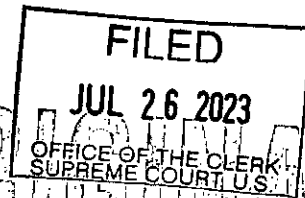


23-5399
No. _____



ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

of Washington DC

Milton Rodgers — PETITIONER
(Your Name)

vs.

The People of the State of California — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

In the Court of Appeal, Fourth Appellate District, Division One - No. 079605
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Milton Rodgers
(Your Name)

480 Alta Road "CDCR# Bp9651"
(Address)

San Diego, ca 92179
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

This Court should Respectfully decide the following important question of law:

1. Whether the Trial Court Erred by admitting Evidence that Petitioner was Previously Convicted of Being a Felon in Possession of a Firearm and by allowing the Prosecution to Question Petitioner about Whether petitioner ever Owned or Possessed a firearm because the Evidence had been Excluded During Motions in Limine and Petitioner's Testimony that I did not own a gun did not Open the door to the Admission of this Evidence, Which Admission Violated Evidence Code 352 and Petitioner Due Process Rights Pursuant to the Fifth and Fourteenth Amendment to the United States Constitution and the Prosecutor's Questioning to elicit this Excluded Evidence was Prosecutorial Error?

Question Respectfully Submitted by: Milton Rodgers in Proper Status

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:

The People Plaintiff and Respondent,

RELATED CASES

- (People Vs. Harris (1994) 22 Cal. App. 4th 1575, 1580.)
- (People Vs. Crew (2003) 31 Cal. 4th 822, 842.)
- (United States Vs. Myers (5th Cir. 1977) 550 F.2d 1036, 1044)
- (People Vs Garceau (1993) 6 Cal. 4th 140, 186.)
- (People Vs Sims (1976) 64 Cal. App. 3d 544, 554.)
- (People Vs Lavergne (1971) 4 Cal. 3d 735, 744.)
- (People Vs Bonin (1988) Cal. 3d 659, 689 - 690 overuled in part in People Vs Hill (1988) 17 Cal. 4th 800, 823, fn. 1.)
- (People Vs Carter (2003) 30 Cal. 4th 1166 Cal. 4th at p. 1207.)
- (People Vs Heard (2003) 31 Cal. 4th 946, 978, citing, People Vs Watson 46 Cal. 2d at p. (1956) 46 Cal. 2d 818, 836
- (United States Vs Myers, Supra, 550 F.2d at p. 1044)
- (People Vs Garceau Supra, 6 Cal. 4th at p. 140.)
- (People Vs Cooks, supra, 141 Cal. App. 3d at p. 324; 3 R. T. pp. 536, 538 - 539.)
- (People Vs Senior Supra, 3 Cal. App. 4th at p. 778)
- (People Vs Beagle (1972) 6 Cal. 3d 441, 453, abrogated on another point in People Vs Diaz (2015) 60 Cal. 4th 1176, 1190.)
- (Chapman Vs California (1976) 386 U.S. 18, 24 [87 S. Ct. 824, 17 L. Ed. 2d 705]; 5th and 14th Amends. U.S. Constitution.)

Related Cases Respectfully Submitted by, Milton Rodgers in Proper Status

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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 _____ 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 _____ 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 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 Court of Appeal Fourth Appellate District Division 1 court 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.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ 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 May 17, 2023.
A copy of that decision appears at Appendix C.

☒ A timely petition for rehearing was thereafter denied on the following date: May 17, 2023, and a copy of the order denying rehearing appears at Appendix C.

☐ 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

The Trial Court erred by admitting evidence that petitioner was previously convicted a being a Felon in Possession of a firearm and by allowing the Prosecution to Question petitioner about whether I Ever owned or Possessed a Firearm because the evidence had been Excluded during Motions in Limine and Petitioner's testimony that I did not own a Gun did not open the door to the admission of this evidence, which Admission Violated Evidence Code 352 and petitioner's Due Process Rights Pursuant to the Fifth and Fourteenth Amendments to the United States Constitution and the prosecutor's Questioning to Elicit this Excluded Evidence was Prosecutorial error. This error Violated Petitioner federal Constitutional rights. In order to enforce the presumption of innocence to which Petitioner is entitled, I have a Right to have the Jury decide Petitioner guilty based on what Petitioner did, not on who they think Petitioner is a Result of prior Bad Act evidence. (United States Vs Myers, supra, 550 F.2d at p.1044; People Vs Garceau, supra, 6 Cal. 4th at p.140.) The admission of other crimes evidence deprives a defendant of My fifth fifth and fourteenth Amendment rights to due process of Law. Ibid; People Vs Garceau, Supra, 6 Cal. 4th at p.186.) Because this error Violated Petitioner's federal Constitutional rights and it is reversible under the lower standard of prejudice applicable to non-constitutional error, it is Reversible for the same reasons, under the higher federal Constitutional error standard. (Chapman Vs California (1967) 386 U.S. 18, 24 [87 S.Ct. 824, 17 L.Ed.2d 705.]; 5th 314th Amends. U.S. Const.) Absent the Admission of this Evidence; it is reasonably probable the Jury would have been Unable to Convict Petitioner of any counts other than Count 1-4. (People Vs Heard (2003) 31 Cal. 4th 946, 978, citing, People Vs Watson 46 Cal.2d at p.(1956) 46 Cal.2d 818, 836.) "There is little doubt exposing a jury to a petitioner's prior criminality presents the possibility of Prejudicing a defendant's case and rendering suspect the outcome of the trial." (People Vs Harris (1994) 22 Cal. App. 4th 1575, 1580.) The problem with admitting this type of evidence is it tends to evoke an emotional bias against the Petitioner, which is the type of Prejudice forbidden by Evidence Code 352. (People Vs Crew (2003) 31 Cal. 4th 822, 842.) This Evidence should have been Excluded because Where "Multiple Convictions of various kinds can be shown, strong reasons arise for Excluding those which Arise for the same crime because of the inevitable pressure on lay juror to believe "if petitioner did it before petitioner probably did so this time." (People Vs Beagle (1972) 6 Cal.3d 441, 453 abrogated on another point in People Vs Diaz (2015) 60 Cal 4th 1176, 1190.) In contrast, in the instant case, Petitioner did not open the door to the admission of Prior by voluntarily making a broad sweeping statement. (People Vs Cooks, supra, 141 Cal.App.3d at p.324; 3 R.T. pp. 536, 538-539; People Vs Senior, supra, 3 Cal. App. 4th at p.778.) Petitioner only said I did not own a gun Meaning Petitioner not currently own a gun.

Constitutional and Statutory Provisions involved

(7 R.T. pp. 1483-1484.) Instead, the prosecution's questions forced the door open by asking Petitioner if I ever owned or ever possessed a gun, (7 R.T. pp. 1483-1484.) This questioning was improper because "a prosecutor may not intentionally elicit inadmissible testimony," (People Vs Sims (1976) 64 Cal. App. 3d 544, 554.) A party may not cross-examine a witness regarding collateral matters for the purpose of eliciting something to be contradicted. (People Vs Lavigne (1971) 4 Cal. 3d 735, 744.) It was improper because the trial court specifically warned the prosecutor not to try to elicit testimony from Petitioner that would open the door to admission of other excluded prior gun use evidence, which would logically apply to doing the same with regard to the excluded prior conviction for felon in possession of a firearm and told him to discuss it with the trial court if he believed petitioner opened the door to get a ruling. (3 R.T. pp. 556-537.) The Trial Court erred by ruling Petitioner had opened the door to admission of this evidence. (7 R.T. pp. 1483-1487.) The prosecution violation of the in limine order and the asking of questions to try to open the door to evidence previously found inadmissible was Prosecutorial error because eliciting inadmissible testimony is prosecutorial error. (People Vs Bonin (1988) 46 Cal. 3d 659, 689-690, overruled in part in People Vs Hill (1998) 17 Cal. 4th 800, 823, fn. 1.) It is Reversible prosecutorial error under California state law because it involves the use of deceptive or reprehensible methods in an effort to persuade the jury and it is reasonably probable the result of trial would have been more favorable to the Petitioner absent the error. (People Vs Carter (2003) 30 Cal. 4th 1166 Cal. 4th at pp. 1207.) The Appellate Court found any error harmless, as follows: Petitioner put his credibility at issue subject to impeachment by testifying and giving an alibi; the jury received evidence Petitioner had a prior conviction for assault with a deadly weapon and that he possessed a gun in connection with count 1-4, petitioner DNA was on a gun at that scene, the evidence of guilt on counts 5-8 and 10-13 was relatively strong, petitioner 4.

Constitutional and Statutory Provisions Involved

claim he was the Victim of a Robbery on July 24th was undermined because Petitioner did not report it to the interviewing Detective; the prosecutor only briefly referenced the 2012 prior during closing; the Jury acquitted petitioner of Count - 9 and "the court's ~~Instruction~~ Instruction to Rodgers to 'stop Stalling' and to answer the questions" did not "shed an unduly negative light on Petitioner."

The Appellate Court is Wrong. The trial court exacerbated the highly prejudicial effect of this evidence by repeatedly berating Petitioner in front of the Jury for not answering, which comments prejudiced Petitioner because it reasonably probable it made the jury believe the trial court did not think very highly of petitioner or My creditability and the Evidence of guilt on count 5-8 and 10-13 was Not relatively Strong for the reasons argued below.

(T.R.T.-pp. 1483-1487; Exhibit "A" pp. 15-17.) The Jury's acquittal of Petitioner on Count 9 demonstrates that it did not completely believe the Prosecution Case.

It's reasonably probable the jury would have been Unable to Convict Petitioner of any counts, except for Count 1-4, absent this error for the above reasons and the following reasons: None of the Witnesses to Counts 5-9 and Counts 10-13, Saw the face of either suspect; two Men were involved in the shooting in Count 5-9; in Counts 5-13 petitioner was mainly identified by a helmet he was carrying during the incident in Counts 1-4, Which Was Not Unique; Petitioner's Motorcycle Was a popular brand; three different firearms were used and only one firearm was recovered; Petitioner Was Not found near the Scence of Counts 5-13; Petitioner's DNA was not found on the Bullet casing #12; and petitioner's Mother testified I was at work during the incidents in Counts 5-13.

(S.R.T.-pp. 950-951, 1054, Vol 6 pp. 1123-1125, 1143, 1146, 1246, Vol 7 pp. 1381, 1418, 1547.) Evidence Presented to the jury in an Effort to Prove Count 1-4,

Constitutional and Statutory Provision involved

which alleged Petitioner possessed a gun, detailed by the appellate court, did not render this error harmless. (Exhibit "A" pp. 15-17.) Because Petitioner was accused of possessing three different firearms on different occasions, evidence petitioner possessed a firearm on yet another occasion in the distant past would reasonably likely lead the Jury to conclude Petitioner was guilty of the charged offenses because he was the type of person that possesses and carries guns. (R.T. Vol. 5 pp. 950-951, 1054, Vol. 6 pp. 1123-1125, 1143, 1146, 1246, Vol. 7 pp. 1387, 1418, 1547.) Absent the admission of this Evidence, it is reasonably probable the jury would have been unable to convict Petitioner of any counts other than Counts 1-4. (People vs Heard (2003) 31 Cal. 4th 946, 978, citing, People vs Watson 46 Cal. 2d at p. (1956) 46 Cal. 2d 818, 836)

STATEMENT OF THE CASE

The trial court granted Petitioner's motion in limine to exclude my prior 2012 felon in possession of a firearm conviction; Petitioner argued it was more prejudicial than probative, pursuant to Evidence Code Section 352. (Evid. Code sec. 352; 3 R.T. - pp. 553-557.) The trial court ruled only petitioner's 2011 assault with a deadly weapon conviction was admissible. (3 R.T. - pp. 516-522, 524, 556-557.) Although the trial court did not discuss opening the door in reference to the 2012 felon in possession of a firearm, it discussed the procedures to be followed if the prosecutor believed petitioner opened the door to the other gun use evidence. (9 R.T. - pp. 529-539.) The trial court excluded evidence Ms. Whitson had seen petitioner shoot a 9-millimeter handgun into a canyon, as too prejudicial and not similar enough to the charged crimes. (3 R.T. - pp. 529-536.) However, the trial court warned petitioner the evidence could be admitted if he opened the door, by saying something like, "I never shot a gun in my life." (3 R.T. - p. 536.)

The trial court instructed the prosecutor:
... Mr. Nominati, you may not introduce this evidence in your case in chief. But if Mr. Rodgers opens the door to that evidence, you may alert me sidebar saying, "Judge, I think I should be allowed to use it now." ... I'll make that decision at the time. (3 R.T. - p. 536.)

The following colloquy then occurred between the Prosecutor and the trial court:
Mr. Nominati: ... Is that subject to me being able to cross examine Mr. Rodgers as to that specific underlying conduct?

The Court: No. ... Unless Mr. Rodgers makes a statement that independently opens the door.

Mr. Nominati: I understand.

The Court: I understand you might want to bait him into doing that. ... You May not - you need to steer your cross examination away from Ms. Whitson

Statement of the Case

... IF Mr. Rodgers leads it back to that, you may say, "Judge, I think he's opened the door to me. Can I inquire?" ... (3 R.T.-p. 537.)

During cross examination, the prosecutor asked the following questions; Petitioner gave the following Response:

Prosecutor: This was your gun?

Petitioner: That was the gun I was robbed with. I don't own a gun.

Prosecutor: You've never owned guns?

Petitioner: No I'm Not in the military or Anything.

Prosecutor: Have you ever Possessed guns?

Petitioner: I object to Violating Court Order.

The Court: It's Not a Violation. You Must answer the question, (7 R.T.-pp. 1483-1487.)

When Petitioner continued to Object and answer I had no recollection, the trial court kept telling Petitioner to answer making Several Comments in front of the Jury, like the following that showed it did not find petitioner to be credible or think much of me:

The question is: Have you ever been, "I'm sure he has a piece of paper. Stop stalling. Were you - answer the question. Have you been Convicted in the past of possession of weapons? Yes or No. Answer it or I'll answer it for you. (7 R.T.-pp. 1483-1487.)

The trial court advised the jury Petitioner had been convicted of this crime. (7 R.T.-pp. 1483-1487.)

REASONS FOR GRANTING THE PETITION

The Petitioner Milton Rodgers was not Afforded a fair and impartial Trial. My Federal and Constitutional Rights were Violated. I suffer Tremendous prejudice by admission of petitioner Felon in possession Conviction.

My due process was Violated, which led to a Miscarriage of Justice. The Innocent should not have to suffer

because of this unjust that transpire during Trial and Petition of Review, for overlooking the Fact that I have Federal, Constitutional and God given Rights. So Help me God. This Petition Should be GRANTED based on the foregoing arguments and authorities presented. Your the Only one that Can right this Wrong. I already serve 90 percent of this unjust Sentence Term while the real true culprit Remains at Large due to this corruption that occur

I had to Suffer tremendously, By Granting this Petition is the Only Rememdy at Course.

Respectfully Submitted by,

Milton Rodgers cdc# BP9651 in Pro-per status

Date: July 24, 2023