

No. _____

IN THE
Supreme Court of the United States

MABON DEMITRIC JAMES,

Petitioner,

v.

MARCUS POLLARD, WARDEN,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Was Mabon James convicted of the robbery of Marta Parfeta in violation of his Fourteenth Amendment due process rights despite constitutionally insufficient evidence, where, at the time of the alleged robbery, Parfeta (1) did not actually possess the stolen goods, (2) was not instructed by the goods' owner to intercede in their theft, and (3) while being the owner's good friend, did not otherwise have a codified special relationship with the goods' owner?

RELATED PROCEEDINGS

1. *People v. Mabon Demetric James*, Case No. FVI-1301842 (San Bernardino Super. Ct.), judgment entered October 18, 2013
2. *People v. Mabon Demetric James*, Case No. E059918 (Cal. Ct. App.), judgment entered April 14, 2015
3. *People v. James*, Case No. S226561 (Cal.), judgment entered July 15, 2015
4. *Mabon Demetric James v. Proma, Warden*, Case No. ED CV 15-1956-SJO (PLA) (C.D. Cal.), judgment entered June 22, 2017
5. *Mabon Demetric James v. Scott Kernan, CDCR Secretary*, Case No. 17-55977 (9th Cir.), judgment entered June 19, 2019

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**PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

OPINIONS BELOW

Petitioner Mabon Demetric James petitions for a writ of certiorari to review a judgment of the Ninth Circuit Court of Appeals. The Ninth Circuit’s memorandum affirming the district court’s final judgment denying habeas relief is unreported. (Petitioner’s Appendix (“Pet. App.”) 1-8.) The district court’s final judgment and its order accepting the magistrate judge’s report recommending the denial of relief and the dismissal of James’s habeas action with prejudice are unreported. (Pet. App. 9-21.)

The California Court of Appeal’s opinion affirming the state court judgment on direct appeal is unreported. (Pet. App. 23-38.) The California Supreme Court’s order denying James’s petition for review of the Court of Appeal’s opinion is unreported. (Pet. App. 22.)

JURISDICTION

The Ninth Circuit’s memorandum affirming the denial of habeas relief was filed on June 19, 2019. (Pet. App. 1.) The district court had jurisdiction under 28 U.S.C. §§ 2241 and 2254. The Ninth Circuit had jurisdiction pursuant to 28 U.S.C. §§ 1291 and 2253. This Court has jurisdiction under 28 U.S.C. § 1254(1). This petition is timely filed under Supreme Court Rule 13.1.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Fourteenth Amendment

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 the laws.

28 U.S.C. § 2254 (a), (d)

- (a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.
- (d) 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.

Cal. Penal Code § 211

Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.

Cal. Civ. Code § 50

Any necessary force may be used to protect from wrongful injury the person or property of oneself, or of a spouse, child, parent, or other relative, or member of one's family, or of a ward, servant, master, or guest.

STATEMENT OF THE CASE

A. Factual background

1. The prosecution's case

On June 20, 2013, at 6:00 p.m., Cassandra Smith and Marta Parfeta, who were friends and had been drinking together, drove in Smith's car to a liquor store in Adelanto, California. (Pet. App. 69-70, 73, 90-92, 100-01.) Parfeta stayed at the car while Smith went inside the store to purchase cigarettes, soda and vodka. (Pet. App. 74-75, 86, 91.) Smith could not recall whether James, who she knew through a neighbor and had drank with before, was drinking vodka with Parfeta in the car before Smith went in to the store. (Pet. App. 127-28, 152, 154.) Smith did recall that while she waited in line in the store, she gave James three dollars because he said his mother needed something to eat. (Pet. App. 152-53, 155-56.)

Smith returned to her car, placed her newly-purchased soda and vodka inside her car, put her wallet and new cigarettes in her purse, which was on the driver's side front floorboard, and walked to another car in the parking lot to talk with some "cute" guys. (Pet. App. 109-10, 133-34, 138, 156.) Parfeta walked over to where Smith was talking to the cute guys to see what Smith was doing, leaving the unlocked car unattended. (Pet. App. 76, 79, 94-95.)

Smith told Parfeta to return to the unlocked car, as her purse was in the car. (Pet. App. 79.) As Parfeta returned to the car, she saw James standing on the driver's side holding cigarettes Parfeta believed belonged to Smith. (Pet. App. 76-77, 80, 94-96.) Parfeta asked James to put the cigarettes back. (Pet. App. 81, 96.) James punched Parfeta in the face and walked away. (Pet. App. 81-82.) Parfeta called out to Smith. (Pet. App. 81, 113.)

Smith returned to the car and decided they should just go home. (Pet. App. 84, 111.) When she looked in her purse, however, she discovered that her wallet, money, cell phone and cigarettes had been removed. (Pet. App. 84, 111.) After borrowing a phone to call the police, and following James to see where he was going, the two had a confrontation and James shook her, knocked a phone out of her hand, and punched her. (Pet. App. 112-17.) James was in possession of a knife, but Parfeta never saw him with it. (Pet. App. 86, 171-72.)

Parfeta later identified James during a show-up and identified the items that the police had seized from him as belonging to Smith. (Pet. App. 88-89.) Smith also identified James during a post-detention show-up. (Pet. App. 130.) She testified

that the police returned her children's social security cards and her driver's license, credit cards, cigarette case and cell phone. (Pet. App. 130.)

2. The defense case

Trial counsel called no witnesses. (Pet. App. 187.) In closing, defense counsel argued, as relevant here, that Parfeta did not possess Smith's purse so could not be a victim of robbery. (Pet. App. 282.)

B. Procedural background

1. Proceedings in California state court

On August 29, 2013, a San Bernardino County Superior Court jury convicted James of two counts of second degree robbery (Cal. Penal Code § 211), and one count of dissuading a witness from reporting a crime (Cal. Penal Code § 136.1(b)(1)). (Pet. App. 343-45.) The jury found true the allegation that James personally used a deadly and dangerous weapon within the meaning of California Penal Code § 12022(b)(1). (Pet. App. 346.) James admitted that he had prior "strike" convictions within the meaning of California Penal Code §§ 667(b)-(i) and 1170.12(a)-(d), and had served prior prison terms within the meaning of California Penal Code § 667.5(b). (Pet. App. 323-329.) The trial court sentenced James to 91 years to life in state prison. (Pet. App. 332-33, 351-55.)

James appealed, and judgment was affirmed on April 14, 2015. (Pet. App. 23-38). James filed a petition for review which was summarily denied on July 15, 2015. (Pet. App. 22.)

2. Proceedings in federal court

James filed a timely federal habeas petition on September 23, 2015 and an amended petition on September 28, 2015. It was dismissed with prejudice on June 28, 2017. (Pet. App. 9.) A certificate of appealability was denied by the district court. On January 30, 2018, the Ninth Circuit granted James's request for a certificate of appealability. On June 19, 2019, the Ninth Circuit issued a memorandum affirming the district's court's denial of habeas relief and dismissal of James's habeas petition. (Pet. App. 1.)

REASONS FOR GRANTING THE WRIT

A. Legal standards applicable to a claim of insufficient evidence in violation of federal Due Process

"The Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *In re Winship*, 397 U.S. 358, 364 (1970). In *Jackson v. Virginia*, 443 U.S. 307 (1979), this Court held that "the relevant question is whether, after 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." 443 U.S. 307, 319 (1979), *overruled on other grounds by Schlup v. Delo*, 513 U.S. 298 (1995). The standard assumes that jurors "draw reasonable inferences from basic facts to ultimate facts." *Jackson*, 443 US. at 319. "[E]vidence is insufficient to support a verdict where mere speculation, rather than reasonable inference, supports the government's case" *United States v. Nevils*, 598 F.3d 1158, 1167 (9th Cir. 2010) (en banc) (citing *Juan H. v. Allen*, 408 F.3d

1262, 1277-79 (9th Cir. 2005)). A “reasonable’ inference is one that is supported by a chain of logic, rather than . . . mere speculation dressed up in the guise of evidence.” *Juan H.*, 408 F.3d at 1277. It is the province of the jury to “resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.” *Jackson*, 443 U.S. at 319. The “reviewing court must consider all of the evidence admitted at trial when considering a *Jackson* claim.” *McDaniel*, 558 U.S. 120, 131 (2010).

Concluding that there was insufficient evidence to support a conviction “is in effect a determination that the government’s case against the defendant was so lacking that the trial court should have entered a judgment of acquittal.”

McDaniel, 558 U.S. at 131 (quoting *Lockhart v. Nelson*, 488 U.S. 33, 39 (1988)).

Under *Jackson*, a federal habeas court determines sufficiency of the evidence in reference to the substantive elements of the criminal offense as defined by state law. *Jackson*, 443 U.S. at 324, n.16; *Juan H.*, 408 F.3d at 1275. However, when evaluating the sufficiency of the evidence, the court turns back to federal due process standards to determine whether the state court was objectively unreasonable in concluding that the evidence was sufficient in a given case.

Coleman v. Johnson, 566 U.S. 650 (2012) (per curiam); *Boyer v. Belleque*, 659 F.3d 957, 965 (9th Cir. 2011).

Moreover, on federal habeas review of an insufficient evidence claim, this Court must “apply the standards of *Jackson* with an additional layer of deference” under the ADEPA. *Juan H.*, 408 F.3d at 1274 (citing § 2254(d)).

B. There was insufficient evidence that Parfeta possessed Smith's belongings to sustain the robbery conviction in count one as to Parfeta

1. The California Court of Appeal's decision

Under California law, robbery is defined as “the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.” Cal. Penal Code § 211. An essential element of the crime of robbery is that property be taken from the possession of the victim. *People v. Nguyen*, 24 Cal.4th 756, 764 (2000). “Section 211 . . . limits victims of robbery to those persons in either actual or constructive possession of the property taken.” *Id.* “For constructive possession, courts have required that the alleged victim of a robbery have a ‘special relationship’ with the owner of the property such that the victim had authority or responsibility to protect the stolen property on behalf of the owner.” *People v. Scott*, 45 Cal.4th 743, 750 (2009) (citations omitted). “Constructive possession depends upon a special relationship with the owner of the property, not upon the motives of a person seeking to recover possession from a thief or burglar.” *Id.* (internal quotation and citation omitted). The California Supreme Court has also recognized the following as relationships that may invoke authority or duty to act regarding another's property: “wife, husband, child, parent, or other relative, or [a] member of one's family, or of a ward, servant, master, or guest.” *Id.* at 754 (quoting Cal. Civ. Code § 50). However, evidence that shows no more than a “neighbor and good citizen seeking to catch a criminal” is insufficient to support a robbery conviction. *Id.* at 750-51.

Here, the California Court of Appeal held that the evidence that Parfeta possessed Smith's property at the time James removed it from the vehicle was sufficient to support the robbery conviction as to Parfeta. Specifically, that there was evidence of a "special relationship" which gave rise to Parfeta's constructive possession of Smith's belongings:

[Smith], upon realizing that [Parfeta] was no longer at her car, guarding her possessions in the car, told [Parfeta] to return to the car, impliedly telling her to do precisely that. That established the special relationship between [Parfeta] and [Smith] concerning the property. The fact that [Parfeta] felt it "her place" to demand of [James] that he return [Smith's] cigarettes further established that such a relationship existed, which gave [Parfeta] "standing" to demand the return.

(Pet. App. 30.)

The magistrate judge concluded the California Court of Appeal did not unreasonably apply the *Jackson* standard, citing the fact that Parfeta and Smith were "best friends." (Pet. App. 19-20.) The Ninth Circuit also held that the California Court of Appeal did not unreasonably apply *Jackson*, stating:

Here, the owner specifically told the victim, who was her close friend, "[m]y car's unlocked. My purse is in there. You need to go back to the car." This statement showed the "obvious implication" that owner wanted the victim "to help safeguard [her] property" and provided implied authority for her to do so. Viewing this evidence "in the light most favorable to the prosecution," a rational factfinder could find that the victim had constructive possession of the property. *Lewis*, 497 U.S. at 781. Thus the state court's decision was not "objectively unreasonable" under AEDPA. *See Howard v. Clark*, 608 F.3d 563, 568 (9th Cir. 2010); *Harrington v. Richter*, 562 U.S. 86, 103 (2011) (explaining that to find a state court's decision objectively unreasonable on AEDPA review, that decision must have been "so lacking in justification that

there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement”).

(Pet. App. 3-4.) Both federal courts erred, and James should have been granted habeas relief because there was not sufficient evidence of the special relationship necessary to establish constructive possession.

2. No rational jury could have found the evidence sufficient

Looking at the evidence that was presented, no reasonable juror could have found that Parfeta had possession of Smith’s items. The evidence showed that Parfeta was not at Smith’s car at the time the items were removed and did not have actual possession of the property. Rather, Parfeta was away from the vehicle when Smith told her to return to the car. (Pet. App. 79.) As she walked back towards the car, Parfeta noticed James standing near the vehicle with cigarettes in his hand. She “asked him if he put Cassandra’s cigarettes back.” (Pet. App. 81.) James then punched her and walked away. This evidence did not establish possession or the creation of a “special relationship” to support constructive possession.

While the state court made much of the fact that Parfeta felt it was “her place” to demand return of the property, this evidence showed no more than that Parfeta was a good friend to Smith, not the existence of a “special relationship.” (Pet. App. 30.) Indeed, Parfeta did not testify that she felt it was “her place” to demand return of the property. When this evidence is considered in the context of all the admitted evidence, it failed to satisfy the requirements of due process. Absent evidence that Smith deputized Parfeta to guard her purse, Parfeta’s act of “ask[ing James] if he put Cassandra’s cigarettes back” is simply too speculative to

support the California Court of Appeal’s conclusory assertion that a “special relationship” had been established. (Pet. App. 30, 79-81); *see Sykes v. Superior Court*, 30 Cal. App. 4th 479, 484 (1994).

“Constructive possession depends upon a special relationship with the owner of the property, not upon the motives of a person seeking to recover possession from a thief or burglar.” *Sykes*, 30 Cal. App. 4th at 484. It does not matter if someone reluctantly seeks the return of property or eagerly demands it. Parfeta may be a good citizen or a good friend but that does nothing to prove the establishment or existence of a “special relationship.” Instead, Parfeta’s role was similar to the “bystanders” in *Sykes* and *People v. Galoia*, 31 Cal. App. 4th 595 (1994).

In *Sykes*, a security guard employed by a business across the street from a music store, ordered to stop and chased down someone who had stolen a saxophone from the music store. *Sykes*, 30 Cal.App.4th at 481. The appellate court concluded that the security guard “had no special obligation to protect the goods of [the music store] . . . The fact [that the security guard] was employed as a guard for another business did not make him an agent of [the music store].” *Id.* at 484. Here, even if Parfeta “felt it was her place” to ask James to return the cigarettes, like the security guard in *Sykes*, that did not transform her in to an agent of Smith. The fact that Parfeta and Smith were friends also is not legally sufficient to prove a “special relationship” existed whereby Parfeta is guardian of all property belonging to Smith. Neither demanding the return of the cigarettes nor being a friend to Smith transforms Parfeta into an agent of Smith.

Similarly, in *Goloia*, a convenience store “customer” left without paying for the merchandise he had taken. *Galoia*, 31 Cal. App. 4th at 596, 597. A man who was in the store retrieving money from the video games he owned there, chased the “customer” and was struck by the latter’s companion. *Id.* at 597. The Court of Appeal found that the man was not acting under the “implicit authorization” of the store, even though he was tending to his video games in the store, and was followed outside by a store employee. *Id.* at 596-97. Here, Parfeta had no more authority than the video game owner. She was not present when the items were taken, the items did not belong to her, and Smith’s direction to return to the car was ambiguous at best. Therefore, like in *Goloia*, there was no relationship to establish that Parfeta constructively possessed the property.

The inadequacy of the evidence of possession here is analogous to *Lucero v. Holland*, 902 F.3d 979 (9th Cir. 2018). In *Lucero*, the Ninth Circuit found that there was no evidence a “reasonable juror could view as directly or circumstantially proving, beyond a reasonable doubt, Lucero’s conviction for possession of, custody of, or control of a shank in jail, and that any conclusion go the contrary was so clearly without support in the record as to be unreasonable.” *Id.* at 991. This was so despite expert testimony that, as a gang member, Lucero was “supposed to have access to a weapon at all times,” and the state court’s conclusion that a shank was used in the attack on Lucero’s cellmate and that all three defendants had constructive possession of the weapon. *Id.* at 992. In discussing the insufficiency of this evidence, the court found that, under California law, access to an item is not

the same as having the right to control it. *Id.* at 993 (citing *People v. Sifuentes*, 195 Cal. App 4th 1410, 1419 n.6 (2011)). “For example, an employee may have access to another coworker’s desk, but it does not logically follow that the employee gains the right to exercise control over the items on the desk, such as key or a wallet.” *Id.* Evidence that Lucero may have had access to a shank was insufficient to find that he had control over it and thus had possession. “In short, the gang expert’s testimony provided no evidence that Lucero personally had *any* control *at any point* of a shank.” *Id.* (emphasis in original).

The same is true here--evidence that Parfeta had access to Smith’s possessions was not sufficient to establish that Parfeta had the right to control those items. Smith directed her to return to the car, but that did not give Parfeta unrestricted access to, or control of, the items in the car. *See Sifuentes*, 195 Cal. App. 4th at 1419 n.6 (“Access to an item, but with unspecified restrictions, is not the same as having the right to control it.”). Absent such evidence, an essential element of the offense was missing.

Even applying AEDPA deference, courts have reversed the denial of federal habeas in cases where no rational jury could have found an essential element of the offense. *See, e.g., Chien v. Shumsky*, 373 F.3d 978, 986-88, 993 (9th Cir. 2004) (en banc) (granting habeas relief where petitioner demonstrated that no reasonable jury could have found that false statements given under oath were material to an underlying court case), *cert. denied*, 543 U.S. 956; *Juan H.*, 408 F.3d at 1275 (granting habeas relief to petitioner for conviction for first-degree murder as an

aider and abettor because of insufficient evidence of petitioner's knowledge of his brother's unlawful purpose or intent to kill the victim), *cert. denied*, 546 U.S. 1137. This Court has similarly held that a writ of habeas corpus was warranted based upon a claim of insufficient evidence where the state presented no evidence on a material element of the offense—viz., that the defendant lacked a permit to operate a hazardous waste facility. *Fiore v. White*, 531 U.S. 225, 226, 229 (2001) (per curiam). In the present case, the California Court of Appeal stretched the meager evidence supporting possession into the realm of speculation. Finding such insufficient evidence sufficient to support James's conviction for robbery of Parfeta was an unreasonable application of *Jackson* and *Winship*.

Accordingly, James's conviction for robbery with respect to Marta Parfeta must be reversed for insufficient evidence and retrial is barred by the double jeopardy clause of the Fifth Amendment to the U.S. Constitution. *Burks v. United States*, 437 U.S. 1, 16-18 (1978) (holding that when a defendant's conviction is reversed on the grounds that the evidence was insufficient to sustain the jury's verdict, the Double Jeopardy Clause bars retrial on the same charge); *see Lockhart*, 488 U.S. at 39.

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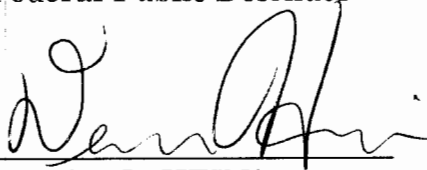
CONCLUSION

For all the foregoing reasons, James submits that the petition for a writ of certiorari should be granted.

Respectfully submitted,

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DATED: September 16, 2019

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