

SUPREME COURT COPY

SUPREME COURT, STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,)
)
 Plaintiff/Respondent,)
)
 v.)
)
 PAUL WESLEY BAKER,)
)
 Defendant/Appellant.)
)
)
)

No: S170280

APPELLANT'S
SUPPLEMENTAL
OPENING BRIEF

SUPREME COURT
FILED

AUG 18 2015

Frank A. McGuire Clerk
Deputy

APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT
 OF THE STATE OF CALIFORNIA
 LOS ANGELES COUNTY
 SUPERIOR COURT CASE NO. LA045977-01

THE HONORABLE SUSAN M. SPEER, JUDGE

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DEATH PENALTY

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I. ARGUMENT

THE ABSTRACT OF JUDGMENT MUST BE CORRECTED¹

In counts 7, 10, and 16, appellant was charged with and convicted of violating Penal Code section 286, subdivision (c)(2), sodomy “by force, violence, duress, menace, and fear of immediate and unlawful bodily injury.” (Supp. CT III 99, 101, 106; 6CT 1403-1404, 1406.) The victims were all adult women. However, the abstract of judgment (36CT 9483-9484) erroneously shows that appellant was convicted on those three counts of sodomy with a person under 14 years old. This clerical error should be corrected.

In *In re Candelario* (1970) 3 Cal.3d 702, 705, 91 Cal.Rptr.497, 498, this Court stated:

It is not open to question that a court has the inherent power to correct clerical errors in its records so as to make these records reflect the true facts. The power exists independently of statute and may be exercised in criminal as well as in civil cases. The power is unaffected by the pendency of an appeal or a habeas corpus proceeding. The court may correct such errors on its own motion or upon the application of the parties. (Citations omitted.)

(Accord, *Aspen Cap. Corp. v. Marsch* (1991) 235 Cal.App.3d 1199, 1204, 286 Cal.Rptr.

¹ On June 10, 2015, through a telephone call and an email, counsel for appellant contacted counsel for respondent regarding this error, which was not raised in the opening brief. Counsel for respondent responded, “It appears you are correct re the incorrect abstract of judgment. Feel free to add the footnote and my agreement as to the clerical error that should be corrected by the trial court.” On June 11, 2015, counsel for appellant wrote the trial court requesting correction of the clerical error.

921, 924 [“A court of general jurisdiction has this inherent power to correct clerical error in its records, whether made by the court, clerk or counsel, at anytime so as to conform its records to the truth.”]; *People v. Jack* (1989) 213 Cal.App.3d 913, 914, 261 Cal.Rptr.860, 861.) A “court may correct these [clerical] errors on its own motion or upon application of the parties.” (*People v. Little* (1993) 19 Cal.App.4th 449, 452, 23 Cal.Rptr.2d 394, 395.)

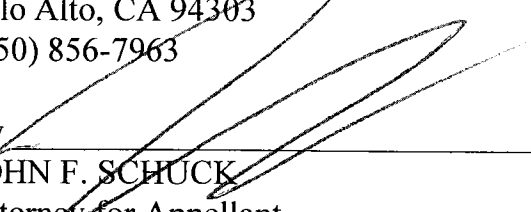
As to the convictions on counts 7, 10, and 16, the abstract of judgment does not reflect the true facts. This clerical error should be corrected on this Court’s own motion to show convictions for sodomy by force.

II. CONCLUSION

As shown, the abstract of judgment should be corrected.

Dated: August 7, 2015

Respectfully submitted
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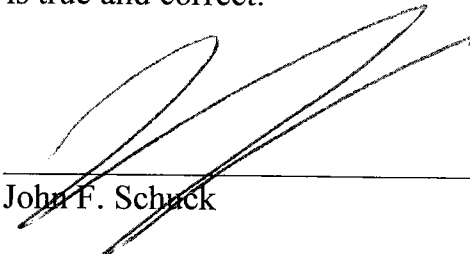
By 
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(Appointed by the Court)

CERTIFICATE OF WORD COUNT

In reliance on the word count of the computer program used to generate this brief, I, John F. Schuck, hereby certify that this Supplemental Opening Brief contains 416 words.

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

Dated: August 7, 2015



John F. Schuck

PROOF OF SERVICE

I, John Schuck, declare:

I am a citizen of the United States and a resident of the County of Santa Clara; I am over the age of eighteen years and am not a party to the within action; my business address is 885 N. San Antonio Road, Suite A, Los Altos, CA 94022.

On August 7, 2015, I served the within:

APPELLANT'S SUPPLEMENTAL OPENING BRIEF

on the following interested persons in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Altos, California addressed as follows:

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I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on the same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit.

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

Executed at Los Altos, California on August 7, 2015.



John E. Schuck