

# SUPREME COURT COPY

SUPREME COURT  
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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA MAY 29 2008

Frederick K. Unrich Clerk

DEPUTY

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

FLOYD DANIEL SMITH,

Defendant and Appellant.

S065233

CAPITAL CASE

San Bernardino County Superior Court No. FWV08607  
Honorable John W. Kennedy, Judge

## RESPONDENT'S BRIEF

EDMUND G. BROWN JR.  
Attorney General of the State of California

DANE R. GILLETTE  
Chief Assistant Attorney General

GARY W. SCHONS  
Senior Assistant Attorney General

ANNIE FEATHERMAN FRASER  
Deputy Attorney General

GIL GONZALEZ  
Supervising Deputy Attorney General  
State Bar No. 115682

110 West A Street, Suite 1100  
San Diego, CA 92101  
P.O. Box 85266  
San Diego, CA 92186-5266  
Telephone: (619) 645-2200  
Fax: (619) 645-2191  
Email: Gil.Gonzalez@doj.ca.gov

Attorneys for Respondent

# DEATH PENALTY



## TABLE OF CONTENTS

	Page
INTRODUCTION	1
STATEMENT OF THE CASE	2
STATEMENT OF FACTS	4
<b>I.</b>	
<b>GUILT PHASE</b>	4
Prosecution's Case In Chief	4
1. Motive For The Killing Of Rexford	4
2. Events Occurring In Michael Honess's Apartment Just Prior To The Shooting	6
3. The Shooting	9
4. Observations Of Other Witnesses In And Around The Apartment Complex	14
5. Facts Revealed By Post-Shooting Investigation	16
Defense	26
Rebuttal	30
<b>II. PRIOR MURDER SPECIAL CIRCUMSTANCE PHASE</b>	31
<b>III. PENALTY PHASE</b>	32
Prosecution Evidence	32
1. Robbery And Sex Crimes Against Felton Manual	32
2. Murder Of Virgil Dwight Fowler	33
3. Smith's Threat To Dawn Hall	37
Defense Evidence	37

## TABLE OF CONTENTS (continued)

	Page
<b>ARGUMENT</b>	
<b>I. SMITH'S <i>BATSON/WHEELER</i> MOTIONS WERE PROPERLY DENIED AS SUBSTANTIAL EVIDENCE SUPPORTS THE TRIAL COURT'S FINDING THAT THE PROSECUTOR USED PEREMPTORY CHALLENGES TO EXCUSE THE JURORS AT ISSUE BASED SOLELY ON RACE-NEUTRAL REASONS</b>	42
Prospective Juror Sandra D.	46
Prospective Juror Regina S.	49
Prospective Juror Huey D.	53
Conclusion of First <i>Batson/Wheeler</i> Motion	55
Prospective Juror Elizabeth K.	57
This Court Should Not Engage In Comparative Analysis for the First Time On Appeal	61
Statistical Analysis	71
Conclusion	72
<b>II. THE TRIAL COURT DID NOT HAVE A SUA SPONTE DUTY TO INSTRUCT THE JURORS ON LESSER INCLUDED OFFENSES OF FIRST DEGREE MURDER</b>	73
A. Invited Error	74
B. The Trial Court's Sua Sponte Duty Regarding Lesser Included Offenses	78
C. Lesser Forms Of Homicide Were Not Supported By The Evidence	79
1. Second Degree Murder	79

**TABLE OF CONTENTS (continued)**

	<b>Page</b>
2. Manslaughter	82
D. Smith Was Not Prejudiced By The Failure To Provide Lesser Offense Instructions	84
<b>III. TROY HOLLOWAY'S TESTIMONY AND STATEMENTS TO THE POLICE WERE NOT COERCED, DID NOT VIOLATE SMITH'S DUE PROCESS RIGHTS, AND WERE NOT PREJUDICIAL IN ANY EVENT</b>	87
A. Chronology Of Events	88
B. Applicable Law	91
C. Analysis	92
D. There Was No Prejudice	94
<b>IV. AFTER SMITH HAD BEEN REPRESENTED BY COUNSEL AT ALL PHASES OF HIS TRIAL, THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING SMITH'S REQUEST TO PERSONALLY PRESENT CLOSING ARGUMENT AT THE CONCLUSION OF HIS PENALTY PHASE</b>	96
A. Facts	96
B. Applicable Law	98
C. Analysis	99
<b>V. SMITH'S COMMISSION OF FIRST DEGREE MURDER AT THE AGE OF SIXTEEN WAS PROPERLY USED TO PROVE THE PRIOR MURDER SPECIAL CIRCUMSTANCE ALLEGED PURSUANT TO PENAL CODE SECTION 190.2, SUBDIVISION (A)(2)</b>	102
A. Facts	103

**TABLE OF CONTENTS (continued)**

	<b>Page</b>
B. Forfeiture	103
C. Merits	104
D. Harmless Error	110
<b>VI. THE JURY WAS PROPERLY INSTRUCTED AT THE CONCLUSION OF THE PENALTY PHASE, INCLUDING THE INSTRUCTION TO DISREGARD ALL PREVIOUS INSTRUCTIONS (CALJIC NO. 8.84.1)</b>	<b>112</b>
A. Factual Background	112
B. Invited Error	113
C. Merits	113
<b>VII. ANY ERROR IN THE TRIAL COURT'S FAILURE TO INSTRUCT THE JURY TO VIEW SMITH'S ORAL ADMISSIONS WITH CAUTION WAS HARMLESS</b>	<b>116</b>
A. Applicable Law	116
B. The Omission Of CALJIC No. 2.71.7 Was Harmless	118
<b>VIII. THE GUILT PHASE INSTRUCTIONS DID NOT IMPERMISSIBLY UNDERMINE THE REQUIREMENT OF PROOF BEYOND A REASONABLE DOUBT, NOR DID THEY INFRINGE UPON SMITH'S RIGHTS TO DUE PROCESS AND TRIAL BY JURY</b>	<b>120</b>
<b>IX. THIS COURT HAS CONSIDERED AND REJECTED SMITH'S VARIOUS CHALLENGES TO THE CONSTITUTIONALITY OF CALIFORNIA'S DEATH PENALTY LAW AND IMPLEMENTING INSTRUCTIONS</b>	<b>122</b>

**TABLE OF CONTENTS (continued)**

	<b>Page</b>
<b>X. THE LYING IN WAIT SPECIAL CIRCUMSTANCE FULFILLS ITS NARROWING FUNCTION AND IS CONSTITUTIONAL</b>	127
CONCLUSION	129

## TABLE OF AUTHORITIES

Cases	Page
<i>People v. Millwee</i> (1998) 18 Cal.4th 96	120, 121
<i>Apprendi v. New Jersey</i> (2000) 530 U.S. 466 120 S.Ct. 2348 147 L.Ed.2d 435	124
<i>Batson v. Kentucky</i> (1986) 476 U.S. 79 106 S.Ct. 1712 90 L.Ed.2d 69	42-44, 46, 53-58, 62, 64, 68, 73
<i>Beck v. Alabama</i> (1980) 447 U.S. 625 100 S.Ct. 2382 65 L.Ed.2d 392	84, 86
<i>Blakely v. Washington</i> (2004) 542 U.S. 296 124 S.Ct. 2531 159 L.Ed.2d 403	124
<i>Blystone v. Pennsylvania</i> (1990) 494 U.S. 299 110 S.Ct. 1078 108 L.Ed.2d 255	123
<i>Chambers v. Mississippi</i> (1973) 410 U.S. 284 93 S.Ct. 1038 35 L.Ed.2d 297	69
<i>Chapman v. California</i> (1967) 386 U.S. 18 87 S.Ct. 824 17 L.Ed.2d 705	87

## TABLE OF AUTHORITIES (continued)

	Page
<i>Clemons v. Mississippi</i> (1990) 494 U.S. 738 110 S.Ct 1441 108 L.Ed.2d 725	111
<i>Conservatorship of Early</i> (1983) 35 Cal.3d 244	115
<i>Ex Parte Gutierrez</i> (1873) 45 Cal. 429	106
<i>Faretta v. California</i> (1975) 422 U.S. 806 95 S.Ct. 2525 45 L.Ed.2d 562	98
<i>Gryger v. Burke</i> (1948) 334 U.S. 728 68 S.Ct. 1256 92 L.Ed. 1683	106
<i>Hernandez v. New York</i> (1991) 500 U.S. 352 111 S.Ct. 1859 114 L.Ed.2d 395	72
<i>In re Christian S.</i> (1994) 7 Cal.4th 768	84
<i>In re Eric J.</i> (1979) 25 Cal.3d 522	108
<i>In re Roger S.</i> (1977) 19 Cal.3d 921	108
<i>Johnson v. California</i> (2005) 545 U.S. 162 125 S.Ct. 2410 162 L.Ed.2d 129	43

## TABLE OF AUTHORITIES (continued)

	Page
<i>Lowenfield v. Phelps</i> (1988) 484 U.S. 231 108 S.Ct. 546 98 L.Ed.2d 568	123
<i>McCleskey v. Kemp</i> (1987) 481 U.S. 279 107 S.Ct. 1756 95 L.Ed.2d 262	123
<i>Miller-El v. Dretke</i> (2005) 545 U.S. 231 125 S. Ct. 2317 162 L.Ed.2d 196	45, 62, 66-68
<i>Miller-El v. Cockrell</i> (2003) 537 U.S. 322 123 S.Ct. 1029 154 L.Ed.2d 931	66
<i>Montana v. Egelhoff</i> (1996) 518 U.S. 37 116 S.Ct. 2013 135 L.Ed.2d 361	69
<i>People v. Allen</i> (1986) 42 Cal.3d 1222	127
<i>People v. Alvarez</i> (1996) 14 Cal.4th 155	104
<i>People v. Anderson</i> (2001) 25 Cal.4th 543	126
<i>People v. Andrews</i> (1989) 49 Cal.3d 200	106
<i>People v. Arias</i> (1996) 13 Cal.4th 92	65, 123, 125

## TABLE OF AUTHORITIES (continued)

	<b>Page</b>
<i>People v. Aris</i> (1989) 215 Cal.App.3d 1178	84
<i>People v. Ashmus</i> (1991) 54 Cal.3d 932	48, 51
<i>People v. Badgett</i> (1995) 10 Cal.4th 330	91, 92, 94
<i>People v. Barnett</i> (1998) 17 Cal.4th 1044	99
<i>People v. Barton</i> (1995) 12 Cal.4th 186	75, 79, 82, 83
<i>People v. Beagle</i> (1972) 6 Cal.3d 441	116
<i>People v. Benson</i> (1990) 52 Cal.3d 754	111
<i>People v. Berryman</i> (1993) 6 Cal.4th 1048	80
<i>People v. Bonilla</i> (2007) 41 Cal.4th 313	72, 112, 128
<i>People v. Boyer</i> (2006) 38 Cal.4th 412	93
<i>People v. Brasure</i> (2008) 42 Cal.4th 1037 107 P.3d 632	113, 121, 126
<i>People v. Breverman</i> (1998) 19 Cal.4th 142	78, 79, 83, 85, 86
<i>People v. Brown</i> (2004) 33 Cal.4th 382	127

## TABLE OF AUTHORITIES (continued)

	<b>Page</b>
<i>People v. Bunyard</i> (1988) 45 Cal.3d 1189	117, 118
<i>People v. Burgener</i> (2003) 29 Cal.4th 833	45, 65, 126
<i>People v. Burton</i> (1989) 48 Cal.3d 843	98
<i>People v. Calvin</i> (2008) 159 Cal.App.4th 1377 72 Cal.Rptr.3d 300	51, 52, 73
<i>People v. Carpenter</i> (1997) 15 Cal.4th 312	116-118
<i>People v. Carpenter</i> (1999) 21 Cal.4th 1016	125
<i>People v. Carter</i> (2003) 30 Cal.4th 1166	113, 114
<i>People v. Catlin</i> (2001) 26 Cal.4th 81	123
<i>People v. Chatman</i> (2006) 38 Cal.4th 344	48
<i>People v. Clair</i> (1992) 2 Cal.4th 629	73
<i>People v. Cleveland</i> (2004) 32 Cal.4th 704	52, 121
<i>People v. Coffman</i> (2005) 34 Cal.4th 1	78
<i>People v. Combs</i> (2004) 34 Cal. 4th 821	125

## TABLE OF AUTHORITIES (continued)

	<b>Page</b>
<i>People v. Cook</i> (2007) 40 Cal.4th 1334	125
<i>People v. Cooper</i> (1991) 53 Cal.3d 771	75
<i>People v. Cornwell</i> (2005) 37 Cal.4th 50	43
<i>People v. Cummings</i> (1993) 4 Cal.4th 1233	52
<i>People v. Cunningham</i> (2001) 25 Cal.4th 926	123
<i>People v. Danielson</i> (1992) 3 Cal.4th 691	114
<i>People v. Davis</i> (2005) 36 Cal.4th 510	113
<i>People v. DeLeon</i> (1992) 10 Cal.App.4th 815	83, 84
<i>People v. Dickey</i> (2005) 35 Cal.4th 884	116-119
<i>People v. Douglas</i> (1990) 50 Cal.3d 468	91, 92, 94
<i>People v. Douglas</i> (1995) 36 Cal.App.4th 1681	52
<i>People v. Duncan</i> (1991) 53 Cal.3d 955	75
<i>People v. Dunkle</i> (2005) 36 Cal.4th 861	124

## TABLE OF AUTHORITIES (continued)

	<b>Page</b>
<i>People v. Edelbacher</i> (1989) 47 Cal.3d 983	86, 87, 128
<i>People v. Edwards</i> (1991) 54 Cal.3d 787	128
<i>People v. Elliot</i> (2005) 37 Cal.4th 453	126, 127
<i>People v. Eribarne</i> (2004) 124 Cal.App.4th 1463	106
<i>People v. Fairbank</i> (1997) 16 Cal.4th 1223	122
<i>People v. Farnam</i> (2002) 28 Cal.4th 107	48, 52
<i>People v. Flannel</i> (1979) 25 Cal.3d 668	84
<i>People v. Forrester</i> (2007) 156 Cal.App.4th 1021	106
<i>People v. Frye</i> (1998) 18 Cal.4th 894	121
<i>People v. Fuentes</i> (1991) 54 Cal.3d 707	45, 62, 65, 73
<i>People v. Garceau</i> (1993) 6 Cal.4th 140	52
<i>People v. Geier</i> (2007) 41 Cal.4th 555	126

## TABLE OF AUTHORITIES (continued)

	<b>Page</b>
<i>People v. Gray</i> (2005) 37 Cal.4th 168 33 Cal.Rptr.3d 451 118 P.3d 496	60, 125
<i>People v. Guerra</i> (2006) 37 Cal.4th 1067	43, 44, 120, 121
<i>People v. Gutierrez</i> (2002) 28 Cal.4th 1083	128
<i>People v. Hainline</i> (1934) 219 Cal. 532	106
<i>People v. Hamilton</i> (1988) 46 Cal.3d 123	114
<i>People v. Hansen</i> (1994) 9 Cal.4th 300	79, 80
<i>People v. Hardy</i> (1992) 2 Cal.4th 86	99
<i>People v. Hart</i> (1999) 20 Cal.4th 546	80
<i>People v. Hillhouse</i> (2002) 27 Cal.4th 469	111
<i>People v. Hofsheier</i> (2006) 37 Cal.4th 1185	108
<i>People v. Holt</i> (1997) 15 Cal.4th 619	114
<i>People v. Horning</i> (2004) 34 Cal.4th 871	77, 78, 86

## TABLE OF AUTHORITIES (continued)

	<b>Page</b>
<i>People v. Horning</i> (2005) 34 Cal.4th 871	75
<i>People v. Howard</i> (1992) 1 Cal.4th 1132	53
<i>People v. Howard</i> (2008) 42 Cal.4th 1000 175 P.3d 13 71 Cal.Rptr.3d 264	121
<i>People v. Howze</i> (2001) 85 Cal.App.4th 1380	99
<i>People v. Hoyos</i> (2007) 41 Cal.4th 872	125, 126
<i>People v. Huggins</i> (2006) 38 Cal.4th 175	45, 68
<i>People v. Humphrey</i> (1996) 13 Cal.4th 1073	84
<i>People v. Jacob</i> (1985) 174 Cal.App.3d 1166	106
<i>People v. Jenkins</i> (2000) 22 Cal.4th 900	99
<i>People v. Johnson</i> (1989) 47 Cal.3d 1194	49, 56, 62-65
<i>People v. Johnson</i> (2003) 30 Cal.4th 1302	43, 62, 66
<i>People v. Jurado</i> (2006) 38 Cal.4th 72	45, 120, 121

## TABLE OF AUTHORITIES (continued)

	<b>Page</b>
<i>People v. Kipp</i> (2001) 26 Cal.4th 1100	125
<i>People v. Leach</i> (1985) 41 Cal.3d 92	91
<i>People v. Ledesma</i> (2006) 39 Cal.4th 641	48, 60, 61
<i>People v. Lee</i> (1999) 20 Cal.4th 47	82
<i>People v. Lenart</i> (2004) 32 Cal. 4th 1107	125
<i>People v. Lohbauer</i> (1981) 29 Cal.3d 364	79
<i>People v. Manduley</i> (2002) 27 Cal.4th 537	108, 109
<i>People v. Marshall</i> (1997) 15 Cal.4th 1	98
<i>People v. Marshall</i> (1996) 13 Cal.4th 799	79, 99, 100
<i>People v. Martinez</i> (2003) 31 Cal.4th 673	126
<i>People v. Mayfield</i> (1997) 14 Cal.4th 668	80, 98, 99, 101
<i>People v. McDermott</i> (2002) 28 Cal.4th 946	45
<i>People v. Melton</i> (1988) 44 Cal.3d 713	116

**TABLE OF AUTHORITIES (continued)**

	<b>Page</b>
<i>People v. Michaels</i> (2002) 28 Cal.4th 486	122
<i>People v. Mickey</i> (1991) 54 Cal.3d 612	111
<i>People v. Monterroso</i> (2004) 34 Cal.4th 743	122, 124
<i>People v. Montiel</i> (1993) 5 Cal.4th 877	65
<i>People v. Montoya</i> (1994) 7 Cal.4th 1027	78
<i>People v. Moon</i> (2005) 37 Cal.4th 1	116
<i>People v. Morales</i> (1989) 48 Cal.3d 527	128
<i>People v. Morgan</i> (2007) 42 Cal.4th 593	112
<i>People v. Morrison</i> (2004) 34 Cal.4th 698	124, 125
<i>People v. Nakahara</i> (2003) 30 Cal.4th 705	120, 121
<i>People v. Nieto Benitez</i> (1992) 4 Cal.4th 91	79, 80
<i>People v. Noah</i> (1971) 5 Cal.3d 469	79
<i>People v. Noguera</i> (1992) 4 Cal.4th 599	121

**TABLE OF AUTHORITIES (continued)**

	<b>Page</b>
<i>People v. Ochoa</i> (2001) 26 Cal.4th 398	123
<i>People v. Panah</i> (2005) 35 Cal.4th 395	122, 124, 126, 127
<i>People v. Patterson</i> (1989) 49 Cal.3d 615	80
<i>People v. Pensinger</i> (1991) 52 Cal.3d 1210	117
<i>People v. Phillips</i> (2007) 147 Cal.App.4th 810	53
<i>People v. Pollock</i> (2004) 32 Cal.4th 1153	125
<i>People v. Pride</i> (1992) 3 Cal.4th 195	107, 111
<i>People v. Prieto</i> (2003) 30 Cal.4th 226	125
<i>People v. Prince</i> (2007) 40 Cal.4th 1179	79, 80
<i>People v. Ramirez</i> (2006) 39 Cal.4th 398	80
<i>People v. Ramos</i> (2004) 34 Cal.4th 494	127
<i>People v. Reynoso</i> (2003) 31 Cal.4th 903	43-45
<i>People v. Roberts</i> (1992) 2 Cal.4th 271	111

**TABLE OF AUTHORITIES (continued)**

	<b>Page</b>
<i>People v. Roldan</i> (2005) 35 Cal.4th 646	127
<i>People v. Sakarias</i> (2000) 22 Cal.4th 596	85-87
<i>People v. Sanders</i> (1990) 51 Cal.3d 471	111
<i>People v. Schmeck</i> (2005) 37 Cal.4th 240	49, 122
<i>People v. Scott</i> (2001) 91 Cal.App.4th 1197	101
<i>People v. Silva</i> (2001) 25 Cal.4th 345	45
<i>People v. Simon</i> (2001) 25 Cal.4th 1082	104
<i>People v. Sims</i> (1993) 5 Cal.4th 405	128
<i>People v. Smith</i> (2003) 30 Cal.4th 581	104, 125, 126
<i>People v. Smith</i> (2005) 35 Cal.4th 334	125-127
<i>People v. Snook</i> (1997) 16 Cal.4th 1210	106
<i>People v. Snow</i> (2003) 30 Cal.4th 43	125
<i>People v. Stankewitz</i> (1990) 51 Cal.3d 72	117, 118

**TABLE OF AUTHORITIES (continued)**

	<b>Page</b>
<i>People v. Stanley</i> (2006) 39 Cal.4th 913	44, 45
<i>People v. Steele</i> (2002) 27 Cal 4th 1230	125
<i>People v. Stewart</i> (2000) 77 Cal.App.4th 785	79
<i>People v. Stitely</i> (2005) 35 Cal.4th 514	124
<i>People v. Stowell</i> (2003) 31 Cal.4th 1107	110
<i>People v. Trevino</i> (2001) 26 Cal.4th 237	106
<i>People v. Valdez</i> (2004) 32 Cal.4th 73	85, 86
<i>People v. Wade</i> (1995) 39 Cal.App.4th 1487	121
<i>People v. Waidla</i> (2000) 22 Cal.4th 690	78, 86
<i>People v. Walker</i> (1988) 47 Cal.3d 605	52
<i>People v. Watson</i> (1956) 46 Cal.2d 818	85, 119
<i>People v. Watson</i> (1981) 30 Cal.3d 290	80
<i>People v. Welch</i> (1999) 20 Cal.4th 701	122-124

## TABLE OF AUTHORITIES (continued)

	<b>Page</b>
<i>People v. Wheeler</i> (1978) 22 Cal.3d 258	42, 44, 46, 52-58, 73
<i>People v. Whitfield</i> (1994) 7 Cal.4th 437	79
<i>People v. Wickersham</i> (1982) 32 Cal.3d 307	83
<i>People v. Wilkins</i> (1990) 225 Cal.App.3d 299	99, 101
<i>People v. Williams</i> (1997) 16 Cal.4th 153	53
<i>People v. Wilson</i> (1992) 3 Cal.4th 926	120
<i>People v. Wilson</i> (2005) 36 Cal.4th 309	122
<i>People v. Windham</i> (1977) 19 Cal.3d 121	98-101
<i>People v. Wohl</i> (1991) 226 Cal.App.3d 270	106
<i>People v. Yeoman</i> (2003) 31 Cal.4th 93	48, 126
<i>People v. Young</i> (2005) 34 Cal.4th 1149	125
<i>Pulley v. Harris</i> (1984) 465 U.S. 37 104 S.Ct. 871 79 L.Ed.2d 29	124

## TABLE OF AUTHORITIES (continued)

	Page
<i>Purkett v. Elem</i> (1995) 514 U.S. 765 115 S.Ct. 1769 131 L.Ed.2d 834	44
<i>Rice v. Collins</i> (2006) 546 U.S. 333 126 S.Ct. 969 163 L.Ed.2d 824	67
<i>Ring v. Arizona</i> (2002) 536 U.S. 584 122 S.Ct. 2428 153 L.Ed.2d 556	124
<i>Roper v. Simmons</i> (2005) 543 U.S. 551 125 S.Ct. 1183 161 L.Ed.2d 1	102, 104, 105
<i>Schad v. Arizona</i> (1991) 501 U.S. 624 111 S.Ct. 2491 115 L.Ed.2d 555	85, 86
<i>Snyder v. Louisiana</i> (2008) 552 U.S. ____ 128 S.Ct. 1203 2008 WL 723750	62-64, 69
<i>Spaziano v. Florida</i> (1984) 468 U.S. 447 104 S.Ct. 3154 82 L.Ed.2d 340	123
<i>U.S. v. Batchelder</i> (1979) 442 U.S. 114 99 S.Ct. 2198 60 L.Ed.2d 755	108

## TABLE OF AUTHORITIES (continued)

	<b>Page</b>
<i>United States v. Scheffer</i> (1998) 523 U.S. 303 118 S.Ct. 1261 140 L.Ed.2d 413	115
<i>Zant v. Stephens</i> (1983) 462 U.S. 862 103 S.Ct. 2733 77 L.Ed.2d 235	111
<b>Constitutional Provisions</b>	
United States Constitution, Fifth Amendment	126
Sixth Amendment	126
Eighth Amendment	104, 126, 128
Fourteenth Amendment	107, 126, 128
<b>Statutes</b>	
Evidence Code, § 353	104
§ 664	110
Penal Code, § 136.1, subd. (c)(1)	2
§ 187	31, 79, 103
§ 187, subd. (a)	2, 80
§ 188	79
§ 189	80
§ 190.2, subd. (a)(2)	2, 86, 102-104, 106, 107, 111
§ 190.2, subd. (a)(15)	2, 86, 110, 127
§ 190.3	111, 122

## TABLE OF AUTHORITIES (continued)

	<b>Page</b>
§ 236	2
§ 245, subd. (a)(2)	2
§ 459	2
§ 664	2
§ 667, subds. (b)-(i)	2
§ 1170.12, subds. (a)-(d)	2
§ 1239, subd. (b)	4
§ 12021, subd. (a)(1)	2
§ 12022.5, subd. (a)	2
<b>Welfare and Institutions Code,</b>	
§ 707	108-110
§ 707 subd. (b)	110
§ 707 subd. (c)	109, 110
§ 1772	31, 103, 107

### **Other Authorities**

#### **CALJIC Nos**

2.02	120
2.20	113, 114, 118
2.21.1	118
2.21.2	118, 120, 121
2.22	118, 120, 121
2.27	120, 121
2.51	120, 121
2.62	120
2.70	118
2.71.1	118, 119
2.71.7	116, 117, 119
2.92	113
8.20	120, 121
8.41.1	112, 113
8.84.1	112
9.02	115

**TABLE OF AUTHORITIES (continued)**

	<b>Page</b>
9.40	115
9.50	115
9.94	115
10.10	115

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

**PEOPLE OF THE STATE OF CALIFORNIA,**

Plaintiff and Respondent,

v.

**FLOYD DANIEL SMITH,**

Defendant and Appellant.

S065233

**CAPITAL  
CASE**

**INTRODUCTION**

In order to avenge the murder of Manuel Farias, Floyd Daniel Smith, who had previously been convicted of first-degree murder, gunned down an innocent 19-year-old boy named Joshua Rexford who had recently graduated from high school. The killing was thoroughly planned out, premeditated, and deliberated. Smith spent several days asking about the victim, and tracking down the victim's whereabouts. On the morning of the killing, Smith had the apartment the victim was in under surveillance. The killing was committed by Smith while "lying in wait" as the victim was gunned down ambush-style, completely unaware that Smith had him under surveillance. Smith gunned down the surprised victim in cold-blood with numerous shots from a 9 millimeter automatic handgun loaded with hollow point ammunition. Smith's numerous gunshots nearly struck two of the victim's companions as well. But for the quick evasive reactions of those two individuals (diving to the floor, and jumping out of a window), this matter could easily have been a triple homicide. In the end, the killing of Rexford was completely senseless, as there was never any evidence that the victim, Joshua Rexford, had anything to do with the death of Manuel Farias.

## STATEMENT OF THE CASE

On February 18, 1997, an amended indictment was filed in San Bernardino County Superior Court charging Smith with nine felony offenses. In count 1, Smith was charged with murder, in violation of Penal Code section 187, subdivision (a). In counts 2 and 3, Smith was charged with attempted murder, in violation of Penal Code sections 664 and 187, subdivision (a). In counts 4 and 5, Smith was charged with first degree residential burglary, in violation of Penal Code section 459. In count 6, Smith was charged with assault with a firearm, in violation of Penal Code section 245, subdivision (a)(2). In count 7, Smith was charged with false imprisonment by violence, in violation of Penal Code section 236. In count 8, Smith was charged with dissuading a witness by force or threat, in violation of Penal Code section 136.1, subdivision (c)(1). In count 9, Smith was charged with being a convicted felon in possession of a firearm, in violation of Penal Code section 12021, subdivision (a)(1). It was further alleged, as to counts 1 through 9, that Smith had previously been convicted of murder (in Riverside County Superior Court case number CR-22000 on July 13, 1984) within the meaning of Penal Code sections 1170.12, subdivisions (a) through (d), and 667, subdivisions (b) through (i). With regard to count 1, two special circumstances were alleged, namely, that Smith had previously committed murder in the first degree within the meaning of Penal Code section 190.2, subdivision (a)(2), and that the instant murder was committed by "lying in wait" within the meaning of Penal Code section 190.2, subdivision (a)(15). With regard to counts 1 through 8, it was alleged that Smith personally used a firearm within the meaning of Penal Code section 12022.5, subdivision (a). (2 CT 310-317.)

On March 11, 1997, a motion filed by Smith to dismiss the indictment was heard and denied. (1 CT 357.)

On March 17, 1997, opening statements and trial testimony began in the guilt phase. (2 CT 361-362.) On March 31, 1997, Smith brought a motion for mistrial. (2 CT 381.) Smith's mistrial motion was granted, and the jurors were excused. (2 CT 371.) On April 28, 1997, selection of a new jury began. (2 CT 392.) On May 14, 1997, after a new jury was sworn, opening statements from both the prosecution and defense were given, and trial testimony began anew. (2 CT 412.) On July 16, 1997, the jury found as follows: Count 1, guilty of murder in the first degree; Counts 2 and 3, guilty of the lesser included offense of attempted voluntary manslaughter; Counts 4 and 5, guilty of first degree burglary; Count 6, guilty of assault with a firearm; Count 7, guilty of false imprisonment by violence; Count 8, not guilty of dissuading a witness by force or threat; Count 9, guilty of possession of a firearm by a convicted felon. (2 CT 465-481.) Additionally, the jury found the "lying in wait" special circumstance attached to Count 1 to be true, and found the firearm use allegations true for all convictions. (2 CT 465-481.)

On July 21, 1997, after a bifurcated trial before the same jury, the "prior murder" special circumstance allegation regarding count 1 was found to be true. (2 CT 484-486.)

On July 22, 1997, Smith's penalty phase began. (2 CT 487.) On July 29, 1997, the jury returned a verdict of death. (2 CT 498-500.)

On October 14, 1997, Smith was sentenced. (2 CT 521.) The court denied Smith's Penal Code section 190.4, subdivision (e) motion to modify the death verdict to life without the possibility of parole. (19 RT 6141.) The court sentenced Smith to death for the first-degree murder conviction (count 1) with special circumstances ("lying in wait" and "prior murder"). (2 CT 521, 530, 539-544.) The court imposed a 57-year determinate prison sentence for the remaining counts as follows: 12 years for count 4, the principal count (first-degree burglary), one year and four months consecutively for count 2

(attempted voluntary manslaughter), one year and four months consecutively for count 3 (attempted voluntary manslaughter), two years and eight months consecutively for count 5 (first-degree burglary), two years consecutively for count 6 (assault with a firearm), one year and four months consecutively for count 7 (false imprisonment by violence), and one year and four months consecutively for count 9 (possession of a firearm by a convicted felon). Additionally, two terms of 10 years each were imposed consecutively for the firearm enhancements attached to counts 1 and 4. Three terms of three years and 4 months were imposed consecutively for the firearm enhancements attached to counts 2, 3, and 5. The remaining enhancements were stayed. (2 CT 521-530.)

The appeal to this Court is automatic pursuant to Penal Code section 1239, subdivision (b).

## STATEMENT OF FACTS

### I.

#### GUILT PHASE

##### Prosecution's Case In Chief

##### 1. Motive For The Killing Of Rexford

Manuel Farias was murdered on October 30, 1994, and he was buried on November 23, 1994 (three days prior to the shooting of Joshua Rexford). (11 RT 3431-3432.) Smith had been a friend of Manuel's, and Smith attended Manuel's funeral. (11 RT 3428, 3431.) Right after Manuel's burial, Linda Farias,<sup>1/</sup> Manuel's sister, overheard Smith talking to Jake Carroll, Jesse Valarde, and Shawn Flores. (11 RT 3428.) Smith was doing most of the talking. (11 RT 3431.) Smith said that "they were going to get whoever did this" to

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1. To avoid confusion, members of the Farias family, Linda Farias, Raymond Farias, and Manuel Farias are all referred to by their first names.

Manuel. (11 RT 3431.) The conversation included mention that “Josh” [Rexford] was “Brian’s” cousin, and “They would get through him to find Brian” [i.e., suggesting that a person named “Brian,” who was Rexford’s cousin, was responsible for Manuel’s death]. (1 RT 3431.)

Christina Hogue had known Manuel Farias for several years and had gone to school with him since junior high school. (12 RT 3564.) She was also in attendance at Manuel’s funeral. (12 RT 3566.) She saw Smith at the funeral, and she overheard parts of a conversation about who was responsible for Manuel’s killing. (12 RT 3566.) According to Hogue, the people conversing were Victor Ledbetter, Jake Carroll, and one other person (possibly Manuel’s cousin). (12 RT 3566.) Hogue was not sure if Smith participated in the conversation. (12 RT 3566.) The concept of “revenge” was discussed. (12 RT 3567.) The name “Brian” was mentioned, and one person said, “No, we’ll do it the right way.” (12 RT 3567.)

Troy Holloway knew Josh Rexford, as they had played football together at A.B. Miller High School in Fontana. (11 RT 3441-3443.) Holloway also knew Smith, as he had been introduced to Smith by Patrick Wiley at a football practice.<sup>2/</sup> (11 RT 3443-3444, 3453-3454.) Between three and five days prior to the shooting of Rexford, Smith went over to Holloway’s house with Bennett Brown. (11 RT 3445-3447.) Smith then drove Holloway (along with Brown) to his apartment in Rialto (for reasons unknown to Holloway).<sup>3/</sup> (11 RT 3447.) Smith was asking Holloway questions about Rexford. (11 RT 3445.) Smith was asking “How was he. What’s he like.” (11 RT 3445.) Smith said he was asking because he heard Rexford was on the A.B. Miller football team, and he

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2. Patrick Wiley referred to Holloway as a cousin because they had grown up together. (11 RT 3454.)

3. Along the way they stopped at a Circuit City so Holloway could turn in a job application. (11 RT 3455-3456.)

[Smith] played too. (11 RT 3446.) Holloway told Smith that Rexford was "Fine" and that "He's cool." (11 RT 3446.) Holloway's conversation with Smith lasted three or four hours. (11 RT 3448.) Smith wanted to know "About where he [Rexford] hung out, how - - what type of person he was." (11 RT 3456.) Smith did not tell Holloway why he wanted the information. (11 RT 3456.) Smith just said that he wanted to talk to Rexford. (11 RT 3456.) Holloway did not tell Smith where Rexford was living. (11 RT 3458.) While he was in Smith's apartment, Holloway saw two guns. (11 RT 3468-3469.) One of the guns, a 9 millimeter pistol, was on Smith's person. (11 RT 3468-3469.) The other gun was possessed by Smith's friend, Jake Carroll. (11 RT 3543.) Carroll's gun was "like a rifle, almost." (11 RT 3543.) It was about 16 inches in length. (11 RT 3543.)

## **2. Events Occurring In Michael Honess's Apartment Just Prior To The Shooting**

Michael Honess was in his apartment on the morning of the shooting. (10 RT 2974-2978.) At 9:15 a.m., Honess went downstairs to purchase a newspaper from a newspaper stand. (10 RT 2978-2979.) On his way to get the newspaper, Honess saw Smith and another male (whom he had never seen in the apartment complex before) sitting on a wall. (10 RT 2979-2980.) When Honess returned with his newspaper, they were still sitting on the wall. (10 RT 2981.) Smith asked Honess for a cigarette, and Honess gave one to him and one to his companion. (10 RT 2981-2982.) The person sitting with Smith was lighter-skinned than Smith, and Honess thought he was white, but later found out he was Hispanic. (10 RT 2981-2982.)

After giving cigarettes to Smith and his companion, Honess went back to his apartment. (10 RT 2983.) At 9:30, Honess left his apartment a second time to walk his girlfriend to her car. (10 RT 2983-2984.) When Honess returned to his apartment, he again saw Smith, but not Smith's companion. (10

RT 2984.) Smith had climbed the stairs of the complex and was now sitting next to Honess's apartment. (10 RT 2984-2985.) Smith complained to Honess that there were no telephones in the complex and he needed to use one to call his mother. (10 RT 2985.) Honess told Smith he could use his telephone. (10 RT 2986.) Smith accepted the offer and entered Honess's apartment and began using Honess's telephone. (10 RT 2986.)

Instead of calling his mother, however, Smith called directory assistance and requested the number for the "Church of God in Christ" in the City of Highland. (10 RT 2986.) Smith wrote a number down on a piece of paper, and then dialed the number. (10 RT 2987.) Smith did not appear to talk to anyone after dialing the number. (10 RT 2987.) After a short period of time, Smith left Honess's apartment. (10 RT 2988-2989.) He did not take the number he had written down with him. (10 RT 2988-2989.) While Smith was in Honess's apartment he never said anyone was threatening him, nor that he was in any danger. (10 RT 2989.) Smith was calm, pleasant, and did not appear nervous. (10 RT 2990.) He told Honess that his name was "Jerry." (10 RT 2988.)

Ten minutes later, Smith knocked at Honess's door. (10 RT 2990.) Honess opened the door assuming that Smith wanted to use his telephone again, and he allowed Smith to enter his apartment again. (10 RT 2990-2991.) However, this time, Smith put a hand on Honess's shoulder and pushed him down to the floor. (10 RT 2991-2992.) Honess then noticed that Smith's other hand was holding a gun; a dark gray or black automatic pistol. (10 RT 2991.) Smith was wearing a wool cap with no bill. (10 RT 2995.)

Honess was on his hands and knees with his back to Smith as two other male individuals entered Honess's apartment. (10 RT 2992-2993.) One of the two was the person Honess saw sitting with Smith earlier (to whom Honess had given a cigarette). (10 RT 2993.) The third person appeared to be a 19 to 21 year-old Caucasian. (10 RT 2993-2994.) Smith referred to this person as

“Jay.” (10 RT 2997.) Jay was carrying a sawed-off shotgun, but the Hispanic male did not appear to have a firearm. (10 RT 3013.)

Smith said words to the effect of “Jay, go look out the window.” (10 RT 2997.) Jay complied with Smith’s command. (10 RT 2998.) The Hispanic male also peeked through the blinds. (10 RT 2999-3000.) At one point, Smith directed Jay to look for other telephones in the apartment. (10 RT 3001.) Although Honess had a second telephone in the apartment, Jay did not find it. (10 RT 3001.) However, the Hispanic male found Honess’s wallet. (10 RT 3002.) Smith opened it, removed Honess’s driver’s license and said, “I know who you are now.” (10 RT 3003.)

The Hispanic male frisked Honess and pulled some bills (money) out of Honess’s pockets. (10 RT 3004-3005.) Smith said words to the effect of “Put the money back. We don’t need that.” (10 RT 3005.) The three individuals were in Honess’s apartment 15-20 minutes. (10 RT 3000, 3018.) At one point, Smith told Jay to “go wait in the car.” (10 RT 3018.) Jay left the apartment, and took his sawed-off shotgun with him. (10 RT 3018, 3026.)

While Smith and the Hispanic male were still in Honess’s apartment, Smith cut Honess’s telephone line with a knife. (10 RT 3007.) He then wiped the telephone with paper towels. (10 RT 3011.) Smith told the Hispanic male to wipe anything he might have touched. (10 RT 3011.) Honess was sitting in a chair and Smith told him that he wanted to be able to see Honess’s hands. (10 RT 3016.) Smith then told Honess, “When you talk to the police tell the truth.” (10 RT 3017.) Smith was talking in a normal, non-threatening voice, and did not seem nervous. (10 RT 3015, 3017.) Likewise, the Hispanic person also did not appear to be afraid or nervous. (10 RT 3015.) Smith never put his gun down. (10 RT 3005.)

After Smith and the Hispanic male left Honess’s apartment, they ran down the stairs. (10 RT 3024.) Honess then heard knocking at one of the