

SUPREME COURT COPY

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No. S062259

IN THE SUPREME COURT FOR THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

ROBERT WALTER SCULLY,

Defendant and Appellant.

(Sonoma County Sup. Ct.
No. SCR-22969)

SUPREME COURT
FILED

FEB - 4 2015

APPELLANT'S REPLY BRIEF

Frank A. McGuire Clerk

Appeal from the Judgment of the Superior Court of
the State of California for the County of Sonoma

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DEATH PENALTY

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

| | | |
|------------------------------------|---|----------------|
| _____ |) | |
| PEOPLE OF THE STATE OF CALIFORNIA, |) | |
| |) | No. S062259 |
| Plaintiff and Respondent, |) | |
| |) | |
| v. |) | (Sonoma County |
| |) | Sup. Ct. No. |
| ROBERT WALTER SCULLY, |) | SCR-22969) |
| |) | |
| Defendant and Appellant. |) | |
| _____ |) | |

APPELLANT’S REPLY BRIEF

INTRODUCTION

In this reply to respondent’s brief on direct appeal, appellant replies to contentions by respondent that necessitate an answer in order to present the issues fully to this Court. Appellant does not reply to all respondent’s arguments which are addressed in his opening brief. The failure to address or respond to any particular argument, subargument or allegation made by respondent, or to reassert any particular point made in the opening brief, does not constitute a concession, abandonment or waiver of the point by appellant (see *People v. Hill* (1992) 3 Cal.4th 959, 995, fn. 3), but rather reflects appellant’s view that the issue has been adequately presented and the positions of the parties fully joined. The arguments in this reply are numbered to correspond to the argument numbers in Appellant’s Opening Brief.

ARGUMENT

1

THE TRIAL COURT'S DENIAL OF APPELLANT'S MOTIONS FOR A CHANGE OF VENUE DEPRIVED HIM OF A FAIR TRIAL BY AN IMPARTIAL JURY AND A RELIABLE PENALTY DETERMINATION IN VIOLATION OF THE SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS AND REQUIRES REVERSAL OF THE ENTIRE JUDGMENT

In his opening brief, appellant argued that the trial court erroneously denied his motions for change of venue, that appellant's case meets this Court's criteria that establishes when it is reasonably likely that a fair trial could not be had in the county, and that retrospective review on appeal demonstrates that it was reasonably likely that appellant did not receive a fair trial due to the court's refusal to grant appellant's motions. (AOB 82-208.)¹

Respondent contends that the circumstances of appellant's case supported the trial court's decision to deny appellant's venue motions. Respondent argues that the factors this Court has directed trial courts to consider in determining whether a venue motion should be granted did not weigh in favor of changing venue and that the jury selection process filtered out prospective jurors who, due to the extensive publicity, could not be fair and impartial. (RB 44-72.)

Respondent's assertions are incorrect and its arguments unpersuasive. Respondent minimizes, as did the trial court, the impact from the pervasive media coverage that vilified appellant as a cold-blooded killer

¹ In this brief, "AOB" refers to Appellant's Opening Brief and "RB" refers to Respondent's Brief. As in the opening brief, the clerk's transcript is cited as "CT" and the reporter's transcript as "RT."