

23-5064

ORIGINAL

No. _____

FILED

JUN 29 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

DAVALL

(Your Name)

— PETITIONER

vs.

Montgomery et. Al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

9th Cir Ct. of App.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Joseph DAVALL (C.D.C.R. NO. AW-8294)

(Your Name)

P.O. Box 5007

(Address)

CALIPATRIA, CA. 92233

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- 1) Define a "Reliable" Chain of Custody, specifically for DNA evidence that does not conflict with the Right to confrontation.
- 2) Does the admission of false DNA evidence violate Due Process, and if so, does that particular type of extremely prejudicial evidence require a harmless error test or automatic reversal?
- 3) Is a weak eyewitness identification enough to uphold a conviction, and if so, How weak, before it violates a fair identification requirement?

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:

- 1) ARIAS (NEW WARDEN)
- 2) CALIFORNIA

RELATED CASES

- 1) DAVALL V. MONTGOMERY NO. 22-55057 UNITED STATES COURT OF APPEALS FOR THE 9TH CIRCUIT, JUDGEMENT ENTERED 5-25-2023
- 2) DAVALL V. MONTGOMERY ~~WAT~~ NO. 2:18-CV-07252-DSF-LAL U.S. DISTRICT COURT FOR CENTRAL DIST. OF CA. JUDGEMENT ENTERED 11-30-2021
- 3) (TRIAL COURT) PEOPLE V. DAVALL NO. KA105537 LOS ANGELES COUNTY SUPERIOR COURT JUDGEMENT ENTERED MAY 2015
- 4) (DIRECT APPEAL) CA. COURT OF APPEALS NO. B265279 JUDGEMENT ENTERED 12-20-2016
- 5) CA. SUPREME COURT NO. 5239308 JUDGEMENT ENTERED 2-15-2017
- 6) U.S. SUPREME COURT NO. 16-9254 JUDGEMENT ENTERED 10-2-2017
- 7) LOS ANGELES SUPERIOR COURT NO. KA105537 JUDGEMENT ENTERED 2-26-2020
- 8) CA. CT. OF APP. NO. B304951 JUDGEMENT ENTERED 2021
- 9) CA. SUPREME CT. NO. 5275361 JUDGEMENT ENTERED 2022
- 10) CA. SUPREME CT. NO. 5277081 JUDGEMENT ENTERED 2-1-2023

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No. Review conducted; motion For Appointment OF counsel
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Statutes And Rules

DUE PROCESS CLAUSE (CONSTITUTION) → intersection?
 CONFRONTATION CLAUSE (CONSTITUTION) → intersection?

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Please forgive me, as a prisoner I do not have access to all my records
 (No transcripts in the appendix)

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 _____; 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

DAVALL V. MONTGOMERY CV-07252-DSF-LAL
☒ reported at E File (Lexis nexis); 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 5-25-2023.

☐ 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: 6-16-2023, and a copy of the order denying rehearing appears at Appendix D.

☐ 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

- 1) DUE PROCESS clause
- 2) CONFRONTATION clause
- 3) HEARSAY

I am interested in how the DUE PROCESS clause can accurately reflect this court's opinion on the confrontation clause / Hearsay in regards to chain of custody }
"Reliability" specifically for critically important DNA evidence

STATEMENT OF THE CASE

AS it Relates to Questions Presented

Relevant to Question 1

A) The SART Nurse who has 'no skin in the game' testified that she gave the sexual assault kit to officer OROSCO (2R+1251-52)

Veteran officer OROSCO denied liability testifying that he did not receive the sexual assault kit (2R+1280)

Rookie officer EARL testified that he was the one to pick up the sexual assault kit from the SART Nurse (ZUNIGA) (2R+1283)

No officers or anyone else testified about who if anyone had access to the victims sexual assault kit at the Police station

No officers or anyone else testified about who if anyone took the victims sexual assault kit from the police station to the crime lab

The only officer who accepted liability for Jane Does sexual assault kit was 1 year Rookie officer EARL and per Nurse ZUNIGA's testimony that is NOT who she gave the sexual assault kit too. 1 single questionable link does NOT equal a chain of custody

Defense counsel objected to the "lack of foundation; chain of custody in regards to the DNA expert testifying about the DNA samples that were reviewed" (2R+1271-74) ID at 1273

The Trial court; the APP. Ct. ruled that "gaps in the chain of custody normally go to the weight of evidence rather than its admissibility" and "It is up to the Prosecution to Decide what steps in the chain of custody are so crucial as to require evidence"

Melendez-DIAZ V. MASSACHUSETTS 557 U.S. 305 (2009)

although that seems to conflict with Merrill Dow Pharm 509 U.S. 579 (1993) mandate that "only 'reliable' scientific evidence is admissible"

The Direct APP. Ct. also made a Reliability based ruling stating that "evidence tape was still on the sexual assault kit when it arrived at the lab" even though that is contrary to CRAWFORD V. WASHINGTON 541 U.S. 36 (2004) emphatic rejection of Reliability Based rulings

On Federal Habeas Corpus the Magistrate finds that my claims fail Because "There are No controlling Supreme Court decisions holding that the admission of evidence based on an inadequate chain of custody violates due process" HALL V. CATE NO. CV-12-4770 (2014) citing HOLLEY V. YARBOROUGH 568 F.3d. 1091, 1101 (9th Cir 2009) "

The Supreme Court... has not yet made a clear ruling that admission of irrelevant or overtly prejudicial evidence constitutes a due process violation sufficient to warrant issuance of the writ (see ATTACHED APPENDIX C ID at Page 13: 25-28)

B) Relevant to Question 2

No officer or anyone at all testified about any alleged DNA sample taken from me, or any chain of custody whatsoever of that alleged DNA sample. Serious questions arise about what if anything at all the DNA sample tested has to do with me.

The DNA expert told the jury (at 2R+1290) that she reviewed a DNA sample with my name on it (JOSEPH DAVALL) from a section of the lab that stores evidence and that the sample alleged to be mine matched a sample from Jane Does sexual assault kit

There is NO testimony whatsoever of where the DNA sample alleged to be mine came from before it mysteriously appeared in the lab

On Federal Habeas Corpus the Magistrate found the error of telling the Jury my DNA was found inside of Jane Doe's vagina was HARMLESS error, despite the fact that there is no proof my DNA was ever tested at all (see ATTACHED APPENDIX C at Page 11:23-28) The Magistrate also found that the prosecution failed to prove my DNA was ever tested (see ATTACHED APPENDIX C at Page 17:9) This type of error can NOT simply be separated from the whole (see ATTACHED APPENDIX E at Page 2)

C) RELEVANT to Question 3

7 months after the crime, 13 year old Jane Doe identified me at the preliminary hearing. at this preliminary hearing Jane Doe made the statement that she "DID NOT see" her rapist's face (see Page 9:16 of preliminary hearing transcript) at this point the court took a recess and MONICA SEBASTIAN of the D.A.'s office took Jane Doe into the Judges chambers to correct her testimony (see Page 14 of the Preliminary hearing transcript) When Jane Doe returned to court she was ready to identify me as I sat at the defense table, shackled in chains, and wearing a Blue jail jumpsuit. There simply does not exist a more "impermissably suggestive identification procedure that gives rise to a very substantial likelihood of irreparable misidentification" *SIMMONS V. UNITED STATES* 390 U.S. 377 (1968) The protection of counsel can NOT repair the taint of such a suggestion

Moreover Jane Doe's identification of me lacked independent indicia. Correctly applying the Biggers test for reliability, Jane Doe's prior description was that "BEFORE the crime she seen" a man wearing a hat" outside in the dark street, she also told police

(in the police report) that the man who raped her inside of her apartment had "Blue eyes" & on the other hand have Brown eyes. During trial Jane Doe said she got a "Quick look at her rapist from a small opening in her Blind Fold" The Preliminary hearing occurred 7 months after the crime. Finally there is 1 more factor to consider in a test for reliability, Jane Does age. (See Attached Appendix F at page 5:26) *Haliym V. Mitchell* 492 F.3d. 680, 706-07 (6th cir 2007) "counsel against a finding of reliability. Studies show that children are more likely to make a mistaken identification than adults"

The Magistrate cites *Olivia V. Hedgepeth* 600 F. Supp 2d. 1067, 1086-88 (C.D. CA1 2009) to determine that "even relatively weak eyewitness identifications amount to sufficient evidence to prove identity and noting the ID of the petitioner by a single witness can be sufficient evidence to support the conviction"

Importantly however the ID in the above case was stronger than the ID in my case. In the *Olivia V. Hedgepeth* case the witness was shown a '6 pack' array to choose from. In contrast I was shown singly to the witness while I was shackled in chains and wearing Blue jail clothing

Other Relevant Fact, not related to Questions Presented
11:00 PM on the night of March 21st 2014, I stopped at the same gas station I always stop at on my way home from work. 3/4 of a mile away, 12 year old Jane Doe was Being raped. After the rape Police drove young Jane Doe around the city pulling random men over and asking Jane Doe to identify, this occurred no less than 3 traffic stops before police gave up and drove Jane Doe to the hospital

The Police focused on this single tactic throughout the investigation. 1 month after the crime I was arrested after police reviewed traffic light video and discovered my truck going thru the traffic light 3/4 of a mile away from the crime scene, Police also discovered I was out on Bail for another crime, That was enough to make me the primary suspect and to arrest me.

After I was arrested the arrest warrant was amended to add charges of rape. To this day I have been denied discovery of the probable cause affidavit that led to the arrest

I have however since discovered that lead detective in my case David Hughes was fired from the Pomona Police Dept. in 1997 (see Hughes v. Pomona No. BSO 42455 (1998) Los Angeles superior court) He must have had access to Jane Does sexual assault kit while it was at the police station. This would explain why the prosecution did not call him to testify

REASONS FOR GRANTING THE PETITION

AS it Relates to Questions Presented

Relevant to Question 1, 2

DNA evidence is unlike any other kind of evidence, therefore an absolute or near absolute Reliable chain of custody standard is necessary for DNA evidence Because it is without a doubt the deciding factor in whether an innocent man goes to prison or a guilty man goes free

It is understandable why this high court has been reluctant to define chain of custody for other kinds of evidence, however it is excusable that there is no national standard for DNA chain of custody Because DNA evidence is infinitely more prejudicial than all other kinds of evidence

The admission of false DNA evidence should be an automatic reversal

Holley v. YARBorough 568 F.3d 1091, 1101 (9th cir. 2009)

"The Supreme court... has not yet made a clear ruling that the admission of irrelevant or overly prejudicial evidence constitutes a due process violation sufficient to warrant issuance of the writ"

HALL V. CATE NO. CV-124770-JGB (SP) 2014 WL 3587509 at 8 (C.D. CAL JULY 16, 2014) "There are no controlling SCOTUS decisions holding that the admission of evidence based on an inadequate chain of custody violates due process (see ATTACHED APPENDIX C at 13:26)

This court should take this opportunity to define chain of custody specifically for DNA evidence Because DNA evidence is critically important on the issue of guilt or innocence

Moreover the "Vital link" stated in the Melendez-Diaz v. Massachusetts 557 U.S. 305 (2009) case encourages Reliability Based review which is emphatically rejected By Crawford v. Washington 541 U.S. 36 (2004); Hemphill v. New York 142 S.Ct. 681 (2022)

On Direct App. in my case CA. used the Melendez-Diaz v. Massachusetts 557 U.S. 305 (2009) case and made a Reliability Based Ruling stating that "evidence tape was still on the sexual assault kit when it arrived at the lab" (see CA. Ct of App. No. B265279) and the Magistrate on federal Habeas corpus cites the People v. Lucas 60 Cal 4th 153, 285 (2014) here for Reliability Based Ruling (see attached Appendix C at 14:23)

The "Vital Link" left to the prosecutors discretion in the Melendez-Diaz case can be interpreted as any single weak link without a clear definition of Chain of Custody for Scientific evidence

I'm short SCOTUS must define Reliable chain of custody specifically for DNA evidence in order that the Due Process clause accurately reflects this courts opinion about Reliability on the confrontation clause

Merrill Dow Pharm. 509 U.S. 579 (1993) states in part that "Only relevant; Reliable scientific evidence is admissible"

Now this court should define what Reliable scientific evidence means in relation to Chain of Custody

In conclusion, when inadmissible Hearsay evidence relates case specific facts that creates a misleading profile to the jury thus depriving the jury of making a decision Based on Proven facts. When a confrontation clause occurs in such a way, it

Should Be enforceable against the states through the Due Process clause

A Person can not incur the loss of liberty without a meaningful opportunity to defend, otherwise we would not have freedom from a wholly arbitrary deprivation of liberty Based on a total lack of evidence

Relevant to Question 3

The current standard for insufficient evidence is that "a single eyewitness identification is enough to uphold a conviction"

All of the circuits agree that eye witness identifications are the least Reliable kind of evidence

Given that science has evolved significantly in this field, we can be certain that neither a single eyewitness ID and most certainly Not a weak eyewitness ID can no longer be the American Justice systems definition of Beyond a Reasonable doubt

Following is a small sample of the circuits opinion

Ferguson v. LACK 629 F. Supp 105 (6th cir. 1985)

HN 2 " There is always cause for concern when guilt or innocence turns solely on identification testimony and nothing else connects the defendant with the crime - identification testimony is one of the least reliable forms of evidence "

HN 4 " In some cases the procedures leading to an eyewitness ID may be so defective as to make the ID constitutionally inadmissible as a matter of law "

Clemmons v. United States 408 F.2d. 1230
(D.C. cir. of App. 1968)

HN 10 " Juries are entitled to know more of the circumstances which culminate in a courtroom identification, an event

which standing alone often means very little to a conscientious and intelligent Juror... who may not attach great weight to such an identification in the absence of corroboration"

Jarrett V. Headley 633 F. Supp 1403 (2nd cir 1986)
HN2 "Centuries of experience in the administration of justice have shown that convictions Based solely on testimony that identifies a defendant previously unknown to the witness is highly suspect, of all the various kinds of evidence it is the least Reliable"

In conclusion the insufficient evidence standard desperately needs modification in regards to a single eyewitness ID or as in my case "a relatively weak eyewitness ID" As the D.C. circuit opines above Jurors do not always know the circumstances that culminate in a eyewitness ID. The Jury in my case certainly did not know that the identification was suggested to Jane Doe at the preliminary hearing.

Insufficient evidence requires near total deference to a Jurys verdict, However as the D.C. circuit opines above, "a conscientious & intelligent Juror may not attach great weight to such an identification"

Therefore a single eyewitness ID simply can NO longer be the American Justice systems definition of Beyond a reasonable Doubt

CONCLUSION

This court should take a few Pro Se criminal cases because despite my lack of knowledge I represent thousands of innocent men who simply can not afford a proper defense

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Joseph Davall

Date: 6-26-2023