

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIAN JOSEPH STOLTIE, <i>Petitioner-Appellee,</i> v. JAMES E. TILTON, Secretary of the Department of Corrections, <i>Respondent-Appellant.</i>

No. 07-56079
D.C. No.
CV-06-00289-DDP
OPINION

Appeal from the United States District Court
for the Central District of California
Dean D. Pregerson, District Judge, Presiding

Argued and Submitted
August 6, 2008—Pasadena, California

Filed August 19, 2008

Before: Stephen Reinhardt, Circuit Judge, Roger J. Miner,*
Senior Circuit Judge and Marsha S. Berzon, Circuit Judge.

Per Curiam Opinion

*The Honorable Roger J. Miner, Senior United States Circuit Judge for the Second Circuit, sitting by designation.

COUNSEL

Jonathan Libby, Deputy Federal Public Defender, Los Angeles, California, for the petitioner-appellee.

Heather F. Crawford, Deputy Attorney General for the State of California, San Diego, California, for the respondent-appellant.

OPINION

PER CURIAM:

We AFFIRM the district court's decision, and adopt its opinion in *Stoltie v. California*, reported at 501 F. Supp.2d 1252 (C.D. Cal. 2007), except for Section III.C., as to which we express no view. As the state acknowledged at oral argument, even the state appellate court misunderstood the confused and confusing explanation of reasonable doubt provided to the jury by the trial judge. This error led it to apply in an unreasonable manner clearly established Supreme Court law regarding reasonable doubt. *Sullivan v. Louisiana*, 508 U.S. 275 (1993); *Cage v. Louisiana*, 498 U.S. 39 (1990), *overruled on other grounds by Estelle v. McGuire*, 502 U.S. 62 (1991); *In re Winship*, 397 U.S. 358 (1970).

AFFIRMED.

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