

No. **19-7142**

Supreme Court, U.S.
FILED

DEC 12 2019

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IN THE
SUPREME COURT OF THE UNITED STATES

GENERAL P. HAYMON,
Petitioner,

v.

MICHAEL JOHNSON,
Respondent.

On Petition for a *Writ of Certiorari* to the Superior Court of California,
County of San Joaquin, Appellate Division

PETITION FOR A WRIT OF CERTIORARI

General P. Haymon, B.A. (Econ.), Ed.S. (Spec.Ed.): Self-Represented
Lifetime Licensed CA College Instructor of Marketing & Distribution
Founder, CEO, Overseer, and Sr. Pastor: God's Church in Christ Jesus
Decorated Veteran of a Foreign War & Former U.S. Army Specialist
Two-Time Nominee, Mayor of Oakland, California (1990 & 1994)
Senior Research Socio-Economist in Private Practice since 1977
47003 Mission Falls Court, Suite 206, Fremont, CA 94539
(510) 219-7773 generalhaymon@gmail.com

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QUESTION PRESENTED FOR REVIEW

In the U.S. Supreme Court ruling in *Dred Scott v. John F.A. Sandford* (1857) 60 U.S. 393, 407, the Court held that descendants of imported Africans, cannot be, nor were ever intended to be, citizens under the U.S. Constitution; and the plaintiff, Dred Scott, was without standing to file a suit:

“...In the opinion of the Court, ‘they had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white man, either in social or political relations; and so far inferior, they had no rights which the white man was bound to respect; and that the negro might justly and lawfully be reduced to slavery for his benefit. He was bought and sold and treated as an ordinary article of merchandise and traffic, whenever a profit could be made by it. This opinion was at that time fixed and universal in the civilized portion of the white race...’”

Given the above-mentioned 19th century U.S. Supreme Court’s ruling and opinion in the *Dred Scott* case, the question presented to Chief Justice John Roberts and the associate justices of the U.S. Supreme Court is: “Whether a state [California] can deprive a descendant of enslaved people in the U.S. [who is also a Black Man born in California; and a decorated U.S. Army Veteran during the Vietnam-Era; and a senior citizen; and a father of both adult sons and adult daughters, and a grandfather of five; and a retired teacher in 22 California public high schools since 1977; and a California licensed **lifetime** college instructor of marketing and distribution since 1981; and a California certified nonprofit corporation president, overseer and senior pastor,] the right to a jury trial under the Seventh (7th) Amendment to the U.S. Constitution?”

In other words, “Are Black Americans guaranteed **identical** rights under the *Constitution of the United States of America* as White Americans?”

PARTIES TO THE PROCEEDING

Pursuant to Rule 12.6, the names of all parties appear in the caption of the case on the cover page.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully requests that Chief Justice John Roberts and the Associate Justices of this Honorable Supreme Court of the United States of America, grant a Writ of Certiorari to review the opinions below.

OPINIONS BELOW

The opinion and subsequent order of the Appellate Division of the Superior Court of California, County of San Joaquin, the highest state court to review the merits, appears at Appendix A to the petition and is unpublished.

The judgment of the Superior Court of California, County of San Joaquin, appears at Appendix B to the petition and is unpublished.

JURISDICTION

The Third Appellate District of the Court of Appeal of the State of California, the highest state court authorized to grant discretionary review of this case, denied the Appellant's *Petition for Transfer* on September 13, 2019. A copy of that order appears at Appendix C.

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

FEDERAL AND STATE CONSTITUTIONAL PROVISIONS

CONSTITUTION OF THE UNITED STATES OF AMERICA, Preamble

“We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.”

UNITED STATES CONSTITUTION, Amendment VII

The Seventh Amendment to the United States Constitution is part of the Bill of Rights. This amendment codifies the right to a jury trial in certain civil cases and inhibits courts from overturning a jury’s findings of fact. While the Seventh Amendment’s provision for jury trials in civil cases has never been incorporated (applied to the states) almost every state, including California, voluntarily complies with this requirement. The prohibition of overturning a jury’s finding of fact applies to federal cases, state cases involving federal law, and to review of state cases by federal courts. *United States v. Wonson* (1812) established the *historical test*, in which the federal government wished to retry the facts of a civil case it had lost against Samuel Wonson. Supreme Court Justice Joseph Story ruled for Wonson, stating that to retry the facts of the case would violate the Seventh Amendment. In *Beacon Theatres, Inc.* the Court held that the litigants are entitled to have a jury resolve the disputed common facts. Adoption of the Seventh Amendment reflected a concern that the right to jury trial should be expressly contained in the Constitution. See *Colgrove v. Battin*, 413 U.S. 149 (1973).

FEDERAL AND STATE CONSTITUTIONAL PROVISIONS

The Re-Examination Clause of the Seventh Amendment states: “In suits at common law, ... no fact tried by jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.” This clause forbids any court from reexamining or overturning any factual determinations made by a jury guaranteeing that facts decided by that jury cannot be reexamined at a later date. Exceptions to this prohibition are possible if it is later determined that legal errors were made or evidence submitted was insufficient in some way. In such cases the reexamination is conducted by another jury so that the decision is still left in the hands of the people.

This clause applies only to cases where private rights—rights that exist between private citizens—have been violated. The Re-Examination Clause applies not only to federal courts, but also to “a case tried before a jury in a state court and brought to the Supreme Court on appeal.” Common law precluded the judge from himself entering a verdict; a new trial, with a new jury was the only course permissible.

CALIFORNIA STATE CONSTITUTION, Article I (Declaration of Rights), Section 16

Trial by jury is an inviolate right and shall be secured to all, but in a civil cause three-fourths of the jury may render a verdict...In civil causes the jury shall consist of 12 persons or a lesser number agreed on by the parties in open court...

STATEMENT OF THE CASE, FACTS, AND PROCEDURAL HISTORY

In December, 2016, Bishop General Haymon, a Black U.S. Army veteran, lifetime college instructor, and senior pastor, signed a lease with William Anderson, a fellow veteran, and moved into 529 N. Monroe Street, Apt.8, Stockton, CA.

Fourteen months later, Petitioner received a letter dated February 10, 2018, stating: “The apartment building has changed ownership. We acquired the building last month from Bill Anderson. My name is Michael Johnson and I will be your new Property Manager. It is our intent to continue renovations and area beautification in order to keep the building enjoyable place...If there are any issues or concerns, please feel free to contact me...”

Five months later, Petitioner e-mailed a letter dated July 11, 2018, stating: “I have complained to the property manager [Michael Johnson] on numerous occasions during the past 60 days with respect to the garbage issue...the combined building’s trash and garbage overflows before the refuse collectors remove it each week...Therefore, I am forced to utilize the “repair and deduct” remedy. The rent for August, 2018 will be reduced by \$85.00. If the landlord’s breach of warranty of habitability is not mitigated, the rent will continue to be reduced, proportionately, pursuant to existing law...”

But, on September 13, 2018, Chad Wood, the attorney for Michael Johnson, **filed** an Unlawful Detainer Complaint against General Haymon for an alleged past-due rent of \$85.00 for August, 2018.

So, Petitioner (Defendant) **filed** a timely Answer—Unlawful Detainer claiming “the \$85.00 was deducted using the *repair and deduct* remedy for breach of warranty of habitability.”

STATEMENT OF THE FACTS AND PROCEDURAL HISTORY

Four of the affirmative defenses listed by the petitioner in the Answer were: (1) Plaintiff has breached the warranty to provide habitable premises; (2) Defendant made needed repairs and properly deducted the cost from the rent, and plaintiff did not give proper credit; (3) Plaintiff served defendant with the notice to quit or filed the complaint to retaliate against the defendant; (4) By serving defendant with the notice to quit or filing the complaint, plaintiff is arbitrarily discriminating against the defendant in violation of the Constitution or the laws of the United States or California.

During the Pre-Trial Settlement Conference, Petitioner rejected the offer to ‘move out’ made by the attorney for the plaintiff in the presence of a judge, who said it was a ‘good deal’

But, on September 17, 2018, Petitioner (Defendant) **filed** a request for a JURY TRIAL.

The Jury Trial commenced on October 16, 2018; and the jury reached a verdict on October 18, 2018.

Judge Roger Ross said to the jury “...I want to thank you for your attentiveness. The case went a little bit longer than two days, but that’s not unusual in these types of things. I really do appreciate you coming in and taking the time now. Yes, Miss ****?” (RT 211)

The Unidentified Juror asked, “Will we ever know the final results of this case?” (RT 211)

Judge Roger Ross responded, “...Again, I don’t know that we’re going to conclude anything right now, but I just wanted to talk to the attorneys. Based on the verdict that came in, the one that was significant was number 10, indicating that there was retaliation.” (RT 213)

STATEMENT OF THE FACTS AND PROCEDURAL HISTORY

Petitioner argued to the Court that "...the rights that we have in this country should not be based upon color of the skin, should not be based upon socioeconomic status. It should be based upon the rule of law, and part of that law is the fact that **the decision of the jury is important, it's fundamental to this country. Otherwise we don't need to have a Constitution...The jury system works.** If this was not something that works, I wouldn't have had faith in it. We wouldn't have gone through all this trouble..." (RT 214-215)

But, eleven days later, Judge Roger Ross ignored the facts found by the jury and secretly reexamined the jurors' verdict of **landlord retaliation**. Then, on October 29, 2018, Judge Roger Ross signed the judgment that states "**AFTER COURT TRIAL. The jury was waived. The court considered the evidence.**" "Judgment is for plaintiff, Michael Johnson and against defendant, General Haymon. Plaintiff is entitled to possession of the premises and defendant must pay plaintiff past-due rent of \$85.00 and holdover damages of \$1,353.14 for a total judgment of \$1,438.14. The lease is forfeited."

So, on November 1, 2018, Petitioner (Defendant) **filed** a *Notice of Appeal* in the Appellate Division of the Superior Court of California, County of San Joaquin.

But, on November 15, 2018, Judge Roger Ross **granted** a *Writ of Possession* of the apartment [where Petitioner resided since December 8, 2016 (nearly two years)] to the landlord.

Then, on November 28, 2018, at 1:54 pm, Petitioner (Appellant) **filed** an *Ex Parte Application for Temporary Stay of Execution of Judgment Pending Appeal* addressed to "The Honorable Roger Ross, Superior Court Trial Judge" attached to a *Declaration in Support of*

STATEMENT OF THE FACTS AND PROCEDURAL HISTORY

Ex Parte Application for Temporary Stay of Execution of Judgment Pending Appeal. But, on November 29, 2018 at 8:37 am, Petitioner was informed by the clerk that the “Stay was **denied!**”

So, Petitioner (Appellant) **filed** a *Petition for an Extraordinary Writ for Stay of Execution of Judgment Pending Appeal* in the Appellate Division on November 29, 2018.

But, Judge George Abdallah, Presiding Judge of the Appellate Division, **denied** Petitioner’s *Petition for an Extraordinary Writ for Stay of Execution of Judgment Pending Appeal* on November 30, 2018 [filed on December 3, 2018].

So, on February 22, 2019, Petitioner **filed** *Appellant’s Opening Brief* in the Appellate Division, addressed to “The Honorable George J. Abdallah, Presiding Judge...”

Petitioner **received** the *Respondent’s Brief* from Michael Johnson’s attorney, Chad J. Wood, Tracy, CA, dated March 21, 2019, by mail.

Then, on April 10, 2019, Petitioner **filed** the *Appellant’s Reply Brief* which also stated: “ORAL ARGUMENT REQUESTED”

On July 3, 2019, Presiding Judge George J. Abdallah **filed** the unanimous *Opinion* of the [3-Judge Panel] Appellate Division, stating “No prejudice occurred. Accordingly, IT IS HEREBY ORDERED that the judgment [of Judge Roger Ross] be AFFIRMED.

So, on July 17, 2019, Petitioner (Appellant) **filed** an Application for Certification for Transfer to the Court of Appeal.

But, on July 23, 2019, an Order was signed by Presiding Judge George J. Abdallah stating: “The application is hereby **DENIED.**”

STATEMENT OF THE FACTS AND PROCEDURAL HISTORY (Final)

So, on August 16, 2019, Petitioner **filed** a *Petition for Transfer of Appellate Division Case to the California Court of Appeal, Third Appellate District, Sacramento*.

But, on September 13, 2019, Acting P.J. Robie of The Court of Appeal, Third Appellate District, **denied** the *Petition for Transfer of Appellate Division Case to the California Court of Appeal, Third Appellate District, Sacramento*.

REASONS FOR GRANTING THE PETITION

“The question is: ‘How to make the rule of law stick?’ Constitutions are written around the globe with protections for civil rights, judicial review...and much more. But, when it comes to implementing these constitutional provisions, the rule of law often cannot compete with the rule of power, privilege, greed.” Taylor Reveley, Former President, College of William and Mary, July 31, 2019 [courtesy C-SPAN]

“Most lawyers don’t cite the Preamble. It should be cited because one of it’s mandates is to establish justice...The end mission is always justice. If there is a question, if there is a doubt, if there is a bent, it must be toward justice...As Federalist Papers 78 says, the Constitution is the fundamental law; and judges shall regard it as such. But, it also says in terms of judicial review, it is the ‘*proper and peculiar* province of the courts’ to interpret the law. The power of judicial review is entrusted to the courts by the people...The intention of the will of the people should always prevail over the intention of its agents. Self-governance shall always prevail...You must always prefer the Constitution over the statute...Make it inclusive.” Chief Judge Roger Gregory, U.S. Court of Appeals, Fourth Circuit, July 31, 2019 [courtesy C-SPAN]

Therefore, the jury represents the will of the people in determining the facts of the case presented to them. Historically, the colonists clearly favored the jury as the principal decision maker. When the colonial jury ignored law in order to limit the government’s reach, it was exercising ‘constitutional judgment’. The jury has a unique “constitutional competence.”

But, such actions by Judge Roger Ross constituted usurpation of the jury’s basic fact-finding function. Moreover, the Appellate Division affirmed, supported, and encouraged judges to reexamine jury verdicts, in violation of the Seventh Amendment of the U.S. Constitution.

REASONS FOR GRANTING THE PETITION

This case raises **federal questions** involving the State of California **violating a Black man's right a jury trial under the California Constitution which resulted in the denial of equal protection under the Fourteenth Amendment to the U.S. Constitution. Equal Protection ensures the rights and equality of all citizens**. Moreover, the Supreme Court's interpretations of constitutional law regarding the rights of individuals as illustrated in this case could have both national significance and precedential value and are binding on all state courts.

Title 42 U.S.C. Section 1983 (2000) provides a cause of action for any citizen deprived of any rights, privileges, or immunities secured by the Constitution and laws by a person acting under color of any statute, ordinance, regulation, custom, or usage of any State or Territory or the District of Columbia. Congress enacted Section 1983 in 1871 as a means to enforce the provisions of the Fourteenth Amendment. Congress created the statute to provide citizens with a civil action against any misuse of power by a state actor given by authority of the state.

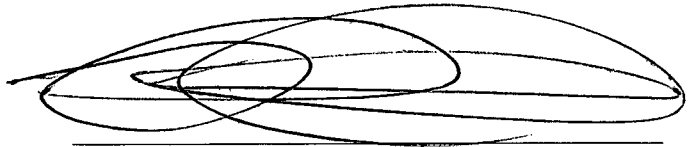
Strict scrutiny is the most stringent standard of judicial review used by U.S. courts. The opinion of the Appellate Division is tangible evidence that the strict scrutiny standard was not applied in this case. It is part of the hierarchy of standards that courts use to determine which is weightier, a constitutional right or principle or the government's interest against observance of the principle. The first and most notable case in which the U.S. Supreme Court applied the strict scrutiny standard and found the government's action was valid was *Korematsu v. United States*, 323 U.S. 214 (1944), in which the Court upheld the exclusion of Japanese Americans from designated areas during World War II. **The Court has consistently found that classifications based on race require strict scrutiny review.**

CONCLUSION

Accordingly, for the above-mentioned reasons, and in the interests of establishing justice for all, pursuant to the **Preamble of the U.S. CONSTITUTION**, this *Petition for a Writ of Certiorari* should be granted by Chief Justice John Roberts and the Associate Justices of this Honorable and Supreme Court of the United States of America.

DATED: December 11, 2019

Respectfully submitted,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

Bishop General Haymon, Ed.S., Petitioner