

No. 20-6411

IN THE
SUPREME COURT OF THE UNITED STATES

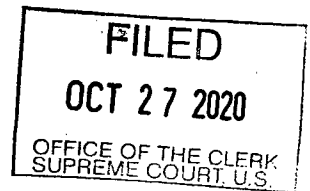
ORIGINAL

MIGUEL RAMIREZ — PETITIONER
(Your Name)

vs.

(WARDEN) J. PICKETT — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO



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

PETITION FOR WRIT OF CERTIORARI

MIGUEL RAMIREZ
(Your Name)

P.O. BOX 3030
(Address)

SUSANVILLE, CA 96127
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. whether a jury instruction in correctly stating that continuous sexual abuse of a child is a general intent crime was prejudicial?
2. whether the trial court's unanimity instruction improperly allowed jurors to convict Petitioner's of continuous sexual abuse based on a single act?
3. whether cumulative instructional error rendered Petitioner's trial unfair under the U.S. Constitution?

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

Chapman v. California (1967) 386 U.S. 18 . . .
Chambers v. Mississippi (1973) 410 U.S. 284 . . .
People v. Jackson (2014) 58 Cal. Wth. 724 . . .
People v. Sengpaduchith (2001) 26 Cal. Wth. 316 . . .
Montana v. Egelhoff (1996) 518 U.S. 37 . . .
Sullivan v. Louisiana (1993) 508 U.S. 275 . . .

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Chamber v. Mississippi (1973) 410 U.S. 254	9
Chapman v. California (1967) 396 U.S. 18	2
In re Winship (1970) 397 U.S. 358	8
Montana v. Egelhoff (1996) 518 U.S. 37	10
Neder v. United States (1999) 527 U.S. 1	3
People v. Jackson (2014) 58 Cal. 4th 724	3
People v. Sengpadychith (2001) 26 Cal. 4th 316	5
People v. Valenti (2016) 243 Cal. App. 4th 1140	4
People v. Louisiana (1993) 508 U.S. 275	2

STATUTES AND RULES

U.S. Const. Amend. 5	
U.S. Const. Amend. 14	

Miscellaneous

Calcrim	252
Calcrim	1120
Calcrim	3501

OTHER

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Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

[] For cases from federal courts:

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[] is unpublished.

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[] is unpublished.

[] reported at CALIFORNIA SUPREME COURT; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

[] 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 _____.

[X] 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: _____, 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. § 1254(1).

[] For cases from **state courts**:

The date on which the highest state court decided my case was July 15, 2020.
A copy of that decision appears at Appendix A.

[] 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

U.S. Const, Amend. 5

U.S. Const, Amend. 14.

STATEMENT OF THE CASE

The Opinion adequately sets forth the
Procedural and Factual history of the case.

REASONS FOR GRANTING THE PETITION

Petitioner contends his trial was rendered fundamentally unfair for several reasons. AND ASSERTS his Fifth, Sixth and Fourteenth Amendment Rights to the United States Constitution were violated that deprived him of a fair trial. The Fifth Amendment provides that no person shall be deprived of his life, liberty or property without due process of law. The government violates this guarantee by taking away someone's life, liberty or property under a criminal law. [so vague that it fails to give ordinary people fair notice of the conduct it punishes. OR so standardless that it invites arbitrary enforcement. The prohibition of vagueness in criminal statutes is a well recognized, requirement consonant alike with ordinary notions of fair play and the settled rule of law and a statute that flouts its violates the first essential of due process, the principles apply not only to statutes defining elements of the crimes" but also to statutes fixing sentences. Here failure to instruct on an element of an offense is federal constitutional error. The incorrect instruction on intent improperly allowed jurors in the instant case before this court to convict petitioner on less than proof beyond a reasonable doubt. Furthermore it was prejudicial. Because the unanimity instruction improperly allowed jurors to convict petitioner of continuous sexual abuse based on a single act. This court should grant review due to the trial being ineffectuated with cumulative instructional errors. The U.S. Supreme Court has clearly established that the combined effect of multiple trial court errors violates due process where it renders the resulting criminal trial fundamentally unfair. *Chambers v. Mississippi* (1973) 410 U.S. 284, 288, 302-03 (combined effect of multiple errors can violate due process" and Deprive Chambers of a fair trial.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

x Miguel Ramirez

Date: x 10/15/2020

ARGUMENT

I.

The incorrect Instruction on Intent Improperly Allowed Jurors to Convict Petitioner on less than Proof Beyond A Reasonable Doubt.

ARGUMENT

II.

The unanimity Instruction Improperly allowed Jurors to Convict Petitioner on Continuous Sexual Abuse Based on a Single Act.

ARGUMENT

III.

This Court should Grant Review because the trial was Ineffected with Cumulative Instructional ERRORS.

I.

THE INCORRECT INSTRUCTION ON INTENT IMPROPERLY ALLOWED JURORS TO CONVICT PETITIONER ON LESS THAN PROOF BEYOND A REASONABLE DOUBT

The Court of Appeal agreed that the version of CALCRIM 252 given to Petitioner's jury incorrectly identified continuous sexual abuse of a minor as a general intent crime, but held that the error was harmless. Finding overwhelming evidence proved Mr. Ramirez must have intended to arouse himself when he touched Doe. [Slip op. at 5-6.] This Court should grant review to reject the Court of Appeal's use of the "overwhelming" evidence" standard to find the error harmless.

The Court of Appeal agreed that the Prejudice standard for this error is governed by *Chapman v. California* (1967) 386 U.S. 18, 24 [See Slip op. at 5], but *Chapman* explicitly precludes a reviewing court from finding harmless error based solely ("upon the court's (own) view of "overwhelming evidence" (*Chapman*, supra, 386 U.S. at p. 23.) "The inquiry, in other words, is not whether, in a trial that occurred

Without the error, a guilty verdict would surely have been rendered, but whether the guilty verdict would surely have been rendered, but whether the guilty verdict actually rendered in this trial was surely have been rendered, but whether the guilty verdict actually rendered in this trial was surely unattributable to the error. That must be so, because to hypothesize a guilty verdict that was never in fact rendered - no matter how inescapable the findings to support that verdict might be - would violate the "jury-trial guarantee" (Sullivan v. Louisiana (1993) 508 U.S. 275, 279).

When the U.S. Supreme Court used "overwhelming evidence" to describe the harmless error standard in Neder v. United States (1999) 527 U.S. 1, it said instructional error would be harmless if the omitted element was both uncontested and supported by overwhelming evidence. Justice Liu has noted in dissent that appellate courts should not measure the sufficiency of the evidence in determining whether an error is harmless under Chapman, because sufficiency determination

are supposed to belong to juries.

The risk of an appellate court usurping the jury's role becomes especially great when harmless error analysis focuses not on whether error might have affected the jury's decisionmaking, but on whether there was overwhelming evidence to support the result. As Chief Justice Traynor explained, "It is one thing for an appellate court to determine that a verdict was or was not affected by error. It is quite another for an appellate court to become in effect a second jury to determine whether the defendant is guilty." (Traynor, *The Riddle of Harmless Error* (1970) p. 21 (Traynor); see *Neder v. United States* (1999) 527 U.S. 1, 31-32 (144 L. Ed. 2d 35, 119 S. Ct 1827) (Conc & dis. opn. of Scalia, J); Sullivan, at p. 280; Edwards, *supra*, 70 N.Y.U. L. Rev. at pp. 1185-1199; Field, *Assessing the Harmless of Federal Constitutional Error - A Process in Need of a Rationale* (1976) 125 U. Pa. L. Rev. 15) (*People v. Jackson* (2014) 58 Cal. 4th 724, 790-791.)

This Court also should grant review on the harmless analysis because it improperly

Placed the burden of proof on Petitioner-noting "Defendant provided no explanation for any acts before Doe turned 14" (slip op. at 6)- in contravention of Chapman's explicit command that the prosecution prove that any constitutional error is harmless beyond a reasonable doubt. The question under Chapman is not whether the defendant provided any or much of a defense to the charges. It is whether the erroneous instruction influenced the jury's assessment of the evidence, including the credibility of the prosecution's witnesses and the credibility of the prosecution's interpretation of that evidence.

If the Court of Appeal had followed Chapman, it would have agreed with Mr. Ramirez's characterization of the prejudice. (1) Mr. Ramirez testified that none of the prior touching occurred. In *People v. Valenti* (2019) 243 Cal. App. 4th 1140, superseded by statute on other grounds as stated in *People v. Brooks* (2018) 23 Cal. App. 5th 932, 945, footnote 17, the defendant's testimony was sufficient to show the instructional error was prejudicial. This testimony, if believed, would have supported

a contrary finding on the omitted element, (Valenti, supra, at p. 1167.) (2) Doe made numerous vague allegations against Mr. Ramirez, even though she denied to her mother found her and Mr. Ramirez in bed together.) (3) Doe was actively involved in therapy for a prior sexual assault when these alleged new assaults were happening, and she refused to tell that therapist that she was being assaulted. (4) No forensic evidence corroborated the acts underlying count one.

The only count that was a slam dunk was count twelve. All of the others had credibility and vagueness problems. These are exactly the kinds of problems that can be exacerbated by incorrect or conflicting jury instructions on intent.

The Court also should grant review to address the federal constitutional error caused by the instructions, which removed an element of the offense from jurors' consideration. (U.S. Const., amend. 5; People v. Sengpaduchith (2001) 26 Cal. 4th 316, 324 (a failure to instruct on an element of an offense is federal constitutional error).

(5)

II.

THE UNANIMITY INSTRUCTION IMPROPERLY
ALLOWED JURORS TO CONVICT PETITIONER
OF CONTINUOUS SEXUAL ABUSE BASED
ON A SINGLE ACT

Mr. Ramirez argued that CALCRIM 3501 and CALCRIM 1120, read together, gave jurors improperly contradictory instructions on their duty to make unanimous findings on what acts he committed. In particular, he argued that the trial court's version of CALCRIM OF CALCRIM 3501 failed to explain that jurors' unanimous agreement on one act - in the face of generic allegations of multiple sex acts over time - would be insufficient to convict Mr. Ramirez of continuous sexual abuse. He also argued that even though CALCRIM 1120 directed jurors to unanimously find that three acts occurred, CALCRIM 1120 did not address the particular challenges presented by generic testimony and purportedly cured by CALCRIM 3501. In particular, CALCRIM

directed jurors to unanimously find that three acts occurred. CALCRIM 1120 did not address the Particular challenges Presented by generic testimony and Purportedly Cured by CALCRIM 3501. In Particular, CALCRIM 1120 does not tell jurors how to assess Vague, generic allegations of multiple acts alleged to have occurred over a Period of months or years, or how to aggregate that Vague evidence to find the Commission of three acts sufficient to Prove Continuous sexual abuse. And CALCRIM 3501 addresses Vague generic testimony but does not explain how to aggregate Vague generic testimony to find the Commission of three acts.

The Court of Appeal rejected this argument, stating that no unanimity instruction was required and that the instruction as given were corrected because the singular term "act" as stated in CALCRIM 3501 described "continuous abuse" which was describe in CALCRIM 1120 as "three or more acts". (Slip op. at 6-7.) This analysis ignores how confusing

it is to characterize a crime that requires proof of three acts as a single act. Lawyers and judges might be expected to understand these subtle distinctions, but asking that level of analysis from jurors is unreasonable. And the purpose of jury instructions is to give jurors an understandable and usable exposition of the law.

The Court of Appeal unreasonably refused to recognize that jurors could have found the term "at least one of these acts" conflicted with "three or more lascivious acts". The terms are facially contradictory, and the instructions did nothing to explain the conflict between them. This Court should grant review to address the conflict and to address the federal constitutional error it created by allowing the jury to convict Mr. Ramirez with continuous sexual abuse on less than proof beyond a reasonable doubt of every element of the charged offense. (See U.S. Const., amend. 14; *In re Winship* (1970) 397 U.S. 358.)

III

THIS COURT SHOULD GRANT REVIEW
BECAUSE THE TRIAL WAS INFECTED
WITH CUMULATIVE INSTRUCTIONAL
ERROR

Not surprisingly, the Court of Appeal rejected Mr. Ramirez's claim that the cumulative effect of the errors in his case violated his federal constitutional right to due process because it found no errors in the conduct of the trial. The U.S. Supreme Court has clearly established that the combined effect of multiple trial court errors violates due process where it renders the resulting criminal trial fundamentally unfair. (Chambers v. Mississippi (1973) 410 U.S. 284, 298, 302-03 [combined effect of multiple errors can violate due process" and "deprived Chambers of a fair trial"].) The cumulative effect of multiple errors can violate due process even where no single error rises to the level of a constitutional violation or would independently warrant reversal. (Chambers,

- Supra, 416 U.S. at 290 n.3. See also Montana v. Egelhoff (1996) 518 U.S. 37, 53 (stating that Chambers held that "erroneous evidentiary rulings can, in combination, rise to the level of a due process violation")

Once this Court agrees with Mr. Ramirez that the Court of Appeal incorrectly assessed the merit of his claims, it should revisit the cumulative error analysis and find that even if no error alone merits reversal, the cumulative effect of the errors in this case violate due process.

Conclusion

For the foregoing reason, this Court should grant review on the questions presented.

Respectfully submitted

DATE: OCT 15, 2020
BY: Miguel Ramirez
MIGUEL RAMIREZ / IN PRO
PER