

No. 25-6765

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

WILLIE M. HARDY, JR.

FILED
DEC 18 2025

OFFICE OF THE CLERK
SUPREME COURT, U.S.

vs.

UNITED STATES OF AMERICA - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Respectfully Submitted,

Willie M. Hardy, Jr.

Reg. No. 58661-083

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QUESTIONS PRESENTED

1. Whether a police officer's intentional and purposeful decision to keep the audio turned off on his body-worn camera constitutes an inference against the officer's credibility regarding whether a defendant was properly provided with a Miranda warning.
2. Whether defense counsel's failure to file a motion to suppress statements obtained without a Miranda warning constitutes ineffective assistance of counsel
3. Whether the credibility of an officer who intentionally chose to keep the audio on his body worn camera turned off during an alleged Miranda warning is greater than the credibility of a defendant with a criminal history.
4. Whether a claim of ineffective assistance of counsel is procedurally barred where counsel fails to file a motion to suppress statements that were obtained in violation of Miranda

LIST OF PARTIES

The caption set out above contains the names of all the parties.

LIST OF CASES DIRECTLY RELATED TO THIS CASE

1. United States Court of Appeals for the Fourth Circuit
2. Case No. 24-6620
3. United States of America v. **Willie M. Hardy, Jr.**
4. Date of Judgement: September 23, 2025.

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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

The Writ of Habeas Corpus under 28 U.S.C. §2255 was appealed to the United States Court of Appeals for the Fourth Circuit, which dismissed the Petition for a Writ of Habeas Corpus and denied issuing a certificate of appealability. The United States Court of Appeals for the Fourth Circuit also denied the Petitioner's request for a rehearing en banc on September 23, 2025.

JURISDICTION STATEMENT

The judgment of the United States Court of Appeals for the Fourth Circuit was entered on July 28, 2025. Rehearing was sought and was denied on September 23, 2025. The jurisdiction of this court is invoked under 28 U.S.C. §1254(1).

STATEMENT OF THE CASE

After a jury trial, Mr. Hardy was found guilty of possession with intent to distribute marijuana, possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 USC §924(c), and felon in possession of a firearm, in violation of 18 USC §922(g). Mr. Hardy was sentenced to 300 months imprisonment, which included 120 months on counts two and four, and 180 months on count three, which ran consecutively to counts two and threee.

Mr. Hardy appealed his conviction, arguing errors with the jury instructions. The Fourth Circuit Court of Appeals affirmed the conviction.

In 2022, Mr. Hardy filed a Motion to vacate under 28 USC §2255, arguing that his counsel was ineffective for 1) failing to meaningfully challenge the voluntariness of Mr. Hardy's confession at trial or argue that the detectives failed to give Miranda warnings; 2) failing to challenge the veracity of Mr. Hardy's confession at trial; 3) failing to seek a jury instruction on the voluntariness or veracity of the defendant's confession; and 4) failing to file a motion to suppress the confession.

REASONS FOR GRANTING THE WRIT

I. The Petitioner's Statements Were Obtained In Violation of *Miranda v. Arizona*

"For reasons both practical and historical [courts] have deemed it not only prudent but imperative that there be preemptive strictures against the government coercing confessions from persons accused of crime." United states v. Renda, 567 F.Supp. 487, 488 (E.D. Va. 1983). The "fear of government oppression in this regard is evident in the Fifth Amendment to the United States Constitution." Id. "No confession, whether obtained while the accused is in custody or not, is admissible against the accused if it were coerced by the Government." Id.

"Because custodial confessions are particularly suspect and because the facts surrounding such a confession are known only to the accused and the government, a prophylactic rule was erected in Miranda v. Arizona, 384 U.S. 486, 16 L.Ed.2d 694. 86 S.Ct. 1602 (1966), to give greater assurance that custodial confessions, when made, are made with the full understanding of the rights afforded an accused under our Constitution and laws." United States v. Renda, 567 F.Supp. 487, 488 (E.D. Va. 1983).

"The Miranda rule is a per se rule. By that it is meant that the inquiry is not directed to whether the confession is voluntary or not; the inquiry is directed first to whether the Miranda warning was given. If it were not given, and if the confession be a result of custodial interrogation, then no matter how voluntary the confession, it is inadmissible." Id.

Here, the Petitioner was arrested by police officers. The officers have claimed that they provided the Petitioner with a Miranda warning prior to speaking with the Petitioner, however, the audio of the police officer's bodycam was never turned on. The Petitioner has consistently denied that any such

warning was given prior to his statements to the police.

"Any police interview of an individual suspected of a crime has coercive aspects to it." J.D.B. v. North Carolina, 131 S.Ct. 2394, 2401, 180 L.Ed.2d 310 (2011). "When police conduct results in an individual being placed 'in custody', the substantial coercion inherent in his situation 'blurs the line between voluntary and involuntary statements, and thus heightens the risk that [the person being interrogated] will not be accorded his privilege under the Fifth Amendment...not to be compelled to incriminate himself.'" United States v. IMM, 747 F.3d 754, 764 (9th Cir. 2013)(quoting Dickerson v. United States, 530 U.S. 428, 435, 120 S.Ct. 2326, 147 L.Ed.2d 405 (2000)).

"Custodial police interrogation, by its very nature, isolates and pressures the individual, and there is mounting empirical evidence that these pressures can induce a frighteningly high percentage of people to confess to crimes they never committed." Corley v. United States, 556 U.S. 303, 320-21, 129 S.Ct. 1558, 173 L.Ed.2d 443 (2009).

"Recognizing that the inherently coercive nature of custodial interrogation calls into doubt the voluntariness of inculpatory statements, the Court in Miranda, 'adopted a set of prophylactic measures designed to safeguard the constitutional guarantees against self-incrimination.'" United States v. IMM, 747 F.3d 754, 764 (9th Cir. 2013)(quoting J.D.B., 131 S.Ct. at 2401).

These rules "give force to the Constitution's protections against compelled self-incrimination," Florida v. Powell, 559 U.S. 50, 59, 130 S.Ct. 1195, 175 L.Ed.2d 1009 (2010), and requires that, before custodial interrogation, a suspect be "warned that he has a right to remain silent, that any statement he does make be used as evidence against him, and that he has a right to the presence of an

attorney, either retained or appointed." Miranda, 384 U.S. at 444.

Here, the real question is whether Petitioner was properly Mirandized by officers before he made any of the disputed statements. If not, the statements must be suppressed. See, United States v. Faulkingham, 295 F.3d 85, 90 (1st Cir. 2002).

The government, which bears the burden of proving that a Miranda waiver was given knowingly, e.g. United States v. Downs-Moses, 329 F.3d 253, 257 (1st Cir. 2013), must prove by a preponderance of the evidence that Defendant was properly informed of his rights before he made any disputed statements, see, e.g., Moore v. Ballone, 488 F.Supp. 798, 804 (E.D. Va. 1980).

Relevant here, "if a suspect makes a statement during his custodial interrogation, the burden is on the Government to prove, as a 'prerequisite to the statement's admissibility as evidence in the Government's case in chief, that the Defendant voluntarily, knowingly, and intelligently waived his rights.'" J.D.B., 131 S.Ct. at 2401.

In his Section 2255 Petition, the Petitioner argued that his defense counsel violated his right to effective assistance of counsel by 1) failing to meaningfully challenge the voluntariness of Petitioner's confession at trial or argue that the detectives did not give him Miranda warnings; 2) failing to meaningfully challenge the veracity of Petitioner's confession at trial; 3) failing to seek a jury instruction on the voluntariness or veracity of Petitioner's confession; and 4) failing to file a motion to suppress the confesison.

As to the first issue, Petitioner argued that defense counsel deprived him of the right to effective counsel when she failed to meaningfully challenge the voluntariness of his confession at trial or argue that the detectives did not give him Miranda warnings.

The District Court held that the Petitioner must demonstrate by a preponderance of the evidence that counsel's performance fell below an objective standard of reasonableness and overcome the strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance under Strickland. However, the District Court failed to recognize that it is the Government's burden to prove that the Petitioner properly received any Miranda warnings.

According to Defense Counsel, she did meet with the police detectives on December 6, 2018 and expressed her concern that Detective Cline did not capture any advisement of Petitioner's Miranda rights nor Petitioner's waiver of such rights on his body-worn camera. Defense Counsel stated that both Detectives Cline and Kempf assured her that Detective Kempf properly advised Petitioner of his Miranda rights in Detective Cline's presence and that Petitioner waived those rights prior to the custodial interview. The Detectives further advised that they would testify to such at trial.

Rather than seek an hearing or file a motion to suppress the Petitioner's statements, Defense Counsel chose to abandon her adversarial duties and chose to believe the officer's version of events despite the Petitioner's vehement denial of those events. Counsel believed the officers despite the fact that the officers' body camera video did not support their version of events.

Defense Counsel stated that she did not pursue the argument that Petitioner's confession was not voluntary because she believed that she would have needed Petitioner to testify that he never received any Miranda warnings, thus opening Petitioner to severe impeachment.

However, Defense Counsel did not need to have Petitioner testify at trial, rather, he could have testified during a hearing on a motion to suppress the

confession. There, the Court could have weighed the credibility of the officers and the Petitioner and considered the fact that the officers intentionally did not turn on the audio on their body cameras during their interactions with the Petitioner. That fact would be imperative at a motion to suppress hearing, as the lack of body camera audio "might support an inference that the event had not occurred, because if it had, it would have been recorded." United States v. Doucette, 2025 U.S. Dist. LEXIS 10310 (D. Mass. 2005).

The District and Appellate Courts overlooked these facts and erroneously held that Petitioner had not overcome the strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance.

For an ineffective assistance of counsel claim based on counsel's failure to file a motion to suppress, the Fourth Circuit applies a "refined" version of the Strickland analysis. Grueninger v. Dir., Va. Dep't of Corr., 813 F.3d 517, 524 (4th Cir. 2016); see also, Sexton v. French, 163 F.3d 874, 885 (4th Cir. 1998)(stating that counsel may determine "what pre-trial motions should be filed" without obtaining the defendant's consent as a matter of trial strategy).

Under the deficient performance prong of Strickland, a petitioner must show that an unfiled motion to suppress would have had "some substance." Grueninger, 813 F.3d at 524-525. ("[I]t is enough to call into question counsel's performance that an unfiled motion would have had 'some substance.'"). Here, the Petitioner can easily meet the "some substance" standard as the intentional lack of body camera video supports Petitioner's version of events. "[T]he task of weighing the credibility of police testimony against other evidence is the stuff of which" suppression hearings are made. Atkins v. Benneett, 2025 U.S. Dist. LEXIS 133497 at *27 (M.D. Fla. July 11, 2025).

The Fourth Circuit has held that a defendant is entitled to the suppression of any incriminating statements if law enforcement officers failed to provide Miranda warnings prior to a custodial interrogation. See, United states v. Colonna, 511 F.3d 431, 434-35 (4th Cir. 2007).

The District Court held that any motion to suppress would likely depend on a credibility determination. The Court acknowledged that the two officers would testify at such a hearing that they provided Petitioner with the Miranda warning. The Court also acknowledged that Petitioner would testify that no Miranda warning was given. The Court erroneously held that the Petitioner's testimony "would have formed the only piece of evidence to support his claim." District Court Order at 20. However, the Court overlooked the other evidence that supported Petitioner, namely the fact that both officers intentionally chose not to turn on the audio on their body-worn cameras.

Additionally, since the motion to suppress was never filed, it deprived Petitioner of any meaningful appellate review on the issue of Miranda. As the jury found Petitioner not guilty on some counts, despite the police testimony, it is plausible that the Court, like the jury itself, would have had some doubts as to the veracity of the officers' testimony, especially in light of the fact that the officers did not turn on the audio on their body-worn cameras even though they were required to do so in accordance with their police department policies. The District Court acknowledged that at trial the officers testified that "they purposely did not record the Miranda warnings." District Court Order at 22.

II. The District Court Incorrectly Held That Petitioner's Miranda Claim Was Procedurally Defaulted

The District Court held that the Miranda issue was procedurally defaulted because it was not raised on direct appeal. "A prisoner procedurally defaults on a claim if he fails to raise an argument in his initial criminal proceeding or on direct appeal." United States v. McClammy, 2023 U.S. App. LEXIS 18793 at 6 (4th Cir. 2023). The Court "may excuse such a default only if a prisoner can demonstrate either cause and actual prejudice or that he is actually innocent."

Id.

Notably, courts including this Honorable Court have found that ineffective assistance of counsel constitutes "cause" to defeat a procedural default. See, Murray v. Carrier, 477 U.S. 478, 488, 106 S.Ct. 2639, 91 L.Ed.2d 397 (1986) ("Ineffective assistance of counsel, then, is a cause of procedural default"); Bell v. Fizer, 242 Fed. Appx. 445 (9th Cir. 2007)(attorney error can constitute "cause" for purposes of cause and prejudice necessary to lift a procedural bar to habeas corpus relief); Sanders v. Hobbs, 2011 U.S. Dist. LEXIS 36205 at *12 (E.D. Ark. 2011) ("a trial counsel's ineffectiveness for failing to preserve a claim for review may constitute cause to lift a procedural bar").

As to "prejudice", courts have found that "actual prejudice" sufficient to excuse a procedural default occurs where the error of which the defendant complained was "an error of constitutional dimension that worked to his actual and substantial disadvantage." United States v. Snyder, 871 F.3d 1122, 1128 (10th Cir. 2017). "A petitioner can establish cause and prejudice by showing that counsel rendered constitutionally-ineffective assistance." United States v. McGrew, 397 Fed. appx. 87, 91 (5th Cir. 2010). See also, United States v.

Patten, 40 F.3d 774, 776 (5th Cir. 1994) ("Ineffective assistance of counsel satisfies the cause and prejudice standard").

CONCLUSION

For the reasons stated herein, this Petition for a writ of certiorari should, therefore, be granted.

Respectfully Submitted,

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