

21-5575
No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

AUG 19 2021

OFFICE OF THE CLERK

FREDERICK ARAYATANON — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE 5TH Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

FREDERICK ARAYATANON
(Your Name)

P.O. Box 3900
(Address)

Adelanto, CA 92301
(City, State, Zip Code)

U/A
(Phone Number)

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QUESTION(S) PRESENTED

~~Does the admission of jail telephone calls by the District Court during defendant's trial undermine defendant's presumption of innocence?~~

LIST OF PARTIES

[x] 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

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APPENDIX F

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 No. 19-60233 11-13-2020 5th Cir; 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[] is unpublished.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 U.S. Dist No. 18-cr-52-1 10-31-2018; 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[] is unpublished.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[] is unpublished.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[] is unpublished.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 Nov. 13 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: April 9, 2021, and a copy of the order denying rehearing appears at Appendix C.

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

Amendments Five and Six to U.S. Constitution

Due Process Clause

STATEMENT OF THE CASE

~~Frederick Arayatanon~~ was convicted by a jury of conspiracy to possesss with intent to distribute 500 grams or more of methamphetamine under 21 U.S.C. §846 and sentenced as a career offender to life in prison. Arayatanon appealed the conviction and the United States Court of Appeals for the Fifth Circuit affirmed the conviction on November 13, 2020. Petitioner requested an En Banc rehearing which was denied on April 09, 2021.

Arayatanon argues that the District Court's admission of recordings of jailhouse telephone calls resulted in prejudice during his trial and warrants reversal of his conviction. The calls indicated to the jury that he was incarcerated, violating his presumption of innocence resulting in a due process violation.

REASONS FOR GRANTING THE PETITION

"The presumption of innocence is a key component of a criminal defendant's right to a fair trial." (Estelle v. Williams 425 U.S. 501, 503, 96 S. Ct. 1691, 1692, 48 L Ed 2d 126, 1976. "The Supreme Court has explained that constant references at trial to a defendant's incarceration violate due process because they tend to weaken the presumption of innocence and suggest to the jury that the defendant is guilty." See *id* at 504-06 96 S. Ct. at 1963-94. Such was the case in Arayatanon's trial. During trial, the government introduced four telephone calls he had with others while he was incarcerated awaiting trial. The government also elicited testimony from a correcti-

onal officer who testified as to how Arayaton's calls were recorded and identified. In the government's closing statement the government emphasized all four of the jail telephone calls. These three occurrences served as constant reminders to the jury that petitioner was incarcerated. "A prosecutors repeated statements directly referencing a defendant's imprisonment may likewise compromise the right to a presumption of innocence." U.S. v. Villabona Garnica, 63 F. 3d 1051, 1058, 11th Cir, 1995. "Jurors may speculate that the accused pre-trial incarceration ...is explained by the fact that he poses a danger to the community or has a prior criminal record." U.S. v. Harris April 18, 1983 11th Cir. "Even without a presumption of prejudice, the defendant will be granted a new trial where there is any reasonable doubt about his having been prejudiced or harmed." id. The court of Appeals for the Fifth Circuit stated in its brief affirming defendant's conviction that "While Arayatanon may have been somewhat prejudiced by the fact that the jury learned the calls were recorded while he was in jail...was not unfairly prejudicial." In their decision affirming petitioner's conviction, the Appeals Court failed to consider the continuing influence these calls placed in the jury's mind throughout the trial. The calls were tantamount to defendant being dressed in prison attire or shackled. "The constant reminder of the accused's condition implicit in such distinctive, identifiable attire may affect a juror's judgment " and is "likely to be a continuing influence throughout the trial" Estelle v. Williams, 425 U.S. at 504-05

(1976). These three incidents served as constant references to defendant being incarcerated and any trier of fact would reasonably conclude that they may have influenced the jury in a negative manner towards defendant. The constant reference to the jail telephone calls indicated to the jury that defendant was already incarcerated and therefore guilty of the alleged offense, affecting his presumption of innocence. .

The following references to defendant being incarcerated when he made the telephone calls are contained in the transcript of Mr. Arayatanon's jury trial:

- 1) Pages 307-319- Captain Eddie Rogers, Deputy Warden and chief Security Officer at Stone County Regional Correctional Facility, testified as to how the calls that defendant placed while defendant was incarcerated at the jail were recorded. Excerpt of testimony, "Q. And how do you know that that particular inmate made the call? A. It's based on that booking number. And I can actually once I pull up that booking number, the inmate would make--you have a call--it would actually generate the call. It would say, 'you have a call from', and the inmate would have to state his name" P. 310 Id. The testimony referencing defendant being incarcerated lasted for approximately 40 minutes.
- 2) Exhibit 17 contained a copy of the four recordings from the jail telephone calls introduced by the government. The jury was handed a copy of the transcript from that recording. Page 318, "THE COURT: You may. Hand each member of the jury one copy of 17A.
- 3) Audio of Recordings of Jail Telephone calls played for the

jury. Audio of the four jail telephone calls that were introduced by the government were played for the jury which consisted of recordings marked as exhibits 17A, 17B, 17C, and 17D. Page 319 Id.

- 4) Closing Argument by the Government made by Ms. Van Buskirk referencing defendant's incarceration. "You heard the defendant in these jail calls with his friends...So you heard in those jail calls, he tried to correct his friends." Page 355 Id.
- 5) Continued Closing argument for Government by Ms. Cole. "You heard him in those jail phone calls. Like my co-counsel told you, he was trying to..." Page 365 Id. Transcript.

CONCLUSION

It was a constant reminder to the jury that defendant Arayatanon was incarcerated. He may have as well been wearing a prison issued jumpsuit for the jury to see. Almost 40 minutes of testimony from Captain Eddie Rogers talking about the jail calls, transcripts of the jail calls provided to the jury, audio of all four calls played for the jury, and both attorneys for the government referencing the jail phone calls in their respective closing arguments served as constant reminders throughout defendant's trial to the jury that Mr. Arayatanon was incarcerated, violating his presumption of innocence, a violation of his due process.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Frederick Arayatanon

Date: July 1, 2021