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January 31, 2011

Molly Dwyer, Clerk of the Court
Office of the Clerk
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Re: *Cudjo v. Wong*, Case No. 08-99028
Letter pursuant to Fed. R. App. P. 28(j) and Ninth Circuit Rule 28-6

Dear Ms. Dwyer:

Armenia Cudjo submits this letter to advise the Court of *Lunbery v. Hornbeak*, 605 F.3d 754 (9th Cir.), *cert. denied*, 131 S. Ct. 798 (2010), an opinion that supports his argument that he is entitled to a COA and relief on his claim that his constitutional rights were violated by the exclusion of John Culver's testimony that Cudjo's brother, Gregory, admitted to him that he had killed the victim. Appellant's Opening Brief ("AOB") at 44-64.

Lunbery granted relief under AEDPA. It held that the California state court unreasonably applied *Chambers v. Mississippi*, 410 U.S. 284 (1973), when it concluded that murder defendant Kristi Lunbery's due process rights were not prejudicially violated by the exclusion of "Rory Keim's testimony that Henry Garza, dead at the time of Kristi's trial, had admitted that his partners had murdered" the victim. 605 F.3d at 761. This Court reasoned that, as in *Chambers*, Garza's statement was against his penal interest, was made shortly after the murder, albeit not to a close acquaintance, "'bore persuasive assurances of trustworthiness' and 'was critical to Kristi's defense.'" *Id.* at 761-62; *compare* AOB at 45 (California Supreme Court states that Gregory Cudjo "confessed to the

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murder within hours after the crime was committed and under circumstances providing substantial assurances that the confession was trustworthy.”); *id.* at 46 (Gregory’s confession “raised the requisite reasonable doubt of defendant’s guilt”).

Prejudice was shown and relief required even though Lunbery had confessed. 605 F.3d at 762; *compare* AOB at 16, 21 (Armenia Cudjo never admitted guilt). This Court explained:

Because [Lunbery] was prevented from presenting this evidence, she was prevented from offering any alternate theory as to who might have committed the crime. The jury would not have been confused by such evidence. It would probably have been led to a state of reasonable doubt.

Id.; *compare* AOB at 48-49 (Justice Kennard states in dissent that “[e]vidence that Gregory had confessed to the murder would have filled a major gap in the defense case, and would have greatly increased the likelihood of the jury’s entertaining a reasonable doubt of defendant’s guilt”).

Respectfully,

/s/ Mark R. Drozdowski
Mark R. Drozdowski
Deputy Federal Public Defender

Attorneys for Appellant
Armenia Cudjo

CERTIFICATE OF SERVICE

I hereby certify that on January 31, 2011, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Mark R. Drozdowski
MARK R. DROZDOWSKI