No. 24-218

# In the Supreme Court of the United States

DAMON B. COOK,

*Petitioner,*

v.

PATRICK COVELLO, WARDEN
(*previously* GEORGE M. GALAZA, WARDEN),

*Respondent.*

**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit**

## PETITION FOR REHEARING PURSUANT TO RULE 44

Damon B. Cook
*Petitioner Pro Se*
CDC # J-10213
ASU-F-164
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December 20, 2024
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**CONSTITUTIONAL PROVISIONS**



**JUDICIAL RULES**

## PETITION FOR REHEARING PURSUANT TO RULE 44

*Damon B. Cook* was deprived of and denied his Constitutional Right to be heard on his insufficiency of the evidence of force claim in violation of due process of law to be heard. *Mullane*, 339 U.S. 306, 313-314. *See Armstrong v. Manzo* (1965) 380 U.S. 545, 552. Rule 60(b)(4) Motion to set aside the 2002 District Court's Judgment as "Void" for Deprivation of due process of law to be heard on insufficiency of the evidence of force claim in violation of due process of law to be heard. *Damon B. Cook v. George M. Galaza.*

*See United Student Aid Funds Inc. v. Espinosa*, 559 U.S. 260, 270, 271 (2010) —Rule 60(b)(4).

*See People v. Griffin*, 33 Cal. 4th 1015, 1028-1029 (2004).

*See People v. Guido*, 125 Cal. App. 4th 566, 574-576 (2005).

*See People v. Brown*, 11 Cal. App. 5th 332, 342 (2017).

## FEDERAL AUTHORITIES

*See Juan H. v. Allen* (9th Cir. 2005) 408 F. 3d at 1279. Such a lack of evidence violates the 14th Amendment guarantee that an "accused must go free" unless and until the prosecution presents evidence that proves guilt beyond a reasonable doubt.

*In Re Winship* 397 U.S. at 365-368. "Free *Damon Cook*".

*See Jones v. Wood* 114 F.3d 1002, 1008 (9th Cir. 1997).

*See Fiore v. White*, 531 U.S. 225, 228-229 (2001) .

*See Bunkley v. Florida*, 538 U.S. 835, 840 (2003) .

*See In Re Winship*, 397 U.S. at 364 (1970) .

*See Jackson v. Virginia* 443 U.S. 307, 316, 318-319, 324, Fn.16 (1979).

*See Renico v. Lett* 559 U.S. 766, 773, 130 S.Ct. 1855, 176 L.Ed. 2d 678, 686 (2010).

The court may Grant Habeas Relief only if no rational trier of fact could have found proof of guilt beyond a reasonable doubt. *See Jackson* 443 U.S. at 324, 99 S.Ct. at 2791. *See Payne* 982 F.2d at 338. *See Weaver* 888 F.2d 1097.

No rational trier of fact could have found proof of the Element of Force when there was "No Testimony" from Erin Healey that Petitioner Damon Cook used force in accomplishing the sexual acts. (Justice)

## THE PETITION AND HABEAS RELIEF SHOULD BE GRANTED

*See Jackson* 443 U.S. at 324, 99 S.Ct. at 2791 (Because there was no substantial Evidence of Force in this case, Affirmance of Petitioner's convictions by the State Court of Appeal Rejecting petitioner Damon Cook's insufficiency of the Evidence of Force Claim without addressing it first and without applying the relevant law to the claim "was an unreasonable application of *Jackson v. Virginia*" that warrants Federal Habeas relief.)

*See Renico v. Lett* 559 U.S. 766, 773 130 S.Ct. 1855, 176 L.Ed.2d 678, 686 (2010).

## PLEA FOR RELIEF TO THE COURT

Attn: Supreme Court Re: Letter to the Whole Court

Please "Do Not be Mislead" Any Further in the Legal Argument on the Insufficient Evidence. *Id* at page 29. Where the Complaining Witness Testified, All of the Complaining Witness's Trial Testimony Statements are Actually "False Evidence" Which the Jury was Mislead by the State in Obtaining These Criminal Convictions.

None of the Complaining Witness's Trial Testimony Statements are in the Original Police Report, None of the Complaining Witness's Trial Testimony Statements are in the Preliminary Hearing Transcript, None of the

Complaining Witness's Trial Testimony Statements are in Medical Examination Report.

The Complaining Witness's whole Trial Testimony Statements are "Inconsistent" with the Above Reports & Hearing Please Do Not Let Those Trial Testimony Statements from the Complaining Witness's "Which are Actually False" Influence This U.S. Supreme Court's Decision Making Any further on Damon Cook's Insufficiency of the Evidence of Force Claim. I Request That This Court Order the State to Produce the above Documents to the Court. I am Innocent.

*See Miller v. Pate*, 386 U.S. 1, 7 (1967).

The Fourteenth Amendment Cannot Tolerate A State Criminal Conviction Obtained by the Knowing use of False Evidence.

*See Napue v. Illinois*, 30 U.S. 264 at 269 (1959).

Respectfully submitted,

/s/ Damon Cook

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December 20, 2024

## RULE 44 CERTIFICATE

I, DAMON COOK, petitioner pro se, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the following is true and correct:

1. This petition for rehearing is presented in good faith and not for delay.

2. The grounds of this petition are limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented.

/s/ Damon Cook
Petitioner

Executed on December 20, 2024

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# EXCERPT FROM APPELLANT BRIEF REGARDING THE INSUFFICIENCY OF EVIDENCE

[...]

## IV. There Is Insufficient Evidence to Support Appellant's Convictions for Rape and Forcible Oral Copulation

There was insufficient evidence to convict appellant of Forcible rape and oral copulation because there was no evidence of threats of "force" to the complaining witness, nor did she testify she feared "immediate and unlawful" bodily injury. Accordingly, appellant's convictions must be reversed.

### A. Standard of Review

The proper standard of review for a sufficiency of the evidence challenge is whether, on the entire record, a reasonable tier of fact could have found the defendant guilty beyond a reasonable doubt. (*People v. Jones* (1990) 51 Cal.3d 294, 314; *People v. Johnson* (1980) 26 Cal.3d 557, 576-578; *Jackson v. Virginia* (1979) 443 U.S. 307, 318-319.) The appellate court must view the evidence in a light most favorable to the judgment and must presume in support of that judgment "the existence of a every fact a tier could reasonably deduce from the evidence." (*People v. Johnson, supra*, 26 Cal.3d at pp. 576-577.) Evidence of each of the essential elements of the offense must be "substantial". (*People v. Johnson, supra*, 26 Cal.3d at pp. 576-577.)

### B. There Was Insufficient Evidence of Force or Fear of Bodily Injury to Support Appellant's Convictions.

Appellant was convicted of violations of section 261, subdivision (a)(2) and 288a which criminalizes sexual acts "accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person. . . ."

Rape may be committed by acts causing fear of immediate bodily harm to the complaining witness and does not require the threat of imminent harm. One court has defined fear as it is used in section 261, subdivision (a)(2), as; "A feeling of alarm or disquiet caused by the expectation of danger, pain, disaster or the like; terror; dread; apprehension:" (*People v. Jeff* (1988) 204 Cal.App.3d 309, 325.) The complaining witness's fear may even be unreasonable to satisfy this element of the offense "if the accused knowingly takes advantage of that fear in order to accomplish sexual intercourse." (*Id.*, at p. 324, quoting *People v. Young* (1987) 190 Cal.App.3d 248, 259.)

In *Young* and *Jeff*, the courts concluded there was insufficient evidence to show the prosecutrix feared immediate and unlawful bodily injury, requiring reversal of the defendants' convictions. In both cases, the defendants. did not say or do anything that would induce in the complaining witness fear of immediate and unlawful bodily injury, such as threats or the use of physical force. (*People v. Young*, *supra*, 190 Cal.App.3d at p. 259; *People v. Jeff*, *supra*, 204 Cal.App.3d at p. 327.)

The California Supreme Court in *People v. Iniguez* (1994) 7 Cal.4th 847, 856 defined the element of "fear" of immediate and unlawful bodily injury" as having two components, one subjective and one objective. It must first be determined whether there is substantial evidence that the complaining witness "generally entertained a fear of immediate and unlawful bodily injury sufficient to induce her to submit to sexual intercourse against her will"; this is the subjective component. Although the "extent or seriousness of the injury feared is immaterial", there must be some evidence that the complaining witness genuinely feared injury. (*Id.*, at pp. 856-857.) The objective component asks whether the victim's fear was reasonable under the circumstances, or, if unreasonable, whether the perpetrator knew of the victim's subjective fear and took advantage of it. (*Id.*, at p. 857.) Both of these elements must be satisfied in a prosecution for rape. (*Id.*, at pp. 856-857.)

Here, as in *Young* and *Jeff,* there was no testimony that the complaining witness was ever threatened by appellant, or that appellant used force in accomplishing the sexual acts. The complaining witness told appellant she did not want him to orally copulate her, but she did not testify that she feared appellant would harm her. During the sexual intercourse following the oral copulation, she testified she told appellant she did not want to do that, and tried to push appellant off her. (R.T. 63, 113) However, these statements merely show that the acts were accomplished against her will, not that they were accomplished against her will by means of fear of immediate and unlawful bodily injury. The complaining witness never testified she was afraid. (Compare with *People v. Iniguez, supra,* 7 Cal.4tn at

p.857 [substantial evidence that complaining witness genuinely feared immediate and unlawful bodily injury where witness testified she "froze because she was afraid," and that she "did not move because she feared defendant would do something violent."].)

Because there was insufficient evidence to support the element of force or fear of immediate and unlawful bodily injury, appellant's convictions on the forcible rape and oral copulation counts must be reversed; moreover, any further proceedings on the two counts are barred by the Double Jeopardy Clause, (*People v. Green* (1980) 27 Cal.3d 1, 62.)

*See People v. Griffin* (2004) 33 Cal.4th 1015, (Force Element) 16 Cal.Rptr.3d 891, 94 P.3d 1089; *See People v. Guido* (2005) (Force Element) 125 Cal. App.4th 566, 574-576; *See People v. Brown* (2017) 11 Cal.App.5th 332, 342;

[. . .]

## PRELIMINARY HEARING TRANSCRIPT (JULY 25, 1997)

Transcript, Page 65:

Q. Did You look or examine miss Healey to see if there were any bruises, confusions, or scratches?

A. No, Sir.

Q. Did she complain of any injuries of any type?

A. She did not Complain of any pain

MR. RENNER: May I have a moment, your honor?

THE COURT: Yes

Q. (By Mr. Renner) Did Miss Healey complain of any injuries she may have sustained?

A. No, She did Not.

Q. On your examination of miss Healey or speaking with miss Healey did you observe or see any Marks of any physical force being used against Miss Healey at any time?

A. No, Sir.

MR. RENNER: I have no further question of this witness.

THE COURT: Do you have Anything Further?

MR. HOFELD: No, RE-Redirect, Your Honor

THE COURT: May this witness be excused?

MR. HOFELD: Yes, Your Honor

THE COURT: Mr. Holmes, you may step down, you're free to remain or you may leave If you wish. Call your next witness.

MR. HOFELD: Rest

THE COURT: Counsel

MR. RENNER: Your Honor, Mr. Cook is Asking that I make an Objection to this officer's Testimony based on Corpus delicti Rule and Evidence was not Fully Submitted for the Proof *See Jones v. Superior Court* (1971) 4 Cal.3d 660.

[ . . . ]

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SUPREME COURT
PRESS

**CERTIFICATE OF WORD COUNT**

**No. 24-218**

Damon B. Cook,

*Petitioner*,

v.

Patrick Covello, Warden,

*Respondent.*

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STATE OF MASSACHUSETTS )
COUNTY OF NORFOLK ) SS.:

Being duly sworn, I depose and say:

1. That I am over the age of 18 years and am not a party to this action. I am an employee of the Supreme Court Press, the preparer of the document, with mailing address at 1089 Commonwealth Avenue, Suite 283, Boston, MA 02215.

2. That, as required by Supreme Court Rule 33.1(h), I certify that the DAMON B. COOK PETITION FOR REHEARING contains 745 words, including the parts of the brief that are required or exempted by Supreme Court Rule 33.1(d).

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

Lucas DeDeus

December 20, 2024

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SUPREME COURT, U.S.

**CERTIFICATE OF SERVICE**

**No. 24-218**

Damon B. Cook,

*Petitioner,*

v.

Patrick Covello, Warden,

*Respondent.*

---

STATE OF MASSACHUSETTS )
COUNTY OF NORFOLK ) SS.:

Being duly sworn, I depose and say under penalty of perjury:

1. That I am over the age of 18 years and am not a party to this action. I am an employee of the Supreme Court Press, the preparer of the document, with mailing address at 1089 Commonwealth Avenue, Suite 283, Boston, MA 02215.

2. On the undersigned date, I served the parties in the above captioned matter with the DAMON B. COOK PETITION FOR REHEARING, by mailing three (3) true and correct copies of the same by USPS Priority mail, prepaid for delivery to the following address which the filing party avers covers all parties required to be served.

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*Counsel for Respondent*

Lucas DeDeus

December 20, 2024