

21-7641

No. 21A397

ORIGINAL

Supreme Court, U.S.
FILED

MAR 25 2022

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Jose Diaz Perez — PETITIONER
(Your Name)

vs.

The State of Texas — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States District Court - Eastern Division of Texas
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jose Diaz Perez
(Your Name)

2665 Prison Rd. #1
(Address)

Lovelady, Texas 75851
(City, State, Zip Code)

N/A
(Phone Number)

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

- 1) Did the State of Texas and the U.S. District Court improperly hold that the trial court properly admitted into evidence a personal writing by the Petitioner, seized unconstitutionally upon the execution of an evidentiary search warrant?
- 2) Did the State of Texas and the U.S. District Court improperly hold that the trial court properly admitted into evidence statements made by Petitioner while he was intoxicated?

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

State of Texas v. Jose Diaz Perez, Tr.Ct. No.18373
Judgement April 22, 2014.

Jose Diaz Perez v. State of Texas, COA No.12-14-00116-CR
Affirmed May 29, 2015.

Jose Diaz Perez v. State of Texas, PD-0728-15
Refused December 9, 2015.

Jose Diaz Perez v. State of Texas, WR-86,945-01
Denied without written order May 16, 2018.

Jose Diaz Perez v. Bobby Lumpkin, Director TDCJ-ID Civil Action
No. 6:18CR255.
Denied August 5, 2020.

Jose Diaz Perez v. Bobby Lumpkin, Director TDCJ-ID No.02-40587
Application for Certificate of Appealability
Denied October 28, 2021.

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Fifth Circuit Court of Appeals denial of Application for Certificate of Appealability

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United States Constitution Fourth Amendment

APPENDIX E

United States Constitution Fifth Amendment

APPENDIX F

United States Constitution Fourteenth Amendment Section (1)

APPENDIX G

Texas Code of Criminal Procedure Article 18.02(a)(10)

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Harrison v. United States, 392 U.S. 219(1968)	7
Jackson v. Denno, 378 U.S. 368(1964)	8
Michigan v. Harvey, 494 U.S. 344(1990)	8
Miller v. Fenton, 474 U.S. 104(1985)	11
Miranda v. Arizona, 384 U.S. 436(1966)	8,9,10,11
Netherly v. Collins, 993 F.2d 1154(5th Cir.1993)	11
Smith v. State, 779 S.W.2d 417(Tex.Crim.App.1989)	8

STATUTES AND RULES

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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 _____; 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 _____; 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 C to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ 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 October 28, 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: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including March 27, 2022 (date) on February 9, 2022 (date) in Application No. 21 A 397.

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 _____. A copy of that decision appears at Appendix _____.

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution, Fourth Amendment - See Appendix D

U.S. Constitution, Fifth Amendment - See Appendix E

U.S. Constitution Fourteenth Amendment - See Appendix F

Texas Code of Criminal Procedure Article 18.02 - See Appendix G

STATEMENT OF THE CASE

Petitioner was indicted on April 23, 2012, for the offense of Murder. Defense counsel filed suppression of evidence motions in regards to a personal writing of the Petitioner's and statements given to law enforcement officials. The trial court denied the suppression motions and the case proceeded to a jury trial.

During the trial, over defense counsel's objections, a personal writing and two statements made by the Petitioner were introduced into evidence at trial.

At completion of the guilt/innocence phase of the trial, the jury found the Petitioner guilty of Murder and assessed a 50 year sentence. Petitioner filed a Motion For New Trial and a Notice of Appeal. The trial court certified Petitioner's right to appeal.

Petitioner's Direct Appeal was filed with the Twelfth Court of Appeals, Beaumont, Texas Division and later affirmed on May 29, 2015. Petitioner subsequently requested a Petition For Discretionary Review with the Texas Court of Criminal Appeals which was refused on December 9, 2015.

After submission of the Application For State Writ of Habeas Corpus, the Texas Court of Criminal Appeals later denied without written order the application on May 16, 2018.

Application for Federal Writ of habeas corpus was filed with the United States District Court for the Eastern District of Texas - Tyler Division on August 21, 2018. The Magistrate Judge recommended denial on March 31, 2020 with denial of Certificate of Appealability.

STATEMENT OF THE CASE CONT.

The District Court Judge later agreed with the recommendation and denied Petitioner's federal writ of habeas corpus on August 5, 2020.

Application to file a Certificate of Appealability was filed with the Fifth Circuit Court of Appeals but later denied on October 28, 2021.

Petitioner motioned this Court for an Extension of Time to present his Writ of Certiorari which was granted making the new date for filing of March 27, 2022. Thus this writ is timely filed.

REASONS FOR GRANTING THE PETITION

The United States District Court of the Eastern District of Texas has decided an important matter of federal law in a way that conflicts with the decision of this Court, and has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power.

The Petitioner presents two questions of federal law to this Court, which should be addressed to prevent further injustice, and future injustice to others in similar situations.

ARGUMENT NUMBER ONE

The Texas Twelfth Court of Appeals (12th COA) and the United States District Court improperly applied constitutional precepts concerning personal writings of the Petitioner, which were seized in violation of state and federal law under the Fourth Amendment of the United States Constitution. (See Appendix D).

Texas Code of Criminal Procedure, (Tex.C.C.P.) Article 18.02(a) (See Appendix G) specifically provides the basis of a search warrant, what is allowed, and disallowed. Specifically, the "personal writings of the accused," are prohibited, both under constitutional and state law.

The State improperly introduced, over objections of defense counsel, and was allowed into evidence what was clearly a personal writing. See State's Exhibit (SE) 73. The writing was written in Spanish, the Petitioner's primary language, upon a writing tablet.

The State was forced to translate the personal writing into english for the purpose of introduction at trial and into evidence. Further, the personal writing was partially covered by items on a kitchen table.

The State claimed that the writing was a Last Will and Testament. However, in order to make such an assertion, the writing must be deemed a legal document under Texas Law. It clearly is not. At best, it could be considered an initial draft for personal use.

The handwritten document can hardly be considered a legal document for the disposition of the Petitioner's property.

Therefore, the 12th COA's holding that personal writings rise to admissible evidence is incorrect. Since personal writings are disallowed under Tex.C.C.P. Article 18.02(a)(10), (See Appendix G) and such item was not specifically listed on the search warrant, it was inadmissible.

This ten creates the conflict of the "Fruit of the Poisonous Tree" doctrine as found in Harrison v. United States, 392 U.S. 219, 222 (1968).

For the -

"essence of a provision forbidding the acquisition of evidence in a certain way is not merely evidence so acquired before the Court, but that it not be used at all."

Harrison @ page 222.

Additionally, the personal writing was not admissible under the "plain view" exception.

Law Enforcement does not have a legal or constitutional right to seize any item they desire during the course of a good faith search conducted within the parameters of a valid search warrant.

By the holding of the Courts, a means is contrived to bypass the law and rights of individuals creating its own legal system. The warrant was issued to search for "weapons" and "blood" from the Petitioner's residence. See SE-1.

The personal writings of the Petitioner can in no manner or form be construed as either of the items to be searched for within, the issued search warrant.

As such, the Texas 12th COA and the United States District Court have decided an important question of federal law in a way that conflicts with the decisions of this Court and the United States Constitution so as to call for an exercise of this Court's supervisory authority.

ARGUMENT NUMBER TWO

This question revolves around the issue of statements made and federal law specifically in violation of Miranda v. Arizona, 384 U.S. 436 (1966).

The Fourteenth Amendment's (See Appendix F) Due Process Clause requires that only voluntary confessions be admitted into evidence; otherwise reliable and probative evidence is inadmissible for all purposes if the evidence is derived from an involuntary statement. See Michigan v. Harvey, 494 U.S. 344 (1990).

It is a violation of the Due Process Clause of the United States Constitution, in whole, or in part, on an involuntary statement. See Jackson v. Denno, 378 U.S. 368 (1964); Smith v. State, 779 S.W.2d 417 (Tex.Crim.App.1989)

The Texas 12th COA concluded -

"that***Appellant's statement was not taken in strict compliance with [Tex.C.C.P. Art.38.22] Subsection 3(a),..."

12th COA Memorandum Opinion, page 5.

However, the Court also held,

"the State established an exception under subsection 3(c). Therefore, the trial court did not err in admitting the statement."

Id @ pp.5-6.

For the 12th COA to circumvent the protections afforded by the United States Constitution's Fifth Amendment, and Miranda, supra is unfounded in any jurisprudence in the United States. The protections against self incrimination were secured -

"for ages to come, and...designed to approach immortality as nearly as human institutions can approach it."

Miranda v. Arizona, 384 U.S. 436, 442 (1966)(Quoting Cohens v. Virginia, 6 Wheat 264, 387 (1821)).

"The prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure a privilege against self-incrimination."

Id. @ page 444.

A defendant's Constitutional rights have been violated if his conviction is based, in whole or in part, on an involuntary confession, regardless of its truth or falsity, even if there is ample evidence aside from confession to support the conviction.

See Id. @ pp.463-64.

In reference to the voluntariness, the -

"voluntariness doctrine in state cases encompasses all interrogation practices which are likely to exert such pressure upon an individual as to disable him from making a free and rational choice."

Id. @ pp.465-66.

"Whatever the testimony of the authorities as to waiver of rights by an accused, the fact of...in-communicado incarceration before a statement is made is strong evidence that the accused did not validly waive his rights."

Id. @ page 476.

When the 12 COA acknowledged that Petitioner's statements were not taken in strict compliance with the law, the issue should have been resolved. Instead, the court searched for and found a possible exception to bypass the Petitioner's constitutional rights, thereby contravening the hold of this court in Miranda.

"unless other fully effective means are devised to inform accused person of their right of silence, and to assure a continuous opportunity to exercise it...prior to any questioning, the person must be warned that he has a right to remain silent..."

Id. @ page 444.

This provision applies to statements made during the booking procedure. Any evidence that the accused was threatened, "tricked or cajoled" into waiver will show that he did not voluntarily waive privilege to remain silent. See Id. @ page 476.

Further, the privilege against self-incrimination protects individuals from being compelled to incriminate themselves in any manner; it does not distinguish degrees of incrimination. See Id. @ page 476.

The Fifth Amendment (see Appendix E) provision that an individual cannot be compelled to be a witness against himself cannot be abridged in any circumstantial manner. See Id. @ page 477.

"Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them."

Id. @ page 491.

The United States District Court for the Eastern District of Texas, Tyler Division went on to hold that the trial court's recommendation of denial of Petitioner's state habeas petition with subsequent denial without written order by the Texas Court of Criminal Appeals is an adjudication on the merits and is entitled to a presumption of correctness. However, the state court did not make any specific factual findings in regards to the complained of statements given by Petitioner, only a general denial. See Report and Recommendation of the Magistrate Judge, page 13. (Appendix).

This situation is aggravated by the fact that the trial judge and the habeas judge are two different individuals. As such,

"Because it did not follow on the heels of a Full and Fair hearing, this finding is not entitled to the statutory presumption of correctness."

Netherly v. Collins, 993 F.2d 1154, 1157 (5th Cir.1993).

Seeing as how the Petitioner's petition was not considered by the same judge who presided over his trial, there was never a meaningful opportunity for the court to assess the credibility of the conflicting affiants. Thus, the presumption must be afforded to the Petitioner.

"[V]oluntariness is a legal question requiring independent federal determination."

Miller v. Fenton, 474 U.S. 104, 110 (1985).

Therefore, the 12th COA and the United States District Court have issued findings that directly conflict with the decisions of this Court and the United States Constitution so as to call for an exercise of this Court's supervisory authority.

CONCLUSION

Perez prays this Court address the matters at bar, and grant relief as appropriate and ensure his and others constitutional rights will be adhered to.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Joseph

Date: March 25, 2022