

**A. RICHARD ELLIS**

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**SUPREME COURT COPY**

October 30, 2017

Jorge E. Navarrete  
Court Administrator  
Supreme Court Clerk's Office  
350 McAllister Street  
San Francisco, CA 94102-4797

**Re: S104144, *People v. Perez Jr.***  
**Oral Argument: Tuesday, November 7, 2017 (1:30 p.m.)**

**Additional Authorities Letter (Amended Declaration of Service)**

Dear Mr. Navarrete:

This letter is a citation to additional authorities not mentioned in appellant's brief or decided after the submission of the briefs in this matter.

**Argument I: The trial court's system of group *voir dire* violated appellant's right to due process and a fair trial:**

*People v. Cash* (2002) 28 Cal.4th 703, 721-722 (*voir dire* must not be so abstract that it fails to identify jurors whose death penalty views would prevent or substantially impair their performance as jurors; the limitation on *voir dire* was prejudicial).

**Argument II: Lead defense counsel had a conflict of interest, as the trial judge had found him ineffective in a case pending in the Court of Appeals:**

In *People v. Doolin* (2009) 45 Cal.4th 390, 420-421, this Court abandoned the previous standard that a conflict was shown if "informed speculation" could show that there was a potential conflict, overturning *People v. Mroczko* (1983) 35 Cal. 3d 86, 105 (relied upon by appellant (AOB at 101-102; Reply at 19). Now an actual conflict must be shown under the federal standard of *Mickens v. Taylor* (2002) 535 U.S. 162 and *Strickland v. Washington* (1984) 466 U.S. 668, 692, which is that the conflict existed and the actual conflict affected the lawyer's performance. Hence, appellant abandons the "informed speculation" arguments.

**Argument III: Trial error for failure of the trial judge to disqualify himself as a result of comments that indicated he could not be impartial:**

*Williams v. Pennsylvania* (2016) 136 S. Ct. 1899 (Supreme Court's precedents set an objective standard that requires recusal when the likelihood of bias on the part of the judge "is too high to be constitutionally tolerable," citing *Caperton v. A.T. Massey Coal Co.* (2009) 556 U.S. 868, 872;

*People v. Almanza* (2015) 233 Cal.App.4th 990, 998-1007 (conflict was established when defense counsel was under threat of prosecution; no prejudice found);

*Harris v. Superior Court* (2014) 225 Cal.App.4th 1129, 1134-1149 (prosecution of defense attorney in separate matter created an actual conflict of interest at the preliminary hearing; the threat that the attorney's conduct might be affected gives rise to an actual conflict; dismissal of information required without affirmative showing of prejudice).

**Argument VII: Appellant's rights were violated when the trial court removed a sworn and sitting juror during the guilt phase:**

*Shanks v. Dept. of Transportation* (2017) 9 Cal.App.5th 543, 549-550 (for dismissal of juror, juror's inability to perform as juror must appear in the record as a demonstrable reality, a higher level of scrutiny than the typical "substantial evidence");

*People v. Barnwell* (2007) 41 Cal.4th 1038, 1052 (same);

*Martinez v. Illinois* (2014) 134 S. Ct. 2070, 2071-2072 ("our cases have repeatedly stated the bright-line rule that jeopardy attaches when the jury is empaneled and sworn").

**Argument XVII: Trial court error in allowing inadmissible hearsay testimony from the pathologist who was not present at the autopsy:**

*People v. Perez* (Cal. App.4, Oct. 25, 2017) 2017 WL 4803952 (*People v. Dungo* (2012) 55 Cal.4th 608, among other cases, did not anticipate the distinction that *People v. Sanchez* (2016) 63 Cal.4th 665, drew between case-specific and non-case-specific hearsay; objection to case-specific gang expert testimony would have been meritorious);

*Merolillo v. Yates*, 663 F.3d 444, 453-459 (9<sup>th</sup> Cir. 2011) (admission of non-testifying autopsy pathologist's opinion violated Confrontation Clause and was prejudicial);

*U.S. v. Ignasiak, Jr.*, 667 F.3d 1217 (11<sup>th</sup> Cir. 2012) (autopsy reports of defendant's former patients were testimonial; admission violated Confrontation Clause and was prejudicial);

*People v. Trujeque* (2015) 61 Cal.4th 227, 275-276 (issue not forfeited by failure to object at trial to testimony from pathologist who did not perform autopsy);

*People v. Harris* (2013) 57 Cal.4th 804, 839-840 (same);

*People v. Hill* (2011) 191 Cal.App.4th 1104, 1128-1137 (criticizing *People v. Gardeley* (1996) 14 Cal.4th 605, 619, rule in effect at appellant's trial, that hearsay statements testified to by an expert as a basis for his or her expert opinion are not offered for the truth of the matter asserted.

By copy of this letter, I am forwarding a copy of the same to the Office of the Attorney General, the Contra Costa County District Attorney, the trial court, appellant, and the California Appellate Project assisting attorney.

Thank you for your kind assistance with this matter.

Yours sincerely,

/s/ A. Richard Ellis

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A. Richard Ellis  
Attorney for Appellant

**DECLARATION OF SERVICE (AMENDED)**

I, A. RICHARD ELLIS, hereby declare that I am a citizen of the United States, over the age of eighteen, an active member of the State Bar of California, and not a party to the within action. My business address is 75 Magee Ave, Mill Valley, California 94941.

On October 30, 2017 I served the within

**ADDITIONAL AUTHORITIES LETTER**

on the interested parties in said action listed below, by e-filing it through the Court's electronic filing system or by placing a true and correct copy of the same in a sealed envelope, with 1<sup>st</sup> class postage affixed thereto, and placing the same in the United States Mail, addressed as follows:

John H. Deist  
Deputy Attorney General  
Office of the Attorney General of the State of California  
California Department of Justice  
455 Golden Gate Ave., Ste. 11000  
San Francisco, CA 94102-7004  
E-mail: [John.Deist@doj.ca.gov](mailto:John.Deist@doj.ca.gov)  
(via TrueFiling)

Scott Kaufmann  
California Appellate Project  
101 2<sup>nd</sup> Street, Ste. 600  
San Francisco, CA 94105  
E-mail: [filing@cap.sf.org](mailto:filing@cap.sf.org)  
(Via TrueFiling)

Clerk of the Court  
Contra Costa County Superior Court  
Wakefield Taylor Courthouse  
725 Court Street  
Martinez, CA 94553-1233  
(via U.S. mail)

Douglass MacMaster  
Acting District Attorney

Contra Costa District Attorney's Office  
P.O. Box 670  
Martinez, CA 94553  
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(Via TrueFiling)

Mr. Joseph Perez  
T-42655  
San Quentin State Prison  
San Quentin, CA 94974  
(Via U.S. mail)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed at Mill Valley, California, on October 30, 2017.

/s/ A. Richard Ellis

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A. RICHARD ELLIS

STATE OF CALIFORNIA  
Supreme Court of California

**PROOF OF SERVICE**

STATE OF CALIFORNIA  
Supreme Court of California

Case Name: **PEOPLE v. PEREZ (JOSEPH ANDREW)**  
Case Number: **S104144**  
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: **a.r.ellis@att.net**
3. I served by email a copy of the following document(s) indicated below:

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John Deist California Dept of Justice, Office of the Attorney General 136469	john.deist@doj.ca.gov	e-Service	10-31-2017 12:45:31 PM
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This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

10-31-2017

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Date

/s/Richard Ellis

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Signature

Ellis, Richard (64051)

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Last Name, First Name (PNum)

Law office of A. Richard Ellis

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Law Firm