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SUPREME COURT
FILED

JAN 05 2016

Frank A. McGuire Clerk
[Signature]
Deputy

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

IRVING RAMIREZ,

Defendant and Appellant.

CAPITAL CASE

Case No. S155160

Alameda County
Superior Court Case
No. 151080

**OPPOSITION TO APPELLANT'S
MOTION FOR JUDICIAL NOTICE**

Ramirez asks this Court to take judicial notice of three pages of the Reporter's Transcript of trial proceedings in *People v. Smithey*, Calaveras Co. Super. Ct. No. 2639 (affirmed in *People v. Smithey* (1999) 20 Cal.4th 936.) Ramirez insists that these three transcript pages support his claim that the trial court in his case erred in modifying CALCRIM No. 521. Granting his request, Ramirez argues, would show that, in contrast to his case, "the prosecutor [in *Smithey*] made clear in his closing argument that while it was not necessary to prove the defendant maturely and meaningfully reflected on the gravity of his act, premeditation and deliberation required more than just malice or intent to kill." (Mot. at p. 4.) According to Ramirez, judicial notice of the content of the

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prosecutor’s argument delivered in *Smithey* must be taken at this juncture because “that [argument] was not apparent from the Court’s opinion in *Smithey*.”

The motion for judicial notice should be denied because the only factual matter Ramirez might hope to “prove” by reference to the *Smithey* trial record—what the prosecutor in that case said—is irrelevant to the resolution of any contention he proposes to advance in his own case. By definition, anything said by the prosecutor in *Smithey* but “not apparent from the Court’s opinion in *Smithey*” necessarily had no bearing on this Court’s resolution of that case. Less still, would the prosecutor’s remarks in *Smithey* have any tendency in reason to show that the trial court in this case did, or did not, commit instructional error. (See *People v. Smithey*, *supra*, 20 Cal.4th at pp. 980-982; see, e.g., *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 544, fn. 4 [court refuses to take judicial notice of Court of Appeal’s file and legislative history because plaintiff failed to demonstrate their relevance]; *Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 295, fn. 21 [“reviewing court need not take judicial notice of irrelevant court records”]; *Manginin v. R. J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063, overruled on another point in *In re Tobacco Cases II* (2007) 41 Cal.4th 1257, 1263 [court must decline to take judicial notice of material that is not relevant]; *Stockton Citizens for Sensible Planning v. City of Stockton* (2012) 210 Cal.App.4th 1484, 1488, fn. 3 [court of appeal would not take judicial notice of irrelevant city council resolutions].)

Dated: January 5, 2015

Respectfully submitted,

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v. Irving Ramirez**
No.: **S155160**

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 January 5, 2016, I served the attached **OPPOSITION TO APPELLANT'S MOTION 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 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

The Honorable Nancy O'Malley
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Alameda County District Attorney's Office
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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 January 5, 2016, at San Francisco, California.

Nelly Guerrero

Declarant



Signature