

~~No.~~ 21-7506

In The
Supreme Court Of The
United States

ORIGINAL

FILED

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

Curtis Carr - Petitioner

VS

Anthony Wills - Respondent

Petition For Writ Of Certiorari

Curtis Carr
IDOC # Y31122
Menard Correctional Center
P.O. Box 1000
Menard, IL 62259

Question Presented

Does the admissibility of videotaped interrogations in which the interrogating officers insert their conclusions about the defendant's guilt violate a defendant's United States Constitution Amendment XIV, due process of law rights to a fair trial?

List of Parties

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

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Opinions Below

The opinion of the Appellate Court of Illinois, Fifth district
appears at Appendix A to the petition and is reported at
People v. Carr, 2021 IL App. (5th) 180387-LL

The opinion of the highest State Court to review the merits appears
at Appendix B to the petition and is unpublished.

Jurisdiction

The date on which the highest state court decided the case at hand on January 26, 2022.

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

Statement Of Facts

State's Case:

Charged Events

In July 2013, 12-year-old M.F. lived with her 14-year-old sister, Katie; her brother, Phillip; her mother, Tammy A.; and her step-father, Michael. On July 4, 2013, Michael and Tammy gave Katie and M.F. permission to ride overnight with Carr, a truck driver and Michael's childhood friend, to Kansas City. Katie slept in the passenger seat, while M.F. and Carr slept in the bunk.

At some point later in July, Michael and Tammy allowed the girls to stay overnight with Carr at the home of Stephanie Murphy, who lived outside Anna, Illinois, with her mother; brother Devon Murphy; and friend, Karen Sovar. According to Katie, she slept in Stephanie's mom's room, alone. The next morning, she received a text from M.F. that she was "across the border" with Carr. Two days later, the family discovered that Katie and Devon had sex at Stephanie's house. Michael also testified that, around July 28, 2013, Carr spent the night at their house. Michael woke up and saw M.F. and Carr on the same couch away from [Carr]. Carr said he had been watching television and fell asleep.

The family noticed a change in M.F. after the trip to Stephanie's house. On July 30, 2013, Michael asked Katie to obtain a journal in which Katie had seen M.F. writing. The journal read, "I am going out with Curtis Carr. He is the best BF that I have had. We kissed and been kissing... And... slept naked. We did stuff but I'm still a virgin because he said I'm too hard for his eight inches, but he did give me an orgasm and turned me on a lot."

Michael showed the journal to Tammy A., and Tammy A.'s mother, Tammy F. Tammy F. asked M.F. if anyone had touched her, and M.F. cried and said she had been touched by Carr. According to Michael, M.F. did not say that Carr touched her until they put the journal in front of her. Once Tammy A. heard M.F.'s revelation, she smacked her hand down and yelled that she told M.F. never to let anybody touch her. Following this outburst, M.F. would no longer talk. The family called the police. Michael testified that M.F. called him at work later that night. She told him she slept in Carr's truck at Stephanie's house. Around 2 a.m., she woke up and saw Carr over her, naked. He stripped off her clothing, rolled her on top of him, and tried forcing his penis inside her. She also said Carr stuck his hands down her pants when they went to Kansas City.

Ginger Meyer interviewed M.F. on August 15, 2013. M.F. discussed the trip to Kansas City, stating that Carr got into the bunk with her while she was sleeping. When she woke up, Carr told her his hands were in her pants, but she had not known because she was sleeping. M.F. also said she and Katie were supposed to sleep in Carr's truck at Stephanie's house, while Carr slept inside. However, M.F. fell asleep in the truck alone. When she woke up, Carr forcibly took off her clothes, rolled her on top of him, and then got on top of her. He stopped when she started screaming and crying. Meyer asked if Carr had touched her with a part of his body, and M.F. nodded. She agreed that he put his hands in her "private area," which hurt. He also tried to put his "private" inside, but could not do so because she was too "tight."

Illinois State Police Sergeant Chad Brown interviewed M.F. on August 27, 2013. Brown asked M.F. what she had meant by writing

that she and Carr slept naked together. M.F. responded that she and Carr kissed and did "stuff" outside Stephanie's house, but Carr told her she was still a virgin.

At trial, M.F. testified she was born on August 28, 2000. At some point during the Kansas City trip, she woke up and found Carr lying next to her. He told her his hands had been in her pants. She was scared, but fell back to sleep.

When M.F. and Katie stayed overnight at Stephanie's house, she slept in Carr's truck and thought Katie would join her. During the night, Carr entered the truck, removed their clothes, got on top of her, and tried to stick his penis inside her vagina. His penis made contact, but he said it was too big and would not fit. He also stuck his fingers inside her vagina. He told M.F. not to tell anyone what happened or else he would go to prison. At some point thereafter, Carr came by the house when M.F. and her cousins were jumping on a trampoline. M.F.'s four-year-old cousin, Zoe, ran to Carr, and M.F. worried the same thing could happen to Zoe. She wrote down what happened in the journal and put it under Katie's dresser for Katie to find.

Police did not request a sexual assault kit because the typical window to find evidence was within 72 hours, and M.F. had not reported the charges within that window. Dr. Kathy Swafford examined M.F. on August 15, 2013. Her genitals appeared normal and there was no damage to her hymen.

On August 16, 2013, Illinois State Police Trooper Mark Stram and Special Agent Nicolas Dill interviewed Carr. The interview was recorded and published at trial. In the interview, Carr said he had "no clue" why police wanted to talk to him. He knew his arrest warrant was from

Union County, where Stephanie Murphy lived. He knew Devon had sex with Katie at Stephanie's house, but was not present when that occurred. The prior night, M.F. slept on the love seat, Carr slept with Stephanie, Devon slept with his mother, and Katie slept in Devon's room.

The officers asked Carr if he had ever taken the girls on the road with him, and Carr said he took them to Kansas City, M.F. slept in the bunk, but kept his back toward M.F. Carr brought up the activity between Katie and Devon, and the officers asked what happened the night before that occurred. Carr said they went to bed around 1:00 am. Stephanie woke him up the next day, and he left for Scott City alone.

Eventually, the officers took a break. When they returned, an officer told Carr that the girls said he touched them, and the police knew that occurred. Carr said he never did anything sexual. An officer said he already knew it happened, but was trying to figure out why. Carr said he already told the officers he never did anything and did not know what the officer was talking about and denied touching the girls' "privates." An officer said they already knew the answers to the questions they were asking, but were trying to gage if Carr was telling the truth. They had already done the investigation, and Carr would not be sitting there if they did not already know "for a fact" that this happened. Carr maintained he did nothing inappropriate.

Later, an officer asked Carr if anyone was with him when he went to Scott City. Carr said M.F. was with him, and that he should have been more "elaborate" earlier. When an officer told Carr he had earlier said he was alone when he went to Scott City, Carr responded, "Did I?" He stated, "I'm sorry. I totally f-ed that up, didn't I?"

Other - Crimes Evidence

Detective Mark McDaniel testified that, in June 2016, he served legal papers on Carr at the home where Carr was living with his parents, his girlfriend, Elizabeth M., and Elizabeth's three children, including 14-year-old C.A. In June of 2016, C.A. was interviewed by the Department of Children and Family Services, who obtained her cell phone. Detective Richard Minton extracted C.A.'s phone and described a series of text messages between Carr and C.A. in March and April 2016. In those texts, Carr and C.A. said they loved and missed each other. Carr also asked C.A. if she was "up to having sex again," and C.A. responded affirmatively. Carr also asked C.A. to erase their text messages. Minton also discussed Skype and Instagram messages of a sexual nature exchanged between Carr and C.A. in July 2016. He obtained images from C.A.'s phone that had been sent over Skype, which included a selfie of Carr and alleged photos of his penis and buttocks.

Detective Minton also accessed deleted Facebook messages between Carr and a woman named Harper Sunshine on March 17, 2016. In those messages, Carr said he and "her daughter" were caught "talking dirty back and forth," but it had been "fun and games." He also wrote that "they" obtained C.A.'s phone. He stated, "me and her have talked a lot of shit that wasn't even true but they will never think that."

At Carr's trial, C.A. testified she was born on May 24, 2002, and lived in Maryland until 2016. Her mother met Carr in April 2015, after which Carr and C.A. communicated through messaging. During these exchanges, Carr sent pictures of his private parts and also asked for pictures of her private parts. Not long after, C.A. and Carr were alone on her Maryland porch late at night. She did not know when this occurred, or why they

were alone. At that time, Carr placed his penis inside her vagina.

On September 6, 2016, Detective McDaniel recovered a Motorola phone from Carr's bedroom. He retrieved messages of a sexual nature sent in 2014 to H.S., who was born on January 7, 2003. Minton also recovered six images that he believed to be child pornography.

Defenses Case

Stephanie Murphy testified she lived with her mother, Devon, and Karen Sovar. Everyone except for Sovar had their own bedroom, and Sovar slept in the living room. On July 15, 2013, Carr came to visit with M.F. and Katie. The girls slept in Devon's room, while Devon slept with his mother. Carr slept in Stephanie's room, and was only gone for a few seconds to use the bathroom. When Stephanie got up the next morning, Carr was still lying beside her. On cross, Stephanie acknowledged she testified previously that she had woken Carr up in his truck the last time the girls stayed at her house. She explained that she had been nervous and confused. She was certain she woke up Carr in his truck on a different occasion.

Karen Sovar testified that she slept on the couch. At some point, she got up to use the restroom and saw someone asleep on the other couch, whom she assumed to be Katie or M.F., based on their body shape. She thought Carr was in Stephanie's bedroom, because she heard him snoring and saw two adults on the bed.

Leta Carr, Curtis Carr's mother, testified that Carr loaned his Motorola phone to a fellow truck driver named Jimmy Hester.

Argument

This Court should address the issue of first impression regarding the State guidelines for admissibility of videotaped interrogations in which the interrogating officers insert their conclusions about the defendant's guilt.

Over defense objection, Curtis Carr's jury viewed a videotaped interrogation in which the officers stated seven times that they knew Carr improperly touched M.F. and made other conclusive statements regarding his guilt. This Court has not addressed the relevance and guidelines for admissibility of videotaped interrogations in state courts. Yet the admission of this evidence is becoming increasingly common, and the rules for admissibility are expanding. Thus, this Court should grant this Certiorari.

During a portion of Carr's videotaped interrogation, police officers told him:

- 1) "The girls say that you touched them. I know it happened." (St. Exh. 5 51:22-53:10)
- 2) "... I believe it went on and I know it went on. *** That you touched them. I know that." (St. Exh. 5 55:00-55:11)
- 3) "I know it happened... but I'm still trying to figure out why." (St. Exh. 5 55:45-55:52)
- 4) "... the questions that we're asking you, we already know the answer to, okay. A lot of it we're trying to judge is whether you're gonna tell us the truth or not. We're trying to gauge... the truth, umm, and we're trying to see if you're a truthful person." (St. Exh. 5 1:00:20-1:00:37)
- 5) "... the fact of the matter is, is that we know for a fact. We wouldn't

be sitting here talking to you if we didn't know for a fact that this happened. The question is why did it happen and how did it happen. And that's why we're giving you an opportunity to explain... ." (St. Exh. 5 1:02:45-1:03:15)

6) "The fact of the matter is, I'm not gonna go, if I'm a truck driver- no matter what I am- I'm not gonna go sleep in the same bed as a 12-year-old girl. It's not gonna happen. *** Because, because nothing good comes out of that situation. *** And then, then, the issue also that we have is when, you know, they're both making comments- hey, you know, something happened- obviously we're like hey, you know, maybe there's some truth to this. Obviously. Obviously there's some truth." (St. Exh. 5 1:03:20-1:04:02)

7) "do you realize that, again, we know this happened. Okay?" (St. Exh. 5 1:04:34-1:04:41)

8) "We are trying to find out and give you the opportunity to explain what happened. Because if we let things go, Curtis, you look like a monster..." (St. Exh. 5 1:04:58-1:05:11)

9) "... Obviously you had not had any female attention. Which, as a guy, we can all understand." (St. Exh. 5 1:08:50-1:08:58)

10) "I'm trying to put myself in your shoes, okay. So I get arrested and they bring me to Franklin County jail. *** I'm... an innocent man. Okay? So, the next day as I'm sitting in jail, the Illinois State Police come in to talk to me. Now I'm sitting in your chair. Um- the thing- the last thing that I would have ever done as an innocent person, okay, is start talking pretty much automatically about the victims in the case. Without being prompted to. Do you realize you did that? (St. Exh. 5 1:19:35-1:21:26)

Carr argued that the Court erred in admitting this evidence because its probative value was outweighed by its prejudicial effect, thereby, violating the XIV amendment, since the statements did not garner relevant responses from Carr. (St. Exh. 5 51:22-1:21:35) See *People v. Beaman*, 229 Ill. 2d 56, 75-76 (2008) (evidence is relevant if it tends to make any fact in consequence more or less probable than it would be without the evidence); *People v. Stevenson*, 2014 IL App (4th) 130313, ¶43 (relevant evidence may be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice"). However, the Illinois appellate court rejected Carr's argument and affirmed his convictions. *People v. Carr*, 2021 IL App (5th) 180387-U, ¶¶ 51-55, and the Illinois Supreme Court denied Carr leave to appeal.

The Illinois appellate court has generally allowed the publication of videotaped interrogations in which police officers comment on the credibility of the defendant, without offering opinions on his guilt. See *People v. Brothers*, 2015 IL App (1st) 130644, ¶132; *People v. Theis*, 2011 IL App (2d) 091080, ¶¶ 36-37; *People v. Degorski*, 2013 IL App (1st) 100580, ¶¶ 73-74, 86; *People v. Moore*, 2012 IL App (1st) 100857, ¶52. However, this case law does not resolve the admissibility of interrogations in which the officers express their investigative conclusions of the defendant's guilt. For example, jurors are instructed when they hear evidence of a defendant's guilt, through their statements, it is up to them to determine how much weight to give that statement. See Illinois Pattern Instructions, Criminal, No. 3.06-07 (2018). Thus, they understand that they get to resolve the statements made by the defendant during his interrogation, including whether or not he was truthful. By contrast, no IPI

informs jurors how to consider statements made by officers during an interrogation. Thus, here, Carr's jury was allowed to utilize the officers' conclusions that Carr improperly touched M.F. in any way the jury pleased. See *People v. Jura*, 352 Ill. App. 3d 1080, 1093 (1st Dist. 2004) (where jury is not instructed that it can consider evidence only for a limited purpose, court will presume jury considered evidence for truth of the matter asserted). Moreover, an officer's statement during interrogation that the defendant is lying does not always encroach on the jury's call on whether the defendant was guilty. Rational jurors can understand that suspects may lie for reasons other than because they were guilty, e.g., not wanting to say something to make them look guilty. By contrast, an officer's assertion that he believes the defendant is guilty does usurp the jury's role. See *People v. Suggs*, 2021 IL App (2d) 190420, ¶¶ 17-18.

Addressing this issue below, the Illinois Appellate court noted that, in *People v. Hanson*, 238 Ill. 2d 74, 101 (2010), this Court drew a distinction between opinions stated at the time of trial versus those expressed during investigation. Carr, 2021 IL App. (5th) 190387-U, ¶51. In *Hanson*, the detective testified that the defendant called the police and asked why they wanted to speak to him, and the detective responded that the defendant's sister thought he caused the deaths of the victims. See *Hanson*, 238 Ill. 2d at 101-02. This Court found no error because: 1) the testimony provided context for the investigation; 2) did not amount to an opinion that the defendant's sister thought he was guilty; and 3) explained the defendant's actions after that phone call, including how he left the state. *Id.* This Court also noted that the opinion of a layperson is not the

same thing as that from a police officer, which impresses the jury. Yet here the jury heard the repeated statements of police officers that they knew Carr committed these crimes, despite his denials. (St. Exh. 5 55:45-1:05:11)

Three published decisions from Illinois appellate courts have analyzed the admissibility of interrogation videos where police similarly expressed their faith in the charges against the defendant. In *Hardimon*, 2017 IL App (3d) 120772, ¶59, the court found the defendant's attorney ineffective in failing to redact an interrogation in which the police repeatedly accused the defendant of being guilty. The court noted that the defendant did not change his version of events following those accusations, and thus, "the final two-thirds [of his interrogation] had no probative value and were highly prejudicial." *Id.* at ¶59. By contrast, in *People v. McCallum*, 2019 IL App (5th) 160279, ¶¶58-59, and *People v. Whitfield*, 2018 IL App (4th) 150948, ¶¶50-52, the courts found similar interrogation videos admissible, since the officers' accusations did lead to relevant responses from the defendant.

Unlike the prior cases where these types of interrogation videos have been admitted, the State has never disputed that the officers' repeated assertions to Carr that they knew "for a fact" that he touched M.F., and that the only reason he was being questioned was to explain himself (St. Exh. 5 55:45-1:05:11), produced no relevant responses from Carr. When the officers insisted Carr was guilty, Carr continued to maintain that he never touched M.F. (St. Exh. 5 51:22-1:21:35) Unlike any inculpatory statement made during an interrogation, a criminal defendant's out-of-court denials

of guilt are inadmissible. *People v. Barnwell*, 285 Ill. App. 3d 981, 989 (1st Dist. 1996). Thus, there was no value in allowing the jury to hear prejudicial statements from the officers resulting in inadmissible evidence.

Nevertheless, the Illinois appellate court found the entire interrogation video to be admissible, since Carr otherwise discussed relevant facts around the same portions of the interrogation in which the officers' prejudicial statements were made. Specifically, the court noted that Carr: 1) admitted to sleeping in the same compartment with M.F. during an overnight trip that Carr took with M.F. and her sister, Katie, to Kansas City; 2) admitted that he played a game with the girls in which he "scooped" them; and 3) acknowledged that M.F. went with him to Scott City on the morning after these events, a change from his prior statement to the officers. *Carr*, 2021 IL App (5th) 180387-U, ¶¶ 54-55.

None of these statements increased the probative value of the damning conclusions stated by the officers during interrogation. First, Carr had already stated earlier that he slept next to M.F. during the trip to Kansas City (St. Exh. 5 21:32-23:17), and that he had played a game with the girls and others called "scooping," where someone would walk up to another person and scoop under their breasts. (St. Exh. 5 35:50-37:43) Thus, it was not necessary to allow the jury to see portions of the interrogation in which Carr repeated those statements.

The only new information stated by Carr during the challenged portion occurred when Carr said M.F. had been with him when he went to Scott City the morning after the charged events, which

he had "totally f-ked [] up" earlier. (St. Exh. 5 1:15:21-1:16:50) Yet this was not elicited by the officers' assertions that they knew Carr touched M.F. Carr made this statement when asked directly if anyone was with him that morning. (St. Exh. 5 1:15:21-1:16:50) Thus, if the State wanted to show this portion of Carr's interrogation, it could have done so without showing the prejudicial conclusions stated elsewhere. Indeed, this question and answer occurred a full 10 minutes after the officers told Carr they already knew he committed this crime (St. Exh. 5 55:00-1:05:11); seven minutes after an officer surmised that Carr committed the acts because he had not recently had any female attention (St. Exh. 5 1:08:50-1:08:58); and five minutes before the officers commented on why a statement made by Carr at the beginning of his interrogation was suspicious. (St. Exh. 5 1:19:35-1:21:26)

Or, the State could have asked Trooper Mark Stram to describe anything of relevance stated by Carr during this portion of his interrogation. See *People v. Musser*, 835 N.W. 2d 319, 359 (Mich. 2013) ("requiring the interrogating officer to testify at trial and paraphrase the statements he or she made that provoked a relevant statement by a defendant may be necessary in some instances to protect a defendant's right to a fair trial from the resulting prejudice of allowing the jury to hear the interrogator's comments verbatim"). Notably, the State did not play any portion of Carr's interrogation at his first trial. Any relevant statement was described by Stram from the witness stand. Obviously, the State then recognized that it was Carr's statements,

and not the officers's remarks, that were relevant.

Moreover, the prejudice caused by this type of evidence is substantial. In *People v. Crump*, 319 Ill. App. 3d 538, 541-44 (3d Dist. 2001), the Illinois appellate court found reversible error from a police officer's testimony that he had believed the defendant was guilty during his investigation, because the officer was an authority figure, whose opinion would be highly persuasive to the jury. The persuasive effect of police officers' opinions that the defendant is guilty does not change depending on whether the jury hears that opinion from the witness stand, or watches the officer state that conclusion in an interrogation video. See *Hardimon*, 2017 IL App (3d) 160279, ¶37 (officers' stated opinions of defendant's guilt during interrogation "removed the finding of guilt from the province of the jury as the detectives conclusively stated that the defendant was guilty of murder"). Indeed, the high courts in at least three other states have limited the admissibility of similar interrogation videos in which the officers made those kinds of remarks. See *Musser*, 835 N.W. 2d at 359; *Jackson v. State*, 50.3d 328, 338-41 (Fla. 2012) (finding it "especially troublesome when a jury is repeatedly exposed to an interrogating officer's opinion regarding the guilt or innocence of the accused"); and *Sweet v. State*, 234 P.3d 1193, 1199 (Wyo. 2010) (finding plain error where, inter alia, jury viewed an interrogation in which officer stated he believed defendant sexually abused minor). Since this Court has not yet addressed the guidelines for admissibility of this increasingly common evidence, this Court should grant this Certiorari.

Conclusion

This petition for a writ of certiorari should be granted for the reasons stated within.

Respectfully Submitted,
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Curtis Carr

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