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SUPREME COURT
FILED

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Frank A. McGuire Clerk
Deputy

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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PEOPLE OF THE STATE OF CALIFORNIA,)
)
Plaintiff and Respondent,)
)
v.)
)
THOMAS LEE BATTLE,)
)
Defendant and Appellant.)
<hr/>)

No. S119296
San Bernardino County
Superior Court
No. FVI012605

**APPELLANT’S REPLY TO RESPONDENT’S OPPOSITION TO APPELLANT’S
REQUEST FOR JUDICIAL NOTICE**

On December 18, 2013, appellant filed his Appellant’s Opening Brief and simultaneously filed Appellant’s Request for Judicial Notice. This request asks the Court to take judicial notice of four pages of transcripts from the first trial in *People v. Edwards*

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(2013) 57 Cal.4th 658, California Supreme Court No. S073316, and asserts that the records are relevant to determining appellant's appeal of the trial court's denial of his request for a similar instruction, which is addressed in Argument IV of his opening brief.

On December 31, 2013, respondent filed Respondent's Opposition To Appellant's Request for Judicial Notice. Respondent concedes that the *Edwards* records "can be properly subject to judicial notice pursuant to Evidence Code section 452, subdivision (d)," but contends that judicial notice should be denied because they are irrelevant. (Opposition at p. 2, citing *People v. Payton* (1992) 3 Cal.4th 1050, 1073 ["even if a matter is a proper subject of judicial notice, it must still be *relevant*. [Citations]"].) Respondent is mistaken: the *Edwards* records are relevant to appellant's lingering-doubt claim.

In Argument IV of Appellant's Opening Brief, appellant asserts that under state law the trial court should have given the jury appellant's correct, properly-limited statement of the law on lingering doubt. (AOB 196-202.) In this argument, appellant critiques the Court's rationales for its current rule, which leaves instruction on the lingering doubt mitigating factor to the discretion of the trial courts. To support his position that the Court should reconsider its current rule, appellant discusses the arbitrariness of leaving instruction on lingering doubt to the discretion of the trial court. (AOB 196-197.) As part of this showing, appellant requests judicial notice of the pages from the appellate record in *People v. Edwards* which, in conjunction with the published decision in the case, establish that the trial court instructed the first jury on lingering doubt, but refused to give the instruction to the retrial jury. (AOB 197, fn. 67.) Appellant cites *Edwards* as an example to show that the Court's current rule on lingering doubt instructions results not only in arbitrariness among different cases, but also within the same case. In this way, the *Edwards* records are relevant in that they relate to and support an argument appellant makes as part of his claim of instructional error.

Appellant's understanding of relevance for the purposes of judicial notice is in line with decisions of this Court. In one of its leading decisions on judicial notice on appeal, the Court explained that judicial notice is "confined to those matters which are relevant to the issue at hand" and is declined when the material "has no bearing" on the legal question on appeal. (*Mangini v. R. J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063, citations omitted [granting judicial notice of legislative history of federal statute at center of preemption issue, but denying judicial notice of documents that did not relate to the interpretation of that statute], overruled on other grounds by *In re Tobacco Cases II* (2007) 41 Cal.4th 1257; see also *Apartment Association of Los Angeles County, Inc. v. City of Los Angeles* (2001) 24 Cal.4th 830, 837, fn. 1 [granting judicial notice where document (Legislative Analyst's discussion of proposition at issue in the case) "contains material relevant to the question at bench," but denying judicial notice where other documents (rent control ordinances not at issue in the case) "have no bearing on the question before us"].) This approach makes sense because it permits consideration of materials, such as the *Edwards* records, that shed some light on the issue before the Court, but precludes consideration of materials that have nothing to do with the legal question to be decided.

Respondent suggests a different, indeed novel, analysis. It argues that the *Edwards* documents are irrelevant because they will not affect the resolution of appellant's lingering doubt claim. (Opp. at p. 2 ["the requested information will have no impact on the solution of the issue being raised on appeal"]; *id.* at p. 3 ["judicial notice of the records in *Edwards* is entirely inconsequential to the proper resolution of [appellant's] claim for relief".) Respondent argues that because there is no right to an instruction on lingering doubt, the *Edwards* documents will have no impact on the Court's decision of appellant's lingering doubt claim. (*Id.* at pp. 2-3.) This argument is curious to say the least. Respondent starts from the premise that appellant's claim lacks merit and works backwards to assert that, therefore, the *Edwards* records are irrelevant because they

cannot affect its determination. In essence, respondent defines the relevance of materials for judicial notice narrowly in terms of whether they might determine or influence the outcome of the issue on appeal. Such a high threshold, however, is not consistent with this Court's judicial notice rulings discussed above.

Nor is respondent's unusual theory of relevance supported by the cases it cites. These decisions found the materials subject to the requests for judicial notice to be irrelevant, but not, as respondent suggests, because they could have had no impact on the resolution of the issues being raised on appeal. In *People v. Curl* (2009) 46 Cal.4th 339, 360, fn. 16, the defendant failed to establish an adequate foundation that a witness was the type of informant covered by the record subject to the request for judicial notice, a 1989-1990 Los Angeles County Grand Jury report regarding the involvement of jailhouse informants in the criminal justice system in Los Angeles County. In *People v. Young* (2005) 34 Cal.4th 1149, 1171, fn. 3, the opinion reveals only that defendant failed to establish the relevance of the records in three other automatic appeals to his *Batson* and prosecutorial misconduct claims. Similarly, in *People v. Rowland* (1992) 4 Cal.4th 238, 268, fn. 6, the defendant did not show the relevance of the records of a pretrial writ on a legal issue he raised on appeal, especially given that the trial court made no determination in light of those records. And in *People v. Payton* (1992) 3 Cal.4th 1050, 1072-1073, the remarks about Payton's case made by a deputy attorney general during the oral argument before the United States Supreme in the controlling case, *Boyde v. California* (1990) 494 U.S. 370, were irrelevant because *Boyde's* meaning had to be gleaned from the opinion itself and the attorney's remarks were made without the full examination of the record that *Boyde* required. In short, none of these decisions endorsed the stringent test of relevance for judicial notice that respondent proposes.

As set forth above and in the Memorandum of Points and Authorities previously filed, the transcripts pages from *Edwards* are relevant to appellant's appeal, and this Court should grant his request for judicial notice.

Dated: January 16, 2014

Respectfully Submitted,

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By: 
Nina Rivkind

ATTORNEYS FOR APPELLANT

DECLARATION OF SERVICE

Re: *People v. Thomas Lee Battle*

Cal. Sup. No. S119296
San Bernardino County Sup. Ct., No.
FVI012605

I, Kecia Bailey, declare that I am over 18 years of age, and not a party to the within cause; my business address is 1111 Broadway, Suite 1000, Oakland, California, 94607; that I served a copy of the attached:

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

on each of the following, by placing same in an envelope addressed respectively as follows:

Theodore M. Cropley
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110 West A Street, Suite 1100
San Diego, CA 92101-3702

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

Thomas Lee Battle V-05994
CSP-SQ
3-EB-42
San Quentin, CA 94974

Each said envelope was then, on January 16, 2014, sealed and deposited in the United States mail at Oakland, California, in Alameda County in which I am employed, with the postage thereon fully prepaid.

I declare under penalty of perjury that the foregoing is true and correct.
Signed on January 16, 2014, at Oakland, California.


DECLARANT