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SUPREME COURT
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Deputy

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

	) Calif. Supreme
	) Court
PEOPLE OF THE STATE OF CALIFORNIA,	) No. S148462
	)
Plaintiff and Respondent,	) San Diego
	) Co.Super.Ct.
	) No. SCD173300
v.	)
	)
JEFFREY SCOTT YOUNG,	)
	)
Defendant and Appellant.	)

APPELLANT'S SUPPLEMENTAL OPENING BRIEF

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By appointment of the
California Supreme Court

DEATH PENALTY

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TOPICAL INDEX

INTRODUCTION		1
VI.	HOLDING A SECOND PENALTY TRIAL AFTER THE FIRST PENALTY PHASE JURY FAILED TO REACH A UNANIMOUS DECISION VIOLATED APPELLANT'S FEDERAL CONSTITUTIONAL RIGHTS UNDER THE SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS, AND THE STRUCTURAL ERROR REQUIRES REVERSAL WITHOUT RESORT TO HARMLESS ERROR ANALYSIS	2
CONCLUSION		3
CERTIFICATE OF COMPLIANCE		4
CERTIFICATE OF SERVICE		5

TABLE OF AUTHORITIES CITED

Arizona v. Fulminante (1991) 499 U.S. 279 2

Brecht v. Abrahamson (1993) 507 U.S. 619 2

California v. Roy (1997) 519 U.S. 2 2

Gideon v. Wainwright (1963) 372 U.S. 335 3

McKaskle v. Wiggins (1984) 465 U.S. 168 3

McKaskle v. Wiggins (1984) 465 U.S. 168 3

Sullivan v. Louisiana (1993) 508 U.S. 274 2

Tumey v. Ohio (1927) 273 U.S. 510 3

Vasquez v. Hillery (1986) 474 U.S. 254 3

Waller v. Georgia (1984) 467 U.S. 39 3

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. JEFFREY SCOTT YOUNG, Defendant and Appellant.	) Calif. Supreme Court) No. S148462)) San Diego Co.Super.Ct.) No. SCD173300

INTRODUCTION

In Appellant's Opening Brief, he argued that holding a second penalty trial pursuant to Penal Code section after the first penalty jury failed to reach a unanimous decision violated appellant's federal constitutional rights under the Sixth, Eighth and Fourteenth Amendments. Implicit in this argument was that the error was structural. Appellant herein makes that argument explicit in this Supplemental Opening Brief.

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VI. HOLDING A SECOND PENALTY TRIAL AFTER THE FIRST PENALTY PHASE JURY FAILED TO REACH A UNANIMOUS DECISION VIOLATED APPELLANT'S FEDERAL CONSTITUTIONAL RIGHTS UNDER THE SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS, AND THE STRUCTURAL ERROR REQUIRES REVERSAL WITHOUT RESORT TO HARMLESS ERROR ANALYSIS

Constitutional errors that occur during trial are of two types: Trial errors are those"which occur[] during the presentation of the case to the jury, and which may therefore be quantitatively assessed" in the context of the trial as a whole to determine whether they are harmless. (*Arizona v. Fulminante* (1991) 499 U.S. 279, 307-08.)

Structural errors, on the other hand, are defects "affecting the framework within which the trial proceeds, rather than simply an error in the trial process itself." (*Id.* at 310.) Structural errors are "defects in the constitution of the trial mechanism," and therefore defy analysis by harmless error standards, and reversal is automatic. (*California v. Roy* (1997) 519 U.S. 2, 5, citing *Brecht v. Abrahamson* (1993) 507 U.S. 619, 629.)

Examples of structural error include: erroneous reasonable doubt instruction, as in *Sullivan v. Louisiana* (1993) 508 U.S. 274; erroneous exclusion of grand jurors of the

defendant's race, as in *Vasquez v. Hillery* (1986) 474 U.S. 254; denial of the right to self-representation at trial, as in *McKaskle v. Wiggins* (1984) 465 U.S. 168; denial of the right to a public trial, as in *Waller v. Georgia* (1984) 467 U.S. 39; total deprivation of the right to counsel, as in *Gideon v. Wainwright* (1963) 372 U.S. 335; and lack of an impartial trial judge, as in *Tumey v. Ohio* (1927) 273 U.S. 510.

The erroneous second penalty trial fits squarely within the framework of structural errors as it is a defect in the trial mechanism itself. Thus, the error requires reversal without resort to harmless error analysis. If the error is structural, then defendant's "criminal trial cannot reliably serve its function" and reversal is required. (*Rose v. Clark* (1986) 478 U.S. 570, 577-78.)

CONCLUSION

For the above-stated reasons, Appellant respectfully requests that t his Court reverse his judgment of death.

DATED: December 15, 2014

Respectfully submitted,

KATHY R. MORENO

Attorney for Appellant
Jeffrey Young

CERTIFICATE PURSUANT TO RULE OF COURT 8.630(b)

I, Kathy R. Moreno, attorney for Jeffrey S. Young certify that this Appellant's Supplemental Opening Brief does not exceed 102,000 words pursuant to California Rule of Court, rule 8.630(b). According to the Pages word- processing program on which it was produced, the number of words contained herein is 863 and the font is Times New Roman 13.

I hereby declare, under penalty of perjury, that the above is true and correct, this 15th day of December, 2014, in Berkeley, CA.

KATHY R. MORENO

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SUPREME COURT
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JAN 21 2015

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Deputy

December 18, 2014

Office of the Clerk, California Supreme Court
Automatic Appeals Supervisor
350 McAllister Street, Room 1295
San Francisco, CA 94102

RE: People v. Jeffrey Scott Young, S148462
ERRATA to Appellant's Supplemental Opening Brief

Dear Ms. Jameson:

I hereby respectfully request that the Court accept this Errata Letter. In Appellant's Supplemental Opening Brief filed yesterday, I omitted the number of a Penal Code section on page one.

I have attached hereto a corrected copy of the page. I have also served a copy of this letter and the corrected page one to those listed on the attached Certificate of SErvice.

Sincerely,

KATHY R. MORENO
Attorney for Jeffrey Young

DEATH PENALTY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

	) Calif. Supreme
	) Court
PEOPLE OF THE STATE OF CALIFORNIA,	) No. S148462
	)
Plaintiff and Respondent,	) San Diego
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	) No. SCD173300
v.	)
	)
JEFFREY SCOTT YOUNG,	)
	)
Defendant and Appellant.	)

INTRODUCTION

In Appellant's Opening Brief, he argued that holding a second penalty trial pursuant to Penal Code section 190.4 (a) after the first penalty jury failed to reach a unanimous decision violated appellant's federal constitutional rights under the Sixth, Eighth and Fourteenth Amendments. Implicit in this argument was that the error was structural. Appellant herein makes that argument explicit in this Supplemental Opening Brief.

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CERTIFICATE OF SERVICE

I, Kathy Moreno, certify that I am over 18 years of age and not a party to this action. I have my business address at P.O. Box 9006, Berkeley, CA 94709-0006. I have made service of the foregoing ERRATA APPELLANT'S SUPPLEMENTAL OPENING BRIEF by depositing in the United States mail on December 18, 2014, a true and full copy thereof, to the following:

Attorney General, Capital Appeals, Attn Stacy Tyler
110 West A St., Ste. 1100
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Jeffrey Young
San Quentin, CA 94974

Executed this 18th day of December, 2014, in Berkeley, CA under penalty of perjury.

KATHY MORENO

CERTIFICATE OF SERVICE

I, Kathy Moreno, certify that I am over 18 years of age and not a party to this action. I have my business address at P.O. Box 9006, Berkeley, CA 94709-0006. I have made service of the foregoing APPELLANT'S SUPPLEMENTAL OPENING BRIEF by depositing in the United States mail on December ___, 2014, a true and full copy thereof, to the following:

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Executed this ___day of December, 2014, in Berkeley, CA under penalty of perjury.

KATHY MORENO