

ORIGINAL

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SUPREME COURT
FILED

DEC - 8 2010

Frederick K. Ohlrich Clerk


Deputy

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE)
OF CALIFORNIA,)
)
 Respondent,)
)
 v.)
)
 CHARLES MOORE,)
)
 Appellant.)

S075726
Superior Court (Los Angeles)
A0185568

APPLICATION FOR JUDICIAL
NOTICE PURSUANT TO
CALIFORNIA RULES OF COURT
8.54 AND 8.252.

RECEIVED

DEC - 3 2010

INTRODUCTION

CLERK SUPREME COURT

In 1978, appellant Charles Moore was charged with capital murder, along with a co-defendant Lee Harris. The two men were tried separately.

Mr. Harris was originally tried in 1980. After he was found guilty and sentenced to death, this Court reversed the conviction and death sentence. (*People v. Harris* (1984))

DEATH PENALTY

36 Cal.3d 36.) Mr. Harris's second trial began in 1985. He was again convicted, but the jury imposed life. (*People v. Harris* (1987) 191 Cal.App.3d 819, 820.)

Mr. Moore, the appellant in this case, was originally tried in 1984, found guilty, and sentenced to death. After Court affirmed that conviction and sentence in 1988, the conviction was set aside in federal court. (*See People v. Moore* (1988) 47 Cal.3d 63; *Moore v. Calderon* (9th Cir. 1997) 108 F.3d 261.) Mr. Moore's second trial began in 1998. He was again convicted and sentenced to death. That is the case currently on appeal to this Court. On November 29, 2010, Mr. Moore filed a Supplemental Opening Brief with the Court in connection with this conviction and sentence.

Among the claims in this supplemental brief is a claim that the prosecutor violated Mr. Moore's state and federal due process rights in taking a position in his trial that was fundamentally inconsistent with the position taken in the trial of Lee Harris. (*People v. Moore*, S075726, Appellant's Supplemental Opening Brief ("ASOB") at 43-53.) Pursuant to California Rules of Court 8.54 and 8.252, as well as Evidence Code sections 452 and 459, Mr. Moore requests the Court to take judicial notice of specific pages from the Reporter's Transcript of the two trials in the Harris case: one of which was pending before this Court (*People v. Harris*, Cr. No. 21633) and one of which was pending before the Second District Court of Appeal (*People v. Harris*, B016657).

This application is based on the Declaration of Cliff Gardner, attached as Exhibit A to the application, as well as the following argument.

ARGUMENT

I. THE COURT SHOULD GRANT JUDICIAL NOTICE OF REPORTER'S TRANSCRIPTS SHOWING THE PROSECUTOR'S RELIANCE ON FUNDAMENTALLY INCONSISTENT POSITIONS AT THE TRIAL OF LEE HARRIS.

As noted above, among the claims presented in Mr. Moore's supplemental brief is a claim that the prosecutor violated his state and federal due process rights in taking a position in Mr. Moore's trial which was fundamentally different from the position he advocated during the two trials of co-defendant Lee Harris. (*People v. Moore*, S075726, ASOB at 43-53.) As argued more fully in Mr. Moore's supplemental opening brief, the Reporter's Transcripts from the two Harris trials show the position taken by the prosecutor in those cases.

Taken together, Evidence Code sections 452, subdivision (d) and 459, subdivision (a) provide that a reviewing court may take judicial notice of the "records of . . . any court of this state" As this Court has repeatedly made clear, the primary question in deciding whether to take judicial notice is whether the information sought to be judicially noticed is reasonably subject to dispute. Where that information is not reasonably subject to dispute, judicial notice is entirely proper even over objection of one of the parties. (*See, e.g., People v. Hill* (1998) 17 Cal.4th 800, 847 n. 9; *People v. Wiley* (1995) 9 Cal.4th 580, 594.)

Here, none of the facts sought to be noticed are disputable. Indeed, since they are verbatim transcripts of arguments made and positions taken in open court, respondent

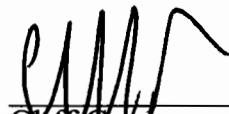
could hardly make such a contention. Judicial notice is appropriate. (*See, e.g. People v. Hoover* (1987) 186 Cal.App.3d 1074, 1082 n.1 [reviewing court takes judicial notice of transcripts of co-appellant's trial in order to evaluate Due Process claim of inconsistent arguments]; *accord County of San Diego v. State* (1997) 15 Cal.4th 68, 83, n.7 [taking judicial notice of records from another case never presented to trial court]; *Estate of Castiglioni* (1995) 40 Cal.App.4th 367, 370, n.3 [same].)

Judicial notice is especially appropriate in light of this Court's ruling in *In re Allison*, SO42478. There, a death row petitioner pursuing the identical claim Mr. Moore is pursuing here elected *not* to raise this claim on appeal, but to raise it in state habeas proceedings. He did so, alleging that the prosecutor violated Due Process by presenting a factual theory inconsistent with that presented at the earlier trial of a co-defendant. (*In re Allison*, SO42478, Petition for Writ of Habeas Corpus at para. XXIII, p. 19.) In two separate filings with this Court, the Attorney General argued that the claim had "been defaulted under California law because petitioner, although he could have, failed to raise it on direct appeal." (*In re Allison*, SO42478, Respondent's Informal Response to Petition for Writ of Habeas Corpus ["Response"] at p. 3; *see also* Respondent's Supplemental Letter Brief of June 16, 1995 at p. 1 [the inconsistent arguments claim "could have been, but was not, raised on direct appeal."].) *This Court agreed with respondent's contention*, rejecting petitioner's inconsistent arguments claim "because [it] could have been, but [was] not, raised on appeal" (*In re Allison*, SO42478, Order of April 16, 1997 at p. 1.)

For all these reasons, the Court should take judicial notice of the attached transcript pages from the cases of *People v. Harris*, Supreme Court Cr. No. 21633 and *People v. Harris*, B016657. In accord with Rules of Court 8.54 and 8.252, the material of which judicial notice is sought has been attached to this application as part of Exhibit A. By taking judicial notice, the Court help assure that the process of deciding Mr. Moore's appeal meets the standards of fairness of reliability demanded by the Eighth Amendment.

DATED: 11/30/10

Respectfully submitted,



Cliff Gardner
Attorney for Appellant

EXHIBIT A

DECLARATION OF CLIFF GARDNER

I, Cliff Gardner, declare:

1. I am an attorney licensed to practice law in the state of California. On July 8, 2009, the Court appointed me to represent appellant Charles Moore in this case.

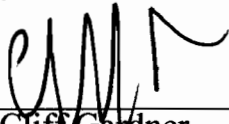
2. Charles Moore was charged with capital murder, along with a co-defendant named Lee Harris. The two men were tried separately. Mr. Harris was originally tried in 1980. After he was found guilty and sentenced to death, this Court reversed the conviction and death sentence. (*People v. Harris* (1984) 36 Cal.3d 36.) Mr. Harris was tried a second time in 1985. The state again sought death; this time, however, the jury imposed a life without parole sentence. (*People v. Harris* (1987) 191 Cal.App.3d 819, 820.)

3. Mr. Moore was also tried twice. After his first conviction was overturned, he was again sentenced to death. I now represent Mr. Moore on appeal from this death sentence and have filed a supplemental opening brief on Mr. Moore's behalf.

4. One of the claims I have raised is a claim that the prosecutor violated Mr. Moore's state and federal due process rights by taking a position in his trial that was fundamentally inconsistent from the position he (the prosecutor) took in seeking death against Lee Harris. I have obtained trial transcripts from the two prior trials of Lee Harris. Attached to this declaration as Attachment 1 are copies of pages 1638, 1647, 1657, 1659, 1660, 1686, 1697, 1699, 2076, and 2077 of the Reporter's Transcript from

People v. Harris, Supreme Court Cr. No. 21633 (which this Court had before it when it decided Mr. Harris's case in 1984) and pages 3838, 3842, 3843, 3844, 3605, 3606, 3609, 3614, and 3615 of the Reporter's Transcript from *People v. Harris*, B016657, which the Second District Court of Appeal had before it when it decided Mr. Harris's case in 1987.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 30th day of November, 2010, in San Francisco, California.


Cliff Gardner

ATTACHMENT 1

1 directed the murders of Hettie and Robert Crumb by word, deed
2 and conduct. His participation was not minor. He was the
3 moving force in ultimately deciding to exterminate those
4 innocent people.

5 As to the murder of Samuel Norwood, I suggest
6 also the evidence is clear that Lee Edward Harris was not a
7 minor participant but an equal partner, and the facts stand
8 uncontradicted that at the moment of decision as to whether
9 to take the life of Sam Norwood or let him go home to his
10 little boy and enjoy his little boy's birthday party, who
11 acted first?

12 Lee Edward Harris tells Mr. Moore, "Don't
13 forget the task that I have for you." That becomes meaningful
14 when we learn why it is no witnesses were left alive.

15 And after Mr. Norwood is taken from a place of
16 relative safety to the deserted railroad tracks, who drags
17 him out of the car, without orders from another? Who stops
18 the car, opens the door and pulls Mr. Norwood out, so that
19 he may be executed with five bullets to the back of his head
20 by two guns, one in the hand of this defendant? Lee Edward
21 Harris did that. Moore did not direct him.

22 To indicate the control over these events that
23 Mr. Moore -- pardon me -- Mr. Harris exercised, we had the
24 question asked by Harris to Moore right after the shootings,
25 "Why did you shoot him so many times?" not "Why did you shoot
26 him at all?" The answer, "I wanted to be sure he was dead," is
27 attributed to Charles Moore.

28 Why would Lee Edward Harris, a person who I am

1 telling you the evidence shows is a vicious and calculated
2 killer, question Charles Moore's repeated use of that gun in
3 using it too many times? The answer is abundantly clear.
4 The motivation of Lee Edward Harris throughout these brutal
5 murders was to leave no witnesses, leave no traces of
6 participation and involvement in these killings.

7 What greater signal for help is there than the
8 sound of a gunshot, one or two, versus five? It is obvious
9 that Harris' concern was not with the victim, Mr. Norwood,
10 who was likely dead with the first shot to the back of his
11 head. His concern was the possible summoning of help or
12 detection. And it is abundantly clear from the evidence that
13 after the murder of Samuel Norwood, these two cold-blooded
14 killers showed no remorse, no sorrow over their deed, who
15 immediately, while the body was still warm, planned the next
16 series of crimes ending in the murders of Mr. and Mrs. Crumb.

17 So when you consider whether or not defendant was
18 merely an accomplice or was a relatively minor participant,
19 you are confronted with overwhelming evidence of the fact that
20 he was a cold-blooded co-leader at least and the man in control
21 of Charles Moore also, who supplied the ideas for the crime,
22 where to go.

23 The court will then tell you that in addition to
24 considering the factors I've mentioned, you may consider any
25 other circumstance which mitigates the gravity of the crime,
26 even though it is not a legal excuse. This last factor opens
27 the door for the consideration of mercy, the consideration of
28 pity. You will not be instructed in this phase that you are

1 inflicted, and the showing of intention is shown circum-
2 stantially in, among other things, by Lee Edward Harris'
3 order to Terry Avery to get a knife, manifesting intention,
4 the logical inference to be drawn to explain the conduct in
5 the multiple stabbings that followed. That is an example
6 of circumstantial evidence.

7 As to the type of evidence shown as opinion
8 evidence, we have two areas of this case that involve opinion
9 by qualified experts. I think you will find the cause of
10 death, as related to you by the coroner, Dr. Dykstra, is
11 based on his physical observations.

12 He draw logical inferences, rendered an opinion,
13 which is a combination of the two, direct and circumstantial
14 evidence, his opinion as to the cause of death.

15 The other opinion is that of Mr. Russell Bradford
16 in relation to the group of documents that can be called the
17 room rental for the Appleton apartment, Exhibit 5, comparing
18 that to one Mr. and Mrs. Brown's hotel registration, written
19 by the same person, that opinion.

20 The other is the opinion that the exemplar of
21 Mr. Harris is written by the same person who wrote the other
22 room registration in the name of Sam Harris.

23 In addition then to in-person testimony that is
24 direct, testimony that is circumstantial completely and this
25 opinion that's a combination, you will also have the physical
26 evidence itself; photographs, deadly weapons, the murder
27 instruments, and these other objects which are both direct
28 evidence, because they are there, and have meaning independently

1 knew of their intention and helped them.

2 The example that stands out like a sore thumb
3 is Terry, go get a knife. Terry, stab Mrs. Crumb here.
4 In judging the person I have just referred to as Terry,
5 Miss Avery, you will come to know her as a person defined by
6 the law as an accomplice. There is no question. The court
7 will instruct you as a matter of law that Terry Avery is an
8 accomplice.

9 What that means is -- it means that in order
10 to convict Lee Edward Harris of these charges based on the
11 testimony of Terry Elaine Avery, Terry Elaine Avery's testi-
12 mony must be corroborated. If we had no other evidence in
13 this case other than the words of Terry Avery, you would be
14 obligated under the law to find this defendant not guilty
15 of all charges, because an accomplice must be corroborated,
16 as I will demonstrate in this argument.

17 This case is proven beyond a reasonable doubt,
18 even without the testimony of Terry Elaine Avery at all, and
19 all of that other evidence that I will show you proves this
20 evidence corroborates Miss Avery in every particular that is
21 significant, but keep in mind that in viewing the testimony
22 of Terry Elaine Avery, you must do so with caution and
23 distrust, because she was involved in this crime, she was a
24 principal, she was there with intent and knowledge and knowing
25 a robbery was going to happen.

26 She was part of it and she must be viewed with
27 caution and distrust because of her coming into this courtroom
28 with guilt in her past, but that doesn't mean she shouldn't be

1 unlawfully the helpless, bound, gagged and otherwise
2 neutralized Mr. and Mrs. Robert Crumb, which intention was
3 expressly manifested by the order to Terry Elaine Avery to
4 get a knife from the kitchen, which was expressly manifested
5 by the giving of that knife to Moore, which he ended up with,
6 which was expressly manifested by the order specifically
7 directed to Avery to stab Mrs. Crumb in the chest when she
8 was turned over by Mr. Harris, when she was in a way directed
9 to the chest and told to stab her here in a vital area of her
10 body. Express malice aforethought.

11 You'll find, however, that that express malice
12 aforethought in intending to kill someone doesn't require any
13 ill will or hatred toward them. That is not part of the
14 mental state known as malice aforethought.

15 So we don't have to show that he hated
16 Mr. and Mrs. Crumb or that he disliked them, bore them any
17 ill will. Only that he intentionally directed and caused
18 their death.

19 And "malice aforethought," that word, means
20 preexisting. And aforethought does not imply deliberation.
21 Aforethought does not require a considerable lapse of time.
22 It only means that the required mental state of express
23 malice existed before the act of killing commenced. That's
24 what it means by aforethought. You think of doing it. You
25 intend to do it and then you do it.

26 On the issue of element two that the People
27 are required to prove in the first theory of first-degree
28 murder - willful and deliberate and premeditated killing - you

1 willfully killing. It is not a rash impulse. Those people
2 weren't going anywhere. They couldn't even talk. They
3 couldn't shout. They couldn't scream. They couldn't hardly
4 move. The act resulting in the multiple stab wounds by
5 Mr. Moore, the stabbing acts by Miss Avery were initiated,
6 responsible, scored by, if you will, and directed by Lee
7 Edward Harris, the defendant.

8 The evidence is clear and uncontroverted that
9 no one in the apartment but Lee Edward Harris brought up the
10 idea, the thought of and the course of conduct known as
11 stabbing these innocent people, nobody other than Lee Edward
12 Harris.

13 In considering then element two, consider the
14 manner in which the actions of Mr. Harris show his mental
15 process. And the court will tell you that intention, that
16 mental state that we are dealing with here, willful, deliberate
17 and premeditated state of mind, intention, can only be shown
18 by the circumstances surrounding the event, because nobody
19 can read the mind of another.

20 It can also be shown by a statement reflecting
21 intention. The conduct of Lee Edward Harris manifest his
22 preexisting decision to exterminate these two innocent people,
23 to execute them. His statements to Terry Avery manifest his
24 intention, when he tells her in no uncertain terms, "Stab
25 the woman here." And his intention that the woman and man
26 should die is manifested by his anger shown when Terry Avery
27 doesn't stab hard or deep enough.

28 Clear, convincing and overwhelming evidence of

1 state of mind of Lee Edward Harris, coolly, calculatingly,
2 deliberatingly and premeditatingly executing by deed and
3 conduct and order these two innocent human beings.

4 Theory one, willful, deliberate and premeditated
5 murder is shown by this evidence beyond a reasonable doubt
6 and every element within.

7 Keep in mind the burden of proof. I bear that
8 burden of proof gladly.

9 An alternative theory is also shown by this
10 evidence beyond a reasonable doubt. Whether or not you
11 believe that first degree murder was committed in willful
12 and deliberate and premeditated fashion, with express malice
13 aforethought, theory number one, you may still, and you will
14 still when you consider this evidence, find that the defendant
15 is guilty of two counts of first-degree murder under the
16 theory that the murders were committed in the course of felonies
17 dangerous to human life; burglary and robbery.

18 Focus your attention, when the court instructs
19 you on what is required to prove in order to establish felony
20 murder of the first degree, and you will see that the elements
21 are different totally.

22 In order to establish the second theory -- and
23 these are alternatives. One or the other will do -- felony
24 murder, again the elements, each and every one must be proven
25 beyond a reasonable doubt to a moral certainty as it is defined.

26 We must show the killing of a human being. We
27 have one of those in each count; Mr. Robert Crumb, Mrs. Hettie
28 Marie Crumb. The killing was unlawful. I suggest to you that

1 three, 86 pounds.

2 So not only does Dr. Dykstra independently
3 establish the killing and its nature but corroborates to
4 almost every particular in a material way Miss Avery's
5 testimony of what she saw with her own eyes in the perpetration
6 of these crimes.

7 As to Robert Crumb, I think it's even more
8 graphically shown that the intention to kill him was clearly
9 manifested. After providing the knife to Mr. Moore, through
10 his directions to Avery, Moore stabbed Mr. Crumb five times
11 through the heart, five times through the heart, and if that
12 isn't enough, three stab wounds to the lungs. If that isn't
13 enough, two more for good measure in another part of his body.

14 Ten independent blows of deadly force. Any
15 question of intention versus accident, intention versus --
16 well, an afterthought? And, again, as to all of those wounds,
17 ladies and gentlemen, People's 8, this vicious weapon, this
18 butcher knife is the weapon used.

19 It wasn't enough to stab Mr. Crumb these 10 times,
20 8 of which were independently fatal, if left alone. That was
21 done only after he was pistol whipped. And that's the
22 coroner's version of what he saw on the head wounds,
23 independent of Miss Avery, who says Mr. Crumb was struck with
24 a pistol once by this defendant, Mr. Harris, and once that she
25 saw by Mr. Moore.

26 So again not only independent of Miss Avery but
27 also in corroborating her, we have the fact that, yes, the man
28 was pistol whipped. Why? In an effort to drag from him

1 That should be clear.

2 Miss Avery, in her efforts to be fair and
3 truthful, has not told us that Mr. Harris has stabbed per-
4 sonally anyone. He did, however, physically aid those
5 killings and is equally guilty thereof because of his
6 initiation and order that the killings take place. That is
7 what the court will tell you means physically aided.

8 That's Circumstance 1 of both Count I and II.
9 They are repeated for each victim, Mr. Robert Crumb and
10 Mrs. Fattie Marie Crumb.

11 In the second circumstance, presuming -- and I
12 presume very logically that you will convict this defendant
13 of two counts of murder in the first degree, but assuming
14 that, then you must decide Special Circumstance 2. Again
15 each element must be proven beyond a reasonable doubt. No
16 less evidence is satisfactory in this court of justice. We
17 must prove these four elements, all of them, beyond a
18 reasonable doubt, that the murder was willful, deliberate
19 and premeditated.

20 Again focus on the nature of the killing, how
21 it went about and the definition of willful and deliberate
22 and premeditated that the court will give you. You will see
23 that satisfied beyond a reasonable doubt.

24 Second, that the defendant was personally present
25 during the acts causing death. No question he was there.
26 Ordered and initiated the killing itself and the act of
27 Mr. Moore which followed immediately. He was there the whole
28 time. No question, plus beyond a reasonable doubt,

1 others, just like first-degree murder, this two theories,
2 willful, deliberate, premeditated murder, or felony murder.

3 So does the Special Circumstance No. 3 -- the --
4 it is based on a different theory, I submit than burglary-
5 murder or robbery-murder that we have just discussed. You
6 will see absent from the elements necessary willful, deliberate
7 and premeditated killing. Not required.

8 What is required for the multiple murder
9 special circumstance are these elements and these elements
10 only. That the defendant was personally present during the
11 acts causing death. Clearly, beyond any question, he was
12 there; that he physically aided or committed the acts causing
13 death, with intent to kill.

14 Element 2 is the same as Element 3 and the other
15 two special circumstances.

16 Physically aided again is the theory upon which
17 the People rely, because the defendant did not stab anyone
18 personally. He ordered it to be done by others, suggested it
19 and initiated it. That is physically aiding, as defined by
20 the court.

21 Element 3. This presumes that the defendant has
22 been found guilty of two counts of murder in the first degree,
23 so, therefore, if you find the defendant guilty of first-degree
24 murder in Count I and Count II, the only additional evidence
25 to be presented for special circumstance known as multiple
26 murder is that he physically aided, with intent to kill, the
27 killing, and that he was personally present, so to make your
28 jobs somewhat easier, I will suggest to you this:

1 YOU DIDN'T GET TO KNOW IT THEN, BUT NOW YOU SEE
2 THE FULL PICTURE.

3 AND YOU KNOW FROM THIS EVIDENCE ALTOGETHER THAT
4 THE INSTIGATOR OF THE ROBBERY IN EACH CASE, THE PERSON THAT
5 CHOSE THE VICTIM, HAD WORKED WITH OR HAD LIVED WITH THE
6 VICTIM, WAS CHARLES EDWARD MOORE.

7 YOU KNOW FROM THE EVIDENCE THAT THE MOST SERIOUS
8 KILLING CONDUCT IN BOTH INSTANCES WAS BY CHARLES EDWARD
9 MOORE.

10 YOU KNOW THAT THE LION'S SHARE OF THE PROCEEDS OF
11 THE CRIMES WAS TAKEN BY CHARLES EDWARD MOORE.

12 BUT YOU ALSO KNOW WITHOUT QUESTION NOW THAT THE
13 IDEA OF THE ACTUAL KILLING AND HOW TO DO EACH OF THE THREE
14 KILLINGS WAS THIS DEFENDANT LEE EDWARD HARRIS' CONTRIBUTION
15 TO THIS SERIES OF EXECUTIONS.

16 NO QUESTION ABOUT IT.

17 ASSIGNING RESPONSIBILITY IN THE MORAL SENSE,
18 CHARLES MOORE STILL REMAINS NUMBER ONE, MR. HARRIS A CLOSE
19 SECOND, AND MISS AVERY A DISTANT THIRD. NO QUESTION ABOUT
20 THAT EITHER.

21 FACTORS A, B, AND C, I SUGGEST, BASED ON THE
22 EVIDENCE, ARE THE MOST IMPORTANT THINGS TO CONSIDER BECAUSE
23 AS A MORAL IMPERATIVE, IT SEEMS, THAT THE PUNISHMENT SELECTED
24 SHOULD BE REFLECTIVE OF THE CRIMINAL CONDUCT OF THE GUY YOU
25 ARE JUDGING.

26 YOU SHOULD PAY TO A MEASURE OF WHAT YOU DO.

27 YOU MUST DETERMINE PENALTY IN THE GREAT PART BY
28 WHAT MR. HARRIS HAS DONE. THE PUNISHMENT SHOULD FIT THE

1 COMPARED TO THE FACTS OF THE CRIMES. THE FACTS OF THE
2 CONVICTION.

3 FACTOR NEXT, G, WHETHER OR NOT THE DEFENDANT
4 ACTED UNDER EXTREME DURESS OR UNDER THE SUBSTANTIAL
5 DOMINATION OF ANOTHER.

6 WHAT THAT FACTOR TENDS TO LOOK AT IS THE RELATIVE
7 MORAL CULPABILITY, THE RELATIVE SERIOUSNESS OF THE CONDUCT OF
8 THE PARTICIPANTS IN THE CRIMES.

9 IF YOU WERE TO FIND, FOR INSTANCE, THAT
10 MR. HARRIS WAS THE DUPE OF MR. MOORE, MOVED EXCLUSIVELY AT
11 HIS DIRECTION UNDER DURESS WITH NO CHOICE TO THE CONTRARY, I
12 SUGGEST THAT WOULD HAVE TO BE CONCLUDED TO BE A FACTOR IN
13 MITIGATION BECAUSE HE WASN'T ALL THAT RESPONSIBLE FOR WHAT
14 HAPPENED. HE DID IT BECAUSE SOMEBODY MADE HIM, IN ESSENCE.

15 IS THAT WHAT THE EVIDENCE TELLS YOU HERE?
16 CERTAINLY NOT.

17 WHAT DO WE KNOW ULTIMATELY ABOUT THE FACT OF
18 BEING AN INDEPENDENT PERSON WILLFULLY ENGAGED IN A CRIME
19 VERSUS BEING DOMINATED AND FORCED TO?

20 WE KNOW THE EXECUTION AFTER THE KIDNAP AND
21 ROBBERY OF SAM NORWOOD WAS ACTIVELY PARTICIPATED IN BY LEE
22 EDWARD HARRIS AND PERSONALLY PARTICIPATED IN THE KILLING
23 DEED, SHOOTING HIS GUN INTO THE HEAD OF MR. NORWOOD AS WELL
24 AS MR. MOORE DOING IT.

25 WE KNOW THAT RIGHT AFTER THAT INCIDENT,
26 MR. HARRIS DID NOT IN ANY WAY ATTEMPT TO ABANDON THE JOINT
27 CRIMINAL PURPOSES THAT HE MR. MOORE AND MISS AVERY, BUT THEN
28 AGREED TO GO TO ANOTHER STATE TO CONTINUE THIS VISCIOUS CRIME

1 SPREE WITH THE CRUMBS AS VICTIMS.

2 WE KNOW THAT EVEN AFTER THE THIRD BODY FOUND, THE
3 TWO CRUMBS ARE DEAD, THAT MR. HARRIS, MR. MOORE, STAYED
4 TOGETHER AS A TEAM AND WERE JOINTLY ARRESTED IN THE SAME
5 APARTMENT THOUSANDS OF MILES AWAY IN LITTLETON, COLORADO.

6 THAT'S THE EVIDENCE.

7 SO I SUGGEST FROM THAT EVIDENCE THAT, ALTHOUGH IT
8 IS CLEAR THAT THE VICTIMS WERE CHOSEN BY MR. MOORE, THE
9 LOCATIONS TO BE ROBBED WERE CHOSEN BY MR. MOORE, BASED ON HIS
10 EXPERIENCE, WORKING AT THE WOOLWORTH'S, LIVING AT THE CRUMBS'
11 BUILDING WHERE THEY MANAGED, THAT THE ACTUAL KILLING IDEA AND
12 METHOD IN ALL INSTANCES WAS CHOSEN BY MR. HARRIS FOR THE
13 MOTIVE STATED, TO NOT LEAVE WITNESSES.

14 SO IN THE REAL SENSE, ON THE SUBJECT OF FACTOR G,
15 WHETHER OR NOT THE DEFENDANT ACTED UNDER EXTREME DURESS OR
16 SUBSTANTIAL DOMINATION, IT WOULD APPEAR THAT THAT SIMPLY IS
17 NOT TRUE, THAT THE INDIVIDUALS, ALTHOUGH THE IDEAS INITIATED
18 WITH MR. MOORE, THE CONCLUSION AND CLEAN UP WORK IN NO
19 UNCERTAIN SENSE, THE WIPING OUT OF THE WITNESSES AND THE
20 METHOD CHOSEN, MR. LEE EDWARD HARRIS' PARTICIPATION IN THAT
21 CONDUCT.

22 SO THEREFORE, WHAT DOES IT MEAN? WHETHER OR NOT
23 THE DEFENDANT ACTED UNDER EXTREME DURESS OR SUBSTANTIAL
24 DOMINATION?

25 IF YOU FIND HE DID, IT MUST BE MITIGATING.

26 WHAT DOES IT MEAN IF HE DIDN'T? AND IN A REAL
27 SENSE, WAS AN ACTIVE PARTICIPANT IN THE CRIMES?

28 IT MUST MEAN, I SUGGEST, THAT FACTOR G IS

1 AGGRAVATING IF YOU FIND THAT THERE IS NO DURESS OR -- AND
2 I'LL JUST SHORTEN THE WORD DOMINATION. AND LET'S PUT IT BY
3 MOORE BECAUSE I'M SURE THAT'S WHO IT HAS TO REFER TO IN HERE
4 ULTIMATELY.

5 THE WEIGHT YOU GIVE TO THAT FACTOR IS FOR YOU TO
6 DECIDE. NO QUESTION.

7 THE FACT THAT THIS WAS A JOINT VENTURE AND THE
8 MEN TRAVELED FROM STATE TO STATE EVEN AFTER THE KILLINGS
9 TOGETHER SHOWS A PARTNERSHIP AS OPPOSED TO AN
10 EMPLOYER-EMPLOYEE RELATIONSHIP OR A MASTER-SLAVE OR WHATEVER
11 DOMINATION MEANS IN THE SENSE OF THE INSTRUCTION.

12 WE KNOW AGAIN FROM THE EVIDENCE THAT WHEN IT CAME
13 TO ORDERING MR. MOORE AROUND IN REGARD TO HIS AGGRESSIVE
14 BEHAVIOR, MR. HARRIS DID TAKE CONTROL, WAS ALL TO CONTROL HIM
15 IN RE HIS ACTIONS TOWARD MISS AVERY.

16 THE EVIDENCE IS CLEAR ON THAT.

17 SO I SUGGEST FROM THE EVIDENCE THAT IT'S CLEAR
18 THAT THIS WAS A PARTNERSHIP IN A REAL SENSE, BUT THE IDEA
19 STARTED WITH MR. MOORE. NO QUESTION. HE WAS MORE SERIOUSLY
20 INVOLVED IN THE KILLINGS OF THE CRUMBS, NO QUESTION.

21 AND HE SHOT THE GUNS INTO MR. NORWOOD'S HEAD WITH
22 HIS GUN MORE TIMES THAN MR. HARRIS.

23 WE KNOW FROM THE EVIDENCE THAT MR. HARRIS ASKED
24 MR. MOORE AT THE CONCLUSION OF THAT EXECUTION OF MR. NORWOOD
25 WHY DID YOU FIRE YOUR GUN SO MANY TIMES.

26 NOT IN SHOCK, NOT IN DISMAY FOR THE EXERCISE OF
27 VIOLENCE, BUT GRINNING AS HE ASKED THE QUESTION. GRINNING.

28 ANY REMORSE? ANY SHOWING OF FEELINGS TOWARD AN

1 I'VE TOLD YOU THAT NOW AND I REMIND YOU NOW.

2 I THINK THE EVIDENCE IS CLEAR, AND COUNSEL POINTS
3 THIS OUT CORRECTLY, THAT THE PLANNING OF THE CRIMES, THE
4 DECISION TO COME TO CALIFORNIA TO ROB THESE PEOPLE WAS
5 MR. MOORE'S PLAN. CORRECT. GIVE HIM AN A FOR THAT.

6 THE METHOD OF DEATH CHOSEN WAS NOT MR. MOORE'S
7 PLAN, IT WAS MR. HARRIS'S PLAN.

8 HARRIS DECIDED ON USING THE KNIVES, AND NOT JUST
9 DECIDED TO USE KNIVES, BUT DIRECTED MISS AVERY TO DO SO, AND
10 THE ONLY INFERENCE YOU CAN DRAW THAT IS REASONABLE IS I GAVE
11 THE KNIFE TO MR. MOORE THAT HE USED.

12 BUT IN CONCEDED MR. MOORE'S INVOLVEMENT, WE SEE
13 MR. CARROLL IS DOING SOMETHING THAT HE STARTED OUT WITH IN
14 HIS OPENING STATEMENT TO YOU, AND THAT IS, TO MAXIMIZE THE
15 BAD GUY, BIG EDDIE, AND MINIMIZE THE INNOCENT BYSTANDER, IF
16 YOU WILL, OR THE BYSTANDER WHO IS JUST A FOLLOWER,
17 MR. HARRIS.

18 AND EVERYTHING HE HAS SAID HAS BEEN TO CREATE THE
19 ILLUSION THAT MR. HARRIS WAS A MERE FOLLOWER WITH NO
20 INDEPENDENCE OF THOUGHT. NO INDEPENDENCE OF ACTION.

21 IS THAT THE TRUTH UNDER THE EVIDENCE?

22 NO, IT ISN'T.

23 HOW SO?

24 FROM THE EVIDENCE FROM MISS AVERY'S MOUTH, WE GET
25 THE IMPRESSION THAT CHARLES EDWARD MOORE WAS NOT ONLY A BIG
26 MAN, BUT FRIGHTENING IN ASPECT. SIX FOOT TWO, 250, GIVE OR
27 TAKE. MEAN, AND DANGEROUS.

28 ONE WOULD EXPECT THEN A PERSON OF THAT

1 CONSTRUCTION AND ATTITUDE WOULD FRIGHTEN ALL IN HIS PATH.

2 HE DIDN'T SCARE LEE HARRIS ONE BIT, BECAUSE WHO
3 CONTROLLED CHARLES EDWARD MOORE'S APPETITE FOR SEX? LEE
4 HARRIS.

5 CAN YOU IMAGINE CASPAR MILKTOAST WALKING UP TO
6 THIS FORMIDABLE GIANT, YOU GO, LEAVE THAT GIRL ALONE, AND NOT
7 DYING FOR THE EFFORT OR EVEN NOT PUNCHED IN THE MOUTH?

8 WHO IS CONTROLLING THE BIG BEAST? LEE HARRIS.
9 HE'S IN CONTROL.

10 IT'S MOORE'S IDEA, BUT WHO IS EFFECTUATING THE
11 METHOD OF EXECUTION? HARRIS.

12 IMAGINE WALKING UP TO BIG EDDIE AND SAYING YOU
13 LEAVE THAT WOMAN ALONE AND NOT SUFFERING FOR IT A BIT?
14 WHATEVER YOU SAY, LEE.

15 WHO IS IN CONTROL? WHO'S THE CALM, COOL, AND
16 COLLECTED ONE THAT CHANNELS THE VIOLENCE AND AGGRESSION OF
17 THIS ANIMAL MR. MOORE?

18 WHO TELLS HIM WHERE TO GO? HOW TO DO IT? KEEP
19 IT QUIET. LET'S GET THE JOB DONE QUIETLY AND GET OUT OF
20 HERE?

21 NOT IN HASTE AND FEAR BUT CAREFULLY. LET'S WIPE
22 OR PRINTS, MAKE SURE WE HAVE LEFT NONE AND TAKE OUR TIME AND
23 DO IT RIGHT? LEE HARRIS.

24 FRIGHTENED? COUNSEL SAYS. FRIGHTENED?

25 FRIGHTENED. WHAT EVIDENCE IS THERE OF FEAR IN
26 THE PART OF MR. HARRIS OTHER THAN FEAR OF BEING CAUGHT AND
27 WANTING TO SNUFF OUT THE LIVES OF THOSE IN HIS WAY?

28 WHAT FEAR? NONE.

1 TOWN. KANSAS CITY IS A BORDER TOWN, AS YOU KNOW, PART OF IT
2 BEING IN MISSOURI, PART OF IT BEING IN KANSAS.

3 AT ANY RATE, THAT'S WHERE IT ALL STARTED.

4 WHAT ABOUT THE PLAN TO KILL? A DIFFERENT PLAN.
5 DIFFERENT PLAN.

6 THE PEOPLE ARE NOT REQUIRED TO PROVE THAT THE
7 PLAN TO KILL OCCURRED IN KANSAS. OR AT THE KONA MOTEL. OR
8 ON THE WAY UP THE STAIRS TO THE CRUMBS' APARTMENT. OR AT THE
9 DOOR.

10 WHAT WE ARE REQUIRED TO SHOW IS THAT THE KILLING
11 WAS PREMEDITATED, WILLFUL, AND DELIBERATE, AND IT DID OCCUR
12 WITH THAT EXISTING REFLECTION BEFORE THE KILLING DEED
13 HAPPENED. THAT'S WHAT WE GOT TO PROVE.

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1 FROM THE CONDUCT OF LEE EDWARD HARRIS WHEN HE HELD THE MAN'S
2 LEGS DOWN UNTIL HE STOPPED STRUGGLING?

3 THE REASONABLE INTERPRETATION IS TO PHYSICALLY
4 AID THE KILLING PROCESS.

5 IT'S NOT REASONABLE TO BELIEVE HE WAS FRIGHTENED
6 AND DIDN'T WANT NOISE. BECAUSE NOT A SINGLE THING HE DID IN
7 THAT ROOM SHOWED HE WAS SCARED OF ANYBODY, INCLUDING CHARLES
8 EDWARD MOORE, WHOM HE CONTROLLED.

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1 REASONABLE INTERPRETATION. COUNSEL SAYS THAT ALL
2 THAT CONDUCT REFLECTED MR. HARRIS WAS FRIGHTENED AND MERELY
3 WANTED TO GET THE ROBBERY OVER WITH AND GET OUT. WITH NO
4 INTENTION TO DO HARM.

5 NOT A SINGLE INFERENCE FROM ANY EVIDENCE SHOWS
6 MR. HARRIS WAS EVER FRIGHTENED OF ANYONE, INCLUDING CHARLES
7 EDWARD MOORE.

8 HE WAS CALM AND COOL AND GAVE QUIET AND
9 EFFICIENT, IF YOU WILL, ORDERS.

10 HE EXPRESSED ANGER WHEN THEY WEREN'T CARRIED
11 OUT.

12 WIPE THE PRINTS. YOU TOUCHED THAT.

13 LET'S CONTINUE TO LOOK FOR THINGS AFTER THE
14 BODIES ARE COLD OR DEAD. MAKE SURE WE HAVEN'T LEFT ANY CLUES
15 AND MAKE SURE WE HAVEN'T LEFT ANY OF THE VALUABLES. COSTUME
16 JEWELRY IS THE ONLY THING LEFT, JUNK.

17 CALM AND COOL, NOT FRIGHTENED AT ALL.

18 THE IMPORTANT FACT TO CONSIDER IN THIS, LOOKING
19 AT THE EVIDENCE, IS THAT THIS STATE OF MIND OF WILLFUL,
20 DELIBERATE, AND PREMEDITATED KILLING MUST HAVE OCCURRED
21 BEFORE THE STABBING STARTED.

22 THAT'S WHERE IT HAD TO START. AND WHAT DO WE
23 KNOW ABOUT THAT FACT?

24 WHEN IT BECAME OBVIOUS THAT MRS. CRUMB IDENTIFIED
25 MR. MOORE, OR IT APPEARED SHE DID, MR. MOORE AND MR. HARRIS,
26 ACCORDING TO MISS AVERY, WHICH IS NOT CONTROVERTED, EXCHANGED
27 A VERY POINTED LOOK AT ONE ANOTHER.

28 A SILENT COMMUNICATION, IF YOU WILL. A

CERTIFICATE OF SERVICE

I, the undersigned, declare as follows:

I am a citizen of the United States, over the age of 18 years and not a party to the within action. My business address is 1448 San Pablo Ave. Berkeley, CA 94702. I am not a party to this action.

On December 1, 2010 I served the within

APPLICATION FOR JUDICIAL NOTICE PURSUANT TO CALIFORNIA RULES OF COURT 8.54 AND 8.252 IN PEOPLE V. MOORE, S075726

upon the parties named below by depositing a true copy in a United States mailbox in Berkeley, California, in a sealed envelope, postage prepaid, and addressed as follows:


California Appellate Project
101 2nd Street
San Francisco, CA 94105

Charles Moore
C-86605
San Quentin, CA 94974

Attorney General
300 South Spring St. North Tower
Suite 5001
LA, CA 90013

I declare under penalty of perjury that the foregoing is true.

Executed on December 1, 2010, in Berkeley, California.



Declarant