

18-8804

IN THE

RECEIVED

NOV 27 2018

OFFICE OF THE CLERK
SUPREME COURT, U.S.

SUPREME COURT OF THE UNITED STATES
WASHINGTON, DISTRICT OF COLUMBIA

CARLOS Antonio Raymond
Petitioner,

VS.

Roy And Pizza Venture Of San Antonio, LLC

SUPREME COURT OF TEXAS # CASE NO. 18-0531

APPEAL # 04-17-0061-30061-CV
TRIAL CASE # 2015-CV-00935

FILED
NOV 20 2018

OFFICE OF THE CLERK
SUPREME COURT, U.S.

On Petition For A Writ Of Certiorari To The Fourth Court Of Appeals

PETITION FOR A WRIT OF CERTIORARI

Carlos Antonio Raymond

8054 Silver Grove

San Antonio, Texas 78254

(210) 232-0666

E-MAIL: Survivor0253@Aol.Com

UNCOMMERICAL PAPER
BY THE CITIZEN
Ordinary Minority Citizen, Pro

RECEIVED

JAN 29 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTIONS PRESENTED

Did the District (Trial) Court err in Allowing trial to proceed without first obtaining A written WAIVER consent from Petitioner/Plaintiff?

Was the opinion of The Fourth Court Of Appeals Unconstitutional by adopting and approving a WAIVER DEFENSE?

Should the Supreme Court Of Texas consider a MOTION FOR DEFAULT Judgement when a Respondent Failed to respond to a MOTION FOR REVIEW?

Did Petitioner, RAYMOND voluntarily, intentionally, and knowingly WAIVED his Constitutional right to call discovery witnesses at trial?

Whether or not failure to Cite Authorities In Amended Brief warrant a DENIAL of the Appeal?

Did the Fourth Court Of Appeals incorrectly ruled on unsubstantiated WAIVER Defense raised by the Defendant?

Can A Counsel WAIVE the Constitutional rights of its clients before or on the day of trial?

Approximately two-thirds of federal plea bargains contain provisions that waive the defendant's right to appeal his or her sentence. While the courts of appeals generally enforce those waivers, there are established exceptions for situations in which enforcing the waiver would, for example, result in a "manifest injustice." See, e.g., *United States v. Grimes*, 739 F.3d 125, 128-29 (3d Cir. 2014). This case raises the question of wh

Kent v. United States, 383 U. S. 541, 383 U. S. 562 (1966), held "that the [waiver] hearing must measure up to the essentials of due process and fair treatment."

TABLE OF CONTENTS

QUESTIONS PRESENTED	2
LIST OF PARTIES	
TABLE OF CONTENTS	3
TABLE OF AUTHORITIES	4
OPINIONS BELOW	5
JURISIDCTION	5
CONSTITUTIONAL PROVISION, STATUTE AND	6
REGULATIONS AT ISSUE	
STATEMENT OF THE CASE	7
A. Facts Giving Rise To This Case	7
B. The District Court Proceedings	7
C. The Appellate Court Proceedings	7
REASONS WHY CERTIORARI SHOULD BE GRANTED	8
1. Review Is Warranted Because The Opinion By The Fourth Court Of Appeals Is Inconsistent With The Opinions of This Court With Respect To The United States Constitution.....	8
2. Review Is Warranted Because Petitioner Has Raised A Violation DUE PROCESS Afforded By The FIFTH and FOURTEENTH Amendment Of The United State Constitution.....	8
3. Review Is Warranted Because Respondent Failed To File A Response To The Petition For Review In This Case.....	8
4. Review Is Warranted Because Petitioner Filed Multiples Supplemental Motions For Reviews, Including A Motion For Default Judgement And Was DENIED By The Supreme Court Of Texas.....	8
5. Review Is Warranted Because Petitioner Is Entitled To A Fair Trial According By The FIFTH and FOURTEEN Amendment Of The United State Constitution.	8

CONCLUSION CERTIFICATE OF CERVICE & ACKNOWLEDGEMENT

TABLE OF AUTHORITIES

CRIMINAL CASES:

Arizona v. Roberson.....
Edwards v. Arizona.....
Giacomazzi v. State.....
McNeil v. Wisconsin, 501 U.S.) . 171, 177 (1991.....
Adams v. State, 390 P.3d 1194 (Alaska App. February 17, 2017).....
Oregon v. Bradshaw, 462 U.S. 1039 (1983).....
Smith v. Illinois.....
CIVIL CASES:	
Gault, 387 U.S. 1 (1967) - No. 116, Argued December 6, 1966, Decided.....
HOMERO GONZALEZ, PETITIONER v. UNITED STATES.....

STATUTES

CONSTITUTIONAL PROVISIONS

United States Constitution V
United States Constitution VI
United States Constitution VII
United States Constitution XIV

PETITION FOR A WRIT OF CERTIORARI

Petitioner, Carlos Antonio Raymond, Prose, respectfully petitions this Court for a writ of certiorari to review the opinion and decision of the Fourth Court Of Appeals, San Antonio Texas in this case.

Whether the district court violated the Confrontation Clause of the Sixth Amendment by limiting petitioner's ability to cross-examine the cooperating witnesses who testified against him about the precise statutory minimum sentences they would have faced in the absence of cooperation with the government.

OPINIONS BELOW

The opinion of the Fourth Court Of Appeals is inconsistent with the Due Process Clause of the Fifth And Fourteenth Amendment Of The United States Constitution as it relates to Petitioner's ability to have the Defendant key witnesses present for cross examination at trial.

The Fourth Court Of Appeals upheld and sided with the Defendant in that Petitioner's Counsel, Morris Kircshberge failed to raise TIMELY objection and demand that the court issue a subpoena for key Witnesses, namely Pizza Delivery Driver to appear at trial for cross questioning.

The Texas Supreme Court DENIED the Petition for Review without issuing an opinion on the case.

The Texas Supreme Court DENIED all supplemental Petition For Review, including a MOTION For Default Judgement given that Defendant, Pizza Ventured Failed to file A Response Petition For Review.

JURISDICTION

On or about July 31, 2018, Respondent, Prose filed an Appeal with the Supreme Court of Texas, alleging that The Fourth Court Of Appeals had violated his FIFTH and FOURTEETH Amendment to the United States Constitution by requiring or allowing Defendant Pizza venture to WAIVE the RAYMND's Due Process Claus (RIGHT TO CROSS EXAMIN KEY WITNESSES) without his knowledge and consent wherein he slept on his right and RULED the Appeal be dismissed.

**The Jurisdiction of this Court to review the judgement of Supreme Court of Texas
is invoked under 28 U.S.C. 1254 (1) And Or Any and all other statutes as may
apply herein.**

CONSTITUTIONAL PROVISIONS, STATUTES AND POLICIES AT ISSUES

FIFTH AND FOURTEETH Amendment To The United States Constitution

No state shall make or enforce any law which shall abridge the **privileges or immunities** of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without **due process of law**; nor deny to any person within its **jurisdiction** the **equal protection** of the laws. In the criminal setting, the right to confront and cross-examine witnesses is fundamental. Although the fully panoply of right do not apply in the civil setting, the right to confront and cross-examine witnesses often still applies. Here, however, the due process clause, rather than the Sixth Amendment, protects the right.

WAIVER OF A CONSTITUTIONAL PROTECTIVE RIGHT

The right to due process is a fundamental protective rights, and this Court has unequivocally ruled that such process **rights** may **not** be **waived at trial without full knowledge of such rights**. Since this protection is grounded in the Constitution, trial court may not statutorily truncate such due process safeguards.

The issue is whether consent expressed by counsel alone is warranted simply because the Respondent himself did not express to the court his consent. In many instances, the opinion of this Court have sometimes said in passing that, under the Constitution, certain "fundamental" or "basic" rights cannot be waived unless a defendant personally participates in the waiver. See, e.g., *Taylor v. Illinois*, 484 U. S. 400, 417-418 (1988) ; *United States v. Olano*, 507 U. S. 725, 733 (1993) .

This Court also opined and although noted that "[f]or certain fundamental rights, the Respondent must personally make an informed waiver,".

36 U.S.C. 1972 (As Amended June 14, 1994, Now codified at 4 U.S.C. 4 (1998)

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

STATEMENT OF THE CASE

A. Fact Giving Rise To This Case

This case arises out of a auto collision involving ROY MARTIN JOSEPH, PIZZA DELIVERY DRIVER who rear-ended Petitioner, CARLOS ANTONIO RAYMOND's 2009 H3T Hummer vehicle. Mr. ROY was acting in the scope of his employment as a Pizza Delivery Driver For PIZZA VENTURE AKA, Papa John's Pizza, and should have been covered by an Auto-Owners liability policy with a \$100,000-per-person limit for bodily injury.

Petitioner, retained counsel, MORRIS KIRCHBERGE with written express understanding that he RAYMOND would be fully represented at trial. Petitioner through counsel sued both PIZZA VENTURE AND ROY MARTIN JOSEPH for damages that he allegedly suffered as a result of the collision.

B. The District Court Proceedings

The trial Judge allowed Petitioner's Constitutional protective rights to be WAIVED without his knowledge and consent. Petitioner RAYMOND was not aware of his Constitutional (DUE PROCESS) rights. No one advised him of any rights to WAIVE calling key discovery witness for cross examination, and the Trial Court allowed the case to go on without it. From the beginning of this case, it has always been clear and undisputed at trial Opening Statement, Defendant's Counsel Greg R. Brown stipulated that Mr. ROY was fully at fault in this collision, but failed to appear at trial, despite efforts by Counsel to contact him by various means, including letters, telephone calls and personal visit to his home, upon which Mr. ROY choose to ignore all efforts. Defendant provided a discovery list of key witnesses, including ROY MARTIN JOSEPH and his duty floor supervisor upon whom it intended to call at trial.

During the course of this trial proceedings, it was noted that none of the discovery witnesses, including Mr. ROY, Pizza Delivery Driver and his duty supervisor were present to testify. Petitioner approached the trial judge (OFF RECORD) and inquire about the missing witnesses, but the Judge responded, "TALK TO YOUR ATTORNEY."

The trial Court failed to give jury written instruction to the Jury regarding the missing witness and rendered a judgement in favor of Defendant. Adding insult to injury, the trial judge reversed a portion of the Jury's decision by motion filed by Defendant Pizza Venture.

C. The Appellate Court Proceedings

Immediately upon the trial court's RULING, Petitioner filed a motion for a Motion for Appeal with the Fourth Court Of Appeals. Defendant file a WAIVER Defense Response and the Appellate AGREED, APPROVED, ADOPTED its motion, and upheld the trial Court's decision. RAYMOND also argued that his DUE PROCESS right to have all discovery key witnesses present at trial WAIVED during trial was not voluntary and intelligent. However, because RAYMOND's Ineffective Counsel, MORRIS KIRSCHBERGE had not raised such a claim in the Trial District Court, the Court of Appeals held that RAYMOND had not preserved his challenge.

REASONS WHY CERTIORARI SHOULD BE GRANTED

Review Is Warranted Because, Petitioner, in is PETITION FOR REVIEW, raised issues of Constitutional (Due Process) violation and the Supreme Court Of Texas elected not to render any opinion of its own, deferring the case to this Court for final determination.

Petitioner, respectfully, submit that the a decision of the Fourth Court Of Appeals also conflicts with the affirmation of this Court regarding the constitutionality of the WAIVER Due Process Clause. This Court has unequivocally extended due process protection to criminal and civil litigants in that parties to a criminal and/or civil case may not waive the due process rights.

Moreover, because the Majority panel's error is so clear, Petitioner respectfully submit that this Honorable Court may wish to summarily reverse the Forth Court Of Appeal's Decision.

CITE CASE LAW REGADING WAIVER OF CONSTITUTIONAL RGHTS:

Review Is Warranted Because,

CITE CASE LAW REGADING WAIVER OF CONSTITUTIONAL RGHTS:

Review Is Warranted Because,

CITE CASE LAW REGADING WAIVER OF CONSTITUTIONAL RGHTS:

SIX CASE LAWS:

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court issue a writ of certiorari to review the opinion and decision of the Fourth Court Of Appeals.

DATED this 20th day of November, 2018

Respectfully submitted,