SUPREME COURT COPY

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA, **Respondent,** **v.** **JEFFREY SCOTT YOUNG,** **Appellant.**	**CAPITAL CASE** Case No. S148462

SUPREME COURT
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San Diego County Superior Court Case No. SCD173300
The Honorable John M. Thompson, Judge

RESPONDENT'S SUPPLEMENTAL BRIEF

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I. WERE IT ERROR TO HOLD A SECOND PENALTY TRIAL AFTER A HUNG JURY IN THE FIRST PENALTY TRIAL, THE ERROR WOULD BE STRUCTURAL

In Argument VII of his Opening Brief, appellant Young argued that California's requirement in capital cases that a second jury decide the defendant's penalty if the first jury deadlocks on the question is unconstitutional. (AOB 130-146.) In his supplemental brief filed January 21, 2015, appellant asserts that the error was structural. (Appellant's Supp. Br. at 1-3.) As set forth in the Respondent's Brief, there is no constitutional infirmity in a second penalty trial when the first jury is unable to reach a verdict. (RB 79-84, citing *People v. Taylor* (2010) 48 Cal.4th 574, 633-634 ("*Taylor*").) However, were this Court to find the proceeding of a second penalty trial unconstitutional in itself, respondent agrees that the error would be structural.

"'Error that occurs during the presentation of the case to the jury is generally trial error . . . [and] can "be quantitatively assessed in the context of the other evidence presented in order to determine whether its admission was harmless beyond a reasonable doubt."'" (*People v. Anzalone* (2013) 56 Cal.4th 545, 553-554, quoting *Arizona v. Fulminante* (1991) 499 U.S. 279, 308 [111 S.Ct. 1246, 113 L.Ed.2d 302] ("*Fulminante*").) Structural error, on the other hand, requires reversal per se and is not subject to harmless error analysis. (*People v. Lightsey* (2012) 54 Cal.4th 668, 699; *People v. Flood* (1998) 18 Cal.4th 470, 493, citing *Fulminante*, at pp. 306-310.) "[O]nly a very limited class of cases" involves structural error: those involving a defect in the trial framework itself, rather than simply an error that occurred during trial. (*People v. Gray* (2005) 37 Cal.4th 168, 233, fn. 20, citing, inter alia, *Johnson v. United States* (1997) 520 U.S. 461, 468–469 [117 S.Ct. 1544, 137 L.Ed.2d 718] and *Fulminante*, 499 U.S. 279.) Examples include "total deprivation of the right to counsel," "lack of an

impartial judge," and "unlawful exclusion of grand jurors of defendant's race." (*Gray*, 37 Cal.4th at p. 233, fn. 20, citing *Gideon v. Wainwright* (1963) 372 U.S. 335 [83 S.Ct. 792, 9 L.Ed.2d 799]; *Tumey v. Ohio* (1927) 273 U.S. 510 [47 S.Ct. 437, 71 L.Ed. 749]; *Vasquez v. Hillery* (1986) 474 U.S. 254 [106 S.Ct. 617, 88 L.Ed.2d 598].)

Were this Court to hold unconstitutional the very occurrence of a second penalty trial, the error would be structural because if the trial itself never should have happened, then its occurrence would necessarily be a defect in its framework. Indeed, the structural nature of the alleged error was so implicit in the claim, appellant did not make the point expressly in his Opening Brief (see AOB 130-146; Appellant's Supp. Br. at 1), and respondent did not argue it (see RB at pp. 79-84).

Assuming this Court holds, as in did in *Taylor*, *supra*, 48 Cal.4th at pp. 633-634, and more recently in *People v. Trinh* (2014) 59 Cal.4th 216, 227-238 [third penalty trial constitutional], that retrial of the penalty phase is constitutionally sound, then any alleged errors that occurred within that trial would simply be trial errors and would be harmless as set forth in Respondent's Brief. (See *People v. Anzalone*, *supra*, 56 Cal.4th at p. 556 ["most procedural shortcomings constitute trial error. Indeed, most *constitutional violations themselves* are subject to harmless error review" (original italics)].)]

CONCLUSION

For the reasons stated herein and in the Respondent's Brief previously filed in this Court, respondent respectfully requests this Court affirm the judgment.

Dated: February 17, 2015

Respectfully submitted,

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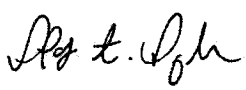

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CERTIFICATE OF COMPLIANCE

I certify that the attached Supplemental Respondent's Brief uses a 13 point Times New Roman font and contains 668 words.

Dated: February 17, 2015

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: ***People v. Jeffrey Scott Young*** No.: **S148462**

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 collection and processing of correspondence for mailing with the United States Postal Service. 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.

On February 17, 2015, I served the attached **RESPONDENT'S SUPPLEMENTAL BRIEF** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

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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 February 17, 2015, at San Diego, California.

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