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May 19, 2014

Frank A. McGuire, Esq.
Court Administrator and Clerk of the Supreme Court
California Supreme Court
350 McAllister Street
San Francisco, CA 94102-3600

Re: *People v. Carrasco*, No. S077009 (automatic appeal)
Oral argument, May 29, 2014
Additional authorities

Dear Mr. McGuire:

The above-referenced matter will be orally argued on May 29, 2014 at 1:30 P.M. Appellant wishes to direct the court's attention to additional authorities counsel intends to refer to in oral argument as they relate to Arguments X (AOB 154-218) and XI (AOB 219-258) concerning ineffective assistance of counsel at the guilt and penalty phases.

1. *Hinton v. Alabama* (2014) 134 S. Ct. 1081

In *Hinton v. Alabama* (2014) ___ U.S. ___, 134 S. Ct. 1081, it was held that (1) defense counsel's failure to request additional funds to replace an inadequate expert amounted to deficient performance, and (2) the state appellate court erred in determining that defendant could not have been prejudiced by counsel's performance. It was determined that the Alabama courts had incorrectly applied *Strickland v. Washington* (1984) 466 U.S. 668, holding that Hinton's trial attorney rendered constitutionally deficient performance by not requesting additional funds for an expert witness based on his mistaken belief as to the amount to which he was entitled. (*Hinton, supra*, 134 S. Ct. at p. 1085.)

Hinton is similar to the facts in this case as Appellant's trial attorney, Robert Beswick, filed a motion to be "relieved from the case and the Public Defender's Office appointed" but failed to bring the motion before the correct judge despite being advised to do so by Judge Stephen Czuleger. (*See* Respondent's Brief at 92-93; 2 Supp. 2 CT 375, 378-379, 381-382.) Further, Beswick only received authorization for $1,500 in investigative service and failed to seek additional funding. (30c RT 3289-3291.) The extent of his guilt and penalty phase "investigation" consisted of speaking with Mark Garrelts, a bail bondsman, regarding two witnesses from state prison inmates. (30c RT 3246, 3256, 3249.) The prosecution ended up finding and transporting at least one of those witnesses to the courthouse. (CT 356.)

Additionally, Mr. Beswick did not hire any forensic experts, criminalists, medical doctors, psychiatrists, neurologist, psychologists, social workers, mitigation expert, fingerprint expert, or penalty phase investigator. (30c RT 3256-3259, 3277-3279, 3293.)

2. *Davis v. Alaska* (1974) 415 U.S. 308

3. *Herring v. New York* (1975) 422 U.S. 853

Davis v. Alaska (1974) 415 U.S. 308 and *Herring v. New York* (1975) 422 U.S. 853, though not directly referred to in Appellant's briefing, are cited to in *United States v. Cronic* (1984) 466 U.S. 648, 655-659, which is included in Appellant's briefing before this Court.

The United States Supreme Court held in *Davis*, that no specific showing of prejudice was required because petitioner had been denied the right of effective cross-examination, which "would be constitutional error of the first magnitude and no amount of showing of want of prejudice would cure it." (*Davis, supra*, 415 U.S. at p. 318.)

In *Herring*, the high court held that the "very premise of our adversary system of criminal justice is that partisan advocacy on both sides of a case will best promote the ultimate objective that the guilty be convicted and the innocent go free." (*Herring, supra*, 422 U.S. at p. 862.)

Both cases support Arguments X & XI, specifically in reference to Beswick's failure to competently cross-examine Shane Woodland, the prosecution's key witness, with allegedly available impeachment evidence contained in a January 30, 1997, interview with the deputy district attorney, prosecution detectives, and Woodland's attorney, Bruce Hill.

More generally, *Davis* and *Herring* address the principle purpose of the right to counsel: to provide the accused with a fair trial, the hallmark of which is the requirement that it be adversarial in nature. "The right to the effective assistance of counsel is thus the right of the accused to require the prosecution's case to survive the crucible of meaningful adversarial testing." (*Cronic, supra*, 466 U.S. at p. 656.)

4. *Milke v. Ryan* (9th Cir. 2013) 711 F.3d 998

Milke v. Ryan, a death penalty case, was reversed and remanded based on violations of *Brady v. Maryland* (1963) 373 U.S. 83 and *Giglio v. United States* (1972) 405 U.S. 150. (*Milke, supra*, 711 F.3d at p. 1001.) This case is relevant to Argument X (AOB 202-206; RB 172-178), which outlines the Woodland interviews that took place on January 30 and

February 10, 1997.[1] The deputy district attorney, prosecution detectives, and Mr. Woodland's attorney, Bruce Hill, were present at the interviews.

Milke is similar to the facts here in that the day before reaching its verdict (RT 2980, 2982), the jury requested that the testimony of Detective Coblentz (RT 2692, lines 4-16) and cross-examination of Woodland (RT 1990-2061) be read back to them. (RT 2978.) In his testimony, Detective Coblentz denies that a January 30th interview took place, referring to the subsequent February 10th, 1997 interview as being the first time he spoke to Woodland about the events that occurred to Allan Friedman on October 24th, 1995. (RT 2962:4-16.) Though the Prosecutor, Danette Meyers, knew that the detective's testimony was false, she failed to correct it. Therefore, the jury was never made aware of the existence of a January 30th interview or its contents. The contents of the interview were favorable to Appellant because it impeached Woodland, the key witness without whom the prosecution had no direct evidence linking him to the shooting. Because the jury was never made aware of this interview or its contents, Appellant did not receive a fair trial and confidence in the guilty verdicts is undermined. (*Kyles v. Whitley* (1995) 514 U.S. 419, 434.)

Yours very truly,

Robert R. Bryan
Lead counsel for Robert Carrasco,
Appellant

RRB/cjc

[1] On February 9, 1999, during the evidentiary hearing on the motion for a new trial, the videotape was marked as Defendant's Ex. O and received in evidence. (RT 3889-3894; CT 766.)

DECLARATION OF SERVICE BY MAIL

I declare that I am over 18 years of age, not a party to the within cause; my business address is 2107 Van Ness Avenue, Suite 203, San Francisco, California 94109. Today I served a copy of the attached **Letter of Additional Authorities** upon the following by mailing same in an envelope, postage prepaid, and addressed as follows:

Virginia Lindsay, Esq.
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Robert Carrasco, No. P-31200
(Appellant and Petitioner)
CSP-San Quentin
4-EB-074
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I declare under penalty of perjury that the foregoing is true and correct.

Executed on this the 19th day of May, 2014, at San Francisco, California.

ROBERT R. BRYAN