No. _____

ORIGINAL

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

Benjamin James Boatman
_____ — PETITIONER
(Your Name) IN PRO PER

vs.

Jeffrey A. Beard
_____ — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeal For the Ninth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Benjamin James Boatman
(Your Name)

P.O.Box 2199
(Address)

Blythe, California, 92226
(City, State, Zip Code)

N/A
(Phone Number)

INEFFECTIVE ASSISTANCE OF COUNSEL QUESTIONS PRESENTED

Mr. Boatman alleged that trial counsel was ineffective for failing to conduct, develop, and present readily available evidence of a drug-induced psychosis and heat of passion which would have negqated the necessary elements required to prove murder. Mr.Boatman was convicted,in large part, due to trial counsel raising a defense of voluntary intoxication without support or corroboration of said theory or instructions to mitigate the elements of murder. Expert witnesses would have testified that Mr. Boatman was suffering from drug-induced psychosis, brought on by poly-substance abuse withdrawal. Had the 150 page medical record been obtained, reviewed and presented at trial, supported by corroborated expert testimony, as well as the necessary jury instructions requested and given, it is likely the outcome would have been different especially since the California appellate court found that the evidence used to convict Mr. Boatman of first degree murder was insufficient and subsequentially reduced the first degree murder to second degree(See partially published opinion infra @ pgs. - ; People v. Boatman 221 Cal.App.4th 1253[same]; See District Court Lodgement 7 [same] "herein after District Court will be abbreviated to reflect "Dist. Ct. Lodg."). In finding no prejudice, The Ninth Circuit improperly relied upon the lower courts rulings consequentially denieng Mr.Boatman of his rights to effective representation and this case thus presents the following Ineffective assistance of counsel questions:

1. Did the Ninth Circuit err in deferring to the lower court finding that trial counsel's failures to conduct, develop and present readily available evidence of a drug-induce psychosis, were in fact, not deficient? Prejudicial?

2.Did the Ninth Circuit err in deferring to the lower courts finding that trial counsel's failure to investigate, develop and elicit sufficient evidence in mitigation/heat of passion was, in fact, not deficient? Prejudicial?

3.Did the Ninth Circuit err in deferring to the lower courts finding that trial counsel's failure to request the necessary jury instructions supporting de-

deficiently Prejudicial
fense theories was, in fact, not prejudicial?

PROSECUTORIAL MISCONDUCT QUESTION PRESENTED

Mr. Boatman alleged that the prosecutor misstated and mischaracterized the evidence to lessen his burden of proof, to not prove all elements of the crime, including disproving the existance of heat of passion/ sudden quarrel when it was properly presented. Mr.Boatman was ultimately convicted of first degree murder as the prosecutor had free reign to mischaracterize the evidence of a fight that ended in a gunshot in line with his theory. However, the California Appellate court found insufficient evidence for the first degree murder. Mr. Boatman, having never had a voluntary manslaughter instruction, was ultimately over convicted of murder by mischaracterized evidence which, to this date, has yet to be properly determined. This case thus presents the following question:

4.Did the Ninth Circuit err in deferring to the lower court finding that the prosecutor did not create misconduct, lowerind his burden of proof, amounting to constitutional violations?

INEFFECTIVE ASSISTANCE OF SENTENCING COUNSEL QUESTION PRESENTED

After trial, Mr. Boatman requested different counsel for the purpose of filing a motion for new trial so as to raise the issues presented earlier, with expert assistance, rather than later with no assistance. Sentencing counsel refused. This case thus presents the following question:

5. Was sentencing counsel ineffective in failing to file a motion for new trial and did the Ninth Circuit err in finding that this was not prejudicial?

CUMULATIVE ERROR QUESTION PRESENTED

Mr. Boatman contends that at every phase of his trial a prejudicial error was committed. Trial counsel was negligant in failing to conduct pretrial investigation, in developing and presenting evidence to mitigate and support evidence as well as supporting and requesting necessary jury instructions. The prosecutors misconduct was so great it prejudiced Mr.Boatman and over-convicted him as evidenced by

the California Appellate Court (See partially published opinion, infra; Boatman, supra; Dist. Ct. Lodg. 7) reducing Mr. Boatman's first degree murder to second due to insufficiency of evidence leaving the remaining conviction unfair. The sentencing counsel deprived Boatman of his rights to have proper investigation and place all of this on record through expert testimony on a motion for new trial.

This case thus presents the following question:

6.Did the Ninth Circuit err in deferring to the lower courts finding that Mr. Boatman was not prejudiced by the cumulative error, in light of the record as a whole, that the errors did not severely undermine the confidence in the judgement and that the errors did not violate Boatman's right to effective assistance, fair trial, and due process?

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LIST OF PARTIES

[XX] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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FEDERAL CASES

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[XX] For cases from **federal courts**:

The opinion of the United States court of appeals appears at ATTACHMENT D to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[XX] is unpublished.

The opinion of the United States district court appears at ATTACHMENT A to B the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[XX] is unpublished.

[XX] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at ATTACHMENT G to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[XX] is unpublished.

The opinion of the Cal. Court of Appeals, 4th Dist, Division 2 court appears at ATTACHMENT F to the petition and is

[XX] reported at People v. Boatman 221 Cal.App.4th 1253; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[XX] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was April 20, 2018.

[ ] No petition for rehearing was timely filed in my case.

[XX] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: July 12, 2018, and a copy of the order denying rehearing appears at ATTACHMENT E.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was March 12, 2014. A copy of that decision appears at ATTACHMENT G.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at ATTACHMENT _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

U.S. Constitution - Amendment 5

Amendment 5 - Trial and Punishment, Compensation for Takings

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Constitution - Amendment 6

Amendment 6 - Right to Speedy Trial, Confrontation of Witnesses

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

14th Amendment

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2.

Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3.

No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any

claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5.

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

28 U.S. Code § 2254 - State custody; remedies in Federal courts

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b)

(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a Statecourt shall not be granted unless it appears that—

(A) the applicant has exhausted the remedies available in the courts of the State; or

(B)

(i) there is an absence of available State corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

(2) An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.

(3) A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a Statecourt shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the Statecourt proceeding.

(e)

(1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a Statecourt, a determination of a factual issue made by a State court shall

be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

(2) If the applicant has failed to develop the factual basis of a claim in Statecourt proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that—

(A) the claim relies on—

(i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and

(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(f) If the applicant challenges the sufficiency of the evidence adduced in such Statecourt proceeding to support the State court's determination of a factual issue made therein, the applicant, if able, shall produce that part of the record pertinent to a determination of the sufficiency of the evidence to support such determination. If the applicant, because of indigency or other reason is unable to produce such part of the record, then the State shall produce such part of the record and the Federal court shall direct the State to do so by order directed to an appropriate State official. If the State cannot provide such pertinent part of the record, then the court shall determine under the existing facts and circumstances what weight shall be given to the State court's factual determination.

(g) A copy of the official records of the Statecourt, duly certified by the clerk of such court to be a true and correct copy of a finding, judicial opinion, or other reliable written indicia showing such a factual determination by the State court shall be admissible in the Federal court proceeding.

(h) Except as provided in section 408 of the Controlled Substances Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel for an applicant who is or becomes financially unable to afford counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

(i) The ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254.

(June 25, 1948, ch. 646, 62 Stat. 967; Pub. L. 89–711, § 2, Nov. 2, 1966, 80 Stat. 1105; Pub. L. 104–132, title I, § 104, Apr. 24, 1996, 110 Stat. 1218.)

STATEMENT OF THE CASE

INTRODUCTION

The District Court and the Ninth Circuit Court of Appeals dismissed Boatmans Petition for Writ of Habeas Corpus and denied Certificate of Appealability as to each claim (See Attachments A-G). Boatman filed a timely petition for rehearing which was denied as well. The following claims were raised : 1) Reasonable jurists could differ as to whether the District Court erred in dismissing the habeas petitione in its entirety, 2) Reasonable jurists could differ as to whether trial counsel was ineffective for failing to conduct, develop, and present readily available evidence in mitigation, 3) Reasonable jurists could differ as to whether the District Court properly denied appellants claim that the trial counsel was ineffective for failing to request the necessary jury instructions supporting defense theories,, 4) Reasonable jurists could differ as to whether the District Court properly denied appellants claim of prosecutorial misconduct, in which the prosecutor misstated and mischaracterized the evidence to lessen his burden of proof, to not prove all elements of the crime, 5) Reasonable jurists could differ as to whether the District Court properly denied appellants claim that the sentencing counsel provided ineffective assistance by depriving appellant of his right to file a motion for new trial, 6) Reasonable jurists could differ as to whether the District Court properly denied appellants claim that appellate counsel provided ineffective assistance by failing to raise meritorious claims on appeal, 7) Reasonable jurists could differ as to whether the District Court properly denied appellants claim that the cumulative errors in light of the record as a whole, violated appellants constitutional rights.

PROCEDURAL HISTORY

On July 1,2011, a Riverside County Superior Court jury convicted appellant of first-degree murder and possession of marijuana for sale. The jury also found true a firearm allegation and an allegation that appellant committed the offenses while on release from custody pending trial on another felony offense. He was sentenced to 52 years to life in state prison. (Lodg.1[Reporters Transcripts, herein after "RT"] @

481-83, 532; Lodgment[1] 3[Clerk Transcripts, herein after "CT"] @ 278-81; 390-392).

Appellant appealed.(Respondent's notice of lodging, Lodg. 4). In a partially published decision filed on December 4,2013, the California Court of Appeal reversed appellants conviction of first degree murder because the evidence presented at trial was insufficient to establish premeditation and deliberation. See People v. Boatman 221 Cal.App.4th 1253 (2013). In the remaining unpublished portion of the decision the California Court of Appeal rejected seven other claims of error(see Lodg.7). On March 13, 2014, the California Supreme Court summarily denied a Petition for Review (Lodg. 8 and 9). Appellant was resentenced to 40 years to life in state prison (Lodg. 10 @ 2).

Appellant then litigated a series of habeas petitions in the California courts. On June 11, 2015, appellant filed a habeas petition in the Riverside County Superior Court (Lodg.10). It was denied in a brief decision on July 13, 2015 (Lodg. 11). On August 26, 2015, appellant filed a habeas petition in the California Court of Appeal (Lodg. 12). It was denied without comment or citation of authority on September 1,2015 (Lodg. 13). On November 2, 2015, appellant filed a habeas petition in the California Supreme Court (Lodg.14). It was denied without comment or citation of authority on February 17,2016 (Lodg. 15).

Appellant filed his petition in the United States District Court for the Central District of California on November 4,2015 (Docket # 1, herein after all docket citations will be "Doc"). Appellant also filed a Motion for Stay and Abeyance while he completed exhaustion of his claims in the state courts, but motion became moot on February 17, 2016, when the California Supreme Court denied his habeas petition. All filings were timely and timliness is not at issue.

The Respondent filed an Answer on April 26,2016 (Doc.20). Appellant filed a Traverseon June 27, 2016 (Doc.26). The Magistrate Judge filed a Report and Recommend-

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1.All further Lodgments will be abbreviated to reflect "Lodg.".

ation '(herein after "R&R")(Doc.29) on June 19,2017. The appellant filed an Objection to the Magistrates R&R on July 26,2017 (Doc.35).

The District Court Judge filed an order accepting the findings of the Magistrate judge (Doc.38) and a Judgement, pursuant to the R&R, denying the petition and dismissing the action with prejudice (Doc.29) on September 1,2017. The District Court also filed an Order denying appellants request for COA on the same day (Doc.40).

Appellant now brings forth his Motion for Certificate of Appelability Following Denial of COA Request By District Court to the Honorable United States Court of Appeals For The Ninth Circuit.

SUMMARY OF THE EVIDENCE

The California Cour of Appeal set forth the following summary of the evidence from appellants trial (Lodg. 7 @ 3-9).

At approximately 3:30 a.m. on March 18, 2010, [appellant] was released from jail on bail. He walked home, where he lived with his father (Jim), a sister (Hannah), an older brother (Brandon), and a younger brother (Brenton).[footnote omitted.] Brandon's girlfriend, Victoria Williams, was also staying there at that time.

After talking with Brenton for awhile, [appellant] and Brenton drove to Marth's house, to pick her up, and returned home. [appellant] had been dating Marth for about one year and, he testified, was in love with her. However, [appellant] also had an exfiancee and was conflicted about whom he wanted to be with.

Around 7:05 a.m., Officer Eric Hibbard responded to a report of a shooting at [appellant's] house. When he arrived, he saw Brenton leaning up against the fender of a white Cadillac holding Marth in his arms. Marth had been shot in the face. Shortly after Officer Hibbard placed Marth on the ground, [appellant] came running out of the house with blood on his clothes and face. [appellant] told officer Gregory Hayden to "[c]all the ambulance for my girlfriend."

With both [appellant] and Brenton detained, Officer Hibbard and two other officers conducted a safety sweep of the house. Inside, the officers found Brandon,

Williams, and Hannah. Upon entering the bedroom where Marth had been shot, Officer Hibbard saw bloodstains on the bed and pillow. He also saw some marijuana and marijuana pariphernalia in the room. A trail of blood led Officer Hibbard from the bedroom to the kitchen. Officer Hibbard saw a black revolver on the kitchen floor. Both the floor and the revolver appeared to be wet with water. The revolver contained five live .38-caliber rounds, as well as one fired round. During a subsequent search of the room where Marth was shot, a box containing a semiautomatic handgun, a box of .38-caliber bullets, and a duffel bag containing a sawed-off shotgun and a box of shotgun shells were found.

Brandons bedroom shares a wall with the room in which Marth was shot. On the day of the shooting, Williams (who was in Brandon's room) told an investigating officer that she was awakened by a "[l]oud screaming argument between a guy and a girl for at least three minutes." She said she did not know here the yelling was coming from and that shouy could not tell what the "[l]oud screaming" was about. At trial, Williams did not remember characterizing the sounds she heard as "loud screaming," and said she was awoken by l"loud talking." A couple of minutes after hearing the "loud talking" Williams heard a Gunshot. Immediately afterward, Williams heard a commotion and screaming; "it seemed like someone was panicking, like yelling or screaming out of fear."

[Appellant] was taken to the police station by a Riverside police officer. On the way to the police station, [appellant] asked the officer if he knew if Marth was okay. [appellant] said: "I cant lose her. I would do anything for her. How is someone supposed to go on with their life when they see something like th? We were just going to watch a movie." [Appellant was crying with his head down for most of the trip.

[Appellant] was interviewed by two homicide detectives. He gave different versions of what had happened that day and admitted at trial that he lied to the officers. In the first version, [appellant] claimed that Marth had accidentally show

herself. He said he was showing her a gun he had recently purchased; he did not tell her it was loaded; and as she was playing around with it, she accidentally shot herself.

In [appellants] second version, he said he shot Marth, but claimed the shooting was accidental and that he did not think the gun was loaded. He explained that they were sitting on the couch; Marth pointed the gun at him, he pushed the gun away, and she pointed it at him again; he took the gun, pointed it at her, and accidentally shot her.

In the third version, [appellant] said he knew the gun was loaded. He described the events this way: "She pointed it at me. I slapped it away. She pointed it at me. I slapped it away. We both knew it was loaded. And then I went like that and I cocked back the hammer just jokingly and it slipped, pow." He later added: "I pulled it back...[¶]...[¶]...and it slipped.[¶]...[¶]... Like I didn't get to pull it all the way back." In this version, [appellant claimedthat his finger was not on the trigger. At trial, this version was placed in doubt by a criminalist with an expertise in firearms who testified that, because of the multiple safeties on the gun, the gun cannot be fired by pulling the hammer back and releasing it before it is fully cocked.

[appellant] testified at trial. He stated that after a few restless nights in jail, he was released on bail around 3:30 a.m. and walked home. Along the way, he sent a text message to Marth to tell her he was going to come get her. He arrived at his house around 5:00 a.m. He and Brenton picked up Marth around 5:30 that morning and returned to their house.[Appellant] and Marth were happy to see each other.

After the three returned to [appellant's] house, they planned to smoke a "blunt" - a cigarillo in which the tobacco has been removed and replaced with marijuana - and watch a movie. After showering, [appellant] took some xanax and Norco pills. [Appellant] said that these pills typically make him feel drunk and euphoric and that on the day in question they made him feel disoriented.[fn]

[fn] The detective who interviewed [appellant] testified that he did not notice that defendant had any symptoms of being under the influence of drugs during the interview.

[Appellant] and Marth were in a bedroom that had been converted from a back patio. [Appellant] went to his safe, which contained marijuana and money, and began weighing the marijuana and counting the money. Marth said, "[h]ey, baby." [Appellant] turned around and saw Marth pointing a gun at him. Marth had apparently retrieved the gun from underneath [appellants] pillow. [Appellant] was not worried because he trusted Marth. He slapped the gun away and continued to weigh the marijuana.

At this point, a mosquito landed on Marth, causing her to "scream[] a little bit." She "jumped up, started waiving her hands, doing a whole bunch of girly stuff... ." In order to tease her, [appellant] "grabbed the mosquito, and... brought it closer to her, and she got even more upset." To make up for the teasing, [appellant] gave Marth a hug and a kiss, then went back to weighing his marijuana.

When [appellant] turned around, Marth was sitting on the edge of the bed pointing the gun at him again. The bed did not have a frame and was low on the floor. [Appellant], who had just finished putting the marijuana back into the safe on the floor,was squatting and about "eye to eye" with Marth. He took the gun away from Marth and pointed it at her. He knew the gun was loaded when he received it and it "had to be loaded because [he] didn't take the bullets out." He cocked the hammer back, but did not intend or threaten to shoot her. He was "]j]ust kind of being stupid[.]" [Appellant] then described what happened next:

"[Appellant:] She slapped the gun,and as soon as she slapped the gun, the gun went off. I almost dropped it. I tried to grab hold of it. Still the gun didn't drop. As soon as I squeezed it, it went off.

"Q. Okay. Why are you squeezing it?

"A. I didn't want to drop it. I didn't want anything to happen. I guess just a reaction.

"Q. Okay.

"A. You drop something; you try not to drop it.

"Q. Did you sit there and think this through step by step or was it kind of

more an instinctive reaction?

"A. It just happened so quick. It just happened. I didn't think about it at all."

Immediately after the shot, [appellant told Brenton "to call the cops," which he did. [Appellant] tried to give Marth mouth-to-mouth resuscitation. When Marth told [appellant] she could not breathe, [appellant] and Brenton took her outside to the driveway in front of the house "to get her help."

[Appellant] went back into the house to get his keys. From the inside of the house, he heard sirens and panicked. [Appellant] grabbed the gun and rinsed it off in an attempt to wash off the fingerprints. He tossed the gun into the bottom of the kitchen cabinet. He then ran outside where he was met by police officers.

A recording of Brenton's 911 Call was played to the jury. Brenton lied to the 911 operator, telling her his name was "paul" and that he did not know who had shot Marth. [Appellant] can be heard in the background of the telephone call crying and repeatedly saying things like, "[n]oooo," "[b]aby" and "[b]aby are you alive, baby.. .."

A forensic pathologist estimated that the gun was fired roughly 12 inches from Marth's face. She arrived at this estimate based on evidence of stippling, "a phenomenon where some of the gunpowder comes out of the gun and actually tattoos and burns the skin." The doctor also opined on the trajextory of the bullet: "Essentially the projectile entered just to the left side of her nose. It was recovered in the back portion of her neck a little bit to the right. And so the trajectory would have been front to back, slightly left to right, and slightly downward."

Marth's best friend, Heather A. Hughes, testified that she and Marth exchanged text messages in the hours before the shooting. A text sent at 10:29 p.m. on March 17, 2010 (the night before [appellant] was released from jail) read: "Going to sleep soi [sic] can wake up when [defendant] calls." At 4:24 a.m. on March 18,2010, Marth texted: "[Appellant's] out." Two minutes later she sent: "I alrea[d]y fuckin wish he

was locked back up....[O]mg [you] have no clue." At 7:02 a.m., Marth wrote: "Just were [sic] fighting... with hi right now.

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REASONS FOR GRANTING THE WRIT

I.THE NINTHS CIRCUIT'S MISAPPLICATION OF THE DEFICIENT PERFORMANCE AND PREJUDICE PRONG STANDARDS OF STRICKLAND WARRANTS THIS COURTS ATTENTION.

A.Legal standard for ineffective assistance of counsel.

Ineffective assistance is a two prong test:(1)Counsel's performance was deficient, (2) The deficient performance resulted in prejudice to the defense.Strickland v. Washington(1984) 466 U.S. 668. To establish deficient performance, counsels performance must have "fell below an objective standard of reasonableness." Wiggins v. Smith(2003) 539 U.S. 510,521. To establish the prejudice prong "the [petitioner] must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability sufficient to underminde confidence in the outcome."Strickland, supra @ 694-95.

B.Trial counsel's failure to conduct, develop and present readily available evidence of a drug-induced psychosis warrants this courts attention.

The Ninth Circuits decision completely overlooked substantial facts that trial counsel was put on notice of the existance of medical records diagnosing Boatman od drug-induced psychosis and never attempted to obtain or review them(See Ninth Circuit Docket #5 @ 10-18; Herein after "9th Doc"). The Ninth Circuit also overlooked trial counsel's failure to not consult any experts in this regard, nor corroborate a voluntary intoxication defense that was insufficiently raised(See 9th Doc. 5, Id.)

Thus, violating Ninth Circuit cases finding that "counsel has a duty to investigate a[n[[appellants] mental state if there is evidence to suggest that the [appellant] is impaired." Douglas v. Woodford 316 f.3d 1079,1085(9th Cir.1998); Caro v. Woodford 280 f.3d 1247,1254(9th Cir.2002); Hendricks v. Calderon 70 f.3d 1032,1043(9th Cir.1995); Jennings v. Woodford 290 f.3d 1006,119-120(9th Cir.2002); Bloom v. Calderon 132 f.3d 1267(9th Cir.1997); Harris v. Wood 64 F.3d 1432(9th Cir. 1995); Rios v. Rocha 299 f.3d 796,805; see 9th Doc.5 @ 10-11). Further, Boatman

showed that counsel "must at minimum conduct a reasonable investigation enabling him to make informed decisions about how to best represent his client."(Citing: Sanders v. Ratelle 21 f.3d 1446(9th Cir.1994); Seidel v. Merkle 146 f.3d 750,755-756; Evans v. Lewis 855 f.2d 631,637(9th Cir.1998); see 9th Doc. 5 @ 13).

The U.S. Supreme Court has also held the same which the Ninth Circuit Court ignored, citing: Strickland,supra; Wiggins, supra; Hinton v. Alabama 134 S.ct 1081(2014); Williams v. Taylor 529 U.S. 362, 395(2000); See 9th Doc 5 @13-14).

Boatman also showed that trial counsel raised an involuntary intoxication defense without corroboration and in California, 9th Circuit, and the U.S. Supreme Court, corroboration is required. See 9th Doc.5 @ 14-16; citing Liao v. Junious 2016 DJDAR 3176; People v. Cox 221 Cal.App.3d 980,989-990(1990);People v. Frierson 25 Cal.3d 142,159-160(1979); Harris,supra; Douglas,supra;Jennings,supra;Waiters v. Lee 2015 U.S. Dist. LEXIS 130117; Ake v. Oklahoma 470 U.S. 68,80-81(1985); Hinton,supra @ 1089. For full discussion see 9th Doc.5 @ 10-16. Boatman made a substantial showing of the denial of Stricklands first prong, deficient performance.

PREJUDICE

The impact of trial counselors failures can be seen in the jurys actions:

(1)Began deliberating before 10:30 a.m. on 6/30/11(See Court Transcripts, herein after "CT", at page 267; CT's are Dist. Ct. Lodg.3).

(2)Forty minutes later, jurors sent out a note to the court requesting four more copies of instructions and the CD copy of the 911 call. (CT 269[911 call contains Boatman's spontaneous expressions of grief]).

(3)At 4:05 p.m. the jurors sent out question #2 asking for Boatmans testimony transcripts(CT 274)

(4)7/1/11, the next morning, jurors sent a note stating:"we would like the full in depth definition for the following words:willfully, deliberately, and premeditation."(CT 277; Reporters Transcripts, herein after "RT", Dist. Ct. Lodgement 1, @ 480) The court sent the jurors back to the same instructions that confused them (RT 480).

(5)At 2:42 p.m., 7/1/11/ the beginning of a holiday weekend, the jury reached the unlawful verdict of first degree murder(CT 275;RT 481).

The jurys three questions go to the heart of Boatmans mental state. The third question shows the confusion with the prosecutions theory, discussed infra. The only reasonable inference for requesting the 911 audio call is that it contains evidence

og Boatmans anguish. The request for Boatmans testimony shows concerns about Boatmans inconsistencies between his testimony at trial and his earlier statements to police.

It is commendable that the jury struggled with these issues, but ultimately they reached the wrong conclusion as evidence by the California Appellate Opinion in Boatmans Case.(See ATTACHMENT F, also Dist Ct. Lodg.7[opinion, reducing first degree murder to second degree for insufficiency of evidence]). It is apparent that the jury fell into the trap of over convicting Boatman as a precaution.

In both California amd federal courts, aBoatman has shown, extended jury deliberations are a factor that demonstrates closeness in a case. People v. Woodward(1979) 23 Cal.3d 329, 342[6 hours]; People v. Rucker(1980) 26 Cal.3d 368, 391 [9 Hours]; 8People v. Collins(1968) 68 Cal.2d 319, 332; Hamilton v. Vasquez (1992) 17 f.3d 1149[3 days at penalty phase]; See also People v. Williams(1971) 22 Cal.App.3d 34,40[Jury notes and request for testimony show "probable difficulty in decision"]).

The reduction of Boatmans murder from first to second degree for insufficiency of evidence does not remedy the ineffectiveness of trial counsel. In fact, it highlights how close this case was and makes it that much more obvious that had there been support in corroboration for Boatmans defense theories, there is a reasonable probability that the outcome would have been different.Strickland,supra. Trial counsels failures "had a substantial [and] injurious effect [and] influence in determining the jurys verdict" which Boatman showed, and warrants relief. Brecht v. Abrahamson(1993) 507 U.S. 619; See 9th Doc.5)

Boatman has demonstrated a substantial showing satisfying both of Stricklands prongs. Reversal and rehearing is required so as to maintain uniformity within the law.

C.Trial counsels failure to investigate,develop and elicit sufficient evidence in mitigation/heat of passion constituted a denial of a constitutional right and warrants this courts attention.

Boatman showed all throughout court proceedings(Dist. Doc. 1,26,35; 9th Doc.5)

that the prosecution put four witnesses on the stand for the sole purpose of using the "fight evidence" to prove first degree murder(See RT 426,433; See also withness testimony at: RT 82-85,106-107,370,374-376). Trial counsel failed to investigate, develop and elicit any evidence to support favorable defense theories violating appellants rights. Strickland, supra; United States v. Escobar De Bright 742 f.2d 1196, 1198(1984); Beck v. Alabama 447 U.S. 625, 633-34, 637(1980).

Boatman proved that trial counsel failed to question into favorable mitigating evidence which led to over-conviction(Dist.Ct. Doc.1,26,35 ; 9th Doc.5). Boatman further proved that trial counsel was put on notice of this evidence from the very beginning through police reports attesting to witnesses observing a fight ending in a gunshot. ID; See also CT 98. Trial counsel was also put on notice of said fight via text messages indicating the aforementioned. RT 371-77. As per 9th Circuit and U.S. Supreme Court, trial counsels failure to investigate, develop and elicit mitigating evidence is deficient performance because a trial counsel"must, at minimum, conduct a reasonable investigation enabling him to make informed decisions about how to best represent his client." Sanders, supra; Evans, supra; Cox v. Del Pappa 542 f.3d 669, 679(9th Cir.2008); Strickland,supra; Wiggins, supra. See 9th Doc.5.

Boatman made a substantial showing that the sole eyewitness submitted a declaration indicating, that if he were asked, he would have informed counsel and the court of the mitigating facts behind the argument. See Dist Ct. Doc.1, Exhibit N; See also 9th Doc.5. Nobody inquired into this and the prosecution had free range to mischaracterize the fight as a first degree murder and obtain an unlawful conviction. Discussed further, infra and throughout documents.

Boatman also showed that trial counsel neglected to request any instructions supporting the undisputed fight evidence(Discussed throughout proceedings; see also RT 127). The District Court agrees with this(See Dist. Ct. Lodg. 7). The California Appellate Court also suggested that had trial counsel inquired into the duration, nature and intensity of the fight, it would have been the courts obligation to sua sponte instruct the lesser included voluntary manslaughter instruction(see Dist Ct.

Lodg.7 @ 33-34). The evidence still has not been properly determined and the resulting conviction is a constitutional violation.

Trial counsels failure to elicit this evidence tied the hands of the court and the jury in regards to the lesser included offenses. Again, it also aided the prosecution in over-conviction and unlawful conviction. Escobar De Bright, supra (Boatman was entitled to an instruction concerning his theory of the case if it is supported by some evidence);Beck, supra(No tactical choice in failing to request favorable instruction because lesser included offenses afford appellant the full benifit of reasonable doubt). This was laid out in all previous court documents.

Prejudice is established in full discussion of prejudice above. Additionally, not investigating, developin and eliciting evidence in mitigation was highly prejudicial. See also full discussion in 9th Doc.5. Boatman has demonstrated a substantial showing satisfying both of Stricklands prongs. Reversal and rehearing is required so as to maintain uniformity within the law.

D.Trial counsels failure to request the necessary jury instructions supporting favorable defense theories constituted a denial of a constitutional right and warrants this courts attention.

1.CALCRIM No.570 and No.522: Voluntary manslaughter based on heat of passion/ sudden quarrel was warranted and the failure to request this instruction warrants this courts attention.

Boatman has shown, and the district court agrees, that there was ample evidence(four witnesses) stating that a sudden quarrel occurred before the gunshot(See 9th Doc.5; See Magistrates Report and Recommendation, herein after "R&R, Dist. Doc. 29). Simply put, instruction was warranted so as to allow the jury to determine all relevant facts and afford Mr.Boatman the full extent of due process. Beck, supra; Escobar De Bright, supra. Boatman has also shown that the credibility of the evidence and the witnesses are for the jury to determine and instructions are not satisfied if only one theory is instructed when evidence is present for others, this is true in California and in Federal courts. People v. Braverman 19 Cal.4th 142,162,203 (1999). Beck, supra; Escobar De Bright, supra; Sandstrom v. Montana 422 U.S. 510, 523(1979) Keeble v. United States 412 U.S. 205, 213; Gilmore v. Taylor 508 U.S. 333,

361-362(1993).

All relevant evidence corroborated that the killing was committed under the heat of passion/sudden quarrel and still has not properly determined due to the lack of instruction. The over-conviction of first degree, followed by the reduction to second degree, leaving the evidence undetermined by a jury, violating due process, in conjunction with the ineffectiveness of counsel illustrates a substantial constitutional violation(s). The evidence of sudden quarrel in this case need be properly determined by a jury. Prejudice is illustrated above, see prejudice prong.

Boatman has demonstrated a substantial showing of both Strickland prongs. Reversal and rehearing is required so as to maintain uniformity within the law. See previous court documents for full discussion.

2.CALCRIM No. 3404 and No.510: Excusable homicide on accident.

Boatman has conceded that this issue by itself is harmless(Dist Doc.26 @ 27-28). However, since defense counsel, prosecutor and trial court all came to the erroneous conclusion that pointing a loaded gun at a victim was lawful, these instructions were applicable as they went to the degree of culpability which were all issues for the jury to determine(See Dist. Doc.1 @ 32-62[full claim]; Dist. Doc.26 @ 27-28). These issues remain for the purpose of cumulative error discussed infra.

3.CALCRIM No.983 and No.580:"Misdemeanor manslaughter" theory of involuntary manslaughter was warranted and the failure to request this instruction warrants this courts attention.

Boatman has shown throughout court documents(Dist Doc.1,26,35; 9th Doc.5) that trial counsels failure to request the appropriate involuntary manslaughter instructions was constitutionally ineffective. As mentioned above, the uncontested evidence of a fight ending in a gunshot corroborates that appellant violated Cal. Penal Code § 417(See Dist Doc.1 @42-47; Dist Doc. 26 @ 28-31). Boatman has shown that the respondent agreed that, trial counsel requested the wrong involuntary instruction because boatman was not committing a lawful act when he pointed the gun at the victim.Dist Doc 20 @ 22, L.4-5 and L. 16-17; also Dist doc. 20 @ 23, L.3-4. Nonetheless

in California and the U.S. Supreme Court, the court has a sua sponte obligation to instruct on all theories of involuntary manslaughter when some evidence suggests a theory. People v. Lee 20 Cal.4th 47, 61(1999); People v. Wilson 66 Cal.2d 749(1967); Escobar De Bright, supra; Beck, supra;Sandstrom, supra. Deficient performance is established.

Boatman has shown that the trial court, the prosecution and trial counsel all erroneously concluded that the killing occurred during the comission of a lawful act (RT 412; CT 325-26) and that the respondent agreed with appellant that he was in fact committing a misdemeanor (Dist Doc 20 @ 22-23). The failure to instruct properly precluded the jury from viewing the evidence of a fight or quarrel in line with at least one of boatmans defense theories. Reason being, it was the prosecutions sole mischaracterizations of the fight evidence which is how he unlawfully persuaded the jurors to over-convict(RT 116,390,391,394,426,429,433; Dist. Lodg. 7[Ca. Appellate decision finding insufficiency of premeditation]).

The jury clearly struggled with certain aspects of this case. Given that Boatman was ultimately over-convicted, unlawfully, of the only theory that explained the fight evidence at trial(first degree murder), and that subsequentially the murder was reduced to disprove said theory, shows that the fact finder ,if properly instructed, may have come to a different conclusion. Nonetheless, the reduction of first degree murder to second degree leaves significantly probative evidence undetermined properly by a jury. prejudice is established. See also prejudice p½rong above. Boatman has demonstrated a substantial showing of both Strickland prongs. Reversal and rehearing is required to maintain uniformity within the law.

4.Instructional error conclusion.

It stands to reason that a conviction obtained by the prosecutor by distorting the facts, although reduced to a lesser degree, should not stand at all. Simply put, the prosecution was enabled byt the trial court and trial counsel to run free with his bersion of the events. that led to an unlawful conviction by way of insufficient evi-

dence, now leaving the fight evidence undetermined by a jury in the proper light. That being said, there are only two theories that support the evidence: Voluntary manslaughter, and misdemeanor manslaughter. Both of which were never given or instructed.

These errors cannot be considered harmless as they had a substantial and injurious effect on the jurys verdict as shown. Brecht, supra. These instructional errors further compounded the cumulative effect discussed infra.

II.THE NINTH CIRCUITS MISAPPLICATION OF PROSECUTORIAL MISCONDUCT AMOUNTING IN DUE PROCESS VIOLATION STANDARDS OF DARDEN,WARRANTS THIS COURTS ATTENTION.

A.Legal standard for prosecutorial misconduct.

"The appropriate standard of review for such a claim on writ of habeas corpus is the narrow one of due process" and in examining a prosecutors misconduct the "relevant question is whether the prosecutors comments so infected the trial with unfairness as to make the resulting conviction a denial of due process rights."Darden v. Wainwright 477 U.S. 168, 181(1986); Brecht, supra; Carothers v. Rhay 594 f.2d 225, 230(9th Cir. 1979) 594 f.2d 225, 230; United States v. Lopez 575 f.2d 681, 685(9th Cir.1978).

B.The prosecutions mischaracterizations did amount to lowering his burden of proof and misconduct amounting to a substantial denial of a constitutional right and warrants this courts attention.

Boatman has shown that the prosecution misstated and mischaracterized the evidence to lessen his burden of proof, to not prove all elements of the crime, including disprove the existance of heat of passion/sudden quarrel when it was properly presented, all in order to merely seek a conviuction in violation of Boatmans rights to a fair trial and due process as guaranteed by the U.S. Constitution, Amendments 5 and 14.In Re Winship 397 U.S. 358(1970); Mathews v. United States 485 U.S. 58 (1998); Mullaney v. Wilbur 421 U.S. 684, 703-04; Darden, supra; Berger v. United States 295 U.S. 78(1935): Brecht, supra; See also 9th Cir. doc.5.

Boatman has shown that under both California and Federal law, the prosecution is required to prove beyond a reasonable doubt that appellant committed all elements of murder, including disporivng heat of passion when it is properly presented.

Mullaney, supra; Mathews, supra; People v. Rios 23 Cal.4th 450, 462. Boatman has discussed above, the voluntary manslaughter instruction was not given and thus, the prosecution cannot disprove the evidence of a fight/ sudden quarrel which he proffered and unlawfully misused to over-convict. Also, as discussed above, the prosecution elicited four witnesses that a fight transpired and ended in a gunshot. See Dist. Doc. 1 @ 73-85; See 9th Doc. 5; discussed in detail throughout court proceedings.

The prosecution also knew that the evidence could be used to support a coluntary manslaughter conviction and even after he produced the evidence, he claimed that he did not have to disprove the existance of heat of passion/ sudden quarrel simply because the instructions were not given (RT 390,393,468). Hence, the prosecution effectively lessened his burden of proof by aid through the court and the highly ineffective trial counsel. These instances also give substance to the extreme cumulative effect of all parties errors, discussed infra.

The appellate court finding insufficient evidence of first degree murder does the following things:

1) Supports Boatmans contention that the prosecution unlawfully mischaracterized the evidence to bolster his theory and lessen his burden, establishing prosecutorial misconduct.

2) Leaves the mrosecutorial mischaracterized evidence of the fight and facts undetermined by the fact-finder. This violates Boatmans right to have all material facts properly determined by a jury under fair trial and due process.

3) Supports Boatmans contention that the prosecution lessened his burden and failed to disprove the evidence of voluntary manslaughter when it was properly presented, violating Mullaney.

(See Dist. Lodg.7[Ca. Appellate Courts opinion]).

This further compounds trial counsels ineffective assistance for failing to investigate, develop and elicit mitigating evidence as well as failure to request necessary jury instructions as discussed above and cumulative effect as discussed below. Boatman has demonstrated a substantial showing of prosecutorial misconduct violating his right to fair trial and due process as guaranteed by the U.S. constitution. Reversal and rehearing is required so as to maintain uniformity within the law.

III. THE NINTH CIRCUITS MISAPPLICATION OF THE DEFICIENT PERFORMANCE AND PREJUDICE PRONG STANDARDS OF STRICKLAND IN REGARDS TO SENTENCING COUNSELS FAILURE TO FILE A MOTION FOR NEW TRIAL WARRANTS THIS COURTS ATTENTION.

A. Sentencing counsels ineffectiveness amounted to a substantial denial of a constitutional right that warrants this courts attention.

Boatman has shown that sentencing counsel deprived him of his right to file a motion for new trial for the purpose of preserving the record for appellate purposes with expert testimony. See Dist. Doc 1; See also 9th Doc 5 @ 34. Per Cal. Law, a motion for new trial can be filed on ineffective assistance of counsel and when deprived of this right, a defendant is entitled to a new trial. People v. Fosselman 33 Cal.3d 572, 582-83; People v. Sarrazawski 27 Cal.2d 7, 17; Lockhart v. Fretwell 506 U.S. 364, 372; People v. Braxton 34 Cal.4th 798.

Boatman has shown that he expressely requested a motion for new trial (CT 366-67; Dist Lodg. 2[Supplemental transcripts of Marsden hearing] @ 490, 492-93). Boatman was deprived of this right , and under the caselaw mentioned above and Cal. P.C. § 1202, Boatman is entitled to a new trial. However, Boatman is aware that this is California caselaw which is less relevant on federal relief, but urges the court to consider this infra during cumulative effect as Boatman was deprived yet again of expert assistance in review of his mental state at the time of the killing.

Boatman has demonstrated a substantial showing of ineffective assistance of sentencing counsel under Strickland. Reversal and rehearing is required so as to maintain uniformity within the law.

IV. THE NINTH CIRCUITS MISAPPLICATION OF THE CUMULATIVE ERRORS WHICH RENDER A DENIAL OF CONSTITUTIONAL RIGHTS FOUND IN CHAMBERS WARRANTS THIS COURTS ATTENTION.

A. Trial counsels multiple failures considered cuumulatively severely undermined the confidence in the judgement violating boatmans constitutional rights which warrants this courts attention.

Boatman has shown(9th Doc.5) that the 9th Cir. and U.S. Supreme Court have held that prejudice from Strickland "may result from the cumulative impact of multiple deficiencies." Boyde v. Brown 404 f.3d 1159, 1176(9th Cir.2005); Strickland, supra

Brecht, supra; Harris Ex El Ramseyer v. Wood 64 f.3d 1432, 1438 (9th Cir.1995);Madrigal v. Yates 662 f.supp.2d 1162, 1192-93; Mak v. Blodgett 970 f.2d 614, 622(9th Cir.1992).

Boatman has shown that trial counsel made at least 7 errors:(1)Failed to conduct minimal investigation in multiple instances;(2)Failed to obtain and review readily available documents containing significant probative mental health issues corroborating defense theories;(3)Failed to consult experts and prepare a potentially meritorious defense;(4)Failed to properly question four seperate witnesses in order to preserve and elicit substantially probative mitigating evidence;(5)Failed to present any evidence, at all, in corroboration;(6)Failed to present expert testimony to support defense theories and impeach prosecution witnesses;(7)Failed to request multipl jury instruction(at least six).

Trial counsels failure to request CALCRIM 570 (voluntary manslaughter) was perhaps the most detrimental:

1)It is reasonable to infer that without this instruction, the prosecution used this as an opportunity to bridge the gap between the evidence presented, the wrong instruction on involuntary manslaughter, and his theory that a fight led to first degree murder.

2)Without instruction, the prosecution proclaimed that he did not have to disprove the evidence of heat of passion that he presented.

3)This also precluded the jury from reaching any other conviction than the prosecutions theory due to significant probative evidence that a fight occurred and ended in a gunshot.

4)Consequentially Boatman was over-convicted of first degree murder as evidenced by the California Appellate Courts reduction(See Dist. Lodg.7)

Boatman has shown that without proper instruction, defense counsel cannot tie the evidence to the law, rendering null the defense counsels efforts to succeed in the central issue: was this an excusable accident, criminally negligent involuntary manslaughter, voluntary manslaughter, or murder? Francis v. Franklin 417 U.S. 307, 324, N.9. Had the jury been properly instructed in conjunction with the evidence, there is a reasonable probability that the outcome would have been different as discussed throughout court filings.

Due to trial counsels inadequacies, the jury was unable to learn the full ex-

tent or Boatmans voluntary intoxication and mental health issues, causing them to specultate and form their own opinions based on personal experience and not evidence. Trial counsels failure also prevented the jury from learning the significance of heat of passion/sudden quarrel which was properly presented in this case at trial (Discussed above and throughout court proceedings;Dist Doc.1,26,35; 9th Doc.5). Trial counsels inadequacies prevented the jury from tieng evidence of any fight to any instruction that favore Boatman, virtually assuring he be found guilty.

B.The Prosecutions multipl misstatements considered cumulatively amounted to a denial of constitutional rights which warrants this courts attention.

Boatman has shown that the prosecution mischaracterized the evidence on at least 8 occassions: See RT 116,390-95,426,427,429,433,469,471. The prosecution did this by mischaracterizing four seperate witnesses testimony:(RT 69-103; 106-110; 357-370; 371-377; See 9th Doc.5). Boatman showed that the prosecution declined to instruct on voluntary manslaughter even though he knew it should have been instructed(See 9th Doc 5 ; RT 119-120). The prosecution elicited evidence of a sudden quarrel/heat of passion but claimed he did not have to disprove it on at least three occassions: RT 390,L.14-16,L.22-27; RT 393,L.14-15; RT 468, L.1-8). This, violating Mullaney.

Boatman also proved(9th Doc.5) that the prosecutor mischaracterized the evidence and persuaded the trial counsel and court to instruct on the facially erroneous involuntary manslaughter instruction(Discussed above; see also 9th Doc.5)The prosecutions actions precluded the jury from legally viewing any evidence in any other way other than his unlawful first degree murder theory, discussed above. The appellant has shown that the prosecutors misconduct was "pronounced and persistent, with probable cumulative effect upon the jury which cannot be disregarded as unconsequential." Berger v. United States 295 U.S. 78,89 (1935).

Boatman has demonstrated a substantial cumulative showinf of prosecutorial misconduct. Reversal and rehearing is required so as to maintain uniformity within the law.

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C. The multiple errors considered cumulatively created a substantial and injurious effect and influence, amounting to constitutional violations which warrants this courts attention.

Boatman has shown(9th Doc.5) that U.S. Supreme court and Ninth Circuit support his position. Chambers v. Mississippi 410 U.S. 284["The seminal cumulative error case"]; Parle v. Runnels 505 f.3d 922, 927 n.5, 934(9th Cir.2007); Alcala v. Woodford 334 f.3d 862, 883(9th Cir.2003); Daniels v. Woodford 428 F.3d 1181,1214(9th Cir. 2005); Johnson v. Mississippi 486 U.S. 578 (1988); Phillips v. Woodford 267 F.3d 966 985(9th Cir.2001); Ewing v. Williams 596 F.2d 391,395.

Boatman has demonstrated (9th Doc.5) that numerous errors in his case resulted in cumulative error requiring reversal(See Dist Doc. 1,26,35). With all these errors, we do not need to consider these deficiencies alone to meet Strickland. Mak, supra; Boyde, supra; Madrigal,supra. The cumulative effect had a substantial and injurious effect and influence in determining the jurys verdict.brecht, supra.

A more prejudicial set of circumstances is difficult to imagine.Gioven the length of jury deliberations and the three mental state questions asked by the jury, it is reasonable to conclude that in the absence of the cumulative effect of these errors, the jury would have reached a different conclusion, a more favorable one. This is evidenced by the California Court of appeal reducing Boatmans first degree murder to second degree due to insufficiency of evidence. These errors must be considered to have had a cumulative effect in violation of Brecht, and Chambers. Further, if the verdict is already questionable, additional evidence of relatively minor importance might be sufficient to create a possible reasonable doubt as was the case her. United States v. Argurs 427 U.S. 97, 112-113; Donnelly v. DeChristoforo 416 U.s. 637,643.

Boatman has demonstrated a substantial cumulative effect violating his constitutional rights. Reversal and rehearing is required so as to maintain uniformity within the law.

CONCLUSION

CONCLUSION

Regarding each claim above, Boatman has made a substantial showing of a denial of multiple constitutional rights. Due to the showing of constitutional violations, Boatman prays that this court offers relief in what ways they seem fit so as to further the intrest of justice in this case. Further, Boatman respectfully prays that a Writ of Certiorari issue to review the judgement and opinion of the lower courts.

Verification

I Benjamin James Boatman, the petitioner in this action, declare under the penalties opf perjury, of California and Federal law, that the foregoing is true and correct to the best of my knowledge.

Dated: 1-6-19

Respectfully Submitted,

Benjamin J. Boatman,
Petitioner,
In Pro Per.

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