Cannon & Harris

Attorneys at Law
6046 Cornerstone Court West, Suite 141
San Diego, California 92121-4733
Telephone (619) 392-2936

June 13, 2014

PETITIONER'S SUPPLEMENTAL LETTER BRIEF

Mr. Frank A. McGuire
Clerk, California Supreme Court
350 McAllister Street
San Francisco, CA 94102

Re: ***People v. Vince Smith***
Supreme Court No. S210898
Court of Appeal No. D060317
Superior Court No. BAF004719

Dear Mr. McGuire:

On May 14, 2014, the Court directed petitioner to respond to two questions regarding the following sentence taken from CALCRIM No. 402:

> If the murder or voluntary manslaughter was committed for a reason independent of the common plan to commit the disturbing the peace or assault or battery, then the commission of murder or voluntary manslaughter was not a natural and probable consequence of disturbing the peace or assault or battery.

The Court asked whether this is a correct statement of the law and, if so, whether there is "evidence in the record to support a jury finding that the murders of this case were not committed for a reason independent of the common plan to commit the disturbing the peace or assault or battery." Petitioner respectfully submits the following responses.

PETITIONER'S SUPPLEMENTAL LETTER BRIEF

I.

THE SENTENCE IN QUESTION DOES NOT CORRECTLY STATE THE LAW BECAUSE IT ERRONEOUSLY ENGRAFTS AN EXCEPTION TO LIABILITY AS A CONSPIRATOR INTO LIABILITY UNDER THE NATURAL AND PROBABLE CONSEQUENCES THEORY OF AIDING AND ABETTING

The short answer to the Court's first question is relatively straightforward. While there are similarities between liability as a conspirator and liability as an aider and abettor, caselaw has rejected the application of this exception to liability in the context of conspiracy to liability as an aider and abettor under the natural and probable consequences doctrine. In *People v. Brigham* (1989) 216 Cal.App.3d 1039, Brigham and others were dispatched by a drug dealer to kill an enemy of the drug dealer. (*Id.* at pp. 1043-1044.) They came upon two women, and the 14-year-old son of one of the women, whose car had broken down. (*Id.* at pp. 1042, 1044.) Brigham first identified someone in the group as being the person targeted by the drug dealer. He later claimed that he then told the others that it was not the person being targeted. He also claimed that he tried to abort the attack after seeing a police car nearby. One of his associates refused to abort the attack and shot the 14-year-old in the face, killing him. (*Id.* at pp. 1044-1045.)

Brigham was tried and convicted of murder based on an aiding and abetting theory. (*People v. Brigham*, *supra*, 216 Cal.App.3d at p. 1042.) Brigham was not charged with conspiracy, but evidence of the conspiracy was admitted in proof of aiding and abetting. (*Id.*

at p. 1046.) Brigham complained on appeal that the trial court erred by refusing his proffered instruction on aiding and abetting, onto which he had engrafted the portion of CALJIC No. 6.15[1] providing that derivative liability must be vitiated if the "criminal act charged is an 'independent product' of the mind of the perpetrator." (*People v. Brigham*, *supra*, 216 Cal.App.3d at p. 1046, 1050.) The *Brigham* court found no error in the refusal of Brigham's proposed instruction. (*Id.* at p. 1051.) According to *Brigham*, what is important is an objective analysis of causation rather than a subjective inquiry into the state of mind of the perpetrator to determine whether the consequent act was an independent product of the perpetrator's mind. (*Ibid.*)

Brigham characterized the issue as being whether an aider and abettor may be "relieved of derivative criminal liability as a matter of law if that criminal act of the perpetrator is an 'independent product' of his mind, and is outside and not in furtherance of the criminal offense the aider and abettor originally agreed to aid or facilitate." (*People v. Brigham*, *supra*, 216 Cal.App.3d at p. 1045.) The court held that the trial court was not required to give CALJIC No. 6.15 because the aider and abettor's "derivative criminal liability continues to be factually determined by the test of whether the criminal act

---

[1] The version of CALJIC No. 6.15 discussed in *Brigham* provided as follows:

"No act or declaration of a conspirator that is an independent product of [his] [her] own mind and is outside the common design and not a furtherance of that design is binding upon [his] [her] co-conspirators, and they are not criminally liable for any such act." (CALJIC No. 6.15, 5th ed. 1988; *People v. Brigham*, *supra*, 216 Cal.App.3d at p. 1046, fn. 6.)

committed by the principal was a natural and probable (or foreseeable) consequence of an act the aider and abettor knowingly aided, encouraged, or facilitated." (*People v. Brigham*, *supra*, 216 Cal.App.3d at p. 1045.)

Brigham also contended that the trial court had a sua sponte duty to instruct on conspiracy -- and hence on the exception for acts that were the independent product of the perpetrator's mind -- when Brigham's defense strategy became apparent. (*People v. Brigham*, *supra*, 216 Cal.App.3d at p. 1050.) Brigham argued that the prosecutor's election to try the offense under an aiding and abetting theory in a case that was "equally susceptible of a conspiracy prosecution" unfairly denied Brigham the use of defenses accorded to defendants charged with conspiracy. (*Id.* at pp. 1051-1052.)

The *Brigham* court responded to that assertion first by acknowledging the broad charging discretion afforded to the prosecution, and the deference extended to that discretion by the courts. (*People v. Brigham*, *supra*, 216 Cal.App.3d at p. 1051.) *Brigham* then undertook an analysis of the foundations of derivative criminal liability, quoting extensively from *People v. Luparello* (1986) 187 Cal.App.3d 410:

> "[T]he concept of agency explains a great deal about why we feel justified in punishing an accomplice as if [he] were the perpetrator. ... [Citation.]" (*People v. Luparello*, *supra*, 187 Cal.App.3d at p. 440.) ¶ "Technically, only the perpetrator can (and must) manifest the mens rea of the crime committed. Accomplice liability is premised on a different or, more appropriately, an equivalent mens rea. [Citation.] This equivalence is found in intentionally encouraging or assisting or influencing the nefarious act. '[B]y intentionally acting to further the criminal actions of another, the [accomplice] voluntarily

> identifies himself with the principal party. The intention to further the acts of another, which creates liability under criminal law, may be understood as equivalent to manifesting consent to liability under the civil law.' [Citations.]"

(*Id.* at p. 1053, quoting *People v. Luparello*, *supra*, 187 Cal.App.3d at pp. 439-440.) Based on this analysis, *Brigham* held that the refused instruction would have been erroneous on the issue of aider and abettor derivative criminal liability. Using the phrasing used in *People v. Croy* (1985) 41 Cal.3d 1, *Brigham* held that:

> If the principal's criminal act charged to the aider and abettor is a reasonably foreseeable consequence of any criminal act of that principal, knowingly aided and abetted, the aider and abettor of such criminal act is derivatively liable for the act charged. The aider and abettor is not, therefore, exculpated as a matter of law from the act charged to him simply because it does not further the originally agreed criminal act or enterprise of the parties. The dissent's proposed instruction is erroneous because it would compel such exculpation on that rationale.

(*Id.* at p. 1054.)

Brigham thus is important for two reasons. First, *Brigham* directly answers the Court's first question. The sentence taken from CALCRIM No. 402 does not correctly state the law with regard to liability under the natural and probable consequences doctrine. Second, *Brigham* also directly supports petitioner's contention that liability under the natural and probable consequences doctrine of aiding and abetting requires a relationship -- akin to the master-servant relationship in agency law -- before an aider and abettor can be held liable for an unintended offense.

PETITIONER'S SUPPLEMENTAL LETTER BRIEF

Brigham was followed in *People v. Anderson* (1991) 233 Cal.App.3d 1646. In *Anderson*, Novak was a small time drug dealer who employed Anderson as a bodyguard. (*Id.* at p. 1650.) A man named Chen blackmailed Novak into providing information on other drug dealers so that Chen and his cohorts could rob them. Chen assembled a "hit squad" and recruited Anderson for the squad. (*Id.* at pp. 1650-1651.) Novak gave Chen specific information about another drug dealer, with whom Novak had problems, and they decided that the victim drug dealer would have to be killed because he might have been able to determine the source of the information (Novak) that led to the robbery. (*Id.* at pp. 1651-1652.) Chen, Anderson and two men named Young and Lee committed the robbery. During the robbery, Chen directed Young to kill the victims, but Young refused. Anderson attempted to kill the victims, but his gun misfired. Lee killed both victims by shooting them in the head. (*Id.* at pp. 1652-1653.)

The prosecutor in Anderson elected to use different theories of liability for the robbery and the murders. With regard to the robbery, Novak and Anderson were tried on the theory that the robbery was "a natural, reasonable and probable consequence of their knowing and intentional acts." (*People v. Anderson*, *supra*, 233 Cal.App.3d at p. 1653.) The prosecutor did not argue that that they were guilty of the murder under the natural and probable consequences doctrine, however, instead choosing to argue that the defendants were guilty of the murder under the felony-murder doctrine because the killings were

effected in the commission of the robbery "even if those killings were not natural, reasonable and probable consequences of the robbery itself." (*Id.* at p. 1655.)

Novak and Anderson both were convicted and sentenced to life in prison. (*People v. Anderson*, *supra*, 233 Cal.App.3d at p. 1654.) Although they were not charged with conspiracy, Novak and Anderson argued on appeal that the trial court erred by denying their request for special instructions based on the law of conspiracy. Novak and Anderson sought those instructions in order to support a defense based on the claim that they were not liable for the murders "because the killings occurred outside the common design, as the 'independent idea' of Chen or Lee, the actual gunman." (*Ibid.*)

The Court of Appeal found that the trial court's rulings were correct and held that the requested instructions "would have constituted erroneous and misleading statements of the law that was in fact applicable here to the charge appellants aided and abetted a robbery which was the predicate felony in a felony-murder prosecution." (*People v. Anderson*, *supra*, 233 Cal.App.3d at p. 1654, citing *People v. Brigham*, *supra*, 216 Cal.App.3d at p. 1050.) The court held that the exception to criminal liability based on a finding that the criminal act was the "'independent product' of the mind of another conspirator" is "foreign to the law of aider and abettor liability." (*People v. Anderson*, *supra*, 233 Cal.App.3d at p. 1656, citing *People v. Brigham*, *supra*, 216 Cal.App.3d at p. 1050.)

PETITIONER'S SUPPLEMENTAL LETTER BRIEF

The court held that liability as an aider and abettor "centers on causation," and not on whether the direct perpetrator's[2] act was an "independent product" of the direct perpetrator's mind. (*People v. Anderson*, *supra*, 233 Cal.App.3d at p. 1656.) The court noted that while there are similarities between liability as a conspirator and liability as an aider and abettor, there also are significant differences between the theories such that a defendant who is tried on the theory that he is an aider and abettor is not entitled to "defensive instructions regarding the limits of a conspirator's liability." (*Id.* at p. 1655, citing *People v. Brigham*, *supra*, 216 Cal.App.3d at p. 1050.) Quoting *Brigham*, the court held:

> "A subjective inquiry as to whether the perpetrator's committed crime was the 'independent product' of his mind, so as to lead to exculpation of the aider and abettor on that basis, is improper because the ultimate factual determination of the jury as to the liability of an aider and abettor is based instead on an objective analysis of causation; i.e., whether the committed crime was the natural and probable consequence of the principal's criminal act the aider and abettor knowingly encouraged or facilitated."

(*Id.* at p. 1656, quoting *People v. Brigham*, *supra*, 216 Cal.App.3d at p. 1051.)

That the direct perpetrator's state of mind is not determinative of liability under the natural and probable consequences doctrine also is supported by this Court's decisions in *People v. Favor* (2012) 54 Cal.4th 868 and *People v. Chiu* (June 2, 2014, S202724) ___

---

[2] The court used the word "principal" rather than direct perpetrator. The context of the holding, however, makes it clear that the court used the word "principal" to distinguish that person from the aider and abettor.

Cal.4th ___ [14 C.D.O.S. 6160]. In *Favor*, the defendant contended on appeal that the trial court erred by failing to instruct that the jury had to find that the "perpetrator's willfulness, deliberation, and premeditation were natural and probable consequences." (*Id.* at p. 874.) This Court rejected that claim, in large part, based on the Court's finding that the Legislature intended Penal Code section 664, subdivision (a), as a penalty provision. (*Id.* at pp. 876-877.) The Court instead held that a jury need only be required to find that an attempted murder -- and not a premeditated and deliberate attempted murder -- is a natural and probable consequence of the offense being aided and abetted. (*Id.* at pp. 879-880.) *Favor* thus can be seen as supporting the conclusion, at least within the context of attempted murder, that application of the natural and probable consequences doctrine does not turn on what is in the mind of the direct perpetrator.

In *Chiu*, *supra*, the issue before this Court varied from the issue in *Favor* in that premeditation and deliberation are in fact elements of first degree murder. (*Chiu*, slip opn. at p. 8.) The Court of Appeal reversed Chiu's conviction based on the trial court's failure to require the jurors to find that premeditated and deliberate murder was a natural and probable result of the target offense aided and abetted by Chiu. (*Id.*, slip opn. at p. 2.) This Court agreed with the necessity for reversal of Chiu's first degree murder conviction, but did so on a ground different than that found by the Court of Appeal. The Court's rationale in *Chiu* differed somewhat from the reasoning in *Favor* in that whether premeditation and

deliberation are elements of the offense is of limited or no import. The Court noted:

> We have never held that the application of the natural and probable consequences doctrine depends on the foreseeability of every element of the nontarget offense. [fn. omitted] Rather, in the context of murder under the natural and probable consequences doctrine, cases have focused on the reasonable foreseeability of the actual resulting harm or the criminal act that caused that harm.

(*Chiu, supra*, slip opn. at pp. 10-11.)

It should be clear that there is no place in this formulation for inquiry into the state of mind of the direct perpetrator other than to determine the existence of malice. The sentence taken from CALCRIM No. 402 does not accurately reflect the law with regard to aiding and abetting liability under the natural and probable consequences doctrine. Whether an act is committed for a reason independent of the common plan is but one of many factors the jurors should consider in determining whether an unintended offense is the natural and probable consequence of the offense being aided and abetted.

II.

THE SENTENCE IN QUESTION WAS ERRONEOUS BECAUSE THE INSTRUCTION IN ITS ENTIRETY PERMITTED THE JURY TO RETURN MURDER CONVICTIONS EVEN IF THE MURDERS WERE COMMITTED BY ONE OR MORE OF THE PEOPLE WHO WATCHED, BUT DID NOT HELP ARRANGE, THE FIGHT

The Court's first question directed petitioner to evaluate a single sentence taken out of context from the trial court's instructions. As discussed above, petitioner believes that sentence misstates the law. Should the Court disagree with that position, however, the Court

still must reverse petitioner's convictions because the context in which the sentence was uttered rendered it possible for the jurors to convict petitioner if the fatal shots were fired by anyone in the crowd that assembled to watch the fight.

The relevant instructions are as follows. First, the trial court instructed the jurors on the concept of aiding and abetting using the words "the perpetrator." The court instructed the jurors (1) that the aider and abettor must know the perpetrator's intent to commit a crime, (2) that the aider and abettor must intend to aid and abet the perpetrator in committing the crime and (3) that the aider and abettor must "in fact aid, facilitate, promote, encourage, or instigate the perpetrator's commission of that crime." (41 RT 8282.) Then, almost immediately after phrasing the requirements in terms of aiding and abetting a perpetrator, the trial court gave the following instruction -- using the word "co-participant" -- setting forth the natural and probable consequences doctrine:

> To prove the defendant is guilty of murder or the lesser offense of voluntary manslaughter, the People must prove that (1) the defendant is guilty of disturbing the peace or assault or battery; (2) during the commission of disturbing the peace or assault or battery, a *co-participant* in that crime committed the crime of murder or the lesser offense of voluntary manslaughter; and (3) under all the circumstances, a reasonable person in the defendant's position would have known that the commission of the murder or voluntary manslaughter was a natural and probable consequence of the commission of the disturbing the peace or assault or battery. *A co-participant in a crime is the perpetrator or anyone who aided and abetted the perpetrator*. It does not include a victim or a innocent bystander. A natural and probable consequence is one that a reasonable person would know is likely to happen if nothing unusual intervenes. A consequence is not reasonably foreseeable if it is merely possible. In deciding whether a

> consequence is natural and probable, consider all of the circumstances established by the evidence. If the murder or voluntary manslaughter was committed for a reason independent of the common plan to commit the disturbing the peace or assault or battery, then the commission of murder or voluntary manslaughter was not a natural and probable consequence of disturbing the peace or assault or battery.

(41 RT 8283, emphasis added.)

The flaw in this instruction should be manifest given the fact that the jump out in this matter was widely attended by members of YAH, blood gang members and crip gang members, any one of whom could be found to be "co-participants" by the jurors based on a finding that by their presence they intentionally facilitated, promoted, encouraged, or instigated the perpetrators commission of the fight. Even more to the point, there is reason to believe that the jurors did in fact attribute the killings to co-participants rather than to the direct perpetrators of the fight because, as discussed in petitioner's reply brief on the merits, there was substantial evidence suggesting that more than one person fired the fatal shots. (See: Petitioner's Reply Brief on the Merits, pp. 3-6.)

By extending the natural and probable consequences doctrine to the acts of co-participants, the trial court's instructions in this matter essentially changed the analysis to that of tort causation without regard to whether the person who commits the unintended offense acts "within the express commands or procurement" of the aider and abettor. Tort causation was not the rule under the common law. (Sayre, *Criminal Responsibility for the Acts of Another* (1930) 43 Harv.L.Rev. 689, 696.) Tort theory under the common law bore

similarities to vicarious criminal liability, but tort theory developed separately from the development of vicarious criminal liability. (Sayre, *supra*, at p. 694.) Professor Sayre noted that the doctrine of respondeat superior violated "the most deep-rooted traditions of criminal law" because it departed "from ordinary principles of causation and from the fundamental, intensely personal, basis of criminal liability." (Sayre, *supra*, at p. 702.) Because of this, according to Sayre, courts had rejected the application of tort causation in favor of the "strict principles of causation, as formulated in the sixteenth century in *Regina v. Saunders*, as reaffirmed in the eighteenth century in *Rex v. Huggins*, as consecrated by centuries of practice." (*Ibid.*)

Saunders and *Huggins* demonstrate that causation in tort is, and was, different from causation in the context of derivative criminal liability. It is difficult to imagine that Archer would not have been convicted had causation in the context of aiding and abetting been the same as causation in tort, as it was foreseeable that the poison provided by Archer could be consumed by someone other than the targeted victim. (See *Regina v. Saunders* (1575) 2 Plowd. 473.) In *Rex v. Huggins* (1730) 2 Strange 882; 2 Ld. Raym. 1574, Barnes was charged with the care of prisoners. Huggins was the warden of the fleet and Barnes was the servant of Huggins' deputy warden. Barnes was found guilty of the murder of a prisoner who was kept in barbaric conditions until he fell sick and died. Huggins was not convicted because Barnes acted without the command or knowledge of Huggins. Raymond wrote:

> It is a point not to be disputed but that in criminal cases the principal is not answerable for the act of the deputy, as he is in civil cases; they must each answer for their own acts, and stand or fall by their own behaviour. All the authors that treat of criminal proceedings, proceed on the foundation of this distinction; that to affect the superior by the act of the deputy, there must be the command of the superior, which is not found in this case. . . . The jury does not say he directed his being put into the room, [or] that he knew how long he had been there. . . ."

(Sayre, *supra*, at pp. 700-701, quoting *Rex v. Huggins*, *supra*, 2 Strange at p. 885.)

Huggins obviously does not take into account the natural and probable consequences doctrine, but that doctrine is an extension of potential liability as an aider and abettor. Because aiding and abetting liability depends in the first instance upon a relationship between the aider and abettor and direct perpetrator of the target offense, the foreseeability of unintended offenses could not, in and of itself, support a finding of criminal liability. It is only after the relationship between accessory and direct perpetrator is established that the accessory's liability can be extended to unintended acts. Tort concepts of foreseeability still are instructive within the context of aiding and abetting liability, but tort foreseeability alone is not enough.

III.

BECAUSE THE IDENTITIES OF THE KILLERS ARE UNKNOWN, THE REASONS FOR THE KILLINGS CANNOT BE DETERMINED

As discussed above, petitioner believes the sentence at issue in this brief did not correctly state the law. The Court's second question therefore is moot. Petitioner

nonetheless submits that there is no way to know why the killers -- whoever they were -- fired their weapons. The fight was over before any weapons were fired. The shooters could have drawn and fired their weapons because they wanted to kill crip gang members, because they saw petitioner draw his weapon, or because they saw Mister or someone else draw a weapon.

The bottom line is that there is no way to know why weapons were drawn and fired because the identities of the shooters are unknown, and because the instructions permitted the jurors to convict petitioner based on the acts of "co-participants" in addition to the acts of the direct perpetrators. There are possible reasons why the shooting was connected to the "common plan" and possible reasons why the shooting was independent of the "common plan." Either possibility is nothing more than speculation that ultimately is based on little more than the fact that the shooters were present at the fight.

CONCLUSION

The sentence in CALCRIM No. 402 indicating that murder or voluntary manslaughter is not a natural and probable consequence if it was for a reason independent of the common plan does not correctly state the law. The inclusion of the sentence essentially engrafted a facet of conspiracy law that has no application in the context of liability under an aiding and abetting theory. The caselaw that has addressed the issue has rejected the application of this exception to conspiracy liability to the law of aiding and abetting, and

this Court's recent decisions have strongly indicated that what is in the mind of the direct perpetrator is not relevant to, or determinate of, the analysis.

Even if the Court should disagree with petitioner's position with regard to the sentence in question, the Court still should not draw any conclusions based on the instruction because it applied, by its express terms, both to direct perpetrators and to "co-participants." The fight between petitioner's brother and other members of the YAH Squad was attended by members of YAH and blood gang members, one or more of whom could have been the persons who fired the fatal shots. Based on this instruction, the jurors in this matter could have convicted petitioner for the acts of those unknown persons simply because the jurors believed that by their presence, those unknown persons encouraged the fight and thus, under the instruction, were co-participants in the offense.

By extending liability to the acts of persons unrelated to petitioner, the instruction essentially expanded the common law of vicarious liability by engrafting tort causation into the common law of vicarious criminal liability. As noted by Professor Sayre, the application of tort causation to the law of vicarious criminal liability had been rejected by caselaw. Under the common law, petitioner potentially would have been civilly liable for the unintended acts of a "co-principal," but he would not have been held criminally liable unless the unintended acts followed naturally and probably from petitioner's command. Petitioner would have been held criminally liable only if he was in a relationship with the unknown

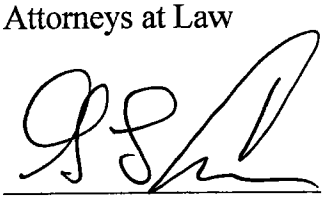
persons who fired the fatal shots.

Please inform the Court that counsel for petitioner remains available to address any other issues the Court may deem necessary or appropriate.

Respectfully submitted,

Very truly yours,

Cannon & Harris
Attorneys at Law



Gregory L. Cannon
Attorney for Petitioner
VINCE BRYAN SMITH

PETITIONER'S SUPPLEMENTAL LETTER BRIEF

CERTIFICATION OF WORD COUNT

I hereby certify that I have checked the length of this computer-generated brief using the word count feature of my word-processing application. (Cal. Rules of Court, rule 8.520(c)(1).) The brief as currently constituted, excluding tables, indices and this certificate, contains 4,282 words.

Dated: June 13, 2014

Gregory L. Cannon
Attorney for Petitioner
VINCE BRYAN SMITH

PETITIONER'S SUPPLEMENTAL LETTER BRIEF

PROOF OF SERVICE BY MAIL

I declare that I am over eighteen (18) years of age and not a party to the within action. My business address 6046 Cornerstone Court West, Suite 141, San Diego, California, 92121-4733. On June 13, 2014, I served **PETITIONER'S SUPPLEMENTAL LETTER BRIEF** on each of the following by placing a true copy thereof in a sealed envelope with postage fully prepaid to the remaining persons and entities addressed as follows:

Clerk of the Superior Court
County of Riverside
4100 Main Street
Riverside, CA 92501

For delivery to:
Hon. Patrick F. Magers

Deena Bennett, Esq.
Deputy District Attorney
3960 Orange Street, Suite 100
Riverside, CA 92501

Ryan Markson, Esq.
Deputy Public Defender
4200 Orange Street
Riverside, CA 92501

Mr. Vince B. Smith, AC-2716
Folsom State Prison
Bldg. 1 - B3 - 13
P.O. Box 715071
Represa, CA 95671-5071

Clerk, Court of Appeal
Fourth App. Dist., Div. One
750 "B" Street, Suite 300
San Diego, CA 92101

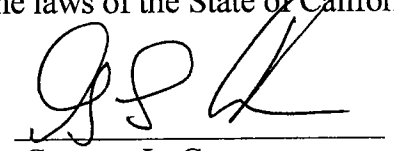
PROOF OF SERVICE BY ELECTRONIC SERVICE

Furthermore, I declare that I electronically served from my electronic service address of Cannon135635@gmail.com the same document referenced above on the same date to the following entities as indicated:

Appellate Defenders, Inc.: e-service-criminal@adi-sandiego.com
Attorney General: ADIEService@doj.ca.gov

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

Dated: June 13, 2014



Gregory L. Cannon