

COPY

KAMALA D. HARRIS  
Attorney General

State of California  
DEPARTMENT OF JUSTICE



455 GOLDEN GATE AVENUE, SUITE 11000  
SAN FRANCISCO, CA 94102-7004

SUPREME COURT COPY

Public: (415) 703-5500  
Telephone: (415) 703-5934  
Facsimile: (415) 703-1234  
E-Mail: Nanette.Winaker@doj.ca.gov

November 20, 2015

The Honorable Frank A. McGuire  
Clerk/Administrator  
Supreme Court of the State of California  
Earl Warren State Building, First Floor  
350 McAllister Street  
San Francisco, CA 94102-4797

RE: *James F.*  
*People v. O'Malley*  
Supreme Court of the State of California, Case No. S024046

SUPREME COURT  
FILED

NOV 20 2015

Frank A. McGuire Clerk  
Deputy

Dear Mr. McGuire:

The aforementioned case is set for oral argument on the afternoon of December 1, 2015.

We wish to bring to the Court's attention the following cases, which postdate the filing of the respondent's brief in this matter.

*People v. Williams* (2013) 56 Cal.4th 165, 179-182 [sufficient evidence that prospective juror would have been substantially impaired in performance of duties where, even though he was in favor of death penalty, juror stated he would have a "rough time" imposing it, and if called on to carry it out, would "have to pass"]. This opinion is relevant to the issue raised in Argument II of respondent's brief.

*People v. Livingston* (2012) 53 Cal.4th 1145, 1165-1167 [agreeing with decisions including *People v. Anderson* (2007) 152 Cal.App.4th 919, 929-934, which held that CALCRIM No. 224 correctly states law with respect to direct and circumstantial evidence], *id.* at p. 1166. ["Differentiating between direct and circumstantial evidence does not undermine the reasonable doubt standard or presumption of innocence for the simple reason that direct evidence and circumstantial evidence are different"]. This opinion is relevant to the issue raised in Argument VIII of respondent's brief.

*People v. Bacon* (2010) 50 Cal.4th 1082, 1101-1103 [where trial court excluded a note containing victim's contact information which defendant claimed was relevant to show he and victim engaged in consensual sex, this Court held that trial court's ruling not an abuse of discretion where preliminary fact – that victim was source of information on note – had not been

DEATH PENALTY

shown by defense]. This opinion is relevant to the issue raised in Argument IX of respondent's brief.

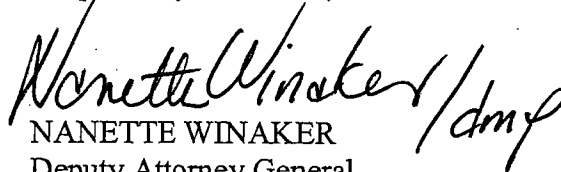
*People v. Contreras* (2013) 58 Cal.4th 123, 163 [felony-murder special circumstance "valid absent any requirement that a defendant who actually killed during an enumerated felony acted with the intent to kill"]; *ibid.* [declining to reconsider *People v. Anderson* (1987) 43 Cal.3d 1104, 1138-1148, on the point]. This opinion is relevant to the issue raised in Argument XI of respondent's brief.

*People v. Maciel* (2013) 57 Cal.4th 482, 512-513 [trial court acted within its discretion by denying defendant's motion to discharge counsel where defendant made motion after case had been pending two years, and trial was imminent, defendant had no substitute counsel in mind, and new counsel would have to study records in case of former co-defendant as well as those in the defendant's case, resulting in significant delays]. This opinion is relevant to the issue raised in Argument XIII of respondent's brief.

*People v. Verdugo* (2010) 50 Cal.4th 263, 311 [trial court acted within its discretion by denying defendant's motion to relieve retained counsel where, inter alia, motion was made during hearing on new trial motion, several witnesses had already testified at hearing, new counsel would have to familiarize himself/herself with issues related to new trial motion and also lengthy trial record resulting in significant delay]. This opinion is relevant to the issue raised in Argument XIII of respondent's brief.

*People v. Dowdell* (2014) 227 Cal.App.4th 1388, 1412-1413 [where trial court erroneously considered midtrial motion to relieve retained counsel under standard enunciated in *Marsden*, court found that given untimeliness of motion eight days into trial, and after trial court spent five days selecting two juries for complex two-defendant trial, trial court's implicit conclusion that granting a continuance to procure retained counsel could cause unreasonable disruption of process of justice not abuse of discretion]. This opinion is relevant to Argument XIII of respondent's brief.

Respectfully submitted,



NANETTE WINAKER  
Deputy Attorney General  
State Bar No. 186025

For KAMALA D. HARRIS  
Attorney General

**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: *People v. O'Malley*

No.: S024046

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 November 20, 2015, I served the attached **LETTER TO THE HONORABLE FRANK A. McGUIRE, CLERK/ADMINISTRATOR** 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:

Cliff Gardner           (2 copies)  
Attorney at Law  
1448 San Pablo Avenue  
Berkeley, CA 94702  
*Attorney for Appellant O'Malley*

Richard C. Neuhoff  
Attorney at Law  
11 Franklin Square  
New Britain, CT 06051

Habeas Corpus Resource Center  
303 Second Street, Suite 400 South  
San Francisco, CA 94107

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

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

California Appellate Project  
101 Second Street, Suite 600  
San Francisco, CA 94105-3647

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 November 20, 2015, at San Francisco, California.

\_\_\_\_\_  
E. Rios  
Declarant

\_\_\_\_\_  
*E. Rios*  
Signature