In the Supreme Court of the State of California

In re **ABELINO MANRIQUEZ,** **On Habeas Corpus**	**CAPITAL CASE** Case No. S141210 (Related to *People v. Manriquez*, Supreme Court Case No. S038073)

Los Angeles County Superior Court, Case No. VA004848
The Honorable Robert Armstrong, Judge

RESPONDENT'S REPLY TO PETITIONER'S EXCEPTIONS TO THE REFEREE'S REPORT

KAMALA D. HARRIS
Attorney General of California
LANCE E. WINTERS
Senior Assistant Attorney General
JAIME L. FUSTER
Deputy Attorney General
TIMOTHY M. WEINER
Deputy Attorney General
State Bar No. 210173
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-4922
Fax: (213) 897-6496
Email: DocketingLAAWT@doj.ca.gov
Timothy.Weiner@doj.ca.gov
Attorneys for Respondent

TABLE OF CONTENTS

Page

I. Preliminary statement 1

II. Standard of review and applicable law 2

III. Statement of facts 4

IV. Evidentiary hearing of July 30, 2013 5

Argument 10

I. Respondent's reply to Petitioner's first exception: the referee's finding that Juror C.B. Was not actually biased is entitled to deference because it is a factual finding that is supported by substantial evidence 10

II. Respondent's reply to Petitioner's second exception: the referee articulated and applied the applicable legal standard prior to finding that no actual bias existed 16

III. Respondent's reply to Petitioner's third exception: substantial and credible evidence support's the referee's finding that Juror C.B.'s failure to disclose her childhood abuse during voir dire was unintentional 18

Conclusion 22

TABLE OF AUTHORITIES

Page

CASES

Dennis v. United States
(1950) 339 U.S. 162 [70 S.Ct. 519, 94 L.Ed. 734] 11, 14

In re Avena
(1996) 12 Cal.4th 694 2

In re Boyette
(2013) 56 Cal.4th 866 ..... 4, 12, 15, 17

In re Carpenter
(1995) 9 Cal.4th 634 14

In re Hamilton
(1999) 20 Cal.4th 273 ..... passim

In re Hitchings
(1993) 6 Cal.4th 97 ..... 2, 3, 4

In re Marquez
(1992) 1 Cal.4th 584 ..... 2, 10, 19

In re Ross
(1995) 10 Cal.4th 184 2

Irvin v. Dowd
(1961) 366 U.S. 717 [81 S.Ct. 1639, 6 L.Ed.2d 751] 2

McDonough Power Equipment, Inc. v. Greenwood
(1984) 464 U.S. 548 [104 S.Ct. 845, 78 L.Ed.2d 663] ..... passim

People v. Bell
(1989) 49 Cal.3d 502 13

People v. Coddington
(2000) 23 Cal.4th 529 16

TABLE OF AUTHORITIES
(continued)

Page

People v. Danks
(2004) 32 Cal.4th 269 13

People v. Harris
(2008) 43 Cal.4th 1269 ..... 3, 4

People v. Karis
(1988) 46 Cal.3d 612 13

People v. Kasim
(1997) 56 Cal.App.4th 1360 2

People v. Manriquez
(2005) 37 Cal.4th 547 ..... 1, 5

People v. Marshall
(1990) 50 Cal.3d 907 4

People v. Mayfield
(1993) 5 Cal.4th 142 2

People v. Miranda
(1987) 44 Cal.3d 57 3

People v. Mosley
(1997) 53 Cal.App.4th 489 16

People v. Nesler
(1997) 16 Cal.4th 561 13

People v. Ramos
(2004) 34 Cal.4th 494 13

People v. Ray
(1996) 13 Cal.4th 313 ..... 15, 19

People v. Stowell
(2003) 31 Cal.4th 1107 16

TABLE OF AUTHORITIES
(continued)

Page

People v. Thomas
(2012) 53 Cal.4th 771 14

People v. Wilson
(2008) 44 Cal.4th 758 ..... passim

People v. Yeoman
(2003) 31 Cal.4th 93 ..... 14, 18

Price v. Superior Court
(2001) 25 Cal.4th 1046 16

Ross v. Superior Court
(1977) 19 Cal.3d 899 16

Smith v. Phillips
(1982) 455 U.S. 209 [102 S.Ct. 940, 71 L.Ed.2d 78] 10, 11, 14

Wiley v. Southern Pacific Transportation Co.
(1990) 220 Cal.App.3d 177 3

STATUTES

Evid. Code, § 1150 15

CONSTITUTIONAL PROVISIONS

Cal. Const., art. I, § 16 2

U.S. Const., 6th Amend. 2

U.S. Const., 14th Amend. 2

I. PRELIMINARY STATEMENT

Petitioner was convicted of four murders with a multiple-murder special circumstance and sentenced to death. His convictions and death sentence were affirmed on direct appeal. (*People v. Manriquez* (2005) 37 Cal.4th 547.) On February 17, 2006, petitioner filed a petition for writ of habeas corpus in this Court. Thereafter, on January 10, 2008, petitioner filed a first amended petition for writ of habeas corpus. On January 23, 2008, this Court ordered Respondent to file an informal response to the first amended petition. Respondent filed an informal response on December 31, 2008. petitioner filed a reply to the informal response on June 30, 2009.

On June 20, 2012, this Court issued an order to show cause ("OSC") why relief should not be granted on the ground of juror misconduct. On September 7, 2012, Respondent filed a return to the OSC. On December 6, 2012, petitioner filed a traverse to the return. Thereafter, on March 20, 2013, this Court ordered that a reference hearing be held to answer the following four questions: (1) what were Juror C.B.'s reasons for failing to disclose her childhood abuse on her juror questionnaire and during voir dire at petitioner's trial?; (2) was the nondisclosure intentional and deliberate?; (3) considering Juror C.B.'s reasons for failing to disclose these facts, was her nondisclosure indicative of juror bias?; and (4) was Juror C.B. actually biased against petitioner?

Los Angeles County Superior Court Judge William C. Ryan was appointed to sit as a referee, and on July 30, 2013, held an evidentiary hearing. On January 27, 2014, the parties appeared before Judge Ryan to argue the matter. On April 21, 2014, Judge Ryan filed his findings of fact.

On April 21, 2014, this Court ordered the parties to file exceptions, if any, to the report of the referee, and to submit simultaneous merits briefing. In response to the Court's order, petitioner filed his exceptions to the referee's findings of fact and merits brief. Respondent had no exceptions to

the referee's report, and filed a brief on the merits. This reply to petitioner's exceptions to the referee's findings of fact follows.

II. STANDARD OF REVIEW AND APPLICABLE LAW

The standard of review of a referee's report is well-settled:

> The referee's conclusions of law are subject to independent review, as is his resolution of mixed questions of law and fact. [Citations.] . . . The referee's findings of fact, though not binding on the court, are given great weight when supported by substantial evidence. The deference accorded factual findings derives from the fact that the referee had the opportunity to observe the demeanor of witnesses and their manner of testifying. [Citation.]

(*In re Marquez* (1992) 1 Cal.4th 584, 603; see also *In re Avena* (1996) 12 Cal.4th 694, 710; *In re Ross* (1995) 10 Cal.4th 184, 201; *People v. Mayfield* (1993) 5 Cal.4th 142, 199; *People v. Kasim* (1997) 56 Cal.App.4th 1360, 1379.)

A criminal defendant has the right to a trial by an impartial jury under both the federal and state Constitutions. (U.S. Const., amends. VI and XIV; Cal. Const., art. I, § 16; *Irvin v. Dowd* (1961) 366 U.S. 717, 722 [81 S.Ct. 1639, 6 L.Ed.2d 751]; *In re Hamilton* (1999) 20 Cal.4th 273, 293-294.) An impartial jury is "one in which no member has been improperly influenced" and "every member is capable and willing to decide the case solely on the evidence before it." (*In re Hamilton, supra*, 20 Cal.4th at p. 294, internal citations and quotation marks omitted.)

During jury selection, the parties have the right to challenge and excuse candidates who clearly or potentially cannot be fair. (*In re Hamilton, supra*, 20 Cal.4th at p. 295.) Voir dire is the vehicle used to discover actual or potential juror bias: "'A juror who conceals relevant facts or gives false answers during the voir dire examination thus undermines the jury selection process and commits misconduct. [Citations.]'" (*Ibid.*, quoting *In re Hitchings* (1993) 6 Cal.4th 97, 111; see also *McDonough*

Power Equipment, Inc. v. Greenwood (1984) 464 U.S. 548, 554 [104 S.Ct. 845, 78 L.Ed.2d 663] [Noting that voir dire protects a defendant's right to an impartial trier of fact "by exposing possible biases, both known and unknown, on the part of potential jurors"].)

Juror misconduct involving the concealment of material information during voir dire raises the presumption of prejudice. (*In re Hitchings*, *supra*, 6 Cal.4th at p. 119; *Wiley v. Southern Pacific Transportation Co.* (1990) 220 Cal.App.3d 177, 189 [applying the presumption of prejudice standard in case involving concealment on voir dire].) This presumption may be rebutted by an affirmative evidentiary showing that prejudice does not exist, or by a reviewing court's examination of the entire record to determine whether there is a reasonable probability of actual harm to the complaining party resulting from the misconduct. (*In re Hitchings*, *supra*, 6 Cal.4th at p. 119, internal quotations marks omitted; see also *People v. Miranda* (1987) 44 Cal.3d 57, 117.) However, "[w]hat is clear is that an honest mistake on voir dire cannot disturb a judgment in absence of proof that the juror's wrong or complete answer hid the juror's actual bias." (*In re Hamilton*, *supra*, 20 Cal.4th at p. 300; see also *People v. Wilson* (2008) 44 Cal.4th 758, 823 [inadvertent or unintentional failures to disclose as a result of misunderstanding or forgetfulness do not constitute good cause for removal of a juror].) "Moreover, the juror's good faith when answering voir dire questions is the most significant indicator that there was no bias." (*Ibid*, citing *McDonough Power Equipment, Inc. v. Greenwood*, *supra*, 464 U.S. at pp. 556-557 (conc. opn. of Blackmun, J.); *id.* at pp. 557-558 (conc. opn. of Brennan, J.).)

Whether an individual verdict must be overturned for jury misconduct or irregularity is resolved by reference to the substantial likelihood test, an objective standard which asks whether the misconduct is inherently likely to have influenced the juror. (*People v. Harris* (2008) 43 Cal.4th 1269,

1303; *In re Hitchings*, *supra*, 6 Cal.4th at p. 118; see also *People v. Marshall* (1990) 50 Cal.3d 907, 950-951.) "Any presumption of prejudice is rebutted, and the verdict will not be disturbed," if the record, including the nature of the misconduct and the surrounding circumstances, "indicates there is no reasonable probability of prejudice, i.e., no substantial likelihood that one or more jurors were actually biased against the defendant." (*People v. Harris*, *supra*, 43 Cal.4th at pp. 1303-1304; *In re Hamilton*, *supra*, 20 Cal.4th at p. 296.)

The mere fact a juror provides inaccurate information during voir dire does not automatically mean that juror has committed prejudicial misconduct. "To invalidate the result of a . . . trial because of a juror's mistaken, though honest response to a question [on voir dire], is to insist on something closer to perfection than our judicial system can be expected to give." (*McDonough Power Equipment, Inc. v. Greenwood*, *supra*, 464 U.S. at p. 555.) "A trial represents an important investment of private and social resources, and it ill serves the important end of finality to wipe the slate clean simply to recreate the peremptory challenge process because counsel lacked an item of information which objectively he should have obtained from a juror on voir dire examination." (*Ibid.*) In part, the test for prejudice "asks not whether the juror would have been stricken by one of the parties, but whether the juror's concealment or nondisclosure evidences bias." (*In re Boyette* (2013) 56 Cal.4th 866, 890.)

III. STATEMENT OF FACTS

> On January 22, 1989, at approximately 4:40 a.m., [petitioner] was a patron at the Las Playas restaurant, located in Paramount. An argument ensued between [petitioner] and Miguel Garcia, ending when [petitioner] shot Garcia several times, after which [petitioner] departed from the premises.
>
> On February 22, 1989, at approximately 10:00 p.m., [petitioner] was a patron at Fort Knots, a topless dance bar,

located in South Gate. While Daneen Baker, one of the dancers, performed on stage with her back to the audience, she felt a customer touch her thighs. Such conduct was prohibited, and believing that [petitioner] had touched her, she asked the doorman, George Martinez, to evict him. Martinez did so, after which [petitioner] attempted to reenter the bar on several occasions that evening, finally returning with a firearm and fatally shooting Martinez at point-blank range.

On November 29, 1989, at approximately 2:00 p.m., [petitioner] and his girlfriend, Sylvia Tinoco, were drinking beer and ingesting cocaine at the Rita Motel, located in Compton. Efrem Baldia (occasionally referred to by witnesses by his nickname, "Arnulfo") drove to the motel and [petitioner], knowing that Baldia had been romantically linked to Tinoco, left the motel room looking angry, confronted Baldia (who was unarmed) in the motel parking lot, and fatally shot him.

On January 21, 1990, shortly after midnight, [petitioner] was drinking beer at the Mazatlan Bar, located in Compton. [petitioner] approached the bar to order another beer and encountered Jose Gutierrez, who, according to one witness, had been sitting at the bar, asleep, with his head resting on his arm. [petitioner] grabbed Gutierrez by the neck and shot him repeatedly.

Approximately one month later, on February 22, 1990, law enforcement officers arrested [petitioner] at the Charter Suburban Hospital, located in Paramount, where he was being treated for a fresh gunshot wound in the shoulder.

(*People v. Manriquez*, *supra*, 37 Cal.4th at p. 552.)

IV. EVIDENTIARY HEARING OF JULY 30, 2013

On March 20, 2013, this Court ordered that a referee be appointed to take evidence and make findings of fact on the following four questions regarding a claim of juror misconduct related to petitioner's trial (*People v. Abelino Manriquez*, Los Angeles County Superior Court case number VA004848):

"1. What were Juror C.B.'s reasons for failing to disclose her childhood abuse on her juror questionnaire and during voir dire at petitioner's trial?

"2. Was the nondisclosure intentional and deliberate?

"3. Considering Juror C.B.'s reasons for failing to disclose these facts, was her nondisclosure indicative of juror bias?

"4. Was Juror C.B. actually biased against petitioner?"

Los Angeles County Superior Court Judge William C. Ryan was appointed as a referee. On July 30, 2013, Judge Ryan held an evidentiary hearing at which Juror C.B. appeared and testified. The evidence presented at the evidentiary hearing regarding these questions, and the referee's findings, are summarized below.

QUESTION 1: What were Juror C.B.'s reasons for failing to disclose her childhood abuse on her juror questionnaire and during voir dire at petitioner's trial?

Juror C.B. testified that she did not consider the physical abuse she suffered as a child to have been an act of violence. (EHT[1] at p. 20; Findings[2] at p. 4.) Moreover, when asked by petitioner's counsel whether in 1993 she considered the abuse she suffered to have been "an act of violence, not necessarily a crime," Juror C.B. replied, "No, I didn't." (EHT at p. 20; Findings at p. 4.) Juror C.B. elaborated, "I guess my answer is, you had to be there. When you are growing up and that's your environment, you take it in stride." (EHT at p. 20; Findings at p. 4.)

At the hearing, Juror C.B. acknowledged that she had been present during a violent act, and that when she answered Question 64 in 1993

[1] "EHT" refers to the reporter's transcript of the evidentiary hearing that took place on July 30, 2013.

[2] "Findings" refers to the Referee's Findings Of Fact In Response To California Supreme Court's Reference Questions filed by Judge Ryan on April 21, 2014.

("Have you or any relative or friend ever experienced or been present during a violent act, not necessarily a crime?"), she "did not interpret the question as imposing any timeframe limitation *per se*." (Findings at p. 5; see also EHT at p. 38.) Petitioner's counsel asked Juror C.B. directly, "Why did you not disclose your childhood abuse in response to this question?" Juror C.B. replied, "Because the question indicated a violent act not necessarily a crime, and I did not consider my childhood a violent act." (EHT at p. 38; Findings at p. 5.)

The referee found that Juror C.B. did not disclose her childhood abuse on her juror questionnaire and during voir dire because Juror C.B. "did not consider her childhood experiences to have been criminal acts or acts of violence, and she did not consider herself to be a victim of crime." (Findings at p. 3.) More specifically, the referee found that "Juror C.B.'s experiences of growing up as a child in the 1950's, which shaped her view of life, support her explanation of why she did not disclose the circumstances of her abusive childhood." (Findings at p. 7.) The referee also found that "Juror C.B.'s perspective that she did not view herself as a victim of either a crime or act of violence is consistent with how society viewed and treated abuse of children 60 years ago, as distinct from how society now views and treats such abuse." (Findings at p. 7.)

QUESTION 2: Was the nondisclosure intentional and deliberate?

Juror C.B. testified that she did not consider herself to have been a victim of a crime during her childhood, and accordingly, that she had honestly answered questions 63 through 66 of the pretrial juror questionnaire. (EHT at p. 19.) Specifically, in response to a question posed by the referee regarding her thought processes, Juror C.B. testified that she "tried to recall if [she] had been a victim of any crime, and nothing came to mind." (EHT at p. 68; Findings at p. 9.)

The referee found that Juror C.B. did not disclose her childhood experiences because they did not come to mind at the time she was filling out the questionnaire or during voir dire. (Findings at p. 9.) The referee also found that Juror C.B. "explicitly and credibly testified that when she completed the juror questionnaire . . . she believed that she had honestly answered every question on the questionnaire, including Questions 63 through 66." (Findings at pp. 9-10; see also EHT at p. 52.) The referee further found that "[n]o evidence has been adduced to indicate that Juror C.B. intentionally *concealed* her childhood experiences. After observing Juror C.B., the referee concludes that all voir dire questions were answered in good faith by her with no intent to conceal or deceive." (Findings at p. 10, italics in original.)

QUESTION 3: Considering Juror C.B.'s reasons for failing to disclose these facts, was her nondisclosure indicative of juror bias?

The referee found that Juror C.B.'s nondisclosure was not indicative of juror bias. (Findings at p. 10.) Specifically, the referee determined that because Juror C.B. credibly and honestly believed that she had accurately answered the questions on the juror questionnaire, and accordingly, "her nondisclosure of the circumstances of her abusive childhood history is not indicative of actual juror bias." (Findings at p. 10.) The referee also found:

> Juror C.B.'s voir dire answers and her credible testimony that she gave time and thought to the responses she gave in her pretrial questionnaire are an indication that she was attempting to provide full and honest answers, and that her nondisclosure was inadvertent. From a review of the whole record, the referee concludes that no [actual juror] bias existed.

(Findings at p. 11.)

QUESTION 4: Was Juror C.B. actually biased against petitioner?

The referee expressly found that "Juror C.B. was not actually biased against petitioner." (Findings at p. 11.) Specifically, the referee found credible Juror C.B.'s testimony in response to Respondent's question – "Were you biased against [petitioner] at any time while you were a sitting juror in this trial?" – "No, sir, I was not." (Findings at p. 12; EHT at p. 53.)

In addition to this direct testimony, the referee considered circumstantial evidence that supported its conclusion Juror C.B. was not actually biased against petitioner, i.e., that Juror C.B. voluntarily disclosed her childhood abuse when she responded to defense counsel's post-verdict questionnaire. (Findings at p. 12.) The referee found Juror C.B. to be "forthright and candid" in this regard, and noted that she had discussed her history with both petitioner's habeas counsel and respondent's counsel. (Findings at p. 12.)

The referee also rejected petitioner's argument that Juror C.B. was actually biased because (according to petitioner's counsel) she "prejudged petitioner's mitigation defense and was unable to put aside her own history of abuse to determine his sentence." (Findings at p. 12.) The referee further noted that Juror C.B. did not use "extrajudicial information" in deciding petitioner's case, instead finding that she had simply interpreted the evidence based on her own life experience: "The reference to [Juror C.B.'s] childhood experience during deliberation was merely her way of analyzing the penalty phase evidence through the prism of her life's experiences and not misconduct of any sort." (Findings at pp. 12-13.)

ARGUMENT

I. RESPONDENT'S REPLY TO PETITIONER'S FIRST EXCEPTION: THE REFEREE'S FINDING THAT JUROR C.B. WAS NOT ACTUALLY BIASED IS ENTITLED TO DEFERENCE BECAUSE IT IS A FACTUAL FINDING THAT IS SUPPORTED BY SUBSTANTIAL EVIDENCE

Petitioner's first exception to the referee's report is that the referee "erroneously found that [Juror] C.B. was not actually biased." (PE[3] at pp. 18-40.) According to petitioner, the referee's finding that Juror C.B. was not actually biased should be reviewed de novo because "[t]he undisputed facts prove C.B. was actually biased." (PE at p. 19.) Respondent disagrees.

When a referee has the opportunity to observe the demeanor of a witness and his or her manner of testifying, the referee's findings of fact are given "great weight" and accorded deference if they are supported by substantial evidence. (*In re Marquez*, *supra*, 1 Cal.4th at p. 603.) Such is the case at bar. It is beyond reasonable debate that Judge Ryan observed Juror C.B.'s demeanor and manner of testifying at the evidentiary hearing held on July 30, 2013. As set forth in greater detail below, Judge Ryan's findings are supported by substantial evidence and should be accorded deference. (*In re Marquez*, *supra*, 1 Cal.4th at p. 603.)

Contrary to petitioner's claim (see PE at pp. 20-21), Juror C.B. was able – and did – keep an open mind during deliberations, and based her decision on the evidence presented. Juror C.B. expressly stated that she was not biased against petitioner at any time during the trial. (EHT at pp. 52-53.) This evidence was properly considered by Judge Ryan when making his finding of fact. (*Smith v. Phillips* (1982) 455 U.S. 209, 215

---

[3] "PE" refers to petitioner's Exceptions to the Referee's Findings of Fact and Merits Brief.

[102 S.Ct. 940, 71 L.Ed.2d 78] [court may ascertain the impartiality of a juror by relying solely upon the testimony of the juror in question]; *id.* at p. 217, fn. 7 ["'One may not know or altogether understand the imponderables which cause one to think what he thinks, but surely one who is trying as an honest man to live up to the sanctity of his oath is well qualified to say whether he has an unbiased mind in a certain matter'"], quoting *Dennis v. United States* (1950) 339 U.S. 162, 171 [70 S.Ct. 519, 94 L.Ed. 734].)

In any event, a review of the record shows that Juror C.B. actually listened to and considered the evidence presented during the penalty phase. For example, in a post-verdict questionnaire provided by the defense, Juror C.B. commented in a handwritten note that the "mitigating circumstances *during the sentencing phase* was [sic] actually a detriment in most jurors' minds, especially in mine." (EHT at p. 34, italics added.) Later, Juror C.B. explained to the referee that the triggering event that brought her own childhood abuse to mind was not a comment made by a fellow juror, but rather the presentation of mitigating evidence during the penalty phase of petitioner's trial. (EHT at p. 69.) Thus, the record clearly shows that Juror C.B. listened to and considered the mitigating factors presented by defense counsel during the penalty phase. That Juror C.B. determined the mitigating evidence was not helpful to petitioner's case does not mean that she was biased against petitioner. It does, however, constitute substantial evidence in support of the referee's findings.

Further evidence showing that Juror C.B. was not actually biased included the fact that Juror C.B. was the person who disclosed her childhood abuse to the parties and the Court. As noted by Judge Ryan, "Like the juror in [*In re Hamilton, supra*, 20 Cal.4th at p. 273], when specifically asked during the July 30, 2013, evidentiary hearing about her childhood experiences, Juror C.B. was forthright and candid." (Findings at p. 12.) The fact that Juror C.B. did not intentionally conceal this

information strongly supports the referee's finding that she harbored no actual bias against petitioner. (Findings at pp. 7-8; see also *In re Hamilton*, *supra*, 20 Cal.4th at p. 300; see also *McDonough Power Equipment, Inc. v. Greenwood*, *supra*, 464 U.S. at pp. 556-557 (conc. opn. of Blackmun, J.); *id.* at pp. 557-558 (conc. opn. of Brennan, J.).)

The instant case is similar to *In re Boyette*, *supra*, 56 Cal.4th at p. 866. In *Boyette*, a juror was asked "to disclose his own criminal history, that of relatives and friends, and whether he or a relative had a problem with alcohol or drugs." (*Id.* at p. 889.) The juror "failed to disclose information relevant to all three of these topics." (*Ibid.*) Nevertheless, this Court found that even though the juror's omissions "were based on a dubious interpretation of the relevant question," his interpretation "though erroneous and unreasonable – was sincerely held. For other omissions, [the juror] simply did not recall, for example, a distant relative." (*Id.* at p. 890.) Adopting the referee's finding that the juror's failure to disclose information was neither intentional nor deliberate, this Court found that there was no substantial likelihood of actual bias, and rejected the petitioner's challenge. (*Ibid.*)

Here, even if Juror C.B. erroneously believed that she had not been a victim of a crime as a child, her belief was "sincerely held" (*In re Boyette*, *supra*, 56 Cal.4th at p. 890), and corroborated by her credible testimony at the evidentiary hearing. In light of Juror C.B.'s testimony and the case law cited above, the referee properly found that Juror C.B.'s testimony was credible, that her nondisclosure was neither intentional nor deliberate, and that "all [Juror C.B.'s] voir dire questions were answered in good faith by her with no intent to conceal or deceive." (Findings at pp. 7-10.)

Petitioner's claim that Juror C.B. was actually biased appears to be based on his mistaken belief that Juror C.B. was improperly influenced by "extrajudicial information." (PE at p. 22.) While evidence to the contrary

is plentiful (see, e.g., EHT at p. 48), there is simply no evidence that Juror C.B. knew anything about this case other than what she learned during the trial. Petitioner appears to confuse "extrajudicial information," which is defined as information *about a case* received from *outside sources* (see, e.g., *People v. Ramos* (2004) 34 Cal.4th 494, 518-520 [consideration of outside newspaper articles during trial]; *People v. Danks* (2004) 32 Cal.4th 269, 306-307 [conversation with pastor about the case]; *People v. Nesler* (1997) 16 Cal.4th 561, 579-580 [overhearing information about the case in a bar and revealing it to fellow jurors]) with a juror's life experiences, which the courts "expect jurors to use . . . when evaluating the evidence." (*People v. Wilson* (2008) 44 Cal.4th 758, 823; *People v. Bell* (1989) 49 Cal.3d 502, 564 ["it is unrealistic to expect jurors to be devoid of opinions, preconceptions, or even deep-rooted biases derived from their life experiences"].) Put another way, the prohibition against introducing extrajudicial information simply does not preclude a juror from considering and/or discussing his or her life experiences during deliberations. (*People v. Wilson*, *supra*, 44 Cal.4th at p. 823; cf. *People v. Karis* (1988) 46 Cal.3d 612, 642 ["[j]urors are not allowed to obtain information from outside sources either as to factual matters or for guidance on the law."].)

Petitioner also claims that Judge Ryan "erroneously found that [Juror] C.B. merely interpreted petitioner's mitigation evidence through the 'prism' of her general 'life experience.'" (PE at pp. 30-33.) Respondent disagrees. Judge Ryan's finding was proper, and made in express reliance on this Court's ruling in *People v. Wilson*, *supra*, 44 Cal.4th at p. 830 ("Given the jury's function at the penalty phase under our capital sentencing scheme, for a juror to interpret evidence based on his or her own life experiences is not misconduct"). Petitioner's claim that *Wilson* "did not create a general 'life experience' exception to the requirement that jurors base their decisions solely on the evidence" (PE at 31) misstates the not only the

holding of *Wilson*, but also Judge Ryan's findings. Here, as in Wilson, Juror C.B. was entitled to analyze the penalty phase evidence through "the prism of her life's experiences" not because of a "general life experience exception," but rather because "[j]urors cannot be expected to shed their backgrounds and experiences at the door of the deliberation room." (*People v. Wilson*, *supra*, 44 Cal.4th at p. 832, quoting *People v. Yeoman* (2003) 31 Cal.4th 93, 162, internal quotation marks omitted.) Moreover, Juror C.B. expressly stated that she based her decision on the evidence that was presented at petitioner's trial. (See Decl. of Juror C.B. at p. 1.) As such, the referee's finding here was entirely proper.

Petitioner's claim that Judge Ryan relied on "irrelevant" evidence in making his findings (see PE at pp. 33-36) is likewise meritless. For example, petitioner's claim that Juror C.B.'s "belief that she was not biased" was an "uninformed statement" that "should not be given any weight" because "[she] is not a lawyer and admitted that she does not know the legal definition of bias" (PE at pp. 33-34) is completely meritless. Not only was Judge Ryan permitted to consider direct and circumstantial evidence – including Juror C.B.'s own beliefs – when addressing the allegation of juror bias (see *People v. Thomas* (2012) 53 Cal.4th 771, 819 [court may view the "entire record" logically bearing on a circumstantial finding of likely bias in addressing claim of juror misconduct]; see also *In re Carpenter* (1995) 9 Cal.4th 634, 654 ["the totality of the circumstances surrounding [alleged juror] misconduct must still be examined to determine objectively whether a substantial likelihood of actual bias nonetheless arose"]), if he chose to do so he was entitled to *rely entirely* on Juror C.B.'s statements. (*Smith v. Phillips*, *supra*, 455 U.S. at pp. 215-217; see also *Dennis v. United States*, *supra*, 339 U.S. at p. 171.) Put another way, Juror C.B.'s testimony regarding her belief that she was not biased was not only relevant, it was completely proper for Judge Ryan to consider it when

making his findings of fact. Petitioner's assertion to the contrary should be rejected.

Petitioner also claims that evidence that Juror C.B. did not intentionally conceal information on voir dire and later voluntarily disclosed her childhood abuse to the attention of the parties was "irrelevant to the bias question." (PE at pp. 36-38.) He is mistaken. As in *People v. Ray* (1996) 13 Cal.4th 313, had Juror C.B. intended to intentionally conceal her childhood abuse, "common sense suggests that [s]he would have simply remained silent." (Id. at p. 344.) Moreover, Juror C.B.'s "good faith when answering voir dire questions is the most significant indicator that there was no bias." (*In re Boyette*, *supra*, 56 Cal.4th at p. 890.) Thus, the fact that Juror C.B. voluntarily disclosed her childhood abuse was relevant and properly considered by the referee when making his factual findings.

Petitioner also assigns error to the referee for striking Juror C.B.'s affirmative response to counsel for petitioner's question, "And when you heard evidence of his abuse from working on the farm, did you think, well, so was I?" (PE at pp. 38-40; see also EHT at p. 33.) The referee struck this response pursuant to Evidence Code section 1150, which in relevant part prohibits the introduction of evidence "concerning the mental processes" of a juror. (EHT at p. 33.) Simply stated, testimony related to Juror C.B.'s internal response to evidence presented during the penalty phase is not evidence of a "biased state" or a preexisting bias that was concealed on voir dire, as petitioner suggests. (See PE at p. 39.) Rather, it falls squarely within the "mental processes" portion of Evidence Code section 1150, and speaks directly to Juror C.B.'s personal reaction to the mitigation evidence presented by petitioner. As such, the referee properly sustained the Evidence Code section 1150 objection to counsel's question and Juror C.B.'s response.

For each of these reasons, petitioner's first exception to the referee's findings should be rejected.

II. RESPONDENT'S REPLY TO PETITIONER'S SECOND EXCEPTION: THE REFEREE ARTICULATED AND APPLIED THE APPLICABLE LEGAL STANDARD PRIOR TO FINDING THAT NO ACTUAL BIAS EXISTED

Petitioner's second exception to the referee's report is that he is entitled to relief because the referee "did not mention the operative legal standard" and "concluded without analysis" that no bias existed. (PE at p. 41.) This claim is facially meritless. Aside from the fact that the referee is presumed to have applied the applicable legal standards, a review of the record shows that Judge Ryan was actually aware of, recited, and applied those standards when making his findings.

It is well-settled that this Court presumes that a trial court judge knows and applies the correct legal standards until the contrary is shown. (*People v. Stowell* (2003) 31 Cal.4th 1107, 1114; *People v. Coddington* (2000) 23 Cal.4th 529, 644 [as part of the presumption that judicial duties are properly performed, this Court presumes that the trial court "knows and applies the correct statutory and case law"], overruled on other grounds by *Price v. Superior Court* (2001) 25 Cal.4th 1046, 1069; accord *Ross v. Superior Court* (1977) 19 Cal.3d 899, 913-914 [rule that trial court is presumed to follow "established law . . . encompasses a presumption that the trial court applied the proper burden of proof in matters tried to the court"]; *People v. Mosley* (1997) 53 Cal.App.4th 489, 496 ["The general rule is that a trial court is presumed to have been aware of and followed the applicable law"].) Because there is nothing in the record that suggests Judge Ryan was unaware of them, this Court should presume that he knew and applied the correct legal standards in the instant case.

Even without this assumption, a review of the referee's findings unambiguously shows that petitioner's claim that Judge Ryan "did not

mention the operative legal standard" is wrong. In the Referee's Findings of Fact, Judge Ryan correctly noted that "[a] juror who honestly but incorrectly answers voir dire questions does not intentionally and deliberately fail to disclose, and such failure is 'not indicative of juror bias.' *In re Boyette*, *supra*, 56 Cal.4th at 873." (Findings at p. 11.) Thereafter, Judge Ryan stated that assuming arguendo Juror C.B.'s inadvertent nondisclosure constituted misconduct, "such a presumption of prejudice may be rebutted," and that the "whole record must be examined to determine whether there is any evidence of bias. *In re Hamilton*, *supra*, 20 Cal.4th at p. 296." (Findings at p. 11.) Given the state of the record, petitioner's claim that Judge Ryan "did not mention the operative legal standard" cannot stand and should be rejected.

Petitioner's claim that the referee concluded "without analysis" that no bias existed is likewise defective. After setting forth the correct legal standards, Judge Ryan made the following findings:

> Here, Juror C.B.'s voir dire answers and her credible testimony that she gave time and thought to the responses she gave in her pretrial questionnaire are an indication that she was attempting to provide full and honest answers, and that her nondisclosure was inadvertent. From a review of the whole record, the referee concludes that no such bias existed.

(Findings at p. 11.) Thus, the record plainly shows that not only did Judge Ryan apply the correct legal standard, he reviewed the entire record prior to finding that, assuming arguendo that Juror C.B.'s inadvertent nondisclosure raised a presumption of prejudice, no actual bias existed. (Findings at p. 11.)

Contrary to petitioner's claim (see PE at 42), Juror C.B.'s "abuse is no excuse" opinion does not suggest that her "mind was made up" prior to deliberations or suggest that the referee ignored the applicable legal standards here. Instead, it is a reflection of how Juror C.B. viewed the

evidence presented through her own life experiences, which as stated in more detail above is something she was expressly permitted to do. (*People v. Wilson*, *supra*, 44 Cal.4th at p. 832; *People v. Yeoman*, *supra*, 31 Cal.4th at p. 162; see also Decl. of Juror C.B. at p. 1.)

Judge Ryan, sitting as the referee in this hearing, is presumed to have known and applied the correct legal standards. A review of the record confirms that he did. Petitioner's subjective belief that Juror C.B. was actually biased is not evidence that Judge Ryan applied an incorrect legal standard during any portion of these proceedings, much less a valid basis for petitioner to seek habeas relief. Accordingly, petitioner's second exception to the referee's findings should be rejected.

III. RESPONDENT'S REPLY TO PETITIONER'S THIRD EXCEPTION: SUBSTANTIAL AND CREDIBLE EVIDENCE SUPPORT'S THE REFEREE'S FINDING THAT JUROR C.B.'S FAILURE TO DISCLOSE HER CHILDHOOD ABUSE DURING VOIR DIRE WAS UNINTENTIONAL

Petitioner's third exception to the referee's report is that no substantial or credible evidence supports the finding that Juror C.B.'s failure to disclose her childhood abuse was unintentional. (PE at pp. 43-51.) Respondent disagrees. A review of the record reveals that the referee's findings of fact are thoroughly supported by substantial, credible evidence.

Substantial evidence supporting the referee's finding that Juror C.B.'s failure to disclose her childhood abuse was unintentional (see Findings at pp. 9-10) is abundant. Initially, the manner in which information about Juror C.B.'s childhood experiences surfaced strongly supports the conclusion that she did not intentionally conceal her past. As recognized by the referee, Juror C.B. *voluntarily* disclosed her childhood abuse to petitioner's trial counsel in response to counsel's post-verdict questionnaire, and thereafter openly discussed her childhood abuse with petitioner's habeas counsel and counsel for Respondent. As noted earlier,

if Juror C.B. intended to intentionally conceal her childhood abuse, she would not have shared details of that abuse with the other jurors or counsel for the parties. (See *People v. Ray*, *supra*, 13 Cal.4th at pp. 313, 344.) This conclusion is supported by Juror C.B.'s testimony at the evidentiary hearing, at which she expressly stated that her childhood abuse simply "did not come to mind" during the voir dire process, including when she filled out the pretrial juror questionnaire. (EHT at p. 68.) Indeed, Juror C.B. expressly testified that when she completed the pretrial juror questionnaire in 1993, she believed that she had done so honestly, testimony that the referee found to be credible. (Findings at p. 9.) Such an "honest mistake on voir dire cannot disturb a judgment" absent proof that it concealed actual bias. (*In re Hamilton*, *supra*, 20 Cal.4th at p. 273.) And as noted by the Supreme Court, "[t]o invalidate the result of a . . . trial because of a juror's mistaken, though honest response to a question [on voir dire], is to insist on something closer to perfection than our judicial system can be expected to give." (*McDonough Power Equipment, Inc. v. Greenwood*, *supra*, 464 U.S. at p. 555.)

Additional evidence in support of the referee's finding that Juror C.B.'s nondisclosure of her childhood was inadvertent includes, but is not limited to, her demeanor and manner of testifying and her candid discussions of her experiences of growing up in a foster home in the 1950's. Each of these reasons is a separate piece of substantial, credible evidence upon which the referee properly based his factual finding that Juror C.B.'s testimony was credible. (See *In re Marquez*, *supra*, 1 Cal.4th at p. 603 [factual findings afforded "great weight" and "deference" when supported by substantial evidence]; see also *People v. Wilson*, *supra*, 44 Cal.4th at p. 823.)

Petitioner argues that the referee's findings are faulty because the Judge Ryan "selectively" addressed "several conflicting explanations"

provided by Juror C.B. for her failure to disclose her childhood abuse, and opines that "there is no way to reconcile her various explanations." (PE at p. 43.) Respondent disagrees. As recognized by Judge Ryan,

> Juror C.B.'s testimony explaining different aspects of her questionnaire experience are not in conflict. As noted above, in her testimony, Juror C.B. acknowledged that during her childhood, she had in fact been present during a violent act and that when she answered Question 64 in 1993, she did not interpret the question as imposing any timeframe limitation *per se*; but that because she did not view herself as having been the *victim* of a crime, her experiences did not come to mind in response to those questions; that she viewed the questions at issue as important and purposeful, and that she believed she had answered them accurately and honestly.

(Findings at p. 8, italics in original.)

The referee's finding is correct, and supported by substantial evidence. When read in its entirety and in context, Juror C.B.'s position is clear and consistent. The following colloquy took place during the evidentiary hearing:

> [PETITIONER'S COUNSEL]: In 1993 when you were answering the question, was there anything in the question that indicated to you that it was limited in [the] time frame it was asking about?
>
> [JUROR C.B.]: No.
>
> [PETITIONER'S COUNSEL]: [Juror C.B.], why did you not disclose your childhood abuse in response to this question?
>
> [JUROR C.B.]: Because the question indicated a violent act not necessarily a crime, *and I did not consider my childhood a violent act.*

(EHT at p. 38, italics added.) Thereafter, counsel for petitioner asked Juror C.B. why she indicated in her declaration that she believed in 1993 she interpreted questions 63 through 66 as only "asking about [her] adulthood."

Juror C.B. replied, "I interpreted that way, sir, because I did not consider anything in my life as criminal acts." (EHT at p. 40.)

The record simply does not support the conclusion that Judge Ryan "fail[ed] to acknowledge" (as petitioner alleges) portions of Juror C.B.'s testimony, or that Juror C.B. took contradicting positions. Instead, the record supports the conclusion Judge Ryan considered all of Juror C.B.'s testimony in context, including her consistent explanation that she did not interpret questions 63 through 66 as applying only to her adulthood because she did not consider "anything in [her] life as criminal acts." (EHT at p. 40.)

Petitioner's claim regarding Juror C.B.'s explanation about abuse and rape (see PE at pp. 46-47) is similarly flawed. Reviewed in context, Juror C.B. never took the position that all other sexual abuse other than her own constitutes a violent act. Instead, she very candidly explained,

> Upon reflection, yes. I -- in [1993] I would have understood [sexual abuse] to be a crime. The unfortunate part about the whole thing is that I did not consider myself a victim of a crime. I was a victim of circumstance. And that being said, I never thought of myself as having been a victim of any kind. So in 1993, I did not even think about the fact that I had been criminally assaulted, as it were, because in the [19]50's when I grew up, abuse was not a crime. Kids were abused all the time. And using kids for hard labor was very common. [¶] And as far as the molestation, it was a one-time thing, it never happened again. It went into the recesses of my mind. And it was not even thought of in 1993 until the very end of this whole trial.

(EHT at pp; 19-20.)

In sum, only through a myopic reading focused on isolated sentences from different parts of the record can petitioner conclude that Juror C.B.'s answers to questions about her childhood abuse were inconsistent or incredible. Read in context, Juror C.B. consistently and clearly testified that she did not disclose her childhood abuse because she did not consider

the events of her childhood to constitute a series of criminal or violent acts. (See, e.g., EHT at pp. 19-20, 38, 40, 68.) Accordingly, the referee's findings of fact are amply supported by credible evidence, and accordingly, petitioner's claim should be rejected.

CONCLUSION

For the reasons stated, respondent respectfully requests that this Court adopt the findings of the referee and find: (1) that Juror C.B. failed to disclose her childhood abuse on her juror questionnaire because she did not consider her childhood experiences to have been criminal acts or acts of violence; (2) that Juror C.B.'s nondisclosure was neither intentional nor deliberate; (3) that her nondisclosure was not indicative of juror bias; and (4) that Juror C.B. was not actually biased against petitioner.

Dated: September 18, 2014

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
LANCE E. WINTERS
Senior Assistant Attorney General
JAIME L. FUSTER
Deputy Attorney General

TIMOTHY M. WEINER
Deputy Attorney General
Attorneys for Respondent

LA2006500617
61365989.doc

CERTIFICATE OF COMPLIANCE

I certify that the attached **Respondent's Reply To Petitioner's Exceptions To The Referee's Report** uses a 13-point Times New Roman font, and contains 6,727 words. This certification is based upon a report generated by the word count feature of the word processing program used by the undersigned.

Dated: September 18, 2014

KAMALA D. HARRIS
Attorney General of California

TIMOTHY M. WEINER
Deputy Attorney General
Attorneys for Respondent

DECLARATION OF SERVICE

Case Name: ***In re Abelino Manriquez On Habeas Corpus*** **No.:** **S141210**

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 September 18, 2014, I served the attached **RESPONDENT'S REPLY TO PETITIONER'S EXCEPTIONS TO THE REFEREE'S REPORT,** by placing a true copy thereof enclosed in a sealed envelope in the internal mail system of the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

PLEASE SEE ATTACHED SERVICE LIST

On September 18, 2014, I caused the original and 10 copies of the **RESPONDENT'S REPLY TO PETITIONER'S EXCEPTIONS TO THE REFEREE'S REPORT,** in this case to be overnight delivered to the California Supreme Court at 350 McAllister Street, First Floor, San Francisco, CA 94102-4797 by OnTrac Delivery Service; Tracking Number B10304250330.

On September 18, 2014, I caused one electronic copy of the **RESPONDENT'S REPLY TO PETITIONER'S EXCEPTIONS TO THE REFEREE'S REPORT,** in this case to be submitted electronically to the California Supreme Court by using the Supreme Court's Electronic Document Submission system.

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 September 18, 2014, at Los Angeles, California.

Consuelo Esparza
Declarant

Signature

SERVICE LIST

Case Name: *In re Abelino Manriquez On Habeas Corpus* **No.:** S141210

John R. Reese, Esq.
Attorney for Amicus Curiae - Gifted Homeschoolers Forum
Bingham McCutchen - San Francisco
Three Embarcadero Center
San Francisco, CA 94111-4067
(Served 2 copies)

Bertha A. Magana
California Appellate Project (SF)
101 Second Street, Suite 600
San Francisco, CA 94105-3672

Office of the State Public Defender
1111 Broadway, 10th Floor
Oakland, CA 94607

Nora Cregan, Esq.
619 Mariposa Avenue
Oakland, CA 94610

Sherri R. Carter
Executive Officer
Los Angeles County Superior Court
111 N. Hill Street
Los Angeles, CA 90012
For delivery to Hon. Robert Armstrong, Judge

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

Joseph Markus
Deputy District Attorney
Brian R. Kelberg
Deputy District Attorney
L.A. County District Attorney's Office
210 West Temple Street, 18th Floor
Los Angeles, CA 90012