19-8727

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

FELTON HUMPHRIES JR — PETITIONER
(Your Name)

vs.

THE STATE OF CALIFORNIA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

IN THE NINTH CIRCUIT COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

FELTON HUMPHRIES JR. CDCR# BC0079
(Your Name)

P.O. BOX 5242
(Address)

CORCORAN CA 93212
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

PAGE(S)

QUESTION(S) CONTINUED PAGE(S)

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:

RESPONDENT:

XAVIER BECERRA
ATTORNEY GENERAL OF CALIFORNIA
LANCE E. WINTERS
SENIOR ASSISTANT ATTORNEY GENERAL
STEPHAINE C. BRENAN
SUPERVISING DEPUTY ATTORNEY GENERAL
JONATHAN M. KRAUSS
DEPUTY ATTORNEY GENERAL
300 SOUTH SPRING STREET SUITE 1702
LOS ANGELES, CA 90013

TABLE OF AUTHORITIES CITED

CASES — PAGE NUMBER

STATUTES AND RULES

OTHER

AUTHORITIES CONTINUED

PAGE(S)

TABLE OF CONTENTS

INDEX TO APPENDICES

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2020
NO. _____

FELTON LADELL HUMPHRIES JR.,
PETITONER

V.

THE STATE OF CALIFORNIA, et al..
RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

OPINIONS BELOW

THE OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT IS NOT REPORTED AND A COPY IS ATTACHED HERETO AS APPENDIX 'A' P.3 THE ORDER OF THE REPORT AND RECOMMENDATION OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA IS NOT REPORTED AND A COPY IS ATTACHED HERETO AS APPENDIX "C."

JURISDICTION

THE ORDER TO SHOW CAUSE WAS ISSUED BY THE UNITED STATES COURT OF APPEALS ON JULY 19, 2019 AND IS ATTACHED HERETO AS APPENDIX A P. 1-2. AN ORDER DENYING A PETITION FOR REHEARING EN BANC WAS ENTERED ON NOVEMBER 8, 2019. AND A COPY OF THAT ORDER IS ATTACHED HERETO AS APPENDIX

B. JURISDICTION IS CONFERRED BY 28 U.S.C. 1254(1)

//

//

//

//

//

//

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

THIS CASE INVOLVES AMENDMENTS V, VI, AND XIV OF THE UNITED STATES CONSTITUTION. WHICH GUARANTEES A FUNDAMENTAL RIGHT TO A PROPERLY INSTRUCTED JURY DETERMINING THAT ALL ELEMENTS OF THE CHARGED CRIMES HAVE BEEN PROVEN BEYOND A REASONABLE DOUBT.

STATEMENT OF THE CASE

PROSECUTION CASE

JARED WILLIAMS IDENTIFIED A PHOTOGRAPH OF HIS SISTER, ALICIA WILLIAMS, AND HER DAUGHTERS, THREE-YEAR OLD RHILEY W. AND ONE-YEAR-OLD RHEESE H. ALICIA AND HER DAUGHTERS RESIDED IN APARTMENT J19 LOCATED ON 5242 PENDLETON AVENUE, SOUTH GATE CALIFORNIA. BEFORE MOVING TO THE APARTMENT, ALICIA MARRIED PETITIONER AND RESIDED AT HER MOTHER'S HOUSE FOR SIX MONTHS WHERE JARED ALSO RESIDED.

ON APRIL 3, 2016, AT ABOUT 7:00 P.M. JARED WENT TO THE APARTMENT IN RESPONSE TO AN S.O.S. APPLICATION TEXT MESSAGE FROM ALICIA'S PHONE. AT 6:36 P.M. JARED RECIEVED THE FIRST S.OS. TEXT WITH A FUZZY PHOTO AND A MESSAGE "I NEED HELP" AND A GOOGLE MAP. THAT MESSAGE WAS AUTOMATICALLY GENERATED BY PRESSING THE APP BUTTON AND NOT TYPED OUT BY SENDER. EN ROUTE TO THE APARTMENT, JARED RECIEVES A SECOND PHOTO WITH A BLURRY FINGERPRINT AS IF SOMEONES FINGER WAS HELD OVER THE CAMERA. HE CALLED BUT SHE DID NOT ANSWER.

AT 6:43 P.M., JARED RECIEVED AN EMERGENCY AUDIO MESSAGE WHEREIN THEY WERE ARGUING AND SHE SOUNDED LIKE SHE WAS PLEADING WITH HIM. AT 7:06 P.M., AFTER RECIEVING HER SOS APP TEXT "I'M OKAY," JARED RESPONDED "OPEN THE DOOR." AT 7:07 P.M., JARED RECIEVED ANOTHER AUTOMATED AUDIO MESSAGE ALONG WITH A BLURRY PHOTO OF PETITIONERS FACE STANDING APPARENTLY OVER ALICIA.

AFTER KNOCKING ON THE APARTMENTS FRONT DOOR JARED RECIEVED A PHONE CALL FROM ALICIA SAYING SHE WAS AT HER MOTHER'S HOUSE. JARED CALLED HIS MOTHER AND CONFIRMED ALICIA WAS NOT WITH HER. DESPITE HER TEXTING "I'M OKAY." JARED PUTTING HIS EAR TO THE DOOR, HEARD A BABY CRYING AND A WOMAN SCREAMING HE BEGAN BREAKING DOWN THE DOOR AND TOLD NEIGHBORS TO CALL THE POLICE. AFTER BREAKING DOWN THE DOOR, JARED HEARD A CRYING BABY. IN THE BATHROOM, HE SAW HIS SISTER WITH MULTIPLE CUTS LAYING IN THE BATHTUB. RHEESE H. WAS CRYING ON THE FLOOR WITH A LARGE CUT ON THE RIGHT SIDE OF HER BODY AND HER INTESTINES EXPOSED. JARED RAN OUT THE FRONT DOOR AND TOLD NEIGHBORS TO CALL AN AMBULANCE, AS HE RETURNED. TWO-YEAR-OLD RHILEY EXITED THE BEDROOM. AS HE CARRIED RHILEY OUT OF THE APARTMENT, SHE SAID "HE CUT MY MOMMY, HE CUT MY MOMMY." LEAVING RHILEY WITH A NEIGHBOR JARED RETURNED TO THE BATHROOM TO SOOTHE ALICIA BY CONTINUING TO TALK TO HER. ALICIA'S EYES WERE OPEN BUT MADE NO NOISES. AFTER RHEESE AND ALICIA WERE TAKEN AWAY, JARED REMAINED TO IDENTIFY PETITIONER BY THE FREEWAY.

WHILE LIVING TOGETHER JARED RECALLED ONE ARGUMENT WHERE ALICIA WAS YELLING AT PETITONER. PETITIONER CALMLY SAID HE WAS GOING TO LEAVE. JARED NEVER SAW PETITIONER YELL AT ALICIA OR RAISE HIS HANDS TOWARDS HER.

PHYSICAL EVIDENCE

ON APRIL 9, 2016, DEPUTY MEDICAL EXAMINER KENG-CHIH SU CONDUCTED THE AUTOPSY OF ALICIA RENE WILLIAMS BORN ON MARCH 16, 1984. SU FOUND 12 STAB WOUNDS AND 23 SHARP FORCE INJURIES ON HER BODY. DR. SU CONCLUDED THE CAUSE OF DEATH WAS MULTIPLE STAB WOUNDS AND THE MANNER OF DEATH HOMOCIDE.

ON APRIL 3, 2016, DR. FREDERICK STAFFORD WAS ON DUTY AS EMERGENCY ROOM TRAUMA SURGEON AT LONG BEACH MEMORIAL HOSPITAL WERE HE TREATED RHEESE H., BORN ON OCTOBER 26, 2015. HE FOUND A STAB WOUND TO HER ABDOMEN WITH EVISCERATION OF SMALL BOWEL AND COLON. THE LATERAL THREE-INCH LONG LACERATION WAS CAUSED BY SLICING MOTION.

PETITIONER TESTIMONY

PETITONER IS 33 YEARS OF AGE AND WAS BORN IN COMPTON, CALIFORNIA. AFTER SERVING IN THE U.S. NAVY, HE ATTENDED COLLEGE AND HAS A DEGREE IN BUSINESS ADMINISTRATION. IN 2011, HE BECAME A MINISTER WITH A SUNDAY MINISTRY IN LOS ANGELES.

AT THE END OF 2013, PETITIONER MET ALICIA WILLIAMS AFTER DATING FOR ALMOST A YEAR THEY BEGAN LIVING TOGETHER. HE TREATED HER 18-MONTH-OLD RHILEY AS HIS OWN. AFTER PROPOSING MARRIAGE. THEY MOVED INTO HER MOTHER'S HOUSE IN FEBRUARY 2015, JOINING HER MOTHER, BROTHER, NEPHEW.

ON JULY 4, 2015 THEY GOT MARRIED, AFTER RHEESE H. WAS BORN OCTORER 26, 2015. ALICIAS PERSONALITY CHANGED. SHE REMAINED IN BED AND HAD ALOT OF MOOD SWINGS. SHE GOT ANGRY ALOT. PETITIONER BELIEVED HER HORMONAL CHANGES CAUSED HER PERSONALITY CHANGE.

ON SUNDAY MORNING, APRIL 3, 2016 AT 11:00 A.M. ALICIA TOLD PETITONER SHE WAS LEAVING, WITH RHILEY. HE DID NOT ASK WHERE SHE GOING BECAUSE SHE WAS ANGRY. THE PREVIOUS NIGHT PETITIONER RETURNED HOME FROM WORK HE WAS SUPRISED BY AN AGENT WITH A FAMILY LIFE INSURANCE POLICY PREPARED FOR HIS SIGNATURE. SINCE HE WAS NOT READY OR PREPARED TO REVIEW SAID POLICY HE DECLINED TO SIGN. THE AGENT AGREED TO CONTACT PETITIONER WHEN HE WAS READY. ALICIA FELL UPSET WHEN PETITIONER FAILED TO SIGN POLICY WHICH LED TO VERBAL ALTERCATION, AND LED UP TO ALICIA LEAVING THE NEXT MORNING. AFTER ALICIA LEFT PETITIONER STAYED HOME WITH RHEESE. ABOUT 4:00 P.M. HE TEXTED ALICIA ASKING ABOUT WHERE SHE WAS. AT ABOUT 5:30 P.M. SHE RETURNED HOME ANGRY AND REFUSED TO SPEAK TO HIM. SHE NEVER AT HIM TEXTING ON HER PHONE SHE STATED "MY HUSBAND DOESN'T WANT TO BE WITH ME SO WHY SHOULD I HAVE TO TALK TO YOU," WHEN PETITIONER ASKED WHAT SHE WAS TALKING ABOUT SHE SAID "YOU NEVER LOVED ME," SHE SAID HE DID NOT CARE OR LOVE RHILEY AND ONLY CARED ABOUT RHEESE.

PETITIONER DID NOT SEE RHILEY WALKING INTO ROOM WHEN HE SAID "YOU'RE REALLY ACTING LIKE A BITCH." WHEN ALICIA SAID HE WAS CUSSING HER OUT IN FRONT OFHER CHILDREN PETITIONER APOLOGIZED. THE ARGUMENT CONTINUED TO THE KITCHEN. AS HE WALKED TOWARD HER SHE WAS TEXTING MESSAGES SHE TURNED HER BACK TO HIM. WHEN HE REACHED FOR HER PHONE HE SAW THAT THE S.O.S. APP WAS ACTIVATED WITH A BLURRY PICTURE AND HER TEXT SAID "FELTONS HERE," HE PUT HER PHONE ON THE TABLE AND WENT TO THE BEDROOM TO PACK HIS BELONGINGS. ALICIA ENTERED THE BEDROOM WITH A KNIFE SAYING "THIS IS THE LAST TIME YOU WILL EVER HAVE THIS ARGUMENT WITHME."

SAYING HE WAS TIRED OF THIS AND WAS LEAVING PETITIONER WENT INTO THE OTHER BEDROOM TO PACK RHEESE'S CLOTHES AS HE INTENDED TO LEAVE. AS HE TRIED TO PACK, ALICIA CAMEUP FROM BEHIND AND GRABBED HIM TELLING HIM TO LEAVE RHEESE'S STUFF ALONE. AS HE TURNED AROUND PETITIONER SHRUGGED HIS RIGHT SHOULDER TO GET HER OFF OF HIM.

AT THE TIME PETITIONER WAS 5'8 AND WEIGHED 245 POUNDS. BY HIS THRUSTING MOTION HE PUSHED HER DOWN AND SHE FELL INTO THE CLOSET.

AFTER ALICIA FELL INTO THE CLOSET PETITIONER SAW SHE WAS BLEEDING FROM A SCRAPE ON HER FOREHEAD. HER FINGER WAS BLEEDING ONTO THE FLOOR, WHEN SHE CONTINUED ARGUING, HE TOLD HER TO WASH HER BLEEDING HAND. AND DID NOT SEE HOW HER HAND GOT CUT. IN THE BATHROOM SHE WASHED WITH ONE HAND STILL HOLDING THE KNIFE IN HER OTHER HAND. WHILE WASHING HER BATHROOM, SHE GOT A PHONE CALL. AFTER RETRIEVING HER PHONE FROM THE KITCHEN, SHE RETURNED TO THE BATHROOM WHILE TALKING ON THE PHONE, SHE SAID "I'M AT MOM'S HOUSE WITH RHILEY. PETITIONER WAS CONCERNED SOMEONE WAS ON THEIR WAY TO HARM HIM BECAUSE OF HER S.O.S. APP BEING ACTIVATED.

ALICIA FOLLOWED PETITIONER INTO THEIR BEDROOM AND ASKED IF HE WANTED A RIDE. WHEN HE SAID HE JUST WANTED TO LEAVE, SHE SAID "I'M SORRY ABOUT THIS." ABOUT TEN MINUTES LATER HE FIRST NOTICED BANGING ON THE DOOR. AS SHE SPOKE. HE PREPARED TO LEAVE GATHERING HIS WALLETT AND CLOTHES HE INFORMED HER THAT HE HAD AN ATTORNEY BECAUSE HE WOULD SEEK CUSTODY OF RHEESE. ALICIA RESPONDED ANGRILY BY PROMPTLY GRABBING RHEESE AND WALKING TOWARD THE BATHROOM. FOLLOWING BEHIND PETITIONER ASKED FOR RHEESE BECAUSE HE WAS NOT LEAVING WITHOUT HER.

THEY CONTINUED ARGUING ABOUT RHEESE IN THE BATHROOM. HOLDING RHEESE IN ONE ARM, ALICIA SWUNG HER OTHER ARM WITH THE KNIFE AT PETITIONER, TO DEFEND HIMSELF HE PUT HIS RIGHT HAND UP AND SHE GASHED IT. WHEN SHE TRIED AGAIN HE MOTIONED UP AS IF HE WAS GOING TO PUSH HER. WHEN ALICIA BACKED UP, SHE HIT THE BATHTUB AND FELL INTO IT. WHEN ALICIA FELL, THE KNIFE SLICED RHEESES BACK.

SINCE THE AFTER SURGERY HOSPITAL PHOTOGRAPHS OF RHEESE SHOW HER CUT WAS NOT ON HER BACK PETITIONERS RECOLLECTION OF THE KNIFE IN HER BACK IS WRONG. HOWEVER HE DID RECALL PULLING OUT THE KNIFE SOMEWHERE FROM HER RHEESE WAS NOT CRYING AS SHE DEEPLY INHALED AND EXHALED SHARPLY. HE PLACED RHEESE DOWN ON THE FLOOR ON TOP OF TOWELS. HE WAS DOWN ON ONE KNEE AND THOUGHT SHE WAS DEAD HE HAD THROWN THE KNIFE OUTSIDE BATHTUB. AS ALICIA CAME OUT OF THE TUB SHE GRABBED THE KNIFE AND SWUNG IT AT HIM. WHEN HE PUT HIS LEFT ARM UP TO DEFEND HIMSELF, HER KNIFE CUT UNDER HIS FOREARM AND WRIST. SHE SWUNG AT HIM THREE OR FOUR MORE TIMES. HE GOT STABBED ON HIS ARM WITH EACH SWING OF THE KNIFE. PETITIONER ROSE UP FROM ONE KNEE WHEN SHE SWUNG THE KNIFE. WHEN SHE STABBED HIS HAND, HE PUSHED THE KNIFE DOWN AND IT WENT INTO HER LEG.

SHE AGAIN SWUNG THE KNIFE AT HIM SHE MISSED AND PETITIONER KNOCKED THE KNIFE OUT OF HER HAND. AS SHE REACHED FOR THE KNIFE HE GRABBED IT AFRAID FOR HIS LIFE. HE STARTED SWINGING THE KNIFE TO KEEP HER AWAY FROM HIM. THEY WERE BOTH STANDING IN THE BATHROOM. HAVING NEVER BEEN ATTACKED WITH A KNIFE BEFORE HE THOUGHT HE WAS GOING TO DIE. AS HE SWUNG THE KNIFE HE DID NOT FEEL THE KNIFE CONNECTING WITH HER. AS SHE WAS PUNCHING AND KICKING AT HIM. WHEN HE BACKED UP FROM HER HE HEARD BANGING ON THE DOOR AND "OPEN THE FUCKEN DOOR"!

LOOKING IN THE DIRECTION OF THE DOOR HE SAW MORE THAN ONE PERSON APPROACHING. TO AVOID THOSE PERSONS HE DECIDED TO EXIT THROUGH THE WINDOW SO HE COULD GET HELP FOR RHEESE. HE WAS AFRAID RHEESE WAS ALMOST DEAD. BEFORE JUMPING OUT OF THE BEDROOM WINDOW HE TOLD RHILEY TO REMAIN IN THE ROOM. AT THE TIME PETITIONER WAS BLEEDING. HE JUMPED OUT THE WINDOW TO AVOID CONFRONTATION RESULTING IN FURTHER INJURY. AFTER JUMPING OUT THE WINDOW, PETITIONER LANDED ON HIS BACK ON TOP OF SOME BUSHES UNDER THE WINDOW. AS HE TRIED TO WALK BOTH OF HIS ANKLES SNAPPED FALLING TO THE GROUND HE CRAWLED INTO THE APARTMENT COMPLEX AND SCREAMED FOR HELP WHEN PETITIONER ASKED FOR HELP BECAUSE HIS BABY HAD BEEN STABBED MATHEW CREHAN AGREED TO CALL POLICE.

PETITIONER CONTINUED CRAWLING AND YELLING FOR HELP. PETITIONER AWOKE WHEN HE HEARD A POLICE CAR PULL UP. AS TWO OFFICERS WALKED TOWARDS HIM ONE SAID "PUT YOUR HANDS UP." PETITIONER YELLED THREE TIMES "I CANNOT MOVE!" IMMEDIATELY THE DOG WAS RELEASED. PETITIONER WAS SITTING UP AND GRABBED THE DOG WITH HIS RIGHT ARM. SCARED PETITIONER SQUEEZED THE DOGS NECK TO PREVENT BEING BITTEN. HE WAS AFRAID THE DOG BITE WOULD INJURE HIM MORE THAN HE ALREADY WAS. HE WAS SITTING UP ON THE SIDE OF THE BUSHES CLEARLY VISIBLE TO POLICE. PETITIONER COMPLIED WITH OFFICER COOK'S ORDER TO RELEASE THE DOG. PETITIONER WAS SUBSEQUENTLY ARRESTED. PETITIONER NEVER TOOK ANY STEPS TO FLEE OR AVOID ARREST. HE ONLY SOUGHT TO PROTECT HIMSELF AGAINST THE DOG. UNABLE TO WALK ON HIS OWN THE FIRE DEPARTMENT PLACED HIM ON GURNEY TO BE TRANSPORTED TO HOSPITAL. AFTER BEING BOOKED HE WAS PLACED IN LEG CASTS AND HE WAS BED RESTRICTED FOR 16-20 WEEKS. ALSO HE WAS TREATED FOR SEVERAL LACERATION TO ARMS AND HANDS WHICH HAD TO BE SUTURED AND STAPLED IN DIFFERENT PLACES.

PETITIONER'S WOUNDS

IN PHOTOGRAPHS OF PETITIONER'S HAND, DR. SU CHICH IDENTIFIED AN INCISION WOUND AT HIS (PETITIONER'S) RIGHT PALM CLOSE TO PETITIONER'S RIGHT WRIST. IN PHOTOS OF SHARP FORCE INJURIES AS DEFENSIVE WOUNDS AS HE WOULD IF FOUND ON A DECEDENT. DR. PAUL BRONSTON M.D., A PRACTICING MEDICAL DOCTOR IN THE EMERGENCY ROOM FOR OVER 25 YEARS, HAS QUALIFIED AS A COURT-APPOINTED EXPERT IN EMERGENCY MEDICINE MORE THAN 100 TIMES. DR. BRONSTON, M.D. DID NOT TREAT PETITIONER.

REVIEWING PHOTOGRAPHS OF PETITIONER'S HAND AND ARM DR. BRONSTON OPINED THAT THE CUTS MARKS ON THE HAND WERE CAUSED BY A SHARP OBJECT. THE MARKS COULD HAVE POSSIBLY BEEN MADE IN DIFFERENT SCENARIOS INCLUDING ANOTHER PERSON STABBING THE HAND AND IF PEOPLE WERE ROLLING AROUND A KNIFE, YOU COULD GET STABBED THAT WAY.

REVIEWING OTHER PHOTOS OF SIX LACERATIONS ON HIS FOREARM DR. BRONSTON OPINED THE INJURIES INCLUDED SCARRING ON AN OLDER LACERATION CLOSED BY STAPLES. IN COMPARING TWO PHOTOS OF THE SAME INJURY THE PASSAGE OF TIME WAS A MATTER OF WEEKS. HE COMPARED DIFFERENT SETS OF PHOTOS ON FOREARM LOCATED ABOUT A THIRD OF THE WAY DOWN FROM THE ELBOW TOWARDS THE HAND. IN ADDITION TO A SUTURED CUT THERE WERE OTHER CUTS WITH STAPLES OR SUTURES WHICH DR. BRONSTON DESCRIBED AS NON-JAGGED FROM A SHARP OBJECT. HYPOTHETICALLY, LOOKING AT THE PHOTOS OF THE ARM DR. BRONSTON OPINED THE INJURY WAS FROM A SHARP OBJECT RATHER THAN FROM A DOG BITE. WHERE A DOG BITE WILL GRAB AND HOLD DOWN AND WHERE DOG AND SUSPECT ARE MOVING DR. BRONSTON OPINED IT WOULD MORE LIKELY THAN NOT LEAVE A CLEAN STRAIGHT CUT DEPICTED IN THE PHOTOS.

IN PHOTOS OF OTHER CUTS WHICH APPEARED APPROXIMATELY SAME AGE DR. BRONSTON OPINED THAT IT WAS IMPOSSIBLE THAT THOSE CUTS WERE CAUSED BY A SINGLE DOG BITE. THESE INJURIES WERE SEPARATE STRAIGHT OR SEMI-STRAIGHT INJURIES CAUSED BY A SHARP OBJECT. THESE INJURIES WERE NOT CONSISTENT WITH A PUNCTURE WOUND BUT A STABBING WOUND. NONE OF THE INJURIES COULD HAVE BEEN CAUSED BY A SINGLE DOG BITE. ALL OF THE INJURIES COULD HAVE BEEN DEFENSIVE WOUNDS FROM A KNIFE ATTACK.

STATEMENT OF THE CASE

PROCEEDINGS

BY AN INFORMATION FILED ON JUNE 24, 2016 PETITIONER FELTON LADELL HUMPHRIES, JR. WAS CHARGED WITH MURDER (P.C. § 187(a). COUNT 1), ATTEMPTED MURDER (P.C. § 664/187 COUNT 2). RESISTING A PEACE OFFICER (P.C. § 148(a) COUNT 3) AND INTERFERENCE WITH A POLICE ANIMAL (P.C. § 600(a) COUNT 4) COUNTS 1 AND 2 WERE ENHANCED WITH PERSONAL USE OF DEADLY WEAPON ALLEGATION (P.C. 12022(b)(1) WITH GREAT BODILY-INJURY-ON CHILD ALLEGATION (P.C. § 1203.075(a), 12022.7(d). WITH PRIOR SERIOUS FELONY CONVICTION ALLEGATION (P.C. § 667(a)) AND WITH A PRIOR STRIKE FELONY CONVICTION ALLEGATION (P.C. §§ 667(b)(i), 1170.12) (1 CT 108-112) AND IS ATTACHED HERETO AS APPENDIX 'A' P 1-2. AN ORDER DENYING A PETITION FOR REHEARING EN BANC WAS ENTERED ON NOVEMBER 8, 2019. AND A COPY IS ATTACHED HERETO AS APPENDIX 'B'. JURISDICTION IS CONFERRED BY 28 U.S.C. 1254(1).

REASONS FOR GRANTING THE PETITION

1) CONFLICTS WITH DECISIONS OF THIS COURT, THIS CASE IS IMPORTANT FOR THESE ISSUES IT RAISES AS TO THE PROPER ALLOCATION OF FUNCTIONS BETWEEN THE STATE COURTS, FEDERAL DISTRICT COURTS AND FEDERAL COURT OF APPEALS.

2) THE STANDARD SET BY THIS COURT TO OBTAIN A CRIMINAL CONVICTION, ESPECIALLY AS TO FIRST-DEGREE MURDER AS IN THE CASE AT BAR, SHOULD BE THE RULE NOT THE EXCEPTION; THIS ENFORCEMENT LIES AT THE FOUNDATION OF THE ADMINISTRATION OF OUR CRIMINAL LAW.

//

//

THE COURTS REFUSAL TO INSTRUCT ON

PETITIONERS REQUESTED IMPERFECT SELF-DEFENSE INSTRUCTION VIOLATED HIS CONSTITUTIONAL RIGHTS TO DUE PROCESS OF LAW AND TO TRIAL BY JURY. AND THE ISSUES PRESENT A UNIQUE OPPORTUNITY FOR THIS HONORABLE COURT TO SECURE UNIFORMITY ON THIS IMPORTANT QUESTION OF LAW THE TRIAL COURTS, DISTRICT COURTS, AND COURTS OF APPEALS ARE DIVIDED ON THE ISSUE OF WHETHER AN IMPERFECT SELF-DEFENSE INSTRUCTION SHOULD BE GIVEN WHENEVER THERE IS SUFFICIENT EVIDENCE WARRANTING A PERFECT SELF-DEFENSE INSTRUCTION. IN PEOPLE V. CEJA (1994) 26 CAL. APP. 4TH 78, 86-87, DISAPPROVED ON OTHER GROUND(S) IN PEOPLE V. BLAKELY (2000) 23 CAL.4TH 87, 92 AND IN PEOPLE V. DELEON (1992) 10 CAL. APP. 4TH 815, 824. DIVISION SEVEN OF THE SECOND APPELLATE DISTRICT HELD THAT WHENEVER THERE IS SUBSTANTIAL EVIDENCE SUPPORTING PERFECT SELF-DEFENSE, THERE WILL ALWAYS BE SUBSTANTIAL EVIDENCE TO SUPPORT AN IMPERFECT SELF-DEFENSE. THIS IS NECESSARILY SO BECAUSE PERFECT SELF-DEFENSE REQUIRES BOTH AN HONEST AND REASONABLE BELIEF IN IMMINENT PERIL WHILE IMPERFECT SELF-DEFENSE REQUIRES ONLY A HONEST BELIEF CEJA SUPRA 26 CAL. APP. 4TH AT PP. 86-87; DELEON SUPRA 10 CAL APP. 4TH AT P. 824. TO THE CONTRARY, IN PEOPLE V. RODRIGUEZ (1997) 53 CAL. APP. 4TH 1250, 1274, THE FIFTH APPELLATE DISTRICT HELD THAT, EVEN WHERE THE JURY IS INSTRUCTED ON PERFECT SELF-DEFENSE THE TRIAL COURT HAS A SUA SPONTE DUTY TO INSTRUCT ON IMPERFECT SELF-DEFENSE UNLESS BASED ON THE EVIDENCE. SIMILARLY, IN PEOPLE V. VALENZUELA (2011) 199 CAL. APP. 4TH 1214 1228-1231. DIVISION ONE OF THE SECOND APPELLATE DISTRICT AFFIRMED THAT, WHERE THE TRIAL COURT

RULED IT WOULD INSTRUCT ON PERFECT SELF-DEFENSE. THE TRIAL AND NOT ON IMPERFECT SELF-DEFENSE WITHOUT DEFENSE OBJECTION, SUBSTANTIAL EVIDENCE DID NOT SUPPORT A SUA SPONTE DUTY TO INSTRUCT ON IMPERFECT SELF-DEFENSE.

IN PEOPLE V. SZADZIEWICZ (2011) 199 CAL. APP 4TH 1214, 1228-1231, DIVISION EIGHT OF THE SECOND APPELLATE DISTRICT HELD THAT, WHERE THE TRIAL COURT INSTRUCTED ON PERFECT SELF-DEFENSE, THERE WAS NO DUTY TO INSTRUCT SUA SPONTE ON IMPERFECT SELF-DEFENSE BECAUSE THE DEFENDANTS WRONGFUL CONDUCT BY INITIATING THE PHYSICAL ASSAULT CREATED THE CIRCUMSTANCES WHICH LEGALLY JUSTIFIED HIS ADVERSARY'S ATTACK OR PURSUIT.

TURNING TO THE CASE NOW BEFORE THE COURT PETITIONER SUPPORTED HIS REQUESTED INSTRUCTION BY ARGUING THE "SIZE DIFFERENCE BETWEEN [HUMPHRIES AND ALICIA] AND HER ACTUAL ABILITY TO CAUSE DEATH" MIGHT CAUSE THE JURY TO FIND UNREASONABLE HIS STATED BELIEF THAT HIS LIFE WAS IN DANGER. THE COURT OF APPEALS STATES THE PETITIONER FAILED TO CITE THE RECORD SHOWING THIS DISCREPANCY IN SIZE AND STRENGTH. (SLIP OPN., at p.17) HOWEVER, WHERE THE COURT AND COUNSEL REVIEWED THE AUTOPSY REPORT AS PEOPLE'S EXHIBIT 59 (4RT 1609) WHICH WAS PUBLISHED TO THE JURY (4RT 1612, 1614, 1615) AND WHERE PETITIONER ADMITTED BEING 5' 8" AND 245 POUNDS AT THE TIME (5RT 276) ANY MISREPRESENTATION OF THE DISCREPANCY WOULD HAVE BEEN CONTESTED BY THE PROSECUTOR. THE RECORD SHOWS THE PROFFERED DISCREPANCY IN SIZE AND STRENGTH WAS UNCONTROVERTED. CONTINUING ON, THE COURT OF APPEAL REJECTS PETITIONER'S

CLAIM THAT THE TRIAL COURT'S INSTRUCTION ON PERFECT SELF-DEFENSE ESTABLISHES THERE WAS SUFFICIENT EVIDENCE TO WARRANT AN IMPERFACT SELF-DEFENSE INSTRUCTION. (SLIP OPN. AT P.17.) CONTRARY TO CEJA. THE COURT OF APPEALS HEREIN AFFIRMS ITS PRIOR RULING IN Szadziewicz AND REITERATES "AN IMPERFECT SELF-DEFENSE INSTRUCTION IS NOT REQUIRED JUST BECAUSE THE COURT IS INSTRUCTING ON ACTUAL SELF-DEFENSE. WHERE THE DEFENDANT'S VERSION OF EVENTS, IF BELIEVED, ESTABLISH ACTUAL SELF-DEFENSE WHILE THE PROSECUTION'S VERSION, IF BELIEVED, NEGATES BOTH ACTUAL AND IMPERFECT SELF-DEFENSE, THE COURT IS NOT REQUIRED TO GIVE THE INSTRUCTION" (SLIP OPN., AT P.19.). UNDERLYING THE COURT OF APPEAL'S ERROR IS ITS CLAIM THAT THE JURY HAD ONLY TWO OPTIONS: FIRST, THE JURY COULD BELIEVE PETITIONER'S VERSION WHICH ESTABLISHES PERFECT SELF-DEFENSE; OR SECOND, THE JURY COULD BELIEVE THE PROSECUTIONS VERSION WHICH NEGATES BOTH PERFECT AND IMPERFECT SELF-DEFENSE (SLIP OPN AT 20) THE COURT OF APPEAL'S EITHER-OR-ANALYSIS IS UNPERSUASIVE BECAUSE THERE IS A THIRD OPTION: THE JURY COULD BELIEVE PETITIONER HAD A GOOD FAITH BELIEF IN THE NEED TO DEFEND BUT IT WAS UNREASONABLE BELIEF BECAUSE PETITIONER WAS PHYSICALLY BIGGER AND STRONGER THAN HIS WIFE.

MOREOVER IN DETERMINING THE SUFFICIENCY OF THE THE FACT THAT THE EVIDENCE MAY NOT INSPIRE BELIEF DOES NOT AUTHORIZE THE REFUSAL OF REQUESTED INSTRUCTION BASED THEREON." THAT IS A QUESTION WITHIN THE EXCLUSIVE PROVINCE OF THE JURY." PEOPLE V. FLANNEL (1979) 25 CAL. 3d

668, 684, SUPERCEDED BY STATUTE ON ANOTHER GROUND IN IN RE CHRISTIAN S. (1994) 7 CAL.4TH 768, 777. DOUBTS AS TO THE SUFFICIENCY OF THE EVIDENCE TO WARRENT INSTRUCTIONS SHOULD BE RESOLVED IN FAVOR OF THE ACCUSED." PEOPLE V. WILSON (1967) 66 CAL. 2d 749, 763 WHETHER THE JURY WOULD HAVE CONCLUDED THAT HUMPHRIES HAD A SUBJECTIVELY HONEST BUT OBJECTIVELY UNREASONABLE BELIEF THAT HE WAS IN DEADLY PERIL IS AN OPEN QUESTION THAT THE JURY NEVER HAD AN OPPORTUNITY TO ANSWER.

FINALLY HUMPHRIES ASK THE COURT, DOES THE NINTH CIRCUIT COURT OF APPEALS HAVE THE INHERENT POWER TO DEEM HIS REQUEST FOR CERTIFICAT OF APPEALABILITY AS A REQUEST FOR EXTENTION OF TIME AS (1) HE DID NOT RECEIVE THE DISTRICT COURT'S JUDGMENT UNTIL JUNE 3. 2019 AND ON GOOD FAITH AND BELIEF THAT HE HAD THIRTY DAYS FROM THAT TO FILE A REQUEST FOR CERTIFICATE OF APPEALABILITY (2) BECAUSE OF "NUMEROUS LOCKDOWNS" CAUSED A MAJOR DISRUPTION" IN HIS ABILITY TO TIMELY FILE HIS REQUEST (3) THE INSTITUTIONAL PHOTOCOPIER IN THE LAW LIBRARY WAS OUT OF ORDER PREVENTED HIM FROM OBTAINING LEGAL COPIES.

WAS THE NINTH CIRCUIT COURT OF APPEALS RULING BASED ON A PERJURED DECLARATION OF LYNETTA LIMA LIBRARY TECH. WHO WAS FIRED FOR FALSIFICATION OF OFFICIAL DOCUMENT, INTRODUCING DRUGS, CELL PHONES, AND CONTROBAND AND HAVING SEXUAL RELATIONS WITH INMATES FOR MONETARY GAINE. WHICH DENIED HUMPHRIES FIRST AMENDMENT RIGHT TO ACCESS THE COURT(S)

A.

DOES HUMPHRIES HAVE A FUNDAMENTAL RIGHT GUARANTEED BY THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO A PROPERLY INSTRUCTED JURY DETERMINING THAT ALL ELEMENTS OF THE CHARGED CRIMES HAVE BEEN PROVEN BEYOND A REASONABLE DOUBT.

THE FIFTH AMENDMENT DUE PROCESS CLAUSE "PROTECTS THE ACCUSED AGAINST CONVICTION EXCEPT UPON PROOF BEYOND A REASONABLE DOUBT OF EVERY FACT NECESSARY TO CONSTITUTE THE CRIME CHARGED" IN RE WINSHIP (1970) 397 U.S. 358, 364, 90 S.Ct 1068, 25 L.Ed. 2d 368. MORE OVER, THE FIFTH AMENDMENT DUE PROCESS RIGHTS AND THE SIXTH AMENDMENT JURY TRIAL RIGHTS ARE INTERRELATED PUT ANOTHER WAY IS" THE JURY VERDICT REQUIRED BY THE SIXTH AMENDMENT A JURY VERDICT OF GUILT BEYOND A REASONABLE DOUBT? SULLIVAN V. LOUISIANA (1993) 508 U.S. 275, 278, 113 S.Ct 2078, 124 L.Ed. 2d 182.

ERRONEOUS OR CONTRADICTORY INSTRUCTIONS DEFINING THE ELEMENTS OF A CRIME MAY VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT AS WELL AS THE SIXTH AMENDMENT RIGHT TO TRIAL BY JURY ROSE V. CLARK (1986) 478 U.S. 570, 580-581, 106 S.Ct. 3101 92 LE.d 2d 460. THE ACCUSED'S CONSTITUTIONAL RIGHT TO A JURY TRIAL EMBODIES A PROFOUND JUDGMENT ABOUT THE WAY IN WHICH LAW SHOULD BE ENFORCED AND JUSTICE IS ADMINISTERED DUNCAN V. LOUISIANA, SUPRA 391 U.S. at P. 155)

THIS STRUCTURAL GUARANTEE REFLECTS A FUNDAMENTAL DECISION ABOUT THE EXERCISE OF OFFICIAL POWER-A RELUCTANCE TO ENTRUST PLENARY POWERS OVER THE LIFE AND LIBERTY OF THE CITIZEN TO ONE JUDGE OR TO A GROUP OF JUDGES. DUNCAN V. LOUISIANA, 391 U.S. at p. 156.

B.

WAS HUMPHRIES ENTITLED TO A JURY INSTRUCTION PINPOINTING HIS THEORY OF DEFENSE AND WAS HE ENTITLED TO THE REQUESTED JURY INSTRUCTION CALCRIM NO 571 VOLUNTARY MANSLAUGHTER IMPERFECT SELF-DEFENSE.

"A DEFENDANT IS ENTITLED TO AN INSTRUCTION AS TO ANY RECOGNIZED DEFENSE FOR WHICH THERE EXIST EVIDENCE SUFFICIENT FOR A REASONABLE JURY TO FIND IN HIS FAVOR." MATHEWS V. UNITED STATES (1988) 485 U.S. 58, 63, 108 S.Ct. 883, 99 L.Ed.2d 54. CONSISTENT THEREWITH, A CRIMINAL DEFENDANT IS ENTITLED TO REQUEST AN INSTRUCTION PINPOINTING THE THEORY OF DEFENSE. PEOPLE V. WHARTON (1991) 53 CAL. 3d 522, 570.

A REQUESTED INSTRUCTION MAST BE GIVEN IF THE ACCUSED PRESENTS SUFFICIENT EVIDENCE TO "DESERVE CONSIDERATION BY THE JURY, I.E. EVIDENCE FROM WHICH A JURY COMPOSED OF REASONABLE MEN COULD HAVE CONCLUDED THAT THE PARTICULAR FACTS UNDERLYING THE INSTRUCTION DID EXIST PEOPLE V. FLANNEL, SUPRA 25 CAL

3d at pp 684-685 fn. 12. MOREOVER. THIS STANDARD NEITHER REQUIRES NOR PERMITS THE TRIAL COURT TO DETERMINE THE CREDIBILITY OF WITNESSES, BUT IT MERELY FREES THE COURT FROM AN OBLIGATION TO INSTRUCT UPON A THEORY WHICH THE JURY COULD NOT REASONABLY FIND TO EXIST. PEOPLE V. WICKERSHAM (1982) 32 CAL. 3d 307. 324-325, DISAPPROVED ON ANOTHER GROUND BY PEOPLE V. BARTON (1995) 12 CAL. 4TH 186, 201. INDEED, IN DETERMINING THE SUFFICIENCY OF THE EVIDENCE. THE "FACT THAT THE EVIDENCE MAY NOT INSPIRE BELIEF DOES NOT AUTHORIZE THE REFUSAL OF AN INSTRUCTION BASED THEREON. THAT IS A QUESTION WITHIN THE EXCLUSIVE PROVINCE OF THE JURY." FLANNEL, SUPRA, 25 CAL. 3d at p 684 DOUBTS AS TO THE SUFFICIENCY OF EVIDENCE TO WARRANT INSTRUCTIONS SHOULD BE RESOLVED IN FAVOR OF THE ACCUSED PEOPLE V. WILSON, SUPRA 66 CAL. 2d at p 763

C.

WHERE AN HONEST AND REASONABLE BELIEF IN THE NEED TO DEFEND IS A COMPLETE DEFENSE, DOES AN HONEST BUT UNREASONABLE BELIEF REDUCE THE HOMICIDE TO MANSLAUGHTER LAW.

TO BE EXCULPATED ON A THEORY OF SELF DEFENSE ONE MUST HAVE AN HONEST AND REASONABLE BELIEF IN THE NEED TO DEFEND. A BARE FEAR IS NOT ENOUGH THE THE CIRCUMSTANCES MUST BE SUFFICIENT TO EXCITE THE FEARS OF A REASONABLE PERSON, AND THE PARTY KILLING MUST HAVE ACTED UNDER INFLUENCE OF SUCH FEARS ALONE.

FLANNEL SUPRA. 25 CAL.3d at pp. 674-675. JUSTIFICATION DOES NOT DEPEND ON THE EXISTENCE OF ACTUAL DANGER BUT ON APPEARANCES. PEOPLE V. COLLINS 1961 189 CAL. APP. 2d 575, 558. IN ORDER THAT A PERSON AVAIL HIMSELF OF HIS RIGHT OF SELF-DEFENSE, IT IS SUFFICIENT THAT APPEARANCES ON THE PART OF HIS ASSAILANT WERE SUCH AS TO AROUSE IN HIS MIND, AS A REASONABLE MAN THAT HIS ASSAILANT WAS ABOUT TO COMMIT A FELONY.

UNREASONABLE SELF-DEFENSE, ON THE OTHER HAND DOES NOT REQUIRE THE DEFENDANTS FEAR TO BE REASONABLE BARTON SUPRA 12. CAL 4TH AT D. 200 MOREOVER. IT IS WELL-ESTABLISHED THAT AN HONEST BUT UNREASONABLE BELIEF IN THE NEED TO DEFEND ONESELF FROM IMMINENT PERIL TO LIFE OR GREAT BODILY INJURY. ALTHOUGH INSUFFICIENT FOR SELF-DEFENSE, IS SUFFICIENT TO NEGATE MALICE AFORETHOUGHT THE MENTAL COMPONENT NECESSARY FOR MURDER AND THUS REDUCE MURDER TO MANSLAUGHTER. FLANNEL, SUPRA 25 CAL.3d at p. 674

IMPERFECT SELF-DEFENSE, OBVIATES MALICE BECAUSE THAT MOST CULPABLE OF MENTAL STATES CANNOT COEXIST WITH AN ACTUAL WITH AN ACTUAL BELIEF THAT THE LETHAL ACT WAS NECESSARY TO AVOID ONE'S DEATH OR SERIOUS INJURY AT THE VICTIM'S HAND. PEOPLE V. RIOS (2000) 23 CAL. 4TH 450 461 A KILLING IN IMPERFACT SELF-DEFENSE CONSTITUTES BY DEFINITION UNREASONABLE CONDUCT BECAUSE THE BELIEF IN THE NEED TO DEFEND IS NOT REASONABLE. THE KILLING IS NEVERTHELESS MITIGATED BECAUSE OF THE DEFENDANT'S MISGUIDED BELIEF PEOPLE V. BELTRAN (2013) 56 CAL. 4TH 936, 951 IN HOLDING

THAT THE REQUIRED PROVOCATION NEED NOT SHOW THAT A REASONABLE PERSON WOULD BE MOVED TO KILL. BELTRAN STATED: "THE PROPER FOCUS IS PLACED ON THE DEFENDANTS STATE OF MIND; NOT HIS PARTICULAR ACT. TO BE ADEQUATE THE PROVOCATION MUST BE ONE THAT WOULD CAUSE AN EMOTION SO INTENSE THAT AN ORDINARY PERSON WOULD SIMPLY REACT, WITHOUT REFLECTION." Id at pp 949.

D.

DID THE TRIAL COURT COMMIT REVERSIBLE ERROR BY REFUSING HUMPHRIES REQUESTED INSTRUCTIONS ON IMPERFECT SELF-DEFENSE

WHEN THE PROSECUTION OBJECTED TO PETITIONERS REQUESTED FOR THE COURT TO INSTRUCT ON IMPERFECT SELF-DEFENSE (6RT.3018) THE FOLLOWING DISCUSSION ENSUED IN PERTINENT PART:

THE COURT: I THINK THAT THE EVIDENCE THAT HAS BEEN PRESENTED THROUGHOUT THIS TRIAL SUPPORTS A LOT OF INSTRUCTIONS... BUT ONE INSTRUCTION IT DOES NOT SUPPORT IN "MY ESTIMATION" ESTIMATION IS THE INSTRUCTION ON IMPERFACT SELF-DEFENCE.

WHAT THE COURT DID IN IT'S OWN ESTIMATION WAS WEIGH THE CREDIBILITY OF HUMPHRIES TESTMONEY AND WENT ON TO SAY:

"THERE IS NO EVIDENCE THAT MR. HUMPHRIES HONESTLY AND IN GOOD FAITH BUT ERRONEOSLY BELIEVED IN THE NEED TO DEFEND HIMSELF IF HIS TESTIMONY THAT HE

GAVE OVER THE LAST COUPLE OF DAYS IS ACCEPTED AT FACE VALUE AS AN IMPERFACT SELF-DEFENSE CASE AND THERES NOTHING IN THE OTHER STATEMENT THAT WOULD SUPPORT AN IMPERFECT SELF-DEFENSE. SO WITH ALL DUE RESPECT THAT REQUEST IS DENIED

THIS COURT HELD IN IN RE WINSHIP 397 U.S. 358 25 L.ED. 2d 368 (1970) THAT "THE DUE PROCESS CLAUSE PROTECTS THE ACCUSED AGAINST CONVICTION EXCEPT UPON PROOF BEYOND A REASONABLE DOUBT OF EVERY FACT NECESSARY TO CONSTITUTE THE CRIME WITH WHICH HE IS CHARGED" Id at 364 THIS COURT NOTED THAT THIS STANDARD "PLAYS A VITAL ROLE IN THE AMERICAN SCHEME OF CRIMINAL PROCEDURE" AND THAT "THE STANDARD PROVIDES CONCRETE SUBSTANCE FOR THE PRESUMTION OF INNOCENCE-THAT BEDROCK AXIOMATIC AND ELEMENTARY PRINCIPLE WHOSE ENFORCEMENT LIES AT THE FOUNDATION OF THE ADMINISTRATION OF OUR CRIMINAL LAW."

WITH WINSHIP IN MIND. THE COURTS REFUSAL TO INSTRUCT ON IMPERFECT SELF-DEFENSE WAS CONSTITUTIONALLY INFIRM UNDER THE DUE PROCESS CLAUSE AND THE HOLDING IN WINSHIP ONCE EVIDENCE TENDING TO SHOW PERFECT-SELF DEFENSE WAS INTRODUCED AND AN INSTRUCTION GIVEN ON PERFECT SELF-DEFENSE IS GIVEN AS IT WAS HERE. THE STATE-NOT THE DEFENDANT-HAD TO BEAR THE BURDEN OF PROVING BEYOND A REASONABLE DOUBT THE ABSENCE OF IMPERFECT SELF-DEFENSE. THE COURT SHIFTED THE BURDEN. HUMPHRIES PRODUCED EVIDENCE SUFFICIENT TO GENERATE A JURY ISSUE AS TO WHETHER HE HAD A SUBJECTIVELY HONEST BUT OBJECTIVELY UNREASONABLE BELIEF THAT HE

WAS IN IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY AND THE TRIAL COURT SHOULD HAVE GRANTED THE REQUESTED INSTRUCTION ON IMPERFECT SELF-DEFENSE.

E.

DID THE PROSECUTION PRESENT SUBSTANTIAL EVIDENCE TO SUSTAIN A PREMEDITATION AND DELIBERATE FIRST DEGREE MURDER CONVICTION.

TO COMMIT FIRST DEGREE MURDER, OTHER THAN THOSE KILLINGS EXPRESSLY DECLARED TO BE MUDER BY STATUTE (§ 189) THE INTENT TO KILL MUST BE THE RESULT OF PREMEDITATION AND DELIBERATION AND BE FORMED UPON PREEXISTING REFLECTION PEOPLE V. ANDERSON (1968) 70 CAL.2d 15,26 NOT THE RESULT OF SUDDEN HEAT OF PASSION PEOPLE V. DAUGHERTY 1953 40 CAL.2d 876,901-902 OR FROM UNCONSIDERED AND RASH IMPULSES HASTILY EXECUTED PEOPLE V. VELASQUEZ (1980) 26 CAL.3d 425,435 VACATED AND REMANDED IN CALIFORNIA V. VELASQUEZ (1980) 448 U.S. 903. REITERATED IN ITS ENTIRETY IN PEOPLE V. VELASQUEZ (1980) 28 CAL.3d 461,462 IN A MANNER SO AS TO PRECLUDE PREMEDITATION DAUGHTERTY, SUPRA 40 CAL.2d At pp.901-902.

THUS, A FINDING OF FIRST DEGREE MURDER BASED ON PREMEDITATION AND DILIBERATION IS PROPER ONLY WHEN THE DEFENDANT KILLED AS A RESULT OF A DELIBERATE JUDGMENT OR PLAN, CARRIED ON COOLY AND STEADILY ESPECIALLY ACCORDING TO A PRECONCEIVED DESIGN

ANDERSON SUPRA 70 CAL.2d at p.26. THE ANDERSON COURT SET FOURTH GUIDELINES FOR REVIEWING THE SUFFICIENCY OF EVIDENCE FOR FIRST DEGREE MURDER VIRDICTS BASED ON PREMEDITATION AND DELIBERATION. ANDERSON SUPRA REFERS TO THREE TYPES OF EVIDENCE (1) FACTS ABOUT A DEFENDANT'S BEHAVIOR BEFORE THE KILLING THAT SHOW PRIOR PLANNING OF THE INTENDED KILLING; (2) FACTS ABOUT ANY PRIOR RELATIONSHIP BETWEEN THE DEFENDANT AND THE VICTIM FROM WHICH THE JURY COULD INFER A MOTIVE TO KILL THE VICTIM; AND (3) FACTS ABOUT THE MANNER OF THE KILLING FROM WHICH THE JURY COULD INFER THAT THE DEFENDANT INTENTIONALLY KILLED THE VICTIM ANDERSON 70 CAL.2d at pp. 26-27.

MOREOVER, PREMEDITATION AND DELIBERATION ARE NOT TO BE CONFUSED WITH A DELIBERATE INTENT TO KILL. PREMEDITATION AND DELIBERATION REQUIRES SUBSTANTIALLY MORE REFLECTION; i.e., MORE UNDERSTANDING AND COMPREHENSION OF THE CHARACTER OF THE ACT THAN THE MERE AMOUNT OF THOUGHT NECESSARY TO FORM THE INTENT TO KILL IT IS THEREFORE OBVIOUS THAT THE MERE INTENT TO KILL IS NOT THE EQUIVALENT OF A DELIBERATE AND PREMEDITATED INTENT TO KILL PEOPLE V. STRESS (1988) 205 CAL APP. 3d 1259, 1269.

FROM THE APPLICATION OF THE ANDERSON CRITERIA TO THE CASE AT BAR, IT IS APPARENT THAT THERE WAS NO SUBSTANTIAL EVIDENCE FITTING WITHIN ANY OF THE ENUMERATED CRITERIA PROVING FIRST DEGREE MURDER AS TO THE FIRST ANDERSON CRITERION. THE PROSECUTOR

CITED NO EVIDENCE THAT PETITIONER ACTUALLY PLANNED THE STABBING. AS TO THE SECOND ANDERSON CRITERION, THE PROSECUTION CITED NO EVIDENCE THAT PROFFERED A MOTIVE IN THIS CASE. AS TO THE THIRD ANDERSON CRITERION, THE CRUX OF THE PROSECUTIONS ARGUMENT FOCUSED ON THE INTERVALS BETWEEN THE 23 SHARP FORCE INJURIES AS PROVIDING PETITIONER WITH MULTIPLE OPPORTUNITIES TO THINK ABOUT WHAT HE WAS DOING (6RT3146-3147). YET, WHERE THE ACTUAL TIME FRAM IS UNKNOWN, AN EQUALLY REASONABLE INFERENCE IS THAT SUCH REPETITIVE CONDUCT SHOWS THAT PETITIONER MAY WELL HAVE ACTED FROM A SUDDEN HEAT OF PASSION DAUGHERTY, 40 CAL.2d at p. 902 OR FROM AN UNCONSIDERED AND RASH IMPULSE SUFFICIENT TO PRECLUDE PREMEDITATION AND DELIBERATION. IT IS "AXIOMATIC THAT THE KILLER ACTED WITH PREMEDITATION AND DELIBERATION. ANDERSON, 70 CAL.2d at p. 24 THE PROSECUTOR'S ARGUMENT HEREIN ESSENTIALLY USING EVIDENCE OF PETITIONER'S MANNER OF KILLING ALSO AS EVIDENCE OF HIS PREMEDITATION AND DELIBERATION IS CONTRARY TO CLEARLY ESTABLISHED LAW.

IN ANDERSON, WHERE THE 10-YEAR-OLD VICTIM WAS FOUND WITH OVER 60 WOUNDS, BOTH SEVERE AND SUPERFICIAL, WHICH EXTENDED OVER HER ENTIRE BODY, INCLUDING ONE EXTENDING FROM THE RECTUM THROUGH THE VAGINA, AND PARTIAL CUTTING HER TONGUE, THE CALIFORNIA SUPREME COURT NONETHELESS HELD: "IF THE EVIDENCE SHOWED NO MORE THAN THE INFLICTION OF MULTIPLE ACTS OF VIOLENCE ON THE VICTIM, IT WOULD NOT BE SUFFICIENT TO SHOW THAT

THE KILLING WAS THE RESULT OF CAREFUL THOUGHT AND AND WEIGHING OF CONSIDERATION"

IN FAULKNER V. STATE 54 Md App 113.458 A.2d 81 (1983) THE JURY FOUND FAULKNER GUILTY OF ASSAULT WITH INTENT TO MURDER AND RELATED HANDGUN OFFENSES. THE COURT OF SPECIAL APPEALS REVERSED, HOLDING THAT THE TRIAL COURT ERRED IN REFUSING TO INSTRUCT THE JURY AS TO THE DEFENSE OF IMPERFECT SELF DEFENSE. THIS COURT GRANTED THE STATES PETITION FOR WRIT OF CERTIORARY TO ADDRESS THE IMPORTANT ISSUES PRESENTED HERE AND AFFIRMED THE JUDGMENT OF THE COURT OF SPECIAL APPEALS. INITIALLY, THIS HONORABLE COURT NOTED THAT THE DIFFERENCE BETWEEN MURDER AND MANSLAUGHTER IS THE PRESENCE OR ABSENCE OF MALICE. STATE V. WARD 284 Md 189, 195, 396 A.2d 1041 (1978); DAVIS V. STATE, 39 Md 355 (1874); WEIGHORST V. STATE, 7 Md 442 (1855) SELF DEFENSE OPERATES AS A COMPLETE DEFENSE TO EITHER MURDER OR MANSLAUGHTER A SUCCESSFUL SELF-DEFENSE. THEREFORE, RESULTS IN THE ACQUITTAL OF THE DEFENDANT. THIS COURT SUMMARIZED THE ELEMENTS NECESSARY TO JUSTIFY A HOMICIDE, OTHER THAN FELONY MURDER. ON THE BASIS OF SELF DEFENSE IN THE FOLLOWING TERMS:

(1) THE ACCUSED MUST HAVE HAD A REASONABLE GROUNDS TO BELIEVE HIMSELF IN APPARENT IMMINENT OR IMMEDIATE DANGER OF DEATH OR SERIOUS BODILY HARM FROM HIS ASSAILANT OR POTENTIAL ASSAILANT.

(2) THE ACCUSED MUST HAVE IN FACT BELIEVED HIMSELF IN DANGER.
(3) THE ACCUSED CLAIMING THE RIGHT OF SELF DEFENSE MUST NOT HAVE BEEN THE AGGRESSOR OR PROVOKED THE CONFLICT; AND
(4) THE FORCE USED MUST HAVE NOT BEEN UNREASONABLE AND EXCESSIVE. THAT IS. THE FORCE MUST NOT HAVE BEEN MORE FORCE THAN THE EXIGENCY DEMANDED.

IMPERFACT SELF DEFENSE, BY CONTRAST. IS NOT A COMPLETE DEFENSE. ITS CHIEF CHARACTERISTIC IS THAT IT OPERATES TO NEGATE MALICE. AN ELEMENT THE STATE MUST PROVE TO ESTABLISH MURDER. AS A RESULT THE SUCCESFUL INVOCATION OF THIS DOCTRINE DOES NOT COMPLETELY EXONERATE THE DEFENDANT BUT MITIGATES MURDER TO VOLUNTARY MANSLAUGHTER.

IMPERFACT SELF DEFENSE. IS DIFFERENT FROM EITHER SELF DEFENSE OR THE COMMONLY RECOGNIZED MITIGATION DEFENSE. BECAUSE THE DOCTRINE OF IMPERFECT SELF DEFENSE HAS BEEN SUBJECTED TO DIFFERENT INTERPRETATIONS AND REGARDED BY SOME COURTS AND SCHOLARS AS BEING A RECENT THEORY NOT FAR ADVANCED

THIS COURT IN FAULKNER. GAVE A BRIEF EXAMINATION OF IT'S HISTORY AND DEVELOPMENT WHICH HELP CLARIFY ITS NATURE AND SCOPE AND POINT OUT THE DIFFERENCES. IN WHICH THE LOWER COURTS HAVE FORGOTTEN THE LANDMARK CASE DECIDED NOV 24. 1984 AND ARE

REPETEING THE PREJUDICIAL ERRORS OF THE PAST.

THE RUDIMENTARY PRINCIPLES OF IMPERFACT SELF DEFENSE APPEARED IN A SERIES OF MANSLAUGHTER STATUTES ENACTED IN ENGLAND BETWEEN 1496 AND 1547 THIS COURT STATED. SEE R. MORLAND, THE LAW OF HOMICIDE 91 (1952). ACCORDING TO PROFESSOR MORELAND, THESE STATUTES REFLECTED A COMPROMISE BETWEEN MURDER AND COMPLETE EXONERATION IN THOSE INSTANCES WHERE A DEFENDANT'S CONDUCT WARRANTED NEITHER A MURDER CONVICTION NOR ACQUITTAL. OUT OF THESE STATUTES AROSE THE MITIGATING DEFENSE OF IMPERFECT SELF DEFENSE, WHICH WAS PREDICATED UPON A "FEAR OF LIFE". IMPERFECT SELF DEFENSE WAS APPLICABLE TO A CRIME WITHOUT PASSION SO AS TO DISTINGUISH IT FROM THE MITIGATION DEFENSE FOUNDED UPON HEAT OF PASSION. HOWEVER, BECAUSE THE DEFENDANT WAS AT FAULT THE LAW DEMANDED THAT HE BEAR SOME CRIMINAL RESPONSIBILITY FOR THE HOMICIDE ALTHOUGH HE LACKED THE MENS REA FOR MURDER. PROFESSOR MORELAND PUT IT THIS WAY:

> IN EACH CASE [HOMICIDE ARISING FROM PROVOCATION (CRIME OF PASSION)] THE ACCUSED MIGHT WELL BE HELD FOR MURDER OR HE MIGHT BE EXCUSED BECAUSE OF THE CIRCUMSTANCES FOR COMMITTING THE CRIME; BUT THE LAW COMPROMISES, TAKES A MIDDLE GROUND, AND HOLDS HIM GUILTY OF MANSLAUGHTER. THUS, IN THE CASE OF IMPERFECT SELF DEFENSE, THE LAW MIGHT REFUSE HIM THE OPPORTUNITY TO PLEAD SELF-DEFENSE BECAUSE OF HIS FAULT AND HOLD HIM GUILTY OF MURDER, OR IT MIGHT WAIVE HIS FAULT AND ALLOW HIM TO UTILIZE THE EXCUSE OF

SELF-DEFENSE. BALANCING THE TWO THE LAW STRIKES A MIDDLE GROUND AS A MATTER OF POLICY AND RATHER REASONABLY CONVICTS HIM OF VOLUNTARY MANSLAUGHTER.

IN CONCERT WITH THE ABOVE, PROFESSOR PERKINS RECOGNIZED THAT MANSLAUGHTER IS A "CATCH-ALL" CONCEPT THAT ENCOMPASSES A VARIETY OF HOMICIDES THAT ARE "NEITHER MURDER NOR INNOCENT." R. PERKINS CRIMINAL LAW 69 (2d ed. 1969). IN ELABORATING UPON THIS PROPOSITION, PROFESSOR PERKINS EXPLAINED:

> SENCE MANSLAUGHTER IS A "CATCH ALL" CONCEPT, COVERING ALL HOMICIDES WHICH ARE NEITHER MURDER NOR INNOCENT IT LOGICALLY INCLUDES SOME KILLINGS INVOLVING OTHER TYPES OF MITIGATION, AND SUCH IS THE RULE OF THE COMMON LAW. FOR EXAMPLE, IF ONE MAN KILLS ANOTHER INTENTIONALLY, UNDER CIRCUMSTANCES BEYOND THE SCOPE OF INNOCENT HOMICIDE, THE FACTS MAY COME SO CLOSE TO JUSTIFICATION OR EXCUSE THAT THE KILLING WILL BE CLASSED AS VOLUNTARY MANSLAUGHTER RATHER THAN MURDER. "IT IS NOT ALWAYS NECESSARY TO SHOW THAT THE KILLING WAS DONE IN THE HEAT OF PASSION, TO REDUCE THE CRIME TO MANSLAUGHTER." AND THE THE ARKANSAS COURT, "FOR WHERE THE KILLING WAS DONE BECAUSE THE SLAYER BELIEVES THAT HE IS IN GREAT DANGER, BUT THE FACTS DO NOT WARRENT SUCH A BELIEF, IT MAY BE MURDER OR MANSLAUGHTER ACCORDING TO THE CIRCUMSTANCES EVEN THOUGH THERE BE NO PASSION"
>
> [redacted]

THE DOCTRINE OF IMPERFECT SELF DEFENSE GAINED A FOOTHOLD IN THE UNITED STATES IN THE LATE 1800'S. THE THE "CORNERSTONE" CASE FOR THIS DEFENSE IS AN 1882 DECISION BY THE COURT OF CRIMINAL APPEALS OF TEXAS: REED V. STATE, 11 TEX. CRIM. APP. 509 (1882). IN DISCUSSING THE DOCTRINE THE REED COURT REMARKED:

> IT [SELF DEFENSE] MAY BE DIVIDED INTO TWO GENERAL CLASSES. TO WIT, PERFECT AND IMPERFECT RIGHT OF SELF DEFENSE... IF, HOWEVER, [THE DEFENDANT] WAS IN THE WRONG, - IF HE WAS HIMSELF VIOLATING OR IN THE ACT OF VIOLATING THE LAW, - AND ON ACCOUNT OF HIS OWN WRONG WAS PLACED IN A SITUATION WHEREIN IT BECAME NECESSARY FOR HIM TO DEFEND HIMSELF AGAINST AN ATTACK MADE UPON HIMSELF WHICH WAS SUPERINDUCED OR CREATED BY HIS OWN WRONG, SUCH A STATE OF CASE MAY BE SAID TO ILLUSTRATE AND DETERMINE WHAT IN LAW WOULD BE DENOMINATED THE IMPERFECT RIGHT OF SELF-DEFENSE. WHENEVER A PARTY BY HIS OWN WRONFUL ACT PRODUCES A CONDITION OF THINGS WHEREIN IT BECOMES NECESSARY FOR HIS OWN SAFETY THAT HE SHOULD TAKE LIFE OR DO SERIOUS BODILY HARM, THEN INDEED THE LAW WISELY IMPUTES TO HIM HIS OWN WRONG AND ITS CONSEQUENCES TO THE EXTENT THAT THEY MAY AND SHOULD BE CONSIDERED IN DETERMINING THE GRADE OF OFFENSE WHICH BUT FOR SUCH ACTS WOULD NEVER HAVE BEEN OCCASIONED.

Id at 517-18. SHORTLY AFTER REED, COURTS FASHIONED THREE VARIATIONS OF THE DOCTRINE.

FIRST, SOME COURTS INDICATED THAT THE DOCTRINE WOULD APPLY WHERE THE HOMICIDE WOULD FAIL WITHIN THE PERFECT SELF DEFENSE DOCTRINE BUT FOR THE FAULT OF THE DEFENDANT IN PROVOKING OR INITIATING THE DIFFICULTY AT THE NON-DEADLY FORCE LEVEL E.G. ALLISON V. STATE 74 ARK. 444, 86 S.W. 409 (1905) REED V. STATE, SUPRA; STATE V. FLORY 40 WYO 184 276 P. 458 (1929)

SECOND, THE COURTS NOTED THAT THE DOCTRINE WOULD APPLY WHEN THE DEFENDANT COMMITTED A HOMICIDE BECAUSE OF AN HONEST BUT UNREASONABLE BELIEF THAT HE WAS ABOUT TO SUFFER DEATH OR SERIOUS BODILY HARM. E.G. ALLISON V. STATE SUPRA; STATE V. THOMAS 184 N.C. 757, 114 S.E. 834 (1922)

THIRD OTHER COURTS RECOGNIZED THE DOCTRINE WHEN THE DEFENDANT USED UNREASONABLE FORCE IN DEFENDING HIMSELF AND AS A RESULT KILLED HIS OPPONENT SEE E.G. STATE V. CLARK, 69 KAN 576, 77 P. 287 (1904).

SINCE THE ACCEPTANCE OF THIS DOCTRINE BY SEVERAL JURISDICTIONS DURING THE LATE 1800'S AND EARLY 1900'S COMPARATIVELY FEW MODERN JURISDICTIONS HAVE ANALYZED THE DOCTRINE. OF THOSE JURISDICTIONS THAT HAVE CONSIDERED THE DOCTRINE IN RECENT TIMES HOWEVER, SEVERAL HAVE ADOPTED THE HONEST BUT UNREASONABLE BELIEF VARIATION OF THE IMPERFECT SELF DEFENSE DOCTRINE. YET REFUSE TO INSTRUCT UPON THE DOCTRIN DUE TO A SUBJECTIVE VIEW OF THE CASE ITSELF.

FOR EXAMPLE WHEN THE JUDGE STATED:

> 'I' THINK THAT THE EVIDENCE THAT HAS BEEN PRESENTED THROUGHOUT THIS TRIAL SUPPORTS A LOT OF INSTRUCTION... BUT ONE INSTRUTION IT DOES NOT SUPPORT IN "MY ESTIMATION" IS THE INSTRUCTION ON IMPERFACT SELF-DEFENSE.

HE APPLIED HIS OWN ESTIMATION SUBJECTIVELY THUS RELEAVING THE PROSECUTION OF ITS BURDEN OF PROVEING THAT IMPERFACT SELF-DEFENSE DID NOT EXIST. AND COMPOUNDED THE ERROR BY REMOVING FROM THE JURYS CONSIDERATION HUMPHRIES DEFENSE ON IMPERFECT SELF DEFENSE. IN OTHER WORDS THE JUDGE TELLING HUMPHRIES HE DID NOT PROVE TO THE COURT IN HIS "ESTIMATION" THAT IMPERFACT SELF-DEFENSE EXISTED WAS AN INCORRECT APPLICATION OF THE LAW AND PREJUDICIAL ERROR. AS THE CORRECT THING TO DO WAS INFORM THE PROSECUTION THAT IT WAS THEIR BURDEN TO PROVE IT DID NOT EXIST THE COURT SHIFTED THE BURDEN.

THIS COURT STATED THAT THE SUPREME COURT OF CALIFORNIA IN PEOPLE V. FLANNEL: 25 CAL. 3d 668. 603 P. 2d 1 160 CAL. RPTR 84 (1979) SOUGHT TO ELIMINATE THE "OBFUSCATION BY INFREQUENT REFERENCE AND INADEQUATE ELUCIDATION" OF WHAT IT CHARACTERIZED AS A UNIQUE RULE Id 25 CAL. 3d at 681. 603 P. 2d at 8 160 CAL. RPTR at 91. CONSISTENT WITH PROFESSOR MORELANDS

VIEW; THE FLANNEL COURT OBSERVED THAT THE UNREASONABLE BELIEF THEORY OF IMPERFECT SELF-DEFENSE IS NOT LIMITED BY OR BOUND UP WITH THE CONCEPT OF THE MITIGATING DEFENSE OF HEAT OF PASSION.

IN ADDITION, THE COURT EXPLAINED THAT THE REASONABLENESS OF AN INDIVIDUAL'S HONEST BELIEF THAT HE NEEDS TO REPEL IMMINENT PERIL OR BODILY INJURY SIMPLY GOES TO THE JUSTIFICATION FOR THE HOMICIDE. MOREOVER, THE FLANNEL COURT EMPHASIZED THE WEIGHING OF COMPETING INTERESTS IN DETERMINING THE APPLICABILITY OF THIS MITIGATION DEFENSE. IN WRITING FOR THE COURT, JUSTICE TOBRINER OBSERVED:

> [T]HE STATE HAS NO LIGITIMATE INTEREST IN OBTAINING A CONVICTION OF MURDER WHEN, BY VIRTUE OF DEFENDANT'S UNREASONABLE BELIEF, THE JURY ENTERTAINS A REASONABLE DOUBT WHETHER DEFENDANT HARBORED MALICE LIKEWISE, A DEFENDANT HAS NO LEGITIMATE INTEREST IN COMPLETE EXCULPATION WHEN ACTING OUTSIDE THE RANGE OF REASONABLE BEHAVIOR. THE VICE IS THE ELEMENT OF MALICE; IN ITS ABSENCE THE LEVEL OF GUILT MUST DECLINE. Id 25 CAL. 3d at 680, 603 P.2d at 7, 160 CAL RPTR at 90.

THIS REASONING IS PERSUASIVE BECAUSE IT RECOGNIZE THAT A DEFNDANT'S CULPABILITY FOR A HOMICIDE BE MITIGATED WHEN HE LACKS THE REQUISITE MENS REA FOR THE OFFENSE OF MURDER. THE TRIAL COURT HAS DEPARTED FROM THIS REASONING AND CERTIORARI SHOULD GRANTED TO CONSIDER THE SUBSTANTIAL CONSTITUTIONAL QUESTIONS RAISED BY THE PETITION.

F.

DOES THE NINTH CIRCUIT COURT OF APPEALS HAVE INHERENT AUTHORITY TO DEEM HIS REQUEST FOR CERTIFICATE OF APPEALABILITY AS A REQUEST FOR EXTENTION OF TIME.

THE DEPUTY ATTORNEY GENERAL ARGUED THAT THE REQUEST FOR CERTIFICATE OF APPEALABILITY (COA) WAS SIX DAY'S LATE AND TIME BARED.

THE PETITIONER EXPLAINED TO THE COURT THAT HE WAS UNABLE TO TIMELY FILE DUE TO (1) HE DID NOT RECEIVE THE MAY 23, 2019 DISTRICT COURTS ORDER UNTIL JUNE 3, 2019 (12 DAYS LATER) AND ON GOOD FAITH AND BELIEF THAT HE HAD 30 DAYS FROM JUNE 3, 2019 TO FILE. (2) CALIFORNIA SUBSTANCE ABUSE TREATMENT FACILITY WAS SUBJECTED TO NUMEROUS LOCKDOWN THAT CAUSED NUMEROUS DISRUPTIONS WITHIN THE FACILITY THAT ALSO PREVENTED ACCESS TO THE LAW LIBRARY. AND (3) THE PHOTOCOPIER IN THE FACILITY WAS OUT OF ORDER FROM MAY THROUGH JULY. ALL OF WHICH WERE CIRCUMSTANCES BEYOND PETITIONERS CONTROLE. THE LIBRARY TECH LYNETTA LIMA FILED A DECLARATION STATING THAT SHE HAD A SYSTEM IN PLACE. SEE APPENDIX D ALTHOUGH THIS DECLARATION WAS THE RESULT OF PERJURY. DURING THE TIME THE PETITIONER WAS DENIED ACCESS TO THE LAW LIBRARY LYNETTA LIMA WAS ALREADY UNDER A COVERT INVESTIGATION

FOR FALSIFICATION OF OFFICIAL DOCUMENTS. INTRODUCING A CONTROLED SUBSTANCE (HERDIN) INTO THE FACILITY WITH INTENT TO DISTRIBUTE INTRODUCTION OF CELL PHONES. AND HAVING SEXUAL RELATIONS WITH INMATES FOR MONETARY GAINE. IT WAS DETERMAINED THAT SHE WOULD CALL INMATES TO THE LAW LIBRARY IN ORDER TO TO FACILITATE HER ILLEGAL ACTIVITY SHORTLY AFTER SHE SIGNED THE DECLARATION SHE WAS ARRESTED BY THE INSTITUTIONAL SECURITY SQUAD INMATE WRIGHT WHO SHE CALLED TO THE LAW LIBRARY EVERY DAY AND HAD A CONTINUING RELATIONSHIP WITH WAS ALSO ARRESTED AND E-MAILS LOCATED IN INMATES WRIGHT'S TABLET SHOWED NUMEROUS MONEY TRANSACTION. ONE OF HER CLERKS INMATE SHARRIFF WHO WAS ALSO A MAJOR PARTICIPANT COULD NOT PRODUCE ANYMORE DRUGS TO INMATES NOR COULD WE PROVIDE THEM WITH A REFUND AND TO PROTECT HIS OWN LIFE BECAME A CONFIDENTIAL INFORMANT FOR THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATIONS AND WAS MOVED TO A SECURE LOCATION

A SIX DAY DELAY IN THE FILING A COA WAS NOT EXCESSIVE NOR WOULD IT PREJUDICE THE STATE NOW THE LAW LIBRARY IS ONLY OPEN TWO DAYS A WEEK DUE TO THE ABOVE AND THERE ARE STILL LOCDOWNS IN PLACE DUE TWO SEARCHES FOR CONTROBAND AND THE MURDER OF TWO INMATES WHICH GAINED WIDE NEWS COVERAGE.

THIS COURT HAS LONG HELD THAT A DEFENDANT/ RESPONDENT IS ESTOPPED TO ASSERT A DEFENSE OF THE

STATUTE OF LIMITATION WHEN THE EXPIRATION OF THE STATUTE IS DUE TO CONDUCT BY THE DEFENDANT/RESPONDENT INDUCING THE PETITIONER TO DELAY THE FILING OF THE ACTION.

LYNETTA LIMA'S DECLARATION WAS A FRAUD UPON THE COURT AS AN INTENTIONAL MISREPRESENTATION. DECEIT AND CONCEALMENT OF MATERIAL FACTS KNOWN TO LYNETTA LIMA WITH THE INTENTION ON HER PART TO THEREBY DEPRIVE HUMPHRIES OF THE FIRST AMENDMENT RIGHT TO ACCESS THE COURT. AND AMOUNTED TO OPPRESSION IT WAS DESPICABLE CONDUCT THAT SHE WAS INGAGED IN THAT SUBJECTED HUMPHRIES TO CRUEL AND UNJUST HARDSHIP IN CONCIOUS DISREGARD OF HUPHRIES RIGHTS AND IT WAS DONE WITH MALICE, INTENDED TO CAUSE INJURY AND CARRIED ON WITH A WILLFUL AND CONSCIOUS DISREGARD OF THE RIGHTS AND SAFETY OF OTHERS

THIS COURT HAS CONSISTENTLY HELD "THE INHERENT POWER OF THE COURT EXTENDS BEYOND THOSE POWERS SPECIFICALLY CREATED BY STATUTE OR RULE, AND ENCOMPASSES THE POWER TO SANCTION MISCONDUCT BY THE ATTORNEYS OR PARTIES BEFORE THE COURT." CHAMBERS V. NASCO INC. 501 U.S. 32, 44-45 (1991) RECOGNIZING THAT FEDERAL COURTS HAVE INHERENT POWER "TO FASHION AN APPROPRIATE SANCTION FOR CONDUCT WHICH ABUSES THE JUDICIAL PROCESS." SANCTIONS PURSUANT TO A COURT'S INHERENT AUTHORITY ARE APPROPRIATE UPON A FINDING OF RECLESSNESS WHEN COMBINED WITH AN ADDITIONAL FACTOR SUCH AS FRIVOLOUSNESS, HARASSMENT OR AN IMPROPER PURPOSE.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

FELTON HUMPHRIES JR.

Date: FEBRUARY 1, 2020