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21-6980

No. USAP9 No 28-16016

Supreme Court, U.S.
FILED

DEC 15 2021

OFFICE OF THE CLERK

No 21A58

IN THE

SUPREME COURT OF THE UNITED STATES

Michael Ray Fowler — PETITIONER
(Your Name)

VS.

Fox Warden — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Ninth Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Michael Ray Fowler CDCR # AY9779
(Your Name)

P.O. Box 2000
(Address)

Vacaville Ca. 95696
(City, State, Zip Code)

(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

- ① Whether a victim's uncontroverted statements to police are admissible at trial on the grounds of unavailability by forfeiture where no affirmative evidence showed the appellant wrongfully caused the witness' unavailability and the prosecution failed to perform due diligence to obtain her appearance.
- ② ^{Right to Confrontation} Whether evidence used to take my rights away at the hearing was even allowed under the same issue as above chain of command of the statements used from other agency not present at the hearing. All evidence relied on at this hearing was uncontroverted, and in the form of one investigator saying what another from another State supposedly said to him. Hearsay - on top of hearsay.
- ③ Whether this 402 hearing was even timely given the fact that this day July 16 2015 was trial day. This 402 hearing was heard the same day. Appellant had no opportunity to prepare for this hearing.

Questions Presented

Did the Defendant get proper Representation?

The Attorney continually got continuances to find Witnesses but continually fails to even look for him.

Did the Attorney perform his duties by continually filing untimely motions that were denied, severely harming the Defendants Defense.

Did Attorney perform his duties by not filing a memorandum of points and Authorities to strike priors that Defendant had gotten written up and gave to his Attorney to file. The Attorney failed to file said motion. Even though it would not have changed the outcome of Trial. It would have drastically reduced his sentence motion is attached Appendix F

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:

Tuolumne County Superior Court NO. CRF43675

United States Court of Appeals For the
Ninth District DC NO 1:18-cv-01576-DAR-JKT

US. District Court Eastern Division

RELATED CASES

Crawford v. Washington (2004) 541 U.S. 36

Giles v. California (2008) 554 U.S. 353

O'Sullivan v. Boerckel (1999) 526 U.S. 838

People v. Banos (2009) 178 Cal. App. 4th 483

People v. Cogswell (2010) 48 Cal. 4th 467

People v. Cromer (2001) 24 Cal. App. 4th 889

People v. Foy (2016) 245 Cal. App. 4th 328

People v. Hopson (2017) 3 Cal. 5th 1124

Statutes and other authorities

Code of Civil Procedure Sec. 1219 Sub. (b)

Evidence Code 1390

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TABLE OF AUTHORITIES CITED

CASES

	PAGE NUMBER
People v. Banos Supra 178 Cal. App. 4th at 502 Citing Giles v. California 2008 554 U.S. 353	7
Giles II at pg 128 S.Ct. at p 2687 citing Davis Supra 547 U.S. at p 883	7

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OTHER

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was Aug 13 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 January 10, 2023 (date) on Oct 6, 2021 (date) in Application No. 21 A 158.

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 June 27 2018.
A copy of that decision appears at Appendix C.

☐ 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

Crawford v. Washington (2004) 541 U.S. 36
Giles v. California (2008) 554 U.S. 353
O'Sullivan v. Boerckel (1999) 526 U.S. 838
People v. Banos (2009) 178 Cal. App. 4th 483
People v. Cogswell (2010) 48 Cal. 4th 467
People v. Cromer (2001) 21 Cal. 4th 889
People v. Foy (2016) 245 Cal. App. 4th 328
People v. Hopson (2017) 3 Cal. 5th 424

Code of Civil Procedure Sec. 1219 Subdivision (b)

Evidence Code 1390

People v. Ledesma 43 Cal. 3d 171

People v. Poggi 45 Cal. 3d 306

STATEMENT OF THE CASE

Appellant was charged with assault with a deadly weapon, False imprisonment, Corporal injury to a cohabitant. With Three Prior Strike convictions The Jury found the Appellant guilty of the Assault w/ deadly weapon other than Firearm, False imprisonment & not guilty of False imprisonment. Appellant was sentenced to an aggregate Term of 35 years to life (2CT 314; 3RT 601-602)

Appellant submits that the facts of the substance offenses are not pertinent to the issues at question

Evidence used for this conviction was one photo, and an uncontroverted or signed statement supposedly made by the victim to a Sheriff's deputy. This victim was never put under oath in this process.

At the 402 hearing on July 16 2015 Pg 181 the D.A. Admits that what he will present at this hearing involves multiple layers of hearsay

REASONS FOR GRANTING THE PETITION

Under the 10411 Forfeiture by wrongdoing doctrine and 1390 it is not sufficient that the defendant caused the declarant to be unavailable; The Defendant must also have intended that result when engaging in the wrongdoing that caused that unavailability

Fed Rule Evid. 804 (b) (6) Every commentator knows concluded the requirement of intent "means" that the exception applies only if the defendant has in mind the particular purpose of making the witness unavailable. The prosecution fails to make this intent requirement. Also the Prosecution claims that the Recountant lied to the Judge when questioned about witnesses whereabouts and claims my answer was that I didn't know. This is a false & misleading statement by the Prosecutor. Pg 149 (CRT) this entire question & answer never happened. Again the Prosecution not only fails to make a case, He lies about it.

Also on two occasions one on Dec 10 2014 Pg 91 CRT the Trial was continued because of no Court room available for Trial. Witness Miss Fowler was

Reasons for granting the Petition (cont)
Present on that Day. This was Dec 10 2014.
But according to the D.A. Services were turned
on in Alamath Falls in my Name. This alone would
disproved the claim of Forfeiture by Wrongdoing
Since the Appellant and the Victim Witness appears
at Court together Trial Date. This is sixteen days
after after the prosecutors Claim that Appellants
moved to Oregon to keep Witness away. If
Appellant wanted to keep her away she would
not have been there on this Date. It is the
Fault of there own Court System that caused her
to be unavailable.

There was no evidence that there was any collu-
sion between Appellant and the Witness, No Evidence
of us communicating with each other. The Court
of appeals merely refers to the Speculation of
Collusion made by the prosecutor. Also the prose-
cutors claim that witness once in open Court said
She would not Testify. At another she told the
Judge we had married. Neither one of us ever
invoked Marital Privilege. The only fact that is
true is when she told the Court she refused.

Reasons for Granting Petition to Testify.

There is no evidence to support a claim that the Appellant intended to stop the witness from testifying (People v. Banos, Supra 178 Cal. App. 4th at 582) citing Giles v. California (2008) 554 U.S. 353, and Evidence Code 1390

The Victim Witness Statement in Court referred to over and over by the Prosecutor does not make the case that Appellant had anything to do with her failure to appear. It does raise the issue of why the Prosecution didn't keep closer tabs on her, knowing of her reluctance.

For All the above reasons the Opinion below erred in finding that appellant forfeited his rights under the Confrontation Clause

Evidence Code 1350 Codifies some aspects of the Common Law of Forfeiture by Wrong doing doctrine. The Statute in part requires clear and convincing evidence. Evidence Code Sub (a) (1) Also Fed Rule 804 (b) (6) and Giles II at p 128 S.C.T. at p 2687 Citing Davis, Supra 547 U.S. at p 833

The Prosecutor failed to show intent of Defendant
at 402 Hearing

Judge Errored in allowing Victim statement
that was uncontroverted, and no recording or signa-
ture.

Prosecutor failed to give proper notice of 402
Hearing. Judge failed to rule + let hearing air
undimly.

Prosecuter gave False Statments at hearing in
regards to statements made by Judge and Defendant
in CRT PJ 149

CONCLUSION

For all the reason set forth the petition should
be granted.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael Ray Fowler

Date: Dec 13 2021

Addendum

Also the Issue of the Prosecutor making a Statment to the Jury about the Victim not coming forward to correct the Sheriff's Report Pg's

of CRT. Then on July 16 2015 the Prosecutor states that the Victim witness came forward and asked that the charges be dismissed. There was a discovery on record that this Prosecutor never disclosed this to the Defense. And this is a direct contradiction to what he told the Jury because she did go to the D.A. to try to get the report corrected and was told it didn't matter because they would prosecute anyway.

Without this statement to the Jury there would be the possibility of a different outcome.

Also the Issue of Ineffective Assistance of counsel

People v. Ledesma 43 Cal. 3d 171

People v. Poggi 45 Cal. 3d 306

The Defendants Attorney Fails to get a Dr. Rortke as a witness on defendants behalf

On pg 37 of CRT the judge is talking of how easy it would be to get this witness. Again on page 38 He again says this Dr. is easy to find. That he works for the Dept of Corrections And he personally knows this Dr. Bourke. On May 26-2015 pg 110 of CRT Defendants Attorney is given time to reach this Dr. Bourke. On this same day he files a motion to disqualify the Judge. It was ruled untimely. On pg 117-118 The Attorney is telling the Judge he hasn't done anything to get this witness even though he has recieved continuances to get this witness. On pg 124-125 the Attorney is apologizing to the Court for not doing his job. Stating he's a sole practitioner and his workload as an excuse. He even mentions this being ineffective Assistance. He says he dropped the ball. The Judge and Himself are in agreement that his performance is below standards again on pg 144-145 all of Defendants motions were denied as being untimely or for no good cause. The Defendant in this case is looking at ~~25~~ 35 years to life and this Attorney continually

Fails to perform his duties to defend the Defendant
On July 16th 2015 a 402 Hearing was held
Just before Jury trial was to begin. There was
no prior notice given that this hearing was to be
held so the Prosecutor could use an uncontested
unsigned and not recorded not under Oath. The
Defendants Attorney fails to object to this hearing
since no advance notice was given. The Defense had
no opportunity to prepare for this. If notice was
given the Defendant would have tried to get his
Victim to come and appear in person. Also the defense
asked for a continuance for this purpose, but was
denied.

The Defendant was denied a Fair Trial because
of this Attorney not performing his duties to the
point of the Defendant could not put up a Defense.

Also the Deck seemed to be stacked against the
Defendant to the point of the Prosecution even dealing
from the bottom of Stacked Deck

Respectfully Submitted on

Date Dec 13 2021

Signature Michael Ray Fowler