

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

NATHANIEL MARCUS GANN — PETITIONER
(Your Name)

VS.

RALPH DIAZ — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

NATHANIEL MARCUS GANN
(Your Name)

P.O. BOX 96 (#G-64542)
(Address)

CHOWCHILLA, CA 93610
(City, State, Zip Code)

NONE
(Phone Number)

QUESTION(S) PRESENTED

- 1) IS THE ADMISSION OF IRRELEVANT OR OVERTLY PREJUDICIAL EVIDENCE A DUE PROCESS VIOLATION?
(AND IS SUCH A VIOLATION SUFFICIENT TO ISSUE A WRIT OF HABEAS CORPUS?)

- 2) IS A MIXTURE OF UNCROSS-EXAMINED TESTIMONIAL STATEMENTS OFFERED FOR TRUTH AND NON-TESTIMONIAL HEARSAY PROHIBITED BY THE CONFRONTATION CLAUSE?
(AND IS SUCH A VIOLATION SUFFICIENT TO ISSUE A WRIT OF HABEAS CORPUS?)

- 3) DOES A CONVICTION FOR A CRIME THE DEFENDANT WAS NOT CHARGED WITH NOR ARRAINED FOR CONSTITUTE A DUE PROCESS VIOLATION?
(AND IS SUCH A VIOLATION SUFFICIENT TO ISSUE A WRIT OF HABEAS CORPUS?)

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

- People v. Gann, No. 1SCD207862, California Superior Court for the County of San Diego. Judgement Entered Jun. 19, 2009
- People v. Gann, No. D055431, California Court of Appeal, Fourth Appellate District. Judgement Entered Mar. 25, 2011
- Gann v. Beard, No. 12cv1418, U.S. District Court, Southern District of California. Judgement Entered Nov. 4, 2015 (Sep. 14, 2018)
- Gann v. Beard, No. 17-55316, U.S. Court of Appeals for the Ninth Circuit. Judgement Entered Jun. 16, 2020

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APPENDIX B - U.S. Court of Appeals Rehearing Denial

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and Findings and Reccomendations of U.S. Magistrate
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TABLE OF AUTHORITIES CITED

CASES

None

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STATUTES AND RULES

None

OTHER

None

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.

The opinion of the United States district court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ 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 _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

[X] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was 4-20-20.

[] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 6-16-20, and a copy of the order denying rehearing appears at Appendix B.

[] 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 _____. A copy of that decision appears at Appendix _____.

[] 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution Amendments:

Amendment V,	[Due Process, Double Jeopardy, Self Incriminate]
Amendment VI,	[Impartial Jury, Informed of Nature of Crime]
Amendment VIII,	[Excessive Bail, Cruel and Unusual Punishment]
Amendment XIII	[Involuntary Servitude unless duly Convicted]
*Amendment VI	[Confrontation Clause]

Statutes

28 U.S.C. §2253(c)
28 U.S.C. §2254

Cal.

STATEMENT OF THE CASE

On 7/19/20 Brae Hansen dialed 911 and stated that her stepfather, Tim MacNeil had been killed by a masked intruder (burglar). Brae Hansen was interviewed/interrogated several times by various police officers/detectives wherein she eventually confessed to the crime and incriminating her brother Nathaniel Gann who lived in Arizonas Brae was charged with special circumstance murder and later upon extradition Nathaniel was also charged with special circumstance murder.

The cases were severed and Gann went to trial resulting in a hung jury on 11/20/2008. At this trial no conspiracy was charged, argued, or instructed to the jury. The testimonial hearsay in question was not admitted in that trial, and no surprise witness with a last minute rape allegation was introduced.

On 12/23/2008 the cases were rejoined by the trial court despite objection. The second trial began on 3/28/2009 with the explicit agreement with the trial court that the jury instructions would be the same, the same witness list was used (no Kristen Ullinger).

Hansen's jury rendered its verdict on 4/9/2009 finding her guilty of first degree murder with the special circumstance of lying in wait and that she was armed with a firearm. Gann's jury was subjected to a change of jury instructions on the day prior to deliberations to include conspiracy despite the objections of counsel stating that if conspiracy was to be alleged that he would have provided a defense for conspiracy. Also, at approximately

STATEMENT OF THE CASE - 2

the last day of testimony, the prosecution (at 1700 hours the night before) introduced a surprise witness, Kristen Ullinger, who unexpectedly shouted that Gann had "Raped" her in high school. A previously unheard allegation by all parties that prejudiced the 9 woman jury. Additionally testimonial hearsay was introduced in this second trial that were intended as evidence for use against Hansen, and the prosecutions "star witness" Goodman committed perjury.

After three days and a total of 17 hours of deliberation with requests regarding Ullinger's surrebuttal testimony (By Mr. Wood) the jury rendered a verdict of guilty of First Degree murder, but not guilty of firing a firearm (the murder weapon, showing conspiracy was thought), and not guilty of the lying in wait

Hansen was sentenced to life without parole and Gann was sentenced to 25 years to life. On June 11, 2012 Gann filed his habeas petition in the Southern District of California raising seven claims. The District court denied the petition on 11/4/2015. On 12/15/17 the Ninth Circuit court granted a certificate of appealability as to two issues and eventually denied the petition on 4/20/20 and denied the petition for rehearing on 6/16/20, citing in part that the issues were not squarely addressed by the Supreme Court.

REASONS FOR GRANTING THE PETITION

- 1) To outline how in today's world surprise "Rape" allegations can be used in the criminal justice and civilian systems (Irrelevant and/or Overtly Prejudicial Evidence).
- 2) To squarely address whether prosecutors can mix testimonial and non-testimonial hearsay statements in order to circumvent the confrontation clause, and determine whether a co-defendants invocation of their 5th amendment to not speak at trial can prejudice other co-defendants.
- 3) To address whether the trial court and prosecutor can abuse/misuse their position to change the jury instructions the day before deliberation to change the nature of the crime charged so as to prevent defense from the previously unknown allegations.

*) In todays world there is a serious problem with women alleging sexual misconduct against men and the men not being able to defend themselves and/or woman not being heard or believed. In this case while on murder trial, an ex-girlfriend who had admitted on the interview tape that all sexual contact was consensual was permitted to testify as a surprise witness the day before scheduled closing arguments and shouted a surprise allegation of "He Raped Me", while the trial court and the prosecutor knew this was a lie they played on the allegation to portray me as a violent rapist and used that testimony in closing arguements to scare the women in the jury. This court needs to make a ruling on whether this conduct in trial renders the jury partial and the trial fundamentally unfair, unconstitutional in a word.

REASONS FOR GRANTING THE PETITION - 2

The trial court did not strike the testimony, nor grant a mistrial.

The jury asked questions in the form of rereadings of the surrebuttal witness Josh Wood, showing they were thinking about it.

As to #2, is it proper to knowingly mix testimonial hearsay and non-testimonial hearsay to get what you want said into the trial when the co-defendant is unavailable for cross examination because they invoked their 5th amendment right. The mixture should be disallowed but currently is allowed unless this court squarely addresses this issue also.

As to #3, I was denied a defense to conspiracy because the prosecution lied about the jury instructions and the trial court agreed to change the instructions to include conspiracy after the testimony was concluded. Is it proper for the trial court and prosecutor to change the nature of the crimes charged after the evidence has been presented to the jury but before the jury is given their instructions. This is important because the current precedent is that the prosecution can change the charges against an individual after the bulk of the trial and deny them a defence.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Nathaniel Marcus Gann
Nathaniel Marcus Gann

Date: 9-1-20