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FILED
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DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY _____ 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,)
)
Plaintiff,)
)
v.)
)
ANTOLIN GARCIA-TORRES,)
)
Defendant.)
_____)

Criminal Case No. 213515

MOTION TO PERMIT COUNSEL
VOIR DIRE ON SPECIFIC POINTS
OF LAW

The People request that the Court permit inquiry into the juror's feelings about, and willingness to follow, specific points of law. Such examination is permitted and indeed, numerous examples can be found in the questionnaire. This briefing is provided in case there are objections from either side during jury voir dire.

In *People v. Williams* (1981) 29 Cal.3d 392, defense counsel attempted to ask prospective jurors "whether they would willingly follow an instruction to the the effect that a person has a right to resist an aggressor by using necessary force and has no duty to retreat." *Id.* at 398. The trial court refused and the Supreme Court reversed. *Id.* at 415. Citing *Williams*, the Supreme Court has stated: "the court must permit questioning about legal doctrines that are material to the trial and controversial in the sense that they are likely to invoke strong feelings and resistance to their application." *People v. Johnson* (1989) 47 Cal.3d 1194, 1224-1225.

1 In *People v. Noguera* (1992) 4 Cal.4th 599, 645, the defendant objected to the prosecution's
2 questions noted below:

- 3 1. "the fact that a capital defendant was '18 or 19 at the time of the killing ... [would]
4 automatically cause you to vote for the lesser punishment of life imprisonment
5 without possibility of parole?"
- 6 2. "whether 'you would be able to consider imposing the death penalty ... if we have
7 one victim as opposed to requiring that the defendant kill two or more people?"

8 *Id.* at 645. Despite the changes as a result of Proposition 115, the Supreme Court found such
9 questions permissible under both the new rule (Prop 115) as well as the previous rule. "[T]he
10 prosecutor's questions were entirely proper because they were directly relevant to whether a juror
11 would be subject to a challenge for cause." *Id.* at 646.

12 Regardless of the narrowing of the purpose of criminal voir dire due to the passage of
13 Proposition 115, it is exploration of those strong feelings and resistance to the application of
14 specific and controversial points of law (e.g. drug laws, felony murder or implied malice murder)
15 that requires both counsel be given the latitude to inquire about specific points of law applicable
16 to this case. Without such freedom, the People and the defendant will be unable to explore the
17 strong feelings of our Santa Clara County jurors who typically have strong feelings about the
18 operation of the criminal justice system including what they feel the law should be if it does not
19 conform to their preferences. Exploration of such strong feelings is necessary to accomplish the
20 goal of attorney voir dire in criminal cases, "in aid of the exercise of challenges for cause." CCP
21 223.

22 DATED: November 7, 2016

23 Respectfully submitted,

24 Jeffrey F. Rosen
25 District Attorney

26 
27 DAVID R. BOYD
28 Deputy District Attorney