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February 26, 2025 **CAPITAL CASE**

Jorge E. Navarrete
Clerk and Executive Officer
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-3600

Re: *People v. Barrett*, No. S124131
Supplemental Letter Brief
Addendum to Argument IV of Appellant's Opening Brief

Dear Mr. Navarrete:

This letter is submitted in the above-captioned case, to address a Sixth Amendment claim relevant to the issue raised in Appellant's Opening Brief, Argument IV. Mr. Barrett has contemporaneously filed an application to file this supplemental letter. Please transmit the letter and the application to the justices for their consideration.

I. THE TRIAL COURT'S INCONSISTENT STATEMENTS AND RULINGS ON THE APPLICATION OF EVIDENCE CODE SECTION 1103, SUBDIVISION (B), INDUCED DEFENSE COUNSEL TO PROVIDE INEFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF THE SIXTH AMENDMENT

As explained in Appellant's Opening Brief, the trial court prejudicially erred when it permitted the prosecution, pursuant to Evidence Code section 1103,[1] subdivision (b),[2] to cross-examine appellant

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[1] All further references are to the Evidence Code unless otherwise specified.

[2] As relevant, section 1103, subdivision (b), provides that "[i]n a criminal action, evidence of the defendant's character for violence or trait

about eleven highly prejudicial prior violent acts. The trial court further erred by mis-instructing the jury as to the limited purpose of the evidence of both appellant and the alleged victim's prior violent acts. (Appellant's Opening Brief (AOB), Argument IV, pp. 178-235.)

Below, appellant addresses the additional argument that, even if the trial court properly admitted evidence of appellant's prior acts of violence, the trial court's inconsistent rulings induced defense counsel to provide ineffective assistance of counsel in violation of the Sixth Amendment.

a. The trial court abruptly changed its mind after defense counsel detrimentally relied on its ruling permitting admission of Richmond's prior misconduct

The relevant facts and procedural history surrounding the admission of evidence pursuant to section 1103, subdivision (b), and the jury instructions regarding the same, are summarized in detail in Appellant's Opening Brief. (AOB 181-196.) The following is a summary of the procedural history relevant to the Sixth Amendment claim presented here.

After the state presented its guilt phase case-in-chief and before the presentation of the defense case, the trial court held a hearing, inter alia, on whether the alleged victim, Thomas Richmond, and appellant's disciplinary records and other evidence of prior crimes could be admitted pursuant to section 1103, subdivision (b). (58RT:7405-7416.) The prosecution had already presented its theory that appellant had a motive to kill Richmond because he was a "snitch" who had given up weapons and information to prison staff. (58RT:7409-7410.) To disprove that theory, defense counsel intended to present evidence of appellant's state of mind—that he believed Richmond was trustworthy and a good "wood" (i.e., a fellow loyal White inmate), based on specific acts, including acts of

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of character for violence . . . is not made inadmissible by Section 1101 if the evidence is offered by the prosecution to prove conduct of the defendant in conformity with the character or trait of character and is offered after evidence that the victim had a character for violence or a trait of character tending to show violence has been adduced by the defendant under paragraph (1) of subdivision (a)."

violence, Richmond engaged in prior to his death. (*Ibid*.) The trial court agreed that evidence of Richmond's acts of violence was relevant to "counter[ing] [the prosecution's] theory of the motive for this homicide. . . . [I]t would have some relevance from the defense point of view that Mr. Richmond was not somebody that the other people in this particular gang or culture would want to have taken out." (58RT:7411-7412.)

Defense counsel thereafter explained in his opening statement that Richmond's misconduct in administrative segregation demonstrated why appellant believed Richmond was a good "wood" and thus gave him the benefit of the doubt when he acted suspiciously. (58RT:7417-7446.) Defense counsel also elicited testimony from Calipatria State Prison records analyst Ray Vialpando that Richmond had strike convictions, after the trial court rejected the prosecution's argument that doing so would open the door to evidence of appellant's violent character. (58RT:7409-7414 [trial court ruling], 58RT:7448-7449 [testimony about Richmond's prior convictions].)

Defense counsel next elicited testimony about how appellant and Richmond exchanged information about why they were in prison and in Administrative Segregation. (58RT:7507.) When the prosecutor objected on hearsay grounds, the trial court overruled the objection and reiterated that the testimony was not offered for the truth, but to show appellant's state of mind. (58RT:7508-7511.) Appellant then testified that he told Richmond he would be taking a weapon to yard, and Richmond said he would do the same over appellant's warnings that it would be unwise. (58RT:7512.) The prosecutor objected again, and the trial court repeated that the evidence was only offered to show appellant's state of mind. (58RT:7510-7513.) Relying on the trial court's rulings, defense counsel continued to ask appellant about instances where Richmond proved his trustworthiness, including assisting appellant with making weapons (58RT:7516) and gassing a correctional officer (58RT:7524). The prosecutor did not object when appellant described the making of weapons, and while the court sustained a hearsay objection to some aspects of appellant's testimony, it allowed evidence of the gassing. (58RT:7523; 7516.)

During a break in appellant's testimony, however, the trial court without warning abruptly reversed gears, stating, "you've gotten into a situation now, I believe, where [the prosecutor] can introduce evidence of

Mr. Barrett's violent past activities. . . ." (58RT:7534.) The trial court now found concerning "Mr. Barrett's testimony that the decedent Mr. Richmond had carried inmate manufactured weapons at various times and had participated in an act of gassing against a correctional officer, which is an assault, which is a violent crime." (59RT:7545.) The court thus allowed the prosecution to cross-examine appellant about prior instances of violent acts—including that appellant had possessed a variety of weapons and/or assaulted other inmates on eleven separate occasions. (59RT:7553.)

The trial court then exacerbated the situation with erroneous limiting instructions relating to the section 1103, subdivision (b), evidence. (See AOB, Argument IV, Section F, pp. 216-227.) Specifically, the faulty instructions permitted the jury to use the evidence of appellant's other crimes against him to find guilt, as evidence of intent, knowledge, and his violent character, but failed to instruct the jury that it could use Richmond's misconduct as evidence of his violent character and conduct on the night of his death to find appellant not guilty. (*Ibid*.)

b. The court induced ineffective assistance of counsel violated appellant's Sixth Amendment rights

The trial court's application of section 1103, subdivision (b) was erroneous, and the admission of appellant's violent acts and corresponding jury instructions prejudicially violated his statutory and constitutional rights. (AOB, Argument IV.) However, even assuming arguendo that the trial court's ruling on this evidence was correct, the court's inconsistent statements and preliminary rulings interfered with counsel's ability to rebut the prosecution's case and present a defense, in violation of appellant's right to effective assistance of counsel.

The Sixth Amendment provides that criminal defendants are entitled to the effective assistance of counsel at all critical stages of the proceedings against them. (*United States v. Gouveia* (1984) 467 U.S. 180, 187; *Coleman v. Alabama* (1970) 399 U.S. 1, 9-10.) Importantly, and as relevant here, a defendant's Sixth Amendment rights may be violated when the state interferes with defense counsel's ability to provide effective assistance. (*Strickland v. Washington* (1984) 466 U.S. 668, 685-686 (*Strickland*);

Bradbury v. Wainwright (5th Cir. 1983) 658 F.2d 1083, 1087 ["[t]he actions of the trial court may cause the ineffectiveness of counsel's assistance."].)

For example, the United States Supreme Court has long recognized that a trial court can violate a defendant's rights through actions that prevent counsel from effectively responding to the state's case. (*Strickland*, *supra*, 466 U.S. 668, 685; see also *Geders v. United States* (1976) 425 U.S. 80, 81 [right to effective counsel violated where court precluded defendant from consulting with counsel during an overnight recess]; *Herring v. New York* (1975) 422 U.S. 853, 865 [right to effective counsel violated where trial court refused to allow defense counsel to make closing argument in bench trial]; *Brooks v. Tennessee* (1972) 406 U.S. 605, 617-618 [right to effective counsel violated where trial court required defendant testify first if he wished to testify at all].) Lower federal courts have similarly recognized that a trial court may induce ineffective assistance of counsel. (See, e.g., *United States v. Gaskins* (9th Cir. 1988) 849 F.2d 454, 460 [instructional error gave jury an alternative theory of liability of which counsel was unaware]; *United States v. Harvill* (9th Cir. 1974) 501 F.2d 295, 295-296 (*Harvill*) [instructional error removed defense on which counsel had relied]; *Wright v. United States* (9th Cir. 1964) 339 F.2d 578, 579 [same].)

Harvill, *supra*, 501 F.2d 295, provides an analogous example of "court induced" ineffective assistance. There, the trial court indicated that it would instruct the jury on a defense, counsel argued based on that understanding and defense, and, afterwards, the court gave its instructions and omitted the defense. On appeal, the court first noted that, in fact, the trial court was correct in omitting the instruction. (*Id*. at p. 296, n.3.) Nevertheless, for purposes of assessing how defense counsel was affected, "[w]hether the requested instructions were faulty is irrelevant." (*Ibid*.) The court thus reversed because it could not "conclude that the effectiveness of counsel's argument and hence of appellant's defense was not impaired . . . ." (*Id*. at p. 297; accord *Wright*, *supra*, 339 F.2d at p. 579.)

Here, defense counsel similarly relied on the trial court's statements and subsequent rulings that evidence of Richmond's prior acts was admitted for the limited purpose of proving appellant's state of mind, not to show Richmond's character for violence, and therefore would not open the

door to appellant's own prior bad acts. The trial court's sudden reversal and entirely new ruling that counsel's conduct did open the door and appellant's prior bad acts could now be admitted not only completely undercut the defense trial strategy but devastated it. So much so that, in addition to other remedies it suggested, defense counsel offered, *multiple times*, to strike all the testimony about Richmond's misconduct just to keep out the damaging evidence about appellant's bad acts. (59RT:7556; 7641; 7642; 7645.) Defense counsel further urged the court, "[i]f it chooses not to strike the testimony, what we would agree is that Mr. Barrett would admit that he's a violent and dangerous person sometimes." (59RT:7556; 7641.)

Accordingly, had the trial court not repeatedly indicated that it understood and *agreed with* defense counsel's plan to present limited evidence of Richmond's prior misconduct to rebut the prosecution's theory of motive, and that doing so would not open the door to highly prejudicial evidence of appellant's prior acts of violence, defense counsel would not have elicited testimony from appellant regarding Richmond's prior acts of violence. The trial court's inconsistency therefore induced ineffective assistance of counsel in violation of appellant's Sixth Amendment right.

c. The court-induced deprivation of counsel requires reversal

The Supreme Court has made clear that the standard of prejudice for ineffective assistance of counsel depends on the source of counsel's ineffectiveness. (*Strickland*, *supra*, 466 U.S. 668.) Where counsel's ineffectiveness is caused by the state, prejudice is presumed. (*Id*. at p. 692.)

Here, the trial court's inconsistencies significantly interfered with counsel's ability to present a defense or to affirmatively rebut the prosecution's theory, rendering defense counsel ineffective. Appellant's entire case depended on proving he acted in self-defense. Evidence that appellant frequently possessed weapons and assaulted other inmates was highly prejudicial to his claim that he would not have instigated the fight with Richmond. (See AOB, Argument IV, Section G, pp. 227-235.) Accordingly, "[t]he record is too tainted to" permit a conclusion that the Sixth Amendment violation was harmless. (See *Sheppard v. Rees* (9th Cir. 1989) 909 F.2d 1234, 1237.) Reversal is thus required.

CONCLUSION

For the above-mentioned reasons, as well as the arguments made in Appellant's Opening and Reply Briefs, and in Appellant's Supplemental Opening Brief, this Court should reverse the judgment.

Date: February 26, 2025

Respectfully Submitted,

Galit Lipa
State Public Defender

/s/
CATHERINE WHITE
Deputy State Public Defender
Attorney for Appellant

CERTIFICATE OF COUNSEL
(Cal. Rules of Court, rule 8.520(d)(2))

I, Catherine White, am the Deputy State Public Defender assigned to represent appellant Joseph Anthony Barrett in this automatic appeal. I have conducted a word count of this brief using our office's computer software. On the basis of that computer-generated word count, I certify that this brief is 1,934 words in length, excluding the tables and this certificate.

Dated: February 26, 2025

/s/
Catherine White
Deputy State Public Defender

DECLARATION OF SERVICE

Case Name: *People v. Joseph Barrett*
Case Number: Supreme Court Case No. S124131
Imperial County Superior Court No. CF5733

I, **Glenice Fuller**, declare as follows: I am over the age of 18, and not party to this cause. My business address is 1111 Broadway, Suite 1000, Oakland, California 94607. I served a true copy of the following document:

APPELLANT'S SUPPLEMENTAL LETTER BRIEF

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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. Signed on **February 26, 2025**, at Solano County, California.

Glenice Fuller

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Date

/s/Glenice Fuller

Signature

White, Catherine (193690)

Last Name, First Name (PNum)

Office of the State Public Defender

Law Firm