

No. 20-6989

IN THE
SUPREME COURT OF THE UNITED STATES

RODNEY LOUIS SIMS PROSE PETITIONER
(Your Name)

vs.

Kimberly A. Seibel-Warden RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

FILED

DEC 28 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

RODNEY LOUIS SIMS
(Your Name)

D.V.I. 23500 KASSON ROAD
(Address)

TRACY, CA. 95304
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. IN APPENDIX H, (PETITIONER NOTICE OF APPEAL) DID PETITIONER SHOW "SUFFICIENT EVIDENCE AND FACTS" OF ALL THREE WITNESS'S WHO "SWEARED UNDER OATH TO TELL THE TRUTH, BUT LIED ON THE STAND TO AN SUPERIOR COURT JUDGE, ALSO JURY." "REFER TO PETITION IN ITS ENTIRETY."
2. IN APPENDIX H, (PETITIONER NOTICE OF APPEAL) PAGES, 5-8 "DO THE FACTS SHOW THE PROSECUTOR KNOWINGLY AND USING FALSE TESTIMONY AND EVIDENCE TO OBTAIN A CONVICTION."
3. IN APPENDIX H, (PETITIONER NOTICE OF APPEAL) PAGES, 1, 2, 3 AND 4 DID PETITIONER "TRIAL ATTORNEY REPRESENT THE DEFENDANT FAIRLY," WHEN HE DID NOT CHALLENGE ANY OF WITNESS ROBIN LOPEZ "PERJURED TESTIMONY" IN VIOLATION OF DUE PROCESS.
4. IN APPENDIX H, (PETITIONER NOTICE OF APPEAL), FACTS SECTION, PAGE 359, LINE 4-11. DO THE FACTS SHOW THAT THE PRINCIPAL PROSECUTION WITNESS ROBIN LOPEZ "RECAST TESTIMONY!"
5. IN APPENDIX H, (PETITIONER NOTICE OF APPEAL), FACTS SECTION PG. 13, LINE 19-22, DID OFFICER ROBIN LOPEZ PROMISE TO BRING COOPERATION TO PROSECUTOR'S ATTENTION. ALSO, AGREE TO WORK WITH SUSPECT IN EXCHANGE FOR HIS COOPERATION.

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:

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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 28 U.S.C. § 2253(c)(2); Miller-El v. Cockrell, 537 U.S. 322, 327 (2003).
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the United States district court appears at Appendix D 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

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was OCT. 20, 2020.

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 _____. 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

A WITNESS PRIOR STATEMENTS THAT ARE INCONSISTENT WITH HIS OR HER ANTICIPATED TRIAL TESTIMONY CONSTITUTES IMPEACHMENT EVIDENCE, 547 U.S. AT 868-69, YOUNGBLOOD, STRICKLER, 527 U.S. AT 282. OMITS CRITICAL DETAILS IN ONE OF THE STATEMENTS, JAMISON V. COLLINS, 291 F.3d 380, 389 (6TH CIR. 2002). GIVES CONFLICTING DETAILS, PARADIS V. ARANE, 130 F.3d 385, 392-93 (9TH CIR. 1997). DEMARCO V. U.S. 928 F.2d 1074 (11TH CIR. 1991). FAILURE OF PROSECUTOR TO CORRECT PERJURED TESTIMONY OF WITNESS IS GROUNDS FOR REVERSAL OF CONVICTION.

STATEMENTS CAN BE INCONSISTENT EVEN IF THEY BOTH INculpate THE DEFENDENT.

SEE APPENDIX-H, PAGE 2, ALSO, IN THE FACTS SECTION, PAGE 334, LINE 9-14, PG. 355, LINE 1-10, AND PG. 17, LINE 25-26.

U.S. V. CUFFIE, 80 F.3d 514 (D.C. Cir. 1996).
UNDISCLOSED EVIDENCE THAT PROSECUTION
WITNESS HAD LIED IN EARLIER COURT PROCEEDING
IN SAME CASE WAS ENOUGH FOR REVERSAL
OF CONVICTION.

SEE APPENDIX-H, PAGE 5, ALSO, FACTS SECTION, PG. 8,
LINE 10-12, PG. 9, LINE 10-16, AND, PG. 390, LINE 18-20.
MILLER V. PATE, 386 U.S. 1 (1967), PETITIONER
CONVICTION WAS BASED ON EVIDENCE KNOWN
TO BE FALSE, VIOLATING PETITIONER RIGHT TO
A FAIR TRIAL.

SEE APPENDIX-H, PAGE 7, ALSO, FACTS SECTION,
PG. 321, LINE 26-27, PG. 322, LINE 1-28, PG. 389, LINE 19-20
PG. 390, LINE 1-28 AND, PG. 391, LINE 1-9.

NIX V. WHITESIDE, 475 U.S. 157 (1986). PETITIONER
COUNSEL KNOWINGLY INTRODUCED PERJURED
TESTIMONY IN VIOLATION OF RIGHT TO COUNSEL,
DUE PROCESS OF LAW.

SEE APPENDIX-H, PAGE 1, ALSO, FACTS SECTION,
PG. 334, LINE 9-14, PG. 355, LINE 8-10, AND, PG. 17
LINE 25-26.

U.S. V. CRONIC, 466 U.S. 648 (1985), PETITIONER COUNSEL SO UTTERLY FAILED TO DEFEND AGAINST THE CHARGES THAT THE TRIAL WAS FUNCTIONALLY EQUIVALENT OF A GUILTY PLEA, RENDERING COUNSEL REPRESENTATION PRESUMPTIVELY INADEQUATE, IN VIOLATION OF RIGHT TO COUNSEL, DUE PROCESS OF LAW.

SEE APPENDIX -H, PAGES 3-4, ALSO, FACTS SECTION, PAGE 334, LINE 1-4, PG. 23, LINE 16-18, PG. 359, LINE 14.

U.S. V. BAGLEY (1985) 473 U.S. 667, 676, 105 S CT 3375, KYLES V. WHITNEY (1995) 514 U.S. 419, 434, 115 S CT 1555.

DUE PROCESS REQUIRES THE DISCLOSURE TO THE DEFENDANT OF "EVIDENCE FAVORABLE TO AN ACCUSED" THAT IS MATERIAL EITHER TO GUILT OR TO PUNISHMENT.

THE QUESTION OF MATERIALITY IS NOT WHETHER IT IS "MORE LIKELY THAN NOT" THE DEFENDANT WOULD HAVE RECEIVED A DIFFERENT VERDICT WITH THE EVIDENCE BUT WHETHER THE DEFENDANT RECEIVED A FAIR TRIAL, I.E., ONE "RESULTING IN A VERDICT WORTHY OF CONFIDENCE.

KNOWLES V. MIRZAVANCE, 556 U.S. 111, 123, 127 (2009). "A REASONABLE PROBABILITY IS A PROBABILITY SUFFICIENT

TO UNDERMINE CONFIDENCE IN THE OUTCOME". SEE APPENDIX H, PAGES 1, ALSO, FACTS SECTION, PG. 334, LINE 9-14, PG. 355, LINE 8-10, AND PG. 17, LINE 25-26, PAGES 2, 3, 4, FACTS SECTIONS, PG. 334, LINE 1-4, PG. 23, LINE 16-18, AND PG. 359, LINE 14

STATEMENT OF THE CASE

I. THE FACTS OF THE CASE ARE THAT THE PRINCIPAL PROSECUTION WITNESS ROBIN LOPEZ "liED UNDER OATH" MAKING A FALSE STATEMENT TO ONE QUESTION, THEN WHEN gIVING THE OPPORTUNITY TO EXPLAIN OR DENY THE THE PREVIOUS FALSE STATEMENT, "THE WITNESS CHANGES THE QUESTION AND TESTIMONY ON THE STAND TO CORROBORATE WITH THE INTERROGATION REPORT" THE PROSECUTION FAILED TO CORRECT THE PERJURED TESTIMONY OF THE ORIGINAL QUESTION.

DEMARCO v. U.S, 928 F.2d 1074 (11TH CIR. 1991). SEE APPENDIX H, PG. 2, ALSO, FACTS SECTION, PG. 334, LINE 9-14, PG. 353, LINE 24-28, PG. 354, LINE 1-28, PG. 355, LINE 1-10, AND PG. 17, LINE 25-26.

II. THE FACTS OF THE CASE ARE THAT THE WITNESS ENRIQUE RODRIGUEZ "liED IN AN EARLIER COURT PROCEEDING!" IN PETITIONER'S PRELIMINARY HEARING, THE WITNESS TESTIFIED TO "BEING AWARE OF HOW MUCH MONEY WAS IN THE CASH REGISTER!" IN SAME PROCEEDING THE WITNESS TESTIFIED THAT "HE DID NOT REMEMBER EXACTLY HOW MUCH MONEY WAS MISSING." IN A LATER TRIAL DATE, THE WITNESS WAS ASKED, "WHEN THE MONEY WAS RETURNED, DID IT EVENTUALLY ADD UP TO THE \$400," THE WITNESS STATED,

"IT DID. IT WAS THE EXACT AMOUNT WE WERE MISSING." BUT THE WITNESS ACKNOWLEDGED THAT A PORTION OF THAT \$400 WAS CHANGE. SO HOW CAN EXACTLY \$400 BE RETURNED WHEN THE WITNESS TESTIFIED THAT HE DIDN'T KNOW HOW MUCH WAS BILLS AND HOW MUCH WAS COINS. U.S. V. WIFFIE, 80 F.3d 514 (D.C.Cir.1996) SEE APPENDIX H, PG. 5, ALSO, FACTS SECTION, PG. 8, LINE 13-12, PG. 9, LINE 10-16, PG. 390, LINE 18-26, AND, PG. 391, LINE 1-3.

III. THE FACTS OF THE CASE ARE THAT THE WITNESS RAYMOND COTA TESTIFIED TO THE POLICE FILE NUMBER 15-33068 AS BEING THE FILE NUMBER THAT YOU WOULD EVIDENCE UNDER WHICH SOMEONE CAN LATER RETRIEVE THAT EVIDENCE.

IN LATER TESTIMONY THE WITNESS "RECATS HIS STATEMENT AND TESTIFIES TO HANDING THE MONEY OVER TO AGENT IGLESIAS," IN WHICH THE MONEY WAS NOT POOKED, THE WITNESS STATED, "BUT COUNTED AND RETURNED TO THE VICTIM.
SEE APPENDIX H, PG. 6, ALSO, FACTS SECTION, PG. 321, LINE 11-15, PG. 323, LINE 3-7.

IV. THE FACTS SHOW THAT WITNESS ENRIQUE RODRIGUEZ AND WITNESS RAYMOND COTA "GAVE PERJURED TESTIMONY AND ALSO TWO CONFLICTING DETAILS IN CONCERN WITH THE CURRENCY DENOMINATIONS." WITNESS "ENRIQUE RODRIGUEZ TESTIFIED THAT HE WAS AWARE OF HOW MUCH MONEY WAS IN THE

REGISTER PRIOR TO OPENING IT, AND GAVE A STATEMENT OF \$1, \$5, \$10 AND \$20 BILLS." WITNESS "RAYMOND COTA, AGREED ~~TO~~ TO FOUNDING \$1, \$5, AND \$20 BILLS."

PETITIONER, I KNOW BOTH WITNESS'S LIED UNDER OATH TO AN SUPERIOR COURT JUDGE AND JURY. BECAUSE I KNOW I HAD \$1, \$10 AND \$20 BILLS THE AMOUNT OF \$190." THIS WAS KNOWN BY MY ARRAIGNMENT ATTORNEY AS WELL AS MY TRIAL ATTORNEY"

SEE APPENDIX H, PG. 7, ALSO, FACTS SECTION, PG. 389, LINE 17-20 PG. 390, LINE 6-7, AND, PG. 322, LINE 26-28.

NAPUE V. ILLINOIS, 360 U.S. 264 (1959). THE PROSECUTOR KNOWINGLY USED PERJURED TESTIMONY TO OBTAIN A CONVICTION.

MILLER V. PATE, 386 U.S. 1 (1967). PETITIONER CONVICTION WAS BASED ON EVIDENCE KNOWN TO BE FALSE. VIOLATING PETITIONER RIGHT TO A FAIR TRIAL.

IV. "THE FACTS SHOW THAT PETITIONER TRIAL COUNSEL SHOWED MORE THAN A REASONABLE PROBABILITY A PROBABILITY SUFFICIENT TO UNDERMINE CONFIDENCE IN THE OUTCOME".

V.S. V. BAGLEY (1985), 473 U.S. 667, 676, 105 S.Ct 3375 KNOWLES V. MIRZAYANCE, 556 U.S. 111, 123, 127 (2009).

TRIAL COUNSEL FAILED TO DISCLOSE EVIDENCE THAT COULD HAVE BEEN USED TO IMPEACH THE PRINCIPAL PROSECUTION WITNESS ROKIN LOPEZ. AS WELL AS

ALLOWING WITNESS ROBIN LOPEZ TO CHANGE THE ORIGINAL QUESTION AND STATEMENT ON THE STAND WITHOUT CHECKING WHAT QUESTION AND STATEMENT THE WITNESS WAS BEING REFRESHED WITH. ALSO, FAILING SO UTTERLY TO DEFEND AGAINST ANY PERJURED TESTIMONY PRESENTED BY THE WITNESS.

SEE APPENDIX H, PG. 1, 2, 3 AND 4, ALSO, FACTS SECTION, PG. 334, LINE 9-14, PG. 355, LINE 8-10, PG. 17, LINE 25-26, PG. 334, LINE 1-4, PG. 23, LINE 16-18, AND, PG. 359, LINE 14-16.

VI. THE FACTS OF THE CASE ARE THAT THE PRINCIPAL PROSECUTION WITNESS ROBIN LOPEZ "RECANTS HER TESTIMONY." THE WITNESS WAS ASKED, "DID PETITIONER STATE HE WENT TO THE HOTEL TO ROB SOMEBODY?" WITNESS STATES, "YES". AND THEN RECANT THAT STATEMENT WITH "I DONT THINK HE USED THAT WORD."

SEE APPENDIX H, FACTS SECTION, PG. 359, LINE 4-11.

VII. THE FACTS OF THE CASE ARE THAT, SHOULD PETITIONER'S MISSTATEMENTS TO CERTAIN QUESTION SHOULD HAVE BEEN CONSIDERED AS A CONFESSION! AND WOULD A CONFESSION BE IN VOLUNTARY PARTLY DUE TO OFFICER'S PROMISE TO BRING COOPERATION TO PROSECUTOR'S ATTENTION. ALSO, "AGREEING TO WORK WITH PETITIONER IN EXCHANGE FOR HIS COOPERATION." U.S. V. TINGLE, 658 F.2d 1332, 1336-37 (9TH CIR. 1981). IF COMBINED WITH OTHER FACTORS, HOWEVER, PROMISES OF LENIENCY CAN BE SUFFICIENTLY COERCIVE TO RENDER A CONFESSION IN VOLUNTARY.

SEE APPENDIX H, FACTS SECTION, PG. 13, LINE 19-22

REASONS FOR GRANTING THE PETITION

PETITIONER HAS AN COMPELLING REASON TO BELIEVE THAT THERE IS AN EXISTENCE OF CONFLICT BETWEEN THE DISTRICT COURT AND THE NINTH CIRCUIT COURT OF APPEAL. IN WHICH THE NINTH CIRCUIT COURT OF APPEAL HAD CONSTRUE APPELLANT'S PROSE NOTICE OF APPEAL AS A MOTION TO REOPEN PURSUANT TO FEDERAL RULE OF APPELLATE PROCEDURE 4(A) (6). SEE, V.S. V. WITHERS, 638 F.3d 1055, 1061 (9th Cir. 2011), IN WHICH THE DISTRICT COURT GRANTED APPELLANT'S MOTION TO REOPEN THE JULY 29, 2019, NOTICE OF APPEAL. WOULD THERE HAVE BEEN AN EXISTENCE OF CONFLICT BETWEEN BOTH COURTS BECAUSE THE NINTH CIRCUIT COURT OF APPEAL believed THERE TO BE AN REASON FOR APPELLANT'S PETITION TO BE REVIEWED. IN WHICH REVIEW FOR THE MOTION WAS GRANTED BY THE DISTRICT COURT. IN THE NINTH CIRCUIT COURT OF APPEAL THERE IS ONE SET OF CIRCUIT JUDGES WHO FOUND APPELLANT'S PETITION TO BE DEBATABLE, AND ANOTHER SET

OF CIRCUIT JUDGES WHO DENIED THE MOTION AS BEING DEBATABLE.

PETITIONER BELIEVE THAT THE NINTH CIRCUIT COURT OF APPEAL FAILED TO JUDGE THE FACTS OF THE CASE. BECAUSE YOU HAVE EVIDENCE OF ALL THREE PROSECUTION WITNESS'S COMMITTING PERJURY, LYING UNDER OATH TO AN SUPERIOR COURT JUDGE AND JURY. ALSO, USING MATERIAL EVIDENCE KNOWN TO BE FALSE TO PROSECUTE AND CONVICT PETITIONER.

AND A DEFENSE THAT SHOWED A REASONABLE PROBABILITY TO UNDERMINE THE OUTCOME OF THE TRIAL, WHEN COUNSEL FAILED ON NUMEROUS OCCASIONS TO DEFEND OR PRESENT ANY EVIDENCE TO DEFEND HIS CLIENTS SUPPOSED INCRIMINATING STATEMENTS, EVIDENCE THAT COULD HAVE BEEN USED TO IMPEACH PERJURED TESTIMONY OF THE PRINCIPAL PROSECUTION WITNESS Robin Lopez.

Thank you,

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Rodney Lewis Sims

Date: DECEMBER 27, 2020.