

**ORIGINAL**

**In the Supreme Court of the State of California**

**PEOPLE OF THE STATE OF  
CALIFORNIA,**

**Plaintiff and Respondent,**

**v.**

**CHARLES EDWARD MOORE,**

**Defendant and Appellant.**

**CAPITAL CASE**

Case No. S075726

**SUPREME COURT  
FILED**

**DEC 20 2010**

Frederick K. Ohlrich Clerk

Los Angeles County Superior Court  
Case No. A018568

The Honorable James B. Pierce, Judge

  
Deputy

**RESPONDENT'S OPPOSITION TO  
APPELLANT'S APPLICATION FOR JUDICIAL  
NOTICE**

EDMUND G. BROWN JR.  
Attorney General of California  
DANE R. GILLETTE  
Chief Assistant Attorney General  
PAMELA C. HAMANAKA  
Senior Assistant Attorney General  
KEITH H. BORJON  
Supervising Deputy Attorney General  
DANIEL C. CHANG  
Deputy Attorney General  
State Bar No. 231358  
300 South Spring Street, Suite 1702  
Los Angeles, CA 90013  
Telephone: (213) 897-2395  
Fax: (213) 897-6496  
Email: DocketingLAAWT@doj.ca.gov  
*Attorneys for Respondent*

**DEATH PENALTY**

**TABLE OF CONTENTS**

	<b>Page</b>
This court should not take judicial notice of the transcripts of the separate Harris trials.....	1
Conclusion .....	3

## TABLE OF AUTHORITIES

	<b>Page</b>
<b>CASES</b>	
<i>People v. Brooks</i> (1980) 26 Cal.3d 471 .....	3
<i>People v. Payton</i> (1992) 3 Cal.4th 1050 .....	1
<i>People v. Sakarias</i> (2000) 22 Cal.4th 596 .....	2
<i>People v. Sanchez</i> (1995) 12 Cal.4th 1 .....	1, 2
<i>People v. Waidla</i> (2000) 22 Cal.4th 690 .....	1
<b>STATUTES</b>	
Evid. Code	
§ 452, subd. (d) .....	1
§ 453.....	2
§ 459, subd. (a).....	1
<b>COURT RULES</b>	
Cal. Rules. Of Court, rules 8.619(b), 8.610(a)(1), (2), & (4).....	3

Respondent respectfully submits this opposition to Appellant/Defendant Charles E. Moore's Application for Judicial Notice ("Application"). The Application must be denied because taking judicial notice of the reporter's transcripts of separately tried codefendant Lee Harris' two trials would "improperly augment" the record of appellant's appeal. (*People v. Waidla* (2000) 22 Cal.4th 690, 703, fn. 1; *People v. Sanchez* (1995) 12 Cal.4th 1, 59, fn. 5.)

**THIS COURT SHOULD NOT TAKE JUDICIAL NOTICE OF THE TRANSCRIPTS OF THE SEPARATE HARRIS TRIALS**

Relying on Evidence Code section 452, subdivision (d), and section 459, subdivision (a), appellant asks this Court to take judicial notice of certain pages from the reporter's transcripts of separately tried codefendant Lee Harris' two trials. (Application at pp. 3-4.) Specifically, appellant makes this request in support of his claim, raised in his supplemental opening brief, that "the prosecutor violated [appellant'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." (Application at p. 2; Appellant's Supplemental Opening Brief at 43-53.) Respondent submits that appellant's request should be denied because taking judicial notice of the transcripts from codefendant's trials would "improperly augment" the record of appellant's appeal.

Evidence Code section 452, subdivision (d), states, in relevant part, that a court may take judicial notice of records of any court of this state. Nevertheless, "[e]ven if a matter is a proper subject of judicial notice, it must still be *relevant*. [Citations.]" (*People v. Payton* (1992) 3 Cal.4th 1050, 1073, italics original.) The party requesting judicial notice must give sufficient notice of the request to each adverse party and "[f]urnish the

court with sufficient information to enable it to take judicial notice of the matter.” (Evid. Code, § 453.)

In *People v. Sakarias* (2000) 22 Cal.4th 596, Sakarias asked this Court to take judicial notice of the appellate record in the trial of Waidla, Sakarias’ crime partner, arguing that the prosecutor argued inconsistent factual theories in the two trials. (*Id.* at p. 633.) This Court denied the request and stated, “Where . . . the asserted inconsistencies in prosecutorial theory were not the subject of any proceeding in the trial court and, hence, neither the inconsistencies nor any explanations the prosecutor may have been able to offer appear in the appellate record, any due process claim defendant can state should be ‘presented by petition for writ of habeas corpus rather than by appeal.’ [Citation.]” (*Id.* at p. 635.) Indeed, this Court held that “to take notice under these circumstances and for the purpose requested would be to augment improperly the appellate record. [Citation.]” (*Id.* at p. 636.)

In *People v. Sanchez, supra*, 12 Cal.4th at page 59, footnote 5, this Court similarly rejected a request by the defendant to have the Court take judicial notice of records in four separate proceedings occurring after the defendant’s trial. As to two of the proceedings, the Court denied the request because “it would improperly augment the appellate record.” (*Ibid.*) As to the other two proceedings, the Court denied the request “on the ground that reference to them is unnecessary to [the Court’s] discussion of the issues raised by defendant.” (*Ibid.*)

Here, including the transcripts of codefendant Harris’ trials would “improperly augment” the record in this case. Since his trials were separate from appellant’s, the transcripts of those trials were obviously not before the trial court in the instant case. Further, appellant makes no allegation

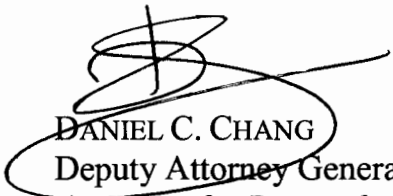
that his claim of inconsistent theories was presented before the trial court. Accordingly, appellant's request for judicial notice should be denied.<sup>1</sup>

### CONCLUSION

Based on the foregoing arguments, respondent respectfully requests that Appellant's Application for Judicial Notice be denied.

Dated: December 17, 2010      Respectfully submitted,

EDMUND G. BROWN JR.  
Attorney General of California  
DANE R. GILLETTE  
Chief Assistant Attorney General  
PAMELA C. HAMANAKA  
Senior Assistant Attorney General  
KEITH H. BORJON  
Supervising Deputy Attorney General

  
DANIEL C. CHANG  
Deputy Attorney General  
*Attorneys for Respondent*

DCC:sf  
LA1999XS0012  
50797066.doc

---

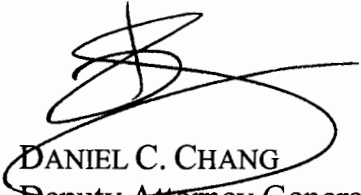
<sup>1</sup> Appellant's cites to various filings in *In re Allison* (California Supreme Court case number S042478). (Application at 4.) His reliance on these filings are unavailing because appellant does not allege, nor does it appear, that these filings were properly made part of the record in this case. (See Cal. Rules. Of Court, rules 8.619(b), 8.610(a)(1), (2), & (4); see also *People v. Brooks* (1980) 26 Cal.3d 471, 484 "[a]ugmentation is not available [] for the purpose of adding material that was not a proper part of the record in the trial court. [Citation.]") Appellant fails to attach these filings to his Application and respondent submits they are irrelevant to the issues in the instant case. Appellant at no time argues that the unpublished filings in *Allison* suffice to somehow overrule the undisputed published precedent of this Court.

**CERTIFICATE OF COMPLIANCE**

I certify that the attached **RESPONDENT'S OPPOSITION TO APPELLANT'S APPLICATION FOR JUDICIAL NOTICE** uses a 13 point Times New Roman font and contains 613 words.

Dated: December 17, 2010

EDMUND G. BROWN JR.  
Attorney General of California



DANIEL C. CHANG  
Deputy Attorney General  
Attorneys for Respondent

**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **People v. Charles Edward Moore**

No.: **S075726**

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 collection and processing of correspondence for mailing with the United States Postal Service. 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 that same day in the ordinary course of business.

On December 17, 2010, I served the attached **RESPONDENT'S OPPOSITION TO APPELLANT'S APPLICATION FOR JUDICIAL NOTICE** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

Cliff Gardner  
Attorney at Law  
1448 San Pablo Avenue  
Berkeley, CA 94702  
Counsel for Appellant (two copies)

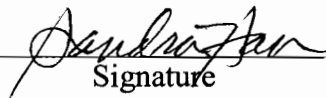
Marilyn Seymour  
Deputy District Attorney  
Los Angeles County District Attorney's  
Office  
210 West Temple, 18th Floor  
Los Angeles, CA 90012

The Hon. James B. Pierce, Judge  
Los Angeles County Superior Court  
415 West Ocean Boulevard, Dept. D  
Long Beach, CA 90802-4591

California Appellate Project  
101 Second Street, #600  
San Francisco, CA 94105-3672

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 December 17, 2010, at Los Angeles, California.

\_\_\_\_\_  
Sandra Fan  
Declarant

\_\_\_\_\_  
  
Signature