

SUPREME COURT COPY

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff and Respondent,

v.

PAUL SODOA WATKINS,

Defendant and Appellant.

CAPITAL CASE

Case No. S026634

SUPREME COURT
FILED

JUN 4 5 2009

Frederick K. Choo, Clerk

Deputy

Los Angeles County Superior Court Case No. KA005658
The Honorable Robert M. Martinez, Judge

SUPPLEMENTAL RESPONDENT'S BRIEF

EDMUND G. BROWN JR.
Attorney General of California
DANE R. GILLETTE
Chief Assistant Attorney General
PAMELA C. HAMANAKA
Senior Assistant Attorney General
KEITH H. BORJON
Supervising Deputy Attorney General
STEPHANIE A. MIYOSHI
Deputy Attorney General
State Bar No. 190394
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-8784
Fax: (213) 897-6496
Email: Stephanie.Miyoshi@doj.ca.gov
Attorneys for Plaintiff and Respondent

DEATH PENALTY

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**I. THE UNITED STATES SUPREME COURT'S DECISION IN
KENNEDY V. LOUISIANA DOES NOT ALTER THE CONCLUSION
THAT IT IS CONSTITUTIONALLY PERMISSIBLE TO IMPOSE
THE DEATH PENALTY FOR FELONY MURDER WHEN, AS
HERE, THE DEFENDANT WAS THE ACTUAL KILLER**

In appellant's opening brief and reply brief, appellant argued that the Eighth Amendment required a factual finding that he killed his victim with a culpable state of mind, such as an intent to kill or recklessness, in order to impose the death penalty. (AOB 211-225; ARB 55-60.) Appellant now contends that the United States Supreme Court's recent decision in *Kennedy v. Louisiana* (2008) __ U.S. __, [128 S.Ct. 2641, 171 L.Ed.2d 525] further demonstrates that "the death penalty is unconstitutional for any unintentional murder." (Supp. AOB 1-12.) This argument must be rejected.

As noted in respondent's brief (RB 95-97), the imposition of the death penalty for a felony murder in which the defendant is the actual killer is well-recognized as being constitutional. (See *Tison v. Arizona* (1987) 481 U.S. 137, 150 [107 S.Ct. 1676, 95 L.Ed.2d 127] [noting that the Supreme Court had "clearly held" that jurisdictions could impose the death penalty on "the felony murderer who actually killed"]; *Enmund v. Florida* (1982) 458 U.S. 782, 801, [102 S.Ct. 3368, 73 L.Ed.2d 1140] [reversing a sentence of death because there was an "absence of proof" that the defendant who drove the getaway car "killed or attempted to kill" the victims]; *People v. Young* (2005) 34 Cal.4th 1149, 1204 [evidence that the defendant is the actual killer in a felony murder establishes enough culpability under the Eighth Amendment to permit a defendant's execution]; *People v. Smithey* (1999) 20 Cal.4th 936, 1016 ["Evidence that the defendant is the actual killer and guilty of felony murder, however, establishes 'a degree of culpability sufficient under the Eighth Amendment to permit defendant's execution.'"].) Indeed, this Court has explained:

Contrary to defendant's assertion, the federal Constitution's Eighth Amendment imposes no requirement that a jury make an express finding that a capital defendant acted with "reckless disregard for human life." As the United States Supreme Court said in *Tison v. Arizona, supra*, 481 U.S. at pages 157-158, such mental state is "implicit" in the knowing participation in criminal activities carrying a grave risk of death. Moreover, defendant is wrong when he asserts that this court has never addressed whether, consistent with the federal Constitution's Eighth Amendment, the death penalty can be appropriate punishment for someone who kills *accidentally* during such activity. The purpose of our felony murder law "is to deter felons from killing negligently or accidentally [in the course of a felony] by holding them strictly responsible [for such killings]." [Citations.] Thus, we necessarily resolved this issue in *People v. Anderson, supra*, 43 Cal.3d at pages 1146-1147, when we concluded that the Eighth Amendment posed no impediment to subjecting the actual killer in a felony murder to the death penalty.

(*People v. Earp* (1999) 20 Cal.4th 826, 905, fn. 15, parallel citations omitted.)

In the case at bar, the jury found appellant guilty of the first degree murder of Raymond Shield and also found true the special circumstances allegation that appellant killed Shield while engaged in an attempted robbery. The jury also found true the allegation that appellant did so while armed with a handgun. (3CT 762; 11RT 1825-1826.) As appellant has already conceded (AOB 214-215), the prosecutor argued that the special circumstances finding had to be based on a determination that appellant was the actual killer. (10RT 1663-1664.) Because it was established that appellant was the actual killer beyond any doubt, the imposition of the death penalty does not violate the Eighth Amendment. (*People v. Young, supra*, 34 Cal.4th at p. 1204; *People v. Earp, supra*, 20 Cal.4th at p. 905; see *People v. Harris* (2008) 43 Cal.4th 1269, 1322.)

Appellant's reliance on *Kennedy v. Louisiana* does not alter this conclusion. In *Kennedy v. Louisiana*, the Supreme Court held that a

defendant could not be sentenced to death for the rape of a child when the rape did not result in the victim's death. (*Kennedy v. Louisiana, supra*, 128 S.Ct. at pp. 2646, 2664-2665.) Thus, the issue in *Kennedy v. Louisiana* has nothing to do with the issue in this case and does not dictate that the death penalty was improperly imposed here. Indeed, to the extent that *Kennedy v. Louisiana* sheds any light on the question, it does not assist appellant. In reaffirming why a defendant could not be sentenced to death for the rape of a child, the Supreme Court explained, “[t]he murderer kills; the rapist if no more than that, does not. . . .” (*Id.* at p. 2654.) Because a murderer kills, death is an appropriate punishment even for unintentional killings.

This Court has determined that California law is consistent with the Supreme Court's constitutional precedent, and appellant has offered no compelling reason to revisit this issue. (See *People v. Harris, supra*, 43 Cal.4th at p. 1322.) Therefore, appellant's contention must be rejected.

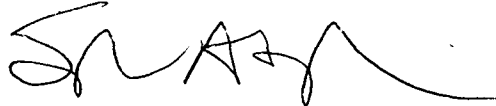
CONCLUSION

Accordingly, respondent respectfully requests that the judgment be affirmed.

Dated: June 11, 2009

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of California
DANE R. GILLETTE
Chief Assistant Attorney General
PAMELA C. HAMANAKA
Senior Assistant Attorney General
KEITH H. BORJON
Supervising Deputy Attorney General



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

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CERTIFICATE OF COMPLIANCE

I certify that the attached **SUPPLEMENTAL RESPONDENT'S BRIEF** uses a 13 point Times New Roman font and contains 841 words.

Dated: June 11, 2009

EDMUND G. BROWN JR.
Attorney General of California

A handwritten signature in black ink, appearing to read 'S. Miyoshi', with a stylized flourish at the end.

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

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: *People v. Paul Sodoa Watkins*
No.: **S026634**

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 that same day in the ordinary course of business.

On June 15, 2009, I served the attached **SUPPLEMENTAL RESPONDENT'S BRIEF** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, 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:

Nina Rivkind, Esq.
Office of the State Public Defender –
San Francisco
221 Main Street, 10th Floor
San Francisco, CA 94105

Michael G. Millman
Executive Director
California Appellate Project (SF)
101 Second Street, Suite 600
San Francisco, CA 94105

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 June 15, 2009, at Los Angeles, California.

Bernard M. Santos
Declarant


Signature