

# SUPREME COURT COPY COPY

KAMALA D. HARRIS  
Attorney General

State of California  
DEPARTMENT OF JUSTICE



300 SOUTH SPRING STREET, SUITE 1702  
LOS ANGELES, CA 90013

Public: (213) 897-2000  
Telephone: (213) 897-4920  
Facsimile: (213) 897-6496  
E-Mail: Robin.Davis@doj.ca.gov

May 20, 2014

Frank A. McGuire  
Court Administrator and Clerk of the Supreme Court  
California Supreme Court  
350 McAllister Street  
San Francisco, CA 94102

SUPREME COURT  
FILED

MAY 22 2014

RE: People v. Robert Carrasco (Death Penalty)  
California Supreme Court Case No. S077009

Frank A. McGuire Clerk  
Deputy

Dear Mr. McGuire:

On May 19, 2014, opposing counsel in the above-named case served a Letter of Additional Authorities ("Letter"), informing the Court of additional cases he intends to cite at oral argument on May 29, 2014. In the letter, counsel describes four cases not previously cited in the briefs, and explains why he believes the cases relate to the instant case. (Letter at 1-3.) He also cites a fifth case not cited in the briefs, although he fails to describe it or designate it as an additional authority. (Letter at 3, citing *Kyles v. Whitley* (1995) 514 U.S. 419, 434 [115 S.Ct. 1555, 131 L.Ed.2d 490] (*Kyles*)). Please inform the Court that respondent hereby opposes counsel's improper reliance on *Kyles* and *Milke v. Ryan* (9th Cir. 2013) 711 F.3d 998 (*Milke*), to support a claim not raised in Appellant's Opening Brief.

In *Milke*, the United States Court of Appeals for the Ninth Circuit held that the defendant was denied due process and a fair trial because the prosecutor committed error under *Brady v. Maryland* (1963) 373 U.S. 83 [83 S.Ct. 1194, 10 L.Ed.2d 215] (*Brady*), by failing to inform the defense of crucial impeachment evidence that the investigating detective, on whose testimony the prosecution case was based, had committed perjury and violated suspects' rights on multiple occasions. (*Milke, supra*, 711 F.3d at p. 1012-1019.) The cited portion of *Kyles* deals with the materiality element under *Brady*.

Counsel here states that *Milke* is relevant to the claim raised in Argument X of the opening brief. However, the argument counsel proffers as to *Milke* and *Kyles* does *not* relate to the claim raised in Argument X. In Argument X, appellant claimed that trial counsel was ineffective at the guilt phase, and the trial court abused its discretion in denying appellant's new trial motion on that ground. One of the grounds underlying appellant's claim was that trial counsel should have impeached the testimony of prosecution witness Shane Woodland with his two recorded statements to police and the prosecutor. (AOB 202-206.) In his letter, counsel argues that *Milke* "is similar" to this case because the jury here was never informed that two

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interviews of Woodland took place: one on January 30, 1997, and one on February 10, 1997. Counsel recounts Detective Coblenz's testimony that February 10, 1997, was the first time he spoke with Woodland. Counsel argues that the prosecutor knew the detective's testimony was false, but she failed to correct him. Counsel concludes that appellant did not receive a fair trial because the jury was never informed of the first interview or its contents. (Letter of Additional Authorities at 3, citing 23RT 2692.)

To the extent counsel intends to rely on *Milke* and *Kyles*, or Detective Coblenz's cited testimony, for the proposition that the prosecutor committed misconduct or violated *Brady*, such claim is forfeited by his failure to raise it in the opening brief. (See *People v. Duff* (2014) 58 Cal.4th 527, 550, fn. 9 [new claims may not be raised in the reply brief].) Although *Milke* was decided after briefing in this case was complete, counsel was aware of Detective Coblenz's testimony, and the general law regarding prosecutorial error and *Brady*, when this case was briefed. Nevertheless, he failed to raise any claim regarding Detective Coblenz's testimony, or any claim of prosecutorial error relating to that testimony. Allowing counsel to argue a new claim at oral argument would unfairly prejudice respondent.

For the foregoing reasons, respondent respectfully requests that appellant's counsel not be permitted to argue any new issues at oral argument, and that the argument raised for the first time in the Letter of Additional Authorities be summarily rejected.

Sincerely,



ROBERTA L. DAVIS  
Deputy Attorney General

For KAMALA D. HARRIS  
Attorney General

**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: ***People v. Robert Carrasco***  
No.: **S077009**

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 May 21, 2014, I served the attached **LETTER TO THE COURT DATED MAY 20, 2014**, 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 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

**Robert R. Bryan**  
**Law Offices of Robert R. Bryan**  
**2107 Van Ness Avenue, Suite 203**  
**San Francisco, CA 94109-2572**

**The Hon. Michael B. Harwin, Judge**  
**Los Angeles County Superior Court**  
**Northwest District**  
**6230 Sylmar Avenue**  
**Dept. M**  
**Van Nuys, CA 91401**

**Maria Elena Arvizo-Knight**  
**Death Penalty Appeals Clerk**  
**Los Angeles County Superior Court**  
**Criminal Appeals Unit**  
**Clara Shortridge Foltz Criminal Justice**  
**Center**  
**210 West Temple Street, Room M-3**  
**Los Angeles, CA 90012**

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 May 21, 2014, at Los Angeles, California.

\_\_\_\_\_  
C. Esparza  
Declarant

\_\_\_\_\_  
  
Signature