No. 20-8381

IN THE

SUPREME COURT OF THE UNITED STATES

Christian Diaz — PETITIONER

(Your Name)

ORIGINAL

vs.

Scott Frauenheim — RESPONDENT(S)

FILED
JUN 02 2021
OFFICE OF THE CLERK
SUPREME COURT, U.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

Christian Diaz

(Your Name)

P.O. BOX 8500

(Address)

Coalinga, CA, 93210

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

If evidence Presented at trial has abundant indications of being **false**, or **contaminated**, are not evidentiary experts/ technicians (who processed the evidence) obligated by Proce--dure or law, to be present at trial for cross-examination and confrontation?

If counsel to defendant has overwhelming indications that evidence Presented against said defendant, is **false** or **tainted**, does counsel not have a minimal obligation to challenge, or at least, conduct a reasonable investigation into the questionable evidence, especially if the evidence is material to the case?

If counsel to defendant receives information about a tainted Pre-trial identification of defendant **during trial**, does counsel not have a minimal obligation to at least conduct a reaso--nable investigation, especially, if the sole arguement for the defense was misidentification?

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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OTHER

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

[✓] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

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[✓] is unpublished.

The opinion of the United States district court appears at Appendix B 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[✓] is unpublished.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 March 4, 2021.

[√] 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

Strickland v. Washington (1989) 466 U.S. 668: "a criminal defendant has the right to a fair trial and the right to assistance of counsel. The ultimate purpose of this right to a fair trial is to protect the defendant's fundamental right to a trial that is both fair in its conduct and reliable in its results. Construed in its purpose, the right entitles the defendant to not some bare assistance, but rather effective assistance."

Howard v. Clark (2010) F.3d. 563: "An attorney's duty to provide reasonably effective assistance includes the duty to make reasonable investigations or to make reasonable decisions that makes particular investigations unnecessary."

Wiggins v. Smith (2003) 539 U.S. 510: "the meaning of the Federal Constitution's 6th. Amendment. a court in assesing the reasonableness of potential mitigating evidence, must consider not only the quantum of evidence already known to counsel, but also whether the known evidence would lead a reasonable attorney to investigate further."

Melendez-Diaz v. Massachussetts (2009) 557 U.S. 305: "There is no support for the proposition that witnesses who testify regarding fact other than those observed at the crime scene are exempt from confrontation. The absence of interrogation is irrelevant: a witness who volunteers his testimony is no less a witness for Sixth Amendment purposes." This case also states: "U.S. Const. Amnd 6. the text of the Amendment contemplates two classes of witness, those against the defendant and those in his favor. The prosecution must produce the former, the defendant may call the latter. There is no third category of witnesses, helpful to the prosecution but somehow immune from confrontation."

Bullcoming v. New Mexico (2011) 564 U.S. 647: "Sixth Amendment Clause held not to Permit Prosecution to introduce forensic laboratory report containing testimonial certification through in-court testimony of scientist who had not signed the certification or Performed, or observed test reported in certification." This case also declares: "The question Presented is whether the Confrontation Clause Permits the Prosecution to introduce forensic laboratory report containing a testimonial certification made for the Purpose of Proving a Particular fact through in-court testimony of a scientist who didn't sign the certification or Perform or observe the test reported in the certification. We hold that surrogate testimony of that order does not meet the constitutional requirement."

Martinez v. Ryan (2011) 566 U.S. 1: "The right to effective assistance of counsel at trial is a bedrock Principle of the American Justice system. It is deemed an "obvious truth" the idea that any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is Provided for him. Indeed, the right to counsel is the foundation for the adversary system. Defense counsel tests the Prosecutions case to ensure that the Proceedings serve the function of adjucating guilt or innocence, while Protecting the rights of the Persons charged. Effective trial counsel Preserves claims to be considered on Appeal and in a Federal Habeas Proceedings."

Federal Rule Of Evidence 901 (a) 6. Article IX: "Precision in developing chain of 'custody' is not iron clad requirement, and fact of 'missing Link' does not Prevent admission of real evidence so long as there is sufficient Proof that evidence is what it Purports to be and has not been altered in any material aspect."

STATEMENT OF THE CASE

Petitioner's case stems from Feb. 2007. Petitioner was charged with murder and three attempted murders. The Preliminary hearing took place in May of 2008, and trial, in Feb. 2013. Sentencing finally occured in Jan. 2014, after Motion for a new trial was denied. Superior Court No. is: FVA700187.

Three witnesses were presented at trial against Petitioner: Justin Haston — the sole witness to the murder of Michael McCoy — Jerome Franks, and Jonelle Buckley, who are also, all victims in the case. Mr. Franks and Mr. Haston both identified a suspect from a photo six-pack line-up, who they belived did the shooting. Petitioner had not been arrested yet, nor was he part of the line-up. Days later, Petitioner is arrested, put into a photo six-pack line-up, and accord--ing to law enforcement, all three witnesses pick Petitioner out of the line up. At the scene of arrest, a spent shotgun shell was found in a truck, that was declared to be an exact match to the shells of the crime scene. Jesus Sanchez, the driver of the truck, was charged with being the driver in the murder, and Petitioner was charged as the shooter.

This first part of the arguement now begins in relation to Petitioner's claims. Many facts surrounding the alleged shell indicated tampering and falseness. The unknown evidence technician/expert should have been present for confrontation and cross-examination to: 1) authenticate the evidence and 2) to clarify the disturbing and inconsistent facts surrounding the alleged shell. <u>Bullcoming v. New Mexico</u> (2011) 566 U.S. 1 and also

Melendez Diaz v. Massachussetts (2009) 557 U.S 305 are striking examples that are very similar to this writ, and it's issues. The only difference is that this case does not deal with testimonial reports that prove a certain fact, but rather, deals with evidence that was presented without any authoritative basis that could have proved a certain fact. In other words; the state in Petitioner's case presented this alleged shell, and asserted facts that were not backed or affirmed by any expert. The unknown evidentiary expert in Petitioner's case is not immune from the confrontation clause of the 6th Amendment. Melendez-Diaz and Bullcoming v. New Mexico are very clear on this issue.

Petitioner wants to make it very clear: arguements set forth in this writ are rooted in ineffective assistance of counsel (I.A.C). The previous cases just cited don't deal with I.A.C but this case does. If Petitioner's attorney – Gina Kershaw – would have honored her investigative and adversarial duties, the facts surrounding the alleged shell would have been clarified, and the alleged shell would not have been presented at trial. The expert should have been subpoenad.

The second issue in this writ is a tainted pre-trial identification of petitioner. Identification of Petitioner was highly prejudicial and illegal. Mr. Franks and Ms. Buckley (the two witnesses and victims) were observed by two witnesses sneaking back into the courtroom – after being excluded by the court – at the moment when Petitioner and his ex-co-defendant were being brought into the courtroom. Mr. Franks was observed coaching Ms. Buckley by hand gestures; signaling who petitioner was and who his codefendant was. Mr. Franks was also overheard saying "Diaz" (Petitioner) and "Sanchez" (co-defendant) while pointing to petitioner and to Sanchez. This is part of the record. Two witnesses stepped forward and testified under oath that they seen Mr. Franks and Ms. Buckley commit this illegal act. Mr. Franks had already misidentified Petitioner at the Prelimi--nary hearing a total of 5 times. Mr. Haston - the sole witness to the murder of Mr. McCoy - flat out said that Petitioner was not the shooter.

Ms. Buckley - even by being coached in who to identify - testified that the shooter that night was caucasian. Petitioner is hispanic and, in no way, looks caucasian. What's shocking is that Gina Kershaw (trial counsel) admitted under oath that she received the information about Mr. Franks and Ms. Buckley, during trial. One of the witnesses to the tainted identity - testified that she gave the information to counsel Kershaw. Petitioner's defense was misidentification.

Petitioner will clarify the pre-trial tainted identification in just a moment. First, is the issue of the evidentiary expert that should have been present for cross examination and confront--ation.

Supporting Facts

At the back of this writ are supporting documents (Doc.). Document # (1) is a police report of the scene of arrest. Officer Viola clearly reports (pg. 2, 3rd. paragraph) he found a spent (fired) shotgun shell. The report is dated Feb. 2007. Document # (2) is a transcript from the Preliminary hearing in May 2008. It's two pages from the record numbered as: pg. 142, about the alleged shell. Silva describes the evidentiary envelope (that contains the unspent shotgun shell) that has information stamped, like: crime, date of crime, victim's name etcetera. The information on the envelope indicated the evidence (the shell) belonged to a crime that took place on Feb. 2, 2010. The name of the victim to that crime (according to the envelope) was Pizano. This unknown victim is, in no way, related to Petitioner's case.

All this is: a gross abuse of procedure and fairness. One officer lies, claiming the shell was spent (fired) and was collected into evidence in 2007. **Fact:** the shell was collected in 2010, and it was an unspent (not fired) shell. The state claimed the shell to be an exact match to the shells of the crime scene. **Fact:** no evidentiary expert ever confirmed this. The state told the jury that the shell was a strong link to Petitioner's guilt. **Fact:** the shell (according to evidentiary envelope) was linked to a crime that took place in 2010 (not 2007) and the victim Pizano was linked to the alleged shell - not to any victims in Petitioner's case.

Now Petitioner will present supporting facts for the pre-trial tainted identification of Petitioner:

On Jan. 9, 2014 a Motion for new Trial was put forth in Petitioner's case. Superior Court Case No. **FVA700187**. Attorney for Petitioner was Tomas D. Requejo. Four witnesses took the stand: Attorney Salvador Silva; Attorney Gina Kershaw; Noelia Ramirez; and Maria Sanchez Estrada.

REASONS FOR GRANTING THE PETITION

Trials should be fair. Due Process should be honored. Evidence should be verified by evidentiary experts to eliminate the possibility of contamination, and falsification. These experts should not remain anonymous; for they play a vital role in processing evidence that is used against defendants. They are not immune from the confrontatinn clause of the 6th. Amendment_ especially if the processed evidence has many signs of falsification and tampering. The absence of an Objection is not relevant.

In Order for these basic rights and procedures to be protected, attorneys need to provide **Effective Assistance**, by challenging, Objecting, and investigating the evidence _ before and even during trial. This includes subpoenaing witnesses for cross-examinations. Most criminal defendant's are at the mercy of their attorneys, and of court procedure, because most defendants are lay persons of the law. That's why effective assistance is vital.

As of yet, none of the lower courts have offered a legal opinion about Petitioner's case. Nor, have they explained, specifically, which part of Petitioner's claims lack merit. Petitioner's writs, have so far, been rubber stamped denied, and silently passed on. This confuses and shocks Petitioner at the same time; for Petitioner has done much legal research and set forth documentation and case law for all his claims; to the best of his abilities as a layperson of the law. Petitioner does not understand the lack of concern from the reviewing courts about his trial attorney's performance, or, of the anonymous technical expert that processed questionable evidence. This very court has dealt with issues as these.

In Strickland v. Washington, a defendant has a right to a trial that's "both fair in its conduct and reliable in its results," and defendants have a Right to "not some bare assistance, but rather effective assistance." In Howard v. Clark (2010) F.3d.563, effective assistance includes to "make reasonable investigations" and to "make reasonable decisions that makes particular investigations unnecessary." In Wiggins v. Smith (2003) 539 U.S. 510, says "Known evidence would lead a reasonable attorney to investigate further." Even as recent in Martinez v. Ryan (2011) 566 U.S. 1, states that defense counsel should "test the prosecutions case to ensure that proceedings serve the function of adjudicating guilt or innocence, while protecting the rights of the persons charged."

In this case, Effective Assistance even extends beyond trial, because: "effective (assi-
-stance) trial counsel Preserves claims to be considered on Appeal and in a Federal
Habeas Corpus Proceedings."
Gina Kershaw - trial counsel - did not Provide effective assistance. Did not inve-
-stigate the alleged shell - despite the inconsistent facts. She did not subpoena the
evidentiary expert (there were strong reasons to do so). Ms. Kershaw did not investi-
-gate the tainted identification of Petitioner, despite the fact that misidenti-
-fication was the sole arguement for the defense. In regards to the shell, all
testimony, by the state, is hearsay. The evidentiary expert, who processed the
evidence did not come to trial to establish foundation, from which facts and
conclusions can be drawn. All the cases that have just been cited basically say
that: 1) Reasonable Attorneys need to provide effective assistance, and 2) Reasonable
Attorneys conduct reasonable investigations and challenges. There's no reason for
Ms. Kershaw to do nothing.

Melendez-Diaz v. Massachussetts (2009) 557 U.S. 305 is clear about the kinds of
witnesses that can come forward, and must come forward. It's states theres: "two
classes of witnesses, those against the defendant and those in his favor. The
Prosecution must produce the former, the defendant may call the latter. There
is no third category of witnesses, helpful to the Prosecution but somehow immune
from confrontation."
This is exactly on Point in Petitioner's case. An unknown evidentiary expert
(helpful to the Prosecution) Processed the shell casing that had signs of tampering,
yet remained anonymous. Petitioner was convicted through this evidence. The
trial focused mainly on two things: 1) Identity 2) Shell casing. These were material
to the case. Petitioner's co-defendant was aquitted of all charges. Petitioner got
life in Prison.
The Purpose of the subpoena for the evidentiary expert was to answer some important
questions, like: Why is there another victims name on the evidentiary envelope?
Did this victim die of a similar cause, with a similar shell like this case? Why
is the date of crime wrong? An officer first described the shell as spent (fired) why
is this shell unspent? Who took Pictures of the shell at the scene of arrest? Why not
collect the shell initially? Why wait 3 yrs. to collect this evidence? Who had access
to the evidence for the three missing years of custody? If this is just a mix up

This obviously was to ensure that Ms. Buckley did not misidentify Petitioner as Mr. Franks himself did. What's disturbing, is that Ms. Kershaw admitted under oath that she received this information during trial. Salvador Silva (counsel for Sanchez) also admitted - under oath - that he received the information. This is an obvious violation of Petitioner's due Process. Identification of Petitioner was tainted and illegal. How can any court be okay with this?

Evidence should be free of corruption. That's why due process exist. Witnesses who submit evidence should not remain anonymous, that's why the Confrontation Clause of the 6th. Amendment exists. Attorneys should provide Effective Assistance, that's why the Sixth Amendment exists. All courts exists to provide justice, both to defendants and victims. All Petitioner asks, is to be heard on the merit of his claims. So far, no court wants to specifically explain where in Petitioners claims, are lacking legal merit. Will this court honor its own legal opinion - using the case law that Petitioner has submitted - and address Petitioner's claims? No defendant should be convicted by evidence, submitted by an anonymous source. This court would set a dangerous precedence if they allowed that. No identifications should be tainted. Petitioner's conviction stands soley upon these two tainted sources.

For all the reasons just cited Petitioner believes he deserves relief in the form of a new trial. Or, at the very least, Petitioner deserves an evidentiary hearing. Thank you for your time and patience.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Christian Diaz

Date: 6/1/21