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September 24, 2021

Honorable Jorge E. Navarrete, Clerk
Supreme Court of California
350 McAllister Street, First Floor
San Francisco, California 94102-4797

RE: ***People v. William Lee Wright, Jr.***
California Supreme Court Case No. S107900 (**Capital Case**)
Notice of Supplemental Authorities

Dear Mr. Navarrete:

Oral argument in the above-captioned case is set for October 5, 2021, at 1:30 p.m. During oral argument, counsel for respondent may discuss the following authorities not cited in the briefs.

Winkler, *Fundamentally Wrong About Fundamental Rights*, 23 Const. Commentary 227 (Summer 2006) is relevant to appellant's claim that the Sixth Amendment right of self-representation triggers the strict scrutiny standard of review. (AOB 43-44 [Claim I.B.3]; ARB 5.) This article observes that only a small subset of rights in the First and Fifth Amendments trigger strict scrutiny review, and nowhere is strict scrutiny found in Sixth Amendment jurisprudence. (Winkler, *Fundamentally Wrong About Fundamental Rights*, *supra*, at pp. 227-228.)

The cases of *People v. Lee* (1987) 43 Cal.3d 666 and *People v. Gonzalez* (2006) 38 Cal.4th 932 are relevant to appellant's claim of error pursuant to *People v. Marsden* (1970) 2 Cal.3d 118. Specifically, *Lee* and *Gonzalez* are relevant to appellant's assertion that respondent incorrectly applied the *Watson* "reasonable probability" test for harmless error rather than the *Chapman* "beyond a reasonable doubt" test, thereby conceding the issue. (See *Chapman v. California* (1967) 386 U.S. 18; *People v. Watson* (1956) 46 Cal.2d 818.) Appellant points to respondent's statement that appellant "failed to show that, absent the alleged error he would have obtained more favorable verdicts" with a citation to *People v. Henning* (2009) 178 Cal.App. 4th 388, 405 [applying Chapman

standard].) (ARB 21-22; see AOB 81-84 [Claim II.D]; RB 53). In *Lee*, this Court used similar language to conclude beyond a reasonable doubt that “the jury would not have reached a more favorable verdict had it been properly instructed.” (*People v. Lee, supra*, at p. 669 [applying *Chapman* test].) In *Gonzalez*, this Court compared the “reasonable probability,” “reasonable possibility,” and “harmless beyond a reasonable doubt” tests and concluded that they were substantially equivalent based on *Chapman*’s analysis of the same issue. *Gonzalez* acknowledged that “[t]here is little, if any, difference . . . about whether there is a reasonable possibility that the evidence complained of might have contributed to the conviction and requiring the beneficiary of a constitutional error to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.” *People v. Gonzalez, supra*, at p. 961, fn. 6, quoting *Chapman v. California, supra*, 386 U.S. at p. 24, citations and internal quotation marks omitted).

Finally, the recent case of *People v. McDaniel* (2021) 12 Cal.5th 97, 2021 WL 3779752, is relevant to appellant’s penalty phase claims that the jury’s ultimate weighing determination is a factual finding beyond a reasonable doubt pursuant to *Hurst, Ring*, and *Apprendi*; and juror unanimity is required in finding aggravating circumstances (AOB 167-182 [Claim X]; Supp. AOB 19-33 [Claim XII]). (See *Hurst v. Florida* (2016) 577 U.S. 92; *Ring v. Arizona* (2002) 536 U.S. 584, 589; *Apprendi v. New Jersey* (2000) 530 U.S. 466, 494.) *McDaniel* held that the jury’s ultimate weighing determination in selecting the penalty does not constitute a “factfinding” in any relevant sense, 2021 WL 3779752 at p. *29; and *Hurst, Ring*, and *Apprendi* do not alter the standard of proof at the penalty phase, *id.* at p. *32. *McDaniel* further held that there is no independent state law principle requiring juror unanimity in finding a circumstance to be aggravating in the face of disputed evidence. *Id.* at p. *24.

Sincerely,

/s/ Kim Aarons

Kim Aarons

Deputy Attorney General

For ROB BONTA
 Attorney General

September 24, 2021

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DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S. MAIL

Case Name: People v. William Lee Wright, Jr . Case No.: S107900

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 collecting and processing electronic and physical correspondence. 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 with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

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210 West Temple Street, Room M-3
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The Honorable Norman P. Tarle, Judge
Los Angeles County Superior Court
Santa Monica Courthouse
1725 Main Street, Department J
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John Monaghan, Jr.
Deputy District Attorney
Los Angeles County District Attorney's Office
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Los Angeles, CA 90012 Served via U.S. Mail)

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on September 24, 2021, at Los Angeles, California.

Vanida S. Sutthiphong

Declarant

/s/ Vanida S. Sutthiphong

Signature

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STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

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Supreme Court of California

Case Name: **PEOPLE v. WRIGHT (WILLIAM LEE)**

Case Number: **S107900**

Lower Court Case Number:

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/s/Vanida Sutthiphong

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Sutthiphong, Vanida (Pro Per)

Last Name, First Name (PNum)

DOJ

Law Firm

