

NO.

IN THE SUPREME COURT OF THE UNITED STATES

19-7273

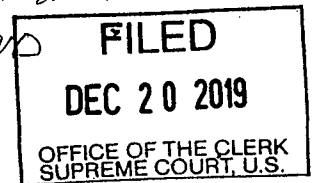
Pablo Rodriguez-Palomino
Petitioner,

v.

State of Illinois,
Respondent.

ORIGINAL

ON PETITION FOR WRIT OF CERTIORARI
TO THE ILLINOIS COURT OF APPEALS SECOND
JUDICIAL DISTRICT



PETITION FOR WRIT OF CERTIORARI

DECEMBER 19, 2019

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Question Presented

Petitioner, Pablo Rodriguez-Palomino, was found guilty of three counts of predatory criminal sexual assault of a child and nine counts of aggravated criminal sexual abuse. The trial court sentenced defendant to life imprisonment for each count of predatory criminal sexual assault and seven years for each count of aggravated criminal sexual abuse. The trial court ordered the sentences for predatory criminal sexual assault to be served consecutively. The trial court ordered the sentences for aggravated criminal sexual abuse to be served consecutively to one another but concurrently with the sentences for predatory criminal sexual assault. On appeal to the Illinois court of appeals second district, petitioner argued that the state failed to prove beyond a reasonable doubt that he was guilty of those crimes.

The Illinois court of appeals affirmed by claiming that the state presented evidence upon which a rational trier of fact could have found the essential elements of the crimes beyond a reasonable doubt.

The question presented is this:

What standard is to be applied by State courts when a defendant claims that the evidence used to convict was insufficient and inadequate when this Court under Winship presupposes an essential of the due process guaranteed by the Fourteenth Amendment that no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof?

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PETITION FOR WRIT OF CERTIORARI

PETITIONER Pablo Rodriguez-Palomino
RESPECTFULLY PETITIONS THIS COURT FOR A WRIT
OF CERTIORARI TO REVIEW THE JUDGMENT OF THE
ILLINOIS COURT OF APPEALS.

OPINIONS BELOW

THE ORDER OF THE ILLINOIS SUPREME COURT DENYING
THE PETITION ~~FOR~~ FOR LEAVE TO APPEAL IS ATTACHED AS
APPENDIX A. THE OPINION OF THE ILLINOIS COURT OF APPEALS
SECOND DISTRICT AFFIRMING THE CONVICTIONS AND DENYING
REHEARING IS PUBLISHED AS PEOPLE V. PABLO RODRIGUEZ-PALOMINO,
2019 IL APP (2d) 160361-B, NO. 2-16-0361 (ILL. CT. APP. APPX
24, 2019), AND ARE ATTACHED AS APPENDIX B.

JURISDICTION

THE ILLINOIS COURT OF APPEALS SECOND DISTRICT
AFFIRMED PETITIONER'S CONVICTIONS ON APRIL 24, 2019.
THE COURT DENIED PETITIONER'S TIMELY PETITION FOR
REHEARING ON MAY 23, 2019, AND THE ILLINOIS SUPREME
COURT DENIED THE PETITION FOR LEAVE TO APPEAL ON
SEPTEMBER 25, 2019. THIS COURT HAS JURISDICTION
PURSUANT TO 28 U.S.C. § 1257(a).

RELEVANT CONSTITUTIONAL PROVISIONS

The Fourteenth Amendment to the United States

CONSTITUTION provides, in relevant part;

No State shall... 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.

STATEMENT OF THE CASE

A jury convicted petitioner of three counts of

Predatory Criminal Sexual Assault of a child and

Nine counts of Aggravated Criminal Sexual Abuse.

Petitioner was sentenced to Natural Life in Prison

for the three counts of Predatory Criminal Sexual

Assault. For each of the Aggravated Criminal Sexual

Abuse counts, the judge entered a seven-year sentence

and ordered that each of the nine sentences run

consecutive to one another, but concurrent with the

life sentence.

There were three alleged victims named in the

indictment, R.A., G.M., and K.S. The events are given

different dates in the indictment based on the victim

alleged: The R.A. counts were alleged to have occurred

between October 11, 2007 and October 19, 2008; G.M.'s

between January 1, 2003 and December 31, 2003; and K.S.'s

between August 24, 2003 and August 23, 2005. (A.9-84). R.A.

told the police that her abuse occurred when she was

nine years old and she was born in 1998.

There were two jury trials in this case, and prior to the first petitioner disclosed that an alibi defense would be presented, showing that petitioner was in Mexico from April 2005 until 2009. (C.94). Four days before trial was to begin, the state disclosed that, when interviewing R.A. in preparation for trial, R.A. stated that she was only six or seven years old when the alleged abuse occurred. (C.96). R.A. allegedly came to the realization that she was not nine when the acts occurred after seeing photos of her prior birthday parties. (C.96).

R.A. recalled the acts occurring around a "BRATZ"-themed birthday party when she had her seventh birthday. (C.96). Because of the timing of the disclosure, the trial judge would not allow the state to amend the indictment to change the date, so the trial date was continued so that the state could seek new charges relating to R.A. (R.143-46). A new indictment reissued the charges relating to R.A., alleging that the incidents occurred sometime between October 11, 2004 and October 10, 2006. (C.101-09).

Petitioner Filed a MOTION To dismiss the indictment, arguing that the new charges violated Petitioner's constitutional and statutory rights to a Speed Trial. (C.114-17). In response, the State argued that the date of the offense was not an essential element and R.A.'s disclosure was unprompted, and therefore not an attempt to subvert the defendant's alibi. (C.119-21). The Trial Court denied Petitioner's MOTION to dismiss the indictment and the case proceeded to the First jury Trial. (C.122).

The First jury Trial resulted in the judge declaring a mistrial. During those deliberation the jurors disclosed that they were split on all counts, with three to five not-guilty opinions depending on the count, and unlikely to come to a unanimous decision. (C.204).

During the Second jury Trial, R.A. testified that she remembered screaming and crying by the front window of the house when her mom was leaving in her car. (R.1260). As she was crying, Petitioner came into the living room, pulled his pants down and exposed his erect penis to R.A. before starting to play with it. (R.1260-61). R.A. ran away scared. (R.1261).

R.A. Testified a second incident with Petitioner occurred in her mother's room, when her mom (T.M.) and her younger brother Junior were also present. (R.1261-62). Junior, who was three or four years old, was playing a video game while sitting on the corner of the bed. (R.1263). Her mother, T.M., was asleep on the bed, laying on her side, while Petitioner was laying in the middle of the bed, watching Junior play the game. (R.1264-65). According to R.A., Petitioner got out of bed and sat on the ground on the side of the bed R.A. was laying on. (R.1266). Petitioner took his pants down to his knees and also pulled R.A.'s pants to her knees. (R.1266-68). Petitioner then put his penis in R.A.'s vagina and started moving back and forth. (R.1269). R.A. was not sure how long it lasted, but she said that her mom stayed asleep the entire time and Junior did not turn to look at them. (R.1268-69).

R.A. Testified a third incident occurred in the same bedroom. (R.1271). R.A. remembered Petitioner asking her to bring him some water, so she got a glass from the kitchen. (R.1271). When she brought the water in the room, Junior was again sitting on the corner of the bed, this time just watching television. (R.1272). R.A. sat in the same spot as she had the previous time. (R.1273). R.A. said that Petitioner proceeded to put his hand inside her pants and touch her vagina, but also said that the touching occurred over her pants. (R.1274). Junior did not turn around at any point and R.A. did not make any sounds. (R.1275).

During a Fourth incident, Pablo again put his pants into R.A.'s vagina while in her mom's bedroom again. (R.1275-76). Junior was again also in the bedroom, in the same spot on the bed, playing the video game, and Petitioner was in the same spot on the bed. (R.1276-77). R.A. sat on the side of the bed, but did not lay down. (R.1277).

According to R.A., Petitioner got off the bed and pulled down both her pants and his, both going to the respective person's knees. (R.1277-78). That Petitioner put his penis in her vagina and moved around, and Junior never turned around to see what was happening. (R.1278-80).

For a Fifth incident, R.A., Petitioner T.M., and Junior were all in the bedroom. (R.1280). R.A. had a soft blanket, Junior was watching television, and T.M. was asleep on her side, facing the wall. (R.1281). R.A. remembered Petitioner reaching under the blanket and touching her vagina. (R.1282). In an effort to distract herself from what was happening, R.A. hummed a made up song. (R.1282-83). R.A. said that her mom did not wake up and her brother did not turn around. (R.1283).

R.A. testified that a sixth incident occurred around the time of a birthday party with a "Bratz" theme. (R.1284). After the party, R.A. once again sat on the corner of the bed while Junior was once again watching television. (R.1285). Again, Junior did not turn around when Petitioner put his hands in R.A.'s pants and touched her vagina. (R.1285-87).

R.A. Then Testified To a Seventh incident, Juvon was again playing the video game when R.A. Came into the room and laid down. (R.1287-88). R.A. Claimed That Petitioner again put his hand in her pants and Touched her vagina. (R.1288-89).

On appeal To The Illinois Court of Appeals Second District, Petitioner Claimed The State Failed To Prove Petitioner guilty beyond a reasonable doubt of the charges relating to R.A., where she believed the events occurred around her Seventh birthday, which was six months after Petitioner left The United States.

The Second District affirmed, stating in part:
"Starting with the assumption that the Party For her Seventh birthday occurred in 2005, defendant argues that R.A.'s Testimony was incorrect because he had moved to Mexico in April 2005. However, there was conflicting Testimony about when defendant moved to Mexico. T.M. Testified That defendant moved in January 2006." People v. Rodriguez, 2019 IL App (2d) at 25.

THE ILLINOIS SUPREME COURT denied Petition For Leave to appeal. Petitioner Appendix A. This Petition Follows.

REASONS FOR GRANTING THE WRIT

THIS COURT should grant Certiorari in this case because Petitioner maintains his claim that he is innocent of each and every count of his convictions and where the ruling of the ILLINOIS COURT OF APPEALS SECOND DISTRICT departed from this COURT'S reasonable doubt standard under *In re Winship*, 397 U.S. 358 (1970), and warrants reversal. The case is well suited for Certiorari review, as Petitioner squarely presented and preserved the CONSTITUTIONAL issue in the STATE COURTS.

I. The ruling of the ILLINOIS COURT OF APPEALS concluded that STATE presented evidence upon which a rational Trier of Fact could have found the essential elements of the crimes beyond a reasonable doubt departs from the *Winship* doctrine.

The Standard of Proof beyond a reasonable doubt "Plays a vital role in the American scheme of criminal procedure," because it operates to give "concrete substance" to the presumption of innocence to ensure against unjust convictions, and to reduce the risk of factual error in a criminal proceeding. *In re Winship*, 397 U.S. at 363.

The opinion of the Court of Appeals overlooked the fact that R.A. specifically indicated at trial that she was seven years old when she had her "BRATZ" birthday party. (R. 1295-98). Yet the court only notes that R.A. was "either six or seven" for the "BRATZ" birthday party. *Rodriguez*, 2019 IL App (2d) at 14; Petitioner App. B. Furthermore, when the court reaches the point that petitioner asserts that R.A.'s revised testimony is still not possible for R.A.'s "BRATZ" birthday party because petitioner was already in Mexico at that point. The court only provides two sentences claiming there was conflicting testimony about when petitioner moved to Mexico, and T.M.'s testimony that petitioner moved in January 2006. *Id.* at 25; Petitioner's App. B.

Petitioner notes that during the First Trial, T.M. testified that the relationship ended in 2005. (R.502-03). This point was included in Petitioner's appeal to the Second District and the Court did not consider it. The conflicting testimony the Court weighs against Petitioner is misplaced. All the conflicting testimony comes from the State's witnesses, not Petitioner. The Second District furthermore overlooked the fact that everyone, including T.M., G.M., and K.S., should have known the time period that they lived with Petitioner or at least a rough approximation of the time frame, and yet, not one of them recognized that the alleged abuse as originally charged could not have happened. Alleging acts from 2003 to 2008. (C.9-24). The Court also did not consider that if it believes the testimony from T.M. that Petitioner left in 2006, then it is a physical impossibility for the acts on G.M. and K.S. as they claimed occurred in January and August 2003. (C.9-24), noting that T.M. testified that she was living with the father of her children until 2004. (C.67-72).

The Fourteenth Amendment provides in part that "no State shall... 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 law." U.S. Const. Amend. XIV. This is an essential constitutional standard that protects an accused against a conviction except on "proof" beyond a reasonable doubt..." *Lego v. Twomey*, 404 U.S. 477, 486-487.

The Winship Doctrine requires more than simply a trial ritual. A doctrine establishing so fundamental a substantive constitutional standard must also require that the fact finder will rationally apply that standard to the facts in evidence. While the second district in the instant case chose only one sentence from T.M. claiming that petitioner moved to Mexico in 2006 and allegedly was only living with petitioner for two years, how can the dates of G.M. and K.S. in 2003 be overlooked? The evidence then clearly does not support convictions for them. The evidence provided by T.M. is that she was living with the father of her children until 2004. (c.67-72).

The question whether a defendant has been convicted upon inadequate evidence is central to the basic question of guilt or innocence. A "reasonable doubt" has often been described as one "based on reason which arises from the evidence or lack of evidence." *Johnson v. Louisiana*, 406 U.S. 356, 360. As petitioner has not shifted from the position of complete innocence and maintains that what the court of appeals notes as conflicting testimony stems from the prosecution's witnesses.

IT IS CONFLICTING TESTIMONY BECAUSE PETITIONER DID NOT COMMIT THESE ACTS AND R.A. NEVER GAVE A CONSISTENT ACCOUNT OF WHEN THE ALLEGED ACTS OCCURRED, FIRST STATING SHE WAS NINE YEARS OLD AND THEN ALLEGING THAT SHE REMEMBERED THE ACTS OCCURRED AROUND HER SEVENTH BIRTHDAY PARTY. PETITIONER HAD MOVED TO MEXICO SIX MONTHS PRIOR TO HER SEVENTH BIRTHDAY.

THE PROSECUTION HAS THE BURDEN OF PERSUADING THE FACT FINDER AT ~~THE~~ THE CONCLUSION OF THE TRIAL OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT. DUE PROCESS COMMANDS THAT NO MAN SHALL LOSE HIS LIBERTY UNLESS THE GOVERNMENT HAS BORNE THE BURDEN OF... CONVINCING THE FACT FINDER OF HIS GUILT. TO THIS END, THE REASONABLE-DOUBT STANDARD IS INDISPENSABLE, FOR IT "IMPRESSES ON THE TRIER OF FACT THE NECESSITY OF REACHING A SUBJECTIVE STATE OF CERTITUDE OF THE FACTS IN ISSUE." *IN RE WINSHIP*, 397 U.S. AT 364. THE EVIDENCE IN THE INSTANT CASE SIMPLY CANNOT FAIRLY BE DEEMED SUFFICIENT TO HAVE ESTABLISHED GUILT BEYOND A REASONABLE DOUBT.

The lack of clear evidence from the witnesses' testimony together with the obvious intention of the State to impair and subvert Petitioner's alibi infected the trial that the resulting convictions violate Petitioner's due process. *Cupp v. Naughten*, 414 U.S. 141, 146 (1973). When Petitioner presented an unimpeachable alibi (R. 143-46), that caused the State to encourage K.A. to review photographs "after her interview." (State's Appellate brief at 26). The fact remains that this occurred only after the State became aware of Petitioner's alibi, almost two years after the initial change. The State's actions shifted the allocation of the burden of proof to Petitioner to re-establish his innocence or produce another alibi. Nevertheless, Petitioner claims that the Illinois Court of Appeals could not reasonably conclude that the State was persuasive to prove beyond a reasonable doubt that Petitioner committed the alleged acts. *Mullaney v. Wilbur*, 421 U.S. 684 (questioning of state law governing the allocation of the burden of production or persuasion).

Because citizenship presupposes an essential of the due process guaranteed by the Fourteenth Amendment to the U.S. Constitution that no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof, this court should grant certiorari, vacate the judgment of the Illinois Court of Appeals, and remand the case for further proceedings.

II. This case is well suited for certiorari review because petitioner squarely presented and preserved the reasonable doubt issue in the Illinois Court of Appeals.

This case is particularly appropriate for certiorari review because the Illinois Court of Appeals departed from this court's citizenship doctrine. Petitioner objected to the court's constitutional error through an application for rehearing, see denial of petition for rehearing, People v. Rodriguez-Palomino, No. 2-16-0361 (May 23, 2019). And then sought discretionary review on the issue in the Illinois Supreme Court, see petition for leave to appeal, People v. Pablo Rodriguez-Palomino, No. 125002 (September 25, 2019).

BOTH COURTS denied the requests, see Petitioner's Appendix A (Order of the Illinois Supreme Court denying Petition For Leave To Appeal); Petitioner's Appendix B (Order of the Illinois Court of Appeals denying rehearing). As a result, the constitutional error is both clear and properly preserved.

Because the Illinois Court of Appeals rejected Petitioner's claim through state procedural rules, their decision necessarily involves state law components. However, the state law rulings are intertwined with and directly undermine Petitioner's Federal rights to due process under citizenship.

CONCLUSION

For the foregoing reasons, Petitioner Rodriguez respectfully requests that this Court grant certiorari, vacate the decision of the Illinois Court of Appeals, and remand this case for further proceedings.

Respectfully Submitted,

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