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#### Fourth Circuit Court of Appeals

(Note: You may access the court's opinion by clicking on the case name)

### **Court Holds That State Court's Ruling Was Objectively Unreasonable Under Federal Habeas Standard of Review When State Court Ruled That Defendant's Trial Lawyer Did Not Provide Ineffective Assistance of Counsel When He Failed to Move to Suppress Defendant's Confession**

[Grueninger v. Director, Virginia Dept. of Corrections](#), \_\_\_ F.3d \_\_\_, 2016 WL 502939 (4th Cir., Feb. 9, 2016). Grueninger was convicted in a Virginia state court of sexually abuse charges involving his fourteen-old-daughter and child pornography. During his first custodial interrogation with an officer, Grueninger was read his *Miranda* rights and said, "These are felonies, I need an attorney." Interrogation stopped. Three days later after a new arrest warrant was issued with additional charges, the officer visited Grueninger in jail to serve the warrant, administered *Miranda* warnings, and this time Grueninger answered the officer's questions and confessed.

Grueninger's attorney failed at trial to move timely to suppress his confession, which was admitted into evidence, and his convictions were affirmed on direct appeal. He then filed a writ of habeas corpus in a Virginia state court, alleging that his trial attorney had provided ineffective assistance by failing to move to suppress his confession under *Edwards v. Arizona*, 451 U.S. 477 (1981) (prohibiting custodial interrogation after an invocation of the right to counsel under *Miranda*). His petition was denied at the trial court level, which ruled that Grueninger's confession was not the product of interrogation when he was served with the warrants so *Edwards* did not apply, and an appellate court summarily found there was no reversible error.

Grueninger filed a federal habeas petition in a Virginia federal district court alleging, among other claims, the ineffective assistance of counsel issue alleged in Virginia courts. The district court denied the petition, and Grueninger appealed to the fourth circuit, which reversed the district court.

The fourth circuit analyzed how the federal habeas standard of review applied to Grueninger's allegation of ineffective assistance of counsel and how an state appellate court's ruling should be considered. This analysis will not be discussed here. Instead, the focus will be on the substantive *Miranda* issue.

The fourth circuit reached the following conclusions. There was no question that when the officer served a new arrest warrant on Grueninger while in jail, he questioned him about the charges. It was equally plain that these questions constituted interrogation under *Miranda*, and that Grueninger had unambiguously requested counsel three days earlier. Defense counsel's failure to move timely to suppress the confession was deficient under Sixth Amendment standards, because not only would the suppression motion have substance, it would have been meritorious and likely granted. And prejudice to Grueninger resulted because the remainder of the State's evidence against him (excluding the confession), while substantial, was not so overwhelming that it can be said with confidence that he would have been convicted of the child sexual abuse charges without the confession. There was a reasonable probability that the admission of the confession affected the outcome of the trial for these charges. (The court, however, did not disturb Grueninger's child pornography convictions because the confession was of little relevance to these convictions.)

The fourth circuit remanded the case to district court to issue a writ of habeas corpus for the sexual abuse convictions unless Virginia decides within a reasonable period of time to retry Grueninger without using the confession.