Susan K. Shaler
Professional Law Corporation
State Bar No. 115762
991 Lomas Santa Fe Dr., Ste C, #112
Solana Beach, CA 92075

Office 858.259.6737
Facsimile: 858.345.1666

Attorney for Defendant and Appellant
Warren Justin Hardy

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,	
Plaintiff and Respondent,	Supreme Court No. S113421
v.	
WARREN JUSTIN HARDY,	Los Angeles County Super. Ct. No. NA039436-02
Defendant and Appellant.	
	AUTOMATIC APPEAL

MOTION FOR JUDICIAL NOTICE; DECLARATION IN SUPPORT THEREOF; PROPOSED ORDER

TO THE HONORABLE TANI G. CANTIL-SAKAUYE, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

Appellant Warren J. Hardy hereby respectfully requests this Court to take judicial notice, pursuant to California Rules of Court, rule 8.25(a)(1),

and Evidence Code sections 452 and 459, of pages 4883 through 4903 of the reporter's transcript of October 2, 2003 in the trial of Hardy's severed co-defendant Kevin Pearson. The transcript reports the penalty phase argument by Los Angeles County Deputy District Attorney Corene Locke-Noble who was the prosecutor assigned to the trials of Hardy and his co-defendant Kevin Pearson, who were tried in the Los Angeles County Superior Court, South Division, 415 West Ocean Boulevard, Long Beach, CA 90802. Attachment A hereto is a true and accurate copy of those pages 4883 through 4903. The reporter's transcript relates to Argument XIX in Appellant's Opening Brief. Judicial notice of this reporter's transcript is authorized and appropriate, and will permit this Court's attention and consideration of information relevant to Hardy's direct appeal. (Cf., *People v. Jurado* (1981) 115 Cal.App.3d 470, 482.)

The transcript of the prosecutor's penalty phase argument on October 2, 2003, is relevant to Argument XIX in Hardy's Appellant's Opening Brief. The issue is whether the prosecutor used wholly inconsistent theories at the penalty phases of Hardy's and Pearson's respective trials in order to obtain a sentence of death against each defendant. For example, to obtain the death penalty against Hardy, the prosecutor argued that, "He was the leader . . ." of the other two co-defendants. (14RT 3146, lines 12-13.) The

majority of the prosecution's evidence against all defendants derived from their respective statements to law enforcement following their arrests shortly after the crimes. There was no newly discovered evidence concerning leadership among the three defendants. Nevertheless, in Pearson's trial, again to obtain a sentence of death, the same prosecutor argued that Pearson, not Hardy, was the leader. The transcripts contain the prosecutor's closing argument at the penalty phase of Pearson's trial. The transcripts are necessary to permit complete direct appeal of Hardy's death sentence. Hardy's Appellant's Opening Brief refers to three pages reporting the prosecutor's argument. For the sake of continuity, and to avoid any hint that Hardy has misrepresented or misunderstood the prosecutor's argument, judicial notice of the transcript of the complete prosecutor's closing argument is requested.

Evidence Code section 459 authorizes a reviewing court to take judicial notice of any matter specified in section 452. "Records of . . . any court of this state" are matters which may be judicially noticed under section 452. (Evid. Code, § 452, subd. (d)(1); see also *Smith v. Rae-Venter Law Group* (2002) 29 Cal.4th 345, 359; *People v. Connor* (2004) 115 Cal.App.4th 669, 681, fn.3.) Under longstanding practice in California court, transcripts are a type of document or record that is routinely noticed

judicially. (*Knoff v. San Francisco* (1969) 1 Cal.App.3d 184, 200 [proper judicial notice of testimony in grand jury transcript]; *People v. Buckley* (1986) 185 Cal.App.3d 512, 525 [proper judicial notice of preliminary hearing transcript].) In *Santillan v. Roman Catholic Bishop of Fresno* (2012) 202 Cal.App4th 708, 719, footnote 7, the Second Appellate District, Division Eight, took judicial notice of a case management order and a request for a jury instruction in another case. In *In re Nicole H.* (2011) 210 Cal.App.4th 388, 392, the Third Appellate District involved judicial notice of the record in a different appeal, including the reporter's transcript. This approach is consistent with that of federal courts. (See e.g., *Scherr v. Marriott International* (7th Cir. 2013) 703 F.3d 1069, 1073 [judicial notice of documents part of the public record, including transcripts].)

Rule 8.252, California Rules of Court provides that "To obtain judicial notice by a reviewing court under Evidence Code section 459, a party must serve and file a separate motion with a proposed order." A proposed order is attached.

Respectfully submitted

Dated: June 21, 2013

Susan K. Shaler
Attorney for Warren J.Hardy

DECLARATION IN SUPPORT OF MOTION.

I, SUSAN K. SHALER, without waiving the attorney client privilege, do hereby declare that I have personal knowledge of the matters set forth below. If called to testify, I could and would testify as follows:

1. On June 12, 2013, I filed the Appellant's Opening Brief. Argument XIX raises the issue of the prosecution presenting wholly inconsistent theories in the trial of Hardy's co-defendant in order to obtain the death sentence against each defendant.

2. At diverse times during my representation of Hardy, I obtained the reporter's transcripts of the prosecutor's closing argument in the penalty phase of co-defendant Pearson's trial from Pearson's appellate attorney, the Los Angeles Superior Court, and confirmed the accuracy of those transcripts by comparing them to the electronic transcripts in the possession of the Attorney General.

3. Attachment A hereto is a true and accurate copy of pages 4883 through 4903 of the prosecutor's closing argument during the penalty phase of Pearson's trial.

4. Based on the foregoing, I seek an order from this Court taking judicial notice of the attached reporter's transcript.

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

DATED: June 21, 2013

SUSAN K. SHALER

[PROPOSED] ORDER GRANTING JUDICIAL NOTICE

The motion of appellant Warren J. Hardy for judicial notice of portions of the record, that is the reporter's transcript pages 4883 through 4903 in the case of *People v. Pearson* (NA039436), having been considered by the Court, and on good cause appearing, pursuant to Evidence Code sections 452 and 459, and California Rules of Court, rule 8.25(a)(1), IT IS HEREBY ORDERED that judicial notice will be, and is, taken of the following portion of the court record of the reporter's transcript in *People v. Pearson* on October 2, 2003, found at pages 4883 through 4903.

DATE:_____

_____

CHIEF JUSTICE

FOLLOWING CRIMINAL ACTS OF ASSAULT AND BATTERY OR ACTIVITIES OF BEATING PEOPLE WITH STICKS, BEATING PEOPLE WITH FIST KICKING PEOPLE, KICKING PEOPLE OFF THEIR BIKES OR KNOCKING PEOPLE OFF OF THEIR BIKES, WHICH EXPRESSES OR IMPLIES USE OF FORCE OR VIOLENCE OR THE THREAT OF FORCE OR VIOLENCE.

BEFORE A JUROR MAY CONSIDER ANY CRIMINAL ACTS OR ACTIVITY AS AN AGGRAVATING CIRCUMSTANCE, IN THIS CASE, A JUROR MUST FIRST BE SATISFIED BEYOND A REASONABLE DOUBT THAT THE DEFENDANT, KEVIN PEARSON, DID, IN FACT, COMMIT THE CRIMINAL ACTS OR ACTIVITIES.

A JUROR MAY NOT CONSIDER ANY EVIDENCE OF ANY OTHER CRIMINAL ACTS OR ACTIVITY AS AN AGGRAVATING CIRCUMSTANCE.

IT IS NOT NECESSARY FOR ALL JURORS TO AGREE.

IF ANY JUROR IS CONVINCED BEYOND A REASONABLE DOUBT, THAT THE CRIMINAL ACTIVITY OCCURRED, THAT JUROR MAY CONSIDER THAT ACTIVITY AS A FACT IN AGGRAVATION.

IF A JUROR IS NOT CONVINCED IF A JUROR IS NOT SO CONVINCED, THAT JUROR MUST NOT CONSIDER THAT EVIDENCE FOR ANY PURPOSE.

CLOSING MS. LOCKE-NOBLE.

MS. LOCKE-NOBLE: THANK YOU.

AS HIGH AS YOU CAN GO OR SHOULD I SAY AS LOW.

AS LOW, WHAT HE DID TO PENNY WAS INHUMANE.

LADIES AND GENTLEMEN, THIS IS A HARD DECISION, BUT THE DEFENDANT'S ACTIONS HAVE MADE IT EASY.

THIS PORTION OF THE TRIAL, AS YOU KNOW, IS KNOWN AS PENALTY PHASE. WHAT I SAY OR WHAT COUNSEL SAYS IS NOT TO BE CONSIDERED BY YOU AS EVIDENCE.

ATTACHMENT A

DURING THE COURSE OF THIS PARTICULAR PORTION OF THE TRIAL EVIDENCE WAS PRESENTED CONCERNING THE PENALTY OF WHICH YOU SHALL DECIDE WHEN YOU GO BACK INTO THE JURY ROOM.

THE PENALTIES AVAILABLE AT THIS TIME ARE DEATH OR LIFE WITHOUT THE POSSIBILITY OF PAROLE.

THE LAW PROVIDES FOR YOU A SET OF FACTORS BY WHICH YOU ARE TO BE GUIDED IN DETERMINING WHICH PENALTY SHOULD BE IMPOSED. YOU ARE TO USE THOSE FACTORS AND THE EVIDENCE PRESENTED IN THIS COURTROOM TO GUIDE YOU TO YOUR DECISION AND THAT'S ALL YOU ARE TO USE.

YOU DON'T HAVE TO AGREE. AS YOU WILL REMEMBER DURING JURY SELECTION, I TOLD EACH AND EVERY ONE OF YOU THAT THERE WOULD BE AGGRAVATING FACTORS AND MITIGATING FACTORS, AND YOU PERSONALLY HAD TO DECIDE WHAT FACTORS YOU FELT WERE AGGRAVATING AND WHAT FACTORS YOU FELT WERE MITIGATING.

YOU DO NOT HAVE AGREE WITH EACH OTHER AS TO WHICH ARE AGGRAVATING OR WHICH ARE MITIGATING. ONCE YOU HAVE DECIDED WHICH THE FACTORS, THAT IS THE EVIDENCE THOSE WHICH ARE AGGRAVATING AND THOSE WHICH ARE MITIGATING. AND SOME OF YOU MAY DECIDE THERE ARE NO MITIGATING, OTHERS OF YOU MAY DECIDE THAT THERE ARE.

ONCE YOU HAVE MADE THAT DECISION THEN YOU MUST ASSIGN A WEIGHT TO EACH ONE OF THOSE FACTORS. AND IT'S NOT A SCALE OF 1 TO 10. IT'S NOT A PERCENTAGE, NOR IS IT A PYRAMID. IT'S YOUR OWN PERSONAL DECISION AS TO HOW MUCH WEIGHT TO GIVE THIS EVIDENCE.

ONCE YOU HAVE DECIDED THE WEIGHT TO GIVE THE

EVIDENCE THAT WAS PRESENTED, IT IS IN THAT WAY THAT YOU DECIDE WHAT THE PENALTY SHALL BE IN THIS PARTICULAR CASE.

LET'S TAKE A LOOK AT THE LAW. THE PENALTY INSTRUCTIONS ARE AS FOLLOWS:

YOU, THE JURY, MUST DETERMINE THE FACTS, FROM THE EVIDENCE RECEIVED DURING THE ENTIRE TRIAL, THAT INCLUDES THE GUILT PHASE. YOU MUST ACCEPT AND FOLLOW THE LAW THAT THE JUDGE HAS STATED TO YOU.

YOU MUST DISREGARD ALL OTHER INSTRUCTIONS THAT THE COURT HAS TOLD YOU THAT DO NOT APPLY.

YOU MUST NEITHER BE INFLUENCED BY BIAS NOR PREJUDICE AGAINST THE DEFENDANT OR SWAYED BY PUBLIC OPINION OR PUBLIC FEELINGS.

YOU MUST CONSIDER ALL OF THE EVIDENCE, FOLLOW THE LAW AND EXERCISE YOUR DECISION, CONSCIENTIOUSLY AND REACH A JUST VERDICT.

YOU ARE TO BASE YOUR DECISION ON WHAT HAS OCCURRED DURING THE COURSE OF THIS PARTICULAR TRIAL AND NOTHING ELSE.

IN DETERMINING WHICH PENALTY IS TO BE IMPOSED ON THE DEFENDANT, YOU SHALL CONSIDER ALL OF THE EVIDENCE WHICH HAS BEEN RECEIVED DURING ANY PART OF THE TRIAL IN THIS CASE.

YOU SHALL CONSIDER AND TAKE INTO ACCOUNT AND BE GUIDED BY THE FOLLOWING FACTORS IF APPLICABLE.

SO, FIRST OF ALL, YOU HAVE TO DECIDE WHICH FACTORS APPLY. THEN YOU DECIDE IF THAT FACTOR IS AGGRAVATING OR MITIGATING, AND THEN YOU ASSIGN A WEIGHT TO EACH ONE OF FACTORS.

THE FACTORS ARE AS FOLLOWS:

THE CIRCUMSTANCES OF THE CRIME OF WHICH THE DEFENDANT WAS CONVICTED IN THE PRESENT PROCEEDING; AND EXISTENCE OF ANY SPECIAL CIRCUMSTANCES TO BE TRUE.

THAT MEANS THE, MURDER THE ROBBERY, THE KIDNAPPING, THE KIDNAPPING FOR RAPE, THE RAPE WITH THE STAKE, AND THE TORTURE. ALL OF THOSE YOU MAY TAKE INTO CONSIDERATION, ALSO THE PERSONAL USE OF THE DANGEROUS OR DEADLY WEAPON, THE WOODEN STAKE.

B. THE PRESENCE OR ABSENCE OF CRIMINAL ACTIVITY BY THE DEFENDANT, OTHER THAN THE CRIMES FOR WHICH THE DEFENDANT HAS BEEN TRIED IN THE PRESENT PROCEEDINGS WHICH INVOLVED THE USE OR ATTEMPTED USE FORCE OR VIOLENCE OR THE EXPRESS OR APPLIED THREAT TO USE FORCE OR VIOLENCE.

C. THE PRESENCE OR ABSENCE OF ANY PRIOR FELONY CONDUCT, OTHER THAN THE CRIMES FOR WHICH THE DEFENDANT HAS BEEN TRIED IN THE PRESENT PROCEEDINGS.

THERE ARE ACTUALLY ELEVEN FACTORS BY WHICH YOU WILL MAKE YOUR DECISION.

D. WHETHER OR NOT THE OFFENSE WAS COMMITTED WHILE THE DEFENDANT WAS UNDER THE INFLUENCE OF EXTREME MENTAL OR EMOTIONAL DISTURBANCE.

E. WHETHER OR NOT THE VICTIM WAS A PARTICIPANT IN THE DEFENDANT'S HOMICIDAL CONDUCT OR CONSENTED TO THE HOMICIDAL ACT.

F. WHETHER OR NOT THE OFFENSE WAS COMMITTED UNDER CIRCUMSTANCES WHICH THE DEFENDANT REASONABLY BELIEVES TO BE MORAL JUSTIFICATION OR EXTENUATION FOR HIS CONDUCT.

G. WHETHER OR NOT THE DEFENDANT ACTED UNDER EXTREME DURESS OR UNDER THE SUBSTANTIAL DOMINATION OF ANOTHER PERSON.

H. WHETHER OR NOT, AT THE TIME OF THE OFFENSE, THE CAPACITY OF THE DEFENDANT TO APPRECIATE THE CRIMINALITY OF HIS CONDUCT OR TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF THE LAW WAS IMPAIRED AS A RESULT OF MENTAL DISEASE OR DEFECT OR THE EFFECTS OF INTOXICATION.

I. THE AGE OF THE DEFENDANT AT THE TIME OF THE CRIME.

J. WHETHER OR NOT THE DEFENDANT WAS AND ACCOMPLICE TO THE OFFENSE AND HIS PARTICIPATION IN THE COMMISSION OF THE OFFENSE WAS RELATIVELY MINOR.

K. ANY OTHER CIRCUMSTANCE WHICH EXTENUATED THE GRAVITY OF THE CRIME EVEN THROUGH ITS NOT A LEGAL EXCUSE FOR THE CRIME AND ANY SYMPATHETIC OR OTHER ASPECT OF THE DEFENDANT'S CHARACTER THAT THE DEFENDANT OFFERS AS A BASIS OF A SENTENCE FOR LESS THAN DEATH, WHETHER OR NOT RELATED TO THE OFFENSE FOR WHICH HE IS ON TRIAL.

YOU MUST DISREGARD ANY JURY INSTRUCTIONS GIVEN IN THE GUILT OR INNOCENCE PHASE OF THIS TRIAL WHICH CONFLICTS WITH THIS PRINCIPAL.

SO THESE ARE THE FACTORS WHICH YOU ARE TO BE GUIDED BY IN MAKING YOUR DECISION TO AS WHETHER OR NOT TO IMPOSE DEATH IN THIS PARTICULAR CASE.

MS. SPERBER: YOUR HONOR, I'M GOING TO OBJECT. PARAGRAPH K IS NOT A CORRECT STATEMENT OF THE WHAT THE LAW IS THAT THE COURT READ TO THE JURY.

THE COURT: ALL RIGHT. OBJECTION IS NOTED, LADIES AND GENTLEMEN.

CONTINUE PLEASE.

MS. LOCKE-NOBLE: EVIDENCE HAS BEEN INTRODUCED FOR PURPOSE OF SHOWING THAT THE DEFENDANT HAS COMMITTED FOLLOWING CRIMINAL ACTS WHICH INVOLVE EXPRESS APPLIED USE OF FORCE OR VIOLENCE. BEFORE YOU MAY CONSIDER ANY CRIMINAL ACT AS AN AGGRAVATING CIRCUMSTANCES IN THIS CASE, YOU, THE JURY, MUST FIRST BE SATISFIED BEYOND A REASONABLE DOUBT THAT THE DEFENDANT DID, IN FACT, COMMIT THE CRIMINAL ACTS.

YOU DON'T HAVE TO AGREE. SOME OF YOU MAY BELIEVE THAT JANISHA WILLIAMS' TESTIMONY CONCERNING THE BEATING OF OTHER PEOPLE WITH STICKS WAS TRUE. THAT'S ENOUGH EVIDENCE TO PROVE IT TO YOU BEYOND A REASONABLE DOUBT. SOME OF YOU MAY NOT BELIEVE IT.

SOME OF YOU MAY BELIEVE THE FACT THAT THEY JUMPED PEOPLE ON THEIR BICYCLES OR BEAT THEM OFF OR KNOCKED THEM OFF THEIR BICYCLES AND SOME OF YOU MAY NOT. THAT'S UP TO YOU EACH INDIVIDUALLY. YOU DON'T ALL HAVE TO AGREE ON THAT.

IT IS NOT NECESSARY FOR ALL JURORS TO AGREE. IF ANY JUROR IS CONVINCED BEYOND A REASONABLE DOUBT THAT THE CRIMINAL ACTIVITY OCCURRED, THAT JUROR MAY CONSIDER THAT ACTIVITY AS A FACTOR IN AGGRAVATION.

IF A JUROR OR IS NOT SO CONVINCED, THAT JUROR MUST NOT CONSIDER THAT EVIDENCE FOR ANY PURPOSE.

LADIES AND GENTLEMEN, WHAT I'M GOING TO DO NOW IS TO THROUGH EACH FACTOR, AND I'M GOING TO GO THROUGH THEM IN

REVERSE ORDER IN REGARD TO WHAT EVIDENCE WAS PRESENTED DURING THE COURSE OF THIS TRIAL IN THIS PENALTY PHASE AND DETERMINING WHAT EVIDENCE FITS EACH FACTOR.

FACTOR K. WHAT CIRCUMSTANCES EXTENUATE THE GRAVITY OF THE CRIME?

LADIES AND GENTLEMEN OF THE JURY, THERE WERE NONE, ABSOLUTELY NONE, EVEN DR. ROTHBERG, ABSOLUTELY NONE WAS PRESENTED. THERE WAS NO LEGAL CAUSE FOR THE CRIME, SYMPATHETIC OR OTHER ASPECT OF THE DEFENDANT'S LIFE OR RECORD THAT THE DEFENSE OFFERS AS A BASIS FOR A SENTENCE LESS THAN DEATH. WHETHER OR NOT IT RELATES TO THE OFFENSE FOR WHICH HE IS ON TRIAL, WHAT FACTORS OR ANY SYMPATHETIC ASPECT OF THE DEFENDANT'S LIFE WAS SHOWN. HE HAD A GREAT STEP-FATHER, WHOM THE DEFENDANT HAD NO FEELINGS FOR WHEN HE DIED.

HIS MOM TAUGHT HIM RIGHT FROM WRONG. HIS MOM HAS BREAKDOWNS, THE DEFENDANT DID CHORES. HE TOOK CARE OF HIS SIBLINGS. THE DEFENDANT WAS IN FOSTER CARE. THE DEFENDANT'S MOTHER HAD DISADVANTAGES AND DEFENDANT'S BROTHER HAD DISADVANTAGES, BUT THEY ARE NOT ON TRIAL FOR MURDER. THEY HAD A BAD LIFE. THEY DID NOT COMMIT MURDER.

THERE HAS BEEN NOTHING PRESENTED UNDER THIS FACTOR.

THE DEFENDANT MADE A CHOICE.

FACTOR J. WHETHER OR NOT THE DEFENDANT WAS AN ACCOMPLICE TO THE OFFENSE AND HIS PARTICIPATION IN THE THEN OFFENSE WAS RELATIVELY MINOR.

HE WAS IMMEDIATELY INVOLVED IN THE ROBBERY. HE

STARTED SEARCHING, LOOKING FOR MONEY, MONEY WAS DEMANDED, HE WAS RIGHT THERE. HE RAPED HER AND DESCRIBED THE RAPE IN GREAT DETAIL, BECAUSE HE DID IT.

IT WAS HIS IDEA TO DESTROY ANY FINGERPRINTS BY ROLLING THE VICTIM DOWN THE HILL. HE USED HIS SHIRT TO WRAP IT AROUND HER WRIST AND ROLL HER IN THAT MULCH SO THAT HE COULD REMOVE THE FINGERPRINTS.

IT WAS HIS IDEA TO COLLECT ALL THE INCRIMINATING EVIDENCE, HER CLOTHING, HE WAS WORRIED ABOUT THE SHOE, THE STAKE, ALL OF THAT WAS COLLECTED UP. AND HE WAS THE ONE THAT WORRIED ABOUT IT. HE WAS THE ONE THAT WAS IN CONTROL. HE WAS ONE DIRECTING IT.

HE MADE SURE THAT THE BUS DRIVER DID NOT CALL THE POLICE. HE WAS THE ONE THAT MADE SURE THINGS RAN SMOOTHLY UNTIL THEY GOT TO HARDY'S HOME.

HE MADE SURE THAT HARDY STAYED UNDER HIS CONTROL SO THE POLICE WOULD NOT BE CALLED, AND HE WOULD NOT BE CAUGHT. HE WAS THE FIRST ONE TO SPEND HIS SHARE OF THE LOOT. HE BOUGHT THAT BLACK AND MILD. JAMELLE GOT GAVE HIM THE MONEY. THEY GOT SIX DOLLARS, TWO DOLLARS A PERSON AND HE WANTED THAT BLACK AND MILD CIGAR, A SMOKE AFTER SEX.

HE SAID, "WE KILLED A WHITE WOMAN." THIS IS A FACTOR FOR YOU TO TAKE INTO CONSIDERATION.

HIS PARTICIPATION WAS NOT RELATIVELY MINOR. HE WAS A MAJOR PARTICIPANT.

FACTOR I. THE AGE OF THE DEFENDANT AT THE TIME OF THE CRIME. HE WAS 21. HE WAS OLD ENOUGH TO KNOW BETTER. OR YOU CAN SAY IT'S EITHER AGGRAVATING OR

MITIGATING. IT'S NEUTRAL, BUT HE WAS OLD ENOUGH TO KNOW RIGHT FROM WRONG. HE WENT TO SCHOOL. HIS MOTHER TAUGHT HIM, HE EVEN TAUGHT HIS BROTHER RIGHT FROM WRONG. HE KNEW BETTER.

H. WHETHER OR NOT AT THE TIME OF THE OFFENSE THE CAPACITY OF THE DEFENDANT TO APPRECIATE THE CRIMINALITY OF HIS CONDUCT OR TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF THE LAW WAS IMPAIRED AS A RESULT OF MENTAL DISEASE OR DEFECT OR THE AFFECTS OF INTOXICATION.

NO EVIDENCE WAS PRESENTED, NONE. IN FACT, THE DEFENDANT KNEW WHAT HE WAS DOING WAS WRONG. DR. ROTHBERG TESTIFIED TO THAT HE KNEW WHAT HE WANTS DOING. HE HAD A CHOICE. HE CHOOSE TO PARTICIPATE IN THESE ACTS.

FACTOR G. WHETHER OR NOT THE DEFENDANT ACTED UNDER EXTREME DURESS OR UNDER THE SUBSTANTIAL DOMINATION OF ANOTHER PERSON. THE DEFENDANT WAS THE LEADER. HE WAS LOOKED UP TO BY OTHER PEOPLE. THE DEFENDANT WAS SCRAPPY CAPONE OF THE CAPONE THUG SOLDIERS.

THE DEFENDANT ASKED MONTE IF HE COULD PUT CHRIS ON THE BLOCK AND HIM JUMP INTO THE GANG OF C.T.S., CHRIS, WHAT IS THAT? BEATING SOMEONE UP. A VERY SHORT TIME BEFORE PENNY WAS MURDERED THERE HE IS ENGAGING IN VIOLENT ACTIVITY. WHAT IS HIS MINDSET.

THE DEFENDANT WAS BIGGER THAN WARREN AND HE WAS ABOUT THE SAME SIZE AS JAMELLE. THE DEFENDANT IMMEDIATELY PARTICIPATED IN THE ROBBERY. THE DEFENDANT WAS FIRST ONE TO RAPE THE VICTIM. AND HOW DO WE KNOW THAT, BECAUSE HE TOLD WARREN THAT WAS DISGUSTING, THAT HE COULD GET AIDS AND WHAT

DOES WARREN? DO HE LISTENED TO HIM AND HE STOPPED WHAT HE WAS DOING BECAUSE HE WAS THE LEADER.

IT WAS DEFENDANT'S IDEA TO COLLECT THE CLOTHES. IT WAS THE DEFENDANT'S IDEA TO WRAP THE SHIRT AROUND HER WRIST DRAG HER UP THE HILL AND ROLL HER DOWN THE HILL TO DESTROY FINGERPRINTS IN THE MULCH, AND WHO FOLLOWED HIM? JAMELLE. HE SEES HIS LEADER WRAPPING HIS SHIRT AROUND THE ARMS AND WRISTS OF THE VICTIM, AND JAMELLE TAKES HIS SHIRT OFF AND WRAPS THEM AROUND THE LEGS OF THE VICTIM AND THEY DRAG HER UP THE HILL.

THE DEFENDANT APOLOGIZED TO THE BUS DRIVER TO PREVENT POLICE FROM BEING CALLED AND DEFENDANT KEPT CONTROL OVER WARREN HARDY'S BEHAVIOR ON THAT BUS. HE WAS THE LEADER. HARDY WAS THE SAME AGE AS THE DEFENDANT, BUT JAMELLE WAS YOUNGER.

F. WHETHER OR NOT THE OFFENSE WAS COMMITTED UNDER THE CIRCUMSTANCES WHICH THE DEFENDANT REASONABLY BELIEVED TO BE A MORAL JUSTIFICATION OR EXTENUATION FOR HIS CONDUCT.

THERE WAS NO EVIDENCE PRESENTED. THIS IS NEITHER AGGRAVATING OR MITIGATING. IT DOESN'T APPLY. THE DEFENDANT KNEW RIGHT FROM WRONG. HE KNEW WHAT HE WAS DOING WAS WRONG, ABSOLUTELY WRONG.

E. WHETHER OR NOT THE VICTIM WAS A PARTICIPANT IN THE DEFENDANT'S HOMICIDAL CONDUCT OR CONSENTED TO THE HOMICIDAL ACT. PENNY NEVER PARTICIPATED OR CONSENT TO THE DEFENDANT RAPING HER, KIDNAPPING HER, KIDNAPPING HER FOR RAPE, RAPPING HER WITH A WOODEN STAKE, RAPPING HER, TORTURING HER OR MURDERING HER. SHE FOUGHT. SHE STRUGGLED.

SHE RESISTED FOR HER LIFE. THE VICTIM PLEADED AND BEGGED THE DEFENDANT TO LET HER LIVE. SHE KEPT SAYING, "HELP ME, HELP ME."

NO ONE HEARD, BUT YOU CAN.

FACTOR D. WHETHER OR NOT THE OFFENSE WAS COMMITTED WHILE THE DEFENDANT WAS UNDER THE INFLUENCE OF EXTREME MENTAL OR EMOTIONAL DISTURBANCE.

WHAT WE HAVE AS EVIDENCE IS THAT THE DEFENDANT SHARED ALCOHOL AND DRUGS WITH FOUR TO SIX OTHERS OVER A SIX TO EIGHT HOUR PERIOD OF TIME. THE DEFENDANT JUST CAME FROM MONTE'S HOUSE WHERE HE ENGAGED IN VIOLENT CONDUCT, THEY JUMPED CHRIS IN TO C.T.S., AND THAT MEANS THEY HAD A MINDSET FOR VIOLENCE. THEY HAD JUST BEAT HIM UP.

WHO WAS IT THAT ASKED MONTE, CAN WE USE YOUR ROOM?" THE DEFENDANT ASKED MONTE GMUR IF THEY COULD USE HIS BACK ROOM TO PUT CHRIS ON THE BLOCK. RIGHT THERE, THAT SHOWS THAT HE IS A LEADER. THAT HE IS THE ONE THAT STARTED THIS VIOLENT BEHAVIOR IN ACTION.

THE DEFENDANT COULD CARRY ON A CONVERSATION, HE, WALKED FINE. HE COULD BE UNDERSTOOD. HE HAD A PRESENCE OF MIND. HE COLLECTED THE VICTIM'S CLOTHING. HE WAS WORRIED ABOUT HER FINGERPRINTS. HE PREVENTED THE BUS DRIVER FROM CALLING THE POLICE. HE KEPT HARDY UNDER CONTROL. HE WAS THE LEADER.

DR. ROTHBERG, LADIES AND GENTLEMEN, BELIEVE HIM OR NOT. HE DIDN'T VERIFY ANYTHING BUT, YET HE BELIEVES THE DEFENDANT. EVEN WHEN HE VERIFIED WHAT THE DEFENDANT SAID TO HIM THROUGH THE AUTOPSY REPORT IN WHICH THE CORONER

TESTIFIED AND IN HIS REPORT STATED, THAT ALL OF THE WOUNDS WERE INFLICTED DURING LIFE, HE STILL BELIEVES THE DEFENDANT WHEN HE SAYS I ONLY STOMPED ON HER AFTER SHE WAS DEAD.

HE ONLY BELIEVES THE DEFENDANT. HE LIKES THE DEFENDANT. DESPITE INCONSISTENT STATEMENTS WITH OTHER WITNESS'S TESTIMONY AND EVIDENCE, HE STILL BELIEVES THE DEFENDANT.

THAT'S WHAT HE IS PAID TO DO. WHO HAS A GREAT DEAL TO GAIN BY LYING AND MANIPULATING? DR. ROTHBERG HAS MONEY TO AGAIN. BY TESTIFYING --

MS. SPERBER: OBJECTION, YOUR HONOR, THAT'S IMPROPER.

MS. LOCKE-NOBLE: -- BY TESTIFYING IN THE WAY THAT HE DID --

THE COURT: OBJECTION SUSTAINED.

MS. LOCKE-NOBLE: DR. ROTHBERG WON'T BE HIRED AGAIN --

MS. SPERBER: OBJECTION, THAT IS SPECULATION.

MS. LOCKE-NOBLE: -- IF HE DOESN'T TESTIFY.

THE COURT: THE OBJECTION IS OVERRULED. YOU MAY COMMENT ON THE CLOSING. CONTINUE PLEASE.

MS. LOCKE-NOBLE: DR. ROTHBERG WON'T BE HIRED AGAIN IF HE DOESN'T GIVE THE OPINION THAT IS EXPECTED OF HIM. THAT'S HOW HE MAKES HIS MONEY.

MS. SPERBER: OBJECTION YOUR HONOR, MISSTATES THE EVIDENCE.

THE COURT: OBJECTION IS NOTED FOR THE RECORD CONTINUE.

MS. LOCKE-NOBLE: THE DEFENDANT HAS A GREAT DEAL TO GAIN BY LYING AND MANIPULATING, AND THAT'S WHAT HE DID. HE LIED AND MANIPULATED.

WHO HAS BLOCKED ALL EMOTION AT A YOUNG AGE AND STILL HAS NO FEELINGS FOR OTHERS? THE DEFENDANT. HE HAD NO FEELING WHEN HE WAS LITTLE AND HIS STEP-FATHER DIED, WHO HE SAID, WAS A GREAT MAN.

WHO HAS NO FEELINGS OR CONSCIOUS THE DEFENDANT. WHO BLAMES OTHER AND SHIFS BLAME? THE DEFENDANT. HE BLAMED ALL OF THIS ON EVERYONE ELSE BUT HIMSELF.

WHO IS THE SOCIOPATH HERE? THE DEFENDANT. HE TREATED PENNY LIKE AN OBJECT. AN OBJECT TO TAKE THIS STAKE AND BEAT HER WITH IT OVER AND OVER, AND OVER AGAIN. AND STOMP ON HER WITH HIS BOOTS. THAT'S WHAT HE DID. WITH ABSOLUTELY NO FEELING, NO CONSCIOUS, OVER AND OVER AGAIN UNTIL THERE WAS NOTHING LEFT.

C. THE PRESENCE OR ABSENCE OF ANY PRIOR FELONY CONVICTION OTHER THAN CRIMES FOR WHICH THE DEFENDANT HAS BEEN TRIED IN THESE PRESENT PROCEEDINGS.

THIS IS A NEUTRAL. IT IS NEITHER AGGRAVATING OR MITIGATING. LADIES AND GENTLEMEN, MOST PEOPLE DON'T HAVE FELONY CONVICTIONS. THIS REALLY DOESN'T APPLY AS EITHER AGGRAVATING OR MITIGATING.

I SUPPOSE WHAT I COULD SAY IS FOLLOWING THE LAW IS NEITHER AGGRAVATING OR MITIGATING, THAT'S JUST DOING WHAT YOU ARE SUPPOSED TO DO AS A CITIZEN, FOLLOW THE LAW.

B. THE PRESENCE OR ABSENCE OF ANY CRIMINAL ACTIVITY BY THE DEFENDANT OTHER THAN THE CRIMES FOR WHICH THE DEFENDANT HAS BEEN TRIED IN THE PRESENT PROCEEDINGS WHICH INVOLVE THE USE OR ATTEMPTED USE OF FORCE OR VIOLENCE OR EXPRESS OR IMPLIED THREAT TO USE FORCE OR VIOLENCE.

THE NAME OF HIS GROUP IS CAPONE THUG SOLDIERS. THEY JUMPED CHRIS IN THE NIGHT OF MURDER. HE IS ENGAGING IN CRIMINAL ACTIVITY RIGHT THEN AND THERE.

HE BEAT OR HIT PEOPLE WITH STICKS, ACCORDING TO JANISHA WILLIAMS, KNOCKED PEOPLE OFF THEIR BIKES. HE BEAT PEOPLE WITH HIS FISTS. HE KICKED PEOPLE FOR THE FUN OF IT, BECAUSE THAT'S THE KIND OF GUY HE IS. FOR THE FUN OF IT, THAT'S WHAT HE DID.

FACTOR A. THE CIRCUMSTANCES OF THE CRIME OF WHICH THE DEFENDANT WAS CONVICTED IN THE PRESENT PROCEEDINGS AND THE EXISTENCE OF ANY SPECIAL CIRCUMSTANCES FOUND TO BE TRUE.

THE CRIMES THAT HE WAS CONVICTED OF ARE MURDER, ROBBERY, KIDNAP, KIDNAP FOR RAPE, RAPE IN CONCERT, RAPE, RAPE WITH A STAKE IN CONCERT, RAPE WITH A STAKE AND TORTURE.

ALL OF THESE WERE ARE FACTORS IN AGGRAVATION THAT YOU MAY CONSIDER. THE SPECIAL CIRCUMSTANCES THAT WERE FOUND TRUE ROBBERY, KIDNAPPING, KIDNAP FOR RAPE, RAPE WITH THE STAKE, RAPE AND TORTURE YOU MAY CONSIDER ALL OF THESE AS CIRCUMSTANCES IN AGGRAVATION.

YOU MAY ALSO CONSIDER THE FACT THAT YOU FOUND TRUE THE PERSONAL USE OF THE WOODEN STAKE AS A FACTOR IN AGGRAVATION.

THE VICTIM WAS WALKING ALONE LATE AT NIGHT. THE DEFENDANT AND HIS COMPANIONS APPROACHED HER AND DEMANDED MONEY, THEY ROBBED HER OF HER FOOD STAMPS, HER CLOTHING, AND HER DIGNITY.

THEY PUNCHED HER AND THREW OVER A FENCE. SHE

TRIED TO DEFEND HERSELF. THEY TOOK FROM HER -- TOOK HER FROM A PLACE WHERE SHE COULD HAVE GOTTEN HELP, RIGHT THERE ON THE PUBLIC SIDEWALK TO A SECLUDED DARK AREA BY THE FREEWAY WHERE ALL OF HER SCREAMS WERE DROWNED OUT. AND I MEAN SCREAMS OF TERROR, AND CRIES FOR HELP THAT WENT UNANSWERED BY THE DEFENDANT AND HIS COMPANIONS.

WELL, LADIES AND GENTLEMEN THOSE CRIES CAN BE ANSWERED BY YOU.

THEY TOOK TURNS RAPING HER. HE STOMPED ON HER WITH HIS 10 POUND STEEL TOED BOOTS, PUNCHED AND KICKED HER UNTIL THAT STAKE WAS FOUND. AND THEN THEY TOOK THAT STAKE AND USED IT OVER AND OVER AGAIN TO INFLICT PAIN AND TORTURE AND TO END PENNY'S LIFE.

114 WOUNDS, 94 EXTERNAL, 20 INTERNAL INCLUDING A SLIVER IN HER VAGINA.

LADIES AND GENTLEMEN YOU HEARD DR. ROTHBERG TESTIFY, THE COURT INSTRUCTED YOU AT ONE POINT IN TIME DURING THE COURSE OF THE TESTIMONY THAT THE ATTORNEYS QUESTIONS ARE NOT EVIDENCE. THE COURT HAS ALSO INSTRUCTED YOU THAT AN ATTORNEY'S QUESTIONS ARE NOT EVIDENCE EXCEPT FOR HOW IT GIVES CONTEXT TO THE ANSWERS GIVEN BY THE WITNESS.

YOU SAW HIS DEMEANOR ON THE WITNESS STAND. YOU HEARD HIM HESITATE. YOU HEARD HIM SAY OVER AND OVER AGAIN THAT HE BELIEVED THE DEFENDANT.

IN SPITE OF YOUR VERDICT, HE STILL BELIEVED THE DEFENDANT OVER YOU. HE DIDN'T DO ANY INTERVIEWS OF ANYBODY TO VERIFY ANY INFORMATION WHATSOEVER. EVEN THOUGH HE COULD HAVE.

MS. SPERBER: OBJECTION, YOUR HONOR, SPECULATION.

THE COURT: SUSTAINED.

MS. LOCKE-NOBLE: I BELIEVE I ASKED HIM ABOUT THAT ON THE WITNESS STAND.

MS. SPERBER: OBJECTION, YOUR HONOR.

THE COURT: MOVE ON.

MS. LOCKE-NOBLE: I ASKED HIM IF HE HAD A PHONE, IF HE HAD A PHONE IN HIS OFFICE. REMEMBER THAT QUESTION? HE SAID HE DID. I ASKED HIM IF HE USED THE PHONE, HE SAID HE DIDN'T. I ASKED HIM IF HE CALLED MONTE GMUR OR ANYBODY ELSE LISTED IN THE WITNESS BOOK, EVEN THOUGH HE HAD THE PHONE NUMBERS OF THOSE PEOPLE SO HE COULD HAVE DONE SOME INVESTIGATION ON HIS OWN. IT WOULD HAVE BEEN -- HE COULD HAVE USED --

MS. SPERBER: OBJECTION, SPECULATION.

MS. LOCKE-NOBLE: HE CHOOSE NOT TO

THE COURT: OVERRULED.

MS. SPERBER: ALSO MISSTATES THE EVIDENCE.

THE COURT: OVERRULED. YOU MAY COMMENT IN YOUR CLOSING.

NEXT PLEASE.

MS. LOCKE-NOBLE: REMEMBER, WHEN I WAS ASKING HIM THE SERIES OF QUESTIONS, LET ME GET THIS RIGHT. I ASKED HIM, YOUR REPORT INDICATES THAT THE DEFENDANT DID NOT DENY HIS INVOLVEMENT IN AND I LISTED A CRIME. FOR EXAMPLE, RAPE, CORRECT? AND HE WOULD SAY, "CORRECT."

I WENT THROUGH ALL THE CRIMES THAT THE DEFENDANT WAS CONVICTED OF. WHEN I GOT TO THE CRIME OF TORTURE, WHICH

WAS RIGHT BEFORE LUNCH, THE EXACT SAME WORDS, "YOUR REPORT INDICATES THAT THE DEFENDANT DID NOT DENY HIS INVOLVEMENT IN THE CRIME OF TORTURE, CORRECT?" "I DON'T UNDERSTAND YOUR QUESTION." ALL OF SUDDEN HE DOESN'T UNDERSTAND MY QUESTION.

WE HAVE THIS LONG DISCUSSION. HE SAYS TO THE JUDGE, HE DOESN'T UNDERSTAND MY QUESTION. WE GO TO LUNCH. WE COME BACK.

"YOUR REPORT INDICATES THAT THE DEFENDANT DID NOT DENY HIS INVOLVEMENT IN TORTURE, CORRECT?" ANSWER, "CORRECT."

LADIES AND GENTLEMEN THERE ARE SOME THINGS THAT HE TESTIFIED TO THAT FIT WITH THE EVIDENCE THAT IS PRESENTED DURING THE COURSE OF THIS TRIAL, THAT IS DEFENDANT WAS INTOXICATED. THE DEFENDANT WAS NOT UNDER SOME MENTAL ILLNESS OR DISEASE OR DEFECT. THERE HAS BEEN NO TESTIMONY THAT HE WAS, AND DR. ROTHBERG TESTIFIED TO THAT, BUT THERE HAS BEEN EVIDENCE PRESENTED THAT HE WAS, IN FACT, THE RAPIST, THAT HE PARTICIPATED IN THESE CRIMES.

DR. ROTHBERG CHOSE TO DISREGARD ALL OF THAT IN FORMING HIS OPINION AND ONLY BELIEVED THE DEFENDANT. NOW IT'S UP TO YOU LADIES AND GENTLEMEN TO DETERMINE WHETHER OR NOT YOU BELIEVED HIM.

THE COURT WILL GIVE YOU THIS INSTRUCTIONS IN A FEW MINUTES AFTER DEFENSE COUNSEL HAS HAD AN OPPORTUNITY TO ARGUE.

IT IS NOW YOUR DUTY TO DETERMINE WHICH OF THE TWO PENALTIES DEATH OR CONFINEMENT IN THE STATE PRISON WITHOUT POSSIBILITY OF PAROLE SHALL BE IMPOSED ON THE DEFENDANT.

HAVING HEARD ALL OF THE EVIDENCE AND AFTER HAVING HEARD AND CONSIDER THE ARGUMENTS OF COUNSEL YOU SHALL CONSIDER AND TAKE INTO ACCOUNT THEN AND BE GUIDED BY THE APPLICABLE FACTORS OF AGGRAVATING AND MITIGATING CIRCUMSTANCES UPON WHICH YOU HAVE BEEN INSTRUCTED.

AN AGGRAVATING FACTOR IS ANY FACT, CONDITION, OR EVENT ATTENDING THE COMMISSION OF A CRIME, WHICH INCREASES ITS GUILT OR ENORMITY, AND ADDS TO INJURIOUS CONSEQUENCES WHICH IS ABOVE AND BEYOND THE ELEMENTS OF THE CRIME ITSELF.

THE FACTORS AND CIRCUMSTANCES CONCERNING THESE CRIMES GO ABOVE AND BEYOND ANYTHING.

A MITIGATING CIRCUMSTANCE IS ANY FACT OR CONDITION OR EVENT WHICH DOES NOT CONSTITUTE A JUSTIFICATION OR EXCUSE FOR THE CRIME IN QUESTION BUT MAY BE CONSIDERED AS AN EXTENUATING CIRCUMSTANCE IN DETERMINING THE APPROPRIATENESS OF THE DEATH PENALTY.

LADIES AND GENTLEMEN, THERE WERE NO MITIGATING CIRCUMSTANCES IN THIS CASE. WHAT THE DEFENDANT DID WAS INTOLERABLE. IT WAS INHUMANE CRUELTY THAT SHOULD NEVER BE INFLICTED ON ANYONE.

THE WEIGHING OF AGGRAVATING AND MITIGATING CIRCUMSTANCES DOES NOT MEAN A MERE MECHANICAL COUNTING OF FACTORS ON EACH SIDE OF AN IMAGINARY SCALE OR THE ARBITRARY ASSIGNMENT OF WEIGHTS TO ANY OF THEM. YOU ARE FREE TO ASSIGN WHATEVER MORAL OR SYMPATHETIC VALUE YOU TO DEEM APPROPRIATE TO EACH AND ALL OF THE VARIOUS FACTORS YOU ARE PERMITTED TO CONSIDER. IN WEIGHING THE VARIOUS CIRCUMSTANCES YOU DETERMINE UNDER THE RELEVANT EVIDENCE

WHICH PENALTY IS JUSTIFIED AND APPROPRIATE. BY CONSIDERING THE TOTALITY OF THE AGGRAVATING CIRCUMSTANCES WITH THE TOTALITY OF THE MITIGATING CIRCUMSTANCES. TO RETURN A JUDGMENT OF DEATH, EACH OF YOU MUST BE PERSUADED THAT THE AGGRAVATING CIRCUMSTANCES ARE SO SUBSTANTIAL IN COMPARISON WITH THE MITIGATING CIRCUMSTANCES THAT IT WARRANTS DEATH INSTEAD OF LIFE WITHOUT THE POSSIBILITY OF PAROLE.

THAT'S WHAT THE CASE IS HERE, LADIES AND GENTLEMEN, THE AGGRAVATING CIRCUMSTANCES SO SUBSTANTIALLY OUTWEIGH THE MITIGATING CIRCUMSTANCE THAT IS YOUR DUTY AND RESPONSIBILITY TO VOTE DEATH.

WHEN ARE YOU BACK THERE IN THE JURY ROOM, REVIEWING THE EVIDENCE, I WANT YOU TO REMEMBER PENNY'S LIFE, THE LAST MOMENTS OF HER LIFE IN TERROR, IN PAIN, AND BEING TORTURED.

SHE DIDN'T HAVE CHRISTMAS, 1999. SHE DID NOT HAVE THANKSGIVING, 1999. SHE DID NOT HAVE CHRISTMAS, 2000 OR THANKSGIVING, 2000. SHE DIDN'T HAVE CHRISTMAS 2001 AND 2002. AND SHE WON'T BE HERE FOR CHRISTMAS THIS YEAR EITHER. SHE WON'T BE -- SHE WASN'T THERE FOR THANKSGIVING, 2001, 2002, AND SHE WON'T BE HERE IN A MONTH FOR THANKSGIVING EITHER.

SHE WILL NEVER SEE ANOTHER CHRISTMAS OR ANOTHER THANKSGIVING. SHE MISSED NEW YEAR'S 1999, BY A FEW DAYS. SHE DID NOT SEE NEW YEAR'S 2000, 2001, 2002, AND SHE DID NOT SEE 2003, AND SHE WON'T SEE IT IN 2004.

SHE DIDN'T GO TO A GRADUATION THAT DIDN'T HAPPEN BECAUSE TEDDY'S MOM WAS DEAD. SHE WASN'T THERE FOR HIM, TO

HELP HIM THROUGH THE PROBLEMS HE WAS HAVING WITH SCHOOL.

NO MORE HOLIDAYS WILL BE SPENT WITH HIS MOTHER. SHE WILL NEVER SEE HIS CHILDREN.

THEY HAD A SPECIAL BOND THEY WERE BORN ON THE SAME DAY MARCH 5, TEDDY AND PENNY. SHE WASN'T THERE IN 1999, 2000, 2001, 202, 2003 AND SHE WON'T BE THERE IN 2004 TO SHARE HIS BIRTHDAY WITH HIM.

THE LAST MOMENTS OF PENNY'S LIFE WERE TERROR HORROR, AND UNBELIEF.

PENNY DIED SLOWLY. WITH EVERY STRIKE OF THIS STAKE, EVERY STRIKE OF THIS STAKE, EVERY STRIKE OF THIS STAKE, EVERY STRIKE OF THIS STAKE.

MS. SPERBER: OBJECTION, YOUR HONOR.

MS. LOCKE-NOBLE: PENNY WAS DYING.

THE COURT: OVERRULED.

MS. LOCKE-NOBLE: SHE WAS DYING EVERY TIME THEY HIT HER WITH THIS STAKE. EVERY TIME THE DEFENDANT TOOK THIS STAKE AND HIT HER WITH IT.

MS. SPERBER: OBJECTION, YOUR HONOR, MISSTATES THE EVIDENCE.

MS. LOCKE-NOBLE: EVERY TIME.

THE COURT: THE OBJECTION IS OVERRULED.

MS. LOCKE-NOBLE: EVERY TIME THE DEFENDANT STOMPED ON HER WITH HIS 10 POUND STEEL TOED BOOTS. PENNY WAS DYING, EVERY TIME.

THE DEFENDANT CHOOSE TO BE HER EXCUTIONER, WITHOUT A JURY, WITHOUT A TRIAL, WITHOUT EVIDENCE, AS HE HAS RECEIVED.

LADIES AND GENTLEMEN, THE APPROPRIATE PENALTY IN THIS CASE IS DEATH. THANK YOU.

THE COURT: MS. SPERBER.

MS. SPERBER: I'M NOT READY, YOUR HONOR, I NEED A COPY OF 8.87 TO READ TO THE JURY.

THE COURT: OF COURSE.

MS. SPERBER: AND PERHAPS WE CAN TAKE A BREAK SO COUNSEL CAN REMOVE HER PROPS.

THE COURT: LADIES AND GENTLEMEN, I'LL GIVE YOU -- DO YOU NEED FIVE OR TEN MINUTES?

MS. SPERBER: I DON'T NEED TO SET UP.

THE COURT: FIVE MINUTES.

(RECESS.)

THE COURT: BACK ON THE RECORD IN THE MATTER OF PEOPLE VERSUS PEARSON, BEFORE I INVITE MS. SPERBER UP.

JUROR NO. 7, WHO IS THE FOREMAN, YOU SENT ME A NOTE?

JUROR NO. 7: YES.

THE COURT: I WILL ASK MADAM CLERK TO FILE THE NOTE. THE NOTE IS PREMATURE FOR ME TO DISCUSS AND RESOLVE. YOU MAY RAISE THAT ISSUE UP, IF NECESSARY, AGAIN.

MS. SPERBER.

MS. SPERBER: GOOD AFTERNOON LADIES AND GENTLEMEN, THERE IS A LIGHT AT THE END OF THE TUNNEL, I PROMISE, AND I'M SURE YOU ARE ALL SITTING THERE AND THINKING WHAT IN THE HELL COULD SHE POSSIBLY SAY TO YOU. THERE IS A LOT I'M

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I reside in the county of SAN DIEGO, State of California. I am over the age of 18 and not a party to the within action. My business address is: Susan K. Shaler Professional Law Corporation, 991 Lomas Santa Fe Dr., Ste C, #112, Solana Beach, CA 92075.

On June 21, 2013, I served the foregoing document described as:

APPELLANT'S REQUEST FOR JUDICIAL

on all parties to this action by placing a true copy thereof enclosed in a sealed envelope or box addressed as follows:

Clerk, California Supreme Court
350 McAllister St.
San Francisco, CA 94102

Kamala D. Harris
Attorney General
300 S. Spring St.
North Tower, Ste 5001
Los Angeles, CA 90013

California Appellate Project
Attn: Ms. Linda Robertson
101 Second Street, 6th Floor
San Francisco, CA 94105

Mr. Warren J. Hardy
T80906
San Quentin State Prison
San Quentin, CA 94974

Clerk, Superior Court
Los Angeles County
Long Beach Courthouse
415 W Ocean Blvd
Long Beach, CA 90802

District Attorney
Los Angeles County
Clara Shortridge Foltz Crim. Justice Ctr
210 West Temple St
Los Angeles, CA 90012

Mr. Robin Yanes
Attorney at Law
13110 W. Washington Blvd., Ste A
Los Angeles, CA 90066

I caused such envelope or box with prepaid shipping via Federal Express to be sent to the California Supreme Court, and to all others with postage thereon fully prepaid to be placed in the United States Mail at Solana Beach, California.

Executed on June 21, 2013, at Solana Beach, California.

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

SUSAN K . SHALER