No. _____

IN THE SUPREME COURT OF THE UNITED STATES

RICKY MENDOZA,

Petitioner,

v.

WILLIAM SULLIVAN, Warden,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

JODI LINKER
Federal Public Defender
MARA K. GOLDMAN*
Assistant Federal Public Defender
55 South Market Street, Suite 820
San Jose, CA 95113
(408) 291-7753
**Counsel of Record for Petitioner*

QUESTION PRESENTED

Whether the Ninth Circuit erred in denying habeas relief on petitioner's claim that the state trial court deprived him of his Sixth Amendment right to confront the witnesses against him when the court prohibited him from cross-examining the prosecution's key cooperating witness about the witness's pending murder case, including what benefits the witness expected to receive in that case in return for testifying in petitioner's case.

RELATED PROCEEDINGS

Mendoza v. Sullivan, No. 22-15933 (9th Cir. May 6, 2024)

Mendoza v. Sullivan, No. 18-cv-07160-SI (N.D. Cal. May 31, 2022)

People v. Mendoza, No. S242865 (Cal. Supreme Ct. Aug. 30, 2017)

People v. Mendoza, No. A139901 (Cal. Ct. App. May 22, 2017)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases

Federal Statutes

Additional Authorities

PETITION FOR A WRIT OF CERTIORARI

Petitioner Ricky Mendoza respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The Ninth Circuit's unpublished memorandum disposition affirming the district court's denial of Mr. Mendoza's § 2254 petition is available at 2024 WL 1988840, and attached at Appendix ("App.") 1a.

The district court's unpublished order denying Mr. Mendoza's § 2254 petition is available at 2019 WL 3973757, and attached at App. 8a.

The California Court of Appeal's unpublished decision affirming Mr. Mendoza's conviction is available at 2017 WL 2267050, and attached at App. 46a.

JURISDICTION

The Ninth Circuit entered its judgment on May 6, 2024. App. 1a. This Court has jurisdiction under 28 U.S.C. § 1254(1). This petition is timely under Supreme Court Rule 13.3.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Sixth Amendment provides in relevant part: "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him[.]" U.S. Const. amend. VI.

28 U.S.C. § 2254(d) provides:

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—
>
> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States, or
>
> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

INTRODUCTION

Petitioner Ricky Mendoza was tried twice for the murder of Martin Navarro. In the first trial, none of the eyewitnesses identified Mendoza as the shooter. That trial ended in a hung jury. In the second trial, Mendoza's former codefendant, Tony Martin, testified that he saw Mendoza shoot and kill Navarro. That trial ended in a guilty verdict.

When Martin testified, he had a separate murder case pending against him. Mendoza tried to cross-examine Martin about the pending charges, including whether Martin expected to receive any benefits in that case in return for his testimony in this one, but the trial court refused to allow it. This restriction violated Mendoza's rights under the Confrontation Clause, a violation that was compounded by the trial court's insistence that Mendoza stipulate that Martin had been told he would not receive a deal in his pending murder case.

This constitutional error was not harmless; on the contrary, it had a substantial and injurious effect on the jury's verdict. The California Court of Appeal's decision

affirming Mendoza's conviction involved an unreasonable application of clearly established federal law. The district court's denial of Mendoza's habeas petition was erroneous, as was the Ninth Circuit's decision affirming the district court.

STATEMENT OF THE CASE

I. Procedural History

On June 25, 2013, a California jury found petitioner Ricky Mendoza guilty of first degree murder. 2-ER-123–26.[1] The jury also found true allegations that Mendoza personally used and discharged a firearm and that he committed the murder for the benefit of a criminal street gang. *Id.* On August 16, 2013, Mendoza was sentenced to life in prison without the possibility of parole plus 25 years to life. 2-ER-117–19.

The California Court of Appeal affirmed the conviction on May 22, 2017, App. 46a, and the California Supreme Court summarily denied review, 2-ER-113.

On November 27, 2018, Mendoza timely petitioned for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. CR 1.[2] On May 31, 2022, the district court denied the petition. App. 8a. On June 23, 2022, Mendoza timely appealed to the Ninth Circuit. 9-ER-1556. On May 6, 2024, the Ninth Circuit affirmed the district court in an unpublished memorandum disposition. App. 1a.

---

[1] Where appropriate, petitioner cites the Appellant's Excerpts of Record ("ER"). *See* 9th Cir. Rule 30-1 (directing parties to submit excerpts of record instead of the appendix contemplated by FRAP 30).

[2] "CR" refers to the district court docket in *Mendoza v. Sullivan*, No. 18-cv-07160-SI (N.D. Cal.).

II. Preservation of the Issue in State and Federal Court

Mendoza argued in the trial court that the restrictions on his ability to cross-examine Tony Martin violated the Confrontation Clause. *See* 3-ER-327–32. He raised this issue again on direct appeal, *see* App. 70a-71a; in his federal habeas petition, *see* App. 30a; and in his Ninth Circuit appeal, *see* App. 5a-6a.

III. Statement of Relevant Facts[3]

On August 20, 2011, Martin Navarro was shot and killed in front of approximately 30 witnesses at a house party in Antioch, California. In the immediate aftermath, some of the eyewitnesses described the shooter as a short, white male with a "Mongolian haircut" (shaved sides with a ponytail). This description matched a party guest named Chris Donaldson. Others described the shooter as a tall, dark-skinned male or "the black dude." This description matched a party guest named George Hellums. 8-ER-1264–65, 1273, 1310. None of the eyewitnesses identified Ricky Mendoza as the shooter nor did Mendoza match any of the eyewitness descriptions. Nonetheless, Mendoza was charged with the murder of Martin Navarro.

Mendoza was tried with two codefendants: Tony Martin and John Moreno.[4] At the trial, Hellums testified that Mendoza had admitted shooting and killing

---

[3] Except as otherwise noted, the following factual recitation is taken from the California Court of Appeal's decision.

[4] Neither of the men identified by eyewitnesses went to trial. Chris Donaldson, the man with the Mongolian haircut, was charged but pled guilty before trial to manslaughter with the use of a firearm for the benefit of a gang. 2-ER-134. George Hellums, the "black dude," cooperated with law enforcement and was not charged. 6-ER-918.

Navarro because Navarro was a Sureño.[5] In addition, the prosecution presented text messages between Mendoza and his girlfriend discussing the shooting;[6] evidence that Mendoza was seen with a .357 and the fatal shots could have come from either a .357 or a .38;[7] and testimony from a gang expert that Mendoza was a Norteño and that he had recently gotten at tattoo with the words "Real Shooter" and "SK." According to the expert, "SK" stood for "scrap killer," with "scrap" being a derogatory term for Sureños.

The trial ended in a hung jury.

After the first trial, Tony Martin entered into a plea bargain allowing him to plead guilty to an unspecified violent felony with an indicated sentence of 10 years in return for his testimony against Mendoza and Moreno at their retrial.

The prosecution's case at the second trial was, in almost every respect, identical to the first: the prosecutor presented the same testimony from Hellums, the same text messages, the same forensic evidence, and the same gang expert. 3-ER-308. There was only one difference: Tony Martin testified that he saw Mendoza shoot and kill Navarro.

The defense sought to cross-examine Martin, not only about his plea bargain in this case but also about his role in a gang-related homicide that occurred in Concord, California, about one week after Martin Navarro was killed (the "Concord

---

[5] Navarro was an associate of Los Monkeys Treces, a Sureño subset.

[6] In one, Mendoza reminded his girlfriend not to say anything; in another, Mendoza asked her, "if something ever happens to me, would you still by my side regardless of what it is?"

[7] According to one of the eyewitnesses, the shooter used a .38. 7-ER-1046–47.

case"). 3-ER-323–25. In that case, Martin was charged with murder, attempted robbery, and attempted carjacking, all for the benefit of a criminal street gang. During a pretrial hearing, the prosecutor told the court that the Concord case was still in the early stages and Martin had not been offered a deal: "No promises were made on his pending homicide. He understands that there are no offers. That hasn't even gone to preliminary hearing, so the People have no idea what the witnesses are gonna say, and he understands that it's going to play out how it's going to play out. There are no deals on the table." 3-ER-297.

The trial court refused to permit any cross-examination regarding the Concord case, because it did not want a "mini-trial" and because it did not want Martin to assert his Fifth Amendment privilege in front of the jury.[8] Instead, the court directed the parties to prepare a stipulation regarding the Concord case. The following stipulation was read to the jury:

> On August 29, 2011, at approximately 10:00 p.m. in Hillcrest Park in Concord, Ever Osario, Alejandra Balderas, Idalia Sanchez, and Osmin Sanchez were approached by two males, one wearing black and one wearing white. The males confronted the group and asked what they "claimed." The males demanded their money, cell phones and car keys. The male wearing the black lifted Ever Osario's shirt, saw a blue belt, and yelled "Scrap." The male wearing the black repeatedly stabbed Ever Osario. As victim Osario attempted to flee the male wearing white fired a handgun and struck victim Osario in the upper torso.
>
> Less than five minutes later, the male wearing black and the male wearing white were arrested less than 650 yards away from the scene, both were sweaty and out of breath. An hour and a half later

[8] The California Court of Appeal found that Mendoza declined the opportunity to question Martin outside the presence of the jury. *See* App. 71a. Doing so would have been futile, though, because Martin's attorney had already confirmed that Martin would take the Fifth. 9-ER-1541.

> Alejandra Balderas and Idalia Sanchez were transported to the site of the arrest and both immediately identified the male wearing white as the person responsible for shooting the victim Osario, stating, "the one in white shot him." The male wearing white was positively identified as Tony Martin.
>
> Tony Martin is charged with attempted robbery, attempted carjacking and murder, a criminal street gang enhancement, an enhancement for intentionally discharging a firearm resulting in death, and two specific allegations, that the murder of victim Osario was committed to further the activities of a criminal street gang and that the murder was committed during the course of an attempted robbery. On May 14, 2013, when Tony Martin was interviewed by the District Attorney's Office, Mr. Martin was informed he was not being given any deal on his Concord case in exchange for his testimony in this case.

Mendoza objected to the final sentence of the stipulation, but his objection was overruled.[9]

The jury found Mendoza guilty. He was sentenced to life in prison without parole plus a consecutive sentence of 25 years to life.

IV. Lower Court Decisions

On May 22, 2017, the California Court of Appeal affirmed Mendoza's conviction.[10] *See* App. 46a. The court acknowledged Mendoza's constitutional right to confront the witnesses against him, but noted that trial courts have wide latitude to place reasonable limits on cross-examination. App. 77a. The court found that

---

[9] A stipulation is a "voluntary agreement between opposing parties concerning some relevant point." Black's Law Dictionary 1712 (11th ed. 2019); *see also United States v. Molina*, 596 F.3d 1166, 1168-69 (9th Cir. 2010) ("The test regarding the validity of a stipulation is voluntariness."). In light of Mendoza's objection, "stipulation" is arguably a misnomer.

[10] Mendoza raised six grounds for appeal, all of which were rejected by the state court. *See id.* This Petition addresses only the Confrontation Clause portion of the state court's decision.

although Mendoza was precluded from cross-examining Martin about the Concord case, the stipulation provided "significant impeachment evidence." *Id.* In addition, the court concluded that Mendoza was able to effectively impeach Martin's credibility by eliciting the following facts on cross: (1) Martin was originally charged in this case and, if convicted, faced life in prison; (2) Martin repeatedly lied to police; (3) because he was a defendant in the first trial, Martin was able to hear all of the witnesses testify; (4) in return for his testimony in this trial, the prosecution had agreed to let him plead guilty to an offense with a 10-year sentence; and (5) on the night Navarro was killed, Martin fired at least five times into a car, wounding one of its passengers. App. 77a-78a. Finally, the court concluded that even if the restriction on cross-examination was error, the error was harmless in light of the rest of the evidence presented at trial. App. 81a.

On November 27, 2018, Mendoza filed a § 2254 habeas petition in district court. CR 1. The district court denied the petition on May 31, 2022. App. 8a. The district court concluded that the state court's rejection of Mendoza's Confrontation Clause claim was not contrary to clearly established federal law, and even if it was, Mendoza was not entitled to habeas relief because he could not establish "actual prejudice" as required by *Brecht v. Abrahamson*, 507 U.S. 619 (1993). App. 35a-36a.

Mendoza appealed to the Ninth Circuit Court of Appeals. CR 35. On May 6, 2024, the Ninth Circuit affirmed in an unpublished disposition. *See* App. 1a. The court held that the state court had reasonably concluded that even though Mendoza was precluded from questioning Martin about the Concord case, the cross-

examination that was permitted, combined with the stipulation read to the jury, were sufficient to impeach Martin's credibility. App. 5a-6a.

ARGUMENT

I. The trial court's restriction on the cross-examination of Tony Martin violated Mendoza's constitutional right to confront the witnesses against him and present a complete defense.

A. The Confrontation Clause guarantees the opportunity for effective cross-examination of adverse witnesses.

The Confrontation Clause guarantees that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him[.]" U.S. Const. amend. VI. The right to confront witnesses is part of the defendant's constitutional right to present a defense. *See Crane v. Kentucky*, 476 U.S. 683, 690 (1986) ("Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation Clauses of the Sixth Amendment, the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense.") (cleaned up).

"Confrontation means more than being allowed to confront the witness physically." *Davis v. Alaska*, 415 U.S. 308, 315 (1974). "The main and essential purpose of confrontation is to secure for the opponent the opportunity of cross-examination." *Id.* at 315-16 (citation omitted).

The right to cross-examination is not unlimited; the Confrontation Clause guarantees "an *opportunity* for effective cross-examination, not cross-examination that is effective in every way, and to whatever extent, the defense might wish."

Delaware v. Fensterer, 474 U.S. 15, 20 (1985) (emphasis in original). But while the trial court has "wide latitude" to "impose reasonable limits on cross examination," *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986), this Court has long recognized that "the exposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination," *Davis*, 415 U.S. at 316-17 (citation omitted). This is especially true "when one person accuses another of a crime under circumstances in which the declarant stands to gain by inculpating another." *Lee v. Illinois*, 476 U.S. 530, 541 (1986). In these circumstances, "the accusation is presumptively suspect and must be subjected to the scrutiny of cross-examination." *Id.* Restrictions on impeachment of a prosecution witness rise to the level of a constitutional violation if a reasonable juror might have received a significantly different impression of the witness's credibility absent the restriction. *Van Arsdall*, 475 U.S. at 680; *see also Davis*, 415 U.S. at 320.

B. The trial court's absolute prohibition on any cross-examination regarding the Concord case deprived Mendoza of the opportunity for effective cross-examination.

The state court concluded that the trial court's prohibition on cross-examination about the Concord case was constitutional because: (1) the Confrontation Clause permits trial courts wide latitude in deciding what cross-examination to allow; and (2) the cross-examination that *was* permitted, combined with the stipulation read to the jury, were sufficient to impeach Martin's credibility. App. 77a-78a. This conclusion was contrary to clearly established federal law.

It is true that Mendoza received an opportunity to cross-examine Martin. The problem is that the trial court deprived him of the opportunity for *effective* cross-examination. Not only did the trial court impermissibly restrict Mendoza's ability to impeach Martin, but the so-called stipulation—read to the jury over the defense's objection—undermined the impeaching effect of the cross-examination that Mendoza *was* able to conduct.

The stipulation did not merely inform the jury of Martin's pending charges; it also stated that "[o]n May 14th, 2013, when Tony Martin was interviewed by the District Attorney's office, Mr. Martin was informed he was not being given any deal on his Concord case in exchange for his testimony in this case." 8-ER-1306. At the end of the trial, the jury was instructed that "[d]uring the trial you were told that the People and the defense agreed or stipulated to certain facts. *This means that they both accept those facts as true.* Because there's no dispute about those facts, *you must also accept them as true.*" 8-ER-1443 (emphasis added).

The inclusion of the stipulated "fact" that the District Attorney had told Martin he would not receive any benefit in the Concord case, coupled with the court's instruction to the jury that it was obligated to accept this "fact" as true, "effectively emasculated the right of cross-examination." *Fensterer*, 474 U.S. at 19 (cleaned up). Mendoza was deprived of the opportunity to cross-examine Martin—or the District Attorney, who was handling both cases—about whether Martin was actually told there was no possibility of any benefits in the Concord case and whether he believed it. "[I]t makes no practical difference whether the understanding is consummated by a wink, a nod and a handshake, or by a signed and notarized formal document

ceremoniously impressed with a wax seal." *Rickman v. Dutton*, 864 F. Supp. 686, 705 (M.D. Tenn. 1994) (internal quotations and citations omitted). Indeed, "a co-defendant who testifies with only a reasonable expectation or understanding of leniency, but not a formal agreement, has an even more powerful incentive to testify falsely in order to facilitate a conviction and curry favor with a prosecutor." *Id.*

The state court found that the stipulation was "significant impeachment evidence" that ameliorated the restriction on cross-examination, but the opposite is true. The stipulation may have been technically accurate, but it was unquestionably misleading. Outside the presence of the jury, the prosecutor told the court that the Concord case "hasn't even gone to preliminary hearing, so the People have no idea what the witnesses are gonna say, and [Martin] understands that *it's going to play out how it's going to play out*. There are no deals *on the table*." 3-ER-297 (emphasis added). Based on this statement, it appears that the message conveyed to Martin was not that there could never be a deal, but only that it was too early for the prosecutor to make any promises; the prosecutors couldn't make an informed decision when they had "no idea what the witnesses are gonna say" at the preliminary hearing. "It's going to play out how it's going to play out" is a very different message from "you will not be given any deal on the Concord case in exchange for your testimony in this case." Martin could reasonably have understood that "how it's going to play out" would depend, in part, on his testimony against Mendoza.

Defense counsel was allowed to argue that Martin might have been expecting a deal in the Concord case, but the jury was unlikely to credit this argument. Not

only had the jury been told that Martin was informed he would not get any deal, but the jury had been instructed that the prosecution *and the defense* accept all of the facts in the stipulation as true and that "you must also accept them as true."

The prohibition on cross-examination about the Concord case violated the Confrontation Clause, and the stipulation only compounded the violation.

II. The state court's harmlessness determination was objectively unreasonable.

The state court concluded that even if Mendoza was denied his constitutional right to present a defense and confront the witnesses against him, the error was harmless under *Chapman v. California*, 386 U.S. 18 (1967). App. 80a-81a. This determination was objectively unreasonable.

Under *Van Arsdall*, the harmlessness inquiry turns on factors including: (1) "the importance of the witness' testimony in the prosecution's case; (2) "whether the testimony was cumulative"; (3) "the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points"; (4) "the extent of cross-examination otherwise permitted"; and (5) "the overall strength of the prosecution's case." *Van Arsdall*, 475 U.S. at 684. While the state court acknowledged the *Van Arsdall* factors, it failed to apply those factors in an objectively reasonable manner.

Van Arsdall requires the reviewing court to assess "the presence or absence of evidence corroborating or contradicting the testimony of the witness *on material points*." *Id.* (emphasis added). Even assuming that it was reasonable for the state court to conclude that there was corroborating evidence in general, there was no

corroboration whatsoever on the most material points, namely, Martin's claim that he saw Mendoza shoot and kill Navarro. The state court's assessment of the extent of cross-examination permitted is also objectively unreasonable since Mendoza was completely prohibiting from cross-examining Martin about the Concord case. Finally, the prosecution's overall case against Mendoza was extremely weak. Tellingly, the first trial—in which the only significant difference was the absence of Martin's testimony—ended with a hung jury. The state court's failure to properly assess these factors resulted in an objectively unreasonable decision.

III. The error had a substantial and injurious effect on the verdict.

The district court concluded that even if the state court's harmlessness analysis was erroneous, Mendoza was not entitled to relief because he could not demonstrate that the Confrontation Clause violation resulted in "actual prejudice." App. 36a (citing *Brecht*, 507 U.S. at 637).[11] The district court was incorrect.

Brecht requires Mendoza to demonstrate that the error had a "substantial and injurious effect or influence in determining the jury's verdict." *Brecht*, 507 U.S. at 637. Here, the only person who claimed to have seen Mendoza shoot Navarro was Tony Martin—an individual who was himself facing life in prison for Navarro's murder until he made a deal with prosecutors. Approximately 30 other people witnessed the shooting, yet not one of them identified Mendoza as the shooter. Instead, the eyewitness identifications pointed to Donaldson and Hellums, both of

[11] The Ninth Circuit did not reach this issue. *See* App. 5a-6a.

whom were Norteños and therefore had the same purported motive as Mendoza to kill a rival gang member.

Since the trial court prevented Mendoza from cross-examining Martin about the Concord case, there is no way to know with absolute certainty how Martin would have responded to such questioning. But no matter how Martin answered, it would have materially benefitted the defense. Needless to say, an admission that he was testifying in the hope of leniency would have called into question the veracity of his testimony. But even if Martin denied that he was trying to obtain leniency in the Concord case, defense counsel would have had the opportunity to probe his answer, and the jury would have had the opportunity to evaluate his demeanor. Moreover, if Mendoza had been permitted to cross-examine Martin about the Concord case, there would have been no stipulation, meaning that the jury would not have been instructed that it must accept as true that Martin had been informed he would not receive any benefit in the Concord case. The denial of Mendoza's Confrontation Clause rights resulted in actual prejudice.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

JODI LINKER
Federal Public Defender
s/ Mara K. Goldman

July 31, 2024

MARA K. GOLDMAN
Assistant Federal Public Defender
55 S. Market St., Suite 820
San Jose, CA 95113
(408) 291-7753
mara_goldman@fd.org