

## Office of the State Public Defender

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October 24, 2019

Jorge E. Navarrete, Clerk  
Supreme Court of California  
350 McAllister St.  
San Francisco, CA 94102

Re: *People v. Jose Luis Leon*, Case No. S143531  
Oral Argument – Supplemental Authority

Dear Mr. Navarrete:

I am counsel assigned to represent Mr. Leon in the above-referenced appeal, calendared for oral argument on November 5, 2019, at 1:30 p.m.

I wish to submit the following additional authority in support of the claim that the trial court erred prejudicially, and that the judgment should be reversed, because the trial court instructed the jury pursuant to CALCRIM No. 2.71.7 over the objection of Mr. Leon's counsel (Argument II.):

*People v. Diaz* (2015) 60 Cal.4th 1176, 1189 [The trial court does not have a sua sponte duty to instruct the jury to consider with caution witness testimony to the effect that the defendant made an out-of-court statement that is used by the prosecution to prove the defendant's guilt, because "[t]he cautionary instruction does not reflect a legal principle with which jurors would be unfamiliar absent the instruction, *and the defendant may not always want the instruction to be given*[,]" abrogating, inter alia, *People v. Lang* (1989) 49 Cal.3d 991, 1021, and *People v. Williams* (1988) 45 Cal.3d 1268, 1315, cited in Respondent's Brief at pp. 43-44. (Italics added.)].

Thank you for bringing this letter to the Court's attention.

Sincerely,

/s/ Andrea Asaro

Andrea Asaro  
Senior Deputy State Public Defender

## DECLARATION OF SERVICE

Case Name: *People v. Jose Luis Leon*  
Case Number: **Cal. Supreme Court No. S143531**  
**Riverside Co. Sup. Ct. No. RIF109916**

I, Alco C. Robinson, 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 1111 Broadway, 10th Floor, Oakland, California, 94607. I served a true copy of the following document(s):

### **ORAL ARGUMENT – SUPPLEMENTAL AUTHORITY**

by enclosing it in envelopes and placing the envelopes 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.

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| Clerk of the Court for Honorable Christian F.<br>Thierbach<br>Riverside County Superior Court<br>4100 Main Street<br>Riverside, CA 92501 | Jose Luis Leon – CCR #F-26864<br>SPSQ<br>5-EB-86<br>San Quentin, CA 94974 |
|--|---|

The following were served the aforementioned document(s) electronically via TrueFiling on **October 24, 2019**:

Kristen K. Chenelia  
Deputy Attorney General  
Attorney General's Office  
P.O. Box 85266  
San Diego, CA 92186  
[kristen.chenelia@doj.ca.gov](mailto:kristen.chenelia@doj.ca.gov)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Signed on **October 24, 2019**, at Oakland, California.

**/s/ ALCO ROBINSON**

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DECLARANT

STATE OF CALIFORNIA

**PROOF OF SERVICE**

STATE OF CALIFORNIA

Case Name: **PEOPLE v. LEON (JOSE LUIS)**

Case Number: **S143531**

Lower Court Case Number:

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **andrea.asaro@ospd.ca.gov**
3. I served by email a copy of the following document(s) indicated below:

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| LETTER      | Leon Supplemental Authority |

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| Andrea Asaro<br>Office of the State Public Defender  | andrea.asaro@ospd.ca.gov    | e-Serve |             |
| Office Of The Attorney Office Of The Attorney General<br>Court Added   | sdag.docketing@doj.ca.gov   | e-Serve |             |
| Attorney General - San Diego Attorney General - San Diego Office<br>Kristen Chenelia, Deputy Attorney General            | kristen.chenelia@doj.ca.gov | e-Serve |             |
| Office Of The State Public Office Of The State Public Defender-Sac<br>Timothy J. Foley, Sr. Deputy State Public Defender | docketing@ospd.ca.gov       | e-Serve |             |

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

Date

/s/Alco Robinson

Signature

Asaro, Andrea (107039)

Last Name, First Name (PNum)

Office of the State Public Defender

Law Firm