

COPY

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SUPREME COURT
FILED

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Frank A. McGuire Clerk

Deputy

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

DONTE LAMONT MCDANIEL,

Defendant and Appellant.

No. S171393

Los Angeles
Superior Ct. No.
TA074274

MOTION FOR JUDICIAL NOTICE

DEATH PENALTY

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MOTION FOR JUDICIAL NOTICE

TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Appellant Donte Lamont McDaniel, through his attorney, the State Public Defender, requests that this Court take judicial notice pursuant to

Evidence Code sections 452, subdivision (d), and 459, subdivision (a) of the *Batson/Wheeler*¹ proceedings in co-defendant Kai Harris's separately tried capital case. (See *People v. Kai Harris*, Los Angeles County Superior Court Case No. TA74314 at 10 CT 2743-2744, 2754-2755, and 11 RT 1959-2172.)² The prosecutor who prosecuted both appellant and Mr. Harris was Los Angeles County Deputy District Attorney Halim Dhanidina. In both appellant's case and Harris's, Mr. Dhanidina was found to have violated *Batson/Wheeler*. In Mr. Harris's case, the court declared a mistrial and a new jury was empaneled. Following the retrial, Mr. Harris received the death penalty. Mr. Harris's automatic appeal is pending before this Court in *People v. Harris*, No. S178239.

The *Batson/Wheeler* proceedings in Mr. Harris's case are relevant to the Court's consideration of appellant's Argument I ("The Prosecutor Violated *Batson* and *Wheeler* in His Peremptory Challenge of Prospective Juror No. 28") in that they support appellant's argument that Mr. Dhanidina's decision to strike an African-American prospective juror from appellant's jury was improperly influenced by race.

¹ *Batson v. Kentucky* (1986) 476 U.S. 79; *People v. Wheeler* (1978) 22 Cal.3d 258.

² "CT" refers to the Clerk's Transcript in Mr. Harris's case, and "RT" refers to the Reporter's transcript in Mr. Harris's case. Copies of the relevant CT and RT pages in Mr. Harris's case are attached to this motion as Exhibit A.

Appellant's request for judicial notice is based on the attached Memorandum of Points and Authorities and the files and records in this case.

Dated: August 6, 2015

Respectfully Submitted,

MICHAEL J. HERSEK
State Public Defender

A handwritten signature in black ink, appearing to read "P. + Uu", positioned above the typed names of the attorneys.

PETER R. SILTEN
Supervising Deputy State Public Defender
ELIAS BATCHELDER
Deputy State Public Defender

Attorneys for Appellant

MEMORANDUM OF POINTS AND AUTHORITIES

I. THE TRANSCRIPTS AND MINUTE ORDER OF CO-DEFENDANT'S TRIAL ARE PROPER SUBJECTS FOR JUDICIAL NOTICE

Evidence Code section 459, subdivision (a) provides, in relevant part, that the “reviewing court . . . may take judicial notice of any matter specified in Section 452.” Among the items set forth in Evidence Code section 452 which may be judicially noticed are: “(c) official acts of . . . judicial departments of . . . any state of the United States and (d) “records of (1) any court of this state” (Evid. Code, § 452, subds. (c) & (d)(1).) Evidence Code section 453 converts permissive judicial notice into mandatory judicial notice whenever a party seeking judicial notice has advised each adverse party of the items sought to be judicially noticed and provided them with sufficient information concerning the items sought to be judicially noticed.

Attached to this request is one volume of reporter's transcripts, and related minute orders, from the case of *People v. Kai Harris*, Los Angeles County Superior Court Case No. TA74314, an automatic appeal which is currently pending before this Court. (See attached Exh. A.)

The documents listed above are “records” of a court of the state of California, as defined by Evidence Code section 452, subdivision (d)(1). In addition, the minute orders appellant asks to be judicially noticed reflect “official acts” as defined by Evidence Code section 452, subdivision (c). A copy of this request has been served on each adverse party. Accordingly, appellant submits that the requested items may be judicially noticed by this court pursuant to section 459. (See *People v. Howard* (2010) 51 Cal.4th 15, 43, fn. 21 [granting motion for judicial notice transcripts in co-defendant's

trial].)

II. THE DOCUMENTS ARE RELEVANT TO APPELLANT'S CLAIM OF *BATSON/WHEELER* ERROR

Even if a matter is a proper subject of judicial notice, it must still be relevant. (See e.g., *People v. Payton* (1992) 3 Cal.4th 1050, 1073.) The documents at issue demonstrate that a mistrial due to a *Batson/Wheeler* violation was granted in the co-defendant's penalty phase retrial within months of the alleged *Batson/Wheeler* violation at issue in appellant's case. Because the records show that the same prosecutor violated *Batson/Wheeler* twice within the span of several months, these documents are unquestionably relevant.

Under *Batson*, pattern and practice evidence has always been admissible to assist in the showing of discrimination required to make out a claim. (See *Batson*, *supra*, 476 U.S. at p. 80 [inference of discrimination could be supported by showing that the prosecutor "in case after case . . . is responsible for the removal of Negroes who have been selected as qualified jurors"]; see also *Miller-El v. Cockrell* (2003) 537 U.S. 322, 346-347 [historical evidence of discrimination by the prosecutor's office "is relevant to the extent it casts doubt on the legitimacy of the motives underlying the State's actions in petitioner's case"].)

The evidence in Mr. Harris's case is probative even though it arose shortly after appellant's trial. (See *Williams v. Woodford* (9th Cir. 2005) 396 F.3d 1059, 1064 (Rawlinson, J., dis. from denial of reh'g. en banc) [arguing that evidence that prosecutor "continued to engage in this reprehensible and unconstitutional practice [of *Batson* violations] after Williams' trial" should have been considered in support of claimed discrimination]; see also *U.S. v. Hughes* (8th Cir. 1988) 864 F.2d 78, 79

[judicial notice taken of the frequency of the charge of systematic exclusion of black jurors in the Eastern District of Missouri in criminal cases]; *Riley v. Taylor* (3d Cir. 2001) 277 F.3d 261, 280) [office's strikes in other cases "within one year" of trial relevant to *Batson* inquiry].)

As this Court has recently recognized, the issue in *Batson/Wheeler* cases is not simply whether the trial court erred in not finding discrimination, but whether the public's "confidence in the rule of law" suffers by an unduly rigid method of review that – by ignoring highly relevant evidence – permits discrimination to occur without consequence. (See *People v. Scott* (2015) 61 Cal.4th 363, 390 [allowing for consideration of discriminatory statements made by the prosecutor even if made subsequent to the trial court's non-erroneous denial of prima facie case].) To ensure that the interests of justice are served, this Court has not hesitated to take into account evidence that was not necessarily placed before the trial court by the parties. (See *People v. Lenix* (2008) 44 Cal.4th 602, 622 [comparative analysis must be undertaken by reviewing court for the first time on appeal even if not presented to the trial court].)

Looking to the Title VII context from which the *Batson/Wheeler* doctrine derives, courts frequently take into consideration discriminatory conduct that post-dates the alleged act at issue. (See, e.g., *Ryder v. Westinghouse Elec. Corp.* (3d Cir.1997) 128 F.3d 128, 132–133 [age-discriminatory comments made by CEO and other supervisors one year after plaintiff's termination were relevant to show managerial attitudes]; *Ansell v. Green Acres Contracting Co.* (3d Cir.2003) 347 F.3d 515, 524–525 [subsequent discriminatory conduct may be relevant to finding of discrimination].)

In appellant's case the prosecutor claimed that, because the victims

and many of the prosecution witnesses were black, he could have no motivation to excuse black jurors. (5 RT 1076-1077.) Obviously, there are invidious stereotypes other than the existence of shared racial identity which may tempt prosecutors to allow race to infect their decision-making. (See, e.g., *People v. Williams* (2013) 56 Cal.4th 630, 652 [trial court espoused stereotype that “[b]lack women are very reluctant to impose the death penalty”].) If nothing else, the fact that the same prosecutor – in case involving the same crimes, with the same African American victims and witnesses – was found to have violated the tenets of *Batson/Wheeler* undermines his protestations that race could not have possibly affected his decisions. In short, the instant documents subject to the request for judicial notice are relevant to appellant’s claim. Therefore, the motion should be granted.

CONCLUSION

For each of the reasons set forth herein, this Court should grant appellant’s motion for judicial notice.

Dated: August 6, 2015

Respectfully submitted,

MICHAEL J. HERSEK
State Public Defender



PETER R. SILTEN
Supervising Deputy State Public Defender
ELIAS BATCHELDER
Deputy State Public Defender

Attorneys for Appellant

002743

MINUTE ORDER
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE PRINTED: 02/23/09

CASE NO. TA074314

THE PEOPLE OF THE STATE OF CALIFORNIA
VS:
DEFENDANT 02: KAI HARRIS

INFORMATION FILED ON 08/02/04.

COUNT 01: 187(A) PC FEL - MURDER.
COUNT 02: 187(A) PC FEL - MURDER.
COUNT 03: 664-187(A) PC FEL - ATTEMPTED MURDER.
COUNT 04: 664-187(A) PC FEL - ATTEMPTED MURDER.
COUNT 05: 215(A) PC FEL - CARJACKING.

ON 02/23/09 AT 930 AM IN CENTRAL DISTRICT DEPT 108

CASE CALLED FOR JURY TRIAL IN PROGRESS

PARTIES: MICHAEL JOHNSON (JUDGE) DONNA PEALE (CLERK)
SABA MCKINLEY (REP) HALIM DHANIDINA (DA)
LORA JOHNSON (REP2)

DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY JOHN B SCHMOCKER BAR PANEL ATTORNEY

BAIL SET AT NO BAIL

MATTER IS CALLED FOR RE-TRIAL OF DEATH PENALTY PHASE.

VOIR DIRE COMMENCES WITH PANEL A.

OUT OF THE PRESENCE OF THE JURY:

DEFENSE WITNESSES ARTISIA PRICE, JAMEKA GLASPIE, CARL WILLIAMS JR. AND MARTELIS DAVIS ARE PLACED ON CALL TO THE DEFENSE.

IN THE PRESENCE OF THE JURY:

VOIR DIRE RESUMES.

DEFENSE REQUEST A WHEELER/BATTEN MOTION.

PAGE NO. 1

JURY TRIAL IN PROGRESS
HEARING DATE: 02/23/09

002744

CASE NO. TA074314
DEF NO. 02

DATE PRINTED 02/23/09

JUROR NUMBER P9765 IS REQUESTED TO RETURN ON WEDNESDAY AT
9:00 A.M. WITH ALL REMAINING JURORS WHO ARE ADMONISHED.

PARTIES ARGUE THE WHEELER/BATTEN MOTION. THE COURT GRANTS THE
MOTION. THE PEOPLE REQUEST THE COURT TO WITH HOLD THE RULING
UNTIL TOMORROW AT 1:30 P.M. WHEN THE PEOPLE WILL SUBMIT CASE
LAW AND FURTHER ARGUMENT.

COURT ORDERS AND FINDINGS:

-THE COURT ORDERS THE DEFENDANT TO APPEAR ON THE NEXT COURT DATE.

NEXT SCHEDULED EVENT:

02/24/09 130 PM JURY TRIAL IN PROGRESS. DIST CENTRAL DISTRICT DEPT 108

CUSTODY STATUS: DEFENDANT REMANDED

002754

MINUTE ORDER
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE PRINTED: 02/25/09

CASE NO. TA074314

THE PEOPLE OF THE STATE OF CALIFORNIA
VS.
DEFENDANT 02: KAI HARRIS

INFORMATION FILED ON 08/02/04.

COUNT 01: 187(A) PC FEL - MURDER.
COUNT 02: 187(A) PC FEL - MURDER.
COUNT 03: 654-187(A) PC FEL - ATTEMPTED MURDER.
COUNT 04: 654-187(A) PC FEL - ATTEMPTED MURDER.
COUNT 05: 215(A) PC FEL - CARJACKING.

ON 02/24/09 AT 130 PM IN CENTRAL DISTRICT DEPT 108

CASE CALLED FOR JURY TRIAL IN PROGRESS

PARTIES: MICHAEL JOHNSON (JUDGE) DONNA PEALE (CLERK)
LORA JOHNSON (REP) HALIM DHANIDINA (DA)

DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY JOHN B SCHMOCKER BAR PANEL
ATTORNEY

BAIL SET AT NO BAIL

-DDA HALIM DHANIDINA **DEATH PENALTY PHASE
MOTION IN LIMINE REGARDING AGGRAVATING FACTOR OF 3/22/94.

MARK THARP IS SWORN AND TESTIFIES ON BEHALF OF THE PEOPLE.

PARTIES ARGUE THE MOTION.

THE COURT RULES THE SEARCH MAY BE ADMITTED AS REFLECTED IN THE
OFFICIAL NOTES OF THE COURT REPORTER.

THE PEOPLE ARGUE FOR THE COURT NOT TO DECLARE A MISTRIAL
BASED UPON WHEELER/BATSON.
THE COURT AFTER REVIEWING THE PEOPLE'S MOTION AND HEARING FROM
DEFENSE COUNSEL DECLARES A MISTRIAL.

MISTRIAL MOTION IS GRANTED BASED ON THE WAYING OF EVIDENCE.

PAGE NO. 1

JURY TRIAL IN PROGRESS
HEARING DATE: 02/24/09

002755

CASE NO. TA074314
DEF NO. 02

DATE PRINTED 02/25/09

THE COURT DETERMINES THE DEFENSE SUSTAINED ITS BURDEN OF PROOF UNDER BATSON. THE COURT DOES NOT FIND ANY KIND OF INVIVIOUS CONDUCT OR OTHER MISCONDUCT BY THE PROSECUTION, IT'S SIMPLY A FACTOR OF WAYING THE EVIDENCE.

* PARTIES ALL AGREE THAT ALL QUESTIONNAIRES AND SIGNATURE PAGES FROM THE QUESTIONNAIRES MAY BE DESTROYED.

* PARTIES AGREE THAT TRIAL WILL START ON 8/17/09 AS 8 OF 10.

* FURTHER TRIAL READINESS IS SET FOR 6/5/09.

* JUROR INFORMATION SHEETS FROM PANEL A AND B ARE ORDERED SEALED AND PLACED IN THE COURT FILE.

* JURORS ORDERED TO RETURN ON 2/25/09 WILL BE RELEASED OFF THE RECORD WITHOUT THE DEFENDANT OR COUNSEL PRESENT.

COURT ORDERS AND FINDINGS:

-THE COURT DECLARES A MISTRIAL.

-THE COURT ORDERS THE DEFENDANT TO APPEAR ON THE NEXT COURT DATE.

WAIVES STATUTORY TIME.

NEXT SCHEDULED EVENT:
06/05/09 830 AM JURY TRIAL (RE-TRIAL) DIST CENTRAL DISTRICT DEPT 108

CUSTODY STATUS: DEFENDANT REMANDED

1 CASE NUMBER: TA074314
2 CASE NAME: PEOPLE VS. KAI HARRIS
3 LOS ANGELES, CALIFORNIA MONDAY; FEBRUARY 23, 2009
4 DEPARTMENT NO. 108 HON. MICHAEL JOHNSON, JUDGE
5 REPORTER: SABA MC KINLEY, CSR NO. 9051
6 TIME: 9:55 A.M.

7

8 APPEARANCES:

9 DEFENDANT HARRIS, PRESENT WITH
10 COUNSEL, JOHN SCHMOCKER, ATTORNEY
11 AT LAW AND LYNDA VITALE, ATTORNEY
12 AT LAW; HALIM DHANIDINA, DEPUTY
13 DISTRICT ATTORNEY, REPRESENTING
14 THE PEOPLE OF THE STATE OF
15 CALIFORNIA.

16

17 (THE FOLLOWING PROCEEDINGS WERE
18 HELD IN OPEN COURT OUTSIDE THE
19 PRESENCE OF THE PROSPECTIVE
20 JURORS:)

21

22 THE COURT: PEOPLE VS. HARRIS.
23 THE DEFENDANT AND COUNSEL PRESENT.
24 MR. SCHMOCKER, YOU HAVE SOME WITNESSES?
25 MR. SCHMOCKER: YES, I DO, YOUR HONOR.

26

27 THE FIRST ONE I'D LIKE ORDERED BACK WOULD BE
28 ARTRISIA PRICE. SHE'S PRESENT HERE IN THE PINK SUIT.
THIS IS JAMEKA GLASPIE STANDING BY HER.

1 THE COURT: WHEN WOULD YOU LIKE THEM -- WOULD
2 YOU LIKE THEM ORDERED BACK OR TO BE PLACED ON CALL OR
3 WHAT'S YOUR PLEASURE?

4 MR. SCHMOCKER: I'D LIKE THEM TO BE PLACED ON
5 CALL -- ORDERED BACK ON CALL.

6 THE COURT: FOR YOUR CONVENIENCE, IT'S NOT
7 NECESSARY FOR YOU TO WAIT IN THE COURTHOUSE UNTIL YOU'RE
8 CALLED AS A WITNESS, BUT YOU WILL BE ON CALL, WHICH
9 MEANS THAT ONCE MR. SCHMOCKER OR ANOTHER MEMBER OF THE
10 DEFENSE TEAM CALLS YOU AND TELLS YOU TO COME TO THE
11 COURTHOUSE, YOU MUST AGREE TO BE HERE AT THE TIME THEY
12 TELL YOU.

13 DO YOU BOTH AGREE TO THAT?

14 MS. PRICE: YES.

15 MS. GLASPIE: YES.

16 THE COURT: THEN YOU'RE FREE TO GO SUBJECT TO
17 THAT UNDERSTANDING.

18 MR. SCHMOCKER: I ALSO HAVE A NUMBER OF OTHER
19 WITNESSES. ONE IS CARL WILLIAMS, JR.

20 MR. DAVIS: MARTELIS DAVIS.

21 MR. SCHMOCKER: IF THE REST OF THEM COULD BE
22 ORDERED BACK, YOUR HONOR.

23 THE COURT: FOR THE -- FOR THOSE OF YOU WHO ARE
24 NOT (SIC) IN THE COURTROOM, IT'S THE SAME UNDERSTANDING,
25 THAT IT'S FOR YOUR CONVENIENCE. IT'S NOT NECESSARY FOR
26 YOU TO WAIT OUT IN THE HALLWAY OR TO EVEN BE IN THE
27 COURTHOUSE UNTIL YOU'RE CALLED AS A WITNESS, BUT YOU
28 MUST AGREE THAT WHEN MR. SCHMOCKER OR ANOTHER MEMBER OF

1 THE DEFENSE TEAM CALLS YOU AND TELLS YOU TO COME BACK TO
2 THIS COURTROOM, THEN YOU'LL BE HERE AT THE TIME THEY
3 TELL YOU.

4 DO YOU EACH AGREE TO DO THAT?

5 AN UNIDENTIFIED WITNESS: YES.

6 AN UNIDENTIFIED WITNESS: YES.

7 AN UNIDENTIFIED WITNESS: YES.

8 THE COURT: THEN, YOU'RE FREE TO GO SUBJECT TO
9 THAT UNDERSTANDING.

10 MR. SCHMOCKER: THANK YOU VERY MUCH,
11 YOUR HONOR.

12 THE COURT: ARE WE READY TO ADDRESS THE
13 STIPULATIONS?

14 MR. DHANIDINA: I THINK SO.

15 MR. SCHMOCKER: WE'RE READY, YOUR HONOR.

16 THE COURT: WHO'S GOING TO STATE THEM?

17 MR. DHANIDINA: I WILL.

18 THE COURT: LET THE RECORD REFLECT THAT BOTH
19 SIDES EXCHANGED PROPOSED JURORS TO BE EXCUSED BASED UPON
20 THE WRITTEN QUESTIONNAIRES, AND HAVING REVIEWED THEIR
21 PROPOSALS, THE PARTIES ARE READY TO STIPULATE.

22 MR. DHANIDINA: THANK YOU. IS THE NUMBER OKAY
23 OR YOU WANT THE INITIAL AND THE NUMBER?

24 THE COURT: IT WOULD BE EASIER WITH INITIAL.

25 MR. DHANIDINA: OKAY. THE FOLLOWING JURORS ARE
26 JURORS THAT THE PEOPLE AND THE DEFENSE HAVE STIPULATED
27 TO EXCUSING FOR CAUSE IN THIS CASE:

28 G-4661.

1 THE COURT: LET'S GO SLOWLY HERE.
2 MR. DHANIDINA: OKAY.
3 THE COURT: GO AHEAD.
4 MR. DHANIDINA: G-3083.
5 THE COURT: NEXT.
6 MR. DHANIDINA: 0-1355.
7 THE COURT: NEXT.
8 MR. DHANIDINA: Z-1993.
9 THE COURT: NEXT.
10 MR. DHANIDINA: H-2186.
11 THE COURT: NEXT.
12 MR. DHANIDINA: S-4222.
13 THE COURT: NEXT.
14 MR. DHANIDINA: V-3237.
15 THE COURT: NEXT.
16 MR. DHANIDINA: N-1951.
17 THE COURT: NEXT.
18 MR. DHANIDINA: T-0206.
19 THE COURT: I'M SORRY. JUST A SECOND HERE.
20 MR. DHANIDINA: THAT'S ALL RIGHT.
21 THE COURT: T-0206.
22 NEXT.
23 MR. DHANIDINA: YES.
24 MR. SCHMOCKER: IT'S ON THE FRONT PAGE OF
25 THE -- FIRST PAGE, SECOND GROUP FROM THE BOTTOM. SECOND
26 ONE.
27 THE COURT: I FOUND IT. I'M READY FOR THE
28 NEXT.

1 MR. SCHMOCKER: I APOLOGIZE.
2 MR. DHANIDINA: M-6314.
3 THE COURT: YES.
4 MR. DHANIDINA: B-7054.
5 THE COURT: YES.
6 MR. DHANIDINA: G-7991.
7 THE COURT: YES.
8 MR. DHANIDINA: N-2217.
9 THE COURT: YES.
10 MR. DHANIDINA: S-6634.
11 THE COURT: YES.
12 MR. DHANIDINA: B-4817.
13 THE COURT: YES.
14 MR. DHANIDINA: P-0059.
15 THE COURT: YES.
16 MR. DHANIDINA: P-7436.
17 THE COURT: YES.
18 MR. DHANIDINA: R-0140.
19 THE COURT: YES.
20 MR. DHANIDINA: P-9597.
21 THE COURT: YES.
22 MR. DHANIDINA: B-8629.
23 THE COURT: YES.
24 MR. DHANIDINA: H-5246.
25 THE COURT: YES.
26 MR. DHANIDINA: D-3343.
27 THE COURT: YES.
28 MR. DHANIDINA: M-8295.

1 THE COURT: YES.

2 MR. DHANIDINA: AND V-3635.

3 THE COURT: BOTH SIDES AGREE TO THE EXCUSAL OF
4 THESE JURORS FOR CAUSE?

5 MR. DHANIDINA: YES.

6 MR. SCHMOCKER: YES.

7 THE COURT: THERE WAS ONE OTHER JUROR THAT I
8 HAD HAD AN ISSUE WITH, AND THAT'S S-8640, WHO WAS ON THE
9 SECOND PAGE NEAR THE BOTTOM.

10 MR. DHANIDINA: DO I NEED TO READ THAT JUROR'S
11 NAME?

12 THE COURT: SHE IS PREGNANT.

13 MR. DHANIDINA: YOU KNOW WHAT, THAT WAS A NAME
14 I INTENDED TO READ. I MAY HAVE SKIPPED OVER IT.

15 THE COURT: I DIDN'T HEAR IT.

16 THE CLERK: I DIDN'T EITHER.

17 MR. DHANIDINA: THAT'S ONE WE AGREED TO ALSO.

18 MR. SCHMOCKER: I'M LOOKING FOR THAT ONE RIGHT
19 NOW.

20 THE COURT: IT'S ON PAGE 2, THE SECOND GROUP
21 FROM THE BOTTOM.

22 MR. DHANIDINA: THAT'S RIGHT.

23 THE COURT: IN THE MIDDLE, S-8640.

24 HER --

25 MR. SCHMOCKER: YES. WE HAVE THAT SCRATCHED
26 OUT.

27 THE COURT: HER CONTENT IS NOT REMARKABLE, BUT
28 SHE'S EIGHT-AND-A-HALF WEEKS (SIC) PREGNANT AND IS DUE

1 ON MARCH 28 AND HAS GREAT CONCERNS ABOUT HER ABILITY TO
2 PARTICIPATE, AS WELL AS THE FACT THAT SHE HAS MANY
3 DOCTOR APPOINTMENTS.

4 BOTH SIDES AGREE TO S-8640?

5 MR. DHANIDINA: YES. THANK YOU.

6 MR. SCHMOCKER: YES, YOUR HONOR.

7 THE CLERK: WAS M-8404 CALLED?

8 MR. DHANIDINA: M-8404?

9 THE CLERK: YES.

10 MR. DHANIDINA: I DON'T THINK SO.

11 THE COURT: NO.

12 THE CLERK: OKAY.

13 MR. SCHMOCKER: THERE WAS ONE OTHER THAT I WAS
14 HAVING TROUBLE WITH. I THINK WE ADDRESSED IT. I THINK
15 IT WAS 6208. THIS IS THE ONE THAT HAD THE DIFFERENT
16 NUMBER.

17 MR. DHANIDINA: RIGHT.

18 MR. SCHMOCKER: I WILL SEE IF I CAN FIND IT
19 AGAIN. I DON'T KNOW WHAT THAT NUMBER WAS.

20 MR. DHANIDINA: IT WAS ONE WHO WE BELIEVE IS
21 3458.

22 MS. VITALE: RIGHT.

23 MR. DHANIDINA: BUT SHE WROTE DOWN 6208.

24 THE COURT: THERE IS A JUROR THAT I NOTICED THE
25 SAME THING FOR. SHE MARKED HER QUESTIONNAIRE AS M-6208.

26 MS. VITALE: YES.

27 THE COURT: HOWEVER, HER TRUE IDENTIFICATION
28 NUMBER IS M-3458. SHE IS ON THE FIRST PAGE, FOURTH

1 GROUP.

2 MR. SCHMOCKER: VERY GOOD.

3 THE COURT: LET ME SEE IF THERE WERE ANY
4 OTHERS.

5

6 (BRIEF PAUSE).

7

8 THE COURT: ONE THAT WAS SOMEWHAT ILLEGIBLE WAS
9 THE JUROR WHO HAD WRITTEN SHE HAS A CAST, K-6804.

10 MR. SCHMOCKER: YES.

11 THE COURT: SHE WAS ACTUALLY PRETTY LEGIBLE I
12 THOUGHT.

13 MR. DHANIDINA: I THOUGHT SO.

14 MR. SCHMOCKER: WHEN SHE HAD TROUBLE, SHE PUT
15 IT DOWN MORE THAN ONCE.

16 THE COURT: THOSE WERE THE ONLY NUMBER ERRORS
17 THAT I SAW OF THE JURORS WHO SURVIVED. THERE WERE SOME
18 THAT WE STIPULATED WERE IN ERROR. I DID CORRECT THEM ON
19 THE FACE OF THE QUESTIONNAIRE.

20 THOSE JURORS CAN BE EXCUSED IN THE HALLWAY.

21 THE RECORD SHOULD REFLECT THAT WE'RE WORKING
22 OFF OF THE RANDOM LIST, WHICH INCLUDES THE FULL NAME OF
23 THE JURORS, AS WELL AS THE IDENTIFICATION NUMBERS THAT
24 WE'RE USING FOR CONVENIENCE.

25 THE PROCEDURE THAT I'D LIKE TO FOLLOW IS THE
26 SAME AS WE DID IN THE FIRST TRIAL, AND JUST SO EVERYONE
27 MAY REMEMBER, I'LL GIVE SOME BRIEF WELCOMING REMARKS,
28 AND THEN CALL UP THE FIRST 27 JURORS INTO THE JURY SEATS

1 IN THE JURY BOX.

2 I WILL GO THROUGH SOME PRELIMINARY REMARKS. IF
3 YOU HAVE ANY, YOU CAN SUGGEST THEM, BUT I THOUGHT THE
4 ONES THAT WERE MOST PERTINENT WERE UNJOINED PERPETRATOR,
5 JUST TO SIMPLY POINT OUT THAT THE NAME DONTE MC DANIEL
6 WILL BE MENTIONED IN THE CASE. HE'S NOT HERE. THERE
7 ARE MANY REASONS THAT HE'S NOT HERE. THEY'RE ALL
8 IRRELEVANT. AND THEY'RE SIMPLY TO FOCUS ON THE ISSUES
9 PRESENTED HERE.

10 I'LL ALSO MENTION GANGS, AS NOTED IN THE
11 QUESTIONNAIRE. THERE WERE QUESTIONS ABOUT THE BOUNTY
12 HUNTER BLOODS, AS WELL AS OTHER EXPERIENCES WITH GANGS
13 THAT PEOPLE HAVE HAD. THAT THE EVENTS IN THIS CASE WERE
14 IN A GANG NEIGHBORHOOD, SO MANY OF THE PEOPLE INVOLVED
15 IN THE CASE MAY BE IDENTIFIED WITH GANGS, AS WELL AS THE
16 PEOPLE THAT THEY HEAR ABOUT DIRECTLY, SUCH AS THE
17 DEFENDANT, MR. BROOKS AND A NUMBER OF THE WITNESSES.

18 I'D LIKE TO POINT OUT THAT GANG INVOLVEMENT IS
19 NOT A FACTOR IN AGGRAVATION OR MITIGATION. IT'S SIMPLY
20 PART OF THE BACKGROUND OR BACKDROP FOR THE CASE.
21 EVIDENCE MAY BE RELEVANT TO EXPLAIN WHY PEOPLE ACTED IN
22 CERTAIN WAYS, AND WE'RE LOOKING FOR JURORS WHO CAN
23 SIMPLY CONSIDER THE EVIDENCE REGARDING GANGS FOR VALID
24 PURPOSES AND NOT JUST REACT BY SAYING THINGS LIKE, IF A
25 WITNESS IS A GANG MEMBER, MUST BE A LIAR. IF BROOKS WAS
26 A GANG MEMBER, WHO CARES IF HE WAS KILLED, OR IF THE
27 DEFENDANT'S A GANG MEMBER, HE DESERVES SOME FORM OF
28 PUNISHMENT.

1 AND THEN GO OVER AGAIN THE CRITERIA REGARDING
2 THE DEATH PENALTY, MUCH AS I DID AT THE PRELIMINARY
3 STAGE, JUST TO REFRESH THEIR MEMORY AS TO THE PROCEDURES
4 AND THINGS OF THAT NATURE.

5 MR. DHANIDINA: ALL RIGHT.

6 THE COURT: THEN I WOULD GO THROUGH THE
7 QUESTIONNAIRES WITH EACH JUROR. THERE ARE A COUPLE OF
8 AREAS THAT I FLAGGED TO CLARIFY. I WOULD ALSO ASK THE
9 JURORS IF THEY HAVE ANYTHING FURTHER TO ADD, AND THEN AT
10 THAT POINT I WOULD TURN IT OVER TO THE ATTORNEYS WITH
11 THIS GROUP OF 27. I'M LOOKING AT APPROXIMATELY 40, 45
12 MINUTES, SOMETHING ALONG THOSE LINES, PER SIDE, WITH
13 THIS GROUP. YOU NEED MORE, YOU CAN CERTAINLY TELL ME
14 THAT, BUT THAT'S SORT OF A TARGET.

15 ONCE WE'VE COMPLETED YOUR QUESTIONS, I'LL
16 RECEIVE ANY MOTIONS FOR CAUSE AFTER THE JURY HAS LEFT.
17 ONCE WE'VE RESOLVED MOTIONS FOR CAUSE, FOR THOSE JURORS
18 THAT REMAIN, WE'LL EXERCISE PEREMPTORY CHALLENGES, AND
19 ONCE WE'VE DONE THAT, WE DON'T HAVE A JURY, WE'LL CALL
20 UP MORE JURORS AND GO THROUGH THE SAME KIND OF
21 PROCEDURES.

22 DOES ANYONE HAVE ANY OBJECTION TO THAT?

23 MR. DHANIDINA: NO. THANK YOU.

24 MR. SCHMOCKER: THAT SOUNDS FINE, YOUR HONOR.

25 THE COURT: ARE THERE ANY AREAS THAT YOU WANT
26 ME TO GO INTO PRELIMINARILY, BESIDES THOSE THAT I
27 IDENTIFIED?

28 MR. DHANIDINA: I THINK THE ONLY OTHER THING

1 THAT'S WORTH BRINGING UP AT THIS POINT IS TO REMIND THE
2 JURORS OF THEIR ROLE AS PENALTY PHASE JURORS, AS OPPOSED
3 TO HAVING TO DETERMINE GUILT OR INNOCENCE.

4 THE COURT: YES.

5 MR. DHANIDINA: OKAY.

6 THE COURT: AS SOON AS WE'RE READY TO CALL THEM
7 IN, WE'LL HAVE THEM COME IN.

8

9 (BRIEF PAUSE).

10

11 THE COURT: JUST FOR YOUR INFORMATION, A JUROR
12 HAS SUBMITTED A NOTE. IT'S ON THE SECOND PAGE, FIRST
13 NAME ON THE SECOND GROUP, R-3749. YOU'RE WELCOME TO
14 LOOK AT THIS NOTE, BUT IT'S QUITE SHORT. HE BASICALLY
15 SAYS:

16

17 FIVE MONTHS AGO I WAS
18 DIAGNOSED WITH PROSTATE CANCER AND
19 UNDERWENT A RADICAL PROSTATECTOMY.
20 SINCE THEN I HAVE HAD TO USE THE
21 RESTROOM OFTEN, AND IT'S HARD FOR
22 ME TO SIT FOR LONG PERIODS OF
23 TIME.

24

25 LAST WEEK IT WAS VERY
26 DIFFICULT FOR ME TO SIT WITHOUT
27 GOING TO THE RESTROOM. I WOULD
28 LIKE TO ASK IF I CAN BE EXCUSED.

I'M PREPARED TO KEEP HIM HERE AND SEE HOW
THINGS GO.

1 IF YOU BOTH HAVE ANY DIFFERENT THOUGHTS, YOU'RE
2 WELCOME TO EXPRESS THEM.

3 MR. SCHMOCKER: MAY I JUST HAVE A MOMENT,
4 YOUR HONOR? I'M LOOKING FOR HIS NUMBER.

5 THE COURT: YES.

6 MR. SCHMOCKER: 3749.

7 THE COURT: R-3749.

8 MR. SCHMOCKER: I'D AGREE TO STIPULATE TO HIS
9 REMOVAL.

10 MR. DHANIDINA: I AGREE WITH THE COURT. MAYBE
11 WE SHOULD SEE HOW IT GOES THIS MORNING. IF IT BECOMES
12 UNBEARABLE FOR THE JUROR, WE CAN REASSESS.

13 THE COURT: ALL RIGHT. THERE'S NO STIPULATION.
14 WE'LL KEEP HIM HERE.

15 THE CLERK: READY?

16 THE COURT: YES. WE'RE READY.

17
18 (THE FOLLOWING PROCEEDINGS WERE
19 HELD IN OPEN COURT IN THE PRESENCE
20 OF THE PROSPECTIVE JURORS:)

21
22 THE COURT: GOOD MORNING, EVERYONE.
23 WELCOME BACK TO DEPARTMENT 108.
24 YOU MAY REMEMBER. I'M JUDGE MICHAEL JOHNSON.
25 THIS IS THE CASE OF PEOPLE OF THE STATE OF
26 CALIFORNIA VERSUS KAI HARRIS.
27 THE DISTRICT ATTORNEY IS HALIM DHANIDINA.
28 THE DEFENSE ATTORNEYS ARE JOHN SCHMOCKER AND

1 LYNDA VITALE. AND MR. HARRIS IS SEATED AT THE TABLE AS
2 WELL.

3 FIRST OF ALL, I WANT TO THANK YOU ALL FOR
4 FILLING OUT YOUR QUESTIONNAIRES. YOU, AS WELL AS SOME
5 OF THE JURORS WHO HAVE BEEN EXCUSED, WE APPRECIATE IT.
6 YOU WERE VERY COMPLETE. THAT HELPS US A GREAT DEAL.

7 WHAT WE'RE GOING TO DO TODAY IS ASK SOME
8 FOLLOW-UP QUESTIONS. WE'RE GOING TO CALL JURORS UP INTO
9 THE JURY BOX AND BEGIN THE PROCESS WHICH WILL BE THE
10 SECOND PHASE OF JURY SELECTION.

11 WE WILL CALL YOU UP AT RANDOM. THERE ARE
12 NUMBERS ON EACH SEAT, SO WE'LL ASSIGN YOU TO A
13 PARTICULAR SEAT.

14 SEAT NUMBER 1 IS IN THE TOP ROW ALL THE WAY TO
15 MY LEFT. SEAT NUMBER 2 IS NEXT TO THAT AND SO FORTH. A
16 TOTAL OF 27 JURORS WILL BE CALLED UP TO THESE SEATS.

17 THEN I WILL ASK YOU SOME FOLLOW-UP QUESTIONS
18 REGARDING YOUR QUESTIONNAIRES, SOME THINGS THAT OCCURRED
19 TO ME AS I WENT THROUGH THEM.

20 YOU'RE ALSO WELCOME TO ADD ANY ADDITIONAL
21 COMMENTS. IN OTHER WORDS, IF YOU'VE THOUGHT ABOUT
22 THINGS A LITTLE BIT AND MAYBE YOU'VE NOW HAD SOME FIRMER
23 IDEAS ABOUT SOME OF THE ISSUES, OR IF YOU FORGOT TO ADD
24 SOMETHING TO THE QUESTIONNAIRE THAT YOU THOUGHT ABOUT AS
25 YOU DROVE HOME OR THAT SORT OF THING, YOU'RE WELCOME TO
26 ADD THOSE.

27 ONCE I'VE DONE THAT, THEN THE ATTORNEYS WILL
28 HAVE THE OPPORTUNITY TO ASK FOLLOW-UP QUESTIONS, AND

1 THEY TOO WILL ASK VARIOUS JURORS SOME FOLLOW-UP
2 QUESTIONS OR ASK ABOUT OTHER THINGS CONCERNING THE CASE.

3 PLEASE KEEP IN MIND THAT YOU ARE ALL UNDER
4 OATH. YOU'RE UNDER THE SAME OATH THAT YOU TOOK THE
5 FIRST DAY THAT YOU WERE HERE. YOU SHOULD MAKE SURE THAT
6 ALL OF YOUR ANSWERS ARE TRUTHFUL AND COMPLETE.

7 IF THERE'S SOMETHING THAT YOU WOULD FIND
8 EMBARRASSING OR DIFFICULT TO TALK ABOUT IN FRONT OF
9 EVERYONE, IF THERE'S SOMETHING PERSONAL THAT YOU JUST
10 DON'T WANT TO TALK ABOUT IN FRONT OF EVERYONE, PLEASE
11 DON'T AVOID THE QUESTION, BUT JUST LET ME KNOW THAT YOU
12 WOULD PREFER TO TALK ABOUT IT MORE PRIVATELY. THEN I'LL
13 CALL JURORS OVER TO THE SIDE AND WE CAN TALK WITH THE
14 LAWYERS ONLY ABOUT THOSE ISSUES THAT YOU REGARD AS
15 SENSITIVE OR EMBARRASSING TO TALK ABOUT IN FRONT OF
16 EVERYONE.

17 THAT ALL BEING SAID, WE WILL CALL YOU UP TO THE
18 SEATS.

19 WE WILL USE THE FIRST LETTER OF YOUR LAST NAME,
20 THE LAST FOUR NUMBERS OF YOUR JUROR BADGE.

21 PLEASE COME UP TO THE SEATS AS INDICATED.

22 THE CLERK: D-3563, YOU'LL BE SEAT NUMBER 1.

23 IT'S IN THE TOP ROW.

24 S-3050, SEAT 2.

25 G-4450, SEAT 3.

26 G-4450.

27 (NO AUDIBLE RESPONSE).

28 THE COURT: G-4450. [NAME REDACTED].

1 JUROR [NAME REDACTED]. [NAME REDACTED].
2 THE CLERK: I WILL CHECK IN THE JURY ROOM AND
3 SEE IF HE LEFT.
4 THE COURT: [NAME REDACTED].
5 NOT HERE?
6 (NO AUDIBLE RESPONSE).
7 THE COURT: DO THE PARTIES AGREE THAT THIS
8 JUROR CAN GO TO THE END OF THE LIST, AND WE'LL CHECK ON
9 HIS LOCATION?
10 MR. DHANIDINA: THAT'S FINE.
11 MR. SCHMOCKER: THAT'S AGREEABLE, YOUR HONOR.
12 THE COURT: B-7993, YOU'LL BE SEAT NUMBER 3.
13 R-5857, SEAT 4.
14 T-5208, SEAT 5.
15 P-9765, SEAT 6.
16 H-4884, SEAT 7.
17 V-4528, SEAT 8.
18 J-0750, YOU'LL BE SEAT NUMBER 9.
19 THE CLERK: R-6693, SEAT 10.
20 MR. SCHMOCKER: I'M SORRY. WHAT NUMBER WAS
21 THAT?
22 THE CLERK: R-6693.
23 M-3458. SEAT 11.
24 M-3458.
25 (NO AUDIBLE RESPONSE).
26 THE COURT: M-3458. [NAME REDACTED].
27 MR. DHANIDINA: WANT TO TRY 6208?
28 THE WITNESS: OH, I'M SORRY.