IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. CHESTER DEWAYNE TURNER, Defendant and Appellant.	No. S154459 (Los Angeles County Superior Court No. BA273283-01) Death Penalty Case

Appeal from the Judgment of the Superior Court
of the State of California for the County of Los Angeles

Honorable William R. Pounders, Judge

APPELLANT'S SECOND SUPPLEMENTAL OPENING BRIEF

MARY K. McCOMB
State Public Defender

WILLIAM C. WHALEY
Deputy State Public Defender
California Bar No. 293720
william.whaley@ospd.ca.gov

770 L Street, Suite 1000
Sacramento, California 95814
Telephone: (916) 322-2676
Facsimile: (916) 327-6939

Attorneys for Appellant

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Federal Cases

State Cases

State Statutes

Constitutional Provisions

Court Rules

Other Authorities

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. CHESTER DEWAYNE TURNER, Defendant and Appellant.	Case No. S154459 (Los Angeles County Superior Court No. BA273283-01) Death Penalty Case

APPELLANT'S SECOND SUPPLEMENTAL OPENING BRIEF

INTRODUCTION

Mr. Turner filed Appellant's Opening Brief (AOB) on November 18, 2014, and Appellant's Reply Brief (ARB) on November 17, 2016. An initial round of supplemental briefing was completed on January 18, 2017. Mr. Turner now submits this Second Supplemental Appellant's Opening Brief to raise a new argument based on this Court's decision in *People v. Sanchez* (2016) 63 Cal.4th 665 ("*Sanchez*").[1]

[1] The argument concerns the erroneous admission of evidence used to prove an essential element of the fetal murder conviction – viability of the fetus. A different challenge to the fetal murder conviction was raised in Argument V of the AOB. That argument concerns a defect with the trial court's instruction on fetal viability. (AOB, at pp. 126-134.)

I.
THE ADMISSION OF STATEMENTS CONTAINED IN AN AUTOPSY REPORT THROUGH THE TESTIMONY OF AN EXPERT WHO NEITHER CONDUCTED THE AUTOPSY NOR PREPARED THE REPORT VIOLATED STATE HEARSAY RULES AND THE SIXTH AMENDMENT'S CONFRONTATION CLAUSE REQUIRING REVERSAL OF COUNT 5 AND THE DEATH JUDGMENT

Count 5 of the amended information charged Mr. Turner with fetal murder. In 1989, when the alleged murder occurred, viability of the fetus – its ability to survive outside the womb – was a critical element of the offense. To prove viability, the prosecutor relied on the opinion of Dr. Scheinin, a medical examiner who did not perform the autopsy but worked in the same coroner's office as the medical examiner who did, Dr. Selser. Dr. Scheinin related to the jury that the basis for her opinion was the gestational age and weight of the fetus as stated in Dr. Selser's autopsy report. Because Dr. Selser's statements were case-specific and testimonial, their admission through Dr. Scheinin violated state hearsay rules and the confrontation clause of the Sixth Amendment. (Evid. Code, § 1200, subd. (b); *People v. Sanchez* (2016) 63 Cal.4th 665 ("*Sanchez*"); *Crawford v. Washington* (2004) 541 U.S. 36 ("*Crawford*").) The error also violated appellant's rights to a reliable determination of guilt and penalty under the Sixth, Eighth, and Fourteenth Amendments of the United States Constitution, and article I, sections 7, 15, and 17 of the California Constitution. Reversal of the fetal murder count and death judgment are required.

A. Factual background

An amended information charged Mr. Turner with 11 counts of murder. (2CT 290.) According to the prosecution, 10 of the victims, including Regina Washington (Count 4), were sexually assaulted and strangled to death. (17RT 2426-2432.) Washington was pregnant and her fetus also died. The death of the fetus formed the basis for the remaining murder charge (Count 5). (2CT 292.)

To establish the cause of death of each victim in all 11 counts, the prosecution relied on the testimony of Dr. Scheinin, who did not perform the autopsy on Washington or the fetus, and had personally performed the autopsy on only one of the victims, Paula Vance. (12RT 1791, 13RT 1884.) Dr. Scheinin said it was very common for medical examiners at the Los Angeles County Coroner's Office to testify about autopsies they had not personally performed based solely on autopsy reports prepared by other pathologists. (12RT 1790-1791, 13RT 1884-1885.)

During her testimony, Dr. Scheinin related that the cause of death of Washington's fetus was "listed as anoxic intrauterine fetal demise" due to "maternal strangulation." (12RT 1820.) Although the medical examiner who performed the autopsy and wrote the report did not render an opinion as to whether Washington's fetus was viable, Dr. Scheinin opined that it was viable. She based her opinion on Dr. Selser's statements in the autopsy report that the fetus's gestational weight was 825 grams and that it had a gestational age of six and a half months.[2] (12RT 1822-1826.) According to Dr.

---

[2] The autopsy report was not admitted into evidence.

Scheinin, medical texts and the World Health Organization generally consider fetuses to be viable when they are over 22 weeks old and weigh at least 500 grams.[3] (12RT 1820-1825.)

Dr. Selser did not testify and Mr. Turner did not have a prior opportunity to cross-examine her. Nevertheless, defense counsel did not object to Dr. Scheinin's testimony relating Dr. Selser's statements as the basis for her opinion.

During closing argument, the prosecutor pointed solely to Dr. Scheinin's testimony as proof that Washington's fetus was viable. (17RT 2452.) The jury ultimately convicted Mr. Turner of second-degree fetal murder as alleged in Count 5, along with the other charges and, after a penalty phase, sentenced him to death. (17RT 2583-2584.)

B. Dr. Scheinin Related Case-Specific Hearsay as the Basis for Her Opinion That the Fetus Was Viable

Dr. Selser's statements in the autopsy report were case-specific hearsay, which cannot be related to the jury, even as the basis for an expert opinion, absent a hearsay exception. "Hearsay evidence" is evidence of a statement that was made other than by a witness testifying at a hearing that is offered to prove the truth of the matter stated. (Evid. Code, § 1200, subd. (a).) Hearsay evidence is generally inadmissible "[e]xcept as provided by law." (Evid. Code, § 1200, subd. (b).)

---

[3] A chart from one of the medical texts referenced by Dr. Scheinin during her testimony was displayed for the jury and admitted into evidence. (12RT 1820-1826; People's Exh. No. 141.)

With regard to hearsay, "expert witnesses are given greater latitude [than lay witnesses]." (*Sanchez*, *supra*, 63 Cal.4th at p. 675.) Evidence code section 801, subdivision (b), permits experts to testify to opinions based on out-of-court statements. (See *In re Scott* (2003) 29 Cal.4th 783, 823; *In re Fields* (1990) 51 Cal.3d 1063, 1070.) That section provides that expert witnesses can base their opinion on matters "perceived by or personally known to the witness or made known to him at or before the hearing, whether or not admissible." (Evid. Code, § 801, subd. (b).)

Until 2016, the law permitted experts to relate hearsay that formed the basis of their opinion, in addition to the opinion itself, to the jury. (*Sanchez*, *supra*, 63 Cal.4th at pp. 680-681.) For years, "some courts . . . attempted to avoid hearsay issues by concluding that statements related by experts are not hearsay because they 'go only to the basis of [the expert's] opinion and should not be considered for their truth.'" (*Ibid*., citing *People v. Montiel* (1993) 5 Cal.4th 877, 919.)

Sanchez discredited that fiction. (*Sanchez, supra,* 63 Cal.4th at pp. 682-683.) Now, when an expert relates case-specific, out-of-court statements made by a third party as a basis for his or her expert opinion, those statements are hearsay. (*Id.* at p. 682 ["When an expert relies on hearsay to provide case-specific facts, considers the statements as true, and relates them to the jury as a reliable basis for the expert's opinion, it cannot logically be asserted that the hearsay content is not offered for its truth"].)

The portions of Dr. Scheinin's testimony in which she related Dr. Selser's out-of-court statements are exactly the sort of evidence

that this Court addressed, and deemed inadmissible, in *Sanchez*, *supra*, 63 Cal.4th 665. Dr. Selser's autopsy report was an out-of-court statement. Dr. Scheinin related portions of the report to the jury as the basis for her opinion that Washington's fetus was viable. Under *Sanchez*, such hearsay basis testimony is necessarily offered for its truth and is inadmissible as a matter of state evidentiary law absent an exception or other evidence proving the same point. (*Sanchez*, at p. 686 ["What an expert cannot do is relate as true case-specific facts asserted in hearsay statements, unless they are independently proven by competent evidence or are covered by a hearsay exception"].)

This Court has applied *Sanchez* and found hearsay violations in contexts identical to the one here. In *People v. Garton* (2018) 4 Cal.5th 485 ("*Garton*"), the testifying pathologist related statements made in an autopsy report prepared by a different pathologist. This Court found that the testifying pathologist's recitation of statements made in the autopsy report, including statements about the wound trajectory, were hearsay under *Sanchez*. (*Garton*, at p. 506.) This Court reached the same conclusion in *People v. Perez* (2018) 4 Cal.5th 421, 456 ("*Perez*"). There, a pathologist gave opinion testimony based on statements in an autopsy report prepared by a different pathologist, including descriptions of hemorrhaging in the victim's eyes, the depth of knife wounds on the victim's body, and internal injuries caused by the stabbings. (*Perez*, at p. 456.) Because the testifying pathologist presented the facts in the report as true and relied on their purported truth in forming his opinion, this Court found them to be hearsay under *Sanchez*. (*Ibid.*)

The same error occurred here. Dr. Scheinin presented the statements contained in Dr. Selser's autopsy report regarding gestational age and weight as true and relied on their truth in forming her opinion concerning viability. As in *Garton* and *Perez*, those statements are hearsay and their admission, absent an exception or other admissible evidence as to age and weight, was error.[4]

C. The Statements in Dr. Selser's Autopsy Report Were Testimonial and Their Admission, Through Dr. Scheinin, Violated the Confrontation Clause

As this Court explained in *Sanchez*, *supra*, 63 Cal.4th at p. 679, "[t]he admission of expert testimony is governed not only by state evidence law, but also by the Sixth Amendment's Confrontation Clause . . . ." A criminal defendant in state court has a constitutional right to confront witnesses against him under the Sixth Amendment. The United States Supreme Court has held that the confrontation clause prohibits the admission of testimonial statements of a witness who does not appear at trial unless he or she is unavailable and the defendant had a prior opportunity for cross-examination. (*Crawford*, *supra*, 541 U.S. at pp. 53-54.) The statements in Dr. Selser's autopsy report constituted testimonial hearsay and there was no showing that she was unavailable to

---

[4] Because this trial preceded *Sanchez*, *supra*, 63 Cal.4th 665, an objection was not required to preserve the hearsay issue for review. (*People v. Perez* (2020) 9 Cal.5th 1, 9-13.) Nor was an objection required to preserve the confrontation issue discussed *post*. (*Ibid.*)

testify at trial or that Mr. Turner had a prior opportunity to cross-examine her. The admission of those statements through Dr. Scheinin violated Mr. Turner's confrontation right.

Before *Crawford*, *supra*, 541 U.S. 36, the test for whether hearsay violated the confrontation clause turned on its reliability. (*Ohio v. Roberts* (1980) 448 U.S. 56, 66.) *Crawford* altered the test, which now focuses on the whether the hearsay is "testimonial." (*Crawford*, at p. 68.) Testimonial hearsay is inadmissible absent a showing that the declarant was unavailable and that the defendant had a prior opportunity to cross-examine him. (*Ibid.*) Where, as here, there was neither a showing of unavailability nor a prior opportunity to cross-examine the out-of-court declarant, the analysis turns on whether the hearsay statements were "testimonial."

The high court discussed the scope of the term "testimonial" in *Crawford* and a number of subsequent decisions. (*Davis v. Washington* (2006) 547 U.S. 813, 833 ("*Davis*"); *Melendez-Diaz v. Massachusetts* (2009) 557 U.S. 305, 307 ("*Melendez-Diaz*"); *Bullcoming v. New Mexico* (2011) 564 U.S. 647, 663 ("*Bullcoming*"); *Williams v. Illinois* (2012) 567 U.S. 50, 70 ("*Williams*").) The Court has considered the testimonial nature of statements made during police interrogation (*Davis*) and statements made by analysts in forensic reports concerning testing for controlled substances (*Melendez-Diaz*), blood-alcohol levels (*Bullcoming*), and DNA profiles (*Williams*). The high court has not yet considered whether statements made in autopsy reports are testimonial.

This Court, however, previously considered that question in *People v. Dungo* (2012) 55 Cal.4th 608, where it concluded that

statements of observational facts in an autopsy report were not testimonial. In essence, this Court determined that such statements can never be testimonial, regardless of the underlying circumstances, because observational facts do not possess the requisite formality, and autopsy reports are generally prepared for multiple purposes. (*Dungo*, at pp. 619, 621.) A review of the decisions preceding and following *Dungo,* however, shows that the United States Supreme Court continues to look at the particular circumstances surrounding the making of a statement, rather than the nature of the statement itself, to ascertain whether it was testimonial. (See, e.g., *Bullcoming*, *supra*, 564 U.S. at pp. 664-665; *Ohio v. Clark* (2015) 576 U.S. 237, 135 S.Ct. 2173, 2177-2181 ("*Clark*").) To the extent this Court's approach in *Dungo* conflicts with that of the high court, *Dungo* should be reconsidered.

1. *Crawford* requires the court to consider the totality of the circumstances in determining whether a statement is testimonial

In *Crawford*, the Court discussed the "various formulations" of "testimonial" statements. (*Crawford*, *supra*, 541 U.S. at p. 51.) One formulation included "*ex parte* in-court testimony or its functional equivalent—that is, material such as affidavits, custodial examinations, prior testimony that the defendant was unable to cross-examine, or similar pretrial statements that declarants would reasonably expect to be used prosecutorially." (*Ibid*.) Another included "statements that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial." (*Id.* at p. 52.)

The Court did not need to settle on one particular formulation because the statements at issue in *Crawford* were made to the police during an interrogation and thus were "testimonial under even a narrow standard." (*Ibid.*)

In *Davis*, *supra*, 547 U.S. at p. 833, the Court addressed whether statements made to police during an ongoing emergency were "testimonial." The Court held that they were not and, in doing so, set forth a two-pronged test focusing on the formality or solemnity of the statements and their primary purpose. (*Davis*, at pp. 822, 830, fn. 5.) The Court found the statements were sufficiently formal because they had been made to officers and lying to an officer would constitute a criminal offense. (*Id.* at p. 830, fn. 5.) But to be testimonial a statement must also be made under circumstances that objectively indicate its primary purpose was to "establish or prove past events potentially relevant to later criminal prosecution." (*Id.* at p. 822.) The statements at issue failed that prong of the test because their primary purpose was not evidentiary, but to enable officers to meet an ongoing emergency. (*Id.* at p. 828.)

After *Davis*, in *Melendez-Diaz*, *supra*, 557 U.S. 305, the Court applied the *Davis* test to reports prepared by forensic analysts. An analyst had prepared a report stating that the substance found in the defendant's possession was cocaine. (*Melendez-Diaz*, at pp. 307-309.) The analyst who prepared the report did not testify at the defendant's trial, but the report was admitted into evidence. (*Id.* at p. 309.) The Court concluded the report was testimonial and that its admission violated the confrontation clause. (*Id.* at p. 311.) The report was sufficiently formal because it included a notarized

certificate of accuracy. (*Id.* at pp. 310-311.) It also satisfied the primary purpose prong of the analysis because it had been made under circumstances which would lead an objective witness reasonably to believe that the statements in the report would be available for use at a later trial. (*Id.* at pp. 310-311.)

Bullcoming, *supra*, 564 U.S. 647, concerned a forensic laboratory report that had been signed, but not notarized. (*Bullcoming*, at pp. 664-665.) Nevertheless, the Court found the report to be sufficiently formal because it had been signed and, for reasons similar to those discussed in *Melendez-Diaz*, reasoned that its primary purpose was evidentiary. (*Ibid.*)

2. The opinions in *Williams* did not alter the required totality of the circumstances analysis

Williams, *supra*, 567 U.S. 50, was a fractured four-one-four decision addressing whether a report containing a DNA profile was testimonial. At Williams' rape trial, a DNA expert opined that the defendant's DNA profile matched the DNA profile of semen found on vaginal swabs collected from the victim. (*Williams*, at pp. 56-57.) However, the analyst who prepared the profile from the vaginal swabs did not testify. (*Id.* at p. 56.) Five justices – Alito, Roberts, Kennedy, Breyer, and Thomas – found that the admission of statements about a DNA profile generated by a non-testifying analyst did not violate the confrontation clause. However, there was no agreement on the rationale.

Four of the five justices – Alito, Roberts, Kennedy, and Breyer – reasoned that an expert's hearsay basis testimony was not offered for its truth and was therefore incapable of implicating the

confrontation clause. (*Williams*, 567 U.S. at p. 58.) The same four also sought to limit the primary purpose test articulated in *Davis*, *Meldendez-Diaz*, and *Bullcoming*, which asks whether a reasonable person would have understood the evidentiary purpose of their statements, to situations where the defendant had already been targeted for investigation at the time the statements were made. (*Id.* at pp. 84-86.)

Justice Thomas, who cast the fifth vote to reject the confrontation argument, did so based on an approach with which no other justice agreed; he did not agree with the not-for-truth rationale. (*Williams*, at pp. 103-118.) The remaining four justices – Kagan, Ginsberg, Scalia, and Sotomayor – would have applied the test from *Melendez-Diaz* and *Bullcoming* to find that the DNA profile generated by a non-testifying analyst was testimonial. (*Id.* at pp. 122-123.) While there was no single rationale that received majority support, a five-justice majority, including Justice Thomas, rejected the not-for-truth rationale of Justice Alito's opinion and its proposed limitation of the primary purpose test to situations involving a targeted defendant. (*Id.* at pp. 103, 114-116, 132-136.)

Courts have tied themselves into knots trying to synthesize a rule from *Williams*. (See, e.g., *State v. Hutchison* (Tenn. 2016) 482 S.W.3d 893.) But in *Clark*, *supra*, 135 S.Ct. 2173, the Court appeared to abandon *Williams* altogether when assessing whether hearsay was testimonial; instead, the Court returned to the formulation of the test set forth in its pre-*Williams* decisions. At issue in *Clark* were statements a child, who appeared to have been abused, made to his preschool teachers identifying the defendant as

his abuser. (*Clark*, *supra*, 135 S.Ct. at pp. 2177-2178.) The child did not testify at trial, but his statements were admitted. (*Id.* at p. 2178.) The Court applied the following test from *Davis*:

> Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.

(*Clark, supra,* 135 S.Ct. at p. 2179.) Applying that test, the Court concluded that the child's statements to his teachers were not made for the primary purpose of creating evidence for the defendant's prosecution. (*Id.* at p. 2181.)

3. The approach taken in *Dungo* is not consistent with that of the United States Supreme Court

This Court decided *People v. Dungo* (2012) 55 Cal.4th 608, shortly after *Williams* and without the benefit of *Clark*. In *Dungo*, the medical examiner who testified opined that the victim had been strangled for more than two minutes. He related that his opinion was based on statements in an autopsy report indicating that the victim's larynx and hyoid bone had not been broken. (*Dungo*, at p. 622 (conc. opn. of Werdegar, J.).)

As to the formality prong, the majority differentiated "statements describing the pathologist's anatomical and physiological observations about the condition of the body" from "statements setting forth the pathologist's conclusions as to the cause of the victim's death." (*Dungo*, *supra*, 55 Cal.4th at p. 619.) It

found the first category insufficiently formal to be testimonial and reasoned that the statements at issue fell into that category. (*Ibid.*) A concurring opinion by Justice Werdegar and joined by Chief Justice Cantil-Sakauye and Justices Chin and Baxter also found the statements were insufficiently formal because they were not sworn or certified. (*Id.* at p. 623 (conc. opn. of Werdegar, J.).)[5]

Concerning the primary purpose prong, *Dungo* found that autopsy reports have several important purposes. Because criminal investigation is only one of them, statements made in such reports are not testimonial. (*Dungo*, *supra*, 55 Cal.4th at p. 621.)

Justice Corrigan dissented, joined by Justice Liu. The dissent identified a number of flaws with the majority and concurrences' analyses, which are discussed in more detail below. For the reasons articulated by the dissent and because intervening decisions have undermined its rationale, this Court should now reconsider *Dungo* and join the jurisdictions that have found autopsy reports and/or the statements in them to be testimonial.[6]

---

[5] Justice Chin's concurring opinion, joined by Chief Justice Cantil-Sakauye, Justices Werdegar and Baxter reasoned that the statements were not testimonial because they failed both Justice Alito's and Justice Thomas's tests in *Williams*. (*Dungo*, at pp. 627-633 (conc. opn. of Chin, J.).)

[6] See, e.g., *Miller v. State* (Okla.Crim.App. 2013) 313 P.3d 934, 967-971, overruled on another ground in *Harris v. State* (Okla.Crim.App. 2019) 450 P.3d 933; *Cuesta-Rodriguez v. State* (Okla.Crim.App. 2010) 241 P.3d 214, 228; *State v. Navarette* (N.M. 2013) 294 P.3d 435, 437-441; *State v. Jaramillo* (N.M.Ct.App. 2011) 272 P.3d 682, 684-688; *State v. Kennedy* (W.Va. 2012) 735 S.E.2d 905, 912-917; *State v. Frazier* (W.Va. 2012) 735 S.E.2d 727, 731; *Commonwealth v. Nardi* (Mass. 2008) 893 N.E.2d 1221, 1231-1233;

(footnote continued)

4. *Dungo* should be reconsidered

The reasoning of *Dungo*, *supra*, 55 Cal.4th at pp. 619-621, has been undermined by subsequent state and federal developments. In *Perez* and *Garton*, this Court assumed that the admission of statements made by non-testifying pathologists in their autopsy reports violated the confrontation clause but found the error harmless beyond a reasonable doubt. (*Garton*, *supra*, 4 Cal.5th at p. 507; *Perez*, *supra*, 4 Cal.5th at p. 456.) While this Court did not expressly overrule *Dungo* in *Perez* or *Garton*, it appears to have done so implicitly in *Sanchez*, *supra*, 63 Cal.4th 665, and should do so explicitly now.

a. *Dungo*'s analysis of the formality prong focused on a distinction between expert opinion and the opinion's objective basis that no longer exists

The majority opinion in *Dungo* concluded that observational facts recorded in an autopsy report were not testimonial because they lack the requisite formality. (*Dungo*, *supra*, 55 Cal.4th at pp. 619-620.) It drew a distinction between an expert's opinion, which it considered formal, and the observational facts on which that opinion was based. (*Ibid.*) That treatment of observational facts aligned with

---

Commonwealth v. Avila (Mass. 2009) 912 N.E.2d 1014, 1029; *Rosario v. State* (Fla.Ct.App. 2015) 175 So.3d 843, 854-858; *State v. Bass* (N.J. 2016) 132 A.3d 1207, 1222-1227; *State v. Locklear* (N.C. 2009) 681 S.E.2d 293, 305; *Martinez v. State* (Tex.Ct.App. 2010) 311 S.W.3d 104, 109-111; *Wood v. State* (Tex.Ct.App. 2009) 299 S.W.3d 200, 208-210; *State v. Davidson* (Mo.Ct.App. 2007) 242 S.W.3d 409, 416-418; *Commonwealth v. Brown* (Pa. 2018) 185 A.3d 316, 329; *United States v. Moore* (D.C. Cir. 2011) 651 F.3d 30, 73; *United States v. Ignasiak* (11th Cir. 2012) 667 F.3d 1217, 1229-1235.

this Court's prior decisions holding that basis testimony was distinguishable from opinion testimony because the former is not being admitted for its truth. (See *People v. Montiel*, *supra*, 5 Cal.4th at p. 919.) The *Dungo* majority's analysis found further support in Justice Alito's opinion in *Williams*, which employed the not-for-truth rationale to conclude hearsay basis testimony was not testimonial. (*Dungo*, at p. 618.) However, a majority of justices in *Williams* rejected Justice Alito's not-for-truth rationale, undermining any argument that basis testimony can be treated differently from opinion testimony for purposes of the confrontation clause. (*Williams*, *supra*, 567 U.S. at pp. 103, 114-116, 132-136.)

After *Williams* and *Dungo*, this Court explicitly eliminated the state evidentiary fiction that hearsay basis testimony is not being admitted for its truth. (*Sanchez*, *supra*, 63 Cal.4th at pp. 682-683.) *Sanchez* also rejected the existence of a meaningful distinction between statements recording objective facts and statements recording conclusions or opinions, the precise distinction on which *Dungo* had relied. (*Sanchez*, at p. 695.) *Sanchez* cited a discussion in *Bullcoming*, *supra*, 564 U.S. at p. 660, which addressed and rejected the same distinction:

> Similarly, in rejecting the argument that testimony by a surrogate analyst satisfied confrontation principles because the testing analyst merely recorded objective facts, *Bullcoming* presented the following scenario: "Suppose a police report recorded an objective fact [such as an] address above the front door of a house or the read-out of a radar gun. [Citation.] Could an officer other than the one who saw the number on the house or gun present the information in court—so long as that officer was equipped to testify about any technology the observing officer deployed and the police department's

> standard operating procedures? As our precedent makes plain, the answer is emphatically 'No.' "

(*Sanchez*, at p. 695.) Thus, both *Sanchez* and *Bullcoming* undermine *Dungo*'s conclusion that whether a statement is testimonial depends on whether it takes the form of an objective fact or an opinion.

There are other reasons to revisit the *Dungo* majority's approach to the formality prong. As the *Dungo* dissent explained, formality "turns on the circumstances of the statement's production and preservation rather than its content." (*Dungo*, *supra*, 55 Cal.4th at p. 639 (dis. opn. of Corrigan, J.).) Whether the statements in the autopsy report are merely "objective" observations is not relevant to whether the statements are sufficiently formal to be testimonial.

The distinction is also unworkable because even the description of visible injuries depends on the skill of the pathologist observing them and the pathologist should therefore be subject to cross-examination. "The line between an inadmissible statement amounting to a *conclusion*, and an admissible statement about an *observation*, is not as bright as *Dungo* suggests." (*People v. Edwards* (2013) 57 Cal.4th 658, 769 (conc. & dis. opn. of Corrigan, J.); see also *United States v. Ignasiak, supra*, 667 F.3d at p. 1232 [rejecting claim that observational data in autopsy report was not dependent upon pathologist's skill]; *Wood v. State*, *supra*, 299 S.W.3d at pp. 208-209 [rejecting argument that autopsy report was nontestimonial because it contained "'sterile recitations' of 'objective facts' . . ."]; *Commonwealth v. Nardi*, *supra*, 893 N.E.2d at p. 1233 [finding non-testifying medical examiner's findings relating to presence and location of facial trauma "undoubtedly involved the exercise of

'judgment and discretion'"]; but see *People v. Hall* (N.Y.App.Div. 2011) 84 A.D.3d 79, 81-85; *State v. Maxwell* (Ohio 2014) 9 N.E.3d 930, 944-952, 949 [statements by non-testifying examiner describing "objective facts, such as the condition of the victim's body at the time of the autopsy," were not testimonial].)[7]

This Court should also reject the requirement set forth in Justice Werdegar's concurrence in *Dungo* that statements in an autopsy report cannot be testimonial unless the report is sworn or certified. (See *Dungo*, *supra*, 55 Cal.4th at p. 623 (conc. opn. of Werdegar, J.).) As Justice Corrigan's stated in her dissent, in which Justice Liu joined: "The formality prong looks to the circumstances under which the statement is made and any efforts to enhance the statement's formality" by having it sworn, certified, or signed. (*Dungo*, *supra*, 55 Cal.4th at p. 639.) The *Dungo* dissenters found that the autopsy report of Dr. Bolduc, who did not testify at trial, "comport[ed] closely" with the high court's description of testimonial evidence in *Bullcoming* and found that Dr. Bolduc's report, although

---

[7] Appellant contends that both *Hall* and *Maxwell* rely on flawed reasoning. In *Hall*, the court found that the "factual portions of the autopsy report in [the] case, which recorded only what happened to the victim, did not directly link defendant to the crime [citation omitted]." (*People v. Hall*, *supra*, 84 A.D.3d at p. 84.) But this Court in *Sanchez* squarely rejected the notion that to be testimonial, a hearsay statement need specifically accuse a targeted individual. (*Sanchez*, *supra*, 63 Cal.4th at p. 695.)

In *Maxwell*, the court relied on *Dungo* to find that statements describing the condition of the victim's body are not testimonial but engaged in no other analysis on this point. (9 N.E. 3d at p. 949.) *Maxwell* is wrong for the same reasons that *Dungo* is wrong, as set forth in the text.

not certified, was signed and dated, and was "manifestly an official report, prepared by . . . an agent of the Sheriff-Coroner and in compliance with the Government Code." (*Id.* at p. 641.)

Other courts have similarly found that the requisite solemnity does not turn on whether a document is certified or sworn. For example, in *Rosario v. State*, *supra*, 175 So.3d at pp. 857-858, the court rejected the claim that the autopsy report at issue there was nontestimonial because it was not sworn or certified. Citing *Melendez-Diaz* and *Bullcoming*, the *Rosario* court explained that "law enforcement provided evidence ([the victim's] body) to a state medical examiner's office that was required by law to assist in police investigations." (*Id.* at p. 857.) The medical examiner then "tested" this evidence by conducting an autopsy and issued a report of his findings. The report, which was "formalized" in a signed document, was sufficiently solemn. (*Id.* at pp. 857-858; see also *United States v. Moore*, *supra*, 651 F.3d 30, 73 [autopsy reports were formalized in signed documents entitled "reports"].)

For all these reasons, this Court should revisit *Dungo's* approach to formality. Statements of observational fact in an autopsy report are no less formal than the conclusions and opinions that are based on them.

Accordingly, this Court should conclude that the statements in Dr. Selser's autopsy report concerning the gestational age and weight of the fetus were sufficiently formal to be testimonial. Dr. Selser's report was signed (see Exhibit A, Appellant's Motion for

Judicial Notice)[8] and the law required that she transmit her report to law enforcement because there was reasonable ground to suspect the cause of the victim's death was homicide. (Gov. Code, § 27491.1.)[9] That the transmission of an autopsy report to law enforcement is statutorily mandated reflects on both the primary purpose *and* the degree of formality with which such a report would be prepared. A medical examiner would not approach a statutory task with anything less than formality and solemnity.

---

[8] Deputy Medical Examiner Susan Selser's autopsy report is attached as Exhibit A to Appellant's Request to Take Judicial Notice, which is being filed with this brief. (See *Dungo*, *supra,* 55 Cal.4th at p. 615, fn. 3 [Supreme Court may take judicial notice of autopsy report]; Evid. Code, § 459 [judicial notice by reviewing court].)

[9] Government Code section 27491.1 provides:

> In all cases in which a person has died under circumstances that afford a reasonable ground to suspect that the person's death has been occasioned by the act of another by criminal means, the coroner, upon determining that those reasonable grounds exist, shall immediately notify the law enforcement agency having jurisdiction over the criminal investigation. Notification shall be made by the most direct communication available. The report shall state the name of the deceased person, if known, the location of the remains, and other information received by the coroner relating to the death, including any medical information of the decedent that is directly related to the death. The report shall not include any information contained in the decedent's medical records regarding any other person unless that information is relevant and directly related to the decedent's death.

But even if observational facts can be treated less formally than conclusions and opinions in some hypothetical case, Dr. Selser did not treat them less formally in this case. Dr. Selser expressed her findings concerning the fetus's gestational age and weight with the exact same formality that she expressed her opinion concerning the cause of death. In the first section of her autopsy report, before detailing her external and internal observations, Dr. Selser wrote her conclusion: "From the anatomic findings and pertinent history I ascribe the death to: (A) Anoxic intrauterine fetal demise. Female. 825 grams. Approximately 6 1/2 months gestation due to or as a consequence of (B) Maternal strangulation." (Exh. A, Appellant's Motion for Judicial Notice.) Thus, the statements at issue concerning the gestational age and weight, although observations in some sense, were incorporated into a formal opinion. Assuming, without conceding, that there may have been a basis in *Dungo* to treat the medical examiner's objective observations there as less formal than her opinions, there is no reason to do so here.

b. In *Dungo* this Court did not consider the circumstances surrounding the making of the statements in the autopsy report when assessing whether their primary purpose was evidentiary

The *Dungo* majority concluded that because a criminal investigation is not the primary purpose motivating preparation of an autopsy report, observational statements in such a report are not testimonial. It found that, in general, there are other "equally important purposes" for conducting autopsies and reporting the findings, which include, inter alia, providing information that may inform a wrongful death action or insurance claim. (*Dungo*, *supra*,

55 Cal.4th at p. 621.) In her concurrence, joined by three other justices, Justice Werdegar agreed with the majority's conclusion that the primary purpose of the statements in an autopsy report are not evidentiary but provided an additional rationale. Where the statements are made by a non-governmental agent, acting independently to record observations made as a regular part of the declarant's business or profession, they are more reliable than statements elicited from witnesses by law enforcement during a criminal investigation. (*Id.* at pp. 626-627 (conc. opn. of Werdegar, J.).) Neither rationale is persuasive.

As to the first, the existence of important – but hypothetical – purposes motivating preparation of an autopsy report should not be more important than the actual reason that particular autopsy is conducted. To determine the primary purpose of an autopsy in a given case, the court should look to the specific facts that motivated the autopsy and ask whether, in light of those particular facts, the pathologist who conducted it would have reasonably expected her findings would be available for later use in a criminal prosecution. (See *Clark*, *supra*, 135 S.Ct. at pp. 2179-2180 [noting that the inquiry must take into account "all the relevant circumstances"].)

As Justice Corrigan emphasized in her dissent in *Dungo*, discerning the primary purpose of a statement is often "highly fact dependent." (*Dungo*, *supra*, 55 Cal.4th at p. 644 (dis. opn. of Corrigan, J.).) She observed that: "While some autopsies may be conducted for purposes unrelated to a criminal prosecution, other autopsies conducted under different circumstances may well result in the production of testimonial statements." (*Ibid.*) When there are

multiple purposes involved in the generation of a statement, it is the primary purpose that "will drive the analysis." (*Ibid.*)

This Court's unanimous opinion in *Sanchez* lends weight to the dissent in *Dungo* on this point. In *Sanchez*, this Court considered whether a STEP notice given to the defendant was testimonial. (*Sanchez*, *supra*, 63 Cal.4th at p. 672.) The Attorney General argued that STEP notices are not testimonial because they may serve various purposes in addition to the memorialization of facts for use in later criminal prosecutions. (*Id.* at p. 696.) This Court rejected that argument. Instead, it examined the particular circumstances under which the notice in that case was issued and concluded that it was for possible use in a prosecution. (*Ibid.*) This holding supports the principle Justice Corrigan expounded in *Dungo* – that the primary purpose inquiry is very fact specific, and a statement is testimonial if it was created primarily for use at a criminal trial, even if it might also serve other purposes.

The dissenters in *Dungo* concluded that the facts left no doubt that the primary purpose of the autopsy in that case was "to establish facts for possible use in a criminal trial." (*Dungo*, *supra*, 55 Cal.4th at p. 645 (conc. & dis. opn. of Corrigan, J.).) The victim clearly had died as a result of homicide and her autopsy occurred during a criminal investigation. A homicide detective and other law enforcement personnel involved in the investigation were present when the victim's body was examined by the pathologist. The detective related relevant information about the circumstances of death to the coroner. In sum, these circumstances made clear that "when Dr. Bolduc wrote [the]autopsy report, his primary purpose

was to make the statements at issue to establish facts for possible use in a criminal trial." (*Ibid.*)

Courts in other jurisdictions have adopted a similar approach to Justice Corrigan's. For example, the Supreme Court of Pennsylvania recently stated: "We recognize cases from a number of jurisdictions hold autopsy reports are non-testimonial because they are not created primarily for presentation in a criminal trial . . . ." (*Commonwealth v. Brown* (Pa. 2018) 185 A.3d 316, 329.) But when an autopsy is conducted to determine whether death was caused by a criminal act, "we determine the primary purpose for preparation of an autopsy report under these circumstances is to establish or prove past events potentially relevant to a later criminal prosecution and that any person creating the report would reasonably believe it would be available for use at a later criminal trial." (*Ibid.*) Other courts have also looked to the particular circumstances under which the autopsy at issue was conducted to determine its primary purpose. (See, e.g., *Rosario v. State*, *supra*, 175 So.3d at p. 857; *State v. Jaramillo*, *supra*, 272 P.3d at pp. 685-686; *United States v. Moore*, *supra*, 651 F.3d at p. 73; *Wood v. State*, *supra*, 299 S.W.3d at pp. 209-210; *Martinez v. State*, *supra*, 311 S.W.3d at p. 111; *State v. Davidson*, *supra*, 242 S.W.3d at p. 417; *Cuesta-Rodriguez v. State*, *supra*, 241 P.3d at p. 228; *State v. Navarette*, *supra*, 294 P.3d at p. 440; *State v. Bass* (N.J. 2016) 132 A.3d 1207, 1225; *United States v. Ignasiak*, *supra*, 667 F.3d at p. 1232; *Commonwealth v. Nardi*, *supra*, 893 N.E.2d at p. 1233.)

These courts have identified several factors that may contribute to a finding that statements made in an autopsy report

are testimonial, including: whether the autopsy was requested by law enforcement; whether circumstances surrounding the victim's death suggested homicide; whether law enforcement officers were present at the autopsy; whether an active investigation was ongoing at the time; and whether any evidence collected by the pathologist was transmitted to law enforcement personnel for prosecution purposes. Often citing *Melendez-Diaz*, these courts have found statements in autopsy reports to be testimonial when made under circumstances which would have led a reasonable pathologist to understand that his or her findings might be used in a criminal prosecution. (See, e.g., *United States v. Moore*, *supra*, 651 F.3d at p. 73; *Wood v. State*, *supra*, 299 S.W.3d at p. 201; *Martinez v. State*, *supra*, 311 S.W.3d at p. 111; *Commonwealth. v. Brown*, *supra*, 185 A.3d at p. 329; *Cuesta-Rodriguez v. State*, *supra*, 241 P.3d at p. 228; *United States v. Ignasiak*, *supra*, 667 F.3d at p. 1232; *Commonwealth v. Nardi*, *supra*, 893 N.E.2d at p. 1233.)

5. Dr. Selser's report was made under circumstances which would have led a reasonable pathologist to understand that her findings would be used in a criminal prosecution

The facts here establish that the autopsy report was prepared for use in a criminal investigation into the death of Washington and her fetus. From the moment Washington was discovered strangled with the ligature still around her neck, with her pants unfastened and her shirt pulled up, it was obvious that she was the victim of a crime. (People's Exh. No. 43; 7RT 1077-1083.)

The coroner's investigator was present at the crime scene. He collected a sexual assault kit from Washington, and it was protocol

for him to relate his crime scene observations to the medical examiner performing the autopsy. (8RT 1171, 1183, 13RT 1888.) The ligature was still wound around Washington's neck when her body came to the coroner's office. (12RT 1814-1815; People's Exh. 51.) Washington's death and the death of her fetus obviously were the result of homicide and Dr. Selser made that conclusion. (12RT 1820.) A statute required the examiner to transmit a report to law enforcement (Gov. Code, § 27491.1) and law enforcement was present during the autopsy (Exh. A, Appellant's Motion for Judicial Notice). Further, Dr. Scheinin said it was very common for medical examiners with the Los Angeles County Coroner's Office to testify in court based on statements in reports that had been prepared by others. (12RT 1790-1791, 13RT 1884-1885.)

That this case involved an obvious homicide requiring a formal report to a prosecutorial entity demonstrates that the purpose of the report was primarily, if not entirely, evidentiary. Moreover, there was no evidence and nothing to even suggest that Dr. Selser's report was prepared for any purpose but a criminal investigation. Washington's body was found in a burnt-up garage (7RT 1063-1064) in an area known to be used for prostitution and the smoking of narcotics (8RT 1077, 1091). She had a small amount of drugs in her system when she died, as did her fetus. (13RT 1890.) Under these circumstances, the primary purpose of the report was not for a wrongful death action, for insurance purposes, or to inform the public.

Additionally, as previously indicated, four concurring justices in *Dungo* determined that a pathologist's findings are not

testimonial in part because the pathologist is not a government officer engaged in a prosecutorial effort. As a result, a pathologist would have less motive to fabricate or render biased findings. (*Dungo*, *supra*, 55 Cal.4th at pp. 626-627 (conc. opn. of Werdegar, J.).) Reliability was relevant to a confrontation analysis under the old paradigm (*Ohio v. Roberts*, *supra*, 448 U.S. at p. 66), but it is not relevant under the new one. (*Crawford*, *supra*, 541 U.S. at p. 68.) In *Melendez-Diaz*, *supra*, 557 U.S. at p. 318, the Court rejected an argument that the "reliability" of a forensic report made confrontation unnecessary:

> Nor is it evident what respondent calls 'neutral scientific testing' is as neutral or as reliable as respondent suggests. Forensic evidence is not uniquely immune from the risk of manipulation . . . And because forensic scientists often are driven in their work by a need to answer a particular question related to the issues of a particular case, they sometimes face pressure to sacrifice appropriate methodology for the sake of expediency. A forensic analyst responding to a request from a law enforcement official may feel pressure – or have an incentive – to alter the evidence in a manner favorable to the prosecution. [¶] Confrontation is one means of assuring accurate forensic analysis.

Recent events in California reflect that the Court's concern with the reliability of forensic reports is real. For example, in San Joaquin County, two medical examiners resigned because they had been pressured by that county's sheriff-coroner to change their autopsy results. (Balko, *It's time to abolish the coroner*, Wash. Post (Dec. 12, 2017).) In 2016, legislation was adopted in response to a scandal in Ventura County where the medical examiner was fired after a whistleblower complaint led to a realization that the

examiner had been directing assistants without medical licenses to perform postmortem procedures. (Sen. Rules Com., Off. of Sen. Floor Analyses, analysis of Sen. Bill No. 1189 (2015-2016 Reg. Sess.) as amended Aug. 19, 2016, p. 5.) And in *In re Figueroa* (2018) 4 Cal.5th 576, 588, this Court overturned the petitioner's death sentence after concluding that the pathologist's testimony that the child victim's injuries were caused by anal penetration was false, as was his testimony that the child had suffered injuries to her genitalia and anus.

In light of these developments, it is not tenable to say that a pathologist's observations about injuries to a victim are neutral and objective, and unlikely to be influenced by bias or other inappropriate factors. If cross-examination on such findings is thwarted because the prosecutor has chosen not to call the pathologist to testify, the kind of malfeasance described above is not likely to be uncovered.

For all these reasons, this Court should reconsider *Dungo*. Looking at the totality of the circumstances, this Court should conclude that the statements in Dr. Selser's autopsy report were formal and made primarily for evidentiary purposes, and thus their admission violated the confrontation clause.

D. Dr. Scheinin's Testimony Relating Dr. Selser's Statements Violated Other State and Federal Rights

Mr. Turner's state and federal constitutional rights to due process, to a fair trial, and to a reliable adjudication of guilt and the appropriate penalty were also violated by Dr. Scheinin's testimony relating to the jury the hearsay basis for her opinion. (U.S. Const.,

5th, 6th, 8th, & 14th Amends.; Cal. Const., art I, §§ 7, 15, & 17; *Estelle v. McGuire* (1991) 502 U.S. 62, 72; *Walters v. Maass* (9th Cir. 1995) 45 F.3d 1355, 1357.) Moreover, use of this hearsay in a capital case in particular violates the Eighth Amendment's requirement of heightened reliability (*Beck v. Alabama* (1980) 447 U.S. 625, 637-638, fn. 13), and violates due process by infringing on a defendant's constitutionally protected liberty interest in the correct application of state law governing the admissibility of hearsay evidence (*Hicks v. Oklahoma* (1980) 447 U.S. 343, 346-347).

E. Dr. Selser's Statements Were Critical to Proving Viability and are Prejudicial Under Any Test

The admission of Dr. Selser's hearsay was not harmless as either federal constitutional error under *Chapman v. California* (1967) 386 U.S. 18, 24, or as state law error under *People v. Watson* (1956) 46 Cal.2d 818, 836, and *People v. Brown* (1988) 46 Cal.3d 432, 448 (reversal of death sentence required when there is a reasonable possibility that error affected the penalty verdict). The prosecution offered Dr. Scheinin's opinion to prove viability (17RT 2452), which was a critical element of the fetal murder count (*People v. Davis* (1994) 7 Cal.4th 797, 811-812). Dr. Scheinin informed the jury that, according to medical literature, viability occurs when a fetus has a gestational age over 22 weeks and a gestational weight exceeding 500 grams. (12RT 1820-1825.) Dr. Scheinin opined that Washington's fetus was viable under that standard, but the sole factual basis for her opinion, which she related to the jury, was Dr. Selser's statements in the autopsy report. (12RT 1822-1826.) Because there was no other evidence that Washington's fetus

exceeded the 22 week/500 gram threshold, the admission of Dr. Selser's testimonial hearsay was critical to the fetal murder conviction.

Under *Chapman*, *supra,* 386 U.S. at p. 24, respondent must prove that the error was harmless. The question is whether there is a reasonable possibility that the evidence complained of might have contributed to the conviction. (*Fahy v. Connecticut* (1963) 375 U.S. 85, 87.) Put another way, this Court must look to "the basis on which 'the jury *actually rested its verdict*.' [Citation.] The inquiry, in other words, is not whether, in a trial that occurred without the error, a guilty verdict would surely have been rendered, but whether the guilty verdict actually rendered in *this* trial was surely unattributable to the error." (*Sullivan v. Louisiana* (1993) 508 U.S. 275, 279, italics in original.) Because respondent cannot prove that there is no reasonable possibility that the erroneously admitted evidence contributed to the guilt and penalty verdicts, Mr. Turner is entitled to reversal under *Chapman*.

Mr. Turner is also entitled to reversal under the state Constitution. "Prejudice, under our state Constitution, means a miscarriage of justice that rendered the proceeding or its outcome unfair or unreliable." (*People v. Lara* (2010) 48 Cal.4th 216, 238, citing *People v. Watson*, *supra*, 46 Cal.2d at p. 836.) The admission of Dr. Selser's statements in the autopsy report rendered the outcome of Mr. Turner's trial both unfair and unreliable and it is reasonably probable that he would not have been convicted of Count 5 had that testimony been excluded. Without Dr. Selser's hearsay, there was no

evidence that Washington's fetus was viable and, without evidence of viability, there would not have been a fetal murder conviction.

With respect to penalty, it is reasonably possible that the jury considered the viability of the fetus as uniquely aggravating. The prosecution considered the fetal murder count to be one of the most aggravating facts in the case. It made that argument in its opposition to the automatic motion to modify the judgment of death. (CT 3638-3639 [referring to the murder of Washington and her fetus as involving "shocking indifference" and "cruel depravity" and as an "unspeakable" crime].) Jurors reasonably could have assigned the same weight to the fetal murder that the prosecution did and determined that, because of its "depravity," Mr. Turner should be sentenced to die.

F. Conclusion

For the foregoing reasons, the admission of case-specific testimonial hearsay violated Mr. Turner's state and federal constitutional rights, was prejudicial under any applicable test, and requires reversal of Count 5 and the judgment of death.

Dated: June 16, 2020

Respectfully submitted,

MARY K. McCOMB
State Public Defender

/s/
WILLIAM C. WHALEY
Deputy State Public Defender

Attorneys for Appellant

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

I, William C. Whaley, am the Deputy State Public Defender assigned to represent appellant CHESTER DEWAYNE TURNER in this automatic appeal. I have conducted a word count of this brief using our office's computer software. On the basis of that computer-generated word count, I certify that this brief is 8,108 words in length excluding the tables and this certificate.

Dated: June 16, 2020

/s/
WILLIAM C. WHALEY
Deputy State Public Defender

DECLARATION OF SERVICE

Case Name: ***People v. Turner (Chester Dewayne)***
Case Number: **Supreme Court Case No. S154459**
Los Angeles County Superior Court No. BA273283-01

I, **Brenda J. Buford**, declare as follows: I am over the age of 18, and not party to this cause. I am employed in the county where the mailing took place. My business address is 770 L Street, Suite 1000, Sacramento, California 95814. I served a true copy of the following document:

APPELLANT'S SECOND SUPPLEMENTAL OPENING BRIEF

by enclosing it in envelopes and placing the envelopes for collection and mailing on the date and at the place shown below following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing.

The envelopes were addressed and mailed on **June 16, 2020**, as follows:

Chester Dewayne Turner, J-69942 CSP-SQ 1 AC 8 San Quentin, CA 94974	Honorable William R. Pounders, Judge Criminal Appeals Unit 210 West Temple Street, Room M-3 Los Angeles, CA 90012

The aforementioned document(s) were served electronically (via TrueFiling) to the individuals listed below on **June 16, 2020**:

Blythe J. Leszkay Deputy Attorney General Attorney General–Los Angeles Office 300 South Spring Street, 5th Floor Los Angeles, CA 90013 *E-mail: blythe.leszkay@doj.ca.gov*	California Appellate Project 345 California St., Suite 1400 San Francisco, CA 94104 *E-mail: docketing@capsf.org*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Signed on **June 16, 2020**, at Sacramento, CA.

/s/
BRENDA J. BUFORD