

SUPREME COURT COPY

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May 7, 2014

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

SUPREME COURT
FILED

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Frank A. McGuire Clerk
Deputy

RE: *People v. Justin Merriman (Death Penalty)*
Supreme Court of the State of California, Case No. S097363
Notice of Supplemental Authorities

Dear Mr. McGuire:

At oral argument on May 29, 2014, respondent may discuss the following decisions, all of which were issued after the respondent's brief was filed in this case.

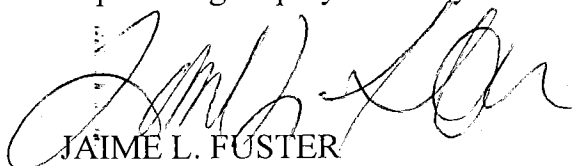
The following cases are relevant to appellant's claim of juror bias (Argument I of AOB). In *In re Boyette* (2013) 56 Cal.4th 866, 889-890, this Court found no substantial likelihood of actual bias where a juror did not intentionally and deliberately fail to disclose at voir dire information about his criminal record and alcohol problems as well as the criminal record of a distant relative and his son's drug addiction. This Court clarified the test for prejudice "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 p. 890.) In *Smith v. Swarthout* (9th Cir. 2014) 742 F.3d 885, 892-893, the Ninth Circuit held that, in order to obtain a new trial based on a juror's failure to disclose information during voir dire, a defendant must show the juror failed to answer honestly a material question and a correct response would have provided a valid basis for a challenge for cause. In *People v. Linton* (2013) 56 Cal.4th 1146, this Court pointed out jurors "are allowed to reflect about the case during the trial and at home In fact, it is unrealistic to expect them not to do so." This Court found that a juror's comment to her husband about the case did not indicate she was unwilling to fairly deliberate when it came time to do so and did not show she had prejudged case. (*Id.* at p. 1195.) In *People v. Allen and Johnson* (2011) 53 Cal.4th 60, 72-76, this Court found no prejudgment or misconduct where a juror held a preliminary view of the case before deliberations but his mind remained open to fair consideration of the evidence and instructions during deliberations.

DEATH PENALTY

The following cases are relevant to appellant's claim that potential jurors were improperly excluded for cause (Argument XI of AOB). In *People v. Whalen* (2013) 56 Cal.4th 1, 25-26, this Court reaffirmed that a trial court's ruling as to a juror's bias is reviewed for abuse of discretion and that deference must be given to the trial court's evaluation of a juror's actual state of mind when the juror supplies conflicting or equivocal responses. (See also *People v. Manibusan* (2013) 58 Cal.4th 40, 60 [trial court has broad discretion in determining whether there is a reasonable possibility that prospective juror could consider imposing death].) In *People v. McKinzie* (2012) 54 Cal.4th 1302, 1331-1332, 1334-1336, this Court deferred to the trial court's excusal of prospective jurors who were equivocal about their ability to impose the death penalty in single-murder cases. In *People v. Fuiava* (2012) 53 Cal.4th 622, 660-661, this Court found the trial court could reasonably view a prospective juror's remarks that she could not be fair in assessing penalty and that it would be "very unlikely" she ever vote for death, as establishing her ability to follow the law would be substantially impaired.

Respectfully submitted,

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DECLARATION OF SERVICE

Case Name: **People v. Merriman**

No.: **S097363**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the Bar of this Court at which member's direction this service is made. I am 18 years of age or older and not a party to the within entitled cause; 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 that same day in the ordinary course of business.

On May 8, 2014, I placed the attached

LETTER DATED May 7, 2014 TO FRANK A. MCGUIRE RE PEOPLE
V. MERRIMAN, S097363

in the internal mail collection system at the Office of the Attorney General, 300 S. Spring Street, Los Angeles, California 90013, for deposit in the United States Postal Service that same day in the ordinary course of business, in a sealed envelope, postage thereon fully prepaid, addressed as follows:

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I declare under penalty of perjury the foregoing is true and correct and that this declaration was executed on May 8, 2014, at Los Angeles, California.

L. Luna

L. Luna
Signature

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