

No. 20-6061 **ORIGINAL**

IN THE
SUPREME COURT OF THE UNITED STATES

WHITTIER BUCHANAN — PETITIONER
(Your Name)

Supreme Court, U.S.
FILED
JUL 13 2020
OFFICE OF THE CLERK

PEOPLE of the STATE ^{vs.}
OF CALIFORNIA, et al. RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF CALIFORNIA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

WHITTIER BUCHANAN-BF1638
(Your Name)

HIGH DESERT STATE PRISON
PO BOX 3030
(Address)

Susenville, CA. 96127
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

- 1) ONCE the COURT allowed ME to REPRESENT MYSELF during trial, should I have BEEN appointed ASSISTANT-COUNSEL after learning that I'm hearing impaired and did NOT have my hearing aids throughout trial?
- 2) I wish for the COURT to decide clearly whether my Public Defender is allowed to assist the D.A. after the judge relieved her from her duties of REPRESENTING ME?
- 3) Please decide whether a juror, after reading enough of an article in the newspaper to realize that it's my case of which he is presently a juror, should the COURT have dismissed this juror because of the prejudicial nature of this article?
- 4) A witness from a prior trial twenty-years ago was brought to testify against ME in the instant case, but the trial transcripts were NOT provided. Did this absence of the trial transcripts violate any of my rights?

LIST OF PARTIES

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

[X] 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:

Sylvia Cediel; DAVID BRYDEN; TRIHA THOMPSON; WALT STANNARD;
Det. ~~DARREN~~ KACOLEK; Ofc. KELVIN Gibbs; Sgt. DAVID MARBLE; Sgt. CRAIG
LINDENAU; MICHAEL McDANIEL; ALEX HERNANDEZ; JERRY SMITH;
DANIEL SHAIRO; Ofc. COREY BOLD; HERIBERTO DIAZ; Ofc. MEGAN JONES;
Ofc. KEVIN KIEPPE; Ofc. OMAR Ashford; Ofc. DAVID WALSH;
LOUISE SONG; William J. CAPRIOLA; GYRETHA GREEN; TANYA LEE (AKA JUNE DOD)

RELATED CASES

PEOPLE V. TAVER (1991) 228 Cal. App. 3rd 954, 957; GRIFFIN V. ILLINOIS, 351
U.S. 12, 76, S. Ct. 585, 100 L. Ed. 891 (1951); U.S. V. YOUNG (1985) 470, U.S. 1,
10 (quoting QUERRIA V. UNITED STATES, (1933) 289 U.S. 466, 469; SHEPPARD V.
MAXWELL, (1966) 384 U.S. 333, 362; PEOPLE V. AGUILAR (1984) 35 Cal. 3rd 785);
PEOPLE V. BENSON (1990) 52 Cal. 3rd 754, 794; PC § 1044 — KENNEDY V. CAR-
DWELL, 487 F. 2nd 101, 108-09 (6th Cir. 1973); PEOPLE V. VALDEZ (1986) 177 Cal.
App. 3rd 680; PEOPLE V. SLOCUM (1975) 52 Cal. App. 3rd 867; PEOPLE V. CRAIG (1978)
86 Cal. App. 3rd 905; PC § 1119; UNITED STATES V. COLLINS (9th Cir. 109 F. 3rd
1413, 1416 (quoting HARRIS V. PULLEY (9th Cir. 1988) 885 F. 2nd 1354, 1361; PEOPLE
V. BROPHY (1992) 5 Cal. App. 4th 932; LEKA V. PORTUONDO (2nd Cir. 2001) 257
F. 3d 89; NEWMAN V. L.A. TRANSIT LINES (1953) 120 Cal. App. 2nd 685, 691; PEOPLE
V. YOUNG (2004) 34 Cal. 4th 1149, 1193; PEOPLE V. GALLOWAY (1979) 100 Cal. App. 3rd
551; U.S. V. Bioggi (2nd Cir. 1990) 909 F. 2nd 662; PEOPLE V. CASH (2002) 28 Cal.
4th 703, 732; PEOPLE V. BEMORE (2000) 22 Cal. 4th 809, 806; PEOPLE V. MAYFIELD
(1997) 14 Cal. 4th 668, 781-782; PEOPLE V. CALDERON (1994) 9 Cal. 4th 69, 751
accord; PEOPLE V. PROFIT (2017) 8 Cal. App. 5th 1255, 1266; PEOPLE V. BLAIR (2005)
36 C. 4th 686, 723, 31 CR. 3d 485, 115 P. 3d 1145; PEOPLE V. REDMOND (1969) 71
C. 2d 745, 758, 79 C.R. 529, 457 P. 2d 321, citing text; 71 C. 2d 758; PEOPLE V. WIL-
KINS (1990) 225 C.A. 3d 299, 304, 308, 275 C.R. 74; CHALEFF V. SUPERIOR COURT

(Cont.)

RELATED CASES

(1977) 69 C.A. 3d 721, 731, footnote 6, 138 C.R. 735, § 308; PEOPLE V. BIGELOW (1984) 37 C. 3d 731, 209 C.R. 328, 691 P.2d 994; PEOPLE V. MATSON (1959) 51 C. 2d 777 793, 336 P.2d 937; PEOPLE V. Goodville (2007) 147 C.A. 4th 695, 712, 54 C.R. 3d 601; FERREL V. SUPERIOR COURT, SUPRA, 20 C. 3d 892; PEOPLE V. POLETTI (2015) 240 Cal. App. 4th 1191; PC § 1203 d & 1203 c; PEOPLE V. MURTIHAW (1981) 29 Cal. 3rd 733, 766; Kyles v. Whitley (1995) 514 U.S. 419, 437-438; U.S. V. ZUNO-ARCE (9th Cir. 1955) ~~44 F.3d 1420~~ 44 F.3d 1420; PEOPLE V. McDonald (1984) 37 Cal. 3rd 351, 372; Lisenba v. California, (1941) 314 U.S. 219, 236; California v. Trombetta (1984) 467 U.S. 479, 485; BROKOPP V. FORD MOTOR CO., (1977) 71 Cal. App. 3rd 841, 853; PEOPLE V. CARTER (1967) 66 C. 2d 666, 667, 58 C.R. 614, 427 P.2d 214; FARETTA V. California (1975) 422 U.S. 806, 95 S.Ct. 2525, 45 L. Ed. 2d 562; PEOPLE V. Windham (1977) 19 C. 3d 121, 130, 137 C.R. 8, 560 P.2d 1187, infra, § 295; PEOPLE V. JONES (1991) 53 C. 3d 1115, 282 C.R. 465, 811 P.2d 757; PEOPLE V. MARLOW (2004) 34 C. 4th 131, 147, 17 C.R. 3d 825, 96 P. 3d 126; PEOPLE V. SCOTT (2001) 91 C.A. 4th 1197, 1205, 111 C.R. 2d 318; PEOPLE V. LOPEZ (1977) 71 C.A. 3d 568, 138 C.R. 36; PEOPLE V. Fox (2014) 224 C.A. 4th 424, 168 C.R. 3d 615; PEOPLE V. BURNETT (1987) 188 C.A. 3d 1314, 1322, 234 C.R. 67; GODINEZ V. MORAN (1993) 509 U.S. 389, 113 S.Ct. 2680, 2682, 2686, 125 L.Ed. 2d 321, 327, 331; PEOPLE V. JENAN (2007) 148 C.A. 4th 1144, 1164, 56 C.R. 3d 360; PEOPLE V. FAXEL (1979) 91 C.A. 3d 327, 331, 154 C.R. 132; PEOPLE V. Soukornlane (2008) 162 C.A. 4th 214, 233, 75 C.R. 3d 496, supra, § 16; PEOPLE V. Maddox (1967) 67 C. 2d 647, 653, 63 C.R. 371, 433 P. 2d 163; PEOPLE V. FULTON (1979) 92 C.A. 3d 972, 976, 155 C.R. 327; PEOPLE V. STEWART, (2004) 33 C. 4th 425, 517, 15 C.R. 3d 656, 93 P. 3d 271; PEOPLE V. Sullivan (2007) 151 C.A. 4th 524, 554, 59 C.R. 3d 876; IN RE Smiley (1967) 66 C. 2d 606, 624, 58 C.R. 579, 427 P.2d 179; PEOPLE V. O'WARD (1959) 168 C.A. 2d 127, 132, 335 P. 2d 762; MUNES V. MUELLER (2003) 350 F. 3d 1045 (C.A.9 (Cal.)); PEOPLE V. Varona (1983) 143 Cal. App. 3d 566; PEOPLE V. Randle (1982) 130 Cal. App. 3d 286; PEOPLE V. KING (1979) 94 Cal. App. 3d 696; PEOPLE V. CHANDLER (1997) 56 Cal. App. 703; SPENCER V. Kemma, 523 US 1 - SUPREME COURT - Google Scholar; Evid. Code § 1110(b); PEOPLE V. CARPENTER (1997) 15 Cal. 4th 312, 382 [63 Cal. Rptr. 2d 1, 935 P.2d 708]; PEOPLE V. COLLIE (1981) 30 Cal. 3d 43, 63-64 [177 Cal. Rptr. 458, 634 P. 2d 534]; (PEOPLE V. COLLIE, SUPRA, 30 Cal. 3d at pp. 63-64; PEOPLE V. Rollo (1977) 20 Cal. 3d 109, 123 fn. 6 [141 Cal. Rptr. 177, 569 P.2d 771]; PEOPLE V. Balcom (1994) 7 Cal. 4th 414, 422-23 [27 Cal. Rptr. 2d 666, 867 P.2d 777]; PEOPLE V. BRUCE, SUPRA, 208 Cal. App. 3d pp. 1103-1106; PEOPLE V. Blackburn (1976) 56 Cal. App. 3d 685;

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A - DECISION of State Court of APPEALS
APPENDIX B - DECISION of State Trial Court
APPENDIX C - ORDER MODIFYING OPINION - AND -
APPENDIX D - ORDER DENYING REHEARING
APPENDIX E - SUPREME COURT DENYING WRIT of Habeas Corpus
APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

CHAPMAN V. CALIFORNIA (1967) 386 U.S. 18.....	
COLLEGE HOSPITAL, INC. V. SUPERIOR COURT (1994) 8 Cal. 4th 704.....	
FAREHA V. CALIFORNIA (1975) 422 U.S. 806.....	
PEOPLE V. POSEY (2004) 32 Cal. 4th 193, 218	
PEOPLE V. MOBLEY (1999) 72 Cal. App. 4th 761, 781.....	
PEOPLE V. GLORIA (1975) 47 Cal. App. 3d 1, 7.....	
PEOPLE V. DELETTA (1983) 147 Cal. App. 3d 458, 471-472.....	
PEOPLE V. SANDERS (2012) 55 Cal. 4th 731, 743, fn. 13.....	
PEOPLE V. JONES (2012) 54 Cal. 4th 350, 353.....	
PEOPLE V. LATIMER (1993) 5 Cal. 4th 1203.....	
PEOPLE V. RATCLIFFE (1981) 124 Cal. App. 3d 808, 820-821.....	
PEOPLE V. TUA (2018) 18 Cal. App. 5th 1136, 1141.....	
IN RE ESTRADA (1965) 63 Cal. 2d 740.....	
PEOPLE V. GARCIA (2008) 167 Cal. App. 4th 1550.....	
PEOPLE V. WILLIAMS (2004) 34 Cal. 4th 397, 401	
ROBERT L. V. SUPERIOR COURT (2003) 30 Cal. 4th 894, 900-901	

STATUTES AND RULES

PEN. CODE,

§ 647.....

§ 1385.....

§ 654

OTHER

THREE STRIKES REFORM ACT (PROPOSITION 36)

CALIFORNIA RULES OF COURT : 8.1105(b) AND 8.1110

CAL. RULES OF COURT 8.500 AND 8.504

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
PEOPLE V. LANGSTON (2004) 33 CAL. 4TH 1237, 1241.....	
PEOPLE V. BUCHANAN (2019) 39 CAL. APP. 5TH 385.....	
OL SULLIVAN V. BOERKKEI (1999) 526 U.S. 838.....	

STATUTES AND RULES

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 DAILY APPELLATE REPORT; 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 B to the petition and is

☒ reported at CERTIFIED FOR PARTIAL PUBLICATION; 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

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was AUGUST 14, 2019.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: AUGUST 28, 2019, and a copy of the order denying rehearing appears at Appendix C/D.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including JULY 27, 2020 (date) on APRIL 22, 2020 (date) in Application No. A. S 258214

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 NOV. 26, 2019.
A copy of that decision appears at Appendix E.

☐ 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 JULY 27, 2020 (date) on APRIL 22, 2020 (date) in Application No. A. S 258214

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

PEOPLE V. RUNDLE (2008) 43 Cal. 4th 76, 114 - A defendant must be advised of his or her Miranda Rights, and must make a valid waiver of these rights, before questioning begins or any statements resulting from interrogation can be admitted.

PEOPLE V. ALLEN (1978) 77 Cal. App. 3rd 924 - Exclusion of evidence which would prevent the trier of fact from considering evidence that might substantially affect the credibility of a prosecution witness is likely reversible error.

PEOPLE V. McDONALD (1984) - Evidence that is relevant to the prime theory of the defense cannot be excluded in wholesale fashion merely because the trial would be simpler without it.

PENAL CODE § 1122; PEOPLE V. PIERCE (1979) 24 Cal. 3rd 199; IN RE CARPENTER (1995) 9 Cal. 4th 634, 646-658; IN RE HITCHINGS (1993) 6 Cal. 4th 97, 118 - It is well established that jurors "shall not converse among themselves, or with anyone else, on any subject connected with the trial. Violation of this duty is serious misconduct. Jurors shall not form or express any opinion thereon until the cause is finally submitted to them," and jurors shall not harbor a bias or prejudice. PEOPLE V. HAWTHORNE (1992) 4 Cal. 4th 43, 73.

PEOPLE V. BLAIR (1979) 25 Cal. 3rd 640, 659 - A due process violation occurs when a pretrial identification procedure is so impermissibly suggestive that it gives rise to a very substantial likelihood of irreparable misidentification.

MIRANDA V. ARIZONA, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed. 3d 694; Rhode Island v. Innis, (1980) 446 U.S. 291, 100 S.Ct. 1682, 64 L.Ed. 2d 297; Missouri v. Seibert, 542 U.S. 600.

(2004) - The defendant was in custody and did not make a knowing and intelligent waiver of his Miranda Rights. The constitutional protections set out in Miranda apply not only to direct custodial interrogation but also to police conduct which is designed to elicit an incriminating response.

Austin v. Lambert (1938) - The fair administration of justice includes an impartial judge who has no vested interest in the outcome of a proceeding.

Wainwright v. Witt (1985) 469 U.S. 412, 429-431; - The trial court must be zealous to protect the rights of an accused.

PEOPLE V. CARTER (1957) 48 Cal. 2nd 737, 751 - If the principal effect of evidence

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

is to arouse passion of jury and inflame them against a party, then the evidence must be excluded.

CRANE V. KENTUCKY (1986) 476 U.S. 683; - "WHETHER ROOTED DIRECTLY IN THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT OR IN THE COMPULSORY PROCESS OR CONFRONTATION CLAUSES OF THE SIXTH AMENDMENT, THE CONSTITUTION GUARANTEES CRIMINAL DEFENDANTS A MEANINGFUL OPPORTUNITY TO PRESENT A COMPLETE DEFENSE. KYLES V. WHITLEY (1995) 514 U.S. 419, 437-438; - A PROSECUTOR IS DEEMED TO HAVE "CONTROL" OVER ALL MEMBERS OF AN INVESTIGATORY TEAM AND THAT EVIDENCE MAINTAINED BY COOPERATING ENTITIES FALL WITHIN THE SCOPE OF THE PROSECUTION'S BRADY OBLIGATION.

PEOPLE V. BADGETT (2000) 10 Cal. 4th 330, 344; - A THIRD PARTY STATEMENT OBTAINED THROUGH COERCION MUST BE EXCLUDED. "EXCLUSION IS BASED ON THE IDEA THAT COERCED TESTIMONY IS INHERENTLY UNRELIABLE, AND THAT ITS ADMISSION THEREFORE VIOLATES A DEFENDANT'S RIGHT TO A FAIR TRIAL, THIS EXCLUSION NECESSARILY FOCUSES ONLY ON WHETHER THE EVIDENCE ACTUALLY ADMITTED WAS COERCED. DEFENDANT CAN PREVAIL ON HIS SUPPRESSION CLAIM ONLY IF HE CAN SHOW THAT THE TRIAL TESTIMONY GIVEN BY THE THIRD PARTY WAS INVOLUNTARY AT THE TIME IT WAS GIVEN.

BOYKIN V. ALABAMA (1969) 395 U.S. 238; - ONE CANNOT WAIVE HIS DUE PROCESS RIGHT UNLESS FULLY INFORMED. FEDERAL LAW IS CONTROLLING OVER THE DEFINITION OF A CONSTITUTIONAL RIGHT (E.G. DUE PROCESS). IF THE ADVISEMENT OF THE DUE PROCESS RIGHT IS NOT FULL AND COMPLETE, THE WAIVER OF THE RIGHT IS NOT KNOWING, INTELLIGENT, AND VOLUNTARY.

PEOPLE V. HITCH (1974) 12 Cal. 3rd 641; - THE CALIFORNIA SUPREME COURT HELD THAT SINCE IT WAS SCIENTIFICALLY POSSIBLE TO CAPTURE A BREATH SAMPLE / DRUG SAMPLE, THE FAILURE TO DO SO VIOLATED DUE PROCESS.

PEOPLE V. JOHNSON (1976) 62 Cal. App. 3rd Supp. 1, 10-11; - WHERE POLICE CONDUCT PREVENTS A DEFENDANT FROM OBTAINING HIS OWN CHEMICAL EVIDENCE (AS MANIFESTLY OCCURRED HERE BECAUSE NO SAMPLE TO BE PRESERVED OFFERED), DUE PROCESS IS VIOLATED, AND EXCLUSION OF EVIDENCE IS THE APPROPRIATE REMEDY. THE OFFICER FAILED TO ADVISE DEFENDANT OF HIS DUE PROCESS RIGHT TO COLLECT EVIDENCE.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES v. COLLINS (9th Cir.) 109 F. 3rd 1413, 1416 (quoting HARRIS v. PULLEY (9th Cir. 1988) 885 F. 2nd 1354, 1361; - PREJUDICE IS PRESUMED WHEN THE RECORD DEMONSTRATES THAT THE COMMUNITY WHERE THE TRIAL WAS HELD WAS SATURATED WITH PREJUDICIAL AND INFLAMMATORY MEDIA PUBLICITY ABOUT THE CRIME.

PRESS-ENTERPRISE CO. v. SUPERIOR COURT, RIVERSIDE (1984) 464 U.S. 501, 508; - THE RIGHT TO A FAIR TRIAL IS A FUNDAMENTAL LIBERTY SECURED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION. NO RIGHT RANKS HIGHER THAN THE RIGHT OF THE ACCUSED TO A FAIR TRIAL.

PENAL CODE § 1119 - AUTHORIZES THE TRIAL COURT TO DETERMINE WHETHER THE JURY SHOULD VIEW THE PLACE IN WHICH THE OFFENSE WAS COMMITTED OR OTHER PERSONAL PROPERTY THAT CANNOT BE BROUGHT INTO THE COURTROOM.

PEOPLE v. SLOCUM (1975) 52 Cal. App. 3rd 867; PEOPLE v. CRAIG (1978) 86 Cal. App. 3rd 905; - MISCONDUCT ON THE PART OF A SPECTATOR CONSTITUTES GROUND FOR A MISTRIAL IF THE MISCONDUCT IS OF SUCH CHARACTER AS TO PREJUDICE THE DEFENDANT OR INFLUENCE VERDICT.

PEOPLE v. BONIN (1988) 46 Cal. 3rd 659, 689; - IT IS MISCONDUCT FOR A PROSECUTOR TO 'INTENTIONALLY ELICIT INADMISSIBLE TESTIMONY'. THE DELIBERATE ASKING OF QUESTIONS CALLING FOR INADMISSIBLE AND PREJUDICIAL ANSWERS IS MISCONDUCT. PEOPLE v. FUSARO (1971) 18 Cal. App. 3rd 877, 886.

PENAL CODE § 1181 - IT IS IMPROPER FOR THE JURY TO RECEIVE EVIDENCE OUTSIDE OF THE NORMAL COURT PROCEEDINGS.

PEOPLE v. TARVER (1991) 228 Cal. App. 3rd 954, 957; AN INDIGENT DEFENDANT IS "PRESUMPTIVELY ENTITLED TO A TRANSCRIPT OF HIS FIRST TRIAL. A DENIAL OF A TIMELY REQUEST, BASED ON A SHOWING OF THE NECESSITY FOR THE TRANSCRIPT TO EFFECTIVELY CROSS-EXAMINE WITNESSES, REQUIRES AUTOMATIC REVERSAL."

U.S. v. YOUNG (1985) 470 U.S. 1, 10 (quoting QUERRIA v. UNITED STATES (1933) 289 U.S. 466, 469; - THE TRIAL JUDGE HAS THE RESPONSIBILITY TO MAINTAIN DECORUM IN KEEPING WITH THE NATURE OF THE PROCEEDING; THE JUDGE IS NOT A MERE MODERATOR BUT IS THE GOVERNOR OF THE TRIAL FOR THE PURPOSE OF ASSURING ITS PROPER CONDUCT

PEOPLE v. GALLOWAY (1979) 100 Cal. App. 3rd 551; - IT IS PROSECUTORIAL MISCONDUCT FOR A PROSECUTOR TO COMMENT ON DEFENDANT'S FAILURE TO DISCLOSE AN ALIBI.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

COLORADO V. CONNELLY (1986) 479 U.S. 157, 168; LEGO V. TWOMEY (1972) 404 U.S. 477;

THE PROSECUTION MUST PROVE THAT DEFENDANT WAIVED HIS FIFTH AMENDMENT RIGHTS AGAINST SELF-INCRIMINATION BY A PREPONDERANCE OF THE EVIDENCE. THE VALIDITY OF THE WAIVER MUST BE DETERMINED IN EACH CASE THROUGH AN EXAMINATION OF THE PARTICULAR FACTS AND CIRCUMSTANCES SURROUNDING THAT CASE INCLUDING THE BACKGROUND, EXPERIENCE, AND CONDUCT OF THE ACCUSED. (EDWARDS V. ARIZONA (1981) 451 U.S. 477).

PEOPLE V. TAYLOR (1982) 31 Cal. 3rd 488, 495; - A defendant may be handicapped in presenting his defense by the embarrassment associated with his wearing jail garb.

RULE 5-220; - SUPPRESSION OF EVIDENCE; A MEMBER SHALL NOT SUPPRESS EVIDENCE THAT THE MEMBER OR THE MEMBER'S CLIENT HAS A LEGAL OBLIGATION TO REVEAL OR TO PRODUCE.

RULE 5-110; - SPECIAL RESPONSIBILITIES OF A PROSECUTOR; THE PROSECUTOR IN A CRIMINAL CASE SHALL: (A) NOT INSTITUTE OR CONTINUE TO PROSECUTE A CHARGE THAT THE PROSECUTOR KNOWS IS NOT SUPPORTED BY PROBABLE CAUSE; AND (F) WHEN A PROSECUTOR KNOWS OF NEW, CREDIBLE AND MATERIAL EVIDENCE CREATING A REASONABLE LIKELIHOOD THAT A CONVICTED DEFENDANT DID NOT COMMIT AN OFFENSE OF WHICH THE DEFENDANT WAS CONVICTED, THE PROSECUTOR SHALL: (1) PROMPTLY DISCLOSE THAT EVIDENCE TO AN APPROPRIATE COURT OR AUTHORITY, AND; (2) (G); WHEN A PROSECUTOR KNOWS OF CLEAR AND CONVINCING EVIDENCE ESTABLISHING THAT A DEFENDANT IN THE PROSECUTOR'S JURISDICTION WAS CONVICTED OF AN OFFENSE THAT THE DEFENDANT DID NOT COMMIT, THE PROSECUTOR SHALL SEEK TO REMEDY THE CONVICTION.

PENAL CODE § 1237; - APPEAL BY DEFENDANT; FROM A FINAL JUDGMENT OF CONVICTION, AN APPEAL MAY BE TAKEN BY THE DEFENDANT FOR THE COMMITMENT OF A DEFENDANT FOR CONTROLLED SUBSTANCE ADDICTION SHALL BE DEEMED TO BE A FINAL JUDGMENT WITHIN THE MEANING OF THIS SECTION.

PC § 1367; - MENTALLY INCOMPETENT PERSONS; TRIAL OR PUNISHMENT PROHIBITED

PC § 1367.1; - INCOMPETENCY DURING PENDENCY OF ACTION, PRIOR TO JUDGMENT

PC § 127; - SUBORNATION OF PERJURY; EVERY PERSON WHO WILLFULLY PROCURES ANOTHER PERSON TO COMMIT PERJURY IS GUILTY OF SUBORNATION OF PERJURY, AND IS PUNISHABLE IN THE SAME MANNER AS HE WOULD BE IF PERSONALLY GUILTY OF THE PERJURY SO PROCURED

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FARETTA V. CALIFORNIA (1975) 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed 562; "AN UNWANTED COUNSEL 'REPRESENTS' the defendant only through a tenuous and UNACCEPTABLE legal action. UNLESS the accused has acquiesced in such REPRESENTATION, the defense PRESENTED is NOT the defense guaranteed him by the CONSTITUTION, for, in a VERY REAL SENSE, it is NOT his defense." (95 S.Ct. 2533, 45 L.Ed 2d 573)

PEOPLE V. CARTER (1967) - IN CARTER, defendant was charged with kidnapping for purposes of robbery, and robbery while armed with a deadly weapon. During the 4 months prior to trial he was granted numerous continuances and changes of counsel. On the day of trial his counsel moved to be relieved and to substitute defendant in pro per. The district attorney made an inquiry, and defendant asserted his ability, "if I am granted use of the Law Library." The judge ordered the trial to proceed, but defendant insisted on time to go to the law library and prepare his case. When this was denied, he refused to participate. Held, the conviction was reversed.

PEOPLE V. LOPEZ (1977) 71 C.A. 3d 568, 138 C.R. 36; - The court suggested guidelines for trial judges to consider when a defendant asserts the right of self-representation.

PEOPLE V. BURNETT (1987) 188 C.A. 3d 1314, 1322, 234 C.R. 67; - IF there is substantial evidence of defendant's incompetence to stand trial and or if defendant's mental competency to make the election is in doubt, the trial court must inquire into the subject, ordinarily by ordering a psychiatric evaluation.

PEOPLE V. JENAN (2007) 148 C.A. 4th 1144, 1144, 56 C.R. 3d 360; The trial judge committed reversible error in denying defendant appointed counsel and forcing self-representation where his mental competence was at issue; 122 Harv. L. Rev. 316 [Competency Standard for Self-Representation]; 34 U.S.F.L. Rev. 603 [Welch].

PEOPLE V. BLAIR (2005) 36 C. 4th 686, 723, 31 C.R. 3d 485, 115 P. 3d 1145; A defendant who elects self-representation can cite the errors of counsel as constituting ineffective assistance only when counsel has been assigned a particular role in connection with the proceedings, and only to the extent counsel has performed inadequately in that role.

PEOPLE V. SOKOMLANE (2008) 162 C.A. 4th 214, 233, 75 C.R. 3d 496, supra, 516; Removal of a disruptive pro per. defendant to back room where he could not hear part of prosecution's examination of key witness against him constituted denial of right to counsel and required reversal of conviction.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

PEOPLE V. REDMOND (1969) 71 C.2d 745, 758 79 C.R. 529, 457 P.2d 321; ~~Trial~~ judge is "ordinarily not required" to advise and assist self-representing defendants, but it is "common practice" to do so.

PEOPLE V. MADDOX (1967) 67 C.2d 647, 653 63 C.R. 371, 433 P.2d 163; A judge who determines to grant the motion must then also grant a reasonable continuance for preparation by the defendant. PEOPLE V. FULTON (1979) 92 C.A. 3d 972, 976, 155 C.R. 327)

PEOPLE V. HAMILTON (1989) 48 C.3d 1142, 1164, footnote 14, 259 C.R. 701, 774 P.2d 730 *supra*, § 294; the court may appoint advisory counsel if and when accused requests help.

PEOPLE V. MATSON (1959) 51 C.2d 777, 793, 336 P.2d 937; Held that a trial judge has discretion to appoint advisory counsel, and Californian courts have frequently done so; 37 C.3d 742) This survives *Faretto, supra* (37 C.3d 742, footnote 6) (Therefore, a rule of automatic reversal is appropriate when refusal to appoint advisory counsel is an abuse of discretion. (37 C.3d 744, 745)

PEOPLE V. RANDLE (1982) 130 Cal. App. 3d 286; IN PROSECUTION FOR FORCIBLE ORAL COUPATION, trial court committed error in excluding testimony that on two prior occasions at same bar, complainant falsely complained of being victim of purse snatch and of having been kidnapped.

PENAL CODE § 1203 (4)(c) - If a defendant is not represented by an attorney, the court shall order the probation officer who make the probation report to discuss its contents with the defendant.

PEOPLE V. HILL, 185 Cal. App. 3d 381; When notified by the Department of Corrections and Rehabilitation that an illegal sentence exists, the trial court is entitled to reconsider all sentencing choices.

PENAL CODE § 1203.1(b); The court violated my rights to a financial hearing pursuant to Penal Code § 1203.1b.

RANDOLPH V. ADAMS (2006) U.S. Lexis 52721 9th Cir.; 2014 U.S. Dist. Lexis 62133
REGSDALE V. PARAMO (AN OPINION 2016) APPELLATE COUNSEL FAILED TO INVESTIGATE CASE.

STATEMENT OF THE CASE

ON May 1, 2017, I, WHITTIER BUCK BUCHANAN, purchased a 1999 ASTRO Chevy Van, and afterwards went home to show my van to family. After dinner, I decided to go out, so I called friends and decided that I'd pick them up for a night of bowling.

While on my way to pick-up my friends, I saw JENNIFER PINSET tossing trash in the middle of the street, so I stopped and got out of my van to escort her from standing in the middle of traffic. When I called out to JENNIFER PINSET, I realized that she was very high on methamphetamine and also that someone had hit her as she had a black-eye, I then told JENNIFER to get out of the street and for her to come with me, as I held out my hand for her to take it. JENNIFER PINSET took one look at me, and recognized me, so I repeated; "STOP throwing trash in the street and come with me." Although JENNIFER did not take my hand, she did remove herself from the middle of traffic and follow me to my van. Once inside of my van, I went to pick-up friends to go bowling, then we went bowling at Albany Bowl.

From approximately 10:00 P.M. to 1:00 A.M., my friends and I drank beer, alcohol, and enjoyed bowling. We also engaged in cocaine and meth, while JENNIFER PINSET sat in my van for the entire time, as she was already too-high to bowl with us.

After a night of getting high while bowling, I took everyone home and began driving around by myself aimlessly, just testing-out driving the van I'd purchased only hours ago. As I drove on Shattuck Avenue, I thought I saw a person lying on the sidewalk, so I made a U-turn to see if I could help. When I arrived on Berkeley Way, I turned onto it off of Shattuck Ave, where there was Tanya Lee, sitting on the sidewalk. I drove my van directly in front of where Tanya sat on the sidewalk. I was parked on the street, but I did not turn off my engine because it was now about 3:00 A.M. and I had no clue what had happened to this young lady suspiciously sitting on a sidewalk. My van has electric windows, so I pushed the button that rolls my passenger window down and asked Tanya Lee; "Are you okay?" Tanya replied; "I can't find my keys," so I said; "I will take you home. It's not safe out here. I promise that I'll take you home." Tanya Lee got-up/stood-up and walked to my van, but could not open the passenger-front-door, so I began to push buttons hoping to unlock it, but when Tanya futilely attempted to open it failed, I lowered the window all the way down and reached-outside for the handle to open the door because I too, could not open the door by using the door handle on the inside of my van. The door opened and Tanya Lee climbed into the passenger seat directly next to me.

STATEMENT OF THE CASE (CONT.)

ONCE inside of my van sitting safely next to me, I asked Tanya Lee where is it that she lived and she responded that 'she was not in a hurry' and that 'I could go pick-up other people', in which I told Tanya that 'I don't have anyone to pick-up' and that 'I'm just driving around testing-out my NEW van.' Tanya Lee was very loquacious as she began telling me that she's a college student, that she sings and that her major is in Psychology, and that she has a 'drinking' and a 'mental' problem. I replied to Tanya saying, "everybody has some mental obstacles to hurdle". Suddenly, Tanya began sobbing as she cried, "Something horrible happened to me", and I asked her what happened? Tanya Lee confided that she'd been raped and orally copulated, but when I offered to take her to a hospital or call the police, Tanya said, "No, I just want to call my dad", so I said, "Go ahead, call your dad." I continued to drive aimlessly as Tanya made what appeared to me as several phone calls, after which I decided to pull-over and park while Tanya and I carried on conversation. During this conversation, I smoked cigarettes and meth, then I offered some meth to Tanya, of which she did smoke with me...but after Tanya smoked meth from my pipe a third time, she suddenly "Zoned-out" (using her own words while testifying) and became very paranoid and frightened as she tried to open the door to my van, but could not so I pushed buttons trying to unlock the driver side door, but Tanya was also pushing buttons on the arm of the passenger side, and I did not learn until the testimony by Detective Darren Kacalek that the passenger-side-door had a "control-lock" also, so that she could also control the locks on the doors and window on the passenger side.

"Calm down," I said. "I will let you out... I want you to get out because you're scaring me." Tanya apologized and I suggested, "Why don't you sit in the back so that you can call down. Tanya then sat in the seat behind me and I began to drive aimlessly as I still did not know where it was she wanted to go. Suddenly, Tanya began talking to me, asking me if I wanted 'a blow-job', and showing to me her vagina, while I was driving. So I found a place in a residential neighborhood and again parked my van. I stayed put in the drivers seat while Tanya remained in the seat behind me. The meth I'd smoked with Tanya was affecting me so I lit a cigarette to level-off my high. Tanya asked me about having sex and I told her that 'although I'd like too, you told me that you've been raped and that I don't want to have my DNA on her body because I don't want to be accused of sexual assault. Tanya said that she understood and as the conversation contin-

STATEMENT OF THE CASE

ued I heard a 'Swoosh' sound - like someone had made a basketball shot. I turned to look in the back seat and Tanya was gone. Suddenly, Tanya began to scream and I immediately drove away. Later, as I was driving, I noticed a cell phone in my van on the passenger-side-seat, so I put it in my glove compartment because I had had several people inside of my van and I'd return it to whomever it belonged to.

As I was still driving around in my new van in Berkeley, California, the Police pulled me over and immediately began asking me a barrage of questions from both sides of my van. Sgt. David Marble was at the driver side window asking me 'where I had come from?', while Officer Kevin Kleppke was asking me about the cell phones of which were inside of my van. After I explained to Officer Kleppke which phone was my own and that the other phone was left by one of my passengers, Kleppke told me to give him 'the other cell phone', of which I handed to Ofc. Kleppke through the open passenger side window. After answering every question hurled at me, Sgt. Craig Lindeman ordered for me to get out of my van and I was immediately handcuffed by a huge - seven-foot - Berkeley - Police - Officer named Ofc. Kelvin Gibbs.

Although I was told that 'I am not under arrest', Berkeley Police Officers asked me a plethora of questions without Mirandizing me, then kidnapped me as Ofc. Kleppke drove me in his Squad car to a hospital in Oakland, California, where Police had told Tanya Lee that I was the Uber driver that had given her a ride. This, however, was a false identification because Tanya Lee told Det. Kacalek that the Uber driver was a caucasian male named Daniel Andrade, not an African-American male named Whittier Buchanan. Although Tanya Lee told Policemen that she could not describe what I look like, nor what type of vehicle I was driving, Officer Kleppke drove me to the Berkeley Police Department without informing me why I was being detained.

During this time, Officer Megan Jones had searched my van and confiscated my meth and meth pipe of which was inside of my cigarette pack. This evidence proved that Tanya Lee, as well as myself, was most likely high and impaired, so the Berkeley Police did not charge me with possession of a controlled substance, because if they did, they could not put me in jail or charge me with a crime as I was obviously impaired - as was Tanya Lee. Nor did the prosecutor, Alex Rodriguez, bring up the evidence of my having Methamphetamine. As a fact, D.A. Alex Rodriguez told all Berkeley Police Officers to 'Not charge me with possession of a controlled substance' and if I were to ask them about the meth found inside of my van, that Police are not to answer - that this 'meth' evidence is to be suppressed.

STATEMENT OF THE CASE

The early morning of May 2, 2017, at approximately 4:30 am, is when the Berkeley Police Officers stopped, detained, kidnapped and illegally arrested me without Mirandizing me; without charging me for the Meth and or Meth Pipe Ofc. Megan Jones Confiscated from my van; and without telling me why I was being arrested. Sgt. Craig Lindenau told Officer Jones to put the Meth into evidence, and to give my cell phone to Det. Darren Kacalek, of which Officer Jones testified that she did.

On or about May 3, 2017, Det. Kacalek appeared at the holding cell of which I was being illegally held and asked if I would talk with him, and I asked him if I could have an attorney present and he said 'yes'... but when I was brought to the room where I was being unlawfully videotaped, I immediately asked Det. Kacalek; "I thought an attorney would be here?" Det. Kacalek response was "That's why I'm here", then proceeded to question me without Mirandizing me. During trial, Det. Kacalek testified that he 'partially' Mirandized me... but this is a violation of my Miranda Warning Rights - Furthermore, the Attorney I was told would be present to represent me during questioning was not present, so Det. Kacalek lied to me, then illegally filmed/videotaped me while illegally questioning me, all the while knowing that I was still very high/impaired on Methamphetamine.

On May 4, 2017, I was transferred from the Berkeley Jail to Santa Rita County Jail in Dublin, California, still not knowing what I was being charged with. Several days later, I was appointed a Public Defender, one Sylvia Cediel, who insisted that I plea guilty, and I asked her; "Plea guilty to what charge?" This is the first mention of my being accused of kidnapping. The alleged victim, a medical/mental patient taking Psychotropic Medications, of which was, on May 2, 2017, very intoxicated and impaired on Meth, did not once testify that I'd kidnapped her, so I told this Public Defender that I am not pleading guilty and that I want/desire a 'SPEEDY TRIAL'. My Public Defender, one Sylvia Cediel, adamantly demanded that I plea guilty and accept a sentence of 117-years, due to the fact that she was involved in another trial at that time.

Several months elapsed without my learning anything about my case or the whereabouts of my van, as Sylvia Cediel refused to inform me of the progress of my case, so I asked the trial judge, one Trina Thompson, for a Marsden Motion, of which the judge denied me, forcing me to keep this unwanted Public Defender. When matters grew worse between Mrs. Cediel and myself, I requested another Marsden

STATEMENT OF THE CASE

Motion of which was held on June 27, 2017, in the courtroom of the Honorable Gloria Rhynes. Judge Rhynes, after hearing my allegations that Sylvia Cediel was not informing me of the progress of my case, but instead, adamantly coercing for me to plea guilty, denied my Marsden Motion, forcing me to proceed with Ms. Cediel.

Several months passed without my being apprised of the status of my case, nor the status of my van, and my Attorney, Ms. Cediel, was refusing to inform me, as she was acting more like a surrogate prosecutor, so I again requested a Marsden hearing, as I also noted that Ms. Cediel was 'jittery', as if she were high on methamphetamines.

The trial judge, one Trina Thompson, presided over what was now my third Marsden hearing, and this time the judge dismissed/relieved my public defender of her duties.... but this dismissal did not prevent Sylvia Cediel from involving herself in my case, as she would enter the court after her being dismissed to assist the prosecutor.

Prior to her being relieved of her duties, Ms. Cediel rendered ineffective assistance of counsel as she worked closely with the prosecutor as surrogate prosecutor and assisted the D.A. in suppressing evidence. For example, my van, of which I'd purchased only hours prior to my being illegally/unlawfully arrested and kidnapped, did not have a licence plate on it when I purchased it; but when my public defender, Sylvia Cediel, only after my persistently urging, finally investigated my van, it had been sold and had a licence plate on it. Furthermore, there was clothing belonging to the new owner(s) of my van inside of it, and Ms. Cediel took photos of the clothing of which the D.A. presented to the juror as items belonging to myself.

Sylvia Cediel also gave/relinquished all of discovery documents in her possession to D.A. Alex Hernandez, as a reprisal for her being dismissed/relieved from her duties, as Ms. Cediel verbally expressed to the court that she felt that 'it was I who sabotaged our relationship' in this case. So D.A. Hernandez was privily aware of information/documents of which violated attorney-client privilege.

My van was the alleged 'scene-of-a-crime', and I wanted for it to be preserved so that I might allow the jurors to see for themselves how the override on the locks prevented me (and the alleged victim) from opening the doors. My van was, hence, exculpatory evidence, of which Ms. Cediel and D.A. Hernandez made the decision to suppress. Later, I discovered that it was Ms. Cediel who purchased my van, as she informed the court that she'd 'wrecked her car' and was presently looking for another vehicle because she was 'at-that-time' without one.

To further violate my right to a fair trial, Sylvia Cediel would talk to jury

STATEMENT OF THE CASE

Members when they arrived to court, or while riding on the elevators, or while walking in the hallways of the courthouse. Sylvia Cediell was so incensed that I was responsible for her being relieved from her duties in my case, that she would follow jurors at lunch and discuss within hearing distance my case, stating that I am guilty. My private investigator, Walt Stannard, observed such activities on several occasions.

David Bryden was appointed to represent me after Sylvia Cediell was relieved, and he immediately lied to Judge Cramer by telling him that I wanted to waive my right to a speedy trial, and I corrected this by informing the court that I did not tell Mr. Bryden that I wish to waive my right to a speedy trial, but that it was Bryden that had previous engagements and would not be available until early 2018. This apparently did not fare well with Mr. Bryden as he came to Santa Rita Jail and told me that he's going to find a way to make/force me to waive my right to a speedy trial. This caused me to give Mr. Bryden 'very-specific-directions' as to where he could go, and he swiftly departed in what may have been the direction/location in which I had suggested; And when back in court, I explained to the court that Mr. Bryden is rendering ineffective assistance by forcing me to waive my right to a speedy trial against my will, and because I cannot be appointed an attorney that has the time to proceed and represent me in a speedy trial, that I would like to represent myself, pro se. Judge Don C. Clay did dismiss David Bryden as my public defender and GRANTED my Faretta motion to self-representation. It was during this time that I learned that D.A. Hernandez was having difficulty attaining witnesses because the alleged victim told her dad that she did not want to attend a trial regarding this matter. Nor did Gyretta Green wish to testify in this trial because she has admitted to 'church members' and to an 'attorney' that she falsely accused me of rape, and that 'she's sorry' about these false accusations. Hence, the prosecutor did ensure both witnesses that 'they would be safe' and that 'nothing would happen to them' if they were to testify to the facts as he presented them.

Now that Judge Don C. Clay had granted me self-representation, I went back to Judge Trina Thompson where we continued at the point we were at when I was represented by Sylvia Cediell. The problem here was that I wasn't given time to properly prepare, and I didn't have any discovery documents from the D.A., or my attorney

STATEMENT OF THE CASE

The trial judge granted me pro per status, giving me the right to call my private investigator, of which was appointed to me by Judge Cramer, free of charge, but jail officials failed to provide this service for me, and when I informed the court that I'm not being allowed/~~provided~~ pro se phone calls to my private investigator, ~~the~~ trial judge did absolutely nothing, for the duration of my trial, to ensure that I was able to communicate with my private investigator to discuss trial strategies.

The trial court further failed to ensure that my witnesses honored the subpoenas served them and appeared in court. The court felt that it was my responsibility to make sure that my witnesses showed-up in court to testify, and told me that there was nothing that the court could do.

Furthermore, the trial judge would not allow for me to speak/confer with my prosecutor during trial, so when the trial judge asked me which witness I'd like to call on first to testify, I asked the judge, "How am I suppose to call on my witnesses when you won't allow for me to communicate with my private investigator?" "How am I suppose to know who is here?" The trial judge, TRINA Thompson, berated my private investigator for ten minutes, scolding that he's not to speak in court — that if he wants to address the court, that he's to tell me, and then I would address the court....but in the same breath, the court told my private investigator that he could not sit next to me in court, that he must sit in the audience and pass notes to me through a person that was not an employee or clerk of the court. My private investigator informed the court that as an P.I. for a defendant, that he's always allowed to sit with his client during a trial, but the trial court refused me/him the right to communicate with me during my trial. This led to my not knowing of discovery evidence of which I've not received because these items were never given to my P.I. from/by the D.A.

My Due Process rights were severely violated on every level. The court knew that I am hearing impaired and failed to supply hearing aids or an advisory attorney. ON August 28, 2017, the Bailiff (Michael McDonald) dislocated my clavicle in court. ON September 18, 2017, the transportation vehicle, while transporting me to court, collided with another vehicle, causing multiple injuries to my person, of which left me

STATEMENT OF THE CASE

in dire need of medical care/treatment of which I did not receive throughout trial.

The trial court denied me a fair trial as well as my due process by:

- 1) Failing to ensure that the pro per status granted me was in effect
- 2) Not allowing my Private Investigator to converse with me during trial
- 3) Bribing the jurors by giving them gifts and candy treats
- 4) Allowing the Bailiff to assault me; Physically dislocating my collarbone
- 5) Failing to provide hearing aids for me during trial
- 6) Failing to Order a Mistrial once it was learned that the jurors were discussing the case amongst one another; with the media; and with my Private Investigator, during trial proceedings
- 7) Preventing me from presenting my defense to the court
- 8) Allowing the D.A. to present false character evidence to jurors
- 9) Not allowing me to 'Recall' witnesses
- 10) Failing to ensure witnesses honored my subpoenas served
- 11) Failing to secure the scene of the alleged crime
- 12) Forcing complaining witnesses to testify
- 13) Allowing the Prosecutor to vindictively prosecute this case by asking the court to give the jurors a fraudulent instruction (The D.A. asked the court to give jurors an instruction stating: "The Berkeley Police Officers did not answer when asked if Methamphetamine was found in my van because the Prosecutor advised them to 'Not-Answer' any questions regarding the Meth/Meth Pipe found in my van.
- 14) The alleged victim did not tell the Police what had happened to her - as she testified that the 'Police-told-her' what happened, and for her to learn their version of events for trial
- 15) The trial court failed to replace my Private Investigator after it was learned that my P.I. was no longer providing service for me.
- 16) Once my Public Defender was relieved from her duties (Ms. Sylvia Cediel), the court allowed her to assume the role as 'Surrogate Prosecutor'
- 17) The court knew that my Public defender, after her being relieved of her duties, lurked in the hallways and or elevators of the court, speaking to my jurors informing them that I'm a 'Guilty-Rapist'.

STATEMENT OF THE CASE

- 18) Trial Court failed to provide transcripts of a prior proceeding needed for the preparation of a defense.
- 19) While testifying, the D.A. would 'nod' or 'shake' his head, indicating to the complaining witness what he'd like for their answers to be.
- 20) My pro per status was relinquished and the court failed/refused to appoint/provide standby and or advisory counsel.
- 21) The prosecuting attorney failed to make available to standby counsel all discovery provided to pro per defendant.
- 22) Trial Court denied me my right to introduce evidence of Jane Doe's (Tania Lee) prior sexual assault allegations.
- 23) Court prejudiced my case by allowing a 1995 prior case of which had nothing to do with the instant case.
- 24) Introducing the 1995 incident created a substantial danger of undue prejudice due to its inflammatory nature.
- 25) News articles by the East Bay Times stating that I had six prior sexual-assault convictions were read by jurors and the court failed to dismiss or rule/order a mistrial.
- 26) The court violated my right to effective assistance of counsel.
- 27) My appellate counsel failed to obtain transcripts of a prior case to present an effective defense.

REASONS FOR GRANTING THE PETITION

The Court should grant certiorari because the only crime of which I did commit, which was possession of a controlled substance (ie. Methamphetamine and Meth pipe), the Berkeley Police (and District Attorney) confiscated this evidence but failed to charge me with this crime. Instead, the Berkeley Police chose to fabricate a 'kidnapping' charge against me with much perjury suborned by the D.A.

On May 1, 2017, I purchased a 1999 Astro Chevy Van at approximately 7:00 p.m., and on May 2, 2017, I was driving in Berkeley, California, when I was detained by many police cars at approximately 4:30 a.m.. As soon as I pulled-over to the curb Sgt. David Marble appeared at the door on the driver's side while Officers Kelvin Gibbs and Kevin Kleppe appeared at my passenger window, so I lowered the passenger window, as my driver's side window was already down.

Sgt. Marble told me to 'cut-off-my-van' and Officer Kleppe asked me for my Driver's License and Registration, while Officer Gibbs stood directly behind Ofc. Kleppe. Officers Marble and Kleppe immediately asked me questions about my whereabouts, 'Where had I been?', and 'Where was I going?', when Ofc. Kleppe asked me about the cell phone in my glove compartment; And when I told him that someone had left it in my van after giving several people rides home from a night of bowling, Ofc. Kleppe told me to hand him that phone, of which I complied, then Sgt. Marble told me to get out of my van, and when I did I was immediately handcuffed by the 7-foot-tall, 400-pounds, Ofc. Gibbs, who basically took-over as he began to ask me so many questions that I wasn't sure which question I was responding to.

Although I was told by Ofc. Gibbs that I was not under arrest, I truly felt like I was as I was handcuffed behind my back; Several police cars surrounded me with lights flashing; and now there was many officers with guns everywhere while Ofc. Gibbs relentlessly questioned me. Police radios or 'Walkie-Talkies' were squaking loudly and I thought I heard a reference pertaining to somebody being hurt, so I asked Ofc. Gibbs if I need an attorney. My Miranda Rights had not been administered, and Ofc. Gibbs told me that 'I'm not in any trouble', so I continued to answer his questions although I had not been informed why I had been detained by all of these Berkeley Police Officers. The fact that I was currently wearing a GPS-ankle monitor on my left-ankle, and had been for 2½ years, I figured would prove that I had not done anything wrong, other than the fact

REASONS FOR GRANTING THE PETITION

that I had been smoking meth that night and only moments prior to my being stopped by the Berkeley Police Sgt. Marble and other Officers. The fact that I was high, disoriented, and paranoid due to my use of methamphetamine, did not prevent me from talking and answering questions propounded by Ofc. Gibbs.

The State Court Requires Police to clarify ambiguous Request for Counsel before continuing interrogation. The Supreme Court of Connecticut held that State Constitution Requires Police to clarify an ambiguous Request for Counsel before continuing to interrogate a suspect. According to DAVIS V. UNITED STATES, 512 U.S. 452 (1994), Police must cease questioning a suspect only after he makes an unambiguous Request for Counsel.

After 30-45 minutes of my being questioned by Ofc. Gibbs without my being advised of Pending Charges, Ofc. KLEPPE was ordered by Sgt. Marble to kidnap me by way of placing me while still handcuffed into his Squad/Patrol car and whisking me away to a hospital in Oakland, California, where Berkeley Police told the alleged victim that I was the person that had her cell phone and that tried to rape her. The Berkeley Police Officers described what I looked like to this alleged victim, after which Ofc. KLEPPE took me to the Berkeley Jail, which alerted me that I was victim of false identification orchestrated by the Berkeley Police.

Once at the Berkeley Jailhouse, while still very high on methamphetamine of which Officer Jones confiscated from my van and later placed in evidence, I was unlawfully housed after an Officer swabbed my mouth and hands against my will because I had no clue why I was in jail, or why Police failed to tell me why I was being detained, arrested, and placed in jail.

Hours later, Det. Darren Kacalek appeared at the cell I'd been placed in and asked me if I would talk to him, and I told him that "I want to have an attorney present" if I'm to speak to him, and Det. Kacalek said; "Okay", but when Det. Kacalek came back and led me to the interrogation room where I was unknowingly being filmed, I immediately noticed that there was not an attorney present, so I said to Det. Kacalek: "I thought that there would be an attorney here, because I told you that I want an attorney and you said; 'Okay'". Det. Kacalek dodged my Request and asked me questions, and because I was still high/disoriented, I talked and talked for hours, & hours. Furthermore, Det. Kacalek, nor the other officer, Heriberto Diaz, read me my rights,

REASONS FOR GRANTING THE PETITION

NOR did Det. Kacalek, who did all of the interrogation, give me any Miranda warnings. During trial, when asked if he gave me Miranda warnings or if he Mirandized me, Det. Kacalek responded: "Partially". The record shows that Berkeley Police did not obtain a waiver of my right not to incriminate myself and police did not inform me of the essence of the charges filed against me. Hence, the state cannot prove beyond a reasonable doubt that I knowingly and intelligently waived my right. Thus, the 2½ hours long videotaped interview of my statements of which were shown to the jurors in its entirety, must be, and or should have been suppressed. If police had followed the law, I would've been placed in 'Detox' and tested to see if I had Methamphetamine in my system, but the Berkeley Police, while knowing that I was 'high-on-meth', did fail to advise me of any pending charges; did fail to obtain a waiver of my right against self-incrimination; which requires suppression of statements. The police may inform the suspect of the charges before or after Miranda warnings, but they must do so before obtaining any waiver. In the instant case, I did not waive any rights and Det. Kacalek testified in court that he 'partially' Mirandized me. For these reasons alone, the court should reverse judgment. STATE V. VICENTY, 202 A.3d 1273 (N.J. 2019); MIRANDA V. ARIZONA, 384 U.S. 436 (1966); STATE V. REED, 627 A.2d 630 (N.J. 1993).

The record reflects that I asked Det. Kacalek for an attorney, and it also reflects that when I was detained by Berkeley Police, that I was not Mirandized. In MIRANDA V. ARIZONA (1966) 384 U.S. 436, the United States Supreme Court held that a defendant could not be penalized for exercising Fifth Amendment rights while in custody. This includes exercising his right to counsel. In the instant case, the attorney I requested was not provided, but I did not knowingly and intelligently waive my right to counsel, so my statements must be (or should have been) suppressed despite the fact that the statements were made voluntarily. PEOPLE V. BRADFORD, (1997) 14 Cal.4th 1105. Furthermore, the Berkeley Police confiscated 0.6 grams of Methamphetamine from my van, along with a meth pipe, and the Berkeley Police, the prosecutor, as well as the court, knew or should have known that at the time of my arrest, that I, as well as the alleged victim, was very high and disoriented. Due to my (and the alleged victims) diminished capacity, the Supreme Court should vacate Superior Court's order and remand the case. STATE V. GROPP, 433 P.3d 1113 (Alaska 2018). Hence, the court should exclude all evidence of and references to the videotaped statements because at the time of the statement, I was in custody and did not make a knowing and intelligent waiver of my Miranda rights. The constitutional

REASONS FOR GRANTING THE PETITION

PROTECTIONS SET OUT IN MIRANDA V. ARIZONA 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed. 3d 694, apply not only to direct custodial interrogation but to also police conduct which is designed to elicit an incriminating response. Rhode Island v. Innis (1980) 446 U.S. 291, 100 S.Ct. 1682, 64 L.Ed. 2d 297; Missouri v. Seibert, 542 U.S. 600 (2004).

FURTHER, the admission of the evidence of my videotaped statements taken by Detectives Kocalek and Diaz did violate my rights under the UNITED STATES and CALIFORNIA CONSTITUTIONS. HENCE, my alleged admissions/statements in the videotaped interview was not voluntary, but the result of the undue coercion of a person who was under the influence of methamphetamine and under arrest.

ONCE the BERKELEY police officers failed to house me in the proper facility for persons in need of 'detoxing'; failed to MIRANDIZE me and tell me the charge I was arrested for; failed to honor my request for an attorney; illegally interrogated and videotaped me without mirandizing and or providing requested counsel, ON May 4, 2017, I was transferred from Berkeley Jail to Santa Rita County Jail in Dublin, California. WEEKS later I was appointed a public defender, one Sylvia Cediel, and from May thru September, refused to inform me of any details pertaining to my case. ONCE the trial court became aware of my displeasure with Ms. Cediel's refusal to communicate with me, the court's initial response was to proceed with trial, so I first informed the court that my public defender has been pretending to represent me for several months and has not yet notified me of a plea offer... and because I later ended up representing myself, I was never notified of a plea offer by/ from the prosecutor. The Connecticut Supreme Court announced that defense counsel has duty to promptly notify defendant of a plea offer, and failure to notify before testifying constitutes ineffective assistance of counsel. The Connecticut Supreme Court noted that the right to effective assistance of counsel "applies to all critical stages of a criminal prosecution. The U.S. Supreme Court has ruled that this right applies specifically to plea negotiations. Missouri v. Frye, 566 U.S. 134 (2012).

Sylvia Cediel would not talk to or visit me at Santa Rita Jail (SRJ) to update me on the progress of my speedy trial; she would not inform me about my van, but when she did speak to me, it was only to demand that I plea guilty.

REASONS FOR GRANTING THE PETITION

Sylvia Cediel would file motions on my behalf in the court but refuse to tell me or to allow for me to read/know what she was arguing. There were indications that my public defender was acting as a surrogate prosecutor, so I requested a Marsden motion to relieve Ms. Cediel from her duties, but the trial judge denied my motion. When Ms. Cediel continued to ignore my questions regarding my case, I requested another Marsden motion of which the trial court ordered held in another court with a different judge, and that judge also denied my motion to relieve Ms. Cediel, my public defender. My situation with my public ~~defender~~ grew to the point where it was visible to all that the client-attorney relationship was irreparable, so I requested a third Marsden motion, and this time the trial judge relieved Ms. Cediel of her duties, which caused further violations of my right to a fair trial because Ms. Cediel, after her being dismissed, would come into trial court and assist the D.A. as a surrogate prosecutor. Ms. Cediel would also speak with the jurors in the hallways and elevators of the court, informing them that I was guilty of kidnapping.

After relieving Ms. Cediel, the trial court appointed me another public defender, one David Bryden, who immediately went before Judge Cramer and told him that I wanted to waive my right to a speedy trial; but when I appeared before Judge Cramer I informed him that I do not wish to waive my right to a speedy trial, so Cramer ordered that Mr. Bryden is to be my trial attorney. Several days later Mr. Bryden came to SRJ to inform me that he's going to find a way to waive my right to a speedy trial, and when I told him that I do not wish to waive this right, Mr. Bryden told me that he's going to do it anyway. So when I returned to court I informed the trial judge that "Mr. Bryden wants for me to waive my right to a speedy trial and has told me that he will do anything in his power to make this happen." I then informed the court that "it appears that I cannot receive adequate representation from an appointed public defender, so I'd like to represent myself." The trial judge then ordered that I appear before Judge Don C. Clay, and after a Faretta hearing, I was granted self-representation. However, Judge Clay observed that I was hearing impaired, so he said that he would ensure that I receive hearing aids for trial, and Judge Clay ordered me back to the trial court presided by Judge Trina Thompson.

Once back in trial court, the decisions of important federal questions did so far depart from the accepted and usual course of judicial proceedings, that I'm calling for an exercise of this Court's supervisory power.

First of all, I was not required to make a successful Marsden motion to

REASONS FOR GRANTING THE PETITION

discharge counsel before the court will hear a FARETHA motion for self-representation. Under FARETHA V. CALIFORNIA, (1975) 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed. 2d 562, SUPRA, §291, there is no requirement that the defendant show that appointed counsel is not providing effective representation before self-representation may be permitted.

NEVERTHELESS, the trial judge ordered the trial to proceed and granted me PRO PER status; but Santa Rita Jail Officials denied me access to the law library; Refused to make legal copies for me; and denied me PRO PER phone calls to my Private Investigator or to the Clerk of the Court. When I alerted the court that my due process is being violated because SRJ Officials are not honoring the PRO PER status granted me, ~~the~~ the Court/Judge told me that there was nothing that she (the court) could do about that. I was compelled to prosecute my case without PRO PER status; as I was not allowed access/use of the law library; nor was I allowed/able to make phone calls (PRO PER) to my Private Investigator, not once, throughout my entire trial. For these reasons, my conviction should be reversed, (PEOPLE V. CARTER (1967) 66 C.2d 666, 667, 58 C.R. 614, 427 P.2d 214) as it is clear from the record that my willingness to proceed without counsel was predicated upon my belief reinforced by the trial judge granting me PRO PER status. The failure of the trial judge to promptly and unequivocally reject the condition of SRJ Officials disallowance of my access to the law library and prepare my case, and not allowing me PRO PER calls, requires reversal, because a prisoner who wishes to should "at a minimum be allowed reasonable access to such legal materials as are available at the facility in which he is confined (66 C.2d 671). Furthermore, the court was very much aware that Meth and a Meth pipe was confiscated from my van, and that if my mental competency to make the election of self-representation is in doubt, the trial court must inquire into the subject, ordinarily by ordering a psychiatric evaluation. (PEOPLE V. BURNETT (1987) 188 C.A. 3d 1314, 1322, 234 C.R. 67.)

IN the instant case, I did not initially seek to waive counsel, but when my public defender failed to advise/inform me of the status of my case, I, via Marsden Motion, sought only to relieve this attorney, of which the court granted and appointed a new public defender. HOWEVER, this newly appointed attorney sought to compel me to waive my right to a speedy trial, so I asked the court to relieve this attorney as well, and only decided to represent myself because the appointed public defenders did not have my best interest in heart. (MOON V. SUPERIOR COURT (2005) 134 C.A. 4th 1521, 1529, 36 C.R. 3d 854 ["competence that is required of a defendant seeking to waive his right to counsel is the competence to

REASONS FOR GRANTING THE PETITION

REPRESENT HIMSELF; quoting: GODINEZ V. MORAN (1993) 509 U.S. 389, 113 S.Ct. 2680, 2682, 2686, 125 L.Ed. 2d 321, 327, 331. IN the instant case, the trial court/judge committed REVERSIBLE ERROR in denying me 'EFFECTIVE - APPOINTED - COUNSEL' WHERE my MENTAL COMPETENCE WAS AT ISSUE. A RIGHT OF SELF-REPRESENTATION at trial will NOT "affirm the dignity" of a defendant who lacks the mental capacity to conduct a defense without the assistance of counsel. "TO the contrary, given that defendant's UNCERTAIN MENTAL STATE, the SPECTACLE that could well result from his SELF-REPRESENTATION at trial is at least as likely to PROVE humiliating as ENnobling." TO the extent my lack of capacity lacked of capacity RISKED an IMPROPER CONVICTION and SENTENCE, and SELF-REPRESENTATION in this EXCEPTIONAL context UNDERCUTS the most basic of the Constitution's CRIMINAL law objectives, providing a FAIR trial.

TRIAL Courts are NOT PROHIBITED from advising a defendant. A COURT MAY PROVIDE ADVISEMENT. IN the instant case, the trial judge told me that "she cannot advise me in any way," and that "I'm NOT allowed advisory counsel," NEITHER of which is true, as it's COMMON PRACTICE to do so, PEOPLE V. REDMOND (1969) 71 C.2d 745, 758, 79 C.R. 529, 457 P.2d 321; AND I could have BEEN appointed ADVISORY COUNSEL. PEOPLE V. HAMILTON (1989) 48 C.3d 1142, 1164, footnote 14, 259 C.R. 701, 774 P.2d 730, SUPRA, § 294.

So that I don't write another ten pages of WHY/REASONS for Granting This Petition, I will simply state the REASONS briefly as follows:

- 1) My Sentence was/is illegal (UNITED STATES V. BOOKER, 543 U.S. 220 (2005))
- 2) My jurors Read Newspaper articles of my case during the trial: U.S. V. GONZALEZ, 214 F.3d 1109 (9th Cir. 2000)
- 3) The Appellate court disagreed with Double Jeopardy of Superior Courts' Convicting me of Rape, Sodomy, Oral Copulation, When my Charge is 'Kidnapping'. (Sentencing)
- 4) Appellate Attorney failed to argue P.C. § 654 - Proscription Against Double Punishment in § 654: PEOPLE V. BAUER (1969) 1 Cal. 3d 368, 376
- 5) Federal Judge ISSUED ORDER URGING COURT TO DISMISS ONE of TWO 18 U.S.C. § 924(C) STACKING CONVICTIONS
- 6) Where Prior Conviction is involved, Proof of Prior Conviction is NECESSARY - Trial Court failed to produce RECORD/TRANSCRIPTS of Prior Proceedings
- 7) Police Misconduct - Withholding exculpatory evidence; Illegal Identification line-up
- 8) My Public Defender, after being "relieved of her duties", began working with the D.A. in/out of court; Sylvia Cediel SPOKE to jurors, Prejudicing them against me.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Whittier Buchanan
WHITTIER BUCHANAN

Date: July 13, 2020

Resubmitted on: AUGUST 11, 2020

Resubmitted on: ~~SEPTEMBER~~ 21, 2020