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August 24, 2022

Clerk of the Court
California Supreme Court
350 McAllister Street
San Francisco, CA 94102

Re: **Notice of Errata**
People v. Schuller
Supreme Court No. S272237

Dear Clerk of the Court:

Appellant Jason Carl Schuller, through his attorney, submits this letter to correct three typographical errors contained in his opening brief on the merits filed on June 7, 2022. The errors and their corrections are summarized below, and replacement pages for each error are attached.

On page 51, the first sentence in the last paragraph provides,

> That subdivision (a) of section 192 uses the phrase "upon a sudden quarrel or heat of passion" in describing voluntary manslaughter does make heat of passion a form of or element of the lesser crime.

It should read,

> That subdivision (a) of section 192 uses the phrase "upon a sudden quarrel or heat of passion" in describing voluntary manslaughter does *not* make heat of passion a form of or element of the lesser crime.

On page 60, the last sentence of the first paragraph (which begins on the previous page) reads as follows:

> On the other hand, "where the defendant contested the [effected] element and raised evidence sufficient to support a contrary finding," the reviewing court "should not find the error harmless." (*Id.* at p. 19.)

It should read,

> On the other hand, "where the defendant contested the [affected] element and raised evidence sufficient to support a contrary finding," the reviewing court "should not find the error harmless." (*Id.* at p. 19.)

Finally, the last sentence on page 69, which continues on page 70, reads as follows:

> Mr. Schuller submits that it is reasonable probable—more than an abstract possibility—that such a result would have obtained had the trial court instructed the jury properly.

It should read,

> Mr. Schuller submits that it is reasonably probable—more than an abstract possibility—that such a result would have obtained had the trial court instructed the jury properly.

I apologize for any inconvenience these mistakes have caused.

Respectfully submitted,

/s/ DAVID L. POLSKY

David L. Polsky
Attorney for Mr. Schuller

(*Gonzalez, supra,* 5 Cal.5th at p. 197.)

Under the elements test, if heat of passion is a kind of voluntary manslaughter, then its elements, including sufficient provocation, must also be elements of murder, but they are not. Murder does not require proof of such provocation. Likewise, if imperfect self-defense is a form of voluntary manslaughter, then its elements, like an actual belief in the need to defend oneself, must be elements of murder too. Its elements are not either. The same result would obtain under the accusatory pleading test where malice murder was charged. Heat of passion and imperfect self-defense are thus not lesser included offenses of murder. Rather they are merely circumstances that negate malice and thus prohibit a conviction of murder—i.e., a conviction for anything greater than voluntary manslaughter.

On the other hand, voluntary manslaughter defined simply and generally as an unlawful killing without malice (because that mental state has been negated) satisfies both the elements and accusatory pleading tests for malice murder. Therefore *it is* a lesser included offense of murder.

That subdivision (a) of section 192 uses the phrase "upon a sudden quarrel or heat of passion" in describing voluntary manslaughter does *not* make heat of passion a form of or element of the lesser crime. This court has addressed that very issue:

> The obvious inference is that this mitigating circumstance renders such a homicide an "unlawful killing . . . without malice" (§ 192), and thus reduces the offense to the "[v]oluntary" form of manslaughter (*id.*, subd. (a)), *even though* the lethal act was committed with a mental state, such as intent to kill,

uncontested and supported by overwhelming evidence." (*Neder v. United States* (1999) 527 U.S. 1, 17 [119 S.Ct. 1827, 144 L.Ed.2d 35], emphasis added; accord, *Aranda, supra,* 55 Cal.4th at p. 367; see *People v. Mil* (2012) 53 Cal.4th 400, 414 [same standard applies to instructional error affecting more than one element of offense]; see also *Johnson v. United States* (1997) 520 U.S. 461, 470 [117 S.Ct. 1544, 137 L.Ed.2d 718] [concluding that the trial court's failure to submit the question of materiality to the jury in a perjury case was harmless in light of the *overwhelming and uncontroverted* evidence supporting that element].) In that case, the error could not have possibly "'contribute[d] to the verdict obtained.'" (*Neder,* at p. 17.) On the other hand, "where the defendant contested the [affected] element and raised evidence sufficient to support a contrary finding," the reviewing court "should not find the error harmless." (*Id.* at p. 19.)

1. Application of Chapman

Two version of events were presented to the jury in this case. Under the prosecution's version, Mr. Schuller killed W.T. willfully, deliberately and with premeditation (see 2CT 483), and his claim that he killed W.T. in self-defense while in the throes of a delusional state was feigned. This was the version the Court of Appeal found overwhelmingly believable. But the omitted element—the absence of imperfect self-defense—*was* contested. It was the basis for the other version of events presented to the jury—that, while in a delusional state, Mr. Schuller believed W.T. was attacking him with a knife and attempted to take the gun, prompting Mr. Schuller to shoot him repeatedly in self-

reasonable chance, more than an *abstract possibility*." (*College Hospital,* at p. 715, emphasis in original.)

Notably, where the evidence is sufficient to support the verdict but is "extremely close," "any substantial error" that undermines the defense or bolsters the prosecution must be deemed prejudicial under this test. (*People v. Gonzales* (1967) 66 Cal.2d 482, 493-494; accord, *People v. Babbitt* (1988) 45 Cal.3d 660, 689.) The failure to instruct the jury on imperfect self-defense during the guilt phase undermined Mr. Schuller's defense and made it easier for the prosecutor to prove malice. And on the issue of whether Mr. Schuller actually believed he needed to shoot W.T. to protect himself, this was a close case.

As discussed above, there was considerable uncontroverted and highly credible evidence presented that, before the killing and especially in the days leading up to it, Mr. Schuller was suffering from delusional thoughts that made him aggressive and fearful and led him to interpret innocuous events as life-threatening. His self-defense claim was consistent with that history. Additionally, as also noted above, it appears that half of the jury that found him guilty doubted he was sane at the time and accepted the countervailing explanation for the killing put forth by Mr. Schuller—that he killed W.T. because he believed his life was in danger. If an imperfect self-defense instruction would have led even one juror to vote against the murder verdict, the error was necessarily prejudicial. Mr. Schuller submits that it is reasonably probable—more than an abstract possibility—that

PROOF OF SERVICE

I declare that:

I am employed in Windham County, Connecticut; I am over the age of 18 years and not a party to the within entitled cause; my business address is P.O. Box 118, Ashford, Connecticut 06278. On August 24, 2022, I served a copy of the attached **NOTICE OF ERRATA** in said cause on all parties in said cause, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail, at Ashford, Connecticut, addressed as follows:

Jason Carl Schuller, BG3734
Avenal State Prison, E-550
P.O. Box 905
Avenal, CA 93204

Christopher Walsh, Deputy D.A.
Jesse Wilson, Deputy D.A.
Office of the District Attorney
201 Commercial Street
Nevada City, CA 95959

Hon. Candace Heidelberger, Judge
Nevada City Courthouse
201 Church Street, Dept. 4
Nevada City, CA 95959

In addition, I electronically served the attached brief to the following parties via the TrueFiling electronic service system:

Office of the Attorney General

California Court of Appeal
Third Appellate District

Central Calif. Appellate Program

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 24, 2022, at Ashford, Connecticut.

/s/ DAVID L. POLSKY
David L. Polsky

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **PEOPLE v. SCHULLER**
Case Number: **S272237**
Lower Court Case Number: **C087191**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **polsky183235@gmail.com**

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

8/24/2022
Date

/s/David Polsky
Signature

Polsky, David (183235)
Last Name, First Name (PNum)

Law Office of David L. Polsky
Law Firm