

SUPREME COURT COPY

*David Goodwin
Attorney at Law
P.O. Box 93579
Los Angeles, CA 90093-0579
(323) 666-9960*

**SUPREME COURT
FILED**

March 16, 2013

MAR 22 2013

Frank McGuire
Clerk/Administrator
California Supreme Court
350 McAllister Street
Room 1295
San Francisco, CA 94102-3600

Frank A. McGuire Clerk

Deputy

Re: People v. Nunez and Satele
Case No. S091915

Dear Mr. McGuire,

By appointment of this court, I am the attorney for appellant William Tupau Satele in the automatic appeal from a judgment of death. The case has been set for oral argument for April 4, 2013. This letter is to inform the court of the focus issues listed below.

Although I would be pleased to respond to questions from the court regarding any issues raised in the appeal, I anticipate focusing my argument primarily upon the following issues, referenced by the Roman numeral used in the Opening and Supplemental Briefs:

As discussed in Argument I, the jury finding that both appellants personally used the firearm was improper, in violation of appellant's right to due process of law and other fundamental constitutional rights. These findings were contrary to all of the reliable evidence presented at trial by the prosecution. They were also contrary to the theory of the case argued by the prosecution during the guilt phase.

This error improperly elevated the culpability of appellant and was compounded when the trial court, in denying the motions for a new trial and modification of the sentence, relied in part on the fact that the jury determined that both defendants were the actual shooters.

The finding that appellant personally fired the shots negated the need for the jury to determine whether appellant had the requisite intent for first degree murder.

California Supreme Court
March 16, 2013
Page 2

This issue incorporates and implicates other issues raised in the Opening and Supplemental Briefs. The issues further raised are as follows:

Aspects of Arguments III and V, respectively, the trial court's errors in incorrectly instructing the jury on the gang enhancement and the weapon enhancement.


Aspects of Arguments II and IV, and arguments from the Supplemental Brief, respectively, the failure to instruct on implied malice, error in instructing the jury that being a "major participant" was sufficient to trigger first degree murder, and error in instructing that all participants in the offense were "equally guilty."

Additionally, please inform the court that I intend to rely on additional authority not contained in the briefing. In particular, I intend to rely on *People v. Concha* (2010) 182 Cal.App.4th 1072, 1089-1090, the opinion of the Court of Appeal after remand from this Court in *People v. Concha* (2009) 47 Cal.4th 653. That case discusses prejudice from failing to instruct the jury on the need to find each individual defendant's mens rea.

Likewise, I also intent to rely on *People v. Gonzalez* (Cal. 2012) 54 Cal.4th 643 which discusses when an instruction that improperly omits an element of an offense is harmless.

Thank you for your assistance in this matter. Feel free to contact me if there is any other information that I can provide. However, please be advised that I will be out of the country from March 19th to April 2nd and my access to e-mail be limited.

Respectfully submitted



David H. Goodwin,
Attorney for appellant Satele

PROOF OF SERVICE BY MAIL (C.C.P. SEC. 1013.A, 2015.5)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am a resident of the aforesaid county; I am over the age of eighteen years and not a party to the within entitled action; my business address is P.O. Box 93579, Los Angeles, Ca 90093-0579

On March 16, 2013, I served the within **Focus Letter Regarding Issue to be Discussed at Oral Argument** on the interested parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles , California addressed as follows:

Carl Henry, D.A.G.
Office of the Attorney General
300 South Spring Street
Los Angeles, CA 90013

Wes VanWinkle
P O Box 5216
Berkeley, CA 94705-0216
(Assisting Attorney)

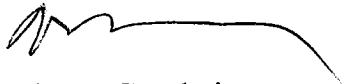
Laura Murry
California Appellate Project
101 Second Street, Suite 600
San Francisco, CA 94105
(assisting attorney for co-appellant)

William Satele
P-93224, 1AC60
San Quentin State Prison
San Quentin, CA 94974

Janyce Blair
321 Richmond Street
El Segundo, Ca 90245
Counsel for appellant Nunez

Executed on March 16, 2013, at Los Angeles, California

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



David H. Goodwin