

SUPREME COURT COPY

COPY

DONALD R. TICKLE

LAW OFFICES

STATE BAR NO. 142951

140 M STREET NE, No. 1240

Washington, D.C. 20002-3370

Telephone: (202) 695-9405

E-mail: dontickle@gmail.com

September 10, 2016

SUPREME COURT
FILED

Hon. Frank A. McGuire, Clerk
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

SEP 14 2016

Frank A. McGuire Clerk

Re: *People v. Daniel Gary Landry (S100735)*.

Deputy

Dear Mr. McGuire:

For oral argument at 1:30 p.m. on October 5, 2016, in San Francisco, appellant Daniel Gary Landry (“appellant”) submits the following new authorities related to issues on appeal, which were unavailable when he submitted his reply brief to the Court on June 28, 2011.

V. The Trial Court Erred In Dismissing A Juror Who Was Temporarily Sick With The Flu And Substituting An Alternate Juror Just Before Closing Arguments And Jury Deliberations. (AOB Vol. 2, page 163; ARB page 64.)

See *People v. Armstrong* (2016) 1 Cal.5th 432, 450 [“Although this court reviews for abuse of discretion a court's ruling discharging a juror pursuant to [Penal Code] section 189 ([*People v.*] *Cleveland* [(2001)] 25 Cal.4th [466,] 485-86 (*Cleveland*)), we have made clear that such review involves a ‘heightened standard [that] more fully reflects an appellate court's obligation to protect a defendant's fundamental rights to due process and to a fair trial by an unbiased jury’ (*People v. Barnwell* (2007) 41 Cal.4th 1038, 152 (*Barnwell*); see *Cleveland, supra*, at p. 488 (conc. opn. of Werdegar, J.)). Specifically, the juror's ‘inability to perform’ his or her duty ‘must appear in the record as a demonstrable reality.’ (*People v. Compton* (1971) 6 Cal.3d 55, 60; accord, *People v. Wilson* (2008) 44 Cal.4th 758, 821; *Barnwell, supra*, at p. 1052.)”].

DEATH PENALTY

VI. The Trial Court's Refusal To Give Instructions Requested By The Defense On Issues Related To The Evidence Of Duress Violated Appellant's Federal Constitutional Trial Rights. (AOB Vol. 2, p. 172; ARB p. 74.)

See *People v. Cesares* (2016) 62 Cal.4th 808, 844 [“The defense of duress is available to defendants who commit crimes, except murder, ‘under threats or menaces sufficient to show that they had reasonable cause to and did believe their lives would be endangered if they refused.’”], quoting *People v. Wilson* (2005) 36 Cal.4th 309, 331.

VII. The Trial Court Erred By Requiring Evidence "Precluding" Deliberation And Premeditation (CALJIC No. 8.20) To Establish Reasonable Doubt Of First Degree Murder. (AOB Vol. 2, p. 209; ARB p. 95.)

See *People v. Prunty* (2015) 62 Cal.4th 59, 80 [“evidence that subset gangs have periodically been at odds does not necessarily preclude treating those gangs collectively under the STEP Act”]; *Miller v. Alabama* (2012) 567 U.S. ____ [132 S.Ct. 2455, 2468; 183 L. Ed. 2d 407] [“Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features ...” and “prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional.”].

XIV. Section 4500 Is Unconstitutional On Its Face And As Applied To Appellant Because It Did Not Sufficiently Narrow The Class Of Life Prisoners Eligible For The Death Penalty Or Provide A Meaningful Basis For Distinguishing The Extreme Cases Where Death Is The Appropriate Punishment. (AOB VOL. 2, p. 276; ARB p. 146.)

Since appellant submitted his reply, four additional states (Connecticut, Delaware, Maryland, and Nebraska) have abolished or overruled the death penalty. (See “State-by-State Comparison” and “DPIC Fact Sheet” at www.deathpenaltyinfo.org.)¹ In four additional states

¹ In Nebraska, a petition to suspend the legislative repeal of the death penalty bill will be on the November 2016 ballot. (*Ibid.*)

(Colorado, Oregon, Pennsylvania, and Washington), the governors have imposed moratoria on the death penalty. (*Ibid.*)

XVI.D.3 For Multiple Reasons, The Trial Court Erred In The Penalty Phase By Admitting Evidence Of The Details Of Appellant's Prior Theft-Related Juvenile And Adult Offenses. (AOB Vol. 3, 458; ARB p. 179.)

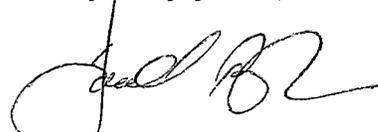
See State v. Hand (2016) ___ Ohio ___ [Ohio LEXIS 2106] [Because a juvenile adjudication is not established through a procedure that provides the right to a jury trial, it cannot be used to increase a sentence beyond a statutory maximum or mandatory minimum.], citing *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000), and *Alleyne v. United States*, ___ U.S. ___, 133 S.Ct. 2151, 186 L.Ed.2d 314 (2013).

IX.B. &C. The Trial Court Erred By Failing To Instruct The Jury On Three Forms Of The Lesser Included Offense Of Voluntary Manslaughter Supported By The Evidence. (AOB Vol. 2, pp. 233, 2344; ARB p. 120)

See People v. Elmore (2014) 59 Cal.4th 121, 136-137 [“unreasonable self-defense, as a form of mistake of fact, has no application when the defendant's actions are entirely delusional.”]; *People v. Ocegueda* (2016) 247 Cal.App. 4th 1393, 1396 [“We hold the trial court erred by precluding the jury from considering evidence of defendant’s mental disabilities in deciding whether he harbored the state of mind required for imperfect self-defense.”].

See also People v. Bryant (2013) 56 Cal.4th 959, overruling *People v. Garcia* (2008) 162 Cal.App.4th 18 [holding that a fatal assault with a deadly weapon without malice is voluntary manslaughter], which was cited by appellant.

Very truly yours,



Donald R. Tickle

PROOF OF SERVICE
(People v. Daniel Gary Landry, S100735)

I declare that I am over the age of 18, not a party to this action and my business address is 140 M ST NE, No. 1240, Washington, D.C., 20002. On the date shown below, I served the within LETTER OF NEW AUTHORITIES to the following parties hereinafter named by:

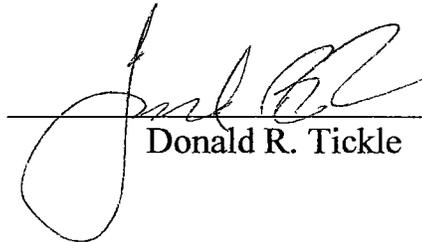
X Placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Washington, D.C., addressed as follows:

Daniel Landry (D-62144)

Karl Terp
Deputy Attorney General
Office of the Attorney General
P.O. Box 85266
San Diego, CA 92186-5266
(Counsel for Respondent)

Mordecai Garelick, Esq.
California Appellate Project
101 Second Street, Suite 600
San Francisco, CA 94105

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 10th day of September 2016 at Washington, D.C.



Donald R. Tickle