

SUPREME COURT COPY

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SUPREME COURT
FILED

DEC 31 2012

Frank A. McGuire Clerk
Deputy

December 28, 2012

Honorable Tani Cantil-Sakauye
Chief Justice, California Supreme Court
350 McAllister Street
San Francisco, California 94102-4797

Re: *People v. Edwards*
Case No. S073316

Dear Chief Justice,

In response to the Court's order dated December 19, 2012, appellant offers the following.

In this automatic appeal, appellant has made a Confrontation Clause challenge to the admission of the testimony of Dr. Fukumoto as to the factual findings and the professional opinions of the autopsy surgeon, Dr. Richards, who did not testify. See Appellant's Supplemental Opening Brief, pp. 43-66. In *People v. Dungo* (2012) 55 Cal.4th 608, the Court held that an autopsy surgeon's factual findings regarding the physical condition of a victim's body were not testimonial and thus were not subject to the Confrontation Clause. *Id.*, at 612. The Court specifically did not address or decide whether the professional opinions of the autopsy surgeon were subject to the Confrontation Clause. *Id.*, at 619. Appellant contends that such professional opinions are testimonial under *Williams v. Illinois* (2012) ___ U.S. ___, 132 S.Ct. 2221, because they are "sufficiently formal" to qualify as testimony and because their primary purpose was for possible use in a criminal trial. See *People v. Dungo, supra*, 55 Cal.4th at 644-46 (Corrigan, J., dissenting.) In *Merolillo v. Yates* (9th Cir. 2011) 663 F.3d 444, the State of California conceded that the defendant's right to confront witnesses was violated by the admission of hearsay testimony regarding the opinion of the autopsy surgeon. *Id.*, at 454. The Court of Appeals found the error prejudicial and reversed the murder conviction. *Id.*, at 455-59.

Appellant has also challenged under the Confrontation Clause the admission of hearsay evidence of a statement by laboratory personnel to a police officer that a list of seven possible suspects had been eliminated as donors of semen and fluids at the Deeble

DEATH PENALTY

crime scene. See Appellant's Supplemental Opening Brief, pp. 63-66. The out-of-court statement by lab personnel was obviously in response to a question by Sergeant Janssen and thus was testimonial under the Confrontation Clause. *E.g., Ocampo v. Vail* (9th Cir. 2011) 649 F.3d 1098, 1107-08 and cases therein cited.

Respectfully submitted

A handwritten signature in black ink that reads "Quin Denvir". The signature is written in a cursive, slightly slanted style.

Quin Denvir
Attorney For Appellant

QD/dln

Cc: See attached Proof of Service

PROOF OF SERVICE

I am a citizen of the United States and a resident of Sacramento County. I am over the age of eighteen years and not a party to the within above-entitled action; my business address is Rothschild Wishek & Sands LLP, 901 F Street, Sacramento, California 95814. On the below named date, I served the within

**Letter to Honorable Tani Cantil-Sakauye
Chief Justice, California Supreme Court**

***People v. Edwards*
Case No. S073316**

on the parties in said action as follows:

XXX (By REGULAR MAIL) by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States post office mail box at Sacramento, California, addressed as follows:

Arlene A. Servidal
Deputy Attorney General
Box 85266
San Diego, CA 92186-5266

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

Executed this 28th day of December, 2012 at Sacramento,

California.


Diana Nawlin

AMENDED PROOF OF SERVICE

I am a citizen of the United States and a resident of Sacramento County. I am over the age of eighteen years and not a party to the within above-entitled action; my business address is Rothschild Wishek & Sands LLP, 901 F Street, Sacramento, California 95814. On the below named date, I served the within

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on the parties in said action as follows:

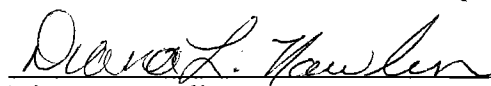
Frank A. McGuire Clerk

XXX (By REGULAR MAIL) by placing a true copy thereof enclosed in a **Deputy** sealed envelope with postage thereon fully prepaid, in the United States post office mail box at Sacramento, California, addressed as follows:

Edward Roberts
CDC No. P-11700
San Quentin State Prison
San Quentin, CA 94974

I, Diana L. Nawlin, declare under penalty of perjury that the foregoing is true and correct.

Executed this 2nd day of January, 2013 at Sacramento, California.


Diana L. Nawlin