

**IN THE SUPREME COURT OF THE STATE OF CALIFORNIA**

PEOPLE OF THE STATE OF CALIFORNIA,

PLAINTIFF AND RESPONDENT,

V.

VALDAMIR FRED MORELOS,

DEFENDANT AND APPELLANT.

**CAPITAL CASE**

No. S051968

Santa Clara County  
Superior Court

No. 169362

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**APPELLANT’S SUPPLEMENTAL REPLY BRIEF**

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Appeal from Judgment of  
The Superior Court of Santa Clara County  
The Late Honorable Daniel Creed

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**TABLE OF CONTENTS**

	<b>PAGE</b>
I. THE LACK OF VALID JURY TRIAL WAIVERS REQUIRES REVERSAL OF APPELLANT’S CONVICTION AND JUDGMENT OF DEATH .....	4
CONCLUSION .....	9
CERTIFICATE OF COUNSEL .....	10
DECLARATION OF SERVICE .....	11

**TABLE OF AUTHORITIES**

**PAGE(S)**

**FEDERAL CASES**

*Faretta v. California*  
(1975) 422 U.S. 806 ..... 5

**STATE CASES**

*People v. Daniels*  
(2017) 3 Cal.5th 961 .....*passim*

*People v. Sivongxxay*  
(2017) 3 Cal.5th 151 ..... 4, 7

**COURT RULES**

Cal. Rules of Court, Rule 8.630(b)(2) ..... 10

**IN THE SUPREME COURT OF THE STATE OF CALIFORNIA**

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v.

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169362)

**APPELLANT’S SUPPLEMENTAL REPLY BRIEF**

**I.**

**THE LACK OF VALID JURY TRIAL WAIVERS REQUIRES  
REVERSAL OF APPELLANT’S CONVICTION AND JUDGMENT  
OF DEATH**

The majority of respondent’s brief is devoted to urging that appellant’s waiver of his right to a jury trial, provided in response to perhaps the most truncated advisements possible, was voluntary. Respondent relied most heavily on *People v. Sivongxxay* (2017) 3 Cal.5th 151 (*Sivongxxay*), a case in which the defendant was represented by counsel, and on the unknown content of the plea colloquies in appellant’s prior cases that were seven and thirteen years old, respectively, at the time of the capital trial. The relevant question in the present case is whether the waivers of a pro per defendant, who was denied advisory counsel and facing his first capital trial, were knowingly and intelligently made. ““You don’t know what you don’t know”” encapsulates the

futility of relying on defendants to raise questions or identify misunderstandings on their own when they lack the very basis to understand what lies beyond the scope of their knowledge.” (*People v. Daniels* (2017) 3 Cal.5th 961, 995 (*Daniels*).

Respondent begins its argument that appellant’s jury trial waivers were knowing and intelligent resting on findings that appellant was competent to stand trial and on his assertion of his right to represent himself under *Faretta v. California* (1975) 422 U.S. 806 (*Faretta*). (Supp. RB:4-5.) This Court explicitly rejected the relevance of these circumstance as having any bearing on whether a jury waiver was knowing and intelligent in the lead opinion of *Daniels, supra*, 3 Cal.5th 961. There, this Court found Mr. Daniels’ competence to stand trial and waiver of the right to counsel irrelevant to the determination of whether his jury trial waivers were knowing and intelligent:

Even a defendant with enough acumen to invoke the *Faretta* right by filling in all the blanks of a form or drafting his or her own motion in no way forfeits the protections rooted in the wholly distinct requirement that waiver of a jury trial right must be knowing and intelligent. Of course, what must be knowing and intelligent for present purposes is Daniels’s understanding of the jury trial right, not his appreciation of the separate *Faretta* right.

\* \* \*

But while Daniels’s choice to represent himself meant that he agreed to assume certain duties of counsel, perhaps to his detriment, this decision did not constructively vest him with the knowledge and intelligence he was entitled to have as a defendant entering a jury trial waiver. [ . . . ]

\* \* \*

When the court advised Daniels of what self-representation would entail, it certainly did not probe Daniels’s knowledge of the jury right, nor did it mention that the court would no longer be obliged to ensure his jury waiver was knowing and intelligent. Hence, Daniels’s valid counsel waiver did not absolve the court of its duty to ensure a valid waiver of his separate constitutional right to be tried by a jury.

(*Daniels, supra*, 3 Cal.5th at pp. 996-997.)

Respondent next argues that appellant's jury trial waivers were knowing and intelligent because he had three prior convictions. (Supp. RB:5, 12-13.) As respondent notes, all three were guilty pleas, but there is no record of the content of the colloquies of those pleas and none was a capital case. (Supp. RB:5-6.) The record thus fails to provide any evidence that appellant's prior experience in the criminal justice system meant that he fully understood what his right to a jury trial entailed, especially in this capital case in which he had a right to jury three times: at the guilt, special circumstance, and penalty phases of trial.

Respondent correctly quotes the jury trial waiver taken by Judge Ball as to the guilt and penalty phases of trial, limited to trial by the one judge in the county that would preside over a judge trial at the penalty phase. (Supp. RB:6-7.) Most of that colloquy relates to the voluntariness of plea, which appellant does not contest. Rather, the colloquy has but a single convoluted question about the nature of the right appellant was giving up: appellant was asked only whether he knew he had a right to "12 individuals to make the factual determination both as to your guilt and in the event that jury would find you guilty and determine one or more special circumstances to be true, that you would have a constitutional right to a jury to determine penalty for which the crime would be punishable." ([8/11/1995] RT:48.) This colloquy is even more deficient with respect to the information the trial court imparted regarding the nature of the rights appellant was foregoing than the colloquy a majority of this Court found inadequate in *Daniels*. Further, the two jury trial "waivers" the trial judge took consisted simply of asking appellant whether he gave up his right to a jury at guilt and penalty phases. (1RT:1-2; 2RT:329.) This singular question is but one of the four "basic mechanics of a jury trial" that this Court held a trial court should tell a defendant seeking a jury trial waiver. These "basic mechanics" are: "(1) a jury is made up of 12 members of the

community; (2) a defendant through his or her counsel may participate in jury selection; (3) all 12 jurors must unanimously agree in order to render a verdict; and (4) if a defendant waives the right to a jury trial, a judge alone will decide his or her guilt or innocence.” (*Sivongxxay, supra*, 3 Cal.5th at p. 169.) This Court continued that “[a]dditional questioning may assist the court in ensuring a defendant comprehends what the jury right entails and the consequences of waiving it.” (*Id.* at pp. 169-170.) No additional questions were asked here. And in *Daniels*, this Court further recommended the appointment standby counsel for the limited purpose of discussing with the defendant the decision to waive a jury in situations where, like here, a defendant has waived counsel. (*Daniels, supra*, 3 Cal.5th at p. 999-1000.) Contrary to that recommendation, appellant’s request for advisory counsel was denied. (See Appellant’s Opening and Reply Briefs, Argument I.)

And at no time did any court advise appellant he had a right to a jury trial on the alleged special circumstances, a point respondent does not contest.

Respondent attempts to distinguish the instant case from *Daniels* by incorrectly asserting that, unlike Mr. Daniels, appellant was the initiating force behind the jury waiver. (Supp. RB:10.) The record contradicts this assertion. The record reflects that prosecutor informed the trial court that he had spoken to appellant over the telephone and learned of appellant’s desire to plead guilty to the guilt portion of the trial, but after speaking with the Attorney General regarding California Supreme Court dicta disfavoring such a plea in a capital case, that “they” had decided to waive jury as to the guilt and penalty phases of trial. ([7/27/95] RT:29-30.) When that trial court indicated that it would not likely accept of waiver of jury trial at the penalty phase, the prosecutor replied that what he “would like of course is to have a court trial all the way through to avoid the necessity of going through jury voir dire with a pro per.” (*Id.* at p. 30.) That admission belies who was the driving force behind the jury waiver in this case – the prosecutor, not appellant.

Respondent asserts that, unlike *Daniels*, “Nothing about this plea threatened the societal interest in the integrity of the capital process” because appellant proceeded “thoughtfully” and “according to his plan” and demonstrated that he was knowledgeable about his rights. (Supp. RB:14.) This Court should, like the plurality in *Daniels*, “decline to conflate a knowing, intelligent waiver with an emphatic one. . . . that a defendant ‘may have made a ‘tactical choice: to waive a jury tells us nothing about whether he understood what he would be giving up by making such a choice.’” (*Daniels, supra*, 3 Cal.5th at p. 995, citation omitted.) The *Daniels* plurality explained:

Confidence does not imply comprehension. Individuals are entirely capable of categorically asserting a position without awareness that the roots of that position lie in ignorance or lack of reflection. It was incumbent upon the court to verify, not merely to assume, that *Daniels* indeed grasped the actual nature of the jury right—even if only at a basic level. In his own mind, *Daniels* may have had an impression of what a jury trial is. Just what impression that was—and whether it bore any relationship at all to the required constitutional standard—is well beyond what we can discern from this record.

(*Daniels, supra*, 3 Cal.5th at p. 996.)

As in *Daniels*, the record in this case does not demonstrate that appellant grasped the actual nature of the jury trial rights to which he was entitled in this case. This Court must, consistent with constitutional principles, reverse appellant’s conviction and judgment of death. That is the only way appellant’s constitutional rights, as well as society’s interest in the integrity of the capital process, can be upheld.

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## CONCLUSION

For all the foregoing reasons, reversal of appellant's conviction and judgment of death is required.

DATED: April 18, 2018

Respectfully Submitted,  
MARY K. McCOMB  
State Public Defender

/s/  
KATHLEEN M. SCHEIDEL  
Assistant State Public Defender

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

I, Kathleen M. Scheidel, am the Assistant State Public Defender assigned to represent appellant, Valdamir Fred Morelos, in this automatic appeal. I directed a member of our staff to conduct a word count of this supplemental reply brief using our office's computer software. On the basis of that computer-generated word count I certify that this brief is 1,588 words in length, excluding the tables and this certificate.

DATED: April 18, 2018

/s/ \_\_\_\_\_  
KATHLEEN M. SCHEIDEL

## DECLARATION OF SERVICE

*People v. Valdamir Fred Morelos*

Cal. Supreme Court No. S051968  
Santa Clara Co. Superior Court No. 169362

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Signed on **April 18, 2018**, at Oakland, California.

/s/ \_\_\_\_\_  
LAUREN EMERSON

STATE OF CALIFORNIA  
Supreme Court of California

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Case Name: **PEOPLE v. MORELOS (VALDAMIR FRED)**

Case Number: **S051968**

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/s/Kathleen Scheidel

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Scheidel, Kathleen (141290)

Last Name, First Name (PNum)

Office of the State Public Defender

Law Firm