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SUPREME COURT  
**FILED**

DEC 31 2013

Frank A. McGuire Clerk  

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Deputy

**In the Supreme Court of the State of California**

**THE PEOPLE OF THE STATE OF  
CALIFORNIA,**

Plaintiff and Respondent,

v.

**THOMAS BATTLE,**

Defendant and Appellant.

**CAPITAL CASE**

Case No. S119296

San Bernardino County  
Superior Court, Case  
No. FVI012605

**RESPONDENT'S OPPOSITION TO APPELLANT'S REQUEST  
FOR JUDICIAL NOTICE**

Appellant Thomas Lee Battle filed a Request for Judicial Notice on December 24, 2013, asking this Court to take judicial notice of several pages of the Clerk's Transcript and Reporter's Transcript from the state court record of *People v. Edwards*, California Supreme Court case number S073316, a case separate and unrelated to the instant case. Respondent objects to this request for judicial notice because transcripts from a prior

court proceeding are irrelevant to an appeal from a judgment in an unrelated case.

While appellant is correct that the record on appeal in *People v. Edwards* is the type of record that can be properly subject to judicial notice pursuant to Evidence Code section 452, subdivision (d), “even if a matter is a proper subject of judicial notice, it must still be *relevant*. [Citations.]” (*People v. Payton* (1992) 3 Cal.4th 1050, 1073, italics original.) Accordingly, judicial notice is discretionary and can be denied where, as here, judicial notice of the requested information will have no impact on the resolution of the issues being raised in this appeal.

In his opening brief, appellant contends the trial court committed prejudicial error in declining to instruct the jury in the penalty phase with an instruction on lingering doubt requested by appellant. (AOB 193-211.) As this Court has repeatedly held, including in the same case that is the subject of the judicial notice request by appellant, there is no right to any such instruction. (*People v. Edwards* (2013) 57 Cal.4th 658, 765, citing *People v. Thomas* (2012) 53 Cal.4th 771, 826, and *People v. Hartsch* (2010) 49 Cal.4th 472, 513.) This is so because “the standard instructions on capital sentencing factors, together with counsel’s closing argument, are sufficient to convey the lingering doubt concept to the jury.” (*Id.*, quoting *People v. Hartsch, supra*, 49 Cal.4th at p. 513.)

Appellant apparently wants to support his claim on appeal by showing that the identical instruction he requested at trial was given in the initial penalty phase of *Edwards* where the jury was unable to reach a penalty verdict; and the instruction was then not given in the penalty retrial wherein a death verdict was returned. (See AOB at 197, fn. 67.) This procedural history from *Edwards* did not alter the outcome of that particular defendant’s challenge in his automatic appeal to the trial court’s refusal of

the defense instruction on lingering doubt in the *Edwards* case itself.  
(*People v. Edwards, supra*, 57 Cal.4th at p. 765.)

Because the decision whether to instruct the jury with a lingering doubt instruction is within the trial court's discretion (i.e., there is no right to such an instruction), what happened in a previous case has no effect on the discretion of a trial court in an unrelated case as to whether such an instruction is warranted. As stated above, judicial notice cannot be taken of irrelevant matters. (*People v. Curl* (2009) 46 Cal.4th 339, 360, fn. 16; *People v. Rowland* (1992) 4 Cal.4th 238, 268, fn. 6.) In terms of appellant's pending case, judicial notice of the records in *Edwards* is entirely inconsequential to the proper resolution of his claim for relief. (See *People v. Young* (2005) 34 Cal.4th 1149, 1171, fn. 3 [denying request for judicial notice of transcripts from prior unrelated cases because such transcripts would be irrelevant in determining the instant issue on appeal]; see also *People v. Johnson* (190) 217 Cal.App.3d 978, 983 [although it could be judicially noticed, a transcript of a prior court proceeding which was not presented to the trial court cannot be considered in reviewing the actions of the trial court].)

For the foregoing reasons, respondent respectfully requests this Court deny appellant's request for judicial notice.

Dated: December 30, 2013

Respectfully submitted,

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**DECLARATION OF SERVICE BY U.S. MAIL (CAPITAL CASE)**

Case Name: **People v. Battle**  
Case No.: **S119296**

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.

On December 30, 2013, I served the attached **RESPONDENT'S OPPOSITION TO APPELLANT'S REQUEST FOR JUDICIAL NOTICE** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

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(2 Copies)

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412 W. Hospitality Lane, First Floor  
San Bernardino, CA 92415-0042

Honorable Eric M. Nakata  
San Bernardino County Sup. Ct.  
14455 Civic Drive  
Victorville, CA 92392

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 December 30, 2013, at San Diego, California.

\_\_\_\_\_  
C. Scott  
Declarant



\_\_\_\_\_  
Signature