

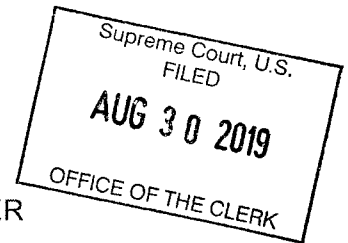
19-5994

No. §255544

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



Benjamin Justin Brownlee — PETITIONER  
(Your Name)

vs.

The People of the State of California — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The California Supreme Court and Court of Appeal Third Appellate Division  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Benjamin Justin Brownlee, BE3069  
(Your Name)

100 Prison Road, P.O. Box 290066  
(Address)

Repres, CA 95671  
(City, State, Zip Code)

(416) 985-8610  
(Phone Number)

## QUESTIONS PRESENTED

① The Failure to Instruct that to find the special circumstance true the felony had to be independent of the killing, was prejudicial and requires Reversal of the Special Circumstance Finding?

② There is Insufficient Evidence to support Robbery charge?

③ Evidence Erroneously Admitted pursuant to Evidence Code Section 1108 had a prejudicial Impact on the Jury's Consideration of Appellant's guilt of Murder, Robbery, and the Robbery-Murder special circumstance?

A. The Prior crime was not a sexual offense and was Inadmissible Pursuant to Evidence Code Section 1108?

B. The Admission of the Evidence was an Abuse of Discretion Under Evidence Code Section 352?

C. The Admission of the Prior Acts Evidence Requires Reversal of Appellant's convictions?

④ The Prosecution Misted the Jury About the Laws?

⑤ Was the lower court in Error with the Laws and Rules of the Court?

⑥ Was Judge acting bias towards Defendant when making his Rulings against Defendant in this case?

⑦ Was the Defendant confession reliable with the Evidence that was given at trial or at the crime scene?

⑧ Was the Defendant in the right state of mind when he gave the statement/Confession to the Police and his Girlfriend?

⑨ Did the State Lower court violated any state and Federal constitution, and State laws, when making decision on the Defendant case?

⑩ Is the Defendant is actually Innocent of all criminal charges against him?

### LIST OF PARTIES

☒ 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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### CASES

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Berger v. United State, (1935) 295 U.S. 78

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Conde v. Henry, (9th Cir. 1999)

Donnelly v. DeChristoforo (1974) 416 U.S. 637

Graham v. Florida, (2010) 560 U.S. 48

In re Winship, (1970) 397 U.S. 358

Jackson v. Virginia, (1979) 443 U.S. 307

Roper v. Simmons, (2005) 543 U.S. 551

United state v. Escobar de Bright, (9th Cir. 1984)

United States v. Myers (5th Cir. 1977)

College Hospital, Inc. v. Superior court, (1994) 8 Cal. 4th 704

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People v. Barker, (2001), 91 Cal. App. 4th 1166

People v. Bassett, (1988), 69 Cal. 2d 122

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People v. Raley, (1992) 2 Cal. 4th 870

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U.S. Const. Amends. V, VI, XIV, VIII

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Carriger v. Stewart, (~~2002~~) 132 P.3d 463 (9th Cir. 1997)

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**

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☒ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the Court of Appeal, Third Appellate Division court appears at Appendix B to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☒ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

## JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ 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 Supreme Court of California. A copy of that decision appears at Appendix   A  .

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ 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).

# CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

① Fifth Amendments of the United State constitution

② Sixth Amendments of the United State constitution

③ Eighth Amendments of the United State constitution

④ Fourteenth Amendments of the United State constitution

⑤ Article 1 Section 15 of the California State constitution

## STATEMENT OF APPEALABILITY

This appeal is from final judgment following jury trial in Sacramento case number 16FE018278. It is authorized by Penal Code section 1237, subdivision (a), and California Rules of Court, rule 8.304, subdivision (a).

### → STATEMENT OF THE CASE ←

A four-count information was filed on May 16, 2017, in Sacramento County Superior Court case number 16FE018278 charging appellant with crimes alleged to be committed against Sharen Brandow between August 1, 2016 and August 2, 2016. (1CT 123-127.)<sup>1</sup> Count one charged appellant with a violation of Penal Code section 187, subdivision (a), murder. (1CT 123.) Three special circumstances were alleged: murder while engaged in the commission of anal penetration by an unknown object, murder while engaged in genital penetration by an unknown object, and murder while engaged in the commission of robbery within the meaning of Penal Code section 190.2, subdivision (a)(17), subsections (A) and (k). (1CT 123-124.)

Count two charged a violation of Penal Code section 289, subdivision (a)(1), anal penetration by force or fear. (1CT 124.)

Count three charged a violation of Penal Code section 289, subdivision (a)(1), genital penetration by force or fear. (1CT 125.)

Count four charged a violation of Penal Code section 211, robbery. (1CT 125.)

A jury was sworn to try the charges against appellant on July 19, 2017. (1CT 12-13.) Trial lasted six days. (1CT 13-14.) On count one,

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<sup>1</sup> The Clerk's Transcript is referred to herein as "CT." The Reporter's Transcript is referred to as "RT." The additional volume of reporter's transcript produced in response to appellant's request for augmentation is referred to as "AugRT." The additional volume of clerk's transcript produced in response to appellant's request for augmentation is referred to as "AugCT."

appellant was found guilty of first degree murder, and the special circumstance of murder in the course of robbery was found true. (1CT 280-282, 285-288.) The special circumstances of anal and genital penetration were found not true. (*Ibid.*) Appellant was acquitted of anal and genital penetration as charged in counts two and three. (1CT 282-283, 289-290.) Appellant was found guilty of robbery as charged in count four. (1CT 14, 283, 290A.)

Sentencing took place on September 1, 2017. (1CT 15; 2CT 386.) On count one, appellant was sentenced to life without the possibility of parole. (2CT 386.) On count four, the court imposed a three year term, stayed pursuant to Penal Code section 654. (2CT 388.) In addition, appellant was ordered to pay a restitution fine of \$10,000 under Penal Code section 1202.4, subdivision (b). (2CT 387.) Appellant was also required to pay restitution in an amount to be determined. (*Ibid.*) Appellant was also required to pay court security fees totaling \$80 pursuant to Penal Code section 1465.8, subd. (a)(1), and assessments totaling \$60 pursuant to Government Code section 70373, and a \$402.30 booking fee and a jail classification fee of \$99.19 pursuant to Government Code section 29550.2, subdivision (a). (*Ibid.*)

On October 2, 2017, appellant filed a timely notice of appeal. (2CT 390.)

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## **STATEMENT OF FACTS**

### **A. The Prosecution Case**

#### **1. A Homeless Woman is Killed**

Sharen Brandow was homeless and sleeping by the pillar of a freeway overpass on Broadway near Alhambra in Sacramento. (1RT 122, 211, 213.) She was 69 years old. (1RT 223.)

There was a larger homeless encampment up the steep hill from where Brandow regularly slept. (1RT 201-203, 210-211.) A woman named Laurie “owned” the encampment on the hill, and made her living “selling her favors.” (1RT 211, 215-216.) Harry Lee Brown, a man who lived in the encampment on the hill for two weeks in August 2016, would see Brandow brushing her hair in the mornings, when he left the hill. (1RT 210-212.) Brandow never came up the steep hill where Brown stayed with Laurie. (1RT 214.)

On August 1, 2016, around 5:00 p.m., Jose Ramirez was driving on Broadway. (1RT 126-127.) He saw Brandow on the street, hauling her belongings, and stopped to ask if he could help. (1RT 127.) She pointed under the bridge and told Ramirez that she would be sleeping there. (1RT 127.) Ramirez went to Carl’s Junior, and brought back food and water for Brandow. (1RT 128.) By the time he returned, she had set up her camp – she had put down plastic anchored by rocks in the corners, and a blanket – it was windy. (1RT 128.) Her belongings were behind the pillar. (1RT 131-132.) He offered to take her up under the bridge because she was right off the sidewalk. (1RT 129.) She preferred to stay where she was because the street light hit her and made her feel safer. (1RT 129.) She said if she went up under the bridge she would not be able to get back down because her legs would lock up. (1RT 132.) Ramirez gave her the money he had – fives, tens, and ones. (1RT 133.)

The next morning, on August 2, around 7:30 or 8:00, Ramirez returned and saw Brandow lying face down by a tree up on the embankment. (IRT 122, 134; Exh. 3D & 3F [AugCT 3, 5].) He parked and called Channel 3. (IRT 134.) Then he called 911, and waited for the police. (IRT 134-135.)

Brandow was deceased and her body had rigor mortis. (IRT 122-123.) Her pants were around her ankles and her black skirt was pushed up.<sup>2</sup> (IRT 122, 159.) Belongings, including a number of medication bottles, were scattered on the embankment. (IRT 123, 161-162.) Brandow was identified by her medication bottles. (2RT 315-316.)

Forensic pathologist Brian Nagao did an autopsy on Brandow on August 3 at 10:45 a.m. (IRT 218, 221-222.) The cause of death was asphyxia and blunt force injuries. (IRT 244.) She had multiple abrasions and bruises on her face and neck, and fractures on both sides of her jaw. (IRT 235-237, 247.) She had injuries common in cases of strangulation: petechiae in the eyelids, hemorrhages in front and back on neck, and fractures of the hyoid bone and thyroid cartilage. (IRT 237-238.)

She had abrasions above her right breast, on her right abdomen, to her pubic and inguinal areas, on both thighs, and the outer part of her right leg. (IRT 225-228; Exh. 6F.) She had an abrasion on her right buttock, and a contusion and abrasion on her sacral region. (IRT 229-230.) She had multiple rib fractures: six on the left, seven on the right. (IRT 238-239.)

There was dried blood around the vagina and anus. (IRT 230.) There was a hemorrhage in the wall of the vagina. (IRT 231.) There was no injury to the anus, but there was a hemorrhage and small tears in rectal mucosa. (IRT 232-233, 253.) These could have been caused by a blunt

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<sup>2</sup> A torn pair of underwear nearby contained only Brandow's DNA. (2RT 391-392.)



object and could have been caused by consensual sex within 24 hours of death. (1RT 231, 233, 253-254.) The histology showed no inflammation, indicating that the injuries sampled were less than 24 hours old. (1RT 246.) It was not possible that these injuries were inflicted post mortem. (1RT 248.)

A CSI officer, Stacy Rossi, searched all of the property recovered at the scene that appeared to belong to Brandow, and found no money and no cell phone. (2RT 424.) The property on Brandow's person included some amount of money, but this was not catalogued by the pathologist. (1RT 221-222; Exh. 6E [AugCT 8].) No spermatozoa, acid phosphatase, or P-30 was found on Brandow's body or belongings. (2RT 391-393.) There was no evidence of any unidentified DNA on Brandow.<sup>3</sup>

On August 3, after the autopsy, police returned to the area where Brandow was found to look for bodily fluids. (1RT 199-200.) Various items were collected, including a bloody tissue and clothing and bedding from the homeless encampment. (1RT 201-206; Exhs. 7G (bloody tissue), 7H-7T, Exh 9A.)

The bloody tissue by found by the tree had the DNA of Jesse Luna. (2RT 316, 393-394.) Luna was a 67-year-old heroin addict. (1RT 271.) He appeared at trial and denied killing Brandow. (1RT 271-272.)

Another person whose DNA was identified on items collected, Darren Medici, had an alibi. (2RT 316, 390-391.) At the time of Brandow's death, Medici was in the Sacramento Jail. (1RT 273-274.)

After he reported finding Brandow's body, Ramirez was taken to the police station, where they took his DNA, scraped his fingernails and took

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<sup>3</sup> Appellant's DNA was taken and compared to the crime scene evidence. (1RT 169-171; 2RT 391-395.) This analysis produced no incriminating result.

many pictures of him. (1RT 135-136, 142; Exh 18B.) None of Brandow's DNA was under Ramirez's fingernails. (2RT 393.)

## **2. Appellant Makes a Confession**

Leshon Mitchell met appellant at Wellness and Recovery Center South, a mental health drop in center where she was employed. (1RT 275.) At the Wellness Center, appellant used the "wellness side" where they provided group counseling, peer support, showers, laundry, and a computer lab. (1RT 283.) A couple months after meeting him, for three weeks in August 2016, Mitchell let appellant stay in her home at Stockton and Broadway. (1RT 276, 280, 284.) Appellant had a knapsack with him. (1RT 284.)

Mitchell knew that Tracey Wilson was one of the women appellant considered to be his girlfriend, but that their relationship was "touch and go."<sup>4</sup> (1RT 277, 288.) Appellant talked to Mitchell about Wilson periodically. (1RT 288.)

At some point, Mitchell told appellant he needed to find a new place to live because it was a conflict of interest because of where she worked. (1RT 276-277.) Mitchell and appellant had a sexual relationship "for a moment," but Mitchell denied that this had anything to do with why she asked him to move out. (1RT 286.) Appellant was concerned about having a place to stay. (1RT 277.)

Appellant told Mitchell he had killed an older woman a couple months before by the freeway. (1RT 277-278.) Mitchell never saw appellant act violently. (1RT 287.) Mitchell asked if he had remorse and appellant said yes, but he gets to a dark place when he cannot control

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<sup>4</sup> Mitchell referred to Wilson as a friend; she had known Wilson for 15 years. (1RT 287.) Wilson agreed that she knew Mitchell, but denied that she and Mitchell were friends. (2RT 353-354.)

himself. (1RT 279.) Appellant told Mitchell that, if she supported him, he would call the police and tell them what he did. (1RT 280.) Mitchell told appellant she would take him to police station and she, appellant, and her ex-husband Anthony Robinson, got into her car. (1RT 276, 280, 280.) On the way, Mitchell saw a police officer and stopped. (1RT 280-281.)

On September 18, 2016, at 8:30 p.m., Sacramento Police Sergeant Dan Farnsworth was parked on N Street at Alhambra doing reports. (1RT 299.) Mitchell, Robinson, and appellant pulled up in a car. (1RT 276, 280, 299.) Mitchell said a guy in her car had something to say to him. (1RT 299.)

Farnsworth opened the car door and asked appellant what he had to say. (300.) Appellant appeared to have been crying. (1RT 300; 2RT 302-303.) He was mumbling so Farnsworth had to ask him to repeat himself. (1RT 300; 2RT 302-302.) Appellant said he had "murdered a girl under the bridge on Alhambra a couple months ago." (2RT 303.) He got out of the car and immediately put his hands behind his back. (1RT 300.) Farnsworth handcuffed him and called for another car. (1RT 300.)

Additional officers arrived and put appellant into the back of a police vehicle equipped with a backseat camera and microphone. (1RT 281; 2RT 301, 305-306.) Mitchell asked to speak to appellant by the vehicle, and their conversation was recorded. (1RT 286; 2RT 302, 310; Exhs. 24 & 24-A.)

Appellant was crying profusely and said he was going to jail for the rest of his life and nobody cared about him or would help with his needs. (1RT 281; 2RT 308-309; Exh. 24.) Appellant said he was crying "because I see my whole life sittin' in jail. Since I was 15." (Exh. 24 & 24A [1CT 210].) He talked about the cycle of incarceration for the homeless and how they came back out to the same situation they left and how noone cared.

(Exh. 24 & 24A [1CT 211].) He talked about how when you go to jail "you never come out right. You come out worse. And each time you keep goin' to jail, it just get worse. That's like so when you send somebody to war." (Exh. 24 & 24A [1CT 213].) He said he could not function on the streets, he had nowhere to go, and it was best for him to sit in jail. (Exh. 24 & 24A [1CT 214].) He said he was "regrettin' I even told anybody." (Exh. 24 & 24A [1CT 214].) Mitchell stood by the car and tried to comfort him. (1RT 281.)

On the night of September 18, Detective Macauley was notified that someone had told police that he had killed someone at the general time and in the general location of the Brandow homicide. (2RT 316.) Macauley eventually went in and interviewed appellant in custody. (2RT 317-320, 335; Exh. 25 & 25A [1CT 215-261].)

In the interview, appellant said he had choked a homeless woman to death a couple month ago on the sidewalk beneath the highway overpass by Broadway near the Salvation Army. (Exh. 25 & 25A [1CT 217-218, 220, 222].) He had been walking from the gas station across the street from the Salvation Army and had "just flipped." (Exh. 25 & 25A [1CT 219, 221].) He had seen the woman before, and she was not in her usual spot. (Exh. 25 & 25A [1CT 220-221, 224, 231-232].) He could see the woman's face while he was choking her, and he left her laying on her back in the flat area. (Exh. 25 & 25A [1CT 222-223, 242-243, 246, 249, 251].) Then he came to himself, panicked, and ran. (Exh. 25 & 25A [1CT 222, 243, 251, 255].) Appellant explained that, due to post traumatic stress disorder, he had "blackout moments where I know what's going on but I can't get -- can't do nothing to stop it." (Exh. 25 & 25A [1CT 217-218, 240].) When he got upset and had too much on his plate, he lost control and lashed out at random people who were not the ones who had made him mad. (Exh. 25 &

25A [1CT 218-222].) Appellant had been physically abused by people who were supposed to take care of him in group homes and in jail. (Exh. 25 & 25A [1CT 228].) The triggering events before killing the woman were that he was homeless, having medical problems, was unable to get a job, and had had a fight with his ex-girlfriend Tracey Wilson. (Exh. 25 & 25A [1CT 218-219, 226-227, 232, 241].) Appellant was taking Lithium and Celexa for posttraumatic stress disorder, multiple personalities, and depression, but it was not working because he had taken it for so long. (Exh. 25 & 25A [1CT 226].)

Appellant denied beating the woman or sexually assaulting her. (Exh. 25 & 25A [1CT 223, 229, 233, 235, 237-238, 244-245, 247-250, 260].)

Appellant said he had confessed because he felt another episode coming on and did not want a random innocent person to get hurt. (Exh. 25 & 25A [1CT 226, 228].) He felt he was better off in jail because then he would not have to deal with the stress of "trying to survive every day." (Exh. 25 & 25A [1CT 227].)

Appellant said he had been in Sacramento for a year and, before that, he was in jail since he was 15 for assault. (Exh. 25 & 25A [1CT 225, 234].) That assault occurred in 2005 after appellant's grandmother hit him with a skillet. (Exh. 25 & 25A [1CT 256].) Instead of hitting his grandmother, appellant went out and tried to rob a lady in an apartment building and became violent and punched and choked her. (*Ibid.*)

### **3. Subsequent Investigation**

#### **a. The Police Seize Property**

On September 19, Detective Macauley spoke to Tracey Wilson. (2RT 338.) She said she had property belonging to appellant and retrieved a white grocery bag from her trunk. (2RT 338.) It was seized as evidence.

(2RT 338.) The bag contained clothing, deodorant, and an inhaler. (1RT 171-172; Exh. 19D.) She said she had more of appellant's property at an apartment on Bowling Drive. (2RT 339.) Wilson met Macauley in the parking lot there and gave him a green Walmart bag and a black OGIO backpack. (1RT 179, 191-192; 2RT 339; AugCT 9-10; Exhs. 12A-12F, 13A.)

The black backpack contained items with appellant's name – prescription bottles, a wallet with appellant's identification, and a cell phone case with his name inside with a barcode. (1RT 180-182.) In the main pocket, there were items belonging to Sharen Brandow, a senior citizen identification card, her social security card, and her Medicare card. (1RT 182; Exhs 13Q-13V.) There was a brown cardboard box containing receipts and other papers with appellant's name. (1RT 183-185.) In addition to other documents and folders, there was a blue folder containing a benefits letter addressed to Brandow from the Social Security Administration. (1RT 186-189; 2RT 424; Exhs. 15U, 15W-15Z, 16A-16M.) On the back of one of the pages, there was what appeared to be a handwritten phone number. (2RT 424; Exh. 15X & 14Z.) On the back of another, there was scratched out writing that appeared to have some of Wilson's personal information and that of her daughter.<sup>5</sup> (1RT 187; 2RT 355, 380-381; Exh. 15X.) Brandow's documents were processed for fingerprints and none were found. (1RT 192-194.) In a black folder, there was a document from Kaiser Permanente that had Wilson's information printed on the bottom. (2RT 378, 380, 424; Exh. 14X.)

Appellant's green backpack was retrieved by police from Leshon

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<sup>5</sup> Wilson denied that it was in her handwriting, and said her middle name was misspelled. (2RT 355, 380; Exh. 22A.) Appellant denied that this was his handwriting. (2RT 507-508.)

Mitchell on September 21, 2016. (2RT 423; Exh. 19G.) In addition to containing clothing, and papers and identification belonging to appellant, it contained a wallet which in turn contained identification of a man who was not appellant.<sup>6</sup> (1RT 173-178, 2RT 423; Exhs. 19H-19L, 19S-19U.)

**b. Appellant's ER Visit**

On August 3, 2016, appellant went to the emergency room complaining of right hand pain. (2RT 343-344.) He had abrasions over his knuckles and generalized tenderness. (2RT 344.) The abrasion could have happened the day before or even the day appellant was treated. (2RT 347.) An x-ray showed old injuries to the bones but no acute fractures or dislocations. (2RT 344.) He was also treated for a urinary infection. (2RT 345.) According to records he was discharged to Light Rail. (2RT 345.)

**c. Appellant Sells a Cell Phone**

On August 3, 2016 at 2:41 p.m., appellant sold a Samsung Galaxy phone at an automated buyback kiosk in a Safeway store at 1814 19th Street.<sup>7</sup> (2RT 383, 386-387; Exh. 31.) The identity of the person selling the phone is verified by matching photographs of the person selling the phone with their drivers license that they are required to insert into the machine. (2RT 384-385; Exh. 31.) A bandage on appellant's hand was visible in the

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<sup>6</sup> Appellant testified that he found this on the bus and did not have a chance to return it. (2RT 483, 485-487.) Appellant acknowledged that, in a jail visit with Wilson on September 22, he said "I got to fuckin' rob and steal. The only way to survive out there. . . So I had to feel like I had no choice but either sit here or do credit card swipes, fuckin' stealing people's wallets just to fuckin' eat, just to get a place so I can fucking take a shower and sleep in a hotel for a couple hours." (2RT 515-517.)

<sup>7</sup> Appellant testified that this phone was one he had obtained free with a service plan he purchased from the K Street Metro PCS when he transferred his number from a "government phone." (2RT 491-492.) Appellant also acknowledged that, when people left cell phones around, he would take them and turn them in for money. (2RT 516.)

verification photo. (2RT 386.) The phones are kept 30 days before being resold to protect against the sale of stolen phones. (2RT 387-388.) When officers contacted the company to try to retrieve the phone, it had already been sold. (2RT 388.)

#### 4. Tracey Wilson's Testimony

Tracey Wilson met appellant at work at the Department of Health Services on October 15, 2015, when he was trying to obtain SSI.<sup>8</sup> (2RT 348, 374.) Wilson was going to become his payee, meaning the person who would handle a social security check for someone who may not be capable of making appropriate decisions with their money. (2RT 375.) They had a sexual relationship. (2RT 349.) Shortly after they met, appellant stayed with Wilson for about six months, initially at her place on Mack Road, and later at her brother's apartment on Bowling Drive. (2RT 351-352.) Appellant was staying with Wilson regularly in early 2016. (2RT 375.) Wilson was staying at her brother's place in February 2016. (2RT 353.) Appellant knew Wilson's brother, left things at his apartment, and took showers there. (2RT 353.)

After May 2016, Wilson was in another relationship, and appellant was no longer staying with her. (2RT 376.) At that point, appellant knew the code to get into Wilson's vehicle and still sometimes stayed in it, sometimes with Wilson's permission. (2RT 349, 353, 376.) He left some of his property in her car and apartment – a backpack and some of his clothing. (2RT 349.) Wilson had some of the property in the trunk of her car, and more at her brother's apartment. (2RT 349-350.) The property was on the patio, downstairs. (2RT 350.) She did not know it was there

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<sup>8</sup> At a pretrial hearing, Wilson expressed overt hostility toward appellant, calling him names, including "a piece of shit," and saying "You ruined my fucking life." (AugRT 84-85.)



until her brother told her to tell appellant to come get his stuff. (2RT 350.) Wilson denied putting anything into the bags she gave to the police. (2RT 351, 378.)

Wilson visited appellant in jail after his arrest and took his phone calls. (2RT 352, 377.) During a visit, appellant told Wilson about CC. (2RT 377.) Wilson agreed that her sister knew CC and Wilson had heard her sister speak of him. (2RT 379.) Wilson denied that CC had ever visited her brother's apartment or left things there. (2RT 378-379.) She also denied that she knew CC or had ever met him. (2RT 378-379.)

**5. A Prior Offense That Occurred in New York When Appellant Was 15-Years-Old**

On June 27, 2005, Elena Bezgina was working in a Manhattan apartment building doing laundry in the basement.<sup>9</sup> (2RT 357, 364, 370.) A tall, skinny, black person wearing a red cast came in and asked Bezgina a question about how to get to the lobby. (2RT 357-358.) He left the laundry room. (2RT 358-359.) Later, when Bezgina was leaving the laundry room, he appeared in the doorway and hit her in the face and kept hitting her. (2RT 359.) He did not say anything. (2RT 359.) Bezgina realized she was in real danger and fought back, trying to kick. (2RT 359.) When Bezgina came to, there was a woman in the basement, and Bezgina's jeans were "slightly lowered." (2RT 360.) Bezgina's eye was cut and she had to have plastic surgery. (2RT 360.) Her nose was broken and her front teeth were chipped. (2RT 360-361; Exh. 28.) Bezgina has lingering problems from the injuries. (2RT 360-361.) There was film footage of the attack.<sup>10</sup> (2RT

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<sup>9</sup> Bezgina was 44 years old. (2RT 371.)

<sup>10</sup> The "film" was security camera footage that consisted of still images taken at approximately three second intervals on several cameras. (See Exh. 10.) At trial, an edited "film" of screen shots from the footage was played for the jury and narrated by the detective who investigated the

364, 373; Exhs. 29, 30.)

Appellant, age 15, gave a statement to police. (2RT 370-371.) He said he was coming from his grandmother's house and he went up the elevator in the apartment building. (2RT 371.) Then he went down to laundry room. (2RT 372.) After he talked to the woman about the lobby, he sneaked and peeked in the window. (2RT 372.) She walked out and he punched her and she fell to the floor. (2RT 372.) He thought he broke her nose. (2RT 372-373.) A woman came into the laundry room and said "oh my goodness, help, help" and appellant ran away. (2RT 373.)

Bezgina identified the person in a line up. (2RT 362.) She did not go to court and was not told the matter had been settled with a plea bargain. (2RT 362.)

#### **B. The Defense Case**

Appellant was seen at Well Space Health on February 5, 2016. (2RT 424-425.) Well Space Health is a full service healthcare provider for both medical care and mental health services. (*Ibid.*) He was seen by Dr. Jennifer Chu and requested medication refills. (*Ibid.*) He received prescriptions for Lithium, which is used to treat Bipolar 1 Disorder, and Citalopram and Effexor, which are used to treat depression. (*Ibid.*) He also received a prescription for Singulair and a Ventolin aerosol inhaler: they are used to treat asthma. (*Ibid.*)

Appellant testified on his own behalf. He had been receiving mental health care since age six. (2RT 436.) He had lived in New York City. (2RT 430.) He was in various facilities in Manhattan from age six to 15. (2RT 436.) He lived for a time with his grandmother. (2RT 436.) He also lived in a group home in Pennsylvania and spent weekends with his grandmother who worked as a bus driver for MTA in New York City. (2RT

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attack. (2RT 364-367; Exh. 30.)

437.) He was in custody in upstate New York, just before coming to Sacramento. (2RT 430.) While in custody in New York, appellant was given mental health treatment and multiple medications. (2RT 437.) The day he was released from custody, he got on a Greyhound and arrived in Sacramento on <sup>wrong date</sup> October 2, 2015. (2RT 429-430.) He came to start anew and escape the gang life. (2RT 430.) His mother lived in New York, but they did not get along. (2RT 431.) Appellant did not have family in Sacramento, but he had a pen pal named Thommy Reader who had offered to help appellant get started and get into college. (2RT 430-431.)

After arriving, appellant stayed with Reader for ten or eleven days. (2RT 431.) Reader asked appellant to leave after appellant's mother sent the police to Reader's home for a welfare check. (2RT 431-432.) This was a problem because Reader's nephew who had arrived a few days before appellant was on parole, and having police contact or living with ex-felon could threaten his parole. (2RT 432.)

It took appellant two days to find a place to sleep – one was a homeless shelter. (2RT 432-433.) He met Tracey Wilson the evening of October 11 while she was working security. (2RT 433.) He had asked her for directions to the light rail, and he ended up going home with her. (2RT 433.) He only had the clothes on his back and some food and hygiene products in a plastic bag. (2RT 434.) Wilson bought appellant clothes and a car, and fed him.<sup>11</sup> (2RT 434.) Appellant looked for work, and applied for GA and food stamps. (2RT 435.) Appellant got health insurance as soon as he signed up with the welfare office, but it did not cover the full cost of his medications. (2RT 443, 468.) He went to WellSpace and Effort for medical care. (2RT 444.) In September, he started to get back on SSDI.

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<sup>11</sup> The car was not in appellant's name and was impounded on February 15, 2016, when he did 90 in a 25 zone. (2RT 468, 509.)

(2RT 435.)

Appellant stayed with Wilson a month or two until Wilson found out he was seeing another woman. (2RT 434.) Then Wilson got mad, struck him, and pulled knives on him. (2RT 434.) She told him to leave, and he did. (2RT 434.) After that, appellant still had occasional contact with her and they kept in touch by cell phone and on Facebook. (2RT 434.)

At some point, appellant was arrested, and was in the Sacramento Jail from February 29, 2016 to May 31, 2016.<sup>12</sup> (2RT 438, 509.) He received psychiatric services there, and was housed on the psychiatric floor several times. (2RT 438.) During this time, he had left things at Tracey Wilson's apartment – paperwork, medical and mental health records. (2RT 438.) Wilson came to visit him, but sometimes they argued. (2RT 438, 511.)

When appellant was released from jail, Wilson picked him up and took him to her new place, which was her brother's place on Bowling Drive. (2RT 438-439.) Appellant continued to stay there sometimes "if her brother wasn't tripping out." (2RT 439.) Appellant sometimes stayed in a shelter, but there were only three shelters for men, and there was not always room. (2RT 440-441.) Sometimes appellant stayed with other women in exchange for cleaning, cooking, or sexual favors. (2RT 439.) When appellant had nowhere to go, he slept at the 16th Street light rail station parking lot – it was safe from getting into violent altercations with other homeless people or people doing drugs because they had security. (2RT 440.) He went frequently to Loaves and Fishes, but they did not provide overnight accommodations. (2RT 440.)

Appellant did various jobs that paid off the books, like waving signs

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<sup>12</sup> On July 1, 2016, appellant was convicted of a felony involving moral turpitude. (2RT 509-510.)

to try to get people to visit houses for sale. (2RT 441.) He also worked a month and a half for Safe Link signing up homeless people up for free government phones with their ID, EBT card, or MediCal. (2RT 441-442.) He was supposed to be paid \$10 for each person he signed up, but then they did not want to pay the \$3,000 they owed him. (2RT 442-443.) He also did odd jobs like cleaning or errands in exchange for money, food, or clothes. (2RT 443.)

Appellant went to Wilson's brother's apartment frequently to shower and eat. (2RT 460.) He did not leave anything at the apartment or in the yard because Wilson's brother had an issue with it. (2RT 457, 460.) Appellant left his belongings in Wilson's car. (2RT 457.) When appellant slept in Wilson's car, it was always at the Bowling Drive location where she parked it. (2RT 445.)

Appellant did not recognize the black backpack that Wilson gave to police. (2RT 445.) Appellant's papers that were in it were those he used to leave organized in a crate in the trunk of Wilson's car. (2RT 446, 500.) Appellant had prepared resumes at the Wellness Center to attempt to find work. (2RT 448.) The resumes were organized in the crate – he did not put them into the black backpack. (2RT 449.) Appellant denied ever touching any identification or paperwork belonging to Brandow. (2RT 447.) He also denied taking Wilson's letters from Kaiser or anyone else. (2RT 449.) The green book bag given to police by Leshon Mitchell *did* belong to him – he carried it every day. (2RT 446.)

Appellant had met Leshon Mitchell when he registered at the Wellness Center on Franklin. (2RT 448.) Wilson had offered to take appellant there so he could do his resume, laundry, and get involved with the mental health service. (2RT 448.) When appellant began staying with Leshon Mitchell, he was trying to stay away from Wilson with whom he

was having frequent arguments that made him feel messed up and not right. (2RT 447.)

When appellant first stayed at Mitchell's, he had offered his services around her house. (2RT 456.) He had stayed with Leshon for a month until her ex-husband came to stay and did not like appellant sleeping in the bedroom with her while he was in living room. (2RT 457.) Appellant had bonded with Mitchell, and when she told him he could not stay there anymore, he felt down, agitated, and stressed. (2RT 467.) He had nowhere to stay and no money. (2RT 468.) He was also depressed and worried because he had medical issues, including a testicle problem or cancer that was concerning him. (2RT 458-459, 467.) He could not get a prompt medical appointment, so he went to UC Davis to get medication for testicle cancer. (2RT 458-459.) They treated him, and gave him fluid for dehydration. (2RT 459.) He ran out of Lithium and was not taking it because it would have a bad interaction with the cancer medication he was taking. (2RT 459-460.) In the month or two prior to his arrest, he was using heroin. (2RT 462.) At time of his arrest, appellant had been without medication for a couple of weeks. (2RT 470.)

Appellant wanted to go to jail because he had serious medical problems and the winter rainy season was coming – he wanted to have roof over his head and have his medical needs taken care of. (2RT 469, 473.) The day Leshon told him he had to leave, appellant came up with idea to say he had murdered someone. (2RT 469, 474.) He chose to say murder because he knew it would be taken seriously. (2RT 469.) In 2015, he had tried to get the police to take him to jail by saying he stole something from a store, but it did not work. (2RT 473.)

In June, appellant had met a man named CC in a spot behind the Western Dental at Florin and Bowling Drive where homeless people

congregated to drink, talk, and do drugs. (2RT 449-450, 455, 466.)

Wilson's sister Sabrina was there at the time, and appellant almost got in a fistfight with CC and a couple others because CC was grabbing her. (2RT 449-450.) Appellant did not know CC's "government name" but knew he had been locked up many times. (2RT 451.) Appellant also saw CC at the Wellness Center where CC was also registered. (2RT 455.) Appellant heard about the killing of Sharen Brandow from CC. (2RT 450, 455.) CC said he was speaking to a lady and he tried to do things to her and he choked her and hit her upside the head with a weapon. (2RT 451.) He said it happened on Broadway by the overpass in Oak Park. (2RT 451-452.) Appellant did not know that there was a homeless encampment up there. (2RT 451-452.) He had sometimes seen a woman in that location where the 51 bus went. (2RT 452.)

Appellant did not kill Sharen Brandow, but lied about having done so based on details he heard CC confess to, and based on having seen a news report about Brandow's death. (2RT 429, 470-471.) He put two and two together that it was what CC was talking about. (2RT 471.) Appellant knew details of area because he frequented that area and had seen Brandow before. (2RT 475.)

Appellant injured his hand at the beginning of August after getting into fistfight with street gang Starz at the Meadowview light rail station – someone had tried to take his cell phone. (2RT 463.) His right hand has never completely recovered from the boxer's fracture that required him to wear a cast in New York, and every time he falls or gets into a physical altercation, he ends up hurting his hand – it swells up and tendons start tearing or he breaks bones. (2RT 461-462.)

When appellant was little, he started writing with his left hand. (2RT 463.) His grandmother said that people who write with the left hand are the

devil's child, and she beat him to make him stop. (*Ibid.*) Now he writes with his right hand, but uses his left for everything else. (2RT 464.)

In 2005 in New York, appellant was wearing a cast because he was fighting with someone at the group home and one of the staff grabbed him, broke his arm, and stomped on his hand breaking all the bones and snapping his finger. (2RT 518.) This was about a week or two before June 27, 2005. (2RT 519.)

On June 27, 2005, appellant's grandmother did not want him to see his other grandmother because she is a Jehovah's Witness. (2RT 517.) This grandmother had always abused appellant physically and had gotten his mother arrested. (2RT 518.) He told her that his mother said he could leave when he wanted and he had a MTA pass. (2RT 517.) She picked up a skillet and hit him in the head. (*Ibid.*) Appellant got angry and slammed the door, which broke. (2RT 517-518.)

He went into a Manhattan high rise intending to rob people by hitting them and then getting into their pockets to take whatever they had. (2RT 519-520.) When he asked Bezgina the question about the lobby, he saw one of her pockets was bulging out and was planning to rob her. (2RT 521.) He did not get anything because he was interrupted. (2RT 524.) He felt bad and wrote letter of apology. (2RT 525.) He did nine years of a three to nine year sentence. (2RT 524.) Appellant has PTSD and severe depression from being sexually abused by his grandmother, in state custody in group homes, foster homes, and prison. (2RT 478.)

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## REASONS FOR GRANTING THE PETITION

The errors described herein, both separately and cumulatively, deprived appellant of due process and a fair trial and to be convicted only on sufficient evidence under Fifth, Sixth, and Fourteenth Amendments of the United State Constitution. In added the eight Amendments of the United State Constitution also has been violated by the people of the State of California.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

X  \_\_\_\_\_

Date: July 28, 2019