SUPREME COURT COPY

COPY

# In the Supreme Court of the State of California

| THE PEOPLE OF THE STATE OF CALIFORNIA,<br>Plaintiff and Respondent,<br>v.<br>ALFONSO IGNACIO MORALES,<br>Defendant and Appellant. | **CAPITAL CASE**<br>Case No. S136800 |
|---|---|

SUPREME COURT
FILED

JUN 16 2014

Frank A. McGuire Clerk

Deputy

Los Angeles County Superior Court
Case No. VA071974
The Honorable Michael A. Cowell, Judge

## RESPONDENT'S BRIEF

KAMALA D. HARRIS
Attorney General of California
LANCE E. WINTERS
Senior Assistant Attorney General
KEITH H. BORJON
Supervising Deputy Attorney General
JOSEPH P. LEE
Deputy Attorney General
NIMA RAZFAR
Deputy Attorney General
State Bar No. 253410
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2390
Fax: (213) 897-2806
Email: DocketingLAAWT@doj.ca.gov
Nima.Razfar@doj.ca.gov
*Attorneys for Plaintiff and Respondent*

DEATH PENALTY

## TABLE OF CONTENTS

**Page**


Statement of the Case ........ 1

Statement of Facts ........ 2

I. Guilt phase ........ 2

A. Prosecution evidence ........ 2

1. Background ........ 2
2. Events leadings up to discovering the bodies ........ 4
3. The crime scene ........ 8
4. Investigation and police interviews ........ 10
5. Autopsy findings ........ 14
6. Forensics evidence ........ 16
7. Crime reconstruction expert ........ 18

B. Defense ........ 21

II. Penalty phase ........ 21

A. Prosecution's evidence ........ 21

1. Victim impact statements ........ 21
2. Weapons and homemade handcuff keys possession in prison cell ........ 24

B. Defense ........ 24

1. Appellant's family history ........ 24
2. Educational history ........ 28
3. Learning disability expert ........ 29
4. Clinical psychologist evaluation ........ 31

C. Rebuttal ........ 32

Argument ........ 34

I. Sufficient evidence supported the jury's finding in counts 1 through 4 that the murders were premeditated ........ 34

A. The applicable law ........ 35

**TABLE OF CONTENTS**
**(continued)**


Page

B. There was substantial evidence of premeditated deliberation ..... 37

II. The trial court properly allowed the crime scene reconstruction expert to testify ..... 43

A. Background ..... 43

B. Applicable law ..... 50

C. The trial court properly allowed Delhauer to testify as to the sequence of the homicides ..... 51

D. Any error was harmless ..... 57

III. The trial court properly exercised its discretion in admitting colored photographs depicting the victims' bodies ..... 58

A. Background ..... 59

B. Applicable law ..... 64

C. No abuse of discretion occurred in admitting the challenged photographs depicting the injuries to the victims ..... 66

D. Any error was harmless ..... 70

IV. The victim impact evidence did not violate appellant's federal and state constitutional rights ..... 71

A. Background ..... 71

B. The victim impact testimony was proper ..... 73

C. Any error was harmless ..... 78

V. The trial court's instructions defining the scope of the jury's sentencing discretion and the nature of its deliberative process pursuant to CALJIC No. 8.88 were proper ..... 80

VI. California's death penalty statute does not violate the federal constitution ..... 82

A. Appellant's cumulative unconstitutionality claim lacks merit ..... 82

## TABLE OF CONTENTS
## (continued)


**Page**

B. Section 190.2 is not impermissibly broad ..... 82

C. Section 190.3, subdivision (a) does not allow arbitrary and capricious imposition of death ..... 83

D. California's statutory scheme contains proper safeguards in compliance with the federal constitution ..... 84

E. California's sentencing scheme complies with the equal protection clause ..... 86

F. California's death penalty law falls within the norms of international law ..... 86

Conclusion ..... 88

## TABLE OF AUTHORITIES

**Page**

CASES


*Apprendi v. New Jersey*
(2000) 530 U.S. 466, [120 S.Ct. 2348, 147 L.Ed.2d 435] .................. 84

*Arnold v. State*
(1976) 236 Ga. 534, 224 S.E.2d 386 .................................................. 81

*Blakely v. Washington*
(2004) 542 U.S. 296 [124 S.Ct. 2531, 159 L.Ed.2d 403] .................. 84

*Chapman v. California*
(1967) 386 U.S. 18 [17 L.Ed.2d 705] ........................................... passim

*Cunningham v. Washington*
(2007) 549 U.S. 270 [127 S.Ct 856, 166 L.Ed.2d 856] ....................... 84

*Lockett v. Ohio*
(1978) 438 U.S. 586 [98 S.Ct. 2954, 57 L.Ed.2d 973] ........................ 84

*Payne v. Tennessee*
(1991) 501 U.S. 808 [111 S.Ct. 2597, 115 L.Ed.2d 720] ............ 73, 74

*People v. Alcala*
(1984) 36 Cal.3d 604 ........................................................................ 37

*People v. Allen*
(1986) 42 Cal.3d 1222 ....................................................................... 86

*People v. Anderson*
(1968) 70 Cal.2d 15 ............................................................ 36, 37, 40

*People v. Anderson*
(2001) 25 Cal.4th 543 ........................................................................ 85

*People v. Arias*
(1996) 13 Cal.4th 92 .......................................................................... 81

*People v. Ashmus*
(1991) 54 Cal.3d 932 ......................................................................... 79

*People v. Ayala*
(2000) 24 Cal.4th 243 .......... 64

*People v. Bacigalupo*
(1993) 6 Cal.4th 457 .......... 83

*People v. Bivert*
(2011) 52 Cal.4th 96 .......... 84

*People v. Bolden*
(2002) 29 Cal.4th 515 .......... 40, 83

*People v. Bolin*
(1998) 18 Cal.4th 297 .......... 35, 51, 56

*People v. Brasure*
(2008) 42 Cal.4th 1037 .......... 67

*People v. Brents*
(2012) 53 Cal.4th 599 .......... 69

*People v. Brown*
(2003) 31 Cal 4th 518 .......... 77

*People v. Brown*
(2004) 33 Cal.4th 382 .......... 78, 84, 85

*People v. Carasi*
(2008) 44 Cal.4th 1263 .......... 36

*People v. Carrera*
(1989) 49 Cal.3d 291 .......... 67

*People v. Carter*
(1957) 48 Cal.2d 737 .......... 51

*People v. Ceja*
(1993) 4 Cal.4th 1134 .......... 35

*People v. Crew*
(2003) 31 Cal.4th 822 .......... 85

*People v. Crittenden*
(1994) 9 Cal.4th 83 .......... 70, 82, 83

*People v. Cunningham*
(2001) 25 Cal.4th 926 .......... 57, 82, 84

*People v. D'Arcy*
(2010) 48 Cal.4th 257 .......... 85

*People v. Daniels*
(1971) 16 Cal.App.3d 36 .......... 39

*People v. Davis*
(2009) 46 Cal.4th 539 .......... 76

*People v. Duff*
(2014) 58 Cal.4th 527 .......... 65, 68

*People v. Dykes*
(2009) 46 Cal.4th 731 .......... 73, 75

*People v. Edwards*
(1991) 54 Cal.3d 787 .......... 77

*People v. Escudero*
(2010) 183 Cal.App.4th 302 .......... 65

*People v. Falsetta*
(1999) 21 Cal.4th 903 .......... 37

*People v. Farnam*
(2002) 28 Cal.4th 107 .......... 51, 53, 56

*People v. Foster*
(2010) 50 Cal.4th 1301 .......... 81

*People v. Fuiava*
(2012) 53 Cal.4th 622 .......... 80

*People v. Gamache*
(2010) 48 Cal.4th 347 .......... 85

*People v. Garceau*
(1993) 6 Cal.4th 140 .......... 65

*People v. Gonzales*
(2012) 54 Cal.4th 1234 .......... 67, 68

*People v. Gonzalez*
(2006) 38 Cal.4th 932 .......... 78, 79

*People v. Gurule*
(2002) 28 Cal.4th 557 .......... 66, 69, 76

*People v. Hamilton*
(2009) 45 Cal.4th 863 .......... 74

*People v. Harris*
(1998) 60 Cal.App.4th 727 .......... 64

*People v. Harris*
(2005) 37 Cal.4th 310 .......... 77

*People v. Hawthorne*
(1992) 4 Cal.4th 43 .......... 85

*People v. Hawthorne*
(2009) 46 Cal.4th 67 .......... 74

*People v. Heard*
(2003) 31 Cal.4th 946 .......... 66, 67, 70

*People v. Hillhouse*
(2002) 27 Cal.4th 469 .......... 85, 87

*People v. Homick*
(2012) 55 Cal.4th 816 .......... 56

*People v. Howard*
(2010) 51 Cal.4th 15 .......... 67

*People v. Hughes*
(2002) 27 Cal.4th 287 .......... 36, 37, 85

*People v. Hyde*
(1985) 166 Cal.App.3d 463 .......... 39

*People v. Jenkins*
(2000) 22 Cal.4th 900 .......... 86, 87

*People v. Jones*
(1990) 51 Cal.3d 294 .......... 35, 75

*People v. Jones*
(2003) 29 Cal.4th 1229 .......... 87

*People v. Jones*
(2012) 54 Cal.4th 1 .......... 74, 75, 77, 78

*People v. Kelly*
(1990) 51 Cal.3d 931 .......... 68

*People v. Killebrew*
(2002) 103 Cal.App.4th 644 .......... 50

*People v. Koontz*
(2002) 27 Cal.4th 1041 .......... 36

*People v. Kraft*
(2000) 23 Cal.4th 978 .......... 64

*People v. Lee*
(2011) 51 Cal.4th 620 .......... 80, 81, 82, 86

*People v. Lenart*
(2004) 32 Cal.4th 1107 .......... 36

*People v. Letner and Tobin*
(2010) 50 Cal.4th 99 .......... 85

*People v. Lewis and Oliver*
(2006) 39 Cal.4th 970 .......... 73, 74, 77

*People v. Linton*
(2013) 56 Cal.4th 1146 .......... 80

*People v. Loker*
(2008) 44 Cal.4th 691 .......... 65, 67

*People v. Martinez*
(2008) 158 Cal.App.4th 1324 .......... 35

*People v. Mattson*
(1990) 50 Cal.3d 826 .......... 67

*People v. McAlpin*
(1991) 53 Cal.3d 1289 .......... 51

*People v. McFarland*
(2000) 78 Cal.App.4th 489 .......... 51

*People v. McKinzie*
(2012) 54 Cal.4th 1302 .......... 66, 80, 81

*People v. Mendoza*
(2000) 24 Cal.4th 130 .......... 85

*People v. Mills*
(2010) 48 Cal.4th 158 .......... 68

*People v. Moon*
(2005) 37 Cal.4th 1 .......... 69, 80, 81, 82

*People v. Nazeri*
(2010) 187 Cal.App.4th 1101 .......... 36

*People v. Ochoa*
(1993) 6 Cal.4th 1199 .......... 35, 56

*People v. Page*
(2008) 44 Cal.4th 1 .......... 81, 84

*People v. Pearson*
(2013) 56 Cal.4th 393 .......... 57

*People v. Perez*
(1992) 2 Cal.4th 1117 .......... 35, 36, 40, 41

*People v. Poe*
(1999) 74 Cal.App.4th 826 .......... 56

*People v. Poulson*
(2013) 213 Cal.App.4th 501 .......... 56

*People v. Price*
(1991) 1 Cal.4th 324 .......... 67

*People v. Pride*
(1992) 3 Cal.4th 195 .......... 36, 40

*People v. Prieto*
(2003) 30 Cal.4th 226 .......... 83, 85

*People v. Ramirez*
(2006) 39 Cal.4th 398 .......... 65

*People v. Ramos*
(2004) 34 Cal.4th 494 .......... 87

*People v. Ray*
(1996) 13 Cal.4th 313 .......... 83

*People v. Rodrigues*
(1994) 8 Cal.4th 1060 .......... 65

*People v. Rodriguez*
(1999) 20 Cal.4th 1 .......... 65

*People v. Romero*
(2008) 44 Cal.4th 386 .......... 36

*People v. Roundtree*
(2013) 56 Cal.4th 823 .......... 66

*People v. San Nicolas*
(2004) 34 Cal.4th 614 .......... 36, 39

*People v. Sanchez*
(2001) 26 Cal.4th 834 .......... 56

*People v. Seaton*
(2001) 26 Cal.4th 598 .......... 82

*People v. Smith*
(2003) 30 Cal.4th 581 .......... 51

*People v. Stanley*
(1995) 10 Cal.4th 764 .......... 41, 83

*People v. Steele*
(2002) 27 Cal.4th 1230 .......... 37

*People v. Taylor*
(2009) 47 Cal.4th 850 .......... 80

*People v. Thomas*
(2012) 53 Cal.4th 771 .......... 76

*People v. Torres*
(1995) 33 Cal.App.4th 37 .................................................................. 51

*People v. Valdez*
(2012) 55 Cal.4th 82 ....................................................................... 80

*People v. Villalobos*
(2006) 145 Cal.App.4th 310 .............................................................. 35

*People v. Villegas*
(2001) 92 Cal.App.4th 1217 .............................................................. 36

*People v. Virgil*
(2011) 51 Cal.4th 1210 ............................................................... 67, 86

*People v. Watson*
(1956) 46 Cal.2d 818 .................................................................. 57, 70

*People v. Whisenhunt*
(2008) 44 Cal.4th 174 ....................................................................... 86

*People v. Wilson*
(2006) 38 Cal.4th 1237 ..................................................................... 64

*People v. Young*
(2005) 34 Cal.4th 1149 ..................................................................... 35

*People v. Yu*
(1983) 143 Cal.App.3d 358 ............................................................... 64

*People v. Zack*
(1986) 184 Cal.App.3d 409 ............................................................... 39

*People v. Zamudio*
(2008) 43 Cal.4th 327 ........................................................... 76, 77, 86

*Ring v. Arizona*
(2002) 536 U.S. 584 [122 S.Ct. 2428, 153 L.Ed.2d 556] .................. 84

*Sanford v. Kentucky*
(1989) 492 U.S. 361 [109 S.Ct. 2969, 106 L.Ed.2d 306] ............. 86, 87

*Tuilaepa v. California*
(1994) 512 U.S. 967 [114 S.Ct. 2630, 129 L.Ed.2d 750] .................. 83

**STATUTES**


Evid. Code

§ 210 .......... 64
§ 350 .......... 64
§ 352 .......... 64, 65
§ 411 .......... 35
§ 720, subd. (a) .......... 50
§ 720, subd. (b) .......... 50
§ 801, subd. (a) .......... 50

Pen. Code

§ 187, subd. (a) .......... 1
§ 190.2 .......... 82
§ 190.2, subd. (a)(3) .......... 1
§ 190.2, subd. (a)(17) .......... 1
§ 190.2, subd. (a)(18) .......... 1
§ 190.3 .......... 74, 77
§ 190.3, subd. (a) .......... 77, 83
§ 190.3, subd. (b) .......... 85
§ 211 .......... 1
§ 288, subd. (b)(1) .......... 1
§ 289, subd. (a)(1) .......... 1
§ 459 .......... 1
§ 1203.066, subd. (a)(1) .......... 1, 2
§ 1203.066, subd. (a)(8) .......... 1, 2
§ 1239, subd. (b) .......... 2
§ 12022, subd. (b)(1) .......... 1, 2
§ 12022.9 .......... 1, 2


**CONSTITUTIONAL PROVISIONS**


U.S. Const.

8th Amend. .......... 82, 86
14th Amend. .......... 82, 86


**OTHER AUTHORITIES**


CALJIC

No. 1.00 .......... 69
No. 2.80 .......... 56
No. 8.84.1 .......... 76, 78, 79
No. 8.85 .......... 72, 77
No. 8.85.1 .......... 71
No. 8.88 .......... 80

## STATEMENT OF THE CASE

In an information filed by the Los Angeles County District Attorney, appellant was charged with four counts of first degree murder (Pen. Code,[1] § 187, subd. (a); counts 1 through 4), one count of first degree robbery (§ 211; count 5), one count of first degree burglary (§ 459; count 6), one count of forcible lewd act upon a child (§ 288, subd. (b)(1); count 7), and one count of sexual penetration by a foreign object (§ 289, subd. (a)(1); count 8). (4CT 988-998.) The information further alleged the following enhancements: personal use of a deadly weapon (§ 12022, subd. (b)(1); counts 1, 2, 3, 5 and 6); use of force and fear of immediate and unlawful bodily injury (§1203.066, subd. (a)(1); count 7), substantial sexual contact with person under 14 years of age (§ 1203.066, subd. (a)(8); count 7), and great bodily injury (§ 12022.9; counts 7 and 8).

The following special circumstances were charged: as to counts 1 through 4, appellant committed multiple murders (§ 190.2, subd. (a)(3)), and committed the crimes while engaged in robbery and burglary (§ 190.2, subd. (a)(17)). As to count 4, it was alleged that the murder was committed by torture (§ 190.2, subd. (a)(18)) and during the commission of both a lewd act upon a child and sexual penetration by force and violence (§ 190.2, subd. (a)(17)).

Appellant pled not guilty and denied the allegations and special circumstances. (4CT 999-1000.) Following a trial, a jury found appellant guilty on all counts, found true the special circumstance that multiple murders occurred, that the murders were committed during a burglary, and that the murder of Jasmine Ruiz involved torture, lewd act upon a child, and sexual penetration by force. The jury also found true the enhancements

[1] All further statutory references will be to the Penal Code, unless otherwise indicated.

pursuant to section 12022, subdivision (b)(1), as to counts 1, 2, 3, and 6; section 1203.066, subdivisions (a)(1) & (a)(8), as to count 7; and section 12022.9, as to count 8. (25CT 7181-7195.) Following the penalty phase, the jury returned a verdict of death. (26CT 7250-7253, 7320-7321.) A motion to modify the jury's verdict was heard and denied. (26CT 7422-7424.) The trial court subsequently sentenced appellant to death. (26CT 7388-7393.)

This appeal is automatic. (§ 1239, subd. (b).)

## STATEMENT OF FACTS

### I. GUILT PHASE

#### A. Prosecution Evidence

##### 1. Background

In July 2002, Miguel Ruiz ("Mike") lived in a three-bedroom house on Gunn Avenue in the city of Whittier, along with his family, which included his wife Maritza Trejo ("Maritza"), their eight-year-old daughter Jasmine Ruiz, his stepdaughter Maritza Raquel Trejo ("Raquel"), and his grandmother Ana Martinez ("Ana"). Raquel was Maritza's daughter from a prior relationship. (10RT 2109.) Around the corner from the Ruiz residence on Close Street, appellant lived with his mother and stepfather Jerry Rodriguez. Appellant and Mike were friends. He visited the Ruiz house almost every day and usually hung out and talked with Mike. (10RT 2117-2119; 13RT 2912-2913; 14RT 3127-3128.)

Mike worked out of his home fixing and building computers. Maritza worked for her family's business, "Sound City." She sold car stereo equipment at a swap meet. Mike occasionally worked at the family business installing car stereos. (10RT 2111-2114; 11RT 2263.) Ana stayed home for the most part. Following a stroke she had suffered, she had

difficulty speaking and needed assistance to walk. (10RT 2112.) Raquel was on break from school that summer; she usually stayed at home when her mother was off from work. Raquel spent most of the weekdays babysitting her uncle's children at his house in Chino. (10RT 2116.) Jasmine attended second grade and shared her room with Raquel. (10RT 2113.) The Ruiz family had two dogs, a shih tzu and a boxer. Appellant had given the boxer to Mike. (10RT 2113-2114.) The dogs always barked at strangers but not at appellant since they were familiar with him. (10RT 2140.)

When appellant visited the Ruizes, he would occasionally run into Raquel. Raquel typically stayed in her room doing homework or working on the computer. When the two saw each other, they briefly exchanged greetings. A couple of times, appellant engaged her in some small talk. (10RT 2119.) On one occasion, Raquel felt uncomfortable. Appellant stood in the backyard with Jasmine and stared through Raquel's bedroom window. Appellant told Raquel to come outside but she said she was doing her homework. Raquel saw Jasmine laughing and assumed Jasmine played a joke on her by bringing appellant to the backyard. Raquel asked her parents to tell Jasmine not to do that again. When her parents told Jasmine, Jasmine explained she had just followed appellant to the backyard. (10RT 2119-2121.) After that incident, appellant apologized to the parents and bought dinner for the entire family. (10RT 2122.)

Sometime after that, appellant asked Raquel out to a movie. Raquel did not want to go out with appellant but told him she would "maybe" go. The next day appellant asked Maritza for permission to take her daughter out to the movies. Appellant planned to pick up Raquel that night. Raquel, however, made sure to be with her aunt so she would not be around when appellant arrived. Subsequently, Raquel began to feel uncomfortable around appellant so when he would visit the house, she stayed in her room

so she did not have to talk to him. (10RT 2122-2123, 2184.) In June 2002, appellant stopped coming over to the house. (10RT 2126-2127.)

On Thursday, July 11, 2002, at around 6 p.m., Mike finished installing a car stereo at Sound City. As he left for the day, he told the workers he would see them the next day. Nothing appeared unusual. (11RT 2234-2235.) At about 9 p.m., Mike and Maritza sat and ate out on the front porch of their home. One of Mike's best friends, Michael Gardner, came by to drop off some car stereo cables. Gardner conversed with Mike and Maritza for about 15 to 30 minutes. Mike and Maritza appeared to be happy and smiling. Nothing appeared out of the ordinary. (11RT 2261-2264.)

**2. Events Leadings Up To Discovering the Bodies**

On Friday, July 12, 2002, at around 6 a.m., Doris Morris, a neighbor who lived next to the Ruiz family and shared a backyard wall with the Ruiz property, saw a step stool in her backyard against the wall. She later took the stool and put it in her garage at around 11 a.m. (11RT 2289-2291, 2299-2301; 12RT 2495-2496.) Another neighbor did not hear anything unusual prior to 8 a.m. (10RT 2201-2202.)

Mike usually woke up by 8 a.m. and got ready to work out of his home office. Maritza woke up early as well to get Jasmine ready for school. She would prepare Jasmine's breakfast and make Mike coffee. She then took Jasmine to school around 8 a.m., returned home, and left for work by 9 a.m. (10RT 2114-2115.) However, things were unusual.

Sometime between 8 a.m. and 8:30 a.m., Mike's father, Miguel Ruiz, Sr., went over to the Ruiz residence to drop off a pair of shoes for his mother Ana. He knocked on the front door and then Ana's window, but no one responded. He waited a while then left the shoes by the front door. He thought the Ruizes were still asleep, although that was not typical. (11RT 2279-2284, 2286.)

At 9 a.m., Harold Suarez had an appointment to meet Mike at the shop for some car stereo work he needed on his car. Mike did not show up. Suarez called Mike's cell phone around 9:15 a.m., and someone answered and hung up after a few seconds without saying anything. He called ten minutes later and the same thing happened. It was unusual for Mike not to show up as he was always punctual with his appointments. (10RT 2202-2207.)

At about 11 a.m., Raquel called Mike to ask him about a computer issue. She tried both his cell phone and the house phone, but no one answered. Raquel called again later in the day and still received no response. Mike usually answered his phone when she called or at the very least returned the call promptly. (10RT 2129-2130, 2133-2134.) Raquel's aunt, Kenelly Zeledon, who was married to Maritza's brother, called Mike in the morning to find out about some installations Mike had been working on. She learned that Mike never showed up at the shop in the morning. She tried calling him throughout the day but received no response. (11RT 2234-2235.)

At around 9 p.m., Raquel arrived at the house with her uncle and his kids. All the doors were closed and the window curtains shut. Her parents' cars were outside. The dogs were outside in the fenced portion of the yard. Raquel knocked on the front door but received no response. She tried calling the cell phones again but still had no luck. Things seemed "kind of strange." After waiting for ten minutes, her cousins became hungry so her uncle took everyone to get some food. When they returned, Raquel went around the house to check for signs that someone was there. The dogs usually would have been in the kitchen sleeping at that time; they were not able to get inside the house by themselves. Raquel did not have a key to the house. Her uncle left with the kids. Raquel waited for her aunt to pick

her up. At about 10:00 or 10:30 p.m., Zeledon arrived and took Raquel to Zeledon's home for the night. (10RT 2134-2137; 11RT 2237.)

At 11:00 p.m., Leopoldo Salgado saw appellant at a bar he managed. The two were friends. Appellant often went to the bar to hang out even though he did not drink. Appellant wanted to talk, but Salgado was too busy. Salgado asked him to wait around to talk later. Appellant left the bar. Shortly after the bar closed at 2 a.m. the following morning, Salgado saw appellant in the parking lot waiting in his car but did not have the chance to talk with him before leaving. (10RT 2210-2217; 12RT 2480-2483.)

On July 13, 2002, at around 6 a.m., Morris woke up and looked out her window again. She saw a trash bin and a step stool against her backyard wall.[2] The step stool appeared to be the same one she had seen earlier. After about 15 minutes, she went outside to rake leaves and noticed that the trash bin and step stool were gone. (11RT 2292-2295; 12RT 2495; 13RT 2808-2811.) She soon discovered that the missing trash bin was one of the two that belonged to her. (11RT 2295-2296, 2303.) At around 8 a.m., Morris found a black laptop bag wedged between pipes behind her garage. She reported finding the bag to police. A deputy arrived to pick it up. Inside the bag, the deputy discovered a gold bracelet, lighter, and business cards with the name "Miguel Ruiz" on them. (11RT 2310-2312.) Appellant's home on Close Street could easily be accessed from the Ruiz residence by jumping the wall Morris shared with the Ruizes and walking an unobstructed path back home. (13RT 2808-2811.)

Later that morning, Raquel called her mother's work and learned that she never arrived. (10RT 2139.) Zeledon also tried to reach Maritza but

---

[2] Nothing on Morris' property would obstruct wheeling the trash bin towards her driveway and onto the street. (11RT 2308-2309; 13RT 2796.)

had no luck. At around 11 a.m., Raquel and her aunt went to the house on Gunn Avenue. (11RT 2239-2240.) Raquel knocked on the front door and still received no response. (10RT 2139.) She used a trash bin to get over the fence. She opened the unlocked kitchen door and went inside the house. (10RT 2141.) She saw that the kitchen area was unusually messy, with numerous dishes scattered about, barbecue sauce and "red stuff" on the floor and walls, and a really bad smell. The dogs were inside the kitchen this time. (10RT 2140-2141.) She walked into the living room and saw a big mess there as well, with blood on the floor and carpet and towels scattered on the ground. The walls were splattered with barbecue sauce and blood. There was a lot of blood near the main entrance. In the office room, she noticed a missing computer, items on the floor, and a lot of blood. (10RT 2141-2142.) Raquel immediately went back outside and told her aunt what she saw. (10RT 2142.) Zeledon told Raquel to wait outside as she went in to check. (11RT 2241.) Zeledon saw the mess and a lot of furniture moved around "as if someone was looking for something." (11RT 2243.) She went into the office room and saw pants and blood on the floor. Mike did not usually leave clothes on the floor and kept things in perfect order. She walked into the master bedroom and noticed the furniture had been moved. In Jasmine's room, she saw a mess with honey all over the furniture. She went into the bathroom and discovered Jasmine's body in the bathtub with a statue on top of her and blood running down her legs. She finally went into the other bedroom and discovered the bodies of Mike, Maritza, and Ana next to each other. Mike was in his underwear, Maritza in a tank top and shorts, and Ana in a gown.[3] (11RT 2243-2246, 2254-2258.) Zeledon felt as though she was having a bad dream. She screamed,

[3] Mike did not ever walk around the house in his underwear. (10RT 2142-2143.)

went outside, and hugged Raquel. They began to cry. (10RT 2142; 11RT 2246-2247.) Moments later, a neighbor approached after hearing their cries, found out what happened, and immediately called the police. (10RT 2200-2201.)

### 3. The Crime Scene

At about 10:50 a.m., Deputy Todd Kammer responded to the Ruiz residence and spoke with Zeledon. Deputy Kammer proceeded to shut down the street with backup units that arrived. (11RT 2314-2315.) Once the area was secured, the deputy entered the house and saw a large pool of blood in the entryway, blood on the carpet and walls, and food debris thrown on the walls and floor. In the bedroom with the three bodies, Mike lay on his back covered in blood while Maritza faced the floor with her arm draped over Mike's body. Ana was curled up in a fetal position with blood around her neck and face. A can of Ajax was on the floor next to the bodies. (11RT 2323, 2330-2331.) Blue powder was sprinkled over the bodies of Mike and Maritza. Mike had tape wrapped around his head and over his mouth and a white towel across his chest. (11RT 2408-2409.) The deputy went towards the bathroom and stood just outside the door. He observed Jasmine's body in the bathtub but did not enter the bathroom. He carefully retraced his path back to the front door and exited the house. (11RT 2320-2321.)

Soon after, a team of forensic investigators arrived at the house to process the crime scene. They discovered a chair in Jasmine's room that immediately stood out — it appeared to have been removed from the kitchen and placed there in front of some open cupboards. Investigators were able to obtain a shoe print from the chair. (11RT 2334-2335, 2345-2347.) Shoe impressions were also discovered throughout the rest of the house, including in the entryway, kitchen, a bathroom, the backyard, and a chair in the office room. (11RT 2343-2346.) In the bathroom where

Jasmine's body was found, bloodstains were collected from the floor, sink, and bathtub. A purple, penis-shaped sex toy in between Jasmine's legs was recovered. A lemon-scented liquid detergent had been poured in the basin of the statue that rested on Jasmine's body. An orange cord was found on the floor of the bathroom as well as two other cords, one on the bed of the master bedroom and the other underneath Ana's body. (11RT 2389-2390; 12RT 2458.) A ring of soap scum around the bathtub tested positive for blood. (12RT 2468-2469.) A sexual assault examination was performed on Jasmine's body, which included swabs taken from the vagina, anal cavity, and the general external area. (12RT 2600-2602.)

Investigators found and collected blood samples from bloodstains throughout the house. In the entryway, blood spatter riddled the walls and door. (11RT 2376-2380, 2412-2416.) Smeared blood appeared on the living room sofa along with a black sandal underneath. (11RT 2388, 2402-2407.) The drapes in the dining room had blood marks at the top. (12RT 2468.) In the room with the bodies, blood was on a blanket on the bed, the carpet, and a seat next to Ana. (11RT 2388-2389.) A blood trail with drag marks went from the living room into the bedroom where the bodies were discovered. (11RT 2386-2387.) Bloody shoe prints in front of the kitchen sink were also found. (11RT 2395-2396.)

In the office, multiple blood stains ran down from the wall. (11RT 2400-2401.) A bloodstained hoop earring was found on the floor that matched an earring Maritza had on one of her ears. (12RT 2426-2427; 15RT 3182.) Next to the bathroom door by the office, bloodstains flowed down the wall. (11RT 2414.) Clothes inside a hamper in that bathroom contained blood. (11RT 2406-2407.)

There were signs that someone attempted to clean up some of the blood. (11RT 2425.) Near the entryway, there was a bucket filled with liquid along with a mop, and some towels on the floor. (11RT 2380; 2398-

2407.) The screen to a kitchen window had been cut along the bottom. (12RT 2467-2468.)

### 4. Investigation and Police Interviews

Later that evening, Deputy Barry Hall and his partner spoke to one of the neighbors whose daughter was good friends with Jasmine. Appellant abruptly came by from behind and interjected himself into the middle of their conversation. Appellant said he knew the Ruizes and was really close with Mike. He said Mike was his mentor and taught him a lot about computers. Appellant seemed interested in helping with the investigation but did not give the deputies any helpful information at the time. (12RT 2476-2480.)

On July 14, 2002, Sergeant Timothy Miley went to appellant's residence. He noticed shoeprints in the dirt near the front door that looked similar to the print investigators recovered from the chair in Jasmine's room. (12RT 2486-2489.) He and his partner, Detective Elizabeth Smith, contacted appellant and spoke to him to gather more information. (14RT 3048-3049.) During the conversation, appellant claimed Mike had recently bought a shipment of stolen Japanese beer that he sold for $15 to $20 a case. He said that Mike was good with computers and often installed software so people could access Direct TV for free. Appellant mentioned how he gave the Ruizes one of their dogs as a gift. (14RT 3049-3050.) Appellant was asked to show the bottom of his Doc Marten boots he had on. After noticing the similarity with the print from the crime scene, the detectives asked appellant to accompany them to the police station for a formal interview. Appellant agreed. (12RT 2489; 14RT 3051.)

The first interview took place at 8:34 p.m. (Supplemental I Clerk's Transcript ("1SCT") 44.) Appellant discussed his whereabouts up to and including the approximate time the killings occurred. Appellant claimed the last time he was at the Ruizes was Tuesday or Wednesday, July 9 or 10,

sometime around noon. (1SCT 47.) During his stay, he hung out with Mike, watched some television, went into various parts of the house, and may have used the restroom at least one time. (1SCT 47-48.) He remembered that he did not go into Jasmine's room but went into the other rooms to help move things around and help Mike get Ana out of bed. (1SCT 49-50.) He left the their house around 2 p.m., went home and watched television before falling asleep around 4 a.m. the next morning. (1SCT 52-53.) When he woke up, he briefly stopped by at a friend's house to deliver a computer and then went to Salgado's bar around 3 p.m., where he stayed until 2 a.m. Friday morning. (1SCT 55-59.) Afterwards, he returned home, watched television, and fell asleep around 3 or 4 a.m. (1SCT 58-60.) He woke up around noon, left his house around 1 p.m., briefly stopped at a friend's house, then went to Salgado's bar at 2 p.m. He stayed at the bar until it closed the next morning at 2 a.m. (1SCT 60-62.) He woke up at 9 a.m. Saturday morning and first learned about the killings from the mailman. (1SCT 63-64.)

Appellant denied knowing what happened at the house. (1SCT 69-70.) When asked about noticeable cuts on his hands, appellant claimed he always had them because of the work he did on electronics. (1SCT 66-67.) Sergeant Miley showed appellant a photograph of the shoeprint obtained at the crime scene. Appellant denied it looked similar to his boots but agreed to give his boots to them. (12RT 2489-2890.) Towards the end of the interview, appellant consented to a search of his house. (1SCT 71, 77-78.) Afterwards, patrol deputies transported appellant to another police station. During the drive, appellant admitted he was actually in the house during the killings and wanted to talk more about the incident with Detective Smith. (14RT 3056-3057, 3060.)

The second interview began at 9:50 p.m. with Detective Smith and another detective. (14RT 3063-3065; 1SCT 80.) During the interview,

appellant stated he went to the Ruiz house on Wednesday at about 8 p.m. When he arrived and looked through the office window, he saw two men with guns talking to Mike. The men appeared angry and Mike seemed scared. (1SCT 81-82, 100-101.) The men accused Mike of "messing around" with a friend's wife. Appellant remembered a family friend who had told him about Mike having an affair with a woman whose husband was in the Puerto Rican mafia. (SCT 90, 97.) Appellant did not know who the men were and had never seen them before. (1SCT 86.)

When appellant knocked on the office window, the men told him to come inside. (1SCT 83.) Once inside, the men taped appellant's hands together in the living room and put a sock in his mouth . (1SCT 85-86, 102-103.) Appellant remained in the living room as the two men killed the Ruizes one by one. (1SCT 96-97, 103.) Appellant did not see everything, but heard the men attack Mike first while he was in the office. Mike was "bleeding everywhere" out of "his throat and stuff." (1SCT 103-104.) Soon after, Mike fell to the floor. The men next attacked Maritza and a struggle ensued during which appellant heard Maritza say, "Why are you doing this to us?" (1SCT 105.) After killing Maritza, the men killed the grandmother. Appellant could not recall how they did that. (1SCT 106.) Appellant heard "gargling" from one of the victim's. (1SCT 107.) The men next went into one of the rooms and stayed there for a while. Appellant felt the men had to be doing something really bad to the little girl. (1SCT 107, 124.)

Afterwards, the men took the three bodies into one of the rooms. They told appellant to create a mess and throw barbecue sauce on the walls. They ordered appellant to take monitors, a laptop, a CD player, and a computer. The men wore gloves while appellant did not. (1SCT 95, 108-111.) The men put the items in a trash bin and dragged it over to appellant's house. (1SCT 117.) By then, appellant recalled it was early

morning and just around the break of daylight. Appellant, however, could not remember whether it was Thursday or Friday morning. (1SCT 118-119.) The men threatened appellant that if he told police anything they would kill him and his father. (1SCT 87.)

As the second interview was conducted, several deputies began the search of appellant's residence, which led to the recovery of more evidence. (14RT 3058-3061.) In a woodshed in the back of the house, deputies cut open the padlock and discovered a green trash bin similar to the one Morris discovered missing. (13RT 2794.) The trash bin was heavy and contained computer equipment, a DVD player, CDs and DVDs, and cords taken from the Ruiz residence. Bloodstains on some of the items were also collected. (13RT 2769, 2772-2778, 2780, 2795-2796; see 16RT 3488.) In appellant's room, deputies recovered watches and a model car that belonged to Mike. A bracelet, gold ring, silver chain, condom, little girl's wristwatch, and a lighter were found inside a jacket. (13RT 2797-2800.)

Meanwhile, a third interview was conducted at 12:11 a.m. on July 15, 2002, with Detectives Smith and two other detectives, Stephen Davis and Joseph Sheehy. (1SCT 126; 13RT 2783-2784; 14RT 3073-3076.) Appellant repeated much of the same story as in his second interview. This time appellant said he thought about the date and was certain he went to the Ruiz house on Thursday at 8 p.m.. (1SCT 127-129.) Appellant discussed how after the men killed Mike and Maritza, they took Ana to one of the rooms. The men stayed in that part of the house for about an hour. When the men returned, they threatened appellant, telling him that if he talked to police, they would kill him. (1SCT 141-144, 147.) They untied him and told him to ransack the house. They put the items in the trash bin, pulled it over the wall, and followed appellant to his house. (1SCT 149-154.) Once there, they told appellant to put the trash bin in the garage. Appellant complied and locked the garage door. Before leaving, the men threatened

appellant again not to tell anyone. Appellant was afraid to call the police. (1SCT 156-158.)

Detective Davis insisted appellant fabricated his story. He accused appellant of being the killer. Appellant denied he killed the Ruizes and said his story was the truth. (1SCT 159-160, 163-165, 169-170.) When confronted about the watches found in his room during a search, appellant denied the watches were stolen. He stated they were not his watches and did not know how they got there. He did not know if they belonged to Mike. (1SCT 161-162.) Appellant also denied he had any feud with Mike. He owed Mike $100 and went over his house at the time to give him $50 of the money he owed. (1SCT 167.) He admitted that although he asked Raquel out on a date, they never went out. Appellant said he complied with Mike's request not to ask Raquel out again after Raquel became upset that appellant knocked on her window. (1SCT 167-169.) Appellant continued to insist he was telling the truth. (1SCT 169-170.)

**5. Autopsy Findings**

Medical examiners who conducted the autopsies made the following findings. (13RT 2625-2626, 2653-2654, 2682-2683, 2713-2715.) Mike suffered multiple sharp-force injuries, including a wound to the neck, small wounds to the forehead, back of the neck, and the mid-back. The cause of death was determined to be a fatal slicing wound to the front neck which cut through the neck muscle and cut the jugular veins. (13RT 2627-2630.) The fatal wound would have slowly drained blood from Mike's body and allowed him to remain upright for just a few more minutes. This was consistent with Mike staggering several feet before falling down and bleeding to death. (13RT 2631.) The wound to the back of the neck was consistent with a double-edged sharp knife and having been attacked from behind. Mike did not have any defensive wounds. (13RT 2632, 2635-2636.) The wound to the mid-back was consistent with a single-edged

knife. It appeared two knives were used to attack Mike. (13RT 2632.) Mike's right arm had an abrasion consistent with dragging his dead body by a cord wrapped around the arm. (13RT 2633.) Mike was 6' 2" and weighed 205 pounds. (13RT 2652.)

Ana died as a result of two-major, sharp-force wounds to the neck. One of the wounds was a large, gaping Y-shaped wound which severed the jugular veins, damaged the larynx and trachea, and extended back to the spine of the neck. The wound had a slashing motion that went downward and backward and was consistent with a single-edge knife. (13RT 2655-2662, 2669-2670.) The other fatal wound went through the neck and left side of the collarbone, severing the subclavian artery and causing blood to drain into the chest cavity. (13RT 2656, 2660-2663.) The wounds were consistent with the attacker using two different knives. (13RT 2665, 2672.) Ana also suffered small, non-fatal wounds on the left shoulder, scraping and tearing of the scalp, and minor abrasions on the knee. (13RT 2655-2656, 2666-2667.) Ana had no defensive wounds. (13RT 2669.) Ana was 5' 4" and weighed 124 pounds. (13RT 2654-2655.)

Maritza suffered a total of thirty-one stab wounds and fourteen slashes by a sharp instrument, some of which suggested the use of a single-edge knife and the others the use of a double-edge knife. (13RT 2698, 2701.) Maritza suffered a majority of her wounds to her chest, back, and neck. Maritza died as a result of five fatal wounds inflicted to the bottom of her neck, upper chest and collarbone region, and her lung and chest cavity. The fatal wounds penetrated the lungs and perforated major blood vessels. (13RT 2684-2693.) Maritza had at least eight defensive wounds on her hands. Wounds to her back were consistent with a person fleeing an attacker. The pattern of the injuries scattered on various parts of Maritza's body indicated a likely struggle and a fair amount of movement. (13RT 2694-2695, 2698-2699.)

Jasmine was killed by asphyxia, or the loss of oxygen supply to the brain and vital organs, which was likely caused by body compression and drowning in fresh water. (13RT 2718, 2736.) Petechiae, or tiny salt and pepper hemorrhages of the skin, covered Jasmine's neck, face, and chest area. Petechiae are strongly associated with asphyxia. When they occur on the face they are usually caused by either body or neck compression. The amount of force required is significant enough to stop breathing and squeeze blood to rush from the body up to the tiny veins in the face where they puncture out into the skin. Petechiae typically develop above the compression point, which in Jasmine's case would have been somewhere around her upper chest. (13RT 2718-2719.) Jasmine suffered severe injuries to her genitalia and anal area along with abrasions to her buttocks and feet. (13RT 2720.) There was a fingernail mark on the right side of her external genital area and scratches on the back of her thigh near the buttocks. (13RT 2721-2722.) She had numerous tears to the vaginal area, including a two-inch long tear through the back of her vagina and into the tissue between the vagina and rectum, and a complete destruction of the posterior hymen. A blunt force violently driving against that area or into the vagina caused severe stretching of the skin, soft-tissue hemorrhage, and bruising to the anterior hymen. (13RT 2723-2730.) There was severe bruising to the anus and three tears in the anal area, indicating the use of a great deal of force. (13RT 2731-2733.) The sexual assault injuries occurred while Jasmine was still alive and would have caused severe pain. The extent of the injuries were far beyond the typical type seen for sexual assault victims. (13RT 2733-2734, 2745.)

#### 6. Forensics Evidence

The shoeprint found on the chair in Jasmine's room was a conclusive match of appellant's boots. (12RT 2499-2509, 2513-2515.) Other shoeprints throughout the house were either not made by appellant or

shared a few similarities that were consistent with appellant's boots but could not be conclusively linked to them. (12RT 2515-2530.) Fingerprints pulled from the mop handle matched appellant's left palm. (12RT 2563-2564.) Appellant's fingerprints were also found on items contained in the trash bin, including a keyboard, manila folder, computer, and some CDs and DVDs. (13RT 2774-2777, 2820-2825; 14RT 3094-3100.)

On October 26, 2002, appellant's stepfather discovered two ammunition boxes underneath a woodpile in his backyard. (13RT 2834-2835; 14RT 2920-2922.) He opened the boxes and recognized that it contained items belonging to appellant. He turned the items over to police shortly thereafter. (13RT 2840; 14RT 2921-2926.) The boxes contained a black jacket, a black "Slayer" T-shirt, a pair of boxer shorts, two white socks, a pair of jeans, a pair of handcuffs, a small flashlight, a three-inch dagger in a sheath, a large United-brand knife inside a black sheath, a small Vaquero-brand folding knife, a pair of black fingerless weight-lifting gloves, white nylon twine, and a tear gas canister. (13RT 2842-2843, 2882-2884; 14RT 2936-2941, 2945.) Appellant typically dressed in all black clothing and wore Doc Marten boots. (10RT 2216-2217.)

Tests of the swabs taken from Jasmine's vaginal and anal areas contained sperm matching appellant's DNA profile and included no DNA types other than Jasmine's or appellant's. (13RT 2861-2877; 15RT 2880-2881, 2905.) Blood from the shoelace of appellant's boot matched the major profile of Maritza's DNA as well as Mike's DNA as a possible contributor. (14RT 3019.) Blood samples recovered from the United knife contained DNA of a major profile matching Maritza while appellant could not be excluded from a minor profile. (13RT 2942-2943; 14RT 3020.) A DNA profile obtained from the Vaquero knife was consistent with at least two people, with the major profile matching Mike and a minor profile consistent with Maritza. (14RT 3021.) DNA obtained from the blood on

the jacket and jeans contained a major profile from Maritza and a minor profile contributed by appellant. (13RT 2961; 14RT 3016-3017, 3022.) The boxer shorts contained sperm cell matching appellant's DNA and an epithelial fraction mixture consistent with both Jasmine and appellant. (15RT 3017-3019, 3024.) Other contents from the ammunition box tested positive for blood, including the black shirt, weightlifting gloves, handcuffs, canister and flashlight. (14RT 2946-2947, 2957-2958, 2974-2975.)

Two of the orange cords recovered from the scene were tested, one matched the major profile of Mike and possible minor profiles of Maritza and Ana, and the other resulted in a single source that matched Ana's DNA. (14RT 3022.) The probability of a random DNA match from the general population was extraordinarily rare.[4] (14RT 3023-3027.)

### 7. Crime Reconstruction Expert

Deputy Paul Delhauer testified as the crime scene reconstruction expert. (14RT 3112.) He described his background and training with regard to crime scene reconstruction, which included examining between 800 and 900 cases. Delhauer worked extensively with crimes involving blood spatter, knife wounds, bloodstains and pattern stains. (14RT 3112-3120.) Delhauer personally observed the crime scene in the afternoon on Saturday, July 13, 2002. After his observations and reviewing all the reports, documents, and photographs in the case, he concluded the crime occurred in the following manner. (14RT 3120-3121.) The attacker killed Mike from behind during a surprise knife attack to the front of his throat. This was corroborated by the fact that Mike did not sustain any defensive

---

[4] For example, the random probability of DNA found in the sexual assault kit matching appellant's profile was one out of 15.3 quintillion in the Hispanic population. (15RT 2880-2881.)

injuries. (14RT 3124.) Blood streaks and stains on the computer, the desk, and wall above the desk were consistent with a large volume of blood gushing out of Mike's neck. (15RT 3175-3176.) Blood spatter on the office walls was consistent with the knife blade rapidly moving from one direction to the other, typical of incidents that involved bludgeoning and multiple stab wounds. (15RT 3168-3172.) Shoe impressions and blood spatters in the office and the bathroom attached to the office indicated that Mike moved toward the door after sustaining his fatal injuries. (15RT 3164-3165, 3184-3185.) Bloodstained clothing on the office floor along with blood pattern near it suggested the clothing was not worn during the attack. This was consistent with the injuries Mike received, as the blood flow from his chest to his legs did not show that he had worn clothes over those areas. (15RT 3166-3167.) Based on bloodstains on the carpet near the couch, it appeared Mike fell to his death there. (15RT 3192-3193.)

Maritza appeared to have entered the office during the attack or immediately following it. The killer struck her first in the office. She then fled towards the front door where the killer caught up to her and stabbed her multiple times. (14RT 3124.) The hoop earring found on the floor in the office likely became dislodged during the wound that penetrated her left ear lobe and the left side of her neck. (15RT 3182-3183.) Directional blood spatter on the officer door corroborated the conclusion that Maritza moved towards the living room. (15RT 3171-3712.) Blood on the area of the front door at both the higher and lower levels indicated the killer stabbed Maritza as she stood and continued to stab her as she fell and remained on the ground. (14RT 3134-3136, 3150.) Blood found on the inside of the screen door suggested Maritza approached the door and opened it slightly right before she fell to the ground. (14RT 3147-3148, 3152-3153.)

Ana appeared to have come out from the back of the house to investigate sounds she may have heard. She was attacked in the living room. (14RT 3125.) A broken statue in the living room appeared to have been the object used that caused a patterned injury to Ana's head. (15RT 3197-3198, 3201-3202.)

Abrasions on Ana's and Mike's body indicated they were dragged by an electrical cord to the bedroom. (15RT 3206.) The floor also contained stain marks from the living room and front door area to the bedroom, which also suggested the bodies were dragged and placed in the bedroom. (15RT 3188.) Powder and liquid was poured over Mike's body and tape wrapped around Mike's head and through his mouth following his death. (15RT 3204.)

Jasmine was sexually assaulted and became unconscious before being placed in the bathtub. She was weighted down in water by the statue and eventually drowned to death. There was no evidence of strangulation, splash or resistance in the tub. (14RT 3125-3126.) A mass of fluid around her nose was consistent with fluid being purged from her body and settling on her face when the water was drained. (15RT 3207.) She had marks on her right thigh consistent with fingernail scratches. (15RT 3208.) A pattern stain with herbal substance on the bed in Jasmine's room was consistent with the purple vibrator found in between Jasmine's legs. (15RT 3208-3210.) Some stains on the bedspread were consistent with blood. (15RT 3249.) Delhauer suggested that a hose found under some clothes in the bathroom next to the office appeared to be a bidet hose used to cleanse Jasmine's vaginal and rectal areas. (15RT 3186-3188, 3280-3284.)

Delhauer examined the three knives and concluded that only two knives were used in the attacks — the six-inch bladed Vaquero folding knife and the three-inch blade dagger. The United knife remained in the sheath throughout the attacks. Blood found in the sheath appeared to have

been deposited there during the attacks and superficially washed after the killings. (14RT 3130-3134; 15RT 3163.). The Vaquero knife was used to make the larger slash-type wounds such as the ones found on Maritza's cheek and throat. (14RT 3132-3134; 15RT 3158.) The dagger was used to inflict the wounds to Maritza's neck and shoulder. (15RT 3162-3163, 3183.) Both knives were used to inflict wounds to Ana's throat. (15RT 3206.)

Delhauer opined that the mess created by food and other items throughout the house and the attempt to clean-up blood suggested crime scene staging. This was done to deflect attention from what really happened and eliminate suspicion from the actual killer. (15RT 3195-3196.)

### B. Defense

Appellant did not testify in his defense. Investigator Richard Salazar testified that the hose believed to be used as a bidet hose according to Delhauer actually attached to a hookah pipe used to smoke tobacco, hashish, or marijuana. (15RT 3296-3300.)

## II. PENALTY PHASE

### A. Prosecution's Evidence

#### 1. Victim Impact Statements

Several Ruiz family members testified as to the impact the murders had on their lives. Raquel recounted how much she loved her family and missed them. Jasmine was the baby sister she always wanted to have. She loved spending time with her, watching television and walking her to the park to play basketball. She was a very happy little girl and always brightened Raquel's day. Raquel explained how her mother was like a friend to her. She worked hard and never got mad. She wished her mother

was alive so she could share things with her. Mike was Raquel's father figure. He made her feel special when he introduced her as his daughter. Ana was a sweet lady who always worried about Mike and made sure Jasmine and Raquel were doing well. (17RT 3702-3710.) Following the deaths, Raquel received therapy and continued to experience difficulty. She felt guilty at times and wished she was in the house during the murders. (17RT 3711.)

Zeledon recalled the disbelief she felt when she discovered the bodies. (17RT 3714-3715.) She recounted Mike being very generous to others and a lovely, outgoing and funny person. He was a perfectionist who liked everything to be clean. (17RT 3715-3716.) Maritza always had a smile on her face and loved to joke around. She was an outstanding salesperson and naturally drew people to her. (17RT 3716.) Ana was a caring person who expressed her love with her body language given her health. (17RT 3717-3718.) Jasmine was very dear to Zeledon. She loved to read and play dress-up. She played with Zeledon's son. (17RT 3718.) Zeledon discussed the difficulty she had telling her son about Jasmine's death, especially the day she discovered the bodies. Her son waited in the car and wanted to say "hi" to Jasmine. She was glad her son did not come inside the house. (17RT 3719-3720.) Since the deaths, Zeledon obsessed over making sure all the doors and windows in her home were locked. She sometimes found herself crying in the car and not knowing whether the light she had just passed was red or green. (17RT 3720-3721.) The holidays were particularly hard because she used to spend those moments with the Ruizes. (17RT 3722-3723.)

Mike's father, Miguel Ruiz, Sr., discussed how his life turned upside down after the murders. He was not able to think straight and sleep through the night. It was hard for him to work and as a result he eventually lost his job. Miguel Sr. was Ana's only son. Ana was always happy and never got

mad with anyone. Miguel Sr. was very close with his son and saw him everyday. He missed how Mike used to pick him up and give him a hug. He missed everything about Jasmine, especially how she called him "grandpa." He remembered how Maritza always made coffee for him when he visited the house. He missed her cooking. Miguel Sr. continued to always think about the murders and could never forget them. (17RT 3725-3731.)

Luz Ruiz, Miguel Sr.'s wife, was very close with the Ruizes. She visited the house about three times a week, often dropping off various items for them. Since the murders, Luz explained that she lost a part of her husband. He was not the same anymore and enjoyed staying alone a lot at home. (17RT 3733-3735.)

Mike's sister, Olga Lizzette, was in disbelief when she found out about the murders. Olga was very close with her brother. When she and her brother were little kids they talked about the party they would have when they each turned 40 years old. Mike treated appellant as part of his family. (17RT 3737-3740.) Olga loved Jasmine like a daughter. They spoke to each other everyday, including about Jasmine wanting to be a veterinarian and teacher. (17RT 3744.) After the murders, Olga received therapy. She was not the same person as before. She was not able to watch television or attend funerals. (17RT 3747.) Going to the morgue to identify the bodies was quite a horrifying experience for her. (17RT 3745.) When she entered the house a day or two following the murders, she felt she was in a "horror movie." She missed the Ruizes very much and wished she had been in the house to help them somehow. (17RT 3747-3751.)

### 2. Weapons and Homemade Handcuff Keys Possession In Prison Cell

On December 21, 2002, Deputy Young Kim performed a routine safety check of appellant's cell unit. He discovered a possible "shank," or a sharp object that could be used to cause injury. The item was made from a plastic spoon that had one side sharpened and thread wrapped around the end to create a grip. (17RT 3752-3754, 3761-3762.) Appellant claimed he was using it as a "fishing line," which is a way an inmate can send paper messages to an inmate in a nearby cell. (17RT 3744-3758.)

On February 15, 2003, Deputy Joseph Chavez conducted a search of appellant's cell unit and recovered a razor blade and a homemade handcuff key. (17RT 3766-3767.) The blade was considered contraband as it was not allowed to be removed from the shaving unit under prison policy. (17RT 3768-3769.) The handcuff key appeared to have been made from silver metal such as a paperclip and could be used to unlock handcuffs placed on an inmate's wrists. (17RT 3767-3768, 3774.)

## B. Defense

### 1. Appellant's Family History

Manuela Chavez Rodriguez was appellant's mother. She and appellant's father, Emiliano Morales, Sr., had one other son together, Emiliano ("Emi"). Emi was older than appellant. Appellant and Emi had an older half-sister, Yvonne Ybarra, who was Manuela's daughter from a previous relationship. (17RT 3807; 3810.) When Manuela was pregnant with appellant, she had gained 100 pounds and gave birth ten-and-a-half months into the pregnancy. When she gave birth, appellant's skin was black, blue, and purple. She asked the hospital staff if anything was wrong, and they assured her that appellant was healthy. That appearance lasted for about six months. (17RT 3808-3809.)

Manuela and Emiliano frequently argued in front of the children. During one of the arguments, Manuela called the police after Emiliano hit her. When the police arrived, they saw blood on Manuela's face. They took Emiliano in the front of the house and beat him. (17RT 3817-3818.) Emiliano finally left the home when appellant was four years old. Appellant was devastated and was very attached to his father in those early years. Emiliano still worked across the street from the house. Appellant sometimes stood outside and stared at his father's workplace. On one occasion, Manuela panicked when she lost sight of appellant only to later discover someone found him across the street riding a forklift with his father. (17RT 3818-3819, 3899.)

When appellant was six, Manuela's boyfriend Donald Rodriguez lived with them. (17RT 3819.) Manuela's two nieces, Tina and Val, also lived with them at the time. (17RT 3821.) Donald was physically abusive to appellant. He would hit appellant with a paddle to discipline him. Appellant was disciplined much more than his siblings. (17RT 3822; 3870.) Sometimes when Donald beat appellant, appellant's screams were heard by neighbors who yelled at Donald to leave him alone. (17RT 3872-3873.) Appellant usually returned to his room with visible red marks on his skin. He lay on his bed and faced the wall, wanting to just be left alone. (17RT 3875.) He never complained about the physical abuse. Being concerned about the abuse, Manuela asked appellant's school to inform her if they saw any signs of physical injuries. (17RT 3822-3823.) Donald abused appellant while he lived at the house for about a year when Manuela ended her relationship with Donald and had him move out. (17RT 3822-3823, 3862-3863.) Soon after, Tina started doing drugs. Manuela took her to the mental hospital on several occasions. She suffered from paranoia and would stay up all night with a knife in her hand. She eventually committed suicide by jumping off a bridge. (17RT 3823-3825.)

When appellant was ten, Jerry Rodriguez married Manuela. He lived with them until appellant was around 23, the time he was arrested for the current crimes. Jerry was an alcoholic who always verbally abused appellant. Manuela told Jerry about appellant's learning disability but Jerry ignored her. Jerry claimed appellant had nothing wrong with him and just acted stupid. Jerry ridiculed appellant almost everyday, sometimes calling him names such as "stupid" and "dumb ass." (17RT 3829-3832; 3879.) One time when the family was at a restaurant, appellant asked his mother to help him read the menu. Jerry poked fun of appellant by telling Manuela, "Shouldn't he read by now yet?" (17RT 3876.) Jerry was proud of Emi and treated him differently than he did appellant. Starting at the age of 12, appellant occasionally ran out of the house when Jerry verbally taunted him. Appellant would walk aimlessly until he lost track of his whereabouts and called his mother to come pick him up. (17RT 3832-3833.) If appellant did not run out of the house, he would lock himself in his room. (17RT 3834.)

Manuela spent a lot of time with Emi. Emi was more athletic than appellant. Emi played several sports and received many awards. He was particularly skilled at hockey and played for nine years. As a result, Emi received most of the parents' attention. (17RT 3811-3812, 3827-3828, 3881.)

When appellant was 17, his brother Emi died in an accidental rock slide at Yosemite. (17RT 3834, 3844; 18RT 4126.) Appellant became devastated. (17RT 3841.) He turned the bedroom he shared with his brother into a shrine for him. Appellant became very protective of Emi's belongings and kept it the way Emi had left them before his death. Appellant did not touch or move any of his items. (17RT 3835, 3843-3844, 3882.) After Emi's death, appellant went into a shell and pulled himself away from everyone and everything. At family gatherings, he would stand

in the corner and just watch everyone. He barely interacted with anyone other than exchange greetings. (17RT 3841.) As appellant became more withdrawn, he also began to dress in black and listen to heavy metal music. He became more of a night person. When he watched television, he would hold a bamboo samurai sword and flashlight just in case anyone walked in. (17RT 3842-3845.) At Emi's funeral, appellant lashed out at his biological father Emiliano. He told him, "Is this what it took for you to come and see us? To see your son lying in the casket? After all these years, this is what it took?" Appellant told his father that he never wanted to see him again. (17RT 3842.)

Following Emi's death, Jerry's drinking worsened. He drank day and night and had to be admitted into the hospital on one occasion. (17RT 38345.) He criticized appellant for living at home "mooching off" his parents and not moving out of the house. (17RT 3853.) When appellant got older, he began to stand up for himself against Jerry's disparagement and accused Jerry of having a drinking problem. (17RT 3881-3882.)

Manuela loved appellant very much. She believed he was a child trapped in a man's body. (17RT 3850-3851.) Manuela always tried to help appellant and make sure he got the extra care he needed as he got older. She was always involved with his teachers and even took him to the California Rehabilitation Center to help him gain skills to get a job. (17RT 3854-3856.) She was devastated when she learned about the murders. (17RT 3849.) Manuela knew the Ruizes very well. She visited them almost every day during the summers. Her granddaughter Candace was Jasmine's best friend. Jasmine often came over their house to play with Candace. (17RT 3848-3849.) The purebred boxer appellant gave to the Ruizes was one of Manuela's dog she tried to sell. Because she liked the Ruizes, she allowed appellant to give them the dog as a gift. (17RT 3849.)

Yvonne wished her mother helped appellant in more ways when he was younger. Shortly after Emi's death, Yvonne and appellant were not on speaking terms. She did not know the reason for that. (17RT 3886-3888.) Even though they did not talk to each other, appellant still had a relationship with Yvonne's kids. He would buy them ice cream from the ice cream truck and take them to the store. It was not until the murders that Yvonne and appellant finally had a conversation again. (17RT 3892-3893.) Yvonne would not wish for anybody's child to have the childhood appellant had. (17RT 3885-3886.)

**2. Educational History**

During first grade in 1984, appellant did not take direction well at school. Sometimes he did the opposite of what the teacher told him to do. When given multiple instructions, he would perform one of them but not the others. (17RT 3781-3783, 3794.) When appellant answered a question, his answer would not be relevant and other students tended to laugh. (17RT 3785-3786.) Appellant had limited speech and would cry out of frustration when he could not say something the teacher wanted him to say. (17RT 3790.) Although appellant was slow, other students were sympathetic and wanted to help him. (17RT 3794.) Although appellant attended normal class, he was released about three times per week to attend special education classes. His first grade teacher believed appellant belonged in special education class full time. (17RT 3787-3788.) Appellant attended special education classes regularly after the first grade. (17RT 3797-3800, 3815.) His special education teacher in grades four through six observed appellant was usually quiet and not social. Sometimes other students teased him. Appellant seemed depressed. (17RT 3801-3802.)

By eighth grade, appellant had severe learning deficits. He reached only the reading level of a first or second grader. He tried hard but his

vocabulary was very limited, being unable to express himself like other students were able to do. He spoke like a young child. (18RT 3923-3925, 3936-3937.) Appellant tried to fit in but was not accepted by his classmates. (18RT 3927-3928.) He felt dejected and was very quiet and withdrawn. Other kids picked on the way he dressed because appellant wore clothes that were too big for him or had an outdated sports logo. On the playground, appellant just kept to himself. (18RT 3930-3931.)

In high school, appellant continued to be in special education classes. Appellant was mainly by himself outside of class and did not interact with other students. He had a blank look on his face and his eyes did not focus like a normal child. (17RT 3905-3907.)

### 3. Learning Disability Expert

Nancy Cowardin, an educational and developmental learning specialist, evaluated appellant and concluded he had a learning disability. (18RT 3938-3940.) Learning disabilities go outside the classroom environment and into a person's everyday life. It is a life-long condition that affects decision making and adaptability to everyday situations. (18RT 3968.) Some kids with learning disabilities may do something inadvertent but still not know they did something wrong. When people do not understand learning disabilities, they jump to the conclusion that the kid is acting out on purpose. Kids with learning disabilities need consistency, something that appellant lacked in his household. Having a harsh disciplinarian at home made appellant feel as if he was not good at anything. (18RT 3970-3972.)

Appellant's learning disability began from an early age. (18RT 3940-3941.) Appellant was placed in special day classes for children who needed to spend more than half the time of a school day in a special learning environment. (18RT 3942-3943.) Appellant started special day classes from second grade until he graduated high school. He graduated

with a literacy level of a fifth or sixth grader, which under the current standards would not allow him to receive a diploma. (18RT 3946-3947.)

In September 2004, Cowardin evaluated appellant while he was in jail. Appellant was rather reserved and held back emotion. Only after a while during the evaluation did appellant begin interacting spontaneously, such as smiling or laughing. (18RT 3947, 3972-3973.) Cowardin concluded appellant continued to have learning disabilities, especially in spelling and math. (18RT 3947.) Appellant had "expressive dyslexia," which meant that although he could read, his writing was deficient. (18RT 3951.) Appellant's IQ in reading was close to the average of 100 while his IQ in spelling and math were far below, with scores of 59 and 62 respectively. (18RT 3953-3954.) His single-word vocabulary was an 84 while his ability to understand words was a 96. However, he scored a 68 for language fundamentals, or his ability to insert language into more difficult contexts. This was at the level of a person under the age of 10. Appellant had a difficult time expressing himself. (18RT 3951.) The significant discrepancies of appellant's IQ level in certain areas compared to others indicated a pattern consistent with students having learning disabilities, as opposed to mental retardation students who would consistently score below 70 in each category. (18RT 3954-3956, 3959.) Appellant processed visual information better, at the equivalency of a 13 year old, while his ability to process what he heard was below a 9 year old. (18RT 3963.) Appellant's overall test was at an average IQ. (18RT 3973.)

Cowardin acknowledged that one of appellant's high school transcripts showed that he obtained a C grade point average. Appellant had excessive absences and truancies in courses he obtained grades below a C. (18RT 3976-3979.) A high school assessment report from 1996 indicated appellant's failures were entirely due to adolescent issues of motivation and willingness to follow direction and not his learning disabilities. (18RT

3980.) Cowardin explained that learning disabled students often selectively skipped classes because the subject was impossible or the teacher was bad. Appellant currently tested well and read at a fairly normal level of an 11th grader. This was largely due to his opportunity to practice more while he spent time in jail. However, his math skills tested low because he did not keep up in that area. (18RT 3981-3984.)

### 4. Clinical Psychologist Evaluation

Dr. Arnold Purisch, a psychologist specializing in clinical neuropsychology, performed a neuropsychological evaluation of appellant and reviewed his medical records. (18RT 4018.) He interviewed appellant for about an hour and administered tests for about eight hours. (18RT 4043.) The test results were consistent with someone who had longstanding brain damage and learning disabilities from an early age. (18RT 4024.) Purisch was not aware of any physical damage to appellant's brain. Rather, appellant's brain damage was developmental and something he was born with, which cannot be discovered through brain scans. People with developmental brain damage usually appear to have normal brains, but abnormal brain functioning. (18RT 4044, 4058.)

Purisch's testing confirmed that appellant had an average IQ but performed significantly less than what was expected on academic achievement. This meant he had multiple severe learning disabilities that coincided with his poor performance in various academic subjects. (18RT 4026-4027.) Appellant had significant difficulty pursuing one line of thought without losing his train of thought. (18RT 4028-4029.) His ability to spell, express thoughts in writing, and express thoughts verbally were the equivalent of a nine-year old. (18RT 4030.) Although appellant did well with listening and comprehension, his ability to express and organize his thoughts was at the capacity of a person between the ages of nine and eleven. (18RT 4031-4032.) In particular, appellant functioned at the

capacity of a 10-year old in areas where he had to think through things, problem solve and organize behavior, and evaluate and pick appropriate responses and emotions. (18RT 4037.) Appellant performed poorly on tasks where he had to formulate his own thoughts and was passive and unmotivated in such situations. Appellant tended to react by impulse rather than think things through. (18RT 4034-4037.) After the death of his brother Emi, appellant's behavior deteriorated. (18RT 4039.)

Purisch explained that appellant's poor performance with the California Rehabilitation Center coincided with the tragic death of his brother Emi. (18RT 4057.) Although appellant tried to get ahead in the program, he was very passive and just let the system try to take care of him. He did not exercise good judgment and skipped classes that were required because he wanted to attend other classes. According to Purisch, appellant's behavior was not done in a malicious manner, but done because he just did not have what it took to sustain himself in a goal-oriented direction. (18RT 4038-4039.) However, Purisch noted appellant was capable of aggressive and immature behavior that had to do with emotional stress and getting caught in the circumstances. (18RT 4048.) Purisch believed that appellant's brain development would not improve any more. (18RT 4040.)

**C. Rebuttal**

While in high school from the summer of 1995 to October 1999, appellant participated in the vocational rehabilitation program at the California Department of Rehabilitation under the guidance of vocational counselor Myrna Zavala. Zavala worked with school personnel to help appellant identify his interests and strengths in order to assist him in making a decision about the type of employment or career path he wanted to pursue after leaving school. (18RT 4095-4096.) Although appellant was classified in the "most severely disabled" category of the program because

of deficiencies in interpersonal skills, personal care, self-direction, mobility, cognitive process, and job-related skills. The category, however, did not mean appellant could not be a productive individual. (18RT 4109-4111, 4125.)

In the summer of 1997, the program placed appellant at a YMCA to work as an aid to a summer camp counselor. (18RT 4081, 4098.) Jacqueline Derimow enrolled her 7-year old son Nicholas in the summer day camp. She dropped him off and picked him up every day. On one occasion when she picked him up, she noticed he was upset and began to cry. (18RT 4079-4081.) Her son described an incident he had earlier in the day. He walked into the bathroom and saw appellant dunking a child's head in the toilet. Nicholas asked appellant what he was doing and the two exchanged words. Appellant grabbed Nicholas and dunked his head in the toilet. Appellant released him moments after Nicholas' forehead touched the water. (18RT 4084-4085.) Derimow reported the incident to police and immediately took Nicholas out of the camp. (18RT 4081.) Appellant was fired as a result of the incident. (18RT 4093, 4098.)

In February 1998, appellant enrolled in electronics courses at the East Los Angeles Skill Center to pursue his interest working in the electronic industry. He took remedial courses to improve his reading and writing. (18RT 4099-4100.) Zavala learned that appellant had issues with his attendance. She spoke to appellant and explained that it was very important for him to attend classes. Appellant signed a contract agreeing to attend the classes but violated it two weeks later. The center asked appellant to leave the program. (18RT 4101-4103.) Appellant's mother insisted they give her son another chance. The center agreed but soon after, appellant again failed to adhere to the attendance requirements and was again dismissed. (18RT 4103-4106.)

Throughout appellant's time in the program, he and Zavala discussed his employment interests. Appellant expressed interest in law enforcement, security, military, and electronics. Zavala advised appellant against a security-related job as she believed it was not a good match for him based on his experience with the YMCA. (18RT 4098-4099.) Towards the end of the vocational program, appellant did not want to continue any training and just wanted a job. (18RT 4127.) Zavala found out that appellant got a job as a security guard or bouncer. She advised appellant's mother that she did not believe such a job was suitable for appellant. Soon after, appellant's mother told Zavala that appellant obtained a different job. Zavala informed appellant that she was going to close out his case with the vocational program because of his failure to cooperate. Zavala believed appellant did not adhere to his responsibilities and had not put his best effort or acted in good faith while he participated in the program. Appellant did not dispute those reasons and accepted Zavala's decision. Zavala closed appellant's file in October 1999. (18RT 4107, 4124-4125.)

## ARGUMENT

### I. SUFFICIENT EVIDENCE SUPPORTED THE JURY'S FINDING IN COUNTS 1 THROUGH 4 THAT THE MURDERS WERE PREMEDITATED

Appellant argues insufficient evidence supported the jury's findings that the murders were willful, deliberate, and premeditated. (AOB 75-81.) Respondent disagrees. Sufficient evidence supported the jury's findings that the murders were a result of careful thought and consideration.

### A. The Applicable Law

In assessing the sufficiency of the evidence, the court reviews "the entire record in the light most favorable to the judgment to determine whether it discloses evidence that is reasonable, credible, and of solid value such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Bolin* (1998) 18 Cal.4th 297, 331.) Only by a clear showing that "on no hypothesis whatever is there sufficient substantial evidence to support the verdict" will a conviction be reversed. (*People v. Martinez* (2008) 158 Cal.App.4th 1324, 1329.) "[The reviewing court] resolve[s] all conflicts in favor of the judgment and indulge[s] all reasonable inferences from the evidence in support of the judgment. [Citation.] This standard applies to convictions resting primarily on circumstantial evidence." (*People v. Villalobos* (2006) 145 Cal.App.4th 310, 321.)

> Although it is the duty of the jury to acquit a defendant if it finds that circumstantial evidence is susceptible of two interpretations, one of which suggests guilt and the other innocence, it is the jury, not the appellate court which must be convinced of the defendant's guilt beyond a reasonable doubt. If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also be reasonably reconciled with a contrary finding does not warrant a reversal of the judgment.

(*People v. Perez* (1992) 2 Cal.4th 1117, 1124; see also *People v. Ceja* (1993) 4 Cal.4th 1134, 1139.) The testimony of a single witness, unless physically impossible or inherently improbable, is sufficient to support a conviction. (See Evid. Code, § 411; *People v. Young* (2005) 34 Cal.4th 1149, 1181.) A reviewing court does not reweigh the evidence, resolve conflicts in the evidence, or reevaluate the credibility of witnesses. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206; *People v. Jones* (1990) 51 Cal.3d 294, 314.)

In determining whether evidence is sufficient to support a finding that a killing or attempted killing was willful, deliberate, and premeditated, reviewing courts consider three types of evidence: prior planning, motive, and the manner of killing. (*People v. Anderson* (1968) 70 Cal.2d 15, 26-27; *People v. Villegas* (2001) 92 Cal.App.4th 1217, 1223.) Such evidence need not be present in some special combination or be accorded a particular weight, nor is the list exhaustive. (*People v. Pride* (1992) 3 Cal.4th 195, 247.) Rather, they serve as an aid to assess whether the killing or attempted killing was the result of preexisting reflection. (*People v. Perez, supra,* 2 Cal.4th at p. 1125.)

Generally, it must be shown that the killing or attempted killing resulted from a preexisting reflection, rather than an unconsidered and rash impulse. (*People v. Hughes* (2002) 27 Cal.4th 287, 342.) However,

> [t]he process of premeditation and deliberation does not require any extended period of time. The true test is not the duration of time as much as it is the extent of the reflection. Thoughts may follow each other with great rapidity and cold, calculated judgment may be arrived at quickly. . . .

(*People v. Koontz* (2002) 27 Cal.4th 1041, 1080; see *People v. Lenart* (2004) 32 Cal.4th 1107, 1127 [the California Supreme Court has "never required that there be an extensive time to premeditate and deliberate."].) "The act of planning — involving deliberation and premeditation — requires nothing more than a 'successive thought[ ] of the mind.' [Citations.]" (*People v. San Nicolas* (2004) 34 Cal.4th 614, 648.)

As appellant recognizes (AOB 76), the *Anderson* factors need not be present in any particular combination, nor does any single factor carry definitive weight. (*People v. Pride* (1992) 3 Cal.4th 195, 247; see, e.g., *People v. Carasi* (2008) 44 Cal.4th 1263, 1306 [listing *Anderson* factors in disjunctive]; *People v. Romero* (2008) 44 Cal.4th 386, 401 [same]; *People v. Nazeri* (2010) 187 Cal.App.4th 1101, 1113 [same].) The issue on appeal

is simply whether a jury reasonably could determine the killings resulted from preexisting reflection, rather than an unconsidered and rash impulse, as already noted. (*People v. Hughes*, *supra*, 27 Cal.4th at p. 342.)

### B. There Was Substantial Evidence of Premeditated Deliberation

Here, applying the *Anderson* factors and reviewing the evidence in the light most favorable to the judgment, sufficient evidence supported the jury's findings that the murders were the result of a preexisting reflection. First, as to evidence of planning, a jury could reasonably infer that appellant armed himself with several knives and an arsenal of other items to assist him in effectuating the murders. Appellant's stepfather identified the ammunition boxes and some of the clothing he noticed inside them as belonging to appellant. (13RT 2840; 14RT 2921-2926.) DNA found on blood samples taken from some of the items found inside the ammunition boxes — the United knife, Vaquero knife, jacket, jeans, and boxer shorts— were at the very least consistent with the profiles of appellant and victims. (14RT 3016-3019, 3020-3022.) From this evidence, a jury could reasonably infer that all the clothing and knifes in the ammunition boxes belonged to appellant and that he entered the Ruiz house armed with the instruments to carry out his bloody murders. (See *People v. Steele* (2002) 27 Cal.4th 1230, 1250 ["As to planning, the jury could infer that defendant carried the fatal knife into the victim's home in his pocket, which makes it 'reasonable to infer that he considered the possibility of homicide from the outset.' "]; *People v. Alcala* (1984) 36 Cal.3d 604, 626, superseded by statute on other grounds as stated in *People v. Falsetta* (1999) 21 Cal.4th 903, 911 ["when one . . . brings along a deadly weapon which he subsequently employs, it is reasonable to infer that he considered the possibility of homicide from the outset"].)

Other evidence showed that appellant planned a discrete entry into the Ruiz house by going through Morris' property and climbing over the wall. Morris testified she saw a step stool along her backyard wall leading to the Ruiz house Thursday morning. The deputy recounted that Morris actually told him it was Friday morning at 6 a.m. when she saw the step stool. (11RT 2289-2291, 2299-2301; 12RT 2495-2496.) Morris recalled seeing the step stool again on Saturday morning and having a trash bin of hers missing that was later found in the shed of appellant's residence, which contained items taken from the Ruiz house and linked to appellant by his fingerprints. (11RT 2291-2296, 2203; 13RT 2774-2777, 2820-2825; 14RT 3094-3100.) Even appellant's own statements during police interviews corroborated the path taken by him and the supposed killers to the shed to hide the trash bin. (1SCT 151-154, 156-158.)

Moreover, appellant's killing of Mike by slicing his throat from behind was consistent with a surprise attack. (13RT 2627-2630, 2632, 2635-2636; 14RT 3124.) Furthermore, appellant moved methodically from one victim to the next, culminating with the sexual assault and murder of Jasmine, as supported by appellant's own version of the events, the physical evidence, and Delhauer's opinion on interpreting the crime scene. (1SCT 103-107; 14RT 3123-3126, 3135-3137, 3142-3146, 3149-3153, 3163-3164, 3175-3177, 3182-3185.) From this evidence, a jury could reasonably infer appellant methodically planned a surreptitious entry into the Ruiz house in order to execute a surprise attack on his intended victims and to kill them one by one from strongest to weakest.

Second, the prosecution presented some evidence to suggest a motive. Raquel soon became uncomfortable around appellant after the incident where he looked through Raquel's bedroom window and later asked her out on a date. (10RT 2122-2123.) Soon after, appellant's visits to the house stopped. (10RT 2127-2128.) During his interview, appellant relayed some

information regarding these incidents. He claimed he complied with Mike's request not to ask Raquel out again on a date after the bedroom window incident. Appellant also admitted he owed Mike some money. (1SCT 167-169.) A jury reasonably infer that appellant and Mike had a falling out as a result of the money appellant owed to Mike and/or appellant's inappropriate behavior with Raquel. As a result, appellant was no longer welcomed around the house and stopped visiting. This evidence supported an inference of a motive founded upon revenge. (See *People v. San Nicolas*, *supra*, 34 Cal.4th at p. 668 [prior quarrels between defendant and decedent show motive]; *People v. Zack* (1986) 184 Cal.App.3d 409, 413, citing *People v. Daniels* (1971) 16 Cal.App.3d 36, 46 [evidence of jealousy, quarrels, antagonism or enmity between an accused and the victim of a violent crime is proof of motive to commit the offense]; *People v. Hyde* (1985) 166 Cal.App.3d 463, 478 [exacting revenge is a sufficient motive to support a finding of premeditation and deliberation].) Additionally, a motive to steal could be inferred from the evidence. Numerous items taken from the Ruizes were found in appellant's room and the trash bin in his shed. (13RT 2769, 2772-2778, 2795-2800.)

Third, the manner of killing supported the jury's finding of premeditation. The sheer number of stab wounds inflicted on three of the victims and the prolonged nature of the attack point to nothing but deliberate and calculated murders. Mike died from an unexpected, surprise attack by a fatal slice to his throat. (13RT 2627-2630, 2632, 2635-2636; 14RT 3124.) Maritza was killed by five fatal wounds to the neck, chest, and back. The deepest wound penetrated five-and-a-half inches into her back and all the way to her lung and chest cavity. (13RT 2686-2693, 2705-2706.) Ana was killed by two fatal wounds to her neck, one of which was a Y-shaped wound that penetrated her neck and moved downward and backward. (13RT 2656-2663.) Wound patterns indicated that two types of

knives were used during the killings. (13RT 2632-2633, 2665, 2698; 14RT 3131.) Jasmine's death as a result of a brutal rape, asphyxiation with a tremendous amount of force applied to her body, and subsequent drowning in the bathtub indicated a cold, calculated judgment to kill her rather than a rash impulse. Based on the evidence pertaining to the manner of killing, a jury reasonably inferred appellant had a deliberate and well-executed determination to kill each victim. (See *People v. Bolden* (2002) 29 Cal.4th 515, 561 [stating that "[i]n plunging the knife so deeply into such a vital area of the body of an apparently unsuspecting and defenseless victim, defendant could have had no other intent than to kill"]; *People v. Pride* (1992) 3 Cal.4th 195, 247 ["[a] violent and bloody death sustained as a result of multiple stab wounds can be consistent with a finding of premeditation."].)

Finally, in addition to the *Anderson* factors discussed above, the conduct of appellant after the murders indicated premeditation. *Perez*, *supra*, 2 Cal.4th 1117, provides guidance. There, the defendant killed the victim by stabbing her multiple times with two different knives. He was convicted of first degree murder, but the appellate court reduced that conviction to second degree murder because it found insufficient evidence of premeditation and deliberation. This Court, however, affirmed the first degree murder conviction and criticized the appellate court's approach because it failed to focus on the evidence presented and the inferences therefrom. (*Id.* at pp. 1125-1126.) *Perez* found sufficient evidence of premeditation based on the defendant's planning activities and motive. (*Id.* at pp. 1126-1127.) *Perez* also examined the defendant's conduct *after* the stabbing as further evidence of premeditation:

> Additionally, the conduct of defendant *after* the stabbing, such as the search of dresser drawers, jewelry boxes, kitchen drawers and the changing of a Band-Aid on his bloody hand, would appear to be inconsistent with a state of mind that would

> have produced a rash, impulsive killing. Here, defendant did not immediately flee the scene. Again, while not sufficient in themselves to establish premeditation and deliberation, these are facts which a jury could reasonably consider in relation to the manner of killing.

(*Perez, supra,* 2 Cal.4th at p. 1128, italics in original.) Similarly, appellant's conduct following the murders evinced a deliberate thought process as he systematically ransacked the house, searched through cupboards and drawers, took items and carefully placed them in a trash bin, cleaned-up some of the evidence, and appeared to stage events to throw investigators off track. This behavior was "inconsistent with a state of mind that would have produced a rash, impulsive killing." (*People v. Perez*, *supra*, 2 Cal.4th at p. 1128.)

Despite the strong evidence establishing premeditation, appellant reweighs the evidence and highlights the lack of *direct* evidence. For example, appellant speculates that he could have grabbed the knives "from somewhere" after he entered the Ruiz house, thereby tending to show a lack of planning activity and entered the house innocently yet then "flew into a rage, grabbed the knives, and committed the killings." (AOB 78.) The basis for another inference is not the standard of review on appeal. (*People v. Stanley* (1995) 10 Cal.4th 764, 792-793 [reviewing court may not reweigh evidence or determine if other inferences could have been drawn from the evidence]; *People v. Perez*, *supra*, 2 Cal.4th at p. 1124 [the possibility the evidence may be reconciled with a contrary conclusion does not warrant reversal of judgment].)

In any event, as the jury found and as the direct evidence showed, appellant's knives were directly linked to him and also had the victims' blood on them, thereby dispelling the notion that appellant somehow grabbed the knives from inside the home. With respect to motive, appellant again reweighs the strength of the evidence by noting that there was "no

evidence" appellant and Mike fought over the debt and characterizes the bedroom window incident as possibly "inappropriate" but not a "confrontation." (AOB 80.) Once again, appellant invades the jury's province to assesses the weight of the evidence. Certainly, some evidence suggested motive, even if not strong evidence in isolation. Evidence suggesting motive along with evidence of planning, manner of killing, and conduct following the murders established a sufficient basis for premeditation. With respect to manner of killing, appellant merely mentions the evidence showed the murders occurred "in a frenzy" and that his conduct after the killings was "an afterthought." (AOB 81.) Yet as Delhauer testified and appellant's own concocted version of events indicated, the precise method appellant killed the victims, including the stabbings to vital areas of the body and the fact that they were killed one by one by hand (knife), lead to a reasonable inference that his actions were premeditated.

In sum, substantial, if not overwhelming, evidence supports the jury's finding that the murders were deliberate and premeditated. Appellant armed himself with two knives, surreptitiously entered the Ruiz home, then systematically and deliberately killed each family member, from strongest to weakest, culminating with his brutal sexual assault on the daughter prior to her killing. He then staged the crime scene and stole various items which he put in a trash bin and were found in his shed. Even by his own version of the events, he detailed the order in which the victims were killed (Mike, Maritza, Ana, and then Jasmine), described how he staged the crime scene, and finally stole items he put in a trash bin and dragged to his home. All this evidence was sufficient to demonstrate a careful, reasoned decision to kill. Therefore, this claim must be rejected.

## II. THE TRIAL COURT PROPERLY ALLOWED THE CRIME SCENE RECONSTRUCTION EXPERT TO TESTIFY

Appellant contends the trial court abused its discretion when it admitted Paul Delhauer's testimony as a crime scene reconstruction expert. Specifically, appellant maintains that portions of Delhauer's testimony lacked foundation and was based on speculation and conjecture, thereby resulting in prejudicial harm that "facilitated a finding of premeditation." (AOB 82-97.) Respondent disagrees. The trial court's decision to admit Delhauer's testimony was a reasonable exercise of its discretion.

### A. Background

Prior to trial, trial counsel reviewed the report prepared by Paul Delhauer, the crime scene reconstruction expert. Trial counsel noted certain objections to the report. The prosecutor agreed that those portions would not be introduced into evidence. (2RT 40; 10RT 2011-2012, 2049-2050.) The prosecutor explained that it only intended to use Delhauer's testimony with regard to physical items found at the scene, the method and manner of the killings, and staging activity. (10RT 2049-2050.) The court noted that it did not make any ruling at that point except to agree generally that Delhauer should not testify beyond the scope of his expertise. (10RT 2051-2052.) A copy of the full report was made part of the record, including the bracketed portion trial counsel highlighted as material that should be excluded. (10RT 2052-2053.) The prosecutor again noted that it was not intending to introduce the bracketed portion. (10RT 2053.) Upon further discussion, this exchange followed:

> COURT: I just wanted to indicate that the Court would not exclude any observations that are observations of the crime scene.
>
> MR. WEIL [trial counsel]: Right, the conclusions usurp — I'm sorry.

> COURT: The extent to which he starts extrapolating meaning and significance —
>
> MR. WEIL: We feel that would be usurping the function of the jury.
>
> COURT: The delusions or psychosis clearly —
>
> MR. GLAVIANO [prosecutor]: Not the delusions or psychosis, because we don't intend to get into that. I do intend to elicit testimony from him. He is very specific as to his observations. He can — based upon his expert opinion he can formulate an opinion as to staging of a crime scene. He has very specific observations and his opinion — he can say this is a classic example of somebody trying to stage a crime scene and he gives specific reasons based upon that. So I don't know if that necessarily they're objecting to that. We need to deal with that, because I do intend to elicit —
>
> MR. WEIL: I don't think that's been indicated in here. It's not bracketed, is it? The staging.

(10RT 2055-2056.) Trial counsel objected to any opinion regarding staging that had to do with advanced planning by selecting the weapons and placing the stool by the wall. The court stated it would permit such an opinion to the extent there would be evidence to support it. (10RT 2055-2056.) The prosecutor discussed the potential testimony regarding the placement of food debris and bottles as part of the staging activity. Trial counsel stated that he would not object to that line of testimony so long as the foundation was met for Delhauer's training and experience. (10RT 2056-2057.) The trial court agreed and stated, "Even then [the expert] would be testifying not that this is why [appellant] did it, that it is consistent with behavior other people have done in similar situations. That's all. But he can't ultimately form a conclusion as to the defendant's intent at the time he actually did it." (10RT 2057-2058.) The court struck the bracketed portion of the report as speculation that went beyond the expert's expertise. (10RT 2058.)

During Delhauer's testimony, the prosecutor asked Delhauer to reconstruct what happened near the entryway based on one of the photographs depicting the area. Trial counsel objected to the question on the ground that it was speculation. The Court overruled the objection. Delhauer testified he could do so but needed to see the subsequent photographs of the area. The prosecutor requested a sidebar. (14RT 3137-3138.) At the sidebar discussion, the prosecutor believed the objections trial counsel made were discussed at the previous hearing. Trial counsel responded that there were some matters Delhauer could testify to and some matters that he could not, but that trial counsel was raising objections as they came up. (14RT 3139.) The court stated:

> Well, I'm not going to say the defense can't object, but I will indicate this. This witness has indicated qualifications that justify the court in finding him to be an expert witness who is entitled to render opinions. To what extent those opinions are speculative or to what extent they are solid inferences that can be elicited is something you can attack on cross-examination. But, I'm not going to preclude him from giving an opinion if he can give one. A perfect example of that is the last question where I overruled your objection. Mr. Glaviano [the prosecutor] asked him to give an opinion and he said I can't do it based on what's there. If you let me go on to the next picture.
>
> I can't tell in advance whether or not an opinion is speculative or solidly based upon forensic evidence. But, Mr. Delhauer has established qualifications that in my opinion entitle him to testify as an expert witness and to that extent I am overruling the lack of foundation objection.

(14RT 3139-3140.) The court further explained:

> The witness had already looked at the photograph and testified to other aspects of what was depicted in the scene. The blood spatter analysis, the direction of the blood flow, the distance of the source of blood. All information gleaned from that scene. Mr. Glaviano asked him one question, I believe, about based on the totality of it, including the blood streaks on the wall, can you hypothesize what may have happened. And

> yes, this comes close to speculation, but we're dealing here with crime scene reconstruction. I think it's a permissible area. The witness then said no, I can't. Not on this.
>
> But the court will stand by its ruling, whether it was correct or not. The point is I'm not going to preclude him from extending opinions.

(14RT 3140-3141.) The trial court deemed trial counsel's future objections on lack of foundation as a continuing objection. (14RT 3141.) Later, the court noted trial counsel could still object but added, "If there's a question that's asked that's totally off the wall and entirely speculative, yes, I will still sustain an objection." The court stated that asking Delhauer's opinion as to "what may have happened or how stains may have gotten in place" was permissible. (14RT 3155-3156.)

Further into direct examination, trial counsel lodged several objections to specific portions of Delhauer's testimony. For example, the trial court sustained a defense objection based on speculation when Delhauer opined that Mike had likely removed his clothes prior to or after taking a shower. (14RT 3166.) An objection as to how blood spatter got on the wall in the office was overruled. (14RT 3170.) The court struck testimony as speculative when Delhauer stated that a knife superimposed in a photograph was consistent and more than likely used to cause the injury to Mike's throat. (14RT 3180.) The court granted a motion to strike testimony regarding Delhauer's opinion that towels in the dining room were likely used to clean the bloodstains beneath them. (14RT 3189.) Trial counsel objected to testimony about a patterned injury to Ana's head being consistent with a statute used to inflict the injury. The court allowed the testimony since it was the expert's opinion and dealt with the dimensions and length of the injury. The court reiterated that trial counsel could challenge Delhauer's opinion on cross-examination. (15RT 3196-3200.) The court struck testimony where Delhauer speculated as to why one tape

was put on top of another over Mike's mouth. (15RT 3205.) The court sustained an objection to Delhauer describing an abrasion on Jasmine's leg being consistent with someone who was struggling or attempting to evade a pursuing individual. (15RT 3208.) The trial court explained, "The injuries speak for themselves. As to how they were occasioned and what the person was doing is speculative." (15RT 3208.) The court struck Delhauer's opinion as to areas of autopsy photographs consistent with ligature marks, stating, "Autopsy photographs speak for themselves. What a ligature mark would do to the flesh of a deceased body is something for a doctor to testify to not a deputy sheriff." (15RT 3211-3212.) And finally, the court ordered stricken Delhauer's testimony that items in the ammunition boxes were consistent with the preparatory tools for sexual assault offenders. (15RT 3213-3214.)

On cross-examination, trial counsel thoroughly challenged Delhauer's opinions. Trial counsel questioned Delhauer on his formal training, particularly his reliance on his general "grammar school" education in the areas of physical science and mathematics. (15RT 3224-3225.) Delhauer acknowledged he disagreed with the medical examiner's conclusion with respect to whether the perpetrator attacked Mike with his left or right hand and whether the wound on Mike's neck indicated a clean or serrated cut. (15RT 3216-3220, 3230-3231.) Delhauer admitted he was not present during the autopsy and did not closely examine the bodies. (15RT 3228.) Delhauer agreed that certain bloodstains he discussed during his testimony were not linked to any particular individual. (15RT 3258-3260, 3268-3271.) Delhauer confirmed that while red stains on a pillow were consistent with blood, such stains could also not be blood. (15RT 3257.) Trial counsel highlighted how Delhauer's observation that bedding material in the master bedroom appeared to have blood contrasted with the forensic analyst's testimony that blood was not detected. (12RT 2448; 14RT 2989;

15RT 3255-3257.) As part of the defense, trial counsel elicited testimony that countered Delhauer's belief that the hose was part of a bidet used to douche Jasmine. (See 15RT 3186-3188, 3280-3284, 3296-3300.)

Following the presentation of evidence, the parties discussed the admission of the prosecution's exhibits. In particular, trial counsel objected to an exhibit that had Delhauer's written comment about serration marks on Mike's autopsy photograph and asked the court to exclude that exhibit. (15RT 3310-3311.) The trial court initially hesitated to include it, commenting:

> This is enormous prejudice. First of all, I think the defense has done a very effective job of discrediting Detective Delhauer in at least some aspects of his testimony. The comments on the blood splatter and everything else are very interesting and probably I think very appropriate and accurate and I accept much of what he has said. But I also think that the man has tended to overextend himself in terms of the — his opinions.
>
> And the most obvious and glaring example is his pontificating as to a — this being a bidet tube that was in his opinion used to douche Jasmine when it turns out it is in all probability a hookah pipe tube. I think the defense has done an awful lot to discredit him.
>
> Nonetheless, the jury has seen this entire presentation of his, much of which is cumulative, much of which has already been independently established by either investigating officers or coroners or criminalists and he basically gave an overview of the house that had absolutely nothing to do with his opinions, just goes from beginning to end. He's just summarized the entire case.
>
> I have a great deal of difficulty with the idea of taking this man's opinions and putting in written summaries in addition to it. I remember years ago I made the mistake of allowing the district attorney to include a very helpful exhibit summary that was used in argument and I was reversed by the Court of Appeals. This is not something that should go in.

(14RT 3311-3312.) The prosecutor responded that the court's concern was different than the situation presented here when a witness writes on a photograph during his or her testimony. The prosecutor argued that Delhauer's comments were just opinions and no different than when a criminalist writes "possible footprints" on a photograph as part of his or her testimony. The prosecutor did not see how Delhauer's comments prejudiced appellant. (15RT 3313.) The defense countered that the issue was about admissibility not prejudice. (15RT 3313.) The court found the prosecutor's argument persuasive and noted that Delhauer's opinion had already been admitted except those portions that the court had previously excluded. The court acknowledged that if it excluded the comments on the exhibit now, "we're basically closing the barn door after the horse is gone. Because I'm not excluding it as evidence, I'm simply saying, well, you heard it, you saw it, but you can't consider it in its original form during your deliberations." (15RT 3313-3314.) The court found there was no "great prejudice to the defense because the defense has the ability to attack his opinions." (15RT 3316.) The court concluded, "Given they've been in evidence, given that the jury has heard his testimony, seen the photographs and the accompanying text, I think that's part of an exhibit that is legitimately presented or submitted to the jury for them to consider in their deliberations." (15RT 3316.)

Later, trial counsel renewed an objection to strike Delhauer's testimony on grounds that it lacked foundation and was speculation. (15RT 3323-3324.) The court noted that trial counsel's cross-examination was quite effective in challenging Delhauer's reliance upon his grammar school education for his expertise. (15RT 3324.) The court, however, stated that an expert does not have to have formal education to qualify and that Delhauer "had an awful lot of on-the-job training." (15RT 3324.) The court explained:

> I stand by my ruling that Deputy Delhauer is entitled to testify as an expert. His opinions may be overblown, but that's a question to be argued by both sides. There's an awful lot of validity to what he has done, to what he's testified to in my opinion. I think that his expertise is very much demonstrated, in my opinion, by some of the observations that he has made.
>
> I do think that he has tended to deviate from the scientific method to the extent he's allowing himself to render opinions that go beyond the limits of his expertise, but that's my personal opinion and it's got no bearing on this case. It certainly is not enough to justify striking the entirety of his testimony. I think he is entitled to testify as an expert, he did so, and the Court's going to leave it all out there for the jury to consider and for both sides to argue.

(15RT 3324-3325.)

**B. Applicable Law**

"A person is qualified to testify as an expert if he has special knowledge, skill, experience, training or education sufficient to qualify him as an expert on the subject to which his testimony relates." (Evid. Code, § 720, subd. (a); *People v. Killebrew* (2002) 103 Cal.App.4th 644, 651.) This qualification "may be shown by any otherwise admissible evidence, including his own testimony." (Evid. Code, § 720, subd. (b).) Evidence Code section 801, subdivision (a), provides that an expert may offer his or her opinion if it is, among other things, "[r]elated to a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact." Generally, its admissibility

> is a question of degree. The jury need not be wholly ignorant of the subject matter of the opinion in order to justify its admission; if that were the test, little expert opinion testimony would ever be heard. Instead, the statute declares that even if the jury has some knowledge of the matter, expert opinion may be admitted whenever it would 'assist' the jury. It will be excluded only when it would add nothing at all to the jury's common fund of information . . . .

(*People v. McAlpin* (1991) 53 Cal.3d 1289, 1299-1300; see *People v. Farnam* (2002) 28 Cal.4th 107, 162-163.) A witness may not express an opinion as to the defendant's guilt or innocence. (*People v. Torres* (1995) 33 Cal.App.4th 37, 46-47.)

California courts have recognized expert testimony regarding blood spatter as admissible opinion testimony. (See, e.g., *People v. Bolin, supra*, 18 Cal.4th at pp. 321-322,; *People v. Carter* (1957) 48 Cal.2d 737, 750-751.) Inferences made from such evidence generally requires "knowledge and experience beyond those of ordinary jurors and could assist them to weigh the evidence more perceptively than they could unaided." (*Ibid.*)

On appeal, an appellate court reviews a claim that an expert's opinion was improperly admitted for abuse of discretion. (*People v. Smith* (2003) 30 Cal.4th 581, 627.) "Error regarding a witness's qualifications as an expert will be found only if the evidence shows that the witness *clearly lacks* qualification as an expert." (*People v. Farnam, supra*, 28 Cal.4th at p. 162, italics original.) An improperly admitted expert opinion does not result in a reversal if it is not reasonably probable the jury would have arrived at a different result had the opinion not been admitted. (*People v. McFarland* (2000) 78 Cal.App.4th 489, 496.)

### C. The Trial Court Properly Allowed Delhauer to Testify As to the Sequence of the Homicides

Here, appellant fails to demonstrate that the trial court abused its discretion when it admitted and then refused to strike Delhauer's testimony about the sequence of the homicides. First, there was an adequate foundation for Delhauer's testimony. Delhauer had the requisite special knowledge, skill, training, and experience to assist the jury in understanding the crimes and how it may have occurred based on the physical evidence. Delhauer had extensive law enforcement experience, having a major role in over 6,300 criminal investigations and a minor role

in about 1,000 more. Prior to his current position, Delhauer completed a 40-hour training course involving the composition of blood and dynamics of flight in blood as a result of blood shedding incidents. During that course, Delhauer also conducted around 40 separate experiments to recreate bloodshed incidents. Since that time, Delhauer performed over 200 reconstruction experiments relevant to his own cases to analyze pattern injuries, gunshot and sharp force and stab wounds, and blood spatter dynamics. (14RT 3115-3116.) Delhauer explained that he always educated himself and stayed current with new developments in forensics. (14RT 3119-3120.)

Delhauer also received training as a coroner's investigator in the Los Angeles County Coroner's Department and worked there for six months where he conducted over 200 death investigations. Afterwards, he transferred to the homicide bureau of the Los Angeles County Sheriff's Department. He was lead investigator in over 70 murder investigations and conducted more than 200 additional death investigations. In 1999, while in the homicide bureau, he started working in criminal investigative analysis specializing in criminal profiling and crime scene reconstruction. He amassed extensive experience examining between 800 and 900 cases. He served as a consultant in over 300 cases involving either serial or individual incidents of sexual assault, child molestation or homicide. (14RT 3112-3114.) As it related to knife wound injuries, Delhauer examined over 300 or 400 stab wounds during his stint at the coroner's office. Prior to his work in homicide, he had interviewed numerous victims of knife wounds and gathered information related to the dynamics, methods, and physical and medical appearances of such injuries. (14RT 3116.) Overall, he had conducted between 40 and 50 reconstruction experiments using media such as meat or modeling clay to understand wound patterns of different sharp force objects. (14RT 3117.)

Given his extensive background, training, and experience, Delhauer firmly established the basis for his expertise in his field. The trial court could reasonably conclude that he had advanced knowledge beyond that possessed by the average person to assist the jury in connecting the totality of the evidence to a likely sequence of events and interpreting a crime scene that would be of assistance to the jury. As such, the trial court properly qualified Delhauer as an expert witness on crime scene reconstruction. (See, e.g., *People v. Farnam*, *supra*, 28 Cal.4th at p. 162 [criminalist with 10 years of experience qualified to offer opinions on blood spatters].)

Moreover, Delhauer's testimony with respect to the sequence of the killings was not speculative or based on conjecture, as appellant suggests (see AOB 87-95). It was reasonable for Delhauer to render an expert opinion as to what had happened to the victims and a likely sequence of events based on the physical evidence he observed at the crime scene. Delhauer drew his conclusions from a thorough and detailed analysis of the totality of the evidence in this case, which included evaluating all the crime reports, photographs, the interviews, and the physical evidence collected from the crime scene. Specifically, Delhauer extensively analyzed all the photographs generated in the case at the crime scene and in the crime lab, as well as Delhauer's own photographs depicting reconstruction experiments. (14RT 3121.) From his analysis, Delhauer reconstructed a likelihood of the events and the sequence of the killings. The evidence was consistent with the killer initiating his onslaught with a surprise attack from behind against Mike as he sat at his office desk.[5] Delhauer based his opinion on blood patterns in the office and a puddle of blood on the desk, along with the fact that Mike suffered no defensive wounds. (15RT 3123-

---

[5] Indeed, appellant himself said that he observed Mike "bleeding everywhere" out of "his throat and stuff." (1SCT 103-104.)

3124, 3175-3177, 3182-3183.) Projected blood near the closet and the general area of the office door was consistent with Mike's injuries to his external jugular veins and an attempt to move out of the room. (15RT 3184-3185.) Delhauer opined Mike fell to his death in the living room near the couch, given the size of the blood pattern, the concentration of blood, and handprints in the vicinity. (15RT 3192-3193.) Drag marks connected to burgundy stains beneath the sofa , as Delhauer observed, was also consistent with Mike's body being dragged from the living room to the bedroom. (15RT 3188.)

According to Delhauer, Maritza was the second person to be attacked. The attack began in the office, where the killer slashed her left ear and dislodged an earring that matched the other earring found on Maritza's right ear. Delhauer highlighted blood spatter on the wall near the desk where Mike likely sat and to the immediate left side blood spatter where Maritza likely stood at the time the killer sliced her ear and dislodged the earring. (15RT 3182-3183.) Maritza then fled towards the front door and slightly opened the door as she was stabbed numerous times. This conclusion by Delhauer was based on blood spatter consistent with movement from the office to the front door, the number of wounds and the defensive ones Maritza suffered, bloodstains near the entryway and on the threshold of the door, and drag marks of the body towards the bedroom.[6] (15RT 3124, 3135-3137, 3142-3146, 3149-3150, 3152-3153, 3163-3164, 3182.) Delhauer also recreated an experiment to show that the blood spatter found on the door was consistent with it being lodged while the door was opened. (15RT 3145-3147.) In addition, some of the blood stains by the entryway contained evidence of air bubbles, consistent with blood that

---

[6] Again, appellant stated that a "struggle ensued" during which Maritza said, "Why are you doing this to me?" (1SCT 105.)

had been exhaled or spat from the airway of the person who created the stains. (15RT 3147-3148.) Drag marks also went from the front door area to the bedroom indicating movement of Maritza's body to the bedroom. (15RT 3188.)

As to Ana, Delhauer acknowledged that there was less to indicate exactly what happened to her but stated that it was apparent she was the third victim. Delhauer noted bloodstains in the living room in proximity to a broken statue. (15RT 3124-3125.) The same statute appeared to match a pattern injury to Ana's head. (15RT 3197-3198, 3201-3202.) Once all the adults were eliminated, the killer went after Jasmine. According to Delhauer, it appeared she was drowned in the bathtub after being sexually assaulted. Jasmine was likely unconscious when placed in the bathtub as the physical evidence did not indicate any resistance or splashing, which was consistent with the coroner's testimony. (15RT 3125-3126.)

Delhauer's opinion regarding the sequence of the killings was consistent with the totality of the evidence, including the reports, the physical evidence, the coroners' testimony, and the police interviews, all of which Delhauer carefully scrutinized. The killer effectively eliminated individuals in the order of those who posed the greatest physical threat to his killing spree. Even appellant's own statements in police interviews corroborated the sequence of the killings. (1SCT 103-107.) That an alternative sequence of events may have existed or that some of the fingerprints or blood Delhauer observed were not linked to a particular individual does not render Delahauer's opinion unreasonable or speculative.

Appellant, nevertheless, points to weaknesses in Delhauer's conclusions (AOB 94-97), which trial counsel aggressively exposed during cross-examination in an attempt to undermine Delhauer's credibility as an expert. Yet these weaknesses, if any, go to the weight of the expert's

testimony, not its admissibility. Even the trial court acknowledged trial counsel effectively attacked the expert's credibility. (14RT 3311-3312; 15RT 3324.) It was up to the jury to determine how credible Delhauer's testimony was and what weight, if any, to give to it. Such determinations are not reweighed on appeal. (*People v. Poulson* (2013) 213 Cal.App.4th 501, 518 ["'The credibility of the experts and their conclusions [are] matters [to be] resolved . . . by the [trier of fact],' and '[w]e are not free to reweigh or reinterpret [that] evidence.' "]; *People v. Poe* (1999) 74 Cal.App.4th 826, 831 ["It is not the role of this court to redetermine the credibility of experts or to reweigh the relative strength of their conclusions."]; *People v. Ochoa* (1993) 6 Cal.4th 1199, 1206 [a reviewing court does not reweigh the evidence, resolve conflicts in the evidence, or reevaluate the credibility of witnesses].) Furthermore, the trial court thoroughly instructed the jury concerning expert testimony. The trial court specifically instructed the jury that it was not bound by the expert's opinion and that it may disregard the opinion if it found it to be unreasonable. (16RT 3426-3427; CALJIC No. 2.80.) Absent evidence to the contrary, it is presumed the jurors understood and followed this instruction. (See, e.g., *People v. Homick* (2012) 55 Cal.4th 816, 867; *People v. Sanchez* (2001) 26 Cal.4th 834, 852.)

In short, the trial court properly exercised its discretion in allowing Delhauer's opinion to be a matter for the jury to evaluate in its deliberations. Delhauer's testimony was properly admitted. (See *People v. Farnam*, *supra*, 28 Cal.4th at pp. 162-163 [not improper for crime scene reconstruction expert to testify about the sequence of events in killing, including that victim was strangled where body was found]; *People v. Bolin*, *supra*, 18 Cal.4th at pp. 321-322 [expert's testimony about the various positions of victims' bodies and their movements after being shot was proper].)

### D. Any Error Was Harmless

Appellant contends the error in admitting Delhauer's testimony must be measured under the "harmless beyond a reasonable doubt" standard for federal constitutional error set forth in *Chapman v. California* (1967) 386 U.S. 18, 24 [17 L.Ed.2d 705, 710-711]. Not so. The "[a]pplication of the ordinary rules of evidence. . . does not impermissibly infringe on a defendant's right to present a defense." (*People v. Cunningham* (2001) 25 Cal.4th 926, 998, ctiations and internal quotations omitted.) The proper test is the state law error standard — whether it is reasonably probable the jury would have returned a more favorable verdict had the expert testimony been admitted. (*People v. Pearson* (2013) 56 Cal.4th 393, 446; citing *People v. Watson* (1956) 46 Cal.2d 818, 836.)

Here, the evidence against defendant was overwhelming. Even absent the expert testimony, the evidence — including physical evidence and the coroner's testimony as to the wounds inflicted and cause of death — established that a cold, calculated killing spree took place inside the Ruiz home. As discussed in the previous section, the evidence in and of itself convincingly demonstrated that the killer's actions where the result of premeditation and deliberation, irrespective of the sequence of the homicides or Delhauer's testimony, which, in any event, was provided by appellant's own statements to police. The evidence unquestionably connected appellant to the crime scene and murders, which included shoeprints found on the chair (12RT 2499-2509, 2513-2515), fingerprints on the mop handle and on items found in the trash bin that were taken from the Ruizes (12RT 2563-2564; 13RT 2774-2777, 2820-2825; 14RT 3094-3100), victims' blood on the murder knives (13RT 2942-2943; 14RT 3020-3021), and DNA found in swab sample of Jasmine's sexual assault examination (13RT 2861-2877; 15RT 2880-2881, 2905). Most notably, appellant's own version of the sequence of events mirrored Delhauer's

opinion and also placed him at the house during the crimes (1SCT 83-86, 95-97, 102-111, 117-119, 124, 141-144, 147). The circumstances demonstrated a methodical effort to sneak into the Ruiz home, catch Mike by surprise, eliminate each adult in the household and perpetuate a brutal rape of an 8-year old girl. The physical evidence concerning the circumstances of the crime and the nature and extent of the injuries weighed against any suggestion that the crimes were "frenzied and chaotic" and the "product of inexplicable rage," as appellant suggests (see AOB 96). Instead, each and every individual appellant killed showed a calculated murder spree, from the surprise slicing of Mike's throat, to the repeated stabbing of Maritza, to the killing of a disabled elderly woman, ending with the brutal sexual assault and asphyxiation of eight-year-old Jasmine.

Thus, because the evidence against appellant was overwhelming irrespective of Delhauer's testimony, and appellant's own statements provided a sequence of the order of the killings, it is not reasonably probable the jury would have reached a different verdict had the trial court excluded Delhauer's testimony. For the reasons discussed above, any error would be also be harmless under the *Chapman* standard as well.

## III. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN ADMITTING COLORED PHOTOGRAPHS DEPICTING THE VICTIMS' BODIES

Appellant contends that the trial court erred in permitting the prosecution to introduce "gruesome" color photographs of the victims' bodies, arguing that the photographs were "excessive" and "inflammatory" and should have been limited to an "overview of what happened." This error, he claims, violated his constitutional rights to due process and fair trial. (AOB 98-103.) Respondent disagrees. The trial court properly

exercised its discretion in admitting photographs of the crime scene and autopsies.

### A. Background

Prior to trial, the trial court indicated that it was inclined to give wide latitude in terms of the photographs the prosecutor used but that it would be disinclined to allow anything that was purely cumulative. (10RT 2010.) The court noted:

> I just want to indicate, I know there are going to be a vast number of pictures in here. The court has no problem with allowing them in. The gruesome aspect of them is going to be difficult to overcome. I suppose all we can hope for is there will be some kind of numbing effect after seeing them collectively. Although that may be an absurd hope. That's the court's primary concern, the People be given an opportunity to completely establish the scope of the crime scene and complexity of what occurred.

(10RT 2010-2011.) The prosecutor gathered the photographs trial counsel was challenging with respect to Jasmine. (10RT 2011.) The prosecutor argued that the photographs were not duplicative and were selected to support each point a witness intended to make. (10RT 2015-206.) The first group of photographs depicted just the faces of the individuals. The prosecutor intended to show them for purposes of identification by the family members who discovered the bodies. (10RT 2016.) The defense offered to stipulate to the identifications. The court deferred its ruling on those photographs. (10RT 2016-2017.)

A second group of photographs depicted Jasmine in the bathtub with the statute over her. (10RT 2017-2018.) The prosecutor observed, "This is the condition of the body when found. It displays the statue. It also displays an item around the victim's face which is crucial to her — what was happening to her just prior to death. That is, she vomited and that she was placed inside the water. When the water drained, that vomit was left

on her mouth. It's just a — it's evidence of her condition." (10RT 2018.) Trial counsel responded that the photograph should be cropped to just show the face and the bottom of the statute. (10RT 2018-2019.) The court ruled it would admit the photograph, explaining, "[T]he entirety of the body and the statue and the position that she was found is relevant and material." (10RT 2019.)

The next challenged photographs depicted Jasmine's vaginal area. The prosecutor stated that the photographs would be used to corroborate the coroner's testimony. The defense objected to the photographs as cumulative and offered that in the alternative, less prejudicial black and white copies be used. (10RT 2019-2020.) The prosecutor admitted the photographs were horrible but that they demonstrated "the severity to which the victim was injured." (10RT 2020-2021.) The court did not find any merit to sanitizing the crime scene by using black and white copies. The court explained, "There's a legitimate reason for having color photographs. Black and whites are artificial and depart from reality. So the court's going to permit colored photographs wherever the People wish to introduce them absent the specific rulings. But as a general rule of thumb, that's what I will concern myself with." (10RT 2021.) The court allowed four photographs of Jasmine into evidence, three of which depicted Jasmine in the bathtub and one of which depicted showed injuries to the vaginal and anal orifices. (10RT 2021-2022.) Trial counsel noted for the record that its objection to the photographs of Jasmine were not just based on its gruesome nature but also that "we're going to have a hard time keeping jurors in the box from running out of this courtroom" when alternatives were available. (10RT 2023.) The court responded it was not going to "minimize the impact or undermine the impact of this case by reducing [the photographs] to black and white pictures." (10RT 2023.)

Later in the hearing, the court reexamined the photographs of Jasmine and reversed its ruling as to one of the photographs that depicted Jasmine on a plastic sheet and streaks of discharge. The court disallowed the photograph because that was not the position Jasmine was found when discovered and other photographs showed a better view of the vaginal and anal injuries. (10RT 2033-2034.)

Another group of photographs depicted the injuries to Mike, one showing the location of the injury and the condition of Mike at the time he was first discovered and the other showing the full extent of the injuries to the throat. Trial counsel reiterated his previous objections. The court allowed the photographs to be admitted. (10RT 2023-2026.)

A final group of photographs depicted the injures to Ana, showing her neck and chest area and two different knife wounds. The court excluded one of the photographs as cumulative since it showed more of her face and torso and did not show any further injuries than one of the other photographs. (10RT 2027-2028.)

The parties subsequently discussed the series of photographs Delhauer would use to corroborate his testimony. The trial court allowed most of those photographs, finding that "the probative value is legitimate and outweighs any prejudicial effect." (10RT 2036-2039, 2047-2048.) The court ruled that one of the photographs of Ana was cumulative of a coroner's photograph and required the prosecutor to one or the other. The prosecutor selected the one Delhauer would use, which the court observed was more graphic and demonstrative. (10RT 2039-2040.) In another photograph the court admitted over a defense objection as cumulative, the court explained:

> You also have here the two different knives in this picture. There's a valid point to this. This is a very complicated crime scene. This is not purely cumulative. There is some cumulative aspect. It demonstrates not only the expert's opinion you have

> two types of wounds, it also juxtaposed the stabbing knife plus the serrated knife. The court finds it is appropriate and will allow it.

(10RT 2042.) The trial court deemed trial counsel's objections regarding the admission of the photographs as continuing objections throughout the trial. (10RT 2048.)

The court returned to the issue of trial counsel's request to stipulate to the identification of the witnesses in order to exclude the close-up photographs of the victims' faces. (10RT 2058, 2060.) The court stated, "In essence the stipulation takes away the element of their identity and their humanity. The People can establish by live testimony these were breathing human beings and that's something negated in the stipulation. These people existed, they are who they claim to be, and that's it." (10RT 2060.) The court rejected trial counsel's request and explained that the prosecutor did not to enter into that stipulation. (10RT 2061-2062.)

The following photographs of the victims were admitted into evidence during trial:

(1) Overview of the bodies on the bedroom floor, one showing the top torso area of Mike and Maritza with Maritza's arm draped across Mike, another showing mainly their legs and upper torsos without faces, and a third showing Ana curled up on the floor between the chair and bed (11RT 2407-2408, 2410-2411 [Peo. Exh. 50, 51, 54]);

(2) Coroner's photographs of Maritza, Mike, Ana, and Jasmine showing their faces (11RT 2248-2249 [Peo. Exhs. 27, 28, 29, 30]);

(3) Mike's injuries: close-up of neck wound (11RT 2408 [Peo. Exh. 52), left side of the face and neck showing tape around the mouth (13RT 2633 [Peo. Exh. 86]), the tape after it was removed from Mike's face (13RT 2636 [Peo. Exh. 87]), neck wound after being cleaned (13RT 2637 [Peo. Exh. 88]);

(4) Maritza's injuries: top view of upper chest and face covered in blood (11RT 2410 [Peo. Exh. 53]), left profile view of face and upper chest showing multiple incised and stab wounds (13RT 2685 [Peo. Exh. 89]), close-up of face and neck area (13RT 2689 [Peo. Exh. 90]), two adjacent wounds to the top of the head (13RT 2692 [Peo. Exh. 91]), left side of face towards forehead showing laceration below hairline (13RT 2694-2695 [Peo. Exh. 92]), front of the neck from the right side showing fatal wound (13RT 2687 [Peo. Exh. 93]), stab wounds near left armpit and shoulder (13RT 2689-2690 [Peo. Exh. 94]), stab wounds on back (13RT 2691 [Peo. Exh. 95]), and right palm showing defensive wound (13RT 2694-2695 [Peo. Exh. 96]);

(5) Ana's injuries: left view of upper chest and head depicting neck wound (11RT 2411 [Peo. Exh. 55]), top view close-up showing Y-shaped neck wound (13RT 2656-2657 [Peo. Exh. 97]);

(6) Jasmine's injuries: view from bathroom entrance showing partial head and statue in bathtub (11RT 2401 [Peo. Exh. 41]), various close-up and full body angles showing body in tub along with statue on top (11RT 2411-2413, 2595 [Peo. Exhs. 56, 57, 79]), close-up of leg and crotch area showing purple object inserted in vagina (11RT 2595 [Peo. Exh. 80]), full body in tub with statue removed (11RT 2596 [Peo. Exh. 81]), petechiae on neck and chin area (13RT 2717 [Peo. Exh. 98]), petechiae on eyelids, cheeks, nose, and temples (13RT 2718 [Peo. Exhs. 99, 100]), autopsy photograph of legs and feet together (13RT 2714 [Peo. Exh. 101]), close-up showing washerwoman change of skin over palm and fingers(13RT 2721 [Peo. Exh. 102]), external genital area showing vaginal tear (13RT 2723 [Peo. Exh. 103]), anal genital area (13RT 2731-2732 [Peo. Exh. 104]).

## B. Applicable Law

To be admissible, evidence must be relevant. (Evid. Code, § 350.) To be relevant, the evidence must have "a tendency in reason to prove a disputed fact of consequence to the case." (*People v. Kraft* (2000) 23 Cal.4th 978, 1034; Evid. Code, § 210.) A determination of relevant evidence includes whether the evidence tends, "logically, naturally, and by reasonable inference to establish material facts such as identity, intent, or motive." (*People v. Wilson* (2006) 38 Cal.4th 1237, 1245.)

Relevant evidence may be excluded under Evidence Code section 352 if its probative value is substantially outweighed by the probability that its admission will create a substantial danger of undue prejudice. (Evid. Code, § 352; *People v. Ayala* (2000) 24 Cal.4th 243, 282.) The prejudice referred to in Evidence Code section 352 "applies to evidence which uniquely tends to evoke an emotional bias against defendant as an individual and which has very little effect on the issues." (*People v. Yu* (1983) 143 Cal.App.3d 358, 377.) "Prejudicial" within the meaning of section 352 is not synonymous with "damaging." (*Ibid.*) "The prejudice which [Evidence Code section 352] is designed to avoid is not the prejudice or damage to a defense that naturally flows from relevant, highly probative evidence. Rather, the statute uses the word in its etymological sense of 'prejudging' a person or cause on the basis of extraneous factors. Painting a person faithfully is not, of itself, unfair." (*People v. Harris* (1998) 60 Cal.App.4th 727, 737, citations and internal quotations omitted.) As a result, evidence should be excluded as unduly prejudicial "'when it is of such nature as to inflame the emotions of the jury, motivating [jurors] to use the information, not to logically evaluate the point upon which it is relevant, but to reward or punish one side because of the jurors' emotional reaction. In such a circumstance, the evidence is unduly prejudicial because of the substantial

likelihood the jury will use it for an illegitimate purpose.' [Citation.]" (*People v. Escudero* (2010) 183 Cal.App.4th 302, 310.)

Admission of allegedly gruesome or inflammatory photographs lies within the broad discretion of the trial court. (*People v. Duff* (2014) 58 Cal.4th 527, 557; *People v. Ramirez* (2006) 39 Cal.4th 398, 453-454.) A trial court exercises broad discretion in deciding whether evidence is relevant and in compliance with Evidence Code section 352. (See *People v. Garceau* (1993) 6 Cal.4th 140, 177; *People v. Rodrigues* (1994) 8 Cal.4th 1060, 1124.) A court's exercise of that discretion "will not be disturbed unless the probative value of the photographs clearly is outweighed by their prejudicial effect." (*People v. Ramirez, supra*, 39 Cal.4th at p. 454, citations and internal quotations omitted.) Photographs that are allegedly gruesome may be admitted "if the evidence is highly relevant to the issues raised by the facts, or if the photographs would clarify testimony. . . ." (*Ibid.*) An abuse of discretion occurs when the trial court acted in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice. (*People v. Rodriguez* (1999) 20 Cal.4th 1, 9-10.) The discretion applies equally to an autopsy photograph, which may be admitted as "pertinent because it showed the 'nature and placement of the fatal wounds' . . . [or] supported the prosecution's theory of how the murders were committed [citation] [or] illustrated the testimony of the coroner and percipient witnesses." (*People v. Loker* (2008) 44 Cal.4th 691, 705.)

As this Court has explained:

> "'[M]urder is seldom pretty, and pictures, testimony and physical evidence in such a case are always unpleasant'" [citations], and we rely on our trial courts to ensure that relevant, otherwise admissible evidence is not more prejudicial than probative [citation]. A trial court's decision to admit photographs under Evidence Code section 352 will be upheld on appeal unless the prejudicial effect of such photographs clearly

> outweighs their probative value. [Citation.] Finally, prosecutors, it must be remembered, are not obliged to prove their case with evidence solely from live witnesses; the jury is entitled to see details of the victims' bodies to determine if the evidence supports the prosecution's theory of the case.

(*People v. Gurule* (2002) 28 Cal.4th 557, 624.)

### C. No Abuse of Discretion Occurred in Admitting the Challenged Photographs Depicting the Injuries to the Victims

Here, the colored photographs at issue were not particularly gruesome or inflammatory as to render their admission an abuse of discretion. First, the photographs were highly relevant, an issue which appellant seemingly ignores in his argument. Observing the blood and the nature and extent of the injuries was far more evident in the colored photographs as opposed to black and white versions, as the trial court aptly observed (10RT 2023). The colored photographs demonstrated the nature, location, and severity of the injuries in greater detail. The photographs showed the placement and location of the victims within the home along with the placement and location of injuries to the bodies, facts that were relevant to the issue of appellant's intent to kill based on premeditation and deliberation. The photographs were not unduly gruesome or inflammatory when compared to the heinous nature of the crime presented through the testimony of witnesses who observed the crime scene and injuries. Indeed, the photographs were "'relevant in establishing the fact that . . . murder[s] had occurred.'" (*People v. Heard* (2003) 31 Cal.4th 946, 974; see *People v. McKinzie* (2012) 54 Cal.4th 1302, 1351-1352 [autopsy and crime scene photographs can be "highly probative of how the victim was killed"].) This Court has repeatedly upheld the admission of gruesome photographs disclosing how a victim was wounded as being relevant to the issue of premeditation and deliberation. (*People v. Roundtree* (2013) 56 Cal.4th

823, 852; *People v. Heard*, *supra*, 31 Cal.4th at p. 975 [jury entitled "to see the physical details of the crime scene and the injuries defendant inflicted on his victim[s]."].)

Second, the evidence was not unduly prejudicial. The photographs at issue were indeed graphic and unsettling, but only because the injuries appellant inflicted to the victims were particularly gruesome. Photographs of injuries and wounds have greater evidentiary value and weight than mere descriptions of them by witnesses. (*People v. Price* (1991) 1 Cal.4th 324, 441; *People v. Mattson* (1990) 50 Cal.3d 826, 871.) Such photographs corroborate testimony of prosecution witnesses and help clarify the events. (See *People v. Loker*, *supra*, 44 Cal.4th at p. 705; *People v. Carrera* (1989) 49 Cal.3d 291, 328-329 [admission of 25 photographs of homicide victim and crime scene, including enlargements to life-size and larger than life-size, was not abuse of discretion where photographs "helped to clarify the testimony of the medical expert."].) "The challenged photographs simply showed what had been done to the victim[s], the revulsion they induce is attributable to the acts done, not the photographs." (*People v. Brasure* (2008) 42 Cal.4th 1037, 1054; see *People v. Virgil* (2011) 51 Cal.4th 1210, 1248 [photographs relevant to illustrate a forensic expert's testimony]; *People v. Howard* (2010) 51 Cal.4th 15, 33 ["Autopsy photographs are routinely admitted to establish the nature and placement of the victim's wounds and to clarify the testimony of prosecution witnesses regarding the crime scene and the autopsy, even if other evidence may serve the same purposes."]; see also *People v. Gonzales* (2012) 54 Cal.4th 1234, 1272 ["The photographs at issue here are gruesome because the charged offenses were gruesome, but they did no more than accurately portray the shocking nature of the crimes."].) A jury cannot be precluded from seeing "an accurate depiction of the charged crimes that does not unnecessarily play upon the emotions of the jurors.'" (*People v. Gonzales*, *supra*, 54 Cal.4th

at p. 1272.) Here, the photographs corroborated Delhauer's testimony about blood spatter and injury patterns, the extent and nature of the wounds and injuries, the sequence of the events, and the manner of deaths.

Finally, the lack of any abuse of discretion is even more apparent when the trial court's rulings in this case are scrutinized. The trial court carefully considered each photograph and exercised its discretion in excluding at least two photographs that were cumulative. This was not a case where "the court exercised its discretion in an arbitrary, capricious, or patently absurd manner." (See *People v. Mills* (2010) 48 Cal.4th 158, 192.) To the contrary, "[t]he record reflects that the experienced trial judge was well aware of [her] duty to weigh the prejudicial effect of the photographs against their probative value, and carefully did so." (*People v. Gonzales*, *supra*, 54 Cal.4th at p. 1272.)

Appellant, nevertheless, fails to make any argument as to how black and white versions were more appropriate than the colored ones. Appellant also fails to acknowledge how colored photographs accurately and completely portrayed the injuries described by the medical examiners. Indeed, appellant's argument would seem to advance the tenuous position that the use of colored photographs depicting injuries to a victim of a bloody murder are inherently excessive and inflammatory. As the old adage goes, a picture is worth a thousand words. (See *People v. Duff*, *supra*, 58 Cal.4th at pp. 557 ["In these circumstances, a picture could be worth a thousand words; the images were not simply cumulative of other testimony."]; *People v. Kelly* (1990) 51 Cal.3d 931, 963 ["The Chinese proverb of old states it well: 'One picture is worth more than a thousand words.'"].) The colored photographs in dispute spoke volumes, more so than any witness could describe by words alone. They provided the best and most reliable evidence to show the positions of the victims and the location and nature of their injuries. (See *People v. Duff*, *supra*, 58 Cal.4th

at p. 557 ["[I]mages of the victims necessarily provided crucial corroboration as to their positions and injuries and would have made it much easier to visualize which version of events fit."].)

Had the prosecution relied merely on the "well-described" testimony by the medical examiners as appellant suggests (AOB 102), trial counsel could have raised doubts about the accuracy of their recollection and their ability to perceive the victims' physical state at the time. (*People v. Gurule*, *supra*, 28 Cal.4th at p. 624; see also *People v. Brents* (2012) 53 Cal.4th 599, 617, [prosecution not obligated to rely only on live witnesses to the exclusion of photographic evidence].) Notably, appellant does not cite any authority to support his position, nor is respondent aware of any, that black and white photographs of a crime scene are more appropriate than colored versions, or somehow lessen the prejudice. As the trial court stated, black and white photographs are artificial and depart from reality. Appellant does not advance any argument as to why this Court should depart from the well-settled precedent recognizing the value and importance of allowing a jury to see the most accurate depiction of the crime scene and autopsies through the use of photographs.

In short, the photographs in dispute were not so unduly gruesome as to overcome the jury's rationality. The trial court could reasonably conclude any potential for prejudice was negligible, and there was sufficient probative value to warrant admission of the photographs to properly show the extent and nature of appellant's crimes. (*People v. Moon* (2005) 37 Cal.4th 1, 35 ["The photographs demonstrated the real life consequences of defendant's crimes and pointedly made clear the circumstances of the offenses. . . ."].) Indeed, the jury was instructed not to be swayed by passion, emotion, or prejudice, an instruction it presumably followed. (10RT 2085; CALJIC No. 1.00.) On this record, it cannot be said that the prejudicial effect of the colored photographs so clearly

outweighed their probative value as to render the trial court's ruling an abuse of discretion. (See *People v. Crittenden* (1994) 9 Cal.4th 83, 134 [graphic photographs of murder victims while unpleasant, were not "unduly shocking or inflammatory" and did not "include multiple exposures of very similar views"].)

**D. Any Error Was Harmless**

The erroneous admission of photographs would warrant reversal only if this Court concludes that it is reasonably probable the jury would have reached a different result if the evidence had been excluded. (*People v. Heard*, *supra*, 31 Cal.4th at p. 978; *People v. Watson*, *supra*, 46 Cal.2d at p. 836.) The photographs introduced in this case "did not disclose to the jury any information that was not presented in detail through the testimony of witnesses," and they were "no more inflammatory than the graphic testimony provided by a number of the prosecution's witnesses." (*People v. Heard*, *supra*, 31 Cal.4th at p. 978.) The testimony of numerous prosecution witnesses provided graphic and compelling evidence of the bodies and the crime scene, including the testimony of Raquel, Kennelly, the medical examiners, the crime scene analysts, and Delhauer's testimony. In addition, the jury was instructed that it "must not be influenced by mere sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling." (10RT 2085.) Finally, for the reasons discussed in Arguments II.D, *ante*, the evidence against appellant was overwhelming. Under these circumstances, it is not reasonably probable that the admission of photographs of the crime scene or autopsies affected the jury's verdict. (*Ibid.*) For the same reasons, any error would also be harmless beyond a reasonable doubt. (See *Chapman v. California*, *supra*, 386 U.S. at p. 24.)

## IV. THE VICTIM IMPACT EVIDENCE DID NOT VIOLATE APPELLANT'S FEDERAL AND STATE CONSTITUTIONAL RIGHTS

Appellant next contends that the trial court failed to limit the prosecution's victim impact evidence during the penalty phase of his trial in violation his constitutional rights. Appellant also contends this error was compounded when the trial court refused to instruct the jury with his proposed instruction, Supplement No. 6 to CALJIC No. 8.85.1. (AOB 104-121.) Respondent disagrees. The victim impact testimony was proper and the trial court properly refused the proposed instruction.

### A. Background

Prior to the penalty phase, the trial court heard argument on trial counsel's motion to limit victim impact evidence. The defense objected to several potential exhibits related to Jasmine, any photographs of her under the age of eight, a school drawing she made with written comments that she loved her sister and family, and another drawing about her two dogs. The trial court noted that Jasmine's age in the photographs were close enough to eight and the photographs did not show her as a baby or two-year old. The court allowed the drawing of her family but excluded the one about the dogs. (4CT 886-890; 16RT 3618-3624, 3629-3630.) The defense also expressed its concern over the family members' testimony being "full of rage and grief." (16RT 3631.) The court acknowledged that the "raw anger of the survivors should not be admitted" but that it would not admonish the witnesses to control their emotions before they testified. The prosecutor acknowledged informing the witnesses they could not speak directly to appellant, were there to answer questions, and could not be "venting." The court advised trial counsel to lodge any appropriate objections during the testimony. (16RT 3631-3634.) The defense also objected to a funeral announcement with a photograph of some of the surviving family members

and a "thank you" message to the community for their support. The parties agreed to crop out the portion trial counsel found objectionable. (16RT 3634-3635.) The defense also stated that it had just received and not yet reviewed a short video clip of Jasmine that the prosecutor intended to use. The defense did not anticipate it would lodge an objection to that video clip. The court noted trial counsel reserved the right to object. (16RT 3637-3638.) The defense later renewed its objection on state and federal constitutional grounds to the admission of photographs and any improper statements during victim impact testimony. The court ruled the objection would be a continuing objection throughout the trial. (16RT 3671-3672..)

During the penalty phase trial, the prosecutor called several family members to testify regarding the impact the murders had on their lives. (17RT 3700-3751; see Statement of Facts § II.A.1.) Following the presentation of evidence by the prosecutor, trial counsel proposed a Supplement No. 6 to CALJIC No. 8.85, entitled "Cautionary & Limiting: Victim Impact," which read:

> Evidence has been introduced for the purpose of showing the specific harm caused by the defendant's crime. Such evidence, if believed, was not received and may not be considered by you to divert your attention from your proper role of deciding whether defendant should live or die. You must face this obligation soberly and rationally, and you may not impose the ultimate sanction as a result of an irrational, purely subjective response to emotional evidence and argument. On the other hand, evidence and argument on emotional though relevant subjects may provide legitimate reasons to sway the jury to show mercy.

(26CT 7293.) The defense, however, requested that the last sentence beginning with "on the other hand" be omitted. The trial court observed the completed sentence trial counsel wanted to omit actually read, "On the other hand, evidence and argument on emotional though relevant subjects may provide legitimate reasons to sway the jury to show mercy *or to*

*impose the ultimate sanction*." (18RT 4002-4003, emphasis added.) The court noted that without the last sentence, the "thrust of this instruction is to say you can't consider emotional evidence," which strayed from the purpose of the supplemental instruction that meant "you can't consider irrelevant and irrational evidence." The court ruled that if trial counsel wanted the instruction, it would only allow it with the full and complete last sentence. (18RT 4004-4005.) After the prosecutor's rebuttal, the parties returned to the issue. The court reiterated its position that it would only give Supplement No. 6 if the last sentence was included. The defense objected and withdrew the instruction. As a result, the trial court did not read the proposed Supplement No. 6 instruction to the jury. (18RT 4138-4142; 26CT 7293.)

**B. The Victim Impact Testimony Was Proper**

In the penalty phase of a capital trial, evidence showing the direct impact of the defendant's acts on the victim's family is not barred by the Eighth or Fourteenth Amendments to the federal Constitution. (*People v. Dykes* (2009) 46 Cal.4th 731, 781.) Indeed, "[t]he federal Constitution bars victim impact evidence only if it is 'so unduly prejudicial' as to render the trial 'fundamentally unfair.'" (*People v. Lewis and Oliver* (2006) 39 Cal.4th 970, 1056, quoting *Payne v. Tennessee* (1991) 501 U.S. 808, 825 [111 S.Ct. 2597, 115 L.Ed.2d 720].)

In *Payne*, the United States Supreme Court determined that the state should not be prevented from demonstrating the loss to the victim's family which has resulted from the defendant's homicide. (*Payne v. Tennessee*, *supra*, 501 U.S. at p. 822.) The high court ruled that "[a] State may legitimately conclude that evidence about . . . the impact of the murder on the victim's family is relevant to the jury's decision as to whether or not the death penalty should be imposed." (*Id.* at p. 827.) The rationale behind allowing victim impact evidence is that "'[t]he State has a legitimate

interest in counteracting the mitigating evidence which the defendant is entitled to put in, by reminding the sentencer that just as the murderer should be considered as an individual, so too the victim is an individual whose death represents a unique loss to society and in particular to his family.'" (*Id.* at p. 825.)

"State law is consistent with these principles. Unless it invites a purely irrational response from the jury, the devastating effect of a capital crime on loved ones and the community is relevant and admissible as a circumstance of the crime under section 190.3, factor (a)." (*People v. Lewis and Oliver*, *supra*, 39 Cal.4th at pp. 1056-1057.) "Victim impact evidence is admissible under California law provided it 'is not so inflammatory as to elicit from the jury an irrational or emotional response untethered to the facts of the case.'" (*People v. Hawthorne* (2009) 46 Cal.4th 67, 102.) Furthermore, "[t]he 'circumstances' of the crime under section 190.3, factor (a) are not merely the immediate temporal and spatial circumstances of the crime, but extend to that which surrounds the crime materially, morally, or logically." (*People v. Hamilton* (2009) 45 Cal.4th 863, 926.)

In *People v. Jones* (2012) 54 Cal.4th 1, the defendant argued that the trial court erred in permitting inflammatory victim impact testimony. This Court rejected that claim, stating:

> We have reviewed the victim impact evidence admitted under section 190.3, factor (a), and conclude that the evidence was not so inflammatory as to "'divert[] the jury's attention from its proper role or invite[] an irrational, purely subjective response . . . .' [Citation.]" [Citation.] The testimony from [the victim]'s daughter, her two nieces, and a grandniece, all of whom were very close to [the victim], "concerned the kinds of loss that loved ones commonly express in capital cases." [Citation.] In addition to recounting basic facts about [the victim], such as that she was a loving and attentive mother, grandmother and aunt, liked to garden, cook and bake, and was

> very generous with her time and money, the witnesses spoke of their love of [the victim], special moments they shared with her, their feelings upon learning of her death and seeing her burned home, and how the manner in which she died affected them and various family members. These recollections of past incidents or activities that family members shared with [the victim], and of the immediate and lasting impact of her murder, all fell well within the ambit of permissible victim impact evidence.

(*Id.* at p. 70.)

Here, the victim impact testimony in this case was similar to the properly admitted victim impact testimony in *Jones*. It did not exceed the permissible scope of typical victim impact testimony. The family members of the victims described the special bonds they had with the victims, the victims' love for each other, the victims' talents, interests, and special qualities, memories of shared experiences, their feelings upon learning of the victims' deaths, and the effects the victims' deaths had on their lives. As in *Jones*, this testimony was "well within the ambit of permissible victim impact evidence." (See *People v. Jones*, *supra*, 54 Cal.4th at p. 70.) Moreover, testimony from the victims' family members was not "voluminous" as appellant characterizes (see AOB 118), as it spanned only 51 pages of the roughly 423 pages of penalty phase testimony. (See 17RT 3700-3913; 18RT 3920-3987, 4011-4061, 4078-4085, 4092-4127.) Appellant does not "identify any persuasive basis for a rule that victim-impact evidence may not form a substantial portion of a prosecutor's case in aggravation." (*People v. Dykes*, *supra*, 46 Cal.4th at pp. 782-783 [noting cases where this Court has rejected claims that victim impact evidence be limited to a single witness].)

Furthermore, the trial court properly declined to give Supplement No. 6. A trial court's duty to instruct at the penalty phase is guided by the following principles:

[T]he standard CALJIC penalty phase instructions "are adequate to inform the jurors of their sentencing responsibilities in compliance with federal and state constitutional standards." [Citation.] Moreover, the general rule is that a trial court may refuse a proffered instruction if it is an incorrect statement of law, is argumentative, or is duplicative. [Citation.] Instructions should also be refused if they might confuse the jury. [Citation.]

(*People v. Gurule, supra,* 28 Cal.4th at p. 659.) This Court has repeatedly rejected the language in the proposed instruction Supplement No. 6 as unnecessary and confusing, particularly when a trial court gives CALJIC No. 8.84.1, as the trial court did in this case.[7] (*People v. Thomas* (2012) 53 Cal.4th 771, 825 ["We have previously rejected claims that an identical instruction should have been given, finding it to be duplicative and potentially confusing and misleading."]; *People v. Davis* (2009) 46 Cal.4th 539, 623 [rejecting the proposed instruction as "both confusing and duplicative of CALJIC No. 8.84.1"]; *People v. Zamudio* (2008) 43 Cal.4th 327, 368-369 [requested instruction covered by CALJIC No. 8.84.1 and would in any event be "misleading to the extent it indicates that emotions may play no part in a juror's decision to opt for the death penalty"].) As this Court has explained:

The court properly rejected the defense-proffered instruction as confusing; the instruction was unclear as to whose emotional reaction it directed the jurors to consider with caution — that of the victim's family or the jurors' own. Further, the instructions given as a whole did not give the jurors the mistaken impression that they could consider emotion over reason, nor did the instructions improperly suggest what weight the jurors should give to any mitigating or aggravating factor.

---

[7] CALJIC No. 8.84.1 provides that the jury "must neither be influenced by bias or prejudice against the defendant, nor swayed by public opinion or public feelings." (19RT 4181-4182; 26CT 7276)

(*People v. Harris* (2005) 37 Cal.4th 310, 359.) The proposed instruction was confusing for an additional reason. The instruction seemed to imply that victim impact evidence could not be considered. The trial court correctly instructed the jury with CALJIC No. 8.85, which stated that it was to take into account 11 factors, including "the circumstances of the crimes of which the defendant was convicted in the present proceeding and the existence of any special circumstances found to be true," in determining which penalty to impose. (See 19RT 4195-4198; 26CT 7281-7282; see also § 190.3, subd. (a).) Victim impact evidence is relevant to section 190.3, factor (a) and, therefore, a proper consideration in determining which penalty is appropriate. (See *People v. Brown* (2003) 31 Cal 4th 518, 573; *People v. Edwards* (1991) 54 Cal.3d 787, 837.)

Appellant, nevertheless, offers a string of vague and general assertions regarding the victim impact testimony in this case, noting that it was "so voluminous, inflammatory and unduly prejudicial" and "so out of proportion" that it caused the jury's decision to be "a passionate, irrational, and purely subjective response." (AOB 118-119.) Although appellant recognizes victim impact evidence is admissible, he does not identify any specific testimony or evidence that he deems unduly prejudicial and "likely to provoke irrational, capricious, or purely subjective responses from the jury." (See AOB 119.) Contrary to appellant's generalized assertions, the victim impact testimony in this case was of the type that has consistently been upheld. (See *People v. Jones*, supra, 54 Cal.4th at p. 70; *People v. Lewis and Oliver*, *supra*, 39 Cal.4th at p. 1057.) As appellant recognizes, victim impact evidence, including photographs and video of the victims while they were alive, may be introduced during the penalty phase of the trial. (AOB 115, citing *People v. Zamudio*, *supra*, 43 Cal.4th at pp. 363-368 [a 14-minute video montage containing 118 photographs admissible]; *People v. Edwards*, *supra*, 54 Cal.3d at pp. 832-836 [photographs of victim

while alive admissible and "[w]hater the photographs suggested of the preciousness of [the victim] was relevant to determining the proper punishment" for taking the victim's life].) Appellant does not provide any valid basis for this Court to depart from well-settled principles allowing victim impact evidence like the type in this case.

In short, the victim impact evidence here was proper. Family members discussed their love for the victims, the shared memories, and the impact the deaths had on their lives. Their testimony properly focused on the victims' lives and the pain the deaths caused them. This was the ordinary type of victim impact evidence that fall within constitutional constraints, and appellant offers no specific examples otherwise. The trial court's refusal to give an incomplete version of the Supplement No. 6 instruction also did not violate constitutional standards, as that instruction was sufficiently addressed by the trial court's instruction pursuant to CALJIC No. 8.84.1. No constitutional error occurred. (See *People v. Jones*, *supra*, 54 Cal.4th at p. 70; *People v. Brown* (2004) 33 Cal.4th 382, 397-398 [victim impact evidence proper when it "concerned either the immediate effects of the murder," described the "residual and lasting impact" that family members continued to experience, and served "to explain why [family members] continued to be affected by the loss and to show the victim's uniqueness as an individual human"].)

**C. Any Error Was Harmless**

Even if the trial court erred in admitting victim impact testimony and failing to instruct the jury with Supplement No. 6, such an error was harmless. The standard for state law error affecting the penalty determination is "whether there is a reasonable *possibility* the error affected the verdict." (*People v. Gonzalez* (2006) 38 Cal.4th 932, 960-961, italics in original.) Appellant utilizes the standard set forth in *Chapman v. California*, *supra*, 386 U.S. at p. 24, to evaluate the penalty phase error.

(AOB 120-121.) This Court has explained that the reasonable possibility standard and the *Chapman* beyond-a-reasonable-doubt standard "'are the same in substance and effect.'" (*People v. Gonzalez*, *supra*, 38 Cal.4th at p. 961, quoting *People v. Ashmus* (1991) 54 Cal.3d 932, 965.)

Here, as properly admitted evidence in aggravation, the jury had before it the circumstances of the instant crimes showing appellant had committed brutal multiple murders and severely assaulted Jasmine prior to killing her. The prosecutor emphasized the particular heinousness of the crimes, discussing how appellant armed himself with the knifes, weapons, mace, and handcuffs, how appellant entered the home "somehow without them knowing," how he murdered three generations of a family who welcomed him into their home almost every day, how the victims were all defenseless, including Ana and Jasmine who were "completely helpless," and how eight-year old Jasmine particularly suffered by being raped and sodomized. (19RT 4209-4212.) The aggravating nature of the crimes paled in comparison to the small amount of victim impact testimony, particularly the portions appellant now challenges.[8] As an additional layer of aggravating evidence aside from victim impact testimony, the prosecutor presented evidence of criminal activity involving the attempted use of force or violence while in custody. Moreover, as stated above, CALJIC No. 8.84.1 covered the information that was in appellant's proposed Supplement No. 6 instruction. There is no indication that the jury misapplied CALJIC No. 8.84.1 in deciding the appropriate penalty. Nothing in the record indicates the jury engaged in anything less than a careful deliberation in reaching a judgment. There was no reasonable

[8] Although appellant fails to identify specific victim impact evidence that trial court should have limited, he concedes some of the victim impact evidence was proper. (See AOB 104.)

possibility that the trial court's alleged errors regarding victim impact evidence affected the verdict.

## V. THE TRIAL COURT'S INSTRUCTIONS DEFINING THE SCOPE OF THE JURY'S SENTENCING DISCRETION AND THE NATURE OF ITS DELIBERATIVE PROCESS PURSUANT TO CALJIC NO. 8.88 WERE PROPER

Appellant also presents various challenges to the trial court's instruction to the jury with CALJIC No. 8.88, the instruction that defines the jury's sentencing discretion and the nature of its deliberative process. (AOB 122-131.) As appellant acknowledges, this Court has rejected these challenges. (See AOB 122.)

Appellant contends the instruction failed to inform the jury that if it found the mitigating circumstances outweigh the aggravating circumstances, it was required to impose a sentence of life without the possibility of parole. Appellant also contends the instruction failed to inform the jury it had discretion to impose life without the possibility of parole even in the absence of mitigation evidence. (AOB 125-128.) This Court has rejected these arguments. (*People v. Valdez* (2012) 55 Cal.4th 82, 179-180; *People v. McKinzie*, *supra*, 54 Cal.4th at pp. 1361-1362; *People v. Fuiava* (2012) 53 Cal.4th 622, 732-733; *People v. Lee* (2011) 51 Cal.4th 620, 652; *People v. Moon* (2005) 37 Cal.4th 1, 42; see *People v. Linton* (2013) 56 Cal.4th 1146, 1211 [CALJIC No. 8.88 not "constitutionally defective for failing to inform the jury that it has the discretion to impose a sentence of life without the possibility of parole even in the absence of mitigating circumstances."].) The principle appellant advances that jurors "must return a verdict of life without [the] possibility of parole if mitigation outweighs aggravation . . . is clearly implicit in the standard instruction." (*People v. Taylor* (2009) 47 Cal.4th 850, 900.) As this Court has explained, ""[b]y advising that a death verdict should be returned only if aggravation is 'so substantial in

comparison with' mitigation that death is 'warranted,' the instruction clearly admonishes the jury to determine whether the balance of aggravation and mitigation makes death the appropriate penalty. [Citations.]''" (*People v. Foster* (2010) 50 Cal.4th 1301, 1367, quoting *People v. Arias* (1996) 13 Cal.4th 92, 171.)

Appellant next complains the instruction's use of the phrase "so substantial" makes it unconstitutionally vague and fails to set forth the correct standard. In reliance of his argument, appellant cites a Georgia Supreme Court case, *Arnold v. State* (1976) 236 Ga. 534, 224 S.E.2d 386. (AOB 129.) This Court has rejected this very argument. (*People v. Lee*, *supra*, 51 Cal.4th at p. 652; *People v. Moon*, *supra*, 37 Cal.4th at pp. 42-43.) In *Arnold*, the defendant challenged the sole aggravating circumstance found by the jury, that the defendant had "a substantial history of serious assaultive criminal convictions." (*Arnold v. State*, *supra*, 224 S.E.2d at p. 391.) The Georgia Supreme Court invalidated the "substantial history" aggravating factor as unconstitutionally vague and highly subjective. (*Ibid.*) In rejecting a defendant's similar reliance on *Arnold*, this Court explained:

> The jurors in *Arnold* were called upon to decide, in isolation and without further guidance, whether a defendant's prior criminal record was 'substantial,' whereas the jurors [instructed pursuant to the CALJIC instructions] were instructed extensively with respect to the manner of performing their task and were called upon to compare the totality of the aggravating circumstances with the totality of the mitigating circumstances. The instructions adequately explained that the jurors 'could return a death verdict only if aggravating circumstances predominated and death is the appropriate verdict.' [Citation.]"

(*People v. Page* (2008) 44 Cal.4th 1, 56.)

Finally, appellant challenges the instruction on the basis that it failed to inform jurors that the central determination was whether the death penalty was the appropriate punishment, not merely an authorized penalty. (AOB 130-131.) This Court has rejected this argument. (*People v.*

*McKinzie*, *supra*, 54 Cal.4th at p. 1361; *People v. Lee*, *supra*, 51 Cal.4th at p. 652; *People v. Moon*, *supra,* 37 Cal.4th at pp. 42-43.)

## VI. California's Death Penalty Statute Does Not Violate the Federal Constitution

Appellant raises numerous challenges that California's death penalty scheme violates the federal Constitution. (AOB 132-134.) As appellant recognizes (AOB 132), all of these claims have been rejected by this Court.

### A. Appellant's Cumulative Unconstitutionality Claim Lacks Merit

Appellant suggests that, even if his numerous challenges fail standing alone, cumulatively they render California's death penalty scheme unconstitutional. (AOB 132-134.) Indeed, because each claim standing alone fails, accumulating them does not somehow render them meritorious. (*People v. Seaton* (2001) 26 Cal.4th 598, 675, 691-692 [few errors identified were minor and either individually or cumulatively would not alter the outcome of the trial.) This Court has recognized that a capital defendant is entitled only to a fair trial, not a perfect one. (*People v. Cunningham*, *supra*, 25 Cal.4th at p. 1009.) Appellant received nothing short of a fair trial. As demonstrated below with respect to appellant's various challenges, California's death penalty scheme is not "wanton and freakish" that it is "so lacking in procedural safeguards." (AOB 133-134.)

### B. Section 190.2 Is Not Impermissibly Broad

Appellant claims that section 190.2, which sets forth the circumstances for when a death sentence may be imposed, is impermissibly broad in violation of the Eighth and Fourteenth Amendments of the federal Constitution. (AOB 135-136.) However, this Court has held that section 190.2 adequately performs the narrowing function mandated by the Eighth Amendment. (*People v. Crittenden*, *supra*, 9 Cal.4th at pp. 155-156;

*People v. Bacigalupo* (1993) 6 Cal.4th 457, 466-467.) California's capital sentencing scheme does not contain so many special circumstances that it fails to perform the constitutionally mandated narrowing function. (*People v. Ray* (1996) 13 Cal.4th 313, 356-357; *People v. Bacigalupo, supra*, 6 Cal.4th at pp. 465-468.) Also, the statutory categories have not been construed in an unduly expansive manner. (*People v. Crittenden, supra*, 9 Cal.4th at pp.154-156.) And finally, the breadth of the prosecutor's discretion in choosing to seek the death penalty does not render it unconstitutional. (*People v. Stanley* (1995) 10 Cal.4th 764, 843.)

**C. Section 190.3, subdivision (a) Does Not Allow Arbitrary and Capricious Imposition of Death**

Appellant claims that section 190.3, subdivision (a) [Factor A], which allows the jury to find aggravation based on the "circumstances of the crime," resulted in an arbitrary and capricious imposition of the death penalty in violation of the Fifth, Sixth, Eighth and Fourteenth Amendments. (AOB 137-138.) However, consideration of the circumstances of the crime under Factor A does not result in an arbitrary or capricious imposition of the death penalty. (*People v. Prieto* (2003) 30 Cal.4th 226, 276; see *Tuilaepa v. California* (1994) 512 U.S. 967, 987-988 [114 S.Ct. 2630, 129 L.Ed.2d 750].) Factor A, which permits the jury to consider the circumstances of the capital crime as an aggravating factor, is not unconstitutionally vague. (*Tuilaepa v. California, supra*, 512 U.S. at p. 973; *People v. Bolden, supra*, 29 Cal.4th at p. 566.) Appellant's argument that a range of inconsistent circumstances could result from death penalty decisions is based on speculation. What this reflects is that each case is judged on its facts, and each defendant on the particular circumstances of his or her offense. Contrary to appellant's claim, a statutory scheme would violate constitutional limits if it did not allow for individualized assessment of the crimes, but instead mandated death in specified circumstances. (See,

e.g., *Lockett v. Ohio* (1978) 438 U.S. 586, 606-606 [98 S.Ct. 2954, 57 L.Ed.2d 973].)

### D. California's Statutory Scheme Contains Proper Safeguards in Compliance With the Federal Constitution

Appellant maintains the trial court erred when it failed to instruct the jury that it may only impose the death penalty if they are persuaded beyond a reasonable doubt that the aggravating factors were present and the aggravating factors outweigh the mitigating factors. (AOB 140-149.) In support of his argument that any jury finding necessary to the imposition of a death sentence must be found true beyond a reasonable doubt, appellant relies on *Cunningham v. Washington* (2007) 549 U.S. 270, 293 [127 S.Ct 856, 166 L.Ed.2d 856] ("*Cunningham*"), *Blakely v. Washington* (2004) 542 U.S. 296, 303-305 [124 S.Ct. 2531, 159 L.Ed.2d 403] ("*Blakely*"), *Ring v. Arizona* (2002) 536 U.S. 584 [122 S.Ct. 2428, 153 L.Ed.2d 556] ("*Ring*"), and *Apprendi v. New Jersey* (2000) 530 U.S. 466, [120 S.Ct. 2348, 147 L.Ed.2d 435] ("*Apprendi*"). (AOB 140-149.) This Court has held that *Cunningham*, *Blakely*, *Ring*, and *Apprendi* have not altered the conclusion that the jury is not required to find beyond a reasonable doubt that the aggravating factors have been proved and that death is the appropriate sentence. (*People v. Bivert* (2011) 52 Cal.4th 96, 124; *People v. Whisenhunt*, *supra*, 44 Cal.4th at p. 227; *People v. Brown*, *supra*, 33 Cal.4th at p. 401.)

Appellant also claims that California's statutory scheme lacks certain safeguards to prevent arbitrary and capricious sentencing. (AOB 149-160.) However, this Court has rejected the claims raised by appellant by holding that: (1) the death penalty law is not unconstitutional for failing to impose a burden of proof — whether beyond a reasonable doubt or by a preponderance of the evidence — as to the existence of aggravating

circumstances, the greater weight of aggravating circumstances over mitigating circumstances, or the appropriateness of a death sentence [see AOB 140-149] (*People v. Gamache* (2010) 48 Cal.4th 347, 407 [trial court is not "required to instruct the penalty jury on any burden of proof; in California, at the penalty phase, there is no burden of proof, only a normative judgment for the jury. [Citations.]"; *People v. Brown, supra*, 33 Cal.4th at p. 401; *People v. Crew* (2003) 31 Cal.4th 822, 860); (2) the jury need not be instructed on the burden of proof during the penalty phase because the sentencing function is "not susceptible to a burden-of-proof quantification." [see AOB 149-152] (*People v. Hawthorne* (1992) 4 Cal.4th 43, 79; *People v. Mendoza* (2000) 24 Cal.4th 130, 191); (3) written jury findings as to aggravating circumstances are not constitutionally required [see AOB 153-155] (*People v. Gamache, supra*, 48 Cal.4th 347 at p. 406 [no state or federal requirement of written findings]; *People v. Brown, supra*, 33 Cal.4th at p. 401; *People v. Hughes* (2002) 27 Cal.4th 287, 405; *People v. Hillhouse* (2002) 27 Cal.4th 469, 510); (4) the death penalty law is constitutional even though it does not provide for intercase proportionality review [see AOB 155-157] (*People v. Anderson* (2001) 25 Cal.4th 543, 602 [rejecting a contention that intercase proportionality review is required as a matter of due process, equal protection, or cruel and/or unusual punishment]; *People v. Prieto, supra*, 30 Cal.4th at p. 276); (5) the jury may properly consider the evidence of unadjudicated criminal activity involving force or violence under Factor B (§ 190.3, subd. (b)) and it need not make a unanimous finding of such evidence [see AOB 157] (*People v. Brown, supra*, 33 Cal.4th at p. 402); (6) the use of certain adjectives — i.e., "extreme" and "substantial" — in the list of mitigating factors does not render the statute unconstitutional [see AOB 158] (*People v. Letner and Tobin* (2010) 50 Cal.4th 99, 208; *People v. D'Arcy* (2010) 48 Cal.4th 257, 308); and (7) the failure to instruct the jurors that statutory

mitigating factors were relevant solely as potential mitigating factors [see AOB 158] (*People v. Lee*, *supra*, 51 Cal.4th at p. 653; *People v. Whisenhunt* (2008) 44 Cal.4th 174, 228.)

### E. California's Sentencing Scheme Complies With the Equal Protection Clause

Appellant's next claim is that California's sentencing scheme violates the federal Equal Protection Clause by denying procedural safeguards to capital defendants which are afforded to non-capital defendants. (AOB 161-163.) This Court, however, has held that capital case defendants are not denied equal protection because the statutory scheme does not contain disparate sentence review. (*People v. Jenkins* (2000) 22 Cal.4th 900, 1053; *People v. Allen* (1986) 42 Cal.3d 1222, 1286-1288.)

### F. California's Death Penalty Law Falls Within the Norms of International Law

Finally, appellant contends that California's use of the death penalty as a regular form of punishment violates international norms of humanity and decency, and its imposition now violates the Eighth and Fourteenth Amendments. (AOB 164-166.) This Court has repeatedly rejected this claim. (*People v. Virgil*, *supra*, 51 Cal.4th at p. 1290, *People v. Lewis*, *supra*, 43 Cal.4th, 537-538.)

Appellant's argument is based on an incorrect premise that the international community's views are relevant to federal constitutional analysis. On the contrary, "it is *American* conceptions of decency that are dispositive[.]" (*Sanford v. Kentucky* (1989) 492 U.S. 361, 369, fn. 1 [109 S.Ct. 2969, 106 L.Ed.2d 306].)

> While "[t]he practices of other nations, particularly other democracies, can be relevant to determining whether a practice uniform among our people is not merely a historical accident, but rather so 'implicit in the concept of ordered liberty' that it occupies a place not merely in our mores, but, text permitting, in our Constitution as well," *Thompson v. Oklahoma*, 487 U.S.

> 815, 868-869 n.4, 108 S. Ct. 2687, 2716-2717 n.4, 101 L. Ed. 2d 702 (1988) (SCALIA, J., dissenting), quoting *Palko v. Connecticut*, 302 U.S. 319, 325, 58 S. Ct. 149, 152, 82 L. Ed. 2d 288 (1937) (Cardozo, J.), they cannot serve to establish the first Eighth Amendment prerequisite, that the practice is accepted among our people.

(*Sanford v. Kentucky*, *supra*, 492 U.S. at p. 369, fn. 1.) As this Court stated in *People v. Ramos* (2004) 34 Cal.4th 494, international laws and treaties do not compel the elimination of the death penalty in California when such penalty had been rendered in accordance with state and federal constitutional and statutory requirements. (*Id.* at pp. 533-534, citing *People v. Hillhouse*, *supra*, 27 Cal.4th at p. 511; *People v. Jenkins*, *supra*, 22 Cal.4th at p. 1055.) Since there is no other defect in imposing the death penalty against appellant, the death penalty law cannot be defective based on any provision of international law. (*People v. Jones* (2003) 29 Cal.4th 1229, 1268 ["Because defendant has entirely failed to establish the predicates of his argument — that he suffered prejudicial violations of due process . . . during his trial — we have no occasion to consider whether such violations would also violate international law."].)

* * *

In sum, appellant's challenges to various aspects of California's death penalty as violating the federal Constitution have been repeatedly rejected by this Court. Appellant provides no viable reason for this Court to reverse its prior holdings. Therefore, this Court should decline to reconsider them in the instant case.

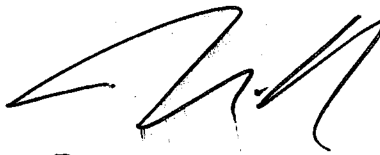
## CONCLUSION

Accordingly, respondent respectfully requests that the judgment be affirmed.

Dated: June 12, 2014

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
LANCE E. WINTERS
Senior Assistant Attorney General
KEITH H. BORJON
Supervising Deputy Attorney General
JOSEPH P. LEE
Deputy Attorney General



NIMA RAZFAR
Deputy Attorney General
*Attorneys for Plaintiff and Respondent*

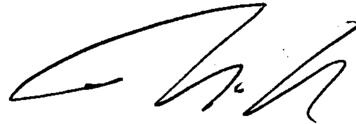
LA2005502871
61290498.doc

## CERTIFICATE OF COMPLIANCE

I certify that the attached RESPONDENT'S BRIEF uses a 13 point Times New Roman font and contains 27,015 words.

Dated: June 12, 2014

KAMALA D. HARRIS
Attorney General of California



NIMA RAZFAR
Deputy Attorney General
*Attorneys for Plaintiff and Respondent*

## DECLARATION OF SERVICE

Case Name: **People v. Alfonso Ignacio Morales** No.: **S136800**

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 with postage thereon fully prepaid that same day in the ordinary course of business.

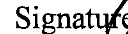
On June 13, 2014, I served the attached **RESPONDENT'S BRIEF** by placing a true copy thereof enclosed in a sealed envelope in the internal mail system of the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

**PLEASE SEE ATTACHED SERVICE LIST**

On June 13, 2014, I caused the Original and Eight copies of the **RESPONDENT'S BRIEF** in this case to be delivered to the California Supreme Court at 350 McAllister Street, First Floor, San Francisco, CA 94102-4797 by On Trac, Tracking Number B10296713080.

On June 13, 2014, I caused one electronic copy of the **RESPONDENT'S BRIEF** in this case to be served on the California Supreme Court by using the Supreme Court's Electronic Document Submission system.

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 June 13, 2014, at Los Angeles, California.



| Lisa P. Ng | |
|---|---|
| Declarant | Signature |

LA2005502871
61294444.doc

## SERVICE LIST

Case Name: **People v. Alfonso Ignacio Morales** No.: **S136800**

Diane E. Berley
Attorney at Law
6520 Platt Avenue, PMB 834
West Hills, CA 91307-3218
Counsel for Appellant
(2 Copies)

Maria Elena Arvizo-Knight
Death Penalty Appeals Clerk
Los Angeles County Superior Court
Criminal Appeals Unit
Clara Shortridge Foltz Criminal Justice Center
210 West Temple Street, Room M-3
Los Angeles, CA 90012

Government's Office
Legal Affairs Secretary
State Capitol, First Floor
Sacramento, CA 95814

The Honorable Michael A. Cowell
Judge
Los Angeles County Superior Court
Southeast District
Norwalk Courthouse
12720 Norwalk Boulevard
Department L
Norwalk, CA 90650

Phillip Glaviano
Deputy District Attorney
Los Angeles County District Attorney's Office
12720 Norwalk Blvd., Rm. 201
Norwalk, CA 90650

CAP - SF
California Appellate Project (SF)
101 Second Street, Suite 600
San Francisco, CA 94105-3647