SUPREME COURT COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,	)	
Plaintiff and Respondent,	)	No. S030553
v.	)	(Los Angeles County Superior Court TA 006961)
GEORGE BRETT WILLIAMS,	)	
Defendant and Appellant.	)	

SUPREME COURT
FILED
JAN 30 2013
Frank A. McGuire Clerk
Deputy

SUPPLEMENTAL APPELLANT'S BRIEF

DANIEL N. ABRAHAMSON
Bar No. 158668
918 Parker St., Bldg A21
Berkeley, CA 94710
Telephone: (510) 229-5212

Attorney for Appellant

DEATH PENALTY

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

INTRODUCTION

In December 1992 at Mr. Williams's motion for new trial proceeding, the prosecutor offered additional reasons to justify his excusal – ***15 months earlier in September 1991*** – of five African-American women from appellant's venire. Neither appellant in his opening or reply briefs, nor the State in its response brief, referred to or relied on the prosecutor's 1992 justifications in addressing the *Batson/Wheeler* issue on direct appeal. And for good reason: the prosecutor's *post-hoc* rationalizations for his strikes, fifteen months after he exercised them, offered without the opportunity for rebuttal by defense counsel, and unremarked upon by the trial court, shed no light on the prosecutor's reasons *at the time of jury selection* for his strikes. They were thus wholly irrelevant to the proper determination of appellant's *Wheeler* issue.

The prosecutor's 1992 justifications did not become an issue until January 11, 2013, when the Court asked the parties to examine a mistake that the prosecutor made while he tried to backfill his justifications for his peremptory challenges. The Court's January 2013 request for additional briefing, and the State's letter brief of January 23, 2013, now cast a new spotlight on the prosecutor's 1992 justifications for his 1991 strikes.

Indeed, the thrust of the State's letter brief on January 23, 2013, suggests, for the first time, that the justifications offered by the prosecutor in 1992 are a natural continuation of the *Wheeler* hearings in 1991 and that the prosecutor's justifications

provided at the motion for new trial hearing can simply be transferred back fifteen months in time to shed light on the reasons for his peremptory challenges *at the time of jury selection* – the only relevant time-period for assessing *Wheeler* error. (*See* Respondent's Letter brief at pp. 8-9 (arguing that the prosecutor simply read into the motion for new trial record "his recollection from his notes" on which his peremptory challenges had been based).)

In light of the new focus by the Court and Respondent on the motion for new trial with respect to appellant's *Wheeler* issue, appellant submits this supplemental brief in order to:

1) Bring to the Court's attention the record evidence that undercuts each of the late-coming justifications offered by the prosecution at the motion for new trial for his culling of African-American female jurors; and

2) Present a new argument, XV - E, that of Ineffective Assistance of Motion for New Trial Counsel – an argument that was heretofore not reasonably considered by the parties to be part of the direct appeal, but is now apparently at issue.

For these reasons, discussed more fully below, *Wheeler* error must be found.

ARGUMENT

I. THE RECORD CONTRADICTS THE PROSECUTOR'S *POST-HOC* RATIONALIZATIONS FOR HIS STRIKES OF AFRICAN-AMERICAN FEMALE JURORS.

A. Family History of Law Enforcement Contacts.

At the 1992 motion for new trial hearing, the prosecutor, after referring to his jury selection files, supplemented his justification for previously striking Retha Payton, Paula Cooper-Lewis, and Harriett Reed by noting, without explanation, that these African-American female jurors variously had family members who had run-ins with law enforcement or the criminal justice system, or who were victims of crime, or who visited persons in custody. *See* 54 RT 4167 (Payton's son arrested by LAPD and Long Beach Police, but never charged); 54 RT 4166 (Cooper-Lewis' brother sent to prison for drugs); *id.* (Cooper-Lewis visited relatives in custody); 54 RT 4165 (Reed had a brother in jail); *id.* (Reed had a brother who was shot).

These proffered explanations for strikes, however, are at stark odds with the situations of nine seated jurors, two alternate jurors and two jurors who were seated on jury panels accepted by the prosecutor.[1] This comparative juror analysis, sanctioned by

---

[1] *See, e.g.*, 4 CT-Supp. 1, 944 (seated juror Richard Coon arrested three times in Los Angeles, found guilty); *id.* (Coon visited juvenile correctional facility); 23 CT-Supp. 1, 5628 (seated juror Vernon Worden arrested and found guilty and spent time in custody); *id.* (Worden's mother a victim of mugging); 23 CT-Supp 1. 5593 (seated juror Bonnie Bean had two family members arrested); 22 CT-Supp 1, 5453 (seated juror Billy Haley had son who was arrested, convicted, and sent to juvenile camp); *id.* (Haley's mother a victim of crime); 23 CT Supp-1, 5803 (seated juror Willie Jackson arrested and

this Court in *People v. Lenix* (2008) 44 Cal.4th 602, 612 discloses that the prosecution's proffered reasons were pretextual.

B. Alleged Uncertainty about Death Penalty.

At the motion for new trial proceeding, the prosecutor belatedly justified his strike of Ms. Cooper-Lewis on the ground that she had not decided if California should have the death penalty. 54 RT 4166. But this proffered rationale is also belied by the record, which reflects that identical or similar answers were provided by a juror seated on a panel accepted by the prosecutor (before being struck by the defense), and an alternate juror.[2]

---

jailed for DUI); 12-13 CT-Supp 1, 3042 (seated juror Lyle Stoltenberg visited correctional facility to see friend); 2 CT Supp-1, 279 (seated juror Will Collins a victim of crime); 19 CT Supp-1, 4649 (seated juror Charles Smith temporarily held in custody pending payment of fine); *id.* (Smith and spouse were victims of crime); 13 CT-Supp1, 3146 (seated juror Lela Bohn visited L.A. County Jail to see neighbor's son); *id.* (Bohn victim of crime); 12 CT-Supp. 1, 2971 (alternate juror Joe Acosta had a half-brother arrested and incarcerated for narcotics); 2 CT-Supp. 1, 314 (alternate juror Gloria Earnshaw had a son arrested but not charged for DUI); 4 CT-Supp 1, 839 (juror panelist Argle Eldridge arrested for and convicted of a crime of violence for which he served 180 days in jail); 12 CT-Supp 1, 2796 (juror panelist Wanda Muncey had a son who was arrested but against whom no charges were filed.)

[2] *See* 12 CT-Supp. 1, 2796 (panelist Wanda Muncey, stating "I don't know" if California should have the death penalty); 4 CT-Supp 1, 804 (alternate juror Daniel Villareal, stating "I am neither for [the death penalty] or against it," and declaring that California should *not* have the death penalty.)

The prosecutor belatedly justified his strike of Harriett Reed on the ground that she wrote "no comment" on her juror questionnaire about *the purpose* of the death penalty. 54 RT 4165. But this proffered rationale cannot be squared with the prosecutor's acceptance of a juror seated on a panel passed on by the prosecutor (before being struck by the defense) who provided similar or more provocative responses.[3] Nor can it be reconciled with the prosecutor's failure to question Ms. Reed about her response during either Hovey voir dire, *see* 7 RT 390-392, or general voir dire, indicating that it was not of particular concern to him at the time. *See Miller-El v. Dretke* (2005) 545 U.S. 231, 246. The prosecutor belatedly justified his strike of Harriett Reed also on the ground that she felt the death penalty was appropriate for "hardcore murderers" who mutilated victims' bodies. 54 RT 4165. But this proffered rationale cannot be squared with the prosecutor's acceptance of a seated juror and an alternate juror who provided strikingly similar responses.[4] Nor can it be reconciled with the response she gave when questioned at voir dire.[5]

---

[3] 12 CT-Supp 1, 2830 (panelist John Hoover, stating "When would I think about the death penalty?" in response to a question about whether his views about capital punishment have changed over time.)

[4] 12-13 CT-Supp. 1, 3042 (seated juror Lyle Stoltenberg, stating that the death penalty should be used to "eliminate those who have committed *heinous* crimes, e.g., *serial killers*" (emphases added)); 2 CT-Supp 1, 314 (alternate juror Gloria Earnshaw, stating that the death penalty may be warranted "if the crime committed was proven to be done in *absolute malice*" (emphasis added).)

[5] 7 RT 390-91 (responding that crimes with mutilated victims "are the first ones that really come to mind when I think of the death penalty," not limiting herself to only those types of crimes and stating she could impose the death penalty on Mr. Williams if

C. Volunteer Work at Hospital.

At the motion for new trial proceeding, the prosecutor belatedly justified his strike of Ms. Cooper-Lewis on the grounds that she "volunteered at a psychiatric hospital." 54 RT 4166. But this proffered rationale is at odds with the prosecutor's acceptance of a full-time nurse as a seated juror.[6] Nor can it be reconciled with the prosecutor's failure to question Ms. Cooper-Lewis about her volunteer work on Hovey or general voir dire, *see* 6 RT 359-365, suggesting that the prosecutor's concern about her hospital-experience was insincere or not deeply felt. *See Miller-El,* 545 U.S. at 246.

D. The Prosecutor Mischaracterized Juror Cooksie's Written Answer to Claim She Believed Something She Clearly Did Not.

Question 88 of the juror questionnaire asked: "In your opinion, what are the most important causes of crime?" In response to this question, juror Theresa Cooksie wrote: "Kids see others do wrong or selling cocaine. They think that's fine so they also do it also [sic]."[7]

At the motion for new trial, the prosecutor belatedly justified his strike of juror Cooksie on the ground that her explanation for the causes of crime, quoted above,

---

aggravating circumstances substantially outweighed mitigating ones.)

[6] 22-23, CT-SUPP 1, 5558 (seated juror D. Hubbard, identifying vocation as hospital nurse with three years' experience, delivering "total patient care.")

[7] 21 CT-Supp 1, 5138.

reflected Ms. Cooksie's personal view about crime that "you know, if everybody else is doing it and it's okay in your neighborhood then it's not that big of a deal." 54 RT 4166.

The prosecutor's explanation is a blatant mischaracterization of juror Cooksie's words and intent. No reasonable interpretation of Ms. Cooksie's considered response to the question about the causes of crime could conclude that Ms. Cooksie herself felt that crime is not "that big of a deal." Indeed, responding to the very next question, question 89, Ms. Cooksie said she believed crime had become more serious in recent years, and in response to question 90, she attributed the increase to "gang violence,"[8] – a view that dovetailed nicely with the prosecutor's plan to call expert witnesses at appellant's trial who would try to tie appellant to major gang activity.

The prosecutor's distortion of juror Cooksie's written response to justify his strike of her 15 months after the fact is further, persuasive evidence that the prosecutor had no valid race-neutral grounds for excusing her. *See Miller-El*, 545 U.S. at 545 U.S. 243-44.

* * *

For the above reasons, the prosecutor's belated justifications offered at the motion for new trial were pretextual and do not undercut appellant's claim of *Wheeler* error. Not only do the reasons "reek[] of afterthought," *id.* at 246, but a comparison to other jurors whom the prosecutor did not strike renders those reasons implausible.

---

[8] *Id.*

II. NEW ARGUMENT XV-E: APPELLANT'S COUNSEL FOR HIS MOTION FOR NEW TRIAL RENDERED CONSTITUTIONALLY INEFFECTIVE ASSISTANCE BY FAILING TO CORRECT THE PROSECUTOR'S ERRORS AT MOTION FOR NEW TRIAL PROCEEDINGS AND REBUTTING THE PROSECUTOR'S BELATED JUSTIFICATIONS FOR HIS PEREMPTORY STRIKES.

When the trial court asked the prosecutor at the motion for new trial proceeding to supplement the record with additional justifications for his peremptory challenges, neither the attorney who represented appellant at jury selection (but not at trial), nor the attorney who represented appellant at trial (but who absented himself from jury selection) were present in the courtroom. The only attorney present on appellant's behalf during this portion of the new trial proceeding was the one appointed by the trial court to represent appellant at his motion for new trial.

As the record reflects, 54 RT, appellant's counsel for the motion for new trial remained silent when the trial court asked the prosecutor to supplement the record by adding to his reasons for the peremptory challenges he exercised against African-American women fifteen months earlier. Appellant's counsel did not object to the court's questionable invitation to the prosecutor to backfill his *Wheeler* justifications. Nor did appellant's counsel make any effort whatsoever at comparative juror analysis, as appellant has now done (see *ante*, pp. 3-7) to point out the many ways in which the record belied the prosecutor's belated rationales and exposed those reasons as pretextual. Nor did appellant's counsel correct the prosecutor's error when the prosecutor at motion for

new trial *twice* misidentified the subject of the third *Wheeler* motion as "Denise" Jordan, a "39-year-old black female." 54 RT 4165, 4167.

There is no conceivable tactical or strategic reason for these failures. *See People v. Lopez* (2008) 42 Cal. 4th 960, 972 (a claim of ineffective assistance of counsel may be brought on direct appeal if "there is no conceivable tactical purpose for counsel's actions"); *People v. Mendoza Tello* (1997) 15 Cal. 4th 264, 266-267.

Appellant's jury had already been selected (and dismissed), so counsel's silence cannot be chalked up to a desire for a certain jury composition. Moreover, the purpose of counsel's special appointment to represent appellant on his motion for new trial was to obtain a new trial. Persuading the trial court that *Wheeler* error had occurred was an effective way to accomplish exactly that.

This supplemental brief and appellant's letter brief filed on January 22, 2013, underscore the prejudice suffered by appellant because of counsel's deficient performance. Had motion for new trial counsel brought to light the wealth of record evidence discussed in appellant's supplemental and letter briefs, the trial court would undoubtedly have been persuaded that *Wheeler* error occurred and granted Mr. Williams's motion for new trial.

Accordingly, appellant's motion for new trial counsel rendered constitutionally deficient performance in violation of the Sixth Amendment. *Strickland v. Washington* (1984) 466 U.S. 668.

CONCLUSION

As discussed in the appellant's briefs and expanded upon here, appellant's conviction and sentence should be set aside on grounds of the *Wheeler* error.

Dated: January 29, 2013

Respectfully submitted,

DANIEL N. ABRAHAMSON

By 

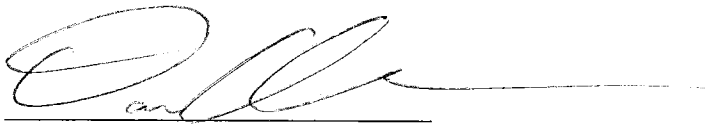
Counsel for appellant

George B. Williams

CERTIFICATE OF COMPLIANCE

I certify that the attached Supplemental Appellant's Brief uses a 13 point Times New Roman font and contains 2326 words, excluding the tables and certificates.

Dated: January 29, 2013



DANIEL N. ABRAHAMSON

DECLARATION OF SERVICE BY MAIL

CASE: People vs. (George Brett) Williams

CASE NO: California State Supreme Court Case No. S030553
Los Angeles County Superior Court Case No. TA006961

I am employed in the City of Berkeley and County of Alameda, California. I am over the age of eighteen years and not a party to the within action; my business address is 918 Parker St., Bldg A21, Berkeley, California 94710.

On January 29, 2013, I served the following document(s):

MOTION FOR LEAVE TO FILE SUPPLEMENTAL APPELLANT'S BRIEF AND REQUEST FOR RELIEF FROM DEFAULT (AND DECLARATION THERETO);

SUPPLEMENTAL APPELLANT'S BRIEF

MODIFICATION OF DESIGNATION OF FOCUS FOR ORAL ARGUMENT LETTER TO CALIFORNIA STATE SUPREME COURT

on each of the following, by placing true copies thereof in sealed envelopes addressed as shown below for service as designated below:

(A) By First Class Mail: I am readily familiar with the practice of attorney Daniel N. Abrahamson for the collection and processing of correspondence for mailing with the United States Postal Service. I caused each such envelope, with first-class postage thereon fully prepaid, to be deposited in a recognized place of deposit of the U.S. Mail in Berkeley, California, for collection and mailing to the office of the addressee on the date shown herein.

(B) By Overnight Express Delivery: I am readily familiar with the practice of attorney Daniel N. Abrahamson for the collection and processing of correspondence using the following overnight / next-day delivery services: Express Mail with the United States Postal Service, Next-Day Air with United Parcel Service (UPS), and Overnight Express with FedEx. I caused each such envelope, with the proper postage or billing information used by the service chosen (Circle Service Used), to be deposited in a recognized place of deposit in Berkeley, California, for collection and delivery to the office of the addressee on the date shown herein.

(C) By Personal Service: I caused each such envelope to be personally delivered to the office of the addressee by a member of the staff of this law office within one week of the date last written below.

TYPE OF SERVICE	ADDRESSEE
C	Supreme Court of California Office of the Clerk 350 McAllister St. San Francisco, CA 94102
A	George Brett Williams H-61000 North Seg - 30N San Quentin, CA 94974
B	Stephanie Miyoshi Deputy Assistant Attorney General Office of the State Attorney General 300 South Spring Street, Suite 500 Los Angeles, CA 90013
A	California Appellate Project Attn: Michael Millman 101 Second St., Suite 600 San Francisco, CA 94105

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 29th day of January, 2013, in Berkeley, California.

Michelle Asato
Declarant

DECLARATION OF SERVICE BY MAIL

CASE: People vs. (George Brett) Williams

CASE NO: California State Supreme Court Case No. S030553
Los Angeles County Superior Court Case No. TA006961

I am employed in the City of Berkeley and County of Alameda, California. I am over the age of eighteen years and not a party to the within action; my business address is 918 Parker St., Bldg A21, Berkeley, California 94710.

On January 29, 2013, I served the following document(s):

SUPPLEMENTAL APPELLANT'S BRIEF

on each of the following, by placing true copies thereof in sealed envelopes addressed as shown below for service as designated below:

(A) By First Class Mail: I am readily familiar with the practice of attorney Daniel N. Abrahamson for the collection and processing of correspondence for mailing with the United States Postal Service. I caused each such envelope, with first-class postage thereon fully prepaid, to be deposited in a recognized place of deposit of the U.S. Mail in Berkeley, California, for collection and mailing to the office of the addressee on the date shown herein.

(B) By Overnight Express Delivery: I am readily familiar with the practice of attorney Daniel N. Abrahamson for the collection and processing of correspondence using the following overnight / next-day delivery services: Express Mail with the United States Postal Service, Next-Day Air with United Parcel Service (UPS), and Overnight Express with FedEx. I caused each such envelope, with the proper postage or billing information used by the service chosen (Circle Service Used), to be deposited in a recognized place of deposit in Berkeley, California, for collection and delivery to the office of the addressee on the date shown herein.

(C) By Personal Service: I caused each such envelope to be personally delivered to the office of the addressee by a member of the staff of this law office within one week of the date last written below.

TYPE OF SERVICE	ADDRESSEE
C	Supreme Court of California Office of the Clerk 350 McAllister St. San Francisco, CA 94102
A	George Brett Williams H-61000 North Seg - 30N San Quentin, CA 94974
B	Stephanie Miyoshi Deputy Assistant Attorney General Office of the State Attorney General 300 South Spring Street, Suite 500 Los Angeles, CA 90013
A	California Appellate Project Attn: Michael Millman 101 Second St., Suite 600 San Francisco, CA 94105

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 29th day of January, 2013, in Berkeley, California.

Michelle Asato
Declarant