

19-8282

ORIGINAL

No. _____

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

ROBBIE GENE WATSON

— PETITIONER

(Your Name)

vs.

STATE OF CALIFORNIA

— RESPONDENT(S)

ON PETITION FOR A WRIT OF HABEAS CORPUS

UNITED STATES EASTERN DISTRICT COURT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF HABEAS CORPUS

Robbie Gene Watson

(Your Name)

5150 O'Byrnes Ferry Road

(Address)

Jamestown, California 95327

(City, State Zip Code)

n/a

(Phone Number)

QUESTION(S) PRESENTED

Did reasonable jurist debate whether California Penal Code section 206 is Constitutionally void for purported vagueness because it is capable of arbitrary and discriminatory enforcement ?

Did reasonable jurist debate whether the California court of Appeal reasonably reject Petitioner's sufficiency of evidence claim ?

Does the declaration and witness statement secured after trial constitute new evidence within the meaning of Penal Code section 1473(b)(3) ?

Did the Superior Court below error in concluding that Petitioner was not entitled to habeas corpus relief pursuant to Penal Code section 1473(b)(3) ?

LIST OF PARTIES

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

[X] 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:

State of California Supreme Court
501 I Street, Sacramento, California

Attorney General for the State of California
1300 I Street, Sacramento, California 94244

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner respectfully prays that a habeas corpus issue to review the case.

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☐ is unpublished.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 A 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☒ is unpublished.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 B 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 appears at Appendix _____ 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), and United States Supreme Court Rule 44. 9

☐ For cases from state courts:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ 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).

REASON THIS PETITION WILL AID
THIS COURT'S APPEAL JURISDICTION

The fact that Petitioner's claims involve conflicts between both state and federal laws that are cited in this instant petition, Petitioner is informed that this court has settled a similar matter that the state court's opinions now conflict with this court's opinion cited as Lockyer v. Andrade, 538 U.S. 63 (2003) that govern legal principle from this court.

Petitioner has a interest in this matter due to violations of United States Constitutional Amendments 1,5,6,8 and 14, that provides fundamental benefits of the laws that create fundamental fairness, and due process of procedures.to that operates to aid this court's jurisdiction. [See United States Supreme Court Rule 20.1.]

Petitioner can and will demonstrate how the conflicting opinions require resolution on the merits in favor of Petitioner, and will resolve the conflict between the state and federal law opinions.

The rule of starię decisis mandate that the courts inferior to this court must give effect to this court's rulings inspite of opinions that the inferior court may not agree with.

EXTRAORDINARY CIRCUMSTANCE

The fact that the Supremacy Clause also dictate that the courts below the United States Supreme Court must give effect to the superior authority of this court in uno and in omnibus. In this instant case both state and Federal courts below refuse to obey the Supremacy Clause.[Appendix A-B.]

It is for the aforementioned reasons this court should find that Petitioner has stated a prima facie case for this court to exercise its jurisdiction to resolve the Petitioner's claims presented in this instant petition pursuant to Rules of this court, Rule 44.

PETITIONER'S RELIEF SOUGHT BELOW
WERE DEEMED PROCEDUALLY BARRED OR
WERE DENIED IN CONFLICT WITH THIS
COURT'S OPINIONS RELATED TO GROUNDS

Appendix A-B demonstrate the courts below denial of relief up to this court have been futile, satifying United States Supreme Court Rule 20.4(a) exhaustion of remedies.

STATEMENT OF THE CASE

10. Petitioner was charged with eleven (11) felony counts arising out of events that occurred on January 10, 2014. The information charged Petitioner as follows:

- a. Torture of Sylvia Watson (Count 1);
- b. Assault with a deadly weapon, to wit, an aluminum rail (Count 2);
- c. Assault with a deadly weapon, to wit, a post hole digger (Count 3);
- d. Corporal injury on a spouse (Count 4);
- e. Attempting to dissuade a witness (Count 5);
- f. Child neglect/abuse/endangerment (Count 6);
- g. Criminal threats (Count 7);
- h. Assault with force likely to produce great bodily injury (Count 8);
- i. False imprisonment (Count 9);
- j. Attempting to dissuade a witness who is a victim of a crime (Count 10); and
- k. Attempted murder (Count 11).¹

11. The information made special allegations as to each count. As to counts 1-9 and 11, it was alleged that Petitioner was released from custody on bail or on his own recognizance. As to counts 1, 7, and 8, it was alleged that Petitioner personally used a deadly weapon, specifically, an aluminum rail. As to count 11, it was alleged that

¹ Ex. A.

Petitioner personally used a deadly weapon, specifically, a post-hole digger. As to counts 2, 4, and 8, the information alleged that Petitioner personally inflicted great bodily injury under circumstances involving domestic violence. Finally, the information alleged that Petitioner had suffered a prior conviction for which he served a prior prison term.²

12. Jury trial commenced on October 22, 2014. Prior to trial, Petitioner admitted the prior conviction and prison term allegations.

13. On October 30, 2014, Petitioner was convicted of counts 1-2, 4-9, 10, and 12. The jury also found true the special allegations attached to counts 2, 4, and 8, and that Petitioner personally inflicted great bodily injury. As to counts 3 and 11, the jury acquitted Petitioner.³

14. Petitioner was subsequently sentenced to a total term of 19 years to life. Petitioner filed a timely notice of appeal.

15. On appeal, Petitioner argued that: (a) the definition of torture set forth in Penal Code § 206 is unconstitutionally vague; (b) there was insufficient evidence to support convictions for torture and attempting to dissuade Sylvia from testifying; and (c) the trial court erroneously

² Ex. A.

³ Ex. K.

imposed a sentence of 7 years to life instead of a sentence of life with the possibility.

16. On May 16, 2016, this Court affirmed Petitioner's convictions in an unpublished opinion. However, this Court ordered the trial court to modify the abstract of judgment to reflect a sentence of life with the possibility of parole.⁴

17. Petitioner subsequently filed a petition for review in the California Supreme Court, which was denied on August 10, 2016.⁵

STATEMENT OF FACTS

A. Prosecution Evidence⁶

1. Trial Testimony of Sylvia Watson

18. Sylvia Watson is Petitioner's ex-wife and the mother of two of his children. She is also the victim in this case. She testified at trial regarding the events that transpired at the home she shared with Petitioner on January 10, 2014. The full transcript of her trial testimony is attached hereto as exhibit B and summarized below.

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⁴ Ex. L.

⁵ Ex. M.

⁶ The following is a summary of the relevant evidence presented by the prosecution at trial. Unless otherwise admitted, Petitioner denies the accuracy of the evidence introduced at trial, including the veracity of witness statements.

19. Sylvia testified that, on January 10, 2014, she heard Petitioner on the phone with his mother. He appeared upset that he faced a possible sentencing proceeding on a prior domestic violence criminal case involving Sylvia. He had met with his attorney that day and had been drinking.

20. In the prio domestic violence case, Petitioner had pled guilty and was ordered into a residential treatment program.

21. Sylvia further testified that, after Petitioner finished speaking with his mother on the phone, Petitioner threw the phone at her, and it hit her in the chest. He then grabbed her by the throat, at which point she hit Petitioner with an ashtray. She then ran into the kitchen.

Petitioner then followed her and punched her several times in the face. She fell and he yelled at her that he would hit her again if she got up.

22. Sylvia further testified that she tried to run, but Petitioner shoved her into the refrigerator and she fell back on the floor. She attempted to rise, but he grabbed her head and slammed it into the floor. Sylvia got up again, grabbed a spatula and hit Petitioner in the head as he held her hair. The blow caused a laceration to Petitioner's forehead and caused him to bleed. At the same time, Petitioner called his mother and spoke to her.

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23. Sylvia further testified that Petitioner pinned her in the doorway between the kitchen and dining room and screamed at her that he was going to kill her and their children, who remained in their bedroom screaming. Sylvia ran into the bedroom to comfort the children, but Petitioner entered and hit her as she held her two-year old daughter in her arms. Sylvia tried to call 911, but Petitioner hung up the phone. The dispatcher called back and Sylvia reported the crime. Petitioner continued hitting her in the face.

24. Petitioner's friend Lawrence arrived and Petitioner told him that Sylvia had called the police. Lawrence took the children into the bedroom, but Petitioner continued to hit Sylvia in the face. He told Sylvia, "you're dead."

25. Sylvia further testified that Petitioner left the house and stood on the front porch. Sylvia locked the door, but he kicked it in. As the door opened, Petitioner held the post-hole digger in his hands but she knocked it to the ground, at which point, he grabbed her and threw her to the ground. He then began beating her with an aluminum rail, holding it like a baseball bat, all the while telling her that he was going to kill her.

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26. Sylvia received sixteen (16) stitches for her injuries and suffered dizziness. She also suffered swelling of her cheeks, a gash on the back of her head, and bruising on various body parts.

27. Sylvia acknowledged that, in the past, when she had called the police to report Petitioner's domestic violence, she later recanted when he convinced her to give him another chance. Two weeks after the January 10, 2014 incident, Petitioner sent her a lengthy letter from jail asking her to forgive him and start over. In the letter, he repeatedly begged her to give him one last chance.

28. Although Sylvia claim to "hate" Petitioner, she further acknowledged that, between the time of the incident and the time of trial, she had sent a number of texts to Petitioner's mother. In those texts, she repeatedly professed her love for Petitioner and offered to send him money in jail, claiming that she would not show up for trial and "get out of this."

2. Trial Testimony of Yuba County Deputy Sheriff Brian Thornton

29. Yuba County Deputy Sheriff Brian Thornton was one of the officers who arrived at the scene of the January 10, 2014 incident. He testified at trial. The transcript of his testimony is attached hereto as exhibit C and summarized below.

30. Thornton testified that, when he arrived at the residence of Petitioner and Sylvia, he heard a scream and saw Sylvia run toward them from the front door. Thornton called out to her and illuminated her with his flashlight as she approached and collapsed onto the ground. Thornton could see that her face was severely swollen and covered with fresh blood. She exclaimed, "Robbie Watson beat the fuck out of me."

31. Thornton testified that he saw Lawrence Jackson exit the house. Yuba County Sheriff Sergeant Garza used a patrol car public address speaker and tried to order Petitioner to exit the house. After deputies determined that the children had been removed from the house, Thornton announced over the public address speaker that they were going to search the house with police dogs. Petitioner was found hiding in a carport, where a police dog was used to help take him into custody.

3. Trial Testimony of Yuba County Deputy Sheriff Nathan Lybarger

32. Yuba County Deputy Sheriff Nathan Lybarger was one of the officers who arrived at the scene of the January 10, 2014 incident. He testified at trial. The transcript of his testimony is attached hereto as exhibit E and summarized below.

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33. Deputy Lybarger testified that he interviewed Petitioner on the afternoon following his arrest. In that interview, Petitioner admitted that he had a prior offense of domestic violence against his first wife and two prior arrests for domestic violence against Sylvia.

34. Lybarger identified Petitioner's voice in a recording of a jail visit he received after being arrested. In that recording, Petitioner claimed Sylvia had attacked him. However, Lybarger testified that Petitioner claimed he had difficulty remembering what had happened because he had been intoxicated.

4. Trial Testimony of Criminalist Rebecca Gaxiola

35. Rebecca Gaxiola is a criminalist who testified at trial. The transcript of her testimony is attached hereto as exhibit D and summarized below.

36. Gaxiola testified that she analyzed buccal swabs collected from Petitioner and Sylvia as well as a sample of blood that was collected from an aluminum pole seized from Petitioner's residence. Gaxiola opined that the blood on the pole matched Sylvia but not Petitioner.

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B. Defense Evidence

1. Trial Testimony of Yuba County Deputy Sheriff Henry Abe

37. Yuba County Deputy Sheriff Henry Abe interviewed Sylvia at the hospital shortly after the January 10, 2014 incident. He testified at trial. The transcript of his testimony is attached hereto as exhibit F and summarized below.

38. Abe testified that Sylvia had said that she fought her way off the couch after Petitioner had pinned her down, and that Sylvia had not mentioned striking Petitioner with an ashtray. Sylvia further told Abe that Petitioner had thrown the phone at her, but that he had not hung up first. Sylvia had mentioned attempting to lock the front door, but Petitioner kicked it in and began hitting her again. Sylvia did not tell Abe about a post-hole digger, but she did mention the metal bar. Sylvia had said Lawrence Jackson arrived before Petitioner began to strike her with the metal bar. At the hospital, Sylvia had stated that while he was striking her, Petitioner said, "bitch, you're dead."

39. Abe interviewed Sylvia a second time the day after the attack, on the afternoon of January 11, 2014, at the Yuba County Sheriff's Department. In this interview, Sylvia mentioned the post-hole digger and that she was able to knock it out of Petitioner's hand. She also said that Jackson

arrived before Petitioner came back in with the post-hole digger. Sylvia also mentioned the ashtray. Abe recalled that Sylvia was much more coherent in this second interview. Sylvia was also able to recall grabbing the second phone when the dispatcher called back, and she was able to describe the metal bar Petitioner had used to hit her. In the January 11th interview, Sylvia stated Petitioner had said, "bitch, stay down. You better start listening."

2. Trial Testimony of District Attorney

Investigator Stephanie Johnson

40. Yuba County District Attorney Investigator Stephanie Johnson testified at trial regarding a meeting she had with Sylvia approximately three (3) days after the attack. The transcript of her testimony is attached hereto as exhibit G and summarized below.

41. Johnson testified that, in the interview, Sylvia described a prior domestic violence incident and remarked that Petitioner had come home "blacked out drunk." Sylvia described to Johnson hitting Petitioner several times with the ashtray, and moving from there to the kitchen. Sylvia did mention the post-hole digger and told Johnson that she knocked it out of Petitioner's hand at some point. Sylvia stated that Lawrence Jackson arrived before the incident with the post-hole digger. Sylvia also told Johnson that, at

some point, Petitioner had sought a second metal bar or pipe to use as a weapon.

42. Johnson identified at trial photos she had taken which depict a plastic tool shed in the yard. Johnson had taken photos 19 days after the January 10, 2014 incident, and confirmed that, at that time, the tool shed door had been closed and the post-hole digger was inside the shed.

3. Trial Testimony of Kitty Strain

43. Petitioner's mother, Kitty Strain, testified at trial on Petitioner's behalf. The transcript of her testimony is attached hereto as exhibit H and summarized below.

44. Strain testified that she received possibly four (4) or five (5) phone calls from Petitioner on January 10, 2014. During the first call, she could hear Sylvia yelling in the background, telling Petitioner that she did not want to talk to Strain and that Strain could "go fuck herself." Strain called Lawrence Jackson and asked him to go to Petitioner's house.

45. Strain had been in contact with Sylvia after January 10, 2014. Most of this communication was through text messaging, in which Sylvia had said that she did not want to come back to California⁷ to testify against Petitioner. However, Strain admitted that, in one of the text messages, Sylvia had told Strain that Petitioner tried to

⁷ Prior to trial, Sylvia had moved to Ohio.

kill her. Strain denied threatening Sylvia or telling her that she should not testify. Strain recognized Petitioner's voice in a recording of a jail visit in which Petitioner admitted telling Sylvia, "bitch, don't fucking get up or I'm going to fuck you up."

4. Petitioner's Trial Testimony

46. Petitioner testified on his own behalf at trial. The transcript of his testimony is attached hereto as exhibit I and summarized below.

47. Petitioner admitted that he was convicted of three prior felony counts of domestic violence arising from incidents in 2008, 2011, and 2013. He further testified that he had consumed "well over 12 beers" with Lawrence Jackson on the afternoon of the January 10, 2014 incident. He returned home to Sylvia around 7:30 p.m. They ate dinner and watched a movie. He called his mother and started arguing with her. Sylvia inquired about the reason for the argument, and Petitioner told her that he was angry because Sylvia did not tell the truth about what really happened in the last court case, and he "was facing alot of time."

48. During the argument, Petitioner threatened to leave her, "just like her ex-husband did." He angrily threw the phone at her, and told her to call and speak to his mother about the situation. She then began striking him with the spatula, which caused two different cuts to his head.

49. After Sylvia struck Petitioner with the spatula, he struck her back, causing her to fall to the floor. He told her not to get up because he feared she would strike him again. He called Lawrence Jackson and told "things were physical and I needed him to come get me." Sylvia then struck him with a heavy object behind his ear, causing his vision to blur. Because of the blow, he had trouble remembering events occurring thereafter.

50. Petitioner did not recall striking Sylvia with a metal rod or threatening her with a post-hole digger. He did not remember Mr. Jackson coming back to his home that evening. He denied that his children had emerged from their bedroom during the incident or that Sylvia ever held the children during the argument.

51. Petitioner denied later threatening Sylvia harm if she testified to the January 10, 2014 incident. He denied ordering Sylvia to change her story. He testified that, in previous arguments, Sylvia—a short tempered person—often resorted to violence before he did. He admitted he suffered from an alcohol problem, but denied ever intending to kill Sylvia. He testified that he loved her.

52. On cross-examination, Petitioner testified that he did not relate all the particulars of the incident to Deputy Sheriff Lybarger during the jail interview the day after the incident. He

testified that he was in "alot of pain" and did not want Sylvia to get in trouble for her aggressive conduct. He denied hitting Sylvia with the metal rail and testified that her "blood spatters" accounted for the blood on that object. He admitted, however, that the photographs of Sylvia did show that he committed domestic violence upon her.

C. Jury Deliberations And Verdict

53. The jury began deliberating on October 28, 2014 and reached verdicts on October 30, 2014.⁸ During deliberations, the jury posed several questions that are relevant to this petition.

54. The jury asked for a readback of Sylvia's testimony "from the beginning to the discussion of the photographic evidence."⁹ The jury also asked the following question:

If the jury is unable to come to a unanimous verdict, are we required to continue to deliberate or is our verdict— not guilty?

Must a not guilty verdict be unanimous?¹⁰

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⁸ Exs. J and K.

⁹ Ex. J, p. 265.

¹⁰ Ex. J, p. 304.

D. Summary Of New Evidence Obtained After Trial

55. On October 26, 2015, Sylvia Watson prepared a notarized affidavit, under penalty of perjury, stating that: (a) she was under the influence of methamphetamine during her trial testimony; (b) she did not want to testify at trial; and (c) she only testified because government agencies had threatened to remove her children from her custody if she did not testify in a specific manner; and (d) CPS made her sign an agreement to testify against Petitioner in a specific manner in order to retain custody of her children.¹¹

56. On October 10, 2017, Yuba County Superior Court Judge Debra L. Givens allowed the release of CPS documents detailing statements made by Petitioner's son Zachary Mash to CPS about past incidents between Petitioner and Sylvia.¹²

57. On September 18, 2013, Zachary stated that, in a past incident of domestic violence between Sylvia and Petitioner, Sylvia physically assaulted Petitioner and he pinned her down to prevent her from further assaulting him.¹³

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¹¹ Ex. N.

¹² Ex. O.

¹³ Ex. O, p. 3.

58. On November 10, 2017, Petitioner's mother Kitty Strain prepared a declaration setting forth facts that occurred after trial.¹⁴

59. After trial, Strain discovered footage of Sylvia dancing at a party approximately one (1) week after testifying at a pretrial hearing that she was suffering from severe dizziness because of Petitioner's January 10, 2014 assault.¹⁵

60. Sylvia also had a very close relationship with Monica Diamond, Petitioner's first wife. Sylvia explained after trial how Monica taught her that being the victim of domestic violence prevents CPS from taking custody of the children.¹⁶

61. Sean Ajuria, Jr. never testified at trial. On January 1, 2018, he prepared a declaration attesting to Sylvia's assaultive behavior towards Petitioner before the instant offense. Towards the end of 2013, Ajuria personally observed Petitioner with a bloodied face after Sylvia had punched him in the nose and mouth during an argument over her infidelity.¹⁷

62. On July 29, 2016, a CPS official prepared a written memorandum stating that Sylvia Watson's children were taken from her custody because of her history of current and past addiction to

¹⁴ Ex. P.

¹⁵ Ex. P, ¶ 7.

¹⁶ Ex. P, ¶ 10.

¹⁷ Ex. Q, ¶¶ 4-6.

methamphetamine.¹⁸

E. The Effects Of Methamphetamine Abuse

63. According to government experts, methamphetamine has severe adverse effects on a person's brain chemistry, especially when chronically abused.¹⁹ Some long-term effects of methamphetamine abuse include psychosis, memory loss, aggressive or violent behavior, and increased distractibility.²⁰

F. Habeas Corpus Proceedings Below

64. On April 25, 2018, Petitioner filed a petition for writ of habeas corpus in the Yuba County Superior Court arguing that the evidence listed herein meets the standard for new evidence set forth in Penal Code § 1473(b)(3) so as to warrant habeas relief.²¹

65. On May 9, 2018, Yuba County Superior Court Judge Debra L. Givens issued an order for an informal response to the petition.²²

66. On May 25, 2018, the Yuba County District Attorney's Office filed an informal response to the petition.²³

¹⁸ Ex. T.

¹⁹ Exs. R and S.

²⁰ Ex. R, p. 4; see also Ex. S, pp. 6-7.

²¹ Ex. U.

²² Ex. V.

²³ See Ex. W. It should be noted that Petitioner never received a copy of the informal response to

67. On July 31, 2018, Judge Givens issued an order summarily denying the petition.²⁴ As for Sylvia Watson's declaration, the court stated:

The Court finds Ms. Watson's statement that she was under the influence to be highly questionable given that there were no obvious signs during her trial testimony, and her trial testimony was consistent with that given at the preliminary hearing. At no time did anyone, including the judge, have reason to have the bailiff conduct an evaluation to determine if she was under the influence. Even if she had methamphetamine in her system, it does not reduce the culpability of defendant. A review of the trial transcript shows that Ms. Watson's testimony was corroborated by other witnesses, including Officer Thornton (Ex. C), and is consistent with her injuries (see Ex. C). The Court therefore finds that this "new" evidence is not credible and is not likely to change the outcome at trial.²⁵

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the petition. Therefore, he was unable to file a reply to the informal response.

²⁴ Ex. X.

²⁵ Id, pp. 2:22-3:3.

68. As for the declaration of Petitioner's mother Kitty Strain, the court found that "[t]here is nothing new in this declaration, the alleged dancing occurred February 7, 2014, prior to the trial. Thus, this is evidence that was known at the time of trial and could have been presented; it does not satisfy the standards set forth in Penal Code section 1473(b)(3)(A)."²⁶

69. The court found that the CPS records of statements made by Petitioner's son Zachary Mash were not new because they were "prepared well before trial."²⁷ The court also found the articles addressing methamphetamine use to be "largely irrelevant."²⁸ Petitioner filed a subsequent petition in the Court of Appeal that was summarily denied.²⁹

REASON FOR GRANTING THE WRIT

70. Petitioner realleges and incorporates by reference paragraphs 1 through 69 of this petition.

71. Effective January 1, 2017, a writ of habeas corpus can be prosecuted when "[n]ew evidence exists that is credible, material, presented without substantial delay, and of such

²⁶ Ex. X, p. 3:6-9.

²⁷ Id., p. 3:12-15.

²⁸ Id., p. 3:16.

²⁹ Exs. Y and Z.

decisive force and value that it would have more likely than not changed the outcome at trial."³⁰

72. The term "new evidence" is defined as "evidence that has been discovered after trial, that could not have been discovered prior to trial by the exercise of due diligence, and is admissible and not merely cumulative, corroborative, collateral, or impeaching."³¹

73. In this case, Petitioner was convicted of torture based primarily on Sylvia Watson's testimony. The new evidence in this case casts serious doubt on the credibility of that testimony.

74. First, Sylvia herself now admits that: (a) she was under the influence of methamphetamine during her trial testimony; (b) she did not want to testify at trial; and (c) her testimony was motivated by threats from Yuba County Child Protective Services (CPS) to remove her children from her custody if she did not testify in the manner urged by the prosecution; namely, that Petitioner beat her in a manner consistent with the elements of torture.

75. Petitioner also obtained declarations from witnesses that were unavailable at trial, which attest to Sylvia's propensity from assaulting Petitioner and playing the role of hapless victim

³⁰ Penal Code § 1473(b)(3)(A).

³¹ Penal Code § 1473(b)(3)(B).

children stated that one of the alleged prior incidents between Sylvia and Petitioner did not occur in the manner she claimed.

The above evidence meets that the standard for new evidence set forth in Penal Code § 1473(b)(3). Therefore, this Court should issue an order to show cause, appoint counsel, and ultimately grant the petition for the reasons stated herein.

STANDARD FOR HABEAS CORPUS RELIEF

BASED ON NEW EVIDENCE

Effective January 1, 2017, a writ of habeas corpus can be prosecuted when [n]ew evidence exists that is credible, material, presented without substantial delay, and of such decisive force and value that it would have more likely than not changed the outcome at trial."³² The term "new evidence" is defined as "evidence that has been discovered after trial, that could not have been discovered prior to trial by the exercise of due diligence, and is admissible and not merely cumulative, corroborative, collateral, or impeaching."³³

The new habeas corpus standard for new evidence appears to be similar to the "new evidence" standard for a motion for new trial pursuant to Penal Code § 1181. Under this standard, a defendant "must show inter alia that

³² Penal Code § 1473(b)(3)(A).

³³ Penal Code § 1473(b)(3)(B).

the evidence is in fact newly discovered; that it is not merely cumulative to other evidence bearing on the factual issue; that it must be such as to render a different result probable on retrial; and that the moving party could not, with reasonable diligence, have discovered and produced the evidence at trial."³⁴

ARGUMENT

I. THE DECLARATIONS AND WITNESS STATEMENTS OBTAINED AFTER TRIAL CONSTITUTE "NEW EVIDENCE" WITHIN THE MEANING OF PENAL CODE § 1473(b) (3)

A. Summary of New Evidence

The new evidence in this consists of: (a) an affidavit from Sylvia Watson stating that she was under the influence of methamphetamine during her trial testimony, and only testified under threat from CPS; (b) documents from CPS detailing statements made by Petitioner's son to CPS agents that corroborates Petitioner's trial testimony; (c) documents from CPS detailing Sylvia's long-term addiction to methamphetamine; and (d) declaration detailing Sylvia's assaultive behavior towards Petitioner and possible conspiracy to lie under oath.³⁵ For the reasons that follow, this constitutes new evidence under Penal Code § 1473(b) (3).

³⁴ *People v. McDaniel*, 16 Cal.3d 156, 178 (1976).

³⁵ Exs. N-Q and T.

B. The Declarations and Documents Obtained
After Trial Could Not Have Been Discovered
Prior To Trial Through The Exercise Of Due
Diligence

The former habeas corpus new evidence standard required a showing that Petitioner acted with "reasonable diligence" when presenting his or her claim.³⁶ It appears that the terms "reasonable diligence" and "due diligence" are essentially interchangeable.³⁷ What constitutes due diligence to secure evidence depends upon the facts of the individual case. This term is incapable of mechanical definition. It has been said that the word "diligence" connotes persevering application, untiring efforts in good earnest, efforts of a substantial character.³⁸

As previously explained herein, Sylvia Watson did not provide a notarized affidavit until nearly a year after trial. Furthermore, Penal Code § 1473(b)(3) was not enacted until 2017. Upon receiving Sylvia's affidavit and learning of the enactment of the new habeas corpus standard for

³⁶ See *In re Hardy*, 41 Cal.4th 977, 1016 (2007) (petitioner's evidence was not "newly discovered" because it was reasonably available to him before trial had he conducted a "reasonably thorough pretrial investigation").

³⁷ See *People v. Cromer*, 24 Cal.4th 889, 892 (2001); see also *People v. Herrera*, 49 Cal.4th 613, 622 (2010).

³⁸ *People v. Linder*, 5 Cal.3d 342, 346-347 (1971).

new evidence, Petitioner began a quest to obtain additional declarations and documents attached hereto.

C. The Declarations and Documents Obtained After Trial Are Admissible

"Except as otherwise provided by statute, all relevant evidence is admissible."³⁹ "'Relevant evidence' means evidence...having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action."⁴⁰ A habeas corpus proceeding is subject to the rules of evidence set forth in the Evidence Code.⁴¹ However, a writ of habeas corpus serves a "traditional function as a flexible procedural remedy of last resort to prevent severe and manifest injustice."⁴²

Here, it cannot be reasonably disputed that the evidence presented herein is admissible. All affidavits are made under penalty of perjury by people (including the victim in this case) who are willing to testify to the facts stated in their declarations.⁴³

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³⁹ Evid. Code § 351.

⁴⁰ Evid. Code § 210.

⁴¹ *In re Fields*, 51 Cal.3d 1063, 1070 (1990).

⁴² *In re Clark*, 5 Cal.4th 750, 803 (1993) (conc. & dis. opn. of Kennard, J.).

⁴³ See Exs. N, P, and Q.

D. The Declarations and Documents Obtained
After Trial Are Not Merely Cumulative,
Collateral, Or Impeaching

The "merely cumulative, corroborative, collateral, or impeaching" element of Penal Code § 1473(b)(3) appears to be similar to the standard for excluding evidence under Evid. Code § 352. "Cross-examination is subject to restriction under Evidence Code section 352 if it constitutes impeachment on collateral issues."⁴⁴ "[T]rial courts are not required to exclude all cumulative evidence and if evidence has substantial relevance to prove material facts which are hotly contested and central to the case, it is not merely cumulative."⁴⁵

A trial court "has discretion to exclude impeachment evidence..if it is collateral, cumulative, confusing, or misleading."⁴⁶ "To impeach means to discredit."⁴⁷

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⁴⁴ *People v. Greenberger*, 58 Cal.App.4th 298, 352 (1997).

⁴⁵ *People v. Lang*, 49 Cal.3d 991, 1016 (1989).

⁴⁶ *People v. Price*, 1 Cal.4th 324, 412 (1991).

⁴⁷ *People v. O'Brien*, 70 Cal.App. 130, 134 (1927); see also Garner, *Black's Law Dict.*, p. 870 col. 1 (10th ed. 2014) (the term "impeach" means "[t]o discredit the veracity of").

It is true the evidence presented herein is cumulative and impeaching in a sense that it tends to bolster Petitioner's version of events. However, the central issue in this case is whether Petitioner possessed the necessary mental state to sustain a torture conviction. On direct, this Court acknowledged that Sylvia's testimony was the sole evidence to establish this mental state.⁴⁸

"The power of impeachment ...is a valuable instrument in the process of truth ascertainment."⁴⁹ That being the case, the evidence presented herein is not merely cumulative or impeaching because it goes to the credibility of Sylvia's testimony, the central issue at trial.

E. The Declarations and Documents Obtained After Trial Are Credible

Generally, a "court or jury may consider in determining the credibility of a witness any matter that has any tendency in reason to prove or disprove the truthfulness of his testimony at the hearing."⁵⁰ In determining the credibility of witness testimony, this Court is guided by the same factors that a jury is instructed to consider. "In deciding whether testimony is true and accurate, use your common sense and

⁴⁸ Ex. L, pp. 5-6.

⁴⁹ *Brown v. Superior Court*, 218 Cal.App.2d 430, 443 (1963).

⁵⁰ Evid. Code § 780.

experience."⁵¹

The evidence presented herein is credible because: (a) one piece of evidence is from the victim and key prosecution witness; (b) the remaining declarations are from witnesses who state facts under penalty of perjury; and (c) the remaining evidence consists of documents prepared by government officials.

On habeas corpus, the court must conduct an evidentiary hearing in order to resolve any questions about the credibility of witness statements.⁵² Thus, this Court should conduct an evidentiary hearing if there are any issues regarding the credibility of evidence presented herein.

F. The Declarations and Documents Obtained After Trial Are Material And Have Been Presented Without Substantial Delay

The phrase "material evidence" is defined as "evidence having some logical connection with the facts of the case or the legal issues presented."⁵³ [A] matter is 'collateral' if it has no logical bearing on any material, disputed issue."⁵⁴

⁵¹ CALCRIM No. 226.

⁵² See *In re Thomas*, 37 Cal.4th 1249, 1255 (2006).

⁵³ Garner, *Black's Law Dict.*, p. 676 col. 2 (10th ed. 2014).

⁵⁴ *People v. Contreras*, 58 Cal.4th 123, 152 (2013).

As to timeliness, it has long been a requirement that all habeas petitions be timely filed without "substantial delay."⁵⁵ "Substantial delay is measured from the time the petitioner or his or her counsel knew, or reasonably should have known, of the information offered in support of the claim and the legal basis for the claim. A petitioner must allege, with specificity, facts showing when information offered in support of the claim was obtained, and that the information neither was known, nor reasonably should have been known, at any earlier time."⁵⁶

As previously explained, the evidence in this case is material because it goes to the credibility of the prosecution's key witness who provided the only evidence of the necessary elements of torture. As for timeliness, Petitioner previously explained that the evidence was obtained within a reasonable time period after Penal Code § 1473(b)(3) was enacted in 2017.

G. The Declarations and Documents Obtained After Trial Are Such Decisive Force And Value That It Would Have More Likely Than Not Changed The Outcome At Trial

The phrase "more likely than not" appears to have the same meaning as the phrase "preponderance of evidence", the burden of proof in civil

⁵⁵ *In re Robbins*, 18 Cal.4th 770, 779 (1998).

⁵⁶ *Robbins*, supra, at 780.

proceedings.⁵⁷ "Proof by a preponderance of the evidence is a different burden of proof from proof beyond a reasonable doubt. A fact is proved by a preponderance if you conclude that it is more likely than not that the fact is true."⁵⁸

Furthermore, the probability of a "changed outcome" includes not only the probability of an acquittal, but also that the evidence "more likely than not" would resulted in a deadlocked or hung jury.⁵⁹ In evaluating whether it is "more likely than not" that the evidence would have changed the outcome of trial, courts consider the overall closeness of the case.⁶⁰ A case is considered close, for example, where it turns primarily on the credibility of witnesses.⁶¹ An additional

⁵⁷ See *Beck Development Co. v. Southern Pacific Transportation Co.*, 44 Cal.App.4th 1160, 1205 (1996).

⁵⁸ CALCRIM No. 1191.

⁵⁹ See *People v. Mason*, 218 Cal.App.4th 818, 826 (2013) ("[t]he error is not harmless because, even if a properly instructed jury would have voted to acquit, the views of some jurors may have been swayed resulting in a hung jury. That is a result more favorable to [defendant]").

⁶⁰ See *People v. Newson*, 37 Cal.2d 34, 46 (1951) ("when a case against a defendant is a close one, an error which otherwise would not be prejudicial may justify a new trial").

⁶¹ See *People v. St. Andrew*, 101 Cal.App.4th 450, 465 (1980) ("this case is a close one, turning primarily upon the respective credibility of the two principal witnesses").

factor to consider is whether the evidence is sharply conflicting.⁶²

As previously stated, this Court held that Sylvia's testimony alone was insufficient evidence to support a torture conviction.⁶³ The jury began deliberating on October 28, 2014 and reached verdicts on October 30, 2014.⁶⁴ During deliberations, the jury posed several questions that are relevant to this petition.

The jury asked for a readback of Sylvia's testimony "from the beginning to the discussion of the photographic evidence."⁶⁵ The jury also asked the following question:

If the jury is unable to come to a unanimous verdict, are we required to continue to deliberate or is our verdict—not guilty?

Must a not guilty verdict be unanimous?⁶⁶

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⁶² *People v. Hadley*, 84 Cal.App.2d 687, 693 (1948) ("it is only 'in a close case where the evidence is sharply conflicting, substantial and serious errors vital to defendant that may have resulted in a miscarriage of justice must be regarded as prejudicial and grounds for reversal'").

⁶³ Ex. L, pp. 5-6.

⁶⁴ Exs. J and K.

⁶⁵ Ex. J, p. 265.

⁶⁶ Ex. J, p. 304.

Given the above, it is clear that the jury not only had questions about Sylvia's credibility, but Petitioner's guilt in general. However, with the evidence presented herein, it is "more likely than not" that Petitioner would have received a hung jury at worst.

II. THE SUPERIOR COURT ERRED IN ITS CONCLUSION THAT PETITIONER IS NOT ENTITLED TO HABEAS RELIEF UNDER PENAL CODE § 1473(b) (3)

On July 31, 2018, Judge Givens issued an order summarily denying the petition.⁶⁷ As for Sylvia Watson's declaration, the court stated:

The Court finds Ms. Watson's statement that she was under the influence to be highly questionable given that there were no obvious signs during her trial testimony, and her trial testimony was consistent with that given at the preliminary hearing. At no time did anyone, including the judge, have reason to have the bailiff conduct an evaluation to determine if she was under the influence. Even if she had methamphetamine in her system, it does not reduce the culpability of defendant. A review of the trial transcript shows that Ms. Watson's testimony was corroborated by other witnesses, including Officer Thornton (Ex. C), and is consistent with her injuries (see Ex. C). The Court

⁶⁷ Ex. X.

therefore finds that this "new" evidence is not credible and is not likely to change the outcome at trial.⁶⁸

As for the declaration of Petitioner's mother Kitty Strain, the court found that "[t]here is nothing new in this declaration, the alleged dancing occurred February 7, 2014, prior to the trial. Thus, this is evidence that was known at the time of trial and could have been presented; it does not satisfy the standards set forth in Penal Code section 1473(b)(3)(A)."⁶⁹

The court found that the CPS records of statements made by Petitioner's son Zachary Mash were not new because they were "prepared well before trial."⁷⁰ The court also found the articles addressing methamphetamine use to be "largely irrelevant."⁷¹ For the reasons that follow, Petitioner disagrees.

First, the court's finding that Sylvia did not appear intoxicated at trial is not reasonable. Just because a person does not appear intoxicated does not necessarily mean that person is not intoxicated. Furthermore, the court impermissibly made a credibility determination without holding

⁶⁸ Id, pp. 2:22-3:3.

⁶⁹ Ex. X, p. 3:6-9.

⁷⁰ Id., p. 3:12-15.

⁷¹ Id., p. 3:16.

an evidentiary hearing.⁷²

Second, the court's finding that the Strain declaration deals with facts that occurred prior to trial ignores those portions of the declaration that deals with facts occurring after trial.⁷³

Third, although statements by Zachary made before trial are present in the CPS documents, the court overlooked the fact that the very same judge who denied this petition actually released those documents on October 10, 2017, well after trial.⁷⁴

Finally, the court's conclusion that the reports on methamphetamine abuse are "largely irrelevant" is not accompanied by any reason for reaching such a conclusion. Indeed, these reports are relevant to show the effects of methamphetamine abuse on a person's memory and propensity for violence and aggression, which tends to support Petitioner's version that Sylvia attacked him first.

Given the above, the superior court's summary denial of the petition does not square with Cal. R. Ct. 4.551 and relevant Supreme Court precedent. Thus, this Court should give any deference to the decision.

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⁷² See *In re Thomas*, supra, 37 Cal.4th at 1255.

⁷³ See ex. P.

⁷⁴ Ex. O.

CONCLUSION

The new evidence presented herein meets the standard for habeas relief set forth in Penal Code § 1473(b)(3). Therefore, this Court should issue an order to show cause, appoint counsel, and ultimately grant the petition.

DATED:

B-24-20

Respectfully Submitted:

Robbie Watson
Robbie Gene Watson, Jr.
PETITIONER PROCEEDING IN
PROPRIA PERSONA