IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. BYRON WILSON, Defendant and Appellant.	No. S087533 Los Angeles County Superior Court Court No. BA164899 Death Penalty Case

Appeal from the Judgment of the Superior Court
of the State of California for the County of Los Angeles

Honorable Curtis B. Rappe, Judge

APPELLANT'S SUPPLEMENTAL OPENING BRIEF

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Federal Cases

State Cases

State Statutes

Constitutional Provisions

Court Rules

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INTRODUCTION

Appellant filed Appellant's Opening Brief [AOB] on February 19, 2013, and Appellant's Reply Brief [ARB] on March 30, 2015. Appellant now submits this Supplemental Opening Brief to raise new arguments that were not presented in the prior briefing, based in part on a case decided after the prior briefing was completed, *In re Manriquez* (2018) 5 Cal.5th 785 (*Manriquez*).

With the submission of this brief, appellant does not abandon any arguments made in the AOB or ARB.

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12.
DUE TO THE ERRORS ADDRESSED IN ARGUMENTS 4 AND 5 OF THE AOB, REVERSAL OF THE ROBBERY SPECIAL CIRCUMSTANCE IS REQUIRED

As explained in the Statement of the Case, in the AOB at pages 1-4, Wilson was convicted of the first degree murders of Charles Hurd (Count One), Michael Hoard (Count Two), Shawn Potter (Count Three), and Jessie Dunn (Count Four), as well as the second degree robberies of Hurd (Count Five) and Dunn (Count Eight). [1] (5CT 1137, 1140-1144.) The jury also found true the special circumstance allegations, under Penal Code section 190.2, subdivision (a)(17), that each of the murders were committed in the course of a robbery. As explained in Arguments 4 and 5 of the AOB, both robbery convictions must be reversed. It follows that the robbery-murder special circumstances must also be set aside.

In Argument 4 of the AOB, at pages 199-201, Wilson explained that the robbery conviction in Count Eight must be reversed because the trial court erred in failing to instruct the jury on theft as a lesser included offense. The evidence showed that Dunn's El Camino was taken after the shooting. (19RT 2987-2991 [Anthony Brown testifying that he saw someone driving Dunn's El Camino away from the scene].) Because the evidence was entirely consistent with a theory that the vehicle was taken only as an afterthought, and because only theft (not robbery) is committed if the intent to steal is formed "after force

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[1] Although appellant was initially charged with the second degree robbery of Hoard (Count Six) and Potter (Count Seven), the trial court reduced those charges to attempted robbery and the jury acquitted on both. No other robberies were alleged in this case.

was used" (*People v. Turner* (1990) 50 Cal.3d 668, 688), there was substantial evidence to support an instruction on theft as a lesser included offense and the trial court erred by failing to give that instruction. (*People v. Breverman* (1998) 19 Cal.4th 142, 154.) Because there is a reasonable probability that, had the jury been instructed on the lesser included offense of theft, they would not have found Wilson guilty of robbery in Count Eight, reversal is required. (*Id.* at p. 177.)

In Argument 5 of the AOB, at pages 202-204, Wilson explained that the evidence was insufficient to support the robbery conviction in Count Five, for two reasons: First, as the prosecution conceded, no marijuana or anything else was taken from Hurd. Second, even assuming there was sufficient evidence to infer that marijuana was taken from the business at which the crimes in this case occurred, the evidence did not suffice to establish that Hurd was an owner or employee of the marijuana business nor that he "had authority or responsibility to protect the stolen properly on behalf of the owner." (*People v. Scott* (2009) 45 Cal.4th 743, 750.) Accordingly, judgment of acquittal should be entered as to Count Five.

Besides those at issue in Counts Five and Eight, there are no other robberies on which the jury could have based its findings on the robbery-murder special circumstances. The jury did not have sufficient evidence to determine that appellant committed murder in the course of robbing Hurd, the robbery at issue in Count Five. Had the jury been properly instructed, there is at least a reasonable probability that the jury would not have concluded that appellant committed murder in the course of robbing Dunn, the robbery at issue in Count Eight. Accordingly, for the same reasons that the robbery convictions

must both be reversed, the robbery-murder special circumstances must also be set aside.

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13.
EVEN IF JUROR NO. 9 UNINTENTIONALLY CONCEALED HER PRIOR EXPERIENCE AS A DEATH PENALTY JUROR, THAT CONCEALMENT STILL AMOUNTED TO MISCONDUCT, WHICH CREATED A PRESUMPTION OF PREJUDICE THAT THE PROSECUTION FAILED TO REBUT

In Argument 7 of the AOB, at pages 235-264, incorporated by reference herein to avoid needless repetition, Wilson explained that Juror No. 9 committed prejudicial misconduct by intentionally concealing her prior experience as a death penalty juror, though she remembered it during trial and had been asked to disclose her past jury experience during voir dire. As Wilson explained, it is implausible that Juror No. 9 forgot her experience as a capital juror, but regardless, Juror No. 9 had a duty to speak up and correct her mistake once she remembered it during Wilson's trial. Juror No. 9's intentional concealment, i.e. her failure to disclose her prior jury service once the memory came back to her, constituted implied bias and thus required reversal without any further consideration of prejudice. (AOB, pp. 262-263.) Even if that concealment only raised a presumption of prejudice, reversal is still required because that presumption was not rebutted. (AOB, pp. 263-264.) Wilson stands by each of these arguments.

To ensure the point is adequately presented in this appeal, however, Wilson now submits the following additional argument: even if Juror No. 9's failure to disclose her prior jury service in the first place (in the questionnaire or during oral voir dire) was unintentional and the product of an honest mistake, it still amounted to juror misconduct. (*Manriquez*, *supra*, 5 Cal.5th at pp. 797-798.) That misconduct created a presumption of prejudice. (*Ibid.*) Because the prosecution failed to rebut that presumption, reversal is required.

A. Legal Standards

As this Court stated in *Manriquez, supra*, 5 Cal.5th at p. 797, "[t]he law concerning juror concealment is settled." "'A juror who conceals relevant facts or gives false answers during the voir dire examination . . . undermines the jury selection process and commits misconduct." (*Ibid.*, quoting *In re Hitchings* (1993) 6 Cal.4th 97, 111.) "Such misconduct includes the *unintentional concealment*, that is, the *inadvertent nondisclosure* of facts that bear a substantial likelihood of uncovering a strong potential of juror bias." (*Manriquez, supra*, 5 Cal.5th at p. 797, citing *In re Boyette* (2013) 56 Cal.4th 866, 889 (*Boyette*), internal quotations omitted, italics added.)

Before *Manriquez, supra*, 5 Cal.5th at p. 797, it was arguably less clear whether such unintentional concealment amounted to misconduct. In *People v. Carter* (2005) 36 Cal.4th 1114, 1208, for example, this Court noted that it had no occasion to "address the question whether a juror's concealment of information *must* be intentional." (Italics added.) Still, to demonstrate the then-existing uncertainty on the point, this Court cited (1) cases that declined to explicitly answer the question (*In re Hitchings, supra*, 6 Cal.4th at pp. 114-116, and *Weathers v. Kaiser Foundation Hospitals* (1971) 5 Cal.3d 98, 110, fn. 5); (2) cases that held that concealment need not be intentional (*People v. Diaz* (1984) 152 Cal.App.3d 926, 932, and *People v. Blackwell* (1987) 191 Cal.App.3d 925, 929); and (3) cases that suggested otherwise (*People v. Kelly* (1986) 185 Cal.App.3d 118, 125-128, *People v. Jackson* (1985) 168 Cal.App.3d 700, 704-706, and *McDonough Power Equip. v. Greenwood* (1984) 464 U.S. 548, 555-556). (*People v. Carter, supra*, 36 Cal.4th at p. 1208, fn. 47.) Any such uncertainty has since been set aside. Where a juror unintentionally conceals, or inadvertently fails to disclose, a material fact (i.e.,

one that bears a substantial likelihood of uncovering a strong potential of bias), that concealment constitutes juror misconduct. (*Manriquez, supra*, 5 Cal.5th at p. 797.)

"'Once a court determines a juror has engaged in misconduct, a defendant is presumed to have suffered prejudice.'" (*Manriquez, supra*, 5 Cal.5th at p. 797, quoting *People v. Weatherton* (2014) 59 Cal.4th 589, 600.) The question then becomes whether the *prosecution* can rebut the presumption of prejudice "by establishing no *substantial likelihood* that one or more jurors were actually biased against the defendant." (*Manriquez, supra*, 5 Cal.5th at p. 797, original italics.) It is only at this point in the analysis that the question whether the juror's concealment was intentional or the product of an honest mistake becomes relevant.

As this Court went on to explain in *Manriquez, supra*, 5 Cal.5th at pp. 797-798, an unintentional concealment "caused by an honest mistake during voir dire" will not *usually* result in reversal of the judgment, in large part because "the juror's good faith when answering voir dire questions is the most significant indicator that there was no bias." (*Id.* at p. 798, citing *In re Hamilton* (1990) 20 Cal.4th 273, 300, and *Boyette, supra*, 56 Cal.4th at p. 890.) Still, "a court ultimately may determine that a juror's concealment masked a substantial likelihood of actual bias." (*Manriquez, supra*, 5 Cal.5th at p. 798.) The possibility that a juror's concealment will have the effect of masking their bias stems, of course, from the critical function that voir dire plays "'in assuring the criminal defendant that [his or her] Sixth Amendment right to an impartial jury will be honored.'" (*In re Hitchings, supra*, 6 Cal.4th at p. 110, quoting *Rosales-Lopez v. United States* (1981) 451 U.S. 182, 188.) "'Without an adequate *voir dire* the trial judge's responsibility to remove prospective jurors who will not

be able impartially to follow the court's instructions and evaluate the evidence cannot be fulfilled.'"[2] (*Ibid.*, original italics.)

There are two critical points here: First, even an unintentional concealment constitutes misconduct and thus creates a presumption of prejudice. Second, "[w]hether any nondisclosure was unintentional is not dispositive; an unintentional nondisclosure may mask actual bias, while an intentional nondisclosure may be for reasons unrelated to bias." (*Manriquez*, *supra*, 5 Cal.5th at p. 798.) Accordingly, once the fact of concealment (whether intentional or unintentional) has been determined, "[t]he ultimate question remains whether [a defendant] was tried by a jury where a substantial likelihood exists that a juror was actually biased against [him]." (*Ibid.*)

B. Even If Juror No. 9 Unintentionally Failed to Disclose Her Prior Capital Jury Service, that Amounted to Juror Misconduct, Which Created a Presumption of Prejudice that the Prosecution Failed to Rebut.

It follows from the application of the above legal standards that Juror No. 9 committed misconduct in this case, "even if not 'misconduct' in the pejorative sense[.]" (*In re Hamilton*, *supra*, 20 Cal.4th at p. 295.) As explained in Argument 7, the trial court's questionnaire inquired into Juror No. 9's prior jury experience and instructed her to indicate whether she had ever been a juror in the past, and if so, to provide the year of the case, whether it was civil or

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[2] An additional, related, problem, discussed further in Argument 14 below, is that the "'lack of adequate voir dire impairs the defendant's right to exercise peremptory challenges where provided by statute or rule . . . .'" (*In re Hitchings*, *supra*, 6 Cal.4th at p. 110, quoting *Rosales-Lopez v. United States*, *supra*, 451 U.S. at p. 188.)

criminal, the charges or type of case, and whether a verdict was reached. (7CT 1846.) Juror No. 9 indicated that she had only previously served as a juror in a civil personal injury case. (*Ibid.*) After the verdict, however, Juror No. 9 testified under oath that she "served as an alternate in a death penalty case" in 1984 or thereabouts. (39RT 6338.) Although Juror No. 9 further testified that she failed to list her prior jury service because she had forgotten about it, she still remembered it prior to the commencement of deliberations: "[m]aybe three or four weeks" into the presentation of evidence in this case. Yet she never considered sharing that information with the court. (39RT 6339-6343.)

In determining the critical issue of whether the juror concealment in this case amounted to misconduct (critical, because it determines whether there is a presumption of prejudice and so determines how the analysis should proceed), the question is not whether Wilson has established that Juror No. 9 was actually or even probably biased against him. It is whether the concealed fact, Juror No. 9's prior jury service on a death penalty case, "bear[s] a substantial likelihood of uncovering a strong potential of juror bias." (*Manriquez*, *supra*, 5 Cal.5th at p. 797, internal quotations omitted.) This standard—with its reference to a *likelihood* of a *potential* for bias—should not be too exacting. After all, as noted above, the problem with a juror's failure to honestly and thoroughly answer the questions presented to her is that it undermines voir dire, the very process designed to root out bias and protect a defendant's right to be tried by an impartial jury, in the first place. (*Manriquez*, *supra*, 5 Cal.5th at p. 797.)

There is a reason, of course, that courts and parties so routinely inquire into prior jury service during voir dire and use it to justify challenges. (See *People v. Contreras* (2013) 58 Cal.4th 123, 141 [describing factors "bearing on the prospective juror's ability and willingness to serve in a fair and impartial

manner," including "experience gained during prior jury service in criminal trials"]; see also *People v. Winbush* (2017) 2 Cal.5th 402, 444; *People v. Rogers* (2009) 46 Cal.4th 1136, 1150, fn. 4; *People v. Robinson* (2005) 37 Cal.4th 592, 615; *People v. Reynoso* (2003) 31 Cal.4th 903, 909.) To put it succinctly, prior jury experience matters. Especially in a death penalty case, where jurors are called upon to make "moral and normative" judgments (*People v. Winbush*, *supra*, 2 Cal.5th at p. 489), there is a very real risk that a juror with prior experience will compare facts (including those relevant to aggravation and mitigation) and weigh the two cases against each other. That is exactly what Wilson's counsel explained to the trial court, that Juror No. 9 might have engaged in "comparative analysis," and that due to her prior experience, she may have approached the case with a more "blasé attitude towards the process." (39RT 6386-6387.) In fact, as noted in Argument 14 below, counsel specifically said that had they known of Juror No. 9's prior service, they would have used a peremptory challenge to exclude her from Wilson's jury. (39RT 6386.) The trial court found counsel credible on that point. (40RT 6404.) Due to Juror No. 9's concealment at voir dire, the potential for bias arising from Juror No. 9's prior jury experience went totally unexplored.

Juror No. 9's misconduct created a presumption of prejudice, regardless of whether her failure to disclose her prior jury experience was an honest mistake. (*Manriquez*, *supra*, 5 Cal.5th at p. 797.) The central inquiry, then, is whether the prosecution managed to rebut that presumption by establishing no substantial likelihood that Juror No. 9, due to her prior jury service, harbored actual bias, i.e., "the existence of a state of mind on the part of the juror in reference to the case, or to any of the parties, which . . . prevent[ed] the juror

from acting with entire impartiality, and without prejudice to the substantial rights of any party." (Code Civ. Proc., § 225, subd. (b)(1)(C).) To be sure, in addressing that question, it was appropriate for the trial court to consider its finding that Juror No. 9 did not intentionally conceal her prior jury service.[3] But that fact alone "is not dispositive[.]" (*Manriquez*, *supra*, 5 Cal.5th at p. 798.)

The problem in this case is that the trial court *only* concerned itself with whether Juror No. 9 acted in good faith. It did not proceed past that question to address "[t]he ultimate question" of "whether [Wilson] was tried by a jury where a substantial likelihood exists that a juror was actually biased against [him]." (*Manriquez*, *supra*, 5 Cal.5th at p. 798.) As explained in the AOB, at pages 245-247, the trial court's examination of Juror No. 9 was very brief. The court asked Juror No. 9 to repeat what she told trial counsel, then briefly explored why she failed to bring up her prior service when she was directly asked in her questionnaire, at oral voir dire, or when she remembered the fact during Wilson's trial. But the trial court did not adequately—or even cursorily—address the sorts of questions that could have determined whether Juror No. 9 harbored bias.

For instance, the trial court never asked Juror No. 9 *what* she remembered of the previous case. Were there any factual similarities to Wilson's case? Was there more than one murder victim in the prior case? Did it

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[3] Wilson does not concede that Juror No. 9's concealment was unintentional. This argument proceeds under the assumption that the trial court's finding in this regard was supported by substantial evidence and argues that, even then, reversal is still required.

Footnote continued on next page

involve felony murder? What was the defense theory, and did it bear similarities to the defense presented in Wilson's case? Did it involve evidence regarding eyewitness identification? What mitigation evidence was put on in the previous case? Was there victim impact evidence? If so, was it particularly emotional? Did mental health experts testify?[4] Most importantly, the trial court never confronted the issue of whether Juror No. 9 was affected by the memory of her prior jury experience, a memory that arose during the presentation of evidence and prior to deliberations. As a result, there is no answer in the record (and certainly no finding by the trial court to which this Court owes deference) to the critical question whether Juror No. 9's memory of her prior experience put her in a frame of mind that "prevent[ed] [her] from acting with entire impartiality, and without prejudice to the substantial rights of any party." (Code Civ. Proc., § 225, subd. (b)(1)(C).)

The fact that the record is lacking in this regard does not count against Wilson or his claim of juror misconduct. Because Juror No. 9's unintentional concealment constituted juror misconduct, the question is not whether Wilson proved actual bias, but whether the *prosecution* rebutted the presumption of prejudice created by Juror No. 9's misconduct. The prosecution made little effort to do so. After the trial court briefly questioned Juror No. 9, the court

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[4] As to this point, it is noteworthy that Juror No. 9 answered in her questionnaire that mental health experts, in her view, were "more likely to confuse the issues than help a jury decide the case." (7CT 1854.) Because she concealed the fact of her prior jury service, the record does not indicate whether her view in this regard was informed by her prior experience. Dr. Efrain Beliz, a clinical psychiatrist, testified on Wilson's behalf at the penalty phase.

twice asked whether the parties had additional questions, but both times, the prosecution simply said no. (39RT 6340, 6344.)

Rather than urge the trial court to draw out the evidence relevant to the issue, the prosecution argued that Juror No. 9's questionnaire did not itself indicate bias, in part because it contained reasons for the defense to prefer Juror No. 9 because she had indicated she was *not* more willing to believe law enforcement and that she was "jaded by reports of unfavorable acts of law enforcement officers." (49RT 6419.) These answers are entirely beside the point. According to the trial court's and prosecution's point of view, Juror No. 9 filled out her questionnaire weeks *before* it occurred to her that she had previously served as a death penalty juror. If Juror No. 9 had not yet remembered her prior service when she filled out her questionnaire, there is no reason to expect that her answers would reveal the bias prompted by her subsequent memory. There is also no substance to the prosecution's argument (echoed by respondent) that there was little reason to believe that Juror No. 9's failure to disclose her prior service was motivated by a strong, secret, desire to serve. (40RT 6432-6433.) This entire theory is a red herring. The question is not whether Juror No. 9 was so biased against Wilson that she intentionally concealed information in the hope that she would have the opportunity to sentence him to death. As noted, the issue is whether the memory of prior experience, perhaps by serving as an unavoidable point of comparison between the two cases, put her in a frame of mind that "prevent[ed] [her] from acting with entire impartiality . . . ." (Code Civ. Proc., § 225, subd. (b)(1)(C).)

The prosecution also urged the trial court to credit Juror No. 9's supposed testimony that her memory of her prior service "played no role in her decision in this case." (40RT 6433.) The prosecution said Juror No. 9's

testimony to that effect was "honest" and "should be believed by the court." (40RT 6433-6434.) But Juror No. 9 *never said that*. She never said that her prior experience played no role in her decision in this case. Nobody ever asked her that question, or anything resembling it.

Because the prosecution failed to rebut the presumption of prejudice caused by Juror No. 9 having concealed her prior jury experience on a capital case, reversal is required. (*People v. Nesler* (1997) 16 Cal.4th 561, 579 [where there is a substantial likelihood that a juror was actually biased, the verdict must be set aside regardless of whether an unbiased jury might have reached the same verdict].)

C. In the Alternative, this Court Should Issue a Limited Remand to Determine Whether a Retroactive Hearing on the "Ultimate Question" of Actual Bias Is Possible.

Given the legal standards articulated above, the issue here is not limited to whether Juror No. 9 intentionally concealed her prior jury service or whether the fact that Juror No. 9 failed to speak up when she remembered her prior service was itself sufficient to warrant a finding of misconduct and actual bias. As explained, the fact of Juror No. 9's misconduct, a fact established by her *unintentional* concealment alone (but bolstered by her additional failure to speak up when she remembered her prior service), created a presumption of prejudice that the prosecution failed to rebut.

As also noted above, however, it was arguably less clear at the time of Wilson's trial that unintentional concealment amounted to misconduct and so created a presumption of prejudice. It was in *Manriquez*, *supra*, 5 Cal.5th at p. 797, that this Court explicitly referred to the law on this point as "settled." To the extent this Court concludes that the law regarding a juror's unintentional

concealment was unsettled at the time of Wilson's trial, and so declines to reverse the judgment without first providing the prosecution with an opportunity for further inquiry, this Court should remand to the trial court to determine whether a retrospective hearing is possible, and if so, to determine "[t]he ultimate question [of] whether [Wilson] was tried by a jury where a substantial likelihood exists that a juror was actually biased against [him]." (*Id.* at p. 798; see *People v. Lavender* (2014) 60 Cal.4th 679, 693 [remanding to allow the trial court to determine the issue of prejudice arising from juror misconduct].)

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14.
JUROR NO. 9'S MISCONDUCT PREJUDICED WILSON BECAUSE IT DENIED WILSON THE OPPORTUNITY TO USE A PEREMPTORY CHALLENGE

In Arguments 7 and 13, Wilson contends that Juror No. 9's failure to disclose her prior jury service in a capital case amounted to juror misconduct. Because the prosecution failed to rebut the presumption created by that misconduct, by failing to establish there is no substantial likelihood of *actual bias*, reversal is required. For the reasons articulated in Justice Liu's dissenting opinion in *Manriquez*, *supra*, 5 Cal.5th at pp. 819-822 (dis. opn. of Liu, J.), however, this Court should also reverse the judgment, due to Juror No. 9's misconduct, for a second reason. As Justice Liu explained, with Justice Franson concurring, this Court's "limited inquiry" in the present context, which considers whether one or more jurors was actually biased against the defendant but does *not* consider whether a juror served who would have been stricken by one of the parties, "does not adequately safeguard a defendant's right to a fair trial." (*Id.* at p. 821.) When a juror conceals material information at voir dire, it undermines the jury selection process and prevents the parties and the trial court from rooting out actual bias, thus preventing the parties from articulating challenges for cause. (*Ibid.*) The central concern is that, "'false answers or concealment on voir dire also eviscerate a party's statutory right to exercise a peremptory challenge and remove a prospective juror for cause.'" (*Ibid.*, quoting *In re Hitchings, supra*, 6 Cal.4th at pp. 111-112.)

That is precisely what happened here. In a declaration signed under penalty of perjury, Wilson's trial counsel averred that had they "known that Juror 9 had previously served as an alternate on a death penalty case, the defense on behalf of Byron Wilson, either jointly, or separately, would have

exercised a peremptory challenge towards Juror 9." (6CT 1626.) Trial counsel repeated the same point in court, explaining that "prior jury service on a death penalty case was an automatic peremptory challenge on that juror if we couldn't establish cause to get that person off." (39RT 6386.) The trial court did not "question counsel's sincerity in that." (40RT 6404.) The record also shows that when Prospective Juror No. 12 (Juror No. 3057) revealed she had prior jury service in a death penalty case, the defense excused her with a peremptory challenge. (6CT 1624; 10RT 1242.)

Accordingly, for all the reasons articulated in Arguments 7 and 13, but also because the constitutional harm of the juror's misconduct in this case undermined Wilson's ability to exercise peremptory challenges, in violation of both his statutory right under Code of Civil Procedure section 231, subdivision (a), and his constitutional rights to due process and a fair and impartial jury, reversal is required.

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CONCLUSION

For all the reasons argued above, and those stated in Wilson's opening and reply briefs, the judgment against Wilson must be reversed.

DATED: October 16, 2020

Respectfully submitted,

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CERTIFICATE OF COUNSEL
(Cal. Rules of Court, rule 8.630(b)(2))

I am the Supervising Deputy State Public Defender assigned to represent appellant, BYRON WILSON in this automatic appeal. I conducted a word count of this brief using our office's computer software. On the basis of that computer-generated word count, I certify that this brief, excluding tables and certificates is 4,188 words in length.

DATED: October 16, 2020

/s/
RYAN DAVIS

DECLARATION OF SERVICE

Case Name: ***People v. Byron Wilson***
Case Number: **Supreme Court Case No. S087533**
Los Angeles County Superior Court No. BA164899

I, **Marsha Gomez**, declare as follows: I am over the age of 18, and not party to this cause. I am employed in the county where the mailing took place. My business address is 770 L Street, Suite 1000, Sacramento, California 95814. I served a true copy of the following document:

APPELLANT'S SUPPLEMENTAL OPENING BRIEF

by enclosing it in envelopes and placing the envelopes for collection and mailing on the date and at the place shown below following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

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California Appellate Project 345 California Street, Suite 1400 San Francisco, CA 94104	Habeas Corpus Resource Center 303 Second Street, Suite 400 South San Francisco, CA 94107

The aforementioned document(s) were served electronically (via TrueFiling) to the individuals listed below on **October 16, 2020**:

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Eric Multhaup 20 Sunnyside Avenue, Suite A Mill Valley, CA 94941	

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Signed on **October 16, 2020**, at Sacramento, CA.

/s/

MARSHA GOMEZ

STATE OF CALIFORNIA
Supreme Court of California

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Supreme Court of California

Case Name: **PEOPLE v. WILSON (BYRON)**
Case Number: **S087533**
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Batchelder, Elias (253386)
Last Name, First Name (PNum)