IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. WILLIAM CLINTON CLARK, Defendant and Appellant.	**CAPITAL CASE** No. S066940

APPELLANT'S SUPPLEMENTAL REPLY BRIEF

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DEATH PENALTY

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ARGUMENT

CLAIM 1 THERE WAS *BATSON* ERROR

Appellant claims that the prosecutor committed Batson error when he exercised a peremptory challenge to strike a Native America, and one of only two minorities in the jury box, from the jury. In denying appellant's objection, the trial court stated that there had been no *prima facie* showing of a *pattern* of discrimination. Appellant pointed out that this showing, required by the trial court, was unconstitutionally high, and is in contravention of United States Supreme Court precedent.

Respondent argues that "In terms of whether the prosecutor struck most or all of the members of a particular group, or used a disproportionate number of challenges against the group, it has been repeatedly held that it is impossible to draw an inference of discrimination from the challenge of one potential juror." Supplemental Respondent's Brief [SRB] 7. Respondent's argument flies in the face *Johnson v. California*, 545 U.S. 162 (2005), cited in Appellant's Supplemental Brief [ASB]. Appellant need not show a pattern of discrimination. One unconstitutional strike is sufficient. Even " a single invidiously discriminatory governmental act is not immunized by the absence of such discrimination in the making of other comparable decisions." (*Johnson* at 169, fn. 5, quoting *Batson v. Kentucky*, 476 U.S.79 (1986) at 95 (internal quotations omitted).) When this Court conducts it *de novo* review, it will conclude that the defense had met its burden of establishing a *prima facie* case by "producing evidence sufficient to permit the trial judge to draw an inference

that discrimination has occurred." (*Johnson, supra*, at 170.) The trial court's denial of appellant's motion amounted to an erroneous implicit finding that a *prima facie* case had not been established. See ASB 10. This error is reversible *per se*. See ASB 11-12.

Respondent next argues that this Court should not conduct a comparative juror analysis to decide whether appellant has met his burden. SRB 10-14. Of course, both this Court and the United States Supreme Court have both sanctioned and conducted comparative juror analyses in cases similar to appellant's. See ASB 4-6, 10-11.

CLAIM 2 EVIDENCE THAT APPELLANT ORDERED ANTOINETTE YANCEY TO KILL ADRELL WILLIAMS TO PREVENT HER FROM TESTIFYING WAS INSUFFICIENT AS A MATTER OF LAW, AND THE WITNESS-KILLING SPECIAL CIRCUMSTANCE MUST BE STRUCK.

Respondent argues that circumstantial evidence was presented which was sufficient to sustain the special circumstance finding. Appellant stands by the arguments made in the ASB at 12-23.

Dated: August 20, 2010

Respectfully submitted,

PETER GIANNINI
Attorney for Appellant

CERTIFICATE OF COMPLIANCE

I certify that the attached Appellant's Supplemental Reply Brief uses a 13 point Times New Roman font and contains 412 words.

Dated: August 20, 2010

PETER GIANNINI
Attorney for Appellant

DECLARATION OF SERVICE BY MAIL

Case Name: People v. William Clinton Clark

Case Number: S066940

I declare that I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1015 Gayley Avenue, #1000, Los Angeles, California 90024.

On August 20, 2010 I served the foregoing Appellant's Supplemental Reply Brief on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes with postage fully prepaid addressed as follows:

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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 and that this ceclaration was executed on August 20, 2010 at Los Angeles, California.

Peter Giannini
Declarant

Signature