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August 19, 2019

Jorge E. Navarrete
Clerk and Executive Officer of the Court
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

Re: *People v. Joe Edward Johnson*, S029551
Notice of Supplemental Authorities

Dear Mr. Navarrete,

This case is scheduled for oral argument on Tuesday September 3 at 1:30 p.m. in San Francisco. For this Court's consideration, appellant cites the following additional authorities not contained in the briefs on file and which counsel may cite during oral argument.

Argument I: Denial of *Faretta* Motion.

Tamplin v. Muniz (9th Cir. 2018) 894 F.3d 1076, 1088-89 (even under the deferential AEDPA standard a *Faretta* motion filed two weeks before the scheduled trial date is timely as a matter of clearly established United States Supreme Court law).¹

Burton v. Davis (9th Cir. 2016) 816 F.3d 1132, 1141. (“had Burton asked to represent himself weeks before trial and had the trial court denied his request as untimely, we would conclude that the denial was contrary to *Faretta* and would issue the writ on that basis.”)

Argument II: Denial of *Batson/Wheeler* Motion.

Flowers v. Mississippi (2019) ___ U.S. ___, 139 S.Ct. 2228, 2243, 2247-2248 (disparate investigation of prospective jurors on the basis of race is evidence of discrimination); *id.* at p. 2246 (seating one black juror “cannot insulate the State from a *Batson* challenge”).

¹ Because the question of timing is critical to this issue appellant has, for the convenience of the court, attached a timeline of significant events with record references.

Thank you for bringing this letter to the court's attention.

Sincerely,

/s/

Andrew C. Shear
Senior Deputy State Public Defender
(CBN 244709)

Chronology of Events Related to *Faretta* Motion

People v. Joe Edward Johnson No. S029551

- March 21, 1991 Under an order issued by the California Supreme Court Charles Ogulnik's suspension from the practice of law ends. He remains on probation until September 20, 1993. (6CT 1149.22-1149.23)
- May 17, 1991 The court sets a trial date of September 23, 1991. (30RT 10077)
- About July 3, 1991 Ogulnik is assigned to represent Mr. Johnson in his second penalty retrial. (49RT 10542)
- July 3&4, 1991 Mr. Johnson writes Ogulnik and Gary Dixon expressing hope they will be able to work together. (6CT 1149.9; 1149.10)
- August 19, 1991 The defense moves for a continuance. Ogulnik does not appear in court. The court grants the defense motion and continues the case to November 18, 1991. (30RT 10085-10086)
- October 23, 1991 Mr. Johnson writes Donald Masuda (*Keenan* counsel), thanks him for work on the case, and expresses concern about whether court will grant the continuance. Mr. Johnson complains about lack of consideration shown to him by others in case and says that he expects to have the final say in what defense is presented at trial. (6CT 1149.11-1149.12)
- November 15, 1991 Defense moves for a continuance to June 22, 1992. The motion is unopposed and is granted. (30RT 10092)
- January 30, 1992 Mr. Johnson writes to Masuda, telling him he has recently heard about a state bar investigation of Ogulnik. (6CT 1149.14)
- February 10, 1992 Mr. Johnson writes Robert Bryan, his prior appellate attorney, seeking help to get information on the state bar disciplinary case against Ogulnik. (6CT 1149.14)
- April 10, 1992 Mr. Johnson writes state bar counsel Hans Uthe seeking information about the Ogulnik disciplinary case. (6CT 1149.16)
- April 14, 1992 Mr. Johnson writes Ogulnik informing him that he has written the state bar regarding the disciplinary case and indicating dissatisfaction with their relationship and Ogulnik's work on the case. (6CT 1149.18-1149.20)
- April 16, 1992 Hans Uthe at the state bar writes Mr. Johnson saying he has referred the request to Richard Harker, assistant chief trial counsel in the office. (6CT 1149.17)
- April 19, 1992 Mr. Johnson writes Richard Harker at the state bar reiterating his request for records. (6CT 1149.21)

April, 1992 Mr. Johnson writes Ogulnik expressing concern about the progress of the investigation. (49RT 10600-10601)

May 2, 1992 Mr. Johnson writes Ogulnik and expresses concern that he has not received all of the information that had been developed in the case or a list of witnesses the attorneys intend to call. He also complains that he has repeatedly asked Ogulnik for information about the state bar matter but has received none. (6CT 1149.46)

May 3, 1992 Mr. Johnson writes Masuda and complains about a meeting with Ogulnik and Dixon on May 1. He expresses frustration over the failure of his defense team to investigate certain aspects of the case he feels are important. (6CT 1149.48)

May 5, 1992 Scott Drexel, Chief Court Counsel for the State Bar writes Mr. Johnson and provides information and documents regarding Ogulnik's disciplinary case.

May 8, 1992 Mr. Johnson writes Ogulnik, Dixon, Marteen Miller, and Masuda discussing the breakdown in communications. He says he is still trying to work with his attorneys. (6CT 1149.50)

May 9, 1992 Mr. Johnson writes Ogulnik and Masuda stressing that they cannot afford to fail to raise everything possible to get a favorable outcome. (6CT 1149.51)

June 1, 1992 Mr. Johnson writes to Masuda asking him to file motions regarding his counsel because mailing them from prison would take at least two weeks. (6CT 1149.52)

June 8, 1992 Mr. Johnson files a written motion to proceed in pro per under *Faretta*. (4CT 1123) He also files a *Marsden* motion (4CT 1122.1), a motion to continue (4CT 1136), and a motion for discovery of documents Ogulnik's Bar disciplinary hearing. (4CT 1125).

June 12, 1992 The prosecution files an opposition to Mr. Johnson's *Faretta* and continuance motions in which it states that June 22 is the date set for trial. (4CT 1137.3) During a discovery hearing that day the court says the *Faretta* motion is set to be heard June 22, 1992. (30RT 10106) Also at that hearing the prosecutor states that the June 22 date is in the master calendar part and that they do not yet know who the trial judge is. (30RT 10099-10100.)

June 22, 1992 The Master calendar judge does not hear the *Faretta* motion and informs parties that the case will be assigned to Judge Mering for trial and that the first appearance before Judge Mering will be July 6, 1992. (30RT 10108-10109; 4CT 1137.14)

July 6, 1992 Judge Mering says he is still familiarizing himself with the case. (31RT 10502) The first discussion of the *Marsden* motion occurs in camera in the afternoon session. (49RT 10542)

July 7, 1992 The court holds a second day of the in camera *Marsden* hearing. (49RT 10569) The court denies the *Marsden* motion. (49RT 10621) The court says it will address *Faretta* in open court on July 9, 1992. (49RT 10622-10623)

July 9, 1992 The court acknowledges it is “a little overwhelmed by the volume of motions.” (31RT 10626) The court says it has decided it needs to ask questions about the *Faretta* motion in camera. (49RT 10651-10652)

July 14, 1992 The court says it still has more questions on *Faretta* and *Marsden* which need to be addressed in camera. (31RT 10671)

July 17, 1992 During hearings on other motions, Masuda asks the court if it has decided *Faretta* motion. The court says it has not had time to do so. (32RT 10914)

July 21, 1992 The court holds another in camera hearing. (50RT 10981-10982) Mr. Johnson addresses the court. (50RT 10987) In open court, the court denies the *Faretta* motion as untimely. (32RT 10955-10957)

July 23, 1992 Mr. Johnson files 52 pages of letters and documents as support for his statements to the court at the *Marsden* and *Faretta* hearings. (6CT 1149.1-1149.52)

July 28, 1992 Jury selection begins. (33RT 11251.) The court notes that it has reviewed and considered the additional materials submitted on July 23 and that they do not change its decision. (34RT 11341-11342.)

August 25, 1992 Opening statements and the prosecution’s case in chief begin. (40RT 13286; 41RT 13274)

DECLARATION OF SERVICE

Case Name: ***People v. Joe Edward Johnson***
Case Number: **Supreme Court No. S029551**
Sacramento County Superior Court No. 58961

I, Jon Nichols, the undersigned, declare as follows:

I am over the age of 18, not a party to this cause. I am employed in the county where the mailing took place. My business address is 1111 Broadway, 10th Floor, Oakland, California 94607. I served a copy of the following document(s):

LETTER

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 **August 19, 2019** as follows:

Joe Edward Johnson
C-31602
North Seg. 16-South
San Quentin State Prison
San Quentin, CA 94974

Clerk of the Superior Court
for delivery to the
Honorable Peter Mering
720 Ninth St
Sacramento, CA 95814

ELECTRONIC SERVICE

Melissa Lipon, DAG
Office of the Attorney General
P.O. Box 944255
Sacramento, CA 94424
VIA TRUEFILING @
melissa.lipon@doj.ca.gov on
August 19, 2019

Michael J. Hersek
Habeas Corpus Resource Center
303 2nd St
San Francisco, CA 94107
VIA TRUEFILING @
mhersek@hrcr.ca.gov on
August 19, 2019

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Signed on **August 19, 2019** at Oakland, California.

/s/ Jon Nichols

DECLARANT

STATE OF CALIFORNIA
 Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
 Supreme Court of California

Case Name: **PEOPLE v. JOHNSON (JOE EDWARD)**

Case Number: **S029551**

Lower Court Case Number:

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **andrew.shear@ospd.ca.gov**
3. I served by email a copy of the following document(s) indicated below:

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LETTER	Focus Letter

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Attorney Attorney General - Sacramento Office Melissa Lipon, Deputy Attorney General	sacawttrufiling@doj.ca.gov	e-Serve	8/19/2019 3:57:21 PM
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Habeas Corpus Resource Habeas Corpus Resource Center Nisha K. Shah, Staff Attorney	docketing@hrcr.ca.gov	e-Serve	8/19/2019 3:57:21

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Office Of The State Public Defender - Office Of The State Public Defender - Ok Kathleen Scheidel, Deputy State Public Defender	docketing@ospd.ca.gov	e-Serve	8/19/2019 3:57:21 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

8/19/2019

Date

/s/Jon Nichols

Signature

Shear, Andrew (244709)

Last Name, First Name (PNum)

Office of the State Public Defender

Law Firm