

**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>
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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

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\*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.

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**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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