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SUPREME COURT
FILED

FEB - 1 2016

Frank A. McGuire Clerk

Deputy

In the Supreme Court of the State of California

**THE PEOPLE OF THE STATE OF
CALIFORNIA,**

Plaintiff and Respondent,

v.

BILLY CHARLES WHITE,

Defendant and Appellant.

Case No. S228049

Fourth Appellate
District, Division One,
Case No. D060969

San Diego County
Superior Court, Case
No. SCD228290

RESPONDENT'S MOTION FOR JUDICIAL NOTICE AND DECLARATION OF A. NATASHA CORTINA IN SUPPORT THEREOF

Respondent respectfully moves this court, pursuant to Evidence Code sections 452 and 459, and California Rules of Court, rule 8.252, to take

judicial notice of materials relating to the amendments to Penal Code section 261. (See *People v. Cruz* (1996) 13 Cal.4th 764, 780.)

The pertinent pages were retrieved from our office library and appended to this motion. (Cal. Rules of Court, rule 8.252(a)(3); see also Declaration of A. Natasha Cortina Support of Motion for Judicial Notice.)

These materials are relevant to this case because they are the proper extrinsic aids for construing the Legislature's intent in amending Penal Code section 261. (Cal. Rules of Court, rule 8.252(a)(2)(A); see also *People v. Zambia* (2011) 51 Cal.4th 965, 972 [Where a statute's language permits more than one reasonable interpretation, the court looks to a variety of extrinsic aids, including the legislative history].) Neither the trial court nor the Court of Appeal took judicial notice of these materials. (See Cal. Rules of Court, rule 8.252(a)(2)(B).) These materials consist of "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy," as well as "[o]fficial acts of the legislative, executive, and judicial departments of" the State of California. (Evid. Code, § 452, subs. (h) & (c); Cal. Rules of Court, rule 8.252(a)(2)(C).) Finally, the materials do not relate to proceedings occurring after the order or judgment that is the subject of this appeal. (Cal. Rules of Court, rule 8.252(a)(2)(D).)

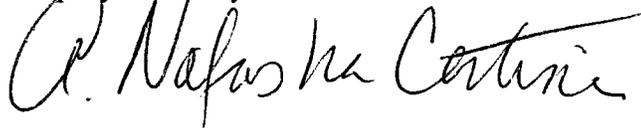
CONCLUSION

For the reasons stated above, respondent respectfully requests that this Court take judicial notice of the attached documents.

Dated: January 29, 2016

Respectfully submitted,

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Supervising Deputy Attorney General
Attorneys for Plaintiff and Respondent

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**DECLARATION OF A. NATASHA CORTINA
IN SUPPORT OF RESPONDENT'S MOTION FOR JUDICIAL NOTICE**

I, A. Natasha Cortina, declare as follows:

1. I am a Supervising Deputy Attorney General for the State of California and the primary attorney responsible for this case.
2. Attached as Exhibit A is the Leg. Counsel's Digest of Assembly Bill No. 2899, Summary (1979-1980 Reg. Sess.), summarizing change in Penal Code section 261 deleting the provisions relative to force, violence or threats and the element of resistance and providing for rape accomplished against the will by force or fear of immediate and unlawful bodily injury.
3. Attached as Exhibit B is the Report of the Assembly Committee on Public Safety, for Assembly Bill No. 3485 (1986 Reg. Session), summarizing changes to sections 261, 286, 288a and 289, among other provisions, to conform prohibited acts.
4. Attached as Exhibit C is Leg. Counsel's Digest of Assembly Bill No. 85 (1979-1985 Reg. Sess.), summarizing common change to sections 261, 286, 288a and 289 regarding the requirement of administering an intoxicating substance.
5. Attached as Exhibit D is Leg. Counsel's Digest of Assembly Bill No. 1844, (2009-20101 Reg. Sess.), summarizing common change to sections 264, 286, 288a and 289, regarding sentencing for acts committed against children and in concert.

6. I am informed and believe that the attached documents are true and correct copies retrieved from our office library.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 29th day of January, 2016, at San Diego, California.

A handwritten signature in black ink, reading "A. Natasha Cortina". The signature is written in a cursive style with a large initial "A" and a long, sweeping underline.

A. NATASHA CORTINA
Declarant

EXHIBIT - A

CALIFORNIA LEGISLATURE
1979-80 REGULAR SESSION

SUMMARY DIGEST

of

Statutes Enacted and Resolutions (Including Proposed
Constitutional Amendments) Adopted in 1980

and

1979-1980 Statutory Record



DARRYL R. WHITE
Secretary of the Senate

JAMES D. DRISCOLL
Chief Clerk of the Assembly

Compiled by
BION M. GREGORY
Legislative Counsel

Ch. 587 (AB 2899) Levine. Rape.

Existing law provides two definitions of rape. First, rape is defined as an act of sexual intercourse accomplished under any of specified circumstances, including force, violence, or specified threats, with a person not the spouse of the perpetrator. Second, rape is defined to include an act of sexual intercourse with the spouse of the perpetrator accomplished under force, violence or specified threat. Under either definition the use of force must overcome resistance, or threats must be used to prevent resistance.

This bill would delete the provisions relative to force, violence or threats and the element of resistance in connection therewith and provide for rape accomplished against the will by force or fear of immediate and unlawful bodily injury. The bill would make related changes.

Under existing law, Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement. These statutory provisions will be supplemented by a constitutional requirement of reimbursement effective for statutes enacted on or after July 1, 1980.

This bill provides that no appropriation is made and no reimbursement is required by this act for a specified reason.

Ch. 588 (AB 2138) Bates. State Fire Marshal: regulations.

(1) Existing law declares the intent of the Legislature relating to certain statutes and State Fire Marshal regulations for application to specified buildings, and declares the intent to prohibit local ordinances, rules or regulations relating to fire and panic safety in buildings or structures used for community care facilities.

This bill would require an administrative hearing, upon specified request and after written notice of the State Fire Marshal's interpretation, to resolve any conflict between the State Fire Marshal and the local enforcement agency in the interpretation or application of such provisions as they pertain to community care facilities in case of such a conflict by a local enforcement agency in the interpretation or application of the regulations of the State Fire Marshal.

(2) Under existing law, Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement. The statutory provisions requiring reimbursement will be supplemented by a constitutional requirement of reimbursement effective for statutes enacted on or after July 1, 1980.

This bill provides that no appropriation is made by this act pursuant to the constitutional mandate or Section 2231 or 2234, but recognizes that local agencies and school districts may pursue their other available remedies to seek reimbursement for these costs.

Ch. 589 (AB 3166) Stirling. Vehicle ownership and registration: manufacturer's serial or identification number.

(1) Under existing law, it is a felony for any person with intent to defraud to alter, forge, counterfeit, or falsify any certificate of ownership, registration card, certificate, license or special plate or permit with respect to a motor vehicle. It is a felony for any person to alter, forge, counterfeit, or falsify any such document or plate with intent to represent the same as issued by the Department of Motor Vehicles, or for any person to alter, forge, counterfeit, or falsify with fraudulent intent any endorsement of transfer on a certificate of ownership. It is also a felony for any person with fraudulent intent to display, or cause or permit to be displayed, or to have in his possession any blank, incomplete, canceled, suspended, revoked, altered, forged, counterfeited, or false ownership or registration certificate. It is also a felony for any person to utter, publish, pass, or attempt to pass, as true and genuine, such ownership or registration certificate knowing the same to be false, altered, forged, or counterfeited with intent to prejudice, damage, or defraud any person.

This bill would recast the statutory provisions relating to the above-described felonies and would, in addition, make it a felony for any person, with intent to prejudice, damage, or defraud, to acquire, possess, sell, or offer for sale a genuine or counterfeit vehicle

EXHIBIT - B

**NEW STATUTES
AFFECTING THE CRIMINAL LAW**

Report of the
Assembly Committee on Public Safety

This bill increases the determinate prison sentences for shooting at an inhabited dwelling, occupied building, or occupied motor vehicle to 2, 3, 5 or 7 years.

CABLE TELEVISION
AB 3449 (Chapter 756), Wright

(Adds Title 2.5 (commencing with Section 536) to Part 4 of Division 1 of the Civil Code, and amends Section 591 of the Penal Code)

Under current law, any person who willfully and maliciously damages or removes the property or equipment of an electrical, gas, telephone or telegraph corporation is civilly liable for three times the amount of the damages. Also, any person who unlawfully and maliciously injures, removes or obstructs a telegraph, telephone or electrical line is guilty of a felony/misdemeanor (wobbler) punishable by up to 3 years in prison and/or a \$500 fine, or 1 year in county jail.

This bill extends these provisions to the malicious damage of cable television property.

SEX OFFENSES
AB 3485 (Chapter 1299), Wright

(Amends Sections 261, 266c, 286, 288, 288a, 289, 290, 667.7, 667.9, 1170.1, 1192.7, 1203.065, 1203.066, 1203.075 and 12022.8 of the Penal Code)

This bill recasts the provisions of specified sex offenses to conform the prohibited acts, to wit: redefines the reference to mental disabilities and includes the use of violence in rape provisions; adds the prohibited act of inducing a person to engage in the penetration of a genital or anal opening by a foreign object by the use of false or fraudulent representations; raises the wobbler offenses of sodomy or oral copulation, where the victim is unconscious of the nature of the act, to straight felonies (3, 6 or 8 years); adds the offenses of sodomy, oral copulation, and penetration by a foreign object, where the victim is prevented from resisting by an intoxicating or controlled substance, where the victim believes the perpetrator is his or her spouse, and by threatening the use of authority (3, 6 or 8 years); makes specified prohibited acts of penetration by a foreign object (e.g. threat of future retaliation, mental disabilities, age distinctions) consistent with the prohibited acts of other sex offenses; in lewd and lascivious acts, changes the reference from "threat of great bodily injury" to "fear of immediate and unlawful bodily injury."

EXHIBIT - C

ASSEMBLY BILL

No. 85

Introduced by Assembly Member Martinez

February 24, 1994

An act to amend Sections 261, 286, 288a, and 289 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 85, as introduced, Martinez. Crimes: rape: definition. Existing law provides definitions for rape, sodomy, oral copulation, and penetration by foreign object, which contain the common element that the act include, among other conditions, the circumstance where a victim is prevented from resisting by any toxicating or anesthetic substance, or any controlled substance, administered by or with the privity of the accused.

This bill would delete the language "administered by or with the privity of the accused" from that element. To the extent that this bill would expand the scope of existing crimes, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

EXHIBIT - D

Assembly Bill No. 1844

CHAPTER 219

An act to amend Sections 220, 236.1, 264, 264.1, 286, 288, 288a, 289, 290.04, 290.05, 290.06, 290.46, 666, 667.61, 1203.067, 2962, 3000, 3000.1, 3008, and 13887 of, and to add Sections 290.09, 3053.8, and 9003 to, the Penal Code, and to amend Section 18846.3 of the Revenue and Taxation Code, relating to sex crimes, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 9, 2010. Filed with
Secretary of State September 9, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1844, Fletcher. Sex offenders: punishment: parole.

Under existing law, an assault with the intent to commit mayhem, rape, sodomy, oral copulation, or with the intent to commit, by force, rape, spousal rape, or sexual penetration in concert with another, is punishable by imprisonment in the state prison for 2, 4, or 6 years, except as specified.

This bill would provide that an assault of a person under 18 years of age with the intent to commit rape, sodomy, oral copulation, or with the intent to commit, by force, rape, spousal rape, or sexual penetration in concert with another, would be punishable by imprisonment in state prison for 5, 7, or 9 years.

Under existing law, any person who deprives or violates the personal liberty of another with the intent to effect or maintain a felony violation of specified sex crimes, extortion, or to obtain forced labor or services, is guilty of human trafficking. Existing law provides that a violation of this provision where the victim of the trafficking was under 18 years of age at the time of the commission of the offense is punishable by imprisonment in the state prison for 4, 6, or 8 years.

This bill would provide that any person who commits human trafficking involving a commercial sex act where the victim of the human trafficking was under 18 years of age at the time of the commission of the offense shall be punished in addition by a fine of not more than \$100,000, to be used as specified.

Under existing law, rape, sodomy accomplished against the victim's will, oral copulation accomplished against the victim's will, and sexual penetration accomplished against the victim's will is punishable by imprisonment in state prison for 3, 6, or 8 years. Rape, sodomy, and oral copulation committed in concert with another is punishable by imprisonment in the state prison for 5, 7, or 9 years.

This bill would provide that the punishment for these specified crimes upon a child who is under 14 years of age is punishable by imprisonment

in state prison for 9, 11, or 13 years, and if committed upon a minor who is 14 years of age or older is punishable by imprisonment in state prison for 7, 9, or 11 years. This bill would provide that if these crimes are committed in concert with another person upon a child who is under 14 years of age they are punishable in state prison for 10, 12, or 14 years and if committed in concert upon a minor who is 14 years of age or older by imprisonment for 7, 9, or 11 years. By increasing the punishment for crimes, this bill would impose a state-mandated local program.

Under existing law, a person who commits an act of rape, rape or sexual penetration in concert, sodomy, oral copulation, or sexual penetration, when the act is committed upon a child who is under 14 years of age and 7 or more years younger than the person, is guilty of aggravated sexual assault of a child. Aggravated sexual assault of a child under these circumstances is punishable by imprisonment in state prison for 15 years to life.

This bill would provide that it does not preclude prosecution under this existing law.

Under existing law, a person who commits any lewd or lascivious act upon a child who is under 14 years of age by use of force or fear is guilty of a felony punishable by imprisonment in state prison for 3, 6, or 8 years.

This bill would increase the punishment for this crime to imprisonment in the state prison for 5, 8, or 10 years. By increasing the punishment for a crime, this bill would impose a state-mandated local program.

Under existing law, a person who commits any lewd or lascivious act upon a dependent person, as defined, by use of force or fear is guilty of a felony punishable by imprisonment in state prison for 3, 6, or 8 years.

This bill would increase the punishment for this crime to imprisonment in the state prison for 5, 8, or 10 years. By increasing the punishment for a crime, this bill would impose a state-mandated local program.

Existing law, as amended by Proposition 83 of the November 7, 2006, statewide general election, requires a person convicted of certain felonies under specified circumstances to be committed to prison for a term of years to life.

This bill would provide that these felonies committed under the above-specified circumstances upon a victim who is a child under 14 years of age shall be punished by imprisonment in state prison for life without the possibility of parole if the offender is 18 years of age or older or 25 years to life if the offender is under 18 years of age. This bill would add as a circumstance the infliction of bodily harm, as defined, on a victim who is a child under 14 years of age to the list of specified circumstances that would result in this imprisonment.

This bill would provide that when rape, spousal rape, rape in concert, or sexual penetration, sodomy, or oral copulation committed against the victim's will are committed under 2 of a specified list of circumstances, upon a minor 14 years of age or older, the punishment shall be imprisonment in state prison for life without the possibility of parole if the offender is 18 years of age or older or 25 years to life if the offender is under 18 years of age, or for 25 years to life if committed under one of the specified circumstances.

Under existing law, a person convicted of certain felony sex offenses shall be committed to prison for a term of 15 years to life if during the commission of the felony the defendant inflicted great bodily injury on the victim.

This bill would provide that any person who is convicted of certain sex offenses under specified circumstances, upon a victim who is a child under 14 years of age, shall be punished by imprisonment in the state prison for 25 years to life. The bill would provide a life term of imprisonment for any person convicted of a lewd or lascivious act where he or she inflicted bodily harm.

Existing law makes it unlawful for a person who is required to register as a sex offender to reside within 2,000 feet of a public or private school, or park where children regularly gather. Existing law also provides that any person required to register as a sex offender who comes into any school building or upon any school ground without lawful business and written permission is guilty of a misdemeanor.

This bill would make it a misdemeanor for a person who is on parole for specified sex offenses to enter any park where children regularly gather without express permission from the person's parole agent.

Under existing law, a prisoner is generally released on parole for a period not exceeding 3 years, except that inmates sentenced for certain enumerated violent felonies are released on parole for a period not exceeding 5 years. Under existing law, the period of parole for an inmate who has received a life sentence for certain specified sex offenses is for a period not exceeding 10 years.

This bill would require lifetime parole for habitual sex offenders, persons convicted of kidnapping a child under 14 years of age with the intent to commit a specified sexual offense, and persons convicted of other specified sex crimes, including, among others, aggravated sexual assault of a child. The bill would, unless a longer period of parole applies, impose a 10-year parole period on inmates sentenced for kidnapping with the intent to commit specified sex offenses, specified lewd or lascivious acts, and other specified sexual offenses. The bill would impose a 20-year parole period on inmates convicted and required to register as sex offenders for rape, sodomy, lewd or lascivious acts, continuous sexual abuse of a child, and other specified sex crimes, in which one or more of the victims of the offense was a child under 14 years of age, as specified.

Existing law provides that petty theft is a misdemeanor, except that every person who, having been convicted of petty theft, grand theft, auto theft, burglary, carjacking, robbery, or receiving stolen property and having served time in a penal institution therefor, is subsequently convicted of petty theft, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison.

This bill would require that most persons be convicted 3 or more times of a qualifying offense to be subject to imprisonment in the state prison for petty theft. Persons required to register as sex offenders, or with a prior serious or violent felony conviction, who have been convicted and

imprisoned for the commission of specified crimes, including, among others, petty theft, auto theft, burglary, carjacking, or robbery, would remain subject to imprisonment in the state prison with one prior qualifying offense.

Existing law provides that the sex offender risk assessment tool for use with selected populations shall be known as the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO). Existing law provides that the SARATSO for adult males required to register as sex offenders shall be the STATIC-99 risk assessment scale. Existing law requires the SARATSO Review Committee to determine whether the STATIC-99 should be supplemented with an actuarial instrument that measures dynamic risk factors or whether it should be replaced with a different risk assessment tool.

This bill would provide that the STATIC-99 shall be the SARATSO static tool for adult males. The bill would require the SARATSO Review Committee, on or before January 1, 2012, to select an actuarial instrument that measures dynamic risk factors and an actuarial instrument that measures risk of future sexual violence to be administered as specified. The bill would provide that persons who administer the dynamic SARATSO and the future violence SARATSO shall be trained, as specified. The bill would make other conforming changes.

Existing law provides that with respect to a person who has been convicted of specified sex crimes, the Department of Justice shall make available to the public via the department's Internet Web site certain identifying and criminal history information.

This bill would require the department to also make available the person's static SARATSO score and information on an elevated risk level based on the SARATSO future violence tool.

Existing law requires that persons convicted of certain sex crimes be evaluated by the county probation department and requires that if a defendant is granted probation, the court shall order the defendant to be placed in an appropriate treatment program designed to deal with child molestation or sexual offenders, if an appropriate program is available in the county.

This bill would remove the requirement that the defendant be placed in an appropriate treatment program but would instead impose specified conditions, including participation in an approved sex offender management program, on persons released on formal supervised probation for an offense requiring registration as a sex offender, as specified. By imposing additional requirements on county probation departments, this bill would impose a state-mandated local program. The bill would similarly require participation in an approved sex offender management program, as a condition of parole, for persons released on parole for an offense that requires registration as a sex offender, as specified.

Existing law requires that, as a condition of parole, prisoners who meet specified criteria be treated by the State Department of Mental Health. Existing law requires that prior to release on parole, these prisoners be evaluated, as specified. Existing law provides that only if both independent

professionals who evaluate the prisoner, as required, concur with the chief psychiatrist's certification shall treatment by the department be required.

This bill would instead make these provisions applicable to the prisoner if at least one of the independent professionals concurs with the chief psychiatrist's certification.

Under the Personal Income Tax Law, individual taxpayers are allowed to contribute amounts in excess of their tax liability for the support of specified funds or accounts, including, among others, the California Sexual Violence Victim Services Fund. Existing law provides for the appearance of this fund on the tax return form until January 1, 2011, unless a later enacted statute deletes or extends that date.

This bill would delete the January 1, 2011, repeal date.

This bill would incorporate additional changes to Section 290.06 of the Penal Code proposed by SB 1201 contingent on the prior enactment of that bill.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. This act shall be known as the Chelsea King Child Predator Prevention Act of 2010.

SEC. 2. Section 220 of the Penal Code is amended to read:

220. (a) (1) Except as provided in subdivision (b), any person who assaults another with intent to commit mayhem, rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 shall be punished by imprisonment in the state prison for two, four, or six years.

(2) Except as provided in subdivision (b), any person who assaults another person under 18 years of age with the intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 shall be punished by imprisonment in the state prison for five, seven, or nine years.

(b) Any person who, in the commission of a burglary of the first degree, as defined in subdivision (a) of Section 460, assaults another with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 shall be punished by imprisonment in the state prison for life with the possibility of parole.

SEC. 3. Section 236.1 of the Penal Code is amended to read:

DECLARATION OF SERVICE BY U.S. MAIL & ELECTRONIC SERVICE

Case Name: **People v. Billy Charles White** Case No.: **S228049**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business. The Office of the Attorney General's eService address is AGSD.DAService@doj.ca.gov.

On January 29, 2016, I served the attached: **RESPONDENT'S MOTION FOR JUDICIAL NOTICE AND DECLARATION OF A. NATASHA CORTINA IN SUPPORT THEREOF**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 600 West Broadway, Suite 1800, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

Raymond M. DiGuiseppe
Attorney at Law
P.O. Box 10790
Southport, NC 28461

Honorable Frank A. Brown, Judge
c/o Michael M. Roddy
Court Executive Officer
San Diego County Superior Court
220 West Broadway
San Diego, CA 92101-3409

Kevin J. Lane/Court Administrator
Fourth Appellate District, Division One
750 B Street, Suite 300
San Diego, CA 92101

and, furthermore I declare, in compliance with California Rules of Court, rules 2.251(i)(1)(A)-(D) and 8.71(f)(1)(A)-(D), I electronically served a copy of the above document on **January 29, 2016**, by 5:00 p.m., on the close of business day to the following.

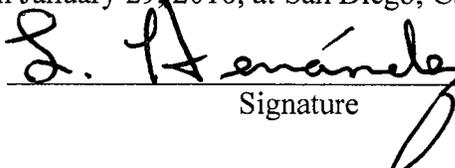
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Raymond M. DiGuiseppe
Attorney for Appellant Billy Charles White

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on January 29, 2016, at San Diego, California.

L. Hernández
Declarant


Signature