In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

VIRGINIA HERNANDEZ LOPEZ,

Defendant and Appellant.

S177046

Case No. S_____

Fourth Appellate District, Division One, Case No. D052885
San Diego County Superior Court, Case No. SCE274145
The Honorable Lantz Lewis, Judge

PETITION FOR REVIEW

EDMUND G. BROWN JR.
Attorney General of California
DANE R. GILLETTE
Chief Assistant Attorney General
DONALD E. DENICOLA
Deputy Solicitor General
GARY W. SCHONS
Senior Assistant Attorney General
GIL GONZALEZ
Supervising Deputy Attorney General
LYNNE G. MCGINNIS
Deputy Attorney General
State Bar No. 101090
110 West A Street, Suite 1100
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2205
Fax: (619) 645-2191
Email: Lynne.McGinnis@doj.ca.gov
Attorneys for Plaintiff and Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

STATUTES

CONSTITUTIONAL PROVISIONS

COURT RULES

TO: THE HONORABLE RONALD M. GEORGE, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

Pursuant to rules 8.500(a)(1) and (b)(1) of the California Rules of Court, the People of the State of California respectfully petition this Court to review the published decision of the California Court of Appeal, Fourth Appellate District, Division One, reversing for alleged Confrontation-Clause error appellant Lopez' conviction for committing vehicular manslaughter while intoxicated. The Court of Appeal's opinion is attached.

ISSUE PRESENTED

Is a blood-alcohol report generated by a gas chromatography device and recorded by its operator "testimonial" for Confrontation Clause purposes under *People v. Geier* (2007) 41 Cal.4th 555 and *Melendez-Diaz v. Massachusetts* (2009) __ U.S. __ [129 S.Ct. 2527, 174 L.Ed.2d 314]?

STATEMENT OF THE CASE

After consuming several drinks, appellant drove recklessly down a narrow mountain road. Straying into the on-coming traffic lane, she drove her vehicle into the side of a pickup truck, pushing the truck into a tree and killing its driver. Appellant was charged with committing vehicular manslaughter while under the influence of alcohol. (See Pen. Code, § 191.5.)

To establish appellant's blood/alcohol level at the time of the offense—and over appellant's Confrontation Clause objection—the prosecution at her trial introduced the computer print-out generated from a gas chromatograph machine (GCMS), handwritten notes by the machine's operator recording the results, and the in-court testimony of John Willey, a

forensic alcohol supervisor at the San Diego County Sheriff's Crime Laboratory, where the blood-alcohol testing took place.

Mr. Willey detailed his scientific training and testified that, having worked at the lab for 17½ years at the lab, he was familiar with its procedures for analyzing blood samples. (4 RT 468-469.) He described the laboratory's chain-of-custody process, in which incoming samples in sealed envelopes are issued laboratory identification numbers and then are stored until tested. (4 RT 459.) Then he explained the operation of the GCMS. (4 RT 459.) He noted that, after samples are tested in the machine, its computer generates a paper printout of the result. (4 RT 459-460.) The printout shows a graph that, in the widths and heights of peaks depicted, corresponds to the chemical being tested in the sample. (4 RT 460.) Mr. Willey also testified about safeguards the lab uses to ensure that the tests are run properly and that the GCMS remains calibrated and in working order. (4 RT 460-461.)

With respect to appellant's sample, Willey further testified that he trained and was intimately familiar with the work performed by criminalist Jorge Peña at the lab. (4 RT 461.) As Willey explained, Peña and all the other analysts at the lab were trained to process blood-alcohol tests in the same manner, one recognized in the scientific community as accurate and correct. (4 RT 462.)

In connection with this case, Willey reviewed a blood-alcohol report prepared by Peña recording the alcohol level in appellant's blood sample as well as the printout from the GCMS machine and the before-and-after quality-control calibrations of the machine. (4 RT 462-463; Peo. Exh. 18.) These records are maintained by the lab in the ordinary course of business. (4 RT 463-464, 466-467.) The test performed by Peña reported that, at 1:04 a.m. on August 19, 2007, about two hours after the crash, appellant's blood-alcohol level was ".09 grams percent." (4 RT 465-466.) Finally,

Willey testified to his conclusion, based on his separate abilities as a criminal analyst, that the blood-alcohol level in appellant's sample was .09. (4 RT 467.)

Defense counsel cross-examined Willey at length. (4 RT 467-484.) The written reports were admitted into evidence as People's Exhibit 18. (7 RT 1033.)

After the prosecution presented further evidence about the circumstances of the collision, appellant's involvement in it, and appellant's drinking beforehand, the jury found appellant guilty as charged. The judge sentenced her to state prison for the midterm of two years. (1 CT 94, 140.)

In May 2009, the Court of Appeal affirmed the judgment in light of this Court's opinion in *People v. Geier*, *supra*, 41 Cal.4th 555, upholding the admissibility of DNA laboratory data under the Confrontation Clause as "non-testimonial" so that the analyst who had performed the laboratory test was not required to be produced by the prosecution for cross-examination. But, in July, this Court granted review (Case No. S173791) and transferred the case back to the Court of Appeal "with directions to vacate its judgment and to reconsider the matter in light of *Melendez-Diaz v. Massachusetts*." (Slip opn. at p. 2.)

On August 31, the Court of Appeal issued a new opinion, published, that reversed the judgment. The panel held that *Melendez-Diaz* had "disapproved" this Court's decision in *Geier*. (Slip. opn. at p. 5.) Then, applying *Melendez-Diaz,* the panel held that the GCMS test results and Peña's report were testimonial and therefore should have been excluded because Peña was not presented for cross-examination at trial. Next, asserting simply that "it cannot be shown that the error . . . was harmless beyond a reasonable doubt (*Chapman* v. *California* (1967) 386 U.S. 18)," the Court of Appeal reversed appellant's conviction. (Slip. opn. at pp. 7-8.)

Respondent's petition for rehearing was denied on September 22, 2009.

REASONS WHY REVIEW SHOULD BE GRANTED

Review is necessary to settle an important question of law and to secure uniformity of decision. (See Cal. Rules of Court, rule 8.500(b)(1).) This Court in *Geier* recognized the importance of the question presented here—whether data produced by impersonal scientific processes and contemporaneously recorded by laboratory analysts is "testimonial" under the Confrontation Clause so that the prosecution need not produce the analyst in court for examination by the defense. And, in *Geier*, this Court affirmed that such reports are not "testimonial." But, as reflected in the case at bar and in other recent Court of Appeal decisions, the intervening United States Supreme Court opinion in *Melendez-Diaz* now is said by some to have overruled *Geier*. The Court of Appeal adopted that view in this case.

The Court of Appeal's decision throws *Geier* into doubt and impairs the orderly administration of justice. It forces forensic scientists to forego laboratory work in order to appear as witnesses in any case where they oversaw the scientific process that yielded results material to the trial. And, indeed, it threatens to render important evidence of those results, such as blood-alcohol levels in drunk-driving cases and DNA data in serious crimes in which the identity of the culprit is at issue, practically inadmissible.

In *People v. Geier, supra,* 41 Cal.4th 555, an expert different from the analyst who oversaw the production of a DNA report rendered an opinion based upon that report. This Court held that the DNA report was not "testimonial" under the Sixth Amendment right to confrontation and cross-examination as interpreted in *Crawford v. Washington* (2004) 541 U.S. 36. This Court reasoned that such reports are contemporaneous

observations of observable events made during a non-adversarial scientific process meant to ensure accuracy, i.e., a recording of the results as the scientific tests were performed.

Later, in *Melendez-Diaz*, the United States Supreme Court held that the defendant's Sixth Amendment rights were violated when the prosecution, without calling the affiants as witnesses at trial, presented "certificates of analysis" by laboratory technicians attesting that certain samples tested a week earlier were cocaine. As the Court observed, the "sole purpose" of these sworn affidavits was to provide evidence for the criminal trial. (*Melendez-Diaz*, *supra*, 129 S.Ct. at p. 2535.) The Court said there was no exception for reports that were "nearly contemporaneous" with the observed event (*id.* at p. 2535), without foreclosing that there might be an exception for "contemporaneous" reports. In *Davis v. Washington* (2006) 541 U.S. 813 [126 S.Ct. 2266, 165 L.Ed.2d 224], the United States Supreme Court had held that a contemporaneous observation (there in the form of a "911" call) is not testimonial even though it may be later used in litigation. (See *Melendez-Diaz*, *supra*, 129 S.Ct. at p. 2536.) This Court relied in large part on *Davis* in reaching its conclusion in *Geier*. (*Geier*, *supra*, 41 Cal.4th at pp. 602-607.) Four days after deciding *Melendez-Diaz*, the United States Supreme Court denied certiorari in *Geier*. (*Geier v. California* (2009) __ U.S. __ [129 S.Ct. 2856, 174 L.Ed.2d 600].)

In the wake of *Melendez-Diaz*, California appellate courts have reached varying conclusions about the continuing viability of certain common practices in California criminal prosecutions. In this Fourth Appellate District case, the Court of Appeal held that *Melendez-Diaz* abrogated this Court's holding in *Geier* that objective laboratory results produced by impersonal machines or processes were not "testimonial" for Confrontation Clause purposes . (Slip. Opn. at pp. 4-5.) In *People v. Gutierrez* (2009) __ Cal.App.4th __ [99 Cal.Rptr.3d 369], a Second

Appellate District case, the Court of Appeal held that *Melendez-Diaz* did not overrule *Geier*; accordingly, the court allowed evidence of reports of a sexual assault examination as long as a witness laid a proper foundation for them. (99 Cal.Rptr.3d at pp. 374-377.) In *People v. Rutterschmidt* (2009) 176 Cal.App.4th 1047, pet. review pending, No. S176213, a Second Appellate District case, the Court of Appeal concluded that the defendant's Confrontation Clause rights were not violated when the chief laboratory director testified in lieu of the analyst who had tested blood samples for the presence of drugs and alcohol. Disagreeing with the Fourth District opinion in this case, the Court of Appeal found that there was an important distinction between reports that were contemporaneous and affidavits that, as in *Melendez-Diaz*, were near contemporaneous. (*Id.* at p. 1054, fn. 3.) The *Rutterschmidt* court also noted that the defendant had an opportunity to cross-examine the expert who rendered an opinion based on those reports. (*Id.* at pp. 1070-1076; see also *People v. Dungo* (2009) 176 Cal.App.4th 1388, 1398-1405, pet. review pending, No. S176886 [*Melendez-Diaz* precludes new pathologist from rendering in-court cause-of-death opinion based on, and describing, autopsy report by non-testifying pathologist].)

Review is necessary to finally resolve the important *Geier* question, assertedly re-opened by *Melendez-Diaz*, of whether scientific reports generated by impersonal processes and contemporaneously recorded in the laboratory setting are "testimonial." The kind of tests performed in this case are at issue in numerous criminal cases involving the testing of blood for alcohol and other substances and the testing of biological material for DNA. The published opinion in this case threatens to seriously disrupt the administration of the criminal justice system by requiring each individual criminalist to be available to testify each time the work he or she oversees is presented by the prosecution in a criminal case—transforming them, in effect, from scientists to professional trial witnesses. Indeed, the Court of

Appeal opinion threatens in any event to render machine- or process-produced evidence unavailable for a criminal trial in any event. Such scientific evidence includes but is not limited to blood-alcohol testing, DNA testing, and autopsy reports. Also at risk are numerous convictions obtained over the past few years in reliance on scientific test results performed by an analyst or scientist not present for cross-examination at trial.

Further, the Court of Appeal's reading of *Melendez-Diaz* is incorrect. The holding in *Melendez-Diaz* is simple and straightforward: "The Sixth Amendment does not permit the prosecution to prove its case via ex parte out-of-court affidavits. . . ." (*Melendez-Diaz*, *supra*, 129 S.Ct. at p. 2542.) As Justice Thomas noted in his concurring opinion, "the Confrontation Clause is implicated by extrajudicial statements only insofar as they are contained in formalized testimonial materials, such as affidavits, depositions, prior testimony, or confessions [citations]." (*Id.* at p. 2543, Thomas, J., concurring, internal quotation marks omitted.) Unlike the after-the-fact affiants in *Melendez-Diaz*, the computer- or machine that generated the reports of the gas chromatograph results in this case was not a "witness" susceptible to "cross-examination." And the analyst in a case such as the present one merely records, without the exercise of subjective judgment, "the results of that analysis as she [is] actually performing [the] task." (*Geier*, *supra*, 41 Cal.4th at p. 606.) So, like the 911 caller in *Davis*, and unlike the affiant in *Melendez-Diaz*, the analyst is neither acting as witness nor testifying. (See *ibid.*) In addition, as in this case, an analyst familiar with the test and testing procedures often testifies and lays the foundation for introduction of the report. This analyst is available for and subject to cross-examination by defense counsel. Indeed, the report is not admissible without this foundational testimony. And here, as in *Geier*, such an expert rendered an opinion at trial, subject to cross-examination, on the

basis of the non-testimonial written report produced contemporaneously by the gas chromatograph and the operator in the laboratory. Thus, the concerns expressed by the High Court in *Melendez-Diaz*, i.e., weeding out incompetent and fraudulent analysts through confrontation and cross-examination (*Melendez-Diaz*, 129 S.Ct. at p. 2537), are not present with California's procedure.

Finally, by the time of the defendant's trial, the analyst who performed or oversaw the test likely will not remember it directly. Instead, the analyst will testify by relying on his or her contemporaneous report along with any computer-generated test results. As a practical matter, then, there is little to be gained from requiring the presence of the testing analyst, whose only role was to physically record and authenticate the objective, contemporaneous data generated by the machine.

CONCLUSION

For the foregoing reasons, the petition for review should be granted.

Dated: October 8, 2009

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of California
DANE R. GILLETTE
Chief Assistant Attorney General
DONALD E. DENICOLA
Deputy Solicitor General
GARY W. SCHONS
Senior Assistant Attorney General
GIL GONZALEZ
Supervising Deputy Attorney General

LYNNE G. MCGINNIS
Deputy Attorney General
Attorneys for Plaintiff and Respondent

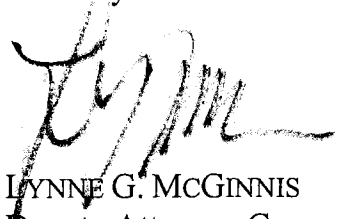
SD2008801482
80393743.doc

CERTIFICATE OF COMPLIANCE

I certify that the attached PETITION FOR REVIEW uses a 13 point Times New Roman font and contains 2255 words.

Dated: October 8, 2009

EDMUND G. BROWN JR.
Attorney General of California



LYNNE G. MCGINNIS
Deputy Attorney General
Attorneys for Plaintiff and Respondent

ATTACHMENT

Filed 8/31/09; on transfer from Supreme Ct.

OPINION AFTER TRANSFER FROM THE CALIFORNIA SUPREME COURT

CERTIFIED FOR PUBLICATION

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. VIRGINIA HERNANDEZ LOPEZ, Defendant and Appellant.	D052885 (Super. Ct. No. SCE274145)

APPEAL from a judgment of the Superior Court of San Diego County, Lantz Lewis, Judge. Reversed.

Janice R. Mazur, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Lynne McGinnis and Gil Gonzalez, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Virginia Hernandez Lopez of committing vehicular manslaughter while intoxicated in violation of Penal Code section 191.5, subdivision (b). Lopez appeals, contending the admission into evidence of a blood alcohol laboratory report violated her constitutional right to confrontation of witnesses by allowing testimonial hearsay evidence prohibited under *Crawford v. Washington* (2004) 541 U.S. 36. We reverse the judgment.

On May 11, 2009, this court filed an opinion affirming the judgment in this case. On July 22, 2009, the California Supreme Court granted a petition for review and issued the following order: "The cause is transferred to the Court of Appeal, Fourth Appellate District, Division One, with directions to vacate its judgment and to reconsider the matter in light of *Melendez-Diaz v. Massachusetts* (June 25, 2009, No. 07-591) ___ U.S. ___, 2009 WL 1789468." In compliance with the order of the Supreme Court, the opinion filed May 11, 2009, is vacated and we issue this new opinion.

FACTS

On August 18, 2007, Lopez worked the evening shift at a restaurant in Julian, California. During the evening, she drank at least three shots of tequila. Shortly after consuming the last shot, Lopez left the restaurant and drove westbound on State Route 78, a narrow, curving road. At the same time, Allan Wolowsky was driving eastbound on State Route 78. Lopez veered into the driver's side of Wolowsky's pickup truck, pushing his truck into a tree; and as a result Wolowsky died.

An ambulance took Lopez to a nearby church and from there a helicopter took her to a hospital. She suffered facial injuries and a broken leg. Her injuries prevented

investigating Officer Pirko from administering a preliminary alcohol screening. At the hospital, two hours after the collision, Officer Pirko observed phlebotomist, Trevin Tuovinen, draw two vials of blood from Lopez at 1:04 a.m. and seal them in an evidence envelope. Officer Pirko transported the vials to a police station in Oceanside where they were placed in evidence storage. Later, the vials were transferred to the San Diego County Sheriff's Crime Laboratory.

On August 28, 2007, Brian Constantino in the San Diego County Sheriff's Crime Laboratory received Lopez's blood samples from the Oceanside station. The San Diego office was beta testing a system for processing evidence. Generally, chain of custody papers accompany a locked evidence box. Under the new system, each item of evidence received individual chain of custody information. As a result, the People did not present chain of custody documentation for an evidence box containing Lopez's blood samples, but presented documentation for the individual blood samples.

Jorge Peña tested the alcohol content of Lopez's blood and reported a level of 0.09 percent blood alcohol content at the time of the blood draw. Over Lopez's *Crawford* objection, John Willey, a Criminalist Forensic Alcohol Supervisor with the San Diego County Sheriff's Crime Laboratory and custodian of the laboratory reports, testified at trial and explained the new evidence processing procedures. Over Lopez's objection, Peña's blood test report that Lopez's blood alcohol level at the time of the draw was 0.09 percent was admitted into evidence. Peña did not testify. A jury convicted Lopez of committing vehicular manslaughter while intoxicated.

DISCUSSION

I

Testimonial hearsay evidence otherwise permitted at a trial may not be admitted in a criminal proceeding unless the declarant is unavailable and the defendant had a prior opportunity to cross-examine the declarant. (*Crawford v. Washington, supra,* 541 U.S. at p. 59.) The California Supreme Court held that forensic laboratory reports are nontestimonial hearsay evidence because they qualify as business records. (*People v. Geier* (2007) 41 Cal.4th 555, 606-607 [concluding contemporaneous recordings of observable events in laboratory reports are nontestimonial business records because they are not accusatory and "can lead to either incriminatory or exculpatory results."].) A business record is a " 'report . . . or data compilation, in any form, of . . . conditions . . . or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the . . . report . . . .' " (*Geier*, at p. 606.) *Geier* concluded that a person who created a laboratory report does not need to testify at trial about the information contained in a laboratory report because that person " '[was] "not acting as [a] witness[];" and [was] "not testifying" ' " while making the report. (*Id.* at p. 606.)

However, in *Melendez-Diaz v. Massachusetts, supra,* ___ U.S. ___ [129 S.Ct. 2527] (*Melendez*), the United States Supreme Court held that laboratory reports of the type presented in *Geier*, and in the instant case, are testimonial hearsay evidence within the meaning of *Crawford* and are inadmissible in a criminal proceeding unless the person

creating the report is unavailable and the defendant had a prior opportunity to cross-examine the creator. (*Melendez, supra,* ___ U.S. at p. ___ [129 S.Ct. 2527, 2532].) It therefore appears that *Geier* has been disapproved by the United States Supreme Court's interpretation of the confrontation clause of the Sixth Amendment to the United States Constitution.

In *Melendez,* the defendant was charged under state law with distributing and trafficking in cocaine. At trial, the prosecution introduced into evidence "certificates of analysis" showing the results of the forensic analysis of the substances seized from the defendant. The certificates stated the substances were cocaine. The defendant objected to the admission into evidence of the certificates, contending that, under *Crawford*, the confrontation clause required the analyst of the substances testify in person and be subject to cross-examination. The defendant's objection was overruled, he was convicted by jury and his conviction affirmed through the state court appellate system, which held that the "authors of certificates of forensic analysis are not subject to confrontation under the Sixth Amendment." (*Melendez, supra,* ___ U.S. at p. ___ [129 S.Ct. 2527, 2531.)

Melendez concluded the certificates of forensic analysis were testimonial hearsay statements under *Crawford* because they contained the same testimony the analysts would provide if called as witnesses at trial. (*Melendez, supra,* ___ U.S. at p. ___ [129 S.Ct. 2527, 2532].) The purpose for which the certificates were prepared was to establish at trial the nature of the substances seized from the defendant and for that purpose were introduced as evidence at trial. (*Ibid.*) Therefore, "[a]bsent a showing that the analysts were unavailable to testify at trial *and* that [defendant] had a prior opportunity to cross-

examine them, [defendant] was entitled to ' "be confronted with" ' the analysts at trial." (*Ibid.*)

Melendez also concluded that to constitute testimonial hearsay, the certificates did not have to be accusatory in the sense they did not directly accuse the defendant of a crime. It is sufficient that the certificates provided testimony against or adverse to the defendant; they proved a fact necessary for the defendant's conviction. (*Melendez, supra,* ___ U.S. at p. ___ [129 U.S. 2527, 2533-2535].) Furthermore, *Melendez* rejected the arguments the certificates were not testimonial hearsay because they did not describe events observed in the past but rather nearly contemporaneous observations of the test of the nature of the substances; they contained neither observations of the crime nor any human conduct related to the crime; and they were not in response to interrogation. (*Melendez, supra,* ___ U.S. at p. ___ [129 U.S. 2527, 2535].) *Melendez* also rejected the argument the certificates were not testimonial hearsay subject to the confrontation clause because they were types of business records admissible at common law even though hearsay. (*Melendez, supra,* ___ U.S. at p. ___ [129 U.S. 2527, 2538].) The court stated: "Documents kept in the regular course of business may ordinarily be admitted at trial despite their hearsay status. [Citation.] But that is not the case if the regularly conducted business activity is the production of evidence for use at trial . . . . The analysts' certificates--like police reports generated by law enforcement officials--do not qualify as business or public records" because they are produced for use in court, not for the regular business of the entity producing them. (*Ibid.*, fn. omitted.)

II

Lopez contends the laboratory did not follow the standard procedures required to qualify the laboratory report as a nontestimonial business record under *Crawford* because the new procedures created discrepancies in the chain of custody documentation. Lopez further contends that in any event, under *Crawford,* the technician who tested her blood should have testified at trial; the laboratory report was inadmissible testimonial hearsay evidence under *Crawford.*

The People introduced adequate chain of custody documentation for Lopez's blood samples. The documents were not part of the record provided on appeal, but were introduced into evidence at trial. We reviewed these documents and found that they, together with the testimony of the laboratory report's custodian, Willey, show Constantino received Lopez's blood samples in San Diego on August 28, 2007, and Peña tested the blood on August 31, 2007. The court did not abuse its discretion by finding the People adequately established a chain of custody for Lopez's blood samples.

However, we conclude it was error under *Crawford* and *Melendez* to admit into evidence the blood alcohol report created by Peña. That report is indistinguishable from the certificates described in *Melendez* and was therefore testimonial hearsay evidence admitted in violation of the confrontation clause of the Sixth Amendment to the United States Constitution. There was no evidence Peña was unavailable and that Lopez had the opportunity to cross-examine him before trial.

Because it cannot be shown the error of admitting the blood alcohol report that Lopez was intoxicated at the time of the incident was harmless beyond a reasonable

doubt (*Chapman v. California* (1967) 386 U.S. 18), the admission of the report into evidence was prejudicial error and the judgment is therefore reversed.

DISPOSITION

The judgment is reversed.

CERTIFIED FOR PUBLICATION

McDONALD, J.

WE CONCUR:

McCONNELL, P. J.

NARES, J.

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v. Virginia Hernandez Lopez**

No.: **D052885**

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 that same day in the ordinary course of business.

On October 8, 2009, I served the attached **PETITION FOR REVIEW** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

Janice R. Mazur
Attorney at Law
Mazur & Mazur
13465 Camino Canada, No. 106-103
El Cajon, CA 92021
Attorneys for Virginia Hernandez Lopez
(2 copies)

The Honorable Bonnie M. Dumanis
District Attorney
San Diego County District Attorney's Office
330 West Broadway, Suite 1320
San Diego, CA 92101

The Honorable Lantz Lewis, Judge
San Diego County Superior Court
East County
Department EC-9
250 East Main Street
El Cajon, CA 92020

Appellate Defenders, Inc.
555 West Beech Street, Suite 300
San Diego, CA 92101

California Court of Appeal
Fourth Appellate District, Division One
750 B Street, Suite 300
San Diego, CA 92101

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 October 8, 2009, at San Diego, California.

M. Seda
Declarant

M. Seda
Signature

SD2008801482
80394127.doc