

IN THE SUPREME COURT OF THE UNITED STATES

STEVEN BERNARD SYDNOR,
Petitioner/Appellant,

v.

DOUG COOK, WARDEN (Mr. Cook is
deseased; the new Warden is Kevin
Hampton)

Case no. _____
Originating Case # 3:16-cv-01972

PETITION FOR WRIT OF CERTIORARI
FROM THE SIXTH CIRCUIT COURT OF APPEALS

Steven Bernard Sydnor, 423496
BCCX, Site 2, Unit
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Pikeville, TN. 37367

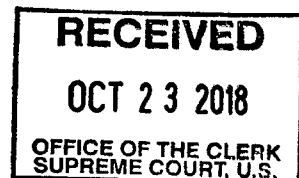


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 1. Whether defendant's Constitution 5th and 14th Amendment rights were violated by the trial court denial of defendant's Motion to Suppress statements he made to the Police that were the product of custodial interrogation without the benefit of a Miranda warning?

 2. Whether defendant's Constitution 5th and 14th Amendment rights were violated by the trial court's errors of admitting graphic photographs of the victim's face and body at trial, which denied defendant a fair trial?

 3. Whether defendant's Constitution right to due process were violated, because petitioner's conviction was obtained as the result of evidence that is insufficient to persuade a properly instructed, reasonable, jury of his guilt beyond a reasonable doubt. See Jackson v. Virginia, 433 U.S. 307 (1979).

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QUESTIONS PRESENTED

Claim 1.

Whether defendant's Constitution 5th and 14th Amendment rights were violated by the trial court denial of defendant's Motion to Suppress statements he made to the police that were the product of custodial interrogation without the benefit of a Miranda warning?

Claim 2.

Whether defendant's Constitution 5th and 14th Amendment rights were violated by the trial court's errors of admitting graphic photographs of the victim's face and body at trial, which denied defendant a fair trial?

Claim 3.

Whether defendant's Constitution right to due process were violated, because petitioner's conviction was obtained as the result of evidence that is insufficient to persuade a properly instructed, reasonable, jury of his guilt beyond a reasonable doubt. See Jackson v. Virginia, 433 U.S. 307 (1979).

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATE SUPREME COURT

The petitioner, Steven Bernard Sydnor, respectfully prays that a Writ of Certiorari be issued to review the judgment and opinion of the Sixth Circuit Court of Appeals, rendered in these proceedings on August 17, 2018.

OPINION BELOW

The Sixth Circuit Court of Appeals denied petitioner's Application for a COA on August 17, 2018. The opinion is enclosed in the Appendix.

JURISDICTION

The original opinion of the Sixth Circuit Court of Appeals was entered August 17, 2018. The jurisdiction of this court is invoked under 28 U.S.C. §1254.

STATUTORY & CONSTITUTION PROVISIONS INVOLVED

The following statutory and constitutional provisions are involved in this case:

United States Constitution, Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment by a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put to jeopardy of life or limb 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; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment VI

In all criminal prosecution, 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 witness 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 XIV

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. 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 the laws.

STATEMENT OF CASE

In 2007, a jury convicted Sydnor of second-degree murder and theft of property valued between \$1,000-\$10,000 for killing his girlfriend, April Anderson, and stealing her car. The Tennessee Court of Criminal Appeals affirmed the trial court's judgment, and the Tennessee Supreme Court denied leave to appeal. State v. Sydnor, No. M2007-02393-CCA-R3-CD, 2010 WL 366670 (Tenn. Crim.App. Feb. 2, 2010), perm.app. denied (Tenn. June 17, 2010). Sydnor filed a petition for post-conviction relief, which the trial court denied. The Tennessee Court of Criminal Appeals affirmed the post-conviction court's decision, and the Tennessee Supreme Court denied leave to appeal. Sydnor v. State, No. M2015-00615-CCA-R3-PC, 2016 WL 304415 (Tenn.Crim.App. Jan. 26, 2016), perm.app. denied (Tenn. June 23, 2016).

In his federal corpus petition, Sydnor raised the following grounds for relief: (1) the trial court deprived him of his right to due process when it denied his motion to suppress statements taken by the police at the time of his arrest, in violation of Miranda v. Arizona, 384 U.S. 436 (1966); (2) he was denied his right to a fair trial when the court admitted into evidence (a) a photograph of Anderson taken prior to her death, (b) the medical examiner's post-mortem photographs of Anderson's face and certain photographs of her body, and (c) "evidence of prior hostilities" between Anderson and Sydnor;

(3) his sentence was enhanced based on facts found by the judge and not the jury, in violation of Cummingham v. California, 549 U.S. 270 (2007), and Blakely v. Washington, 542 U.S. 296 (2004); and (4) there was insufficient evidence to support his theft conviction because the State failed to establish the value of Anderson's car. The district court denied Sydnor's petition, concluding that claim 2(a), 2(c) and 3 were procedurally defaulted and that the remaining claims lacked merit. The court declined to issue a COA.

Lastly, Sydnor filed a COA in the Sixth Circuit Court of Appeals, which was denied on August 17, 2018.

REASONS FOR GRANTING THE WRIT

Claim 1.

The defendant's Constitution 5th and 14th Amendment rights were violated by the trial court denial of defendant's Motion to Suppress statements he made to the police that were the product of custodial interrogation without the benefit of a Miranda warning.

In Miranda v. Arizona, 384 U.S. 436 (1966), this Court extended the greater protections inherent in the Sixth Amendment right to counsel to Fifth Amendment custodial encounters. To dispel the subtle compulsion inherent in custodial interrogation, the Court established "critical safeguards" for the right and promulgated concrete constitutional guidelines which must be followed in order to honor the exercise of the right.

The Miranda warnings were created to protect the right against compulsory self-incrimination. In the Miranda opinion, the Court stated that it "might not find the defendant's statements to have been involuntary in traditional terms." 384 U.S. 457. That did not prevent the Court from holding that the defendant's Fifth Amendment rights had been violated by the failure to give full warnings:

"The constitutional issue we decide in each of these cases is the admissibility of statements obtained from the defendant questioned while in custody or otherwise

deprived of his freedom of action in any significant way..." 384 U.S. at 445 (Emphasis added).

The Miranda Court recognized that compulsion is inherent in custodial surroundings. A statement obtained from a person in such surrounding is not truly the product of a person's free choice "unless adequate protective devices are employed to dispel the compulsion." 384 U.S. at 458. Both inculpatory and exculpatory statements from a criminal trial if they are obtained during custodial interrogation without adequate Miranda warnings.

For the purpose of Miranda, an individual is in custody when placed under formal arrest or "otherwise deprived of his freedom of action in any significant way." State v. Anderson, 937 S.W.2d 851, 852 (Tenn. 1996). Interrogation, for purpose of requiring Miranda warning, "refers not only to express questioning, but also to any words or actions on the part of the police (other than those attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response for the suspect." Rhode Island v. Innis, 446 U.S. 291, 301 (1980).

In this case, prior to trial, the petitioner filed a Motion to suppress portions of statements he made to the police at the time of his arrest in this case. In said Motion,

the petitioner argues that all but the initial portions of the statements he made to officers occurred while he was subjected to custodial interrogation without benefit of the warning required by Miranda. Following a pretrial hearing, the trial court denied the Motion. The court ruled that the State would NOT be permitted to introduce any statement made after the petitioner was handcuffed, and they made a factual finding that the petitioner was handcuffed when detectives appeared on the scene.

The State subsequently presented testimony at trial concerning several statements the defendant made after his initial encounter with officer Shane Fairbanks. Officer Fairbanks testified that on November 22, 2005, at approximately 9:30, he was driving his patrol car near the intersection of South Seventh and Sylvan Streets in East Nashville when he saw the petitioner walking towards him with hands in the air. Officer Fairbanks testified that he stopped his patrol car and got out. He testified that the petitioner told him that he wanted to turn himself in. Officer Fairbanks testified that the petitioner appeared very distraught, and he asked the petitioner what had happened. He testified that the petitioner stated, "I think I took it too far." Officer Fairbanks testified that when questioned further, the petitioner said that he and his girlfriend had argued and that his girlfriend

was "always playing she's going to commit suicide." Officer Fairbanks testified that he "tried to find out who she was and where she was, and he gave me an address and her name, so I went ahead and notified dispatch to have some cars to go to the address...to check the welfare of this other individual."

After Miranda should have applied, Officer Fairbanks testified that the petitioner stated that his girlfriend got a knife and told him she wanted him to do it. Officer Fairbanks testified that the petitioner stated that he and his girlfriend together had cut her throat and that he thought she was dead. Officer Fairbanks testified that Officer Archie Spain, who had arrived on the scene, questioned the petitioner about how he arrived at the location where he approached Officer Fairbanks, and that the petitioner responded that he had taken the victim's car, that he disposed of the knife he had used to cut her by throwing it out on the freeway, and that he had abandoned the car at a nearby location and tossed the key in an alley. He testified that he handcuffed the petitioner thereafter when the petitioner requested to sit down.

Officer Archie Spain testified that he arrived on the scene while Officer Fairbanks was talking to the petitioner. Officer Spain testified that when he walked up to the petitioner, he "advised that he killed his girlfriend

Claim 2.

Defendant's Constitution 5th and 14th Amendment rights were violated by the trial court's error of admitting graphic photographs of the victim's face and body at trial, which denied him a fair trial.

According to 401 (a) and (b) of the Federal Rules of Evidence, and similarly in Tennessee's Rules of Evidence, states "Evidence is relevant if:

- (a) it has a tendency to make a fact more or less probable than it would be without the evidence, and
- (b) the fact is of consequence in determining the action.

Further, according to 403 of the Federal Rules of Evidence, and similarly in Tennessee's Rules of Evidence, states,

"The Court May exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence."

The Advisory Committee Notes, pursuant to rule 403, state: The case law recognizes that certain circumstances call for the exclusion of evidence which is of unquestioned relevance. These circumstances entail risks which range all the way from inducing decision on a purely emotional basis, at one extreme, to nothing more harmful than merely wasting time, at the other extreme. Situations in this

area call for balancing the probative value of and need for the evidence against the harm likely to result from its admission. Slough, Relevancy Unraveled, 5 Kan.L.Rev. 1, 12-15 (1956); Trautman, Logical or Legal Relevancy -- A Conflict in Theory, 5 Van.L.Rev. 385, 392 (1952); McCormick § 152, pp. 319-321. The rules which follow in this Article are concrete applications evolved for particular situations. However, they reflect the policies underlying the present rule, which is designed as a guide for the handling of situations for which no specific rules have been formulated.

Exclusion for risk of unfair prejudice, confusion of issues, misleading the jury, or waste of time, all find ample support in the authorities. "Unfair prejudice" within its context means an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one.

In reaching a decision whether to exclude on grounds of unfair prejudice, consideration should be given to the probable effectiveness or lack of effectiveness of a limiting instruction.

That Rule 403 position as "the cornerstone" of Federal Rules of Evidence, which allows exclusion of relevant evidence

"if its probative value is substantially outweighed by the danger of unfair prejudice."

Hence, the pivotal issues in this case is whether the probative value of the evidence is outweighed by the danger of unfair prejudice caused by such.

Specifically, prior to trial, the petitioner filed a Motion in Limine to exclude photographs of the victim's face and certian photographs of the victim's body. The petitioner later filed a Motion in limine to "crop" the medical examiner's photographs of the victim's face.

At a subsequent hearing outside the presence of the jury, defense counsel specifically objected to photographs depicting close-up views of rivet marks on the victim's hands and close-up views of the victim's face. The trial court ruled that these photoographs would be admissible. The prosecutor orally agreed to crop two of the photogrpahs. At trial, the state introduced the photographs during the testimony of Dr. Amy McMaster, Deputy Chief Medical Examiner for Davidson County who assisted in performing the autopsy and displayed the photographs to the jury.

Petitioner contends that the trial court erred in allowing the admission of the following color photographs during the State's case in chief:

Exhibit 25 (c), a close-up photograph depicting rivet mark on the victim's right hand.

Exhibit 26, a close-up profile view depicting the left side of the victim's face and her neck (cropped below her eyes).

Exhibit 27, a close-up view depicting the victim's face with a sock in her mouth (cropped below her eyes).

The petitioner contends that the photographs were not relevant to any contested issue at trial. He alternately submits that even if relevant, the photographs should have been excluded, because their probative value was substantially outweighed by the danger of unfair prejudice.

Most people would agree that the morbid, gruesome, photographs of any dead person, especially one who had died from a cut throat, would illicit a detrimental, emotional, response from the jury against the defendant, which would prejudice the outcome of those proceeding. Further, this detrimental emotional response could result in the jury's decision being based on emotions and not the facts of the case.

Thus, the Court's admission of these photographs at trial caused the jury's decision to be tainted by inflamed emotions that led to an unfair trial, which created a condition that can only be corrected by this Court vacating petitioner's conviction and sentence.

Claim 3.

The defendant's Constitution right to due process were violated, because petitioner's conviction was obtained as the result of evidence that is insufficient to persuade a properly instructed, reasonable, jury of his guilt beyond a reasonable doubt. See Jackson v. Virginia, 433 U.S. 307 (1979).

In 1979, the Supreme Court set forth a new precedent, in Jackson v. Virginia, that held a §2254 "applicant is entitled to habeas corpus relief if it is found that upon the record evidence adduced at the trial no rational trier of fact could have found proof of guilt beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 324 (1979).

Further, the Court in Jackson explained that In re Winship "presupposes as an essential of the due process guaranteed by the Fourteenth Amendment that no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof - defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense." Jackson, at 315. Following In re Winship, the Court in Jackson held that "the critical inquiry on review of the sufficiency of the evidence to support a criminal conviction must be not simply to determine whether the jury was properly instructed, but to determine whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt. Jackson, at 318. The relevant question, the Jackson Court ruled, "is whether

after reviewing the evidence in light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Jackson, at 319.

Because Jackson announced a federal constitutional standard both state appellate and federal courts apply the same standard in reviewing convictions for sufficiency of the evidence, [or at least they are supposed to]. Gomez v. Acevedo, 522 U.S. 801 (1997).

In this case the State Appellate Court and Federal Courts used the correct standard, Jackson v. Virginia, but they incorrectly applied it to the facts in this case.

Specifically, Petitioner's right to due process was violated, because petitioner's conviction was obtained as the result of evidence that is insufficient to persuade a properly instructed, reasonable, jury of his guilt beyond a reasonable doubt for theft of property of the value of \$1,000 or more, but less than \$10,000, when the state failed to establish the value of the victim's car, which is a critical element of this crime.

Count two (2) of the indictment charged the petitioner with theft of the victim's 2004 Honda Accord automobile. The indictment alleged that the automobile was valued at ten thousand dollars (\$10,000) or more, but less than sixty-

thousand-dollars (\$60,000). At the conclusion of the proof in this case, the trial court submitted count two to the jury on the lesser included offense of theft of property of the value of one thousand dollars (\$1,000) or more, but less than ten thousand dollars (\$10,000). The jury found the petitioner guilty of this offense. The petitioner submits that the evidence in the record is insufficient to support his conviction for theft of property of the value of \$1,000 or more, but less than \$10,000, in count two, because the state failed to establish that the value of the property exceeded one thousand dollars.

A person commits theft if the person knowingly obtains or exercises control over the property of another without the owner's effective consent and with the intent to deprive the owner of his or her property. T.C.A. § 39-14-102. Theft of property is a class D felony if the value of the stolen property is \$1,000 or more but less than \$10,000, or a class E felony if the value of the stolen property is more than \$500 but less than \$1,000, or a class A misdemeanor if the value of the property is \$500 or less. T.C.A. § 39-14-105. "Value" is defined as "(i) The fair market value of the property or service at the time and place of the offense; or (ii) if the fair market value of the property cannot be

ascertained, the cost of replacing the property within a reasonable time after the offense[.] T.C.A. § 39-11-106 (a) (36)(a)(i) and (ii), The determination of fair market value is a jury question based on the evidence presented at trial. State v. Hamm, 611 S.W.2d 826, 828-29 (Tenn. 1981).

In the instant case, the state presented no proof as to the value of the victim's automobile. The victim's sister Samatha Singer testified that the victim bought the car new in 2004. When the prosecutor asked Singer whether she knew how much the victim paid for the car, defense counsel objected on hearsay grounds, and the trial court sustained the objection. Hillary Selvin, the victim's sister's partner, testified that the victim bought the car new in 2004 and "was paying over \$500 a month for it." Defense counsel objected to this testimony on hearsay grounds, but the trial court overruled the objection "on that part of it." Photographs of the car admitted into evidence at trial indicate substantial damage on the passenger side of the vehicle. The state presented no proof as to how or when the car was damaged.

The petitioner submits that the foregoing evidence is sufficient to establish the value of the victim's car was at least one thousand dollars (\$1,000).

During argument on the defendant's motion for a judgment of acquittal at the state's proof, the trial court indicated that Selvin's testimony regarding the amount the victim's car payment did not establish the value of the car, because "we don't know how many payments she had on it." The trial court also described the vehicle's condition as "wrecked."

In summary, the petitioner contends that the evidence is insufficient as a matter of law to support his conviction for class D theft of property in count two (2), because the state failed to present any proof regarding the value of the victim's car at the time of the offense. Thus, petitioner's conviction for count two (2) violates his constitutional due process rights; therefore, the courts' have used the right U.S. Supreme Court precedent but they have applied it incorrectly to the facts of this case.

CONCLUSION


All of the afore mentioned demonstrates that this Certiorari should be granted, and petitioner's conviction and sentence should be vacated.

I declare under penalty of perjury that the foregoing is true and correct.

Date: 10-12-18

Respectfully submitted by:

Pro se


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