

AUG 26 2013

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By appointment of the California Supreme Court
Under the Appellate Defenders, Inc.
Independent Case System

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,)	Supreme Court No. S209957
)	
)	APPELLANT’S MOTION FOR
Plaintiff and Respondent,)	JUDICIAL NOTICE
)	
vs.)	
)	
JONIS CENTENO,)	
)	
Defendant and Appellant.)	
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On Review from Fourth Appellate District, Div. Two, No. E054600
Hon. Cara D. Hutson, Judge, San Bernardino Superior Court No. FVA801798

APPELLANT’S MOTION FOR JUDICIAL NOTICE

To the Honorable Chief Justice Tani G. Cantil-Sakauye and the Associate Justices of the Supreme Court of California:

Appellant respectfully moves this Court, pursuant to Evidence Code sections 451-453 and 459 and California Rules of Court, rule 8.252(a), to take judicial notice of the following:

1. The PowerPoint slide and/or a true paper copy printout thereof, used by the prosecutor, Deputy District Attorney Vicki Hightower, during rebuttal closing argument in

the trial of this case in San Bernardino Superior Court No. FVA801798, illustrating a hypothetical puzzle referred to by the prosecutor as, “What State is this?” which involved the identification of the State of California.

This matter is relevant to this Court’s review for the following reasons:

The Court granted review on the following limited issue: “Did the prosecutor commit misconduct during closing argument by misstating the state's burden of proof?” The issue relates in part to the prosecutor’s use during rebuttal closing argument of a Power Point slide illustrating a hypothetical puzzle called, “What State is this?” which involved the identification of the State of California. The prosecutor related to the jury information received from several hypothetical witnesses. The first hypothetical witness said that “right next to this state there is a great place where you can go gamble, and have fun, and lose your money.” The second hypothetical witness said that in this state, “there is this great town, it is kind of like on the water, it has got cable cars, a beautiful bridge, and it is called Fran-something, but it is a great little town.” The third hypothetical witness said he had been to this state, where he “went to Los Angeles, I went to Hollywood, I saw the Hollywood sign, I saw the Walk of Fame, I put my hands in Clark Gable’s handprints in the cement.” (3RT 614-615, true copies attached hereto collectively as Exhibit 1.) The prosecutor concluded the presentation by asking: “...is there a reasonable doubt that this is California?” As such, the prosecutor’s comments during the presentation make it clear that an image of California was placed on the “Elmo” monitor and shown to the jury. (3RT 615:1-2.) The presentation,

which necessarily includes the Power Point slide, is central to the issue on which this Court has granted review.

There was no objection to the presentation at trial, the PowerPoint slide was not lodged or admitted as an exhibit, and it is not part of the appellate record. Appellant's counsel does not have access to the PowerPoint slide or a paper copy thereof.

Therefore, in order for a full and fair evaluation of the prosecutor's argument and to determine the issue on which this Court has granted review, appellant respectfully requests this Court order the office of the prosecuting attorney, i.e., the Office of the San Bernardino District Attorney, Valley Division, 17830 Arrow Boulevard, Fontana, CA 92335, to provide to this Court, a paper copy of the Power Point slide used in closing argument by the prosecutor, Deputy District Attorney Vicki Hightower.

Appellant/Petitioner is indigent with a right to competent appointed counsel at trial and on appeal (*Strickland v. Washington* (1984) 466 U.S. 668, 693-694 [104 S.Ct. 2052, 80 L.Ed.2d 674]; *Vasquez v. District Court of Appeal, Fifth Appellate District* (1963) 59 Cal.2d 585, 586-587) and the right to an appellate record of sufficient completeness so that this Court can fully and fairly decide the important issue on which review has been granted (*March v. Municipal Court* (1972) 7 Cal.3d 422, 428; *People v. Landry* (1996) 49 Cal.App.4th 785, 792-793; *Draper v. Washington* (1963) 372 U.S. 487, 499 [83 S.Ct. 774, 9 L.Ed.2d 899].) Appellant should not be deprived of a sufficient record due to any neglect of counsel in failing to make the Power Point slide an exhibit at trial, or in failing to seek


augmentation of the appellate record at an earlier date.

The sought Power Point slide is necessary to this Court's full and fair evaluation of the important issue on which review has been granted i.e., whether the prosecutor committed misconduct in closing argument by misstating the state's burden of proof.

The Court is requested to order the prosecution to provide the PowerPoint slide and/or a true paper copy thereof, and to take judicial notice thereof pursuant to Evidence Code sections 452, subdivision (h), 453, and 459, on grounds the PowerPoint slide used by the prosecutor is a known entity to the prosecutor and is "not reasonably subject to dispute and [is] capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." (Evid. Code, §425, subd. (h).) Further, the visual aid is in the nature of an official act of a judicial department of this state (Evid. Code, § 452, subd. (c)) or a record of the trial court (Evid. Code, § 452, subd. (d)), in that the trial court allowed the prosecutor to use it in rebuttal closing argument.

Based upon the foregoing, appellant respectfully requests the court grant this request, order the office of the prosecuting attorney to provide the said PowerPoint slide and/or a paper copy thereof to the Court, and take judicial notice thereof.

I declare under penalty of perjury that the foregoing is true and correct. Executed August 23, 2013 at Los Angeles, California.



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That is just another example of why it is important to properly start a case off right, investigate the case, not on rumor or delusion, follow it up with important interviews that are documented or tape-recorded, and move in a logical fashion so that each chain of evidence is forged beyond a reasonable doubt and not this shotgun approach where it is all over the place, confusion and disarray, and that is actually what you have in front of you. It is nobody's fault, no one is claiming anyone, it is what it is, it is a lack of evidence in front of you. It is not personal, but it's doing the right thing.

So before you arrive at a verdict, if you can, we ask you to please sort through the evidence or the lack of evidence, and when you do, we ask you to find Jonis Centeno not guilty beyond a reasonable doubt.

THE COURT: Thank you.

Ms. Hightower, rebuttal?

MS. HIGHTOWER: Yes.

All right. Mr. Von Schlichting spoke quite a bit about reasonable doubt. Basically, with reasonable doubt, you need to accept the reasonable and reject the unreasonable, and your decision cannot be based on sympathy, prejudice, or speculation. It has to be based on the evidence in this case.

Now, Mr. Von Schlichting said there is missing evidence so, therefore, there is reasonable doubt. You can't possibly make a decision because there is missing evidence, and the only missing evidence he is referring to is an interview with Jane Doe at the school.

Let me give you a hypothetical. Suppose for me that

there is a trial, and in a criminal trial, the issue is what state is this that is on the Elmo. Say you have one witness that comes in and this witness says, hey, I have been to that state, and right next to this state there is a great place where you can go gamble, and have fun, and lose your money. The second witness comes in and says, I have been to this state as well, and there is this great town, it is kind of like on the water, it has got cable cars, a beautiful bridge, and it is called Fran-something, but it is a great little town. You have another witness that comes in and says, I have been to that state, I went to Los Angeles, I went to Hollywood, I saw the Hollywood sign, I saw the Walk of Fame, I put my hands in Clark Gable's handprints in the cement. You have a fourth witness who comes in and says, I have been to that state.

What you have is you have incomplete information, accurate information, wrong information, San Diego in the north of the state, and missing information, San Bernardino has not even been talked about, but is there a reasonable doubt that this is California? No. You can have missing evidence, you can have questions, you can have inaccurate information and still reach a decision beyond a reasonable doubt. What you are looking at when you are looking at reasonable doubt, is you are looking at a world of possibilities. There is the impossible, which you must reject, the impossible but unreasonable, which you must also reject, and the reasonable possibilities, and your decision has to be in the middle. It has to be based on reason. It has to be a reasonable account. And make no mistake about it, we talked about this in jury selection, you need to look at

PROOF OF SERVICE

I, Jean Ballantine, declare and say that:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within-action; my business address is 12228 Venice Boulevard, Suite 152, Los Angeles, CA 90066-3814.

On August 23, 2013 I served the foregoing document described as APPELLANT'S MOTION FOR JUDICIAL NOTICE AND PROPOSED ORDER GRANTING MOTION on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope, postage prepaid, first class mail, with the U.S. Postal Service, addressed as follows:

OFFICE OF THE ATTORNEY GENERAL, P.O. Box 85266, San Diego, CA 92101
SAN BERNARDINO PUBLIC DEFENDER, DPD William E. Drake, 17830 Arrow Boulevard, Fontana, CA 92335
SAN BERNARDINO DISTRICT ATTORNEY, 17830 Arrow Route, Fontana, CA 92335
SAN BERNARDINO SUPERIOR COURT, For: Hon. Cara D. Hutson, Judge, 17780 Arrow Highway, Fontana, CA 92335

AND BY ELECTRONIC SERVICE TO:
Office of the Attorney General, ADIEService@doj.ca.gov
Appellate Defenders, Inc., eservice-criminal@adi-sandiego.com

I declare, under penalty of perjury, that the foregoing is true and correct. Executed on August 23, 2013 at Los Angeles, California.


Jean Ballantine