

No: 17-9118

IN THE
SUPREME COURT OF THE UNITED STATES

ANTWAIN WILLIAMS - PETITIONER

VS.

THE PEOPLE OF
THE STATE OF CALIFORNIA - RESPONDENT(s)

ON PETITION FOR RE-HEARING OF AN ORDER
DENYING A PETITION FOR A WRIT OF CERTIORARI TO
THE STATE OF CALIFORNIA COURT OF APPEAL SECOND APPELLATE
DISTRICT DIVISION FIVE

PETITION FOR RE-HEARING OF AN ORDER
DENYING A PETITION FOR A WRIT OF CERTIORARI

ANTWAIN WILLIAMS

PELICAN BAY STATE PRISON - A7-223

P.O. BOX 7500. CRESCENT CITY, CA 95532

QUESTION(S) PRESENTED

- 1.) Whether the Court of Appeal Slip Opinion decision here, was a correct exposition of Law?
- 2.) Whether there was a complete absence of evidence upon the issue of heat of passion, as to require that it be taken from the consideration of the jury?
- 3.) Whether the trial court's failure to instruct on heat of passion in a Conviction for Attempted Premeditated, Deliberate, Willful Murder, can be determined "Harmless-Error," when no thorough / comprehensive instructions on heat of passion was given and evidence on the issue existed?
- 4.) Whether the Prosecution is required to prove beyond a reasonable doubt the absence of heat of passion when only the State / Prosecution produced relevant evidence upon the issue of heat of passion?
- 5.) Whether the Federal Standard applies in assessing prejudice when a trial court fails to give sua sponte, lesser included offense instruction in a non-capital case, when evidence exist?
- 6.) Whether the State Court errors constitute a violation in Federal Constitutional error?
- 7.) Whether the Court of Appeals decision and determination, was objectively unreasonable?
- 8.) Whether failing to instruct on heat of passion was Federal Constitutional error resulting in incomplete instructions on the elements of murder, when requested by the trial counsel?
- 9.) Whether Attempted Premeditated, Deliberate, Willful Murder instructions are functionally equivalent to / obviate the necessity of; heat of passion instructions?
- 10.) Whether the Chapman Standard of this court, conflict with the Watson standard of California, by requiring the error be harmless beyond a reasonable doubt?
- 11.) Whether the State Court failure to apply the "Accusatory Pleading" Test, constitute harmless error?

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 judgement is the subject of this petition is as follows:

TABLE OF CONTENTS

OPINIONS BELOW.....	1.
JURISDICTION.....	2.
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED...	3.
STATEMENT OF THE CASE.....	4.
REASONING FOR GRANTING.....	9.
CONCLUSION.....	13.
CERTIFICATION OF COUNSEL.....	14.

INDEX TO APPENDICES

APPENDIX A - California Court of Appeals Slip Opinion decision

APPENDIX B- Abstract of Judgment from a State Court.

APPENDIX C- United States Supreme Court denied review

APPENDIX D- California Supreme Court denied review

APPENDIX E- Jury Verdict Forms

APPENDIX F-

APPENDIX G-

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Chapman v. California (1967) 386 U.S. 18	12.
Fry v. Piller (2007) 551 U.S. 112	9.
People v. Hernandez (2010) 183 Cal. App. 4th 1327	11.
People v. Hernandez (2011) 51 Cal. 4th 733	11.
People v. Lee (1999) 20 Cal. 4th 47	11.
People v. Speight (2014) 227 Cal. App. 4th 1229	12.
People v. Wickersham (1982) 32 Cal. 3d 307	11.
People v. Wright (2015) 242 Cal. App. 4th 1461	11.
Stevenson v. United States (1896) 162 U.S. 313	11.
Sullivan v. Louisiana (1993) 508 U.S. 275	12.
United States v. Gaudin (1995) 515 U.S. 506	9.

STATUTES AND RULES

California Penal Codes

§ 187(a)	4.
§ 246	4.
§ 422	4.
§ 664	4.
§ 12022.53(b)	4., 5.
§ 12022.53(c)	4., 5.

United States Code of Service

Title 28	
§ 2111	12.

OTHER

Senate Bill 620	5.
-----------------	----

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR REHEARING OF AN ORDER DENYING A
PETITION FOR A WRIT OF CERTIORARI

PETITIONER RESPECTFULLY PRAYS THAT AN ISSUE TO REVIEW
THE JUDGMENT BELOW

OPINIONS BELOW

☒ 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

☒ is unpublished.

JURISDICTION

☒ For cases from state courts:

The date on which the highest state court decided my case was February 14, 2018.

A copy of that decision appears at Appendix D.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Code of Service (U.S.C.S.) Title 28, § 2111

On the hearing of any appeal or writ of certiorari in any case, the court shall give judgment after an examination of the record without regard to errors or defects which do not affect the substantial rights of the parties.

STATEMENT OF THE CASE

Petitioner, prose, Antwain Williams was charged by information in counts one through six with attempted murder, (§664/187 Subd.(a)), in count seven with shooting at an inhabited dwelling, (§246), and in count eight was dismissed at preliminary examination, was criminal threats with intent, (§422), but was held insufficient evidence to hold petitioner for. It was further alleged as to counts one through six that, during the commission of the offenses, petitioner had personally used a firearm within the meaning of section 12022.53(b). (CT 89-92.)

A jury trial began on August 19, 2016, which it was that counts one through six would be premeditated, deliberate, willful attempted murder and that petitioner personally and intentionally discharged a firearm, within the meaning of Section 12022.53(c). (CT 92, 112).

On August 29, 2016, petitioner was acquitted of premeditated, deliberate, willful attempted murder in count one, three, four, five, and six; but was convicted on Count 2 and Count 7, (RT 1802-1805; CT 194-207, CT 209-210). The jury also found both firearm allegations as to count two, (RT 1803); (CT 195, 210).

At a Sentencing hearing on November 9, 2016, petitioner was sentenced to 27 years to Life, consisting of 7 years to

Life for count two, plus twenty years for the section 12022.53(c) enhancement. (RT 3306-3307; CT 238, 240.) The section 12022.53(b) enhancement was stayed; the upper term of seven years on count seven was ordered to run concurrently. (RT 3306-3307, 3312; CT 238, 240.) A timely notice of appeal was filed on November 10, 2016 (CT 244.)

On appeal represented by appellate counsel at California Court of Appeal, Second Appellate District, Division Five, counsel first addressed the issues of both State and Federal errors from failing to instruct on a lesser included offense (*sua sponte*) and refusing to give requested pin point instructions on heat of passion. The Court of Appeals, on November 29, 2017, affirmed petitioner conviction. (See, Appendix-A). Appellate counsel resigned immediately after judgement was affirmed, so Petitioner, Pro Se, was unaware of the option to rehear, so, no petition for review was sought.

On December 18, 2017, review was sought in the California Supreme Court, arguing the Court of Appeals Slip Opinion and among other things, newly enacted Senate Bill 620. On February 14, 2018, the California Supreme Court denied discretionary review. (See, Appendix-D). Petitioner, unaware of option for rehearing, further review was not sought at that time.

On May 15, 2018, a timely petition of a writ of certiorari was sought. On October 1, 2018, the United States Supreme Court denied review. (See, Appendix-C). On December 17, 2018, a timely petition for re-hearing of an order denying a petition for a writ of certiorari was submitted.

CONCISE STATEMENT OF FACTS

Petitioner and Evetta Smith had been in a relationship for nine years and have a three year old daughter together. (RT 923-924). The three year old child suffer from a serious medical condition, which medical appointments are in the Long Beach, CA area, although, all three of them live in San Bernardino, CA. (RT 924, 974). Prior to April 2016, the petitioner has always been around his daughter, enabled to ensure her safety, health, and welfare, but, around the day of the crime charged, petitioner was unable to see his child for three weeks. (RT 962, 970, 975). Smith, who uses drugs, was often criticized for her parenting and was known as a "couch surfer" over those three weeks prior to the incident, as she often went out with friends and stayed out the whole night. (RT 969, 970, 1029); (RT 963).

On April 25, 2016, petitioner and Smith was conversating fine earlier in the day, when Petitioner asked Smith if he could come pick her and the child up, and the petitioner said no, then later on said yes, just come, and then refused when Petitioner got to the location he believed she was at. (RT 931-933). Smith never told Petitioner where she was actually located, nor who she was around, or any facts to presume her actual location, on or prior to the crime charged. (RT 971, 973, 1011). Petitioner called Smith back upon arrival at the apartment building, he was use to dropping her and their child off at, and picking them up, and an argument begun and Smith refused to allow Petitioner to see his child, this made Petitioner very upset. (RT 932-933). Petitioner expressed concerns for them and desire for them to return home. (RT 959-960, 963). Petitioner, already at the apartment building told Smith he was outside but, Smith either didnt care or didnt believe Petitioner, never checked and remained inside the Secured

-Locked Apartment Building. (RT 965). Petitioner and Smith arguments continued and increased as the day went on, late into the evening with Petitioner getting madder and madder. (RT 935, 970). Petitioner is known to become angry and has a "short fuse" when discussing the custody, health, safety, and welfare of his daughter, who requires special care and which Smith is the only one out of the two of them with full legal custody, but still chooses to do drugs and party all night, out with friends. (RT 962-963, 969-970, 1029). Petitioner, upset with outcome of court awarding Smith full custody, which Petitioner only has visitations, and now, Smith refusing to comply with mandated weekly stated court order visitations, was seeking split custody in the ongoing custody battle. (RT 961-963, 970, 977, 1055-1057, 1059); (RT 1310). Petitioner expressed knowledge of Smith having an affair and called Smith a bitch and a liar. (RT 934).

Around 10:37pm, April 25, 2016, shortly after Smith and Petitioner hung up, Smith and others in the living room of Smith's friend apartment in Long Beach, CA, heard a loud bang outside the door, inside the apartment building public hallway. (RT 939-940). Smith investigated the loud noise by looking thru the small peephole in the door which leads to the public hallway and observed a person in a black hoodie, without her prescription glasses she's require to wear. (RT 940-942, 950-951, 964-965, 976; 1313). Smith, unknowing exactly what was going on, went to the back of the apartment, which is actually the side by design, to get someone who stayed there, when while she was still in the back of the apartment, heard somebody yelling "he's shooting" and started to head back towards the living room, when a bullet entered thru the side wall, she then ducked and crawled back to the back bedroom. (RT 942-943, 971, 994, 1009-1010, 1011-1014, 1045, 1049; 1214-1218). Smith, Among about fourteen/or fifteen others, was not hit and

no one was injured from the whole incident, which Smith, and others, called 911 afterwards, which Smith mistakenly named the Petitioner as the shooter, because of the arguments they was having earlier that day. (RT 940-943, 964, 965); (CT 52, 54).

Long Beach Police Department, officers only, examined the crime scene poorly, by failing to do any routine measurements, adequate documentation, victim locations inside during shooting, Gun shoot residue and Ballistic testing, and must of all, failed to determine or examine bullet shells and bullet trajectory. (RT 1212-1235). Bullets and bullet shells was found on multiple levels and multiple apartments, suggesting someone outside the apartment unit Smith was located at, was targeted on both levels, since more shells than bullets was found, (CT 65, 68-69, 71). Petitioner was arrested at his job, BNSF Railroads in San Bernardino, CA, on April 28, 2016.

Smith, during trial, was only asked about her infidelity in relation to the issue of heat of passion by the defense trial counsel as: "Mr. Smith, have you ever cheated," on the Petitioner and then, before had she any chance to answer, the prosecution objected on relevance and Surprisingly, the judge sustained and Smith was never asked nor stated, any facts which she denied an affair; Nor was any evidence produced which would allow any inference she denied having an affair. (RT 967.)

REASONS FOR GRANTING THE PETITION

On limited but substantial grounds and controlling authority not previously presented, the State Court erred under United States Supreme Court intervening decision in United States v. Gaudin (1995) 515 U.S. 506, 522-523, in failing to submit heat of passion instructions to fully define malice to the jury. Briefly and distinctly, for the reasons set forth below, the petitioner contends in good faith and not for delay, the Court of Appeals Slip Opinion (See, Appendix-A) decision and determination of "harmless" error beyond a reasonable doubt, objectively "unreasonable." Fry v. Pliler (2007) 551 U.S. 112

First, the Court of Appeals, in accordance with other courts, construed relevant evidence, to describe, any information necessary to a determination of insufficient evidence on the issue of heat of passion. On pages 7-10 of the Slip Opinion (See, Appendix-A), are the unreasonable determinations in light of the evidence adduced at trial, follows: "there is no evidence in the record that Smith verbally taunted defendant about infidelity or that defendant had knowledge of an ongoing affair," but the records at trial the petitioner either had knowledge of Smith having an affair or reasonably believed Smith had been in an affair (RT 934), and which Smith staying with another person for three weeks is perhaps the ultimate taunted infidelity which Smith alternated in telling petitioner not to come, then to come, then not to come on the day of the charged crime (RT 925, RT 931, RT 933, RT 960, RT 966, RT 1316); "there is no evidence in record that defendant and Smith were engaged in a heated custody dispute," but the records reflect that Smith and petitioner was engaged in a heated custody battle that which Smith received full custody of their child and Petitioner was

now proceeding to get Split Custody (RT 960-961, RT 977); "the argument that took place on the day of the shooting was no different than the many other occasions on which they had argued in their... relationship," but the records suggest, prior to Smith desire to be in Los Angeles County (RT 1316), Smith and Petitioner lived together for 2-3 years with their child, which this was the first time Smith had stayed with a friend for three weeks without allowing the Petitioner to see his child surely creates a very different situation than in what the Court of Appeal describe as "other occasions", especially since Smith and Petitioner only have one child together, made this argument anything but normal and capable of being much more intense (RT 925, RT 931, RT 960, RT 962, RT 975); "the defendant harassed Smith by calling... defendant proceeded to drive to Long Beach from San Bernardino to commit the shooting" But the records state Petitioner wasn't harassing her (RT 977) and no evidence that Petitioner drove anywhere on the day of the crime was presented in trial, only testimony by Mr. Miller placed the Petitioner in San Bernardino County 2 days before, which Detective Garcia corroborated (RT 1322-1323); "defendant argues legally adequate provocation can be found in Smith's statement that she didn't want him to pick up their daughter until the following morning. This evidence is insufficient as a matter of law to establish the level of provocation required for heat of passion," but the records suggest that provocative conduct over a period of considerable time had come to a head, prior to the shooting (RT 961, RT 960, RT 963, RT 970). Hence, the evidentiary support set forth above, notwithstanding any other relevant evidence in the record, suggest that the victim engaged in or was reasonably

believed to have been engaged in, provocative conduct prior to the shooting and the petitioner was subjectively aroused to "the actual influence of strong passion" at the time of the shooting. See, People v. Wickersham (1982) 32 Cal. 3d 307, 327. There is a reasonable probability that at least one juror could have found reasonable doubt to find Petitioner's state of mind when shots were fired, was that of a high-wrought enthusiastic emotion driven by strong passion for the custody of a loving child, aggravated with extreme emotion from a volatile and acrimonious relationship (see, People v. Wright (2015) 242 Cal. App. 4th 1461, 1483), compounded with intense anger from the belief of Smith having an affair (see, People v. Lee (1999) 20 Cal. 4th 47, 59); thus, finding Petitioner guilty of attempted voluntary manslaughter and acquitting him of first degree attempted murder, had the heat of passion instructions been given. See, People v. Hernandez (2011) 51 Cal. 4th 733, 746. Notably, the presence of heat of passion negates malice, and the crime is only manslaughter, but that's when the jury finds both objective and subjective components of heat of passion.

Consequently, "if the provocation would not cause an average person to experience deadly passion but it precludes the defendant from subjectively deliberating or premeditating," the crime is second degree attempted murder instead. See, People v. Hernandez (2010) 183 Cal. App. 4th 1327, 1332. The question then becomes, whether there was a complete absence of evidence upon the issue of attempted voluntary manslaughter, and 2nd degree attempted murder, as to require that it be taken from the consideration of the jury? Stevenson v. United States (1896) 162 U.S. 313.

Second, the Court of Appeal Slip Opinion, at page 10 (See, Appendix-A) opined: "Finally, assuming there was instructional error, defendant did not suffer prejudice. The jury's finding that the attempted

murder in count 2 was willful, deliberate, and premediated 'is manifestly inconsistent with having acted under heat of passion. Thus, we conclude the instruction error was harmless beyond a reasonable doubt.'" Citing, People v. Speight (2014) 227 Cal. App. 4th 1229, 1264. A rationale, that which Petitioner contends is both within itself is internally inconsistent, contradictory and in conflict with published opinions in that regards. Chapman v. California (1967) 386 U.S. 18, 24.

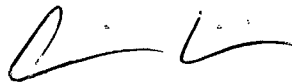
Whats most incongruous with the Court of Appeals decision here is that, "the jury's finding that the attempted murder in count 2 was willful, deliberate, and premediated 'is manifestly inconsistent with having acted under heat of passion....'" Which the heat of passion instruction and thus findings, reduc[es] attempted murder to attempted voluntary manslaughter, that of which the trial court refused to give. Therefore, it begs the question as to how the jury's finding that the attempted murder was willful, deliberate, and premediated, as "manifestly inconsistent with having acted under heat of passion," when in fact the trial court deprived the jury, and thus, Petitioner of its option in that regard, by with-holding the heat of passion instruction? The essential inquiry "is not whether, in a trial that occurred without the error, a guilty verdict would surely have been rendered, but whether the guilty verdict actually rendered in this trial was surely unattributable to the error." See, Sullivan v. Louisiana (1993) 508 U.S. 275, 279. See also, United States Code of Service (U.S.C.S.) Title 28, sub-section 2111; (CT 151-193).

CONCLUSION

The Petitioner prays and hopes this most honorable court grants this petition for re-hearing of an order denying a petition for a writ of certiorari.

Respectfully submitted,

Antwain Williams #BB6055

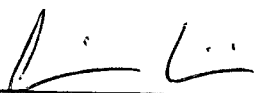


Date: December, 17, 2018

CERTIFICATION OF COUNSEL

I, the Undersigned, hereby declare that the attached Petition for Re-Hearing of an order denying a petition for a writ of certiorari to the State of California Court of Appeal Second Appellate District, Division Five, is presented in good faith and not for delay, and the grounds are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented.

I, the Undersigned, declare that I am over the age of eighteen (18) years old, and I am a party to the within cause of action, under the penalty of perjury of the laws of the State of California, that the foregoing Certificate of Counsel, is true and correct

 12/17/18
Declarant

**Additional material
from this filing is
available in the
Clerk's Office.**