

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

CHINDA NOMESIRI — PETITIONER
(Your Name)

WARDEN VS.

KIMBERLY A. SEIBEL — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEAL FOR
THE NINTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

CHINDA NOMESIRI AS6489
(Your Name)

PO BOX 600
(Address)

TRACY CA 95378
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

I

IS THE EVIDENCE OF RECORD INSUFFICIENT TO SUPPORT PETITIONER'S CONVICTION OF ASSAULT WITH A DEADLY WEAPON, VIOLATING PETITIONER'S FEDERAL CONSTITUTIONAL RIGHT TO DUE PROCESS?

II

DID THE TRIAL COURT FAIL TO CARRY OUT ITS SPONTANEOUS DUTY TO INSTRUCT THE JURY ON THE LEGAL DEFINITION OF LIFE, AN IMPLIED ELEMENT OF ASSAULT WITH A DEADLY WEAPON? WAS THE FAILURE PREJUDICIAL AND IN VIOLATION PETITIONER'S FEDERAL CONSTITUTIONAL RIGHT TO DUE PROCESS AND A FAIR TRIAL?

III

WAS PETITIONER'S TRIAL COUNSEL'S ASSISTANCE INEFFECTIVE FOR FAILING TO REQUEST A PINPOINT INSTRUCTION GIVING THE LEGAL DEFINITION OF LIFE?

IV

DID THE PROSECUTOR COMMIT PREJUDICIAL MISCONDUCT AND VIOLATE PETITIONER'S CONSTITUTIONAL RIGHT TO DUE PROCESS AND A FAIR TRIAL BY MISSTATING THE LAW AND MISHEADING THE JURY AS TO THE LEGAL DEFINITION OF LIFE? WAS PETITIONER'S TRIAL COUNSEL'S ASSISTANCE INEFFECTIVE FOR FAILING TO OBJECT AND TO REQUEST THE JURY BE ADMONISHED?

V

WERE PETITIONER'S STATEMENTS TO DETECTIVE HEINLEIN TAKEN IN VIOLATION OF MIRANDA V. ARIZONA AND INVOLUNTARY? WAS PETITIONER'S TRIAL COUNSEL'S ASSISTANCE INEFFECTIVE FOR FAILING TO MOVE TO SUPPRESS ON PROPER CONSTITUTIONAL GROUNDS?

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 A 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☒ is unpublished.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 B 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 C to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

COURT OF APPEAL OF THE STATE OF

The opinion of the CALIFORNIA THIRD APPELLATE DISTRICT court appears at Appendix D 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 DECEMBER 18, 2017.

☒ 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 JUNE 17, 2015.
A copy of that decision appears at Appendix C.

☐ 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).

IN ALL CRIMINAL PROSECUTION, THE ACCUSED

AMENDMENT VI

COMPENSATION.

BE TAKEN FOR PUBLIC USE WITHOUT JUST

PROCESS OF LAW; NOR SHALL PRIVATE PROPERTY

OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE

WITNESS AGAINST HIMSELF, NOR BE DEPRIVED

COMPELLED IN ANY CRIMINAL CASE TO BE A

JEOPARDY OF LIFE OR LIMB; NOR SHALL BE

THE SAME OFFENSE TO BE TWICE PUT IN

ANGER; NOR SHALL ANY PERSON BE SUBJECT FOR

ACTUAL SERVICE IN TIME OF WAR OR PUBLIC

OR NAVAL FORCES, OR IN THE MILITIA, WHEN IN

TRY, EXCEPT IN CASES ARISING IN THE LAND

ON A PRESENTMENT OR INDICTMENT OF A GRAND

CAPITAL, OR OTHERWISE INFAMOUS CRIME, UNLESS

NO PERSON SHALL BE HELD TO ANSWER FOR A

AMENDMENT V

PROVISIONS INVOLVED

CONSTITUTIONAL AND STATUTORY

SHALL ENJOY THE RIGHT TO A SPEEDY AND PUBLIC TRIAL, BY AN IMPARTIAL JURY OF THE STATE AND DISTRICT WHEREIN THE CRIME SHALL HAVE BEEN COMMITTED, WHICH DISTRICT SHALL HAVE BEEN PREVIOUSLY ASCERTAINED BY LAW, AND TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION; TO BE CONFRONTED WITH THE WITNESS AGAINST HIM; TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR, AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE.

AMENDMENT XIV

(SECTION 1) ALL PERSON BORN OR NATURALIZED IN THE UNITED STATES AND SUBJECT TO THE JURISDICTION THEREOF, ARE CITIZENS OF THE UNITED STATES AND OF THE STATE WHEREIN THEY RESIDE. NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR DENY TO ANY

PERSON WITHIN ITS JURISDICTION THE
EQUAL PROTECTION OF THE LAWS.

STATEMENT OF THE CASE

PETITIONER WAS CONVICTED OF DISCHARGING A FIREARM IN A GROSSLY NEGLIGENT MANNER, FELON IN POSSESSION OF A FIREARM, AND ASSAULT WITH A DEADLY WEAPON BY USING A SHOVEL. THE JURY FOUND TRUE THAT PETITIONER INFLICTED GREAT BODILY INJURY.

THE TRIAL COURT IMPOSED A PRISON SENTENCE OF SIX YEARS, EIGHT MONTHS, WHICH COMPRISED OF THE THREE-YEAR MIDTERM ON COUNT 3, PLUS A CONSECUTIVE THREE-YEAR TERM FOR THE GREAT BODILY INJURY ENHANCEMENT, PLUS A CONSECUTIVE TERM OF ONE-THIRD OF THE TWO-YEAR MIDTERM ON COUNT 2. THE TRIAL COURT ALSO IMPOSED VARIOUS FINES AND FEES.

A NOTICE OF APPEAL WAS FILED ON JANUARY 24, 2014. ON APRIL 9, 2015, THE COURT OF APPEAL OF THE STATE OF CALIFORNIA THIRD APPELLATE DISTRICT AFFIRMS THE JUDGMENT AND PRISON SENTENCE AND REMANDING FOR A NEW VICTIM RESTITUTION HEARING.

PETITIONER'S APPOINTED COUNSEL SUBMITTED
PETITION FOR REVIEW WITH THE SUPREME COURT
OF CALIFORNIA ON MAY 12, 2015, AND WAS DENIED.

A HABEAS CORPUS WAS SUBMITTED TO THE
UNITED STATES DISTRICT COURT FOR THE EASTERN
DISTRICT OF CALIFORNIA ON AUGUST 7, 2015, AND
WAS DENIED ON JUNE 7, 2017.

PETITIONER FILES FOR A CERTIFICATE OF
APPEALABILITY ON JULY 10, 2017, TO THE UNITED
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.
ON DECEMBER 18, 2017, CERTIFICATE OF
APPEALABILITY WAS DENIED.

REASONS FOR GRANTING THE PETITION

I

THE EVIDENCE OF RECORD WAS INSUFFICIENT TO SUPPORT PETITIONER'S CONVICTION OF ASSAULT WITH A DEADLY WEAPON. THE HEALTH AND SAFETY CODE SECTION 7180, SUBDIVISION (A), PROVIDES:

"AN INDIVIDUAL WHO HAS SUSTAINED EITHER (1) IRREVERSIBLE CESSATION OF CIRCULATORY AND RESPIRATORY FUNCTION, OR (2) IRREVERSIBLE CESSATION OF ALL FUNCTIONS OF THE ENTIRE BRAIN, INCLUDING THE BRAIN STEM, IS DEAD."

THEREFORE, A NON-DECEASE PERSON CONSIST OF BOTH RESPIRATORY AND BRAIN FUNCTION; HOWEVER, THE PROSECUTION PROVIDE NO EVIDENCE ON ESSENTIAL ELEMENT (BRAIN FUNCTION) OF OFFENSE. U.S. V. MEADOWS, 91, F.3d 851 (7TH CIR. 1996). IN ADDITION, THE CONVICTION VIOLATED PETITIONER'S RIGHT TO DUE PROCESS OF LAW UNDER THE FOURTEENTH AMENDMENT. SUMMIT V. BLACKBURN (5TH CIR 1986) 795 F.2d 1237, 1244.

II

THE TRIAL COURT FAILED TO CARRY OUT ITS
SUA SPONTE DUTY TO INSTRUCT THE JURY ON THE
LEGAL DEFINITION OF LIFE, AN IMPLIED ELEMENT
OF ASSAULT WITH A DEADLY WEAPON. CONSTITUTIONAL
TEST FOR SUFFICIENCY OF THE EVIDENCE IS "WHETHER
OFTEN VIEWING THE EVIDENCE IN THE LIGHT MOST
FAVORABLE TO THE PROSECUTION, ANY RATIONAL
TRIER OF FACT COULD HAVE FOUND THE ESSENTIAL
ELEMENTS OF THE CRIME BEYOND A REASONABLE
DOUBT." JACKSON V. VIRGINIA, 443 U.S. 307, 319
(1979). THE FAILURE WAS PREJUDICIAL AND
VIOLATED PETITIONER'S CONSTITUTIONAL RIGHT
TO DUE PROCESS AND A FAIR TRIAL.

III

THE UNITED STATES CONSTITUTION GUARANTY
THE RIGHT TO PUT FORTH A DEFENSE, WHICH IN
THIS CIRCUMSTANCE REQUIRED PIN-POINT JURY
INSTRUCTIONS OF THE LAW OF LIFE AND DEATH.
HOWEVER, PETITIONER'S TRIAL COUNSEL'S ASSISTANCE

WAS INEFFECTIVE FOR FAILING TO REQUEST A PIN-POINT INSTRUCTION GIVING THE LEGAL DEFINITION OF LIFE AND OBJECT TO ERONEOUS JURY INSTRUCTIONS. GARY V. LYNN, 6 F. 3d 265 (5TH CIR. 1993)

IV

THE PROSECUTOR COMMITTED PREJUDICIAL MISCONDUCT AND VIOLATED PETITIONER'S CONSTITUTIONAL RIGHT TO DUE PROCESS AND A FAIR TRIAL BY MISSTATING THE LAW (HEALTH AND SAFETY CODE), AND MISLEADING THE JURY AS TO THE LEGAL DEFINITION OF LIFE. IT IS IMPROPER REMARKS BY A PROSECUTOR CAN "SO INFECT THE TRIAL WITH UNFAIRNESS AS TO MAKE THE RESULTING CONVICTION A DENIAL OF DUE PROCESS." DAREN V. WAINWRIGHT (1986) U.S. 168, 181

IN ADDITION, PETITIONER'S TRIAL COUNSEL'S ASSISTANCE WAS INEFFECTIVE FOR FAILING TO OBJECT AND TO REQUEST THE JURY BE ADMONISHED. IT IS REASONABLY PROBABLE THAT PETITIONER WOULD NOT HAVE BEEN CONVICTED HAD PETITIONER'S TRIAL COUNSEL OBJECTED TO THE PROSECUTOR'S

MISSTATEMENT OF THE LAW AND REQUESTED THAT THE JURY BE ADMONISHED AS TO THE CORRECT INTERPRETATION. STRICKLAND V. WASHINGTON (1984) 466 U.S. 668, 687

IV

PETITIONER'S STATEMENTS TO DETECTIVE HEINLEIN WERE TAKEN IN VIOLATION OF MIRANDA V. ARIZONA AND INVOLUNTARY. PETITIONER WAS INTERVIEWED AT LENGTH IN THE FIELD WITHOUT A MIRANDA WARNING. WHEN INTERROGATION RESUMED IN THE POLICE INTERVIEW ROOM, DETECTIVE HEINLEIN INTRODUCED THE MIRANDA WARNING AS A "PROTOCOL", THUS, THE WARNINGS WERE NOT UNEQUIVOCAL BUT WERE NEGATED BY DETECTIVE HEINLEIN'S ASSERTION HE KNEW PETITIONER HAD BEEN TALKING TO OFFICERS IN THE FIELD. MOREOVER, DETECTIVE HEINLEIN PROVIDED NO CURATIVE MEASURES. ACCORDING TO MISSOURI V. SIEBERT (2004) 542 U.S. 600, 621, WHEN POLICE USE A DELIBERATE TWO-STAGE STRATEGY TO VIOLATE MIRANDA POST-WARNING STATEMENTS RELATED

TO "THE SUBSTANCE OF PREWARNING STATEMENTS MUST BE EXCLUDED ABSENT SPECIFIC, CURATIVE STEPS." IN ADDITION, BECAUSE OF THE LACK OF SLEEP THAT PETITIONER HAD PRIOR TO THE FINAL INCIDENT, ACCORDING TO *BRAIN V. UNITED STATES* (1997) 168 U.S. 532, IF THE WILL OF THE ACCUSED IS OVERBORNE BY THE INTERROGATION AND IF HE WOULD HAVE REMAINED SILENT BUT FOR THE IMPROPER INFLUENCE, THE RESULTANT CONFESSION MUST BE DEEMED INVOLUNTARY. FURTHERMORE, PETITIONER'S TRIAL COUNSEL'S ASSISTANCE WAS INEFFECTIVE FOR FAILING TO MOVE TO SUPPRESS ON PROPER CONSTITUTIONAL GROUNDS. HAD PETITIONER'S TRIAL COUNSEL CHALLENGED HIS STATEMENTS ON MIRANDA, FIFTH AMENDMENT, AND FOURTEENTH AMENDMENT GROUNDS, IT IS REASONABLY PROBABLE THEY WOULD HAVE BEEN EXCLUDED AND PETITIONER WOULD NOT HAVE BEEN CONVICTED. *STRICKLAND V. WASHINGTON* (1984) 466 U.S. 668. 687.

Conclusion

FOR THESE REASONS, A WRIT OF CERTIORARI SHOULD
ISSUE TO REVIEW THE JUDGMENT AND OPINION OF THE
NINTH CIRCUIT COURT OF APPEALS SO THAT ALL COURTS
MAY LOOK UPON THE RULING AS THE STANDARD
FAIRNESS OF THE LAW.

RESPECTFULLY SUBMITTED,

Chinda Nomiesiri

DATE: FEB 20, 2018

CHINDA NOMESIRI

AS6489