

SUPREME COURT
FILED

DEC 20 2019

Jorge Navarrete Clerk

Deputy

Shelley J. Sandusky (Bar No. 155857)
Cliona Plunkett (Bar No. 256648)
Rachel G. Schaefer (Bar No. 298354)
HABEAS CORPUS RESOURCE CENTER
303 Second Street, Suite 400 South
San Francisco, California 94107
Telephone: (415) 348-3800
Facsimile: (415) 348-3873
E-mail: docketing@hcrc.ca.gov
Attorneys for Real Party in Interest Bryan Maurice Jones

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Petitioner,

v.

THE SUPERIOR COURT OF
SAN DIEGO COUNTY,

Respondent,

BRYAN MAURICE JONES,

Real Party in Interest.

Case No. S255826

CAPITAL CASE

Appeal from the Fourth Appellate
District, Division One, No. D074028

(Related to California Supreme Court
Case No. S042346 [on direct appeal –
closed]; No. S217284 [on habeas
corpus])

San Diego Superior Court Case No.
CR136371, The Honorable Joan P.
Weber

**REQUEST TO TAKE JUDICIAL NOTICE AND PROPOSED
ORDER**

TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE
OF CALIFORNIA AND THE HONORABLE ASSOCIATE
JUSTICES OF THE SUPREME COURT OF THE STATE OF
CALIFORNIA:

Real Party in Interest, Bryan Maurice Jones, through his counsel, the
Habeas Corpus Resource Center (HCRC), respectfully requests, pursuant to
California Evidence Code sections 452 and 459 and California Rules of

Court, rule 8.252(a), that this Court take judicial notice of the following pleadings and orders relevant to the instant appeal:¹

1. The unpublished opinions of the California Courts of Appeal in *People v. Superior Court (Carey)*, Court of Appeal, Second District Case No. B290318, filed on Sept. 28, 2018 (Exhibit A), and *People v. Michael Antonio Placencia*, Court of Appeal, Third District Case No. C062700, filed on November 23, 2019 (Exhibit B).²

2. Excerpts³ of the Petition for Writ of Habeas Corpus and Exhibits 15 & 16 in Support of Petition for Writ of Habeas Corpus, filed on September 18, 2015, in *In re Jeffrey Jones*, California Supreme Court Case No. S230239 (Exhibit C).

3. Excerpts of the Petition for Writ of Habeas Corpus and Exhibit 227 in Support of Petition for Writ of Habeas Corpus, filed on September 27, 2007 in *In re George Brett Williams*, California Supreme Court Case No. S030553 (Exhibit D), and the Order to Show Cause issued by this Court on July 13, 2016 in the same matter (Exhibit E).

¹ Concurrent with this Request, Mr. Jones files his Answer Brief containing citations to the materials as to which he seeks judicial notice in the instant Request. To the extent his Answer Brief further demonstrates the import of such materials to his arguments and provides further context for this Court to consider the instant Request, Mr. Jones incorporates his Answer Brief into this Request.

² In accordance with California Rules of Court, rule 8.1115, Mr. Jones does not request that this Court take judicial notice of the decisions in either *Carey* or *Placencia* for any precedential value. Instead, Mr. Jones notes that the decisions in *Carey* and *Placencia* demonstrate the prosecutor's voluntary disclosure of notes relating to jury selection.

³ To conserve state resources, Mr. Jones has provided only the relevant excerpts of the more voluminous documents as to which he seeks judicial notice. If this Court wishes to review any or all of the complete documents from which these excerpts were taken, Mr. Jones will promptly file them with the Court.

4. Order on Defendant's Extraordinary Motion for New Trial entered on January 10, 2019, in *Georgia v. Johnny Lee Gates*, Superior Court of Muscogee County Case No. SU-75-CR-38335 (Exhibit F).

5. Excerpts of the Amicus Curiae Brief of the North Carolina State Conference of the NAACP and Appendices 1 and 2, filed on July 11, 2018, in *North Carolina v. Marcus Reymond Robinson et al*, North Carolina Supreme Court Case Nos. 411A94-6, 548A00-2, 441A98-4, and 130A03-2 (Exhibit G).

6. Excerpts of the Order Granting Motions for Appropriate Relief, filed on December 13, 2012, in *North Carolina v. Tilmon Golphin et al*, Cumberland County Case Nos. 97-CRS-47314-15, 98-CRS-38432, 98-CRS-35044, and 01-CRS-65079 (Exhibit H).

7. Order entered on April 5, 2002, in *Tennessee v. Abu-Ali Abdur'rahman*, Tennessee Supreme Court Case No. M1988-00026-SC-DPE-PD (Exhibit I).

Mr. Jones requests that this Court take judicial notice of the above-delineated pleadings and orders in accordance with Evidence Code sections 452 and 459.⁴ Together these sections authorize this Court to take judicial notice of any "decisional, constitutional, and statutory laws of any state of the United States," as well as any "[r]ecords of (1) any court of this state or (2) any court of record of the United States or of any state of the United States." (Evid. Code §§ 452, subd. (a) & 459, subd. (a).)

In its Opening Brief, Petitioner asserts that a prosecutor's voir dire notes are not discoverable and cites cases from other states purportedly supporting its argument that such notes constitute protected work product

⁴ Mr. Jones has not previously sought judicial notice of these materials from either the San Diego Superior Court or the Court of Appeal below.

because they pertain to trial strategy.⁵ Petitioner failed to argue that case law supports its claim that these notes pertain to trial strategy or cite to these cases in its Opposition to the Motion for Postconviction Discovery and Preservation of Evidence filed in the Superior Court, its Petition for Writ of Mandate filed in the Court of Appeal below, and its Petition for Review filed in this Court. As such, Petitioner has waived this argument. (See Cal. Rules of Court, rule 8.516.)

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

⁵ (See Opening Brief at 12-13.) Mr. Jones further discusses Petitioner's arguments in his concurrently-filed Answer Brief.

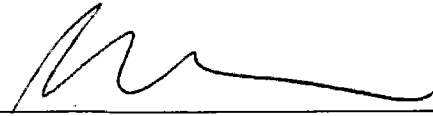
Should this Court nevertheless be inclined to consider Petitioner's argument, the above-delineated materials are relevant to the question presently before this Court regarding the scope of core work-product protection and its inapplicability to a prosecutor's voir dire notes when a prima facie *Batson/Wheeler*⁶ challenge has been made. The identified materials detail numerous instances in California and across the United States where appellants and habeas petitioners have obtained the prosecution's jury selection notes either through informal or court-ordered discovery, and such notes have formed the basis of and/or evidentiary support for a *Batson/Wheeler* challenge. The materials as to which Mr. Jones asks this Court to take judicial notice demonstrate the fallacy of Petitioner's argument that access to the prosecutor's notes is routinely denied and are therefore relevant to the questions before this Court in the instant appeal.

WHEREFORE, Mr. Jones respectfully asks the Court to grant this request.

Dated: December 20, 2019 Respectfully submitted,

HABEAS CORPUS RESOURCE CENTER

By:



Rachel G. Schaefer

⁶ *Batson v. Kentucky* (1986) 476 U.S. 79; *People v. Wheeler* (1978) 22 Cal.3d 258.

No. S255826

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE, Petitioner,

v.

THE SUPERIOR COURT OF SAN DIEGO COUNTY, Respondent,

BRYAN MAURICE JONES, Real Party in Interest.

Based on Real Party in Interest Bryan Jones's "Request to Take Judicial Notice," and exhibits thereto, filed on December 20, 2019, and the other briefing and exhibits on file in this case, Mr. Jones's Request to Take Judicial Notice is hereby granted.

Chief Justice

PROOF OF SERVICE

Case Name: *People v. Superior Court (Bryan Maurice Jones)*
Case No.: S255826

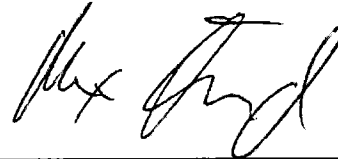
I am over 18 years of age and not a party to this action. I am a resident of or employed in the county from which the document was served. My business address is: Habeas Corpus Resource Center, 303 Second Street, Suite 400 South, San Francisco, California 94107. My electronic address is docketing@hcrcc.ca.gov.

I served by mail the following document(s): **Request for Judicial Notice and Proposed Order, Materials to be Judicially Noticed (2 Volumes)** on those parties listed in the attached service list.

- By U.S. Mail - Deposited with the United States Postal Service, postage fully prepaid.
- By U.S. Mail - Deposited for collection and mailing 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 package or envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: December 20, 2019



Max Friend

SERVICE LIST

Samantha Begovich, Deputy District Attorney
330 W. Broadway, Suite 860
San Diego, CA 92101
619-531-4457
Samantha.Begovich@sdca.org
Petitioner

The Honorable Judge Joan P. Weber
Central Courthouse, Division 1804
1100 Union Street
San Diego, CA 92101
619-844-2184
Respondent Court

Bryan Maurice Jones, D-50899
4-EY-37
C.S.P. San Quentin
San Quentin, CA 94974
Real Party in Interest

Brendon Marshall, Deputy Attorney General
Attorney General- San Diego Office
P.O. Box 85266
San Diego, CA 95266
619-738-9000
Counsel for Respondent on Habeas