No. 22-5974

IN THE

SUPREME COURT OF THE UNITED STATES

DRACO AURUM RAT — PETITIONER
(Your Name)

vs.

DAVID SHINN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE U.S. DISTRICT COURT FOR THE STATE OF ARIZONA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DRACO AURUM RAT
(Your Name)

PO BOX 3200
(Address)

FLORENCE, AZ, 85132
(City, State, Zip Code)

NONE
(Phone Number)

QUESTION(S) PRESENTED

1) WHETHER A PROSECUTOR WHO MISREPRESENTS WITNESS TESTIMONY, ASKS FALSE LEADING QUESTIONS, AND SOLICITS FALSE TESTIMONY HAS COMMITTED FUNDAMENTAL ERROR, IN VIOLATION OF A DEFENDANT'S CONSTITUTIONAL RIGHT TO A FAIR AND IMPARTIAL TRIAL, AND TO DUE PROCESS.

2) WHETHER BEING TOLD En Masse AS A MEMBER OF THE AUDIENCE AT A CONFERENCE "You are the experts!" IS SUFFICIENT TO QUALIFY A WITNESS AS AN EXPERT AND WHETHER THEIR SUBSEQUENT TESTIMONY RUNS AFOUL OF RULE 702/704 AND/OR VIOLATES A DEFENDANT'S RIGHT TO A FAIR AND IMPARTIAL TRIAL, AND TO DUE PROCESS.

3) WHETHER THE COLLATERAL ATTACK PROCESS SHOULD ALLOW A SHOWING OF PROSECUTORIAL MISCONDUCT WHEN DOING SO WOULD REQUIRE EVIDENCE NOT ENTERED AT TRIAL BUT AVAILABLE TO THE PROSECUTOR PRE-TRIAL.

4) WHETHER A PRO-SE LITIGANT ASKING FOR INCLUSION OF RELIEF THE STATE ARGUED AGAINST BEFORE THE COURT MADE ANY RULING WAS FAIRLY INCLUDED AND SHOULD BE CONSIDERED.

5) WHETHER THE LANGUAGE WITHIN THE Portillo INSTRUCTION IMPERMISSABLY LOWERS THE STANDARD OF GUILT BY APPEALING TO ONE'S FEELINGS RATHER THAN REASON.

6) WHETHER ANY OF THE ISSUES HEREIN GIVE THIS COURT CAUSE TO REVERSE AND/OR REMAND PETITIONER'S CONVICTION/CASE.

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:

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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

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

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

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[X] is unpublished.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

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

The date on which the United States Court of Appeals decided my case was JUL 25 2022.

[X] 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

Amendment V of the Constitution of the United States of America: "No person shall be [...] deprived of life, liberty, or property, without due process of law [...]"

Amendment VI of the Constitution of the United States of America: "In all criminal prosecutions, the accused shall enjoy the right to a speedy trial, by an impartial jury of the State and district wherein the crime shall have been committed [...] and have the Assistance of Counsel for his defence."

Amendment XIV of the Constitution of the United States of America: "[...] nor 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."

STATEMENT OF THE CASE

After a jury trial, I, Draco Aurum Rat, was convicted of Indecent Exposure to a minor under fifteen, two counts of sexual conduct with a minor under fifteen, and continuous sexual abuse of a child. On the first I was sentenced to a one-year concurrent prison term and for each of the other three consecutive twenty-year prison terms, totalling 60 years.

During trial, the prosecutor repeatedly asked if the victim had made historical reports to CPS, to which a witness appearing on behalf of CPS kept saying that she had, such as "[...] and you knew that [Victim] had disclosed abuse at age 8?" (Jury trial day 4, page 19), including three other supposed incidents, and ending with "You agree that [Victim] reported it herself to a Case Worker?" and each time the CPS witnessed agreed with the question. However, none of these statements were true. Prior to the accusation, in 2014, that started this case, the victim was questioned each time and each time denied anything was happening, and each time it was her mother making the reports. Because these reports were made to CPS, records were requested from CPS which reflected this, such as (CPS record numbered 190/258) "[After] accusations of sexual misconduct with [Victim] however it has been proven he is not. [Victim] has been approached in therapy and there are no concerns that this took place." There are multiple other such reports. Further, the prosecutor went further and asked "and you're aware that the defendant actually attended some counseling, based on the sexual abuse allegations, as well before you took over the case?" and the reply was "I imagine he would have." - except that I have never attended any counselling based on sexual abuse allegations.

During trial, two experts were presented to talk about possible injury to a person's hymen as a result of penetration, one for the State and one for the defense. Prior to trial the State's expert was asked if she was an expert in this specific subject and she said that she wasn't - that she was to be a fact witness only. When confronted, she claimed she had not been confident in her ability (JURY TRIAL DAY 3 @ 67) and admitted that she had no treatises or research papers to support her statements. The prosecution attempted to cure her deficiency by asking what had changed (10 @ 71) to which her response was "I have since been to a conference, and they basically said, you are the experts." (10) She said she wouldn't expect to see any injury unless there was forced, blunt-force trauma. In contrast, the Defense's witness testified that he reads the subject matter literature monthly including peer-reviewed medical literature, has performed hundreds of thousands of exams, has taught the subject at UCLA and the American Academy of Forensic Scientists and reviewed more than 200 similar cases (JURY TRIAL DAY 4, 30-36), then said that under similar circumstances that while it may be theoretically possible to have no injury that he would expect that there would be injury. (10 @ 44-47, 63). During closing arguments, however, the prosecutor attempted to cure her deficiency by saying multiple times that the experts would agree with each other and neither would expect to see injury (DAY 5 AT 22, 23, 58, 61), which is false.

After a Direct Appeal I filed a Rule 32[1] motion with multiple claims, including that the prosecutor had commited misconduct for these and other reasons. The State argued for preclusion based on not having raised it on direct appeal, to which I replied - before the court had made any rulings - that some of my claim would require the presentation of evidence (such as the CPS records) that were not preserved in the record, that Prosecutorial Misconduct is fundamental to my rights, and that if the court were to consider the State's arguments that they should declare my Appeals Attorney ineffective. No court then nor hence has done so, declaring that since I raised it in my reply and not my original petition that I had not

[1] IN ARIZONA, A RULE 32 motion / proceeding is the avenue for collaterral attacks, and State HABEAS.

fairly presented it to the Court.

Finally, at trial, my Jury was given the Portillo instruction. I raised on Direct Appeal that it impermissably lowers the Standard of Guilt by encouraging jurors to make a decision on guilt or innocence based on "feeling" and being "firmly convinced" that a person is guilty, instead of guilt being proof beyond a reasonable doubt. The State appeals court disagreed but the U.S. District Court stated that it could not reach a decision because it must base its ruling on clearly established Federal Law and, as stated on page 15 of the Attorney General's answer, "The Supreme Court has never addressed the Reasonable-Doubt definition set forth above."

REASONS FOR GRANTING THE PETITION

1) PROSECUTORIAL IMPERMISSABLE CONDUCT

The prosecution, before and to the jury asked questions and made statements that they had to have known were not only incorrect but implied or stated that I had committed acts I had not.

Prior to trial both parties (defense and prosecution) were provided records from CPS; records that showed that any prior allegation of misconduct had been investigated and that the victim had, each time, denied that any abuse had occurred and that someone else (her mother) had been the party to make the allegations. At trial, however, the prosecutor asked the CPS witness if the victim had been the reporting party and for reasons I do not know the witness said 'yes' each time. The prosecutor then asked if I had attended counseling based on sexual abuse allegations and the witness said "I imagine he would have." The entire line of questioning is directly controverted by the records. See, for example, Appendices F and G, being two such parts of the disclosure.[1]

These things, if true, would be a great boon for the prosecution because they encourage the jury to see me as a predator who 'slipped through the cracks' and thus they encourage the jury to become the victim's protector by becoming The One Who Can Stop It. (By finding for guilt) Used this way, it shows that the prosecutor adopted a 'win-at-all-costs' strategy, where the truth no longer matters. It's effective so they did it and by doing it they are trying to get a sympathetic jury.

Yet they didn't stop there. They continued by summarizing

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[1] THE 3+ Prior Review Tool ends with a "Current Report" which is the allegation that started this case. Its findings / recommendations are not historical - it occurred after my arrest.

the testimony as "... AND with all that, [CPS] increased visitation with Dad. So nothing happens with it. [...] Nothing happens." Again, not true. Just the sheer volume of CPS records alone proves that a lot happened. Reading them illustrates how many people were involved and all the steps taken along the way.

They also summarized the defense's sexual assault expert as having said that after multiple sexual encounters that he would expect to see no injury - just like the state's expert.[1] Yet this is the opposite of what he said. He said that no injury could theoretically occur but he would expect injury. I know that the Court says that closing arguments are not evidence but when they are outrightly false - about key testimony and evidence - It would be hard for a jurist to disagree with such a bold statement. A lot is said at a trial and it is human nature to think that if someone in authority - the prosecutor - tells them that something was said in some way that they are likely to take that as the truth; that they have err'd in their understanding or recollection. And when that mistake fundamentally means that the expert's testimony was the opposite of what it was then the prosecutor has again abandoned the pursuit of truth.

If US v. Goodson, US v. Necochea, Ray v. Rose, Napue v. Illinois, and other cases like them, mean anything it's that prosecutors must act as agents of the truth. "The prosecution is permitted to 'strike' hard blows but it's not permitted to strike foul ones." (US v. Easley) "Prosecutor may not insinuate possession of personal knowledge of facts not offered in evidence." (People of Territory of Guam v. Torre)

Please find that this action is wrong; that the right to a Fair Trial and Due Process of Law must be preserved by a prosecutor by searching for the truth.

2: WHETHER BEING TOLD En Masse THAT ONE IS 'AN EXPERT' AT A CONFERENCE QUALIFIES THEM.

Prior to trial the SANS Nurse was asked if she had any qualification to also testify as an expert about the possible effects, if any, of sexual conduct with a minor. She said she didn't.

So when the prosecution asked her to opine on this very subject she was asked what had changed? Her reply was that she had attended a Conference wherein the lecturers told the audience that they, in attendance, were the experts, so she was an expert!

I imagine that was an ego boost but that cannot rise to the level necessary to allow one to testify as an expert in a criminal trial. In Arizona the rule concerning expert witnesses follows letter-for-letter those of the Federal rules of the same, specifically Rule 702. It states that a witness may give testimony or opinion if (joined by "and") it "... will help the trier of fact to understand the evidence or determine a fact in issue; [...] is based on sufficient facts or data; [...] is the product of reliable principles and methods, and [...] they applied the principles and methods to the facts of the case."

In order for those requirements to be met then at its very core the Scientific Method must be followed, which means not only forming a hypothesis but also testing it. And that means following a procedure that involves not only the possibility of success but also of failure so that one could know that they have a testible process - that through the application of the process that they can discern A from B. Simply being told "you can do it!" is not a process. Everything the expert said was her personal opinion - not a professional one - because, as she mentioned, there was not any specific training for her on the matter, no peer-reviewed literature, no process.

In short, she never did anything to form a hypothesis. Going to a conference and being told "you're the experts!" as part of the audience doesn't

4: PRO-SE INCLUSION OF AN ISSUE AFTER THE STATE'S REPLY.

When the State argued for a procedural bar of my Prosecutorial misconduct claim, arguing that I should have raised it on my Direct Appeal, I asked the court to declare that attorney ineffective for not having done so - to find for IAC in that instance. The Court did not even address it at first until I wrote for a Motion to Reconsider, after which they said they didn't need to address claims raised in a reply.

What I didn't know until much later, discovering it incidentally while doing other research, was that after the State's answer I should have asked leave to Amend the original petition to include my request for IAC. I am not an attorney - I am a computer programmer. Even the basics are difficult as a ley-person. It seems the Court recognizes this to some degree, such as in Sause v. Bauer: "Pro-Se pleadings must be reviewed by less stringent standards," Hanes v. Kerner: "Courts are directed to read Pro-Se complaints 'liberally';" and others.

Since the State argued for procedural bar; that was the first notice I received of intent to seek such bar; the Court had not yet made any ruling; and I immediately asked for relief based on their argument, I feel the Court should have recognized that, as a ley-person, I may not have known that I should have amended the petition and thus either: notified me and given me time to amend, or treated my pleading as an intended amendment, then proceeded as though the petition had been so amended.

The potential that justice could be not done is too high to ignore an issue such as Prosecutorial

Misconduct. Other issues could rise to that level as well, so I am asking this Court to find that when a Pro-Se litigant asks for the inclusion of relief in response to the State's arguments that the Court should consider that relief even if normally they might not had an attorney raised it in this manner. An attorney is trained, has the benefit of working with colleague attorneys, whereas a Pro-Se litigant is not / has not.

As a Pro-Se, I am seeking review of an issue and may not know all the technical details but that doesn't make my arguments any less valuable nor my need any less necessary.

5: The Portillo Instruction

The Portillo instruction says about Proof Beyond A Reasonable Doubt that it "is proof that leaves you firmly convinced of the defendant's guilt." That is wrong - it lowers the standard. You can be firmly convinced of things for which you are completely wrong: creationism v. evolution, flat- v. round-earthers, were dinosaurs real or an elaborate deception by Lucifer? In each case there are people on either side of the argument and in each case one side (at least) must be wrong because the opinions are mutually exclusive, yet those people are firmly convinced that they are right.

The instruction continues "There are very few things in this world we know with absolute certainty." This may (or may not) be true to some degree but it is also suspect. This language can only be said to have been included for one reason - to tell jurists they don't have to be certain of their decision. After all, there are very few things in this world we know with absolute certainty, right?

"In criminal cases the law does not require proof that overcomes every doubt." Again misleading as it says essentially "you can have some doubts, that's O.K." without saying concurrently that any such remaining doubt should have been evaluated and deemed unreasonable. This saying softens their conviction - it allows a guilty verdict in the face of doubt, which the above says is O.K. if they are firmly convinced.

It ends by saying that there must be a "real possibility" that someone is not guilty to find for acquittal. What does that even mean? Does it mean, as it sounds, that being even only slightly convinced that a person is not guilty is not enough to acquit?

All of this language is one-sided: it serves the prosecution by encouraging juries to find for guilt based on their feelings, to allow one to set aside their doubts, and to think again when considering acquittal.

Did our Fore-fathers say "'Tis better a guilty man go free - unless you are firmly convinced he is guilty, then hey, go for it!"? Of course not - that phrase ends with "... than for an innocent man to languish in prison."

Proof beyond a reasonable doubt is just that: decide what your doubts are, consider them, and if even one is reasonable to you then you must acquit. If none are reasonable (or you have none) then find for guilt. It is a judgment based on what you know, not what you may feel.

A country that prides itself on freedom must take it only when it is sure it is right to do so. How sure? Absolutely sure.

I am asking this Court to fix the Portillo instruction. It recreates, as it's now, the standard of guilt to one more closely matching "more certain than not" which is not the criminal standard.

6: REVERSAL / REMAND

Any of the above issues result in a fundamental miscarriage of justice when applied to my case, so I pray this Court take appropriate corrective action.

Thank you.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Draco Aurum Rat
DRACO Aurum Rat

Date: 20 Oct 2022