

*In re Burton (Andre) on Habeas Corpus (S034725)*

Andre Burton was convicted and sentenced to death for the murder of Gulshakar Khwaja. The evidence at trial showed that Burton and a confederate, Otis Clements, trailed Anwar Khwaja (Gulshakar's son) as he emerged from a Bank of America branch carrying a money bag and followed Anwar until he parked in front of his mother's house. Burton approached Anwar's car and demanded the bag. Anwar told Burton to take it but Burton shot him anyway, in the forehead and through the eye, and then took the money. When Gulshakar came out of the house and approached the car to help her son, Burton shot her, fatally, in the chest.

Burton was identified as the shooter by Anwar Khwaja, who survived the shooting and testified at trial, and by a neighbor, who saw Burton running down the street and carrying a gun and a white canvas bag. During a police interview, Burton confessed to these crimes as well as to robbing two women at gunpoint a short time before the murder. One of the robbery victims also identified Burton. During a second police interview, however, Burton denied any knowledge of or involvement in these offenses.

A capital trial in California is divided into two parts. During the *guilt phase*, the factfinder (usually a jury) decides whether the defendant has committed the charged crimes. If the jury finds the defendant has committed a capital crime, the case proceeds to a *penalty phase*. During the penalty phase, the jury decides whether a defendant should be sentenced to life in prison without the possibility of parole or sentenced to death. Based on the strength of the evidence against Burton, Burton's trial attorney, Ronald Slick, decided not to offer a defense during the guilt phase and instead to concentrate his efforts on saving Burton's life at the penalty phase.

After Burton's conviction was affirmed on appeal by the Supreme Court of California, Burton petitioned the court for a writ of habeas corpus (one procedure for overturning a criminal conviction), claiming that Slick overrode his clearly expressed desire to present a defense at the guilt phase, a right first recognized by the court in *People v. Frierson* (1985) 39 Cal.3d 803. The Supreme Court asked a lower court judge (a "referee") to hear witnesses and answer a number of questions relating to whether Attorney Slick had overridden Burton's clearly expressed desire to present a guilt phase defense and whether, even if Burton had clearly expressed such a desire, there was credible evidence to support a guilt phase defense. After a hearing, the referee found that Slick had discussed his intended trial strategy with Burton, that Burton did not object to this strategy (and, in particular, did not clearly express a desire to present a defense), and that the defense Burton claims he wanted was not supported by credible evidence.