

No. 17-56539

IN THE  
SUPREME COURT OF THE UNITED STATES

Michael J. HORTON — PETITIONER  
(Your Name)

vs.

Clark E. DUCART — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for Ninth Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Michael J. HORTON  
(Your Name)

P.O. Box # 290066  
(Address)

Represa, C.A. - 95671  
(City, State, Zip Code)

(Phone Number)

- QUESTIONS PRESENTED -

AS ONE JUSTICE SOeloQUENTLY PUT IT.....  
"LEST THE SAME INJUSTICE ONE DAY TURN AROUND  
ON US....."

U.S. v. TURNING BEAR

- 1.) SHOULD THE UNEQUIVOCAL RIGHT TO  
REPRESENT ONE'S SELF OR HAVE COUNSEL  
BE LEFT AMBIGIOUS ?
  
- 2.) SHOULD THE RIGHT TO BE PRESENT  
AT ALL "CRITICAL" STAGES OF TRIAL  
BE LEFT FOR HARMLESS ERROR ?

RESPECTFULLY SUBMITTED,

Michael Horton

MICHAEL HORTON

## LIST OF PARTIES

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

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:

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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 \_\_\_\_\_ 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 is unpublished.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 \_\_\_\_\_ 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 is unpublished.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 is unpublished.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 is unpublished.

(1.)

## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

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: \_\_\_\_\_, 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. § 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**

- 1.) SIXTH AMENDMENT OF U.S. CONSTITUTION - PGS. 7, 10
- 2.) FOURTEENTH AMENDMENT OF U.S. CONSTITUTION - PGS. 7, 10
- 3.) Evidence Code section 1042 (d) - PGS. 4, 6, 9, 10
- 4.) Penal Code section 187/664 - PG. 4
- 5.) Vehicle Code section 10851, subd. (d) - 4

## STATEMENT OF THE CASE

This petitioner was convicted of two counts of attempted murder (Pen Code, § 187/664) and one count of unlawful driving of a vehicle (Veh. Code, § 10851, subd. (a)). Multiple enhancements attached to each count. The counts arose from separate incidents, but were all joined.

This petitioner first raised the two questions raised here in the Superior Court of Los Angeles County by way of habeas corpus following direct appeal. These issues had to be raised via "ineffective assistance of counsel" due to counsel's failure to raise and federalize issues. This appeal was denied 10/18/14. (Attachment A) The state court ruling that petitioner had failed to show that "appellate counsel's exercise of professional judgment was deficient."

Petitioner then, timely appealed to the California Court of Appeal who conditionally reversed and remanded the matter back to the trial court with respect to counts 1 and 2 on 12/23/14. (Attachment E) The trial court stated had a deficient/unfair Evidence Code section 1042(d) hearing, the Court of Appeal found, where the statute was that "all parties are to participate." On remand, the trial court again held a hearing in which this petitioner was not allowed to participate.

The Trial Court reinstated the judgment upon its unfair hearing.

This petitioner then appealed this confusing ruling, that the same violation had occurred. The Court of Appeal (California) denied the petition citing that "although error existed, it appeared harmless. (Attachment F)

Then petitioner filed a timely appeal to the California Supreme Court who denied the petition without comment on 6/24/15. (Attachment B)

Petitioner then filed a timely appeal to the United States District Court. (Attachment B) This petitioner was then represented by counsel, who submitted two (2) claims to the court. These claims were: 1) FARCTA VIOLATION — Petitioner had been denied the right to represent himself after properly invoking the right and desiring to submit a motion for new trial, after trial attorney failed to do so. 2) SEVERANCE MOTION — Petitioner's case lacked any of the prongs to keep the three (3) cases together, except for the saving of court expenses.

Petitioner elected to go pro per following ultimatum of attorney. (Attachment F) and petitioned District Court for permission to amend habeas and was granted permission on 12/9/15. (Attachment B) Petitioner then sought to include claim of 3) due process violation — Petitioner denied the right to be present

AT A CRITICAL STAGE OF TRIAL. SPECIFICALLY THE  
PARTICIPATION OF EVIDENCE CODE § 1042(d) HEARINGS  
WHICH STATES "ALL PARTIES PARTICIPATE." PETITIONER  
COULD HAVE PROVIDED COUNSEL WITH INFORMATION IN  
ORDER TO PROVE THE MATERIALITY OF THE INFORMANT  
WHICH COULDNT BE RELAYED IN HABEAS. THE DISTRICT  
COURT RULED THE THIRD ISSUE TO BE INCLUDED. THE  
UNITED STATES DISTRICT COURT THEN DENIED THE PETITION  
ON 9/22/17, CITING "NO SUBSTANTIAL SHOWING OF A  
DENIAL OF A CONSTITUTIONAL RIGHT."

PETITIONER THEN FILED A TIMELY NOTICE OF  
APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE  
NINTH CIRCUIT FROM THE JUDGMENT ON 10/4/17.

PETITIONER THEN FILED A MOTION FOR  
REHEARING AFTER THE NINTH CIRCUIT DENIED  
PETITION. 5/31/2018. NO STATEMENT.

THIS PETITIONER NOW APPEALS ON WRIT OF  
CERTIORARI TO THE UNITED STATES SUPREME COURT.  
PRAYING FOR RELIEF.

THIS COURT PROPERLY HOLDS JURISDICTION AS  
SHOWN. (US SUP CT R 14.1(g)(i))

THIS CASE IS ONE THAT CAN SET PRECEDENT  
ON TWO (2) ISSUES THAT CONTINUE TO BE AMBIGUOUS  
CONCERNING "STRUCTURAL ERRORS". 1) FARETTA, 2) THE  
RIGHT TO BE PRESENT AT MATERIAL STAGES OF TRIAL.

## REASONS FOR GRANTING THE PETITION

1.) FARETTA v. CALIFORNIA (1975) 422 U.S. 806, HAS BEEN ESTABLISHED BY THIS HONORABLE COURT STATING, "EVERY DEFENDANT HAS THE CONSTITUTIONAL RIGHT TO SELF REPRESENTATION." THIS IS UNEQUIVOCAL. THAT IS, UNTIL THE WINDOW FOR A MISCARRIAGE OF JUSTICE IS LEFT OPEN, ALLOWING STATE COURTS TO INTERPRET WHEN THE RIGHT SHOULD BE HONORED. IT HAS BEEN INTERPRETED THAT THIS RIGHT ONLY APPLIES BEFORE THE COMMENCEMENT OF TRIAL, HOWEVER ISSUES ARISE WHEN IITIGANTS DESIRE TO REPRESENT THEMSELVES FOR SUBMISSION OF NEW TRIAL MOTIONS. AS SHOULD BE A FARETTA HONORED CHOICE. IT IS NOT, IT IS LEFT UP FOR INTERPRETATION AND DISCRETION.

- People v. Rivers (1993) 20 Cal. App. 4th 1040 - "FARETTA WAS GRANTED HERE MISTRIAL."
- People v. Givan (1992) 4 Cal. App. 4th 1107 - "HERE, FARETTA WAS DENIED."

NUMEROUS RULINGS OF TRIAL COURT DISCRETION CONCERNING A CONSTITUTIONAL RIGHT THAT SHOULDN'T BE SO AMBIGUOUS.

THIS PETITIONER REQUESTED TO REPRESENT MYSELF SOLELY TO PREPARE A MOTION FOR NEW TRIAL. THIS REQUEST WAS DENIED THUS, DEPRIVING ME OF THE SIXTH AND FOURTEENTH AMENDMENTS TO THE

## UNITED STATES CONSTITUTION.

THE ABSOLUTE RIGHT TO REPRESENT ONE'S SELF, AND/OR TO BE WITH COUNSEL IS CURRENTLY BEING LEFT AMBIGUOUS AND THEREFORE HAS BECOME AN ISSUE OF NATIONAL IMPORTANCE DEPRIVING MANY OF FAIR TRIALS, THUS BOMBARDING THE COURT WITH APPEALS. THERE SHOULD BE NO REASON FOR THE AMBIGUITY WHERE THE FARETTA RULES ALREADY IN PLACE CAN ELIMINATE "MALINGERING" OR "STALL" TACTICS IN COURTROOMS. COURT PROCEDURES ALSO ELIMINATE THESE INSTANCES. THE CONSTITUTIONAL RIGHT OF SELF-REPRESENTATION SHOULD NOT BE A REASON FOR A MISCARRIAGE OF JUSTICE BECAUSE IT WAS DENIED TO THE LITIGANTS OF OUR NATION.

THEFORE, THIS LITIGANT PRAYS THIS SUPREME COURT SEEKS THE NEED TO RULE CONCERNING THE VIOLATION OF THIS PETITIONER'S RIGHT TO SELF-REPRESENTATION FOR PURPOSES TO PREPARE AND SUBMIT A MOTION FOR NEW TRIAL WHERE EXISTING COUNSEL WAS INEFFECTIVE IN DOING SO.

## 2.) KENTUCKY v. STINCEY (1987) 482 U.S. 730, 745

[96 L. ED. 2d 631, 107 S. CT. 2658.] HAS ESTABLISHED PRECEDENCE FOR A DEFENDANT'S "RIGHT TO BE PERSONALLY PRESENT AT ANY STAGE OF THE CRIMINAL

proceedings that is critical to its outcome if his presence would contribute to the fairness of the procedure." Also, U.S. v. GAGNON (1985) 470 U.S. 522, 526 [84 L.Ed. 2d 486, 105 S.Ct. 1482]

However, the lower courts have repeatedly violated this substantial right when it pertains to hearings to prove the materiality of an informant. How this does not equal a critical stage of a criminal proceeding remains mysterious but, should no longer. There are too many appeals of litigants having to express contention that they were left out of important counsel interaction or procedures in the open court sessions of informant hearings.

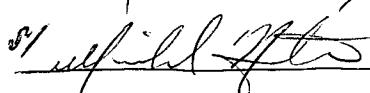
This petitioner was substituted for a "materiality hearing" under Evidence Code § 1042(d) which explicitly states.... "when, in any such criminal proceeding, a party demands disclosure of the identity of the informant on the ground the informant is a material witness on the issue of guilt, the court shall conduct a hearing at which all parties may present evidence on the issue of disclosure..." This statute is clear enough. Therefore, on appeal because I was not given the opportunity to participate — the court of appeal reversed and remanded in order to hold a proper hearing.

On remand, this petitioner was never called down to court to participate again for a

proper hearing. Thus, not only violating this petitioner's constitutional right to be present but, also violating this petitioner's sixth and fourteenth amendment rights to represent myself or be represented by counsel of choice. The Court of Appeal disagreed, citing "harmless error" and affirmed judgment.

This case can unequivocally establish a defendant's right to be present at all critical stages of a trial. This includes the open court portion of the materiality hearing as evidence code section 1042(d) reads. Ruling this case also takes away the opportunity for such a grave violation of rights to be deemed harmless.

Therefore, this litigant prays this Supreme Court sees the need to rule concerning the violation of this petitioner's "right to be present at all critical stages of trial."

Respectfully submitted,  
  
Michael Horion

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael J. Hirsch". The signature is fluid and cursive, with a horizontal line underneath it.

Date: AUGUST 12, 2018