

# SUPREME COURT COPY

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## IN THE SUPREME COURT FOR THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

DAVID SCOTT DANIELS,

Defendant and Appellant.

No. S095868

(Sacramento County Sup. Ct.  
No. 99F10432)

### APPELLANT'S SUPPLEMENTAL REPLY BRIEF

SUPREME COURT  
**FILED**

Appeal from the Judgment of the Superior Court of  
the State of California for the County of Sacramento

SEP 22 2014

Frank A. McGuire Clerk

HONORABLE JAMES L. LONG, JUDGE PRESIDING

Deputy

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# DEATH PENALTY

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**APPELLANT'S SUPPLEMENTAL REPLY BRIEF**

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**INTRODUCTION**

In this brief, appellant does not reply to respondent's arguments which are adequately addressed in appellant's supplemental opening brief. Unless expressly noted to the contrary, the absence of a response to any particular argument or allegation made by respondent, or to reassert any particular point made in the opening brief, does not constitute a concession, abandonment or waiver of the point by appellant (see *People v. Hill* (1992) 3 Cal.4th 959, 995, fn. 3, overruled on another ground in *Price v. Superior Court* (2001) 25 Cal.4th 1046, 1069, fn. 13), but reflects appellant's view that the issue has been adequately presented and the positions of the parties fully joined. For the convenience of the Court, the arguments in this reply are numbered to correspond to the argument numbers in Appellant's Supplemental Opening Brief.<sup>1</sup>

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<sup>1</sup> Appellant refers to Appellant's Opening Brief and Appellant's  
(continued...)

## IX.

### **THE TRIAL COURT ERRED WHEN IT PERMITTED APPELLANT TO REPRESENT HIMSELF AT HIS CAPITAL TRIAL**

In his supplemental opening brief, appellant argued that the trial court erred when it granted his motion to represent himself at his capital trial. (SAOB 1-16.) Specifically, appellant argued that because of (1) recognized limits on the *Faretta* decision,<sup>2</sup> and (2) Eighth Amendment requirements pursuant to which the right to self-representation must be limited to non-capital cases, the trial court erred when it granted his motion to represent himself at his capital trial. (SAOB 2-10.) Appellant further argued that, because *Faretta*'s reasoning does not support the right to self-representation at the penalty phase, the trial court erred when it continued to allow him to represent himself there. (SAOB 10-14.) Appellant recognizes that this Court has previously rejected these arguments (see SAOB 1), but again urges the Court to reconsider them. Respondent relies on this Court's previous precedents without any substantive new arguments. (SRB 1-3.) The issue is therefore joined, and, except as to the following point, no further reply to respondent's contentions is necessary:

This Court's recent decision in *People v. Boyce* (2014) 59 Cal.4th

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<sup>1</sup>(...continued)

Reply Brief as "AOB" and "ARB," respectively. He refers to the Supplemental Appellant's Opening Brief and Supplemental Respondent's Brief as "SAOB" and "SRB," respectively. Finally, as in appellant's previous briefing in this case, he refers to the Clerk's Transcript and Reporter's Transcript in the Superior Court as "CT" and "RTS," respectively.

<sup>2</sup> *Faretta v. California* (1975) 422 U.S. 806.

672 supports appellant's position. There, on the same day the jury returned its guilt phase verdicts, Boyce requested that his attorneys be removed because they "did their job already, you know, and ain't no need to put no defense for me for the penalty phase." (*Id.* at p. 701.) Although Boyce repeatedly affirmed that he did not want to be represented by counsel, he also repeatedly stated that he did not wish to represent himself either. (*Ibid.*) During the trial court's inquiry into Boyce's request, Boyce stated, "You know, your Honor, if I could have it my way, I don't want to be here at all. I want to stay in the jail. You could notify me of the outcome." (*Ibid.*) The court deemed Boyce to have made a *Faretta* motion as "part and parcel of a *Marsden* request," and, after questioning him, denied his request for pro se status. (*Ibid.*)

On appeal, this Court held that the trial court properly denied Boyce's request, in part because he did not make an unequivocal demand to represent himself. (*People v. Boyce, supra*, 59 Cal.4th at p. 703.) In so holding, this Court rejected the trial court's understanding that Boyce's request was for self-representation. (*Id.* at pp. 703-704.) Instead, Boyce's comment to the trial court – specifically, "You know, your Honor, if I could have it my way, I don't want to be here at all. I want to stay in the jail. You could notify me of the outcome" – "reflect[ed] a desire not to participate in the defense that is inherently inconsistent with a proper *Faretta* demand." (*Id.* at p. 704.) As this Court recognized, a defendant who seeks self-representation in order to absent himself signals an intent to violate "relevant rules of procedural and substantive law." (*Ibid.*, quoting *Faretta v. California, supra*, 422 U.S. at pp. 834-835, fn. 46.) "Simply stated, [Boyce] wished to proceed in a way the law does not allow. His desire to do what the law prevents cannot be transformed into a request to do what

the law permits but that he does not want. Accordingly, the court properly allowed defense counsel to remain on the case and to present mitigating evidence on [his] behalf.” (*Ibid.*)

The instant case is analogous. Unlike Boyce, appellant did not explicitly state that he did not wish to represent himself. However, the distinction is immaterial. As appellant has noted (see AOB 41-42, 81; ARB 37-38; SAOB 14-15, 20-21), the trial court knew or should have known even prior to trial that appellant intended to effectively plead guilty by way of non-participation, in violation of Penal Code section 1018. (See Arguments I, III and X, hereby incorporated by reference as if fully set forth herein.) He had attempted to plead guilty several times. (1 RTS 48.) Before appellant waived jury, the court had been informed by the prosecutor that appellant contemplated waiving jury. (1 CT 255.) In agreeing to the court trial, appellant did not reserve the right to present witnesses or any other evidence, declined the court’s offer to appoint an investigator or advisory counsel (1 RTS 47-78), and did not request time to prepare for the guilt trial, which was scheduled to begin on January 16, 2001, only 10 days away. (1 RTS 78.) The court knew that appellant did not have discovery or any other materials with him in court, and when the court inquired, appellant said he did not want to bring them (but assured the court he knew what he was doing). (1 RTS 62-63.)

Under these circumstances, appellant, no less than the defendant in *Boyce*, “signal[led] an intent to violate ‘relevant rules of procedural and substantive law.’” (See *People v. Boyce, supra*, 59 Cal.4th at p. 704.) Therefore, the trial court in this case should have denied appellant’s request for self-representation, as did the trial court in *Boyce*. Certainly, by the end of the guilt phase, it was apparent that appellant was not representing

himself, and the trial court should have terminated his pro per status and appointed counsel. At a minimum, the trial court in this case, like the trial court in *Boyce* (*id.* at p. 705), should have inquired into appellant's intentions before commencing the trial. (See AOB 81-82; ARB 44-45.)

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X.

**THE CONVICTIONS, SPECIAL CIRCUMSTANCE FINDINGS AND DEATH VERDICT MUST BE REVERSED BECAUSE THE TRIAL COURT ERRONEOUSLY PERMITTED APPELLANT TO WAIVE COUNSEL IN VIOLATION OF PENAL CODE SECTION 686.1**

In his supplemental opening brief, appellant argued that the trial court erroneously permitted him to waive counsel in violation of Penal Code section 686.1, which requires counsel in capital cases, and that the entire judgment must therefore be reversed. (SAOB 17-26.) Appellant recognizes that this Court has previously rejected these arguments, but urges the Court to reconsider them. Respondent relies on this Court's previous precedents without any substantive new arguments. (SRB 3-9.) The issue is therefore joined, and, except as to the following point, no further reply to respondent's contentions is necessary:

Respondent acknowledges that appellant did not present evidence at the penalty phase, but asserts that the trial court considered guilt-phase evidence of his drug use as a potentially mitigating circumstance. (SRB 7.) However, as appellant has demonstrated, the trial court erroneously *refused* to consider that evidence in mitigation. (AOB 88-110; ARB 48-52.) Under these circumstances, respondent is incorrect in contending that California's interests in the fairness and reliability of a death judgment were satisfied. (SRB 7-8.)

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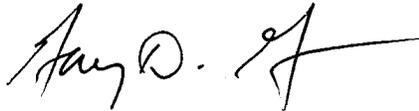
**CONCLUSION**

For all the aforementioned reasons, the judgment in this case must be reversed in its entirety.

DATED: September 22, 2014

Respectfully submitted,

MICHAEL J. HERSEK  
State Public Defender

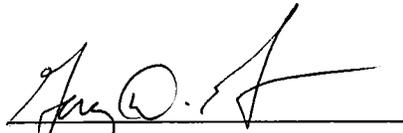
A handwritten signature in black ink, appearing to read "Gary D. Garcia", with a long horizontal flourish extending to the right.

GARY D. GARCIA  
Senior Deputy State Public Defender

Attorneys for Appellant

**CERTIFICATE OF COUNSEL  
(CAL. RULES OF COURT, RULE 8.630(b)(1), (2))**

I, Gary D. Garcia, am the Senior Deputy State Public Defender assigned to represent appellant David Daniels 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 1,351 words in length.

  
\_\_\_\_\_  
GARY D. GARCIA  
Attorney for Appellant

**DECLARATION OF SERVICE BY MAIL**

Case Name: **People v. Daniels**  
Case Number: **Supreme Court Crim. No. S095868**  
**Sacramento County Superior Court No. 99F10432**

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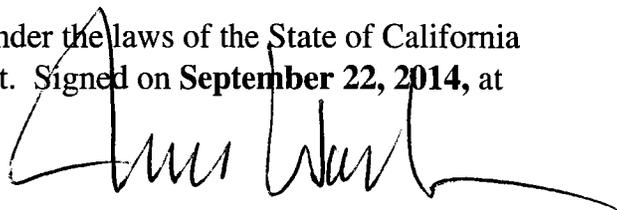
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Signed on **September 22, 2014**, at Oakland, California.



\_\_\_\_\_  
NEVA WANDERSEE