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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,
v.
MITCHELL CARLTON SIMS,
Defendant.

Case Number A591707

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,
v.
TIEQUON AUNDRAY COX,
Defendant.

Case Number A758447

**DECLARATION OF MICHAEL
LAURENCE IN SUPPORT OF
DEFENDANTS' MOTION TO
PRECLUDE TAKING OF EVIDENCE AT
JULY 13, 2012 HEARING**

Date: July 13, 2012
Judge: Hon. Larry Fidler
Dep't: 106
Time: 10:00 a.m.

1 I, Michael Laurence, declare as follows:

2 1. I am an attorney admitted to practice in the State of California. I am the
3 Executive Director of the Habeas Corpus Resource Center (HCRC), which is counsel of
4 record in state court for Mitchell Sims and Tiequon Cox. I am the supervising attorney in
5 Mr. Sims's matter, and Jeannie Sternberg, the Deputy Director at the HCRC, is the
6 supervising attorney in Mr. Cox's matter. If called as a witness, I could and would testify
7 competently to the facts set forth below.

8 2. On November 10, 1999, the California Supreme Court appointed the HCRC as
9 counsel for Tiequon Cox for postconviction proceedings in that Court and for subsequent
10 proceedings, including any executive clemency proceedings. On October 27, 2006, the
11 California Supreme Court appointed the HCRC as counsel of record for Mitchell Sims for
12 similar purposes. The HCRC's appointment in each case appears on the California Supreme
13 Court's online case docket on the Court's website.

14 3. Between the filing of the Commitment and Judgment of Death, Notice of
15 Motion and Motion for Order of Execution Using Single Drug Method and Order to Show
16 Cause and the present time, the Los Angeles County District Attorney's Office ("District
17 Attorney") has engaged in a pattern of improper service, with some violations more serious
18 than others, ranging from misrepresentations on the proofs of service to a complete failure
19 to serve documents and provide timely notice of proceedings.

20 4. On May 1, 2012, the District Attorney filed a Commitment and Judgment of
21 Death, Notice of Motion and Motion for Order of Execution Using Single Drug Method and
22 Order to Show Cause ("Motion") against Mr. Sims and a nearly identical motion against Mr.
23 Cox and noticed hearing dates for both motions of May 25, 2012, in the Los Angeles County
24 Superior Court. The HCRC, as counsel for Mr. Sims, was not served with the Motion filed
25 against Mr. Sims and was not included on the proof of service. Service on Ms. Sternberg of
26 the motion filed against Mr. Cox was misrepresented in the Declaration of Service by Mail
27 as having been placed in the mail on May 1, 2012. The District Attorney's postage label
28 bears the date of May 2, 2012, and the Motion was not delivered to Ms. Sternberg until May

1 7, 2012.

2 5. The HCRC received no notice of the proceeding held in both cases in
3 Department 100 on May 4, 2012, and counsel for Mr. Sims and Mr. Cox learned of the
4 proceeding by chance after it occurred. Neither I nor any other attorney at the HCRC was
5 provided notice or otherwise informed about the May 4 proceeding in advance of its
6 occurrence. Based on my review of the Reporter's Transcript of the May 4, 2012
7 proceeding, the deputy district attorney represented that all parties had been served and were
8 agreeable to proceeding on May 25, 2012. No attorney representing Mr. Sims or Mr. Cox in
9 state or federal court was consulted in advance about, or agreed to, either the May 4 or the
10 May 25 date.

11 6. On May 25, 2012, the HCRC and the Los Angeles County District Attorney's
12 Office agreed to exchange their pleadings in this matter by electronic mail and this was
13 accomplished in a timely fashion with respect to the Defendants' oppositions, filed on June
14 28, 2012, and the District Attorney's reply to those oppositions, filed on July 3, 2012. As
15 with the proof of service on the motion in Mr. Cox's case, however, the deputy district
16 attorney's Declaration of Service by Mail stated that the deputy district attorney placed the
17 reply in the United States mail on July 3, 2012, although the Los Angeles County District
18 Attorney's postage meter bears a date of July 6, 2012.

19 7. Most recently, at 9:26 a.m. this morning the HCRC received an electronic mail
20 communication from deputy district attorney Michele Hanisee, which is attached to this
21 declaration as Exhibit A. No pleadings, subpoenas, declarations or any other documents
22 were attached to this e-mail. Prior to this e-mail notification, no attorney representing Mr.
23 Sims or Mr. Cox received any notice that the District Attorney intended to present the
24 testimony of Mr. John McAuliffe at the hearing scheduled for July 13, 2012.

25 8. Subsequent to receiving Ms. Hanisee's e-mail, I learned that on or about July 3,
26 2012, Ms. Hanisee issued a subpoena to Mr. John McAuliffe, a retired California
27 Department of Corrections Correctional Counselor II; that on July 9, 2012, Deputy Attorney
28 General Michael Quinn, as counsel for Mr. McAuliffe, objected to the subpoena on multiple

1 grounds; that on July 10, 2012, deputy district attorney Hanisee filed with this Court a
2 Petition for Attendance of Witness Residing in Excess of 150 Miles From the Court (P.C.
3 1330) ("Petition"); and that on July 10, 2012, this Court issued an Order Directing Witness
4 to Appear and Testify in the County of Los Angeles, State of California ("Order"). Neither
5 the Petition nor the Order that I viewed for the first time today contains a proof of service.
6 In addition, at the time of the execution of this Declaration, neither HCRC nor any other
7 counsel for Mr. Sims or Mr. Cox has been served with any of these documents by the
8 District Attorney.

9 9. At the May 25, 2012 hearing, the parties agreed that the hearing to be conducted
10 on July 13, 2012, would consist of argument of the Motion. This Court confirmed the
11 parties' understanding on the record by stating the following: "I know the defense has not
12 yet had an opportunity to respond to that, so we're going to set a date. I understand that
13 counsel have talked and have agreed upon July 13th for argument." Reporter's Transcript of
14 Proceedings, May 25, 2012, at 2.

15 10. Since May 25, 2012, counsel for Mr. Cox and Mr. Sims have devoted
16 substantial time to researching and drafting oppositions to the Motion and preparing for
17 argument on the numerous jurisdictional issues implicated by the Motion. Based on our
18 understanding of the scope of the July 13, 2012 hearing, counsel for Mr. Sims and Mr. Cox
19 have not spent any time investigating the factual issues implicated by the Motion or the
20 issues to be litigated should this Court determine that it possesses the jurisdiction and
21 authority to conduct an inquiry into whether the CDCR should be ordered to conduct
22 execution by a single drug.

23 11. As described in the Opposition to Motion for Order of Execution Using Single
24 Drug Method and Order to Show Cause, filed in *People v. Sims*, on June 28, 2012, such an
25 inquiry will be complex and time-consuming. The Federal District Court in *Morales v.*
26 *Cate*, Nos. 3-6-cv-219, 3-6-cv-926 (N.D. Cal.) has generated extensive testimony from
27 CDCR personnel and medical experts and conducted a review of "a mountain of documents,
28 including hundreds of pages of legal briefs, expert declarations, and deposition testimony."

1 *Morales v. Tilton*, 465 F. Supp. 2d 972, 974 (N.D. Cal. 2006). Prior to conducting an
2 evidentiary hearing on the merits of the Motion, counsel for Defendants necessarily will be
3 required to review this material, as well as that presented in *Sims v. California Dep't of*
4 *Corrections & Rehabilitation*, Marin County Superior Court No. CIV1004019.

5 12. Neither I nor any of the other counsel for Mr. Sims and Mr. Cox can prepare to
6 cross-examine Mr. John McAuliffe in a professionally adequate fashion in the limited time
7 that remains before the July 13, 2012 hearing. In order to prepare to cross-examine Mr.
8 McAuliffe, I will need to obtain and review documents from Mr. McAuliffe himself and
9 from the CDCR, including, for example, his curriculum vitae; his personnel file; his sworn
10 testimony in other matters regarding the topics upon which the District Attorney plans to
11 examine him; and other documents relating to the CDCR's decision to implement a three-
12 drug rather than a single-drug protocol, including departmental memoranda and records of
13 communications between CDCR employees and/or between CDCR employees and other
14 individuals or agencies. For example, Mr. McAuliffe's deposition in *Morales v. Cate*—only
15 a portion of which the District Attorney provided to this Court in its Petition—consists of
16 263 pages, and his deposition in *Sims v. CDCR*, Marin County Superior Court No.
17 CIV1004019, consists of 125 pages, exclusive of exhibits. I also will need to secure the
18 attendance of witnesses if impeachment of Mr. McAuliffe's testimony by other witnesses
19 becomes necessary.

20 The foregoing is true and correct and executed under penalty of perjury under the
21 laws of the State of California on July 11, 2012.

22
23 
24 Michael Laurence

From: Michele Hanisee [MHanisee@da.lacounty.gov]
Sent: Wednesday, July 11, 2012 9:26 AM
To: scohbra@hcrc.ca.gov; Eisenberg, Sara J.; MLaurence@hcrc.ca.gov;
JSternberg@hcrc.ca.gov; jgrele@earthlink.net
Subject: People v. Cox & Sims

I am writing to advise you of my intent to call John McAuliffe as a witness at this Friday's hearing. I know you are aware of his position, expertise, etc., as he has previously testified in Morales v. Cate. I intend to question him regarding CDCR's present ability to perform three-drug and one-drug executions.

Michele Hanisee
Special Assistant
Los Angeles County District Attorney
213-974-9870