No. 22-6768 ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

STANLEY FOSTER BAKER — PETITIONER
(Your Name)

vs.

STATE of TEXAS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

COURT of APPEALS - FOURTH COURT of APPEALS DISTRICT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

STANEY FOSTER BAKER
(Your Name)

2101 Fm 369 NORTH
(Address)

IOWA PARK, TEXAS 76367
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Was it objectively unreasonable, under 28 U.S.C. §2254(d)(1), for the State courts to conclude on the record before it that no reasonable factfinder could believe that Baker was in custody during interrogation on May 27, 2015?

2. Under 28 U.S.C. §2254(d)(1) or (d)(2), did the State Court's failure to provide a full and fair hearing - in refusing to allow petitioner the opportunity to testify in the motion to suppress and Jackson v. Denno hearing - result in an unreasonable evidentiary foundation or objectively unreasonable determination of the facts presented in the proceedings?

3. Was the State court's determination that Baker was not in custody during interrogation "contrary to" or an "unreasonable application" of clearly established Supreme Court law?

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

Baker v. Davis, No. SA-19-CA-0240-XR, U.S. District Court for the Western District of Texas San Antonio Division. Judgment entered Oct. 29, 2019.

Baker v. Lumpkin, No. 20-50019, U.S. Court of Appeals for the Fifth Ciruit. Judgment entered Jan. 25, 2021. Rehearing denied Feb. 11, 2021.

Baker v. Lumpkin, No. 20-50897, U.S. Court of Appeals for the Fifth Circuit. Judgment entered Mar. 15, 2021.

Baker v. Lumpkin, No. 21-50918, U.S. Court of Appeals for the Fifth Circuit. Judgment entered Apr. 18, 2022.

Baker v. Lumpkin, No. 5:22-cv-01285-OLG. Pending. Filed Nov. 28, 2022.

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TABLE OF AUTHORITIES CITED

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STATUTES AND RULES

28 U.S.C. §2254(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in the State court proceedings unless the adjudication of the claim- (1) resulted in a decision that was contrary to, or involved an unreasonable application of clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceedings.

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 _____ 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 _____ 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 B 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 _____.

[ ] 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 _____ (date) on _____ (date) in Application No. ___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 11-02-2022. A copy of that decision appears at Appendix A.

[✓] A timely petition for rehearing was thereafter denied on the following date: 11-30-2022, and a copy of the order denying rehearing appears at Appendix C.

[ ] 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

United States Constitution Amendment V - "...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"

United States Constitution Amendment VI - "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...; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

United States Constitution Amendment XIII - "Section 1. Neither Slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

United States Constitution Amendment XIV - "...nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Title 28 U.S.C. §2254(d) - An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in the State

court proceedings unless the adjudication of the claim -
(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceedings.

STATEMENT OF THE CASE

Petitioner was indicted on September 11, 2015 for one count of continuous sexual abuse of a child, one count of indecency with a child by contact, and two counts of indecency with a child by exposure (Clerk's Record ("CR"), pg. 4-6). The State abandoned counts 3 and 4 (CR, pg. 135) (Reporter's Record ("RR") Vol. 9, pg. 85-87). On July 12th, 2016, the trial court granted in part, and denied in part, petitioner's motion to suppress (RR, Vol. 6 of 11). The case was tried before a jury on July 18-20, 2016. (RR, Vol. 7-9). The jury convicted petitioner on counts 1 and 2, and the Judge sentenced petitioner to life in prison for count 1 and twenty years for count 2. (CR, pg. 123-124 and pg. 134-135 incorrectly states that punishment was assessed by the jury, it was assessed by the Judge). On August 19, 2016, petitioner timely filed a notice of appeal (proceeding pro se with court-appointed stand-by counsel (CR, pg. 147). Petitioner timely filed his pro se appellate brief, on May 05, 2017, with the Fourth Court of Appeals (FCOA). The FCOA refused to accept petitioners pro se brief (asserting substantive and formative defects without reference thereto) and, over petitioner's objections, gave stand-by counsel control of petitioner's appeal. The FCOA refused to accept petitioner's pro se brief as a supplement, or oder stand-by counsel to include the claims insisted on by petitioner, as requested by petitioner. The FCOA affirmed petitioner's

conviction March 21, 2018. Petitioner timely filed a petition for discretionary review that was refused by the Texas Court of Criminal Appeals on September 12, 2018. On February 11, 2019, petitioner filed a formal criminal complaint with United States Magistrate Elizabeth Chestney due to the fact the State had suppressed petitioner's request for an attorney during interrogation on May 27, 2015. On March 04, 2019, petitioner's complaint was construed as a 28 U.S.C. §2254 Writ of Habeas Corpus (See No. SA-19-CA-0240-XR (ESC) (ECF No. 1)). Petitioner timely filed his amended §2254 Writ of Habeas Corpus on May 20, 2019 (ECF No. 5). The U.S. District Court for the Western District of Texas - San Antonio dismissed petitioner's Writ of Habeas Corpus, without prejudice, for failure to exhaust state court remedies on October 29, 2019. Petitioner timely filed a notice of appeal contesting the ruling and requested a certificate of appealability (COA). The U.S. Court of Appeals for the Fifth Circuit denied petitioner's request on January 25, 2021. Believing his remedies were exhausted, and that circumstances existed rendering the State's corrective process inadequate/ineffective, petitioner filed related motions with the U.S. District Court and U.S. Court of Appeals for the Fifth Circuit (writ of mandamus, motion to recuse, and Rule 59(a)). The U.S. COA for the Fifth Circuit denied these motions on April 18, 2022.

On June 21, 2022, petitioner filed his State Habeas Corpus Application (No. 15-1755-CR-A-A). The Texas Court of Criminal Appeals denied the application without written order on November, 02, 2022. Petitioner timely filed this request for writ of certiorari.

STATEMENT OF FACTS

On May 27, 2015, petitioner was interrogated by Detective Terry Grubbs and Texas Ranger Keith Pauska while lying confined to a hospital bed at University Hospital's Trauma Unit. Petitioner was connected to life saving medical equipment, intubated, and physically unable to remove himself from police interrogation due to injuries from a forty (40) foot fall. (See Exhibit No. 1 - medical Records pg. 83, 84, 85 - Left lung tube still draining serious fluid; also RR, Vol. 6 of 11, pg. 35). Officers Grubbs and Pauska intruded into petitioner's private hospital room uninvited, unannounced, and without a warrant. Petitioner was speaking with his aunt, and was being monitored around-the-clock by a one-to-one sitter, when the officers entered the room and isolated petitioner (See Spoliated Interview Transcripts ("SIT"), State's Exhibit No. 3 in RR Vol. 7 of 11) (~~Appendix B~~). Petitioner's aunt and one-to-one sitter exited the room when police entered. A third officer had arrived with officer Grubbs and Ranger Pauska (Officer Sorenson) but was stationed outside the room during the interrogation (RR Vol. 8 of 11, pg. 293).

Petitioner was completely unaware of why he was in the hospital, or for the officer's intrusion. (SIT pg. 3-4). Officer Grubbs and Ranger Pauska then proceeded to accuse petitioner of sexual crimes and elicit incriminating responses from petitioner (SIT pg. 7-45). Petitioner asked officer Grubbs "Am I supposed to have counsel here?" (SIT pg. 8, lines 21-22 - SIT says "Am I supposed to have (Inaudible)?," and then petitioner asked again "Am I supposed to have an attorney here?" (SIT pg. 8, lines 24-25). Officer Grubbs then asked petitioner the clarifying question "Do you think you need an attorney?," to which petitioner responded "I don't know, I think so, yeah". These two statements, "Do you think you need an attorney?" and "I don't know, I think so, yeah", have been omitted, deleted, or edited out of the original audiovisual recording and transcripts thereof. (The omitted, deleted, or edited audiovisual recording and spoliated interrogation transcripts were presented to the judge and jury during the motion to suppress and subsequent trial). The missing statements should appear at the top of page 9 of the Spoliated Interrogation Transcripts. Petitioner then tried to invoke his right to silence by stating "I just don't -- I don't know what to say". (SIT pg. 9, lines 10-11). Both officers ignored petitioner's requests for an

attorney and to remain silent, pressed on with the interrogation, and obtained incriminating statements from petitioner. It is undisputed petitioner was never given miranda warnings nor initiated conversation with the officers. (See SIT). Petitioner was medically cleared to leave the hospital on May 31, 2015 (See Appendix D), but was held until June 03, 2015 and wheelchaired directly to police inside the hospital and arrested. Petitioner did not leave the hospital with family as claimed by Ms. Barrios and the State. (RR vol. 9 of 11, pg. 27).

A motion to suppress was held on July 12, 2016. Petitioner was forced to proceed with court-appointed counsel (Mr. Peplenski) over vehement objection by petitioner. (See RR Vol. 6 of 11). Detective Grubbs was the only police officer to testify in the motion to suppress. When he was asked if petitioner had requested an attorney during interrogation, officer Grubbs replied "...that it was up to him." (RR Vol. 6 of 11, pg. 75-76). This does not appear anywhere in the Spoliated Interrogation Transcripts (SIT). During the trial officer Grubbs alluded that Ranger Pauska could have been the officer that asked the clarifying question "Do you think you need an attorney?", and that the omitted, deleted, or edited statements could have resulted/occured during the transfering the recorded interrogation from Ranger Pauska's phone to compact disc (CD). (RR Vol. 8 of 11, ps. 32, lines 15-23 and ps. 32-34, ps. 37-39). Ranger Pauska was never called as a witness to testify in the motion to suppress or subsequent trial. Ranger Pauska

was in the courtroom before the motion to suppress started. Petitioner vehemently objected to being forced to use unwanted, unethical, and unprepared counsel (RR Vol. 6 of 11). Judge Kirkendall's comment "That's his choice?" (RR Vol. 6 of 11, pg. 84, line 8) was not a question directed at petitioner, but an affirmative statement directed at Mr. Replenski. Just like the statement at RR Vol. 6 of 11, pg. 32, lines 3-4. Petitioner was never informed by his court-appointed attorney, or Judge Kirkendall, that he had the right to testify in the motion to suppress and Jackson v. Denno hearing and that his testimony could not be used to impeach him at trial.

Judge Kirkendall made findings of fact and conclusions of law (RR Vol. 6 of 11, pg. 83, lines 5-22) that failed to include whether or not petitioner invoked his rights to an attorney or to remain silent. Nor did Judge Kirkendall determine if petitioner had made a knowing and intelligent waiver of those rights. Judge Kirkendall ignored relevant, material, and potentially dispositive evidence presented in the motion to suppress (i.e. medical records, claims that petitioner invoked his rights to an attorney and to remain silent). Judge Kirkendall failed to take all of the objective circumstances and relevant evidence into consideration. Judge Kirkendall granted in part, and denied in part, petitioner's motion to suppress. (RR Vol. 6 of 11, pg. 83, lines 5-22). Petitioner vehemently objected to the entire proceedings (RR Vol. 6 of 11).

of Stanley Baker's interview with police?". (CR, pg. 106). The jury returned a verdict of guilty on counts one and two. Petitioner was sentenced, immediately after the trial, by the judge. The judge sentenced petitioner to life in TDCJ on count one, and twenty years in TDCJ on count two (running concurrently).

On appeal, over vehement objection by petitioner, court-appointed stand-by counsel presented one issue (Custody) to the Fourth Court of Appeals (FCOA). The FCOA, relying on the trial court's findings of fact and conclusions of law that consisted of three sentences, determined that petitioner was not in custody and Miranda warnings were not required. The trial court failed to determine if a reasonable person in petitioner's circumstances would have felt free to terminate the interrogation and leave, or if petitioner had invoked his right to silence and/or an attorney. Relying on incomplete findings of fact and conclusions of law, and ignoring relevant, material evidence presented in the motion to suppress and trial, the FCOA affirmed the trial court's judgment.

Petitioner filed his State Habeas Corpus Application (Texas Code of Criminal Procedure Article 11.07) on June 13, 2022. On November 02, 2022, the Texas Court of Criminal Appeals denied petitioner's application without written order.

REASONS FOR GRANTING THE PETITION

If the United States Constitution, and the decisions of your Court are the Supreme Law of the Land, it is crucial that those entrusted and obliged to give them meaning and force faithfully adhere to their obligation of upholding them. It is equally imperative that they follow the law they represent. Neglect of the former necessarily leads to the failure of the latter. The recent events across the Nation are evidence that Americans have lost faith in, and respect for, the public servants entrusted to lawfully uphold and protect the rights of its citizens.

The same philosophy applies to the truth seeking function of the courts across the Nation. The importance of properly observing, deciding, and enforcing a citizens guaranteed rights when confronted by police cannot be overstated. The issue of "custody" has been a recurring problem, with a long history of Supreme Court precedent, that is needlessly flooding the courts with unnecessary litigation.

In the instant case, the State trial court ignored critical relevant evidence dispositive of the custody issue presented in the motion to suppress. First, the State trial court denied petitioner an opportunity to testify, and present crucial testimony that would

have rebutted the State's key witnesses, based solely on petitioner's refusal to acknowledge court-appointed counsel working against petitioner's best interests and wishes. Petitioner's testimony would have had a direct impact on the issue of custody due to the evidence suppressed by the prosecution, and the fact his testimony would have been dispositive in resolving how he perceived his freedom of action during interrogation.

Second, the trial court failed to make critical findings of fact and conclusions of law necessary for a complete and adequate assessment of the custody issue in petitioner's circumstances. Specifically, the court failed to determine if petitioner invoked his right to silence and/or his right to an attorney (petitioner argues he invoked both rights), nor did the court mention whether a reasonable person in petitioner's position would have felt he was at liberty to terminate the interrogation and leave. In neglecting to consider <u>all</u> of the objective circumstances (i.e. petitioner's physical and mental conditions apparent in the records - Judge Kirkendall did not review petitioner's medical records before making his ruling), and ascertain whether or not petitioner was restrained in his liberty in any significant way, petitioner argues the trial court's findings of fact and

conclusions of law fall well short of what is required in oder to make an objectively reasonable determination on the issue of custody. These very pertinent, material, and dispositive omissions by the trial court not only resulted in a determination that is unreasonable in light of facts and evidence presented to the court, but resulted in a determination that is contrary to or an unreasonable application of clearly established Supreme Court Law (28 U.S.C. §2254(d)(1),(2)).

Moreover, relying on the trial court's incomplete fact finding and conclusions, the Fourth Court of Appeals (FCOA) failed to thoroughly review the record and acknowledge false/conflicting testimony or scrutinize obvious factual errors in the State's Appellee Brief (SAB) (see SAB pg. 3, lines 8-10 - "..no law enforcement officers were stationed outside of his door nor did any officers physically appear at the hospital prior to appellant's interview on the 27th.") This conflicts with Ms. Barrios' testimony during the motion to suppress - "They were calling me because they wanted to know... And then they came up here -- and they came up to my floor and talked with me also." (RR Vol. 6 of 11, pg. 39, lines 18-24). Also, "Detective Grubbs also testified that there were no armed guards outside of appellant's room...." (SAB pg. 3, lines 15-16). This conflicts with officer Sorenson's testimony - "...but we

did go up to the hospital, myself and Ranger -- Texas Ranger, Keith Pauska, and Detective Grubbs went to the hospital to conduct an interview." (RR Vol. 8 of 11, pg. 274, lines 7-10). Also, on cross-examination - Mr. Replenski (Defense Counsel) asked Officer Sorenson, "You're at the hospital while Ranger Pauska and Detective Grubbs were conducting the interview. You -- did you just remain outside the hospital room?", to which Officer Sorenson replied, "Yes, I did." (RR Vol. 8 of 11, pg. 302, lines 8-12). This testimony directly conflicts (Officer Sorenson's testimony) the SAB that states "In addition, they did not have anyone standing guard at appellant's room..." (SAB pg. 5, lines 6-7).

Furthermore, whether inadvertent or by design, the State misled the court and misrepresented the facts when they inserted petitioner's name "Baker" into a quote from findings of fact and conclusions of law in the Martinez v. State case the State was using to argue their position. (See SAB pg. 10). This critical error makes it appear that these findings of fact and conclusions of law were made during "Baker's" proceedings, thereby, putting his claim in a completely different context. More importantly, it makes it seem as if

petitioner was allowed to leave the hospital. Petitioner was never allowed to leave the hospital, he was wheelchaired directly to awaiting police and arrested without ever leaving the hospital. (Petitioner told this to Mr. Peplenski, whom failed to call the nurse or the police officer to testify).

FCOA's memorandum opinion is chalked full of inaccurate, incomplete, and false statements that were readily apparent in the records: 1) "they asked Baker if he wished to have a discussion with them" (mem. op. pg. 2, lines 22-23). Where in the record does this appear? It does not appear in the Spoliated Interrogation Transcripts (SIT). Officer Grubbs said, "Up to talking?" (SIT pg. 3, lines 7-8). 2) "Detective Grubbs testified Baker asked whether an attorney should be present, and he told Baker they were just having a conversation and 'it was up to him'" (mem. op. pg. 4, lines 1-2). Where in the record does this appear? It was said by Detective Grubbs in the motion to suppress (RR Vol. 6 of 11, pg. 76, line 2), but this does not appear anywhere in the SIT - because it was never said. What Detective Grubbs actually said was "Do you think you need an attorney?", to which petitioner responded "I don't know, I think so, yeah". This

should appear at the top of page 9 of the SIT. 3) "He also told Baker if he was not comfortable in answering questions, they could stop at any time". (mem. Op. pg. 4, lines 2-3). The FCOA fails to mention the material fact that petitioner said "I just don't -- don't know what to say" (SIT pg. 9, lines 10-11) trying to invoke his right to silence since police ignored his request for an attorney. 4) "Detective Grubbs did not recall whether he told Baker he was free to leave the hospital" (mem. Op. pg. 4, lines 8-9). The record clearly reveals that petitioner was <u>never</u> told that he was free to leave the hospital. 5) The FCOA quotes the trial court's findings of fact and conclusions of law, but fails to determine whether or not those findings and conclusions were specific enough to make the required determination of custody as required by the Supreme Court. (mem. Op. pg. 4, lines 12-23). Based on the record, the trial court's findings of fact and conclusions of law are wholly inadequate to make the determination that petitioner was not in custody during interrogation. The FCOA should have, at a minimum, remanded for more complete findings and conclusions before making a determination. Petitioner made such a request, but it was ignored.

In the FCOA's Standard of Review they state, "it requires application of legal principles to a specific set of facts." (mem. Op. pg. 5, line 12). Petitioner argues the FCOA failed miserably in applying the applicable legal standards to his specific set of facts. The FCOA cites Berkemer v. McCarty, 468 U.S. 420, 440 (1984) for it's reasonable person test (mem. Op. pg. 5, lines 14-17), but Berkemer involved a traffic stop. Petitioner's circumstances more closely resemble the circumstances found in Mincey v. Arizona, 98 S.Ct. 2408, 437 U.S. 385 (1978). Petitioner was physically confined to a hospital bed, encumbered by tubes and needles, and completely isolated from family or legal support. Id. at, 2417. In Miranda v. Arizona the Court stated "By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way(4)". 384 U.S. 436, 444 (1966). Petitioner's circumstances certainly met all of the requirements of Miranda as emphasized above, and argued throughout. Even though the FCOA refers to Stansbury v. California, 511 U.S. 318 (1994), they fail to apply the proper

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

STANLEY FOSTER BAKER

Date: January 30, 2023