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SUPREME COURT COPY

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March 20, 2013

**SUPREME COURT
FILED**

MAR 22 2013

Frank A. McGuire
Clerk of the Supreme Court
California Supreme Court
350 McAllister Street
San Francisco, CA 94102

Frank A. McGuire Clerk

Deputy

RE: **People v. Juan Manuel Lopez (Capital Case)**
Supreme Court of the State of California, Case No. S073597
Notice of Supplemental Authorities

Dear Mr. McGuire:

At oral argument on April 3, 2013, respondent may discuss the following decisions, all of which were issued after the respondent's brief was filed in the instant case.

The following cases are relevant to appellant's claim of *Batson/Wheeler* error (Claim 2 of the AOB). (See *Batson v. Kentucky* (1986) 476 U.S. 79; *People v. Wheeler* (1978) 22 Cal.3d 258.) This Court has repeatedly held that, even where a trial court finds no prima facie case of racial discrimination in the prosecutor's use of a peremptory challenge, if the prosecutor states his or her reason for the peremptory challenge, and the trial court rules on the ultimate question of intentional discrimination, the issue of whether the defendant made a prima facie showing is moot. (See, e.g., *People v. McKinzie* (2012) 54 Cal.4th 1302, 1320; *People v. Elliott* (2012) 53 Cal.4th 535, 560; *People v. Mills* (2010) 48 Cal.4th 158, 174; *People v. Lenix* (2008) 44 Cal.4th 602, 613, fn.8.) Such a case is deemed a "first stage/third stage *Batson* hybrid," and it is appropriate to proceed directly to the third stage of the *Batson/Wheeler* analysis, determining whether substantial evidence supports the trial court's finding that the prosecutor did not engage in purposeful discrimination. (*People v. Mills, supra*, 48 Cal.4th at pp. 174-175; *People v. Lenix, supra*, 44 Cal.4th at p. 613, fn.8.) A trial court's finding of no purposeful discrimination, which may be express or implied, is entitled to great deference on appeal. (See *People v. Riccardi* (2012) 54 Cal.4th 758, 786-787; *People v. Thomas* (2011) 51 Cal.4th 449, 473-474.) Finally, in *People v. Taylor* (2009) 47 Cal.4th 850, 893, where the prosecutor stated his reason for excusing a juror was her confused responses to questioning, this Court found that a juror's ambiguous responses on a questionnaire and in response to oral questioning provided strong reason to doubt the juror's ability to perform her duties as a juror, and therefore, the prosecutor's stated reason for excusing the juror was supported by the record. (See also *People v. Elliott, supra*, 53 Cal.4th

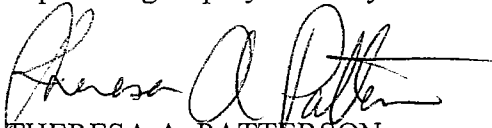
DEATH PENALTY

at p. 566 [inconsistency and ambiguity of juror's responses suggested she might have difficulty performing her duties as a juror].)

The following cases are relevant to appellant's claims alleging a violation of the Sixth Amendment right to confrontation, i.e., the claim alleging that Ricardo Lopez's statement at the scene of the shooting was improperly admitted (Claim 5 of the AOB), and the claim alleging that the victim's diary entry and statements to her teacher were improperly admitted (Claim 10 of the AOB). In *Giles v. California* (2008) 554 U.S. 353, 376, the United States Supreme Court clarified that "only *testimonial* statements are excluded by the Confrontation Clause." (See also *Whorton v. Bockting* (2007) 549 U.S. 406, 420 ["Confrontation Clause has no application to [nontestimonial] statements and therefore permits their admission even if they lack indicia of reliability"]; *Davis v. Washington* (2006) 547 U.S. 813, 821 ["It is the testimonial character of the statement that separates it from other hearsay that, while subject to traditional limitations upon hearsay evidence, is not subject to the Confrontation Clause"]. Also, as relevant to the admission of the victim's diary entry and statements to her teacher, in *Giles*, although the United States Supreme Court rejected a blanket exception to the Confrontation Clause for forfeiture by wrongdoing, the Court suggested that such an exception would nevertheless be applicable in situations where the wrongdoing was done with the intent to prevent a person from testifying. (*Giles, supra*, 554 U.S. at pp. 359-361, 366.)

Respectfully submitted,

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DECLARATION OF SERVICE

Case Name: *People v. Juan Manuel Lopez* (CAPITAL CASE)

No.: S073597

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 March 20, 2013, I served the attached **NOTICE OF SUPPLEMENTAL AUTHORITIES** by placing a true copy thereof enclosed in a sealed envelope in the internal mail system of the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

**Michael J. Hersek
State Public Defender
Arnold Erickson
Deputy State Public Defender
Office of the State Public Defender-Oakland City Center
1111 Broadway, 10th Floor
Oakland, CA 94607**

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 March 20, 2013, at Los Angeles, California.

C. Damiani
Declarant



Signature

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