

SUPREME COURT COPY

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No. S119296

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

)
 PEOPLE OF THE STATE OF CALIFORNIA,)
)
 Plaintiff and Respondent,)
)
 v.)
)
 THOMAS LEE BATTLE,)
)
 Defendant and Appellant.)
)

(San Bernardino County
 Superior Court
 No. FVI012605)

**SUPREME COURT
 FILED**

DEC 18 2013

Frank A. McGuire Clerk
 Deputy

APPELLANT'S OPENING BRIEF

Appeal from the Judgment of the Superior Court
 of the State of California for the County of San Bernardino

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DEATH PENALTY

TABLE OF CONTENTS

	Page
STATEMENT OF APPEALABILITY	1
STATEMENT OF THE CASE	1
STATEMENT OF FACTS	6
I. GUILT PHASE	6
A. The Prosecution's Case	6
1. Andrew and Shirley Demko Disappear	6
2. The Demkos' Bodies Are Found in the San Bernardino Desert	7
3. The Causes of the Demkos' Deaths	9
4. The Physical Evidence at the Demkos' House	10
5. Appellant's Possession of the Demkos' Car Leads to His Arrest	11
6. Other Property from the Demkos' Home Is Tied to Appellant and the Christian Living Home on Rancherias Road in Which He Lived	13
7. Appellant's Custodial Statements	15
a. Appellant admits possessing property linked to the Demkos, but denies involvement in the murders	16
b. After the unrecorded portion of the November 26 interview, appellant admits going into the Demkos' house with four other people to take their property, but says he left the group while the victims, bound in the car trunk, were still alive	18

TABLE OF CONTENTS

	Page
c. In the first interview on November 27, appellant provides further information about the participants in the crimes	20
d. In the second interview on November 27, appellant admits that he knew there was a plan to kill the people and that he was in the desert, first says Steve killed both the man and the woman, but later says he stabbed both victims while Steve held a gun on him	20
e. In the final interview on November 27, appellant first admits the burglary but denies involvement in the murders, saying Perry alone killed the couple, but then admits he stabbed the man and the woman while Perry held a gun on him	23
8. Appellant's Admissions to Matthew Hunter and Jenica McCune	26
9. Some of the People Appellant Implicated Deny Their Involvement in the Crimes	27
10. William Kryger Sees Appellant at Night Dressed in Black with Duct Tape and Zip Ties and Later During the Day Sees Him Bring Property into the Rancherias House	28
11. Evidence That Perry Washington Was Working on the Morning of November 13	29
B. The Defense Case	30
1. Perry Washington's Motive to Kill	30

TABLE OF CONTENTS

	Page
2. Appellant's Interactions with Perry Washington Around the Time of the Crimes	31
3. Perry Washington Is Overheard Admitting That Appellant Was Taking the Blame for Murders Washington Committed	33
4. Perry Washington's Use of the Property Stolen from the Demkos	34
5. Law Enforcement's Limited Investigation of Perry Washington	35
C. The Prosecution's Rebuttal Case	35
II. PENALTY PHASE	36
A. Prosecution's Case In Aggravation	36
1. The Prison Riot	36
2. The Assault on Matthew Hunter	37
3. Victim Impact Evidence	38
B. The Defense Case in Mitigation	40
1. Appellant's Early Childhood with His Birth Family	40
2. Appellant's Later Childhood and Adolescence with His Adoptive Parents	43
3. Expert Evidence Regarding the Impact of Appellant's Background on His Personality and Behavior	45

TABLE OF CONTENTS

	Page
4. Prison Security for Inmates Serving Life-Without-Parole Sentences	48
5. Pleas of Appellant’s Family to Spare His Life	49
ARGUMENT	50
I. THE TRIAL COURT ERRED IN FINDING NO PRIMA FACIE CASE OF RACIAL DISCRIMINATION WHERE THE PROSECUTOR PEREMPTORILY STRUCK AFRICAN-AMERICAN PROSPECTIVE JUROR J.B. AND SIX OF THE SEVEN AFRICAN-AMERICANS CALLED TO THE JURY BOX WERE EXCUSED	50
A. The Proceedings Below	51
B. Applicable Legal Standards	59
C. This Court Should Order A Remand On Appellant’s <i>Wheeler/Batson</i> Claim Because The Trial Court Applied The Wrong Standard And, Although Recognizing Appellant’s Showing Was “Close,” Found No Prima Facie Case Of Racial Discrimination	61
1. The Trial Court Applied the Wrong Standard	63
2. Because the Trial Court Found a Close Case Despite Applying an Incorrect and Too Onerous Standard and Ignoring Relevant Evidence, Remand Is the Only Appropriate Remedy	68
a. The standard of review of step-one claims ..	68
b. Remand, rather than analyzing the cold record de novo, is the appropriate remedy to cure the trial court’s error in a close case where the intensity of the prosecutor’s questioning of a challenged juror is at issue ..	70

TABLE OF CONTENTS

	Page
D. Assuming This Court Refuses To Remand This Case To The Trial Court For Reconsideration Of Its Step-One <i>Batson/Wheeler</i> Ruling, And Instead Conducts De Novo Review, Appellant Established An Inference Of Racial Discrimination By The Prosecution In Its Peremptory Challenge Of J.B.	80
1. The Race of the Defendant, the Race of the Victims, the Ultimate Composition of the Jury, and Cross-Racial Credibility Determinations at Issue in this Case All Support Appellant's Prima Facie Case	81
2. The Prosecutor's Use of a Disproportionate Number of Strikes Against African-Americans and Other Minority Jurors Supports Appellant's Prima Facie Case	83
3. The Prosecutor's Disparate Questioning of African-American Prospective Jurors Supports Appellant's Prima Facie Case	92
4. The Prosecutor's Apparent Eagerness to Excuse J.K. for Hardship Supports Appellant's Prima Facie Case	98
5. The Prosecutor's High Number of Offers to Stipulate to African-American Jurors Supports Appellant's Prima Facie Case	101
a. J.B.	106
b. M.N.	106
c. A.H.	110
d. B.A.	112

TABLE OF CONTENTS

	Page
6. Remedy	117
E. Conclusion	117
II. APPELLANT'S INVOLUNTARY STATEMENTS TO SAN BERNARDINO COUNTY SHERIFF SPECIAL INVESTIGATOR ROBERT HEARD WERE UNCONSTITUTIONALLY AND PREJUDICIALLY ADMITTED AGAINST HIM AT TRIAL	119
A. The Proceedings Below	120
B. Appellant's Statements During The November 27 Interview That He Knew There Was A Plan To Kill The Demkos And Participated In Their Murders By Stabbing Them Were Coerced By Improper Interrogation Tactics And Therefore Were Unconstitutionally Admitted	123
1. The November 26 interview of appellant by Gilliam and Pacifico laid the groundwork for the coercive polygraph interrogation by Heard on November 27	125
2. In the November 27 pre-test interview, polygraph examiner Heard coerced appellant into admitting he knew there was a plan to kill the Demkos by promising to help appellant and deceiving appellant about his potential criminal liability, and Heard then misleadingly played on appellant's fear for himself and his godson to get appellant to confirm his new admission	126
a. Heard impliedly promised to help appellant if he made further admissions within a limited time	135

TABLE OF CONTENTS

	Page
b. Heard falsely assured appellant that his knowledge of a plan to kill the Demkos was “not important”	138
c. In coercing appellant into admitting he knew there was a plan to kill the Demkos, Heard played on appellant’s fear for his godson’s and his own safety	147
d. The coercion taints all the statements appellant made during the remainder of the November 27 interviews	150
C. The State Cannot Prove That The Admission of Appellant’s Involuntary Statements Was Harmless Beyond A Reasonable Doubt	151
1. Appellant’s Involuntary Statements Were the Cornerstone of the Prosecution’s Case	152
2. The Length of the Jury’s Deliberations and its Mid-Deliberation Inquiries Indicate That Appellant’s Involuntary Statements Likely Had an “Indelible Impact” on the Jury	153
3. The Prosecution’s Other Evidence, Including Appellant’s Admissible Statements, When Considered in Light of the Problems in its Case and Questions Raised by Appellant’s Defense, Does Not Present the Type of Overwhelming Evidence of Guilt That Would Prove the Error in Admitting the Involuntary Statements to Be Harmless Beyond a Reasonable Doubt	156

TABLE OF CONTENTS

	Page
4. Assuming, Arguendo, This Court Were To Find The Admission of Appellant’s Involuntary Statements To Be Harmless Beyond A Reasonable Doubt with Regard to the Convictions, The State Could Not Carry its Harmless-Error Burden with Regard to the Special Circumstances and the Death Penalty	165
III. THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY REFUSING TO REDACT STATEMENTS APPELLANT MADE DURING CUSTODIAL INTERROGATIONS ABOUT PAWNING HIS SWORDS AND PREVIOUSLY COMMITTING BURGLARY	169
A. The Proceedings Below	169
B. The Trial Court Abused Its Discretion In Refusing To Redact Inflammatory Statements Appellant Made During Custodial Interrogations Indicating He Possessed A Sword Collection And Had Previously Committed Burglary Because The Evidence Had Little Or No Relevance And Its Prejudicial Effect Far Outweighed Any Probative Value	171
1. The References to Appellant’s Sword Collection Were Irrelevant Yet Inflammatory	172
2. The References Indicating Appellant Previously Had Committed Burglary Lacked Substantial Probative Value and Were Highly Inflammatory ..	177
a. In the challenged statements, appellant impliedly admitted that he previously had committed burglary	181
b. The prejudicial effect of appellant’s implied admissions far outweighed any probative value	184

TABLE OF CONTENTS

	Page
C. The Erroneous Admission Of The Sword And Prior-Burglary Evidence Resulted In A Miscarriage Of Justice Under State Law And Rendered The Trial Fundamentally Unfair In Violation Of The Due Process Clause Of The Fourteenth Amendment	188
IV. THE TRIAL COURT ERRONEOUSLY AND PREJUDICIALLY DENIED APPELLANT'S REQUEST TO INFORM THE JURY THAT ANY LINGERING OR RESIDUAL DOUBT A JUROR HARBORED ABOUT HIS GUILT WAS A PERMISSIBLE MITIGATING FACTOR	193
A. The Proceedings Below	193
B. The Trial Court's Refusal To Deliver The Requested Instruction On Lingerin g Or Residual Doubt, A Relevant Mitigating Factor In California, Violated Both State Law And The Federal Constitution	196
1. Under State Law, the Trial Court Should Have Provided Defense Counsel's Correct, Properly-Limited Statement of the Law to the Jury	196
2. The Trial Court's Failure to Give Any Instruction on Lingerin g or Residual Doubt Violated the Federal Constitutional Due Process Clause, and the Proscription Against the Imposition of Cruel and Unusual Punishment	203
C. The Violation Of State Law And The Federal Constitution, Which Prejudiced Appellant's Chances For A Life-Without-Parole Verdict, Cannot Be Dismissed As Harmless Error	205
V. THE <i>OCHOA</i> RESTRICTION ON EXECUTION-IMPACT EVIDENCE GIVEN AS PART OF CALJIC NO. 8.85 PREVENTED THE JURY FROM GIVING MEANINGFUL EFFECT TO APPELLANT'S MITIGATING EVIDENCE	212

TABLE OF CONTENTS

	Page
A. The Proceedings Below	212
B. The Penalty Phase Instructions Must Permit Full Consideration Of A Defendant’s Mitigation Evidence ...	217
C. Under The Unusual Circumstances of This Case, There Is A Reasonable Likelihood That The Jury Interpreted The <i>Ochoa</i> Instruction In A Way That Precluded It From Giving Meaningful Consideration To The Testimony Of Appellant’s Family Members	219
D. California’s Restriction On Execution Impact Evidence Violates The Eighth And Fourteenth Amendments	228
E. The Unconstitutional Instruction, Which Prejudiced Appellant’s Chances for A Life-Without-Parole Verdict, Cannot Be Dismissed As Harmless Error	232
VI. CALIFORNIA’S DEATH PENALTY STATUTE, AS INTERPRETED BY THIS COURT AND APPLIED AT APPELLANT’S TRIAL, VIOLATES THE UNITED STATES CONSTITUTION	235
A. Penal Code Section 190.2 Is Impermissibly Broad	235
B. The Broad Application Of Penal Code Section 190.3, Subdivision (a) Violated Appellant’s Constitutional Rights	236
C. The Death Penalty Statute And Accompanying Jury Instructions Fail To Set Forth The Appropriate Burden Of Proof	238
1. Appellant’s Death Sentence Is Unconstitutional Because it Is Not Premised on Findings Made Beyond a Reasonable Doubt	238

TABLE OF CONTENTS

	Page
2. Some Burden of Proof Is Required, or the Jury Should Have Been Instructed That There Was No Burden of Proof	240
3. Appellant's Death Verdict Was Not Premised on Unanimous Jury Findings	241
a. Aggravating factors	241
b. Unadjudicated criminal activity	242
4. The Instructions Caused the Penalty Determination to Turn on an Impermissibly Vague and Ambiguous Standard	244
5. The Instructions Failed to Inform the Jury That the Central Determination Is Whether Death Is the Appropriate Punishment	244
6. The Instructions Failed to Inform the Jurors That If They Determined That Mitigation Outweighed Aggravation, They Were Required to Return a Sentence of Life Without the Possibility of Parole	245
7. The Instructions Violated the Sixth, Eighth and Fourteenth Amendments by Failing to Inform the Jury Regarding the Standard of Proof and Lack of Need for Unanimity as to Mitigating Circumstances	246
8. The Penalty Jury Should Be Instructed on the Presumption of Life	247
D. Failing To Require That The Jury Make Written Findings Violates Appellant's Right to Meaningful Appellate Review	248

TABLE OF CONTENTS

	Page
E. The Instructions To The Jury On Mitigating And Aggravating Factors Violated Appellant's Constitutional Rights	249
1. The Use of Restrictive Adjectives in the List of Potential Mitigating Factors	249
2. The Failure to Delete Inapplicable Sentencing Factors	249
3. The Failure to Instruct That Statutory Mitigating Factors Were Relevant Solely as Potential Mitigators	250
F. The Prohibition Against Intercase Proportionality Review Guarantees Arbitrary And Disproportionate Impositions Of The Death Penalty	251
G. The California Capital Sentencing Scheme Violates The Equal Protection Clause	251
H. California's Use Of The Death Penalty As A Regular Form Of Punishment Falls Short of International Norms	252
VII. THE CUMULATIVE EFFECT OF THE ERRORS AT THE PENALTY PHASE UNDERMINES THE FAIRNESS AND RELIABILITY OF THE DEATH JUDGMENT	253
CONCLUSION	256
CERTIFICATE OF COUNSEL	257

TABLE OF AUTHORITIES

Page(s)

FEDERAL CASES

<i>Abdul-Kabir v. Quarterman</i> (2007) 550 U.S. 233	passim
<i>Abu-Jamal v. Horn</i> (3rd Cir. 2008) 520 F.3d 272	84
<i>Alcala v. Woodford</i> (9th Cir. 2003) 334 F.3d 862	174, 175
<i>Apprendi v. New Jersey</i> (2000) 530 U.S. 466	238, 243
<i>Arizona v. Fulminante</i> (1991) 499 U.S. 279	passim
<i>Ballew v. Georgia</i> (1978) 435 U.S. 223	241
<i>Batson v. Kentucky</i> (1986) 476 U.S. 79	passim
<i>Blakely v. Washington</i> (2004) 542 U.S. 296	238, 239, 243
<i>Blystone v. Pennsylvania</i> (1990) 494 U.S. 299	244
<i>Boyd v. Newland</i> (9th Cir. 2006) 467 F.3d 1139	60
<i>Boyde v. California</i> (1990) 494 U.S. 370	218, 228, 245, 246
<i>Brecht v. Abrahamson</i> (1993) 507 U.S. 619	233

TABLE OF AUTHORITIES

	Page(s)
<i>Brewer v. Quarterman</i> (2007) 550 U.S. 286	246
<i>Calderon v. Coleman</i> (1998) 525 U.S. 141	232
<i>California v. Ramos</i> (1983) 463 U.S. 992	219
<i>Carter v. Kentucky</i> (1981) 450 U.S. 288	239
<i>Chapman v. California</i> (1967) 386 U.S. 18	passim
<i>Collazo v. Estelle</i> (9th Cir. 1991) 940 F.2d 411	146
<i>Colorado v. Connelly</i> (1986) 479 U.S. 157	124
<i>Culombe v. Connecticut</i> (1961) 367 U.S. 582	142
<i>Cunningham v. California</i> (2007) 549 U.S. 270	243
<i>Daniels v. Woodford</i> (9th Cir. 2005) 428 F.3d 1181	253
<i>Darden v. Wainwright</i> (1986) 477 U.S. 168	190
<i>De Medina v. Reinhardt</i> (D.C. Cir. 1982) 686 F.2d 997	71

TABLE OF AUTHORITIES

	Page(s)
<i>Delo v. Lashley</i> (1993) 507 U.S. 272	248
<i>Donnelly v. DeChristoforo</i> (1974) 416 U.S. 637	190, 253
<i>Duncan v. Henry</i> (1995) 513 U.S. 364	191
<i>Eddings v. Oklahoma</i> (1982) 455 U.S. 104	205, 218
<i>Edmonson v. Leesville Concrete Co., Inc.</i> (1991) 500 U.S. 614	72
<i>Edmonson v. Leesville Concrete Co., Inc.</i> (5th Cir. 1991) 943 F.2d 551	72
<i>Estelle v. McGuire</i> (1991) 502 U.S. 62	190
<i>Estelle v. Williams</i> (1976) 425 U.S. 501	247
<i>Fahy v. Connecticut</i> (1963) 375 U.S. 85	158
<i>Fernandez v. Roe</i> (9th Cir. 2002) 286 F.3d 1073	passim
<i>Franklin v. Lynaugh</i> (1988) 487 U.S. 164	200, 201
<i>Frazier v. Cupp</i> (1969) 394 U.S. 731	144, 146

TABLE OF AUTHORITIES

	Page(s)
<i>Furman v. Georgia</i> (1972) 408 U.S. 238	235
<i>Gantt v. Roe</i> (9th Cir. 2004) 389 F.3d 908	154
<i>Grades v. Boles</i> (4th Cir. 1968) 398 F.2d 409	136
<i>Gregg v. Georgia</i> (1976) 428 U.S. 153	248
<i>Griffin v. Carlin</i> (11th Cir. 1985) 755 F.2d 1516	71
<i>Griffith v. Kentucky</i> (1987) 479 U.S. 314	72
<i>Harmelin v. Michigan</i> (1991) 501 U.S. 957	242
<i>Harris v. Forklift Systems, Inc.</i> (1993) 510 U.S. 17	79
<i>Hicks v. Oklahoma</i> (1980) 447 U.S. 343	203, 240, 245
<i>Hitchcock v. Dugger</i> (1987) 481 U.S. 393	232, 255
<i>Holloway v. Horn</i> (3rd Cir. 2004) 355 F.3d 707	82
<i>Jackson v. Denno</i> (1964) 378 U.S. 368	123, 142, 143

TABLE OF AUTHORITIES

	Page(s)
<i>Johnson v. California</i> (2005) 545 U.S. 162	passim
<i>Johnson v. Mississippi</i> (1988) 486 U.S. 578	243
<i>Jones v. United States</i> (1999) 527 U.S. 373	232
<i>Jones v. West</i> (2nd Cir. 2009) 555 F.3d 90	87
<i>Killian v. Poole</i> (9th Cir. 2002) 282 F.3d 1204	253
<i>Lego v. Twomey</i> (1972) 404 U.S. 477	143
<i>Lewis v. Horn</i> (3rd Cir. 2009) 581 F.3d 92	87
<i>Leyra v. Denno</i> (1954) 347 U.S. 556	144, 146, 150
<i>Lockett v. Ohio</i> (1978) 438 U.S. 586	232, 246, 249
<i>Lynumn v. Illinois</i> (1963) 372 U.S. 528	149
<i>Madison v. Commissioner, Ala. Dept. of Corrections</i> (11th Cir. 2012) 677 F.3d 1333	66, 67
<i>Malave v. Potter</i> (2nd Cir. 2003) 320 F.3d 321	71

TABLE OF AUTHORITIES

	Page(s)
<i>Marsh v. County of San Diego</i> (9th Cir. 2012) 680 F.3d 1148	204
<i>Maynard v. Cartwright</i> (1988) 486 U.S. 356	204, 205, 237, 244
<i>McKinney v. Rees</i> (9th Cir. 1993) 993 F.2d 1378	174, 176, 191
<i>McKoy v. North Carolina</i> (1990) 494 U.S. 433	217, 230, 241, 247
<i>Merolillo v. Yates</i> (9th Cir. 2011) 663 F.3d 444	154
<i>Miller-El v. Cockrell</i> (2003) 537 U.S. 322	passim
<i>Miller-El v. Dretke</i> (2004) 545 U.S. 231	passim
<i>Mills v. Maryland</i> (1988) 486 U.S. 367	217, 246, 247, 249
<i>Mincey v. Arizona</i> (1978) 437 U.S. 385	134
<i>Monge v. California</i> (1998) 524 U.S. 721	242
<i>Myers v. Ylst</i> (9th Cir. 1990) 897 F.2d 417	242
<i>Neder v. United States</i> (1999) 527 U.S. 1	232

TABLE OF AUTHORITIES

	Page(s)
<i>Oregon v. Guzek</i> (2006) 546 U.S. 517	201
<i>Overton v. Newton</i> (2nd Cir. 2002) 295 F.3d 270	60, 91
<i>Parker v. Gladden</i> (1966) 385 U.S. 363	154
<i>Payne v. Tennessee</i> (1991) 501 U.S. 808	231
<i>Penry v. Johnson</i> (2001) 532 U.S. 782	218, 224, 228
<i>Penry v. Lynaugh</i> (1989) 492 U.S. 302	222, 229
<i>Powers v. Ohio</i> (1991) 499 U.S. 400	81
<i>Riley v. Taylor</i> (3rd Cir. 2001) 277 F.3d 261	82
<i>Ring v. Arizona</i> (2002) 536 U.S. 584	238, 241, 243
<i>Rogers v. Richmond</i> (1961) 365 U.S. 534	143, 144
<i>Romano v. Oklahoma</i> (1994) 512 U.S. 1	190
<i>Roper v. Simmons</i> (2005) 543 U.S. 551	252

TABLE OF AUTHORITIES

	Page(s)
<i>Sandin v. Conner</i> (1995) 515 U.S. 472	203
<i>Satterwhite v. Texas</i> (1988) 486 U.S. 249	152
<i>Schneckloth v. Bustamonte</i> (1973) 412 U.S. 218	123, 142
<i>Skipper v. South Carolina</i> (1986) 476 U.S. 1	205, 217, 230, 255
<i>Smith v. Cain</i> (5th Cir. 2013) 708 F.3d 628	65, 66
<i>Smith v. Spisak</i> (2010) 558 U.S. 139	219
<i>Snyder v. Louisiana</i> (2008) 552 U.S. 472	99, 117
<i>Spano v. New York</i> (1959) 360 U.S. 315	134, 143
<i>Stankewitz v. Wong</i> (9th Cir. 2012) 698 F.3d 1163	226
<i>Stringer v. Black</i> (1992) 503 U.S. 222	250
<i>Tennard v. Dretke</i> (2004) 542 U.S. 274	230
<i>Thomas v. Chappell</i> (9th Cir. 2012) 678 F.3d 1086	154, 206

TABLE OF AUTHORITIES

	Page(s)
<i>Trop v. Dulles</i> (1958) 356 U.S. 86	252
<i>Tuilaepa v. California</i> (1994) 512 U.S. 967	204, 237
<i>Turner v. Murray</i> (1986) 476 U.S. 28	206
<i>United States v. Allen</i> (4th Cir. 1987) 814 F.2d 977	72
<i>United States v. Alvarado</i> (2nd Cir. 1991) 923 F.2d 253	84, 85
<i>United States v. Anderson</i> (2nd Cir. 1991) 929 F.2d 96	147, 150
<i>United States v. Clemons</i> (3rd Cir. 1988) 843 F.2d 741	60, 88
<i>United States v. David</i> (11th Cir. 1986) 803 F.2d 1567	72
<i>United States v. Farmer</i> (2nd Cir. 2009) 583 F.3d 131	191, 217, 241
<i>United States v. Frederick</i> (9th Cir. 1996) 78 F.3d 1370	253
<i>United States v. Lall</i> (11th Cir. 2010) 607 F.3d 1277	145
<i>United States v. Stephens</i> (7th Cir. 2005) 421 F.3d 503	60, 82, 90, 91

TABLE OF AUTHORITIES

	Page(s)
<i>United States v. Stewart</i> (11th Cir. 1995) 65 F.3d 918	87
<i>United States v. Taylor</i> (2nd Cir. 1996) 92 F.3d 1313	99
<i>United States v. Tingle</i> (9th Cir. 1981) 658 F.2d 1332	149
<i>United States v. Townsley</i> (8th Cir. 1988) 843 F.2d 1070	72
<i>United States v. Velarde-Gomez</i> (9th Cir. 2001) 269 F.3d 1023	154
<i>United States v. Wallace</i> (9th Cir. 1988) 848 F.2d 1464	253
<i>United States v. Waters</i> (9th Cir. 2010) 627 F.3d 345	253
<i>United States v. Wilson</i> (8th Cir. 1987) 816 F.2d 421	72
<i>Vasquez v. Hillery</i> (1986) 474 U.S. 254	235
<i>Wardius v. Oregon</i> (1973) 412 U.S. 470	246
<i>Washington v. Recuenco</i> (2006) 548 U.S. 212	232
<i>Wheeler v. City of Columbus, Miss.</i> (5th Cir. 1982) 686 F.2d 1144	71

TABLE OF AUTHORITIES

	Page(s)
<i>Wiggins v. Smith</i> (2003) 539 U.S. 510	211, 229
<i>Woodson v. North Carolina</i> (1976) 428 U.S. 280	202, 241, 244, 246
<i>Zant v. Stephens</i> (1983) 462 U.S. 862	235, 245

STATE CASES

<i>Carson v. Facilities Development Co.</i> (1984) 36 Cal.3d 830	175
<i>Cobb v. State</i> (Ala. Crim. App. 1995) 678 So.2d 247	73
<i>Commonwealth v. DiGiambattista</i> (Mass. 2004) 813 N.E.2d 516	145
<i>In re Cox</i> (2003) 30 Cal.4th 974	151
<i>In re Lucas</i> (2004) 33 Cal.4th 682	210, 211, 229
<i>In re Martin</i> (1987) 44 Cal.3d 1	154, 206
<i>In re Sakarias</i> (2005) 35 Cal.4th 140	202, 206
<i>Lawrie v. State</i> (Del. 1994) 643 A.2d 1336	231
<i>People v. Albarran</i> (2007) 149 Cal.App.4th 214	191

TABLE OF AUTHORITIES

	Page(s)
<i>People v. Alcala</i> (1984) 36 Cal.3d 604	184
<i>People v. Alexander</i> (2010) 49 Cal.4th 846	175, 185, 221
<i>People v. Allen</i> (1976) 65 Cal.App.3d 426	175
<i>People v. Allen</i> (1979) 23 Cal.3d 286	115
<i>People v. Allen</i> (1986) 42 Cal.3d 1222	210
<i>People v. Alvarez</i> (1996) 14 Cal.4th 155	62, 76, 177, 189
<i>People v. Anderson</i> (2001) 25 Cal.4th 543	238, 239, 243
<i>People v. Aranda</i> (2012) 55 Cal.4th 342	208
<i>People v. Arias</i> (1996) 13 Cal.4th 92	passim
<i>People v. Avila</i> (2006) 38 Cal.4th 491	passim
<i>People v. Azure</i> (1986) 178 Cal.App.3d 591	134
<i>People v. Bacigalupo</i> (1993) 6 Cal.4th 457	245

TABLE OF AUTHORITIES

	Page(s)
<i>People v. Bell</i> (2007) 40 Cal.4th 582	passim
<i>People v. Belmontes</i> (1998) 45 Cal.3d 744	135
<i>People v. Bemore</i> (2000) 22 Cal.4th 809	216, 221
<i>People v. Bennett</i> (2009) 45 Cal.4th 577	221
<i>People v. Benson</i> (1990) 52 Cal.3d 754	123, 124
<i>People v. Blacksher</i> (2011) 52 Cal.4th 769	61, 75
<i>People v. Blair</i> (2005) 36 Cal.4th 686	237, 239
<i>People v. Bonilla</i> (2007) 41 Cal.4th 313	passim
<i>People v. Bowers</i> (2002) 87 Cal.App.4th 722	188
<i>People v. Box</i> (2000) 23 Cal.4th 1153	63
<i>People v. Breaux</i> (1991) 1 Cal.4th 281	244
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TABLE OF AUTHORITIES

	Page(s)
<i>People v. Brown</i> (1988) 46 Cal.3d 432	206, 237
<i>People v. Brown</i> (1993) 17 Cal.App.4th 1389	187
<i>People v. Cahill</i> (1994) 22 Cal.App.4th 296	passim
<i>People v. Cahill</i> (1993) 5 Cal.4th 478	124, 137, 156, 164
<i>People v. Cain</i> (1995) 10 Cal.4th 1	210, 211, 213
<i>People v. Carasi</i> (2008) 44 Cal.4th 1263	passim
<i>People v. Carrington</i> (2009) 47 Cal.4th 145	136, 141
<i>People v. Clark</i> (2011) 52 Cal.4th 856	61, 75
<i>People v. Coddington</i> (2000) 23 Cal.4th 529	177
<i>People v. Cole</i> (2004) 33 Cal.4th 1158	196, 219, 222
<i>People v. Cook</i> (2006) 39 Cal.4th 566	248, 250, 252
<i>People v. Cornwell</i> (2005) 37 Cal.4th 50	62, 63, 76, 81

TABLE OF AUTHORITIES

	Page(s)
<i>People v. Cox</i> (1991) 53 Cal.3d 618	199, 200, 201, 203
<i>People v. Davenport</i> (1985) 41 Cal.3d 247	250
<i>People v. Davenport</i> (1995) 11 Cal.4th 1171	68
<i>People v. Davis</i> (2009) 46 Cal.4th 539	61, 75
<i>People v. DeHoyos</i> (2013) 57 Cal.4th 79	79
<i>People v. Dement</i> (2011) 53 Cal.4th 1	61, 78
<i>People v. Duncan</i> (1991) 53 Cal.3d 955	245
<i>People v. Edelbacher</i> (1989) 47 Cal.3d 983	235
<i>People v. Edwards</i> (2013) 57 Cal.4th 658	61, 197
<i>People v. Elliott</i> (2012) 53 Cal.4th 535	61
<i>People v. Engert</i> (1987) 193 Cal.App.3d 1518	144
<i>People v. Ewoldt</i> (1994) 7 Cal.4th 380	174, 184, 185

TABLE OF AUTHORITIES

	Page(s)
<i>People v. Fairbank</i> (1997) 16 Cal.4th 1223	238
<i>People v. Fauber</i> (1992) 2 Cal.4th 792	194, 195, 248
<i>People v. Fierro</i> (1991) 1 Cal.4th 173	251
<i>People v. Fudge</i> (1994) 7 Cal.4th 1075	209
<i>People v. Fuhrman</i> (1997) 16 Cal.4th 930	64
<i>People v. Fuiava</i> (2012) 53 Cal.4th 622	184
<i>People v. Garcia</i> (2011) 52 Cal.4th 706	61, 75
<i>People v. Gay</i> (2008) 42 Cal.4th 1195	196, 198, 211
<i>People v. Ghent</i> (1987) 43 Cal.3d 739	252
<i>People v. Gonzalez</i> (2006) 38 Cal.4th 932	211
<i>People v. Gray</i> (2005) 37 Cal.4th 168	62, 185
<i>People v. Griffin</i> (2004) 33 Cal.4th 536	239

TABLE OF AUTHORITIES

	Page(s)
<i>People v. Guerra</i> (2006) 37 Cal.4th 1067	75
<i>People v. Gurule</i> (2002) 28 Cal.4th 557	202
<i>People v. Hamilton</i> (1989) 48 Cal.3d 1142	250
<i>People v. Hamilton</i> (2009) 45 Cal.4th 863	62, 78, 85, 200
<i>People v. Harris</i> (2013) 57 Cal.4th 804	passim
<i>People v. Harrison</i> (2005) 35 Cal.4th 208	197
<i>People v. Hartsch</i> (2010) 49 Cal.4th 472	61, 75, 182, 199
<i>People v. Haskett</i> (1990) 52 Cal.3d 210	182
<i>People v. Hawthorne</i> (1992) 4 Cal.4th 43	238
<i>People v. Hawthorne</i> (2009) 46 Cal.4th 67	passim
<i>People v. Hill</i> (1967) 66 Cal.3d 536	137
<i>People v. Hill</i> (1998) 17 Cal.4th 800	254

TABLE OF AUTHORITIES

	Page(s)
<i>People v. Hillhouse</i> (2002) 27 Cal.4th 469	250
<i>People v. Hogan</i> (1982) 31 Cal.3d 815	123, 150
<i>People v. Holloway</i> (2004) 33 Cal.4th 96	123
<i>People v. Howard</i> (2008) 42 Cal.4th 1000	61, 75
<i>People v. Hoyos</i> (2007) 41 Cal.4th 872	62, 76
<i>People v. Hutchins</i> (2007) 147 Cal.App.4th 992	73, 79
<i>People v. Jimenez</i> (1978) 21 Cal.3d 595	136, 137
<i>People v. Johnson</i> (1969) 70 Cal.2d 541	150
<i>People v. Johnson</i> (1992) 3 Cal.4th 1183	198, 199
<i>People v. Johnson</i> (2003) 30 Cal.4th 1302	69, 71
<i>People v. Johnson</i> (2006) 38 Cal.4th 1096	74, 117, 118
<i>People v. Jones</i> (1998) 17 Cal.4th 279	146

TABLE OF AUTHORITIES

	Page(s)
<i>People v. Jones</i> (2011) 51 Cal.4th 346	99
<i>People v. Jones</i> (2013) 57 Cal.4th 899	61, 79
<i>People v. Karis</i> (1988) 46 Cal.3d 612	187
<i>People v. Kelley</i> (1980) 113 Cal.App.3d 1005	246
<i>People v. Kelly</i> (2007) 42 Cal.4th 763	61
<i>People v. Kennedy</i> (2005) 36 Cal.4th 595	237, 250
<i>People v. Lancaster</i> (2007) 41 Cal.4th 50	62, 74, 106
<i>People v. Lenart</i> (2004) 32 Cal.4th 1107	240
<i>People v. Lenix</i> (2008) 44 Cal.4th 602	60, 69, 70, 77
<i>People v. Lewis</i> (2001) 25 Cal.4th 610	184
<i>People v. Lewis</i> (2006) 39 Cal.4th 970	83
<i>People v. Linton</i> (2013) 56 Cal.4th 1146	172

TABLE OF AUTHORITIES

	Page(s)
<i>People v. Livingston</i> (2012) 53 Cal.4th 1132	222
<i>People v. Lopez</i> (2013) 56 Cal.4th 1028	61
<i>People v. Manriquez</i> (2005) 37 Cal.4th 547	252
<i>People v. Maury</i> (2003) 30 Cal.4th 342	124
<i>People v. McWhorter</i> (2009) 47 Cal.4th 318	124, 150
<i>People v. Medina</i> (1995) 11 Cal.4th 694	242
<i>People v. Memro</i> (1995) 11 Cal.4th 786	123
<i>People v. Mickey</i> (1991) 54 Cal.3d 612	217
<i>People v. Moore</i> (1954) 43 Cal.2d 517	246
<i>People v. Morris</i> (1991) 53 Cal.3d 152	197
<i>People v. Musselwhite</i> (1998) 17 Cal.4th 1216	200, 202
<i>People v. Nunez</i> (2013) 57 Cal.4th 1	206

TABLE OF AUTHORITIES

	Page(s)
<i>People v. Ochoa</i> (1998) 19 Cal.4th 353	passim
<i>People v. Paniagua</i> (2012) 201 Cal.App.4th 499	155
<i>People v. Partida</i> (2005) 37 Cal.4th 428	190
<i>People v. Pearch</i> (1991) 229 Cal.App.3d 1282	156
<i>People v. Pearson</i> (2013) 56 Cal.4th 393	61
<i>People v. Phillips</i> (1997) 59 Cal.App.4th 952	208
<i>People v. Prieto</i> (2003) 30 Cal.4th 226	239, 241
<i>People v. Reynoso</i> (2003) 31 Cal.4th 903	67, 68, 114
<i>People v. Rice</i> (1976) 59 Cal.App.3d 998	246
<i>People v. Rogers</i> (2013) 57 Cal.4th 296	201
<i>People v. Romero</i> (2008) 44 Cal.4th 386	221
<i>People v. Rundle</i> (2008) 43 Cal.4th 76	141

TABLE OF AUTHORITIES

	Page(s)
<i>People v. Sanchez</i> (1995) 12 Cal.4th 1	198
<i>People v. Schmeck</i> (2005) 37 Cal.4th 240	235
<i>People v. Scott</i> (2011) 52 Cal.4th 452	141, 142
<i>People v. Sedeno</i> (1974) 10 Cal.3d 703	239
<i>People v. Sengpadychith</i> (2001) 26 Cal.4th 316	251
<i>People v. Sheldon</i> (1989) 48 Cal.3d 935	181
<i>People v. Silva</i> (2001) 25 Cal.4th 345	59
<i>People v. Smith</i> (2005) 35 Cal.4th 334	221, 222, 229, 230
<i>People v. Smith</i> (2007) 40 Cal.4th 483	146
<i>People v. Smithey</i> (1999) 20 Cal.4th 936	221
<i>People v. Snow</i> (2003) 30 Cal.4th 43	197, 198, 252
<i>People v. Stanley</i> (1995) 10 Cal.4th 764	236

TABLE OF AUTHORITIES

	Page(s)
<i>People v. Stowell</i> (2003) 31 Cal.4th 1107	64
<i>People v. Streeter</i> (2012) 54 Cal.4th 205	61, 75
<i>People v. Sturm</i> (2006) 37 Cal.4th 1218	211
<i>People v. Tapia</i> (1994) 25 Cal.App.4th 984	73, 74
<i>People v. Taylor</i> (1990) 52 Cal.3d 719	241
<i>People v. Taylor</i> (2010) 48 Cal.4th 574	61, 75
<i>People v. Terry</i> (1964) 61 Cal.2d 137	196, 199
<i>People v. Thomas</i> (2012) 53 Cal.4th 771	61, 76, 200
<i>People v. Thompson</i> (1980) 27 Cal.3d 303	184, 186
<i>People v. Thompson</i> (1990) 50 Cal.3d 134	142, 146
<i>People v. Thompson</i> (2010) 49 Cal.4th 79	79, 85
<i>People v. Trevino</i> (1985) 39 Cal.3d 667	89

TABLE OF AUTHORITIES

	Page(s)
<i>People v. Valdez</i> (2004) 32 Cal.4th 73	185, 197, 198
<i>People v. Vanbuskirk</i> (1976) 61 Cal.App.3d 395	63
<i>People v. Vann</i> (1974) 12 Cal.3d 220	209
<i>People v. Villatoro</i> (2012) 54 Cal.4th 1152	176
<i>People v. Walker</i> (1998) 64 Cal.App.4th 1062	68
<i>People v. Ward</i> (2005) 36 Cal.4th 186	197, 233, 243
<i>People v. Watson</i> (1956) 46 Cal.2d 818	188
<i>People v. Webster</i> (1991) 54 Cal.3d 411	209
<i>People v. Wheeler</i> (1978) 22 Cal.3d 258	passim
<i>People v. Williams</i> (1988) 44 Cal.3d 883	241
<i>People v. Williams</i> (2006) 40 Cal.4th 287	62
<i>People v. Williams</i> (2010) 49 Cal.4th 405	141, 146

TABLE OF AUTHORITIES

	Page(s)
<i>People v. Williams</i> (2013) 56 Cal.4th 165	222, 229
<i>People v. Zambrano</i> (2007) 41 Cal.4th 1082	69
<i>State v. Benn</i> (Wash. 1993) 845 P.2d 289	231
<i>State v. Grandy</i> (S.C. 1991) 411 S.E.2d 207	81
<i>State v. Jordan</i> (Tenn. 2010) 325 S.W.3d 1	231
<i>State v. Mann</i> (Ariz. 1997) 934 P.2d 784	231
<i>State v. McKoy</i> (N.C. 1988) 372 S.E.2d 12	230
<i>State v. Rhines</i> (S.D. 1996) 548 N.W.2d 415	231
<i>State v. Simmons</i> (Mo. 1997) 944 S.W.2d 165	231
<i>State v. Stevens</i> (Or. 1994) 879 P.2d 162	231
<i>State v. Walker</i> (Wis. 1990) 453 N.W.2d 127	88

CONSTITUTIONS

U.S. Const., Amends.	V	passim
	VI	passim

TABLE OF AUTHORITIES

		Page(s)
U.S. Const., Amends.	VIII	passim
	XIV	passim
Cal. Const., art. I, §§	15	253
	16	59

STATE STATUTES

Code Civ. Proc, §§	129	204
	219	115
Evid. Code, §§	210	171, 185
	350	171, 185
	352	passim
	402	4
	520	240
	1101	171, 172, 175, 176, 185
	1220	172, 175
Pen. Code, §§	187	2
	190.2	3, 235, 236
	190.3	passim
	190.4	168
	207	2, 3
	211	2
	459	2, 3
	470	3
	667	3
	667.5	2, 3
	830.2	115
	1093	198, 199, 203, 204
	1127	199, 203, 204
	1170.12	3
	1192.7	2, 3
	1202.4	6
1239	1	

TABLE OF AUTHORITIES

Page(s)

COURT RULES

Cal. Rules of Court, rules 4.421 251
4.423 251
8.630(b)(2) 257

JURY INSTRUCTIONS

CALJIC, Nos. 1.00 183
3.01 138, 139
3.02 138, 139
3.03 138, 139
4.40 139, 158
8.20 139
8.21 139
8.80.1 139, 165
8.84.1 227
8.85 passim
8.86 238
8.87 238, 243
8.88 passim

OTHER AUTHORITIES

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TABLE OF AUTHORITIES

	Page(s)
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Taggart, <i>Prosecutor Must Meet Heightened Burden in Demonstrating Racially Neutral Explanation for Use of Peremptory Strikes</i> (1992) 44 S.C. L. Rev. 25	81
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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

_____)	
PEOPLE OF THE STATE OF CALIFORNIA,)	
)	
Plaintiff and Respondent,)	
)	
v.)	(San Bernardino County
)	Superior Court
THOMAS LEE BATTLE,)	No. FVI012605)
)	
Defendant and Appellant.)	
)	
_____)	

APPELLANT’S OPENING BRIEF

STATEMENT OF APPEALABILITY

This is an automatic appeal from a final judgment of death. (Pen. Code, § 1239, subd. (b).)¹

STATEMENT OF THE CASE

On November 28, 2000, a complaint was sworn out in San Bernardino County charging appellant, Thomas Battle, in Case No.

¹ All statutory references are to the Penal Code unless stated otherwise.

FVI012605 as follows: in count 1 with the willful, deliberate and premeditated murder of Andrew Demko on or about November 18, 2000, in violation of section 187, subdivision (a); in count 2 with the willful, deliberate and premeditated murder of Shirley Demko on or about November 18, 2000, in violation of section 187, subdivision (a); in count 3 with the first degree residential burglary of Andrew Demko on or about November 18, 2000, in violation of section 459; in count 4 with the first degree residential robbery of Andrew Demko on or about November 18, 2000, in violation of section 211. (1 CT 2-7.) The complaint also alleged that all the charges were serious felonies pursuant to section 1192.7, subdivision (c) and that counts 3 and 4 were violent felonies within the meaning of section 667.5, subdivision (c). (*Ibid.*)

On November 29, 2000, appellant was arraigned, entered pleas of not guilty to all charges and denied all the other allegations, and the public defender was appointed to represent him. (1 CT 21.)

On November 2, 2001, the first amended felony complaint was filed in San Bernardino County Superior Court charging appellant as follows: in count 1 with the unlawful murder of Andrew Demko, in violation of section 187, subdivision (a) on or about November 13, 2000; in count 2 with the unlawful murder of Shirley Demko, in violation of section 187, subdivision (a) on or about November 13, 2000; in count 3, with the first degree residential burglary of a dwelling of Andrew and/or Shirley Demko in violation section 459 on or about November 13, 2000; in count 4 with the first degree residential robbery of Andrew and/or Shirley Demko in violation of section 211 on or about November 13, 2000; in count 5, with the kidnapping of Andrew Demko in violation of section 207, subdivision (a) on or about November 13, 2000; in count 6, with the kidnapping of