

**IN THE SUPREME COURT OF THE STATE OF CALIFORNIA**

IN RE )  
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 )  
**HECTOR MARTINEZ,** )  
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 On Habeas Corpus. )  
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**NOTICE OF ERATA**

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

I was informed today that page 17 is missing from the Petition For  
Review filed with this Court. Accordingly it is attached.

Respectfully submitted,



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MARILEE MARSHALL

RECEIVED

JUL 10 2015

CLERK SUPREME COURT

elements. First that Hector Martinez is guilty of an assault or battery, that he hit Mr. Parker, that he tried to assault Mr. Parker, that he is guilty of that, or tried to hit or assault Mr. Esparza even.

Now, during that assault or battery, a coparticipant, Darren, committed a murder. Under the circumstance, a reasonable person in Hector's place would have know that a murder was a natural and probable consequence of that assault or battery.

And, finally, you need to look at all of the circumstances in determining whether murder was a natural and probable consequence of assault and battery.

And the murder doesn't even have to be a strong possibility. It just have to be a possible consequence reasonably contemplated at the time. And that's where detective Hernandez's, if you recall, testimony about what gang members expect of one another, what gang members expect in a violent confrontation is key, and how Darren Martinez and Hector Martinez's shared experience is key, because Hector Martinez that day not only aided and abetted, but he knew or reasonably should have know that his assault and battery would have resulted in a murder.

(10 R.T. 1604-1607.)

This Court's recent decision in *Chiu* now holds that a natural and probable consequences theory of liability can never support a first degree murder conviction. (*People v. Chiu, supra*, 59 Cal.4th at pp. 158-159, 166-167.) *Chiu* further holds that where, as here, the jury was instructed on both direct aiding and abetting and natural and probable consequences theories of liability, and there is nothing in the record to affirmatively indicate upon which theory the jury relied, reversal of the defendant's first degree murder conviction is required. (*Id.* at pp. 159, 167-168, 176.)

Pursuant to this Court's recent decision in *Chiu*, petitioner was wrongfully convicted of first degree murder and three counts of

**DECLARATION OF SERVICE**

I, the undersigned, declare:

I am over eighteen (18) years of age, and not a party to the within cause; my business address is 595 East Colorado Blvd, Suite 324, Pasadena, CA 91101; that on July 7, 2015, I served a copy of the within:

**NOTICE OF ERATA**

on the interested parties by placing them in an envelope (or envelopes) addressed respectively as follows:

Clerk of the Superior Court  
San Diego County Superior Court  
Main Courthouse  
220 West Broadway. Dept. SD-56  
San Diego, CA 92101  
For Delivery to Hon. Robert F. O' Neill

Mr. Hector Martinez, AF9134  
B6-124  
P.B.S.P.  
P.O. Box 7500  
Crescent City, CA 95531

Office of the Attorney General  
P.O. Box 85266  
San Diego, CA 92186-5266

Clerk of the Court of Appeal  
Fourth Appellate District/ Division One  
750 B. Street, #300  
San Diego, CA 92101-8189

Each said envelope was then, on July 7, 2015, sealed and deposited in the United States mail at Pasadena, California, the county in which I maintain my office, with postage fully prepaid.

I, further declare that I electronically served a copy of the same above document from electronic notification address ([marshall101046@gmail.com](mailto:marshall101046@gmail.com)) on July 7, 2015 to the following entities electronic notification addresses:

Attorney General, [adieservice@doj.ca.gov](mailto:adieservice@doj.ca.gov)  
District Attorney, [DA.Appellate@sdccda.org](mailto:DA.Appellate@sdccda.org)

I additionally declare that I electronically submitted a copy of this document to the Supreme Court on its website at [www.courts.ca.gov](http://www.courts.ca.gov) in compliance with the court's Terms of Use, as shown on the website.

I declare under penalty of perjury that the foregoing is true and correct.  
Executed on July 7, 2015, at Pasadena, California.



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LESLIE AMAYA