

Errata letter

SUPREME COURT COPY

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LAW OFFICE OF CLIFF GARDNER
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June 13, 2016

The Honorable Frank McGuire
California Supreme Court
Office of the Clerk
350 McAllister Street
San Francisco, CA 94102

SUPREME COURT
FILED

JUN 20 2016

Frank A. McGuire Clerk

Deputy

Re: *People v. Rices*, S175851

Dear Mr. McGuire:

I represent appellant Jean Pierre Rices in the above captioned case. I filed an opening brief on Mr. Rices's behalf on November 18, 2014.

I am writing to advise the Court of an error in the brief. On pages 31 and 39-40 of the brief I incorrectly attributed a statement to seated juror 4 which was actually made by seated *alternate* juror 4. I have enclosed for filing the original and ten copies of (1) an errata sheet listing the specific corrections to the brief and (2) corrected pages 31 and 39-40. I have also enclosed a copy for endorsement and return in the enclosed self-addressed stamped envelope.

I am sorry for any inconvenience my mistake has caused the Court or opposing counsel. Please feel free to contact me if you have any questions.

Thank you for your assistance.

Sincerely,


Cliff Gardner

RECEIVED

JUN 20 2016

CLERK SUPREME COURT

CERTIFICATE OF SERVICE

I, the undersigned, declare as follows:

I am a citizen of the United States, over the age of 18 years and not a party to the within action. My business address is 1448 San Pablo Avenue, Berkeley, CA 94702. I am not a party to this action.

On June 13, 2016, I served the within

LETTER OF JUNE 13, 2016; ERRATA SHEET; PAGE 31, 39-40

upon the parties named below by depositing a true copy in a United States mailbox in Berkeley, California, in a sealed envelope, postage prepaid, and addressed as follows:

California Appellate Project
101 2nd Street
San Francisco, California 94105


Office of the Attorney General
P.O. Box 85266
San Diego, California 92186

Jean Pierre Rices, P-98772
San Quentin State Prison
San Quentin, California 94974

Hon. Lantz Lewis
San Diego Superior Court
250 E. Main Street
El Cajon, California 92020

Office of the District Attorney
250 E. Main Street
El Cajon, California 92020

I declare under penalty of perjury that the foregoing is true. Executed on June 13, 2016, in Berkeley, California.



Declarant

People v. Rices, S175851, Errata Sheet

1. On page 31 of Appellant's Opening Brief, the second full paragraph, second sentence currently reads as follows:

During voir dire, this juror stated that the death penalty was used too seldom. (6 RT 917.)

Correction:

Delete the sentence.

No other change on the page.

2. On page 39 of Appellant's Opening Brief, the second sentence of the last paragraph on page 39 (which continues onto page 40) currently reads as follows:

Left on the jury was one juror who had herself been the victim of violent crimes where the sentence imposed was not harsh enough, who believed the death penalty was not used often enough, conceded she would "favor the side that had law enforcement officers as witnesses" and who said that based on the press she had read, Mr. Rices "sounds obviously violent and without regard for human life." (7 CT 1509, 1511, 1512, 1518; 6 RT 917.)

Correction:

The sentence should read:

Left on the jury was one juror who had herself been the victim of violent crimes where the sentence imposed was not harsh enough, conceded she would "favor the side that had law enforcement officers as witnesses" and who said that based on the press she had read, Mr. Rices "sounds obviously violent and without regard for human life." (7 CT 1509, 1511, 1512, 1518.)

No other change on these two pages.

the side that had law enforcement officers as witnesses.” (7 CT 1509, 1511.) She had been the victim of several violent crimes and believed that as to one of these crimes, the sentence imposed was not harsh enough. (7 CT 1512.)

There should be little doubt that seated juror 4 was a problematic juror from the defense perspective. Based on what she had heard about the case, she had formed an extremely negative view of Mr. Rices before the case even started. When asked what opinion she had formed of Mr. Rices she responded as follows:

“None, other than he sounds obviously violent and without regard for human life.” (7 CT 1518.)

Juror number 4 made clear that she would not weigh or consider defendant's childhood or upbringing because “by a certain age they should know right from wrong unless they are mentally incapable of that reasoning.” (7 CT 1521.) Given that the aggravation phase of this case involved testimony from numerous law enforcement officers, the mitigation case depended largely on evidence of defendant's childhood, this juror already believed that Mr. Rices was “obviously violent and without regard for human life,” this was hardly a positive juror for the defense. But without a peremptory challenge left, counsel could not challenge her.

be expressed by conduct, such as requesting additional peremptory challenges to excuse members of the seated jury. (See *People v. Whalen*, *supra*, 56 Cal.4th at p. 42; *People v. Ramirez*, *supra*, 39 Cal.4th at p. 448; *People v. Shambatuyev*, *supra*, 50 Cal.App.4th at p. 272; *People v. Terry*, *supra*, 30 Cal.App.4th at pp. 103-104.)

This aspect of the issue has been discussed in detail in connection with Argument I. Suffice it to say here that defense counsel (1) used peremptory challenges to discharge V.B. and T.T. and (2) exhausted his allotted challenges. When prospective jurors V.B. and T.T. were called into the jury box, defense counsel exercised a peremptory challenge as to each. (8 RT 1274-1275, 1277.) Moreover, not only did defense counsel exercise all 20 of his peremptory challenges, but at the end of the voir dire he explicitly asked for additional peremptory challenges both in writing and orally. (4 CT 931; 8 RT 1273-1280, 1281.)

As also discussed above, the record shows why defense counsel wanted additional peremptory challenges. Left on the jury was one juror who had herself been the victim of violent crimes where the sentence imposed was not harsh enough, who conceded she would “favor the side that had law enforcement officers as witnesses” and who said that based on the press she had read, Mr. Rices “sounds obviously violent and without regard for human life.” (7 CT 1509, 1511, 1512, 1518.) Another seated juror thought death was

proper for anyone who took a life willfully and admitted he would give more weight to the testimony of law enforcement officers. (7 CT 1555, 1564.) Yet another seated juror, who was in favor of the death penalty, explained simply that “if you take a life (inosent) [sic] yours should be taken.” (7 CT 1652.)

As with the claim raised in Argument I, defense counsel here did all that he was supposed to do to preserve this issue for review. Because the trial court erred in refusing to discharge two jurors for cause who said they would refuse to consider defendant’s childhood and upbringing in mitigation, Mr. Rices was denied a fair and reliable sentencing determination in violation of his Fifth, Sixth, Eighth and Fourteenth Amendment rights, as well as similar provisions of the state constitution. A new penalty phase is required.

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