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# SUPREME COURT COPY

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May 4, 2011

Honorable Chief Justice  
Tani Gorre Cantil-Sakauye  
and Honorable Associate Justices  
California Supreme Court  
Earl Warren Building  
350 McAllister Street  
San Francisco, CA 94102

**SUPREME COURT  
FILED**

**MAY 05 2011**

Frederick K. Ohlrich Clerk

Deputy

RE: *People v. Ronald Bruce Mendoza*  
California Supreme Court, Case No. S065467  
**DEATH PENALTY CASE**

Dear Chief Justice Cantil-Sakauye and Associate Justices:

On April 13, 2011, this Court ordered the parties to be prepared to discuss at oral argument Penal Code section 1252<sup>1</sup> as it relates to this case, and further permitted the parties to submit letter briefs on this issue on or before May 4, 2011. Respondent accordingly submits this letter brief addressing the application of section 1252 to this case.

**SECTION 1252 REQUIRES THIS COURT TO CONSIDER RESPONDENT'S ARGUMENT  
THAT THE TRIAL COURT WAS UNAUTHORIZED TO STRIKE THE LYING-IN-WAIT  
SPECIAL CIRCUMSTANCE**

**A. Relevant Background**

Appellant asserted in the trial court that there was insufficient evidence to support the lying-in-wait special circumstance and objected to the lying-in-wait jury instructions. (13CT 3684, 3692; 13RT 1915-1917, 1920-1921; 14RT 2046-2047, 2092, 2104.) The trial court repeatedly rejected appellant's arguments, finding sufficient evidence of lying-

<sup>1</sup> All further statutory references are to the Penal Code unless otherwise designated.

in-wait, at the close of the prosecution's case (13RT 1921-1924, 1929), at the close of evidence (14RT 2047), and during the jury instruction hearing (14RT 2092, 2104). Prior to imposing the death sentence, however, the trial court reversed course and struck the lying-in-wait special circumstance pursuant to section 1385. (18RT 2875, 2906-2907, 2913.) The court found "the time [of watching and waiting] was insubstantial" as a matter of law. (18RT 2875, 2913.) Neither the trial court nor counsel raised or addressed section 1385.1, which limits the trial court's authority to strike a special circumstance.

Appellant's Opening Brief raised several issues challenging the validity of the lying-in-wait special circumstance. (AOB 24-42, 53-56, 132-141.) Appellant cited and set forth section 1385.1 (AOB 24, fn. 27), but did not directly address the application of that section or the trial court's authority to strike the special circumstance.

As a threshold issue to the sufficiency of the evidence supporting the lying-in-wait special circumstance, Respondent's Brief argued that the trial court was without authority to strike the special circumstance and asked this Court to modify the judgment, abstract of judgment and commitment order to accurately reflect the jury's verdicts. (RB 47-56.) The Respondent's Brief relied on section 1385.1, which states:

Notwithstanding Section 1385 or any other provision of law, a judge shall not strike or dismiss any special circumstance which is admitted by a plea of guilty or nolo contendere or is found by a jury or court as provided in Sections 190.1 to 190.5, inclusive.

Appellant's Reply Brief appears to agree that section 1385.1 prohibited the trial court from striking the special circumstance pursuant to section 1385, but contends other provisions of law provide the necessary authority. (Reply 3-5.) Appellant further argues that the striking of the special circumstance did not result in an unauthorized sentence because the sentence of death remained. (Reply 6-8.)

**B. Applicable Law: Section 1252 Permits the State to Raise Issues in a Defendant's Appeal to "Secure an Affirmance"**

Section 1252 states, in pertinent part:

On an appeal by a defendant, the appellate court shall, in addition to the issues raised by the defendant, consider and pass upon all rulings of the trial court adverse to the State which it may be requested to pass upon by the Attorney General.

The purpose of this statute was to give the State the right to receive review of adverse trial court rulings. (*People v. Braeseke* (1979) 25 Cal.3d 691, 699, citing Rep. of Com. for Reform of Crim. Proc., Sen. J., p. 163 (1927).) The broad language of the statute reflects that purpose. This Court has accordingly held "that the People may, on an appeal by the defendant and pursuant to the provisions of section 1252, obtain review of allegedly erroneous rulings by the trial court in order to secure an affirmance of the judgment of conviction." (*Id.* at p. 701; accord, *People v. Jones* (2011) 51 Cal.4th 346, 377, fn. 5.)

**C. This Court's Consideration of Whether the Trial Court Was Authorized to Strike the Lying-in-Wait Special Circumstance Is Necessary to Secure an Affirmance**

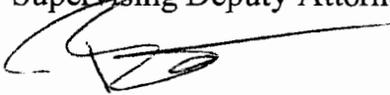
Respondent is seeking affirmance of the death judgment, based on the jury's finding of three special circumstances. (13CT 3629-3630.) The trial court struck one of the three special circumstances, leaving the judgment as a first degree murder with two special circumstances. (13CT 3713; 18RT 2875, 2906-2907, 2913.) Appellant, in this appeal, challenges all three special circumstances on various grounds. (AOB 24-42, 53-56, 63-78, 132-141.) Respondent is seeking to affirm the jury's conviction of first degree murder with three special circumstances. Review of whether the trial court was authorized to strike the lying-in-wait special circumstance is therefore necessary "to secure an affirmance" of the jury's findings and the judgment of death. (See *People v. Braeseke*, *supra*, 25 Cal.3d at p. 701.)

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Pursuant to the plain language of section 1252, as well as this Court's interpretation of that statute, Respondent has properly raised the issue of the trial court's authority to strike the special circumstance here.<sup>2</sup> Accordingly, Respondent requests the Court to "consider and pass upon" the trial court's unauthorized decision to strike the lying-in-wait special circumstance. (See § 1252.)

Respectfully Submitted,

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<sup>2</sup> Although Respondent's Brief did not cite section 1252, it did cite and discuss *People v. Johnwell* (2004) 121 Cal.App.4th 1267, 1281-1285 & fn. 9, wherein the appellate court noted that it would have reached the People's argument challenging the trial court's striking of a special circumstance under section 1252 if necessary. (RB 55, fn. 21.)

**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: *People v. Ronald Bruce Mendoza*  
No.: **S065467**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On **May 4, 2011**, I served the attached

**LETTER BRIEF**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

Denise Kendall  
Assistant State Public Defender  
State Public Defender's Office - San  
Francisco  
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(Counsel for Appellant)

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101 Second Street, Suite 600  
San Francisco, CA 94105-3672

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **May 4, 2011**, at Los Angeles, California.

Marianne A. Siacunco

Declarant



Signature