DESCRIPTION OF THIS APPENDIX:

NINTH CIRCUIT'S DENIAL OF

PETITIONER'S REQUEST FOR C.O.A.

NUMBER OF PAGES: 1

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

NOV 2 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JAMES ROBERT STANFORD, Petitioner-Appellant, v. DANIEL PARAMO, Warden, Respondent-Appellee.	No. 19-56126 D.C. No. 5:19-cv-00276-SVW-E Central District of California, Riverside ORDER

Before: TALLMAN and LEE, Circuit Judges.

The request for a certificate of appealability (Docket Entry No. 5) is denied because appellant has not made a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *see also Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Any pending motions are denied as moot.

DENIED.

DESCRIPTION OF THIS APPENDIX:

PETITIONER'S REQUEST FOR C.O.A.

FROM THE 9TH CIRCUIT COURT OF APPEALS

NUMBER OF PAGES: 24

APPENDIX B

JAMES ROBERT STANFORD, #AY0663
PETITIONER IN PRO SE
R.J. DONOVAN STATE PRISON
480 ALTA Rd.
SAN DIEGO, CA. 92179

IN THE U.S. COURT OF APPEALS
FOR THE NINTH CIRCUIT

JAMES ROBERT STANFORD, PETITIONER V. D. PARAMO, WARDEN, RESPONDENT	DOCKET NO.: 19-56126 D.C. NO.: 5:19-CV-00276-SVW-E PETITIONER'S MOTION FOR A CERTIFICATE OF APPEALABILITY ACTION FILED: 02/12/2019

TO THE HONORABLE JUSTICES OF THE COURT OF APPEALS FOR THE NINTH CIRCUIT, COMES NOW, PETITIONER IN PRO SE, WHO MOTIONS THIS COURT FOR A CERTIFICATE OF APPEALABILITY (C.O.A.) AS FOLLOWS.

ISSUES ON WHICH C.O.A. IS BEING SOUGHT

I. WHETHER PETITIONER RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF HIS CONSTITUTIONAL RIGHTS, AMENDMENTS 6 AND 14

II. WHETHER THE STATE COURTS' ADJUDICATION OF PETITIONER'S IAC CLAIM RESULTED IN A DECISION THAT WAS BASED ON AN UNREASONABLE DETERMINATION OF THE FACTS IN LIGHT OF THE EVIDENCE PRESENTED IN THE STATE COURTS.

STANDARD OF REVIEW FOR A C.O.A.

"...A PRISONER SEEKING A C.O.A. NEED ONLY DEMONSTRATE A SUBSTANTIAL SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT. A PETITIONER SATISFIES THIS STANDARD BY DEMONSTRATING THAT JURISTS OF REASON COULD DISAGREE WITH THE DISTRICT COURT'S RESOLUTION OF HIS CONSTITUTIONAL CLAIMS, OR THAT JURISTS COULD CONCLUDE THAT

THE ISSUES PRESENTED ARE ADEQUATE TO DESERVE ENCOURAGEMENT TO PROCEED FURTHER." MILLER-EL V. COCKRELL (2003) 537 U.S. 322

STATEMENT OF THE CASE [N1]

1. ON OCT. 13, 2014, PETITIONER SUBMITTED A PETITION FOR WRIT OF HABEAS CORPUS RE: A PRE TRIAL "VENUE" ISSUE TO THE SAN BERNARDINO COUNTY SUPERIOR COURT (ID pp. 50-55)
2. ON NOV. 3, 2014, PETITIONER RECEIVED A DENIAL FROM THE SUPERIOR COURT. (ID 56-8)
3. ON DEC. 10, 2014, PETITIONER RECEIVED A DENIAL FROM THE APPELLATE COURT. (ID 59)
4. ON SEP. 25, 2015, PETITIONER WAS SENTENCED TO 30 YEARS TO LIFE. (ID 2) [N2]
5. ON MAY 3, 2017, PETITIONER'S SENTENCE WAS MODIFIED BY THE APPELLATE COURT (ID pp. 2-3, AND 63-72)
6. ON NOV. 5, 2017, PETITIONER SUBMITTED TO THE SAN BERNARDINO COUNTY SUPERIOR COURT THE EXACT SAME CLAIMS PRESENTLY AT ISSUE. (ID 73)
7. ON DEC. 26, 2017, THE SUPERIOR HABEAS COURT DENIED PETITIONER'S WRIT BASED ON SUCCESSIVENESS, AND FAILURE TO INCLUDE TRANSCRIPTS. (ID pp. 74-8)
8. ON FEB 1, 2018, PETITIONER MAILED HIS PETITION TO THE APPELLATE COURT. (ID 79)
9. ON FEB 12, 2018, PETITIONER MAILED A REQUEST TO THE APPELLATE COURT THAT HIS PETITION BE HELD IN "ABEYANCE",...UNTIL SUCH TIME THAT HE COULD RESEARCH THE PROCEDURAL BARS ASSERTED BY THE LOWER COURT, AND COPY AND SUBMIT HIS TRANSCRIPTS.
10. ON FEB. 19, 2018, PETITIONER MAILED TO THE APPELLATE COURT, A "REQUEST THAT MERITS BE CONSIDERED DESPITE DENIAL BY LOWER COURT," WITH AN EXPLANATION AS TO HIS PROCEDURAL DEFICIENCIES IN THE LOWER COURT. (ID 82-5)
11. ON FEB 25, 2018, PETITIONER COPIED AND MAILED THE PERTINENT PORTIONS OF HIS TRIAL TRANSCRIPTS TO THE APPELLATE COURT.

[N1] PETITIONER WAS "PRO SE" IN ALL PROCEEDINGS.

[N2] AS A RESULT OF A COUPLE OF THINGS THAT HIS ATTORNEY HADN'T DONE AT SENTENCING, PETITIONER BEGAN CONTEMPLATING WHETHER HE HAD RECEIVED IAC "DURING" TRIAL, INVESTIGATION OF WHICH, UNLIKE HIS 1ST PETITION RE: "VENUE," HINGED ON EVIDENCE/INFO. IN HIS TRIAL TRANSCRIPTS, WHICH HE COULD NOT RECEIVE FROM HIS APPELLATE ATTORNEY UNTIL MAY 16, 2017. (SEE: ID pp. 60-62)

12. ON APRIL 26, 2018, THE APPELLATE COURT DENIED PETITIONER'S PETITION. (ID 86)

13. ON JUNE 7, 2018, PETITIONER MAILED TO THE CA. SUPREME COURT, HIS PETITION FOR WRIT OF HABEAS CORPUS (TRANSCRIPTS INCLUDED), AND A "REQUEST FOR COURT TO CONSIDER MERITS, DESPITE LOWER COURTS' DENIALS" (ID pp. 87-95), WITH REFERENCE TO THE PROCEDURAL EXPLANATIONS HE HAD GIVEN AT THE APPELLATE COURT PROCEEDING, AND REQUEST FOR OPPORTUNITY TO PROVE THE MERITS OF HIS CLAIM. (ID pp. 87-95)

14. ON OCT. 10, 2018, THE CA. SUPREME COURT DENIED PETITIONER'S HABEAS. (ID 99)

15. ON FEB 5, 2019, PETITIONER MAILED HIS 2254 PETITION TO THE U.S. CENTRAL DISTRICT COURT, WHICH WAS "FILED" ON FEB. 12, 2019. (ID 1)

16. ON FEB 19, 2019, MAGISTRATE CHARLES F. EICK ORDERED AN ANSWER TO THE PETITION.

17. ON APRIL 2, 2019, ATTORNEY GENERAL DAVID RUCCI FILED AN ANSWER TO THE PETITION (ID pp. 664-695) AND NOTICE OF LODGEMENT (ID pp. 696-699)

18. ON APRIL 28, 2019, PETITIONER MAILED/FILED HIS REPLY TO THE ATTORNEY GENERAL'S (RESPONDENT'S) ANSWER.

19. ON MAY 24, 2019, THE MAGISTRATE FILED HIS REPORT AND RECOMMENDATION.

20. ON JUNE 25, 2019, PETITIONER MAILED/FILED HIS OBJECTIONS TO THE MAGISTRATE'S REPORT AND RECOMMENDATION.

21. ON JULY 7, 2019, PETITIONER REQUESTED AN OPPORTUNITY TO SUBMIT AN ARGUMENT IN REQUEST FOR A C.O.A.

22. ON JULY 15, 2019, THE MAGISTRATE GRANTED PETITIONER'S REQUEST.

23. ON AUG. 4, 2019, PETITIONER MAILED/FILED HIS ARGUMENT IN REQUEST FOR A C.O.A. TO THE DISTRICT COURT.

24. ON AUG. 14, 2019, THE HONORABLE STEPHEN V. WILSON DENIED PETITIONER'S C.O.A. REQUEST, AND DENIED AND DISMISSED HIS PETITION WITH PREJUDICE.

25. ON AUG. 28, 2019, PETITIONER, VIA. THE REQUIRED PRISON PROCESS, SUBMITTED HIS NOTICE OF APPEAL AND FILING FEE FOR MAILING TO THE DISTRICT COURT.

STATEMENT OF FACTS [N3]

PETITIONER'S CONVICTION IS BASED ON:

1. THE TESTIMONIES OF HIS TENANTS SHANNON KENDRICK & JASON NORMAN THAT:
   a) PETITIONER AND HIS GIRLFRIEND LATONYA HENDERSON HAD BEEN ARGUING MOST OF THE DAY OFF AND ON ON JAN. 14, 2014. (ID 218)
   b) ON THE NIGHT OF JAN. 14, 2014, PETITIONER PUNCHED (ID pp. 185, 201, 207) & REPEATEDLY KICKED LATONYA (ID pp. 180, 181, 210, 212) LIKE A SOCCER BALL (ID 182, 209) AS SHE SCREAMED FOR HELP, AND AT ONE POINT APPEARED UNCONSCIOUS. (ID pp. 186, 210, 214)
   c) LATONYA DID NOT HAVE ANYTHING IN HER HAND OR HIT AT PETITIONER. (ID pp. 185, 197, 198)
   d) PETITIONER "BOLTED" AT THE SOUND OF APPROACHING SIRENS. (ID 215)
2. A 911 CALL BY SHANNON KENDRICK RELAYING HER OBSERVATIONS OF THE INCIDENT AS IT WAS OCCURRING.
3. A LETTER THAT PETITIONER WROTE/SENT TO HIS TENANTS INFERRENCING PETITIONER'S CONSCIOUSNESS OF GUILT. (ID pp. 203-206)
4. IMPEACHMENT OF LATONYA VIA. HER OWN ADMISSION OF PRIOR UNTRUTHFULNESS.
5. TESTIMONY OF THE ARRESTING OFFICER, ALAN PENNINGTON, AS TO:
   a) WHAT LATONYA AND THE TENANTS INITIALLY REPORTED. (ID pp. 100-102)
   b) PETITIONER'S FLIGHT. (ID 231)

ARGUMENT

THIS COURT SHOULD GRANT A CERTIFICATE OF APPEALABILITY AS TO THE ISSUES ON WHICH A C.O.A. IS BEING SOUGHT, BECAUSE, AS PETITIONER WILL DEMONSTRATE, JURISTS OF REASON COULD DISAGREE WITH THE DISTRICT COURT'S RESOLUTION OF PETITIONER'S CONSTITUTIONAL CLAIMS, OR CONCLUDE THAT THE ISSUES PRESENTED ARE ADEQUATE TO DESERVE ENCOURAGEMENT TO PROCEED FURTHER.

[N3] BECAUSE OF HIS PRIOR RECORD, PETITIONER DID NOT TESTIFY

ISSUE I

PETITIONER DECLARED UNDER THE PENALTY OF PERJURY THAT HE TOLD HIS APPOINTED TRIAL ATTORNEY:

a) HIS TENANTS LIED ABOUT HIM ASSAULTING LATONYA ALL DAY LONG, AND THAT HE AND LATONYA WERE NOT EVEN HOME MOST OF THE DAY.

b) HE HAD NOT BEEN DRINKING.

c) THE SITUATION WAS NOT OVER "INFIDELITY," BUT LATONYA USING METH, AND HIM TELLING HER SHE HAD TO LEAVE, AND THAT HE HAD SOMEONE ELSE.

d) HE DID NOT PUNCH, FIGHT, OR INTENTIONALLY KICK LATONYA, ... HE WAS TRYING TO STOP HER FROM CAUSING A DISTURBANCE ON HIS PROPERTY.

e) HIS TENANTS HAD MOTIVE TO LIE ON HIM BECAUSE OF THE THREAT OF EVICTION FOR DISTURBANCES THEY HAD CAUSED ON HIS PROPERTY.

f) LATONYA HAD ALSO WITNESSED THE TENANTS' CHANGE IN ATTITUDE TOWARD PETITIONER.

g) HE FLED FOR FEAR OF PAROLE VIOLATION FOR NEGATIVE CONTACT WITH LAW ENFORCEMENT, ESPECIALLY SINCE LATONYA HAD BEEN DRINKING AND DOING DRUGS, AND WAS ANGRY ENOUGH TO LIE ON HIM.

h) HE WAS ARRESTED UPON RETURNING TO HIS PROPERTY ON HIS OWN.

i) HE FELT LIKE THE VICTIM FOR BEING LOCKED UP BEHIND DEFENDING HIS PROPERTY, BUT HIS ATTORNEY NEVER CONSULTED WITH HIM ABOUT THIS. (SEE: ID pp. 112-113)

THE TRIAL AND HABEAS RECORD REVEALS THAT DEFENSE COUNSEL DID NOT:

- FURTHER INVESTIGATE / ELICIT EVIDENCE OF BIAS (e ABOVE), MAINLY TO ASCERTAIN THAT IT COULD BE ELICITED ABSENT TESTIMONY FROM PETITIONER. (f ABOVE)
- INVESTIGATE / CONSULT WITH PETITIONER AS TO WHETHER HE HAD A DEFENSE COMPATIBLE WITH THE FACTS PROVIDED BY HIM. (d AND i ABOVE) E.G.:
  1) WHEN PETITIONER TOLD HIS ATTORNEY HE WAS TRYING TO STOP LATONYA FROM CAUSING A DISTURBANCE (d), THIS SHOULD HAVE ALERTED HIS ATTORNEY

THAT PETITIONER MAY HAVE BEEN TRYING TO PREVENT THE COMMISSION OF A PUBLIC OFFENSE (E.G. A VIOLATION OF PENAL CODE 415)[N4] A DEFENSE FOR WHICH REASONABLE FORCE COULD HAVE BEEN JUSTIFIED. (SEE ALSO PENAL CODES 692, 693, AND PETITION AT ID 23, LINES 1-8)

2) WHEN PETITIONER, ON SEVERAL OCCASIONS, TOLD HIS ATTORNEY THAT HE WAS..."DEFENDING HIS PROPERTY" (i), THIS SHOULD HAVE ALERTED HIS ATTORNEY TO INVESTIGATE WHETHER PETITIONER HAD A DEFENSE UNDER "DEFENSE OF PROPERTY,"..."ANOTHER" DEFENSE FOR WHICH FORCE COULD HAVE REASONABLY BEEN USED. SEE: CALCRIM 3476

- INVESTIGATE PETITIONER'S G.P.S. (ANKLE MONITOR) FOR EXCULPATORY EVIDENCE ASSERTED BY PETITIONER. (a + h ABOVE)
- ASCERTAIN THAT THE JURY WOULD NOT BE GIVEN THE IMPRESSION THAT PETITIONER MAY HAVE BEEN UNDER THE INFLUENCE OF ALCOHOL. (b ABOVE, + ID pp. 13 + 171) OR OTHERWISE SEEK TO IMPEACH THE RELIABILITY OF THE OFFICER'S TESTIMONY.
- PRESENT: 1) THE TENANTS' "BIAS"; 2) THE TENANTS' CLAIMS OF MULTIPLE PUNCHES AND KICKS NOT MAKING SENSE; OR 3) "SELF DEFENSE". IN FACT,... THE ONLY TACTICAL EXPLANATION REVEALED BY THE RECORD FOR SUCH OMISSIONS IS THAT DEFENSE COUNSEL "INTENDED" TO DAMAGE THE CREDIBILITY OF THE DEFENSE.[N5] FOR EXAMPLE:

1.) <u>AS TO "THE TENANTS' BIAS"</u>[N6] IN HER CLOSING, DEFENSE COUNSEL ARGUED THAT THE TENANTS "HAVE SOMETHING INVESTED," BUT, AS THE PROSECUTOR OBJECTED, DEFENSE COUNSEL MISSTATED TESTIMONY (R.T. 277), AND AS THE PROSECUTOR

N4 "FIGHTING; NOISE; OFFENSIVE WORDS," ARE THE ELEMENTS CONSTITUTING THIS OFFENSE, + THE RECORD REFLECTS THAT LATONYA WAS DOING ALL OF THOSE THINGS. SEE: PETITION AT ID 23, LINES 1-7, AND REFERRENCES TO R.T. PAGES THEREIN.

N5 THOUGH DEFENSE COUNSEL'S OTHER OMISSIONS [REGARDING "DRINKING" (ID 13); NORMAN'S TESTIMONY RE: PETITIONER'S "FLIGHT" (ID pp. 15-16); OFFICER PENNINGTON'S TESTIMONY THAT LATONYA REPORTED PAIN IN HER FACE + HEAD (ID 16-17); "ARGUING ALL DAY" + "OVERHEARING" (ID pp 10-13)] REVEAL SUCH INTENT, PETITIONER ADDRESSES 1 + 2 BELOW FIRST BECAUSE THEY ARE THE "CHIEF" ISSUES / THEORIES OF THE DEFENSE.

N6 AT TRIAL, PETITIONER PUT MUCH OF THIS ISSUE ON RECORD BY OBJECTING TO DEFENSE COUNSEL'S REPRESENTATION REGARDING IT. (ID pp. 285-286)

CORRECTLY ARGUED (R.T. 266) THERE WAS NO EVIDENCE PRESENTED THAT THE TENANTS HAD A STAKE IN THIS, OR "MOTIVE" TO LIE. SEE: p. 8 INFRA FOR FURTHER

2) AS TO THE TENANTS' CLAIMS OF MULTIPLE PUNCHES AND KICKS NOT MAKING SENSE, . . . THIS THEORY, WHICH DEFENSE COUNSEL PROMISED IN HER OPENING (ID 14), AND ARGUED THROUGHOUT HER CLOSING (R.T. 276-288), WOULD HAVE, AMONGST OTHER THINGS,[N7] SUBSTANTIATED THE THEORY OF BIAS, BECAUSE THE TENANTS ACTUALLY DID TESTIFY SIGNIFICANTLY DIFFERENT FROM WHAT THEY INITIALLY REPORTED, REGARDING ACTS, PARTICULARLY PUNCHES,[N8] WHICH CREATED THE CHARGES AGAINST PETITIONER. THUS, HAD DEFENSE COUNSEL ACTUALLY PRESENTED THIS THEORY BY USING THE 911 TRANSCRIPT AND POLICE REPORT TO IMPEACH THE TENANTS' TESTIMONIES RE: PUNCHES + KICKS; THE JURY WOULD HAVE BELIEVED THAT THE TENANTS WERE LYING OR TESTIFYING BIASEDLY, AND THAT PETITIONER, E.G., "WAS" TRYING TO PUT HIS HAND OVER LATONYA'S MOUTH, AND TRYING TO KICK HER WEAPON AWAY, AS STATED IN THE LETTER. (ID 204-5) SEE: pp. 11-13 INFRA FOR FURTHER

3) AS TO "SELF DEFENSE", TO PROVE THIS, DEFENSE COUNSEL NEEDED "EVIDENCE" THAT PETITIONER REASONABLY BELIEVED HE WAS IN IMMINENT DANGER OF SUFFERING BODILY INJURY, OR OF BEING TOUCHED UNLAWFULLY.[N9]

DEFENSE COUNSEL ALSO NEEDED "JUSTIFICATION" FOR PETITIONER GOING AFTER LATONYA, AND ALLEGEDLY KICKING HER WHILE SHE WAS DOWN.[N10] BUT, SINCE THERE WAS NO SUCH EVIDENCE OR JUSTIFICATION PRESENTED, THE JURY WAS CERTAIN TO DISBELIEVE DEFENSE COUNSEL'S "SELF DEFENSE" THEORY (ID 275-6 et al) AND BELIEVE THE PROSECUTION'S ARGUMENT THAT "THIS IS NOT A CASE OF SELF DEFENSE." (ID 273)

[N7] SEE: PETITION AT ID 16, LINES 3-15 ALSO: PRESENTATION OF THIS THEORY VIA "IMPEACHMENT" WOULD HAVE SUPPORTED THE DEFENSE'S ARGUMENT RE: THE LETTER TO THE TENANTS. (ID pp. 276-7)

[N8] ONLY "NORMAN" GAVE DIRECTLY INCONSISTENT TESTIMONY REGARDING THE ACT OF "KICKING" SEE: PETITION AT ID 15, AND TRANSCRIPTS AT ID pp. 217, 219

[N9] SEE: CALCRIM 3470, AND PEOPLE v. MINIFIE (1996) 13 CAL 4th 1055 "A PERSON CLAIMING 'SELF DEFENSE' IS REQUIRED TO PROVE HIS OWN STATE OF MIND."

[N10] THE GIVEN CALCRIM 3474 "DEFINITELY" WORKED TO PETITIONER'S DISADVANTAGE AS TO THIS.

BEGINNING WITH THE CHIEF ISSUES OR THECRIES OF DEFENSE JUST IDENTIFIED, . . . PETITIONER WILL NOW SHOW THAT REASONABLE JURISTS COULD DEBATE WHETHER HIS PETITION SHOULD HAVE BEEN RESOLVED IN A DIFFERENT MANNER,[N11] OR THAT HIS ISSUES PRESENTED A "SUBSTANTIAL QUESTION," AND WERE ADEQUATE TO DESERVE ENCOURAGEMENT TO PROCEED FURTHER.

1

FAILURE TO INVESTIGATE / ELICIT EVIDENCE OF TENANTS' POSSIBLE BIAS AGAINST PETITIONER. (PETITION, ID pp. 7-10); (STATE, ID pp. 34-36); (ANSWER, ID 685); (REPLY, 6-7); (R+R, pp. 27-32); (OBJECTIONS, pp. 6-9)[N12]

THE DISTRICT COURT ARGUED[N13]

- COUNSEL DID QUESTION NORMAN, BUT NORMAN DID NOT RECALL ANY THREAT OF EVICTION.
- PETITIONER FAILS TO SHOW THAT ANY OTHER WITNESS COULD HAVE TESTIFIED AS TO HIS THREAT OF EVICTION.
- GIVEN THE STRENGTH OF THE EVIDENCE, THERE IS NO REASONABLE PROBABILITY THAT THE EVICTION THREAT WOULD HAVE ALTERED THE TRIAL OUTCOME.

PETITIONER'S RESPONSE

IT BEARS REPEATING THAT COUNSEL DID QUESTION NORMAN, BUT "ONLY" NORMAN AND ONLY BRIEFLY, ABOUT EVICTION FOR "DRUG USE," WHICH PETITIONER DID NOT, EVEN MISTAKENLY TELL COUNSEL, BECAUSE AT THE TIME PETITIONER INFORMED COUNSEL ABOUT THIS, HE HAD NO KNOWLEDGE OF THE TENANTS' DRUG USE.

PETITIONER DECLARED THAT HE INFORMED DEFENSE COUNSEL THAT THE REASON BEHIND THE THREAT OF EVICTION WAS "DISTURBANCES," AND THAT LATONYA HAD ALSO WITNESSED THE TENANTS' CHANGE IN ATTITUDE TOWARD HIM.

N.[11] THE DISTRICT COURT ACCEPTED THE FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS OF THE MAGISTRATE, DISMISSING PETITIONER'S HABEAS WITH PREJUDICE, & DENYING HIS REQUEST FOR C.O.A.

N[12] THE PRECEDING PARENTHESIZED REFERENCES ARE TO PETITIONER'S PRIOR HABEAS PROCEEDINGS REGARDING THIS ISSUE.

N[13] AS BEST AS POSSIBLE, PETITIONER WILL IDENTIFY THE DISTRICT COURT'S MOST PERTINENT ARGUMENTS, AND FOR THE SAKE OF AVOIDING REPETITIOUS RESPONSES, PETITIONER RE-ALLEGES HIS ARGUMENTS FROM PRIOR HABEAS PROCEEDINGS.

THE RECORD AT ID 235-238, NOT ONLY VALIDATES PETITIONER'S CLAIM THAT THE TENANTS HAD A PROBLEM WITH CAUSING "DISTURBANCES," BUT THAT COUNSEL WAS SO INFORMED OF IT. SEE: ID 236, LINES 10-12

THE DISTRICT COURT'S ARGUMENT THAT PETITIONER FAILS TO SHOW THAT ANY OTHER WITNESS COULD HAVE TESTIFIED THAT HE HAD THREATENED TO EVICT HIS TENANTS, IS UNDERSCORED BY PETITIONER'S ASSERTION OF DEFENSE COUNSEL'S DUTY, OR FAILURE TO INVESTIGATE, TO ASCERTAIN THAT SUCH EVIDENCE COULD BE ELICITED IN ABSENCE OF PETITIONER'S TESTIMONY. (SEE: ID #8, AT LINES 15-23, NO. 2) I.E., CONSIDERING THE INFO. PETITIONER PROVIDED COUNSEL RE: THE TENANTS' MOTIVE TO LIE, AND COUNSEL'S UNMISTAKEABLE ACKNOWLEDGEMENT OF THE WEAKNESS OF THE PROSECUTION'S CASE, I.E, THAT THE TENANTS' INITIAL CLAIMS OF PUNCHES AND KICKS DID NOT MATCH LATONYA'S INJURIES, IT WAS UNREASONABLE UNDER STRICKLAND V. WASHINGTON, 466 U.S. 668 FOR DEFENSE COUNSEL NOT TO CONDUCT FURTHER INVESTIGATION OR INQUIRY INTO WHAT MAY HAVE PROVED TO BE A FRUITFUL LINE OF ATTACK, AS EVIDENCED BY THE TENANTS' GIVING OF TESTIMONY ON MATERIAL MATTERS THAT WAS INCONSISTENT WITH THEIR INITIAL STATEMENTS. IN REYNOSO V. GIURBINO (9TH CIR. 2006) 462 F.3d 1099, THE COURT HELD THAT "THE DUTY TO INVESTIGATE IS ESPECIALLY PRESSING WHERE THE WITNESSES AND THEIR CREDIBILITY ARE CRUCIAL TO THE STATE'S CASE." "A COLORABLE SHOWING OF BIAS CAN BE IMPORTANT BECAUSE UNLIKE EVIDENCE OF PRIOR INCONSISTENT STATEMENTS WHICH MIGHT INDICATE THAT THE WITNESS IS LYING, EVIDENCE OF BIAS SUGGESTS WHY THE WITNESS MIGHT BE LYING." IN DAVIS V. ALASKA, (1974) 415 U.S. 308 THE SUPREME COURT HELD THAT "THE EXPOSURE OF A WITNESS'S MOTIVATION IN TESTIFYING IS A PROPER AND IMPORTANT FUNCTION OF THE CONSTITUTIONALLY PROTECTED RIGHT OF CROSS EXAMINATION" AND THAT A DEFENDANT IS DENIED SUCH RIGHT WHERE DEFENSE COUNSEL DOES NOT MAKE A RECORD FROM WHICH TO ARGUE WHY THAT WITNESS MIGHT BE BIASED OR OTHERWISE LACKS THAT DEGREE OF PARTI-

-ALITY EXPECTED OF A WITNESS AT TRIAL.

THE CROSS EXAMINATION CONDUCTED BY DEFENSE COUNSEL WAS INADEQUATE TO DEVELOP THE ISSUE OF BIAS PROPERLY TO THE JURY, WHO MIGHT WELL HAVE CONCLUDED THAT DEFENSE COUNSEL WAS ENGAGED IN A SPECULATIVE AND BASELESS LINE OF ATTACK ON THE CREDIBILITY OF AN APPARENTLY BLAMELESS WITNESS. "JURORS WERE ENTITLED TO HAVE THE BENEFIT OF THE DEFENSE THEORY BEFORE THEM, SO THAT THEY COULD MAKE AN INFORMED JUDGE-MENT AS TO THE WEIGHT TO PLACE ON THE WITNESSES' TESTIMONY WHICH PROVIDED A "CRUCIAL LINK IN THE PROOF... OF PETITIONER'S ACT," DAVIS V. ALASKA, SUPRA

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FAILURE TO FULFILL OPENING STATEMENT PROMISES BY FAILING TO ELICIT IMPEACHMENT EVIDENCE (PETITION, ID 14-16); (STATE, ID 74-78); (REPLY, ID 38-9); (A.G.'s ANSWER, ID 688-9); (REPLY, 9-10); (R+R, 39-43); (OBJECTIONS, 1-6)

THE DISTRICT COURT ARGUED

- PETITIONER HAS NOT SHOWN STRICKLAND VIOLATION OR PREJUDICE.
- COUNSEL MADE NO PROMISE, CITING SAESEE V. MCDONALD, (9th CIR. 2013) 725 F.3d 1045
- THE PROMISED EVIDENCE ACTUALLY WAS PRESENTED, VIA, DEPUTY PENNINGTON.
- IN THE 911 CALL, KENDRICK SAID SHE SAW PETITIONER HIT LATONYA MULTIPLE TIMES, BUT DID NOT SAY WHERE THE HITS LANDED.

PETITIONER'S RESPONSE

IT BEARS REPEATING THAT EVEN SAESEE V. MCDONALD SUPRA INSTRUCTS: "IN ORDER FOR THE PREJUDICE PRONG TO BE SATISFIED, IT IS ESSENTIAL THAT A PROMISE BE MADE." THE COURT THEN GOES ON TO EXPLAIN THAT IF COUNSEL HAS CREATED AN "EXPECTATION", I.E, BY TELLING JURORS THAT THE TEST-IMONY "WILL" HAPPEN,... THEN A "PROMISE" HAS BEEN MADE. THE DISTRICT COURT EVEN CONTRADICTED ITSELF BY NEXT ARGUING: THE "PROMISED" EVIDENCE ACTUALLY WAS PRESENTED VIA, DEPUTY PENNINGTON, WHICH WAS ALSO AN

ERRONEOUS ARGUMENT BECAUSE THE DISTRICT COURT MADE REFERRENCE TO THE "PRELIMINARY" HEARING (SEE; C.T. 39) "NOT" THE PROCEEDING AT ISSUE.

AS TO THE DISTRICT COURT'S ARGUMENT REGARDING KENDRICK'S 911 CALL,... "WHERE" THE HITS LANDED WAS NOT THE QUESTION. THE QUESTION WAS... WHETHER KENDRICK INITIALLY REPORTED (IN THE 911 CALL) MORE THAN THE "1" AND "ONLY" PUNCH SHE SWORE (IN TRIAL) TO HAVE SEEN. (ID 184-5)

UNTIL NOW, PETITIONER HAS NOT FULLY DEMONSTRATED HOW ELICITATION OF EVIDENCE THAT THE TENANTS HAD CHANGED THEIR STATEMENTS REGARDING PUNCHES, KICKS, AND EVEN PETITIONER'S FLIGHT,[N14] WOULD HAVE "AIDED THE DEFENSE'S VERSION" (SEE: OBJECTIONS AT p. 3, LINE 22) WITH RESPECT TO PETITIONER'S LETTER TO THE TENANTS. (ID 203-206)

FIRST, "THE DEFENSE'S VERSION" MEANS THE DEFENSE'S "CREDIBILITY IN GENERAL"... INCLUDING DEFENSE COUNSEL'S ARGUMENT THAT SHE SEES THE LETTER AS:

> "SOMEBODY WHO IS SCARED, WHO JUST WANTS THE WITNESS TO TELL THE TRUTH ON WHAT HAPPENED... NOT SOMEBODY WHO'S TRYING TO GET SOMEONE TO CHANGE THEIR TESTIMONY." (ID 276, LINES 21-25)

THAT ARGUMENT, LIKE COUNSEL'S OTHER ARGUMENTS REGARDING THE THEORIES OF DEFENSE, WAS NOT CREDIBLE, ABSENT IMPEACHMENT OF THE TENANTS' TESTIMONIES.

HOWEVER, ASSUMING FOR EXAMPLE THAT DEFENSE COUNSEL HAD EFFECTIVELY ELICITED TESTIMONY RE: THE TENANTS' POSSIBLE BIAS TOWARD PETITIONER DUE TO THE THREAT OF EVICTION FOR "DISTURBANCES," AND THEN THE IMPEACHMENT EVIDENCES SUBSTANTIATING SUCH BIAS (SEE: ID 14-16) THE JURY WOULD HAVE DEEMED THE TENANTS' CREDIBILITY UNRELIABLE, AND PAID PARTICULAR NOTICE TO THE "PATTERN" OF CONCERN PETITIONER HAD REGARDING "DISTURBANCES" ON HIS PROPERTY, THUS, INCREASING THE POSSIBILITY THAT PETITIONER WAS TRYING TO PUT HIS HAND OVER LATONYA'S

[N14] I.E, WHERE NORMAN'S INITIAL STATEMENT RE: PETITIONER'S FLIGHT, WAS THAT HE "WALKED" AWAY (ID 102) CHANGED TO: HE "BOLTED." "I SEEN HIM, CORNER OF MY EYE. HE WAS THAT QUICK!" THEN ANSWERS "YEAH" TO: "YOU SAW HIM RUNNING OUT THE CORNER OF YOUR EYE?" (ID 215) THIS ISSUE, WHICH WAS PERHAPS MISTAKENLY PLACED UNDER THIS "OPENING PROMISE" ISSUE, HAS NEVER BEEN ADDRESSED BY ANY COURT.

MOUTH TO QUIET HER, AND HAD ACCIDENTALLY KICKED HER AS HE WAS TRYING TO KICK THE WIRE AWAY FROM HER AS STATED IN THE LETTER. (ID 204-205)

EVEN IF PETITIONER'S TENANTS "HONESTLY" AND "MISTAKENLY" THOUGHT THAT PETITIONER HAD "PUNCHED" LATONYA A NUMBER OF TIMES, OR HAD "KICKED" HER..."AT LEAST" ONCE IN THE HEAD AS NORMAN INITIALLY REPORTED (ID pp. 102, 314-318), ...

"WHY DID THEY CHANGE THEIR STORIES AT TRIAL?"

A REASONABLE JURY WOULD HAVE CONCLUDED THAT IT WAS BECAUSE OF THE TENANTS' MOTIVE TO LIE ON PETITIONER, AND/OR THAT OFFICER PENNINGTON MADE SOME SERIOUS MISTAKES IN HIS REPORT OF THE INCIDENT, ... RENDERING THE RELIABILITY OF BOTH IN GRAVE DOUBT.[N15]

THE JURY COULD HAVE ALSO BELIEVED THAT LATONYA WAS HITTING + HOLLARING AT PETITIONER AS THE LETTER ASKS THE TENANTS TO SAY (ID 206, LINES 10-11) BECAUSE OF MS. KENDRICK'S 911 CALL STATING: "SHE'S WAVING HER HANDS" (ID 318, LINE 11); KENDRICK'S TRIAL TESTIMONY STATING: "I DIDN'T SEE HER HIT HIM BUT SHE COULD HAVE." (ID 185, LINE 5); LATONYA'S TESTIMONY THAT SHE HAD SCRATCHED PETITIONER'S ARM WITH A PIECE OF FENCE WIRE (R.T. 182, 193, 198-9, 202-4, 206); PHOTOS OF PETITIONER'S ARM SCARS. (R.T. 203); AND PLENTY OF TESTIMONY SUPPORTED LATONYA'S HOLLARING AT PETITIONER THE WHOLE TIME, AS SHE WAS MAD AT HIM (R.T. 191-2, 201) AND LOUD (R.T. 67, 69, 76-7, 92, 103, 108, 143, 194, 197)

THERE WAS ALSO INDICATION THAT THE JURY MAY HAVE BELIEVED OTHER PARTS OF THE LETTER IN FAVOR OF THE DEFENSE ARGUMENT THAT PETITIONER WAS JUST TRYING TO GET HIS TENANTS TO TELL THE TRUTH. FOR EXAMPLE: THE TENANTS CLAIMED THAT LATONYA'S LOSS OF CONSCIOUSNESS WAS CAUSED BY PETITIONER. (R.T. 76, 78, 107, 112) WHEREAS LATONYA TESTIFIED THAT HER LOSS OF CONSCIOUSNESS WAS NOT CAUSED BY PETITIONER. (R.T. 189, 194-5, 207) THE LETTER, IN RELEVANT PART (ID 204, LINE 18) STATES:

[N15] THIS WOULD CERTAINLY BE THE CASE IN LIGHT OF OFFICER PENNINGTON'S TESTIMONY REGARDING HIS TRAINING AND EXPERIENCE WITH ASSAULT, BATTERY, AND DOMESTIC VIOLENCE CASES (R.T. 133-135, 215) AND HIS OTHER MISTAKES, DISCUSSED INFRA AT pp. 16-18.

"IN THE POLICE REPORT, YOU GUYS SAID LATONYA WAS UNCONSCIOUS FOR 30-40 SECONDS. IF ASKED, EVEN BY THE D.A., PLEASE SAY SHE WAS IN A FETAL POSITION WHEN YOU THOUGHT THIS." HAD THE JURY BELIEVED PETITIONER WAS GUILTY OF CAUSING LATONYA'S LOSS OF CONSCIOUSNESS, BUT TRYING (VIA THE LETTER) TO GET HIS TENANTS TO TESTIFY OTHERWISE, THEY WOULD HAVE FOUND PETITIONER GUILTY OF "BATTERY CAUSING SERIOUS BODILY INJURY," WHICH INCLUDES LOSS OF CONSCIOUSNESS. (SEE: CALCRIM 925)

TWICE IN THE LETTER, THE TENANTS WERE ENCOURAGED TO "SAY WHAT YOU SAID IN THE REPORT," AND URGED "DON'T SOUND TOO SURE."(ID 205-06) BUT,... AS THEIR TESTIMONIES ULTIMATELY REVEALED, OR,..."WOULD HAVE" REVEALED HAD DEFENSE COUNSEL NOT FAILED TO IMPEACH THEM, IS THAT THEY WERE NOT TOO SURE, WHICH, AGAIN, WOULD HAVE VALIDATED COUNSEL'S ARGUMENT THAT SHE SEES THE LETTER AS SOMEBODY WHO JUST WANTS THE WITNESS TO TELL THE TRUTH.

IT WOULD NOT HAVE BEEN DIFFICULT THEN, FOR JURORS TO ALSO UNDERSTAND WHY THE LETTER ADVISES KENDRICK THAT JASON (NORMAN) COULD JUST TAKE THE 5TH IF SHE THINKS HE WOULD HAVE TROUBLE TESTIFYING (ID 204, LINES 12-17) BECAUSE, AS THE RECORD REVEALS, NORMAN NOT ONLY HAD TROUBLE TESTIFYING "TRUTHFULLY" AS TO WHAT HE HAD INITIALLY REPORTED,[N16] HE GAVE MORE DAMAGING TESTIMONY THAN DID KENDRICKS IN SOME RESPECTS[N17]

IRREGARDLESS OF THE LETTER, THE JURY SEEMED TO "WANT" TO BELIEVE THE THEORY OF DEFENSE, BUT SIMPLY COULD NOT COME TO TERMS WITH DOING SO... BECAUSE IT WAS NEVER ACTUALLY PRESENTED... AS PROMISED (R.T. 62-63), AND ARGUED BY DEFENSE COUNSEL. (R.T. 276-292)

[N16] RE: PUNCHES, KICKS, AND PETITIONER'S FLIGHT (SEE: ID pp. 14-15, AND R.T. pp. 114-115) WHICH WAS PERHAPS MISPLACED, BUT SHOULD ALSO BE CONSIDERED ON APPEAL.

[N17] E.G.: KENDRICK TESTIFIED THAT PETITIONER KEPT TRYING TO WALK AWAY FROM LATONYA WHO WAS INSTIGATING AND CONFRONTATIONAL (R.T. 73, 76, 87, 88, 90) WHEREAS NORMAN TESTIFIED THAT LATONYA WAS TRYING TO GET AWAY FROM PETITIONER (R.T. 108); KENDRICK TESTIFIED THAT PETITIONER KICKED LATONYA 8-10 TIMES (R.T. 70, 85), WHEREAS NORMAN TESTIFIED THAT THERE WERE 15-20 KICKS (R.T. 111); KENDRICK DID NOT KNOW HOW LONG PETITIONER AND LATONYA HAD BEEN ARGUING (R.T. 83-5) WHEREAS NORMAN TESTIFIED THAT THEY HAD BEEN ARGUING ALL DAY, OFF AND ON. (R.T. 103, 104, 116)

3

FAILURE TO INVESTIGATE / ELICIT IMPEACHMENT EVIDENCE OF TENANTS' CLAIM THAT PETITIONER AND LATONYA WERE ARGUING ALL DAY (PETITION: ID 11-13); (STATE: NO ARGUMENT); (ANSWER: ID 687); (REPLY: 7-8) (R+R: 34-5); (OBJECTIONS; 10-11)

THE DISTRICT COURT ARGUED:

- PETITIONER HAS NOT SHOWN THAT COUNSEL WOULD HAVE BEEN ABLE TO OBTAIN LATONYA'S WILLINGNESS TO TESTIFY IN THE MANNER SUGGESTED.
- PETITIONER'S CLAIM LACKS MERIT BECAUSE CHALLENGING THE MATTER WOULD NOT HAVE CONSTITUTED EFFECTIVE IMPEACHMENT OR CHANGED THE OUTCOME.

PETITIONER'S RESPONSE

IN ADDITION TO PETITIONER'S OBJECTIONS, THE DISTRICT COURT'S ARGUMENT IS ERRONEOUS AND UNDERSCORES COUNSEL'S LACK OF INVESTIGATION INTO THE INFO. PETITIONER GAVE HER, I.E, THAT HIS TENANTS WERE LYING ABOUT HIM ARGUING WITH LATONYA ALL DAY LONG, AS HE AND LATONYA WERE NOT EVEN HOME MOST OF THE DAY, AND THAT HE WAS ARRESTED UPON RETURNING TO HIS PROPERTY ON HIS OWN.

THE DISTRICT COURT ALSO MISCONSTRUED PETITIONER'S CLAIM AS ASSERTING THAT HIS G.P.S. EVIDENCE SHOULD HAVE BEEN INTRODUCED TO THE JURY; BUT THE INTENDED ASSERTION WAS THAT COUNSEL, VIA. THE G.P.S. EVIDENCE, HAD THE LUXURY OF DISCOVERING FOR "HERSELF" WHETHER PETITIONER'S MOVEMENTS WERE CONSISTENT WITH HIS CLAIMS PRIOR TO INVESTIGATING WITNESSES TO CONFIRM WHAT COULD OR COULD NOT BE ELICITED BY WAY OF TESTIMONY.

PETITIONER'S CLAIM THAT HE AND LATONYA WERE NOT HOME MOST OF THE DAY WOULD HAVE BEEN SUPPORTED BY KENDRICK'S TESTIMONY THAT PETITIONER AND LATONYA "WERE GOING TO GO OUT FOR THE AFTERNOON" (R.T. 65, LINE 23) BUT FALLS SHORT OF PROVING THEY ACTUALLY WENT OUT. HOWEVER, THIS IS WHERE LATONYA COULD HAVE CONFIRMED THAT SHE AND PETITIONER "WERE" GONE MOST OF THE DAY, SETTING A STRONG FOUNDATION UPON WHICH TO FURTHER

ELICIT "REBUTTAL" N18 EVIDENCE TO THE TENANTS' (PARTICULARLY NORMAN'S) CLAIM, I.E, A CLAIM WHICH, AMONGST OTHER THINGS, WAS SUBSTANTIAL BECAUSE IT BELIED THE "INTENDED" THEORY N19 THAT PETITIONER IS AGAINST DISTURBANCES ON HIS PROPERTY. (SEE: PETITION, AT ID 12, LINE 8 - ID 13 FOR FURTHER)

EVEN IF, E.G., THE TENANTS'/NORMAN'S CREDIBILITY HAD BEEN IMPEACHED, I.E, ON AN ISSUE PRIOR TO THIS, SUCH THAT THEIR/HIS TESTIMONY "IN GENERAL" WAS SUSPECT, THERE WOULD STILL BE THIS TESTIMONY ABOUT "ARGUING ALL DAY LONG, OFF AND ON," WHICH WOULD GIVE THE JURY NEGATIVE INFERRENCES AS TO WHY IT STOOD UNCHALLENGED BY THE DEFENSE.

PETITIONER'S CLAIM THAT HE WAS ARRESTED UPON RETURNING TO HIS PROPERTY ON HIS OWN, N20 WOULD HAVE BEEN SUPPORTED BY OFFICER PENNINGTON'S TESTIMONY THAT PETITIONER WAS LOCATED "ABOUT 300 YARDS FROM THE INCIDENT LOCATION" (R.T. 140, LINES 26-7) BUT FALLS SHORT OF PROVING THAT HE DID SO "KNOWING" THAT POLICE WERE STILL THERE. HOWEVER, THIS IS WHERE DEFENSE COUNSEL, VIA, A QUICK AND SIMPLE INVESTIGATION, COULD HAVE CONFIRMED FROM PETITIONER AND THE ARRESTING OFFICER, THAT PETITIONER WAS APPROACHING HIS PROPERTY, WHILE POLICE WERE STILL ON LOCATION AND IN PLAIN SIGHT OF HIM, AND WITHOUT ANY ATTEMPT TO HIDE, ESCAPE, OR OTHERWISE EVADE POSSIBLE ARREST. THEN, DEFENSE COUNSEL COULD HAVE USED HER SKILL AND KNOWLEDGE IN ELICITING SUCH EVIDENCE VIA. THE ARRESTING OFFICER'S TESTIMONY, TO UNDERMINE THE EVIDENCE OF CONSCIOUSNESS OF GUILT WITH RESPECT TO "FLIGHT."

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N18 "REBUTTAL" WAS PERHAPS MORE FITTING THAN "IMPEACHMENT" FOR THIS CLAIM.

N19 I.E, THE "DESIRED" OBJECTIVE OF PETITIONER'S DEFENSE, WHICH WAS TO EXPOSE TO JURORS HIS TENANTS' MOTIVE IN TESTIFYING.

N20 THIS CLAIM HAS ALSO NEVER BEEN ADDRESSED BY ANY COURT.

4 [N21]

A. FAILURE TO ELICIT EVIDENCE THAT TENANTS MAY HAVE OVERHEARD LATONYA'S ACCOUNT. (PETITION, ID 10-11); (STATE, NO ARGUMENT); (ANSWER, ID 686); (REPLY, 7); (R+R, 32-3); (OBJECTIONS, 9-10)

THE DISTRICT COURT ARGUED

- PETITIONER'S CLAIM LACKS MERIT AS COUNSEL COULD HAVE DETERMINED THAT ATTEMPTING TO ELICIT SUCH EVIDENCE WOULD HAVE BEEN FRUITLESS.

PETITIONER'S RESPONSE

THE DISTRICT COURT'S ARGUMENT IS ERRONEOUS, AS IT OVERLOOKS THE FACT THAT PETITIONER, IN HIS REPLY, HAD AMENDED HIS "ARGUMENT" UNDER THIS CLAIM,[N22]... BUT NOT THE CLAIM ITSELF.

THE BASIS FOR THIS CLAIM (A), AND THE FOLLOWING 2 CLAIMS (B + C) IS COUNSEL'S FAILURE TO CHALLENGE OFFICER PENNINGTON'S "AURA OF SPECIAL RELIABILITY AND TRUSTWORTHINESS." SEE: ID#37, AT LINES 17-23; AND REPLY, p.7 FOR FURTHER E.G., IT IS COMMONLY KNOWN THAT THE MOST RELIABLE METHOD OF INTERVIEWING WITNESSES TO A POTENTIAL CRIME IS TO INTERVIEW THEM SEPERATELY, I.E, OUT OF EARSHOT OF ONE ANOTHER. IN THIS CASE, THE PRELIMINARY HEARING RECORD REVEALS THAT OFFICER PENNINGTON INTERVIEWED THE ALLEGED VICTIM IN DIRECT EARSHOT OF THE OTHER WITNESSES, AND DEFENSE COUNSEL KNEW THIS, BECAUSE SHE WAS THE ONE WHO ELICITED IT. (ID 309) HOWEVER, AT TRIAL, DEFENSE COUNSEL PASSED ON THE OPPORTUNITY TO ELICIT THIS EVIDENCE, WHICH, ESPECIALLY IN COMBINATION WITH OTHER ISSUES CONCERNING PENNINGTON'S REPORT, WOULD HAVE REFLECTED NEGATIVELY ON THE RELIABILITY AND TRUSTWORTHINESS OF THE TRAINING AND EXPERIENCE HE SWORE TO HAVE USED IN HIS REPORT OF THIS MATTER.

[N21] THIS NUMBER WILL PERTAIN TO THE FOLLOWING 3 CLAIMS WHICH ARE SUBDIVIDED A, B, C, AS THEY ALL RELATE TO IMPEACHMENT OF THE REPORTING OFFICER'S "AURA OF SPECIAL RELIABILITY AND TRUSTWORTHINESS."

[N22] i.e, A CLAIM WHICH THE STATE COURTS NEVER ADDRESSED.

B. FAILURE TO IMPEACH OFFICER PENNINGTON'S TESTIMONY AS TO PETITIONER DRINKING (PETITION, ID 13); (STATE, 37-8); (ANSWER, ID 688); (REPLY, 8-9); (R+R, 36-7); (OBJECTIONS, 12).

THE DISTRICT COURT ARGUED

- PETITIONER'S CLAIM LACKS MERIT BECAUSE COUNSEL COULD HAVE FEARED THAT SUCH IMPEACHMENT COULD RESULT IN THE PROSECUTION RECALLING LATONYA TO TESTIFY THAT PETITIONER HAD BEEN DRINKING.
- EVEN IF PENNINGTON HAD ADMITTED THAT HE FAILED TO REPORT THAT LATONYA TOLD HIM PETITIONER WAS DRINKING, IT WOULD NOT HAVE GIVEN RISE TO ANY REASONABLE PROBABILITY OF A DIFFERENT OUTCOME.

PETITIONER'S RESPONSE

PETITIONER REASSERTS HIS PLEADINGS IN HIS PRIOR HABEAS PROCEEDINGS, AND ADDS THAT EVEN IF LATONYA HAD RETURNED TO TESTIFY THAT PETITIONER WAS ALSO DRINKING, IT WOULD NOT HAVE RESULTED IN ANY MORE DAMAGE TO PETITIONER'S CASE THAN THE TESTIMONY OFFICER PENNINGTON HAD ALREADY GIVEN, WHICH, LIKELY LEFT THE JURY TO CONCLUDE THAT PETITIONER "MUST HAVE BEEN" DRINKING, BECAUSE THAT TESTIMONY ALSO STOOD UNCHALLENGED BY THE DEFENSE. CUMULATIVELY, IMPEACHMENT OF OFFICER PENNINGTON'S TESTIMONY AS TO PETITIONER DRINKING "WOULD HAVE" GIVEN RISE TO A REASONABLE PROBABILITY OF A DIFFERENT OUTCOME.

C. FAILURE TO IMPEACH OFFICER PENNINGTON AS TO WHAT LATONYA ALLEGEDLY TOLD HIM. (PETITION, ID 16-17); (STATE, ID 37-8); (ANSWER, NO ARGUMENT); (REPLY—); (R+R, 38-9); (OBJECTIONS, 12-13)

THE DISTRICT COURT ARGUED

- EVIDENCE THAT PETITIONER HIT LATONYA IN THE HEAD, AND THE INJURY TO HER MOUTH AND BENEATH HER EYE, PERSUASIVELY SUPPORTED AN INFERENCE THAT SHE MUST HAVE SUFFERED PAIN IN HER FACE AND HEAD.
- COUNSEL REASONABLY COULD HAVE DETERMINED THAT ATTEMPTING TO IMPEACH

PENNINGTON'S TESTIMONY CONCERNING LATONYA'S REPORT OF PAIN IN HER FACE AND HEAD WOULD HAVE ACCOMPLISHED NOTHING.

• PETITIONER HAS FAILED TO DEMONSTRATE COUNSEL'S UNREASONABLENESS OR ANY PREJUDICE RESULTING THEREFROM.

PETITIONER'S RESPONSE

THE DISTRICT COURT'S ARGUMENTS ARE ERRONEOUS IN THAT THEY FAIL TO ADDRESS THE CRUX OF PETITIONER'S CLAIM, I.E, THAT IMPEACHMENT WOULD HAVE PUT THE RELIABILITY OF PENNINGTON'S TESTIMONY IN QUESTION. (SEE: ID 37-38) [N23]

FIRST, THE WEAKNESS OF THE PROSECUTION'S CASE WAS THAT LATONYA'S INJURIES, OR LACK THEREOF, WERE JUST AS, IF NOT MORE CONSISTENT WITH "HER" TESTIMONY AS THEY WERE WITH THE TENANTS' TRIAL ACCOUNTS. IN ESSENCE, THE JURORS COULD HAVE BELIEVED "EITHER" STORY, AND EVIDENCE THAT LATONYA HAD PAIN IN HER FACE AND HEAD MAY HAVE TIPPED THE SCALE IN FAVOR OF THE PROSECUTION, AS THERE WAS TESTIMONY THAT LATONYA WAS PUNCHED IN HER FACE. (R.T. 76, 93)

HOWEVER, THE TRUE SIGNIFICANCE OF IMPEACHMENT OF OFFICER PENNINGTON ON THIS MATTER IS THAT IT WOULD HAVE HIGHLIGHTED THE CULMINATION OF IMPORTANT OBSERVANCES HE NOT ONLY FAILED TO REPORT, BUT TO "ACCURATELY" REPORT, WHICH IS INCONSISTENT WITH THE SWORN TESTIMONY HE GAVE AS TO HIS TRAINING AND EXPERIENCE WITH OBSERVING AND REPORTING MATTERS RELEVANT TO ASSAULT, BATTERY, AND DOMESTIC VIOLENCE SITUATIONS. (R.T. 133-5, 215) THUS, CUMULATIVELY, IMPEACHMENT OF OFFICER PENNINGTON'S TESTIMONY AS TO LATONYA REPORTING PAIN IN HER FACE AND HEAD WOULD HAVE SIGNIFICANTLY UNDERMINED HIS "AURA OF RELIABILITY AND TRUSWORTHINESS."

ALSO, THE DISTRICT COURT, AT p. 38, FOOTNOTE 11 OF THE REPORT AND RECOMMENDATION, ERRONEOUSLY IMPLIES THAT THE QUESTIONING AT ISSUE ONLY OCCURRED "OUT OF THE PRESENCE OF THE JURY" BY MAKING REFERENCE TO R.T. 122, BUT SEE: R.T. 135, 143, 213

[N23] PETITIONER MAKES REFERENCE TO THIS HABEAS PROCEEDING BECAUSE THERE WAS NO ANSWER FROM THE A.G. REGARDING THIS CLAIM, AND THUS... NO REPLY.

SUPPORTING ARGUMENT N[24]

"A DEFENDANT'S RIGHT TO CONFRONT THE WITNESSES AGAINST HIM IS CENTRAL TO THE TRUTHFINDING FUNCTION OF THE CRIMINAL TRIAL." BRECHT V. ABRAHAMSON, (1993) 507 U.S. 619. "ASSERTING THE VIOLATION OF A CORE CONSTITUTIONAL PRIVILEGE CRITICAL TO THE RELIABILITY OF THE CRIMINAL PROCESS IS A STRONG CLAIM THAT FAIRNESS FAVORS REVIEW." BRECHT, SUPRA

"A FUNDAMENTAL PREMISE OF OUR CRIMINAL TRIAL SYSTEM IS THAT THE JURY IS IS THE LIE DETECTOR," WHOSE ROLE IS "DETERMINING THE WEIGHT & CREDIBILITY OF WITNESS TESTIMONY." U.S. V. SCHEFFER, (1998) 523 U.S. 303, 313

THE IMPEACHMENT EVIDENCE IN THIS CASE WAS ADMISSIBLE VIA, OFFICER PENNINGTON'S TESTIMONY. SEE P.C. §872(b) & WHITMAN V. SUPERIOR COURT, (1991) 54 C 3d 1063, 1072. SIMILAR TO THE CIRCUMSTANCES OF THIS CASE, THE COURT IN U.S. V. TUCKER, (9TH CIR. 1983) 716 F. 2d 576 HELD:

"KEATING'S MOST SERIOUS DERELICTION OF DUTY DURING TRIAL WAS FAILURE TO UTILIZE ANY OF THE PRIOR STATEMENTS GIVEN BY THE GOVERNMENT WITNESSES WHICH RAISED QUESTIONS AS TO THEIR CREDIBILITY, OR WHICH WERE MORE SUPPORTIVE OF TUCKER'S THEORY OF DEFENSE THAN THE TESTIMONY THEY GAVE AT TRIAL. NONE OF THOSE PRIOR INCONSISTENT STATEMENTS WAS BROUGHT TO THE JURY'S ATTENTION. THE JURY WAS THUS DEPRIVED OF THE OPPORTUNITY FAIRLY AND FULLY TO ASSESS THE ACCURACY OF TESTIMONY DAMAGING TO TUCKER, OR TO DETERMINE THE HONESTY OF THE WITNESSES WHO GAVE THAT TESTIMONY."

IN PEOPLE V. HAYES, (1992) 3 CAL. APP 4TH 1238, 1244-5, THE COURT HELD: "WHEN THE RELIABILITY OF A GIVEN WITNESS MAY WELL BE DETERMINATIVE OF GUILT OR INNOCENCE, NON-DISCLOSURE OF EVIDENCE AFFECTING CREDIBILITY MAY REQUIRE A NEW TRIAL."

IN THIS CASE, OFFICER PENNINGTON WAS THE CHIEF SOURCE OF EVIDENCE BEARING UPON THE RELIABILITY OF WITNESSES' TESTIMONIES, EVEN HIS OWN, BUT COUNSEL DID NOTHING, EXCEPT ARGUE AS IF HIS TESTIMONY "WAS" RELIABLE. (SEE R.T. 277, 278, 280, 281, 284, 285, 287, 288)

N[24] PETITIONER RE-ASSERTS THE LEGAL ARGUMENT IN HIS PETITION (ID 17) + OTHER PROCEEDINGS.

5

FAILURE TO INVESTIGATE WHETHER PETITIONER HAD A PLAUSIBLE DEFENSE

(PETITION, ID 18-24); (STATE, ID 39-40); (ANSWER, ID 689-690); (REPLY, 10-11); (R+R, 43-49); (OBJECTIONS, 13-17)

THE DISTRICT COURT ARGUED

- PETITIONER'S CLAIM THAT COUNSEL'S DECISION TO PURSUE A THEORY OF SELF DEFENSE WAS UNREASONABLE LACKS MERIT.
- FURTHER INVESTIGATION BY COUNSEL REGARDING DEFENSE OF PROPERTY WOULD HAVE BEEN A WASTE.
- THE TRIAL COURT WOULD HAVE DECLINED TO INSTRUCT ON SUCH A THEORY.
- THE CHOICE OF DEFENSES WAS WITHIN COUNSEL'S DISCRETION.

PETITIONER'S RESPONSE[N25]

THE DISTRICT COURT'S ARGUMENTS AS TO THIS CLAIM ARE ERRONEOUS AS FOLLOWS: FIRST, IT INCORRECTLY TITLED THE CLAIM AS "FAILURE TO PRESENT THE THEORY OF DEFENSE OF PROPERTY." (SEE: R+R AT p. 43, LINES 19-20) SECOND, THE DECISION TO PURSUE A THEORY OF SELF DEFENSE WAS UNREASONABLE BECAUSE, AS PETITIONER STATED IN HIS OBJECTIONS, "THE VERY 1ST MOST IMPORTANT ELEMENT NECESSARY TO ESTABLISH A SELF DEFENSE CLAIM, IS THAT: "THE DEFENDANT REASONABLY BELIEVED THAT HE WAS IN IMMINENT DANGER OF SUFFERING BODILY INJURY, OR WAS IN IMMINENT DANGER OF BEING TOUCHED UNLAWFULLY." SEE: CALCRIM 3470 AND PEOPLE v. HUMPHREY, (1996) 13 CAL 4th 1073 IN PETITIONER'S CASE, THERE WAS NO SUCH EVIDENCE. MOREOVER, A PERSON CLAIMING SELF DEFENSE IS REQUIRED TO "PROVE HIS OWN FRAME OF MIND." PEOPLE v. MINIFIE, (1996) 13 CAL. 4TH 1055. ALSO, PETITIONER INFORMED DEFENSE COUNSEL, AND THE RECORD REVEALS, THAT PETITIONER "WENT AFTER" LATONYA (SEE: ID 112, LINES 13-14; AND R.T. pp. 183, 196, 205). AT THAT POINT, ANY DANGER WOULD HAVE NO LONGER EXISTED, AND ANY RIGHT TO USE FORCE IN SELF DEFENSE WOULD HAVE ALSO ENDED. SEE: CALCRIM 3474

N25 PETITIONER REASSERTS HIS PRIOR HABEAS ARGUMENTS AS TO THIS CLAIM.

IN PEOPLE V. KEYS, (1944) 62 CAL App 2d 903 THE COURT RULED THAT SELF DEFENSE WAS NOT APPLICABLE, AS THE DEFENDANT HAD NO RIGHT TO PURSUE AND SHOOT SOMEONE IN THE BACK THAT WAS RUNNING "AWAY" FROM HIM.

A TRIAL COURT MUST INSTRUCT ON A DEFENSE THAT IS SUPPORTED BY SUBSTANTIAL EVIDENCE IF THE DEFENDANT IS RELYING ON IT, "OR" IF IT IS NOT INCONSISTENT WITH THE THEORY OF HIS CASE. PEOPLE V. FLANNEL, (1979) 25 C. 3d 668, 684; PEOPLE V. SEDENO, (1974) 10 CAL. 3d 703. PURSUANT TO THE FOREGOING, NOT EVEN AN "INSTRUCTION" ON SELF DEFENSE WAS WARRANTED IN PETITIONER'S CASE.[N26]

IN JOHNSON V. BALDWIN, (1997) 114 F. 3d 835, I.A.C. WAS FOUND FOR INADEQUATE INVESTIGATION, WHICH RESULTED IN THE PRESENTATION OF A WEAK, UNBELIEVABLE DEFENSE, AND IN JENNINGS V. WOODFORD, (9th Cir. 2002) 290 F. 3d 1006, I.A.C. WAS ALSO FOUND FOR CONCENTRATING EXCLUSIVELY ON 1 DEFENSE, & FAILING TO INVESTIGATE ANOTHER, MORE VIABLE ONE. IN THE INSTANT CASE, THERE WERE "2" MORE VIABLE DEFENSES. (SEE: p.5 supra, AT LINE 25 - p. 6, LINE 9)... THE 1ST OF WHICH WAS "COMPLETELY" SUPPORTED BY THE RECORD AND HAS NEVER BEEN ADDRESSED BY ANY COURT;[N27] THE 2d REQUIRED ONLY MINIMAL INVESTIGATION.

IN U.S. V. TUCKER, (9th Cir. 1983) 716 F. 2d 576, IAC WAS FOUND FOR AN ATTORNEY'S FAILURE TO OBTAIN LEGALLY RELEVANT FACTS FROM A CLIENT, TO PURSUE OBVIOUS LEADS PROVIDED BY HIM, AND FAILING TO INTERVIEW A KEY WITNESS FOR EVIDENCE THAT WOULD HAVE SUPPORTED A DEFENSE COMPATIBLE WITH THE FACTS.

IN RIOS V. ROCHA, (9th Cir. 2002) 299 F. 3d 796, THE COURT HELD: "A DEFENSE ATTORNEY'S FAILURE TO CONSIDER ALTERNATIVE DEFENSES CONSTITUTES DEFICIENT PERFORMANCE WHEN THE ATTORNEY NEITHER CONDUCTS A REASONABLE INVESTIGATION, NOR MAKES A SHOWING OF STRATEGIC REASONS FOR FAILING TO DO SO."

N[26] SEDENO, supra, ALSO HOLDS THAT IT IS PREJUDICIAL TO ARGUE OR INSTRUCT ON A DEFENSE INCONSISTENT WITH THE THEORY RELIED ON BY PETITIONER.

N[27] PETITIONER ONLY RECENTLY DISCOVERED AUTHORITY RE: THE DEFENSE.

GENERAL ARGUMENT N28

PETITIONER HAD A CONSTITUTIONAL RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL WHO PLAYS THE ROLE NECESSARY TO ENSURE THAT HE RECEIVES A FAIR TRIAL. STRICKLAND V. WASHINGTON (1984) 466 U.S. 668

IN STRICKLAND, THE U.S. SUPREME COURT INSTRUCTED, INTER ALIA, THAT:

a) COUNSEL'S INVESTIGATION DECISIONS MUST BE ASSESSED IN LIGHT OF THE INFORMATION KNOWN AT THE TIME OF THE DECISIONS, NOT IN HINDSIGHT.

b) SUCH DECISIONS ARE BASED QUITE PROPERLY ON STRATEGICAL CHOICES MADE BY AND SUPPLIED BY THE DEFENDANT.

c) A FAIR ASSESSMENT OF ATTORNEY PERFORMANCE REQUIRES THAT EVERY EFFORT BE MADE TO ELIMINATE THE DISTORTING EFFECTS OF HINDSIGHT AND TO RECONSTRUCT THE CIRCUMSTANCES OF COUNSEL'S CHALLENGED CONDUCT, AND TO EVALUATE THE CONDUCT FROM **COUNSEL'S** PERSPECTIVE AT THE TIME.

d) INQUIRY INTO COUNSEL'S CONVERSATIONS WITH DEFENDANT MAY BE CRITICAL TO **PROPER** ASSESSMENT OF COUNSEL'S OTHER LITIGATION DECISIONS.

AS TO "a" ABOVE, A COURT, IN ASSESSING THE REASONABLENESS OF COUNSEL'S INVESTIGATION, MUST CONSIDER NOT ONLY THE QUANTUM OF EVIDENCE ALREADY KNOWN TO COUNSEL, BUT WHETHER THE KNOWN EVIDENCE WOULD LEAD A REASONABLE ATTORNEY TO INVESTIGATE FURTHER. WIGGINS V. SMITH, (2003) 539 U.S. 510.

AS TO "b" ABOVE, COUNSEL IN ANY CASE MUST DEVELOP A STRATEGY AND DISCUSS IT WITH HER CLIENT. THE ABA MODEL RULES OF PROFESSIONAL CONDUCT 1.2(a) (2016) PROVIDE THAT A LAWYER SHALL ABIDE BY A CLIENT'S DECISIONS CONCERNING THE OBJECTIVES OF THE REPRESENTATION / DEFENSE. SEE: MCCOY V. LOUISIANA, (2018) 138 S. CT. 1500. SEE ALSO: NIX V. WHITESIDE, (1986) 475 U.S. 157, 166, HOLDING: "COUNSEL MUST TAKE ALL REASONABLE MEANS TO ATTAIN THE OBJECTIVES OF THE CLIENT."

IN PEOPLE V. DAVIS, (1957) 48 CAL 2d 241, THE CALIFORNIA SUPREME COURT HELD:

N28 THIS ARGUMENT IS IN SUPPORT OF "ALL" OF THE FOREGOING ISSUES.

"WITHOUT CLIENT'S CONSENT, AN ATTORNEY MAY NOT SURRENDER ANY SUBSTANTIAL RIGHT OF THE CLIENT, NOR MAY HE IMPAIR, COMPROMISE, OR DESTROY CLIENT'S CAUSE OF ACTION."

AS TO "C" ABOVE, IN AN I.A.C. CASE, THE COURT CANNOT ASSUME THAT COUNSEL HAD A "TACTICAL" DECISION FOR ANYTHING SHE DID OR DIDN'T DO, UNLESS THE RECORD PROVIDES SUPPORT FOR SUCH DETERMINATION. U.S. v. SPAN, (9TH CIR. 1996) 75 F.3d 1383, AND IN PETITIONER'S CASE, THE RECORD PROVIDED NONE, AS MUCH OF COUNSEL'S DEFICIENCIES INVOLVED A FAILURE TO INVESTIGATE,... FOR WHICH THE COURT IN REYNOSO v. GIURBINO, (2006) 462 F.3d AT 1112 HELD:

"ALTHOUGH TRIAL COUNSEL IS TYPICALLY AFFORDED LEEWAY IN MAKING TACTICAL DECISIONS REGARDING TRIAL STRATEGY, COUNSEL CANNOT BE SAID TO HAVE MADE A TACTICAL DECISION WITHOUT FIRST PROCURING THE INFORMATION NECESSARY TO MAKE SUCH A DECISION."

AS TO "d" ABOVE, IN PEOPLE v. DUVALL, (1995) 9 CAL 4TH 464, THE COURT HELD:

"IN CASES IN WHICH ACCESS TO CRITICAL INFORMATION IS LIMITED OR DENIED TO ONE PARTY, WHERE IT IS UNREASONABLE TO EXPECT PARTY TO OBTAIN INFORMATION AT PLEADING STAGE, OR WHERE PROPER RESOLUTION OF CASE HINGES ON CREDIBILITY OF WITNESSES, GENERAL RULE REQUIRING PLEADING OF FACTS IN HABEAS CORPUS PROCEEDINGS SHOULD NOT BE ENFORCED SO STRICTLY AS TO DEFEAT ENDS OF JUSTICE."

PETITIONER HAS CONSISTENTLY ASSERTED THE DENIAL OF HIS RIGHT TO EFFECTIVE ASSISTANCE, AND REPEATEDLY ASKED FOR OPPORTUNITIES TO PROVE THE MERITS OF HIS CLAIMS VIA, AN EVIDENTIARY HEARING AND DISCOVERY, BUT TO NO AVAIL.

PETITIONER FIRMLY BELIEVES, AND HEREBY ASSERTS THAT HE HAS MADE A SUBSTANTIAL SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT, SUCH THAT, UNDER THE CIRCUMSTANCES OF THIS CASE, THERE CAN BE NO REASONABLE ARGUMENT THAT COUNSEL SATISFIED STRICKLAND SUPRA, AND THAT JURISTS OF REASON COULD CONCLUDE THAT THE ISSUES PRESENTED ARE ADEQUATE TO DESERVE ENCOURAGEMENT

TO PROCEED FURTHER.

AS TO ISSUE II, I.E., WHETHER THE STATE COURTS' ADJUDICATION OF PETITIONER'S CLAIM RESULTED IN A DECISION THAT WAS BASED ON AN UNREASONABLE DETERMINATION OF THE FACTS..., PETITIONER REASSERTS THE ARGUMENT HE MADE TO THE DISTRICT COURT, AS THE ONLY NEW INFORMATION HE HAS TO ADD ARE REGARDING HIS PROCEDURAL DEFECTS IN STATE COURT, WHEREIN HE CORRECTED THE DEFECTS HE HAD MADE AT THE SUPERIOR COURT LEVEL, VIA. RENEWED HABEAS PETITIONS TO THE HIGHER STATE COURTS. SEE, E.G.: WILKINS V. MACOMBER, (9TH CIR. 2019) 2019 U.S. DIST LEXIS 2797 "FAILURE TO INCLUDE TRANSCRIPTS, ARE "DEFECTS" THAT CAN BE CURED IN A RENEWED STATE PETITION. SEE ALSO: KIM V. VILLALOBOS, (9TH CIR 1986) 799 F.2d 1317; GUZMAN V. KANE, (9TH CIR. 2006) 2006 U.S. DIST. LEXIS 81281.

AS TO PETITIONER'S ORIGINAL DEADLINE OF SEPTEMBER 18, 2019 TO SUBMIT THIS MOTION IN REQUEST FOR C.O.A., PETITIONER COULD NOT HAVE POSSIBLY MET THAT DEADLINE, AND HAD THEREFOR, ON 9-8-19, SUBMITTED A "MUCH NEEDED" 30 DAY REQUEST FOR EXTENSION OF TIME, LARGELY DUE TO HIS PRISON WORK SCHEDULE AND INABILITY TO ACCESS THE PRISON'S LAW LIBRARY. ALTHOUGH HE HAS NEVER RECEIVED A GRANT OR DENIAL OF THE REQUEST, PETITIONER WAS LEFT WITH NO CHOICE BUT TO CONTINUE WORKING DILIGENTLY AND IN GOOD FAITH TOWARD COMPLETING AND SUBMITTING THIS MOTION "AS SOON AS HE COULD," AND THEREFOR PRAYS THAT THIS COURT CONSIDERS IT.

I, JAMES ROBERT STANFORD, DECLARE UNDER THE PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT, AND WAS EXECUTED BY ME, James R. Stanford, ON THIS 15TH DAY OF OCTOBER, 2019, AT R.J. DONOVAN STATE PRISON, IN SAN DIEGO, CA.

DESCRIPTION OF THIS APPENDIX:

U.S. DISTRICT COURT ORDER ACCEPTING FINDINGS CONCLUSIONS AND RECOMMENDATIONS OF MAGISTRATE JUDGE

NUMBER OF PAGES: 59

2019 U.S. DIST. LEXIS 128879

APPENDIX C

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JAMES ROBERT STANFORD, Petitioner, v. D. PARAMO, Warden, Respondent.	NO. ED CV 19-0276-SVW(E) ORDER ACCEPTING FINDINGS, CONCLUSIONS AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. section 636, the Court has reviewed the Petition, all of the records herein and the attached Report and Recommendation of United States Magistrate Judge. Further, the Court has engaged in a de novo review of those portions of the Report and Recommendation to which any objections have been made. The Court accepts and adopts the Magistrate Judge's Report and Recommendation.

IT IS ORDERED that Judgment be entered denying and dismissing the Petition with prejudice.

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IT IS FURTHER ORDERED that the Clerk serve copies of this Order, the Magistrate Judge's Report and Recommendation and the Judgment herein on Petitioner and counsel for Respondent.

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: August 14, 2019.

STEPHEN V. WILSON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JAMES ROBERT STANFORD, Petitioner, v. D. PARAMO, Warden, Respondent.	NO. ED CV 19-0276-SVW(E) REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

This Report and Recommendation is submitted to the Honorable Stephen V. Wilson, United States District Judge, pursuant to 28 U.S.C. section 636 and General Order 05-07 of the United States District Court for the Central District of California.

PROCEEDINGS

Petitioner filed a "Petition for Writ of Habeas Corpus By a Person in State Custody" on February 12, 2019. Respondent filed an Answer on April 2, 2019. Petitioner filed a Reply on May 1, 2019.

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BACKGROUND

A jury found Petitioner guilty of: (1) corporal injury to a spouse/cohabitant/child's parent (Petitioner's then-girlfriend, LaTonya Henderson) in violation of California Penal Code section 273.5(a) (Count 1); (2) assault by means likely to produce great bodily injury in violation of California Penal Code section 245(a)(4) (Count 2); and (3) simple battery in violation of California Penal Code section 242 (Count 3) (Reporter's Transcript ["R.T."] 326-27; Clerk's Transcript ["C.T."] 173, 175, 177). The jury rejected Petitioner's self-defense theory.

However, with respect to Counts 1 and 2, the jury found not true the allegations that Petitioner personally had caused great bodily injury under circumstances involving domestic violence within the meaning of California Penal Code section 12022.7(e) (R.T. 326; C.T. 175). The jury also found Petitioner not guilty of battery with serious bodily injury, a greater offense than simple battery (R.T. 327; C.T. 177).

After a second trial phase, the jury found true the allegations that Petitioner had suffered prior convictions for arson and for forcible lewd act on a child (R.T. 384; C.T. 193-94, 198-99). The trial court denied Petitioner's motion to strike the prior convictions (R.T. 397; C.T. 247). At sentencing on September 25, 2015, Petitioner received a total prison sentence of thirty years to life (R.T. 487-88; C.T. 148-49).

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The California Court of Appeal stayed the sentence on the assault count, struck the prior prison term enhancements, and reversed the battery conviction, but otherwise affirmed (Respondent's Lodgment 9; see People v. Stanford, 2017 WL 1684346 (Cal. App. May 3, 2017)). Petitioner did not file a petition for review in the California Supreme Court (Petition, p. 3).

Prior to sentencing, Petitioner had filed a habeas corpus petition in the San Bernardino Superior Court challenging venue and alleging counsel's ineffectiveness in failing to object to the transfer of the case to a particular courthouse (Respondent's Lodgment 10). The Superior Court denied the petition on November 3, 2014 (Respondent's Lodgment 11).

Petitioner also had filed a habeas corpus petition in the California Court of Appeal on November 25, 2014, raising the venue issue and counsel's alleged ineffectiveness with respect thereto (Respondent's Lodgment 12). The Court of Appeal denied the petition summarily (Respondent's Lodgments 12).

Petitioner filed another habeas corpus petition in the Superior Court on November 8, 2017 (see Petition, Exhibit A, ECF Dkt. No. 1, p. 74). The present record does not contain this petition. The Superior Court denied this petition in a reasoned order on December 26, 2017, ruling both that the petition was successive and that the petition failed on the merits (Petition, Exhibit A, ECF Dkt. No. 1, pp. 74-78). The Superior Court's order reflects that the claims Petitioner alleged in the petition then being adjudicated were essentially the same as

those alleged in the present Petition.

Petitioner then filed a another habeas corpus petition in the California Court of Appeal, which that court denied summarily (Respondent's Lodgments 14-16). Finally, Petitioner filed a habeas corpus petition in the California Supreme Court, which that court denied summarily (Respondent's Lodgments 17-21).

SUMMARY OF TRIAL EVIDENCE

I. Prosecution Case

A. Shanon Kendrick

Shanon Kendrick, Petitioner's tenant, testified:

On the evening of January 14, 2014, Kendrick's boyfriend, Jason Norman, came into Kendrick's house and said that Petitioner and LaTonya Henderson had been arguing (R.T. 67-68). Kendrick stepped out of her house and saw LaTonya[1] on the ground, screaming "my ribs, he's going to kill me" (R.T. 69). Petitioner was pacing around and kicking LaTonya in her side repeatedly (R.T. 69-70). The area was lit by moonlight and lights from houses, and the lighting was clear enough for Kendrick to see what was going on (R.T. 68, 84).

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[1] Because Petitioner and the record so frequently refer to the alleged victim as "LaTonya," the Court does likewise, intending no disrespect toward Ms. Henderson.

Kendrick ran across the yard, grabbed Norman's phone, and ran inside her house (R.T. 73). Kendrick called 911 from a place near her kitchen window, through which she could still see what Petitioner was doing to LaTonya (R.T. 73). During the call, Kendrick related what Kendrick then was seeing through the window (R.T. 87).

Kendrick saw Petitioner kicking LaTonya with his foot, hard "like a soccer player" (R.T. 74). LaTonya was in a fetal position on the ground (R.T. 79). LaTonya rose from the ground and appeared to argue with Petitioner (R.T. 75). Petitioner appeared to try to walk away, but LaTonya followed (R.T. 76). Petitioner punched LaTonya in the face with a closed fist (R.T. 76-77, 93). Kendrick did not see LaTonya strike Petitioner (R.T. 76). LaTonya fell to the ground and did not move for approximately 30-40 seconds (R.T. 76). Kendrick thought LaTonya appeared severely injured (R.T. 78). When Kendrick heard police sirens, Petitioner "bolted" (R.T. 80). Another tenant, Joel Mendez, was present during the incident (R.T. 80-81).[2]

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[2] Deputy Pennington interviewed Mendez after the incident (see Petition, Exhibits, ECF Dkt. No. 1, p. 101). Mendez did not testify.

Prior to trial, Kendrick received a letter from Petitioner (R.T. 95-96).[3] Kendrick read the letter aloud at trial:

> Hi, Mrs. Brooks [sic]. I'm informed that you are willing to help me and free of charge. Well, I am very pleased about that but I insist on giving you at least a couple thousand. Of course, I cannot give it all at once but as a man of my word, I will do that because your help means a great deal to me. I assume by now that you have received the letter LaTonya sent you. You and Jason keep it and study it. If you lose it, get another copy from her. We will be going to court at the end of May.
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> Before we can go any further I need an answer to this question. Are you able to help me in the way that the letter asks? I mean, if there's a problem let me know precisely what it is because whatever it may be I'm sure I have or can come up with an alternative solution. Example, if you think Jason may have trouble testifying, he doesn't have to. All he has to do is show up, get

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[3] Although Kendrick said the letter was addressed to Kendrick's mother, with whom Kendrick lived, Kendrick testified that she believed the letter was directed to Kendrick herself (R.T. 99).

on the stand and take the 5th right away then he'd be excused. Okay.

One thing I didn't mention in the first letter in the police report, you guys said LaTonya was unconscious for 30 to 40 seconds. If asked even [sic] by the DA, please say she was in a fetal position when you thought this. It would probably help you to know what the defense strategy is. I wasn't punching LaTonya. I was trying to put my hand over her mouth to quiet her down because I had tenants and neighbors and it was after 9:00 p.m.

While I was trying to do this, she was hitting and cutting my arm with something she had in her hand. When she was on the ground I accidentally - sorry. I accidently kicked her once in the ribs as I was trying to kick the sharp thing she had in her hand away from her. It had fall [sic] to the ground. I don't want you to testify to any of this. I just need your testimony to give credence to the strategy. In other words, you can say what you said in the report, just don't sound too sure.

After all it was dark and there was nothing on LaTonya's face. No black eye. No bruise. No broken jaw. No nothing. The evidence is on our

side. There's a possibility that this may not go to trial but if it does don't panic, don't fear, stay the course and get me home. You won't regret it, I promise and just to let you know, the DA would call you to the stand first, he will basically be trying to get you to testify to what you said in the report and that's cool. Just don't give them any more than that, and don't sound too sure about the stuff you have said. If the DA asks about what LaTonya was doing, please say she was hitting and hollering at me the whole time. One more thing, my lawyer told me the DA is slow so don't be intimidated. I've seen the judge get on his case a couple [sic]. That's all for now. Put Chris to work on your place, whatever he can do. He's about a several hundred in debt. Later, James.

(R.T. 96-99).

At trial, Kendrick testified that the story in the letter that Petitioner wanted her to relate was untrue (R.T. 99).

On cross-examination, Kendrick denied being under the influence of drugs on the evening of the incident and also denied drinking alcohol that evening (R.T. 82).

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B. Kendrick's 911 Call

The jury heard a recording of Kendrick's 911 call (R.T. 129). In the call, Kendrick said that her landlord was "beating the shit out of his girlfriend" and that the girlfriend was "on the ground screaming" (C.T. 261). Kendrick said "please hurry" (C.T. 261).

Kendrick told the 911 operator "they've been arguing all day" (C.T. 262). Kendrick said the girlfriend was on the ground and Petitioner was trying to kick her (C.T. 262). As the call continued, Kendrick said the girlfriend had gotten up and was walking (C.T. 264). Kendrick then exclaimed "oh shit, oh shit, oh my god" (C.T. 264). As the operator tried to calm Kendrick, Kendrick said "I'm trying, I know, what's going on, oh god, oh my god" (C.T. 264). Kendrick said Petitioner had "just hit her again" and that he "keeps going back" (C.T. 264). When the operator asked "what's going on," Kendrick said "She's waving her hands, I'm having a hard time (Unintelligible) he just hit her, she's on the ground, please hurry she's going to die out there. Oh my god oh my god he's kicking her on the ground, he's kicking her on the ground" (C.T. 265). The operator said, "he's kicking her?" Kendrick responded, "Yeah he's kicking her while she's down. Now he's going um, he's going to the house (Unintelligible) She's laying in the driveway --" (C.T. 265).

C. Jason Norman

Jason Norman, Petitioner's tenant and Kendrick's boyfriend, testified:

On January 14, Petitioner and LaTonya were arguing (R.T. 103). Norman went to the store, and upon his return saw Petitioner and LaTonya still arguing (R.T. 103). Petitioner kicked LaTonya in the ribs and she fell (R.T. 104). The kick was a "full on force kick" (R.T. 105).

Norman saw Petitioner kick LaTonya "like a soccer ball" as she lay on the ground (R.T. 105). Petitioner kicked LaTonya "about 2 or 3 times" (R.T. 105).

Norman went inside briefly, then came back outside (R.T. 105). Petitioner was still kicking LaTonya (R.T. 105-06). LaTonya said "help me" (R.T. 106). Kendrick attempted to intervene (R.T. 106).

LaTonya did not get up for approximately two to three minutes (R.T. 107). Norman decided to call 911 but his phone was not working and he had to restart it (R.T. 107).

While Kendrick was inside calling 911, LaTonya got up and tried to get away from Petitioner (R.T. 108). LaTonya was still arguing with Petitioner (R.T. 108). Norman saw Petitioner punch LaTonya hard on the shoulder, a "real punch" (R.T. 110). LaTonya fell and Petitioner began kicking her again repeatedly, approximately fifteen to twenty times (R.T. 110-11). LaTonya did not move for several minutes (R.T. 111-12).

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When sirens were heard, Petitioner "bolted" (R.T. 113). Norman saw Petitioner running (R.T. 113). Norman did not see Petitioner again for "[m]aybe 2 hours" (R.T. 113).

On cross-examination, Norman denied telling Deputy Pennington that Norman had seen Petitioner punch LaTonya in the face approximately three times with a closed fist (R.T. 114). Norman said that he had seen only a "sock" to the shoulder (R.T. 114). Norman also denied telling Deputy Pennington that Norman had seen Petitioner kick LaTonya in the head, and Norman denied that Petitioner had done so (R.T. 114-15). Norman denied being under the influence of drugs or drinking alcohol that day (R.T. 115). When asked whether "just prior to this incident" Petitioner indicated that he was going to evict Norman and Kendrick, Norman replied "I don't recall that" (R.T. 116). Norman also said that Petitioner had never told Norman that Petitioner was going to evict Norman and Kendrick for doing drugs in the house (R.T. 116).

D. Deputy Pennington

Deputy Alan Pennington testified:

Pennington arrived on the scene and spoke to LaTonya (R.T. 133-34). Pennington observed a knot under LaTonya's left eye and blood around her lips (R.T. 134). LaTonya said she had pain in her hip, ribs, head and face (R.T. 135).

She described the pain in her ribs as severe (R.T. 135). LaTonya had "dirt and stuff" in her hair and was covered with dust and dirt (R.T. 135). Her dress was "kind of pulled up" (R.T. 135).

LaTonya told Pennington that she, Petitioner and Joel Mendez had been drinking in a vehicle when Petitioner accused LaTonya of cheating (R.T. 211).[4] LaTonya said that the two argued and, when LaTonya tried to leave, Petitioner tackled her (R.T. 211). LaTonya said that, when she got up, Petitioner attacked her again (R.T. 211). LaTonya said that, when she got up again, Petitioner began punching her, causing her to fall to the ground, where Petitioner began kicking her (R.T. 211). LaTonya told Pennington she had lost consciousness (R.T. 211).

Pennington also spoke with Kendrick, who appeared "frantic and scared" (R.T. 136). Kendrick said that she had heard screaming and yelling outside, and that she had looked out the window to see Petitioner knock LaTonya to the ground and begin kicking her (R.T. 136). Kendrick said LaTonya lay on the ground for approximately 30 to 40 seconds without moving, as Petitioner continued to kick her (R.T. 136). Kendrick and Mendez reportedly had attempted to intervene (R.T. 138).

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[4] Pennington gave this testimony concerning what LaTonya allegedly told Pennington following LaTonya's testimony, which is described below.

Pennington also spoke with Norman, who said that he came home and saw Petitioner punch LaTonya (R.T. 138). Norman related that LaTonya was on the ground for 30 to 40 seconds without moving, while Petitioner kicked her several times (R.T. 138).

Pennington took a photograph of LaTonya showing blood caked all around her upper and lower lips (R.T. 139). When Pennington initially contacted LaTonya, the blood was wet, although it had dried by the time Pennington took the photograph (R.T. 139).

Deputies located Petitioner approximately 300 yards away (R.T. 140). Pennington did not observe any injuries to Petitioner, and did not observe any stab marks on Petitioner's arms or shoulders (R.T. 141, 213).

E. LaTonya Henderson

The prosecution had difficulty locating LaTonya, and obtained an order allowing the admission of her preliminary hearing testimony in lieu of trial testimony (see R.T. 18-29, 145-55). However, LaTonya eventually was located during trial.

LaTonya testified on direct examination:

On the night of January 14, 2014, LaTonya was sitting in Petitioner's car with Petitioner and Joel Mendez (R.T.

181). LaTonya first admitted telling Deputy Pennington that Petitioner accused her of infidelity with Mendez, but then said she did not remember "admitting that" and said that the accusation was untrue (R.T. 181-82). LaTonya said "that wasn't what started it" (R.T. 182). Rather, what "started it" was Petitioner's discovery that LaTonya had been doing drugs (R.T. 182). Petitioner wanted LaTonya to leave (R.T. 182). Upset, LaTonya went in the back yard and obtained a piece of wire fencing with which she attacked Petitioner (R.T. 182-83).

Asked whether it was true that LaTonya exited the car to leave and Petitioner caught up with her and began punching her, LaTonya replied, "Not necessarily" (R.T. 183). LaTonya exited the car because she did not want to leave (R.T. 183). LaTonya went into a rage, and Petitioner was trying to calm her down because he had tenants on the property (R.T. 183).

LaTonya recalled telling Deputy Pennington that she had tried to run to a neighbor's house and that Petitioner had tackled her to the ground (R.T. 183). She did not recall telling Pennington that Petitioner had tackled her again after she got to her feet (R.T. 184). Rather, she slipped and fell (R.T. 184).

LaTonya denied being punched multiple times, losing consciousness and waking up on the ground being kicked (R.T.

184). LaTonya previously had said these things because she was very angry, had been drinking and was on medication (R.T. 184). LaTonya "probably" told Deputy Pennington that she believed she had lost consciousness and that the next thing she remembered she was in a fetal position and Petitioner was kicking her in the ribs (R.T. 184). However, at trial, LaTonya said these things were untrue (R.T. 184). Rather, Petitioner was kicking the weapon from her and she fell down (R.T. 184).

LaTonya recalled testifying at the preliminary hearing that, after Petitioner ran after her, he kicked and hit her, and she was on the ground (R.T. 185, 189). She testified that she "said a lot of things" and was "angry and sad" (R.T. 185). LaTonya also recalled testifying that she had lost consciousness (R.T. 185).

LaTonya explained her injuries by saying she hit her teeth when she slipped and fell (R.T. 186). She suffered "[j]ust a little scratch" (R.T. 186). Shown photographs taken the night of the incident, LaTonya identified a knot under her left eye and dried blood on her lips (R.T. 187). She did not suffer any bruising on her ribs or arms (R.T. 188). However, she agreed that she "probably" testified at the preliminary hearing that she had bruises on her arms and ribs (R.T. 188).

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At trial (on July 28, 2014), LaTonya denied that she was still in a relationship with Petitioner, but admitted she had visited him on July 18, 2014 (R.T. 189-90). LaTonya agreed that she was not happy to be in court, but denied lying to cover up for Petitioner (R.T. 190-91).

LaTonya testified on cross-examination:

Petitioner thought LaTonya was using methamphetamine at the house and told her she would have to leave (R.T. 191). LaTonya became upset because Mendez was living at Petitioner's house and also used methamphetamine (R.T. 191). Sometimes she and Mendez used methamphetamine together (R.T. 192).

LaTonya became angry when Petitioner told her he had found someone else (R.T. 192). On the evening of the incident, LaTonya had drunk "[p]robably a half a bottle of Jack Daniels [whiskey]," "straight" (R.T. 192). After she and Petitioner argued, LaTonya went behind the house, picked up a piece of chain link fencing, and attacked Petitioner, scratching him on his arm (R.T. 193). She also used her fists on Petitioner (R.T. 193-94). While running, LaTonya slipped and fell, but got up and resumed attacking Petitioner, yelling and screaming with the weapon in her hand (R.T. 197). When the officers arrived at the scene, Petitioner was not there (R.T. 208).

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LaTonya lied to the officers who arrived at the scene because she did not want to get in trouble (R.T. 198). When LaTonya first talked to Pennington, she was angry and hysterical (R.T. 201). LaTonya falsely told Pennington that Petitioner had punched her multiple times in the head and face because she was angry and wanted Petitioner to be arrested "for what he did," i.e., for seeing another woman, and also because LaTonya was under the influence of alcohol and prescription medication (R.T. 198-200). LaTonya said she "probably" had told Pennington that Petitioner had tackled her, but claimed it had been a lie (R.T. 200). LaTonya said she had fallen to the ground because she was "really drunk" (R.T. 200). Pennington never asked LaTonya if she had hit Petitioner or if she had had a weapon in her hand (R.T. 199).

LaTonya did not want to go the hospital the night of the incident, but went to the emergency room the following evening (R.T. 201-02). She did not receive a CT scan, X-rays or CAT scan, but a doctor gave her Norco for pain (R.T. 201-02, 207). LaTonya did not have a black eye or any broken bones or injuries (R.T. 207-08).

LaTonya testified on redirect:

LaTonya did not tell Pennington that she had attacked Petitioner because she did not want to go to jail (R.T. 204). She agreed that she told Pennington the incident

started because Petitioner accused her of infidelity (R.T. 205). She acknowledged testifying at the preliminary hearing that she had attacked Petitioner with a wire, but also acknowledged testifying that he pursued her and knocked her unconscious (R.T. 205). At the preliminary hearing, LaTonya wanted to get Petitioner in trouble, but was "not understanding a lot of things" (R.T. 205). Asked why, if she wanted to get Petitioner in trouble, she had testified at the preliminary hearing that she attacked Petitioner with a wire, LaTonya responded, "Because I did attack him with a wire" (R.T. 206). Asked whether, at the preliminary hearing, LaTonya told the truth about attacking Petitioner with a wire but lied about Petitioner knocking her to the ground and rendering her unconscious, LaTonya replied, "Right" (R.T. 206-07).

Asked on redirect about the knot under her eye, LaTonya said she had been drinking and could not remember a lot of things (R.T. 208). She said she had received a "tiny little cut" on her lip (R.T. 209).

II. Defense Case

Petitioner chose not to testify, and the defense did not call any witnesses (R.T. 221). In closing, Petitioner's counsel argued that LaTonya's alleged injuries did not "match" with the accounts of Kendrick and Norman (R.T. 276-81, 287-88). Counsel also argued that LaTonya had been "out of control," drunk and under the influence of

methamphetamine at the time of the incident, and that LaTonya assertedly was the aggressor, not the victim (R.T. 278-79, 282-83). Counsel reminded the jury that LaTonya had testified that she attacked and stabbed Petitioner with a piece of fence wire, fell down, and then rose and went after Petitioner again (R.T. 279-82). Counsel said Petitioner had a right to defend himself and had tried to kick the weapon out of the way (R.T. 282-83).

PETITIONER'S CONTENTIONS

Petitioner contends that Petitioner's trial counsel rendered ineffective assistance, by assertedly:

1. Failing to investigate and elicit evidence of the tenants' possible bias against Petitioner;

2. Failing to elicit evidence that the tenants may have overheard LaTonya's statements to police;

3. Failing to investigate and elicit impeachment evidence that Petitioner and LaTonya allegedly had not been arguing all day prior to the incident;

4. Failing to impeach Deputy Pennington's testimony that Petitioner had been drinking and failing to impeach Pennington's testimony concerning LaTonya's statement to Pennington;

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5. Failing to fulfill an alleged promise made in opening statement;

6. Failing to pursue a theory of "defense of property" rather than the theory of self-defense;

7. Failing to object to the wording of the flight instruction, CALCRIM 372; and

8. Failing to present a declaration from LaTonya at sentencing.

Petitioner alleges that counsel's assertedly cumulative errors entitle Petitioner to federal habeas relief.

STANDARD OF REVIEW

Under the "Antiterrorism and Effective Death Penalty Act of 1996" ("AEDPA"), a federal court may not grant an application for writ of habeas corpus on behalf of a person in state custody with respect to any claim that was adjudicated on the merits in state court proceedings unless the adjudication of the claim: (1) "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States"; or (2) "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d); Woodford v. Visciotti, 537 U.S. 19, 24-26 (2002); Early v.

Packer, 537 U.S. 3, 8 (2002); Williams v. Taylor, 529 U.S. 362, 405-09 (2000).

"Clearly established Federal law" refers to the governing legal principle or principles set forth by the Supreme Court at the time the state court renders its decision on the merits. Greene v. Fisher, 565 U.S. 34, 38 (2011); Lockyer v. Andrade, 538 U.S. 63, 71-72 (2003). A state court's decision is "contrary to" clearly established Federal law if: (1) it applies a rule that contradicts governing Supreme Court law; or (2) it "confronts a set of facts . . . materially indistinguishable" from a decision of the Supreme Court but reaches a different result. See Early v. Packer, 537 U.S. at 8 (citation omitted); Williams v. Taylor, 529 U.S. at 405-06.

Under the "unreasonable application" prong of section 2254(d)(1), a federal court may grant habeas relief "based on the application of a governing legal principle to a set of facts different from those of the case in which the principle was announced." Lockyer v. Andrade, 538 U.S. at 76 (citation omitted); see also Woodford v. Visciotti, 537 U.S. at 24-26 (state court decision "involves an unreasonable application" of clearly established federal law if it identifies the correct governing Supreme Court law but unreasonably applies the law to the facts).

"In order for a federal court to find a state court's application of [Supreme Court] precedent 'unreasonable,' the state court's decision must have been more than incorrect or erroneous." Wiggins v. Smith, 539 U.S. 510, 520 (2003) (citation omitted). "The state

court's application must have been 'objectively unreasonable.'" Id. at 520-21 (citation omitted); see also Waddington v. Sarausad, 555 U.S. 179, 190 (2009); Davis v. Woodford, 384 F.3d 628, 637-38 (9th Cir. 2004), cert. dism'd, 545 U.S. 1165 (2005). "Under § 2254(d), a habeas court must determine what arguments or theories supported, . . . or could have supported, the state court's decision; and then it must ask whether it is possible fairminded jurists could disagree that those arguments or theories are inconsistent with the holding in a prior decision of this Court." Harrington v. Richter, 562 U.S. 86, 101 (2011). This is "the only question that matters under § 2254(d)(1)." Id. at 102 (citation and internal quotations omitted). Habeas relief may not issue unless "there is no possibility fairminded jurists could disagree that the state court's decision conflicts with [the United States Supreme Court's] precedents." Id. "As a condition for obtaining habeas corpus from a federal court, a state prisoner must show that the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." Id. at 103.

In applying these standards, the Court ordinarily looks to the last reasoned state court decision, here the Superior Court's decision. See Delgadillo v. Woodford, 527 F.3d 919, 925 (9th Cir.

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2008).[5] Where no reasoned decision exists, "[a] habeas court must determine what arguments or theories . . . could have supported the state court's decision; and then it must ask whether it is possible fairminded jurists could disagree that those arguments or theories are inconsistent with the holding in a prior decision of this Court." Harrington v. Richter, 562 U.S. at 102; see also Cullen v. Pinholster, 563 U.S. 170, 188 (2011).

Additionally, federal habeas corpus relief may be granted "only on the ground that [Petitioner] is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). In conducting habeas review, a court may determine the issue of whether the petition satisfies section 2254(a) prior to, or in lieu of, applying the standard of review set forth in section 2254(d). Frantz v. Hazey, 533 F.3d 724, 736-37 (9th Cir. 2008) (en banc).

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[5] Here, because the Superior Court denied the petition on the merits, the AEDPA standard of review applies, notwithstanding the Superior Court's alternate denial of the petition as successive. See Apelt v. Ryan, 878 F.3d 800, 825 (9th Cir. 2017), pet. for cert. filed (No. 18-8386) March 12, 2019. The Court rejects Petitioner's apparent contention that the Superior Court's "fact-finding" process supposedly was defective (see Reply, p. 2). See Ayala v. Chappell, 829 F.3d 1081, 1105 (9th Cir. 2016), cert. denied, 138 S. Ct. 244 (2017); Hibbler v. Benedetti, 693 F.3d 1140, 1147-48 (9th Cir. 2012), cert. denied, 568 U.S. 1172 (2013).

DISCUSSION

For the reasons discussed herein, the Petition should be denied and dismissed with prejudice. Whether considered individually or in combination, Petitioner's arguments fail to demonstrate that he was denied the effective assistance of counsel.[6]

I. Legal Principles Governing Claims of Ineffective Assistance of Counsel

To establish ineffective assistance of counsel, Petitioner must prove: (1) counsel's representation fell below an objective standard of reasonableness; and (2) resulting prejudice, i.e., a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. Strickland v. Washington, 466 U.S. 668, 694, 697 (1984) ("Strickland"). A reasonable probability of a different result "is a probability sufficient to undermine confidence in the outcome." Id. at 694. The court may reject the claim upon finding either that counsel's performance was reasonable or the claimed error was not prejudicial. Id. at 697; Rios v. Rocha, 299 F.3d 796, 805 (9th Cir. 2002) ("Failure to satisfy either prong of the Strickland test obviates the need to consider the other.") (citation omitted).

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[6] The Court has read, considered and rejected on the merits all of Petitioner's arguments. The Court discusses Petitioner's principal arguments herein.

Review of counsel's performance is "highly deferential" and there is a "strong presumption" that counsel rendered adequate assistance and exercised reasonable professional judgment. Williams v. Woodford, 384 F.3d 567, 610 (9th Cir. 2004), cert. denied, 546 U.S. 934 (2005) (quoting Strickland, 466 U.S. at 689). The court must judge the reasonableness of counsel's conduct "on the facts of the particular case, viewed as of the time of counsel's conduct." Strickland, 466 U.S. at 690. The court may "neither second-guess counsel's decisions, nor apply the fabled twenty-twenty vision of hindsight. . . ." Matylinsky v. Budge, 577 F.3d 1083, 1091 (9th Cir. 2009), cert. denied, 558 U.S. 1154 (2010) (citation and quotations omitted); see Yarborough v. Gentry, 540 U.S. 1, 8 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.") (citations omitted). Petitioner bears the burden to show that "counsel made errors so serious that counsel was not functioning as the counsel guaranteed the defendant by the Sixth Amendment." Harrington v. Richter, 562 U.S. at 104 (citation and internal quotations omitted); see Strickland, 466 U.S. at 689 (petitioner bears burden to "overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy") (citation and quotations omitted); see also Morris v. California, 966 F.2d 448, 456-57 (9th Cir.), cert. denied, 506 U.S. 831 (1992) (if the reviewing court can conceive of a reasonable explanation for counsel's challenged action or inaction, the court need not determine the actual explanation before denying relief).

Defense counsel has a "duty to make reasonable investigations or to make a reasonable decision that makes particular investigations

unnecessary." Strickland, 466 U.S. at 691. "This includes a duty to investigate the defendant's 'most important defense,' [citation] and a duty adequately to investigate and introduce into evidence records that demonstrate factual innocence, or that raise sufficient doubt on that question to undermine confidence in the verdict. [citation]." Bragg v. Galaza, 242 F.3d 1082, 1088 (9th Cir.), amended on other grounds, 253 F.3d 1150 (9th Cir. 2001). "However, 'the duty to investigate and prepare a defense is not limitless: it does not necessarily require that every conceivable witness be interviewed.'" Id. (citation omitted). The duty to investigate does not require "defense lawyers to scour the globe on the off chance something will turn up; reasonably diligent counsel may draw a line when they have good reason to think further investigation would be a waste." Rompilla v. Beard, 545 U.S. 374, 383 (2005) (citation omitted).

"When the claim at issue is one for ineffective assistance of counsel, moreover, AEDPA review is 'doubly deferential,' [citation], because counsel is 'strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.'" Woods v. Etherton, 136 S. Ct. 1149, 1151 (2016) (citations and internal quotations omitted). "In such circumstances, federal courts are to afford 'both the state court and the defense attorney the benefit of the doubt.'" Id. (citation omitted).

"In assessing prejudice under Strickland, the question is not whether a court can be certain counsel's performance had no effect on the outcome or whether it is possible a reasonable doubt might have

been established if counsel acted differently." Harrington v. Richter, 562 U.S. at 111 (citations omitted). Rather, the issue is whether, in the absence of counsel's alleged error, it is "'reasonably likely'" that the result would have been different. Id. (quoting Strickland, 466 U.S. at 696). "The likelihood of a different result must be substantial, not just conceivable." Id. at 112.

II. Analysis

A. Alleged Failure to Investigate and Elicit Evidence of the Possible Bias of Kendrick and Norman Against Petitioner.

1. Background

Petitioner alleges that, prior to trial, Petitioner's counsel asked Petitioner if he knew of any reason why Kendrick and Norman might lie (Petition, attachment, p. 1). Petitioner allegedly told counsel that: (1) these tenants were in "desperate need of a place to stay" because they reportedly had been forced to leave their prior place of residence for reasons unknown to Petitioner; (2) Petitioner allegedly had warned the tenants "about having/doing things around him such as weapons, drugs, disturbing or illegal activities which could jeopardize his freedom + property";[7] (3) Petitioner allegedly had evicted others "because of drugs & disturbances"; (4) Kendrick and

[7] According to Petitioner, he was subject to parole conditions requiring him to inform "anyone with whom he had a relationship about such things" (Petition, attachment, p. 1 n.1).

Norman allegedly faced eviction for "disturbances" they had caused (but assertedly not for drugs);[8] and (5) the "respectful + grateful attitude" Kendrick and Norman allegedly had showed toward Petitioner "changed 180° as a result" (id.).

As indicated above, when cross-examined at trial, Norman did not recall any alleged threat by Petitioner to evict Norman and Kendrick (R.T. 116). In closing argument, the prosecutor summarized the testimony of Kendrick and Norman and asserted that these witnesses "had no stake in this" (R.T. 266). In response, Petitioner's counsel argued that the witnesses did "have something invested," because they lived on the property and "were about to be evicted" (R.T. 277).[9]

Following the verdict, Petitioner addressed the court, complaining that his attorney had not questioned Kendrick concerning possible bias or motive (R.T. 330-31). Petitioner alleged he had told Kendrick and Norman to "stop attracting police" because Petitioner was on parole (R.T. 331). Petitioner alleged he had told counsel that other tenants supposedly had told Petitioner to evict Kendrick and Norman (R.T. 331). Petitioner alleged he told counsel that LaTonya purportedly had witnessed the tenants' supposedly rude behavior (R.T.

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[8] Petitioner alleges that, had he known Kendrick and Norman purportedly were "doing drugs," Petitioner assertedly would have evicted them "ASAP" (Petition, attachment, p. 1, n.3). In a declaration attached to the Petition, Petitioner asserts that the tenants' "disturbances" were "not loud enough to disturb others & force [Petitioner] to evict" (Petition, Exhibits, ECF Dkt. No. 1-1, p. 9 n.2) (emphasis added).

[9] The court overruled (perhaps erroneously) a prosecution objection that defense counsel's argument misstated the testimony (R.T. 277).

331). The court indicated that, at the proper time, Petitioner would be notified of his appeal rights, "but we're way ahead of that at this stage" (R.T. 332).

Petitioner contends counsel should have investigated the reasons the tenants reportedly had to leave their previous place of residence and the reasons Petitioner's rental supposedly was important to them (Petition, attachment, p. 2). Petitioner asserts that he or LaTonya could have told counsel that the latter reasons "likely" were the affordability of the rent and Petitioner's willingness to accommodate the tenants' two big dogs (id., p. 2 & n. 6). According to Petitioner, evidence that the tenants supposedly had a motive to lie about "the person who had threatened to 'put them out on the street'" would have: (1) undermined the prosecution's theory that the argument between Petitioner and LaTonya concerned infidelity; and (2) corroborated Petitioner's theory that he was just trying to keep drugs and drug users off his property and to stop LaTonya from disturbing his tenants (id., p. 3).

The Superior Court rejected this claim, deeming Petitioner's assertions of failure to investigate conclusory and based on "unsubstantiated speculation" (Petition, Exhibits, ECF Dkt. No. 1, p. 77). According to the Superior Court, Petitioner had failed to provide any "declarations or other proffered testimony establishing both the substance of any omitted evidence . . . and its likelihood for exonerating Petitioner" (id.).

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2. Discussion

Petitioner's claim fails because Petitioner has not shown a reasonable probability of a different result had counsel investigated and presented evidence of the tenants' "bias," including the tenants' rental history and residence preference. Petitioner faults counsel for failing to investigate the supposed reasons the tenants left their prior residence and the reasons they allegedly were "desperate" to remain Petitioner's tenants. Petitioner speculates that affordable rent and tolerance of the tenants' dogs may have contributed to the tenants' alleged desire to remain at the property. Petitioner's speculation concerning what if any admissible evidence counsel's investigation would have uncovered does not suffice to show Strickland prejudice. See Bible v. Ryan, 571 F.3d 860, 871 (9th Cir. 2009), cert. denied, 559 U.S. 995 (2010) (speculation insufficient to show Strickland prejudice); Cooks v. Spaulding, 660 F.2d 738, 740 (9th Cir. 1981), cert. denied, 455 U.S. 1026 (1982) (same); Zettlemoyer v. Fulcomer, 923 F.2d 284, 298 (3d Cir.), cert. denied, 502 U.S. 902 (1991) (petitioner cannot satisfy Strickland standard by "vague and conclusory allegations that some unspecified and speculative testimony might have established his defense"); see also Wood v. Bartholomew, 516 U.S. 1, 8 (1995) (per curiam) (granting a habeas petition "on the basis of little more than speculation with slight support" is improper).

Even if Petitioner's speculation regarding the tenants' supposedly "desperate" desire to remain Petitioner's tenants were entirely accurate, there is no reasonable probability that evidence of

such desire would have produced a different trial result. While Petitioner argues that such evidence would have suggested bias against Petitioner, it is equally if not more likely that any such evidence would have suggested bias in favor of Petitioner, given the tenants' allegedly "desperate" dependence on Petitioner's tolerance of their tenancy. The tenants' posited bias in favor of Petitioner, i.e. their interest in maintaining or reclaiming Petitioner's favor for the sake of their tenancy, obviously would have been counterproductive to Petitioner's defense. Such evidence also might have provided an explanation (unhelpful to the defense) regarding why the tenants' trial testimony was in some respects not as damaging to Petitioner as the tenants' arguably less circumspect pretrial statements.

As to Petitioner's argument that counsel failed to present evidence of Petitioner's alleged threats of eviction, counsel did question Norman at trial regarding this subject matter. Petitioner chose not to testify. Petitioner has failed to show that any other witness could have and would have testified competently that Petitioner had threatened Norman and Kendrick with eviction. See Dows v. Wood, 211 F.3d 480, 486-87 (9th Cir.), cert. denied, 531 U.S. 908 (2000) (denying claim of ineffective assistance where the petitioner failed to prove that a witness would have testified as the petitioner desired). Again, Petitioner's speculation that witnesses would have testified in a particular manner is insufficient. See Bible v. Ryan, 571 F.3d at 871; Cooks v. Spaulding, 660 F.2d at 740; Zettlemoyer v. Fulcomer, 923 F.2d at 298. In any event, given the strength of the incriminating evidence at trial, there is no reasonable probability

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that the desired "eviction threat" evidence would have altered the trial outcome.

Petitioner's argument that counsel should have introduced evidence of Petitioner's parole conditions also lacks merit. As a matter of strategic choice, Petitioner's counsel kept from the jury any evidence that Petitioner was on parole at the time of the incident (see R.T. 44-45, 72). Counsel reasonably could have determined that it was more advantageous to the defense that the jury not know that Petitioner was on parole (i.e., had a criminal history) than it might have been for the jury to know that Petitioner's parole conditions prevented him from tolerating drug users on the property.

For all of the foregoing reasons, Petitioner is not entitled to federal habeas relief on his claim that counsel allegedly rendered ineffective assistance in failing to investigate and obtain evidence concerning the alleged bias of Kendrick and Norman. See 28 U.S.C. § 2254(a); Frantz v. Hazey, 533 F.3d at 736-37.

B. Alleged Failure to Elicit Evidence that Kendrick and Norman Assertedly May Have Heard LaTonya's Statements to Police

Petitioner contends that the statement in Pennington's report that Pennington contacted LaTonya "at her neighbor's residence" "signaled a possibility that LaTonya may've been interviewed there & that the tenants may've overheard her account to the reporting officer" (Petition, attachment, p. 4). Petitioner also references

Pennington's preliminary hearing testimony that, when Pennington interviewed LaTonya, the tenants "were standing right there" (Petition, attachment, p. 4; see C.T. 42).[10] Petitioner faults counsel for failing to elicit testimony suggesting that the tenants overheard what LaTonya told Pennington, thus purportedly accounting for "consistency" in the witnesses' testimony (Petition, attachment, pp. 4-5).

Petitioner's claim lacks merit. Counsel reasonably could have determined that attempting to elicit such evidence would have been fruitless. The jury heard Kendrick's 911 call providing a contemporaneous description of the assault. This call, which reported a version of events at least as damaging to Petitioner as Kendrick's later statements, preceded any possible "overhearing" of LaTonya's statement to Pennington. Furthermore, the witnesses' testimonies were not wholly consistent. Jurors readily could have believed that such consistencies as did exist tended to confirm the credibility of the witnesses' version of the incident rather than the converse. Petitioner has not shown a reasonable likelihood of a different outcome from the evidence Petitioner argues counsel should have presented. Accordingly, Petitioner is not entitled to federal habeas relief on this claim. See 28 U.S.C. § 2254(a); Frantz v. Hazey, 533 F.3d at 736-37.

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[10] Pennington testified that he did not know if the tenants were talking with each other and did not know what the "other three people [Kendrick, Norman and Mendez] were doing" while he spoke with LaTonya (R.T. 42).

C. Alleged Failure to Investigate and Elicit Evidence to Impeach Statements that Petitioner and LaTonya Assertedly Were Arguing All Day Prior to the Incident

Kendrick told the 911 operator that Petitioner and LaTonya had been arguing all day (C.T. 262). At trial, Norman testified that Petitioner and LaTonya had been arguing early in the day, and were still arguing when Norman returned from a trip to the store (R.T. 103). The police report indicated that a caller reported that Petitioner "had been assaulting the female all day long" (Petition, Exhibits, ECF Dkt. No. 1, p. 100).

Petitioner contends he told defense counsel that he and LaTonya had not been arguing all day and had not been at home most of the day (Petition, attachment, p. 5). Petitioner suggests that counsel could have determined from the police report that Petitioner was wearing a GPS ankle bracelet on the day of the incident, which assertedly could have confirmed Petitioner's whereabouts that day (Petition, attachment, p. 5 & Exhibits, ECF Dkt. No. 1, p. 102). According to Petitioner, the prosecution's evidence that Petitioner and LaTonya allegedly had been arguing "all day" undercut the purported defense theory that Petitioner assertedly did not want drugs or disturbances on his property and that he allegedly was trying to stop LaTonya from causing a disturbance on Petitioner's property (Petition, attachment, p. 6). Petitioner contends counsel erred in failing to investigate the GPS evidence and/or to investigate and elicit from LaTonya testimony that she and Petitioner allegedly were not home most of the day (Petition, attachment, p. 6).

Again, Petitioner's claim of ineffectiveness lacks merit. Petitioner has not shown that counsel would have been able to obtain LaTonya's willingness to testify in the manner suggested by Petitioner. In any event, the evidence was undisputed that Petitioner and LaTonya were arguing prior to the assault. Counsel reasonably could have decided that the duration of their argument(s) was not significantly material as a substantive matter. Counsel also reasonably could have decided that challenging the witnesses' colloquial hyperbole concerning the duration of the argument(s) would not have constituted effective impeachment. Additionally, even if counsel had elicited evidence that Petitioner and LaTonya had not been arguing "all day" (but only during the times immediately preceding and during the assault), there would have been no reasonable probability of a different trial outcome. Such evidence would not have materially undermined the evidence compellingly proving that Petitioner assaulted LaTonya, including the 911 call, the tenants' testimony, LaTonya's statements to Pennington, LaTonya's trial testimony, the evidence of her injuries and the witness bribery letter authored by Petitioner, which persuasively reflected a consciousness of guilt. Furthermore, evidence that Petitioner wore a GPS ankle bracelet would have alerted the jury to the fact that Petitioner previously had been convicted of a crime, a fact counsel reasonably chose to keep from the jury as a matter of trial strategy.

For the foregoing reasons, Petitioner is not entitled to federal habeas relief on this claim. See 28 U.S.C. § 2254(a); Frantz v. Hazey, 533 F.3d at 736-37.

D. Alleged Failure to Impeach Deputy Pennington's Testimony

At trial, Deputy Pennington testified that LaTonya told Pennington that she, Petitioner and Mendez had been drinking in the car prior to the assault (R.T. 211). Petitioner contends that he informed defense counsel that Petitioner had not been drinking, and that Pennington's report allegedly did not contain any statement by LaTonya concerning Petitioner's drinking (Petition, attachment, p. 7). Petitioner faults counsel for failing to impeach Pennington's testimony concerning LaTonya's description of Petitioner's drinking. Petitioner also faults counsel for failing to use Pennington's report to impeach Pennington's testimony that LaTonya told Pennington she had pain in her face and head (Petition, attachment, pp. 10-11).

The Superior Court rejected these claims, commenting that the proposed impeachment "was not about a direct inconsistency but about the absence of information; thus questioning the officer about this issue could have just added emphasis and detail without tainting the officer's credibility" (Petition, Exhibits, ECF Dkt. No. 1, p. 77).

1. Alleged Failure to Impeach Testimony That LaTonya Told Pennington That Petitioner Had Been Drinking

This claim lacks merit for several reasons. First, counsel reasonably could have decided that attempting to impeach Pennington with the police report would not have been effective. Prior to

Pennington's testimony, LaTonya testified that she had been in the car with Petitioner and Mendez, and that she had been drinking (R.T. 181, 184, 192-93, 199). At the conclusion of her testimony, the court told her that she was subject to recall and should wait in the hall (R.T. 209). Pennington testified immediately thereafter, stating that LaTonya had told him that she, Mendez and Petitioner had been drinking in the car when Petitioner accused LaTonya of cheating (R.T. 211). Pennington's police report recounted that Joel Mendez had told Pennington that Petitioner was intoxicated while in the car (Petition, Exhibits, ECF Dkt. No. 1, p. 101). At the preliminary hearing, Pennington testified that Mendez said Petitioner had been drinking in the car (C.T. 17). Counsel reasonably could have feared that, if counsel attempted to impeach Pennington with the police report which did not mention LaTonya's statement regarding drinking, the prosecution could recall LaTonya to elicit her testimony that Petitioner had been drinking. Furthermore, as the Superior Court recognized, counsel could have feared that attempting to impeach Pennington by showing the mere absence of information from his report would not have contradicted his testimony and might well have highlighted to the jury the evidence concerning Petitioner's drinking.

In any event, even if counsel had elicited an admission from Pennington that the police report failed to mention LaTonya's statement regarding Petitioner's drinking, the admission would not have given rise to any reasonable probability of a different trial outcome. Hence, Petitioner has failed to demonstrate Strickland prejudice.

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2. **Alleged Failure to Impeach Pennington's Testimony That LaTonya Said She Had Pain in Her Face and Head After the Assault**

Petitioner faults counsel for failing to impeach Pennington's testimony that LaTonya told Pennington that she had pain in her face and head (Petition, attachment, p. 11). The copy of Pennington's report attached to the Petition states that LaTonya had blood coming from an unknown injury inside her mouth and a small knot developing on her left check just below her eye (Petition, Exhibits, ECF Dkt. No. 1, p. 100). The report also states that LaTonya reported severe pain to her left ribs and right hip (id.). The report does not state expressly that LaTonya complained of pain in her face and head.[11]

The evidence that Petitioner hit LaTonya in the head, and the evidence of LaTonya's injuries to her mouth and beneath her eye, persuasively supported an inference that LaTonya must have suffered pain in her head and face. Counsel reasonably could have determined that attempting to impeach Pennington's testimony concerning LaTonya's alleged report of pain in her face and head would have accomplished nothing. Petitioner has failed to demonstrate counsel's unreasonableness in failing to impeach Pennington in the manner suggested or any prejudice resulting therefrom.

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[11] At a pretrial hearing out of the presence of the jury, Petitioner's counsel asked Pennington whether Pennington had documented in his report the information, to which he had testified on direct examination, that LaTonya had told him her face and head were hurting (R.T. 122). Pennington replied that he did not recall if he put those "exact words" in the report (R.T. 122).

3. Conclusion

For the foregoing reasons, the Superior Court's rejection of Petitioner's claims that counsel erred in failing to impeach Pennington with the police report was not contrary to, or an objectively unreasonable application of, any clearly established Federal Law as determined by the Supreme Court of the United States. See 28 U.S.C. § 2254(d); Harrington v. Richter, 562 U.S. at 100-03. Petitioner is not entitled to federal habeas relief on these claims.

E. Alleged Failure to Fulfill "Promises" Made in Opening Statement

In her opening statement, Petitioner's counsel stated:

> . . . you are going to hear that [Kendrick] saw Mr. Stanford punch Ms. Henderson multiple times in the face, kicked her multiple times while she was on the ground.
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> You're going to hear Mr. Norman say the same thing. Multiple punches to the face, multiple kicks to the ground in the ribs and head area.

R.T. 62-63). Petitioner's counsel then stated that LaTonya's injuries were inconsistent with the reported punching and kicking to which the witnesses would testify, contending that "some things just don't make sense" (R.T. 63).

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As indicated above, Kendrick did testify that she saw Petitioner punch LaTonya in the face with a closed fist, but Kendrick did not testify Petitioner punched LaTonya multiple times in the face (R.T. 76-77, 93). In the 911 call, Kendrick had said she saw Petitioner "hit" LaTonya multiple times, but did not say where the "hits" landed (C.T. 265). At trial, Norman said he saw Petitioner punch LaTonya on the shoulder, but denied having told Deputy Pennington that Norman saw Petitioner punch LaTonya in the face approximately three times with a closed fist (R.T. 110, 114). Oddly enough, Petitioner now appears to argue counsel was ineffective for failing to fulfill "promises" that the jury would hear of an assault more violent than the one described by the witnesses during their trial testimony.

The Superior Court rejected this unusual claim on the procedural ground that Petitioner had not provided a transcript of the opening statement (Petition. Exhibits, ECF Dkt. No. 1, pp. 77-78). The Superior Court also stated that "presumably" the trial court had instructed the jury that the attorney's statements were not evidence and that the jury was to decide the case based only on the evidence (id.).[12] The Superior Court further stated that informing the jury of presumably unfavorable evidence in opening statement was a "sound

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[12] The trial court did give such instructions (R.T 50, 56, 226, 230; C.T. 120, 124, 128).

strategy that is tactical in nature" (id.).[13]

In certain circumstances, a criminal defense attorney's failure to present specific favorable evidence promised in opening statement can constitute a Strickland violation. See Saesee v. McDonald, 725 F.3d 1045, 1048-50 (9th Cir. 2013), cert. denied, 571 U.S. 1165 (2014) (citing cases). Petitioner has shown no such violation, however.

At the preliminary hearing, Deputy Pennington testified that LaTonya told him: (1) Petitioner punched her in the face and tackled her to the ground; and (2) after LaTonya got up, Petitioner punched her "an unknown number of times to the face" (C.T. 34-35). Pennington also testified that Norman told Pennington that Norman saw Petitioner punch LaTonya "a few times" in the face (C.T. 39).

At the time of opening statement, Petitioner's counsel could not have known with certainty precisely how any of the potential trial witnesses, particularly the potential prosecution witnesses, later

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[13] Because the record does not contain the petition filed in the Superior Court, it is unclear whether Petitioner argued to the Superior Court that counsel's comments inappropriately emphasized unfavorable evidence or whether Petitioner argued, as here, that counsel failed to fulfill a purported "promise" to introduce the apparently unfavorable evidence. In any event, as discussed herein, Petitioner has failed to demonstrate a Strickland violation with respect to counsel's opening statement. Therefore, habeas relief is unavailable on this claim even under a de novo standard of review. See 28 U.S.C. § 2254(a); Frantz v. Hazey, 533 F.3d at 736-37. Indeed, Petitioner's claim is not even "colorable." See Cassett v. Stewart, 406 F.3d 614, 623-24 (9th Cir. 2005), cert. denied, 546 U.S. 1172 (2006) (federal habeas court may deny on the merits unexhausted claims that are not "colorable").

would testify. Counsel then reasonably could have anticipated that prosecution witnesses' trial testimony would be more or less consistent with the preliminary hearing testimony. In any event, conveying to the jury in opening statement counsel's anticipation of what the prosecution would show at trial did not in any sense constitute a "promise" to present any defense evidence to the same effect. Contrary to Petitioner's unusual argument, counsel made no "promise" to present evidence that Petitioner had punched LaTonya in the face multiple times. See Saesee v. McDonald, 725 F.3d at 1050 ("it is essential that a promise be made"). Indeed, it would be an extraordinary occurrence if a criminal defense attorney were to promise in opening statement to present evidence that would incriminate the attorney's client.

In any event, Petitioner has not shown Strickland prejudice. First, the "promised" evidence actually was presented to the jury, in the form of Deputy Pennington's testimony. Second, regardless of discrepancies in the accounts of Norman and Kendrick concerning how many times Petitioner hit or kicked LaTonya or where on her body the blow(s) landed, both witnesses testified that Petitioner hit and kicked LaTonya, and Kendrick's 911 call and Pennington's testimony confirmed the assault. Although LaTonya attempted to give a different version of events at trial, LaTonya nevertheless admitted she had testified at the preliminary hearing that Petitioner had punched and kicked her until she became unconscious, and also admitted that she had told Deputy Pennington that Petitioner had hit her multiple times and kicked her until she lost consciousness. There was overwhelming evidence of the assault, regardless of discrepancies concerning the

number of blows or kicks Petitioner administered or where the blows landed. Any attempt by counsel to emphasize evidence that the assault was actually more violent than described by the witnesses at trial would not have aided the defense.

Furthermore, defense counsel's reasonable argument that LaTonya's injuries were inconsistent with the alleged severity of the attack proved partially successful. The jury rejected the great bodily injury enhancement allegations. It is not reasonably likely that, had counsel elicited evidence that Petitioner struck LaTonya even more viciously than the witnesses testified, the trial outcome would have been more favorable to Petitioner.

For the foregoing reasons, Petitioner is not entitled to federal habeas relief on his claim of ineffective assistance of counsel with respect to opening statement. See 28 U.S.C. § 2254(a); Frantz v. Hazey, 533 F.3d at 736-37.

F. Alleged Failure to Present the Theory of "Defense of Property"

1. Background

Petitioner's counsel argued self-defense, based on LaTonya's testimony that she supposedly attacked Petitioner with a piece of fencing or wire. Petitioner now asserts that he had informed counsel he "went after" LaTonya to "stop her from causing a disturbance on his property by trying to put his hand over her mouth & accidentally

kicked her as he was trying to kick her weapon away" (Petition, attachment, p. 12). Petitioner argues that, based on this alleged information and LaTonya's trial testimony, counsel should have advanced a theory of "defense of property" rather than self-defense (Petition, attachment, pp. 14-18).

Petitioner contends counsel should have investigated "whether Petitioner had a defense commensurate with the 'right to defend real or personal property' under CALCRIM 3476 . . . [,] [t]he pertinent question being whether Petitioner had a reasonable belief that his property was in imminent danger of being harmed by LaTonya" (Petition, attachment, p. 15). According to Petitioner, counsel knew or should have known, from information obtained from Petitioner, the preliminary hearing transcript and the police report, that: (1) Petitioner allegedly was on his own property and LaTonya assertedly was a "visitor"; (2) Petitioner allegedly was on parole and could be violated for "being around drugs or users"; (3) "the situation may've been over LaTonya's 'drug use' and not 'infidelity'"; (4) LaTonya allegedly had been drinking, "possibly doing meth," and was angry when Petitioner assertedly told her to leave and told her he had someone else; (5) Petitioner purportedly did not "fight" LaTonya, but only "went after her" to stop her from causing a disturbance on his property; (6) LaTonya's injuries allegedly were more consistent with Petitioner's version of events; and (7) Petitioner allegedly repeatedly told defense counsel he had been defending his property (Petition, attachment, p. 14).

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Petitioner asserts that, had counsel investigated, counsel would have discovered from Petitioner that: (1) Petitioner allegedly believed that crystal meth users, when angry, were "prone to destruction"; (2) LaTonya allegedly had engaged in prior acts of destruction and assertedly was likely to "take out her anger on [Petitioner's] property"; (3) a 911 "disturbance call" could have resulted in the revocation of Petitioner's parole for "being around alcohol, drugs, users," thus purportedly putting Petitioner's property at risk of foreclosure "or some other adversity"; (4) Petitioner allegedly did not know of his "right as 'the property owner to use force'"; and (5) Petitioner's "initial intent" allegedly was to "get LaTonya home & off his property" (Petition, attachment, p. 15). Petitioner contends counsel could have learned from LaTonya that: (1) LaTonya allegedly had exhibited prior acts of violence and destruction toward other persons and properties; and (2) Petitioner allegedly was concerned with keeping his property in good condition (Petition, attachment, p. 15).

The Superior Court rejected this claim on the ground that counsel's choice of defense was within the scope of counsel's discretion (Petition, Exhibits, ECF Dkt. No. 1, p. 77).

2. Analysis

To the extent Petitioner argues that counsel unreasonably decided to pursue a theory of self-defense, such argument lacks merit. LaTonya's version of the incident, i.e., that she purportedly attacked Petitioner with a piece of wire fencing, supposedly cutting

Petitioner's arm, and that Petitioner allegedly kicked her "accidentally" while trying to kick away the wire, reasonably supported counsel's decision to argue self-defense. The fact that the defense was unsuccessful does not show counsel's ineffectiveness. See Strickland, 466 U.S. at 689 (cautioning against "examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable"); Siripongs v. Calderon, 133 F.3d 732, 736 (9th Cir.), cert. denied, 525 U.S. 839 (1998) ("the relevant inquiry under *Strickland* is not what defense counsel could have pursued, but rather whether the choices made by defense counsel were reasonable") (citation omitted).

Petitioner contends counsel instead should have advanced a "defense of property" theory based on CALCRIM 3476, which provides:

> The owner [or possessor] of (real/ [or] personal) property may use reasonable force to protect that property from imminent harm. [A person may also use reasonable force to protect the property of a (family member/guest/master/ servant/ward) from immediate harm.]
>
> *Reasonable force* means the amount of force that a reasonable person in the same situation would believe is necessary to protect the property from imminent harm.
>
> When deciding whether the defendant used reasonable force, consider all the circumstances as they were known to and appeared to the defendant and consider what a reasonable

person in a similar situation with similar knowledge would have believed. If the defendant's beliefs were reasonable, the danger does not need to have actually existed.

The People have the burden of proving beyond a reasonable doubt that the defendant used more force than was reasonable to protect property from imminent harm. If the People have not met this burden, you must find the defendant not guilty of <insert crime>.

As indicated above, "reasonably diligent counsel may draw a line when they have good reason to think further investigation would be a waste." Rompilla v. Beard, 545 U.S. 374, 383 (2005) (citation omitted). For the reasons discussed below, counsel reasonably could have concluded that further investigation regarding this defense would have been a "waste" and that an attempt to present such a defense would not be successful.

First, even assuming arguendo the truth of Petitioner's allegations concerning LaTonya's asserted drug use and disturbances on the property, counsel reasonably could have concluded that any such alleged behavior by LaTonya was not subjecting the property itself or Petitioner's alleged right therein to any "imminent harm." See generally, People v. Robertson, 34 Cal. 4th 156, 167, 17 Cal. Rptr. 3d 604, 95 P.3d 872 (2004), overruled on other grounds, People v. Chun, 45 Cal. 4th 1172, 91 Cal. Rptr. 3d 106, 203 P.3d 425 (2009) (a person may be privileged to use force in defense of "oneself or another or of property" if the force is "reasonable under the circumstances to repel

what is honestly and reasonably believed to be a threat of imminent harm") (citations omitted). Second, counsel also reasonably could have determined that punching and kicking LaTonya did not constitute force which any reasonable person in Petitioner's situation could have believed to have been necessary to protect Petitioner's interest in the property from possible harm, whether from foreclosure, dispossession or otherwise. Third, and relatedly, counsel reasonably could have concluded that the trial court would decline to instruct on such a theory.[14] Fourth, counsel also reasonably could have decided that presenting a theory of defense of property based on Petitioner's parole conditions would harm Petitioner by disclosing to the jury the fact that Petitioner had a criminal history.

For similar reasons, Petitioner has failed to demonstrate that the omission of a "defense of property" theory prejudiced Petitioner under the Strickland standard. Even if LaTonya's continued presence on the property could have harmed Petitioner's right to possession or title to the property, the harm was not "imminent." Nor could any such harm have justified the severe force Petitioner exerted on LaTonya. There is no reasonable probability the trial court would have instructed the jury on "defense of property" under these circumstances. Moreover, there is no reasonable probability that the jury, even if so instructed, would have returned a verdict more favorable to Petitioner.

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[14] The trial court doubtlessly would have been loath to expand the doctrine of "defense of property" so as to privilege the use of such force against anyone "threatening" an interest in real property, including a mortgage lender, a lienholder, a tenant resisting eviction or a family member disputing title.

For the foregoing reasons, the Superior Court's rejection of this claim was not contrary to, or an objectively unreasonable application of, any clearly established Federal Law as determined by the Supreme Court of the United States. See 28 U.S.C. § 2254(d); Harrington v. Richter, 562 U.S. at 100-03. Petitioner is not entitled to federal habeas relief on this claim.

G. Alleged Failure to Object to the Wording of the Flight Instruction.

The trial court gave California's pattern flight instruction, CALCRIM 372:

> If the defendant fled immediately *after the crime was committed*, that conduct may show that he was aware of his guilt. If you conclude that the defendant fled, it is up to you to decide the meaning and importance of that conduct. However, evidence that the defendant fled cannot prove guilt by itself.

(R.T. 241; C.T. 142) (emphasis added.

Petitioner's counsel objected unsuccessfully to the flight instruction on the ground that the evidence assertedly did not support the instruction (R.T. 170). Petitioner claims that counsel also should have objected on the ground that the instruction purportedly implied that the crime "had been committed," thus supposedly lowering the prosecution's burden of proof and undermining the presumption of

innocence (Petition, attachment, p. 19). The Superior Court rejected this claim, observing that the claim Petitioner was making had been "rejected years ago," citing People v. Paysinger, 174 Cal. App. 4th 26, 30-32, 93 Cal. Rptr. 3d 901 (2009) (Petition, Exhibits, ECF Dkt. No. 1, p. 78).

The Superior Court's denial of Petitioner's claim was not unreasonable. In People v. Paysinger, the California Court of Appeal rejected the precise challenge to the instruction presented here, reasoning that the word "if" in the operative clause of the instruction modified the entire phrase, including the words "after the crime was committed." Id. at 30. The Paysinger Court also ruled that it was "highly unlikely that a reasonable juror would have understood the instruction as dictating that 'the crime was committed.'" Id. The Paysinger Court also stated that its conclusion was bolstered by other instructions such as the instructions that: (1) the jury must decide the facts; (2) it was up to the jury alone to decide what had happened; (3) a defendant in a criminal case is presumed innocent; (4) the prosecution must prove guilt beyond a reasonable doubt. Id.

In the present case, the trial court gave instructions on the presumption of innocence, the prosecution's burden of proof and the exclusive role of the jury to decide the facts (see R.T. 54-56, 226, 229-30; C.T. 119-20, 124, 127). Therefore, at the time of trial in July of 2014, counsel reasonably could have decided that any challenge to the flight instruction on the ground that the instruction "assumed" or "presumed" the commission of the crime would be doomed to failure. See Herrera v. Phillips, 2013 WL 3789613, at *8 (C.D. Cal. July 16,

2013) (rejecting similar challenge to CALCRIM 372). Counsel cannot be faulted for failing to make a meritless argument. See Gonzalez v. Knowles, 515 F.3d 1006, 1017 (9th Cir. 2008); Rupe v. Wood, 93 F.3d 1434, 1445 (9th Cir. 1996), cert. denied, 519 U.S. 1142 (1997); Shah v. United States, 878 F.2d 1156, 1162 (9th Cir.), cert. denied, 493 U.S. 869 (1989). For the same reasons, Petitioner has not shown Strickland prejudice.

For the foregoing reasons, the Superior Court's rejection of this claim was not contrary to, or an objectively unreasonable application of, any clearly established Federal Law as determined by the Supreme Court of the United States. See 28 U.S.C. § 2254(d); Harrington v. Richter, 562 U.S. at 100-03. Petitioner is not entitled to federal habeas relief on this claim.

H. Alleged Failure to Present LaTonya's Declaration at Sentencing

Petitioner contends that, after trial, he sent counsel a declaration "to be completed by LaTonya . . . for presentation at sentencing" (Petition, attachment, pp. 21, 22 n.3). According to Petitioner, counsel told Petitioner the declaration "had to be written by LaTonya" (id.).[15] Petitioner asserts that counsel thereby prevented Petitioner from presenting "authentic evidence" in the form of LaTonya's testimony concerning the tenants' "possible bias" (id.).

[15] In the Reply, Petitioner contends LaTonya could not write the declaration herself because her reading, writing and spelling allegedly were poor and her meth addiction supposedly had worsened (Reply, p. 12).

Petitioner attaches to the Petition a purported unsigned declaration of LaTonya, written in what appears to be Petitioner's handwriting. This purported declaration states that: (1) before Petitioner's arrest, Kendrick and Norman allegedly "had a very negative attitude towards [Petitioner] as a result of his putting them up for eviction"; and (2) Joel Mendez allegedly was giving drugs to Kendrick and Norman in exchange for the use of their car (Petition, Ex. D, ECF Dkt. No. 1-1, p. 15).

The Superior Court rejected this claim of ineffective assistance, stating that Petitioner's claim "ignore[d] that the sentencing hearing took place after the jury's verdict (Petition, Ex. A, ECF Dkt. No. 1, p. 77).

Petitioner's claim fails for several reasons. First, as the Superior Court observed, the trial was over. The verdict reflects that the jury credited the evidence that Petitioner had assaulted and injured LaTonya and rejected Petitioner's theory of self-defense, which had been based on LaTonya's testimony that she supposedly was the aggressor. Counsel reasonably could have concluded that the purported declaration Petitioner drafted for LaTonya attempting post hoc to discredit the tenants' trial testimony would have no material

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effect at sentencing.[16]

Second, regardless of counsel's alleged failure to present the supposed declaration at sentencing, both LaTonya and Petitioner spoke at sentencing and could have presented the same information as that contained in LaTonya's alleged declaration. At sentencing, LaTonya stated that she had lied about Petitioner so he would go to jail and stated that Petitioner "was kicking the weapon from me when I fell" (R.T. 397-98). LaTonya said that she wished she was in jail because it was her fault due to her drug and drinking problems, that she had "started this whole thing" and that Petitioner did not "deserve this at all" (R.T. 398). However, LaTonya did not mention any purported bias of, or drug use by, Kendrick or Norman.

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[16] Elsewhere in the Petition and in the Reply, Petitioner states, in seeming contradiction to his claim, that he did not desire to use LaTonya's declaration at sentencing, but rather on appeal (Petition, attachment, p. 8; Reply, p. 12). However, on direct appeal, the appellate court generally may not consider evidence outside of the appellate record. People v. Farmer, 47 Cal. 3d 888, 254 Cal. Rptr. 508, 765 P.2d 940 (1989), cert. denied, 490 U.S. 1107 (1989), disapproved on other grounds, People v. Waidla, 22 Cal. 4th 690, 94 Cal. Rptr. 2d 396, 996 P.2d 46 (2000), cert. denied, 531 U.S. 1018 (2000); People v. Floyd, 1 Cal.3d 694, 710, 83 Cal. Rptr. 608, 464 P.2d 64 (1970) (affidavits not contained in appellate record), overruled on other grounds, People v. Wheeler, 22 Cal.3d 258, 148 Cal. Rptr. 890, 583 P.2d 748 (1978); see also People v. Peevy, 17 Cal. 4th 1184, 1207, 73 Cal. Rptr. 2d 865, 953 P.2d 1212 (1998), cert. denied, 525 U.S. 1025 (1998) ("an appellate court generally is not the forum in which to develop an additional factual record, particularly in criminal cases when a jury trial has not been waived") (citations omitted). Counsel reasonably could have decided that any attempt to submit LaTonya's purported declaration on appeal was doomed to failure.

At sentencing, Petitioner said the "whole thing" [i.e., the assault] concerned his purported discovery that LaTonya allegedly was doing drugs (R.T. 399). Petitioner mentioned assertedly having to evict tenants who were doing drugs (R.T. 399). However, Petitioner did not mention Kendrick or Norman and did not allege that either Kendrick or Norman purportedly was biased against Petitioner (R.T. 399).

Third, there is no reasonable probability that presentation of the purported declaration would have changed the outcome of Petitioner's sentencing. After listening to LaTonya and to Petitioner, the sentencing court found no factors in mitigation (R.T. 485). The court stated that Petitioner had no one to blame but himself for his criminal history and that Petitioner's supposed drug use did not excuse Petitioner's continuous commission of violent offenses (R.T. 485). The court stated that "[n]ot once" had Petitioner taken responsibility for or expressed remorse for his actions (R.T. 485-86). The court said that Petitioner had "just expressed remorse for being found in this predicament which, again, he blames on drugs and he blames on the victim" (R.T. 486). The court said Petitioner "violate[d] other people's rights," "victimize[d] other individuals," and presented "a danger to our community" (R.T. 486). The sentencing court doubtlessly would have viewed the purported declaration as yet another vain attempt by Petitioner to avoid taking responsibility for his criminal actions.

For the foregoing reasons, the Superior Court's rejection of this claim was not contrary to, or an objectively unreasonable application

of, any clearly established Federal Law as determined by the Supreme Court of the United States. See 28 U.S.C. § 2254(d); Harrington v. Richter, 562 U.S. at 100-03. Petitioner is not entitled to federal habeas relief on this claim.

I. Alleged Cumulative Error

"When an attorney has made a series of errors that prevents the proper presentation of a defense, it is appropriate to consider the cumulative impact of the errors in assessing prejudice." Turner v. Duncan, 158 F.3d 449, 457 (9th Cir. 1998). However, for the foregoing reasons, Petitioner has not shown that counsel made any errors preventing the proper presentation of a defense. Accordingly, any claim of cumulative Strickland error necessarily fails. See generally Hayes v. Ayers, 632 F.3d 500, 524 (9th Cir. 2011) ("Because we conclude that no error of constitutional magnitude occurred, no cumulative prejudice is possible.") (citation omitted); Delgado v. Muniz, 2019 WL 1590909, at *11 (C.D. Cal. Mar. 12, 2019), adopted, 2019 WL 1585106 (C.D. Cal. Apr. 8, 2019) ("Because Petitioner has not established any ineffective assistance, he cannot show cumulative ineffectiveness."). "What [petitioner's] protest[s] over the cogency of his defense really shows is that not every . . . case can be won by the defense." Hendricks v. Calderon, 70 F.3d 1032, 1042 (9th Cir. 1995), cert. denied, 517 U.S. 1111 (1996).

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III. Petitioner Is Not Entitled to an Evidentiary Hearing.

Where a state court adjudicates a petitioner's claims on the merits, "evidence introduced in federal court has no bearing on § 2254(d)(1) review." See Cullen v. Pinholster, 563 U.S. 170, 185 (2011); see also Gulbrandson v. Ryan, 738 F.3d 976, 993 n.6 (9th Cir. 2013), cert. denied, 573 U.S. 981 (2014) (Pinholster's preclusion of a federal evidentiary hearing applies to section 2254(d)(2) claims as well as section 2254(d)(1) claims). Here, the state courts adjudicated almost all of Petitioner's claims on the merits. Moreover, Petitioner has failed to demonstrate that an evidentiary hearing would reveal anything material to any of Petitioner's claims. Therefore, Petitioner is not entitled to an evidentiary hearing.

RECOMMENDATION

For the reasons discussed above, IT IS RECOMMENDED that the Court issue an order: (1) accepting and adopting this Report and Recommendation; and (2) denying and dismissing the Petition with prejudice.

DATED: May 24, 2019.

/s/
CHARLES F. EICK
UNITED STATES MAGISTRATE JUDGE

NOTICE

Reports and Recommendations are not appealable to the Court of Appeals, but may be subject to the right of any party to file objections as provided in the Local Rules Governing the Duties of Magistrate Judges and review by the District Judge whose initials appear in the docket number. No notice of appeal pursuant to the Federal Rules of Appellate Procedure should be filed until entry of the judgment of the District Court.

If the District Judge enters judgment adverse to Petitioner, the District Judge will, at the same time, issue or deny a certificate of appealability. Within twenty (20) days of the filing of this Report and Recommendation, the parties may file written arguments regarding whether a certificate of appealability should issue.

DESCRIPTION OF THIS APPENDIX:

STATE COURT

HABEAS DENIALS

NUMBER OF PAGES: 9

APPENDIX D

S249479

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re JAMES ROBERT STANFORD on Habeas Corpus.

The petition for writ of habeas corpus is denied.

Corrigan, J., was absent and did not participate.

CANTIL-SAKAUYE

Chief Justice

S249479

ORIGINAL

COPY

PERTINENT PORTIONS OF

TRANSCRIPTS

IN RE: JAMES R. STANFORD

ON HABEAS CORPUS

SAN BERNARDINO COUNTY #FVI1400184

S249479

EXHIBITS

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REC'D 4-30-18

COURT OF APPEAL -- STATE OF CALIFORNIA
FOURTH DISTRICT
DIVISION TWO

ORDER

In re JAMES ROBERT STANFORD

on Habeas Corpus.

E069924

(Super.Ct.Nos. FVI1400184 & WHCJS1700378)

The County of San Bernardino

THE COURT

The petition for writ of habeas corpus is DENIED.

RAMIREZ
Presiding Justice

Panel: Ramirez
McKinster
Slough

cc: See attached list

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

In the matter of	Case No. WHCJS1700378
James Robert Stanford, Petitioner	ORDER
for Writ of Habeas Corpus	

Petitioner James Robert Stanford filed a petition for writ of habeas corpus on November 8, 2017. In 2014, a jury convicted Petitioner of corporal injury on a dating partner (Pen. Code,[1] § 273.5, subd. (a)), assault by means likely to produce great bodily harm (§ 245, subd. (a)(4)), and simple battery (§ 242).[2] The jury also found Petitioner had two strike priors (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)) and one serious felony prior (§ 667, subd. (a)(1)). On appeal, the simple battery conviction was reversed as a lesser included offense, as was the enhancement under section 667, subdivision (a)(1), as the current convictions are not serious felonies. The Court of Appeal also modified the sentence to impose a section 654 stay on the sentence for the assault conviction.

The petition contends trial counsel was ineffective for 1) failing to investigate Petitioner's tenants; 2) failing to impeach an officer who testified as to statements by the victim that were not included in his report; 3) failing to present evidence she told the jury during opening statements it would hear; 4) using a defense theory of self-defense; 5) failing to investigate whether Petitioner had a defense under the right to defend property; 6) failing to object to the wording "after the crime was committed" in the flight

[1] Further section references are to the Penal Code.

[2] The Court takes judicial notice of the unpublished opinion in E064552. (See Evid. Code, § 452, subd. (d).)

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instruction; and 7) failing to assist with Petitioner's post-trial efforts to have the victim sign a declaration Petitioner could use at sentencing.

This is Petitioner's second habeas petition based on ineffective assistance of counsel. The first petition was denied on November 3, 2014, case no. WHCJS1400408, the Hon Katrina West, judge presiding. Such successive claims constitute an abuse of the writ of habeas corpus. (See *In re Reno* (2012) 55 Cal.4th 428, 453 ["a petitioner's failure, in a second or successive habeas corpus petition ... both to acknowledge the limitations of habeas corpus as an avenue of collateral attack and to make a plausible effort to explain why the claims raised are properly before the court, can be considered an abuse of the writ process."]; *In re Clark* (1993) 5 Cal.4th 750, 767-769; *In re Miller* (1941) 17 Cal.2d 734, 735.) Petitioner has not alleged facts establishing an exception to the rule requiring all claims to be raised in one timely filed petition. (*In re Reno* (2012) 55 Cal.4th 428, 454; *In re Clark* (1993) 5 Cal.4th 750, 767-768; *In re Horowitz* (1949) 33 Cal.2d 534, 546-547.) Raising variations of a previously rejected habeas claim justifies summary denial without reaching the merits. (See, *Reno*, 55 Cal.4th at 455–456.)

While documents are attached to the petition, no documentation is provided that shows what would have been learned from any of the suggested further investigation contemplated by the petition. Petitions for a writ of habeas corpus are evaluated "by asking whether, assuming the petition's factual allegations are true, the petitioner would be entitled to relief. [Citations.] If no prima facie case for relief is stated, the court will summarily deny the petition." (*People v Duvall* (1995) 9 Cal.4th 464, 474–475.) To state a prima facie case for relief "the petition 'should both (i) state fully and with particularity the facts on which relief is sought [citations], as well as (ii) include copies of reasonably available documentary evidence supporting the claim, including pertinent portions of trial transcripts and affidavits or declarations.' [Citations.]" (*In re Martinez* (2009) 46 Cal.4th 945, 955–956.) This is because in the absence of specificity—and supporting documentation—claims for relief are conclusory and conclusory allegations do not warrant relief. (See *In re Reno* (2012) 55 Cal.4th 428, 493.)

Under both the Sixth Amendment to the United States Constitution and Article I, Section 15 of the California Constitution, a criminal defendant has the right to the effective assistance of counsel. (E.g., *Strickland v. Washington* (1984) 466 U.S. 668, 686; *People v. Ledesma* (1987) 43 Cal.3d 171, 215-218; *In re Cordero* (1988) 46 Cal.3d 161, 179-180. This right entitles a criminal defendant to the reasonably competent assistance of an attorney acting as his diligent conscientious advocate. (*Ledesma*, 43 Cal.3d at 215; *Cordero*, 46 Cal.3d at 180; see, *Strickland*, 466 U.S. at 686.)

To prevail on a claim of ineffective assistance of counsel, Petitioner "must show that counsel's representation fell below an objective standard of reasonableness" measured against "prevailing professional norms," and that prejudice resulted. (*Strickland v. Washington* (1984) 466 U.S. 668, 687-688, 694; see, *People v. Anderson* (2001) 25 Cal.4th 543, 569; *In re Cordero* (2007) 46 Cal.3d 161, 180.) Prejudice generally requires an affirmative showing that, absent counsel's alleged errors, there is a reasonable probability of a more favorable outcome. (*Cordero*, 46 Cal.3d at 180; *Ledesma*, 43 Cal.3d at 218; see, *Anderson*, 25 Cal.4th at 569.) A "reasonable probability" is not a showing that "counsel's conduct more likely than not altered the outcome in the case," but simply "a probability sufficient to undermine confidence in the outcome." (*Strickland*, 466 U.S. at 693-694; *Anderson*, 25 Cal.4th at 569; *Cordero*, 46 Cal.3d at 180.) "An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." *Strickland*, 466 U.S. at 691.

In assessing prejudice under *Strickland*, the question is not whether a court can be certain counsel's performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. (*Harrington v. Richter* (2011) 562 U.S. 86, 111.) Instead, *Strickland* asks whether it is "reasonably likely" the result would have been different. (562 U.S. at 111.) "The likelihood of a different result must be substantial, not just conceivable." (562 U.S. at 112, citing, *Strickland*, 466 U.S. at 693.)

The facts underlying Petitioner's conviction cannot be ignored. The Court of Appeal described the vicious beating Petitioner inflicted on the victim: "On the night of January 14, 2014, defendant argued with his girlfriend, and got physical. Defendant kicked his girlfriend in the ribs, knocking her down. Once she was on the ground, defendant kicked her repeatedly in the ribs and upper torso, 'like a soccer ball.' The girlfriend curled up in the fetal position and screamed, 'M]y ribs, he's going to kill me. Defendant walked away from his girlfriend, who then got up and followed him. The girlfriend asked defendant to stop and help her. Defendant responded by punching her in the face or shoulder with a closed fist. The girlfriend fell to the ground and lay still for 30 to 40 seconds. Defendant kicked his girlfriend repeatedly in the ribs until the police arrived." (See, Case no. E064552, available at 2017 WL 1684346.)

Much of Petitioner's complaints about counsel's performance are attacking the sufficiency of the evidence. However, a claim that the evidence at trial was insufficient may not be raised by petition for writ of habeas corpus. (*In re Reno* (2012) 55 Cal.4th 428, 452 ("Claims alleging the evidence was insufficient to convict . . . are not

cognizable on habeas corpus."); *Ex parte Lindley* (1947) 29 Cal.2d 709, 723 ("Upon habeas corpus, . . . the sufficiency of the evidence to warrant the conviction of the petitioner is not a proper issue for consideration.").) In substance, Petitioner is seeking a re-do of his trial by way of this habeas petition. Habeas may not be used for this purpose. The weighing of evidence and determinations regarding the credibility of witnesses are for the trial court. (See *People v. Farris* (1977) 66 Cal. App.3d 376, 383).

More specific to counsel's performance, Petitioner has also failed to show that counsel's performance was deficient. Petitioner has also failed to show that but for counsel's allegedly deficient performance, there is a reasonable probability that a more favorable outcome would have resulted. It is not enough to speculate about possible prejudice to be accorded relief. Petitioner has failed to show that the prejudicial effect of counsel's alleged errors was a "demonstrable reality." (*In re Cox* (2003) 30 Cal.4th 974, 1016; *In re Clark* (1993) 5 Cal.4th 750, 766; *Strickland v. Washington* (1984) 466 U.S. 668, 697.)

Petitioner's claims of ineffective assistance of counsel for failing to investigate had to be supported by declarations or other proffered testimony establishing both the substance of any omitted evidence, or viability of an alternative defense theory, and its likelihood for exonerating Petitioner. (See *People v. Bolin* (1998) 18 Cal.4th 297, 334.) Alleged deficiencies of counsel cannot be evaluated solely on unsubstantiated speculation. (*Ibid.*) The petition does not include any such supporting documentation. Thus, the allegations based on a failure to investigate are conclusory.

Petitioner's challenges to the chosen defense theory, failure to impeach, and failure to assist in obtaining a declaration from the victim, are all claims about actions within the scope of trial counsel's discretion. (See *People v. Welch* (1999) 20 Cal.4th 701, 728–729 [defense strategy conceding murders but arguing against premeditation within trial counsel's role as captain of the ship and not ineffective].) Impeachment was not about a direct inconsistency but about the absence of information; thus questioning the officer about this issue could have just added emphasis and detail without tainting the officer's credibility. Similarly, seeking to obtain a declaration from the victim for use at sentencing ignores that the sentencing hearing took place after the jury's verdict.

The petition also fails to state a claim based on defense counsel's opening statement. As Petitioner failed to provide a copy of the jury instructions or a transcript from the opening statement, this allegation may be denied as conclusory and unsupported. Vague or conclusory allegations do not warrant relief. (*In re Martinez* (2009) 46 Cal. 4th 945, 955-956 ["[T]he petition should ... state fully and with particularity the facts on which relief is sought [citations], as well as ... ***include copies of***

reasonably available documentary evidence supporting the claim." (Emphasis added.)]; *People v. Duvall* (1995) 9 Cal.4th 464, 474; *People v Karis* (1998) 46 Cal.3d 612, 656; *In re Swain* (1949) 34 Cal.2d 300, 303-304.) Presumably, the jury was instructed that what the attorneys say is not evidence, and that the jury was to decide the case based only on the evidence presented in the courtroom. (See, e.g., CALCRIM 104, 222.) The jury is presumed to have followed the instructions given by the trial court. (*People v. Prince* (2007) 40 Cal.4th 1179, 1295 ["As a general matter, we may presume that the jury followed the instructions it was given."].)

Further, reviewing courts defer to counsel's reasonable tactical decisions in examining a claim of ineffective assistance of counsel, and there is a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. Tactical errors are generally not deemed reversible, and counsel's decision making must be evaluated in the context of the available facts. (*People v. Weaver* (2001) 26 Cal.4th 876, 925–926.) Counsel's informing the jury of presumably unfavorable evidence in opening statement as a way to develop and maintain counsel's credibility with the jury is a sound strategy that is tactical in nature. The petition fails to set forth any factual hypothesis by which this Court could come to a contrary conclusion.

Lastly, Petitioner's contention about the flight instruction, CALCRIM No. 372, is that trial counsel should have objected to the phrase "If the defendant fled immediately after the crime was committed" because it implied a crime occurred, reduced the prosecutor's burden, undermined the presumption of innocence, and violated the right to a fair trial. Petitioner's contention is premised on the instruction presuming a crime occurred. But this interpretation of the instruction was rejected years ago. (See *People v. Paysinger* (2009) 174 Cal.App.4th 26, 30–32.)

The petition is DENIED.

Dated: December 26, 2017

Hon. Gregory S. Tavill
Judge of the Superior Court

DESCRIPTION OF THIS APPENDIX:

EVIDENCES SUPPORTING SHOWING OF DENIAL OF CONSTITUTIONAL RIGHT

NUMBER OF PAGES: 46

APPENDIX E

DECLARATION OF:

JAMES R. STANFORD, PETITIONER

RE: BROOKE SATTERFIELD, PUBLIC DEFENDER IN CASE #FVI1400184 —

I, JAMES R. STANFORD, THE PETITIONER IN THE ABOVE ENTITLED CAUSE, HEREBY STATE THAT ABOUT MARCH OF 2014 AT THE VICTORVILLE CALIF. JAIL, MY PUBLIC DEFENDER BROOKE SATTERFIELD INTERVIEWED ME REGARDING CASE #FVI1400184, AT WHICH TIME I TOLD HER THAT NOT ONLY WAS MY TENANT'S (SHANNON K. + JASON N.) CLAIM THAT I ASSAULTED LATONYA ALL DAY LONG (EXHIBIT B, p. 1) UNTRUE, . . . WE WEREN'T EVEN HOME MOST OF THE DAY.[N1] I THEN TOLD HER I WASN'T DRINKING + DON'T DO DRUGS + THAT THE SITUATION WASN'T OVER "INFIDELITY," IT WAS OVER ME FINDING OUT LATONYA USED CRYSTAL METH + TELLING HER SHE HAD TO LEAVE + THAT I HAD SOMEONE ELSE + SO SHE WENT CRAZY BY ATTACKING ME WITH A PIECE OF FENCE WIRE + RUNNING AWAY ON MY PROPERTY IN A RIOTOUS MANNER. I TOLD BROOKE I DID NOT PUNCH OR FIGHT LATONYA, BUT WENT AFTER HER TO STOP HER FROM CAUSING A DISTURBANCE ON MY PROPERTY BY TRYING TO PUT MY HAND OVER HER MOUTH + ACCIDENTALLY KICKED HER WHILE TRYING TO KICK THE FENCE WIRE AWAY.

BROOKE THEN ASKED IF I KNEW OF ANY REASON MY TENANTS MIGHT HAVE TO LIE ON ME. I ANSWERED "YES" + TOLD HER THEY WERE IN DESPERATE NEED OF A PLACE TO STAY + VERY GRATEFUL + RESPECTFUL TOWARD ME UNTIL I NEARLY EVICTED THEM. I WENT ON PROVIDING DETAILS,[N2] INCLUDING THE FACT THAT LATONYA EVEN WITNESSED THE CHANGE IN THEIR ATTITUDE TOWARD ME. I ADDED THAT LATONYA WAS ALSO WITH ME DURING 2 OTHER EVICTIONS I HAD

N1 THIS WAS DUE IN PART TO A MANDATORY 2 HOUR PROGRAM I ATTENDED AT THE PAROLE OFFICE A HALF HOUR DRIVE AWAY IN VICTORVILLE CA.

N2 THOSE DETAILS ARE LARGELY CONTAINED IN A PRIOR DECLARATION I SENT TO BROOKE (EXHIBIT D, PAGE 6) I DON'T KNOW WHAT THE SITUATION WAS AT MY TENANTS' PRIOR RESIDENCE, ONLY THAT THEY "HAD" TO LEAVE, + MAY'VE BEEN ON THE STREET IF IT WEREN'T FOR ME. THEIR DESPERATION WAS FOR AN AFFORDABLE PLACE THAT WOULD ACCOMODATE THEIR 2 BIG DOGS. THE TYPE OF DISTURBANCES THEY WERE CAUSING AT MY PLACE WAS ALL NIGHT ARGUING + TRAFFIC. EVEN AFTER GIVING THEM A CHANCE TO STAY, IT WAS LIKE THEY SOUGHT OPPORTUNITIES TO SPITE ME ABOUT PROBLEMS ALREADY DISCUSSED + RESOLVED IN THE RENTAL AGREEMENT, + THOUGH NOT LOUD ENOUGH TO DISTURB OTHERS + FORCE ME TO EVICT, "THEY" CONTINUOUSLY BICKERED + ARGUED WITH ONE ANOTHER ON A "DAILY" BASIS.

RECENTLY CONDUCTED,[N3] + THAT I WAS REQUIRED, NOT ONLY AS A LANDLORD, BUT AS A PAROLEE TO REVEAL TO TENANTS "+" LATONYA MY CRIMINAL HISTORY (EXHIBIT C, p. 3)[N4] + TO WARN THEM ABOUT SUCH THINGS AS WEAPONS, DRUGS, ILLEGAL CONDUCT, ETC,

WHEN ASKED IF/WHY I LEFT THE SCENE, I TOLD BROOKE THAT I FEARED THE POSSIBILITY OF BEING VIOLATED FOR COMING IN CONTACT WITH LAW ENFORCEMENT (EXHIBIT C, p. 5) ESPECIALLY KNOWING THAT LATONYA HAD BEEN DRINKING, DOING DRUGS, + WAS ANGRY ENOUGH TO LIE ON ME, BUT THAT I WAS ARRESTED UPON "RETURNING" TO MY PROPERTY.

SINCE THAT INTERVIEW I SAW BROOKE A FEW OTHER TIMES PRIOR TO TRIAL + ON PRACTICALLY EVERY OCCASION, I'VE EXPRESSED THAT I FELT LIKE THE VICTIM AS I WAS DEFENDING MY PROPERTY, BUT SHE'D NEVER CONSULT WITH ME ABOUT THIS.[N5]

AFTER TRIAL, I SENT BROOKE MY DECLARATION (IDEM, N. 2) + THEN ONE TO BE COMPLETED BY LATONYA (EXHIBIT D, p. 7)[N6] FOR PRESENTATION TO THE COURT AT SENTENCING, AT WHICH TIME BROOKE TOLD ME THAT LATONYA'S DECLARATION HAD TO BE WRITTEN BY LATONYA.

N3 DETAILING JOEL MENDEZ'S EVICTION FOR DRUG USE. SEE: p. 4 LINES 18-28

N4 ONLY THE RELEVANT PAGES OF PETITIONER'S PAROLE CONDITIONS HAVE BEEN EXHIBITED

N5 LACKING KNOWLEDGE OF PROPERTY RIGHTS/DEFENSES, I WAS RELIANT ON BROOKE'S DECISION AS TO THE MATTER. HAD SHE CONSULTED WITH ME, SHE'D'VE FOUND THAT I FEARED NOT ONLY FOR THE DISRESPECT TO MY TENANTS + NEIGHBORS I.E. THE SAME TENANTS + NEIGHBORS WHO STRONGLY ADVISED ME TO EVICT SHANNON + JASON FOR THE DISTURBANCES "THEY" HAD CAUSED (EXHIBIT D, p. 6, LINES 12-14), BUT FOR THE SAFETY OF MY PROPERTY AS WELL. I.E. I BELIEVED THAT: 1) CRYSTAL METH, + AISO ALCOHOL USERS, ESPECIALLY WHEN ANGRY, WERE PARTICULARLY PRONE TO DESTRUCTION (EXHIBIT D, pp. 3-5) + THAT LATONYA, WHO HAD EXHIBITED PRIOR ACTS OF SUCH NATURE, WAS LIKELY TO TAKE OUT HER ANGER ON MY PROPERTY; AND 2) A 911 DISTURBANCE CALL COULD RESULT IN A PAROLE VIOLATION FOR MY BEING AROUND ALCOHOL, DRUGS, USERS (EXHIBIT C, pp. 1+2) OR EVEN LAW ENFORCEMENT (IDEM, at p. 5) + MY INCARCERATION WOULD PUT MY PROPERTY AT RISK OF FORECLOSURE OR SOME OTHER ADVERSITY.

N6 I HAD DIFFICULTIES WITH GETTING LATONYA'S DECLARATION "LEGITIMATELY" DONE, SO I FIGURED "WHAT BETTER WAY THAN THRU MY PUBLIC DEFENDER!"

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE + WAS EXECUTED BY ME James R. Strickland ON THIS 3RD DAY OF NOVEMBER 2015 AT N.K.S.P. IN DELANO CA.

DECLARATION OF JAMES R. STANFORD
RE: CASE # FVI 1400184

I, JAMES ROBERT STANFORD, HAVE BEEN THE PROPERTY OWNER AT 4734 LUNA Rd. IN PHELAN, CA. SINCE MAY 12, 2012.

BECAUSE THEY WERE IN DESPERATE NEED OF A PLACE TO STAY, I ALLOWED SHANNON KENDRICK & JASON NORMAN TO MOVE INTO MY 2 BEDROOM MOBILE HOME RENTAL WHILE I WAS AWAY FOR 3 DAYS DURING THE THANKSGIVING HOLIDAY OF 2013. ALTHOUGH I WASN'T THERE, I INFORMED THEM OF MY PAROLE CONDITIONS & MY EXPECTATIONS OF THEM AS TENANTS. THEY TALKED TO ME AS THOUGH I WERE THE BEST LANDLORD IN THE WORLD.

THEIR GRATITUDE WAS NO LESS APPARENT UPON MY RETURN HOME TO MEET THEM. BUT SOON AFTER, OTHER TENANTS & NEIGHBORS CAME TO STRONGLY ADVISE AGAINST ALLOWING THEM TO STAY, DUE TO DISTURBANCES THEY'D CAUSED WHILE I WAS AWAY. AS A RESULT, I SUGGESTED TO SHANNON & JASON THAT THEY FIND ANOTHER PLACE, & GAVE THEM TIME TO DO SO. IMMEDIATELY, THEIR WHOLE ATTITUDE HAD CHANGED TOWARD ME, EVEN THOUGH I DECIDED TO GIVE THEM A CHANCE BY LETTING THEM STAY ON A TRIAL BASIS. THEIR ATTITUDE CHANGE TOWARD ME HAS BEEN APPARENT EVER SINCE.

I DECLARE UNDER THE PENALTY OF PERJURY THAT THE ABOVE IS TRUE & WAS EXECUTED BY ME James Stanford, ON THIS 15TH DAY OF JULY, 2015 IN SAN BERNARDINO CALIFORNIA.

COURTS WITH TRANSCRIPTS ATTACHED & IN COMPLIANCE AS TO ALL OTHER RESPECTS. PETITIONER ALSO ALERTED THE HIGHER STATE COURTS OF SUCH COMPLIANCE, GIVING A MORE DETAILED EXPLANATION AS TO HIS INADVERTENT FAILURE TO ATTACH TRANSCRIPTS (p. ID# 82-85, + 87-89) AND AS TO HIS PETITION BEING PROCEDURALLY PROPER. IN HIS PRAYER FOR RELIEF, PETITIONER ALSO REQUESTED AN OPPORTUNITY TO PROVE THE MERITS OF HIS CLAIMS. (EXHIBIT AT p. 1)

5. BUT COUNSEL'S PROMISE WAS BASED ON THE 911 TRANSCRIPT AND POLICE REPORT, i.e, EVIDENCE SHE HAD. SO, HAD THE WITNESSES TESTIFIED DIFFERENTLY REGARDING MATERIAL ISSUES (AS THEY DID), COUNSEL WOULD BE ABLE TO IMPEACH THEM. . . . BUT DID NOT.

6. a) p. ID#'s 7-33 IS AN "EXACT" COPY OF THE PETITION.

b) EVEN THE A.G. IN ITS ANSWER AT ID#665 ACKNOWLEDGED EXHAUSTION.

7 + 8. TO THE CONTRARY, SAESEE V. MCDONALD MORE FULLY EXPLAINS:

"IN ORDER FOR THE PREJUDICE PRONG TO BE SATISFIED HOWEVER, IT IS ESSENTIAL THAT A PROMISE BE MADE. NO PROMISE, NO PREJUDICE." THE COURT GOES ON TO EXPLAIN: "A PROMISE CREATES AN EXPECTATION": DID THE COUNSEL SAY THAT THE TESTIMONY "WILL" HAPPEN ?, AND DID HE PRESENT SUCH TESTIMONY AS SUPPORTIVE OF HIS THEORY ?

IN PETITIONER'S CASE, COUNSEL'S TELLING THE JURY "YOU ARE GOING TO HEAR"... IS SYNONYMOUS WITH "YOU WILL HEAR," AND THUS CREATED SUCH EXPECTATION, . . . BUT COUNSEL NEVER PRESENTED THE TESTIMONY SUPPORTIVE OF HER THEORY.

9. THE RECORD DOES NOT REFLECT SUCH TESTIMONY.

10 + 11. TO THE CONTRARY, THE JURY'S REJECTION OF THE GBI ALLEGATION RESULTED FROM THE FACT THAT THERE WAS NO G B I. THE QUESTION WAS WHETHER PETITIONER WAS GUILTY OF HAVING USED FORCE (i.e, HITTING OR KICKING) LIKELY TO CAUSE G B I, WHICH THE JURY FOUND PETITIONER

SHERIFF'S DEPARTMENT COUNTY OF SAN BERNARDINO CALIFORNIA CA 03600	SUPPLEMENT ☐	CASE NO. 071400168 REPORT AREA VV106

CODE SECTION	CRIME	CLASSIFICATION
PC243(D)	BATTERY W/SERIOUS BODILY	FELONY

VICTIM'S NAME - LAST NAME	FIRST NAME	MIDDLE NAME	(FIRM NAME IF BUSINESS) TYPEP
VICTIM #1			

ADDRESS	RESIDENCE	PHONE

PHOTOGRAPHS:

I photographed VICTIM #1 using my department issued digital camera. The photographs were downloaded to the Digital Image Management System (DIMS) at the Phelan Station.

WITNESS INTERVIEW: MENDEZ, JOEL

I contacted MENDEZ at his residence. The following is a summary of what he told me.

MENDEZ said he, STANFORD, and VICTIM #1 were all sitting in STANFORD's car. STANFORD was intoxicated and began accusing VICTIM #1 and MENDEZ of having an affair. VICTIM #1 exited the vehicle and STANFORD followed. STANFORD began punching VICTIM #1 and VICTIM #1 tried to run away, but she was stopped by STANFORD. VICTIM #1 yelled for help and was screaming. VICTIM #1 was knocked to the ground and MENDEZ believed she was unconscious as she did not move for approximately 30 to 40 seconds. While VICTIM #1 appeared to be unconscious STANFORD began kicking her on her ribs on both sides of her body.

MENDEZ attempted to stop STANFORD from continuing his assault. STANFORD pushed MENDEZ away and MENDEZ walked away. MENDEZ returned approximately 20 seconds later to attempt to calm STANFORD down. STANFORD continued to kick VICTIM #1 as she lie on the ground in a fetal position. Other neighbors came to try to stop STANFORD and STANFORD walked away from VICTIM #1 and went inside his trailer. MENDEZ had nothing further to add.

WITNESS INTERVIEW: KENDRICK, SHANNON

I contacted KENDRICK at her residence. The following is a summary of what she told me.

KENDRICK told me she was at her residence when she heard screaming and yelling outside. She walked outside and observed her landlord, STANFORD, punch VICTIM #1 in the face. VICTIM #1 fell to the ground and STANFORD began kicking her while she was on the ground. KENDRICK told me she did not see VICTIM #1 move for approximately 30 to 40 seconds and believed she was unconscious. She observed MENDEZ try to stop STANFORD and STANFORD pushed him away. KENDRICK walked over to STANFORD and asked him to stop. She put her hands on his arms to try to lead him away. STANFORD faced her and held his fists up as if he was going to punch her. KENDRICK turned around and walked away. She then called 911. KENDRICK had nothing further to add.

WITNESS INTERVIEW: NORMAN, JASON

I contacted NORMAN at his residence. The following is a summary of what he told me.

REPORTING OFFICER	DATE	REVIEWED BY	TYPED BY	ROUTED BY	DATE
ALAN PENNINGTON	01/15/2014	Robert Vaccari	Crystal Warren		01/15/2014

FURTHER ACTION:	COPIES TO:	REMARKS
☐ YES ☐ NO	☐ Other ☐ Detective ☐ Dist. Atty. ☐ SD/PD ☐ CII ☐ Patrol	

15-15184-401 Rev. 1/83

SHERIFF'S DEPARTMENT COUNTY OF SAN BERNARDINO CALIFORNIA CA 03600	SUPPLEMENT ☐	CASE NO. 071400168
		REPORT AREA VV106

CODE SECTION	CRIME	CLASSIFICATION
PC243(D)	BATTERY W/SERIOUS BODILY	FELONY

VICTIM'S NAME - LAST NAME	FIRST NAME	MIDDLE NAME	(FIRM NAME IF BUSINESS) TYPEP
VICTIM #1			

ADDRESS	RESIDENCE	PHONE

NORMAN told me he heard screaming and yelling outside. He looked out the door and saw STANFORD punch VICTIM #1 in the face approximately three times. VICTIM #1 fell to the ground and when she fell to the ground she did not move for over a minute. STANFORD continued to kick her while she was on the ground. NORMAN said at some point VICTIM #1 stirred and curled up into the fetal position because she was unable to defend herself any longer. STANFORD continued to kick VICTIM #1 on her upper body and legs. NORMAN said STANFORD kicked VICTIM #1 at least one time in the head. NORMAN and KENDRICK went outside and attempted to calm STANFORD down to get him to leave VICTIM #1 alone. STANFORD finally stopped and walked away into his house. NORMAN had nothing further to add.

SUSPECT CONTACT: STANFORD, JAMES

Deputies attempted to contact STANFORD at his residence. STANFORD had fled out the back door as deputies arrived and fled northwest through the desert while jumping several fences. Deputies tracked STANFORD for approximately 1 to 1-1/2 miles. STANFORD was on parole and was currently wearing a GPS monitoring ankle bracelet. We were able to contact his parole agent who was able to give us directions to where he was. STANFORD continued to move in erratic directions, even going back through the scene going south until we were able to corner him behind a few residences trapped between those and the aqueduct. Sheriff's Aviation arrived on scene and helped direct us to his location. Once located, STANFORD was handcuffed without incident.

ARREST/TRANSPORTATION:

I advised STANFORD he was under arrest for violation of PC 243(d), PC 273.5(a), and PC 236. STANFORD was transported to the Victor Valley Jail where he was later booked after receiving medical clearance from St. Mary's Hospital.

MIRANDA WARNING:

I advised STANFORD of his Miranda Rights using my department issued Miranda Warning Card. To question number one he stated, "Yes." To question number two he stated, "Yes."

SUSPECT INTERVIEW: STANFORD, JAMES

I asked STANFORD what had occurred. STANFORD told me nothing happened. Whatever VICTIM #1 stated did not happen. STANFORD said he did not do anything. I asked STANFORD about the injuries VICTIM #1 received and all the witness and victim statements. STANFORD refused to talk to me after that. SANFORD had nothing further to add.

REPORTING OFFICER	DATE	REVIEWED BY	TYPED BY	ROUTED BY	DATE
ALAN PENNINGTON	01/15/2014	Robert Vaccari	Crystal Warren		01/15/2014

FURTHER ACTION:	COPIES TO:	REMARKS
☐ YES ☐ NO	☐ Other ☐ Detective ☐ Dist. Atty. ☐ SD/PD ☐ CII ☐ Patrol	

15-15184-401 Rev. 1/83

Dispatch: 911, what's your emergency?

Kendrick: Hello?

Dispatch: Hello? 911

Kendrick: Hi, my landlord is beating the shit out of his girlfriend. I just moved here, it's 4734 Lunar Road, 4734 Lunar Road

Dispatch: Okay now what's going on there?

Kendrick: He keeps beating the shit out of his girlfriend

Dispatch: Who is he?

Kendrick: He's my landlord, um, all I know is she's on the ground screaming and (Unintelligible) Please come.

Dispatch: Okay and the address you gave me is?

Kendrick: 4734 Luna-Lunar Road

Dispatch: No I know, but that's the address where they're at?

Kendrick: Yes our apartment is 4734D, we're at our apartment right now please hurry

Dispatch: Okay what is his name?

Kendrick: (Unintelligible)

Dispatch: Hello? Okay ma'am I can barely understand you.

Kendrick: His name is James

Dispatch: James what?

Kendrick: Um, I don't know (Unintelligible)

Dispatch: Okay what were they fighting over?

Kendrick: I-I have no idea, please hurry

Dispatch: Okay ma'am listen to me, listen to me, I need information from you. Okay I have a deputy is going to be in route-

Kendrick: I'm so sorry

Dispatch: -Me talking to you is not going to stop him, but I need you to answer my questions

Kendrick: Okay I'll do the best I can.

Kendrick: I can go (Unintelligible) from the side, but I'm afraid to go outside because I don't want him to see me talking (Unintelligible) I know he's on parole, he still has like a month, now she seems to be walking

Dispatch: You said what? He's on-

Kendrick: Yeah he's on parole, he's got like three months to go (Unintelligible) that's why I keep trying to tell him, "It's not worth it, it's not worth it." Trying to distract him, she seems to be walking um now there's a-oh shit, oh shit, oh my god

Dispatch: What happened? Okay so why are you freaking out? What happened?

Kendrick: (Unintelligible)

Dispatch: Because what?

Kendrick: Um um I don't want to lose my place to live.

Dispatch: Okay I can barely understand you, but I don't know why you're getting upset because-

Kendrick: Because he's my landlord

Dispatch: He's not out there?

Kendrick: No he's my landlord

Dispatch: Okay.

Kendrick: And I don't want to lose my place to live because all-

Dispatch: You can't lose your place to live because you're reporting an emergency.

Kendrick: He's attacking her, hurry hurry.

Dispatch: Ma'am, ma'am calm down.

Kendrick: I'm trying, I know, what's going on, oh god, oh my god

Dispatch: Okay you said he just hit her?

Kendrick: Yeah he just hit her again, um I think um look, I'm not (Unintelligible)

Dispatch: Where did he hit her?

Kendrick: I couldn't see from the far (Unintelligible) he keeps going back (Unintelligible) Oh dear god (Unintelligible) the yard again-the yard again. I

Dispatch: Has anyone been drinking or doing drugs?

Kendrick: I have no idea, um, I just came back-I just came home

Dispatch: Okay what is your name?

Kendrick: I'm Shannon

Dispatch: Shannon what?

Kendrick: Kendrick

Dispatch: Okay and so what did you walk in to see?

Kendrick: They've been arguing all day-they've been arguing all day.

Dispatch: Okay.

Kendrick: Um my boyfriend just came home and said he they were really fighting, he went out there to make sure everything was okay. When I went out there she was screaming, "Somebody help me" she was on the ground and he was trying to kick her, there was another Mexican guy there, I don't know who that is. I think that's the guy who lives in his house, but I don't know.

Dispatch: Okay, so he wha-he was beating her with his hands? She was on the ground?

Kendrick: She was on the ground screaming um (Unintelligible) kick her, and I kept telling him "James come on calm the fuck-"

Dispatch: You saw him kick her?

Kendrick: Yes.

Dispatch: What is he wearing?

Kendrick: Okay uh, I can't-a grey tank top, it's dark, some dark jeans and uh uh a dark colored jacket

Dispatch: Okay and where are you now?

Kendrick: I'm in my house. And I just-I just rented from him, and I live right next door so he owns this house too. I'm in D

Dispatch: Do you still see them?

Kendrick: Um (Unitelligible) he's standing like in the driveway by a car, I don't know where she is

Dispatch: What kind of car is it?

Kendrick: My boyfriend thinks she's by the house um it's a white

Dispatch: White? Ma'am I can barely understand you

Kendrick: I'm sorry, it's a white four door uh Sudan (Unintelligible) um there's a black guy. Oh god.

Dispatch: Is white, black, Hispanic, or Asian?

Kendrick: No he's-he's black.

Dispatch: He's black?

Kendrick: Light skinned black yes.

Dispatch: Okay what is she wearing?

Kendrick: Um I-what is she wearing? What is she wearing?

Dispatch: What is her name?

Kendrick: Uh Tania that's all I know.

Dispatch: Tania?

Kendrick: Tania.

Dispatch: And you don't know her last name?

Kendrick: No it's just like on a first name basis um I think she in like um like a dress, like a body dress kind of thing, I don't really know

Dispatch: Okay let me know if you can anyone leave

Kendrick: (Unintelligible)

Dispatch: Okay, okay let me know if you see anyone leave, does she need paramedics?

Kendrick: I-I I don't know (Unintelligible) they were trying to drag her up (Unintelligible)

Dispatch: Okay, is there any way you can get in a spot where you can see what's going on?

		think the Mexican guy is trying to break it up, Oh my god they're like-they're real close, I don't know oh my god oh my god
	Dispatch:	Ma'am I already have a call on it, I'm just having you pay attention so I can update the deputies
	Kendrick:	I'm trying (Unitelligible) I can't hear them though, my boyfriend's outside he's trying to run back in (Unitelligble) He's walking back up to him um just trying to tell him "You don't want to go back to prison." My boyfriend said he thinks he doesn't care, I don't know if he's high or I-oh my god, oh shit oh my god
	Dispatch:	What's going on now?
	Kendrick:	She's waving her hands, I'm having a hard time (Unintelligible) he just hit her, she's on the ground, please hurry she's going to die out here. Oh my god oh my god he's kicking her on the ground, he's kicking her on the ground
	Dispatch:	He's kicking her?
	Kendrick:	Yeah he's kicking her while she's down. (Unintelligible) Now he's going um, he's going to the house (Unintelligible) She's laying in the driveway.
	Dispatch:	The deputy is on scene, the deputy is on scene, do you see him?
	Kendrick:	Yes, thank god.
	Dispatch:	Okay, stay inside the deputy will handle it okay?
	Kendrick:	Okay.
	Dispatch:	Okay. Uh-huh buh bye.

E. DEFENSE COUNSEL FAILED TO FULFILL OPENING STATEMENT PROMISES BY FAILING TO ELICIT IMPEACHMENT EVIDENCE [N15]

DURING OPENING STATEMENTS, DEFENSE COUNSEL TOLD THE JURY "YOU ARE GOING TO HEAR THAT MS. KENDRICK SAW MR. STANFORD PUNCH MS. HENDERSON MULTIPLE TIMES IN THE FACE...YOU'RE GOING TO HEAR MR. NORMAN SAY THE SAME THING, MULTIPLE PUNCHES TO THE FACE, MULTIPLE KICKS TO THE GROUND IN THE RIBS & HEAD AREA." (RT. 62-63)

DEFENSE COUNSEL'S TELLING THE JURY THAT THEY'D HEAR THIS EVIDENCE, WAS NOT REASONABLE UNDER THE CIRCUMSTANCES, NOR SOUND TRIAL STRATEGY. E.G:

F. AS TO MS. KENDRICK

- HER 911 CALL REVEALED (IN RELEVANT PARTS) THAT SHE STATED: "MY LANDLORD IS BEATING THE SHIT OUT OF HIS GIRLFRIEND." (2 CT. 261, LINE 4) "HE JUST HIT HER AGAIN" (IDEM AT 264, LINE 25) "HE JUST HIT HER" (C.T. 265, LINES 11-12)
- THE POLICE REPORT REVEALED THAT SHE "OBSERVED HER LANDLORD, STANFORD, PUNCH VICTIM #1 IN THE FACE." (XBT B, p. 2)
- AT TRIAL SHE TESTIFIED THAT SHE ONLY SAW PETITIONER PUNCH LATONYA ONCE IN THE FACE. (RT. 76, LINE 1-2, RT. 77, LINES 21-25).
- THERE WAS NO EVIDENCE DELIVERED TO THE JURY, VIA OFFICER PENNINGTON OR OTHERWISE, THAT MS. KENDRICK SAW PETITIONER PUNCH LATONYA MULTIPLE TIMES IN THE FACE.

G. AS TO MR. NORMAN

- THE POLICE REPORT REVEALED THAT HE TOLD OFFICER PENNINGTON THAT HE "SAW STANFORD PUNCH VICTIM #1 IN THE FACE APPROXIMATELY THREE TIMES." (XBT B, p. 3)
- AT TRIAL HE ADAMANTLY DENIED TELLING OFFICER PENNINGTON THAT HE SAW STANFORD PUNCH MS. HENDERSON THREE TIMES IN THE FACE, "INSISTING" THAT HE SAW HIM SOCK LATONYA IN THE SHOULDER. (RT. 114; SEE ALSO: RT. 110)

[N15] PETITIONER INCORPORATES THIS ISSUE HERE WITH HIS CONFRONTATION/CROSS EXAMINATION ISSUE BECAUSE OF THE DIRECT CORRELATION BETWEEN THEM.

21

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what appeared to be, in his words, the victim on the ground for perhaps a minute while the defendant kicked her. You're going to hear a 911 call from Shanon Kendrick that was recorded while this incident was happening. You're going to hear a live rendition of events, and that's going to tell you what she saw, an argument, him knocking her to the ground, kicking her while she's down.

You're going to hear from Deputy Al Pennington who is the responding officer at the scene who made contact with LaTonya Henderson and saw her getting picked up off the ground, covered in dirt, blood on her lips and a knot under her eye. You're not going to hear from LaTonya Henderson, ladies and gentlemen, but at the end of the day, ladies and gentlemen, in this trial after you have heard all of the witness testimony, we're going to be asking you to find the defendant guilty of spousal assault.

Assault means likely to cause great bodily injury and assault and battery with serious bodily injury. Thank you, ladies and gentlemen.

THE COURT: Ms. Satterfield.

MS. SATTERFIELD: Thank you. You know, some things just don't make sense in life. You are going to hear from Ms. Kendrick. You're going to hear her 911 call. You're going to hear that she's irate for lack of a better way of putting it. You're going to hear that she tells the officer something different than what she's telling the 911 call but you are going to hear that she saw Mr. Stanford punch Ms. Henderson multiple times in the face, kicked her multiple times while

she was on the ground.

You're going to hear Mr. Norman say the same thing. Multiple punches to the face, multiple kicks to the ground in the ribs and head area. You're not going to see any of those injuries, though. There are none of those injuries. Some of those things just don't make sense. What you're going to hear as far as injuries go is some blood on her lips but nobody could observe where it came from and that there was maybe a knot forming under her eye. That's all.

Ms. Henderson is not going to testify, so you're not going to get the whole story. We're not going to know why the argument started. What happened? Who was the aggressor? We will hear from two people who were neighbors, whose attention was brought because there was yelling and screaming from both parties and they say that they see Mr. Stanford punch multiple times in the face with a closed fist. They say that they saw Mr. Stanford kick Ms. Henderson while she was down multiple times. But the injuries don't match that.

After you hear the testimony of the witnesses, we're confident that you will find Mr. Stanford not guilty on all three counts because some things just don't make sense. Thank you.

THE COURT: Your first witness.

MR. LEVERS: Thank you, your Honor. At this time I would like to call Shanon Kendrick to the stand.

THE BAILIFF: Please face the clerk and raise your right hand to be sworn.

THE CLERK: Do you solemnly state that the evidence

A The only time I saw him strike her in the face, she hit the ground and didn't move for approximately 30, 40 seconds, and I believe on the tape I think I said, she's dead.

Q And was that after they got into the verbal altercation?

A That was at the very end of everything.

Q Okay. I'm taking you through this step by step. How long do you think the verbal altercation lasted or the argument?

A What I saw was maybe a few minutes.

Q Okay, and then did they stay arguing? Did they ever separate?

A It seemed like he tried to walk away and LaTonya would go back and go back.

Q So he was walking away and she was still arguing with him?

A Yes.

Q Okay, and so at what point did he rear back and strike her in the face?

A I don't -- I mean, it was at the end. I don't know. I don't know how to answer that question.

Q Okay. Let me just walk you through it then. So they were arguing. He kind of tried to walk away. She was still following, arguing?

A They had been arguing for, I guess hours. So I mean --

Q Now, when she was still arguing with him, did anything else of note happen before he struck her or did they

just argue for a while?

A Nothing that I saw.

Q Just the argument continued and then he punched her in the face?

A Yeah. I didn't see her hit him but she could have.

Q You couldn't see her striking him at any time?

A No, but I'm not saying that she was absolutely innocent and didn't strike him, but I didn't see that.

Q You just don't know because you didn't see?

A Yeah, I didn't see it.

Q Okay. Now, when he did strike her, do you recall was his back to you? Front to you?

A It was sideways. My window is here. They were in the driveway that was directly from my house.

Q So kind of like Mr. Stanford was standing like I am to you? Like on the edge? Okay, and Ms. Henderson was standing the same way?

A Yeah, they were facing each other.

Q So you saw them from the side?

A Yes.

Q And then all of a sudden you saw Mr. Stanford punch with a closed fist, Ms. Henderson in the face?

A Yes.

Q Okay, and was that just the one punch that you saw?

A Yes.

Q Now, did this appear to be like, for lack of a better term, short rabbit punches or a hay maker?

A Honestly I don't know. I just remember telling the

there during the entire altercation. My boyfriend, Jason Norman was there. Then two people live behind us. They were also there in the neighborhood behind us on the other side, was also there.

Q Okay.

A And they just stood there.

MR. LEVERS: No further questions at this time, your Honor.

THE COURT: Cross.

MS. SATTERFIELD: Thank you.

CROSS-EXAMINATION

BY MS. SATTERFIELD:

Q Good morning, Ms. Kendrick.

A Good morning.

Q Now, you said that on January 14th of 2014 you were home all day that day?

A Yes, I was.

Q So you were home the entire day?

A Yes.

Q Okay, and at some point late in the evening you indicated that you heard yelling and screaming; is that right?

A No. My boyfriend alerted me to the fact that they were fighting. He had told me a couple times during the day.

Q Okay. Let me -- I'm going to ask you questions and --

A No, I did not hear the yelling.

Q Okay. Let's try not to talk over each other so this

POLICE REPORT SAYS DIFFERENTLY

He went after another person, so that person said, go inside. I stayed outside.

Q Sorry. You said he went after another person?

A Yes, which was our tenants behind us.

MS. SATTERFIELD: Objection. Relevance.

THE COURT: Overruled.

BY MR. LEVERS: Q What happened exactly?

A He tried to hit him but the tenant behind us backed off and told me to go in and they went in.

Q Now, did you hear sirens approaching around this time?

A Yes.

Q And when you started hearing sirens what did Mr. Stanford do?

A He bolted. He left.

Q Did you actually see him leave?

A I seen him, corner of my eye. He was that quick.

Q You saw him running out of the corner of your eye?

A Yeah.

Q Did you see him again for a while?

A Maybe 2 hours.

Q Now, is it at that point that you and Ms. Kendrick helped up Ms. Henderson?

A Yes.

Q And is that when Officer Pennington here arrived?

A Yes.

Q And did you talk to Officer Pennington?

A Yes, I did.

Q Excuse me. Deputy Pennington. Apologizes. You told him what you told us here today?

A Yes.

Q Thank you.

MR. LEVERS: No further questions.

THE COURT: Cross.

MS. SATTERFIELD: Thank you.

CROSS-EXAMINATION

BY MS. SATTERFIELD:

Q Mr. Norman, you just testified that you recall speaking to Deputy Pennington; is that right?

A Yes.

Q Do you recall telling him that you saw Mr. Stanford punch Ms. Henderson approximately 3 times with a closed fist in the face?

A No. I didn't see that. I seen him sock her in the shoulder.

Q So you didn't say that to Deputy Pennington?

A No.

Q So if Deputy Pennington testified that that's what you told him, he would be lying?

MR. LEVERS: Objection.

THE COURT: Rephrase.

BY MS. SATTERFIELD: Q Would he be mistaken?

A I would say maybe mistaken. I seen what I saw.

Q Okay. Do you recall talking to Deputy Pennington and telling him that you saw Mr. Stanford kick Ms. Henderson

while she was on the ground?

A Yes. I remember saying that.

Q Okay, and do you recall telling Deputy Pennington that you saw him kick her, you saw Mr. Stanford kick Ms. Henderson in the head?

A No, I did not see him do that.

Q So you don't recall telling Deputy Pennington that?

A No.

Q Do you recall telling Deputy Pennington that you saw Mr. Stanford walk away back to his house?

A No.

Q You didn't actually speak to a 911 operator; is that correct?

A No Shanon did.

Q Okay. During the time that Shanon was on the phone with the 911 operator where were you?

A I was outside making sure things were going to be okay.

Q Okay. Were you home that whole day prior to the incident?

A Yes, I was.

Q But at some point you said you left; is that right?

A Yeah, I went to the store, 20 minutes to get --

Q Had you been under the influence of drugs that day?

A No.

Q Okay. What about alcohol? Were you drinking alcohol that day?

A No, ma'am.

Q Approximately what time were the officers called out to your residence?

A About 8:00, 9:00.

Q Okay, but it was dark out?

A Yes.

Q Approximately how long did the altercation last between Ms. Henderson and Mr. Stanford?

A For a while.

Q Okay. What about, you said for a while. Let me be more specific. How long did the argument last between the two of them, just words?

A Pretty much most of the day, off and on.

Q How long did the physical altercation between them last?

A Almost a good full hour.

Q A full hour?

A Yeah.

Q And at this time that's when you said you saw Mr. Stanford kick Ms. Henderson more than 15 times?

A Yes, ma'am.

Q Just prior to this incident did Mr. Stanford indicate to you that he was going to evict you and Shanon?

A I don't recall that.

Q You don't recall him telling you that the two of you were going to be evicted for doing drugs in the house?

A No. He never said that.

MS. SATTERFIELD: Nothing further.

THE COURT: Redirect.

THE COURT: Okay. Other issues regarding that witness?

MR. LEVERS: That witness, no, your Honor.

THE COURT: Okay.

MS. SATTERFIELD: No.

THE COURT: What other issues before we get to jury instructions?

MR. LEVERS: As I informed the Court off the record before, Ms. Kendrick, who testified Thursday, I've been informed as of Saturday night around 1:00, she was being taken to jail for assaulting Mr. Norman, the other witness. I don't -- I've asked for the police reports. They may not be done yet. I certainly don't have them. What I do know is per Deputy Pennington and I quote, "She hit him with a plant and a lamp and a knife. The defendant has superficial cuts to his arms and there may be -- "

THE COURT: The who?

MR. LEVERS: I'm sorry. The victim. Mr. Norman has superficial cuts to his arm and there may have been meth involved.

THE COURT: Okay, and so what issues arise because of that?

MR. LEVERS: I feel this information is 352. She hasn't been convicted of anything. I believe Ms. Satterfield is feeling different.

MS. SATTERFIELD: I agree. She's only been accused and arrested. She's, according to the jail inmate information, currently is in custody at West Valley Detention

Center. One of the questions that I had asked of Mr. Norman specifically was that whether or not, actually both of them, is if they were under the influence of a controlled substance, that they used the night of the incident. I believe Ms. Kendrick's specific answer was, I don't believe so. Mr. Norman denied it.

Furthermore, I asked them, specifically Mr. Norman, about eviction, which is one of the reasons that they could be exaggerating or straight out lying in this case as far as what happened, and it's my understanding that one of the reasons why they were potentially going to be evicted other than the drug use was for their domestic violence incidences.

THE COURT: So what are you asking?

MS. SATTERFIELD: At this point I think she's subject to recall.

THE COURT: She is.

MS. SATTERFIELD: From last Thursday. Potentially I am going to ask, well, I guess at this point I don't have the report so I don't know if there was any drug use involved or suspected.

THE COURT: Let's say there was drug use involved.

MS. SATTERFIELD: Specifically the sense that this goes to their credibility as far as their willingness and availability to lie because of the potential eviction gives them a reason to exaggerate what they may have seen that evening or even straight lying about who was the aggressor, was it Mr. Stanford? Was it the landlord, and finally was going to evict them because of the issues that now seem to be

addressed it to a nonexistent attorney to her address, offering her money in exchange for changing her testimony. He even told her, this is a defense strategy. This is what we need you to say. He was trying to get her a lie. Fortunately she did the right thing and came in and gave, brought in the letter.

Now, you also heard from Jason Norman. Mr. Norman is Ms. Kendrick's boyfriend and lived there at the residence. He also saw the defendant kicking the victim on the ground, heard her yelling for help. Saw the victim eventually get up and get knocked to the ground again after she approached the defendant and she wasn't moving.

When the police arrived the defendant fled. Now, both of these witnesses have no stake in this. They live there at the residence. You heard Ms. Kendrick. She liked Mr. Stanford. Actually, she was very surprised by this. But they, along with Ms. Henderson, all told the police what they saw at the scene. They all talked to Deputy Pennington right after it happened and told him what happened. Their stories were all the same. Minor differences because they saw different parts of it but they all agreed that Ms. Henderson was on the ground being kicked. She did not appear to be moving and she was kicked again.

Now, what about Ms. Henderson? We had her testify and what did we find out? This is what she told the deputy. She was dating the defendant for 4 to 6 months and told Deputy Pennington she had been living there for 2 months. And the assault. She was covered in dirt and had to be helped off the

CALCRIM. I'm going to talk about these injuries a little more but first let's talk about self-defense. You have been given the self-defense instruction; right? So what is self-defense? Means the defendant reasonably believed that he was in eminent danger of suffering bodily injury or being touched unlawfully. In other words, he thought he was going to be attacked or hurt or was attacked. Kind of what you would commonly think of as self-defense.

And you reasonably believed that the immediate use of force to defend against the danger, you have to use force to -- everyone has the right to self-defense. No one's saying you don't. He used no more force than was reasonably necessary to defend against the danger. If someone takes a swing at you, you can't beat them to death with a baseball bat because that's more force than reasonably necessary to defend the danger.

This is not a case of self-defense. The victim was on the ground being kicked. She was no danger to anyone. She was even unconscious while being assaulted at one point. How exactly do you defend yourself against someone who is unconscious? Even if you believe the victim's new story about the wire, it is not self-defense. Beating someone while they lay unconscious is not self-defense.

You notice the defendant never said he was defending himself. He said, she started it. You don't get to beat someone unconscious because you're mad at them. You all heard the three types of injury in this case, traumatic condition, serious bodily injury, and great bodily injury. They all have

that's just like we talked about, did the victim suffer greater than minor or moderate harm? The totality of the circumstances, I argue to you, the bruises, severe pain in the rib, the bruise to the shoulder and side, the knot in the head, the pain in the head, the blood on the lips, the fact that she was knocked unconscious for between 30 seconds and a minute, the totality of that is greater than a minor or moderate harm. She didn't just have a cut or a knot. She had all that together with being flat out knocked unconscious as a result of the defendant's actions. That is great bodily injury.

It is true, I'm sure some of you are wondering that we don't have witnesses to the first part of the confrontation. We have witnesses to the assault on the ground. We have, Ms. Henderson said it happened and it makes sense how the whole thing started. I'm going to tell you -- curiosity or wondering, would you like to hear more or another witness? That's not really something that decides this case. The question is whether you believe beyond a reasonable doubt that the defendant inflicted traumatic injury on her, assault by means likely to case great bodily injury, and battery with serious bodily injury actually causing great bodily injury.

I submit to you based on all of the evidence, Ms. Kendrick's testimony, Mr. Norman's testimony, the victim's initial testimony of the officer, the letter the defendant sent to Ms. Kendrick trying to get her to change her testimony, the injury to the victim, this is not a case of self-defense or something that didn't happen. He got upset

with his girlfriend and kicked her on the ground, kicked her in the ribs and she got up and started arguing. Again, he knocked her unconscious and kicked her some more. Find him guilty, ladies and gentlemen. Thank you.

THE COURT: All right. Ms. Satterfield.

MS. SATTERFIELD: Thank you. At the beginning of the trial I you told you some things just don't make sense. You have now had the opportunity to hear from the witnesses in this case. One unexpected witness, Ms. Henderson, actually showed up yesterday. I'm going to go through some of the same things Counsel went through with the witness's testimony.

First let's talk about Ms. Henderson. She's an excited person. You can hear her on the 911 call. You can hear her testify. I, at one point, asked her if she was under the influence of a controlled substance that evening. She said, I don't believe so. We don't know what was going on that evening. But we do know that she states that she saw the end of the confrontation. At one point she saw Mr. Stanford, she believed, rear back and kick Ms. Henderson while she was on the ground multiple times. I think her testimony was 8 to 10 times.

Over and over again, Mr. Levers asked her, well, what kind of kick was it? Was it a light kick? No. It's a soccer kick. Reared back. Multiple times. Kick, kick, kick over and over. That's what she said she saw. Then she says that she saw Ms. Henderson get up. She didn't appear to be injured, and went after Mr. Stanford again. She said her gestures were angry. They were fighting. She couldn't tell

if she had anything in her hand. She didn't say she didn't see anything. She couldn't tell. The only light that she could see that evening was the light from the moon. Then she says that all of a sudden she sees Mr. Stanford rear back and punch Ms. Henderson so hard she was knocked to the ground out flattened. Punched her right in the face.

Then you have the testimony of Mr. Norman, I asked him, you were going to get evicted weren't you? Answer was, well I don't remember hearing that. I don't remember that. Mr. Levers said these two witnesses don't have anything invested. They do. They have something invested. They lived at the property. They were about to be evicted.

MR. LEVERS: Objection. Misstates testimony, your Honor.

THE COURT: Overruled.

MS. SATTERFIELD: And this confrontation started. Mr. Norman told you the same thing, he didn't see how it started. He was at the store. He ran errands and came back and then he says that he saw Mr. Stanford kick Ms. Henderson 15 to 20 times, strong kicks. Kick, kick, kick in the ribs while she was down. I also asked him, well, didn't you tell Deputy Pennington that you saw him punch her multiple times in the face, too? No, I didn't say that. Deputy Pennington told you that that's in fact, what he did say.

So I don't know why he's changing his story now other than the injuries don't match. That's what he initially told the officer that day. That he, Mr. Stanford, punched Ms. Henderson multiple times in the face. Multiple times in the

methamphetamine at Mr. Stanford's house. He told her that she had to leave. She became upset. They became upset because Mr. Mendez was living in the house, was also doing methamphetamine. She thought he wasn't going to get kicked out. I'm your woman. Why would you kick him out and not let me stay, she said. So he says to her, well I found somebody else and then she got irate. That was not her word. I can't remember the word she used. She said she was crazy.

She said she was drunk, under the influence and that she went behind the house. She did describe the weapon that she had. She described it as a fence wire from the chain link fence that was behind the house. She told everybody exactly what it was. She said she was flailing it around. She was scraping Mr. Stanford with that wire. She was stabbing him with the wire and she says she was using profanities, cursing over and over and she was being loud.

Said that as she ran, she fell to the ground and then she got back up and started going after Mr. Stanford again. Ms. Kendrick, her testimony, that's basically what she said, yeah, she got back up and then she went after him again. I don't know who to believe in this case. Nothing seems to make sense to me. You can't really believe Ms. Kendrick's statement that Mr. Stanford kicked her, kicked Ms. Henderson so many times over and over and over again. 8 to 10 times with a soccer kick and punched her so hard in the face, is flattened on the back and she has no injuries and I'll get to the injuries in a second, I don't want to say no injuries, maybe minor is the word we're looking for.

I don't know whether or not to believe Mr. Norman. He says the same thing, 15 to 20 times he kicks her over and over again. You had the opportunity to see Ms. Henderson. She not a big lady. She's pretty small in stature. Initially Mr. Norman told the officer that he also punched her, Mr. Stanford punched her so many times in the face, multiple times in the face and head.

The evidence that we do have as far as injuries go, are Deputy Pennington says he believed there was a knot forming under her left eye and that she he saw some dried blood on her, or wet blood that turned dry on her lips. He said he didn't even see a cut where it came from. Ms. Henderson told you that no matter which version you believe, that she may have had bruising but she told you she went to the hospital the next evening and they gave her some Norco.

First she told me like Ibuprofen, then said, oh no, it's Norco and that's all they did. About 3 years ago my husband and I went on a snowboarding trip to Big Bear with friends and he was in San Diego in the military and he and a Navy buddy met me up there, hung out the night before, went snowboarding the next day, and to be honest, I didn't snowboard, he did, but I got a phone call right at the end of the day that said he had taken a smash on the mountain, last run, all getting ready to go and he smashed.

The friends that he was snowboarding with said, meet us at the medical cart. They are bringing him down the back of the snowmobile. He was knocked unconscious for 10 seconds. He woke up and said, man, my wife is going to be ticked but

this case. That's reasonable doubt. Looking at the testimony with everything else that you have with all of these supposed injuries, that's reasonable doubt because it doesn't make sense.

None of us were there that evening. But what they're saying happened, doesn't match the rest of the story. Doesn't match the injuries that came out of this supposed incident.

Let's talk about Ms. Henderson's statement in self-defense. She says she became irate with Mr. Stanford because he was kicking her out. Said he had someone else. She testified that he doesn't -- that she didn't live with him. She was doing in-home care down the hill were her words. That she had visited him on the weekends or when she had time off. She stated that she, that they were dating for a few months. She didn't specify what dating meant, spending time together I guess is the best way to put it. She wasn't living there. They weren't sharing bills.

But she became upset and she said that she got a weapon. Those were her words, weapon, and starting attacking him. Had he said she ran and fell to the ground. He was trying to kick the weapon out of the way and then she got back up and started being aggressive with him again. Mr. Stanford has a right to defend himself against that regardless of whether or not she's male or female, whether or not she had a weapon.

It sounded to me like she was out of control that evening. She had been drinking, she said half a bottle of

Jack Daniels. She's not a very big person. I'm not sure I would be functioning after that. Said she was doing some methamphetamine. She has a prescription drug problem. Regardless of what she was doing that evening, she says that she was irate, that she was hysterical and she was freaking out. Mr. Stanford has a right to defend himself against that.

If you look at the injuries that she supposedly sustained during the altercation, those are the kind of injuries that you may see from somebody who is trying to defend themselves. It doesn't make sense that she's on the ground getting kicked so many times and that's what she ends up with. It doesn't make sense, not the way the witnesses described it over and over and over again. Hard kicks over and over again.

Now, let's talk about the letter that Ms. Kendrick said she received from Mr. Stanford. Everyone had an opportunity to listen to her read that letter. You are going to get it in the jury room and I would submit to you that I see that letter very differently than Counsel sees that letter. If you read it, there are appears to me what you're dealing with is somebody who is scared, who just wants the witness to tell the truth on what happened. At one point in the letter it says the evidence is on our side.

This is not somebody who's trying to change -- get someone to change their testimony. Ms. Kendrick said she had received multiple letters in the past. She said she wasn't scared by the letter. It didn't frighten her in any way. But this isn't something that was sent to her in order to change

her testimony, and if you read through it, you'll see that most of the letter indicates, just tell the -- tell what happened. The evidence is on our side.

When Mr. Levers put up on the PowerPoint the law in this case, he went through all of the elements of each charge, Count 1, corporal injury to a spouse, Count 2, assault by means likely to produce great bodily injury, and Count 3, assault with serious bodily injury. He left out the last element on all 3 of the those counts, which is that he also has to prove beyond a reasonable doubt that Mr. Stanford did not act in self-defense. He has the burden of proof in this case. He has the burden of proving that Ms. Henderson's injuries were a traumatic condition.

He has the burden of proving that great bodily injury did occur in this case, and he has the burden of proving that she was knocked unconscious. Just because someone says I was knocked unconscious doesn't mean that that's what happened. Based on circumstances that are surrounding after the fact, it didn't make sense that that's what happened. It doesn't make sense she blacked out, I think was the word she used to Deputy Pennington.

Because that's not how someone acts when they're unconscious for 30 seconds to a minute. That doesn't make sense. I think at one point Mr. Norman said it was 1 to 2 minutes that she was not moving on the ground. It doesn't make sense that you have blacked out or were knocked unconscious for over 30 seconds and you get up and you're not disoriented and remembered exactly what happened, you know,

what's going on. You don't go to the hospital to get checked out and you just go the next day to get Norco. It doesn't make sense.

The people who were with my husband said maybe it was 10 seconds he was out. He was a mess. He didn't know what was going on. Couldn't tell us what we had done for breakfast that morning. Couldn't remember the guy who drove 3 hours with him the night before, was even at Big Bear with us. It doesn't make sense. There is no serious bodily injury in this case. If you believe everything regarding the injuries, if you believe that Deputy Pennington saw a small knot forming and some dried blood or blood on her lips, that's not a traumatic condition. It's certainly not serious or great bodily injury. Deputy Pennington didn't even see where the blood was coming from.

But all of those things have to be proved beyond a reasonable doubt by Mr. Levers including the fact that Mr. Stanford did not act in self-defense. You heard from three people in this case who you have to judge their credibility and I think that's a very difficult job for everybody in this case, and you have to do it for yourself and I know that sometimes probably sitting here listening to testimony was almost a little bit amusing. But it's not amusing to my client. This is his life. So if you look at this case for what it is, it doesn't make sense. What all these people are saying happened, it doesn't make sense.

At the end of the trial, you all are going to go back and deliberate, you have to make the decision for

yourself, each person. If afterwards you come back with a verdict, let me say it this way, you hear, you're going to hear the instruction for reasonable doubt as an abiding conviction. It's a difficult thing to understand. What is an abiding conviction? Is it an abiding conviction that I chose to marry or have a child? Is it a gut feeling? The legal definition says it's an abiding conviction. But this is what I'll tell you, after you go back and review all of the evidence, if you walk out that day after your verdict and the deputy stops you and he says, oh, hey we found a video. You can watch everything that happened from the day and you grab that video --

MR. LEVERS: Objection. Misstatement of the law, your Honor.

THE COURT: Sustained.

MS. SATTERFIELD: This is what I'm telling you. You have to make the decision for yourself. You have to look at the evidence, go through all of the evidence and that includes the witness's testimony, that includes the ability to judge their credibility, but you have to look at it with what else has been presented and that is, at this point, a photo of some dried blood around the lips, a photo of Ms. Henderson which may or may not have a small knot forming below her left eye, and you're going to receive some photos of my client.

Ms. Henderson testified yesterday that they were photos of my client with scarring on his arm where she believed she scratched him and stabbed him with the wire. You heard the judge give you a stipulation, my investigator went

out and took the photos. It was almost two months after the incident because of how quickly things happen sometimes, but you'll see those and see the scarring on his arms from those injuries that she sustained on him. But at the end of the day there is no injury in this case that makes sense to the witness's testimony.

Quite honestly, as much as it's difficult to believe, Ms. Henderson's last testimony probably makes the most sense as far as the injuries she sustained. She initially tells the officer that she was kicked multiple times, punched in the face, but now she says, well, you know, I went after him with a knife. He was trying to kick it away or excuse me, with a wire. I went after him again with the wire. He was pushing me away.

But it's your job to judge the credibility of the witnesses and I submit to you that when you look at all of the evidence, when you look at the testimony, when you look at how excitable these two witnesses are, these independent witnesses were, Ms. Kendrick and Mr. Norman, their stories don't match or make sense to what was sustained in this case. There was no traumatic condition. We haven't seen any photos of bruises. We haven't seen any photos of busted ribs or black eyes or broken noses. There's none of those injuries which you would expect with 15 to 20 kicks over and over again.

You would expect if someone was knocked unconscious that that person would be disoriented, that that person would have issues remembering, would go to the hospital and get a CT scan. It's very dangerous to be knocked unconscious

especially for 30 seconds to a minute. Or one to two minutes, if you believe Mr. Norman.

I'm going to ask when you look at all of the testimony and when you look at all three witnesses and Deputy Pennington and what they told him initially, that the injuries don't make sense and you'll find Mr. Stanford not guilty on all 3 felony counts. Thank you.

THE COURT: Counsel.

MR. LEVERS: Thank you, your Honor. You know, Ms. Satterfield was talking about how this letter was just the defendant trying to get Ms. Henderson to tell the truth. I was reading through it a little bit. You know what I don't find in this letter? Just tell the truth. Tell them what really happened. Anything like that. Nope. Now what I find is, it would help you to know what the defense strategy is. I accidently, in quotes, kicked her once in the ribs while I was trying to kick the thing she had in her hand away from her.

Let's see what else. How about, you guys said LaTonya was unconscious. If asked even by the DA, please say that she was in a fetal position. This is after the, he offers her a couple thousand dollars. This is not a letter telling someone tell the truth. I'm in trouble. This is saying, I'm going to give you a couple thousand dollars to lie for me. You can read it in the jury room.

I'd like to address a few points. First she talked about how Ms. Kendrick and Mr. Norman were about to be evicted. You heard zero evidence of that. Her asking a question is not evidence. They said no. There's no evidence

that they were anywhere near eviction or any motive. As to unconsciousness, I don't know what happened to Ms. Satterfield's husband, but you heard the victim. She had a few memory issues. She said when she went down she didn't remember anything until she woke up being kicked and she was barely able to get up off the ground. You heard no testimony that if you're knocked unconscious that it will necessarily cause you to be disoriented. If such testimony existed you would have heard it.

Now, self-defense. Ms. Satterfield mentioned that I didn't include that element on each of the offenses. Actually I did tell you, if you believe self-defense, if you believe it is self-defense, he's not guilty of anything. You're defending yourself. You're not in trouble. This is not self-defense. You heard two witnesses testify that Ms. Henderson was being kicked on the ground repeatedly, while she was no threat to anyone.

You heard them testify she was kicked while being unconscious. That is not self-defense. Even if he's upset at her and based on Ms. Henderson on the stand, I imagine she has a very creative ability to upset people. I believe she has irritated Mr. Stanford many, many times. But just because someone's annoying or makes you mad, you don't get to beat them up. It doesn't work that way.

Counsel asked, why did Ms. Henderson go to the hospital? Why didn't she -- why did she go get Norco the next day? Not all victims are angels, ladies and gentlemen, but they are still victims. Ms. Henderson is an interesting lady.

Perhaps she wanted to just go in and get Norco. We don't know. Maybe she didn't have insurance. She wasn't terribly cooperative with us on the stand.

Regardless, none of this changes the fact that this is all a distraction from the fact that the defendant repeatedly kicked her on the ground, punched her to the ground and despite what Counsel says, her injuries are consistent with that. She said she got hit in the face. She has a knot forming. She testified she has a cut lip. You saw the fresh blood. Excuse me. Deputy Pennington saw it. You saw the dried blood. This all makes sense.

As we talked about during voir dire, right after an incident a lot of times injuries haven't had time to form. Deputy Pennington said when he saw her she had a knot forming on her face. Ms. Henderson said the same thing, reluctantly acknowledged that she had that on her face after she was hit.

Ladies and gentlemen, as my father likes to say, this is a case about seeing the forest through the trees. Cancelling all of the little distractions. I'll tell you, if you ever have three witnesses telling exactly word for word the sequence of events, then they're probably lying. Any three people witnessing something remember things differently. That's human nature.

Before I sit down and ask you to go back and find the defendant guilty on all charges, I want to talk about injuries first. Counsel acknowledges she has injuries, says they're not traumatic conditions. Traumatic condition was explained to you, any injury however minor. It's a minor

hear that. Because it didn't happen. Instead you have photos taken two months later when the story can be that they have had time to heal instead of well, Ms. Satterfield can you have one of your colleagues take pictures of my fresh wounds?

MS. SATTERFIELD: Objection.

I DID ASK over & over Letter proof

THE COURT: What is your objection?

MS. SATTERFIELD: I believe it's inappropriate. I mean, can we approach?

THE COURT: Come on up.

MS. SATTERFIELD: Thank you.

(Whereupon the following proceedings were held at the bench out of the presence of the jury:)

MS. SATTERFIELD: Burden shifting is what I mean to say.

THE COURT: Okay. Sustained.

MS. SATTERFIELD: Thank you.

(Whereupon the following proceedings were held in open court in the presence of the jury:)

MR. LEVERS: Ladies and gentlemen, only one thing makes sense in this case. The victim was assaulted on the ground repeatedly. Her injuries match it. The testimony matches it. Her statements to the police match it. The defendant's actions and lack of injuries at the scene match it. It all makes sense. The victim's new story on the stand, counsel's theory of the case, none of that makes any sense. It's fishing. It's trying to instill doubt in you.

But reasonable is not any doubt. It's in the matter of, if you have a question or you're curious, every trial I've

done someone wants to hear more. The question is whether you believe without any reasonable doubt the defendant did this. You have heard the testimony. You have heard the tape. You've seen pictures. You've heard the totality of the circumstances. I ask you as representatives of the community the ultimate defenders of truth to find the defendant guilty of all charges. See justice done. Thank you.

THE COURT: Counsel, come on up.

(Whereupon a side-bar discussion was held out of the presence of the reporter.)

THE COURT:

"The defendant, James Robert Stanford Junior is charged in Count 1 of the information with the offense of corporal injury to a spouse, cohabitant, child's parent, in violation of Penal Code Section 273.5(a). It is further alleged as to Count 1 of the information that the defendant, James Stanford Junior, personally inflicted great bodily injury upon LaTonya Henderson, pursuant to Penal Code Section 12022.7(e).

The defendant, James Stanford Junior, is charged in Count 2 of the information with the offense of assault by means likely to produce great bodily injury, in violation of Penal Code Section 245(a)4. It is further alleged as to Count 2 of the information that the defendant, James Stanford Junior, inflicted great bodily injury upon LaTonya Henderson pursuant to Penal Code Section 12022.7(e).

The defendant, James Stanford Junior, is charged in Count 3 of the information with the offense of battery with serious bodily injury, in violation of Penal Code Section

THE COURT: All right, and you have two witnesses for that?

MR. LEVERS: Three. I think two very briefly for chain and then the CAL ID person.

THE COURT: Okay.

MR. LEVERS: Your Honor, just, I've never done it quite this way. Do you want someone to testify as to what the priors are as well or save that for the jury?

THE COURT: We're just doing ID with the Court.

MR. LEVERS: Okay.

(Whereupon a brief recess was taken.)

THE BAILIFF: Come to order. Court is now in session.

THE COURT: On the record outside the presence of the jury. Mr. Stanford is present with Counsel. The prosecutor is present. We've received a request from the jury for the following: Signed by the foreperson requesting deputy's report and transcript of 911. The deputy's report obviously is not going to be given, but I'll allow both Counsel to be heard on the request for the transcript.

MR. LEVERS: Your Honor, I think if it's just for ease of use to refer to so they don't have to check the tape, I don't have a problem. I think we both agreed it was accurate.

MS. SATTERFIELD: I think they have the audio recording. That's the evidence. I object as far as the transcript. It's somebody's interpretation of what they heard and the think the jury needs to listen to the audio if they

choose to do so. The transcript itself is not evidence. They have the evidence back there if they want to replay it again.

THE COURT: And did you provide a computer for them to listen to?

MR. LEVERS: Yes.

THE COURT: To my bailiff?

MR. LEVERS: Yes, your Honor.

THE COURT: That's one of those stripped down computers where they don't have any research capabilities?

MR. LEVERS: Yes.

THE COURT: All right. I'm going to answer this request as follows: The above items are not available for your deliberations.

MR. LEVERS: Thank you.

MS. SATTERFIELD: Thank you.

THE COURT: Okay. That will be returned to them.

(Whereupon a brief recess was taken.)

THE BAILIFF: Come to order. Court is now in session.

THE COURT: On the record in People versus James Stanford. We're here on ID issues. Mr. Stanford is present. Counsel, the prosecutor is present. Your first witness.

MR. LEVERS: Thank you, your Honor. People call Deputy Marylee Brown to the stand.

THE CLERK: Do you solemnly state that the evidence you shall give in this matter shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: Yes.

THE COURT: Certainly.

MS. SATTERFIELD: Thank you. As far as the "unconscious a little bit" testimony goes, I think that Ms. Henderson testified that if this is in fact what happened, which she did not say happened in her testimony today, she said that all of her injuries were caused not by anything that Mr. Stanford had done but all from her acting crazy and from her falling to the ground when she was attacking him and running. So the Court heard the testimony. I would submit.

THE COURT: The Court needs to look to reasonable inferences for any substantial evidence in existence of each element. Court is satisfied that all elements under that standard have been shown, based on the evidence, depending on who you believe and at what point you believe the information was provided. We have been given different stories but it's not the Court's, the Court is not one to determine which story is the truthful story. The jurors are the ones that will make that determination.

But it certainly is sufficient information on which each element has been shown and that a jury can conclude that all elements have been shown as to the charges as well as the allegation. The motion is denied. All right. With that in mind, how's the defense going to proceed?

MS. SATTERFIELD: Based on your chambers conference regarding the photos, if the District Attorney is willing to stipulate to the two photos that I had?

THE COURT: Exhibit 6 and 7.

MS. SATTERFIELD: Exhibit 6 and 7, at that point if

From the Editors

THIS ISSUE OF *CLN* IS BEING PROVIDED to all *Prison Legal News* subscribers as a complimentary review copy. For those readers who may not be familiar with *CLN*, here's a brief overview.

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New Report Shows More Than Half of Wrongful Convictions Involved Misconduct by Police and Prosecutors

by Dale Chappell

MORE THAN HALF OF THE CASES WHERE innocent people were wrongfully prosecuted and imprisoned over the last three decades involved misconduct by the police and/or prosecutors. This comes from a new report by the National Registry of Exonerations ("NRE") released in September 2020, compiling data on every exoneration since 1989.

Out of 2,400 cases analyzed by the NRE, 54 percent were the result of misconduct by law enforcement and prosecutors, and the more severe the crime, the more likely misconduct played a role. Overall, cops and prosecutors evenly split the misconduct. But the discipline was largely on law enforcement, with prosecutors rarely, if ever, taking the blame.

The 218-page report details the most common types of misconduct, giving examples of cases and the fate of the officials responsible for the misconduct. It then notes any discipline handed out and concludes with suggestions on why misconduct occurs and what can be done to prevent it.

Background

THE NRE MANAGES AN ARCHIVE OF ALL known exonerations in the U.S. since 1989. So far, that comes to 2,663 cases. The report, though, focuses on all the cases up to February 2019. It also limits misconduct to government officials who contributed to the false convictions of people later exonerated. Typically, this means concealed or false evidence and lying witnesses.

For purposes of the study, the term "exoneration" is defined as "a person who was convicted of a crime [and] is officially and completely cleared based on new evidence of innocence."

"Misconduct" is defined as a violation of an "official duty in the investigation or prosecution of a criminal case, and that violation contributed to the conviction of a defendant who was later exonerated."

The misconduct is broken down into five general categories: witness tampering, interrogations, fabricated evidence, concealed evidence, and misconduct at trial.

While not less important, the report does not focus on misconduct by defense lawyers and judges.

Defense lawyers work for the defendant, and their errors are usually "sins of omission" (such as failing to investigate) and usually remain unknown. And lawyers tend to steer away from claims against judges, possibly because other judges are reluctant to pursue complaints against other judges, the study suggests.

Frequency of Misconduct

MISCONDUCT OCCURRED ABOUT EVENLY BEtween men and women, and Black and White defendants, with slightly higher numbers in cases involving Black men. This, of course, is an average across all crimes, and some offenses were much more uneven, like drug cases versus white-collar crimes.

By far, the most misconduct happened in murder cases, with about half of the 908 murder convictions by way of official misconduct. Interestingly, prosecutorial misconduct in white-collar crimes beat out all other crimes, with more than half of the cases infected by misconduct. Those white-collar cases were also entirely federal cases.

Disturbingly, the report said that almost 80 percent of death penalty cases that were exonerated involved official misconduct. In other words, 8 out of 10 people who were wrongfully convicted and sentenced to die were put on death row because of police and prosecutorial misconduct. The report attributes this high rate to the fact that death penalty cases get more attention and therefore more scrutiny, which uncovers the misconduct more often. That's probably why the worse the crime is, the higher the misconduct rate, the report states.

Drug case exonerations happened mainly in two places: Houston and Chicago. Most of the Chicago cases involved a few corrupt cops, notably Police Sgt. Ronald Watts, who planted drugs on people to extort money from them. At least 77 wrongful drug convictions were linked directly to Watts. The Houston drug cases involved drugs that were found to be not drugs at all, once they were tested in a lab. Hundreds of defendants were exonerated in Houston after that was exposed.

While Blacks make up only 13 percent of this country, 52 percent of wrongful murder convictions and 63 percent of drug exonerations involved Blacks. They were twice as likely as Whites to be wrongfully convicted in drug cases, according to the report.

Types of Misconduct

IN ORDER OF THE WAY PROCEEDINGS HAPpen in criminal cases, the following are the five common categories of misconduct listed in the report.

- ***Witness Tampering***: Defined as "delib-

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erate and successful efforts to get witnesses to give false evidence or withhold true evidence." Witness tampering accounted for 17 percent of the exonerations in the report. The highest rate was for murder and child sexual abuse cases, with about 80 percent of all exonerations involving witness tampering.

It's primarily a form of police misconduct, the report says, since they're the main investigators who interview witnesses. The three common types of witness tampering include (1) procuring false testimony, (2) tainting identifications, and (3) improper questioning of a child victim. Tainted identification was the most common, occurring twice as often as the others. It's also the type of witness tampering most often used to convict Black defendants.

• ***Interrogations***: Misconduct during police interrogations made up seven percent of all exonerations, with 57 percent of those being false confessions. Chicago police led the nation in illegal interrogations, with 69 percent of false confessions in Chicago the result of violence. Nearly all of those exonerations stemmed from a pattern of torture during the 1970s and 1980s, where mostly Black men were tortured by Chicago detectives under then-Police Commander Jon Burge. In 2009, a "torture commission" found dozens of false confessions coerced by Burge and his men. Burge was eventually fired and sentenced to four years in prison.

• ***Fabricated Evidence***: Misconduct when police create evidence in a case in order to convict happened in about 10 percent of the exonerations. This included actual false evidence in three percent of cases, officers lying as witnesses in five percent, and "confessions" by defendant created by the police in two percent of those cases.

Concealing evidence favorable to the defendant was a common problem, as was planting evidence, mostly in drug crimes (see Houston, for example). The report notes that planted evidence is difficult to detect and is most often only revealed by other coinciding factors.

Fabricated confessions (not false confessions) are those created by the police, often in the form of admissions written by the police that were not made by the defendant. Once again, the report found most fabricated confessions happened in Chicago.

• ***Concealing Evidence***: *In Brady v. Maryland*, 373 U.S. 83 (1963), the U.S. Supreme Court held that the prosecution must turn over all favorable evidence to the defense. Over the last 50-plus years, prosecutors have devised ways around *Brady*, and courts have chipped away at the rule as well.

The report unsurprisingly found that concealing evidence from the defense was the most common type of misconduct found by the NRE in all exonerations. It happened in 44 percent of the exonerations in the report. Why the high number with such a clear command by the Supreme Court? The report notes several factors.

The evidence considered "reportable" by *Brady* is unclear, the report states. The Court has defined it as evidence that, had it been disclosed to the defense, the result of the case would've been different. The report points out the problems with this definition.

"First, how can anyone know whether a jury would have decided a case differently if it had additional evidence?" And, more importantly, how can a prosecutor make that call? After all, it's the prosecutor who determines whether evidence might be favorable to a defendant and must be turned over.

"Given their role, it's not surprising that prosecutors were responsible for concealing evidence in 73 percent of exonerations," the report notes.

• ***Misconduct at Trial***: Over 95 percent of convictions in this country are by way of guilty pleas, rather than trials. Many reasons exist for that unreal fact, but even in the small number of trials conducted, 23 percent of all exonerations involved misconduct at trial.

Lying cops called by prosecutors at trial made up most of the misconduct. They committed perjury in 13 percent of exonerations. They lied about the investigation in 75 percent of trials, which made up most of the report's details.

Misconduct by prosecutors also occurred when they would "suborn" perjury, i.e., allow a witness to lie on the stand. A prosecutor has a duty to correct any lies by its witnesses. Prosecutors failed to do this in eight percent of all exonerations or 186 of the 2,400 cases. The most common lie by a prosecutorial witness was that they didn't get favorable treatment in exchange for their testimony.

Lies by prosecutors themselves often came during closing arguments, trying to convince the jury to convict the defendant.

Federal Cases

FEDERAL CASES MADE UP ONLY FIVE PERCENT of all exonerations, but 41 percent of federal exonerations were white-collar crimes. And the misconduct in those cases was all by the prosecutors. White-collar cases are "big-ticket prosecutions" for federal prosecutors, the report notes. Federal prosecutors often use white-collar cases as platforms to push their career and position themselves for federal life-long judgeships.

This is true even though more than half of white-collar defendants never see jail or prison, and then those who do usually get sentenced to less than three years on average. Perjury was the main misconduct by prosecutors in those cases. In exoneration cases, federal prosecutors lied in white-collar cases two times more often than state prosecutors lied in murder cases.

Discipline

DISCIPLINE, WHEN IT DID HAPPEN, WAS imposed in just 17 percent of exonerations and often came in bunches, the report states. Prosecutors were "rarely" punished, but cops were punished four times more often than prosecutors. Still, that was in only one in five known cases of misconduct by the police. Forensics workers got most of the punishment in nearly half the exonerations.

The type of discipline usually came down to employment (fired or demoted), professional (loss of licenses), or criminal (criminal charges filed). Out of 2,400 cases, only three prosecutors were ever criminally charged because of their misconduct, and those were high-profile cases.

The report notes that a loss in a civil lawsuit does not count as "punishment" because it's usually the taxpayers or insurance company that pays the damages, not the officials themselves.

Two disgraced prosecutors were mentioned in the report. Former Williamson County (Texas) D.A. Ken Anderson, who purposely concealed evidence in a murder case that caused a defendant to spend 24 years in prison, spent just four days in jail for criminal contempt. And Michael Nifong, the former Durham County D.A. in North Carolina who falsely accused the Duke University Lacrosse players of rape, spent just a single day in jail on criminal contempt charges.

Conclusion

WHY DO LAW ENFORCEMENT OFFICIALS commit misconduct that leads to convictions of innocent people? The report concludes that the causes are mostly systemic. Pervasive practices that allow and encourage bad behavior by cops and prosecutors together with an environment of poor leadership and training all support misconduct by officials. Change those elements, and you can change the instances of misconduct, the report concludes.

Sources: *reason.com, National Registry of Exonerations*