

25-5679
No. _____

ORIGINAL

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

WASHINGTON, D.C. 20543

Supreme Court, U.S.
FILED

JUL 25 2025

OFFICE OF THE CLERK

LEWIS ANDERSON — PETITIONER
(Your Name)

VS.

PEOPLE OF THE STATE OF CALIFORNIA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA FOURTH APPEL. DIST. ET AL.
DIV. II (NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

LEWIS ANDERSON
(Your Name)

VALLEY STATE PRISON 21633 AVENUE 24
(Address)

CHOWCHILLA CALIFORNIA 93610
(City, State, Zip Code)

STATE PRISON
(Phone Number)

QUESTION(S) PRESENTED

- A. SHOULD UNITED STATES SUPREME COURT GRANT CERTIORARI REVIEW ON ASSAULT WITH DEADLY WEAPON CHARGE AND VACATE STATE'S COURT'S CONVICTION BASED ON PROPENSITY EVIDENCE VIOLATIONS?
- B. HAVE TRIAL JUDGE AND COURT OF APPEALS FOR THE STATE OF CALIFORNIA ABUSE ITS DISCRETION BY GRANTING PROPENSITY EVIDENCE DURING PETITIONER ASSAULT TRIAL.
- C. WERE CALIFORNIA STATE SUPREME IN THE RIGHT IN DEPRIVING PETITIONERS OF FUNDAMENTAL CONSTITUTIONAL RIGHT TO A FAIR TRIAL WHEN IT CONVICTED BASED ON A NON-CONSENSUAL WAIVER OF RIGHTS?
- D. WHAT IS UNITED STATES SUPREME COURT RULES FOR PROPER STANDARD FOR WAIVING RIGHTS?
- E. ARE STATE'S COURT REJECTION OF PETITIONER'S FEDERAL DUE PROCESS AND EQUAL PROTECTION CLAUSE AS MOOT CONTRARY TO CLEARLY ESTABLISHED FEDERAL RULES?
- F. HAVE CALIFORNIA TRIAL COURT VIOLATED PETITIONER'S RIGHT TO A FAIR TRIAL IN ACCORDANCE TO DUE PROCESS CLAUSE BY ADMITTING EVIDENCE OF PRIOR VIOLENCE CRIMES?
- G. CAN STATE TRIAL COURTS WAIVE CONSTITUTIONAL RIGHTS AND COURT OF APPEALS DENIED RIGHTS AS MOOT?
- H. WERE THERE AN ABUSE OF DISCRETION WHEN PROSECUTOR CONVICTED PETITIONER'S FOR ASSAULT WITH A DEADLY WEAPON ABSENCE A FIREARM?

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:

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DEPUTY ATTORNEY GENERAL	AND RESPONDENT.

RELATED CASES

BRADY V. MARYLAND, 373 U.S. 83 (1963)
CRAWFORD V. WASHINGTON, 541 U.S. 36 (2004)
DAVIS V. WASHINGTON, 347 U.S. 813 (2006)
ESTELLE V. MCGUIRE, 502 U.S. 62 (1991)
IN RE WINSHIP, 397 U.S. 358 (1970)
OLD CHIEF V. UNITED STATES, 519 U.S. 172 (1997)
TAPIA - FELIX V. NDOH, 2020 U.S. DIST. LEXIS 9870

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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 C 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 CALIFORNIA COURT OF APPEALS, 4TH DISTRICT court appears at Appendix A 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 APRIL 30, 2025.
A copy of that decision appears at Appendix _____.

☐ 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 N/A.

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

THIS CASE INVOLVES AMENDMENTS V, VI, VIII, AND XIV, TO THE UNITED STATES CONSTITUTION, WHICH PROVIDES:

AMENDMENT 5 CRIMINAL ACTIONS - PROVISIONS CONCERNING DUE PROCESS OF LAW AND JUST COMPENSATION CLAUSES.

NO PERSON SHALL BE HELD TO ANSWER FOR A CAPITAL, OR OTHERWISE INFAMOUS CRIME, UNLESS ON A PRESENTMENT OR INDICTMENT OF A GRAND JURY, EXCEPT IN CASES ARISING IN THE LAND OR NAVAL FORCES, OR IN MILITIA, WHEN IN ACTUAL SERVICE IN TIME OF WAR OR PUBLIC DANGER: NOR SHALL ANY PERSON BE SUBJECT FOR THE SAME OFFENSE TO BE TWICE PUT IN JEOPARDY OF LIFE OR LIMB; NOR SHALL BE COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF; NOR BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR SHALL PRIVATE PROPERTY BE TAKEN FOR PUBLIC USE, WITHOUT JUST COMPENSATION.

AMENDMENT 6 RIGHTS OF ACCUSED.

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 ALLEGATION; 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 DEFENSE.

AMENDMENT 8 BAIL - PUNISHMENT.

EXCESSIVE BAIL SHALL NOT BE REQUIRED, NOR EXCESSIVE FINES IMPOSED, NOR CRUEL AND UNUSUAL PUNISHMENTS INFLICTED.

AMENDMENT 14 SEC. 1. CITIZENS OF THE UNITED STATES. 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 LAW.

THE AMENDMENTS IS ENFORCED BY TITLE 42, SECTION 1983 UNITED STATES CODE:

EVERY PERSON WHO, UNDER COLOR OF ANY STATUTE, ORDINANCE, REGULATION, CUSTOM, OR USAGE, OF ANY STATE OR TERRITORY OR THE DISTRICT OF COLUMBIA, SUBJECT, 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 HAS 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 A STATUTE OF THE DISTRICT OF COLUMBIA.

STATEMENT OF THE CASE

THE PETITIONER'S COMPLAINT ALLEGED THAT ON SEPTEMBER 10, 2022, THE NIGHT OF HIS ARREST, THE ARRESTING OFFICER INFORM PETITIONER'S THAT HE WAS BEING BOOKED INTO ROBERT PRESLEY DETENTION CENTER FOR A CHARGE OF "MISDEAMNOR BATTERY". PETITIONER'S ASSERTS THAT HE DID NOT RECEIVED HIS BOOKING INFORMATION UNTIL MINUTES BEFORE HIS PRELIMINARY HEARINGS, AND THAT COMPLAINT INFORM PETITIONER HE WERE BEING CHARGE WITH IN COUNT (1) WITH "ASSAULT WITH A DEADLY WEAPON," CAL. PENAL CODE 243, SUB. (a)(1), WITHOUT A FIREARM, AND COUNT (2) CAL. PENAL CODE 243, SUB. (c)(1), A MISDEAMNOR BATTERY AGAINST SPOUSE. PETITIONER'S FURTHER ALLEGED THAT THOSE CHARGES ARE UNTRUE. PETITIONER ASSERT THAT HE DID NOT ASSAULT HIS DAUGHTER MOTHER IN ANY WAY ALL PETITIONER DID WAS TRYING TO DO WAS TO GET HER BACK INTO THE VAN AND GO GET SOMETHING TO EAT AND RENT A ROOM FOR THE NIGHT.

PETITIONER ASSERT THAT HE STARTED TRIAL ON FEBRUARY 21, 2022, AND WAS FOUND GUILTY ON FEBRUARY 28, 2022, FILED A TIMELY NOTICE OF APPEAL AND WERE APPOINTED COUNSEL IN DECEMBER 2022. ON OR ABOUT JANUARY 22, 2023, THEN COUNSEL SERVED APPELLANT'S OPENING BRIEF ON THE COURT AND COUNSEL RAISED THE FOLLOWING ISSUES ON PETITIONER'S BEHALF,

- THE TRIAL COURT ABUSED ITS DISCRETION AND VIOLATED APPELLANT'S RIGHT TO A FAIR TRIAL UNDER THE "DUE PROCESS CLAUSE" WHEN IT ADMITTED EVIDENCE OF APPELLANT'S 2014 CONVICTION FOR DOMESTIC VIOLENCE UNDER SECTION 1109 BECAUSE THE EVIDENCE WAS INADMISSIBLE AS TO THE FELONY COUNT AND BECAUSE IT WAS MORE PREJUDICIAL THAN PROBATIVE UNDER EVIDENCE CODE SECTION 352 . .
- B. UNDER EVIDENCE CODE SECTION 1109, THE PRIOR CONVICTION EVIDENCE WAS INADMISSIBLE AS PROPENSITY EVIDENCE AS TO THE COUNT OF ASSAULT WITH A DEADLY WEAPON BECAUSE THAT OFFENSE IS NOT A CRIME INVOLVING "DOMESTIC ABUSE".
- C. THE TRIAL COURT VIOLATED APPELLANT'S RIGHT TO A FAIR TRIAL UNDER THE "DUE PROCESS CLAUSE" AND PREJUDICIALLY ABUSE ITS DISCRETION BECAUSE IT ADMITTED EVIDENCE OF A PRIOR INCIDENT OF DOMESTIC VIOLENCE WHEN THE PROBATIVE VALUE OF THE EVIDENCE WAS OUTWEIGHED BY ITS PREJUDICIAL EFFECT . .
- D. ADMISSION OF THE PRIOR CONVICTION EVIDENCE WAS NOT HARMLESS.

- 1 11. APPELLANT SHOULD RECEIVE A NEW TRIAL BECAUSE THE TRIAL
2 COURT'S UNANIMITY INSTRUCTION ERRONEOUSLY AND PRESUDI-
3 CIALY DESCRIBED THE ASSAULT CHARGED IN COUNT 1 AND THE
4 BATTERY CHARGED IN COUNT 2 AS A SINGLE OFFENSE THAT
5 COULD BE ESTABLISHED BY PROOF OF "ONE ACT".
- 6 111. APPELLANT SHOULD RECEIVE A NEW SENTENCING HEARING BE-
7 CAUSE HIS WAIVER OF A JURY TRIAL AS TO THE AGGRAVATING FACTOR
8 AS WAS NOT KNOWING, VOLUNTARY AND INTELLIGENT..
- 9 IV. THE TRIAL COURT IMPROPERLY SELECTED THE UPPER TERM
10 BASED ON AGGRAVATING FACTORS THAT APPELLANT USED A DE-
11 ADLY WEAPON AND ENGAGED IN VIOLENT CONDUCT BECAUSE
12 THOSE FACTORS WERE ELEMENTS OF THE CRIME OF ASSAULT
13 WITH A DEADLY WEAPON..
- 14 V. THE TRIAL COURT SHOULD HAVE STAYED THE SENTENCE ON THE
15 SIMPLE ASSAULT COUNT BECAUSE IT WAS PART OF A CONTINUOUS
16 COURSE OF CONDUCT COMMITTED WITH A SINGLE OBJECTIVE AND
17 INTENT..

18 PETITION ASSEET THAT ON OR ABOUT MAY 17, 2024, THE PEOPLE OF
19 THE STATE OF CALIFORNIA SUBMIT THEIR RESPONDENTS BRIEF AND RAIS-
20 ED THE FOLLOWING COUNTER CLAIMS

- 21 1. THE TRIAL COURT CORRECTLY ADMITTED EVIDENCE OF UNCHARGED
22 ACT OF DOMESTIC VIOLENCE UNDER EVIDENCE CODE SECTION 1109
23 BECAUSE IT WAS HIGHLY PROBATIVE OF APPELLANT'S PROPENSITY FOR
24 DOMESTIC VIOLENCE AND NOT CONFUSING OR INFLAMMATORY..
- 25 A. RELEVANT PROCEEDINGS..
- 26 B. THIS COURT REVIEWS THE ADMISSION OF EVIDENCE FOR AN AB-
27 USE OF DISCRETION..
- 28 C. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ADMITTI-
ING APPELLANT'S PRIOR CONVICTION OF INFLICTION INJURY
ON A DOMESTIC PARTNER RESULTING IN A TRAUMATIC CONDITION.
- D. APPELLANT'S CLAIM THAT THE TRIAL COURT'S RULING VIOLATED
DUE PROCESS IS FORFEITED AND FAILS ON THE MERITS..
- E. ANY ERROR WAS HARMLESS UNDER WATSON...
11. THE MODIFIED JURY UNANIMITY INSTRUCTION WAS NOT REVERS-
IBLE ERROR BECAUSE THE JURY KNEW EACH CHARGED OFFENSE WAS
BASED ON SEPARATE ACTS...
- A. RELEVANT PROCEEDINGS..
- B. APPELLANT'S STIPULATION TO THE INSTRUCTION FORFEITED HIS CLAIM.
- C. THIS COURT CONSIDERS WHETHER THERE IS A REASONABLE LIKELI-
HOOD THAT THE INSTRUCTION CAUSED THE JURY TO APPLY THE LAW
IN AN UNCONSTITUTIONAL MANNER..
- D. THERE WAS NO REASONABLE LIKELIHOOD THAT THE JURY THOUGHT THEY
COULD CONVICT APPELLANT OF TWO CRIMES BY UNANIMOUSLY FIND-
ING THAT HE COMMITTED ONLY ONE ACT..

E. ANY ERROR WAS HARMLESS BEYOND A REASONABLE DOUBT UNDER CHRPMA . .

III. APPELLANT'S ADMISSION OF THE AGGRAVATING FACTORS WAS KNOWING AND INTELLIGENT BECAUSE HIS ACTION EARLIER IN THE TRIAL AND HIS EXPERIENCE IN THE CRIMINAL JUSTICE SYSTEM ESTABLISHED HE KNEW HIS RIGHTS . .

A. RELEVANT PROCEEDINGS . .

B. THIS COURT CONSIDERS THE TOTALITY OF THE CIRCUMSTANCES WHEN DETERMINING THE VALIDITY OF A BOYKIN-TALL WRIT . .

C. APPELLANT PROPERLY WAIVED HIS RIGHTS . .

IV. ANY POSSIBLE ERROR IN THE TRIAL COURT'S DUAL USE OF FACTS IS FORFEITED AND WAS HARMLESS BECAUSE THE RECORD IS CLEAR THAT IT WOULD HAVE IMPOSED THE UPPER TERM BASED SOLELY ON PERMISSIBLE FACTORS . .

A. RELEVANT PROCEEDINGS . .

B. APPELLANT FORFEITED THIS CLAIM BECAUSE HE FAILED TO OBJECT DURING THE SENTENCING HEARING . .

C. ANY DUAL USE OF FACT WAS HARMLESS . .

V. THE TRIAL COURT CORRECTLY IMPOSED SEPARATE SENTENCES UNDER PENAL CODE SECTION 654 BECAUSE THERE WAS A SUBSTANTIAL BREAK IN TIME BETWEEN THE OFFENSES . .

A. RELEVANT PROCEEDINGS . .

B. THIS COURT REVERSES THE TRIAL COURT'S FINDING FOR SUBSTANTIAL EVIDENCE . .

C. THE TRIAL COURT CORRECTLY FOUND THAT BOTH OFFENSES WERE TEMPORALLY DIVISIBLE . .

VI. THIS COURT SHOULD CORRECT THE ABSTRACT OF JUDGMENT AND MINUTE ORDER TO ACCURATELY REFLECT THAT APPELLANT WAS SENTENCED TO 14 YEARS IN STATE PRISON, NOT 13 YEARS . .

PETITIONER ASSERTS THAT ON OR ABOUT JULY 5, 2024, COUNSEL FOR PETITIONER'S FILED THE REPLY BRIEF AND HER ARGUMENTS WITH THE FOLLOWING COUNTER ARGUMENTS . .

I. THE VIOLATIONS OF APPELLANT'S CONSTITUTIONAL AND STATUTORY RIGHTS ARE COUNIZABLE . .

II. THE TRIAL COURT PREJUDICIALLY ERRED WHEN IT ADMITTED EVIDENCE OF APPELLANT'S PRIOR CONVICTIONS FOR DOMESTIC VIOLENCE . .

A. AS RESPONDENT IMPLICITLY CONCEDES, ASSAULT WITH A DEADLY WEAPON IS NOT IDENTIFIED IN EVIDENCE CODE 1104 AS A QUALIFYING OFFENSE . .

B. THE ERROR WAS PREJUDICIAL, BECAUSE EVIDENCE THAT APPELLANT HAD TRIED TO STRIKE THE COMPLAINING WITNESS WITH HIS CAR WAS CONFLICTING AND WEAK AND THE PROSECUTOR EXPLOITED

THE TRIAL COURT'S ERROR IN ADMITTING THE PRIOR CONVICTION EVIDENCE AND INSTRUCTING THE JURY TO CONSIDER IT AS PROPENSITY EVIDENCE AS TO THE ASSAULT COUNT . .

III. THE ERRONEOUS UNANIMITY INSTRUCTION VIOLATED PETITIONER'S RIGHT TO DUE PROCESS . . .

A. AS RESPONDENT CONCEDES, THE UNANIMITY INSTRUCTION WAS INCORRECT . .

B. THE ERROR WAS PREJUDICIAL BECAUSE THE EVIDENCE ON THE CONCEDED MISDEMEANOR DOMESTIC VIOLENCE COUNT WAS SIGNIFICANTLY STRONGER AND THE INSTRUCTION MIS-ADVISED THE JURY THAT IT WAS ONLY REQUIRED TO BE UNANIMOUS AS TO ONE OFFENSE . . .

IV. APPELLANT SHOULD RECEIVE A NEW SENTENCING HEARING BECAUSE HIS WAIVER OF A JURY TRIAL AS TO THE AGGRAVATING FACTORS WAS NOT KNOWING, VOLUNTARY AND INTELLIGENT . . .

A. THERE WAS NO VALID STIPULATION OR WAIVER . . .

B. BECAUSE THE ERROR IN FAILING TO CONDUCT A TRIAL AS TO THE AGGRAVATING FACTORS WAS STRUCTURAL, APPELLANT NEED NOT SHOW PREJUDICE . . .

V. AS RESPONDANT CONCEDES, THE TRIAL COURT ERRONEOUSLY RELIED ON AN ELEMENT OF THE OFFENSE AS AGGRAVATING CIRCUMSTANCES . . .

VI. THE SENTENCE ON THE MISDEMEANOR DOMESTIC VIOLENCE COUNT SHOULD HAVE BEEN STAYED PURSUANT TO SECTION 654 . . .

PETITIONER ASSERT THAT ON OR ABOUT JANUARY 31, 2025, THE CALIFORNIA COURT OF APPEALS ISSUE A TENTATIVE OPINION PRE-DENYING PETITIONER'S FEDERAL CONSTITUTIONAL CLAIMS. AND ON OR ABOUT FEBRUARY 19, 2025, ISSUE ITS OPINION CONFIRMING THE DENIAL STATING THAT THE CONVICTIONS ARE AFFIRMED, THE SENTENCE IS VACATED, AND THE MATTER IS REMANDED.

IF THE PEOPLE ELECT TO PROCEED NO AGGRAVATING FACTORS OTHER THAN THE ONE ALLEGED UNDER RULE 4.421 (b)(3), THE COURT SHALL CONDUCT A TRIAL UNLESS ANDERSON VALIDLY STIPULATES TO THE AGGRAVATING FACTORS, OTHERWISE, THE TRIAL COURT SHALL RESENTENCE ANDERSON.

PETITIONER ASSERT THAT ON OR ABOUT APRIL 30, 2025, THE SUPREME COURT OF CALIFORNIA, DENIED REVIEW OF THE CLAIM.

REASONS FOR GRANTING THE PETITION

A. CONFLICTS WITH DECISIONS OF THIS COURT AND OTHER COURTS.

PETITIONER ASSERTS THAT THIS COURT SHOULD GRANT CERTIORARI REVIEW OF HIS ASSAULT WITH A DEADLY WEAPON CHARGED AND VACATE STATE COURT⁷ CONVICTION BASED ON THE PROPENSITY EVIDENCE VIOLATIONS, SEE OLD CHIEF OVERVIEW; WHERE DEFENDANT OFFERED TO STIPULATE THAT HE PREVIOUSLY HAD BEEN CONVICTED OF A FELONY, HIS PRIOR RECORD OF CONVICTION WAS INADMISSIBLE BECAUSE ITS PROBATIVE VALUE WAS SUBSTANTIALLY OUTWEIGHED BY THE RISK OF UNFAIR PREJUDICE.

1. PETITIONER ASSERTS THAT IN ACCORDING TO HOHN V. UNITED STATES, 524 U.S. 236, [263] THIS COURT CAN ISSUE A COMMON-LAW WRIT OF CERTIORARI UNDER THE ALL WRITS ACT, 28 U.S.C. § 1651. THE ALL WRITS ACT PROVIDES THAT "THE SUPREME COURT... MAY ISSUE ALL WRITS NECESSARY OR APPROPRIATE IN AID OF [ITS] JURISDICTION AND AGREEABLE TO THE USAGES AND PRINCIPLES OF [COMMON] LAW." AS EXPRESSLY NOTED IN THIS COURT'S RULE [267] 20.1 ISSUANCE OF A WRIT UNDER § 1651 "IS NOT A MATTER OF RIGHT, BUT OF DISCRETION SPARINGLY EXERCISED", AND TO JUSTIFY THE GRANTING OF ANY SUCH WRIT, THE PETITIONER MUST SHOW THAT THE WRIT WILL BE IN AID OF THE COURT'S APPELLATE JURISDICTION, THAT EXCEPTIONAL CIRCUMSTANCES WARRANT THE EXERCISE OF THE COURT'S DISCRETIONARY POWERS, AND THAT ADEQUATE RELIEF CANNOT BE OBTAINED IN ANY OTHER FORM OR FROM ANY OTHER COURT."

2. PETITIONER ASSERTS THAT THE HOLDING OF THE COURTS BELOW HAS CONFIRMED PETITIONER'S CONVICTION WHICH ARE RESTING ON EVIDENCE OF PROPENSITY AND ARE DIRECTLY CONTRARY TO THE HOLDING OF THIS COURT AND U.S.C.S. FEDERAL RULES OF EVIDENCE RULE 404 (b), AND CALIFORNIA EVIDENCE CODE § 1101.

SECTION 1101. STATES IN PARTS ON EVIDENCE CHARACTER TO PROVE CONDUCT (a) EXCEPT AS PROVIDED IN THIS SECTION AND SECTIONS 1102, 1103, 1108 AND 1109

1 EVIDENCE OF A PERSON CHARACTER OF A TRAIT OF HIS OR HER CHARACTER
2 (WHETHER IN THE FORM OF AN OPINION, EVIDENCE OF REPUTATION,
3 OR EVIDENCE OF SPECIFIC INSTANCES OF HIS OR HER CONDUCT) IS INAD-
4 MISSIBLE WHEN OFFERED TO PROVE HIS OR HER CONDUCT ON A SPECIFIC
5 OCCASION. PETITIONER ASSERTS THAT IN ACCORDING WITH THE GOVERNMENT
6 RESPONDENT'S BRIEF ARGUMENT, THE GOVERNMENT HAS TAKEN § 1109
7 OF CALIFORNIA EVIDENCE CODE WHICH IN PARTS, IN A CRIMINAL ACTION IN WHICH
8 THE DEFENDANT'S IS ACCUSED OF AN OFFENSE INVOLVING DOMESTIC VIOLENCE,
9 EVIDENCE OF THE DEFENDANT'S COMMISSION OF OTHER DOMESTIC VIOLENCE
10 "IS NOT MADE INADMISSIBLE BY SECTION 1101 IF THE EVIDENCE IS NOT
11 INADMISSIBLE PURSUANT TO SECTION 352. PETITIONER ASSERTS THAT THE
12 ABOVE DEFINITION OF SECTION 1109, HAS MADE IT CLEAR THAT § 1109 IS IN-
13 ADMISSIBLE. NOW AS FOR SECTION 352, DISCRETION OF COURT TO EXCLUDE EVI-
14 DENCE, STATES THE FOLLOWING: THE COURT IN ITS DISCRETION MAY EXCLUDE
15 EVIDENCE IF ITS PROBATIVE VALUE IS SUBSTANTIALLY OUTWEIGHED BY THE PRO-
16 BABILITY THAT ITS ADMISSION WILL (a) NECESSITATE UNDUE CONSUMPTION OF TIM-
17 E OR (b) CREATE SUBSTANTIAL DANGER OF UNDUE PREJUDICE, OF CONFUSING THE
18 ISSUES OR OF MISLEADING THE JURY. PETITIONER ASSERTS THAT IN THE AB-
19 SENCE OF SECTION 352, THE CALIFORNIA GOVERNMENTAL BODY HAS CLEARLY
20 VIOLATED PETITIONER'S FEDERAL CONSTITUTIONAL DUE PROCESS AND EQUAL
21 PROTECTION CLAUSE RIGHTS IN ACCORDING TO THE FOURTEENTH AMENDMENT.

22 B. HAVE TRIAL JUDGE AND COURT OF APPEALS FOR THE STATE OF CALIFORNIA ABUSED ITS
23 DISCRETION BY GRANTING PROPENSITY EVIDENCE DURING PETITION ASSAULT TRIAL?

24 1. PETITIONER ASSERT TO ESTELLE V. MCGUIRE, 502 U.S. 62, 117 S. 2d 1018, MCGUIRE ARGUES
25 THAT, DESPITE THE ABSENCE OF ANY DIRECTED EVIDENCE SHOWING THAT HE CAUSED
26 THE RIB AND RECTAL INJURIES, THE INSTRUCTION TOLD THE JURY TO FIND THAT HE HAD
27 COMMITTED THREE PRIOR OFFENSES. FURTHERMORE, HE ARGUES, THE INSTRUCTIONS
28 LEFT THE JURY WITH THE MISTAKEN IMPRESSION THAT IT COULD BASED ITS FINDING

1 OF GUILT ON THE SIMPLE FACT [77] THAT HE HAD PREVIOUSLY HARMED TONI.
2 UNDER McGUIRE'S READING, THE INSTRUCTION IS TRANSFORMED INTO A PRO-
3 PENSIY INSTRUCTION, ALLOWING THE JURY TO CONSIDER AS EVIDENCE OF HIS
4 GUILT THE FACT THAT HIS PRIOR ACTS SHOW A DISPOSITION TO COMMIT THIS TYPE
5 OF CRIME. THIS, HE CONTENTS, VIOLATES THE DUE PROCESS CLAUSE.

6 [78]. ALTHOUGH WE "HAVE DEFINED THE CATEGORY OF INFRACTIONS THAT VIOLATE
7 'FUNDAMENTAL FAIRNESS' VERY NARROWLY. DOWLING V. UNITED STATES, 493 U.S.
8 342, 352, 107 L. ED. 2D 708, 110 S. CT. 668 (1990), IT IS WELL ESTABLISHED
9 THAT THE FUNDAMENTAL FAIRNESS GUARANTEE OF THE DUE PROCESS CLAUSE
10 USE REQUIRES THE PROSECUTION TO PROVE BEYOND A REASONABLE DOUBT EVERY
11 ELEMENT OF THE OFFENSE. IN RE WINSHIP, 397 U.S. 358, 364, 25 L. ED. 2D 348
12 90 S. CT. 1068 (1970); McMILLAN V. PENNSYLVANIA, 477 U.S. 78, 85, 91 L. ED.
13 2d 67, 106 S. CT. 2411 (1986). THIS CONSTITUTIONAL PRINCIPLE "PROHIBITS
14 THE STATE FROM USING EVIDENTIARY PRESUMPTIONS IN A JURY CHARGE THAT
15 HAVE THE EFFECT OF RELIEVING THE STATE OF ITS BURDEN OF PERSUASION
16 BEYOND A REASONABLE DOUBT OF EVERY ESSENTIAL ELEMENT OF THE A
17 CRIME." FRANCIS V. FRANKLIN, 471 U.S. 307, 313, 85 L. ED. 2D 344, 105 S. CT.
18 1965 (1985); THUS WE HAVE HELD THAT MANDATORY PRESUMPTIONS VIOLATE
19 THE DUE PROCESS CLAUSE IF THEY RELIEVE THE STATE OF THE BURDEN OF PER-
20 SUASION ON AN ELEMENT OF THE OFFENSE. PATTERSON V. NEW YORK 432 U.S.
21 197, 215, 53 L. ED. 2D 281, 79 S. CT. 2319 (1977); SANDSTROM, SUPRA, AT
22 520, 524.

23 IN THIS REGARD, WE OBSERVE THAT THE NINTH CIRCUIT REACH A SIMILAR RE-
24 SULT IN BLAIR V. McLEATHY, 881 F.2d 602 (1989), CERT. GRANTED 498 U.S. 807, V.A.
25 CATED AS MOOT AND REMANDED, 498 U.S. 954 (1990). IN THAT CASE, THE COURT
26 OF APPEALS BASED ITS GRANT OF HABEAS RELIEF SOLELY ON A VIOLATION OF
27 STATE LAW THAT PRESUMED THE DEFENDANT. BLAIR V. McLEATHY, SUPRA,
28 603-604. AS OUR DISCUSSION ABOVE MAKES CLEAR, SUCH-STATE-LAW VIOL-

1 LATION PROVIDE NO BASIS FOR FEDERAL HABEAS RELIEF.

2
3 2. PETITIONER ASSERT TO JAMA-FELIX V. NDOH, U.S. DIST. LEXIS 9870.

4 [*19] ANALYSIS, STATES THAT THIS COURT HAS ESTABLISHED THAT OLD CHIEF
5 V. UNITED STATES, 519 U.S. 172 (9TH CIR. 1997); AND ESTELLE V. McGUIRE
6 502 U.S. 62 (1991), ARE CLEARLY ESTABLISHED FEDERAL LAW FOR THE PURPOSE
7 OF SECTION 2254 (d) REVIEW, AND NEITHER CASE REQUIRES THE EXCLUSION
8 OF THE PRIOR ACTS EVIDENCE ADMITTED IN THIS CASE. AS DISCUSSED SUPRA,
9 ESTELLA EXPRESSLY DECLINED TO HOLD THAT THE ADMISSION OF PROPENSITY
10 EVIDENCE VIOLATES THE DUE PROCESS CLAUSE. IN OLD CHIEF THE SUPREME COURT
11 HELD THAT IMPROPER ADMISSION OF BAD CHARACTER EVIDENCE VIOLATES DUE
12 PROCESS, BUT DID NOT REQUIRE, A BLANKET EXCLUSION OF EVIDENCE INDICAT-
13 ING BAD CHARACTER. IN OLD CHIEF, THE SUPREME COURT FOUND THAT THE AD-
14 MISSION [*20] OF BAD CHARACTER EVIDENCE WAS IMPROPER BECAUSE THE BAD
15 CHARACTER EVIDENCE WAS BEING ADMITTED TO PROVE THE PRIOR CONVICTION
16 ELEMENT OF THE CRIME AND THE PETITIONER WAS WILLING TO STIPULATE TO
17 THAT ELEMENT. PETITIONER ASSERT THAT THE NINTH CIRCUIT HELD THAT DUE
18 PROCESS IS VIOLATED BY THE ADMISSION OF PRIOR BAD ACTS EVIDENCE "[O]NLY IF
19 THERE ARE NO PERMISSIBLE INFERENCES THE JURY MAY DRAW FROM THE EVIDENCE
20 AND THE EVIDENCE IS OF SUCH A QUALITY THAT IT NECESSARILY PREVENTS A
21 FAIR TRIAL." JAMPAL, 964 F.2d at 920 (EMPHASIS IN ORIGINAL).

22
23 3. PETITIONER ASSERT THAT IN ADDITION, THE SUPREME COURT OF THE UNITED
24 STATES HAS HELD THAT "[A]N UNJUSTIFIED ADMISSION OF PROPENSITY EVIDE-
25 NCE ON IMPROPER GROUNDS ON WHICH A FACTFINDER MAY FIND A DEFENDANT
26 GUILTY INCLUDE GENERALIZING AN EARLIER BAD ACTS OF THE DEFENDANT INTO
27 BAD CHARACTER AND TAKING THAT AS (1) RAISING THE ODDS THAT THE DEFEN-
28 DANT DID THE LATER BAD ACT NOW CHARGED, OR (2) WORSE CALLING FOR

1 PREVENTIVE CONVICTION EVEN IF THE DEFENDANT SHOULD HAPPEN TO BE
2 INNOCENT MOMENTARILY WOULD WARRANT REVERSAL. RULE 403 OF THE
3 FEDERAL RULES OF EVIDENCE, OLD CHIEF V. UNITED STATES 319 U.S.
4 172, 1 L. ED. 1118A AND 8 B. FEDERAL RULES OF EVIDENCE RULE 404 (b) RE-
5 FLECTS THE COMMON-LAW TRADITION DISALLOWING SUCH PROPENSITY
6 EVIDENCE; THUS, PROPENSITY IS AN IMPROPER BASIS FOR CONVICTION, AND
7 EVIDENCE OF A PRIOR CONVICTION IS SUBJECT TO ANALYSIS UNDER RULE
8 403 FOR (1) RELATIVE PROBATIVE VALUE AND (2) PRESUDICIAL RISK OF MIS-
9 USE AS PROPENSITY EVIDENCE.

10
11 C. WERE CALIFORNIA STATE SUPREME COURT IN THE RIGHT IN DEPRIVING
12 PETITIONER'S OF FUNDAMENTAL CONSTITUTIONAL RIGHTS TO A FAIR TRIAL WHEN ITS
13 CONVICTED BASED ON A NON-CONSENSUAL WAIVER OF RIGHTS,

14 1. PETITIONER'S ASSERT TO RIGGINS V. NEVADA, 504 U.S. 127, AT 147 A.

15 THIS COURT MAY NOT REVERSE A STATE TRIAL JUDGE ACTION IN THE ADMISSION OF
16 EVIDENCE "UNLESS THE EVIDENTIARY RULING" SO [***36] INCURRED THE TRIAL
17 WITH UNFAIRNESS AS TO DENY DUE PROCESS OF LAW, LIVENBA V. CALIFORNIA, 314
18 U.S. 219, 228, 86 L.ED. 164, 62 S. CT. 280 (1941). SEE ALSO MARSHALL V. LONBER-
19 GER, 459 U.S. 422, 438, 11 L. ED. 2d 642, 103 S. CT. 843 (1982) BURGETT V. TEX-
20 AS 389 U.S. 109, 113-114, 19 L. ED. 2d 319, 88 S. CT. 238 (1967).

21 2. THIS CASE PRESENT A FUNDAMENTAL QUESTION OF THE INTERPRETATION
22 OF THE COURT'S DECISION IN OLD CHIEF V. UNITED STATES, 319 U.S. 172, 117 S. CT.
23 644 (1997). THE QUESTION PRESENTED IS OF GREAT PUBLIC IMPORTANCE BE-
24 CAUSE IT AFFECTS THE OPERATIONS OF THE JURISDICTIONAL SYSTEMS IN ALL
25 50 STATES, THE DISTRICT OF COLUMBIA, AND HUNDREDS OF CITY AND
26 COUNTY JAILS. IN VIEW OF THE LARGE AMOUNT OF LITIGATION OVER FUNDA-
27 MENTAL CONSTITUTIONAL RIGHTS PROCEEDINGS, GUIDANCE ON THE QUESTI-
28 ON IS ALSO OF GREAT IMPORTANCE TO CITIZENS THROUGHOUT THE COUN-
TRY, BECAUSE IT AFFECTS THEIR ABILITY TO RECEIVE A FULL AND FAIR TRIAL

1 DECISION IN PROCEEDING THAT MAY RESULT IN MONTHS OR YEARS OF ADD-
2 ED INCARCERATION OR HARSH PUNITIVE CONFINEMENT.

3
4 3. OLD CASE OVERVIEW

5 THE GOVERNMENT INTRODUCED AT TRIAL, OVER DEFENDANT'S OBJECTION,
6 THE ORDER OF JUDGMENT AND COMMITMENT FOR DEFENDANT'S PRIOR
7 CONVICTION. THE JURY FOUND DEFENDANT GUILTY ON ALL COUNTS, AND
8 THE APPELLATE COURT AFFIRMED. ON CERTIORARI REVIEW, DEFENDANT
9 ARGUED THAT HIS OFFER TO STIPULATE RENDERED THE PRIOR CONVIC-
10 TION INADMISSIBLE UNDER FED. R. EVID. 403. THE COURT AGREED, HOLD-
11 ING THAT THE DISTRICT COURT ABUSE ITS DISCRETION IN ADMITTING
12 DEFENDANT'S RECORD OF CONVICTION BECAUSE ITS DISCOUNTED PROBATIVE
13 VALUE WAS SUBSTANTIALLY OUTWEIGHED BY THE RISK OF UNFAIR PREJUD-
14 ICE.

15 4. CLEARLY ESTABLISHED SUPREME RULING ON PROPENSITY EVIDENCE

16 UNIT RELEVANT EVIDENCE, FED. R. EVID. 402, PROVIDES: ALL RELE-
17 VANT EVIDENCE IS ADMISSIBLE, EXCEPT AS OTHERWISE PROVIDED BY
18 CONSTITUTION OF THE UNITED STATES, BY ACTS OF CONGRESS, BY THESE
19 RULES, OR BY OTHER RULES PRESCRIBED BY THE SUPREME COURT PURSU-
20 ANT TO STATUTORY AUTHORITY, EVIDENCE WHICH IS NOT RELEVANT IS NOT
21 ADMISSIBLE.

22 5. STATUTE OF LIMITATIONS ON PRIOR BAD ACTS, FED. R. EVID. RULE 404 (b)
23 UNIT CONDUCT EVIDENCE, PRIOR ACTS, CRIMES & WRONGS

24 FED. R. EVID. RULE 404 (b) PROVIDES: EVIDENCE OF OTHER CRIMES, WRONG-
25 GS, OR ACTS IS NOT ADMISSIBLE TO PROVE THE CHARACTER OF A PERSON IN ORDER
26 TO SHOW ACTION IN CONFORMITY THEREWITH.

27 UNIT ABUSE OF DISCRETION, EVIDENCE.

28 THE STANDARD OF REVIEW APPLICABLE TO THE EVIDENTIARY RULINGS

1 OF THE DISTRICT COURT IS ABUSE OF DISCRETION. UNITED STATES V.
2 ABLE, 469 U.S. 45, 54-55, 83 L.Ed. 2d 450, 105 S.Ct. 465 (1984).

3
4 D. WHAT IS UNITED STATES SUPREME COURT RULES FOR PROPER STANDARD
FOR WAIVING RIGHTS

5
6 PETITIONER ASSERTS THAT FEDERAL RULE OF CRIMINAL PROCEDURE 23 (4)
7 DOES NOT PERMIT A DEFENDANT TO WAIVE A JURY TRIAL UNLESS THE
8 GOVERNMENT CONSENTS, AND WE HAVE UPHOLD THE PROVISION AS CON-
9 STITUTIONAL. SINGER SUPRA. AT 37. "THE CONSTITUTION [1920] RECO-
10 GNIZES AN ADVERSARY SYSTEM AS THE PROPER METHOD OF DETERMINING
11 GUILT, AND THE GOVERNMENT, AS A LITIGANT, HAS A LEGITIMATE INTEREST
12 [1945] IN SEEING THAT CASES IN WHICH IT BELIEVES A CONVICTION IS WARR-
13 ANTED ARE TRIED BEFORE THE TRIBUNAL WHICH THE CONSTITUTION REGARDS
14 AS MOST LIKELY TO PRODUCE A FAIR RESULT." 350 U.S. AT 36. A DEFENDANT
15 WHO CONCEDES THE PRIOR CONVICTION ELEMENTS OF TWO § 922 (4)(1) OFFENSES
16 MAY BE EFFECTUALLY TRYING TO WAIVE HIS RIGHT TO A JURY TRIAL TO THAT
17 ELEMENT. UNLESS THE [1960] GOVERNMENT AGREES TO THIS WAIVER, IT RUNS
18 AFoul OF RULE 23 (4) AND SINGER.

19 U.S. & S. FED. RULES CRIM PROC R 23

20 RULE 23. JURY OR NONJURY TRIAL

21 (a) JURY TRIAL. IF THE DEFENDANT IS ENTITLED TO A JURY, THE TRIAL MUST
22 BE BY JURY UNLESS: (1) THE DEFENDANT WAIVES A JURY TRIAL IN WRITING;
23 (2) THE GOVERNMENT CONSENTS; AND (3) THE COURT APPROVES.

24
25 E. ARE STATE COURTS REJECTION OF PETITIONERS FEDERAL DUE PROCESS
26 AND EQUAL PROTECTION CLAUSE AS MOST CONTRARY TO CLEARLY ESTAB-
LISHED FEDERAL RULES?

27 PETITIONER ASSERTS TO IN RE WINSHIP, 397 U.S. 358, CASE SUMMARY
28 PROCEDURAL POSTURE: PETITIONER, ON BEHALF OF A JUVENILE, SOUGHT REVIEW

1 OF JUDGMENT FROM THE COURT OF APPEALS OF NEW YORK THAT THE DETERMINA-
2 TIONS TO BE MADE AT A JUVENILE ADJUDICATORY HEARING WERE TO BE BASED
3 ON A PREPONDERANCE OF EVIDENCE, AS PROVIDED IN N.Y. FAM. CT. ACT §
4 744(b).

5 N.Y. CLS FAMILY CT ACT § 744

6 § 744. EVIDENCE IN FACT-FINDING HEARINGS: REQUIRED QUANTUM

7 (a) ONLY EVIDENCE THAT IS COMPETENT, MATERIAL AND RELEVANT MAY
8 BE ADMITTED IN A FACT-FINDING HEARING.

9 (b) ANY DETERMINATION AT THE CONCLUSION OF A FACT-FINDING
10 HEARING THAT A RESPONDENT DID AN ACT OR ACTS MUST BE BASED
11 ON PROOF BEYOND A REASONABLE DOUBT. FOR THIS PURPOSE, AN UNCORRO-
12 BORATED CONFESSION MADE OUT OF COURT BY A RESPONDENT IS NOT
13 SUFFICIENT.

14 AND PROOF OF CRIMINAL CHARGE BEYOND A REASONABLE DOUBT IS CONSTITU-
15 TIONALLY REQUIRED. IT IS THE DUTY OF THE GOVERNMENT TO ESTABLISH
16 GUILT BEYOND A REASONABLE DOUBT. THIS NOTION - BASIC IN OUR LAW AND
17 RIGHTLY ONE OF THE CORNERS OF A FREE SOCIETY - IS A REQUIREMENT AND A
18 SAFEGUARD OF DUE PROCESS OF LAW IN THE HISTORICAL, PROCEDURAL CONTENT
19 OF "DUE PROCESS." LELAND V. ORLOFF, SUPRA, AT 802-803 [*** 9]. (DISSEN-
20 TING OPINION). IN A SIMILAR VEIN, THE COURT SAID IN BRINEGAR V. UNITED
21 STATE, SUPRA, AT 174, THAT GUILT IN A CRIMINAL CASE MUST BE PROVED BE-
22 YOND A REASONABLE DOUBT AND BY EVIDENCE CONFINED TO THAT WHICH
23 LONG EXPERIENCE IN THE COMMON-LAW TRADITION, TO SOME EXTENT EM-
24 BODIED [**1072]. IN THE CONSTITUTIONAL, WAS CRYSTALLIZED INTO RULES
25 OF EVIDENCE CONSISTENT WITH THAT STANDARD. THESE RULES ARE HIS-
26 TORICALLY GROUNDED RIGHTS OF OUR SYSTEM, DEVELOPED TO SAFEGUARD MEN
27 FROM DUBIOUS AND UNJUST CONVICTIONS, WITH RESULTING FORFEITURES OF LIFE,
28 LIBERTY, AND PROPERTY." DAVIS V. UNITED STATES, SUPRA, AT 482-483,
STATED THAT THE REQUIREMENT IS IMPLICIT IN "CONSTITUTIONAL" RECO-
GNIZE THE FUNDAMENTAL PRINCIPLES THAT ARE DEEMED ESSENTIAL FOR THE
PROTECTION OF LIFE AND LIBERTY." IN DAVIS A MURDER CONVICTION WAS [**363]
REVERSED BECAUSE THE TRIAL JUDGE INSTRUCTED THE JURY THAT IT WAS THEIR

1 DUTY TO CONVICT WHEN THE EVIDENCE WAS EQUALLY BALANCED REGARDING THE
2 SANITY OF THE ACCUSED. THE COURT SAID: ON THE CONTRARY, HE IS ENTITLED
3 TO AN ACQUITTAL OF THE SPECIFIC CRIME CHARGED IF UPON ALL THE EVIDENCE
4 THERE IS REASONABLE DOUBT WHETHER [***10] HE WAS CAPABLE IN LAW OF
5 COMMITTING CRIME... NO MAN SHOULD BE DEPRIVED OF HIS LIFE UNDER
6 THE FORMS OF LAW UNLESS THE JURY WHO TRY HIM ARE ABLE, UPON THEIR
7 CONSCIENCES, TO SAY THAT THE EVIDENCE BEFORE THEM... IS SUFFICIENT
8 TO SHOW BEYOND A REASONABLE DOUBT THE EXISTENCE OF EVERY FACT NECE-
9 SSARY TO CONSTITUTE THE CRIME CHARGED" 14, AT 484, 493.

10
11 1. SEE FOR EXAMPLE MILES V. UNITED STATES, 103 U.S. 304, 312 (1882); DAVIS
12 V. UNITED STATES, 160 U.S. 469, 488, (1895); HOLT V. UNITED STATES, 212 U.S. 245
13 253 (1910); WILSON V. UNITED STATES, 232 U.S. 563, 569-570 (1914).

14 [***26] IN CRIMINAL CASES, ON THE OTHER HAND, WE DO NOT VIEW THE
15 SOCIAL DISUTILITY OF CONVICTING AN INNOCENT MAN AS EQUIVALENT
16 TO THE DISUTILITY OF ACQUITTING SOMEONE WHO IS GUILTY. AS MR.
17 JUSTICE BRENNAN WROTE FOR THE COURT IN SPEISER V. RANDALL, 357
18 U.S. 513, 525-526 (1958). IN THIS CONTEXT, I VIEW THE REQUIREMENT
19 OF PROOF BEYOND A REASONABLE DOUBT IN A CRIMINAL CASE AS BOTTOM-
20 ED ON A FUNDAMENTAL VALUE DETERMINATION OF OUR SOCIETY THAT IT
21 FAR WORSE TO CONVICT AN INNOCENT MAN THAN TO LET A GUILTY MAN GO
22 FREE. IT IS ONLY BECAUSE OF THE NEARLY COMPLETE AND LONG-STANDING
23 ACCEPTANCE OF THE REASONABLE-DOUBT STANDARD BY THE STATES IN CRIM-
24 INAL TRIALS THAT THE COURT HAS NOT BEFORE TODAY HAD TO HOLD EX-
25 PPLICITLY THAT DUE [***27] PROCESS, AS AN EXPRESSION OF FUNDAMENTAL PROC-
26 EDURAL FAIRNESS,⁵ REQUIRES [***38] A MORE STRINGENT STANDARD FOR
27 CRIMINAL TRIAL THAN FOR ORDINARY CIVIL LITIGATION.

28 ⁵ IN DISSENT MY BROTHER BLACK AGAIN ARGUES THAT APART FROM THE SPEC-
IFIC PROHIBITIONS OF THE FIRST EIGHT AMENDMENTS, ANY PROCEDURE SPECIFIED
OUT BY A LEGISLATURE - NO MATTER HOW UNFAIR - PASSES CONSTITUTIONAL
MUSTER UNDER THE DUE PROCESS CLAUSE. HE BOTTOMS HIS CONCLUSION ON

HISTORY THAT HE CLAIMS DEMONSTRATES (1) THE DUE PROCESS MEANS "LAW OF THE LAND", (2) THAT ANY LEGISLATIVE ENACTMENT, IPSO FACTO, IS PART OF THE LAW OF THE LAND; AND (3) THAT THE FOURTEENTH AMENDMENT INCORPORATES THE PROHIBITIONS OF THE BILL OF RIGHTS AND APPLIES THEM TO THE STATES; I CANNOT REFRAIN FROM EXPRESSING MY CONTINUED BAFPLEMENT AT MY BROTHER BLACK'S INSISTENCE THAT DUE PROCESS, WHETHER UNDER THE FOURTEENTH AMENDMENT OR THE FIFTH AMENDMENT, DOES NOT EMBODY A CONCEPT OF FUNDAMENTAL FAIRNESS AS PART OF OUR SCHEME OF CONSTITUTIONALLY ORDERED LIBERTY. HIS THESIS FLIES IN THE FACE OF A COURSE OF JUDICIAL HISTORY REFLECTED IN AN UNBROKEN LINE OF OPINIONS THAT HAVE INTERPRETED DUE PROCESS TO IMPOSE RESTRAINTS ON THE PROCEDURES GOVERNMENT MAY ADOPT IN ITS DEALING WITH ITS CITIZENS. SEE, E.G., THE CASES CITED IN MY DISSENTING OPINIONS IN POE V. ULLMAN, 367 U.S. 497, 522, 539-545 (1961); DUNCAN V. LOUISIANA, 39 U.S. 145, 171 (1968); AS WELL AS THE UNCONVERTED SCHOLARLY RESEARCH (NOTWITHSTANDING H. FLAK, THE ADOPTION OF THE FOURTEENTH AMENDMENT (1968)), RESPECTING THE INTENDMENT OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT. SEE FAHMAN, DOES THE FOURTEENTH AMENDMENT INCORPORATE THE BILL OF RIGHTS? THE ORIGINAL UNDERSTANDING, 2 STAN. L. REV. 5 (1949).

F. HAVE CALIFORNIA TRIAL COURTS VIOLATED PETITIONER'S RIGHTS TO A FAIR TRIAL IN ACCORDING TO DUE PROCESS CLAUSE BY THE ☐ ADMITTED EVIDENCE OF PRIOR VIOLENCE CRIMES?

PETITIONER ASSERT THAT IN ACCORDING TO ADREWS V. WHYTE, 145 S. CT. 75 HILL PROCEDURAL DUE PROCESS; SCOPE OF PROTECTION

WHEN "EVIDENCE IS INTRODUCED THAT IS SO UNUSUALLY PREJUDICIAL THAT IT" RENDERS THE TRIAL FUNDAMENTALLY UNFAIR, THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT PROVIDES A MECHANISM FOR RELIEF."

PAYNE V. TENNESSEE, 501 U.S. 808, 825, 115 S. CT. 2597, 115 L. ED. 2d 720 (1991).

IN 2 CONTRARY & UNREASONABLE STANDARD, UNREASONABLE APPLICATION; A FEDERAL COURT MAY GRANT HABEAS RELIEF AS TO A CLAIMS ADJUDICATED ON THE MERITS IN STATE COURT ONLY IF THE STATE COURT RELIED ON AN UNREASONABLE DETERMINATION OF THE FACTS, OR UNREASONABLY APPLIED "CLEARLY ESTABLISHED FEDERAL LAW, AS DETERMINED BY" THIS COURT. 28 U.S.C. § 2254(d)(1)-(2). TO SHOW THAT A STATE COURT UNREASONABLY APPLIED CLEARLY ESTABLISHED FEDERAL LAW, A PETITIONER MUST SHOW THAT THE COURT UNREASONABLY APPLIED "THE HOLDINGS, AS

1 OPPOSED TO THE DICTA OF [CITING] THIS COURT'S DECISIONS." WHITE V. WOODALL,
2 572 U.S. 415, 419, 134 S. Ct. 1697, 188 L. Ed. 2d 698 (2014). (QUOTING HOWES
3 V. FIELDS, 565 U.S. 499, 505, 132 S. Ct. 1181, 182 L. Ed. 2d 17 (2012)). AN
4 UNREASONABLE APPLICATION, IN TURN, IS ONE WITH WHICH NO FAIRMINDED
5 JURIST WOULD AGREE. HARRINGTON V. RICHTER 562 U.S. 86, 101, 131 S. Ct. 770,
6 178 L. Ed. 2d 624 (2011).

7 HN3 COURTS, JUDICIAL PRECEDENT, WHEN THE U.S. SUPREME COURT RELIES ON A
8 LEGAL RULE OF PRINCIPLE TO DECIDE A CASE, THE PRINCIPLE IS A "HOLDING" OF
9 THE COURT FOR PURPOSES OF AEDPA. LOCKYER V. ANDRADE, 338 U.S. 63, 71-72,
10 123 S. Ct. 1166, 155 L. Ed. 2d 144 (2003). ("[C]LEARLY ESTABLISHED FEDERAL LAW...
11 IS THE GOVERNING LEGAL PRINCIPLE OR PRINCIPLES SET FORTH BY THE SUPREME
12 COURT AT THE TIME THE STATE COURT RENDERS ITS DECISION" (INTERNAL QUO-
13 TATION MARKS OMITTED)). FOLLOWING THESE PRINCIPLES, IT IS CLEAR THAT
14 ANDREW PROPERLY IDENTIFIED CLEMENCY ESTABLISHED FEDERAL.

15 G. CAN STATE TRIAL COURTS WAIVE CONSTITUTIONAL RIGHTS AND
16 COURT OF APPEALS DENIED RIGHTS AS MOOT?

17 PETITIONER ASSERT THAT IN ACCORDING TO REPORTER'S TRANSCRIPTS
18 ON APPEAL BEFORE THE HONORABLE WALTER H. KUBELUN, IN DEPARTMENT
19 32, FOR FEBRUARY 21, 23, 24, 27, 28, 2023; AND APRIL 21, 2023. IN CORRDING
20 TO THE PEOPLE'S TRIAL BRIEF, CASE No. RIF 2204714, AND FILED IN THE
21 SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF RIVERSIDE AND FILED
22 ON FEB. 24, 2023, BY COURT CLERK D. CARTER.

23 II. MOTIONS IN LIMINE 1. THE 911 CALL IS AN ADMISSIBLE BUSINESS
24 RECORD OF THE RIVERSIDE POLICE DEPARTMENT AND THE STATEMENTS THERE-
25 IN ARE SPONTANEOUS STATEMENTS, WHICH ARE NON-TESTIMONIAL UNDER
26 CRAWFORD. PETITIONER ARE REFERENCE TO PAGE #4 AND LINES 17-23. OF
27 THIS DOCUMENT WHICH STATE'S, HERE, MR. OCHOA IMMEDIATELY CALL 911 RIGHT
28 AFTER HE WITNESSED THE DEFENDANT ATTEMPT TO HIT DOE TWICE WITH HIS

1 CAR, FOLLOWED UP PUNCHING HER ON THE FACE THREE TIMES. MR. OLMOA'S STATE-
2 MENTS TO DISPATCH DEPICT THE EVENT PERCEIVED. MOREOVER, "DOE'S STATE-
3 MENT TO DISPATCH THAT "HE TRIED TO 'KILL' ME" ALSO NARRATES THE DEFEN-
4 DANT'S ACTIONS. THE FACT THAT MR. OLMOA CALL 911 AND DOE INDICATED THAT
5 SHE "FELT SHE WAS ALMOST KILLED" HER SHOWS THAT BOTH WERE UNDER THE
6 STRESS OF THE EVENT WHEN MAKING THE STATEMENTS TO DISPATCH. AS SUCH
7 ALL OF THE STATEMENTS CONTAINED WITHIN THE CALL ARE SPONTANEOUS
8 STATEMENTS. PETITIONER ASSERTS THAT THE ABOVE STATEMENTS ARE IN
9 CONFLICT WITH THE STATEMENTS OF REPORTER'S TRANSCRIPTS OF TRIAL PRO-
10 CEEDINGS, AND EVIDENCE TAP, 911 CALL WITH ANDREW OLMOA, PLEASE SEE
11 APPENDIX E, E 1, E 2, E 3 AND E 4.

12 PETITIONER ASSERTS TO REPORTER'S TRANSCRIPT OF TRIAL PROCEED-
13 INGS, BEFORE THE HONORABLE WALTER H. MUEBUN, DEPARTMENT 32, FOR
14 FEBRUARY 21, 23, 24, 27, 28, 2023; AND APRIL 21, 2023. CASE NO. RIF 200-
15 4714. PETITIONER ASSERT TO PAGE # 243, LINES 19-28 WHICH STATE'S, MR. ANDER-
16 SON IS RAISING A CONFRONTATION OBJECTION BASED ON JANE DOE NOT TE-
17 STIFYING IN THIS CASE. AGAIN, IF THIS COURT RECALLS, THIS CASE WAS
18 PROVEN BY THREE INDEPENDENT WITNESSES TO THIS CRIME. THEY ALL TESTI-
19 FIED ABOUT THE INCIDENT THAT OCCURRED ON THIS CASE. MR. ANDERSON
20 THROUGH MR. CARNERD HAD THE RIGHT TO CONFRONT AND CROSS-EXAMINE EACH
21 OF THOSE WITNESSES. AS THE COURT RECALLS, JANE DOE HAD A BENCH WAR-
22 RANT HOLD FOR HER. THE PEOPLE SERVED HER, SHE NEVER APPEARED IN COURT,
23 SO THE PEOPLE HAD TO PROCEED WITHOUT HER BECAUSE THE DEFENDANT DID NOT
24 WAIVE TIME IN THIS CASE. PAGE 243, LINES 1-4, AND FOR FURTHER INFO-
25 RMATION, THERE WAS A 911 TAP CALL -- OR PLAYED IN THIS CASE. JANE DOE'S
26 STATEMENTS WERE "STRICKEN FROM THAT 911 CALL", SO NONE OF HER STATE-
27 MENTS CAME IN. SO THERE WAS NO VIOLATION OF CONFRONTATION CLAUSE
28 IN THIS CASE. PLEASE SEE ATTACH DOCUMENTS IN APPENDIX B.

1 PETITIONER ASSERT THAT IN ACCORDING TO RIVERSIDE POLICE DEPART-
2 MENT'S 911 CALL EVIDENCE TAPE FOR SEPTEMBER 10, 2022, REPORT #
3 220025341, ON PEOPLE V. ANDERSON, RIVERSIDE CASE NO. RIV 220 -
4 4714, STATES THAT IN ACCORDING TO THE PEOPLE RECORDING TRIAL
5 BRIEF TRANSCRIPTS ARE IN CONFLICT WITH THE POLICE REPORT STATE-
6 MENTS, PETITIONER ASSERT THAT THE POLICE 911 EVIDENCE TAPE REPOR
7 STATES THE FOLLOWING, PAGE 1, LINES 14-36, [CORRECTS] LINE 16,
8 DISPATCH: 911 WHAT'S THE LOCATION OF YOUR EMERGENCY? LINE 18,
9 DISPATCH: UM 2840 MILLER PLACE, IT'S THE PATH OF LIFE COMMUNITY
10 SHELTER. LINE 20,

11 DISPATCH: WHAT'S GOING ON? OLHDA: UM THERE'S TWO TRANSIENTS
12 OUT HERE, ONE OF THEM WAS A FORMER GUEST OF OURS, A GUY
13 LEWIS ANDERSON JUST STRUCK HER ABOUT THREE TIMES IN THE
14 FACE. AND HE'S TRIED RUNNING HER OVER WITH HIS VAN, UM
15 MY STAFF WAS OUT HERE TRYING TO KEEP THEM BOTH SEPAR-
16 ATED. LINE 26.

17 DISPATCH: WHAT RACE IS HE? OLHDA: AFRICAN AMERICAN. LINE 30,

18 DISPATCH: WHAT'S HE WEARING? OLHDA: A WHITE TEE SHIRT, UM,
19 LOOKS LIKE SOME DARK-COLORED BLUE PANTS. LINE 34.

20 DISPATCH: AND WHAT KIND OF CAR?

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21
22 PAGE 2, LINES 1-36,

23 OLHDA : IT LOOKS LIKE A VAN OR AN SUV, THE LICENSE PLATE IS SW-
24 TN 802. LINE 3,

25 DISPATCH: AND WHAT COLOR IS IT? LINE 5,

26 OLHDA : SILVER. LINE 7,

27 DISPATCH: AND THE FEMALE, WHAT RACE IS SHE? LINE 9,

28 OLHDA : SHE'S AN AFRICAN AMERICAN. LINE 11,

DISPATCH: AND WHAT IS SHE WEARING? LINE 13,

OLHOA: SHE'S GOT LIKE A SWEATSHIRT ON WITH - COLLEGE MAJ [PHONETIC],

"WAIT HERE" LINE 15,

DISPATCH: A SWEATSHIRT AND WHAT ELSE? LINE 17,

[CROSSTALK] LINE 19,

OLHOA: I'M SORRY. UM, SOME LIKE UM BLUE SHORTS, LIKE CARLO
SHORT. LINE 21,

OLHOA: SHE SAYS YES. LINE 23

DISPATCH: AND WHERE IS HE? LINE 26,

OLHOA: HE'S RIGHT HERE, PARKED IN FRONT OF OUR, OUR FACILITY,
RIGHT IN FRONT OF 2440 HUMAN PLACE. LINE 29,

MALE: LET ME GIVE YOU MY [CROSSTALK]. LINE 31,

OLHOA: I'M ON THE PHONE WITH THEM RIGHT NOW. LINE 33,

DISPATCH: OKAY, AND WHAT IS YOUR NAME? LINE 35,

OLHOA: MY NAME IS ANDREW OLHOA.

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PAGE 3, LINE 1-36

FEMALE: I'M SERIOUS. LINE 4,

DISPATCH: AND YOU'RE AN EMPLOYEE THERE? LINE 6,

OLHOA: I'M THE ASSISTANT MANAGER HERE. LINE 8,

DISPATCH: IS HE OUT OF THE CAR NOW? LINE 10,

OLHOA: YEAH, HE'S STANDING HERE IN FRONT OF MY EMPLOYEE ON THE
OTHER SIDE OF THE GATE. LINE 12,

[CROSSTALK] LINE 14,

MALE: THAT'S NO WOMAN, THAT'S NO WOMAN, THAT'S MY BROTHER
MOMMA. LINE 16,

OLHOA: OKAY, BUT IT DOESN'T GIVE YOU THE RIGHT TO HIT HER SIR.

LINE 18,

MALE : I GOT THE RIGHT TO DO WHATEVER THE "FUCK" I WANT TO
DO. LINE 20,

DISPATCH: OKAY, YOU CAN TELL IT WHEN THE OFFICERS, WHEN THEY
COME OUT HERE. LINE 22,

MALE : [INAUDIBLE] LINE 24,

OLHDA: WHAT'S THAT? LINE 26,

DISPATCH: OKAY, WE'LL GET SOMEBODY OUT THERE. LINE 28,

OLHDA: ALL RIGHT THANK YOU. LINE 30,

DISPATCH: YOU'RE WELCOME. LINE 32,

MALE : LEWIS ANDERSON. LINE 34,

END OF RECORDING

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22

PAGE 3

PLEASE SEE THE ATTACHED DOCUMENT IN APPENDIX E ☐

PETITIONER ASSERTS THAT HIS APPELLATE ATTORNEY, MRS. STEPHANIE M.
ADRAKTES MAILED PETITIONER'S A LETTER ON DECEMBER 12, 2023, INFORM-
ING ME ON THE ISSUE OF CONFRONTATION. PETITIONER ASSERTS THAT WE
ARE STARTING THE FOLLOWING INFORMATION AT THE BOTTOM OF PAGE
ONE, WHICH STATE'S THE FOLLOWING, QUOTATIONS, WHEN I READ THE TRANS-
SCRIPTS, I LOOKED VERY CAREFULLY FOR ANY EVIDENCE THAT HEARSAY STA-
TEMENTS OF JANE DOE WERE INTRODUCED AT TRIAL. "THERE WERE NO
HEARSAY STATEMENT BY JANE DOE INTRODUCED IN THE 911 RECORDING."

THERE WERE ALSO NO WRITTEN STATEMENTS BY JANE DOE INTRODUCED
AT TRIAL AND NO AUDIO OR VIDEO RECORDINGS OF ANY STATEMENTS BY
HER. THE WITNESSES DID NOT TESTIFY THAT SHE SAID THAT YOU HAD TRIED
TO STRIKE HER WITH YOUR VEHICLE OR THAT YOU HAD STRUCK HER ON HER

1 FACE WITH YOUR HAND. THE TESTIMONY THAT YOU DID THAT ALL CAME FROM
2 THE THREE WITNESSES WHO TESTIFIED AT TRIAL, WHO WERE ALL CROSS EX-
3 AMINED BY YOUR LAWYER. AS A RESULT, THE COURT OF APPEAL WOULD
4 FIND THAT THERE COULD NOT HAVE BEEN A VIOLATION OF YOUR RIGHT
5 TO CONFRONT AND CROSS EXAMINE JANE DOE. PLEASE SEE THE COM-
6 PLETE 2 PAGE LETTER ATTACHED HERETO IN APPENDIX E 4.

7 PETITIONER ASSERT THAT IN ACCORDING TO THE UP ABOVE DOCUMENT
8 SOMEONE ARE NOT BEING TRUTHFUL WITH THE COURT'S ARE DISHONEST AND
9 DECEITFUL. LAW § 840.3 - DUE PROCESS - CRIMINAL CONVICTION - REASONABLE
10 DOUBT STANDARD. THE DUE PROCESS CLAUSE PROTECTS AN ACCUSED AGAINST
11 CONVICTION EXCEPT UPON PROOF BEYOND A REASONABLE DOUBT OF EVERY FACT
12 NECESSARY TO CONSTITUTE THE CRIME WITH WHICH HE IS CHARGED. OUR
13 CONSTITUTION PROVIDES THAT NO PERSON SHALL BE "DEPRIVED OF LIFE, LIB-
14 ERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW."³ THE FOUR WORDS-DUE
15 PROCESS OF LAW-HAVE BEEN THE CENTER OF SUBSTANTIAL LEGAL DEBATE
16 OVER THE YEARS. SEE CHAMBER V. FLORIDA, 309 U.S. 227, 235-236, AND
17 N. B. (1940).

18 ³ THE FIFTH AMENDMENT APPLIES THE LIMITATION TO THE FEDERAL GOVERN-
19 MENT AND THE FOURTEENTH AMENDMENT IMPOSES THE SAME RESTRICTION
20 ON THE STATES. IN RE WINSHIP, 397 U.S. 358, 1970 AND 34-35.

21 PETITIONER ASSERT THAT THE PROSECUTION'S EVIDENCE IS INSUFFICIENT
22 AS A MATTER OF LAW TO PROVED AN ELEMENT OF A CHARGED CRIME BEYOND A
23 REASONABLE DOUBT NO RETRIAL IS POSSIBLE FOLLOWING REVERSAL OF THE CON-
24 VICTION. THE TRIAL COURT JUDGE'S RULING WAS MOTIVATED BY RACIAL BIAS.

25 PETITIONER ASSERT THAT AT ONE TIME, THE PROSECUTORS WERE NEVERTHE-
26 LESS ABLE TO CONVICT DOMESTIC ABUSERS BY HEARING POLICE OFFICERS TELLING TO
27 VICTIM'S HEARSAY STATEMENTS DELIBERATELY DEFENDANTS ABUSE, HOWEVER MANY OF
28 THESE STATEMENTS ARE "TESTIMONIAL" AND ARE NO LONGER ADMISSIBLE IN

1 EVIDENCE. (SEE DAVIS V. WASHINGTON, U.S. SUP. CT. 2006) AS A RESULT,
2 IF DOMESTIC VIOLENCE VICTIMS ARE NOT WILLING TO TESTIFY AT TRIAL,
3 CHARGES AGAINST THEIR ABUSERS OFTEN HAVE TO BE DISMISSED UNLESS
4 THE PROSECUTOR CAN PROVE THE ABUSE WITH OTHER EVIDENCE.

5 THE CONFRONTATION CLAUSE GUARANTEES THAT IN CRIMINAL CASES,
6 DEFENDANTS HAVE THE RIGHT TO CONFRONT THE WITNESSES AGAINST
7 THEM. AS A RESULT, PROSECUTOR'S CANNOT OFFER "TESTIMONIAL" HEARSAY
8 STATEMENT AGAINST DEFENDANT UNLESS THE PERSON WHOSE HEARSAY
9 IS OFFERED (PURSUANT TO AN EXCEPTION TO THE HEARSAY RULE) TESTIF-
10 IES AS A WITNESS OR THE DEFENDANT HAS PREVIOUSLY HAD A CHANCE TO
11 CROSS-EXAMINE THE PERSON (SAY DURING A PRELIMINARY HEARING). (
12 CRAWFORD V. WASHINGTON, U.S. SUP. CT. 2004) WHEN POLICE OFFICERS GO TO
13 A CRIME SCENE AND ASK VICTIMS AND WITNESSES TO DESCRIBE WHAT HAPPENED,
14 THE WITNESSES' STATEMENTS ARE LIKELY TO BE TESTIMONIAL AND INADMISSI-
15 BLE AT TRIAL IN THE ABSENCE OF A DEFENDANT'S OPPORTUNITY TO CROSS EX-
16 AMINE AT OR BEFORE TRIAL. (DAVIS V. WASHINGTON, U.S. SUP. CT. 2006).

17 PETITIONER ASSERT THAT THIS DISCLOSURE ON THE VICTIM'S STATEMENT
18 VIOLATED THE RULE OF BRADY V MARYLAND, 373 U.S. 83, 5, CT. 1194, 10 L.ED. 2d
19 215 (1963). GIBBS V. COVELLO, 996 F.2d 596. HAS THE CONFRONTATION CLAUSE
20 OF THE SIXTH AMENDMENT, MADE APPLICABLE TO THE STATES BY THE FOURTEEN
21 TH AMENDMENT GUARANTEES THAT "IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED
22 SHALL ENJOY THE RIGHT . . . [TO] TO BE CONFRONTED WITH THE WITNESSES AG-
23 INST HIM". U.S. CONSTITUTION AMEND. VI; POINST V. TEXAS, 382 U.S. 445, 40 L.ED.
24 S. CT. 1065, 13 L. ED. 2d 923 (1965). THE CLAUSE PROHIBITS THE GOVERNMENT FROM
25 INTRODUCING "TESTIMONIAL" HEARSAY AGAINST THE DEFENDANT, INCLUDING "PRIOR
26 TESTIMONY AT A PRELIMINARY HEARING". CRAWFORD V. WASHINGTON 541 U.S. 31,
27 48, 124 S. CT. 1334, 158 L. ED. 2d 177 (2004);

1 PETITIONER ASSERT THAT ON CERTIORARI, THE UNITED STATES SUPREME
2 COURT REVERSED AND REMANDED, IN AN OPINION BY SCALIA, J., JOINED BY STE-
3 VENS, KENNEDY, SOUTER, GINSBURG, AND BREYER, JJ., OVERRULING OWEN V.
4 ROBERTS, SUPRA, IT WAS HELD THAT THE PLAYING, AT THE ACCUSED'S TRIAL, OF
5 THE WIFE'S TAPE-RECORDED STATEMENT VIOLATED THE ACCUSED'S SIXTH AMEN-
6 DMENT RIGHT TO BE CONFRONTED BY THE WITNESSES AGAINST HIM, AS (1)
7 WHERE THE TESTIMONIAL EVIDENCE WAS AT ISSUE, THE SIXTH AMENDMENT DE-
8 MANDS UNAVAILABILITY AND A PRIOR OPPORTUNITY FOR CROSS-EXAMINATION;
9 AND (2) THE STATE'S ADMISSION OF THE WIFE'S TESTIMONIAL STATEMENT AGAINST
10 THE ACCUSED, DESPITE THE FACT THAT HE HAD HAD NO OPPORTUNITY TO CROSS-
11 EXAMINE HER, ALONE WAS SUFFICIENT TO MAKE OUT A VIOLATION OF THE SIXTH
12 AMENDMENT.

13 PETITIONER ASSERT THAT FOR (1) PURPOSES OF THE SIXTH AMENDMENT
14 CONFRONTATION CLAUSE - WITHOUT ATTEMPTING TO PRODUCE AN EXHAUSTIVE
15 CLASSIFICATION - STATEMENTS ARE (a) NON TESTIMONIAL WHEN MADE IN THE
16 COURSE OF POLICE INTERROGATION UNDER CIRCUMSTANCES OBJECTIVELY INDIC-
17 ATING THAT THE PRIMARY PURPOSES OF THE INTERROGATION IS TO ENABLE POLI-
18 CES ASSISTANCE TO MEET AN ONGOING EMERGENCY; AND (b) "TESTIMONIAL" WHEN
19 THE CIRCUMSTANCES OBJECTIVELY INDICATE THAT (i) THERE IS NO SUCH ONGOING
20 EMERGENCY, AND (ii) THE PRIMARY PURPOSE OF THE INTERROGATION IS TO
21 ESTABLISH OR PROVE PAST EVENTS POTENTIALLY RELEVANT TO LATER CRIMINAL
22 PROSECUTION. DAVIS V. WASHINGTON, 547 U.S. 813 [2006] 125

23 PETITIONER ASSERT THAT ACCORDING TO THE RIVERSIDE POLICE DEPARTMENT EVI-
24 DENCE TAPE 911 CALL WITH ANDREW DEHOA, PAGE #1, LINES 22-24 STATES THE FOL-
25 LOWING: UM, THERE'S TWO TRANSIENTS OUT HERE, ONE OF THEM WAS A FOR-
26 MER GUEST OF OURS, A GUY LEWIS ANDERSON JUST STRUCK HER ABOUT THREE
27 TIMES IN THE FACE. AND HE'S TRIED RUNNING HER OVER WITH HIS VAN; UM, MY
28 STAFF WAS OUT WERE TRYING TO KEEP THEM BOTH SEPARATED. PETITIONER ASS-

1 ENT THAT AT THIS POINT THE CONVERSATION BETWEEN THE 911 DISPATCHER
2 AND MR. OLIVER, IN ACCORDING TO LINE 13 ON PAGE #2, WHEN HE TOLD
3 COLASHAUN, TO WAIT HERE. HIS DEFINITIONS OF THE ALLEGED INCIDENT
4 ARE (b) "TESTIMONIAL" WHEN THE CIRCUMSTANCES OBJECTIVELY INDICATE THAT
5 (i) THERE IS NO SUCH ONGOING EMERGENCY, AND (ii) THE PRIMARY PURPOSE
6 OF THE INTERROGATION IS TO ESTABLISH OR PROVE PAST EVENTS POTENTI-
7 ALLY RELEVANT TO LATER CRIMINAL PROSECUTION. DAVIS V. WASHINGTON 547
8 U.S. 813 (2006).

9
10 WHERE THEIR AN ABUSE OF DISCRETION WHEN
11 PROSECUTOR CONVICTED PETITIONERS FOR ASSAULT
WITH A DEADLY WEAPON ABSENCE A FIREARM?

12 PETITIONER ASSERT TO OLD CHIEF V. UNITED STATES, 519 U.S. 172
13 OVERVIEW: WHERE DEFENDANT OFFERED TO STIPULATE THAT HE PRE-
14 VIOUSLY HAD BEEN CONVICTED OF A FELONY, HIS PRIOR OF CONVICTION
15 WAS INADMISSIBLE BECAUSE ITS PROBATIVE VALUE WAS SUBSTANTIALLY OUT-
WEIGHED BY THE RISK OF UNFAIR PREJUDICE.

16 ON CERTIORARI REVIEW, DEFENDANT ARGUED THAT HIS OFFER
17 TO STIPULATE RENDERED THE PRIOR CONVICTION INADMISSIBLE UNDER
18 FED. R. EVID. 403 THE COURT AGREED HOLDING THAT THE DISTRICT
19 COURT ABUSED ITS DISCRETION IN ADMITTING DEFENDANT'S RECORD
20 OF CONVICTION BECAUSE ITS DISCOUNTED PROBATIVE VALUE WAS SUBST-
21 ANTIALY OUTWEIGHED BY THE RISK OF UNFAIR PREJUDICE.

22 OUTCOME THE COURT REVERSED THE APPELLATE COURT'S JUDGMENT
23 AND REMANDED FOR FURTHER PROCEEDING.

24 PETITIONER ASSERT TO UNITED STATES V. GEORGIA, 546 U.S. 151, 163
25 L.ED. 2d 630, 651, ON CERTIORARI, THE SUPREME COURT REVERSED
26 AND REMANDED. IN AN OPINION BY SCALIA, J., EXPRESSING THE
27 UNANIMOUS VIEW OF THE COURT, IT WAS HELD THAT: (1) TITLE 11
28 VALIDLY ABOGATED STATE SOVEREIGN IMMUNITY, INsofar AS TITLE

1 11 CREATE A PRIVATE CLAUSE OF ACTION FOR DAMAGES AGAINST THE
2 STATES FOR CONDUCT THAT ACTUALLY VIOLATED THE CONSTITUTION'S
3 FOURTEENTH AMENDMENT, FOR: (b) ON THE ASSUMPTION, WITHOUT
4 DELIBERATE, THAT THE PRISONER IN QUESTION HAD ALLEGED ACTUAL VIO-
5 LATIONS OF THE EIGHT AMENDMENT BY A STATE AGENTS, THE PRISON-
6 ER'S TITLE 11 CLAIMS WERE BASED, AT LEAST IN LARGE PART, ON CON-
7 DUCT THAT INDEPENDENTLY VIOLATED THE PROVISIONS OF § 1 OF THE
8 FOURTEENTH AMENDMENT, WHERE (i) THE SUPREME COURT HAS HELD
9 THAT THE FOURTEENTH AMENDMENT'S DUE PROCESS CLAUSE INCORPOR-
10 ATED THE EIGHT AMENDMENT'S GUARANTEE AGAINST CRUEL AND UN-
11 USUAL PUNISHMENT, AND (ii) THE PRISONER AARGED, THAT THE STATE
12 DID NOT DISPUTE, THAT THIS SAME ALLEGED CONDUCT THAT VIOLATED
13 THE EIGHT AMENDMENT ALSO VIOLATED TITLE 1.

14 (2) THE COURT OF APPEALS HAD ERRORED IN DISMISSING THOSE OF THE
15 PRISONER'S TITLE 11 CLAIMS THAT WERE BASED ON CONDUCT THAT INDEP-
16 ENDENTLY VIOLATED THE PROVISIONS OF § 1 OF THE FOURTEENTH AME-
17 NDMENT.

18 A REQUEST FOR THE COURT'S

19 I, LEWIS ANDERSON, DECLARE THAT I AM THE PETITIONER IN THE
20 WITHIN LEGAL CAUSE OF ACTION, AM A POOR INDIGENT IMPRISONER-
21 ATED PRISONER, AND HAVE AT RISK LIBERTY INTEREST RIGHT
22 AS A RESULT OF THE WITHIN CAUSE OF ACTION. I AM A LAY PER-
23 SON, UNTRAINED IN LAW, AND AS A RESULT OF POOR INDIGENT.
24 PETITIONER'S IS WITHOUT FUNDS TO EMPLOY COUNSEL, AND HAS
25 NO LEGAL TRAINING, EXPERIENCE OR ACCESS TO THE COURT'S NE-
26 CESSARY TO ADEQUATELY AND REASONABLY PROTECT PETITIONER'S
27 PRESENT AND FUTURE PERSONAL LIBERTY INTEREST. PETITIONER
28 THEREFORE, RESPECTFULLY REQUEST THE COURT'S TO CONSIDER THIS

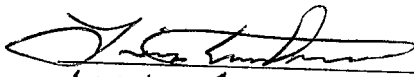
APPLICATION FOR CERTIORARI REVIEW ON THE GROUNDS OF 28 U.S.C. § 2254
STATE'S CUSTODY, REMEDIES IN FEDERAL COURTS, AND CONTRARY AND
UNREASONABLE STANDARD WHERE THE PROVISIONS OF THE ANTI-TERRORISM
AND EFFECTIVE DEATH PENALTY ACT OF 1994 COVER THE SCOPE OF A COURT'S
REVIEW, THE COURT MUST ASK WHETHER A STATE COURT'S ADJUDICATION OF A
CLAIM ON THE MERITS RESULTED IN A DECISION THAT WAS CONTRARY TO, OR INVOLV-
ED AN UNREASONABLE APPLICATION OF CLEARLY ESTABLISHED FEDERAL LAW, AS
DETERMINED BY THE SUPREME COURT OF THE UNITED STATES. 28 U.S.C. § 2254
(d)(1).

PETITIONER ASSERTS THAT HIS CONVICTION ON THE FACTS OF THIS CASE VIOLATE
THE CRUEL AND UNUSUAL PUNISHMENT CLAUSE OF THE EIGHTH AMENDMENT AS APPLIED TO
THE STATES THROUGH THE FOURTEENTH AMENDMENT. THE PRIMARY PURPOSE OF THE
CLAUSE HAS ALWAYS BEEN CONSIDERED, AND PROPERLY SO, TO BE DIRECTED AT THE
METHOD OR KIND OF [§532] PUNISHMENT IMPOSED FOR THE VIOLATION OF CRIMIN-
AL STATUTES; THE NATURE OF THE CONDUCT MADE CRIMINAL IS ORDINARILY REL-
EVANT [§532] FITNESS OF THE PUNISHMENT IMPOSED. SEE, EG., TROP V. DULLES, 356
U.S. 86 (1958); LOUISIANA EX REL. FRANCIS RESWEWER, 329 U.S. 459 (1947); WHEELS V.
UNITED STATES, 217 U.S. 349 (1910). WHATEVER MAY BE THE MERITS OF SUCH A
DOCTRINE OF CRIMINAL RESPONSIBILITY, IT SURELY CANNOT BE SAID TO FOLLOW
FROM ROBINSON. THE ENTIRE THRUSS OF ROBINSON'S INTERPRETATION OF THE
CRUEL AND UNUSUAL PUNISHMENT CLAUSE IS THAT CRIMINAL PENALTIES MAY BE IN-
FLICTED ONLY IF THE ACCUSED HAS COMMITTED SOME ACT, [§535] HAS ENGAGED IN
SOME BEHAVIOR, WHICH SOCIETY HAS AN INTEREST IN PREVENTING, OR PERHAPS IN HIS-
TORICAL COMMON LAW TERMS, HAS COMMITTED SOME ACTUS REUS. IT THUS DOES NOT
DEAL WITH THE QUESTION OF WHETHER CERTAIN CONDUCT CANNOT CONSTITUTIONALLY
BE PUNISHED BECAUSE IT IS, IN SOME SENSE, "INVOLUNTARY" OR "DETERMINED BY A
COMPULSION". POWELL V. TEXAS, 392 U.S. 514 (1962)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


LEWIS ANDERSON

Date: JULY 23, 2023