

COPY

No. S148863

SUPREME COURT COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

ROBERT WARD FRAZIER,

Defendant and Appellant.

(Contra Costa County
Sup. Ct. No. 041700-6)

**SUPREME COURT
FILED**

OCT 27 2014

Frank A. McGuire Clerk

Deputy

APPELLANT'S OPENING BRIEF

Appeal from the Judgment of the Superior Court
of the State of California for the County of Contra Costa

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DEATH PENALTY

TABLE OF CONTENTS

	<u>Page</u>
APPELLANT’S OPENING BRIEF	1
STATEMENT OF APPEALABILITY	1
STATEMENT OF THE CASE	1
STATEMENT OF FACTS	3
I. GUILT PHASE	3
A. Kathleen Loreck is attacked	3
B. Investigation - Potential Suspects	5
C. Observations of Appellant’s Injuries	7
D. Evidence of Sexual Assault and DNA evidence ...	11
E. Appellant’s Arrest	14
F. Defense Case	14
II. PENALTY PHASE	18
A. Prosecution Case in Aggravation	18
1. Robbery, October 1985	18
2. Prison Assault, June 1986	18
3. Threat of Violence, April 1989	19
4. Robbery, September 1991	20
5. Victim Impact Evidence	20
B. Defense Case in Mitigation	21
1. Appellant’s Life	21
2. Appellant’s Mental Health Diagnoses	29
3. Institutional Violence and Future Violence ..	34
C. Prosecution Rebuttal	35

TABLE OF CONTENTS

	<u>Page</u>
I. THE TRIAL COURT’S IMPROPER EXCLUSION FOR CAUSE OF PROSPECTIVE JUROR NO. 111 REQUIRES REVERSAL OF APPELLANT’S DEATH SENTENCE	36
A. Factual Background	36
B. Juror No. 111 Was a Qualified Capital Juror; His Exclusion Was Reversible Error	37
1. Juror No. 111 Was Opposed to the Death Penalty, but Willing to Set Aside his Beliefs and Follow the Law	38
2. The Court’s Ruling Sustaining the Prosecutor’s Challenge is Based on a Misrepresentation of Juror No. 111’s Consistent and Unequivocal Assertions that He Could Impose the Death Penalty in this Case and a Misapplication of the Law Regarding the Qualifications of a Capital Juror . . .	45
3. The Court’s Decision Was Not Based on the Juror’s Demeanor	54
4. The Trial Court’s Finding Is Not Binding Because Juror No. 111’s Statements about His Ability to Impose the Death Penalty Were Neither Conflicting Nor Ambiguous	59
5. Juror No. 111 Held No Other Disqualifying Beliefs	65
C. CONCLUSION	68

TABLE OF CONTENTS

	<u>Page</u>
II. THE DEATH JUDGMENT MUST BE REVERSED BECAUSE APPELLANT WAS ERRONEOUSLY DENIED HIS CONSTITUTIONAL RIGHT TO SELF- REPRESENTATION AT THE PENALTY TRIAL	69
A. Factual and Procedural Background	69
1. Before the Start of the Penalty Trial, Appellant Informed the Trial Court He Might Assert His Right to Represent Himself	69
2. On the First Day of the Penalty Trial, Appellant Asserted His Right to Represent Himself	74
3. Appellant Renewed His Request to Represent Himself Repeatedly Throughout the Penalty Trial	79
B. A Criminal Defendant Has A Constitutional Right To Self-Representation As Long As His Assertion Of That Right Will Not Unjustifiably Disrupt The Trial Or Otherwise Obstruct The Administration Of Justice	86
1. Invocation of the Constitutional Right to Counsel Identified in <i>Faretta</i> Is Not Dependent on the Timing Of the Assertion	88
2. This Court's Interpretation of the Timeliness Requirement for the Assertion of the Sixth Amendment Right to Counsel Is Not Supported by State Law and Violates the Federal Constitution	90
C. The Trial Court Erroneously Denied Appellant's <i>Faretta</i> Motion in Violation of the Sixth and Fourteenth Amendments	94
1. The Request Was Unequivocal	95

TABLE OF CONTENTS

	<u>Page</u>
a. Appellant unequivocally asserted his right to represent himself in his initial motion on July 31	96
b. Appellant unequivocally asserted his right to represent himself each time he renewed his motion	104
c. The request was timely	108
i. The automatic application of the unitary-capital-trial rule to a determination of the timeliness of a <i>Faretta</i> motion unreasonably and unjustifiably undermines the right to self-representation at the penalty phase of a capital case	109
ii. The Court's existing jurisprudence supports assessment of a motion for self-representation at the penalty phase by considering the totality of the circumstances under which the motion is made rather than under the automatic application of the unitary-capital-trial rule	116
iii. Appellant's <i>Faretta</i> motion was timely under <i>Windham</i> and <i>Lynch</i> ..	120
2. The Request Was Knowingly and Intelligently Made	125
D. Even Assuming the Motion Was Untimely, The Trial Court's Denial Of The Motion Was Error	127
1. The Reason for the Request	128
2. Disruption or Delay	131
3. Quality of Representation	132

TABLE OF CONTENTS

	<u>Page</u>
4. The Defendant's Proclivity to Substitute Counsel .	135
5. The Length and Stage of the Proceedings	136
E. The Erroneous Denial Of The Right Of Self-Representation Requires Reversal	137
F. Conclusion	143
III. THE TRIAL COURT ERRONEOUSLY DENIED APPELLANT'S CONSTITUTIONAL RIGHT TO SELF-REPRESENTATION AT THE SECTION 190.4 AND SENTENCING HEARINGS	144
A. Factual Background	144
B. The Trial Court Erred in Denying Appellant's Request to Represent Himself at the Section 190.4 and Sentencing Hearings	148
1. The Trial Court Erred in Denying Appellant's Motion on the Ground that He Was Not Qualified to Represent Himself	149
2. The Request was Unequivocal	149
3. The Request was Timely	149
i. The section 190.4 and sentencing hearings are separate proceedings from the trial for purposes of determining the timeliness of a <i>Faretta</i> motion.	149
ii. Appellant's self-representation motion was timely under <i>Windham</i> and <i>Lynch</i>	153
iii. The trial court abused its discretion by denying the self-representation motion	154
a. Quality of representation	155
b. The Defendant's Proclivity to Substitute Counsel	156

TABLE OF CONTENTS

	<u>Page</u>
c. Disruption or Delay of Proceedings	156
C. The Erroneous Denial of the Right of Self-Representation Requires Reversal	158
D. Conclusion	159
IV. THE CONVICTIONS AND DEATH JUDGMENT MUST BE REVERSED BECAUSE THE TRIAL COURT ERRONEOUSLY AND PREJUDICIALLY INSTRUCTED THE JURY TO CONSIDER APPELLANT'S PUTATIVE FLIGHT IN DECIDING HIS CULPABILITY	160
A. Factual Background	160
B. The Trial Court Erred in Instructing the Jury to Consider Appellant's Putative Flight in Deciding His Culpability	161
1. There Was No Factual Basis for the Flight Instruction	161
2. The Flight Instruction Unduly Favored the Prosecution, and Was Argumentative and Unnecessary	161
3. The Flight Instruction Should Not Be Given When, As Here, Identity Is Conceded	164
4. The Flight Instruction Permitted the Jury to Draw an Impermissible Inference Concerning Appellant's Culpability	164
5. The Error Violated Appellant's State and Federal Constitutional Rights	166
6. Reversal of the Convictions and Ensuing Death Judgment Is Required	168

TABLE OF CONTENTS

	<u>Page</u>
V. THE TRIAL COURT ERRONEOUSLY DENIED APPELLANT’S MOTION FOR INDIVIDUAL SEQUESTERED VOIR DIRE	170
A. A Voir Dire Procedure That Does Not Allow Individual Sequestered Voir Dire On Death-Qualification Violates A Capital Defendant’s Constitutional Rights To Due Process, Trial By An Impartial Jury, Effective Assistance Of Counsel, And A Reliable Sentencing Determination . .	171
B. The Trial Court Erred In Denying Appellant’s Request For Individual Sequestered Voir Dire	173
C. The Trial Court’s Unreasonable And Unequal Application Of The Law Governing Juror Voir Dire Requires Reversal Of Appellant’s Death Sentence	175
VI. CALIFORNIA’S DEATH PENALTY STATUTE, AS INTERPRETED BY THIS COURT AND APPLIED AT APPELLANT’S TRIAL, VIOLATES THE UNITED STATES CONSTITUTION	178
A. Penal Code Section 190.2 is Impermissibly Broad	178
B. The Broad Application Of Section 190.3, Subdivision (a) Violated Appellant’s Constitutional Rights	179
C. The Death Penalty Statute And Accompanying Jury Instructions Fail To Set Forth The Appropriate Burden Of Proof	181
1. Appellant’s Death Sentence Is Unconstitutional Because it Is Not Premised on Findings Made Beyond a Reasonable Doubt	181
2. Appellant’s Death Verdict Was Not Premised on Unanimous Jury Findings	183
a. Aggravating factors	183

TABLE OF CONTENTS

	<u>Page</u>
b. Unadjudicated Criminal Activity	184
3. The Instructions Caused the Penalty Determination to Turn on an Impermissibly Vague and Ambiguous Standard	185
4. The Instructions Failed to Inform the Jurors That If They Determined That Mitigation Outweighed Aggravation, They Were Required to Return a Sentence of Life Without the Possibility of Parole	186
5. The Instructions Violated the Sixth, Eighth and Fourteenth Amendments by Failing to Inform the Jury of the Lack of Need for Unanimity as to Mitigating Circumstances	187
6. The Penalty Jury Should Be Instructed on the Presumption of Life	188
D. Failing To Require That The Jury Make Written Findings Violates Appellant’s Right to Meaningful Appellate Review	189
E. The Instructions To The Jury On Mitigating And Aggravating Factors Violated Appellant’s Constitutional Rights	189
1. The Use of Restrictive Adjectives in the List of Potential Mitigating Factors	189
2. The Failure to Delete Inapplicable Sentencing Factors	190
3. The Failure to Instruct That Statutory Mitigating Factors Were Relevant Solely as Potential Mitigators	190

TABLE OF CONTENTS

	<u>Page</u>
F. The Prohibition Against Intercase Proportionality Review Guarantees Arbitrary And Disproportionate Impositions Of The Death Penalty	191
G. California’s Capital Sentencing Scheme Violates The Equal Protection Clause	191
H. California’s Use Of The Death Penalty As A Regular Form Of Punishment Falls Short of International Norms	192
CONCLUSION	193
CERTIFICATE OF COUNSEL	194

TABLE OF AUTHORITIES

Pages

FEDERAL CASES

<i>Adams v. Carroll</i> (9th Cir. 1989) 875 F.2d 1441	99, 108
<i>Adams v. Texas</i> (1980) 448 U.S. 38	37, 39, 50
<i>Apprendi v. New Jersey</i> (2000) 530 U.S. 466	181, 182, 185
<i>Bacigalupo v. California</i> (1992) 506 U.S. 802	162
<i>Beck v. Alabama</i> (1980) 447 U.S. 625	167
<i>Blakely v. Washington</i> (2004) 542 U.S. 296	181, 182, 185
<i>Boyde v. California</i> (1990) 494 U.S. 370	186, 187
<i>Brewer v. Quarterman</i> (2007) 550 U.S. 286	187
<i>Bullington v. Missouri</i> (1981) 451 U.S. 430	111, 112
<i>California v. Ramos</i> (1983) 463 U.S. 992	173
<i>Chapman v. California</i> (1967) 386 U.S. 18	168, 175
<i>Chapman v. United States</i> (5th Cir. 1977) 553 F.2d 886	111, 158, 175

TABLE OF AUTHORITIES

	<u>Pages</u>
<i>Carter v. Kentucky</i> (1981) 450 U.S. 288	182
<i>Delo v. Lashley</i> (1983) 507 U.S. 272.	188
<i>Eddings v. Oklahoma</i> (1982) 455 U.S. 104	113, 168
<i>Estelle v. Williams</i> (1976) 425 U.S. 501	188
<i>Faretta v. California</i> (1975) 422 U.S. 806	passim
<i>Ford v. Wainwright</i> (1986) 477 U.S. 399	167
<i>Furman v. Georgia</i> (1972) 408 U.S. 238	178
<i>Gardner v. Florida</i> (1977) 430 U.S. 349	173
<i>Godinez v. Moran</i> (1993) 509 U.S. 389	132, 149
<i>Gray v. Mississippi</i> (1987) 481 U.S. 648	68
<i>Green v. United States</i> (1961) 365 U.S. 301	137
<i>Gregg v. Georgia</i> (1976) 428 U.S. 153	189

TABLE OF AUTHORITIES

	<u>Pages</u>
<i>Harmelin v. Michigan</i> (1991) 501 U.S. 957	184
<i>In re Winship</i> (1970) 397 U.S. 358	167
<i>Indiana v. Edwards</i> (2008) 554 U.S. 164	87, 113, 127
<i>Irvin v. Dowd</i> (1961) 366 U.S. 717	37
<i>Jackson v. Ylst</i> (9th Cir.1990) 921 F.2d 882	100, 104
<i>Johnson v. Mississippi</i> (1988) 486 U.S. 578	184
<i>Lindsay v. Normet</i> (1972) 405 U.S. 56	166
<i>Lockett v. Ohio</i> (1978) 438 U.S. 586	113, 187, 189
<i>Lockhart v. McCree</i> (1986) 476 U.S. 162	38, 60, 65
<i>Martinez v. Court of Appeal</i> (2000) 528 U.S. 152	92
<i>Maynard v. Cartwright</i> (1988) 486 U.S. 356	180, 185-186
<i>McKaskle v. Wiggins</i> (1984) 465 U.S. 168	94, 138, 142, 158

TABLE OF AUTHORITIES

	<u>Pages</u>
<i>McKoy v. North Carolina</i> (1990) 494 U.S. 433	183, 187
<i>Mills v. Maryland</i> (1988) 486 U.S. 367	187, 189
<i>Miranda v. Arizona</i> (1966) 384 U.S. 436	14
<i>Mitchell v. United States</i> (1999) 526 U.S. 314	153
<i>Monge v. California</i> (1998) 524 U.S. 721	184
<i>Moore v. Calderon</i> (9th Cir. 1997) 108 F.3d 261	88
<i>Morgan v. Illinois</i> (1992) 504 U.S. 719	passim
<i>Murtishaw v. Woodford</i> (9th Cir. 2001) 255 F.3d 926	167
<i>Myers v. Ylst</i> (9th Cir. 1990) 897 F.2d 417	184
<i>Peters v. Gunn</i> (9th Cir. 1994) 33 F.3d 1190	149
<i>Ring v. Arizona</i> (2002) 536 U.S. 584	181, 182, 183, 185
<i>Roper v. Simmons</i> (2005) 543 U.S. 551	192

TABLE OF AUTHORITIES

	<u>Pages</u>
<i>Rosales-Lopez v. United States</i> (1981) 451 U.S. 182	173
<i>Stenson v. Lambert</i> (9th Cir. 2007) 504 F.3d 873	99
<i>Stringer v. Black</i> (1992) 503 U.S. 222	191
<i>Sullivan v. Louisiana</i> (1993) 508 U.S. 275	167, 168
<i>Trop v. Dulles</i> (1958) 356 U.S. 86	192
<i>Tuilaepa v. California</i> (1994) 512 U.S. 967	180
<i>Turner v. Murray</i> (1986) 476 U.S. 28	171, 172-173
<i>Ulster County Court v. Allen</i> (1979) 442 U.S. 140	165, 167
<i>United States v. Adams</i> (2001) 252 F.3d 276	135
<i>United States v. Arlt</i> (9th Cir. 1994) 41 F.3d 516	99
<i>United States v. Brown</i> (2d Cir. 1984) 744 F.2d 905	93, 138

TABLE OF AUTHORITIES

	<u>Pages</u>
<i>United States v. Dougherty</i> (D.C. Cir. 1972) 473 F.2d 1113	158
<i>United States v. Gonzales-Lopez</i> (2006) 548 U.S. 140	138, 139, 140
<i>United States v. Gaudin</i> (1995) 515 U.S. 506	167
<i>United States v. Mayes</i> (10th Cir. 1990) 917 F.2d 457	93
<i>United States v. Rubio-Villareal</i> (9th Cir. 1992) 967 F.2d 294	167
<i>United States v. Wesley</i> (8th Cir. 1986) 798 F.2d 1155	93
<i>Uttecht v. Brown</i> (2007) 551 U.S. 1	49, 57, 58
<i>Vasquez v. Hillery</i> (1986) 474 U.S. 254	178
<i>Victor v. Nebraska</i> (1994) 511 U.S. 1	168
<i>Wainwright v. Witt</i> (1985) 469 U.S. 412	passim
<i>Wardius v. Oregon</i> (1973) 412 U.S. 470	163, 166, 187
<i>Wiggins v. Smith</i> (2003) 539 U.S. 510	114

TABLE OF AUTHORITIES

	<u>Pages</u>
<i>Witherspoon v. Illinois</i> (1968) 391 U.S. 510	37, 47, 51, 171
<i>Wong Sun v. United States</i> (1963) 371 U.S. 471	165
<i>Woodson v. North Carolina</i> (1976) 428 U.S. 280	113, 173, 183, 187
<i>Zant v. Stephens</i> (1983) 462 U.S. 862	173, 178

STATE CASES

<i>Covarrubias v. Superior Court</i> (1998) 60 Cal.App.4th 1168	172, 174, 176
<i>In re Brumback</i> (1956) 46 Cal.2d 810	175
<i>In re Carmaleta B.</i> (1978) 21 Cal.3d 482	53
<i>In re Lucas</i> (2004) 33 Cal.4th 682	114
<i>In re Marriage Cases</i> (2008) 43 Cal.4th 757	92
<i>Leversen v. Superior Court</i> (1983) 34 Cal.3d 530	152
<i>Lucas v. Superior Court</i> (1988) 203 Cal.App.3d 733	92

TABLE OF AUTHORITIES

	<u>Pages</u>
<i>Moon v. Superior Court</i> (2005) 134 Cal.App.4th 1521	98
<i>People v. Abilez</i> (2007) 41 Cal.4th 472	161
<i>People v. Anderson</i> (1968) 70 Cal.2d 15	165
<i>People v. Anderson</i> (2001) 25 Cal.4th 543	181, 182, 185
<i>People v. Avila</i> (2006) 38 Cal.4th 491	189
<i>People v. Bacigalupo</i> (1991) 1 Cal.4th 103	162
<i>People v. Bacigalupo</i> (1993) 4 Cal.4th 457	113
<i>People v. Barnett</i> (1998) 17 Cal.4th 1044	100, 104
<i>People v. Bigelow</i> (1984) 37 Cal.3d 731	140, 175
<i>People v. Black</i> (2014) 58 Cal.4th 912	180
<i>People v. Blair</i> (2005) 36 Cal.4th 686	passim
<i>People v. Bloom</i> (1989) 48 Cal.3d 1194	91, 109

TABLE OF AUTHORITIES

	<u>Pages</u>
<i>People v. Bonilla</i> (2007) 41 Cal.4th 313	161
<i>People v. Box</i> (2000) 23 Cal.4th 1153	174
<i>People v. Boyce</i> (2014) 59 Cal.4th 672	99
<i>People v. Boyette</i> (2002) 29 Cal.4th 381	166
<i>People v. Bradford</i> (1997) 15 Cal.4th 1229	passim
<i>People v. Breaux</i> (1991) 1 Cal.4th 281	186
<i>People v. Brown</i> (1988) 46 Cal.3d 432	138, 141
<i>People v. Brown</i> (2004) 33 Cal.4th 382	180
<i>People v. Butler</i> (2009) 47 Cal.4th 814	125
<i>People v. Cahill</i> (1993) 5 Cal.4th 478	176-177
<i>People v. Capistrano</i> (2014) 59 Cal.4th 830	57
<i>People v. Carey</i> (2007) 41 Cal.4th 109	63

TABLE OF AUTHORITIES

	<u>Pages</u>
<i>People v. Carlisle</i> (2001) 86 Cal.App.4th 1382	98, 99
<i>People v. Carson</i> (2005) 35 Cal.4th 1	125
<i>People v. Cash</i> (2002) 28 Cal.4th 703	177
<i>People v. Castro</i> (1985) 38 Cal.3d 301	165
<i>People v. Clark</i> (1990) 50 Cal.3d 583	86, 109
<i>People v. Clark</i> (1992) 3 Cal.4th 41	106, 133, 136, 156
<i>People v. Cook</i> (2006) 39 Cal.4th 566	189, 190, 192
<i>People v. Courts</i> (1985) 37 Cal.3d 784	141
<i>People v. Cowan</i> (2010) 50 Cal.4th 401	67
<i>People v. Crandell</i> (1988) 46 Cal.3d 833	139, 140, 141
<i>People v. Cummings</i> (1993) 4 Cal.4th 1233	171
<i>People v. Daniels</i> (1991) 52 Cal.3d 815	162

TABLE OF AUTHORITIES

	<u>Pages</u>
<i>People v. Davenport</i> (1985) 41 Cal.3d 247	190
<i>People v. Dent</i> (2003) 30 Cal.4th 213	94, 97
<i>People v. Diaz</i> (1951) 105 Cal.App.2d 690	177
<i>People v. Doolin</i> (2009) 45 Cal.4th 390	passim
<i>People v. Duenas</i> (2012) 55 Cal.4th 1	65
<i>People v. Duff</i> (2014) 58 Cal.4th 527	67
<i>People v. Duncan</i> (1991) 53 Cal.3d 955	186
<i>People v. Dunkle</i> (2005) 36 Cal.4th 861	149
<i>People v. Edelbacher</i> (1989) 47 Cal.3d 983	178
<i>People v. Fairbank</i> (1997) 16 Cal.4th 1223	181
<i>People v. Fauber</i> (1992) 2 Cal.4th 792	189
<i>People v. Fierro</i> (1991) 1 Cal.4th 173	191

TABLE OF AUTHORITIES

	<u>Pages</u>
<i>People v. Gamache</i> (2010) 48 Cal.4th 347	51
<i>People v. Ghent</i> (1987) 43 Cal.3d 739	39, 192
<i>People v. Gray</i> (2005) 37 Cal.4th 168	45
<i>People v. Green</i> (1980) 27 Cal.3d 1	175
<i>People v. Griffin</i> (2004) 33 Cal.4th 536	182
<i>People v. Halvorsen</i> (2007) 42 Cal.4th 379	passim
<i>People v. Hamilton</i> (1988) 45 Cal.3d 351	109, 110, 111, 134
<i>People v. Hamilton</i> (1989) 48 Cal.3d 1142	190
<i>People v. Hardy</i> (1992) 2 Cal.4th 86	109, 111, 112
<i>People v. Hawthorne</i> (1992) 4 Cal.4th 43	181
<i>People v. Heard</i> (2003) 31 Cal.4th 946	68
<i>People v. Hernandez</i> (1985) 163 Cal.App.3d 645	119

TABLE OF AUTHORITIES

	<u>Pages</u>
<i>People v. Herrera</i> (1980) 104 Cal.App.3d 167	passim
<i>People v. Hill</i> (1983) 148 Cal.App.3d 744	136
<i>People v. Hillhouse</i> (2002) 27 Cal.4th 469	190
<i>People v. Hines</i> (1997) 15 Cal.4th 997	100
<i>People v. Horning</i> (2004) 34 Cal.4th 871	59
<i>People v. Horton</i> (1995) 11 Cal.4th 1068	89, 131, 167
<i>People v. Howard</i> (2008) 42 Cal.4th 1000	161, 162, 166
<i>People v. Jackson</i> (2009) 45 Cal.4th 662	87, 148
<i>People v. Jenkins</i> (2000) 22 Cal.4th 900	94, 120, 123
<i>People v. Johnson</i> (2012) 53 Cal.4th 519	91
<i>People v. Jones</i> (2003) 29 Cal.4th 1229	65
<i>People v. Jones</i> (2012) 54 Cal.4th 1	50-51, 63

TABLE OF AUTHORITIES

	<u>Pages</u>
<i>People v. Joseph</i> (1983) 34 Cal.3d 936	97, 138, 158
<i>People v. Jurado</i> (2006) 38 Cal.4th 72	171
<i>People v. Kaurish</i> (1990) 52 Cal.3d 648	51, 52
<i>People v. Kelley</i> (1980) 113 Cal.App.3d 1005	186
<i>People v. Kennedy</i> (2005) 36 Cal.4th 595	180
<i>People v. Kirkpatrick</i> (1994) 7 Cal.4th 988	110, 150
<i>People v. Knoller</i> (2007) 41 Cal.4th 139	53
<i>People v. Lawley</i> (2002) 27 Cal.4th 102	131
<i>People v. Lewis</i> (2001) 26 Cal.4th 334	163
<i>People v. Lewis</i> (2008) 43 Cal.4th 415	59
<i>People v. Loker</i> (2008) 44 Cal.4th 691	166
<i>People v. Lucero</i> (1988) 44 Cal.3d 1006	113

TABLE OF AUTHORITIES

	<u>Pages</u>
<i>People v. Lynch</i> (2010) 50 Cal.4th 693	passim
<i>People v. Mai</i> (2014) 57 Cal.4th 986	46, 47, 61
<i>People v. Manriquez</i> (2005) 37 Cal.4th 547	192
<i>People v. Marlow</i> (2004) 34 Cal.4th 131	100
<i>People v. Marshall</i> (1997) 15 Cal.4th 1	passim
<i>People v. Martinez</i> (2009) 47 Cal.4th 399	46
<i>People v. Mayfield</i> (1997) 14 Cal.4th 668	89, 150, 157
<i>People v. McKinnon</i> (2011) 52 Cal.4th 610	66
<i>People v. Medina</i> (1995) 11 Cal.4th 694	184
<i>People v. Mendoza</i> (2000) 24 Cal.4th 130	162
<i>People v. Miller</i> (2007) 153 Cal.App.4th 1015	151, 152
<i>People v. Mincey</i> (1992) 2 Cal.4th 408	162, 163

TABLE OF AUTHORITIES

	<u>Pages</u>
<i>People v. Montes</i> (2014) 58 Cal.4th 809	64
<i>People v. Moore</i> (1954) 43 Cal.2d 517	167, 186
<i>People v. Morgan</i> (2007) 42 Cal.4th 593	162
<i>People v. Musselwhite</i> (1998) 17 Cal.4th 1216	112
<i>People v. Nakahara</i> (2003) 30 Cal.4th 705	162, 163
<i>People v. Nicholson</i> (1994) 24 Cal.App.4th 584	passim
<i>People v. Nieto Benitez</i> (1992) 4 Cal.4th 91	162
<i>People v. O’Bryan</i> (1913) 165 Cal. 55	176
<i>People v. Ochoa</i> (2001) 26 Cal.4th 398	163
<i>People v. Ortiz</i> (1990) 51 Cal.3d 975	141
<i>People v. Panah</i> (2005) 35 Cal.4th 395	162
<i>People v. Pearson</i> (2012) 53 Cal.4th 306	59

TABLE OF AUTHORITIES

	<u>Pages</u>
<i>People v. Pensinger</i> (1991) 52 Cal.3d 1210	164
<i>People v. Percelle</i> (2005) 174 Cal.App.4th 164	133
<i>People v. Prieto</i> (2003) 30 Cal.4th 226	163, 182, 183, 184
<i>People v. Ramos</i> (2004) 34 Cal.4th 494	92
<i>People v. Rice</i> (1976) 59 Cal.App.3d 998	186
<i>People v. Rivers</i> (1993) 20 Cal.App.4th 1040	passim
<i>People v. Roder</i> (1983) 33 Cal.3d 491	165, 167
<i>People v. Rogers</i> (1995) 37 Cal.App.4th 1053	137, 138
<i>People v. Roldan</i> (2005) 35 Cal.4th 646	54, 65, 96, 134
<i>People v. Romero</i> (1996) 13 Cal.4th 497	175
<i>People v. Rountree</i> (2013) 56 Cal.4th 823	66, 67
<i>People v. Ruiz</i> (1983) 142 Cal.App.3d 780	116, 135, 154

TABLE OF AUTHORITIES

	<u>Pages</u>
<i>People v. Salazar</i> (1977) 74 Cal.App.3d 875	106
<i>People v. Sanders</i> (1995) 11 Cal.4th 475	162
<i>People v. Schmeck</i> (2005) 37 Cal.4th 240	178
<i>People v. Sedeno</i> (1974) 10 Cal.3d 703	182
<i>People v. Sengpadychith</i> (2001) 26 Cal.4th 316	192
<i>People v. Sharp</i> (1972) 7 Cal.3d 448	91
<i>People v. Skaggs</i> (1996) 44 Cal.App.4th 1	104
<i>People v. Smith</i> (1983) 34 Cal.3d 251	153
<i>People v. Smithey</i> (1999) 20 Cal.4th 936	164
<i>People v. Snow</i> (2003) 30 Cal.4th 43	192
<i>People v. Stanley</i> (2006) 39 Cal.4th 913	87, 148
<i>People v. Stanley</i> (1995) 10 Cal.4th 764	179

TABLE OF AUTHORITIES

	<u>Pages</u>
<i>People v. Stewart</i> (2004) 33 Cal.4th 425	passim
<i>People v. Stitely</i> (2005) 35 Cal.4th 514	171
<i>People v. Stuckey</i> (2009) 175 Cal.App.4th 898	152, 153
<i>People v. Superior Court (Alvarez)</i> (1997) 14 Cal.4th 968	174
<i>People v. Tate</i> (2010) 49 Cal.4th 635	37
<i>People v. Taylor</i> (1990) 52 Cal.3d 719	183, 184
<i>People v. Taylor</i> (2009) 47 Cal.4th 850	127
<i>People v. Thornton</i> (2007) 41 Cal.4th 391	164
<i>People v. Tyner</i> (1977) 76 Cal.App.3d 352	89, 142
<i>People v. Valdez</i> (2004) 32 Cal.4th 73	97
<i>People v. Waidla</i> (2000) 22 Cal.4th 690	172, 174
<i>People v. Ward</i> (2005) 36 Cal.4th 186	185

TABLE OF AUTHORITIES

	<u>Pages</u>
<i>People v. Watson</i> (1956) 46 Cal.2d 818	138, 139, 142, 168
<i>People v. Whalen</i> (2013) 56 Cal.4th 1	62, 68
<i>People v. Williams</i> (1990) 220 Cal.App.3d 1165	156
<i>People v. Wilson</i> (2008) 44 Cal.4th 758	37-38
<i>People v. Windham</i> (1977) 19 Cal.3d 121	passim
<i>People v. Wright</i> (1990) 52 Cal.3d 367	104
<i>People v. Wright</i> (1988) 45 Cal.3d 1126	162, 166

FEDERAL STATUTES

28 U.S.C. § 1654.	93
U.S. Const. Amends	
6	166, 170, 171
8	166, 170, 167, 188
14	passim

STATE STATUTES

Cal. Const. art. I, §§	
7	166, 167, 170, 171
15	166, 167, 170, 171
16	166, 167, 170, 171
17	166, 167

TABLE OF AUTHORITIES

	<u>Pages</u>
Code Civ. Proc., §§	223 170, 174
	232, subd. (b) 67
Pen. Code, §§	187. Passim
	190.2 178, 179
	190.3 passim
	1096 167
	1127c 161
	1158a 183

COURT RULES

Cal. Rules of Court, rules	4.421 192
	4.423 192

JURY INSTRUCTIONS

CALCRIM Nos	223 163
	224 163
	372 160
	704 163
	763 112
	766 52, 53
CALJIC Nos	2.03 162
	8.85 passim
	8.86 181
	8.87 181, 184, 185
	8.88 181, 186

TEXT AND OTHER AUTHORITIES

2 LaFave, Substantive Criminal Law (2d ed. 2003), § 14.7(a)	165
Note, <i>The Presumption of Life: A Starting Point for Due Process Analysis of Capital Sentencing</i> (1984) 94 Yale L.J. 351	188

TABLE OF AUTHORITIES

	<u>Pages</u>
Thomas, <i>Beyond Mitigation Towards a Theory of Allocation</i> (2007) 75 Fordham L.Rev. 2641	137
Winnick, <i>New Directions in the Right to Refuse Mental Health Treatment: the Implications of Riggins v. Nevada</i> (1993) 2 Wm. & Mary Bill Rts. J. 205	92

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,)	S148863
)	
<i>Plaintiff and Respondent,</i>)	Contra Costa Cty
)	Superior Court
)	No. 041700-6
v.)	
)	
ROBERT WARD FRAZIER,)	
)	
<i>Defendant and Appellant.</i>)	

APPELLANT'S OPENING BRIEF

STATEMENT OF APPEALABILITY

This appeal is from a final judgment imposing a verdict of death and is automatic under Penal Code section 1239, subdivision (b).

STATEMENT OF THE CASE

On November 5, 2004, appellant was charged in Contra Costa County Superior Court case number 041700-6 by a three-count indictment. Count One alleged the murder of Kathleen Luise Loreck. (Pen. Code, §

187.)¹ The indictment alleged two special circumstances under section 190.2 (a)(17), felony murder, that the murder was committed during the commission of rape and sodomy. The information also charged forcible rape in violation of section 261, subdivision (a)(2) (Count Two), and sodomy by use of force in violation of section 286, subdivision (c)(2) (Count Three). (2 CT 336-338.)

Jury selection began on March 27, 2006. (4 CT 1123.)² The prosecution case began on May 23, 2006. (5 CT 1536.) On June 14, 2006, the prosecution concluded its case-in-chief and the defense began its case. (6 CT 1586.) On June 20, 2006, the defense rested. (6 CT 1603.) The prosecution presented no rebuttal. (*Ibid.*)

The jury began deliberating on June 20, 2006. (6 CT 1604.) On June 21, 2006, the jurors returned their verdicts, finding appellant guilty of first degree murder, and guilty of counts two and three, and finding true the special circumstances. (6 CT 1640-1641.)

On July 31, 2006, the penalty phase of the trial began. (6 CT 1865.) On August 21, 2006, the jurors began deliberating and returned a death verdict on August 24, 2006. (7 CT 2032, 2034-2035, 2043.)

On December 15, 2006, the court denied the automatic motion to modify the verdict and imposed a sentence of death for the murder conviction. The court also imposed six years each for counts two and three, to run concurrent and stayed them pursuant to section 654. (8 CT 2263.)

¹ All further statutory references are to the Penal Code unless otherwise noted.

² “CT” refers to the Clerk’s Transcript on appeal; “RT” refers to the Reporter’s Transcript.

STATEMENT OF FACTS

I. GUILT PHASE

A. Kathleen Loreck is attacked

On May 13, 2003, Kathleen Loreck left her office at Systron Donner in Concord for a midday walk on the Canal Trail located behind her office. (35 RT 7188; 38 RT 7684; 39 RT 7723; 41 RT 8164, 8165.) At approximately 1:45 p.m., while talking on her cell phone with her husband, Johannes Loreck, who was living in Austria at the time, Loreck mentioned that there were homeless people near the trail where she was walking, and that she did not want them to hear her talking.³ (35 RT 7186, 7187, 7190-7192, 7201, 7214.) After his wife made this statement, Johannes Loreck heard a low sigh on the phone, but when he called Loreck's name, she did not respond. (35 RT 7193.) When Johannes called back and could not get through, he called his father, Heinz Loreck, who also worked at Systron Donner. (35 RT 7194, 7195, 7196.)

After speaking with his son, Heinz noticed Loreck's regular shoes still at her desk so he went to the trail to look for her. (35 RT 7213.) When he could not find her, he returned to Systron Donner and called the police. (*Ibid.*) A police officer was dispatched to Systron Donner at 3:10 p.m. (36 RT 7278; 39 RT 7876.) Officer Paul Borda, who was assigned to the downtown unit riding an off-road motorcycle to patrol parks, canals, and trail areas, and to deal with homeless people in these areas, also received the call and began searching the Canal Trail at Cowell Road for Loreck. (36 RT 7293, 7299-7300, 7301.)

³ There were several homeless encampments along the trail near Systron Donner. (36 RT 7292.)