

APPENDIX

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U.S. District Court for the Central District of California Reporter's Transcripts of Trial Proceedings Held April 30, 2010, afternoon (partial).....	Rep. App. A001
California Supreme Court Petition for Writ of Habeas Corpus (June 27, 2013)	Rep. App. A010

2701

1 CASE NAME: PEOPLE V. JOVIAN DAVIS
2 CASE NUMBER: BA 354723-01
3 LOS ANGELES, CALIFORNIA FRIDAY, APRIL 30, 2010
4 DEPARTMENT CENTRAL 116 HON. NORM SHAPIRO, JUDGE
5 REPORTER: JUDITH MARCELLO, CSR #4002
6 TIME: 1:09 P.M. SESSION

7
8 (APPEARANCES AS HERETOFORE NOTED.)
9
10
11
12

13 THE COURT: GOOD AFTERNOON. JUDI, IF YOU ARE ALL SET,
14 WE WILL GO ON THE RECORD IN THE DAVIS MATTER. MR. DAVIS IS
15 PRESENT WITH MR. MCKINNEY. THE DISTRICT ATTORNEY, MISS
16 HUMPHREY, IS PRESENT WITH MISS CHEUNG. THE JURY IS PRESENT
17 WITH ALTERNATES.

18 AND WE'RE GOING TO BEGIN WITH THE JURY
19 INSTRUCTIONS, LADIES AND GENTLEMEN. I ALWAYS TELL THE JURIES
20 RIGHT AWAY THAT YOU ARE GOING TO HAVE THESE INSTRUCTIONS IN
21 THE JURY ROOM TO REFER TO WHILE WE DELIBERATE. IT'S A LITTLE
22 WARM OVER THERE FOR SOME OF YOU. JUROR NUMBER TWELVE --

23 JUROR NUMBER TWELVE: I WAS RUNNING.

24 THE COURT: I APPRECIATE IT. AND I AM SURE YOUR FELLOW
25 JURORS DO AS WELL. IN ANY EVENT, YOU WILL HAVE THESE IN THE
26 JURY ROOM TO REFER TO. NOW IF THERE IS AN IDEA, A PHRASE,
27 SOMETHING YOU WANT TO JOT DOWN, YOU ARE FREE TO DO THAT, BUT
28 YOU DON'T HAVE TO WRITE ANYTHING DOWN AS WE GO ALONG.

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1 USED TO BE A LOT MORE LIBERAL ON THAT, BUT IT
2 TURNED OUT THAT PEOPLE WERE CALLING FOR ADVICE AND ASKING.
3 QUESTIONS. AND WE ASK YOU NOT TO DO THAT BY CELL TELEPHONE,
4 BY WORD OF MOUTH, WHEN YOU'RE SEPARATED.

5 WE ASK YOU NOT TO GO ON YOUR COMPUTERS OR DO ANY
6 RESEARCH ON THIS CASE. EVERYTHING THAT YOU MUST UTILIZE TO
7 DETERMINE AN OUTCOME IN THIS CASE IS BASED ON THE RECORD THAT
8 WE HAVE FOR THIS CASE AND IS NOT TO GO BEYOND THAT RECORD.
9 SO WITH THAT IN MIND, IF YOU WOULD LIKE TO GO AHEAD.

10 MS. HUMPHREY: THANK YOU.

11

12

13

CLOSING ARGUMENT

14 BY MS. HUMPHREY:

15 GOOD AFTERNOON NO GOOD DEED GOES UNPUNISHED.
16 I AM SURE WE ARE ALL FAMILIAR WITH THAT SAYING. BUT HOW TRUE
17 TO LIFE THAT WAS ON MARCH 12, 2009, FOR THOMAS MASON, WHEN
18 HIS GOOD DEED, GIVING AN ACQUAINTANCE A RIDE TO A
19 GIRLFRIEND'S HOUSE AROUND THE CORNER, RESULTED IN HIM NOT
20 BEING ABLE TO USE HIS ARMS, HIS LEGS, OR ANY PART OF HIS BODY
21 BELOW HIS NECK, BECOMING A QUADRIPLÉGIC.

22 AND THAT'S WHY WE'RE HERE TODAY, BECAUSE ON
23 MARCH 12, 2009, THE DEFENDANT SHOT THE VICTIM IN THE NECK,
24 CAUSING HIM THAT PERMANENT PARALYSIS.

25 NOW THE COURT HAS ALREADY INSTRUCTED YOU ON
26 WHAT THE CHARGES ARE, BASICALLY. THERE ARE TWO MAIN CHARGES
27 IN THIS CASE THAT THE PEOPLE HAVE ALLEGED, THE ATTEMPTED
28 MURDER OF MR. MASON, AS WELL AS THE ROBBERY. FOR EACH OF

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1 THOSE TWO COUNTS, WE HAVE ALSO ALLEGED THAT THOSE ACTS WERE
2 DONE FOR THE BENEFIT OF, AT THE DIRECTION OF, OR IN
3 ASSOCIATION WITH A CRIMINAL STREET GANG, THAT THEY WERE
4 COMMITTED BY USE OF A GUN, BY PERSONAL USE OF A GUN.

5 AND I'M GOING TO GO INTO DETAILS A LITTLE BIT
6 REGARDING WHAT THAT MEANS. WHY IN THIS CASE IS THE DEFENDANT
7 GUILTY OF THE ATTEMPTED MURDER OF MR. MASON? THE COURT
8 INSTRUCTED YOU WHAT THE PEOPLE HAVE TO PROVE. BASICALLY,
9 THAT THE DEFENDANT INTENDED TO KILL MR. MASON, AND HE
10 COMMITTED AN ACT THAT DIDN'T RESULT IN THE DEATH OF
11 MR. MASON.

12 NOW WHAT FACTS DO WE HAVE TO SUPPORT THAT
13 CONCLUSION? YOU HEARD FROM THOMAS HIMSELF. HE CAME IN HERE
14 TWICE AND SPOKE TO YOU ABOUT WHAT HAPPENED TO HIM. HE TOLD
15 YOU THAT ON THAT NIGHT, AFTER VISITING A FRIEND, WHEN HE WAS
16 ABOUT TO GET IN HIS CAR, COMING FROM PRAYER ON HIS WAY HOME,
17 HE SAW THE DEFENDANT. AND THE DEFENDANT, WHILE SEEING HIM,
18 ASKED HIM FOR A RIDE TO HIS GIRLFRIEND'S HOUSE AROUND THE
19 CORNER.

20 THOMAS MASON WAS GETTING IN HIS CAR ON HIS WAY
21 HOME. THAT WAS NO BIG DEAL FOR HIM. HE AGREED. HE KNEW THE
22 DEFENDANT TO SOME EXTENT FOR OVER SIX MONTHS TO A YEAR.

23 THE DEFENDANT GOT IN HIS CAR, BROUGHT HIM TO
24 THE GIRLFRIEND'S HOUSE, OR SO HE THOUGHT. THE DEFENDANT
25 EXITED THE CAR, BUT WHEN HE GOT BACK IN THE CAR, MR. MASON
26 TOLD YOU HE SAW A GUN. HE TOLD YOU THAT HE SAW THE GUN
27 POINTING AT HIM. AND HE TOLD YOU THAT HE SAW THE DEFENDANT
28 FIRE THAT GUN.

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1 HE TOLD YOU THAT HE SAW THE GUN AIMED AT HIS
2 HEAD, BUT THE GUN STRUCK HIS NECK. AFTER THAT HE TOLD YOU HE
3 THOUGHT DEFENDANT WENT THROUGH HIS POCKETS, TOOK MONEY, AND
4 FLED.

5 SO THE EVIDENCE THAT YOU HAVE THAT THE
6 DEFENDANT INTENDED TO KILL THE VICTIM IN THIS CASE IS
7 MR. MASON'S OWN STATEMENTS AND ALL THE CIRCUMSTANCES
8 SURROUNDING THIS INCIDENT THAT I AM GOING TO GET INTO IN A
9 LITTLE BIT MORE DETAIL.

10 WE ALSO HAVE CIRCUMSTANTIAL EVIDENCE HE
11 COMMITTED THE CRIME BECAUSE OF DEFENDANT'S FLIGHT. THE COURT
12 INSTRUCTED YOU THAT, WHEN AN INDIVIDUAL FLEES AFTER
13 COMMITTING A CRIME, YOU MAY CONSIDER THAT AS A SHOWING OF
14 GUILT.

15 AND IN THIS CASE THE DEFENDANT FLED TWICE. HE
16 FLED RIGHT AFTER SHOOTING THOMAS, NEVER CALLING FOR AN
17 AMBULANCE, NEVER RUNNING INTO THE GIRLFRIEND'S HOUSE OR JAY'S
18 HOUSE TO CALL FOR POLICE. HE HAD HIS CELL PHONE ON HIM.
19 NEVER USED THE CELL PHONE TO CALL THE POLICE.

20 HE RAN BACK TO HIS LOCATION. DO YOU KNOW HOW
21 MANY HOUSES THERE ARE BETWEEN WHERE THOMAS' CAR ENDED UP TO
22 THE DEFENDANT'S RESIDENCE AT 4606 WILTON? YOU HAVE THE
23 AERIAL THERE. YOU CAN COUNT. EVERY ONE OF THOSE INDIVIDUALS
24 COULD HAVE BEEN A POSSIBLE PLACE TO STOP AND TO ASK FOR HELP.
25 BUT HE WENT HOME.

26 HIM FLEEING THE LOCATION, HIM GETTING RID OF
27 THE GUN BY HIS OWN ADMISSION, THROWING THE GUN IN THE TRASH
28 ,M IF YOU BELIEVE HIM ON WHERE HE THREW IT -- BUT HE SAID HE

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1 THREW IT AWAY, HE GOT RID OF IT -- THAT'S ALL CIRCUMSTANTIAL
2 EVIDENCE OF HIS GUILT IN THIS CASE.

3 AS WELL AS FLEEING TO INDIANA. HE TOLD YOU
4 AND TESTIFIED ON THE STAND, OH, BY COINCIDENCE, A COUPLE OF
5 WEEKS BEFORE THIS SHOOTING, HE HAD A POSSIBILITY OF BEING
6 TRANSFERRED. WELL, THAT'S CONVENIENT. AND THEN AFTER THIS
7 SHOOTING, WITHIN A WEEK OR TWO, HE DECIDED TO TAKE UP ON
8 THAT, AND WITHIN ONE TO TWO WEEKS AFTER THE SHOOTING, SOMEHOW
9 HE WAS MAGICALLY TRANSFERRED TO INDIANA, AFTER BEING RELEASED
10 FROM CUSTODY, WITH A FRIEND WE DON'T KNOW THE NAME OF,
11 DRIVING UP TO INDIANA, SO WE CAN'T FIND ANY AIRPLANE RECORDS,
12 IS IN INDIANA AT A JOB WHO WE DON'T HAVE EMPLOYMENT RECORDS
13 FOR, NO PAY STUBS FOR, AT WORK, WHEN WE DON'T HAVE ANY
14 CLOTHES THAT SHOW HE'S IN ANY TYPE OF WORK CLOTHES, NO WORK
15 LOGO ON ANY OF THE CLOTHES.

16 BUT HE WANTS YOU TO BELIEVE THAT IT WAS JUST
17 DONE BY COINCIDENCE. THAT'S NOT A COINCIDENCE. HE FLED TO
18 GET AWAY FROM TRYING TO KILL MR. MASON.

19 THAT'S WHY YOU HAVE BEFORE YOU THE REASONS,
20 AND IN THIS CASE IT SHOWS THE DEFENDANT'S INTENT TO KILL
21 MR. MASON. ONCE YOU DETERMINE, "YES, I BELIEVE HE TRIED TO
22 KILL MR. MASON," YOU THEN HAVE TO FIND ON WHETHER YOU BELIEVE
23 THAT THE ATTEMPTED MURDER WAS DONE WILLFULLY WITH
24 PREMEDITATION AND DELIBERATELY.

25 WE WOULD CALL THAT FIRST DEGREE ATTEMPTED
26 MURDER.

27 NOW WHAT ADDITIONAL FACTS DO YOU HAVE TO SHOW
28 THAT THE ATTEMPTED MURDER WAS BASICALLY DONE IN THE FIRST

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1 DEGREE? WELL, A LOT OF THE FACTS I JUST MENTIONED WOULD
2 ASSIST IN THAT.

3 DETAILS OF THE SITUATION THAT I'M GOING TO ASK
4 YOU TO LOOK AT: THE DEFENDANT HAD A CAR. HE HAD A CAR.
5 ACCORDING TO HIM, THE CAR WAS SITTING OUTSIDE OF HIS HOUSE.
6 IF IT WASN'T HIS, WE KNOW HE HAD ACCESS TO A CAR. SO IF YOU
7 HAVE A CAR, WHY ARE YOU ASKING A GUY YOU HARDLY KNOW, YOU MAY
8 KNOW AS AN ACQUAINTANCE, FOR A RIDE?

9 WELL, THE DEFENDANT HAD AN EXCUSE FOR THAT.
10 HE SAID HE GETS STOPPED, HARASSED BY THE POLICE, ALL THE
11 TIME. WELL, I CAN SEE THAT IN TWO WAYS. IF YOU ARE A GANG
12 MEMBER, YOU GET STOPPED AND HARASSED BY THE POLICE ALL THE
13 TIME. BUT HE'S NOT SAYING HE'S A GANG MEMBER ANY MORE. BUT
14 HE MADE THAT UP TO, BECAUSE HE HAD TO HAVE AN EXCUSE ON WHY
15 HE'S ASKING THOMAS FOR A RIDE AROUND THE CORNER.

16 THAT WAS A LIE. HE HAD A CAR, BUT HE WANTED
17 THOMAS ALONE TO GET TO HIM. SO HE ASKED THOMAS. WHEN HE
18 ASKED THOMAS FOR THE RIDE, HE TOLD THOMAS, "I AM GOING TO THE
19 GIRLFRIEND'S HOUSE AROUND THE CORNER. JUST DROP ME OFF."

20 HE NEVER TOLD THOMAS, "WAIT FOR ME AND THEN
21 BRING ME BACK," ACCORDING TO THOMAS. BUT THE DEFENDANT TOOK
22 THE STAND AND SAID, NO, HE TOLD HIM HE WAS GOING TO BE
23 DROPPED OFF, AND HE TOLD HIM TO WAIT. THAT'S A DISCREPANCY
24 IN THE TESTIMONY.

25 BUT HIM JUST LETTING THOMAS KNOW, ACCORDING TO
26 THOMAS, "JUST DROP ME OFF," FURTHER EVIDENCE IN HIS MIND HE
27 KNEW HE WHAT WANTED TO DO, BUT HE NEEDED TO CONVINCE THOMAS
28 TO GIVE HIM THE RIDE.

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1 INTERESTINGLY ENOUGH, WHEN THOMAS DROPPED HIM
2 OFF, HE WENT INSIDE OR TO WHATEVER LOCATION TO GET THE GUN,
3 WHAT HE SAID ON DAY TWO OF HIS TESTIMONY, OR NOT DAY TWO BUT
4 DAY ONE OF HIS TESTIMONY, WHEN HE GOT THE GUN -- AND USING
5 THIS AS AN EXHIBIT -- THE HAMMER WAS PULLED BACK. THIS
6 HAMMER CAN'T GO BACK. BUT THE HAMMER IS PULLED BACK.

7 WELL, DAY ONE, THE DEFENDANT SAYS HE DOESN'T
8 KNOW MUCH ABOUT GUNS. DAY TWO, HE SEEMED TO KNOW A LITTLE
9 BIT MORE ABOUT GUNS WHEN HIS ATTORNEY WAS QUESTIONING HIM.

10 BUT WHEN I QUESTIONED HIM, HE KNEW ENOUGH TO
11 SAY, "WHEN THE HAMMER IS PULLED BACK, THE GUN'S READY TO
12 SHOOT." WOULD ANYONE IN THEIR RIGHT MIND ACCEPT A GUN FROM A
13 PERSON NAMED JAY, WHO BY THE DEFENDANT'S OWN STATEMENT, JAY
14 WAS SO CONCERNED THIS GUN WAS IN HIS HOUSE, HE WANTED SOMEONE
15 TO COME TAKE THE GUN? YET JAY HOLDS A GUN AND GIVES A GUN TO
16 SOMEONE WITH THE HAMMER PULLED BACK? DOES THAT MAKE SENSE?

17 NO, THAT DOESN'T MAKE SENSE. JAY'S SO
18 CONCERNED ABOUT HIS FAMILY AND THE SAFETY OF HIS OWN HOME,
19 BUT HE WANTS TO GET RID OF A GUN, SO HE GIVES THE GUY THE GUN
20 WITH WITH THE HAMMER PUMPED BACK, READY TO FIRE.

21 BUT THE DEFENDANT HAD TO MAKE THAT UP, BECAUSE
22 HE HAD TO GIVE AN EXCUSE ON HOW THE GUN COULD JUST GO OFF.
23 SO, ANYWAY, THE DEFENDANT SAYS HE GETS THE GUN. HE ADMITS
24 THAT, WHEN HE GETS THE GUN, AT SOME POINT THE HAMMER'S PULLED
25 BACK.

26 WELL, I WOULD SAY TO YOU, HE PULLS BACK THE
27 HAMMER HIMSELF, BECAUSE PULLING BACK THE HAMMER ON THAT GUN
28 BEFORE HE GETS IN THE CAR SHOWS HIS INTENT TO GET READY TO

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1 SHOOT AND KILL SOMEONE. SO HE HAS THE GUN IN HIS HAND. HE
2 HAS THE HAMMER PULLED BACK. HE HAS THE GUN GETTING READY TO
3 SHOOT WHEN HE GETS IN THE CAR.

4 WHETHER THE GUN WAS IN HIS POCKET, AS HE SAYS
5 IT WAS, WHICH IT COULD HAVE BEEN, THAT COULD HAVE BEEN SO
6 THOMAS WOULDN'T BE ABLE TO SEE THAT GUN IN THAT POCKET SO
7 THOMAS WOULD BE CAUGHT OFF GUARD WHEN THE GUN IS IN THE
8 POCKET. AND THEN AT SOME POINT EITHER HE POINTS THE GUN AT
9 THOMAS WHILE IT'S IN THE POCKET AND FIRES, OR AT SOME POINT
10 THE GUN MAY HAVE BEEN OUT OF THE SWEATSHIRT WHEN IT FIRES.

11 UNFORTUNATELY, THE FIREARMS EXPERT, THE GSR
12 INDIVIDUAL, MISS ACOSTA, CANNOT TELL YOU WHEN THE GUN WAS
13 FIRED FROM WITHIN THE POCKET. IT COULD HAVE BEEN DURING THE
14 SHOOTING OF THOMAS, IT COULD HAVE BEEN FIVE MINUTES LATER
15 WHEN HE'S TRYING TO -- RUNNING DOWN THE STREET TO TRY TO
16 THINK OF AN ALIBI. IT COULD HAVE BEEN TEN MINUTES BEFORE HE
17 SAW THOMAS. WE WILL NEVER KNOW.

18 BUT WHAT YOU CAN THINK AND WHAT PROBABLY
19 HAPPENED, AT SOME POINT AFTER THE DEFENDANT GOT THE GUN, THE
20 HAMMER'S PULLED BACK, HE MAY HAVE STUCK IT IN HIS POCKET,
21 POINTED THE GUN, AND THEN FIRED.

22 THOMAS COULD HAVE SEEN THE GUN AT SOME POINT
23 BEFORE OR AFTER AND THOUGHT HE POINTED AT HIM AND FIRED. WE
24 DON'T KNOW. WE DON'T KNOW. BUT THE MAIN PART IS, IF HE'S
25 GIVEN A GUN, COMING TO THAT CAR WITH THE HAMMER PULLED BACK,
26 HE DID IT, AND THAT WAS HIS INTENT TO KILL.

27 FURTHER EVIDENCE THAT THIS IS A FIRST DEGREE
28 AND HE WANTED THOMAS TO DIE, AGAIN, WAS, HE NEVER CALLED THE

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1 POLICE, NEVER CALLED THE AMBULANCE, NEVER TOLD ANYONE IT WAS
2 AN ACCIDENT TILL HE SAT UP HERE AND TOLD YOU. BUT WE ALSO
3 KNOW HE HAD A WHOLE YEAR TO MAKE UP A STORY AND TO FILL IN
4 THE BLANKS TO HELP SHOW IN HIS MIND AND TO HELP TRY TO PROVE
5 TO YOU THAT IT WAS AN ACCIDENT.

6 THAT'S WHY IN THIS CASE THIS IS FIRST DEGREE
7 ATTEMPTED MURDER, AND IT WAS DONE WILLFULLY WITH DELIBERATION
8 AND PREMEDITATION.

9 A ROBBERY. WE ALL KNOW COMMONLY WHAT A
10 ROBBERY IS. OKAY? IN THIS CASE YOU HAVE THE FACTS TO SHOW
11 IT WAS A ROBBERY, IF YOU BELIEVE THOMAS. THOMAS HAD MONEY ON
12 HIM. THOMAS SAID HE HAD APPROXIMATELY \$140 ON HIM. THE
13 AMBULANCE PEOPLE, WHEN THEY PICKED UP THOMAS, DIDN'T HAVE ANY
14 MONEY. THE POLICE OFFICERS NEVER RECOVERED ANY MONEY FROM
15 THOMAS OF 120 OR \$140.

16 WHERE IS THE MONEY? THE MONEY WAS ON THE
17 DEFENDANT. HE WAS FOUND WITH \$2851. AND BECAUSE HE HAD A
18 WHOLE YEAR TO TRY TO THINK OF "HOW CAN I EXPLAIN \$2851?" THIS
19 IS THE STORY HE GAVE YOU. "WELL, MY RENT WAS DUE. I HAD ALL
20 THIS CASH SO I COULD PAY MY RENT, SO I COULD PAY A FURNITURE
21 BILL."

22 IT'S 9:00 O'CLOCK AT NIGHT ON MARCH 12TH, A
23 THURSDAY. HE GETS PAID ON FRIDAY. WHY DOES HE HAVE ALMOST
24 \$3000 AT NIGHTTIME ON A THURSDAY? THE MONEY HE HAS, THIRTEEN
25 HUNDRED-DOLLAR BILLS, SOME TWENTIES, SOME ONES, HE HAS TO
26 THINK OF A STORY TO TELL YOU TO EXPLAIN THIS MONEY -- "I
27 DIDN'T GET THIS FROM THOMAS. THIS IS NOT GETAWAY MONEY.
28 THIS IS MY RIGHTFUL MONEY."

LODGED DOC. M
CV 13-8179-GW(CW)

MC-275

Name: Jovian William Davis**SUPREME COURT COPY**Address: Pelican Bay State PrisonP.O. Box 7500 Crescent CityCA, 95532CDC or ID Number: AF0516**SUPREME COURT****FILED**

JUN 27 2018

Evidentiary
Hearing
Requested

Supreme Court of California

Frank A. McGuire Clerk

(Court)

Deputy

<u>Jovian William Davis</u>	
Petitioner	vs.
<u>Greg Lewis</u>	
Respondent	

PETITION FOR WRIT OF HABEAS CORPUS

S211750

No.

(To be supplied by the Clerk of the Court)

INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the superior court, you only need to file the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal and you are an attorney, file the original and 4 copies of the petition and, if separately bound, 1 set of any supporting documents (unless the court orders otherwise by local rule or in a specific case). If you are filing this petition in the Court of Appeal and you are *not* represented by an attorney, file the original and one set of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and 10 copies of the petition and, if separately bound, an original and 2 copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court (as amended effective January 1, 2007). Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

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This petition concerns:

- ☒ A conviction
 ☐ Parole
☐ A sentence
 ☐ Credits
☐ Jail or prison conditions
 ☐ Prison discipline
☐ Other (specify): _____

1. Your name: Jovian William Davis
2. Where are you incarcerated? Pelican Bay State Prison
3. Why are you in custody? ☒ Criminal conviction ☐ Civil commitment

Answer items a through i to the best of your ability.

- a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon")

Attempted murder, Second Degree Robbery, Gang Enhancement, Gun Enhancement

- b. Penal or other code sections: 664/187, 211, 186.22(b)(1), 12022.53

- c. Name and location of sentencing or committing court Los Angeles County Superior Court

- d. Case number: BA354723

- e. Date convicted or committed: May 4th, 2010

- f. Date sentenced: September 20, 2010

- g. Length of sentence: 65 years to life

- h. When do you expect to be released? _____

- i. Were you represented by counsel in the trial court? ☒ Yes ☐ No If yes, state the attorney's name and address:

William McKinney, 3250 Wilshire Blvd. Suite 708
Los Angeles, California 90010

4. What was the LAST plea you entered? (Check one).

☒ Not guilty ☐ Guilty ☐ Nolo contendere ☐ Other: _____

5. If you pleaded not guilty, what kind of trial did you have?

☒ Jury ☐ Judge without a jury ☐ Submitted on transcript ☐ Awaiting trial

MC-275

E. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "The trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page 4. For additional grounds, make copies of page 4 and number the additional grounds in order.)

Ineffective Assistance of Trial Counsel; Petitioner was denied his 6TH & 14TH amendment rights of effective assistance of trial counsel and due process, due to attorneys lack pretrial investigation and omissions during trial including failure to make appropriate objections and file proper adequate motions.

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts on which your conviction is based. If necessary, attach additional pages. CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel, you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is, who did exactly what to violate your rights at what time (when) or place (where) (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

(A) Trial Counsel failed to investigate and present key evidence in petitioner's case to support petitioner's defense theory of accidental discharge of a firearm. (1) Counsel knowingly failed to investigate the interior of victim's car for "Gun Shot Residue" even after petitioner made the request, which is the crime scene in this instant case. Counsel admitted to the jury in opening statements that there was never any examination done for "Gun Shot Residue" in the interior of the victim's car (See: 3RT-621). Had Counsel conducted a proper pretrial investigation and presented jury with the ballistics test it would of had a major impact and effect on the outcome of the jury's verdict, due to the fact this instant case is based upon petitioner's assertion of the shooting being accidental. Victim testified that petitioner sat down in his car and deliberately pulled a gun out pointed it head level and shot him one time (See: 3RT-913-914) ALSO (See: 3RT-940-941).

b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

Strickland v. Washington 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984)
Sims v. Live Say (C.A. 6 (Tenn) 1992) 970 F.2d 1575
Alcala v. Woodford (C.A. 9 (Cal) 2003) 334 F.3d 862
Wiggins v. Smith (U.S. 2003) 123 S.Ct. 2527, 539 U.S. 510

Ground 1: I.A.C. continued

Petitioner testified that a firearm accidentally discharged in his sweatshirt pocket once as he was entering victim's car (See: 5RT-2125) Also (See: 5RT-2187-2188). If counsel had presented such key evidence it would have undermined prosecution's entire case by showing there wasn't any gunshot residue inside victim's car and supporting petitioner's testimony that this instant case was not intentional and nothing more than an accidental discharge of a firearm in petitioner's sweatshirt pocket. (2) Trial counsel failed to conduct a meaningful pretrial investigation of physical evidence. Trial counsel failed to present its own forensic expert to have comparison done on petitioner's sweatshirt and alleged gun to show the gun presented to the jury was not part of crime and irrelevant. When questioning Carole Acosta L.A.P.D. firearm criminalist expert trial counsel asked "do you think it might be beneficial to take the weapon behind you which is the weapon in question and make a comparison with the actual residue and location of the defect inside the jacket," then MS. ACOSTA answered "When I was given the request I was informed that the firearm that was booked in evidence was not (See: 4RT-1548-1549). Had counsel not relied solely on L.A.P.D. investigation and presented its own experts it would have proved the firearm in this case should have been excluded and not part of trial an appropriate pretrial would have supported any motion to suppress this evidence. Showing jury with a weapon in petitioner's hand prejudiced jurors by making him appear to be a threat to society as

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Ground 1: I.A.C. continued

another gangbanger with a gun (See: 5RT. 2195-2198).

(B.) Trial Counsel failed to file proper motion during trial and have gang evidence bifurcated. (1.) Petitioners trial counsels unprofessional omissions prejudiced petitioners case when counsel failed to file the appropriate motion to have evidence bifurcated during trial especially when the trial judge himself made two seperate comments about having such evidence bifurcated, trial judge first stated "that this gang allegation really should be bifurcated and it makes a fair trial somewhat more difficult when the jury has this spector of gang and if the defendant is convicted of Attempted murder and Robbery that he's convicted because he did it and not because he's a gang member (See: 5RT. 2161-2162). And again trial judge himself stated "that its better to bifurcate the gang portion of the case and see what the case itself can be proven and then take up the gang issue later But that request wasn't made" (See: 5RT. 2463-2464).

The trial record clearly supports petitioners contention that had the appropriate motion to bifurcate the gang evidence been filed by trial counsel the judge would have granted it and this very prejudicial evidence would not have had such a damaging impact on the jury's verdict. If evidence was bifurcated there is a strong probability that jury's verdict would have been different due to the fact that the prosecutors theory was based on the Attempted murder & Robbery motive was for the benefit of Petitioners gang.

(C.) Trial Counsel failed to object to false evidence and

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Ground 1: I.A.C. continued

also prosecutor misconduct. (1.) Trial counsel knowingly failed to object to allowing a gun which was false evidence, during trial counsel questioned the false evidence but never objected to it (See: 5RT-2428). (2.) Trial counsels performance was deficient when he failed to object to prosecutor misconduct when the D.A. made petitioner get off the stand and hold highly prejudicial irrelevant gun which was false evidence in front of the jury (See: 5RT-2195-2198). Trial counsels performance violated petitioners due process rights by allowing prosecutors misconduct to prejudice the jury when the D.A. made petitioner get off the stand and hold a gun in his hand before the jury which ultimately painted a picture in the jury's mind due to the fact that very gun had nothing to do with this instant case what so ever. (D.) Petitioner contends that the many instances of (I.A.C.) had a cumulative error effect on the outcome of his trial. (1.) Trial counsels deficient performance when knowingly failed to investigate the crime scene prejudiced petitioners entire case due to the fact if that key evidence was present during trial it would have showed that petitioners testimony of a firearm accidentally discharging in his sweatshirt pocket was true, instead when the victim testified that petitioner sat in his car and intentionally & deliberately pulled a gun out pointed it head level and shot him once. Therefore had trial counsel conducted a proper pretrial investigation of the crime scene it would have undermined prosecutions theory of this entire case being intentional deliberate

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Ground 1: I.A.C. continued

Attempted murder, by showing victims testimony not only false but also scientifically impossible due to the fact the investigation would of shown no (Gun Shot Residue) in victims car. (2.) Trial Counsel failed to hire forensic experts to have proper examinations done. Counsel failed to have a comparison done on petitioners sweatshirt and a gun that was false evidence in petitioners trial, if that proper investigation was done it would show that the gun that was introduced at trial was not only false & irrelevant but also prejudicial. (3.) Petitioner argues that trial counsel failed to object to D.A. misconduct when the prosecutor made petitioner get off the stand and hold a gun that trial counsel knew was false & irrelevant evidence in front of the jury (see: 5RT-2195-2198). (4.) Trial counsel failed to file proper adequate motion during trial to have gang evidence bifurcated. Counsel failed to have gang evidence bifurcated during trial when the trial judge himself made two separate statements about having the gang evidence bifurcated "But the request was not made by trial counsel" (see: 5RT-2161-2162) ALSO (see: 5RT-2463-2464). Therefore if counsel would have filed the motion to have such prejudicial evidence bifurcated petitioners trial would have had a different outcome due to the fact that the prosecutors theory of the Attempted Murder & Robber motive was for the benefit of petitioners gang, also trial judge would have granted petitioners motion since it was the trial judges idea in the first place to have the gang evidence bifurcated.

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Ground 1: I.A.C. continued

These errors if not alone had such a prejudicial effect cumulatively as to render petitioners trial fundamentally unfair and a violation of his due process rights. Also petitioner adds that to show the gang evidence prejudiced his trial attached to this petition is (Exhibit- J) which is one of the jury read backs asking could someone of MR. Davis level revoke MR. Masons "pass" on his own or would he need approval of higher leaders, so therefore the jury based its motive & guilty verdict of attempted murder on petitioners false gang evidence.

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Ground 4: Cumulative Effect; Petitioner contends that in violation of his due process and equal protection clauses of the 5TH & 14TH Amendments of the U.S. Constitution he received a fundamentally unfair trial caused by the many instances of prosecutorial misconduct, an trial counsels deficient performance also the multiple errors of inadmissible evidence used in petitioners trial.

Supporting Facts: (A.) Trial Counsel failed to investigate and present key evidence to support petitioner's defense. Trial Counsel knowingly failed to investigate victims car which is the crime scene in this instant case for Gun Shot residue (See: 3RT-621), Counsel told the jury there was never any examination done for gun shot residue in the victims car. (B.) Trial Counsel failed to file a proper motion to have gang evidence bifurcated especially when the trial judge himself implied on two separate occasions during trial that its best to have the gang evidence bifurcated because he wants to ensure petitioner has a fair trial but that request was not made (See: 5RT-2161-2162). Also (5RT:2463-2464). (C.) Gang expert exceeded the permissible scope of expert testimony depriving petitioner of his 5TH, 6TH & 14TH amendment rights. During trial gang expert Flores testified that to his experience a pass can be revoked at any time for any reason but thats something that happened with this person his pass was revoked (See 4RT: 1841), trial Counsel objected to that being a conclusion and not a part of hypothetical, after trial court sustained officer Flores continued

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Ground 4: Cumulative Error. continued

to elaborate on a pass being revoked without any evidentiary support (See: 4RT-1841-1842). This testimony clearly offered expert testimony on the ultimate issue of petitioner's intent at the time of the alleged attempted murder and robbery. Petitioner contends this error had substantial and injurious effect and influence in determining jury's verdict, especially when the jury specifically questioned "Can petitioner or someone at his level revoke Mr. Mason's 'pass' on his own or would he need approval of higher leaders" (See: Exhibit J) also Petitioner argues that trial court erred in allowing the admission of a gang video at a hood party that was used as improper impeachment evidence after trial counsel objected to the irrelevant evidence being more prejudicial than probative, the court then agreed the video was "offensive" but that since it was legitimate evidence it was admitted over defense objection (See: 5RT-2462-2465). Petitioner argues this error had a substantial and injurious effect in determining the jury's verdict based on during closing arguments the prosecutor capitalized on how petitioner lied during his testimony about certain instances that took place in that video (See: 6RT-2744). (D) Trial counsel knowingly failed to object to a gun that was presented in petitioner's case when counsel knew the gun was false evidence, counsel specifically states "The people's position also is then why do they have this .357 as one of the exhibits, are you going to withdraw that as an exhibit" (See: 5RT-2428). Also trial counsel failed to object to prosecutorial misconduct when the D.A. made petitioner get off the stand and hold a gun counsel knew was false evidence

D.A.F. H.G

Ground 4: Cumulative Effect continued

in front of the jury (See: 5RT. 2195-2198). (E) Petitioner contends the prosecutor committed misconduct when she knowingly used false testimony to obtain a conviction. The prosecutor knew her key witnesses testimony was false and inconsistent with the physical evidence; during trial the victim admitted how the DA discussed with him the fact that the physical evidence came back inconsistent with his testimony (See: 3RT. 913-914). Petitioner argues the prosecutor committed misconduct when she made petitioner get off the stand and hold a gun in front of the jury (See: 5RT. 2195-2198), the prosecutor knew this gun had nothing to do with petitioners case she even stated to the jury she didn't know if that was the weapon (See: 6RT. 2787) therefore the jury still used that gun as evidence when they requested to have it during deliberation (See: Exhibit. I) attached to this petition. Petitioner claims the prosecutor violated his due process when she questioned his post miranda silence and how Petitioner had a whole year to articulate this story for the jury (See: 5RT. 2158), the trial judge then stepped in and admonished the jury that petitioner was not ever required to say anything about his case (See: 5RT. 2158-2159), then during closing arguments the prosecutor again told the jury how petitioner had a whole year to make up a story to prove this was an accident (See: 6RT. 2739), prosecutor again told jury how petitioner sat there and heard all people's witnesses and had over a year to make up this story and how I could make it fit for when I would

Ground 4: Cumulative Effect continued
testify (see: 6RT. 2750-2751, also 2740).

Supporting Cases:

Alcala V. Woodford, 334 F.3d 862 (C.A. 9. 2003)
U.S. V. Frederick, 78 F.3d 1370 (9TH 1996)
killian V. Poole 282 F.3d 1204 (9TH CIR 2002)
Brecht V. Abrahamson 113 S.Ct. 1710 (1993)

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Petitioners Affidavit in Support of habeas Corpus

Petitioner contends that Los Angeles County Superior Courts findings labeled (Exhibit. A) are incorrect of ruling that petitioner failed to address other evidence which indicated an intentional act and not an accident. Petitioner argues that the record clearly supports his contention of this case not being intentional and the exact opposite of the victims testimony. In this petition the petitioner submits (Exhibits. B-G) that supports his testimony of firearm accidentally discharging in his sweatshirt. Had trial Counsel conducted a Scientific investigation for "gun shot residue" inside victims car which is the crime scene in this instant case, it would have proved and shown that a firearm was never intentionally pulled out aimed and pointed head level at victim inside of his car and shot just as he testified at trial (See: 3RT-908-914) Also (See: 3RT-938-941) So therefore the only evidence of intent in this case is the victims testimony of a gun being intentionally pulled out pointed head level and purposely firing. Now had Counsel provided the Scientific evidence it would have not only shown that the victims testimony was false & impossible but also that petitioner never had any intent to harm or attempt to murder the victim due to the fact that petitioner never expressed or implied any malice. Trial Counsel failed to present gun shot residue evidence in petitioners defense which ultimately failed to show that this instant case was not intentional and was a mere accident. Also the Los Angeles County Superior Court failed to address petitioners allegation of prosecutorial misconduct and attached to this affidavit is (Exhibit H) which supports and

Shows the false evidence the prosecutor used in petitioner's trial.

I, the undersigned say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

April 16th, 2013

Josam Du-