

21-7643

No. _____

ORIGINAL

Supreme Court, U.S.
FILED

FEB 24 2022

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

DANIEL TREJO — PETITIONER
(Your Name)

vs.

RALPH DIAZ — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE 9TH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DANIEL TREJO
(Your Name) CVSP

CG 9-4L P.O. Box 2349
(Address)

Blueth, CA 92226
(City, State, Zip Code)

8
(Phone Number)

2

QUESTION(S) PRESENTED

Mr. Trezo was convicted in large part UPON evidence made UP by the victim mother and manipulated by her.

Mr. Trezo respectfully petitions this court for petition certiorari, to review of the un-published decision of the Fourth District Court of Appeals Division two, affirming thejos conviction and sentence. A copy of the court of Appeals is attached as Exhibit A.

Here, is the principal issue for review involves compelling lines of court of Appeals decisions about the meaning of duress under Penal Code 269 and 288.

1 Resolution of the split and legal issue of state wide importance impacts both institutional error claims presented by Mr. Trezo.

The statutory definition of duress under Penal Code Section 269 and 288 is analogous. (People v. Veale. (2008) 160 Cal. App. 4th 40, 46 [Pen. Code § 288].

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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 DC No 5:19-cv-01852-DSF-JDE; 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 is unpublished.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 _____ 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[] is unpublished.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 B to the petition and is

reported at E066202; 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 is unpublished.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[] is unpublished.

1.

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JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was Dec-20-2021.

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: Dec-20-2021, and a copy of the order denying rehearing appears at Appendix A.

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 5-28-2020. A copy of that decision appears at Appendix B.

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

U.S. Const., 14th Amend.

Statement of a federal Constitutional claim to be exhausted

I.

The Trial court failure to instruct, As to Count 1, on the Lesser Indulged offense of Unlawful Intercourse with Minor Three Years Youn than the Defendant Violated Appellants Federal Due Process Rights

The Fourteenth Amendment requires fundamental fairness the criminal procedures by which appellant was convicted here. (United States v. Valenzuela-Bernal (1982) 458 U.S. 858, 872 ["Due process guarantees that a criminal defendant will be treated with the fundamental fairness essential to the very concept of justice"] ; Spencer v. Texas (1967) 385 U.S. 554, 563-564 ["the Due Process clause guarantees the fundamental elements of fairness in a criminal trial"] .) In particular, due process ensures fundamental fairness in the determination of guilt at trial. (Albright v. Oliver (1994) 510 U.S. 266, 283).

The concept of fundamental fairness in criminal procedure extends to jury instructions. (People v. Breverman (1998) 19 Cal.4th 142, 191 (dis. opn. of Kennard, J.).) Justice Kennard's opinion teaches that it is fundamentally unfair to use the jury's ignorance of the

II

The Trial Court Violated Appellant's Federal Due Process Rights By failing to Instruct, Regarding the lewd Act charges in Counts 2 and 3, regarding the lesser included offense of Non Aggravated Lewd Act.

As explained more fully in connection with Argument I, the Fourteenth Amendment requires fundamental fairness in Criminal Procedures used to convict appellant here, including Jury Instructions. (U.S. Const., 14 Amend., Valenzuela-Bernal, 458 U.S. at p. 872; Spencer, 385 U.S. at pp. 563-564.)

Here, as to Counts 2 and 3, the instructions given forced the jury into an improper all-or-nothing choice. The jury had to decide between (1) convicting Trejo of aggravated lewd conduct under Section 288 (b), despite ample evidence showing reasonable doubt that the lewd acts involved force, duress, menace, or threats, and (2) acquitting Trejo of the charge crimes in Counts 2 and 3 despite fairly strong circumstantial evidence of at least some unlawful sexual conduct between Trejo and Doe when she was under the age of 14.

Because Trejo has a Fourteenth Amendment right to all Jury Instructions Supported by substantial evidence presented at trial, the trial court's failure to instruction on lesser included crime of lewd act under Section 288(a). Violated his Federal due Process rights.

elements of the lesser crime to force the jury an all-or nothing choice between convicting Trejo of the greater crime of aggravated sexual assault of a child (of which he may well be not guilty) and absolving him of any liability (despite existence of evidence pointing to some form of criminal conduct by Trejo towards Doe). (Ibid.)

Here, there is substantial evidence that Trejo was guilty only of the lesser crime of unlawful sexual intercourse with a minor three years younger than him, rather than the greater crime of aggravated sexual assault of a child. It was fundamentally unfair for the trial court not give jury instructions that would have allowed the jury to make a guilty or innocent determination that is fully consistent with the trial evidence.

The appellate court disputed the above point, finding that there was no all-or-nothing choice because the jury received simple assault instruction. (Exhibit A, p. .) But this is not reasonable analysis because given Trejo's failure in that pretext phone to deny at least some sexual conduct with Doe, which he had done on trial, and before he was arrested. Simple assault was not a viable lesser offense instruction given the phone call evidence, the jury likely perceived a simple assault conviction to be equivalent to a straight acquittal.

It does not cover all possible verdicts under the trial evidence while an instruction concerning unlawful sexual intercourse with the minor does. Yet the jury received no opportunity to consider that lesser offense which is a federal due process violation.

People v. Griffin (2004) 33 Cal. 4th 1015, 1027-1028
[Pen. Code § 269]. I. May "dress" under Penal Code Section
269 and 288 be found without evidence of direct or
implied threat by the defendant?

II. Did the trial court breach its *Sua Ponte* instructional duty and violated, appellant's federal due process by failing to instruct the jury regarding Unlawful sexual intercourse with a minor three years younger than the defendant (Pen Code, § 261.5 (c) in Count 1?

III Did the trial court breach its *Sua Ponte* instructional duty and violated, Mr. Trejo, Federal due process rights by failing to instruct the jury regarding the crime of non-aggravated lewd act (Pen Code, § 288 (a)), a lesser included offense of aggravated lewd act (Pen. Code § 288c (b)) in counts 2 and 3?

STATEMENT OF THE CASE

At the time of the relevant events, Trejo owned an auto repair business. (2 RT 243.) Trejo's date of birth is January 18, 1970. (1 RT 42.) Doe is Trejo's stepdaughter. Doe was born November 3, 1997. (1 RT 41.)

Trejo and Doe's mother, Coral, were married in 2001 when Doe was only three years old. (1 RT 42.) Trejo was the only father figure in Doe's life. (1 RT 42.) Trejo and Coral had three additional children together: Ramses, Shannelle and Danielle. (1 RT 41.)

At the time of the marriage, Coral worked in a beauty salon and did not own a home. (1 RT 64.) Trejo paid all the bills and the expenses in the household. (1 RT 65.) According to Trejo, he and Coral did not marry out of love. For that reason, they marry only to get her legal status in the U.S. everything, including the house, was put in Trejo's name only. (1 RT 48.) Trejo also owns a \$100,000 motor home, classic cars, and motorcycles worth over one million dollars. (2 RT 152.)

After living in a rental apartment for a short period of time, the couple bought their first home in Bellflower. When Doe was six years old, the family moved to a house in Riverside. (1 RT 63-64.)

In 2010, after discovering that Coral was having an affair with another man, Trejo filed for divorce.

Doe repeatedly threatened to put Trejo in jail if he divorced her mother Coral. (2RT267.) Doe also resented Trejo for disciplining her and for taking away her phone. (2RT237-239.)

A couple of days after Trejo told Coral in front of Doe about his decision to file for divorce, Doe reported her allegation of continual sexual abuse by Trejo. (1RT69.) At trial, (oral) Coral testified that throughout her marriage with Trejo, she never had any reason to suspect that Trejo was abusing Doe. Coral never thought that there was anything going on between Trejo and Doe or that Trejo had opportunity to be alone with Doe (1RT45.) Doe denied that anything had happened to her. (1RT46-48.)

On February 2, 2014, Coral took Doe out of school with the other kids, to the park, where she and Doe fabricated the allegations against Trejo.

Coral never call the police. Instead, Coral called her sister and the next day, the sister reported it to a person at her college who, in turn, called law enforcement (1RT5455.).

About a week after the initial report, the police interviewed Doe about her allegations of abuse against Trejo. Doe looked reluctant and unhappy to be there. (2RT192.) On 2010 Trejo file for divorce

Coral also filed for a restraining order based on her allegations that Trejo fabricated that Trejo had physically assaulted her in front of the children. Later she recanted her allegations. (2 RT 250-252.) At trial here, Doe denied ever witnessing Trejo physically hurt her mother or her. (1 RT 68, 178.) The couple eventually decided to work it out and Trejo stopped the divorce never went through. (1 RT 67; 2 RT 243.)

In January 2014, two days after overhearing Coral on the phone with a man she described as a "friend" Trejo again file for divorce. (2 RT 251, 264.) Doe knew that man, Jose Pedro Covarrubias, with she also talk to him on the phone about their plans. Doe was present when Trejo confronted Coral about that man, and told Coral about his plan to divorce Coral. (2 RT 267.)

Trejo believed that Doe was covering up her mother's affair because Doe saw her mother have sex with another man in the living room of the family home and did not tell him. (2 RT 245, 248, 251, 253.) Trejo warned Coral and Doe that they would not get any money from him. (2 RT 266.)

Several Times, Trejo told Doe that she was to be blamed for covering her mother's affairs. The Police arrested Trejo the next day. On the same day before the arrest, Trejo and Coral had consensual sex 5 hours before the arrest (1CT181.).

Some time following Trejo's arrest, an email was sent to Trejo's sister from Coral's email address, asking for money \$100,000 in exchange for Doe recanting her accusations. (1RT91-92; 2RT232.) At trial Coral confirmed the email address from which it was sent is hers but denied ever sending that email (e-mailing Trejo's sister). (1RT60-61.) But the email was sent when Trejo was already in custody. (1RT93.)

Also, when a defense investigator searched Coral's email, Trejo's sister email address popped up in the search. (2RT234.) It cannot be ruled out that the email in question originated from Coral's email address. (2RT234.) Surrounding the losins divorce from Coral and his anger at Doe for covering up her mother's affair, (RT 241-248.) Trejo intended the statements in the phone call about Doe losing everything only as a reference to the property division agreement Trejo and Coral made when they got married. (2RT248).

Trejo also stated that Doe was a good kid and that he had a good relationship with her. But resented Trejo for disciplining her (ZRT 255.)

On August of 2012 Doe Sent a Skype Text Messages to Alec Lopez, her friend "Boy Friend" whom she had sex at his house and her mother knew about it, and when Trejo confronted them, She send that text about 2 AM, where she told Alec Lopez that Trejo had rape her, The following day Trejo look at the tablet and saw that text messages and told Doe that whu she lied that he never abuse her on any wall.

That Skype text messages is in possession of Defense attorney, Bosky Kathuria whom keep it from presented in trial, as evidence?.

Also Doe was Paid \$10,000 From the sale of Trejo's House, by her mother in exchange for the allegations against Trejo.

REASONS FOR GRANTING THE PETITION

This Court Should Grant this petition for certiorari to resolve the split in the Appellate Court Decisions regarding whether "Duress" Under Penal Code Section 288(b) Can Be Established Based Only on Subjective Fear of the Victim, Without Evidence of Direct or Subjective Fear of the Victim, Without Evidence of Direct or Implied Threats by the Accused.

A. The Need to Resolve the Split of Authority

This Court should grant this petition to resolve the conflict in appellate court decisions regarding the definition of "duress" for the purpose of section 269 and 288. As noted before, the statutory definitions of the term are analogous. Finally, for the reason stated on this petition, the appellate court's harmless error analysis is objectively unreasonable.

Conclusion

For these reasons, this Court should grant this petition as to Questions I through III. As to the two federal claims presented for exhaustion those claims should be considered exhausted for the purpose petition of certiorari.

DATE: 03/30/2022

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:

RELATED CASES

People v. Taylor CA146975,
Filed 10/30/2017 2017 WL 4875830, *3-4 People v. Ramos (B275963,
Filed 08/14/2017), 2017 WL 3634092, *2, People v. Baird (E060751,
Filed 8/25/2015), 2015 WL 5029559, *6, People v. Godwin (D064909,
Filed 5/18/2015), 2015 WL 2393851, **5-6 People v. Mroczko (D050274,
Filed 12/16/2014), 2014 WL 7151802, *7; People v. LaBrera (H03-7730,
Filed 09/25/2013) 2013 WL 5348082, *5, People v. Orellana (B239862,
Filed 08/13/2013 WL 4100026, *6.)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Daniel Trejo

Date: 3/30/2022