

25-5628

ORIGINAL

No.

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

MAR 31 2025

OFFICE OF THE CLERK

Stephen Shapiro & Kerry Barnes, Petitioners,

v.

Harbor Freight Tools USA, INC., Respondents

On Petition for a Writ of Certiorari
to the California Court of Appeals
for the First Appellate District

PETITION FOR A WRIT OF CERTIORARI

STEPHEN SHAPIRO
KERRY BARNES
Post Office Box 1125
Cloverdale, CA 95425
(707) 814-5729
kerry.barnes.shapiro@gmail.com

March 29, 2025

QUESTIONS PRESENTED

- I. *Due process principles are designed to ensure a party is afforded his or her right to be heard during adversarial proceedings: "As the rubric itself implies, "procedural due process" is simply "a guarantee of fair procedure." Duran v. U.S. Bank National Assn., 203 Cal.App.4th 212, 137 Cal. Rptr. 3d 391, 162 Lab. Cas. (CCH) 61226, 18 Wage & Hour Cas. 2d (BNA) 1368 (Cal. Ct. App. 2012)*

The general rule for self-represented litigants in California is only that their pleadings are to be liberally construed. Now that there are more and more self-represented litigants in this country, it does not make sense to have such wide ranging "rules" in the courts on how to treat these litigants.

Q. Do self-represented litigants receive their constitutional right of procedural due process?

- II. *As our colleagues noted in Hoversten v. Superior Court (1999) 74 Cal.App.4th 636, 640 [88 Cal. Rptr. 2d 197]: "Prison walls are a powerful restraint on a litigant wishing to appear in a civil proceeding." Given this, all courts have an obligation to ensure those walls do not stand in the way of affording litigants with bona fide claims the opportunity to be heard. Apollo v. Gyaami, 167 Cal.App.4th 1468, 85 Cal. Rptr. 3d 127 (Cal. Ct. App. 2008)*

While many court rulings emphasize access to courts for incarcerated persons, these rulings primarily address civil rights while incarcerated, and the right to a fair trial. There is also a divide between the circuit courts regarding where or when the access to court ends. These rulings do not necessarily apply to the self-represented civil plaintiff in a civil appeal.

Q. Does the Fourteenth Amendment's right of access to the courts for incarcerated litigants apply to all litigants at all stages of litigation?

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.

RELATED CASES

Shapiro vs Harbor Freight Tools USA, Inc, No. SCV-263488, Superior Court of California, Sonoma County, Case Filed November 18, 2018, Motion for Summary Judgment Granted November 30, 2021

Shapiro vs Harbor Freight Tools USA, Inc, No. A164895, California Appeals Court, 1st Appellate Division, Appeal Filed March 28, 2022, Dismissed June 20, 2023

Shapiro vs Harbor Freight Tools USA, Inc. No. S281202, Supreme Court of the State of California, Petition for Review Filed August 1, 2023, Granted October 11, 2023

Shapiro vs Harbor Freight Tools USA, Inc. No. S284429, Supreme Court of the State of California, Petition for Review Filed April 16, 2024, Denied June 12, 2024

Shapiro vs Harbor Freight Tools USA, Inc. No. S287575, Supreme Court of the State of California, Petition for Review Filed October 19, 2024, Denied December 31, 2024

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Shapiro vs Harbor Freight Tools, USA, No. S287575, Supreme Court of the State of California, Petition for Review Filed October 19, 2024, Denied December 31, 2024

JURISDICTION

This Court has jurisdiction of this petition to review the judgment of California Court of Appeals, First Appellate District pursuant to 28 USC §1257(a). The Appeals Court's dismissal of appeal was filed September 19, 2024, and the Petition for Review with the California Supreme Court was denied on December 31, 2024.

CONSTITUTIONAL AND STATUTORY PROVISIONS

California State Constitution, Article I § 7

- (a) A person may not be deprived of life, liberty, or property without due process of law

United States Constitution, Amendment V

"No person shall be deprived of life, liberty, or property without due process of law"

United States Constitution, Amendment IV

"No person shall be deprived of life, liberty, or property without due process of law"

California Code of Regulations, Title 15, Division 3, Chapter 1, Subchapter 2, Article 6, § 3160. Incarcerated Person Access to Courts.

- (a) Incarcerated person access to the courts shall not be obstructed.

IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioners Stephen Shapiro and Kerry Barnes respectfully petition for a writ of certiorari to review the judgment of the California Court of Appeals for the First District in this case.

STATEMENT OF THE CASE

A. Factual and Procedural Background

a. Superior Court Proceedings – Summary Judgment

Petitioners brought a complaint against Harbor Freight Tools USA, Inc. on November 8, 2018 for Strict Products Liability, Strict Products Liability Failure to Warn, Negligence, and Loss of Consortium, due to a generator malfunction on November 25, 2016, which caused gas to escape the generator and ignite, burning Stephen Shapiro with 2nd and 3rd degree burns over 45% of his body. Stephen was subjected to seven skin graft surgeries during his one month stay at a burn center. He is forever scarred both mentally and physically by this.

Petitioners lost their first and second attorney due to misinformation and lack of pursuing the truth on the part of the attorneys, therefore petitioners were forced to proceed as self-represented litigants.

Petitioners submitted discovery requests to Defendant on April 12, 2021 for Interrogatories (38 questions), Requests for Admission (103), and Request for Production of Documents (71), Set No. 1.

On May 14, 2021, Defendant served responses, all of which were evasive, non-adequate, nonresponsive answers, which included blanket denials, repetitive non-answers and boilerplate and meritless objections.

On June 3, 2021, Defendants attorney Brandon Franklin called Petitioner Kerry Barnes and stated he would be sending additional responses within two weeks. On June 30, 2021 Petitioners sent Defendant a good faith letter requesting responses no later than July 9, 2021. On July 28, 2021, while in depositions in defendant's attorneys' offices, Petitioners again mentioned that they had not received any further response to the requests for discovery, to which Defendant's attorney Mr. Franklin said nothing. In a September 8, 2021 letter to Defendant, Petitioners again stated they had not received any further responses to discovery.

Defendant filed a Motion for Summary Judgment on June 30, 2021.

On September 7, 2021, Petitioners filed a motion requesting permission to file the objection to summary judgment in excess of twenty pages, but the motion was denied. Petitioners filed their opposition to the motion for summary judgment to the best of their ability on September 10, 2021, with no assistance whatsoever. Petitioners noted in the opposition that Petitioners still had not received Defendants responses to the requests for discovery.

On September 19, 2021, Petitioners received what was thought to be the discovery they were waiting for from Defendant. Unfortunately, this "discovery" stated it would have documents Petitioners requested but it did not.

On October 3, 2021, Petitioners attempted to file a motion to compel responses to form interrogatories, requests for admissions, and request for documents and things, due to defendant's abuse of the rules of discovery. Due to numerous issues with filing, Petitioners again attempted to file this motion on October 8, 2021, October 14, 2021, and October 25, 2021. This was scheduled to be heard January 5, 2022, then was moved to February 16, 2022.

The Motion for Summary Judgment was granted in favor of the Defendant on November 30, 2021.

Petitioners submitted a Motion for a New Trial on December 30, 2021, which was denied March 30, 2022.

b. Appeal Proceedings & California Supreme Court Proceedings

On March 28, 2022 Petitioners filed a Notice of Appeal.

On March 29, 2022 the Superior Court filed a Notice of Default on Appeal for failure to deposit \$100.00. This was paid on June 17, 2022.

On April 7, 2022, Petitioners attempted to file the designation of record on appeal four times and each time they experienced filing issues.

Due to numerous issues with the filing of the record on appeal, requesting fee waivers, and the Court Reporters Board Transcript Reimbursement Fund, Petitioners attempted to designate the record on appeal from April 11, 2022 to June 12, 2023.

On June 20, 2023, the appeal was dismissed due to an error by the courts regarding the fee waivers and the time calculated for granting.

On July 19, 2023 Petitioners filed a Motion for Relief from Dismissal. Petitioners did not receive any response.

On July 30, 2023 Petitioners filed a Petition for Review with the California Supreme Court. On October 11, 2023 the petition for review was granted.

The Appeals court notified Petitioners on October 17, 2023 that they had twenty days to procure the record.

On November 3, 2023 Petitioners filed a Motion requesting additional time to procure the record which was granted on December 19, 2023, giving an additional twenty days.

On January 4, 2024 Petitioners filed the Designating Record Submittal and Table of Contents.

On January 9, 2024 Petitioner Kerry Barnes was incarcerated for a parole violation.

On January 12, 2024 the designation was rejected. Petitioner Kerry Barnes was the person to have filed all prior documents, and Petitioner Stephen Shapiro had never worked on the paperwork with the courts and was understandably apprehensive about the process. Petitioner Stephen Shapiro resubmitted the designations on January 25, 2024. This was rejected on February 29, 2024.

The appeal was dismissed on March 15, 2024.

Petitioners filed a petition for review with the Supreme Court on April 2, 2024 which was denied on June 12, 2024.

On June 13, 2024 a remittitur was issued. On August 18, 2024 Petitioners filed a Motion to Recall Remittitur and Reinstate Appeal. This was denied on September 19, 2024.

Petitioners filed a petition for review with the Supreme Court on October 19, 2024. This was denied on December 31, 2024.

REASONS FOR GRANTING THE PETITION

A. The District Court and the Court of Appeals Decisions Raise Issues of National Importance Regarding Pro-Se Litigants

It is well known and written about often that there is no uniformity within the courts regarding how to proceed with self-represented litigants.

This court recognizes that it has a duty to ensure that pro se litigants do not lose their right to a hearing on the merits of their claim due to ignorance of technical procedural requirements. Balistri v. Pacifica Police Dept, 901 F.2d 696 (9th Cir. 1988)

The right of self-representation does not exempt a party from compliance with relevant rules of procedural and substantive law. Birl v. Estelle, 660 F.2d 592 (5th Cir. 1981)

a. Summary Judgment & Due Process -Liberally and Strictly Construed.

Petitioners should have been given additional time to have the Motion to Compel heard before the court ruled on the Motion for Summary Judgment.

It was quoted by Judge Dollard in the September 29, 2021 Motion for Summary Judgment Tentative Ruling (Appendix A), in regards to Defendant's evidence:

"While this evidence is by no means overwhelming...", yet stated in regards to petitioner's evidence *"this evidence is insufficient to show a disputed issue of fact"*

Did the court properly follow the procedure for Summary Judgment rulings?

The evidence of the moving party is strictly construed and that of the opponent is liberally construed, and any doubts as to the propriety of granting the motion are to be resolved in favor of the party opposing the motion. (Branco v. Kearny Moto Park, Inc. (1995) 37 Cal.App.4th 184, 189.) Kovatch v. California Casualty Management Co., 65 Cal.App.4th 1256, 77 Cal. Rptr. 2d 217 (Cal. Ct. App. 1998)

It is clear that Petitioners were not given any assistance, contradicting some courts decisions on how to treat pro se litigant, as there are some courts who have considered leniency regarding a Motion for Summary Judgment and self-represented litigants.

...special care be taken to insure that pro se litigants are not treated more severely than those who can afford lawyers. Camps v. C P Tel. Co., 692 F.2d 120 (D.C. Cir. 1981)

Finally, as a general rule, we are solicitous of the obstacles that pro se litigants face, and while such litigants are not exempt from procedural rules, we hold pro se pleadings to less demanding standards than those drafted by lawyers and endeavor, within reasonable limits, to guard against the loss of pro se claims due to technical defects. Dutil v. Murphy, 550 F.3d 154 (1st Cir. 2008)

District courts must take care to insure that pro se litigants are provided with proper notice regarding the complex procedural issues involved in summary judgment proceedings. Garaux v. Pulley, 739 F.2d 437 (9th Cir. 1984)

In the Motion for Summary Judgment Oral Argument transcript of October 20, 2021 it was stated:

THE COURT: So let me ask you, because there -- I'm familiar with the law that says essentially when there's discovery that's essential to oppose a motion for summary judgment and it has not been obtained, despite the exercise of due diligence, the opposing party may request a continuance for that purpose and then the Court generally will grant that. But that application is generally made when the -- on or before an opposition is due, and it says with specificity what it is that's necessary and why it has not yet been obtained through -- despite the exercise of due diligence. But I -- I think what I'm hearing, in part, just now from you -- well, a couple of things. One, you are understandably struggling because you are not an attorney. You are handling this in addition to a lot of other responsibilities. And while you're learning a lot, you are faced with responding to a very complex technical legal proceeding. But, two, I think I also heard a request for a continuance because of a lack of discovery.

Do you want to address if I heard that correctly, one? And then, two, why you didn't make that request sooner?

MS. BARNES: Yes, I -- I did not know -- I did not read that part of the summary judgment, because it's kind of a -- complicated and long. I did not know that I could request a continuance. I was trying to respond to all the other things that I have been, you know, sent. So it is quite a lot of -- a lot of paperwork and research and things. So I did -- if I had known that I could request a continuance, I would have. I also knew that I had these other things that I was filing, such as the motion to compel, which I hoped would, you know, assist me. The protection order, which I had to do. The motion to exclude testimony. So I thought all these things would assist me. And then I also know that the defendant moved the date of the trial, so I thought that would help, that we'd have more time. I did not know that I could do that in this actual motion, and I apologize for that.

THE COURT: Okay. Well, I have to say, I don't think you need to apologize. That's like somebody apologizing for not knowing how to tie their shoe when they've never been shown how to do it. It's something that you'd have no reason to understand unless you were not only a lawyer, but probably an experienced lawyer."

It does not seem equitable that the courts recognize the difficulties Petitioners faced yet still ruled in favor of defendants. In fact, Petitioners should have been given a continuance since Petitioners did not receive relevant discovery from defendant and had filed a Motion to Compel.

Holding that the district court abused its discretion by granting summary judgment before discovery where "the district court was on fair notice of potential disputes as to the sufficiency of the summary judgment record". Shaw v. Foreman, 59 F.4th 121 (4th Cir. 2023)

" '[A] summary judgment is a drastic measure which deprives the losing party of trial on the merits.' " (*Bahl v. Bank of America* (2001) 89 Cal.App.4th 389, 395 [107 Cal. Rptr. 2d 270].) "To mitigate summary judgment's harshness, the statute's drafters included a provision making continuances--which are normally a matter within the broad discretion of trial courts--virtually mandated" (*Ibid.*; Code Civ. Proc., § 437c, subd. (h).) Where the opposing party submits an adequate affidavit showing that essential facts may exist but cannot be presented timely, the court must either deny summary judgment or grant a continuance. (*Frazee v. Seely* (2002) 95 Cal.App.4th 627, 633 [115 Cal. Rptr. 2d 780].) *Dee v. Vintage Petroleum, Inc.*, 106 Cal.App.4th 30, 129 Cal. Rptr. 2d 923 (Cal. Ct. App. 2003)

b. District Court, Appeals Court, and Fee Waiver

Petitioners experienced numerous issues with the attempts to file the record designations, from issues with the documents themselves or due to procedural errors which Petitioners attempted to fix each time.

Finally, after numerous attempts to have Petitioner Kerry Barnes' waiver approved, on May 22, 2023, Petitioners received in the mail an Order on Court Fee Waiver, which was stamped Received by the courts on May 5, 2023, stamped Filed by the courts on May 17, 2023, and signed as granted on May 17, 2023.

On June 12, 2023, Petitioners received the following email from truefilingadmin@trufiling.com

"This is an order for Case No. SCV-263488, *Shapiro v. Harbor Freight Tools, USA, Inc.* This order was Denied on 5/18/2023 2:43 PM PST Comments: Filing code: Order Denying Application for Waiver of Additional Court Fee" The document attached was an Order on Court Fee Waiver which was court stamped May 18, 2023, and Signed May 18, 2023, denying the waiver.

On June 20, 2023, Petitioners filed a Request for Hearing About Court Fee Waiver Order. This was filed June 20, 2023 and rejected June 26, 2023 with the comment “The Fee Waiver was denied 5/18/23. A Request for Hearing About Court Fee Waiver needs to be filed within 10 days of the denial.”

The fee waiver was denied on 05/18/22 but Petitioners did not receive any notification until the email of 06/12/23.

*To protect indigents' right of access to our courts, the California Legislature has mandated that litigants whose incomes are insufficient to pay court fees and costs without sacrificing their ability to provide “the common necessities of life” for themselves or their families must be granted permission to proceed *in forma pauperis*. (Gov. Code, § 68511.3, subd. (a)(6)(C). If an individual completes and files the appropriate Judicial Council-approved form requesting a fee waiver but there is a “substantial evidentiary conflict” as to the applicant's right to proceed *in forma pauperis*, the trial court may not deny the application without first conducting a noticed hearing to determine his or her eligibility for the fee waiver. (Cal. Rules of Court, rule 985(f).) Cruz v. Superior Court, 120 Cal.App.4th 175, 14 Cal. Rptr. 3d 917 (Cal. Ct. App. 2004)*

On June 20, 2023 Petitioners received an email stating the appeal dismissal order was filed.

Petitioners filed a Motion for Relief from Dismissal on July 18, 2023, but it was rejected on July 19, 2023, due to “The trial Court does not have jurisdiction for this motion to be heard here. The Dismissal was issued from the District Court.

Petitioners then refiled it in the Appeals Court on July 19, 2023. This was accepted on July 20, 2023.

On July 22, Petitioners looked on the California Courts Case Information page and found the following:

07/20/23 Voice Mail message for: Appellant K. Barnes, re: motion for relief from dismissal and reinstatement of appeal will be received only because the motion and exhibits show the superior court in the heading and not this court, please correct and resubmit asap since the court only has jurisdiction until July 20, 2023.

Petitioners did not receive this message, nor any other communication regarding the Request for Relief. Petitioners resubmitted the amended Request on July 22, 2023, which was filed July 24, 2023.

On July 24, 2023, Petitioners received two letters from the Court Reporters Board, one stating the Transcript Reimbursement Fund has been approved, and one that the TRF has been provisionally approved.

Petitioners concluded the petition for review with “We do not know if the State of California 1st District Court of Appeals would rule on our Motion for Relief from Dismissal and Reinstatement of Appeal, and from what we understand, the time to file this Petition for Review runs out today, July 30, 2023. Therefore, we feel we must file this.”

The Petition for review was granted by the Supreme Court of California on July 30, 2023.

c. The California Supreme Court's Decision to Deny Petitioner's April 16, 2024 Petition for Review is in direct conflict with their October 11, 2023 decision regarding this same case

On October 11, 2023, the Supreme Court granted Petitioners Petition for Review.

On October 17, 2023, the Appeals Court ruled on Petitioners motion for relief from dismissal and granted twenty days to procure the record.

On October 26, 2023, Petitioners submitted the Motion to Allow Additional Time to Procure the Record, which was granted December 19, 2023. This gave Petitioners until January 8, 2024.

On January 4, 2024, Petitioners submitted the Notice Designating Record on Appeal.

On January 8, 2024, Petitioner Kerry Barnes was taken into custody for a probation violation. She should not have been arrested nor incarcerated for three months, yet she was.

On January 12, 2024 Petitioner Stephen Shapiro received notice that the document was rejected stating

“Please resubmit designation without cover sheet and without attached filed designations.”

Petitioner Kerry Barnes had been the only individual to compile, file and respond to court documents up to this point. Although she tried to assist Stephen Shapiro in the re-filing of the designation, it was difficult due to being incarcerated, under constant lockdown, and limited telephone time. Petitioner Stephen Shapiro attempted to fix the filing and resubmitted per the directions on January 25, 2024.

On February 29, 2024 Petitioners received notice that this filing was rejected stating

“Resubmit Amended Designations with only Reporter Transcripts.” They also received an email from the courts stating “I am rejecting your designation that was submitted on 1/25/24 in e-file per C.R.C 8.121. You will need to resubmit an Amended Designation with only the reporter transcript if you are electing to proceed with the reporter transcript. You will need to resubmit without the emails and attachments.”

From March 11, 2024 to March 23, 2024, Petitioner Kerry Barnes submitted eight separate Inmate Request Forms while in jail requesting assistance for a civil court case she was involved in. She received no assistance.

The federal and state Constitutions guarantee the right of access to the courts to all persons, including prisoners. (Smith v. Ogbuehi (2019) 38 Cal.App.5th 453, 465, 251 Cal.Rptr.3d 185 (Smith).) In addition, a California statute grants state prisoners the right "[t]o initiate civil actions" as plaintiffs. (Pen. Code, § 2601, subd. (d).) This statute has been interpreted to afford state prisoners a right of meaningful access to the courts to both initiate and prosecute civil actions. (Smith, supra , at p. 465, 251 Cal.Rptr.3d 185.) Under Penal Code section 2601, subdivision (d), "a prisoner may not be deprived, by his or her inmate status, of meaningful access to the civil courts if the prisoner is both indigent and a party to a bona fide civil action threatening his or her personal or property interests.' " (Smith, supra , at p. 465, 251 Cal.Rptr.3d 185.) Crane v. Dolihite, 70 Cal.App.5th 772, 285 Cal. Rptr. 3d 642 (Cal. Ct. App. 2021)

On March 15, 2024, Petitioner's appeal was dismissed.

Petitioner Kerry Barnes was released from Jail on March 26, 2024.

On April 2, 2024 Petitioners submitted a Petition for Review with the California Supreme Court. This was denied June 12, 2024.

On June 13, 2024, the court of Appeal issued a remittitur.

On June 21, 2024, Petitioners filed a Motion to Recall Remittitur and Reinstate Appeal.

On September 13, 2024, Petitioners received an email from the Court of Appeals stating the Order of Dismissal was vacated. Unfortunately, this was sent to Petitioners in error and was for another case not related to this.

On September 19, 2024 the Motion to Recall Remittitur was denied.

On October 19, 2024, Petitioners filed a Petition for Review with the Supreme Court. This was denied December 31, 2024.

It is well known that it is the policy of appellate courts is to hear appeals on the merits and to avoid, if possible, all forfeitures of substantial rights on technical grounds.

Where a prisoner seeking judicial relief fails to take timely action due to an act or restriction of those charged with official responsibility, it has been held that such person cannot be deprived of the right to obtain his relief. (People v. Slobodion, 30 Cal.2d 362 [181 P.2d 868].) Where the acts which cause a late filing are those of a clerk of the court or other administrative officer, the right to file is preserved. (People v. Howard, 166 Cal.App.2d 638 [334 P.2d 105]; People v. Stinchcomb, 92 Cal.App.2d 741 [208 P.2d 396].) In re Martin, 58 Cal.2d 133, 23 Cal. Rptr. 167, 373 P.2d 103 (Cal. 1962)

d. The Supreme Court's and The Court of Appeals' decision to dismiss Petitioner's appeal is in fact a denial of Petitioner's Constitutional Rights.

Petitioners were denied the constitutional rights when, 1) Petitioners were not afforded the same rights as non-self-represented litigants when the Motion for Summary Judgment was ruled in favor of the defendant, knowing that Petitioners were trying to file a Motion to Compel, and requested additional time to continue discovery, due to defendant's abuse of the rules of discovery.

Because discovery was pending, as a general rule it was "improper to grant summary judgment." Mut. Sec. Life Ins. Co., 659 N.E.2d at 1103. Smith v. Taulman, 20 N.E.3d 555 (Ind. App. 2014)

2) Petitioners were not given the right to due process when the appeal was dismissed due to Petitioner Kerry Barnes being incarcerated and unable to access the court.

A substantive right of access to the courts has long been recognized. In Ryland v. Shapiro, we characterized that right as "one of the fundamental rights protected by the Constitution." In Wilson v. Thompson, we stated, "[i]t is by now well established that access to the courts is protected by the First Amendment right to petition for redress of grievances." That right has also been found in the fourteenth amendment guarantees of procedural and substantive due process. Consequently, interference with access to the courts may constitute the deprivation of a substantive constitutional right, as well as a potential deprivation of property without due process, and may give rise to a claim for relief under § 1983. Any deliberate impediment to access, even a delay of access, may constitute a constitutional deprivation. Jackson v. Procunier, 789 F.2d 307 (5th Cir. 1986)

CONCLUSION

“...the wrongful dismissal of a civil action can lead to catastrophically injured people living out their lives in relative poverty or with a substantially diminished quality of life.” 24 May 2010 LA Times Article “Social Justice: Let’s address miscarriages of justice in civil court” by Alan Shanoff

For the above and foregoing reasons, Petitioners requests the issuance of a writ of certiorari to have the California Court of Appeals reinstate the appeal.

Respectfully,

Stephen Shapiro
Stephen Shapiro

Kerry Barnes
Kerry Barnes

Post Office Box 1125
Cloverdale, CA 95425
707 814-5729
kingofthehill776@yahoo.com

March 29, 2025