

No.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2021

MICHAEL EUGENE WYATT, Petitioner,

v.

JOHN SUTTON, Respondent

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

PETITION FOR WRIT OF *CERTIORARI*

MARY E. POUGIALES
1 Blackfield Drive, # 111
Tiburon, CA 94920
(415) 847-6379

Counsel of record for Petitioner

QUESTION PRESENTED

Did the Ninth Circuit improperly disregard and/or overlook United State Supreme Court and Ninth Circuit precedent that required it to defer to California state law to define each element of the offense, specifically in this case what kind of evidence California law requires to prove premeditation and deliberation?

LIST OF PARTIES

The Solicitor General of the United States and petitioner Michael Eugene Wyatt are the parties to the case.

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL and STATUTORY PROVISIONS	2
STATEMENT OF THE CASE	3
Procedural History	3
Evidence at Trial	5
REASONS FOR GRANTING THE PETITION	7
ARGUMENT.....	9
The Ninth Circuit has failed to follow mandates from this Court, and its own directly applicable precedent governing habeas review for sufficiency of the evidence of first-degree murder.	
CONCLUSION	16

INDEX TO THE APPENDICES

APPENDIX A: Ninth Circuit Court of Appeals Order Denying
Petition for Rehearing and Rehearing *En Banc*, *Wyatt v. Sutton*, Case No.
20-15203, filed February 1, 2021.

APPENDIX B: Unpublished Opinion of the Ninth Circuit Court of Appeals
affirming denial of habeas petition, *Wyatt v. Sutton*, Case No. 20-15203,
filed December 24, 2020.

APPENDIX C: United States District Court, Northern District of California, Order Denying Petition for Writ of Habeas Corpus, *Wyatt v. Sutton*, Case No. 18-cv-06588, filed December 5, 2019.

APPENDIX D: California Court of Appeal, First Appellate District, Opinion affirming Judgment and Sentence, *People v. Wyatt*, Case No. A144872, filed April 5, 2018.

PROOF OF SERVICE

TABLE OF AUTHORITIES

CASES	PAGE
<i>Boyer v. Belleque</i> , 659 F.3d 957 (9 th Cir. 2011)	14, 15
<i>Chien v. Shumsky</i> , 373 F.3d 978 (9 th Cir. 2004).....	15
<i>Colman v. Johnson</i> , 566 U.S. 650 (2012).....	5, 10, 11
<i>Garcia v. Carey</i> , 395 F.3d 1099 (9 th Cir. 2005).....	15
<i>Jackson v. Virginia</i> , 443 U.S. 30 (1979).....	9, 10, 14
<i>MacDonald v. Hedgepeth</i> , 907 F.3d 1212 (9 th Cir. 2018).....	14
<i>Marshall v. Rodgers</i> , 133 S.Ct. 1446 (2003).....	10
<i>Marshall v. Taylor</i> , 395 F.3d 1058 (9 th Cir. 2005).....	10
<i>People v. Anderson</i> , 70 Cal.2d 15 (1968).....	10, 11, 12, 13
<i>People v. Boatman</i> , 221 Cal.App.4th 1253 (2014)	12, 13
<i>People v. Craig</i> , 49 Cal.2d 313 (1957)	13
<i>People v. Granados</i> , 49 Cal.2d 490 (1957)	13
<i>People v. Motherwell</i> , 195 Cal.App.2d 545 (1961)	13
<i>People v. Perez</i> , 2 Cal.4th 1117 (1992)	13
<i>People v. Rowland</i> , 134 Cal.App.3d 1 (1982)	13
<i>United States v. Gay</i> , 967 F.2d 32 (9th Cir. 1992).....	10

STATUTES

United States Code, Title 28

§ 1254(1)	2
-----------------	---

§ 1291.....	2
-------------	---

California Penal Code

§ 187	3
-------------	---

CONSTITUTIONAL PROVISION

Fifth Amendment	2, 16
-----------------------	-------

Sixth Amendment	2, 16
-----------------------	-------

Fourteenth Amendment	2, 16
----------------------------	-------

SUPREME COURT RULES

Rule 10 (c)	7
-------------------	---

PETITION FOR A WRIT OF CERTIORARI

Petitioner Michael Wyatt respectfully petitions for a writ of *certiorari* to review the judgment of the United States Court of Appeals for the Ninth Circuit that affirmed the order of the district court denying his federal habeas petition. He filed the petition following his conviction for first-degree murder in California state court, a judgment that was affirmed on direct appeal by the California Court of Appeal. He is in the custody of the California Department of Corrections serving a 56-year prison term.

OPINIONS BELOW

The Ninth Circuit affirmed the district court's order denying petitioner's habeas petition in an unpublished Memorandum Opinion issued December 24, 2020. *Wyatt v. Sutton*, Case No. 20-15203. Attached as Appendix B. The issue certified for appeal was whether constitutionally sufficient evidence of premeditation and deliberation supported the first-degree murder verdict. Petitioner's Petition for Rehearing and Rehearing *En Banc* was denied on February 1, 2021. Attached as Appendix A.

The United States District Court, Northern District of California, denied petitioner's underlying habeas petition in *Wyatt v. Sutton*, Case No. 18-cv-06588, order filed December 5, 2019. The petition raised several issues, one of which was the sufficiency of the evidence supporting the first-degree murder conviction, specifically the elements of premeditation and deliberation. Attached as Appendix C. The district court certified that single issue for appeal to the Ninth Circuit.

The California Court of Appeal Opinion on direct appeal affirmed petitioner's conviction for first-degree murder in an unpublished decision following jury trial in the

Superior Court of Alameda County. *People v. Wyatt*, Case No. A144872 filed April 5, 2018. Attached as Appendix D. The state appellate court rejected petitioner's claim that, *inter alia*, there was insufficient evidence of premeditation and deliberation to support a first-degree murder conviction.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The Ninth Circuit had jurisdiction pursuant to 28 U.S.C. § 1291. The Ninth Circuit denied petitioner's request for rehearing and rehearing *en banc* on February 1, 2021.

CONSTITUTIONAL and STATUTORY PROVISIONS

No person shall be . . . deprived of life, liberty, or property, without due process of law[.]

United States Constitution, Am. 5.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury[.]

United States Constitution, Am. 6.

No State shall . . . 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.

United States Constitution, Am. 14.

STATEMENT OF THE CASE

I. Procedural History

Petitioner was charged by Information filed July 24, 2013, in Alameda County Superior Court with a single count of murder, in violation of Penal Code § 187(a). A jury convicted petitioner of first-degree murder, and found that he used a deadly weapon. Petitioner was sentenced to a total term of 56 years in prison.

He appealed his conviction to the state court of appeal raising multiple claims of error, including the insufficiency of the evidence of premeditation and deliberation. App. D at p. 5. The California Court of Appeal rejected the claim:

Based on the evidence of motive, the manner of the killing, and Wyatt's conduct after Nobles' death, there was substantial evidence that the murder of Nobles was perpetrated with premeditation and deliberation – even without consideration of [the 1995 homicide].

App. D at p. 7.

This opinion identified the motive as “to get Nobles to stop” his “annoying” behavior; it described the manner of killing as “multiple stab wounds to the chest.” App. D at p. 6. The state court concluded that these two factors alone provided sufficient evidence that petitioner “had weighed

the considerations and decided to end Nobles' life." App. D at p. 7.

In addition, the state court concluded that it was reasonable for the jury to have drawn the inference that petitioner's "callousness toward Nobles' body" after the homicide proved "not only his state of mind after the stabbing, but his state of mind toward Nobles before and during the stabbing, consistent with his deliberative decision to end Nobles' life." App. D at p7. It approved the admission of a 17-year-old homicide and petitioner's false statements to the police days after the Nobles' homicide as probative of petitioner's state of mind before and during the killing. App. D at p. 10-11.

Petitioner's underlying federal habeas petition was denied by the district court on December 5, 2019, with a certification for appeal of the single issue of whether sufficient evidence supported the verdict of first -degree murder. App. C. On review, the Ninth Circuit affirmed the district court's denial of the because "[t]he state court's decision was a reasonable application of the law and based on a reasonable determination of the facts[.]" App. B at p. 2. The opinion cited AEDPA's double deference standard, to find the state court's "evidentiary inferences" were not "objectively unreasonable." *Id.* The Court explicitly stated that it would not consider California case law

relevant to the elements of premeditation and deliberation but would instead conduct its evidentiary review as “purely a matter of federal law,” citing *Colman v. Johnson*, 566 U.S. 650, 655 (2012). *Id.*

II. The Evidence at Trial¹

James Nobles died from multiple stab wounds inflicted by petitioner. An autopsy revealed several blunt force injuries, including a bruise to the right eye, a laceration on the right side of the nose, and a bruise on the right arm. There were superficial incised wounds on Nobles’ face, neck, and lower right leg, as well as six deeper stab wounds – two in the chest, one in the neck, one near the jawline, and two in the leg. The two chest wounds penetrated his left lung, causing nearly instantaneous death. App. D at p. 2.

Petitioner, the only eyewitness, at first denied any knowledge of Nobles’ whereabouts, but eventually confessed and said he killed Nobles during a fight. App. D at pp. 2-4. He told police that he became friends with Nobles, who moved in with him in mid-2010, and who was paying the rent on the apartment. Nobles suffered from schizophrenia and sometimes would “go off the deep end” but eventually came back around and was normally “a gentle, easy-goin’ guy [who] would not harm a fly.” He

¹ This summary is drawn from Appendix D at pp. 1-5.

claimed that Nobles “flipped out,” that he tried and failed to subdue Nobles and “the next thing you know, it just got outta hand and I lost it.”

Two weeks before the homicide, Nobles started acting out every day with constant movement or incessant babbling. In the early morning of Sunday, February 5, 2012, Nobles became upset about a text petitioner had received and started “acting real bad.” Petitioner’s requests of Nobles to calm down, were ineffective. The behavior disrupted petitioner’s sleep throughout the night. When petitioner woke on Sunday morning, Nobles seemed fine but the bizarre behavior began again during the day.

“Words, there was a lot of movements . . . constant – he would get up and then he would write on the floor and then he would kick. It was just a lot of – I – I mean it may seem petty. You know, but it was just a lot of irritation. Just – just talking and you know and just moving around. . . . It just didn’t – it just didn’t let up.”

Things “came to boil” that afternoon. Petitioner duct-taped Nobles’ hands in front of his body, and put duct tape over his mouth. He also put Nobles in a corner and placed a mattress over him. Nobles readily freed himself with help from petitioner, but then “started back at his theatrics again.” When Nobles refused to leave, petitioner grabbed him by the

shoulders and shook him; Nobles began kicking and hitting back. Petitioner then grabbed a container of clear blue, non-toxic cleaning liquid and threw the liquid in Nobles's face. When Nobles continued struggling, petitioner punched him in the chin and the right eye. Nobles went to the bathroom and returned "tryin' to swing and tryin' to grab." Petitioner grabbed a small "folding-knife" and, in "panic" and "rage," stabbed Nobles twice in the chest. Petitioner heard a "poof" as the air exited Nobles' lungs. Nobles fell down and rapidly died. Petitioner's attempts at chest compressions were ineffective because of the punctured lung.

Petitioner did not consider calling 911. Roughly 12 hours later, under cover of darkness, petitioner moved Nobles' body to the nearby BART tracks. He told police that he threw the knife down a nearby gutter, where they were able to retrieve it, and also threw out some clothing.

Petitioner admitted to the officers that he "went too far" and stated repeatedly that Nobles did not deserve what happened to him. When asked if he premeditated the homicide, he responded "No, no, no, I didn't."

REASONS FOR GRANTING THE PETITION

This Petition presents an important question of federal law pursuant to Supreme Court Rule 10 (c) that affects all similarly-situated defendants

accused by the state of first-degree murder. The Ninth Circuit failed to apply this Court’s well-established precedents that required, first, that in reviewing a challenge to the sufficiency of the evidence it defer to California’s statutory and case law to define the elements of first-degree murder, here deliberation and premeditation.; and, second, that it decide the issue consistently with its own applicable precedent. These are critically important principles of federal law that were disregarded here. Only review by this Court can correct this injustice.

Fundamental fairness calls for this Court to grant *certiorari* in order to ensure that petitioner is provided the same due process protections that this Court and the Ninth Circuit itself have historically mandated and that other similarly situated defendants convicted of first-degree murder have enjoyed, and because of which many similarly-situated defendants have obtained habeas relief that reduced their convictions from first- to second-degree murder.

Without this Court’s grant of review, this prosecution will end with petitioner condemned to serve out an unduly lengthy prison term knowing that he was convicted on the basis of evidence that both California and Ninth Circuit precedents have rejected repeatedly as being insufficient to prove

deliberation and premeditation. He will be in prison long past the time of similarly-situated defendants. This is manifestly unjust.

ARGUMENT

The Ninth Circuit has failed to follow mandates from this Court, and its own directly applicable precedent governing habeas review for sufficiency of the evidence of first-degree murder.

The central flaw in the Ninth Circuit’s ruling that calls for review and reversal by this Court is its conclusion that California’s case law – which would have compelled granting of the writ – was irrelevant to its review. This Court and multiple Ninth Circuit cases explicitly hold directly to the contrary. The Ninth Circuit relied on exactly the same trial evidence that the district court and the California Court of Appeal relied on, evidence that California’s jurisprudence, discussed at length below, has long and soundly rejected as inadequate *as a matter of law* to prove premeditation or deliberation.

Clearly established authority of this Court required the Ninth Circuit to review the claim of insufficient evidence “with explicit reference to the substantive elements of the criminal offense *as defined by state law*,” not in a selective disregard of it. (Emphasis added.) *Jackson v. Virginia*, 443 U.S.

30, 32, n. 6 (1979). This Court reiterated that mandate in the very case the Ninth Circuit inaccurately cited to justify its failure to follow that clear mandate here, *Colman v. Johnson*, 566 U.S. 650, 655 (2012): “Under *Jackson* federal courts must look to state law for ‘the substantive elements of the criminal offense.’”

This Court has also directed the Ninth Circuit to follow its law-of-the-circuit and “look to circuit precedent to ascertain whether it has already held that the particular point in issue is clearly established by Supreme Court precedent.” *Marshall v. Rodgers*, 133 S.Ct. 1446, 1450 (2003). When a prior three-judge panel has held that a principle is clearly established Supreme Court law, we are bound by the earlier panel’s decision.” *Marshall v. Taylor*, 395 F.3d 1058, 1061, n. 15 (9th Cir. 2005); *United States v. Gay*, 967 F.2d 322, 327 (9th Cir. 1992).

The California Supreme Court more than five decades ago established the framework for evaluating sufficiency of the evidence offered to prove the elements of premeditation and deliberation. *People v. Anderson*, 70 Cal.2d 15, 25 (1968). *Anderson* identified the following as key characteristics: first and foremost, planning activity (which every reviewing court agreed did not exist here); second, motive if and when combined with

evidence of either planning or a manner of killing than is more than “mere unconsidered or rash impulse hastily execute”; and, third, a manner of killing “so particular and exacting that the defendant must have intentionally killed according to a `preconceived design' to take his victim's life in a particular way for a `reason' which the jury can reasonably infer from facts of [planning or motive].” *Anderson, supra* 26-27. [While later state court decisions describe *Anderson* as “guidance,” they have without exception all hewed to *Anderson*'s analytical structure, as the Ninth Circuit recognized here.]

The Ninth Circuit purported to follow *Anderson* in this case, but then explicitly elected to disregard the actual holding of *Anderson*, as well as its progeny, as well as its own Circuit precedent. This necessarily brought it into direct conflict with this Court's clearly established precedent in *Jackson* and *Colman, supra*.

These were the Ninth Circuit's findings of determinative fact, all of which the district court and the California Court of Appeal relied on also, and all of which have been long-rejected by California's case law as inadequate to meet the state definition of the elements of premeditation and deliberation:

Motive: petitioner engaged in an “increasingly violent attempt to quiet his . . . roommate.” App. B at p. 2.

Manner of killing: petitioner’s “decision to grab and then plunge, a knife into Nobles’s chest, multiple times” was “a method sufficiently particular and exacting” to prove a “preconceived design” to kill. App. B at pp. 2. [Note: *Anderson* found such evidence relevant only to proving intent to kill, and inadequate to prove the additional first-degree elements of premeditation or deliberation.]

Post-murder conduct: after the murder petitioner failed to seek medical aid for the victim, waited 12 hours to dispose of the body under cover of darkness, and lied to police and family about the victim’s whereabouts. App. B at p. 2.

Prior killing: petitioner, 17 years earlier, shot and killed an acquaintance in a dispute over a debt.

Under the following California case law, all of that evidence, except the 17-year-old homicide, is inherently inadequate to support the inference of more than intent to kill, and should have been excluded from the calculus:

The passage of time in which to theoretically reflect is inadequate.

People v. Boatman, 221 Cal.App.4th 1253, 1270 (2014).

Annoyance, anger, or any other emotional mood motivating the violent act. Such evidence instead establishes the *lack* of deliberation and premeditation. *Boatman, supra* at 1268.

An attack such as occurred here, explosive and inflicting both severe and superficial wounds, proves no more than a “mere unconsidered or rash impulse.” *Anderson, supra* at 25 27; *People v. Perez*, 2 Cal.4th 1117, 1228 (1992).

An explosive attack, rather than the kind of cold, calculated attack indicative of premeditation and deliberation, is inadequate. *Anderson, supra* at 30.

The brutality of an attack or the infliction of multiple acts of violence, is inadequate. *Anderson, supra* at 25.

Post hoc attempts to cover up the killing, or lying to family or police after the killing is irrelevant and inadequate. *Anderson, supra* at 32, 33-34; *People v. Granados*, 49 Cal.2d 490, 497-498 (1957)

Mistreatment of the victim’s body after death is inadequate. *Anderson, supra* at 21-22; *People v. Craig*, 49 Cal.2d 313 (1957), 316; *People v. Motherwell*, 195 Cal.App.2d 545 (1961); *People v. Rowland*, 134 Cal.App.3d 1 (1982).

Consistently with this Court’s mandate to look to state law to define the elements of an offense, and consistently deferring to California state case law for that purpose regarding the elements of premeditation and deliberation, the Ninth Circuit has previously on habeas review reduced first-degree murder convictions to second degree on far more egregious circumstances than those that existed here. The Circuit’s own jurisprudence Routinely looked to the many California cases discussed above that clarified what evidence simply cannot support a reasonable inference of premeditation and deliberation. Several Ninth Circuit panels have hewed to the state court’s case law for that purpose, as *Jackson* mandated, including:

MacDonald v. Hedgepeth, 907 F.3d 1212, 1218, 1222 n 4 (9th Cir. 2018), reversing the district court’s denial of a writ citing *Jackson* and applying California case law to define elements and to evaluate relevance and sufficiency of evidence.

Boyer v. Belleque, 659 F.3d 957, 965 (9th Cir. 2011), analyzed the challenged element “as it has been defined and interpreted by the state of Oregon,” holding that Oregon’s state law “clearly establishes the principle” to be applied in analyzing the constitutional sufficiency of evidence.

Garcia v. Carey, 395 F.3d 1099, 1104 (9th Cir. 2005) looked to state case law to determine “the *kind* of evidence that can support a finding of the requisite [element].” (Emphasis added.). Here, also, petitioner challenged the kind of evidence admitted at his trial as being insufficient as a matter of law under the state court’s definition. The panel erred in failing to follow this precedent.

Chien v. Shumsky, 373 F.3d 978, 984-985 (9th Cir. 2004) properly asked what the Ninth Circuit failed to ask here: “how California case law courts would evaluate the facts for sufficiency.”

Thus, a well-trod path pointed the Ninth Circuit to California’s case law to define and interpret the elements of premeditation and deliberation. They set out a principle firmly embedded in its own precedent: similar facts should lead to same results *Boyer, supra* at 968. Where, as here, the state’s courts have determined that that there are kinds of evidence that simply cannot rationally support an inference of premeditation and deliberation, the convictions have been reduced to second degree. That should have happened here. Only review by this Court will ensure that it does.

CONCLUSION

For these reasons, Michael Eugene Wyatt respectfully requests that this Court grant *certiorari* to review the merits of his claim that he was wrongly denied his Fifth, Sixth, and Fourteenth Amendment rights to be convicted of first-degree murder only upon constitutionally sufficient evidence of premeditation and deliberation.

Dated: February 20, 2021

Respectfully submitted,

/s/. Mary E. Pougiales
MARY E. POUGLIALES
Counsel for Petitioner
Michael Eugene Wyatt