

SUPREME COURT COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff and Respondent,

v.

LOUIS RANGEL ZARAGOZA,

Defendant and Appellant.

DEATH PENALTY
CASE

San Joaquin Co. Sup. Ct.
No. SP076824A

Cal. Supreme Ct.
No. S097886

SUPREME COURT
FILED

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APPELLANT'S SUPPLEMENTAL BRIEF ^{Frank A. McGuire Clerk}

APPEAL FROM THE JUDGMENT OF THE ^{Deputy}
SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN JOAQUIN

The Honorable Thomas Teaford, Presiding

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ARGUMENT

A. Statement of Facts

The parties agreed to ask prospective jurors if they had any family or close friends who were judges, attorneys, retired judges, or potential witnesses, including any of the Gaines family members. (17 RT 4219.) A list of potential witnesses was prepared and attached to each juror questionnaire. Seven members of the Gaines family were on the list, including Steve Gaines. (4 CT 1102–1103.)

In each questionnaire, prospective jurors were instructed to read the list carefully: “if you think you may know any of the listed witnesses please indicate how you know them, and the nature of your familiarity.” Juror No. 8 answered, “None.” (SCT 7739.) He made this answer even though the victim’s brother Steve Gaines worked with him at Save-Mart, likely in a supervisory position.

Juror No. 8 was very conscious of and concerned about his work, as was shown by his first appearance in this case on voir dire:

PROSPECTIVE JUROR JN.08: JN.08XXXXXXXXX.

THE COURT: And you actually got up here, you're juror eight on our list.

PROSPECTIVE JUROR JN.08: I'm just wondering if there's any way possible -- I have to go to my job because I have inventory tonight. I'm going to start at 4:00 o'clock in the morning. I wonder if there is any way I can go to the afternoon, you have a 1:30, if I could come back and do mine then.

THE COURT: I have to have you then.

PROSPECTIVE JUROR JN.08: At 9:30?

THE COURT: You guys are the first ones up. I have to talk to you first. I don't have a choice.

PROSPECTIVE JUROR JN.08: Well, I planned on going there -- I'm going to be staying the night there tonight in San Jose.

THE COURT: Wait a minute, now, okay, hang on a second. Come on up here and have a seat.

PROSPECTIVE JUROR JN.08: Okay.

THE COURT: I don't tell jurors what time to go to bed. They might stay up and watch TV at all hours. I don't tell them that. But I do tell them I want them alert during the day. You seem alert now, but you probably haven't been up all night. What sort of shift did you plan to put in tonight?

PROSPECTIVE JUROR JN.08: Well, I'm a grocery manager and this is inventory, it's sort of like everything my job is based off of is inventory and inventory control.

THE COURT: But what would happen if you were here and -- and -- what would happen if you got the sleep you would need to have to be alert tomorrow, would you be able to do this?

PROSPECTIVE JUROR JN.08: Yes, I will be fine, I'm not worried. That's not a...

THE COURT: So what -- you're asking, you just were asking somehow you could have a longer morning?

PROSPECTIVE JUROR JN.08: Well, I want to be there for the whole inventory. The inventory will be done at 11:00.

THE COURT: I need to have you. You're not very far down here on the list. I got to ask you questions and I got to ask my questions before any of the attorneys can ask questions.

PROSPECTIVE JUROR JN.08: I was seeing if I could get put out of order or something like that.

THE COURT: I wish I could. I try to make accommodations, I don't think I can make one in your case.

PROSPECTIVE JUROR JN.08: Well, then...

THE COURT: See you tomorrow morning at 9:30. Thank you.

PROSPECTIVE JUROR JN.08: Uh-huh.

(19 RT 4998-4999.)

* * * *

MR. SCHICK: So, JN.08XXXX, I don't really have any questions except the other day you expressed concern about your personal situation at your job. Is that kind of under control or do you feel like you're going both ways?

PROSPECTIVE JUROR JN.08: That pretty much -- situation was handled as of yesterday.

MR. SCHICK: Okay. Everything turn out okay?

PROSPECTIVE JUROR JN.08: I will find out in about eight weeks.

MR. SCHICK: What we're asking is your mind isn't distracted?

PROSPECTIVE JUROR JN.08: Not any more.

(20 RT 5260-5261.)

On February 7, 2001, after the prosecution had presented its case, and in the midst of the defense case, Juror No. 8 passed a note to the court

saying, “Steve Gaines and myself have talked on the plane¹ before. We both work for Save-Mart. I think this will be no problem, but you should know.” (28 RT 7416.)

Subsequent questioning of Juror No. 8 established that he had seen Steve Gaines about once a month for the previous three or four months, and was “positive” he would see him again. (28 RT 7418–7419.) Although the precise relationship between the two was not established, Juror No. 8 testified that they had talked about time-cards to be installed in the store he managed (28 RT 7416–7417), suggesting that Steve Gaines had a supervisory position over Juror No. 8.

B. Active Concealment of a Work Relationship with the Victim’s Brother Heightened the Likelihood That Juror No. 8 Based His Decisions on Improper Factors, and Requires That the Verdicts Against Appellant Be Set Aside.

Under federal law, a defendant is denied the right to an impartial jury if even one juror is biased or prejudiced. (*Fields v. Woodford* (9th Cir. 2002) 309 F.3d 1095, 1103, amended (9th Cir. 2002) 315 F.3d 1062; *Dyer v. Calderon* (9th Cir. 1998) 151 F.3d 970, 973 (en banc).) Where a juror’s actions or misconduct in misleading courts and counsel on questionnaires or voir dire create “destructive uncertainties” about the indifference of a juror, bias should be presumed. (*Fields, supra*; *Green v. White* (9th Cir. 2000) 232 F.3d 671, 677.)

¹ It later emerged that they had talked on the phone, not on a plane.

In California, “[a] juror who conceals relevant facts or gives false answers during the voir dire examination . . . undermines the jury selection process and commits misconduct. [Citations].” (*In re Boyette* (2013) 56 Cal.4th 866, 889.) Once misconduct is established, it raises a presumption of prejudice. (*People v. Nesler* (1997) 16 Cal.4th 561, 578; *People v. Stanley* (1995) 10 Cal.4th 764, 836.) This presumption “excuses the defendant from affirmatively proving prejudice when that cannot be done” and “prevails “unless the contrary appears.”” (*In re Carpenter* (1995) 9 Cal.4th 634, 657.)

False answers or concealment on voir dire or on questionnaires eviscerate a party’s statutory right to exercise a peremptory challenge as well as remove a prospective juror for good cause. This Court has recognized that “the peremptory challenge is a critical safeguard of the right to a fair trial before an impartial jury.” (*People v. Williams* (1981) 29 Cal.3d 392, 405.) In *In re Hitchings* (1993) 6 Cal.4th 97, this Court wrote,

As explained by the Court of Appeal, “[j]uror concealment, regardless whether intentional, to questions bearing a substantial likelihood of uncovering a strong potential of juror bias, undermines the peremptory challenge process just as effectively as improper judicial restrictions upon the exercise of voir dire by trial counsel seeking [112] knowledge to intelligently exercise peremptory challenges.” (Citations omitted.) “The denial of the right to reasonably exercise a peremptory challenge, be it by either the trial court or a juror through concealing material facts, is not a mere matter of procedure, but the deprivation of an absolute and substantial

(32 RT 8344.)

right historically designed as one of the chief safeguards of a defendant against an unlawful conviction.” (citations omitted.)

(*In re Hitchings, supra*, 6 Cal.4th at pp. 111–112.)

As noted in appellant’s opening brief, Juror No. 8 acknowledged the possibility that voting in favor of appellant would cause problems for him. (AOB 114; 28 RT 7418–7419.) Concealment of his ongoing relationship with Steve Gaines during the jury selection process precluded appellant from challenging the juror for cause, and denied him the opportunity to dismiss Juror No. 8 with a peremptory challenge. It thus led to verdicts against him likely influenced by improper factors. The trial court should have excused Juror 8 after these revelations sua sponte, regardless of whether trial counsel requested it.

CONCLUSION

For the reasons set forth herein and in appellant’s previous briefing on Claim VIII, Mr. Zaragoza’s convictions and sentence should be set aside.

Dated: _____

Respectfully submitted,

MICHAEL R. SNEDEKER

Attorney for Appellant
LOUIS RANGEL ZARAGOZA

CERTIFICATE PURSUANT TO CAL. RULE OF COURT 8.630

I hereby certify that, according to my computer's word processing program, this brief, exclusive of tables, is 1819 words, within the 2,800-word limit specified in the California Rules of Court.

Dated: _____

MICHAEL R. SNEDEKER

Attorney for Appellant
LOUIS RANGEL ZARAGOZA

DECLARATION OF SERVICE BY MAIL

Re: *People v. Zaragoza*, Supreme Court No. S097886

I, Michael R. Snedeker, declare that I am over 18 years of age and am not a party to this action. My business address is PMB 422, 4110 SE Hawthorne Blvd., Portland, OR 97214-5246. I served a copy of the attached:

APPELLANT'S SUPPLEMENTAL BRIEF

on each of the following by placing same in an envelope addressed respectively as follows:

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Each said envelope was then, on March 10, 2016, sealed and deposited in the United States mail in Portland, Oregon, with postage fully prepaid.

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

Executed in Portland, Oregon, this 10th day of March, 2016.

MICHAEL R. SNEDEKER