

NO. 22-7642

IN THE SUPREME COURT OF THE UNITED STATES

JULIO ANGEL TORREZ JR
PETITIONER

vs.

CALIFORNIA
RESPONDENT

PETITION FOR WRIT OF HABEAS CORPUS

PETITION FOR REHEARING
(SUP. CT. R. 44.)

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APPELLANT PRESENT ITS PETITION FOR REHEARING
OF THE ABOVE-ENTITLED CAUSE, AND, IN SUPPORT
OF IT, RESPECTFULLY SHOWS:

GROUND FOR REHEARING

A REHEARING OF THE DECISION IN THE MATTER
IS IN THE INTEREST OF JUSTICE BECAUSE:

I WAS EXERCISING MY 5TH AMENDMENT RIGHT
IN THE JAIL PHONE CALLS.

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SUPREME COURT, U.S.

THE TRIAL COURT ABUSED ITS DISCRETION UNDER EVIDENCE CODE SECTION 1221 BY ADMITTING THE PURPORTED TACIT ADMISSIONS THAT I TORREZ MADE IN RECORDED JAIL CALLS

A. THIS COURT HAS HELD THAT A DEFENDANT'S SILENCE CAN BE ADMITTED AS A TACIT ADOPTIVE ADMISSION IF THE TRIAL COURT DETERMINES THAT THE CIRCUMSTANCES (1) AFFORD THE DEFENDANT A FAIR OPPORTUNITY TO RESPOND AND (2) DID NOT LEAD THEMSELVES TO AN INFERENCE THE DEFENDANT WAS RELYING ON HIS CONSTITUTIONAL RIGHT TO SILENCE

B. HERE, THE EVIDENCE SHOWED THAT I TORREZ HAD BEEN MADE AWARE OF HIS RIGHT TO REMAIN SILENT IF ATTORNEY HAS ADVISED ME TO REMAIN SILENT IF CONFRONTED BY ACCUSATIONS. I KNEW THE JAIL CALLS WERE RECORDED. THE COURT ABUSED ITS DISCRETION BY ADMITTING MY SILENCE AS TACIT ADMISSIONS

C. THIS CASE PRESENTS THE COURT WITH AN OPPORTUNITY TO ADDRESS THE PROPER APPLICATION OF THE TACIT ADMISSION RULE TO A COMMON SITUATION - A DEFENDANT WHO REMAINS SILENT DURING A JAIL CALL THAT HE KNOWS IS BEING RECORDED AND CAN BE USED AGAINST HIM

II. THE ADMISSION OF THE PURPORTED TACIT ADMISSIONS VIOLATED TORREZ'S FOURTEENTH AMENDMENT DUE PROCESS RIGHT TO A FAIR TRIAL UNDER THE RULE OF DOYLE V. OHIO

A. UNDER THE DOYLE RULE OF DOYLE V. OHIO, IT IS UNFAIR TO USE A DEFENDANT'S SILENCE AGAINST HIM AFTER HE HAS BEEN ADVISED THAT HE HAS A RIGHT TO REMAIN SILENT

B. HERE, THE EVIDENCE SHOWS THAT TORREZ HAD BEEN ADVISED THAT HE HAD A RIGHT TO REMAIN SILENT BEFORE THE JAIL CALLS IN WHICH HE REMAINED SILENT WHEN CONFRONTED BY ACCUSATIONS OF GUILT. THE ADMISSION OF TORREZ'S SILENCE VIOLATED DUE PROCESS UNDER DOYLE V. OHIO

C. THIS CASE PRESENTS THE COURT AN OPPORTUNITY TO RESOLVE TWO IMPORTANT LEGAL QUESTIONS RELATED TO THE RULE OF DOYLE V. OHIO

1. THIS COURT SHOULD GRANT REVIEW TO HOLD THAT THE RULE OF DOYLE V. OHIO APPLIES - AT LEAST UNDER CERTAIN CIRCUMSTANCES - IN PRIVATE CONVERSATIONS

2. THIS COURT SHOULD GRANT REVIEW TO HOLD THAT THE RULE OF DOYLE V. OHIO APPLIES EVEN WHERE THE DEFENDANT REMAINS SILENT SELECTIVELY

III. THE ADMISSION OF THE PURPORTED TACIT ADMISSIONS VIOLATED TORREZ'S FOURTEENTH AMENDMENT DUE PROCESS RIGHT TO A FAIR TRIAL UNDER ESTELLE V. MCGUIRE AND PEOPLE V. MEDINA

A. UNDER ESTELLE V. MCGUIRE, THE ADMISSION OF EVIDENCE VIOLATES FEDERAL DUE PROCESS IF IT RESULTS IN A TRIAL THAT IS FUNDAMENTALLY UNFAIR

B. IN PEOPLE V. MEDINA, THIS COURT SUGGESTED - BUT DID NOT DECIDE - THAT THE ADMISSION OF A DEFENDANT'S SILENCE WOULD VIOLATE DUE PROCESS IF THE EVIDENCE SHOWED HE KNEW HIS CONVERSATION WAS BEING RECORDED BY LAW ENFORCEMENT.

C. HERE, THE RECORD SHOWS THAT I TORREZ WAS AWARE OF MY RIGHT TO REMAIN SILENT, MY ATTORNEY ADVISED ME TO REMAIN SILENT IF CONFRONTED BY ACCUSATIONS OF GUILT, AND I KNEW THE JAIL CALLS WERE RECORDED. ADMITTING THE TACIT ADMISSIONS UNDER THESE CIRCUMSTANCES WAS FUNDAMENTALLY UNFAIR AND A DENIAL OF DUE PROCESS.

D. THIS CASE PRESENTS THIS COURT AN OPPORTUNITY TO DECIDE THE ISSUE IT LEFT OPEN IN PEOPLE V. MEDINA AND HOLD THAT IT IS A DENIAL OF DUE PROCESS TO ADMIT A DEFENDANT'S SILENCE ON A RECORDED JAIL CALL WHERE THE DEFENDANT KNEW THE CALL WAS BEING MONITORED, HAD BEEN MADE AWARE OF HIS RIGHT TO REMAIN SILENT, AND HAD BEEN ADVISED BY COUNSEL TO REMAIN SILENT

IV. THE COURT OF APPEAL'S HARMLESS ERROR ANALYSIS MISAPPLIES THE CHAPMAN V. CALIFORNIA STANDARD - AND THEREBY VIOLATED MY SIXTH AMENDMENT RIGHT TO A JURY TRIAL - BY FINDING THE ABOVE ERRORS HARMLESS BASED ON THE PRESENCE OF OTHER EVIDENCE OF GUILT

A. CHAPMAN V. CALIFORNIA REQUIRES REVERSAL UNLESS THE STATE PROVES BEYOND A REASONABLE DOUBT THAT THE ERROR HERE, THE ERRONEOUSLY ADMITTED EVIDENCE - DID NOT CONTRIBUTE TO THE JURY'S VERDICT

B. HERE THE COURT OF APPEAL DID NOT FOCUS, AS CHAPMAN V. CALIFORNIA DEMANDS, ON THE ERRONEOUSLY ADMITTED EVIDENCE'S EFFECT ON THE JURY'S VERDICTS, AND IT INSTEAD FOCUSED ON THE EFFECT OF OTHER EVIDENCE

ON THE VERDICTS. THE COURT OF APPEAL'S ANALYSIS VIOLATED TORREZ'S SIXTH AMENDMENT RIGHT TO A JURY TRIAL.

C. THIS CASE PRESENTS THE COURT AN OPPORTUNITY TO ADDRESS A COMMON MISAPPLICATION OF CHAPMAN V. CALIFORNIA BY THE DISTRICT COURTS OF APPEAL.

V. THE TRIAL COURT ERRED BY REFUSING TORREZ'S PROPOSED MODIFICATION OF CAL CRIM NO. 357, WHICH WOULD HAVE CORRECTLY INFORMED THE JURY THAT IT MAY CONSIDER EVIDENCE THAT I RELIED ON MY RIGHT TO REMAIN SILENT WHEN ASSIGNING MEANING TO MY SILENCE UNDER THE TACIT ADMISSION RULE

A. THIS COURT HAS HELD THAT WHETHER A DEFENDANT'S CONDUCT ACTUALLY CONSTITUTED AN ADOPTIVE ADMISSION IS A QUESTION FOR THE JURY TO DECIDE

B. HERE, TRIAL EVIDENCE SUPPORTED AN INFERENCE THAT I REMAINED SILENT IN RELIANCE ON MY RIGHT OF SILENCE, NOT AS AN ADOPTION OF THE ACCUSATIONS' TRUTH, BUT THE JURY WAS NOT INSTRUCTED THAT IT COULD CONSIDER SUCH RELIANCE WHEN ASSIGNING MEANING TO MY SILENCE

C. THE INSTRUCTIONAL ERROR VIOLATED TORREZ'S FOURTEENTH AMENDMENT RIGHT TO A FAIR TRIAL, AND THE ERROR WAS PREJUDICIAL UNDER CHAPMAN V. CALIFORNIA

D. THIS CASE PRESENTS THE COURT AN OPPORTUNITY TO GRANT REVIEW REVIEW AND HOLD THAT IT IS ERROR TO DENY A REQUEST TO INSTRUCT THE JURY THAT IT MAY CONSIDER EVIDENCE THAT THE DEFENDANT RELIED ON HIS RIGHT TO REMAIN SILENCE WHEN DETERMINING WHETHER THE DEFENDANT'S SILENCE WAS AN ADOPTIVE ADMISSION.

VI. THE ABOVE ERRORS' CUMULATIVE PREJUDICIAL EFFECT DENIED MY FOURTEENTH AMENDMENT RIGHT TO A FAIR TRIAL.

1. ON 10/2/2023, THIS COURT DENIED MY PETITION. DENIED THE PETITION FOR WRIT OF CERTIORARI.

2. 357. ADOPTIVE ADMISSIONS. MY CASE CONSIST OF JAIL CALLS THE ALLEGED VICTIM ARIAS AND LEO RAMIREZ DIDNT SHOW UP TO TESTIFY THE DISTRICT ATTORNEY DIDNT USE THE SUBPOENA POWER TO BRING ARIAS TO JAIL TO SECURE MY RIGHT TO BE ABLE TO CONFRONT ARIAS AND RAMIREZ ABOUT THE ALLEGATIONS. THE RECORD STATES THAT MY PUBLIC DEFENDER INSTRUCTED ME NOT TO TALK ABOUT MY CASE ON THE PHONE DUE TO MY 5TH AMENDMENT RIGHTS OF THE U.S. CONSTITUTION AND CALIFORNIA CONSTITUTION, EXERCISING MY RIGHT UNDER THE RULE OF DOYLE V. OHIO, IT WAS UNFAIR TO USE MY SILENCE AGAINST ME BECAUSE THE RECORD SHOWS MY SILENCE WAS AN EXERCISE OF MY RIGHT TO SILENCE AND ADHERENCE OF ADVICE OF COUNSEL. THE ADMISSION OF EVIDENCE RENDERS A CRIMINAL TRIAL FUNDAMENTALLY UNFAIR VIOLATES DUE PROCESS UNDER THE FOURTEENTH AMENDMENT.

A. 357. ADOPTIVE ADMISSIONS: BENCH NOTES AND IT WAS HIS INSTRUCTIONAL DUTY.

HONORABLE JUDGE DAVID LAMPE SAID MY RIGHT TO CONFRONT BECAUSE I WAS THE ONE MAKING THE PHONE CALLS TO ARIAS WHICH SHE HAS ALWAYS PICKED UP MY CALLS.

B. 357. ⁴ADOPTIVE ADMISSION CLEARLY STATES:

DO NOT GIVE THIS INSTRUCTION IF THE DEFENDANTS FAILURE TO REPLY WAS BASED ON HIS OR HER INVOCATION OF THE RIGHT TO REMAIN SILENT.

(SEE GRIFFIN V. CALIFORNIA (1965) 380 U.S. 609 [85 S. CT. 1229, 14 L. ED. 2D 106]; PEOPLE V. ROCKWELL (1965) 63 CAL. 2D 659 [47 CAL. RPTR. 788, 408 P. 2D 116].)

PETITION FOR REHEARING

3. APPELLANT JULIO ANGEL TORREZ, JR RESPECTFULLY PETITIONS THIS COURT FOR REHEARING UNDER SUP. CT. R. 44.

ON JANUARY 17, 2023, THE COURT OF APPEAL ISSUED A DECISION AFFIRMING THE JUDGEMENT OF CONVICTION AND REMANDING FOR A FULL RESENTENCING. NO PETITION FOR REHEARING WAS FILED. THE COURT OF APPEAL'S UNPUBLISHED DECISION HAS BEEN DOCKETED NO. 22-7642

4. THERE IS NO LAW OR CASE LAW WHICH PROTECTS A DEFENDANT THAT REMAINS SILENT SELECTIVELY IN PRIVATE CONVERSATIONS AFTER BEING INFORMED OF MY RIGHT TO REMAIN SILENT, ADVISED BY COUNSEL TO REMAIN SILENT IF ACCUSED OF GUILT, AND WAS WARNED BY JAIL CALLS THAT CONVERSATIONS ARE RECORDED AND MONITORED

DOES USING MY SILENCE VIOLATE DUE PROCESS UNDER DOYLE V. OHIO (1976) 426 U.S. 610 (DOYLE)?

5. THE GROUNDS FOR THE RULING IN MY CASE CAME AS A SURPRISE TO PETITIONER. PETITIONER HAD BRIEFED THE CRUCIAL ISSUE IN THIS CASE CAREFULLY AND WAS AWARE OF ALL THE CASE LAWS SUPPORTING MY BRIEF INCLUDING DOYLE THAT DOESNT PROTECT CONVERSATIONS WITH CITIZENS

6. MY CASE IS REALLY IMPORTANT BECAUSE THERE IS NO LAW OR CASELAW THAT PROTECTS DEFENDANTS FROM SILENCE IN JAIL PHONE CALLS. THIS COURT HAS THE OPPORTUNITY TO ADDRESS THIS ISSUE THAT WILL HELP SEVERAL PEOPLE IN MY SITUATION. I AM ASKING THE COURT TO RECONSIDER MY CASE. THIS IS A PERFECT CHANCE TO MAKE IT A CONSTITUTIONAL RIGHT TO SILENCE WHEN CONFRONTED BY REGULAR CITIZENS WHEN ACCUSED OF ACCUSATIONS.

7. PETITIONER WAS NOT GRANTED ANY OPPORTUNITY BY THE COURT TO DISTINGUISH THIS CASE FROM DOYLE CASE OR TO SUGGEST WHY NOT BE DETERMINED BY THE SAME RULE

8. THIS CASE CONTAINS SEVERAL CRUCIAL FACTUAL AND PROCEDURAL DISTINCTIONS FROM THE CASE DOYLE THAT WARRANT ITS DETERMINATION BY A DIFFERENT OR AT LEAST ALTERED RULE.

A. USE MY 5TH AMENDMENT RIGHT WHEN SPEAKING ON A JAIL CALL WITH THE ALLEGED VICTIM (A CITIZEN) AS EVIDENCE VIOLATES MY DUE PROCESS RIGHT

B. IS IT ERROR TO DENY A REQUEST TO MODIFY CALCRIM NO. 357'S INSTRUCTION ON ADOPTIVE ADMISSIONS TO INFORM THE JURY THAT, WHEN DECIDING WHETHER THE DEFENDANT'S SILENCE ADOPTED A STATEMENT'S TRUTH, IT MAY CONSIDER EVIDENCE THE DEFENDANT RELIED ON A RIGHT TO REMAIN SILENT?

9. A REHEARING TIGHTLY AND SQUARELY FOCUSED ON THE DISTINCTIONS BETWEEN THIS CASE AND THE DOYLE CASE, AND WHETHER THESE DISTINCTIONS MERIT A DIFFERENT RULE OF LAW, IS A MATTER OF FUNDAMENTAL FAIRNESS TO PETITIONER AND WOULD NOT UNDULY BURDEN THE COURT.

CONCLUSION

FOR THE REASONS JUST STATED, JULIO ANGEL TORREZ JR URGES THAT THIS PETITION FOR REHEARING BE GRANTED, AND THAT, ON FURTHER CONSIDERATION, RELIEF SOUGHT, THE PETITION FOR CERTIORARI BE GRANTED OR THE JUDGEMENT OF THE LOWER COURT BE REVERSED OR AS APPROPRIATE.

DATED: 10.9.2023

Julio Angel Torrez Jr
JULIO ANGEL TORREZ JR
17695 INDUSTRIAL FARM ROAD
BAKERSFIELD CA 93308

COUNSEL OF RECORD FOR JULIO ANGEL TORREZ JR
IS JANO MATTAEU AND APPELLATE ATTORNEY
IS DAVID BEADREAU 748 S. MEADOWS PARKWAY
SUITE 49-182 RENO NV. 89521

CERTIFICATE OF GOOD FAITH BY DEFENDANT

I, JULIO ANGEL TORREZ JR, CERTIFY THAT THIS
PETITION FOR REHEARING IS REPRESENTED IN A
GOOD FAITH AND NOT FOR DELAY AND THAT IT
IS RESTRICTED TO THE GROUNDS SPECIFIED
IN SUPREME COURT RULE 44 OF THE RULES OF
THIS COURT.

Julio Angel Torrez Jr

I DECLARE UNDER PENALTY OF PERJURY THAT
THE FOREGOING IS TRUE AND CORRECT.

EXECUTED ON 10.9.2023

Julio Torrez Jr
JULIO ANGEL TORREZ JR

SUPREME COURT
FILED

Court of Appeal, Fifth Appellate District - No. F082878

MAR 29 2023

S278677

Jorge Navarrete Clerk

IN THE SUPREME COURT OF CALIFORNIA Deputy

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

JULIO ANGEL TORREZ, JR., Defendant and Appellant.

The petition for review is denied.

GUERRERO

Chief Justice

IN THE

Court of Appeal of the State of California

IN AND FOR THE

Fifth Appellate District

THE PEOPLE,
Plaintiff and Respondent,
v.
JULIO ANGEL TORREZ, JR.,
Defendant and Appellant.

F082878
Kern County Super. Ct. No. BF176040A

TO THE SUPERIOR COURT:

*** * * REMITTITUR * * ***

This remittitur is issued in the above entitled cause. Also enclosed is a file-stamped copy of the opinion/order.

Costs are not awarded in this proceeding.

Date: April 3, 2023

BRIAN COTTA, Clerk/Executive Officer

Alicia Gonzalez

By: Alicia Gonzalez
Deputy Clerk

**Additional material
from this filing is
available in the
Clerk's Office.**