KAMALA D. HARRIS
Attorney General

COPY

State of California
DEPARTMENT OF JUSTICE

300 SOUTH SPRING STREET, SUITE 1702
LOS ANGELES, CA 90013

Public: (213) 897-2000
Telephone: (213) 897-8784
Facsimile: (213) 897-6496
E-Mail: Stephanie.Miyoshi@doj.ca.gov

SUPREME COURT COPY

January 15, 2013

SUPREME COURT
FILED

JAN 22 2013

Frank A. McGuire Clerk

Deputy

Frank A. McGuire
Court Admininstrator and Clerk of the Supreme Court of California
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

RE: *People v. George Brett Williams*, Capital Case
Supreme Court of California, Case No. S030553
Los Angeles Superior Court, Case No. TA006961

Dear Mr. McGuire:

This letter brief is in response to the Court's January 11, 2013, Order to file a letter brief on the issue of whether the prosecutor mistook Ruth Jordan with Denise Jordan as the subject of his peremptory challenge and what effect any mistake had on appellant's *Batson*[1]/*Wheeler*[2] claims.

Respondent submits that the prosecutor did mistake Ruth Jordan with Denise Jordan and thereby offered an adequate race-neutral explanation for his use of his peremptory challenge to dismiss Ruth Jordan.

[1] *Batson v. Kentucky* (1986) 476 U.S. 79 [106 S.Ct. 1712, 90 L.Ed.2d 69].
[2] *People v. Wheeler* (1978) 22 Cal.3d 258.

DEATH PENALTY

I. THE PROSECUTOR MISTOOK RUTH JORDAN WITH DENISE JORDAN AND, THUS, HAD RACE-NEUTRAL REASONS FOR DISMISSING RUTH JORDAN

A. Relevant Facts and Proceedings

1. Juror Questionnaire of Ruth Jordan

Ruth Jordan was a 65-year-old married supervisor for the State of California.[3] (5 Supp. 1 CT 1049-1050.) In her juror questionnaire, Ruth Jordan stated that the death penalty had "never been a deterrent to crime" but that it was "necessary . . . because so many people think it is." (5 Supp. 1 CT 1072.) She believed that California should have the death penalty and that the purpose of it was to "let the punishment fit the crime." (5 Supp. 1 CT 1073.)

Ruth Jordan agreed somewhat with the statement that "[a]nyone who intentionally kills another person without legal justification, and not in self defense, should receive the death penalty." She would not automatically refuse to find appellant guilty of first degree murder to avoid the issue of the death penalty, and would not automatically refuse to find the special circumstance true to avoid the issue of the death penalty. (5 Supp. 1 CT 1074.)

Ruth Jordan also stated that she would not vote for life in prison without the possibility of parole regardless of the evidence. She circled "I Don't Know" when asked if life in prison without the possibility of parole was a more severe punishment than death. (5 Supp. 1 CT 1075.)

2. Juror Questionnaire of Denise Jordan

Denise Jordan was a 39-year-old married clerical worker for the Department of Water and Power. (21 Supp. 1 CT 5173-5174.) She stated in her juror questionnaire, "I'm not for the death penalty, life in prison is what I'm for." She added that she did not think anyone had the right to take someone's life and that "if the person is guilty, they should do there [*sic*] time." When asked if the death penalty was "used too often," Denise Jordan responded, "I'm not for it." (21 Supp. 1 CT 5197.) In response to whether California should have the death penalty, she replied that imprisonment was "all the

---

[3] Ruth Jordan did not write her name on the front of her jury questionnaire; however, she did sign her name on the last page of her questionnaire. (5 Supp. 1 CT 1049, 1082.)

punishment we should be able to give" and that death "should be when God call[s] them home." (21 Supp. 1 CT 5198.)

Denise Jordan disagreed somewhat with the statement that "[a]nyone who intentionally kills another person without legal justification, and not in self-defense, should receive the death penalty." She circled "Don't Know" in response to whether she would automatically refuse to vote to find appellant guilty to avoid the issue of the death penalty, whether she would automatically refuse to find the special circumstance true to avoid the issue of the death penalty, whether she would automatically find the special circumstance true to be able to consider the issue of penalty, and whether she would automatically vote for the death penalty regardless of the evidence. She added a note stating, "I'm again[st] Death penalty." (21 Supp. 1 CT 5199.)

Denise Jordan answered "Yes," when asked if she would vote for life in prison without the possibility of parole, regardless of the evidence, if the trial reached the penalty phase. She also believed that life in prison without the possibility of parole was a more severe punishment than the death penalty. Her views on the death penalty had not changed in the last 10 years. (21 Supp. 1 CT 5200.)

3. *Hovey*[4] Voir Dire of Ruth Jordan

Ruth Jordan stated that she did not have any convictions that would cause her to automatically vote for life in prison without the possibility of parole and never vote for the death penalty. (12RT 912-913.)

Ruth Jordan was asked to elaborate on her response in the questionnaire that capital punishment was not a deterrent to crime. She stated, "I just don't think that it is a deterrent to crime and that is based on the fact that there are so many people in jail for capital crimes." (12RT 913.)

The prosecutor asked Ruth Jordan if she had the ability to impose the death penalty on another human being. She replied, "I don't understand you." (12RT 914.) The prosecutor explained that some people would not be able to render a death verdict even if one was warranted by the circumstances of the crime. The prosecutor again asked if she had the ability to render a death verdict. Ruth Jordan replied, "Yes, I believe I would have." The prosecutor again asked, "If the death penalty in this case is warranted you would have the ability then to return that verdict?" She replied, "Yes, I would." The court asked Ruth Jordan to return on another date for jury selection. (12RT 915.)

---

[4] *Hovey v. Superior Court* (1980) 28 Cal.3d 1.

4. *Hovey* Voir Dire of Denise Jordan

During *Hovey* voir dire, Denise Jordan stated that she would automatically vote for life in prison without the possibility of parole. The trial court noted that in her questionnaire, she had stated that she would vote for life in prison without the possibility of parole, regardless of the evidence. The court asked, "Is there any time that you would find that the death penalty would be appropriate?" Denise Jordan responded, "It depends on the case. I want to say that I'm against it but it depends on the case itself." (5RT 201.)

The court asked her to clarify her response since she had stated in her questionnaire that she would automatically vote for life in prison without the possibility of parole. Denise Jordan answered, "I would always vote for that." The court asked, "And you would never vote for death?" She responded, "I wouldn't say never. I say it depends on the case. You know, it depends on, you know, just the case. I don't know what more to say." (5RT 202.)

When the court asked if she would always vote for life in prison, Denise Jordan replied, "Not always. That still depends on the case." She conceded it would be "hard" for her to "vote for death." (5RT 202.)

The court explained that the jurors would first be asked to determine whether appellant was guilty and that, depending on the verdicts, they would then make a determination whether the special circumstance was true. (5RT 202.) If the special circumstance was true, the jurors would then determine the penalty based on aggravating and mitigating evidence. The court explained that if the aggravating evidence "far outweighed the mitigating evidence" a juror "may vote for the death penalty" or "may also vote for life in prison without the possibility of parole." The court asked Denise Jordan if she would automatically "in every case no matter what the evidence is vote for life in prison without the possibility of parole." She responded, "Yes." When the court asked, "And your answer is yes?" Denise Jordan replied, "Yes." (5RT 203.)

The court asked, "So you would never, ever vote for the death penalty?" (5RT 203-204.) Denise Jordan stated, 'Well, see, I can't say that." She added that she would "probably" vote for life in prison without the possibility of parole. When the court reiterated that it was asking whether she would "automatically" "in every case" vote for life in prison without the possibility of parole," she stated, "Not every case. You know, it depends on the circumstances. Not every case." She added that life in prison was "probably' what she would "vote for most of the time, more so than the death penalty." (5RT 204.)

Denise Jordan then stated that she would automatically vote for life in prison without the possibility of parole in every case. (5RT 204-205.) She added that she did not believe in the death penalty. (5RT 205.)

However, after further questioning by defense counsel, Denise Jordan stated that she might be able to impose the death penalty "[o]n some cases," "depend[ing] on the case." (5RT 205.) She added that it was "possible" she could "vote for the death penalty" even though she "disagree[d] with it." She clarified that her "preference" was to vote for life in prison without the possibility of parole. (5RT 206.)

Denise Jordan stated that she would have to feel that the death penalty was the "appropriate" punishment to vote to impose it. (5RT 206.) She stated that an appropriate circumstance might occur if "someone just go[es] out and just kill, period." (5RT 206-207.)

In response to a question from the prosecutor, Denise Jordan stated that her opposition to the death penalty was based on her religion. (5RT 207.) Jordan stated that being asked to determine whether someone deserved the death penalty placed her in an "uncomfortable position." (5RT 207-208.)

The prosecutor noted that there were some people who were against the death penalty who could never vote to impose it. The prosecutor stated, "And I need to know, are you that type of a person?" (5RT 208.) Denise Jordan responded, "Yes, I'm that type of a person." (5RT 208-209.)

The prosecutor asked if there was a penalty she would automatically vote for if she was faced with the decision to determine whether someone should receive life in prison without the possibility of parole or the death penalty. Denise Jordan stated that she would automatically vote for life in prison without the possibility of parole. She stated that she would vote for life in prison without the possibility of parole despite the evidence. (5RT 209.)

The prosecutor challenged Denise Jordan for cause. (5RT 209-210.) However, the court allowed defense counsel to question Denise Jordan further. (5RT 211.)

Defense counsel asked Denise Jordan if the death penalty could be a part of God's will. Denise Jordan replied, "It probably could. I haven't really gave it no thought." (5RT 211.) She added that she did not "want to be the one that says, yeah, he should - - or whoever should die." She then reiterated that the death penalty could be a part of God's will. (5RT 212.)

Jordan stated that she could impose the death penalty if she thought it was the appropriate sentence. (5RT 212.) Defense counsel then asked if she would feel she was interfering with God's will if she imposed the death penalty. Denise Jordan responded, "Okay. We're talking about - - like you said it could be God's will and it couldn't. I haven't really gave it no thought. And now that you brought it up it's something to think about. You left me with something to think about it because I never thought on that other side. I just know I don't want to be the one responsible for taking a person's life." (5RT 212-213.)

The prosecutor asked Denise Jordan if there was one option that she would automatically choose. Denise Jordan responded, "Probably life in prison." In response to the court asking her to "look into yourself and be very honest with us" and to state whether she would be able to impose the death penalty, Denise Jordan stated that she "could" impose it. Jordan was then asked to return to the courtroom on another date for jury selection. (5RT 213.)

5. Jury Selection

As noted in Respondent's Brief (RB 27-32), the prosecutor used a peremptory challenge to excuse Harriet Reed. (15RT 1187.) The prosecutor subsequently used a peremptory challenge to excuse Theresa Cooksie. (15RT 1188.) The prosecutor later accepted the jury four times. (15RT 1199-1201.) After additional voir dire, the prosecutor again accepted the panel. (15RT 1209.)

When the prosecutor used a peremptory challenge to excuse Paula Cooper-Lewis, defense counsel made a *Wheeler* motion. In doing so, defense noted that the prosecutor had excused three African-American women, Reed, Cooksie, and Cooper-Lewis. (15RT 1210.) The court asked the prosecutor to justify his use of peremptory challenges. (15RT 1211.) As described in more detail in Respondent's Brief (RB 27-28), the prosecutor believed the three women were reluctant to impose the death penalty. (15RT 1211.)

The court denied the motion and voir dire continued. (15RT 1213.) After defense counsel exercised a peremptory challenge, Ruth Jordan was placed in the jury box. (15RT 1214.)

Ruth Jordan was asked if she had "anything to share," and she replied, "No, I don't believe I do." She stated she had never been on a jury before and that she

understood the burden of proof placed on the prosecution. She stated she would hold the prosecution to that burden of proof. (15RT 1214.)

The prosecutor accepted the jury three more times. (15RT 1224.) When Retha Payton was placed in the jury box, the prosecutor used a peremptory challenge to dismiss her. (15RT 1225.)

Defense counsel made a second *Wheeler* motion. The court asked the prosecutor to explain his peremptory challenge of Payton. (15RT 1226.) The prosecutor explained that he excused Payton because she did not appear to have the ability to impose the death penalty. (15RT 1226-1231.) The court denied the motion. (15RT 1231-1232.)

The defense accepted the jury. The prosecutor then used a peremptory challenge to excuse a juror, as did defense counsel. The prosecutor then used a peremptory challenge to excuse Ruth Jordan. (15RT 1232.)

Defense counsel then made a third *Wheeler* motion, noting that the prosecutor was "systematically" using his peremptory challenges to remove five of the six African-American women. (15RT 1232-1233.) Defense counsel noted that the prosecutor had accepted the jury with Ruth Jordan as a juror. (15RT 1233.)

The prosecutor explained that he had initially accepted Ruth Jordan as a juror because the composition of the jury had been "somewhat satisfactory." The prosecutor stated that he had "gone back down" and had "reviewed all [his] notes." The prosecutor stated that he had rated Jordan "very low." The prosecutor stated that he had been "somewhat reluctant to kick" Jordan because he feared defense counsel would make a *Wheeler* motion. (15RT 1233.) The prosecutor also stated that he was worried about offending the African-Americans on the panel. (15RT 1233-1234.) The prosecutor stated that he had thought about the matter and that it did not "make any sense" to "go through this entire process with a juror" who could not impose the death penalty based on "her responses and the way she answered [him] during the individual voir dire." The prosecutor stated that the peremptory challenge had "nothing to do with the color of her skin," but instead related to "her responses." (15RT 1234.) The prosecutor reiterated that he was "kicking people who can't impose the death penalty." (15RT 1235.)

Defense counsel argued that the prosecutor had accepted the jury with Jordan on it. (15RT 1235.) He reiterated that Ruth Jordan was African-American and that "five out of the six black women ladies on this jury have been perempted." (15RT 1236.)

The prosecutor explained that he kept "a rating system on the jury on their own ability to impose the death penalty." The prosecutor stated that it was his "impression not only from her answers to the questions but her demeanor and the fashion in which she answered them, I don't think she can impose the death penalty on any case." (15RT 1236.) The prosecutor added that "sometimes you get a feel for a person that you just know that they can't impose it based upon the nature of the way that they say something." (15RT 1237.)

The court stated that it did not remember Jordan's responses. (15RT 1234.) The court denied the motion, stating, "And at this point I will accept [the prosecutor's] explanation." (15RT 1240.)

The defense then exercised a peremptory challenge, as did the prosecutor. (15RT 1240-1241.) The prosecutor exercised two additional peremptory challenges before accepting the jury. (15RT 1248-1249.)

After the jury was selected, the prosecutor stated that, during jury selection, he had exercised peremptory challenges to replace White jurors with African-American jurors. The prosecutor noted that he had excused the White jurors because he wanted "a greater mix of racial diversification." He also noted that he had rated the remaining African-Americans "very high" because their answers indicated they could impose the death penalty. The prosecutor concluded that there were four male African-Americans, one female African-American, and seven Whites on the jury. (15RT 1250.)

6. Motion for New Trial

In a motion for new trial, appellant argued that the court erred in denying his *Wheeler/Batson* motions, including the motion made after the prosecutor used a peremptory challenge to excuse Ruth Jordan. (3CT 692-710.)

During argument on the motion on December 17, 1992,[5] the trial court asked the prosecutor to state his reasons for excusing the jurors who were the subject of the *Wheeler* motions. (54RT 4162-4163.) The court noted that the prosecutor had his "box here" and that the prosecutor had previously stated that his peremptory challenges had been based on his notes. (54RT 4163.)

---

[5] On October 21, 1991, the jurors reached a verdict recommending death. (2CT 410-411.)

The prosecutor stated that he wanted to incorporate all of the reasons he gave when the motions were made because those reasons were "adequate." The prosecutor stated he would "read into the record" his recollection from his notes as to the "chronology" of the jurors he excused by peremptory challenges. (54RT 4163.)

The prosecutor stated that, according to his notes, he first excused "a married 31-year-old white female," Sandy Weishaar. (54RT 4163-4164.) He then used peremptory challenges to excuse: Harriet Reed, "a single 24-year-old black female"; Beverly Lucker, a "married 34-year-old white female"; Sarah Kropp, "a divorced 60-year-old white female"; and Teresa Cooksie, "a married 27-year-old black female." The prosecutor then accepted the panel four times. (54RT 4164.)

After additional peremptory challenges were exercised by the defense, the prosecutor used a peremptory challenge to excuse Carla Ewart, "a married 32-year-old white female, followed by "Mr. Cristy." The prosecutor then accepted the panel. (54RT 4164.)

When the defense used a peremptory challenge to excuse another juror, the prosecutor excused Barbara Thompson, "a single 36-year-old white female." The prosecutor then accepted the panel. (54RT 4164.)

The prosecutor then used peremptory challenges to excuse Sonya Salazar, "a married 45-year-old Hispanic female," and Paula Cooper-Lewis, a "28-year-old black female." (54RT 4164-4165.) The prosecutor accepted the jury three times. (54RT 4165.)

The prosecutor then excused Retha Payton, "a married 63-year-old black female" and Nancy Lavoise, "a single 53-year-old white female." The prosecutor's fourteenth peremptory challenge was to excuse "Dennis [*sic*] Jordan," "a married 39-year-old black female." The prosecutor then used peremptory challenges to excuse "Mr. Harp," and "Mr. Rosnow." (54RT 4165.)

The prosecutor stated that "total collective group excused included 13 females, seven of which were white, five black, one Hispanic, their age ranged from 24 to 63 years, seven were married, four were single, one was divorced and one was separated." (54RT 4165.)

The prosecutor then looked at his notes and discussed his reasons for dismissing the jurors who were the subject of the *Wheeler/Batson* motions. (54RT 4165-4167.) For "Denise Jordan," the prosecutor stated that he had her responses to the jury questionnaire and that there was also a note to himself to look at her responses to the *Hovey* voir dire.

The prosecutor stated that he had made a challenge for cause against Denise Jordan, which indicated that he "felt that she shouldn't have been around even by the time we got to general voir dire." (54RT 4167.)

The prosecutor added that when he selected the jury, he wanted to ensure that if his evidence supported a death verdict, "each and every one" of the jurors "has the ability to render a death verdict." The prosecutor stated he had to be "satisfied" that each juror could "return that type of verdict." (54RT 4167.) The prosecutor said, "Sometimes it's a difficult thing to do other than looking at them, hearing their emotional responses, and only trial attorneys can evaluate and assess in terms of selecting an adequate jury." (54RT 4167-4168.)

The court ruled that the *Wheeler* motions were properly denied. (54RT 4168.) The court denied the motion for new trial. (54RT 4180.)

B. Because The Prosecutor Honestly Mistook Ruth Jordan For Denise Jordan, He Had A Race-Neutral Reason For Using A Peremptory Challenge Against Ruth Jordan

Appellant contends that the prosecutor used his peremptory challenges to impermissibly dismiss African-American females, including Ruth Jordan, from the jury. (AOB 63-112.) However, in regard to Ruth Jordan, the record establishes that the prosecutor mistook Ruth Jordan with Denise Jordan in his notes, challenged Ruth Jordan based on Denise Jordan's responses, and thereby offered a race-neutral explanation for the exercise of his peremptory challenge.

When a defendant makes a *Wheeler/Batson* motion, the trial court must first determine whether the defendant has made a prima facie showing that the prosecutor exercised the peremptory challenge based on race. (*People v. Jones* (2011) 51 Cal.4th 346, 360.) If such a showing is made, the burden shifts to the prosecutor to provide a race-neutral explanation for the exercise of the peremptory challenge. (*Ibid.*) The trial court then determines whether the defendant has provided purposeful discrimination. (*Ibid.*) "'The ultimate burden of persuasion regarding racial motivation rests with, and never shifts from, the opponent of the strike.'" (*Ibid.*)

"It is self-evidently possible for counsel to err when exercising peremptory challenges." (*People v. Williams* (1997) 16 Cal.4th 153, 188-189.) "The purpose of a *Wheeler/Batson* motion is not to test the prosecutor's memory but to determine whether the reasons given are genuine and race-neutral." (*People v. Jones, supra*, 51 Cal.4th at p.

366.) "[A] genuine 'mistake' is a race-neutral reason." (*People v. Williams, supra*, 16 Cal.4th at p. 189.)

"Faulty memory, clerical errors, and similar conditions that might engender a 'mistake' of the type the prosecutor proffered to explain his peremptory challenge are not necessarily associated with impermissible reliance on presumed group bias." (*People v. Williams, supra*, 16 Cal.4th at p. 189; accord *People v. Jones, supra*, 51 Cal.4th at p. 366.) Such mistakes are possible in capital cases because a prosecutor has "to keep track of dozens of prospective jurors, thousands of pages of jury questionnaires, and several days of jury voir dire" and then make peremptory challenges "in the heat of trial," without the "luxury of being able to double-check all the facts that appellate attorneys and reviewing courts have." (*People v. Jones, supra*, 51 Cal.4th at p. 366.)

Although there is always the possibility that an attorney asked to explain a questionable peremptory challenge "will take refuge in a disingenuous claim the challenge was mistakenly made," a reviewing court relies on the judgment of the trial court to distinguish bona fide reasons from manufactured excuses. (*People v. Williams, supra*, 16 Cal.4th at p. 189.) A reviewing court gives "great deference to the trial court's determination that the use of peremptory challenges was not for an improper or class bias purpose." (*Ibid.*)

In the case at bar, it appears that, based on his notes, the prosecutor mistook Ruth Jordan with Denise Jordan when he used a peremptory challenge to dismiss Ruth Jordan. At both the motion for new trial and prior to dismissing Ruth Jordan, the prosecutor reviewed his notes. (15RT 1233; 54RT 4163-4165.) The prosecutor's statements during the motion for new trial make clear that his notes mistakenly related to Denise Jordan, rather than Ruth Jordan, because he described the juror as "a married 39-year-old black female," which is consistent with Denise Jordan's juror questionnaire, but is inconsistent with Ruth Jordan's questionnaire.[6] (54RT 4167; 21 Supp. 1 CT 5173-5174 [Denise Jordan was 39 years old and married]; see also 5 Supp. 1 CT 1049-1050 [Ruth Jordan was 65 years old and married].) Because the prosecutor's notes mistakenly related to a different juror with the same last name, it is apparent that the prosecutor dismissed Ruth Jordan based on a mistaken belief that she had given the responses on her jury questionnaire and voir dire that Denise Jordan had given.[7]

---

[6] Neither the trial court nor defense counsel noted that the prosecutor was referring to the wrong Jordan during the motion for new trial.

[7] The prosecutor's confusion may have been caused by Ruth Jordan's failure to write her name on the first page of her juror questionnaire. (5 Supp. 1 CT 1049.) The

This conclusion is further supported by the fact that Denise Jordan's responses to the juror questionnaire and to voir dire were more consistent with the prosecutor's explanation for dismissing the juror than Ruth Jordan's responses were. In responding to the *Wheeler/Batson* motion, the prosecutor explained that he had used a peremptory challenge to dismiss Ruth Jordan because he had rated her "very low" in that she could not impose the death penalty based on her answers to the questionnaire and the *Hovey* voir dire. (15RT 1233-1237.) Denise Jordan stated in her jury questionnaire that she was against the death penalty and that she would vote for life in prison without the possibility of parole, regardless of the evidence. (21 Supp. 1 CT 5197, 5199-5200.) In her *Hovey* voir dire, Denise Jordan stated that she would automatically vote for life in prison without the possibility of parole, that she would have a difficult time voting for a sentence of death, and that she did not want to be the one responsible for sentencing someone to death. (5RT 201-202, 204-205, 208-209, 212-213.) In contrast, Ruth Jordan's responses on the questionnaire and during voir dire did not indicate strong opposition to the death penalty or an overwhelming preference for life in prison without the possibility of parole. (5 Supp. 1 CT 1072-1075; 12RT 912-915.)

Denise Jordan's responses to both the questionnaire and the *Hovey* voir dire were also consistent with the other jurors who were the subject of *Wheeler/Batson* motions and who indicated either a strong preference for life in prison without the possibility of parole or indicated no opinion on whether the death penalty was a valid form of punishment. (15 Supp. 1 CT 3556; 21 Supp. 1 CT 5165; 5RT 214, 217; 7RT 389, 391; 10RT 729-730, 758.) Thus, Denise Jordan's responses confirm that the prosecutor was mistakenly referring to her, and not to Ruth Jordan, when he was explaining his peremptory challenge at the time of the *Wheeler/Batson* motion.

Moreover, during the *Wheeler/Batson* motion and the motion for new trial, the prosecutor stated that he dismissed Ruth Jordan based on her demeanor and the manner in which she responded to the prosecutor's questions during voir dire. (15RT 1234, 1236-1237; 54RT 4167-4168.) However, the prosecutor only briefly questioned Ruth Jordan, but conducted a more extensive examination of Denise Jordan and unsuccessfully moved to dismiss her for cause. (5RT 207-209, 213; 12RT 914-915.)

In light of the foregoing, the record demonstrates that the prosecutor proffered a race-neutral reason for using a peremptory challenge against Ruth Jordan because he inadvertently mistook her with Denise Jordan. (See *People v. Jones, supra*, 51 Cal.4th at

---

only identifying feature of the questionnaire is that Ruth Jordan signed her name on the last page of the form. (5 Supp. 1 CT 1082.)

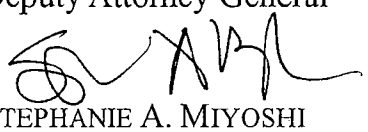
p. 366 [honest mistake of fact does not show racial bias]; cf. *People v. Phillips* (2007) 147 Cal.App.4th 810, 819 [prosecutor provided race-neutral explanation for using peremptory challenge when she explained that she mistakenly dismissed prospective juror because she relied on information from questionnaire of another juror with the same last name].) Therefore, the trial court properly denied the *Wheeler/Batson* motion.[8]

CONCLUSION

Accordingly, respondent respectfully requests that the Court find that the prosecutor provided an adequate race-neutral explanation for exercising a peremptory challenge against Ruth Jordan.

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
DANE R. GILLETTE
Chief Assistant Attorney General
LANCE E. WINTERS
Senior Assistant Attorney General
JAIME L. FUSTER
Deputy Attorney General



STEPHANIE A. MIYOSHI
Deputy Attorney General
Attorneys for Plaintiff and Respondent

LA1994XS0008
51226535.doc

[8] To the extent this Court finds that the prosecutor did not mistakenly refer to Denise Jordan when explaining his peremptory challenge against Ruth Jordan, respondent submits that the prosecutor's explanation was adequate for the reasons explained in the Respondent's Brief. (RB 36-37.)

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: ***In re George Brett Williams*, On Habeas Corpus**
No.: **S030553**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On January 18, 2013, I served the attached **LETTER BRIEF** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

Daniel Abrahamson
918 Bancroft Way, Suite A21
Berkeley, CA 94710

John A. Clarke
Clerk of the Court
Los Angeles County Superior Court
111 N. Hill Street
Los Angeles, CA 90012

Laura Jane Kessner
Deputy District Attorney
Los Angeles District Attorney's Office
320 West Temple Street, Room 540
Los Angeles, CA 90012

California Appellate Project
California Appellate Project (SF)
101 Second Street, Suite 600
San Francisco, CA 94105-3672

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 January 18, 2013, at Los Angeles, California.

Bernard M. Santos
Declarant

Signature

LA1994XS0008
51226519.doc