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In the Supreme Court of the United States

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PAUL WESLEY BAKER,

Petitioner,

v.

STATE OF CALIFORNIA,

Respondent.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE  
SUPREME COURT OF CALIFORNIA

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BRIEF IN OPPOSITION

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CAPITAL CASE  
QUESTION PRESENTED

Whether the California Supreme Court properly upheld the trial court's determination that the prosecutor did not discriminate on the basis of race in exercising peremptory challenges against two prospective jurors.

DIRECTLY RELATED PROCEEDINGS

California Supreme Court:

*People v. Baker*, No. S170280 (Feb. 1, 2020) (this case below).

*In re Baker*, No. S266263 (habeas petition filed Dec. 23, 2020).

California Superior Court, Los Angeles County:

*People v. Baker*, No. LA045977 (Jan. 16, 2009) (judgment of death).

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## STATEMENT

1. A California jury convicted petitioner Paul Wesley Baker of the first-degree murder and rape of Judy Palmer, whose body was found in the desert after she had ended a romantic relationship with Baker. Pet. App. 1-2. The jury also found, as special circumstances making the murder punishable by the death penalty, that Baker had murdered Palmer in the commission of rape and burglary. *Id.* The same jury convicted Baker of forcible rape and sodomy against two other women. *Id.* at 2. Following a separate penalty-phase trial, the jury returned a verdict of death. *Id.* at 1.

During jury selection at Baker's trial, the prosecutor exercised peremptory challenges to excuse the only two Black prospective jurors—R.T. and T.P.—in the venire. Pet. App. 31-34. After the challenge of T.P., Baker raised an objection under *Batson v. Kentucky*, 476 U.S. 79 (1986), and California's similar state-law precedent, *People v. Wheeler*, 22 Cal. 3d 258 (1978). *Id.* at 34. The court asked the prosecutor to state her reasons for excusing the jurors. *Id.* at 34-35. The prosecutor explained that she had challenged both prospective jurors because they expressed that it would be difficult for them to impose a death sentence and because R.T.'s "body language" indicated that she was "extremely unreceptive both to the prosecution and the idea of having to impose the death penalty." *Id.* at 35. The prosecutor also noted that Baker and all of the crime victims were "non-Hispanic Caucasian[s]." *Id.* at 35-36. Defense counsel did not dispute the prosecutor's statements. *Id.* Although the court found a prima facie case of

racial discrimination based on the number of excused Black prospective jurors, *id.* at 36, it denied the *Batson* motion, *id.* at 37. It found the prosecutor credible, stated that “there are no racial issues in this case that I am aware of,” and determined that the prosecutor’s observations were “based on race neutral reasons that are proper challenges.” *Id.* at 36.

2. On direct appeal, the California Supreme Court unanimously affirmed Baker’s convictions and death sentence. Pet. App. 1, 96. Relevant here, after reviewing this Court’s precedents as well as its own jurisprudence, the court rejected Baker’s *Batson* claim. *Id.* at 31-51. It viewed the trial court’s ruling as meriting deference because the trial court had made a “sincere and reasoned” effort to evaluate the prosecutor’s stated justifications—as evidenced by the trial court’s attentiveness to the pattern of strikes and to the jurors’ demeanor and jury-questionnaire responses. *Id.* at 40-45. The California Supreme Court reasoned that substantial evidence supported the trial court’s conclusion that the excusal of the prospective jurors was not racially motivated. *Id.* at 39-45, 45-51.

In a concurring opinion, Justice Liu recognized that the majority opinion had cited indications in the record supporting the inference that the trial court had considered the jurors’ demeanor and their jury-questionnaire responses. See Pet. App. 2 (Liu, J., concurring).<sup>1</sup> And he explained that, “even upon an

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<sup>1</sup> The petition appendix is not sequentially numbered; citations in this paragraph are to the page numbers of Justice Liu’s concurring opinion, which follows the opinion of the California Supreme Court in the appendix.

independent review of the record, I would conclude that defendant has not shown by a preponderance of the evidence that the prosecutor's reasons for striking the two prospective jurors were pretextual." *Id.* He wrote separately to reiterate his position that appellate courts should "require the trial court to affirmatively demonstrate on the record that it has made a sincere and reasoned effort to evaluate the prosecutor's explanations for a contested strike." *Id.* at 1.

### ARGUMENT

Petitioner has not established that the California Supreme Court erred in analyzing his *Batson* claim, or that its decision conflicts with the decision of any other court. There is no basis for further review.

1. The Equal Protection Clause forbids a prosecutor from challenging potential jurors solely on the basis of their race. *See Batson v. Kentucky*, 476 U.S. 79, 89 (1986); *Miller-El v. Dretke*, 545 U.S. 231, 239 (2005). "[O]nce the opponent of a peremptory challenge has made out a prima facie case of racial discrimination (step one), the burden of production shifts to the proponent of the strike to come forward with a race-neutral explanation (step two). If a race-neutral explanation is tendered, the trial court must then decide (step three) whether the opponent of the strike has proved purposeful racial discrimination." *Purkett v. Elem*, 514 U.S. 765, 767 (1995) (*per curiam*) (citing *Hernandez v. New York*, 500 U.S. 352, 360 (1991) (plurality opinion)). "In deciding if the defendant has carried his burden of persuasion, a court must undertake 'a sensitive inquiry into such circumstantial and direct evidence of



intent as may be available.'" *Batson*, 476 U.S. at 93 (quoting *Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 266 (1977)). Beyond those basic rules, *Batson* "decline[d] . . . to formulate particular procedures to be followed upon a defendant's timely objection to a prosecutor's challenges. 476 U.S. at 99. Instead, "[i]t remains for the trial courts to develop rules, without unnecessary disruption of the jury selection process, to permit legitimate and well-founded objections to the use of peremptory challenges as a mask for race prejudice." *Powers v. Ohio*, 499 U.S. 400, 416 (1991).

2. Baker's primary contention is that the California Supreme Court erred in concluding that the trial court had undertaken a "sincere and reasoned effort to evaluate the genuineness of the prosecutor's stated reasons." Pet. 10; see Pet. App. 39. Baker does not appear to argue that the state court's "sincere and reasoned effort" inquiry departs from *Batson's* "sensitive inquiry"; instead, he challenges how that inquiry has been "applied" "in practice," including to the particular facts of his case. *Id.* at 7; see *id.* at 13. But the state court's application of that inquiry to the circumstances of Baker's case did not contravene any constitutional requirement or precedent.

The California Supreme Court first determined that the trial court had been attentive to *Batson's* concerns from the outset, including by taking note of the "pattern of strikes" and the personal characteristics of the two cited jurors even before Baker raised his *Batson* objection. Pet. App. 40. When the prosecutor explained her reasons for the strikes, the trial court took care to

evaluate whether the asserted reasons were “race neutral” and supported “proper peremptory challenges.” *Id.* The California Supreme Court further observed that, on the question of the prosecutor’s credibility, the trial court took account of the prosecutor’s undisputed observation that Baker and the crime victims all were white—while also correctly explaining that the fact of their common racial characteristic did not automatically negate potential racial discrimination. *Id.* at 40-41, 43-44.

In addition, the California Supreme Court reasonably concluded that, by explicitly finding the prosecutor’s explanation to be “credible,” the trial court had considered whether her reasons were supported by the record. Pet. App. 41. The trial court’s observations with respect to earlier for-cause juror challenges indicated that it had been “attentive to the demeanor of the prospective jurors and knowledgeable about their questionnaires during jury selection.” *Id.* That demonstration of attentiveness supports a reasonable inference that “the trial court had in mind the prospective jurors’ demeanor and questionnaire answers when it evaluated the prosecutor’s strikes of Prospective Jurors R.T. and T.P.” *Id.* at 41-42. And, as this Court has recognized, deference is appropriate when the trial court finds that an attorney credibly relied on a juror’s demeanor when exercising the strike. *See Snyder v. Louisiana*, 552 U.S. 472, 479 (2008); *see also Rice v. Collins*, 546 U.S. 333, 339-341 (2006) (trial court properly credited prosecutor’s explanation in striking a prospective juror for “eye-rolling” that the court did not see).

The California Supreme Court properly concluded that the trial court was not required to do more, “at least where, as here, the defense disputed neither the accuracy of the prosecutor’s observations or the sincerity of her explanation.” Pet. App. 41. Under these circumstances, the state supreme court properly deferred to the trial court’s credibility determination. *See, e.g., Batson*, 476 U.S. at 98 n.21 (“[s]ince the trial judge’s findings in the context under consideration here largely will turn on evaluation of credibility, a reviewing court ordinarily should give those findings great deference.”).

Baker emphasizes (Pet. 9) the California Supreme Court’s observation that the trial court “could have done more to make a fuller record.” Pet. App. 42. And he takes issue (Pet. 9-10) with the state court’s conclusion that “[t]he law . . . does not require a court in all circumstances to articulate and dissect at length the proffered nondiscriminatory reasons for a strike.” *Id.* at 42-43. But the approach taken by the court below is consistent with this Court’s *Batson* framework, which does not require a trial court to “make detailed findings.” *E.g., Miller-El v. Cockrell*, 537 U.S. 322, 347 (2003); *see also Wainwright v. Witt*, 469 U.S. 412, 430 (1985) (upholding a state trial court’s dismissal of a juror for cause and noting “that the judge was [not] required to announce for the record his conclusion that [the] juror . . . was biased, or his reasoning” because the finding was evident from the record). Because “[t]he record in this case reveals that the trial court made a sincere and reasoned

effort to evaluate the justifications proffered, . . . deference is appropriate[.]” Pet. App. 43.

2. Baker focuses particular attention on the prosecutor’s justification for striking prospective juror R.T. Pet. 8-13. He first argues that the prosecutor’s explanation—that R.T. had expressed that it would be difficult for her to impose the death penalty—was not supported by substantial evidence and that the California Supreme Court did not conduct an adequate inquiry into it. *Id.* at 10-11. As that court noted, however, when R.T. was asked whether she could announce a death verdict, she replied, “I really don’t know. [¶] I don’t know if I’d be comfortable or if I’d be scared. [¶] I don’t know.” Pet. App. 45. The prosecutor described R.T.’s “body language” as “extremely unreceptive both to the prosecution and the idea of having to impose the death penalty.” *Id.* While acknowledging that, on a cold record, the prosecutor’s characterization of R.T.’s answers appeared to be “somewhat strong,” the California Supreme Court properly concluded that the combination of R.T.’s words and the description of her demeanor did not establish that the prosecutor’s explanation was pretextual. *Id.* at 46.

Baker cites *Snyder v. Louisiana*, 552 U.S. at 479, arguing that the lack of a description of R.T.’s demeanor on the record prevented the court from conducting a proper inquiry into pretext. Pet. 11-12. But *Snyder* explained that, when the reason for a peremptory challenge “invoke[s] a juror’s demeanor,” the trial court’s “firsthand observations” are of great importance.

*Snyder*, 552 U.S. at 477; *see also Thaler v. Haynes*, 559 U.S. 43, 49 (2010) (*per curiam*) (judges may accept demeanor-based rationales even “in the absence of a personal recollection of the juror’s demeanor”). As the California Supreme Court recognized, the trial court here “was in a position to observe not only R.T.’s demeanor, but also the demeanor of the prosecutor herself, whom the court found credible.” Pet. App. 45. And defense counsel did not dispute the prosecutor’s characterization of the juror’s demeanor. *Id.* at 41.

On this record, it was not error for the California Supreme Court to defer to the trial court’s finding with respect to R.T. (or T.P.). In any event, as the concurring opinion below recognized, even an independent review of the record would not support the conclusion that the prosecutor’s reasons for striking the two prospective jurors were pretextual. Pet. App. 2 (Liu, J., concurring).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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