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In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA, **Plaintiff,** **v.** **PEDRO RANGEL, JR.,** **Defendant.**	**CAPITAL CASE** Case No. S076785

Madera County Superior Court Case No. 13413
The Honorable John W. DeGroot, Judge

REPLY TO APPELLANT'S SUPPLEMENTAL BRIEF

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I. AS PREVIOUSLY DISCUSSED IN THE RESPONDENT'S BRIEF, THE TRIAL COURT DID NOT HAVE A DUTY TO INSTRUCT THE JURY ON ACCESSORY AS A LESSER-RELATED OFFENSE TO MURDER

In his supplemental brief, appellant has not raised any new legal issues for this Court to consider. Instead, appellant reasserts the same issue that he previously raised in Argument XI of his opening brief, claiming that the trial court erred by denying the defense's request for an instruction on accessory as a lesser-related offense to murder. Specifically, appellant realleges that in *People v. Birks* (1998) 19 Cal.4th 108 (*Birks*), this Court merely held that while instructions on lesser-related offenses are no longer mandatory, a trial court still retains the authority and discretion to consider and give such an instruction. (AOB 178-197; Supp. AOB 1-11.) As justification for reasserting the same argument, appellant contends that this Court has recently "take[n] the *Birks* opinion further than it actually goes," thereby allegedly "giv[ing] the incorrect impression that instructions on lesser-related offenses are necessarily foreclosed by the *Birks* decision." (Supp. AOB at pp. 7-8.) Appellant is incorrect.

As previously explained in the respondent's brief, appellant misinterprets the holding in *Birks*, wherein this Court "overruled the holding of [*People v. Geiger* (1984) 35 Cal.3d 510] that a defendant's unilateral request for a related-offense instruction must be honored over the prosecution's objection." (*People v. Rundle* (2008) 43 Cal.4th 76, 147.) This Court summarized the underlying reasons for its decision as follows:

> On careful reflection, we now agree that *Geiger* represents an unwarranted extension of the right to instructions on lesser offenses. *Geiger's* rationale has since been expressly repudiated for federal purposes by the United States Supreme Court, and it continues to find little support in other jurisdictions. *The Geiger rule can be unfair to the prosecution, and actually promotes*

> *inaccurate factfinding, because it gives the defendant a superior trial right to seek and obtain conviction for a lesser uncharged offense whose elements the prosecution has neither pled nor sought to prove*. Moreover, serious questions arise whether the holding of *Geiger*, ostensibly based on the due process clause of the California Constitution, can be reconciled with other provisions of the same charter. By according the defendant the power to insist, over the prosecution's objection, that an uncharged, nonincluded offense be placed before the jury, *the Geiger rule may usurp the prosecution's exclusive charging discretion*, and may therefore violate the Constitution's separation of powers clause.

(*Birks, supra*, 19 Cal.4th at pp. 112-113, italics added.)

As this Court emphasized, its ruling was guided by the important "concern for mutual fairness between defense and prosecution. . . ." (*Birks, supra*, 19 Cal.4th at p. 126.) To that end, this Court examined the impact of the *Geiger* rule on the parties and determined that the parties were not treated equally:

> The *Geiger* rule contravenes the principle of mutual fairness by giving the defendant substantially greater rights either to require, or to prevent, the consideration of lesser nonincluded offenses than are accorded to the People, the party specifically responsible for determining the charges.

(*Ibid.*) Thus, the Court held that instructions for lesser-related offenses should be given only where both parties agree to such instructions. (*Id.* at p. 137.)

Despite appellant's contention to the contrary, the holding in *Birks* simply does not provide a trial court with the authority to instruct on lesser-related offenses when the prosecution objects to such instructions. (*People v. Taylor* (2010) 48 Cal.4th 574, 622; *People v. Jennings* (2010) 50 Cal.4th 616, 668.) In *Taylor*, this Court summarized its holding in *Birks* as follows: "In *Birks*, we held that *instruction on a lesser related offense is proper only upon the mutual assent of the parties*. [Citation.] Here, because the

prosecutor objected to instruction on the crime of trespass, the trial court correctly denied defendant's request." (*Ibid.*, italics added) Subsequently, this Court reemphasized the same point in *Jennings* as follows:

> To the extent defendant contends the accessory instruction was required because the crime of being an accessory after the fact is a lesser related offense of murder, his claim fails as well. *A defendant has no right to instructions on lesser related offenses, even if he or she requests the instruction and it would have been supported by substantial evidence, because California law does not permit a court to instruct concerning an uncharged lesser related crime unless agreed to by both parties.* [Citations.] Therefore, the trial court was not required to instruct the jury on its own motion concerning the lesser related offense of being an accessory after the fact, whether or not there was substantial evidence supporting a theory of accessory liability.

(*People v. Jennings, supra*, 50 Cal.4th at p. 668, italics added.) Thus, appellant's interpretation of *Birks* is incorrect, and his claim is, therefore, without merit.

Furthermore, as set forth more fully in the respondent's brief, the trial court was bound by the *Birks* opinion and, thus, had to reject appellant's request for jury instructions on the lesser-related offense of being an accessory. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455 ["Under the doctrine of *stare decisis*, all tribunals exercising inferior jurisdiction are required to follow decisions of courts exercising superior jurisdiction"].) Thus, appellant's claim is without merit and should be rejected on this basis as well.

CONCLUSION

Accordingly, respondent respectfully requests that the judgment be affirmed.

Dated: February 17, 2012

Respectfully submitted,

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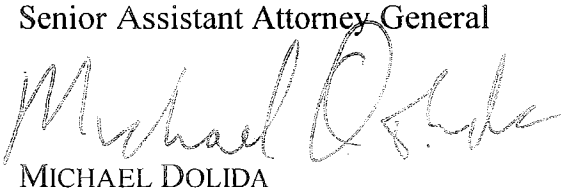

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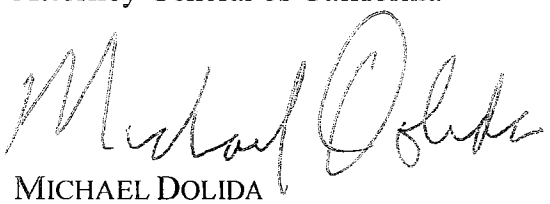
CERTIFICATE OF COMPLIANCE

I certify that the attached **REPLY TO APPELLANT'S SUPPLEMENTAL BRIEF** uses a 13 point Times New Roman font and contains 892 words.

Dated: February 17, 2012

KAMALA D. HARRIS
Attorney General of California



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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v. Rangel**
No.: **S076785**

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.

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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 February 17, 2012, at Sacramento, California.

_____
Signature

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