No. _____

ORIGINAL

In The
Supreme Court of the United States

GEORGE ELLIS WALLACE,
Petitioner,

V.

Ron E. Barns, Warden
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, George Ellis Wallace #AF8343
A4-113 / P.B.S.P.
P.O. Box 7500
Crescent City CA 95532
In Pro Per.

Questions To The U.S. Supreme Court

1. Was the federal Court required by federal law to accept as true any of Petitioners factual allegations that were made and supported in federal court, when the state court made its findings against the Petitioner on those facts without first ordering a hearing?

2. Was the states fact-finding procedure deemed unreasonable (Sup Ct at 20-25, Ex. G.) which meant that the state's factual findings were not binding on federal habeas corpus. see Taylor V. Maddox, 366 F.3d 992, 1001 (9th Cir. 2004)

3. Was Petitioner on federal habeas corpus entitled to an evidentiary hearing when the petitioner established merely a colorable claim for relief and where petitioner never been accorded on evidentiary hearing in the state court. see Earp V. Ornoski, 431 F.3d 1158, 1167 (9th Cir. 2005).

4. Was the federal Court required by federal law to grant Petitioner discovery (ECF 81) of CSI D. Noonans report of her seized shotgun pellet from Browns livingroom wall that the AG was arguing never happened in his answer if discovery was indispensable to a fair round development of material facts. Towisend V. Sain, 372 U.S. 293 (1963). See (AG at 34:1-8, EX. 30.)

5. Was the blooddrops in Browns hallway, enterring his bedroom over and infront of his master dresser and the blood splatter against his east bedroom wall combined with the gunshot heard while Brown was out of his bedroom and Campbells summary indicating Brown coming into his bedroom wounded, material evidence kept from the jury. Ex. 1.4-8.24.

6. Was Petitioner entitled to an evidentiary hearing on his motion to amend (ECF No 85) concerning denied Penal Code Section 1054.9 discovery that lead to the discovery of the evidence in Petitioners 2013 California Supreme writ of habeas corpus and supported petitioners federal writ of habeas.

7. Did pathologist stephany Fiore testify falsely about Clifford Brown not having an exit wound to his head when her autopsy report indicated he did have one and did the prosecutor fail to correct what was untrue under the Napue Standard and the district err by not holding an Evidentiary hearing on the matter.

8. Did petitioner receive a fair trial and effective assistance of trial counsel with all the evidence that was kept from the jury and did the district court fail to hold an evidentiary to see if 1.) did the state seize his black shoes he ware one hour before the murders in the Walmart video that the prosecutor and my trial attorney argued to the jury that I got rid of and 2.) Did the prosecutor present black clothing with GSR on them that was not the same black clothing wore in the Walmart video one hour before the murders and did my trial attorney support this deceit on the record.

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Table Of Authority

Petition for A Writ Of Certiorari

Petitioner George Wallace respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit, denying Petitioner's application for Certificate of Appealability.

Opinions Below

Magistrate findings And Recommedations 9-21-17, Order by District judge 12-12-17, Circuit judges order 6-22-18 Third District Appellate opinion 10-23-12. Please see Appendix cover sheet attached to this writ.

Statement Of Jurisdiction

The District Court and the Court of Appeals for the Ninth Circuit denied Petitioner's request for Certificate of Appealability. In Hohn V. United States, 524 U.S. 236 (1998), this Court held that, pursuant to 28 USC § 1254(1), the United States Supreme Court has jurisdiction, on certiorari, to review a denial of a request for Certificate of Appealability by a circuit judge or panel of a Federal Court of Appeals.

Statutory Provisions Involved

The right of a state prisoner to seek federal habeas corpus relief is guaranteed in 28 USC § 2254. The standard for relief under "AEDPA" is set forth in 28 USC § 2254(d)(1).

Standard Of Review: Denial Of Certificate Of Appealability

In Miller-EL V. Cockrell, 537 U.S. 322, 123 S.Ct. 1029 (2003), this Court clarified the standards for issuance of a Certificate of Appealability [hereafter "COA"]:

... A prisoner seeking a COA need only demonstrate a "substantial showing of the denial of a constitutional right". A prisoner satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further... We do not require petitioner to prove, before the issuance of a COA, that some jurists would grant the petition for habeas corpus. Indeed, a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail.

Id., 123 S.Ct. at 1034, citing Slack V. McDaniel, 529 U.S. 473, 484 (2000).

Statement Of The Case

Petitioner was convicted by a California jury of two counts of first-degree murder by discharge of a shotgun. (Cal. Pen. Code §§§ 187, 1192.7, 667.5.) Petitioner was sentenced to 25 years life without possibility of parole on each count.

Statement Of Pertinent Facts

Trial counsel failed to challenge the states case, to investigate, and implyed defendants guilt by repeatedly lending support to the states version of events. And the prosecutor knowingly used perjured testimony to obtain a conviction, the prosecution knew or should have known the testimony was false, and prejudice resulted. Petitioner was found guilty and filed a postconviction motion for discovery (under Penal Code § 1054.9) on February 17, 2012 and did not receive any discovery until January 20, 2013 in which Petitioner learned all of the following:

....

Reasons For Granting The Writ

Argument Summary

(1) Trial attorney did not investigate nor challenge the states case with evidence that was in the states access.

(2) The evidence was an autopsy findings report showing that victim Clifford Brown did infact have an exit wound to his head.

(3) Prosecutor asked state Pathologist if victim Brown had an exit wound to his head from his head injury inwhich Pathologist stated no.

(4) Although the pathologist false statement was at odds with the Autopsy Findings Report. the prosecutor did not correct this (misstatement) false testimony but allowed it to go to the jury as truth.

(5) Trial counsel failed to investigate and secure the actual true certified original formal police reports of the true events of the murder.

(6) The true reports would have shown that Brown was first shot in his chest while in his living room and that only one shotgun pellet exited his back through his t-shirt and lodge itself in Browns east livingroom wall,

(7) That CSI Darin Noonan searched the livingroom wall and seized the shotgun pellet to her report and Noonan was purposely kepted out of petitioners trial to hide these facts from the jury,

(8) That evidence of blood drops in Browns hallway entering his bedroom, over and infront of his master dresser to around the foot of his bed to the northside of it was kept from the jury to secure witness Lawanda Shoals false testimony that Brown was shot twice while in his bedroom after he hid Shoals from the gunman in order to support that these murders were witness killings and that Shoals was not shot because of

Browns speed, hidding the fact that Brown came in his bedroom fatally wounded,

(9) That witness Shoals made a statement to Detective Merten on video that the first gunshot took place while Brown was out of their bedroom in the hallway with the gunman inwhich these facts were kept from the jury along with the evidence of blooddrops, and the search of Browns livingroom wall and seizure of shotgun pellet from livingroom wall by CSI Noonan,

(10) That officer Richard Kawasaki was the first officer on the scene who took a witness Statement from Lawanda Shoals and presented what he learned to sergeant Jeff Naff who past what was presented to him to homicide Detective K. Campbell who reported in his summary that Brown was in the doorway of the bedroom when he was shot. That Brown then went back towards the bed and pushed Shoales off the bed, inwhich Campbells summary showed that Brown was shot first before the so called false claim that he hid Shoals first and was then shot twice while in his bedroom, however this summary was kept from the jury, to keep shoals from being seen by the shooter to support witness killings.

(11) That both Richard Kawasaki and Jeff Naff transcribed reports are both althered and piece mealed together to hide from the reader; when, how, and if Brown got up from his bed and walked out of the bedroom and was shot but is indeed indicating that Brown was shot first before Shoals was hid and that Shoals seen the gunman pointing the gun at them before she was hid and pushed off the bed showing that Shoals had been seen by the gunman and also showing that the murders were not for witness killings to Bryanna Warrens case inwhich these facts were never aired out nor investigated by trial counsel,

(12) That only one shotgun pellet was discovered and documented as being found in Browns bedroom which was pellet item #4 which was on top of Browns bed. This pellet was photographed in place by CSI R. Crowell,

(13) That CSI M. Zeiger removed all shotgun pellets that were numbered in place from both victims bedroom and stored them herself at police property. Zeiger only gave CSI D. Noonon three cell phones from the scene and nothing else but however it was never investigated by trial counsel Noonans seized shotgun pellet from her search of Browns

livingroom wall that was kept from the jury,

(14) That all the above factors show that the false testimony by Pathologist Stephany Fiore, that Brown had no exit wounds from his head, was material,

(15) That even though the Autopsy findings stated that Brown had two exit wounds from the right side of his head and two from his back it was not investigated and aired out that only one pellet exited from the back of Browns t-shirt making one small hole in it and that only one pellet exited out of the rightside of Browns head by the ear lobe and that the other pellet did not exit out but lodged itself into Browns neck showing that there should have been two pellets in Browns bedroom if he was shot twice in his bedroom.

The only pellet documented in Browns bedroom came from the rightside of his head and landed on his bed, and that Brown was facing his east bedroom wall with the gunman infront of him when the gunman shot Brown close range in the face inwhich blood splatter (that was kept from the jury) came back towards the

shooter up against Browns eastwall of his bedroom inwhich these photos were kept from the jury of the bloodsplatter against Browns eastwall of his bedroom inwhich because of the deceit by the state and ineffective assistance of trial counsel, petitioner did not receive a fair trial nor was he able to be absolved of the murders by showing if he was the shooter there would have been blood on his clothing. Had there been two shotgun pellets located in Browns bedroom; the one from his back and the one from the right side of his head, surely pathologist fiore misstatement concerning Brown not having an exit wound from his head would not have been material, because the pellets would have secured that Brown was shot twice in his bedroom after hidding witness Shoals. However there was only one shotgun pellet documented as as being discovered in Browns bed, a blood trail starting from Browns hallway enterring Browns bedroom, a preliminary hearing testimony by detective Merten stating that the gunshot Shoals first heard was when Brown was out of the bedroom in the hallway inwhich

this gunshot was never ever presented to the jury at petitioners trial, nor was detective K. Campbells report presented that Brown was shot in the hallway because all these facts destroy witness killings and the prosecutor had to present a case where Brown was able to hide witness Shoals from the gunman first before being shot twice himself in his bedroom; Campbells report of Brown being shot in the hallway and the blood drops in the Hallway enterring Browns bedroom would have put the shooter to close to witness Shoals leaving Shoals no room to be hid.

This Court said in Napue V. Illinois, 360 U.S. 264, 269, 79 S. Ct. 1173, 3 L. Ed. 2d 1217 (1959); United States V. Agurs, 427 U.S. 97, 103, 96 S. Ct. 2392, 49 L. Ed. 2d 342 (1976) ..("A conviction obtained by the knowing use of perjured testimony is fundamentally unfair, and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury".). "Deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of

justice." This Court also said in Giglio V. United States, 405 U.S. 150, 153, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972) (imputing knowledge of false evidence to trial prosecutor to find due process violation) (quotation omitted); also Napue, 360 U.S. at 269 ("The same result obtains when the state, although not soliciting false evidence, allows it to go uncorrected when it appears.")

9th Circuit Judge Marsha S. Berson (addressing Napue violation) in United States V. Alli, 344 F.3d 1002, 1007 (9th Cir, 2003): stating the government has an independent obligation to immediately take steps to correct known misstatements of its witnesses. United States V. La Page, 231 F.3d 488, 492 (9th Cir. 2000) citing Alli, 344 F.3d at 1007.

This Court said in Wiggins V. Smith, 539 U.S. 510, 123 S. Ct. 2527 (2003) concerning trial counsels failure to conduct an investigation. "In assessing the reasonableness of an attorney's investigation, however, a court 'must consider not only the quantum of evidence already known to counsel, but also whether the known evidence would lead a reasonable attorney to investigate further." Id 539 U.S. at 527.

This Is A Fundamentally Unjust Incarceration

Facts That Had To Be known To The Prosecution And Petitioners Trial Attorney And Attorney General And District Court:

... That while witness Shoals was laying in her bed with victim Brown watching t.v. they heard a noise and called for their friend George who was in the livingroom. George didnt answer so Brown got up and proceeded into the hallway. Once Brown is in the hallway he yelled "oh shit" and at that point Shoals heard one gunshot and then Brown proceeded back into the bedroom to pull Shoals off of the bed inwhich at that time there was a second gun shot and Brown was hit. See(preliminary hearing testimony by detective Merten 129:15-28,130:1-13,EX.1.).. The above testimony was kept from the jury.

In officer Richard kawasaki transcribed summary which is not complete it states that while Shoals was laying in bed with Brown they heard a noise like the front door being kicked. That Clifford Brown then yelled out to George who was out in the front but got no response. See (Richard Kawasaki Summary, EX. 2 .). Shoals clarifys in that report that the next thing she hears is a gunshot in the hall. Ex. 2. However in

that report of Kawasaki the part about Brown getting up off the bed and walking into the hallway to check on George in the front room is tooken out of that summary report.

This Court must combined together 1.) Detective Mertens preliminary hearing Testimony: hereafter "PHT" concerning the statement giving to him by witness Shoals. 2.) Officer Richard Kawasaki summary of Shoals witness statement, and 3.) Witness Shoals trial testimony: hereafter "RT" in order to see the miscarriage of justice done against the petitioner.

The Noise from The living That Made Brown Get Up To Go Check On Witness George Clark

Kawasaki's summary states that Shoals and Brown heard a big boom like the front door being kicked in which made Brown yell out to George who was in the front room EX. 2. This noise had nothing to do with the false testimony by Shoals seeing the gunman shooting into victim Turners North east bedroom after Brown hid her. (RT 213) However the Attorney General, hereafter "AG" was able to argue the lie that the noise (Shoals and Brown heard from the livingroom while in their bed watching t.v. (EX. 1. 2.) RT 207: 22-28; 208: 1-5, EX. 3.), was the gunshot into victim

Turners room (AG at 14:4-7, 18-28, Ex. 4.) Shoals and Brown cant be on the bed watching t.v. and hear a noise from the living room and it is the gunshot into Turners bedroom and then Brown yells out to George who's in the living room inwhich they believed that the noise was something that fell or maybe George tripped on something RT 208:1-5, Ex. 3. for one: Shoals testified that the gunshot into Turners bedroom did not take place until after Brown got out of bed; walked into the hallway, hollered "oh-shit"; ran back into the bed room and pulled Shoals off the bed and as Shoals was being pulled off the bed she seen the gunman firing into Turners bedroom (RT 211, 213). No jury would believe that the noise Shoals and Brown heard while on their bed watching t.v. was the gunshot into Turners bedroom (Ex. 2. PHT 129-130, Ex. 1., AG at 14, Ex. 3. RT 207-208, 211, 213, Ex. 4.). That Brown then got up and walked into the hallway and ran back into the bedroom to pull Shoals off the bed and as Shoals is falling off the bed she witnesses the same event that she witness while her and Brown was watching t.v., which as the AG argues was the gunman shooting into Turners bedroom (AG at 14, Ex. 4.). Shoals stated on testimony

that Clifford got up and proceeded into the hallway area heading into the living room. (RT 208: 1-9, Ex. 3 .). The evidence shows that Brown was going to check on George Clark in the livingroom when he didnt respond back to (Ex. 2 .) Brown after Brown and Shoal heard the loud big bam from the kitchen (which has nothing to do with a gunshot into Turners bedroom) and thought the noise was something that fell or maybe George tripped on something (RT 208:1-9, Ex. 3.).

Because the state did not present to the jury the true events of the murder because the prosecution wanted to gain an illegal false conviction, the jury was kept ignorant that 1.) Shoals had been testifying falsely to the events of the murders, 2.) that when Brown proceeded into the hallway area heading into the livingroom that he was shot first in his chest while in his livingroom and that this gunshot was took out while Brown was in the hallway, that was heard by Shoals while Brown was out of the bedroom and Shoals was in her bed and it was kept from the jury to gain a tainted conviction. The Magistrate and U.S District judge failed to hold an evidentiary hearing on this issue when they were presented

with the preliminary hearing testimony from Merten of the gunshot taking place while Brown was out of his bedroom (PHT 129-130, Ex. 1.), Detective Campbells report indicating that Brown was fatally wounded in the chest before Shoals could be hid from some gunman showing that Shoals was testifying falsely to the events of the murders Ex. 5.

The blood drops in the hallway in front of Browns bedroom doorway showing that Brown came into the bedroom wounded. see (Blood drops in hallway, Ex. 6.)

The blood drops entering Browns bedroom in front of his master dresser. see (Blood drops in front of master dresser, Ex. 7.)

The blood drops on top of Browns master dresser. see (Blood drops on top of master dresser, Ex. 8.). None of the above evidence was presented to the jury. There was no evidentiary hearing by the district court to see if the blood was blood drops or blood spray. The magistrate called the blood on top of the master dresser blood stains (FR at 21:19-21). The magistrate failed to address the blood drops on the carpet in front of the dresser in Browns bedroom Ex. 7. The magistrate failed to

address the blood drops in Browns hallway. Ex. 6. Nor did the AG address them when ordered to do so concerning Petitioners motion to expand the record with argument and color photos of the blood. (Fed writ Pet. Ex. 3, 4, and 8; Sup. Ct. Pet. Ex. G.) There was no evidentiary hearing on if the blood drops on top of Browns master dresser were blood spray as the AG argued or blood drops.

> Petitioner on federal habeas corpus is entitled to an evidentiary hearing where the Petitioner has established merely a colorable claim for relief, and where the Petitioner has never been accorded an evidentiary hearing in state court. See Earp V. Ornoski, 431 F.3d 1158, 1167 (9th Cir. 2005)

The Magistrate argued, "Regardless of where or how Brown was shot, the evidence as a whole was compelling that petitioner was the person who killed Brown and Turner." (FR at 18:8-10).

The Magistrate misses the mark concerning fundamental fairness and forgets that if Brown is shot in his chest first while in his livingroom then the shotgun pellet that exited his back exited in the living room and that if this is to be found true, then witness Shoals testified

falsely to the events of the murders and the prosecutor had a duty to correct that false testimony and present the truth.

As the U.S. District Court said in Lisker V. Knowles, 651 F. Supp. 2d 1097 (2009 U.S. Dist) "Napue applies whenever a prosecution knew or should have known that the testimony was false" Jackson V. Brown 513 F.3d 1057 (9th Cir. 2008).

For the Magistrate to say Regardless of where or how Brown was shot is the same as saying Regardless if Shoals testified falsely or not to the events of the murders. Regardless if Pathologist Fiore made a misstatement concerning if Brown had an exit wound to his head or not. Regardless if the blood drops in Browns hallway enterring his bedroom put Brown being outside of his bedroom being shot first. Regardless if there was testimony by detective Merten at the PH stating Shoals heard a gunshot while Brown was out of the bedroom. Regardless if there was a report by Detective K. Campbell indicating Brown came into the bedroom wounded. Regardless if officer Richard Kawasaki, Sergeant Jeff Naff and K. Campbells summary report indicate that Brown was shot first before making any contact with Shoals. Regardless

if Brown was shot in his livingroom first infront of witness George Clark who also testified falsely to the events of the murders. Regardless if the shotgun pellet that exited Browns back lodged itself into Browns livingroom wall. Regardless if CSI Darrin Noonan searched the livingroom wall and seized that pellet to her own report and that Noonans pellet was not documented as being discovered with the pellets located from victim Brown and Turners bedroom in CSI M. Zeiger and R. Crowell crimescene process reports. Regardless if Noonan was keptout of Petitioners trial purposely. And Regardless if the above evidence was all kept from the jury.

Fundamental Miscarriage Of Justice

Once the events of the murders change, the location and distance of the shooter change. The timing of events change. The location of evidence change. The investigation changes and the location and distance of the victims change. The credability of witnesses change. The chargest sometime change. And the verdict can change to a verdict of guilty or not guilty.

The question concerning Justice is not Regardless of where or how Brown was shot, but that from the California Supreme Court to the 9th Cir no one has addressed the photos of blood

drops in Browns hallway. (Fed writ Pet. Ex. 8; Sup. Ct. Pet. Ex. G; Traverse to Answer, Ex. 18.) And to this Court now the photos come to you under, Ex. 6. No Evidentiary Hearing Whatsoever.

This Court said in Engle V. Isaac, 456 U.S. 107 (1982); Murray V. Carrier, 477 U.S. 478 (1986) and Schlup V. Delo, 513 U.S. 298 (1995) "... In appropriate cases, the principles of comity and finality that inform the concepts of cause and prejudice must yield to the imperative of correcting a fundamentally unjust [Schlup, 513 U.S. 321] incarceration." Carrier, 477 U.S. at 495, 106 S.Ct. 2649, quoting Engle V. Isaac, 456 U.S. at 135, 102 S.Ct. at 1576. see Smith V. Murray, 477 U.S. at 537, 106 S.Ct. at 2668.

Because the blooddrops were not addressed in Petitioners motion to expand the record at page 5 of 8, Fed. Pet. Ex. 8. the AG was able to argue, "the absence of Brown's blood outside the bedroom was evidence that Brown was shot while he was in the bedroom." (AG at 16; 20-25, Ex. 9.)

And also the prosecutor makes it clear in her openning that the loud noise Shools heard from her bed with Brown was the door bang open which made Brown get up to go check on George in the livingroom. See (openning at 465; 25-28, Ex. 10.) Showing that the loud noise was not a gunshot into Turners bedroom as the AG said. Ex. 4.

This Court said in U.S. V. Cronic, 466 U.S. 648, 104 S.Ct. 2039 (1984): "Even when no theory of defense is available, if decision to stand trial has been made, counsel must hold the prosecution to its heavy burden of proof beyond a reasonable doubt" Cronic, 466 U.S. 657 n. 19, 104 S.Ct. 2039: Counsel at Petitioners trial did not do this nor did he investigate. And he supported the states evidence against Petitioner. And did not challenge the states evidence.

The Black Shoes And The Black Clothing Petitioner Was Seen Warring One Hour Before The Murders Of Clifford Brown And James Turner In A Walmart Video

Because trial counsel failed to challenge the states evidence: the jury was kept ignorant to the fact that when officers came to Petitioners home on the night of the murders to arrest him on 12-15-09 and seize evidence from home of petitioner that officers had no ideal of how petitioner was dressed in the Walmart video one hour before the murders.

The jury never learned that the Walmart video was not discovered by officers until detectives flew to Iowa on 12-30-09 to interview John Cross on 12-31-09 at the Polk County Jail inwhich Cross said he had nothing to do with the murders but stated he seen me

at the Walmart on 12-14-09 before midnight. Officers then advised other detectives to check the surveillance video at Wal Mart. See (John Cross 12-31-09 interview, EX. 11.)

Doing the direct examination by prosecution of officer Henry Jason the prosecutor asked Jason(who was the finder in the search and seizure of evidence from my home on 12-15-09) if Jason found any black beanie caps and black knit caps of any kind inwhich Jason stated no. see (RT 640:6-11, EX. 12.). The ideal of the prosecution was to give the jury the impression that officers had the Walmart video doing the time of the search of Petitioners apartment and that the reason a beanie cap was not in evidence was because it was the ski mask the shooter wore and that Petitioner got rid of it. Had the trial counsel been functioning as the Governments adversary the jury would have learned that the beanie cap was not seized on 12-15-09 because the detectives did not learn about the walmart video until 12-31-09 and had no ideal how petitioner was dressed one hour before the murders.

The Black Shoes

Petitioners black shoes that he wore in the Walmart video one hour before the murders were seized on 12-15-09 from his home by detectives and photographed in place

by CSI D. Noonan under evidence report #631213-1, under photos 83-86, 121 and 122. Either trial counsel failed to investigate or failed to act as an advocate; for doing the time of direct and cross examination of detective Henry Jason, who was the finding of all the evidence seized from petitioners home, there was no direct questions by either side into the inquiry if any black shoes had been seized from petitioners home.

However doing the cross examination of detective K. Campbell by trial counsel, counsel inquired to Campbell asking if he found comparable black shoes at petitioners home to the black shoes petitioner was wearing in the Walmart video. Counsel attempted to inflame the jury by asking Campbell if he believed the dark colored shoes in the Walmart video were slippers. Once Campbell could not recall if there was any all black shoes or not, trial counsel ended his cross examination. See (RT 753-754, Ex. 13.)

It was evident that counsel was attempting to conduct his investigation at trial. Had a reasonable competent counsel knew about the black shoes seized from Petitioners home, he would have presented the black shoes to the jury to compare them to that of the Walmart video, and would have knew that detective Bales was the one who discovered the black shoes. The lack of preparation revealed by these illustrative exchanges indicates an objectively unreasonable

failure to investigate. This Court said in Strickland v. Washington, 466 U.S. 668, 698, 104 S.Ct. 2052, 80 L.Ed.2d. 674 (1984). "Counsel has a duty to investigate all reasonable lines of defense, or make reasonable determinations that such investigation is not necessary." Strickland, 466 U.S. at 691, 104 S.Ct. 2052. A decision not to investigate cannot be deemed reasonable if it is uninformed. Id. Counsels decision not to undertake substantial pretrial investigations and instead to investigate the case during the trial was not only uninformed, it was patently unreasonable.

Although the prosecution never asked Henry Jason if he found any black shoes doing the search of petitioners apartment (RT 631:5 EX.12.), the prosecution took adventage of trial counsels line of questions to Campbell (RT 753-54, EX. 13.) and argued to the jury, "We know direct "fact" that black beanie he was wearing, those black shoes, gone". (RT 1126: 7-8, EX. 14.) Because of this Miscarriage of justice the AG in the answer was abel to repeat that the prosecutor argued that the black shoes Petitioner was wearing in the Walmart tapes were not found, (AG at 25: 1-13, EX. 15.)

The Black Clothing EX. 35.

Doing the search of Petitioners apartment on 12-15-09 many items of black clothing were seized. However none

of the items of black clothing were the black clothing petitioner wore in the Walmart video one hour before the murders. The black clothing from petitioners home were tested for blood and GSR, some items of clothing coming up positive for GSR. The clothen with GSR on them were used to put me at the scene shooting a shotgun. The black clothen from the Walmart video was used to say that petitioner was dressed like the shooter and did the murders in the black Walmart clothen. Because of trial counsels failure to challenge the states evidence the record now reflects that the black clothing in the Walmart video and the black clothing with GSR on them that were seize from my home are one together. Had there been an evidentiary hearing by the State or federal court, it would have proved that the black clothing with GSR on them and the black clothing on the Walmart video are two different material of clothing and styles. The prosecutor could have presented the truth and stated they grabbed the wrong clothing because they didnt find out about the Walmart video until 12-31-09, EX. II. However the black

shoes wore in the Walmart video that were seized by the state and kept from the jury were size 13 K-swiss that did not match the size 14 skater brand shoe print at the crime scene.

Trial counsel repeatedly lended support to the states version of events as counsel argued to the jury:

> "imagine this: somebody goes in and does a shooting, and they get rid of, lets say, the shoes, the mask, the gun and everything, right. Well, they didn't get rid of their clothes". (RT 1095:10-16, EX. 16.)

It was evident that Counsel just told the jury that the black shoes petitioner wore in the Walmart video were not found. That the black clothing with GSR on them are the same black clothing in the Walmart video.

The Court said in Fisher V. Gibson, 282 F.3d 1283, (10 Cir. 2002) see also Osborn V. Shillinger, 861 F.2d 612, 624-25 (10th Cir. 1988)(quoting Von Moltke V. Gillies, 332 U.S. 708, 725-26, 68 S.Ct. 316, 92 L.Ed. 309 (1948)

> Thus the duty of loyalty is violated not merely when counsel represents clients who have conflicting interests, but also when counsel acts more for the benefit of, and

with more apparent sympathy toward, the prosecution than the client he is defending. See id at 625 (quoting Cronic, 466 U.S. at 666, 104 S.Ct. 2039) ("an attorney who adopts and acts on a belief that his client should be convicted fails to function in any meaningful sense as the Government's adversary.")

A key piece of evidence was the fact that officers did not know that petitioner was shopping at the Walmart on 12-14-09 one hour before the murders until their visit with John Cross on 12-31-09, Ex. 11,

without the above evidence aired out to the jury the prosecution was able to present false testimony by detective Merten that Merten asked Petitioner specifically did he go to (on 12-14-09) Walmart on Florin Road and that petitioner stated no. (RT 1053:6-10, Ex. 17.). It allowed the AG on direct appeal also to argue Petitioner denied going to a nearby Walmart (AG at 7, RT 494, Ex. 18.)

Had the evidence of John Cross been presented by Counsel, no jury would have believed that detective Merten asked petitioner about going to a Walmart on 12-14-09 one hour before the murders when the officers did not know about the Walmart video until 12-31-09 Ex. 11,

However Counsel supports the states evidence by arguing to the jury, " Lets assume he got on the stand, I didn't do it. Nobody is going to believe him anyway, he just lied, right. And so it doesn't make any difference that he told you the truth or told you a lie. It would make sense to discount whatever he's saying one way or the other. So the value of his testimony is not going to a hell of -- strike that. It's not going to be a lot." (RT 1111:9-15, EX. 19 .)

..."The Sixth Amendment requires that counsel hold the prosecution to its heavy burden of proof beyond a reasonable doubt" Cronic, 466 U.S. at 657 n 19, 104 S.Ct. 2039.

Complete failure To Investigate

Counsel did not investigate!

1.) The blood drops in Browns hallway Ex. 6, 9

2.) The blood drops enterring Browns bedroom Ex. 7,

3.) The gunshot heard by Shoals while Brown was out of the bedroom. Ex. 1,

4.) The exit wound to Browns head Ex. 20, 21, 22.

5.) The exit wound to Browns back Ex 23, see (AG at 22:8, 24:1-2, EX. 21)

6.) The blood drops on top of Browns master dresser. Ex, 8.

7.) Detective Campbells summary of Brown coming into the bedroom wounded. Ex. 5.

8.) The blood splatter up against Browns east bedroom wall that came back toward shooter. Ex. 24.

9.) CSI D. Noonans search of Browns livingroom wall and the shotgun pellet seized from that wall. Ex. 25, 26, 27.

10.) Trial counsel did not speak to any of the witnesses from the crime scene.

11.) Counsel failed to investigate into the items of shoes that were seized from my home and failed to learn that the black shoes wore by petitioner in the Walmart video were seized. Ex. 12, 13, 14, 15, 16, 18.

12.) Counsel failed to challenge Detective Mertens false testimony that he question Me about my whereabouts concerning 12-14-09 and that Merten inquired if I went to Walmart on 12-14-09. Ex. 17. And failed to learn Petitioner was never question about the murders.

13.) Failed to learn that detectives did not learn about the Walmart video until 12-31-09. Ex. 11.

14.) Failed to set the record straight that the black clothing seized from my home was not the black clothing petitioner wore in the Walmart video. EX. 16, 18. The State did not have my black jean pants from the Walmart video either. Nor coat. EX. 35.

15.) Failed to present to the jury that none of the surveillance video gathered en rout to the murder scene showed any of petitioners cars.

16.) Failed to investigate into witness Antonio Meneses learning disability before allowing to take the stand. Ex. 16, 18.

17.) Failed and refused to investigate into drug dealing at the home of victim Brown and witness Addie Hayes.

18.) Failed and refused to investigate into witness Nga Thi Nguyen statement that she seen witness Clark and another man out side Browns home 15 minutes before the gun shots, and that a few minutes after Clark and the other man entered the home of Brown, Nguyen heard the shooting. Ex. 28, 30.

19.) Failed to investigate into Clarks statement that he was not outside minutes before the shooting nor did he speak to any one outside. Ex. 29, 30.

20.) Counsel lied at Petitioners Marsden Hearing that witness Nguyen made no such statement seeing Clark out side minutes before the shootings with another man; stating to the judge that petition had Ms Nguyen case, (RT 1158-1162) confused with Bryanna

Warrens case.

21.) Counsel failed to utilize my cellphone recording of my visit with Witness Addie Hayes showing that it was Ms Hayes and a friend of hers attempting to intervene into Bryanna Warrens attempted murder investigation by asking Petitioner not to get a lawyer, but to pay Brown and Shoals not to testify against Ms Warren. Ex. 31.

22.) Counsel failed to investigate the call made by Brown on 12-14-09 to detective Bales. Browns mother had called Brown to scare him into not testifying against Ms Warren. She told him that I offered to pay them not to testify and that I described what his residence looked like in order to verify that I knew where they lived. That I had goons. Ex. 32. The above call was kept from the jury.

The call showed that Brown never made any contact with petitioner over the phone as the lie Ms Hayes stated, but that Browns information and knowledge of me came directly from Browns mother, Ms Hayes. Ex. 33. Counsel failed to utilize the above evidence. The stamped date and time of my cellphone recording showed that I was at Ms Hayes house on 12-3-09 for almost an hour Ex. 31. Whats not also investigated

is when I received Bryanna Warrens police report and from who I received that police report. Petitioner received that police report from Bryannas attorney Roosevelt Oniel Jr on 12-7-09. Petitioner knows this date because detectives seized my receipt on 12-15-09 showing that I had retained Mr. Oniel for Bryanna Warren for $3,000 dollars down with a balance of $5,000. See (Traverse at 63, EX 17) The jury was kept ignorant of the above inwhich Counsel could have atlest showed the jury that Petitioner was not trying to take matters into his own hands. The jury could have also drawn an inferance that if petitioner knew where Brown lived at on December 3, 2009 that 1.) Why not go directly to Browns house, 2.) why didnt witness Hayes address this to detectives on 12-15-09 when they came to her house 3.) why didnt Hayes tell the officers, if it was not her ideal, that Petitioner offered money for Brown not to testify against Warren 4.) Why didnt Ms Hayes tell the officers that she knew Petitioner if there was nothing illegal going on between the both of them, 5.) Why did Ms Hayes tell officers that Petitioner wanted Browns address and spoke to Brown when Browns only information about Petitioner came from his mother, 6.) How did Petitioner know how to get to Ms Hayes house on 12-3-09

if he didnt receive Warrens police report until he obtained Mr Oniel for Ms Warren on 12-7-09. And 7.) If Petitioner did describe what Browns house looked like inorder to show he knew where Brown lived at on 12-3-09, then what need did petitioner have for the map quest directions. 8.) if the petitioner did use the map quest directions to go murder Brown then why weren't Petitioners cars seen in the surviellance footage gathered from the businesses enroute of the map quest directions to Browns home.

And even if Brown made no call on 12-14-09 to detectives, there still would be no getting around the miscarriage of justice that was done to petitioner concerning the blooddrops in Browns hallway entering his bedroom Ex. 6, 7, 8,, showing that Brown was first shot in the chest while out of his bedroom. The only pellet in Browns room that exited from the rightside of his head on to his bed showing that Brown was facing his eastwall of his bedroom with the gunman infront of him. Ex. 24, 26, 21,. The bloodsplatter that came back toward the shooter up against Browns east wall of his bedroom. Ex. 27. The false testimony by pathologist Stephany Fiore that Brown had no exit wounds to his head

to give the record the impression that the only pellet that was documented as being discovered in Browns bed room exited from his back to secure witness Shoals false testimony of the events of the murders that Brown was shot twice in his bedroom after hidding her. EX. 1. .3.4 .10., The gunshot that Shoals heard while Brown was out of the bedroom that was presented at the preliminary hearing and took out at the trial showing that Brown was shot outside of his bedroom, before the false claim that he hid shoals first with Officer Richard Kawasaki and detective K Campbell summarys supporting this also. EX. 1, 2, 5, 6, 7, 8., CSI Noonan search of Browns livingroom eastwall and her seized shotgun pellet from that wall that exited Browns back and the injustice keeping Noonan out of the trial to hidethis fact when Noonans seized shotgun pellet was not even documented as being 1.) found in Browns and Turners bedroom, seized from their bedroom or even given to Noonan by CSI M. Zeiger who seized all those pellets from Brown and Turners bedroom and stored them her self at SPD property. Ex. 26, 27. Petitioners black shoes that were wore by him in the walmart video one hour before the murders that were hid from the jury and avgued to the jury that they were not found. RT 753-54, EX. 13, RT 1126, EX. 14, RT 1095:12-16, Ex. 16.,

(AG on direct Appeal at 7, 9, 11, EX. 18.)

On direct appeal the AG used transcript pages, RT 608, 620, 631, 640 EX. 12, and 753-54, EX. 13. to argue that petitioner had discarded his shoes and black knitted cap that he had worn at Wal-Mart a few hours before the murders (AG at 9, 11, EX. 18.)

608 builds up the speculation of petitioner having on slippers when arrested 608:14-21. 620 shows that no black knit hats were found in my cars. 620:4-13. 631 shows only the size of the shoes found but there is nothing from the prosecution asking if black shoes were found. 631:17-24. 640 dosent ask about any black shoes either. But it does ask about the beanie caps. However they were not looking for a beanie because they didnt know petitioner wore a black beanie until 12-31-09. 640:2-18. EX. 12. And last is 753-54 which is my trial counsel cross-examination of detective Campbell who could not remember if there were any black shoes in which trial counsel had no plans on presenting them to the jury. 754:6-17 (Photo of the black shoes seized from petitioners home that he wore in the Walmart video, 83-86, 121 and 122, evidence tag #631213-1). Why would a prosecutor argue that no black shoes were found if the prosecutor never inquired into the black shoes. (RT 608, 620, 631, 640, EX. 12.; AG on direct, 7, 9, 11, EX. 18.) (AG on answer at 25, EX. 15.)
Counsel even failed to investigate witness Antonio Meneses learnig disability. EX. 34,

Actual Innocence

Petitioner argued in his Traverse [at 49-52] that he was never questioned about the murders of Brown and Turner. That there was nothing in petitioners interview of Detective Merten asking petitioner his whereabouts on 12-14-09 nor if petitioner was at a Walmart on 12-14-09. Even though petitioner explained to the Court that he viewed the Dvds of the interview and presented the fact that Detectives did not discover the Walmart video until 12-31-09 (Traverse at 26-27, 30-31, 41-43, 47, Ex. 3. 4.), no evidentiary hearing was held to fully illuminate these facts.

Petitioner argued in his first writ of habeas to the California Supreme Court that Brown was shot first while out side of his bedroom. Petitioner even presented a photo of the blood drops in Browns hallway and even explained to the state court by declaration how I filed a 1054.9 motion for discovery and discovered the blood drops in Browns hallway. (Cal. Supreme. Pet at 20-25, Ex. G.) Petitioner did the same in his federal writ: "motion to expand the record at 5 of 8, Ex. 8." And in his traverse at 18, 21, 31, 32, 38, 40, 46, Ex. 18. The AG addressed most of the exhibits in the state writ but stayed away from the blood drops in Browns hallway (Sup. Ct. Pet. Ex. G.). The AG stayed away from the photo of blood drops in the motion to expand the record at 5 of 8, Ex. 8. The Magistrate followed the AG and stayed on the path of only speaking of the blood in Browns bedroom and replacing the evidence

of blooddrops in Browns hallway with talk of evading words: "Regardless of where or how Brown was shot, the evidence as a whole was compelling that petitioner killed Brown and Turner" (F&R at 18, 21-22). The where by the Magistrate evades the blooddrops in Browns hallway never having to mention them. The how by the Magistrate evades the false testimony by Pathologist Stephany Fiore that Brown had no exit wounds to his head only his back; the only pellet documented in Browns bedroom when there should be two if he was shot twice in his bedroom; And Brown facing the eastwall of his bedroom with the gunman infront of him facing Brown and the bloodsplatter coming back from Brown toward the gunman up against the eastwall of Browns bedroom.

Petitioner argued that the black clothing wore in the Walmart video by petitioner was not the black clothing in evidence with GSR on them and that the record is deceived. (Traverse at 22-23, 42-43, 47, 58)

Petitioner argued that the black shoes wore in the Walmart video by him one hour before the murders were seized and kept from the jury and argued to the jury that petitioner got rid of them because he did the murders in them. (Traverse at 27-31, 41, 43-44, 47-48, 58)

However no evidentiary hearing was held to prove the above evidence. Nor has the blooddrops in Browns hallway been spoken on, but with a turn of a blind eye they have vanished from the mouths of the adepts.

Denied Penal Code §1054.9 Discovery

That discovery I requested in 2012 under penal code §1054.9 was not completely and truely given to me by the district attorneys office nor my trial attorney. The District Court erred by not hearing my claim for denied postconviction discovery in my (ECF NO. 85) amended petition. Had the district court considered the petition, petitioner could have argued that petitioner was entitled to the actual hand written police statements under Penal Code §1054.9 because my trial attorney at my preliminary hearing specifically ask for those actual statements and not the summary statements because of the conflicting statements and typographical error in the summary reports. See (Trial Counsels Motion Regarding Outrageous Government Misconduct

By Withholding Discovery. Ex.36.) See also (Trial Counsels Request at Preliminary hearing for Discovery, at 3-5, 16-18, Ex.37.). The record shows that the judge made an order for the police department and district attorney after an investigation has been completed that not only the police department keep records but also the DA of the completion of the reports and that the people turn this over to my trial attorney. (Prelim at 16: 13-28, 17:1, Ex.37.) However no one has given me these written statements and petitioner was forced to use in this writ and all habeas writs nothing but summary reports as the Court can see by Officer Richard Kawasaki Summary Ex.2. Under In re Steele (2004) 32 Cal 4th 682, 10 Cal. Rptr. 3d 536, the 1054.9 statue permits discovery of materials to which trial counsel was legally entitled. Steele, supra, 32, Cal 4th at p. 694, 10. Rptr. 3d 536. 85 P. 3d 444. see Barnett v. Superior Court, (2010. Cal) 50 Cal

4th 890, 114 Cal Rptr 3d 576, 237 P.3d 980.
The question that only should have been addressed was if the D.A. turned over the true complete original certified copies of the raw reports. If the court views that discovery motion it will see that I have been trying to get CSI D. Noonans report since 2012 of February to no avail, and the written Statements.

CONCLUSION

The Principles Of Comity And Finality That Inform The Concepts Of Cause And Prejudice Must Yield To The Imperative Of Correcting A Fundamentally Unjust [Schlup, 513 U.S. 321] Incarceration" Carrier, 477 U.S. at 495, 106 S.Ct. 2649, quoting Engle V. Isaac, 456 U.S. at 135, 102 S.Ct. at 1576. see Smith V. Murray, 477 U.S. at 537, 106 S.Ct. at 2668. Petitioner is Actually Innocent.

For the above reasons the Court should grant this writ in the interest of Justice. Without an Evidentiary hearing Petitioner would suffer a Miscarriage of Justice.

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

Date: 7-23-18

/s/ George Wallace
GEORGE WALLACE
In Pro Per