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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CRC
8.25(b)

_____)	No. S253155
In re)	
)	Court of Appeal
WILLIE SCOGGINS,)	(Third District)
)	No. C084358
)	
)	Sacramento County
On Habeas Corpus,)	Superior Court
_____)	No. 08F04643

PETITIONER'S REPLY BRIEF ON THE MERITS

On Review from the Decision of the Court of Appeal
Third Appellate District

From a Judgment of the Superior Court
for the County of Sacramento

HONORABLE DAVID DE ALBA, JUDGE

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PETITIONER'S REPLY BRIEF ON THE MERITS

INTRODUCTION

In this Reply Brief on the Merits, petitioner declines to reply to every contention made by respondent in its Answering Brief on the Merits, as the arguments in petitioner's Opening Brief on the Merits anticipated many of respondent's contentions. Petitioner's decision not to reply to one or more of respondent's contentions in this brief should not be construed as a concession of any issue or an abandonment of any of his positions or arguments.

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ARGUMENT

I

THIS COURT'S DECISIONS IN *PEOPLE V. BANKS* (2015) 61 CAL.4TH 788 AND *PEOPLE V. CLARK* (2016) 63 CAL.4TH 522 MAKE IT CLEAR THAT THE EVIDENCE IN PETITIONER'S CASE IS INSUFFICIENT TO PROVE THE ROBBERY-MURDER SPECIAL CIRCUMSTANCE, REGARDLESS WHETHER THE EVIDENCE ESTABLISHES THAT PETITIONER CREATED A FORESEEABLE RISK OF DEATH IN PLANNING AN UNARMED BEATING AND ROBBERY

A. Introduction

In its Answering Brief on the Merits, respondent portrays the evidence presented at trial in such a way as to bolster its position that petitioner aide and abetted the charged crime with reckless indifference to human life, an essential element of the felony-murder special circumstance.

Specifically, respondent maintains that the evidence proves petitioner to have been a criminal mastermind who handed down a specific and direct order to his accomplices -- Randall Powell, James Howard, Shaneil Cooks, and Jennifer Kane -- to severely beat Samuel Wilson, the intended robbery victim. Moreover, respondent claims that the evidence suggests that petitioner knew that Randall Powell was likely to be armed and likely to shoot Wilson, and that petitioner was in a position to prevent Powell from shooting Wilson at the time of the confrontation. Finally, respondent argues that immediately after the crime, petitioner appeared completely unfazed by the fatal shooting, and

took steps designed to enable him and his accomplices to avoid consequences for the crime, thereby neglecting Wilson's well-being in the process.

Petitioner will show that respondent's assertions are unsupported by the record. The only conclusion supported by the evidence presented at trial is that Powell's act of shooting Wilson was an entirely unanticipated event, committed by a single rogue accomplice, at a time when petitioner had no expectation that lethal violence would erupt and no ability to restrain the actions of any accomplice.

B. No Evidence Supports the Claim That Petitioner Specifically and Directly Ordered the Accomplices to Severely Beat the Victim

Respondent asserts that petitioner was a "mastermind" (ABM 6, 26, 27, 28, 36, 38, 40, 42)¹ who not only singlehandedly "devised [the] plan to exact revenge" that resulted in Wilson's death (ABM 6) but specifically "ordered" the accomplices to "severely" beat Wilson (ABM 6, 40). However, the record fails to support respondent's claims that petitioner micro-managed the accomplices' actions in their confrontation with Wilson or specifically ordered them to inflict a severe beating.

Lorenzo McCoy's trial testimony and his statements to detectives provide the only evidence in the record about the plan to confront Wilson. According to McCoy, petitioner disclosed that Wilson

1. ABM refers to respondent's Answering Brief on the Merits. OBM refers to petitioner's Opening Brief on the Merits.

had scammed him by selling him bogus TV sets. (2 RT 398-400.)^{2/} Petitioner was so mad that he wanted to beat up Wilson and take back his money. (2 RT 400-401.) In subsequent conversations with McCoy, petitioner claimed responsibility for devising a plan to confront Wilson, and explained that the plan was threefold -- to “beat the shit out” of Wilson, “get the fuckin’ money back and go on about [their] business.” (2 CT 595; see also 2 CT 593-595; 2 RT 407.) But McCoy never testified or told detectives that petitioner insisted he would explicitly order the accomplices to “severely” beat Wilson. Nor is there any other evidence in the record about this aspect of the plan to confront Wilson.

McCoy’s account establishes only that petitioner expected the accomplices to understand their general goals in confronting Wilson -- to seek restitution by taking petitioner’s money from Wilson, to seek revenge by beating up Wilson, and then to go about their business. Thus respondent’s claim that petitioner specifically ordered accomplices to inflict a severe beating is unsupported.

C. No Evidence Supports the Claim That Petitioner Had Reason to Believe That His Accomplice Would Be Armed and Likely to Shoot

Respondent asks this Court to conclude that the evidence is sufficient to prove that petitioner suspected that Wilson might be armed, that he shared this suspicion with Powell, and that he may have encouraged Powell to arm himself or must have known that Powell

2. CT, SCT, and RT refer respectively to the Clerk’s Transcript, Supplemental Clerk’s Transcript, and Reporter’s Transcript in petitioner’s appeal in No. C068971.

would arm himself. (ABM 33.) This is pure speculation. As petitioner has explained in his opening brief on the merits (OBM 37), there is absolutely no evidence in the record to show that petitioner was aware that Powell had at any point in his lifetime ever used, carried, or even possessed a gun, or that Powell had ever injured or even threatened to injure anyone.

Respondent bases its speculation on petitioner's conversation with detectives at a time when petitioner was denying any role in the plan to confront Wilson. Petitioner mused that if he were to seek to engage a person with whom he had a dispute, he would have "pulled right up, probably tried to block him in with my car or whatever." (SCT 106.) He added that he would have put himself in a position where he was "[t]aking a chance and not knowing if he got a pistol that's gonna shoot me first." (SCT 106; see ABM 33.) But petitioner's comment does not demonstrate that he actually suspected before the confrontation that Wilson would be armed. Petitioner made this comment nearly two weeks after the shooting (2 RT 575) during an interrogation in which detectives sought to elicit his confession to involvement with the person who shot Wilson. Petitioner simply responded to these efforts by arguing that he would never have confronted someone in the manner that the persons in the van did. Petitioner's remark about a hypothetical pistol in the hands of a hypothetical person cannot reasonably be construed to mean that prior to the fatal shooting, petitioner actually believed that Wilson may have been armed, that he shared his suspicion with Powell, and that he may

have encouraged Powell to arm himself or must have known that Powell would arm himself before confronting Wilson.

Respondent also bases its speculation on petitioner's comment that Powell was a hot head. (ABM 29, 31, 33, 38.) Petitioner remarked to detectives in an interrogation after the crime was committed that, if the detectives were correct in saying that Powell did shoot Wilson, then it showed that "his hot head got him in trouble." (SCT 839.) But petitioner's remark does not establish that he knew before the confrontation with Wilson that Powell was likely to resort to lethal violence, either by inflicting a deadly beating or by firing a gun. Petitioner made this comment in reaction to a detective telling him that Lorenzo McCoy had implicated petitioner in the plan that culminated in Powell shooting Wilson. (SCT 834-839.) Petitioner's characterization of Powell as a hot head was contingent on the detectives' assertion that Powell was the person who shot Wilson, and can only be seen as an effort to distance himself from the person detectives had accused of committing the shooting. Thus the context of his comment does not support the inference that petitioner knew from past experience or reputation that Powell was likely to be armed and likely to shoot because he was a hot head.

Finally, respondent bases its speculation on petitioner's comments characterizing Powell as "more aggressive" and "more of a street guy." (ABM 31.) However, petitioner described Powell in these terms only in response to the detectives' request that he compare the personality of Powell with that of Howard, another accomplice.

(SCT 83.)^{3/} Petitioner answered that Powell was “more aggressive than” Howard (SCT 84) and that Powell was “more of a street guy” than Howard (SCT 88). Petitioner clarified that by “street guy,” he meant that Powell preferred not to “stay[] in the house,” but instead “like[d] to be out, fucking with hella girls and all that.” (SCT 88.) Thus petitioner’s comments about Powell’s character traits cannot reasonably be construed to be an expression of his opinion that Powell was likely to carry a gun or shoot anyone.

In short, no evidence establishes that petitioner could have anticipated that Powell would resort to lethal violence during the confrontation with Wilson.

D. No Evidence Supports the Claim That Petitioner Had the Opportunity to Restrain the Gunman at the Time of the Shooting

Respondent further claims that petitioner “had ample opportunity to act as a restraining influence” on Powell, the shooter, because petitioner and Powell had communicated by phone in the minutes prior to the confrontation with Wilson that culminated in the fatal shooting. (ABM 37.) But there is no evidence that Powell disclosed to petitioner in any phone call that he was armed or that he might possibly fire shots if Wilson were to flee or fail to comply with any of the accomplices’ demands. If there were evidence that petitioner had been on the phone with Powell at the precise time that Powell pulled out

3. In this interrogation, petitioner sometimes referred to Randall Powell as Jason (SCT 82) and to James Howard as Frankie (SCT 21).

a gun and began firing shots, it might be reasonable to infer that petitioner neglected an opportunity to tell Powell to put the gun away and refrain from shooting. But there is no evidence of such a phone call contemporaneous with the shooting. The evidence shows that at the time of the accomplices' confrontation with Wilson in the parking lot, petitioner was at the Shell station adjacent to the lot. Petitioner was in no position to intervene and prevent the shooting from taking place.

E. No Evidence Supports the Claims That Petitioner Was Unfazed By the Shooting, That He Took Steps to Enable Him or His Accomplices to Avoid Consequences, or That He Neglected the Victim's Well-Being

Finally, respondent contends that petitioner's actions and statements after the shooting demonstrate "his subjective awareness of the risk of violence." (ABM 30.) Respondent is mistaken.

Respondent repeatedly asserts that when petitioner walked over to the scene of the shooting after the departure of the accomplices, he appeared "unfazed." (ABM 6, 30, 38, 40, 43.) However, although four witnesses testified at trial about their conversations with petitioner or observations of his conduct after the shooting (1 RT 197-199, 203-204 [Martesha Lewis]; 1 RT 256 [Lakesha Sherron]; 2 RT 499-503 [Laticia Lovelace]; 2 RT 523, 529-531 [Deputy David Treat]), not a single witness described petitioner as appearing unfazed. This claim is a figment of respondent's imagination. Deputy Treat described petitioner as "cooperative" but not "unfazed." (2 RT 531.)

Respondent also argues that the evidence shows that

petitioner remained at the scene after the shooting “in an apparent attempt to shield himself from liability” (ABM 38) and “to assist his cohorts in an effort to avoid consequences for the killing” (ABM 39). This too is an assertion without any factual basis. The record shows that petitioner walked over toward Wilson’s body only after three bystanders had already gathered there. (1 RT 197, 255-256; 2 RT 499.) By this point in time, there was nothing petitioner could have done to assist Wilson or summon help. Martesha Lewis, a medical assistant, had already checked Wilson’s pulse. (1 RT 195-196.) Laticia Lovelace recalled that petitioner said someone should call the police, but Lovelace said they already had done so. (2 RT 500-501.) Cindy Keller had called 911. (1 RT 101; 2 CT 563.) Lewis believed that her cousin had also called 911. (1 RT 196.) According to petitioner’s account to detectives, petitioner approached Wilson for the purpose of determining whether Wilson was breathing. (3 CT 653, 661.) He could not see him breathing. (3 CT 653, 661.) Petitioner left the scene briefly to move his car (2 RT 502; 3 CT 661), but then returned on foot and remained there to talk to Deputy David Treat, who described petitioner as “cooperative.” (2 RT 523, 531.) Although petitioner was apparently present when an eyewitness stated that she had taken down the license number of the perpetrators’ getaway van (3 CT 737), this establishes only that petitioner happened to be present when startled bystanders were sharing information. No evidence indicates that petitioner’s purpose for remaining at the scene was to acquire information “to assist his cohorts in an effort to avoid consequences for the killing.” (ABM 39.)

Therefore, no evidence about petitioner's conduct following the shooting demonstrates that he had a pre-existing subjective awareness of the risk of violence.

F. The Evidence is Insufficient

In light of this Court's opinions in *People v. Banks* (2015) 61 Cal.4th 788 and *People v. Clark* (2016) 63 Cal.4th 522, the circumstances in petitioner's case compel the conclusion that the evidence presented at trial fails to prove he had the reckless indifference to human life that is essential for a robbery-murder special circumstance. No evidence in the record concerning petitioner's plan for the accomplices to rob and beat up the victim, petitioner's level of knowledge about the background of the gunman or the victim, petitioner's location at the time of the fatal shooting, or petitioner's actions immediately after the shooting, suggests that petitioner knew that the plan to confront Wilson carried "a grave risk of death." (See *People v. Banks, supra*, 61 Cal.4th 788, 808; *Tison v. Arizona* (1987) 481 U.S. 137, 157 [95 L.Ed.2d 127].)

Thus the special circumstance must be reversed and petitioner's sentence to life imprisonment without the possibility of parole must be vacated.

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CONCLUSION

Petitioner is therefore entitled to the relief requested -- granting him a writ of habeas corpus to set aside the judgment that imposed the robbery murder special circumstance and sentenced him to life imprisonment without possibility of parole.

DATED: August 29, 2019

Respectfully submitted,

VICTOR J. MORSE

**Attorney for Petitioner
WILLIE SCOGGINS**

CERTIFICATE OF WORD COUNT

Counsel for petitioner WILLIE SCOGGINS hereby certifies that this reply brief on the merits consists of 2,332 words (excluding tables and proof of service), according to the word count of the computer word-processing program that produced this brief. (California Rules of Court, rule 8.520(c)(1).)

Dated: August 29, 2019

VICTOR J. MORSE

Attorney for Petitioner
WILLIE SCOGGINS

**DECLARATION OF SERVICE BY MAIL
AND ELECTRONIC SERVICE BY TRUEFILING**

In re Willie Scoggins on Habeas Corpus Case No. S253155

I, VICTOR J. MORSE, declare that I am a citizen of the United States, over 18 years of age, employed in the County of San Francisco, State of California, and not a party to the subject cause. My business address is 3145 Geary Boulevard, PMB # 232, San Francisco, California 94118-3316. I served a true copy of the attached

PETITIONER'S REPLY BRIEF ON THE MERITS

on the following, by placing copies thereof in envelopes addressed as follows:

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Each said envelope was then, on August 29, 2019, sealed and deposited, in the United States Mail at San Francisco, California, the county in which I am employed, with the postage thereon fully prepaid.

On August 29, 2019, I caused the TrueFiling website to transmit a PDF version of this document by electronic mail to each of the following using the email addresses indicated:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 29, 2019, at San Francisco, California.

VICTOR J. MORSE