

No. **24-7390**

ORIGINAL

Supreme Court, U.S.
FILED

FEB 17 2025

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IN THE

SUPREME COURT OF THE UNITED STATES

RILEY LEON SCOTT — PETITIONER
(Your Name)

vs.

STATE OF CALIFORNIA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

IN THE SUPREME COURT OF CALIFORNIA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

RILEY LEON SCOTT AR5937
(Your Name)

P.O. BOX 8457/B-2-112
(Address)

LANCASTER CA 93539-8457
(City, State, Zip Code)

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(Phone Number)

QUESTION(S) PRESENTED

1. Our disagreement in the case boils down to the correctness of one point in a single decision - People v. Laws (1993) 12 Cal.App.4th 786 (Laws). Question - "Is it 'simply dictum'?"
2. Does the possibility that the jury relied upon an incomplete first-degree murder theory - missing the proper MENS-REA - require a new trial where the error was not harmless?
3. The jurors was never told they had to determine that while lying in wait for the victim defendant "SCOTT" possessed a "wanton and reckless intent to inflict injury likely to cause death." (Brown, supra, 15 Cal.5th at p.465) In my view; was this clear error?
4. "If defendant 'SCOTT,' premeditated (sic) an assault and later in the confrontation deliberately killed victim, does that constitute first degree murder or is it more closely aligned to second degree murder?"

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Office of the Attorney General
State of California
450 Golden Gate Avenue
San Francisco, CA 94102

San Francisco District Attorney Office
ADA Allison Macbeth
350 Rhode Island Street
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Department of Justice Rm 5614
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Washington - D.C. 20530-0001

RELATED CASES

In re Saunders (1970) P-7 (5A)
2 Cal.3d 1033, 1040-1041

In re Spears (1970) - P-7 (5A)
2 Cal. App. 3d 1203, 1208

Cutierrez supra 28 Cal 4th at -P4
p. 1148 quoted People v. Webster,
(1991) 54 Cal.3d 411, 448

People v. Berberena (1989) (5A) P-9
209 Cal. App. 3d 1099

People v. Poindexter (2006) (5A) P-8
144 Cal. App. 4th 572, 586

People v. Young (2005)
34 Cal. 4th 1149, 1175

In re Frederick G 96 Cal. App. 3d 353

People v. Guiton (1993)

4 Cal. 4th 1116

TULER CATLIN BORG CAL/1 D079070
SUP CT No. RIF1805408 / (5A) 1

People v. Atchley (1959) P. (5A)-4
53 Cal. 2d 160, 176

People v. Howard (1987) P. (5A)-8
195 Cal. App. 3d 41, 48

People v. Mattison (1971) P. (5A)-3
4 Cal. 3d 177, 183.

People v. Osband (1986) P. (5A)-8
13 Cal. 4th 622, 664.

People v. Rodriguez (2001)
68 Cal. App. 5th 301, 324 P. (5A)-8

People v. Webster (1991) P. (5A)-4
54 Cal. 3d 411, 448 P. (5A)-5

United Steelworks of America

Board of Education (1982)
1162 Cal. App. 3d 823, 835

People v. Anderson (1968)
70 Cal. 2d 15, 26-27 P. (4A)-3-

People v. Pessinger (1991)
52 Cal. 3d 1210, 1238 P. (4A)-3-

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<u>People v. Brown (2023)</u>	<u>4A-1-1</u> ; <u>5A-1-3-4-5-8-9</u>
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<u>People v. Duvall (1995)</u>	<u>AA-2</u>
<u>9 Cal. 4th 414, 474-475</u>	
<u>People v. Laws (1993)</u>	<u>5A-4-5-9-</u>
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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

☒ reported at A170885; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the California Supreme Court court appears at Appendix C to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was 12/11/2024
A copy of that decision appears at Appendix C.

☐ A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on _____ (date) in Application No. ____ A ____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. 14th Amend § 1; Cal. Const., Art I § 15,
Sixth Amend. I.A.C.

Pen. Code. § 187 subd. (a);

Means of lying in wait (190.2 subd. (a)(15))

Pen. Code § 12622

Code of Civil Procedure section 1107

Other Authorities

CalCrim Jo. 521

Pen. Code § 189

CALJIC 8.25

STATEMENT OF THE CASE

Rickey Leon Scott appeals the judgment sentencing him to prison to 75 years plus 11 after a jury found him guilty of first degree murder instructed on two theories: premeditation and lying-in-wait. Scott's jury was instructed with the pattern charge (CALCRIM No. 521) - missing the heightened mental state of lying-in-wait murder. And nothing shows whether the jury relied on that theory or the other one. I'm asserting the challenge to the standard CALCRIM No. 521 instruction on lying-in-wait first degree murder.

The critical legal question can be simply stated - what culpable mental state must the defendant have while lying in wait to be guilty of first degree murder on a lying in wait theory? One view, the Supreme Court has already answered this question on several occasions and the answer it has given is quite different from the one that Laws offers or the nonanswer that CALCRIM No. 521 provides.

Let's start with the high court's most recent pronouncement. In Brown, the court considered a claim of instructional error by a defendant charged with first degree murder by poison. In particular, the court was ask to decide whether "the trial court erred in failing to instruct on the mental state required for first degree poison murder." (Brown supra, 14 Cal. 5th at p. 460.) In other words, the issue in Brown was identical to the contention raised by Scott in this case with

CONTINUE... STATEMENT OF THE CASE

1 respect to first degree lying-in-wait

2 To resolve this question, one Justice's
3 opinion began with examining the language of
4 section 189 "in its historical context," noting "the -
5 designation of murders by means of poison, lying in wait
6 and torture as kinds of first degree premeditated
7 Murder." (Brown) supra, 14 Cal.5th at pp 461-462.)

8 This historical context "revealed the Legislature's intent
9 to require proof of 'something more' than malice to
10 elevate a murder by means of torture, lying-in-wait,
11 or poison to the first degree." (Id. at pp. 463-464.)

12 Taking its a factual present in my
13 case, I've shown each state court an prima facie
14 case that I'm convicted under a first-degree murder
15 instruction that omitted the required MENTAL
16 state lay down in the decision in People v. Brown
17 (2023) 14 Cal.5th 453. - intent to inflict injury -
18 likely to cause death - rendering my conviction
19 invalid and a new trial necessary under alternative
20 - theory error rule." (In re Ferrell (2023) 14 Cal.5th 593.

21 (Whether assuming the allegation are true,
22 "Scott", would be entitled to relief." People v. Duvall
23 (1995) 9 Cal.4th 464, 474-475.)

24 On April 12, 2013, A jury instructed -
25 with the pattern lying in wait, inter alia found "Scott"
26 guilty, affirmed on appeal (A13993) in July of 2015. I am
27 serving 75 years plus 11 years; at time of sentence I'm
28 only 12 days shy of 65 year of age.

Continue, STATEMENT OF THE CASE

1 Review of the reasoning on direct appeal
2 is useful in analyzing whether the jury could have
3 reasonably found against premeditation just as
4 they could have found for it. In reviewing the Anderson
5 premeditation factors this court noted the lack of
6 evidence that Scott went to the shelter . . .
7 expecting to see Smith (#A139921 at 9, citing People
8 Anderson (1968) 70 Cal.2d 15, 26-27.) And, though the
9 court noted the jury was not required to credit
10 Scott's testimony that he put the knife in his
11 pocket and went to sleep before encountering -
12 Smith, nothing shows they could not or did not do
13 so. That the jury could have credited Scott's very
14 testimony in this regard - as it gave its cloth
15 of truth (Ferrell, supra, 14 Cal.5th at 604) - shows
16 it may have decided against premeditation.

17 Likewise, on the motive factor, as there
18 could have been "an incomprehensible need" to kill
19 to avenge a prior theft as in the Pessinger case
20 (#A139921) at 10, citing People v. Pessinger (1991) 52
21 Cal.3d 1210, 1238), a historical theft could also provide
22 motive to act with a state of mind far short
23 of intent to kill. And again, the court rightly noted
24 that the jury could have credited Pava's testimony
25 on this topic. Similarly, the jury could have doubted
26 Pava there, but found it did not matter to their
27 verdict because of evidence that supported lying
28 in wait. Indeed noting the pros and cons around

PLEADING TITLE - I

Continue, ... STATEMENT OF THE CASE

knife by Security Guard) carried a knife and was primed for real or perceived danger due to past experiences. Scott's drawing the knife in close proximity to the compromised Smith could itself be viewed as proof of conscious disregard for the risk to human life and an implied malice murder finding the result, without premeditation or intent to kill.

With the record unable to eliminate reasonable doubt that the jury relied on lying-in-wait over premeditation, the first-degree murder conviction must be infirm, also vacated and a new trial ordered.

Respectfully Submitted
s/ Rickley Leon Scott
Rickley Leon Scott Pro Se

REASONS FOR GRANTING THE PETITION

I truly believe judge Date, J., Dissenting on the matter in "TYLER CATTIN BORG, CA4/1 DO79870 (Super Ct No RIF1905409). It was felt that there was instructional error in that case, same as my case under alternative theory error rule (In re Ferrell (2023) 14 Cal.5th 593:

Pointing out that the standard CALCRIM instruction on first degree murder (No. 521) fails to correctly set forth the mental state required to establish that crime on a lying-in-wait theory, as recently confirmed and explained by the Supreme Court in People v. Brown (2023) 14 Cal.5th 453 (Brown)

An instructional error of this nature, punctuated by a jury not told they had to determine that while lying in wait for the victim, defendant "SCOTT," possessed a "wanton and reckless intent to inflict injury likely to death." (Brown, supra, 15 Cal.5th at p. 465) This was clear error, the same topic, should require reversal.

So there was error, but was it prejudicial? — CALCRIM NO. 521. The first question inquired.

"On page 2 of CALCRIM 521 it is stated

Continue;... REASON FOR GRANTING THE PETITION

that "The lying in wait does not need to continue for any particular period of time, but its duration must be substantial enough to show a state of mind equivalent to deliberation or premeditation."

"Therefore, based on that specific language [if a person lied [sic] in wait briefly with only intent to assault, and murder ended up happening by rash decision in a state of panic then they did not show a state of mind equivalent to deliberation or premeditation for murder, only for assault. Can you provide any guidance on this?"

II.

A. Constitutional Law = Fundamental Rights =

Procedural Due Process = General Overview

B. Criminal Law & Procedure = DEFENSES = GEN. OVERVIEW

C. Crim. Law & Procedure & DEFENSES = Right to Present

Under the due process clause of U.S. Const. Amend. XIV, criminal prosecutions and defense counsel must comport with prevailing notions of fundamental fairness, procedural. If lying in wait could have been brought, the idea of *Wainwright*, *Scott*, be afforded a meaningful opportunity to present and complete ignorance of the law is no excuse. To safeguard that right, the U.S. Supreme Court has developed - what might loosely be called the area of constitutionally guaranteed areas.

Because the court's had "never been

Continue... REASON FOR GRANTING THE PETITION

Asked to directly address what mental state in the administration of murder by lying-in-wait and torture - the two other kinds of 'willful, deliberate, and premeditated killing' that section 189 has listed as categorically 'murder of the first degree' since its enactment." (Brown, at p. 464) "In both contexts," said Justice Groban, "we have concluded that more than malice is required; the defendant must have committed the designated act with a specific mental state that is equivalent to willfulness, deliberation, and premeditation." (Ibid, italics added) The court then reiterated that the "act" of lying in wait - an act preceding and distinct from the act of killing - must be accompanied by a specific mental state. "[I]t is not sufficient to merely show the elements of waiting, watching and concealment. It must also be shown that the defendant did those physical act with [a specific] intent." (Brown, at p. 465 quoting - People v. Mattison (1971) 4 Cal.3d 177, 183.)

Just as the "designated act" in murder by poison is the administration of the poison, in murder by lying in wait it is the lying in wait. And so Brown's discussion of the required mental state addresses the precise - question "SCOTT," confront in this case - what must defendant's mental state be while he is lying in wait?

CONTINUE; ... REASON FOR GRANTING THE PETITION

III

Although the court in Laws did not have the benefit of Brown's discussion of the mental state necessary for lying in wait - first degree murder, Justice Grabau's opinion makes clear that the "heightened mental state" required for conviction is nothing new. (Brown, supra, 14 Cal.5th at p.472.) In declaring that "defendant's must act with a 'wanton and reckless intent to inflict injury likely to cause death,'" the Supreme Court quoted its earlier decision in Gutierrez, supra, 28 Cal.4th at page 1148, which in turn quoted People v. Webster (1991) 54 Cal.3d 411, 448. (Brown at p.465.) For this proposition, Webster cited, among other cases, People v. Atchley (1959) 53 Cal.2d 160, 175, footnote 4. Although Laws does not mention Gutierrez or Webster, it does acknowledge Atchley as one of "several cases decided years ago [that] have characterized the 'gist' of lying in wait as 'watching, waiting, and concealment from the person killed with the intention of inflicting bodily injury upon such person or of killing such person.'" (Laws, supra, 12 Cal.App.4th at p.795, fn.2 quoting Atchley at p.175.) Laws dismisses the statements in these cases as "simply dictum," suggesting - that "[i]f none of these cases was the issue posed whether lying in wait requires an intent

Continue; ... REASON FOR GRANTING THE PETITION

1 to kill or injure." (LAWSON, at p. 795, fn. 2.) But "[E]ven
2 if properly characterized as dictum, statements of
3 the Supreme Court should be considered
4 persuasive." (United Steelworkers of America v.
5 Board of Education (1984) 162 Cal. App. 3d 823, 835.)
6 This is particularly true when the Supreme Court
7 has repeated the same legal principle on multiple
8 occasions. This was hardly an inadvertent or ill-
9 considered comment.

10 But as Brown make clear, the "height-
11 ened mental state" is not an additional element.
12 It is subsumed within the concept of "lying in
13 wait" which includes both physical act and -
14 mental state requirements. (Brown, supra, 14
15 Cal. 5th at p. 465.) The mental state component,
16 beyond what would be required for express or
17 implied malice, is what justifies making lying
18 in-wait first degree murder the functional
19 equivalent of premeditated first degree murder.

IV.

21 To put it in a concrete context,
22 Assume the defendant "SCOTT" waits for the
23 victim "Abdul Smith", his only intent being to force
24 a verbal confrontation (Transcripts show victim leave after
25 he attacks Scott, six to eight minute pass, victim returns) he knows
26 the victim is trying to avoid. Ten minutes later, during
27 the ensuing argument and without premeditation,
28 the defendant develops the mental state necessary

Continue; ... REASONS FOR GRANTING THE PETITION

1 for malice AND kills the victim. LAWS MEANS this
2 would be first degree murder by means of lying-
3 in-wait even though (1) AS he waited for the
4 victim, the defendant did not intend to injure
5 him, and (2) the identical killing, without the
6 waiting, would at most be second degree murder
7

V.

8 In light of this express finding, I
9 think it unnecessary to speculate on differences
10 between the current version and earlier versions
11 in terms of the temporal connection between the
12 lying in wait and the actual killing. The
13 critical issue for this purposes is the defendant's
14 required mental state and whether he must
15 possess it while he is lying in wait.
16

VI

17 A Any existing delay is justified
18 by good cause
19

20 Delay by a layperson may be justified in
21 view of "the importance of the issue" raised "to a
22 case that resulted in a life sentence." (IN RE LUCERO
23 (2012) 200 Cal. App. 4th 3846) As much is true here,
24 where Scott was indigent, a layperson, a prisoner
25 at all relevant times, and he raises the same -
26 important issue while serving the same kind
27 of life sentence. Indeed, a delay of two-and-a-half
28 years between new law and a filed petition was

Continue;... REASON FOR GRANTING THE PETITION

1 deemed insubstantial in the Supreme Court's In
2 re Huddleston particularly as the delay worked
3 mostly to petitioner's disadvantage. (In re
4 Huddleston (1969) 71 Cal.2d 1031, 1034.)

5 Lack of legal education, indigence,
6 and imprisonment have justified years-long delay
7 excused for lack of education and unfamiliarity
8 with the law, (In re Saunders (1970) 2 Cal.3d
9 1033, 1040-1041.); In re Speaks (1984) 157 Cal.App.
10 3d 1203, 1208 [18-month delay justified by lack
11 of capacity for self-representation and scarcity
12 of legal assistance for indigent prisoners].)

13 The Court's finding "Scott's" habeas
14 untimely, the trial court failed to consider his
15 assertion of good cause, nor the evidence -
16 supporting it. The evidence of "Scott's" lack of
17 education, lack of resources, and lack of knowledge
18 about a legal element issue in the lying-in-wait
19 instruction prior to San Francisco's Public Defender
20 Danielle Harris SB#200185; telling him about the
21 Brown decision; (incapable of being controlled)

22 Were "Scott's" claim based in law
23 existing before his case final despite the holdings
24 of Laure and Berberena, the failure to object to
25 the missing element and to raise the claim on
26 appeal would establish "deficient performance under
27 an objective standard of professional reasonableness
28 and prejudice under a test of reasonable . . .

Continue; ... REASON FOR GRANTING THE PETITION

probability of a different outcome." (People v. Osband (1996) 13 Cal.4th 622, 664.) Prejudice — MEANS "A significant but something-less-than 50 percent likelihood of a different or a more favorable" result absent counsel's errors. (People v. Howard (1987) 190 Cal. App. 3d 41, 48.), below a preponderance. (People v. Rodriguez (2021) 68 Cal. App. 5th 301, 324.)

The inquiry does not depend upon the particular decisionmaker but rather upon what a reasonable decisionmaker might well have done. (Strickland v. Washington (1984) 466 U.S. 668, 695.) Here, a reasonable decisionmaker might well have found reasonable doubt of intent to inflict — injury likely to cause death and of premeditation — all elements required to be provided SNA statute (Brown, supra at 461) — thus acquitting Scott of first degree murder. And the possibility of reversal on appeal had the missing element been raised under the Chapman standard was real.

There is no procedural bar to Scott's petition. In sum, though much can be said about "confusion regarding the definition of lying in wait" before Brown (People v. Bindexter (2006) 144 Cal. App. 4th 572, 581b), Brown made clear that a lying-in-wait murder theory requires "wanton and reckless intent to inflict injury likely to cause death." Brown's 2023 ruling combined with Ferrell's retroactive application

Continue;... REASON FOR GRANTING THE PETITION

of the alternative-theory error rule, render "Scott's" claim timely. There is no substantial delay here because Scott relies on the Supreme Court's holdings in Brown and Ferrell, issued in (2023).

The trial court's conclusion that Brown did not change the law on lying-in-wait murder rests on its conflation of implied malice with - intent to inflict injury likely to cause death. (See supra p. 24, J.3.) Moreover, as the cases cited in the trial court's order show, the law prior to Brown did not support the petitioner's argument. Cases that the order relies upon, like Berberena and Laws, were instead implicitly overruled by Brown.

Berberena's claim that this intent element was absent from his trial was colorable in 1989. (People v. Berberena, supra, 209 Cal. App. 3d at 1105.) But, once this district upheld the 1985 deletion of the intent element from the pattern instruction (then CALJIC 8.25) and the Sixth District in Laws did the same, citing the Supreme Court's Ruiz as support for its holding that lying in wait did not require intent to kill or injure (Laws, supra, 12 Cal. App. 4th at 794.), no litigant could be expected to raise the issue until landscape change in Brown.

Further, Scott also relies on Ferrell's 2023 retroactive application of the alternative theory error rule, one legally correct and one legally incorrect. (In re Ferrell, supra, 14 Cal. 5th at 602.)

If all my arguments are factual; I
may be allowed I.A.L. Claim.

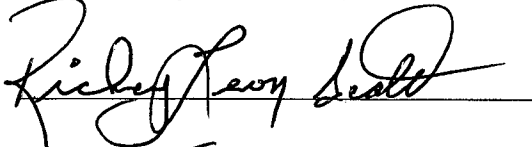
PRAYER FOR RELIEF

1. After full consideration of the issues
raised in this petition, issue a writ of habeas
corpus to discharge Petitioner from his
unconstitutional confinement and restraint and
relieve him of his unconstitutional conviction; sentence.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: Feb. 16, 2025