In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

HEATHER ROSE BROWN,

Defendant and Appellant.

Case No. S257631

Third Appellate District Third, Case No. C085998
Shasta County Superior Court, Case No. 15F2440
The Honorable Stephen H. Baker, Judge

ANSWER TO PETITION FOR REVIEW

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ISSUES PRESENTED

Petitioner Heather Rose Brown seeks this Court's review of the California Court of Appeal's unpublished decision denying her claims on direct appeal after rehearing. The petition sets forth three issues:

> 1. Whether the prosecution presented insufficient evidence that [the infant's] exposure to drugs caused her death.
>
> 2. Whether the prosecution presented insufficient evidence that [petitioner] willfully, deliberately and with premeditation administered "poison" to [her infant] for purposes of first-degree murder by poison.
>
> 3. Whether the trial court prejudicially erred by failing to instruct the jury *sua sponte* that first-degree murder by poison requires proof that the defendant willfully, deliberately and with premeditation administered poison to the victim.

(Petition at pp. 5-6.)

STATEMENT OF THE CASE

Petitioner, knowing she was pregnant and that the drugs she ingested would harm her baby, continued to use heroin, methamphetamine and marijuana during her pregnancy. (Typed Opn. in Case No. C085998 (Opn.) at p. 1.) Well before her due date, petitioner decided that she would not deliver her baby in a hospital because she knew the baby would be taken by authorities. (*Ibid*.) Instead, she planned to have her baby in a hotel room with the aid of an unlicensed midwife. (*Ibid*.) After the baby was born and began to experience drug withdrawal symptoms, instead of heeding the advice of family members and others to take the baby to a doctor, petitioner researched the internet and concluded that she could "treat" the baby's symptoms. (*Ibid*.) In "treating" the baby, petitioner fed her breast milk tainted with the drugs she was still using as well as regular baby formula that she had purchased. (*Ibid*.; 2 CT 390-391.) After five days of life,

petitioner's attempts at "treatment" failed and the baby died. (Opn. at p. 1.) Only then did petitioner seek medical attention for her child. (2 CT 394.)

A jury found petitioner guilty of first-degree murder by poison, child abuse that resulted in death, and possession of heroin and marijuana for sale. (Opn. at p. 2.) The trial court sentenced petitioner to an indeterminate term of 25-years-to-life to follow a determinate term of three years. (*Ibid*.)

Petitioner timely appealed her conviction and alleged the same three issues that she raises in this petition. (Opn. at p. 2.) After the parties fully briefed the case, the Court of Appeal affirmed the judgment. (*Ibid*.) Petitioner filed a petition for rehearing, which the Court of Appeal granted. (*Ibid*.) Subsequently, the Court of Appeal issued a modified opinion reaffirming the judgment. (*Ibid*.)

Petitioner then filed this petition for review.

REASONS FOR DENIAL OF THE PETITION

Petitioner has failed to establish that she meets the criteria for review set forth in rule 8.500(b) of the California Rules of Court. Her first claim, that there was insufficient evidence that drugs were the cause of her baby's death, simply reflects her disagreement with the Court of Appeal decision to the contrary. Because petitioner's first claim is one that involves the particular facts of her case only, it does not present a statewide legal issue that this Court needs to resolve. Petitioner's second and third claims, which she contends present "an issue of first impression in California" and would "secure uniformity of decision and settle these important questions" (Petition at p. 7) do neither. Petitioner's second and third claims—insufficient evidence of her mental state and a related claim of instructional error—are both premised upon petitioner's desire to reinterpret Penal Code section 189 to require the mental state for murder by poison to be the "willful, deliberate and premeditated administration of poison." (Petition at p. 20.) This Court has already determined that this is not the mental state

required under the statute. (*People v. Jennings* (2010) 50 Cal.4th 616 (*Jennings*). In *Jennings*, this Court reiterated that the mental state for murder by poison requires only that the perpetrator know that administering the substance is dangerous to human life and nevertheless, with a conscious disregard for human life, delivers the poison anyway. (*Id*. at pp. 639-640.) Thus, petitioner's second and third claims also do not warrant review because they are based on a challenge to a settled question of law.

ARGUMENT

I. PETITIONER HAS NOT ESTABLISHED A VALID GROUND FOR THIS COURT TO GRANT REVIEW OF HER CLAIM OF INSUFFICIENT EVIDENCE OF CAUSATION

At the outset, this Court should deny the petition for review because petitioner has not shown why review is authorized or appropriate. The permissible grounds for review by this Court are set forth in the California Rules of Court, rule 8.500(b). The petition fails to come within the four grounds for review enumerated in rule 8.500(b).

Petitioner first claims that her conviction for first-degree murder is not supported by sufficient evidence that drugs caused the death of her infant. (Petition at pp. 9-19.) She claims this despite the fact that the forensic pathologist who conducted the autopsy on the baby's body determined that the cause of death was polypharmacy—a situation in which several drugs acting in concert cause the heart and lungs to stop functioning and death to occur. (1 RT 386, 390, 403.) As the Court of Appeal correctly found, this was substantial evidence that drugs caused the baby's death. (Opn. at p. 9-11.) The Court of Appeal also found that the forensic pathologist had ruled out other possible causes of death, including those that another medical expert, who had not conducted the autopsy and who had testified regarding child abuse, had offered as possible causes of death. (Opn. at pp. 9-11.)

Petitioner's claim of insufficient evidence of causation is a factual one limited to the parameters of her specific case.

Petitioner's assertion that she has presented this Court with an important question within the meaning of Rule 8.500(b) is plainly without merit. While the resolution of her claim may be important to petitioner, it does not present an issue that would secure uniformity of law or answer a question of statewide importance. Petitioner's first claim is nothing more than a disagreement with the Court of Appeal's analysis of the sufficiency of the evidence in an unpublished opinion. For this reason, review should be denied.

A. Standard of Review

An appellate court reviews a claim of insufficient evidence by asking "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime or special circumstance beyond a reasonable doubt." (*Jennings, supra*, 50 Cal.4th at p. 638.) The reviewing court examines the "entire record in the light most favorable to the judgment below to determine whether it discloses sufficient evidence—that is, evidence that is reasonable, credible, and of solid value—supporting the decision, and not whether the evidence proves guilt beyond a reasonable doubt." (*Ibid*, citing *People v. Mincey* (1992) 2 Cal.4th 408, 432.) The appellate court does not "reweigh the evidence nor reevaluate the credibility of witnesses." (*Jennings*, at p. 638, citing *People v. Lindberg* (2008) 45 Cal.4th 1, 27; see also *Jackson v. Virginia* (1979) 443 U.S. 307, 318-319; *People v. Johnson* (1980) 26 Cal.3d 557, 576.).) In support of the judgment, the court presumes "the existence of every fact the jury reasonably could deduce from the evidence." (*Jennings*, at pp. 638-639.) If the record reasonably justifies the jury's findings, the judgment will not be reversed "simply

because the circumstances might also reasonably be reconciled with a contrary finding." (*Id*. at p. 639.)

B. Substantial Evidence Supports the Jury's Finding of Causation

The Court of Appeal concluded that there was substantial evidence supporting the causation element of petitioner's first-degree murder by poison conviction. (Opn. at pp. 9-11.) Petitioner argues that the Court of Appeal erred in evaluating the evidence of causation, an argument based on a narrow, one-sided view of the record and a pedantic construction of Dr. Ikechi Ogan's testimony. (Petition at pp. 11-19.) Viewing the entire record in the light most favorable to the judgment, petitioner's argument fails.

Petitioner asserts that the Court of Appeal decision is in error because Dr. Ogan "did not identify any evidence that either drug caused death." (Petition at p. 13.) If petitioner's point is that neither drug on its own could cause the baby's death, the point is both incorrect and irrelevant. Dr. Ogan testified that either methamphetamine or morphine, as a by-product of heroin, could cause death in an infant. (Opn. at pp. 5-6.) Here, however, the cause of death was the interaction of multiple drugs—in other words, polypharmacy, as Dr. Ogan testified. (1 RT 403, 414.) Dr. Ogan testified that the drugs in the baby's system acted together to stop her heart and her respirations. (1 RT 406-407, 414; Opn. at pp. 5-6.)

Petitioner suggests that the evidence showed only that the baby's heart and lungs had stopped working and that fact was of no significance because all deaths by definition include the cessation of heart and lung function. (Petition at p. 13.) But petitioner's characterization of that evidence fails to consider the entirety of Dr. Ogan's testimony and other evidence at trial. The drugs were precisely what had caused the baby's heart and lungs to stop functioning. (1 RT 406-407, 414; Opn at p. 5-6, 9-11.) Petitioner also takes issue with the way in which Dr. Ogan phrased his

testimony about the lethal nature of the drugs petitioner gave to the baby. She states that his testimony was only that these drugs could cause death, not that they did. (Petition at pp. 12-13.) When Dr. Ogan's testimony is examined as a whole, it is abundantly clear that what he said was that the baby's death was caused by petitioner's administration of drugs to the infant. When the record as a whole is considered, both expert and non-expert testimony (Opn. at p. 9-10), it is clear that substantial evidence supports the verdicts and that the Court of Appeal decision finding sufficient evidence of causation is correct. The court presumes "the existence of every fact the jury *reasonably could deduce* from the evidence." (*Jennings*, at pp. 638-639.) If the record *reasonably justifies* the jury's findings, the judgment will not be reversed "simply because the circumstances might also reasonably be reconciled with a contrary finding." (*Id*. at p. 639.) The jury reasonably deduced from Dr. Ogan's testimony that drugs "could cause death" and that the drugs did in fact cause the baby's death in this case.

If petitioner's point is that neither one of the drugs either together or separately could cause death, she is simply wrong. The evidence at trial established that heroin can cause death and that it has no therapeutic uses in standard medicine. (1 RT 407; 2 RT 775-776, 784.) The same is true of methamphetamine. (1 RT 407; 2 RT 794-795.) This is especially true for children, as Dr. Ogan also testified. (Opn. at p. 6.)

Next petitioner takes issue with the Court of Appeal's reliance on Dr. Ogan's training and experience. (Petition at pp. 13-14.) But Dr. Ogan's qualifications were well-established by the record, as the Court of Appeal pointed out on rehearing. (Opn. at p. 10.) The unremarkable fact that the Court of Appeal considered that factor as part of the record as a whole presents no question for this Court's review.

Next petitioner takes issue with the Court of Appeal's reference to Dr. Ogan's testimony that there was "no safe amount [of the drugs] for an infant." (Petition at p. 14.) First, the Court of Appeal did *not* isolate this fact (as petitioner does) to find that it was the proximate cause of the infant's death. The Court of Appeal considered this fact along with all the other evidence in the record to find that there was substantial evidence of causation. (Opn. at p. 6, 10.) Petitioner then characterizes the presence of drugs in the baby as an "unsafe" "condition" and proceeds to analogize to civil cases that dealt with unsafe working conditions to find an employer not negligent. (Petition at pp. 14-15.) Petitioner's administration of illicit drugs to an infant with the full knowledge of the harm it can cause, was not a "condition," still less a "working condition." It was a crime. Petitioner's civil cases are completely inapposite.

Next, petitioner challenges Dr. Ogan's determination that ruled out other causes of death—SIDS (sudden infant death syndrome) and co-sleeping—as "meaningless." (Petition at p. 15.) Again, petitioner's argument reflects only her disagreement with the doctor's observations, analysis and conclusions. Review is not available to reweigh this evidence. (*Jennings*, *supra*, 50 Cal.4th at p. 638 [appellate court does not reweigh evidence].)

Next petitioner asserts that Dr. Ogan made a finding that pointed to another cause of death—that the baby was placed face down and suffocated. (Petition at p. 17.) Dr. Ogan made no such finding, and petitioner distorts the record to reach that conclusion. Dr. Ogan testified that the lividity found on the baby's body resulted from *either* being placed face down before or immediately *after* her death. (1 RT 398-399; Opn. at p. 5.) Dr. Ogan ruled out the possibility of this finding relating to the cause of death by finding that she died of polypharmacy. (Opn. at p. 5, 7, 9.) Dr. Jakubiak also did not conclude that this established definitively a cause of

death. Dr. Jakubiak did not find a conclusive cause of death. (Opn. at p. 10.)

In sum, petitioner's arguments reflect only her disagreement with the Court of Appeal's assessment of the record and its conclusions based thereon. Thus, review in this Court is not warranted. No uniformity of decisions will be generated and no important question of law will be answered.

II. PETITIONER HAS NOT ESTABLISHED A VALID GROUND FOR THIS COURT TO GRANT REVIEW OF HER INSUFFICIENT EVIDENCE OF MENTAL STATE CLAIM

Petitioner's second claim is that the prosecutor was required to prove that she willfully, deliberately, and with premeditation administered poison that killed her baby. (Petition at p. 20.) She further claims that the evidence that she possessed this mental state was insufficient to support the judgment. (Petition at pp. 28-29.) Petitioner's claim is based on her own interpretation of the mental state required for a violation of Penal Code section 189, which is flatly inconsistent with case law, including this Court's opinion in *Jennings*. The mental state required for first degree murder by poison is that the defendant administered the poison with the knowledge that doing so was dangerous to human life and with a conscious disregard for that fact. (*Jennings, supra*, 50 Cal.4th at pp. 639-640.) Because petitioner's claim of insufficient evidence is based on an erroneous legal standard, it does not present a valid ground for this Court's review.

A. Standard of Review

The interpretation of a statute is a question of law that this Court reviews de novo. (See *Bruns v. E-Commerce Exch., Inc.* (2011) 51 Cal.4th 717, 724.) Penal Code section 189, subdivision (a) provides:

> All murder that is perpetrated by means of a destructive device or explosive, a weapon of mass destruction, knowing use of ammunition designed primarily to penetrate metal or armor,

> poison, lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or that is committed in the perpetration of, or attempt to perpetrate, arson, rape, carjacking, robbery, burglary, mayhem, kidnapping, train wrecking, or any act punishable under Section 206, 286, 288, 288a, or 289, or murder that is perpetrated by means of discharging a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict death, is murder of the first degree.

All other types of murder are designated by the statute as being murder in the second degree. (Pen. Code, § 189, subd. (b).) The jury was instructed on first degree murder by poison as follows:

> The defendant is charged in Count 1 with murder in violation of Penal Code section 187.
>
> To prove that the defendant is guilty of murder, the People must prove that :
>
> 1. The defendant committed an act that caused the death of another person;
>
> 2. When the defendant acted, she had a state of mind called malice aforethought
>
> AND
>
> 3. She killed without lawful excuse.
>
> There are two kinds of malice aforethought, express malice and implied malice. Proof of either is sufficient to establish the state of mind required for murder.
>
> The defendant acted with express malice if she unlawfully intended to kill.
>
> The defendant acted with implied malice if:
>
> 1. She intentionally committed an act;
>
> 2. The natural and probable consequences of the act were dangerous to human life;

3. At the time she acted, she knew her act was dangerous to human life;

AND

4. She deliberately acted with conscious disregard for human life.

Malice aforethought does not require hatred or ill will toward the victim. It is a mental state that must be formed before the act that causes death is committed. It does not require deliberation or the passage of any particular period of time.

An act causes death if the death is the direct, natural and probable consequence of the act and the death would not have happened without the act. A natural and probable consequence is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural an probable, consider all of the circumstances established by the evidence.

There may be more than one cause of death. An act causes death only if it is a substantial factor in causing the death. A substantial factor is more than a trivial or remote factor. However, it does not need to be the only factor that causes the death.

A parent has a legal duty to provide care, obtain medical attention and protect a child. If you conclude that the defendant owed a duty to [the child] and the defendant failed to perform that duty, her failure to act is the same as doing a negligent or injurious act.

If you decide that the defendant committed murder, it is murder of the second degree, unless the People have proved beyond a reasonable doubt that it is murder of the first degree as defined in CALCRIM No. 521.

(3 CT 619-620 [CALCRIM NO. 520.].) CALCRIM No. 521 provides:

The defendant is guilty of first degree murder if the People have proved that the defendant murdered by using poison.

> Poison is a substance, applied externally to the body or introduced into the body, that can kill by its own inherent qualities.
>
> The requirements for second degree murder based on express or implied malice are explained in CALCRIM 520, "First or Second Degree Murder With Malice Aforethought."
>
> The People have the burden of proving beyond a reasonable doubt that the killing was first degree murder rather than a lesser crime. If the People have not met this burden, you must find the defendant not guilty of first degree murder and the murder is second degree murder.

(3 CT 621.)

B. The Court of Appeal Correctly Applied the Law of Murder by Poison in the First Degree

Petitioner contends that, under Penal Code section 189, the prosecution presented insufficient evidence that she willfully, deliberately and with premeditation administered poison to her daughter. (Petition at p. 20.) However, petitioner has not and cannot cite to any legal authority that supports the proposition that the legal standard for first-degree murder by poison is as she states it.

For a conviction of first-degree murder by poison, the prosecution must establish only that the defendant administered the poison with the knowledge that doing so was dangerous to human life and with a conscious disregard for that fact. (*Jennings*, *supra,* 50 Cal.4th at pp. 639-640.) In other words, implied malice is sufficient. (*Ibid.*) Here, there was substantial evidence that petitioner knew that the drugs she was ingesting were dangerous to human life and that she administered those drugs to her child with a conscious disregard for that fact. (Opn. at p. 11.) Therefore, the Court of Appeal correctly found that there was substantial evidence of petitioner's mental state to affirm her conviction for first degree murder by poison. (Opn. at pp. 13-14.) Petitioner has not met the criteria for review

by this Court. Thus, even though the Court of Appeal observed that petitioner had not cited, and the court had not found, any authority explicitly extending the premediated intent required for torture-murder to poison-murder cases (Opn. at p. 15), this fact does not make petitioner's case one of "first impression" (see Petition at p. 20), it merely makes her argument one that no court has adopted.

Petitioner has presented no legal basis for her position that a prosecutor is required to present evidence of willful, deliberate and premeditated administration of poison to be guilty of first-degree murder by poison. However, in this case, even if this was the standard, that standard was met here. Petitioner claims that she breast-fed her baby only to nourish it. (Petition at p. 25.) Not so. The evidence at trial established that petitioner knew that the drugs she was consuming were contaminating her breast milk. (1 RT 549, 553-554, 560, 590, 655-656, 658, 660-661, 746, 755; 2 RT 782, 786, 889; 2 CT 384, 414, 422, 430, 479, 488, 506-507.) As a result, she purchased formula for the baby. (2 CT 390-391.) When she realized that the baby was going through withdrawal, she used the internet to research how to treat a newborn going through drug withdrawal. (2 CT 391, 397; 2 RT 865-866.) She researched such topics as: "Opiate withdrawal, causes, symptoms and diagnosis"; "How to help a newborn withdrawing breathe better"; "Will blowing heroin smoke in a baby's face help with withdrawal"; "What to give a newborn for withdrawal"; "Home remedies for newborn withdrawal"; and "Is Benadryl safe for infants." (2 RT 865-866.) Indeed, petitioner told law enforcement during her interview that the only reason she breast-fed the baby was to help her with the withdrawal symptoms. (2 CT 430.) Even assuming, purely for the sake of argument, that this Court should consider reinterpreting Penal Code section 189 in poison cases, this is not the case in which to do so, as it would not change the result.

III. PETITIONER HAS NOT ESTABLISHED A VALID GROUND FOR THIS COURT TO GRANT REVIEW OF HER INSTRUCTIONAL ERROR CLAIM

As an extension of previous argument, Petitioner contends that the trial court failed to instruct the jury that the prosecutor had to prove petitioner willfully, deliberately and with premeditation administered poison to her daughter. (Petition at p. 30.) Because petitioner's claim is based on a misstatement of the mental state required for first-degree murder by poison (see II., *ante*), her concomitant claim that the trial court committed instructional error on this basis is likewise without merit. The trial court correctly instructed the jury consistent with the clearly established legal standard for murder by poison. Petitioner's claim, therefore, does not meet the criteria for review set forth in rule 8.500(b)(1).

A. Standard of Review

A reviewing court examines a claim that a jury instruction was legally inadequate under the independent or de novo standard of review. (*People v. Cole* (2004) 33 Cal.4th 1158, 1211.)

B. No Instructional Error Results from the Failure to Instruct on a New or Novel Legal Theory of Which the Court Was Not Aware

Petitioner contends that the trial court should have instructed the jury sua sponte that proof of first degree murder by poisoning required them to find that she acted willfully, deliberately and with premeditation in administering poison to her daughter. (Petition at p. 30.) Petitioner bases this argument on her conclusion that the intent element for first degree murder by poison should be the same as that for first degree murder by torture. Petitioner's argument is unavailing because, as stated previously, the intent element for first degree murder by poison is not the same as it is for first degree murder by torture. Again, the standard for first degree

murder by poison does not require that the administration of the poison be willful, deliberate and premeditated. It is sufficient that the poison was delivered with the knowledge that it was harmful to human life and with a conscious disregard for this fact. (*Jennings, supra,* 50 Cal.4th at pp. 639-640.)

The trial court instructed the jury on the law as it stands. (3 CT 619-620.) The trial court had no sua sponte duty to alter the pattern instruction to include petitioner's current novel legal theory. Moreover, this claim, like the one on which it is based, does not meet the criterial for review by this Court. It advocates for a change in the law that is within the province of the legislature, not the courts.

It is the function of the legislature to make the laws and the function of the courts to interpret them. (*California Teachers Assn. v. Governing Bd. Of Rialto School Dist.* (1997) 14 Cal.4th 627, 632-633; *Jackpot Harvesting Co., Inc. v. Superior Court* (2018) 26 Cal.App.5th 125, 140-141.)

The Court of Appeal explained its interpretation of the statute by examining in the context of lying-in-wait murder which is also encompassed within Penal Code section 189.

> In the similar context of lying-in-wait murder which, like poison-murder, is specifically set forth as first degree murder in section 189, we observed, "The Legislature could have concluded that an unlawful killing of a human being with implied malice aforethought (i.e., an unintended killing which results from an intentional act inherently dangerous to human life committed with knowledge of the danger to, and with conscious disregard for, human life [citation] is more deplorable than second degree murder when it is perpetrated by means of lying in wait." (*People v. Laws* (1993) 12 Cal.App.4th 786, 793.) And "as defined in section 189, murder perpetrated by means of lying in wait is not the definitional equivalent of premeditated murder. An accused who committed murder perpetrated by means of lying in wait is guilty of first degree murder even if the accused did not have a premeditated intent to kill the victim." (*Ibid*.)

> *Laws* held that there is nothing in section 189 that requires lying in wait to have been done with the intent to injure. (*Laws*, *supra*, 12 Cal.App.4th at p. 794.) "To impose such a requirement would, in effect, add an additional element to the crime of first degree murder when the murder perpetrated by lying in wait is committed with implied malice. It would require that the killing result from an intentional act, the natural consequences of which are dangerous to human life, deliberately performed with knowledge of the danger to, and with conscious disregard for, human life *and* performed with the intent to kill or injure. We have no authority to add such an element; imposition of a requirement of independent proof of intent to kill or injure 'would be a matter for legislative consideration.' [Citation.] [¶] All that is required of lying in wait is that the perpetrator exhibit a state of mind equivalent to, but not identical to, premeditation and deliberation." (*Id*., at pp. 794-795.)

(Opn. at p. 14, italics original.) The Court of Appeal went on to conclude that would not add an additional intent requirement to the crime of murder by poison.

> We decline to extend the requirement merely because the two methods of killing-- by torture and by poison--are specifically classified as first degree murder within the same code section. First, as explained above, in *Laws* we made clear the requirement did not extend to lying in wait, which was also classified as first degree murder by the same statute. Adding a willful, deliberate, and premeditated requirement to the administration of poison is equivalent to adding an intent to injure element to lying-in-wait murder.
>
> Second, we agree with Laws that the Legislature could have concluded that an unlawful killing of a human being by poison, with malice aforethought, was more deplorable than second degree murder.
>
> Third, where a torture-murderer is subject to aggravated punishment due to her state of mind, the cold-blooded intent to inflict pain described in Steger, in the context of poison the defendant is subject to aggravated penalties due to only the method by which the implied malice murder is perpetrated. We thus conclude the court instructed the jury in a manner consistent with the law and did not commit instructional error.

(Opn. at pp. 15-16.) Accordingly, here too, the jury was instructed consistent with the law as it stands. Petitioner's quest to change the law must be taken up with the legislature not this Court.

CONCLUSION

For all of the foregoing reasons, respondent respectfully requests that this Court deny the petition for review.

Dated: October 28, 2019

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached **ANSWER TO PETITION FOR REVIEW** uses a 13 point Times New Roman font and contains 4,762 words.

Dated: October 28, 2019

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DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S. MAIL

Case Name: **People v. Brown**
No.: **S257631**

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 collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on October 28, 2019, at Sacramento, California.

C. McCartney
Declarant

/s/ *C. McCartney*
Signature

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STATE OF CALIFORNIA
Supreme Court of California

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10/28/2019
Date

/s/Chris McCartney
Signature

Lauterbach, Kay (186053)
Last Name, First Name (PNum)

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