

SUPREME COURT COPY

In the Supreme Court of the State of California

**THE PEOPLE OF THE STATE OF
CALIFORNIA,**

Plaintiff and Respondent,

v.

LOUIS RANGEL ZARAGOZA,

Defendant and Appellant.

CAPITAL CASE

Case No. S097886

**SUPREME COURT
FILED**

MAR 22 2016

Frank A. McGuire Clerk

Deputy

San Joaquin County Superior Court Case No.

SP076824A

Honorable Thomas B. Teaford, Judge

**RESPONSE TO APPELLANT'S
SUPPLEMENTAL BRIEF**

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DEATH PENALTY

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INTRODUCTION

On February 24, 2016, the Court issued a letter regarding oral argument in this matter. The letter advised that “[i]f a party wished to bring to the court’s attention new authorities, new legislation, or other matters that were not available in time to be included in the party’s brief on the merits, the party must comply with [California Rules of Court,¹] rules 8.630(d) and 8.520(d).”² Thereafter, appellant filed a supplemental brief on March 15. However, his supplemental brief sets forth facts and law that were available to him at the time he submitted his brief on the merits. Instead, appellant requested permission to file a supplemental brief pursuant to rule 8.200(a)(4) after recently looking closely at his argument in Claim No VIII.³ Appellant’s reason for filing a supplemental brief does not comply with the Court’s direction. Accordingly, appellant’s supplemental brief should not be considered by this Court. Nonetheless, appellant’s argument set forth in his supplemental brief has no merit.

ARGUMENT

I. JUROR NO. 8’S LATE DISCLOSURE OF HIS BUSINESS CONTACT WITH STEVEN GAINES DID NOT ESTABLISH AN ACTUAL BIAS AGAINST APPELLANT

In his supplemental brief, appellant contends that Juror No. 8 actively concealed his working relationship with the victim’s brother, Steven Gaines. This, in turn, precluded appellant from challenging Juror No. 8 for cause or dismissing him with a peremptory challenge. Thus, appellant

¹ All further references to rules are to the California Rules of Court unless otherwise stated.

² Rule 8.502(d)(1) provides: “A party may file a supplemental brief limited to new authorities, new legislation, or other matters that were not available in time to be included in the party’s brief on the merits.”

³ Declaration of Michael R. Snedeker, in support of Application to File a Supplemental Brief, at page 1, paragraph 3.

asserts, the verdicts were likely influenced by improper factors and his convictions and sentence should be set aside. (SAOB 2-6.) Appellant's argument is misguided. The record clearly establishes that Juror No. 8 failed to recall his minimal business contact with Steven Gaines during jury selection, and when he remembered during trial, he immediately brought it to the trial court's attention and the issue was properly addressed by the court. Under these circumstances, there is no basis to conclude that Juror No. 8 was biased against appellant.

A. Procedural and Factual Background

As part of jury selection, the parties agreed to provide prospective jurors with a list of potential witnesses. (17 RT 4219.) A list of potential witnesses was attached to the jury questionnaire. The list included seven members of the Gaines family, including "Steve Gaines." (4 CT 1102-1103.) Each questionnaire requested that jurors read the potential witness list carefully to determine if they may know any of the potential witnesses listed and if so, "please indicate how you know them, and the nature of your familiarity." (SCT 7739.) Juror No. 8's response was "None." (*Ibid.*)

During jury trial, Juror No. 8 wrote the following message to the trial court:

Steve Gaines and myself have talked on the [phone] before. We both work for Save-Mart. I think this should be no problem, but you should know.

(28 RT 7415, 7418.) During the trial court's subsequent voir dire about the note, Juror No. 8 said that he "didn't realize it before now." (28 RT 7416.) Juror No. 8 explained that his contact with Steven Gaines involved "at least three conversations – within the last three to four months." (28 RT 7418.) The conversations were business related phone calls. (28 RT 7417.) Juror No. 8 noted that he had never met Steven Gaines in person, explaining, "I don't know who he is." (28 RT 7418.)

After Juror No. 8 indicated he was positive he would have contact with Steven Gaines in the future, appellant's counsel asked Juror No. 8 if he returned a verdict that's not proper with Mr. Gaines, would that cause any problems? In reply, Juror No. 8 stated: "I have no idea. That's something you would have to, you know, it's something that could be a possibility." (28 RT 107.) The trial court then asked Juror No 8 "regardless of what your verdict was, could you feel that you had some sort of obligation to explain to anybody?" Juror 8 said no. And when the court asked, "Including Mr. Gaines?", Juror No. 8 again said no. (28 RT 7419.) Appellant's counsel concluded the inquiry by asking, "You feel comfortable with where you're at right now then?" Juror No. 8 replied, "I'm fine. I just wanted to make you aware of this." (28 RT 7420.)

B. Juror No. 8 Late Disclosure of his Business Dealings with Steven Gaines did not Establish a Substantial Likelihood of Bias against Appellant

A criminal defendant has a constitutional right to a trial by an impartial jury. (U.S. Const., amends. VI and XIV; Cal. Const., art. I, § 16; *Irvin v. Dowd* (1961) 366 U.S. 717, 722 (*Irvin*); *In re Boyette* (2013) 56 Cal.4th 866, 888 (*Boyette*); *In re Hitchings* (1993) 6 Cal.4th 97, 110 (*Hitchings*.) Voir dire is critical in guaranteeing that this right is protected. (*In re Hitchings, supra*, 6 Cal.4th at p. 110.) The examination of prospective jurors exposes possible biases, both known and unknown, on the part of potential jurors and may provide the basis for a juror being excused for cause or a party exercising a peremptory challenge. " 'The necessity of truthful answers by prospective jurors if this process is to serve its purpose is obvious.' " (*Id.* at pp. 110-111, quoting *McDonough Power Equipment, Inc. v. Greenwood* (1984) 464 U.S. 548, 554.)

"A juror who conceals relevant facts or gives false answers during the voir dire examination thus undermines the jury selection process and

commits misconduct.” (*Hitchings, supra*, 6 Cal.4th at p. 111.) As this Court observed, “[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 knowledge to intelligently exercise peremptory challenges.” (*Id.* at pp. 111-112, citations omitted.)

Juror misconduct raises a rebuttable presumption of prejudice. (*Boyette, supra*, 56 Cal.4th at p. 889.) The presumption is rebutted

‘and the verdict will not be disturbed, if the entire record in the particular case, including the nature of the misconduct or other event, and the surrounding circumstances, indicates there is no reasonable probability of prejudice, i.e., no substantial likelihood that one or more jurors were actually biased against the defendant.’ [Citation.] In other words, the test asks not whether the juror would have been stricken by one of the parties, but whether the juror’s concealment (or nondisclosure) evidences bias.

(*Id.* at pp. 889-890, italics omitted.) “Before an appellate court will find error in failing to excuse a seated juror, the juror’s inability to perform a juror’s functions must be shown by the record to be a ‘demonstrable reality.’” (*People v. Holt* (1997) 15 Cal.4th 619, 659.) This Court independently reviews whether prejudice arose from juror misconduct. (*People v. Nesler* (1997) 16 Cal.4th 561, 582.)

In this instance, Juror No. 8 failed to disclose, in either his juror questionnaire or during voir dire, that he had three business telephone conversations with potential witness Steven Gaines three to four months before trial. Appellant did not assert an objection at trial that Juror No. 8 engaged in misconduct as a result, and appellant did not move to excuse Juror No. 8. (28 RT 7420.) Thus, appellant forfeited this claim for appellate review. (*People v. Russell* (2010) 50 Cal.4th 1228, 1250 [“A

claim of prejudicial misconduct is waived when the defendant fails to object to a juror's continued service and fails to seek a mistrial based upon prejudice.”]; accord *People v. Dykes* (2009) 46 Cal.4th 731, 808, fn. 22.)

Appellant’s claim also fails on the merits because the record does not disclose a substantial likelihood that Juror No. 8 was actually biased against appellant. Based on the entire record, it is evident that Juror No. 8 did not intentionally conceal from the court or the parties his business connection to Steven Gaines. In fact, as Juror No. 8 told the trial court, he did not realize he had prior business dealings with potential witness Steven Gaines until the day he reported it to the court. (28 RT 7416.) As soon as he realized that the potential witness Steven Gaines was the same Steven Gaines he had spoken with in a few business conversations with, Juror No. 8 notified the trial court. The belated disclosure shows a lack of bias. (See *People v. Ray* (1996) 13 Cal.4th 313, 344 [if juror was biased against the defendant, common sense suggests he would not have voluntarily disclosed his connection to the victim after the victim testified].) There is nothing in the record that established Juror No. 8 had a close personal relationship with Steven Gaines which would bias the juror in favor of the prosecution. In fact, Juror No. 8 had never personally met Steven Gaines. (28 RT 7418.)

In *In re Hitchings, supra*, 6 Cal.4th 97, 24 Cal.Rptr.2d 74, 860 P.2d 466, a juror lied in her jury questionnaire and on voir dire regarding her pretrial knowledge of the case. She also violated her oath as a juror and the trial court’s admonitions by discussing the case with nonjurors before the trial was over, and she lied at evidentiary hearings about the scope of her pretrial knowledge of the case and her discussions with nonjurors. (*Id.* at p. 118.) Because the evidence revealed that the juror had intentionally concealed material information during voir dire, the Court determined that the presumption of prejudice could not be rebutted and the matter was reversed. (*Id.* at p. 121-122.) *Hitchings* is readily distinguishable from

appellant's case. Juror No. 8 did not lie during voir dire or on his questionnaire. He merely did not recall his limited business dealing with Steven Gaines. Once he remembered, Juror No. 8 immediately alerted the trial court.

Nonetheless, appellant asserts that Juror No. 8 acknowledged the “possibility” that voting in favor of appellant would cause problems for him. (SAOB 6; 28 RT 7418-7419.) However, Juror No. 8 also said he had no idea whether his business dealings with Steven Gaines would do so. (28 RT 7419.) More importantly, when asked by the court immediately thereafter, Juror No. 8 stated that he felt no obligation to explain his verdict to anyone, including Steven Gaines. (28 RT 7420.) Appellant’s counsel apparently was satisfied by Juror No. 8’s answer because he did not object to Juror No. 8 continuing to serve. (*Ibid.*) Finally, the fact that Juror No. 8 was conscientious and concerned about his work, as his first appearance during voir dire demonstrated, does not establish an actual bias against appellant. (SAOB 1-3.) Instead, it merely revealed that that Juror No. 8 was a conscientious and hard worker.

This Court has held that “good faith when answering voir dire questions is the most significant indicator that there was no bias” and “an honest mistake on voir dire cannot disturb a judgment in the absence of proof that the juror's wrong or incomplete answer hid the juror's actual bias.” (*In re Hamilton* (1999) 20 Cal.4th 273, 300.) Here, it is evident that Juror No. 8’s late disclosure of his limited business dealings with Steven Gaines was an honest mistake, not an intentional or deliberate concealment of this fact. Thus, considering the totality of the circumstances, there is no basis to conclude that Juror No. 8 was biased against appellant. There being “no substantial likelihood ” that Juror No. 8 was “actually biased against” appellant (*id.* at p. 296), appellant’s claim should be denied.

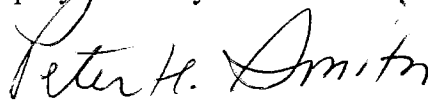
CONCLUSION

Accordingly, respondent respectfully requests that appellant's current claim, along with his previous claims set forth in his opening brief, relating to Claim VIII be denied.

Dated: March 18, 2016

Respectfully submitted,

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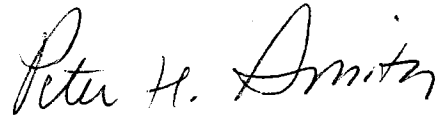
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CERTIFICATE OF COMPLIANCE

I certify that the attached **Response to Appellant's Supplemental Brief** uses a 13 point Times New Roman font and contains 1,909 words.

Dated: March 18, 2016

KAMALA D. HARRIS
Attorney General of California

A handwritten signature in cursive script that reads "Peter H. Smith".

PETER H. SMITH
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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v. Zaragoza**
No.: **S097886**

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 with postage thereon fully prepaid that same day in the ordinary course of business.

On March 18, 2016, I served the attached

RESPONSE TO APPELLANT'S SUPPLEMENTAL BRIEF

by placing a true copy thereof enclosed in a sealed envelope 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:

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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 March 18, 2016, at Sacramento, California.

Declarant