

# CACJ CALIFORNIA ATTORNEYS FOR CRIMINAL JUSTICE

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*July 10, 2017*

The Honorable Jorge E. Navarrete  
Clerk, California Supreme Court  
Supreme Court of California  
455 Golden Gate Ave., Ground Floor  
San Francisco, CA 94102

Please respond to:  
JOHN T. PHILIPSBORN  
Law Offices of J.T. Philipsborn  
507 Polk Street, #350  
San Francisco, CA 94102

Re: *People v. Ryann Lynn Jones*, S242855  
(Fifth Appellate District, Case No. F068996; Tulare County Superior Court  
No. VCF219203)

**LETTER BRIEF OF CALIFORNIA ATTORNEYS FOR CRIMINAL  
JUSTICE IN SUPPORT OF PETITION FOR REVIEW FILED BY  
RYANN LYNN JONES, PETITIONER (CALIFORNIA RULES OF  
COURT, RULE 8.500(g))**

Dear Mr. Navarrete:

This letter, permitted by the California Rules of Court, Rule 8.500(g), is submitted by California Attorneys for Criminal Justice (hereafter 'CACJ') in support of the Petition for Review filed by Ryann Lynn Jones (hereafter referred to as 'Petitioner').

**Identification of *Amicus Curiae***

CACJ is a non-profit California corporation, and a statewide organization of criminal defense lawyers. CACJ is the California affiliate of the National Association of Criminal Defense Lawyers, the largest organization of criminal defense lawyers in the United States. CACJ is administered by a Board of Directors, and its by-laws state a series of specific purposes including "to defend the rights of persons as guaranteed by the United States Constitution, the

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Constitution of the State of California, and other applicable law,” and the improvement of “the quality of the administration of criminal law.” (Article IV, CACJ By Laws). CACJ’s membership consists of approximately 1700 criminal defense lawyers from around the State of California and elsewhere, as well as members of affiliated professions. For more than 35 years, CACJ has appeared before this Court as an *amicus curiae* on matters of importance to the administration of justice, and to its membership.<sup>1</sup>

## Interest of CACJ in this matter

A significant number of CACJ’s members are regularly involved in the representation of individuals who are pursuing appeals of convictions, sentences, and judgments obtained against them in the many trial courts of the State of California. CACJ has among its past Presidents several of the State of California’s most distinguished, and prolific, criminal case appellate and post-conviction counsel who have practiced in California over the past 35 years or so. Among these past Presidents, as well as among CACJ’s members, there are lawyers who have helped administer some of the largest institutional offices for appellate counsel handling indigent appellate matters in California courts. Also represented in the ranks of CACJ members are a number of experienced litigators who regularly are involved in appellate litigation of criminal matters.

CACJ has also been involved in providing training for lawyers either seeking to enter into the ranks of litigators who regularly appear in appellate courts in California, and offers continuing education for lawyers who litigate capital cases in reviewing courts, as well as non-capital cases that are addressed in the first instance, as a matter of California law, by the several Appellate Districts throughout California.

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<sup>1</sup> The undersigned Co-Chair of the CACJ *Amicus Curiae* Committee certifies by his signature as an officer of this Court that no compensation has been paid by any of the parties to this litigation, or by any interested party, other than by CACJ and/or by the undersigned, for any time spent in the research or production of this brief, or for any costs associated with it.

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CACJ is lodging this letter to support the Petition for Review filed on June 29, 2017, by Petitioner to support Petitioner's quest for the Court to address the need for California's appellate courts to undertake the constitutionally, and otherwise legally, required processes of record and error review, and to rigorously apply the required standards of review, and tests for prejudice. Petitioner seeks to have this Court address these matters in some measure because, as Petitioner notes, they have been brought to the attention of this Court in other litigations (Petition for Review, at page 48). Some of the issues sought to be addressed have been commented upon by Justice Liu in the expression of concern that he sounded in his concurring and dissenting opinion in *People v. Jackson* (2014) 58 Cal.4th 724, 774-808.

## ARGUMENT ON THE MERITS

Petitioner seeks review of four matters in the context of his case. First, he urges this Court to grant review to address what he argues to be the minimum safeguards that support an 'adequate and effective' process on direct appeal. Second, he urges that the Court grant review to determine whether a specified error occurred in his case based on a suggestive identification process that he contends must be reviewed under the appropriate appellate standard. Third, he also contends that review is necessary to properly address errors in addressing alleged misconduct in argument and less than adequate appellate review of the issue below. Finally, he also seeks review of what he contends were cumulative errors.

CACJ is particularly concerned to urge this Court to review Petitioner's case to address the first of the issues that he has framed for review. This particular issue, and argument, is that this Court should grant review to confirm the necessity for California's reviewing courts to rigorously apply doctrines and standards applicable to the appellate review process. Petitioner argues California's appeal process must avoid rulings premised on mischaracterizations of the record. He also seeks the Court's review to prompt a ruling that instructs against misapplication of incorrect standards of review (or application of a legally inappropriate standard of review or standard of prejudice), to the issues presented

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in a given criminal case appeal. CACJ makes reference here to that portion of the Petition at pp.45-52, including the argument by Petitioner that the Court of Appeal below failed to properly define, and apply, the *Chapman v. California, supra*, 386 U.S. 18, 24, standard in this case.

Petitioner offers a highly useful, and comprehensive, discussion of concerns that arise because of the creeping reformulation—by reviewing courts—of standards of review applicable to distinct categories of alleged violations of State and Federal constitutional principles that are applicable to appellate review of a criminal conviction and judgment.

Petitioner notes that he is synthesizing and reiterating complaints that have been sounded over the years and that have been aimed at failures by reviewing courts in California to engage in an appellate review process that is properly linked to the procedures and processes that have been set out in controlling law. His concern is for reviewing courts to correctly state and apply the allocation of burdens to prove error on appeal and for strict adherence to standard of review defined in *Chapman v. California*, 386 U.S. 18, 24 (Petition at pages 51-52).

Petitioner points out that there is a basis for him to be concerned that California's reviewing courts must engage in a defensible process that should be characterized by rigorous application of the rules, and expected analyses, that are consistent with a structured and predictable process of appellate review.

As has been pointed out by Justice Liu in his concurring and dissenting opinion in *People v. Jackson, supra*, 58 Cal.4th, at 775, even members of the United States Supreme Court bench have remarked on the need for California courts to “. . . take care to ensure that their burden allocation conforms to the commands of *Chapman*” when considering application of the harmless error rule in its *Chapman* formulation in California capital cases. See the reference to the ‘four-justice statement’ also referenced as the statement of Sotomayor, J. in *Gamache v. California* (2010) 562 U.S. 1083, 1085, cited by Justice Liu in his concurring and dissenting opinion in *People v. Jackson, supra*, 58 Cal.4th, at 775.

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In his concurring and dissenting opinion *Jackson*, Justice Liu also made reference to a now dated, but useful, study of the review process conducted in 215 capital cases that explains the linkage, at least in capital case litigation, between the finding of errors, and the use of doctrines of harmlessness to either uphold, or reverse, findings of guilt, or death sentences, in those capital cases. *Jackson*, 58 Cal.4th, at 805 (Justice Liu's dissent and concurrence, referencing Kamin, *Harmless Error and the Rights/Remedies Split* (2002) 88 Va. L.Rev. 1).

The concern about the need for an appellate review process that is attentive to a proper review for error together with adherence to the correct standard of review of constitutional errors is, admittedly, not a recently initiated endeavor. See, generally, Green (1999) *The Challenge of Harmless Error*, 59 La. L.Rev. 1101; Landes & Posner (2001) *Harmless Error*, 30 J. Legal Studies 161. The questions at issue have been studied dating back a number of years. Davies (1982) *Affirmed: A Study of Criminal Appeals and Decision-Making Norms in a California Court of Appeal*, Am. B. Found. Res. J. 543. See also, generally, Dressler & Michaels (2012) *Understanding Criminal Procedure, Volume Two, Adjudication*.

Petitioner correctly points out that in raising issues that he contends amount to due process violations, given the current approaches used by California reviewing courts, he risks having his claims considered under 'a more deferential standard of review' than the one required by settled law, or, more problematically, he may see the Court use an idiosyncratic and unsupportable iteration of the *Chapman* harmless error rule. (See Petition at p.10.) As Justice Liu pointed out in his concurring and dissenting opinion in *Jackson*, appellants in criminal cases have reason to fear a California court's willingness to imply 'no reasonable possibility of prejudice' where the record is silent or indeterminate on the issue, or recasting phrasing of the *Chapman* standard.

The United States Supreme Court's discussion in *O'Neal v. McAninch* (1995) 513 U.S. 432, is useful because it specifically discusses consideration of the legal question of harmlessness under the *Chapman* rule. In *O'Neal*, the Court

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underscored that “. . . in cases of grave doubt as to harmlessness, the petitioner must win . . . .” *Id.*, at 437-38. In making the point, the United States Supreme Court explained that support for this view, and application of the *Chapman* standard, was rooted in the common law. The Court also acknowledged the evolution of the standards for appellate consideration of errors that rise above the ‘technical errors,’ the natural effect of which is to prejudice the substantial rights of a litigant. *Id.*, at 439-40. The Court there also explained that “. . . precedent suggests that civil and criminal harmless-error standards do not differ in their treatment of grave doubts as to the harmlessness of errors affecting substantial rights.” *Id.*, at 440-41. In *O’Neal*, the United States Supreme Court emphasized the reasoning for disciplined adherence to a properly construed *Chapman* standard.

CACJ respectfully submits that Petitioner is correct to urge the Court to be attentive to the multiple concerns that have been expressed—including by Justices of this Court—when unwarranted reallocations of burdens, reformulations of rules pertinent to the allocation of burdens, and retooling of requirements for proof of harmlessness are published in the texts of reviewing court rulings in California.

Justice Liu explained both succinctly and correctly that the *Chapman* rule carries “. . . its reasonable doubt standard and its allocation of the burden of persuasion . . . .” *Jackson*, 58 Cal.4th, at 808 (Liu, J. concurring and dissenting). As Petitioner points out, and as is acknowledged both above here and in the aforementioned *Jackson* concurrence and dissent, scholarship and research supports the view that a less than rigorous adherence to the *Chapman* rule has found its way into reviewing court rulings in California.

CACJ respectfully supports Petitioner in his arguments in this respect and urges this Court to grant review to address the issues presented.

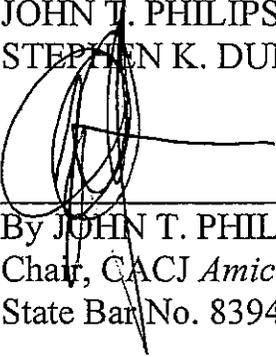
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## CONCLUSION

For the reasons stated here, this Court should grant review.

Respectfully submitted,  
JOHN T. PHILIPSBORN  
STEPHEN K. DUNKLE



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By JOHN T. PHILIPSBORN  
Chair, CACJ *Amicus Curiae* Committee  
State Bar No. 83944

Please respond to:

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507 Polk Street, #350  
San Francisco, CA 94102

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## **PROOF OF SERVICE**

I, Melissa Stern, declare:

That I am over the age of 18, employed in the County of San Francisco, California, and not a party to the within action; my business address is 507 Polk Street, Suite 350, San Francisco, California 94102.

On today's date, I served the within documents entitled:

**LETTER BRIEF OF CALIFORNIA ATTORNEYS FOR  
CRIMINAL JUSTICE IN SUPPORT OF PETITION FOR  
REVIEW FILED BY RYANN LYNN JONES, PETITIONER  
(CALIFORNIA RULES OF COURT, RULE 8.500(g))**

- (X) By placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at San Francisco, CA, addressed as set forth below;
- ( ) By electronically transmitting a true copy thereof;

Stephen Greenberg  
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P.O. Box 754  
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2424 Ventura Street  
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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.

Executed this 10<sup>th</sup> day of July, 2017, at San Francisco, California.

Signed: \_\_\_\_\_

Melissa Stern