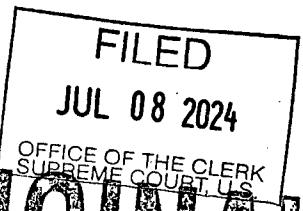


24-5123

No: _____



ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Angel Sanchez — PETITIONER
(Your Name)

vs.

Warden Teresa cisheros — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals For the Ninth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Angel Sanchez #BMS483
(Your Name)

P.O. Box 5242

(Address)

Corcoran, CA 93212

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

Whether petitioner Was Denied His Fifth, Sixth, And Fourteenth Amendment Right to Due Process And Fair Trial Because of the Court's use of Prior Acts Instructions CALCRIM 375 And 1191A..

Whether petitioner Was Denied Effective Assistance of Counsel in Violation of His Sixth Amendment Rights..

Review is Necessary to Determine Violation's of My 5th, 6th, And 14th Amendment Right's..

The court Abused it's Discretion by Abmitting Jane Doe 2's Testimony Pursuant to Evidence Code Section 1101 and / or 1108..

Reversal of Counts 1, 2, and 5 is Required Because the court's prior Acts Instructions (CALCRIM 375, 1191A) Deprived Appellant of Due Process and A Fair Trial..

Appellant's \$ 5,000 Restition/Parole Revocation
Fine Violates My State and Federal
Constitutional Rights to Due Process,
Equal Protection, And to be Free from
EXCESSIVE Fines..

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:

RELATED CASES

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OTHER

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 U.S. Appeals for the Ninth Circuit, 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[] is unpublished.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 Jun 28, 2024.

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: Jun 28, 2024, 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 _____. 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).

STATEMENT OF THE CASE

Petitioner adopts the statement Presented
in the court of Appeal's decision for
purposes of this petition..

No Petition for Rehearing Was Filed in the
Court of Appeal in California..

Review is Necessary to Determine Whether
Petitioner Was Denied His Fifth, Sixth, And
Fourteenth Amendment Rights to Due Process and
Fair Trial Because of the Court's use of Prior
Instructions CALCRIM 375 And 1191A..

Review is Necessary to Determine Whether
Petitioner Was Denied Effective Assistance of
Counsel in Violation of His Sixth Amendment
Rights..

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

On May 30, 2019, a Second Amended Information charged Appellant with five counts arising from an incident on September 2, 2018, and appellant's arrest on September 3, 2018. The charges arising out of the September 2, 2018 incident included: Count 1 for Kidnap for rape, Oral Copulation or Sodomy of Jane Doe DOB: 7/11/1999. Count 2 for Assault with intent to commit rape, Oral Copulation or Sodomy of Jane Doe DOB 7/11/1999. Count 5 for dissuading a Witness (Jane Doe DOB 7/11/1999 by force or threat. It was alleged as to count 2 that appellant was armed with a firearm and deadly weapon. The charges arising out of appellant's September 3, 2018 arrest included: Count 3 for Carrying a Tirk or dagger. Count 4 for resisting, Obstructing, or delaying of peace officer, Santa Barbara Police Department Officer B. Ford. Additionally, it was alleged as to counts 1, 2, and 5 that appellant suffered three strike priors and two prior serious felonies. As to count 3, it was also alleged that appellant suffered two strike priors.

① Statement of the case

It was further alleged as to counts 1, 2, 3 and 5 that appellant served one prior prison term within the meaning of Penal Code section 667.5, subdivision.

Trial proceeded on all counts, but was bifurcated for court hearing as to the strike priors. A jury found appellant guilty as charged on all counts and allegations, as charged.

The court found appellant was previously convicted of two counts of criminal threats on June 22, 2010 in Los Angeles Superior Court case number KA090518, within the meaning of Penal Code sections 667(d)(1) & (e)(1). And thus found true the allegation that appellant suffered two prior strikes. The court also found true the allegation of a "nickel prior" to each serious felony conviction.

Because both of appellant's convictions from June 22, 2010 resulted in a single prison commitment, the court found true the allegation for one prison prior.

The court denied appellant's new trial Motion and Romero motions. It further denied appellant's motion to run his sentence on count 5 concurrent to his sentence on count 2. The court ordered appellant to serve a determinate sentence of 32 months on counts 3 and 4, followed by an indeterminate sentence of 75 years to life.

Specifically, as to count 3, the court imposed the low term of 16 months, doubled to 32 months. The court stayed the strike and prison prior. On count 4, the court imposed one year to run concurrent to count 3. On count 2, the court imposed 25 years to life plus 10 years for two "nickel priors" and 5 years for the §12022.3(b) allegation. On count 5, the court imposed a consecutive sentence (over defense counsel's objection) of 25 years to life plus 10 years for two "nickel priors." On count 1, the court stayed a sentence and special allegations under Penal Code Section 654. The court further imposed a \$5,000 restitution fine and parole revocation fine (suspended) pursuant to Penal Code Section 1202.4(b)/1202.45. Appellant was given credit for 623 days. Appellant filed a timely notice of appeal.

In a second amended information filed by the Santa Barbara County District Attorney's office, appellant was charged with kidnap for rape, oral copulation, or sodomy (Pen. Code § 209, subd. (b)(1); count 1), assault with intent to commit rape, oral copulation, or sodomy (§ 220, subd. (a)(1); count 2),

(2)

carrying a dirk or daggr (§21310; count 3) resist, delay, or obstruct of a police Officer or EMT (§148, Subd. (a)(1); count 4), and dissuading a witness by force or threat (§136.1, Subd. (c)(1); count 5). It was further alleged as to counts 1, 2, and 5 that appellant suffered three strike priors (§§1170.12(b)/667(b)-(j)) and two prior serious felonies (§667(a)(1).) As to count 3, it was also alleged that appellant suffered two strike priors (§§1170.12(b)/667(c)(b)-(j).) It was further alleged as to counts 1, 2, 3 & 5 that appellant served one prior prison term within the meaning of penal code Section 667.5, subdivision (b). A jury convicted appellant as charged. In a bifurcated proceeding, appellant's prior strike convictions were found true. Appellant was sentenced to 32 months plus 75 years to life in state prison. Appellant filed a notice of appeal.

September 2, 2018 Encounter

On Sept. 2, 2018, 19 year old Jane Doe had plans to hang out with her friends, Rodolfo "Rudy" Campos and Davin Palma. Campos was her best friend; they had gone to San Marcos High School together. The three had

Planned to get together to play uno at around 9 or 10 p.m., but Campos was running late, having lost track of time playing video games. at around 11 p.m. Doe called Campos, who was still at home. Doe, who did not have a car, was talking to Campos while she walked to a nearby ATM to get cash for snacks for game night. The ATM was at the Bank of America on State Street, but before she arrived, Doe realized she had forgotten her ATM card and would have to return home to retrieve it. Somewhere between the Whole Foods and Dunkin Donuts, Doe turned around and heard a bike approaching from behind. She moved to the edge of the sidewalk to allow the bicyclist to pass, but the bicyclist instead slowed down. Doe heard mumbling, and she realized the bicyclist was asking her questions. She responded that she did not want to answer the questions and she did not have to. Campos, who was still on the phone with Doe, heard Doe's tone of voice change to fear, and he started asking what was wrong and if everything was ok. Doe did not respond to him.

③

Doe cussed at the bicyclist and told him to leave her alone. He was right next to her - 6 to 10 inches away. The street was lit so she could see his face. Doe turned around and tried to keep walking, but the bicyclist pedaled in front of her, positioning his bike to block her path. She then turned around again and tried to go the other way, but he repeated the same act in that direction. The bike blocking her, Doe felt like she could not escape unless she entered the street, but she was afraid she would be hit by a car. The bicyclist grabbed her wrist with one hand and her phone with the other, still between the Dunkin' Donuts and Whole Foods when it happened - by the sign that says "State Street Route." Doe tried to get her phone back to call 911 if she could, but the bicyclist threw her phone into the parking lot of the Dunkin' Donuts, which was much darker than the sidewalk where they were. Doe tried to escape, but the bicyclist was much stronger than her. At some point, she dropped her keys. He grabbed them and returned them to her. The bicyclist

remained on astride his bike during this time, maintaining one foot on the ground. Doe pushed the bike to make him fall so that she could run away. However, although he fell, so did she as she tried to run, giving him enough time to catch up and grab her. The bicyclist pulled Doe to her feet and told her that he would hurt her if she did not cooperate. He told her, "I have a Weapon," lifted his sweater, and showed her something on his waistband. She could not tell if it was a weapon, but it was silvery, shiny and pointy. Doe said she could tell it was sharp. He instructed Doe to retrieve her phone. When she did not move, he got upset and repeated the instruction, and he said he would hurt her if she refused. As Doe started walking towards her phone, the men held her wrist. As she leaned to pick up the phone, he pushed her to the ground. She fell on her left side, and he dragged her further into the parking lot by the hood of her sweatshirt. The bicyclist then started to get on top of Doe, who began kicking. He pinned her down by her shoulders. By the way he had her positioned and the way he

Was holding her down, Doe believed he was attempting to rape her. As she tried to reach for her phone, the bicyclist saw and threw the phone again. Doe started thinking that if she could get to the Jack in the Box on the corner of Hitchcock and State, she may be able to get help. Doe therefore told the bicyclist she would cooperate and do what he said, but they had to go to a private area because she did not want to do that in a public area. She said she lived nearby and he could follow her to her place. Doe promised they could do whatever he wanted at her place. He agreed to this plan and let her get up. As he got his bike, Doe was going to run but he realized her plan. He got upset and pushed her down with both hands. Again he dragged Doe deeper into the parking lot, away from the lights. It was hard to see - and she couldn't see her phone any more. After he was done dragging her, he positioned himself in front of her and got down on his knees. He tried to hold her down while she tried to kick and hit him. She screamed as much as she could, asking him to stop. At some point, he put his hand over her mouth to try to stop her from screaming. Doe is 5 feet tall and weighed 119 pounds. The bicyclist was bigger and stronger than her. So she felt overpowered and

tried. The bicyclist was bigger and stronger than her. So she felt overpowered and tired. The bicyclist began trying to remove her shorts, but he was unable to remove them because of the position of her legs. He then yanked her to the side, stepped between her legs and grabbed her shorts. He was able to remove her shorts and under wear with her in this position. The bicyclist then began unbuckling his pants. While he tried to touch Doe's vagina, she continued to attempt to push him away and scream. The bicyclist then turned his head, quickly rose to his feet, got on his bike, and left. Doe saw headlights out of the corner of her eye. She got up, pulled her shorts up and ran in front of the car. Tilton Jones was the driver of that vehicle. He had been at the Bank of America ATM at around 11:30 P.M. and he heard Doe's screams coming from Dunkin Donuts parking lot. He got in his truck and drove over to see what was going on. Jones observed two people-one male and female. As his vehicle approached them, the female came running up to his car and the male rode away on a bicycle. Jones called 911 for Doe, and she requested that the police come. Doe also provided a description of the bicyclist. campos

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has had been driving around, looking for Doe. He found her with Jones, crying and shaking. Doe showed him the injuries she had sustained, including bruising and a scrap on her left hand, redness on her neck, scratches on her back and bruising on her low back.

Statement of Facts

On September 2, 2018, Jane Doe was 19 years old and living near the Earl Warren Showgrounds in Santa Barbara. At approximately 11:00 p.m., Doe was walking to Bank of America to get some money. After going to the bank, Doe intended to go play some games with her friends. As Doe walked to the bank, she was talking on her cellular telephone with her friends, Rudy Campos. When Doe was between Whole Foods and Dunkin' Donuts, she remembered that she forgot her ATM card. When she turned around to return home to get her card, she heard a bike approaching behind a bike approaching behind her on the sidewalk. Doe moved to the side of the sidewalk, expecting the bicyclist to pass. Instead, she heard the bike slow down. Appellant, the person on bicycle, asked Doe a question. However, Doe was not paying

attention because she was still on her cellphone with Campos. Appellant repeated his questions, asking Doe her name and how old she was. As appellant became louder and more aggressive with his questions, Doe turned around and told appellant that she did not have to answer him and was not going to answer him. As appellant continued his questions, Doe got upset and told him, I don't have to fucking answer that. Doe told appellant to leave her alone. Campos asked Doe what was happening. He instructed Doe to tell appellant to leave her alone. Doe turned to walk away. Appellant rode his bicycle in front of Doe, blocking her path. Doe attempted to turn away again. Appellant was six to ten inches away from Doe. The area was lit up and Doe could see appellant's face. Appellant was very angry and upset. Doe would not answer his questions. Doe was scared. Appellant grabbed Doe's wrist and took her cellphone. Appellant threw Doe's cellphone toward the Dunkin Donuts parking lot. Doe attempted to pull away from appellant, but he was too strong. Doe had dropped her keys to the ground. Appellant picked them up and gave them back to Doe. He said he was trying to be nice. Appellant repeated that he was nice, and did not understand why Doe would not answer his questions.

Doe tried to get away. She pushed appellant's bike, causing the bike and appellant to fall. However, Doe tripped as she attempted to step away. Appellant was able to grab ahold of her again. Appellant stated that if Doe did not cooperate, he would hurt her. Appellant lifted his shirt and showed Doe what appeared to be a knife. Doe was scared. Appellant instructed to pick up her cellphone. However, the parking lot was dark where the cellphone was located, and Doe did not want to go there. Appellant got upset and repeated that he would hurt Doe. Appellant pushed Doe to the ground. Doe was wearing a hoodie. Appellant grabbed Doe's hoodie and dragged her away from the street. Appellant pinned down Doe's shoulders. She thought appellant was going to rape her. Doe thought if she could get to Jack in the Box, she might be able to get help. She told appellant that she would cooperate, but that she wanted to do it in private. She told appellant that she lived nearby and they could go to her place. Appellant let Doe up grabbed his bicycle. Doe grabbed her cellphone. When appellant realized that Doe was trying to get away, he got upset. He grabbed the cellphone and threw it again, and pushed Doe back down to the ground.

He dragged her deeper into the parking lot, away from the street lights. Appellant positioned himself in front of Doe, got on his knees, and was attempting to hold her down. Doe unsuccessfully attempted to kick appellant. She was screaming for him to stop. Appellant attempted to grab Doe's breasts. Appellant was much bigger than Doe. She felt overpowered and began to wear down. Her back was burning from being dragged across the pavement. Doe could not fight as hard. Appellant tried to pull off Doe's shorts, but Doe was attempting to fight appellant off. Appellant yanked Doe by the arm and repositioned her. Appellant pulled Doe's pants and underwear down below her knees. Appellant tried touching Doe's vagina. Appellant tried to unbuckle his pants. Suddenly, appellant got up, grabbed his bicycle and left. Doe saw car headlights. She got up, pulled up her shorts, and ran to the car. Doe asked the driver of the vehicle to stay with her and to call 911. Doe gave officers a statement at the site and again later at the police station. Doe described the perpetrator as Hispanic, wearing baggy jeans with a belt, a gray hoodie, and a bandana around his ~~neck~~ neck. He had dark circles around his eyes and smelled

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like alcohol and marijuana. He was riding a turquoise lightest blue bicycle. The bicycle seat was black and had rips or or flakiness on it. Doe identified appellant in a six-pack photographic line-up. At around 11:30 p.m., Tilton Jones was at the Bank of America ATM. He heard Doe's screams from the Dunkin Donuts parking lot. He drove over to see what was happening. Jones saw a male and female. As he approached, the female ran up to him while the male rode away on a bicycle. Campos drove around looking for Doe. He found her with Jones. Doe was crying and shaking. Doe showed Campos the injuries she sustained, including bruising, a scrape on her left hand, scrapes on her back, and redness on her neck. Santa Barbara Officers Name Maudlin and Rocio Declaro arrived at the scene. Officer Declaro estimated Doe had been dragged approximately 60 feet. Officer Declaro interviewed Doe. Doe described appellant has Hispanic, in his 20s, Wearing baggy pants and a hoodie. On September 3, 2018, Santa Barbara Police Officers Brian Parsons and Bryce Ford Were on bike patrol. The Officers saw appellant and another man standing near a vehicle in the parking lot of Rusty's pizza. Appellant matched the description of Doe's attacker. The Officers approached

and identified themselves as police officers. Appellant walked toward the officers and questioned the legitimacy of their police badges. Appellant moved his hand toward his hip. Officer Ford found appellant's behavior threatening and believed appellant may have been reaching for a weapon. Officer Ford pushed appellant away and instructed him to back up. Appellant attempted to walk past Officer Ford. Officer Ford grabbed appellant's wrist. Appellant pulled away. Officer Parsons grabbed appellant's other wrist. Appellant continued to struggle. The officers took appellant down to the ground. Appellant ignored the officers instruction to stop resisting. Once appellant was restrained he was asked if he had any weapons. Appellant stated that he had a knife on his right hip. Officer Ford recovered the knife and keys to a bike lock. The keys opened a lock on a bicycle locked to a pole. The bike seat had separated in a manner described by Doe. On March 23, 2009, Jane Doe was 16 years old. She was visiting her friend when she met appellant. Appellant was her friend's older brother. Doe 2's friend was a mother. She asked Doe 2 if she would watch her baby while she

(8)

Went to the store. Doe 2 was left alone with appellant. When Doe 2 turned her back, appellant grabbed her and pulled her into the bedroom. Appellant removed Doe 2's pants and underwear. He placed his penis in her vagina. He had sexual intercourse with her until he ejaculated. After Doe 2's friend returned, she called the police. Appellant was detained. However, he was not prosecuted because Doe 2 would not testify against him. She did not think anyone would believe her story.

REASONS FOR GRANTING THE PETITION

I Was Denied My Fifth, Sixth And Fourteenth Amendment Right to Due process And Fair Trial..

Violation's of My State and Federal Constitutional Rights to Due Process, Equal protection..

I Was Denied Effective Assistance of Counsel in Violation of My Sixth Amendment Rights..

Review is Necessary to Determine Violation's of My 5th, 6th, and 14th Amendment Rights..

The court Abused it's Discretion and Deprived Me of My Due Process And A Fair Trial..

The court Abused it's Discretion by
Abmitting Jane Doe 2's Testimony Pursuant
to EVidence code Section 1101 and/or 1108..

Reversal of Counts 1, 2, and 5 is Required
Because the court's prior Acts Instructions
(CALCRIM 375, 1191A)..

I did filed A Rehearing with the California
Court of Appeal..

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Angel Sanchez

Date: 7/9/24