

File
JH

June 2, 1965

J. Grahame Walker, Esq.
Attorney at Law
8400 Wisconsin Avenue
Bethesda, Maryland 20014

Dear Mr. Walker:

We are enclosing herewith a copy of
an Order of Court filed this date in the case of
Lidge Schowgurow vs. State of Maryland, No. 368,
September Term, 1964, which is self-explanatory.

The first of September you will be
notified as to the exact date this case will be set ✓
for reargument.

Very truly yours,

Clerk

JLY/ojr

Enclosure

cc: Office of the Attorney General,
Att'n: Roger D. Redden, Esq.
Office of the State's Attorney of
Baltimore City

LIDGE SCHOWGUROW

v.


STATE OF MARYLAND

*
*
*
*
*
*

In The
Court of Appeals
of Maryland
No. 368
September Term, 1964

O R D E R

It is ORDERED by the Court of Appeals of Maryland
this second day of June, 1965, that the above entitled case be
set for reargument during the September, 1965, session.



Chief Judge

IN THE MARYLAND COURT OF APPEALS

ANNAPOLIS, MARYLAND

FILED APR 26 1965

J. LLOYD YOUNG, CLERK
COURT OF APPEALS OF MARYLAND

TERM: 1964

NO. 368

To the Honorable Chief Judge, and Associate Judges, of The Court of Appeals of Maryland:

I, LIDGE SCHOWGULOW, do hereby respectfully request, that when my case is heard by this Court that:

I. My attorneys, J. Grahane, Walker and J. Gifford, Scarborough, raise the point of my right to counsel; as stated below in the recent Court rulings.

On the uncontroverted fact, the principle of ESCOBEDO v. ILLINOIS, 374 US 478 (1964). is applicable. In that case, the Supreme Court formulated its holdings in two (2) separate statements. The first was:

"Where, as here, the investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect, the suspect has been taken into police custody, the police carry out a process of interrogation that lends itself to eliciting incriminating statements, the suspect has requested and been denied an opportunity to consult with his lawyer, and the police have not effectively warned him of his absolute right to remain silent, the accused has been denied 'the Assistance of Counsel' in violation of the Sixth Amendment of the Constitution as 'made obligatory upon the States by the Fourteenth Amendment,' GIDEON v. WAINWRIGHT 372 US at 342, and that no statement elicited by the police during the interrogation may be used against him at a criminal trial."

The Court says in summation:

"We hold only that when the process shifts from investigatory to accusatory---when its focus is on the accused and the purpose is to elicit a confession--- our adversary system begins to operate, and the circumstances here, the accused must be permitted to consult with his lawyer."

Thus ESCOBEDO announced no new constitutional right, but indicated circumstances in which the right to counsel, previously announced in GIDEON v. WAINWRIGHT 372 US 335 (1963), would be available.

The Supreme Court's holding in ESCOBEDO was explicitly based upon its earlier teachings in HAMILTON v. ALABAMA, 368 US 52 (1961); WHITE v. MARYLAND 373 US 59 (1963); and MASSIAH v. UNITED STATES, 377 US 201 (1964), that under the Constitution a ...state criminal defendant is entitled to the "guiding hand of counsel" when a critical stage in the proceedings has been reached. The Doctrinal importance of ESCOBEDO is found in its recognition that the interrogation of a suspect in police custody is a critical juncture in the criminal process, and that the inquisition may not be persisted in without according him the right to counsel. Otherwise, the real trial occurs in the police station, and the trial in court is;

"no more than an appeal from the interrogation; and the 'right to use counsel at the formal trial is a very hollow thing when for all practical purposes the conviction is already assured by pretrial examination' (cont')

In re; CROBAN, 352 US 330,344 (BLACK, Judge dissenting) quoted in ESCOBEDO at pp. 487-88.

" It is as illogical to exclude from the operations of the ESCOBEDO doctrine all but the very circumstances of that case, disregarding cases presenting analogous circumstances, as it would be to embrace within its doctrine, indiscriminately, all cases irrespective of circumstances. The Fourth Circuit Court of Appeals of the United States have no borderline case where the police may fairly claim some latitude in questioning a person whose status is still obscure. Schowgurow was definitely the suspect when he was arrested and kept under special guard. From then on the officer's concentrated effort was to draw out of his own mouth words that would perfect the case against him. This was a bald violation of his rights.

Nor is there any force in the argument that Schowgurow, according to the testimony of the State Police, did not ask for a lawyer. It has been adjudicated that the failure to demand counsel at other critical points works no forfeiture of the right. *SMITH v. MASSIAH* v. UNITED STATES 377 US 201 (1964)

WHITE v. MARYLAND 373 US 59 (1963)

CARNLEY v. O'CHRAN 369 US 506,513 (1962)

HAMILTON v. ALABAMA 368 US 52 (1961)

Neither should the right be lost for failure to assert it when the accused is subjected to interrogation in the police station. ESCOBEDO does not make it necessary under all circumstances for the person in custody to ask to see a lawyer. It happens that ESCOBEDO did make such a request. The fact as to whether Schowgurow did or didn't make a request to have the assistance is unimportant. Once the State Police knew this man wasn't born in this country, they fully knew he could not know all its laws, and they should have told him of his right to the Sixth Amendment and the Fourteenth Amendment.

The CALIFORNIA SUPREME COURT in *PEOPLE v. DURADO*, 33 U.S.L. WEEK 2122 (CAL. SEPT. 15, 1964). Which held applicable the rule announced in ESCOBEDO, irrespective of whether or not the defendant has actually requested counsel.

" We find no strength in an artificial requirement that a defendant must specifically request counsel; the test must be a substantive one; whether or not the point of necessary protection for guidance of counsel has been reached.....

We should not penalize the defendant who, not understanding his legal rights, does not make the formal request and by such failure demonstrates his helplessness."

SEE..... *CULOMBE v. CONNECTICUT*, 367 US 568 (1961)

HAYNES v. WASHINGTON, 373 US 503 (1963)

LEDBETTER v. WARDEN, Civil No. 14551 (1965)

ESCOBEDO v. ILLINOIS, 376 US 478 (1964)

JACKSON v. DENNO, 378 US 368 (1964)

HILLER v. WARDEN, 4th Cir., 338 F. 2d 201 (1964)

MASSIAH v. UNITED STATES, 377 US 202 (1964)

DAVIS v. NORTH CAROLINA, 4th Cir., F. 2d (1965)

~~*WEEFORD v. STATE*, 235 Md. 497 (1964)~~

GIDRON v. WAINWRIGHT, 372 US 335 (1963)

ALSO SEE;

BRENNAN, The Bill of Rights and the States (James Madison, Lecture at the New York University School of Law) 36 N.Y.U.L. Rev. 761 (1961).

CLARK, The Sixth Amendment and the Law of the Land, 6 St. Louis U.L.J. 1 (1963).

WARREN, Science and the Law: Changes and the Constitution, 12 J. DSA Pub. L. 3 (1963)

When this honorable court meets to hear the case of *LIDSE SCHOWGUROW v. STATE OF MARYLAND* ... NO 363, please review the above quoted and reflect on my right to the assistance of counsel as stated in the Sixth Amendment. My statement was given because I was held incommunicado, and feared for my life. The Statement was involuntary and should be ruled unconstitutional.

COPY CHIEF JUDGE AND ASSOCIATE JUDGES

J. GRAHAM WALKER ESQ

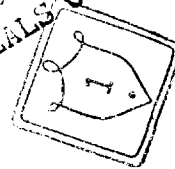
J. GIFFORD SCARBOROUGH-1-

Respectfully,

Lidse Schowgurow
LIDSE SCHOWGUROW

SEPTEMBER TERM 1964 NO. 368

FILED APR 22 1965

J. LLOYD YOUNG, CLERK
COURT OF APPEALS OF MARYLAND

QUESTIONS AND ARGUMENTS

(1)

WAS THE CONFESSION OF APPELLANT FULLY AND VOLUNTARY GIVEN?

Appellant is a Kalmuck of Mongolian descent and was born in Belgrade, Yugoslavia, Approximately 35 years of age. He was raised in the Buddhist faith and has continuously been and was at the time of his indictment and trial and adherent of that faith. His education ceased at the age of 13 when he was seized by the Nazi's and transported to a German labor camp. Subsequently, in 1952, he immigrated to the United States and later married an American girl. On January 5, 1964, appellant was apprehended by the Shore Patrol at the apartment where his wife had received fatal gunshot wounds. Appellant was removed to a hospital for treatment of a wound, while there, State Police informed him he was charged with Murder.

On the following day, Appellant was removed to the State Police Barracks and booked on a charge of Murder. He was fingerprinted, photographed and given lunch. Appellant was then interrogated and a statement or confession was obtained from him. Appellant testified that prior to the interrogation, he requested to telephone his sister or brother to inquire about getting a lawyer but his request was ignored.

See; *Escohedo v. Illinois*, 378 U.S. 478.

The confession of Appellant was not freely and voluntary given, whereas the atmosphere of the interrogation room produce fear and uncertainty in the appellant. It must be remembered that appellant was a prisoner in a Nazi Prison Camp, where it need not be mentioned here the atrocities that took place in those prison camps, his fears of authority of any one wearing a uniform. Appellant was like soft clay in the hands of the State Police. It was brought out on Direct Examination at appellant's trial by the testimony of Trooper Fields that he was wearing his complete dressed uniform when the appellant's statement or confession was taken in the interrogation room.

TROOPER FIELDS' TESTIMONY ON DIRECT EXAMINATION

Q. Trooper Fields, I show you State's exhibit No. 1 which is marked for

identification. It is a statement of Lidge Schowgurow, at Barracks F, North East, on January 6. Were you (56) present when this statement was taken?

A. Yes sir, I was.

Q. Where was the statement taken?

A. Down in the basement, in the Criminal Investigator's Office, at the Barracks.

Q. Who was present when the statement was taken?

A. Lidge Schowgurow, First Sergeant Kosirowsky, Clefk Jean Ragan and myself.

Q. How were you dressed at the time?

A. In uniform.

Q. Did you have a complete uniform on?

A. Yes, sir, minus hat, of course.

Q. Minus your hat?

A. Yes, sir, that is one thing we take off when we go in the barracks.

Q. Q. Would you describe what you mean by your complete uniform?

A. We had the blouse, the brown blouse we have, it is a jacket, we call them a blouse, the Sam Brown equipment, the 38, black tie.

Q. You did have your weapon on?

A. Yes, sir.

The question here, is whether the confession was free and voluntary, in an atmosphere of calm and withdrawn fear. What actually happens behind the closed doors of the interrogation room is difficult if not impossible to ascertain, certainly, if through excess of zeal or aggressive impatience or flaring up of temper. Appellant repeatedly requested before talking with the State Troopers and if he makes the request for a lawyer and it is refused, he is denied the assistance of counsel for his defense guaranteed by the 6th and 14th Amendments of the United States constitution.

See: Culombe v. Connecticut, 367 U.S. 568, 637, 81S.Ct. 1860, 1897 (1961)

Hall v. Warden, No. 8592, Decided Jan. 17, 1963 United States fourth Circuit Court of Appeals

The bold disregard of the State Troopers who conducted the interrogation to even advise appellant of his rights to remain silent is a flagrant violation to appellant's constitutional right to an attorney.

What may happen there may affect the whole trial. As in the case of *Haley v. Ohio*, 332 U.S. 596, 68 S. Ct. 302, where it stated:

"...At no time was this boy advised of his rights to counsel, but the written confession started off with the following statement: we want to inform you of your constitutional rights, the law gives you the right to make this statement or not as you see fit.

See: *Gideon v. Wainwright*, 372 U.S. 335, 83 S. Ct. 792 (1963)"

Appellant's helplessness before the State Troopers when he is without the guiding hand of counsel, emphasizes the lack of equal protection, when leaving the constitutional right to counsel to the discretion of the State Troopers. Appellant knew that no friendly or disinterested witness is present and the knowledge itself induced fear such as the case at the Bar.

See: *Powell v. Alabama* 368 U.S. 52 (1961)

The actions of the State Troopers was nicely calculated to lead appellant of little education and inexperience in the law, to believe he was not entitled to the protection of legal advice until he was taken to court. Appellant could not waiver his rights intelligently when not knowing what those rights are or what they consist of.

In, *Johnson v. Zerbet*, 304 U.S. 458, Cites:

"...A waiver is ordinarily an intentional relinquishment or abandonment of know rights or privileges."

Under Maryland procedures they contend that defendant should know what to do when he is arrested, when having a criminal record, contends he has criminal experience as to the law of preparing his defense. But appellant does not have a degree of legal intelligence, is not a layman to know the fundamental principles in the court of law.

It is contended here that the interrogation of appellant was not under the circumstances of interrogation in its proper form. The testimony of the State Troopers, Sgt. Kosirowsky and First Class Wiley E. Fields whose contradictory testimony leaves one to believe what really happened during the interrogation period. It is a fact that there never was an interview of appellant before taking of the statement of confession. Otherwords the record is completely silent. As Sgt. Kosirowsky testified on cross-examination that he started off cold in taking the state-

ment of the appellant.

(35) Q. You started off cold taking this statement, is that correct?

A. Yes, sir, I started off cold, that is right.

Q. And did Trooper Fields help you, assist you in taking this statement?

A. He asked a few questions in the statement.

Q. The questions in the statement that are indicated that he asked are the only ones he asked?

A. Yes, sir.

Q. Did he coach you in any way?

A. No, sir.

Q. You just did this cold?

A. Yes, sir, I did this cold. The investigator, the civilian investigator, was off and the barracks Commander directed me to take the statement. I complied with his directions.

(36) Q. Have you told us everything that occurred?

A. Yes, sir, I have to the best of my knowledge.

(37) Q. Just a minute until I complete the question, please. From the time you first was the accused until this statement was signed by him, as you said?

A. Yes, sir. To paraphrase your own expression, I went into this cold. Just, "First Sergeant, take the statement." "Yes, sir." I picked up the format, went down there and concluded.

TO TAKE FURTHER QUOTE OF THE TESTIMONY OF SGT, KOSIROWSKY BY JUDGE KEATING.

(39) Q. What was your purposes in going to the basement room?

A. My purpose was, sir, carrying out the order of my barracks commander. He had requested that I take the statement.

Q. Did you know whether the man was going to give a statement or not before you went down there?

A. No, sir, I did not know.

Q. You didn't know that he was going to give one?

Q. No, sir.

Q. Well, when did you learn he was going to give one?

A. I did not learn, sir. I was directed by the barracks (40) commander to take the statement, and I said, "Yes sir."

Q. Was the stenographer present at this time or not?

A. Yes, sir, she was. She overheard from the barracks commander.

Q. Is that the usual place you take statements?

A. Generally, yes, sir. This is the interrogating room for the plain-clothes investigator. It is out of the way, and as I say, traffic is less in that area, and this is where generally people are * - -

Q. Is that where the stenographer stays?

A. No, sir, she dosen't.

Q. How did she happen to come there?

A. I requested her to accompany me to take the statement in shorthand.

Q. How did you know you were going to need her, if you hadn't had the accused interrogated as to whether he was going to give a statement?

A. Well, it was entirely up to him. It was a voluntary statement. As I say, the format, we asked him if he was willing to answer questions and he said yes. Do you wish to make a statement? He said yes. It was strictly voluntary. It was up to him.

Q. At what point did she begin to take down the notes?

A. She began to take the notes down as the word here, "Lidge, you are now at Barracks F."

Q. And you mean to state that you and the stenographer and the accused and the other officer were all present before you asked any single questions as to whether or not he was going to give a statement?

A. That is right, sir. All I did, I came into this thing cold, picked up the format, and I began to read from it. I asked Trooper Fields his name, and he said, "Lidge." And I said, "Lidge, you are now at Barracks F." And we went right through the format, and then the preliminary question, "What is your name", "Where do you live?" and the next question, "Would you tell us as in your own words exactly what happened to the best of your knowledge." And he began to relate in narrative form the background of this as contained in the statement.

AS STATED IN THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES:

"... No state shall deprive any person of life, liberty, or property without due process of the law..."

But the appellant was denied Due Process by the State Troopers who failed to warn appellant of his rights properly and denying his request to make a telephone call. Sgt. Kosirovsky readily admits that after the statement was concluded, the stenographer transcribed it, but during

the transcribing the Sgt. Kosirowsky testified that he was in and out of the interrogation room continuing other duties.

ON CROSS EXAMINATION, SGT. KOSIROWSKY BY MR. WALKER:

(29) Q. All right, now, what was said and done while this was being transcribed?

A. While it was being transcribed? You mean by the stenographer?

Q. Yes.

A. There was nothing being said. He was sitting, having cigarettes.

Q. Well, now you are stating under oath that you and the accused and Trooper Fields(28) sat there for one half hour?

A. No sir.

Q. And no word was said?

A. No, sir.

Q. Well, what are you saying?

A. I am saying that when the clerk went out to type it up, Trooper Feilds remained there. I may have walked in and out and continued other duties, and then came back, and read the thing back with the defendant.

Q. Trooper, I don't want to confuse you, but don't tell me what may have happened. What did happen? Do you have any recollection of what happened?

A. Not precisely what I did during the time she was typing or transcribing the notes, no sir.

Q. (29) Why did you say you all sat there and nothing was said?

A. We sat there, watched him drinking coffee, and a couple of cigarettes, and naturally there are other duties, people were calling for me for different things. Ans as soon as she had - -

Q. I assume you were busy, is that correct?

A. Quote busy, yes sir.

It is submitted is how could Sgt. Kosirowsky know if appellant said anything when he himself was out of the room continuing other duties, leaving appellant in the company of Trooper Fields.

(28) Sgt. Kosirowsky testimony continued by Mr. Walker

Q. Well, now, you are stating under oath that you and the accused and Trooper Fields sat there for one half hour?

MR. BAKER: I HAVE NO FURTHER QUESTIONS.

BY MR. WALKER OF TROOPER FIELDS

Q. Trooper, you didn't testify to that fact on your first (133) examination, did you?

A. No, sir.

Q. You were asked more than once what was done and what was said in the entire time, were you not?

A. Yes, sir.

Q. But you omitted that part?

A. I wasn't asked it sir, about the signing of it or the reading of it.

TROOPER FIELDS WAS ASKED ABOUT THE SIGNING AND READING OF THE STATEMENT AS FOLLOWS:

CROSS-EXAMINATION BY MR. WALKER

(71) Q. All right, now, what else if anything was said or done, rather, between the time you went in the room and this statement was signed?

A. I don't recall anything sir.

Q. You examined the statement did you not?

A. Yes, sir.

Q. Is this a true and accurate transcription of everything that was said and done other than the request for coffee?

A. Yes, sir.

Q. Word by word?

A. Yes, sir. We took it from Mr. Schowgurow and we read it over after it was typed up and what have you, and Mr. Schowgurow and all of us agreed this was exactly what had been taken, and said, and this is the way we all signed.

Judge Carter himself stated there was some discrepancy in the testimony of the two officers.

(145) Judge Carter

Q. But you omitted that part?

A. I wasn't asked it sir, about the signing of it or the reading of it.

Trooper Fields was asked about the signing and reading of the statement as follows:

Cross-examination by Mr. Walker

() Q. All right, now, what else if anything was said or done, rather, between the time you went in the room and this statement was signed?

A. I don't recall anything, sir.

Q. You examined the statement, did you not?

A. Yes, sir.

Q. Is this a true and complete and accurate transcription of everything that was said and done other than the request for coffee?

A. Yes. Sir

Q. Word by word?

A. Yes, sir. We took it from Mr. Schowgurow and we read it over after it was typed up and what have you, and Mr. Schowgurow and all of us agreed this was exactly what had been taken, and said, and this is the way we all signed.

Judge Carter himself stated there was some discrepancy in the testimony of the two officers.

(145) Judge Cater: Before you take your seat Mr. Baker, there is some discrepancy in the testimony of the two state's witnesses, the two officers. The Sergeant said there was only one statement in the room when it was read by him to the accused, and that was the original he read it and he looked over his shoulder.

The other officer said that was entirely inaccurate, there were three statements, the accused had the original, the Sergeant had the copy he read from, and he had the other copy.

The second point on which there is a discrepancy is that the Sergeant said that the two signatures, the two places on the statement which were signed by the accused, one at the end of the statement and the second one at the end of a concluding paragraph that says, I have read it and it is correct, words to that effect - - that the first one was signed at one time, the second signed at a subsequent time.

The last officer on the stand said that is inaccurate, (146) they were both signed at the time. And as Judge Keating points out, there was a discrepancy of rather a material nature in the transcription in certain places about the distance from one point to another. True, they are not controlling facts in the matter, but they are discrepancies as to what transpired in the room.

Appellant's confession was obtained in an atmosphere of substantial coercion and inducement created by statements and actions of the State Troopers.

Appellant testified on Direct examination by defense counsel, Mr. Walker, that he was born in Belgrade, Yugoslavia when he lived with his, Mother, Father, Brothers and sister. It was also brought out on Direct examination that Appellant's schooling ended at the age of (13) thirteen years.

DIRECT EXAMINATION

(88) by Mr. Walker

Q. You are Lidge Schowgurow, the defendant in this case?

A. Yes, sir.

(89)
Q. How old are you Lidge?

A. Thirty-five

Q. Where were you born?

A. Belgrade, Yugoslavia.

Q. Could you speak up a little bit so that all of us can hear, and try to speak fairly slowly so that we can understand. You were born where?

A. Belgrade, Yugoslavia.

Q. How long did you live in Belgrade?

A. I lived 13 years.

Q. Now, lidge, I want you to tell me what is your earliest boyhood recollection? Where were you and what do you recollect? Do you understand me?

A. No.

Q. What part of your boyhood do you first remember?

A. Well, I remember that time when I was outside of Belgrade. There was a town there, Debelacha. That is outside of Belgrade.

Q. Did you live on a farm or in the town?

A. In the town.

Q. Who lived there?

A. My family. My Mother and my father, my brothers, sisters.

Q. Did there come a time when you left that town?

A. Yes.

(90)
Q. How old were you at that time?

A. Thirteen.

Q. Was that the end of your schooling?

A. Yes.

Q. You didn't have any more schooling?

A. No.

Q. How did you come to leave that town? What happened?

A. German soldiers took me.

Q. The German soldiers took you?

A. Yes.

Q. And who else did they take?

A. My brother.

Q. You and your brother?

A. Yes.

Q. Was your brother older or younger?

A. Younger.

Q. What did the German soldiers - - how were they dressed?

A. Uniform.

Q. And did they carry rifles or revolvers?

A. Yes.

It is submitted that here that Trooper Wiley E. Fields of the Maryland State Troopers testified on direct examination that he was wearing his uniform, a complete dressed uniform minus his hat, but was wearing his 38 revolver at the time the statement of appellant was being taken, Sgt. Kosirovsky stated he was wearing his weapon during the interrogation, uniform.

Resumed Direct examination of appellant by Mr. Walker, defense counsel.

Q. How did it come about they took you?

A. I do not understand you.

Q. Do you know why they took you?

A. Yes, Well, these children they was putting them, advertising in the papers for pattisans.

(91) Q. For partisans?

A. Yes.

Q. Were you a partisan?

A. Well, in a way, yes.

Q. Did they say anything to you when they took you ?

A. Oh, yes, they was trying to question us, what was the headquarters, and who keeps the papers, what person was it? At that time I didn't know what it was. I know with the boys we had a bunch of papers, was going around and putting them on houses.

Q. How many Germans came and took you?

A. Oh, there was a truck load. I don't know how many. Must be more than 10, 15.

Q. Were you afraid of them?

A. Yes.

Q. Did you own a dog at the time?

A. Yes.

Q. What happened to the dog?

A. My dog. I had a big dog and the Germans sbldiers shot and killed it.

Q. What kind of dog was it?

A. Big, black and white. It was a big dog. (92)

- - - - -
By Mr. Walker

Q. Now lidge, when you were taken by these soldiers where were you taken?

(93) A. They took us to Belgrade. From Belgrade they took us to Germany

Q. Where did they take you in Germany?

A. Agar, Deutschland, that is the name.

Q. I'm net speaking now of the town, I am speaking of in what sort of place did they put you?

A. X camp.

Q. What sort of camp?

A. Labor camp.

Q. Who was in authority at that camp?

A. German soldiers.

Q. What was their attitude toward you, you boys?

A. I can't - -

Q. Well, let me ask you this: What did they require you to do, if anything?

A. What?

Q. What did they make you do?

A. Oh, work, digging holes, for bunkers, holes for the city people. You know, when the bombing came, hiding shelters. All things like that. Camp clearing. potato cleaning, all sorts of work.

Q. How did the soldiers treat you?

A. They treated us bad.

Q. How did they treat you bad?

A. Well, they would say something, and you refuse it, or(94) you don't do it the way he wants, he beats you, he used to beat us, he used to kick us to walk fast, and give the end of the shotgun, or rifle end.

Q. Rifle?

A. Yes.

Q. They would hit you with the rifle?

A. Yes, I had this several times.

Q. How old were you at the time?

A. I was going on 14 at the time.

Q. How long were you in this camp?

A. Close to two years.

Q. - - - - -

Judge Rollins: How old did you say he was?

Mr. Walker: He was about 13 when he was taken.

Judge Rollins: No, I mean now.

Mr. Walker: He is about 35.

Q. Now id you don't understand this question tell me so. What effect did this treatment have on you with respect to people in uniform?

A. I got a fear of a person in uniform, from my back childhood.

Q. And then came a time when you were released from the camp, is that correct?

A. Yes.

(95)
Q. Have you continued to have that fear of people in uniform?

A. Yes, sir.

Q. What did the German soldiers in the work camp wear?

A. Uniforms.

Q. Did they carry rifles?

A. Rifles, uniforms, belts.

It must be remembered that Appellant had suffered a gunshot wound where he was removed to the Havre de Grace Hosptial for treatment were he was given sedation leaving him a drugged condition, whereas he was removed the next day after the incident, to the State Trooper barracks for questioning. During the taking of the statement Appellant testified that he spoke in Polish language with Sgt. Kosirowsky who spoke Polish also. It is further submitted that Trooper Field nor the Barrack clerk were not familiar with Polish language, because Sergeant Kosirowsky had translated into English for the Barracks clerk who had taken Appellant's statemnet. Trooper Fields testified all he heard between the Appellant and Sergeant Kosirowsky some foreign language.

Appellant testified: by Mr. Walker:

(99)

Q. All right, sir, now, was anything further said at that time?

A. I can't understand.

Q. Well, at the time you were having the picture taken, and the fingerprints taken, that was the conversation between you(100) Trooper Fields, is that correct?

A. Yes. And also was talking about my children. I was telling how many I had, how ling I was married to her.

Q. All right. After the fingerprints and the picture taking wat was done then?

A. Then he brought me coffee, I drank the coffee, and they locked me back in a cell. After the cell, they brought me out, and he told me, said they are going to take a statement and brought Mister Trooper, Sergeant.

Q. Could you speak up, please?

A. He came up with, he was with me with, Sergeant Kosirowsky, he came and introduced to me, and as soon as he told the name, I knew ~~KK~~ ^{be} much Polish, and I started talking Polish with him. And Trooper Fields went out at the time, and when he comes back, he brought the coffee, I was talking with him in Polish, that he was born here, how we still understand the Polish language, and said a lot of people here that are born here in the United States, they usually don't speak the own languages, and how nice of him and his family to learn him

him their own national language to him. And after that I asked him, said, if I have to take the statement, to give them. He tell me, said that everybody gives statements. And after, the time was taking statements.

Judge Carter: I can't understand him.

(101) Judge Rollins: I can't understand him.

Q. Try to speak a little more slowly, please.

A. At the ti e they was talking on statements, he told me, said I had the right to refuse not to give or to give the statement, I wouldn't just go along with him, I just couldn't refuse. I had no idea - -

Q. Keep your voice up, please.

A. I just had to, I just, I guess my fears, I couldn't refuse to them, I just went along with them, and I give the statement. When I give the statement, I tried to come out with how it happened a couple of times, ~~XXX~~ but they refused, he refusedm he stopped, he refused.

Judge Carter: Tried to come out what?

Q. Tried to come out what?

A. With the story how it happened, how I come to see my wife, and how the tragedy started. And he refused me, he says, "No," he said, "we know you are lying. So you better come out with another story." Two or three times he interrupted my story. And then I told the story which is in the statement.

Sergeant Kosirowskt intimidated Appalland, thereby causing fear which induced the Appellant to give the statement that Sergeant Kodr-owsky wanted.

The Appellant neither had not was advised of his right to get counsel. This present a dilemma in a free society. To subject one without counsel to questioning which may and is intended to convict him, is a peril to the solution of crime, because under our adversary system he deems that his sole duty is to protect his client - guilty or innocence in such a capacity he owes no duty whatever to help society solve its crime problem. Under this conception of criminal produce, any lawyer worth his salt will tell his client in no uncertain terms to make no statement to police under ay circumstances.

See. Watts v. Indiana, 338 U.S. 49, 57, 58-59.

Appellant testified: by Mr. Walker

(104)

Q. Now, Lidge, do you remember that while you were at the State Police Barracks, that you did get a telephone call at one time?

A. No, I didn't get a telephone call.

Q. As a matter of fact - - (105)

A. I got telephone call after ~~XXX~~ statement. Trooper Fields answered I was having coffee with him, and you was on telephone.

Q. That is right.

A. And he handed me telephone and you told me, said that, "I am your lawyer, I am hired by your family." And you told me to give it back to the Trooper and I gave back to the trooper.

Q. I told you not to say anything, didn't I?

A. You told me not to say anything.

By Judge Rollins:

Q. Was this the Same day?

A. Same day, that is right after statement I signed, they brought me in the kitchen and gave me coffee. I didn't even finish the coffee yet when the telephone ring, and Trooper Fields answered on telephone, and then he gave me telephone and I answered it. Then Mr. Walker told me, said, I am your lawyer, hired by your family, and now ~~XXXXXX~~ you give back to the Trooper, I want to talk to them," and told me, "don't say anything to them." And I didn't have no chance to say yes or not, and I give to Trooper Fields the telephone.

By Judge Carter:

Q. How long was that after you had signed the statement?

A. In between five and ten minutes. Not even, not quite 10 minutes.

(106)

By Mr. Walker:

Q. Now, before that time, had you been able to get to the telephone?

A. No.

(2)

Did Judge Carter's instructions to the Jury meet the requirement of due Process clause of the Fourteenth Amendment of the Constitution of the United States?

Judge Carter failed to inform the jury that there was a conversation of Polish between Appellant and Sergeant Kosirowsky during the interrogation period, which neither Trooper Fields nor the Barracks clerk understood, when they themselves could not speak the language. It is a fact that Sergeant had to translate into English for the Barracks clerk who was taking confession of Appellant. There were discrepancies as to what transpired in the interrogation room by the two officers, when considering whether Sergeant Kosirowsky induce or threaten Appellant in Polish. It is an important factor which has never been considered which is vital in the case at Bar. Judge Carter informed the jury that they didn't have to inquire into the voluntary character of those statements(531). NOTE: It is also a vital fact one of the Judge's secretary, whose husband was the foreman of the Jury who found Appellant guilty and should have been disqualified from the case at Bar.

The attention of the trial judge should always be focused, for purposes of the Federal Constitution claim on the question whether the behavior of the State's law enforcement was such as to overbear Appellant's will to resist and bring about confessions not freely self-determined - a question to be answered with complete disregard of whether or not appellant in fact spoke the truth. The due process clause of the 14th Amendment forbids compulsions to testify by fear of hurt, torture or exhaustion. If the question of admissibility is left to the jury or is determinable by the trial judge it must be determined according to constitutional standards satisfying the Due process clause of the Fourteenth Amendment. If the question of admissibility is left to the jury, they must not be misdirected by wrong constitutional standards, if the question is decided by the trial judge, he must not misdirect himself. The state must establish guilt by evidence independently and freely secured and may not by coercion prove its charge against an accused out of his own mouth.

See: *Roger vs. Richmond*, 365 U.S. 534, 544, 81 S.Ct. 735, 741(1961)

Jackson vs. Denno 371 U.S. 967

Appellant also submits there is some doubt as to the jurisdiction where the alleged incident occurred. The property which the alleged

incident occurred is adjacent to Federal property. His deceased wife was taken away by the Shore Patrol, where the Shore Patrol also wanted to take appellant who was wounded by gunshot wound. Appellant claims that families in a Navy housing development where incident occurred, Brother-in-law was in the Navy, Federal installation. The question's whether the property where the alleged incident occurred is Federal property whereas coming under the Federal Rules of Criminal Procedure 5 A&B. There is some information that was not brought out at the trial of the Appellant, where two officers went to the Appellant's home in Philadelphia and seized camera, movie projector and rolls of movie film. If Maryland Authorities did to to the Appellant's home to seize such articles without notifying the Philadelphia Authorities, it would be a violation of the Fourth Amendment, because Maryland authorities would not have jurisdiction to do so. Appellant's sister was home when two officers came to the Philadelphia address, but Appellant's sister has never been able to testify to such. Appellant has never recovered said articles of his personal property.

Appellant was denied Due Process, in taking into account the officers conduct, the taking of statement of confession and discrepancy of testimony, and Appellant's fear of authority for anyone who wears a uniform, completed with firearms. The conversation between the Appellant and Sergeant Sergeant Kosirovsky who spoke in Polish and denial of counsel before taking of the statement or confession resulted in a constitutionally invalid conviction. It is respectfully submitted that the judgement and verdict of the Circuit court for Cecil County, Maryland be reversed and remand for a new trial.

APPELLANT STATES THE POLICE TOOK LETTERS OFF HIS CLOTHES WITHOUT HIS PERMISSION AND USED THEM IN COURT WITHOUT HIS PERMISSION.
SEE THE COURT IN WEEKS LUPPE PAGE 393

AFFIDAVIT

I HEREBY CERTIFY THAT ON THIS 19th DAY April MONTH 1965 YEAR
BY ME, THE SUBSCRIBER A NOTARY PUBLIC OF THE STATE OF MARYLAND, IS AND
FOR BALTIMORE CITY AFORESAID, PERSONALLY APPEARED (Judge Schyman)
AND HE MADE IN DUE FORM OF LAW THAT THE MATTERS AND FACTS SET FORTH IN
THE ABOVE AMENDED APPLICATION ARE TRUE AND CORRECT.

AS WITNESS MY HAND AND NOTORIAL SEAL

Stanley Rossman
NOTARY PUBLIC

John *Fuli*

January 20, 1966

J. Grahame Walker, Esq.
Attorney at Law
8400 Wisconsin Avenue
Bethesda, Maryland 20014

Dear Mr. Walker:

The Court has considered your petition for counsel fee, filed January 7, 1966, in the case of Lidge Schowgurow vs. State of Maryland, No. 368, September Term, 1964, and, for your information, an Order of Court thereon was signed yesterday by Chief Judge Prescott.

A copy of the Order is enclosed.

Very truly yours,

Clerk

JLY/ojr
Enclosure

cc: Frederick W. Invernizzi, Esq.,
Director, Administrative Office of the Courts

WALKER, COE & BASTIAN

ATTORNEYS AT LAW

8400 WISCONSIN AVENUE

BETHESDA, MARYLAND 20014

J. GRAHAME WALKER
LOWRY N. COE
DAVID C. BASTIAN

TELEPHONE
AREA CODE 301
656-1600

January 6, 1966

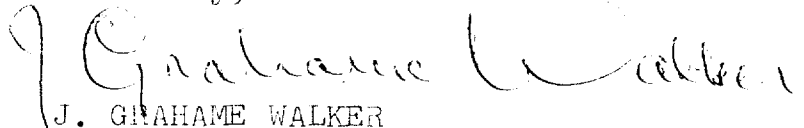
Honorable J. Lloyd Young
Clerk of the Court of Appeals
Annapolis, Maryland

Re: State vs. Schowgurow
No. 368
September Term, 1964

Dear Mr. Young:

Enclosed is an original and seven
copies of a Motion which I will be greatly
obliged if you will please put before the
Court.

Sincerely,


J. GRAHAME WALKER

JGW:ss

Enclosures (8)

IN THE COURT OF APPEALS OF MARYLAND

FILED JAN 27 1966
J. LLOYD YOUNG, CLERK
COURT OF APPEALS OF MARYLAND

LIDGE SCHOWGUROW)
~~STATE OF MARYLAND~~)

vs.)

No. 368
September Term 1964

STATE OF MARYLAND)
~~LIDGE SCHOWGUROW~~)

PETITION FOR COUNSEL FEE
~~XXXXXXXX~~

Now comes J. Grahame Walker, attorney for Lidge Schowgurow, and moves the Court to award him a reasonable attorney's fee for professional services rendered Appellant in this cause, and as reason therefor states:

That heretofore movant was appointed by the Circuit Court for Cecil County, Maryland, to prosecute the appeal of Lidge Schowgurow from the judgment of the Circuit Court to this Court.

That pursuant to said appointment, he made a careful and thorough study of the entire record, including the pleadings, memoranda, Order of Court and the transcript of the testimony and the proceedings during the trial.

That he then spent many hours making an exhaustive study of the applicable law and the questions to be presented to the Court of Appeals.

That he designated, together with the office of the Attorney General, the extracts from the record to be printed in the Appendix to the Brief.

That he prepared, and caused to be printed, Appellant's Brief, including a Statement of the Case, Questions Presented, Statement of Facts and Argument.

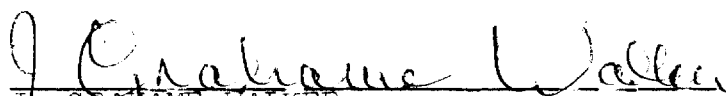
That he traveled to Annapolis and presented Appellant's contentions to this Court on June 1, 1965, and appeared again and re-argued on September 15, 1965.

That he estimates that he devoted in excess of 40 hours of his professional time to the appeal of this case.


 J. GRAHAME WALKER
 Attorney for Lidge Schowgurow

CERTIFICATE OF SERVICE

The foregoing Motion was served upon the State of Maryland by mailing a copy thereof to Honorable Thomas B. Finan, Attorney General, The State Law Department, One Charles Center, Baltimore, Maryland, 21201, this 6th day of January, 1966.


 J. GRAHAME WALKER
 8400 Wisconsin Avenue
 Bethesda, Maryland
 Phone: 656-1600

ORDER OF COURT

Upon the foregoing petition, it is, this 19th day of January, 1966, by the Court of Appeals of Maryland, ORDERED, that J. Grahame Walker, counsel for Lidge Schowgurow be, and he is hereby, allowed the sum of five hundred dollars as a fee for services rendered herein.


 Chief Judge