CATO v. HUBBARD

2004 | Cited 0 times | N.D. California | March 31, 2004

DENIAL OF PETITION FOR WRIT OF HABEAS CORPUS

This is a habeas corpus case filed by a state prisoner pursuant to28 U.S.C. § 2254. The court ordered respondent to show cause why thewrit should not be granted. Respondent has filed an answer and amemorandum of points and authorities in support of it, and has lodgedexhibits with the court. Petitioner has responded with a traverse. Thematter is submitted.

STATEMENT

Petitioner was convicted by a jury of battery and carjacking. He wassentenced to prison for eleven years. As grounds for habeas relief heasserts that: (1) his due process rights were violated because thecarjacking statute is vague; and (2) his Miranda[1] rightswere violated.

Petitioner does not dispute the following facts, which are taken fromthe opinion of the California Court of Appeal.

Appellant was convicted of battering and taking a car from a young man named Raymond Nadonza.Page 2

Appellant had known Nadonza for many years. He was friends with Nadonza's father Wilfredo, and when Nadonza was about 13 years old, appellant left some guns with Wilfredo. A couple of years later, Nadonza took the guns, went to Mission Street in San Francisco, and sold them. Understandably, the incident upset appellant greatly. Appellant's anger came to a head about eight years later. On May 14, 1998, Nadonza was at home with a friend named Racho when Nadonza saw appellant park his Mercedes near the garage. A woman was with appellant. Nadonza knew appellant wanted his guns back, so he closed the garage door, hid behind a couch, and told Racho to tell appellant that he was not at home. Appellant came to the door and asked Racho about Nadonza. Racho said he was not at home. Appellant told Racho to have Nadonza contact him. Racho than left. Appellant did not leave. Instead, he called to Nadonza and told him to come out. Nadonza did so. As soon as Nadonza emerged, appellant began punching him. He knocked Nadonza to the ground, picked up a tripod, and began to stab him. The legs on the tripod were equipped with small spikes and Nadonza sustained injuries to his hands and face. Appellant told Nadonza to stand, and than to lie on the ground. At one point, appellant reached behind his back as if to pull out a gun. Appellant threatened to "blow [Nadonza's] brains out" and told him he was "going to spend the rest of [his] life in a cemetery/' Nadonza begged for mercy and told appellant that he was sorry. As appellant paced

around the room, Nadonza told appellant he would get the guns back. Appellant said he would give Nadonza one week. Nadonza said he would only need two days. Appellant picked up a set of keys that were on a table in the kitchen and asked who owned the car in the garage. Nadonza said it belonged to a friend. Appellant said he would take the car, a Honda, as collateral. He said that if Nadonza went to the police, he would kill him. Appellant then left. Either he or the woman who was with him, drove the Honda away. Appellant was arrested near his home in San Francisco. later that same day.Ex. 6 (opinion of court of appeal) at 1-2.

DISCUSSION

A. Standard of review

The petition in this case was filed after the effective date of theAntiterrorism and Effective Death Penalty Act of 1996 (AEDPA), so theprovisions of that act apply to it. See Lindh v. Murphy,521 U.S. 320, 327 (1997); Jeffries v. Wood. 114 F.3d 1484,1499-1500 (9th Cir.),Page 3cert. denied 522 U.S. 93 (1997) ("justice andjudicial economy are better served by applying the Act to cases filedafter the enactment date."). Under the AEDPA a district court may notgrant a petition challenging a state conviction or sentence on the basisof a claim that was reviewed on the merits in state court unless thestate court's adjudication of the claim: "(1) resulted in a decision thatwas contrary to, or involved an unreasonable application of, clearlyestablished Federal law, as determined by the Supreme Court of the UnitedStates; or (2) resulted in a decision that was based on an unreasonabledetermination of the facts in light of the evidence presented in theState court proceeding." 28 U.S.C. § 2254(d). The first prong appliesboth to questions of law and to mixed questions of law and fact,Williams (Terry) v. Taylor, 529 U.S. 362, 407-09 (2001), whilethe second prong applies to decisions based on factual determinations,Miller — El v. Cockrell 123 S.Ct. 1029, 1041 (2003).

A state court decision is "contrary to" Supreme Court authority, thatis, falls under the first clause of § 2254(d)(1), only if "the statecourt arrives at a conclusion opposite to that reached by [the Supreme]Court on a question of law or if the state court decides a casedifferently than [the Supreme] Court has on a set of materiallyindistinguishable facts." Williams (Terry). 529 U.S. at 412-13.A state court decision is an "unreasonable application of Supreme Courtauthority, falls under the second clause of § 2254(d)(1), if itcorrectly identifies the governing legal principle from the SupremeCourt's decisions but "unreasonably applies that principle to the factsof the prisoner's case." Id. at 413. The federal court on habeas reviewmay not issue the writ "simply because that court concludes in itsindependent judgment that the relevant state — court decisionapplied clearly established federal law erroneously or incorrectly."Id. at 411. Rather, the application must be "objectivelyunreasonable" to support granting the writ. See id.at 409.

"Factual determinations by state courts are presumed correct absentclear and convincing evidence to the contrary." Miller —El. 123 S.Ct. at 1041. This presumption is not altered by the factthat the finding was made by a state court of appeals, rather than by astate trial court. Sumner v. Mata. 449

U.S. 539, 546-47 (1981);Bragg v. Galaza, 242 F.3d 1082,Page 41087 (9th Cir.), amended. 253 F.3d 1150 (9th Cir. 2001).A petitioner must present clear and convincing evidence to overcome §2254(e)(1)'s presumption of correctness; conclusory assertions will notdo. Id.

Under 28 U.S.C. § 2254(d)(2), a state court decision "based on afactual determination will not be overturned on factual grounds unlessobjectively unreasonable in light of the evidence presented in the state— court proceeding." Miller — El 123 S.Ct. at 1041:see also Torres v. Prunty, 223 F.3d 1103, 1107 (9thCir. 2000).

B. Issues Presented

1. Vagueness

Section 215(a) of the California Penal Code defines carjacking as "thefelonious taking of a motor vehicle in the possession of another, fromhis or her immediate presence . . . against his or her will and withthe intent to either permanently or temporarily deprive the person inpossession of the motor vehicle of his or her possession, accomplished bymeans of force or fear." Petitioner contends that this definition isunconstitutionally vague, so his conviction of carjacking was a violationof his due process rights.

A state criminal statute may be challenged as unconstitutionally vagueby way of a petition for a writ of habeas corpus by a prisoner convictedunder the statute. Vlasak v. Superior Court of California.329 F.3d 683, 688-90 (9th Cir. 2003). To avoid unconstitutional vagueness, astatute or ordinance must (1) define the offense with sufficientdefiniteness that ordinary people can understand what conduct isprohibited; and (2) establish standards to permit police to enforce thelaw in a non — arbitrary, non — discriminatory manner.Id. at 688-89 (rejecting vagueness challenge because ordinancedefines "`the criminal offense with sufficient definiteness that ordinarypeople can understand what conduct is prohibited and in a manner thatdoes not encourage arbitrary and discriminatory enforcement'") (quotingKolender v. Lawson, 461 U.S. 352, 357 (1983)). A statute willhave the certainty required by the Constitution if its language conveyssufficiently definite warning as to the proscribed conduct when measuredby common understanding and practices. Panther. 991 F.2d at578.Page 5

In a facial vagueness challenge, the court must look to the plainlanguage of the statute, as well as construe the statute as it has beeninterpreted by the state courts. Nunez. 114 F.3d at 941-42.

Petitioner's argument is that the words "felonious taking" in thestatute long have been defined by California courts to apply only totakings with the intent to permanently deprive the owner of the property,whereas the statute by its terms applies to takings with intent todeprive either permanently or temporarily. The California Court ofAppeal, in rejecting the contention that this "conflict" makes thestatute unconstitutionally vague, held that "while there might be aconflict between the traditional use of the term `felonious taking' andits use in the carjacking statute, the statute itself is clear." Ex. 6

at4. The Court agrees. The definition conveys a warning which issufficiently clear that ordinary people can understand what conduct isprohibited. The decision of the California appellate courts was notcontrary to, or an unreasonable application of, clearly establishedUnited States Supreme Court authority.

2. Miranda

Petitioner was arrested and placed in a patrol car. After he was readhis Miranda rights, he said he did not want to talk. Theofficers ceased questioning. They then spent three to five minutesdriving around the neighborhood looking for the Honda. "As they did so,the officers spoke to each other about the arrest and about the fact thatthey were looking for the Honda. While the officers were talking,appellant spontaneously said, `do you think that I would be stupid enoughto park that car around here.'" Ex. 6 at 7.

Miranda warnings are only required when the defendant is incustody and subject to interrogation. Miranda v. Arizona.384 U.S. 436, 444 (1966). There is no question here that petitioner was incustody; the issue is whether he was interrogated after invoking hisright to remain silent. For Miranda purposes, interrogationinvolves express questioning or its functional equivalent. RhodeIsland v. Innis, 446 U.S. 291, 301 (1980). Interrogation includeswords or actions that police should know are reasonably likely to elicitanPage 6incriminating response from the suspect. Id. InInnis. the police were transporting a man suspected of shootinga cab driver with a shotgun. Id. at 293. On the way to thepolice station, one officer in the car told another officer that he wasworried because the shotgun had not been found and handicapped childrenin the area might find the gun and hurt themselves. Id at294-295. The defendant then told the officers that he would show them thegun's location. Id. Because the conversation was short,included only a few "offhand remarks," and was not particularly"evocative," the Supreme Court held that no interrogation occurred: thepolice should not have known that their comments would invoke anincriminating response. Id at 303.

There is no evidence here of more than a few off — hand remarks,as in Innis. and no sense in which the remarks could becharacterized as "particularly evocative." This was not a situation wherethe officers should have known that their conduct was reasonably likelyto elicit an incriminating response. The Court concludes that there wasno "functional equivalent" of interrogation, and that the state appellatecourts' rejection of this claim was not contrary to, or an unreasonableapplication of, clearly established Supreme Court authority.

3. Sufficiency of the evidence

This claim was not set out in the portion of the form petition whichasks for "Grounds for Relief." It was mentioned, however, in the attachedcopy of the California Court of Appeal's opinion, which is preceded by asheet of paper marked "Exhaustion of State Remedies." It seems clear thatpetitioner was not attempting to raise this issue. The respondent hasnevertheless addressed it, stating that she

does so to avoid "anywaiver." Because petitioner did not raise this issue, habeas reliefcannot be granted on it.

Alternatively, it is clear that the claim is entirely without merit.Petitioner contended in state court that the evidence was insufficient tosupport a finding on the element of carjacking which requires that thecar be taken "from the immediate presence" of the rightful possessor, andthat insufficient evidence that it was taken by means of "force or fear."The state court determined, as a matter of state law, that taking the carfrom an attached garage,Page 7when the owner is in the house, is a taking from the owner's"immediate presence," Since there is no dispute that this is whathappened here, and the holding as to state law is binding on this court,see Hicks v. Feiock, 485 U.S. 624, 629 (1988), clearly therewas sufficient evidence on this element to support the conviction. As tothe "force or fear" claim, it may be that petitioner did not take thecar by "force" because he had ceased his attack on the victim at thetime he took the car, but given the beating the victim had just taken,and petitioner's mood and threats, there was more than substantialevidence that the car was taken by fear. This claim, had it beenraised, would be without merit.

CONCLUSION

For the foregoing reasons, the petition for a writ of habeas corpus isDENIED. The clerk shall close the file.

IT IS SO ORDERED.

1. Miranda v. Arizona. 384 U.S. 436, 473-74 (1966).