No. 23-584

In The Supreme Court of the United States

ROBERT R. SNYDER,

Petitioner,

vs.

THE STATE OF CALIFORNIA,

Respondent.

On Petition For Writ Of Certiorari To The California Court of Appeal

Petition For Rehearing After Denial Of Request For Certiorari

ROBERT R. SNYDER, In Pro Se
D.O.C. No. AC9136,
Salinas Valley S.P. C-6/218
P.O. Box 1050
Soledad, CA 93960

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Federal Cases

Page

State Cases

Page

U.S. Code Provisions and Miscellaneous

PETITION FOR REHEARING

Petitioner Robert Snyder, hereinafter "P.S." petitions for rehearing of this Court's Feb. 20th, 2024 Order denying his petition for Writ of Certiorari. I would first like to beg the court's pardon for any surplusage within his original petition, ("O.P."). PS believes some of his re-clarified arguments below may bring the Court together to reconsider his original claims, which he hereby reincorporates by reference." I will be taking a look at how Cal. Penal Code §12022.53, [1] "the act" 1) could not withstand the weight of the U.S. Constitution, and 2) how §12022.53(e) led to "...inconsistent interpretation and adjudication." Also, 3) how it may be in violation of the *Blockburger* Rule in some cases. This is an appropriate case for rehearing because of those and "...other substantial grounds [2] not previously presented." This respectful and timely petition for Rehearing follows.

After much research, PS submitted comprehensive allegations to the California Courts regarding his charges, conviction and sentence being constitutionally unauthorized. Contrary to their decision, PS did in fact provide both sufficient legal and documentary support for his Habeas claims.

---

1 All further statutory references are to the CA Penal Code.

2 See, Moore's Federal Civil Practice, Sec. 344.03. P.S. believes he has met this requisite.

The totality of germane petitioner's arguments and reasoning why the act should be reviewed by this Court are too lengthy to state 'briefly and distinctly' in accordance with Rule 44. Because of this he has resolved to provide only the best grounds for Reconsideration. This respectful and timely petition for Rehearing follows.

A: The Text Of Firearms Enhancement Statute, Cal. Penal Code § 12022.53 Is Vague, Standardless As Treated And Permits Arbitrary Enforcement; In Violation Of Petitioner and others' 5th And 14th Amendments To The U.S. Constitution.

First, speaking of the act – "The language of subd.(e)(1) of the firearm statute is murky and has led to inconsistent interpretation and adjudication." *Walwyn*, 50 UCLA L. Rev. 685, 698, (2002). Despite this, California Supreme Court, "CSC" in *Jones* and *Brookfield*, (see OP p. 22) did nothing to address these 'disparate results', created by the act (*ibid.*) The noted cases then allowed county prosecutors near freewheeling discretion in selecting from one of many firearm enhancements.

Jones/Brookfield was CSC's eleventh hour answer to many challenges to the validity of the act. Appellate courts, while left unguided for a decade were simply left to *guess* [3] whether the act could be

---

[3] *Begay v. U.S.*, (2008) 533 U.S. 137, 154 applying the Rule of Lenity.

applied in cases where mitigation factors might suggest otherwise; such as with the case now before the Court.

On pg. 11 of the OP it states, "Section 12022.5 would seem to have sufficed..." Professor *Walwyn* similarly explained, "Opponents of AB 4 viewed the then-current sentence enhancements ... under § 12022.5 as sufficient to punish violence." 50 UCLA *id.* at pg. 687-88. Before 2010's (SB-1080), § 12022.5's language included the identical words now contained in § 12022.53 – "discharge of a firearm during commission of a felony, causing GBI." Thus today, § 12022.5's language is slightly different but carries the same 3, 4 and 10 years penalty as it did in 1996, before the inception of § 12022.53. In 1997, the authors of AB 4 basically copied § 12022.5's previous language, put it into § 12022.53 and nearly tripled the penalty; then went back and changed § 12022.5 into something else. This is a suspicious series of adjustments that PS found very difficult to clearly sort out. This comparative analysis is necessary to see that by many accounts, §§ 12022.5 and 12022.53 are still quite similar.

To this day, §§ 12022.5 and 12022.53 are used interchangeably and/or in combination as is the case *sub-judice*. This has led to prejudicial, multiplicitous charges throughout California. The act comes accompanied by a whole assortment of other questionable charging techniques in unison that cannot be briefly explained. Take for example, *People v. Watie*, (2002) 100 Cal. App. 4th 866, where the defendant was charged and convicted of both §§ 12022.5 and 12022.53 in one prosecution involving a

single occasion; despite § 12022.53 subd.(f)'s prohibition against this type of procedure. This sort of thing may violate the *Blockburger* [4] Rule in some cases. Regarding the act, California's 1997 congress may have specifically authorized double punishments for gun use, but it could not have foreseen these and other charging anomalies. PS was charged with 3 different enhancements in his 2007 amended pleading: Sections 12022.5, 12022.53 and 12022.55.

Furthermore, having realized the problem, the legislature tried to further doctor up the act through an amendment in 2021, (AB 1171/Ch. 626). Couched within an omnibus bill.., the legislature made another specious amendment to the act's subdivisions (b–d); attempting to obscure both the original intent as opposed to/or in relation to current custom/usage.., and the legislative history of the act itself. Upon doing so, they simply deleted the words, 'any person' and replaced it with 'a person'. Now suddenly, subd.(e) is the only one that operates as a vicarious-liability feature? However, vicarious-liability automatically is triggered by Cal. Pen. Code, § 27(a)(3). For ten years, subds. (b–d) contained the vicarious-liability phrasing, but no longer. Does this attempt to throw the previous applications out the window, along with the original intent?

CSC has long recognized the problem with the STEP Act: "Step by step, this Court continues its struggle through the thicket of statutory con-

---

[4] "... the test to be applied to determine whether there are two offences or only one, is whether each provision requires proof of a fact which the other does not." *Blockburger v. U.S.*, (1932) 284 U.S. 299, 304.

struction issues presented by the California" ... STEP Act; See, *People v. Sengpadychith*, (2001) 26 Cal. 4th 316. To make matters worse, now the problem is compounded by § 12022.53's adoption of the STEP Act within its subd.(e).[5] It appears that CSC possibly cannot by itself discern the true meaning of § 12022.53—in a way that leads to (consistent application) looking-forward and (correction of mistakes) looking-back—without this Court's guidance. *Ubi jus incertum, ubi jus nullum.*

B: The *Rosemond* Decision By This Court Announced A New Rule Of Constitutional Law Made Retroactive On Collateral Review. California's Obligation To Apply This To The Act Was Ignored, In Violation Of The Supremacy Clause; ART. VI, Cl 2.

The applicable ruling of 'armed intent', found at *Rosemond v. U.S.*, (2014) 134 S. Ct. 1240, 1250 and other related doctrine constitute new substantive rules of Constitutional Law under *Teague*. "A rule is substantive rather than procedural if it alters the *range of conduct* or the *class of persons* that the law punishes." *Welch v. U.S.*, 578 U.S. 120, 129 (2016) citing *Schriro v. Summerlin*, 542 U.S., 348, 353 (2004) (emphasis added). That applies '...to all cases, state or federal'; *Montgomery v. Louisiana*, 577 U.S. 190, 198 (2016). Aider and abettor/accomplice liability arguably is encompassed by both of factors discussed by *Schriro*,

---

[5] "... we have emphasized that where a statute imposes criminal penalties, the required standard of certainty is high..." *Wright v. New Jersey*, 469 U.S. 1146, 1152 (1985) citing *Kolender v. Watson* 461 U.S. 352 (1983).

yet especially the 'class of persons'. Because the act in *Rosemond* is similar to § 12022.53, it is axiomatic that CSC was supposed to adopt the *Rosemond* into their jurisprudence and provide retroactive [6] relief to PS and others similarly situated. That did not happen.

Of particular import is how California has refused to modify its jury instructions respective of the noted ruling in *Rosemond*. (See OP pg. 20) 1 CAL. CRIM. Jury Instruction 1402 [7] represents § 12022.53(e) while 2 CAL. CRIM. 3149, amplifies the act's subd.(d). CC 1402 as related to codefendants, asks the jury simply 'if he or she knew of the criminal purpose of the person who committed the crime.'? The key factor noted by the *Rosemond* majority, was in other words: at what point did they know (about the gun)? CC 1402 fails to ask that vital question. "I did not know about the pistol when I jumped in the car" or at least in time to 'opt out of further participation'—*may* have been *Rosemond*'s original defense that led to the landmark decision.

Now, as far as the second part of CC 1402, it lays out 5 ways for the jury to determine co-conspirator liability. It arguably may send a jury down a slippery slope once they have determined a true finding in part one; making it very easy to

---

[6] CSC acknowledged *Rosemond*'s retroactivity when they applied it to their felony murder doctrine found in *People v. Chiu*, (2014) 59 Cal. 4th at p. 167.

[7] See annotated note/Related Issues: "Defendant need not know Principal armed . . ." the reference note cites *People v. Gonzalez* (2001) 87 Cal. App. 4th 1, 14-15. This is the very antithesis of the rule in *Rosemond*.

assume the truth of the second part. Also it allows the jury to find their own definitions of words with broad meanings, such as – videlicet: encourage, promote, aid, instigate, etc. Compare the foregoing illustration with the instruction initially challenged by *Rosemond*; Cf. *United States v. Rosemond*, 695 F. 3d (10th Cir. 2012) at p. 1154.

Before *Rosemond*, federal prosecutors placed the burden on the codefendant(s) to disprove their participation/advance knowledge of the gun-wielding perpetrator's intention. There were many problems with that—especially how it turned the *burden of proof* on its head. This is a compelling reason why *Rosemond*'s near-unanimous majority reversed. CC 1402 continues to flip the burden; working to the *actual* and *substantial* disadvantage, of those possibly knowing little or nothing about their acquaintance's plans. Partial knowledge such as an awareness that a friend is armed, does not rise to the level of *mens rea* to warrant a heavy, consecutive enhancement; see OP, (p. 18-19).

18 U.S.C. § 924(c)(1)(A)(iii) sets forth a punishment for discharge of a firearm with a consecutive term of imprisonment 'not less than 10 years'; whereas Cal. P.C. § 12022.53(c) by contrast, punishes discharge with a mandatory 20 year consecutive prison sentence, making it possibly twice as heavy. How much more then, should the challenged act be governed by the same restrictions under *Rosemond*? In light of this, those determinative restrictions become doubly important.

C: Insufficiency Of Evidence As To The Primary Charge Underlying The Firearm Enhancement.

Please allow the Petitioner *ad litem* to be heard briefly. The vagueness of the act has many unforeseen ramifications. It would not be as problematic were the act not paired with an additional, consecutive life sentence, as is apparent in the instant case. Based upon the facts of his case, PS should not have been convicted of aggravated, attempted murder.

The reckless action leading to his 2006 arrest, was the results of a *sudden quarrel*. Without much detail, his trial did not comport with the 5th and 6th Amendments. The errors that led to his conviction of the underlying felony also impacted the verdict as to the firearm enhancement now under consideration. If it would please the Court, PS would ask that it turn its attention to *People v. Snyder*, 2011 Cal. App. Unpub. LEXIS 7304. In the first two pages of his direct appeal opinion, the Court of Appeal displayed the prosecution's evidence purportedly used to prove motive. That testimony wildly contradicts the physical facts of the case, provided by the only other two prosecution witnesses. The relevant portion that states, (pp.) 'heard a loud noise, looked up and saw the defendant close his trunk,' was absolutely false testimony; it is easy to see why after reading the two page factual portion of the opinion noted above. Three key factors were admitted by the people which point to *objective* provocation: (1) the victim asked PS to fight, (2) went to *his* trunk, (3) then chased after PS's car, (*ibid*).

D: Additional Important Viewpoints

Another major issue of constitutional magnitude is that PS was charged with shooting during the commission of a felony; when his only felony misbehavior, indisputably, was the shooting itself. PS at bar, mentioned this in the OP on p. 16 and will now further elaborate on that point.

It is important to note that felony-murder is conceptually, very similar to 'discharge during the commission of a felony' especially because shootings often result in murder, to some degree. CSC had ruled in *People v. Chun,* (2009) 45 Cal. 4th 1172, 1200 that § 246 cannot serve as the basis of a felony-murder instruction; however, refused to accept the reverse effect of that same logic. And that is: § 246 merges with other assaultive felonies and should not serve as the basis of a firearm enhancement with the conceptually identical language, 'during the commission of a felony'.

What happened in PS' case has undoubtedly also happened across the board. California courts have recognized the foregoing distinction, but not in a context which squarely extends into firearm enhancement territory. In *People v. Granado,* (1996), 49 Cal. App. 4th 317, 325 the court distinguished between 'facilitative use' as opposed 'incidental use' of a firearm. PS touched upon this point at OP (p. 16) without citation of authority. *Granado,* also used the phrasing– "... to successfully

complete [8] the underlying offense." (*Ibid.*) By this token it logically follows to say that a machine gun could make a robbery faster and hence riskier. And of course, shooting during a robbery cannot legally combine under the theory of mergers. PS explained this claim to CSC on more than one occasion. "The central question is whether the defendant personally deployed the weapon ... in furtherance of the crime," (*id*). at p 330. It's clear that PS' only independent charge besides the momentary discharge was a misdemeanor, attempted criminal threat; one that falls outside the scope of the 'during the commission of a felony', language. Therefore, petitioner's conviction and sentence under the act violates it's own textual requirement.

California now has at least 10 different firearm enhancement statutes available to their prosecutors; of course not all apply to every set of facts and circumstances. However, there is plenty of room for error. These enhancements range from a 1-year consecutive term, to the act's 25 years-to-life aggregate. This statutory firearm scheme raises far more questions that PS can possibly account for. With that constellation of charge selection, it allows the people too much latitude. This complex problem "violates the requirement that a legislative body establish minimal guidelines to govern law enforcement." *Chicago v. Morales*, (1999) 527 U.S. 41, 60. *Incerta quantitas, vitiat actum.*

---

[8] "The jury may find true the gun use allegation when it concludes a defendant 'utilized the gun at least as an aid in completing an essential element of a subsequent crime.' " *People v. Masbruch*, (1996) 13 Cal. 4th., 1001, 1014. In PS's case, there was nothing subsequent to the discharge.

CONCLUSION

In light of the foregoing additional points of Law and Fact, Petitioner Snyder respectfully requests Rehearing of the Certiorari petition.

RULE 44.2 CERTIFICATE

As required by Supreme Court Rule 44.2, I certify that the Petition for Rehearing is limited to "intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented," and that the Petition is presented in good faith and not for delay.

I declare under penalty of perjury that the foregoing is true and correct.

Robert R. Snyder
Salinas Valley S.P.
P.O. Box 1050
Soledad, CA 93960