

In the Supreme Court of the State of California

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

ANTONIO CHAVEZ MOSES, III,

Defendant and Appellant.

Case No. S258143

Fourth Appellate District Division Three, Case No. G055621
Orange County Superior Court, Case No. 16NF1413
The Honorable Julian Bailey, Judge

OPPOSITION TO APPELLANT’S MOTION FOR JUDICIAL NOTICE

XAVIER BECERRA
Attorney General of California
LANCE E. WINTERS
Chief Assistant Attorney General
JULIE L. GARLAND
Senior Assistant Attorney General
MICHAEL PULOS
Supervising Deputy Attorney General
*STEVE OETTING
Supervising Deputy Attorney General
State Bar No. 142868
600 West Broadway, Suite 1800
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 738-9207
Fax: (619) 645-2012
Email: Steve.Oetting@doj.ca.gov
Attorneys for Plaintiff and Respondent

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ARGUMENT

Appellant Antonio Chavez Moses, III, has moved this Court to take judicial notice of the court file in *People v. Peterson*, case no. G053721. Respondent opposes that motion as both improper and irrelevant.

Appellant relies on the *Peterson* case as evidence that the prosecution had the ability to charge him with an attempt to violate Penal Code section 236.1, subdivision (c), because the same prosecutorial agency brought such a charge in *Peterson* under supposedly similar circumstances. (MP&A at 2-3.) But appellant's argument hinges on the notion that it would be possible not only to charge an attempt to commit an attempt, but also that it would be *proper* to do so. What appellant is really asking the Court to do is attach precedential value to the unpublished *Peterson* decision. This, of course, he cannot do. (Cal. Rules of Court, rule 8.1115(a).)

Appellant asserts that he is not relying on the analysis of the Court of Appeal's unpublished opinion in that case. (Mot. at 1.) But there does not appear to be any other explanation for his request. “““A court may take judicial notice of the [e]xistence of each document in a court file, but can only take judicial notice of the truth of facts asserted in documents such as orders, findings of fact and conclusions of law, and judgments.””” (*People v. Franklin* (2016) 63 Cal.4th 261, 280; see Evid. Code § 452, subd. (d) [“Records of . . . any court of this state” are among the matters that may be judicially noticed].) The mere fact that a different defendant in an unrelated case was charged with an attempt to violate Penal Code section 236.1, subdivision (c), is irrelevant unless that charge was *proper* and it was later upheld on that basis. Thus, if appellant is simply relying on the existence of unspecified documents in the case file (as opposed to the content of the Court of Appeal's decision), his motion should be denied as irrelevant.

In any event, as appellant candidly acknowledges (Mot. at 1), he did not move the lower court to take judicial notice of the *Peterson* case file.

This failure alone is a sufficient ground for denying the motion (*People v. Eubanks* (2011) 53 Cal.4th 110, 129, fn. 9; *People v. Ramos* (1997) 15 Cal.4th 1122, 1155, fn. 2) and appellant provides no reason not to apply this bar here, except to insist that the materials are relevant.

CONCLUSION

Accordingly, for the reasons stated above, appellant's motion for judicial notice should be denied.

Dated: March 30, 2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
LANCE E. WINTERS
Chief Assistant Attorney General
JULIE L. GARLAND
Senior Assistant Attorney General
MICHAEL PULOS
Supervising Deputy Attorney General

/s/ STEVE OETTING

STEVE OETTING
Supervising Deputy Attorney General
Attorneys for Plaintiff and Respondent

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CERTIFICATE OF COMPLIANCE

I certify that the attached **OPPOSITION TO APPELLANT’S MOTION FOR JUDICIAL NOTICE** uses a 13 point Times New Roman font and contains 418 words.

Dated: March 30, 2020

XAVIER BECERRA
Attorney General of California

/s/ Steve Oetting

STEVE OETTING
Supervising Deputy Attorney General
Attorneys for Plaintiff and Respondent

DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S. MAIL

Case Name: **People v. Moses**
No.: **S258143**

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 collecting and processing electronic and physical correspondence. 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. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On March 30, 2020, I electronically served the attached **OPPOSITION TO APPELLANT'S MOTION FOR JUDICIAL NOTICE** by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on March 30, 2020, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 600 West Broadway, Suite 1800, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

Via TrueFiling
Mark A. Hart, Esq
Counsel for Antonio Moses

Via TrueFiling
Appellate Defenders, Inc.

Via U.S. Mail
Orange County Superior Court
Clerk to Hon. Julian Bailey
700 Civic Center Drive West
Santa Ana, CA 92701

Via TrueFiling
Orange County District Attorney's Office

Via U.S. Mail
California Court of Appeal
Fourth Appellate- Division Three
601 W. Santa Ana Blvd.
Santa Ana, CA 92701

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 30, 2020, at San Diego, California.

E. Blanco-Wilkins

Declarant

/s/ E. Blanco-Wilkins

Signature