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In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

BRUCE LEE BLACKBURN,

Defendant and Appellant.

Case No. S211078

Sixth Appellate District, Case No. H037207
Santa Clara County Superior Court, Case No. BB304666
The Honorable Gilbert T. Brown, Judge

RESPONDENT'S REPLY BRIEF ON THE MERITS

KAMALA D. HARRIS
Attorney General of California
DANE R. GILLETTE
Chief Assistant Attorney General
GERALD A. ENGLER
Senior Assistant Attorney General
CATHERINE A. RIVLIN
Supervising Deputy Attorney General
KAREN Z. BOVARNICK
Deputy Attorney General
State Bar No. 124162
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5550
Fax: (415) 703-1234
Email: Karen.Bovarnick@doj.ca.gov
Attorneys for Respondent

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INTRODUCTION

Appellant's primary contentions stem from two incorrect premises: that advisement and waiver of jury are guaranteed by plain and unambiguous statutory language; and that due process and dignity interests imply rights under the California and federal constitutions. (AMB 4, 20, 23-26.) To determine whether a defendant is incompetent to act in his or her own best interests, he asks this Court to sanction, or in effect, legislate the appointment of a guardian ad litem—a procedure authorized in proceedings when a party is already deemed incompetent. (AMB 17.)

Appellant's contentions ignore uniform precedent stating that the right to jury trial in these proceedings is statutory and not of constitutional dimension, and he fails to adequately distinguish case-law, never superseded by the Legislature, holding that advisement and waiver may be communicated by a defendant's attorney, i.e., the "Captain of the Ship" who is charged with acting in a defendant's best interest. Stripped to its essence, the crux of appellant's concern is that defense counsel, in, or appearing in, cahoots with the judge and prosecutor, cannot be trusted to advise on the pre-existing right to jury trial nor, after such a consultation, execute a waiver in the defendant's best interest. Appellant's claims are without authority and unsupported by the record which disclosed neither error nor prejudice.

ARGUMENT

I. THE TRIAL COURT DID NOT COMMIT PREJUDICIAL ERROR BY FAILING TO ADVISE APPELLANT OF THE RIGHT TO JURY TRIAL AND TO OBTAIN A PERSONAL WAIVER OF THAT RIGHT

A. MDO Statute Does Not "Mandate" Personal Advisement of Right to Jury by Trial Court

Appellant's primary contention is that the language of Penal Code section 2972, subdivision (a)[1] regarding advisement of the "default" jury right in Mentally Disordered Offender (MDO) extension proceedings is plainly understood and without ambiguity. (AMB 5.) He is incorrect.

Appellant's "plain-language" claim of advisement requires tunnel-vision emphasis on one clause within the statute, to the exclusion of all others. To find no ambiguity, the advisement of jury provision must be read: (1) independent of the clause preceding it, directing advisement of the right to attorney; (2) independent of the sentence preceding it, stating that the court shall conduct a *hearing* on the petition for continued treatment; (3) independent of the sentence immediately following it, directing that the attorney receive a copy of the petition; (4) independent of the sentence, two sentences later, which again refers to the proceedings as a civil *hearing* subject to criminal rules of discovery; and (5) independent of subdivisions (c) and (e) which refer to the defendant as a "patient," and not simply as a "person." (§ 2972.) Even within this interpretive prism, his claim that the advisement provision is without ambiguity is incorrect.

Assuming, as appellant contends, that "person," under the advisement provision of subdivision (a) means defendant, there is also ambiguity since the statute contemplates appointment of counsel and advisement to the

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[1]All statutory references are to the California Penal Code unless otherwise specified.

"person" in the same instance, and does not address the situation in which counsel appears and waives the defendant's appearance. (§ 977.1.) Appellant acknowledges that the statute does not address the situation, but rather than finding ambiguity, blames the trial court for "routinely appointing attorneys when the client was not present" (AMB 6), or failing to advise a defendant moments before a trial is set to commence (AMB 7-8). Ironically, he finds no malfeasance in a trial counsel's routine waiver of a defendant's appearance until trial, presumably because counsel's waiver of appearance serves a defendant's best interest. (Evid. Code § 664; *People v. Rucker* (1960) 186 Cal.App.2d 342, 346.) (Opn. 9-10.)

Appellant characterizes the administrative burden involved in making a "game-time decision" to waive jury on the day of trial as a mere "inconvenience." (AMB 7-8) But he provides no rationale for why the public should bear this burden when counsel has met with a defendant many times before trial, and indicated to the trial court that it is in the best interests of the defendant to waive jury.[2] Rather than acknowledge ambiguity under these circumstances, appellant argues for an anomalous, but strict, construction that belies his plain-language contention. (AMB 5-6.)

Appellant incorrectly overstates the People's position as contending that, rather than advisement by the trial court, the advisement itself

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[2]The Legislature has set forth procedures in civil cases which demonstrate a preference for advance notice that a party will assert the constitutional jury right. In civil cases, demand for jury, even in unlawful detainer matters proceeding on an expedited schedule, must be made at least five days, and in most cases 25 days, in advance of the trial date. (Code of Civ. Proc. § 631, subds. (c), (f)(4).) Moreover, distinct from criminal matters, commitment proceedings raise additional administrative burdens pertaining to custody of an MDO requiring treatment which would require advance planning. (§ 2972, subd. (g); Welf. & Inst. Code § 5325, et seq.)

becomes moot once an attorney is appointed. (AMB 5.)[3] Rather, we argued that the statutory language assumes that the committee defendant is unrepresented at the first appearance, and thus charges the trial court with providing this basic notice of an existing right. Once an attorney appears, especially when waiving a defendant's appearance, then the attorney is charged with advising the defendant of his or her panoply of rights. (RMB 7.) This presents a situation no different from waiving reading of an information otherwise required in section 988 in a criminal case. (e.g., *People v. Jackson* (1950) 36 Cal.2d 281, 283.) Even in criminal matters, moreover, where the right to jury is constitutional, there is no mandate that the trial court, rather than defense counsel, provide notice of the jury right to a represented defendant at arraignment. (§ 988.) Rather, the trial court must inquire about knowledge of this right at the time the right is waived, i.e., when taking a plea. (*In re Tahl* (1969) 1 Cal.3d 122, 131-132 (*Tahl*).) But even when taking a plea, the trial court does not inquire how the defendant acquired knowledge of the right, or prophylactically assure itself of the details the attorney discussed with the defendant prior to waiver. (See *People v. Howard* (1992) 1 Cal.4th 1132, 1178 (*Howard*) [rejecting former rule that absence of express admonitions and waivers requires reversal regardless of prejudice]; *People v. Mosby* (2004) 33 Cal.4th 353, 360-361 [appellate court reviews record to determine if plea was voluntary and knowing even if explicit admonition absent].)

Thus appellant's claim of error in notice must be rejected.

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[3]Contrary to appellant's quotation (AMB 5), our opening brief stated that "when counsel is present at the first appearance, the trial court's failure to advise 'the person' of the right to counsel and the default right of a jury trial makes the statutory advisement moot, rather than an error of *omission*," not one of "admission." (RMB 7, italics added.)

B. Waiver of Jury by an Attorney does Not Require a Preliminary Showing of Incompetency

Appellant mischaracterizes the People's contention as claiming that all commitment schemes have a presumption of incompetence. (AMB 8.) He argues that, to the contrary, we must presume an MDO defendant competent in an extension proceeding because during the criminal trial that preceded commitment, an MDO defendant, like those committed as not guilty by reason of insanity (NGI) (section 1026.5), and sexually violent predators (SVP) (Welf. & Inst. Code § 6600), was deemed competent to stand trial. (AMB 10.) As a threshold matter, a finding that a defendant was competent to stand trial for criminal charges does not suggest he or she is or remains competent when later found to suffer a mental disorder *not in remission* requiring civil commitment as an MDO. (§§ 2970, 2972, subds. (c), (e), italics added.) More significant, however, is that appellant's straw-man premise has no relevance for the primary contention that governs here, i.e., that an attorney has authority over waiver of statutory rights. (*People v. Masterson* (1994) 8 Cal.4th 965, 969; see *Cadle Co. v. World Wide Hospitality Furniture, Inc.* (2006) 144 Cal.App.4th 504, 510 (*Cadle*) [counsel's stipulation to waive jury in civil contract dispute was binding as counsel "is authorized to exercise his independent judgment with respect to strategic litigation decisions"]; also see *In re Horton* (1991) 54 Cal.3d 82, 95, 97 [stipulation to court commissioner's conducting trial in capital case inferred from conduct of counsel who has traditional authority to act in the procedural aspects of case].)

As we discussed in our opening merits brief, undisturbed case law indicates a number of reasons why the Legislature did not set forth a procedure for determining competence to exercise a statutory right of jury waiver in extension proceedings. First, a defendant need not be competent in proceedings to extend commitment (*People v. Angeletakis* (1992) 5

Cal.App.4th 963, 970 [due process does not include the right to be mentally competent during a commitment extension hearing]; *Juarez v. Superior Court* (1987) 196 Cal.App.3d 928, 931-932 [no right to competency determination in NGI commitment proceedings to determine length of treatment and not punishment].) Thus, case authority, and indeed, the Court of Appeal in this case, have focused on a defendant's ability or inability to act in his or her best interests, rather than on the *Dusky* standard of competence[4] under § 1368. (AMB 13-14, and cases cited therein.) Second, the reports and evaluations of mental health experts supporting the initial petition cast doubt upon whether a defendant committee could consistently act in his or her best interest independent of an attorney "captain." (*People v. Barrett* (2012) 54 Cal.4th 1081, 1106.) Third, it is reasonable to infer legislative intent to place the attorney at the helm as captain, not merely due to this threshold showing of mental impairment, but also because the attorney is authorized, presumed, and indeed, obligated to make these kinds of tactical decisions to assert or waive statutory rights with the best interest of the client in mind. (*Barrett*, at p. 1105; *People v. Montoya* (2001) 86 Cal.App.4th 825, 831; *Cadle*, *supra*, 144 Cal.App.4th at p. 510; *In re Horton*, *supra*, 54 Cal.3d at p. 95)

Appellant's reliance on *People v. Hofferber* (197) 70 Cal.App.3d 265, 269, is inapposite as it considered counsel's authority over the defendant's *constitutional* right to enter a plea, i.e., to refuse to plead NGI contrary to advice of counsel, and observed that competency at trial is based on

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[4]The test for trial competence, as set forth in *Dusky v. United States* (1960) 362 U.S. 402, is whether a defendant " 'has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings against him.' "

standards distinct from those determining sanity during a crime. As just noted in *Barrett, Montoya*, *Cadle*, and *In re Horton*, an attorney's authority to waive jury stems from authority over *statutory* decisions, and competency to stand trial is not a relevant concern in an extension proceeding. (See *Angeletakis*, *supra*, 5 Cal.App.4th at p. 970.)[5]

Appellant contends that placing an attorney in charge of a tactical decision over waiver of jury would render identical language in section 2966, subdivision (b),[6] stating that a time waiver may be made by "petitioner or his or her counsel," superfluous. (RMB 13.) He is incorrect. The obvious inference from the difference in statutory language is that the "person" who waives jury, parallel with the district attorney, may be defense counsel alone. (*People v. Otis* (1999) 70 Cal.App.4th 1174, 1176.)

Appellant is incorrect too, in his contention that there is something incongruous if the Legislature intended to leave the decision to waive jury in the hands of trial counsel while allowing an MDO prisoner to contest his status and treatment at the time of parole, or seek appointment of experts under section 2964. (AMB 14.) Nothing compels such a conclusion or even a comparison between procedures before the Board of Parole and a trial in the Superior Court. Indeed, such a comparison does not exclude an attorney's involvement in these decisions, which refer to rights a prisoner "may" exercise (hearing rights under §§ 2964, subdivisions (a) and (b), 2966), or "the patient or the patient's attorney" can exercise (continuance under § 2964), or "the prisoner or *any person* appearing on his or her behalf

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[5]We distinguished *In re Qawi* (2004) 32 Cal.4th 1, 15 in our opening merits brief as addressing constitutional rights of privacy and bodily integrity, rather than a statutory right of jury. (AMB 19.)

[6]Section 2966 addresses an MDO proceeding at the time of parole, with language similar to that at issue here, in section 2972 addressing extension of commitment proceedings. (RMB 1, fn 2, referencing discussion in *Lopez v. Superior Court* (2010) 50 Cal.4th 1055, 1061-1061.)

at the hearing" may exercise (appointment of experts under § 2964, subdivision (b), italics added).

Appellant argues in favor of a competency determination, arguing that it would lend dignity to a process in which government employees working in the criminal justice system—from the judge to the public defender he presumes is appointed in each case—gang up to recommit him. (AMB 17.) He proposes appointing appellant's trial attorney as guardian ad litem. (AMB 17-18.)

As a threshold matter, neither the plain language nor a reasonable interpretation of that language of section 2972 contemplates such a procedure for a defendant committed as an MDO. The procedure, moreover, does not serve appellant's purpose of determining competency for purposes of waiving jury. The Legislature provides for appointment of a guardian ad litem—not to determine competence, but rather, to make decisions for a party already deemed incompetent. (Code of Civ. Proc,. §§ 372, 373.) Appellant's novel proposal merely echoes *Masterson* and subsequent authorities that already establish that a defendant's attorney is "captain of the ship" in commitment proceedings, but with a layer of process not contemplated by the Legislature. (*Angeletakis*, *supra*, 5 Cal.App.4th at p. 970.)

Appellant's reliance on *In re Daniel S.* (2004) 115 Cal.App.4th 903, 912, and *Briggs v. Briggs* (1958)160 Cal.App.2d 312, 318, does not compel appointment of a guardian ad litem to waive jury in MDO commitment proceedings. *In re Daniel S.* involved the protection of constitutional rights of due process owing a parent in dependency proceedings who was alleged to have been incompetent. (*In re Daniel S.*, *supra*, 115 Cal.App.4th at p. 912 [due process error was harmless].) *Briggs v. Briggs* involved protection of constitutional rights of due process owing a defendant spouse in proceedings to annul her marriage. (*Briggs*, *supra*, 160 Cal.App.2d at pp.

314-315.)[7] Determining the competency of a parent or spouse to participate as a party is an issue of constitutional dimension separate and distinct from those to be determined in the dependency or annulment proceedings. It is not analogous to determining whether a defendant, whose mental capabilities are an issue triggered by the proceedings themselves, has the precise capability of waiving a statutory right of jury.[8] If the Legislature had intended to provide for two such proceedings with different standards for mental capability, it would have said so. (*Barrett, supra*, 54 Cal. 4th at p. 1106.)

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[7]*Briggs* involved a complicated fact situation in which the defendant wife, a patient at Camarillo State Hospital, was served with annulment papers; the plaintiff husband sought appointment of a guardian ad litem; the order to appoint the guardian ad litem was never signed and thus ineffective; default was taken; and nine years later—after receiving a "certificate of recovery," trying to move in with plaintiff, and learning of the annulment,—defendant had the annulment order set aside. (*Briggs, supra*, 160 Cal.App.2d at pp. 314-318.) The Court of Appeal held that while service and entry of default were proper absent appointment of a guardian ad litem, "equity jurisdiction" supported setting aside the default judgment because the trial court erred in failing to sign the order appointing a guardian ad litem to represent an incompetent defendant. (*Id.* at p. 318-319.)

[8]Indeed, one factor commonly examined in determining whether defendant meets the elements for MDO extension is whether defendants have insight into their condition, an issue closely connected with whether defendants can appreciate and act in their best interests. (e.g., *People v. Rish* (2008) 163 Cal.App.4th 1370, 1385; *People v. Gregerson* (2011) 202 Cal.App.4th 306, 320-321 [lack of insight into condition part of insufficient showing for outpatient treatment]; *People v. Bowers* (2006) 145 Cal.App.4th 870, 874, 876 [NGI had insufficient insight and serious difficulty in controlling dangerous behavior]; *People v. Galindo* (2006) 142 Cal.App.4th 531, 535-536, 539 [NGI defendant "did not try to control his dangerous behavior, because he perceived no reason to do so"].)

II. THE RIGHT TO JURY IN EXTENDING MDO COMMITMENT IS STATUTORY

A. The Right Does Not Exist Under the California Constitution

Appellant acknowledges that there is neither an express right nor one that existed at common law at the time the California Constitution was adopted that provides him the right to trial by jury. (AMB 20.) Nonetheless, he argues for a novel and limitless interpretation of language in California Constitution, article I, section 16, securing jury rights "to all" to include defendants in civil commitment proceedings and relies on *In re Marriage Cases* (2008) 43 Cal.4th 757[9] as support because "it is time for this interpretation of the constitution to change." (AMB 20-21.) Appellant's call for a new constitutional rule, indeed, a new rule of constitutional rule-making, is unprecedented.

Appellant quotes extensively from *Duncan v. Louisiana* (1968) 391 U.S. 145, 155-156, arguing that jury trials offer protection from government oppression that purportedly appears in the guise of overzealous prosecutors and judges fearful of political repercussions. (AMB 22.) In *Duncan v. Louisiana*, our High Court held that under the due process clause of the Fourteenth Amendment, the Sixth Amendment right to jury applied to all serious felonies, but *not* petty offenses punishable by less than six months. (*Id.* at p. 149.) Just like the analysis required for determining rights under the California Constitution, the United States Supreme Court found that the absence of an express constitutional provision or common-law history requiring jury for petty offenses suggested no reason to disturb

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[9] *In re Marriage Cases*, considered the application of the right of marriage derived from constitutional rights of privacy and due process, was superseded by constitutional amendment as stated in *Hollingsworth v. Perry* (2013) __U.S.__ [133 S.Ct. 2652, 2659].

the presumed "benefits to efficient law enforcement and simplified judicial administration resulting from the availability of speedy and inexpensive nonjury adjudications" in those kinds of cases. (*Id.* at pp. 149, 159-162.) In other words, an allegation of potential government oppression is not a basis for recognizing, or in this case creating, new constitutional rights.

B. Counsel's Waiver of Jury Was Not a Constitutional Violation of Due Process

Appellant reframes all his previous arguments to contend, absent a personal waiver, he was denied a jury trial in violation of his federal constitutional rights of due process. (AMB 23.) As we argued in our opening merits brief, right to jury in commitment proceedings is a statutory right that can be waived by counsel. (*Montoya*, *supra*, 86 Cal.App.4th at p. 829; *Otis*, *supra*, 70 Cal.App.4th at p. 1177; *People v. Powell* (2004) 114 Cal.App.4th 1153, 1157 [an extension trial is civil in nature and directed to treatment, not punishment]; *Barrett*, *supra*, 54 Cal.4th at p. 1098.)

Appellant relies on *Barrett*, in which this Court noted that:

> the procedural safeguards required in this context are flexible [Citation] and the quantum and quality of the process due depends upon the nature and purpose of the challenged commitment. [Citation.] In making this determination, the courts weigh, assess, and consider various factors affected by the disputed procedure. Distilled, these considerations involve (1) the various private interests at stake, (2) any competing state or public concerns, and (3) the potential risk of an erroneous or unreliable outcome.

(*Id.* at p. 1099.)

He relies on *People v. Otto* (2001) 26 Cal.4th 200, 210 which described a fourth factor as "the dignitary interest in informing individuals of the nature, grounds, and consequences of the action and in enabling them to present their side of the story before a responsible government official."

Appellant contends these factors weigh in his favor because of: the liberty interest at stake; the "default" nature of the right which he contends precludes the government from considering an adverse interest including cost; the interest in countering the perception that government employees consisting of "the judge, the prosecutor, and the defense attorney" work together to deprive individuals of their rights; the greater impartiality of a jury versus the political concerns of judges; and the greater reliability of a jury verdict. (AMB 24-26) These arguments hold little weight, however, in a situation in which appellant's interests are well-represented by counsel who is ethically bound to place a defendant's best interests above all others. (*Barrett, supra*, 54 Cal.4th at p. 1998, 1105.) They are also hindered by the government's inability to proceed without an evaluation by mental-health and treating experts who provide a reliable preliminary showing that appellant's judgment is impaired in these proceedings. (*Id.* at p. 1104.) Presumably, this threshold showing filters out cases in which a defendant's judgment is not impaired. (*Cuccia v. Superior Court* (2007) 153 Cal.App.4th 347, 355 [District Attorney had no authority to independently initiate petition where medical directors reported that defendant was in remission].) Appellant's speculation that a jury would render a different decision from a judge is belied by his inability to demonstrate prejudice here, or in any other authorities dealing with waiver of jury in commitment cases.

For all the reasons cited in our opening brief, appellant's contention that due process factors weigh in favor of a personal waiver requirement must be rejected. (RMB 13-17.)

C. Counsel's Waiver of Jury Was Not a Constitutional Violation of Equal Protection

Appellant contends that he is entitled to the same rights pertaining to advisement and waiver of jury trial as those of an NGI, presently being

considered by this Court in *People v. Tran* (S211329). (RMB 27.) We agree and indeed, have argued in that case that based on the rationale discussed in *Barrett*, a threshold showing of mental impairment allows defense counsel to execute a waiver on behalf of a defendant in each of those schemes. (*Barrett, supra*, 54 Cal.4th at p. 1106.)

III. THE TRIAL COURT DID NOT COMMIT PREJUDICIAL ERROR

A. The Trial Court did Not Commit Structural Error

Appellant contends that reversal is "mandatory," because he was denied his right to a jury under the California Constitution. (AMB 29.) As discussed in section II., A., *ante*, his right to jury is a creation of statute, and thus, even if error occurred, it would not require reversal. (*People v. Cosgrove* (2002) 100 Cal.App.4th 1266, 1276-1277; see *People v. Epps* (2001) 25 Cal.4th 19, 29.) Moreover, counsel's waiver of jury was not a deprivation of a statutory right but rather, a tactical decision within counsel's authority to execute. (*Montoya, supra*, 86 Cal.App.4th at p. 829.)

B. The Trial Court did Not Commit Prejudicial Error

Unable to demonstrate structural error based on a purported violation of statute, appellant imports the same concept into his definition of prejudice. (AMB 30.) He contends that if the trial court's failure to render a personal advisement or accept a personal waiver of jury violated his rights of due process and equal protection, then he suffered prejudice under the standard set forth in *Chapman v. California* (1967) 386 U.S. 18, 24 which requires reversal unless error is harmless beyond a reasonable doubt. (AMB 29.) If these purported errors violated state law, then he contends he suffered prejudice under the standard set forth in *People v. Watson* (1956) 46 Cal.2d 818, 836 which requires reversal only if it was reasonably probable the error affected the outcome of the verdict. (AMB 29.) As we argued in our opening merits brief, the correct standard is the *Watson* test

and, as detailed by the Court of Appeal, he fails to meet it. (RMB 20, citing *Cosgrove*, *supra*, 100 Cal.App.4th at pp. 1276-1277 and *Epps*, *supra*, 25 Cal.4th at p. 29.) (Opn. 30.)

Appellant's definition of prejudice, i.e., denial of "the jury trial itself" (AMB 30), is incorrect as it describes the consequence of the purported error, and not its effect on the adjudication of issues at trial. (*People v. Flood* (1998) 18 Cal.4th 470, 506-507.) *Sullivan v. Louisiana* (1993) 508 U.S. 275, 277, on which he relies, is inapposite since the Court found that error in instructing on the reasonable doubt standard was structural error as the effect was "necessarily unquantifiable and indeterminate. (*Id.* at pp. 281-282; see *Bartlett v. Battaglia* (7th Cir. 2006) 453 F.3d 796, 801 [analysis of *Sullivan* in context of subsequent authorities].) Appellant's contention that a statutory right, purportedly to personal notice and waiver, is analogous to constitutional error in misinstructing on reasonable doubt is incorrect. "[T]o declare an error 'structural,' it is not enough to say that the error denied the defendant a 'most elementary and fundamental right.'" (*People v. Aranda* (2012) 55 Cal.4th 342, 366 [failure to instruct on reasonable doubt for a particular offense subject to *Chapman* standard of prejudice].) Using appellant's circular logic, any and all statutory violations of procedure would be prejudicial.

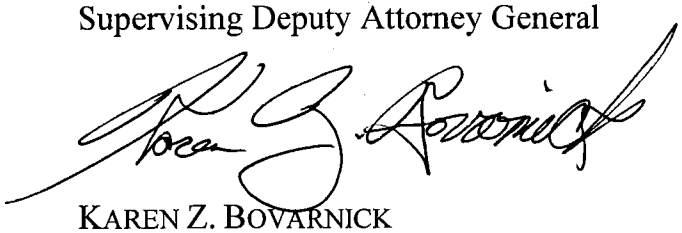
CONCLUSION

Accordingly, respondent respectfully requests the judgment be affirmed.

Dated: January 22, 2014

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
DANE R. GILLETTE
Chief Assistant Attorney General
GERALD A. ENGLER
Senior Assistant Attorney General
CATHERINE A. RIVLIN
Supervising Deputy Attorney General



KAREN Z. BOVARNICK
Deputy Attorney General
Attorneys for Respondent

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CERTIFICATE OF COMPLIANCE

I certify that the attached RESPONDENT'S REPLY BRIEF ON THE MERITS uses a 13 point Times New Roman font and contains 4,209 words.

Dated: January 22, 2014

KAMALA D. HARRIS
Attorney General of California

KAREN Z. BOVARNICK
Deputy Attorney General
Attorneys for Respondent

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v. Blackburn**

No.: **S211078**

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 January 22, 2014, I served the attached **RESPONDENT'S REPLY BRIEF ON THE MERITS** 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 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Rudolph G. Kraft
Attorney at Law
P.O. Box 1677
San Luis Obispo, CA 93406-1677
(2 copies)

The Honorable Jeffrey F. Rosen
District Attorney
Santa Clara County District Attorney's Office
70 W. Hedding Street
San Jose, CA 95110

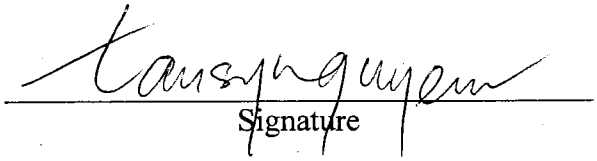
Sixth District Appellate Program
Sixth District Appellate Program
100 N. Winchester Blvd., Ste 310
Santa Clara, CA 95050

Sixth Appellate District
Court of Appeal of the State of California
333 West Santa Clara Street, Suite 1060
San Jose, CA 95113

County of Santa Clara
Criminal Division - Hall of Justice
Superior Court of California
191 North First Street
San Jose, CA 95113-1090

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 January 22, 2014, at San Francisco, California.

Tan Nguyen
Declarant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