

No. 19-8771

USCA9 NO. 19-15599

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL RISENHOOVER — PETITIONER
(Your Name)

VS.

WILLIAM MUNIZ, WARDEN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF THE UNITED STATES
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

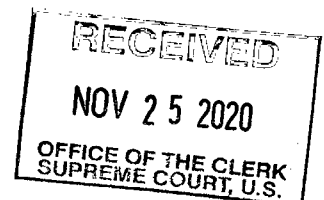
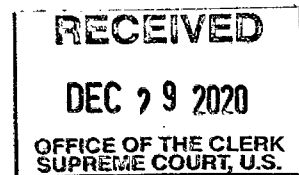
PETITION FOR WRIT OF CERTIORARI

MICHAEL ALLEN RISENHOOVER
(Your Name)

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(Address)

SOLEDAD, CA 93960-1050
(City, State, Zip Code)

N/A
(Phone Number)



IN THE

SUPREME COURT OF THE UNITED STATES

MICHAEL RISENHOVER - PETITIONER
v
WILLAM MUNIZ VARDEN - RESPONDENT

MOTION FOR REHEARING FOR
WRIT OF CERTIORARI

MR. RISENHOVER IN PRO-SE. RESPECTFULLY SUBMITS THE FOLLOWING IN SUPPORT OF HIS MOTION FOR REHEARING ON HIS PETITION FOR A WRIT OF CERTIORARI, WHICH WAS DATE STAMPED BY THIS COURT ON NOV 25, 2020 AND RETURNED TO PETITIONER FOR CORRECTIONS. PETITIONER RECIEVED THE RETURNED PETITION ON DEC 7, 2020.

QUESTIONS PRESENTED

- 1.) A CHILD WHO CLAIMS HER FATHER REPEATEDLY MOLESTED HER OVER A PERIOD OF YEARS, HAS AN IMAGINARY FRIEND WHO THE CHILD IMAGINES HAS BEEN MOLESTED AND THE CHILD BELIEVES THE IMAGINARY FRIEND IS REAL UNTIL THE CHILD IS OVER 10 YEARS OF AGE OR OLDER, CLAIMS TO SEE GHOST AT HOME AND SCHOOL AND IS PLACED ON MENTAL HEALTH MEDICATIONS. IS THAT CHILDS FATHER DENIED HIS DUE PROCESS RIGHT TO PRESENT A DEFENSE (U.S CONST., AMEND XIV) IF THE COURT DOES NOT ALLOW HIM TO PRESENT EXPERT MEDICAL TESTIMONY THAT A CHILD CONTINUING TO HAVE AN IMAGINARY FRIEND AND CLAIMS TO SEE GHOST AND REQUIRES MENTAL HEALTH MEDICATION TO THAT AGE INDICATES THE CHILD IS FANTASIZING ABOUT OTHER THINGS THAT ARE NOT REAL?
- 2.) WAS MR. RISENHOVER OR ANY DEFENDANTS DUE PROCESS RIGHT TO A FAIR TRIAL (U.S CONST., AMEND XIV) COMPROMISED BY THE ADMISSION, IN A TRIAL ON THE CHARGES OF MOLESTING A CHILD, OF EVIDENCE OF LAWFULL SEXUAL CONDUCT BETWEEN A DEFENDANT AND HIS ADULT WIFE THAT IS NOT PROBATIVE ON THE ISSUE OF INTENT OR PLAN TO ENGAGE IN SEXUAL CONDUCT WITH A CHILD?

I.

THE TRIAL COURT DENIED MR. RISENHOOVER HIS DUE PROCESS RIGHT TO A FAIR TRIAL BY EXCLUDING RELEVANT EVIDENCE ABOUT THE PSYCHOLOGICAL MAKEUP OF THE COMPLAINING WITNESS. THE EXCLUDED TESTIMONY AT ISSUE IN THIS CASE RELATED TO THE CHILDS TESTIMONY THAT SHE SAW PEOPLE WHO WERE NOT THERE AND HOW THAT PART OF HER TESTIMONY MAY INDICATE SHE SUFFERS A BIPOLAR OR OTHER MENTAL DISORDER. THE EXCLUDED EVIDENCE AT ISSUE IN THIS CASE WAS CRITICAL TO DEFENDANTS DEFENSE AGAINST THE CHARGES, AS THERE WAS NO EYEWITNESS TO THE ALLEGED CRIMINAL ACTS AND NO PHYSICAL EVIDENCE OF TRAUMA. THE DEFENSE SOUGHT TO ADMITS DR. TERRELL'S OPINION ABOUT RAVEN'S TESTIMONY THAT SHE SAW PEOPLE WHO WERENT THERE AND HOW THAT PART OF HER TESTIMONY MAY INDICATE THAT SHE SUFFERS FROM A BIPOLAR OR OTHER MENTAL DISORDER. THE COURT WOULD NOT ALLOW EXPERT TESTIMONY THAT RAVEN MAY BE SUFFERING FROM SOME KIND OF DISORDER. IF ALLOWED TO TESTIFY DR. TERRELL WOULD HAVE OPINED THAT GIVEN HIS EXPERIENCE AND THE EVIDENCE AT HAND, THAT RAVEN CLAIMS THAT HER FATHER RAPED HER REPEATDLY, WHICH DID NOT MATCH THE PHYSICAL EVIDENCE ARE MUCH MORE LIKELY A PSYCHOTIC MENTAL DISORDER THAN OF REALITY. THE COURT BEGAN IT'S RULING BY STATING "I AM NOT GOING TO ALLOW THE DOCTOR TO RENDER ANY OPINION AS TO BIPOLARITY OR ANY OTHER KIND OF PSYCHIATRIC DISORDER OR PSYCHOSIS AS TO RAVEN. I'M NOT GOING TO ALLOW THAT SUBJECT TO BE BROACHED," THE PROSECUTION ALSO OPENED THE DOOR TO THE DEFENSE EXPERT TESTIMONY BY PRESENTING ITS OWN EXPERT, DR. ANTHONY URQUIZA, WHO TALKED ABOUT A CHILD WHO IS A SUBJECT OF ABUSE DISASSOCIATING FROM REALITY. THE EXCLUSION OF THE DEFENSE EVIDENCE IS PREJUDICIAL GIVEN THE WEAKNESS IN THE

PROSECUTIONS EVIDENCE. THIS IS A CASE OF HE SAID VERSUS SHE SAID GIVEN THAT THERE WERE NO WITNESS TO THE ABUSE INCLUDING RAVEN'S BROTHERS AND SISTER AND NO PHYSICAL EVIDENCE. IN ADDITION AT ONE POINT RAVEN HAD RECANTED HER ACCUSATIONS. GIVEN THE DEFICIENCIES IN THE PROSECUTIONS EVIDENCE, EXCLUDING DR. TERRELLS TESTIMONY WAS NOT HARMLESS BEYOND A REASONABLE DOUBT. DEPRIVING THE DEFENSE OF THIS EVIDENCE IS PREJUDICIAL ERROR.

II.

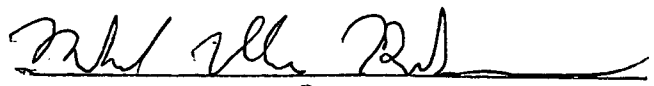
PETITIONERS DUE PROCESS RIGHT TO A FAIR TRIAL (U.S. CONST. AMEND XIV) WAS COMPROMISED BY THE TRIAL COURT DECISION TO ALLOW THE JURORS TO HEAR EVIDENCE OF DEFENDANTS LAWFULL SEXUAL CONDUCT WITH HIS ADULT WIFE. THE EVIDENCE WAS ADMITTED PURSUANT TO EVIDENCE CODE SECTION 1101, SUBD (b) TO SUPPORT THE INFERENCE OF INTENT AND COMMON PLAN OR DESIGN. THE EVIDENCE WAS NOT SUFFICIENTLY PROBATIVE ON THE ISSUE OF DEFENDANTS ALLEGED INTENT OR PLAN TO ENGAGE IN SEXUAL RELATIONS WITH A CHILD. EVIDENCE OF A PERSONS BAD CHARACTER (INCLUDING SPECIFIC INSTANCE OF MISCONDUCT) MAY NOT BE ADMITTED TO PROVE HIS CONDUCT ON A SPECIFIC OCCASION. (EVID, CODE S 1101, SUBD (a)). THE PART OF THE EVIDENCE MR. RISENHOOVER CHALLENGES IS EVIDENCE THAT HE AND HIS WIFE HAD SEXUAL RELATIONS ALMOST EVERY DAY, BUT REFRAINED FROM SEX DURING HER MENSTRUATION, AND THE TESTIMONY THAT HE TOLD A COWORKER THAT HE MASTURBATED INTO HIS WIFES HAIR WHILE SHE WAS ASLEEP. THE INCIDENTS WITH MR. RISENHOOVER'S WIFE WERE NOT CRIMINAL ACTS, AS THE COURT OF APPEAL ACKNOWLEDGED. THE COURT OF APPEAL HOLD THAT EVEN IF THE TRIAL COURT ERRED ANY ERROR WAS HARMLESS, THE COURT

DOES NOT EXPLAIN WHY IT WAS HARMLESS. THE ERROR SHOULD BE REVIEWED UNDER THE FEDERAL STANDARD OF CHAPMAN V. CALIFORNIA BECAUSE THE NATURE OF THE EVIDENCE AT ISSUE COMPROMISES MR. RISENHOOVER'S DUE PROCESS RIGHT TO A FAIR TRIAL BY ALLOWING THE JURY TO USE THE EVIDENCE OF DEFENDANT'S LAWFULL SEXUAL CONDUCT WITH HIS ADULT WIFE TO INFER THAT HE WOULD ENGAGE IN THE SAME TYPE OF CONDUCT WITH HIS DAUGHTER. IF THE JURY FOUND THE EVIDENCE SHOWED PERVERTED CONDUCT WITH ADULTS, IT PREJUDICED DEFENDANT BY SUGGESTING HE IS A SEXUAL DEVIANT. THE JURY WOULD VIEW IT AS EVIDENCE OF HIS BAD CHARACTER. THAT TYPE OF EVIDENCE IS PROHIBITED BY EVIDENCE CODE SECTION 1101, SUBD (a). THEREFORE REVERSAL IS REQUIRED. IT IS REASONABLY PROBABLE THERE WOULD HAVE BEEN AN OUTCOME MORE FAVORABLE TO MR. RISENHOOVER ABSENT THIS EVIDENCE.

CONCLUSION

FOR THE FOREGOING REASONS THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE GRANTED.

RESPECTFULLY SUBMITTED,


DATE 12-9-2020

MICHAEL RISENHOOVER # AN9272
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SALINAS VALLEY STATE PRISON
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