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# SUPREME COURT COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

People of the State of California,	)	
	)	
Plaintiff and Respondent,	)	
	)	No. S087773
v.	)	
	)	
Ruben Perez Gomez,	)	
	)	
Defendant and Appellant.	)	Superior Court No.
	)	BA156930
	)	

SUPREME COURT  
FILED

**Appellant's supplemental opening brief**

APR 06 2015

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DEATH PENALTY



IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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	)	
Plaintiff and Respondent,	)	
	)	No. S087773
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## Argument

**The trial court abused its discretion and violated Mr. Gomez's constitutional rights when it arranged for Deputy Ganarial to testify about Mr. Gomez's refusal to come to court, and when it denied the defense motion to strike after Ganarial testified not only about Mr. Gomez's refusal to come to court, but also about the security measures to which he was subject and the fact that he was housed in a disciplinary unit in the jail.**

In appellant's opening brief, Gomez contended that the trial court erred when it arranged for testimony, by deputy sheriff John Ganarial, regarding Gomez's refusal to come to court one morning during trial. Encompassed in that argument, Gomez contended that Ganarial's testimony was irrelevant and prejudicial, violating his constitutional rights, in that it included details about the security conditions in which Gomez was held in a disciplinary unit in the jail: he was fed through a slot in his cell, and waist-chained and handled by a movement team when going to court. (AOB 194-195, 200, 201-203, 208, 212-213, 224.)

Mr. Gomez now seeks permission to file this supplemental brief in order to make clear that he challenges not only the trial court's admission of (indeed, its arrangement of) Ganarial's testimony, but also the court's refusal to strike that testimony after it ranged far beyond the ostensible purpose for which Ganarial was called, and that he contends that admission of the testimony and the denial of trial counsel's motion to strike constituted

prejudicial error not only under state law, but under the state and federal constitutions.

**A. Proceedings below.**

As set forth at greater length in appellant's opening brief, the trial court, apparently frustrated by Gomez's refusal to come to court and the 38-minute delay that ensued one morning, and in response to a defense motion for a mistrial made after the court told jurors they might learn the reason for the delay, arranged for Deputy Ganarial to testify before the jury, over defense objection. (See AOB 186-193.)

Ganarial testified that he was a deputy sheriff at Men's Central Jail, assigned to a module for "K-10 inmates for discipline," where Gomez was housed in a single-man cell. (12RT 1842-1843; see AOB 194.) Ganarial recounted the procedure for getting inmates ready for court: After they are fed through slots in their cell door (12RT 1843, 1846-1847), inmates going to court are waist-chained; they come out of their cells one at a time, and are walked downstairs by the "movement team" to wait in line to be escorted to court. (12RT 1843-1844; see AOB 194.)

Ganarial then testified about Gomez's refusal to come to court on the morning of December 14, 1999. (12RT 1844-1850; see AOB 194.)

After Ganarial testified, defense counsel moved to strike his



testimony “as being irrelevant to the charges for what Mr. Gomez is presently on trial.” (12RT 1854.) The trial court denied the motion. (12RT 1854.)

**B. The trial court abused its discretion in refusing to strike Ganarial’s testimony; its error had the effect of violating Mr. Gomez’s state and federal constitutional rights.**

Ganarial’s testimony was irrelevant with respect to its ostensible purpose — to inform the jury that Gomez had refused to come to court one morning, so that they could conclude that that refusal demonstrated a consciousness of guilt. (AOB 196-200.)

The additional facts Ganarial testified about — that Gomez was held in a disciplinary unit in the jail, that he was fed through a slot in his cell door, and that he was waist-chained and handled by a “movement team” when going to court — were also irrelevant. (See AOB 200.) Indeed, neither the trial court nor the prosecutor ever articulated any theory under which this information would be relevant to Gomez’s guilt or innocence of the charges he faced.

Like shackling, or forcing a defendant to stand trial in prison clothes, Ganarial’s testimony that Gomez was in a disciplinary unit, and his testimony about the security conditions under which Gomez was held there, undermined the presumption of innocence. (See *Estelle v. Williams* (1976)

425 U.S. 501, 504; *Holbrook v. Flynn* (1986) 475 U.S. 560, 567-568-569; *Deck v. Missouri* (2005) 544 U.S. 622, 630; see AOB 200, 213.)

Ganarial's testimony was inherently prejudicial. (*Holbrook v. Flynn, supra*, 475 U.S. at p. 568; *Deck v. Missouri, supra*, 544 U.S. at p. 635; AOB 213.) Like shackling or prison garb, Ganarial's testimony that Gomez was housed in a disciplinary unit, fed through a slot, and waist-chained and handled by a "movement team" (12RT 1841-1851) signaled an "unmistakable indication[] of the need to separate [him] from the community at large," in other words, a "sign that he is particularly dangerous or culpable." (*Holbrook v. Flynn, supra*, 475 U.S. at pp. 568-569.)

In *Deck*, the Supreme Court held that "where a court, without adequate justification, orders the defendant to wear shackles that will be seen by the jury, the defendant need not demonstrate actual prejudice to make out a due process violation." (*Deck v. Missouri, supra*, 544 U.S. at p. 635.) Here, similarly, the trial court, without any justification, refused to strike testimony tantamount to shackling Gomez before the jury: testimony that he was held in a disciplinary unit in the jail, that he was fed through a slot in his cell, and that he was waist-chained and handled by a movement team when going to court. (12RT 1841-1847, 1854.)

Ganarial's testimony was entirely irrelevant and unjustified, and it was inherently prejudicial. The trial court's erroneous refusal to strike it had the effect of violating Mr. Gomez's state and federal constitutional rights. (U.S. Const., 5th, 6th, 8th, & 14th Amends.; Cal. Const., art. I, §§ 7, 15, 16, & 17; *Deck v. Missouri, supra*, 544 U.S. at p. 635; *Holbrook v. Flynn, supra*, 475 U.S. at pp. 568-569; *Estelle v. Williams, supra*, 425 U.S. at p. 504; see *People v. Partida* (2005) 37 Cal.4th 428, 433-439; *People v. Gutierrez* (2009) 45 Cal.4th 789, 809; *People v. Boyer* (2006) 38 Cal.4th 412, 441 & fn. 17; AOB 208-215.)

**C. These errors require reversal.**

These federal constitutional errors are subject to *Chapman* review. (*Chapman v. California* (1967) 386 U.S. 18, 24; *Deck v. Missouri, supra*, 544 U.S. at p. 635.) The state "must prove 'beyond a reasonable doubt that the . . . error complained of did not contribute to the verdict obtained.'" (*Deck v. Missouri, supra*, 544 U.S. at p. 635, quoting *Chapman*.)

Evidence suggesting that a defendant is dangerous and needs to be separated from the community at large is "inherently prejudicial." (*Deck v. Missouri, supra*, 544 U.S. at p. 635; see *Holbrook v. Flynn, supra*, 475 U.S. at p. 568.) Here, the evidence suggested not merely that Gomez needed to be separated from the community at large, but that he needed to be

separated from the general population in the jail and handled with additional security measures. (12RT 1842-1854.)

In the context of this case, where evidence supporting the first degree murder verdicts was at best extremely weak (see AOB Arguments I, II, & III), the prosecution cannot prove that the trial court's arrangement of and refusal to strike Ganarial's testimony — which not only included the “inherently prejudicial” evidence about the security conditions in which Gomez was held, but was offered to support a conclusion that Gomez's own actions in jail betrayed his guilt — was harmless beyond a reasonable doubt. (*Chapman v. California, supra*, 386 U.S. at p. 24.) Nor was it harmless under any standard. (See AOB 221-225; ARB 79-80.)

Indeed, even setting aside the trial court's error in admitting Ganarial's testimony about Gomez's refusal to come to court as demonstrating consciousness of guilt, Ganarial's testimony about the security measures to which Gomez was subject would alone require reversal. The prosecution cannot sustain its burden with respect to this “inherently prejudicial” testimony. (*Deck v. Missouri, supra*, 544 U.S. at p. 635.) Of course, in combination with the court's errors in putting the testimony about Gomez's refusal to come to court before the jury in the first place, and instructing the jury that it could be used to establish

consciousness of guilt, Ganarial's testimony about the security measures used to restrain Gomez was all the more prejudicial.

Finally, Gomez asks this Court to consider these errors and the prejudice that flowed from them cumulatively with all the other errors discussed in appellant's opening brief. (AOB Argument XXV.)

### **Conclusion**

For the reasons set forth above, in appellant's opening brief, and in appellant's reply brief, Mr. Gomez respectfully asks this Court to reverse the judgment.

Dated: March 23, 2015

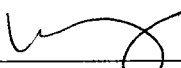
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### **Word count certification**

I, Laura S. Kelly, associate counsel for Ruben Perez Gomez, certify pursuant to the California Rules of Court that the word count for this document is 1,423 words, excluding the cover, the tables, and this certificate. I prepared this document on my computer using Corel Word Perfect, and this is the word count generated by that program for this document.

Executed at Irvine, California, on March 23, 2015.

  
\_\_\_\_\_  
Laura S. Kelly

## DECLARATION OF SERVICE

Re: People v. Ruben Perez Gomez, S087773

On March 24, 2015, I served the within

### **Appellant's supplemental opening brief**

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

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Laura S. Kelly