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Supreme Court of the State of California
San Francisco Branch
350 McAllister Street
San Francisco, CA 94102-4797

RE: People v. Grimes
Case No. S076339

Dear Honorable Chief Justice Tani Cantil-Sakauye and Honorable Associate Justices:

This is respondent's supplemental letter brief responding to the three questions posed in this Court's June 28, 2014, order. As discussed more thoroughly below, respondent did not forfeit any harmless error argument, and any error in the exclusion of John Morris's additional statements to Misty Abbott and Albert Lawson was harmless in the guilt and penalty phases. Appellant's convictions and death sentence should be affirmed.

1. Does the Attorney General's failure to argue in the answer brief that an alleged error is harmless constitute forfeiture of any harmless error argument regarding either state law errors or federal constitutional errors?

No.

There is no forfeiture because a harmless error argument was made to this Court before the matter was initially submitted

Respondent acknowledges that counsel for respondent stated at oral argument that a harmless error argument had been "omitted" from the answer brief. However, respondent included in the captioned response to appellant's claim of constitutional error reasons why any error in excluding Morris's additional statements to Misty Abbott and Albert Lawson should be deemed harmless. This argument would have put appellant on notice that respondent was contending that appellant was not prejudiced by any error. The answer states:

> Moreover, the court's ruling did not completely deprive appellant of the ability to present evidence that Morris had acted alone when he killed Bone. Indeed, Morris's statements that were

> ruled admissible supported appellant's theory that Morris had acted alone. (See 24RT 6796-6797, 6803 ["*I* killed that old lady" and "*I* stabbed her. *I* grabbed her by the throat." (Italics added.)]; 24RT 6798-6799, 6803 [statements to Abbott that "*he* murdered the little old lady," "It didn't work...strangling her...so *I* stabbed her," and that "*he* killed her...she wouldn't die choking her, so *I* had to get a knife from the kitchen." (Italics added.)].) Accordingly, appellant has not demonstrated that the trial court's exclusion of evidence under state law violated his federal constitutional rights.

(RB 77.)

Respondent recognizes that the California Rules of Court require that arguments raised in a brief must be made "under a separate heading or subheading summarizing the point," and include citations to relevant authority. (Cal. Rules of Court, rules 8.204(a)(1)(B), 8.360(a).) Respondent also recognizes that the failure to comply with these rules may result in forfeiture of the argument. (*People v. Harper* (2000) 82 Cal.App.4th 1413, 1419, fn. 4 ["[A]n argument raised in such a perfunctory fashion is waived."].)

But, here, respondent's brief does include reasons why any error in the court's ruling should be deemed harmless, and whether the exclusion of Morris's statements could be deemed harmless was discussed at oral argument before the matter was submitted. Therefore, any failure to comply with court rules concerning the content and form of briefs should not result in forfeiture in this case.

"Counsel must ensure that all points are properly presented in the original briefs and argument before the matter is submitted [citation], for once the case is submitted, we assume that counsel 'have presented all the reasons upon which they rely for an affirmance or a reversal of judgment.'" (*Alameda County Management Employees Assoc. v. Superior Court* (2011) 195 Cal.App.4th 325, 338, fn. 10 [discussing argument made for the first time in a petition for rehearing].) To the extent there was any deficiency in respondent's presentation of a harmless error argument in the answer brief, counsel for respondent expressly stated at oral argument that any omission of a harmless error argument in the answer brief should not be interpreted as a forfeiture. Counsel for respondent also stated during argument reasons why any error in the court's ruling should be deemed harmless in the guilt and penalty phases.

Under the circumstances, respondent urges this Court to find that respondent did not forfeit any harmless error argument notwithstanding any failure to comply with the court rules. But even if respondent has forfeited the opportunity to make a harmless error argument, this Court has an independent duty to review the record to determine whether the error may be deemed harmless under state law and the federal Constitution.

Harmless error – state law

Assuming, arguendo, this Court finds that respondent forfeited a harmless error argument under state law, that forfeiture does not affect this Court's independent state constitutional duty to determine whether any error was harmless in the guilt and penalty phases. The California Constitution explicitly states:

> No judgment shall be set aside, or new trial granted, in any cause, on the ground of misdirection of the jury, or of the improper admission or rejection of evidence, or for any error as to any matter of pleading, or for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.

(Cal. Const. Art. VI, § 13.)

In the guilt phase, "[a] 'miscarriage of justice' should be declared only when the court, 'after an examination of the entire cause, including the evidence,' is of the 'opinion' that it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error. (*People v. Watson* (1956) 46 Cal.2d 818, 836.) The *Watson* harmless error standard "applies to all nonstructural state law error [citation], and requires a defendant to show that without the error a more favorable outcome was reasonably probable." (*People v. Hurtado* (2002) 28 Cal.4th 1179, 1190-1191, citing *People v. Cahill* (1993) 5 Cal.4th 478, 492.)

This Court applies a different harmless error standard to independently assess error in the penalty phase. This Court uses "the reasonable possibility test as [its] articulation of the constitutional 'miscarriage of justice' standard when assessing the effect of state-law error at the penalty phase of a capital trial." (*People v. Brown* (1988) 46 Cal.3d 432, 448.) "This test is effectively the same as that under *Chapman v. California* (1967) 386 U.S. 18[], which asks whether the error is harmless beyond a reasonable doubt." (*People v. Wilson* (2008) 43 Cal.4th 1, 28.)

The state Constitution prohibits a reviewing court from reversing a conviction without independently reviewing the trial record to determine whether "the error complained of has resulted in a miscarriage of justice." Any possible failure by respondent does not relieve appellant of his burden to demonstrate prejudice, or relieve this Court of its independent duty to determine whether the error was harmless at the guilt and penalty phases.

Harmless error – federal Constitution

Assuming, arguendo, that any error in excluding Morris's statement rises to the level of federal constitutional error, and this Court finds that respondent's answer to appellant's claim of federal constitutional error was insufficient to preserve a harmless error argument, that forfeiture

does not affect this Court's independent duty to determine whether any error was harmless beyond a reasonable doubt in the guilt and penalty phases.

"[B]efore a federal constitutional error can be held harmless, the court must be able to declare a belief that it was harmless beyond a reasonable doubt." (*Chapman v. California* (1967) 386 U.S. 18, 24.) "The Court has the power to review the record de novo in order to determine an error's harmlessness." (*Arizona v. Fulminante* (1991) 499 U.S. 279, 295-296.) "In so doing, it must be determined whether the State has met its burden of demonstrating that the admission of the [erroneous evidence] did not contribute to [the defendant's] conviction." (*Id.* at p. 296) In this context, the "State" refers to evidence in the trial record. (*Id.* at p. 297.)

In *Arizona v. Fulminante*, *supra*, 499 U.S. 279, the Supreme Court found based on its "*review of the record* . . . that the State has failed to meet its burden" of demonstrating the error's harmlessness. (*Id.* at p. 297, italics added.) Similarly, this Court has stated, "If, after *examination of the record*, the reviewing court concludes beyond a reasonable doubt that the jury must have found the defendant's guilt beyond a reasonable doubt, the error is harmless." (*People v. Aranda* (2012) 55 Cal.4th 342, 367, italics added; see also *People v. Cahill*, *supra*, 5 Cal.4th at p. 482 ["U]nder *Fulminante*, a state court, without violating the federal Constitution, now may affirm a conviction despite the erroneous admission of an involuntary confession, when the *trial record* establishes that the admission of the confession was harmless beyond a reasonable doubt." (Italics added.)]; but see *People v. Jackson* (2014) 58 Cal.4th 724, 802 (conc. & dis. opn. of Liu, J.) ["The court's reliance on this argument [not made by the Attorney General] seems a rather questionable way to adjudicate whether *the state* has carried *its burden* of proving the absence of prejudice beyond a reasonable doubt." (Original italics.)].)

In *O'Neal v. McAninch* (1995) 513 U.S. 432, the Supreme Court addressed the confusion that arises when a prejudice determination is discussed in terms of a party's burden of proof. *O'Neal* explained:

> The case before us does not involve a judge who shifts a "burden" to help control the presentation of evidence at a trial, but rather involves a judge who applies a legal standard (harmlessness) to a record that the presentation of evidence is no longer likely to affect. In such a case, we think it conceptually clearer for the judge to ask directly, "Do I, the judge, think that the error substantially influenced the jury's decision?" than for the judge to try to put the same question in terms of proof burdens (e.g., "Do I believe the party has borne its burden of showing ...?"). As Chief Justice Traynor said:
>
> > "Whether or not counsel are helpful, it is still the responsibility of the . . . court, once it concludes there was error, to determine whether the error affected the judgment. It must do so without benefit of such aids as presumptions

> or allocated burdens of proof that expedite fact-finding at the trial." R. Traynor, The Riddle of Harmless Error 26 (1970) (hereinafter Traynor).

(*Id.* at pp. 436-437 [discussing federal court's determination of prejudice on habeas corpus]; *People v. Jackson*, *supra*, 58 Cal.4th at p. 807 (conc. & dis. opn. of Liu, J.).)

To assess prejudice under the federal Constitution, the reviewing court must review the record to determine whether the error affected the judgment. Any failure by respondent to include a harmless error argument in the answer brief does not relieve this Court of its independent duty to determine whether the error was harmless beyond a reasonable doubt at the guilt and penalty phases.[1]

2. Assuming the trial court erred in excluding the hearsay statements of John Morris to Misty Abbott and Albert Lawson that were proffered by defendant as statements against interest, does the error require reversal of the special circumstances or death sentence?

No.

Trial court's ruling on the admissibility of Morris's statements to Misty Abbott and Albert Lawson

Appellant sought to present evidence in the guilt phase of Morris's statements to Misty Abbott and Albert Lawson. The court excluded Morris's statement to Abbott that appellant and Wilson did not participate in the killing, and that they "looked at [Morris] as if they were saying, what in the hell are you doing, dude." (24RT 6750, 6759, 6798, 6803.) The court also excluded Morris's statement to Lawson that appellant and Wilson "were in the house but took no part in the actual killing and were in some other place in the house." (24RT 6797, 6786-6789, 6797, 6803.)

The court ruled, however, that appellant could present evidence of Morris's statement to Abbott that "he murdered the little old lady," "It didn't work . . . strangling her . . . so I stabbed her," and that "he killed her . . . she wouldn't die choking her, so I had to get a knife from the kitchen." (24RT 6798-6799, 6803.) The court also ruled that appellant could present evidence of Morris's statements to Lawson, that were obtained during two different interviews, that Morris said, "I killed that old lady," "I stabbed her. I grabbed her by the throat." (24RT 6796-6797, 6803.)

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[1] Despite any occasional inadvertent omission of a harmless error argument, the People will ordinarily have a strong adversarial incentive, without the threat of forfeiture, to argue harmless error in order to assist the court in its determination by presenting appropriate arguments from the record as to why an error was non-prejudicial.

Based on the court's ruling, Abbott testified on direct examination that Morris told her that "[h]e had killed her . . . he tried to strangle her but it didn't work, so we had to go and get a knife from the kitchen and stab her." (27RT 7590.) On cross-examination, Abbott testified that Morris told her that he killed Bone. Morris said that he tried to strangle her, but when Bone would not die he got a knife and stabbed her. (28RT 7644-7645.)

At the time of the court's ruling, the defense stated its intention to only present evidence of Morris's statement to Lawson, "I killed that old lady," that Lawson reported to sheriff's deputies on October 22, 1995, but it did not intend to elicit the additional information Lawson told defense investigators on March 31, 1998. (24RT 6794-6795.) Counsel made this statement after the prosecutor discussed evidence that could be used to impeach Lawson's testimony. (See 24RT 6750-6753.) The defense did not call Lawson to testify.

Any error in excluding Morris's additional statements to Abbott and Lawson was harmless to the jury's findings on the special circumstances

Appellant argued in his opening brief and at oral argument that the exclusion of Morris's statements at the guilt phase was prejudicial to his ability to undermine the prosecution's theory that appellant had the intent to kill to support the robbery-murder and burglary-murder special circumstances. (AOB 88-91.) Appellant claimed that the prosecution's intent-to-kill theory relied "'primarily'" on Jonathon Howe's testimony. (AOB 90, quoting 35RT 9212 [prosecutor's argument .) Appellant claimed that without evidence of Morris's statements to Abbott and Lawson, the only defense appellant had against Howe's testimony was to attack Howe's credibility and to rely on appellant's statement to detectives describing his role in the crimes. (AOB 89.)

Appellant also argued that Morris's excluded statements provided evidence from which the defense could argue that Morris, "the actual killer," "took *all* responsibility" for the killing, that he placed "no responsibility for the killing" on appellant, and appellant was "shocked and surprised when Morris unexpectedly killed the victim," which demonstrated that appellant could not have ordered the killing as Howe testified. (AOB 89.) Appellant claimed that the court's ruling excluding Morris's statements prevented him from presenting "critical" evidence to contradict Howe's testimony and to support his defense that he did not have an intent to kill. (AOB 90.)

Appellant restated this argument during oral argument before this Court.

Appellant has not argued that the exclusion of these statements was prejudicial to his ability to undermine the prosecution's theory that appellant acted with reckless indifference to human life when he aided and abetted the robbery and burglary that resulted in Bone's death, which also would support a true finding on the robbery-murder and burglary-murder special circumstances. Apparently, appellant believes that unanimity is required as to appellant's intent in order to uphold the jury's special circumstance findings. Therefore, under appellant's theory, the special circumstances must be reversed because the jury was not instructed that it must be

unanimous on appellant's intent unless the exclusion of Morris's statements can be deemed harmless to the prosecution's intent to kill theory. Appellant believes that the impact of the exclusion of Morris's statements on the prosecution's theory that appellant acted with reckless indifference to human life is irrelevant. (AOB 111-127.)

Respondent disagrees that the jury's findings on the special circumstances must be unanimous as to appellant's intent in order to uphold the jury's findings on the special circumstances. (RB 86-93.) But regardless of whether jury unanimity is, or is not, required, any juror that found that appellant aided and abetted Bone's murder with the intent to kill would necessarily have also found that appellant, at the very least, acted with reckless indifference to human life when he aided and abetted Wilson and Morris in the commission of the robbery and burglary that resulted in Bone's death. (RB 92.)

The defense theory and evidence presented at trial

Appellant conceded at trial that he was guilty of the crimes of murder, robbery, and burglary. (35RT 9237-9238, 9274.) The "contested issue" was whether the prosecution had proved the robbery-murder and burglary-murder special circumstances. (35RT 9238.) Appellant argued that the prosecution did not prove that appellant had the intent to kill Bone because the prosecution's theory relied exclusively on the untrustworthy testimony of jailhouse informant Jonathon Howe. Trial counsel conceded that appellant was a "major participant in the burglary and robbery," and told the jury that the issue for it to decide was whether appellant acted with "reckless indifference to human life." (35RT 9247-9248.)

Evidence of appellant's intent to kill

To prove that appellant had the intent to kill and aided and abetted in the commission of the murder, the prosecutor relied on Jonathon Howe's testimony that appellant said that he ordered Morris and Wilson to tie Bone up and kill her. (35RT 9212-9213, 9215; see 31RT 8381, 8383, 8504-8506.) To corroborate Howe's testimony, the prosecutor reminded the jury that appellant had his blood drawn on June 5, 1998, and appellant's conversation with Howe occurred sometime around the end of May and early June. The prosecutor argued that Howe could only have been aware of the significance of the blood draw and DNA if appellant had told him about it. (35RT 9213, 9293-9294; see 31RT 8381.) The prosecutor also argued that there was no indication that Howe could have known that Bone had been tied up unless appellant had told him. (35RT 9214, 9294; see also 31RT 8381.)

The prosecutor also argued that the jury could infer that appellant had the intent to kill based on evidence that all three men entered Bone's house armed with weapons. (35RT 9214-9215, 9295; see also 27RT 7472-7473; 27CT 8141-8142, 8151.) Appellant also took surgical gloves and a bandanna inside Bone's home from which the jury could reasonably infer that appellant was concerned about leaving evidence behind---including any witnesses. (35RT 9215; see also 27RT 7471-7472, 7493; 27CT 8157-8158, 8181-8182.)

The prosecutor argued that Howe's testimony that appellant ordered Morris and Wilson to tie up and kill Bone was also consistent with the substantial difference between appellant's age and Morris and Wilson's ages. Appellant was 33 years old. Morris was 20 years old. Wilson was 19 years old. (35RT 9215, 9294; see also 30RT 8167.) The jury could reasonably find that appellant was the leader of the group and ordered the killing based on the substantial differences in their ages. After Bone's murder, Morris was upset and could not finish his hamburger. Appellant, however, did not suffer the same problem and finished Morris's hamburger for him. (35RT 9214; 27CT 8159, 8161.)

The defense emphasized to the jury during closing argument that the prosecution's intent-to-kill theory "totally depends on Jonathon Howe." (35RT 9243.) Howe admitted that he had used multiple aliases. (31RT 8394-8395.) He admitted his multiple prior convictions. (31RT 8395-8397.) He acknowledged that he had entered into a plea agreement for a specific disposition on two criminal charges, and that one of the conditions of the plea agreement was that he testify truthfully at appellant's trial. (31RT 8385-8390, 8397-8406, 8421.) Howe admitted that no one else was around when appellant made the statements to him. (31RT 8421-8427.) The defense relied on all this evidence to argue that Howe's testimony was not credible. (35RT 9244-9247.)

Trial counsel emphasized the jury instruction on how to evaluate the testimony of an "in-custody informant," and told the jury that the instruction raised a "red flag and says beware" of Howe's testimony. (35RT 9243-9244; 6CT 1236.) Counsel argued that Howe either lied or did not remember that he could receive a benefit from his testimony as part of the plea agreement. (35RT 9244-9245; see 31RT 8404-8405.) Defense counsel told the jurors that if they believed that Howe lied about that, his testimony could be distrusted in all respects. If they believed he could not remember a recent discussion concerning a benefit, the jurors should be suspect about Howe's testimony concerning events that occurred much earlier. (35RT 9245.)

Evidence of appellant's reckless indifference to human life

The prosecutor argued that evidence of when and where the crimes occurred, appellant's knowledge of Morris's intent prior to entering the house, and appellant's conduct before, during, and after the crimes, demonstrated that appellant acted with "reckless indifference to human life." In other words, that appellant knew, or was aware, that his acts involved a "grave risk of death" to Betty Bone. (See 6CT 1259.)

These crimes were committed during the day and in a neighborhood that appellant was familiar with and had recently visited. (See 26RT 7261-7262; 27RT 7434-7436; 27CT 8130, 8135.) By committing the crime during the day, appellant, Morris and Wilson were most likely to find vulnerable victims --"women, children and invalids"-- at home. Appellant would have known that the home's rural location would make it difficult for someone to flee or to get help if they were in danger. (35RT 9203-9205, 9208-9209, 9285; see 26RT 7147-7148.) The jury could reasonably infer that a potential for violence existed when appellant, Morris, and Wilson burglarized an occupied home.

The likelihood that violence would occur escalated when appellant chose to commit a burglary with two other people, and all three of them were armed with weapons. (35RT 9205-9206, 9209-9210, 9284.) Morris had a gun. Appellant had a gun. And either Morris or Wilson had a knife. (27CT 8141, 8151; 27RT 7472-7473.) They brought surgical gloves and bandannas with them. (35RT 9209, 9285-9286; 27CT 8157-8158, 8182.) The jury could reasonably infer that this was not going to be an ordinary burglary.

Appellant was forewarned that his actions involved a "grave risk of death." Shortly before they got to Bone's house, appellant and the others saw a woman taking out the trash. Morris looked at the woman and said, "Fuck it, we'll just fuckin' kill her an' look at the house, we got all day long." (35RT 9206, 9210, 9284; see also 27CT 8142; 26RT 7240-7242, 7250, 7582-7583.) Appellant may have told Morris that he was "not into killin people" (27CT 8142), but that did not stop appellant from entering Bone's house even after he saw Morris stick a gun into his pants (27CT 8141-8142).

Not surprisingly, violence began even before appellant entered the house. Ninety-eight year old Bone opened her door and saw three unknown men. When Bone started to close the door, Wilson rushed the door to get inside and knocked Bone to the ground. (35RT 9211, 9285-9286; 27CT 8132-8133, 8142-8145, 8150.) Appellant passed Bone, lying on the floor unconscious, as he entered the house. (27CT 8133-8134.) Appellant went from room to room inside the house stealing. Appellant heard and ignored Bone's pleas for her life. (35RT 9211-9212, 9206-9207; 27CT 8147.) Appellant knew Bone had been tied up with a phone cord. (35RT 9211-9212; 27CT 8147, 8149.) Appellant heard Morris say, "I can't leave no witnesses," and "that fucking bitch won't die." (27CT 8150.) Once they were inside the house Morris did what he said he was going to do --- and what appellant heard Morris say that he was going to do --- which was to kill someone so they had time to steal items from the house.

Appellant's own statement describing Bone's killing proved that he was present, and not somewhere else in the house, when Morris killed Bone. (35RT 9297-9300.) Appellant saw Morris strangling Bone when appellant came out of the back bedroom. (27CT 8146-8147.) Appellant knew that Morris had stabbed Bone before Morris took a butcher knife from the kitchen. (27CT 8151.) Appellant described Morris stabbing Bone as "like watching . . . 'Chuckie's Back.'" (27CT 8151.) Morris stabbed Bone hard, "caving her fucking chest in." (27CT 8151.) It was so hard that appellant could hear the stabbing. (27CT 8151-8152.)

The prosecutor argued that appellant's statement to the police that he wanted to leave the house shortly after going inside was not worthy of belief. (35RT 9230; 27CT 8144.) Appellant had a gun. (35RT 9230.) He had access to kitchen knives. (35RT 9230-9231.) Appellant knew people in the area where the crime occurred. He could have walked down the road to his friend's house. (35RT 9231.) Instead, appellant remained in the house and watched as Morris killed Bone. (35RT 9231.) Appellant was not upset that Morris killed Bone. Instead, appellant and Morris were laughing together and calling each other "down white boys" after they dumped the stolen truck into the lake. (35RT 9231.) This was hardly the conduct of a person who was surprised by what had just occurred.

On the other hand, the defense argued that there was no evidence that appellant was the actual killer, and the nature of Bone's injuries was consistent with only one person being involved in the killing. (35RT 9247, 9250-9251.) Counsel argued that the burglary and robbery committed by appellant and the others was not the "calculated, systematic operation" the prosecutor described, but involved them "haphazardly, running through a residence." (35RT 9250.)

Trial counsel argued that the actions of appellant and the others was inconsistent with any plan to kill the person inside the house. (35RT 9252.) They gave false names prior to entering the house. (35RT 9252; 27CT 8143-8144.) Bone was already "immobilized" and "unconscious" when appellant entered the house. (35RT 9252; 27CT 8134.) There was no evidence that appellant entered the house with a gun. (35RT 9253.)

The defense disagreed with the prosecutor's argument that appellant was in control of the events. (35RT 9255.) Counsel argued that if there was a "leader" of these crimes, it was Morris, not appellant. (35RT 9255.) Morris suggested they "do a caper." (35RT 9255; 27CT 8129-8130.) Morris needed money to pay his car insurance. (35RT 9255; 27CT 8136.) Morris got Wilson to go with them. (35RT 9255; 27CT 8182.) Morris took his car. (35RT 9255; 27CT 8130-8131, 8135-8136.) It was Morris's idea to have appellant drive the truck with the stolen items instead of putting them in his car. (35RT 9255-9256; 27CT 8152-8153.) Appellant followed Morris to the lake to dump the truck. (35RT 9256; 27CT 8155.) Morris wanted to bring Abbott along on the drive to the lake. (35RT 9256; 27CT 8155, 8159-8160.) They fled to Morris's aunt's house in Sacramento. (35RT 9256.) Morris had the most valuable of the stolen items, the jewelry, in his possession. (35RT 9256; 27CT 8172, 8174, 8176.) Morris was the actual killer. (35RT 9256.)

Trial counsel urged the jurors to listen to the recording of appellant's statement and "hear the emotion of what is on that tape." (35RT 9265, 9276.) Defense counsel pointed out parts of appellant's statement that were corroborated by other evidence. Counsel argued that because it could be shown that appellant was being truthful in some of his statements, the jury could find that appellant was being truthful throughout his statement. (35RT 9265-9270.) Trial counsel identified portions of appellant's statement to the detectives that he argued demonstrated that appellant's acts did not involve a grave risk of death to Bone. (35RT 9270.) He did not kill Bone. (35RT 9270.) He was not present when Morris killed Bone. (35RT 9272, 9274, 9277.) Appellant told Morris, "'Oh, dude, you know, don't hurt no women. Don't hurt nobody,'" when he saw Morris choking Bone. (35RT 9271.) He told Morris when he saw Morris strangling Bone, "'Dude, you got to chill. Who are we, you don't do this,'" and Morris stopped choking Bone. (35RT 9273.) Appellant said, "'Dude, I'm not into killing people, Home Boy. I'm not into killing people," when Morris talked about killing a woman prior to committing the burglary at Bone's house. (35RT 9271-9272.) Appellant told detectives that Bone was killed for "no reason," and he had wanted to leave within five minutes of being inside the house. (35RT 9272, 9274.) But he was "not arguing with no dude that's killed a fucking broad, you know what I mean, for no reason at all. For me, the lady, she didn't have that coming . . . ." (35RT 9277.)

Any error in excluding Morris's additional statements was harmless under both the state and federal harmless error standards given the negligible value of the excluded evidence

The record shows that the value of the excluded statements to appellant's defense was insignificant based on the questionable credibility of Abbott and Lawson, and the statements themselves. Both the prosecutor and trial counsel commented upon Abbott's credibility during closing argument to the jury, and the prosecutor brought up issues related to Lawson's credibility during the hearing on the admissibility of the statements. Appellant's interpretation of the meaning of the excluded statements is unsupported by any evidence in the record. Evidence that Morris told Abbott and Lawson that appellant and Wilson did not participate in the killing and did not participate in the actual killing was cumulative of other evidence already presented to the jury in which Morris admitted killing Bone and described the manner in which he killed her. Evidence of Morris's statement describing appellant and Wilson's expressions after Bone's killing does not mean that appellant had no knowledge that Bone was going to be killed and that he was surprised that Morris killed Bone.

Abbott and Lawson's credibility issues and reliability of the statements

Misty Abbott

The prosecutor acknowledged during her closing argument that there were issues with Abbott's credibility even though Abbott was a prosecution witness. The prosecutor argued that Abbott was under the influence of her mother, Sheila Abbott, who liked appellant. (35RT 9223-9224.) Sheila had spoken to appellant at least two times before he was interviewed by detectives. (35RT 9226; 27CT 8128, 8163.)

Abbott was interviewed by Detective Highet on October 20, 2005, within days of Bone's murder. Abbott told Highet that she did not know anything about Bone's murder. (28RT 7599-7600, 7635-7636; 30RT 8110-8112.) Morris committed suicide on October 22, 1995, one day after his arrest. (32RT 8637.) Appellant was interviewed by detectives on October 23, 1995. (26RT 7313.) Appellant knew at the time he was interviewed that Morris had killed himself. (26RT 7313.)

A little over a week later, on November 1, 1995, Sheila visited appellant in the county jail. (30RT 8203.) That same day, Abbott called Highet and reported what Morris had told her about Bone's killing. (35RT 9225-9226; see also 30RT 8116-8117.) The prosecutor argued, Abbott "didn't think there was anything wrong with getting John Morris in trouble if John Morris was already dead . . . so it was okay to blame him[.]" (35RT 9224.) The prosecutor also observed that at the time of trial, Abbott's memory about what Morris had told her remained clear, while her memory of other events surrounding the crime had worsened. (35RT 9225.)

Like the prosecutor, the defense also discussed issues relating to Abbott's credibility during closing argument. Counsel described Abbott as an "interesting" witness and referred the

jurors to the court's instruction on evaluating the credibility of witnesses. Trial counsel argued that "with the exception of conviction of a felony, you can just go down the line on Misty Abbott. Every one of those creates a reason why she is unbelievable." (35RT 9256.) Trial counsel rhetorically asked, "Is there bias? Well, demeanor, manner, that speaks for itself. Character, quality of the testimony, speaks for itself. Bias, interest, other motives." (35RT 9256-9257.) Counsel argued that "absolutely almost everything" Abbott said was inconsistent. (32RT 9257.) Abbott was one of those witnesses who "will say whatever they want, whenever they want it, whenever they believe it's [in] their best interests to say it. Or in the best interests of somebody that they care about." (35RT 9262-9263.)

Defense counsel criticized the prosecutor for "pick[ing] out one fact from a witness's statement and say[ing] that's true," but then "[p]ick[ing] out another statement from another witness and say[ing] that's true. In order to build her bridge, she pulls what she wants to believe. And the reason why we have credibility of witness instructions is that you have to look at the quality of testimony as a whole." (35RT 9269.)

Respondent recognizes that the defense's argument would not have been exactly the same had Abbott testified about Morris's additional statements. But counsel would have had to walk a difficult line to try and convince the jury that Abbott was being truthful when she testified that Morris told her that appellant and Wilson did not participate in the killing, and they looked at Morris after the killing "as if they were saying, what in the hell are you doing dude?" but that other portions of Abbott's testimony were unworthy of belief. Especially since no one else heard Morris tell Abbott these things.

Abbott did not report Morris's statements that were excluded by the court when she first spoke to detectives. Instead, Abbott reported Morris's statements to detectives after Morris committed suicide and after her mother had contact with appellant. The timing of Abbott's reporting of the statements and her bias toward appellant is evidence that certainly would have been explored at trial in addition to all the other factors that already demonstrated her lack of credibility.

Albert Lawson

The record also provides evidence that could have been used to attack Lawson's credibility. On October 22, 1995, Lawson told sheriff's deputies investigating Morris's suicide that Morris stated, "I killed that old lady." (24RT 6747.) But it was not until March 31, 1998, when Lawson was interviewed by an investigator for the defense that he elaborated on his prior statement and said that Morris told him, "I stabbed her," "I grabbed her by the throat," and appellant and Wilson "were in the house but took no part in the actual killing and were in some other place in the house." (24RT 6747, 6788-6789.) The prosecutor made this point during the hearing on the admissibility of Morris's statements. She also told the court that Lawson and appellant had "shared the same pod area for approximately five or six days" after Morris spoke to the detectives but before he spoke to the defense investigator and gave additional details about what Morris had told him. The prosecutor also stated that appellant and Lawson have a "friendly

relationship." (24RT 6752.) The prosecutor commented that Lawson had "a recently developed memory in March 1998, and that's after spending some time with [appellant]." (24RT 6750-6751, 6753.)

In addition, the defense investigator interviewed Lawson at Pelican Bay State Prison, indicating that Lawson had been convicted of, at least, one felony offense that could be used for impeachment. (24RT 6747; Evid. Code, § 788.)

Like Abbott, the first time Lawson reported that Morris had made additional statements about his involvement in Bone's killing was when he was contacted by an investigator for the defense, and after he had shared a pod with appellant, and Lawson and appellant had developed a friendly relationship. This strong evidence of bias, along with at least one felony conviction, would have substantially undermined Lawson's credibility with the jury.

The excluded statements were consistent with the evidence presented at trial and appellant was not prejudiced by their exclusion

In any event, even assuming the jury believed Morris made the excluded statements, the statements are consistent with the trial testimony and cumulative of other evidence establishing that Morris alone killed Bone.

Morris's statement to Abbott that he killed Bone and that appellant and Wilson "did not participate" does not mean that Morris alone made the decision to kill Bone thereby negating the prosecution's intent-to-kill theory for the special circumstance findings. Instead, Morris's statement is reasonably understood to mean that appellant and Wilson did not participate in the *actual* killing of Bone and nothing more. This is especially true here because Lawson would have testified to that fact --- that Morris said that appellant and Wilson "were in the house but took no part in the *actual* killing." (24RT 6747, 6786-6787, 6797, italics added.) These statements are consistent with Morris's other statements taking sole responsibility for killing Bone, and appellant's statement to detectives that Morris alone killed Bone, all of which were presented to the jury.

Morris's statements that appellant and Wilson did not participate in the killing, or that they did not participate in the actual killing, do not contradict Howe's testimony that appellant ordered Morris and Wilson to tie up and kill Bone. Instead, the excluded statements are consistent with Morris killing Bone on appellant's command while appellant took items from the house. The excluded statements add nothing to appellant's defense other than support Morris's statements -- "*I* killed that old lady," "*I* stabbed her," "*I* grabbed her by the throat," "*he* [Morris] murdered the little old lady," "It didn't work...strangling her...so *I* stabbed her," and "*he* [Morris] killed her...she wouldn't die choking her, so *I* had to get a knife from the kitchen" – that were ruled admissible and were consistent with appellant's theory that Morris acted alone when he killed Bone. (24RT 6796-6797, italics added.) Morris's statements to Abbott and Lawson cannot reasonably be understood to mean that Morris, completely on his own and contrary to any plan, killed Bone without appellant and Wilson's knowledge. All Morris's

statements prove is that appellant and Wilson were in the house, doing something else, when Morris killed Bone.

Appellant argues that Morris's statement to Abbott that appellant and Wilson looked at Morris after the killing "as if they were saying, what in the hell are you doing, dude" is evidence that appellant was "surprised" that Morris killed Bone thereby demonstrating that he did not order Morris to kill Bone. Morris's statement is too vague to reasonably be understood to mean that appellant and Wilson were surprised that Morris killed Bone, or that was what Morris meant when he made the statement. It is just as likely, and even more so, that appellant and Wilson's expressions reflected their shock at the brutality of the killing of 98-year-old Bone.

When Bone was discovered, she had a black and white bandanna knotted and tied around her neck. She also had a telephone cord wrapped around her neck. (25RT 7023, 7050.) She had "considerable" blunt force trauma to her head and face. (25RT 7023-7024, 7027, 7039-7041.) She had bruises on her hands, arms, and shoulders. (25RT 7031-7035; 26RT 7124-7127.) There were six stab wounds to her left chest. (25RT 7035-7036.) There was bruising near one stab wound, which was consistent with Morris making a "full thrust" stab and his wrist hitting Bone's chest. (25RT 7036, 7053, 7059.) Three wounds penetrated Bone's chest wall and went through her heart. (25RT 7044-7047.) Two wounds penetrated to the back of Bone's chest wall near the spinal column. (26RT 7067-7068, 7087.)

Appellant's statement to the detectives describing Bone's killing also supports this interpretation. Morris tied Bone up and tried choking her before getting a butcher knife from the kitchen and stabbing her. (27CT 8146-8147, 8151) The manner in which Morris stabbed Bone was "like watching . . . 'Chuckie's Back.'" (27CT 8151.) Morris stabbed Bone hard, "caving her fucking chest in." (27CT 8151.) Appellant could hear the stabbing. There was blood everywhere. (27CT 8151-8152.) Wilson looked "ghostly white" and "white as a sheet" after the killing. (27CT 8145, 8152.)

Appellant may have been "surprised" after Bone's murder, but it was about how Bone was killed not that she was killed. In addition to these statements being consistent with the prosecution's intent-to-kill theory, the excluded statements do nothing to undermine the prosecution's theory that appellant acted with reckless indifference to Bone's life, and appellant does not argue otherwise.

In sum, Morris's statements that appellant and Wilson did not participate in the killing or participate in the actual killing are consistent with Howe's testimony that appellant ordered Morris and Wilson to tie up and kill Bone. Morris's statement describing appellant's and Wilson's expressions is too vague to determine what Morris actually meant, and does not prove that appellant was "surprised" that Morris killed Bone. These additional statements would have added nothing to Morris's other statements in terms of appellant's defense. They did nothing to undermine the conclusion that appellant acted with reckless indifference to Bone's life. Abbott and Lawson both had issues with their credibility from which the jury could decide that their testimony was untrustworthy. Based on this record, it is not reasonably probable that appellant

would have received a more favorable outcome at the guilt phase had Morris's additional statements been admitted at trial. (*People v. Watson*, *supra*, 46 Cal.2d at p. 836.) For these same reasons, any error in excluding these statements is harmless beyond a reasonable doubt. (*Chapman v. California*, *supra*, 386 U.S. at p. 24.) Reversal of the jury's special circumstance findings is unwarranted.

Any error in the court's ruling excluding Morris's statements to Abbott and Lawson was harmless in the penalty phase

In his opening brief, appellant argued that the exclusion of Morris's statements to Abbott and Lawson was prejudicial in the penalty phase because without Morris's statements the prosecutor was able to argue to the jury that the defense had "'never given you a reason to doubt [Howe's] testimony," and that Howe's uncontradicted testimony left no "'lingering doubt.'" (AOB 90, quoting 41RT 10879-10880).

As discussed above, Abbott and Lawson had significant issues with their credibility and the excluded statements do not contradict Howe's testimony that appellant ordered Morris and Wilson to tie up and kill Bone. There is no reasonable possibility that the exclusion of these statements affected the jury's penalty verdict.

The prosecutor did not rely on Howe's testimony as a circumstance in aggravation

In arguing that death was the appropriate punishment, the prosecutor focused on the circumstances surrounding Bone's murder, appellant's prior crimes of violence and felony convictions, the impact Bone's murder had on Bone's daughter and granddaughters, appellant's lack of remorse following the crimes, and rebutting appellant's evidence in mitigation.

The prosecutor told the jury that appellant's conduct in Bone's murder alone was enough to warrant the death penalty, but there was "much more" evidence in aggravation. (41RT 10825.) The prosecutor reviewed the circumstances of Bone's murder, and as additional circumstances in aggravation the prosecutor asked the jury to consider that appellant had been out of prison for only two-and-a-half months when he committed these crimes, and within hours after committing the crimes he bought drugs. (41RT 10818.)

The prosecutor described the emotional impact Bone's killing had on Bone's daughter and granddaughters, and how they had lost their sense of safety since Bone's murder. (41RT 10818-10819.)

The prosecutor discussed appellant's prior crimes of violence, and argued that the residential robbery he committed with Anne Cline was "strikingly similar" to his crimes against Bone. (41RT 10820.) In that case, appellant and Cline robbed James Leonard inside his home. Cline knew Leonard. (36RT 9594, 9600.) Leonard was in his late fifties or early sixties. (36RT 9585.) Leonard was not physically hurt during the robbery, but appellant carried a pipe wrapped in a towel into the house to simulate a gun, he carried in pieces of rope to tie up the victim, and

he and Cline tied up Leonard's hands and feet during the robbery. (36RT 9583-9588, 9593-9596, 9599-9600, 9609.) The prosecutor described appellant's violent assault and battery on Marie McCosker. (41RT 10821.) She also listed appellant's many prior felony convictions. (41RT 10823-10824.)

The prosecutor asked the jury to reject any defense claim that appellant showed remorse based on statements he made to his mother prior to his arrest. (41RT 10824.) The prosecutor argued that appellant showed no remorse when he went through jewelry taken from the house, when he "laughed" about the killing with Morris and "fired off guns and called each other good old boys," and when he ate hamburgers after Bone's murder. (41RT 10824.) The prosecutor stated that appellant did not have any remorse "until he thought he might get caught." (41RT 10424.)

The prosecutor told the jury that appellant had squandered opportunities and had no one to blame but himself for why he was facing the death penalty. (41RT 10824-10824.) The prosecutor argued that appellant did not deserve the jurors sympathy or mercy. (41RT 10825.)

In response to the evidence offered in mitigation, the prosecutor questioned the reliability of the mental health evidence presented by appellant (41RT 10810-10812), and argued that despite that testimony there was "no evidence" that appellant "was unable to make the decision as to whether he should enter Betty Bones (sic)'s house and participate in the things that followed." (41RT 10812.) She asked the jurors to evaluate evidence of appellant's mental condition in light of his conduct in committing other crimes. (41RT 10814; see also 41RT 10875-10877.)

The prosecutor argued that appellant's crimes of violence against Marie McCosker, James Leonard, and Betty Bone -- crimes against people he could "intimidate" or "overpower" -- - was consistent with his "impulsivity." (41RT 10813.) Despite his "impulsivity" and "hyperactivity" appellant was able to plan the residential robbery of Leonard and "participate in the planning of the murder of Betty Bone." (41RT 10813.) As to the crimes against Bone, the prosecutor reminded the jurors that appellant took bandanas and surgical gloves with him to commit the crimes, and he made sure his car was not at the crime scene. (41RT 10814.)

The prosecutor argued that appellant's behavior was inconsistent with testimony that he had a "borderline IQ." (41RT 10814.) The prosecutor argued that appellant was "smart enough" to blame other people for his criminal conduct, including accusing Morris of killing Bone after Morris committed suicide. (41RT 10814-10815.) He was "smart enough" to provide officers who came in contact with him with false names, false explanations for his conduct, and a false date of birth. (41RT 10815.) The prosecutor also argued that Dr. Globus's testimony and findings were inconsistent with the testimony of appellant's mother and her description of appellant's childhood. (41RT 10816-10817.)

The prosecutor argued that appellant's conduct demonstrated that he was not a "follower" as described by Dr. Globus. (41RT 10814; see also 41RT 10877-10879.) The prosecutor cited

as examples appellant's solo act of helping a fellow inmate who had been assaulted and giving advice to Michael Tew. (41RT 10814.)

In closing, the prosecutor described step-by-step appellant's participation in Bone's murder (41RT 10825-10826) and asked the jurors to consider what Betty Bone's final moments must have been like (1RT 10880-10881).

Defense case in mitigation and lingering doubt

In arguing for appellant's life, defense counsel told the jury that its verdict meant appellant would die in prison. He would never be released. (41RT 10832.) Appellant would lead a "very structured life" in prison. (41RT 10833.) He would be told when to eat, when to sleep, and he would have time to think about the consequences of his actions for the rest of his life. (41RT 10833.) Counsel quoted a passage from the Bible and stated that a sentence of life without possibility of parole was equivalent to banishment. (41RT 10834.)

Counsel disagreed with the prosecutor's description of the evidence presented in mitigation as "excuses" for appellant's conduct. Instead, the evidence was offered to "explain" appellant and assist the jury in its penalty decision. (41RT 10835; see also 41RT 10854-10855.) Counsel argued that appellant was not the "worst of the worst, the most morally culpable, beyond redemption . . . that he should deserve a death penalty rather than punishment in prison for the rest of his life." (41RT 10855; see also 41RT 10866-10887.)

As a circumstance in mitigation, the defense presented evidence from which the jury could infer that appellant could not have been the "leader" of the crimes that resulted in Bone's death. This evidence included testimony that appellant had an overall IQ of 73, which meant that he had "low intelligence" and was "borderline retarded." (41RT 10836-10837.) In junior high, appellant was placed in a special education program for "severely emotionally disturbed" students. (41RT 10842.) Appellant's seventh grade teacher described appellant as "a small, timid child, kind of quiet, and . . . a follower" (41RT 10839), who was "desperately in need of nurturing" (41RT 10840-10841). Appellant was also described as "very quiet and kind of a follower" during that time. (41RT 10843.) Appellant's half-sister testified that appellant lacked self-esteem, and he was impulsive and a follower. (41RT 10846.)

There was also unrebutted testimony from Dr. Globus that appellant suffered from a "neuropsychiatric illness from birth or even before birth, and that illness . . . resulted in organic change or organic brain syndrome that . . . led to a whole variety of psychiatric signs and symptoms." (41RT 10856.) Counsel discussed appellant's early development, functioning, poor self-esteem, prescription medications, learning disabilities, hyperactivity, impulsivity, delinquency, commitment to Napa State Hospital, borderline intelligence, and diagnosis of schizophrenia at age 15. (41RT 10857-10863.) Counsel acknowledged that appellant knew right from wrong, but he told the jury that appellant was unable to apply the concept to his daily life. (41RT 10861; see also 41RT 10887.)

Appellant's half-sister testified how distraught appellant had been after the death of his fiancee. Appellant's fiancee had been killed in an intentional car crash about a month before Bone's murder. (41RT 10846-10847; see also 41RT 10852-10853.)

Appellant's half-brother confirmed that he and appellant had been forced to wear dresses and stand in the front yard as punishment. (41RT 10848-10849.) Appellant's mother told appellant's "story" from before his birth to when he was committed to Napa State Hospital at age 18. (41RT 10863-10864.) Appellant told his mother that "he was sorry . . . the old lady was killed." (41RT 10849; see also 41RT 10849-10850, 10886.)

Defense counsel reminded the jury of appellant's kindness to others. Appellant married and had a positive relationship with a "crippled" woman. (41RT 10851.) Appellant was like a father to the woman's son. Appellant encouraged him and gave him guidance. (41RT 10851.) Appellant was kind and helpful to an elderly couple who lived in the same apartment complex. (41RT 10852.) Appellant came to the aid of a fellow inmate who was being assaulted. (41RT 10853-10854.)

Counsel told the jurors that they could consider any "lingering doubt" they may have "as to some of the facts of this case or to the degree of [appellant's] participation in the crime" as a factor in mitigation. (41RT 10865.) Defense counsel stated that he accepted the jury's finding of "reckless indifference," but he took issue with Howe's testimony. (41RT 10866; see also 41RT 10833-10884.) Counsel also discussed "lingering doubt" as to whether appellant had been the "leader" when Bone was murdered. (41RT 10868.) Trial counsel argued that "it was much easier for the prosecutor to argue that [appellant] was a leader" based on the guilt phase evidence, but the evidence presented in mitigation established that he was "not a leader." (41RT 10868-10869.) Counsel argued that appellant had been a follower his entire life. Morris was the leader. (41RT 10869.) Appellant was not the actual killer. (41RT 10869.)

Any error in excluding Morris's additional statements was harmless in the penalty phase

The prosecutor never discussed Howe's testimony or that appellant had ordered Morris to kill Bone in her penalty phase closing argument, not even when she described appellant's role in Bone's killing. (See 41RT 10808-10826.) Instead, the only reference the prosecutor made to Howe occurred during rebuttal argument when the prosecutor responded to appellant's statement that Howe's testimony lacked credibility and that evidence presented in mitigation created a "lingering doubt" that appellant had been the "leader" of the crimes. (41RT 10865-10869, 10879-10880.)

The prosecutor stated, "In looking at Mr. Howe's statement, the Defense has never been able to give you a reason [why] Mr. Howe would lie. They've never been able to give you any reason [why] he would simply make this up about the defendant." (41RT 10879.) The prosecutor reminded the jury that appellant and Howe had been friends, and that other evidence corroborated Howe's testimony about appellant's statement. (41RT 10879.) The prosecutor

said, "When the Defense talks about lingering doubt, Jonathan Howe is not a factor in it. They've never given you a reason to doubt his testimony." (41RT 10879-10880.)

As discussed above, it is most unlikely that the jurors would have credited Abbott and Lawson's testimony regarding Morris's statements based on their obvious biases, belated reporting of the statements, and other factors relating to their credibility. But even if the jurors did credit their testimony, Morris's excluded statements that appellant and Wilson "did not participate in the killing" and "did not participate in the actual killing," are cumulative of other evidence presented to the jury that Morris alone killed Bone. Morris's excluded statement describing appellant and Wilson's expressions after Bone's killing is too vague to prove anything, let alone that appellant was not the leader.

Howe's testimony that appellant ordered Morris and Wilson to tie up and kill Bone was not part of the prosecution's case in aggravation. The prosecutor did not rely on Howe's testimony to refute appellant's mitigation evidence that appellant was a "follower." The mitigation evidence presented by the defense was much more direct and compelling evidence that appellant, because of his mental deficiencies, was "not a leader," "never was a leader," and "never will be a leader," than Morris's excluded statements. (41RT 10868-10869.)

Based on the trial record, any error in excluding Morris's additional statements to Abbott and Lawson is harmless under the state "reasonable possibility" standard for penalty phase error (see *People v. Brown*, *supra*, 46 Cal.3d at pp. 446-448), and the federal constitutional "harmless beyond a reasonable doubt" standard (*Chapman v. California*, *supra*, 386 U.S. at p. 24). Reversal of the penalty verdict is unwarranted.

3. Assuming that the trial court did not err in excluding Morris's statement to Abbott that after Morris killed the victim, defendant looked at him as if her were surprised, but that the trial court did err in excluding Morris's statement to Abbott and Lawson that defendant was not involved in the actual killing, does the error require reversal of the special circumstance findings or death sentence?

No.

Respondent's analysis in question 2 applies equally here. The excluded statement added nothing to the statements by Morris that were admitted at trial in which Morris described his personal and sole involvement in Bone's actual killing. Therefore, assuming the trial court erred by excluding Morris's statements to Abbott and Lawson that appellant did not participate in Bone's killing, any error in the guilt phase was harmless under the state harmless error standard. Assuming the error violated appellant's federal constitutional rights in the guilt phase, any error was also harmless under the federal constitutional harmless error standard. In addition, any error in the penalty phase was harmless beyond a reasonable doubt. Reversal of the special circumstance findings and death sentence is unwarranted.

CONCLUSION

Based on the foregoing arguments, and the arguments made in the respondent's brief and at oral argument, respondent respectfully urges this Court to affirm appellant's convictions and sentence to death.

Dated: July 16, 2014

Respectfully submitted,

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v. Grimes**
No.: **S076339**

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 July 16, 2014, I served the attached:

SUPPLEMENTAL LETTER BRIEF

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 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

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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 July 16, 2014, at Sacramento, California.

_____
Declarant

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