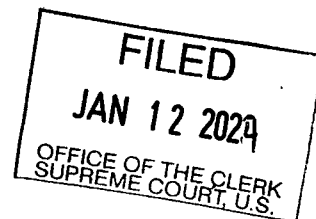


No. 23 - 6890



IN THE
SUPREME COURT OF THE UNITED STATES

LAMAR LARUE WHITE — PETITIONER
(Your Name)

vs.

CALIFORNIA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

CALIFORNIA SUPREME COURT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

LAMAR LARUE WHITE CDCR#AW1425
(Your Name)

480 ALTA RD.
(Address)

SAN DIEGO, CA 92179
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1.) Wherefore, in this matter is it legally permissible to convict the accused on erroneous jury instructions that do not prove guilt beyond a reasonable doubt and the elements are not proven, and,

(A.) the violation of due process by the lower court's duty to instruct the jury sua sponte of a lesser included offense?

2.) Wherefore, does the constitution protect an accused from a miscarriage of justice where impeaching evidence is lost, or destroyed pertaining to DNA and Toxicology samples relevant to Brady material?

3.) Does the failures of trial counsel to protect petitioner from wrongful conviction by allowing the proceedings to continue on an illegally impermissible prosecution due the circumstances substantiate a violation of the Sixth Amendment?

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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:

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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☐ is unpublished.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☐ is unpublished.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 _____ 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 _____.

☐ 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 8/30/2023.
A copy of that decision appears at Appendix A.

☐ 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

The Fourteenth Amendment to the United States Constitution provides in relevant part; "In all criminal prosecutions, the accused shall not be deprived of their right to a fair trial and have all the protections given to them under due process."

The United States Constitution explains that all accused parties in a criminal matter shall enjoy the protections of the Constitution in which did or could have put them at a disadvantage during the criminal proceedings. The disappearance of critical DNA/Toxicology evidence that is considered impeaching and an entitlement under Brady presents an issue during the proceedings that would put the accused at a grave disadvantage if that missing impeachable Brady material could have dramatically changed the trajectory of the jury's verdict. Prosecuting of a charge that requires a sole perpetrator can not be found legally correct under the beyond a reasonable doubt rule, because you cannot aid a perpetrator that was never proven to have committed the sole act in which you stand accused of aiding and abetting.

And, the Sixth Amendment to the United States Constitution provides in relevant part; "In every criminal prosecution the accused shall be afforded the right to effective assistance of counsel for his or her defense."

STATEMENT OF THIS CASE

The California Supreme Court had a chance to review this case and analyze the contentions on its merits in which Mr. White presented that this Court has deemed sacred constitutional issues of an accused. Petitioner was convicted in a case

where he was accused of Sexually Assaulting a woman with allegedly three other individuals. The California charges petitioner was charged and tried on were specifically Rape in Concert By A Foreign Object under California Penal Code Section § 264.1. (1) The charging information in this case was never legally permissible because the sole perpatrator Cory Wilson was deceased at the time charges were filed. According to the jury instructions of Rape In Concert By A Foreign Object has to be proven by force and that the alleged victim was aware at the time of the alleged assault. Here in petitioner's case the alleged victim stated on the stand during testimony that she may have consented and that she believed she was not conscious. Petitioner submitted several habeas petitions to overturn his conviction however, being a novice to the law and not knowing how to navigate the judicial process, petitioner has been unsuccessful in proving his innocence in this matter.

Petitioner received an unimpartial trial and the facts in the makeup of this case were never properly addressed to satisfy the requirements of due process. The trial counsel failed to explore the Brady issue in this case after he submitted an informal discovery request during the proceedings requesting all pertinent discovery that would be relevant at trial. The missing Toxicology report is a critical element in the conviction of petitioner and the disappearance of such evidence brings into question the fundamental fairness of the trial. These contentions that are presented to this Court are more accurately applicable to the facts of the case. Petitioner received a sentence of 25 years for the alleged crime and it violates due process.

REASONS FOR GRANTING THE PETITION

There is a conflict in the points of the case that defines guilt and innocence. The lower courts in California overlooked the constitutional provisions afforded petitioner by disregarding the facts that he was not proven guilty beyond a reasonable doubt. In California the case of *People v. Tewsbury*, (1976) 15 Cal. 3d 953, 963-968, [127 Cal. Rptr. 135, 544 P. 2d 1335], activated *In re Winship*, 397 U.S. 358 (1970). In *People v. Tewsbury*, it stated that sexual penetration in concert, or rape in concert, require proof that the defendant acted with an accomplice. It also states that Rape in concert requires that a rape be committed by force or violence to constitutionally support a conviction of California Penal Code Section § 264.1. The alleged victim in this case testified that she was sexually assaulted by three individuals. She also testified that she was not conscious and could not remember what happened that night, and also she testified that she could not rule out that she in fact consented to sex.

It also stated in California caselaw that in order to establish force within the meaning of section § 264.1 the prosecution need only show that the accused used physical force of a degree sufficient to support a finding that the act of sexual intercourse was against the will of the alleged victim. See, *People v. Griffin* (2004) 33 Cal. 4th 1015, 1023, [16 Cal. Rptr. 3d 891, 94 P.3d 1089], & *Sandstrom v. Montana*, 442 U.S. 510 (1979). The use of force in this case was never proven beyond a reasonable doubt. According to the law petitioner is entitled to a judgment of acquittal on a prima facie showing that the evidence does not support a finding of forcible rape in concert with others beyond a

reasonable doubt. Even if the Court decided to grant petitioner a new trial it would be barred here under the circumstances if the case is reversed on insufficiency of the evidence because there was never any substantial evidence to convict initially in this case. *Burks v. United States*, (1978) 437 U.S., 1, 16-18 [57 L. Ed. 2d 1, 98 S. Ct. 2141]).

The weight here involving petitioner's charge of rape in concert without any main perpetrators being charged and presented to the jury cannot possibly prove the elements of rape in concert with a foreign object. The prosecution never proved beyond a reasonable doubt that petitioner acted in concert with anyone and used force to accomplish the alleged act beyond a reasonable doubt. *People v. Brown*, 11 Cal. App. 5th 332, (2017) supports the caselaw of this Court. See *Lockhart v. Nelson*, (1988) 488 U.S. 33, 39, 109 S. Ct. 285, 102 L. Ed. 2d 265.

**I. THE CALIFORNIA SUPREME COURT'S REASONING IS FLAWED;
IN DENYING THE ENTIRETY OF THE PETITION BASED ON
ONE STATUTE IN CALIFORNIA IS INCORRECT**

The California Supreme Court was presented with all of the Constitutional violations that are protected by this Court. The due process violations pertaining to the *Brady v. Maryland*, 373 U.S. 83, made the trial fundamentally unfair. The disappearance of the the alleged victims Toxicology report violated Brady. It also violated petitioner's right to the Confrontational Clause of *Davis v. Alaska*, 415 U.S. 308, and *Crawford v. Washington*, 541 U.S. 36, because petitioner did not have a chance to impeach the credibility of the witness. The Toxicology report would have revealed that the witness was perjuring her testimony as to what drugs she had in her system. Even though the Toxicology report

that was turned over to the Los Angeles Police Officer Brian Milan who received the DNA/Toxicology reports from the U.C.L.A. Medical Center as to the chain of custody of that evidence. If it was not preserved it directly violates **Arizona v. Youngblood** (1988) 488 U.S. 51, and **Giglio v. United States** (1971) 405 U.S. 150. The law enforcement agency claims that that particular evidence was lost or destroyed in the supplemental reports written in 2014 which secretly disappeared as well. The missing Toxicology report would have proved to the jury that this alleged victim/witness would commit perjury, and the Toxicology report records were and still should be on file at the U.C.L.A. Medical Center, however, trial counsel never sought out the records directly from the hospital after that evidence was claimed to have been misplaced or destroyed.

The preservation of biological evidence gathered during a criminal investigation, such as samples of hair, blood, urine, semen, saliva, skin tissue, and fingernail clippings must be preserved and if not, the reviewing Court must determine what probable outcome may have happened had the lost or destroyed evidence had been presented at trial. And, for those reasons also counsel rendered ineffective under **Strickland v. Washington** (1984) 466 U.S. 668,694, because counsel never followed up on getting what remaining results the hospital had of the Toxicology report. For those reasons petitioner's writ of certiorari should be granted.

II. Strickland covers Petitioner's Claims

Strickland itself commands that the ultimate test for relief is not formalistic;

In every case the court should be concerned with whether, despite the strong presumption of reliability, the result of a particular proceeding is unreliable because of a breakdown of counsels trained obligations to protect his client from unconstitutional mishaps that taint the fairness of the judicial process.

Strickland v. Washington, 466 U.S. at 696, 104 S.Ct. 674, (1984), Surely, such a breakdown has occurred when counsel abandons their role to seek out missing evidence or file for sanctions during the proceedings to protect their client which is their sworn duty to practice law in their respected state. Counsel failed to conduct a hearing on the basis of the missing evidence and failed to request instructions as to its needed presence to the jury. Even though the court had a sua sponte duty to instruct of such a critical issue counsels duty was to preserve it for the record to give the states appellate court an opportunity to review the discrepancies from trial.

A remand for hearing in this case on the insufficiency of the evidence is warranted and the review of the fairness or lack there of as to the missing Toxicology report that renders the conviction unconstitutional.

The Sixth Amendment of the United States Constitution guarantees "in all criminal prosecutions the accused shall [have] the right ... to have the assistance of counsel for his defense."

Gideon v. Wainwright (1963) 372 U.S. 335, 339 [9 L.Ed. 2d 799, 83, S. Ct. 792, 93 A.L.R. 2d 733.. Pertaining to DNA discovery which includes the Toxicology report that was missing in this case brings into question counsels performance for his failure to challenge the absence of the critical evidence that was considered impeachment evidence. Counsel never brought up the fact that the testimony pertaining to petitioner's DNA profile extended to the Toxicology report.. In *Williams v. Illinois* (2012) 567 U.S. 50, 132 S. Ct. 2221, a plurality of the Court found no Sixth Amendment right to confrontation violation when an expert testified to the contents of DNA laboratory report while opining that a profile produced by an outside laboratory from a vaginal swab of a rape victim matched the defendant's profile produced by her lab results from the defendants blood. The Justices, disagreed, however, on the analysis. Counsel never raised the issue here that the testimony of the the alleged victim could be received as expert testimony as to her Toxicology report. Counsel never questioned or even attempted to call a witness from the U.C.L.A. Medical Center to inquire about the results of the Toxicology report. And that Toxicology report attaches to *California v. Trombetta* (1984), 467 U.S. 479, 81 L.Ed. 2d 413, 104 S.Ct. 2528 and *Arizona v. Youngblood* (1988) 488 U.S. 51 [102 L.Ed. 2d]

These facts point to counsels ineffective representation in this case. *United States v. Cronin* (1984) 466 U.S. 648, 655 [80 L. Ed. 2d 657, 104 S. Ct. 2039.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

LAMAR LARUE WHITE, Pro se

LAMAR LARUE WHITE, Pro se

Dated: January 15, 2024