In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA, **Plaintiff and Respondent,** **v.** **ROBERT BOYD RHOADES,** **Defendant and Appellant.**	**CAPITAL CASE** Case No. S082101

Sacramento County Superior Court Case
No. 98F00230
The Honorable Loyd H. Mulkey, Jr., Judge

SUPPLEMENTAL RESPONDENT'S BRIEF

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INTRODUCTION

In his supplemental opening brief, appellant Robert Rhoades argues as part of his *Batson/Wheeler*[1] claim that the prosecutors during voir dire for the penalty phase of his capital trial "employed race and gender stereotypes historically invoked to exclude African-American women from jury service." (SOB 1.) In support of this argument, he regurgitates a portion of an amicus brief recently filed in support of a petition for writ of certiorari filed in the United States Supreme Court in *Williams v. California*, Case No. 13-494. The United States Supreme Court denied the petition for writ of certiorari in that case. (*Williams v. California* (2014) 134 S.Ct. 1279.) The quoted portions of the amicus brief are of no use in appellant's case. Neither the amicus brief nor the underlying case of *People v. Williams* (2013) 56 Cal.4th 630 (*Williams*) from which it stems supports appellant's *Batson/Wheeler* argument on appeal.

ARGUMENT

Appellant's supplemental brief details the ills of excluding prospective jurors based on race and gender and presents a historical overview of the exclusion of African-American women from juries based on their race and gender. (SOB 1-7.) The brief also touches upon the impartiality and biases of trial judges and the courts' review of prosecutors' justifications for exercising peremptory challenges. (SOB 7-8.) While educational, this information has no relevance or applicability to the instant case. It fails to demonstrate that the trial court erred in determining that appellant failed to make a prima facie showing of discrimination after the prosecutor used peremptory challenges to excuse four African-American women.

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[1] *Batson v. Kentucky* (1986) 476 U.S. 79, 84-89 (*Batson*) and *People v. Wheeler* (1978) 22 Cal.3d 258, 276-277 (*Wheeler*).

In *Williams*, the defendant was convicted of two counts of second degree robbery and two counts of first degree murder with special circumstances of multiple murder and felony murder. (*Williams*, *supra*, 56 Cal.4th at p. 630.) At trial, defense counsel brought three motions under *Batson/Wheeler* based on the prosecutor's use of peremptory challenges against five African-American women prospective jurors. (*Id.* at p. 649.) The prosecutor excused the five Black women because each seemed to be reluctant to impose the death penalty. (*Id.* at pp. 650-652.) The prosecutor's impression came from not only the answers given by the prospective jurors but also from the time that it took them to respond to the questions, their general demeanor, and the manner in which they answered the questions. (*Ibid.*) The trial court accepted the prosecutor's explanations and denied the *Batson/Wheeler* motions. The trial court did note that it did not have any notes for the last two African-American female jurors who were questioned and relied on what the prosecutor was saying. (*Id.* at pp. 651-652.) When defense counsel asked the trial court "'to respond to the numbers,'" the trial court replied, "'I have to say in my other death penalty cases I have found that the black women are very reluctant to impose the death penalty; they find it very difficult no matter what it is.'" (*Id.* at p. 652.) The trial court then made clear, however, that it was not making its ruling based on that observation. (*Ibid.*) The final makeup of the jury was seven Caucasions and five African-Americans, of whom four were men and one was a woman. (*Ibid.*)

This Court found no error in the trial court's denial of the *Batson/Wheeler* motions. (*Williams*, *supra*, 56 Cal.4th at p. 650.) First, the Court concluded that despite the trial court's isolated comment, the trial court was not biased against African-American women and granted its rulings their usual deference. (*Id.* at p. 652.) The trial court had quickly made clear that its observation played no role in ruling on the defendant's

Bason/Wheeler motions. (*Ibid.*) Second, the Court, while obviously not having the ability to examine the demeanor of the excused jurors, concluded that the record supported the prosecutor's stated race-neutral reason that each of the prospective jurors appeared reluctant to impose the death penalty. (*Id.* at pp. 653-661.)

The defendant in *Williams* filed a petition for writ of certiorari in the United States Supreme Court seeking review of the *Batson/Wheeler* issue. (*Williams v. California* (Oct. 16, 2013, No. 13-494) 2013 WL 5666607.) In the amicus brief, which appellant quotes in his supplemental brief, the author argues that African-American women, have been historically excluded from jury service and continue to be the targets of discriminatory jury selection practices. (SOB 2-3; *Williams v. California* (Nov. 15, 2013, No. 13-494) 2013 WL 6091738, at pp. 4-7.) Specific to *Williams*, the amicus brief points to the prosecutor's use of the demeanor of the prospective jurors and the prosecutor's general impression of the jurors "in spite of what they said." (*Id.* at p. 3.) It also urges that the trial court's comment that it had found in other death penalty cases that Black women are very reluctant to impose the death penalty proves that the trial court was biased against African-American women. (*Id.* at pp. 4-5.)

Unlike *Williams*, the instant case involves the first stage of a *Batson/Wheeler* claim, that is, the trial court found twice that appellant failed to even make a prima facie showing that the prosecutor used peremptory challenges to purposely exclude African-American women from the jury. An independent review of the record fails to show that the totality of the relevant facts gives rise to an inference of discriminatory intent. The statistics show that the prosecutor excluded three African-American female jurors out of five peremptory challenges, followed by a fourth African-American woman out of eight challenges. (30 RT 9040.) The defense exercised two of its peremptory challenges against African-

Americans, and there were other African-American jurors in the venire. (*Ibid.*) Nothing in *Wheeler* suggests that the removal of all members of a cognizable group, standing alone, is dispositive on the question of whether a defendant has established a prima facie case of discrimination. (See, e.g., *People v. Johnson* (2003) 30 Cal.4th 1302, 1325-1326, overruled on another point in *Johnson v. California* (2005) 545 U.S. 162 (*Johnson*); *People v. Sanders* (1990) 51 Cal.3d 471, 500 [the removal of all members of a cognizable group is not dispositive on the question of whether a prima facie case has been shown].) The record does not support the argument that the four challenged jurors shared only the characteristic of being African-American women but were otherwise "as heterogeneous as the community as a whole." Moreover, the record demonstrates that the prosecutor diligently and purposefully questioned each of the jurors. And in this case, appellant is a Caucasian and not a member of the group to which the prospective jurors at issue belong, a factor which supports the trial court's ruling that appellant failed to establish a prima facie case of discrimination. (*People v. Kelly* (2007) 42 Cal.4th 763, 779.) Thus, unlike the defendant in *Williams*, appellant failed to raise an inference of discriminatory purpose.

In addition, there were obvious, legitimate race-neutral reasons for the prosecutors to challenge each of the four African-American women excused. A trial court may reasonably conclude that no prima facie case of discrimination has been established when there are obvious race-neutral grounds for excluding the jurors. (*People v. Davis* (2009) 46 Cal.4th 539, 584.) "A juror's reluctance to impose the death penalty, even if insufficient to justify a challenge for cause, is a valid reason for a prosecutor to exercise a peremptory challenge." (*People v. Ledesma* (2006) 39 Cal.4th 641, 678.)

Here, prospective juror Rakestraw had a strong religious conviction which the prosecutor may have reasonably believed would prevent her from voting in favor of the death penalty. Rakestraw indicated that she had a

strong opinion about the death penalty and declined to answer many of the death penalty questions. (25 RT 7665; 23 CT 6894-6900.) During voir dire, she stated, "I try to lead a Christian life, and my Bible says thou shalt no kill. It doesn't say [sic] give me any exceptions, it just simply states to me, and I believe it, says thou shalt not kill." (25 RT 7666.) She explained that she "would have to really hear the evidence and weigh everything" before she could "make a decision to go against what I've been taught to believe." (*Ibid.*) And while she did state that she believed there may be cases in which the death penalty was appropriate (25 RT 7666-7667), it would be reasonable for the prosecutor to be concerned about her ability to make such a finding if warranted by the evidence. Rakestraw also wrote on her questionnaire that she believed life in prison without the possibility of parole was more of a punishment than the death penalty. (23 CT 6897.) The information collected on Rakestraw demonstrated obvious and legitimate race-neutral reasons for a prosecutor to excuse her from the jury.

Similarly, excused juror Ayers admitted on her juror questionnaire that she did not believe the death penalty served a purpose. (24 RT 7425; 22 CT 6438.) She also wrote, "I can't support actions to kill a human as a sentence even if that individual has killed someone." (*Ibid.*) When asked for the types of cases/offenses for which the death penalty should be imposed, Ayers stated, "[n]one." (*Ibid.*) These answers indicate that Ayers would not choose to impose the death penalty under any circumstances. If Ayers was in charge of making all the laws, there would not be a death penalty. (22 CT 6440.) Clearly, this was a potential juror who it is reasonable to believe would be unable and/or unwilling to vote for the death penalty. The prosecutor's use of a peremptory challenge to excuse this juror was proper.

With regard to Richard, the prosecutor may have reasonably believed that this potential juror harbored ill feelings toward law enforcement that

would prevent her from being impartial. Richard detailed an unpleasant experience with law enforcement and also indicated that she felt courts may treat people differently depending on their race. (26 RT 7934; 28 CT 8362, 8365.) The prosecution may have also believed that Richard would be sympathetic to appellant based on her juror questionnaire response that her ex-boyfriend had become physically assaultive because of the alcohol and drugs he consumed. (28 CT 8368.) The evidence showed appellant was using methamphetamine at the time surrounding the crimes committed against Michael Lyons.

Moreover, she was equivocal on one of the questions regarding the death penalty, answering that she "supposed" she would vote for the death penalty if the evidence supported the conclusion that it was the correct verdict. (26 RT 7937-7938.) She also admitted that her views on the death penalty had changed over time as a result of the case of Karla Faye Tucker,[2] "because she proved that some people can change." (28 CT 8376.) The prosecutor could have reasonably assumed Richard may be biased against the death penalty and would not impose it when justified based on personal beliefs.

And finally, there were many causes for concern regarding excused juror Spruill. First, it was reasonable for the prosecutor to not want to risk Spruill being unwilling or unable to fulfill jury duty because she was responsible for the care of her infant child. When asked if caring for her child would interfere with her ability to serve on the jury, Spruill stated, "I

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[2] According to Wikipedia, Tucker was convicted of murder in Texas in 1984 and put to death in 1998. She was the first woman to be executed in the United States since 1984, and the first in Texas since 1863. Because of her gender and widely-publicized conversion to Christianity, she inspired an unusually large national and international movement advocating the commutation of her sentence to life imprisonment. (http://en.wikipedia.org/wiki/Karla_Faye_Tucker)

don't know, I just had a baby (6 mos. old) I can't say. He's still young and my husband travels so I get very stressed at times." (26 CT 7781.) When asked if she was willing to stay as long as necessary to complete the trial and jury deliberations if the case lasted longer than estimated by court or counsel, Spruill answered "No." (*Ibid.*) Furthermore, Spruill had a brother who had been convicted of sexual assault and molestation of a teen for which he was serving time, and she was convinced he was innocent because he was a substance abuser. (27 CT 7803.) It would be reasonable for the prosecutor to be concerned that she may not vote for the proper punishment in the case given the fact appellant was high on methamphetamine during the commission of his crimes. Thus, in this case, the record suggests race-neutral grounds on which the prosecutor reasonably might have challenged each of the four prospective jurors.

Also unlike *Williams*, the trial court made no comment regarding the prospective jurors much less a comment relevant to the trial court's findings of black women's views of the death penalty in other death penalty cases. There is no evidence that the trial court in this case was "lax in restraining a prosecutor's unlawful strikes" or, worse, "embraced the same stereotype that has been applied to African-American women for decades" as alleged by the author of the amicus brief in support of the petition filed in *Williams*. (*Williams v. California* (Nov. 15, 2013, No. 13-494) 2013 WL 6091783, at p. 5.) The trial court found appellant did not even make a prima facie showing of discriminatory exercise of peremptory challenges. Accordingly, appellant's supplemental brief does not aid his argument that the trial court erred in denying his *Batson/Wheeler* motions.

Appellant argues in conclusion that this case is indistinguishable from *Johnson*, *supra*, 545 U.S. 162, in which the United States Supreme Court held that the trial court erred in not requiring the prosecutors to explain their reasons for excusing all prospective African-American jurors at the

first stage of a *Batson/Wheeler* inquiry. (SOB 9.) The *Johnson* Court reiterated that "a prima facie case of discrimination can be made out by offering a wide variety of evidence, so long as the sum of the proffered facts gives 'rise to an inference of discriminatory purpose.'" (*Johnson*, *supra*, 545 U.S. at p. 169, citing *Batson*, 476 U.S. at p. 94.) The Court quoted *Batson*'s explanation of what constitutes a prima facie case:

> [A] defendant may establish a prima facie case of purposeful discrimination in selection of the petit jury solely on evidence concerning the prosecutor's exercise of peremptory challenges at the defendant's trial. To establish such a case, the defendant first must show that he is a member of a cognizable racial group, and that the prosecutor has exercised peremptory challenges to remove from the venire members of the defendant's race. Second, the defendant is entitled to rely on the fact, as to which there can be no dispute, that peremptory challenges constitute a jury selection practice that permits 'those to discriminate who are of a mind to discriminate.' Finally, the defendant must show that these facts and any other relevant circumstances raise an inference that the prosecutor used that practice to exclude the veniremen from the petit jury on account of their race.

(*Johnson*, *supra*, 545 U.S. at p. 169, quoting *Batson*, 476 U.S. at p. 96 (citations and quotations omitted).) Thus, the *Johnson* Court held that the State of California could not require at the first *Batson* step that the objector show that "it is more likely than not" the other party's peremptory challenges, if unexplained, were based on impermissible group bias. (*Ibid.*) "[Instead] a defendant satisfies the requirements of *Batson's* first step by producing evidence sufficient to permit the trial judge to draw an inference that discrimination has occurred." (*Id.* at p. 170.)

Here, appellant fails to raise relevant evidence that supports an inference of discrimination other than the bare fact that the prosecutors exercised peremptory challenges against four members of a cognizable racial group. This is not sufficient in this case to raise an inference of purposeful discrimination, particularly in light of the relevant

circumstances gleaned from the jury questionaires and voir dire which negate a finding of discriminatory intent by the prosecutors. Unlike *Johnson*, where a black male was convicted of second-degree murder of a white child, appellant is not a member of the cognizable group of the prospective jurors challenged. He is white, and his victim was a white child. Moreover, there is no evidence in the record that any particular prospective jurors were targeted for more questioning in an attempt to provoke a certain response. Rather, the prosecutor diligently and purposefully questioned each of the jurors.

And, most persuasively, there were obvious, legitimate and demonstrable race-neutral reasons for challenging each of the four African-American women excused by the People. These reasons are detailed above. This case is unlike *Johnson*, where the trial court explained that her own examination of the record had convinced her that the prosecutor's strikes could be justified by race-neutral reasons. (*Johnson*, *supra*, 545 U.S. at p. 165.) Thus, the trial court was correct in its determination that no prima facie showing of purposeful racial discrimination was met by the defense in its *Batson/Wheeler* motions.

CONCLUSION

For the reasons stated above, respondent respectfully requests that this Court find that the trial court properly determined that appellant failed to make a prima facie showing under *Batson/Wheeler*.

Dated: April 28, 2014

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached Supplemental Respondent's Brief uses a 13 point Times New Roman font and contains 2,771 words.

Dated: April 28, 2014

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DECLARATION OF SERVICE BY U.S. MAIL

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On April 29, 2014, I served the attached:

SUPPLEMENTAL RESPONDENT'S BRIEF

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 29, 2014, at Sacramento, California.

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