

AUTOMATIC APPEAL

**IN THE SUPREME COURT OF THE STATE OF
CALIFORNIA**

PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff and Respondent,

v.

ARTURO JUAREZ SUAREZ,

Defendant and Appellant.

DEATH PENALTY CASE

NO. S105876

(Napa Co. Super. Ct.
No. CR 103779)

Automatic Appeal from the Judgment of The Superior Court of
The State of California in and for The County of Napa
The Honorable W. Scott Snowden, Presiding

APPELLANT'S SUPPLEMENTAL REPLY BRIEF

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APPELLANT’S SUPPLEMENTAL REPLY BRIEF

**THIS COURT SHOULD OVERRULE *PEOPLE v. RISER*
AND ENFORCE CODE OF CIVIL PROCEDURE SECTION
229.**

Respondent writes that the holding at issue in *People v. Riser* (1956) 47 Cal.2d 566, has been affirmed numerous times by this Court in the decades since it was decided, and the Legislature has not amended the Penal Code or California Rules of Civil Procedure to reverse its impact. (Respondent’s Supplemental Brief (“RSB”), 6-8.) In this instance, these arguments cannot prevail.

Arguments based on supposed legislative acquiescence rarely do much to persuade. [Citation.] Regardless, while it may sometimes be true that legislative inaction signals acquiescence when there exists both a well-developed body of law interpreting a statutory provision and

numerous amendments to a statute without altering the interpreted provision, that is not the case here.’ [Citation.]

(*Scher v. Burke* (2017) 3 Cal.5th 136, 147.)

This Court was confronted with a similar issue of legislative silence after its opinion interpreting a statute on how much movement was required for a robbery to transform into a kidnapping. The state argued that the Court’s earlier interpretation of the statute had been made binding by subsequent legislative failure to undo an interpretation that this Court had come to see was wrong.

Legislative silence after a court has construed a statute gives rise at most to an arguable inference of acquiescence or passive approval, the weaknesses of which have been exposed elsewhere. (fn omitted.) *But something more than mere silence should be required before that acquiescence is elevated into a species of implied legislation such as to bar the court from reexamining its own premises.*

People v. Daniels (1969) 71 Cal.2d 1119, 1127–1128; emphasis added.)

There have not been “numerous amendments.” The statute was moved in 1988, along with many other juror-related statutes, to the same chapter of the Code of Civil Procedure as part of

Assembly Bill No. 2617, the Trial Jury Selection and Management Act (1988 Cal ALS 1245).¹ Code of Civil Procedure Section 228, for example, was formerly Section 602 of that code.

Code of Civil Procedure Section 229 came from the penal code, where it was Penal Code Section 1074, subd. 8. It has remained unchanged since at least 1872, and probably back to 1850 when the first penal code statutes were enacted in California.

In 1857 this Court reversed a death penalty case under the predecessor statute because of the discharge of a juror who was opposed to the death penalty, but not so strongly that he would find a guilty person innocent to avoid it:

Many men are opposed on principle to capital punishment, because, as often remarked, they believe that the worst use

¹ The intent of the 1988 act was as follows: “The Legislature recognizes that trial by jury is a cherished constitutional right, and that jury service is an obligation of citizenship. It is the policy of the State of California that all persons selected for jury service shall be selected at random from the population of the area served by the court; that all qualified persons have an equal opportunity, in accordance with this chapter, to be considered for jury service in the state and an obligation to serve as jurors when summoned for that purpose; and that it is the responsibility of jury commissioners to manage all jury systems in an efficient, equitable, and cost-effective manner, in accordance with this chapter.”

that can be made of a man is to hang him; they believe that society would be benefitted by the adoption of some other mode of punishment, and yet, as long as the law provides that certain crimes shall be punished with death, would feel no conscientious scruples in finding a verdict of guilty against one accused of such crime.

(*People v. Stewart* (1857) 7 Cal. 140, 143, 144.)

Statutory ambiguity usually arises out of real-life experiences shortly after a statute is passed, or some other events that cast doubt on an old interpretation. (See, e.g., *Salcido v. Superior Court* (2020) 44 Cal.App.5th 998; *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.) The *Riser* Court not only failed to point out any linguistic ambiguities in the statute, but also did not point to anything that had changed over the preceding century that warranted a different interpretation of the statute.

Respondent asserts that “Appellant’s interpretation would also fly in the face of decades of practice and precedent from this Court and the United States Supreme Court and would invite jury nullification of the death penalty system.” (RSB 8.)

But there is not one such U.S. Supreme Court precedent. (See ASB 13-14.) This hyperbole is empirically false as well.

According to the California Department of Corrections and Rehabilitation, there were 445 persons executed in California between 1893 and 1955, the year before *Riser* was decided. The annual rate at which death penalty sentences were carried out varied widely—but the great majority of executions ever carried out in California were carried out while the language of Code of Civil Procedure Section 229 was read to mean what it says, and “death qualification” did not exist.² The statute does not permit jury nullification; it defines jury nullification.

In sum, the language of this statute was not analyzed by the *Riser* court, which was only concerned with what it believed were the malign policy effects of literally construing the statute to mean what it said – that it would mean the end of the death penalty. This was factually without support, as well as an improper use of judicial authority.

Reversing decades of precedent can and should be done when the interpretation of a law is plainly wrong. (*Ramos v. Louisiana* (2020) ___ U.S. ___ [2020 U.S. LEXIS 2407].) There are

² California Department of Corrections and Rehabilitation, *Number of Executions 1893 to Present* <<https://www.cdcr.ca.gov/capital-punishment/number-of-executions-1893-to-present/>> (consulted May 21, 2020).

no principles of statutory construction that would preclude this Court from declaring that Code of Civil Procedure 229 means exactly what it says. Its erroneous application at Appellant's trial requires reversal of his guilt convictions and sentence of death.

CONCLUSION

For the foregoing reasons, the judgment against Appellant must be reversed.

Respectfully submitted,

Dated: May 24, 2020

By: _____ /s/

MICHAEL R. SNEDEKER

LISA R. SHORT

Attorneys for Appellant

ARTURO JUAREZ SUAREZ

CERTIFICATE OF WORD COUNT

After conducting a word count on this supplemental brief,
I have determined there are a total of 1018 words in a Century
Schoolbook 13-point font.

Respectfully submitted,

Dated: May 24, 2020 By: /S/
MICHAEL R. SNEDEKER
LISA R. SHORT

Attorneys for Appellant
ARTURO JUAREZ SUAREZ

DECLARATION OF ELECTRONIC SERVICE

Re: *People v. Arturo Juarez Suarez*, Cal. Supreme Court No. S105876; Napa Co. Super Ct. No. CR 103779. I, the undersigned, declare that I am over 18 years of age, and not a party to the within cause; my business address is PMB 422, 4110 SE Hawthorne Blvd., Portland, Oregon 97214. My electronic service address is m.snedeker@comcast.net. On May 24, 2020, I served a true copy of the attached

APPELLANT’S SUPPLEMENTAL REPLY BRIEF

on each of the following, by electronic mail, addressed as follows:

Patricia Daniels: pdaniels@capsf.org

California Appellate Project efilng: filng@capsf.org

DECLARATION OF SERVICE BY MAIL

Re: *People v. Arturo Juarez Suarez*, Cal. Supreme Court No. S105876; Napa Co. Super Ct. No. CR 103779. I, the undersigned, declare that I am over 18 years of age, and not a party to the within cause; my business address is PMB 422, 4110 SE Hawthorne Blvd., Portland, Oregon 97214. My electronic service address is m.snedeker@comcast.net. On May 24, 2020, I served a true copy of the attached

APPELLANT’S SUPPLEMENTAL REPLY BRIEF

on each of the following, by placing same in an envelope (or envelopes) addressed as follows:

Arturo Juarez Suarez
#T-47397
CSP-SQ; 4-EB-36
San Quentin, CA 94974

Clerk, Napa County Superior Curt.
825 Brown Street
Napa, CA 94559

Each said envelope was then, on May 24, 2020, sealed and deposited in the United States mail at Portland, Oregon, Multnomah County, the county in which I am employed, with the postage thereon fully prepaid. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 24, 2020, in Portland, Oregon.

/s/
MICHAEL R. SNEDEKER

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **PEOPLE v. SUAREZ (ARTURO JUAREZ)**

Case Number: **S105876**

Lower Court Case Number:

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

5/26/2020

Date

/s/Michael Snedeker

Signature

Snedeker, Michael (62842)

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