

COPY SUPREME COURT COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

vs.

STEPHEN EDWARD HAJEK, and
LOI TAN VO

Defendant and Appellant.

Case No. S049626

Santa Clara County
Superior Court No. 148113

SUPREME COURT
FILED

JAN 10 2012

Frederick K. Ohlrich Clerk

Deputy

APPELLANT'S THIRD SUPPLEMENTAL OPENING BRIEF

Appeal from the Judgment of the Superior Court
of the State of California for the County of Santa Clara

The Honorable Judge Daniel E. Creed

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DEATH PENALTY

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PEOPLE OF THE STATE OF CALIFORNIA,)	Crim. S049626
)	
Plaintiff and Respondent,)	Santa Clara County
)	Superior Court
v.)	No. 148113
)	
STEPHEN EDWARD HAJEK and)	
LOI TAN VO.)	
)	
Defendants and Appellants.))	

APPELLANT'S THIRD SUPPLEMENTAL OPENING BRIEF

On June 22, 2005, appellant Stephen Hajek filed his Appellant's Opening Brief. He filed his First Supplemental Opening Brief on November 8, 2005. Co-appellant Loi Tan Vo filed his 531-page Appellant's Opening Brief on January 18, 2008. After reviewing Mr. Vo's opening brief, counsel for Mr. Hajek determined that in order to provide him with effective assistance of counsel and to an appellate determination of all meritorious legal issues presented by the record she must file a Second Supplemental Opening Brief, which, inter alia, adopted, pursuant to California Rules of Court, rule 8.200(a)(5), certain arguments or parts of arguments set forth in co-appellant Vo's opening brief. Mr. Hajek's second supplemental opening was filed on April 9, 2008.

Respondent's brief was filed on October 8, 2009. In preparing Mr. Hajek's reply brief, his counsel determined that she had inadvertently failed to adopt two constitutional claims made by Mr. Vo in his opening brief; these two claims are essential to protecting Mr. Hajek's constitutional rights to effective assistance of counsel and to an appellate determination of all

meritorious legal issues presented by the record. (U.S. Const., Amends. VI and XIV; Cal. Const., art. I, § 15.) Because this is a death penalty case, the Eighth Amendment of the United States Constitution also requires that all meritorious legal issues in support of Mr. Hajek's claims for relief be addressed in this appeal.

Rule 8.200(a)(5) of the California Rules of Court provides as follows:

Instead of filing a brief, or as part of its brief, a party may join in or adopt by reference all or part of a brief in the same or a related appeal.

Since Mr. Hajek and Mr. Vo were tried together and their appeals are joined, it makes sense and is most expeditious that the Court consider all arguments raised by both appellants which are relevant to both of them as co-defendants. In addition, respondent has filed one brief which addresses all the claims contained in the two briefs by appellants. Respondent's brief (RB at pp. 95-96; 101-102) has already addressed the two claims made in Mr. Vo's brief, which Mr. Hajek now seeks to adopt by the instant third supplemental brief.

Appellant requests to adopt, pursuant to rule 8.200(a)(5), the following arguments, or portions of arguments, set forth in Mr. Vo's opening brief:

1. Argument 9 (C) of Vo's Opening Brief

Argument 9(C) of Mr. Vo's opening brief (pp. 302-306) challenges the constitutionality of the torture special circumstance of the California death penalty statute on the grounds that it violated his Eighth and Fourteenth Amendments rights because it fails to adequately narrow eligibility for the death penalty. The United States Supreme Court has found that "[t]o pass constitutional muster, a capital sentencing scheme must 'genuinely narrow the class of persons eligible for the death penalty and must reasonably justify the imposition of a more severe sentence of the defendant compared to others found guilty of murder.'" (*Lowenfield v. Phelps* (1988) 484 U.S. 231, 244, quoting *Zant v. Stephens* (1983) 462 U.S.

862, 877.) Mr. Hajek wishes to adopt, pursuant to rule 8.200(a)(5), Argument 9(C) of the Vo opening brief (pp. 302-306). Mr. Hajek does not, however, adopt any portion of this argument which seeks to shift blame for the murder and other charges in this case from Mr. Vo to him.

2. Argument 10(C) of Vo's Opening Brief

Argument 10(C) of Mr. Vo's opening brief (pp. 311-316) challenges the constitutionality of the lying-in-wait special circumstance of the California death penalty statute on the ground that it violates a capital defendant's rights under the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and article I, sections 1,7, 15, 17 and 24 of the California Constitution because it applies to a substantial portion of all premeditated murders, thus failing to narrow the class of persons eligible for the death penalty or to provide a meaningful basis for distinguishing between those who are subject to that penalty and those who are not.

Pursuant to rule 8.200(a)(5), Mr. Hajek wishes to adopt this argument. Mr. Hajek does not, however, adopt any portion of Argument 10(C) of Vo's opening brief which seeks to shift blame for the murder and other charges in this case from Mr. Vo to him.

CONCLUSION

For all of the foregoing reasons and for the reasons set forth in his appellant's opening brief and in his first and second supplemental opening briefs, Mr. Hajek respectfully requests the Court to reverse the convictions and death sentence rendered in this case.

DATED: December 20, 2011

Respectfully submitted,

MICHAEL J. HERSEK
State Public Defender

A handwritten signature in black ink that reads "Alison Pease". The signature is written in a cursive style with a long horizontal flourish extending to the right.

ALISON PEASE
Senior Deputy State Public Defender

Attorneys for Stephen E. Hajek

CERTIFICATE OF COUNSEL
(Cal. Rules of Court, rule 8.360(b)(1))

I, Alison Pease, am the Senior Deputy State Public Defender assigned to represent appellant Stephen Edward Hajek in this automatic appeal. I directed a member of our staff to conduct a word count of this brief using our office's computer software. On the basis of that computer-generated word count, I certify that this brief is 861 words in length.

Dated: December 20, 2011

A handwritten signature in cursive script that reads "Alison Pease". The signature is written in black ink and is positioned above a horizontal line.

ALISON PEASE
Sr. Deputy State Public Defender
Attorney for Appellant Tobin

DECLARATION OF SERVICE BY MAIL

Case Name: *People v. Hajek and Vo*
Case Number: **Superior Court No. Crim. 148113**
Supreme Court No. S049626

I, the undersigned, declare as follows:

I am over the age of 18, not a party to this cause. I am employed in the county where the mailing took place. My business address is 801 K Street, Suite 1100, Sacramento, California 95814. I served a copy of the following document(s):

APPELLANT'S THIRD SUPPLEMENTAL OPENING BRIEF

by enclosing them in an envelope and

// **depositing** the sealed envelope with the United States Postal Service with the postage fully prepaid;

/ **X** / **placing** the envelope for collection and mailing on the date and at the place shown below following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

The envelope was addressed and mailed on December 20, 2011, as follows:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on December 20, 2011, at Sacramento, California.



Saundra Alvarez