

No. _____

CAPITAL CASE

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Bryan Joseph Mincey PRO SE — PETITIONER
(Your Name)

vs.

RON DAVIS WARDEN SAN QUENTIN et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Bryan Joseph Mincey
(Your Name)

PO Box D-09104
(Address)

SAN QUENTIN CALIF 94974
(City, State, Zip Code)

None,
(Phone Number)

QUESTIONS PRESENTED

PRE-AEDPA CAPITAL CASE

- 1 Appellate Commission "No Longer Capital Case, Motion For
2 Clarification, Panel Rejected Clarification, Court Order, Appendix (D)
- (1) 3 Whether A Criminal Defendant's Federal Constitutional
4 Rights Are Violated by An Evidence Rule Under Which The
5 Defendant's May Not Introduce Habit Evidence As Proof of
6 Third-Party Guilt, Fed-Rule 406, Petition Page One
- (2) 7 Whether A Criminal Defendant's Federal Constitutional
8 Rights Are Violated by, Deceiving The Jury That Scientific
9 Testing Was Done To Determine Metabolic Acidosis, And
10 Deceive The Jury That "All Body Fluids" Was Scientific
11 Tested, Petition Page 15, Not Reliably Under F.R. 702
- (3) 12 Whether A Criminal Defendant's Federal Constitutional Rights
13 Are Violated by, Trial Attorney Abandon His Obligation To His
14 Client, Petition Page 19, And Calling Prosecutor Psychological, p.28
15 Even Allow Unredacted Tapes To Be Play To The Jury
16 Petition Page 25.
- (4) 17 Whether "Nine Circuit" Law Is Unconstitutional, To Exceed
18 That "It Is Irrelevant" Whether Lawyer's Use Narcotic
19 During Trial, Petition Page 19 thru 24, See Motion 59 Lower
20 Has Ft. D.C, And Panel Court Refuse To Reply To Motion 59.
- (5) 21 Whether A Criminal Defendant's Federal Constitutional Rights
22 Are Violated by, Trial Court Refused The Instructions
23 ^{Necessary} Necessary For The Jury To Apply The Defense Evidence.
24 Petition Page 32
- (6) 25 Alternative Theories, The Unconstitutional Of Any Theories
26 Requires That The Conviction Be Set Aside, Petition Page 31
- (7) 27 Whether 9th Cir Violated Defendant's Rights To A Meaningful
28 Appellant Review by Refusing To Reply To Claims In Fed-A.O.B. See
Petition P. 31

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[x] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1	Meredith S. White Deputy Attorney General
2	600 W Broadway Suite 1800 San Diego CA 92101
3	
4	
5	

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<u>Unpublished, Electronic Filing System 6/15/15</u>
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<u>En-banc Dec-7 (2017) copy Enclose</u>
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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at _____; or,

has been designated for publication but is not yet reported; or,

is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

reported at _____; or,

has been designated for publication but is not yet reported; or,

is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,

has been designated for publication but is not yet reported; or,

is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,

has been designated for publication but is not yet reported; or,

is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was OCT 26 / 2017.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: Dec 7 2017, and a copy of the order denying rehearing appears at Appendix C.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

In chambers v Mississippi 410 U.S. 284 (1973)

THE UNITED STATE SUPREME COURT CLEARLY ESTABLISHED THAT THE EXCLUSION OF TRUSTWORTHY AND NECESSARY EXCULPATORY TESTIMONY AT TRIAL VIOLATES A DEFENDANT DUE PROCESS RIGHT TO PRESENT A DEFENSE. THIS CLEARLY ESTABLISHED FEDERAL LAW. PROVISIONS LENGTHY. SEE PETITION PAGE ONE.

THE AMENDMENT REQUIRES THAT EXPERT TESTIMONY BE BASED ON SUFFICIENT FACTS OR DATA. PROVISIONS LENGTHY SEE PETITION FOR REHEARING EN BANC, APPENDIX C

COUNSEL ABANDON HIS OBLIGATION TO HIS CLIENT.

MAPLE v THOMAS 132, S.Ct 912, 927 (2012) PETITION PAGE 19

STRICKLAND v WASHINGTON 466 U.S. 668 104 Ct (1984) PROVISIONS LENGTHY PETITION ^{PAGE} 19-24

NINTH CIRCUIT LAW IS UNCONSTITUTIONAL SEE PETITION ^{PAGE} 23, 24

BORIN v CALDERON 59 F.3d 815, 838 9th CIR (1995)

IT HAS LONG BEEN SETTLED THAT WHEN A CASE IS SUBMITTED TO THE JURY ON ALTERNATIVE THEORIES THE UNCONSTITUTIONAL OF ANY THEORIES REQUIRES THAT THE CONVICTION BE SET ASIDE.

SANDSTORM v MONTANA 442 U.S. 510, 526 99 S.Ct 2450 (1979)

CITING LEARY v UNITED STATES 395 U.S. AT 31-32, 89 S.Ct AT 1545, 1546
PETITION PAGE 31, 32

STATEMENT OF THE CASE

This case centers on the threshold requirements for the admissibility of third-party culpability evidence. The trial court improperly prevented excluding evidence implicating co-defendant as the primary perpetrator.

The trial court noted that the prosecutor entire thrust of his case is culpability of Sandra Brown and Mr. Mincey Rt 4165. The trial court granted the prosecution motion in limine. Referred to its obligation to the structure, the fabric of the law Rt 4169, also excluded on the basis of Calif Evidence code 352. The trial court abused its discretion, by not applying the balancing test, to weigh the probative value. It's impossible to weigh proffered third-party culpability evidence without knowing what the witness's would have actually testify, ^{to} also see Rt 4165-68.

The issue was raised by Petitioner in his direct appeal to the Calif Supreme court. That court affirmed the court ruling citing Calif Evidence code 1101 and 352, People v Mincey supra 2, Cal 4th at p 439. State court also addressed the constitutional issue. Application of the ordinary rules of evidence as the trial court did here does not impermissibly infringe on a defendant's right to present a defense. The district court and the Ninth Cir, erred by adopting the reasoning of the trial court. A material point of fact and law

STATEMENT OF THE CASE CONTINUE

WAS OVERLOOK IN THEIR DECISION. SEE MILLER V STAGNER 757, F.2d 988, 994, 9th CIR (1985) DESCRIBING THIS TEST AS A WEIGHING OF THE PROBATIVE VALUE, NECESSITY, AND RELIABILITY OF EVIDENCE AGAINST THE GOVERNMENT INTERESTS.

THE EVIDENCE HAD SUBSTANTIAL PROBATIVE VALUE. RAISED THE REQUISITE REASONABLE DOUBTS, REGARDING A HIGHLY MATERIAL ISSUE OF THE CASE. "CHAMBRAS CONTROL". SEE HABIT EVIDENCE PETITION PAGE 1

THE PROSECUTION'S FALSE MEDICAL TESTIMONY. THE CRITICAL POINTS IS, THE JURY WAS DELIBERATING ON THE METABOLIC ACIDOSIS THEORY. RT 3660 DR. ROOT HAD NO SCIENTIFIC METHODOLOGY TO PRESENT METABOLIC ACIDOSIS TO THE JURY. DR ROOT FAILED TO RUN BASIC TEST BY NOT TESTING THE P. H LEVEL OF THE BLOOD TO DETERMINE WHETHER IT WAS EVEN ACIDIC TO SUPPORT HIS CONCLUSION.

THE JURY WAS FURTHER DECEIVED THAT "ALL" BODY "FLUIDS" WAS SCIENTIFIC TESTED. "THE LOWER COURTS IGNORE THE CORNER DECLARATION THAT HIS TOXICOLOGY REPORT WAS IN ERROR. PETITION PAGE 16 ALSO SEE PETITIONER REHEARING EN BANC APPENDIX C

THE ONLY TACTICAL STRATEGY, TRIAL COUNSEL HAD BY CALLING THE PROSECTOR PSYCHOLOGY AND ALLOW UNREDACTED TAPES TO BE PLAY TO THE JURY WAS COUNSEL LOYALTY TO THE D. A. OFFICE. WHICH DAVE WHITNEY ANNOUNCED HE WILL BE JOINING AFTER THE MINCEY CASE. TWO WEEKS AFTER D.A. HAIGHT WAS HIS SUPERVISOR. COUNSEL COCAIN HABIT WAS WELL KNOWN IN THE COMMUNITY SEE

STATEMENT OF CASE CONTINUE

Whitney Declaration AND MOTION 59, LOWER COURT HAS IT WHICH IS BEING OVERLOOK, SEE PETITION PAGE 19

PANEL COURT COUNSEL'S STRATEGIC DECISION WAS NOT UNREASONABLE UNDER PREVAILING PROFESSIONAL NORMS.

HOWEVER PETITIONER SURE THE HIGH COURT DID NOT MEAN TO TURN A BLIND EYE TO OBVIOUSLY INEFFECTIVE ASSISTANCE OF COUNSEL. PRE-AEDPA LAW APPLY TO THIS CASE

28 U.S.C 2254. WAS TIMELY FILED IN THE DISTRICT COURT CU-93-2254 P.S.G. BEFORE THE A, E, D, P. A OF (1996)

D.C DENIAL OF THE HABEAS PETITION, PETITIONER TIMELY APPEAL THE DISTRICT COURT DENIAL ON HIS HABEAS CLAIM.

CHALLENGING HIS CONVICTION, PANEL AFFIRMED 10/26/17

TIMELY FILE TO THIS COURT, WRIT OF CERTIORARI - RULE 13.1

THE JURISDICTION OF THIS COURT 28 U.S.C 1254 (1)

MARTINEZ V RYAN ^{U.S} cite AS 566 (2012) PRISONER UNLEARNED IN LAW.

REASONS FOR GRANTING THE PETITION

IN THE INTEREST OF JUSTICE EXTRAORDINARY CIRCUMSTANCE SHOULD NOT BE OVERLOOK. THE THREE JUDGE PANEL DOES NOT FOCUS ON THE PROBATIVE VALUE OR THE POTENTIAL ADVERSE EFFECTS OF ADMITTING THE DEFENSE EVIDENCE OF THIRD-PARTY GUILT. PROFFER HABIT EVIDENCE LINKS THE CO-DEFENDANT TO THE MURDER WEAPON WAS OVERLOOK IN THEIR DECISION. EXCLUSION PROBATIVE ADMISSIBLE EVIDENCE THAT ANOTHER PERSON COMMITTED THE CRIME. CHAMBERS CONTROL'S, CHAMBERS V MISSISSIPPI 410, 284, 302-03 (1972)

IN UNITED STATES V ARMSTRONG, 621 F.2d 951 9th CIR (1980) ARMSTRONG LAID OUT THE PROPER STANDARD FOR THE ADMISSIBILITY OF THIRD-PARTY CULPABILITY EVIDENCE UNDER FEDERAL RULE OF EVIDENCE FUNDAMENTAL STANDARDS OF RELEVANCY ID AT 1451. 9th CIR CONSISTENTLY APPLIED THIS STANDARD IN A STRING OF CASES FOLLOWING ARMSTRONG SEE. EG UNITED^{STATES} V WELLS, NO 14-30146 2018 WL 377837, AT 28 9th CIR JAN 11 (2018) AMENDING 877 F.3d 1099, 1136 9th CIR (2017) UNITED STATES V STEVER 603 F.3d 747, 756 9th CIR (2010) UNITED STATES V VALLEJO 237 F.3d 1008, 1023 9th CIR (2001) UNITED STATES V CROSBY 75 F.3d 1343, 1347, 9th CIR (1996)

THE PANEL IN THIS CASE COMPLETELY IGNORES ITS OWN CIRCUIT LAW INCLUDING ITS OWN BALANCING TEST IN MILLER V STAGNER 757 F.2d 988, 949, 9th CIR (1985) 28 U.S.C. 2254 (d) (1). THREE JUDGE PANEL.

REASONS FOR GRANTING THE PETITION CONTINUE

1 Even willing to overlook this court law, the due
2 process clause of the fourteenth Amendment and sixth
3 Amendment. Constitution guarantees criminal Defendants
4 a meaningful opportunity to present a complete defense
5 *Crane v Kentucky*, quoting *California v Trombetta*
6 that constitution right is violated by the exclusion
7 Probativ Admissible evidence that another person committed
8 The crime. *Chambers v Mississippi* 410, U.S. 299, 03 (1972)

9
10 "Federal law. It's irrelevant whether lawyers use
11 Narcotic. To practice law in the United States, lawyers
12 shall take an oath to execute faithfully his/her
13 duties to their clients. Have their best interest
14 at all times, must be of good moral character.
15 State and Federal law prohibits the use and in
16 possession of Narcotic. Lawyers are given sanction
17 by Federal law to engage in Narcotic, while
18 representation a capital and non-capital case,
19 its unlawful, see *Bowin v Calderon* 59 F.3d 815, 838
20 9th Cir (1996). The court held in *Bowin* that because
21 Counsel Performance did not fall below that standard
22 *Strickland*. It is irrelevant whether lawyers use
23 Drugs. Apply *Strickland* Test. "Quoting *Merriam*
24 Webster Dictionary, "Narcotic dulls the sense,
25 Unawareness, Ignorant, Drug stupor, its irrelevant
26 9th Cir. went beyond the limits. It bad law, which
27 calls for an exercise of this court supervisory Power"
28 DISTRICT COURT JUDGMENT 6/15/15 2:93-CV-02554 P.S.G.
SEE

REASON FOR GRANTING THE PETITION CONTINUE

1 DISTRICT COURT AND 9th CIR REFUSE TO REPLY TO MOTION 59
2 TRIAL COUNSEL COCAINE USE DURING TRIAL, WILLING TO OVERLOOK
3 THE EFFECT COCAINE HAD ON MR. WHITNEY SEE HIS DECLARATION
4 EX 50, DESCRIBING THE EFFECT COKE HAD ON HIM "SEE
5 PAGE 19 IN THIS PETITION.

6
7 THE 9th CIR PANEL IGNORE THE FUNDAMENTAL PRINCIPLES
8 "FAILED" TO RECOGNIZE SCIENTIFIC METHOD. "EVERY CIRCUIT
9 COURT AGREE, EACH STAGE OF THE EXPERT TESTIMONY MUST
10 BE RELIABLE. THE AMENDMENT REQUIRES THAT EXPERT
11 TESTIMONY BE BASE ON SUFFICIENT FACTS OR DATA, SEE
12 PETITION REHEARING EN BANC APPENDIX C. AND PAGE 15 IN
13 THIS PETITION

14 IT HAS LONG BEEN SETTLED THAT WHEN A CASE IS SUBMITTED
15 TO THE JURY ON ALTERNATIVE THEORIES, THE UNCONSTITUTION
16 OF ANY THEORIES REQUIRE THAT THE CONVICTION BE SET ASIDE
17 SEE PAGE 31 LINE 22

18 TRIAL COURT IMPROPERLY REFUSED THE INSTRUCTION NECESSARY
19 FOR THE JURY TO FOLLOW THE APPLICABLE LEGAL PRINCIPLE SEE
20 PAGE 32 IN THIS PETITION

21
22 MARTINEZ V RYAN cite AS 566 (2012) PRISONER
23 UNLEARNED IN LAW ARE GENERALLY ALL EQUIPPED TO
24 REPRESENT THEMSELVES.

25
26 MR. MINCEY KNOWS FOR A FACT WITH THE ASSIST OF A
27 WELL QUALIFIED ATTORNEY. THE CASE CAN BE ARGUED BETTER
28

When viewed cumulatively Record demonstrated AN
OVERALL VIOLATION OF DUE PROCESS AND A FUNDAMENTALLY
UNFAIR GUILT PHASE TRIAL. PETITIONER RESPECTFULLY REQUEST
A NEW GUILT PHASE TRIAL

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Bryan Joseph Minney

Date: MARCH 8 / 12 / 18