IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. VALDAMIR FRED MORELOS, Defendant and Appellant.	No. S051968 (Santa Clara Superior Court No. SC169362) Death Penalty Case

Appeal from the Judgment of the Superior Court
of the State of California for the County of Santa Clara

THE LATE HONORABLE DANIEL CREED, JUDGE

APPELLANT'S SECOND SUPPLEMENTAL REPLY BRIEF

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APPELLANT'S SECOND SUPPLEMENTAL REPLY BRIEF

I
THE DEPRIVATION OF APPELLANT'S AUTONOMY RIGHT TO CHOOSE HIS OWN PLEA REQUIRES REVERSAL OF APPELLANT'S CONVICTION AND JUDGMENT OF DEATH

In *McCoy v. Louisiana* (2018) 138 S.Ct. 1500, 1505 (*McCoy*), the United States Supreme Court held that a capital defendant has a Sixth Amendment autonomy right to choose the objectives of his defense that includes the right not to have his choice of plea overruled by his counsel. Appellant demonstrated in his opening brief that the judgment in this case must be reversed in its entirety because he was deprived of this autonomy right when Penal Code section 1018's bar on pleas of guilty by a capital defendant "without the consent of . . . counsel" prevented him from pleading guilty because his counsel would not assent.

Respondent premises the response on the incorrect notion that *McCoy* involved only the narrow right of a defendant to maintain his innocence at trial and therefore cannot apply in any case in which a defendant wishes to plead guilty. But *McCoy* is grounded in the right to *autonomy* protected by the Sixth Amendment, not a right to plead not guilty. Indeed, although autonomy goes undiscussed in respondent's brief in this case, respondent previously understood that, under *McCoy*, Penal Code section 1018's consent-of-counsel requirement "infringes on a defendant's constitutionally-protected '[a]utonomy to decide . . . the objective of the defense.'" (See Respondent's Supplemental Brief, *People v. Miracle*, S140894 at p.11 [citing *McCoy*, *supra*, 138 S.Ct. at p. 1508].)

Respondent also contends that the constitutionality of Penal Code section 1018 is controlled by this Court's prior cases upholding the validity of the consent-of-counsel requirement – all of which predate *McCoy*. California law is subject to the United States Constitution and the dictates of the United States Supreme Court. *McCoy* has made clear that the consent-of-counsel requirement, by permitting counsel to usurp a defendant's choice of plea, violates the Sixth Amendment – even if it may have some impact on the state's interest in the reliability of death judgments.

Finally, respondent argues that any error, if it exists, is amenable to a harmless error analysis, despite *McCoy*'s clear holding that violation of a defendant's protected Sixth Amendment autonomy rights is a structural error. The denial of

appellant's right to autonomy led him to discharge his counsel and cooperate with the prosecutor, and altered the entire nature of the adversary proceeding in this case. Harmless error analysis is impossible, the error was structural, and this Court must reverse the judgment in its entirety.

A. This Court Can and Should Decide Appellant's Constitutional Claim on the Merits

Respondent incorrectly argues that because appellant raised his claim in municipal court, rather than superior court, it has been forfeited, citing this Court's recent decision in *People v. Frederickson* (2020) 8 Cal.5th 963 (*Frederickson*). Respondent ignores, however, that, the defendant in *Frederickson* did not obtain a ruling on his Penal Code section 1018 claim from any court, superior or municipal. (See *Frederickson*, *supra*, 8 Cal.5th at p. 1000.) Unlike the defendant in *Frederickson*, appellant obtained a clear ruling that he was barred by Penal Code section 1018 from pleading guilty without his counsel's consent. (See 10/27/93 RT 3-4.)

Equally important, respondent does not address the many reasons that, even were respondent correct that appellant should have raised his request to plead guilty in superior court, this Court should decide appellant's claim on the merits. (See *People v. McCullough* (2013) 56 Cal.4th 589, 593 (*McCullough*) ["neither forfeiture nor application of the forfeiture rule is automatic"].) As appellant demonstrated in his opening brief and respondent does not acknowledge, continuing to pursue a guilty plea in superior court would have been an exercise in futility in light of the state

of the law and the municipal court's clear ruling that a guilty plea was barred by Penal Code section 1018 and counsel's refusal to consent to a guilty plea. (Appellant's Second Supplemental Opening Brief [hereinafter "SSOB"] at pp. 18-19.) There is no unfairness in permitting an appellant to raise on appeal a claim he diligently pursued below, nor any purpose in requiring an appellant to bring to the attention of the trial court an objection that has no hope of prevailing. (Cf. *McCullough*, *supra*, 56 Cal.4th at p. 593 [holding that purpose of forfeiture rule is to prevent unfairness and inefficiency].)

Respondent also does not and cannot counter appellant's showing that his claim is presented by undisputed facts and raises an important question of constitutional law. (SSOB at pp. 19-20). In the fewer than two years since it was decided, the question whether *McCoy* invalidates Penal Code section 1018 has arrived at this Court no fewer than three times – with respondent the first party to argue, consistently with appellant's claim in this case, that the consent-of-counsel requirement is invalid under *McCoy*. (See *Frederickson*, *supra*, 8 Cal.5th at p. 1031 (Liu, J., concurring) [noting that in *People v. Miracle* (2018) 6 Cal.5th 318 (*Miracle*), respondent contended that Penal Code section 1018 is unconstitutional].)

Respondent correctly recognized in *Miracle* that "section 1018's consent requirement violates the defendant's right to control her own defense" and "infringes on a defendant's constitutionally protected '[a]utonomy to decide . . . the objective of the defense.'" (See Respondent's Supplemental Brief, *People v.*

Miracle, S140894 at p.11 [quoting *McCoy*, *supra*, 138 S.Ct. at p. 1508].) It is true that respondent has since changed its position. Respondent argued for the first time in *Frederickson* and has now reiterated in this case that *McCoy* has no application to the question whether Penal Code section 1018 is constitutional. (*Frederickson*, *supra*, 8 Cal.5th at p. 1031 (Liu, J., concurring); Second Supplemental Respondent's Brief [hereinafter "SSRB"] at p. 6.) But respondent's original understanding of *McCoy*'s significance demonstrates that appellant's constitutional claim is, at minimum, substantial, and calls for this Court's guidance.

In both *Miracle* and *Frederickson*, this Court declined to decide the "serious constitutional question" of the validity of Penal Code section 1018 in light of *McCoy*. (*Miracle*, *supra*, 6 Cal.5th at pp. 339-340.) This case now presents the appropriate vehicle for deciding the substantial constitutional question of the validity of the consent-of-counsel requirement of Penal Code section 1018.

B. *McCoy* is Based on Defendants' Sixth Amendment Right to Autonomy and the Traditional Allocation of Authority Between Counsel and Client

Respondent's argument starts from the incorrect premise that *McCoy* recognized only the narrow right of a defendant to maintain his innocence. (SSRB at p. 5 [*McCoy* held that "a defendant who has entered a plea of not guilty has the right under the Sixth Amendment to insist that his or her trial counsel refrain from admitting that he or she committed murder at the guilt phase"]; see also SSRB at p. 12 [arguing the error in *McCoy*

was "infringe[ment] upon the defendant's right to maintain innocence"].) *McCoy* cannot be confined to this cramped reading.

In its reasoning, the United States Supreme Court relied not merely on a right to assert innocence but on a defendant's right to *autonomy*. (See SSOB at pp. 22-23.) Nowhere in its decision did the high court limit the right of a defendant to set the objectives of his defense to the right to assert innocence. Integral to the *McCoy* decision was the defendant's right to choose whether to plead not guilty *or* "*plead guilty*." (*McCoy*, *supra*, 138 S.Ct. at p. 1508, italics added.)

Moreover, respondent's interpretation does not contend with the traditional "allocation of responsibilities" between counsel and client that "the high court recognized in *McCoy*." (*People v. Amezcua and Flores* (2019) 6 Cal.5th 886, 926 [citing *McCoy*, *supra*, 138 S.Ct. at p. 1508].) As *McCoy* noted, "[t]rial management is the lawyer's province." (*McCoy*, *supra*, 138 S.Ct. at p. 1508.) Other decisions, including "whether *to plead guilty*," are so fundamental that they are reserved for the client and cannot be made for him by counsel. (*Ibid.,* italics added.)

Respondent's reliance on the fact that a defendant has no absolute right to have a guilty plea accepted is therefore misplaced. (See SSRB at p. 6, citing *Lynch v. Overholser* (1962) 369 U.S. 705, 719 [observing that Federal Rule of Criminal Procedure Rule 11 permits federal courts to refuse to enter a guilty plea under some circumstances].) That there are some other circumstances in which the state or the federal government may constitutionally reject guilty pleas does not dictate that the

consent-of-counsel requirement in Penal Code section 1018 is constitutional. (See, e.g., SSOB at pp. 28-29 [noting that guilty pleas must be knowing, intelligent, and voluntary and that a defendant must be competent to enter a plea]; Fed. Rules. Crim. Proc., rule 11, subd. (b)(2) and (b)(3) [court may not accept a guilty plea that is involuntary or for which there is not a factual basis].) The consent-of-counsel requirement in Penal Code section 1018 is unique in its permission to counsel to "usurp" a competent defendant's choice of plea.[1] (*McCoy*, *supra*, 138 S.Ct. at p. 1511.)

C. Penal Code section 1018's Consent-of-Counsel Requirement is Inconsistent with *McCoy*

McCoy holds that a defendant has a Sixth Amendment guaranteed right to choose whether to plead guilty that cannot be usurped by counsel, and that a defendant may exercise this right even when to do so would be counterproductive. (*McCoy*, *supra*,

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[1] Respondent repeatedly argues that *McCoy* does not apply to guilty pleas because a state could permissibly bar guilty pleas in all capital cases. (SSRB at pp. 8-9, 12.) Respondent has no answer, however, to the fact that, as appellant explained in his opening brief, even if a state is not obligated to create a particular right, once it has done so the right is subject to constitutional requirements. (See SSOB at pp. 26-27, n.11; *Evitts v. Lucey* (1985) 469 U.S. 387, 393 [states not required to confer right to appellate review but having done so it is subject to due process and equal protection clauses].) Even if California could permissibly bar all guilty pleas in capital cases, it has not done so. (See Pen. Code, § 1018.) *McCoy* makes clear that so long as California continues to allow guilty pleas in capital cases, the Sixth Amendment requires that the choice whether to plead guilty be for the defendant to make, not his counsel.

138 S.Ct. at p. 1507.) Respondent, rather than engage directly with *McCoy*'s recognition of an autonomy right to choose one's own plea, devotes much of his brief to a summary of this Court's cases upholding the constitutionality of Penal Code section 1018 prior to the high court's decision in *McCoy*. (See, e.g., SSRB at p. 7 [citing *People v. Mai* (2013) 57 Cal.4th 986, 1055 for proposition that "[u]nder California law . . . a capital defendant is subject to the representation and consent provisions of section 1018"]; SSRB at pp. 7-9 [describing the reasoning of *People v. Chadd* (1981) 28 Cal.3d 739 and *People v. Alfaro* (2007) 41 Cal.4th 1277].)

As appellant demonstrated in his opening brief, however, the reasoning of *Chadd* and the cases that have followed it is inconsistent with *McCoy*. Where *Chadd* saw only a minor infringement on autonomy, *McCoy* has recognized a fundamental and personal right to choose. (See SSOB at pp. 26-28.) And where *Chadd* concluded that a defendant's right to choose his plea must give way to the state's interest in reliability, *McCoy* made clear that the Sixth Amendment protects even unwise decisions when it comes to the fundamental and personal decision whether to plead guilty. (See SSOB at pp. 28-29.) "California law is subject to the United States Constitution" and the dictates of the United States Supreme Court. (*People v. Johnson* (2012) 53 Cal.4th 519, 526.) *Chadd*'s conclusion that the consent-of-counsel requirement is constitutional is at odds with the holding of *McCoy* and no longer controls.

Respondent's proffered arguments for the continued validity of Penal Code section 1018 are unavailing. Respondent relies heavily on Justice Liu's dissent in *Miracle* and concurrence in *Frederickson* and argues that Penal Code section 1018's consent-of-counsel requirement survives *McCoy* because it "protects the interest of the public and the parties in reliable capital judgments." (SSRB at p. 11.) There is no doubt that the state and society have an enormous interest in the fairness and reliability of death judgments, and a defendant's personal desires are not the measure of whether a capital trial has been conducted in the manner required by the United States Constitution. Nonetheless, the argument that the consent-of-counsel requirement, in particular, can be justified by the state's interest in reliability is based primarily on two contentions, neither of which survives scrutiny.

First, the concurrence in *Frederickson* suggests that Penal Code section 1018 is permissible because it is one of a number of similar "legislative judgments limiting a defendant's prerogative to direct his representation" in order to "further society's interests in the reliability of criminal judgments." (*Frederickson*, *supra*, 8 Cal.5th at p. 1035 (Liu, J., concurring).) In fact, the other legislative judgments noted are not similar to the consent-of-counsel requirement. It is true that a capital defendant may not waive his right to an appeal. (Pen. Code, § 1239, subd. (b).) This rule does not, however, implicate Sixth Amendment protected autonomy; the United States Supreme Court has concluded that a defendant's Sixth Amendment right to

autonomy does not extend to appeals. (*Martinez v. Court of Appeal of Cal., Fourth Appellate Dist.* (2000) 528 U.S. 152, 161.)

Nor is the requirement that a defendant be represented by counsel at a competency hearing comparable to the consent requirement of Penal Code section 1018. (See *People v. Lightsey* (2012) 54 Cal.4th 668, 696-697.) A defendant whose competence is in doubt may neither enter a guilty plea nor waive his right to counsel. (See *Godinez v. Moran* (1993) 509 U.S. 389, 396.) Penal Code section 1018 goes further, and bars even capital defendants whose competency is established from choosing to plead guilty without their counsel's consent. The consent-of-counsel requirement thus works a unique intrusion into a defendant's autonomy by permitting counsel to overrule a competent defendant's choice of plea.

Second, it is not true that in *McCoy* "there was no conflict between the defendant's objective and the reliability interests of the Eighth Amendment." (*Frederickson*, *supra*, 8 Cal.5th at p. 1036 (Liu, J., concurring).) The Eighth Amendment's heightened reliability requirement applies to both the guilt and penalty phases of a capital trial. (See *Beck v. Alabama* (1980) 447 U.S. 625, 638 [Eighth Amendment reliability applies to both phases of trial].) Reliability at the penalty phase is affected by the extent to which jurors have the opportunity to consider a full and accurate picture of the evidence relevant to whether the defendant should live or die, including the defendant's "character and record . . . and the circumstances of the particular offense." (See *Woodson v. North Carolina* (1976) 428 U.S. 280, 304.) A

capital defendant's irrational decision to protest his innocence in the face of overwhelming evidence, rather than to concede commission of the offenses but show that they were the product of mental illness, deprives jurors of a full picture of his moral blameworthiness. *McCoy* nonetheless held that a defendant is guaranteed the right not to have this "counterproductive" decision overruled by counsel.[2]

Implicit in respondent's defense of Penal Code section 1018 is also an assumption that, as a practical matter, "safeguards like the consent requirement of section 1018 reduce the danger of erroneously imposing death judgments . . . ." (SSRB at p. 10.) *McCoy* establishes that the choice of plea in a capital case is personal and fundamental to the accused and cannot be usurped by counsel – even if it may reduce the reliability of the death judgment. Still, it bears noting that this state permits guilty pleas in capital cases, and there is no reason to assume that

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[2] Respondent also notes that in *Frederickson* this Court cited *Chadd* and *Alfaro* in recounting the history of Penal Code section 1018. (SSRB at pp. 10-11.) That this Court mentioned those cases in describing the development of the law regarding Penal Code section 1018 does not suggest that they control – as it had in *Miracle*, this Court avoided a ruling on the merits of the question whether Penal Code section 1018 must be invalidated in light of *McCoy*. (*Frederickson*, *supra*, 8 Cal.5th at p. 1000.) In fact, this Court's description in *Frederickson* of *McCoy*'s holding is not consistent with respondent's view that *McCoy* involved only a right to maintain innocence. This Court observed that *McCoy* broadly holds that "[d]efense counsel can make strategic choices regarding how best to achieve a defendant's objectives, but the defendant chooses those objectives." (*Frederickson*, *supra*, 8 Cal.5th at p. 993, citing *McCoy*, *supra*, 138 S.Ct. at p. 1508.)

guilty pleas entered without a consent-of-counsel requirement will *necessarily* be unreliable in light of the many other means of ensuring the reliability of pleas, including the requirements that any plea be knowing, intelligent, and voluntary, that a defendant be competent to enter a plea, and that there be a factual basis for the plea. (See, e.g., *Boykin v. Alabama* (1969) 395 U.S. 238, 240-244; SSOB at pp. 28-29.)

Nor does the consent-of-counsel requirement ensure that death judgments will be reliable. In fact, the consent requirement, by fostering conflict between capital defendants and their counsel, may have the perverse effect of reducing the reliability of death verdicts. In this case, the conflict created by the consent requirement contributed to appellant's decision to discharge his counsel and represent himself throughout the remainder of his trial. (See SSOB at p. 13; 7/6/93 RT 8; 7/27/95 RT 29.) Appellant is not the only capital defendant to have made this choice. (See, e.g., *Miracle*, *supra*, 6 Cal.5th at p. 327 ["Defendant further confirmed that he was comfortable with Carty's representation of him, but because Carty was not willing to consent at that point in time to a guilty plea and an admission of the special circumstances allegations, defendant wanted to represent himself"]; *People v. Daniels* (2017) 3 Cal.5th 961, 973-74 ["'I am Respectfully Requesting that I be allowed to withdraw my 'Not Guilty' Plea and enter a 'Guilty Plea.' I am also Requesting that I Be allowed to Represent myself . . .'"].)

The trial that ensues after a defendant who is barred from pleading guilty discharges counsel and proceeds unrepresented

throughout both phases of a capital trial is not certain or even likely to be more reliable. Appellant's own case well-illustrates this possibility. After discharging counsel and having his request for advisory counsel denied, appellant not only did nothing to contest the prosecution's case at either the guilt or penalty phases of his trial, but acted as a second prosecutor, and consulted with the district attorney throughout the trial. Without the benefit of the advice of counsel, he made an invalid waiver of his right to a jury at both phases of his trial, waived his Fifth Amendment rights, and gave unreliable testimony in an attempt to bolster the prosecution's case. (See SSOB at pp. 13-14; see also, e.g., Supp. AOB 5-14 [arguing reversal is required because appellant did not make valid waivers of his right to a jury trial]; AOB 34-36, Reply 3-15 [arguing reversal is required because the trial court erred in denying appellant's request for advisory counsel]; AOB 73-113, Reply 21-38 [arguing complete breakdown in adversary process at appellant's trial violated due process]); AOB 114-120, Reply 39-67 [arguing trial was lacking in fundamental fairness and reliability under the Eighth Amendment].) Both reliability and autonomy are no doubt important constitutional values. In appellant's trial, he received neither.

The reasoning of this Court in *Chadd* has been undermined by *McCoy*. The Legislature may well have intended Penal Code section 1018 as a reasonable compromise between a defendant's Sixth Amendment right to autonomy and the state's interest in reliability. The high court has struck a different balance when it

comes to a defendant's autonomy right to choose whether to plead guilty. Penal Code section 1018 improperly permits counsel to usurp a defendant's choice of plea, and is invalid.

D. The Error Is Structural and May Only Be Corrected By Returning to Appellant His Autonomy Right to Choose His Own Plea

Respondent argues that even if this Court concludes that Penal Code section 1018 is unconstitutional, any error is subject to harmless error analysis. According to respondent, no reversal is required because respondent can see no "logical" or "obvious" remedy that is "superior to the status quo." (SSRB at pp. 12-13.) The relevant question is, however, what the law requires and not whether respondent thinks the remedy is "superior" to leaving an improperly obtained judgment in place. *McCoy* made clear that "[v]iolation of a defendant's Sixth-amendment secured autonomy ranks as error of the kind our decisions have called 'structural'; when present, such an error is not subject to harmless-error review." (*McCoy*, *supra*, 138 S.Ct. at p. 1511; see also Respondent's Supplemental Brief, *People v. Miracle*, S140894 at p.9 ["A defendant's Sixth Amendment 'autonomy right[s]' have been held to be so critical that violation results in structural error," quoting *McCoy*, *supra*, 138 S.Ct. at pp. 1510-1511].)

Respondent's strained efforts to overcome this holding fail. Respondent once again fails to understand that the right at issue in *McCoy* was the defendant's Sixth Amendment right to autonomy. Respondent argues that "[t]he error in *McCoy* was

structural" only "because it infringed upon the defendant's right to maintain innocence at trial after a plea of not guilty." (SSRB at p. 12.) But the high court held that the error was structural "[b]ecause a client's *autonomy* . . . [wa]s in issue." (*McCoy*, *supra*, 138 S.Ct. at p. 1511, italics added; see also *id.* at p. 1511, citing *McKaskle v. Wiggins* (1984) 465 U.S. 168, 177, fn.8 (*Wiggins*) [deprivation of right to self-representation is structural] and *United States v. Gonzalez-Lopez* (2006) 548 U.S. 140, 150 (*Gonzalez-Lopez*) [deprivation of choice of counsel is structural].)

Respondent next argues that there can be no reversal because the end results of the guilt and penalty phases in this case were "as appellant wished" and reached his "desired determination." (SSRB at pp. 12-13.) Respondent's speculation about appellant's sense of personal satisfaction with the result of the trial that came after his right to autonomy was denied is irrelevant. The error in this case was complete when counsel was permitted to usurp appellant's right to choose his plea. (*McCoy*, *supra*, 138 S.Ct. at p. 1511 ["the violation of McCoy's protected autonomy right was complete when the court allowed counsel to usurp control of an issue within McCoy's sole prerogative"].) Whether appellant was or was not subjectively pleased with the proceedings he received after the violation was complete is irrelevant, just as it is not relevant whether a defendant who was deprived of his right to choice of counsel subsequently received equally effective counsel (*Gonzalez-Lopez*, *supra*, 548 U.S. at pp. 148), or whether a defendant whose right to self-representation

was denied ultimately felt like the lawyer he was forced to accept did a pretty good job (*Wiggins*, *supra*, 465 U.S. at p. 177, fn.8).

Respondent, moreover, fails to address appellant's showing that the effects of the error in this case were enormous and indeterminate and thus not amenable to harmless error analysis. That may be because respondent is mistaken about what occurred at appellant's trial. Respondent asserts that "[a]ppellant made it quite clear to the *jury*" at the penalty phase "that he was not seeking their sympathy." (SSRB at p. 12, italics added.) In fact, there was no jury at either phase of appellant's trial. (8/11/95 RT 48-49 [appellant purportedly waiving his right to a jury trial].) And there was no jury because, after counsel was permitted to usurp appellant's right to choose his own plea, appellant discharged counsel, made a purported waiver of his right to a jury trial at the guilt and penalty phases of his trial before the only judge who would accept a waiver for the penalty phase, was denied advisory counsel, and gave unreliable testimony at the guilt and penalty phases in a trial that entirely lost its character as an adversary proceeding. (SSOB at pp. 13-14.)

There is no way to apply harmless error analysis to a denial of the right to autonomy that led a defendant to discharge his counsel and then to proceed without a jury. The potential importance of counsel in a capital case is enormous. (See *Strickland v. Washington* (1984) 466 U.S. 668, 704, Brennan, J., conc. and dis.) The relationship between counsel and client is an ongoing "intimate process of consultation and planning which

culminates in a state of trust and confidence between the client and his attorney." (*Smith v. Superior Court of Los Angeles County* (1968) 68 Cal.2d 547, 561.) How appellant would have chosen to proceed were he still represented by counsel – indeed, how an ongoing relationship with counsel might have affected appellant's view of the proceedings, his desired sentence, and the ultimate outcome of the penalty phase – is unknowable and potentially vastly different from the trial that occurred. And how a jury would have responded to the evidence at such a penalty phase is similarly impossible to determine. (Cf. *Rose v. Clark* (1986) 478 U.S. 570, 578 [denial of jury trial right is structural error].)

Finally, even if this court were to conclude that the error here was not structural, respondent has not proven, as he must, that it was harmless beyond any reasonable doubt. Respondent cannot show that had Penal Code section 1018 not permitted counsel to prevent appellant from pleading guilty appellant would still have discharged counsel. Counsel could have advised appellant against testifying at the penalty phase of his trial or at minimum have prevented his improper and unreliable testimony about other serious crimes (see, e.g., AOB at p. 102), or counsel could have explained to the judge or jury appellant's willingness to take responsibility for the crime. (See, e.g., *Bradshaw v. Stumpf* (2005) 545 U.S. 175, 186 [guilty plea in capital case allows defendant "to assert his acceptance of responsibility as an argument in mitigation"].) The prosecutor would also have been prevented from making improper use of appellant's unreliable

and damaging guilt phase testimony. (See, e.g., AOB at pp. 85-89, 93-96, 102.) Any one of these things could easily have altered the outcome.

By precluding appellant from pleading guilty, Penal Code section 1018 completely altered the adversarial framework of the proceeding. In such a case, the consequences are impossible to measure, the errors are structural, and reversal of the judgment is required.

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CONCLUSION

For the reasons stated in this brief and in appellant's opening and reply briefs, first supplemental opening and reply briefs, and second supplemental opening brief, the judgment must be reversed.

Dated: May 1, 2020

Respectfully submitted,

Mary K. McComb
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/s/ Kathleen M. Scheidel
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CERTIFICATE OF COUNSEL
(Cal. Rules of Court, rule 8.630(b)(2))

I, Kathleen M. Scheidel, am the Assistant State Public Defender assigned to represent appellant, Valdamir F. Morelos, in this automatic appeal. I have conducted a word count of this brief using our office's computer software. On the basis of the computer generated word count, I certify that this brief is 4,184 words in length excluding the tables and this certificate.

Dated: May 1, 2020

Respectfully submitted,

/s/ Kathleen M. Scheidel
KATHLEEN M. SCHEIDEL
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Attorney for Appellant

DECLARATION OF SERVICE

Case Name: ***People v. Valdamir Fred Morelos***
Case Number: **Supreme Court Case No. S051968**
Santa Clara County Superior Court No. SC169362

I, **Lauren Emerson**, declare as follows: I am over the age of 18, and not party to this cause. I am employed in the county of Alameda. My business address is 1111 Broadway, Suite 1000, Oakland, CA 94607. I served a true copy of the following document:

APPELLANT'S SECOND SUPPLEMENTAL REPLY BRIEF

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/s/ Lauren Emerson

LAUREN EMERSON

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

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Supreme Court of California

Case Name: **PEOPLE v. MORELOS (VALDAMIR FRED)**
Case Number: **S051968**
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