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In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

PAUL NATHAN HENDERSON,

Defendant and Appellant.

CAPITAL CASE

Case No. S098318

Riverside County
 Superior Court, Case
 No. INF027515

OPPOSITION TO APPELLANT’S ADDITIONAL REQUEST FOR JUDICIAL NOTICE

On April 3, 2020, appellant Paul Nathan Henderson filed an Additional Request for Judicial Notice in this Court. Pursuant to Evidence Code section 452, subdivisions (c) and (h), Henderson requests that this Court take judicial notice of a 2018 death certificate and obituary for the Honorable Thomas N. Douglass, Jr., who presided over Henderson’s trial; a

webpage on the California State Bar website for trial prosecutor Dianna Carter, which shows inactive status since 2015 and lists a Mississippi address for her; and a webpage on the Mississippi State Bar website which indicates that Dianna Carter has not been admitted to practice in Mississippi. Henderson states that his request is made “[i]n connection with the arguments made in Section V of Appellant’s Opening Brief, at pp. 110-137, and Section V of Appellant’s Reply Brief, at pp. 24-49,” without any further explanation.

Whereas Evidence Code section 451 specifies matters which must be judicially noticed, Evidence Code section 452 provides for matters which may be judicially noticed. Under subdivision (h) of Evidence Code section 452, courts may take judicial notice of “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” Although the matters submitted for notice by Henderson appear to fall within Evidence Code section 452, subdivision (h), he makes no showing of their relevance.

“Even if a matter is a proper subject of judicial notice, it must still be *relevant*.” (*People v. Payton* (1992) 3 Cal.4th 1050, 1073 [emphasis in original].) It is “a precondition to the taking of judicial notice in either its mandatory or permissive form” that “any matter to be judicially noticed must be relevant to a material issue.” (*People ex rel. Lockyer v. Shamrock Foods Company* (2000) 24 Cal.4th 415, 422, fn. 2.) Henderson’s request for judicial notice fails to satisfy this precondition.

In Claim V of his Opening and Reply Briefs, Henderson contends that the trial court erred in finding no prima facie case of discrimination under *Batson v. Kentucky* (1986) 476 U.S. 79, and *People v. Wheeler* (1978) 22 Cal.3d 258, where the prosecutor exercised a peremptory challenge against an African-American woman. However, Henderson does

not explain why the death of the trial judge or the current inactive status of the trial prosecutor are materially relevant to this claim. It is not the burden of this Court or respondent to guess or search for the relevance of the matters for which judicial notice has been requested.

Indeed, the requested matters do not appear to be relevant to any material issue in Claim V. The appellate record upon which this Court will decide the claim remains the same regardless of the availability of the trial judge. Should this Court find a retrospective hearing of assistance in resolving Claim V, any superior court judge would be qualified to entertain and make a reasoned and sincere evaluation of the prosecutor's reasons for exercising the peremptory challenge. (See *People v. Johnson* (2006) 38 Cal.4th 1096, 1102 [that a different judge might have to hear the matter "does not make a limited remand impossible" since the judge "will have the trial record, including the jury questionnaires, to assist in conducting the second and third *Batson* steps"].) The mere fact that the prosecutor is not currently practicing law in California or Mississippi does not mean that she is unavailable to participate in any retrospective hearing.

Where the proponent of a motion for judicial notice fails to explain the relevance of the requested matters, the motion should be denied. (See *Bernstein v. State Bar of California* (1990) 50 Cal.3d 221, 226, fn. 3.) Accordingly, Henderson's Additional Request for Judicial Notice should be denied.

Dated: April 14, 2020

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached Opposition To Appellant's Additional Request For Judicial Notice uses a 13 point Times New Roman font and contains 829 words.

Dated: April 14, 2020

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STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

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Supreme Court of California

Case Name: **PEOPLE v. HENDERSON (PAUL NATHAN)**

Case Number: **S098318**

Lower Court Case Number:

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4/14/2020

Date

/s/Lidia Hernandez

Signature

Jakob, Ronald (131763)

Last Name, First Name (PNum)

Department of Justice, Office of the Attorney General-San Diego

Law Firm