

SUPREME COURT COPY

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SUPREME COURT
FILED

April 30, 2012

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California Supreme Court
350 McAllister Street
Room 1295
San Francisco, CA 94102-3600

Frederick K. Ohlrich Clerk

Deputy

Re: People v. Daniel Nunez and William Tupua Satele
California Supreme Court Case No. S091915
Los Angeles Superior Court Number NA039358

Honorable Tani Cantil-Sakauye, Chief Justice, and the Honorable Associate Justices of the California Supreme Court:

Appellant William Satele requests leave to file this Supplemental Letter Brief joining in the issues raised by counsel Janyce Keiko Imata Blair on behalf of co-appellant Daniel Nunez.

Appellant joins in all issues raised in that Supplemental Brief.

Additionally, appellant submits the following in support of Argument XX raised in that brief.

Appellant was Prejudiced By the Instruction to the Jury that a Person Who Aids and Abets Is "Equally Guilty" of the Crime Committed by a Direct Perpetrator.

As explained in Argument XX of Appellant Nunez's Supplemental Brief, the trial court erred in instructing the jury that an aider and abettor is "equally guilty" of the crime committed by the direct perpetrator. Because it was not shown whether appellant was the direct perpetrator of this crime, appellant was prejudiced by this erroneous instruction.

The evidence implicating appellant as the actual shooter was ambiguous, at best. There were no percipient witnesses to the shooting, and there was testimony

DEATH PENALTY

Hon. Tani Cantil-Sakauye
April 30, 2012
Page Two

that both appellant and Nunez made statements in which they each claimed that “I” or “we” shot the victims. (6RT 1210, 1225-1226, 7RT 1616-1624, 9RT 1961-1962.¹) Furthermore, ballistics evidence, evidence of the timing of the gunshots, and the nature of the wounds provide compelling evidence that only one person fired the shots. (See AOB, at p. 4-6, 32-33.) The prosecutor never contended that both defendants fired the weapon and stated in closing argument that he did not prove who the shooter was. (14RT 3222-3223, AOB, p 34.) Thus, it was never established whether appellant was the actual killer or was instead guilty under a vicarious liability theory.

It is settled law that a fair trial includes the right to be judged on one’s “personal guilt.” (*Scales v. United States* (1961) 367 U.S. 203, 224-225; see also *Humanitarian Law Project v. U.S. Treasury* (9th Cir. 2009) 578 F.3d 1133, 1151; *People v. Albillar* (2010) 51 Cal.4th 47, 55.) Likewise, the Eighth and Fourteenth Amendments to the United States Constitution require an individualized capital sentencing determination. (See *Johnson v. Mississippi* (1987) 486 U.S. 578, 584-585.)

These concepts are critical in context of jury deliberations on whether to impose the death penalty, a decision that requires a unique balancing of aggravating and mitigating factors. The jury could very well decide that a person who actually aims the gun at another human being and pulls the trigger is more culpable than a companion who is guilty only under a vicarious liability theory.

As explained in Argument I of Appellant’s Opening Brief, an instructional error improperly removed from the jury the determination of the respective mental states of the two defendants. However, in most cases, the jury is more likely to deem the actual killer the more culpable of the parties, and accordingly is more likely to convict the defendant who actually fired the fatal shots. Moreover, whether a defendant is the actual killer is also a crucial factor in the jury’s determination whether to impose the death penalty. As explained *In re Hardy* (2007) 41 Cal.4th 977, 1034, whether the defendant is the actual killer or a mere participant creates a reasonable probability the jury would view the balance of

¹ The facts relating to the conflicting evidence of the identity of the actual shooter are more fully discussed in Appellant’s Opening Brief at pp. 37-39.)

Hon. Tani Cantil-Sakauye
April 30, 2012
Page Three

aggravating and mitigating circumstances differently and would conclude the defendant did not deserve the death penalty.

CALJIC No. 3.00, as given in this case, further compounded the error by informing the jury that both the shooter and the non-shooter were “equally guilty.” This instruction thus permitted the jury to reach a verdict and impose the death penalty even though the two defendants may have had different levels of culpability. In following this instruction, there was a grave danger that the jury improperly concluded that if the actual shooter deserved death, so did the other “equally guilty” defendant.

Because the error implicated appellant’s federal constitutional rights, the burden rests with respondent to show the error was harmless beyond a reasonable doubt. (*Chapman v. California* (1967) 386 U.S. 18, 24.) Because the instruction improperly equated the guilt of two defendants in different states of culpability, respondent can make no such showing. Moreover, the error cannot be deemed harmless under any standard of prejudice, and the conviction and sentence of death must be reversed.

For the foregoing reasons, appellant Satele respectfully submits that this court should grant leave for him to join co-appellant’s supplemental brief and consider the additional arguments discussed herein. Appellant also would be pleased to provide any additional briefing on this issue that the court may require.

Respectfully submitted,

David H. Goodwin
Attorney for appellant William Satele

PROOF OF SERVICE BY MAIL (C.C.P. SEC. 1013.A, 2015.5)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am a resident of the aforesaid county; I am over the age of eighteen years and not a party to the within entitled action; my business address is P.O. Box 93579, Los Angeles, Ca 90093-0579

On April 30, 2012, I served the within **Appellant William Satele's Supplemental Brief** on the interested parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles , California addressed as follows:

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Executed on April 30, 2012, at Los Angeles, California

I declare under penalty of perjury that the foregoing is true and correct.

David H. Goodwin

**CERTIFICATE OF WORD COUNT FOR SUPPLEMENTAL
BRIEF OF APPELLANT SATELE IN PEOPLE V. DANIEL
NUNEZ AND WILLIAM TUPUA SATELE, CASE NO. S091915**

Rule 8.520, subdivision (2)(2), California Rules of Court, states that an supplemental brief in an appeal taken from a judgment of death produced on a computer must not exceed 2,800 words. The tables, the certificate of word count required by the rule, and any attachment permitted under Rule 8.204, subdivision (d), are excluded from the word count limit.

Pursuant to 8.520, subdivision (2)(2), and in reliance upon Microsoft Office Word 2003 software which was used to prepare this document, I certify that the word count of the Supplemental Brief submitted to this court, dated April 30, 2012, is brief is 858 words.

DATED:

Respectfully submitted,

DAVID H. GOODWIN

PROOF OF SERVICE BY MAIL (C.C.P. SEC. 1013.A, 2015.5)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am a resident of the aforesaid county; I am over the age of eighteen years and not a party to the within entitled action; my business address is P.O. Box 93579, Los Angeles, Ca 90093-0579

On May 3, 2012, I served the within **Certificate Of Word Count For Supplemental Brief Of Appellant Satele** on the interested parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles , California addressed as follows:

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