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JEFFREY F. ROSEN  
District Attorney  
DAVID BOYD  
Deputy District Attorney  
California State Bar No. 184614  
County Government Center, West Wing  
70 West Hedding Street  
San Jose, California 95110  
Telephone: (408) 792-2968  
  
Attorneys for Plaintiff

(ENDORSED)  
**FILED**  
APR 12 2017  
  
Clerk of the Court  
Superior Court of CA County of Santa Clara  
BY G. GOLDBERSON DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SANTA CLARA

THE PEOPLE OF THE STATE OF CALIFORNIA,	)	Criminal Case No. 213515
	)	
Plaintiff,	)	
	)	
v.	)	DATE: April 10, 2017
	)	DEPT: 40
ANTOLIN GARCIA-TORRES,	)	
	)	PEOPLE'S BRIEF ON <i>SANCHEZ</i>
Defendant.	)	
	)	

The People offer the below because it is relevant to the continued testimony of Marc Taylor as well as defense experts Skip Palenik, Ethan Groves and proposed witness Deborah Davis. Additionally, the issues discussed below will be significant with respect to the proposed expert testimony in the penalty phase and the permissible range of hearsay that can be relayed to the jury in order to support the expert's opinions.

The Supreme Court of California concluded in *People v. Sanchez* (2016) 63 Cal.4th 665 that an expert witness, whether called by the People or the defense, is not generally permitted to relate case-specific facts to explain the basis for their expert opinion because such facts are

1 hearsay.<sup>1/</sup> Prior to *Sanchez*, experts were often permitted to relate case-specific facts to explain the  
2 basis for their expert opinion under the guise that “statements related by experts are not hearsay  
3 because they ‘go only to the basis of [the expert’s] opinion and should not be considered for their  
4 truth.’” *Id.* at 680-681 (quoting *People v. Montiel* (1993) 5 Cal.4th 877, 919)). *Sanchez*  
5 emphatically rejected this subterfuge concluding that case-specific facts are hearsay “because an  
6 expert’s testimony regarding the basis for an opinion *must* be considered for its truth by the jury.”  
7 *Sanchez* at 679 (emphasis in original).

8 “Case-specific facts” are “those relating to the particular events and participants alleged to  
9 have been involved in the case being tried,” [*id.* at 676] and provided four examples to illustrate  
10 what a case-specific fact is and how an expert may testify regarding it.<sup>2/</sup>

11  
12 <sup>1/</sup> “If an expert testifies to case-specific out-of-court statements to explain the bases for his  
13 opinion, those statements are necessarily considered by the jury for their truth, thus rendering them  
14 hearsay. Like any other hearsay evidence, it must be properly admitted through an applicable  
15 hearsay exception.” *Sanchez, supra*, at 684.

16 <sup>2/</sup> (1) That 15 feet of skid marks were measured at an auto accident scene would be  
17 case-specific information. Those facts could be established, for example, through  
18 the testimony of a person who measured the marks. How automobile skid marks are  
19 left on pavement and the fact that a given equation can be used to estimate speed  
20 based on those marks would be background information an expert could provide.  
21 That the car leaving those marks had been traveling at 80 miles per hour when the  
22 brakes were applied would be the proper subject of an expert opinion.

23 (2) That hemorrhaging in the eyes was noted during the autopsy of a suspected  
24 homicide victim would be a case-specific fact. The fact might be established,  
25 among other ways, by the testimony of the autopsy surgeon or other witnesses who  
26 saw the hemorrhaging, or by authenticated photographs depicting it. What  
27 circumstances might cause such hemorrhaging would be background information  
28 an expert could provide. The conclusion to be drawn from the presence of the  
hemorrhaging would be the legitimate subject for expert opinion.

(3) That an associate of the defendant had a diamond tattooed on his arm would be  
a case-specific fact that could be established by a witness who saw the tattoo, or by  
an authenticated photograph. That the diamond is a symbol adopted by a given  
street gang would be background information about which a gang expert could  
testify. The expert could also be allowed to give an opinion that the presence of a  
diamond tattoo shows the person belongs to the gang.

1 The court noted that while an expert “is generally not permitted . . . to *supply* case-specific  
2 facts about which he has no personal knowledge,” the expert can discuss case-specific facts through  
3 hypothetical questions so long as the hypothetical is supported by the evidence.

4 An examiner may ask an expert to assume a certain set of case-specific facts for  
5 which there is independent competent evidence, then ask the expert what  
6 conclusions the expert would draw from those assumed facts. If no competent  
evidence of a case-specific fact has been, or will be, admitted, the expert cannot be  
asked to assume it.

7 *Id.* at 676-677. This of course, is not change in the law prior to *Sanchez*.

8 *Sanchez* makes fundamental changes to state evidentiary rules regarding hearsay and expert  
9 testimony which apply uniformly to both sides. “When *any* expert relates to the jury case-specific  
10 out-of-court statements, and treats the content of those statements as true and accurate to support  
11 the expert’s opinion, the statements are hearsay.” *Id.* at 686 (emphasis added). Another aspect of  
12 *Sanchez* dealing with the Confrontation Clause is an extra hurdle for the prosecution if there is a  
13 right of confrontation and the hearsay is testimonial in nature.<sup>3/</sup>

14 DATED: April 11, 2017

15 Respectfully submitted,  
16 JEFFREY F. ROSEN  
17 District Attorney

18 DAVID R. BOYD  
19 Deputy District Attorney

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20 (4) That an adult party to a lawsuit suffered a serious head injury at age four would  
21 be a case-specific fact. The fact could be established, *inter alia*, by a witness who  
22 saw the injury sustained, by a doctor who treated it, or by diagnostic medical  
23 records. How such an injury might be caused, or its potential long-term effects,  
24 would be background information an expert might provide. That the party was still  
suffering from the effects of the injury and its manifestations would be the proper  
subject of the expert's opinion.

25 *Id.* at 677.

26 <sup>3/</sup> “If the case is one in which a prosecution expert seeks to relate *testimonial* hearsay, there  
27 is a confrontation clause violation unless (1) there is a showing of unavailability and (2) the  
28 defendant had a prior opportunity for cross-examination, or forfeited that right by wrongdoing.”  
*Id.* at 686 (emphasis in original).