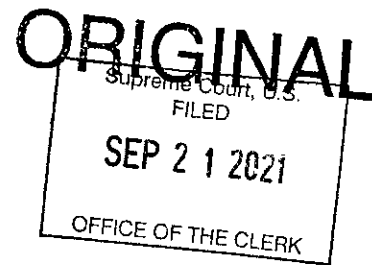


No. 21-5942



IN THE
SUPREME COURT OF THE UNITED STATES

WOOLEN — PETITIONER
(Your Name)

vs.

KIBBLER — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

CALIFORNIA COURT OF APPEAL FOR THE SECOND DISTRICT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MICHAEL WOOLEN
(Your Name)

P.O. BOX 3030
(Address)

SUSANVILLE, CA. 96127
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- I. WHETHER THE UNITED STATES DISTRICT COURT'S CUMULATIVE EFFECT OF DEPRIVATIONS OF EQUAL PROTECTION OF LAWS, FAILURE TO APPOINT COUNSEL TO ADA PETITIONER WITH 4TH GRADE COGNITIVE FUNCTION PREDICATED PROCEDURAL DUE PROCESS DEFICIENCY I.E. SUMMARY DISMISSAL FOR SECOND AND SUCCESSIVE PETITION.
- II. WHETHER THE UNITED STATES DISTRICT COURT FAILURE TO APPOINT COUNSEL IN DETERMINING DUE PROCESS QUESTION IS A CAUSAL LINK TO TRIAL COURT STRUCTURAL DEFICIENCY THAT MENTAL ILLNESS INQUIRY WOULD HAVE INSPIRED COUNSEL TO COMPEL THE DISTRICT COURT WITH.
- III. WHETHER THE JURY WAS QUALIFIED IMPARTIAL IN DETERMINING "WHEN IS A CRIME NOT CONSIDERED PREMEDITATION" PURSUANT TO CALIFORNIA EVIDENCE CODES 403 AND 780, IN TOTALITY OF THE RECORD IN TRANSACTIONS.
- IV. WHETHER A NAIVE VIOLATION CONSISTENT WITH RECENT DISTRICT COURT PRECEDENCE COMBINED WITH A IMPARTIAL JURY DEPRIVATION BRECHT, SUPRA AT 654 CLAIM SATISFIES THE "UNUSUAL CASE" DETERMINATION WARRANTING HABEAS RELIEF.
- V. WHETHER THE UNITED STATES SUPREME COURT SUPERVISORY POWERS SHOULD DETERMINE REFORMATIVE PRECEDENCE ESTABLISHED IN LAW I.E. STRUCTURAL DEFICIENCY IN TRIAL, POST TRIAL, PROCEDURE AND ANALYSIS

LIST OF PARTIES

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

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the LOS ANGELES SUPERIOR COURT court appears at Appendix B to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

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

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 6-9-21.
A copy of that decision appears at Appendix A .

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTION

5TH AMENDMENT - NOR BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY WITHOUT DUE PROCESS OF LAW.

6TH AMENDMENT - RIGHT TO IMPARTIAL JURY, AND RIGHT TO CONFRONTATION

9TH AMENDMENT - THE ENUMERATION IN THE CONSTITUTION OF CERTAIN RIGHTS, SHALL NOT BE CONSTRUED TO DENY OR DISPARAGE THE OTHERS RETAINED BY THE PEOPLE.

14TH AMENDMENT - NOR DENY ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF LAWS.

CALIFORNIA CONSTITUTION

ARTICLE 6 SECTION 12 (C) - TRANSFER OF CAUSE

ARTICLE 6 SECTION 23 (C)(6) - MATTERS REHEARD

UNITED STATES CODE

28 U.S.C. SECTION 1651 (a) - EXTRAORDINARY WRIT

42 U.S.C. SECTION 12101-12213 (AMERICANS WITH DISABILITIES ACT) - TO HAVE REASONABLE ACCOMMODATION FOR A DISABILITY.

42 U.S.C. SECTION 12102 (1)(A)-(2)(A) - MENTAL DISORDERS ARE

SPECIFIC AND MAY SUBSTANTIALLY LIMIT ONE OR MORE MAJOR LIFE ACTIVITIES

OF READING, WRITING, SPELLING, PERFORMING MATHEMATICAL CALCULATIONS,

OR INFORMATION PROCESSING.

CALIFORNIA WELFARE AND INSTITUTIONS CODE

SECTION 5008.2 - DISTRICT COURT FAILED IN ITS CONSIDERATION OF THE

HISTORICAL COURSE OF PETITIONER'S MENTAL IMPAIRMENT OF MAJOR LIFE ACTIVITIES.

UNITED STATES SUPREME COURT RULES

RULE 10 (b) - STATE COURT FAILED TO APPLY RECENT DISTRICT COURT DECISION

RULE 10 (c) - NINTH CIRCUIT COURT BARRED PETITIONER WITHOUT DUE PROCESS

INTEREST BEING DEVELOPED, AS RULED IN THE DISTRICT COURT.

RULE 20.1 - PURSUANT TO U.S.C. SECTION 1651 (a) PETITIONER IS SEEKING

AN EXTRAORDINARY WRIT.

STATEMENT OF THE CASE

PETITIONER WAS CONVICTED OF ATTEMPTED MURDER, GUN ENHANCEMENTS, AND PRISON PRIOR ENHANCEMENTS ON JANUARY 21, 2004. PETITIONER WAS SENTENCED TO LIFE PLUS 25 YEARS TO LIFE, AND 3 YEARS ON FEBRUARY 18, 2004. ON APRIL 20, 2005 THE CALIFORNIA SUPREME COURT DENIED PETITIONER'S PETITION FOR REVIEW, CONCLUDING THE DIRECT APPEAL.

THE DIRECT APPEAL ISSUES THAT WERE RAISED ARE: (1) TRIAL COURT FAILURE TO INSTRUCT ON THE LESSER INCLUDED OFFENSE, (2) PROSECUTORIAL MISCONDUCT; MISTATING THE LAW AND INFRINGING ON PETITIONER'S RIGHT TO PRESENT A DEFENSE, AND (3) TRIAL COURT PRECLUDING APPELLANT FROM CROSS EXAMINING REBUTTAL EXPERT. THE MERITS WERE ADJUDICATED IN THE CALIFORNIA COURT OF APPEALS CASE NO. B173587.

ON 12-14-07 PETITIONER'S STEP FATHER, HOUSED IN ANOTHER PRISON, FILED A HABEAS CORPUS IN THE FIRST INSTANCE IN THE UNITED STATES DISTRICT COURT. ALSO ATTACHED WERE A MOTION FOR EQUITABLE TOLLING, AND EXHIBITS, AND EXCERPTS OF THE APPEAL BRIEFS. THE CLAIMS IN THE MOTION FOR EQUITABLE TOLLING WERE: (1) MENTAL ILLNESS, (2) LAW LIBRARY INACCESSIBILITY, AND (3) LACK OF LEGAL REPRESENTATION AND OR TRAINING. PETITIONER WAS IN THE AMERICANS WITH DISABILITIES ACT AND HAD A 4TH GRADE COGNITIVE FUNCTION. THE HABEAS CORPUS PRESENTED THE DIRECT APPEAL UNDERDEVELOPED CLAIMS.

ON 1-10-08, PETITIONER WAS SUMMARILY DISMISSED BY THE UNITED STATES DISTRICT COURT AS TIME BARRED. PETITIONER HAD FAILED TO RESPOND TO REPORTS AND RECOMMENDATIONS DUE TO INCOMPETENCY. ON 3-16-10 PETITIONER WAS GRANTED CERTIFICATE OF APPEALABILITY TO DETERMINE A CONSTITUTIONAL QUESTION. ON 6-21-10, PETITIONER FILED THE EXACT HABEAS PETITION AS IN THE FIRST INSTANCE, AND WAS SUMMARILY DISMISSED FOR SECOND AND SUCCESSIVE.

1 ON 2-18-21 PETITIONER FILED A STRUCTURAL DEFICIENCY CLAIM IN THE
2 HABEAS COURT IN THE SECOND INSTANCE. ON 3-4-21 IN SUMMARY
3 DISMISSAL, THE HABEAS COURT 'OVER OPINED' ADJUDICATING CLAIMS
4 THAT WERE NOT PRESENTED. PETITIONER FILED A HABEAS PETITION
5 IN THE CALIFORNIA SUPREME COURT PURSUANT TO CALIFORNIA
6 CONSTITUTION ARTICLE 6 SECTION 12 (C). PETITIONER WAS DENIED
7 ON 6-9-21. PETITIONER NOW PETITIONS THE UNITED STATES
8 SUPREME COURT AS THE COURT TO LAST RESORT.

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REASONS FOR GRANTING THE PETITION

PETITIONER PETITIONS THE COURT PURSUANT TO UNITED STATES SUPREME COURT RULE 10 (b)(c), AND RULE 20.1; 28 U.S.C. SECTION 1651 (a). PETITIONER IS BARRED FROM FILING IN THE CALIFORNIA COURT OF APPEALS FOR THE NINTH CIRCUIT (SEE APPENDIX E).

THE NATION IS DIVIDED ON THE SCHOLASTIC LEVEL - ON CRITICAL RACE THEORY. PETITIONER, AFTER YEARS OF MENTAL DEFICIENCY IN 2018 ENROLLED IN COLLEGE, NOW MAINTAINING A 3.09 GPA. THE UNDERLINE VIOLATION OF CONSTITUTIONAL LIBERTIES I.E. DEPRIVATION OF A QUALIFIED JURY IS PREDICATED IN TRIAL COURT. DENYING PETITIONER IMPARTIALITY OF HIS JUDICIAL FUNCTIONALITY AND JUDICIAL DUTY NEVER ENSUED PURSUANT TO THAT DEPRIVATION. FORFEITURE OF JUDICIAL COGNIZANCE CAN NEVER BE, CONSIDER A JUDICIAL ACT IN THE COURSE OF TRIAL DUTIES WHEN THE JUDICIAL OATH IS TO PROTECT AND DEFEND THE CONSTITUTION I.E. DUE PROCESS, AND FAIR TRIAL. PETITIONER HAVE NEVER BEEN AFFORDED A FEDERAL REVIEW.

1. WHETHER THE UNITED STATES DISTRICT COURT'S CUMULATIVE EFFECT OF DEPRIVATIONS OF EQUAL PROTECTION OF LAWS, FAILURE TO APPOINT COUNSEL TO ADA PETITIONER WITH 4TH GRADE COGNITIVE FUNCTION PREDICATED PROCEDURAL DUE PROCESS DEFICIENCY I.E. SUMMARY DISMISSAL FOR SECOND AND SUCCESSIVE PETITION.

1 AN ADA PETITIONER FILED VIA HIS STEP FATHER IN ANOTHER PRISON,
2 A FEDERAL HABEAS PETITION ON 12-14-07, IN THE UNITED STATES
3 DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA. THE HABEAS
4 PETITION ASSERTED THE UNDERDEVELOPED DIRECT APPEAL ISSUES: (1)
5 TRIAL COURT FAILURE TO INSTRUCT THE JURY WITH THE LESSER INCLUDED
6 OFFENSE, (2) PROSECUTORIAL MISCONDUCT: MISSTATING THE LAW, AND
7 INFRINGING ON APPELLANTS RIGHT TO PRESENT A DEFENSE, (3) TRIAL
8 COURT PRECLUDING APPELLANT FROM FULLY CROSS EXAMINING EXPERT
9 WITNESS (SEE EXHIBIT A: NEXT NINE PAGES).

10
11 ALSO, INCLUDED IN THE HABEAS CORPUS WAS A MOTION FOR
12 EQUITABLE TOLLING ASSERTING: (1) MENTAL ILLNESS, (2) INACCESSIBILITY
13 OF LAW LIBRARY, AND (3) LACK OF LEGAL REPRESENTATION, AND LEGAL
14 TRAINING (SEE EXHIBIT A: FIRST SIX PAGES).

15
16 THE UNITED STATES SUPREME COURT HELD IN LEWIS V. CASEY, 518
17 U.S. 343 (1996) "THERE IS A DUE PROCESS VIOLATION WHERE AN
18 INMATE DOES NOT HAVE THE BASIC CAPABILITY OF PRESENTING HIS
19 CLAIM TO THE COURT, IRRESPECTIVE OF CAPACITY OF TURNING PAGES IN
20 A LAW LIBRARY"

21
22 IN ARMSTRONG V. WILSON, 124 F. 3d AT 1023 THE COURT HELD:
23 "THAT NO OTHERWISE QUALIFIED INDIVIDUAL WITH A DISABILITY, BE
24 EXCLUDED FROM PARTICIPATION IN, BE DENIED THE BENEFITS OF, OR
25 BE SUBJECTED TO DISCRIMINATION UNDER ANY PROGRAM OR ACTIVITY
26 TO INCLUDE ALL OF THE OPERATIONS OF ... A DEPARTMENT, AGENCY
27 ... OR OTHER INSTRUMENTALITY OF A STATE OR OF A LOCAL GOVERN-
28 MENT.

PETITIONER REQUESTED LEGAL REPRESENTATION IN THE DECLARATIONS FROM THE LAW LIBRARY TECHNICIAN, HIS MOTHER, AND HIS STEP FATHER IN THE MOTION FOR EQUITABLE TOLLING EXHIBITS (SEE EXHIBIT A: NEXT FIVE PAGES).

WHERE A CLAIM IS ADJUDICATED ON THE MERITS IN A STATE COURT PROCEEDING, COUNSEL SHOULD BE ABLE TO IDENTIFY WHETHER THE ADJUDICATION RESULTED IN A DECISION THAT WAS CONTRARY, OR INVOLVED AN UNREASONABLE APPLICATION OF CLEARLY ESTABLISHED FEDERAL LAW, AS DETERMINED BY THE UNITED STATES SUPREME COURT, WITHOUT ANY EVIDENCE OUTSIDE OF THE RECORD. ATTORNEYS ARE CAPABLE OF REVIEWING THE STATE RECORD, IDENTIFYING LEGAL ERRORS, AND MARSHALLING RELEVANT ARGUMENTS.

AFTER AN INITIAL SUMMARY DISMISSAL 1-10-08, DISTRICT COURT JUDGE GEORGE WU ON 3-16-10 GRANTED THE ISSUANCE OF CERTIFICATE OF APPEALABILITY. THE CONSTITUTIONAL QUESTION BECAME A PROCEDURAL DUE PROCESS QUESTION THAT THE 14TH AMENDMENT EQUAL PROTECTION OF LAWS PROTECTS. THOUGH THERE IS NO CONSTITUTIONAL RIGHT TO COMPETENCE, IF INCOMPETENCE IS EXHIBITED IN A PETITIONER'S FAILURE TO RESPOND TO THE MAGISTRATE'S REPORTS AND RECOMMENDATIONS, PROTECTIONS SHOULD BE AFFORDED PURSUANT TO THE 14TH AMENDMENT'S EQUAL PROTECTION OF LAWS CLAUSE.

IN SANCHEZ V. MADDEN, 2021 U.S. DIST LEXIS 112928 THE DISTRICT COURT HELD: "THE APPOINTMENT OF COUNSEL IS DISCRETIONARY WHEN NO EVIDENTIARY HEARING IS NECESSARY ... UNLESS THE CIRCUMSTANCES OF A PARTICULAR CASE INDICATE THAT APPOINTMENT OF COUNSEL IS

1 TO PREVENT DUE PROCESS VIOLATIONS."

2
3 PETITIONER HAD CLEARLY SHOWN THAT BY FAILURE TO RESPOND TO
4 REPORTS AND RECOMMENDATIONS (SEE APPENDIX F), HIS THIRD PARTY
5 FILING OF HABEAS CORPUS, AND MOTION FOR EQUITABLE TOLLING (SEE
6 EXHIBIT A: FIRST SIX PAGES) THAT HE WAS INCOMPETENT. JUDGE WU'S
7 PROCEDURAL DUE PROCESS QUESTION:

8
9 WHETHER THE COURT HAS CORRECTLY CONCLUDED THAT
10 EQUITABLE TOLLING IS UNAVAILABLE TO PETITIONER AND
11 THAT A CONCLUSION CAN BE REACHED WITHOUT FURTHER
12 DEVELOPMENT OF THE RECORD OF PETITIONER'S ALLEGED
13 MENTAL IMPEDIMENT" (SEE APPENDIX C).

14
15 IS GROUNDED IN EVIDENTIARY NECESSITATION, THOUGH JUDGE WU
16 DENIED THE EVIDENTIARY HEARING THAT WOULD HAVE CONCLUDED
17 THE DEVELOPMENT OF THE RECORD OF PETITIONER'S ALLEGED MENTAL
18 IMPEDIMENT. REASONABLE JURIST WOULD AGREE THAT PROCEDURAL DUE PROCESS
19 SHOULD BE AFFORDED WHERE THE CONSTITUTIONAL QUESTION EXISTS AS
20 A SUBSTANTIAL FACTOR IN GRANTING A CERTIFICATE OF APPEALABILITY.

21
22 ON 6-21-10 PETITIONER RESUBMITTED THE EXACT HABEAS PETITION THAT
23 WAS SUBMITTED IN THE FEDERAL HABEAS IN THE FIRST INSTANCE
24 (SEE EXHIBIT A: NEXT NINE PAGES), THAT HIS STEP FATHER PRESENTED
25 ON HIS BEHALF 12-14-07 IN THE UNITED STATES DISTRICT COURT,
26 AND WAS SUMMARILY DISMISSED AS SECOND AND SUCCESSIVE WITHOUT PRIOR
27 AUTHORIZATION FROM THE NINTH CIRCUIT (SEE APPENDIX D).

28 ///

1 IN CALDERON V. U.S. DISTRICT COURT, 163 F. 3d AT 541 THE COURT HELD:
2 "THE FIRMLY ENTRENCHED COMMON LAW RIGHT TO COMPETENCE PERSISTING
3 BEYOND TRIAL IS A STRONG INDICATOR OF A CONSTITUTIONAL DUE PROCESS
4 RIGHT TO COMPETENCY IN POST CONVICTION PROCEEDINGS... OR TO STAY
5 A PROCEEDING UNTIL COMPETENCY IS REGAINED". IN RYAN V. GONZALES,
6 568 U.S. 57 AT HN7 "HABEAS PETITIONERS WHO DO NOT HAVE THE RIGHT
7 TO COUNSEL MAY STILL AVAIL THEMSELVES OF EQUITABLE TOLLING IF THEY ARE
8 MENTALLY INCOMPETENT."

9
10 42 U.S.C. SECTION 12102 (1)(A)-(2)(A) - MENTAL
11 DISORDERS ARE SPECIFIC AND MAY SUBSTANTIALLY LIMIT
12 ONE OR MORE MAJOR LIFE ACTIVITIES OF READING,
13 WRITING, SPELLING, PERFORMING MATHEMATICAL CALCULATIONS,
14 OR INFORMATION PROCESSING.

15
16 II. WHETHER THE UNITED STATES DISTRICT COURT FAILURE TO
17 APPOINT COUNSEL IN DETERMINING DUE PROCESS QUESTION
18 IS CASUAL LINK TO TRIAL COURT STRUCTURAL DEFICIENCY
19 THAT MENTAL ILLNESS INQUIRY WOULD HAVE INSPIRED
20 COUNSEL TO COMPEL THE DISTRICT COURT WITH.

21
22 THE CONSTITUTIONAL QUESTION THAT THE DISTRICT COURT ISSUED REQUIRED
23 THE DEVELOPMENT OF THE RECORD OF MENTAL ILLNESS, WHICH IRONICALLY IS
24 A SOCIALLY ACCEPTED INTERLOCKING CHARACTERISTIC. PETITIONER HAD
25 VIA THIRD PARTY, FILED A HABEAS PETITION INCLUDING RELEVANT MEN-
26 TAL ILLNESS RECORD EXHIBITS (SEE EXHIBIT A: NEXT TWENTY TWO PAGES).
27 HOWEVER, THE FURTHER DEVELOPMENT REQUIRED AN EVIDENTIARY HEARING
28 AND MENTAL HEALTH EXPERTS.

ON MAY 14, 2005 PETITIONER'S APPELLATE COUNSEL RELINQUISHED THE TRIAL FILE VIA UNITED STATES POSTAL SYSTEM (SEE EXHIBIT D: NEXT EIGHTEEN PAGES). PETITIONER NEVER RECEIVED THE TRIAL FILE UNTIL 2019. THOUGH PETITIONER WAS INCOMPETENT IN 2005, AND UP UNTIL THIS POINT HAVE REGAINED HIS COMPETENCE, PETITIONER DID TRY TO FOLLOW THE CASE DURING DIRECT APPEAL BY ASKING JAILHOUSE LAWYERS FOR ASSISTANCE WHILE IN THE LAW LIBRARY (SEE EXHIBIT A: NEXT FIVE PAGES). ONCE THE TRIAL FILE AND FORMAL NOTICE OF THE AEDPA'S 1 YEAR LIMIT TO FILE A FEDERAL HABEAS CORPUS WAS LOST, PETITIONER WAS LEFT WITHOUT THE PROVERBIAL "CARROT ON THE STRING" THAT APPELLATE ATTORNEY LETTERS AND LEGAL RESPONSES PROVIDED (SEE EXHIBIT D: FIRST TWENTY ONE PAGES).

IN MURRAY V. CARRIER, 477 U.S. AT 493-494 THE UNITED STATES SUPREME COURT HELD: "INTERFERENCE BY GOVERNMENT OFFICIALS THAT MAKE COMPLIANCE WITH THE STATE PROCEDURAL RULE IMPRACTICABLE" IS CAUSE FOR FEDERAL REVIEW. IN LOTT V. MUELLER, 304 F. 3d 918 U.S. APP LEXIS AT 926, CHIEF JUSTICE MCKEOWN OPINED: "EXTRAORDINARY CIRCUMSTANCES BEYOND A PETITIONER'S CONTROL MAKE IT IMPOSSIBLE TO FILE A PETITION ON TIME... ONCE THE HIGH HURDLE OF EXTRAORDINARY CIRCUMSTANCES HAVE BEEN OVERCOME, THE CLOCK STOPS FOR THE DURATION OF SUCH CIRCUMSTANCES". PETITIONER'S TRIAL FILE WAS LOST IN A POST OFFICE DEAD LETTER FACILITY FOR 14 YEARS AND HABEAS COUNSEL COULD HAVE BEEN FURNISHED WITH COPIES OF THE TRIAL FILE WHEN THE CONSTITUTIONAL QUESTION WAS DETERMINED PREPATING COA IN THE DISTRICT COURT IN 2010.

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///

1 IN THE FEDERAL PETITION IN THE FIRST INSTANCE, PETITIONER PROVIDED
2 RECORDS OF INQUIRY TO COCR OFFICIALS CONCERNING THE TRIAL FILE (SEE
3 EXHIBIT D: NEXT TWO PAGES). RESPONDENT REFERRED TO PETITIONER
4 FINDING THE TRIAL FILE IN THE 1-10-08 SUMMARY DISMISSAL (SEE
5 APPENDIX F), WHICH WAS NOT TRUE, THE FEDERAL HABEAS CORPUS CONTAIN-
6 ED EXCERPTS OF THE APPEAL BRIEFS (SEE EXHIBIT A: NEXT FORTY
7 SEVEN PAGES). HOWEVER, PETITIONER'S MOTHER IN HER DECLARATION
8 MISSTAIENLY REFERRED TO PETITIONER RECEIVING THE TRIAL FILE LATE
9 WHICH WAS UNTRUE (SEE EXHIBIT A: NEXT FIVE PAGES). THE EXCERPTS
10 PRESENTED IN THE FEDERAL HABEAS WERE OF THE EXHAUSTED DIRECT
11 APPEAL RECORD.

12 PETITIONER RECEIVED THE TRIAL FILE IN 2019 (SEE EXHIBIT D), THEN DEVELOPED
13 THE JUDICIAL ABUSE OF DISCRETION, AND PROSECUTORIAL MISCONDUCT CLAIMS THAT
14 WERE UNDERDEVELOPED IN THE DIRECT APPEAL. LEGAL REPRESENTATION
15 TO DEVELOP THE RECORD IN ACCORDANCE WITH THE DUE PROCESS, COA
16 RULING WOULD HAVE AFFORDED PETITIONER EQUAL PROTECTION OF LAWS
17 NECESSARY TO PRESENT THE TRIAL COURT STRUCTURAL DEFICIENCY.

18 TRIAL FILE CONTENTS

19
20
21 IN THE TRIAL FILE AND RECORD THERE IS NOW EXISTENT PRETRIAL
22 CONFERENCE INTEREST, AND UNDERDEVELOPED REFERENCE TO PETITIONER'S
23 MENTAL ILLNESS. PETITIONER WAS NOT AFFORDED ONE EQUITABLE PRETRIAL
24 TRANSACTION. FROM 7-27-03 UNTIL 1-12-04 THE RECORD IN TRAN-
25 SACTIONS ARE NON EXISTENT IN REFERENCE SUBSTANCE. HABEAS COUNSEL
26 WOULD HAVE COMPELLED TRIAL ATTORNEY TO RELINQUISH THE TRIAL RECORD
27 WHICH AFTER NUMEROUS REQUEST FROM 2007 - 2020, PETITIONER WAS
28

1 FURNISHED IN 2020. IN THE RECORD THERE WAS THE PEOPLE'S 12 EXHIBIT
2 (SEE EXHIBIT B: NEXT FOUR PAGES), ALSO (EXHIBIT B: RTP. 236), AND
3 MENTAL ILLNESS EXPERT PSYCHOLOGICAL EVALUATION; AND SUPPLEMENTAL
4 REPORT (SEE EXHIBIT D: NEXT NINE PAGES).

5
6 TRIAL COURT PRESIDED ON 9-10-03, AND 10-1-03 FOR RESCHEDULED
7 PRETRIAL CONFERENCES. DR. ROTHBERG'S EVALUATION AND REPORT WERE
8 8-10-03, AND 9-26-03. TRIAL COURT PRESIDED FOR ANOTHER PRETRIAL
9 CONFERENCE ON 10-9-03. THE FIRST TWO WERE RESCHEDULED, AND
10 THE LAST ONE WAS TAKEN OFF OF THE CALENDAR (SEE EXHIBIT B:
11 DOCKET SHEETS - FIRST FOUR PAGES).

12
13 DR. ROTHBERG, IN THE SUPPLEMENTAL REPORT RECOMMENDED, "IF CONVICTED
14 A NOT GUILTY BY REASON OF INSANITY PLEA SHOULD BE CONSIDERED" TRIAL
15 COURT OFFERED PETITIONER A 5, 10, OR 15 YEAR JUDGE'S DISCRETIONARY
16 PLEA ON 10-9-03.

17
18 LEGAL REPRESENTATION WOULD HAVE FOUND IN THE TRIAL FILE MULTIPLE LAYERS
19 OF STRUCTURAL DEFICIENCY EVOLVING FROM THE DEFENSE THEORY, PREDICATED
20 IN THE PRELIMINARY HEARING MOTION FOR DISMISSAL GROUNDED IN
21 THE CRIME HAVING NO MOTIVE OR INTENT AND "JUST HAPPENING"
22 (EXHIBIT B: PRELIM. RTP 15-16). PETITIONERS RIGHT TO FUNDAMENTAL
23 FAIRNESS WAS PRECLUDED AND HEEEMONIC DISPLAYS OF COMMUNICATION
24 BETWEEN TRIAL COURT AND TRIAL PROSECUTOR INVOLVED WITH REFER-
25 RENCE TO PRIOR TRANSACTIONS, USING SUBTLETY VIA MICROAGGRESSION
26 I.E. MICROASSAULTS, MICROINSULTS, AND MICROVALIDATIONS.
27 MICROAGGRESSION, AND THE DIFFERENT FORMS ARE NOTED AS SOCIAL SCIENCE
28 [ADMINISTRATION OF JUSTICE: INVESTIGATING DIFFERENCE. PRIOR AND JONES].

SIX STEPS TO STRUCTURAL DEFICIENCY

FAIRNESS SOMETIMES REQUIRES PRINCIPLES OF EQUITY OR MAKING SOME KIND OF ADJUSTMENT TO COMPENSATE FOR REAL CONSEQUENCES ASSOCIATED WITH THE DIFFERENCES BETWEEN PEOPLE (PRIOR, JONES 2018) I.E. 9TH AMENDMENT NO ENUMERATION IN THE CONSTITUTION. TRIAL COURT FAILURE TO ESTABLISH COGNIZANCE OF MENTAL ILLNESS DEFENSE THEORY PRECLUDES THE FUNDAMENTAL FAIRNESS COMPONENT IN STRUCTURAL CAPACITY I.E. NO MATTER HOW THE SCALES OF JUSTICE TIPPED IN THE ALTERNATE THEORY'S DIRECTION - JUDICIAL DUTY WOULD NEVER ATTACH BECAUSE DUTIES ARE ATTRIBUTES OF COGNIZANCE.

THE PRINCIPAL OF THE CASE NEVER GENERATED INTEREST FROM THE TRIAL TRIBUNAL. THIS INTERLOCKING MENTAL ILLNESS IS THE CASUAL LINK TO STRUCTURAL DEFICIENCY.

STEP ONE: AFTER AN EXTRA JUDICIAL 402 HEARING ON THE MATERIALITY OF THE MENTAL ILLNESS EXPERT WITNESS, MOTIVE, AND DEFENSE THEORY - TRIAL COURT ASSERTS: " I [HE] DON'T KNOW ANYTHING ABOUT THE CASE. OBVIOUSLY, I [HE] JUST GOT IT " (EXHIBIT B: RTP.3-6). THIS MICROAGGRESSIVE, MICROVALIDATION ELICITED A MICROASSAULT FROM THE PROSECUTOR, PRESUMABLY IN REFERENCE TO THE DEFENSE THEORY OF THE CRIME "JUST HAPPENING" (EXHIBIT B: PRELIM RTP 15-16), THE PROSECUTOR MICROASSAULTED TRIAL COURT. THE MICROASSAULT WOULD COME IN THE FORM OF "JUST INDICATED" PROFFERED EVIDENCE INCLUSION. FIVE MINUTES PREVIOUSLY TRIAL COURT, TRIAL PROSECUTOR, AND TRIAL

1 ATTORNEY HELD AN EXTRA JUDICIAL 402 ON PETITIONERS MENTAL
2 ILLNESS AND THE TRIAL COURT ACKNOWLEDGED: "THERE MAY BE A
3 402 AS TO WHETHER THE DEFENSE WILL CALL ANY DOCTORS", AND "WELL
4 I THINK WE MENTIONED... WE HAD SOME QUESTIONS" (EXHIBIT B: RTP. 3, 240).

5 THE MATERIALITY OF THE MENTAL ILLNESS DOCTOR IS THAT HE REC-
6 OMMENDED "IF CONVICTED, A NOT GUILTY BY REASON OF INSANITY
7 PLEA SHOULD BE CONSIDERED" (SEE EXHIBIT B: NEXT FOUR PAGES).
8 THE PROSECUTOR'S "JUST INDICATED" MICROASSAULT WOULD BE THE FIRST
9 OF MANY THROUGHOUT THE TRIAL, IN RESPONSE TO TRIAL COURT NUMEROUS
10 MICROVALIDATIONS OF THE INITIAL FORFEITURE OF JUDICIAL COGNIZANCE
11 INTER ALIA FUNCTIONALITY. THE "JUST INDICATED" MOTIVE INCLUSION REF-
12 ERRED TO A MOTIVE INCLUSION WHICH SHOULD INSPIRE CALIFORNIA
13 EVIDENCE CODES 403 AND 780. TRIAL PROSECUTOR STATED "HE COULD ONLY
14 DRAW REASONABLE INFERENCE AS TO MENTAL STATE" (EXHIBIT B: RTP. 6)

15
16 STEP TWO: THE SECOND MICROVALIDATION FROM TRIAL COURT WAS DURING
17 THE "JUST INDICATED" DIRECT EXAMINATION OF COMPLAINT WITNESS.
18 TRIAL PROSECUTOR ASKED COMPLAINT WITNESS OF THE PROFFERED
19 EVIDENCE, AND COMPLAINT WITNESS ASKED: "ARE YOU SURE" (EXHIBIT
20 B: RTP 55-56). TRIAL COURT MICROASSAULTED/MICROVALIDATED TRIAL
21 PROSECUTOR BY INSTRUCTING HIM TO "LEAD THE WITNESS". TRIAL PRO-
22 SECUTOR MICROINSULTED TRIAL COURT'S INTEGRITY BY LEADING THE
23 COMPLAINT WITNESS TO A CARBON COPY PAGE FROM PRELIMINARY HEAR-
24 ING AND ENDED ASKING TRIAL COURT "IS THAT INSUFFICIENT"
25 (SEE EXHIBIT B: PRELIM RTP. 6-7). THIS HEGEMONIC, ALPHA/BETA,
26 MICROVALIDATION/MICROASSAULT IN TRIAL COMMUNICATION BETWEEN
27 TRIAL COURT AND TRIAL PROSECUTOR CONTINUES.
28

1 STEP THREE: WHILE TRIAL ATTORNEY WAS CROSS EXAMINING DETECTIVE
2 GARCIA ABOUT THE MATERIALITY OF COMPLAINT WITNESS GIVING HIM
3 A DYING DECLARATION (EXHIBIT B: RTP. 79-80, 474). TRIAL ATTORNEY
4 WAS TRYING TO CONFRONT THE CORROBORATIVE ACCUSATORY WITNESS
5 DETECTIVE PURSUANT TO THE 6TH AMENDMENT RIGHT TO CONFRONT-
6 ATION CLAUSE. TRIAL PROSECUTOR OBJECTED AS BEYOND THE SCOPE (EXHIBIT
7 B: RTP. 219). TRIAL COURT: SUSTAINED, AND AFTER A SIDEBAR, TRIAL
8 COURT MICROVALIDATED THE FORFEITURE OF COGNIZANCE INTER ALIA
9 FUNCTIONALITY. TRIAL PROSECUTOR WOULD MICROASSAULT TRIAL COURT'S
10 MICROVALIDATION, AND WITHDRAW HIS OBJECTION (EXHIBIT B: RTP. 220).

11
12 STEP FOUR: A PRACTICALLY SUBORDINATE TRIAL ATTORNEY WOULD SHED SOME LIGHT
13 ON THE EXTRA JUDICIAL 402 WHEN TRIAL PROSECUTOR INTRODUCED
14 AS PEOPLE'S 12 - A DEFENSE INVESTIGATOR REPORT CHRONICLING NUMEROUS
15 MENTAL ILLNESS RELATED INCIDENTS BY PETITIONER, ALSO HEARSAY REF-
16 ERENCE TO THE WITNESS PRIOR INCONSISTENT STATEMENT, WHERE NO
17 MOTIVE EXISTED (SEE EXHIBIT B: NEXT NINE PAGES).

18
19 TRIAL ATTORNEY MICROASSAULTED TRIAL COURT: "I DON'T KNOW IF
20 YOU WANT THAT STUFF TO COME OUT, IT WAS THE SUBJECT OF A
21 402. REFERRING TO TRIAL JUDGE'S ASSERTION FIVE MINUTES AFTER
22 THE EXTRA JUDICIAL 402 "I DON'T KNOW ANYTHING ABOUT THE
23 CASE, OBVIOUSLY, I JUST GOT IT" (EXHIBIT B: RTP. 240-242,
24 3-4). TRIAL ATTORNEY'S REFERENCE SUBSTANTIATES THE MATERIALITY
25 OF THE EXTRA JUDICIAL 402. TRIAL COURT IN TURN MICROAGGRESS-
26 ED TRIAL ATTORNEY: "YOU DON'T WANT THAT STUFF TO COME OUT."
27 TRIAL ATTORNEY ALREADY ABANDONNED THE MENTAL ILLNESS COMPONENT
28 OF THE DEFENSE THEORY, SO SHE MICROINSULTS TRIAL JUDGE:

"I DON'T CARE BUT IT WAS EUNANISHED QUOTE "THE SUBJECT OF A 402 TRIAL COURT INTERRUPTS: "[READING PEOPLE'S 12]... WELL, WE MENTIONED -- I THINK WE HAD SOME QUESTIONS... I DON'T KNOW WHO IT HELPS OR HURTS MORE" (EXHIBIT B: RTP. 240-242).

STEP FIVE: DURING PETITIONER'S TRIAL TESTIMONY MENTAL ILLNESS WAS DISPLAYED IN PETITIONER'S EWHO WAS NOT TAKING HIS MEDICATION AT THE TIME SEE EXHIBIT A: NEXT TWENTY TWO) DEMONSTRATIVE EVIDENCE. THERE WERE 49 FAULTS, OR INTERRUPTIONS THAT TRIAL ATTORNEY, PROSECUTOR, AND TRIAL COURT DISDAINFULLY REGARDED PETITIONER'S TESTIMONY WITHOUT REFERENCE TO THE INTERLOCKING MENTAL ILLNESS CHARACTERISTICS RELEVANCE.

DIRECT EXAMINATION: 1. (RTP. 259:26), 2. (RTP. 260:14), 3. (RTP. 260:1), 4. (RTP. 261:5), 5. (RTP. 261:7), 6. (RTP. 261:18), 7. (RTP. 261:18), 8. (RTP. 261:26), 9. (RTP. 262:17), 10. (RTP. 262:27), 11. (RTP. 263:6), 12. (RTP. 263:18), 13. (RTP. 263:23), 14. (RTP. 265:4), 15. (RTP. 265:8), 16. (RTP. 265:22), 17. (RTP. 266:4-10), 18. (RTP. 266:26), 19. (RTP. 267:14-16), 20. (RTP. 267:27), 21. (RTP. 268:2), 22. (RTP. 268:27-28), 23. (RTP. 269:19-25), 24. (RTP. 270:1-4), 25. (RTP. 270:8-27), 26. (RTP. 271:1-7), 27. (RTP. 271:12-20), 28. (RTP. 271:21-28)

CROSS EXAMINATION: 29. (RTP. 273:12-274:4), 30. (RTP. 274:9-275:8), 31. (RTP. 276:11-13), 32. (RTP. 276:24-277:28), 33. (RTP. 278:22-28), 34. (RTP. 279:1-10), 35. (RTP. 280:6-21), 36. (RTP. 280:22-26), 37. (RTP. 281:1-17), 38. (RTP. 281:19-282:7), 39. (RTP. 282:9-11), 40. (RTP. 282:12-25), 41. (RTP. 283), 42. (RTP. 284:1-22), 43. (RTP. 286:7-25), 44. (RTP. 287:13-28),

1 45. (RTP. 288: 22 - 289: 18), 46. (RTP. 290: 1-18), 47. (RTP. 290: 21-
2 291: 3), 48. (RTP. 291: 4-17), 49. (RTP. 291: 18 - 292: 4)

3
4 IN CLOSING ARGUMENTS TRIAL PROSECUTOR INFRINGED ON PETITIONER'S RIGHT
5 TO TESTIFY BY SHUNNING THE INTERLOCKING RELEVANCE OF PETITIONER'S
6 MENTAL ILLNESS: "HIS OWN ATTORNEY SAYS HE'S A 'LITTLE NUTTY ... THAT
7 MAY BE A WAY TO EVOKE SOME SYMPATHY FROM YOU". THIS, FOLLOWING
8 AN OBJECTION BY TRIAL ATTORNEY, WHICH WAS OVERRULED BY TRIAL
9 COURT (SEE EXHIBIT B: RTP. 478). THE INTERLOCKING CHARACTERISTIC OF
10 MENTAL ILLNESS WAS ALREADY PRESENTED AS THE PEOPLE'S 12 (SEE
11 EXHIBIT B: RTP. 236).

12
13 STEP SIX: THE LAST ALPHA/BETA, MICROAGGRESSION/MICROVALIDATION
14 OCCURRED WHEN TRIAL PROSECUTOR MISSTATED THE LAW TO THE JURY: "YOU
15 ARE TO TAKE THE PRIOR STATEMENT AS THE TRUE STATEMENT. THE JUDGE
16 TELLS YOU THAT. I DIDN'T TELL YOU THAT. THE JUDGE TELLS YOU THAT."
17 TRIAL ATTORNEY OBJECTS FOR MISSTATING THE LAW. TRIAL COURT
18 OVERRULES. THEN TRIAL PROSECUTOR MICROINSULTS TRIAL COURT: "YOU
19 CAN TAKE THE PRIOR STATEMENT AS THE TRUE STATEMENT" (SEE
20 EXHIBIT B: RTP. 475).

21
22 THE COUP DE GRACE OF THE FORFEITURE OF JUDICIAL COGNIZANCE
23 INTER ALIA FUNCTIONALITY ENSUED WHEN THE JURY ASKED WHILE
24 IN DELIBERATIONS: "WHEN IS A CRIME NOT CONSIDERED PRE-
25 MEDITATION" (SEE EXHIBIT B: NEXT FOUR PAGES). TRIAL COURT FAILED
26 TO BE IMPARTIAL IN REFERENCE TO THE ALTERNATIVE THEORY PREDICATED
27 IN THE INTERLOCKING MENTAL ILLNESS RELEVANT EVIDENCE. NOR WAS THE
28 REASONABLE INFERENCE INSTRUCTION APPLIED (EXHIBIT B: NEXT SEVENTYSEVEN RTP. 6).

IN ROSE V. CLARK, 478 U.S. AT 578 THE UNITED STATES SUPREME COURT HELD: "HARMLESS ERROR ANALYSIS PRESUMABLY WOULD NOT APPLY IF JUDGE DIRECTED A VERDICT FOR THE PROSECUTION IN A CRIMINAL TRIAL BY JURY. WE HAVE STATED THAT "A TRIAL JUDGE IS PROHIBITED FROM ENTERING A JUDGEMENT OF CONVICTION OR DIRECTING THE JURY TO COME FORWARD WITH SUCH A VERDICT."

IN SPARE V. UNITED STATES, 156 U.S. AT 87 THE UNITED STATES SUPREME COURT HELD: "THE LAW IN CRIMINAL CASES IS TO BE DETERMINED BY THE COURT. IN THIS WAY WE HAVE OUR LIBERTIES AND RIGHTS DETERMINED NOT BY A IRRESPONSIBLE TRIBUNAL, BUT BY A RESPONSIBLE TRIBUNAL. NOT BY A TRIBUNAL IGNORANT OF THE LAW, BUT BY A TRIBUNAL TRAINED AND DISCIPLINED BY THE LAW. NOT BY A IRREVERSIBLE TRIBUNAL, BUT BY A REVERSIBLE TRIBUNAL. NOT BY A TRIBUNAL THAT MAKES HIS OWN LAW, BUT BY A TRIBUNAL THAT OBEYS THE LAW AS MADE."

III. WHETHER THE JURY WAS QUALIFIED IMPARTIAL IN DETERMINING "WHEN IS A CRIME NOT CONSIDERED PREMEDITATION" PURSUANT TO CALIFORNIA EVIDENCE CODES 403 AND 780, IN TOTALITY OF THE RECORD IN TRANSACTIONS.

A QUALIFIED JURY IS THE CORNERSTONE TO A SIXTH AMENDMENT RIGHT TO AN IMPARTIAL JURY TRIAL. TRIAL COURT DEPRIVED PETITIONER OF THIS RIGHT. WHILE IN DELIBERATIONS, THE JURY ASKED TRIAL COURT "WHEN IS A CRIME NOT CONSIDERED PREMEDITATION" (SEE EXHIBIT B: NEXT FOUR PAGES). IN UNION PACIFIC RAILROAD V. UNITED STATES, 99 U.S. AT 721 (1878) THE UNITED STATES SUPREME COURT HELD: "A JUDICIAL ACT

IS DETERMINING WHAT THE LAW IS, WHAT THE RIGHTS OF THE PARTY'S ARE,
WITH REFERENCE TO TRANSACTIONS ALREADY HAD".

THE STRUCTURAL RECORD IN PRELIMINARY HEARING (EXHIBIT B: PRELIM
RTP. 15-16) HAD INSUFFICIENCY ISSUES. PRELIMINARY JUDGE REASONED
THAT PETITIONER "INITIATED THE CONTACT" MAKING THE EVIDENCE ENOUGH
FOR PRELIMINARY HEARING. JUDICIAL ACTION FOR THE JURY'S INQUIRY SHOULD
HAVE LED TRIAL COURT TO PRIOR TRANSACTIONS, AND THE EXTRA JUDICIAL 402
HEARING REFERED TO IN THE TRIAL RECORD (EXHIBIT B: RTP. 3, 240-242).

THE QUESTION THAT THE JURY ASKED WAS PREDICATED IN PROFFERED
EVIDENCE PRESENTED THE FIRST DAY OF TRIAL AFTER THE EXTRA JUDICIAL
402 STIPULATIONS TO EXCLUSION OF PETITIONER'S MENTAL ILLNESS ISSUE.
TRIAL PROSECUTOR INTRODUCED MOTIVE AS "JUST INDICATED" AND STATED:
"I DON'T KNOW WHAT THE DEFENDANT WAS THINKING SO I CAN ONLY DRAW
REASONABLE INFERENCES" (EXHIBIT B: RTP. 6).

CALIFORNIA EVIDENCE CODE SECTION 403

(a) THE PROPONENT OF THE PROFFERED EVIDENCE HAS THE BURDEN OF
PRODUCING EVIDENCE AS TO THE EXISTENCE OF THE PRELIMINARY FACT, AND
THE PROFFERED EVIDENCE IS INADMISSIBLE UNLESS THE COURT FINDS THAT
THERE IS EVIDENCE SUFFICIENT TO SUSTAIN A FINDING OF THE EXISTENCE
OF THE PRELIMINARY FACT WHEN:

(1) THE RELEVANCE OF THE PROFFERED EVIDENCE DEPENDS ON THE EXIST-
ENCE OF PRELIMINARY FACT.

///

(b) SUBJECT TO SECTION 702 [PERSONAL KNOWLEDGE], THE COURT MAY ADMIT CONDITIONALLY THE PROFFERED EVIDENCE UNDER THIS SECTION, SUBJECT TO THE EVIDENCE OF THE PRELIMINARY FACT BEING SUPPLIED LATER IN THE COURSE OF THE TRIAL.

(c) IF THE COURT ADMITS THE EVIDENCE UNDER THIS SECTION, THE COURT

(2) SHALL INSTRUCT THE JURY TO DISREGARD THE PROFFERED EVIDENCE IF THE COURT SUBSEQUENTLY DETERMINES THAT A JURY WOULD NOT REASONABLY FIND THAT A PRELIMINARY FACT EXISTS.

PURSUANT TO CALIFORNIA EVIDENCE CODE 403 (C)(2), THE JURY COULD NOT HAVE REASONABLY DETERMINED THE "JUST INDICATED" PROFFERED AS EVIDENCE HAVING A PRELIMINARY FACT. NO WITNESS SPOKE OF MOTIVE EXCEPT FOR COMPLAINT WITNESS. WHEN THE PROPONENT OF THE PROFFERED EVIDENCE, TRIAL PROSECUTOR ASKED COMPLAINT WITNESS OF THE MOTIVE I.E. PROFFERED EVIDENCE HE ANSWERED: "MAY I BE SPECIFIC ... ARE YOU SURE" (EXHIBIT B: RTP. 6, 55). COMPLAINT WITNESS TESTIFIED THAT SAME LOGICAL REASONABLE INFERENCE REFERRED TO BY TRIAL PROSECUTOR, THE UNEQUIVOCABLE CONJECTURE OF PETITIONER ASKING HIM (COMPLAINT WITNESS) TO "DO SOMETHING (INTENT POSSIBLY A CRIME INFERENCE), AND PETITIONER HAVING A "DEMENTED LOOK" ON HIS FACE (ABANDONED MAIGNANT HEART) WHICH IS CONSISTENT WITH THE PEOPLE'S 12 DEFENSE INVESTIGATOR REPORT OF NUMEROUS MENTAL ILLNESS EPISODES, THAT ALSO HAD THE PRIOR INCONSISTENT STATEMENT HEARSAY OF COMPLAINT WITNESS, WHICH TRIAL ATTORNEY ESTABLISHED AS FACT IN CROSS EXAMINATION OF COMPLAINT WITNESS. (EXHIBIT B: NEXT NINE PAGES; RTP. 74, 76)

1 WHEN ASKED OF THE PRELIMINARY FACT OF THE PROFERRED EVIDENCE BY
2 THE PROPONENT, TRIAL PROSECUTOR, COMPLAINT WITNESS REPLIED THAT HIS
3 INJURIES DEVELOPED AILMENTS: "SEVERE HEADACHES, DOUBLE VISION, RINGING
4 IN EARS, TEMPORARY BLINDNESS, AND NUMBNESS. (EXHIBIT B: RTP. 60-
5 61). NONE WERE MEMORY OR COGNITIVE FUNCTION RELATED TO PERSON-
6 AL KNOWLEDGE PURSUANT TO CALIFORNIA EVIDENCE CODE 403 (b).

7
8 CALIFORNIA EVIDENCE CODE SECTION 780

9
10 PROOF OF TRUTHFULNESS CONSIDERATION EXCEPT AS OTHERWISE PROVIDED
11 BY STATUTE, THE COURT OR JURY MAY CONSIDER IN DETERMINING
12 THE CREDIBILITY OF A WITNESS AND ANY MATTER THAT HAS A TEN-
13 DENCY IN REASON TO PROVE OR DISPROVE THE TRUTHFULNESS OF HIS
14 TESTIMONY AT THE HEARING, INCLUDING BUT NOT LIMITED TO ANY OF
15 THE FOLLOWING:

16
17 (b) THE CHARACTER OF THE EVIDENCE

18
19 (f) THE EXISTENCE OF BIAS, INTEREST, OR OTHER MOTIVE

20
21 (h) A STATEMENT MADE BY HIM, THAT IS INCONSISTENT WITH ANY PART
22 OF HIS TESTIMONY AT THE HEARING

23
24 THE PRELIMINARY HEARING TESTIMONY DID NOT HAVE THE PREMEDIT-
25 ATION ELEMENTS AFTER THE OFFER TO HAVE PETITIONER SLEEP OVER
26 (EXHIBIT B: PRELIM RTP. 6). COMPLAINT WITNESS WAS ASKED IN PRELIM-
27 INARY HEARING IF "HE WAS AWARE OF PETITIONER'S MENTAL ILLNESS
28 PROBLEMS" (EXHIBIT B: PRELIM RTP. 9). THIS IS A CASUAL LINK TO STRUCT-

1 TURAL DEFICIENCY.

2 THE IN TRIAL TESTIMONY OF COMPLAINT WITNESS IN CROSS EXAM-
3 INATION REVEALED THAT: " I BELIEVE THAT IT WAS DA [NOW HONORABLE]
4 LONERGAN THAT TOLD ME THAT SOMETIMES IT ALL COMES BACK AT
5 ONCE BECAUSE OF THE INITIAL IMPACT OF THE SITUATION THERE ARE
6 SOME THINGS THAT YOU JUST CANT RECALL AT THAT PARTICULAR TIME"
7 (EXHIBIT B: RTP. 83).

8
9 THE THING THAT COMPLAINT WITNESS RECALLED, WITHOUT HAVING A
10 MEMORY LOSS OR COGNITIVE DYSFUNCTION, WAS THE PREMEDITATION
11 ELEMENTS. DA LONERGAN WAS DDA SCHEDULED TO START TRIAL ON
12 11-18-03 (SEE EXHIBIT B: DOCKET SHEETS). THAT TRIAL DATE WAS
13 RESCHEDULED AND COMPLAINT WITNESS RECALLED THE PREMEDITATION
14 ELEMENTS ON "NEW YEAR'S EVE WHILE AT A BAPTIST MASS, AT
15 11:15 AT NIGHT" (EXHIBIT B: RTP. 83). THE NEXT DATE IN THE
16 DOCKET SHEETS AFTER THE DA LONERGAN 11-18-03 TRIAL DATE
17 RESCHEDULING, WAS 12-3-03 "CALL FOR JUDICIAL ACTION WITH-
18 OUT THE DEFENSE OR REPRESENTATION PRESENT (SEE EXHIBIT
19 B: DOCKET SHEETS). THIS EVIDENCES A BUREAUCRATIC INTEREST, AND
20 BIAS PURSUANT TO CALIFORNIA EVIDENCE CODE 780 (F).

21
22 THE JURY WAS ENTITLED TO THE LAW THAT GOVERNS PROFFERED EVIDENCE
23 INQUIRY INTO PRIOR TRANSACTIONS WOULD LEAD TRIAL COURT TO WHERE HIS IN-
24 QUIRY WAS THE FIRST DAY OF TRIAL: "WAIT LET ME INTERRUPT YOU, WAS
25 THERE ANY DISCUSSION AFTER THE OFFER TO HAVE HIM SLEEP OVER?"
26 (EXHIBIT B: RTP. 4).

27
28 ///

1 CALIFORNIA CONSTITUTION ARTICLE 6 SECTION 23 (C)(6)

2 STATES: MATTERS OF A TYPE PREVIOUSLY SUBJECTED TO
3 REHEARING BY A SUPERIOR COURT JUDGE REMAIN SUBJECT
4 TO REHEARING BY A SUPERIOR COURT JUDGE .

5
6 TRIAL COURT JUDICIAL ACTION OF JURY INQUIRY SHOULD HAVE LED HIM
7 WHERE THE CALIFORNIA CONSTITUTION ARTICLE 6 SECTION 23 (C)(6) WOULD
8 HAVE LED HIM ON THOSE DATES THAT HE PRESIDED OVER PRETRIAL CON-
9 FERENCE RESCHEDULING AND CANCELLATIONS. THE PRELIMINARY QUESTION-
10 TRIAL ATTORNEY ASKED: "AFTER YOU OFFERED HIM A PLACE TO STAY DID
11 HE RESPOND IN ANYWAY?" COMPLAINT WITNESS: "HE JUST PULLED
12 OUT A GUN AND SHOT ME" (EXHIBIT B: PRELIM TP. 9).

13
14 REGARD FOR THE RIGHTS OF THE PARTIES WOULD HAVE COMPELLED
15 THE TRIAL COURT TO PROVIDE THE LAW WHICH WOULD ENABLE THE
16 JURY TO BE QUALIFIED IMPARTIAL IN DEVELOPING STRUCTURE FOR A
17 FAIR TRIAL, DETERMINED BY A QUALIFIED IMPARTIAL JURY AS AFFORDED
18 IN THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

19
20 IN RE CAPENTER, 9 CAL. 4TH 634 (1995) HEADNOTES: "WHEN... THE
21 QUESTION SUPPORTS A FINDING THAT THERE IS A SUBSTANTIAL LIKELIHOOD
22 THAT AT LEAST ONE JUROR WAS IMPERMISSIBLY INFLUENCED TO THE
23 DEFENDANT'S DETRIMENT, A COURT IS COMPELLED TO CONCLUDE THAT
24 THAT THE INTEGRITY OF THE TRIAL WAS UNDERMINED. UNDER SUCH
25 CIRCUMSTANCES, A COURT CANNOT CONCLUDE THAT THE JURY WAS IMPARTIAL."

26 ///

27 ///

28 ///

IV. WHETHER A NAPE VIOLATION CONSISTENT WITH RECENT
DISTRICT COURT PRECEDENCE, COMBINED WITH AN IMPARTIAL
JURY DEPRIVATION BRECHT, SUPRA AT 654 CLAIM SATISFIES
THE "UNUSUAL CASE" DETERMINATION WARRANTING HABEAS
RELIEF.

IN BRECHT V. ABRAHAMSON, 507 U.S. AT 654 THE UNITED STATES
SUPREME COURT HELD: "IN THE UNUSUAL CASE, A ERROR COMBINED
WITH A PATTERN OF PROSECUTORIAL MISCONDUCT MIGHT SO
INFECT THE INTEGRITY OF THE PROCEEDINGS AS TO WARRANT
THE GRANT OF HABEAS RELIEF EVEN IF IT DID NOT SUB-
STANTIALLY EFFECT THE JURY'S VERDICT".

ON 2-18-21. PETITIONER FILED THIS CLAIM IN THE HABEAS
COURT IN THE SECOND INSTANCE PURSUANT TO IN RE HARRIS,
5 CAL. 4TH AT 835, "ONLY WHEN A CLAIM IS OF CONSTITUTIONAL
ERROR THAT IS BOTH CLEAR AND FUNDAMENTAL AND STRIKES AT THE
HEART OF THE PROCESS, IS OPPORTUNITY FOR A THIRD CHANCE AT
REVIEW JUSTIFIED. (CF. ARIZONA V. FULMINANTE, (1991) 499
U.S. AT 309 [ONLY ERRORS AMOUNTING TO A STRUCTURAL DEFECT IN THE
TRIAL MECHANISM ARE DESERVING OF AUTOMATIC REVIEW]).

PETITIONER'S BRECHT, SUPRA AT 654 CLAIM OF DEPRIVATION OF A
SIXTH AMENDMENT QUALIFIED IMPARTIAL JURY COMBINED WITH A
PATTERN [PLAN] OF PROSECUTOR MISCONDUCT WAS DENIED REVIEW,
THOUGH TRIAL COURT FAILURE TO INSTRUCT THE JURY WITH THE LAW
TO BS APPLIED INSPIRES DE NOVO REVIEW. THE CALIFORNIA SUPREME
COURT ERRONEOUSLY "LOOKED THROUGH" FUNDAMENTAL CONSTITUTIONAL

1 ERROR (SEE APPENDIX A).

2
3 THE UNITED STATES DISTRICT COURT IN HERNANDEZ V. LEWIS 2018
4 U.S. DIST LEXIS 65509 AT 94-95 REMANDED THE CASE WITH
5 INSTRUCTIONS TO USE THE STANDARD "REASONABLE" AND "CONSISTENT"
6 WITH THE UNITED STATES SUPREME COURT RULING IN NAPUE, SUPRA
7 AT 360 U.S. AT 271-272.

8
9 PETITIONER'S PROCEDURAL BARS ARE NOT IAC, ITAC ISSUES BECAUSE
10 "INTERFERENCE BY GOVERNMENT OFFICIALS" PURSUANT TO MURRAY V.
11 CARRIER, 477 U.S. AT 493-494 PRECLUDED PETITIONER FROM HABEAS
12 COUNSEL, OBTAINING COPIES OF THE TRIAL FILE, AND DEVELOPMENT OF
13 THE RECORD WHICH HABEAS COUNSEL WOULD HAVE INVESTIGATED THE
14 BASIS FOR THE NAPUE VIOLATION.

15
16 IN RE CLARK, SUPRA 5 CAL. 4TH AT 784: "APPELLATE COUNSEL IN
17 NON CAPITAL CASES HAVE NO OBLIGATION TO INVESTIGATE POSSIBLE
18 HABEAS CLAIMS". REASONABLE JURIST WOULD AGREE THAT "EXTRA-
19 ORDINARY CIRCUMSTANCES" (SEE EXHIBIT D: NEXT EIGHTEEN PAGES)
20 WOULD HAVE TOLLED THE AEDPA 1 YEAR LIMIT TO FILE A FEDERAL
21 HABEAS PETITION. THE DISTRICT COURT FAILURE TO APPOINT COUNSEL
22 PRECLUDED THE DEVELOPMENT OF THE TRIAL COURT, AND PROSECUTOR
23 IAL MISCONDUCT ISSUES PETITIONER NOW ASSERTS.

24
25 THE NAPUE VIOLATION IS PREDICATED IN PROCUREMENT OF A
26 PHOTO DOCUMENT THAT CORROBORATES FALSE TESTIMONY IN THE TRIAL
27 FILE, WAS KNOWN, AND MATERIAL. THE APPELLATE CLAIM OF
28 PROSECUTORIAL MISCONDUCT WAS NOT DEVELOPED INTO THE ERROR.

1 THAT IT IS. IN STRICKLER V. GREENE, 527 U.S. AT 286 THE
2 UNITED STATES SUPREME COURT HELD: "THE PRESUMPTION WELL
3 ESTABLISHED BY TRADITION AND EXPERIENCE, THAT PROSECUTORS
4 HAVE FULLY DISCHARGED THEIR OFFICIAL DUTIES IS INCONSISTENT
5 WITH THE NOVEL SUGGESTION THAT CONSCIENTIOUS DEFENSE COUNSEL
6 HAVE A PROCEDURAL OBLIGATION TO ASSERT CONSTITUTIONAL ERROR ON
7 THE BASIS OF MERE SUSPICION THAT SOME PROSECUTORIAL MISSTEP
8 MAY HAVE OCCURRED".

9
10 IN RE HARRIS, SUPRA 5 CAL. 4TH AT 837 HELD: "WE RECOGNIZE:
11 THE POSSIBILITY IN RARE SITUATIONS THERE MAY BE SOME CLEAR
12 AND CONSTITUTIONAL VIOLATION STRIKING AT THE HEART OF THE TRIAL
13 PROCESS THAT SHOULD HAVE BEEN RAISED, OR WAS RAISED UNSUCCESSFULLY
14 ON APPEAL, AND CANNOT BE REMEDIED BY RESORT TO THE THE DOCTRINE
15 OF INEFFECTIVE ASSISTANCE OF COUNSEL. SUCH A BREAKDOWN IN THE
16 APPELLATE PROCESS MAY PRESENT A EXCEPTION TO THE WALTREAS
17 RULE".

18
19 PETITIONER BELIEVES THAT HE IS THAT EXCEPTION, IN HERNANDEZ,
20 V. LEWIS, 2018 U.S. LEXIS 65509 HELD: "[STATE] COURTS APPLY
21 A LESS DEMANDING MATERIALITY TO NAIVE ERRORS: WHETHER THERE
22 IS ANY REASONABLE LIKELIHOOD THAT THE FALSE TESTIMONY COULD
23 HAVE AFFECTED THE JUDGEMENT OF THE JURY" QUOTING AGURS
24 1 SUPRA AT 103.

25 ///

26 ///

27 ///

28 ///

NAPUE FACTS

IN PRELIMINARY HEARING DETECTIVE GARCIA TESTIFIED ON DIRECT EXAMINATION THAT "ARRESTING OFFICERS MEMORIALIZED THAT PETITIONER WAS ATTEMPTING TO CONCEAL HIMSELF CROUCHING BEHIND A PHONE BOOTH" (SEE EXHIBIT C: PRELIM RTP. 13-15).

TRIAL ATTORNEY IN PRELIMINARY HEARING CROSS EXAMINATION, QUESTIONED DETECTIVE GARCIA ABOUT OFFICER HELBING SAYING THAT PETITIONER: "WAS NOT HIDING AT ALL" (EXHIBIT C: PRELIM RTP. 15). DETECTIVE GARCIA CONCEDED.

DA, NOW HONORABLE JUDGE GALLON WAS ACTING AS DDA FROM 7-27-03 UNTIL 12-3-03 (SEE EXHIBIT B: DOCKET SHEETS). AND HE WAS AWARE OF THE NAPUE FACTS.

TRIAL STARTED 1-12-04 AND PHOTO EXHIBITS WERE PROCURED, PRESUMABLY 12-16-03 (SEE EXHIBIT B: DOCKET SHEETS), WITH NO TANGIBLE EVIDENCE OF HIDING POSSIBILITY THAT THE JURY COULD DELIBERATE WITH. THE PEOPLE'S EXHIBITS # 8, AND # 9 WERE PURCHASED FOR THEIR SURMISE AND CONJECTURE.

THE PHOTO EXHIBITS WERE TAKEN FROM THE OPPOSITE DIRECTION FROM THE ENTRANCE (SEE EXHIBIT C: NEXT FOUR PAGES), TO EVIDENCE A HIDING POSSIBILITY ONLY POSSIBLE FROM THE OPPOSITE DIRECTION.

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1 THE OTHER ARRESTING OFFICER, OFFICER DOLLENS TESTIFIED THAT THE
2 PHOTO EXHIBITS WERE TAKEN FROM THE OPPOSITE VIEW, BUT HE FALSE
3 TESTIFIED THAT PETITIONER WAS HIDING - IN PLAIN VIEW FROM THE
4 CORRECT ANGLE FROM THE ENTRANCE - (SEE EXHIBIT C: RTP 202-
5 205), IN FRONT OF HIM. THE PHONE BOOTH IS BEHIND THE
6 PASSENGER BENCH (SEE EXHIBIT C: NEXT FOUR PAGES). THE NEXT
7 BENCH IS 35 - 45 FEET FURTHER SOUTH ON METRO PLATFORM.

8
9 TRIAL PROSECUTOR, DA JACKSON, IN OPENING STATEMENTS REFERRED
10 TO, "ATTEMPTING TO CONCEAL HIMSELF HIDING BEHIND A PHONE
11 BOOTH" (SEE EXHIBIT C: RTP. 42), AND IN CROSS EXAMINATION OF
12 PETITIONER ASKED: "WHY WERE YOU HIDING BEHIND A PHONE
13 BOOTH, DUCKING DOWN" (SEE EXHIBIT C: RTP. 288).

14
15 VI. WHETHER THE UNITED SUPREME COURT SUPERVISORY
16 POWERS SHOULD DETERMINE REFORMATIVE PRECEDENCE
17 ESTABLISHED IN LAW I.E. STRUCTURAL DEFICIENCY IN
18 TRIAL, POST TRIAL, PROCEDURE, AND ANALYSIS.
19

20 21 PETITIONERS LEGAL STANCE

22
23 PETITIONER IS BARRED FROM FILING IN THE UNITED STATES DISTRICT
24 COURT AND THE CALIFORNIA COURT OF APPEAL FOR THE NINTH
25 CIRCUIT. STRUCTURAL DEFICIENCY IN THE RECORD WAS UNDERDEV-
26 ELOPED ON DIRECT APPEAL, AND WHEN THE DISTRICT COURT
27 GRANTED COA, AN EVIDENTIARY HEARING SHOULD HAVE BEEN
28 HELD. THE UNITED STATES SUPREME COURT SHOULD REFORM

PRECEDENCE TO REMEDY DUE PROCESS, FAIR TRIAL AND EQUAL
PROTECTION OF LAWS ISSUES AFOREMENTIONED IN QUESTIONS I-IV.

PETITIONER, PETITIONED FOR TRANSFER OF CAUSE IN THE CALIFORNIA
SUPREME COURT ASSERTING ARIZONA V. FULMINANTE 499 U.S. AT
294: "PROHIBITION OF TRIAL COURT DIRECTING A JURY", CHAPMAN
157 P.2D 35 AT 52: "REVERSAL WILL BE REQUIRED WHEN THE TAINTED
EVIDENCE IS INTENTIONALLY INTRODUCED IN VIOLATION OF CONST-
ITUTIONAL STANDARDS", PEOPLE V. SARRAZAWSKI, 27 CAL.
2D AT 11: "IT IS AN ESSENTIAL PART OF JUSTICE THAT
THE QUESTION OF GUILT OR INNOCENCE SHALL BE DETERMINED BY AN
ORDERLY PROCEDURE, IN WHICH SUBSTANTIAL RIGHTS BELONGING TO
THE DEFENDANT SHALL BE RESPECTED", ALSO PEOPLE V. WATSON
46 CAL. 2D AT 836 (1956): "CERTAIN FUNDAMENTAL RIGHTS
ARE GUARANTEED TO THE DEFENDANT UPON WHICH HE CAN INSIST
REGARDLESS OF THE STATE OF THE EVIDENCE, SUCH AS A RIGHT
TO A JURY TRIAL".

ACCESS TO THE COURTS

IN BOUNDS V. SMITH, 430 U.S. 817, THE UNITED STATES
SUPREME COURT HELD: "PRISONERS HAVE A CONSTITUTIONAL
RIGHT TO ACCESS TO THE COURTS THAT IS ADEQUATE, EFFECTIVE
, AND MEANINGFUL". PURSUANT TO RULE 20.1 OF THE
UNITED STATES SUPREME COURT RULES PETITIONER PRAYS
THAT THE SUPERVISORY POWERS OF THE HIGH COURT BE
GRANTED. PETITIONER HAS NEVER RECEIVED A FEDERAL REVIEW.

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1 OVER DRIVING

2
3 HABEAS COURT IN THE SECOND INSTANCE OVER DRINED ISSUES OF
4 IAC AND IAAC NEVER ASSERTED BY PETITIONER (APPENDIX B).
5

6 INAPPLICABILITY OF IAC AND IAAC DOCTRINE

7
8 TRIAL ATTORNEY'S HARMLESS ERRORS ARE: FAILURE TO PROCURE
9 EVIDENCE TO NEGATE OFFICER DOLLENS FALSE TESTIMONY, FAIL-
10 URE TO OBJECT TO PROFFERED "JUST INDICATED" EVIDENCE, AND
11 ERRONEOUSLY STIPULATING IN AN EXTRA JUDICIAL 402 TO NOT
12 MENTION PETITIONER'S MENTAL ILLNESS.

13
14 THE PROCUREMENT OF PHOTO EVIDENCE WOULD HAVE NEGATED
15 FALSE TESTIMONY, BUT IT WOULD NOT HAVE PASSED HARMLESS
16 ERROR ANALYSIS. TRIAL ATTORNEY'S OBJECTION TO 'JUST INDICATED'
17 PROFFERED EVIDENCE WOULD HAVE COMPELLED TRIAL COURT TO ALLOW
18 THE PROFFERED EVIDENCE DESPITE THE QUALITY OR CHARACTER
19 OF IT.

20
21 SUBJECTING THE PROFFERED EVIDENCE TO EVIDENCE CODE 403
22 "PRELIMINARY FACT" PROVISION, WHICH DA LONERGAN HAD
23 ALREADY TOLD COMPLAINT WITNESS TO UTILIZE MEMORY LOSS
24 AS REFERENCE TO PERSONAL KNOWLEDGE (SEE EXHIBIT B: RTP
25 83). INSTEAD OF FAILING TO PRESENT THE PRELIMINARY
26 FACT OF MEMORY LOSS IN TRIAL, AS WAS DONE IN THE
27 CASE AT BAR (SEE EXHIBIT B: RPT. 60-61),
28

1 COMPLAINT WITNESS WOULD HAVE BEEN FURTHER COMPELLED TO
2 UTILIZE HIS INJURY TO REFER TO WHAT BECAME "INTENT" AND
3 "ABANDONED MALIGNANT HEART" PREMEDITATION ELEMENTS
4 PRELIMINARY FACT OF MEMORY LOSS AS A AILMENT SUSTAINED
5 FROM HIS INJURY (SEE EXHIBIT B: RTP. 74, 76).

6
7 THE PROOF OF TRUTHFULNESS STANDARD OF CALIFORNIA EVIDENCE
8 CODE 780 (b)(f)(h) WOULD NOT HAVE APPLIED UNTIL THE JURY ASKED
9 THE CONSTITUTIONAL QUESTION IN DELIBERATIONS. TRIAL COURT WOULDNT
10 HAVE BEEN EXPECTED TO DISREGARD THE RELEVANT "JUST INDICATED"
11 PROFFERED EVIDENCE WITHOUT ALLOWING THE JURY DETERMINATIVE
12 INTEREST. THE LAW OF CALIFORNIA EVIDENCE CODES 403 (C)(2),
13 AND 780 (b)(f)(h) WOULD HAVE BEEN AN IMPARTIALITY SVA
14 SPONTE JUDICIAL ACT REGARDLESS OF TRIAL ATTORNEY FAILURE
15 TO OBJECT TO IT.

16
17 TRIAL ATTORNEY'S ERROR IN STIPULATING TO EXCLUDE PETITIONER
18 MENTAL ILLNESS WAS HARMLESS AND UNDERSTANDABLY INSPIRED BY BUREAU-
19 CRATIC ASSIMILATION INTEREST. TRIAL PROSECUTOR USED A FALSE
20 GANG WAR REFERENCE WHICH HAD TRIAL ATTORNEY BLINDED BY
21 THE PREJUDICIAL GANG IMPLICATIONS (SEE EXHIBIT B: RTP. 4-6).
22 THIS COMBINED WITH THE REFLECTION OF THE 5, 10, 15 YEAR PLEA
23 OFFER BY TRIAL COURT, AND THE 14 YEAR PLEA OFFER BY THE
24 PEOPLE, THEN BALANCED WITH THE "JUST INDICATED" MOTIVE
25 ALL ONE COULD HOPE TO SALVAGE WITH REFERENCE TO THE RECORD
26 WHAT WAS FIRST MAGNITUDE CONSTITUTIONAL ERROR. THIS ERROR
27 IS FOUNDED IN THE JURY'S INQUIRY, AND THE MENTAL EXPERT
28 RECOMMENDATION "IF CONVICTED, A NOT GUILTY BY REASON

1 OF INSANITY PLEA SHOULD BE CONSIDERED".

2
3 APPELLATE ATTORNEY'S ERRORS WERE HARMLESS BECAUSE HER
4 UNDERDEVELOPED ISSUES COULD HAVE BEEN DEVELOPED IN STATE HABEAS
5 WITHIN THE AEDPA STANDARDS BUT-FOR-TO EXTRAORDINARY CIRCUMSTANCES
6 OF TRIAL FILE AND FORMAL NOTICE BEING LOST IN A POST OFFICE DEAD LETTER
7 FACILITY. DISTRICT COURT INADVERTENTLY INTERFERED SEE MURRAY
8 V. CARRIER, 477 U.S. AT 493-494, WITH THE COMPLIANCE TO
9 THE STATE PROCEDURAL RULE BEING PRACTICABLE IN 2010,
10 BY DETERMINING THE CONSTITUTIONAL QUESTION WITHOUT USING
11 DISCRETION TO APPOINT A THEN INCOMPETENT PETITIONER A
12 HABEAS COUNSEL TO PRESERVE DUE PROCESS, AND EQUAL PROTECT-
13 ION OF LAWS OF AN AMERICANS WITH DISABILITIES ACT PET-
14 TITIONER.

15
16 THE QUESTION SHOULD REMAIN ONE OF STRUCTURAL DEFICIENCY, AND
17 IAC, AND IAAC AS A GATEWAY TO A VALID CLAIM IS A "CATCH-
18 ING TWO FISH WITH ONE HOOK" APPROACH WHICH CONFUSE
19 THE STRUCTURAL DEFICIENCY ISSUE.
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REQUEST FOR RELIEF

WHEREFOR, PETITIONER RESPECTFULLY REQUESTS

1. THE ISSUANCE OF WRIT OF CERTIORARY, AND OR EXTRAORDINARY WRIT.

2. THAT LEGAL REPRESENTATION BE AFFORDED TO PETITIONER TO PRESENT HIS CAUSE.

3. THAT THE CASE BE REVERSED, AND SET ASIDE.

4. THAT PETITIONER BE RETRIED PURSUANT TO PENAL CODE 245(2), 12022.7, ASSAULT WITH A FIREARM AND GREAT BODILY INJURY.

5. FOR ANY AND ALL OTHER RELIEF AS THE COURT MAY DEEM PROPER.

DATED: 9-15-21

RESPECTFULLY SUBMITTED,



CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 9/15/21

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL WOOLEN — PETITIONER
(Your Name)

VS.

BRIAN KIBBLER — RESPONDENT(S)

PROOF OF SERVICE

I, MICHAEL WOOLEN, do swear or declare that on this date,
SEPTEMBER 15, 20 21, as required by Supreme Court Rule 29 I have
served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*
and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding
or that party's counsel, and on every other person required to be served, by depositing
an envelope containing the above documents in the United States mail properly addressed
to each of them and with first-class postage prepaid, or by delivery to a third-party
commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

I declare under penalty of perjury that the foregoing is true and correct.

Executed on SEPTEMBER 15, 20 21

M
(Signature)