

NO. _____

25-5278

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IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

REYNALDO ALBERTO PEÑA
Petitioner,

v.

STATE OF TEXAS
Respondent,

On Petition for Writ of Certiorari to
The Court of Criminal Appeals of Texas

PETITION FOR WRIT OF CERTIORARI

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Question Presented

If a Trial Court admitted into evidence inculpatory statements made by a defendant during the post-interview portion of a polygraph examination, but excluded all evidence relating to the circumstances surrounding the defendant's inculpatory statements, wouldn't that deprive a defendant of his fundamental Constitutional right to a fair opportunity to present a defense, both under the Due Process Clause of the Fourteenth Amendment and under the Compulsory Process and Confrontation Clauses of the Sixth Amendment?

List of Parties

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

List of Prior Proceedings

1. In Cause No.20-CRD-45, State of Texas v. Reynaldo Alberto Peña, in the 229th District Court, Duval County, Texas, – Hearing on Defendant’s Motion to Suppress¹ Electronic Recording, Both Video and Audio of Polygraph Examination of the Defendant. The Motion was granted on September 25, 2023.²

2. In Cause No.20-CRD-45, State of Texas v. Reynaldo Alberto Peña, in the 229th District Court, Duval County, Texas, the State filed Notice of Appeal on October 10, 2023.

3. In Case No. 04-23-00909-CR, State of Texas v. Reynaldo Alberto Peña, the State’s appeal was initially sent to the Fourth District, Texas Court of Appeals, on October 20, 2023.

4. The State’s appeal moved to the Eighth District, Texas Court of Appeals, Case No. 08-23-00303-CR, State of Texas v. Reynaldo Alberto Peña, transferred from the Fourth Court of Appeals due to docket overload on November 8, 2023.³

¹ Appendix 1

² Appendix 4

³ Appendix 5

5. State of Texas v. Reynaldo Alberto Peña, Case No. 08-23-00303-CR, the Eighth District, Texas Court of Appeals, affirmed the Trial Court's decision in part and reversed in part in an Opinion and Judgment on September 27, 2024 ⁴

6. State of Texas v. Reynaldo Alberto Peña, Case No. 08-23-00303-CR, the Eighth District, Texas Court of Appeals, denied the Appellee's Motion for Rehearing on December 4, 2024 ⁵

7. State of Texas v. Reynaldo Alberto Peña, Case No. 08-23-00303-CR, the Eighth District, Texas Court of Appeals, issued a Substitute Judgment and Substitute Opinion on December 4, 2024.⁶

8. State of Texas v. Reynaldo Alberto Peña, Case No. 08-23-00303-CR, the Eighth District, Texas Court of Appeals, denied the Appellee's 2d Motion to Reconsider on January 7, 2025⁷

9. Texas Court of Criminal Appeals, PD-0087-25, denied the Defendant/Appellee Petition for Discretionary Review on April 23, 2025.⁸

⁴ Appendices 7, 8

⁵ Appendices 10, 11

⁶ Appendices 9, 12, 13

⁷ Appendices 12, 13

⁸ Appendices 14,15

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Citations of Reports of the Opinions

1. State of Texas v. Reynaldo Alberto Peña, Eighth District, Texas Court of Appeals, El Paso, Texas – Not reported in Southwest Reporter, 2024 WL 4333183, September 27, 2024

2. State of Texas v. Reynaldo Alberto Peña, Eighth District, Texas Court of Appeals, El Paso, Texas – Not reported in Southwest Reporter, 2024 WL 4984251, December 4, 2024

Jurisdiction

The jurisdiction of this Court to review judgment of a state court of last resort is timely invoked under 28 U.S.C. §1257. The judgment that gives rise to this Petition was entered on April 23, 2025.⁹

⁹ Appendix 15

The Constitutional Provisions and Statutes Involved in the Case

U.S. Const. amend. V, VI, and XIV, sec 1¹⁰

Tex. Code Crim. Proc. Art. 38.22, Sec. 6-7, ¹¹

Tex. Code Crim. Proc., Art. 38.23(a)¹²

¹⁰ Appendix 16

¹¹ Appendix 17

¹² Appendix 17

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PETITION FOR WRIT OF CERTIORARI

Statement of the Case

The Petitioner, Reynaldo Alberto Peña, stepped into a Sheriff's Office after getting a call from there to come in for a visit. A law enforcement officer told him that a child had accused him of molesting her. He agreed to take a polygraph examination.

Law enforcement made a video/audio recording of the polygraph examination. The examination lasted nearly four hours. It consisted of a pre-test interrogation, a series of test sessions, and a post-test interrogation. Near the end of the post-test interrogation, Mr. Peña made an inculpatory statement. The polygraph examination ended, and he was immediately arrested. A grand jury indicted him with the charge of aggravated sexual assault of a minor.

Mr. Peña requested, and a court appointed, a public defender attorney to represent him. The attorney filed a Motion to Suppress the entire recording of the polygraph examination from being presented to a jury, including but not limited to any statement made by the Defendant that

the State asserted was an inculpatory admission of any wrongdoing.¹³ The Motion did not seek to suppress the examiner's opinion. By requesting the opportunity to thoroughly question the polygraph examiner, the Petitioner implicitly waived objection to the admissibility of examiner's opinion.¹⁴

The District Court held a hearing on the Motion to Suppress. The court agreed that the parties could submit their briefs in support of their positions on the motion for him to consider before ruling. In his brief the Petitioner reiterated and augmented his prayer for relief. Mr. Peña requested that the Court exclude the entire electronic recording, disallow any evidence deriving from the polygraph episode, and disallow any witness to testify regarding any portion of the polygraph examination or any evidence deriving from the polygraph examination. The brief concluded with a request in the alternative that that the Court announce that the right provided by the Confrontation Clause overrides the evidentiary rules regarding admissibility of evidence of a polygraph examination having been administered, allow full and robust cross-

¹³ Appendix 1

¹⁴ Appendix 2, p. 10

examination of the polygraph examiner, and allow the Defendant time and means to obtain a polygraph expert to contest or at least explain the methods used by the polygraph examiner in the administration of the polygraph examination at issue.¹⁵ In this brief, the Petitioner first expressly invoked the provisions of the United States Constitution,¹⁶ U.S. Const. amend. VI. and U.S. Const. amend. XIV §1.¹⁷ He also cited the Trial Court to Tex. Code Crim. Pro. Art. 38.22, Sec. 6-7, and Tex. Code Crim. Proc., Art. 38.23(a).¹⁸

The Trial Court granted the Motion to Suppress.¹⁹ In an Amended Order the Court ruled inadmissible at trial the entire above-described audio and video recording of the polygraph examination, including any evidence deriving from the polygraph examination episode and any other evidence deriving from the polygraph examination.²⁰ The State filed Notice of Appeal.

¹⁵ Appendix 2, p. 10

¹⁶ Appendix 2, pp. 4-6

¹⁷ Appendix 2, pp. 5 & 6

¹⁸ Appendix 17 p. 1-2

¹⁹ Appendix 3

²⁰ Appendix 4

In his appellee briefs and in the briefs for motions for rehearing the petitioner included the argument regarding the confrontation clause of the 6th amendment to the United states constitution.²¹ The Court of Appeals issued an initial judgment and opinion on the State's Appeal but later issued a Substituted Judgment.²² In that judgment, the Court of Appeals affirmed the Trial Court's order insofar as it suppressed any evidence relating to the polygraph examination and its results. However, the Court of Appeals reversed the Trial Court in part, ruling that the recorded portion of the post-polygraph interview that included the inculpatory statements the Petitioner made was admissible.²³ The Court of Appeals allowed the alleged confession, but banned any evidence that would shed light on the circumstances surrounding the alleged confession. Texas statutory law provides for a jury instruction and question on the finding of voluntariness of a confession, Tex. Code of Crim. Pro., Art. 38.22, Secs. 6 and 7.²⁴ The Court made it impossible for the Petitioner to raise an issue on voluntariness and have that instruction and question submitted to the jury.

²¹ Appendices 6, pp. 19-23, 8 pp. 5-8, 12 pp. 2-7

²² Appendix 9

²³ Appendix 9

²⁴ Appendix 17

The Court of Appeals denied two Motions to Rehear the Petitioner.²⁵ The petitioner again urged the issue regarding the 6th Amendment and the Confrontation Clause in his Petition for Discretionary Review to the court of last resort in Texas.²⁶ The Court of Criminal Appeals denied a Petition for Discretionary Review without comment.²⁷

²⁵ Appendices 11 & 13

²⁶ Appendix 14 p. 8, pp. 9-10, p. 12, pp. 14-15

²⁷ Appendix 15

Reasons for Granting the Writ

1. Applicable Texas law entitles the Defendant to a jury question on the issue of whether he voluntarily confessed, Tex. Code Crim. Pro. Art. 38.22, Sec. 6-7 .²⁸

The Texas Court of Appeals has denied the Petitioner the right to present evidence on the issue of voluntariness regarding the circumstances surrounding, and giving rise to, an alleged confession. The Texas Court of Criminal Appeals has let this ruling stand without comment, even though Texas provides this right by statute, *id.* This holding denies the Petitioner his fundamental Constitutional right to present a defense, both under the Due Process Clause of the Fourteenth Amendment and under the Compulsory Process and Confrontation Clauses of the Sixth Amendment, U.S. Const. amend. VI and U.S. Const. amend. XIV § 1.²⁹ The decision conflicts with numerous holdings in opinions from the United States Supreme Court, including *Alford v. U.S.*, 282 U.S. 687 (1931), *Crane v. Kentucky*, 476 U.S. 683, 90 L.Ed.2d 636, 106 S.Ct. 2142 (1986), and *Delaware v. Van Arsdall*, 475 U.S. 673 (1986). Other Texas

²⁸ Appendix 17

²⁹ Appendix 16

Court of Criminal Appeals opinions have recognized that the strength and scope of the constitutional right to cross-examination may control to allow cross-examination on a matter that a state rule of evidence would exclude, *Henley v. State*, 493 S.W.3d 77, at 95 (Tex.Crim.App. 2016), citing *Lopez v. State*, 18 S.W.3d 220, at 225 (Tex.Crim.App. 2000)

2. The petitioner has found two other cases on point from courts of last resort in those states. This holding by the Texas Court of Criminal Appeals conflicts directly with those decisions. It also conflicts with the holdings in the opinions from the United States Supreme Court cited above.

State v. Matsumoto, 452 P.3d 310 (Haw. 2019), Hawaii Supreme Court – Accused of a sex related crime, the Defendant agreed to take a polygraph examination. The polygraph examiner testified that he intentionally shifted his attitude during this post-test phase as "an interrogation tactic", *Matsumoto* at 315. Eventually, the Defendant made an inculpatory statement.

In a motion to suppress statements that he made during and after a polygraph examination, the Defendant argued that because the results

of a polygraph test are inadmissible at trial under Hawaii case law, he would be unable to explain the basis and context of the statements he made during the in-test and post-test phases of the polygraph examination, *id.*

The Trial Court and Intermediate Court of Appeals ruled that no evidence regarding the existence, result, or content of a polygraph examination could be allowed at trial. *id.* at 320.

The Hawaii Supreme Court disagreed, citing *Crane v. Kentucky*, and holding that the Trial Court should have allowed the Defendant to fully explain to a jury the circumstances surrounding his confession. Denying him that opportunity violated his rights to a fair trial under both Hawaii and United States Constitutional provisions, *id.* at 327.

State v. McCaleb, 582 S.W.3d 179 (Tenn. Sup. Ct. 2019), Supreme Court of Tennessee – Defendant was charged with aggravated sexual battery and rape of a child. He had consented to a polygraph examination that was videotaped. He moved to suppress the video of a post-polygraph test interview as well as any testimony “relating to” the interview. The Criminal Court granted the motion and suppressed the contested

evidence. The State filed an interlocutory appeal. The Court of Criminal Appeals reversed, *State v. McCaleb*, 2018 WL 2465143 (Tenn.Crim.App. 2018). The Defendant appealed to the state court of last resort, the Tennessee Supreme Court.

The Trial Court had considered the Defendant's right to bring forth evidence to the jury challenging the voluntariness of his alleged confession, and balanced this against the likelihood that the jury would nevertheless be unfairly prejudiced by the occurrence and alleged results of the polygraph examination. On the one hand, the State had a legitimate interest in proving the charges against the Defendant by providing the jury with his incriminating statements. On the other hand, the Defendant was entitled to provide the jury with an explanation of the circumstances surrounding his incriminating statements, *State v. McCaleb*, 582 S.W.3d 179 (Tenn. Sop. Ct. 2019) at 197.

The Tennessee Supreme Court held that it was well within the Trial Court's discretion to consider both the Defendant's constitutional right to attack the credibility of his "confession" by informing the jury of the circumstances under which he "confessed", as well as consider the

potential effects on the jury when they learned that the Defendant had taken a polygraph test that the examiner would say that he failed. The Supreme Court also decided that it was within the sound discretion of the Trial Court to conclude that a limiting instruction would have been ineffective to prevent the jury from concluding that the polygraph results proved the Defendant was guilty of the charges against him. Therefore, the jury's decision to convict the Defendant would have been made based on an unfair prejudice, *id.*

Note that as set out in the Petitioner's Brief in Support of his Motion to Suppress, he suggested the result reached in *Matsumoto* and alternatively the result reached in *McCaleb*.³⁰

3. Picture a trial where the Defendant faces the prospect of life in prison. The State presents the jury with a confession allegedly made by the Defendant but without any context of how it came about. The Trial Court denies the Defendant a chance to show the jury any evidence as to what circumstances motivated the alleged confession.

³⁰ Appendix 2, pp. 9-10

The Trial Court does not allow the Defendant's attorney to question any witness regarding the circumstances that caused the Defendant to make an inculpatory statement at that particular time and place. Nor does it allow the Defendant's attorney call any witness or offer any other evidence as to what circumstances gave rise to the alleged confession. Nor may the Defendant, should he decide to testify, say anything about how this alleged confession came about.

The United States Supreme Court has persistently scrutinized self-incriminating statements used against Defendants in the courtroom, generally showing disdain for alleged confessions "extracted by any sort of threats or violence, [or] obtained by any direct or implied promises, however slight, nor by the exertion of any improper influence. . . .", *Bram v. United States*, 168 U.S. 532 (1897) at 543, quoting *3 Russell on Crimes* (6th Ed. 1877) 478.

Conclusion

This Petitioner prays the Court grant this Petition for Writ of Certiorari.

Respectfully submitted,

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