IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,	)	No. S029490
	)	
Plaintiff and Respondent,	)	Los Angeles
	)	County
v.	)	Superior Court
	)	No. A 579310-01
	)	
DAVID EARL WILLIAMS,	)	
	)	
Defendant and Appellant.	)	

Appeal From the Judgment of the
Superior Court of the State of California
for the County of Los Angeles

The Honorable J.D. Smith, Judge Presiding

SUPPLEMENTAL REPLY BRIEF

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INTRODUCTION

On July 14, 2003, four weeks after Appellant filed his Reply Brief in this case, this Court decided *People v. Neal* (2003) ___Cal.4th ____, 1 Cal.Rptr.3d 650, a decision which supports the *Miranda/Edwards* arguments raised in Arguments I and II of Appellant's Opening Brief. This Supplemental Brief addresses only those issues which are directly affected by the *Neal* case.

APPELLANT'S DECISION TO INITIATE FURTHER DIALOGUE WITH THE POLICE, AND HIS RESULTING CONFESSION, WERE BOTH INVOLUNTARY. ADMISSION OF HIS CONFESSION WAS REVERSIBLE ERROR.

In *People v. Neal* (2003) ___Cal.4th ____, 1 Cal.Rptr.3d 650, police detective Martin asked defendant, Kenneth Neal to come to the police station for questioning about the murder of Neal's housemate. During the questioning, Neal became cautious and decided he wanted to leave. The detective then advised Neal of his *Miranda* rights, and Neal invoked both his right to counsel and his right to remain silent. The detective ignored both requests, placed Neal under arrest and continued the questioning.

During the interrogation Detective Martin urged Neal to cooperate so that the officer could "make it as best as I can for you." He told Neal that if he did not cooperate the system would "hit you as hard as they can." (*Id.* at p. 652.) Despite badgering by the police, Neal continued to maintain his innocence and, in all, invoked his *Miranda* rights nine times. When the interrogation session ended, Neal was placed in a jail cell overnight, without access to counsel, and without food, drink or toilet facilities. The next morning Neal asked to speak to the interrogating officer. After obtaining Neal's *Miranda* waiver, the officer secured two confessions. Although the trial court and the Court of Appeal found that the confessions

were voluntary and admissible, this Court disagreed and reversed.

Three circumstances led to this Court's conclusion that Neal's initiation of the second interview was involuntary, and that his subsequent confessions were also involuntary and inadmissible for any purpose:

(1) Failure of the police to honor the defendant's repeated invocation of his *Miranda* rights.

In this Court's words:

> [T]he first circumstance *that weighs most heavily against the voluntariness of defendant's initiation of the second interview, and against the voluntariness of his two subsequent confessions as well,* is the fact that in the course of the first interview, Detective Martin *intentionally continued interrogation* in deliberate violation of *Miranda* in spite of defendant's repeated invocation of both his right to remain silent and right to counsel. Martin's message to defendant could not have been clearer: Martin would not honor defendant's right to silence or his right to counsel until defendant gave him a confession.

(*Id.* at p. 663.)

(2) Defendant's situation: increasing his feelings of helplessness.

The second circumstance which this Court found significant involved the defendant himself and his situation. Defendant was only 18, had minimal education and had a background of "thoroughgoing neglect if not abuse." (*Id.* at p. 665.) When defendant was placed in the jail cell (sometime after 5:54 p.m.) he was not taken to a bathroom or given any water until the next morning. He was not given food until after the third interview, after more than 24 hours in custody.

But the factor on which this Court placed the *most emphasis*, was the fact that the defendant had been made to believe that there was no one there

for him, except his interrogator:

> *Perhaps most significantly, defendant, as far as he could tell, was confined incommunicado.* When defendant declared, "I am ready to talk to my lawyer," Detective Martin implied that defendant had to talk to him, and could talk to no one else. Martin did not offer defendant an opportunity to speak with an attorney or even with his mother or his brother, nor was there any evidence suggesting that anyone other than Martin made such an offer. Although defendant's situation might not have reflected "physical punishment" (Schneckloth v. Bustamonte (1973) 412 U.S. 218, 226, 93 S.Ct. 2041, 36 L.Ed.2d 854) in the strictest sense of the phrase, its harshness cannot be ignored. Put simply, defendant's situation "could only have increased his feelings of helplessness." (People v. Montano (1991) 226 Cal.App.3d 914, 939, 277 Cal.Rptr. 327.)

(*Id.* at pp. 665-666, emphasis added.)

(3) Promises and threats by police.

The third factor cited by this Court which weighed "heavily against the voluntariness of defendant's initiation of the second interview" arose from the promises and threats made by the detective. The threat involved dropping Neal off "closer to Nimbuktu than to home if he did *not* cooperate," and the promise was to "make it as good for him as he could" if he *did* cooperate. This Court found that both the threat and the promise had their intended effect. In his second interview, Neal specifically referred to the officer's promise that he would be able to help him if he confessed.

In appellant's case, the record is silent as to the conditions of appellant's confinement between his arrest on Saturday and his eventual confession the following Tuesday. There was no evidence presented that appellant was denied food, water or toilet facilities. However, in nearly every other respect, the circumstances of appellant's custodial interrogation

were *at least* as coercive as those presented in the *Neal* case. All three circumstances which the Court found compelling in *Neal* are also present in appellant's case.

(1) Failure of the police to honor the defendant's repeated invocation of his *Miranda* rights.

As in *Neal*, appellant repeatedly asked for an attorney, and his requests were not only ignored, but the officers actively persuaded him to continuing speaking without counsel present. Appellant testified that he "kept on saying that I would like to have my attorney present, you know, I didn't want to talk about this; I didn't know nothing about it." (RT 453.) While the exact number of times that appellant requested counsel is not clear, since not every interaction with the police was captured on tape,[1] law enforcement's own interrogation tape reveals a total of *four* times that appellant stated he wanted an attorney. (See AOB 23-25.) As in *Neal*, rather than end the session, the police interrogators simply continued the questioning; each time he asked for an attorney, the officers pressured appellant to continue talking, *without* an attorney present. Even at that, appellant maintained his innocence, just as the defendant in *Neal.*

In addition, in the first session, appellant told the officers, "I don't want to talk about it." (CT Supp. II 90.) Once appellant invoked his right to cut off questioning, the police were obliged to honor his request and end

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[1]Officer Knebel confirmed that there were several conversations held between the police and appellant that were not tape recorded. At least one took place on Saturday, following appellant's arrest; and another took place on the following Monday, before the tape recorder was turned on. (RT 407-408; RT 415.) In addition, on Tuesday morning, the officers transported appellant to the hospital to be examined by a doctor. There is no tape recording of any of the conversations that may have taken place that morning, while this was taking place. After this exam, when appellant was being returned to his cell, he had another conversation with three officers, which was also not tape recorded. (RT 418.)

the interview. But, as in the *Neal* case, neither the right to silence, nor the right to counsel, were respected.

Although appellant was told on Saturday, the day of his arrest, that he could have an attorney on Monday, Monday came and went, and no attorney was provided. The officers continued to question appellant on Monday, without ever advising him again of his rights. On Tuesday appellant was transported to the local hospital to be examined for burns. By this time, appellant could see that he would not be provided with an attorney. The officer's threats that appellant would "fry in the gas chamber" if he did not confess to them (CT Supp.II 82-92), convinced him, by his fourth day in custody, that he had to confess.

As in *Neal*, appellant clearly had these threats and promises in mind when he asked to speak to the officer on Tuesday afternoon. In the final interview, appellant said to Officer Salgado: "You said you could help me; how can you help me?" As in *Neal*, the officers effectively convinced appellant that the only way he could help himself was by telling them what they wanted to hear. ["The only thing that's going to save you. . . from. . . . the gas chamber is for you, right now, to tell us the truth about this and why you did it;" "when the jury and the judge looks at this, that you admitted you were wrong and you told the truth, they're not gonna be so hard on you." (*Id.*)].

For leverage, the detective in *Neal* "'branded' defendant a 'liar' (citation omitted) and used 'deception' in implying that he possessed more incriminating evidence than he actually did (citation omitted)." (*Id.* at p. 664.) In appellant's case, the police did exactly the same thing. They repeatedly told him he was lying (CT Supp.II 84) and falsely told him that they had fingerprints (CT Supp.II 90-91), and that three eyewitnesses saw

him "face to face" getting cash from the victim's ATM. (CT Supp. II 92.)

These were precisely the tactics used in the *Neal* case. Ignoring the defendant's *Miranda/Edwards* rights, while simultaneously pressuring the defendant to confess, calling him a liar and presenting him with false evidence, were the circumstances that weighed most heavily in the *Neal* case, in finding that the defendant's confession, was involuntary.

(2) Defendant's situation: increasing his feelings of helplessness.

Similarly, like Mr. Neal, appellant came from an extraordinarily deprived background, of not only neglect, but brutal abuse. (RT 1465-1488.) His mother had died when he was very young and his father and nearly all of his other family members were incarcerated. (RT 1466.) Consequently, when he was arrested, he had no family available to him. Without counsel, he had only his interrogators for advice and direction. Officer Salgado ended the first interview by telling appellant that he should "think about it," and that if he decided to change his mind and wanted to talk to Salgado about the victim, "all you have to do is tell the jailor." (CT Supp. II 93.) As in Mr. Neal's case, the police made only themselves available to appellant, and then only in the event that he wished to confess to the crime.

It was clear that by Tuesday, when appellant asked Officer Knebel if he could speak to him further, appellant had become convinced that his only hope was to follow the officers' advice. His attempts to invoke his *Miranda* rights had proven utterly futile. The police, through their actions, had convinced appellant that he *had* no right to counsel and that invoking his right to silence would only work against him.

(3) Promises and threats by police.

In terms of the threats made, appellant was subjected to far more serious threats than those cited in *Neal*. The police in this case referred to the gas chamber on *five* separate occasions, all within the space of the first half-hour interrogation session. (See AOB 67.) He was literally threatened with death.

As previously discussed, the promises made by the police in appellant's case were virtually identical to those made by the police in *Neal*. In both cases, the police told the defendants that the best thing they could do for themselves was to confess. Appellant was repeatedly told that things would go easier on him if he was truthful and showed "remorsefulness" for his actions; that this was the only way he could save himself. (CT Supp.II 91, 93.)

CONCLUSION

The *Neal* case correctly concludes that Mr. Neal's initiation of contact with the police and subsequent confession were both involuntary, under the circumstances of that case. Appellant's case is virtually indistinguishable from the facts of the *Neal* case.

In both cases, the police deliberately ignored the suspect's request for counsel as well as his request to stop talking. In both cases, the police implied that they had more evidence than they actually did; and branded the suspect a liar when he refused to confess to the murder.

In both cases, the suspect came from a deprived background and was ill-equipped to deal with his circumstances, without help or advice from anyone other than the law enforcement personnel on hand.

In both cases the suspect was threatened if he did not cooperate; and promised leniency and "help" if he did. In both cases, the record supports a

finding that the suspect did indeed rely on the promises of help from the police when he decided to confess - - both suspects began their final interrogation session by reminding the police that they hoped to receive "help" by confessing.

In *Neal*, the suspect approached the police, wanting to "talk," after less than 24 hours in custody. In appellant's case, appellant was left incommunicado from Saturday until Tuesday, when he finally broke down and ask to speak to the police.

Relying on *Neal,* this Court must conclude that the trial court's decision to admit appellant's confession was likewise erroneous. Moreover, it cannot be said that admission of appellant's confession was "harmless beyond a reasonable doubt." (*Chapman v. California* (1967) 386 U.S. 18, 24.) Appellant's conviction and death sentence must be reversed and a new trial ordered.

Dated: July 31, 2003

Respectfully submitted,

LYNNE S. COFFIN
State Public Defender

ELLEN J. EGGERS
Deputy State Public Defender

DECLARATION OF SERVICE BY MAIL

Case Name: **People v. Williams**
Case Number: **Supreme Court Case No. S020490**
Los Angeles County Superior Court No. A579310-01

I, the undersigned, declare as follows:

I am a citizen of the United States, over the age of 18 years and not a party to the within action; my place of employment and business address is 801 K Street, Suite 1100, Sacramento, California 95814.

On August 1, 2003, I served the attached

SUPPLEMENTAL REPLY BRIEF

by placing a true copy thereof in an envelope addressed to each of the persons named below at the addresses shown, and by sealing and depositing said envelope(s) in a United States Postal Service mailbox at Sacramento, California, with postage thereon fully prepaid.

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I declare under penalty of perjury that the foregoing is true and correct. Executed on August 1, 2003, at Sacramento, California.

Pat Proby

Pat Proby