

I. 18-8731 No. ORIGINAL

	Supreme Court U.S. FILED
IN THE	FEB 21 2013
	OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

CARLOS NOGUERA-PETITIONER,

VS.

GREG SMITH and NEVADA ATTORNEY GENERAL et.al,
RESPONDENTS-APPELLEES.

ON PETITION FOR A WRIT OF CERTIORARI
Ninth Circuit Court of Appeals

CARLOS NOGUERA

LCC 1200 Prison Rd.

LoveLock, Nevada 89419

AARON Ford

OFFICE OF THE

ATTORNEY GENERAL et.al

Petitioner-Appellant

Respondents-Appellees

QUESTIONS PRESENTED

1. WITH the Record Reflecting that the Alleged Victim Consented to engage in Sexual Intercourse- Should Noguera have been convicted of Sexual Assault?
2. Did the Trial Judge Violate Noguera's 14th Amend Right To Due Process of Law for failing to charge the Jury, instructions on Voluntary Consent?
3. Could any Rational trier of fact have found Noguera guilty of Sexual Assault or essential elements of crime beyond a reasonable doubt, had the Jury known about the Voluntary Consent of ~~in her~~ the alleged Victim [S.G.7]?
4. With the Records) Reflecting that everyone agreed that the Alleged Victim Ab ostensibly consented, including the Alleged Victim, Should Noguera have been charged with any kind of Sexual Assault?
(SPP: Noguera v. State, No. 48609 at 2 July-7-2009).
5. Was the State Court's decision objectively unreasonable- in denying Noguera's request to instruct the Jury on Consent of the Alleged Victim?
6. By the Alleged Victim Stating on the Witness Stand that She did not consider the Possibility of Pregnancy when she agreed to intercourse Show Consent and Knowledge, and was not a Crime of Sexual Assault?

III.

LIST OF PARTIES

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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 ~~is unpublished.~~ *cn*

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 ~~is unpublished.~~ *cn*

For cases from **state courts**: *Nevada Supreme*

The opinion of the highest state court to review the merits appears at Appendix C 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 State District Trial Court court appears at Appendix D 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 December/06/2018.

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 May/07/2011. A copy of that decision appears at Appendix C.

[] 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).

VI. CONSTITUTIONAL AND STATUTORY PROVISIONS

(A) SUPREME COURT R.10 (B) 9TH-CIRCUIT RULE-36-3
 (C) 14TH-FOURTEENTH AMENDMENT (D) N.R.S. ANNS 206.366(1)

VII. STATEMENT OF THE CASE

As stated in question one that legislature-intended for an act of consent to mean just that. In Noguera's case, the Judge abused its discretion by subverting the law in its own way to benefit the State. Laws imposing criminal sanctions must be given strict construction in favor of citizens and against the government." SPARKMAN V. STATE, 590 P.2d 151, 95 Nev. 76 (1979). Though the Trial Judge claim that the State / Government [did not] charge the defendant (Noguera) with sexual assault; But the Judge changed the Jury instruction (s) - See Noguera - V. State, No 48609 at 2 (Rev. July 1/ 2009), unpublished order of affirmance. Being that Noguera was still allegedly found guilty by a Jury due to a Jury instruction imposed by the Trial Judge of sexual assault violated the Due Process Clause under the (14th) Amendment of the United States Const, because he was not put on notice to defend himself against sexual assault. Furthermore, "the record reflects everyone agreed the alleged -

Victim ostensibly consented. The trial Judge abused its discretion to charge the Jury in Instruction and violated Noguera's 14th Amend. rights to Due Process of law, equal fair treatment and protection. The language used by the State claiming that the alleged Victim testified that she did not even consider the possibility of pregnancy when she agreed to intercourse and didn't seek any prenatal care, should not be used to satisfy (Sexual Assault), as to the alleged victim not understanding the nature of her conduct, when things of sorts are taught in schools and discussed by parents, "Moreso", a huge percentage of adults in the world, especially young adults do not consider the possibility of pregnancy or getting a disease. Being that S.G. consented and told her parents that she did and to follow through reflects that she was aware that she was engaging in sexual activities, which reflects her knowledge of what she was participating in, meaning she understood the nature of having intercourse with Noguera, but like some adults, do not concern themselves of the possibility of getting pregnant, so did S.G. not concern herself of the possibility of getting pregnant. "The bottom line", The district court abused its discretion when it charged the Jury in instruction 5: and allowed -

Noguera to be convicted of Sexual Assault.

Legislation intended for assault as a matter of law to mean just that. See: Black's Law Dictionary. Assault; any willful attempt or threat to inflict injury upon the person of another, fear or the expectation of bodily harm, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life. Code, § 211-1. or Rape. Petitioner did not commit any of the above acts, in reference to Sexual Assault.

Question Two: As previously stated, the Trial Judge violated Petitioner's 14th Amendment Due Process rights. Question (3) A rational Trier of fact whom would legally apply the law and not subvert it, could not have found Noguera guilty of sexual assault with knowledge of the alleged victim's testimony, and testimony from other family members, testifying that even they were aware of S.G.'s consent to have sexual intercourse with Noguera. (4) There was no evidence beyond a reasonable doubt that could have legally charged Noguera with sexual assault. (5) This denies Due Process of law, had the trial Judge properly instructed the Jury on consent, Sexual Assault could not have been a factor. The Judge used the Jury instruction 5: to hide and manipulate my Due Process rights protected by the 14th Amendment. JV-6

Reason for Granting The Petition

Explain to the Court why it should grant Certiorari. It is important to read Rule 10 and address what compelling reasons exist for the exercise of the Court's discretionary jurisdiction. Try to show not only why the decision of the lower court may be erroneous, but the National importance of having the Supreme Court decide the question involved.

Because the trial judge acknowledged that Neguera was not charged with sexual assault, as also noted by the 9th Circuit Court of Appeals, but at the trial Judge's discretion, charged the Jury in Instruction 5. See Exhibit A. This act is considered Contamination by Extraneous Influences, by the trial Judge and the Prosecutor. In Remmer v. United States the Supreme Court held that any unapproved private communication, contact or tampering with a Juror during a criminal trial is presumptively prejudicial. The information by the State did not charge Neguera with sexual assault, but he was still convicted of sexual assault due to the trial Judge's interference with inappropriate instructions to the Jury. Remmer v. United States 347 U.S. 222, 229 (1954) extraneous influences entitles Neguera to a new trial or vacate of -

Conviction and or Sentence or lesser included Sentence. Remmer, 347 U.S. at 229-30; see, e.g., U.S. v. ofay-Campos, 534 F.3d 1, 18-25, 27-31 (1st Cir. (2008)). The trial Judge should have ordered the Jury to set aside any opinion and render a Verdict based on the evidence. Foley v. Parker, 488 F.3d 377, 390 (6th Cir. 2007). In Criminal Cases- under the Due Process Clause of the Fifth Amendment, the Prosecutor is required to Prove beyond a reasonable doubt every element of the Crime with which a defendant is Charged. In re Winship, 397 U.S. 358, 364 (1970). See also U.S. v. O'Brien, 130 S.Ct. 2169, 2174 (2010). The State did not Prove Noguera Committed any Sexual assault because he was not charged with Sexual assault, therefore in the best interest of the Public, This type of action by the Judge equates a Misconstrue of Justice and Noguera ask this Court to Vacate Sentence, Grant a new trial, or remand back to the trial Court for an evidentiary hearing and or lesser included Sentence. The Jury Should not have been legally qualified to return a Verdict of Sexual Assault when Noguera was not charged in the Information or Put on Notice of any Sexual Assault. A new Trial or Vacation of Sentence is requested.

Va

CONCLUSION

The State could not possibly have met their burden of proof beyond a reasonable doubt, pertaining to sexual assault, when the alleged victim and other witnesses admitted that the alleged victim consented. Petitioner would not have been deprived of the lesser included offense, if the Trial Judge had not abused its discretion and Canon Codes 3-e etcetera, by changing the Jury's instruction 5; The Jury would not have been thwarted and petitioner's due process would not have been violated. Protected by the 14th Amend.

The Petition for a Writ of Certiorari should be granted.

Respectfully Submitted,

Signature:

Date: February 21, 2019