

In the Supreme Court of the State of California

**THE PEOPLE OF THE STATE OF
CALIFORNIA,**

Plaintiff and Respondent,

v.

PAUL NATHAN HENDERSON,

Defendant and Appellant.

CAPITAL CASE

Case No. S098318

Riverside County Superior Court Case No.
INF027515

The Honorable Thomas N. Douglass, Jr., Judge

RESPONDENT'S SECOND SUPPLEMENTAL BRIEF

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INTRODUCTION

Because the victim, Reginald Baker, died of a heart attack during the home invasion robbery committed by Henderson, Henderson now argues that he was merely an “inadvertent killer,” and therefore imposition of the death penalty was unconstitutional. (2nd Supp. AOB 5-16.) Neither the facts nor the law support Henderson’s claim

Henderson was not an “inadvertent killer.” To the contrary, the evidence demonstrates that during the home invasion robbery of an elderly couple Henderson harbored express malice when he chose to ignore Peggy Baker’s pleas to remove the gag he had placed over her 71-year-old husband’s mouth because he would have a heart attack. Henderson not only admitted he heard Peggy’s pleas, but he also thought Reginald was having a heart attack during the robbery. By choosing to leave the gag on Reginald after Peggy told him that Reginald would have a heart attack, Henderson harbored express malice.

Nothing about Henderson’s actions during the crime was “inadvertent.” As such, the underlying premise of Henderson’s constitutional claim – that the imposition of the death penalty was disproportionate to the offense because he was not the “actual killer”- is factually belied by the record. As Henderson’s underlying premise fails, so must the claim built upon it.

Moreover, Henderson’s challenge to the felony murder special circumstance for actual perpetrators, based on a 32-year-old dissenting opinion from this Court and two law review articles written by the same author, finds no basis in the law. Accordingly, Henderson’s as-applied and facial constitutional challenges to the felony murder special circumstance and his sentence should be rejected.

ARGUMENT

I. BECAUSE HENDERSON WAS NOT AN “INADVERTENT KILLER” HIS CONSTITUTIONAL CHALLENGE TO THE IMPOSITION OF THE DEATH PENALTY SHOULD BE SUMMARILY REJECTED

As shown in Respondent’s Brief (RB pp. 2-9), during his late night home-invasion robbery of elderly couple Reginald and Peggy Baker, Henderson held a butcher knife to Reginald’s throat and demanded the keys to the couple’s car. After ordering the couple into the master bedroom, Henderson forced a gag over Reginald’s mouth. Peggy asked Henderson not to gag Reginald because he was a “mouth-breather” and she feared Reginald would have a heart attack. Henderson ignored Peggy’s warning and said that after he was gone, Reginald could lean over and push the gag off. Henderson then tied Peggy’s ankles together and tied her hands to the binding around her ankles. Henderson made Peggy put a sweatband in her mouth. (2 CT 442-444, 460.)

At some point, Henderson went into the kitchen and returned to the bedroom with a paring knife. He cut the ties on Peggy’s ankles, and Peggy untied her hand. Henderson ordered Peggy into the bathroom, and kept the bathroom door open a crack with a shoe. Peggy saw Reginald on his knees on the floor against the bed. (2 CT 443-444, 462.)

When Peggy asked, “Why are you doing this? We don’t have anything,” Henderson replied, “You have that nice looking car out there and you have a T.V.” Henderson left the bedroom. Peggy heard the car door shut. (2 CT 444-445, 458, 463-464.) Upon Henderson returning to the bedroom, Peggy asked him if she could come out of the bathroom and remove the gag on Reginald’s mouth because, warning Henderson once again, that Reginald was a “mouth breather.” Peggy could not recall if Henderson responded. However, she exited the bathroom and sat on the foot of the bed. The next thing Peggy knew, Henderson had his arm around

her in a “strangle hold.” Henderson held Peggy’s nose as he choked her. Peggy struggled, trying to pull Henderson’s fingers off her nose, and Henderson attempted to “crack” her neck. Suddenly, Henderson let go of Peggy and hit her on the side of her head causing her to fall onto the floor. While Peggy was on the floor, Henderson lifted Peggy’s arm to see if it was limp. It was, so he pulled a sheet over her and left. (2 CT 445, 461, 463.)

Peggy was conscious the entire time. After Peggy heard the car leave, she crawled to the bed and pulled herself up. Peggy looked at Reginald and realized he was dead. The gag was pulled down from his face, and there was a “blood ring” on his throat. (2 CT 445-446.) Unable to call 9-1-1 because Henderson had pulled out the telephone cords (2 CT 461-462; XI RT 2501), Peggy went to a neighbor’s house to ask them to call for help. (2 CT 445, 467.)

Henderson left Reginald with a contusion on his right upper chest; an abrasion on his left shin; and a side-to-side four-inch cut across his neck that was about one-third of an inch in depth. (XV RT 3235-3236.) Dr. Joseph Cohen, who testified for the prosecution, opined that the knife wound on Reginald’s neck was consistent with having been caused by a serrated knife and that it would have been painful. (XI RT 3240, 3246.)

Dr. Cohen also testified that that Reginald suffered from heart disease consistent with the scar that went from his neck to his pubic bone from a previous bypass surgery. (XV RT 3237-3238.) Reginald’s heart was “markedly enlarged,” and “the arteries in the heart were significantly narrowed or occluded with atherosclerosis,” e.g., the arteries were hardened. According to Dr. Cohen, “blocked arteries and a big heart together [were] a set-up for a cardiac death, a sudden death.” Reginald had four bypass grafts from a previous surgery, and two of the grafts were “completely blocked.” When asked about the effect of a stressful or terrorizing situation on someone with Reginald’s heart condition, Dr. Cohen, based on his own

training and experience, opined that “the individual even without any stress [would be] a set-up for sudden death.” (XV RT 3237-3238.)

Based upon a hypothetical consistent with the facts of the case presented by the prosecutor, Dr. Cohen opined that Reginald died primarily of heart disease *but it was more likely than not that he would have survived had it not been for the stressors of the incident, and that the neck injuries inflicted on Reginald would have been stressful on his heart.* (XV RT 3239-3240.) Dr. Cohen confirmed that *other than the stress of the robbery, there was no other explanation for Reginald’s death,* and he reiterated that Reginald died from a combination of “natural disease *plus physical and emotional stressors.*” (XV RT 3241-3242; emphasis added.)

In late June 1997, Gregory Clayton met Henderson in Los Angeles. (XIII RT 2924-2925.) Henderson told Clayton several times that he killed someone, that he entered a trailer home, he cut a man’s throat and he beat the man’s wife. (XIII RT 2927-2928, 2942-2943; 2964-2965, 2970; XIV RT 3064.) Henderson also told Clayton it was a “home-invasion,” that he cut the man’s throat to quiet him because he was yelling and making a lot of noise, and he beat the man’s wife “profusely.” (XIII RT 2926, 2930, 2968.) Henderson said he thought about raping the man’s wife and that he had planned to leave the state. (XIII RT 2938-2939; XIV RT 3058-3059.)

During his police interview, Henderson admitted that he entered the Bakers’ home, announced his intent to rob the couple, and demanded the keys to their car. (XV RT 33370, 3398.) As Henderson spoke to Peggy, he placed his hand on Reginald’s shoulder to prevent him from getting up. Peggy cried and had trouble breathing. (XV RT 3371.) Henderson told the couple he was going to tie them up so they would not call the police, then he ordered the couple into the master bedroom. Henderson tied Reginald’s hands and feet with neckties, and tied Peggy with strips he tore from sheets.

(XV RT 3373.) Henderson admitted Peggy had told him Reginald had a heart problem. (XV RT 3375.)

Initially, Henderson claimed he could not recall if he hurt Reginald, but then admitted that Reginald's injuries had to be caused by him because he was the only person in the house who could have hurt Reginald. At one point, Henderson thought Reginald was having a heart attack. Henderson saw blood on Reginald's neck and shirt, but claimed he did not know if he had slashed Reginald's throat. Henderson put his hand over Reginald's mouth to see if he was breathing and he was not. Henderson admitted he placed a sheet over Reginald because he checked Reginald's vital signs and thought Reginald was dead. (XV RT 3378-3380.)

Accordingly, the facts do not support Henderson's claim that he was an "inadvertent killer." (2nd Supp. AOB 7, 12-15.) To the contrary, Henderson's actions with awareness of Reginald's weaknesses evidenced express malice.

During this incident frightful in its own right, Henderson was warned that Reginald was a "mouth-breather" and would have a heart attack, but chose to ignore Peggy's pleas to remove Reginald's gag. Henderson not only admitted he heard Peggy's pleas, but he also thought Reginald was having a heart attack during the robbery. By choosing to leave the gag on after Peggy told him that Reginald would have a heart attack, Henderson not only inflicted extreme psychological stress, but also deadly force on Reginald, evidencing express malice.

Thus, regardless of Reginald's preexisting heart condition, Henderson's actions during the robbery were the substantial factors that contributed to Reginald's untimely death. (*People v. Phillips* (1966) 64 Cal.2d 574, 578-579, 51, overruled on other grounds in *People v. Flood* (1998) 18 Cal.4th 470, 490, fn. 12, [despite child's serious preexisting illness, evidence showed defendant's actions in dissuading the child's

parents from having her undergo potentially life-saving surgery was a substantial factor in child's death].)

“Murder is never more than the shortening of life; if a defendant's culpable act has significantly decreased the span of a human life, the law will not hear him say that his victim would thereafter have died in any event.” (*People v. Phillips, supra*, 64 Cal.2d at p. 579, disapproved on another point in *People v. Flood* (1998) 18 Cal.4th 470, 490, fn. 12.) “In a case of this kind the offender takes his victim as he finds him.” *United States v. Feola* (1975) 420 U.S. 671, 685.

Henderson begrudgingly admits “there was some evidence to support a finding that [he] had a culpable mental state” (2nd Supp. Brf. 7), but nonetheless characterizes Reginald's death as merely a “tragic accident and truly inadvertent.” In doing so, and contrary to his recitation of the facts (see 2nd Supp. Brf. 13-14), Henderson completely ignores his violent conduct during the robbery and burglary coupled with the knowledge of Reginald's weaknesses which shows express malice.

Contrary to Henderson's assertion, the evidence does not show that he freed Peggy from her own restraints so that she could remove the gag from Reginald's mouth. (2nd Supp. Brf. 14.) Henderson also speculates that Reginald died before Henderson attacked and tried to kill Peggy by strangulation. (2nd Supp. Brf. 14.) Even if Henderson's speculation were correct it would simply confirm that his malicious actions prior to the strangulation of Peggy – the terrifying home invasion, gagging of Reginald, and assault with the knife – were the cause of death. Henderson's suggestion that the knife wound was inflicted after Reginald died, is belied by his own statements to Clayton that he cut the man's throat to “quiet him” down because he was “yelling loud” and “making a lot of noise” (XIII RT 2926, 2930, 2968).

Henderson's contentions that he was remorseful during his police interview and had trouble recalling his involvement in Reginald's death (2nd Supp. Brf. 14), are immaterial in light of his admission that Peggy had told him Reginald had a heart problem. (XV RT 3375.) Additionally, they are contradicted by the conversations Henderson had with Clayton during which Henderson readily admitted without remorse and almost boastfully, his horrific crimes against both Reginald and Peggy.

Furthermore, the record demonstrates that the jury found Henderson guilty of deliberate and premeditated attempted murder of Peggy which of course incorporates an intent to kill. Although the People were not required to prove that Henderson intended to kill Reginald for purposes of felony murder and the related special circumstances charged in this case, the evidence nonetheless demonstrated that Henderson had no reason to have and did not show any lesser degree of malice against Reginald. In light of Henderson's awareness that Reginald had "a heart problem" and was a "mouth breather" as well as Henderson's admission that he thought Reginald was having a heart attack during the incident, the evidence belies any suggestion of an inadvertent killing.

Given the jury's finding that Henderson had the intent to kill Peggy, there is no reason to believe the jury would have found any lesser intent for Reginald had it been required to do so. As the facts do not support the underlying premise of Henderson's argument, that this was an inadvertent killing, his as-applied constitutional challenge to his sentence should be rejected.

II. FELONY MURDER SPECIAL CIRCUMSTANCES ARE CONSTITUTIONAL

Henderson's argument that the death penalty is unconstitutionally disproportionate for inadvertent killings is essentially a facial challenge to the constitutionality of California's felony murder special circumstances.

This Court has repeatedly found the felony murder special circumstance constitutional. (See *People v. Covarrubias* (2016) 1 Cal.5th 838, 934; *People v. O'Malley* (2016) 62 Cal.4th 944, 999.)

Moreover, Henderson was the actual killer in this case. “[T]he principles and authorities that allow the death penalty for nonkiller accomplices to felony murder have no direct bearing on what is minimally required to impose death on someone who actually kills during a felony and who possesses no lethal mental states.” (*People v. Contreras* (2013) 58 Cal.4th 123, 164.)

In support of his claim of “[g]roundbreaking [r]esearch of a “[n]ational [c]onsensus” against the death penalty for inadvertent killings during commission of felonies, Henderson selectively relies on two law review articles written by the same author as well as justice Broussard’s dissenting opinion in *People v. Anderson* (1987) 43 Cal.3d 1104, 1151-1167. (See 2d Supp. AOB 6-12.) Notably, the law review article purportedly showing a national consensus against the death penalty for felony murders surveyed 53 jurisdictions in the United States, many of which do not have any death penalty, grossly skewing its results for the relevant states which have capital punishment. (See 2d Supp. AOB 8-9 & fn. 2.) Henderson’s facial challenge to the constitutionality of California’s felony murder special circumstances should be rejected.

CONCLUSION

Accordingly, for reasons expressed herein as well as the Respondent's Brief and Supplemental Respondent's Brief previously filed with this Court, respondent respectfully requests that the judgment and sentence be affirmed.

Dated: April 12, 2019

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached **RESPONDENT'S SECOND SUPPLEMENTAL BRIEF** uses a 13 point Times New Roman font and contains 2,412 words.

Dated: April 12, 2019

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STATE OF CALIFORNIA
Supreme Court of California

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