

ORIGINAL

MICHAEL J. HERSEK
State Public Defender
C. DELAINE RENARD, SBN 169893
Deputy State Public Defender
Office of the State Public Defender
221 Main Street, 10th Floor
San Francisco, CA 94105
415-904-5600

Attorneys for Appellant

SUPREME COURT
FILED

MAY 13 2010

Frederick K. Ohlrich, Clerk
[Signature]
Deputy

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

| | | |
|---------------------------------|---|-------------------------|
| THE PEOPLE OF THE STATE, |) | No. S022998 |
| OF CALIFORNIA, |) | |
| |) | (Madera County Superior |
| Plaintiff and Respondent |) | Court No. 8926) |
| |) | |
| v. |) | |
| |) | MOTION FOR |
| ANTHONY LETRICE TOWNSEL, |) | JUDICIAL NOTICE |
| |) | |
| Defendant and Appellant. |) | |

**TO THE HONORABLE RONALD M. GEORGE, CHIEF JUSTICE,
AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE
SUPREME COURT OF THE STATE OF CALIFORNIA:**

Appellant ANTHONY LETRICE TOWNSEL, through his attorney,
C. Delaine Renard, and pursuant to Evidence Code sections 452 and 459,
hereby moves for judicial notice of certain matters on which he relies in his
opening brief.

A. The Relevant Statutes

Evidence Code section 452 provides in relevant part:

Judicial notice may be taken of the following matters . . . : (h)

RECEIVED

MAY 13 2010

CLERK SUPREME COURT

DEATH PENALTY

Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.

Evidence Code section 459 provides in relevant part: “(a) . . . the reviewing court may take judicial notice of any matter specified in section 452. . . .”

B. The Court Should Take Judicial Notice that Dr. Charles A. Davis, the Psychiatrist Who Performed the November 17, 1989 Competency Evaluation of Appellant in this Case, is Deceased

Appellant requests that this Court take judicial notice of the fact that one of the psychiatrists who evaluated appellant for competency at trial, Dr. Charles A. Davis, MD, is deceased. This fact is one that is “not reasonably subject to dispute and [is] capable to immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” (Evid. Code § 452, subd. (h); see also Evid. Code § 459.)

Dr. Davis’s November 17, 1989 competency evaluation of appellant is included in the appellate record. (1 CT 49; 13 CT 3085; Competency Hearing, Court’s Exhibit 2.) The face of the evaluation contains the following identifying information: “Charles A. Davis, M.D., 1393 Bailey Drive, Hanford, CA 93230.” It further identifies Dr. Davis as “Diplomat,” “American Board of Psychiatry and Neurology,” and “American Board of Forensic Psychiatry.”

Attached as exhibits to this motions are:

Exhibit A Medical Board of California Certification that “Charles A. Davis, whose address of record is 4400 Avenue 428, Reedley, CA 93654, was issued

Physician's and Surgeon's Certificate Number A 15152 by the Board on June 30, 1953. Our records indicate that Dr. Charles Davis is deceased; date of death is 12/23/2006."

Exhibit B A true and correct copy of Dr. Davis's listing in *The Official ABMS Directory of Board Certified Medical Specialists* (37th ed. 2005) Volume 3, identifying him, inter alia, as "Charles A. Davis" Cert Psyc 64. b. 1921, Greensboro, N.C." and listing the same Reedley, California address listed in Exhibit A

Exhibit C A true and correct copy of Dr. Davis's listing in *The Official ABMS Directory of Board Certified Medical Specialists* (3rd ed. 1990-1991) Volume 53, identifying him, inter alia, as "Charles A. Davis" Cert Psyc 64. b. 1921, Greensboro, N.C." and listing his address as 1393 Bailey Dr., Hanford, CA 93230 (the same address listed on Dr. Davis's 1989 competency evaluation of appellant in this case)

As indicated on the face of Exhibit A, it is admissible under Business & Professions Code section 162 "as prima facie evidence of the facts recited therein." And as the professional publications contained in Exhibits B and C together demonstrate, the deceased Dr. Charles Davis identified in Exhibit A is the same Dr. Charles Davis who performed the November 17, 1989 competency evaluation of appellant in this case.

Hence, it is appropriate to take judicial notice of the fact that Dr.

Charles A. Davis, who performed the November 17, 1989 competency evaluation of appellant, is deceased under Evidence Code sections 459 and 452, subdivision (h). (See, e.g., *People v. Terry* (1974) 38 Cal.App.3d 432, 439-440 [appellate court took judicial notice of fact officer deceased, as reflected in death certificate].) Furthermore, this Court should take judicial notice of this fact because it is highly relevant to an issue raised in appellant's opening brief ("AOB").

In Argument I of the AOB, appellant contends that the trial court violated Penal Code section 1369, subdivision (a), as well as appellant's rights under the Eighth and Fourteenth Amendments, by failing "appoint the director of the regional center for the developmentally disabled. . . to examine the defendant" for competency to stand trial based upon substantial evidence that appellant was both incompetent and mentally retarded. The evaluation of Dr. Davis, who was a psychiatrist and who did *not* evaluate Mr. Townsel for mental retardation *or* for competency due to mental retardation, did not satisfy section 1369, subdivision (a). (*People v. Leonard* (2007) 40 Cal.4th 1370, 1388-1390; *People v. Castro* (2000) 78 Cal. App.4th 1402, 1417-1419.)

While appellant contends that the error violated his federal constitutional rights and demands reversal *per se*, this Court and others have recognized the possibility that a remand for a retrospective competency hearing – though "strongly disfavored" (*Weisberg v. State* (8th Cir. 1994) 29 F.3d 1271, 1278) – may be appropriate in certain "rare" and "highly unusual" cases, in which there is extensive record evidence regarding the appellant's condition at the time of trial, on which a reliable retrospective competency determination might be possible. (*People v. Ary* (2004) 118 Cal.App.4th 1016, 1028-1030; *Marks v. Superior Court* (1991) 1 Cal.4th 56, 67.) The fact that Dr. Davis is now deceased, and thus would be unable

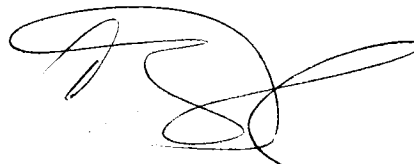
to testify at any retrospective competency hearing, is therefore highly relevant to whether a reliable retrospective competency determination is possible.

For all of the foregoing reasons, appellant respectfully requests that this Court take judicial notice of the fact that Dr. Charles A. Davis, who performed the November 17, 1989 competency evaluation of appellant in this case, is now deceased.

DATED: May 13, 2010

Respectfully submitted,

MICHAEL J. HERSEK
State Public Defender

A handwritten signature in black ink, appearing to read 'C. Delaine Renard', with a large, stylized flourish at the end.

C. DELAINE RENARD
Deputy State Public Defender
Attorneys for Appellant

EXHIBIT A



MEDICAL BOARD OF CALIFORNIA
Licensing Program



September 9, 2009

To Whom It May Concern:

I, Deborah Pellegrini, Chief and Official Custodian of the Licensing Records of the Medical Board of California, do hereby certify that Charles A. Davis Jr, whose address of record is 4400 Avenue 428, Reedley, CA 93654, was issued Physician's and Surgeon's Certificate Number A 15152 by the Board on June 30, 1953. Our records indicate that Dr. Charles Davis is deceased; date of death is 12/23/2006.

I further certify that there is no Board record of disciplinary action having been taken against this certificate by the State of California.

Respectfully submitted,

Deborah Pellegrini

Deborah Pellegrini
Chief of Licensing

DP:am

SECTION 162 OF THE BUSINESS AND PROFESSIONS CODE:

The certificate of the officer in charge of the records of any board in the department that any person was or was not on a specified date, or during a specified period of time, licensed, certified or registered under the provisions of law administered by the Board, or that the license, certificate or registration of any person was revoked or under suspension, shall be admitted in any court as prima facie evidence of the facts therein recited.



EXHIBIT B

The Official ABMS Directory

OF BOARD CERTIFIED MEDICAL SPECIALISTS[®]

2005

37th Edition

Volume 3

Otolaryngologists

Pathologists

Pediatricians

PM&R Specialists (Physiatrists)

Plastic Surgeons

Preventive Medicine Specialists

Psychiatrists

Radiologists

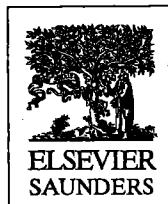


EXHIBIT C

ABMS Compendium of Certified Medical Specialists

**3rd Edition
1990-1991**

VOLUME 5

**Physical Medicine and
Rehabilitation**

Plastic Surgery

**Preventive
Medicine**

Psychiatry

Radiology

**Published by the
American Board of Medical Specialties
One Rotary Center Suite 805
Evanston, Illinois 60201**

DECLARATION OF SERVICE

Re: *People v. Anthony Letrice Townsel*

Superior Court No. 8926
Supreme Court No. S022998

I, KECIA BAILEY, declare that I am over 18 years of age, and not a party to the within cause; my business address is 221 Main Street, 10th Floor, San Francisco, California 94105, that I served a true copy of the attached:

APPELLANT'S MOTION FOR JUDICIAL NOTICE

on each of the following, by placing the same in an envelope addressed (respectively) as follows:

Luis Vasquez
Deputy Attorney General
Office of the Attorney General
2550 Mariposa Mall, Room 5090
Fresno, CA 93721

Mr. Anthony Letrice Townsel
P.O. Box H-10300
San Quentin State Prison
San Quentin, CA 94974

Madera County Superior Court
Clerk of the Court
209 West Yosemite Avenue
Madera, CA 93637

Each said envelope was then, on May 13, 2010 sealed and deposited in the United States Mail at San Francisco, California, the county in which I am employed, with the postage thereon fully prepaid.

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

Executed on May 13, 2010 at San Francisco, California.



DECLARANT