

# SUPREME COURT COPY

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COPY

March 1, 2015

Regine Ho, Deputy Clerk  
California Supreme Court  
350 McAllister Street  
San Francisco, CA 94102

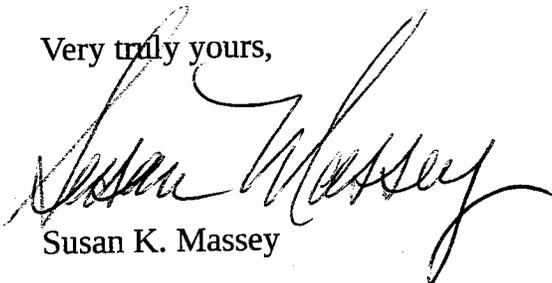
S120583 People v. Dage (Micky Ray)

Dear Ms. Ho,

Per our recent communications, I am enclosing the missing pages (numbers 147 and 148) of the Appellant's Opening Brief in *People v. Micky Cage*, S120583. It appears that these pages were omitted from the AOB when the document was sent for printing. The error went undetected for years, and I had not noticed the absence of these pages until you contacted me. It took me some time to recover the pages as the computer I used to write the AOB had since crashed and the back up, a removable drive, was stored away and had to be located. In any event, the missing pages are now restored and the Court and all parties will have a complete version of the AOB. With respect to the enclosed pages, the page numbering and formatting differs slightly from that in the final version of the brief due to subsequent editing of other section of the document. However, the enclosed pages contain the exact text of those which were inadvertently left out of the AOB.

Please contact me if you need anything else.

Very truly yours,

  
Susan K. Massey

SUPREME COURT  
FILED

MAR 25 2015

Frank A. McGuire Clerk

Deputy

DEATH PENALTY

**Susan K. Massey**  
9462 Winston Drive  
Brentwood, TN 37027  
(615)661-0661

March 15, 2015

Regine Ho, Deputy Clerk  
California Supreme Court  
350 McAllister Street  
San Francisco, CA 94102

Dear Ms. Ho,

Enclosed herewith are the missing pages (numbers 147 and 148) of the Appellant's Opening Brief in *People v. Micky Cage*, S120583. The revisions you requested have been made and all parties have been served.

Please contact me if you need anything else.

Very truly yours,

A handwritten signature in black ink, appearing to read "Susan Massey", written in a cursive style.

Susan K. Massey

in the course of their careers.<sup>44</sup> For all of the reasons discussed below, the nine photographs should not have been admitted. The trial court's decision to allow this evidence was an abuse of its discretion. In the emotionally charged climate of this case, the additional prejudice created by these horrifying images deprived appellant of any chance for a fair trial.

### **B. The Proceedings Below.**

The parties addressed the crime scene and autopsy photographs on the morning of the first day of trial, July 31, 2003. (See 2 RT 302; 2 CT 550-554.) The proposed exhibits at issue were twenty-one photographs from the crime scene and the victims autopsies. The photos may be grouped as follows: five showed the victims as they were found at the scene (People's Exh. Nos. 33, 34, 39, 40, and 41); nine photos were taken during Bruni's autopsy (People's Exh. Nos. 69 through 77); seven photos were from David's autopsy (People's Exh. Nos. 81 through 87).<sup>45</sup> Of these twenty-one proffered exhibits, defense counsel was particularly concerned about "approximately 15 gory pictures." (2 RT 304.) Before hearing any argument on the subject, the trial judge directed the

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See, e.g., 8 RT 1094 [testimony of Jess Gutierrez]; 11 RT 1523, 1530-1532 [testimony of Michelle Amicone].

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Several other exhibits are interspersed with the objectionable photographs. People's Exhibit No. 35 is noted for "I.D." and is described as a photo of slug #15. People's Exhibit No. 38 is described as a casing, while the description of People's Exhibit No. 78 states only "photo." (See 13 CT 3612-3614.)

lawyers to negotiate off the record to reach some agreements. The court expressed the hope that counsel would compromise to the greatest extent possible, leaving fewer disputed items to litigate. (2 RT 302-305.)<sup>46</sup>

When the court reconvened, counsel reported that they had narrowed down the set of disputed items "a little bit." (2 RT 315.) Defense counsel made a number of concessions, ultimately maintaining objections to only nine of the proffered photos. From the original set of seven pictures from David Burgos's autopsy, the defense maintained objections to only two photos.<sup>47</sup> One was a view of the chest with a probe showing the entry and exit path of the wound. (2 RT 317-318; People's Exh. No. 83.) The other was a photo showing both wounds from the chest and the elbow and large

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<sup>46</sup> It is not entirely clear which photographs were considered at this juncture. The prosecutor indicated that the discussion encompassed approximately 40 items of evidence, although not all of these were photographs. (2 RT 303.) The clerk had already marked for identification People's Exhibits Nos. 1 through 91. (2 CT 550-554.)

<sup>47</sup> The prosecutor agreed not to offer the two duplicative photos, and the trial court admitted the remaining five photos over defense objections. (2 RT 321.)

**DECLARATION OF SERVICE BY MAIL**

Case Name: People v. Micky Ray Cage  
Case Number: Crim. SO120583  
Riverside County Superior Court No. RIF-083394

I, the undersigned, declare as follows:

I am a citizen of the United States, over the age of 18 years and not a party to the within action; my place of employment and business address is 9462 Winston Drive, Brentwood, Tennessee 37027.

On March 17, 2015, I served the attached

**COVER LETTER AND PAGES OMITTED FROM APPELLANT'S OPENING BRIEF**

by placing a true copy thereof in an envelope addressed to each of the persons named below at the addresses shown, and by sealing and depositing said envelope(s) in a United States Postal Service mailbox at Brentwood, Tennessee, with postage thereon fully prepaid.

California Appellate Project  
101 Second St., 6<sup>th</sup> floor  
San Francisco, CA 94105

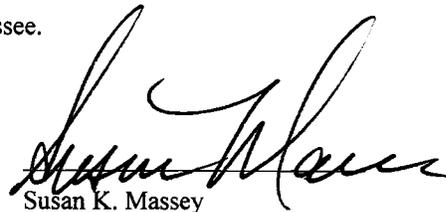
Hon. Dennis McConaghy  
c/o Office of the Clerk  
Riverside County Superior Court  
4100 Main Street  
Riverside, CA 92501

Micky Ray Cage  
San Quentin State Prison  
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San Quentin, CA 92501

Theodore Cropley  
Deputy Attorney General  
California Attorney General's Office  
PO Box 85266  
San Diego, CA 92186-5266

I declare under penalty of perjury, according to the laws of the State of California, that the foregoing is true and correct.

Executed on March 17, 2015, at Brentwood, Tennessee.

  
Susan K. Massey