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EDMUND G. BROWN JR., *Governor*

May 19, 2014

The Honorable Frank A. McGuire
Court Administrator and Clerk of the Supreme Court
Supreme Court of the State of California
350 McAllister St.
San Francisco, CA 94102-4797

Re: *People v. Stanley Bryant, Donald Smith and Leroy Wheeler*
Automatic Appeal Case No. S049596
Notice of Supplemental Authorities

Dear Mr. McGuire:

At oral argument on May 28, 2014, appellant will be prepared to discuss the following decisions relating to appellant Bryant's focus issue (Appellant Bryant's Argument V):

In *People v. Montes* (2014) 58 Cal.4th 809, 839-843, this Court found no error in requiring the defendant to wear a REACT belt at trial where the defendant had attacked a codefendant in a holding cell, where shanks were found in his cell and when he had been observed focusing on the guns of the bailiffs while in the courtroom.

In *People v. Jackson* (2014) 58 Cal.4th 724, 738-748, this Court found harmless the error in forcing the defendant to wear a REACT belt during trial when: (1) the record was devoid of any evidence the jurors saw the belt; (2) the defendant did not take the stand and there was no indication the wearing of the belt played any part in that decision; (3) the only objection defendant made to wearing the REACT belt was discomfort, which was alleviated by the use of a pillow. In addition, this Court employed the test applicable to state law error at the penalty phase of a capital trial (*People v. Brown* (1988) 46 Cal.3d 432, 446–448), because defendant claimed the court's erroneous order that defendant wear a REACT belt affected both the guilt and penalty phases. *(People v. Jackson, supra*, 58 Cal.4th at p. 744 and fn. 8.)

People v. Virgil (2011) 51 Cal.4th 1210, 1269-1271 upheld the trial court's order for a REACT belt upon finding defendant to be a genuine escape risk after testimony

from two deputies that defendant was caught using a make-shift handcuff key to unlock another inmate's handcuffs.

People v. Gamache (2010) 48 Cal.4th 347, 366-370 upheld the trial court's order requiring defendant to wear leg shackles and a REACT belt where evidence was introduced showing: (1) defendant's cell had been searched and he had been found with a hacksaw, ounces of toothpaste (used to saw through bars), plans for a homemade silencer, and a written escape plan; (2) defendant sent two letters to family arguably planning an escape; and (3) defendant had been found with a homemade handcuff and an elastic file fastener that he allegedly was seeking to shape into a weapon. This Court also held that the instruction of *People v. Mar* (2002) 28 Cal.4th 1201, 1225, 1230 to trial courts to consider the psychological impact of stun belts operates prospectively only. (*People v. Gamache*, supra, 48 Cal.4th at p. 367, fn. 7.)

People v. Lomax (2010) 49 Cal.4th 530, 558-562 upheld the trial court's decision to order defendant to wear a REACT belt after defendant attacked a bailiff in a holding cell.

In *People v. Howard* (2010) 51 Cal.4th 15, 27-30, this Court found any error in requiring the defendant to wear a REACT belt was harmless under *Chapman v. California* (1967) 386 U.S. 18, 24, where defendant did not assert that wearing the belt had negatively affected his demeanor on the witness stand, but rather only asserted that antipsychotic drugs had a negative impact on his demeanor during his testimony. This Court also held that a court's abuse of discretion in requiring use of a stun belt is not structural in nature and is not reversible per se. (*People v. Howard, supra*, 51 Cal.4th at p. 30, fn. 6.)

In *People v. Miller* (2009) 75 Cal.App. 4th 1109, 1112-1118, the Attorney General conceded the trial court had erred in requiring defendant, a prison inmate in court for an in-prison stabbing, to wear shackles; the appellate court held that the error was not harmless because it was reasonable to infer that the jury saw the shackles, since the trial court instructed the jury to disregard them, an advisement that should only be given when shackles are visible.

In *People v. Stevens* (2009) 47 Cal.4th 625. 632, 644, this Court described the use of stun belts for purposes of courtroom security as an "exceptional practice[ ]" that is "inherently prejudicial."

People v. Wallace (2008) 44 Cal.4th 1032, 1049-1051, upheld the shackling of the defendant upon testimony of a deputy that defendant had been cited for many rules violations while awaiting trial in the county jail, which included five jailhouse fights and possession of illegal razors.

People v. McDaniel (2008) 159 Cal.App.4th 736, 741-747, held that (1) it can be reasonably inferred that the jury knew and saw that defendant was shackled because he was allowed only to have one hand freed, he testified on the stand, and the court expressly advised jurors to disregard defendants shackles; and (2) information from a probation report prepared after trial describing defendant's violence in jail and domestic violence outside of jail may not be used to retrospectively justify the shackling of a defendant where the trial court fails to make a determination on the record before trial.

In *People v. Soukomlane* (2008) 162 Cal.App.4th 214, 229-233, the Court of Appeal found the "manifest need" standard was not met by defendant's emotional outbursts in the court room.

In *People v. Combs* (2004) 34 Cal.4th 821, 836-839, shackling of the defendant was upheld based upon the prosecutor's representation, undisputed by defendant, that defendant had possessed two shanks in jail and had threatened jail deputies, and based upon a psychological report in which defendant threatened to "nut up" in the court room.

Very Truly Yours,

Kathleen M. Scheidel

KATHLEEN M. SCHEIDEL
Assistant State Public Defender

DECLARATION OF SERVICE

Re: *People v. John Leo Capistrano*

Calif. Supreme Ct. No. S067394
Sup. Ct. No. KA 034540

I, Neva Wandersee, declare that I am over 18 years of age, and not a party to the within cause; that my business address is 1111 Broadway, 10th Floor, Oakland, California 94607. I served a copy of the following document:

NOTICE OF SUPPLEMENTAL AUTHORITIES

by enclosing it in envelopes and

/ / **depositing** the sealed envelope with the United States Postal Service with the postage fully prepaid;
/X/ **placing** the envelopes for collection and mailing on the date and at the place shown below following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

The envelopes were addressed and mailed on **May 19, 2014,** as follows:

Victoria B. Wilson, DAG Office of the Attorney General 300 South Spring Street, #500 Los Angeles, CA 90013	David Goodwin P.O. Box 93579 Los Angeles, CA 90093-0579 (Attorney for Appellant Smith)
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Habeas Corpus Resource Center 303 Second St., Suite N400 San Francisco, CA 94107	

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Signed on May 19, 2014, at Oakland, California in the county of Alameda.

NEVA WANDERSEE