

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

JOSEPH ANDREW PEREZ, JR.,

Defendant and Appellant.

CAPITAL CASE

Case No. S104144

Contra Costa County Superior Court Case No. 990453-3
The Honorable Peter L. Spinetta, Judge

RESPONDENT'S SUPPLEMENTAL BRIEF

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INTRODUCTION

The Court has asked for supplemental briefing addressing the effect of recent precedent on the hearsay and confrontation clause issues related to the trial testimony of forensic pathologist Brian Peterson. Dr. Peterson testified in this case about the nature of the injuries that caused the death of the victim, Janet Daher. Peterson did not participate in the autopsy of Janet, but he offered his medical opinions at trial after having reviewed: (1) the autopsy report prepared by examining pathologist, Dr. Susan Hogan; and (2) photographs of Janet's body taken by a criminalist during the autopsy. In brief, Peterson opined that Janet had been killed by a combination of strangulation and stab wounds, and that most (if not all) of the stab wounds had been inflicted upon Janet after she was strangled.

Appellant Joseph Perez did not challenge Peterson's methods or conclusions at trial. Perez has nonetheless argued on appeal that Peterson's opinions were improperly based on testimonial hearsay—Hogan's autopsy report—in violation of *Crawford v. Washington* (2004) 541 U.S. 36. Several recent decisions from various states have presented conflicting opinions about the application of *Crawford* to autopsy reports, and the court has asked the parties to discuss the impact of those decisions on this case.

Peterson's opinions were admissible under all recent precedents of this court. And even if this court were to revise (or even fully reverse) those precedents, any error in the admission of Peterson's testimony would be harmless because there was no material dispute at trial about the nature of Janet's injuries or the cause of her death.

ARGUMENT

PEREZ HAS FAILED TO SHOW THAT HIS CONSTITUTIONAL RIGHT TO CONFRONTATION WAS VIOLATED BY THE ADMISSION OF DR. PETERSON'S EXPERT TESTIMONY REGARDING THE VICTIM'S INJURIES AND CAUSE OF DEATH; IN ANY EVENT, ANY ERROR WAS HARMLESS

A. Factual Background

As shown in our Respondent's Brief (pp. 2-13), Janet Daher was killed in her Lafayette home on the afternoon of March 24, 1998, almost certainly between 2:30 and 4:30 p.m. Perez's former friend, Maury O'Brien, testified at trial that he had entered the Dahers' house with Perez and Lee Snyder around 2:30 p.m. (11RT 2468-2469.) The three men intended to steal money and property so they could buy drugs, and they encountered Janet in the kitchen. (11RT 2454-2459.) The men subdued Janet and searched the house for valuables, and Perez decided to kill Janet so she could not identify them. (11RT 2469-2475.) The men took Janet up to the master bedroom, and Snyder ripped the cord off the bedroom telephone and gave it to Perez. (11RT 2478-2481.) Perez used part of the cord to tie Janet's hands behind her back, and he wrapped the remaining part of the cord around her neck. (11RT 2482-2485.) Over the next few minutes, Perez and Snyder worked together to strangle Janet with the cord. (11RT 2482-2485.) Perez then told O'Brien to get a knife from the kitchen. (11RT 2486.) O'Brien had a folding knife in his pocket, and he gave it to Perez. (11RT 2487-2490.) Perez repeatedly stabbed Janet as she lay face down on the floor, and O'Brien threw a stereo speaker at Janet's head. (11RT 2482-2490.) O'Brien also ripped a videotape out of the bedroom VCR before the three men left the house. (11RT 2490.)

Two sheriff's deputies testified about the condition of Janet's body in the hours shortly after the killing. Sergeant Michael Fisher testified that he

had been dispatched to the Dahers' house at 6:41 p.m., and that he was the first person to discover the body in the master bedroom. (9RT 2185, 2188-2192.) Janet was lying face down in a pool of blood, and she was obviously dead. (9RT 2191-2192, 2196-2197.) She was not breathing and she had no pulse, and her hands and face were discolored. (9RT 2191; see also Exhs. 37, 38 [photos].) Her hands were bound tightly behind her back with a telephone cord, and the cord extended to—and wrapped around—her neck. (9RT 2191-2192; see also Exhs. 37, 38.)

Criminalist Richard Schorr testified that he had arrived at the Dahers' house around 8:30 p.m., and his description of Janet's body was substantially similar to Fisher's. (See 13RT 2875-2877, 2892-2895; see also Exhs. 37, 38.) Schorr also stated that Janet's sweatshirt appeared to be bloodstained and pierced with several "slits" apparently caused by stabbing. (13RT 2894-2895.) Schorr also observed a stereo speaker and VHS videotape lying on the bedroom floor, and blood spatters on the wall near Janet's body. (13RT 2892-2894, 2897, 2900-2903.) A bloodstain on the bedroom comforter showed the outline of a double-edged knife. (13RT 2904.) The outline of the knife suggested the blade was about three and a half inches long and nearly an inch wide. (13RT 2904.)

The autopsy of Janet was performed by Dr. Susan Hogan, an employee of the Forensic Medical Group. (13RT 3004.) Hogan testified at the 2001 trial of Perez's codefendant, Lee Snyder, and the Court of Appeal summarized her testimony at that trial as follows:

Hogan testified that the telephone cord ran around the victim's neck, "embedded" in the soft neck tissue, and then across and over the left shoulder, diagonally across the back from the left shoulder to the right hip, and around the wrists three times. The victim's tongue was protruding from her mouth, giving evidence of ligature strangulation cutting off the air and blood supply to the victim's head. Based on the evidence of hemorrhaging, Hogan opined that "tremendous

force” had been applied to the victim’s neck. This strangulation had been sufficient to be the cause of the victim’s death. In addition, there were multiple cutting and deep stab wounds in the victim’s neck, chest and back, at least four of which would have been fatal by themselves. Hogan testified that the stab wounds had been delivered with great force.

(*People v. Snyder* (2003) 112 Cal.App.4th 1200, 1210.)¹

It appears that Hogan was not living in California at the time of Perez’s trial in 1999. (See 8RT 1968 [defense counsel stating that he understood Hogan was living “across the country”].) In Hogan’s absence, the prosecutor called two other witnesses to testify about the autopsy procedures and results: criminalist Steven Ojena and Hogan’s colleague at the Forensic Medical Group, pathologist Brian Peterson. (8RT 1968; 13RT 3002-3004.)

Ojena testified that he had attended and taken photographs during the autopsy of Janet, and he described his observations for the jurors. (13RT 2920-2930; see also Exhs. 97, 99-105.) Ojena said that when Janet’s body was first brought into the examination room, it was fully clothed and lying face down (as it had been when the body was first discovered in her bedroom). (13RT 2921, 2923, 2952.) Ojena saw a telephone cord tightly binding Janet’s hands behind her back, and the cord continued to her neck and appeared to have been used to strangle her. (13RT 2922-2925; see also Exhs. 97, 99.) Ojena could see “ligature marks” on Janet’s neck, i.e., impressions on the surface of the skin that appeared to have been made by the telephone cord (or something like the cord). (13RT 2924-2925.) Ojena also described for the jury his photographs of several apparent stab wounds on Janet’s back, neck, and arms. (13RT 2922, 2928-2930, 2954-2955;

¹ In our Respondent’s Brief (p. 125, fn. 24) we wrote that Peterson testified at Snyder’s trial, but in fact it was Hogan.

Exhs. 100-105.) The wounds appeared to correspond to “cuts” in Janet’s sweatshirt. (13RT 2928-2930.)

Peterson testified that he had performed thousands of autopsies and testified as an expert witness in hundreds of trials. (13RT 3002-3004.) He had no personal knowledge about this case, so he based his testimony on the autopsy photos, the factual assertions in Hogan’s autopsy report, and his own personal medical knowledge. (13RT 3004-3023.)

Peterson said that Janet’s body was reported to have been brought to the examining room in the condition it was found, i.e., with a telephone cord binding her hands behind her back and wrapping around her neck. (13RT 3007-3008.) It appeared that the telephone cord had been wrapped so tightly around Janet’s neck that it left a brown furrow (or groove) in the skin. (13RT 3007-3009.) Janet’s face was “very dusky,” and there was bleeding in the whites of her eyes and in the muscles of her neck. (13RT 3007-3009, 3015-3016.) Peterson opined that Janet’s neck and facial injuries were consistent with strangulation by an object like the telephone cord. (13RT 3007-3009; Exh. 104.)

Peterson also discussed the photos showing multiple stab and incise wounds in Janet’s back, neck, and arms. (13RT 3009-3020; see also Exhs. 100, 102-105.) Hogan’s autopsy report had described some of those wounds as superficial and others as deep. (13RT 3012-3017.) Based on Hogan’s descriptions of those wounds—relating to length, depth, and location—Peterson opined that some of the wounds could have been fatal and others nonfatal. (13RT 3012-3017.) The wounds that could have been fatal (if not inflicted before Janet was already dead from strangulation) included those that had penetrated Janet’s windpipe, lungs, and major veins and arteries. (13RT 3010-3018, 3020.)

The prosecutor displayed to Peterson prosecution Exhibit 46, the knife that had been recovered by the police with the assistance of Maury O’Brien

on June 5, 1998. (13RT 3020-3021.) Peterson opined that Janet's stab wounds were of such size and shape that they could have been caused by that knife. (13RT 3020-3021.) Peterson also noted that the autopsy photographs of Janet showed bruises around several of the deepest stab wounds. (13RT 3018.) Peterson believed those bruises most likely had been caused by the bolster (handle) of the knife when it was plunged deep into Janet's body. (13RT 3016-3018.)

Peterson also testified that there were abrasions, consistent with rug burns, on the left side of Janet's face. (13RT 3024.) There were no specific head wounds. (13RT 3025.)

Peterson opined that Janet's death had been the result of both strangulation and stabbing. (13RT 3019-3021.) He believed Janet had first been strangled because there was some, but not much, blood in her chest and lungs. (13RT 3020.) The presence of a relatively small amount of blood in those areas indicated that Janet's heart was still beating when the stab wounds were inflicted, but the heartbeat was probably faint. (13RT 3020, 3025.) If the stab wounds had been inflicted before Janet was strangled, there would have been more blood in those areas. (13RT 3020.)

The defense attorney's cross-examination of Peterson was brief, spanning just four pages of trial transcript. (See 13RT 3022-3026.) Toward the conclusion of his cross-examination, the attorney questioned Peterson as follows:

Q . . . [Y]ou rendered an opinion that you believed that [Janet's] heart was still beating when the stab wounds were inflicted?

A Yes.

Q If [Hogan] had said that she—in her opinion, [Janet's] heart may or may not have been been [*sic*] beating when the stab wounds occurred, you would disagree with that?

A. Yes, I would disagree with that.

(13RT 3025.)

Defense counsel did not pursue the matter further.

Neither the prosecutor nor the defense attorney focused their arguments to the jury on Peterson's testimony or the cause of Janet's death. In his opening statements and closing argument, the prosecutor did not even mention Peterson's opinions. At the outset of his opening statement, the defense attorney specifically told the jurors that many of the factual issues in this case were undisputed, including the nature of the injuries suffered by Janet. (9RT 2053.) In his closing argument, the defense attorney said almost nothing about the autopsy report or Peterson's testimony. Instead, the attorney argued that Maury O'Brien and Lee Snyder had killed Janet with the participation of an unknown third person, and that Perez had not been involved in the killing in any way. (See 9RT 2054-2057; 15RT 3617-3619.)²

B. The Confrontation Right, *Crawford*, and Recent Cases

The confrontation clause of the Sixth Amendment provides that “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be

² At one point in his closing argument, the defense attorney noted that O'Brien had testified that Perez and Snyder had tried to break Janet's neck by pushing her head backwards with their hands and feet. (See 15RT 3615-3617.) The defense attorney argued that this portion of O'Brien's testimony was a lie because nothing in the autopsy report or photos showed a broken neck or shoe marks on Janet's face or head. (15RT 3615-3617.) But the defense attorney did not argue that the autopsy report or Peterson's understanding of the report were defective; instead, the attorney argued that O'Brien's apparent lie supported the defense theory that O'Brien was one of Janet's killers. (15RT 3615-3617.) At the same time, the defense attorney acknowledged that the strangulation and stabbing of Janet, as described by O'Brien and corroborated by Peterson, had “happened for sure.” (15RT 3616-3617.)

confronted with the witnesses against him.” (U.S. Const., 6th Amend.) In *Crawford v. Washington*, *supra*, 541 U.S. at pp. 50-56, the United States Supreme Court held that a criminal defendant has the Sixth Amendment right to confront and cross-examine any witness who offers a testimonial out-of-court statement against him. In three cases decided since 2009, the high court has applied *Crawford* to the admission of forensic evidence at trial. In *Melendez-Diaz v. Massachusetts* (2009) 557 U.S. 305, 311, the court held that the defendant’s confrontation rights were violated by the admission of affidavits stating that a substance connected to the defendant was cocaine. In *Bullcoming v. New Mexico* (2011) 564 U.S. 647, 658-663, the court held that testimony of a laboratory analyst “parroting” the results of a blood alcohol test that he did not perform or observe, together with admission of a formalized report, violated the defendant’s confrontation rights. In *Williams v. Illinois* (2012) 567 U.S. 50, 83-86, the court held that testimony by a police biologist regarding a DNA match, which relied in part on a DNA profile generated at another laboratory, did not violate the confrontation clause.

The U.S. Supreme Court’s decisions interpreting *Crawford*, and particularly the fractured 4-1-4 opinion in *Williams*, have produced conflicting opinions in the lower federal and state courts. Nearly five years ago, this court decided three cases addressing *Crawford*’s application to various items of evidence. (See *People v. Lopez* (2012) 55 Cal.4th 569 [blood alcohol tests]; *People v. Dungo* (2012) 55 Cal.4th 608 [autopsy reports]; *People v. Rutterschmidt* (2012) 55 Cal.4th 650 [toxicology analysis of the victim’s blood].) In his dissenting opinion in *Lopez*, Justice Liu stated as follows:

The nine separate opinions offered by this court in the three confrontation clause cases decided today reflect the muddled state of current doctrine concerning the Sixth Amendment right of criminal defendants to confront the state’s witnesses against

them. The United States Supreme Court's most recent decision in this area produced no authoritative guidance beyond the result reached on the particular facts of that case. (See *Williams v. Illinois* (2012) 567 U.S. ___, 132 S.Ct. 2221, 183 L.Ed.2d 89 (*Williams*)). Given the array of possible doctrinal approaches left open by *Williams*, one can only surmise that the high court will soon weigh in again.

(*People v. Lopez, supra*, 55 Cal.4th at pp. 575-576 (dis. opn. of Liu, J.).)

The proper application of *Crawford* and its progeny remains unclear today, particularly with respect to autopsy reports. When this court requested supplemental briefing from the parties on August 16, 2017, the court cited decisions from eight sister states reaching differing conclusions about the proper treatment of autopsy reports under *Crawford*. It also appears that the uncertainty exists in additional state and federal decisions. (See Amato, *What Happens if Autopsy Reports are Found Testimonial?*, 107 J. Crim. L. & Criminology 293, 306-309 (Spring 2017) [noting that at least eight state supreme courts and two federal circuit courts have found that autopsy reports (or aspects of such reports) are testimonial, while at least seven state supreme courts (including this court) and four federal circuit courts have found that autopsy reports (or aspects of them) are not testimonial].) In 2014, the U.S. Supreme Court declined to grant certiorari in a case addressing these issues. (See Amato, *supra*, at p. 310, discussing *State v. Medina* (Ariz. 2013) 306 P.3d 48, 62-64, cert. den. *Medina v. Arizona*, 134 S.Ct. 1309 (2014).) We are not aware of any case pending in the U.S. Supreme Court that will bring clarity to this issue in the 2017-2018 term.

But several of this court's recent decisions show that the trial testimony of Dr. Peterson was entirely or nearly entirely permissible, and that any error in the admission of the testimony was harmless beyond a reasonable doubt. And those conclusions are not diminished by any cases from other state or federal courts.

In *People v. Dungo*, *supra*, 55 Cal.4th at p. 621, this court explained that statements in an autopsy report describing a nontestifying pathologist's observations about the condition of the victim's body were not testimonial because the primary purpose of recording such facts did not relate to a criminal investigation. The court also described such statements, which "merely record[ed] objective facts," as being "less formal than statements setting forth a pathologist's expert conclusions" about the victim's cause of death. (*Id.* at p. 619.) In *Dungo*, it was unclear whether the pathologist's description of the victim's body was based solely on the autopsy photographs, solely on the nontestifying pathologist's autopsy report, or on a combination of both. (*Id.* at pp. 615.) Nonetheless, because the pathologist did not describe the conclusions of the nontestifying pathologist, this court had no occasion to decide "whether such testimony, if it had been given, would have violated the defendant's right to confront" the nontestifying pathologist. (*Id.* at p. 619.) Justice Corrigan also noted in dissent that properly authenticated photographs are not hearsay at all, much less testimonial hearsay. (*Id.* at pp. 646-647, dis. opn. of Corrigan, J.)

In the aftermath of *Dungo*, this court has repeatedly held that it was harmless error for a testifying pathologist to reference the conclusions of a nontestifying pathologist when the conclusions of the two pathologists were consistent and the defendant did not dispute the actual cause of death. (See *People v. Edwards* (2013) 57 Cal.4th 658, 707; *People v. Trujeque* (2015) 61 Cal.4th 227, 276-277.) The court also has found that the admission of an autopsy report created by a nontestifying pathologist is harmless error where a testifying pathologist independently reaches the same conclusion and the cause of death is not in dispute. (See *People v. Leon* (2015) 61 Cal.4th 569, 604; *People v. Capistrano* (2014) 59 Cal.4th 830, 874.)

Most recently, in *People v. Sanchez* (2016) 63 Cal. 4th 665, 670, this Court held that "case-specific statements related by a prosecution expert

concerning the defendant's gang membership constituted inadmissible hearsay under California law. The statements had been recited by the expert, who presented them as true statements of fact, without the requisite independent proof. The court concluded that some of the hearsay statements at issue, namely those contained in police reports and a STEP notice, were "testimonial" and thus should have been excluded under *Crawford*. The court found that the erroneous admission of that testimonial hearsay was not harmless beyond a reasonable doubt, and thus reversed the jury's true findings on the street gang enhancements. (*Id.* at p. 671.)

Sanchez also clarified what an expert can and cannot do when relying on hearsay or when relating hearsay to a jury. The court explained: "Any expert may still *rely* on hearsay in forming an opinion, and may tell the jury *in general terms* that he did so. Because the jury must independently evaluate the probative value of an expert's testimony, Evidence Code section 802 properly allows an expert to relate generally the kind and source of the 'matter' upon which his opinion rests." (*People v. Sanchez, supra*, 63 Cal.4th at pp. 685-686, italics in original.) But, the court cautioned, "What an expert *cannot* do is relate as true case-specific facts asserted in hearsay statements, unless they are independently proven by competent evidence or are covered by a hearsay exception." (*Id.* at p. 686, italics in original.) "In sum," the court explained, "we adopt the following rule":

When any expert relates to the jury case-specific out-of-court statements, and treats the content of those statements as true and accurate to support the expert's opinion, the statements are hearsay. It cannot logically be maintained that the statements are not being admitted for their truth. If the case is one in which a prosecution expert seeks to relate *testimonial* hearsay, there is a confrontation clause violation unless (1) there is a showing of unavailability and (2) the defendant had a prior opportunity for cross-examination, or forfeited that right by wrongdoing.

(People v. Sanchez, supra, 63 Cal.4th at p. 686, italics in original and footnote omitted.)

C. Dr. Peterson's Testimony Was Permissible, Unchallenged, and Unremarkable

In this case, Dr. Peterson's testimony about the autopsy of Janet did not violate appellant's confrontation rights. In brief, Peterson's testimony was not merely admissible under all of this court's recent precedents, but the testimony was unrefuted and unremarkable to the point of being virtually unnecessary. Thus, there was neither error nor any possibility of prejudice.

As shown above and in our Respondent's Brief (pp. 7-13), Perez's former friend Maury O'Brien described the Dahers' house and the killing of Janet in great detail. Although the killing had obviously received widespread press coverage, there is no evidence (and no reasonable possibility) that all details of the burglary and killing had been disclosed to the public before O'Brien described the crimes to the police in early June 1998. Thus, there was no doubt that O'Brien had been present at the time of the crimes.

There is also no doubt that O'Brien had accurately described, both in his statement to the police and in his trial testimony, the manner in which Janet had been killed. O'Brien knew that Janet had been bound and strangled with a telephone cord in the master bedroom, and that she had been stabbed many times in the back, neck, and arms. The sheriff's deputies who observed Janet's body in her home and at the autopsy confirmed all critical details of O'Brien's description of the killing. Those deputies observed: (1) Janet's dead body on the master bedroom floor; (2) the bedroom telephone cord wrapped around Janet's neck; (3) a furrow (or groove) in Janet's neck where the cord had been wrapped; (4) multiple stab and incision wounds to Janet's neck and back; (5) a pool of blood beneath

Janet's body; (6) bloodstains on the back of Janet's sweatshirt; and (7) blood spatters on the wall beside Janet's body. Given the eyewitness testimony of those deputies, coupled with the crime scene and autopsy photos, the testimony from Peterson did little more than confirm the obvious—that Janet had died after being strangled and repeatedly stabbed in the neck and upper back. It was undoubtedly for this reason that Perez's trial attorney expressly told the jurors in his opening statement that there was "no question" about the nature of Janet's wounds. (9RT 2053.)

The prosecutor nonetheless decided to confirm the cause of Janet's death through expert testimony. Because pathologist Hogan was living across the country at the time of appellant's trial, the prosecutor called Peterson to: (1) summarize the factual assertions of the autopsy report; (2) discuss Janet's wounds as displayed in the authenticated autopsy photos; and (3) offer his own medical opinion about the nature of Janet's wounds and the cause of her death. Significantly, Hogan's autopsy report was not admitted into evidence, and Peterson did not refer on direct examination to any of Hogan's opinions. Indeed, the only reference to Hogan's medical opinion was made by Perez's trial attorney on cross-examination. There, the attorney obliquely suggested that Hogan's report stated that Janet's heart "may or may not have" been beating when she was stabbed. (13RT 3025.) Peterson said he would disagree with such a conclusion, apparently because he had earlier testified that Janet's heart had been beating, albeit faintly, when one of the stab wounds punctured her lung. Perez cannot now complain about Peterson's response to the defense attorney's hypothetical question, and Peterson's response was, in any event, not materially different from Hogan's alleged opinion. More important, the exact timing of Janet's death was not a disputed issue at trial, and both Hogan and Peterson believed that the strangulation and stab wounds were independently lethal.

Of course, Hogan’s autopsy report provided factual details about Janet’s injuries that were consistent with the autopsy photos, and which further supported Peterson’s opinion that Janet had been killed by strangulation and stabbing. Those details included: (1) the bleeding in Janet’s eyes and the furrow in her neck that were consistent with strangulation; (2) the stab wounds to Janet’s neck that cut her major veins and arteries; and (3) the numerous stab wounds that penetrated deeply into Janet’s upper chest, including into her lungs. But those details were also supported by the autopsy photos, which were not hearsay under any authority. (See Evid. Code, § 1200, subd. (a) [hearsay is an out-of-court statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated]; Evid. Code, § 225 [a “statement” is (a) “oral or written verbal expression,” or (b) nonverbal conduct of a person” intended to be a substitute for oral or written verbal expression].) Finally, even if the autopsy photos did not facially reveal the exact depth of all of the stab wounds, the photos showed bruises on the skin surrounding some of the wounds that likely had been caused by the bolster of the knife. In short, the only factual information in Hogan’s autopsy report that was not independently shown by the autopsy photos was the *exact* depth of some of the stab wounds. But that information was not essential to Peterson’s overall testimony, and the information was, in any event, admissible under *Dungo* and other recent decisions of this court. Thus, there was neither error nor any possibility of prejudice in the admission of Peterson’s testimony.³

³ We have also explained in our Respondent’s Brief that the overall evidence against Perez rendered any trial error harmless. (See RB at pp. 117-122.)

CONCLUSION

Accordingly, respondent respectfully requests that the judgment be affirmed.

Dated: September 11, 2017 Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached **Respondent's Supplemental Brief** uses a 13 point Times New Roman font and contains 4,385 words.

Dated: September 11, 2017 XAVIER BECERRA
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/s/ JOHN H. DEIST

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DECLARATION OF SERVICE

Case Name: *People v. Joseph Perez*

No.: **S104144**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On September 11, 2017, I electronically served the attached **RESPONDENT'S SUPPLEMENTAL BRIEF** by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on September 11, 2017, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on September 11, 2017, at San Francisco, California.

S. Chiang

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STATE OF CALIFORNIA
 Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
 Supreme Court of California

Case Name: **PEOPLE v. PEREZ (JOSEPH ANDREW)**

Case Number: **S104144**

Lower Court Case Number:

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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.

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Date

/s/John Deist

Signature

Deist, John (136469)

Last Name, First Name (PNum)

California Dept of Justice, Office of the Attorney General

Law Firm