

---

---

**In the Supreme Court of the United States**

---

---

**ERIC ANDERSON,**

Petitioner,

v.

**THE STATE OF CALIFORNIA,**

Respondent.

---

---

ON PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

---

---

**BRIEF IN OPPOSITION**

---

---

XAVIER BECERRA

*Attorney General of California*

EDWARD C. DUMONT

*Solicitor General*

GERALD A. ENGLER

*Chief Assistant Attorney General*

RONALD S. MATTHIAS

*Senior Assistant Attorney General*

DONALD E. DENICOLA

*Deputy Solicitor General*

HOLLY D. WILKENS

*Supervising Deputy Attorney General*

MICHAEL T. MURPHY\*

*Deputy Attorney General*

*\*Counsel of Record*

600 West Broadway, Suite 1800

San Diego, CA 92101

(619) 738-9211

Mike.Murphy@doj.ca.gov

*Counsel for Respondent*

CAPITAL CASE  
QUESTION PRESENTED

Whether, on the facts of this case, the trial court's order directing an acquittal of a jointly-tried co-defendant on a conspiracy charge amounted to a directed verdict of guilt against petitioner.

**TABLE OF CONTENTS**

	<b>Page</b>
Statement.....	1
Argument.....	4
Conclusion.....	7

## TABLE OF AUTHORITIES

Page

## CASES

<i>Buchanan v. Kentucky</i> 483 U.S. 402 (1987).....	4
<i>Connecticut v. Johnson</i> 460 U.S. 73 (1983).....	4
<i>Kansas v. Carr</i> 136 S. Ct. 633 (2016).....	4
<i>People v. Cole</i> 33 Cal. 4th 1158 (2004) .....	4
<i>People v. Whalen</i> 56 Cal. 4th 1 (2013) .....	4
<i>Taylor v. Freeland &amp; Kronz</i> 503 U.S. 638 (1992).....	5
<i>United States v. Martin Linen Supply Co.</i> 430 U.S. 564 (1977).....	4
<i>Youakim v. Miller</i> 425 U.S. 231 (1976).....	5
<b>STATUTES</b>	
California Penal Code § 1118.1 .....	4

**STATEMENT**

1. Petitioner and two accomplices, Brandon Handshoe and Apollo Huhn, drove to the home of Steven Brucker to steal money from Brucker's safe. Pet. App. A 20–21. Petitioner and Huhn approached the front door on foot. *Id.* at A 21. Brucker opened the door and told them to leave. *Id.* Petitioner responded by shooting Brucker in the chest with a .45 caliber handgun. *Id.* The bullet perforated Brucker's heart and caused his death a short time later. *Id.* After the shooting, petitioner and his accomplices fled. *Id.* at A 22.

2. The state charged petitioner, Handshoe, Huhn, and a third co-defendant, Randy Lee, with murder and conspiracy to commit robbery and burglary. Pet. App. A 20. The trial court denied petitioner's motion to be tried separately from the other defendants. *Id.* at A 24. Subsequently, during jury selection, Handshoe pleaded guilty to reduced charges. *Id.* at A 29, 49 n.1. In addition, to protect petitioner's interests, the judge ordered Huhn to be tried simultaneously but with a jury different from petitioner's and Lee's jury. *Id.* at A 24. The trial court denied petitioner's further requests to be tried separately from Lee. *Id.*

During trial, Huhn's girlfriend testified that she was present at a meeting at which petitioner, Huhn, and Handshoe planned to rob Brucker's safe. Pet. App. A 21. Petitioner and Handshoe each had a firearm. *Id.* Handshoe testified that, later that day, he served as a lookout when petitioner and Huhn went to Brucker's home; that he heard a gunshot; that petitioner and Huhn

then ran back to the car; and that petitioner said that he had shot “the guy.” *Id.* at A 22. In addition, petitioner’s roommate testified that, upon viewing a broadcast about the crime, petitioner had acknowledged that he had been involved and told the roommate to “keep his mouth shut” or else he “would be next.” *Id.* Petitioner presented evidence challenging the credibility of prosecution witnesses and disputing whether a truck, similar to petitioner’s and seen leaving the Brucker home at the time of the crime, was his. *Id.* at A 23.

The prosecution’s case against Lee was limited to evidence that Lee, at various times beginning in 2002, had suggested to Handshoe and Huhn that they burglarize Brucker’s house. Pet. App. A 21. The state presented no evidence that Lee was present at the crime scene. *Id.* Lee’s defense was that he neither conspired to commit the robbery and burglary nor aided and abetted them. See Trial Tr. vol. 29, 5139–5176. Following the prosecution’s case-in-chief, the trial court directed a verdict of acquittal on the conspiracy charge against Lee. Pet. App. A 24–25. The murder charge against Lee remained, and the prosecutor argued to the jury that Lee had aided and abetted the murder. Trial Tr. vol. 29, 5111, 5125.

The jury hearing petitioner’s and Lee’s case found petitioner guilty of conspiracy and murder, and also found that he personally had discharged a firearm during the commission of the murder. Pet. App. 20. It found Lee not guilty of murder. *Id.* at A 49 n.1. The separate jury found Huhn guilty of

conspiracy and murder. *Id.* In a later penalty phase of petitioner's trial, the jury returned a verdict of death. *Id.* at A 20.

3. The California Supreme Court affirmed petitioner's conviction and death sentence. Pet. App. A. 20, 48-49. Rejecting petitioner's argument that the refusal to sever his trial from that of his co-defendants constituted an abuse of discretion and resulted in an unfair trial, the court determined that "[v]irtually no reason existed to try the defendants separately." *Id.* at A 24-25. The court explained that: (1) the separate trial for Huhn ensured that no incriminating confession was admitted against petitioner; (2) the evidence showed the co-defendants to be less culpable than petitioner, so that he would not be prejudiced by association with them; (3) petitioner was charged with all counts, so there was no possibility of confusion stemming from evidence on multiple counts; and (4) there was no indication that any co-defendant would have provided exonerating testimony at a separate trial. *Id.*

The supreme court also rejected petitioner's assertion that the joinder of his and Lee's cases resulted in an unfair trial of petitioner when the trial judge granted Lee's motion for an acquittal on the conspiracy charge. Pet. App. A 24-25. The court explained that, while Lee's defense was different from petitioner's, it was "not antagonistic in a way that prejudiced him" because the jury's acceptance of Lee's defense would not have precluded it from acquitting petitioner; instead, "[t]he jury could easily judge Lee's guilt and [petitioner's] guilt separately." *Id.* at A 25.

The court expressly concluded that denial of petitioner's severance motion "did not violate any federal constitutional right." Pet. App. A 25. In doing so, it cited *Kansas v. Carr*, 136 S. Ct. 633 (2016), in which this Court observed that a joint trial is often preferable when co-defendants' crimes arise from the same events because it "may enable a jury 'to arrive more credibly at its conclusions regarding the guilt or innocence of a particular defendant.'" 136 S. Ct. at 645 (quoting *Buchanan v. Kentucky*, 483 U.S. 402, 218 (1987)).

### ARGUMENT

Petitioner argues that the directed verdict of acquittal for Lee on the conspiracy charge "effectively direct[ed] a verdict of guilty" against petitioner in violation of his constitutional rights. Pet. 15-17. He cites *Connecticut v. Johnson*, 460 U.S. 73 (1983), for the undisputed proposition that "a trial judge is prohibited from entering a judgment of conviction." *Id.* at 84 (plurality opinion) (quoting *United States v. Martin Linen Supply Co.*, 430 U.S. 564, 572-573 (1977)).

Petitioner did not raise this claim either at trial or on appeal, and the California courts did not address it. In a supplemental opening brief filed in the California Supreme Court, petitioner argued, in the context of challenging the denial of his severance motion, only that the directed verdict of acquittal was error under state law and that it contributed to prejudice flowing from the joint trial. Appellant's Suppl. Opening Br. 57-59 (relying on Cal. Pen. Code § 1118.1; *People v. Whalen*, 56 Cal. 4th 1, 54 (2013); and *People v. Cole*, 33 Cal.



4th 1158, 1212–1213 (2004)). Because the contention petitioner now raises—that the trial court’s ruling amounted to a directed verdict of guilty against petitioner in violation of the federal Constitution—was not raised in state court, it should not be considered here. See *Taylor v. Freeland & Kronz*, 503 U.S. 638, 645-646 (1992) (quoting *Youakim v. Miller*, 425 U.S. 231, 234 (1976)).

In any event, petitioner’s argument rests on the mistaken premise that Lee’s acquittal precluded acquittal of petitioner. The California Supreme Court properly rejected that premise in turning aside petitioner’s claim that the combination of the joinder and the directed acquittal amounted to prejudicial error. It recognized that “[t]he jury could easily judge Lee’s guilt and [petitioner’s] guilt separately.” Pet. App. A 25. As the court explained, “Lee’s defense was different than [petitioner’s], but not antagonistic in a way that prejudiced him. Contrary to [petitioner’s] argument, the jury’s acceptance of Lee’s defense would not preclude it from acquitting [petitioner].” *Id.* The trial judge drew the same conclusion. Trial Tr. vol. 3, 600-608 (“this does not appear to be a case in which a successful defense by one defendant will preclude the acquittal of another, or the conviction of one will necessarily trigger the acquittal of another”); see *id.*, vol. 4, 690 (“I don’t believe it’s that classic situation where alleged antagonistic defenses really create prejudice”).

The record supports the state courts’ conclusions on this fact-bound issue. The prosecution’s evidence tended to show that Lee was guilty of the murder only vicariously as an absent co-conspirator—whereas Anderson, without

regard to Lee's conduct, was guilty as a conspirator with other defendants and as the direct perpetrator who later personally shot and killed the victim.

Lee offered no evidence implicating Anderson in the murder; indeed, he did not testify or present any evidence at all. His defense strategy was simply to try to convince the jury that the evidence failed to show that he was even aware of an actual plan to rob Brucker, much less that had aided and abetted or conspired in such a plan. To this end, Lee's counsel argued in his closing summation that the evidence demonstrated that Lee had no knowledge of the crimes beforehand, and that the evidence pointed to petitioner, Handshoe, and Huhn as having committed the crimes independent of Lee for the purpose of getting money to buy drugs. Trial Tr. vol. 29, 5139-5176.

The success of Lee's defense did not hinge on establishing petitioner's participation in the murder. The jury logically could have accepted the proposition that Lee had not conspired to commit crimes against Brucker, while also accepting petitioner's defense that the prosecution had failed to prove that he conspired with others and then actually carried out the crime. The closing argument made by petitioner's counsel reflected this. She never referred to Lee or his defense, never suggested that the jury must reject Lee's defense in order to accept petitioner's defense, and never argued that, in order to find petitioner not guilty, the jury must find that Lee participated in the conspiracy. Trial Tr. vol. 30, 5188-5261. In the end, the jury determined, based on the evidence, that petitioner had conspired to rob Brucker and that

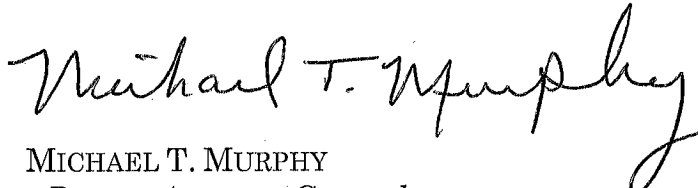
he shot and killed him. The California Supreme Court properly sustained that determination, and there is no reason for further review.

**CONCLUSION**

The petition for a writ of certiorari should be denied.

Respectfully submitted,

XAVIER BECERRA  
*Attorney General of California*  
EDWARD C. DUMONT  
*Solicitor General*  
GERALD A. ENGLER  
*Chief Assistant Attorney General*  
RONALD S. MATTHIAS  
*Senior Assistant Attorney General*  
DONALD E. DENICOLA  
*Deputy Solicitor General*  
HOLLY D. WILKENS  
*Supervising Deputy Attorney General*

  
MICHAEL T. MURPHY  
*Deputy Attorney General*

February 27, 2019