

No. _____

IN THE
Supreme Court of the United States

JUAN VALENZUELA,

Petitioner,

v.

L. SMALL, WARDEN

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

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Petitioner asks leave to proceed in forma pauperis and to file the attached Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit without prepayment of costs. The Ninth Circuit appointed counsel under the Criminal Justice Act, 18 U.S.C. § 3006A(b).

This motion is brought pursuant to Rule 39.1 of the Rules of the Supreme Court of the United States.

Respectfully submitted,

CUAUHTEMOC ORTEGA
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Dated: February 19, 2021

By: 
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JUAN VALENZUELA

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QUESTIONS PRESENTED

Whether, in affirming a district court's denial of federal habeas relief under 28 U.S.C. § 2254(d), the Ninth Circuit unreasonably applied this Court's precedent when it concluded that Petitioner's *Brady* claim, based on a police officer's undisclosed misconduct at the time of trial that resulted in multiple felony convictions after trial, failed for lack of prejudice.

STATEMENT OF RELATED CASES

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

Valenzuela v. Small, 19-55759, 2020 WL 6948788 (9th Cir. Nov. 25, 2020);

In re Juan Valenzuela, S176616 (Cal. Sup. Ct. March 10, 2010);

In re Juan Valenzuela, S169648 (Cal. Sup. Ct. July 8, 2009);

In re Juan Valenzuela, B212038 (Cal. Ct. App. December 18, 2008).

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner Juan Valenzuela seeks summary reversal of the Ninth Circuit's memorandum disposition affirming the district court's dismissal of his federal habeas petition as barred under 28 U.S.C. § 2254(d).

OPINIONS BELOW

The Ninth Circuit Court of Appeals affirmed the judgment below in an unpublished memorandum disposition. App. 1-7. The opinion of the District Court of the Central District of California, adopting the Magistrate Judge's Amended Report & Recommendation, was also unreported. App. 8-46. The California Supreme Court summarily denied Valenzuela's pro se state habeas petition. App. 47.

STATEMENT OF JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1254(1). The Ninth Circuit had jurisdiction under 28 U.S.C. § 2253 and entered judgment on November 25, 2020. App. 1-7.

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONST. AMEND. XIV, § 1

[N]or shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S. Code § 2254

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

STATEMENT OF THE CASE

Following a 1997 jury trial in Los Angeles County, Valenzuela was convicted of three counts involving the first-degree murder of Edward Wilkins, the second-degree murder of Norman LaGrone, and an assault with a deadly weapon on Oscar Thomas. *See* Cal. Penal Code §§ 187, 245(a). The jury found true a multiple-murder special circumstance and that Valenzuela personally used a firearm in the Wilkins murder. Cal. Penal Code §§ 190.2(a)(3), 12022.5(a).

Valenzuela was sentenced to state prison for a term of life without the possibility of parole, plus 17 years. App. 11.

Before and during Valenzuela’s trial, the Long Beach Police Department (LBPD) and Federal Bureau of Investigation (FBI) were jointly investigating LBPD officer Julio Alcaraz for narcotics trafficking. App. 20. After Valenzuela’s trial, Alcaraz was charged and pled guilty in federal court to using or possessing a firearm in connection with a drug-trafficking crime and was sentenced to 135 months imprisonment. App. 20-21. The prosecution never disclosed Alcaraz’s known but uncharged illegal conduct to the defense during Valenzuela’s trial and presented Alcaraz to Valenzuela’s jury as an unimpeached police officer.

After learning of Alcaraz’s convictions, Valenzuela sought habeas relief in the state courts based on Alcaraz’s undisclosed misconduct, alleging a due process violation under *Brady v. Maryland*, 373 U.S. 83 (1963). The state court denied Valenzuela’s *Brady* claim for lack of prejudice. App. 49-50.¹ Valenzuela next sought federal habeas relief under 28 U.S.C. § 2254 and was appointed federal counsel. The district court concluded that relief was barred under 28 U.S.C. § 2254(d)(1), which precludes federal habeas relief unless the state court’s

¹ The parties agreed that the decision of the California Court of Appeal denying Valenzuela’s *Brady* claim for lack of prejudice (App. 49-50) constituted the “last reasoned decision” for purposes of federal review. *Ylst v. Nunnemaker*, 501 U.S. 797, 804 (1991). App. 22.

adjudication on the merits “was contrary to, or involved an unreasonable application of, clearly established Federal law,” as determined by this Court, and dismissed Valenzuela’s petition with prejudice. App. 22-26. The Ninth Circuit affirmed, concluding it was reasonable for the state court to deny Valenzuela’s *Brady* claim because Officer Alcaraz’s testimony was corroborated by other witnesses and because it was “uncertain” whether the trial court would have admitted the uncharged impeachment evidence. App. 4-7.

REASONS FOR GRANTING THE WRIT

Rule 10(c) provides that certiorari is appropriate when “a United States court of appeals . . . has decided an important federal question in a way that conflicts with relevant decisions of this Court.” Rule 10(c), Rules of the Supreme Court. In addition, Rule 10(a) provides that certiorari is appropriate on questions that “call for an exercise of this Court’s supervisory power.”

Summary reversal is warranted to correct the Ninth Circuit’s gross departure from this Court’s precedents interpreting the “materiality” standard under *Brady*. *See Wearry v. Cain*, 136 S. Ct. 1002 (2016) (per curiam) (summarily reversing state post-conviction court’s application of *Brady* which was contrary to “settled constitutional principles”).

Here, the Ninth Circuit concluded it was reasonable, under 28 U.S.C. 2254(d)(1), for a state court to dismiss Valenzuela’s *Brady* claim on its face for

lack of “materiality” where the prosecution suppressed evidence that Valenzuela’s arresting officer, a primary government witness, was under investigation for narcotics trafficking at the time of his trial testimony—conduct to which Alcaraz would later plead guilty in federal court. App. 20-21.

Officer Alcaraz’s testimony was objectively material to both murder counts against Valenzuela, and was, as the prosecutor told jurors, “very important[]” and even “crucial” to the prosecution’s case. App. 53. The importance of Alcaraz’s testimony is especially apparent with respect to Valenzuela’s second-degree murder conviction in Count 2. Kevin Moran, the prosecution’s only eyewitness to the assault on LaGrone “had credibility problems,” as observed by the magistrate judge. App. 24. Moran initially refused to testify and ultimately cooperated with the prosecution only after he was offered a plea deal on pending burglary charges. Moran lied to police about his name when he was arrested and admitted that he lied when it would benefit him. App. 24. Nor could jurors hear from Moran directly because he was deemed unavailable to testify. App. 34. The prosecution was instead permitted to provide jurors with a reading of his prior testimony. *Id.*

Knowing that jurors would have ample reason to doubt Moran’s credibility, the prosecution relied heavily on Officer Alcaraz’s testimony for corroboration. Alcaraz testified that while alone on patrol he saw a group of Eastside Longos, including Valenzuela, walking with a stick that matched the murder weapon

shortly before he responded to the LaGrone incident a short distance away. App.

24. This weapon was never found nor in any way connected to Valenzuela except through Alcaraz's unimpeached testimony.

Had the jury and defense counsel known that Officer Alcaraz was a dirty cop who used his firearm to steal narcotics from drug dealers while on patrol, this would certainly have undercut his credibility as an officer, and it is doubtful the prosecution would have relied on his testimony at all. To establish that the suppressed impeachment evidence was material, Valenzuela was not required to show that the outcome of his trial would have been different had this evidence been disclosed. "Evidence qualifies as material when there is 'any reasonable likelihood' it could have 'affected the judgment of the jury.'" *Wearry*, 136 S. Ct. at 1006 (quoting *Giglio v. United States*, 405 U.S. 150, 154 (1972)).

Where, as here, the evidence before the jury on Count 2 was "already of questionable validity"—relying solely on the discredited and absent Kevin Moran—"additional evidence of relatively minor importance might be sufficient to create reasonable doubt." *Wearry*, 136 S. Ct. at 1006 (quoting *United States v. Agurs*, 427 U.S. 97, 113 (1976)). In the prosecutor's own words, Officer Alcaraz's testimony was not of "relatively minor importance;" it was "crucial." App. 53. The state post-conviction court could not reasonably conclude otherwise and deny Valenzuela's *Brady* claim on its face. The Ninth Circuit's subsequent bar of federal

habeas relief under 28 U.S.C. § 2254(d)(1), upholding the state court’s determination, warrants summary reversal.

Officer Alcaraz’s testimony was also material to Valenzuela’s conviction in Count 1. There the prosecution sole eyewitness was Angela Liner, who also had “credibility issues,” as observed by the magistrate judge. App. 25. Liner was drinking alcohol in an alley by a liquor store, while on seizure medication, when she purportedly witnessed the Wilkins shooting but came forward more than a month later, only after her own son was arrested with Valenzuela. App. 2, 22-23. The prosecution again relied on Alcaraz to buttress a shaky eyewitness with the imprimatur of an officer’s corroboration. Alcaraz testified he was alone on patrol when he happened to see Valenzuela near the scene of the shooting just 35 minutes before he responded to the scene. App. 22. The undisclosed impeachment would have provided jurors ample reason to doubt Alcaraz credibility while alone on patrol, even assuming the prosecution would still have offered him as a witness. There exists at least a “reasonable likelihood” that the undisclosed impeachment “could have affected the judgment of the jury,” and it was therefore material under *Brady*. *Wearry*, 136 S. Ct. at 1006 (internal quotation marks omitted).

Finally, the Ninth Circuit also questioned whether Officer Alcaraz’s uncharged misconduct would have been admitted at Valenzuela’s trial, noting that a trial court would have had “broad” discretion on this issue under California law.

App. 6. Such discretion would apply to the scope of most forms of impeachment evidence at trial and is fully compatible with the evidence engendering a “reasonable likelihood” of a different result. As the Ninth Circuit acknowledged, California law recognizes that uncharged conduct, “including drug trafficking,” is admissible. *See People v. Harris*, 37 Cal. 4th 310, 337 (2005); App. 6.

Here the undisclosed impeachment would not merely have informed jurors of Alcaraz’s drug dealing in the past or in the abstract, but drug dealing he conducted in the course of his duties as a police officer, while alone on patrol, and with the use of his firearm on multiple occasions. App. at 20-21. Such betrayal of the public’s trust plainly “involv[es] moral turpitude that has some logical bearing on the veracity of [the] witness in a criminal proceeding” and was therefore admissible impeachment. *Harris*, 37 Cal. 4th at 337. At no point did the State allege otherwise in the proceedings below.

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The prosecution's *Brady* violation deprived Valenzuela of a trial that comports with due process. He asks that this Court grant his petition for writ of certiorari, vacate the Ninth Circuit's order affirming judgment, and order a new trial or further proceedings consistent with the Court's decision.

Respectfully submitted,

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JUAN VALENZUELA

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of February, 2021, I served a copy of
MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and
PETITION FOR WRIT OF CERTIORARI by e-mail and by first-class mail to:

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I was appointed to represent Petitioner under the Criminal Justice Act, 18
U.S.C. § 3006(A)(b).



MICHAEL PARENTE
Counsel of Record