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Supreme Court Copy

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Attorney for Appellant **ARTURO
JESUS HERNANDEZ**

SUPREME COURT
FILED

JAN 12 2010

Frederick K. Ohlrich Clerk


Deputy

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

**PEOPLE OF THE STATE OF
CALIFORNIA,**

Plaintiff and Respondent,

v.

ARTURO JESUS HERNANDEZ,

Defendant and Appellant.

S175615

**Contra Costa County
Superior Court No.
50707604**

**APPELLANT'S OPPOSITION/REPLY TO RESPONDENT'S
MOTION FOR TRANSFER OF CAUSE TO COURT OF APPEAL
WITH INSTRUCTIONS TO CONDUCT FURTHER PROCEEDINGS**

I, Gail Chesney, counsel for appellant Arturo Jesus Hernandez in the above-entitled case, respectfully oppose/reply to respondent's motion for transfer of this cause to the Court of Appeal with instructions to conduct further proceedings in light of *People v. Stevens* (2009) 47 Cal.4th 625, by hereby requesting that this Court dismiss review rather than re-transferring the case. In support of dismissal, counsel declares as follows:

1. In *People v. Stevens, supra*, this Court determined that the stationing of a security guard at the witness stand during an accused's

testimony was governed by an abuse of discretion standard. The Court further held that the trial court is required to exercise its own discretion on a case-specific basis in ordering such a procedure, rather than applying a generic policy. (47 Cal.4th at pp. 642- 644.)

2. The record in this case shows that the trial court insisted on stationing the security guard behind appellant during his testimony, over defense counsel's repeated objections, because the court believed such a procedure was proper in all cases, regardless of the circumstances. The court then refused a cautionary instruction. (3 RT 406-410, 460-461) The Court of Appeal decision noted that routine application of such a standardized policy was an abuse of discretion. (Opinion at pp. 24-26)

3. In view of the above, appellant respectfully requests that this Court simply dismiss review of the case as unneeded. There is no need to re-transfer the case. However, if this Court declines to dismiss the case, then re-transfer would be more appropriate than briefing and argument.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California on January 12, 2010.


GAIL CHESNEY

PROOF OF SERVICE BY MAIL

I declare that I am a citizen of the United States, over the age of 18, and not a party to this action. My business address is P.O. Box 27233, San Francisco, CA 94127-0233. On the date shown below, I served the within

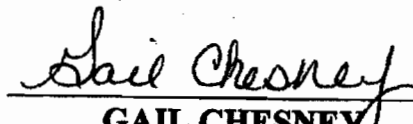
**APPELLANT'S APPELLANT'S OPPOSITION/REPLY TO
RESPONDENT'S MOTION FOR TRANSFER OF CAUSE TO
COURT OF APPEAL WITH INSTRUCTIONS TO CONDUCT
FURTHER PROCEEDINGS** on the following parties/interested persons or entities hereafter named by:

X Placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California, addressed as follows:

Joan Killeen, Deputy Attorney General
California Attorney General's Office
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102
[Counsel for State of California]

Richard Such, Staff Attorney
First District Appellate Project
730 Harrison Street, Suite 201
San Francisco, CA 94107
[Appellate Project]

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 12, 2010, at San Francisco, California.



GAIL CHESNEY