

**COPY SUPREME COURT COPY**

**In the Supreme Court of the State of California**

**THE PEOPLE OF THE STATE OF  
CALIFORNIA,**

**Plaintiff and Respondent,**

**v.**

**DANIEL SANCHEZ COVARRUBIAS,**

**Defendant and Appellant.**

**CAPITAL CASE**

Case No. S075136

**SUPREME COURT  
FILED**

JUN 17 2013

Monterey County Superior Court Case No. SC942212C  
The Honorable Robert F. Moody, Judge

Frank A. McGuire Clerk

Deputy

**SUPPLEMENTAL RESPONDENT'S BRIEF**

KAMALA D. HARRIS  
Attorney General of California  
DANE R. GILLETTE  
Chief Assistant Attorney General  
GERALD A. ENGLER  
Senior Assistant Attorney General  
GLENN R. PRUDEN  
Supervising Deputy Attorney General  
BRIDGET BILLETER  
Deputy Attorney General  
State Bar No. 183758  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004  
Telephone: (415) 703-1340  
Fax: (415) 703-1234  
Email: Bridget.Billeter@doj.ca.gov  
*Attorneys for Respondent*

**DEATH PENALTY**

## TABLE OF CONTENTS

	Page
Argument .....	1
I.    The court properly instructed the jury regarding appellant's recorded statement .....	1
Conclusion .....	4

**TABLE OF AUTHORITIES**

**Page**

**CASES**

*Boyde v. California*  
(1990) 494 U.S. 370.....1

*Estelle v. McGuire*  
(1991) 502 U.S. 62.....1

*People v. Arancibia*  
(2013) 213 Cal.App.4th 1465 .....3, 4

*People v. Clair*  
(1992) 2 Cal.4th 629 .....4

*People v. Gamache*  
(2010) 48 Cal.4th 347 .....4

## ARGUMENT

### I. THE COURT PROPERLY INSTRUCTED THE JURY REGARDING APPELLANT'S RECORDED STATEMENT

As discussed in Respondent's Brief (see RB 20-21), the prosecution presented a videotaped statement by appellant describing portions of the crime. The statement was in Spanish; the prosecutor provided a certified translation for the jury. (4 Supp. CT 1036-1038; People's Exh. 85A; 50 RT 9829-9830 [stipulation that videotape was translated into a written document by a certified interpreter].)

Prior to the playing of the videotape, the court instructed the jury:

All right. We're going to play a videotape. And you have in your hands a translation of that tape. Some of you—again, some of you may have some proficiency in Spanish. Others of you may have no proficiency in Spanish. You should rely on the transcription, and you should not—none of you, if you happen to have some proficiency in Spanish, should anoint yourselves as any kind of expert so as to provide aid independently of the evidence to other jurors as to what is or is not being said on the tape. That comports with the general rule that the jury is to rely upon the evidence that is presented in court and not upon evidence from outside sources. So please keep that in mind if there are some of you who do have some proficiency in Spanish.

(50 RT 9827.)

According to appellant, the court erred because “although the judge's instruction admonished Spanish speaking not to talk ‘**to other jurors**’ about their own translation of the recording, the admonition did not preclude Spanish speakers from **themselves** considering their own translations of the Spanish recording.” (Supp. AOB 2.)

Appellant's claim fails because he has not demonstrated a reasonable likelihood that the jury misinterpreted the law in a way potentially unfavorable to the defense. (*Estelle v. McGuire* (1991) 502 U.S. 62, 72; *Boyde v. California* (1990) 494 U.S. 370, 380.) Although the court told the

jury not to provide their own translations to other jurors, it also referred the jury to the general rule that the jury is only to rely upon the evidence presented in court, and not upon any evidence from outside sources. At the conclusion of the trial, the court reminded the jury that “you must decide all questions of fact from the evidence received in this trial and not from any other source.” (53 RT 10421.) It also advised the jury that “[w]hen a witness has testified through a certified court interpreter, you must accept the English interpretation of that testimony even if you would have translated the foreign language differently.” (53 RT 10421.) Although appellant was not technically a “witness,” and his videotaped statement was not technically “testimony,” the jury was informed that it must rely on the transcription and that the translation was provided by a certified court interpreter, and accurate to “the best of her ability.” (See 50 RT 9827, 9829-9830.) There is no reasonable likelihood that a lay jury would have parsed the technical differences between in-court testimony and appellant’s out-of-court admissions, and believed that it was permitted to provide its own translation for one, but not the other. Nor is it reasonably likely that the jury, being told not to translate appellant’s statements for other jurors and not to rely on evidence outside the record, would have believed it was permitted to ignore the certified translation for “themselves.” (Supp. AOB 2.)

Moreover, appellant has not demonstrated any possible prejudice from the court’s failure to specifically instruct the jury not to translate appellant’s statement for “themselves.” Appellant does not suggest that the certified translation was incorrect, or point to any words which may have had multiple meanings. Thus, even had the jurors translated appellant’s admissions for “themselves,” there is nothing in the record suggesting there would have been any effect on the verdict.

Appellant, relying on *People v. Arancibia* (2013) 213 Cal.App.4th 1465, claims that the error was reversible without a showing of prejudice. (Supp. AOB 4.) However, *Arancibia* is inapposite. In *Arancibia*, the prosecution presented an audio recording of the defendant's interrogation in Spanish, along with a "written side-by-side, Spanish-to-English translation of the recording by a state-certified interpreter." (213 Cal.App.4th at p. 1469.) However, when the recording was played for the jury, the court instructed the jury: "The evidence in this case is the CD [(i.e., the audio recording)]. The transcript is offered to you as an aid to help you understand what's on the CD. However, I can't vouch for whoever transcribed that particular CD, and so it's not the actual evidence. The actual evidence is the tape itself." (*Ibid.*)

The court of appeal found that the court erred because its instruction "invited the Spanish-speaking jurors to translate the recording for themselves and the non-Spanish-speaking jurors." (*Id.* at p. 1470.) The court explained:

A recording in English normally constitutes the evidence of what was said, and a transcript of the recording is used only as an aid in following and understanding the recording. If the recording and the transcript conflict, the recording controls. [Citation.] However, when the recording is in a foreign language, the English translation controls and is the evidence of what was said. [Citation.] Any other rule would be "nonsensical" and have "the potential for harm where the jury includes bilingual jurors." [Citations.]

(*Id.* at p. 1471.)

The court found the error reversible without a showing of prejudice because "the error undermines one of the fundamental tenets of our justice system—that a defendant's conviction may be based only on the evidence presented at trial." (*Ibid.*)

Here, however, the court did not tell the jury that the Spanish language videotape was the evidence, or that it could not vouch for the English translation. The court specifically instructed the jury that the English translation was the evidence, and the parties stipulated that the translation was done by a court-certified interpreter. The court also specifically told the jury that it must “rely on the transcription” and it was to rely only “upon the evidence presented in court and not upon evidence from outside sources.” Appellant’s reliance on *Arancibia* is misplaced, and his claim should be denied.<sup>1</sup>

### CONCLUSION

Accordingly, respondent respectfully requests that this Court reverse the burglary special circumstance and otherwise affirm the judgment.

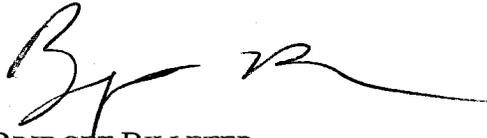
---

<sup>1</sup> In addition, to the extent *Arancibia* holds that the mere possibility that a jury considered extrinsic evidence is reversible per se, it conflicts with this Court’s holdings that a jury’s receipt of extrinsic evidence is subject to harmless error analysis. (*People v. Gamache* (2010) 48 Cal.4th 347, 396-398 [jury inadvertently had access to never-admitted evidence]; *People v. Clair* (1992) 2 Cal.4th 629, 665 [court clerk inadvertently supplied jurors with unredacted statements defendant made to the police which had been excluded by the court as irrelevant and unduly prejudicial].)

Dated: June 17, 2013

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
DANE R. GILLETTE  
Chief Assistant Attorney General  
GERALD A. ENGLER  
Senior Assistant Attorney General  
GLENN R. PRUDEN  
Supervising Deputy Attorney General

A handwritten signature in black ink, appearing to read "Bridget Billeter", with a long horizontal flourish extending to the right.

BRIDGET BILLETER  
Deputy Attorney General  
*Attorneys for Respondent*

SF1998XS0003  
20702443.doc

**CERTIFICATE OF COMPLIANCE**

I certify that the attached SUPPLEMENTAL RESPONDENT'S BRIEF uses a 13 point Times New Roman font and contains 1,126 words.

Dated: June 17, 2013

KAMALA D. HARRIS  
Attorney General of California

A handwritten signature in black ink, appearing to read "Bj B", with a long horizontal line extending to the right.

BRIDGET BILLETER  
Deputy Attorney General  
Attorneys for Respondent

**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: *People v. Daniel Sanchez Covarrubias*  
No.: **S075136**

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 collection and processing of correspondence for mailing with the United States Postal Service. 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.

On June 17, 2013, I served the attached **SUPPLEMENTAL RESPONDENT'S BRIEF** by placing 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:

Thomas Lundy  
Attorney at Law  
2777 Yulupa Avenue, PMB 179  
Santa Rosa, CA 95405  
(2 copies)

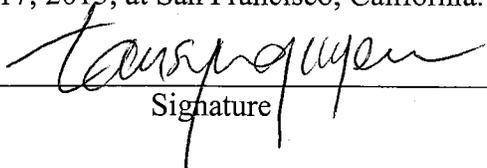
County of Monterey  
Salinas Division  
Superior Court of California  
240 Church Street, Suite 318  
Salinas, CA 93901

The Honorable Dean D. Flippo  
District Attorney  
Monterey County District Attorney's Office  
P O. Box 1131  
Salinas, CA 93902

California Appellate Project SF  
California Appellate Project (SF)  
101 Second Street, Suite 600  
San Francisco, CA 94105-3672

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 June 17, 2013, at San Francisco, California.

Tan Nguyen  
\_\_\_\_\_  
Declarant

  
\_\_\_\_\_  
Signature

