

## OFFICE OF THE STATE PUBLIC DEFENDER

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May 16, 2016

SUPREME COURT  
 FILED

MAY 17 2016

Supreme Court of California  
 Office of the Clerk  
 Automatic Appeals Unit  
 350 McAllister St.  
 San Francisco, CA 94102

Frank A. McGuire Clerk

Deputy

Re: *People v. Sergio Nelson, et al.*, Case No. S048763  
 Additional Authorities Letter

To the Honorable Tani Cantil-Sakauye, Chief Justice of California, and to the Honorable Associate Justices of the Supreme Court of the State of California:

I am counsel assigned to represent Sergio Nelson in the above-referenced appeal, calendared for oral argument on May 27, 2016. Below are two additional authorities not contained in the briefs on file in this appeal.

1. *People v. Beltran* (2013) 56 Cal.4th 935 pertains to Argument No. 1, particularly these points discussed in the opinion: (a) "The development of the law in California tracks th[e] move away from specified categories of provocation to a more generalized standard based on the concept of an ordinary person of average disposition, leaving for the jury whether the given facts show adequate provocation." (*Id.* at p. 947.) (b) "Provocation is adequate only when it would render an ordinary person of average disposition 'liable to act rashly or without due deliberation and reflection, and from this passion rather than from judgment.'" (*Id.* at p. 957.) (c) "[P]rovocation is not evaluated by whether the average person would act in a certain way: to kill. Instead, the question is whether the average person would react in a certain way: with his reason and judgment obscured." (*Id.* at p. 949.) (d) "In both heat of passion and imperfect self-defense scenarios, the killer who acts unreasonably commits a crime. Yet the degree of culpability is reduced from murder to manslaughter. Adequate provocation or an unreasonable but good faith belief in the need to defend operates on the killer's mental state to prevent the formation of malice." (*Id.* at p. 951.)

2. *People v. Hajek* (2014) 58 Cal.4th 1144, 1185, pertains to Argument No. 1, with respect to harmless error, and Argument No. 8, with respect to the sufficiency of the evidence. In *Hajek*, the defendants entered the victim's house through a ruse, displayed a gun, and shortly thereafter bound and blindfolded the victim and isolated her in an

DEATH PENALTY

upstairs bedroom for several hours before finally killing her. This Court “conclude[d] the evidence was insufficient to show that defendants ‘intentionally killed the victim while lying in wait,’ as required under the former law.” (*Id.* at p. 1185.) Moreover, because the murder occurred before the change in law regarding lying in wait, the Court “appl[ie]d the case law interpreting the more stringent requirement of the former law.” (*Id.* at p. 1184.)

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Chabot', written in a cursive style.

Joseph E. Chabot  
Senior Deputy State Public Defender

**DECLARATION OF SERVICE BY MAIL**

Case Name: *People v. Sergio Nelson, et al.*  
Case Number: S048763

I, **Neva Wandersee**, declare as follows:

I am over the age of 18, not a party to this cause. I am employed in the county where the mailing took place. My business address is 1111 Broadway, 10<sup>th</sup> Floor, Oakland, California 94607. I served a copy of the following document(s):

**ADDITIONAL AUTHORITIES LETTER**

by enclosing it in envelopes and

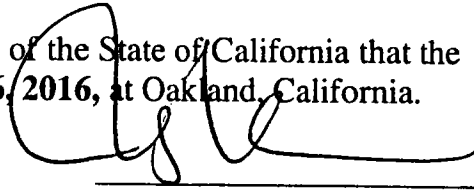
/ **depositing** the sealed envelope with the United States Postal Service with the postage fully prepaid;  
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The envelopes were addressed and mailed on **May 16, 2016**, as follows:

Tita Nguyen  
Deputy Attorney General  
Office of the Attorney General  
300 South Spring Street  
Los Angeles, CA 90013

Sergio Nelson, #J-78400  
CSP-SQ  
NBN2  
San Quentin, CA 94974

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Signed on **May 16, 2016**, at **Oakland, California**.



\_\_\_\_\_  
NEVA WANDERSEE