

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,)

Plaintiff and Respondent, )

vs. )

JOHN ANTHONY GONZALES, )  
MICHAEL SOLIZ, )

Defendants and Appellants. )

No. SO75616

Los Angeles County

Superior Court

No. KA033736

SUPREME COURT  
FILED

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Deputy

Appeal from the Judgment of the Superior Court  
of the State of California for the County of Los Angeles

The Honorable Robert W. Armstrong, Judge

APPELLANT'S SUPPLEMENTAL OPENING BRIEF

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**APPELLANT’S SUPPLEMENTAL OPENING BRIEF**

**INTRODUCTION**

Significant errors occurred in the penalty phase of appellant’s trial relating to his lingering doubt defense: the trial court precluded defense counsel from conducting voir dire on whether jurors would fairly consider such a defense (Arg. XIII, AOB 138-143; ARB 54-57); the judge substantially interfered with the co-defendant’s testimony supporting the lingering doubt defense (Arg. XIV, AOB 144-155; ARB 58-67); the prosecutor engaged in improper questioning of the co-defendant during his testimony presenting evidence supporting lingering doubt (Arg. XV, AOB 156-169; ARB 68-77); the trial court refused to instruct on lingering doubt (Arg. XVII, AOB 190-203; ARB 84-90); and the cumulative effect of these related errors (Arg. XXV, AOB 303-307; ARB 106). The purpose of this supplemental brief is to address this Court’s recent decision in *People v. Gay* (2008) 42 Cal.4th 1195, as it reinforces appellant’s position that errors

related to his lingering doubt defense resulted in prejudice.

This Court reversed the death sentence in *Gay* due to evidentiary and instructional errors related to lingering doubt. Both *Gay* and appellant's case involved penalty retrials with lingering doubt being the primary mitigating circumstance. Analysis of the *Gay* decision is important to proper consideration of appellant's issues because *Gay* recognizes how lingering doubt may be a critical component of a penalty phase defense and how errors, as in appellant's case interfering with the presentation of such a defense, may be prejudicial.

*Gay* involved the killing of a police officer where two defendants, Gay and Cummings, were convicted of the killing with both sentenced to death. Gay obtained a new penalty trial due to ineffective assistance of counsel in the penalty phase of his original trial. At the penalty retrial, Gay sought to show that Cummings alone shot the police officer. As this Court stated, "There can be no dispute that the identity of the shooter was the heart of defendant's penalty phase defense." (*People v. Gay, supra*, 42 Cal.4th at p. 1223.) The trial court abused its discretion in excluding Cumming's admissions that he was the only shooter and corroborating testimony of eyewitnesses proffered by the defense. (*Ibid.*) This Court found that the evidentiary error was compounded by the trial court's instruction to the jury, following opening statement, that defendant's responsibility for the shooting had been conclusively proven. (*Id.* at p. 1224.) Reversing the death sentence, this Court stated: "The combination of the evidentiary and instructional errors presents an intolerable risk that the jury did not consider all or a substantial portion of the penalty phase defense, which was lingering doubt." (*Id.* at p. 1226.)

*Gay* reaffirms that evidence creating a lingering doubt as to the

defendant's guilt of an offense is admissible at a penalty retrial. (*Id.* at p.1221.) This Court noted that this holding was in accord with other jurisdictions that have recognized the legitimacy of a lingering doubt defense in the penalty phase of a capital trial. When a case is retried as to penalty, such evidence is admissible “not because the validity of the conviction is at issue, but because the jury needs to examine the circumstances of the offense (as well as any aspect of the defendant's character or prior record) in order to decide intelligently the question of punishment.” (*Ibid.*, quoting *Alderman v. State* (Ga. 1985) 327 S.E.2d 168, 173.) “It may have particular importance where, as here, the case is being retried as to sentence and the jury is hearing for the first time, at the sentencing phase of the trial, evidence relating to the circumstances of the offense.” (*People v. Gay, supra*, 42 Cal.4th at p. 1222, quoting *Romine v. State* (Ga. 1986) 350 S.E.2d 446, 453.)

In finding prejudice in *Gay*, the Court recognized that lingering doubt evidence and consideration of that evidence by proper instruction can be of critical importance to a fair and reliable penalty determination: As other courts have noted, ‘residual doubt is perhaps the most effective strategy to employ at sentencing.’ (*Chandler v. United States* (11<sup>th</sup> Cir. 2000) 218 F.3d 1305, 1320, fn. 28; accord, *Williams v. Woodford* (9<sup>th</sup> Cir. 2002) 384 F.3d 567, 624; see also Garvey, *Aggravation and Mitigation in Capital Cases: What Do Jurors Think?* (1998) 98 Colum. L.Rev. 1538, 1563.)”

As further elaborated on below, *Gay* makes clear that errors occurred in appellant's case relating to his lingering doubt defense and that those errors resulted in prejudice.

### XIII.

#### THE TRIAL COURT'S RESTRICTIONS ON VOIR DIRE IN THE PENALTY PHASE INTERFERED WITH APPELLANT'S RIGHT TO AN IMPARTIAL JURY

In the penalty retrial, defense counsel requested to supplement the court's voir dire by questioning prospective jurors on their willingness to apply the concept of lingering doubt, but the trial court refused that request. (24 RT 3027-3031.) In finding such questioning inappropriate, the trial court took an overly narrow view of the scope of a penalty phase retrial stating that "we've tried to tell this whole jury that the whole matter of guilt was behind them." (24 RT 3028.) Indeed, the trial court repeatedly told prospective jurors in voir dire that guilt had been determined already. (See e.g., 24 RT 2988, 3044, 25 RT 3111, 3121-3122.)<sup>1</sup>

This is much like the instructional error that occurred in *Gay* where the trial court instructed the jury, following opening statement that the defendant's responsibility for the shooting had been conclusively proven. (*People v. Gay, supra*, 42 Cal.4th at p. 1224.) Unlike in appellant's case where the trial court refused to instruct on lingering doubt in the penalty retrial (see Arg. XVII, *post*), *Gay* at least had the benefit of a lingering

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<sup>1</sup> The juror questionnaires also stated explicitly that guilt would not be redetermined. In the "Death Penalty" portion of the questionnaire, jurors were told: "If you are selected a juror in this case, you will **not** re-decide whether or not the defendants are guilty of these three murders. You will decide **only** what punishment each should receive." (See e.g., 7 CT 1578, emphasis in original text.) Question 88 of the questionnaire stated: "Do you understand that if selected as a juror, you will **not** decide whether the defendants are guilty or not guilty, but only what punishment they should receive for the murder or murders they have already been convicted of?" (*Ibid.*, emphasis in original text.)

doubt instruction. (*People v. Gay, supra*, 42 Cal.4th at pp. 1217, 1225) But this Court found that even with a proper instruction on lingering doubt, the early directive to the jury that responsibility for the shooting had been conclusively established constituted error by creating confusion. (*Id.* at p. 1225-1226.)

In appellant's case, the juror questionnaire and repeated directives from the trial court in voir dire that guilt had been determined similarly created confusion over the role of lingering doubt in the penalty determination. That is, without adequate assurance that lingering doubt could and would be properly considered, there is a reasonable possibility that a different result would have been reached.

That assurance should have come, at least in part, by allowing voir dire on whether jurors would apply the concept of lingering doubt to the penalty determination. Such questioning would have helped clear up any confusion over the role of the penalty retrial jury by clarifying that although guilt had been determined, the jurors could render a verdict of life upon finding a lingering doubt that appellant shot the victims.

It is clear that the trial court's refusal to allow such questioning stemmed from an improper understanding of the scope of a penalty retrial. When the prosecutor objected that voir dire questions were not relevant, the trial court readily agreed, stating that guilt had been decided. (24 RT 3028.) Similarly, when later ruling that jurors would not be instructed on lingering doubt, the trial court stated that such an instruction was improper in a penalty retrial which had "absolutely nothing" to do with the guilt determination. (33 RT 4351, 32RT 4191-4192.)

While a defendant may not "relitigate" the guilt verdict in the penalty phase of a capital trial, it is well established that he may present evidence



and argument that he actually did not kill the victim in order to mitigate his punishment. (*People v. Gay, supra*, 42 Cal.4th at p. 1220-1223.) *Gay* also makes clear that such evidence and argument is proper in a penalty retrial. Indeed, *Gay* recognizes that such evidence and argument may be particularly relevant in a penalty retrial. (*Id.* at p. 1222.)

If evidence and argument on lingering doubt is particularly relevant in a penalty retrial, so too is the opportunity to voir dire on this concept. It has long been established that “a reasonable question about the potential juror’s willingness to apply a particular doctrine of law should be permitted when from the nature of the case the judge is satisfied that the doctrine is likely to be relevant at trial.” (*People v. Williams* (1981) 29 Cal.3d 392, 410.) In appellant’s case, as in *Gay*, “[t]here can be no dispute that the identity of the shooter was the heart of defendant’s penalty phase defense.” (*People v. Gay, supra*, 42 Cal.4th at p. 1223.) Appellant sought to show that although he had been convicted of the Skyles and Price killings, evidence that Gonzales was actually the shooter created lingering doubt of his responsibility for those killings. That entitled appellant to explore whether potential jurors would be willing to apply the doctrine of lingering doubt in determining the appropriate penalty.

As recognized in *Gay*, lingering doubt may be one of the most effective strategies to employ in the penalty phase. (*People v. Gay, supra*, 42 Cal.4th at p. 1227.) A lingering doubt defense that appellant in this case was not the actual shooter would have been important in assessing the appropriate penalty if properly considered. (*Ibid.*) Appellant was entitled to ascertain whether jurors would fairly consider lingering doubt although he had been convicted of the murders already. By prohibiting voir dire on lingering doubt, a circumstance “likely to be of great significance to

prospective jurors, the trial court erred.” (*People v. Cash* (2002) 28 Cal.4th 703, 721.)

In *Cash*, the trial court erred by prohibiting voir dire on whether prospective jurors would automatically vote for the death penalty if the defendant had committed a prior murder. As with lingering doubt in appellant’s case, the prior murder was a circumstance likely to be of great significance to prospective jurors in *Cash*. In finding that error could not be considered harmless, this Court noted that “the trial court’s error makes it impossible for us to determine from the record whether any of the individuals who were ultimately seated as jurors held a disqualifying view . . .” (*Id.* at p. 723.) Similarly, in appellant’s case, the inadequate voir dire precluding exploration of whether jurors would consider lingering doubt, makes it impossible to determine whether jurors should have been excused for cause. Appellant’s death sentences must be reversed.

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#### XIV.

### **THE TRIAL JUDGE'S IMPROPER TESTIMONY AS AN EXPERT WITNESS VIOLATED APPELLANT'S FEDERAL CONSTITUTIONAL RIGHTS AND REQUIRES REVERSAL**

Appellant's lingering doubt defense that he was not the actual shooter of Skyles and Price depended on the testimony of co-defendant Gonzales. The trial judge decimated that defense by intruding into the fact finding process and substantially interfering with the presentation of the lingering doubt evidence.

While in jail awaiting trial, Gonzales admitted being the actual shooter in a statement to an associate which law enforcement authorities taped surreptitiously. In the penalty retrial, Gonzales reaffirmed that admission by testifying that he had shot both victims, and that appellant had nothing to do with the crime. On cross-examination, while taking responsibility for the double murders, Gonzales explained the numerous gunshots to the victims as the product of the handgun being converted from semi-automatic to fully automatic, causing multiple shots to be fired simply by pulling the trigger a single time and holding it. (32 RT 4304-4305.) When asked by the prosecutor how he converted the gun to automatic, Gonzales explained that the spring behind the trigger had been removed. (32 RT 4305.) The trial judge then interrupted Gonzales's testimony to take "judicial notice" of the physical impossibility of converting a gun into an automatic by such a method, which the judge told the jury he knew to be impossible from his "own experience." (32 RT 4305.) In effect, the judge directed the jury to find Gonzales a liar, destroying the credibility of the sole witness supporting appellant's lingering doubt defense.

Although respondent contends the judge's statements were proper (RB 336-337), the impropriety of the judge's invasive action is not reasonably subject to dispute. As addressed in appellant's opening and reply briefs (Arg. XIV, AOB 144-155; ARB 58-67), the judge's statements violated appellant's statutory and constitutional rights and the trial court erred by improperly taking judicial notice, serving as an unsworn expert witness for the prosecution, and showing bias in favor of the prosecution.

*Gay* solidifies appellant's position that these errors resulted in prejudice. As this Court acknowledged in *Gay*, "residual doubt is perhaps the most effective strategy to employ at sentencing'." (*People v. Gay, supra*, 42 Cal.4th at p. 1227, quoting *Chandler v. United States, supra*, 218 F.3d at p. 1320, fn. 28.) In appellant's case, as in *Gay*, "[t]here can be no dispute that the identity of the shooter was the heart of defendant's penalty phase defense." (*People v. Gay, supra*, 42 Cal.4th at p.1223.)

In *Gay*, the trial court allowed the defense in the penalty phase to present some evidence challenging whether the defendant was the shooter, but excluded admissions by the co-defendant Cummings that he was the only shooter and corroborating testimony of eyewitnesses proffered by the defense to raise a lingering doubt. This Court held that the trial court abused its discretion in excluding the lingering doubt evidence as irrelevant. (*Ibid.*) In assessing prejudice, the Court stated: "Although the trial court's evidentiary rulings did not entirely preclude defendant from advancing this defense, those rulings surely crippled it." (*Ibid.*)

The evidentiary error in appellant's case had a similar devastating effect. Although Gonzales was allowed to testify that he was the *only shooter*, the trial court's improper intervention "surely crippled" the lingering doubt defense. In *Gay*, this Court recognized that "the trial

court's rulings effectively limited the defense to a single eyewitness" while precluding the defense from presenting "the far more powerful evidence that Raynard [Cummings] himself, on at least four occasions, had admitted firing all of the shots." (*Ibid.*) In appellant's case, the evidentiary error decimated the testimony of the *only witness* supporting appellant's lingering doubt defense. The trial judge intruded into the fact-finding process by directing the jury that Gonzales had lied. While Gonzales was allowed to testify, the trial court destroyed his credibility wiping out the "powerful evidence" that otherwise could have influenced the jury.

The jury requested a read back of Gonzales's testimony during the penalty phase deliberations. (35RT 4510, 4513.) This "strongly indicate[s] that the jury was focused on defendant's role in the murder." (*People v. Gay, supra*, 42 Cal.4th at p. 1227 [jury requests for clarification of lingering doubt instruction and read backs of eyewitness and expert testimony "strongly indicate" jury focused on role of defendant].) The central role of the identity of the shooter in the penalty determinations in appellant's case is also demonstrated by the resulting verdicts: Gonzales was sentenced to death for the Eaton killing while appellant was sentenced to life without possibility of parole (LWOP) where it was undisputed in the penalty retrial that Gonzales shot and killed Eaton; appellant was sentenced to death for the Skyles and Price killings where the trial court substantially interfered with the lingering doubt evidence attempting to show that Gonzales was the shooter in those killings as well. As stated in *Gay*: "Evidence indicating that defendant was the actual shooter would have been important to the jury in assessing the appropriate penalty." (*Ibid.*) The trial court unfairly deprived appellant of that powerful evidence by his unjustified statements to the jury.

In *Gay*, this Court found such error prejudicial even though aggravating evidence showed that the defendant had committed other crimes that “were unusually – and unnecessarily – brutal and cruel, and there was “scant evidence in defendant’s social history to excuse or mitigate these heinous crimes.” (*Ibid.*) Appellant’s case lacks such brutal and cruel other crimes evidence, making the prejudice from the trial court’s evidentiary error even more apparent.

There is a reasonable possibility the jury would have returned a different verdict absent the evidentiary error by the trial court. Reversal is required.

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## XV.

### **REVERSAL IS REQUIRED FOR THE PROSECUTOR'S REPEATED MISCONDUCT DURING THE PENALTY RETRIAL**

During the critical penalty phase testimony of Gonzales, the prosecutor asked Gonzales “were they lying” questions at least 19 times in relation to the testimony of seven prosecution witnesses whose testimony differed from that of Gonzales. As established in appellant’s opening and reply briefs, this pattern of questioning by a prosecutor is improper except in the situation where the testifying defendant personally knows the witness and therefore presumably has some basis to know why their testimony is contradictory. (*People v. Chatman* (2006) 38 Cal.4th 344, 381-383; *People v. Zambrano* (2004) 124 Cal.App.4th 228, 241-242.) The limited exception applies to only one of the witnesses in appellant’s case (see ARB 71-72), so the prosecutor’s repeated improper questioning of Gonzales as to the testimony of most of the prosecution witnesses constituted federal constitutional error.

As with the preceding argument regarding the judge’s improper interference with Gonzales’s testimony, *Gay* clarifies that prejudice resulted from the prosecutor’s improper cross-examination of Gonzales. “There can be no dispute that the identity of the shooter was the heart of defendant’s penalty phase defense.” (*People v. Gay, supra*, 42 Cal.4th at p. 1223.) That defense depended wholly on Gonzales’s testimony. The prosecutor’s improper questioning which forced Gonzales to label the other witnesses, including the wife of a victim, and a police officer, as liars although Gonzales had no foundation to opine on their motives, severely damaged his credibility. By so doing, the improper prosecutorial action “surely

crippled” appellant’s lingering doubt defense which relied on Gonzales’s testimony. (*Ibid.*)

As noted in the preceding argument, the jury’s request for a read back of Gonzales’s testimony (34 RT 4510) coupled with the eventual penalty verdicts (appellant received LWOP in for the Eaton murder where the undisputed evidence showed that Gonzales was the shooter) strongly indicate that the jury focused on defendant’s role in the murders. (*People v. Gay, supra*, 42 Cal.4th at p. 1227.)

Given the critical nature of Gonzales’s testimony, there is a reasonable possibility that the jury would have reached a different result absent the error. Reversal of the death sentences is required.

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## XVII.

### THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN THE PENALTY RETRIAL BY REFUSING TO INSTRUCT THE JURY ON LINGERING DOUBT

In the original penalty trial, the trial court instructed the jury on lingering doubt. (19RT 2640.) That trial ended in a hung jury favoring LWOP sentences for appellant on each of the murder convictions. (19RT 2765, 2769-2770.) In the penalty retrial, the same trial judge agreed to instruct on lingering doubt after defense counsel explained that lingering doubt would again be the thrust of his penalty phase defense and that appellant was relying on the requested instruction. (24 RT 3028.) Defense counsel did focus on a lingering doubt defense, presenting evidence that Gonzales was solely responsible for the shootings of Skyles and Price. (27 RT 3241-3242.) The trial judge, however, refused to instruct on lingering doubt despite the defense request and earlier agreement to do so. (32 RT 4190.)

The failure to instruct on the critical issue of the penalty phase resulted in an unfair and unreliable penalty determination. Respondent contends that no lingering doubt instruction is required. (RB 369-370.) In this case, however, as in *People v. Gay, supra*, the jurors were repeatedly admonished by the trial court that appellant's guilt had been already decided, and that the *only* decision they would be making was whether to impose a sentence of life without possibility of parole or death (24RT 2866, 3044, 3057, 25RT 3111; see also 7CT 1578 [statements in jury questionnaire informing them that jurors would *not* decide whether or not defendants are guilty]), and nothing in "the record suggest[s] that the jury understood how to weigh the evidence that was admitted." (*People v. Gay,*

*supra*, 42 Cal. 4<sup>th</sup> at p. 1225.)<sup>2</sup>

Indeed, the likelihood was even greater in the instant case than it was in *Gay*, that the “the jury did not consider all or a substantial part of the penalty phase defense, which was lingering doubt.” (*Id.* at p. 1226.) Unlike *Gay*, in which the jury was given an instruction specifically authorizing it to consider any residual or lingering doubt as to appellant's guilt in reaching their sentencing decision (42 Cal.4th at p. 1217), the jury in the instant case received *no* such instruction. Thus while the jury in *Gay* was merely confused by the ostensibly conflicting instructions given by the court, and therefore unsure whether it could, in fact, consider evidence that Cummings rather than Gay had been the shooter as a factor in mitigation (*Id.* at pp. 1225- 1226), the jury in the instant case, having been told *only* that appellant's guilt was *not* in issue, had absolutely no basis upon which to believe that it was authorized to consider lingering or residual doubt as to whether appellant shot Skyles and Price as a circumstance of the offense in reaching its sentencing decision.<sup>3</sup> Under these circumstances, this Court's

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<sup>2</sup> As in *Gay*, the prosecutor's closing argument emphasized that appellant's guilt of the Skyles/Price shootings had already been conclusively established. (42 Cal.4th at p. 1226.) The prosecutor told the jury that the testimony concerning the two offenses “was not presented to you because I have to convict them again – they've already been convicted of these offenses – but that evidence was presented to you so that you could see exactly how these crimes occurred. . . .” (33RT 4395.) While the jury was not there to relitigate the prior guilt verdict, in the absence of a lingering doubt instruction by the court, the prosecutor's statement reinforced the notion that any doubt the jury might have as to whether appellant was in fact guilty of shooting Skyles and Price, was irrelevant to its sentencing decision.

<sup>3</sup>Although defense counsel was permitted to argue appellant's lack of involvement in the Skyles/Price shootings, the court was emphatic that the

decision in *Gay* makes clear that the trial court's refusal instruct the jury that they *could* consider any such doubt was prejudicial error. Indeed, the fact that, after having been given a lingering doubt instruction, seven of the original jurors voted for a sentence of life without the possibility of parole (19RT 2765, 2769-2770.), demonstrates that there was a reasonable probability that the outcome of the penalty retrial would have been different had such an instruction been given. Reversal is therefore required.

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jury not be told they could consider lingering doubt about appellant's guilt as a mitigating factor, and that if counsel were to argue anything that conflicted with the court's admonition to the jurors during voir dire that the issue of guilt was behind them, it would admonish the jury to follow the court's instruction. (32RT 4191.)

## XXV

### **APPELLANT'S DEATH SENTENCES MUST BE REVERSED DUE TO THE CUMULATIVE IMPACT OF THE MULTIPLE ERRORS RELATING TO HIS LINGERING DOUBT DEFENSE**

In *People v. Gay, supra*, this Court held that the trial court's erroneous exclusion of lingering doubt evidence during the penalty phase retrial, coupled with its admonition to the jury that the defendant's guilt had already been conclusively proven, was prejudicial error requiring reversal of the penalty verdict. (42 Cal.4th at pp.1213, 1224, 1226.) The Court stated, "[t]he combination of evidentiary and instructional errors presents an intolerable risk that the jury did not consider all or a substantial portion of the penalty phase defense."

The combination of errors in the instant case likewise created an "intolerable risk" that the jury did not consider appellant's penalty phase defense of lingering doubt. Although the trial court allowed testimony that Gonzalez alone was responsible for the deaths of Skyles and Price, the prosecutor's repeated improper questioning of Gonzalez about whether the eyewitnesses "were lying," and the trial court's own improper statements concerning the veracity of Gonzalez's testimony, unfairly damaged Gonzales' credibility. Those errors were exacerbated by (1) the trial court's repeated admonitions to the jury that guilt had already been determined; (2) its refusal to allow appellant to voir dire prospective jurors to clarify that this did not preclude their consideration of lingering doubt as a mitigating factor, and to determine their willingness to apply the concept of lingering doubt; and (3) its refusal to instruct the jury that it could consider lingering doubt as a factor in mitigation. Cumulatively, these errors "surely crippled"

appellant's penalty phase defense that Gonzalez -- not he -- shot Skyles and Price. (*People v. Gay, supra*, 42 Cal.4th at p. 1223.) Had the jury been allowed to evaluate Gonzales' testimony without the improper comments of the trial court and the improper questioning of the prosecutor, and had it understood that lingering doubt was a mitigating factor it could consider, there is a reasonable possibility that the outcome of appellant's penalty retrial would have been different. Again, the outcome of first penalty trial, in which none of these errors occurred, provides compelling evidence of how the outcome of the penalty retrial would likely have been different, absent these errors. Reversal is therefore required.

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**CONCLUSION**

For all of the foregoing reasons, and those stated in the Opening Brief and Reply Brief, appellant's death sentences must be reversed.

Dated: June 12, 2009

Respectfully submitted,

Michael J. Hersek  
State Public Defender

A handwritten signature in black ink, appearing to read "Jessica K. McGuire". The signature is written in a cursive style with a long, sweeping tail.

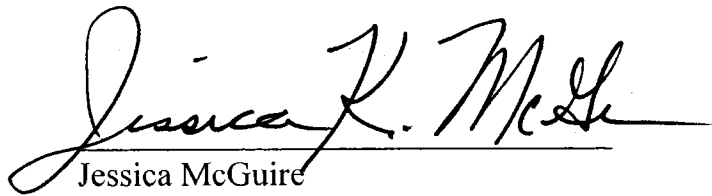
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**CERTIFICATE OF COUNSEL**  
**(Cal. Rules of Court, rule 36(b)(2))**

I am the Deputy State Public Defender assigned to represent appellant, Michael Soliz, in this automatic appeal. I conducted a word count of this brief using our office's computer software. On the basis generated word count, I certify that this brief excluding the tables and certificates is 4,319 words in length.

Dated: June 11, 2009

A handwritten signature in black ink, appearing to read "Jessica K. McGuire", written over a horizontal line.

Jessica McGuire  
Attorney for Appellant

**DECLARATION OF SERVICE BY MAIL**

Case Name: *People v. Soliz*  
Case Number: **Superior Court No. Crim. KA033736**  
**Supreme Court No. S075616**

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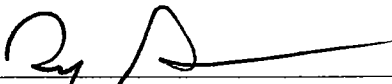
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 12, 2009, at Sacramento, California.

  
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Ricardo Silahua