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Recent Developments: Thompson v. Keohane: State Determinations of "In Custody" for Miranda Purposes Are Not Presumptively Correct under 28 U.S.C. § 2254(d) and Are Subject to Federal Review

Paul J. Wilson

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*Thompson v.
Keohane:*

**STATE
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In a seven to two decision, the Supreme Court of the United States in *Thompson v. Keohane*, 116 S. Ct. 457 (1995), held that a state court determination of whether a suspect was "in custody" is not afforded a presumption of correctness under 28 U.S.C. § 2254(d) (1994), and was subject to review by a federal habeas court. The Court found that such decisions do not fall within the constraints of a factual determination, but instead resolve a mixed question of law and fact. Furthermore, the Court stated that the federal bench was as qualified as a state trial court to make determinations of whether a suspect was "in custody" for *Miranda* warning purposes.

On September 10, 1986, two hunters discovered the corpse of a woman floating in a gravel pit lake. The Alaska state police broadcast a description of the deceased woman, and Carl Thompson ("Thompson") notified the police that the description fit his ex-wife, who had been missing for approximately one month. The remains of Dixie Thompson were positively identified through the use of dental records. On September 15, 1986, the police asked Thompson to visit their headquarters, ostensibly to identify some personal effects, but in actuality for questioning about the murder.

Upon arriving, Thompson was questioned extensively for two hours by two unarmed troopers. At no time was

Thompson given a *Miranda* warning. The troopers told Thompson that officers were executing a search warrant at his house and that his truck was about to be searched pursuant to a second warrant. The troopers' questioning continued, and Thompson eventually confessed to murdering Dixie Thompson. Although Thompson was allowed to leave the station, he was placed under formal arrest a short while later.

At trial, the court dismissed Thompson's motion to suppress the confession without holding an evidentiary hearing. The trial court ruled that Thompson was not "in custody" for *Miranda* purposes; thus, a *Miranda* warning was not required. The trial court, with some hesitancy, found that Thompson arrived at the station voluntarily, was free to depart at any time, and was not arrested at the conclusion of his interrogation. Subsequently, Thompson was convicted of first-degree murder and tampering with evidence.

The Court of Appeals of Alaska affirmed the trial court's decision, and the Alaska Supreme Court denied certiorari. The United States District Court for the District of Alaska denied Thompson's writ of habeas corpus, holding that 28 U.S.C. § 2254(d) granted a presumption of correctness to the state court's conclusion of Thompson's "in custody" claim. The Court of Appeals for the Ninth Circuit affirmed the district court, basing its de-

cision on circuit precedent. The Supreme Court of the United States granted certiorari to determine whether state court “in custody” decisions are entitled to a presumption of correctness under § 2254(d) or are such decisions mixed questions of law and fact subject to review by a federal habeas court. By resolving this issue, the Court would settle conflict among the circuit courts.

In beginning its analysis, the Court noted that § 2254(d) “was an almost verbatim codification of the standards delineated in *Townsend v. Sain*, 372 U.S. 293 (1963), for determining when a district court must hold an evidentiary hearing before acting on a habeas petition.” *Thompson*, 116 S. Ct. at 463 (quoting *Miller v. Fenton*, 474 U.S. 104, 111 (1985)). The *Townsend* Court held that the federal bench should accept the facts found by the state court if the habeas petitioner had received a fair hearing. *Id.* at 463-64 (citing *Townsend*, 372 U.S. at 318). Additionally, *Townsend* defined a “factual issue” as “basic, primary, or historical fact,” in the sense of an event summary that is determinative of its narrator’s credibility. *Id.* at 464 (quoting *Townsend*, 372 U.S. at 309, n.6, quoting *Brown v. Allen*, 344 U.S. 443, 506 (1953)). In contrast, mixed questions of law and fact, requiring the application of law to a factual context, are not “factual issues” under this standard. *Id.* (citing *Townsend*, 372 U.S.

at 309, n.6). The Court reaffirmed that § 2254(d) applies only to factual issues, not to so-called mixed questions of law and fact. *Id.*

Next, the Court described the two decisional lines comprising § 2254(d) jurisprudence. Competency to stand trial and juror impartiality are questions extending beyond a “factual issue,” yet are within § 2254(d). *Id.* at 464-65. The Court held that a trial judge’s appraisal of witness credibility regarding such questions is superior, and is to be accorded “presumptive weight.” *Id.* at 465 (quoting *Miller*, 474 U.S. at 114). Issues of law such as voluntariness of confession, effectiveness of counsel, and conflict of interest, however, are outside § 2254(d) jurisdiction. *Id.* While the factual issues of such questions are within § 2254(d), their “uniquely legal dimension” removed them from the presumption of correctness under § 2254(d). *Id.* (quoting *Miller*, 474 U.S. at 116).

Applying this framework, the Court concluded that a state trial court “in custody” determination for *Miranda* purposes is outside the presumption of correctness afforded by § 2254(d). *Id.* In fashioning an “in custody” determination, the Court believed two inquiries were essential. *Id.* The first inquiry was distinctly factual as it probed the circumstances surrounding the interrogation of the suspect, and is afforded correctness under § 2254(d). *Id.*

The second inquiry, however, required determination of whether a reasonable person would believe that he was not “at liberty to terminate the interrogation” by departing. *Id.* The Court believed that combining these inquiries created a mixed question of law and fact subject to independent federal review. *Id.* The Court stated that trial court credibility determinations were not dispositive to the second inquiry, because “the trial court does not have first-person vantage on whether a defendant was in custody for *Miranda* purposes.” *Id.* at 465-66 (internal quotations omitted).

The Court distinguished “in custody” determinations from other trial court decisions. The Court reasoned that individualized determinations of juror bias or competency to stand trial are unlikely to carry precedential weight. *Id.* at 466. In contrast, the Court noted that “in custody” decisions do carry precedential weight and influence future determinations. *Id.* The Court concluded that a state court is not “in an appreciably better position than the federal habeas court to make [the ultimate] determination” of whether a suspect was “in custody” for *Miranda* warning purposes. *Id.* (quoting *Miller*, 474 U.S. at 117).

In a strongly worded dissent, Justice Thomas, with whom the Chief Justice joined, believed that a state trial court judge is in a superior position to determine whether a suspect

was “in custody” for *Miranda* warning purposes. *Id.* at 467. Justice Thomas reasoned that many of the trial judge’s subtle assessments regarding credibility are “difficult to reduce to writing” and not likely to be recorded for purposes of appeal, thus leaving an incomplete record for federal habeas courts. *Id.* at 469. Because state courts are fully empowered to interpret federal law, Justice Thomas argued they should be presumed to have applied federal law as faithfully as any federal court, absent any indication to the contrary. *Id.* (citing *Brecht v. Abrahamson*, 113 S. Ct. 1710, 1721 (1993) and *Withrow v. Williams*, 113 S. Ct. 1745, 1770 (1993)).

The Court believes that the overall result of *Thompson v. Keohane* will serve the interests of law enforcement without trampling upon the protection of the right against self-incrimination. Although the lack of an evidentiary hearing on Thompson’s suppression motion could logically lead the Court to conclude that the requirements of § 2254(d) were not satisfied, the dissent is more persuasive concerning the overall effect of the holding. A sterile trial record is no substitute for a live defendant when making a determination of whether a suspect reasonably believed that he was “in custody” during police questioning. The trial judge is in the best

position to make this decision, and should be accorded great deference in the absence of § 2254(d) violations. Law enforcement in Maryland would do well to revisit its investigative and interrogative techniques to ensure that they do not run afoul of *Thompson*.

- Paul J. Wilson

