

SUPREME COURT COPY

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff and Respondent,

v.

PAUL HENSLEY,

Defendant and Appellant.

CAPITAL CASE

Case No. S050102

SUPREME COURT
FILED

APR 12 2011

Frederick K. Ohlrich Clerk

San Joaquin County Superior Court Case No. _____
SC054773A

Deputy

The Honorable Frank A. Grande, Judge

SUPPLEMENTAL RESPONDENT'S BRIEF

KAMALA D. HARRIS
Attorney General of California
DANE R. GILLETTE
Chief Assistant Attorney General
MICHAEL P. FARRELL
Senior Assistant Attorney General
ERIC CHRISTOFFERSEN
Deputy Attorney General
CLIFFORD E. ZALL
Deputy Attorney General
State Bar No. 148141
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 324-5281
Fax: (916) 324-2960
Email: Cliff.Zall@doj.ca.gov
Attorneys for Plaintiff and Respondent

DEATH PENALTY

TABLE OF CONTENTS

	Page
SUPPLEMENTAL RESPONSES	1
I. Appellant’s Penalty Retrial Was Constitutional.....	1
II. The Trial Court Properly Permitted The Prosecutor To Point Out The Impact That The Murder Of Gregory Renouf Had On His Family	2
Conclusion.....	5

SUPPLEMENTAL RESPONSES

I. APPELLANT'S PENALTY RETRIAL WAS CONSTITUTIONAL

Appellant asserts that subjecting him to a penalty retrial violated his state and federal constitutional rights. (Supp AOB 1-11.) This Court recently in *People v. Taylor* (2010) 48 Cal.4th 574 rejected this identical claim:

Defendant contends that in permitting a second jury to decide penalty after the first jury deadlocked on that question, the trial court violated his rights under the Eighth Amendment and other federal and state constitutional provisions. Armed with a lengthy string citation to statutes of other jurisdictions that mandate a sentence of life without parole if the penalty jury deadlocks, defendant asserts that California is “out of step with an emerging national consensus against allowing retrial under these circumstances.”

We have previously found no constitutional infirmity in a death verdict rendered by a second penalty phase jury at a retrial following the first jury's deadlock on sentencing, notwithstanding that the second jury had not heard all of the guilt phase evidence. (*People v. Hawkins* (1995) 10 Cal.4th 920, 966–967, 42 Cal.Rptr.2d 636, 897 P.2d 574; *People v. Gurule* (2002) 28 Cal.4th 557, 645, 123 Cal.Rptr.2d 345, 51 P.3d 224.) Although we have never addressed the precise Eighth Amendment challenge defendant raises, we have determined that “California's asserted status as being in the minority of jurisdictions worldwide that impose capital punishment” does not establish that our death penalty scheme per se violates the Eighth Amendment. (*People v. Thornton* (2007) 41 Cal.4th 391, 470, 61 Cal.Rptr.3d 461, 161 P.3d 3; see *People v. Moon* (2005) 37 Cal.4th 1, 47–48, 32 Cal.Rptr.3d 894, 117 P.3d 591.) Likewise here, that California is among the “handful” of states that allows a penalty retrial following jury deadlock on penalty does not, in and of itself, establish a violation of the Eighth Amendment or “evolving standards of decency that mark the progress of a maturing society.” (*Trop v. Dulles* (1958) 356 U.S. 86, 101, 78 S.Ct. 590, 2 L.Ed.2d 630.)

Arguing points more typically raised in a claim of double jeopardy, defendant further contends that compelling a capital

In arguing for the death penalty, the prosecutor briefly pointed to the impact that the murder of Gregory Renouf had on his family. (59 RT 18953-18954, 19080.) The defense objected asserting that this was improper since no family of Mr. Renouf had in fact testified at the penalty phase trial. (59 RT 18953.) The trial court overruled the objection (59 RT 18953-18954.) which appellant now renews before this Court. (Supp. AOB 12-15; See also AOB 293-297.)

It is true that no family of Gregory Renouf testified at the trial, however, it is also well-settled that the prosecutor may make reasonable inferences from the record. (*People v. Cook* (2006) 39 Cal.4th 566, 613.) As the prosecutor noted, "Mr. Renouf wasn't born by an egg." (59 RT 18954.) Thus, it was a reasonable inference to draw that those who were close to Mr. Renouf were impacted by his murder. Prosecutors are allowed significant latitude in making their closing arguments. (*People v. Bennett*, (2009) 45 Cal.4th 577, 615.) There was nothing improper in the brief comments made by the prosecutor that those who were close to Mr. Renouf, particularly his friends and family, were impacted by his murder. Thus, the trial court committed no error when it permitted this line of argument.

Appellant argues that the prosecutor's comments were based upon pure conjecture. (AOB 297.) On the contrary, it is not conjecture but a reasonable assumption that a living breathing human being has people that are close to him somewhere. Those people wherever they are would be impacted by that person's murder. Moreover, the prosecutor's comments were likely also designed to respond to the anticipated argument from the defense that appellant's family and particularly his children loved him and that his life was therefore worth sparing. In light of that argument, vigorously advanced by defense counsel (see 59 RT 19094-19095), the prosecutor's argument that murder victim Gregory Renouf had a life and

CONCLUSION

For the reasons stated above and those previously stated in its Respondent's Brief, respondent respectfully requests that This Court affirm the judgment and sentence of death.

Dated: April 7, 2011

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
DANE R. GILLETTE
Chief Assistant Attorney General
MICHAEL P. FARRELL
Senior Assistant Attorney General
ERIC CHRISTOFFERSEN
Deputy Attorney General



CLIFFORD E. ZALL
Deputy Attorney General
Attorneys for Plaintiff and Respondent

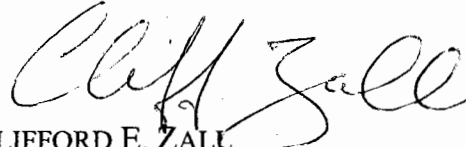
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CERTIFICATE OF COMPLIANCE

I certify that the attached **SUPPLEMENTAL RESPONDENT'S BRIEF** uses a 13 point Times New Roman font and contains 1,076 words.

Dated: April 7, 2011

KAMALA D. HARRIS
Attorney General of California

A handwritten signature in cursive script that reads "Cliff Zall". The signature is written in black ink and is positioned above the printed name of the signatory.

CLIFFORD E. ZALL
Deputy Attorney General
Attorneys for Plaintiff and Respondent

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v. Paul Loyd Hensley**
No.: **S050102**

I declare:

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

On April 11, 2011, I served the attached **RESPONDENT'S SUPPLEMENTAL BRIEF** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

Richard L. Rubin, Esq.
Attorney at Law
4200 Park Boulevard, # 249
Oakland, CA 94602
Attorney for Appellant – 2 copies

California Appellate Project
101 Second Street, Ste. 600
San Francisco, CA 94105

Clerk of the Court
County of San Joaquin
Stockton Courthouse
222 East Weber Avenue, Room 303
Stockton, CA 95202

Honorable James Willett
San Joaquin County District Attorney
P.O. Box 990
Stockton, CA 95201

Peter Fox
San Joaquin County Public Defender
P.O. Box 201030
Stockton, CA 95201-9030

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 April 11, 2011, at Sacramento, California.

Signature