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The Hon. Jorge Navarrete, Clerk
California Supreme Court
350 McAllister St.
San Francisco, CA 94102-7421

Re: People v. Ruben Gomez (S087773)

August 10, 2018

Dear Mr. Navarrete:

I am writing to provide additional citations relevant to Mr. Gomez's arguments in advance of oral argument, calendared for September 5, 2018.

Argument I:

People v. Banks (2015) 61 Cal.4th 788, 804-811 [where evidence showed defendant Matthews was the getaway driver, but there was no evidence he was at the scene, saw or heard the shooting, had any immediate role in instigating it, or could have prevented it, evidence was insufficient to render him eligible for the death penalty].

People v. Lara (2017) 9 Cal.App.5th 296, 316-321 [though defendants Flores and Espinoza were present at scene of crime, fled with a gang companion who participated in the crime, and lied to police, evidence was insufficient to support their convictions; though defendant Lara was present at the scene and participated in the argument preceding the shooting, there was nothing more than speculation suggesting that he was the shooter or that he aided and abetted the shooting with deliberation and premeditation].

Argument IV:

Burton v. Davis (9th Cir. 2016) 816 F.3d 1132, 1141-1146 [*Faretta* request made weeks before trial is timely under *Faretta* itself].

People v. Becerra (2016) 63 Cal.4th 511, 520 [*Faretta* error is reversible per se].

Argument VII:

People v. Landry (2017) 2 Cal.5th 52, 81 & fn. 5 [defendant may argue on appeal that objected-to error had additional legal consequence of violating defendant's constitutional rights].

People v. Espinoza (2016) 1 Cal. 5th 61, 78-79 [noting, with approval, that trial court instructed jurors not to consider *out-of-custody* defendant's absence for any purpose; citing *Wheat v. United States* (1988) 486 U.S. 153, 160].

People v. Banks (2014) 59 Cal.4th 1113, 1172-1176 [defendant's right to due process not violated where trial court's exchanges with defendant and defense counsel regarding defendant's repeated absences from court took place outside the presence of the jury; the court did not, in the jury's presence, blame defendant for the delay or indicate that it had an unfavorable view of defendant or his cooperation with prison authorities, citing *People v. Sturm* (2006) 37 Cal.4th 1218, 1237].¹

¹ *Banks* has been abrogated on other grounds by *People v. Scott* (2015) 59 Cal.4th 113. *Banks* was decided shortly before the filing of appellant's reply brief. *Banks* is cited in appellant's reply brief, though not with respect to Argument VII.

Argument IX:

People v. Rangel (2016) 62 Cal.4th 1192, 1215-1216 [in a case tried before *Crawford v. Washington* (2004) 541 U.S. 36, defendant does not forfeit a *Crawford* challenge by failing to raise a confrontation clause objection at trial].

Argument XII:

People v. Salazar (2016) 63 Cal.4th 214, 246-248 [in context, jurors would not have understood instructions to suggest that reasonable doubts had to be unanimous].

Argument XV:

People v. Johnson (2015) 61 Cal.4th 734, 770-774 [reversing kidnap special circumstance where jury was instructed to consider the totality of the circumstances in determining whether movement of the victim was substantial].

Argument XVIII:

People v. Romero & Self (2015) 62 Cal.4th 1, 35-37 [reversing robbery conviction where robbery accomplice's testimony was not corroborated by evidence which failed to connect the defendant to the crime *independent* of the accomplice testimony].

People v. Rodriguez & Barajas (2018) 4 Cal.5th 1123, 1128-1130 [reversing Barajas's murder conviction where accomplice's testimony was not corroborated by independent evidence tying him to the crime].

People v. Simon (2016) 1 Cal.5th 98, 130 [instruction that each count charged a distinct crime adequately cautioned jurors against considering evidence of one incident when rendering a verdict on another incident, and vice versa].

People v. Daveggio & Michaud (2018) 4 Cal.5th 790, 828-830 [in Evidence Code section 1108 context, jury may not consider evidence of other charged crimes unless court admits them for that purpose under Evidence Code section 352].

People v. Bryant (2014) 60 Cal.4th 335, 453-455 [unadjudicated factor (b) offenses may be admitted absent corroboration, though jury must be instructed on the need to find corroboration before it can consider the evidence in aggravation].²

Argument XIX:

Bryant, supra, 60 Cal.4th at 453-455 [jury must be instructed on the need to find corroboration before it can consider factor (b) evidence in aggravation].

Argument XX:

People v. Grimes (2018) 1 Cal.5th 698, 720 [noting debate over the significance of Attorney General's failure to brief the question of prejudice]; see also *People v. Sivongxxay* (2017) 3 Cal.5th 151, 206-207 [Liu, J., concurring and dissenting] [although the Court is not limited to the parties' arguments in conducting harmless error review, "the fact that no party thought to advance [a theory of harmlessness] suggests its novelty"].

Landry, supra, 2 Cal.5th at 81 & fn. 5 [defendant may argue on appeal that trial court's objected-to error had additional legal consequence of violating defendant's constitutional rights].

United States v. Runyon (4th Cir. 2013) 707 F.3d 475, 492-498 [trial court erred in admitting, at penalty phase, videotape containing detective's references to defendant's ethnic background; error harmless beyond a reasonable doubt because

² *Bryant* was decided before the filing of appellant's reply brief and came to counsel's attention during preparation for oral argument. I apologize for the late discovery of the case.

trial court gave detailed limiting instruction, court instructed jury not to consider race, color, or national origin, and instructed jurors that they could not impose a death sentence unless they would do so no matter what the race of the defendant and the victim was, and each juror signed a certificate stating that race and national origin were not involved in their decision and that they would reach the same verdict no matter the race of the defendant and victim].³

Argument XXII:

Glossip v. Gross (2015) 135 S.Ct. 2726, 2756-2757 [Breyer, J., dissenting] [noting “convincing evidence” that innocent people have been executed in the past 30 years; since 2002, the number of exonerations in capital cases has risen to 115, citing National Registry of Exonerations, *Exonerations in the United States, 1989-2012*, pp. 6-7 (Exonerations 2012 Report)]; see also *Jordan v. Mississippi* (2018) 138 S.Ct. 2567, 2571 [Breyer, J., dissenting from denial of certiorari] [in the past three years, further evidence has accumulated suggesting that the death penalty as applied today lacks reliability; four hours before Willie Manning’s scheduled execution, the Mississippi Supreme Court stayed his execution, and he later became the fourth person on Mississippi’s death row to be exonerated; since January 2017, six death row inmates have been exonerated, four based on evidence of actual innocence, citing National Registry of Exonerations (June 25, 2018), <https://www.law.umich.edu/special/exoneration/Pages/detaillist.aspx>].

³ *Runyon* was decided before the filing of appellant’s reply brief and came to counsel’s attention during preparation for oral argument. I apologize for the late discovery of this case and respectfully request that the Court consider it in connection with Argument XX and appellant’s second supplemental opening and reply briefs.

Argument XXIV:

Hurst v. Florida (2016) 136 S.Ct. 616, 621-624 [Sixth Amendment requires a jury, not a judge, to find each fact necessary to impose a sentence of death]; but see *People v. Case* (2018) 5 Cal.5th 1, 50.

Sincerely,


Laura S. Kelly

Declaration of Service

Re: People v. Ruben Perez Gomez, S087773
On August 10, 2018, I served the within

New authorities letter

on each of the following, by placing true copies thereof in envelopes addressed respectively as follows, and depositing them in the United States mail at Irvine, California:

Clerk Los Angeles Co. Superior Court Capital Appeals Unit 210 W. Temple St. Room M-3 Los Angeles, CA 90012	Mr. Ruben Perez Gomez E99658 San Quentin State Prison San Quentin, CA 94974
Los Angeles District Attorney's Office 210 West Temple St. Los Angeles, CA 90012 Attn.: Anthony Manzella	

I have served the Attorney General and CAP-SF as reflected in the proof of service generated by TrueFiling.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 10, 2018, at Irvine, California



Laura S. Kelly

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **PEOPLE v. GOMEZ (RUBEN PEREZ)**

Case Number: **S087773**

Lower Court Case Number:

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **lkelly@lkellylaw.net**
3. I served by email a copy of the following document(s) indicated below:

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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.

8/10/2018

Date

/s/Laura Kelly

Signature

Kelly, Laura (234036)

Last Name, First Name (PNum)

Laura Kelly, Attorney at Law

Law Firm