

20-5130

SUPREME COURT OF THE UNITED STATES

ANTONIO LOZANO SOLIS,

Petitioner-Appellant,

v

CHARLES L. RYAN; ATTORNEY
GENERAL FOR THE STATE OF
ARIZONA, CIRCUIT Judges
TALLMAN and NGUYEN.

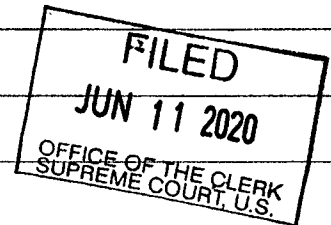
Respondents-Appellees.

C.A. No. 19-15858

D.C. No. 2:18-cv-00988-GMS

ORIGINAL

Writ of Certiorari



QUESTIONS Presented to the COURT

	Page
1. WAS petitioner denied meaning Full access to the court?	7
Legal argument.	8
2. Does Petitioners INEFFECTIVE ASSISTANCE OF COUNSEL claim	10
Require a certificate of Appeal?	
Legal Argument.	11
Jurist of Reason Would Find the district courts ruling debatable.	13
Jurist of reason Would Find it debatable Whether the Petition	
States A Valid claim of the denial of a constitutional right.	16
3 Does the Brady Violation require a Certificate of Appeal.	19
Jurist of Reason Would Find it debatable Whether the Petition	
States a Valid claim of the denial of a constitutional right.	21
Reasonable Jurist Would Find the district courts ruling debatable.	23
4. CONCLUSION	26

TABLE OF CONTENTS.

i TABLE OF CONTENTS.

ii Legal Authorities cases.

iv questions Presented to the Court.

Appendix

Court order denying WRit OF HABEAS corpus. EXHIBIT-M.

Petition for review in the 9TH cir. EXHIBIT-C.

Motion requesting C.O.A. EXHIBIT-A.

Court ruling in the 9TH cir. EXHIBIT-P

Motion to reconsider in the 9TH cir. EXHIBIT-O

Court order denying motion to reconsider 9TH cir. EXHIBIT-U.

Report and recommendation by the magistrate. EXHIBIT-V.

Notice of objection in the district Court. EXHIBIT-Q

The magistrates response to Notice of objection EXHIBIT-R.

Reply to the response by the Magistrate. EXHIBIT-T.

State's court order denying P.C.R. EXHIBIT-Y2

State's court order denying 3rd P.C.R. EXHIBIT-J

CASES LEGAL AUTHORITIES

CASES	Pg.
Hohn V. U.S. 524 U.S. 236, 247, 118 S.Ct. 1969, 141 L.Ed. 2d 242, 256 (1998).	1
Bounds V. Smith 430 U.S. 817 97 S.Ct. 1491 (1977)	8, 9
Strickland V. Wash., 466 U.S. 668, 687 (1984).	11, 14.
Washington V. Tex., 388 U.S. 14, 17-18 (1967).	11, 16
Nunes V. Mueller 350 F.3d 1045 (9Th Cir 2003)	15, 16 25.
Pointer V. Tex., 380 U.S. 400, 403 (1965)	17.
Scales V. U.S. 367, 203 (1961)	18
Dawson V. Delaware 503 U.S. 159, 165, 112 S.Ct. 1093, 117 L.Ed. 2d 309 (1992).	18
U.S. V. Augurs 427 U.S. 97 103-08, 96 S.Ct. 2392, 2397-99, 49 L.Ed. 2d 342 349-52 (1976).	21
U.S. V. Bagley 473 U.S. 667, 678, 105 S.Ct. 3375, 3381-82, 87 L.Ed. 2d 481, 491-92 (1985).	21
Davis V. Alaska 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed. 2d 347 (1974).	22
Slovik V. Yates, 556 F.3d 747 753 (9Th Cir 2009).	22
Banks V. Dretke 540 U.S. 668, 675 (2004)	23
Taylor V. Maddox 366, 992 1000-01 (9Th Cir 2004)	23
Boag V. MacDougall 454 U.S. 364, 70 L.ed. 2d 551, 102 S.Ct. 700 (1982).	9

CONSTITUTIONAL PROVISIONS.

CONST.

Page

SIXTH Amendment

.11 .16 .17 18

Fourteenth Amendment

14 .16 .18 .21

Compulsory Process

16 .18

Confrontation clause

17 .18 .22

Fifth Amendment.

21

APPENDIX

EXHIBIT-A Copy of Motion requesting C.O.A.
EXHIBIT-B Copy of A.D.O.C. Legal material.
EXHIBIT-C Copy of petition for review in the 9th Cir.
EXHIBIT-D Letter to the clerk of the court of the 9th Cir.
EXHIBIT-E District Court order of CIVIL ACTION.
EXHIBIT-F Motion requesting Counsel.
EXHIBIT-G Juan A. Villa's Affidavit.
EXHIBIT-H Maria A Galvez Affidavit.
EXHIBIT-I Trial transcripts of 2-28-2005
EXHIBIT-J Minute Entry of 6-14-2016 Denying P.C.R.
EXHIBIT-K Sentencing transcript 5-31-2005.
EXHIBIT-L Officer SAKALAS Police Report
EXHIBIT-M Court order denying Habeas Corpus.
EXHIBIT-N Reporters Transcripts of 10-2-2014 Hearing
EXHIBIT-O Motion to reconsider in the 9th Cir.
EXHIBIT-P Court ruling in the 9th Cir Denying C.O.A.
EXHIBIT-Q Notice of objection in the district court.
EXHIBIT-T Reply to the Magistrates response.
EXHIBIT-R The magistrates response to Notice of objection.
EXHIBIT-S Copy of Informal Complaint to A.D.O.C.
EXHIBIT-U Court order denying motion to reconsider 9th Cir.
EXHIBIT-V Report and Recommendation by the Magistrate.
EXHIBIT-W Trial transcripts 2-23-2005.
EXHIBIT-X Officer Bryants Police report.
EXHIBIT-Y Jury request for protection of Acuna.
EXHIBIT-Y1 P.C.R. Petition
EXHIBIT-Y2 M.E. Denying P.C.R.
EXHIBIT-Y3 Subpoena For Acuna
EXHIBIT-Y4 Copy of State Bar Complaint.
EXHIBIT-Y5 AZ Court of Appeal Decision
EXHIBIT-Y6 Acc. sanctions of Krouser for securities violation.

JURISDICTION

1

Petitioner was denied his request for a Certificate of Appeal in the District Court of AZ. and in the 9th Circuit of App. The Supreme Court has held that it has Jurisdiction to hear such appeals See Hohn v. United States, 524 U.S. 236, 247, 118 S.Ct. 1909, 141 L.Ed.2d 242, 250 (1998), see Section 2254.

INTRODUCTION

Petitioner ANTONIO LOZANO SOLIS was arrested with co-defendant Juan Avilla on 5.25.2004 Jorge A. Acuna claimed to be walking when LOZANO while passenger in a white truck yelled you can't run this time. Acuna ran to his friend's house the truck followed, LOZANO stepped out of the truck stating you got guns we got guns then pointed a black revolver at his chest. Acuna then ran in the house. While Acuna told this version to the first responding officer Bryant, Acuna seen the truck drive by and told the officers which gave chase. Acuna was then interviewed by officer Sakalas Acuna claimed to be walking when a white truck approached and a passenger stated you got guns showed Acuna a gun Acuna stated no walked away. Acuna also claimed that he was approached by LOZANO day's prior and that LOZANO identified himself as a gang member. LOZANO and Villa were arrested after a short pursuit officer Bryant claimed to have seen something being thrown out of the truck a long tube like object believed to be the gun the officers looked for a gun but found nothing LOZANO was charged with Agg-

Assault With a deadly Weapon a class 3 dangerous felony villa was charged with aggravated assault and unlawful flight while villa and LOZANO were being transported to the county Jail, LOZANO still drunk while being taunted by the officers began to kick the back of the patrol car while on the highway. LOZANO was charged with Attempted Escape. six months after being indicted the state raised a A.R.S 13-604.T. Gang allegation Promoting a criminal street gang by criminal acts. The state gave notice of it's Expert Witness Gang Expert PHX. P.D. Det. Clint Davis Expert Witness. The court Appointed Gary Beren as Defense Attorney. Prior to trial LOZANO asked Beren if he could go interview Robert Franco a 15 year old, 15 year old ACUNA had been bullying. LOZANO explained that this was not gang related and that LOZANO only confronted ACUNA verbally and did not have a gun that the neighbors at the scene witnessed LOZANO only had a beer bottle in hand one neighbor MARIA A. GALVEZ, and that co-defendant villa was willing to testify in LOZANO's defense, Beren's response that no one in a Mexican neighborhood would speak to him thinking he's a cop. LOZANO provided all the names and addresses and phone numbers of the witnesses that would support his defense. Prior to trial Beren visited LOZANO and claimed to have interviewed all witnesses except 1 a officer. Beren assured LOZANO Prior to trial that the court would preclude the gang allegation because it was too prejudicial, days Prior to trial villa mysteriously severed from trial. During trial the court did not preclude the A.R.S 13-604.T. gang allegation. on 2-23-2005 ACUNA testified that

He was in fear for his life. When LOZANO pointed a black revolver at his chest

ACUNA denied talking to OFFICER SAKALAS. The state presented the transporting officers

that claimed LOZANO try'd to escape by trying to push out the back windshield and

presented a picture of the windshield with two shoe prints. The state then presented

Gang Expert Clint Davis¹ that testified that this was a classical gang confrontation.

No defense witnesses were presented. Trial counsel claimed he could not find Galvez

and that Villas testimony could hurt our case. The jury found LOZANO guilty

on both charges after 30 minutes of deliberations asked the court to provide

protection to ACUNA. On 5-31-2005 LOZANO was sentenced to 12 years for Aggravated

Assault 3 years for the gang enhancement 2 years for the 2nd degree escape.

Prior to being sentenced LOZANO pleaded his innocence to the judge stating in

a letter read by Beren this was not a gang related incident that there was no gun

involved and that LOZANO only verbally confronted ACUNA for bullieing LOZANO's younger

friend's younger brother Robert Franco. Exhibit K at 27.1-9

1. Davis also testified that he knew LOZANO through casual contact and had observed

LOZANO at several documented gang members house houses during surveillance, Exhibit I at

401.3-10. While trial counsel objected to this not being disclosed and not having a opportunity

to interview the gang expert the court scolded Beren, at 408 9-10.

On Direct Appeal the AZ CT of App. Affirmed the conviction, LOZANO filed his first P.C.R. on I.A.C.; (1) Failure to interview the gang expert; (2) Failure to interview the witnesses to support his defense; (3) Failure to call witnesses to trial to support his defense; (4) Failure to present important evidence at trial; and (5) Failure to prepare and familiarize himself for trial. The P.C.R. was denied on 3-27-2009. The AZ CT of App denied review denied relief. On 3-22-2010 LOZANO filed his 3rd P.C.R. based on ACUNA's recant while he was in prison sending a letter to LOZANO that was in county jail, ACUNA claimed that he was threatened and coerced by the state and gang expert. The P.C.R. was denied, on 12-13-2013 the AZ CT of App granted petition for review, remanded, State of AZ v. LOZANO-SOLIS No. 1 CA-CR 12-0003 PRPC. On remand ACUNA back in jail on a Capitol offense recanted on 10-2-2014 testified during a Evidentiary hearing that he was pressured to lie to the trial jury and testified that he was on probation and that he told the prosecutor that he was not sure if LOZANO had a gun that he also told the gang expert. The P.C.R. Judge denied relief on 6-14-2016 The AZ CT of App granted review denied relief. On 5-22-2017 LOZANO filed his 4th P.C.R. after finding Villa's court records in the P.C.R. Attorney's file that included the copy of the P.C.R. Counsel's private investigator's file that included sentencing records of Villa a sentencing memo that stated the judge helped convince the prosecutor to offer a plea to Villa the prosecutor agreed if Villa severed from LOZANO's case and did not testify in LOZANO's defense. The P.C.R. Judge barred the claim stating the

violation was not newly discovered. The AZ CT of App granted review denied relief, on both petitions for review State of AZ v. LOZANO SOLIS NO.1 CA-CR16-0477 PR PC. and NO.1 CA-CR17-0472 PR PC.. LOZANO then filed his Federal Writ of habeas corpus on 3-29-2018 Ground (1) I.A.C.; Ground (6) Denial of a fair hearing. Ground (7) suppression of evidence Brady violation. Ground (8) Brady violation denial of a fair trial. Ground (9) Judicial bias. Ground (10) due Process violation. Ground (11) due Process violation VAVAGES claim. Ground (12) Actual innocence. Ground 2, 3, 4, 5 were unexhausted claims the magistrate recommended on 9-24-2018 that LOZANO'S claims are unexhausted but procedurally defaulted barred or fail on the merits recommending petition be denied and dismissed with prejudice. See Exhibit V. LOZANO filed his Notice of objection on 10-9-2018 See Exhibit A. The magistrate issued a response to the objections on 11-20-2018. See Exhibit R. LOZANO reply'd¹ on 11-29-2018 attaching supporting Affidavits of Villa and Galvez and Villa's Sentencing records. The district court on 4-9-2019 ordered adopting the report and recommendation Denying the Writ of habeas corpus denying C.O.A. and denying the motion to appoint counsel, See Exhibit M.

¹ See Exhibit T. Lozano's Reply to response by the Magistrate.

on 4-23-2019 LOZANO Filed his NOTICE OF Appeal in the 9TH Cir. CT OF APP. CASE 19-15858

on 6-14-2019 LOZANO Filed his Petition for review raising (1) Did the District Judge over look

the Petitioners objections Where Petitioner pointed out the Supporting evidence for

The I.A.C. Claim that the magistrate over looked in Ground 1 OF habeas corpus. and (2)

Did the District CT Judge Abuse discretion When it over looked Petitioner's objections

that clearly pointed out the Magistrate overlooked the facts that evidence was presented

: Showing unreasonable Determination of Facts and evidence and that the claim

needed development in Ground 7 of the habeas corpus. (3) was Petitioners due process claim

Procedurally defaulted and did the district court Judge Abuse discretion in over looking

the Constitutional violation in ground 11, OF the Habeas Corpus... on 9-5-2019 Petitioner

submitted a belated motion requesting a C.O.A. on (1) I.A.C. Claim and Ground (7)

Suppression of Brady violation. Ground (11) due process violation vaveges claim. See

Exhibit-A: copy of motion, and Exhibit-P: copy of the 9TH Cir CT 12-19-2019 denial of

request for C.O.A. Citing Appellant has not shown that Jurist of Reason would find

it debatable Weather the Petition states a valid Claim of the denial of a

Constitutional right and that Jurist of Reason would find it debatable Weather the

district court was correct in its procedural ruling. on 1-7-2020 LOZANO Filed a belated

motion to reconsider that was late See Exhibit-O. The court of APP 9TH Cir denied the

motion See Exhibit-U: court ruling dated 2-12-2020.

Was Petitioner denied
meaningfull Access to the Court?

7

Petitioner is housed segregated in a level 5 MAXIMUM Security Prison and has no

Law library in the unit or in all A.D.O.C. The Browning Unit resource center offers the rules of

the Courts, LOZANO use's and rents out the material to properly appeal his case (see-

-Exhibit-B Legal material available to LOZANO. The legal material do not show a format on

how to prepare a important motion such as a Motion Requesting a C.O.A...

LOZANO only learned that He had to file this motion after another inmate told Lozano

that He had to file the motion. LOZANO unaware Presented the question in his Petition

for review (see Exhibit-C pg-14)... LOZANO wrote to the Clerk of the CT, asking if He had filed

the Petition correctly. See Exhibit-D. Soon after LOZANO Filed the motion requesting

C.O.A. see Exhibit-A. This Was denied, see Exhibit-P. LOZANO then requested the rules for

the 9th Cir. CT, that Was not delivered leaving LOZANO Without the Knowledge of the

right to file a motion to reconsider. When LOZANO Finally recieved the rules He filed a motion

to reconsider, see Exhibit-Q. the copy of the Complaint that Was returned unprocessed due to

the date being Wrong Filed on January and accidentally Putting a 2 for February. LOZANO Explained

in the motion to reconsider Why the motion Was day's late see Exhibit-Q page 5 at 22.

LOZANO has requested assistance of counsel and has had his motions denied see Exhibit-F.

copy of motion For Assistance of Counsel. LOZANO is a indigent inmate and can not

buy Law books. While LOZANO Knows how to prepare a petition He is lost in the manner

of the main Ingredients on how to prepare a motion requesting a C.O.A...

LEGAL ARGUMENT

8

LOZANO Filed his motion requesting a C.O.A. after filing his Petition for review in the 9TH CIR. CT OF APP. When LOZANO Was told by a inmate that He had to file a motion requesting a C.O.A. there For quickly filing a motion LOZANO is unfamiliar With and ill equiped to Prepare. (See Exhibit-B: Browning Resource Center legal material) That has no material on how to Prepare a motion For C.O.A. Denying Petitioner Meaningfull access to the courts see Bounds V. Smith 430 U.S. 817 97 S.Ct. 1491 (1977). one Judge in the U.S. District Court of AZ recognized the impact left after A.D.O.C took away the law library (See Exhibit-E: court order pg.4 at 10-26 pg.5 at 25-27.. Lozano is a indigent inmate that can not afford to buy law books, or hire counsel.

The 9TH CIR. CT. denied the motion requesting C.O.A. on 12-20-2019. See Exhibit-P... Petitioner then requested the rules of the 9TH CIR CT OF App. from the resource center on 12-22-2019.

LOZANO again Was denied meaningfull access to the court violating Bounds V. Smith when the request Was not processed LOZANO Was given the request from the week prior see Exhibit-S. copy of informal complaint that Was filed on 1-5-2020 but returned unprocessed due to LOZANO

Putting the Wrong date 2-5-2020. LOZANO recieved the rules on 1-2-2020 filed a belated motion to reconsider see Exhibit-O. dated 1-7-2020 6 day's late, on Page 5 of Exhibit-O.

LOZANO Explains his cause for failure to timely file the motion pg 5 at 22-27 and submitted a declaration to support his cause. The motion Was denied on 2-12-2020

See Exhibit-U. The court order states See 9TH CIR R. 27-10.

CONCLUSION

9

Had the legal material requested by LOZANO been provided by the Browning Resource Center, LOZANO's motion to reconsider would have been filed on time not 6 days late.

LOZANO requested assistance of counsel see Exhibit F at 4 explaining that the public defender had been monitoring the case but could not represent Petitioner

unless the court ordered without assistance of counsel and without a law

library and without access to legal material rules of the court LOZANO WAS left with

out meaningful access to the courts. He cannot find the information on how to

prepare certain motions and research the case law to support an argument and was

left wondering what to do next while his time to file a motion to reconsider

ran out. Violating Bounds v. Smith 430 U.S. 817, 828, 97 S.Ct. 1498, 52 L.Ed. 2d 72, 83 (1977).

It is therefore for Petitioner ask this court to excuse any errors Petitioner has

made attempting to obtain the C.O.A. See Boag v. MacDougall 454 U.S. 364, 70 L.Ed. 2d

551, 102 S.Ct. 700 (1982).

Petitioners Attorney GARY Beren Failed to Subpoena Maria A. GALVEZ Co-defendant Juan a. Villa, Robert Franco to trial to support LOZANO's defense. Prior to trial LOZANO Explained to Beren that He did not have a gun only a beer bottle in hand, that the neighbors seen that, and this WAS not gang related, That the alleged Victim ACUNA had been bullieing France so LOZANO Confronted him, and that Villa Was going to testify in LOZANO's defense. to all of this. Prior to trial Beren visited LOZANO, Petitioner asked him if he had interviewed all the Witnesses to support the defense Beren stated all except 1 of the officers. Villa misteriously severed day's before trial, during trial Beren did not call none of the Witnesses. When LOZANO asked Beren Why he did not call GALVEZ He claimed she did not answer her phone, and that He could not find Franco and that Villa could hurt our case. GALVEZ Was a important witness she Witnessed the alleged offense and that LOZANO did not have a gun only a beer bottle in hand. see Exhibit E.

Villa Was a important witness Villa Claimed LOZANO did not have a gun only a beer bottle in hand. Villa also Witnessed LOZANO not trying to escape While being transported to Jail. see Exhibit G. The officer that Beren did not interview prior to trial Was gang expert Clint Davis of the PHX P.D. Prior to trial Beren claimed the Gang Allegation Would be Precluded because this Was to PreJudicial. The Judge did not Preclude the gang allegation and Beren Was unprepared When the expert Claimed to have seen LOZANO at known documented gang members houses. see Exhibit I at 401:3-25, at 421:17-25.

Legal Argument

11

The SIXTH Amendment provides that in all Criminal prosecutions the accused shall enjoy the right... to have compulsory PROCESS for obtaining witnesses in his favor U.S. const, Amend. VI. This right is held applicable to the states through the 14th Amend, see Washington v. Tex., 388 U.S. 14, 17-18 (1967).

The SIXTH Amend, right also guarantees the assistance of counsel in Criminal Prosecutions, Strickland v. Wash., 466 U.S. 668, 687 (1984) Claims of ineffective assistance of counsel must show that counsels performance was deficient and errors prejudiced the defense to the extent that Petitioner was deprived of a fair trial.

GALVEZ testimony was valuable and exculpatory GALVEZ was in her front yard, witnessed the incident, Her testimony would have shown the jury (1) LOZANO did not point a gun at ACUNA, nor threaten ACUNA. (2) Persuaded the jury to believe that LOZANO did not have a gun in hand only a beer bottle, see EXHIBIT-H: Affidavit of Galvez.

VILLA's testimony could have shown the jury (1) LOZANO did not have a gun the night of the alleged offense (2) LOZANO did not point a gun at ACUNA. (3) That this was not a gang motivated nor related incident. (4) That LOZANO was not trying to escape while kicking the inside of the patrol car, see EXHIBIT-G: Affidavit of Villa.

While villa was a co-defendant his testimony was more credible than ACUNA He was on probation and had a criminal record which was discovered after trial, trial counsel failed to investigate prior to trial see EXHIBIT-J: pg. 3. While the state presented ACUNA

as a law abiding teen that went to school see Exhibit W. T.T. 2-23-2005 pg 118, 119, 120,

Robert Franco could have testified that Acuna was the one bullying him with his friends.

See Exhibit K at 27.3-18. Beren knew it was Acuna targeting Franco and did nothing to show

the jury this fact, instead let the gang expert convince the jury that Lozano a 20 year

old was targeting 15 year old Acuna for walking through the alleged gang neighborhood

the Phx. pd. det claimed to personally know Lozano and witnessed Lozano with other documented

gang members Exhibit I at 420-423, and testifying that this was a classical gang motivated

case see Exhibit I at 459, 44-20. While Beren was unprepared and the trial judge made it

clear to trial counsel Exhibit I at 404-426.

"PREJUDICE." LOZANO was left without a defense and without any witnesses to support a defense

leaving trial counsel to use pure argument that officers and Acuna's testimony were

inconsistent. The witnesses Galvez, Villa and Franco could have convinced the jury that

Lozano was not guilty or raised a reasonable doubt, but trial counsel failed to subpoena

these witnesses, causing the jury to believe Lozano targeted Acuna for walking through a

gang neighborhood and being targeted for not being a member. See Exhibit I. T.T. 2-23-2005

at 451-452 and Exhibit Y. JURY request for protection for Acuna from gang retaliation.

Strickland 466 U.S. at 690 (The court must determine whether in light of all the circumstances

the identified acts or omissions were outside the wide range of professionally competent

assistance. Villa, Galvez and Franco could have testified this was not gang motivated.

The Jurist Would Find the district courts ruling debatable due to the court being

Wrong in (A) Failure to call witness Maria Galvez and Robert Franco. The district court states

there is no evidence¹ that Solis requested his counsel to call these witnesses, and

more importantly there is no evidence that Galvez or Franco would have testified to

any thing favorable to Solis, See Exhibit M at 5, 16-18. While Lozano did explain to trial

counsel and later to the court during sentencing that Franco was being targeted by

Acuna, trial counsel read the letter to the Judge See Exhibit K at 26, 19-25. Counsel reads

the letter mentioning Robert Franco at 27, 1-24. Beren was aware of Franco being a critical

witness for the defense, along with Galvez the last name unknown² at the time see

Exhibit Y1 Petition for P.C.R. front page requesting a evidentiary hearing to present the witnesses.

GALVEZ testimony was favorable See Exhibit H Affidavit stating LOZANO's hands were

visible at all times and there was no guns or weapons involved. Galvez testimony is favorable

Galvez witnessed the alleged offense, Lozano also requested prior to a evidentiary hearing

to subpoena the witnesses. Lozano raised the problem during his 3rd P.C.A Exhibit N at 9, 5-13

, 24-25, at 10, 5-25, at 11, 1-25. LOZANO expressed to the court that He was not getting a

full fair evidentiary hearing, at 10, 5-25, and at 11, 1-25.

(B) Failure to call Co-defendant. The District Court also stated that Solis does not point to

1. See Exhibit Y4 at 4, 1-3. Lozano Filed a complaint against Beren for not subpoena witnesses.

2. See Exhibit Y1 at 4, 9-10 Maria LNU.

any evidence that would suggest that his co-defendant would have testified favorably

See Exhibit M at 6.2-3.

The District Court is wrong Lozano submitted Villa's affidavit

along with GALVEZ Affidavit in Doc 29 (see Exhibit T at 2.1-7. Exhibit 1 and 2) This reply

to the magistrate's response to Notice of objection, stated that Villa and Galvez were willing

to testify and had favorable testimony but the Judge overlooked the evidence.

Lozano also cited that the P.C.R. Court did not hold a evidentiary hearing and only

assumed Villa would Plead the 5th (see Exhibit Q at 4.24-28 and at 5.1-8. Notice of objection)

and court order dated 3-27-09 denying P.C.R. Exhibit YZ at 5.2 through page 6.1-3rd

Paragraph. The P.C.R. Counsel requested a Evidentiary hearing to Present these Witnesses

testimony see Exhibit Y1 at 1.12 and at 6.11-13.

Lozano Continued to try to get these Witnesses to testify or be Subpoena see Exhibit N at 9.5-13.

and at 10.5-25. and at 11.1-25. Lozano attempting to offer the testimony for his P.C.R.

Actual innocence claim where Acuna recanted but P.C.R. Counsel refused to Subpoena Witnesses.

VILLA was willing to testify that Lozano did not have a gun and that Lozano

only had a beer bottle in hand that Lozano did not try to escape, that He

would have testified on Lozano's behalf if Notified see Exhibit G. See also

Strickland v. Wash. 466 U.S. 668-687 (1984) claims of I.A.C. must show that Counsel's Performance

was deficient, errors prejudiced the defense to the extent Petitioner was denied a fair trial.

Nunes v. Mueller 350 F.3d 1045 (9th Cir. 2003) Finding that the state courts factual findings were

unreasonable when the court made the findings without holding an evidentiary hearing.

Villa's testimony was so favorable that he was offered a plea bargain to sever and

not testify in LOZANO's behalf. (See Exhibit T at 2.22-24) (See Exhibit Y2 M.E. 3-29-09 at 1.13-14,

The court suspended sentence for villa and placed him on probation.

C. FAILURE TO INTERVIEW GANG EXPERT. The District Ct. Judge cited in Exhibit M at 5.3-12. that

Post conviction court determined that Solis counsel was adequately prepared to cross examine

Davis because he had previously questioned him in an evidentiary hearing.

The court is wrong see Exhibit I at 402.24-25 Beren claims he had no disclosure of any thing

that Det. Davis wants to tell the jury about the other interactions. Beren explained at 405.20-25

raising all the testimony the counsel wanted out. at 406.3-14. Beren states the difference about

testifying about gangs and undocumented interactions. at 408.2-6 Beren explains he has no way

to cross examine Davis. He can't verify what has been undisclosed to him. 7-8 The court states

that's why you should have interviewed him and found out what he has to say. at 410.1-25. The Ct.

accuses Beren of sand bagging see 410.12-13. at 414.4-11 Beren explains 4 contacts at some gang members

house doesn't come out on the stand on the 23rd. 12-18 The court states it did not know any thing

about the case until it was suggested by case transfer it seems any case taken out of case

transfer is not a very clean case. at 416.12-17 The court states Beren knew what Davis was

going to talk about. at 421.17-20 Beren explains foundation he can not affirm or deny. See Exhibit Q.

"JURIST OF REASON WOULD FIND IT DEBATABLE WHETHER THE PETITION
STATES A VALID CLAIM OF THE DENIAL OF A CONSTITUTIONAL RIGHT." 16

Notice of objection at 1-4. and Nunes v. Mueller 350 F.3d 1045 (9th Cir 2003) finding that the state courts factual findings were unreasonable when the court made the findings without holding an evidentiary hearing. The experts testimony was so damaging that the jury asked for protection for Acuna from gang retaliation see Exhibit Y. While the P.C.R Judge claims in Exhibit Y2 at 5.8-9. trial counsel was able to cross examine Davis effectively while trial counsel stated otherwise see Exhibit I at 408.2-6. Belen states he has no way to cross examine Davis. The trial judge states that's why you should have interviewed him and found out what he had to say at 408.7-8.

THE SIXTH AMENDMENT provides that in all criminal prosecutions the accused shall enjoy the right to have COMPULSORY PROCESS for obtaining witnesses in his favor U.S. Const Amend. VI This right is held applicable to the states through the 14th Amendment see Washington v. Tex., 388 U.S. 14 17-18 (1967)

Lozano was denied this right when counsel failed to subpoena Villa to testify that Lozano did not have a gun but only a beer bottle in hand that this was not a gang related incident and that Lozano did not try to escape see Exhibit G. While Galvez could have corroborated Villa's testimony during trial this did not happen because trial counsel failed to subpoena her as well while Galvez lived next door to the alleged scene of the alleged crime witnessed Lozano not do what Acuna claimed see Exhibit H violating Lozano's right to compulsory

Process. Robert Franco could have testified that Acuna was the one targeting him

See Exhibit K at 27. Lozano explains Robert was the one being targeted by Acuna. Franco's

testimony could have raised doubt into that state's gang allegation. See Exhibit I at

448.22-25 and at 449.1-9. alleging Lozano targeted Acuna for walking through the gang turf.

Beren's failure to subpoena Franco for trial denied Lozano the right to compulsory process

THE SIXTH AMENDMENT provides in pertinent part that "in all criminal prosecutions the

accused shall enjoy the right... to be confronted with the witnesses against him."

U.S. CONST. amend. VI. This right extends to state prosecutions through the due

process clause of the 14th Amendment. See Pointer v. Tex., 380 U.S. 400, 403 (1965).

The failure to interview the gang expert deprived Lozano of his right to confrontation

Lozano did not know Davis and had no knowledge Davis was going to claim to know

him or to prove Davis was lying of about 4 undocumented interactions. See Exhibit I:

at 408.2-6 Beren states he has no way to cross examine. 7-8 The court responds that's

why you should have interviewed him. at 439.6-13 Davis testifies he knows Lozano

at 477.5-25 Davis testifies to witnessing Lozano with gang members at 452.8-16 The

prosecution asks what about committing a crime and getting away with it is it

significant the defendant is in a car that leads officers on a chase

at 12. it means he is willing to go the distance. Lozano was denied his right

to Compulsory Process because Villa was the only one that could testify and say

Why He led officers on a chase, and beren failed to subpoena him. see Exhibit G...

at 437.6-9 Prosecutor asks about gaining respect the expert responds providing

for the gang and comiting crimes. at 455.15-25. Davis testifies witnesses are afraid

of retaliation at 456.1-5. testifies that people that testify are likely to be killed.

The jury believed the gang expert. and LOZANO suffered Prejudice (see Exhibit Y. the

Jury's request for protection for Acuna from Retaliation). Lozano was denied his right

to confrontation and compulsory Process guaranteed by the 6th Amend. see SCALES V.

U.S. 367.203 (1961). When evidence of gang membership has no relevance to the

issue being in the proceeding e.g. no evidence tying the group to the commission of

the underlying crime admitting evidence violates a defendants First and 14th

Amendment rights. See Dawson V. Delaware 503 U.S. 159-165. 112 Sct 1093. 117 LEd. 2d 309 (1992).

Acuna claimed that day's prior to the alleged offense Lozano approached him

identifying himself as a gang member see Exhibit I. at 448.22-25. and at 449.1-9.

While this was all false and Acuna later recanted on 10-2-2014 see Exhibit N. at 25.15-25.

at 42.14-24. to not only being pressured by the prosecutor to testify falsely but also by

the gang expert Det Clint Davis. A reasonable Jurist would find the district courts

ruling debatable and find it debatable whether the petition states a valid claim of denial

of Constitutional right, violating Confrontation clause and compulsory Process.

DOES the BRADY VIOLATION REQUIRE C.O.A

19

15 year old ACUNA WAS contacted on 5-25-2004 by officer Bryant see Exhibit X. ACUNA claimed

LOZANO had chased him to his friends house on Fairmount st. and that LOZANO had

got of the truck stating We got guns you got guns pointing a revolver at him. ACUNA

was also contacted by officer SAKALAS. ACUNA changed his story claiming He had been

Walking on 64th Ave and was approached by 3 males in a pick up truck and was

told Do you got guns? We got guns." Jorge said one of the males showed him a black

Revolver, Jorge told them no Walked away. see Exhibit L: Sakalas Police report.

During trial Jorge testified that LOZANO stated We got guns you got guns then pointed

a revolver at him. see Exhibit W: at 127.4-25. When ACUNA is asked if He recalls telling

officers seeing the gun on 64th Drive ACUNA responds No. at 143.3-5. When asked if He

recalls speaking to 2 officers ACUNA does not recall at 147.6-14. ACUNA is asked again

if it is possible He spoke to 2 officers ACUNA answers No. at 148.1-8. The Prosecutor

asks ACUNA is there any question in your mind that He had a gun in his hand

ACUNA states No. is there any question it was pointed in your direction ACUNA states

No. at 154.3-14. Around March 2010 ACUNA sent LOZANO a letter stating He was threatened

and coerced by the Prosecutor and gang expert. and that some one had used his I.D.

during the night of the alleged offense that he was not there. on 10-2-2014

ACUNA testified that he told the prosecutor that He was not sure LOZANO Had a gun

Exhibit N: at 25.5-25. and that He was pressured by the gang expert Davis at 42.7-24.

Acuna also testified that He lied to LOZANO in the letter stating not being at the scene the night of the alleged offense. at 50.2-15 at 51.8-14.

Acuna admit's to Lying to the Jury at 59.16-25. at 60.15-22. at 61.5-16.

Acuna testified that he was on probation and had stoped going to school

at 25.22-23. The Judge disclosed Acuna's Juvenile Record on 6-14-2016

See Exhibit J. at 3. Acuna's record Was not disclosed during trial, Acuna Was

Presented as a teenager that Went to highschool See Exhibit W. at 120

.1-11. The P.C.R. Judge found Acuna's testimony totally untruthfull See Exhibit

J. and the District Court order Exhibit M. at 6.4-22. (2) Acuna's testimony

Was equivocal at best. (3). Solis contacted the victim first. (4) Acuna did not

recall many details of the event (5) Acuna told police at the scene

Solis pointed a weapon at him, The District court also cited Petitioner

does not point to additional evidence that could show the P.C.R. court

Was unreasonable. see Exhibit M. at 6.19-22.

"Jurist of Reason Would Find It Debatable Whether the Petition States" 21
a Valid Claim of the Denial of a Constitutional Right.

The 5th and 14th Amend requires the government to disclose specific types of evidence to defendants. Acuna testified that (1) He was pressured by the prosecutor and gang expert to lie and say he was 100 percent sure Lozano had a gun. See

Exhibit N at 5-25. and at 29.7-23. at 42.10-24. Acuna testified that he lied to the

Jury because the prosecutor told him to after Acuna stated did not want to testify

because he was not sure Lozano had a gun. See Exhibit N at 61.2-16. Violating

U.S. v. Aguirs 427 U.S. 97 103-08, 96 S.Ct. 2392, 2397-99, 49 L.Ed. 2d 342 349-52 (1976)

Finding that there are 3 situations in which a brady claim might arise. (1) Where

new evidence revealed that the prosecution introduced trial testimony that it should

have known was false. (2) Where the prosecutor failed to obey a defense request for

specific exculpatory evidence (evidence that helps to prove defendants innocence);

and (3) Where the prosecutor failed to volunteer exculpatory evidence that was

never requested, and noting the existence of a duty on the part of the government

in this last situation when suppression of evidence would be of sufficient significance

to result in the denial of the defendant's right to a fair trial. See U.S. v. Bagley 473

U.S. 667. 678, 105 S.Ct. 3375, 3381-82, 87 L.Ed. 2d 481, 491-92 (1985).

The prosecutor knew the testimony was false because Acuna first told officer Bryant

that Lozano chased him to his friends house got out of the truck pointed a gun at him. See

Exhibit X. Second Acuna told a second officer a different story that he was asked if

he had guns was shown a gun responded no and walked away see Exhibit L. During trial already coerced ACUNA denied speaking to 2 officers see Exhibit W at 147.10-14 and at 148.1-9. also while ACUNA recanted testifying that he told the prosecutor he was not sure if LOZANO had a gun see Exhibit N at 25.5-25. and during trial the last question the prosecutor asked ACUNA is there any question in your mind that he had a gun in his hand? No. see Exhibit W at 154.9-14.

Also ACUNA was on probation as he testified see Exhibit N at 25.5-25. and see Exhibit J at 3.

The prosecutor failed to disclose this evidence violating Davis v. Alaska 415 U.S. 308 94

S.Ct. 1105.39 L.Ed.2d 347 (1974). This evidence of probation could have been used to show

the jury why ACUNA did not recall speaking to a second officer. see Exhibit W at 147.10-14.

and at 148.1-9. Violating LOZANO's right to Confrontation Clause see Slovik v. Yates, 556 F.3d 747

753 (9th Cir 2009) Confrontation Clause violated when court prevented defendant from questioning

witness about his criminal record which could alter jury's view of credibility. The evidence

was also favorable to impeach the expert witness testimony. see Exhibit I at 448.22-25

at 449.1-12. Gang expert uses ACUNA's testimony at 451.16-24. at 452.1-11, at 459.14-20,

The expert testifies that after reviewing all information and listening to testimony this

is a classic gang motivated case. at 471.6-13 testifies he's had numerous interviews

with ACUNA. The gang expert Det. Davis knew ACUNA had a criminal record had access

to his record, and used his testimony to offer expert testimony. The suppression of the record, probation

"Reasonable Jurist Would Find the district courts Ruling debatable"

23

of ACUNA deprived LOZANO of evidence to impeach an important government witness.

in Banks v. Dretke 540 U.S. 668-675 (2004) The court observed that one can hardly be

confident that defendant received a fair trial given the Jury's ignorance of

the withheld information." Id at 702. The Prosecution made sure ACUNA was subpoenaed see

Exhibit Y3 and that Villa did not testify (see Exhibit T and its attachment Exhibit 3

Villa's Sentencing memo.) LOZANO also raised the trial court's failure to use the 3 factor

test in Blady. See Exhibit Q at 9.20-27. and at 10.1-13, ACUNA was the only person

accusing LOZANO of a crime....

"The DISTRICT COURT WAS UNREASONABLE" when siding with the state court on finding

ACUNA's testimony totally untruthful. See Exhibit J at 6 The court made its determination

without assessing ACUNA's credibility. at 6.30-31. See Taylor v. Maddox 366.992 1000-01 (9th Cir 2004)

finding that the state court's determination of facts is unreasonable if no fact of finding was

made and the court should have made a finding of fact but neglected to do so."

(2) The state court found ACUNA's testimony equivocal at best, but during the hearing ACUNA

testified risking a aggravation in his Capitol case while the Judge told ACUNA that if

he testified different than that of trial he would face additional charges. see Exhibit N

at 23.1-11. ACUNA was later charged with Perjury see Exhibit J at 3. (3) While the court

cite's LOZANO got a hold of ACUNA first. LOZANO wrote a motion to the court asking

permission to correspond with ACUNA to obtain a affidavit the trial court ignored the

motion and denied and dismissed the P.C.R. Proceedings. See Exhibit Y5 at 3.116.

(4) Acuna did not recall many details of the event. While it has been from 2004 to 2014

it is not hard to forget after 10 years. While Acuna did not recall during trial

many of the questions Beren asked this was not a problem then see Exhibit W at 135-153.

(5) The district court cited in Exhibit M at 6.12-13. that Acuna clearly told police

officers during the night of the alleged offense that Lozano pointed a gun at him.

See also Exhibit N at 73.24-25, at 74.1-12. Lozano presented Exhibit L Officer SAKALAS

Police report, SAKALAS was the second officer to contact Acuna this evidence shows

Acuna try'd to recount his story the same night from being chased to his

Friends house to being told you got guns we got guns and having a gun pointed at him.

to being asked if He had guns being shown a gun and responding no and

walking away. See Exhibit W at 147.6-12 at 148.4-8. Acuna during trial coerced into

denying speaking to officer SAKALAS. The state court and district court were

both clearly wrong. See Exhibit Q at 7.15-26. Lozano also presented the states

subpoena sent to Acuna the victim with a threat to arrest if He did not appear

See Exhibit Y3 and Exhibit Q at 9.8-9. Lozano presented this additional facts to

the district court and they were ignored. See Exhibit T Lozano presented after His

notice of objections a reply to the magistrates response at 2.11-28. While none of

the state courts or district court took a look at Acuna's suppressed Juvie record during trial.

Petitioner believes the suppressed evidence should have been enough to obtain

a evidentiary hearing in the district court. See Nunes V. Mueller 350 F.3d 1045

(9th Cir 2003). Finding that the State Courts Factual Findings were unreasonable

When the court made the Findings Without holding a evidentiary hearing.

While the Prosecutor Shane F. Krauser did not show up during the 10-2-2014

hearing see Exhibit-N. at 10.14-25. at 11.17-22. the Prosecutor had been sanctioned

by the (ACG) a month prior for securities violations while being a deputy maricopa

county attorney. see Exhibit-Y6. Showing Acuna's claims are not incredible or

unbelievable Krauser's willingness to win at any cost led the prosecutor to (1)

.1 Suppress Acuna's recantation (2) Suppress Villas favorable testimony (3) Suppress Acuna's

Probation status and Juvenile record, causing Petitioner to suffer a Fundamental

miscarriage of Justice...

.1 See Exhibit-N. at 60. Exhibit-L, Exhibit Y3.

.2 See Exhibit-T Reply attachment-3

.3 See Exhibit-J. page 3

CONCLUSION

26

It is there for petitioner prays for relief based on the fact that Lozano was denied the right to (1) Present Villa and Galvez during trial to support his defense, (2) for the fact that trial counsel failed to interview and cross examine the state's gang expert, (3) the alleged victim was lying throughout the proceedings, and (4) Acuna's testimony was used by the gang expert to base his expert opinion while the state suppressed Acuna's juvie record and probation status to make Acuna's testimony more credible, denying Lozano a fair trial guaranteed by the 6th Amendment and right to confrontation clause, This court should therefore grant Lozano a certificate of appeal and reverse the 9th Cir Court of App. order denying C.A.A. appoint counsel to help present the multiple constitutional violations in Lozano's conviction and any other relief available that this court can provide.

Respectfully Submitted this 10 day of June 2020

Antonia Lopez Solis