No. 19-1303

IN THE

SUPREME COURT OF THE UNITED STATES

EARNEST C. WOODS II — PETITIONER
(Your Name)

vs.

R. BROOMFIELD, WARDEN (A) — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

CALIFORNIA SUPREME COURT NO. S258700
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

EARNEST CASSELL WOODS II
(Your Name)

SAN QUENTIN STATE PRISON
(Address)

SAN QUENTIN, CA 94974
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. DOES SENATE BILL 1437 ADDED SECTION 1170.95, WHICH PERMITS PERSONS CONVICTED OF MURDER UNDER THE NATURAL AND PROBABLE CONSEQUENCES THEORY TO PETITION IN THE SENTENCING COURT FOR VACATION OF THEIR CONVICTIONS AND RESENTENCING IF CERTAIN CONDITIONS WERE NOT MET?
2. IF THE CONVICTION FOR MURDER REQUIRES THAT A PERSON ACT WITH MALICE AFORETHOUGH. A PERSONS CULPABILITY OWN ACTIONS AND SUBJECTIVE MENS REA, IF THESE REQUIREMENTS WERE NOT MET, CAN THE ACTUAL KILLER PETITION THE COURT FOR VACATION OF THEIR CONVITIONS AN RESENTENCING?
3. DOES SENATE BILL 1437 APPLY TO SECOND DEGREE MURDER WITH IMPLIED MALICE?
4. DOES SENATE BILL 1437 APPLICATION COMPLIES WITH THE LEGISLATIVE INTENT IF IT DOES NOT INCLUDE IMPLIED MALICE?
5. DOES A DISABLED VETERAN HAVE A RIGHT TO KEP AND BARE ARMS IN SELF DEFENSE?
6. SINCE SB1437 IS RETROACTIVE, IS THE PERSONS OWN ACTIONS AND SUBJECTIVE MENS REA RETROACTIVE?
7. WOOD'S RECORD SHOWS THAT HIS ACTIONS AND SUBJECTIVE MENS REA WAS BASED ON HIS UNREASONABLE BELIEF IN SELF-DEFENSE THAT WAS NOT LEGALLY RECOGNIZED AT THE TIME OF TIRAL, IS IMPERFECT SELF DEFENSE NOW RETROACTIVE?

LIST OF PARTIES

■ All parties appear in the caption 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 as is follows:

RELATED CASES

In re Christians, 7 CAL 4th 768

In re Winship, 397 U.S. 364

People v. Flannel, 25 CAL. 3d 668

Reed v. Ross, 468 U.S. 1

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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[ ] is unpublished.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.

[X] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[ ] reported at STATE SUPREME COURT; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the COURT OF APPEALS, 4th Dist., NO. D075613 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.

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).

[X] For cases from **state courts**:

The date on which the highest state court decided my case was Dec. 11, 2019. A copy of that decision appears at Appendix A.

[ ] 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).

CONSTITUTIONAL AND STATUORY PROVISIONS INVOLVED

AMENDMENT I – RESTRICTIONS ON POWERS OF CONGRESS

Section 1 – Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

AMENDMENT II – RIGHT TO BEAR ARMS

Section 1 – A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

AMENDMENT V – CRIMINAL PROCEEDINGS AND CONDEMNATION OF PROPERTY

Section 1 - No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in case arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be take for public use without just compensation.

AMENDMENT VI – MODE OF TRIAL IN CRIMINAL PROCEEDINGS

Section 1 – In all criminal prosecutions, the accused 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 witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

AMENDMENT VIII – BAILS – FINES- PUNISHMENTS

Section 1 – Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT XIV – CITIZENSHIP, REPRESENTATION, AND PAYMENT OF PUBLIC DEBT

Section 1 – All persons 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 laws.

STATUTORY PROVISIONS

Senate Bill 1437 (STATS. 2018 Ch 1015) which amended the law governing application of the natural and probable consequences doctrine.

STATEMENT OF THE CASE

On January 1, 2019, the California Legislature enacted and the Governor Approved Senate Bill No. 1437 (STATS.2018,Ch.1015) which amended the law governing application of the natural and probable consequences doctrine as it relates to murders Senate Bill 1437 "Redefined Malice" in penal code 188. Now, to be convicted of murder, a principal must act with malice aforethought; malice can no longer be imputed to a person based solely on his participation in a crime. A persons culpability for murder must be premised upon that persons own actions and subjective mens rea.

Petitioner contends that he was convicted of second degree murder with implied malice under the natural and probable consequence doctrine in CALJIC. NO, 8,11(1983 rev) Woods argues that the trial court erred by instructing the jury on two alternative definitions of implied malice, permitted the prosecution to cross examine him for, uncharged misconduct and failed to reweigh the evidence after he requested it to reduce the conviction to manslaughter because his subjective mens rea was predicated on a claim the facts supported his unreasonable belief in self defense, People v. Woods, D006442.

On appeal, the court agreed the jury was erroneously instructed with CALJIC. NO, 8,11(1983 rev) (4th ed 1979) which was cast in disjunctive language and permitted jurors to find implied malice without necessarily finding a defendant subjectively appreciated the risk involved under the first alternative definition, the court refused to consider the subjective mens rea of People v. Flannel 25 Cal. 3d 668 based on California's response to the public out cry of Harvey Milk's death, Wood's defense was not legally recognized at the time of the trial, In re Christians, 7 Cal, 4th 768 and Reed v Ross, 468 U.S. 1, CALJIC no, 8.11 allowed the jury to convict without finding the requisite element of the offense, Keating v. Hood, 191 F.3d 1053 and relieved the state of the burden of proving the mens rea beyond a reasonable doubt, contradicts the presumption of innocence and invades the function of the jury, U.S. v. Gaudin, 515 U.S. 506, Sandstrom v. Montana, 442 U.S. 5) D and should receive retro active application, In re Winship, 397 U.S. 358. Senate Bill 1437 thus ensures that murder liability is not imposed on a person who did not act with implied or express malice, (STATS,2018,Ch.1015, 1 Subd. (f),(g).

STATEMENT OF THE CASE

The statues un-codified declaration of findings and intent reveals that in enacting the Senate Bill, the legislature was primarily concerned with making punishment commensurate with a defendant's individual culpability. The legislature stated, "There is a need for statutory changes to more equitably sentence offenders in accordance with their involvement in homicides, "and it is a bedrock principle of the law and of equity that a person should be of individual culpability. (STATS. 2018 Ch.1015, 1 Subds. (b)(d) "Reform is needed in California to limit convictions and subsequent sentencing so that the law of California fairly addresses the culpability of the individual and assists in the reduction of prison over crowding, which partially results from lengthy sentences that are not commensurate with the culpability of the individual."

Woods contends that his subjective mens rea was withheld by the prosecution at the time of the trial, (rptrs. 405-408) and on appeal, Brady v. Maryland, 373 U.S. at P. 87 which has resulted in governmental interference, Pace v. DiGuglielmo, 544 U.S. 408

The courts refusal to consider his "subjective mens rea" violated Woods's second amendment right to the carrying of an operable handgun outside his home for the lawful purpose of self-defense...which constitutes the "right to bear arms" Peruta v. Cnty. Of San Diego, 1375, ct, 1195.

Woods argues that his "subjective mens rea" of imperfect self defense doctrine had been "obfuscated by infrequent reference and inadequate elucidation" and thus before the trial in People v. Flannel had not become a general principle of law requiring a sua sponte instruction. More important for our present purpose, though, is Flannel's conclusion that in future cases, imperfect self-defense would be deemed to be so well established a doctrine that it should be considered a general principle for purposes of jury instructions. "Flannel at p. 682. Thus by 1987, the time of Woods's convictions, imperfect self-defense, was demonstrably and firmly established.

Woods contends that the courts has denied his First Amendment right of access to the courts in aspect to petition the government for redress of grievances, Bill Johnson's Rest. v. N. I. R.B., 401 U.S. 31 when the courts refused to consider his motions for expert witness that would have helped the courts to

determine the evidence of the disputed facts, Helling v. McKinney, 502 U.S. 903, evidence that impeaches the state's version of the case, U.S. v. Badgley, 473 U.S. 667, evidence of the coroner's autopsy report and medical record which were with held by the prosecution which shows Woods's innocence. It is appropriate when technical, scientific, or other specified knowledge will assist the Trier of fact to understand the evidence or decide a fact or issue, Levi v. Dept. of Corr, 2006 U.S. Dist. Lexis 18-795. Woods asked the court for expert Scott Roder, from the Forensic Animation Services, Thomas v. Cty. Of Columbus, 2016 U. S. dist, Lexis 36149 to reenact the withheld coroners autopsy report and medical reports. Both the prosecution and the defense may rely on the record of conviction or may offer new or additional evidence Penal Code 1170.95, Subd, (d)(3).) Woods argues that he was denied his new or additional evidence, and the court refused to rely on the record of People v. Woods, D006442.

Woods argues that the record shows that his case meets the exceptions and the legislative intent or section 1170.95 (g). Although he is the actual killer, both the prosecution and the defense simply contested the issue of Woods's "intent" at the time of the offense.

The court held that CALJIC No, 8.11 was erroneously revised and cast in disjunctive language in an attempt to follow the language of People v. Watson, 30 CAL, 3d 290.

Woods argues that CALJIC No, 8.11 and the language of the People v. Watson, is synonymous and analogous to the "residual clause" in Johnson v. U.S., 135 S, Ct, 2551. That "laws which prohibit the doing of things and provide a punishment for the violation should not have a double meaning." U.S. v. Reese, 92 U. S. 14. "The void-for-vagueness doctrine requires that a penal code/statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in manner that does not encourage arbitrary and discriminatory enforcement, Village of Hoffman v. Flipside, 455 U.S. 489.

The Attorney General conceded in the Respondents' Brief, "At best the instruction at issues here could be labeled an ambiguous" (p.11), In Johnson, the residual clause contained an alternative definition as well

as CALJIC No, 8.11. The Johnson court has acknowledged that the failure of "persistent efforts" ... to establish a standard can provide evidence of vagueness.

Woods argues that "the language of a long, line of cases, Watson, culminated a decades – long effort to interpret for the jury section, penal code 188's cryptic "abandoned and malignant heart" language, People v. Sedeno, 10 Cal. 3d 703, and People v. Poddar, 10 Cal.3d 750. People v. Sedeno, was disapproved the "unreasonable belief in self-defense" in People v. Flannel, 25 CAL. 3d 668, the premise of Woods's case. In People v. Phillips, "We observed that an instruction which relied on the term "abandoned and malignant heart"" invites confusion and unguided speculation, for it "could lead the jury to equate the malignant heart" with an evil disposition or a despicable character; the jury, then, in a closer case, may convict because it believes that the defendants is a "bad man," Phillips, 64 CAL. 2d at 587.

In, People v. Nieto Benitez, 4 Cal. 4th 91, "The fact that lawyers, judges, and others versed in the law may recognize Watson's equivalence does not mean that a lay juror necessarily will be able to do so. A problem could well arise in some cases because the language now set forth in CALJIC NO.8.11 and 8.31 is technical and abstract and hence less readily understood than the "high probability" of death language. The instructions might therefore cloud a juror's ability to discern whether the facts warrant a murder conviction especially because the jury would be faced with the certainty that death had occurred."

The Johnson court shown repeated attempts and repeated failures to craft a principled and objective standard out of the residual clause confirm it is hopeless intermittency.

Woods argues that the has shown the repeated failures to craft a principled and objective standard out of the jury instruction, CALJIC No.8.11 and Watson confirms it hopeless indeterminacy and shows that Watson's "high probability of death/natural consequences" standard this court set fourth for implied malice is synonymous and analogous to Johnson's residual clause.

Thus, Johnson's vagueness analysis turns on one main factor and two factors of lesser importance. The main factor is the intersection of risk and hypothetical facts. The less important factors are (1)

juxtaposition to enumerated felonies, inviting comparisons, and (2) repeated judicial failures to craft a principled and objective standard.

Woods argues that all three factors are abundantly present in CALJIC No.8.11 and in Watson's implied malice formulation and California's "inherently dangerous" felony murder rule unnatural probable consequence doctrine. "using an abstract approach to imagine facts that are then gauged for some threshold of risk amounts to an abstraction is unconstitutionally vague. He has also shown that the language in CALJIC No.8.11 implicates the residual clause in Johnson and that he was prejudiced because the disjunctive language allowed jurors to find implied malice without necessarily finding that he subjectively appreciated the risk involved finding that he subjectively appreciated the risk involved under the first alternative definition, which was reversed in People v. Dellinger, 247 Cal. Rptr.527, which has a double meaning violating Johnson in U.S. v. Reese.

Woods argues that the record shows that the court analysis was based on hypothetical facts, not the actual facts, "The defense forensic pathologist and the state's coroner both testified the downward path taken by the bullet in Stone's body was consistent with the possibility Stone was in a crouched position when he was shot." The Appellate court record shows that, "the jury still may have found given the emotion at the time of the shooting that Woods did not entertain the requisite subjective awareness "Accordingly, he asserts at a minimum he was entitled to have his theory before a properly instructed jury." "However, we are un-persuaded." (p.5,000068)

Woods argues that these facts show that the court analysis was based on hypothetical facts, not the actual facts; the actual facts were withheld by the court, Brady v. Maryland, 373 U.S. at 87. Woods was appointed counsel, Dacia A. Burz who he contends denied him effective assistance of counsel, U.S. v. Cronic, 466 U.S. 648 and Strickland v. Washington 466 U.S.668, she failed to raise CALJIC NO.8.11, the natural and probable consequence doctrine in CALJIC NO.8.11 and the unconstitutional language in People v. Watson, 30 Cal, 3d at 300. Counsel refused to ask for the "refusal" of appellate court judge, Judge Benke, J pursuant to 28 U.S.C.S. 455(b) which requires the disqualification of any justice in

circumstances where such a person has a personal bias or prejudice concerning a party or personal knowledge of "disputed evidentiary facts" concerning the proceeding.

Woods argues that Judge Benke, J should have "recused" himself because of his "impartiality," which covers both "interest and relationship" and "bias or prejudice" grounds which requires him to be evaluated on an objective basis, so that what matters is not the reality of bias or prejudice but its appearance. Litecky v. U.S., 510 U.S. 540.

Judge Benke, J. refused to review the "disputed evidentiary facts" that he personally ruled on in People v. Woods, D006442 when he ruled on this Senate Bill 1437 petition in People v. Woods, D075613.

Woods argues that the records shows "impartiality," the court failed to consider "disputed evidentiary facts" of the coroners; autopsy report and medical records that Woods asked that court for an expert witness from the forensic animation services that impeaches the states' theory of the case, U.S. v. Bagley, 473 U.S. 667 it shows "judicial misconduct" Microsoft v. U.S., 530 U.S. 1301 and shows the actual facts, that Woods acted to save his own life.

Woods contends that Judge Benke's ruling has resulted in governmental interference, that Senate Bill 1437 is retroactive to all murders, Pace v. DiGulgielmo, 544 U.S. 408, the court denied Woods the benefit of the presumption of innocence on the mental element of the crime, a constitutional violation, Morisete v. U.S., 342 U.S. 358 which shifted the burden of proof to Woods violating due process, In re Winship, 397 U.S. 358. That some objective factor external to the defense prevented Woods from bringing this claim earlier, it should be heard under the "cause and prejudice" standard, Murray v. Carrier, 477 U.S. 478. The court prevented Woods from presenting a complete defense, Conde v. Henry, 198 F. 3d 734 even though imperfect self defense was legally sound and the evidence made the defense applicable, Beardslee v. Woodford, 358 U.S. 546.

Woods argues that he has demonstrated the existence of "an agreement or meeting of the minds" to violate constitutional rights; United Steel Workers v. Phelps Dodge Corp, 864 F. 2d 1539, the courts, "by some concerted action" intended to accomplish some unlawful objective for the purpse of harming another

which results in damage, Gilbrook v. Cty of Westminster, 177 F. 3d 839, to be liable, each participant in the conspiracy need not know the exact details of the plan but each participant must at least share the common objective of the conspiracy, Franklin v. Fox, 312 F. 3d at 441, Woods has also demonstrated "continuity." The Racketeer Influenced and Corrupt Organization Act (RICO) 18 U.S.C. 1961-1968, which is Title IX of the Organized Crime Control Act of 1970 (OCCA) imposes criminal and civil liability upon persons who engage in certain "prohibited activities" each of which is defined to include, as a necessary element, proof of a "pattern of racketeering activity" 1962.

Woods contends that he has demonstrated that Judge Benke's ruling violated Senate 1437, 1170.95(STATS.Ch1015) (e) Reform is needed in California...which partially results from lengthy sentences that are not commensurate with the culpability of the individual. He has served over 34 years for second degree murder with implied malice which is grossly disproportionate to his 15 years to life sentence in light of his age at the time of the offense and his "culpability" of the crime, In re Palmer, 2019 Cal. App. LEXIS 314. His continued constructive custody constitutes cruel and unusual punishment under California Constitution, Art. 1 & 17 and the 8th Amendment, Miller v. Alabama, 567 Us. 460.

Woods argues that Judge Benke knows that Woods defense was not legally recognized at the time of trial, People v. Flannel, the prosecutor stated that Flannel, " It is not applicable" (rptr. 405-408, 000151-000155) and Benke ruled this (p. 5,00068) but became legally recognizable in In re Christians and now is retroactive through Senate Bill 1437, Judge Benke knew that Woods's defense was suppressed based on "prosecutor misconduct," that Woods's trial and appellate counsel never received the coroner's autopsy report, a Brady v. Maryland violation (000097-00196), which exonerates Woods because Juge Benke knew that the jury has found Woods not guilty of voluntary manslaughter and not guilty of involuntary manslaughter, the lesser included offenses, (00009-000010) the jury's intent to acquit should have been recognized, thus double jeopardy principles precluded retrial of implied malice, Green v. U.S., 355 U.S. 184.

Woods contends that Judge Benke's rulings are synonymous to the result of the 1961 trial of the Nazi masterminds Adolph Eichman, who has performed a heinous act under command of authority or is introducing an alibi concocted for the moment based on the psychological attitude induced by submission to authority. Woods has demonstrated how, under the right circumstances, people even judges, can become accomplices to horrendous acts of cruelty.

Woods argues that Judge Benke has misconstrued Senate Bill 1437, that the construing of Senate Bill 1437 and its amendments and well settled principles governing statutory interpretation. The court ruled that, "our rule is construing a statute is to ascertain the legislature's intent so as to effectuate the purpose of the law" People v. Conty, 32 Cal. 4th 1266. We select the construction that comports most closely with the apparent intent of the legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences, People v. Hagdon, 127 Cal. App. 4th 734. Senate Bill 1437 contains, "explicitly mandatory language," i.e. specific directives to the decision makers that if the regulations substantive predicates are present, a particular outcome must follow...Hewitt v. Helms, 459 U.S. 460. Woods argues that has refused to adhere to the mandatory language of (2018 SB1437, Ch.1015). That Judge Benke has denied Woods "the rights and privileges conferred by the constitution upon citizens because the rights and privileges do not apply to the negro race," Dred Scott v. Sanford, 60 U.S. (19 How.) The court is applying the principles of "separate but equal" Plessy v. Fergusan, 163 U.S. 537, denying Woods the equal opportunity of the law.

Woods reasserts that the courts have denied his first amendment right of access to the courts in aspect to petition the government for redress of grievances, Bill Johnson's Rest v. NLRB, as the Ninth Circuit denied his application for permission to file a second or successive habeas corpus petition in Woods v. Davis, 20-70122. His claim is that Senate Bill 1437 is a new rule review, that was previously unavailable; the factual predicate for the claim could not have been discovered previously through the exercise of due diligence, and the facts underlying the claim of imperfect self-defense, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for

constitutional error of CALJIC No.8.11, no reasonable fact finder would have found Woods guilty of second degree murder with implied malice.

Woods argues that he could not now be convicted of second degree murder because of changes made to Penal code 188 and 189, effective January 1, 2019 and (2018 1437, STATS. 1015).

Woods is asserting a backward looking denial of access claim seeking a remedy for a lost opportunity to present a legal claim, he has shown the loss of a non-frivolous or arguable claim that official acts frustrated his litigation, Christopher v. Hardbury, 536 U.S. 348, The Ninth Circuit court of appeal denied the petition without considering the "Legislative Intent" (2018 SB1437, Ch. 1015) of the new law.

Woods contends that he has shown that government interference has suppressed material evidence of the coroner's autopsy report that impeaches the state's case, U.S. v. Bagley, with letters from the trial and appellate counsel, People v. Woods, D075613, (rtrsc. 00094-000096). He has shown that his counsel refused to raise his defense of imperfect self-defense, People v. Flannel, (rptr. 000131-000132) denying him effective assistance of counsel, U.S. v. Cronic 466 U.S. 648.

Woods argues that governmental interference of retaliation against his First Amendment right when he took pictures and wrote and article for the San Diego voice and viewpoint newspaper, the black newspaper where he contracted work from regarding the exoneration of Saigon Penn, who was exonerated for self defense against the San Diego Police Department. He asserts that state actors took some adverse actions against him because of his protected conduct to publish pictures of police brutality. The refusal to consider Woods's culpability for murder which was premised upon his actions and subjective mens rea of imperfect self defense which rendered him incapable of entertaining malice, Taylor v. Sup. St. 24 Cal. 3d at p.889, violates the legislature intent in Senate Bill 1437 and is contrary to "explicitly mandatory language" in Penal Code 1170.95(g) Hewitt v. Helms, 459 U.S. 460. The adverse action "would chill a person of ordinary firmness" from engaging in First Amendment activities, Pinard v. Clatskanie School Dist., 467 F. 3d 755.

Woods could not now be convicted of second degree murder with implied malice because of changes made to penal codes 188 and 189 as the legislature has "redefined malice."

The Senate and appropriations committees recognized that Senate Bill 1437 would be costly (Sen. Rules Com. Off. Of Sen. Floor Analyses, 2017-2018 Reg. Sess.) May 29, 2018 and appropriated money of millions of dollars for court cost.

Woods argues that the courts have obtained the money and has "misappropriated government funds" through its judicial interpretation and misapplication of the "Legislative Intent" of Senate bill 1437 (STATS. 2018, Ch.1015).

REASON FOR GRANTING THE PETITION

Petitioner could not now be convicted of second degree murder because of changes made to penal code 188 and 189, Effective January 1, 2019 and (STATS. 1015) section 1(g) except as stated in subdivision (e) of section 189 of the penal code, "a conviction for murder requires that a person act with malice aforethought. A person's culpability for murder must be premised upon that person's own actions and subjective mens rea."

One appeal, People v. Woods, D006442, the court agreed that jury was erroneously instructed with CALJIC No.8.11(1983 rev.) (4th ed 1979) which was cast in disjunctive language and permitted jurors to find implied malice without necessarily finding a defendant subjectively appreciated the risk involved under the first alternative definition, CALJIC No,8,11 is apart of the natural and probable consequences doctrine, it prevented the requirement of malice afore thought and denied Woods's culpability which predicated with facts that support an unreasonable belief in self-defense claim and suppressed his own actions and subjective mens rea,

Petitioner contends that the legislative Intent" of Senate Bill 1437, the amendments to Penal Codes 188, 189 and the enactment of 1170.95(d) "it is a bedrock principle of the law and of equality that a person should be punished for his or her actions according to this or her own level of individual culpability."

Woods contends that his subjective mens rea rendered him incapable of entertaining malice, that he could not be charged with second degree murder after the enactment of SB 1437. His mens rea was based on imperfect self-defense; it was not legally recognized at the time of trial.

Woods argues that construing Senate Bill 1437 to apply to murder but not to implied malice murder would violate the equal protection guarantees contained in the federal and California constitutions, (U.S. Const. 14th Amend., & 1 CAL. Const. Art. I & 7 subd. (A), because courts should endeavor to construe statutes so as to avoid constitutional issues, Senate Bill 1437 should be interpreted to encompass second degree murder with implied malice. A statue must be construed, if reasonably possible, in a manner that avoids as serious constitutional question.

REASON FOR GRANTING THE PETITION

Woods argues that Senate Bill 1437 applies to all murders; he is similarly situated to persons convicted of murder. "The concept of equal protection recognizes that persons that persons who are similarly situated with respect to the law's legitimate purposes must be treated equally, for purposes of the law challenged. Woods was convicted under the natural and probable consequences doctrine in, CALJIC No.8.11. which was erroneously revised and cast in disjunctive language in an attempt to follow the language of People v. Watson, 30 CAL. 3d 290. The language of People v. Watson, is synonymous and analogous to the "residual clause" in Johnson v. U.S., 135 S. Ct. 2551, both contain an alternative definition and both had repeated attempts and repeated failures to craft a principled and objective standard which confirms their hopeless intermittency.

The Legislature enacted and the Governor approved Senate Bill No. 1437 (2017-2018 Reg. Sess.) (Senate Bill 1437) (STATS. 2018 Ch. 1015) which amended the law governing application of the natural and probable consequences doctrine as it relates to murder, senate bill 1437 affects the previous analysis of the instructional error claims in People v. Woods, D006442 and the court must reconsider the law as it stood at the time of trial and the two distinct forms of culpability in CALJIC No. 8.11(1983 rev.)(4th ed. 1979), the disjunctive language implements Johnson v. U.S. 135 S. Ct, 2551, "residual clause" it contained an alterative definition or a "double meaning" and the risk was not based on actual facts, but on hypothetical facts, it was based on People v. Watson, 30 CAL. 3d 290 which has repeated judicial failures to craft a principled and objective standard. .

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Earnest Cassell Woodall

Date: March 6, 2020