

OFFICE OF THE STATE PUBLIC DEFENDER

Arnold Erickson, Senior Deputy State Public Defender
1111 Broadway, 10th Floor
Oakland, California 94607-4139
Telephone: (510) 267-3367
Fax: (510) 452-8712
erickson@ospd.ca.gov



SUPREME COURT COPY

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March 22, 2013

Frank A. McGuire
Supreme Court of California
350 McAllister Street
San Francisco CA 94102-3600

SUPREME COURT
FILED

MAR 25 2013

Re: *People v. Juan Manual Lopez*, No. S073597
Additional Authority (Oral argument set April 3, 2013)

Frank A. McGuire Clerk

Deputy

Dear Mr. McGuire:

Oral argument in the above-entitled case has been set for 2:00 p.m. on Wednesday, April 3, 2013. At that hearing, I may cite the following authorities which were issued after appellant filed his last brief in this appeal and support appellant's argument that the trial court improperly denied appellant's motion brought under *People v. Wheeler* (1978) 22 Cal.3d 258 and *Batson v. Kentucky* (1986) 476 U.S. 79 (AOB and ARB, Argument II):

Snyder v. Louisiana (2008) 552 U.S. 472, 483-485. A prosecutor's proffer of an implausible reason for striking a single juror gives rise to an inference of discriminatory intent and establishes a third-stage *Batson* violation.

People v. Khoa Khac Long (2010) 189 Cal.App.4th 826, 848. Discriminatory intent was found after a stated reason given by the prosecutor was demonstrably inaccurate and contradicted by the record.

United States v. Arango (1st Cir. 2010) 603 F.3d 112, 115. Where the prosecutor states a reason and the trial court accepts it, there is no need to decide whether there was a prima facie case of discrimination (applying *Hernandez v. New York* (1991) 500 U.S. 352, 359).

Reed v. Quarterman (5th Cir. 2009) 555 F.3d 364, 376. Comparative analysis is applied without regard as to whether jurors are the same in all respects.

Ali v. Hickman (9th Cir. 2009) 584 F.3d 1174, 1193. A prosecutor's unsupported reasons for striking a single juror establishes discriminatory intent.

DEATH PENALTY

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Green v. LaMarque (9th Cir. 2008) 532 F.3d 1028, 1030-1033. Courts must be careful not to substitute their own speculation as to reasons why a juror might have been struck for the prosecutor's stated reason. It is not enough for a court to state that a reason is race-neutral without analyzing the evidence in the record to determine whether the reason is genuine. Reversal is required if the prosecutor's reasons are not substantiated in the record as to a single juror.

United States v. Cruz-Escoto (9th Cir. 2007) 476 F.3d 1081, 1089. A trial court's acceptance of the prosecutor's stated reasons make moot the issue of whether a prima facie case was established (applying *Hernandez v. New York, supra*, 500 U.S. at p. 359).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Arnold Erickson', with a long horizontal flourish extending to the right.

Arnold Erickson
Senior Deputy State Public Defender
Attorney for Appellant

DECLARATION OF SERVICE

Re: People v. Juan Manuel Lopez

No. S073597

L.A. Superior Ct. No.: PA023649-01

I, JILL SHAW, declare that I am over 18 years of age, and not a party to the within cause; my business address is 1111 Broadway, 10th Floor, Oakland, California 94607, that I served a true copy of the attached:

NOTICE OF ADDITIONAL AUTHORITY FOR ORAL ARGUMENT

on each of the following, by placing same in an envelope (or envelopes) addressed (respectively) as follows:

Office of the Attorney General
Attn: Theresa A. Patterson
300 S. Spring St., 5th Floor
Los Angeles, CA 90013

Juan Manuel Lopez
(Appellant)

Each said envelope was then, on March 22, 2013, sealed and deposited in the United States Mail at Oakland, California, the county in which I am employed, with the postage thereon fully prepaid.

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

Executed on March 22, 2013, at Oakland, California.



DECLARANT