24-7185

No. ____-_____

SUPREME COURT OF THE UNITED STATES

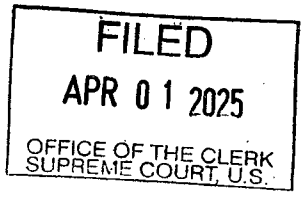
Wayne Johnson, Petitioner,

vs.

Franz Criego, Et Al.,

Defendants and Respondents.

ORIGINAL



Court of Appeal No. A168243

California Supreme Court No. S288444

Mark Duane Johnson, William J. Capriola, James Bradley O'Connell, First District Appellate Project

Real Parties in Interest

Appeal from the Superior Court of
Alameda County

Honorable County of Alameda County No. 22 CV019086
Department 17 · Roesch, Frank

On Petition for a Writ of Certiorari to the California Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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Petitioner

I. Questions Presented

I.

Whether an attorney appointed at public expense has a fiduciary duty to a criminal defendant to not disclose confidential communications in an environment that is accessible and made available to the opposing counsel.

II.

Whether an attorney who eviscerates the fiduciary duty to his client by disclosing confidential communications has violated his client's Sixth and / or Fourteenth Amendment rights and exposed himself to civil damages.

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IV. Petition for Writ Of Certiorari

Wayne Johnson, petitions this court for a writ of certiorari to review the California Supreme Court's Decision to deny his Petition For Review, in Case S288444.

Petitioner asked that the California Supreme Court overturn a clearly unconstitutional decision of the California Court of Appeal in Johnson v. Criego, Et Al., Case Number Court of Appeal No. A168243 stemming from Petitioner's civil lawsuit against his Appellate Attorneys for breaching their fiduciary duties to him by disclosing confidential information regarding his case to opposing counsel.[1]

Appellant sued his court appointed Appellate Attorneys because they committed numerous unethical acts, to wit; broadcasting sensitive irrelevant information relating to Petitioner's case over a known recorded telephone that was available to opposing counsel, who used that information in her Reply Brief. The Court of Appeal cited that false information to justify its ruling.

The Attorney-Client privilege is a fiduciary duty and Respondents conduct violating that privilege deprived Appellant of his guaranteed rights under the Sixth and Fourteenth Amendments. Because California does not allow criminal defendants to sue attorneys except in rare circumstances there is no accountability and no oversight. Thus, making the Sixth and Fourteenth Amendments a dead letter.

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[1] Appellant sued his retained trial attorney and his appointed appellate attorneys for mishandling his trial and his appeal.

Appellant obtained a default judgment against his trial attorney for breach of contract. However, the trial court refused to hold the appellate attorneys responsible for breach of fiduciary duties despite the fact that that their misconduct was the only reasons Petitioner lost on appeal. The case was never about Petitioner's criminality, but instead it was about the Courts setting up roadblocks preventing Petitioner from proving his innocence. Any law that prevents or discourages criminal defendants from suing attorneys for wrongful acts is simply unconstitutional, perceived criminal behavior notwithstanding.

V. Opinions Below

The decision by the California Court of Appeal denying Mr. Johnson's direct appeal is ***Johnson v. Criego***, Et Al., and A168243.

VI. Jurisdiction

Title 28 U.S.C. § 1257 (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

Petitioner seeks Supreme Court review following the State of California's denial of his Request for Review of his rights and privileges claimed under the United States Constitution, particularly his right to recover damages after Respondents denied him his right to Counsel and sacrificed him to the prosecution. That is a denial of a right to counsel and a denial of due process.

The United States Constitution guarantees the right to counsel only in the context of a criminal case. Being able to sue a bad attorney is the final safeguard in poor criminal defense. There is no other remedy when the appellate process fails to expose an attorney's incompetence. A breach of the Attorney-Client privilege is one of the most sacred protections recognized under the Constitution. An attorney, who fails to safeguard that privilege, breaches his or her fiduciary duty to the client and eliminates all the protections afforded under the Sixth and Fourteenth Amendments.

Petitioner asks the United States Supreme Court to intervene in this case, not because it impacts Petitioner as an individual, but because it is crucial to all.

The California Supreme Court denied Petitioner's Petition for Review February 28, 2025. Mr. Johnson invokes this Court's jurisdiction under 28 U.S.C. § 1257, having timely filed this petition for a writ of certiorari within ninety days of the California Supreme Court's denial of his Petition.

VII. Constitutional Provisions Involved United States Constitution.

Sixth Amendment

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

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.

VIII. Statement of the Case

The United States Supreme Court held every criminal defendant has the right to legal counsel and no person should be deprived of a fair trial based upon unfair or unduly prejudicial evidence. (See ***Payne v. Tennessee***, 501 U. S. 808, 825 (1991). It also decided in performing their duties appellate attorneys shall not undermine the judicial system. (See ***Strickland v. Washington***, 466 U.S. 668 (1984).)

When Petitioner was imprisoned he contacted respondent First Appellate District, which assigned Mark D. Johnson to represent him. Petitioner contacted Mark D. Johnson over a known recorded phone to inquire about his case. There is a repeating phone message that all the calls from that phone are recorded. Records of the calls are provided to the opposing counsel, the California Attorney General's Office.

Attorneys are barred by law from breaching the Attorney-Client privilege. Mark D. Johnson breached his duty by disclosing confidential issues over the recorded line. He should have contacted Petitioner over dedicated confidential line or responded via legal mail.

The prosecutor introduced a civil restraining order in Petitioner's criminal trial that was later declared void from the inception by a separate court of appeal because the complaining party failed to serve the underlying TRO. Instead of fiercely attacking the void restraining order Mark D. Johnson announced over a recorded telephone line he felt the introduction of the void restraining order was inconsequential because the prosecutor did not rely heavily upon it during his closing argument.

Mark D. Johnson's statement is not only false it is not the law. Acting with a valid restraining order in place was one of the charges. Moreover, the introduction of any unduly prejudicial evidence is a denial of due process. Even worse, the Attorney General intercepted Mark D. Johnson's bogus argument and included it in her Reply. The Court of Appeal cited that erroneous argument when it upheld the conviction. The void restraining order was the only significant piece of evidence in the trial.

Now comes Appellant seeking compensation from Respondents for their breach of fiduciary duty resulting in a denial of his guaranteed right to counsel.

IX. REASONS FOR GRANTING THE WRIT

A.

TO AVOID ERRONEOUS DEPRIVATIONS OF THE RIGHT TO COUNSEL, THIS COURT SHOULD MAKE IT CLEAR THAT DISCLOSING CONFIDENTIAL MATTERS OVER A PHONE LINE THAT IS AVAILALE TO THE PROSECUTOR IS A BREACH OF FIDUCIARY DUTY AND IS UNLAWFUL.

It is settled that a person accused of a crime has the right to effective representation at every critical stage of the proceedings. And the same right is conferred upon those on appeal after conviction. (See ***Douglas v. California*** (1963) 372 U.S. 353.)

An appellate attorney cannot abandon his client by broadcasting methods for the prosecutor to prevail. Neither can he raise any issues over the public telephone that ought to be reserved for confidential communications. No authority, and no logic, permits appointed counsel argue against his client's case or suggest ways for the prosecutor to prevail in a public atmosphere. Appointed counsel cannot place his prospective client in a worse situation than if he had no counsel at all.

A Court of Appeals decision that a criminal attorney can appear in court intoxicated, or unprepared is an erroneous decision that circumvents the purpose of having an attorney at all. Moreover, if a criminal attorney is not accountable for his inappropriate actions there is no point in having any standards in criminal cases, and there is no reason for a criminal attorney to be a member of the State Bar.

If a defendant is presumed after the fact to be guilty unless he proved he is factually innocent there is no point in allowing that person to appeal. Even if he wins the Court assumes he won by technicality. If one can win by technicality it is logical he can also lose by technicality. Being represented by an incompetent attorney or by introduction of unduly prejudicial evidence is losing by technicality.

If an attorney has training and skills and fails or refuses to use them, there are no competence standards and anyone should be able to waltz into court and represent individuals in criminal cases, bar license notwithstanding.

B.

THE RESPONDENTS' ACTIONS HAD THE IMPACT OF DEFEATING APPELLANT'S RIGHT TO AN ATTORNEY WHEN HE WAS ENTITLED TO AN ATTORNEY.

Some of the rules on right to counsel are somewhat tenuous. Even when the State demands the State provide an attorney in criminal cases, they do not place many requirements on the attorney to perform his or her duties with competence.

With certain exceptions, under California law, an attorney is not liable to the criminal defendant in monetary damages or in equity for failing to perform competently unless the defendant proves he is "factually innocent." (See ***Wiley v. County of San Diego*** (1998) 19 Cal. 4th 532.)

The presumption that having an attorney is better than not having one is not always true, particularly when the attorney's actions cause the conviction. An unprepared licensed attorney who just appears before the court is no better than an unprepared licensed driver who operates a car.

The ABA has high standards for attorneys, but the states are not bound to follow them. Even though the same standards apply for civil and criminal attorneys, the State Bar does not enforce them against criminal attorneys.

They say it is because they want a convicted person to accept responsibility his or her actions. The court ignores the introduction of unconstitutional evidence, perjury, false evidence, and / or other denials of due process.

The real reason could be the Courts do not want to upset the apple cart by exposing racism and corruption in the judicial system.

California State Bar Rule 3-110 requires an attorney to represent his or her client with competence. For example, Rule 3-110 provides in part: (a) A lawyer shall not intentionally, repeatedly, recklessly or with gross negligence fail to act with reasonable diligence and promptness in representing a client.

(b) For purposes of this rule, "competence" in any legal service shall mean to apply the 1) diligence, 2) learning and skill, and 3) mental, emotional, and physical

ability reasonably necessary for the performance of such service. The duties imposed by rule 3-110 continue until the attorney no longer represents the client.

ABA Rule 1.3 says a lawyer shall act with reasonable diligence and promptness in representing a client. ABA Rule 1.4 says (a) A lawyer shall: (1) Promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished.

Under California Business and Professions Code, section 6068, lawyers are obligated to "maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client." If an attorney discloses privileged or confidential information without the client's consent, it constitutes a breach of fiduciary duty.

ABA Rule 1.6 governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of the client.

There is no dispute that a fiduciary duty did exist in this case. (See ***David Welch Co., v. Erskine & Tulley*** (1988) 203 Cal.App.3d 884.) The only issue is whether defendants breached that duty towards Appellant. (See ***Mueller v. MacBan*** (1976) 62 Cal. App. 3d 258, 276 [132 Cal. Rptr. 222].) Ironically, the Court of Appeal dodged the question. It simply stated it did not have to follow the ***Margulis*** case despite it being the precedent for the ***Bird*** case's decision that breach of fiduciary duty gives rise to a lawsuit against an attorney. (See ***Bird v. Superior Court*** (2003) 106 Cal.App.4th 419, citing ***Morris v. Margulis*** (Ill.App. 1999) 718 N.E.2d 709).

In this case, Appellant asked Mark D. Johnson to attack the void restraining order. However, from the outset, Mark D. Johnson demonstrated ignorance and incompetence. He initially assumed the void restraining was merely "voidable." He even erroneously claimed if the court issued a new one after the Court of Appeal voided it; the old one would be revived retroactively.

In his brief he also misstated the testimony relating to the accusers alleged injuries making them appear serious when her medical records failed to disclose any injuries or the recovery of any objects whatsoever. Alleged victim testified someone at the hospital gave her an object and told her they found in her scalp. Mark D. Johnson wrote they removed that item from her head.

Mark D. Johnson continually sought similar ridiculous excuses to avoid challenging the entire conviction.

Instead of making statements relating to the void restraining order over the public telephone Mark D. Johnson should have told Petitioner that he would contact him later to discuss the matter over a confidential line or through legal mail.

It was impossible for Appellant o anticipate the level of Mark D. Johnson's incompetence. Appellant certainly did not expect that a licensed attorney would display such recklessness by suggesting ways to lose the case that did not exist.

Not only that, the things Mark D. Johnson spoke about over the recorded line were mostly were mostly irrelevant and not based upon sound legal reasoning.

He did ultimately make a more logical argument about the restraining order in his brief, but only after he destroyed Appellant's appeal by erroneously suggesting it had a minimal impact on the jury. He seemed to be only interested in chalking up hours to charge the State.

Mark D. Johnson also told Petitioner over the recorded line that he did not like Appellant's arrogance while testifying. Mark D. Johnson ignored the fact that Appellant's trial attorney never discussed the facts with Appellant. Trial counsel did not tell Appellant he would call him to the witness stand prior to his testimony and he did not have a clue how Petitioner would respond to his questions.

Mark D. Johnson was not concerned about Petitioner's testimony. In his opinion, Appellant failed the "attitude test," and that put him in disfavor with the jury. Even so, a verdict should be based upon evidence not a juries' perception of a man's pride or arrogance.

Mark D. Johnson blamed the victim for losing his case because of his attitude. He ignored the fact Appellant had a right to protest the police officer's unlawful detention without probable cause, to serve him with a "void" civil restraining order, and their questioning him after he asserted the Fifth Amendment.

The police had no legal right to detain Appellant at all and any responses he gave to their unlawful questioning was irrelevant and inadmissible.

First, Appellant had not committed any offenses, and they did not issue him a traffic ticket. They certainly did not have a right to make him wait a half an hour sitting on the ground on the freeway to serve him with a void civil order.

Second, after the police unlawfully detained Petitioner, they improperly asked him if he knew a person with a name somewhat similar to the accuser's. The officer mispronounced the name. Moreover, Appellant had taken the Fifth Amendment and he did not have to converse with the officers any further.

Besides, the officer did not personally know Appellant and he did not have any way of verifying if Appellant was accurately responding to his questions. None of the officers had never seen Appellant in the presence of the accuser and they did not have any independent evidence Appellant had ever known that person.

The trial judge became frustrated because Appellant was questioning the lack of foundation in the questions and because Appellant testified he stopped paying attention to the officer after he asserted his Fifth Amendment rights.

Appellant responded he was shaking his head because the officer ignored his exercise of his Fifth Amendment Rights and not because he was responding to the officer's questions. He could not believe the officer was continuing with the unlawful interrogation.

They had not established anyone was driving Petitioner's vehicle that evening, which was at least nine months prior to the time of his testimony. Petitioner had more than one vehicle and they had not proven Petitioner had exclusive control over any vehicle. It would be virtually impossible for Petitioner to know who was driving his vehicle on a random morning nine months prior unless he

was involved in the crime. Moreover, no one claimed to see a weapon or any objects at the scene and no one testified they saw any objects come from a vehicle.

The trial judge also told the jury they could infer Petitioner was driving his vehicle on the night of the alleged attack because Petitioner could not say who was driving his vehicle that evening.

Mark D. Johnson did not attack the prosecutor's erroneous comments about Petitioner being caught on video. There is not a single video image of Petitioner's presence anywhere on any of the alleged crime scenes.

Mark D. Johnson was a wimp who pretended he did not understand the Constitutional significance of Petitioner's exchange with the trial judge and how it unduly prejudiced his chances of a fair trial.

Mark D. Johnson's comments blaming Appellant for his attitude is a separate breach of fiduciary duty. His erroneous comments were a pretext for him failing to be an advocate for Petitioner.

Third, Appellant demonstrated to Mark D. Johnson that each and every part of the verdict was inconsistent with the evidence, beginning with the prosecutions reliance on the void restraining order.

That is when Mark Johnson made the erroneous comment the prosecutor did not heavily rely upon the void restraining order during his closing argument. That is the most ridiculous argument ever because introducing irrelevant incriminating evidence is always unduly prejudicial.

Not only was the restraining order void, the information in the void restraining order was false.

The accuser testified Appellant was her "boyfriend." She did not explain to the jury why she made that assumption. She had already refuted all of the elements that would qualify Appellant for prosecution under the domestic violence statute.

Appellant testified he and the accuser were only friends, and he had been helping her locate an attorney to assist her with her protracted divorce while she was in pro se.

The prosecutor never set forth any of the elements required to charge Appellant with violations of the Domestic Violence Prevention Act (DVPA). California law requires that there be a "serious" relationship, proven by longevity or other facts. A recent California case held that a finding of domestic violence requires the existence of a serious courtship as defined in ***Oriola v. Thaler*** (2000) 84 Cal. App 4th 397, 100 Cal.Rptr. 2nd 822.

In that case, the appellate court considered statutes addressing domestic violence from other states and held a " 'dating relationship,' " as that term is used in California's DVPA (Fam. Code, § 6210) "refers to serious courtship. It is a social relationship between two individuals who have or have had a reciprocally amorous and increasingly exclusive interest in one another, and shared expectation of the growth of that mutual interest, that has endured for such a length of time and stimulated such frequent interactions that the relationship cannot be deemed to have been casual." (***Oriola***, at p. 412, 100 Cal.Rptr.2d 822.) *(See **M.A. v. B.F.***, 99 (2024) Cal.App.5th 559, 317 Cal.Rptr. 909.*)*

The Accuser and Petitioner were never married and they never lived together. She testified she had only known Petitioner for a few months. There was no testimony of exclusivity. They did not share any children. Ironically, the Petitioner had never met the accuser's children. She had only limited contacts with them because she was restrained by a criminal protective order allowing her very limited contact them. Appellant did not depend on her for sex or affection.

The accuser did not testify Appellant physically struck her and she did not identify any conduct that would cause a physical injury. Neither the photographic evidence nor alleged victim's medical records contained any evidence of physical trauma.

The void restraining order and allegations of being a so-called boyfriend allowed them to scathe over the detailed requirements in the DVPA.

C.

APPELLANT IS ENTITLED TO DAMAGES BECAUSE REPONDENT'S BREACH OF FIDUCIARY DUTY IS THE SOLE REASON FOR THE APPELLATE COURT'S ERRONEOUS RULING.

While this is not a Title 42 U.S.C. § 1983 case, Title 42 U.S.C. § 1983 provides a lens through which this court can evaluate Appellant's claims. Title 42 U.S.C. § 1983, provides:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Respondent's stood in the place of the government when they accepted pay from the government to represent an indigent person who was subject to state prosecution. They acted under a statute that authorizes the state to provide representation to defendants on appeal, and they relegated that responsibility to Respondents.

At the same time, the Court of Appeal prohibits criminal appellants from representing themselves based upon a false assumption none of them have the ability to follow the rules or represent themselves before the Court of Appeal. (See ***People v. Scott*** (1998) 64 Cal.App.4th 550) They force indigent persons to accept incompetent attorneys and they deny them the right to seek redress when that

attorney ruins their cases. The rationale for denying an appellant the right to represent himself or herself was he or she was in custody and he or she did not have the requisite tools or skills to produce a quality brief.

In this case, that was not true. This party is more than capable of delivering a quality brief and making sound arguments to the Court of Appeal. He was not in custody at the time he requested permission to represent himself. So Petitioner was stuck with an attorney who did not attempt to prevail. Even worse, he did not put forth the effort.

Whether the attorney's obligations to the person he represents stems from either the Six Amendment, which is a right, or from the Fourteenth Amendment equal protection clause and is governed by statute.

If a state has provided for appellate review as "an integral part of the . . . system for finally adjudicating the guilt or innocence of a defendant" (***Griffin v. Illinois*** (1956) 351 U.S. 12, 18 [76 S.Ct. 585, 590, 100 L.Ed. 891, 55 A.L.R.2d 1055]), its appellate procedures must comport with the demands of "the Due Process and Equal Protection Clauses [to] protect persons . . . from invidious discriminations. [Citations.]" (***Ibid.; Evitts v. Lucey***, ***supra***, 469 U.S. at p. 393 [105 S.Ct. at p. 834].) To pass muster, the state's procedures must afford "adequate and effective appellate review." (See ***Griffin***, ***supra***, at p. 20 [76 S.Ct. at p. 591].)

Appellant had a right to a real appeal, and he deserved a competent attorney, not just an attorney going through the motions so he can collect a paycheck from the State. That is not only a denial of due process, it is a waste of Taxpayer resources.

Furthermore, it matters not how many other tortuous acts he commits, he remains liable for the damages caused by his breach of fiduciary duty.

The Court of Appeal decided it would not follow the breach of fiduciary duty rule set forth in the ***Margulis*** case because ***Margulis*** is not a California case. It ignored the fact that the oft-cited ***Bird*** case is based upon the ***Margulis*** principles. It ignored the sound reasoning in the ***Margulis*** case. ***Morris v. Margulis*** held that applying the factual innocence rule in cases where the attorney breaches a fiduciary

duty is "unconscionable." (See ***Bird v. Superior Court supra*** 106 Cal.App.4th 419, citing ***Morris v. Margulis*** (Ill.App. 1999) 718 N.E.2d 709).

The Superior Court judge who issued the void restraining and the Appellate Judge who refused to do the right thing in overturning the criminal conviction must be on an anti-men crusade. However, they have the wrong poster child. Appellate comes from a matriarchal family where his recently deceased mother ran the family for 80 of her 99 plus years with a silk glove.

Accused victim is the one who does not have a problem with violence against women. From 2014-2018, she was subject to a Criminal Protective Order stemming from her arrest and guilty plea wherein she allegedly punched her elderly mother in the head and kicked her in the buttocks. (See ***People v. Cindy McNemar***, Superior Court of California, Contra Costa County, Case No. 1-170503-7)

In most cases there is a way to differentiate malpractice from breach of fiduciary duty and the attorney should be liable for each separately. One should not override the other and one should not escape liability for breach of fiduciary duty by committing malpractice, assuming it is fair to the public for an attorney to shirk his responsibilities at anytime, just because he chose to take on criminal defendants.

Besides, the framers of the Constitution only recognized the right to counsel in the context of criminal charges given the British Royalty often subjected them to unreasonable criminal charges.

Appellant would have preferred to represent himself. However, the Court of Appeal would not allow him to do that. Instead the Court appointed the First Appellate District, a group of misfit, rag tag, attorneys who do not fit into mainstream Corporate America. And they provided Appellant with an attorney who neither had the desire, interest, or the dedication to present a competent defense. He was more concerned with how he would appear before the Court than dismantling the verdict or representing his supposed client. He chose to abandon Appellant's strongest legal defense, and instead, to attack the conviction piecemeal. This was

never a piecemeal case. This case was about a complete denial of due process from start to finish.

Both the prosecutor and Court of Appeal had to alter the facts to make it seem the prosecution was legitimate because there are no underlying facts to support the conviction without the void restraining order.

Even the prosecutor realized he had not produced any evidence Appellant had committed a single infraction so in his closing argument he made an unconstitutional burden shifting argument..."who else would have done it?"

The cold part about it is there is no objective evidence anyone did anything unlawful. Everyone knows it was not Appellant's job to prove there was not any criminal conduct and / or he did not commit any crimes.

Besides, that's a ridiculous argument. They only had a snapshot of the accuser's life. She was going through a protracted divorce wherein she was barred from the family home and her children. The court allowed her to testify that she was this responsible parent, caring for her daughters.

They were not aware the accuser was a violent person subject to a court order that barred her from seeing her children except for dinner every Wednesday and every other Sunday. Her children spent more time partying at her home with their friends when they knew she was not there.

The jury was unaware of her reputation for manufacturing evidence or how many people may have had a motive to mistreat her.

The entire prosecution was based upon illusion, and smoke and mirrors. No witnesses saw anyone violate any law. Despite the numerous video cameras at all the locations, not one of them captured anyone committing a crime. Appellant does not appear in a single frame of any video footage at any time. No one claims to have seen a weapon or an object that might be confused with a weapon. The accuser's medical records do not corroborate a single physical injury or the recovery of any foreign objects.

If Respondents had never introduced that ridiculous argument over the phone it is extremely unlikely, if not virtually impossible, that the Attorney General would have advanced that argument because it is totally ridiculous and it runs contrary to all existing case law and legal authorities.

In addition, it is unrealistic to assume the jury would ignore the restraining order for any purpose let alone the stalking charge. The jury instructions do not address possible ways the jury might consider the restraining order in the context of the other charges, like the alleged assaults. The only reason the jury found Petitioner guilty was their false belief he was restrained by a valid restraining order.

Even if it was only a factor in their decision, the Court should have overturned the conviction.

The Superior Court judge who issued that void order knowing it was unconstitutional shares some responsibility. And, she did that because she erroneously took evidence and she erroneously believed alleged victim suffered a broken nose when her medical records read she did not suffer any acute injuries.

Despite the accused having video camera about her residence on the date she claimed Appellant attacked her in her garage, there was not a single frame of Appellant on the accuser's property. Moreover, the accuser's medical records state the accused did not suffer any acute injuries, particularly any facial fractures on or near September 4, 2018.

In this case, the appellate attorneys suffer no consequences for recklessly selling out their clients. That is contrary to every rule promulgated by the ABA and the State Bar.

This is not a case involving the exclusionary rule. This is a case of an appointed attorney just not performing any of the tasks a competent attorney was obligated to perform under the Sixth Amendment.

D.

THE RULE THAT DEFENDANTS IN CRIMINAL CASES CANNOT SUE THEIR ATTORNEYS EXCEPT WHEN THEY CAN PROVE FACTUAL INNOCENCE IS UNFAIR AND CONTRARY TO EVERY RATIONAL LAW.

Unfortunately, California has devised a protectionist doctrine that says defendants in criminal cases cannot sue their attorneys unless they can prove he is factually innocent of the crime of which he was charged. (See ***Wiley v. County of San Diego*** (1998) 19 Cal. 4th 532.)

The ***Wiley*** case does not address third party misconduct leading to a criminal conviction when there is no antecedent criminality. It conveniently ignores all other possible reasons for wrongful convictions.

Racism and presenting false evidence is not uncommon in the United States. In one of the most famous cases in Modern United States history a prosecutor and a police officer conspired to deny a boxer, Ruben Carter, of his right to a fair trial by soliciting false testimony and not disclosing material evidence. (See ***Carter v. Rafferty*** (1987 3rd Cir.) 826 F.2d 1299; ***Carter v. Rafferty***, 484 U.S. 1011 (1988))

When Petitioner posted an excessive bail of $255,000m, they revoked it and refused to grant any bail. They charged him with great bodily injury enhancements that were eventually dropped because there was no evidence to support them. They charged him with acting while a restraining order was in effect, but that order was void because it was issued without due process. Additionally, it was based upon false information. They also charged Appellant with personally using a BB or pellet gun that no one claimed to see.

Despite all of that the Court of Appeals altered and remanufactured testimony and facts in its opinion just so it would not have to overturn the erroneous verdict.

Either one of those things alone casts doubt on Appellant's criminality. Appellant is not guilty of any of the alleged offenses, and there is not any objective evidence to the contrary.

The ***Wiley*** case overlooks the wide scale misconduct of judges, juries, police officers, prosecutors, and attorney misconduct and assumes all criminal defendants are guilty as charged. It erroneously assumes the only criminal defendants who win do so on technicalities.

Even though they apply that assumption after the verdict, the premise flies in the face of the Fifth Amendment's doctrine of innocent until proven guilty because implying that all person are guilty after the fact, except those who prevail by technicality, implies that all of criminal defendants are guilty from the inception, even those who ultimately are acquitted because they are not factually innocent.

Even a verdict of not guilty does not qualify a criminal defendant to sue his or her attorneys, even if the attorney was inebriated or under the influence of narcotics.

Even worse, the courts do not rely upon a jury to determine factual innocence. They look only to a judge's determination of factual innocence.

Factual innocence is extremely difficult to establish, and it is nearly impossible in a case involving only circumstantial evidence.

However, there are numerous circumstances that should entitle a criminal defendant to prove his conviction was not a result of his actions, but instead the actions or inactions of attorneys not zealously representing a client's interests. Such is the case like the one before us where the trial attorney failed to call witnesses or failed to impeach prosecution witnesses with prior inconsistent statements, and when the prosecution introduced a void restraining order.

This is a circumstantial evidence case wherein the only evidence that tied the accused to the case is uncorroborated accusations and a void restraining order.

The Court of Appeal decision erroneously reads Appellant followed his accuser outside a ballroom and pointed at her. Her testimony was she went to the ballroom after she learned Appellant was there. When she attempted to make a call inside the ballroom, she could not hear so she went outside. That is when she allegedly noticed Appellant who was already outside leaning against a wall. She testified when he noticed her, pointed his finger at her, which she believed was a handgun gesture.

Not a single witness testified Appellant followed anyone and there was no way

anyone could assume Petitioner's supposed intentions because he never said anything.

The jury certainly could not have relied upon the facts erroneously recited by J. Margulies that Appellant followed the accused outside the ballroom or that he was captured on video on the accused property September 1-2, 2018, because no such evidence was ever presented at the trial. Those are not the facts in the record.

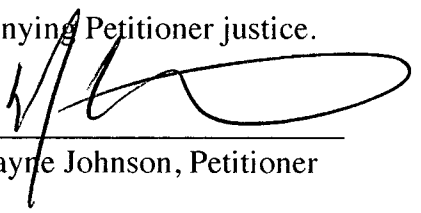
All the evidence the jury considered is relevant, not just what the prosecutor argued on closing.

What's more, it is not realistic to assume Mark D. Johnson would argue he is responsible for giving the prosecutor the argument the prosecutor raised on appeal independently for he was concerned with his own self-preservation. He would never argue to the Court that his breach of the Attorney-Client privilege is the reason Appellant lost the appeal.

CONCLUSION

For the foregoing reasons, Mr. Johnson respectfully requests that this Court issue a writ of certiorari to review the judgment of the California Court of Appeals, and the decree of the California Supreme Court denying Petitioner justice.

Dated: May 3, 2025

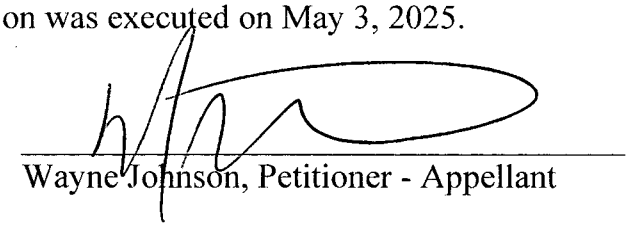


Wayne Johnson, Petitioner

WORD COUNT CERTIFICATION

The undersigned hereby certifies that this application has been prepared using 13 point Time New Roman typeface. In its entirety, the brief consists of 5,848 words as counted by the Microsoft Word word processing program, up to and including the signature lines that follow the application's conclusion.

I declare under penalty of perjury that this Certificate of Compliance is true and correct and that this declaration was executed on May 3, 2025.



Wayne Johnson, Petitioner - Appellant