

STATE OF MINNESOTA
IN COURT OF APPEALS

FILED

February 15, 2024

State of Minnesota

**OFFICE OF
APPELLATE COURTS**

Respondent,

PETITION FOR DISCRETIONARY REVIEW

v.

DISTRICT COURT CASE: 70-CR-22-14898

Michael Tien Huynh

DATE OF FILING ORDER: JAN. 19, 2024

Petitioner,

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RESPONDENT

TO: The Court of Appeals of the State of Minnesota

Petitioner, Michael Huynh, respectfully requests discretionary review of the January 19, 2024 Order of the Scott County District Court, the Honorable Caroline H. Lennon, denying the Petitioner's Motion to Suppress his statement to the Police on March 30, 2022, on the basis that the manner and circumstances in which the statement was obtained violated his Miranda rights under the Constitution of the United States and the State of Minnesota. This petition is based upon Minn. R. Crim. P., Rule 28.02, subd. 3 and Minn. R. Civ. App. P. Rule 105.

Statement of facts necessary to an understanding of the issues presented

The Petitioner is a citizen of the United States (*Tr. Contd. Contested Omnibus Hearing*, 21, ¶ 9, *Dkt. #51, Addendum 116*). He lives in Shakopee Minnesota (*Id.* 20, ¶ 25, *Addendum 115*). He has worked as a nail technician for more than 20 years (*Id.* 21, ¶ 3-4, *Addendum 116*). He is married to Kim Huynh (Kim). (*Id.* ¶ 8). His wife Kim is also a nail technician (*Id.* ¶ 17).

Petitioner was born in Saigon Vietnam. He migrated to the United States in 2001. He came to the United States because Vietnam was a totalitarian country. There were no human rights or freedom, for example, the Vietnam Police could arrest anyone any time and could even beat them or kill them. There were so many wrongful deaths. Thus, he wanted to come to the United States for a better future and for freedom. His highest level of education was a Ninth-Grade education which he had in Vietnam. (*Id.* 22, ¶ 24-25, *Addendum 117*).

Since relocating to the United States, he has had no further education and has not learned the English language because he had to make a living and help [his] family in Vietnam, by sending them money. (*Id.* 23, ¶ 1-10, *Addendum 118*). He has had no incidents with the police. He has never been arrested or charged with a crime. (*Id.* 23, ¶ 11-18, *Addendum 118*). However,

he has seen the American police on television making arrests and this makes him afraid because some of their actions sometimes mirror that of the Vietnam police

On March 29, 2022, Petitioner heard a voice in [his] head telling [him] to kill himself, so [he] drove to Highway 169 [in Minnesota], swerved [his car] and thengot into an accident. After the accident he lost consciousness and [an] ambulance (including Police) took [him] to a nearby hospital. (*Id.* 25, ¶ 11-23, *Addendum 120*). This hospital was named St. Francis Hospital (*Id.* 9, ¶ 20-21, *Addendum 104*). At the time of admission at St. Francis, he was in a coma. (*Id.* ¶ 24-25, *Id.* 10, ¶ 1-2, *Addendum 105*). He was transferred to Hennepin County Medical Center (HCMC) later the same day in that condition. (*Id.* ¶ 6-10). He was in really bad shape at that time, and it was around 2:00 or 3:00 in the afternoon (*Tr. Contested Omnibus Hearing, 91, ¶ 12-20, Dkt. #50, Addendum 91*). HCMC advised Police Officer McLain (McLain) of Shakopee Police Department that Petitioner was being transferred to the Surgical Intensive Care Unit and that he was intubated. (*Addendum 192*). McLain visited HCMC on 03/29/22, while Petitioner was in a coma and took photographs of ligature marks on his neck. (*Id.* ¶ 9). The next day (03/30/22) McLain contacted HCMC to see if Petitioner had been extubated. Upon learning he had been extubated, McLain then visited HCMC to interrogate Petitioner during the morning hours of 03/30/22 (*Tr. Contested Omnibus Hearing, 37, ¶ 18-20, Dkt. #50, (Addendum 37)*).

The Petitioner regained consciousness on 03/30/202 but was kept under medication that left him tired and dizzy with headaches. At the time he regained consciousness, there were no family members around. However, there was a man sitting in a chair in his room watching him, staring at him. (*Tr. Contd. Contested Omnibus Hearing, 26, ¶ 5-20, Addendum 121, Dkt. #51*). This man did not wear a uniform, gun or a badge (*Id.* 53, ¶ 17-25, *Addendum 148*). Petitioner recalled the accident and was afraid that he was going to get arrested by the man watching him.

(*Id.* 26, ¶ 19-22, *Addendum 121*) A second man walked in and told the man watching Petitioner to leave. (*Id.* ¶ 24-25), (*Id.* 27, ¶ 1-4, *Addendum 122*). Petitioner believed both persons were police officers. The first watcher left, and the second person (Officer McLain) then went on to talk to Petitioner. (*Id.* 28, ¶ 1-7, *Addendum 123*) At the time McLain entered Petitioner's room, Petitioner still had medical equipment hooked up to him (*Tr. Contested Omnibus Hearing*, 9, ¶ 23-25 - 10, ¶ 1, *Dkt. #50, Addendum 9-101*)

Officer McLain called an interpreter because Petitioner [did not] understand English. Officer McLain kept on talking to the Petitioner and the Petitioner felt very nervous and intense. (*Tr. Contd. Contested Omnibus Hearing* 28, ¶ 9 -16, *Dkt. #51, Addendum 123*). Petitioner did not believe he could get up and walk out of the hospital. He did not feel he could refrain from talking to the officer without being arrested and tortured. (*Id.* 55, ¶ 2-25, *Addendum 150*). Prior to questioning Petitioner, Officer McLain did not give Petitioner a Miranda warning. (*Id.* ¶ 2-16)

Based on that statement, Petitioner was charged on December 2, 2022, with 6 Counts of Criminal Sexual conduct at the Scott County District Court (See Complaint, Court File No. 70-CR-22-14898, *Dkt. # 1, Addendum 159-167*). On March 31, 2023, he moved to suppress the statement obtained by Officer McLain on the basis that it violated his Fifth and Fourteenth Amendment Rights. (*Defendant's Motion to Dismiss, Dkt. # 13, Addendum 193-194*).

At the hearing, Drs. Randy Ward (Ward) and Ian Heath (Heath), both psychiatrists with the HCMC testified. Dr. Ward testified that he evaluated Petitioner on 03/31/2022 for Suicidal Ideation. (*Tr. Cont. Omnibus Hearing*, 51, ¶ 25, *Id.* 52, ¶ 1, *Dkt. #50, Addendum 51-52*). He found evidence of depression, unspecified and suicidal attempt (*Id.* 14-15). He testified that depression unspecified is a diagnosis in the DSM-5 [the Diagnostic and Statistical Manual of Mental Disorders]. He relied on medical records (*Addendum 247-264*)

Dr. Heath testified that Petitioner was transferred to him as an inpatient between 04/05/22 to 04/15/22 (*Id.* 68, ¶ 20-24, *Addendum* 68). He confirmed that he saw Petitioner 7 times due to concerns about suicidality. (*Id.* 69, ¶ 1-5, *Addendum* 69) His diagnosis was that Petitioner suffered a major depressive episode, with psychotic features. (*Id.* 70, ¶ 8-12, *Addendum* 70). That Petitioner manifested psychotic features as part of his illness and exhibited a positive full output consistent with someone who had had some psychosis. (*Id.* 71, ¶ 1-21, *Addendum* 71) That Petitioner's auditory hallucinations and psychotic features resolved by 04/10/22. (*Id.* 72, ¶ 10-17, *Addendum* 72), that Petitioner suffered a Psychomotor slowing which he described as a literal slowing down of typical voluntary motor movements In such situations, there is a slowdown in Petitioner's thinking because his brain communicates slowly to his body on what to do. (*Id.* 74, ¶ 9-25, *Addendum* 74). That petitioner had manifested those symptoms prior to the referral to Dr. Heath. (*Id.* 78, ¶ 23-25, *Addendum* 78) and that Petitioner was manifesting Psychosis before Dr. Heath examined him. (*Id.* 79, ¶ 1-8, *Addendum* 79). Dr. Heath concluded that Petitioner probably was in about the same condition from his time of admission in HCMC up till when Dr. Heath saw him. He relied on a discharge summary signed by him (*Addendum* 265-274)

At the hearing, the Court considered Officer McLain's report of Petitioner's statement, (*Addendum* 168-171), the verified transcript (*Addendum* 172-187, *Dkt.* # 29, 32) and Officer McLain's report of Kim Huynh (Petitioner's Wife's) statement (*Addendum* 188-192). The Court refused to admit in evidence the 2022 Human Rights Report on Vietnam, published by the United States Department of State (*Dkt.* # 27, *Addendum* 195-237). The Court rejected the said document on grounds of relevance (*Addendum* 135-136).

On January 19, 2024, the District Court issued an order denying the Petitioner's Motion. (Dkt. #63, Addendum 238-246). In so doing, the Court went in direct conflict with established precedent in *State v. Sickles*, 275 N.W. 2d 809 (Minn. 1979). The Court also held that the defendant's will was not overborne and that his statements were the product of rational mind and free will.

Statement of the Issues:

1. Whether the court made wrong findings contrary to the evidence presented at the suppression hearing, thereby resulting in prejudice to petitioner.
2. Did the Court err by refusing to admit into evidence the 2022 Human Rights Report on Vietnam prepared by the United States Department of State on the basis of lack of relevance and did this result in prejudice to petitioner
3. Whether the facts, findings and decision in the Minnesota Supreme Court decision of *State v. Sickles*, 275 N.W. 2d 809 (Minn. 1979) to the effect that a Miranda warning is required before questioning a defendant detained under a hospital hold, is applicable to the facts and circumstances of this case.
4. Whether based on the totality of the circumstances occurring as at 03/30/2022 and petitioner's medical and mental state at that time, his statement to Officer McLain of the Scott County Police Department was made freely, intelligently and voluntarily, as to constitute a waiver of defendant's Miranda rights.

Why an Immediate Appeal is Necessary and Desirable

This Petition merits review under Minnesota Rules of Civil Appellate Procedure 105, because the district court's ruling 'places inordinate pressure on the petitioner to settle this case prior to trial e.g. Doe 175 ex. Rel. Doe175 v. Columbia Heights Sch. Dist., ISD No. 13, 842 N.W. 2d 38, 47 (Minn. App. 2014) (quoting *Gordon v. Microsoft, Inc.*, 645 N.W.2d 393 at 401-402 (Minn. 2002)); *Valspar Refinish, Inc. v. Gaylord's, Inc.*, No. A05-1640, at 2 (Minn. Nov. 22,

2005) to avoid a possible conviction on all 6 charges, rather than take the risk of filing an appeal after conviction, especially in a case where the un-Mirandized statement could potentially be overturned on appeal. A denial of the petition would result in tremendous costs to the Petitioner.

This Court historically has not been receptive to granting petitions for discretionary review, for many reasons. This case is a clear exception. The issue presented involves an extremely important legal issue that has broad application beyond this case. *Doe* 175, 842 N.W.2d at 47. It involves whether questioning a defendant held in hospital under a committal order requires a Miranda advisory. This is the crux of the seminal decision of the Minnesota Supreme Court in *State v. Sickles*, 275 N.W. 2d 809 (Minn. 1979). The Minnesota Supreme Court insists a Miranda warning is necessary. However, the Scott County district court's decision holds otherwise. The district court's holding is highly questionable, *id.*, and presents a conclusion that is truly "troublesome and vexing." *Price*, 256 N.W.2d at 462 n.1. A reversal of the district court's decision would help determine what evidence comes in during the trial and which evidence does not, thereby promoting the possibility of a settlement of this case and meeting the goals of administration of justice. It enables the State and the petitioner to know what evidence will be admissible during the trial so that the parties can intelligently resolve this matter and minimize judicial resources and time. Further, the Court of Appeal should consider the circumstances under which the statement was obtained and determine whether this was fair to petitioner. The issue is important to both the litigants and the public. *Anderson v. Florence*, 181 N.W.2d 873 (Minn. 1970); *Anderson v. Stream*, 295 N.W.2d 595 (Minn. 1980); It also helps minimize the number of motions *in limine* to be filed in advance of trial and promote the integrity of the trial. Further, evidentiary issues regarding the admissibility of public documents like the U.S. Department of State Human Rights Report on Vietnam, can be resolved

and settled prior to trial. The petitioner would be prejudiced without immediate review. e.g., *O'Shaughnessy v. Smuckler Corp.*, 543 N.W.2d 99, 101 (Minn. App. 1996); *Larson v. New Richland Care Ctr.*, 538 N.W.2d 915, 919 (Minn. App. 1995); Unless discretionary review is granted, it will be impossible to remedy this error by an appeal, as a potential jury may have formed a negative opinion, bias and possible conclusion of guilt of the petitioner to the latter's prejudice. Regarding "Other factors the Court of Appeals finds appropriate to the issues to be reviewed, the procedural posture of the case, and other circumstances presented." *State v. Plevell*, 889 N.W.2d 584, 587-88 (Minn. App. 2017), this is a case where the Court will consider on the totality of the circumstances, based on petitioner's background, lack of education, fear of the police, psychosis, mental health, medication, absence of family and counsel, whether petitioner's statement of March 30, 2022, was made voluntarily, intelligently and willingly.

Unless the Court of Appeal allows discretionary review, the Petitioner will be denied the traditional gate keeping role of the Court in keeping away illegally obtained evidence from a jury, thus tainting the minds of jurors regarding the guilt of petitioner.

Based on extant statutes and court decisions, an appeal from a Jury decision resulting from pretrial matters is a difficult and complex task and best avoided.

Standard of Review

This Court may grant discretionary review of an otherwise non-appealable order "in the interests of justice." Minn. R. Civ. App. P. 105.01; *Gordon v. Microsoft, Inc.*, 645 N.W.2d 393, 399 (Minn. 2002) (discussing circumstances warranting immediate review under Rule 105.01 and observing that Court of Appeals should accept review "if there is a compelling reason for immediate appeal"). The case law provides that the following factors should be considered in determining whether to grant a petition for discretionary review:

- The case involves an "important legal issue that is also important to the particular

litigation.” *Doe 175 ex rel. Doe 175 v. Columbia Heights Sch. Dist.*, ISD No. 13, 842 N.W.2d 38, 47 (Minn. App. 2014) (quoting *Gordon*, 645 N.W.2d at 401-02 (Minn. 2002)); *Valspar Refinish, Inc. v. Gaylord’s, Inc.*, No. A05–1640, at 2 (Minn. Nov. 22, 2005) (Order);

- The district court holding is questionable or involves an unsettled area of the law. *Berthiaume v. Allianz Life Ins. Co. of N. Am.*, 2019 WL 7906205, at *1 (Minn. App. Oct. 1, 2019);
- Resolution of the issue presented would settle a difficult question of widespread application. *Clark v. Monnens*, 436 N.W.2d 830, 831 (Minn. App. 1989);
- “[T]he question presented is broad, troublesome and vexing to the courts,” *Price v. Amdal*, 256 N.W.2d 461, 462 n.1 (Minn. 1977) (granting review for that reason);
- The issue is important to both the litigants and the public. *Anderson v. Florence*, 181 N.W.2d 873 (Minn. 1970); *Anderson v. Stream*, 295 N.W.2d 595 (Minn. 1980);
- The petitioner would be prejudiced without immediate review. E.g., *O’Shaughnessy v. Smuckler Corp.*, 543 N.W.2d 99, 101 (Minn. App. 1996); *Larson v. New Richland Care Ctr.*, 538 N.W.2d 915, 919 (Minn. App. 1995);
- The district court ruling “places inordinate pressure on the defendant to settle.” E.g., *Doe 175*, 842 N.W.2d at 47 (quoting *Gordon*, 645 N.W.2d at 401-02 (Minn. 2002));
- “Other factors the Court of Appeals finds appropriate to the issues to be reviewed, the procedural posture of the case, and other circumstances presented.” *State v. Plevell*, 889 N.W.2d 584, 587-88 (Minn. App. 2017).

Cases that “present significant legal issues having impact beyond the particulars of the case are good candidates for discretionary review.” Eric J. Magnuson & David F. Herr, 3 Minn. Prac., Appellate Rules Annotated, § 105.4 (May 2019 update). As demonstrated below, application of the above factors to the present case weighs heavily in favor of discretionary review.

Argument

I. Petitioner was subjected to a Custodial Interrogation and deprived of his freedom in a significant way and the Minnesota Supreme Court decision in *State v. Sickles*, 275 N.W. 2D 809 (Minn. 1979) was directly applicable to defendant’s case

The questioning at a hospital before giving a defendant a warning is improper but it is not error to question a defendant at the house without first giving him a warning. *State v. Sickles*, 275 N.W. 2d 809 (Minn. 1979).

In *State v. Sickles*, 275 N.W. 2d 809 (Minn. 1979), the Minnesota Supreme Court decided that it was ***error to question a defendant both at the house and at the hospital*** during a committal without first giving a warning (emphasis added). The Court held:

1. The **questioning at the hospital before giving defendant a warning was improper but it was not error to question defendant at the house without first giving a warning.** The test in determining the need for a Miranda warning is not whether the interrogation has coercive aspects to it or whether the investigation has focused on the person being questioned but **whether the person being questioned is in custody or is deprived of his freedom of action in a significant way.** (emphasis added) *Oregon v. Mathiason*, 429 U.S. 492, (1977), *Beckwith v. United States*, 425 U.S. 341, (1976), *State v. Carlson*, 267 N.W. 2d 170 (Minn. 1978), *State v. Ousley*, 254 N.W. 2d 73 (1977)
2. **When defendant was taken to the detoxification center, he was being deprived of his freedom of action in a significant way and the officers clearly erred in failing to give him a Miranda warning before they questioned him at the hospital.** (emphasis added)

The facts of *Sickles* are on all fours with the facts of the present matter. At the time he regained consciousness, there were no family members around. However, there was a man sitting in a chair in Petitioner's room watching him, staring at him. (*Tr. Contd. Contested Omnibus Hearing*, 26, ¶ 5-20, *Addendum 121*). (*Id.* 12, ¶ 1-8, *Addendum 107*). Although this man did not wear a uniform, a gun or a badge (*Id.* 53, ¶ 17-25, *Addendum 148*) Petitioner recalled the accident and was afraid that he was going to get arrested by the man watching him. (*Id.* 26, ¶ 19-22, *Addendum 121*) A second person walked in and told the other person watching him to leave. (*Id.* ¶ 24-25), (*Id.* 27, ¶ 1-4, *Addendum 122*) Petitioner believed both persons were police officers. The first watcher left, and the second person (Officer McLain) then went on to talk to Petitioner. (*Id.* 28, ¶ 1-7, *Addendum 123*). Officer McLain never told Petitioner that he was on a hospital hold or was being detained by the hospital. (*Tr. Contested Omnibus Hearing* 31, ¶ 14-25, *Addendum 31*). Although he had the privileged information that Petitioner was under a hospital commitment hold, he did not communicate that to the latter. *Id.* No hospital employee

communicated the fact of the hospital hold to Petitioner. He had just come out of unconsciousness with his intubation and other breathing gear removed. McLain then misspoke in his statement that “I also explained that typically I would tell the person I am speaking with that they can leave. But since he had to remain at the hospital for safety concerns, if he did not want me in his room he could ask me to leave and I would.” (emphasis added) (*Addendum 168*). Yet the transcript of the officer’s recorded interview showed that the very words of the officer to Petitioner was “And typically, I would say – You’re free to leave, but obviously you’re in a hospital bed -so, if you don’t want me here, you can tell me and I will leave – if you don’t want me here.” (emphasis added) (*Addendum 173, lines 1-3*) The Officer’s repetition of the words “If you don’t want me here” to a mentally sick, uneducated, unschooled immigrant, typically afraid of all Police Officers in Vietnam and in the United States, without the benefit of family and Counsel) did intimidate and frighten Petitioner. It is not common practice for unconscious sick patients to regain consciousness and find a guard by their bedside watching them. Experience shows that such practice occurs usually in the case of injured or sick criminal defendants awaiting arrest by police.

Further, the test for determining whether a suspect was in custody is whether a reasonable person in the suspect's situation would have understood that he was in custody. *State v. Staats*, 658 N.W. 2d 207, 211 (Minn. 2003). (emphasis added) “If a suspect has not yet been arrested, a district court must examine all of the surrounding circumstances and evaluate whether a reasonable person in the suspect's position would have believed he was in custody to the degree associated with arrest.” *Id.* (quoting *State v. Miller*, 573 N.W. 2d 661, 670 (Minn. 1998)).

A reasonable person in Petitioner’s position here, would not be a typical American, born,

educated and raised in the United States with full knowledge of the democratic culture, rights and norms typical in this country. He would rather be a person with petitioner's profile – education, mental status, police experience, past police experience, language proficiency, etc. Thus, the court should find in Petitioner's favor and allow review.

II. Petitioner's Statement of 03/30/2022 obtained by Officer McLain of the Scott County Police Department while Petitioner was held by a Committal Order at the Hennepin County Medical Center was not made freely, intelligently and voluntarily as to constitute a valid waiver of defendant's Miranda rights

A confession is not voluntary if the actions of the police, combined with the circumstances, are so coercive and intimidating that the defendant is unable to make a free-will decision. *State v. Jones*, 566 N.W.2d 317, 326 (Minn. 1997). The actions of police need not be threats or deliberate intimidation to be coercive. *State v. Riley*, 568 N.W.2d 518, 525 (Minn. 1997). *In re Welfare of M.A.K.*, 667 N.W.2d 467 (Minn. Ct. App. 2003) The key question is whether the will of the defendant was overborne. *State v. Riley*, 568 N.W.2d 518, 525 (Minn. 1997). Relevant factors include defendant's age, maturity, intelligence, education, experience, and ability to comprehend. *Id.* Courts also consider the nature of the interview, including its length, the lack of or adequacy of warnings, whether the defendant's physical needs were met or ignored, and whether the defendant was denied access to friends. *State v. Zabawa*, 787 N.W.2d at 182, 183 (Minn. 2010).

In this case, petitioner's will was overborne and his statement was not voluntary. The isolation of the Hospital, absence of friends, family and Counsel, denied him all the constitutional protections of *Miranda*. Thus, his statement of 03/30/2022, was not made freely, intelligently and voluntarily as to constitute a valid waiver of his Miranda rights.

III. The Trial Court was in error when it refused to admit into evidence the 2022 Human Rights Report on Vietnam prepared by the United States Department of State when the said document qualified as a Public Record and Report and thus admissible under Hearsay Exception provision of the Minn. R. Evid. 803(8)

Minn. R. Evid. 803 (8) provides that public records and reports are admissible in evidence as exceptions to the hearsay rule.

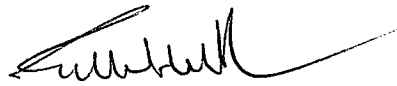
At the Suppression hearing of October 6, 2023, the court refused to admit the 2022 Human Rights Report on Vietnam” on grounds of relevancy. (*Tr. Contd. Contested Omnibus Hearing*, 40-41, (Dkt. # 27, *Addendum 135-136*). Evidence that is relevant is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Minn. R. Evid. 401. *State v. Cermak*, 2018 Minn. App. Unpub. LEXIS 514. In this case, the 2022 Human Rights report on Vietnam was relevant to petitioner’s evidence on Vietnam and his state of mind regarding the police and was wrongly rejected.

IV. Conclusion:

For all of the forgoing reasons, the Petitioner above-named respectfully requests that this Court grant this Petition for Discretionary Review.

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Dated: February 15, 2024



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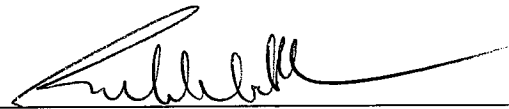
Petitioner,

PETITIONER'S CERTIFICATE OF DOCUMENT LENGTH

I hereby certify that this Petition conforms to the requirements of Minn. R. Civ. P. 105.02, for a petition produced with a monospaced font. Exclusive of the table of caption, signature block and addendum and the certificate of compliance, the length of the brief is 3997 words. This brief was prepared using Microsoft Word 365 MSO Version 2205

Dated: February 15, 2024

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