

SUPREME COURT COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff and Respondent,

v.

LOUIS RANGEL ZARAGOZA,

Defendant and Appellant.

**DEATH PENALTY
CASE**

San Joaquin Co. Sup. Ct.
No. SP076824A

Cal. Supreme Ct.
No. S097886

**SUPREME COURT
FILED**

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Deputy

APPELLANT'S REPLY TO THE RESPONSE TO THE SUPPLEMENTAL BRIEF

APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SAN JOAQUIN

The Honorable Thomas Teaford, Presiding

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ARGUMENT

I. Statement of Facts

Appellant does not disagree with the facts presented by Respondent, but they are incomplete. Respondent says nothing about the possibility that Steve Gaines maintained a supervisorial relationship with Juror No. 8; they were both employees of Sav-Mart Corporation, and their contact was about a change Juror No. 8 made in the functioning of his store (installation of a time-card system for employees). (28 RT 7816–7818; ASB 3–4.)

The crime was well known in Stockton. (AOB 112.) Seven members of the Gaines family were consecutively listed as prospective witnesses; see 4 CT 1102. Steve Gaines was an active participant in the trial. He and his brothers attended on a regular basis, and at least one brother was chastised by the trial court during David Zaragoza’s competency trial for going into the jury room and complaining about the slowness of death penalty trials, as well as making other remarks, to prospective jurors. (6 RT 1354–1395.) On the morning of the day when Juror No. 8 wrote a note to the trial court disclosing his relationship with Steve Gaines, two of the Gaines brothers were seen having a friendly interaction with Juror No. 6 on the street—after having been told by the trial court to stay away from the jurors. (6 RT 1394–1395; 28 RT 7406 et seq.)

II. Juror No. 8's Concealment of His Work Relationship with the Victim's Brother Heightened the Likelihood That Juror No. 8 Based His Verdicts on Improper Factors.

Respondent cites *People v. Russell* (2010) 50 Cal.4th 1228, 1250, for the proposition that a claim of prejudicial misconduct is waived when the defendant fails to object to a juror's continued service and fails to seek a mistrial based upon prejudice. (SRB 7–8.) Appellant recognizes this principle. However, this Court retains the authority to reach the merits of this ruling, and in *Russell*, as with other cases, this Court proceeded to decide the merits of the claim notwithstanding counsel's failure to object. (*Id.* 50 Cal.4th at pp. 1251–1253.) Appellant asks this Court to do the same in this case.

Business relationships have long been recognized as a potential source for juror bias. In *United States v. Allsup* (9th Cir. 1977) 566 F.2d 68, a bank robbery conviction was reversed because two jurors worked for a different branch of the same bank that had been robbed. The court held,

Bias can be revealed by a juror's express admission of that fact, but, more frequently, jurors are reluctant to admit actual bias, and the reality of their biased attitudes must be revealed by circumstantial evidence. We agree with the observation in *Kiernan v. Van Schaik* (3d Cir. 1965) 347 F.2d 775, 781: "That men will be prone to favor that side of a cause with which they identify themselves either economically, socially, or emotionally is a fundamental fact of human character."

(*United States v. Allsup, supra*, 566 F.2d at p. 71.)

This Court has recognized as much. In *People v. Gutierrez* (2009) 45 Cal.4th 789, the victim's sibling worked with a juror, and confronted that juror on the job; the trial court found evidence of bias, and discharged the juror. This Court held that "The trial court did not abuse its discretion in concluding that F.K.'s business relationship with Pinto and Pinto's statement would 'prevent the juror from acting with entire impartiality.' (Code Civ. Proc., § 225, subd. (b)(1)(c).)" (*People v. Gutierrez, supra*, 45 Cal.4th at 806.)

Respondent cites *People v. Ray* (1996) 13 Cal.4th 313, for the proposition that Juror No. 8 and Stave Gaines had no personal relationship, and that belated disclosure of a connection suggests a lack of deliberate concealment. (SRB 8.) In *Ray*, the juror was a guidance counselor at a local high school who did not learn until the victim's daughter testified that she attended the high school where he worked. There was no indication that they had ever talked about the case. As the *Ray* court noted, "A juror who is acquainted with the victim's family as the result of a business or professional relationship is not necessarily incompetent to serve in a capital case. (E.g., *People v. McPeters* (1992) 2 Cal.4th 1148, 1174–1175.)" (*People v. Ray, supra*, 13 Cal.4th at 344.) True enough, but if the possibility of a hierarchical relationship exists, or one in which the juror works under the supervision of a victim's family member, that would

“constitute ‘good cause’ to doubt a juror’s ability to perform his duties and would justify his removal from the case.” (*Id.*, 13 Cal.4th at p. 345.)

In *McPeters*, the name of the victim’s husband was read to the jury along with other possible trial witnesses. After the jury was sworn but before opening statements were delivered, the trial court received a phone call from a juror who recognized his name as the real estate agent for the other side in a house purchase in which he was engaged. When questioned, the juror saw no reason at all for him to be biased for or against the defendant. This court found that the trial court did not abuse its discretion in finding the juror’s nondisclosure to have been inadvertent and, further, in finding no express or implied bias on his part. (*People v. McPeters, supra*, 2 Cal.4th at p. 1175.) The relationship at issue was on a one-time, arms-length basis, with no hint of either party being further obliged to the other (cf. Juror No. 8’s statement that he was “positive” he would interact with Steve Gaines in the future).

CONCLUSION

For the reasons set forth herein and in appellant's previous briefing on Claim VIII, Mr. Zaragoza's convictions and sentence should be set aside.

Dated: _____

Respectfully submitted,

MICHAEL R. SNEDEKER

Attorney for Appellant
LOUIS RANGEL ZARAGOZA

CERTIFICATE PURSUANT TO CAL. RULE OF COURT 8.630

I hereby certify that, according to my computer's word processing program, this brief, exclusive of tables, is 962 words, within the 2,800-word limit specified in the California Rules of Court.

Dated: _____

MICHAEL R. SNEDEKER

Attorney for Appellant
LOUIS RANGEL ZARAGOZA

AMENDED DECLARATION OF SERVICE BY MAIL

Re: *People v. Zaragoza*, Supreme Court No. S097886

I, Michael R. Snedeker, declare that I am over 18 years of age and am not a party to this action. My business address is PMB 422, 4110 SE Hawthorne Blvd., Portland, OR 97214-5246. I served a copy of the attached:

**REPLY TO RESPONSE TO APPELLANT'S
SUPPLEMENTAL BRIEF, APPLICATION FOR
RELIEF FROM DEFAULT**

on each of the following by placing same in an envelope addressed respectively as follows:

Louis Rangel Zaragoza, #T-18228 CSP-SQ 2-EB-109 San Quentin, CA 94974	Peter Smith, Deputy Attorney General 1300 I Street, Suite 125 Sacramento CA 95814
--	---

Charles Press, Staff Attorney
California Appellate Project
101 Second Street
San Francisco, CA 94105

Each said envelope was then, on April 8, 2016, sealed and deposited in the United States mail in Portland, Oregon, with postage fully prepaid.

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

Executed in Portland, Oregon, this 8th day of April, 2016.

MICHAEL R. SNEDEKER