In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA, **Respondent,** **v.** **TIMOTHY JOSEPH McGHEE,** **Appellant.**	**CAPITAL CASE** Case No. S169750

Los Angeles County Superior Court Case No. BA244114
The Honorable Robert J. Perry, Judge

REQUEST FOR JUDICIAL NOTICE

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Pursuant to Evidence Code sections 452, subdivision (d), and 459, subdivision (a), and rule 8.252(a) of the California Rules of Court, respondent requests that this Court take judicial notice of the California Court of Appeal's unpublished opinion in *People v. McGhee*, case number B212538, which was filed on June 23, 2010. A copy of the opinion is attached hereto.

In Los Angeles County Superior Court case number BA331315, appellant was charged with and convicted of conspiracy to commit assault (§ 182, subd. (a)(1)), conspiracy to commit vandalism (§ 182, subd. (a)(1)), three counts of resisting an executive officer (§ 69), and two counts of assault (§ 245, subd. (a)(1)). Appellant appealed.

This opinion in case number B212538 is relevant to appellant's allegation of vindictive prosecution in the instant appeal, and respondent has cited to that opinion in the respondent's brief, filed concurrently herewith. (RB 101.) (See *People v. Franklin* (2016) 63 Cal.4th 261, 280 [court "can . . . take judicial notice of the truth of facts asserted in documents such as orders, findings of fact and conclusions of law, and judgments" (internal quotation marks omitted)]; *People v. Blount* (2009) 175 Cal.App.4th 992, 995, fn. 2 [taking judicial notice of opinion in codefendant's case].)

The attached opinion was not presented to the trial court (see Cal. Rules of Court, rule 8.252(a)(2)(B)), and relates to proceedings occurring after the judgment that is the subject of this appeal (see rule 8.252(a)(2)(D)).

Respondent therefore requests that this Court take judicial notice of the court of appeal opinion in case number B212538.

Dated: December 13, 2016

Respectfully submitted,

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. TIMOTHY JOSEPH McGHEE, Defendant and Appellant.	B212538 (Los Angeles County Super. Ct. No. BA331315)

APPEAL from a judgment of the Superior Court of Los Angeles County, David S. Wesley, Judge. Affirmed.

Feria & Corona and Jennifer L. Peabody for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Victoria B. Wilson and Corey J. Robins, Mary Sanchez, Deputy Attorneys General, for Plaintiff and Respondent.

I.

INTRODUCTION

On charges emanating from a jail riot, defendant and appellant Timothy Joseph McGhee was convicted of conspiracy to commit an assault (Pen. Code, § 182, subd. (a)(1)), conspiracy to commit vandalism (Pen. Code, § 182, subd. (a)(1)), three counts of resisting executive officers in the performance of their duties (Pen. Code, § 69), and two counts of assault (Pen. Code, § 245, subd. (a)(1)). He was sentenced to a total of 75 years to life in state prison.

On appeal from the judgment, appellant contends: (1) he was denied his constitutional rights and due process when the trial court refused his continuance request; (2) he was denied his constitutional rights when the court denied his *Marsden*[1] motion for new counsel; (3) he was denied his constitutional rights to represent himself (*Faretta v. California* (1975) 422 U.S. 806); (4) he was denied his constitutional rights to a speedy trial; (5) the trial court erred in permitting the prosecution to impeach him with other crimes evidence; and (6) his sentence was improperly enhanced based upon a juvenile adjudication. We affirm.

II.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Preliminary facts.*

In February 2003, appellant was arrested and charged with capital murder. Pending trial, appellant was placed in the Los Angeles County Men's Central Jail. On January 7, 2005, a prison riot occurred at the jail. Appellant's involvement in the jail riot gave rise to the present case. In September 2007, trial began in the murder case. Appellant remained in custody.

On November 14, 2007, after the capital murder trial ended, but before the penalty phase began, the Los Angeles District Attorney filed a felony complaint charging

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1 *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*).

appellant with crimes associated with the January 2005 prison riot. In March 2008, appellant was held to answer on the prison riot charges.

B. *Facts.*

In January 2005, appellant was in the Central Jail in 3300 A-Row (A-Row). A-Row was the high security area. A-Row inmates were subject to high security measures, including being handcuffed before leaving their cells. Appellant was the inmate leader of A-Row, i.e., he was the "shot caller." Thus, other inmates would ask appellant permission for various things.

On January 7, 2005, around 4:40 p.m., Los Angeles County Sheriff Deputy Raul Ibarra determined it was necessary to remove inmate Rudolfo Gonzalez from his cell in A-Row because Gonzalez was intoxicated. To avoid any resistance, Deputy Ibarra told Gonzalez he had a pass to see his attorney. Deputy Ibarra and other deputies handcuffed Gonzalez and then escorted him out of his cell, past appellant. After appellant said he had not given Gonzalez permission to leave, Gonzalez started to return to his cell. Deputies Ibarra, Mathew Taylor, Richard Orosco, and Jesus Argueta then forcefully began to remove Gonzalez from the row. Appellant shouted orders directing other inmates to throw liquids at the deputies. Appellant and other inmates, including inmate Reyes, began pelting the deputies with apples, oranges, urine and bleach. With the assistance of pepper spray, the deputies removed Gonzalez from the row by about 5:00 p.m. Thereafter, Deputy Ibarra heard appellant and inmate Reyes talking about breaking sinks so broken porcelain could be thrown at the deputies. A few seconds later, Deputy Ibarra heard porcelain hitting the ground and saw appellant, inmate Reyes, and inmate Morales throwing porcelain. At the time, there were no video cameras or closed circuit cameras on A-Row.

Around 10:00 p.m., Deputies Joseph Morales and Gordon McMullen began their shifts. When they entered A-Row to investigate the disturbance, appellant and other inmates immediately began cursing and pelting the deputies with paper, books, fruit, porcelain, and other items. Deputy McMullen was struck on his right hand with a piece

of porcelain. The inmates set multiple fires, which the officers eventually were able to control.

The Emergency Response Team (ERT, or the riot squad) was assembled to suppress the riot. The ERT had helmets, face shields, gas masks, plexiglas shields, batons and vests. However, the arms of ERT members were bare and they had no protective gear below the waist. Just prior to midnight, Sergeant Thomas Wilson led approximately 15 ERT members into A-Row. When the gate opened, custody assistant Alfredo Alvarez joined other team members in entering the row. Alvarez videotaped the events that eventually led to the inmate's removal. The ERT members were bombarded and almost struck on several occasions with pieces of porcelain and other items. The videotape showed appellant and other inmates (including Reyes and Eric Morales) throwing porcelain. Appellant and two or three other inmates were the main aggressors. Appellant was also seen putting his mattress against his cell bars and then using it as a shield. He was heard yelling profanities. Officers testified they had seen appellant and other inmates throw objects, including porcelain. The officers filled the area with pepper spray. It took hours to remove all inmates from A-Row. Many of the inmates agreed to be handcuffed. Appellant and Reyes had to be forcibly extracted from their cells. A total of seven sinks were destroyed, including appellant's and Reyes's. There was fire and water damage to the cells.

C. *The defense.*

Inmate Gonzalez testified that on January 7, 2005, he had been drinking pruno, an inmate's homemade alcohol concoction. He consented to being handcuffed by Deputy Ibarra and led from his cell. When he left his cell, he did not ask permission from appellant. Gonzalez also testified to the following. He started to walk back to his cell because he did not have an attorney, felt something was wrong, and he was scared. Deputy Ibarra tackled him to the ground. He heard the voices of other inmates getting louder. He was then beaten, kicked, and dragged off the row by Deputy Ibarra and other deputies. He pleaded with the deputies to let him go. However, the deputies maced him. He woke up handcuffed in the shower.

Appellant testified in his own defense to the following. He described a number of incidents in which he had been mistreated by deputies since arriving at the jail two years before the January 2005 events. These incidents included being physically and verbally assaulted. After he complained to the American Civil Liberties Union about one event, deputies retaliated by removing everything from his cell. He was not a "shot caller" in A-Row and it was ridiculous to suggest other inmates asked his permission to go on visits or to the showers. Rather, he was a regular inmate who would speak up if there were problems. He had known Gonzalez since elementary school. On January 7, 2005, he had been drinking pruno, but he was not intoxicated. He saw Gonzalez, who was real drunk, being handcuffed. He called Deputy Ibarra to his cell because he thought Gonzalez might hurt himself on the escalator. Also, it was not a good idea for Gonzalez to walk past the sergeant, drunk, as there would be repercussions. Deputy Ibarra did not seem to care. When Gonzalez refused to go further, Deputy Ibarra attacked Gonzalez and the two fell to the floor. He and other inmates told the deputy to get off Gonzalez. Because he thought his friend was in danger, and because he wanted Deputy Ibarra to stop pummeling Gonzalez, he threw a milk carton and an apple at Deputy Ibarra. Other inmates, acting on their own, reacted to the beating in the same way. Also, when other deputies started to beat Gonzalez, inmates shouted and threw things to divert the deputies' attention away from Gonzalez. While he threw things at the deputies, he did not throw urine.

Appellant also testified to the following. After the deputies dragged Gonzalez from the row, one deputy announced on the public address system that the deputies were going to beat the inmates. Deputies started spraying pepper spray into the cells. He felt threatened. He kicked his sink because he was frustrated that he could not protect himself from the pepper spray. After the porcelain on his sink broke, one of the deputies began video recording. He did not tell other inmates to break their sinks, even though that is what happened. He threw porcelain out of frustration, because he did not want to be beaten, and he did not want to be dragged from his cell. He tried to submit to the

deputies' request to handcuff him, but every time he did so, he was shot with pepper balls.

D. *Procedure.*

Appellant was convicted of conspiracy to commit an assault (Pen. Code, § 182, subd. (a)(1)), conspiracy to commit vandalism (Pen. Code, § 182, subd. (a)(1)), three counts of resisting executive officers in the performance of their duties (Pen. Code, § 69), and two counts of assault (Pen. Code, § 245, subd. (a)(1)). He was sentenced to a total of 75 years to life in state prison.[2]

III.

DISCUSSION

A. *The trial court did not abuse its discretion, nor deny appellant due process or a fair trial by denying appellant's continuance motion.*

Appellant contends he was denied his constitutional rights because the trial court denied his request for a continuance. We are not persuaded by this contention.

1. *Additional facts.*

A complaint containing the instant charges was filed on November 14, 2007. Appellant represented himself until attorney Saltalamacchia was appointed to represent him. Defense counsel H. Clay Jacke was appointed to represent appellant in February 2008. In March 2008, a preliminary hearing was conducted and appellant was held to answer. An information was filed on March 24, 2008. Appellant pled not guilty.

On April 22, 2008, the matter was transferred to the Honorable Robert Perry, to trail the capital case. This riot case was to be heard on June 4, 2008, as day zero of 60. On June 4, 2008, the matter was continued for trial to June 30, 2008, as day 26 of 60.

On June 25, 2008, defense counsel (attorney Jacke) filed a motion to continue the trial and requested additional time to investigate and prepare. On June 30, 2008, defense

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[2] At the time appellant was sentenced in this case, he was waiting formal sentencing in the capital case, after being convicted of multiple murders and attempted murders, for which he eventually received a death sentence and several indeterminate life terms.

counsel moved for a continuance on the basis that attorney Jacke was engaged in trial. Upon agreement of the parties, the case was continued to July 14, 2008.

On July 11, 2008, appellant filed a motion to dismiss on the grounds of discriminatory prosecution. He argued there was an unfair pre-indictment delay. Appellant also moved to recuse the District Attorney. Appellant noted that he had been the only inmate charged with criminal acts arising from the jail riot. He argued, in part, that witnesses and evidence had been lost. Appellant admitted that his counsel had instructed an investigator to find several witnesses, but the investigator had been unsuccessful. Appellant conceded that before the murder trial, the prosecution had told him that it would file charges related to the riot. On July 14, 2008, the trial court continued the case to July 21, 2008, because attorney Jacke was still engaged in trial.

On July 17, 2008, appellant filed an additional motion to continue stating that he wanted time to interview 21 potential witnesses who had been in custody at the county jail during the riot. Appellant sought to obtain through subpoena the booking numbers, date of birth, and other information related to these men. The motion did not identify the men nor explain why they might be valuable to the defense.

On July 14, 2008, the People formally opposed appellant's motions. The People explained that the decision to file charges against appellant for his participation in the riot came after discovery of the videotape depicting appellant throwing porcelain. The People represented that appellant had been provided with a complete list of the names and booking numbers for each inmate witness. The People noted that appellant never explained how the expected testimony would assist him. The People confirmed that the District Attorney's decision to file the riot case had been communicated to defense counsel prior to the murder trial.

Judge Perry heard appellant's motions on July 21, 2008. The court expressed concern because appellant had known about the case for a long time. In response, defense counsel said that there were many witnesses he wished to interview and pointed out that while he had "known about this case for a long time before the guilt phase" of the murder case, the pending case (the riot case) had not been filed until shortly before the

preliminary hearing. In denying the continuance motion, the court reiterated that appellant had been aware of this case for a long time and had ample time to obtain the information he sought. Further, in light of the videotape evidence, appellant had not been prejudiced by the delay in filing the charges. The court also denied the other pending motions.

On July 21, 2008, Judge Perry then transferred the case to the Honorable David Wesley. The defense counsel renewed the continuance motion, which Judge Wesley denied. Trial began on July 21, 2008.

2. *Discussion.*

A continuance of a criminal trial may be granted only for good cause. We review the trial court's denial of a motion for continuance for abuse of discretion. (*People v. Mungia* (2008) 44 Cal.4th 1101, 1118.)

Here, appellant and his counsel knew prior to the murder trial that charges for the riot would be brought against appellant. Yet, they waited until after the case was set for trial to argue there were witnesses who needed to be found. The court granted appellant extra time, continuing the case from June 4 to July 21, 2008. Thus, appellant had time to secure evidence he thought would be beneficial to him. Also, his motion for continuance relied on the claim that witnesses needed to be located. However, appellant did not identify the purported witnesses, nor delineate the expected testimony that purportedly would benefit him. Thus, it is impossible to evaluate the significance of the testimony that might have been gleaned from the unnamed witnesses. In light of the dilatory timing of the continuance request and the lack of specificity as to the expected testimony, the trial court did not abuse its discretion in denying appellant's continuance motion. For the same reasons, the denial of the continuance motion did not deny appellant his constitutional rights.

Appellant further contends he was denied effective representation. He argues that his counsel should have sought the discovery sooner. However, to show that the actions of his counsel amount to ineffective assistance of counsel, appellant must show how he was harmed by his counsel's actions. Here, there is only speculation and conjecture that

testimony from unnamed witnesses might have benefitted appellant's case. Thus, under any standard, the purported failure by his counsel was not harmful to appellant.

The trial court's ruling denying a continuance does not warrant reversal.

B. *Appellant was not denied his constitutional rights when the trial court denied his Marsden motion.*

Contrary to appellant's contention, the trial court did not abuse its discretion in denying his *Marsden* motion.

1. *Additional facts.*

On July 21, 2008, the day appellant's jury trial was to commence and after the court denied his continuance motion, appellant also filed a *Marsden* motion requesting new counsel. Appellant stated that his counsel had not interviewed anyone. Appellant explained that his counsel also represented him in the capital case and he had made a similar motion in that case. Counsel agreed that it was his opinion that the matter was being rushed to trial. Counsel explained, however, that he had provided an investigator with a list of potential witnesses for purposes of obtaining interviews, however, none of the interviews had been completed. Rather, in June 2008, the experienced investigator tried to locate witnesses, but could not do so. The investigator was still trying to locate the witnesses. Counsel had not sought to replace the investigator because counsel had faith in the investigator's abilities based on prior experience. Appellant expressed dissatisfaction with counsel for urging him to accept a negotiated resolution of the capital case, and dissatisfaction with counsel's defeatist attitude.

The trial court stated that attorney Jacke had been on the case since February 21, 2008, for a total of five months and that the investigator had that amount of time to find witnesses. The court also noted that appellant initially had represented himself, and that during this time, appellant had not taken any steps toward locating the witnesses. Appellant explained that while he was representing himself he did not have the tools, such as a computer, that were necessary to adequately represent himself. The court denied appellant's *Marsden* motion.

2. *Discussion.*

Defendants are entitled to a substitution of counsel if they show appointed counsel is not providing adequate representation, or an irreconcilable conflict has developed such that ineffective representation is likely to result. (*People v. Barnett* (1998) 17 Cal.4th 1044, 1085, addressing *Marsden, supra*, 2 Cal.3d 118.) Defendants must make a substantial showing of inadequate representation; a bare assertion of such is not sufficient. Simply lacking confidence in one's attorney, or an inability to get along with the attorney, is not enough. (*People v. Memro* (1995) 11 Cal.4th 786, 857.) We review the denial of a *Marsden* motion for abuse of discretion. (*People v. Barnett, supra,* at p. 1085.)

Here, appellant complained that his counsel had not interviewed potential witnesses. However, appellant's counsel had given an experienced investigator a list of persons to be interviewed, but the investigator could not accomplish this task because more information was required. Further, appellant did not explain to the trial court who these witnesses were or how they could assist appellant's case. Thus, appellant's stated reason for being dissatisfied with attorney Jacke was not substantiated and was not sufficient to warrant a replacement of counsel. There was no total breakdown in the attorney-client-relationship such that continued representation would effectively deny appellant the right to counsel. The trial court did not abuse its discretion in denying the *Marsden* motion as appellant had not provided sufficient information from which the court could determine if there was an irreconcilable conflict.

C. *The trial court did not abuse its discretion in denying appellant's Faretta motion to represent himself.*

Appellant contends he was denied his constitutional rights because the trial court denied his request for self-representation. This contention is not persuasive.

1. *Additional facts.*

After the trial court denied appellant's *Marsden* motion, appellant asked the court if he could make a motion to represent himself. The court stated that appellant had that right, however, if he proceeded in propria persona, he would proceed without a

continuance. Appellant then asked for a 30 day continuance. The trial court reiterated that appellant had a right to defend himself, however, the court would not delay the case. Appellant informed the trial court that no one had been interviewed and he wanted time to "file the subpoena duces tecum on . . . the Sheriff Deputies to surrender their addresses, their whereabouts, wherever their prisons are at." The trial court denied appellant's request for self-representation stating that appellant had not given a reason to remove attorney Jacke and appellant "only requested pro per status so that [appellant] can get a continuance which [the trial court] denied."

2. *Discussion.*

Pursuant to *Faretta v. California, supra,* 422 U.S. 806 (*Faretta*), a defendant has an unconditional right to self-representation if the defendant makes an unequivocal assertion of the right a reasonable time before trial begins. (*People v. Clark* (1992) 3 Cal.4th 41, 98-99; *People v. Windham* (1977) 19 Cal.3d 121, 127-128.) Defendants may not wait until the day of, or the day before, trial to ask to proceed in propria persona without some showing of reasonable cause for the delay in making the request. (*People v. Windham, supra,* at p. 128, fn. 5; *People v. Rudd* (1998) 63 Cal.App.4th 620, 626.) Rather, defendants must make such requests at the earliest possible opportunity. Rulings on untimely requests are reviewed for abuse of discretion. (*People v. Doolin* (2009) 45 Cal.4th 390, 453.) In determining if the trial court abused its discretion, we look at the totality of circumstances. (*People v. Clark, supra,* at pp. 98-99; *People v. Windham, supra,* at p. 128; *People v. Howze* (2001) 85 Cal.App.4th 1380, 1397-1398.) These circumstances can include "the defendant's prior proclivity to substitute counsel, the reasons for the request, the length and stage of the proceedings, and the disruption or delay which might reasonably be expected to follow the granting of such a motion." (*People v. Windham, supra,* at p. 128.)

Here, appellant began the case representing himself, then obtained counsel, and then once again sought to represent himself. Appellant brought his request for self-representation when trial was ready to proceed, and only after the trial court had denied his *Marsden* motion and denied his continuance motion. Appellant's request for self-

regarding the murders and attempted murders would be used pursuant to Evidence Code section 1101, subdivision (b) as evidence of motive and intent "and in response to [appellant's] portrayal of himself as [a] non-violent [person], and . . . as impeachment, moral turpitude conduct, even though not a conviction." Over objection, the trial court permitted the cross-examination. Appellant denied murdering Ronald Martin in 1997, denied murdering Ryan Gonzales on June 3, 2000, denied murdering Marjorie Mendoza in a drive-by shooting on November 9, 2001, and denied ambushing and trying to kill two police officers on July 4, 2000. He also denied confessing to others that he had committed the murders and attempted murders.

In addition to cross-examination relating to the murders and attempted murders, the prosecutor used other acts to cross-examine appellant. In this cross-examination, appellant admitted that while he was a fugitive in 2002 and 2003, he wrote rap songs having explicit anti-police officer lyrics. For example, he wrote "fuck the enemies and punk ass cops" and "fuck all police, judges, and D.A's. You all can catch spray from my M.F. AK." Appellant also admitted he had assaulted a juvenile guard in a custody facility and that a shotgun had been involved, and in 1994 he had assaulted a peace officer.

In suggesting that the prosecutor's cross-examination warrants reversal, appellant focuses only on the questions relating to the murders and attempted murders. He argues these questions warrant reversal because they were highly inflammatory and outweighed any probative value. He also argues the evidence was highly prejudicial because the jury was never told he had been convicted for these crimes, and thus, it was likely the jury sought to punish him for these acts. Appellant further suggests that the admission of this evidence constituted a violation of his due process rights. To do so, the admission of the evidence must render the trial fundamentally unfair. (Cf. *Estelle v. McGuire* (1991) 502 U.S. 62, 70.)

Assuming, the other crimes evidence relating to the murders and attempted murders was admitted in error, appellant cannot demonstrate harm under any standard. (*People v. Watson* (1956) 46 Cal.2d 818, 836; *Chapman v. California* (1967) 386 U.S.

18, 26.) The admission of the evidence did not render the trial fundamentally unfair. Multiple officers who were percipient witnesses to the crimes testified about appellant's participation in the riot. A lengthy videotape of the events was introduced. Appellant admitted to throwing porcelain at the officers. He admitted to other acts constituting criminal conduct, i.e., that he had been convicted of assaulting a peace officer in 1994 and committing an assault with a firearm in 1989 as a juvenile. He also admitted that he had written anti-police lyrics, demonstrating his animus to police. Appellant's justification for his actions during and preceding the jail riot was not believable.

Lastly, appellant does not suggest that in his closing argument the prosecutor even mentioned the murders and attempted murders. Rather, to demonstrate appellant's hatred for police, the prosecutor in rebuttal mentioned only the rap music lyrics and appellant's acts of assaulting a peace officer in 1994 and committing an assault with a firearm in 1989.

The admission of other crimes evidence did not warrant reversal as appellant has not demonstrated their introduction was prejudicial. It is unlikely that a result more favorable to appellant would have been rendered if the objected to evidence had been excluded.

F. *Appellant's sentence was properly enhanced based upon a juvenile adjudication.*

Over objection, appellant's sentence was enhanced because the court found that he had suffered two prior convictions. One of these prior convictions was a juvenile adjudication that appellant had committed an assault with a firearm. Appellant acknowledges that in *People v. Nguyen* (2009) 46 Cal.4th 1007, the Supreme Court held that juvenile strike priors may be relied upon to enhance an adult sentence beyond the statutory maximum despite California's failure to provide the right to a jury trial in the adjudication of juvenile offenses. (*Id.* at p. 1028.) Appellant argues that the trial court improperly relied on the juvenile strike so that he may raise the issue in federal proceedings, as he recognizes that *Nguyen* is binding upon us. As appellant concedes, we

must follow the Supreme Court's ruling. Thus, we hold that the trial court did not err in using the juvenile conviction to enhance appellant's sentence.[3]

IV.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ALDRICH, J.

We concur:

KLEIN, P. J.

KITCHING, J.

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[3] In light of our holdings, we need not address appellant's argument that cumulative error warrants reversal.

DECLARATION OF SERVICE

Case Name: **People v. Timothy J. McGhee**

No.: **S169750**

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 with postage thereon fully prepaid that same day in the ordinary course of business.

On **December 13, 2016**, I served the attached **REQUEST FOR JUDICIAL NOTICE** by placing a true copy thereof enclosed in a sealed envelope in the internal mail system of the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

The Honorable Robert J. Perry, Judge
Los Angeles County Superior Court
Clara Shortridge Foltz Justice Center
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On **December 13, 2016**, I served the attached **REQUEST FOR JUDICIAL NOTICE** by transmitting a true copy via electronic mail using the email addresses as follows:

Patrick Morgan Ford, Attorney at Law
Via Email: ljlegal@sbcglobal.net

Hoon Chun, Deputy District Attorney
Via Email: Courtesy Copy

On **December 13, 2016**, I caused one **(1)** original and eight **(8)** copies of the **REQUEST FOR JUDICIAL NOTICE** in this case to be delivered to the California Supreme Court at 350 McAllister Street, First Floor, San Francisco, CA 94102-4797 by **FEDEX, Tracking # 805521697862**.

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 13, 2016**, at Los Angeles, California.

Nora Fung
Declarant

Signature

SPM: nf
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