

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

BIJAN WOODLEY,
PETITIONER

v.

UNITED STATES OF AMERICA,
RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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QUESTION PRESENTED

Can a defendant who lacks any knowledge he is charged with a crime knowingly and voluntarily waive his Sixth Amendment right to counsel by executing a generic *Miranda* waiver?

PARTIES TO THE PROCEEDINGS

Petitioner

Bijan Woodley, Petitioner, is an individual and has no corporate affiliations.

Respondent

United States of America.

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Opinion of the United States Court of Appeals for the Sixth Circuit
United States v. Bijan Woodley, No. 17-1265
2017 U.S. App. LEXIS 22081
(6th Cir. November 2, 2017) A-1 – A-12

Appendix B:

Order of the United States Court of Appeals for the Sixth Circuit
Denying En Banc Relief
United States v. Bijan Woodley, No. 17-1265
2017 U.S. App. LEXIS 25024
(6th Cir. December 11, 2017) B-1

Appendix C:

Opinion and Order of the United States District Court,
Eastern District of Michigan, Denying Motion to Suppress
(Michelson, J.)
United States v. Bijan Woodley, No. 15-20007
2016 U.S. Dist. LEXIS 62183
(E.D. Mich. May 11, 2016) C-1 – C-21

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OPINIONS BELOW

The Sixth Circuit panel's original opinion is unreported but available at 2017 U.S. App. LEXIS 22081 (Appendix A). The order denying en banc rehearing is unreported but available at 2017 U.S. App. LEXIS 25024 (Appendix B). The district court's decision is unreported but available at 2016 U.S. Dist. LEXIS 62183 (Appendix C).

JURISDICTION

On November 2, 2017, the Sixth Circuit Court of Appeals issued an unpublished opinion affirming the district court's denial of Petitioner's motion to suppress. Petitioner timely filed a Petition for Rehearing En Banc, which was denied on December 11, 2017. This Court has jurisdiction pursuant to 28 U.S.C. Section 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Sixth Amendment to the U.S. Constitution provides:

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, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; 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.

STATEMENT OF THE CASE

I. Petitioner is Not Informed Charges have Been Filed Against Him When He Executes a Generic *Miranda* Waiver.

Petitioner was indicted on January 8, 2015, for federal carjacking and related charges stemming from an incident that occurred on December 30, 2014. (R. 1, Indictment, Page ID #1-3.) On January 12, 2015, members of Detroit Police Department (DPD) arrested Petitioner, and transported him directly to DPD Headquarters for interrogation. (R. 209, Trial Tr. VII, Page ID #2680-2682, 2735, 2771.) Although Petitioner's 4-hour interrogation was recorded ("interrogation recording"), the audio portion of the final 51 minutes of the interrogation was not captured due to a technical malfunction of the recording equipment. (*Id.* at 2688-2689; Defense Exhibit #1, R. 113, Suppression Hearing, Page ID #933-1005.)¹

The interrogation begins at 8:07 p.m, with a DPD homicide detective eliciting from Petitioner that he was 22-years-old, and did not complete high school. The recording explicitly shows Petitioner asking police at the outset of the interrogation, "What am I here for?" Without informing Petitioner he has been charged with a crime, police provide him with standard warnings required by *Miranda v. Arizona*, 384 U.S. 436 (1966). Petitioner signs the *Miranda* waiver, after which police start questioning him about a recent Detroit homicide, wholly unrelated to the federal indictment.

¹ Petitioner moved the interrogation recording into evidence at the Motion to Suppress Hearing (R. 158, Motion to Suppress, Page ID #1422), and provided a copy to the Sixth Circuit upon request. The following recitation of facts is based upon the interrogation recording.

Bewildered by the questions, Petitioner continues to ask what he is doing there. Police tell Petitioner, “We’ll bring it all home later.” When Petitioner says at 8:40 p.m., “I think you’re interrogating the wrong person,” police respond, “We ain’t interrogating. I’m talking to you.” At 9:48 p.m., Petitioner asks bluntly, “What are you all trying to charge me with?” Police do not answer him. By 10:05 p.m., police had shifted the subject to the underlying indictment, and show Petitioner video surveillance that was recorded during the carjacking. They ask Petitioner numerous times whether he was the individual caught on the video surveillance. Petitioner responds in the negative each time, and at one point states, “Get me out of here.”

Finally, at 10:13 p.m., police inform Petitioner he has been charged with carjacking. Petitioner appears shell-shocked. Petitioner is not *Mirandized*, nor is he advised about his right to counsel for this charge. Instead, police explain, “How it works [in the federal system] is everybody gets a chance to tell their story ... the first man to the table gets the best deal ... Tell me your side of the story.” Police continue their interrogation until approximately 10:26 p.m., when they acknowledge Petitioner was blind-sided by them. “You thought you was in here for something else,” police tell Petitioner. “You weren’t expecting this ... This caught you off guard.”

The recording shows Petitioner depart the interrogation room with police at 10:42 p.m. When they return about 30 minutes later, police interrogate Petitioner for an additional 51 minutes, during which it is alleged

Petitioner made incriminating statements (R. 209, Trial Tr. VII, Page ID #2685-2687, 2715-2756.)² Petitioner's interrogation ends just after midnight. (R. 209, Trial Tr. VII, Page ID #2731-2753.)

The next morning, police transported Petitioner to FBI Headquarters for a second interrogation and a polygraph examination. (R. 208, Trial Tr. VI, Page ID #2591-2613; R. 209, Trial Tr. VII, Page ID #2640-2652, 2752-2753.) Petitioner was finally arraigned two days after his arrest. (R. 14, Acknowledgment of Indictment, Page ID #19.)

II. The District Court Denies Petitioner's Claim the Interrogation Violated His Sixth Amendment Right to Counsel.

Petitioner moved to suppress the interrogation, arguing, *inter alia*, the statements and evidence elicited from him during the interrogation were taken in violation of his Sixth Amendment right to counsel. (R. 113, Motion to Suppress, Sixth Amendment, Page ID #933-1005.) On April 22, 2016, the district court heard oral argument on the motion to suppress, wherein it acknowledged having watched the interrogation recording, as requested by Petitioner. (R. 158, Suppression Hearing, Page ID #1421-1449.)

On May 11, 2016, the district court issued an opinion and order denying Petitioner's Motion to Suppress (R. 145, Opinion and Order Denying Motion to Suppress, Page ID #1310-1330.) Petitioner filed a Motion for Reconsideration on May 25, 2016, which was denied. (R. 149, Motion for Reconsideration, Page ID #1343-1350; R. 155, Order Denying Motion for

² As discussed above, this portion of the interrogation was only recorded visually, without any corresponding audio recording.

Reconsideration, Page ID #1361-1364.) Petitioner's trial commenced on September 26, 2016, and on October 6, 2016, the jury convicted him of both counts. (*Id.* at 2900-2901; R. 197, Verdict Form, Page ID #2110-2111.) On February 28, 2017, the district court sentenced Petitioner to a term of 24 months imprisonment on carjacking, followed by a mandatory minimum consecutive term of 84 months on use of a firearm during a crime of violence. (R. 243, Sentencing Hearing, Page ID #3092.) This was Petitioner's first criminal conviction.

III. The Sixth Circuit Holds Petitioner's Sixth Amendment Right to Counsel Was Not Violated.

On appeal, the Sixth Circuit affirmed the decision of the trial court. Relying on *Patterson v. Illinois*, 487 U.S. 285 (1988), the panel reasoned Petitioner's waiver of his *Miranda*-based right to counsel was *ipso facto* an adequate waiver of his Sixth Amendment right to counsel, in spite of his not having any knowledge that criminal charges were filed against him when he executed *Miranda*. Petitioner timely filed a Petition for Rehearing En Banc, which was denied on December 11, 2017.

REASONS FOR GRANTING THE WRIT

The difference between the constitutional right to counsel under the Sixth Amendment and the prophylactic right to counsel under the Fifth Amendment is dramatic. The Fifth Amendment’s protection against compelled self-incrimination gives a suspect the right to counsel in connection with a custodial interrogation by law enforcement officers. *See Edwards v. Arizona*, 451 U.S. 477 (1981); *Miranda v. Arizona*, 384 U.S. 436 (1966). The Sixth Amendment guarantees the accused, after the initiation of formal charges, the right to rely on counsel as a “medium” between him and the State. *Maine v. Moulton*, 474 U.S. 159, 176 (1985). The critical role of counsel as that medium between defendant and the State lasts long after custodial interrogation ends. This Court has made clear that the two guarantees, while similar and perhaps in some circumstances congruent, are distinct and require separate analysis. *McNeil v. Wisconsin*, 501 U.S. 171, 177 (1991). *See Patterson v. Illinois*, 487 U.S. 285, 311, n. 9 (1988) (Fifth and Sixth Amendment rights to counsel “are not coterminous”).

The question at the center of this case – whether an accused can knowingly and voluntarily waive his Sixth Amendment right to counsel without having any knowledge he is charged with a crime – requires definitive clarification by this Court. The opinion below advances *Patterson* as a virtually automatic waiver of the Sixth Amendment right whenever *Miranda* is satisfied. But this is an overbroad reading of *Patterson*,

particularly since the issue in Petitioner’s case was never before the *Patterson* Court.

I. The Decision Below Incorrectly Interprets this Court’s Precedent.

The court below misapprehends *Patterson* to adopt a bright-line rule that generic *Miranda* warnings will in all instances sufficiently apprise a defendant of his Sixth Amendment right to counsel. *Patterson* holds no such thing. In *Patterson*, the petitioner was arrested on charges of battery and mob action, and after being informed of his rights under *Miranda*, volunteered to answer questions. 487 U.S. at 287. Patterson was subsequently indicted for murder, *after which police told him he was indicted and handed him a second Miranda waiver. Id.* at 288 (*emphasis added*). Since the purpose of the second *Miranda* waiver was to apprise Patterson new charges were filed against him, the Court concluded the *Miranda* warnings simultaneously apprised him of his Sixth Amendment right to counsel, and that his waiver of those rights was unambiguous.³

³ Like *Patterson*, in cases in which courts have found *Miranda* waivers contemporaneously suffice for waiver of Sixth Amendment right to counsel, the defendant has been informed of the criminal charges filed against him. In *United States v. Charria*, 919 F.2d 842 (2d Cir. 1990), for example, federal agents showed Charria a copy of the arrest warrant, which indicated Charria was under indictment for federal charges. *Id.* at 844. Similarly, in *Riddick v. Edmiston*, 894 F.2d 586 (3rd Cir. 1990), the record established Riddick knew he was charged with a crime when he was advised of *Miranda*. *Id.* at 591 (“[h]e was plainly aware of the gravity of his situation”). In *United States v. Muca*, 945 F.2d 88, 89 (1991), federal agents advised Muca he was under arrest for federal drug charges. *Id.* at 891 (it was “apparent he was aware of the underlying charges”). See also *Tinsely v. Purvis*, 731 F.2d 791, 796 (11th Cir. 1984) (defendant arraigned); *United States v. Peyton*, 615 F.2d 922, 924-25 (1st Cir. 1980) (defendant informed of indictment).

Tellingly, *Patterson* was prophetic about the narrow waiver issue before it and the broader waiver issue that is present in Petitioner's case.

... 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, see *Maine v. Moulton*, 474 U.S. at 176, *there will be cases where a waiver which would be valid under Miranda will not suffice for Sixth Amendment purposes* ...

487 U.S. at 269 n. 9 (emphasis added). See e.g., *Fellers v. United States*, 540 U.S. 519 (2004) (post-indictment statements violate Sixth Amendment, even though they would be admissible under Fifth Amendment).

The record in Petitioner's case is replete with evidence Detroit police deliberately withheld the federal indictment from him at the outset of the interrogation, thus making Petitioner incapable of knowingly and voluntarily waiving a right that attached only with that indictment. The court below did not acknowledge this wrinkle in Petitioner's case that crucially distinguishes it from *Patterson*. Instead, it rationalized Petitioner "did not offer any statements implicating himself in the carjacking until one hour after [police] informed him that an indictment had been returned against him." See *Appendix B, B-9*. But self-incrimination is a Fifth Amendment concern. See *Chavez v. Martinez*, 538 U.S. 760, 766-70 (2003). The Sixth Amendment, by contrast, is unconcerned with whether incriminating words are spoken. Its crucial time period is when an uncounseled interrogation begins.

Petitioner's constitutional right to counsel arose on December 30, 2014, thirteen days before his interrogation. Thus, he had the right to rely on counsel as a medium between himself and police from the moment he was taken, without explanation, to a DPD interrogation room. In no event should Petitioner have been issued generic *Miranda* warnings in lieu of notification he had been charged with a crime. Since Petitioner was not informed about any aspect of the charges against him, he could not have knowingly and voluntarily waived a right that attaches with these charges. Nor could that right have been waived *nunc pro tunc*, when police finally chose to inform Petitioner of the indictment two hours after he was apprised of *Miranda*.

II. This Case Presents an Ideal Vehicle for Resolving an Issue of Unquestionable Importance.

There are several aspects of this record that make it particularly attractive to clarify whether an accused must comprehend he is charged with a crime before he can relinquish his Sixth Amendment right to counsel. First, the court below was furnished with a recording of the interrogation of Petitioner by police that extended from approximately 8:07 p.m. to after midnight.⁴ This leaves no ambiguity about what occurred. Second, there is no question that, had counsel been present before any interrogation began, counsel would not merely have sat in on a custodial interrogation. Counsel would have insisted that no interrogation take place, neither that night nor the next morning. Counsel's role would have been larger than that

⁴ Petitioner respectfully requests this Honorable Court view the interrogation recording in its entirety.

contemplated by *Miranda*, making the constitutional violation in this instance far from harmless. Finally, there was no practical reason for police to withhold the charges from Petitioner, apart from deliberately inducing an uncounseled confession. This was not an inadvertent omission by police. In sum, the issue in this case is squarely presented by a record that leaves little room for interpretation or inference.

III. The Sixth Circuit Decision Enables Police to Exploit the Opportunity to Confront an Accused Without Counsel Present.

This Court has repeatedly expressed concern that uncounseled persons may, because of a lack of understanding of either the formal or informal aspects of prosecutions, make decisions prejudicial to their interests that they would not have made if counseled. *See Massiah v. United States*, 377 U.S. 201, 205 (1964) (indictment marks crucial point for defendant, after which purpose of interrogation is not merely to investigate but to establish guilt of the accused). Once a prosecution has begun, defendant “finds himself faced with the prosecutorial forces of organized society, and immersed in the intricacies of substantive and procedural criminal law.” *Kirby v. Illinois*, 406 U.S. 682, 689 (1972). Given the value of counsel’s advice and mediation at that critical stage and the high stakes of forgoing counsel, effective waiver requires both comprehension and relinquishment. *Brewer v. Williams*, 430 U.S. 389, 404 (1977).

The record here shows Petitioner neither comprehended he was charged with a crime, nor relinquished his right to counsel for that crime.

Moreover, by transporting him to an interrogation room in lieu of detaining him pending his arraignment, police deliberately and designedly kept Petitioner in the dark about the gravity of his situation. Adding insult to injury, police concealed the fact of the indictment from him at the outset of the interrogation, thereby ensuring Petitioner would lack “a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it,” *Moran v. Burbine*, 475 U.S. 412, 421 (1986). There is no reason to withhold from a defendant he is charged with a crime apart from exploiting the opportunity to confront an accused without counsel present. The lower court decision sends the message that intentional acts that evade the protections of Sixth Amendment right to counsel will be tolerated. This hardly upholds the concept of fair play in the adversarial system.

CONCLUSION

Petitioner respectfully requests this Honorable Court view the interrogation recording in its entirety, and grant this Petition for Writ of Certiorari.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I hereby certify that the petition for writ of certiorari **contains 2656 words**, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

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