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News Story

Habeas decision makes case for cautious harmless error analysis

Eastern District

A habeas corpus petitioner who claimed the Michigan Court of Appeals unreasonably applied U.S. Supreme Court precedent to conclude that admission of his coerced confession at his murder trial was harmless error must be released from custody unless a new trial date is scheduled within 90 days, the U.S. District Court for the Eastern District of Michigan has ruled.

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The Court of Appeals had based its harmless error determination on the testimony of the petitioner's fellow gang members and a jailhouse informant, asserting they had "clearly implicated defendant in the crime."

However, on habeas corpus review, the petitioner insisted the Court of Appeals had reached a faulty conclusion by unreasonably applying federal precedent, given the prosecution witnesses' numerous credibility shortcomings.

Judge Arthur J. Tarnow agreed.

"Considering that a 'defendant's own confession is probably the most probative and damaging evidence that can be admitted against him,' that the evidence against the petitioner came from questionable sources and was far from overwhelming, and that the jury twice reported being deadlocked, the court is in 'grave doubt' about whether admission of the coerced confession had 'substantial and injurious effect or influence in determining the jury's verdict,'" Tarnow wrote. "The court further concludes that the state court's application of the harmless error review was objectively unreasonable."

The 18-page decision is *Eddleman v. McKee*, Lawyers Weekly No. 02-55316.

Hardly Harmless

Okemos attorney Andrew K. Wilkins, who represents the petitioner, praised the decision for reaffirming the U.S. Supreme Court's instruction that courts proceed with extreme caution when applying the harmless error analysis to the admission of a coerced

confession.

"This shows that cases involving the improper admission into evidence of a coerced confession are rarely going to be found to be harmless error," he stated.

Wilkins explained this was so because the prosecution's case often relies largely, even exclusively, on the defendant's confession.

"A confession is the most powerful, probative and damaging piece of evidence that can be introduced against a defendant," he asserted. "For most juries, when they hear a confession, that's the end. They believe the defendant is guilty."

East Lansing appellate specialist F. Martin Tieber agreed, explaining that when the Supreme Court admonished courts to use extreme caution, what it meant was that courts need to look at the facts of the case long and hard before concluding that a coerced confession did not contribute to a jury's guilty verdict.

"This is a common problem with the Michigan Court of Appeals, which is clearly one of the most prosecution-oriented appellate judiciaries in the country," he declared. "If you don't get into and fully assess these complex murder cases — which can often be quite voluminous — then you're not going to be able to apply the law reasonably, let alone correctly. In many of the instances that I have seen, the Michigan Court of Appeals is simply not doing that."

With no physical evidence linking the petitioner to the crime, a jury that deadlocked twice, and a confession that occupied center stage in the prosecution's case, Tieber stressed this case was a perfect example of just how wrong things can go when courts fail to heed the Supreme Court's call for extreme caution.

"The bargained-for testimony of codefendants and snitches, which was relied on by the Court of Appeals to uphold the conviction, was nothing more than the same old, tired stuff that's been used to convict innocent people in the more than 100 DNA exonerations nationwide," he asserted.

Wilkins concurred.

"The Court of Appeals mentioned a few points from the witnesses that went against the petitioner, but neglected to mention all of the deals with the state, the contradictions, and the false statements that would have gone against those same witnesses' credibility," he observed.

Finally, Tieber suggested the judge's analysis highlighted one of the trickier aspects of habeas corpus litigation.

"When a federal judge is determining whether to grant a writ, it's not enough that she find the state court incorrectly applied federal precedent," he noted. "She's got to find that the state court's application was unreasonable."

He urged that the difference between "unreasonable" and "incorrect" boiled down to a question of degree based on personal judgment.

"Inevitably, it's going to be a subjective determination that will differ from judge to judge," Tieber concluded.

Confession Erroneously Admitted

On Oct. 13, 1996, Joane Georgescu was shot to death as she sat in a parked car at the intersection of Kirkwood and Trenton in the City of Detroit. Although witnesses on the scene reported that the fatal shot was fired from a passing car, no one could describe the vehicle or its occupants.

Eventually, petitioner David Eddleman — who was identified as a member of the Insane

Spanish Cobras street gang — was charged with Georgescu's murder.

Prior to trial, the petitioner moved unsuccessfully to suppress his alleged confession, contending it was a police fabrication that he had been forced to sign.

At trial, the evidence against the petitioner consisted mainly of his confession and the testimony of his fellow gang members — Brian Babbitt, Brian Weever and Thomas Valastek — along with the testimony of jailhouse informant Ricky O'Neal.

Following a guilty verdict for second-degree murder and a sentence of 30 to 60 years imprisonment, the petitioner appealed to the Michigan Court of Appeals, contending the trial court had improperly shifted the burden of proof during his suppression hearing from the state to him and, thus, committed reversible error by finding the confession to have been voluntarily made and allowing its admission into evidence at trial.

However, the Court of Appeals rejected his claim, explaining that, even though the confession should have been suppressed because the prosecution had not proven its voluntariness by a preponderance of the evidence, its erroneous admission into evidence was harmless beyond a reasonable doubt based on the prosecution witnesses' trial testimony.

After the Michigan Supreme Court denied his application for leave to appeal, the petitioner filed a petition for writ of habeas corpus pursuant to 28 U.S.C. Sect. 2254, claiming the Court of Appeals harmless error determination was an unreasonable application of U.S. Supreme Court precedent.

Unreasonable Application

Judge Tarnow began his analysis by noting that the standard of review for habeas corpus cases filed under Sect. 2254(d) is whether the state court's adjudication of a federal claim amounted to "an unreasonable application of clearly established federal law as determined by the Supreme Court of the United States."

Citing *Williams v. Taylor*, he explained that an unreasonable application occurs when "a state court decision unreasonably applies the law of [the Supreme Court] to the facts of a prisoner's case," adding that a mere incorrect or erroneous application would be insufficient to trigger habeas corpus relief.

Moreover, Tarnow stated that in the context of a harmless-error claim, the task of the reviewing federal habeas judge is to decide whether the error ""had substantial and injurious effect or influence in determining the jury's verdict.""

If the judge has "grave doubt" about whether the trial error affected or influenced the jury's verdict, then the error cannot be deemed harmless and the petitioner's request for relief must be granted, the judge emphasized, citing *O'Neal v. McAninch*.

'Exercise Extreme Caution'

Turning to the petitioner's claim, Tarnow noted the U.S. Supreme Court's admonition in *Arizona v. Fulminante* that a reviewing court must exercise "extreme caution" before declaring that an erroneously admitted confession was harmless, given the overwhelming, prejudicial effect its admission could have on a jury.

Referencing *Fulminante* — where the court determined the admission of the defendant's coerced confession was not harmless error — the judge highlighted several of the factors that courts consider when analyzing harmless-error claims: (1) whether there would have been enough physical and/or circumstantial evidence to charge the defendant absent the coerced confession; (2) whether admission of the coerced confession may have bolstered the credibility and reliability of other evidence; and (3) whether admission of the coerced confession allowed other prejudicial evidence to be admitted against the defendant.

Moreover, when considering the strength of the other evidence against the petitioner, the

court can take into account the witnesses' motive to lie, he stated.

Applying these principles to the petitioner's case, Tarnow faulted the Michigan Court of Appeals for basing its harmless error determination on only bits and pieces of the prosecution witnesses' trial testimony.

"The state court ... cited only the aspects of their testimony most favorable to the prosecution, and ignored the witnesses' motives for testifying and the inconsistencies in their testimony," he charged.

Of significance to the judge were the facts that Babbitt had originally been arrested as a suspect; that he had been granted immunity in return for his testimony; and that his trial testimony differed from what he had originally told the police.

Tarnow also discredited the testimony of Weaver and Valastek — because they were wrong about the night the shooting took place — and O'Neal, who was a jailhouse informant testifying pursuant to a plea agreement regarding unrelated charges.

Noting that the jury deadlocked twice, the judge observed that not only was there no physical evidence implicating the petitioner, but his confession — like the confession in *Fulminante* — likely bolstered the witnesses' testimony while simultaneously serving as the foundation for the prosecution's case.

Acknowledging that he had "grave doubt" as to whether the confession affected or influenced the jury's guilty verdict, Tarnow declared that the state court's decision was more than just an incorrect or erroneous application of federal, harmless error precedent.

"Such an analysis is unreasonable in the context of the admission of a coerced confession because the Supreme Court requires that, before determining that the admission of a coerced confession at trial was harmless, a reviewing court must 'exercise extreme caution,'" he concluded. "In this case, the Michigan Court of Appeals failed to exercise extreme caution."

Respondent's Arguments

In response to respondent Warden Ken McKee's argument that the petitioner failed to present his claim as a federal constitutional claim in state court and thus failed to exhaust his state remedies, Tarnow observed that a petitioner has adequately presented his federal claim if he has called it a "federal" claim and/or cited the source of federal law on which he relies or cases deciding the issue in question on federal grounds.

With respect to the petitioner's claim, the judge concluded the federal constitutional claim had been properly raised in the state courts based on the petitioner's citation in his briefs to his rights to due process and a fair trial, to U.S. Supreme Court precedent, and to several state court decisions which embraced a federal constitutional analysis.

Moreover, Tarnow suggested in a footnote that, even if the petitioner had not done all of these things, the Michigan Court of Appeals and Michigan Supreme Court should have still known that the petitioner's claim was a federal one based on their "common judicial sense."

"The nature of his claim was sufficient to apprise judicial officers charged with supporting the Constitution of the United States that his claim alleged a violation of that document," he asserted. "The preservation of the claim of a constitutional violation should not hinge upon insertion of certain 'magic words.'"

Finally, Tarnow said he wasn't swayed by the argument that because the petitioner was so ably defended at trial, the prejudicial effect of his confession's admission caused him no harm.

"Supreme Court precedent does not provide that the improper admission of a coerced confession may be rendered harmless if a defendant has the good fortune of an attorney

who delivers a sterling performance," the judge explained. "No matter how sterling the defense attorney's representation, the confession, the most 'probative and damaging evidence' that can be admitted against a defendant, was still improperly before the jury."

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