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August 24, 2020

Mr. Jorge Navarrete
Clerk of the Court
California Supreme Court
350 McAllister Street
San Francisco, CA 94102

Re: People v. Michael Joseph Schultz
Supreme Court Case No. S114671
September 2, 2020, Morning Calendar
Focus Issues for Oral Argument and List of Ad-
ditional Authorities

Dear Mr. Navarrete:

I represent appellant, Michael Joseph Schultz. The Court has asked counsel to identify those issues on which counsel expects to focus at oral argument and to provide the Court with relevant authorities decided after all briefs were filed.

Please inform the Court I expect to focus on these two arguments during the oral argument:

- ARG I. Whether the trial court committed reversible error by excusing Prospective Juror Antonio A. who, despite reservations about imposing the death penalty, stated repeatedly he would carry out his duties as a juror in accordance with the trial court's instructions and his oath.
- ARG. II Whether the trial court erred in admitting the taped message Cynthia Burger left on the answering machine of her dance partner several hours before she died under Evidence Code section 1250 as a statement of her then-existing intent to stay home that evening or as non-hearsay evidence of the same intent.

I would also appreciate your assistance in bringing the following additional authorities to the Court's attention. All authorities were decided after I filed Mr. Schultz's reply brief in July 2014, and all relate to the argument the trial court erred in excusing Prospective Juror Antonio A.:

1. *People v. Armstrong* (2019)
6 Cal.5th 735

A prospective juror who indicates he or she could vote for death but will not guarantee such a vote when presented with hypotheticals — even hypothetical similar to the case facts — is not subject to excusal for cause.

2. *People v. Buenrostro* (2018)

6 Cal.5th 367

A prospective juror whose questionnaire answers indicated she “wouldn’t want to” make a death decision, but did not indicate she would not or could not make such a decision was improperly excused because her answers did not establish the prospective juror’s view would prevent or substantially impair her performance as a capital-case juror or compromise her ability to follow the court’s instructions.

3. *People v. Woodruff* (2018)

5 Cal.5th 697

Although a prospective juror’s questionnaire responses indicated the prospective juror was “strongly against” the death penalty, the questionnaire also indicated a willingness to follow the law and an intention to set personal views aside. In the absence of a showing the prospective juror would not follow the law, excusal was improper.

4. *People v. Covarrubias* (2016)

1 Cal.5th 838

A prospective juror was improperly excused based solely on ambiguous questionnaire responses which indicated strong opposition to the death penalty and an inclination for a life sentence but also indicated an ability to put those views aside and voir dire was required to resolve ambiguity.

5. *People v. Zaragoza* (2016)

1Cal.5th 21

A prospective juror was improperly excused based on questionnaire answers indicating discomfort with deciding “if a person is to die” because she stated she could probably set aside her personal views and indicated a willingness to follow the law.

Thank you for your assistance.

Best regards,

Jeralyn Keller
Attorney for appellant
Michael Joseph Schultz

PROOF OF SERVICE

I, JERALYN KELLER, declare as follows:

I am over eighteen (18) years of age and not a party to the within action. My business address is 790 East Colorado Boulevard, Suite 900, Pasadena, California 91101-2113. On August 24, 2020, I served the within

LETTER IDENTIFYING ISSUES FOCUS ISSUES FOR ORAL ARGUMENT AND LIST OF ADDITIONAL AUTHORITIES

on each of the following, by TrueFiling, email, or by placing a true copy thereof in a sealed envelope with postage fully prepaid, in the United States mail at Los Angeles, California addressed as follows:

RYAN M. SMITH
DEPUTY ATTORNEY GENERAL
By TrueFiling

MOREY GARELICK
CAL APP PROJECT-SF
By Email

MICHAEL JOSEPH SCHULTZ
K-31793
SAN QUENTIN STATE PRISON
SAN QUENTIN, CA. 94974

I declare under penalty of perjury the document was printed on recycled paper and foregoing is true and correct and I signed the declaration on August 24, 2020 at Pasadena, California.

JERALYN KELLER

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **PEOPLE v. SCHULTZ (MICHAEL JOSEPH)**

Case Number: **S114671**

Lower Court Case Number:

1. At the time of service I was at least 18 years of age and not a party to this legal action.
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

8/24/2020

Date

/s/Jeralyn Keller

Signature

Keller, Jeralyn (72565)

Last Name, First Name (PNum)

Law Offices of Jeralyn Keller

Law Firm

