

SUPREME COURT COPY

LAW OFFICE OF RICHARD L. RUBIN

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April 14, 2014

SUPREME COURT
FILED

APR 16 2014

Clerk
California Supreme Court
350 McAllister Street
San Francisco, CA 94102

Frank A. McGuire Clerk

Deputy

re: People v. Paul Hensley, S050102
Oral Argument – New Cases

TO THE COURT:

I represent capital appellant Paul L. Hensley in the above-referenced case, which has been scheduled for oral argument on May 6, 2014. Appellant would like to bring the following new cases to the attention of the Court:

AOB ARGUMENT III
(Motion to suppress appellant's statements to police)

Lujan v. Garcia (9th Cir. 2013) 734 F.3d 917. Defendant's confession to the police was illegally obtained and should have been excluded because in providing Miranda admonitions the police misled defendant regarding his right to counsel. "[T]he 'choice' communicated to Petitioner was that he could speak without an attorney or he could remain silent throughout his interrogations. Speaking without an attorney was not presented to Petitioner. Thus, Miranda was never satisfied." (Id. at 931.)

In re Z.A. (2012) 207 Cal.App.4th 1401. Juvenile invoked right to silence during interview by an officer. Subsequently, rather than responding to juvenile's inquiry about her friend's custody status by readmonishing juvenile, by asking her again whether she wished to waive her right to remain silent or by

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otherwise clarifying Z.A.’s intention, officer simply ignored prior invocation and intensified interrogation. This violated no-recontact rule of Edwards v. Arizona (1981) 451 U.S. 477.

**AOB ARGUMENT IV
(CALJIC No. 2.15 error)**

People v. Moore (2011) 51 Cal.4th 1104. Instructing with CALJIC No. 2.15 was error because it permitted jurors to infer that defendant was guilty of murder if they found he was in possession of property stolen from the murder victims. (Id. at 1130-1131.)

**AOB ARGUMENT X
(Prosecutorial misconduct in closing argument)**

**Subpart X.C.1
(Arguing facts not in evidence regarding
family and friends of Renouf)**

People v. Duff (2014) 58 Cal.4th 527, 565, and People v. Rogers (2013) 57 Cal.4th 296, 346. Defendant has a right to present “negative victim impact evidence,” in the penalty phase of a capital murder trial if such evidence exists.

**Subpartt X.C.2
(Arguing facts not in evidence regarding
impact of Shockley’s death upon his step-daughter)**

People v. Rountree (2013) 56 Cal.4th 823. “The views of the victim’s family regarding the proper punishment [in a capital murder case] – either way – are not relevant either in

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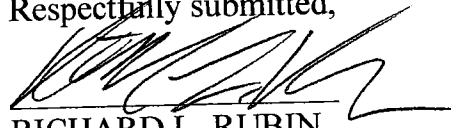
mitigation or in aggravation.” (Id. at 858 [reaffirming statements in People v. Lancaster (2007) 41 Cal.4th 50, 96-99 and People v. Smith (2003) 30 Cal.4th 581, 622-623].)

AOB ARGUMENT XIII
(Exclusion of appellant’s family
members during closing arguments)

United States v. Rivera (9th Cir. 2012) 682 F.3d 1223. Defendant’s Sixth Amendment right to a public trial was violated by the district court’s exclusion of his family members from his sentencing proceedings. The Court of Appeal vacated sentence and remanded for resentencing. (Id. at 1228-1237.)

Drummond v. Houk (6th Cir. 2013) 728 F.3d 520, petn. for cert. pending, No. 13-496). Habeas relief granted. Over defendant’s objection, the trial court closed the trial to the public, including defendants’ family members, during the testimony of three prosecution witnesses during defendant’s gang-related capital trial. Trial court made vague references to threats in justifying court closure, but on appeal the closure order was found to be unreasonable, applying Waller v. Georgia (1984) 467 U.S. 39.

Respectfully submitted,



RICHARD L. RUBIN
State Bar #87666
Attorney for Appellant
Paul L. Hensley

PROOF OF SERVICE BY MAIL

I am employed in the City of Oakland, State of California. My business address is 4200 Park Blvd., # 249, Oakland, CA 94602. I am over 18 years of age, and not a party to the action captioned in the document(s) herein. On the date of execution below, I served the following legal document(s) on the following person(s)/office(s) by placing a true copy thereof in a sealed envelope, with postage thereon fully prepaid, in a United States Post Office mail box at Oakland, California:

In re: People v. Paul Hensley, S050102

Document(s) Served

ORAL ARGUMENT – NEW CASES

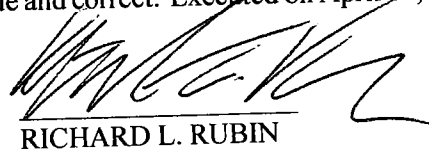
Person(s) Served

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Attn: Linda Robertson, Esq.

Cliff Zall
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1300 "I." St.
Sacramento, CA 95817
(Representing the State)

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 14, 2014,
at Oakland, California.



RICHARD L. RUBIN