

18-9824

ORIGINAL

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES  
[REDACTED]

Supreme Court, U.S.  
FILED

APR 01 2019

OFFICE OF THE CLERK

STEVEN GILBERT PATTEN  
— PETITIONER  
(Your Name)

vs.

THE STATE OF CALIFORNIA  
— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

CALIFORNIA COURT OF APPEAL,  
SECOND APPELLATE DISTRICT, DIVISION TWO (NO.B281573)

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

STEVEN G. PATTEN, BC-7649

(Your Name)

CHUCKAWALLA VALLEY ST. PRISON  
PO BOX 2349, BLYTHE, CA 92226-2349

(Address)

(City, State, Zip Code)

NONE

(Phone Number)

QUESTION(S) PRESENTED

1. Whether Petitioner can establish a *prima facie* case of discrimination under the Equal Protection Clause of the Fourteenth Amendment when the prosecution in a state criminal trial used peremptories (i.e. peremptory challenges) to remove the only African-American (i.e. Black) jurors from the ~~venire~~ venire (2 Black jurors in a venire totalling 35), where the ~~white~~ jurors' answers do not necessarily dispel any inference of discrimination (especially since the answers did not give rise to dismissal for cause).
2. Whether the trial court's failure to give a self-defense instruction (with respect to the animal cruelty charge) is harmless error, where the jury was instructed that Petitioner (& not the prosecution) had to prove he was not in danger?
3. Whether an erroneous & misleading flight instruction can be cured by the standard instruction under CALCRIM No. 200 (that some instructions may not apply)?

## LIST OF PARTIES

- [v] 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:

## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Batson v. Kentucky (1986) 476 U.S. 79	5
Garza v. County of LA (C.D. Cal. 1990) 756 F.Supp. 1298	6
Gonzalez v. Brown (9th Cir. 2009) 585 F.3d 1202	6
Chapman v. California (1967) 386 U.S. 18	7
People v. Epps (1981) 122 Cal.App.3d 691	8
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People v. Jackson (2014) 58 Cal.4th 724	7
People v. Parker (2017) 2 Cal.5th 1184	6
People v. Washington (1958) 168 Cal.App.2d 833	8

### STATUTES AND RULES

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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 \_\_\_\_\_ 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 \_\_\_\_\_ 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 ~~§ 8~~ 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 ~~§~~ CALIFORNIA SUPREME 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 \_\_\_\_\_

[ ] 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 9/26/18.  
A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date: 1/2/2019, and a copy of the order denying rehearing appears at Appendix B.

An extension of time to file the petition for a writ of certiorari ~~was granted~~ is pending to and including 6/21/2019 (date) on 6/6/2019 (date) in Application No. \_\_\_ A \_\_\_\_\_.  
\_\_\_\_\_

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

**CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

- \* Jury trial rights under the Sixth Amendment to the U.S. Constitution.
- \* Equal Protection rights under the Fourteenth Amendment.
- \* Due Process rights under the Fourteenth Amendment.

### STATEMENT OF THE CASE

Petitioner was found guilty by a Los Angeles County, California jury on multiple felony & misdemeanor offenses, to-wit:

1. Assault with a Firearm, Penal Code ("PC") section 245, subd. (a)(2);
  2. Cruelty to an Animal, PC section 597, subd. (a);
  3. Resisting an Executive Officer, PC section 69;
  4. Assault upon a Peace Officer, PC section 245, subd. (c);
  5. Misdemeanor Vandalism, PC section 594, subd. (a);
  6. Guilty of a ~~lesser~~ lesser offense of Misdemeanor Resisting a Peace Officer, PC section 148, subd. (a) (being found not guilty of the felony charge of Resisting an Executive Officer, PC section 69);
  7. Resisting (misdemeanor) a Peace Officer, PC section 148, subd. (a).
- The offenses involving resisting an executive/peace officer involved different officers of the Los Angeles County Sheriff's Department from the underlying criminal case.

Subsequent motion for new trial was denied, Petitioner was sentenced to an aggregate term of 16 years & 8 months.

Petitioner timely appealed. The California Court of Appeal affirmed the judgement in an unpublished opinion, September 26, 2018.

The California Supreme Court declined review on January 2, 2019.

Petitioner filed a Petition for Writ of Certiorari on April 8, 2019. The petition was returned that day due to numerous procedural errors (see letter of the Clerk, U.S. Supreme Court of April 8, 2019), giving 60 days from that date to correct the Petition.

On June 6, 2019, Petitioner requested extension of time of 14 days to June 21, 2019 to the Clerk of the Court, in a manner prescribed by U.S. Supreme Court Rule 29.2 (constructive filing of applications submitted by incarcerated litigants). No ruling has been issued as of this date.

## REASONS FOR GRANTING THE PETITION

Rule 10, subd. (c) of the Rules of the U.S. Supreme Court permit the granting of certiorari if a ruling of a ~~state~~ state appellate court "[D]ecided an important federal question in a way that conflicts with relevant decisions of this Court."

Petitioner submits the above rule is applicable instantly as follows:

1. Petitioner's equal protection rights under Batson v. Kentucky (1986) 476 U.S. 79. Here Petitioner stood trial before a jury without a single African-American (i.e. Black) juror (Petitioner is a member of this racial class).

The Court of Appeal, at pp. 13-15 of the unpublished opinion (Appendix "A" hereto), refused to go beyond the first step of Batson in evaluating this claim (the venire, consisting of 35 persons, containing only TWO (2) Black jurors - ~~including~~ ~~both~~ both of whom were dismissed via peremptory challenge, as their answers during voir dire did not warrant dismissal for cause).

There is no published case in which a court has denied a Batson claim at the first step where peremptory challenges were used to exclude all members of a cognizable class. Yet the lower court concluded that "A small sample size provides insufficient information for a comparision." (Appendix "A" at p. 14).

Yet this decision contravenes Batson and its progeny.

how?

Batson has held that practices providing the opportunity for discrimination (i.e. class under representation) are offensive to our criminal justice system. See Batson at pp. 95-96.

As a factual matter, the racial demographics of Los Angeles County, California are:

- a. 39.8% White;
- b. 36.6% Hispanic;

- c. 12.6% Asian/Other;
- d. 11.0% Black (Petitioner's class).

See Garza v. County of L.A. (C.D. Cal. 1990) 756 F.Supp. 1298, 1320 (projected Los Angeles County population of nearly 9 million for 1990, a 1.5 million increase from the 1980 Census, id., with a reduction in White & Black demographics from 52.9% & 12.4% respectively from 1980 census, ibid.).

The venire ITSELF, did not contain enough members of the complained of racial class in the first instance. Nor can it be said that ~~not~~ not enough members of the complained of racial class were available, in that Los Angeles County is one of the most populated (if not the most) counties/political subdivisions in the United States!

The Court of Appeal applied an onerous standard in denying Petitioner's claim. That court ~~failed~~ failed to give proper weight to the fact~~s~~ that all jurors of a cognizable class were excluded from Petitioner's jury.

"A single peremptory strike, if purposefully discriminative, will be enough to upset a jury conviction." Gonzalez v. Brown (9th Cir. 2009) 585 F.3d 1202, 1206.

The lower court's reliance on decisions of the California Supreme Court to support affirmance of the trial court's action (People v. Hoyos (2007) 41 Cal.4th 872, People v. Harris (2013) 57 Cal.4th 804, People v. Parker (2017) 2. Cal.4th 1184), slip opn (Appendix "A") at p. 11, is an affront to equal protection.

2. The California courts completely leave unsettled the application of the Harmless Error standard of Chapman v. California (1967) 386 U.S. 18, 24; with respect to jury instructions on self-defense, thus eviscerating Petitioner's right to a jury trial under the Sixth Amendment & Due Process right under the Fourteenth Amendment.

The parties agreed in the Court of Appeal that the trial court erred by giving a necessity instruction instead of a self-defense instruction with respect to the animal cruelty charge (Appendix "A" at pp. 18, 21).

The Court of Appeal noted that this Court has not yet to resolve this conflict (Appendix "A" at p. 21).

Most recently, Justice Liu of the California Supreme Court, in his concurring & dissenting opinion in People v. Jackson (2014) 58 Cal.4th 724, 778, noted: "[U]nder Chapman, reversal is unwarranted not when the record ~~is~~ is devoid of evidence that the error had an adverse effect, but only when the state has shown beyond a reasonable doubt that the error did not have an adverse effect."

The Court of Appeal did not undertake the correct analysis in the case at bench. No possible reading of the record would permit the state to prove that placing the burden on Petitioner rather than the prosecution, did not have an adverse effect on the jury's verdict. There is nothing in the record that proves the jury would've rejected self-defense if the jury had been instructed about the proper standard of evaluating (BEYOND A REASONABLE DOUBT) and the correct burden (THE PROSECUTION).

Certiorari is necessary to ensure uniformity of the Chapman standard.

3. Certiorari is necessary to ensure uniformity of law, namely to ensure that standard jury instructions do not demand a harmlessness finding in every instance (as such instructions impact Petitioner's Sixth Amendment jury trial & Fourteenth Amendment Due Process rights).

The Court of Appeal found that the jury should not have been given a flight

instruction on three (3) of the counts (Appendix "A" at p. 23).

These 3 counts were supported by the weakest of evidence, as indicated by the jury's lesser included (rejecting the greater charge) misdemeanor guilt findings on two (2) of those counts & a not guilty finding on the third (id. at p. 3, 22).

However, the Court of Appeal found the error harmless because the trial court instructed the jury via CALCRIM No. 200, which instructed the jury that "some of these instructions may not apply ..." (Appendix "A" at p. 23). The Court of Appeal found CALCRIM No. 200 "mitigated any prejudicial effect of giving the inapplicable instruction." (id.)

Such cannot be the case, for if it were so, then any incorrect instruction is rendered harmless by the court's general instruction (supra.) to a jury.

Such an error is particularly evident where, as here, a mixed verdict and a lesser verdict (i.e. lesser included offense verdict) show the weakness of the prosecution's case (e.g. People v. Epps (1981) 122 Cal.App.3d 691, 698 - jury verdict showed only "selective belief in the evidence", errors in the admission of evidence were prejudicial under the standard of People v. Watson (standard is more generous to the state than Chapman). See also People v. Washington (1958) 168 Cal.App.2d 833, 846).

Certiorari is necessary to ensure uniformity in the application of the appropriate standard of review.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



\_\_\_\_\_  
STEVEN G. PATTEN, Pro Se

Date: JUNE 13, 2019

DECLARATION OF SERVICE

I, Steven G. Patten, declare under the penalty of perjury that:

I'm the Petitioner, proceeding pro se to the foregoing cause of action;

I'm over the age of 18 years;

My state prison address is PO Box 2349, Blythe, CA, 92226-2349;

On JUNE 13, 2019, I did serve the foregoing (1) PETITION FOR WRIT OF CERTIORARI, (2) MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS on:

CALIFORNIA ATTORNEY GENERAL  
300 S. Spring St.  
Los Angeles, CA 90013  
OF ATTORNEYS FOR RESPONDENT

by placing a true copy thereof in a sealed envelope, with first class postage ~~paid~~ paid thereon, for mailing via the prison's legal mail system at my place of incarceration: CHUCKAWALLA VALLEY ST. PRISON, 19025 WILEY'S WELL ROAD, BLYTHE, CA, 92225.

I further say that on JUNE 13, 2019, I did deliver the original of the aforesaid pleadings, in the same manner as service, to those same prison officials, to be mailed via the prison's legal mail system to: CLERK, U.S. SUPREME COURT, WASHINGTON DC, 20543-0001. As such, the aforesaid pleadings should be deemed filed as of the aforesaid date, per U.S. Supreme Court Rule 29.2.

Executed on JUNE 13, 2019, at Blythe, California.

  
STEVEN G. PATTEN  
Declarant

APPENDIX COVER PAGE

A

DESCRIPTION OF THIS APPENDIX:

THE COURT OF APPEAL, SECOND APPELLATE DISTRICT DIVISION TWO  
STATE OF CALIFORNIA ON UNPUBLISHED OPINION ON 09/26/18  
AFFIRMED THE JUDGMENT (CASE NO. B281573)

NUMBER OF PAGES TO THIS APPENDIX: 29 PAGES.

JURISDICTION: UNITED STATES SUPREME COURT