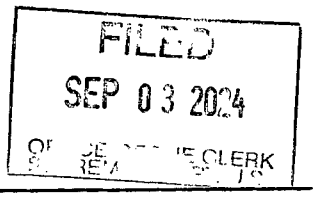
Case No.: 24-5493

ORIGINAL

SUPREME COURT OF THE UNITED STATES



Francisco Lopez,

Petitioner.

VS.

State of California,

Respondent.

On Petition for Writ of Certiorari

Challenging the Supreme Court of California

Francisco Lopez, G22466

POB-4000, A2-208

Vacaville Ca. 95696-4000

In Propria-Persona

QUESTIONS PRESENTED

There has NEVER been a case where two different persons were convicted in two separate trials -- with inconsistant evidence -- of both pulling the same trigger of the same gun simultaneously one time that murdered someone:

(1. Did the doctrines of collateral and judicial estoppel bar the State from trying Petitioner for being the lone single shooter after it had convicted Adres Reyes of being the same single shooter?

(2. Where the State offers a post-conviction procedure to test material evidence for DNA and finger-prints (Penal Code 1405), did the State deny due process by precluding Petitioner from this procedure to test the murder weapon to prove he never touched it?

(3. Where the State blatantly disregards clearly defined law of this Court (McQuiggin v. Perkins, 569 US 383 (2013)(actual innocence gate-way test: no reasonable juror would have voted to find the defendant guilty had they known of the withheld evidence)), are they putting this Court on notice that they intend to deny post-conviction procedures to the innocent? (Skinner v. Switzer, 562 US 521, 534 (2011)(post-conviction procedure should be created to allow a convicted person to prove his innocence)).

(4. Did Petitioner meet the McQuiggin gateway threshhold test: Where the jury was unlawfully precluded from: (A. testimony of an officer eye-witness that witnessed Andres Reyes pull the trigger; and (B. learning that a prior jury had convicted Andres Reyes of being the lone single shooter?

(5. Where **Vice President** (and **President** cannidate) **Kamala Harris** was personally involved in this miscarriage of justice (as a Deputy Attorney General); Did the State Supreme Court err in denying the petition (after granting informal review) solely due to the political firestorm in this very hot election year?

(6. Should politics ever interfere with the freedom of an innocent man (who had been wrongly imprisoned 20 years), essentially making him a sacraficial lamb to their political endeavors?

(7. Judge King precluded the 2nd jury from learning the 1st jury convicted Andres Reyes of being the lone single shooter, obtained jury instructions to assist the prosecutor (who is co-worker's son) do it here, adjudicated over both Reyes and Petitioner's PC-1170.95 petitions (which eliminated natural and probably consequnces) a decade later, denying them both on the grounds that Petitioner and Reyes were both the same lone single shooter. Is this a text-book example of embroilment amounting to partisan advocacy?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

I.
PETITION FOR WRIT OF CERTIORARI

1. "Petitioner" ("Pet.") hereby petitions the Court to review a judgment of the California Supreme Court on writ of certiorari.

II.
JURISDICTION & OPINIONS BELOW

2. On March 10, 2008, Pet. was wrongly convicted and sentenced on May 9, 2008 to life in prison (Case No.: 04CF2780). None of the issues in this petition were challenged. On appeal, Pet.'s attorney brought none of the issues in this petition. Vice President **Kamala Harris** (as a Deputy Attorney General), asserted that Pet. received an unauthorized sentence. The COA agreed, and directed that Pet.'s sentence be increased to life without the possibility of parole (G040350).

3. The prosecutor (Mark Geller) and lead detective (David Rondou) have both been found guilty of permitting witnesses to testify falsely (a Napue violation), and withholding Brady material in another case, causing the federal court to grant habeas relief (Alvarez v. Montgomery, 2022.US. Dist.Lexis.52726 (findings and recommendations) and 2022.US.Dist.Lexis. 52706 (granting the writ) (C.D. Cal. 2022)).

4. On Feb. 14, 2024, the habeas court issued an "objectively unreasonable" order denying the petition because: (A. it was time-barred (A64-65); (B. the issues were not in the appeal (A65); and (C. the attorney abandonment were all tactical choices of trial and appeal counsel (A65-68). The COA denied review on March 28, 2024 (A71).

5. On April 24, 2024, the Supreme Court granted informal review (A72). The "Attorney General's Office" ("AGO") answered none of the issues in the petition (asserting procedural default, with exception of one claim under the "Racial Justice Act" "RJA" Penal Code 745). Although McQiggin was cited in each court, all 3 courts ignored it. No gateway test was ever conducted. Pet. brings a "perfect storm" of (A. attorney abondonment; (B. reprehensible prosecutorial misconduct; and (C. judicial embroilment amounting to partisan advocacy.

STATEMENT OF FACTS

(a. The Murder of Pedro Rosario:

6. The Court of Appeal found:

> At 6:30 PM August 10, 2004, bicycles followed a car yelling: "Hey, homey, stop. We want to talk to you." Witnesses heard a gun shot and the car came to a stop. Undercover police officer Matthew Selinske identified Andres Reyes as the gunman. Pedro Rosario died from a single gunshot to the head. Approximately 30 minutes later, Reyes confronted Jamie Nieves as being in "F-Troop" territory. Reyes asked: "which one is your barrio?" Nieves responded: "no-where." Reyes claimed to be from F-Troop and asked if he wanted to fight, pulling something out of his waistband. Nieves ran, was beaten with fists, and Reyes put the barrel of the handgun against his neck. Nieves struck Reyes, and took the gun from him, and threw it into a yard. Police recovered the gun, and a ballistics expert matched it to the Rosario murder. Reyes admitted being at scene when the murder was committed, but denied killing Rosario.

(People v. Reyes, 2007.Cal.App.Unpub.Lexis.6778, at Pg.2-4).[3]

7. Edgar Lopez seized the murder weapon from the yard, and gave "the gun to the police because the finger prints of [every person who handled the weapon] are" on the firearm (BSR: 036).[4] It was stipulated that the gun was the murder weapon (CT: 454). Police never tested the murder weapon (for finger prints and DNA) to determine who had handled the firearm, even though Edgar Lopez gave the gun to the police for that very purpose.

(b. The Interview & Arrest of Andres Reyes:

8. Andres Reyes told police that Jamie Nieves pulled a gun on him, and then tried to kill him with a knife (BSR: 37-38). Police then informed Reyes that an officer identified him as the shooter in a six-pack photolineup (BSR: 37-38). Reyes then confessed he was at the scene of the murder with five other persons, but was not the shooter (BSR: 40-41).

---

3. Selinske was interviewed at the scene by CSI officers Murry and Martinez, and told them: "The sugject ... placed both feet on the ground, straddling the bicycle and fired what appeared to be a chrome or silver colored revolver, towards the blue Honda civic" (BSR: 21).

4. "BSR" stands for "Bate Stamped Record" which is attached to the form habeas petition.

9. Police clearly did not believe Reyes:

> "[T]he evidence all points to you. You dropped the gun in a fight, the police officer identifed you." "Is there really [even] a guy named Frank or was it you who pulled the trigger?" (BSR: 041).[5]

10. Reyes insisted Frank was wearing the red Angle's cap, not him (BSR: 042). Andres Reyes gang moniker is "Shady." (RT: 120:6-21), which means "dishonist."[6]

(c. Eddie Reyes' Two Interviews:

11. Eddie Reyes was 11 years old when interviewed by police (RT: 157:4-7) on Aug. 12th and 17th 2004 (RT: 225:20-226:1). Reyes' mother brought him to the police station, and interviewed him without her being present after Mirandizing him as a suspect (RT: 238:11-239:8). Eddie made up a fictional account of the fight his brother Andres got in after the murder, to make it appear as if his brother was the victim rather than the purpetrator (BSR: 027). Police then advised Eddie he was leaving out the part about the gun Andres possessed. Eddie replied there was no gun (BSR: 028). Police then said that Andres told them he and Eddie were at the scene of the murder, and an officer identified Andres as the shooter (BSR: 028-29). Eddie said the shooter wore a mask (RT: 241:2-11), but he "didn't think his brother was the shooter" as the shooter was taller and heavier (BSR: 029). Eddie then terminated the interview (RT: 239:9-12, 240:2-4).[7]

---

5. In Mark Geller's rebuttal sumation, he said (RT: 661:24-662:2):
> "Every single piece of evidence in this trial points to one person pulling the trigger that day and that is Frank Lopez ... in realidy, factually, Frank Lopez killed that kid that day. Frank Lopez pulled the trigger."

Powell never objected to this misstatement of evidence.

6. Det. Selinske positively identified Andres Reyes as wearing the red Angles cap, and testified that Reyes was just 12 feet from him when he made that identification (RT: 82:10-84:5, 72:4-17).

7. Prosecutor Geller misrepresented in his summation (without objection) that Eddie Reyes had no motive to lie, and an 11 year old is not sophisticated to lie (RT: 602:9-12, 603:16-21).

12. After the first interview, Eddie's mother contacted the police to discuss her concern for her other Son Andres and brought Eddie to the police station for a second interview in which she attended (RT: 242:1-243:9, 267:23-26, 269:2-12) where Eddie marked on a diagram where Pet. and co-defendants were at the time of the murder (BSR: 032-34).[8]

(d. Coached Louis Perez Police Interview:

13. On Sep. 9, 2004, police discovered Louis Perez hiding in a "doll house" and arrested him (RT: 151:5-17). Perez was interviewed by police. No significant fact was admitted by Perez, but coached by police:

(A. Perez said that he escaped the crime scene in a car. Police then suggested it was a "white truck" and then Perez aggreed it was a "white truck" (BSR: 043-44).

(B. Perez didn't admit that anyone was riding on bicycles until police suggested it (BSR: 044-45).

(C. Perez didn't even mention Pet.'s name until 30 pages into the interview when police suggested he was there (BSR: 048-49).

(D. Perez didn't know that Pet. had a weapon until police suggested it (BSR: 048-49, 054-55).

(E. Police asked why Pet. shot Rosario? Perez responded: "I don't know." Police then suggested it was a "hit up" and Perez aggreed (BSR: 054-55).

14. Perez then said the victim was in a "Hummer" (BSR: 046-47) when the victim was actually in a "Honda civic" (BSR: 021), and Pet.'s moniker was "Little CD" and "Little Stevie" (BSR: 050, 056), neither one correct.[9]

---

8. It is highly probable that Andres' mother visited him in Juvenile Hall, obtained the naration Andres gave to police, and discussed it with her other son Eddie whom she brought to the police station to assist her other Son Andres. Clearly, Powell had a duty to interview eye-witnesses (including Andres and Eddie), and obtain the visiting log to prove Eddie's second statement to police could easily have come from Andres through the mother. In fact, Pet. requested his attorney do just that (BSR: 001).

9. Perez clearly got it wrong because Police did not have enough information at the time to suggest an answer. Was Perez even there? The victim had no tatoos that would identify him as a gang member (RT: 377:1-10), a preresiquite for a "hit up". The only evidence that even suggested Rosario was a gang member was one photo found in the search of his residence where he was throwing hand signs (RT: 60:1-9).

15. Perez was 16 years old at the time, went into the interview intending to "protect" himself "so I can get out", and after the interview cut a deal to plead to manslauter receiving 3 years probation (RT: 141:11-14, 147:25-148:21, 150:25-151:1).

(e. Michael Contreras Interview:

16. On Sep. 14, 2004, Michael Contreras was just 12 years old when interviewed by police without his parents or an attorney. He admitted that Pet. showed a group of people a gun two hours before the murder (BSR: 057-59).[10]

(f. Andres Reyes Trial:

17. Andres Reyes' attorney objected to Geller's inconsistant theories of "who was the actual shooter in this murder" and the court ordered Geller "not to argue at any time in this trial that [Andres Reyes] was the shooter." (BSR: 023).[11]

18. The People offered Michael Contreras immunity in exchange for his testimony. Contreras refused to testify and Geller moved for contempt proceedings. The following day, Contreras aggreed to testify. The court found his testimony to be deceiving with a fake memory loss, and Geller admitted his out-of-court hearsay statements through Det. Ashby (BSR: 26)[12]

19. Although Eddie Reyes was on the People's witness list, Geller declined to call either Eddie or Louis Perez (BSR: 26), who were the only two persons that would exclude Reyes as the shooter.

---

10. Neither Eddie Reyes nor Michael Contreras' recorded statements were transcribed by Powell. If they were, we'ed undoubtedly see the same coaching techniques employed by Detective Ashby and Rondou.

11. Powell made no such objection in Pet.'s trial, and Geller was free to improperly use inconsistant theories in his summation (RT: 597:15-598:19).

12. This gave Powell ampule warning to move in limine to exclude Conreras' hearsay statements in Pet.'s trial after a E.C. 402 hearing. Powell filed no motions or jury instructions.

20. Det. Selinske testified that Andres Reyes was the actual shooter (People v. Reyes, 2007.Cal.App.Unpub.Lexis.6778, at Pg.2).

21. On June 7. 2006, the jury convicted Reyes as being the only single shooter who murdered Pedro Rosario (BSR: 004-09 [Jury Virdicts]).

(g. Francisco Lopez Trial:

22. It was highly prejudicial trying Pet. (who had no gang ties) with documented gang members. The People moved to consolidate (CT: 04) arguing that all five defendants were F-Troop gang members who acted together to murder Pedro Rosario (CT: 05). The motion was granted without objection (CT: 13, 24). Police had no evidence Pet. was an F-Troop gang member (CT: 225).

23. Powell filed no motions or even a trial statement, nor did he offer any jury instructions. Although Pet. repeatedly asked Powell to have the gun tested for DNA and finger-prints to extablish he never touched the murder weapon (to impeach his accusors), Powell refused to do so (BSR: 001). Powell did not interview anyone, even though there were eye-witnesses Voir dire and the opening statement was not transcribed. Powell assisted the People in wrongly convicting an innocent man.

(1. Judicial Bias & Conflict of Interest:

24. The court disclosed that as a prosecutor he worked with Geller's father (who was in the sheriff department) on a "number of cases" (RT: 10:11-11:3, CT: 438). Some murder trials are very lengthy, and a "number of trials" could mean they are extremely close. Yet Powell failed to make any inquiry or objection. This conflict/bias became very apperant as the trial progressed.

25. Louis Perez was not included in either of the People's two witness lists (CT: 414-15, 433). The court noted that defendant Louis Perez was about to be sentenced and was not on the witness list (RT: 12:1-16).

Geller responded that: "I may have inadvertantly left him off of my witness list" and requested "to add Louis Perez as a witness in this case." (RT: 12:13-17; CT: 438). The court granted the request without even asking the defense if they objected to adding a material witness on the day of trial by ambush (RT: 12:18-13:9, CT: 438) in a blatant attempt to seek tactical advantage in clear violation of PC-1054.3(a)/1054.7.[13]

(2. Reprehensible Judicial Misconduct:

26. The court advised Geller that "there is a difference between whether [Pet.] is the shooter" and reviewed jury instructions from Adres Reyes trial to be applied in this case on Geller's theory that Pet. was the only single shooter. Geller advised the court that he did not seek special circumstances instructions in Reyes' trial (when Geller convicted Reyes of being the only single shooter) because Reyes was just 15 years old at the time of the murder (RT: 295:4-296:7).

27. The court advised the jury that the People were proceeding "on the theory that Francisco Lopez was the actual shooter." (RT: 539:15-17).

28. Powell did not object to Geller's request for a 315 jury instruction to attack Det. Selinske's eye-witness identification of Andres Reyes as the shooter (RT: 540:4-16), when no such instruction was issued in Andres Reyes Trial.

29. Geller moved to preclude the jury from learning Andres Reyes had been convicted of being the only single shooter who murdered Rosario, so he could convict Pet. too of being the only single shooter who murdered Rosario. The court granted the motion without any objection from Powell (RT: 28:19-29:27).

---

13. The court was seeking to assist Geller as it would have to pose its own objection if he sought to add a material witness by ambush in the middle of the trial. Powell committed IAC by failing to object (In re Littlefield, 5 Cal.4th 122, 132-33 (1993) and Taylor v. Illinois, 484 US 400 (1988)).

30. Powell incorrectly interpreted the order to preclude him from the assault that occurred 39 minutes after the murder where Andres Reyes shoved the murder weapon into the throat of Jamie Nieves (People v. Reyes, 2007.Cal.App.Unpub.Lexis.6778, at Pg.3), as these facts were never devulged to the jury.[14]

(3. Lack of Police Direction or Empathy for the Victim:

31. Detectives Ashby and Rondou were both lead on the case involved in the investigation from its inception (RT: 301:22-302:4), and were so focused on manufacturing a case against Pet. that they actually forgot the victim's name:

GELLER: "No further questions."

COURT: "Do you think its necessary to identify the person who was found with the bullet wound in his head dead in the car?"

GELLER: "Investigator Rondou, do you recall the name of the decedent in this case?"

RONDOU: "I don't."

GELLER: "May I approach the witness?"

COURT: "Yes."

RONDOU: "Pedro Rosario." (CT: 311-12).

GELLER: "Were you able to identify the victim at any point?"

ASHBY: "Yes."

GELLER: "Who was the victim?"

ASHBY: "I would have to look at the report to remember his name."

GELLER: "With the court's permission?"

COURT: "You may." (whereupon, the officer refers to his report)

ASHBY: "His name was Pedro Rosario." (RT: 59:5-16)

---

14. As Powell never submitted a witness list, it appears he never intended to call Jamie Nieves or Edgar Lopez as witnesses. This is inconceivible unless Powell was colluding with Geller, as Geller had not even moved to preclude the Reyes jury findings until the day of trial.

(4. Police Falsify Petitioner's Discription:

32. Ashby and Rondou both knew that after Det. Selinske's detailed description, the height and weight of the shooter was a material issue, but took no steps to seccure that information from youthful growing defendants, who would all be taller and heavier at the time of trial four years later. They both knew:

(A. Andres Reyes was taller than his reported 5'6" (BSR: 39).

(B. Pet. was just 5'8" or 5'9" tall at the time of the shooting (BSR: 039).

33. Ashby and Rondou then falsified their reports to falsely reflect

(a. Andres was 5'6" tall (BSR: 13).

(B. Pet. had no height or weight, as they were sanitized from all police reports in the case but one (BSR: 14).

34. At trial, Rondou committed perjury (as Geller was aware of it, it became a Napue violation) by testifying Pet. was 6'2" tall and weighed 165 pounds in 2004 (RT: 103:1-13) which he obtained from police reports and observation (RT: 105:12-14), which happened to be the exact physical description given by Det. Selinske [6'2" tall, 165 pounds](RT: 72:4-17). Rondou failed to sanitize one police report that listed Pet.'s height and weight at 5'10" tall and 140 pounds at the time of his arrest (BSR: 31). Although the prosecutor stipulated Pet. was 5.11" tall at the time of the trial in 2008 (RT: 513:1-5), and because Powell did not make a record that Rondou committed perjury, Geller argued false evidence in his summation the the height and weight given by Det. Selenske perfectly matched Pet.'s height and weight (RT: 600:12-21), and Powell failed to object.

(5. Det. Matthew Selinske:

35. Det. Selinske was a Costa Mesa narcotics officer in plain clothes driving an unmarked police vehicle who witnessed the shooting (RT: 63:24-65:22), and saw a man straddling a bike pointing, and a "back [vehicle] window literally being blown out of the driver's side." The pointing

man placed a revolver in his waist, and road his bike toward Selinske with two other bike riders (RT: 69:17-71:3). Selinske never averted his unimpared vision until the shooter was 35 yards from him, then Selinske attempted to retreive his firearm in a back seat bag. The shooter was just 12 feet from him when he again turned to identify the suspect (RT: 82:10-84:5). Selinske identified Andres Reyes as the gunman (RT: 84:9-85:12, 101:3-6) as a light skinned male Hispanic approximately 17-20 years of age, 6'2" tall weighing 165 pounds wearing a black shirt (with a white and blue design), blue shorts white boxer shorts with a red Angel's cap with a firearm in his waistband (RT: 72:4-17).

Q: Did you see that person shoot?

A: No. (RT: 91:23-25).

36. Powell did not impeach Selinske with his prior inconsistant statements contained in the: (1. police report (BSR: 21); and (2. testimony from the Reyes trial (People v. Reyes, 2007.Cal.App.Unpub.Lexis.6778, at Pg.2) that he witnessed Andres Reyes shoot Pedro Rosario.

(6. Louis Perez:

37. Perez testified that Pet. committed the murder after a "hit up" (RT: 114:7-14, 128:14-129:16) and had shown him and others the gun before the shooting (RT: 122:20-123:25). Co-counsel attempted to impeach Perez with a prior inconsistant statement he made to police, but the court committed error by sustaining the People's objection (RT: 142:10-11, 147:3-14).

38. Perez testified that he and others were required to be back-up for Pet. and not run away after the shooting or they'd get beat-up (RT: 135:15-140:9), then testified that everybody essentially ran away after the shooting anyway (RT: 140:10-20). This statement was not contained in the interview, and Powell failed to impeach Perez in the manner in which he was coached in the police interview.

(7. Eddie Reyes' Testimony:

39. Eddie Reyes testified that he didn't: (1. see the shooting (RT: 215:20-24); (2. remember the shooting (RT: 159:12-16, 214:1-10); (3. recognize the defendants (RT: 157:18-158:3); (4. remember talking to police (RT: 160:21-23); and (5. cannot say what in his statement to police was true (RT: 211:18-20, 210:12-14). Reyes testified he was a passenger in a vehicle going in the opposite direction of the shooting, so he was unable to witness it (RT: 222:23-26). Reyes never saw the defendants in the places indicated on his map; the police through the power of suggestion (and pointing) caused him where to place the initials of the defendants on the diagram (RT: 220:22-221:16, 222:2-14, 218:15-23), and didn't make these statements until the police were about to charge his brother (RT: 213:4-9).[15]

40. The People sought leave to project Eddie's hearsay statement to police on the court monitor (with no objection from the defense) and the court even suggested turning off the courtroom lights so the jury could better see the hearsay statements (RT: 167:14-168:15). Ashby then related Eddie's out-of-court hearsay statements to the jury without any objection from defense counsels (RT: 227:26-237:26). Ashby misrepresented that, in a round about way, Eddie told them Pet. was the shooter, because he was wearing the red Angel's cap (RT: 274:22-275:25). However, the police report states that Eddie said it was either Pet. or Chuy was wearing the red Angel's cap (BSR: 29). Powell failed to confront Ashby ith this misrepresentation. [16]

15. The court found Eddie was intentionally evasive (RT: 177:12-24), holding the People have a choice of: (1. confronting the witness with his out-of-court hearsay statements; or (2. offering his out-of-court hearsay statements to the jury (RT: 179:6-17).
THE COURT: "The court does not typically get involved in the mode of interrogation" but "because I'm trying to avoid the recalling of witnesses ... [to assist] the People ... [from] attempt[ing] to offer out-of-court [hearsay] statements of the juvenile" (RT: 177:3-10).

41. Eddie testified that he told the lawyer appointed by the court that the statements he made to police that is reflected in the police reports were untrue (RT: 190:11-17). The court imposed its own objection to what he advised his attorney was not true (RT: 190:18-191:5). Co-counsel reminded the court that attorney-client privilege is held by the client and Eddie could waive it if he so chose, but the court disagreed (RT: 192:24-193:22).

42. During the People's rebuttal summation, Geller told the jury that Eddie thinks he's helping the defense by saying: "I don't remember." (RT: 858:9-14).

(8. Michael Contreras Testimony:

43. On Aug. 10, 2004, Michael Contreras was 13 years old (RT: 247: 12-14), and started high school in Juvenile Hall (RT: 250:2-7). Michael did not remember: (1. being in Salvador Park that day (RT: 248:12-14); (2. telling police that Pet. showed him a gun in that park (RT: 255:6-9); (3. seeing the gun (that Geller was showing him in court) before (RT: 253: 17-23); or (4. testifying in a trial one and one half years ago (RT: 251: 13-22). Without making any holding as to whether Contreras was being dishonestly evasive (as the court did in Reyes' trial), Geller had Ashby narate his out-of-court hearsay statements to the jury without any objection (RT: 279:19-280:12). Ashby also testified that Contreras has no memory problems (RT: 280:13-20).

---

16. Testimony at trial established that the defendants used the following monikers:

Francisco Lopez:	Little Speedy.
Isreal Lopez:	Bam Bam.
Jesus Lopez:	Chuy.
Louis Perez:	Little Soldier.
Severo DeLaRiva:	Bouncer.
Andres Reyes:	Shady.

(9. Flight Instruction:

44. As most of the defendants were arrested on Sep. 9, 2004, but Pet. could not be located until early Dec. 2004, Geller requested and received a flight instruction (RT: 302:5-303:8, 307:6-308:3), even though there was no evidence offered that Pet. fled.

(10. Gang Testimony:

45. Det. Rondou has investigated gangs since 1995, has been involved in 1000s of investigations, and has taught courses on gangs (RT: 303:4-309:8), but his testimony has never conflicted with a prosecutor's theory that a defendant was a gang member (RT: 487:25-488:11).

46. Police keep track of gang members by F.I. ("Field Interview cards and PC-186 notices (RT: 311:23-312:8). F-Troop is a Santa Ana gang who has a riverally with the Myrtle gang (RT: 322:10-329:17). F-Troop requires members to be initiated by being "jumped in" (People v. Gomez, 2014.Cal.App.Unpub.Lexis.7194, at Pg.16 (2014)) "which typically involves three or four members of the gang beating the potential new member for a set period of time while the new member does his or her best to fight back." (People v. Smith, 60 Cal.4th 603, 608 (2014)).

47. A "hit up" is a process where a member of one gang asks a stranger (who looks like a gang member) what gang (or area) he or she belongs to (RT: 317:1-6).

48. Rondou opinioned Pet. to be an F-Troop gang member because: (1. typically gang members do not commit crimes with non-gang members as there is a lack of trust (RT: 330:9-333:1); (2. there was a hit-up in this case; and (3. Pet. attended a party in 2003 where gang members were present (RT: 367:4-20, 330:9-333:1).[17]

17. Rondou also opinioned Pet. to be a gang member because Louis, Eddie and Michael referred to Pet. as "Little Speedy" a gang moniker (RT: 349:10-13, 352:11-353:15, 355:1-18), then reversed himself admitting that a moniker is simply a nick-name and does not mean the person is a gang member (RT: 483:11-20).

(11. Manufacture of Pretext to Remove Juror-5:

49. Juror-5 (# 122) passed a note complaining the defense is failing to ask highly relevant questions, such as:

(A. Observation and clothing (RT: 383:12-384:8).

(B. The physiological ability to witness the incident (Ibid).

(C. "If the crime is spontaneous, are the participants still considered 'back up' to the perpetrator?" (Ibid).

(D. Whether Pet. was a documented gang member at the time of the murder? (RT: 388:25-389:11). [18]

50. Geller asked for the juror's disqualification requesting voir dire (to fish) whether she has done any investigation on her own (RT: 387:26-388:14, 391:17-392:7). The court found no good cause and wanted to instruct the juror that it was perfectly okay to ask questions through notes (RT: 391:1-13). As if on que, Franscelli said the juror asked the bailiff (in the presence of other jurors) if it was okay to ask questions, and the bailiff responded that he could not give legal advise. Franscelli then said: "I think we have a poisoned jury" (RT: 398:2-25). Although Pet. grabbed Powell's arm and specifically requested that he not join Franscelli's request for voir dire, Powell asked the court for voir dire as if he was not even there (RT: 401:6-24, BSR: 001).

51. Two jurors said Juror-5 explained that in civil trials she had been permitted to ask questions through notes, and one juror said that Juror-5 said: "this is going to get interesting now" (RT: 405:20-406:2, 417:19-418:24). Geller wanted disqualification even though he asked Juror -5 no questions (RT: 416:8-12, 417:16).

18, All excellent questions! Louis Perez testified that he and others were required to be back-up and not run away after the shooting or they'd get beaten-up (RT: 135:15-140:9), then testified that everyone essentially ran away after the shooting anyway (RT: 140:10-20). It is refreshing to have a juror who really believes in taking her jury duties seriously. Geller, Powell, Franscenelli and the court responded by instigating her removal.

52. Juror-5's day job was deliberating insurance claims, which required her to attend trials (RT: 443:17-19, 449:16-21). She did no legal research, but did inform one juror that some things are excluded from trial by limine motions (RT: 424:19-425:1, 449:7-11). She has formed no opinions, but takes her jury duties very seriously and asked a few questions even though she assumed that some people may not approve (RT: 417:8-14, 420:5-421:5), admitting there was only one way she could vote if she did not get enough information establishing guilt (RT: 450:22-451:2).

53. Geller again moved to disqualify Juror-5 (RT: 453:1-3). Pet. again grabbed Powell's arm and asked him not to seek the juror's recusal (BSR: 001). Powell again ignored his client, and moved for a mistrial (RT: 453:5-6), admitting that he possessed no facts justifying disqualification (RT: 458:25-459:11). The court denied Powell's motion (RT: 478:19-479:10), but granted Geller's unopposed motion to disqualify Juror-5 (RT: 456:18-457:1) holding:

(1. There was no misconduct in asking the bailiff a question (RT: 454: 17-25).

(2. Juror-5's ability to be impartial has been substantially impared (RT: 453:22-24).

(3. Juror-5 violated her oath (Jury Instruction-101) "Do not do any research on your own" (RT: 453:25-454:9).

(4. Juror-5 violated the instruction to "keep an open mind through out the trial." (RT: 454:10-16).

(5. The court interpreted Juror-5's statement "this is going to get interesting" to mean she is going to ask questions "to make a decision ... beyond a reasonable doubt." (RT: 454:26-456:11). Juror-11 (#213) gave a credible statement Juror-5 "is going to vote not guilty unless her questions are answered" because she "has already made up her mind how she is going to vote" without hearing the rest of the People's case (RT: 454:26-456:11).[19]

---

19. Juror-11 actually said: "if she didn't get her questions answered, there was only one way she could vote." (RT: 442:11-12). Juror-5 said she had not formed any opinions (RT: 417:8-14), and the presumption of innocence required Juror-5 to presume Pet. was innocent until guilt was established. This should have been an inference that the prosecution had not yet established guilt, and an answer to her questions may in fact do so. "This is going to get interesting" clearly meant an answer to he questions would decide whether guilt was established. The People's case was finished!

(12. Misrepresentations of Fact in People's Summation:

54. Geller made the following misrepresentations of fact in his summation without any objections from Powell:

"Not the best police work." Det. Selinske is armed in a car and lets "six guys on bicycles get away after a murder". He "got it wrong with respect to the ID of the shooter." Maybe "he transposed faces when he looked at the six-pack ID. He's 40 yards down the street." (RT: 599:21-600:11).[20]

The height and weight description matched Frank Lopez (RT: 600:12-21)

Eddie Reyes IDed Frank Lopez as the shooter (RT: 600:22-25). Eddie Reyes said either "Junior or Frank shot the gun" (RT: 602:24-26).[21]

An 11 year old is not sophisticated enough to lie (RT: 603:16-21).[22]

Eddie thinks he is helping the defense by saying: "I don't remember" (RT: 658:9-14).

"Every single piece of evidence in this trial points to one person pulling the trigger that day and that is Frank Lopez ... in reality, factually, Frank Lopez killed that kid that day. Frank Lopez pulled the trigger." (RT: 661:24-662:2).

"Michael Contreras, a cousin of his, puts the murder weapon in his hand a half an hour before all this goes down." (RT: 662:6-8).[23]

55. Pet.'s trial was reduced to a farce or a sham.

---

20. Det. Selinske testified that he was just 12 feet from Reyes when he made that identification [not 40 yards](RT: 82:10-84:5, 72:4-17). Also, Pet. was never in the six-pack lineup with Reyes, so it would have been absolutely impossible for Selinske to transpose they're faces.

21. Testimony at trial stated that Pet. sometimes went by Junior. Eddie Reyes said in the interview that he believed it was either Pet. or Chuy who was wearing a red Angel's cap (BSR: 29).

22. An 11 year old is not sophisticated enough to lie? Really? Eddie gave a completely fictional account of the fight his brother Andres got in after the murder, to make it appear as if his brother was the victim rather than the perpetrator (BSR: 027). Geller's summation also misrepresented that Eddie Reyes had no motivation to lie (RT: 602:9-12), when Geller was aware that Eddie had been caught in the interview doing just that.

23. It had never been established that this gun was the murder weapon. Geller was simply vouching as a prosecutor that it was, making it easier for the jury to convict Pet.

56. Judge King adjudicated over both Andres Reyes and Pet.'s PC-1170.95 petitions a decade later (which eliminated natural and probable consequences). Judge King denied them both on the grounds that Reyes and Pet. were both the same lone single shooter who murdered Pedro Rosario.

IV.

REASONS FOR GRANTING THE WRIT

(a. Doctrines of Collateral & Judicial Estoppel Precluded Trial:

> "[I]t is well established ... a prosecutor cannot, in order to convict two defendants in separate trials, offer inconsistant theories and facts regarding the same crime."

(Thompson v. Calderon, 120 F.3d. 1045, 1058 (9th Cir. 1997)(en banc)).

> "The prosecutor's theories of the same crime in two different trials nagate one another. They are totally inconsistant. [It was] inherently unfair ... the prosecutor violate[d] the fundamental fairness essential to the very concept of justice. ... The State cannot devide and conquer in this manner. Such actions reduce criminal trials to mere gamemanship and rob them of their supposed search for truth."

(Drake v. Kemp, 762 F.2d. 1449, 1470 (11th Cir. 1985)(en banc)).

> "[F]undamental fairness does not permit the People ... to attribute two defendants, in separate trials, a criminal act that only one defendant could have committed." "[D]eliberate manipulating of the evidence put before [separate juries] ... undermines the reliability of convictions ... undermines the fairness of the judicial process." "[A] false factual basis [that] is inconsistant with the goal of criminality as a search for the truth." "Increasing acts to two different persons when only one could have committed them [results in] someone factually innocent of the culpable acts attributed to both."

(In re Sakarias, 35 Cal.4th 140, 155-56 & 160 (2005)).

> "The doctrine of collateral estoppel, or issue preclusion, is firmly embedded in both federal and California law." "[O]nce an issue has resolved in a prior proceeding, there is no further factfinding function to be performed."

(People v. Curiel, 15 Cal.5th 433, 451 (2023)).

> "The doctrine of judicial estoppel serves to maintain fairness and judicial integrity."

(People v. Bryant, Smith & Wheeler, 60 Cal.4th 335, 377 (2014)).

The doctrine of collateral estoppel is a constitutional requirement under the double jeopardy clause of the Fifth Amendment, applied to the State under the Fourteenth Amendment's due process clause (Ashe v. Swenson, 397 US 436 (1970)). Collateral estoppel:

"[M]eans simply that when an issue of ultimate fact has once been determined by a valid and final judgment, this issue cannot be litigated between the parties in any future litigation." (Id, at 443).

"The doctrine of judicial estoppel serves to maintain fairness and judicial integrity." (People v. Bryant, Smith & Wheeler, 60 Cal.4th 335, 337 (2014)). Judicial estoppel:

(1. "prevents a party from prevailing in one phase of a case on an argument, an relying on a contradictory argument to prevail in another phase." (New Hamshire v. Maine, 534 US 742, 749 (2001)).

(2. "prevent[s] a party from gaining tactical advantage by taking inconsistant positions ... to protect against a litigant playing fast and loose with the courts." (Hamilton v. State Farm, 270 F. 3d. 778, 782 (9th Cir. 2001)).

(3. applies "when a parties position is tantamount to a knowing misrepresentation to or even a fraud on the court." (Wyler v. Turner, 235 F.3d. 1181, 1190 (9th Cir. 2000) and Milton v. Marilyn Monroe, 692 F. 3d. 983, 994 (9th Cir. 2011)).

Here, the court and prosecutor intentionally convicted an innocent man of a most heinous crime they were both aware someone else had perpetrated and had been convicted thereto. They gave him life without the possibility of parole simply because they could, they were both white, and he was Hispanic. This "shocks the conscience." (Rochin v. California, 342 US 165, 172-73 (1952)("methods too close to the rack and the screw.")).

(b. Judicial Embroilment Amounting to Partisan Advocacy:

"Embroilment is a process by which the judge surrenders the role of impartial factfinder/decisionmaker, and joins the frey." (Inquery Concerning Splitzer, 49 Cal.4th CJC Supp. 254, 276 (2007)). "By doing so, he crossed the line between neutral arbiter and advacate." (Ibid).

Judge King: (1. knew Andres Reyes had already been convicted of being the lone single shooter; (2. looked for jury instructions in the Reyes trial to assist Geller do it here; (3. blocked the jury from learning that another jury convicted Reyes of the crime Pet. was charged with; (4. advised Geller he left a material witness off of the trial witness list; (5. interrupted Geller's examination of Eddie Reyes to allow Geller to show the jury inadmissible out-of-court hearsay statements, even suggesting

the courtroom lights be turned off so the jury could better see the poisonous fruits; (6. imposed his own objections to what Eddie Reyes told his attorney about which hearsay statements were untrue; (7. violated clearly defined law by demanding Pet. waive attorney-client privilege to hold a People v. Marsden hearing over his attorney's ineffectiveness (People v. Smith, 6 Cal.4th 684, 704 (1993))(A1); (8. had a personal relationship with Geller's father; and (9. denied both Pet.'s and Reyes' PC-1170.95 petitions on the grounds they were both the same lone single shooter.

Partisan embroilment occurs when the decisionmaker acts on evidence that had not been subject to the adversarial process (Lasko v. Valley Pres. Hospital, 180 Cal.App.3d. 519, 528 (1986)), as here.

A fundamental component of a fair hearing requires a neutral and unbiased desisionmaker (Goldberg v. Kelly, 397 US 554, 571 (1970)). "[A] biased decisionmaker is constitutionally unacceptable." (Withroe v. Larkin, 421 US 35, 47 (1975)). "A criminal defendant tried by a partial judge is entitled to have his conviction set aside, no matter how strong the evidense is against him." (Edwards v. Balisok, 520 US 641, 647 (1997)).

"[I]n order to reverse for excessive judicial intervention, the record must ... leave the reviewing court with the unbinding impression that the judge's remarks or questioning witnesses projected ... an appearance of advocacy and partiality." (Kennedy v. LAPD, 901 F.2d. 702, 709 (9th Cir. 1989), Crandell v. United States, 703 F.2d. 74, 77 (4th Cir. 1983)(judge "simply assumed the role of advocate."), Reserve Mining v. Lord, 529 F.2d. 181, 185 (8th Cir. 1986)(same), Knapp v. Kinsey, 232 F.2d. 458, 467 (6th Cir. 1956)(same), Amaral v. Ruez, 1993.US.App.Lexis.6078 (9th Cir. 1993), Little v. Kern County Superior Court, 249 F.3d. 1075 (9th Cir. 2002), United States v. Onyeabor, 649 Fed.Appx.442 (9th Cir. 2016) and People v. Perkins, 109 Cal.App.4th 1562, 1571-73 (2003)(questioning by court sought to develop and amplify prosecution evidence amounting to partisan advocacy)).

(c. Abundance of Reprehinsible Prosecutorial Misconduct:

"The first, best and most effective shield against injustice for an individual accused ... must be found ... in the integrity of the prosecutor.' (People v. Dekraai, 5 Cal.App.5th 1110, 1116 (2016)). "A prosecutor is the guardian of the constitutional rights of everyone, even criminal defendants." (People v. Shier, 190 Cal.App.4th 400, 419 (2010)). Here, "protecting the constitutional rights of the accused was not very high on the prosecutor's list of priorities." (United States v. Olsen, 737 F.3d. 625, 631 (9th Cir. 2013)(en banc)). Here, the prosecutor Mark Geller:

(1. Manipulated evidence before two juries that rusulted in two people being convicted of pulling the trigger one time, a crime only one person could have committed.

(2. Precluded the jury from learning that Andres Reyes had been convicted of a crime for which Pet. was being charged.

(3. Knowingly elicited false testimony which manufactured Pet.'s physical description to perfectly match the description given by Det. Selinske.

(4. Geller and lead Det. Rondou had already been found guilty by another court of Napue and Brady violations.

(5. Misstated material evidence in his summation that Det. Selinske "got it wrong with respect to the ID of the shooter" because he was "40 yards down the street", when Selinske testified he was just 12 feet away.

(6. Misstated and testified to evidence not in the trial that Selinske transposed faces of Andres Reyes and Pet. in the six-pack ID lineup, when Pet. was never in the lineup, and the evidence was not testified to at trial.

(7. Intentionally lied to the jury in his summation that Eddie Reyes as an 11 year old was not sophisticated enough to lie, when he was aware that Eddie was caught repeatedly lying to police, but the evidence was never admitted into the trial.

(8. Intentionally lied to the jury by telling them Eddie had no motivation to lie (RT: 602:9-12), when Eddie had been caught doing just that to try to get his brother off (A27), but that information was not in the trial.

(9. Misrepresented to the jury that Eddie thinks he's helping the defense by saying: "I don't remember." when it denied Pet.'s right of confrontation.

(10. Obtained 315 jury instructions to attack Selenske's eye-witness testimony, after relying upon it to convict Reyes.

(11. Misrepresented that Michael Contraras put the murder weapon in Pet.'s hands 30 minutes "before this goes down." When there was no evidence it was the murder weapon, and it was 2 hours, not 30 minutes.

(12. Misrepresented in his summation that: "Every single piece of evidence points to one person pulling the trigger, and that is Frank Lopez."

A prosecutor may not: (1. vouch for the credibility of his own witnesses (United States v. Young, 470 US 1, 18-19 (1985)); (2. misstate facts (United States v. Kajayan, 8 F.3d. 1315, 1323 (9th Cir. 1993)); or (3. knowingly present false evidence, which he has a duty to correct (Napue v. Illinois, 360 US 264, 269 (1959)), as he repeatedly did here.

A prosecutor also may not: (A. allude his oath of office or personal integrity to bolster the State's case (United States v. Frederick, 78 F.3d. 1370, 1380 (9th Cir. 1996)); (B. use staged testimony to introduce improper testimony (Miranda v. Bennett, 322 F.3d. 171, 181 (9th Cir. 2003)); or (C. used perjured testimony to succure a conviction (United States v. Mandujano, 425 US 564, 576 (1976)), as he did here.

"We, ourselves, have warned prosecutors in the past ... Yet [they] do not seem to be listening." (Marrow v. Superior Court, 30 Cal.App.4th 1252, 1262 (1994)). University Law Professor Bennett Gershman (a prosecutor misconduct expert) said: "Its systematic now, and ... the system is not able to control this type of behavior. There is no accountability." (USA Today, 9/23/2010), People v. Pigage, 112 Cal.App.4th 1359, 1374 (2003)(prosecutor misconduct "is part of an alarming new trend.") and People v. Velasco-Palacios, 235 Cal.App.4th 439 (2015)(prosecutor altered transcript in an attempt to induce a confession)).

"No arrest, no matter how lawful ... gives [the State] license to manufacture false evidence." (Rucciuti v. NYC Transit Authority, 124 F.3d. 123, 130 (2nd Cir. 1997)). "[N]o sensible concept of ordered liberty is consistant with law enforcement cooking up its own evidence." (Halsey v. Pfeiffer, 750 F.3d. 273, 292-93 (3rd Cir. 2014)). A criminal conviction

based upon "false evidence that was deliberately manufactured by the government" "shocks the conscience." (Devereauz v. Abbey, 263 F.3d. 1070, 1074 (9th Cir. 2013)(en banc)).

The abundance of reprehensible prosecutorial misconduct, and false evidence, rendered the trial fundamentally unfair, reducing it to a farce or a sham, denying fundamental due process.

(d. Hearsay Statements Violated Right of Confrontation:

The Sixth Amendment right of confrontation dates back to Roman times and the trial of Apostle Paul in the year 60 A.D. (Alvarado v. Superior Court, 23 Cal.4th 1121, fn.8 (2000)) and is satisfied "when the defense is given a full and fair opportunity to probe and expose [the witnesses] infirmaties through cross-examination, thereby calling to the attention of the fact finder the reeason for giving scant weight to the witness' testimony."(Delaware v. Fensterer, 474 US 15, 22 (1985)). The right of confontation ensures "an opportunity for effective cross-examination." (Id, at 20).

A witnesses fake memory loss can so effect the right to cross-examination as to violate the confrontation clause (California v. Green, 399 US 149, 168-69 fn.18 (1970)) and can only be cured if the trial witness had been cross-examined at the preliminary hearing (People v. Green, 3 Cal. 3d. 981, 989 fn.7 (1971)).

The confrontation clause is violated, as here, where a witnesses out-of-court statements are read after an evasive memory loss made the witness unavailable, thus violating the hearsay rule (United States v. Vargas, 933 F.2d. 701, 705 (9th Cir. 1991); People v. O'Quinn, 109 Cal.App. 3d. 219, 226-29 (1980) and People v. Johnson, 3 Cal.4th 1183, 1219-20 (1992)).

This error was compounded by the People's summation that Reyes' had faked his memory to assist the defense (RT: 658:9-14), and his improper vouching. Contreras had a fake memory loss in the Reyes trial first, so

everyone but Pet. knew this was comming. Contreras should have been examined in a 402 hearing (and never gotten to the jury), and as soon as Eddie Reyes' fake memory loss materialized, he too should have been moved to a 402 hearing. There hearsay statements violated Pet.'s right of confrontation, as he cannot cross-examine a hearsay statement.

(e. Material Witness Added on Day of Trial:

Disclosure of witnesses in a criminal trial must be made at least 30 days before trial (PC-1054.3(a)/1054.7).

The only reason to add a witness on the day of trial is to gain a tactical advantage, and the witness should be precluded (Taylor v. Llli-nois, 484 US 400 (1988)). This type of gamemanship, trial by ambush, supports a preclusion order (In re Littlefield, 5 Cal.4th 122, 132-33 (1993) and Eleazer v. Superior Court, 1 Cal.3d. 874, 851-53 (1970)(prosecutorial duty of disclosure)).

Here, Louis Perez was not just any witness, he was a material eye-witness, and Powell advised Pet. he was unprepared to properly cross-examine him (BSR: 002), yet he failed to even pose an objection.

Neither Eddie Reyes, Michael Contreras or Louis Perez should have ever been permitted to testify.

(f. Failure to Interview Eye-Witnesses:

A lawyer has a duty to "investigate what information ... potential eye-witnesses possess[], even if he later decides not to put them on the stand." (United States v. Gray, 878 F.2d. 702, 712 (3rd Cir. 1989)). "Neglect to even interview available witnesses to a crime cannot be ascribed to trial stradegy and tactics." (Hoots v. Allsbrook, 785 F.2d. 1214, 1220 (4th Cir. 1986)) "because counsel can hardly be said to have made a stratigic choice when s/he has not yet obtained the facts which such a decision could be made." (Gray, 878 F.2d. at 711; People v. Bess, 153 Cal. App.3d. 1053 (1984)(reversed where counsel failed to interview eye-witness' to a robbery) and In re Hall, 30 Cal.3d. 408, 428-31 (1981)(reversed for failure to interview eye-witnesses to tainted identification)).

"[F]ailure to interview eye-witnesses to a charged crime constitutes 'constitutionally deficient representation'" even if the witnesses are called at trial and vigorously cross-examined (Anderson v. Johnson, 338 F.3d. 382, 391 (5th Cir. 2003)(reversed for failure to interview eye-witnesses); Gains v. Hopper, 575 F.2d. 1147, 1149 (5th Cir. 1978)(same); Kemp v. Leggett, 635 F.2d. 453, 454 (5th Cir. 1981)(same); and Hughes v. Vannoy, 7 F.4th 380 (5th Cir. 2021)(same)).

"[W]e hold that counsel's failure to ... interview eye-witnesses is unprofessional conduct below the standard of a reasonable competent attorney." (Bryant v. Scott, 28 F.3d. 1411, 1419 (5th Cir. 1994); Rios v. Rocha, 299 F.3d. 796 (9th Cir. 2002)(granting federal habeas corpus relief for failure to interview eye-witnesses) and Lord v. Wood, 184 F.3d. 1083, 1096 (9th Cir. 1999)(same)).

Here, Powell did not even get the police interviews with Eddie Reyes or Michael Contreras transcribed. If he had, we'd see the same coaching techniques as police used in Louis Perez's interview.

(g. Complete Abandonment of Trial & Appeal Counsel:

Had Powell imposed proper objections, neither Louis Perez, Eddie Reyes or Michael Contreras would have been permitted to testify. There would have been no witnesses, no trial, and Pet. would be free.

"A defense attorney who abandons his duty of loyalty to his client and effectively joins the State to obtain [and sucure] a conviction ... 'represents the defendant only through tenuous and unacceptible legal fiction'" (Frazure v. United States, 18 F.3d. 778, 782-83 (9th Cir. 1994) and Faretta v. California, 422 US 806, 821 (1975)). An attorney who concedes prosecutorial burden to prove "every element" "beyond a reasonable doubt" is governed under Cronic not Strickland (See United States v. Swanson, 943 F.2d. 1070 (9th Cir. 1991)). An attorney "must play the role of an active advocate, rather than a mere friend of the court." (Evitts v. Lucey, 469

US 387. 394 (1985)), or in this case, they effectively acted as members of the prosecution team. Defense counsel, and appellate counsel were so inadequate that, in effect, [they were much worse than] no assistance of counsel" at all (United States v. Cronic, 466 US 648, fn.11 (1984)):

> "While a criminal trial is not a game in which the participants are expected to enter the ring with a near match in skills, neither is it a sacrafise of unarmed prisoners to gladiators." (Id, at 657).

Pet. was an unarmed sacrafice delivered bound and gagged by his ineffective trial and appeal counsel that actively assisted the prosecution.

(h. State Habeas Proceedings Beyond "Objectively Unreasonable":

It defies gravity, goes far beyond "objectively unreasonable" for the habeas court to even suggest that Powell's actions were all tactical choices, unless they were designed to assist the prosecutor. When DNA and finger-prints on the handgun itself can prove actual innocents, Powell's refusal to do so, or to file one piece of paper in the criminal case, must be construed as IAC in its best light.

Though Pet. cited McQuiggin v. Perkins, 569 US 383 (2013) in every court, all ignored the actual innocents threashhold test, and denied to consider the merits of the petition due to procedural bars. The State even refused to comply with PC-1405 to finger-print the firearm.

McQuiggin has been cited over 6,500 times in the federal courts, but only 4 times in California courts, 3 of which were with the victim's compesation fund, and only one in a criminal case (unpublished) where the COA directed a hearing in the lower court regarding the threashhold test.

In other words, California is essentially ignoring clearly defined law of this Court so they can sustain convictions of the innocent. State post-conviction procedures represents a farce or a sham, complete with State actors acting out their phony roles in their charade as Pet.'s attorneys amounting to a fraud on the court.

V.

PRAYER FOR RELIEF

Pet. humbly and respectfully requests an order:

(1. Granting full review and appointment of counsel.

(2. A finding that the doctrine of collateral and judicial estoppel barred the State from trying Pet. for being the lone single shooter after a jury convicted Andres Reyes of being the lone single shooter.

(3. A finding that the judicial misconduct amounted to partisan embroilment.

(4. A finding that the judicial and prosecutorial misconduct was so shocking that it "shocks the conscience."

(5. A finding that Pet.'s trial and appeal counsel were so ineffective as to constitute no assistance of counsel at all under Cronic.

(6. A finding that Pet.'s trial and appeal was reduced to a farce or a sham, complete with State actors acting out their phony roles in a charade amounting to a fraud on the court.

(7. A mandate ordering the State of California to adhere to, and not disregard the actual innocents gateway threshhold test in McQuiggin v. Perkins.

(8. A finding that Pet. met the theshhold test in McQuiggin.

(9. The opinion be referred to the State Bar and Judicial Counsel of California for disciplinary prosecures.

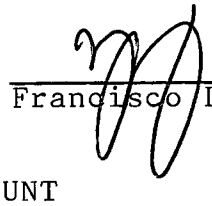
(10. The judgment be vacated / dismissed with prejudice.

(11. A finding that Pet. is factually and legally innocent.

(12. Any other relief that is just.

VERIFICATION

I, Francisco Lopez, declare the foregoing is true and correct under penalty of perjury. Executed this 2nd day of September 2024.



Francisco Lopez, Petitioner

CERTIFICATE OF WORD COUNT

I Francisco Lopez, certify that there are 8,846 words in this petition.