

No. S026634

SUPREME COURT COPY

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

SUPREME COURT  
FILED

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Deputy

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

vs.

PAUL SODOA WATKINS,

Defendant and Appellant.

) L. A. Sup. Ct.  
) No. KA005658-02

SUPPLEMENTAL APPELLANT'S REPLY BRIEF

Appeal from the Judgment of the Superior  
Court of the State of California for the  
County of Los Angeles

HONORABLE ROBERT MARTINEZ

MICHAEL J. HERSEK  
State Public Defender

NINA RIVKIND  
State Bar No. 79173  
Supervising Deputy State Public Defender

221 Main Street, 10th Floor  
San Francisco, CA 94105  
Telephone: (415) 904-5600

Attorneys for Appellant

DEATH PENALTY

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**SUPPLEMENTAL APPELLANT’S REPLY BRIEF**

**THE STATE’S RESPONSE DOES NOT ANSWER  
WATKINS’S ARGUMENT THAT THE DECISION IN  
*KENNEDY v. LOUISIANA* UNMISTAKABLY  
SUPPORTS THE CLAIM THAT HIS DEATH  
SENTENCE, IMPOSED FOR FELONY MURDER  
SIMPLICITER, IS A DISPROPORTIONATE PENALTY  
UNDER THE EIGHTH AMENDMENT**

The State’s Supplemental Respondent’s Brief does not answer the arguments raised in the Supplemental Appellant’s Opening Brief.<sup>1</sup> In his supplemental brief, Watkins argued that the United States Supreme Court’s decision in *Kennedy v. Louisiana* (2008) \_\_ U.S. \_\_, 128 S.Ct. 2641 fully

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<sup>1</sup> The usual abbreviations for the parties’ briefs are used: “AOB” refers to Appellant’s Opening Brief; “RB” refers to Respondent’s Brief; “ARB” refers to Appellant’s Reply Brief; “SAOB” refers to Supplemental Appellant’s Opening Brief, and “SRB” refers to Supplemental Respondent’s Brief.

supports his claim that California’s highly unusual practice of imposing the death penalty for felony murder *simpliciter* is disproportionate under the Eighth and Fourteenth Amendments, and strongly suggests that the death penalty is unconstitutional for a defendant who kills unintentionally. (SAOB at p. 2.) As Watkins explained, the high court’s proportionality analysis in *Kennedy* – both its emphasis on the constitutional imperative to restrict the use of capital punishment and its application of the Eighth Amendment’s “evolving standards of decency” test – adds solid support to his claim (1) that there is a national consensus against executing an actual felony murderer when there has been no proof that he had a culpable mental state with regard to the killing and (2) that death is a disproportionate penalty for such murders. (*Id.* at pp. 2-6.)

Watkins’s supplemental brief went further. Pointing to the repeated distinction in *Kennedy* between “intentional murder” and nonhomicide crimes, Watkins asserted that the high court now considers intentional murder as the constitutional norm for capital punishment. (SAOB at pp. 5-6.) He also showed that under the traditional Eighth Amendment analysis, there is a national consensus that the death penalty may not be imposed for unintentional robbery felony murder and that exacting death for unintentional murder is excessive to the deterrence and retribution rationales for capital punishment. (*Id.* at pp. 6-10.)

In its response, the State sidesteps these arguments. First, citing *Tison v. Arizona* (1987) 481 U.S. 137, 150, the State asserts that imposition of the death penalty on the actual killer in a felony murder is constitutional. (SRB at p. 1.) But, as Watkins contends, *Tison* is the very case that *Kennedy* calls into question. (SAOB at pp. 2, 8.) The State is silent on this

point.<sup>2</sup>

Second, the State asserts that *Kennedy* does not alter the constitutionality of the death penalty for an actual killer, even for an unintentional killing, because *Kennedy* involved the death penalty for rape of a child. (SRB at pp. 2-3.) The statement is not responsive to Watkins's argument. Watkins readily acknowledged that *Kennedy* involved a defendant who raped, but did not kill, while he was convicted of murder. (SAOB at p. 2.) However, that obvious distinction is not controlling. Watkins's argument rests not on the facts of *Kennedy*, but on the methodology of the high court's Eighth Amendment analysis and its emphasis on intentional murder. On these points, the State again is silent.

Finally, the State offers no answer whatsoever to Watkins's arguments (1) that there is a national consensus both against imposing the death penalty upon an actual killer in a felony murder without proof that he had any culpable mental state with regard to the killing and against imposing the death penalty upon an actual killer in a felony murder without proof that he had an intent to kill and (2) that such punishments are disproportionate to the constitutionally-recognized justifications for capital punishment. The State neither challenges Watkins's data regarding a national consensus against exacting death in either situation nor counters his disproportionality arguments. (See SRB at pp. 1-3; see also RB at pp. 95-97; ARB at p. 55.) The State's silence is especially notable given that at trial Watkins challenged the death penalty as cruel and unusual punishment

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<sup>2</sup> In addition to relying on *Tison*, the State also recycles citations and quotations from its prior brief. (Compare RB at pp. 95-96 with SRB at pp. 1-2, quoting from *People v. Earp* (1999) 20 Cal.4th 826, 905, fn. 15 and *People v. Smithey* (1999) 20 Cal.4th 936, 1016.)

for a murder where there has been no finding of “a deliberate intent to kill.”  
(III CT 618; see AOB at p. 211.)

In sum, the State has failed to grapple with the core of Watkins’s claim and has provided this Court with no credible argument for rejecting it. This Court should reconsider its prior rulings, should hold that the imposition of the death penalty on an actual killer for an unintentional murder violates the Eighth and Fourteenth Amendments as well as international law, and should reverse Watkins’s death judgment.

Dated: July 20, 2009

Respectfully Submitted,

MICHAEL J. HERSEK  
State Public Defender

A handwritten signature in cursive script, appearing to read "Nina Rivkind".

NINA RIVKIND  
Supervising Deputy State Public  
Defender

**CERTIFICATE OF COUNSEL  
(CAL. RULES OF COURT, RULE 8.520(d)(2))**

I, Nina Rivkind, am the Supervising Deputy State Public Defender who represents appellant, Paul Sodoa Watkins, in this automatic appeal. I conducted a word count of this brief using our office's computer software. On the basis of that computer-generated word count, I certify that this brief is 862 words in length including footnotes and excluding the tables and certificates.

Dated: July 20, 2009

  
NINA RIVKIND



**DECLARATION OF SERVICE**

People v. Paul Sodoa Watkins

No. S026634

I, Glenice Fuller, declare that I am over 18 years of age, and not a party to the within cause; that my business address is 221 Main St., 10th Floor, San Francisco, California 94105; that on I served a true copy of the attached:

**SUPPLEMENTAL APPELLANT'S REPLY BRIEF**

on each of the following, by placing same in an envelope addressed as follows:

Office of the Attorney General  
Attn: Stephanie A. Miyoshi  
300 South Spring Street, Ste. 1702  
Los Angeles, CA 90013

Office of the Los Angeles Co.  
District Attorney  
400 Civic Center Plaza  
Pomona, CA 91766

Hon. Robert M. Martinez  
East-Pomona Courthouse  
400 Civic Center Plaza  
Pomona, CA 91766

Charles J. Uhalley, Esq.  
300 S. Park Ave., # 850  
Pomona, CA 91766-1559

Gary B. Wells  
Attorney at Law  
6083 N. Figarden Drive,  
PMB 203  
Fresno, CA 93722-3226

Paul S. Watkins  
(Appellant)

Each said envelope was then, on July 20, 2009, sealed and deposited in the United States mail at San Francisco, California, the county in which I am employed, with the postage thereon fully prepaid.

I declare under penalty that the foregoing is true and correct.

Signed on July 20, 2009, at San Francisco, California.

  
DECLARANT