23-584

No. _____

In The
Supreme Court of the United States

ROBERT R. SNYDER,

Petitioner,

vs.

The State of California,

Respondent.

On Petition For Writ Of Certiorari To The California Court of Appeal

PETITION FOR A WRIT OF CERTIORARI

ROBERT R. SNYDER, In Pro Se
D.O.C. No. AC9136,
Salinas Valley S.P.
P.O. Box 1050
Soledad, CA 93960

QUESTIONS PRESENTED

- Should California Penal Code § 12022.53 be struck down and voided as vague and standardless legislation? Does petitioner's conviction serve as an example of an *arbitrary enforcement*?

- Did California Supreme Court fail to incorporate *Rosemond*'s substantive holding into their jurisprudence?

- Does the act as currently interpreted, deprive defendants of accurate fact-finding regarding the principle of armed-intent?

- Was § 12022.53 subd.(e) originally intended to be a penalty provision or limitation clause?

- In this case, would a 25 years-to-life consecutive enhancement for a first-time felon/youth offender seem to violate the Eight Amendment to the U. S. Constitution?

- With the harsh penalty alongside the lack of sentencing triad in mind, shouldn't that indicate § 12022.53's application be limited to the most extreme case facts and circumstances?

- Would the simple fact of several legislative amendments, by itself raise questions about how the act's original intent compares to its current usage?

- Considering the heavy consecutive penalty behind § 12022.53, might it make homeowners hesitant to use a firearm in defense of their property? In that sense, does the act create a Second Amendment issue?

- Does the fact of § 12022.53's identical punishment for both GBI and death—two very different crimes—without any explanation, raise concerns regarding the act's nature and purpose?

PARTIES TO THE PROCEEDING

Petitioner: Robert R. Snyder was the petitioner in the lower court, the Court of Appeal, Second Appellate District, Division Four and the Supreme Court of California.

Respondent:

California Attorney General: Robert Bonta

RELATED CASES

There are no Related Cases.

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF CONTENTS – Continued

APPENDIX TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

FEDERAL CASES

FEDERAL STATUTES/RULES

STATE CASES

CALIFORNIA STATE STATUTES

PETITION FOR WRIT OF CERTIORARI

Robert Snyder respectfully petitions for a writ of certiorari to review a proceeding by the Supreme Court of California. That review was taken subsequent to the dismissal of a direct civil appeal in the Second Appellate District of California.

OPINIONS AND ORDERS BELOW

Order From The U.S. Supreme Court.

An extension of time to file this writ of certiorari was granted by Justice Kagan, who extended the time to and including November 25, 2023. The matter is attached at **App.1**

Opinions And Orders From The California Supreme Court.

The petition for review was filed in this court on June 05, 2023. The court's denial is attached at **App. 2** for Case No. S280298.

Opinions And Orders From The Court Of Appeal, Of The State Of California, Second Appellate District Division Four.

The May 25, 2023 order dismissing Plaintiff's appeal from the Court of Appeal is attached at **App. 3** for Case No. B328809.

Opinions And Orders From The California Superior Court, County Of Los Angeles.

The April 19, 2023 Judgment dismissing Petitioner's Writ of Habeas Corpus is attached at **App.'s 4 – 6** for Case No. GA064579.

JURISDICTION

This Court has all jurisdiction over the matter in accordance with 28 U.S.C section 1257(a) and Supreme Court Rules, Rule 10(c) which states in pertinent portion, "a state court . . . has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court."

CONSTITUTIONAL PROVISIONS

This matter presents issues related to the Second, Fifth, Eighth and Fourteenth Amendments to the United States Constitution.
In pertinent parts:
The *Second* deals with "...the right of the people to keep and bear arms . . ."

The *Fifth* guarantees "No person shall be . . . deprived of life, liberty or property, without due process of law..."

The *Eighth* states the following—"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."

And, the *Fourteenth* requires that "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."

STATEMENT OF THE CASE

In 2010, Petitioner Snyder "PS" was sentenced to 32 years-to-life for a reckless action involving armed[1] criminal misconduct; 25 of which is attributable to Cal. Pen. Code § 12022.53(d). The crime itself took place in February of 2006, when Snyder was 24 years old. In the case before the Court today, he filed for Habeas relief in the Los Angeles Superior Court on February 23rd, 2023. When that petition was denied approximately 60 days later, he then reapplied in the Court of Appeal for his district on May 17th, 2023. When that was denied he filed a petition for Review in the Cal. Supreme Court June 02nd, 2023. The lower Court proceedings were finalized on July 12th, 2023. Because of circumstances beyond his control, PS could not make the 90-day timeframe based upon this Court's Rule 13. He requested an extension of the noted timeframe on October 4th, 2023 and it was granted.

PS humbly requested that the Courts recognize the error by and through his conviction under § 12022.53; however, from the very beginning of the state proceedings to the end, he made allegations that the act was constitutionally problematic. These claims were presented to California's Supreme Court very thoroughly and clearly.

---

[1] This included a few duplicate assaultive charges.

REASONS FOR GRANTING CERTIORARI

The noted 25 years-to-life must be served under the unspecified conditions[2] that accompany California's crowded prison system. This lends credibility to the 'Grossly Disproportionate' question. Not only was PS considered a youth offender, but he was without a felony record at the time of his arrest in 2006.

Both the text of § 12022.53 along side its *nature* and *purpose* are vague. California's Supreme Court has never directly and clearly explained how the act should be applied; and as a result there have been many anomalous applications *inter alia* over the years. As well, the severe penalties behind the enhancements do not include a sentencing triad; thus depriving defense counsel of the normal ability to present factors in mitigation during sentencing. The only rationale the courts have offered for § 12022.53 is that it levels 'increasingly severe penalties for using firearms during the commission of specified felonies.' (*Brookfield*, *infra* at p. 589)

The Supreme Court of California failed to establish a meaningful distinction between its two most commonly used gun enhancements: §§ 12022.5 and 12022.53. Primarily, a grant of Certiorari in this

---

[2] *U.S. v. Sutton* (2007) U.S. Dist. LEXIS 79518 (sentence reduced due to crowded conditions of incarceration).

case will help in two ways: to bring California's strict firearm scheme back into alignment with the decisions of the Federal Judiciary and (2) avoid further occasions for the categorical Due Process Violations inherent to the arbitrary enforcement of § 12022.53. The U.S. Constitution is not flexible enough to tolerate all the irregularities hidden within the applications of § 12022.53. Petitioner here can only display a few examples of its impropriety. Beginning in 2005, there was pressure exerted upon the judiciary by the state's lawyers to set the act in a new direction.

ARGUMENT

A: Introduction

The state knows very well about § 12022.53's permutation of problems. Not very log ago, their legislature enacted it as The Sandy Peters Memorial[3] Act of 1997; (AB-4) was introduced by Mr. Thomas Bordonaro.., At first, § 12022.53, hereinafter "the act" only carried punishments for use under subd.(b); discharge under subd.(c); and GBI under subd.(d). The very next year, subd.(d) was amended to include both GBI and death resulting from a discharge during the commission of various felonies enumerated in subd.(a). From there, not surprisingly.., it

---

[3] See, *Vang v. Walker,* Sandy Peters was a young girl, murdered by a gang member, (2010) U.S. Dist. LEXIS 86857 (*11).

underwent many more dubious amendments to confuse the original intent even further. In 2010, for some reason.., it was repealed and reenacted, (SB-1080).

What's worse, California Supreme Court, "CSC" waited and watched (for over ten years)—to gauge for both custom and usage by the lower courts—before it announced an opinion. And when it finally published one, it became what petitioner calls a 'would-be' standard. That is because—were it thorough and clear, then it would-be a standard... *People v. Jones,* and *People v. Brookfield, infra* both 2009 cases purported to deal with the crescendo of questions from counselors over the years. However, both of these 'companion cases' (1) failed to resolve key issues; (2) avoided differences of opinion by the lower courts; and (3) simply confused the matter further. Some of the noted issues CSC has not settled.., are the very questions that petitioner calls into question today. In his lower court papers, he presented his discussions completely; as well provided documentary support to suggest that the act has deviated from its originally designed course. The results of these unresolved questions have led to manifold Due Process violations—such as is presented in the matter now before the Court today.

Therefore, above all—CSC has left the act standardless. . .

B: The Original Intent Of The Act Has Become Obscure

PS believes the act's original intent was to punish criminal defendants in cases where little or no mitigation factors exist. By the time petitioner *ad litem* was arrested.., the noted shift in perspective had already taken place. From 1998, the typical usage was instituted as expected: for the prosecution of drugs, gangs, priors, drive-bys, or a combination thereof. Today, the typical usage varies a lot.

Consider the foundational *People v. Martinez*, 76 Cal. App. 4th 489, 497 (1999), which basically stated that § 12022.53 was designed for felonies of a very serious type. Next, *People v. Zepeda* [4], 87 Cal. App. 4th at 1215 (2001) states "...defendant committed an unprovoked murder, for the apparent purpose of establishing himself within a street gang and to establish the gang's strength within the community." Also, "...At the time the defendant committed the instant offense, he was on parole for his previous drive-by shooting." (*Ibid.*) These early cases comport with PS's viewpoint of what the original intent of the act was. *Zepeda* was punished under § 12022.53 subd.(d), as was PS.

Two other 2001 cases which charged gang shooters under subd.(d): *People v. Garcia,* 88 Cal. App. 4th 794 and *People v. Villegas*, 92 Cal. App. 4th 1217. Those two cases greatly confused the matter

---

[4] The *Zepeda* opinion did not mention subd.(e) even once.

by merely treating the interplay[5] between Cal. PC § 186.22 and the act. So it wasn't until eleven years later that CSC wrote *Brookfield*, (2009) 47 Cal. 4th, 583 that lower courts began to ensure gang charges were brought under subd.(e). *People v. Botello* is the best example of that; (2010) 183 Cal. App. 4th 1014. In *Botello*, the Court reversed an otherwise valid guilty verdict to correct what amounted to a pleading error because of the long awaited opinion in *Brookfield. Brookfield* did not write much except to imply that the questionable act can be bifurcated into two punitive camps: gang and non-gang prosecutions; the focus being mostly on aider and abettors. Thus, the split between *Botello* and *Zepeda* persists to this day.

Especially because Sandy Peters was killed by a gang member, one could easily surmise that in doing so.., California's intention was to make § 12022.53 into its gun/gang enhancement. The Court in *Salazar v. Superior Court,* thought so as well, (83 Cal. App. 4th 840, 845 (2000)); ("...in so far as the street gang enhancement is a necessary element of the firearm enhancement.") Furthermore, most of the cases reported by the lower courts involve a drive-by/carload of gang members—*all* of which were charged under the act because of course, it is usually impossible to pinpoint the trigger-man when a car goes whizzing by. Those cases are most aggravated. Yet in contrast here.., PS was a first time felon, a

---

[5] *Garcia* and *Villegas* were charged with both Section 12022.53 and Section 186.22.

youth offender and was found incompetent to stand trial twice for mental health reasons, before his 2009 trial—that made cooperating with his attorney impossible.

C: Even Now As Currently Treated, Sec. 12022.53 Is Vague And Was Left Standardless In Contravention Of The 5th And 14th Amendments To The U.S. Constitution.

Legislation must reflect the integrity of the framers that designed our bill of rights in the late 18th century. "Since early in our nation's history, courts have recognized their duty to evaluate the constitutionality of legislative acts." *Moore v. Harper*, (2023) 600 U.S. 1, 24-25 (C.J. Roberts). If criminal legislation is determined to be vague, it deprives defendants of fair notice as to what conduct is prohibited; involving both pillars of the Due Process clause. This Court has typically struck down penal legislation—by both Federal and State Congresses—that was, "... so standardless as to invite arbitrary enforcement," by relatively unaccountable prosecutors. *Johnson v. U.S.*, (2015) 576 U.S. 591, 595 quoting *Kolender v. Lawson*, 461 U.S. 352 (1983).[6] This applies not only to...elements,

---

[6] " ... the prohibition of vagueness in criminal statues is a well recognized requirement...and a statute that flouts it violates the first essential of due process." *Johnson*, citing *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1926).

but also statute fixing sentences. *U.S. v. Batchelder,* 442 U.S. 114, 123 (1979). Setting a reliable standard for vague or otherwise problematic legislative acts.., is not an easy task—in part here why CSC has yet to do so.

The biggest culprit with respect to the act is subd.(e), which makes reference to § 186.22 of the California Penal Code, (The STEP Act)[7]. With that said, this is the first indication that subd.(e) applies in all cases. The West's Penal Code between 2006 and 2011 used to label the act's subds.(e) – (l) as, 'limitations' clauses. Because subd.(e) is 'susceptible* to more than one plausible interpretation'.., there is residual uncertainty about who is liable to be charged and sentenced with the heavy consecutive enhancement. The simple fact of an eleven-year delay before CSC ever released a single opinion is solid grounds for requesting review. (**U.S. v. John Doe, Inc.* I (1987) 481 U.S. 102,109)

However, long before CSC even wrote a single published opinion on the matter.., prosecutors throughout California's 58 counties began using it as their 'all-purpose' firearm enhancement around 2004; in both gang-and non-gang related prosecutions alike. Section 12022.5[8] would seem to have sufficed, before the inception of § 12022.53—where it served as California's basic firearm enhancement, which often applied to all sorts of crimes; from the

---

[7] The STEP Act is California's basic gang enhancement.

[8] In *People v. Cunningham,* (2001) 25 Cal. 4th 926, defendant was convicted of murder in conjunction with § 12022.5.

most extreme homicides to basic assaults with a semiautomatic. The two have never been explicitly distinguished by CSC. Also, punishing GBI and Murder the same under subd.(d) is dubious. Vague statutes create ambiguity while illogical ones.., complete uncertainty.

Due to the heavy indeterminate sentence, the lay reader may reasonably assume the act does not apply in cases where mitigation factors exist; such as in the case *sub-judice* and other non-published cases. However, this act was used ubiquitously in cases far less extreme than *Zepeda supra*, and therefore mitigation factors were often forced to be overlooked as is the case here. It seems that CSC had to leave the act standardless—or else it would (i) discredit all the sequitur opinions by the lower courts and (ii) be forced to disturb the verdicts of otherwise valid convictions. In other words, if there was no question about their guilt; the only issue would be whether or not they deserved this severely enhanced penalty.

It makes sense that CSC, *arguendo* would not wish to order resentencing for so many cases where some of them may still have more time to serve after their rehearing. The published opinions were the serious cases; the many unpublished ones were usually less serious. This created the impression that prosecutors had flexibility in the act's application, so long as the person was guilty of using a gun. CSC in the *Tirado* court, 12 Cal. 5th 688, 694 (2022) wrote, "...use a gun, and you're done!" when referring to this act. This phrasing seems to

violate the Second Amendment to the U.S. Constitution.

D: Section 12022.53's Consecutive Enhance -ment Is Grossly Disproportionate To The Instant Case's Factors Relating To Both The Defendant And The Circum-stances Underlying His Crime; In Violation of the Eighth Amendment To The U.S. Constitution.

The cruel and unusual clause prohibits "not only barbaric punishments, but also sentences that are disproportionate to the crime committed." *Solem v. Helm*, 463 U.S. (1983); furthermore, the sentence must be deemed *grossly* disproportionate; *Harmelin v. Michigan*, 501 U.S. 957. Whether or not a sentence violates the Eighth Amendment by being grossly disproportionate to the charged offense.., is a factual question. In conducting its proportionality review, the Court considers the seriousness of the crime and compares it to the harshness of the penalty. It also looks at the same crimes in other jurisdictions along with sentences for worse crimes in the same jurisdiction.

Appropriate attention should be given to PS's youth,[9] lack of priors, physical and mental infirmity, (when the crime occurred). Of course due to the act's mandatory minimum sentence scheme,

---

[9] See *People v. Franklin*, (2016) 63 Cal. 4th 262 following *Miller v. Alabama*, (2012) 567 U.S. 460, 465.

none of these factors were taken into consideration. Essentially, petitioner *nonce* was given 32 years-to-life for a GBI; inadvertently inflicted upon an innocent bystander sitting in his car in the dark of night, 140 feet to the southwest of where the assault took place. Cal. PC § 12022.7[10] carries a 3-year consecutive enhancement as a punishment for GBI. Certainly, this seems out of proportion. It is a crapshoot whether or not a first termer can survive 32 years-to-life in a crowded prison system. CDCR paroles comparatively few prisoners at their first parole hearing. It should be noted that life sentences are near the stratosphere of capital punishment.

For a good example of a more serious crime in the same jurisdiction.., please see *People v. Warner*, (2019) 35 Cal. App. 5th 25, 28. This case has many similarities to PS's. However, in Petitioner at bar's case, the victim was a random stranger. In contrast, *Warner*, went back to the scene with his pistol looking for revenge after a fight a few days earlier. Both cases involved an unintended victim. Not only were two people injured in *Warner,*[11] but, both were hurt much worse. In PS's matter, there were two victims but only one was physically injured. And *Warner* ended up with the much lighter *determinant* sentence of 22 years. In the Federal courts, Snyder would have been sentenced to between 15 and 20 years for the same facts. From this point of view, Snyder's punishment was excessive by over ten years-to-life because of the

---

[10] All further statutory references are to the California Penal code.

[11] Warner fired 10 bullets, PS only 2.

legislative act in question. Now it is up to the Court to determine if his sentence '*shocks* the conscience'!

E: Petitioner Snyder Is *Not* Guilty Of The Underlying Felony Of Willful, Deliberate, Premeditated Attempted Murder

Petitioner *ad manum* was charged with Cal. PC § 664/187(a)—The Penal Code's most aggravated form of attempted homicide as one of the base charges. This was submitted to a jury whom collectively engaged in several acts of misconduct. The facts of the case as charged, were not quite that serious. Supplicant here went to a gasoline station one block from his house, which became the crime scene; he was accompanied by his 6 year-old daughter. No crime was planned. In summary, PS and the victim, "V" of the ADW were complete strangers that had a verbal confrontation. V asked PS—"You ever been shot before?" as he opened his trunk and brandished a gun. After 2 shots were fired by PS, V chased after him, at a high rate of speed. Additionally, "V" admitted to lying on the witness stand in open court. None of those facts were in dispute, except for the brandishing.

The serious charges against PS have very specific elements that were not met in trial. There must have been a prior relationship between V and the defendant; also, a clear motive and evidence of planning. None of these requisites were met. As well, the prosecution used misconduct when questioning and arguing in front of the jurors as

patchwork for those deficiencies of evidence. This was clearly demonstrated in a previous case. The assault with a firearm and discharge were provoked by "V's" actions.

(1): The Discharge Of A Firearm Was The Only Felony Crime. Because Of This, There Was No Basis For The Prosecution To Have Charged The Defendant/Petitioner With A 'Discharge During The Commission Of A Felony'.

Section 12022.53 has special pleading/proof requirements. One is derived from the act's text regarding either *use* or *discharge* 'during the commission' of various enumerated felonies. The requirements of this act's statutory text were violated in the instant case. For the enhancements to legally apply, the underlying felony must be independent/non-merge-able and (probably) something planned-out where the gun facilitates the success of the crime. CSC has never made any opinions to discuss or refute this reasonable hypothesis. Hence, as it stands why was PS charged and convicted of shooting in the commission of a shooting?

If PS had gone to the station with some bad objective and/or intent, then it would have been enhanceable based upon the text. This Chevron station was a quarter mile from his parents home; a place where he routinely refueled his vehicle. The way in which PS was charged, does not satisfy the

rules of logic. PS was charged with a few duplicate assaultive counts, all of which merged into two during sentencing: attempted murder and discharge of a firearm. PS is not innocent altogether—but, he is *actually* innocent of the underlying felony as charged.

F: The Thorough Treatment Of Related Issues In *Rosemond* Is Instructive In This Matter

Rosemond v. U.S., 572 U.S. 65, 188 L. Ed. 2d 248, 134 S. Ct. 1240 (2014) treats issues related to 18 U.S.C. Section 924(c), which is § 12022.53's closest federal relative. It is very useful to compare the two in this matter. As it is currently treated—if you will—§ 12022.53 allows prosecutors to breeze right past the armed-intent[12] element. Before *Rosemond*, prosecuting attorneys only needed to ask one question in cases involving aider-abettor liability: did any codefendant have knowledge of their accomplice's weapon during the time spent at the scene of the action? Of particular import, is Headnotes (15) and (16) in *Rosemon*d. California's current standards or lack thereof, improperly allows prosecutors to utilize this evidentiary shortcut without having to gauge the depth of involvement by all principals to a crime.

The biggest problem arises in cases where multiple defendants face vicarious liability; invest-

---

[12] *Rosemond, 134 S. Ct.* at p 1250.

igators may find it difficult to determine who had 'advanced knowledge' of the gun; and at a point where there was still 'a realistic opportunity' to opt out of further participation (*Id.* at 1253). This is what the majority in *Rosemond* set out to correct.

The court also recognized not only that (a): there was difficulty in obtaining reliable evidence as to what each defendant knew going into the situation, also that (b): the prosecution bears a heavy burden of proving facts 'peculiarly within the knowledge' of the defendant(s). *Rosemond, id.* at 1256. The dissent in *Rosemond* is correct: the prosecution now bears a heavy burden—but rightfully so. The ruling makes it difficult to prove because it deals with a *consecutive* enhancement for someone who never possessed a firearm. The Court is now hesitant to place that added burden when a codefendant possibly knew nothing about it. Another concern was this: simply because a person might know his confederate is armed, says nothing about any potential for discharge.

In other words, it could seem suspicious that prosecutors claim to have full knowledge of what was/is in the minds of each and every, of several parties to a crime. Direct evidence of a plot by two or more, where they set out to commit a violent crime and also discharge the weapon.., is hard to obtain. Each of their own testimonies are subject to being easily discredited. Perhaps, not even the one accoutered with the firearm knows whether or not they will pull the trigger. It is highly subjective: it may depend on what the victim's reaction is and whether or not they put up resistance. All of that

would be impossible to foresee while planning a crime to be committed by a group. These and other noticeable factors were what the majority in *Rosemond* had in mind when they vacated and remanded for further proceedings.

After a quick reading of *Rosemond*, it became clear what is wrong with the current procedure in California regarding the act in question. At this point, CSC has yet to opine anything that follows *Rosemond* with respect to what was discussed in this section. PS believes it was CSC's duty to update their holdings subsequent the new rule of substantive law announced by *Rosemond*. They may have updated their holdings on felony murder[13] but that does not impact this analysis. Subd.(d) has been used in conjunction with LWOP [14], capital punishment, and their Three Strikes Law; resulting in sentences of high football-jersey numbers, (to-life). There are simply too many moving pieces here for this to pass the Reasonableness, due process test.

None of CSC's cases besides *Chiu* ever acknowledged *Rosemond*; and, *People v. Chiu*, (2014) 59 Cal. 4th 155, 167, only scratched the surface... Because CSC has yet to force the lower courts to respect and apply the constitutional principles in

---

[13] For any changes CSC has made to related doctrine, they have refused to extend recognition into firearm enhancement territory.

[14] Read the other *People v. Chiu*, (2003) 113 Cal. App. 4th 1260, 1262—(court affirms *Chiu's* LWOP plus 25 year-to-life under Subd.(d).)

Rosemond.., the jury instruction as of today continues to allow prosecutors to shortcut the facts. Instead, it only asks the *pro forma* question noted above. This last point here, forces *trial* errors into place. *Arizona v. Fulminante*, 499 U.S. 279 (1991).

G: Miscellaneous Content

(1) "Why does § 12022.53 set § 246 apart inside subd.(d) instead of placing it within subd.(a) like the other enumerated crimes?" is probably a question many counselors have asked CSC over the years. Let's look at this question more closely. First of all, the basic concept behind a firearm enhancement and felony-murder are the same; meaning either a shooting or a murder took place during the commission of a nonmergeable, independent felony act. Therefore, in other words, if two charges legally merge, then one cannot serve to enhance the other; as well, they cannot be the basis of consecutive sentencing.

With that in mind.., consider how in *People v. Chun*, (2009) 45 Cal. 4th 1172 at p. 1200, CSC decided that, "When the underlying felony is assaultive in nature, such as a violation of §§ 246 or 246.3, we now conclude that the felony merges with the homicide and cannot be the basis of a felony-murder instruction." Also, "...test for the merger doctrine is whether the underlying felony was committed with a 'collateral and independent felonious design.' " (*Id.* at 1192). PS's single objective and assaultive intent was provoked by a random stranger at a gas station. By their logic, CSC's relative opinion noted above is

in direct conflict with the text of § 12022.53(d)—the part where it highlights § 246 as an enhanceable crime. Legally, they should not be able to attach a firearms enhancement to a charge of § 246 based upon the reasoning noted in *Chun*.

PS was charged with §§ 245 and 246 which are general intent crimes along side the §§ 664/187 (a) which is a specific intent crime; these are legally inconsistent charges. Section 246 is: 'shooting into an occupied dwelling.' In this case it was a car, 140 feet off in the distance; this occurred at night. The people in this case never alleged that PS knew the car was there. Over defense counsels objection, the § 246 was presented to the jury...

(2) "A statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent. Consequently, each part of a section should be construed in connection with every other part or section so as to produce a harmonious whole." (*Rodriguez v. Superior Court*, (1993) 14 Cal. App. 4th 1260, 1268); accord, (*Oklahoma v. Castro-Huerta*, (2022) 142 S Ct. 2486 n. 14)(noting the "...Court's obligation to read congressional work as a 'harmonious whole.' ")

Looking back upon how the Cal. Appellate Courts properly viewed the act's operation of subdivisions (d) and (e), together in seamless harmony: Both (1) *People v. Hernandez*, (2005) 134 Cal. App. 4th 474, 480 "... § 12022.53 subds.(d) and (e)(1)(b) when read together..," and (2) *People v. Botello*, (2010) 183 Cal. App. 4th 1014, 1027 "...if

they were convicted of the underlying felony charged offenses, they would be subject to the firearm enhancements of § 12022.53 subds.(b) through (d) by virtue of the circumstances listed in subdivision (e)(1), (citations omitted)" seem to follow the *harmonious* dictates of statutory construction principles. By these words, subds.(d) and (e) seemed to posses indivisible cohesion; in other words, they weren't designed to operate separately for punitive purposes.

And so almost twelve years later, CSC through its companion cases in *People v. Jones,* (2009) 47 Cal.4th 566 and *Brookfield,* noted above, decided the matters in a way that intended to disrupt the well-reasoned statutory continuity between (d) and (e), such as was displayed by *Hernandez* and *Botello supra.* Please recall that—before *Brookfield,* lower courts were charging and proving gang-crimes under subd.(d) such as in *Zepeda* mentioned earlier. The *Botello* court—inspired by *Brookfield,* a year earlier—reversed an otherwise correct guilty verdict, on the grounds that a gang prosecution wasn't initially pled under § 12022.53 subd.(e). All of the cases written by CSC post *Brookfield* involve a carload of gang members or some other form of gang shooting.

On the other hand, CSC wrote *Jones* shortly before *Brookfield.* In this case, half way through its 'Overview' at p. 566-67, the Court admitted that Defendant Jones received a 20 year enhancement, "...not because he committed a gang-related offense, but because he committed a particularly heinous offense," punishable by Life imprisonment. By

placing this logic aside what CSC did in *Brookfield*, we see its intentions: uphold convictions under the act whether they were gang related or not—doing so without resolving the various differences of opinion by the lower courts. This basically tried to turn § 12022.53 into an all-purpose firearm enhancement—however, that decision was not supported by the legislative history of this act.

PS's position is: § 12022.53's original intent was *never* to be bifurcated into an enhancement for both gang and non-gang; in serious and extreme cases alike. Here are more examples: "... § 12022.53 is limited to designated felonies of a very serious type"; *People v. Martinez*, (1999) *supra* at p. 497 and *Hernandez* (2005) *supra* at p. 482 – "When the legislature enacted § 12022.53 ... it did so in recognition of the serious threats posed to the citizens of California by gang members using firearms." Police never alleged PS was in a gang. He was a college student when he was arrested. However, the vague nature and purpose of the act in question allowed the prosecution to move forward through trial and conviction.

What CSC did with every other decision post *Brookfield* and *Jones*, was simply build upon those two cases without further clarification. Thus, they established *Brookfield* and *Jones* as their standards, although those cases left a whole assortment of important questions unanswered.

CONCLUSION

The Petitioner, in the case pending before the Court, submits his request: that the Court would find favor with the argument furnished above and grant Certiorari to allow for further briefing in this matter.

Thank you for the opportunity to be heard.

DATED: 11/10/ 23

Respectively submitted,

ROBERT R. SNYDER, Pro Se
D.O.C. No. AC9136,
Salinas Valley S.P.
P.O. Box 1050
Soledad, CA 93960