No. 20-229

IN THE

SUPREME COURT OF THE UNITED STATES

Michael Woolen — PETITIONER
(Your Name)

vs.

Jason Picket — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court Of California
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Michael Woolen
(Your Name)

P.O.Box 3030
(Address)

Susanville, Ca. 96127
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

I. WHETHER PETITIONER ,1 OF 60 MILLION AMERICANS WITH MENTAL ILLNESS WAS DEPRIVED BILL OF RIGHTS PROTECTIONS OF AMENDMENT I ,V ,VI ,IX ,AND XIV. WHERE TRIAL COURT PRECLUDED HIM [49] OCCASIONS FROM TESTIFYING HIS INNOCENCE, FREELY, WITH NO ENUMERATION, WHILE PRESENTING A DEFENSE. DOES DUE PROCESS AFFORD STIPULATION AS TO RELEVANT DEMONSTRATIVE I.E MENTAL CHARACTERISTICS WHICH ARE INFERRING AND PRESUMED IN TESTIMONY.

II. WHETHER CALIFORNIA SUPREME COURT SANCTIONED HABEAS TRIAL COURT'S SUPPRESSION OF NEWLY DISCOVERED EVIDENCE WHICH EXPOSES [3] TRIAL DA SUPRESSIONS ,[1] ASSISTANT ATTORNEY GENERAL SUPPRESSION ,[1] HABEAS JUDGE SUPPRESSION ,AND [1] HABEAS DISTRICT ATTORNEY LITIGATION TEAM SUPPRESSION.

III. WHETHER THE UNITED STATES POSTAL SERVICE ,A SUBSIDIARY OF THE EXECUTIVE BRANCH OF THE UNITED STATES GOVERNMENT SHOULD IMPEDE I.E. DENY PETITIONER XIV AMENDMENT AND EQAUAL PROTECTION OF PRESENTING A NON PIECEMEAL HABEAS PETITION IN THE STATE COURT.

IV. WHETHER APPELLATE COUNSEL'S NON OBLIGATION TO INVESTIGATE HABEAS CLAIMS SHOULD PRECLUDE PETITIONER FROM THE EQUAL PROTECTION OF DUE PROCESS WHEN ALL CLAIMS PRESENTED ARE PREMISED IN FACTS FROM THE TRIAL FILE WHICH WAS IN A DEAD LETTER FACILITY FOR 14 YEARS.

V. WHETHER -VIOLATION OF CALIFORNIA LEGISLATION WHICH ESTABLISHES STRUCTURAL ERROR STEMMING FROM JUDICIAL DERELICTION OF DUTY AND MANIFEST DISREGARD FOR THE LAW CONSTITUTE ERROR OF CONSTITUTIONAL MAGNITUDE.

VI. WHETHER CALIFORNIA SUPREME COURT ERRED IN FAILING TO APPLY THE SCHLUP GATEWAY STANDARD WITHOUT GRANTING AN EVIDENTIARY HEARING TO DETERMINE PHYSIOLOGICAL QUESTIONS. ANSWERS ONLY A PHYSIOLOGIST OR PHYSICAL THERAPIST CAN PROFESSIONALLY PROVIDE IN REGARD TO SHOULDER RANGE OF MOTION DEFICIENCY.

VII. WHETHER FAILURE TO INSTRUCT THE JURY ON FELONY MURDER RULE WHEN ASKED WHEN IS A CRIME NOT PREMEDITATION BECAUSE NO FELONY EXISTS AND THE CHARGE IS RENDERED ASSAULT WITH A FIREARM CONSTITUTE DIRECTINGTHE JURY TO CONVICT.

VIII. DOES TRIAL JUDGE DERILICTION COMBINED WITH MULTIPLE PROSECUTORIAL BRADY/NAPUE VIOLATIONS INVOKE THE BRECHT RULE APPLYING CHAPMAN/SARRAZAWSKI.

IX. WHETHER DETERENCE IS NECESSARY WHEN 'FRUIT OF THE POISONOUS TREE' EVIDENCED AND CONCEDED TO IN THE TRIAL FILE ,THEN INSPIRING MULTIPLE FALSE TESTIMONY COMPEL FULL AND FAIR STATE LITIGATION TO AFFORD DUE PROCESS AND EQUAL PROTECTION.

LIST OF PARTIES

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

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

TABLE OF CONTENTS

OPINIONS BELOW 1

JURISDICTION 2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 3

STATEMENT OF THE CASE 4

REASONS FOR GRANTING THE WRIT 14

CONCLUSION 33

INDEX TO APPENDICES

APPENDIX A Order: Second Appellate District Court of California (1-29-20) Denial

APPENDIX B Order: Second Appellate District Court of California (1-10-20) Denial

APPENDIX C Order : Superior Court of Los Angeles (12-24-19) Summary Denial

APPENDIX D Order: California Supreme Court (5-27-20) Denial

APPENDIX E Order: Superior Court of Los Angeles (10-1-19) Denial of 1054.9

APPENDIX F Order: U.S. Dist. Court of Central Dist. of California Failure to obtain authorization from Ninth Circuit

Appendix G Order: U.S. Dist. Court of Central Dist. of California (5-12-11) COA Denial

Appendix H Order: U.S. Dist. Court of Central Dist. of California (3-16-10) Grant of COA

Appendix I Order: U.S. Dist. Court of Central Dist.of California (1-9-08) Order denying Eqitable Tolling and OCS re dismissal as Time barred

Table Of Authorities

Arizona V.Fulminante 499 US at 294,310 (1991)	22,24,25
Rose V.Clark 478 US at 577-578	24
Brecht V.Abrahannson 507 US at 654 (1995)	6,8,20,24
Champman,supra 386 at 52	20,25,27
People V.Sarrazawsky 27 Cal.2d at 11	11,20,25,27
People V.Watson 46 Cal. 2d at 835	14,20
Merolillo V.Yates 663 F. 3d at 452 n4 (9th Cir.2011)	20
People V.Carmichael 198 Cal.at 547	20
Schlup V.Delo 513 US at 324	6,8,9,20,23,29
House V.Bell 547US at 537 (2006)	23
In re Clark 5 Cal. 4th at 766,775,776,784,797,798	16,17,18,22,30
In re Robbins,supra 18 Cal.4th at 780,781 (1998)	14,16,20,30
Withrow V. Larkin 421 US at 46 (1975)	28
In re Murchinson 349 US at 136 (1955)	28
Gibson V.Berryhill 411 US at579 (1973)	28
Tumey V.Ohio 273 US at 532 (1927)	28
United States V.Frady 456 US at 173-174 (1982)	28
Stone V.Powell 428 US at 489 (1976)	14,19
In re Harris,supra 5 Cal. 4th at 830	9,14,19,30
In re Sterling,supra 63 Cal. 2d at 487	9,14,30
Wong,supra 371 US at 485,488	31
Brown V.Illinois 422 US 590 (1975)	9
United States V.Ceccolini 435 US at 299	9
Utah V.Strieff 136 5 Ct 2056 (2016)	13
United States V.Garcia 2019 US Dist. 27861 Lexis	13

Silverthorn Lumber Co. V.United States 251 US at 392,812	32
Murray V.Carrier 477 US at 492,488 (1986)	6,18
Lott V.Mueller 304 F.3d 918 (2002)US App.Lexis at 926	18
Corjasso V.Ayers 278 F3d at 877 (9th Cir. 2002)	18
Calderon V.US Dist. Court (9th Cir.199)	18
Bonner V.Carey 425 f. 3d 1135 (2005)	18
In re Stankewitz,supra 40 Cal. 3d at 397	18
In re Richards,supra 63 Cal. 4th at 312-313	
Kyles V.Whitley 514 US at 436,438,439, (1995)	14,23,25,26,32
Strickler V.Greene 537 US at 286 (1999)	26
Brady V.Maryland 357 US 94,87 (1963)	8,25,26
Agurs,supra 427 US at 97 (1976)	8
Napue,supra 360 US at 269,270,272	22,26,27
Giglio,supra 405 US at 15	26
Bagley,supra 437 US at 678	25
Chun,supra 45 Cal. 4th at 1182	24
Union Pacific R.R. V.United States 99 US at 721 (1878)	22,28
Rushing V.Barnes 2013 US Dist. Lexis 166542 at 10	30
In re Sixto 48 Cal. at 1260	22,28
In re Ledesma 43 Cal.3d at 199	22,29
Peterson V.Bernardi at 719 F.supp 2d 428	32
Moore V.Hartman 571 F.3d at 67,387 (2009)	32
Hinchman V.Moore 312 F.3d 198,205-206 (6th Cir. 2002)	32
Hill V.McIntyre 884 F. 2d at 275 (6th Cir. 1989)	32

UNTITED STATE'S CONSTITUTION

First Amendment	3
Fourth Amendment	3,6,9,19
Fifth Amendment	3,6,8
Sixth Amendment	3,6
Ninth Amendment	3
Fourteenth Amendment	3,6,8,14,29,31
Article 6	3

California Constitution

Article 6 section 18 (d) (2)	3
Article 6 section 23 (c) (4) (6)	3,9,15

California Penal Code

Section 1473	14,20,26
Section 1054.9	4,21,32
Section 664/187(a)	4,6,24
Section 12022.53 (d)	4,6,22
Section 245 (a)(2)	6,8,22,24
Ssection 667.5(b)	4

California Evidence Code

Section 210	28
Section 403 (d)(1)(b)(c)(1)	24
Section 780 (b)(f)(h)(j)	25

Rules Of Professional

Section 3-700.	23

Black's Law Dictionary

Black's Law Dictionary

- Physical Fact Rule (6th edition) 23,24
- Fabricated Evidence (11th edtition) 32
- Impartial Jury (11th edition) 25
- Legal Evidence (11th edition) 25
- Due Process (6th edition) 28

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner Michael Woolen respectfully petitions for a Writ of Certiorary to review the judgement of the California Supreme Court ,denying petitioner's Habeas Corpus.

OPINIONS BELOW

The following opinions and orders below are pertinent here ,all of which are unpublished: [1] Order: Second Appellate District Court of Appeals of California (1-31-05) Affirming Judgement case no.B173587 [2] Order: California Supreme Court (4-20-05) denying Petition for Review case no.S132152 [3] Order: US Dist. Court Central District of California (1-9-08) Order denying Equitable Tolling and Order to Show Cause re dismissal as Time Barred [4] Order: US Dist. Court Central District of California (3-16-10) Grant of COA [5] Order: US Dist. Court Central District of California (5-12-11) [6] Order: US Dist. Court Central District of California (5-13-11) Failure to obtain authorization [7] Order: Superior Court of Compton (10-1-19) denial of 1054.9 motion for post trial discovery [8] Order: Superior Court of Compton (12-24-19) Summarily denying Habeas petition [9] Order: Second Appellate District Court of Appeals of California (1-10-20) Order denying Habeas petition as jurisdictional [10] Order: Second Appellate District Court of Appeals (1-29-20) Denial of Habeas petition [11] Order California Supreme Court case no. S260733 (5-27-20) Denial of Habeas petition as untimely. see Appendices

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was n/A.

[ ] 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: n/A, 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 n/A (date) in Application No. A_____.

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

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

The date on which the highest state court decided my case was 5-27-20. A copy of that decision appears at Appendix D.

[ ] A timely petition for rehearing was thereafter denied on the following date: n/A, 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 n/A (date) on _____ (date) in Application No. A_____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CALIFORNIA CONSTITUTION
Article 6 Section 18
Judicial Discipline

(d)(2) Except as provided in subdivision (f) ,the Commission on Judicial Performance may censure a judge or former judge or remove a judge for action occurring not more than six years prior to the commencement of the judge's current term or of the former judge's last term that constitutes willful misconduct in office ,persistent failure to or inability to perform the judge's duties...,or conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or (3) publicly or privately admonish a judge or former judge found to have engaged in improper action or deriliction of duty.

CALIFORNIA CONSTITUTION
Article 6 Section 23
Superior and Municipal Court Consolodation

(c) Except as provided by statute to the contrary ,in any county in which the superior and municipal court become unified ,the following shall occur automatically in each preexisting superior and municipal court:

(4) Pending actions ,trials ,proceedings ,and other business of the court become pending in the superior court under the procedures previously applicable to the matters in the court in which the matters were pending.

(6) Matters of a type previously subject to rehearing by a superior court judge remain subject to rehearing by a superior court judge ,other than the judge who originally heard the matter.

THE UNITED STATES CONSTITUTION

Article VI. Oath of Office

Judicial Officers ,of the United States and of the several states ,shall be bound by oath or affirmation ,to support this Constitution.[9/17/1787]

AMENDMENT I

Congress shall make no law abridging the freedom of speech. [9/25/1789]

AMENDMENT IV

The right of the people to be secure in their persons..against unreasonable searches and seizures ,shall not be violated ,and no warrants shall issue ,but upon probable cause.[12/15/1791]

AMENDMENT V

No person shall be compelled in any criminal case to be a witness against himself. ,nor be deprived of life ,liberty ,or property ,without due process law.[12/15/1791]

AMENDMENT VI

In all criminal prosecutions ,the accused shall enjoy the right to a speedy and public trial ,by an impartial jury.[12/15/1791]

AMENDMENT IX

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.[12/15/1791]

AMENDMENT XIV

All persons born or naturalized in the United States and subject to the jurisdiction thereof ,are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which abridge the privileges or immunities of citizens of the United States: nor shall any the state deprive any person of life ,liberty ,or property without due process of law: or deny any person within its jurisdiction equal protection of the laws.[7/28/1868]

STATEMENT OF THE CASE

Petitioner was convicted of one count of Attempted Muder [PC 664/187(a)] ,one Firearm Ennancement Personal use causing Great Bodily Injury [PC 12022.53 (d)] ,and Prior Conviction [PC 667.5 (b)]. Petitioner was sentenced to Life plus 25 years to Life ,plus 3 years at the Superior Court of Los Angeles (Compton) 2/18/2004.[case no. TA070163].Petitioner was represented by trial attorney Jennifer Cheng.

On Direct Appeal [B173587] ,petitioner raised the claims (1) Trial Court erred precluding appellant from fully cross examine rebuttal expert, (2) Prosecution Misconduct ,Mistating the Law and Infringing on appellant's Right to Testify and Present a Defense ,and (3) Trial Court failed to give lesser Included instructions on Attempted Voluntary Manslaughter. Petitioner was represent by appellate attorney Susan Kaiser. California Second Appellate District Court of Appeals Affirmed the conviction 1/31/2005.

Petitioner sought Review in the California Supreme Court [S132152] .The California Supreme Court Affirmed the judgement 4/20/2005. Petitioner did not file a Writ of Certiorary in the United States Supreme Court.

Petitioner ,unaware of the California Supreme Court's Denial of Petition For Review [appellate attorney failed to give any notice to appellant when the CSC returned the denial directly to her]. Upon realizing that the AEDPA's limitation in which a Federal Habeas petition have lapsed five months over the limitation [appellate attorney relinquished the trial file and sent them via US Postal System ,though petitioner never received them ,nor the formal notice of termination of representation] appellant's mother requested that appellant's step father ,a inmate housed at another prison assist in filing a petition in the Federal District Court.

Petitioner ,through his step father ,filed a Federal Habeas Petition on 12/14/2007. [17] months after the AEDPA's limitation had expired. Unaware of the process ,petitioner asserted the exhausted claims presented in Direct Appeal [CV07 - 8161 GW (AN)]

Petitioner file a Motion for Equitable Tolling with the Federal Habeas Corpus 12/14/2007. Petitioner asserted claims ,(1) Petitioner is qualified for Equitable Tolling where prison officially denies beneficial access to law library as a mental ill inmate in violation of the ADA ,(2) Petitioner who suffer mental illness demonstrate the requisite showing to establish mental incompetency for the purpose of warranting Equitable Tolling of their Habeas petition ,(3) Where state prison officials fail to provide equally beneficial access to prison law library by denying aid in the preparation and presentation of their legal claims ,state prison officials create "Extraordinary Circumstances" which warrant application of Equitable Tolling ,and (4) The prison officials fail to provide to mentally ill inmates adequate assistance in tantamount to Extraordinary Circumstances warranting Equitable Tolling of the AEDPA.

On January 9,2008 United States Magistrate Judge Author Nakazato filed a Order Denying Motion Requesting Equitable Tolling and Order to Show Cause Re Dismissal of Petition for Writ of Habeas Corpus by Person in State Custody as Time Barred.

On 3/16/2010 ,United States District Court Judge George Wu issued a Certificate of Appealablity pursuant to Rule 11.

On 6/21/2010 petitioner [medicated ,and suffering from diminished major life activities ,upon instruction of a 'legal beagle'] filed the exhausted claims of the Direct Appeal [CV 10 - 04534 GW (AN)].

On 5/12/2011 ,United States District Judge George Wu filed an Order Summarily Dismissing Successive Petition for Writ of Habeas Corpus for Failure to Obtain Prior Authorization from the Ninth Circuit [CV 10 - 04534 GW (AN)]. In the same matter US District Court Judge George Wu denied COA on 5/12/2010.

Upon receiving the missing trial file [missing 14 years in Post Office Dead Letter Facility] June 2019 ,petitioner on 7/21/2019 filed a Motion for Post Trial Discovery pursuant to PC 1054.9. Petitioner requested (i) full arrest report ,(ii) including ,but not limited to: victim and witness statements ,(iii) dispatch transcriptions ,(iv) impeachment evidence ,(v) dispatch transcription and full investigative report of officer Amy Puzio ,(vi) officer's report of officer who rode with victim to the hospital ,(vii) victim medical reports ,(viii) photo evidence [crime scene] ,(ix) photos in evidence (prosecution) marked P 1-11 ,(x) detective Garcia's investigative reports.

Petitioner compelled the court with the exhibits showing that the trial file was just acquired and exhibits of trial court ,and trial attorney's denials of trial file and work product request. Judge Jacke II denied the motion because petitioner requested the records from the LASD of Compton which is headquartered in the same building as the court ,asserting the LASD did not encompass the judicial process and petitioner failed to show good cause.

Petitioner also asserted claims to be pursued in Habeas proceedings ,(1) Trial Judge Bias ,(2) Intergovernmental Misconduct [Fruit of the Poisonous Tree] ,and (3) Ineffective Assistance of Counsel. Judge Jacke II denied the Motion on 9/19/2019 [case no.TA070163].

On 10/15/2019 petitioner filed a Habeas petition in the Superior Court of Los Angeles (Compton) asserting claims: INTERGOVERNMENTAL MISCONDUCT [Fruit of the Poisonous Tree] (1) Evidence used to convict petitioner was tainted with methods of prosecutorial ante dated corroborations ,(2) Insistence upon petitioner's guilt rather than the truth seeking process necessary to maintain a fair trial procedure was the premise of the investigation ,(3) Exculpatory witness statements were excluded ,suppressed ,or destroyed ,(4) Witness' trial identification was in violation of irreparable misidentification standards.

IAC ,IAAC (5) Appellate attorney failed to include petitioner in appellate process ,(6) Trial attorney failed to investigate metro platform witnesses ,(7) Trial attorney failed to introduce medical evidence of petitioner's limited range of motion ,(8) Appellate attorney failed to raise five potential "Plain Error" issues.

JUDICIAL ABUSE OF DISCRETION (9) Whether a mentally ill defendant should be allowed to testify before a jury without disclosing his mental illness.

PROSECUTORIAL MISCONDUCT (10) DA erroneously placing felony murder rule evidence in trial record ,(11) DA suppressing evidence ,and misleading jury.

The petition was Summarily Dismissed 12/24/2019.

On 12/30/2019 petitioner filed the exact same petition in the California Second Appellate District Court of Appeals [B303327] which denied for Jurisdiction on 1/10/2020.

On 1/23/20 petitioner filed a Habeas petition in the California Second District Court of Appeals [B303794] asserting the same claims in the first instance ,and adding Procedural Hurdles [addressing Cognizable Grounds ,Substantial Delay ,Issues that Could Have Been Raised on Appeal ,Claims that Were Raised and Rejected on aapoeal ,and the Waltreas Rule] ,Introduction to Fruit of the Poisonous Tree ,Judicial Abuse of Discretion :Prejudice ,IAC and IAAC :Prejudice ,Prosecutorial Misconduct :Prejudice. The petition was denied 1/29/2020.

On 2/18/2020 petitioner filed a Habeas petition in the California Supreme Court attached therewith a Motion for Reconsideration: Erroneous Application Obstructing the Judicial Process by Disregarding Federal Precedence to Establish Prejudicial 'Look through' Presumtion [S260733] ,and on 3/12/20 Motioned the Court to Supplement and or Amend the petition [S260733]. The petition presented the claims asserted in the petition submitted to California Second Appellate District Court of Appeals.

The Motion to Supplement and or Amend Procedural Hurdles i.e Extraordinary Circumstances in Substantial Delay ,Judicial Abuse of Discretion i.e Deriliction of Duty and Wanton Misconduct ,Prosecutorial Misconduct [4] Brady/Napue suppression ,false testimony violations. The Petition and Motion to Amend was denied En Banc on 5/27/2020.

Petitioner was arrested May 24 ,2003 for Assault with a Firearm PC 245(2) punishable by 2 ,3 ,or 4 years. On January 21 ,2004 petitioner was convicted of Premeditated Attempted Murder PC 664/187(a) ,and [3] Enhancements PC 667.5. On February 18 ,2004 petitioner was sentenced to 25 to life ,plus life ,and 3 years.

While on Habeas Corpus in the California Supreme Court petitioner presented Federal questions pursuant to Schlup v. Delo 513 US 298 (1995) Murray v. Carrier 477 US 478 (1986) and Brecht v. Abrahamson 507 US at 654 (1993) were presented in Claim I Judicial Abuse of Discretion ,Claim II Prosecutorial Misconduct ,and Claim III Fourth Amendment Fruit of the Poisonous Tree violation.

GROUND I. JUDICIAL ABUSE OF DISCRETION
Trial Court's Structural Errors via Deriliction of Duty ,Manifested Disregard for the Law which Deprived petitioner Fair Trial ,Due Process ,Right to Impartial Jury ,and Equal Protection of Laws as guaranteed by Amendment V ,VI , and XIV of the United States Constitution.

(1) On May 24 ,2003 petitioner was arrested ,and charged with an Assault with a Firearm California Penal Code § 245 (2) punishable by 2 ,3 ,and 4 years (see exhibit 93).

(2) Detective Garcia testified on Direct Examination in Preliminary Hearing that arresting officers reported that "it appeared to them petitioner was hiding behind a payphone" (PrelimRtp.13:3-9) .On Cross Examination Detective Garcia conceded to the fact petitioner was not "hiding behind anything" (PrelimRtp.14:9-15).

(3) Complaint Witness testified in trial cross examination "When I was taken in the ambulance to the hospital ,the detective told me that he was in custody...they told me that he had - - that there was a gun that was nearby ,yes and it was still warm. And might I add ,he was Hiding Behind a Phonebooth that night" (Rtp.79:21-80:7).

(4) In trial testimony Complaint Witness testified that the first officer he talked to identifying petitioner [5] or [10] minutes after being shot was "Detective Garcia"(Rtp.77:6-22)

(5) Detective Garcia testified in trial that he did not speak to Mr. Burnett the night of the crime "He was transported to the hospital and he was unavailable at that time (Rtp.218:24-27)

(6) In trial DA Jackson objected to questioning Detective Garcia as to the identification facts as described by the Complaint Witness and trial judge Sustained for being beyond the Scope (Rtp.219:5-220:9).

(7) In Preliminary Hearing the presiding judge Denied a "Motion to Dismiss Count One" of Premeditated Attempted Murder. He stated the Evidence adduced was "Enough for Preliminary Hearing" (PrelimRtp.15:23-28) (PrelimRtp.16:13-17).

(8) An information was filed on 8/12/03 in Superior Court on Count One : 664-187(a)

(9) Trial was scheduled for 10/14/03 .On 9/10/03 Trial Judge was presiding judge for a pretrial conference which was rescheduled. On 10/1/03 Trial Judge was presiding judge for a pretrial conference that was rescheduled. On 10/9/03 Trial Judge was presiding judge for a pretrial conference which was taken off of the calendar.

(10) Trial Judge offered petitioner a judge's discretion plea for 5 ,10 , or 15 years.

(11) On 1/12/04 ,the first day of trial ,trial judge states "I don't know anything about the case ,obviously I just got it" (Rtp.4:9-10) . Then (Rtp.4:26-27) Trial Judge "wait let me interrupt you. Was there any discussion after the offer to have him sleep over"

(12) In Preliminary Hearing Complaint Witness testified he asked petitioner " let me give you a place to stay for the night" (PrelimRtp.6:13-22)

(13) DA Jackson Introduced 'Felony Murder' motive evidence as 'Just Indicated' (RTp4:28-5:7), while in a §402 hearing on False Hearsay Gang War allegations.

(14) Complaint Witness was questioned in Direct Examination in trial about the 'Just Indicated' "Felony Murder Rule" inclusion (Rtp.55:9-16) DA Jackson asks "As you two began to walk ,did you say anything to the defendant" Mr. Burnett: "May I be specific in answering it" A: "Yes ,you may" , Q: "Are you sure". THE COURT : "NO ,Why don't you go ahead and ask a leading question" Mr. Jackson: "Okay. Thanks"

(15) In Preliminary Hearing (PrelimRtp.6:21-22) Complaint Witness states "After that he pulled out a gun and shot me just below the temple point blank [Indicating].

(16) After Trial Judge interrupted the 'Just Indicated' "Felony Murder" rule line of questioning on Direct Examination ,

DA Jackson questions Complaint Witness : " You're pointing with your right index finger to a spot just below your temple" ,then DA Jackson asks Trial Judge "Is that insufficient" (RTp:56:18-27).

(17) When asked in Cross Examination as to the "Felony Murder" origins ,complaint wistaes states : "When I sat down and thought about it at church New Years Eve night BECAUSE it was ,I believe ,Mr. Lonergan that told me it will come back all at once because the initial impact of the situation ,there are some things that you can't recall at that particular time" (Rtp.83:9-15).

(18) Complaint Witness testified that there were [5] ailments afflicting him from his injuries ,1. severe headaches ,2. temporary blindness ,3. ringing in ears ,4. double vision ,and 5. numbness. Non were memory or cognitive related (Rtp.60:9-17) (Rtp.61:23-27)

(19) While in deliberations the jury asked trial court "When is a crime not premeditation"

(20) Petitioner was diagnosed as bi polar manic depressive in 2001 (see exhibit H)

(21) Trial Attorney states that petitioner's mental illness was the subject of a §402 hearing , and tells the trial judge "She doesn't know if he wants that stuff to come out". The Court replies: "You don't care if it comes out" . Ms. Cheng: "I mean ,really ,I don't care ,but it was the subject-- "The Court interupts: "...She was there to talk about how he is not right in the head. I don't know that that is something relevant now" (Rtp:240) .Trial Court stated " He doesn't know who it helps or hurts more" (Rtp.242:15-16).

(22) During Trial Testimony petitioner's Mental Illness was displayed in Irrational Behavior in Direct Examination and Cross Examination there were [49] faults where the DA ,Trial Attorney ,and Trial Court interfered with ,and or regarded petitioner's testimony with disdain. DIRECT EXAMINATION: 1.(Rtp.259:56) 2.(Rtp.260:14) 3.(Rtp.261:1) 4.(Rtp.261:5) 5.(Rtp.261:7) 6.(Rtp.261:18) 7.(Rtp.261:18) 8.(Rtp.261:26) 9.(Rtp.262:17) 10.(Rtp.262:27) 11.(Rtp.263:6) 12.(Rtp.263:18) 13.(Rtp.263:23) 14.(Rtp.265:4) 15.(Rtp.265:8) 16.(Rtp.265:22) 17.(Rtp.266:4-10) 18.(Rtp.266:26) 19.(Rtp.267:14-16) 20.(Rtp.267:27) 21.(Rtp.268:2) 22.(Rtp.268:27-28) 23.(Rtp.269:19-25) 24.(Rtp.270:1-4) 25.(Rtp.270:8-27) 26.(Rtp.271:1-7) 27.(Rtp.271:11-20)

28.(Rtp.271:21-28) CROSS EXAMINATION: 29.(Rtp.273:12- 274:4) 30.(Rtp.275:9-275:8) 31.(Rtp.276:11-18) 32.(Rtp.276:24-277:28) 33.(Rtp.278:22-28) 34.(Rtp.279:1-10) 35.(Rtp.280:6-21) 36.(Rtp.280:22-26) 37.(Rtp.281:1-17) 38.(Rtp.281:19-282:7) 39.(Rtp.282:9-11) 40.(Rtp.282:12-25) 41.(Rtp.283) 42.(Rtp.284:1-22) 43.(Rtp.286:7-25) 44.(Rtp.287:13-28) 45.(Rtp.288:22-289:18) 46.(Rtp.290:1-18) 47.(Rtp.290:21-291:3). 48.(Rtp.291:4-17) 49.(Rtp.291:18-292:4)

(23) There were [7] displays in petitioner's trial testimony where psychological indifference was apparent. 1.(Rtp.271:8-26) 2.(Rtp.273:12-25) 3.(Rtp.274:17-27) 4.(Rtp.274:28-275:12) 5.(Rtp.276:27-278:17) 6.(Rtp.281:19-282:8) 7.(Rtp.282:27-284:26)

GROUND II: PROSECUTORIAL MISCONDUCT

Prosecutors Suppressed Fabricated Evidence in Trial ,Direct Appeal ,and Habeas proceedings. The [4] Brady/Naupe violations deprived the jury of their Impartiality and Denied petitioner Fair Trial ,and Due Process Rights as guaranteed by Amendment V ,and XIV of the US Constitution. Schlup v. Delo 513 US 298 (1995) Brady v. Maryland 373 US 83 (1963) US v. Agurs 427 US 97 (1976) Brecht v. Abrahamson 507 US 619 (1993)

(1) On May 24 ,2003 petitioner was arrested and booked for an Assault with a Firearm PC 245(2) ,punishable by 2 ,3 ,and 4 years (see exhibit D)(D3)

(2) In preliminary hearing Detective Garcia testified that the arresting officers said petitioner " appeared to be concealing himself behind a phonebooth" (Rtp.13:3-9). Then on Cross Examination the Detective conceded to the fact that petitioner was just 'sitting on a bench' (Rtp.14:9-15).

(3) DA Gallon was acting District Attorney in Preliminary Hearing when Detective Garcia conceded to the fact there was no hiding probability. DA Lonergan was acting District Attorney from 11/18/03 - 12-18-03 when the Photos #8 ,and #9 were procured by a professional.

(3) In trial Arresting Officer Dollens was presented Suppressed Photo Evidence #8 ,and #9 by DA Jackson. These photos were taken from the opposite direction from the entrance to place a passenger bench 'behind a phonebooth'. In an obscured photo with seat fillers and no probative value Officer Dollens False Testifies petitioner was 'hiding' in a vicinity where one man obscured the view of a 10 ft long bench. Then he False Testified petitioner was 'further north ,on the other side' which would place petitioner in plain view ,further in plain view (Rtp.203:2-9) (Rtp.203:20-22) (Rtp.204:5-7) (Rtp.204:27-205:8)

(3) DA Jackson ask petitioner on Cross Examination "You were hiding" , "Ducking down behind that phonebooth" (Rtp.288:22-28) (see exhibit A)

(4) Complaint Witness False Testified in trial that he identified petitioner to Detective Garcia [5] or [10] minutes after the crime was committed (Rtp.77:6-22). Complaint Witness testified Tainted Evidence that he was 'Told by a detective when he was taken in the ambulance to the hospital....that petitioner was hiding behind a phone booth that night' (Rtp.79:21-80:7).

(5) None of the witnesses that immediately assisted Complaint witness were told by Complaint Witness that petitioner was the shooter. The 911 caller was not told by Complaint Witness that petitioner was the shooter.

(6) Arresting officers did not testify that they were responding to a crime with an identified person of interest.

(7) Detective Garcia would incriminate Complaint Witness' False assertion of identifying petitioner to him (Rtp.218:24-27)

(8) In Direct Appeal Assistant Attorney General Mike Katz would attentuate the False Evidence fabrication and Tainted identification (see exhibit C)

(9) In State Habeas Corpus proceedings in the first instance Habeas DA ,and Habeas DA asserted in Summary Dismissal that petitioner failed to send the petition on a MC 275 which was replaced in the prison with the identical HC 001 form.

(10) Both Habeas DA and Judge was furnished with a HC 001 form [8] pages behind the cover page ,and table of authorities. Whether the clerk failed to organize to Habeas Judge and DA specification ,or destroyed ,the Newly Discovered Evidence that exposes the Fabrication also supporting question #1 was referred to 30 plus occasions in Attachment A: Memorandum of Points and Authorities. However the False Evidence remained suppressed (see exhibit F [order summarily dismissind habeas petition])

(11) Despite insufficiency of motive being established in preliminary hearing DA Jackson would introduce 'Felony Murder' evidence as an alternative motive to a False Gang War hearsay allegation during a 402 on gang allegations (Rtp.4:28-5:1).

(12) During deliberations the jury asked trial court "When is a crime not premeditated"

(13) DA Jackson denied Trial Attorney Discovery (Rtp.91:22-23). In Officer's Puzio's police report (see exhibit D6) Witness Hubbard is "Sitting on a Wall" in the rear of the parking lot. Presumably the 4ft wall separating Tom's Hambuger's Drive thru from the 200ft x 200ft parking lot which is at least 200 plus feet from Palmer ,where Complaint Witness testified the crime happened.

(14) Witness Hubbard and Scott FalseTestified about their location in trial. Hubbard saying he was behind Complaint Witness [NorthWest] (Rtp.113:6-15) (Rtp.114:1-11). Witness Scott testified she was next to Hubbard ,and was 25ft from the perpetration of the crime (Rtp.159:28) (Rtp.162:14-16). Neither Scott nor Hubbard mentioned their location [SouthEast] or on the perimeter of the parking lot 'Sitting on a Wall' (see exhibit D6).

GROUND III. FOURTH AMENDMENT FRUIT OF THE POISONOUS TREE VIOLATION Brown v. Illinois 422 US 590 ,45 L Ed 2d 416 (1975) Schlup v. Delo 513 US 298 (1995)

On May 24, 2003 Wilbur Burnett was shot in a parking lot adjacent to the Compoton Metro Station. Petitioner was arrested and charged for the crime. Arresting Officers Dollens and Helbing said they "OBSERVED PETITIONER CROUCHING BEHIND A PHONE BOOTH " (see Supplementary Report #403-07415-2822-051)

Petitioner will establish with NEWLY DISCOVERED EVIDENCE (see exhibit A). A Photo Document Depicting the geographical improbabilty of "Hiding Behind" a phone booth from the natural direction of the entrance. There is a passenger bench in front of the phone booth, which petitioner believes prompted the Prosecution team to solicit "OPPOSITE VIEW PHOTO EXHIBITS ,#8 and #9"

The High Court held in Harris ,supra 5 Cal. 4th at p.830 (1993) that " IF THE VIOLATION OF A PETITIONER'S CONSTITUTIONAL RIGHTS BY THE USE OF ILLEGALLY SEIZED EVIDENCE HAD ANY BEARING ON THE ISSUE OF GUILT, THERE WOULD BE NO DOUBT THAT HABEAS CORPUS WOULD E AVAILABLE.."quoting Sterling ,supra 63 Cal. 2d at 487

In United States v. Ceccolini ,supra, 435 US at p. 279 [55 L Ed 2d at p.279] the High Court held that : THE TESTIMONY OF A WITNESS IS NOT A PRODUCT OF HIS OWN WILL, FREE FROM THE TAINT OF A PRIOR ILLEGAL SEARCH ,IF THAT TESTIMONY WAS "COERCED OR EVEN INDUCED BY OFFICIAL AUTHORITY"

FRUIT OF THE POISONOUS TREE

(1) The Establishment on the Trial file if the"Tree" by Detective Garcia in Preliminary Hearing (prelim RTp.13:3-9) A: " AS THEY APPROCHED THE COMPTON STATION HE HEARD THE SOUND OF METAL STRIKING METAL TO THEIR SOUTH. WHEN THEY WENT TO INVESTIGATE WHERE THE NOISE CAME FROM ,THEY SAW THE DEFENDANT ,WHO MATCHED THE DESCRIPTION OF THE SUSPECT GIVEN OUT BY ASSISTING DEPUTIES, HE WAS SITTING BEHIND SOME PHONE BOOTH, AND IT APPEARED TO THEM HE WAS HIDING FROM THEM" (prelimRTp.14:9-15) BY MS. CHENG: Q: " DIDN'T DETECTIVE HELBING TELL YOU WHEN THEY FIRST SAW MR. WOOLEN HE WAS SEATED ON A BENCH?" A: " YES,BEHIND THE PHONE BOOTH" Q: "SO HE WAS SEATED ON A BENCH. HE WASNT HIDING CROUCHING BEHIND ANYTHING?" A: "THAT'S CORRECT"

INSUFFICIENCY PRONG

(2) In Preliminary HearingTrial Attorney filed a motion to dismiss due to Insufficiency of Motive (prelim.RTp.15:23-28) MS. CHENG : "MOTION TO DISMISS COUNT ONE FOR INSUFFICIENCY OF THE EVIDENCE. I DON'T THINK THERE'S BEEN ANY EVIDENCE TO SHOW THIS IS A PREMEDITATED ATTEMPTED MURDER. IT SEEMS LIKE SOMETHING THAT JUST HAPPENED. THERE'S NO REASON FOR IT. BASED ON THAT I'D ASK THE COURT TO DISMISS COUNT ONE". (prelim.RTp.16:13-17) THE COURT: " THERE'S NOTHING TO INDICATE THERE WAS ANY PROVOCATION OR STRUGGLE OR ANY REASON. AND THE DEFENDANT CALLED OUT TO THE VICTIM ,SO HE INITIATED THE CONTACT.THAT'S ENOUGH FOR PRELIMINARY HEARING. SO THE MOTION TO DISMISS IS DENIED"

(3) The first day of Trial ,after two Pretrial Conferences were taken off the calendar...Trial Judge Daigh who was Presiding Judge over three scheduled Pretrial Conferences September 10 ,2003 ,October 1, and October 9, 2003. The first two were rescheduled requested by Defense Attorney.The last one October 9 ,2003 at 8:30am was taken off of the calendar without Petitioner being present in Court (see exhibit E). Later that day October 9 , 2003 at 11:30am petitioner was offered a Judge' discretion 5,10,or 15 year plea offer

(4) The first day of Trial ,in a 402 hearing on Gang Allegations, Trial Judge Daigh (RTp.4:9-10) states: I DONT KNOW ANYTHING ABOUT THE CASE. OBVIOUSLY I JUST GOT IT. Then (RTp.4:26-27) Trial Judge Daigh : " WAIT. LET ME INTERRUPT YOU. WAS THERE ANY DISCUSSION AFTER THE OFFER TO HAVE HIM SLEEP OVER? " Mr. Jackson : "THERE WAS ONE STATEMENT ACCORDING TO THE WITNESS THAT HE HAS 'JUST INDICATED' . ONE STATEMENT ACCORDING TO THE WITNESS AFTER THE OFFER, "HEY ,YOU CAN STAY AT MY HOUSE". THAT STATEMENT WAS THE DEFENDANT SAID SOMETHING IN THE ORDER OF "HEY CAN YOU HELP ME DO SOMETHING? I NEED YOU TO HELP ME DO SOMETHING". THE WITNESS RESPONDED I'M NOT GOING TO HELP YOU DO ANYTHING NEGATIVE I'VE GOT MORALS". AT THAT POINT THE DEFENDANT PULLED A GUN AND SHOT HIM" (RTp.4:28-5:7)

THE CALIFORNIA CONSTITUTION ART. 6 § 23 CONSOLODATION OF SUPERIOR AND MUNICIPAL COURTS (c)(b) Pending actions, trials, proceedings, and other business of the court become pending in the Superior Court under the procedures previously applicable to the matters in the court in which the matters were pending. i.e [(insufficiency and pretrial conferences)].

(5a) In Preliminary Hearing Mr. Burnett (prelimRTp.6:13-22) Mr. Gallon: "After the defendant joined up with you where did you guys go or what did you do?" Mr. Burnett : " I gave him a handshake and a hug ,and I asks him ' what are you doing in this part of town?' Let me give you a place to stay for the night. I have my apartment to myself. I'll house you for the night, and you can just go on your way in the morning". Q: "Tell me what happened next". A: " After that he pulled out a gun and shot me just below the temple, point blank (indicating) Q: "Did you actually see him pull out a gun?" A: " I saw him motion, and next thing I knew ,it happened so fast."

(5) After Mr. Burnett testified to the "Just Indicated" motive DA Jackson (RTp.56:18-27) questions: "YOU'RE POINTING TO WITH YOUR RIGHT INDEX FINGER TO A SPOT JUST BELOW YOUR TEMPLE TO THE LEFT OF YOUR ---- I'M SORRY TO THE RIGHT OF YOUR RIGHT EYE, MAYBE A HALF AN INCH BELOW-- A: YES. Q: -- ON WHAT I GUESS WOULD BE DESCRIBED AS YOUR UPPER CHEEKBONE? A: YES.
Mr. Jackson: "IS THAT INSUFFICIENT?" The Court: "I DON'T KNOW. I COULDN'T SEE".

(6) Trial Judge never adjudicated the 402 on gang allegations (RTp.6:27-7:3) The Court : "WELL, I GUESS I CAN AFFORD TO THINK ABOUT IT FOR A WHILE. ANY OTHER 402 ISSUES? OKAY I'LL OBVIOUSLY DECIDE THAT BEFORE WE GET TO VOIR DIRE BY YOU GUYS.

(7) trial judge never adjudicated the gang allegation 402 before jury selection. Trial Attorney had to question her legal prowess as to what move would be used being she couldn't object to the "Just Indicated" felony murder rule addition and allow a gang style motive to be used. (RTp.257:4-10) Trial Court: " I HAVE SOME REAL QUESTION AS TO WHETHER I'M GOING TO ALLOW YOU TO TALK ABOUT HIS CREDIBILITY ON THE FACT HE IS A GANG MEMBER WHEN HE HAS FOUR FELONY CONVICTIONS AND OTHER STUFF. IF YOU THINK AFTER YOU CROSS-EXAMINATION OSOME STUFF, WE CAN BREAK AND ARGUE IT,FINE. BUT I REALLY DON'T WANT TO DO IT NOW."

(8)DA John Lonergan who was schedule as DA from November 18 ,2003 thru December 18 ,2003. [7] seven months after the crime was committed , Mr. Lonergan had a conversation with the Complaining Witness Mr. Burnett (RTp.83:9-15) "SO WHEN WAS THE FIRST TIME THAT YOU RECALL HIM MAKING THA STATEMENT AND YOUR RESPONSE?" A: " WHEN I SAT DOWN AND THOUGHT ABOUT IT AT CHURCH NEW YEAR'S EVE NIGHT BCAUSE IT WAS , I BELIEVE , MR. LONERGAN THAT TOLD ME SOMETIME IT WILL COME BACK ALL AT ONCE BECAUSE THE INITIAL IMPACT OF THE SITUATION , THERE ARE SOME THINGS THAT YOU CAN'T RECALL AT THAT PARTICULAR TIME"

(9) Mr. Burnett testified to having five ailments attained from being shot (RTp.60:9-17) (RTp.61:23-27) 1. TEMPORARY BLINDNESS, 2. SEVERE HEADACHES, 3. RINGING IN EARS , 4. DOUBLE VISION, and 5. NUMBNESS. none were Memory or cognitive function related.

THE CRUX OF THE PROSECUTION THEORY : IE PETITIONER'S INCRIMINATING HIMSELF ESTABLISHING PROBABLE CAUSE BY HIDING BEHIND A PHONE BOOTH

(10) All three DA's Steve Gallon , John Lonergan , and Alan Jackson suppressed the "FRUIT OF THE POISONOUS TREE". Steve Gallon acted as DA in preliminary hearing when Detective Garcia testified. John Lonergan was acting as DA when the Photographs were procured that were used as Exhibit #8 and #9. DA Jackson presented the Physical Photo Evidence which was a abstract memorialization, with seat fillers, taken opposite direction facing the metro platform entrance. This became "The Fruit that The Poisonous Tree" bore.

(11) Complaining Witness insist he talked to Detective Garcia that night, (RTp.62:9-15) Question by Mr. Jackson: " AT THE TIME JUST AFTER YOU WERE SHOT , YOU WERE ABLE TO GET UP ON YOUR OWN TWO FEET AND HAD BEEN SOMEWHAT MOBILE. YOU COULD WALK?" A: YES. Q: " WERE YOU ABLE TO DESCRIBE TO THE DEPUTIES WHAT HAPPENED? A: YES I DESCRIBED TO THE DEPUTY WHAT HAD HAPPENED.

(12) Trial Attorney (RTp.77:6-22) asked Mr. Burnett : " AND WHEN THE POLICE CAME , DID YOU TALK TO THEM IMMEDIATELY? A: DETECTIVE GARCIA WAS HIS NAME. THAT WAS THE FIRST OFFICER THAT I TALKED TO. Q : "HOW LONG AFTER YOU WERE SHOT DID YOU TALK TO DETECTIVE GARCIA?" A: "TO ME IT FELT LIKE AN ETERNITY" Q: " SO YOU REALLY CAN'T GIVE A ESTIMATE OF TIME?" A: "I WOULD SAY IT WASN'T THAT LONG PROBABLY ABOUT FIVE OR TEN MINUTES AFTER I WAS SHOT" Q: "AND YOU TOLD DETECTIVE GARCIA EXACTLY WHAT HAD HAPPENED?" A:"YES, I DID" Q: "AND AT THAT POINT YOU IDENTIFIED MICHAEL WOOLEN BY NAME IS THAT RIGHT?" A: "YES. I SAID MICHAEL WOOLEN ,JR. THAT'S WHAT I SAID. I DESCRIBED EVERYTHING HE HAD ON THAT NIGHT.

(13) In Officer Puzio's Police Report urn#403-07415-2822-051 p.3 states that Officer Iberri #131978 unit #284/p was the first Officer to arrive on he scene. In Cross Examination of Defense witnes Officer Puzio, DA Jackson being facetious asked Officer Puzio after she testified to talking to Mr. Burnett and memorializing an identification (RTp.330:21-25) Mr. Jackson : "AT NO TIME DID HE EVER SAY, 'SOMEBODY SHOT ME BUT I'M NOT SURE WHO IT WAS'?" A: "NO" Q: "AT NO TIME DID HE SAY ," SOMEBODY SHOT ME. BOY ,I WISH WE COULD CATCH HIM. I WONDER WHO IT WAS?" A: "NO"

(14) Complaining Witness Burnett never testified to talking with the first Officer on the scene Iberri #131978unit 284/p. Nor did he mention Officer Puzio, Mr. Burnett said he talked to Detective Garcia first. Detective Garcia testifies (RTp.218:24-27) Trial Attorney : Q: "AND DID YOU ALSO SPEAK TO MR. BURNETT AT SOME POINT?" A: "NO. HE WAS TRANSPORTED TO THE HOSPITAL AND HE WAS UNAVAILABLE AT THAT TIME".

(15) Mr. Burnett mentions "THE FRUIT OF THE POISONOUS TREE" in cross examination (RTp.70:21-80:7) Trial Attorney. Q: "DID YOU TELL HER YOU KNEW IT WAS MICHAEL BECAUSE THE POLICE TOLD YOU THEY FOUND A GUN NEAR HIM OR SOMETHING TO THAT EFFECT?" A: "I KNEW IT WAS -- I TOLD HER I KNEW IT WAS MICHAEL BECAUSE I SAW HIM. HE WAS THE ONLY ONE NEAR ME .AND WHEN I WAS TAKEN IN THE AMBULANCE TO MARTIN LUTHER KING HOSPITAL, THE DETECTIVE TOLD ME THAT HE WAS IN CUSTODY". Q: "DID THE DETECTIVE TELL YOU ANYTHING ABOUT A GUN BEING FOUND NEAR OR ON MR. WOOLEN?" A: "THEY TOLD ME THAT HE HAD-- THAT THERE WAS A GUN THAT WAS NEARBY , YES, AND IT WAS STILL WARM. AND MIGHT I ADD ,HE WAS HIDING BEHIND A PHONE BOOTH THAT NIGHT" Q: "SO YOU WERE TOLD" A: " SO I WAS TOLD"

(16a) On Appeal Deputy Attorney General Michael Katz in Respondents Brief p.3 (see exhibit C3) when referring to Mr. Burnett being told on the way to the hospital Incriminating Fabricated facts by a Detective says: " 'BY THE TIME' BURNETT SPOKE TO HER , A DETECTIVE HAD TOLD BURNETT THAT THE POLICE FOUND APPELLANT HIDING 'NEAR' A PHONE BOOTH , AND THEY FOUND A GUN NEARBY" In what appears to be an extension of the "Fruit of the Poisonous Tree" Suppression by the Prosecution team.

(16) Witness Moore while testifying (RTp.235:1-7) Q.By Ms. Cheng: " AT SOME POINT DID YOU ASK HIM HOW HE KNEW IT WAS YOUR SON THAT SHOT HIM?" A: YES. Q: "AND WHAT WAS MR.BURNETT'S RESPONSE?" A: " HE SAID 'BECAUSE THE POLICE CAUGHT HIM. THEY GOT HIM OFF THE TRAIN AND HE STILL HAD THE GUN IN HIS POCKET ". "HE SAID THEY BROUGHT HIM BACK IN THE CAR".

(17) Trial Attorney had a investigator speak with Ms. Moore pertaining to Petitioner's Mental Illness. In cross DA Jackson asks Ms. Moore in words never spoken by Ms. Moore

///// " ADMITTED TO YOU THAT HE HAD NO IDEA WHO SHOT HIM"/////

(RTp.246:15-23) Mr. Jackson Q: "AND AT NO TIME DID YOU EVER TELL MS. DEJON WHILE YALL WERE DISCUSSING THAT INCIDENT ,THE HOSPITAL GOWN INCIDENT FOR LACK OF A BETTER WORD-- AT NO TIME DID YOU EVER TELL HER THAT MR. BURNETT ADMITTED TO YOU THAT HE HAD NO IDEA WHO SHOT HIM? HE JUST ASSUMED THAT BECAUSE THE POLICE TOLD HIM YOUR SON WAS FOUND WITH A GUN. YOU NEVER TOLD HER THAT?" A: YES, I DID TELL HER THAT. I TOLD HER THAT AT THE ELEVATORS.

(18) In Officer Puzio's report (see exhibit D5) " THEY DETAINED A MALE BLACK ADULT (SUSPECT) WHO WAS WAITING TO BOARD A TRAIN AT COMPTON PACKS". Officer Puzio didn't Memorialize the Incriminating , Inculpatory statement that the arresting Officers Dollens and Helbing have in their report (see exhibit D1)supplemental report "SUSPECT SITTING ON A BENCH ATTEMPTINGTO CONCEAL HIMSELF FROM US BY CROUCHING BEHIND A PAYPHONE"

WITNESS IRRAPARABLE SUGGESTED MISIDENTIFICATIONS
OF THE "FRUITFUL TREE"

(19) Officer Puzio's Reports also that Witness Hubbard ,and inadvertently Witness Scott was "SITTING ON A WALL IN THE REAR OF THE LOCATIONS PARKING LOT WHEN HE SAW TWO BLACK GUYS WALK TOWARDS HIM" Presumably the wall at Tom's hamburger stand's drive thru. The wall is on the North - East area of the lot and it is at least 200 ft. from the South - East wall of the shopping center. Then according to Mr. Burnett the crime happened on Palmer, so that's 20 ft from the shopping center's wall. From the South - East corner of the lot 180 ft from Tom's drive thru wall, now going west the distance increases 180..205..230...255...280 even at an Angle the distance is Material to an Identification.

(20) Witness Hubbard testifies (RTp.102:7-14) Mr. Jackson Q: "AND THAT PERSON -- DO YOU SEE THAT PERSON IN COURT TODAY?" A: "LIKE I TOLD YOU ,I DIDN 'T KNOW HOW THE FACE LOOKED OR NOTHING LIKE THAT. ALL I SAW IS ALL BLACK" Q: " SO YOU'RE TELLING US THAT YOU WERE MAKING YOUR POSITIVE IDENTIFICATION OFF OF CLOTHING?". A: " OFF OF CLOTHING"

(21) Hubbard testifies (RTp.104:8-11) A: " THAT DON'T HAVE NOTHING TO DO WITH IT . LIKE WHEN IT FIRST HAPPENED , LIKE WHEN THE INCIDENT FIRST HAPPENED , LIKE I TOLD THEM WHEN I PUT IT IN THE REPORT , I DIDN'T SAW NO FACES. ALL I SAW IS BLACK. I AINT SAW NO FACES OR NOTHING LIKE THAT"

(22) In trial Witness Scott testifies (RTp.157:5-20) Mr. Jackson: Q: "OKAY. AT THE TIME THAT YOU SAW THE SHOOTING ,DID YOU GET CLOSE ENOUGH TO SEE THE PERSON'S FACE?" A: "YES." Q: "AND IS THAT THE

PERSON THAT YOU SEE HERE TODAY IN COURT" A: "AND LATER YOU ALSO SAW THAT THE DEFENDANT WAS WEARING THAT NIGHT ,CORRECT?" A: "YES". Q: DID YOU RECOGNIZE THAT SAME CLOTHING WHEN YOU SAW THEM SHINE A LIGHT ON THE PERSON FROM THE BACK SEAT OF THE POLICE CAR?" A: "YES" Q: "AND WAS IT ,IN FACT ,THE SAME PERSON?" A: "YES. I COULDN'T REALLY SEE THE FACE BECAUSE I WAS TOO FAR ,BUT THE SAME CLOTHES IS WHAT THE PERSON WORE" [Officers Herrera #405349 and Gonzalez #280682 in their report "SHE IMMEDIATELY IDENTIFIED THE SUSPECT AS THE PERSON SHE SAW SHOOT THE VICTIM"]

(23) Officer Phillippi brough Witness Hubbard to the field showup and testified (RTp.145: 8-10) Mr. Jackson: Q: " ABOUT HOW FAR WAS YOUR ,RADIO CAR, YOUR PATROL CAR, YOUR BLACK AND WHITE FROM WHERE THE DEFENDANT WAS STANDING?" A: " APPROXIMATELY WHERE THE DOORS ARE RIGHT THERE ,THE SMALL DOORS NEXT TO GALLERY AREA" Q: "ABOUT WHERE I'M STANDING RIGHT NOW ?" A: "YES ,SIR" THE COURT: ABOUT 25 FEET Mr. Jackson : Q: "WAS THE DEFENDANT LIT UP?" A: "YES" Q: "IS THAT STANDARD OPERATING PROCEDURE?" A: " YES ,IT IS" Q: "HOW WAS HE LIT?" A: " WITH OVERHEAD SPOTLIGHTS AND TWO SIDE SPOTLIGHTS AND THE BRIGHTS ON MY RADIO CAR"

(24) Officer Phillippi did'nt write a report, testifies (RTp.146:5-15) Ms., Cheng Q " WHAT WERE MR, HUBBARDS EXACT WORDS, IF YOU RECALL?" A: "HIS EXACT WORS? I DON'T KNOW WHAT HIS EXACT WORS WERE . THEY WOULD HAVE BEEN SOMETHING TO THE REFERENCE OF "YES, THAT'S HIM" OR "YES ,THAT IS HIM" OR "THAT'S HIM." Q: " HE DIDN'T MENTION ANYTHING ABOUT CLOTHING?" A: " NO" Q: "DO YOU RECALL WHAT CLOTHING MR. WOOLEN WAS WEARING THAT NIGHT?". A: "NO. I DON'T RECALL"

(25) In trial Witnes Scott (RTp.163:27-164:7) Ms. Cheng : Q : "AND HOW CLOSE WAS THE CLOSEST YOU GOT TO THE SHOOTER?" A: "LIKE MAYBE IF HE WAS SITTING IN THAT BLUE CHAIR RIGHT THERE (POINTING), THE ONE RIGHT THERE (POINTING). Ms. Cheng : "RIGHT HERE , YOUR HONOR" THE COURT: "THE BACK OF THE CHAIR IS ABOUT 25 FEET"

THE ARREST : "PROCUREMENT OF THE POISONOUS TREE"

(26) Officers Dollens and Helbing walked up a 75 ft wheelchair accessible ramp leading up to the Metro Platform ,pressumably looking North. Helbing testifies (RTp.191:18-28) Ms. Cheng Q: " NOW CAN YOU TELL ME WHAT HAPPENED ONCE YOU ARRIVED AT THE STATION?". A: " WHEN WE ARRIVED AT THE STATION ,WE WENT UP ONTO THE PLATFORM. I DIDN T SEE ANYBODY AT FIRST THAT MATCHED THE DESCRIPTION ,SO I WALKED BACK OFF OF THE PLATFORM TO LOOK AT A GROUP OF OTHER PEOPLE THAT WERE STANDING AT THE ENTRANCE TO THE PLATFORM TO MAKE SURE I DIDN'T WALK PAST THE PERSON ".

(27) Helbing testifies (RTp.192:13-19) Ms. Cheng Q: "NOW ,DID YOU AND YOUR PARTNER DEPUTY DOLLENS KIND OF FAN OUT AND TAKE YOUR OWN AREAS TO LOOK AT PEOPLE OR WERE YOU TOGETHER?". A: " AT FIRST WE WALKED UP TOGETHER .DOLLENS ,GILLIS ,AND I WALKED UP TOGETHER. THEN THEY WERE LOOKING AROUND AND I DECIDED TO GO BACK TO THE ENTRANCE OF THE PLATFORM TO MAKE SURE WE DIDN'T WALK BY SOMEBODY THAT COULD POSSIBLY BE THE SUSPECT"

(28) Helbing testifies (RTp.193:5-8) Ms. Cheng Q: " NOW ,DEPUTY HELBING DID YOU HEAR ANYTHING THAT SOUNDED LIKE METAL TO METAL THAT ATTRACTED YOUR ATTENTION?" A: "NO ,I DID NOT". Q:" I'M SORRY?" A: " NO ,I DID NOT". Q: "COULD YOU HEAR A POLICE HELICOPTER IN THE SKY AT THE TIME WHEN YOU ARRIVED AT THE STATION?" A: " I DON'T RECALL IF THERE WAS A HELICOPTER UP OR NOT" Q: "WHAT KIND OF NOISE DID YOU HEAR WHEN YOU FIRST GOT UP ON THE TRAIN PLATFORM?" A: "JUST NOISE FROM THE AREA . YOU KNOW, CARS PASSING BY ON WILLOWBROOK AVENUE. AT ONE POINT A BLUE LINE TRAIN WENT BY. BUT OTHER THAN THAT I CAN'T RECALL ANYTHING OUT OF THE USUAL".

(29) Officer Dollens testifies (RTp.207:23-208:5) Ms. Cheng Q: "IS THERE SOMEWHERE ON THIS PICTURE -- AND MAYBE YOU CAN MARK -- WITH A BLUE PEN YOU CAN MARK WITH AN X OR SOMETHING -- WHERE YOU WERE WHEN YOU HEARD THE SOUND?" A : "IT'S HARD TO -- WHERE THESE PEOPLE ARE STANDING (POINTING). Q : "AND YOU'RE REFERRING TO THE PEOPLE WHO ARE FURTHERMOST IN THE PICTURE, I GUESS ,TOWARDS THE TOP OF THE PAGE?". A: "RIGHT. AT THE VERY NORTH END OF THE PLATFORM. DIRECTLY NEXT TO THIS POLE."

(30) Officer Dollens testifies (RTp. 201:10-13) Mr. Jackson Q: " AFTER YOU HEARD THE CLANGING SOUND , WHAT DID YOU IMMEDIATELY DO?" A: " I TURNED AND LOOKED DOWN IN A SOUTH DIRECTION I GUESS WHERE THE TRAINS COMES IN".

(31) Officer Dollens testifies (RTp.206:26-28) Ms. Cheng Q: " NOW ,WHICH DIRECTION WERE YOU FACING ON THE PLATFORM WHEN YOU HEARD THAT SOUND?" A : " I WAS FACING EAST".

OFFICER DOLLENS TESTIFIES AS TO " THE FRUIT OF THE POISONOUS TREE"

(32) Officer Dollens testifies (RTp.203:2-9) Mr. Jackson Q: " USING THE PEOPLE'S 8 FOR REFERENCE, DID YOU WALK THAT DIRECTION WHEN YOU FOUND THE DEFENDANT?" A: " ACTUALLY IT APPEARS -- UNLESS DEPENDING ON WHICH SIDE OF THE TRACKS THE PHOTO WAS TAKEN FROM ,IT APPEARS THAT THIS PHOTO IS LOOKING NORTH ,AND I WAS ACTUALLY LOOKING FROM THE NORTH END LOOKING SOUTH SO I WOULD HAVE BEEN ON THE OPPOSITE END OF THE PLATFORM LOOKING THE OPPOSITE WAY" Q: " SORT OF A MIRROR IMAGE OF THAT PHOTOGRAPH?" A: "CORRECT"

(33) Officer Dollens testifies (RTp. 203:20-22) Mr. Jackson Q: " DO YOU SEE DEPICTED IN THIS PHOTO ANYWHERE THE APPROXIMATE POSITION WHERE YOU SAW THE DEFENDANT ATTEMPTING TO CONCEAL HIMSELF?". (RTp.204:5-7) A: " APPROXINATELY RIGHT IN THIS AREA RIGHT HERE (MARKING). YOU CAN'T REALLY SEE THE BENCH RIGHT THERE IN THE PHOTO ,BUT HE WAS SITTING RIGHT THERE" (RTp.204:27-205:8) A: " DIRECTLY, WHICH WOULD BE NORTH OF THAT, IS A PAY PHONE AND THERE'S A MALE HISPANIC STANDING NEXT TO THAT.RIGHT ON THE OTHER SIDE OF THE PAY PHONE IS THE BENCH. THAT'S EXACTLY WHERE HE WAS SITTING". Q: "I'M GOING TO ASK YOU TO POINT AN ARROW TO THE BENCH ON THE OTHER SIDE OF THAT YOUNG MAN IN THE PHOTOGRAPH" A: (MARKING). Q: " ASSUMING THAT YOUNG MAN WAS NOT IN THAT PHOTOGRAPH, THAT BENCH WOULD BE SHOWN, CORRECT?" A: "YES"!

In United States v. Garcia 2019 U.S. Dist. LEXIS 27861 the Court held "[T]he Exclusionary Rule encompasses both the primary evidence obtained as a direct result of an illegal search or seizure," and " evidence later discovered and found to be derivative of an illegality ,the so called fruit of the poisonous tree" quoting Utah v. Striefl ,136 S Ct 2056, 2061, 195 2d , 400 (2016)

REASONS FOR GRANTING THE PETITION

The California Supreme Court erred when it failed to apply Brown's Attenuation Rule to petitioner's Fourth Amendment Fruit of the Poisonous Tree violation claim. In re Harris ,supra 5 Cal. 4th 2d at 830 held ," if a fourth amendment violation affected the issue of guilt ,no doubt ,habeas would be available" quoting In re Sterling 63 Cal 2d at 487. Brown suggests that (1) temporal proximity of the tainted evidence as it correlates with the collected evidence ,(2) the attenuation ,or dissipation of the tainted evidence ,(3) and the purpose of the tainted evidence be factored in determining whether deterrence is necessary.

The tainted evidence induced false testimony from the arresting officer ,and complaint witness. The tainted evidence was introduced to inculpate ,and incriminate petitioner then provide a reference that attached certainty of petitioner having a weapon. The [5] false testimony issues presented in the CASC pursuant to PC 1473 ,were derivative of the tainted illegal evidence.Though deterrence is applied to discourage misconduct ,the cumulative error in the record is a Due Process ,and Equal Protection of Laws violation.

The CASC precedence applied to PC 1473 false evidence is Watson ,supra 43 Cal. 2d at 835 which encourages evaluating both errors of constitutional magnitude ,and errors of non constitutional magnitude. The CASC failed to acknowledge a cognizable Habeas issue. In Stone v. Powell 428 US at 489 the High Court held that 'full and fair litigation' in state courts would preclude a federal review of such Fourth Amendment claims.

In Watson ,supra the final test is the opinion of the reviewing court. The two court rule should not apply in the state court's derelict opinion of habeas court of the first instance ,which the higher state court adopted it's findings upon. In trial ,trial attorney presumed that the government fully discharged it's official duties when the tainted evidence was introduced. On Direct Appeal the AAG dissipated the tainted evidence ,and in Habeas in the first instance the DA ligation team and habeas trial judge suppressed and or destroyed the tainted evidence inquiry of question #10 of the HC 001 petition. Petitioner have not been afforded a full and fair opportunity to litigate the Fruit of the Poisonous Tree claim.

The High Court in Kyles ,supra at 459 Justice Scalia opined 'if a court enunciated a correct legal rule [Robbins ,supra Error of Constitutional Magnitude] ,since the outcome it reached could not have come from that rule [when applied to Fruit of the Poisonous Tree violation] ,it must have been applying (unbeknownst to itself) an incorrect rule. Id., at 459. Justice Scalia also opined 'in cases of the plainest of error' certiorary would be granted. Id,.at 456

The plain error in the case at bar is the Due Process Deliberate Prosecutorial Misconduct Suppression ,Fruit of the Poisonous Tree violation predicate. This predicate should compel review of the Supervisory Powers of the High Court. The false evidence is highly material in establishing arrest facts that though fabricated would be attenuated by 911 operative dispatch records ,and apparent in the testimony of the witnesses had the identification existed. These sufficient unrelations are necessary in this issue to allow the tainted evidence to be held harmless.The official misconduct on it's face is in the trial file ,and police reports ,therefore when a defendant is deprived of Due Process ,and Equal Protection of the Laws ,a miscarriage of justice ensues and deterrence should be deemed appropriate.

Justice is a fundamental protection provided by the us constitution ,determinitive of fairness in any legal setting ,or tribunal. Petitioner ,a layman of the law evolved while insisting the protections ,and safeguards mandated as requisites of justice be available to him. And rightfully so ,though the emphasis is primarily for finality and the people's interest ,the demands for justice counsel's against abridgement or legal gymnastics to obtain those interest.

The Honorable Court Justices will take pride in the evolution of one of its undesired citizen' transformation and manifestation in legal remedy ,that brings into question 'materiality' of jurisprudence ,and the admistration therewith. These are observations subject to interpretation ,usually reserved and determinitive of a judicial official's understanding of when and when not to act. Should justice be as stringent that the very demand for it is determinitive of implied perception ,when the legal remedy is the tribunal. Also the protector of the law which demands justice in all formulations of interest derminitive of such remedy.

The question become should justice's demands be met when adhered to as a study. The demonstrative evolvement in the case before you shows there are issues that are better left unsaid i.e the formulations of the process in which trials are deemed fair and just have become the very formulation in petitioner's case that is enumerated and disregarded for what one could presume ,the demands of justice. In essence this kill them all and let god sort them out approach ,undermines the very system in which order and civility is premised. There have been remedial presentations of the ultimate fact in petitioner's delima. The judicial element of petitioner's trial was deficient in applying a fundamental approach of legislation.

The 'matters subject to being reheard' pursuant to California Constitution article 6 section 23 (c)(4)(6) were secreted out of petitioner's case by trial judge and after petitioner refused a 5 ,10 ,15 year judge's discretion plea ,the 'matter subject to being reheard' was shifted to another judge per legislation without petitioner or representation of petitioner present. This deprived the defense of valuable resourse in transactions had. These references deprived the defense from presenting the facts to the jury determinitve of a defense with reference to that 'Call for Judicial Action'. These judicial actions are held to determine the law ,determine the rights of the parties ,with reference to transactions already had.

Without petitioner or representation present ,stipulations of fairness cannot be determinitve of the transaction. The first day of trial would set the stage for the process with trial judge saying he 'don't know anything about the case' then throughout the trial refuse to be the tribunal indicative of fundamental fairness in which the law proscribe based on that initial assertion. This could be construed as selective amnesia ,though in the adversarial system of fairness it is incompetence or bias. Either way there is no option determinitive of a judicial act where the rights of the parties are not the fundamental application reflective of the Judicial Oath itself.

Petitioner have not been afforded in any proceeding a fair try. Ignorance of the law ,ironically ,which is no legal remedy ,precluded fairness. Acting without counsel petitioner have not been able to master the legal formulation to compel the state courts of the importance of petitioner's delima.

Today's society is pushing for injustice in every area to be met with justice ,this cannot be accomplished by meeting injustice with the complacent perception that justice is just the operative word of injustice. Politics aside ,the threshold on a state court decision is based or should be based in the the adjudication itself. Though petitioner provided all of the facts to the California Supreme Court in which Review of this High Court is sought ,these facts have magnified tremendously for purposes of this proceeding i.e the state court decisions are premised in abstract parallels of the depth presented to the High Court.

The humanity , for civil and legal purposes the atrocity of the National setting today reflect crime and punishment. George Floyd was killed for passing a counterfeit $20 dollar bill. No matter how one sensationalize it ,he was sentenced to death ,penalized beyond the scope of the crime itself. Petitioner in asserting his innocence was penalized beyond the scope of the crime the people proved. And when that became apparent as the prosecution reasonably inferred a 'caper' otherwise nowhere in the record ,trial judge when confronted with the jury's inquiry 'when is a crime not premeditated' directed the conviction of count one. This 'Judicial Action' is reflective of the unconstitutional 'call for judicial action' determinitive of such non action.

Trial judge failed to invoke the felony murder rule proferred evidence motive that was 'just indicated' the first day of trial and never before mentioned. This was substantiated by the fact of petitioner's mental illness precluding the 'reasonable response' determination necessary for the lesser included manslaughter. The Assault with a Firearm that petitioner was convicted of proves he is actually innocent of the crime in which he was convicted.

In sensationalizing civility and law ,the latter is the measure determinitive of applicability in statute. In civility ,a thug may feel it's civil to shoot a thug ,and legally rationalize 'it's all in the game' ,therefore one involved should not defer to the rules. However ,the law defers and in absolute form the law ,intervenes in it's benevolence. In civility Kyle Odom may feel it's okay to shoot Rev. Tim Remington ,allegedly. The qusetion becomes under what premise is civility maintained ,and where does the greater good apply in the ascertainment of guilt or innocence. The law is undisputed determinitive of the truth that proscribes it. In short the law maintains and ensure the relevance of civility by the standards and rules applicable to us all. When those standards and rules are disregarded civility cease to exist and barbarism ensues i.e cruelty.

REVIEW OF STATE COURT DECISION

Appellate Counsel' non obligation to find and investigate potential habeas corpus issues substantiates petitioner's trial file as text book 'newly discovered' evidence where though available to counsel in direct appeal ,non of the facts inspired advocacy that is consistent with petitioner's assessment of the facts. The constitutional error therefore due process stemming from counsel' job description creating a standard where promoting justice succumbs to embarrassing it.

The policies for appellate counsel affords a derelict advantage in a stringent process. In most direct appeals the exhaustion of claims segue into federal review of those claims. An appellate counsel as in the case at bar can assert that 'in her opinion their were no meritorious issues' which can render federal relief.

Petitioner ,a complete layman ,after receiving the 'newly discovered' trial file peruse and see multiple error and substantial claims. Petitioner ,as a layman also notices the substance excluded from the direct appeal which would have rendered direct appeal relief. [see question #1 in correlation with direct appeal' right to present a defense ,see also question #7 in correlation with direct appeal' lesser included offense]. Does these professional assessments render ineffective counsel? apparently not.

In re Clark 5 Cal. 4th at 784 California Supreme Court held "The policies did, for the first time ,impose an express obligation on counsel representing appellants in capital cases to investigate possible bases for habeas corpus.(Policies ,std.1-1). This obligation ,which counsel in non capital cases do not share ,is limited ,however ,to an investigation of potentially meritorious grounds for habeas corpus which have come to counsel's attention in the course of preparing the appeal. The appointment does not impose on counsel an obligation to conduct an unfocused investigation having as its object uncovering any possible facts know to counsel which could reasonably lead to a potentially meritorious habeas corpus claim is anticipated and required. When a factual basis for a claim is already known ,the claim must be presented promptly unless facts known to counsel suggests the existence other potentially meritorious claims which cannot be stated without additional investigation. at(21a)

Good Faith ,and Ethics are not sufficient nor efficient attributes in the Constitutionality of Due Process. Especially when Stringent demands are petitioner's alone to bear. In Good Faith and Ethics a appellate advocate can 'presume from "tradition and experience" that the prosecution "fully discharged their official duties". Strickler ,supra 286.

The stardard in Clark ,supra ,is procedural and mandates that a petitioner must prove the claims were not known or reasonably should have been known by counsel or petitioner. This standard impairs the Structure of Appellate Procedure by default to the policy of non capital counsel' non obligation to pursue potential meritorious habeas issues. Though enabling ,this policy should not be Constitutionally absolute.

California Supreme Court referenced In re Robbins when petitioner was denied for untimeliness. " Substantial delay is measured from the time the petitioner or his 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 specifity ,facts showing when information offered in support of the claim was obtained ,and that the information was neither known ,nor reasonably should have been known ,at any earlier time. It is not sufficient to allege in general terms that the claim was recently discovered. A petitioner bears the burden of establishing ,through his or her specific allegations ,which may be supported by any relevant exhibits ,the absence of substantial delay. Id. ,18 Cal. 4th at 780

EXTRAORDINARY CIRCUMSTANCE AND UNTIMELINESS

The Honorable High Court's Discretionary Review is necessary because Procedural Due Process was denied in the formal transition into the AEDPA's one year statue of filing a federal habeas corpus. Petitioner was not afforded an opportunity to file a State Collateral Attack.

Petitioner is not seeking favor for procedural default ,because California and the United States Constitution have safeguards in their tribunals that precedence affords petitioner an opportunity as an exceptional circumstance grounded in Constitutional Magnitude Error.

Petitioner is an indigent acting in his own behalf ,and every petition in the State Court on collateral attack have been prepared and presented by petitioner. In 2003 - 2004 petitioner had a mental breakdown due to this situation. Save for the moments of lucidity in trial ,petitioner was a functional mental III defendant not taking medication until 2004 when petitioner arrived at Kern Valley State Prison Reception Center.

Throughout the 2004-2010 process petitioner was heavily medicated ,though supported by family members ,they had their own lives to live. In 2007 when petitioner finally received word from a family member that was supposed to retain legal representation for petitioner that the Direct Appeal was over. Petitioner was up until that point in the awareness that the formal transition of the process would entail the trial file and a notice of the AEDPA standards.

In 2007 petitioner still medicated and slow to realize there won't be a legal retained competent attorney ,in a natural intensity to pursue the trial file ,petitioner wrote appellate attorney ,trial attorney ,trial court ,and appellate court asking them to furnish copies of the trial file. Petitioner also wrote numerous government agencies which failed to yield a means to acquire the trial file.

Petitioner was taken off of medication in 2010. Petitioner never had a violent psychosis ,petitioner's psychosis was eccentric and internalized so self work in the form of exercise and study helped petitioner regain formulative sensibilities. In 2018 petitioner began college studies and also started to pursue legal access to the law library where in 2019 an inmate legal technician informed petitioner of numerous agencies where petitioner could inquire about obtaining the trial file.

Between 3/25/19 and 5/8/19 petitioner wrote the archives and records, department of justice ,record review section ,LA Co. DA office ,metropolitan court house, court reporter services ,Second Appellate District Court ,alternative public defender ,central district us courthouse, LA Co. sherrif department ,and ninth circuit court of appeals.

On June 19 ,2019 petitioner received the transcripts that appellate counsel sent in 2005 ,after 14 years. The process that Equal Protection and Due Process affords was pursued with diligence thereafter.

Petitioner submitted to the California Supreme Court EXHIBITS I (1-10) to substantiate the facts of the trial file being relinquished by appellate attorney in May 2005 pursuant to Rules of Professional Conduct 3-700. The informal relinquishment of the trial file was in 2005. Petitioner did not formally receive the trial file until 2019. The letters dated: 7/21/04 ,8/18/04 ,11/29/04 ,5/20/05 ,10/3/06 ,1/29/07 ,3/1/07 ,3/1/07 ,11/15/12 ,11/24/12 ,and 12/5/12 all solidify reasonable diligence from petitioner in pursuing the only person that was legally obligated to provide petitioner with the work product i.e trial file.

Petitioner presented the California Supreme Court with EXHIBIT K (1-6) to substantiate the reasonable diligence in pursuing a government resource to furnish or provide an avenue in which copies of the trial file may be obtained. These requests dated : 7/21/19 to [Compton Superior Court re Post Trial Discovery pursuant to PC 1054.9] , 9/16/12 to [Appellate attorney : Fifth request for trial file] ,8/22/11 to [United States Court of Appeals for the Ninth Circuit for request for case file and records] ,6/11/11 to [United States District Court ,Central District of California requesting the court order appellate counsel to furnish trial file] ,8/26/10 to [Compton Superior Court motion for transcripts] ,4/5/10 to [Trial attorney requesting trial file ,discovery ,and work product] Petitioner wrote numerous other government agencies unofficially requesting remedies in obtaining copies of the trial file. Every endeavor to obtain the trial file proved futile. Petitioner file two complaints on appellate attorney believing she never sent the trial file because the prison did not have a record in the CDCR 119 incoming legal mail log sheet also in Exhibit I dated 5/20/05 [one entry from Second Appellate District Court].

EXHIBIT J (1-8) dated: 2/2004 [Photocopy of the response from Susanville Post Office] ,6/9/19 [CDCR request to legal mail Seargent asking for the trial file which a legal mail officer perciieved petitioner had received and failed to sign the log in book] ,6/18/19 [CDCR request to legal mail Seargent to inform me of the origins of the trial file which had no sender or return address] ,6/20/19 [CDCR requesting legal mail Seargent to provide a tracking number of the package],6/24/19 [letter to DC Post Office requesting policy information and the sender of the package , letter to 3M in Minnesota asking policy information because the box had a 3M sticker on it dated 12/26/18 ,and letter to Susanville Post Office asking sender and policy information] ,6/27/19 [Response from Susanville Post Office futile in sender information] ,7/7/19 [letter to Susanville Post Office requesting further inquiry of the sender and policy information] ,7/30/19 [Response from Susanville Post Office referring to a Post Office Dead Letter Zone ,which is where a legal mail officer said the box should have been returned to].

Petitioner through Exhibits I ,J ,and K have shown the Honorable Justices of the California Supreme Court that reasonable diligence existed in pursuing the very basic requirement necessary to establish the formal crux of direct appeal' finality i.e the trial file.

Petitioner filed the initial habeas petition in the California Supreme Court on 2/18/20 ,and on 3/12/20 petitioner filed a motion to supplement and or amend the habeas petition's procedural hurdles. Petitioner asserted in the motion to amend:

In re Clark 5th Cal. 4th at 775 "where the factual basis for the claim was unknown to petitioner and the petitioner had been unable to present his claim ,the court will consider the claim on the merits of the petition as promptly and reasonably as possible" Petitioner fully explained the CDCR /Post Office conundrum as the 'external' factor impeding petitioner from being aware of the AEDPA deadline effective date.

Petitioner explained to the court that all of the claims presented were substantiated in the facts in the trial file. Petitioner referenced:

In re Clark 5 Cal. 4th at 786 " a habeas petition should be filed as promptly as the circumstances of the case allow...one who seeks extraordinary relief ...must point to extraordinary circumstances sufficient to justify substantial delay.quoting In re Stankewitz ,supra 40 Cal. 3d at 397 also federalizing the legal basis pursuant to Murray v. Carrier 477 US at 492 ,488 (1986)

The federal courts exercise difference to state court judgements so petitioner submitted District Court precedence to compel the California Supreme Court a means to consider preserving valuable resources. In Lott v., Mueller at 304 F. 3d 918 2002 US App.LEXIS at 926 the court held " Extraordinary Circumstances beyond a petitioner's control make it impossible to file a petition on time" see Corjasso v. Ayers ,278 F. 3d at 877 (9th Cir. 2002) quoting Calderon v. US Dist. Court (9th Cir. 1997). In Mueller ,supra Chief Justice McKeown opined "once the high hurdle of 'extraordinary circumstances' have been overcome ,the clock stops for the duration of such circumstances" Id. ,at 304 F. 3d 926.

The California Supreme Court denied petitioner Petition for Review in April 2005. However ,petitioner was never aware nor informed of the denial. Petitioner's appellate counsel was acting in petitioner's behalf ,and the formal notice of the denial was lost presumably in a Post Office Dead Letter Zone. It is not unheard of that a legal remedy can take whatever time the court deems necessary to adjudicate the proceeding. In Bonner v. Carey 425 F. 3d 1135 (2005) US App. LEXIS 21630 the California trial court held the inmate's third habeas petition for two years.

Petitioner allowed [17] months to lapse without the knowledge of the California Supreme Court's denial of petitioner's Petitions for Review. This extraordinary circumstance impeded petitioner from presenting meritorious claims to the state court in a state collateral attack. Referring Lott v. Mueller ,supra the 'extraordinary circumstance' is Post Office interference. The Post Office is a subsidiary of the Executive Branch of the US Government and petitioner compels the High Court to invoke Supervisory Discretion in determining from the record a reasonable solution in which resources can be preserved.

In procedural default cases ,the cause standard requires the petitioner to show that "some objective factor external to the defense impeded counsel's efforts" to raise the claim in state court. Murray v. Carrier 477 US at 488. Objective factors that constitute Cause include " 'interference by officials' " that makes compliance with the state's procedural rule impracticable ,and " a showing that the factual and legal basis was not reasonably available to counsel". Murray v. Carrier 477 US at 493-494.

Appellate Counsel reviewed the facts of the trial file and concluded ,though petitioner was unwavering about his innocence ,that there were "No meritorious issues that a federal district court would find and grant relief on habeas corpus" (see exhibit i 6). This theory alone is ineffective assistance being that the same factual basis i.e the trial file and minutes are all petitioner used to present the claims for review in this court.

There is an "objective factor external to the defense that impeded counsel's efforts" . In re Clark ,supra 5 Cal. 4th at 784 states: "Imposition of express obligation on counsel representing appellants in Capital cases ,to investigate possible basis for habeas corpus. This obligation is not shared by counsel in Non Capital cases".

This Non Obligation to investigate possible habeas claims ,of the Policies establish 'Cause' which prejudiced petitioner's habeas petition from being timely filed in the state court. This Non Obligation impedes Appellate Attorney in Non Capital cases from being motivated concerning an indigent appellant's federal habeas corpus issues. This Policy is 'External' to any effort ,because the effort is Non Binding to habeas issues which are usually substantiated by evidence outside of the trial file.

Thus the Constitutional question becomes 'whether a petitioner is Equally Protected from appellate counsel's assessment of the trial file facts' ,also 'whether the trial file document qualify as Newly Discovered Evidence'. Appellate Counsel essentially disregarded petitioner's innocence which was expressed to her throughout Direct Appeal (see exhibit i 3). The legal basis for Actual Innocence is a narrow one ,predicated on scientific evidence ,credible witness declarations, or physical evidence. All of which are beyond the scope of appellate counsel's Direct Appeal job description.

NEWLY DISCOVERED EVIDENCE

In re Clark ,supra 5 Cal. 4th at 466 held " A criminal judgement may be collaterally attacked on the basis of 'newly discovered' evidence only if the 'new' evidence casts fundamental doubt on the accuracy and reliability of the proceedings. At the guilt phase ,such evidence ,if credited ,must undermine the prosecution case and point unerringly to innocence or reduced culpability. quoting People v. Gonzalez 51 Cal. 3d at 1246 (1990).

EXHIBIT A (1-4) PHOTO DOCUMENTS OF METRO PLATFORM

[1] Establishes that manipulation of evidence, suppression ,fabrication ,and false testimony exists in the criminal investigation ,pretrial ,trial ,and post trial proceedings. The photo exposes the fact that there is a 30 - 40 feet distance from the phone booth that investigators told complaint witness petitioner was hiding behind. This evidence inspired the DA office to procure opposite direction photo exhibits which deceived the court ,jury ,and defense into believing prosecutors fully discharged their official duties. The claim which undermines the prosecution case is a Fourth Amendment Fruit of the Poisonous Tree. Habeas DA litigation team rejected the claim [intergovernmental misconduct] as not cognizable for habeas corpus.

In re Harris ,supra 5 Cal. 4th at 830 (1993) held " If the violation of a petitioner's constitutional rights by the use of illegally seized evidence had any bearing on the issue of guilt ,there would be no doubt that habeas corpus would be available"

The High Court held in Stone v. Powell 428 US at 489 (1976) that 'a petitioner filing a Fourth Amendment claim on Federal Habeas corpus are gauranteed are reviewable if the petitioner have not been afforded full and fair consideration of reliance on the exclusionary rule with respect to seized evidence by the state courts at trial and on direct review."

United States Constitution Amendment IV [1791] states: The rights of the people to be secure in their persons ,against unreasonable seizures ,shall not be violated ,and no warrants shall issue ,but upon probable cause

,supported by Oath or affirmation ,and particularity describing the place to be searched ,and the persons or things to be seized.

Petitioner presented facts in support of the Fourth Amendment claim directly from the trial file which substantiates the claim's validity. In preliminary hearing records ,Detective Garcia concede to the fact that there is no hiding possibility ,specifically ,petitioner was sitting on a passenger bench and not hiding.

In trial ,the misdirection photo exhibits were all prejudicial when falsified testimony ensued. And of no probative value ,they after all ,were photo exhibit and instead of the evidence in question being in the display there were seat fillers ,obstructed views ,and opposite direction phone booth hiding probabilties.

The Newly Discovered photo document was presented to the Habeas trial court where was mentioned 30 or more occasions in the attachment to the HC 001 form's memorandum of points and authorities. Habeas trial court's failure to acknowledge petitioner's newly discovered evidence which ironically premised all [4] claims present i.e Intergovernmental Misconduct (Fruit of the Poisonous Tree) ,IAC and IAAC ,Judicial Abuse of Discretion ,and Prosecutorial Misconduct.

Petitioner ,upon filing the initial petition in the California Supreme Court also filed a Motion for Reconsideration: Erroneous application obstructing the judicial process by disregarding federal precedence to establish prejudicial "look through" presumption.

Habeas court in the first instance obstructed justice in petitioner's opinion when instead of issuing an order to show cause on the newly discovered evidence ,trial court optioned to suppress ,and or destroy the HC 001 document which was [8] pages after the Table of Authorities. A reasonably competent Clerk would have adjusted the habeas petition to the court's standards. Upon receipt of Habeas court in the first instance' summary denial ,petitioner submitted the exact petition to the Second Appellate District Court of Appeal in California. The court refused to review the petition (see appendix B)

EXHIBIT B (1-4) PHYSIOLOGICAL DOCUMENTS

These documents are dated: 6/29/01 [2 pages of hospital records specifying scheduled surgery for Left shoulder arthrotomy ,Bulletectomy ,and Irrigation and Debridgement of Joint] ,12/5/07 [X-Ray and Exam of left shoulder 3 views ,finding: There is deformity in the left humeral head ,compatible with healed fracture. There are multiple small metallic fragments ,compatible with bullet fragments. There is no acute feature identified. An osteochondral joint body cannot be excluded in the area of the axillary recess. Consider CT of the shoulder for further evaluation].

,This newly discovered evidence was presented without substantial delay ,once petitioner received the facts in the trial file. Petitioner was scheduled to receive a surgery in 2008 but refused after learning that a surgery could be adverse to the initial injury in a worst case scenario. The fact of petitioner being shot doesn't trigger a habeas claim in itself. Complaint witness reconstructed his testimony from the criminal investigation ,preliminary ,defense investigation ,and trial. Therefore petitioner who have maintained his innocence from the start ,could only reasonably become aware of a triggering fact upon discovering those facts i.e the trial file.

Petitioner never saw the first two pages of Exhibit B ,thought trial attorney furnished him with the work product 1/29/20. The High Court in Schlup v. Delo 513 US at 324 (1995) held " To be credible ,such a claim requires petitioner to support his allegations of constitutional error with new reliable evidence - whether it be exculpatory scientific evidence ,trustworthy eyewitness accounts ,or critical physical evidence - that was not presented at trial.

In re Robbins ,supra acknowledges Actual Innocence as an exception to procedural default. Actual Innocence in the context of state precedence is achieved in innocence or reduced culpability. Id. ,at 18 Cal. 4th 812 quoting In re Clark ,supra 5 Cal. 4th at 798.

On 2/18/20 and 3/12/20 petitioner submitted claims of Judicial Abuse of Discretion where Deriliction of Duty and Wanton Misconduct were gateway constitutional errors that 'probably resulted' in the conviction of an innocent person.

Petitioner compelled the California Supreme Court to apply Chapman's Sarrazawski standard where 'reversal will be required when the tainted evidence have been introduced in intentional violation of constitutional standards. This rule is twofold applicable. Fisrt ,petitioner was not afforded the protection of a mentally ill citizen of the United States of America ,where inalienable rights were abridged by suppression of relevant facts of mental illness characteristics. Enabling the prosecution to isolate the demonstrative evidence as inculpatoy to the jury without the stipulation of petitioner's mental illness being disclosed to them. [49] interruptions and defaults where the mnemonic the jury reflected as evasive rather than poor impulse control.

Second there were patterns of prosecutorial misconduct in numerous suppressions, and false testimony. Even if the [4] Brady/Napue suppression ,false testimony errors failed to meet the California Supreme Court standard for Error of Constitutional Magnitude for failure of prejudice. Pursuant to Sarrazawski 27 Cal. 2d 7 ,at 11 precedes Watson ,supra 46 Cal. 2d at 835 which is the standard for PC 1473 false testimony claim ,where the stringent standard is whether any reasonable jury or judge would have convicted petitioner ,minus the error.

The applicability of Watson and it's predecesor to petitioner's Brecht claim is Watson acknowledges, in the interest of a miscarriage of justice - errors both of constitutional dimension and other errors i.e errors that exist but don't meet the threshold required to establish a stand alone error of constitutional magnitude.

Petitioner have met his burden of proving patterns of prosecutorial misconduct where suppressions that establish

cause render the Brecht rule in applying Chapman in exceptional cases would compel the Honorable Court to reverse the conviction. see Brecht ,supra at 654., Chapman ,supra at 52. ,Sarrazawski 27 Cal. 2d at 11.

"The California Supreme Court clarifies that the 'required showing of prejudice is the same as the reasonable probable test for state law error established under People v. Watson ,46 Cal. 2d at 836 (1956).' In re Richards ,63 Cal, 4th at 312-313. The Watson harmless error standard is 'the stands applied by California appellate courts in reviewing non - constitutional magnitude trial errors' see Merolillo v. Yates ,663 F 3d at 452n4 (9th Cir. 2011)." quoting Hernandez v. Lewis 2018 US Dist. LEXIS 65569 at 99

WATSON

In People v. Watson 46 Cal. 2d at 836 (1956) the state court held 'Conceding the error ,there remained the question of whether the character and effect of that error were such to require a reversal under the circumstances ,having 'due regard to the terms of section 4 1/2 of Article VI'. In an exhaustive discussion of the problem ,the following principles were declared: That the section abrogated the former rule that prejudice is presumed from error ,and allowed the reviewing court to consider the evidence to determine whether the error did in fact prejudice the defendant. That the distinction between reversible and non reversible error does not rest upon the distinction relating to constitutional rights as contrasted to errors of other rights ,but that the section applies to both. That certain fundamental rights ,however ,are guaranteed to the defendant upon which he can insist regardless of the state of the evidence ,such as the right to a jury trial and the right to protection under the plea of once in jeopardy ,but that not every invasion of a constitutional right necessarily requires a reversal. That generally ,error involving the infringement of a constitutional right ,like any other error ,requires a further determination whether the defendant has been prejudiced ,and the final test is the 'opinion' of the reviewing court ,in the sense of its belief or conviction ,as to the effect of the error. And that ordinarily where the result appears just ,a reversal will not be ordered.

The controlling consideration in applying the section is whether the error resulted in a 'miscarriage of justice.' In determining the meaning of this phrase ,the reviewing courts have stated the test to be applied in varying language. Emphasis in the main ,however ,has been placed on the constitutional requirements of a fair trial ,and due process ,which emphasis is found in decisions resulting in reversals. see People v. Sarrazawski 27 Cal. 2d at 11 . People v. Carmichael ,198 Cal. at 547 . and People v. Watts 198 Cal. at 792-793 .

SARRAZAWSKI

In People v. Sarrazawski 27 Cal. 2d at 11 (1945) the state court held " we find in the record several incidents which should not have occurred in a fair and orderly trial. At least two of such incidents are matters of such grave moment as to amount to substantial departures the established elements of a fair trial ,to which every person charged with crime ,no matter how rich or poor ,virtuous or debased ,is entitled. When a defendant has been denied any essential element of a fair trial or due process ,even the broad saving provision of section 4 1/2 of article VI of our state Constitution cannot remedy the vice and the judgement cannot stand.(People v. Mahoney ,201 Cal. at 627. People v. Adams ,76 Cal. App. at 186-187. People v. Gilliland ,39 Cal. App. 2d at 264 . People v. Duvernay ,43 Cal. App. 2d at 829). That section was not designed to "abrogate the guarantees accorded persons accused of crime by other parts of the same constitution or to overthrow all statutory rules of procedure and evidence in criminal cases. When we speak of administering 'justice' in criminal cases ,under the English or American system of procedure ,we mean something more than merely ascertaining whether an accused is or is not guilty. It is an essential part of justice that the question of guilt or innocence shall be determined by an orderly legal procedure ,in which the substantial rights belonging to defendants shall be respected" quoting People v. O'Bryan 165 Cal. at 65 opinion of Mr. Justice Sloss.

The Honorable Justices of the California Supreme Court failed to determine the effect of the errors which substantiated the claims petitioner present for review pursuant to Watson ,or Sarrazawski. In Watson the rule established that the character of the error and it effect of such error were such as to require a reversal. Petitioner's Judicial Abuse of Discretion exemplifies this rule. The factual basis for this claim is in the trial file and minutes. Petitioner's Fourth Amendment claim is error that supercedes the judicial process and was primarily relied upon in trial though characterized in concealment rather than disclosure.

Watson also states 'that certain fudamentsl rights ,however ,are guaranteed to the defendant upon which he can insist regardless of the state of the evidence'. This applies to the evidence petitioner was refused in a 1054.9 Post Trial Discovery Motion. The evidence is substantiated in the record and police reports. The photo exhibits are

exculpatory and reveal the actual distance of the witnesses while the crime was perpetrated. This also is the predicate of two False Evidence issues in the Prosecutorial Misconduct claim.

Sarrazawski is the standard referred to in Chapman ,supra at 52 'requiring reversal when tainted evidence is intentional introduced in violation of constitutional standard. The Fruit of the Poisonous Tree phone booth hiding fabrication is conceded to in preliminary then the DA's office introduced and elicited false testimony in trial from complaint witness ,and officer Dollens. DA Jackson failed to correct this false testimony because it inculpates and incriminates petitioner.

The Honorable Justices of the California Supreme Court' failure to review claims due to conflicting evidence unconstitutionally undermines the due process violations which addresses all of the conflicting evidence which cumulatively suffice.

EXHIBIT E (1-4) DOCKET SHEET DOCUMENTS

Petitioner obtained the docket sheet from Compton Court 4/17/14. Though the reference in tandem substantiates the basis for evidentiary support of the claim ,independently the docket sheet does not qualify as triggering facts to investigate for possible claims. The relevant dates on the pages are dated: 9/10/03 [Trial Judge Daigh presided in pretrial conference ,trial set for 10/14/04] , 10/1/03 [Trial Judge Daigh presided in pretrial conference ,trial set for 10/14/03] ,10/9/03 [Trial Judge Daigh presided in pretrial conference ,trial set for 10/14/03] , 11/18/03 [DA Gallon acted as DA in a case called for judicial action ,petitioner was not represented by counse] , 12/18/03 [DA Lonergan acted as DA in a pretrial conference] , 1/12/04 [DA Jackson acted as trial DA].

The evidence is relevant in determining the what the law was in the Motion for Judicial Action by the prosecution and the disregard for the defense representation in that transaction. Trial Judge though he presided in [3] pretrial transactions would assert the first day of trial "I don't know anything about the case".

This incompetence or deriliction prejudiced petitioner. Specifically ,the Call for Judicial Action is unconstitutional and deprived petitioner Due Process and epitomizes the Structural Defect. Judicial Actions are characterized by Determining what the law is ,what the rights of the parties are ,with reference to transactions had. see Union Pacific R.R v. United States 99 US at 721 (1878) (Fields dissenting).This call for judicial action premised a tainted trial ,where impartiality in a trial tribunal was deficient.

Petitioner presented in a Judicial Abuse of Discretion claim ,ample instances which petitioner was legally disregarded under the guise of a trial setting. Trial judge allowed reasonable inference to predicate a felony murder rule ,then when the jury asked what does the premeditation - which by assertion of 'just indicated' motive inclusion was superseded by a felony murder rule. Taking Judicial notice that the prosecution have not met the burden of a felony which necessitate an exception to the rule of a mental component , failed to adjudicate the process requested by the jury because the mental state is necessary in the lesser included as well. The trial court could not apply the lesser included offense because petitioner's mental illness absolves the rational response element of the lesser included offense. Instead of instructing the jury on PC 245 (a)(2) which is punishable by 2 ,3 ,and 4 years ,trial judge rather lead the jury to convict petitioner by Disregarding the Law.

Though trial judge 'did not know anything about the case' on 1/12/04 ,he offered petitioner a 5 ,10 ,15 year judge' discretion deal. When petitioner denied the offer trial judge stated '15 years from now you're going to regret not taking the deal'. Petitioner was sentenced with a PC 12022.53 enhancement that is not applicable to PC 245 (a)(2) ,and petitioner did not have any strikes in which a sentence may be doubled.

"A trial judge is prohibited from directing a jury to come forward with a verdict regardless of how overwhelming the evidence may point in that direction" Fulminante ,supra at 294. "These structural defects in the constitution of the trial mechanism ,which defy analysis by 'harmless error' standards. The entire conduct of the trial from beginning to end is obviously affected by the presence on the bench of a judge who is not impartial" Id. ,at 310

Under the Exception to the bar of Untimeliness Clark ,supra 5 Cal. 4th at 797-798 , recognized exceptions : (1) error of constitutional magnitude led to a trial that was so fundamentally unfair that no reasonable judge or jury would have convicted petitioner ,(2) that the petitioner is actually innocent of the crime or crimes of which the petitioner was convicted.

Petitioner have satisfied these standards with every claim presented to the California Supreme Court ,and was unable to compel the Honorable Justices of the Court to Act Judicially in adjudicating the merits of the claims presented.

EXHIBIT C (1-3) EXPERT DOCUMENT AND COMPLAINT WITNESS TOXICOLOGY REPORT

Petitioner reasonably knew of complaint witness' PCP use and testified to that fact in trial. The legal basis for the "newly discovered" evidence as expert testimony can't stand alone in proving petitioner's innocence though it establishes that the study of PCP users conveyed that PCP users reconstruct events using secondary memory i.e external bits of information.

The Expert Document is a physical paper document of In re Ledesma 43 Cal. 3d 199 where "David E. Smith ,MD a leading specialist in toxicology and addiction and the founder and medical director of the Height - Ashbury Free Medical Clinic ,testified to the various adverse toxic reactions that PCP can produce..Dr. Smith developed his testimony on reconstruction and secondary memory: 'Our experience in dealing with hundreds of PCP abusers and polydrug abusers over the years is that they try to reconstruct what happened ,because the mind doesn't like to know what happened in particular times."

This combined with the Toxicology report of complaint witness' cocaine tox-screen solidify petitioner's testimony in complaint witness using all sorts of drugs. And as a polydrug abuser [complaint conceded to using marijuana ,and the toxicology report revealed cocaine] though the toxicology report revealed there was no marijuana or PCP. In re Sixto 48 Cal. 3d 1260 ,"Dr. Orm Aniline explained in his declaration that PCP has the unique property of remaining in the human body for many months or years while undetectable in the bloodstream or urine. It may be detected by an acidification test."

This evidence in expert testimony presented by a reasonably competent attorney would answer some of the questions of uncertainty the jury may have had in regard to complaint witness' testimony. The false testimony of identifying petitioner to Detective Garcia ,if corrected by the prosecution not only impeaches the complaint witness but also proves that the complaint witness is unreliable.

"The jury's estimate of truthfulness and reliability of a given witness may be well determinative of guilt or innocence ,and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendants life or liberty may depend" Napue v. Illinois 360 US at 269 (1959).
The false testimony of the fabricated 'phone booth hiding possibility' if corrected by the prosecution would have substantiated the premise of the assertion of the 'tainted' reference. The 'taint' was in response to an inquiry of complaint witness telling petitioner's mother that the police told him petitioner shot him and was found with a gun in his pocket.

The expert testimony combined with the toxicology report would have compelled the jury to return a different verdict favorable to petitioner. The reconstructive elements of the 'Just Indicated' felony murder rule inclusion in which complaint witness conceded to being coached by DA Lonergan ,who inadvertently held a call for 'Judicial Action' to obtain a sense of determining what the law should be ,what the rights of the parties are [the people since petitioner was not present ,nor was representation for petitioner] ,and with reference to transactions already had.

A reasonably competent attorney would have utilized expert testimony. Expert testimony for purposes of documentary scientific evidence is admissible in Habeas Corpus. In Schlup ,supra at 324 the court held " to be credible such a claim requires petitioner to present his allegations of constitutional error with new reliable evidence - whether it be exculpatory scientific evidence - that was not presented at trial ,trustworthy eyewitness accounts ,or critical physical evidence - that was not presented at trial. The habeas court's analysis is not limited to such evidence." House v. Bell 547 US at 537 (2006)

Petitioner's reliable newly presented evidence is physiological and compels the Physical Fact Rule.

Black's Law Dictionary (6th edition) Physical Fact Rule / In evidence ,a judge is required to take a case from a jury if the plaintiff's evidence as to physical facts leads to an impossibity in the light of undisputed physical laws. An appellate court is not bound by findings that violate physical laws.

Petitioner presented claims to the California Supreme Court ,substantiated with undisputable facts from the trial file ,and records ,and exhibits that exemplify the standard reasonable diligence. The Honorable Court failed to entertain the petition for umtimeliness ,while disregarding the law for harmlessness ,and used conflicting issues as the standard for failing to apply a standard or rule to each issue petitioner challenged. The materiality standard of PC 1473 i.e Watson ,supra requires that the errors be evaluated and determined in adducing whether a Miscarriage of Justice ensued. The honorable justices failed to weigh cumulitively the effect the trial would have without the false testimonies.

Petitioner now petitions the Honorable Chief Justice Roberts ,and Associate Justices Thomas ,Ginsberg ,Breyer ,Alito ,Satomayor ,Kagan ,Gorsuch ,and Kavanaugh of the High Court to Grant Review of petitioner's Writ of Certiorary.

The High Court's Justice Souter opined in Kyles v. Whitley ,514 US at 438 (1995) " Since ,then the prosecutor has the means to discharge the governments Brady responsibility if he will ,any argument for excusing a prosecutor from disclosing what he does not happen to know about boils down to a plea to subitute the police for the prosecutor ,and even for the courts themselves ,as the final arbiters of the government's obligation to ensure fair trials".

EQUAL PROTECTION OF THE LAW

RULES OF PROFESSIONAL CONDUCT 3-700 (D)(1)

A member whose employment has terminated shall:

(1) Subject to any protective order or non disclosure agreement ,promptly release to the client ,all the client papers and property. "Client papers and property" includes correspondence ,pleadings ,disposition transcripts ,exhibits ,physical evidence ,expert's reports ,and other items reasonably necessary to the client's representation ,whether the client has paid for them or not.

The trial file was necessary to pursue a state collateral attack ,and the AEDPA is not a law constructed to deny Due Process. The Structural Defect in the relinquishment of Appellate Attorney's client trial file stem from a US Post Office conundrum. Short of mail tampering or fraud the US Post Office a subsidiary of the Executive Branch should not preclude an appellant from receiving Fundamental Fairness in determining a 'Extraordinary Circumstance' impeded petitioner from pursuing those legal remedies in the state court.

EXHIBIT H was provided and dated 6/23/01 which establishes petitioner was certified mental ill.The mental ill defendant bias claim could not have been substantiated by appellate attorney because all mental ill issues are inculpatory based and does not afford a innocent defendant with mental illness any equal protection in courts or appeal processes. Thus the factual basis for the claim was just as moot as the failure to disclose the relevant fact to the jury. No difference than driving while black a person cannot reasonably know his mental illness should inspire legal remedy. The triggering fact in the trial file is tear jerking i.e [49] interruptions and defaults infringing upon petitioner's right to present a legal defense as a legal mental ill defendant.

EXHIBIT G are Educational Documents of petitioner's lack of major life activities. Petitioner was reading in parallels and riddling every other segment while reading. These documents are dated 5/14/05 , 9/27/07 , 9/27/05 ,9/12/06 ,3/26/07 ,9/13/07 ,5/9/94

STRUCTURAL ERROR : DERILICTION OF DUTY

Disregard of the law in "Just Indicated" felony murder suppression is Manifest Constitutional Error pursuant to Brecht. Complaint Witness testified that 'while on a five minute walk for a short distance petitioner asked him to 'do something' in which he responded 'not if it's negative ,I've got morals' ,then petitioner shot him' based upon the implied provocation. Perceived provocation can be anything for legal purposes and does not establish a felony predicate contemplated while in a [5] minute walk.
The 'happened so fast' testified to by complaint witness ,is premised in the response to a question that could be negative ,could be positive. In the positive context one's perception is the determinitive factor in the response. One's intention cannot be measured in the hypothetical of a 'Caper' as DA Jackson perused before the jury in closing arguments. DA Jackson's misconduct denied petitioner Due Prices and Fair Trial deliberately disregarding 'beyond a reasonable doubt standard' ,and 'reasonably inferring' a felony to substantiate a felony murder rule 'Just Indicated' inclusion.

FELONY MURDER RULE

The felony murder rule makes a killing while committing certain felonies murder without the necessity of further examining the defendants mental state.(Chun ,supra ,45 Cal. 4th at p.1182).

Complaint witness asked inquisitively should he specify the newly recognized motive which DA Lonergan unconstitutionally coaxed into reality when confronted with preliminary insufficiency. DA Lonergan told complaint witness that 'one day it will all come back'. Though trial court 'obviously did not know anything about the case' ,and DA Jackson was exercising his wide latitude ,trial court directed DA Jackson to lead the witness ,instead of determining ,and developing the 'reasonable inference' for the jury to adjudicate.

The jury asked trial judge 'when is a crime not premeditated' and trial judge replied 'refer to the instruction I gave you' i.e PC 664/187(a). Trial Court failed to refer to the 'felony' murder 'caper DA Jackson hypothesized ,though he also failed to negate the motive in it's entirety and invoke PC 245 (a)(2) when DA Jackson failed to prove beyond a reasonable doubt that a 'felony' existed. The Felony murder rule obviates a mental component i.e malice ,provocation ,intent ,or premeditation. Petitioner's Due Process was violated when trial court upon initially being told the first day of trial that a motive that never existed ,was 'Just Indicated' as 'Reasonable Inference' failed to Act Judicially in determining what the law proscribed.

In Brecht ,supra at 654 "Reserving the 'possibilty that in an unusual case ,a deliberate and especially egregious error of the trial type' or error 'combined with a pattern of prosecutorial misconduct ,might so infect the integrity of the proceeding as to warrant the grant of habeas relief ,even it did not substantially influence the jury's verdict [Chapman applicability].

In Arizona v. Fulminante 499 US at 310 (1991) the High Court held "these constitutional deprevations is a similar structural defect affecting the framework within which the trial proceeds ,rather than simply an error in the trial itself. 'Without these basic protections ,a criminal trial cannot reliably serve it's function as a vehicle for determination of guilt or innocence ,and no criminal punishment may be regarded as fundamentally fair" quoting Rose v. Clark 478 US at 577-578.

CALIFORNIA EVIDENCE CODE

§ 403 Determination of foundational and other preliminary facts where relevancy ,personal knowledge ,or authenticity is disputed.

(a) The proponent of proffered evidence has the burden of producing evidence as to the existence of the preliminary fact ,and the proffered evidence is inadmissible unless the court finds that there is evidence sufficient to sustain a finding of the existence of the preliminary fact when:

(1) The relevance of the proffered evidence depends on the existence of the preliminary fact.

Complaint witness testified that he had severe headaches ,ringing in ears ,double vision ,temporary blindess ,and numbness. Non were memory loss which could be preliminary fact to personal knowledge. On the contrary insufficiency and DA Lonergan coaching complaint witness of what the mind can remember after sustaining such an injury cannot stand as a foundation or preliminary fact to a 'felony' murder rule motive.

(b) Subject to § 702 [personal knowledge] ,the court may admit conditionally the proffered evidence under this section ,subject to evidence of the preliminary fact being supplied later in the course of the trial.

(c) If the court admits the proffered evidence under this section ,the court:

(1) May ,and on request shall ,instruct the jury to disregard the proffered evidence unless the jury finds that the preliminary facts does exist.

The jury requested the law pertaining to the 'felony' murder motive and trial court disregarded the law. Instead trial

court directed the conviction of premeditated attempted murder in constitutional violation of the first magnitude. 'a judge in a criminal trial is prohibited from directing the jury to come forward with a verdict' see Sparf and Hansen v. United States ,156 US 51,105 [39 L Ed 343 15 S Ct 273] (1895) quoting Fulminante ,supra at 294.

(2) Shall instruct the jury to disregard the proffered evidence if the court subsequently determines that a jury could not reasonably find that the preliminary fact exists.

Trial knew that no preliminary facts were shown by DA Jackson to admit the 'Just Indicated' ,'Reasonable Inference' ,'Felony' hypothetical 'Caper' motive as a substitute for a mental component necessary to convict of murder or manslaughter ,so he refused to instruct the jury on felony murder rule attempted murder or the crime that was presented to the jury assault with a firearm. Chapman v. California 386 US at 44 " When a jury is instructed in an unconstitutional presumption ,the conviction must be overturned" Bollenbach v. United States ,326 US at 614-615. 'Chapman specifically noted that trying a defendant before a biased judge cannot be categorized as harmless error' Fulminante ,supra ,at 290

§ 780 Testimony: Proof of truthfulness considerations except as otherwise provided by statute ,the court or jury may consider in determining the credibility of a witness and any matter that has a tendency in reason to prove or disprove the truthfulness of his testimony at the hearing ,including but not limited to any of the following:

(b) The character of his testimony [insufficiency remedy: feloniless felony murder rule]

(f) The existence of a bias ,interest ,or other motive [compliant witness was coached by DA Lonergan that 'memories come back']

(h) A statement made by him that is inconsistent with any part of his testimony at the hearing [complaint witness had numerous interviews where no motive existed]

(j) The attitude toward the action in which he testifies toward giving his testimony[complaint witness accused petitioner of being deceptive]

Brady ,supra at 94 , the High Court held from referenced cases 'that a jury may not "overrule" the trial court on questions relating to the admissibility of evidence. Trial court's failure deprived petitioner of Structure ,and Fairness. Trial attorney established the prejudicial components of 'Just Indicated' motive while cross examining complaint witness.

Complaint witness testified that DA Lonergan coached him ,and prior transactions i.e preliminary records substantiated insufficiency. Every pretrial transaction by trial judge was disregarded also. Only Incompetence or Deriliction justifies trial courts failure to act with regard to petitioner's Due Process ,Fair Trial ,and Right to Impartial jury. Trial court's

Black's Law (11th edition) Legal Evidence / of such a character that it reasonably proves a point rather than merely raising suspicion or conjecture.

Black's Law (11th edition) Impartial Jury / a jury that reaches it's verdict on competent legal evidence.

DA Jackson introduced incompetent evidence on the first day of trial as 'reasonable inference'. The Structural Defect of trial court establishes intentional introduction of tainted evidence in violation of constitutional standards as in Chapman ,where in Brecht is applicable when Errors combined with patterns of prosecutorial misconduct.

The California Supreme Court failed to Cummulatively Evaluate the Brady/Napue violations pursuant to Bagley. The High Court held "Bagley's touchstone of materiality is a 'reasonable probability' of a different result ,and the adjective is important. The question is not whether the defendant would have received a different verdict with the evidence ,but whether in its absence he received a fair trial ,understood as a trial resulting in a verdict worthy of confidence. A 'reasonable probability' of a different result is accordingly shown when the government's evidentiary suppression 'undermines confidence in the outcome of the trial.' Bagley ,473 US at 678. quoting Kyles v. Whitley 514 US at 436 (1995).

DELIBERATE PROSECUTORIAL MISCONDUCT

Petitioner presented [4] Brady/Napue violations pursuant to California Penal Code 1473 ,as False Evidence. In Napue ,supra at 360 US 269 the High Court held "the jury's estimate of the truthfulness and reliability of a given witness may well be determinitive of guilt or innocence ,and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend.

Brady v. Maryland ,373 US, at 87 ,10 L Ed 2d at 218 ,83 S CT 1194 (1963) ,held that suppression of material evidence justifies a new trial "irrespective of the good faith or bad faith of the prosecution. "When the "reliability of a witness may be well determinitive of guilt or innocence" ,nondisclosure of evidence affecting credibility falls within this general rule. see Naupe ,supra at 269 ,3 L ed 2d at 1221.' quoting Giglio 405 US at 15

The Suppressed Fabrication photo evidence was highly prejudicial to petitioner because it afforded complaint witness while he testified to present uncertainty as virtual fact. Though he testifies that petitioner shot him ,he never says that he saw a weapon. The weapon retrieval is the determinitive factor in a jury's doubts as to how a person can be certain he was shot looking directly at the suspect and never see a weapon. The Fabricated Evidence is testified to the jury by complaint witness ,and DA Jackson failed to correct the false testimony.

DA Jackson led officer Dollens into presenting those False fact to correlate inculpatory ,and incriminating proof of petitioner's guilt. The arresting officer's were not looking for a Michael Woolen Jr. Ironically which would be more than enough to prosecute petitioner. The Fabricated arrest evidence was constructed to achieve complaint witness' trust in his assailant being apprehended.

This is evidenced in trial facts that though complaint witness is adamant that he talked to Detective Garcia ,and was told of the Fabricated Evidence by 'a detective'. The only officer that mentioned the 'Materiality' of the fabricated evidence is the officer that complaint witness testified he told of petitioner being the suspect. That is Detective Garcia ,whom impeached complaint witness thus establishing the other false testimony in the record which DA Jackson failed to correct.

DA Jackson utilized the fact that he was newly assigned to the case as a means to use the police to manufacture false testimony ,evidenced by officer Dollens testimony of petitioner hiding in a photo exhibit of no probative value i.e no hiding probability only conjecture. In Kyles v. Whitley 514 US at 438-439 Justice Souter opined " the prosecutor has the means to discharge the government's Brady responsibility if he will ,any argument for excusing a prosecutor from disclosing what he does not happen to know about boils down to a plea to substitute the police for the prosecutor ,and even for the courts themselves ,as the final arbiters of the government's obligation to ensure fair trials....the prosecutor would still be forced to make judgement calls about what would count as favorable evidence ,owing to the very fact that the character of a piece of evidence as favorable will often turn on the context of the existing or potential evidentiary record."

Though the fabricated evidence was conceded to in preliminary hearing by Detective Garcia, DA Jackson had the interest of the state to disclose the suppressed evidence and the False testimony that ensued. These suppressed materials prejudiced petitioner in trial and direct appeal where trial and appellate attorney' failed to notice the suppressions.

In Strickler v. Greene 527 US at 286 the High Court held " the presumption ,well established by 'tradition and experience', " that prosecutors have fully" 'discharged their official duties', is inconsistent with the novel suggestion that conscientious defense counsel have a procedural obligation to assert constitutional error on the basis on mere suspicion that some prosecutorial misstep may have occurred.quoting United States v. Mezzanatto 513 US at 210 (1995).

Witness Hubbard and inadvertently Scott ,was 'sitting on a wall' in the rear of the parking lot when the crime was perpetrated according to Officer Puzio's police report (see exhibit D). The materiality of the non disclosure of photo evidence which would impeach both witnesses Hubbard and Scott. This evidence presented by a reasonable competent attorney would discredit the caliber of the investigation.

The crime was reportedly committed in a parking lot where the complaint witness walked eastbound when his assailant called to him ,met with him ,and shot him ,according to the trial record. Witness Hubbard and inadvertently Scott was noted in officer Puzio's police report as 'seeing two men walking in their direction'. The materiality is there are no walls in which one could sit on in a parking lot. The evidence withheld suggests the witnesses observed the crime from the perimeter of the lot. The witnesses had to be on the North East or South East perimeter , hundreds of feet from where complaint witness said the crime was perpetrated. The distances at night can affect visibility substantially.

Witness Scott testified that she couldn't identify petitioner on the night of the crime in stadium lighting. Witness Hubbard false testified that he was behind complaint witness and his assailant ,and DA Jackson failed to correct his testimony. The High Court held in Napue ,supra at 269-270 "a lie is a lie ,no matter what the subject ,and ,if it is in

any way relevant to the case ,the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth"

Witness Scott was detained in a juvenile facility when she testified and petitioner believe she was coached into reconstructing her previous police record. Evidence in her unawareness of her substantial statement's to Detective Garcia while she testified. Though the trial was seven months after petitioner's arrest ,the auditory fact of complaint witness supposedly say in 'Mike ,don't play' never existed before trial and supplemental reports. Detective Garcia's supplemental report was ante dated because petitioner never had a interview by Detective Garcia ,and in his supplemental report Garcia refers to petitioner's trial testimony.

DA Jackson rationalized rather than correcting false testimony of witness Hubbard ,implying through police corroborator officer Puzio that petitioner's father walked Hubbard to the restroom and intimidated ,or coerced him. DA Jackson opening arguments was Deliberate in Manifesting that into materialization during trial ,and officer Puzio as a rain woman was willing according to DA Jackson ,to decieve the jury instead of informing them of the true distance the witnesses observed the crime ,at night.

Officer Puzio also falsified the police record in regard to petitioner's clothes. Petitioner wore a pea green Karl Kani long sleeve cotton twill shirt with twill elbow patches ,green corduroy pants purchased at target, the gray reflective second layer of a black jacket purchased at target, and black and gray Nike Bo Jackson shoes. The correlation of a falsified [blue shirt] only solidifies the false testimony of complaint witness as the description of the clothes petitioner was wearing described to Detective Garcia.

The prosecutorial misconduct should stand alone as Brady/Napue violations ,but the intentional introduction of tainted evidence by DA Jackson's Haste combined with trial court Deriliction ,establishes Structural Defects that strikes at the heart of the process ,and should require reversal pursuant to Brecht ,Chapman ,Sarrazawski ,and Fulminante.

Though trial court acknowledges petitioner's 'not right' in the head ,and 'not knowing who it helps or hurts more'. There were [49] interruptions continuously throughout direct and cross examination of petitioner. The residual irrationality which in closing arguments DA Jackson exploited as inculpatory was allowed by trial court and deprived petitioner of Fundamental Fairness ,being petitioner was mentally Ill and was not taking his medication during the time. This Error also strikes at the heart of the trial process.

The California Supreme Court failed to adjudicate on the merits due to petitioner's acting without counsel which underscored the validity of the petition. Petitioner provided 'Newly Discovered' evidence that shows the fabrication that was conceded to by Detective Garcia in preliminary hearing ,in which complaint witness and officer Dollens would false testify. The Structure of the investigation was affected substantially because [3] trial DA's allowed it to be discharged within their official duties, [1] Assistant attorney general attenuated the tainted evidence in discharging his official duty , [1] trial court habeas judge sanctioned the destruction of the HC 001 form where question #10 introduces the tainted evidence when [1] DA litigation team suppressed the tainted evidence.

In re Clark ,supra at 5 Cal 4th 766 the court held " [A] criminal judgement may be attacked on the basis of 'newly discovered' evidence only if the newly discovered casts fundamental doubt on the accuracy and reliability of the proceedings. At the guilt phase ,such evidence if credited must undermine the prosecutions the entire prosecution case and point unerringly to innocence or reduced culpabilty." quoting People v. Gonzalez 51 Cal. 3d at 1246.

The tainted felony-less felony murder rule motive is the exact taint inspired by trial court manifest disregard for the law in pretrial ,trial and post trial proceedings. Trial court was informed of the never before 'Just Indicated' felony murder inclusion. DA Jackson introduced it as a 'reasonable inference' then asked the jury in closing arguments to consider whether petitioner was trying to 'caper.' Petitioner satisfied the Clark 'newly discovered' evidence component. The new evidence was suppressed ,then upon discovery from a neutral source petitioner presented the evidence.

The evidence could not have been known by counsel earlier because counsel was under the presumption that the "prosecutor fully discharged his official duties". The non obligation of appellate attorney' to investigate possible habeas claims [see Policy 3 In re Clark ,supra 5 Cal. 4th at 784] .

The rule in Brecht ,supra 507 at 654 in which the High Court established that Errors combined with patterns of prosecutorial misconduct invoke Chapman. Chapman ,supra 386 at 52 invoke the California Supreme Court stare decisis of People v. Sarrazawski 27 Cal. 2d at 11. Sarrazawski requires the reversal when tainted evidence is intentionally introduced in violation of the constitution.

In Napue ,supra 360 at 272 the High Court held " In cases in which there is. claim of a denial of rights under the Federal Constitution ,this Court is not bound by the conclusions of lower courts ,but will reexamine the evidentiary basis on which those conclusions are founded".

JUDICIAL ABUSE OF DISCRETION: MANIFEST DISREGARD OF THE LAW

In Withrow v. Larkin 421 US at 46 (1975) the High Court held " 'a fair trial in a fair trial tribunal is a basic requirement of due process'. In re Murchinson ,349 US at 136 (1955). This applies to administrative agencies which adjudicate as well as to courts. Gibson v. Berryhill ,411 US at 579 (1973). Not only is a biased decision maker constitutionally unacceptable but 'our system of law have always endeavored to prevent even the probability of unfairness'. In re Murchinson ,supra at 136 Tumey v. Ohio ,273 US at 532 (1927). In pursuit of this end ,various situations have been identified in which experience teaches that the probability of actual bias on the part of a judge or decisionmaker is too high to be constitutionally tolerable."

In United States v. Frady 456 US at 173-174 (1982) the High Court held "Provocation ,in order to bring a homicide under the offense of manslaughter ,must be adequate ,must be such as naturally induce a reasonable man in anger of the moment he committed the deed. It must be such provocation would have the like effect upon the mind of a reasonable or average man causing him to lose his self control"

PC 245 (a) ASSAULT WITH A FIREARM

Petitioner is innocent of the crime and could not physiologically commit the crime in which he was convicted. However ,the reasonable or average man component of presumed rationality cannot be reasonable presumed in a defendant that is mentally ill. The evidence trial attorney presented to the jury as Demonstrative i.e petitioner's trial testimony involved [49] interruptions which precluded petitioner from testifying his innocence. Trial court was aware of petitioner's mental illness prior to trial a extra judicial 402 on the subject ensued.

Trial court said in a sidebar 'he don't know who it [petitioner's mental health] helps or hurts more. Trial court allowed the jury to interpret the demonstrative petitioner testimony in one light. This deprived the jury of their Impartiality. An impartial jury is a jury that has no opinion about the case at the start of the trial and bases its verdict on competent legal evidence. Legal evidence is evidence that proves a point rather than suspicion or conjecture.

California Evidence Code § 210 governs Relevant evidence as evidence presumed or inferred.

The relevance of trial courts Manifest Disregard of the Law is evidenced in trial judge' assertion that 'he don't know anything about the case' on the first day of trial ,though he presided on three substantial prior pretrial transactions on 9/10/03 ,10/1/03, and 10/9/03. Trial was originally scheduled for 10/14/03. This disregard of the law manifested constitutional error under the guise of prosecutorial latitude.

The jury questioned the validity of the motive provided asking 'when is a crime not premeditated'. Instead of trial judge adhering to his Article VI oath of Impartiality ,and Act Judicially ,he would allow the demonstrative petitioner testimony to stand uncorrected and the intimate truth of petitioner' past crimes incorporate petitioner's mental illness as a moot point in which the jury otherwise should be able to ascertain themselves being that [49] interruptions had to had piqued their interest as relevant evidence inferred and presumed pursuant to Evidence Code § 210.

Complaint witness' account of the events were not independently determinitive of the facts. Complaint Witness never saw petitioner shoot him with a weapon, nor did complaint witness see petitioner with a weapon that day. In trial court's failure to reference preliminary records to determine the law while in trial ,evidence that the prosecution had the burden of proving i.e petitioner actually shooting complaint witness was contingent upon fabricated evidence of petitioner 'hiding behind a phone booth'. Complaint witness would relay this fabrication to the jury as certainty petitioner shot him.

Abuse of Discretion is not measured by prosecutorial latitude ,but by the checks and balances provided under the law. The law is the greatest element in a civilized world ,regard of the law ,is the law ,of the law. To disregard it can never be considered harmless. A Judicial Act is the determining what the law is ,the rights of the parties are ,with reference to prior transactions. see Union Pacific R.R. v. United States 99 US at 721 (Fields ,J dissenting)

Under trial court deriliction of the law the prosecution should have latitude over the libertv of a Mental Ill defendant's

right to freely testify innocence ,with no enumeration ,as a defense ,equally protected by the Fourteenth Amendment. This not only undermines Fundamental Fairness ,it also disregards the truth seeking element of the fact finding process. In essence a spade is a spade.

Society's interest in fairness and finality can never be met by deliberate suppression of relevant facts. The jury were denied their impartiality ,when petitioner swore that his 'whole truth' would be disclosed and due to trial court's deriliction relevant facts indicative of that truth was suppressed . The mitigating factor was the character of evidence presented ,not the element of the crime. The wash and rinse of it is the jury were cognizant of petitioner's demonstrative display of constitutional proportions, [49] occasions ,though never afforded the component of relevance i.e petitioner's mental illness. Due Process is not afforded when liability is concluded against a defendant (see Black's Law 6th edition Due Process).

ACTUAL INNOCENCE

The Complaining Witness stated petitioner was facing him when he was shot in his right cheek. Petitioner have presented NEWLY DISCOVERED EVIDENCE of Petitioner's physiological deformities, ligament, and joint damage (see exhibit __8__) preventing him from shooting Mr. Burnett.

When a petitioner is challenging the validity of a conviction ,he bears the burden of proving his allegations are true. The credible Newly Presented Evidence of petitioner's Physiological dysfunction inspires a physical fact rule which if applied also requires a reasonable determination i.e an evidentiary hearing based on the science of that physiological aspect. The standard is 'whether the evidence presented can be shown ,or is legally dysfunctional'. Thus, only a physiologist or physical therapist can determine the validity of such a physiological defect assertion.

Petitioner has shown a colorful claim of actual innocence where structural error ,manifest constitutional error ,and prosecutorial misconduct in trial ,direct appeal ,and habeas proceeding precluded petitioner from being afforded Due Process guaranteed by Amendment XIV of the US Constitution. These errors are overwhelming ,egregious ,and should be deterred. The cumulative effect of such errors questions 'whether due process of innocence is afforded or presumed when liability have been conclusively manifest in error'.

Petitioner have submitted Newly Discovered Evidence ,though available at trial was not presented. This Newly Presented Evidence is Physiological Documents of petitioner lack of range of motion in the shooting arm complaint witness testified that petitioner shot him with before the jury. This scientific physiological evidence is protected under the Physical Fact Rule.

Black's Law Dictionary's (sixth edition) defines Physical Fact Rule/ In evidence ,a judge is required to take a case from a jury if the plaintiff's evidence as to physical facts leads to an impossibitilty in the light of undisputed physical laws. An appellate court is not bound by findings which violate physical laws.

In Schlup ,supra the High Court held that "to be credible" a gateway claim requires "new reliable evidence - whether it be exculpatory scientific evidence ,trustworthy eyewitness accounts ,or critical physical evidence - that was not produced at trial. Id. , at 324 ,115 S Ct 851 ,130 L Ed 2d 808 ,the habeas cou's analysis is not limited to such evidence.

Petitioner presented facts that a competent attorney would have used to prove innocence. Petitioner testified that complaint witness was smoking a 'funny smelling cigarrete' [PCP] and petitioner told complaint witness to 'go on man ,you trippin'. Complaint witness testified he was 'Walking Light' ,'Strolling Slow' which is a term for being stuck on PCP. [(see Terrence Crutcher : police fatality 9/16/16 Tulsa ,OK)].

The facts of complaint witness' toxicology report being cocaine positive substantiates petitioner's assertion that complaint witness 'used all types of stuff'. The preponderance of complaint witness not having marijuana in his system ,renders relevant ,petitioner's assertion that PCP can be in the body though not in a urinalysis ,and a acidification test need to be administered to find PCP in the system. (see In re Sixto 48 Cal. at 1260). Thus this admissible evidence is substantiated by complaint witness euphoric description of the weather the night of the crime being 'serene ,peaceful ,tranquil ,and very pleasant'.

A Impartial jury would take into account when an expert witness on PCP users testifies that 'PCP users reconstruct events using secondary memory agents'(see In re Ledesma 43 Cal. at 729 F. 2d 856). A impartial jury would take into account that in trial testimony a detective have told complaint witness of tainted fabricated evidence ,which would be harmless if it wasn't the origin of premise in the reconstruction.

This is evidenced in the facts that the prosecution never presented a police witness corroborating an identification. Compliant witness was the first witness to testify ,and was questioned and insisted he told Detective Garcia petitioner shot him [5] or [10] minutes after the crime. Though complaint witness never mentioned the first officer on the scene ,is the High Court to believe that the identification would not be an important element of the crime to have that first officer Iberri #131978 as a witness when complaint witness was impeached by Detective Garcia.

The prosecution knew complaint witness false testified of his identification of petitioner. When Detective Garcia was being cross examined to the accusatory exactness of complaint witness identifying petitioner ,trial court's first inclination sustained a objection beyond the scope ,in essence sanctioning this false identification. The jury heard the impeachment of complaint witness idenfication of petitioner ,though they were not informed under the law by the prosecution that the evidence was false.

The legal knowledge of a false identification could effect complaint witness' credibility and if he'll lie about identifying petitioner to Detective ,could he be lying about petitioner shooting him. The preponderance suggests Detective Garcia is ante dating records and avoiding liability by saying he did not speak to complaint witness.

The jury would have to take into consideration that no independent source of sufficient unrelation to the police tainted investigation was presented as substantial fact in the record. Both witnesses Hubbard and Scott would prove to be the most relevant measure in this regard. They both did not testify of complaint witness telling them that petitioner shot him. The 911 operator was not told that petitioner was the perpetrator either. This is evidenced by every officer testifying never identifying petitioner as the suspect-parolee at large. The arresting officers searched the platform ,then searched again never asserting that they were looking for Michael Woolen Jr. ,who is in the database.

The jury when presented these facts by reasonably competent counsel would take into account that prosecutor Jackson could have included the first officer in trial after the identification was impeached by Detective Garcia. Instead ,on cross examination of officer Puzio ,DA Jackson obtained an identification from her. Puzio said that complaint witness kept saying Michael Woolen Jr. over ,and over ,though he never told anyone that immediately assisted him i.e witnesses ,and 911 caller of Michael Woolen Jr. shooting him. Trial attorney was told by complaint witness that he spoke to officer Puzio at the hospital.

The inquiry in which the jury would be afforded a means to determine the applicable law in this situation is the Fourth Amendment Fruit of the Poisonous Tree [Browns Attenuation standard] this standard would substantiate the sufficient unrelation of officer Puzio's independence of the tainted evidence cannot be applicable.

Inapplicability is evidenced in officer Puzio's willingness to testify ,according to DA Jackson that petitioner's father walked witness Hubbard to the restroom to intimidate ,influence ,or coerce witness Hubbard. This speculative willingness is consistent with the cumulative denial of fundamental fairness. This willingness comes after DA Jackson told the jury in opening statements that witness Hubbard might be a variable. Then somehow witnes Hubbard ,who was scheduled to testify in numerous trials was according to him threatened over the phone.

Witness Hubbard could have been lying and DA Jackson with officer Puzio could be capitalizing on the record. Hubbard was convicted in 2007 of murdering a church member [(see Rushing v. Barnes 2013 US Dist. LEXIS 166542 at 10)]. Petitioner testified speculatively that Hubbard might have been the person who committed the crime ,but only speculatively.

Petitioner never met Hubbard but they lived their entire life in the same one mile square. Petitioner's father may have known Hubbard's father being that petitioner's father live in Watts for the [47] years of his life ,so he could have been friends with Hubbard's father. This would lead a jury to inquire why would petitioner wait until he in front of a police officer to intimidate ,influence ,or coerce Hubbard.

Officer Puzio willingness to corroborate speculation as fact brings her integrity into question. As a police officer ,integrity have the type of latitude that a prosecutor have in a trial setting. There is no certainty in procedure ,a report can be filed when it gets filed ,if it get filed. The constitution cannot create a measure in which this latitude is displayed either ,if deterence is not imperative in cases where the process in full is affected by this 'integrity latitude'.

FRUIT OF THE POISONOUS TREE

California Supreme Court held in In re Harris ,supra 5 Cal. 4th at 830 (1993) that " if the violation of a petitioner's constitutional rights by the use of illegally seized evidence had any bearing on the issue of guilt ,there would be no doubt that habeas corpus would be available" quoting In re Sterling ,supra 63 Cal. 2d at 487.

California Supreme Court precedence have an exception to untimeliness that if Error of Constitutional Magnitude that led to a trial so fundamentally unfair that absent the error no reasonable judge or jury would have convicted the petitioner (In re Robbins ,supra 18 Cal. 4th 781 (1998)).

The Materiality of the Fabricated Evidence established by arresting officers is the Poisonous Tree which bore Fruit throughout trial. The factual basis for the Fourth Amendment claim need not be determined because it is in the preliminary record ,conceded to by Detective Garcia. The Photo Document that petitioner presented was triggered by the trial file when petitioner recieved it in 2019.

Petitioner's Appellate Counsel presumed the prosecution team had discharged their official duties (see Strickler ,supra at 286). State policy imposes no obligation on appellate counsel to take the triggering facts and investigate them if the case is not a capital offense (see In re Clark ,supra 5th Cal. 4th at 784). Though the standard for 'newly discovered' evidence is when appellant or appellant counsel knew or could have knew the factual or legal basis for the claim (see In re Clark ,supra 5th Cal. 4th at 780).

The factual basis i.e the trial file was sent to petitioner in 2005 ,and petitioner did not receive the trial file until 2019. Being that petitioner's Equal Protection of Laws wasn't afforded due to Post Office 'official interference' of delivering the trial file ,the triggering facts that appellate counsel failed to peruse due to trust in 'tradition and experience' believing the prosecution had 'fully discharged their officiai duties'. This is inconsequential to petitioner's plight because petitioner ,upon receiving the trial file ,accepted the triggering facts as facts determinitive of Constitutional Magnitude Error.

The 'newly discovered' evidence exposes [3] DA suppressions ,[1] AAG suppression ,[1] Habeas trial court Judge and Habeas DA litigation team suppression. The materiality of the evidence is that it is Fabricated to inculpate petitioner and provide complaint witness a means of assurance in his false accusation.

This is evidenced in complaint witness' false testimony of the tainted fabrication as being told to him on the way to the hospital ,by the detective. The detective in his awareness of the illegality i.e testified to and conceded to in preliminary hearing ,would impeach the complaint witness account of the interogatorries.

These False Evidence claims were presented also where pursuant to Watson , deterrence of a Fourth Amendment claim would apply as Error of Constitutional Magnitude. Especially when Constitutional Due Process have been in the balance as a direct result of an fabrication illegality in the arrest and investigatory process. The fabrication pulled the very thread of the trial process itself throughout the duration of the trial.

The issue of Constitutional Magnitude becomes whether Deliberate Misconduct is sanctioned in the interest of finality. This theory is no less barbaric as a public hanging i.e the evolutional application of constitutional law would inspire simplicity in the law ,where disregard of the law is manifest in multiple tribunals. This is characterized in direct disregard of the protection affording the XIV Amendment's 'no law shall abridge the liberty' bequeathed in the Constitutional evolution.

Whether clandestine integrity of police officer' in fabricating evidence ,prosecutorial latitude in using the police to present evidence that was fabricated then false testified to as fact ,or judicial sanctioning them both in disregard of substantial Bill of Rights accepting a 'felony murder' rule motive without a felony predicating the intent. These all are conscientious government officials executing precise formulations and utilizing strategems indicative of a process amounting to nothing more than a dream. 'Injustice anywhere is a threaten to justice everywhere' (MLK).

These Errors were not committed in the interest of justice or society's purpose. These Errors were committed because the process have become what is is on it's face ,a means to circumvent justice even when all proof points to what is just.

In Wong ,supra 371 US at 488 the question is "whether the evidence was obtained by the governments exploitation of the illegality or whether the illegality has become attenuated so as to dissipate the taint"

The ante dated clandestine integrity was used by Assistant Attorney General Mike Katz in Direct Appeal when he would attenuate the False testimony of complaint witness ,writing in a respondent's brief: " 'By the time' Burnett spoke to her [Mrs. Moore] ,a detective had told Burnett the police had found appellant 'hiding near a phone booth' ,and they found a gun nearby."

The testimony he attenuated or paraphrased in harmlessness was actually : Mr. Burnett : "When I was taken in the ambulance to Martin Luther King hospital ,the detective told me that he was in custody..and there was a gun that was nearby ,yes and it was still warm ,and might I add ,he was hiding behind a phone booth that night."

In Wong ,supra at 485 the High Court held " The essence of a provision for bidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the Court but that it shall not be used at all. Of course this does not mean that the facts thus obtained become sacred and inaccessible. If knowledge of them is gained from an independent source they may be proved like any others ,but the knowledge gained by the Government's own wrong cannot be used by it in the way proposed..

quoting Silverthorne Lumber Co. v. United States ,251 US at 392.

The police have the responsibility to protect and serve but sometimes they are wrong and that wrong compounded. Without the intervention and rule of law that wrong could compound the earth off of its axis. This identification process was the norm for Detective Garcia ,whom I truly believe is a good officer in most regards. However ,the issue which pulls the thread of justice is predicated in clandestine efforts undermining the very system he swore to defend and protect.

Detective Garcia the good officer should always substantiate any claim of misconduct or reprimand. Not in the real world ,in the world today and more appropriate to petitioner's plight Detective Garcia is a man with a plan unavoidably detained by what he believes is unjust. Garcia would single handedly circumvent law and procedure by providing ante dated records incorporating Witness Scott as a independent source of sufficient unrelation to the fabricated weapon retrieval (RTp.163).

Discovery was denied upon trial attorney's request (RTp.91:22-23).Pursuant to Penal Code 1054.9 petitioner motioned the state court to compel the DA to furnish suppressed photo evidence of 'wall' witnesses were sitting on. Habeas trial Judge Jacke II denied the motion (see appendix E).

The actual distance Scott observed the crime is exculpatory ,and the jury could ascertain that from the fact that Scott had two different recollections of the crime ,coupled with she was in custody while testifying. The exculpatory evidence in a reasonbly competent attorney' adversarial formulation would yield inducement inquiries at minimum.

This Deliberate Investigatory Misconduct of Detective Garcia defies analysis in conflicting interrogatories. Quintessential Structural Deficiency of the trial tribunal. Kyles ,supra 514 US at 438 the High Court held "Since ,then , the prosecutor has the means to discharge the government's Brady responsibility if he will ,any argument for excusing a prosecutor from disclosing what he does not happen to know about boils down to a plea to substitute the police for the prosecutor ,and even for the courts themselves ,as the final arbiters of the government's obligation to ensure fair trials".

The question becomes one of law being that Garcia conceded to the fact of the fabricated evidence in preliminary hearing. The thread a justice ,at this point is the pile balancing the scale of disregard while multiple layers of injustice indicate the very law preserving justice should be dismantled ,and reassembled in the future later to manifest the disregard in retrospect as justice continually maintained.

Arresting officers failed to interview any of the [10] occupants on the metro platform ,the occupants were allowed to board a train while petitioner was apprehended. The metro platform ,and station is a known site for all types ,on 9/23/08 there was a double murder ,triple attempted murder at the same Compton station. There was no reason for Detective Garcia and the Compton police department to fabricate and manipulate complaint witness into falsely accusing petitioner. This fabricated insistence have an adverse effect to the truth seeking function ,and complacency becomes moral certainty.

Black's Law (11th edition) Fabricated Evidence/ False or decietful evidence that is unlawfully created ,usu. after the relevant event ,in an attempt to achieve or avoid liability or conviction.

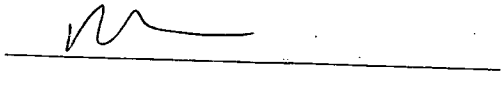
In Peterson v. Bernardi at 719 F. Supp. 2d 428 the court held " Evidence of malice -- that is misrepresentation ,withholding or falsification of evidence ,fraud ,perjury ,or other Bad Faith conduct -- is itself probative of lack of probable cause. see Moore v. Hartman ,571 F. 3d at 67 , 387 US App. DC 62 (D.C. Cir. 2009) also "falsifying facts to establish probable cause to arrest and prosecute an innocent person is of course patently unconstitutional..." Hinchman v. Moore ,312 F 3d 198 ,205-206 (6th Cir. 2002) (citing Hill v. McIntyre ,884 F 2d at 275 (6th Cir. 1989)

This case epitomizes in Constitutional Error the very definition of Black's Law Fabricated Evidence. The Poisonous Tree is false ,decietful ,unlawfully created ,after the failure to obtain a identification by complaint witness ,or a reliable suspect description by witnesses Hubbard and Scott.[they were both at least hundred feet further on the North East or South East wall in the rear of the parking lot]. The purpose of police department's illegality was to achieve carte blanche in reconstructing events to maintain implied justice.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 8/11/20