No.

IN THE

Supreme Court of the United States

DEMETRIUS FRANKLIN,

Petitioner,

v.

RAYMOND MADDEN,

Respondent.

On Petition for a Writ of
Certiorari to the United States
Court of Appeals
for the Ninth Circuit

PETITIONER'S APPENDIX

CUAUHTEMOC ORTEGA
Federal Public Defender
ESTALYN MARQUIS*
Deputy Federal Public Defender
321 East 2nd Street
Los Angeles, California 90012-4202
Telephone: (213) 894-2854
Facsimile: (213) 894-0081
Email: Estalyn_Marquis@fd.org

Attorneys for Petitioner
DEMETRIUS FRANKLIN
**Counsel of Record*

INDEX TO APPENDIX

Page

INDEX TO APPENDIX

Page

INDEX TO APPENDIX

Page

INDEX TO APPENDIX

Page

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

OCT 23 2025

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

DEMETRIUS FRANKLIN,

Petitioner - Appellant,

v.

RAYMOND MADDEN, Warden,

Respondent - Appellee.

No. 25-1884

D.C. No. 2:17-cv-04281-DSF-JC
Central District of California,
Los Angeles

ORDER

Before: S.R. THOMAS and BENNETT, Circuit Judges.

The request for a certificate of appealability (Docket Entry No. 4) is denied because appellant has not made a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *see also Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Any pending motions are denied as moot.

DENIED.

No. 25-1884

In the United States Court of Appeals
for the Ninth Circuit

Demetrius Franklin

Petitioner-Appellant

v.

Raymond Madden, Warden

Respondent-Appellee

On Appeal from the United States District Court
for the Central District of California,
Dale S. Fischer, U.S. District Judge Presiding
U.S. District Court No. 2:17-cv-04281-DSF-JC

Appellant's Request for a Certificate of Appealability

Cuauhtemoc Ortega
Federal Public Defender
Estalyn Marquis
Deputy Federal Public Defender
321 East 2nd Street
Los Angeles, California 90012
213.894.5059
Estalyn_Marquis@fd.org

Counsel for Petitioner-Appellant
Demetrius Franklin

Table of Contents

Table of Authorities

Page(s)

Federal Cases

Federal Rules and Statutes

State Statutes

I. INTRODUCTION

Shanti Day was the star witness at the murder trial of Petitioner Demetrius Franklin. Indeed, Day was the *only* identifying witness at trial. The detectives investigating Franklin's case were also involved in helping Day to fight a felony theft charge. Day's felony charge was reduced to a misdemeanor on the *same day* that Franklin was charged with first degree murder in connection with the death of Willie Ray King. A note in the prosecution's file indicated that the detectives knew about Day's pending criminal case before the preliminary hearing in Franklin's case and well before trial. The note further indicated that the detectives arranged for Day to speak with the public defender's office regarding her criminal case. An officer from the homicide bureau also wrote a letter to the presiding judge in Day's criminal case requesting that the fine levied against her be dropped. The prosecution failed to disclose this evidence to Franklin—even though it was material and "favorable" to Franklin as impeachment evidence. *See Brady v. Maryland*, 373 U.S. 83, 87 (1963).

Because the prosecution failed to disclose all material impeachment evidence, Franklin is entitled to relief on his *Brady* claim. Accordingly, this Court should grant a certificate of appealability on his *Brady* claim.

II. STATEMENT OF THE CASE

A. Testimony of Shanti Day at Trial

In 1997, Franklin was charged with murder in connection with the death of Willie Ray King. The prosecution's case against Franklin hinged on the testimony of Shanti Day. At the preliminary hearing, Day testified that on July 11, 1996, at about 3:00 a.m., she was at a friend's home on 104th Street in Los Angeles. (Dkt.

No. 17-1 at 4-5.)[1] Day further testified that she had picked up her friend from work after a night shift, and two men, including Franklin, approached her car in the parking lot behind the apartments where her friend lived. *Id.* at 5-6. According to Day, Franklin introduced himself as Demetrius and said people called him "Stone." *Id.* at 6. Day testified that she, her friend, and the other man who had approached the car, Darnell, went upstairs to play video games but then heard noises outside and went on the balcony to see what was happening. *Id.* at 7-8. According to Day, she then saw Franklin and another man standing near a car in the driveway next door and pulling a man in a trench coat out from under the car. *Id.* at 8-9. Day testified that she saw them drag the trench-coated man down the driveway across the parkway curb and into the street "right under a street light." *Id.* at 10. She heard Franklin saying, "Ten-Four Crips" and "that's what you get for coming on our block." *Id.* Then, she saw Franklin and the other man stomp on the trench-coated man. *Id.* at 11-12. The other man who had approached the car, Darnell, told Day to return inside the house. *Id.* at 12. Day looked outside again to see a white cutlass swerving around the victim still lying in the street. *Id.* at 16. She stated that she did not have any knowledge about whether the car hit the victim. *Id.* at 42-43. After the car swerved around the victim, Day testified, Franklin was still outside with other people, and Franklin and other individuals dragged the victim from the street to the side at about 5:00 in the morning. *Id.* at 16-17.

The details of Day's testimony changed at trial. During trial, Day testified that Darnell left at about 5:00 in the morning. (Dkt. No. 17-2 at 72.) She also stated that three individuals approached her car, not two. *Id.* at 55. She could not

[1] All citations to "Dkt. No." refer to the district court's docket number and ECF pagination unless otherwise noted. Because electronic page numbers for the preliminary hearing transcript have been obscured, citations are to the pagination within the transcript itself, filed as Dkt. No. 17-1 in the District Court.

identify the third man except to say he had on boots. *Id.* at 87-88. She did not know where the street lights were that night, only that it was dark. *Id.* at 86. Day never mentioned the white cutlass at trial. Day testified that her friend's wife woke her up around 7:00 a.m. and they discussed what happened. *Id.* at 74. Day testified that she saw paramedics lift the victim from the grass. *Id.* at 94.

Day further testified that she approached a fireman on the scene to tell him what she saw and asked not to be identified. *Id.* at 75. Day remained afraid after she left that day and was still afraid when she was testifying. *Id.* at 73. Despite her fear, Day testified that for two weeks after the incident she was in the area of her friend's house two or three times every day and even saw Darnell again. *Id.* at 77, 80. According to Day, Darnell said hello to her and did not threaten her in any way. *Id.* at 81. Later in her testimony, Day claimed she only went back to that area twice within two or three days of the incident and then never returned again. *Id.* at 109. Day eventually demanded that the police relocate her and protect her location, and they did that. *Id.* at 104-105.

B. Suppressed Evidence of Assistance Provided to Shanti Day

On July 28, 1996, within weeks of the death of Mr. King, Day was charged with felony theft in violation of California Penal Code § 666. (Dkt. No. 56-4 at 42.) The lead investigating officer in Franklin's case, Detective Mark Lillienfeld, knew about these charges as evidenced by a memorandum signed by Detective Lillienfield and the other lead detective, John View, that was located in the District Attorney's file. *Id.* at 44. In that note, Detective Lillienfeld indicated that he and Detective View knew of these charges as of August 28th, 1996, and that the two detectives made arrangements for Day to speak with the public defender during the week of October 21, 1996. *Id.*

At the time this charge was filed against Day, she was already on felony probation for a grand theft conviction from 1995, which required that she stay within the boundaries of the law for five years in order to have her initial grand theft charge reduced. *See* Dkt. No. 17-2 at 22-23. Yet, she did not comply and picked up the additional felony theft charge in July 1996.

On January 3, 1997, the same day that Franklin was charged in connection with the death of Mr. King, Day's felony charge was reduced to a misdemeanor. (Dkt. No. 56-4 at 34, 42-43.) On the People's motion, the court added a misdemeanor charge to which Day pleaded guilty, and the court dismissed the felony charge. *Id.* at 42-43. Her probation was reinstated, even though she had not complied with the terms of her probation, and she was ordered to pay $940 in fines by May 2, 1997. *Id.* at 43. No information was introduced into the record as to why the charge had been reduced from a felony to a misdemeanor. *Id.* at 25, 40.

On April 16, 1997, the trial court denied Franklin's request to cross-examine Day about the charge and why it was reduced to a misdemeanor. (Dkt. No. 17-2 at 22-28.) The prosecutor first raised the issue of Day's prior convictions by asking the court to refuse any defense questioning about Day's 1995 grand theft case, for which she was already on felony probation for five years, "with the idea that if she successfully completes that, that can be reduced to a misdemeanor." *Id.* at 22. The defense pointed out that Day had a far more recent felony charge in case no. YA029764 for a violation of California Penal Code § 666 and that she had worked out a deal so that it was reduced to a misdemeanor. *Id.* at 23-24. Counsel noted that this more recent case occurred around July 1996, the same month that Franklin's case occurred. *Id.* Defense counsel also noted that Day had a series of prior misdemeanor convictions, and that it was curious how her second felony (while on probation for the 1995 felony with a caution to behave) could have been reduced.

Id. at 26. In response, the prosecutor denied that he knew about this new case against Day or that there was any deal. *Id.* at 26-27.

On April 30, 1997, about two weeks after Day testified against Franklin at trial, Captain Don Mauro sent a letter to the judge presiding over Day's 1996 case and asked the court to dismiss the fine against her and reinstate her probation because of her assistance in the case against Franklin. (Dkt. No. 56-6 at 81-82.) The Mauro letter was sealed until the California Innocence Project managed to unseal it in 2016 while conducting an investigation in pursuit of a state habeas petition on behalf of Franklin. *Id.* at 75-77. In the letter, Captain Mauro stated that the detectives only learned about the 1996 petty theft case since Day's testimony in Superior Court and that she "was never promised anything other than protection and assistance in relocating." *Id.* at 82.

On May 19, 1997, Franklin's attorney filed a motion for new trial, again arguing in part that he should have been permitted to question Day about a possible motive for her testimony. (Dkt. No. 17-1 at 141-42.) On May 21, 1997, the court held a hearing on the motion. In that hearing, the prosecutor stated, again, that it was still mere speculation that Day had a motive for her testimony, the same argument he made before the trial. The court denied the motion. (Dkt. No. 17-3 at 285-87.)

Franklin was convicted of first degree murder and sentenced to a total prison term of 25 years to life. (Dkt. No. 16-3 at 2.)

C. State Appellate and Habeas Proceedings

Franklin appealed his conviction in March of 1998, raising claims that are not at issue in this petition. The California Court of Appeal affirmed Franklin's conviction on October 28, 1998. (Dkt. No. 16-3 at 2.) Franklin filed a petition for

review with the California Supreme Court, which was denied on January 13, 1999. (Dkt. No. 16-5.)

Franklin filed a state habeas petition in the Los Angeles County Superior Court on June 6, 2017, alleging a *Brady* claim. (Dkt. No. 19-1.) In support of the government's informal response to the petition, Detective Lillienfeld, the investigating detective on Franklin's case, submitted a declaration stating that he wrote the letter requesting that the fine be dismissed in Day's 1996 case for Captain Mauro's signature "through no urging of, nor promises to, Ms. Day, or her attorney." (Dkt. No. 56-4 at 45.) He also declared that "[t]o the best of [his] knowledge, neither [investigating officer] nor L.A.S.D. was involved in Ms. Day's plea to a reduced charge in that case." *Id.* In the declaration, Detective Lillienfeld admitted that the investigating officers were aware of the 1996 case against Day in August of 1996—long before her testimony at Franklin's trial. *Id.*

The government's informal response to the petition also included the notation from the District Attorney's file stating that Detective Lillienfeld and his partner became aware of Day's 1996 case on August 28, 1996. *Id.* at 44. It also stated that two months later during the week of October 21, 1996, they were helping Day obtain representation in her 1996 case. *Id.* This notation had not previously been disclosed to defense counsel. On September 12, 2017, after informal briefing, the Superior Court denied Franklin's petition on the merits in a reasoned decision. (Dkt. No. 19-5.)

Franklin filed a petition for writ of habeas corpus in the California Court of Appeal, which was summarily denied on April 30, 2018. (Dkt. No. 56-12.) Franklin then filed a habeas petition in the California Supreme Court, which was summarily denied on July 24, 2019. (Dkt. No. 56-7.)

D. Federal Habeas Proceedings

Shortly after filing a habeas petition in the Superior Court, Franklin filed a *pro se* habeas petition in the district court along with a request for a stay and abeyance. (Dkt. No. 1.) Without ruling on the stay motion, the district court dismissed Franklin's federal petition as barred by the statute of limitations. (Dkt. Nos. 21, 26.)

Franklin appealed the dismissal, and this Court concluded that the district court erred in finding that the statute of limitations had run on Franklin's federal petition. (9th Cir. Case No. 18-56145, Dkt. No. 40.) In reaching that conclusion, this Court determined that the statute of limitations was not triggered until the letter requesting that Day receive leniency for her testimony in Franklin's case was unsealed on April 1, 2016. *Id.* at 2. Because the prosecutor had expressly assured Franklin's trial counsel that Day had received no leniency, this Court further determined that reasonable diligence did not require Franklin's counsel to investigate further into the letter's existence during trial. *Id.* This Court further concluded that the district court had erred in denying Franklin equitable tolling for the period after the statute of limitations expired on April 1, 2017, and before he filed the federal habeas petition on June 8, 2017. *Id.* at 3. In reaching this conclusion, this Court noted that the California Innocence Project had repeatedly indicated that it would file a habeas petition on Franklin's behalf but then effectively abandoned Franklin two weeks before the statute of limitations ran. *Id.* at 4. Accordingly, this Court remanded Franklin's petition to the district court for further proceedings. *Id.* at 5.

Upon remand, the magistrate judge set a new briefing schedule, and on August 28, 2024, issued a report and recommendation that Franklin's *Brady* claim be denied. (Dkt. No. 70.) The magistrate judge reasoned that even if the prosecutor

should have disclosed the evidence related to Day's case, including Detective Lillienfield's memorandum and Captain Mauro's letter, Franklin would not be entitled to relief because he had not shown a reasonable probability that the evidence would have produced a different verdict (or different ruling on Franklin's motion for a new trial). *Id*. at 24. The report further concluded that the state court's rejection of Franklin's *Brady* claim was not contrary to, and did not involve an unreasonable application of, clearly established federal law, and was not based upon an unreasonable determination of the facts in light of the evidence presented. *Id.* at 26-27.

Over Franklin's objection, the district court accepted that report, dismissed Franklin's petition, and denied Franklin's request for a certificate of appealability. (Dkt. No. 76 at 3.) Franklin timely filed a notice of appeal on March 19, 2025. (Dkt. No. 78.)

Franklin now requests a certificate of appealability on his *Brady* claim.

III. STANDARD FOR CERTIFICATE OF APPEALABILITY

A habeas petitioner must obtain a certificate of appealability to pursue an appeal. *Buck v. Davis*, 580 U.S. 100, 115 (2017); 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). Obtaining one does not require a showing that the appeal will succeed. *Welch v. United States*, 578 U.S. 120, 127 (2016). Rather, a petitioner "need only demonstrate 'a substantial showing of the denial of a constitutional right.'" *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003) (quoting 28 U.S.C. § 2253(c)(2)). This is a low standard. *Frost v. Gilbert*, 835 F.3d 883, 888 (9th Cir. 2016) (*en banc*).

This low standard only asks whether "jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed

further." *Miller-El*, 537 U.S. at 327 (internal citation omitted). In other words, it only asks if the district court's decision was debatable. *Id*. at 348; *see also Buck*, 580 U.S. at 116. Any doubts about whether Franklin has met the standard are resolved in his favor. *Silva v. Woodford*, 279 F.3d 825, 833 (9th Cir. 2002).

IV. ARGUMENT

A. Legal Standards under AEDPA

"Because [Franklin's] federal habeas petition was filed after April 24, 1996, it is governed by the Antiterrorism and Effective Death Penalty Act ('AEDPA'), 28 U.S.C. § 2254(d)." *Jones v. Davis*, 8 F.4th 1027, 1036 (9th Cir. 2021); *see also Woodford v. Garceau*, 538 U.S. 202, 204 (2003). To obtain relief under AEDPA, Franklin must show that his constitutional rights were violated under 28 U.S.C. §§ 2241(c)/2254(a) and that § 2254(d) does not bar relief on any claim adjudicated on the merits in a state court decision. *Frantz v. Hazey*, 533 F.3d 724, 735-36 (9th Cir. 2008) (*en banc*). Section 2254(d) is satisfied if the Court finds that the state court's adjudication of a petitioner's claim was either: (1) contrary to, or an unreasonable application of, clearly established federal law, or (2) based on an unreasonable determination of the facts, in light of the record that was before the state court. 28 U.S.C. § 2254(d).

The relevant state court decision is "'the last reasoned decision' that finally resolves the claim at issue." *Amado v. Gonzalez*, 758 F.3d 1119, 1130 (9th Cir. 2014); *Wilson v. Sellers*, 584 U.S. 122, 125 (2018). Federal habeas courts "look through" later unexplained summary denials to examine "the last reasoned state-court decision that . . . provide[s] a relevant rationale." *Wilson*, 584 U.S. at 125.

If the state courts did not adjudicate the merits of a petitioner's federal claim, § 2254(d) does not apply and the Court reviews the claim *de novo*. *Johnson*

v. Williams, 568 U.S. 289, 292-93 (2013); *Amado*, 758 F.3d at 1130; *Cone v. Bell*, 556 U.S. 449, 451-452, 472 (2009) (claims denied solely on state procedural grounds are reviewed *de novo*). "Where a state court has adjudicated a claim on the merits with a written decision denying relief based on one element of the claim and, therefore, does not reach the others, the federal court gives section 2254(d) deference to the element on which the state court ruled and reviews de novo the elements on which the state court did not rule." *Kipp v. Davis*, 971 F.3d 939, 949 (9th Cir. 2020), *rehearing en banc denied*, 986 F.3d 1281, 1282 (9th Cir. 2021).

When a federal claim has been adjudicated on the merits in a state court opinion, § 2254(d) analysis is limited to evaluating the "state court's *actual* decisions and analysis"; the federal court does not consider unstated arguments that "could have supported . . . the state court's decision," as required when evaluating an unreasoned summary denial. *Frantz*, 533 F.3d at 737 (original emphasis).

"'[C]learly established Federal law' under § 2254(d)(1) is the governing legal principle or principles set forth by the Supreme Court at the time the state court renders its decision." *Lockyer v. Andrade*, 538 U.S. 63, 71-72 (2003). "Only Supreme Court holdings clearly establish federal law for the purposes of § 2254(d)(1), but circuit precedent is persuasive authority in assessing what law is 'clearly established' and whether the state court applied the law reasonably." *Smith v. Ryan*, 823 F.3d 1270, 1279 (9th Cir. 2016).

A "state court decision is contrary to clearly established Supreme Court precedent if the state court applies a rule that contradicts the governing law set forth in Supreme Court cases *or* if the state court confronts a set of facts materially indistinguishable from those at issue in a decision of the Supreme Court and, nevertheless, arrives at a result different from its precedent." *Cudjo v. Ayers*, 698

F.3d 752, 761 (9th Cir. 2012) (original emphasis) (internal citations and quotations omitted).

A state court unreasonably applies federal law when it identifies the correct governing legal principle but unreasonably applies it to the facts of the case. *Id*. "That the standard is stated in general terms does not mean the application was reasonable. AEDPA does not require state and federal courts to wait for some nearly identical factual pattern before a legal rule must be applied." *Panetti v. Quarterman*, 551 U.S. 930, 953 (2007) (internal citation and quotations omitted); *Wiggins v. Smith*, 539 U.S. 510, 520 (2003) ("a federal court may grant relief when a state court has misapplied a 'governing legal principle' to 'a set of facts different from those of the case in which the principle was announced.'").

A state court unreasonably determines the facts under § 2254(d)(2) when its finding of fact is unsupported or contradicted by the record or when the fact-finding process itself was defective. *Brumfield v. Cain*, 576 U.S. 305, 314-322 (2015); *Taylor v. Maddox*, 366 F.3d 992, 999-1001 (9th Cir. 2004), *overruled on other grounds by Cullen v. Pinholster*, 563 U.S. 170, 185 (2011).

When a federal habeas court concludes that the state court decision is contrary to or an unreasonable application of federal law, or is based on an unreasonable factual determination, it reviews the claim *de novo* in assessing whether the petitioner's constitutional rights were violated, *Panetti*, 551 U.S. at 953, *Maxwell v. Roe*, 628 F.3d 486, 506 (9th Cir. 2010), and it can consider evidence not presented in state court and grant an evidentiary hearing. *Brumfield*, 576 U.S. at 311 ("federal habeas courts may take new evidence in an evidentiary hearing when § 2254(d) does not bar relief"); *Hurles v. Ryan*, 752 F.3d 768, 790-92 (9th Cir. 2014); *Earp v. Ornoski*, 431 F.3d 1158, 1166-72 (9th Cir. 2005).

The last-reasoned state court opinion for AEDPA purposes was the Los Angeles County Superior Court denial of Franklin's state habeas petition in 2017. (Dkt. No. 18-4.) In deciding Franklin's *Brady* claim, the court reasoned, in two sentences, "Captain Mauro's request to the court to delete Ms. Day's fine was made a month after she testified at the defendant's trial. The request was not conditioned on any cooperation by Ms. Day in the defendant's case since she had already testified. Consequently, there was no Brady violation." *Id.*

B. Fraklin is Entitled to Relief on his *Brady* Claim.

1. Applicable Law Regarding *Brady* Claims

In *Brady v. Maryland*, 373 U.S. 83 (1963), the Supreme Court held that the "suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material . . . to punishment, irrespective of the good faith or bad faith of the prosecution." *Id*. at 87; *Kyles v. Whitley*, 514 U.S. 419 (1995); *Strickler v. Greene*, 527 U.S. 263 (1999). *Brady* sets forth a three-part test. *Strickler,* 527 U.S. at 281. First, the evidence at issue must be material and favorable to the accused. *Id.* at 281-82. Next, the evidence must have been suppressed by the State, either willfully or inadvertently. *Id*. at 282. Finally, prejudice must have ensued. *Id*. Notably, "[t] he terms 'material' and 'prejudicial' are used interchangeably in *Brady* cases." *Benn v. Lambert*, 283 F.3d 1040, 1053 n. 9 (9th Cir. 2002) ("Evidence is not 'material' unless it is 'prejudicial,' and not 'prejudicial' unless it is 'material.' Thus, for *Brady* purposes, the two terms have come to have the same meaning.").

Evidence is material under *Brady* "when there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different." *Bell*, 556 U.S. at 469-70 (internal citation omitted). There is no

need to satisfy the harmlessness standard in *Brecht v. Abrahamso*n, 507 U.S. 619 (1993) in the context of *Brady* claims. *See Kyles*, 514 U.S. at 435 (1995) (noting that a *Brecht* analysis is unnecessary for *Brady* claims made on habeas). A defendant need not request the material to trigger the prosecution's duty to disclose. *Strickler*, 527 U.S. at 280-81 ("We have since held that the duty to disclose such [*Brady*] evidence is applicable even though there has been no request by the accused . . . ."); *United States v. Agurs*, 427 U.S. 97, 107 (1976).

2. The Prosecution Suppressed Material Evidence in Violation of *Brady.*

To establish a *Brady* violation, the suppressed evidence need not directly establish a leniency deal; it need only be material and "favorable to the accused" as either exculpatory or impeachment evidence. *See Brady v. Maryland*, 373 U.S. 83, 87 (1963); *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999); *Amado v. Gonzalez*, 758 F.3d 1119, 1134 (9th Cir. 2014) (noting that the prosecution "must disclose *all* material impeachment evidence") (emphasis added) (internal citation omitted). Here, the prosecution failed to disclose all material impeachment evidence. Franklin is, therefore, entitled to relief.

To start, the prosecution should have disclosed the fact that the detectives investigating Franklin's case were also involved in helping Day to fight the felony charge in her 1996 case. Indeed, a note penned by the primary investigating officer in Franklin's case had been placed in the District Attorney's file indicating that the officers had known about Day's case since their second meeting with Day on August 28, 1996—before Day testified at the preliminary hearing in December 1996 and well before Franklin's trial in April 1997. (Dkt. No. 56-4 at 44.) The note further indicated that the detectives had arranged for Day to speak with the public defender's office regarding her criminal case during the week of October 1996. *Id.*

The prosecution also failed to disclose Homicide Bureau Captain Don Mauro's letter to the presiding judge in Day's criminal case requesting that the fine levied against Day be dropped. (Dkt. No. 10 at 25-26.) That letter stated that detectives only learned of Day's theft conviction after she testified, even though the notation in the District Attorney's file confirms that the detectives were aware of the 1996 case against Day well before her testimony at trial. *See id.* at 26; Dkt. No. 56-4 at 44. While the notation contained in the District Attorney's file and Captain Mauro's letter to the Superior Court requesting leniency for Day in her criminal matter may not conclusively prove that a leniency deal existed, this evidence is nevertheless material and "favorable" to Franklin as impeachment evidence. *See Amado*, 758 F.3d at 1134. This is especially true in light of the fact that the felony charge in Day's criminal case was reduced to a misdemeanor on the same day that the information was filed against Franklin in connection with the killing of Mr. King. (Dkt. No. 17-1 at 70; Dkt. No. 56-4 at 34, 42.) The suppressed evidence should have been disclosed to Franklin before trial and sentencing but was not.

The suppressed evidence would have been crucial to Franklin's defense. Day was the *only* identifying witness at trial. Indeed, the prosecution did not present *any other* direct evidence connecting Franklin with the crime, such as fingerprints or DNA. *See Kyles v. Whitley*, 514 U.S. 419, 454 (1994) (finding undisclosed evidence that could potentially undermine the reliability of key witness testimony to be material); *Horton v. Mayle*, 408 F.3d 570, 579 (9th Cir. 2005) (finding undisclosed evidence of an alleged deal to be material where the star witness provided the only direct evidence at trial connecting the petitioner to the crime). In other words, without Day's testimony, there simply was no case against Franklin. *See Giglio v. United States*, 405 U.S. 150, 154-55 (1972) (reversing conviction

where prosecution failed to disclose alleged leniency deal with key witness and the case depended "almost entirely" on that witness's testimony).

What's more, Day was unable to make a positive identification after observing a photographic line-up of six individuals and only specifically identified Franklin as the perpetrator when detectives showed her a single Polaroid of Franklin. (Dkt. No. 56-4 at 31.) Day also made multiple inconsistent statements at the preliminary hearing and trial. *See* Dkt. No. 61 at 27.

In light of the paramount importance of Day's testimony, the undisclosed impeachment evidence would have been critical to Franklin's defense, and there is a reasonable probability that it could have changed the outcome of the trial. Moreover, the suppressed letter to the Superior Court would have provided new evidence to support Franklin's motion for a new trial and certainly could have changed the outcome of the trial court's ruling on the motion. Accordingly, the suppressed evidence was material, and Franklin is entitled to relief. *See Giglio*, 405 U.S. at 154-55.

As detailed above, there is ample evidence in the record that Day expected and received leniency. Her felony charge was reduced to a misdemeanor *on the same day* that Franklin was charged in the murder of Mr. King. The detectives investigating Franklin's case were aware of Day's pending criminal case and assisted her in connecting with the public defender's office before she testified at the preliminary hearing or trial. And after reviewing the letter from Captain Mauro requesting leniency, the Superior Court did, in fact, treat Day with more leniency, dropping the pending fine. (Dkt. No. 10 at 23.) This evidence all supports Franklin's allegations of the existence of a leniency deal. In light of this evidence, Franklin is entitled to relief under *Brady* or at least an evidentiary hearing. *See Horton*, 408 F.3d at 581-82 (remanding the petitioner's *Brady* claim to the district

court for a determination of whether the state disputed the existence of a leniency deal and if so, to hold an evidentiary hearing to resolve the factual dispute).

3. The State Court's Decision is Not Entitled to AEDPA Deference, and the *Brady* Claim Should be Reviewed *De Novo*.

The state court's rejection of Franklin's *Brady* claim was contrary to, and involved an unreasonable application of, clearly established federal law, and was based upon an unreasonable determination of the facts in light of the evidence presented. In particular, the state court had a singular and flawed focus on Captain Mauro's letter to the Superior Court. The state court failed to consider key evidence supporting Franklin's *Brady* claim, including the notation in the District Attorney's file, which indicated that the investigating officers were assisting Day with her criminal case before trial and the other evidence detailed above regarding the timing of Day's charge reduction. The state court's failure "to consider key aspects of the record is a defect in the fact-finding process" that rendered its resulting decision unreasonable under 28 U.S.C. § 2254(d)(2). *Taylor v. Maddox*, 366 F.3d 992, 1008 (9th Cir. 2004), *overruled on other grounds by Cullen v. Pinholster*, 563 U.S. 170, 185 (2011); *see also Wiggins v. Smith*, 539 U.S. 510, 528 (2003).

Additionally, the state court's decision was unreasonable under 28 U.S.C. § 2254(d)(1), because it primarily rested on the notion that the letter to the Superior Court could not have prejudiced Franklin at trial and failed to recognize that *Brady* relief is also available where there is a reasonable probability that the result of a proceeding, like Franklin's motion for a new trial, would have been different. *See Strickler v. Greene*, 527 U.S. 263, 280 (1999) (internal citations omitted). As explained above, the memorandum contained in the District Attorney's file and the

letter to the Superior Court requesting leniency for Day both supported Franklin's motion for a new trial.

Because the prosecution suppressed material evidence before Franklin's trial and sentencing, Franklin has demonstrated that he is entitled to relief on his *Brady* claim.

* * *

At bottom, Franklin presented a strong *Brady* claim—that is particularly true as this case should be subject to *de novo* review, not AEDPA deference. At the very least, the district court should have granted an evidentiary hearing, because Franklin presented a colorable claim, did not fail to develop the factual basis in state court, and never received a hearing on this claim. *See Earp v. Ornoski*, 431 F.3d 1158, 1167 (9th Cir. 2005). Accordingly, this Court should grant a certificate of appealability on Franklin's *Brady* claim.

V. CONCLUSION

For these reasons, jurists of reason could at least disagree with the district court's resolution of Franklin's *Brady* claim. This Court should, therefore, grant a certificate of appealability on Franklin's *Brady* claim.

Respectfully submitted,
Cuauhtemoc Ortega
Federal Public Defender

April 8, 2025

s/ Estalyn Marquis
Estalyn Marquis
Deputy Federal Public Defender

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DEMETRIUS FRANKLIN, Petitioner, v. RAYMOND MADDEN, Warden, Respondent.	CV 17-4281 DSF (JC) JUDGMENT

Pursuant to the Court's Order Accepting the Report and Recommendation of United States Magistrate Judge,

IT IS ADJUDGED that the Petition, request for an evidentiary hearing, and request for a Certificate of Appealability are DENIED, and this action is DISMISSED with prejudice.

IT IS SO ORDERED.

Date: February 24, 2025

Dale S. Fischer
United States District Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DEMETRIUS FRANKLIN, Petitioner, v. RAYMOND MADDEN, Warden, Respondent.	CV 17-4281 DSF (JC) ORDER ACCEPTING REPORT AND ADOPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition (Dkt. 1), the relevant records on file, the Report and Recommendation of United States Magistrate Judge (Dkt. 70; "Report"), and Petitioner's Objections to the Report (Dkt. 75; "Objections"). The Court has engaged in a de novo review of those portions of the Report to which Petitioner has objected. Although not required, the Court briefly discusses the following points. See United States v. Ramos, 65 F.4th 427, 434 (9th Cir. 2023) ("the district court ha[s] no obligation to provide individualized analysis of each objection"); Wang v. Masaitis, 416 F.3d 992, 1000 (9th Cir. 2005) (affirming a cursory district court order summarily adopting, without addressing any objections, a magistrate judge's report and recommendation).

The Report recommends dismissing the Petition's two remaining claims (i.e., a Brady[1] claim for withholding evidence that witness Shanti Day testified in exchange for leniency in her own criminal proceedings, and a related cumulative error claim) with prejudice because, among other things, Petitioner has not shown the evidence

[1] Brady v. Maryland, 373 U.S. 83 (1963).

was material to either the jury's verdict or the trial court's ruling on Petitioner's new trial motion. (Dkt. 70 at 23-28). Petitioner contends in the Objections that the suppressed evidence suggesting Day received leniency in her own criminal proceedings in exchange for testimony against Petitioner was material because Day was the only eyewitness at Petitioner's trial directly tying him to the killing. (See Dkt. 75 at 3-6).

While it is true that Day was the only witness who gave direct testimony implicating Petitioner in the beating that resulted in the victim's death, the record shows that Day identified Petitioner by name as an attacker on the day of the beating before she had violated her probation resulting in the charge for which she assertedly was given leniency. (See Dkt. 70 at 5-7, 15-16, 25 (discussing evidence). Day's testimony was consistent throughout: Petitioner introduced himself to her before the beating using his name, and she had seen Petitioner around before. Given Day's consistent testimony, and that she came forward before she had any motivation to testify (when she had strong motivation not to be involved), there is no reasonable probability that the result of the proceedings would have been different had the evidence suggesting Day later may have received leniency in her criminal case been given to the defense. See Strickler v. Greene, 527 U.S. 263, 281 (1999) ("[T]here is never a real 'Brady violation' unless the nondisclosure was so serious that there is a reasonable probability that the suppressed evidence would have produced a different verdict."). The prosecution could have countered any attempt to undermine Day's credibility by pointing to her statement to police on the day of the beating as untainted by any offer of leniency. See Libberton v. Ryan, 583 F.3d 1147, 1163-64 (9th Cir. 2009) ("[T]he government could have pointed to a statement untainted by any secret deal, if such a deal existed, in order to corroborate [the key witness's] trial testimony. . .. Given the availability of [the witness's] earlier statement . . . as corroboration of his trial testimony, it is unlikely any jury would have reached a different conclusion as to Libberton's guilt even if it had known of the alleged oral agreement.").

The Objections are OVERRULED. The Court accepts the Report and adopts it as its own findings and conclusions. Judgment shall be entered DENYING the Petition and request for an evidentiary hearing, and DISMISSING this action with prejudice.

Further, for the reasons stated in the Report, the Court finds that Petitioner has not made a substantial showing of the denial of a constitutional right. See 28 U.S.C. § 2253(c)(2); Fed. R. App. P. 22(b); Miller-El v. Cockrell, 537 U.S. 322, 336 (2003). The request for a Certificate of Appealability is therefore DENIED.

IT IS SO ORDERED.

Date: February 24, 2025

Dale S. Fischer
United States District Judge

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DEMETRIUS FRANKLIN, Petitioner, v. RAYMOND MADDEN, Warden, Respondent.	Case No. 2:17-cv-04281-DSF-JC REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

This Report and Recommendation is submitted to the Honorable Dale S. Fischer, United States District Judge, pursuant to the provisions of 28 U.S.C. § 636 and General Order 05-07 of the United States District Court for the Central District of California.

I. SUMMARY

On June 8, 2017, petitioner Demetrius Franklin, a prisoner in state custody who was then proceeding *pro se*, filed a Petition for Writ of Habeas Corpus by a Person in State Custody ("Petition") pursuant to 28 U.S.C. § 2254, with a separate memorandum ("Pet. Memo"). On June 29, 2017, petitioner filed exhibits in support of the Petition ("Pet. Ex."). The Petition challenges a 1997 murder conviction in Los Angeles County Superior Court ("LASC" or "Superior Court") Case No. YA029506 ("State Case"), raising three claims for relief: (1) the

prosecution allegedly withheld exculpatory evidence (*i.e.*, evidence of lenient treatment assertedly given to prosecution eyewitness Shanti Day in her own criminal prosecution in exchange for her testimony against petitioner) in violation of Brady v. Maryland, 373 U.S. 83 (1963) (Ground One); (2) petitioner allegedly is actually innocent based on Day's asserted recantation of her trial testimony linking petitioner to the murder in a 2014 interview (Ground Two); and (3) the cumulative effect of the foregoing claims allegedly demonstrates that petitioner's constitutional rights were violated (Ground Three). (Petition at 5-6; Pet. Memo at 9-14; Pet. Exs. 2-13).

On April 4, 2018, the District Judge, on the recommendation of the Magistrate Judge, dismissed the Petition and this action with prejudice, finding that the Petition was time-barred. (See Docket Nos. 21, 25). Judgment was entered accordingly on the same date. (Docket No. 26).

Petitioner appealed to the United States Court of Appeals for the Ninth Circuit ("Ninth Circuit"), which appointed counsel for petitioner and ultimately issued a Memorandum Opinion affirming in part and reversing in part the decision of the District Judge. (Docket Nos. 32, 37, 38). The Ninth Circuit found that the Court had erred in concluding that petitioner's claims were time-barred, but that it had correctly rejected petitioner's alternative argument that he qualified for the actual innocence exception to the statute of limitations in light of "new" evidence regarding Day's asserted recantation of her trial testimony. (Docket No. 38). The Ninth Circuit agreed with this Court that the newly-proffered evidence had "credibility issues and layers of hearsay," and was insufficient to show "it is more likely than not that no reasonable juror would have convicted [petitioner]" in light of the new evidence – "especially since recantation evidence is already viewed with suspicion." (Docket No. 38 at 4-5) (citing, *inter alia*, Schlup v. Delo, 513 U.S. 298, 329 (1995)). The Ninth Circuit's mandate issued on March 19, 2021. (Docket No. 39).

On March 25, 2021, the Court granted petitioner's motion to appoint new counsel in these proceedings. (Docket Nos. 41, 43). On August 31, 2021, petitioner's counsel withdrew the actual innocence claim (Ground Two). (Docket No. 52).

On October 13, 2021, respondent filed an Answer to the Petition addressing petitioner's remaining claims (Grounds One and Three) and lodged multiple documents ("Lodged Doc.").[1] (Docket No. 55). On February 24, 2022, petitioner, through counsel, filed a Traverse addressing only petitioner's Brady claim (Ground One). (Docket No. 61).

For the reasons stated below, the Petition should be denied, and this action should be dismissed with prejudice.

II. PROCEDURAL HISTORY

On April 23, 1997, a jury in the State Case found petitioner guilty of the first degree murder of Willie Ray King. (Petition at 2; Lodged Doc. 1). On March 21, 1997, the trial court sentenced petitioner to 25 years to life in state prison. (Petition at 2; Lodged Docs. 2-3).

On October 28, 1998, the California Court of Appeal affirmed the judgment in a reasoned decision. (Lodged Doc. 3) (rejecting claims not raised herein). On January 13, 1999, the California Supreme Court denied review without comment. (Lodged Docs. 4-5).

On June 6, 2017, petitioner's then counsel filed a habeas corpus petition in the Superior Court raising claims similar to the claims raised herein. (Public Lodged Doc. 1). By orders dated August 28 and September 12, 2017, the Superior Court denied that petition, finding: (1) there was no Brady violation arising from

[1]Respondent also relies on multiple documents lodged on August 25, 2017, and January 19, 2018, including the Clerk's Transcript ("CT") and the Reporter's Transcript ("RT") from petitioner's trial court proceedings, as well as public documents from petitioner's state habeas cases lodged on January 26, 2018 ("Public Lodged Doc."). (Docket Nos. 16-19).

the failure to disclose a police request to the court in Day's criminal proceedings to delete Day's fine – the request was made one month *after* Day testified at petitioner's trial, and was not conditioned on any cooperation by Day in petitioner's case since she already had testified; and (2) petitioner's recantation evidence regarding Day's identification of petitioner as a suspect in King's killing was inadmissible hearsay, was "suspect" given the delay in reporting, and would not have changed the result of the trial. (Public Lodged Doc. 4).

On November 9, 2017, petitioner, through counsel, filed a habeas corpus petition with the California Court of Appeal raising claims similar to the claims raised herein. (Public Lodged Doc. 5). On April 30, 2018, the Court of Appeal denied that petition without comment. (Lodged Doc. 12).

On September 6, 2018, petitioner, through counsel, filed a habeas corpus petition with the California Supreme Court raising claims similar to the claims raised herein. (Lodged Doc. 13). On July 24, 2019, the California Supreme Court denied that petition without comment. (Lodged Doc. 14).

III. FACTS[2]

A. Prosecution's Case-in-Chief

Shanti Day testified that on July 11, 1996, at approximately 2:45 a.m., she drove her friend Thomas to his apartment at 1108 104th Street in Los Angeles. (RT 52-54). Day had been staying with Thomas and his wife on and off, and had stayed there for the two days prior. (RT 76-77). As Day parked her car, petitioner and two other men approached. (RT 53-54, 80-81). Petitioner was wearing all white: white pants (or shorts that went past his knees but were above his ankles), shirt, cap, and shoes. (RT 55).

///

[2]The Court has independently reviewed the entire state court record and summarizes the pertinent facts below. See Nasby v. McDaniel, 853 F.3d 1049 (9th Cir. 2017).

Petitioner stood over Day and introduced himself as Demetrius but said people call him "Stone." (RT 55, 86-87). Day had seen petitioner previously in the same neighborhood, directly across the street from where Thomas lived, but did not know petitioner's name until he introduced himself. (RT 54-55, 94, 106). Day also met for the first time one of the men with petitioner named Darnell, who seemed to know Thomas. (RT 56-57, 78). Day, Thomas, and Darnell went into Thomas's apartment. (RT 56-58, 81). Petitioner and the third man remained downstairs and went to the front of the apartment building. (RT 56, 58-59).

About 15 minutes later, Day heard what sounded like roughhousing and horseplay coming from outside. (RT 59, 61). Day, Thomas, and Darnell left the apartment to see what was happening. (RT 59-60, 83-95, 103-05). Day saw a man, who was identified as Willie Ray King (RT 34, 117, 123), running and yelling for help. (RT 60-62, 90, 92-93). King ran and slid underneath a car. (RT 61). Petitioner and another unidentified male dragged King out from under the car to the middle of the street and started beating King. (RT 61-62, 85-89, 106). King's head bounced off the curb. (RT 63). King ceased resisting and making any sounds. (RT 63, 92). He was motionless. (RT 64).

Day saw petitioner stomping, kicking, and jumping up and down on King. (RT 62-63, 67-68, 90). Petitioner kicked King in the head and upper body. (RT 63, 87). Petitioner and the other man stomped on King's chest, head, and stomach. (RT 63, 91). Blood spurted from King's mouth. (RT 91). The beating lasted for more than five minutes. (RT 68-69, 92). More than once petitioner said, "This is 10-4 Crip hood and you don't walk on our block." (RT 67).

Darnell, whom Day described as petitioner's "homeboy," told Day to go inside and escorted her inside the apartment. (RT 68-70, 95, 101). Day could hear the beating as it continued. (RT 69-70). King eventually was dragged from the street and left on the grass. (RT 92).

///

Day did not call 911 because Darnell, who was "associated" with petitioner and the other man who were beating King, was sitting right across from her. (RT 70, 101). Day was afraid. (RT 70, 101). Darnell left the apartment at about 5:00 a.m. (RT 70). Day did not call 911 after Darnell left because she was still very afraid. (RT 71-72, 97-98).

Thomas's wife woke Day at 7:00 a.m. and Day told Thomas's wife what Day had witnessed. (RT 72, 80). Day heard sirens from an ambulance and walked outside. (RT 72). There were three ambulances, a police car, a fire engine and about 10 neighbors present outside. (RT 72-73). Day approached a paramedic and asked if King was going to be okay, and then approached a fireman paramedic and told him she saw what happened. (RT 73). Day did not talk to the paramedic at the scene; she asked him not to identify her or bring any attention to her, and said she would talk to someone later because she was afraid to talk at the scene since it "was a gang area and these were gang members." (RT 73, 99, 102).[3]

At approximately 6:00 a.m., Los Angeles Deputy Sheriff Tony Taylor arrived at the scene. (RT 112). King was bleeding, moaning and unconscious. (RT 113-14, 118). King died two days later. (RT 45). His injuries were consistent with a person having received a protracted beating using fists and feet. (RT 41, 45). The cause of King's death was blunt force trauma to the head. (RT 41-42).

///

---

[3]Day testified as follows: The area was a 104th Street Crips neighborhood, with "104th Street" tagged on the front of Thomas's apartment building. (RT 98, 101-02). She was not a gang member. (RT 99). While Day did not know any 104th Street Crip gang members, they knew her by her car. (RT 108-09). Thomas was not a gang member and had never threatened her. (RT 74). Darnell had not directly threatened her but his presence threatened her. (RT 79, 100-01, 107). Day received death threats up to the time she testified at trial, which affected her state of mind. (RT 71-72, 74-76, 96). Day had been directly approached and told she was not supposed to talk about the incident, and had been paged the number 187 (for murder) so many times that she turned off her pager. (RT 72, 96-97).

Deputy Taylor said that he and his partner asked a number of people at the scene if they had seen anything and the people did not want to talk to them or get involved. (RT 115, 119-20). Taylor said the area was controlled by the "10-4 Gangsters" (or 104th Street Crips). (RT 115-16). He said people who live in the area are afraid of the gang members. (RT 116). Taylor spoke with Day on the day of the incident, and Day asked to be able to remain anonymous as long as possible because she was afraid. (RT 116).[4]

Deputy Robert Lawrence, the prosecution's gang expert, testified to the following: He was familiar with the 104th Street Crips or "10-4 Gangsters." (RT 125, 127-32, 138). Petitioner had identified himself on more than one occasion to Lawrence as a member of the 104th Street Crips with the moniker "Flintstone." (RT 130, 137-38, 146-47). The 104th Street Crips controlled the area where King was beaten. (RT 131, 147-50). Members of a gang will kill people simply to enforce their claim on a territory. (RT 132). Innocent, non-gang members are occasionally victims. (RT 132). If a non-gang member entered a gang's territory, that person could be assaulted, intimidated, or killed. (RT 135). It was common for persons witnessing crimes in gang areas to say they saw nothing. (RT 133, 135-36, 140). It was also common for gang members to call out their gang affiliation while committing an assault. (RT 132-33). This informed persons being attacked they were in the wrong place and discouraged witnesses from speaking to police. (RT 133-35).

///

///

///

///

[4]The police referred to Day as "Jane Doe" to protect Day until she testified at petitioner's preliminary hearing. (RT 99-100). Day demanded from the police to be relocated and for protection of her location and identity, which had been done. (RT 103, 109-11).

B. Defense Case

Petitioner testified in his defense. (RT 174-234). He said he lived at 1111 104th Street with his grandmother. (RT 175, 189).[5] On the evening of July 10, 1996, petitioner rode with Darnell to a club and returned at some point after midnight to petitioner's home, where he and Darnell sat on some steps of an apartment building for not longer than five minutes. (RT 177-78, 188, 192-93, 197, 200, 210, 229, 233). Other people showed up. (RT 178). Petitioner said he was wearing a leather jacket, blue jeans, a rayon shirt and flat-foot casual shoes because the club he had gone to had a dress code. (RT 178, 200-03). Petitioner denied owning white shorts or ever wearing shorts because petitioner did not like his "skinny" legs. (RT 183, 215-16).

In the early morning hours of July 11, 1996, petitioner saw Thomas Evins, who he knew from the neighborhood, arrive home by car and walk to the top of the stairs to Thomas's apartment where Darnell went to talk to Thomas. (RT 179, 199, 203-05, 212). Petitioner said he did not go up and talk to them; he stayed at the bottom of the stairs. (RT 179-80, 205). Petitioner was waiting for Darnell to finish a beer and drive petitioner "home" to petitioner's mother's house on 103rd Street near where Darnell lived. (RT 180, 188-89, 197-98, 234). After Darnell talked to Thomas, he and petitioner left in Darnell's car and drove to petitioner's mother's house where Darnell dropped petitioner off and drove away. (RT 181, 205-06, 227, 231). Petitioner said there were other people still in the area of his

---

[5]Petitioner's booking sheet, which petitioner signed, had the address for petitioner's mother (1157 West 103rd Street) as his address. (RT 191, 214). Petitioner denied telling the police that was where he was living. (RT 191, 214, 224-25, 230). The police had already been to petitioner's mother's house looking for petitioner before petitioner surrendered to the police and was booked. (RT 225). Detective Mark Lillienfeld testified in rebuttal that he participated in petitioner's booking on July 24, 1996, and that petitioner gave as his home address the address of his mother's house on 103rd Street. (RT 314-15). Lillienfeld had been to both petitioner's grandmother's house and his mother's house prior to the booking, serving search warrants. (RT 321-22).

grandmother's house when he left, including someone named Jim from the neighborhood. (RT 181, 198). Petitioner said he went to his mother's house because he did not want to wake his grandmother. (RT 229-33).

Petitioner denied being on 104th Street when King was beaten or seeing it take place. (RT 182, 213). Petitioner said that he valued human life and would not have done anything like that. (RT 185). Petitioner also said it would be foolish for him to do something like that in front of his grandmother's house where everyone knew him because he had lived there his entire life. (RT 185, 194-95).

As for Day, petitioner said he had met Day at Thomas's apartment building on 104th Street early in July but not on July 11. (RT 181, 183, 198, 210). Petitioner had tried to talk to Day but she would not really talk to him so he walked away. (RT 181-82, 184-85, 210-12, 226). Petitioner said he did not see Day again after meeting her in early July. (RT 184, 212).

Petitioner denied knowing "too much" about the 104th Street Crips and said that his block was mostly a quiet block with elderly people. (RT 186, 216, 219-20). Petitioner said he never heard of or saw 10-4 Gangsters in the area. (RT 195; but see RT 220 (petitioner testifying that he never heard of the 104th Street Crips but had heard of the 10-4 Gangster Crips)). Petitioner did not know if Darnell was a 10-4 Gangster and said Darnell never seemed to him to be a gang member. (RT 196-97). Petitioner denied ever identifying himself as a 104th Street Crip, but admitted he had encountered Deputy Lawrence a few times. (RT 186-88, 220-23). Petitioner denied being a gang member. (RT 187, 216, 220-21). Petitioner said he knew of a Hoover gang that operated in the area. (RT 194). Petitioner admitted he had been convicted of a felony for possession of marijuana for sale. (RT 187-88). Petitioner said he was not a drug dealer. (RT 188). Petitioner denied telling the deputies who arrested and booked him that he was a 104th Street Crip with a

///

name of "Little Flintstone," and denied telling any gang officers that he was a 104th Street Crip. (RT 222-23).[6]

Eric "Darnell" Woodard testified that he was friends with petitioner and called petitioner "Meechie." (RT 235-36). On the night of July 10, 1997, Darnell drove petitioner to a club where they stayed until 1:45 a.m. (RT 237-38, 250-52). They left and went to petitioner's grandmother's house on 104th Street where petitioner stays. (RT 238). Darnell said petitioner was locked out of the house, and Darnell wanted to drink a beer before he went home so he and petitioner sat on apartment steps across the street from petitioner's grandmother's house. (RT 239, 258-60, 262). There were a couple of guys already on the steps. (RT 239, 265). Darnell knew one of the guys from around the neighborhood as "Will" or "Willy" and he did not know the other guy. (RT 265). Darnell did not know if the two men were gang members but said there were a lot of gang members in that area. (RT 265). Darnell knew of a Hoover gang but not the 104 Crips or 10-4 Gangster Crips. (RT 265-66).

As he sat on the steps, Darnell saw a car pull up and saw Thomas, the guy who lived upstairs, get out of the car with a girlfriend. (RT 240-41, 261). Darnell went up the stairs to greet Thomas. (RT 241, 261, 263). Darnell said he went inside Thomas's apartment trying to get the phone number of the girl who was with Thomas to "get more acquainted." (RT 241-42, 263). Darnell stayed no more than five minutes and then left and drove petitioner to petitioner's mother's house. (RT 242, 263-64). Darnell walked from there to Darnell's mother's house. (RT 242-43).

---

[6]In rebuttal, Deputy Joseph Trimarchi testified to the following: He arrested petitioner on July 6, 1994, for possession of marijuana for sale, and took part in petitioner's booking. (RT 297-98). He asked petitioner if he was a member of a street gang and petitioner said he was affiliated with the 104 Gangsters and had the street name "Little Flintstone." (RT 298). Another person who was detained at the time of petitioner's arrest identified himself as a 104 Crip. (RT 302).

Darnell admitted he had a 1992 felony grand theft conviction. (RT 245). He denied being a gang member or ever identifying himself as a member of the 104th Street Crips. (RT 245-46). Darnell knew that petitioner had been arrested and charged with murder, but did not contact anyone other than petitioner's family about that evening. (RT 253-55). Darnell did not contact the police to let them know that petitioner did not commit the murder, and did not contact petitioner's trial lawyer until some time in November or December 1996. (RT 254-57).[7]

Thomas Evins testified that he was petitioner's neighbor and had known petitioner for about a year as of July 1996. (RT 273, 279). Thomas testified that at around 3:00 a.m. on July 11, 1996, he was driven home by his friend Shanti (Day). (RT 274-76). When Thomas arrived home he saw petitioner, Darnell, and another guy sitting on the stairs hanging out. (RT 276, 281-82). Day parked in the back and Darnell came to the back with a beer in his hand trying to talk to Day and get her phone number. (RT 276-77, 282-83). Petitioner did not come to the back or talk to Day. (RT 276, 290). Thomas, Day, and Darnell all went upstairs where Darnell talked to Day for about five minutes right outside Thomas's apartment before leaving. (RT 277-78, 282-86). Petitioner called for Darnell from the steps, saying, "Let's go." (RT 286). Thomas went inside the apartment and watched TV with Day for a while. (RT 286-87). Thomas recalled that petitioner was wearing a black leather jacket, black pants, and a white shirt. (RT 290).

Thomas denied seeing Darnell or petitioner again that day, or hearing anyone yelling for help, or coming back out of his apartment. (RT 277, 284, 287). He also said Day shares an apartment with him and never came back out except a little while later to smoke a cigarette and then come right back in. (RT 284-85).

---

[7]The parties stipulated that if called as a witness petitioner's counsel would testify that he first spoke to Darnell on April 17, 1997, had never met or spoken to Darnell prior to that date, and did not know Darnell's full identity or the contents of his testimony until counsel spoke to Darnell on April 17, 1997. (RT 294).

The next morning Thomas saw police and an ambulance outside and saw Day leave and go to a doughnut shop. (RT 278).

Thomas denied being a gang member but said he knew some 104th Street Crips and knew they were present in his neighborhood, saying it was apparent they were there. (RT 280-81). Thomas knew a few gang members but said he would not call himself an associate. (RT 281). During the year that Thomas was neighbors with petitioner, Thomas found out that petitioner was from the Crips. (RT 280). Thomas also knew Darnell from the neighborhood and believed Darnell was a 10-4 Gangster Crip. (RT 280).

C. Prosecution's Rebuttal Case

Detective Frank Salerno testified that he was familiar with the 1100 Block of 104th Street in Los Angeles, and said there were gangs active in that area including the 104th Street Crips or 10-4 Gangster Crips. (RT 305). Salerno knew Darnell by the moniker "Scooby" or "Little Scooby" and knew him to be a member of the 104th Street Crips from talking to Darnell and Darnell admitting his membership. (RT 305-06). Salerno also had known petitioner for about 10 years since petitioner was 11 or 12 years old. (RT 306). Petitioner had told Salerno that petitioner was a member of the 10-4 Crips. (RT 307, 310-11). Although Salerno said petitioner was a gang member, Salerno admitted that petitioner had no gang tattoos on his body. (RT 309-11).

D. Defense's Surrebuttal Case

Petitioner testified that he had known Detective Salerno for only about five years from seeing Salerno around the neighborhood. (RT 361). The parties also stipulated that none of the light colored clothing items the police searched for were taken into evidence as a result of searching petitioner's grandmother's house and mother's house. (RT 361-62).

///

///

IV. STANDARD OF REVIEW

This Court may entertain a petition for writ of habeas corpus on "behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a).

Pursuant to 28 U.S.C. § 2254 ("Section 2254"), as amended by the Antiterrorism and Effective Death Penalty Act ("AEDPA"), federal habeas courts are required to be "highly deferential" to state court decisions regarding a petitioner's federal claims. Cullen v. Pinholster, 563 U.S. 170, 181 (2011) (citation and internal quotation marks omitted). Accordingly, when a state court has adjudicated a petitioner's federal claim on the merits, federal habeas relief may not be granted unless the state court's decision (1) "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the [U.S.] Supreme Court. . . ," or (2) was based on "an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d); see Sexton v. Beaudreaux, 585 U.S. 961, 964 (2018) (per curiam) (stating same) (citation omitted); Tamplin v. Muniz, 894 F.3d 1076, 1082 (9th Cir. 2018) (same) (citation omitted).[8] The AEDPA standard is intentionally "difficult to meet," Sexton, 585 U.S. at 965 (citations and quotation marks omitted), and the petitioner has the burden to show that federal habeas relief is warranted in a particular case, Cullen, 563 U.S. at 181 (citation omitted).

In applying the foregoing standards, federal courts look to the last relevant state court decision and evaluate the state court's adjudication of a federal claim

---

[8]When a federal claim has been presented to a state court and the state court has denied relief, it may be presumed that the state court adjudicated the claim on the merits in the absence of any indication or state-law procedural principles to the contrary. Harrington v. Richter, 562 U.S. 86, 99 (2011); see also Johnson v. Williams, 568 U.S. 289, 298-301 (2013) (extending Richter presumption to situations in which state court opinion addresses some, but not all of defendant's claims).

after an independent review of the record. See Wilson v. Sellers, 584 U.S. 122, 125 (2018) (2018); Nasby v. McDaniel, 853 F.3d 1049, 1053 (9th Cir. 2017). Where the relevant state court did not explain its decision in a reasoned opinion, federal courts "look through the unexplained decision to the last related state-court decision that does provide a relevant rationale." Wilson, 584 U.S. at 125 (noting rebuttable presumption that unexplained state-court decision "adopted the same reasoning" for rejecting prisoner's federal claims as the last state court that provided a reasoned opinion) (internal quotation marks omitted); see also Tamplin, 894 F.3d at 1082 ("Under AEDPA, we review the last reasoned state-court opinion.") (citation, internal quotation marks and brackets omitted).

In this case, the last reasoned decisions denying petitioner's Brady claim are the Superior Court's orders denying petitioner's state habeas petition dated August 28 and September 12, 2017. (Public Lodged Doc. 4). While such orders did not comment specifically on petitioner's cumulative error claim, the Superior Court noted in the September 12, 2017 order: "The court does not agree with the contentions of the Petition and reissues the denial." (Public Lodged Doc. 4). Accordingly, for petitioner's cumulative error claim, the Court has conducted an independent review of the record to determine whether the state courts' denial of that claim was objectively unreasonable. See Delgado v. Lewis, 223 F.3d 976, 982 (9th Cir. 2000) (to the extent no reasoned opinion exists, reviewing courts must independently review the record and determine whether the state court clearly erred in its application of controlling federal law, and consequently, whether the state court's decision was objectively unreasonable), abrogated on other grounds, Lockyer v. Andrade, 538 U.S. 63, 75-76 (2003); see also Harrington v. Richter, 562 U.S. 86, 98 (2011) ("Where a state court's decision is unaccompanied by an explanation, the habeas petitioner's burden still must be met by showing there was no reasonable basis for the state court to deny relief.");

///

Cullen, 563 U.S. at 187 ("Section 2254(d) applies even where there has been a summary denial.") (citation omitted).

V. DISCUSSION[9]

Petitioner claims that the prosecution withheld Brady evidence (Ground One) and that he is entitled to relief based on cumulative error (Ground Three). (Petition at 5-6; Pet. Memo at 9-15; Docket No. 52 (withdrawing petitioner's actual innocence claim, Ground Two); Traverse at 4, 14-23 (arguing only petitioner's Brady claim). Petitioner is not entitled to federal habeas relief on his remaining claims.

A. Petitioner's Brady Claim Does Not Merit Federal Habeas Relief

Petitioner alleges that the prosecution withheld material exculpatory evidence showing that Day was promised leniency in her criminal case in exchange for testifying for the prosecution in petitioner's case. (Pet. Memo at 9-13; Traverse at 5-23).

1. Background Relating to Petitioner's "Brady" Evidence

On July 11, 1996, the day King was beaten, a police report states that an "anonymous informant" (Day) contacted a fireman and told him to have the police meet her at another location for information about the assault. (Pet. Ex. 1 at 1, 3). The report, which refers to Day as "the witness," reflects:

> At approximately 3 a.m. the witness was in a friend[']s apartment directly across from the incident location, when arguing was heard. The witness looked out of the door and saw [two suspects] arguing at [King] about walking down [the suspects'] street. [The suspects] are 104th St. Crips. [The suspects] started hitting [King] with their fists until [King] hit the ground. [The suspects] then

[9]The Court has read, considered and rejected on the merits all of petitioner's contentions regarding the remaining claims. The Court discusses petitioner's principal contentions herein.

took turns jumping and stomping on [King's] head. [The suspects] then walked away from [King] and went into the house of 1109 104th St. (two doors east of incident address).

The witness did not call 911 because there was a 104th St. Crip member in the apartment where she was and [she] feared retaliation.

(Pet. Ex. 1 at 3; see also Lodged Doc. 11 at 25-33 ("Supplementary Report" dated July 16, 1996)). The police report notes the two suspects were 104th Street Crips and lists one suspect's name as "Demetrious" (petitioner) and the other suspect's name as "unk" (unknown). (Pet. Ex. 1 at 1).[10]

On July 28, 1996, Day – who was then on probation in connection with a felony grand theft conviction – allegedly violated the terms of her probation. (Pet. Exs. 2-3; CT 25). On August 9, 1996, Day was charged with one count of petty theft with a prior conviction (Cal. Penal Code § 666), and one count of theft (Cal. Penal Code § 484(A)). (Pet. Ex. 3). On October 17, 1996, Day was arraigned in Department 5 of the Superior Court Torrance Courthouse. (See Docket in LASC Case No. YA029764, available online at www.lacourt.org/criminalcasesummary/ui/).[11]

---

[10]The Sheriff's Department "Supplementary Report" notes the following: "Jane Doe" (Day) said she witnessed "Demetrius" (who lived two houses east of where the assault occurred) beating King. Day expressed concern for her safety, but was willing to cooperate with detectives including testifying in court. (Lodged Doc. 11 at 25-26, 29-31).

[11]Day's defense counsel had written a letter to the District Attorney's Office dated August 16, 1996, expressing his surprise that the Office had agreed to file a complaint based on information Day's counsel had received about the underlying incident, which allegedly involved a dispute at a car wash after Day's car keys were misplaced – with no alleged theft in the complaint because Day reportedly had paid for gas and a car wash before the dispute. (Lodged Doc. 11 at 94-95).

The Government filed an Informal Response to petitioner's Superior Court habeas petition (Lodged Doc. 11), providing additional background and evidence about Day's Superior

(continued...)

On December 18, 1996, petitioner's preliminary hearing was held in Division 2 of the Inglewood Municipal Court. (CT 1). Day was the only witness who testified at the preliminary hearing. Her testimony was consistent with her trial testimony and with what was reported in the police reports (*i.e.*, on the night King was beaten, Day saw petitioner beating King). (See CT 4-44 (Day's preliminary hearing testimony); Pet. Ex. 1 at 3; Lodged Doc. 11 at 26).[12] Day admitted that she had a prior conviction for felony grand theft. (CT 25; see also Pet. Ex. 2 (evidence of Day's prior)).

On January 3, 1997, in Day's criminal case, Day pleaded guilty to theft and the other count for petty theft with a prior conviction was dismissed in furtherance of justice pursuant to California Penal Code section 1385. (Pet. Ex. 3; Lodged Doc. 11 at 42-43 (Municipal Court minutes)). The court sentenced Day to probation and two days in jail and imposed a $940 fine. (See Docket in LASC Case No. YA029764; Lodged Doc. 11 at 43).

///

---

[11](...continued)
Court Case (LASC Case No. YA029764), including a declaration from Detective Lillienfeld and exhibits. (See Lodged Doc. 11 at 45-46) (Lillienfeld's declaration). The Government reportedly had located in the District Attorney's file an undated "Memorandum" by Detective Lillienfeld from some time in 1996 addressed to "Tracy," presumably Tracy Waxman who represented petitioner at his preliminary hearing (see CT 1), which states that Day's criminal case was filed on August 8, 1996, as Case No. YA029764 – 28 days after Day witnessed the King murder [and after Day had identified petitioner as killing King]. (Lodged Doc. 11 at 12, 44). The Memorandum also states, "We have made arrangements to put her [Day] on the phone with the public [defender] during the [week] of 10-21-96" – which would have been after Day's arraignment (and after the private counsel who had represented her throughout her proceedings had contacted the District Attorney's Office). (Lodged Doc. 11 at 44, 94-95; see Docket in LASC Case No. YA029764).

[12]Day testified at the preliminary hearing that shortly before King's beating, petitioner approached and introduced himself to her as "Demetrius" but said "they call me Stone." (CT 6). Day had seen petitioner before. (CT 6-7). Day said she saw petitioner and the other suspect drag King out from under a car and then beat King. (CT 7-12).

On January 3, 1997 – the same day that Day pleaded guilty in her criminal case in Department 5 – petitioner was arraigned in Department G at the Superior Court Torrance Courthouse on the murder charge. (See Docket in LASC Case No. YA029506, available online at www.lacourt.org/criminalcasesummary/ui/; see also CT 48-49 (Information)).

On April 17, 1997, just before Day's testimony at petitioner's trial, the prosecutor sought an order preventing the defense from impeaching Day with her prior felony grand theft conviction. (RT 20-26; CT 75). The prosecutor noted for the record the following:

> . . . Day, the percipient witness to this event, suffered in March of 1995 a felony conviction for grand theft. That is one that she suffered, she's on probation for. And according to the terms of the disposition, she has five years probation with the idea that if she successfully completes that, that can be reduced to a misdemeanor. She is on track to doing that now.

(RT 20-21). The defense objected, noting an understanding that Day had a new conviction for theft in LASC Case No. YA029764 dating back to July of 1996, that counsel thought was due for sentencing in May. (RT 21-22). Petitioner's counsel said, "my understanding from my investigation is she worked out a deal in lieu of the 666 [petty theft with a prior charge,] she's going to plead the 484 [theft charge]." (RT 21). The prosecutor noted that Day's rap sheet showed a single felony conviction, and the prosecutor was not aware of any other case. (RT 22). The court's clerk clarified for the parties that the next scheduled event for Day's pending criminal case was for the payment of a fine on May 2, 1997, and advised

///

///

///

///

that the felony Section 666 charge was dismissed and the parties proceeded on the Section 484(A) misdemeanor theft charge. (RT 23).[13]

Defense counsel asked whether Day had reached some form of disposition from the District Attorney's Office in exchange for her testimony in petitioner's case. (RT 24). The prosecutor noted that he raised the issue of excluding evidence of Day's felony conviction in good faith because he thought Day had only a single felony conviction, and represented as follows:

> . . . I've made no deal with this witness. This witness made her statement on the date of the incident. ¶ We've attempted to protect her since that time from harm. But as far as her criminal record is concerned, that's something I only personally became aware of very recently. Certainly, if there were any deals made with her, that is something that would have been discoverable. That would have been my obligation to turn over to [the] defense, as I've turned over all discovery. Were there such a deal in place, that would be something [the defense] would be entitled to present. . . . I'm representing to the court now that I have no agreement, no arrangement, no understanding with this witness. And I would have been obligated to bring that to counsel's attention. I think counsel knows that [an agreement] doesn't exist. What he would like to do is simply present something to the jury and invite their speculation [that she was given a deal], and I'm suggesting that's improper to do that.

(RT 25-26).

The trial court permitted the defense to impeach Day with her prior grand theft conviction and ruled that, in the absence of some evidence of a deal between

---

[13] As detailed above, Day had already pleaded guilty to theft and had been sentenced on January 3, 1997. (See Docket in LASC Case No. YA029764).

the People and Day, inviting the jury to speculate based upon nothing more than insinuation and innuendo [that Day may have had a deal] would be improper impeachment. (RT 26). Day then testified for the prosecution at petitioner's trial. (RT 50-111; CT 75). Day admitted she had been convicted in March of 1995 for grand theft for misuse of a credit card. (RT 66, 83). As noted above, the jury convicted petitioner on April 23, 1997. (Lodged Doc. 1).

Homicide Bureau Captain Don Mauro signed a letter dated April 30, 1997, to the presiding judge in Day's criminal case which states in relevant part:

> Miss Day provided detectives with suspect descriptions and the first name of one of the suspects. ¶ As a result of this information, detectives were able to identify [petitioner] as one of the persons responsible for the murder [of King]. Miss Day picked [petitioner] out of a photo line up and subsequently testified against him [at his preliminary hearing] in Inglewood Municipal Court. ¶ After the preliminary hearing and [petitioner] was bound over for trial, Miss Day['s] life was threatened by several companions of [petitioner], who were also 104th Street Crip street gang members. [Day] was told to change her testimony, and believed that she'd be killed if she testified truthfully at trial. ¶ Because of this, Miss Day moved several times. Despite these threats, she continued to cooperate and assist detectives and the District Attorney's Office in the prosecution of [petitioner].
>
> On April 18, 1997, Miss Day testified during a jury trial in Torrance Superior Court, Case # YA029506. Her testimony was consistent with the prior statements she had made, as well as her preliminary hearing testimony. Miss Day testified over a two day period, despite receiving death threats via telephone.

///

> Miss Day was the only eyewitness to the murder who came forward. Despite the use of search warrants, informants, surveillance, and other investigative tools, the case against [petitioner] rested primarily on Miss Day[']s testimony.
>
> *Miss Day was never promised anything other than protection and assistance in relocating. Since her testimony in Superior Court, detectives have learned that she was convicted in a petty theft case pending in Torrance Superior Court, [C]ase # YA029764. . . .*
>
> *Detectives are requesting that the fine levied against Miss Day be dropped, and that she be allowed to continue her probation as she previously has been.* Whatever assistance you may offer in this matter is most appreciated.

(Pet. Ex. 7) (emphasis added).[14]

On May 2, 1997, Day's criminal case was transferred to Department 2, where it was noted that petitioner had not paid her $940 fine. (See Docket in LASC Case No. YA029764; see also Lodged Doc. 11 at 40 (Municipal Court minutes); Pet. Ex. 6 ("Additional Court Proceedings")). On May 19, 1997, the

---

[14]Detective Lillienfeld reportedly investigated King's murder and met with Day on July 11, 1996, when she came forward as an eyewitness to the murder and identified petitioner as having been involved based on her familiarity with petitioner before the murder. (Lodged Doc. 11 at 45, ¶¶ 1-4). Detective Lillienfeld stated that the Sheriff's Department provided relocation assistance to Day after she had been threatened for cooperating in petitioner's case. (Id. at ¶ 5). Detective Lillienfeld admits that as of his second interview with Day on August 28, 1996, he and his partner were aware that Day was on probation in LASC Case No. YA029764. (Id. at ¶ 7). To the best of Lillienfeld's knowledge, neither he nor his partner nor the Sheriff's Department were involved in Day's plea to a reduced charge in Case No. YA029764. (Id. at ¶ 7). After Day's trial testimony in petitioner's case on April 18, 1997, Lillienfeld became aware through Day's attorney that Day had a "court ordered fine and probation status for the misdemeanor theft conviction." (Id. at ¶ 8). Lillienfeld authored the April 30, 1997 letter of consideration signed by Captain Mauro "through no urging of, nor promises to" Day or her attorney. (Lodged Doc. 11 at 45-46, ¶ 8). Day reportedly was unaware of the letter until it was sent to her criminal court. (Id.).

presiding judge in Day's criminal case noted: "Court reviews letter from LASD Dep. Mauro (Captain, Homicide Bureau) – DDA Alan Jackson has no objection – Court strikes fine in interest of justice – [probation] reinstated – Clerk to advise counsel." (Pet. Ex. 6; see also Lodged Doc. 11 at 38-39 (Municipal Court minutes)).

On May 21, 1997, petitioner was sentenced in his criminal case. (Lodged Doc. 2). That same day, petitioner filed a new trial motion arguing, *inter alia*, that the defense should have been allowed to present evidence of Day's "present, prominent motives for untruthful testimony," namely the assertedly "pending" felony charge at the time of petitioner's trial. (See CT 138-41 (motion)). The prosecutor opposed the motion, noting again that there were no arrangements made with Day regarding the disposition of Day's criminal case and that the prosecution did not know what had become of Day's case. (RT 462). The trial court denied the new trial motion without explanation prior to sentencing petitioner. (RT 463; CT 142).

Approximately fifteen years later, in August of 2012, the California Innocence Project ("CIP") began investigating petitioner's actual innocence claim. (Pet. Ex. 5 at ¶ 1). At some point prior to February 11, 2015, the CIP learned of Mauro's letter from reviewing the minute orders from Day's criminal case and sought to obtain a copy of the letter. (Pet. Ex. 5 at ¶¶ 4, 5). On November 20, 2015, a CIP intern was told of the contents of Mauro's letter but could not obtain a copy because the letter previously was sealed. (Pet. Ex. 4 at ¶ 7). The court in petitioner's case granted the CIP's motion to unseal Mauro's letter on April 1, 2016. (Pet. Ex. 8; Docket in LASC Case No. YA029506).[15]

///

[15]In March of 2017, the CIP notified petitioner that his case was closed for insufficient new evidence to prove petitioner's factual innocence. (Pet. Ex. 11).

2. Analysis

Petitioner argues that he was deprived of the ability to impeach Day with evidence of her alleged "leniency deal" that the prosecution withheld, which would have shown Day's bias and motive for testifying against petitioner (and would have supported petitioner's related new trial motion). Specifically, petitioner faults the prosecutor for failing to provide the defense with: (1) information about any promises of leniency; (2) Detective Lillienfeld's 1996 "Memorandum" (which was found in the District Attorney's file (see supra note 11 (discussing same)); Lodged Doc. 11 at 12, 44), identifying Day's pending criminal case and stating that the investigating detectives in petitioner's case had arranged for Day to speak to a public defender; and (3) Mauro's letter (authored by Lillienfeld) to the judge in Day's criminal case after Day's testimony at petitioner's trial which "memorialized" "implicitly promised leniency" for Day. (See Pet. Memo at 9-13 (citing, *inter alia*, Hovey v. Ayers, 458 F.3d 892, 919 (9th Cir. 2006) (finding State should have disclosed "implicit agreement" by prosecutor in Hovey's case to provide assistance to informant witness in exchange for his testimony; prosecutor had agreed in part to send a letter on the witness's behalf after he testified against Hovey)); Traverse at 10-11, 15-16 (concluding from the foregoing that the investigating detectives in petitioner's case were "following" and "involved with fighting" Day's pending case). Petitioner argues prejudice because Day was the "star witness" in petitioner's trial and provided the only evidence connecting petitioner to the murder. (Petition at 12-13; Traverse at 17).

The prosecution's suppression of evidence favorable to an accused violates due process "where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." Brady v. Maryland, 373 U.S. at 87. To establish a Brady violation, a defendant must prove that: (1) the evidence at issue was "favorable to the accused" (*i.e.*, it was exculpatory or

impeaching); (2) the government "either willfully or inadvertently" suppressed the evidence; and (3) the evidence was material, *i.e.*, "its suppression undermines confidence in the outcome of the trial." Strickler v. Greene, 527 U.S. 263, 281-82 (1999); United States v. Bagley, 473 U.S. 667, 676-78 (1985) (citing Giglio v. United States, 405 U.S. 150, 154 (1972)); United States v. Jernigan, 492 F.3d 1050, 1053 (9th Cir. 2007) (en banc). "[T]here is never a real 'Brady violation' unless the nondisclosure was so serious that there is a reasonable probability that the suppressed evidence would have produced a different verdict." Strickler, 527 U.S. at 281.

Here, as an initial matter, the Court observes that petitioner has failed to produce any direct evidence that Day testified in petitioner's case in exchange for leniency in her own criminal proceedings. Police reports from the date of King's beating and a few days after indicate that Day identified "Demetrius" as one of King's attackers. (Pet. Ex. 1 at 1, 3; Lodged Doc. 11 at 25-26, 29-31). Day had identified petitioner as one of King's killers to police detectives by July 16, 1996 – well before she allegedly violated the terms of her probation and was charged in criminal LASC Case No. YA029764 – and said that she would cooperate with detectives including testifying in court at a time when she would receive nothing but police protection in exchange for her cooperation. (Lodged Doc. 11 at 25-26, 29-31).

Assuming that the prosecutor did not contemporaneously give and should have given the defense Detective Lillienfeld's 1996 Memorandum (which apparently was in the prosecutor's own file and was addressed to petitioner's counsel) to impeach Day, and Mauro's letter (which predated sentencing) to support the defense's related new trial motion, petitioner has not shown a reasonable probability that either of these documents would have produced a different verdict had the jury (or the trial court on considering petitioner's new trial motion) been made aware of this evidence.

All of the record is consistent in that Day identified petitioner as one of the persons who beat King from the day of the beating through the preliminary hearing and through trial. (See Pet. Ex. 1 at 3 (Day's report); Lodged Doc. 11 at 25-26, 29-31 (Supplementary Report); CT 4-44 (Day's preliminary hearing testimony); RT 50-111 (Day's trial testimony)). Day testified at petitioner's trial consistent with what she reported before she arguably had *any* personal interest in testifying, when, in fact, she had every interest *not* to testify because she feared for her safety. (RT 70-72, 96-98). If defense counsel had been permitted to question Day about her plea to a lesser offense in her own criminal proceeding, which came after Detective Lillienfeld notedly had made arrangements for Day to speak to a public defender during a certain week (where Day already had been arraigned and had private counsel from arraignment through entry of her plea, see Lodged Doc. 11 at 42-43, 94-95), it would not have undermined Day's consistent identification of petitioner as one of the perpetrators of King's killing. Compare Libberton v. Ryan, 583 F.3d 1147, 1163-64 (9th Cir. 2015) (finding no Brady materiality where witness gave statement before alleged deal was entered into, since "the government could have pointed to a statement untainted by any secret deal, if such a deal existed, in order to corroborate [the witness's] trial testimony"), cert. denied, 560 U.S. 979 (2010).

For the same reason, if the trial court had known of Lillienfeld's Memorandum and Mauro's letter, there is no reasonable probability that the trial court would have granted petitioner's new trial motion based upon a Brady violation. The trial court heard Day's testimony and the prosecutor's repeated attestations that there was no deal with Day in exchange for her testimony. (RT 22, 25-26). Neither Lillienfeld's Memorandum nor Mauro's letter suggests otherwise. As the trial court's clerk made clear before Day's testimony, Day had already pleaded guilty to the misdemeanor charge by the time petitioner's case came to trial. (RT 23). The only thing remaining in her case was for Day to pay

her fine. (RT 23). Lillienfeld wrote and Mauro signed the letter for Day (which was filed under seal in Day's criminal case) *after* petitioner's conviction, asking that she not be required to pay the fine because she had provided the testimony; the letter reiterated that no promises had been made to Day other than protection and relocation assistance (of which petitioner's jury was aware (see RT 103, 109-11)). (Pet. Ex. 7).[16]

Having reviewed the entire record, the Court finds no Brady violation based on the evidence of Day's criminal proceedings, Detective Lillienfeld's Memorandum, and Mauro's letter. There is no evidence that Day expected or received leniency in exchange for her testimony in petitioner's case. See United States v. Kerr, 709 Fed. App'x 431, 434 (9th Cir. 2017) (rejecting Brady claim based on failure to disclose leniency agreement where defendants merely speculated about the possibility of an undisclosed agreement); Harrison v. Johnson, 564 Fed. App'x 900, 901 (9th Cir. 2014) (same when petitioner did not show that any such agreement existed); Panella v. Marshall, 434 Fed. App'x 603, 604-05 (9th Cir.) (same), cert. denied, 565 U.S. 1073 (2011); compare Horton v. Mayle, 408 F.3d 570, 578-80 (9th Cir. 2005) (finding that state's failure to disclose leniency deal for prosecution witness was material for Brady violation; the leniency deal at issue was an offer of immunity for anything the witness did on

[16]Additionally, while Day was the only eyewitness to identify petitioner at trial as beating King, there was other evidence suggestive of petitioner's guilt. See Kyles v. Whitley, 514 U.S. 419, 436-37 (1995) (in determining Brady materiality, a court considers allegedly suppressed evidence in light of the other evidence in the case). Day testified that during the beating petitioner repeated, "This is 10-4 Crip hood and you don't walk on our block." (RT 67). Petitioner and Darnell testified that they were not 104th Street Crips or 10-4 Gangster Crips, and petitioner denied that there were any 104th Street Gang members on his street. (RT 186-88, 216, 219-20, 222-23, 245-46). However, consistent with the police testimony (RT 130, 137-38, 146-47, 305-06), Thomas testified based on having lived in the neighborhood and hanging out with petitioner and Darnell that petitioner and Darnell were both 104th Street Crips. (RT 280-81). Unlike Day, Darnell and Thomas both had reasons not to identify petitioner as one of the men who beat King – Thomas still lived in the neighborhood (RT 280), and Darnell was petitioner's long time friend and possible gang associate (RT 246).

the weekend of the murder in exchange for testimony as the prosecution's "star witness," from which the jury reasonably could have inferred an interest to fabricate testimony).

For the foregoing reasons, the state courts' rejection of petitioner's Brady claim was not contrary to, and did not involve an objectively unreasonable application of, clearly established federal law, and was not based upon an unreasonable determination of the facts in light of the evidence presented. See 28 U.S.C. § 2254(d); Richter, 562 U.S. at 100-03. Accordingly, petitioner is not entitled to federal habeas relief on this claim.

B. Petitioner's Cumulative Error Claim Does Not Merit Federal Habeas Relief

Petitioner claims that the cumulative effect of alleged errors in his trial violated his rights to due process, a fair trial, and to effective confrontation of witnesses. (Pet. Memo at 13). Petitioner generally contends that he was deprived of his ability meaningfully to cross-examine Day, prevented from presenting exculpatory evidence, and denied access to Brady evidence. (Pet. Memo at 14).

"While the combined effect of multiple errors may violate due process even when no single error amounts to a constitutional violation or requires reversal, habeas relief is warranted only where the errors infect a trial with unfairness." Payton v. Cullen, 658 F.3d 890, 896-97 (9th Cir. 2011), cert. denied, 568 U.S. 944 (2012). Habeas relief for cumulative error is appropriate when there is a "'unique symmetry' of otherwise harmless errors, such that they amplify each other in relation to a key contested issue in the case." Ybarra v. McDaniel, 656 F.3d 984, 1001 (9th Cir. 2011), cert. denied, 568 U.S. 959 (2012) (citation omitted).

For all the reasons explained herein, based on the Court's independent review of petitioner's cumulative error claim, it appears that no such symmetry of otherwise harmless errors exists. Petitioner has failed to show the kind of prejudice necessary for relief on his Brady claim, and his remaining arguments

otherwise do not suggest his trial was infected with unfairness. See Hayes v. Ayers, 632 F.3d 500, 524 (9th Cir. 2011) (because "no error of constitutional magnitude occurred, no cumulative prejudice is possible"); Fairbank v. Ayers, 650 F.3d 1243, 1257 (9th Cir. 2011) (same), cert. denied, 565 U.S. 1276 (2012). Petitioner is not entitled to federal habeas relief on this claim.

C. Petitioner Is Not Entitled to an Evidentiary Hearing

In his Traverse, petitioner asks this Court to order discovery and an evidentiary hearing to allow petitioner to further prove he is entitled to relief. (Traverse at 3, 4, 24). Petitioner has not alleged any material fact which he did not have a full and fair opportunity to develop in state court and which, if proved, would show his entitlement to habeas relief. See Cullen v. Pinholster, 563 U.S. at 180-181 (scope of record for 28 U.S.C. § 2254(d)(1) inquiry limited to record that was before state court that adjudicated claim on the merits); Schriro v. Landrigan, 550 U.S. 465, 474 (2007) (if record refutes applicant's factual allegations or otherwise precludes habeas relief, court not required to hold evidentiary hearing); Gandarela v. Johnson, 286 F.3d 1080, 1087 (9th Cir. 2002) (evidentiary hearing properly denied where the petitioner "failed to show what more an evidentiary hearing might reveal of material import"), cert. denied, 537 U.S. 1117 (2003); see also Panella v. Marshall, 434 Fed. App'x at 605 (finding district court did not abuse discretion by concluding that petitioner's inability to demonstrate Brady materiality rendered evidentiary hearing unnecessary).

///

///

///

///

///

///

///

V. RECOMMENDATION

IT IS THEREFORE RECOMMENDED that the District Judge issue an Order: (1) approving and accepting this Report and Recommendation; (2) denying the Petition and dismissing this action with prejudice; and (3) directing that Judgment be entered accordingly.

DATED: August 28, 2024

/s/

Honorable Jacqueline Chooljian
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DEMETRIUS FRANKLIN, Petitioner, v. RAYMOND MADDEN, Warden, Respondent.	Case No. 2:17-cv-04281-DSF-JC (PROPOSED) ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE

The Court has conducted the review required by 28 U.S.C. § 636 and accepts and approves the findings, conclusions and recommendation of the Magistrate Judge reflected in the August 28, 2024 Report and Recommendation of United States Magistrate Judge.

IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus by a Person in State Custody is denied on is merits, this action is dismissed with prejudice, and Judgment shall be entered accordingly.

IT IS FURTHER ORDERED that the Clerk shall serve copies of this Order and the Judgment herein on counsel for petitioner and respondent.

IT IS SO ORDERED.

DATED: _____

_____

HONORABLE DALE S. FISCHER
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DEMETRIUS FRANKLIN, Petitioner, v. RAYMOND MADDEN, Warden, Respondent.	Case No. 2:17-cv-04281-DSF-JC (PROPOSED) JUDGMENT

Pursuant to this Court's Order Accepting Findings, Conclusions and Recommendations of United States Magistrate Judge,

IT IS ADJUDGED that the Petition for Writ of Habeas Corpus by a Person in State Custody is denied and this action is dismissed with prejudice.

IT IS SO ADJUDGED.

DATED: _____

_____

HONORABLE DALE S. FISCHER
UNITED STATES DISTRICT JUDGE

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

FEB 25 2021

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

DEMETRIUS FRANKLIN, Petitioner-Appellant, v. RAYMOND MADDEN, Warden, Respondent-Appellee.	No. 18-56145 D.C. No. 2:17-cv-04281-DSF-JC MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Dale S. Fischer, District Judge, Presiding

Argued and Submitted December 8, 2020
Pasadena, California

Before: THOMAS, Chief Judge, O'SCANNLAIN, Circuit Judge, and EZRA,** District Judge.
Partial Concurrence and Partial Dissent by Judge O'SCANNLAIN

Demetrius Franklin appeals the district court's adoption of the Magistrate Judge's report and recommendation to dismiss his habeas corpus petition as

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable David A. Ezra, United States District Judge for the District of Hawaii, sitting by designation.

untimely. We entered a certificate of appealability pursuant to 28 U.S.C. § 2253(c)(3). *See Lambright v. Stewart*, 220 F.3d 1022, 1026 (9th Cir. 2000). We have jurisdiction under 28 U.S.C. § 1291 and review the district court's decision de novo. *Stewart v. Cate*, 757 F.3d 929, 934 (9th Cir. 2014). We affirm in part and reverse in part. Because the parties are familiar with the facts of the case, we need not recount them here.

1. The district court erred in concluding that the statute of limitations had run on Franklin's habeas petition. Under the Antiterrorism and Effective Death Penalty Act ("AEDPA"), the one-year statute of limitations for a federal habeas petition runs from, as relevant here, "the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence." 28 U.S.C. § 2244(d)(1)(D). "Due diligence does not require the maximum feasible diligence, but it does require reasonable diligence in the circumstances." *Ford v. Gonzalez*, 683 F.3d 1230, 1235 (9th Cir. 2012) (internal quotation marks and citations omitted). Here, the statute of limitations was triggered when the letter requesting that Shanti Day receive leniency for her testimony in Franklin's case was unsealed on April 1, 2016. Given the trial prosecutor's express assurances that Day had received no leniency, reasonable diligence did not require Franklin's attorney to investigate further into the letter's existence during trial. *Cf. Quezada v. Scribner*, 611 F.3d 1165, 1167–68 (9th Cir.

2010). The statute of limitations was triggered by the unsealing of the letter, the factual predicate for Franklin's claim under *Brady v. Maryland*, 373 U.S. 83 (1963), on April 1, 2016 and expired one year later on April 1, 2017.

The district court also erred in denying Franklin equitable tolling for the period after the statute of limitations expired on April 1, 2017 and before he filed his habeas petition on June 8, 2017. A petitioner is entitled to equitable tolling only if he demonstrates "(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing." *Holland v. Florida*, 560 U.S. 631, 649 (2010) (internal quotation marks and citations omitted). The California Innocence Project repeatedly indicated that it would be filing a habeas petition on Franklin's behalf. The CIP intern stated in one letter that "[i]f my supervisors believe that this is suitable for *Brady* material (which I believe it will), they will begin drafting a habeas petition for you." In another letter, she wrote "I believe one of the attorneys at my office is going to come with me [to meet with you] so that we can start to build your case," and

referred to motions to be filed "[b]efore the habeas process is complete." [1] Such affirmative representations coupled with the CIP's effective abandonment two weeks before the statute of limitations ran qualifies as an extraordinary circumstance. *See Luna v. Kernan*, 784 F.3d 640, 647 (9th Cir. 2015) ("[A]ffirmatively misleading a petitioner to believe that a timely petition has been or will soon be filed can constitute egregious professional misconduct . . . ."). Franklin has demonstrated that he pursued his rights diligently during this period by hiring new counsel and submitting state and federal habeas petitions quickly.

2. The district court correctly rejected Franklin's alternative argument that he qualified for the actual innocence exception to the statute of limitations. This exception only applies to "cases in which new evidence shows 'it is more likely than not that no reasonable juror would have convicted [the petitioner]'" in light of the new evidence. *McQuiggin v. Perkins*, 569 U.S. 383, 395 (2013) (alteration in original) (quoting *Schlup v. Delo*, 513 U.S. 298, 329 (1995)). We agree with the district court that the credibility issues and layers of hearsay in

[1] The context of the letter indicates that the phrase "start to build your case," refers to Franklin's habeas case, not his actual innocence case. Although the letter is undated, it was most likely sent after April 1, 2016, the date of the hearing on the motion to open the sealed document, because it refers to an attached copy of the letter. At that point, the CIP had been developing Franklin's actual innocence case for over three and a half years, but had only just discovered the factual predicate for his *Brady* claim, the basis of his habeas petition. The context demonstrates that the term "case" referred to Franklin's habeas petition.

Franklin's proffered evidence of Shanti Day's recantation is insufficient to pass through the *Schlup* gateway, especially since recantation evidence is already viewed with suspicion. *See Jones v. Taylor*, 763 F.3d 1242, 1248 (9th Cir. 2014) ("Recanting testimony is easy to find but difficult to confirm or refute . . . ." (quoting *Carriger v. Stewart*, 132 F.3d 463, 483 (9th Cir. 1997) (en banc) (Kozinski, J., dissenting))). Because Franklin did not properly present his request for an evidentiary hearing on this issue to the district court, we consider that argument waived. *See United States v. Robertson*, 52 F.3d 789, 791 (9th Cir.1994) ("Issues not presented to the district court cannot generally be raised for the first time on appeal.").

AFFIRMED IN PART; REVERSED IN PART; REMANDED.

Franklin v. Madden, 18-56145

O'SCANNLAIN, Circuit Judge, concurring in part and dissenting in part:

I concur in Part 2 of the Memorandum, which affirms the district court's rejection of Franklin's alternative argument that he qualified for the actual-innocence exception to the statute of limitations.

However, I respectfully dissent from Part 1. Under the normal operation of the Antiterrorism and Effective Death Penalty Act, the last date for Franklin to file a federal habeas petition was April 13, 2000, one year after his conviction became final. 28 U.S.C. § 2244(d)(1)(A). I would hold that the statute of limitations indeed expired on such date, and accordingly, that Franklin's 2017 habeas petition was time-barred.

First, Franklin is not entitled to delayed commencement of the statute of limitations under the delayed-discovery provision at 28 U.S.C. § 2244(d)(1)(D). Under such provision, the statute of limitations is triggered when the factual predicate "'*could have been discovered* though the exercise of due diligence,' *not* when it actually was discovered." *Ford v. Gonzalez*, 683 F.3d 1230, 1235 (9th Cir. 2012) (quoting § 2244(d)(1)(D)) (emphasis added). Here, the district court properly found that Franklin could—and should—have been aware of the factual predicate for his *Brady* claim long before the California Innocence Project ("CIP")

received the Mauro letter, and even before his conviction became final. At the May 1997 hearings on Franklin's motion for a new trial, prosecutors acknowledged in open court that Day had been allowed to plead down from a felony to a misdemeanor. At such time, Franklin's own counsel expressed his suspicion that the leniency afforded to Day may have been the result of a "deal" in exchange for her testimony against Franklin. For Franklin's counsel, "due diligence" would have entailed acting upon the suspicion he had expressed. It also would have entailed simply investigating the docket in Day's case, where a May 2, 1997, Minute Order referred to the existence of the Mauro letter.

Second, Franklin is not entitled to equitable tolling for the period while the CIP was investigating his actual-innocence claim. Contrary to the majority disposition, CIP never "affirmatively misle[d] [Franklin] to believe that a timely petition ha[d] been or w[ould] soon be filed" on his behalf. *Cf. Luna v. Kernan*, 784 F.3d 640, 647 (9th Cir. 2015). Rather, as the district court accurately noted, CIP accepted Franklin's case *only* "to investigate his claim of actual innocence." Franklin's best evidence to the contrary is a letter he received from a CIP intern, stating that "*[i]f* my supervisors believe that [the not-yet-unsealed letter requesting leniency for Day] is suitable for *Brady* material (which I believe it [*sic*] will), [*then*] they will begin drafting a habeas petition for you." The relevant statement

from the CIP intern was expressly *conditional* in its language; the relevant condition pertained to the contents of a document that was not yet unsealed at the time; and the statement made clear that the ultimate decision on whether or not to "draft[] a habeas petition for" Franklin would rest with the "*supervisors*" of the person making such statement. Nor is Franklin availed by the other undated CIP letter cited in the majority disposition. Its vague references to "start[ing] to build [Franklin's] case" (without differentiation between his actual-innocence case and his habeas case) and to filing a discovery motion "[b]efore the habeas process is complete" remain a far cry from an affirmative representation that CIP would prepare and file a habeas petition on Franklin's behalf. And in any event, because the statute of limitations on Franklin's *Brady* claim had already expired in 2000—long before CIP even *began* investigating his case, in 2012—it cannot be said that CIP's actions were the "cause of [his] untimeliness" in filing a federal habeas petition based on such claim. *Roy v. Lampert*, 465 F.3d 964, 969 (9th Cir. 2006) (quoting *Spitsyn v. Moore*, 345 F.3d 796, 799 (9th Cir. 2003)).

Thus, I would affirm the district court's decision in its entirety.

United States Court of Appeals for the Ninth Circuit

Office of the Clerk
95 Seventh Street
San Francisco, CA 94103

Information Regarding Judgment and Post-Judgment Proceedings

Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)
Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)

(1) A. Purpose (Panel Rehearing):

- A party should seek panel rehearing only if one or more of the following grounds exist:
  - ► A material point of fact or law was overlooked in the decision;
  - ► A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
  - ► An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Purpose (Rehearing En Banc)

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ► Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ► The proceeding involves a question of exceptional importance; or
- ► The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- *See* Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-7806.

Petition for a Writ of Certiorari

- Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
  - ► Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Jean Green, Senior Publications Coordinator);
  - ► and electronically file a copy of the letter via the appellate ECF system by using "File Correspondence to Court," or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 10. Bill of Costs

Instructions for this form: http://www.ca9.uscourts.gov/forms/form10instructions.pdf

9th Cir. Case Number(s)

Case Name

The Clerk is requested to award costs to (*party name(s)*):

I swear under penalty of perjury that the copies for which costs are requested were actually and necessarily produced, and that the requested costs were actually expended.

Signature **Date**

*(use "*s/[typed name]*" to sign electronically-filed documents)*

COST TAXABLE	**REQUESTED** *(each column must be completed)*			
DOCUMENTS / FEE PAID	No. of Copies	Pages per Copy	Cost per Page	TOTAL COST
Excerpts of Record*			$	$
Principal Brief(s) *(Opening Brief; Answering Brief; 1st, 2nd , and/or 3rd Brief on Cross-Appeal; Intervenor Brief)*			$	$
Reply Brief / Cross-Appeal Reply Brief			$	$
Supplemental Brief(s)			$	$
Petition for Review Docket Fee / Petition for Writ of Mandamus Docket Fee				$
			TOTAL:	$

***Example:** Calculate 4 copies of 3 volumes of excerpts of record that total 500 pages [Vol. 1 (10 pgs.) + Vol. 2 (250 pgs.) + Vol. 3 (240 pgs.)] as:*
No. of Copies: 4; Pages per Copy: 500; Cost per Page: $.10 (or actual cost IF less than $.10);
TOTAL: 4 x 500 x $.10 = $200.

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

Appellate Courts Case Information

Supreme Court

Change court

Court data last updated: 04/13/2021 09:37 PM

Docket (Register of Actions)

FRANKLIN (DEMETRIUS) ON H.C.
Division SF
Case Number S251129

Date	Description	Notes
09/06/2018	Petition for writ of habeas corpus filed	Petitioner: Demetrius Franklin Attorney: Thomas Ian Graham
09/06/2018	Exhibit(s) lodged	(1 through 15)
07/24/2019	Petition for writ of habeas corpus denied	

Click here to request automatic e-mail notifications about this case.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

APR 25 2019

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

DEMETRIUS FRANKLIN, Petitioner-Appellant, v. RAYMOND MADDEN, Warden, Respondent-Appellee.	No. 18-56145 D.C. No. 2:17-cv-04281-DSF-JC Central District of California, Los Angeles ORDER

Before: O'SCANNLAIN and GOULD, Circuit Judges.

This appeal is from the denial of appellant's 28 U.S.C. § 2254 petition and subsequent Federal Rule of Civil Procedure 60(b) motion. After reviewing the underlying petition and concluding that it states at least one federal constitutional claim debatable among jurists of reason, namely whether the state failed to disclose exculpatory evidence in violation of appellant's right to due process under *Brady v. Maryland,* 373 U.S. 83 (1963), we grant the request for a certificate of appealability (Docket Entry No. 2) with respect to the following issues: whether the district court erred in dismissing appellant's section 2254 petition as untimely, including (1) whether appellant was permitted an adequate opportunity to respond to the magistrate judge's recommendation that his section 2254 petition be dismissed as untimely; (2) whether appellant is entitled to a later start date of the statute of limitations, *see* 28 U.S.C. § 2244(d)(1)(D); (3) whether appellant is

entitled to equitable tolling; or (4) whether appellant made a sufficient showing of actual innocence to excuse the untimely filing. *See* 28 U.S.C. § 2253(c)(3); *Gonzalez v. Thaler*, 565 U.S. 134 (2012); *Slack v. McDaniel*, 529 U.S. 473, 483-85 (2000); *Lambright v. Stewart*, 220 F.3d 1022, 1026 (9th Cir. 2000); *see also* 9th Cir. R. 22-1(e).

A review of this court's docket reflects that the filing and docketing fees for this appeal are due. Within 21 days of the filing date of this order, appellant shall either (1) pay to the district court the $505.00 filing and docketing fees for this appeal and file in this court proof of such payment, or (2) file in this court a motion to proceed in forma pauperis, accompanied by a completed Form CJA 23. Failure to pay the fees or file a motion to proceed in forma pauperis shall result in the automatic dismissal of the appeal by the Clerk for failure to prosecute. *See* 9th Cir. R. 42-1.

If appellant moves to proceed in forma pauperis, appellant may simultaneously file a Form 24 motion for appointment of counsel.

The Clerk shall serve a copy of Form CJA 23 and Form 24 on appellant.

If appellant pays the fees, the following briefing schedule shall apply: the opening brief is due August 28, 2019; the answering brief is due September 27, 2019; the optional reply brief is due within 21 days after service of the answering

brief. If appellant files a motion to proceed in forma pauperis, the briefing schedule will be set upon disposition of the motion.

The Clerk shall serve on appellant a copy of the "After Opening a Case – Pro Se Appellants" document.

If Raymond Madden is no longer the appropriate appellee in this case, counsel for appellee shall notify this court by letter of the appropriate substitute party within 21 days of the filing date of this order. *See* Fed. R. App. P. 43(c).

CJA 23
Rev. 5/98

FINANCIAL AFFIDAVIT

IN SUPPORT OF REQUEST FOR ATTORNEY, EXPERT OR OTHER COURT SERVICES WITHOUT PAYMENT OF FEE

IN UNITED STATES ☐ MAGISTRATE ☐ DISTRICT ☐ APPEALS COURT or ☐ OTHER PANEL (Specify below)

IN THE CASE

_____ V.S. _____

FOR

AT

LOCATION NUMBER

PERSON REPRESENTED (Show your full name)

CHARGE/OFFENSE (describe if applicable & check box →) ☐ Felony ☐ Misdemeanor

1 ☐ Defendant-Adult
2 ☐ Defendant - Juvenile
3 ☐ Appellant
4 ☐ Probation Violator
5 ☐ Parole Violator
6 ☐ Habeas Petitioner
7 ☐ 2255 Petitioner
8 ☐ Material Witness
9 ☐ Other

DOCKET NUMBERS
Magistrate
District Court
Court of Appeals

ANSWERS TO QUESTIONS REGARDING ABILITY TO PAY

EMPLOYMENT

Are you now employed? ☐ Yes ☐ No ☐ Am Self-Employed

Name and address of employer:

IF YES, how much do you earn per month? $

IF NO, give month and year of last employment

How much did you earn per month? $

If married is your Spouse employed? ☐ Yes ☐ No

IF YES, how much does your Spouse earn per month? $

If a minor under age 21, what is your Parents or Guardian's approximate monthly income? $

ASSETS

OTHER INCOME

Have you received within the past 12 months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, retirement or annuity payments, or other sources? ☐ Yes ☐ No

	RECEIVED	SOURCES
IF YES, GIVE THE AMOUNT RECEIVED & IDENTIFY THE SOURCES	$	
	$	
	$	

CASH

Have you any cash on hand or money in savings or checking accounts? ☐ Yes ☐ No **IF YES**, state total amount $

PROPERTY

Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? ☐ Yes ☐ No

	VALUE	DESCRIPTION
IF YES, GIVE THE VALUE AND DESCRIBE IT	$	
	$	
	$	
	$	

OBLIGATIONS & DEBTS

DEPENDENTS

MARITAL STATUS
☐ SINGLE
☐ MARRIED
☐ WIDOWED
☐ SEPARATED OR DIVORCED

Total No. of Dependents

List persons you actually support and your relationship to them

DEBTS & MONTHLY BILLS (LIST ALL CREDITORS, INCLUDING BANKS, LOAN COMPANIES, CHARGE ACCOUNTS, ETC.)

APARTMENT OR HOME:	Creditors	Total Debt	Monthly Paymt.
		$	$
		$	$
		$	$
		$	$

I certify under penalty of perjury that the foregoing is true and correct. Executed on (date)

SIGNATURE OF DEFENDANT (OR PERSON REPRESENTED)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

INSTRUCTIONS for Form 23. CJA Financial Affidavit

- Use Form 23 **only** in a criminal or habeas corpus appeal.
- Use Form 23 **only** to support a request for waiver of fees or a motion for appointment of counsel or other legal services at government expense.
- If you are not represented by counsel and are requesting appointment of counsel, attach a completed Form 24 Motion for Appointment of Counsel to Form 23.

If you are a self-represented party who is not registered for electronic filing, mail the completed form to: U.S. Court of Appeals for the Ninth Circuit, P.O. Box 193939, San Francisco, CA 94119-3939.

To file Form 23 electronically, use the electronic document filing type "CJA Form 23 Financial Affidavit."

How to prepare fill-in forms for filing:

- If you have Adobe Acrobat or another tool that lets you save completed forms:
  1. Complete the form.
  2. Print the completed form to your PDF printer (File > Print > select Adobe PDF or another PDF printer listed in the drop-down list).

- If you do not have Adobe Acrobat or another tool that lets you save completed forms:
  1. Complete the form.
  2. Print the completed form to your printer.
  3. Scan the completed form to a PDF file.

Note: The fill-in PDF version of the form is available on the court's website at http://www.ca9.uscourts.gov/forms/.

Do not file this instruction page

CJA 24 AUTHORIZATION AND VOUCHER FOR PAYMENT OF TRANSCRIPT (Rev. 5/99)

1. CIR./DIST./ DIV. CODE	2. PERSON REPRESENTED	VOUCHER NUMBER

3. MAG. DKT./DEF. NUMBER	4. DIST. DKT./DEF. NUMBER	5. APPEALS DKT./DEF. NUMBER	6. OTHER DKT. NUMBER

7. IN CASE/MATTER OF *(Case Name)*	8. PAYMENT CATEGORY	9. TYPE PERSON REPRESENTED	10. REPRESENTATION TYPE
	☐ Felony ☐ Petty Offense ☐ Misdemeanor ☐ Other ☐ Appeal	☐ Adult Defendant ☐ Appellant ☐ Juvenile Defendant ☐ Appellee ☐ Other	*(See Instructions)*

11. OFFENSE(S) CHARGED (Cite U.S. Code, Title & Section) *If more than one offense, list (up to five) major offenses charged, according to severity of offense.*

REQUEST AND AUTHORIZATION FOR TRANSCRIPT

12. PROCEEDING IN WHICH TRANSCRIPT IS TO BE USED *(Describe briefly)*

13. PROCEEDING TO BE TRANSCRIBED *(Describe specifically). NOTE: The trial transcripts are not to include prosecution opening statement, defense opening statement, prosecution argument, defense argument, prosecution rebuttal, voir dire or jury instructions, unless specifically authorized by the Court (see Item 14).*

14. SPECIAL AUTHORIZATIONS	JUDGE'S INITIALS
A. Apportioned _____ % of transcript with *(Give case name and*	
B. ☐ Expedited ☐ Daily ☐ Hourly Transcript ☐ Realtime Unedited Transcript	
C. ☐ Prosecution Opening Statement ☐ Prosecution Argument ☐ Prosecution Rebuttal ☐ Defense Opening Statement ☐ Defense Argument ☐ Voir Dire ☐ Jury Instructions	
D. In this multi-defendant case, commercial duplication of transcripts will impede the delivery of accelerated transcript services to persons proceeding under the Criminal Justice Act.	

15. ATTORNEY'S STATEMENT

As the attorney for the person represented who is managed above, I hereby affirm that the transcript requested is necessary for adequate representation. I, therefore, request authorization to obtain the transcript services at the expense of the United States pursuant to the Criminal Justice Act.

_____ _____
Signature of Attorney Date

_____
Printed Name

Telephone _____

☐ Panel Attorney ☐ Retained Attorney ☐ Pro-Se ☐ Legal Organization

16. COURT ORDER

Financial eligibility of the person represented having been established to the Court's satisfaction the authorization requested in Item 15 is hereby granted.

SEE ATTACHED ORDER

_____
Signature of Presiding Judicial Officer or By Order of the Court

_____ _____
Date of Order Nunc Pro Tunc Date

CLAIM FOR SERVICES

17. COURT REPORTER/TRANSCRIBER STATUS

☐ Official ☐ Contract ☐ Transcriber ☐ Other

19. SOCIAL SECURITY NUMBER OR EMPLOYER ID NUMBER OF PAYEE

18. PAYEE'S NAME *(First Name, M.I., Last Name, including any suffix)*, AND MAILING ADDRESS

Telephone _____

20. TRANSCRIPT	INCLUDE PAGE NUMBERS	NO. OF PAGES	RATE PER PAGE	SUB-TOTAL	LESS AMOUNT APPORTIONED	TOTAL
Original						
Copy						
Expense *(Itemize)*						
					TOTAL AMOUNT CLAIMED:	

21. CLAIMANT'S CERTIFICATION OF SERVICE PROVIDED

I hereby certify that the above claim is for services rendered and is correct, and that I have not sought or received payment *(compensation or anything of value)* from any other source for these services.

Signature of _____ Date _____

ATTORNEY CERTIFICATION

22. CERTIFICATION OF ATTORNEY OR CLERK I hereby certify that the services were rendered and that the transcript was received.

_____ _____
Signature of Attorney or Clerk Date

APPROVED FOR PAYMENT — COURT USE ONLY

23. APPROVED FOR PAYMENT	24. AMOUNT APPROVED
_____ _____ Signature of Judicial Officer or Clerk of Court Date	

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Office of the Clerk

After Opening Your Appeal: What You Need to Know

You have received this guide because you asked the U.S. Court of Appeals for the Ninth Circuit to review the final decision of a U.S. District Court or the Bankruptcy Appellate Panel. It provides information you need to know if you decide to handle your case without a lawyer.

Read this guide carefully. If you don't follow instructions, the court may dismiss your case.

For Habeas Appeals

If you are appealing the denial of a habeas corpus petition under 28 U.S. Code Section 2254 or 2255, you are receiving this guide because the district court or court of appeals has granted a certificate of appealability (COA) on one or more of the specific issues in your case.

Before you go further, you should be familiar with these terms:

- **Pro se** is the legal term for representing yourself. It is Latin for "on one's own behalf."
- You are the **appellant** in your case—that is, the person who filed the appeal. The other side in your case is the **appellee**.
- A **notice of appeal** is the document you filed seeking review of the lower court's decision.

You will see these terms on some of the papers you receive from the court.

This Guide Is Not Legal Advice

Court employees are legally required to remain neutral; that means they can't give you advice about how to win your case. However, if you have a question about procedure—for example, which forms to send to the court or when a form is due—this packet should provide the answer. If it doesn't, you may contact the clerk's office for more information.

WHAT'S IN THIS GUIDE?

HOW AN APPEAL WORKS

The chart below shows the path of an appeal from the lowest federal court to the highest. Review these steps to make sure you understand where you are in the process.

U.S. District Court or Bankruptcy Appellate Panel. Your case in the U.S. Court of Appeals must come from a lower federal court, which may be a U.S. District Court or the Bankruptcy Appellate panel. In a very small number of cases, if the court of appeals gives you permission, you can appeal directly from the bankruptcy court to the court of appeals. (See 28 U.S. Code, Section 158(d) if you want more information about appealing directly from a bankruptcy court.)

U.S. Court of Appeals. When reviewing the lower court's decision in your case, the court of appeals (usually a panel of three judges) will carefully consider everything that has happened so far. The court will also read all the papers that you and the other side file during your case. The court will look to see whether a lower court or agency has made a constitutional, legal, or factual mistake. You are not allowed to present new evidence or testimony in the court of appeals.

U.S. Supreme Court. If you do not agree with the decision of the court of appeals, you can ask the United States Supreme Court to review your case. The Supreme Court chooses which cases it wants to hear. It reviews only a small number of cases each year.

Your case may not go through all of the stages shown above. For example, if the U.S. Court of Appeals resolves your case the way that you want, you won't need to file a petition in the U.S. Supreme Court.

YOUR CASE NUMBER

We have assigned your case a seven-digit court of appeals case number, also called a "docket number." You can find the number at the top of the letter you received with this guide. Include your case number on all papers you send to the court or to the opposing party. (When the opposing party is represented by a lawyer, you will send papers to the lawyer rather than directly to the party. This guide generally refers to opposing counsel rather than party.)

You may want to jot down your case number here to keep it handy:

MY CASE NUMBER IS _____.

IMPORTANT RULES FOR ALL CASES

The rules in this section apply to everyone who files a case in the court of appeals. You must understand and follow each one.

Meet Your Deadlines

Read all documents you get from the court. They will contain important instructions and deadlines for filing your court papers. Write down deadlines on your calendar. **If you miss a deadline or fail to respond to the court as directed, the court may dismiss your case.**

Complete Your Forms Properly

Everything you send to the court must be clear and easy to read. If we can't read your papers, we may send them back to you.

Follow these guidelines:

- ✓ Use white 8.5 x 11-inch (letter size) paper.
- ✓ Use blue or black pen or type your papers. If you write by hand, please write clearly.
- ✓ Number your pages and put them in order.
- ✓ Use only one paper clip or a single staple to keep your documents organized. The clerk's office must scan your documents and extra binding makes that job difficult.

Deliver Papers the Right Way

- ✓ When you deliver papers to the court or to the opposing party, you must take certain steps to show you sent them to the right place on time. When you properly deliver papers to the opposing party, it's called "serving" a document
- ✓ **Use the correct address.** Before you put anything in the mail, make sure the address is current and correct.
    - To find current addresses for the court, see "How to Contact the Court," at the end of this guide. It's okay to deliver a document to the court in person, but you must hand it to someone designated to receive documents in the clerk's office.
    - To find the correct address for the opposing party, see opposing counsel's "notice of appearance," filed either in the district court or after you filed your notice of appeal. The notice of appearance states the name and address of the attorney who represents the other side in your case.
- ✓ **Attach a certificate of service.** You must attach a signed "certificate of service" to each document you send to the court or to opposing counsel. You can find a blank certificate of service at the end of this guide and on our website at www.ca9.uscourts.gov/forms. Make copies of the blank document and fill them out as needed.
- ✓ **Send a copy of *all* documents to opposing counsel.** When you send a document to the court, you must also send a copy (including any attachments) to opposing counsel.

Filing Documents Electronically

The court allows self-represented appellants who are not currently in prison to file documents and make payments electronically if they have access to the internet. This means using the same system that lawyers use. To learn about or apply for electronic filing, review the materials on the court's website at www.ca9.uscourts.gov/cmecf.

Keep Copies of Your Documents

Make copies of all documents you send to the court and to opposing counsel and keep all papers sent to you. Put everything in a folder that you keep in a safe place.

Pay Your Filing Fee or Request a Waiver

The filing fee for your case is $505.00.

Your fee is due when you file your notice of appeal. If you don't pay the fee, you will receive a notice informing you that you have **21 days** to either pay the fee or request a waiver if you can't afford to pay.

- **If you can afford the fee.** Send a check or money order to the district court. **Do not send your payment to the court of appeals** unless you are appealing a Bankruptcy Appellate Panel decision (see the note just below). Please note that after you pay your fee, the court generally cannot refund it, no matter how your case turns out.

> **For Bankruptcy Appellate Panel Cases**
>
> Send your fee to the court of appeals. Make your check out to "Clerk, U.S. Courts" and send it to the court using the address at the end of this guide.

- **If you can't afford to pay.** You may ask the court to waive your fee by completing a form called a "motion to proceed in forma pauperis." (See "Filing Motions," below.)

If you do not pay the fee or submit a waiver request by the deadline, the court will dismiss your case.

If You Move, Tell the Court

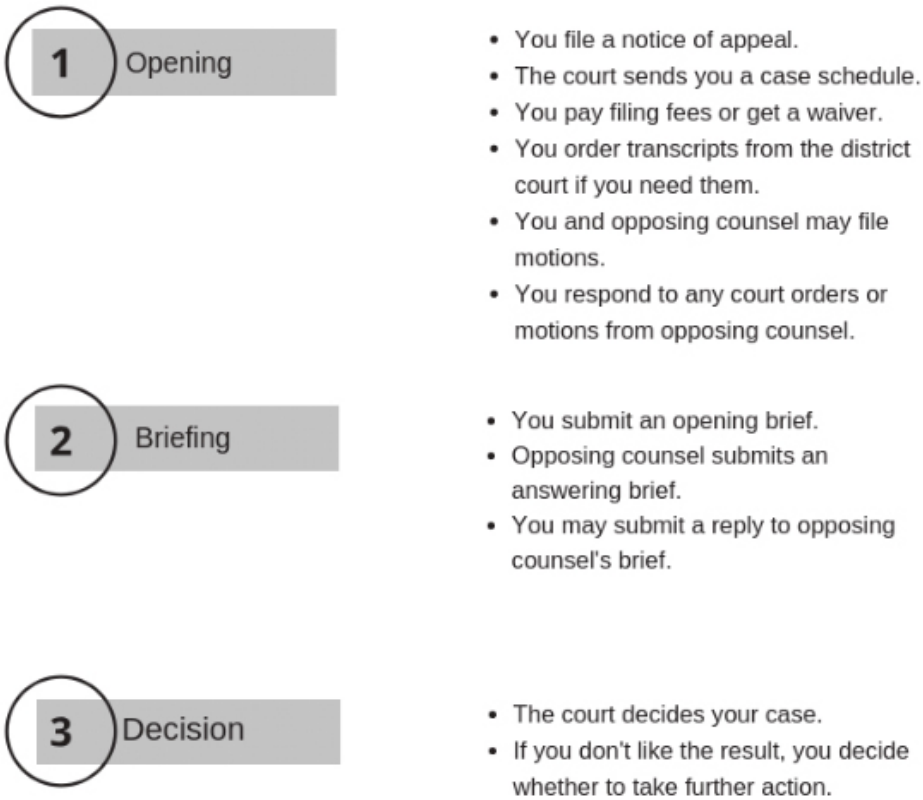
If your mailing address changes, immediately notify the court in writing, using the change of address form at the end of this guide. (You can also find the form on the court's website at www.ca9.uscourts.gov/forms.) If you don't promptly inform the court, you might not receive court notices or decisions, and you could miss court deadlines. Missing a deadline may cause the court to dismiss your case.

> **Additional Rules**
>
> This guide describes the key rules that you **absolutely must follow** during your case.
>
> You can find the complete set of court rules in the Federal Rules of Appellate Procedure (Fed. R. App. P.) and the Ninth Circuit Rules (9th Cir. R.), available at www.ca9.uscourts.gov/rules. If you would like the court to mail you a free copy of the rules, use the form "Request for Docket Sheet, Document, or Rules," at the end of this guide.
>
> Because you don't have a lawyer, the court will do its best to work with you, but it is your job to do your best to follow the rules.

HANDLING YOUR OWN CASE: THREE STAGES

This section will help you understand and manage the different parts of your case. You'll learn about the documents you must file with the court and the timing of each step.

To begin, review the chart below. It introduces the three stages of a case.



Stage One: Opening Your Case

By the time you receive this guide, you have already opened your case by filing a notice of appeal in the lower court. In response, the clerk's office created your case record and gave you a case number and a schedule.

If you haven't already paid your filing fee, you must do so now. (See "Pay Your Filing Fee or Request a Waiver," above.) This is also the time to think about ordering transcripts from the district court and filing motions in your case. This section covers both topics.

The court may dismiss your case at any time. Even if you pay your fees and get a schedule, the court may decide not to keep your case for a variety of legal reasons. If the court dismisses your case and you think the court was wrong, see "If You Don't Agree with a Court Decision," below.

Ordering Transcripts

If your appeal will refer to matters discussed during district court oral hearings, you'll need to submit a transcript of those hearings to the court of appeals. To order them, you must use a "transcript designation form" provided by the district court. Send your completed form to the district court, the court reporter, and opposing counsel.

Usually, you must pay the court reporter to prepare your transcripts. However, you may not have to pay if you have in forma pauperis (IFP) status and file a motion requesting transcripts at government expense. (See "Filing Motions," below.)

For Bankruptcy Appeals

If you are appealing a Bankruptcy Appellate Panel decision or a district court decision that began in bankruptcy court, your transcript designation form must also include any court orders or written pleadings—for example, motions and briefs filed earlier in your case—that you want the court of appeals to see.

For Habeas Appeals

If you bring a habeas appeal under Section 2254 or 2241 and you have IFP status, you are entitled to free transcripts. If you bring a habeas appeal under Section 2255, you may get free transcripts if you have IFP status and also file a motion for transcripts at government expense. (See "Filing Motions," just below.)

Filing Motions

Now is the time for you and opposing counsel to file motions with the court, if you have any. A "motion" is a legal document that asks the court to do or decide something—for instance, to waive your filing fee or give you more time to submit a document. This section describes several motions that you might make at the beginning of your case.

Motion to Proceed in Forma Pauperis (IFP)

This motion asks the court to waive your filing fee. "In forma pauperis" is Latin for "in the form

of a pauper," which simply means that you don't have enough money to pay. The motion form includes information about your finances and a sworn statement that you can't afford the fee.

The court will grant your IFP motion only if it finds that:

- you have financial need, and
- your appeal is not frivolous.

If the court denies your motion, you must then pay your fees or the court will dismiss your case. (See Ninth Circuit Rule 42-1.) You can find a blank copy of the form, called "Motion and Affidavit for Permission to Proceed in Forma Pauperis (Form 4)," on our website, and the Court will mail the form to you with any order directing you to pay your fees or file a motion to waive them. In addition, be sure to follow the instructions in "How to Write and File Motions," below.

If You Already Have IFP Status

If a district court gave you permission to proceed in forma pauperis and no one has revoked that status, you don't have to file again now. (See Federal Rule of Appellate Procedure 24(a).)

For Prisoners Filing Civil, Non-Habeas Appeals

Even if the court grants your IFP motion, you will eventually have to pay your full filing fee. (See 28 U.S. Code, Section 1915(b).) If this applies to you, we will notify you that you must complete and return a form that authorizes prison officials to collect payments on a monthly basis from your prison trust account whenever funds are available.

You may face additional costs. Even if the court gives you IFP status and waives your filing fees, you must pay any other expenses related to your appeal. These expenses may include copying, mailing, and costs you owe to your opponent if you lose your appeal. (See Federal Rule of Appellate Procedure 39.)

Motion for Transcripts at Government Expense

As discussed above, if you have IFP status and need to order transcripts from a district court, you may want to file a motion for transcripts at government expense. You should first file this motion in the district court. If the district court denies your motion, you may file the same motion in the court of appeals. (See 28 U.S. Code, Section 753(f).)

You may request transcripts at government expense only for district court hearings directly related to your appeal. The court will not authorize payment for transcripts of hearings held in other courts or on other matters.

The court will grant your motion only if it finds that:

- your appeal is not frivolous, and
- the court needs your transcripts to decide an issue related to your appeal.

At the end of this guide, you'll find a generic motion form to help you get started. Be sure to follow the instructions in "How to Write and File Motions," below.

Motion for Appointment of Counsel

You may ask the court to appoint a volunteer lawyer to represent you for free, which is called "pro bono," or at government expense in criminal and habeas cases. Pro Bono appointments are rare in civil cases, however. You will be given a lawyer only if the court decides that a lawyer is needed to help explain the issues in the case or if there are other unusual circumstances.

To ask for a lawyer, you must file a motion for appointment of counsel, and you may use the motion for appointment of counsel form at the end of this guide. In addition, be sure to follow the instructions in "How to Write and File Motions," below.

Motion for Injunction Pending Appeal

This motion, sometimes called a "motion for injunctive relief," asks the court to order someone to do something or to stop doing something while your case is in progress. For example, your motion might ask the court to stop the other side from collecting money from you until it decides your appeal. To prepare your motion, start with the generic motion form at the end of this guide and follow the instructions in "How to Write and File Motions," below.

Stage Two: Preparing and Filing Briefs

During the second stage of your case, you and opposing counsel will prepare and file written arguments. These written arguments are called briefs.

Opening brief. It is your job to write and file the first brief in your case. In the opening brief, you will:

- state the facts of your case
- tell the court what you want it to do, and
- give the legal reasons that support your appeal.

You must file your opening brief by the deadline in the schedule the clerk sent to you. (The schedule is called a "time schedule order" or a "briefing schedule," because it tells you when your briefs are due.) In some cases, briefing may be expedited, giving you and your opponent very short deadlines. (See Ninth Circuit Rule 3-3.) **If you do not file your brief on time or request an extension, the court will dismiss your case.**

Answering brief. To respond to your arguments, opposing counsel may file an answering brief. The time schedule order sets the deadline for the answering brief. If opposing counsel files an answer, they must send a copy to you.

Occasionally, an appeal does not have an opponent. This may happen, for example, if the district court dismissed your case before officially notifying defendants about the proceedings. In such cases, there is no opponent unless the court orders otherwise.

Reply brief. You are invited to reply to opposing counsel's answering brief, but you are not required to do so.

How to Write Your Opening Brief

Because you are representing yourself, you may use the informal brief form at the end of this guide. If you use the informal brief, you do not have to follow the rules that apply to regular briefs. The court will give your informal brief the same consideration as any other brief.

To prepare your brief, answer **all** the questions on the informal brief form as clearly and accurately as possible. Be sure to sign your brief on the blank line at the end.

You may include additional pages with the informal brief form, up to a total of **50 double-spaced pages**, including the form itself. If your brief is longer than 50 pages, think about whether you can make it shorter. If you need more than 50 pages to make your case, you must file a motion with your brief requesting permission for the extra pages and explaining why you need them. The court may deny permission and may require you to file a shorter brief.

For Habeas Appeals

Remember, you are allowed to bring your appeal only because a court gave you a certificate of appealability (COA) on one or more specific issues in your case. Before you write your opening brief, look closely at the court order granting your COA. It should list the specific issues on which you may appeal. You may discuss only those issues (called the "certified issues") unless you make changes to your informal brief. If you want to ask the court to consider other issues, you must do both of the following:

- ✓ Add a heading titled "Certified Issues" and then discuss the issues your COA covers.
- ✓ Add a heading titled "Uncertified Issues" and then discuss any issues your COA does not cover.

If you use these two headings, the court will read your "Uncertified Issues" section as a motion to expand the COA. For more information, read Ninth Circuit Rule 22-1(e).

Standard opening briefs must comply with additional rules. If you choose not to use the informal brief provided by the court, and you instead draft a brief using your own format, your brief must meet all the requirements of the federal rules and it must include a certificate of compliance. (You can view the certificate of compliance on the court's website at www.ca9.uscourts.gov/forms.) If your brief does not meet all the rules, we may return it to you for correction, which will delay your case. You can find the detailed rules and requirements in Federal Rules of Appellate Procedure 28 and 32 and Ninth Circuit Rules 28-1, 28-2, 32-1, and 32-3.

How to Write a Reply Brief

If opposing counsel files an answer to your opening brief, you may submit a reply brief telling the court why you think opposing counsel's arguments are incorrect. As with the opening brief, you may use the informal reply brief form at the end of this guide. If you do write a reply brief, do not simply restate the arguments in your opening brief or make new arguments. Instead use the reply brief to directly address the arguments in opposing counsel's answering brief.

You must file your reply brief within **21 days** of the date the opposing counsel serves you with its answering brief.

Tips for Writing Your Briefs

Keep these points in mind to write a better brief:

Avoid unnecessary words. Don't use 20 words to say something you can say in ten.

Write clearly. If you write by hand, make sure we can read your writing. Print using blue or black ink and don't crowd too many words into a small space.

Think things through. Do your best to make logical arguments and back them up with legal rules.

Be respectful. You can disagree without being disagreeable. Focus on the strengths of your case, not the character of others.

Tell the truth. Don't misstate or exaggerate the facts or the law.

Proofread. Before you file, carefully check for misspellings, grammatical mistakes, and other errors.

How to File a Brief

You must follow these special rules for filing briefs:

- ✓ Send the original document and **seven copies** of your brief to the court.
- ✓ Send **two copies** to opposing counsel unless you are proceeding in forma pauperis, in which case you may send just one copy.
- ✓ Attach a signed certificate of service to the original and to each copy for opposing counsel.
- ✓ Keep a copy for yourself.

If You Need More Time to File

You may ask for one extension of up to 30 days for each brief by filing a "Streamlined Request for Extension of Time to File a Brief" (Form 13), available at the end of this guide. You must file Form 13 on or before your brief's existing due date.

If you need more than 30 days, or if the court has already given you an extension, you must submit a motion asking for more time. You must file your request at least seven days before your brief is due. The motion must meet the requirements of Ninth Circuit Rule 31-2.2(b). To file your motion, use the "Motion for Extension of Time" (Form 14) at the end of this guide.

If you followed the correct procedures to ask for more time but the court doesn't respond by the date your brief is due, act as though the court has granted your request and take the time you asked for, but not more than what you asked for.

What Happens After You File

After you and opposing counsel have filed your briefs, a panel of three judges will evaluate the case. Sometimes the court decides a case before briefing is complete; if that happens, we will let you know.

Judges often decide appeals without hearing oral (in-person) arguments. To make a decision, they use the information included in the briefs and the case record. But if the court decides that oral argument would be helpful in resolving your case, we will schedule a hearing and may also appoint a lawyer to help you.

Stage Three: The Court's Final Decision

After the judges decide your case, you will receive a memorandum disposition, opinion, or court order stating the result. (A memorandum disposition is a short, unpublished decision.) If you are happy with the outcome, congratulations.

If you didn't get the final results you wanted, you may take the case further. We explain your options below; see "If You Don't Agree With a Court Decision."

HOW TO WRITE AND FILE MOTIONS

This section provides general guidelines for writing and filing motions, including motions discussed elsewhere in this guide. The motion you want to make may have special rules—for example, a different page limit or deadline—so be sure that you also read its description, as noted below.

How to Write a Motion

To write a motion for the court, we ask that you:

- ✓ Use the correct motion form at the end of this guide.
- ✓ Clearly state **what** you want the court to do.
- ✓ Give the legal reasons **why** the court should do what you are asking.
- ✓ Tell the court **when** you would like it done.
- ✓ Don't write a motion that is more than 20 pages long unless you get permission from the court.

How to File a Motion

To file your motion, you must follow the rules described in "Deliver Papers the Right Way," at the beginning of this guide. In particular, remember to:

- ✓ Send the original document to the court.
- ✓ Send a copy to opposing counsel.
- ✓ Attach a signed certificate of service to the original and to each copy.
- ✓ Keep a copy for yourself,

What Happens After You File

The path of a motion depends on the details of your case, but the following steps are common.

Opposing counsel may respond to your motion. After you file a motion with the court, opposing counsel usually has ten days to file a response. In the response, opposing counsel will tell the court why it disagrees with the arguments in your motion.

You may reply to opposing counsel's response. If opposing counsel responds, you may tell the court why you think opposing counsel's view is incorrect. If you file a reply, don't just repeat the arguments in your original motion or make new arguments. Instead, directly address the arguments in opposing counsel's response. You usually have **seven days** to file a reply with the court, starting on the day opposing counsel serves you with their response. Usually, a reply may not be longer than ten pages.

The court decides your motion. After you and opposing counsel file all papers related to the motion, a panel of judges will decide the issue and will send you an order.

How to Respond to a Motion from Opposing Counsel

Opposing counsel may submit its own motions to the court. For example, opposing counsel may file a motion to dismiss your case or to ask the court to review your case more quickly than usual. If opposing counsel files a motion, you are allowed to respond with your arguments against it. Your response may not be longer than 20 pages.

Usually, you must file your response with the court no more than **ten days** from the day opposing counsel delivers a copy of its motion to you. To get started, you may use the generic motion response form at the end of this guide.

Read More About These Motions

If you are making one of the following motions, read the section noted here:

Motion to proceed in forma pauperis in "Filing Motions," above.

Motion for transcripts at government expense in "Filing Motions," above.

Motion for appointment of counsel in "Filing Motions," above.

Motion for injunctive relief pending appeal in "Filing Motions," above.

Motion for extension of time to file a brief in "If You Need More Time to File," above.

Motion for reconsideration in "If You Don't Agree With a Court Decision," below.

Emergency or Urgent Motions

An emergency motion is a motion that asks the court to act within 21 days in order to prevent "irreparable harm"—that is, serious damage that can't be fixed after it happens. An urgent motion asks the court to act within a window of 21 days to 8 weeks. If you need emergency relief, call the Motions Unit of the court at 415-355-8020. The attorney on duty will help you figure out the best way to file the motion. Please note that a request for more time to file a document with the court will *not* qualify as an emergency or urgent motion.

Learn More About Motions

This guide covers the basics of preparing, filing, and responding to motions. You can find the detailed court rules governing motions in Federal Rules of Appellate Procedure 8 and 27, and Ninth Circuit Rule 27-1.

IF YOU DON'T AGREE WITH A COURT DECISION

If you think the court of appeals made an incorrect decision about important issues in your case, you can ask the court to take a second look. You may do this during your case—for example, if you disagree with the court's ruling on a motion. Or you may ask the court to review its final decision at the end of your case.

During Your Case: Motion for Reconsideration

If you disagree with a court order or ruling during your case, you may prepare a document stating the reasons why you think the court's ruling was wrong. This document is called a "motion for reconsideration." A motion for reconsideration may not be longer than 15 pages.

A motion for reconsideration of any court order that does not end your case is due **within 14 days** of the date stamped on the court order. In addition to these rules, please follow the general guidelines in "How to Write and File Motions," above.

After Your Case: Petitions for Rehearing

If you think the court's final decision in your case was wrong and you want to take further action, you have two options:

- File a motion for reconsideration or petition for rehearing in this court.
  - If the court decided your case in an order, then you would file a motion for reconsideration, as discussed just above. The one difference is that if your case is a civil case involving a federal official or agency as a party, you have **45 days** (instead of 14) to file the motion.
  - If the court decided your case in a memorandum disposition or opinion, then you would file a petition for rehearing, discussed below.
- File a petition for writ of certiorari with the U.S. Supreme Court.

It is most common to do these things one after the other—that is, to file a petition for rehearing or motion for reconsideration in this court and then, if that doesn't succeed, petition the Supreme Court. It is technically possible to file both petitions at the same time but that is not the typical approach. Our discussion focuses on the common path.

Court of Appeals: Petition for Rehearing

To ask the court of appeals to review its final decision in your case, you must file a petition for rehearing. Before starting a petition, remember that you must have a legal reason for believing that this court's decision was incorrect; it is not enough to simply dislike the outcome. You will not be allowed to present any new facts or legal arguments in your petition for rehearing. Your document should focus on how you think the court overlooked existing arguments or misunderstood the facts of your case.

A petition for rehearing may not be longer than 15 pages. Your petition is due **within 14 days** of the date stamped on the court's opinion or memorandum disposition. (If it is a civil case with a federal party, the deadline is **45 days**.) To learn more about petitions for rehearing, read Federal Rules of Appellate Procedure 40 and 40-1.

Most petitions for rehearing go to the same three judges who heard your original petition. It is also possible to file a petition called a "petition for rehearing en banc." This type of petition asks 11 judges to review your case instead of three. The court grants petitions for rehearing en banc only in rare, exceptional cases. If you want to find out more about petitions for rehearing en banc, see Federal Rule of Appellate Procedure 35.

U.S. Supreme Court: Petition for Writ of Certiorari

If the court of appeals denies your petition for rehearing—or if it rehears your case and issues a new judgment you don't agree with—you have 90 days from that denial order or new decision to petition the U.S. Supreme Court to hear your case. You do this by asking the Supreme Court to grant a "writ of certiorari" (pronounced "sersh-oh-**ra**-ree"). You must file your petition directly with the Supreme Court. A writ of certiorari directs the appellate court to send the record of your case to the Supreme Court for review.

The Supreme Court is under no obligation to hear your case. It usually reviews only cases that have clear legal or national significance—a tiny fraction of the cases people ask it to hear each year. Learn the Supreme Court's Rules before starting a petition for writ of certiorari and file your petition with that Court, not in the court of appeals. (You can find the rules and more information about the Supreme Court at www.supremecourt.gov.)

HOW TO GET HELP

We understand that it isn't easy to handle your own appeal. In this section, you'll find resources that may provide support if you need legal help or English-language assistance.

Asking Questions About Court Procedures

As the beginning of this guide makes clear, court employees can't give you legal advice. However, if you have a question about court procedures or rules, the clerk's office may be able to help. Here are some examples of questions you could ask the court clerk:

- Which form should I use?
- When is my form due?
- How many copies of the form should I send to the court?
- Did the court receive the form I sent?

Begin by reviewing this guide to see if it answers your question. If you don't find the answer you need, you may call the clerk's office at (415) 355-8000.

Finding Legal Help

If you need legal advice but can't afford a lawyer, you may want to consider the following options.

Court appointed lawyers. You can ask the court to appoint a volunteer lawyer to represent you for free. These appointments are rare, however. To ask for a lawyer, you must file a "motion for appointment of counsel." (See "Filing Motions," above.)

Low-cost legal services. Another possibility is to seek help from a legal aid organization in your area. You may want to begin with www.lawhelp.org, a searchable network of national nonprofit agencies that provide free or low-cost legal help to people in a variety of circumstances.

If You Need English Language Assistance

All papers you file with the U.S. Court of Appeals must be in English. At this time, the court is not able to accept, translate, or process paperwork in other languages. We realize this may present a barrier to non-native speakers of English. If you need help understanding and completing your court papers in English, we recommend that you seek legal aid as described above or find someone with strong English language skills who is available and willing to support you during your case.

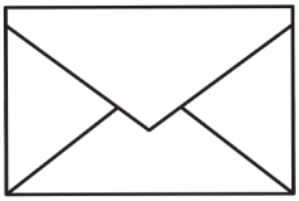
HOW TO CONTACT THE COURT

IN PERSON

95 Seventh Street
San Francisco, CA 94103
Hours: 8:30 a.m. - 5:00 p.m.
Open Monday through Friday, except federal holidays

BY PHONE

(415) 355-8000



BY MAIL

U.S. Postal Service
Office of the Clerk
James R. Browning Courthouse
U.S. Court of Appeals
P.O. Box 193939
San Francisco, CA 94119-3939

FedEx, UPS, or Similar Delivery Services
Office of the Clerk
James R. Browning Courthouse
U.S. Court of Appeals
95 Seventh Street
San Francisco, CA 94103-1526

ONLINE

www.ca9.uscourts.gov

APPENDIX OF COURT FORMS*

Motion and Affidavit for Permission to Proceed in Forma Pauperis (Form 4). Use this form to ask the court to waive your filing fees.

CJA 23 Financial Affidavit (Form 23). Use this form when asking for a fee waiver in criminal and habeas corpus appeals.

Motion for Appointment of Counsel (Form 24). Use this form to ask the court to appoint a lawyer for you.

Streamlined Request for Extension of Time to File Brief (Form 13). Complete and submit this form to receive one extension of up to 30 days to file your brief. For other requests or to ask for more time, use the Motion for Extension of Time (Form 14).

Motion for Extension of Time (Form 14). Use this form to:

- request an extension of time to file a document other than a brief
- request a first extension of time to file a brief if you need more than 30 days
- request an additional extension of time to file a brief after filing Form 13.

Generic Motion (Form 27). Use this form to request something from the court that is not covered by any of the other motion forms in this guide.

Response to Motion or Court Order (Form 28). Use this form to respond to a motion filed by the other side or a court order that directs you to respond.

Informal Brief Forms. Use these forms to write the opening and reply briefs in your case. If you use these forms, you are not required to comply with the technical requirements for Ninth Circuit briefs.

Certificate of Service (Form 25). Include a completed copy of this form with every document you send to the court and opposing counsel.

Notice of Change of Address (Form 22). Use this form if your mailing address changes.

Request for Docket Sheet, Document, or Rules (Form 29). Use this form to request a copy of the Federal Rules of Appellate Procedure, the Ninth Circuit Rules, the docket sheet, or documents for a case to which you are a party.

*For Access to All Court Forms, visit our website at www.ca9.uscourts.gov/forms

DEMETRIUS FRANKLIN, K-55108
CENTINELA STATE PRISON
P.O. BOX 921, C3-245
IMPERIAL, CALIFORNIA 92251

PETITIONER: IN PRO SE

18-56145

UNITED STATES COURT OF APPEALS

NINTHE CIRCUIT FOR THE STATE OF CALIFORNIA

DEMETRIUS FRANKLIN,
Petitioner,

vs.

RAYMOND MADDEN, WARDEN;
Respondent: /

Case No: _____
(CDC-CV-17-4281-DSF-(JC)

ENLARGEMENT OF THE RECORD AND CERTIFICATION OF EXHIBITS "A" THROUGH "J" IN SUPPORT OF CERTIFICATE OF APPEALABILITY

TO: THE HONORABLE JUSTICES OF THE NINTH CIRCUIT COURT OF APPEALS FOR THE STATE OF CALIFORNIA:

I, **Demetrius Franklin**, declare as follows:

That, exhibits "A" through "J" are true and authentic cooresponden-ing letters from lawyers, investigators, and California Innocence Project (CIP) interns that support petitioner was diligently trying to prosecute his case and he was impeded from timely filing a petition on the newly discovered evidence by CIP promise to file a habeas petition but did not do so and dropped petitioner's case two years after the discovery of the exculpatory evidence;

This information were not presented to the District Court because the District Court never issued a directive to brief the diligent pursuit argument. Therefore, the attached exhibits "A" through "J" documents are

b eing presented in support of diligent pursuit argument for the first time in the accompanying certificate of appealability;

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

Dated: September, 17th, 2018

Respectfully Submitted

Demetrius Franklin

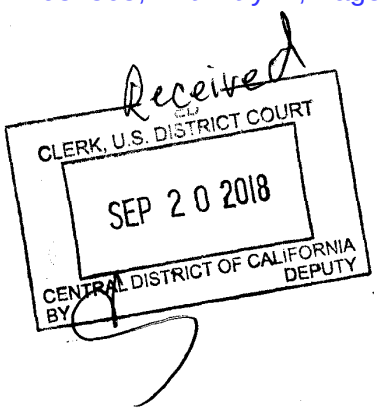
DEMETRIUS FRANKLIN

DECLARANT

PETITIONER: IN PRO SE

DEMETRIUS FRANKLIN, K-55108
CENTINELA STATE PRISON
P.O. BOX 921, C3-245
IMPERIAL, CALIFORNIA 92251

PETITIONER: IN PRO SE



UNITED STATES COURT OF APPEALS

NINTH CIRCUIT FOR THE STATE OF CALIFORNIA

DEMETRIUS FRANKLIN,
Petitioner,
vs.
RAYMOND MADDEN, WARDEN;
Respondent: /

Case No: _____
(CDC-CV-17-4281-DSF-(JC)
CERTIFICATE OF APPEALABILITY

TO: THE HONORABLE JUSTICES OF THE NINTH CIRCUIT COURT OF APPEALS FOR THE STATE OF CALIFORNIA:

The above petitioner **Demetrius Franklin** filed a motion to stay in the District Court on June 8, 2017 which the court construed as a habeas corpus petition pursuant to 28 U.S.C. § 2254 (d) challenging his state court conviction, now seek certificate of appealability from denial of habeas relief from the Central District Court entered on July 18, 2018. (Docket No. 29-30).

A habeas corpus petitioner challenging a state court judgment may not appeal a final order denying habeas corpus relief unless a circuit justice or judge issue a certificate of appealability. 28 U.S.C. § 2253 (c) (1) (A).

Background:

June 8, 2018 petitioner **Franklin's** motion to stay was construed as

a writ of habeas corpus in the Central District Court pursuant to 28 U.S.C. § 2254. Petitioner was also granted informal pauperis status and allowed to proceed in pro se.

The petition challenging petitioner's 1997 conviction in Los Angeles Superior Court (#YA029506) raising three unexhausted claims for relief: (1) The prosecution withheld exculpatory evidence in violation of Brady v. Maryland, 373 U.S. 83 (1963); (2) Petitioner is actually innocent pursuant to Cal. Pen. Code § 1473 (b) (1) (2) and to leave the unlawful conviction in place will manifest a gross miscarriage of justice Schlup v. Delo, 513 U.S. 298; McQuiggin v. Perkins, 185 L. Ed. 2d 1019; and (3) The cumulative effect of the foregoing claims demonstrates that petitioner's constitutional rights were violated and he did not receive a fair trial. (See Petition at 4-5; Meno at 9-15).

January 29, 2018 the Magistrate Judge issued a Report and Recommendation recommending that the petition be dismissed with prejudice as time barred and denied petitioner's motion to stay as moot. (Docket No. 21). On February 26, 2018 petitioner filed an application for an extension of time to file objections to the Report and Recommendation. (Docket No. 22). On march 6, 2018 the court issued an order granting petitioner until March 15, 2018 to file objections. (Docket No. 24). Petitioner did not file any objections before the deadline.

On April 4, 2018 more than two weeks after petitioner's extended deadline to file objections to the Report and Recommendation had expired-the District Court issued an order accepting the findings, conclusions, and recommendation of the Magistrate Judge, dismissing the petition with prejudice as time barred, and denying the stay motion as moot. (Docket No. 25) The District Court further denied petitioner a certificate of appealability. (Docket No. 27.).

April 20, 2018 petitioner filed a motion for reconsideration, alleg-

ing that he did not receive the court's order granting his extension to file objections to the Report and Recommendation until March 26, 2018--11 days after the deadline to file objections. (Docket No. 29.). July 18, 2018 the District Court denied petitioner's request for reconsideration, late objections to Magistrate Judge's report and recommendation and certificate of appealability.

Standard of Review:

28 U.S.C. § 2253 (c) (1) (A). "A certificate of appealability may issue...only if the applicant has made a substantial showing of the denied of a constitutional right." 28 U.S.C. § 2253 (c) (2). Such a showing is made when it is demonstrated that the district court's resolution of the issue "was debatable among jurists of reason." Miller El v. Cockrell, 537 U.S. 322, 336 (2003) the court clarified the standard for issuance of a COA:

> ...A prisoner seeking a COA needs only to demonstrate a "substantial showing of the denial of a constititutional right." A petitioner satisfies this standard by demonstrating that jurists of reason could disgree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.

Id., 123 S. Ct. at 1034, citing Slack v. McDaniel, 525 U.S. 473, 484 (2003). Reduced to it essentials, the test is met where the petitioner makes a showing that "the petitions should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further." Id., at 1039, citing Barefoot v. Estelle,

463 U.S. 880 (1983). This means that the petitioner does not have to prove that the District Court was necessarily "wrong'-just that its resolution of the constitutional claim is debatable."

> We do not require petitioner to prove, before the issuance of a COA, that some jurists would grant the petition for habeas corpus. Indeed, a claim can be debatable even though every jurist of reason might argue, after the COA has been granted and the case has received full consideration, that petitioner will not prevail. As we stated in Slack, where a district court has rejected the constitution claims on the merits, the showing required to satisfy § 2253 (3) is straight-forward; The petitioner must demonstrate that reasonable jurist would find the district court's assessment of the constitution claims debatable or wrong.

For the reason stated below, the issues on which petitioner seeks a COA are at least debatable among jurists of reason. Hence, and even though the state court's decisions' might be affirmed by this court, petitioner is entitled to a COA on the issues set forth above.

(A) The District Court's ruling on the: (i) The prosecution's withholding of exculpatory evidence; (ii) petitioner actual innocent claim and (iii) The cumulative error claim is time barred, is contrary to U.S. Supreme Court controlling authority exception and is debatable by other jurists.

(i) The U.S. Supreme Court ruling in Brady v. Maryland, supra.,. 373

U.S. 83. held that the suppression of exculpatory evidence deprives petitioner of his Sixth Amendment right to due process and his Fourteenth Amendment right to a fair trial. The U.S. Supreme Court in U.S. v. Bagley, (1985) 473 U.S. 667, 682 and Kyles v. Whiley, (1995) 514 U.S. 419 also held suppression of favorable evidence violates the petitioner's due process rights.

The evidence in question is, the prosecution gave Ms. Day leniency for her testimony against petitioner and then lied to the court and claim that she received no leniency for her testimony. However, in 2012 California Innocence Project (CIP) accepted petitioner's case and discovered in the Los Angeles Superior Court Archives records a letter written by Sheriff Deputy Captain Mauro to the court in Ms. Day's criminal case file #YA029764 a request that the court show her leniency by dismissing all fees and fines in the interest of justice while also reinstating her probation. Captain Mauro was a homicide officer and apparently had some kind of involvement in petitioner's case because the letter clearly state that Ms. Day was not given immunity deal for her involvement with Demetrius Franklin's case.[1/] This evidence without doubt demonstrates that Ms. Day was given leniency for her testimony in the Demetrius's case and the authority was trying to cover it up by injecting facts that she received no deal of immunity. This kind of astute ploy is commonly used by the prosecution's office in the state of California to cover up misconduct engaged in by the prosecuting office.

1/ Mauro was a homicide Captain apparently involved in petitioner's case and requested leniency for the State's Key witness in petitioner's case and obviously was trying to divert the truth from the fact that the officer was asking for leniency for Ms. Day because she help them in the Franklin's case when the officer asserted in the letter she was "not given immunity deal" for her testimony in Franklin's case. Why else would that be mentioned or relevant?

At trial this information could have been used to impeach Ms. Day regarding her motivation to testify against petitioner and to show her bais for testifying against petitioner was premised on her receiving leniency and not for the truth about petitioner's involvement in the King murder or because she was doing her patriarch duty. So, the evidence was material and it could have been used to argue to the jury that Ms. Day is not a credible witness causing the jury to have doubt in the honesty of her testimony.

The Brady court held that when such exculpatory evidence is not disclosed the petitioner have been denied his due process right to a fair trial and reversal is required. There are eight circuit jurists that follow Brady reasoning on this point, including our own Ninth Circuit which make this issue debatable. See U.S. v. Aviles-Colon, 536 F. 3d 1, 20 (1st Cir. 2008) (DEA reports favorable to an accused because they contradict testimony of government witnesses); U.S. v. Triumph Capital Group Inc., 544 F. 3d 149, 162 (2d Cir. 2008) (FBI agent's notes favorable to an accused because they agreed with the accused's version of events); Wilson v. Beard, 589 F. 3d 651, 660-62 (3d Cir. 2009) (evidence of government witness's history of severe mental problems favorable to an accused because it showed the witness was prescribed psychotropic drugs during the relevant time period); U.S. v. Bodkins, 274 F. App'x 294 , 300 (4th Cir. 2008) (government witness's prior statements to police favorable to an accused because inconsistent with trial testimony); Banks v. Thaler, 583 F. 3d 295, 311 (5th Cir. 2009) (certain transcripts of police interviews with government witness favorable to an accused because they could impeach witness testimony); Robinson v. Mills, 592 F. 3d 730, 737 (6th Cir. 2010) (government witness's status as paid informant in other criminal cases favorable to accused because status can be used to impeach test-

imony of government's sole witness); United States v. Bland, 517 F. 3d 930, 934 (7th Cir. 2008) (material related to an investigation into misconduct by a detective who testified favorable to an accused because material would impeach credibility); Schad v. Ryan, 595 F. 3d 907, 915 (9th Cir.) (letters on behalf of government witness urging early release in exchange for testimony favorable to an accused because it would serve to impeach witness credibility), amended by 606 F. 3d 1022 (9th Cir. 2010)

This argument and the evidence in support of it not only demonstrates a prima facie case and is debatable, it also fall under the procedural default gross miscarriage of justice standard, which will be addressed here in the following actual innocent argument, and it disputes the District court's decision that petitioner have failed to meet his burden of demonstrating a prima facie case.

(ii) Petitioner's actual innocent claim is premised on Ms. Day's recantation of her trial testimony and admitted to two legal interns that petitioner was not involved in the crime.2/ Petitioner argued that Ms. Day 's testimony at trial accusing him of being involved in the King murder was false and her recantation to the interns establish his actual innocence and the failure of the court to address the merits of this claim and correct the unlawful conviction will result in a manifestation of a miscarriage of justice, therfore, any default must be excused under Schlup v. Delo, 513 U.S. 298, 317 (1995) and McQuiggin v. Perkins, (2013) 133 S. Ct. 1924, 1933 miscarriage of justice exception.

2/ Noted Ms. Day admitted to the interns that her testimony at trial was not true but when the interns came back to Ms. Day to get her testimony on record she changed her mind because of the perjury implication and petitioner relies on the state High Court authority in In re Malone, 12 Cal. 4th 935 to support the legal interns are credible witnesses and an evidentiary hearing should have been conducted to develope the record.

The District Court's decision addressed petitioner's claim that new evidence show his actual innocence on the ground that petitioner failed to timely file the claims in a petition. The District Court reasoned that petitioner learned of the suppressed exculpatory evidence in 2015 and Ms. Day's recantation as early as 2014 and "Petitioner waited until June 6, 2017" to file the claims in a petition in the state court (Docket No. 29-30). The District Court never addressed the miscarriage of justice claims excusing any procedural bar under Schlup and McQuiggin exception standard.

This calim is debatable by jurist because the second circuit in Rivas v. Fischer, (2d Cir. 2011) 687 F. 3d 547; The Third Circuit in Muchinski v. Wilson, (3rd Cir. 2012) 694 F. 3d 1308, and Sixth Circuit in Cleveland v. Bradshaw, (6th Cir. 2012) 693 F. 626; Bell v. Howes, (6th Cir. 2012) 703 F. 3d 848 all concur in McQuiggin finding that the late use of newly discovered evidence that support actual innocence and a miscarriage of justice will occur if the actual innocence claim is not addressed is good cause to excuse a prodecural bar.

The Schlup court held that the manifestation of a miscarriage of justice will occur if an unlawful conviction is sustain, is good cause to excuse any default which the following Circuits in Henderson v. Sargent, 926 F. 2d 706, 713-14 (8th Cir.) (Procedural default excused under actual innocence exception.. .); Gozales v. Abbott, 967 F., 2d 1499, 1504 (11th Cir. 1992); Sena v. N.M. State Prison, 109 F. 3d 652, 654-55 (10th Cir. 1997) (because plea was "fundamentally unfair act" depriving petitioner of due process) and our own Ninth Circuit court in Carriger v. Stewart, 132 F. 3d 463 (9th Cir. 1997) (6-5 decision en banc) stated:

> "This habeas proceeding concerns whether Carriger has adequately shown either actual innocence that would

> foreclose imposition of the death penalty, or sufficient doubt about his guilt to overcome procedural bars and permit consideration of trial error...We now hold that we must consider Carriger's claims, and that those claims warrant a new trial," at 465-66.

These facts and authority support that the District Court's decision did not address the miscarriage of justice exception claims on the merits and ruled the claims are procedurally barred, is contrary to controlling law Schlup and McQuiggin and this court can find the claims debatable on the questions whether petitioner presented strong enough new evidence to demonstrate his actual innocence Carriger, whether the suppression of the leniency evidence had any bearing on petitioner's actual innocence and whether a constitutional fundamental miscarriage of justice will occur.

(iii) The cumulative effects of trial errors is sufficiently prejudicial to require reversal, for each error reinforces the harmful effects of the other. (See e.g., United States v. Federick, (9th Cir. 1996) 78 F. 3d 1370; United States v. Castro, (9th Cir. 1989) 887 F. 2d 988, 998.

A cumulative error that affected fundamental fairness, the constitution entitles the petitioner to a fair trial, not a perfect one, Rose v. Clark, 478 U.S. 570, 92 L. Ed. 460, 106 S. Ct. 3101 (1986); Roger, 89 F. 3d at 1338. And courts must be careful not to magnify the significance of errors which had little importance in the trial setting. United States v. Ward, 190 F. 3d 483 (6th Cir. 1999). This requires an examination of the entire records, paying particular attention to the nature and number of alleged errors committed; their interrelationship, if any, and their combined effect; how the trial court delt with the errors, including the effic-

acy of any remedial measures; and the strength of the prosecution's case. United States v. Fernandez, 145 F. 3d 59, 66 (1st Cir. 1998); United States v. Thomas, 93 F. 3d 479 (8th Cir. 1996); United States v. Frederick, 78 F. 3d 1370 (9th Cir. 1996); Haddon, 927 F. 2d at 949. To warrant relief, the reviewing court must determine that the effect of the errors consider together, could not have been harmless. United States v. Oberle, 131 F. 3d 1414 (10th Cir. 1998). Put another way, a court must be firmly convinced that but for the error, the outcome of the trial probably would have been different. Santos, 201 F. 3d at 965; United States v. Thorton, (7th Cir.) 1 F. 3d 149, 156 (3d Cir. 1993); Thomas v. Hubbard, (9th Cir. 2001) 273 F. 3d 1164; Donnelly, 416 U.S. at 643 the errors "so effect the trial with unfairness as to make the resulting conviction a denial of due process." McKinney v. Rees, (9th Cir. 1993) 993 F. 2d 1378, 1385, Whelchel v. Washington, 232 F. 2d 1197; Matlock v. Rose, 731 F 2d 1236 ("Errors of that might not be so prejudicial as to amount to a deprivation of due process when considered alone, may cumulatively produce a trial setting that is fundamentally unfair." United States v. Jones, 157 U.S. App. D.C. 158, 482 F. 2d 747 (D.C. Cir. 1973); Newson v. United States, 31 F. 2d 74 (5th Cir. 1962); United States v. Moroney, 373 F. 2d 408 (3rd Cir. 1967); United States v. Hanna, (9th Cir. 2002) 293 F. 3d 1080; United States v. Gonzalez, Maldonado, 115 F. 3d 9, 18, (1st Cir. 1997).

As stated in arguments (A) (i) and (ii) herein, the cumulative prejudicial effects from the state erroneous suppressing exculpatory evidence supporting Ms. Day received leniency for her testimony and Ms. Day's recantation admitting to legal interns that petitioner was not involved in the King murder and she did not testify truthfully, are substantial constitutional errors effecting due process and fundamental fairness of petitioner's trial. Therefore, this court should find that cumulative errors occurred

and the fact that over six jurists agree that cumulative errors of constitutional dimension warrant reversal, support the claims herein this certificate of appealability are debatable, including this cumulative error claim.

B. The District Court's decision that petitioner did not diligently seek to prosecute his case--investigate the case and the court's failure to rule on the extraordinary claim, is contrary to the facts, law, and is debatable.

January 13, 1999 petitioner was denied review in the California Supreme Court on direct appeal. After petitioner's direct appeal was denied petitioner's mother **Mary E.** Reed retained attorney **Frank G. Prantil** in 2000 (See Attached Exhibit "A")[3/] From 2000 to 2008 attorney **Prantil** had petitioner's trial records and did nothing with the case. Petitioner was unable to contact attorney **Prantil** because High Desert prison officials would not allow correspondence with attorney **Prantil** because he had been disbarred as early as 1986 (See Attached Exhibit "B"). However, May 7, 2008 attorney **E. Bonham** contacted petitioner and informed him that attorney **Frank Prantil** passed away October 27, 2006. (See Attached Exhibit "C") Petitioner wrote attorney **Bonham** requesting his case file, records, trial transcripts and attorney **Bonham** sent petitioner all of his paper work and case file he was able to locate. (See Attached Exhibit "D") **Toni Tusken** and friends retained **James N. Pennington** investigation service to investigate the **Willie Ray King** case. Investigator **Pennington** learned that a **Kelly** and her husband both witnessed the assault in the early morning hours. In addition, **Lushana Dorsey**, who was living in **Kanas** had came that evening to stay in her grandmother's house, observed the assault, which she clearly identified as not being petitioner and she were willing to testify. (See Attached Exhibit "E") November 4, 2010 investigator **Pennington** referred petitioner's case to California Innocence Project. (See Attached Exhibit "F") April 29, 2011

3/ My family initially lost the trial records trying to forward them to another attorney and attorney Prantil had to help petitioner secure another copy of the trial records. (See Ex. "A")

petitioner received a letter from Elaine Morinelli informing him that James N. Pennington had passed away. (See Attached Exhibit "G") While under review by California Innocence Project. Petitioner's friend Shannon Johnson linked up with Mike Jackson and Carrie Stenger July 2, 2012. Mr. Stenger contacted William J. Genego and explained the case to him. Mr. Genego was very interest in the case and requested petitioner send him the case file which petitioner complied. After reviewing the case file Mr. Genego advised petitioner to stay with CIP. (See Attached Exhibit "H") Petitioner's family hired investigator Robert Manm to locate Ms. Day and petitioner asked CIP intern Jeff was that okay. (See Attached Exhibit "I") in a declaration filed with the Superior Court on 2/3/2016 in support of a motion to open sealed documents attorney Raquel Cohen for CIP explained how from February 2, 2015 CIP was trying to obtain the Captain Mauro's letter and was given the run around from 2/2/15 to 2/3/16 when the motion was filed (See Attached Exhibit "J") and the letter was finally turned over to CIP approximately April 2. 2016. Also in a letter from an intern at CIP in 2016 the intern informed petitioner they was going to conduct a hearing on his case April 1, 2016 and they were probably going to draft a habeas corpus petition on the Brady newly discovered evidence. (See Attached Exhibit "K") there was another CIP intern that wrote petitioner and basisly informed petitioner before the habeas process in his case is completed an attorney at CIP where going to file a motion for discovery. (See Attached Exhibit "L") The CIP did not draft a habeas writ but dropped petitioner's case March 14, 2017. Petitioner sought out legal assistance and retained Ahrony Graham Zucker to prepare a habeas corpus petition using the newly discovered information which was prepared and filed June 2017. (See Attached Exhibit "M").

The letter of these facts pertaining to the suppression of the Mauro letter. Ms. Day's recantation and CIP filing the habeas petition were

presented to the District Court and the entire factual circumstances demonstrates petitioner have been diligently trying to prosecute his case since the year of 1999, but his family lost the trial records in the mail trying to find an attorney to represent petitioner on collateral appeal. Also due to attorney disbarment, passing away, and investigator passing away and the attorney having possession of the petitioner's trial records for over 10 years have impeded petitioner's affords to discover relevant information and to timely prosecute this case. When Ms. Day recanted her trial testimony to CIP interns in 2014 and the interns discovered the leniency letter in 2016. CIP lead petitioner into believing they were going to file a writ of habeas corpus using that information for two years. Petitioner demonstrated to the District Court Court that extraordinary circumstances stood in his way of filing a petition for two years and after petitioner learned that CIP was not going to file the habeas petition, petitioner's family retained legal assistance he could afford to help him file the petition in pro se using the newly discovered information in June 2017.

Petitioner contends that the circumstances of his case were extraordinary and the District Court should have granted him equitable tolling. That under the Lewrence v. Florida, 549 U.S. 327, 337 (2007) standard "To be entitled to equitable tolling, Lewrence must show '(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstances stood in his way' and prevented timely filing"; Petitioner has shown that he have since 1999 been trying to diligently prosecute his case and CIP stood in his way when he discovered the new information proving his actual innocence and the Institution mislead him for two years into believing they was going to file a writ of habeas corpus on his behalf. See Socha v. Boughton, 763 F. 3d 674, 685, 687-88 (7th Cir. 2014) (various impediments, described infra note 81, combined to constitute "extraordinary circumstance[s]"

warranting equitable tolling; diligence criterion is satisfied because petitioner's efforts to obtain court file in counsel's possession began "long before his one-year period expired and continu[ed] at regular intervals until he succeeded[.]" Nickels v. Conway, 980 F. ed App. 54, 57-59 (2d Cir. 2012) (vacating district court's dismissal of petition for untimeless and remanding for further consideration of issue of "diligence in light of petitioner's unique circumstances.") Petitioner's family loosing the trial records in 1999 in their efforts to find an attorney to represent petitioner on collateral appeal. Petitioner's family hired an attorney who had to retrieve a copy of the trial records and the attorney they hired turned out to be an attorney that was disbarred and scheming people and he held on to petitioner's trial records for ten years until he died and his estate turned over the records in 2008. This was "extraordinary circumstances" not in petitioner's control and the circumstances mentioned regarding CIP misleading conduct makes this case debatable under Lewrence standard, Socha and Nickels authority.

C. Failure to exhaust state remedies does not deprive an appellate court jurisdiction to consider merits of a habeas corpus application.

In Granberry v. Geer, 481 U.S. 129 (1987) in a unanimous decision the U.S. Supreme Court reasoned that federal courts have the discretion either to overlook the rule requiring exhaustion in state court or to insist on compliance with it, Id., at pp,. 131-133 If the state raise the nonexhaustion defense, "The court should determine whether the interest of comity and federalism will be better served by addressing the merits or by requiring a series of additional state and district court proceedings before reviewing the merits of the petitioner's claims," at p. 134.

Other Circuit courts follow the Granberry decision. In the Sixth Circuit Weaver v. Foltz, (6th Cir. 1989) 888 F. 2d 1097, 1100 read Granberry empower the courts of appeals to mandate "prompt federal intervention" in "extraordinary cases"; stating: "Granberry has circumscribed the exhaustion requirement by allowing federal courts to use their sound discretion in deciding the waiver issue and to make exceptions in the application of the mixed petition doctrine of Rose v. Lundy."

Here in this case, petitioner filed a motion to stay in the District Court listing several unexhausted claims petitioner wanted to exhaust in the state courts.[4/] Although petitioner had no pending application in the

---

4/ It should be noted that, in anticipation of the court granting the motion to stay, petitioner filed a petition in the California Supreme Court to exhaust the claims raised in the motion to stay.

District Court, the District Court construed the motion to stay as a habeas corpus petition. Rather than dismissed the motion to stay on the grounds of lack of jurisdiction, the District Court entertained the Brady claim the motion to stay listed and dismissed the petition as follows: (1) "... with prejudice because petitioner's claims are time barred by the statute of limitation; (2) the motion to stay is denied as moot; and (3) the clerk shall enter judgment accordingly." (Docket No. 25).

Petitioner cite Granberry solely for it's proposition that the U.S. Supreme Court ruled federal courts have discretion to overlook the rule requiring exhaustion in state courts and petitioner cite Weaver solely for it's proposition that Granberry empower courts of appeals to mandate "promp federal intervention" in "extraordinary cases." Unlike Granberry and Weaver the respondent attorney was never given notice of the proceedings and was never given an opportunity to depose the motion to stay, construed as a writ with a nonexhaustion defense or waive the exhaustion requirement.

As such, petitoner have quickly learned that his filing of the motion to stay in the District Court has created a procedural dilemma for himself in his efforts to preserve his rights to proceed in federal courts on the newly discovered evidence that demonstrates his actual innocence. Therefore petitioner request this court to issue this certificate of appealability on the following grounds: (1) The newly discovered evidence petitioner have discovered is strong enough under the relevant law to support his actual innocence claim. That no reasonable jury or trier of facts would find **Ms. Day** credible after hearing evidence that she potentially made a deal with the state for her testimony and recanted her trial testimony to two CIP interns and admitted petitioner was not involved in the **King** murder. And, it is reasonable that the jury would not have found petitioner guilty if **Ms. Day** would have testified truthfully in the initial trial and the only

reason petitioner have not been granted habeas relief in the state Superior court and appellate court is, because **Ms. Day** is afraid of being penalized for perjury, so she will not sign an affidavit admitting that she lied in court in her testimony in the **Franklin's** case for leniency.[5/] This evidence clearly show that this is an extraordinary case requiring federal judiciary intervention and that the procedural default and failure to exhaust should be set aside and the motion to stay should be reinstated and granted so that the state Supreme Court can pass on the claims presented herein and exhausted them; and

(2) If this court does not find that the circumstances described herein are extraordinary, and warrant relief under **Granberry** and **Waever**, then this court should nevertheless issue the certificate of appealability on the grounds that: (i) The District Court lacked jurisdiction to hear the motion to stay because there was no case pending in that court on the criminal matter the motion referred to. Therefore, the District Court should have dismissed the motion for lack of jurisdiction; and (ii) because the new evidence demonstrates petitioner's actual innocence and is strong enough to excuse any default and the claims supported by the new evidence had not been exhausted, the District Court should have dismissed the petition without prejudice, clearing the way so when petition do exhaust the claims he could proceed in federal court. The District Court's ruling on the procedural issue pertaining to the newly discovered evidence and denial set the stage for the District Attorney to argue any petition filed by petitioner in the

---

5/ **The** In re Malone, supra **.,. 12 Cal. 4th 935 case support that the two legal intern's affidavits' that Ms. Day confessed to them she lied in court about Franklin being involved in the King murder is credible and the State court is required to conduct an evidentiary hearing to develope the record.**

district court containing said claims is delayed and successive and petitioner must seek a successive application pursuant to 28 U.S.C. § 2244 (b) (2) in the Ninth Circuit Court of Appeals requesting permission to file a successive petition in the District Court. The reviewing Court of Appeal conditions under § 2244 (b) (2) (A), which the court will be concern with, look solely to temporal issues relating to the availability of the constitutional authority invoked, not to any assessment regarding the strength of the petitioner's case. Therefore, in petitioner's case the court of appeal will only be concern with when petitioner learned of the newly discovered evidence and did petitioner meet the procedural requirements of the state court and the AEDPA limitation. Petitioner's actual innocence will be irrelevant and because petitioner learned of the newly discovered evidence supporting his actual innocence claims in 2014 and 2015 but did not file his claims in the state court until 2017 the successive application will be denied on the basis that petitioner failed to diligently and timely file the claims in the court.[6/] The manifestation of a gross miscarriage of justice will occur, but will fall on deft ears if this court does not act in the interest of justice and grant this certificate of appealability and either find the District Court erred in it's ruling on the motion to stay, the petition, and reverse the judgment. That this case is "extraordinary" and warrant relief under Granberry's exception and this court should direct the District Court to grant the motion to stay the habeas proceeding pending exhaustion of state remedies and permit petitioner to file an amended petition containing the exhausted claims based on the newly discovered evidence,

---

6 / **Noted: Because petitioner had no clear contract with CIP that says they were going to file a timely writ in his case using the newly discovered information, the courts will rule CIP was under no obligation to file a timely writ and petitioner failed to act on the information in a timely fashion.**

or as the alternative, order the District Court to retract it's order dismissing the case with prejudice and to dismiss the case without prejudice for failure to exhaust there by permitting the case to fall under Slack v. McDaniel, supra.,. standard which states: "[A] habeas petition which is filed after an intial petition was dismissed without adjudication on the merits for failure to exhaust state remedies is not a 'second or successive' petition as that term is understood in the habeas corpus context..." And, petitioner can return to the federal District Court after exhaustion on an initial petition.

CONCLUSION

For the reasons set forth and in the interest of justice this court should grant this certificate of appealability application.

Dated: September, 17th, 2018

Respectfully Submitted

Demetrius Franklin

DEMETRIUS FRANKLIN

PETITIONER: IN PRO SE

(See Attached Exhibit "A")

FRANK G. PRANTIL
Attorney at Law
Penthouse Renaissance Tower
801 K Street
Sacramento, CA 95814
(916) 446-4669

August 17, 2000

DEMETRIUS FRANKLIN K55108
C-5-222U
P.O. Box 3030
Susanville, CA 96127

Dear Mr. Franklin:

Thank you for your letter! I am sending a copy of the first letter I mailed you to your parents, and I will continue to send copies of correspondence between us to them, unless you direct me otherwise.

You are on the right track as far as the lock-downs are concerned. However, we need to get moving now in order to stop the federal clock from running. In NINO v. GALAZA (9th Cir. 1999) 183 F.3d 1003, the United States Court of Appeals for the 9th Circuit held that all time from the first filing of a state petition with the superior court to the denial of the same habeas petition by the state supreme court is excluded from the one year limitation period. It is my suggestion that the review be conducted immediately, and if I find grounds to litigate, we should file a bare bones petition and ask for a stay of the proceedings in order to complete our investigation. With the filing of this bare bones petition at the state superior court level, we will have stopped the running of the federal clock. But we need to stop it as soon as possible.

I have a minimum fee of $775. Your parents need to mail me the transcripts, briefs, and opinion by the court of appeal. They can count of the pages involved and multiply by $1.50 to determine what my review fee will be. Upon receipt of the necessary fee and paperwork, I will send you a review fee agreement and start the review of your case.

Sincerely yours,

FRANK PRANTIL

cc: Mary Reed

FRANK G. PRANTIL
Attorney at Law
Penthouse Renaissance Tower
801 K Street
Sacramento, CA 95814
(916) 446-4669

November 28, 2000

DEMETRIUS FRANKLIN K55108
C-5-221
P.O. Box 3030
Susanville, CA 96127

Dear Demetrius:

Thank you for your letter. Today I telephoned the court of appeal and was told that your petition for review was denied on January 13, 1999. What this means is that we will have a problem once we get to federal court because of the antiterrorism law. It was not your fault that the transcripts were lost, but I am not sure that a federal court will rule that time was tolled because your family lost the transcripts. The time you have been in the SHU or on lockdown, or not able to get to the law library to work on your case, or time lost because you were in transit, or your transcripts did not get to you because you changed locations, should be acceptable as a circumstance beyond your control.

I have a favor to ask:

On December 15, 2000, I will be appearing for oral argument before the United States Court of Appeals for the 9th Circuit, on three different appeals from denials of habeas petitions filed in federal district court. The facts and law of these cases are entirely different. I will be appearing before the same panel of judges, and at the same time: 9:00 am. This is an amazing coincidence. Because these appeals will probably be my clients' last shot at justice I ask your help. I ask that on the morning of December 15, 2000, you send positive thoughts to San Francisco. I ask that you pray for me, that I may enlighten the process and obtain Justice. I ask that you think positive thoughts about the panel, and pray that they will be open to my arguments and reverse the decisions in these three separate and different cases.

Incidentally, all three of these cases deal with the antiterrorism law. I am contending that the law is unconstitutional and I have very good arguments that hopefully the panel of

judges will adopt. So, put in some positive thoughts. We have a lot of people praying.

Sincerely yours,

FRANK PRANTIL

cc: Mary Reed

DEMETRIUS FRANKLIN K55108
D-4-106
P.O. Box 3030
Susanville, CA 96127

Dear Demetrius:

Thank you for your letter!

I get tired of apologizing for delays. As you know my first obstacle was the fact that my son was hospitalized for about a month. After that my wife became sick for three weeks, which burdened me to help out on the ranch with the Llamas. I lost time due to moving my office on March 1st. And right after the move I was in an automobile accident, totaling my car, which laid me up for a couple of days with bruises and sore muscles. However, I am now on track and believe I am through a difficult time. Please God!

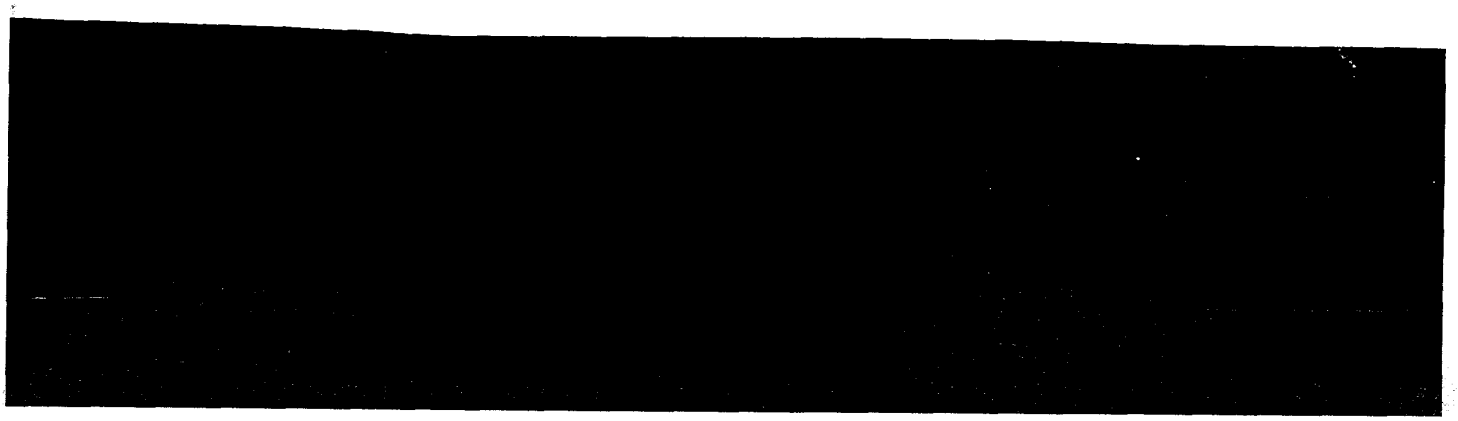
Reasonable doubt only applies at trial. After conviction a reviewing court, either on direct appeal or on habeas, reviews the evidence in the light most favorable to sustain the conviction. The fact that witnesses differ is not grounds to win on appeal or in habeas. Therefore, the conflict between Evans and Day, doesn't have any legal significance.

As to the fees, I will need at least $8,500 as a down payment with monthly payments of $500, **without a miss**, for the balance. I will also request two-thirds down, with payments for the balance as we litigate at the district court, and at the court of appeals levels. And as long as your family has been making payments without a miss, I will be glad to continue to accept payments.

Sincerely yours,

FRANK PRANTIL

cc: Mary Reed



(See Attached Exhibit "B")

IN RE: Frank George PRANTIL on Disbarment.

Supreme Court of California,In Bank.

IN RE: Frank George PRANTIL on Disbarment.

No. S006817.

Decided: March 06, 1989

Frank George Prantil, in pro. per. Diane C. Yu, Oakland, Truitt A. Richey, Jr., Major Williams, Jr., and Mara J. Mamet, San Francisco, for respondent.

This is a proceeding to review the recommendation of the Review Department of the State Bar Court that petitioner Frank G. Prantil be disbarred. The review department adopted unanimously the findings and conclusions of the hearing panel, which recommended disbarment following petitioner's conviction of forgery by uttering. (Pen.Code, § 470.)

Petitioner seeks to collaterally attack the validity of his forgery conviction by reasserting due process claims previously raised in the criminal proceedings, rejected in the Court of Appeal and denied review by this court. As explained further below, we conclude that such collateral attacks are expressly prohibited by Business and Professions Code section 6101,[1] which makes the record of petitioner's conviction conclusive evidence of his guilt for purposes of disciplinary proceedings. We also conclude that petitioner's challenge to the constitutionality of section 6101 is without merit. Finally, after a review of the circumstances in aggravation and mitigation, we conclude that disbarment is warranted on the facts of this case and, accordingly, we adopt the review department's recommendation.

I. FACTS

Petitioner was admitted to practice in 1964. In February 1979, we ordered that petitioner be suspended from the practice of law for six months after a State Bar hearing panel found that he intentionally misrepresented a

client's wishes concerning representation and wrongfully withheld a retainer fee received as a result of such misrepresentations. (Prantil v. State Bar (1979) 23 Cal.3d 243, 247, 152 Cal.Rptr. 351, 589 P.2d 859.) We stayed execution of the suspension, and placed petitioner on probation for four years subject to his compliance with specified conditions. (Ibid.) Petitioner was still on probation when, in September 1981, he committed the acts that led to his conviction for forgery.

In early 1981, petitioner's client, Melvin Goins, introduced him to Daryl Bell. Bell subsequently asked petitioner to represent him on a charge of bank robbery and petitioner agreed, quoting Bell a fee of $10,000 for the representation. Shortly thereafter, petitioner received a call from a woman purporting to be Bell's mother. She asked petitioner to help her negotiate a $53,500 escrow check, from which petitioner would receive his $10,000 fee. Petitioner agreed, and accompanied the woman to his bank, where he introduced her to the teller as his client's mother and assisted her in depositing the check (payable to Joanna F. McKnight) into his trust account. It was later determined that the woman had used a false identification to establish her identity as Joanna McKnight, that the check had in fact been stolen from an escrow company,[2] and that the agent's signature on the check had been forged.

Petitioner was charged with forgery by uttering under Penal Code section 470, which makes it unlawful to pass or attempt to pass as true and genuine a forged instrument with knowledge of the forgery and with specific intent to defraud. At trial, petitioner argued that he knew nothing about the forgery and that he had helped the woman deposit the check merely for collection purposes.

In order to establish petitioner's criminal intent, the prosecutor introduced evidence indicating that: (1) Goins and Bell were involved in what the Court of Appeal described as "a simple plan . [to] forge[ ] trust deeds, name[ ] themselves or someone acting on their behalf as beneficiary and then [sell] the trust deeds pocketing the funds"; (2) petitioner or someone in petitioner's office had prepared four of the trust deeds later forged and recorded by Goins and Bell, two of which encumbered property owned by Joanna F. McKnight, a 78– to 80–year–old woman whose sole asset was the encumbered property; (3) petitioner was informed on several occasions that the instruments were forged, and that Bell and Goins appeared to be involved in a scheme to defraud the property owners; and (4) petitioner helped Bell's "mother," a woman 40 to 45 years of age, deposit the escrow check despite what the Court of Appeal called the "startling coincidence" that she had the exact same name as the 78– to 80–year–old woman whom petitioner had been informed was a potential victim of the forgery scheme. The jury accepted the prosecutor's view of the evidence, and found that petitioner passed the escrow check with knowledge that it was a forgery and with specific intent to defraud.

Petitioner appealed the conviction arguing, inter alia, that there was insufficient evidence on which to convict him and that he was denied due process based on (1) erroneous jury instructions,[3] (2) refusal by the prosecutor to grant judicial-use immunity to a potentially exonerating witness, and (3) a 20–month preindictment delay. The Court of Appeal rejected each of petitioner's contentions (People v. Prantil, supra, 169 Cal.App.3d 592, 215 Cal.Rptr. 372), and we denied his subsequent petition for review. The United States Supreme Court denied certiorari (Prantil v. California (1986) 475 U.S. 1067, 106 S.Ct. 1381, 89 L.Ed.2d 606).

Having exhausted all avenues of direct appeal, petitioner thereafter sought relief by means of a petition for habeas corpus in federal district court, alleging constitutional violations identical to those previously raised and rejected in his appeal. The district court summarily denied the petition, and the Ninth Circuit Court of Appeals, in a published opinion, affirmed. (Prantil v. State of California (1988) 843 F.2d 314.)

The present disciplinary proceeding commenced when, on receipt of petitioner's record of final conviction, we referred the matter to the State Bar for a hearing and recommendations pursuant to section 6102.[4] Following a hearing, the State Bar referee recommended disbarment, and the review department unanimously adopted the recommendation.

II. DISCUSSION

A. Collateral Attack on the Forgery Conviction

Petitioner asserts that the State Bar's recommendation is based on a conviction obtained in violation of his due process rights. He attempts to attack his forgery conviction collaterally by raising claims identical to those previously rejected in both the California Court of Appeal and the United States Court of Appeals, and denied review by this court as well as the United States Supreme Court.[5] Because we conclude that petitioner is expressly precluded from such collateral attack by the terms of section 6101,[6] we do not reach the merits of his claims.

In In re Kirschke (1976) 16 Cal.3d 902, 129 Cal.Rptr. 780, 549 P.2d 548, we faced a situation virtually identical to the one presented here. The petitioner was convicted of a crime involving moral turpitude and the State Bar recommended disbarment. He made no effort to contest our finding of moral turpitude, or to offer mitigating circumstances in his own defense. Instead, he sought "to reassert his innocence" of the crime of which he was convicted. (Id. at p. 904, 129 Cal.Rptr. 780, 549 P.2d 548.) We concluded the petitioner was "expressly precluded from this course of action by section 6101, which provides that in a proceeding to disbar an attorney because of a criminal conviction, 'the record of conviction shall be conclusive evidence of guilt of the crime of which he has been convicted.' Petitioner not only received a fair and lengthy trial by a jury of his peers and subsequent appellate review, but he also obtained a further exhaustive evaluation of his contentions when he filed a habeas corpus petition. Petitioner's attempt in this proceeding to further collaterally attack his conviction must be rejected." (Ibid., italics added.)

Here, as in Kirschke, supra, 16 Cal.3d 902, 129 Cal.Rptr. 780, 549 P.2d 548, petitioner had more than ample opportunity to litigate any perceived error in the proceedings below, and a review of the case law reveals that the conclusive presumption of guilt applies whether the convicted attorney seeks to "reassert his innocence" or merely to relitigate a claim of procedural error. (See In re Alkow (1966) 64 Cal.2d 838, 841, 51 Cal.Rptr. 912, 415 P.2d 800 [§ 6101 precludes consideration of alleged error in manslaughter proceedings]; In re Rothrock (1944) 25 Cal.2d 588, 592–593, 154 P.2d 392 [petitioner precluded from challenging underlying conviction on basis of mental state at time guilty plea entered].) Accordingly, we conclude that section 6101 precludes petitioner's attempt to reassert his due process claims.

Petitioner argues in the alternative that if we conclude section 6101 excludes his claim of constitutional error, then the statute itself is unconstitutional because it deprives him of his right to be heard at an "appropriate time" and in a "meaningful manner" as required under the due process clause of the United States Constitution. As explained below, petitioner's claim is without merit.

In In re Collins (1922) 188 Cal. 701, 707–708, 206 P. 990, we upheld against a due process challenge the automatic disbarment provisions of former sections 287, subdivision 1, and 289 of the Code of Civil Procedure. At the time, those sections provided not only that guilt was to be conclusively presumed from the record of conviction of a crime involving moral turpitude, but also that disbarment was to be ordered upon

final conviction without notice or opportunity to be heard before entry of the disbarment order. We stated: "[W]ith regard to a disbarment under subdivision 1, no notice or order is required or provided for. The only notice which the accused attorney is to have under that subdivision is that which he receives on the trial of the criminal charge of which he has been convicted. The law informs him that one of the results of his conviction will be his subsequent disbarment in the manner provided by the Code of Civil Procedure. This answers the constitutional requirement that he shall have due process of law before he can be deprived of his right to practice. The entire matter is involved in the criminal proceeding." (188 Cal. at p. 708, 206 P. 990, italics added).

Former sections 287, subdivision 1, and 289 of the Code of Civil Procedure were later incorporated into sections 6101 and 6102, respectively, of the Business and Professions Code. Section 6102 was amended in 1955 to eliminate the automatic disbarment provision and to provide for notice and opportunity to be heard on the question of discipline prior to the final order of disbarment. However, the conclusive presumption of guilt for the underlying offense has been retained. Our answer to the constitutional claim of the petitioner in Collins, supra, 188 Cal. 701, 206 P. 990, thus applies to petitioner here. Petitioner was afforded full and meaningful opportunity to contest the validity of his underlying conviction by means of direct appeal and habeas corpus. He is not constitutionally entitled to raise his claims for a third time in these disciplinary proceedings. (See In re Gross (1983) 33 Cal.3d 561, 567, 189 Cal.Rptr. 848, 659 P.2d 1137 ["[N]either constitutional nor policy reasons" preclude the Legislature from giving conclusive effect to convictions based on nolo contendere pleas in bar disciplinary proceedings].) We perceive no constitutional infirmity in the conclusive presumption provision contained in section 6101.

Finally, petitioner argues that in his particular case he was denied meaningful review on appeal because both the California Court of Appeal and the Ninth Circuit "misstated" his arguments, "misquoted" the law, and generally misunderstood the significance of his constitutional claims. Such assertions amount to little more than a back-door attempt to obtain consideration of the legal merits of a Court of Appeal decision we expressly declined to review in October 1985. We must, in accordance with section 6101, decline to reach his claims of error in the criminal proceeding.

B. Appropriate Discipline

Having concluded petitioner's conviction is conclusive evidence of his guilt of the crime of forgery, we turn now to the question of appropriate discipline. Although we exercise our independent judgment in determining whether the facts and circumstances warrant a recommended disbarment, we nonetheless afford great weight to the recommendations of the State Bar. (In re Ford (1988) 44 Cal.3d 810, 815, 244 Cal.Rptr. 476, 749 P.2d 1331; In re Strick (1987) 43 Cal.3d 644, 653, 238 Cal.Rptr. 397, 738 P.2d 743.) Accordingly, petitioner bears the burden of proving that those recommendations are erroneous or unlawful. (In re Gross, supra, 33 Cal.3d 561, 568, 189 Cal.Rptr. 848, 659 P.2d 1137; In re Schwartz (1982) 31 Cal.3d 395, 399, 182 Cal.Rptr. 640, 644 P.2d 833.) Additionally, we note that petitioner's crime of forgery is a serious one involving moral turpitude (In re Bogart (1973) 9 Cal.3d 743, 748–749, 108 Cal.Rptr. 815, 511 P.2d 1167; In re Hallinan (1954) 43 Cal.2d 243, 247–248, 272 P.2d 768) and that disbarment is the rule rather than the exception following conviction for such crimes (In re Silverton (1975) 14 Cal.3d 517, 523, 121 Cal.Rptr. 596, 535 P.2d 724; Bogart, supra, 9 Cal.3d at p. 748, 108 Cal.Rptr. 815, 511 P.2d 1167).

At his disciplinary hearing, petitioner failed to introduce substantial evidence of mitigation to justify discipline short of disbarment. Instead, he relied almost entirely on the contention that he was unjustly convicted of the

underlying offense. The only evidence of mitigation offered at the hearing came in the form of conclusory statements by petitioner. These included assertions that: (1) "no one was harmed" by his conduct (presumably because the forgery was discovered before the funds from the check could be withdrawn); (2) he has suffered great personal hardship as a result of his conviction and imprisonment, but nonetheless "endured" through it all; (3) he acted in good faith throughout the disciplinary proceedings; and (4) considerable time has passed since his crime was committed. The referee concluded that such assertions were insufficient to warrant leniency, particularly in light of petitioner's record of prior discipline. (See § 6102, subd. (d) ["In determining the extent of the discipline to be imposed in a proceeding pursuant to this article any prior discipline imposed upon the attorney may be considered"].)

We are not persuaded that the referee's conclusion, which was unanimously adopted by the review department, is erroneous. In arriving at a proper discipline consistent with the purpose of disciplinary proceedings (i.e., to protect the public from attorneys unfit to practice), we must balance all relevant factors, including mitigating circumstances, on a case-by-caseee basis. (Arden v. State Bar (1987) 43 Cal.3d 713, 726, 239 Cal.Rptr. 68, 739 P.2d 1236.) Here, however, petitioner offers little to counter-balance the seriousness of his offense beyond his own protestations that he was unjustly convicted. We therefore conclude that petitioner has failed to meet his burden of proving that the review department's recommendation of disbarment is unwarranted.

III. CONCLUSION

Petitioner stands convicted of a serious crime involving moral turpitude, committed while he was on probation for an earlier disciplinary violation.[3] We are satisfied under the circumstances that disbarment is appropriate "to protect the public, as well as the courts and the legal profession." (In re Bogart, supra, 9 Cal.3d 743, 748, 108 Cal.Rptr. 815, 511 P.2d 1167.) We therefore adopt the review department's recommendation.

It is ordered that petitioner Frank George Prantil be disbarred and that his name be stricken from the roll of attorneys in this state. It is further ordered that petitioner comply with the requirements of rule 955 of the California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, of the effective date of this order. This order is effective upon the finality of this opinion.

FOOTNOTES

FOOTNOTE.

1. All statutory references are to the Business and Professions Code unless otherwise specified.

2. The Court of Appeal noted that it was "[p]resumably Goins who had worked for a maintenance company with access to United Escrow [who] had stolen the check[ ]." (People v. Prantil (1985) 169 Cal.App.3d 592, 598, 215 Cal.Rptr. 372.)

3. Petitioner asserted he had been denied due process based on the trial court's failure to instruct on the requirement that the defendant intended to pass the forged instrument "as true and genuine." Petitioner also contended that the trial court committed reversible error in giving an instruction on aiding and abetting when there was insufficient evidence to warrant such a charge.

4. In November 1983, we concluded that petitioner's crime was one involving moral turpitude and, pursuant to section 6102, subdivision (a), ordered that petitioner be suspended from the practice of law until further order of this court.

5. Petitioner's initial objection to the State Bar's recommendation was limited to his assertion that the trial court denied him due process by failing to instruct adequately on the "true and genuine" element of forgery. (See ante, fn. 3.) In his reply to the State Bar's supporting brief, however, petitioner renews his claim of error regarding the aiding and abetting instruction, as well as his claims of undue delay and failure to grant immunity. For the reasons noted infra, we decline to reach the merits of any of these claims.

6. Section 6101 provides in pertinent part: "In any proceeding, whether under this article or otherwise, to disbar or suspend an attorney on account of [conviction of a crime involving moral turpitude], the record of conviction shall be conclusive evidence of guilt of the crime of which he or she has been convicted."

7. Section 6102 was amended again in 1985 to provide for summary disbarment under certain specified circumstances. (See § 6102, subd. (c).)

8. As an apparent afterthought in his reply brief, petitioner asks that we "give no weight" to the earlier disciplinary action on the theory that it, too, was wrongly decided. We decline to reexamine the merits of our earlier decision in that action, and we deny petitioner's request that we disregard it for purposes of this proceeding.

THE COURT: * FN* Before LUCAS, C.J., MOSK, BROUSSARD, PANELLI, EAGLESON and KAUFMAN, JJ., and WHITE (CLINTON W.) J. Presiding Justice, Division Three, First Appellate District, assigned by the Chairperson of the Judicial Council.

(See Attached Exhibit "C")

WILLIAM E. BONHAM
ATTORNEY AT LAW
HOTEL DÉ FRANCE, OLD SACRAMENTO
916 SECOND STREET, 2ND FLOOR, STE. A
SACRAMENTO, CA 95814
WILLIAMBONHAMATTY@SBCGLOBAL.NET

TEL. (916) 557-1113
FAX (916) 557-1118

May 7, 2008

Centinela State Prison
Demetrius Franklin K-55108
C5-207U
P.O. Box 921
Imperial, CA 92251

Re: Frank Prantil

Dear Mr. Franklin,

This letter is to advise that attorney Frank Prantil passed away on October 27, 2006. Please be advised that if your legal matter is active and pending, you will need to seek new counsel immediately to represent you. I cannot serve as your new attorney.

I am assisting attorney Prantil's family in arranging return of his client's files. I have possession of the client file and paperwork which attorney Prantil maintained on your behalf. Enclosed are two authorization forms regarding your client file for your consideration.

If you do not want your client file returned, you will need to complete the enclosed ***Authorization to Destroy File*** form and return it to me at the address indicated above no later than July 11, 2008. However, if you would like me to return your client file by mail, you will need to complete the enclosed ***Request to Forward File by Mail*** form and return it to me no later than July 11, 2008.

If it is possible for you to obtain your client file in person, please contact me at (916) 557-1113 no later than July 11, 2008, at any time between the hours of 9:00 a.m. and 3:00p.m., to discuss such an arrangement. If I am unable to answer the phone please leave me a message with your name, contact number, and be sure if someone is calling on your behalf that they leave your name.

If you do not return one of the above authorization forms or make arrangements with me to obtain your client file in person, I may seek an order from the court authorizing the destruction of all undistributed files.

(See Attached Exhibit "D")

AUTHORIZATION TO FORWARD FILE BY MAIL

I, Demetrius Franklin, hereby authorize the Law Office of William E. Bonham, Esq. to forward to me, by certified mail, return receipt requested, the original client file which was maintained for me by attorney Frank Prantil. The address to which the file should be sent is:

P.O. Box 921
Imperial CA 92251
Centinela State Prison

SIGNED: Demetrius Franklin DATED: 5-10-08

Print Name: Demetrius Franklin

TELEPHONE: N/A

ACKNOWLEDGMENT OF RECEIPT

I, Demetrius Franklin, hereby acknowledge that I have received from Transcripts, the following documents obtained from the law office of William E. Bonham:

1. Reporter Transcripts
2. Police Reports / 6 pack photos
3. Reply brief

SIGNED: Demetrius Franklin DATE: 5-27-08

Print name: Demetrius Franklin

WITNESS: Javon Washington DATE: 5-27-08

Print name: JAVON WASHINGTON

WILLIAM E. BONHAM
ATTORNEY AT LAW
HOTEL DÉ FRANCE, OLD SACRAMENTO
916 SECOND STREET, 2ND FLOOR, STE. A
SACRAMENTO, CA 95814
WILLIAMBONHAMATTY@SBCGLOBAL.NET
TEL. (916) 557-1113
FAX (916) 557-1118

May 19, 2008

Centinela State Prison
Demetrius Franklin D-55108
C5-207U
P.O. Box 921
Imperial, CA 92251

Dear Mr. Franklin,

I have received your reply to my letter including the Request to Send your files and paperwork back to you. I would first like to thank you for your prompt attention to this matter. Secondly, enclosed is all of the paperwork and files that I could locate that were associated with your case. Also enclosed is an Acknowledgement of Receipt that should be filled out and returned to us at the address above. Additionally there is a copy of the shipping receipt, please include reimbursement for shipping when returning your completed Acknowledgement of Receipt. Upon receiving your completed Acknowledgement of Receipt and reimbursement I will make a copy and send it to you for your own records. Once again thank your for your quick reply and best of wishes in the future.

Sincerely yours,

William E. Bonham

WILLIAM E. BONHAM
ATTORNEY AT LAW
HOTEL DÉ FRANCE, OLD SACRAMENTO
916 SECOND STREET, 2ND FLOOR, STE. A
SACRAMENTO, CA 95814
WILLIAMBONHAMATTY@SBCGLOBAL.NET
TEL. (916) 557-1113
FAX (916) 557-1118

June 2, 2008

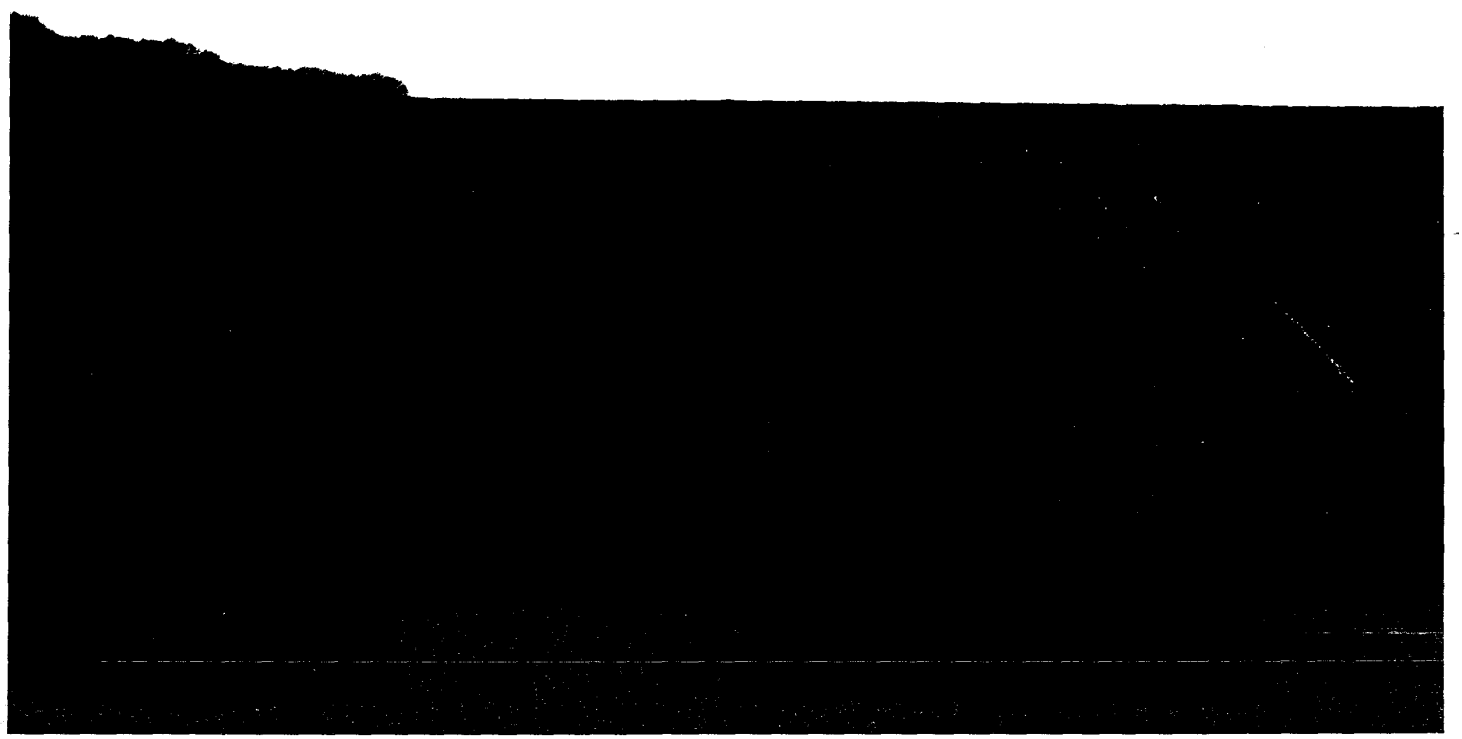
Centinela State Prison
Demetrius Franklin D-55108
C5-207U
P.O. Box 921
Imperial, CA 92251

Dear Mr. Franklin,

I am glad that we were able to assist you in returning all your files. I have received your Acknowledgement of Receipt and I would like to thank you for taking the time to attend to this matter fully. Enclosed is a copy of your Acknowledgement of Receipt for your records.

Sincerely yours,

William E. Bonham



(See Attached Exhibit E")

PENNINGTON INVESTIGATIONS
INTERNATIONAL

CALIFORNIA
STATE LICENSE
#PI 11757

POST OFFICE BOX 5186
WALNUT CREEK, CALIFORNIA 94596

SAN FRANCISCO
(415) 982-1026

WALNUT CREEK
(925) 280-0580

SAN MATEO
(650) 212-1685

SAN JOSE
(408) 252-7380

SACRAMENTO
(916) 443-2413

January 13, 2011

Centinela State Prison
Mr. Demetrius Franklin #K-55108
C5-207U
PO Box 921
Imperial, CA 92251

STATEMENT

Re: Investigation of Murder of Willie Ray King on 7/11/96

Date	Nature of Investigation		Hours	Miles
12/28/10	Investigation as detailed on attached timesheets:			
	23.50 hours at $75.00/hour		$1,762.50	
	116 miles at 44¢/mile		$ 51.04	
	EXPENSES:			
	Lodging Motel 6, Long Beach PCH			
	10/20/09	$ 56.44		
	7/14/10 - 7/18/10	$302.36		
	Total:	$358.80	$ 358.80	
		Subtotal:	$2,172.34	
		Less Retainer Advanced:	$2,500.00	
		Balance of Retainer:	$ 327.66	

PLEASE NOTE: The only expenses charged on the case have been lodging at the least expensive motel at 1121 E Pacific Coast Hwy, Long Beach where the rates are $50.39, plus $6.05 tax, or on weekends $59.39, plus $7.13 tax (two nights). As initially agreed, no charge has been assessed for the travel from San Ramon to the Los Angeles area, 378 miles each way, six hours driving time each direction for the two trips to Los Angeles in October 2009 and again in July 2010. This equates to the same billing as a Los Angeles-based agency with the exception of the cost for lodging.

otherwise resolved prior to the exhausting of the initial retainer, any remaining funds would be returned to you. Ref. overview frame up bro just ideals for flow

As briefly referenced above, the assault of [redacted] years of age, took place at 1115 West 104th Street in Los Angeles, after which Mr. King was hospitalized, and was later pronounced dead on July 13, 1996. As has been discussed in our conversations, as well as reflected in the file material provided, it was only after Mr. King's death that an investigation was conducted in earnest by the Los Angeles County Sheriff's Office, Lennox Division, with no crime scene having been set up prior to that time. As a result, not surprisingly, the important evidence was cleaned up, or destroyed, with the Sheriff's Office "playing catch up" to attempt to recreate the crime two days after the incident.

At that point, detectives assigned to the investigation were somewhat apparently grasping at straws, and through their discovery of witnesses through their inquiries, obtained a statement from Shanti Day. Shanti was visiting the neighborhood that evening, but did not reside there or have personal contact with you that evening, or prior to that night, with you only having seen her from a distance when she arrived at the apartment complex across the street. As a result of the detectives obtaining the statement from Shanti, this allowed them to seemingly clear the case of suspects, and start building on Shanti's statement of the facts of that night's assault, selecting you as the suspect. It appears as though they made few other attempts to develop any other likely perpetrators, since this allowed them to "have their man" and minimize the embarrassment of having not set up a crime scene on the morning of the 11th, which they now had to attempt to conceal. While I'm sure higher-ranking officers may have become aware of the incompetence of the initial investigating team not having preserved the evidence in a timely fashion, the fact that they now had a named suspect, with a purported eyewitness, allowed them to effectively dodge the bullet and solve the case to the satisfaction of their superiors. The fact that they had the wrong person named by an individual not familiar with other males in the neighborhood, left her easy prey to suggestion, by law enforcement, and possibly other witnesses, which helped to build their case. Clearly, after they had their named suspect, Demetrius Franklin, it was simply a matter of tying up loose ends, notwithstanding the fact that you had no previous violent history, and very little prior criminal activity at all, other than possession of marijuana, but nothing involving violence. Other of your family members, with criminal history, some of which was violent, also helped to undoubtedly convince them that you were a product of the same cloth.

Fortunately, since this agency had been initially retained, information has developed leading to possible eyewitnesses, one of which was apparently revealed to your mother 12 years ago, but was inexplicably not pursued until recently, perhaps as a result of the aggressive raid on your mother's residence in an attempt to locate you, which was heavily publicized, and perhaps was such a shattering experience to your mother that she was afraid to mention anything to anyone, which might again bring attention to her, even if it would possibly mean clearing her son. Fortunately, it appears as though this witness, Kelly, as well as her husband, Sidney, who it is believed she has since divorced, but both of them witnessed the assault in the early-morning hours, possibly as a result of the noise taking place.

In addition to Kelly and Sidney purportedly having witnessed the assault, Lashana Dorsey, who presently lives in Kansas, had come that evening to stay in her grandmother's house, and heard the commotion out front, looked out, observed the assault, which she clearly identified as not being you, and is willing to testify to that observance. She stated she is willing to take a polygraph exam, which could be conducted in Kansas. Therefore, the objectives of the investigation has somewhat been redirected with the revelation of the new eyewitnesses, with the focus now on locating Kelly and her ex-husband, and preparing them, as well as Lashana, for presentation to the Innocence Project, for their evaluation and direction. The irony is that since the entire direction of the case has changed since the retention of this agency, perhaps it may have been divine intervention, bringing about the delay, and the investigation not being commenced in earnest, allowing these witnesses to materialize with the focus now directed toward them, as opposed to expensive time and energy, which could have been needlessly expended to accomplish the same end, namely locating eyewitnesses to the event.

As the investigation continues to progress, you will be kept apprised of the information obtained as it is developed, or as soon thereafter as possible, along with the retainer status from this point forward as requested.

Thank you for the opportunity in allowing this agency to work with you on this matter and for the vote of confidence in our ability to bring it to a satisfactory conclusion, ideally with your being released from prison.

In the event that any portion of this letter is contrary to your understanding of our discussions, please advise me at your earliest convenience.

Sincerely,

James N. Pennington

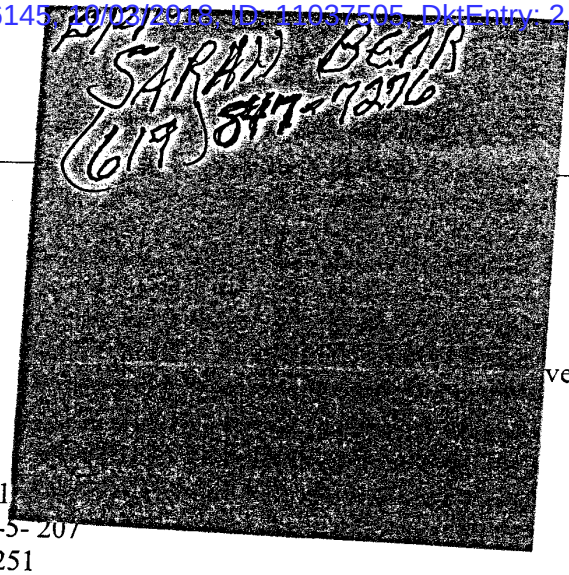
JNP:dl

RETAINER DEPOSIT CONTRIBUTIONS FRANKLIN

	$200.00	MICHAEL JACKSON
	$300.00	LORI (HAWAII)
2/28/11	100.00	MARIO JACKSON
2/28/11	50.00	ANNEKE BOHNEN

[redacted]

(See Attached Exhibit "F")



over

Southern California Division

vember 4, 2010

Demetrius Frankl
P.O. Box 921, C-5- 207
Imperial, CA 92251

Dear Mr. Franklin:

Thank you for sending your case-screening questionnaire. In order for us to investigate your case further, we need a copy of your Appellant's Opening Brief (AOB). Please do not send the original. If you only have the original and copies cannot be made, we can make a copy and return the original to you. Please send, or arrange for another to send this document to the following address:

California DNA Project
225 Cedar Street
San Diego, CA 92101

Please understand that at this time the California DNA Project has not agreed to represent. Rather, we require more information in order to determine if there is anything we can do to help.

Sincerely,

The California DNA Project

Jim,

This is the second missive I received like this. The first missive was a questionaire, and a missive stating they was goin into cases from 2008 on back. So I filled out the questionaire and returned it. So they've re sent this letter for the second time. So I think it best I share this with you partner. Sincerly your client

Demetrius

225 Cedar Street • San Diego, CA 92101
Tel (619) 515-1381 • Fax (619) 615-1443 • californiaDNAproject.org

CALIFORNIA WESTERN
SCHOOL OF LAW | San Diego

TK 11/23/10 Message left 10:55 PM

(See Attached Exhibit "G")

Elaine Morinelli
MORINELLI & ASSOCIATES
6009 Buena Ventura Avenue
Oakland, CA 94605
Phone: 510-430-9366 * Fax: 510-877-7588
Email: elm@morinelliassociates.com

April 29, 2011

To: Creditors of James Nelson Pennington
Deceased March 13, 2011 – Danville, California

To Whom It May Concern:

I am the attorney who is administering the estate of James Nelson Pennington. He passed away on March 13, 2011, intestate and with no assets. There is no money to use or assets to sell to pay bills.

James Pennington has adult children and siblings who know nothing of his business or his affairs. It is unnecessary and unproductive to call them about any of these matters. We are declining to file a probate as there is nothing to probate.

If you have any questions, please do not hesitate to call me.

Sincerely,

Elaine Morinelli

CERTIFICATION OF VITAL RECORD

COUNTY of CONTRA COSTA

MARTINEZ, CALIFORNIA

CERTIFICATE OF DEATH

STATE OF CALIFORNIA
USE BLACK INK ONLY / NO ERASURES, WHITEOUTS OR ALTERATIONS
VS-11 (REV 3/08)

3201107001606

STATE FILE NUMBER — LOCAL REGISTRATION NUMBER

DECEDENT'S PERSONAL DATA

1. NAME OF DECEDENT – FIRST (Given)	2. MIDDLE	3. LAST (Family)
JAMES	NELSON	PENNINGTON

AKA – ALSO KNOWN AS – Include full AKA (FIRST, MIDDLE, LAST)

4. DATE OF BIRTH mm/dd/ccyy	5. AGE Yrs.	IF UNDER ONE YEAR: Months / Days	IF UNDER 24 HOURS: Hours / Minutes	6. SEX
06/29/1942	68			M

8. BIRTH STATE/FOREIGN COUNTRY	10. SOCIAL SECURITY NUMBER	11. EVER IN U.S. ARMED FORCES?	12. MARITAL STATUS/SRDP (at Time of Death)	7. DATE OF DEATH mm/dd/ccyy	8. HOUR (24 Hours)
DC	526-48-0881	[ ] YES [X] NO [ ] UNK	DIVORCED	03/13/2011	2220

13. EDUCATION – Highest Level Completed (see worksheet on back)	14/15. WAS DECEDENT HISPANIC/LATINO/A/SPANISH? (If yes, see worksheet on back)	16. DECEDENT'S RACE – Up to 3 races may be listed (see worksheet on back)
SOME COLLEGE	[ ] YES [X] NO	WHITE

17. USUAL OCCUPATION – Type of work for most of life. DO NOT USE RETIRED.	18. KIND OF BUSINESS OR INDUSTRY (e.g., grocery store, road construction, employment agency, etc.)	19. YEARS IN OCCUPATION
PRIVATE INVESTIGATOR	INVESTIGATIONS	40

USUAL RESIDENCE

20. DECEDENT'S RESIDENCE (Street and number, or location)
2100 CAMINO RAMON

21. CITY	22. COUNTY/PROVINCE	23. ZIP CODE	24. YEARS IN COUNTY	25. STATE/FOREIGN COUNTRY
SAN RAMON	CONTRA COSTA	94583	1	CALIFORNIA

INFORMANT

26. INFORMANT'S NAME, RELATIONSHIP	27. INFORMANT'S MAILING ADDRESS (Street and number, or rural route number, city or town, state and zip)
JACQUELINE WALSTROM, DAUGHTER	185 PLEASANT VIEW ROAD, CHANHASSEN, MN 55317

SPOUSE/SRDP AND PARENT INFORMATION

29. NAME OF SURVIVING SPOUSE/SRDP – FIRST	29. MIDDLE	30. LAST (BIRTH NAME)
-	-	-

31. NAME OF FATHER/PARENT – FIRST	32. MIDDLE	33. LAST	34. BIRTH STATE
JOSEPH	BENNETT	PENNINGTON	NC

35. NAME OF MOTHER/PARENT – FIRST	36. MIDDLE	37. LAST (BIRTH NAME)	38. BIRTH STATE
SARAH	ISABELLE	SMOCK	NJ

FUNERAL DIRECTOR/LOCAL REGISTRAR

39. DISPOSITION DATE mm/dd/ccyy	40. PLACE OF FINAL DISPOSITION
03/21/2011	HOLY CROSS CEMETERY 10045 W. THOMAS ROAD, AVONDALE, AZ 85323

41. TYPE OF DISPOSITION(S)	42. SIGNATURE OF EMBALMER	43. LICENSE NUMBER
CR/TR/BU	▶ NOT EMBALMED	-

44. NAME OF FUNERAL ESTABLISHMENT	45. LICENSE NUMBER	46. SIGNATURE OF LOCAL REGISTRAR	47. DATE mm/dd/ccyy
GRISSOM'S CREMATION & BURIAL	FD1610	▶ WENDEL BRUNNER, MD	03/17/2011

PLACE OF DEATH

101. PLACE OF DEATH	102. IF HOSPITAL, SPECIFY ONE	103. IF OTHER THAN HOSPITAL, SPECIFY ONE
SAN RAMON REGIONAL MEDICAL CENTER	[X] IP [ ] ER/OP [ ] DOA	[ ] Hospice [ ] Nursing Home/LTC [ ] Decedent's Home [ ] Other

104. COUNTY	105. FACILITY ADDRESS OR LOCATION WHERE FOUND (Street and number, or location)	106. CITY
CONTRA COSTA	6001 NORRIS CANYON ROAD	SAN RAMON

CAUSE OF DEATH

107. CAUSE OF DEATH — Enter the chain of events — diseases, injuries, or complications — that directly caused death. DO NOT enter terminal events such as cardiac arrest, respiratory arrest, or ventricular fibrillation without showing the etiology. DO NOT ABBREVIATE.

		Time Interval Between Onset and Death
IMMEDIATE CAUSE (Final disease or condition resulting in death) →	(a) CARDIAC ARREST	(AT) MINS.
Sequentially, list conditions, if any, leading to cause on Line A. Enter UNDERLYING CAUSE (disease or injury that initiated the events resulting in death) LAST	(b) AORTIC DISSECTION	(BT) DAYS
	(c)	(CT)
	(d)	(DT)

108. DEATH REPORTED TO CORONER?	109. BIOPSY PERFORMED?	110. AUTOPSY PERFORMED?	111. USED IN DETERMINING CAUSE?
[ ] YES [X] NO	[ ] YES [X] NO	[ ] YES [X] NO	[ ] YES [X] NO

112. OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO DEATH BUT NOT RESULTING IN THE UNDERLYING CAUSE GIVEN IN 107
NONE

113. WAS OPERATION PERFORMED FOR ANY CONDITION IN ITEM 107 OR 112? (If yes, list type of operation and date.)
NO

113A. IF FEMALE, PREGNANT IN LAST YEAR? [ ] YES [ ] NO [ ] UNK

PHYSICIAN'S CERTIFICATION

114. I CERTIFY THAT TO THE BEST OF MY KNOWLEDGE DEATH OCCURRED AT THE HOUR, DATE, AND PLACE STATED FROM THE CAUSES STATED.	115. SIGNATURE AND TITLE OF CERTIFIER	116. LICENSE NUMBER	117. DATE mm/dd/ccyy
(A) Decedent Attended Since mm/dd/ccyy: 03/03/2011 — (B) Decedent Last Seen Alive mm/dd/ccyy: 03/13/2011	▶ ANITHA ANGAN M.D.	A94004	03/16/2011

118. TYPE ATTENDING PHYSICIAN'S NAME, MAILING ADDRESS, ZIP CODE
ANITHA ANGAN M.D.
5401 NORRIS CANYON ROAD, #308, SAN RAMON, CA 94583

CORONER'S USE ONLY

119. I VIEW THAT IN MY OPINION DEATH OCCURRED AT THE HOUR, DATE, AND PLACE STATED FROM THE CAUSES STATED.
MANNER OF DEATH: [ ] Natural [ ] Accident [ ] Homicide [ ] Suicide [ ] Pending Investigation [ ] Could not be determined

120. INJURED AT WORK?	121. INJURY DATE mm/dd/ccyy	122. HOUR (24 Hours)
[ ] YES [ ] NO [ ] UNK		

123. PLACE OF INJURY (e.g., home, construction site, wooded area, etc.)

124. DESCRIBE HOW INJURY OCCURRED (Events which resulted in injury)

125. LOCATION OF INJURY (Street and number, or location, and city, and zip)

126. SIGNATURE OF CORONER / DEPUTY CORONER	127. DATE mm/dd/ccyy	128. TYPE NAME, TITLE OF CORONER / DEPUTY CORONER
▶		

STATE REGISTRAR	A	B	C	D	E		FAX AUTH.#	CENSUS TRACT
						01000100173334		

CERTIFIED COPY OF VITAL RECORDS

STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA } SS

DATE ISSUED MAR 21 2011

000880338

This is a true and exact reproduction of the document officially registered and placed on file in the office of the CONTRA COSTA COUNTY DEPARTMENT OF HEALTH SERVICES.

Wendel Brunner (MD)
CONTRA COSTA COUNTY HEALTH OFFICER

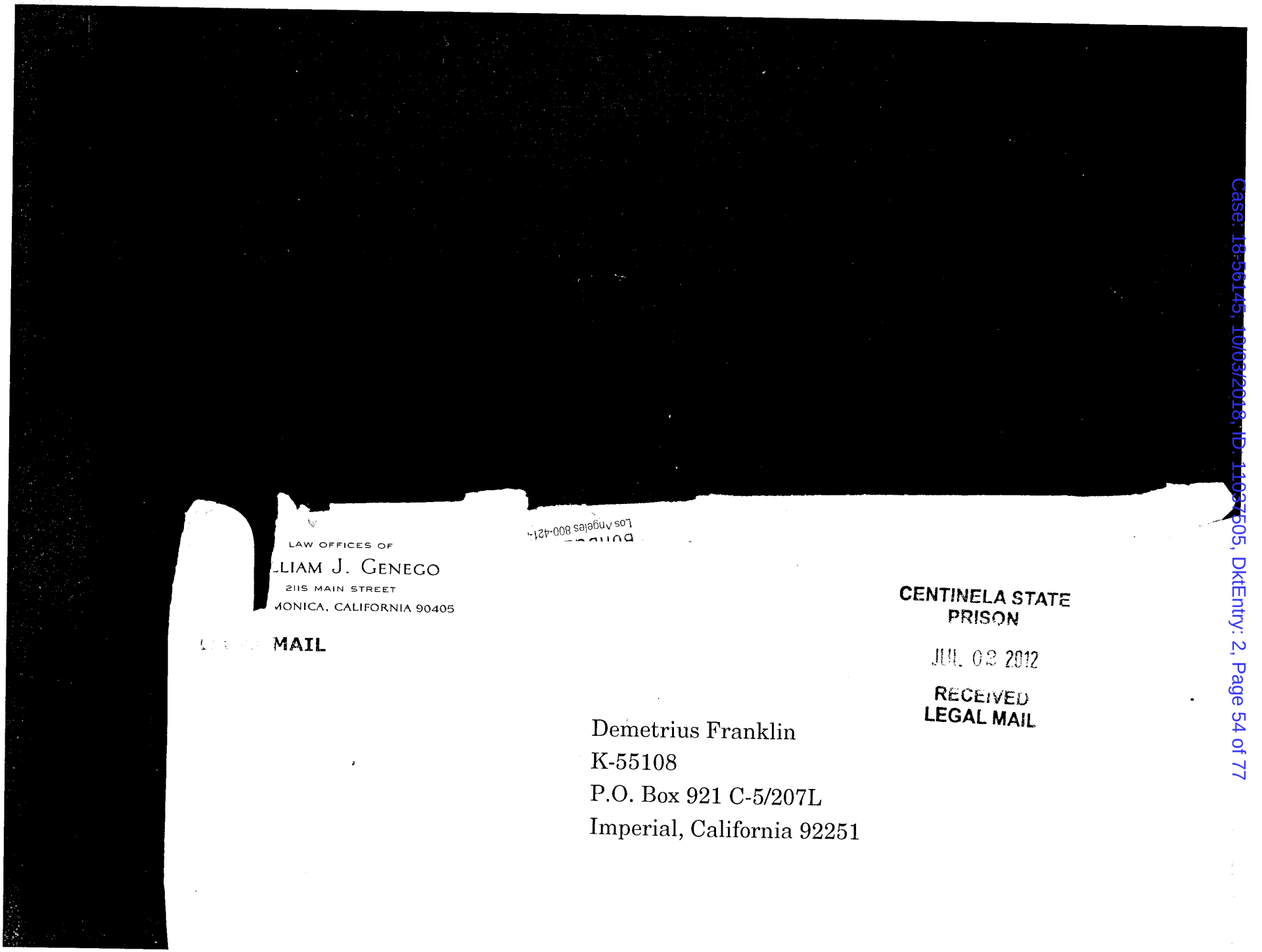
This copy not valid unless prepared on engraved border displaying seal and signature of Contra Costa County Health Officer

SEAL OF THE STATE OF CALIFORNIA EUREKA

CONTRA COSTA COUNTY HEALTH OFFICER MARTINEZ, CALIF.

ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE

(See Attached Exhibit "H")



LAW OFFICES OF
LLIAM J. GENEGO
2115 MAIN STREET
MONICA, CALIFORNIA 90405

MAIL

CENTINELA STATE
PRISON

JUL 02 2012

RECEIVED
LEGAL MAIL

Demetrius Franklin
K-55108
P.O. Box 921 C-5/207L
Imperial, California 92251

(See Attached Exhibit "I")

CALIFORNIA INNOCENCE PROJECT

March 28, 2013

Demetrius Franklin, K-55108
Centinela State Prison
207 Lower
P.O. Box 921
Imperial, CA 92251-0731

Dear Mr. Franklin:

I wanted to thank you for your letters and give you an update on your case. I found Loretta Alfred and Kelly Smith who lived on your street during the time of the incident. Ms. Alfred and her husband stated they did not see anything regarding the assault on the evening of July 11, 1996.

Kelly Smith stated she knew both you and your uncle Stephan while living on 104th Street. She stated she knew you as "Mitchie" and you were very kind to her. Unfortunately, she did not witness the assault and was in the process of moving into a new home at the time. She only saw the police and paramedics when she returned home the following morning.

However, Ms. Smith confirmed she never saw you wearing white clothing or shorts. She regularly saw you wearing khakis or "Ben Davis" pants. Kelly mentioned she heard multiple people were involved in the assault and one of the assailants could potentially be named "Playboy" from 107 Hoover Crips. Please let me know if you know anyone with this moniker.

Lastly, I have been in contact with your sister, Alice Smith, regarding your case. Your family recently hired a private investigator named Robert Mann to help me locate Shanti Day. Mr. Mann gave me an address for her in Long Beach, but no one was home. I spoke to the neighbors and they stated an older couple lived at the address and neither is named "Shanti." I also called a phone number for Ms. Day given to me by Mr. Manm. I called and the person in the voicemail identified herself as Shanti, but I have not spoken to her yet.

I will contact Mr. Mann to inform him the address was inaccurate and we will continue to look for Ms. Day. I hope all is well and please feel free to write or call our office.

Sincerely,

Jeff
Student # (7)

(See Attached Exhibit "J")

JUSTIN BROOKS
State Bar No. 211187
ALEXANDER SIMPSON
State Bar No. 235533
ALISSA BJERKHOEL
State Bar No. 261245
RAQUEL COHEN
State Bar No. 265526
MICHAEL SEMANCHIK
State Bar No. 272205
CALIFORNIA INNOCENCE PROJECT
225 Cedar Street
San Diego, CA 92101
Tel.: (619) 515-1527
Fax: (619) 615-1113
RCohen@cwsl.edu

Attorneys for Defendant
DEMETRIUS FRANKLIN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA. Plaintiff, v. DEMETRIUS FRANKLIN. Defendant.	Superior Court Case No. YA029506 Appellate Court Case No. B113005 Supreme Court Case No. S075176 **DECLARATION OF RAQUEL COHEN** **(Motion to Open Sealed Documents)**

I, RAQUEL COHEN, hereby declare the following:

1. I am currently a staff attorney at the California Innocence Project [the Project], a non-profit law firm that investigates claims of wrongful convictions. In August of 2012, inmate Demetrius Franklin completed the Project's extensive screening process, and the Project commenced investigation into Mr. Franklin's claim of innocence.

2. During my investigation of Mr. Franklin's file, I discovered a potential *Brady* violation in the form of an undisclosed, immunity agreement. Hence, the Project commenced investigation into the content of the agreement.

3. During Demetrius Franklin's trial, Shanti Day acted as the prosecution's star witness. Day was the only individual to testify that she witnessed the murder and was also the only person to testify that Franklin committed the beating. At the time of the trial, Day also had her own pending legal problems. Franklin and his trial attorney speculated that Day was given an

immunity agreement in exchange for her testimony. However, the prosecutor in the case denied any deal at all.

4. During the sentencing of Shanti Day's Case No. YA029764 a letter was introduced by Los Angeles Sheriff's Department Deputy Mauro (Captain of the Homicide Bureau). The minute order of Shanti Day's case reflects that after this letter was introduced her case was dismissed and lines dropped in the interest of justice.

5. The Project has made the following attempts to locate this letter introduced at Shanti Day's sentencing.

A. On February 11, 2015, the Project wrote a letter to the Brady Compliance Unit in Los Angeles, California requesting information on Day's sentencing letter.

B. On March 11, 2015, the Project called the Los Angeles District Attorney's office requesting information regarding the letter. The Project was transferred to Marsha with the Brady Compliance Unit. Marsha told the Project she would call back with additional information. The Project never received a call back.

C. On March 16, 2015, the Project called Marsha at the Brady Compliance Unit office. Marsha was out of the office.

D. On March 18, 2015, the Project called Marsha again. She said she did not know where the letter was in the office. Marsha suggested that we had the wrong address. The Project confirmed the Brady Compliance Unit address as Los Angeles District Attorney's Office ATTN: Discovery Compliance Unit 320 W Temple Street - Room 540 in Los Angeles, California 90012. The Project sent out a duplicate letter on this day.

E. On April 1, 2015, the Project called the Brady Compliance Unit to confirm that the letter arrived. Marsha was busy at the time. The Project called again on April 2, 2015, but could not reach Marsha.

F. On June 2, 2015, Marsha with the Brady compliance called the Project. Marsha said that the Brady Compliance Unit had lost the second letter. Marsha asked that the Project email the letter in order to make sure she received it. The Project sent her the email version of the letter immediately.

G. On June 10, 2015, the Project called Marsha with the Brady Compliance Unit to make sure they received the letter and asked what the process was going to be moving forward. Marsha confirmed that they had the letter, she forwarded it to her supervisor and the Unit would call with any updates.

H. On October 1, 2015, the Project called Marsha and she said that her responsibilities were transferred to the Discovery Integrity Unit.

I. On November 9, 2015, the Project reached out to Ms. Nunez with the Discovery Integrity Unit. She asked the Project to fill out an additional questionnaire. This form was emailed to the Project and sent back immediately.

J. On November 10, 2015, the Project again reached out to the Discovery Integrity Unit. No additional information was provided at this time.

K. On November 20, 2015, Courtney Cummings, a clinical intern with the Project, went to the Los Angeles Superior Court - Archives & Records Department to search for the letter introduced at Shanti Day's sentencing hearing. Please see Exhibit B for additional information.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct to the best of my knowledge.

Executed on 2/3/16 in San Diego County.

RAQUEL COHEN

(See Attached Exhibit "K")

CALIFORNIA INNOCENCE PROJECT

Demetrius Franklin, K-55108
Centinela State Prison
P.O. Box 921
C-2 151 Upper
Imperial, CA 92251-0731

Dear Demetrius,

I hope you are doing okay. I received both of your letters today and also the beautiful image of the Chicago Bears logo. I loved the Chicago Bean in the middle with the beautiful skyline. I teared up when I received it. It means so much to me knowing that you are aware of how hard I am working to prove your innocence. I definitely will frame it and hang it in my office forever. As I am only a law student, and not quite a lawyer yet, your case has really opened my eyes to the injustices within the criminal justice system and just how messed up it is. I believe in you, and I believe in your innocence. I know that this school year is soon to be ending, but my work on your case is not going to end. I am obsessed with this case and your exoneration means more to me than you know.

I apologize if I provided you with false hope. Every time I get a lead on a new witness or hear from another party, I become very optimistic. Something I have really learned this year is how slowly this judicial system runs. But do not worry; I am constantly talking about your case. I am constantly bugging my supervisors to take this seriously. They have listened and they are taking it seriously. Today, my supervisor Katherine (you have a great memory by the way) and I chatted about the upcoming hearing we have for the potential *Brady* letter. This will take place on **April 1, 2016.** Hopefully, we will have the motion opened at this hearing. If my supervisors believe that this is suitable for *Brady* material (which I believe it will), they will begin drafting a habeas petition for you.

Based upon my understanding and recommendation, I think that the habeas petition should contain both a *Brady* and Ineffective Assistance of Counsel Claim. I have outlined some of the many reasons I believe Curtis Shaw did a poor job in earlier letters. Your help with pouring over all the police reports and supplemental reports have been extremely helpful.

Additionally, I have been working on recovering 911 calls made in regards to the beating. I know that Rosa Beeks is deceased but I have gathered a list of people that were living at her house at that time. I will continue to reach out to them. Maybe they heard something said from Beeks? Maybe the 911 calls will reveal more details of the killer's identity? Who knows. Either way I will continue to turn over every stone. Also, I have noticed that Curtis Shaw has a record where

(See Attached Exhibit "L")

CALIFORNIA INNOCENCE PROJECT

Demetrius Franklin, K-55108
P.O. Box 731
Imperial, CA 92251

Hey Demetrius:

I apologize that it has taken me soooooo long to get back to you. But believe me that does not mean that I am not working on your case! I was wrapping up finals, which was taking a lot of my time. I am also in Chicago currently visiting my family.

So attached you will find the **LETTER**. I am so glad that we finally have it in our hands. I know that you will enjoy having it too.

As soon as I get back from Chicago, I am going to schedule a time to come meet with you. I believe one of the attorneys at my office is going to come with me so that we can start to build your case. I know your case inside and out but some of my supervisors have some additional questions.

Before the habeas process is complete, my attorneys suggested filing a motion to discover which evidence is still left in the case. I have already written this motion so do not worry about it taking too long! Courtney is on it! I have written within the letter all of Lillenfield's antics. The supervising attorneys are also going to reach out to the DAs office in Los Angeles to see if we can short cut this motion. Because we have reason to believe that there was *Brady* material in that letter, they may be more receptive.

I am going to send you another letter soon, which will have a declaration in it. You just need to sign it and tell them that you are innocent… blah blah blah. You get it.

One more thing. I talked to my supervisors about you having the opportunity for parole soon. Before you go before the parole board, you will be appointed a parole attorney. Please have them reach out to me. That way I can help them and explain the work we are doing. We have been successful in getting many of our clients out via parole.

Thank you for the letters you sent me! Especially LOVED the birthday card. It was beautiful! I have it hanging above my desk to keep me motivated. I will be back in the office next week but believe me I am working hard on all this.

Sincerely,
Courtney

CALIFORNIA INNOCENCE PROJECT | California Western School of Law | 225 Cedar Street, San Diego, California 92101
Tel.: (619) 515-1528 | Fax: (619) 615-1443 | www.CaliforniaInnocenceProject.org

(See Attached Exhibit "M")

ORLY AHRONY
IAN GRAHAM
BRUCE ZUCKER

MAYA EMIG*
RANDY S. KRAVIS*

*OF COUNSEL

AHRONY GRAHAM ZUCKER LLP
POST CONVICTION LAW FIRM

401 WILSHIRE BLVD. 12TH FL. PENTHOUSE
SANTA MONICA, CALIFORNIA 90401

TEL. (310) 979-6400
FACSIMILE (310) 388-0319
WWW.AHRONYGRAHAM.COM

CONFIDENTIAL – ATTORNEY/CLIENT WORK PRODUCT

May 2, 2017

Demetrius Franklin K55108
California State Prison, Centinela
P.O. Box 921
Imperial, CA 92251

Re: Case Evaluation

Dear Mr. Franklin,

Below is our current evaluation of your case. This evaluation is based on our review of the trial transcripts, the clerk's record, and appellate filings. This evaluation contains notes from the trial transcripts that are relevant to the appellate/habeas issues in order to provide you with a background of the case and our evaluation.

In summary, it appears that you have credible legal grounds to file a petition for habeas corpus based on the issue of newly discovered evidence relating to Ms. Shanti Day's recantation of her trial testimony and her undisclosed immunity agreement. However, as explained in detail below, there are procedural issues that must be addressed, and we recommend that the petition(s) be filed with the court(s) as soon as practicable.

Case Evaluation

A. Trial and Conviction

On January 3, 1997, you were charged with the murder of Willie Ray King. The prosecution's case against you rested almost entirely on

the testimony of Ms. Shanti Day. Ms. Day testified that she dropped off her friend Thomas Evins at his house after picking him up from work. When she arrived at Mr. Evins house, she saw you, Darnell Woodard, and a third unnamed man. You and the unnamed man stayed outside while Ms. Day, Mr. Evins, and Mr. Woodard went inside Mr. Evins's apartment. While inside Mr. Evins and Mr. Woodard played videogames.

After a few minutes Ms. Day heard roughhousing coming from outside. She looked from the front porch of Mr. Evins apartment and saw you, dressed in all white, and the third man chase and beat Mr. King. The beating lasted about five minutes. During the beating you claimed membership in the 104th Street Crips. She did not call the police because she was afraid Mr. Woodard would hurt her.

The next morning police and paramedics found Mr. King lying in the grass. Ms. Day approached the first responders and told them that she had information regarding the beating. Mr. King was taken to a hospital where he died three days later. The crime scene was not secured by police and a neighbor ended up washing away the blood and any other DNA evidence. Ms. Day later identified you as the killer. She identified you by name, although she was not able to conclusively identify you in a six-pack. Additionally, she was not able to identify the other assailant.

After discovering that you were wanted for the murder of Mr. King, you turned yourself in. The police searched your house, but did not find anything that incriminated you.

At trial, the prosecution also called a number of police officers who tried to establish that you were a member of 104th Street Crips. Although you were not charged with any enhancement regarding gang membership, the prosecution wanted to present evidence of your gang involvement to show your motivation for allegedly attacking Mr. King. Two officers testified that you had previously admitted being a member of 104th Street Crips.

Mr. Evins, Mr. Woodard, and you testified in your defense. Each one of you gave a similar account. According to your testimonies, Mr.

Woodard and you went to a club that night and stopped at Mr. Evins apartment complex because your grandmother lived nearby. The two of you wanted to finish your drinks before heading home. Mr. Woodard never entered Mr. Evins's apartment and only chatted with Mr. Evins and Ms. Day for about five minutes. After finishing your drinks, Mr. Evins dropped you off at your mother's house a few blocks away. You never saw Mr. King and did not know about the beating until someone told you the following day.

In 1997, you were ultimately convicted of murder in the first-degree and sentenced to 25 years to life. After your conviction, you filed a direct appeal to the California Court of Appeals, which was denied. You then filed a petition for review in the California Supreme Court, which was also denied. You did not file a petition for the writ of certiorari in the United States Supreme Court or any habeas petitions in state or federal court.

B. Implied Promises of Leniency to Ms. Day in Exchange for Her Testimony Against Petitioner.

At a preliminary hearing, your trial attorney and the prosecutor talked about Ms. Day's pending criminal charges. The District Attorney originally filed charges against Ms. Day alleging that she committed the felony of theft with a prior conviction in violation of California Penal Code section 666. The District Attorney later dismissed the felony charge and re-filed as a misdemeanor violation of California Penal Code section 484 a month before Petitioner's trial.

Your trial attorney inquired about a potential immunity agreement between Ms. Day and the District Attorney's Office. The prosecutor represented to the court, "I've made no deal with this witness. This witness made her statement on the date of the incident. We've attempted to protect her since from harm. But as far as her criminal record is concerned, that's something I only became aware of very recently." The prosecutor further clarified, "certainly, if there were any deals made with her that is something that would have been discoverable. That would have been my obligation to turn over to the defense..."

1. Evidence of Implied Promises of Leniency Not Disclosed at the Time of Trial.

On September 17, 1996, the District Attorney charged Ms. Day with felony petty theft with a prior conviction in violation of California Penal Code 666 while simultaneously charging her with violating the terms of her probation. On January 3, 1997, the same day that Petitioner was charged with the murder of Mr. King, the District Attorney dropped the prosecution of Ms. Day's violation of California Penal Code section 666 and allowed her to plead guilty to a misdemeanor. Additionally, Ms. Day's probation was reinstated.

Per the terms of Ms. Day's probation reinstatement, she was ordered to pay $940 in fees and fines by May 2, 1997. Ms. Day ultimately failed o pay the fine and the court issued a bench warrant. On April 30, 1997, less than two weeks after Ms. Day testified against Petitioner, Captain Don Mauro of the Los Angeles County Sheriff's Department, Homicide Unit wrote the letter to the judge presiding over Ms. Day's criminal trial. The letter explained to the court that Ms. Day was instrumental in Petitioner's conviction. Although the letter stated that she had not been promised anything in return for her testimony, the letter requested that the fine levied against Ms. Day be dropped and that she be allowed to continue her probation. The letter further instructed the court to contact Detective Lillienfield, the investigating officer in Petitioner's case, should the court have any questions or concerns.

On May 19, 1997, the court presiding over Ms. Day's criminal case reviewed Captain Mauro's letter. The court then struck the fine in the interest of justice and reinstated probation on original terms and conditions.

2. Discovery of Ms. Day's Possible Immunity Deal

In August 2012, the California Innocence Project (CIP) began investigating your case for potential post-conviction relief. During the investigation of your case, an intern from CIP interviewed Ms. Day. During this interview, Ms. Day recanted her testimony against

Petitioner. Ms. Day stated that Petitioner had nothing to do with the Mr. King's murder.

CIP also discovered a potential *Brady* violation in the form of Ms. Day's undisclosed immunity agreement. Over the course of nearly a year, CIP sought to obtain evidence of the undisclosed immunity agreement. On November 20, 2015, a law student working with CIP visited the Los Angeles Superior Court Archives and Records Department in Los Angeles, California to review Ms. Day's criminal case file. There, the law student was told that there was a sealed letter indicating that Ms. Day received an immunity deal for her involvement in Petitioner's case.

On April 1, 2016, upon discovering this information, CIP filed a motion to unseal the letter discussing Ms. Day's immunity agreement. The motion was granted that same day. In Ms. Day's case file, CIP discovered the letter from Captain Don Mauro.

Despite having found evidence of undisclosed promises of leniency, CIP did not file any petition for post-conviction relief. Nevertheless, they continued to represent Petitioner for another year, assuring him that they were working diligently on his case. However, on March 14, 2016 CIP informed Petitioner that they would no longer represent him.

C. What Can Be Done Now – Habeas Corpus Claims

Currently, it appears that you have several credible grounds for habeas relief. However, several procedural hurdles must be overcome for the court to hear your claims at this point.

1. Claims for Habeas Relief

a. Ms. Day's Testimony Constituted False Evidence

California Penal Code section 1473 allows habeas relief for a conviction based on false evidence that was substantially material or probative on the issue of guilt or punishment. Your conviction was based almost entirely on Ms. Day's testimony. Therefore, if Ms. Day's testimony was in fact false, you would be entitled to habeas relief.

According to information we have, Ms. Day recanted her testimony at least twice. First, she recanted it in the presence of Charlotte James, a student working for CIP. Ms. Day also recanted her testimony in front of her friend Thomas Evins. Both of these recantations suggest that Ms. Day's testimony was false and that she was motivated to lie by police, who promised her leniency in her own pending criminal charges. Consequently, if we can sufficiently prove to the court that it was in fact false, you will be entitled to habeas relief.

We are currently attempting to obtain a declaration from Ms. James regarding Ms. Day's recantation. In addition, declarations from Mr. Evins regarding Ms. Day's recantation, and from Ms. Day, herself, could potentially further support this claim. If you would like to retain an investigator to attempt to locate these individuals and obtain declarations from them, we can help facilitate that process. The fees for the investigator would be approximately $80 per hour. However, at this point we do not recommend delaying the filing of your habeas corpus petitions any longer than necessary.

b. Ms. Day's Immunity Agreement Constitutes Newly Discovered Evidence of Actual Innocence.

California Penal Code section 1473 allows habeas relief when sufficient newly discovered evidence is "of such decisive force and value that it would have more likely than not changed the outcome of trial." Put simply, if a petitioner discovers new evidence that, by the preponderance of the evidence, undermines his conviction, the petitioner is entitled to habeas relief pursuant to California Penal Code section1473. (*In re Miles* (2017) 7 Cal. App. 5th 821, as modified on denial of reh'g (Feb. 10, 2017).)

Ms. Day's recantation and evidence of her immunity agreement seriously undermines the evidence against you. Additionally, if Ms. Day now gives an accurate account of what happened that evening, her recantation could affirmatively exonerate you. Therefore, you have a tenable state habeas claim based on new evidence. This claim, however, would be made stronger if we are able to obtain a written recantation by Ms. Day.

c. *Brady* Violation Based on The Prosecutor's Failure to Disclose Ms. Day's Immunity deal.

In *Brady v. Maryland* the United State Supreme Court held that a defendant has a constitutional right to all the favorable and material evidence in the possession of the state. Evidence is favorable if it supports a theory of defense or impeaches government evidence. Evidence is material if there is a reasonable probability that had that evidence been introduced, the outcome of trial would have been different. A prosecutor violates a defendant's right by failing to disclose this evidence.

In your case, the state failed to disclose evidence suggesting Ms. Day received lenient treatment as a result of her testimony against you. This evidence would probably have been favorable and material, as it would have questioned her credibility. Had such evidence been disclosed, your trial counsel could have cross-examined Ms. Day regarding her motivations for testifying. Additionally, since Ms. Day's testimony was the only evidence that implicated you in the murder of Mr. King, it was material.

D. Procedural Hurdles in Your Case

The deadline for filing a petition for habeas corpus in Federal Court is one year from date the case becomes final (28 U.S.C. § 2241 et seq. ("AEDPA").) In most cases, a case becomes final 90 days after the affirmation of the direct appeal. However, if a defendant files a Petition for Certiorari in the United States Supreme Court, it is one year from the Court's denial. This federal one year "clock" is stayed while state court habeas proceedings are pending.

California law, unlike Federal law, does not have a rigid statute of limitations for filing a petition for habeas corpus. The California Courts require only that you file a petition without undue "delay." (*In re Clark* (1993) 5 Cal. 4th 750, 765.) "Delay" is measured from the time that you (or your attorney) became aware of, or should have become aware of, the legal arguments supporting the habeas petition. (*In re Reno* (2012) 55 Cal.4th 428, 459.)

Your conviction became final in 1997—nearly 20 years ago. However, CIP discovered evidence of Ms. Day's immunity agreement in April 2016. This implied agreement for immunity likely constitutes "newly discovered" evidence, and thus re-starts your Federal habeas "clock" and state court "without undue delay" period. Thus, technically, you had until April 2017 to file a federal habeas petition. However, CIP failed to file any habeas petition on your behalf. Therefore, the state and federal courts could argue that your habeas petitions are untimely and thus barred.

However, in response, we can argue that you were effectively abandoned by CIP. CIP assured you that they were seeking post-conviction relief and even informed you that the *Brady* claim relating to the undisclosed letter was probably your strongest argument. But, in March 2017, just days before the federal statute of limitation would run, CIP wrote you to inform you that they would no longer be working on your case. Such actions could constitute abandonment, which would then lengthen the time you have to file a federal and state habeas petition. (*See Maples v. Thomas* (2012) 132 S. Ct. 912.) Therefore, you might have a viable argument against any assertion that your habeas petitions are untimely.

E. <u>Next Steps</u>

Since Ms. Day's immunity agreement was discovered just over a year ago, it is important that steps be taken quickly to file your habeas petition(s) to hopefully avoid any procedural bars.

First, we recommend that a petition for habeas corpus be filed promptly in federal district court. This petition would request that the federal court stay the federal proceedings, while we prepare and file a petition for habeas corpus in state court. The goal of this procedure is to stop the federal statute of limitations from continuing to run, while we litigate your habeas claims in state court.

Within the next few days, we will send you a fully drafted petition for habeas corpus for filing in the central district federal court. We will also include step-by-step instructions for you to file this petition *pro per*. We recommend that you file the petition pro per, rather than us file the

petition, because the court is more lenient with the filing requirements of pro per petitions. If you have any questions or concerns about the filing procedures, please call us and we can assist you.

Second, we will prepare a petition for habeas corpus to be filed in California Superior Court, presenting the claims addressed in this evaluation. We will be prepared to file this petition as early as May 11, 2017. However, should you have any issues with the claims presented in this evaluation, or request that an investigator conduct additional investigation to attempt to obtain declarations from Shanti Day and/or Mr. Evins, we can discuss these issues and potentially delay the state filing for the time necessary to conduct the investigation. However, we do not recommend delaying the filing of the state habeas petition.

Finally, per the terms of our retainer agreement with you (see attached), we are due fees for the petition for habeas corpus prior to filing. Please contact me regarding payment at your earliest opportunity.

I look forward to hearing from you regarding this evaluation and any questions or concerns you may have.

Sincerely,

T. Ian Graham
AHRONY, GRAHAM & ZUCKER LLP

Proof of Service

I, **Demetrius Franklin**, declare under the penalty of perjury that the foregoing is true and correct. That I am over the age of 18 years old and I am the petitioner in the above entitled action; I am presently incarcerated at Centinela State Prison, P.O. Box 921, Imperial, California 92251. That I placed in a sealed envelope a "Certificate of Appealability Application with an Enlargement of Records and Certification of Exhibits" attached and placed said envelope in the prison mail box addressed to:

United States court of Appeals
Ninth Circuit
312 N. Spring Street
Los Angeles, California 90012

Central District Court
312 N. Spring Street#G-8
Los Angeles, California 90012-4793

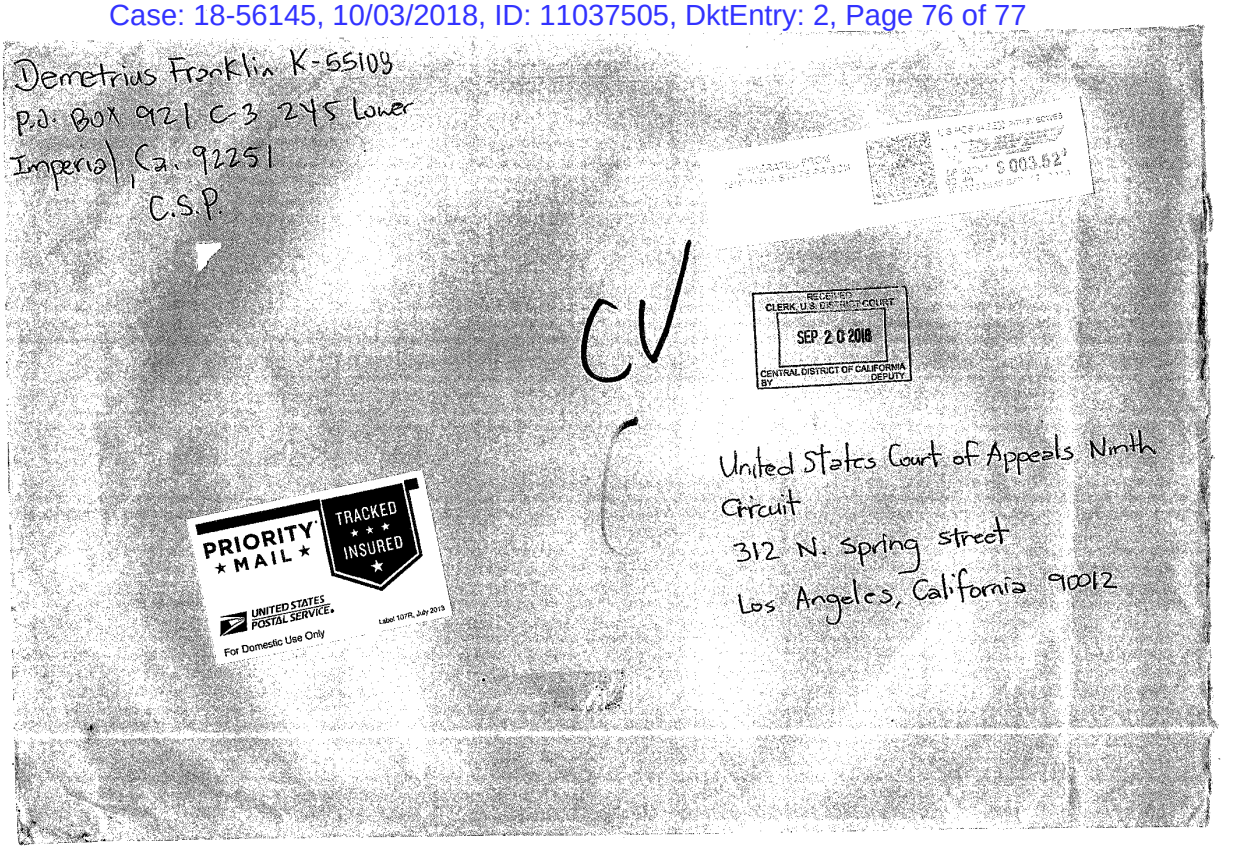
Dated: September, 17th, 2018

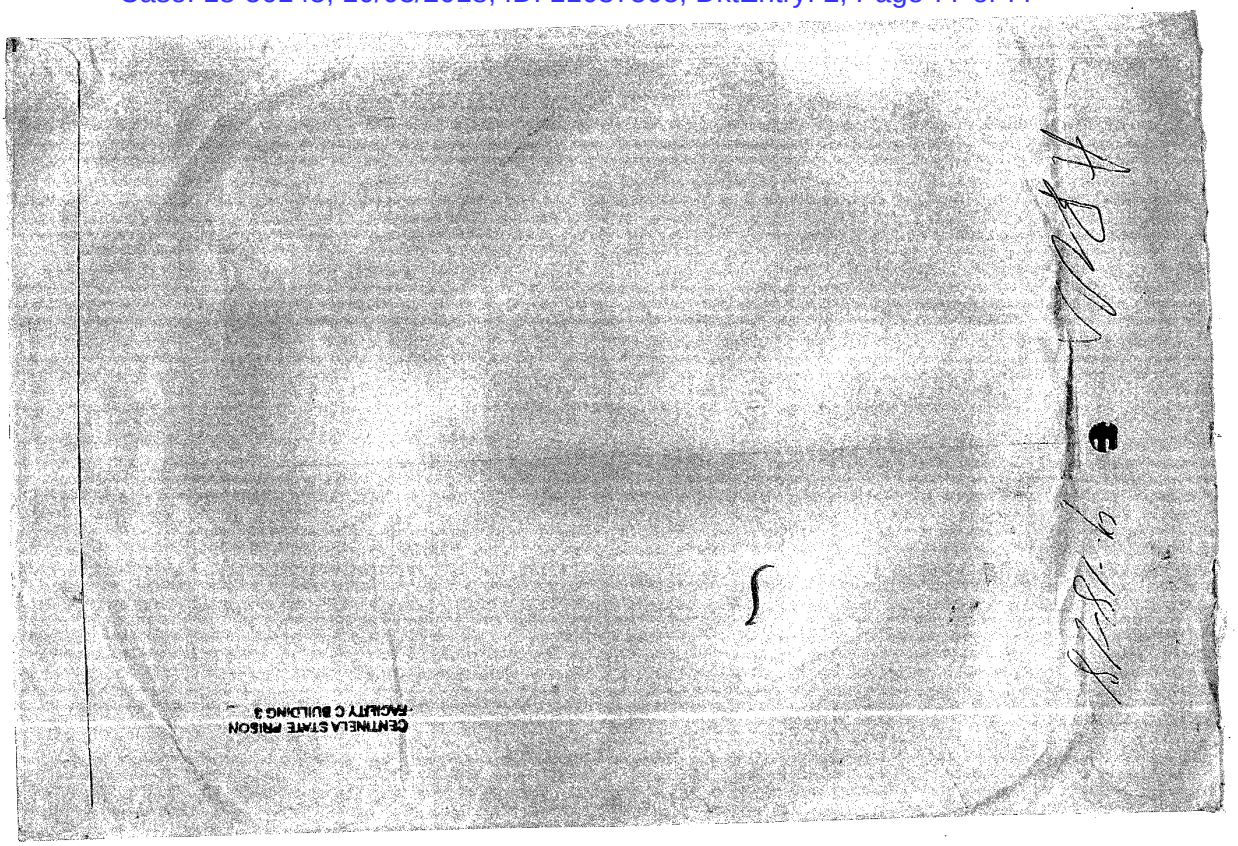
Demetrius Franklin

DEMETRIUS FRANKLIN

DECLARANT

PETITIONER: IN PRO SE


Demetrius Franklin K-55109
P.O. Box 921 C-3 245 Lower
Imperial, Ca. 92251
C.S.P.
CV
RECEIVED
CLERK, U.S. DISTRICT COURT
SEP 20 2018
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY
PRIORITY MAIL
TRACKED INSURED
UNITED STATES POSTAL SERVICE
For Domestic Use Only
United States Court of Appeals Ninth
Circuit
312 N. Spring street
Los Angeles, California 90012


CENTINELA STATE PRISON
FACILITY C BUILDING 3

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DEMETRIUS FRANKLIN, Petitioner, v. RAYMOND MADDEN, Respondent.	Case No. CV 17-4281 DSF(JC) ORDER (1) DENYING PETITIONER'S MOTION FOR RECONSIDERATION AND PETITIONER'S REQUEST TO FILE LATE "OBJECTIONS" TO MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION; AND (2) DENYING A CERTIFICATE OF APPEALABILITY [DOCKET NOS. 29-30]

I. BACKGROUND AND SUMMARY

On June 8, 2017, petitioner Demetrius Franklin, a prisoner in state custody and proceeding *pro se*, filed a Petition for Writ of Habeas Corpus by a Person in State Custody ("Petition") pursuant to 28 U.S.C. § 2254, with a separate memorandum ("Pet. Memo"). (Docket No. 1). On June 29, 2017, petitioner filed exhibits in support of the Petition ("Pet. Ex."). (Docket No. 10). The Petition challenges a 1997 conviction in Los Angeles County Superior Court ("LASC") Case No. YA029506, raising three unexhausted claims for relief: (1) the prosecution withheld exculpatory evidence in violation of Brady v. Maryland, 373

U.S. 83 (1963) (Ground One); (2) petitioner is actually innocent (Ground Two); and (3) the cumulative effect of the foregoing claims demonstrates that petitioner's constitutional rights were violated (Ground Three). See Petition at 5-6; Pet. Memo at 9-15.

Concurrently with the filing of the Petition, petitioner filed a Motion to Stay ("Stay Motion"), seeking to stay the wholly unexhausted Petition under Rhines v. Weber, 544 U.S. 269 (2005), so petitioner could exhaust his claims in state court. (Docket No. 5). On August 25, 2017, respondent filed an Opposition to the Stay Motion ("Opposition"), arguing, among other things, that petitioner's claims were time-barred. (Docket No. 15).

On January 29, 2018, the Magistrate Judge issued a Report and Recommendation recommending that the Petition be dismissed with prejudice as time-barred and the Stay Motion be denied as moot. (Docket No. 21). On February 26, 2018, petitioner filed an application for an extension of time to file objections to the Report and Recommendation. (Docket No. 22). On March 6, 2018, the Court issued an order granting petitioner until March 15, 2018, to file objections. (Docket No. 24). Petitioner did not file any objections before the deadline.

On April 4, 2018 – more than two weeks after petitioner's extended deadline to file objections to the Report and Recommendation had expired – this Court issued an order accepting the findings, conclusions, and recommendations of the Magistrate Judge, dismissing the Petition with prejudice as time-barred, and denying the Stay Motion as moot ("April Order"). (Docket No. 25). Judgment was entered accordingly on April 5, 2018. (Docket No. 26). The Court further denied petitioner a certificate of appealability. (Docket No. 27).

On April 20, 2018, petitioner filed a motion for reconsideration ("Reconsideration Motion"), alleging that he did not receive the Court's order granting his extension to file objections to the Report and Recommendation until

March 26, 2018 – 11 days after the deadline to file objections. (Docket No. 29). Also on April 20, 2018, petitioner filed a request to file late objections to the Report and Recommendation ("Petitioner's Request") and concurrently lodged his proposed objections ("Objections"). (Docket No. 30). The Reconsideration Motion and Petitioner's Request will collectively be referred to as "Petitioner's Motions." Taken together and construed liberally, Petitioner's Motions essentially request that the Court reconsider and vacate the April Order and the Judgment under Federal Rule of Civil Procedure 60(b)(6) and consider and sustain petitioner's Objections to the Report and Recommendation. The Court denies Petitioner's Motions because petitioner's Objections are without merit and consideration thereof does not alter the Court's conclusions that the Petition is time-barred and that it was appropriate to accept the findings, conclusions and recommendations of the Magistrate Judge and to direct that Judgment be entered accordingly.

II. DISCUSSION

A. Pertinent Law

Federal Rule of Civil Procedure 60(b) permits courts to grant relief from a final judgment or order, and reopen a case, in certain limited circumstances. See Gonzalez v. Crosby, 545 U.S. 524, 528 (2005) (citing Fed. R. Civ. P. 60(b)). Rule 60(b)(6), upon which petitioner's Reconsideration Motion is premised, is a "catchall" provision which essentially permits granting relief for any "reason that justifies relief" that is not otherwise delineated in Rule 60(b). See Fed. R. Civ. P. 60(b)(6); Buck v. Davis, 137 S. Ct. 759, 772 (2017) (discussing same).

Notwithstanding the provision's broad language, Rule 60(b)(6) applies only in "extraordinary circumstances, and . . . [s]uch circumstances will rarely occur in the habeas context." Buck v. Davis, 137 S. Ct. at 772 (citations and internal quotation marks omitted). Rule 60(b)(6) "should be used sparingly as an equitable

///

remedy to prevent manifest injustice." Hall v. Haws, 861 F.3d 977, 987 (9th Cir. 2017) (citations and internal quotation marks omitted).

District Courts have "wide discretion" when ruling on Rule 60(b) motions. Buck, 137 S. Ct. at 777 (citation omitted); Savarese v. Edrick Transfer & Storage, Inc., 513 F.2d 140, 146 (9th Cir. 1975) ("the granting or denial of such motions is left largely to the discretion of the district court") (citations omitted). A court is not obligated to vacate a judgment if doing so would be an "empty exercise." James v. United States, 215 F.R.D. 590, 594 (E.D. Cal. 2002) (citing, *inter alia*, TCI Group Life Insurance Plan v. Knoebber, 244 F.3d 691, 701 (9th Cir. 2001) (holding that before granting relief from judgment, a factor to consider is whether the party has a meritorious claim or defense), overruled on other grounds by Egelhoff v. Egelhoff ex rel. Breiner, 532 U.S. 141, 147-50 (2001), as recognized in NewGen, LLC v. Safe Cig, LLC, 840 F.3d 606, 616 (9th Cir. 2016)).

B. Denial of Petitioner's Motions Is Appropriate Because Petitioner's Objections Are without Merit and Reopening the Case Would Be an Empty Exercise

For the reasons discussed in detail below, petitioner's Objections are without merit and consideration thereof does not alter this Court's views that the Petition is time-barred and that it was appropriate to accept the findings, conclusions and recommendations of the Magistrate Judge and to direct that Judgment be entered accordingly. Accordingly, denial of Petitioner's Motions is appropriate because vacating the April Order and Judgment and reopening the case would be an empty exercise.

In his Objections, petitioner argues: (1) the Magistrate Judge's findings that petitioner should have been aware of the factual predicate for Ground One by the time his conviction became final was unreasonable, incorrect, and not based on any legal precedent (Objections at 2-3); (2) petitioner's credible claim of actual innocence excuses any failure to comply with the applicable statute of limitations

(Objections at 3-4); and (3) petitioner is entitled to equitable tolling sufficient to render the Petition timely filed (Objections at 4-5). This Court disagrees.

A party seeking reconsideration must show more than a disagreement with the Court's decision. Petitioner's first two grounds for relief express disagreement with the Court's prior analysis, compare Objections at 2-4 with Report and Recommendation at 20-21, 23-26, which is not sufficient to justify relief from a final judgment. See Motorola, Inc. v. J.B. Rodgers Mechanical Contractors, 215 F.R.D. 581, 582 (D. Ariz. 2003) ("Nor is reconsideration to be used to ask the Court to rethink what it has already thought.") (citations omitted); United States v. Rezzonico, 32 F. Supp. 2d 1112, 1116 (D. Ariz. 1998) (same; "Arguments that the court was in error on the issues it considered should generally be directed to the Court of Appeals.") (citation omitted). Petitioner has not presented any viable basis for reconsideration of these two grounds under Rule 60(b)(6). Even if petitioner's arguments were raised as timely Objections, the Court would find no basis to alter or vacate the April Order or the Judgment as it agrees with the reasoning in the Report and Recommendation.

Petitioner also argues that he should be entitled to equitable tolling of the statute of limitations because his counsel with the California Innocence Project ("CIP"), who began working on his case in August of 2012 (and who allegedly discovered the evidence on which petitioner's claims are based in 2014 and 2015), did not file a petition for post-conviction relief. Rather, counsel waited until March 14, 2017, to inform petitioner that such counsel no longer would be representing him. See Objections at 4-5 (citing Pet. Ex. 11).

According to the record petitioner has supplied, in August of 2012 the CIP accepted petitioner's case to investigate his claim of actual innocence. Pet. Ex. 5 at ¶ 1. The CIP attorney investigating petitioner's case discovered a potential Brady violation in the form of an undisclosed alleged agreement to afford leniency to witness Shanti Day. Id. at ¶¶ 2, 4; see also Pet. Ex. 6 (copy of Day's criminal trial

court minutes from May of 1997, noting imposition of a $940 fine on May 2, 1997, and striking of that fine on May 19, 1997, upon the court's review of a letter from Los Angeles Sheriff's Department Deputy Mauro, Captain of the Homicide Bureau). On November 20, 2015, CIP intern Courtney Cummings researched LASC records from Day's criminal case. Pet. Ex. 4 at ¶ 7. A clerk in the archives department read portions of confidential files from Day's case to Ms. Cummings, including Mauro's letter, which Ms. Cummings summarized as follows: "The letter was dated April 30, 1996. It stated that prior to this letter, Day was not given an immunity deal for her involvement with Demetrius Franklin's case. Mr. Mauro asked the court to dismiss all fees and fines in the interests of justice while also reinstating probation." Id. Ms. Cummings could not get a copy of the letter because it was sealed. Id.

Ms. Cummings informed petitioner of the purported contents of Mauro's letter on or around December 3, 2015. Pet. Ex. 9. In the same communication, Ms. Cummings told petitioner that she had gone to Long Beach with her gang expert to find Day but they could not locate Day. Pet. Ex. 9 (noting, "As of now, the strongest part of this case is the Brady violation. We do not need Day to prove that.").

The CIP litigated a motion to unseal Mauro's letter on or about April 1, 2016. Pet. Exs. 8-9; see also Pet. Ex. 8 (copy of Mauro's letter stating, in relevant part, "Miss Day was never promised anything other than protection and assistance in relocating [for testifying in petitioner's case]. Since [Day's] testimony in Superior Court, detectives have learned that [Day] was convicted in a petty theft case pending in [LASC] . . . . Detectives are requesting that the fine levied against Miss Day be dropped, and that she be allowed to continue her probation as she previously has been. Whatever assistance you may offer in this matter is most appreciated.").

///

On March 14, 2017, the CIP informed petitioner that his case had been closed for insufficient new evidence to prove petitioner's factual innocence. Pet. Ex. 11 (letter from "Gemma, Student #3"). Petitioner then hired counsel to assist him in filing state habeas petitions. Objections at 5. Petitioner obtained a declaration from former CIP intern Charlotte James dated May 4, 2017. Pet. Ex. 13. Ms. James stated that she worked for the CIP from January of 2014 through April of 2014. Pet. Ex. 11 at ¶ 1. At some point during that window of time, Ms. James, along with another unnamed CIP intern, allegedly met with Day and Day's mother at a McDonalds "at or near Long Beach." Id. at ¶ 2. Day allegedly told Ms. James that petitioner had nothing to do with King's death. Id. at ¶ 3. Ms. James stated that, "based on [Ms. James's] memory," Day had a history of psychological issues that were not diagnosed until after petitioner's conviction, but those symptoms "were present at the time of [petitioner's] trial." Id. at ¶ 4. By the time Ms. James allegedly interviewed Day, Day assertedly did not remember accusing petitioner of the murder. Id. at ¶ 4. It is not clear on the record provided whether anyone at CIP other than the above-referenced CIP interns was aware of Ms. James's alleged interview of Day. The interview is not mentioned in any of the correspondence.

Although petitioner had information about Mauro's letter since December of 2015, and the CIP had a copy of the letter since April of 2016, neither petitioner nor the CIP filed any habeas petitions raising a Brady claim in the state courts before petitioner commenced this action. Petitioner waited until June 6, 2017, around the time he filed the instant Petition, to raise any claims in the state courts.[1]

[1]On August 28, 2017, the LASC issued an order denying petitioner's state habeas petition, finding: (1) no Brady violation; and (2) Ms. James's hearsay declaration about Day's alleged recantation, the veracity of which was "suspect" due to the delay in reporting it, was "not the type of new evidence that would have the force that would change the result of the trial." See LASC Petition and Order Summarily Denying Petition for Writ of Habeas Corpus, lodged with the Court on January 26, 2018. (Docket No. 19).

As the Court has advised, the limitations period may be subject to equitable tolling if petitioner can demonstrate both that: (1) he has been pursuing his rights diligently; and (2) some extraordinary circumstance stood in his way. See Holland v. Florida, 560 U.S. 631, 649 (2010) (citations omitted); accord Menominee Indian Tribe of Wisconsin v. United States, 136 S. Ct. 750, 755-56 (2016). "[T]he threshold necessary to trigger equitable tolling is very high, lest the exceptions swallow the rule." Mendoza v. Carey, 449 F.3d 1065, 1068 (9th Cir. 2006) (quoting Miranda v. Castro, 292 F.3d 1063, 1066 (9th Cir.), cert. denied, 537 U.S. 1003 (2002)). It is a petitioner's burden to demonstrate that he is entitled to equitable tolling. Miranda v. Castro, 292 F.3d at 1065. Petitioner must prove that the alleged extraordinary circumstance was a proximate cause of his untimeliness and that the extraordinary circumstance made it impossible to file a petition on time. Ramirez v. Yates, 571 F.3d 993, 997 (9th Cir. 2009); Roy v. Lampert, 465 F.3d 964, 973 (9th Cir. 2006), cert. denied, 549 U.S. 1317 (2007).

Petitioner claims that he is entitled to equitable tolling because the CIP failed to file a habeas petition on his behalf and abandoned their representation of him. Objections at 1. An attorney's professional misconduct, including abandonment, can "amount to egregious behavior and create an extraordinary circumstance that warrants equitable tolling." Holland v. Florida, 560 U.S. at 651; see also, e.g., Maples v. Thomas, 565 U.S. 266, 283-88 (2012) (equitable tolling warranted where petitioner's attorneys left law firm without withdrawing as counsel, failed to notify the court or petitioner, and were precluded from continuing representation by conflict of interest rules; reasoning that, "[a]t no time before the missed deadline," were the attorneys of record serving as petitioner's agent "in any meaningful sense of that word"); Luna v. Kernan, 784 F.3d 640, 646-49, 652 (9th Cir. 2015) (equitable tolling warranted where attorney wrongfully dismissed stayed federal petition and led petitioner to believe for six-plus years that federal petition would have hearing on merits when nothing had been filed in

federal court and limitations period had long since expired); Rudin v. Myles, 781 F.3d 1043, 1056-59 (9th Cir. 2015) (equitable tolling warranted where counsel, appointed to represent petitioner in state habeas proceeding, failed to communicate with her, failed to file state or federal habeas petition and failed to investigate petitioner's post-conviction claims for almost two years), cert. denied, 136 S. Ct. 1157 (2016); Spitsyn v. Moore, 345 F.3d 796, 800-01 (9th Cir. 2003) (equitable tolling warranted where attorney, retained to file and prepare petition, failed to do so and disregarded requests to return files pertaining to petitioner's case until after date petition was due).

Here, unlike in the above cases, petitioner has not provided any evidence suggesting that the CIP ever agreed to file any habeas petitions on his behalf. The CIP accepted petitioner's case to investigate his claim of actual innocence. See Pet. Ex. 5 at ¶ 1. There is no mention in any of the correspondence that the CIP would do any more than investigate petitioner's claim. See Pet. Exs. 4-5, 8-11; compare Christon v. Pfeiffer, 2017 WL 6520639, at *6-7 & n.9 (C.D. Cal. Nov. 7, 2017) (where petitioner claimed entitlement to equitable tolling based on the CIP's alleged ineffective assistance, evidence petitioner provided did not state that the CIP agreed to represent petitioner in post-conviction proceedings; CIP's letter stated in part, "We are happy to inform you that your case will be assigned for additional investigation by one of our clinic students. . . . During the review process, you may believe that you need to pursue remedies on your own. While we don't discourage you from seeking help elsewhere and do not want you to miss any legal filing deadlines, . . . we ask that you please not file any petitions in state court without first consulting us."), report and recommendation adopted, 2017 WL 6509225 (C.D. Cal. Dec. 19, 2017); Osegueda v. Grounds, 2012 WL 5830007, at *1 (C.D. Cal. Nov. 15, 2012) (quoting similar language from CIP intern; petitioner claimed he was entitled to equitable tolling based on intern's advice, but record contained no evidence that the petitioner ever consulted with anyone at the CIP

about filing state habeas petitions, and the CIP intern's advice was given over four years after petitioner's conviction became final); Magana v. McDonald, 2010 WL 5069836, at *3 (N.D. Cal. Dec. 6, 2010) (even if the petitioner assumed the CIP was representing him, a letter from the CIP explicitly informed him that he must continue to pursue all remedies on his own); Gunn v. Salazar, 2009 WL 861247, at *3 (S.D. Cal. Mar. 27, 2009) (petitioner was not entitled to equitable tolling because he thought the CIP would file his federal petition for him and did not; the record did not detail what role the CIP played in petitioner's case and what promises the CIP made to petitioner).

It does not appear that the CIP's investigation of petitioner's case in any way prevented petitioner from timely filing a federal petition. Holland v. Florida, 560 U.S. at 649. Additionally, as explained in the Report and Recommendation, by the time the CIP began investigating petitioner's case, the statute of limitations on petitioner's Brady claim had long since run. See Report and Recommendation at 20-21. The CIP's acceptance of petitioner's case could not have been the "cause of [his] untimeliness" in presenting a Brady claim. Roy v. Lampert, 465 F.3d at 969 (quoting Spitsyn v. Moore, 345 F.3d at 799).

As relevant to all of petitioner's claims, petitioner has not shown what, if anything, he did to pursue his rights from the time his conviction became final in 1999 until August 2012, when the CIP agreed to investigate petitioner's case. While it was the CIP's investigation that resulted in an intern obtaining Day's alleged recantation on which petitioner bases his actual innocence claim, petitioner has made no showing of any efforts he made to locate or interview Day prior to 2014. See, e.g., Bryant v. Arizona Attorney General, 499 F.3d 1056, 1061 (9th Cir. 2007) (affirming the denial of equitable tolling because the petitioner failed to demonstrate any effort to seek relief for six years); Carter v. Montgomery, 2015 WL 10938257, at *4 (C.D. Cal. Nov. 16, 2015) (finding no equitable tolling where sixteen years had passed since petitioner's conviction became final, and in that

time petitioner had sent "sporadic and ineffectual letters" seeking legal assistance to the CIP and other legal assistance programs), report and recommendation adopted, 2016 WL 3034107 (C.D. Cal. May 25, 2016), cert. of appealability denied, 2017 WL 4513501 (9th Cir. 2017). Petitioner was able to hire habeas counsel when the CIP informed him it no longer would be investigating his case. Petitioner has not explained why he was able to afford and hire habeas counsel in 2017, but not in the years beforehand.

In any event, if the CIP had an obligation to inform petitioner of Day's alleged recantation and failed to do so, it still would not constitute an "extraordinary circumstance" warranting equitable tolling. See Holland v. Florida, 560 U.S. at 651-52 (a "garden variety claim of excusable neglect" does not warrant equitable tolling); Spitsyn v. Moore, 345 F.3d at 800 ("We have not applied equitable tolling in non-capital cases where attorney negligence has caused the filing of a petition to be untimely."); Frye v. Hickman, 273 F.3d 1144, 1146 (9th Cir. 2011) ("We conclude that. . . [counsel's] negligence in general [does] not constitute extraordinary circumstances sufficient to warrant equitable tolling."), cert. denied, 535 U.S. 1055 (2002).

For the foregoing reasons, petitioner has not shown he was pursuing his rights diligently or that extraordinary circumstances caused his untimeliness and made it impossible for him to file his Petition on time. Holland v. Florida, 560 U.S. at 649. The Court finds no basis for equitable tolling to render the Petition timely. Nor does the Court find extraordinary circumstances to merit relief from the Court's judgment. Buck v. Davis, 137 S. Ct. at 772.

C. A Certificate of Appealability Is Denied

A certificate of appealability to appeal the denial of Petitioner's Motions is denied because petitioner has failed to make a substantial showing of a denial of a constitutional right and, under the circumstances, jurists of reason would not disagree with the Court's determinations herein.

III. CONCLUSION

For all the foregoing reasons, Petitioner's Motions and a certificate of appealability are denied.

IT IS SO ORDERED.

7/18/18

DATED: _____

Dale S. Fischer

_____

HONORABLE DALE S. FISCHER
UNITED STATES DISTRICT JUDGE

LD #12
CV 17-4281 DSF (JC)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re

DEMETRIUS FRANKLIN

on Habeas Corpus.

B286195

(Super. Ct. No. YA029506)

ORDER

THE COURT:

We have read and considered the petition for writ of habeas corpus filed on November 9, 2017, and the supporting exhibits filed on November 13, 2017. We have also reviewed our file in case number B113005, petitioner's direct appeal from the conviction at issue in this writ proceeding.

The petition is denied.

LAVIN, Acting P. J. EGERTON, J. KALRA, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DEMETRIUS FRANKLIN, Petitioner, v. RAYMOND MADDEN, Warden, Respondent.	Case No. CV 17-4281 DSF(JC) JUDGMENT

Pursuant to this Court's Order Accepting Findings, Conclusions and Recommendations of United States Magistrate Judge,

IT IS ADJUDGED that the Petition for Writ of Habeas Corpus by a Person in State Custody and this action are dismissed with prejudice.

DATED: 4/4/18

Dale S. Fischer

HONORABLE DALE S. FISCHER
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DEMETRIUS FRANKLIN, Petitioner, v. RAYMOND MADDEN, Respondent.	Case No. CV 17-4281 DSF(JC) ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition for Writ of Habeas Corpus by a Person in State Custody ("Petition") and supporting documents, the parties' submissions in connection with the Motion to Stay, and all of the records herein, including the January 29, 2018 Report and Recommendation of United States Magistrate Judge ("Report and Recommendation"). The Court approves and accepts the Report and Recommendation.

IT IS HEREBY ORDERED that (1) the Petition and this action are dismissed with prejudice because petitioner's claims are barred by the statute of limitations; (2) the Motion to Stay is denied as moot; and (3) the Clerk shall enter judgment accordingly.

///

IT IS FURTHER ORDERED that the Clerk serve copies of this Order, the Report and Recommendation, and the Judgment herein on petitioner and counsel for respondent.

IT IS SO ORDERED.

DATED: 4/4/18

Dale S. Fischer

HONORABLE DALE S. FISCHER
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DEMETRIUS FRANKLIN, Petitioner, v. RAYMOND MADDEN, Warden, Respondent.	Case No. CV 17-4281 DSF(JC) REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE [DOCKET NO. 5]

This Report and Recommendation is submitted to the Honorable Dale S. Fischer, United States District Judge, pursuant to the provisions of 28 U.S.C. § 636 and General Order 05-07 of the United States District Court for the Central District of California.

I. SUMMARY

On June 8, 2017, petitioner Demetrius Franklin, a prisoner in state custody and proceeding *pro se*, filed a Petition for Writ of Habeas Corpus by a Person in State Custody ("Petition") pursuant to 28 U.S.C. § 2254, with a separate memorandum ("Pet. Memo"). On June 29, 2017, petitioner filed exhibits in support of the Petition ("Pet. Ex."). The Petition challenges a 1997 conviction in Los Angeles County Superior Court ("LASC") Case No. YA029506, raising three unexhausted claims for relief: (1) the prosecution allegedly withheld exculpatory

evidence in violation of Brady v. Maryland, 373 U.S. 83 (1963) (Ground One); (2) petitioner allegedly is actually innocent (Ground Two); and (3) the cumulative effect of the foregoing claims allegedly demonstrates that petitioner's constitutional rights were violated (Ground Three). See Petition at 5-6; Pet. Memo at 9-15.

Concurrently with the filing of the Petition, petitioner filed a Motion to Stay ("Stay Motion"), seeking to stay the wholly unexhausted Petition under Rhines v. Weber, 544 U.S. 269 (2005), while petitioner exhausts his claims in state court.

On August 25, 2017, respondent filed an Opposition to the Stay Motion ("Opposition"), arguing, among other things, that petitioner's claims are time-barred.[1]

For the reasons explained below, it is recommended that (1) the Petition and this action be dismissed with prejudice because petitioner's claims are barred by the statute of limitations; and (2) the Stay Motion be denied as moot.

II. PROCEDURAL HISTORY

On April 23, 1997, a LASC jury found petitioner guilty of first degree murder. (Petition at 2; Lodged Doc. 1). On May 21, 1997, the trial court sentenced petitioner to 25 years to life in state prison. (Petition at 2; Lodged Docs. 2-3).

On October 28, 1998, the California Court of Appeal affirmed the judgment in a reasoned decision. (Lodged Doc. 3). On January 13, 1999, the California Supreme Court denied review without comment. (Lodged Doc. 5).

---

[1]Respondent lodged multiple documents on August 25, 2017 and January 19, 2018 ("Lodged Doc."), including the Clerk's Transcript ("CT") and the Reporter's Transcript ("RT"). The Court takes judicial notice of other public documents filed in petitioner's following habeas cases which were lodged on January 29, 2018 ("Court Lodged Docs."): (1) LASC Case No. YA029506; and (2) California Court of Appeal, Second Appellate District ("Court of Appeal"), Case No. B286195. See Fed. R. Evid. 201; Harris v. County of Orange, 682 F.3d 1126, 1131-32 (9th Cir. 2012) (court may take judicial notice of undisputed matters of public record including documents on file in federal or state courts).

Petitioner did not seek certiorari in the United States Supreme Court and did not seek state habeas relief until June 6, 2017. (Pet. Memo at 2; Lodged Doc. 6).

On June 6, 2017, petitioner, who is proceeding with the assistance of counsel in state court (Petition at 8), filed a habeas corpus petition with the LASC, which that court denied on September 12, 2017. See Lodged Doc. 6; Court Lodged Docs.; Docket in LASC Case No. YA029506.[2] On November 9, 2017, petitioner filed a habeas corpus petition in California Court of Appeal Case No. B286195, which remains pending. See Docket in Court of Appeal Case No. B286195.

III. FACTS[3]

A. The Trial

1. Prosecution's Case-in-Chief

Shanti Day testified that on July 11, 1996, at approximately 2:45 a.m., she drove her friend Thomas to his apartment at 1108 104th Street in Los Angeles. (RT 52-54). Day had been staying with Thomas and his wife on and off, and had stayed there for the two days prior. (RT 76-77). As Day parked her car, petitioner and two other men approached. (RT 53-54, 80-81). Petitioner was wearing all

///

///

---

[2]The Court takes judicial notice of the public dockets in LASC Case Nos. YA029506 (petitioner's underlying criminal trial and habeas case), YA022875 (witness Shanti Day's 1995 case, discussed below), and YA029764 (witness Shanti Day's 1996 case, discussed below) (available online at www.lacourt.org/criminalcasesummary/ui (last visited Jan. 23, 2018)) and California Court of Appeal Case No. B286195 (available online at http://appellatecases.courtinfo.ca.gov (last visited Jan. 29, 2018)). See Fed. R. Evid. 201; Harris, 682 F.3d at 1131-32.

[3]Since petitioner asserts that he is "actually innocent," the Court has reviewed the entire record and summarizes pertinent facts below. See Lee v. Lampert, 653 F.3d 929, 938 (9th Cir. 2011) (en banc) (in assessing claim of "actual innocence," court considers "'all the evidence, old and new, incriminating and exculpatory,' admissible at trial or not.") (quoting House v. Bell, 547 U.S. 518, 538 (2006)).

white: white pants,[4] shirt, cap, and shoes. (RT 55). Petitioner stood over Day and introduced himself as Demetrius but said people called him "Stone." (RT 55, 86-87). Day had seen petitioner previously in the same neighborhood, directly across the street from where Thomas lived, but did not know petitioner's name until he introduced himself. (RT 54-55, 94, 106). Day also met for the first time one of the men with petitioner named Darnell, who seemed to know Thomas. (RT 56-57, 78). Day, Thomas, and Darnell went into Thomas's apartment. (RT 56-58, 81). Petitioner and the third man remained downstairs and went to the front of the apartment building. (RT 56, 58-59).

About 15 minutes later, Day heard what sounded like roughhousing and horseplay coming from outside. (RT 59, 61). Day, Thomas, and Darnell left the apartment to see what was happening. (RT 59-60, 83-95, 103-05). Day saw a man, who was identified as Willie Ray King (RT 34, 117, 123), running and yelling for help. (RT 60-62, 90, 92-93). King ran and slid underneath a car. (RT 61). Petitioner and another unidentified male dragged King out from under the car to the middle of the street and started beating King. (RT 61-62, 85-89, 106). King's head bounced off the curb. (RT 63). King ceased resisting and making any sounds. (RT 63, 92). He was motionless. (RT 64).

Day saw petitioner stomping, kicking, and jumping up and down on King. (RT 62-63, 67-68, 90). Petitioner kicked King in the head and upper body. (RT 63, 87). Petitioner and the other man stomped on King's chest, head, and stomach. (RT 63, 91). Blood spurted from King's mouth. (RT 91). The beating lasted for more than five minutes. (RT 68-69, 92). More than once petitioner said, "This is 10-4 Crip hood and you don't walk on our block." (RT 67).

///

[4]Day clarified that the pants were "three-fourths down, shorts that go past your knees but above your ankle." (RT 55).

Darnell, whom Day described as petitioner's "homeboy," told Day to go inside and escorted her inside the apartment. (RT 68-70, 95, 101). Day could hear the beating as it continued. (RT 69-70). King eventually was dragged from the street and left on the grass. (RT 92).

Day did not call 911 because Darnell, who was "associated" with petitioner and the other man who were beating King, was sitting right across from her. (RT 70, 101). Day was afraid. (RT 70, 101). Darnell left the apartment at about 5:00 a.m. (RT 70). Day did not call 911 after Darnell left because she was still very afraid. (RT 71-72, 97-98).

Thomas's wife woke Day at 7:00 a.m., and Day told Thomas's wife what Day had witnessed. (RT 72, 80). Day heard sirens from an ambulance and walked outside. (RT 72). There were three ambulances, a police car, a fire engine and about 10 neighbors present outside. (RT 72-73). Day approached a paramedic and asked if King was going to be okay, and then approached a fireman paramedic and told him she had seen what happened. (RT 73). Day did not talk to the paramedic at the scene; she asked him not to identify her or bring any attention to her, and said she would talk to someone later because she was afraid to talk at the scene since it "was a gang area and these were gang members." (RT 73, 99, 102).[5]

At approximately 6:00 a.m., Los Angeles Deputy Sheriff Tony Taylor arrived at the scene. (RT 112). King was bleeding, moaning and unconscious. (RT 113-14, 118). King died two days later. (RT 45). His injuries were

---

[5]Day stated the following: The area was a 104th Street Crips neighborhood, with "104th Street" tagged on the front of Thomas's apartment building. (RT 98, 101-02). She was not a gang member. (RT 99). While Day did not know any 104th Street Crip gang members, they knew her by her car. (RT 108-09). Thomas was not a gang member and had never threatened her. (RT 74). Darnell had not directly threatened her but his presence threatened her. (RT 79, 100-01, 107). She received death threats up to the time she testified at trial, which affected her state of mind. (RT 71-72, 74-76, 96). Day had been directly approached and told she was not supposed to talk about the incident, and had been paged the number 187 (for murder) so many times that she turned off her pager. (RT 72, 96-97).

consistent with a person having received a protracted beating using fists and feet. (RT 41). The cause of King's death was blunt force trauma to the head. (RT 41-42).

Deputy Taylor said that he and his partner asked a number of people at the scene if they had seen anything and the people did not want to talk to them or get involved. (RT 115, 119-20). Taylor said the area was controlled by the "10-4 Gangsters" (or 104th Street Crips). (RT 115-16). He said people who live in the area are afraid of the gang members. (RT 116). Taylor spoke with Day on the day of the incident, and Day asked to be able to remain anonymous as long as possible because she was afraid. (RT 116).[6]

Deputy Robert Lawrence, the prosecution's gang expert, testified to the following: He was familiar with the 104th Street Crips or "10-4 Gangsters." (RT 125, 127-32, 138). Petitioner had identified himself on more than one occasion to Lawrence as a member of the 104th Street Crips with the moniker "Flintstone." (RT 130, 137-38, 146-47). The 104th Street Crips controlled the area where King was beaten. (RT 131, 147-50). Members of a gang will kill people simply to enforce their claim on a territory. (RT 132). Innocent, non-gang members are occasionally victims. (RT 132). If a non-gang member entered a gang's territory, that person could be assaulted, intimidated, or killed. (RT 135). It was common for persons witnessing crimes in gang areas to say they saw nothing. (RT 133, 135-36, 140). It was also common for gang members to call out their gang affiliation while committing an assault. (RT 132-33). This informed persons being attacked they were in the wrong place and discouraged witnesses from speaking to police. (RT 133-35).

///

---

[6]The police referred to Day as "Jane Doe" to protect her until she testified at petitioner's preliminary hearing. (RT 99-100). Day had demanded that police relocate her and protect her location and identity, which had been done. (RT 103, 109-11).

2. Defense Case

Petitioner testified in his defense. (RT 174-234). He said he lived at 1111 104th Street with his grandmother. (RT 175, 189).[7] On the evening of July 10, 1996, petitioner rode with Darnell to a club and returned at some point after midnight to petitioner's home, where he and Darnell sat on some steps of an apartment building for not longer than five minutes. (RT 177-78, 188, 192-93, 197, 200, 210, 229, 233). Other people showed up. (RT 178). Petitioner said he was wearing a leather jacket, blue jeans, a rayon shirt and flat-foot casual shoes because the club he had gone to had a dress code. (RT 178, 200-03). Petitioner denied owning white shorts or ever wearing shorts because petitioner did not like his "skinny" legs. (RT 183, 215-16).

In the early morning hours of July 11, 1996, petitioner saw Thomas Evins, who he knew from the neighborhood, arrive home by car and walk to the top of the stairs to Thomas's apartment where Darnell went to talk to Thomas. (RT 179, 199, 203-05, 212). Petitioner said he did not go up and talk to them; he stayed at the bottom of the stairs. (RT 179-80, 205). Petitioner was waiting for Darnell to finish a beer and drive petitioner "home" to petitioner's mother's house on 103rd Street near where Darnell lived. (RT 180, 188-89, 197-98, 234). After Darnell talked to Thomas, he and petitioner left in Darnell's car and drove to petitioner's mother's house where Darnell dropped off petitioner and drove away. (RT 181,

---

[7]Petitioner's booking sheet, which petitioner signed, had the address for petitioner's mother (1157 West 103rd Street) as his address. (RT 191, 214). Petitioner denied telling the police that was where he was living. (RT 191, 214, 224-25, 230). The police had already been to petitioner's mother's house looking for petitioner before petitioner surrendered to the police and was booked. (RT 225).

Detective Mark Lillienfeld testified in rebuttal that he participated in petitioner's booking on July 24, 1996, and that petitioner gave as his home address the address of his mother's house on 103rd Street. (RT 314-15). Lillienfeld had been to both petitioner's grandmother's house and his mother's house prior to the booking, serving search warrants. (RT 321-22).

205-06, 227, 231). Petitioner said there were other people still in the area of his grandmother's house when he left, including someone named Jim from the neighborhood. (RT 181, 198). Petitioner said he went to his mother's house because he did not want to wake his grandmother. (RT 229-33).

Petitioner denied being on 104th Street when King was beaten or seeing it take place. (RT 182, 213). Petitioner said that he valued human life and would not have done anything like that. (RT 185). Petitioner also said it would be foolish for him to do something like that in front of his grandmother's house where everyone knew him because he had lived there his entire life. (RT 185, 194-95).

As for Day, petitioner said he had met Day at Thomas's apartment building on 104th Street early in July but not on July 11. (RT 181, 183, 198, 210). Petitioner had tried to talk to Day but she would not really talk to him so he walked away. (RT 181-82, 184-85, 210-12, 226). Petitioner said he did not see Day again after meeting her in early July. (RT 184, 212).

Petitioner denied knowing "too much" about the 104th Street Crips and said that his block was mostly a quiet block with elderly people. (RT 186, 216, 219-20). Petitioner said he never heard of or saw 10-4 Gangsters in the area. (RT 195; but see RT 220 (petitioner testifying that he never heard of the 104th Street Crips but had heard of the 10-4 Gangster Crips)). Petitioner did not know if Darnell was a 10-4 Gangster and said Darnell never seemed to him to be a gang member. (RT 196-97). Petitioner denied ever identifying himself as a 104th Street Crip, but admitted he had encountered Deputy Lawrence a few times. (RT 186-88, 220-23). Petitioner denied being a gang member. (RT 187, 216, 220-21). Petitioner said he knew of a Hoover gang that operated in the area. (RT 194). Petitioner admitted he had been convicted of a felony for possession of marijuana for sale. (RT 187-88). Petitioner said he was not a drug dealer. (RT 188). Petitioner denied telling the deputies who arrested and booked him that he was a 104th Street Crip with a

name of "Little Flintstone," and denied telling any gang officers that he was a 104th Street Crip. (RT 222-23).[8]

Eric "Darnell" Woodard testified that he was friends with petitioner and called petitioner "Meechie." (RT 235-36). On the night of July 10, 1997, Darnell drove petitioner to a club where they stayed until 1:45 a.m. (RT 237-38, 250-52). They left and went to petitioner's grandmother's house on 104th Street where petitioner stays. (RT 238). Darnell said petitioner was locked out of the house, and Darnell wanted to drink a beer before he went home so he and petitioner sat on apartment steps across the street from petitioner's grandmother's house. (RT 239, 258-60, 262). There were a couple of guys already on the steps. (RT 239, 265). Darnell knew one of the guys from around the neighborhood as "Will" or "Willy" and he did not know the other guy. (RT 265). Darnell did not know if the two men were gang members but said there were a lot of gang members in that area. (RT 265). Darnell knew of a Hoover gang but not the 104 Crips or 10-4 Gangster Crips. (RT 265-66).

As he sat on the steps, Darnell saw a car pull up and saw Thomas, the guy who lived upstairs, get out of the car with a girlfriend. (RT 240-41, 261). Darnell went up the stairs to greet Thomas. (RT 241, 261, 263). Darnell said he went inside Thomas's apartment trying to get the phone number of the girl who was with Thomas to "get more acquainted." (RT 241-42, 263). Darnell stayed no more than five minutes and then left and drove petitioner to petitioner's mother's house. (RT 242, 263-64). Darnell walked from there to Darnell's mother's house. (RT 242-43).

---

[8]In rebuttal, Deputy Joseph Trimarchi testified to the following: He arrested petitioner on July 6, 1994, for possession of marijuana for sale, and took part in petitioner's booking. (RT 297-98). He asked petitioner if he was a member of a street gang and petitioner said he was affiliated with the 104 Gangsters and had the street name "Little Flintstone." (RT 298). Another person who was detained at the time of petitioner's arrest identified himself as a 104 Crip. (RT 302).

Darnell admitted he had a 1992 felony grand theft conviction. (RT 245). He denied being a gang member or ever identifying himself as a member of the 104th Street Crips. (RT 245-46). Darnell knew that petitioner had been arrested and charged with murder, but did not contact anyone other than petitioner's family about that evening. (RT 253-55). Darnell did not contact the police to let them know that petitioner did not commit the murder, and did not contact petitioner's trial lawyer until some time in November or December 1996. (RT 254-57).[9]

Thomas Evins testified that he was petitioner's neighbor and had known petitioner for about a year as of July 1996. (RT 273, 279). Thomas testified that at around 3:00 a.m. on July 11, 1996, he was driven home by his friend Shanti (Day). (RT 274-76). When Thomas arrived home he saw petitioner, Darnell, and another guy sitting on the stairs hanging out. (RT 276, 281-82). Day parked in the back and Darnell came to the back with a beer in his hand trying to talk to Day and get her phone number. (RT 276-77, 282-83). Petitioner did not come to the back or talk to Day. (RT 276, 290). Thomas, Day, and Darnell all went upstairs where Darnell talked to Day for about five minutes right outside Thomas's apartment before leaving. (RT 277-78, 282-86). Petitioner called for Darnell from the steps, saying, "Let's go." (RT 286). Thomas went inside the apartment and watched TV with Day for a while. (RT 286-87). Thomas recalled that petitioner was wearing a black leather jacket, black pants, and a white shirt. (RT 290).

Thomas denied seeing Darnell or petitioner again that day, or hearing anyone yelling for help, or coming back out of his apartment. (RT 277, 284, 287). He also said Day shares an apartment with him and never came back out except a little while later to smoke a cigarette and then come right back in. (RT 284-85).

---

[9]The parties stipulated that if called as a witness petitioner's counsel would testify that he first spoke to Darnell on April 17, 1997, had never met or spoken to Darnell prior to that date, and did not know Darnell's full identity or the contents of his testimony until counsel spoke to Darnell on April 17, 1997. (RT 294).

The next morning Thomas saw police and an ambulance outside and saw Day leave and go to a doughnut shop. (RT 278).

Thomas denied being a gang member but said he knew some 104th Street Crips and knew they were present in his neighborhood, saying it was apparent they were there. (RT 280-81). Thomas knew a few gang members but said he would not call himself an associate. (RT 281). During the year that Thomas was neighbors with petitioner, Thomas found out that petitioner was from the Crips. (RT 280). Thomas also knew Darnell from the neighborhood and believed Darnell was a 10-4 Gangster Crip. (RT 280).

3. Prosecution's Rebuttal Case

Detective Frank Salerno testified that he was familiar with the 1100 Block of 104th Street in Los Angeles, and said there were gangs active in that area including the 104th Street Crips or 10-4 Gangster Crips. (RT 305). Salerno knew Darnell by the moniker "Scooby" or "Little Scooby" and knew him to be a member of the 104th Street Crips from talking to Darnell and Darnell admitting his membership. (RT 305-06). Salerno also had known petitioner for about 10 years since petitioner was 11 or 12 years old. (RT 306). Petitioner had told Salerno that petitioner was a member of the 10-4 Crips. (RT 307, 310-11). Although Salerno said petitioner was a gang member, Salerno admitted that petitioner had no gang tattoos on his body. (RT 309-11).

4. Defense's Surrebuttal Case

Petitioner testified that he had known Detective Salerno for only about five years from seeing Salerno around the neighborhood. (RT 361). The parties also stipulated that none of the light colored clothing items the police searched for were taken into evidence as a result of searching petitioner's grandmother's house and mother's house. (RT 361-62).

///

///

B. Background Relating to Petitioner's "New" Evidence

On July 11, 1996, the day King was beaten, a police report states that an "anonymous informant" (Day) contacted a fireman and told him to have the police meet her at another location for information about the assault. (Pet. Ex. 1 at 1, 3). The report notes one of the suspects is named "Demetrious" and is a 104th Street Crip. (Pet. Ex. 1 at 1). The witness reported the following:

> At approximately 3 a.m. the witness was in a friend[']s apartment directly across from the incident location, when arguing was heard. The witness looked out of the door and saw [two suspects] arguing at [King] about walking down [the suspects'] street. [The suspects] are 104th St. Crips. [The suspects] started hitting [King] with their fists until [King] hit the ground. [The suspects] then took turns jumping and stomping on [King's] head. [The suspects] then walked away from [King] and went into the house of 1109 104th St. (two doors east of incident address). ¶ The witness did not call 911 because there was a 104th St. Crip member in the apartment where she was and [she] feared retaliation.

(Pet. Ex. 1 at 3).

On August 9, 1996, in LASC Case No. YA029764 ("Day's 1996 case"), Day was charged with one count of petty theft with a prior conviction (Cal. Penal Code § 666), and one count of theft (Cal. Penal Code § 484(A)), based on conduct that allegedly occurred on July 28, 1996. (Pet. Ex. 3). Day was then on probation in connection with a March 1995 felony conviction for grand theft in LASC Case No. YA022875 ("Day's 1995 case"). (Pet. Ex. 2; RT 20-21). On October 17, 1996, Day was arraigned in Day's 1996 case in Department 5 of the LASC Torrance Courthouse. See Docket in LASC Case No. YA029764.

On December 18, 1996, petitioner's preliminary hearing was held in Division 2 of the Inglewood Municipal Court. (CT 1). Day was the only witness

who testified at the preliminary hearing. Her testimony was consistent with her trial testimony and with what was reported in the police report (*i.e.*, on the night King was beaten, Day saw petitioner beating King). See CT 4-44 (Day's preliminary hearing testimony); Pet. Ex. 1 at 3. Day admitted that she had a prior conviction for felony grand theft. (CT 25).

On January 3, 1997, Day pleaded guilty to theft in Day's 1996 case and the other count for petty theft with a prior conviction was dismissed. (Pet. Ex. 3). Day was sentenced to probation and two days in jail and a $940 fine was imposed. See Docket in LASC Case No. YA029764.

On January 3, 1997 – the same day that Day pleaded guilty in Day's 1996 case in Department 5 – petitioner was arraigned in Department G at the LASC Torrance Courthouse on the murder charge. See Docket in LASC Case No. YA029506; see also CT 48-49 (Information).

On April 17, 1997, just before Day's testimony at petitioner's trial, the prosecutor sought an order preventing the defense from impeaching Day with her prior felony grand theft conviction in Day's 1995 case. (RT 20-26; CT 75). The prosecutor noted for the record the following:

> . . . Day, the percipient witness to this event, suffered in March of 1995 a felony conviction for grand theft. That is one that she suffered, she's on probation for. And according to the terms of the disposition, she has five years probation with the idea that if she successfully completes that, that can be reduced to a misdemeanor. She is on track to doing that now.

(RT 20-21). The defense objected, noting an understanding that Day had a new conviction for theft in LASC Case No. YA029764 dating back to July of 1996, that counsel thought was due for sentencing in May. (RT 21-22). Petitioner's counsel said, "my understanding from my investigation is she worked out a deal in lieu of the 666 [petty theft with a prior charge,] she's going to plead the 484 [theft

charge]." (RT 21). The prosecutor assertedly was not aware of Day's 1996 case. (RT 22). The court's clerk clarified for the parties that the next scheduled event for Day's 1996 case was for the payment of a fine on May 2, 1997, and advised that the felony Section 666 charge had been dismissed and the parties had proceeded on the Section 484(A) misdemeanor theft charge. (RT 23).[10]

Defense counsel asked whether Day had reached some form of disposition from the District Attorney's Office in exchange for her testimony in petitioner's case. (RT 24). The prosecutor noted that he raised the issue of excluding evidence of Day's felony conviction in good faith because he thought Day had only a single felony conviction, and represented as follows:

> . . . I've made no deal with this witness. This witness made her statement on the date of the incident. ¶ We've attempted to protect her since that time from harm. But as far as her criminal record is concerned, that's something I only personally became aware of very recently. Certainly, if there were any deals made with her, that is something that would have been discoverable. That would have been my obligation to turn over to [the] defense, as I've turned over all discovery. Were there such a deal in place, that would be something [the defense] would be entitled to present. . . . I'm representing to the court now that I have no agreement, no arrangement, no understanding with this witness. And I would have been obligated to bring that to counsel's attention. I think counsel knows that [an agreement] doesn't exist. What he would like to do is simply present something to the jury and invite their speculation [that she was given a deal], and I'm suggesting that's improper to do that.

[10]The docket in Day's 1996 case reflects that she pleaded guilty to theft and had been sentenced on January 3, 1997. See Docket in LASC Case No. YA029764.

(RT 25-26). The trial court permitted the defense to impeach Day with her prior grand theft conviction in Day's 1995 case and ruled that, in the absence of some evidence of a deal between the People and Day, inviting the jury to speculate based upon nothing more than insinuation and innuendo [that Day may have had a deal] would be improper impeachment. (RT 26). Day then testified for the prosecution at petitioner's trial. (RT 50-111; CT 75). Day admitted she had been convicted in March of 1995 for grand theft for misuse of a credit card. (RT 66, 83). As noted above, the jury convicted petitioner on April 23, 1997. (Lodged Doc. 1).

On April 30, 1997, Homicide Bureau Captain Don Mauro wrote a letter to the presiding judge in Day's 1996 case which states in relevant part:

> Miss Day provided detectives with suspect descriptions and the first name of one of the suspects. ¶ As a result of this information, detectives were able to identify [petitioner] as one of the persons responsible for the murder [of King]. Miss Day picked [petitioner] out of a photo line up and subsequently testified against him [at his preliminary hearing] in Inglewood Municipal Court. ¶ After the preliminary hearing and [petitioner] was bound over for trial, Miss Day['s] life was threatened by several companions of [petitioner], who were also 104th Street Crip street gang members. [Day] was told to change her testimony, and believed that she'd be killed if she testified truthfully at trial. ¶ Because of this, Miss Day moved several times. Despite these threats, she continued to cooperate and assist detectives and the District Attorney's Office in the prosecution of [petitioner].
>
> On April 18, 1997, Miss Day testified during a jury trial in Torrance Superior Court, Case # YA029506. Her testimony was consistent with the prior statements she had made, as well as her

> preliminary hearing testimony. Miss Day testified over a two day period, despite receiving death threats via telephone.
>
> Miss Day was the only eyewitness to the murder who came forward. Despite the use of search warrants, informants, surveillance, and other investigative tools, the case against [petitioner] rested primarily on Miss Day[']s] testimony.
>
> *Miss Day was never promised anything other than protection and assistance in relocating. Since her testimony in Superior Court, detectives have learned that she was convicted in a petty theft case pending in Torrance Superior Court, [C]ase # YA029764. . . .*
>
> *Detectives are requesting that the fine levied against Miss Day be dropped, and that she be allowed to continue her probation as she previously has been.* Whatever assistance you may offer in this matter is most appreciated.

(Pet. Ex. 7) (emphasis added).

On May 2, 1997, Day's 1996 case was transferred to Department 2. See Docket in LASC Case No. YA029764. "Additional Court Proceedings" from that date note that Day had not paid the $940 fine. (Pet. Ex. 6). On May 19, 1997, the presiding judge in Day's 1996 case noted: "Court reviews letter from LASD Dep. Mauro (Captain, Homicide Bureau) – DDA Alan Jackson has no objection – Court strikes fine in interest of justice – [probation] reinstated – Clerk to advise counsel." (Pet. Ex. 6).

On May 21, 1997, petitioner was sentenced in his criminal case. (Lodged Doc. 2). That same day, petitioner filed a new trial motion arguing, *inter alia*, that the defense should have been allowed to present evidence of Day's "present, prominent motives for untruthful testimony," namely the assertedly "pending" felony charge at the time of petitioner's trial. See CT 138-41 (motion). The prosecutor opposed the motion, noting again that there were no arrangements

made with Day regarding the disposition of Day's 1996 case and that the prosecution did not know what had become of Day's 1996 case. (RT 462). The trial court denied the new trial motion prior to sentencing petitioner. (RT 463; CT 142).

Approximately fifteen years later, in August 2012, the California Innocence Project ("CIP") began investigating petitioner's actual innocence claim. (Pet. Ex. 5 at ¶ 1). At some point prior to February 11, 2015, the CIP learned of Mauro's letter from reviewing the minute orders from Day's 1996 case and sought to obtain a copy of the letter. (Pet. Ex. 5 at ¶¶ 4, 5). On November 20, 2015, CIP intern Courtney Cummings was told of the contents of Mauro's letter but could not obtain a copy because the letter was previously sealed. (Pet. Ex. 4 at ¶ 7). On December 3, 2015, Cummings wrote a letter to petitioner telling him about the contents of Mauro's letter. (Pet. Ex. 9). Cummings also noted that she had gone to Long Beach with her gang expert to try to find Day and could not find Day. (Pet. Ex. 9).

By letter dated March 2, 2016, Cummings informed petitioner that on April 1, 2016, the CIP would be litigating the CIP's motion to unseal Mauro's letter. (Pet. Ex. 8). The letter bears a handwritten note that the motion to unseal was granted on April 1, 2016. (Pet. Ex. 8).

On March 14, 2017, the CIP wrote to petitioner informing him that it had closed petitioner's case for insufficient new evidence to prove petitioner's factual innocence. (Pet. Ex. 11).

In a declaration dated May 4, 2017, a former CIP student intern Charlotte James states that she worked for the CIP from January 2014 to April 2014. (Pet. Ex. 13 at ¶ 1). During that time, James reportedly met with Shanti Day and Day's mother at a McDonalds "at or near" Long Beach with another (unnamed) CIP intern. (Pet. Ex. 13 at ¶ 2). James states that Day told James that Day

///

"remembered an old man was killed on her block, but said [petitioner] had nothing to do with the old man's death." (Pet. Ex. 13 at ¶ 3). James further states:

> Based on my memory, Ms. Day also had a history of psychological issues. She had been in and out of treatment for various psychotic episodes. Although her psychological issues were not diagnosed until after [petitioner's] conviction, her symptoms were present at the time of his trial. By the time I interviewed Ms. Day, she did not remember accusing [petitioner] of the murder.

(Pet. Ex. 13 at ¶ 4).[11]

IV. DISCUSSION

Federal courts are permitted to consider, *sua sponte*, the timeliness of a state prisoner's habeas petition, but must accord the petitioner fair notice and an opportunity to present his position before taking any action on that basis. Day v. McDonough, 547 U.S. 198, 209-10 (2006); Herbst v. Cook, 260 F.3d 1039, 1042-43 (9th Cir. 2001). Respondent's Opposition to the Stay Motion and this Report and Recommendation accord petitioner fair notice. Petitioner is being afforded an opportunity to present his position on the statute of limitations issue through the filing of any objections to this Report and Recommendation before any action by the District Judge.[12]

A. Accrual of the Statute of Limitations

Under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 110 Stat. 1214, a one-year statute of limitations exists for the filing of habeas petitions by persons in state custody. See 28 U.S.C. § 2244(d)(1). The limitation

---

[11]None of the correspondence from the CIP to petitioner that has been provided to the Court mentions the reported interview of Day or an intern named Charlotte. See Pet. Exs. 8-11.

[12]Petitioner is ordered to submit any evidence supporting his position on the statute of limitations with his objections to this Report and Recommendation. The failure to submit evidentiary support may result in the Court's dismissal of this action as untimely.

period runs from the latest of: (1) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review (28 U.S.C. § 2244(d)(1)(A)); (2) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action (28 U.S.C. § 2244(d)(1)(B)); (3) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review (28 U.S.C. § 2244(d)(1)(C)); or (4) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence (28 U.S.C. § 2244(d)(1)(D)). The Court must evaluate the commencement of the limitations period on a claim-by-claim basis. Mardesich v. Cate, 668 F.3d 1164, 1171 (9th Cir. 2012).

Petitioner's conviction became final on April 13, 1999 – ninety (90) days after the California Supreme Court denied the petition for review on January 13, 1999 – when the time to file a petition for review with the California Supreme Court expired. See Jimenez v. Quarterman, 555 U.S. 113, 119 (2009) ("direct review cannot conclude for purposes of § 2244(d)(1)(A) until the availability of direct appeal to the state courts, and to this Court, has been exhausted") (internal citations omitted); Zepeda v. Walker, 581 F.3d 1013, 1016 (9th Cir. 2009) (period of "direct review" after which state conviction becomes final for purposes of section 2244(d)(1)(A) includes the 90-day period for filing a petition for certiorari in the United States Supreme Court) (citing Bowen v. Roe, 188 F.3d 1157, 1159 (9th Cir. 1999)). Accordingly, the statute of limitations commenced to run on April 14, 1999, and absent tolling, expired on April 13, 2000, unless subsections B, C or D of 28 U.S.C. § 2244(d)(1) apply in the present case. See 28 U.S.C. § 2244(d)(1)(A).

///

Subsection B of 28 U.S.C. § 2244(d)(1) has no application in the present case. Petitioner does not allege, and this Court finds no indication, that any illegal state action prevented petitioner from filing the Petition sooner.

Subsection C of 28 U.S.C. § 2244(d)(1) also has no application in the present case. Petitioner does not rely upon any constitutional right "newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review."

Petitioner's submissions can be read to suggest that subsection D of 28 U.S.C. § 2244(d)(1) affords petitioner a later accrual date for the statute of limitations. Under Section 2244(d)(1)(D), the statute of limitations commences when a petitioner knows, or through the exercise of due diligence could discover, the factual predicate of his claims, not when a petitioner learns the legal significance of those facts. See Hasan v. Galaza, 254 F.3d 1150, 1154 n.3 (9th Cir. 2001); see also Redd v. McGrath, 343 F.3d 1077, 1084 (9th Cir. 2003). Section 2244(d)(1)(D) does not require the maximum feasible diligence, but it does require reasonable diligence in the circumstances. Ford v. Gonzalez, 683 F.3d 1230, 1235 (9th Cir.), cert. denied, 568 U.S. 1053 (2012). "[T]he petitioner bears the burden of proving that he exercised due diligence, in order for the statute of limitations to begin running from the date he discovered the factual predicate of his claim, pursuant to 28 U.S.C. § 2244(d)(1)(D)." DiCenzi v. Rose, 452 F.3d 465, 471 (6th Cir. 2006).

As to Ground One – petitioner's claim that the prosecution withheld exculpatory evidence (*i.e.*, the letter from Captain Mauro to the judge in Day's 1996 case which assertedly evidences an undisclosed agreement with Day) in violation of Brady – petitioner should have been aware of the factual predicate for this claim prior to the time his conviction became final. Petitioner knew before his trial that Day's felony charge in the 1996 case had been dismissed, and that Day had pleaded guilty to a misdemeanor. (RT 21-23). The docket in Day's 1996 case

also clearly showed that she was given probation as a result of her plea. See Docket in LASC Case No. YA029764. Mauro's letter – the basis for the Brady claim – was referenced in minutes of Day's criminal case two days before petitioner argued his new trial motion and was sentenced. (Pet. Ex. 6). Had petitioner or his counsel reviewed the minutes from Day's criminal proceedings, they (like the CIP intern who reviewed such docket several years later) would have learned of Mauro's letter. Petitioner would then have been in a position to promptly undertake efforts to obtain a copy of the letter or, at a minimum, to present the matter to the state court in conjunction with the motion for new trial. Petitioner's trial counsel had argued that Day had a motive to lie for the prosecution due to her allegedly "pending" criminal case. (CT 138-41). Reasonable diligence in this circumstance would suggest that petitioner or his counsel review Day's 1996 case minutes prior to sentencing or completion of direct review. Certainly, reviewing those minutes more than 13 years after petitioner's conviction became final – with no explanation for the delay – is not reasonable diligence for a later accrual date.

As to Ground Two – that petitioner is actually innocent based upon Day's alleged recantation of her testimony in 2014 – the commencement of the statute of limitations is also governed by 28 U.S.C. § 2244(d)(1)(D). See Souliotes v. Evans, 622 F.3d 1173, 1178-79 (9th Cir. 2010) (rejecting argument that innocent defendant is aware of innocence from the time he is convicted for accrual of actual innocence claim; "the application of § 2241(d)(1)(D) turns on when Souliotes could have reasonably discovered the evidence based on the new developments in testing methods, which Souliotes alleged were not widely known prior to 2005 and not published until 2006"), vacated on other grounds, Souliotes v. Evans, 654 F.3d 902 (9th Cir. 2011); see generally McQuiggin v. Perkins ("Perkins"), 569 U.S. 383, 388-89 (2013) ("If the petition alleges newly discovered evidence, . . . the filing deadline is one year from 'the date on which the factual predicate of the

claim or claims presented could have been discovered through the exercise of due diligence.'" (quoting 28 U.S.C. § 2244(d)(1)(D)). This claim is predicated upon Day's asserted statement to an intern some time between January and April 2014, that petitioner had nothing to do with King's death. (Pet. Ex. 13 at ¶¶ 1, 3). Petitioner has made no showing of any efforts made to locate/interview Day prior to 2014. Assuming petitioner could not have located Day with reasonable diligence prior to April 2014, this, at best, means that the statute of limitations on his actual innocence claim commenced no later than May 1, 2014, and, absent tolling expired on April 30, 2015.

As Ground Three is based upon the cumulative error assertedly arising from Grounds One and Two, and in light of the foregoing, the statute of limitations on Ground Three commenced running no later than May 1, 2014, and, absent tolling expired on April 30, 2015.

To summarize, absent tolling, petitioner had until no later than April 13, 2000 to file a federal habeas petition asserting Ground One, and until no later than April 30, 2015 to file a federal habeas petition asserting Grounds Two and Three.

B. Statutory Tolling

Title 28 U.S.C. § 2244(d)(2) provides that the "time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward" the one-year period. Petitioner has the burden of demonstrating the facts supporting tolling. See Banjo v. Ayers, 614 F.3d 964, 967 (9th Cir. 2010), cert. denied, 564 U.S. 1019 (2011). Petitioner has neither alleged nor demonstrated that statutory tolling renders the Petition timely. During the period in which the statute of limitations was running (*i.e.*, from April 14, 1999 to April 13, 2000 as to Ground One, and from no later than May 1, 2014 to April 30, 2015 as to Grounds Two and Three) petitioner had no pending state habeas petitions. Petitioner's subsequently filed state habeas petitions cannot toll the statute of limitations. See Ferguson v.

Palmateer, 321 F.3d 820, 823 (9th Cir.) (section 2244(d) does not permit reinitiation of limitations period that ended before state petition filed), cert. denied, 540 U.S. 924 (2003); Jimenez v. Rice, 276 F.3d 478, 482 (9th Cir. 2001) (filing of state habeas petition well after statute of limitations ended does not affect limitations bar), cert. denied, 538 U.S. 949 (2003). Consequently, statutory tolling cannot render the Petition timely filed.

C. Equitable Tolling

In addition to statutory tolling, the limitations period may also be subject to equitable tolling if petitioner can demonstrate both that: (1) he has been pursuing his rights diligently; and (2) some extraordinary circumstance stood in his way. Holland v. Florida, 560 U.S. 631, 649 (2010) (citations omitted). "[T]he threshold necessary to trigger equitable tolling is very high, lest the exceptions swallow the rule." Mendoza v. Carey, 449 F.3d 1065, 1068 (9th Cir. 2006) (quoting Miranda v. Castro, 292 F.3d 1063, 1066 (9th Cir.), cert. denied, 537 U.S. 1003 (2002)). It is a petitioner's burden to demonstrate that he is entitled to equitable tolling. Miranda v. Castro, 292 F.3d at 1065. Petitioner must prove that the alleged extraordinary circumstance was a proximate cause of his untimeliness and that the extraordinary circumstance made it impossible to file a petition on time. Ramirez v. Yates, 571 F.3d 993, 997 (9th Cir. 2009); Roy v. Lampert, 465 F.3d 964, 973 (9th Cir. 2006), cert. denied, 549 U.S. 1317 (2007).

Here, there is no basis in the record to find that petitioner is entitled to equitable tolling prior to the expiration of the statute of limitations, let alone equitable tolling that would be sufficient to render the Petition timely.

D. Actual Innocence Gateway

The Court has also considered whether a fundamental miscarriage of justice would occur if the Court did not consider the merits of petitioner's otherwise time-barred claims because of his "actual innocence."

///

"[A]ctual innocence, if proved, serves as a gateway through which a petitioner may pass whether the impediment is a procedural bar . . . [or] expiration of the statute of limitations." Perkins, 569 U.S. at 386; see also Lee v. Lampert, 653 F.3d at 934-37. However, "tenable actual-innocence gateway pleas are rare." Perkins, 569 U.S. at 386. The Court must apply the standards for gateway actual innocence claims set forth in Schlup v. Delo, 513 U.S. 298 (1995). See Perkins, 569 U.S. at 386; Johnson v. Knowles, 541 F.3d 933, 937 (9th Cir. 2008) (miscarriage of justice exception to federal habeas statute of limitations is limited to *extraordinary* cases where petitioner asserts his innocence and establishes that court cannot have confidence in contrary finding of guilt) (citing Schlup; emphasis added in Johnson), cert. denied, 556 U.S. 1211 (2009). "[A] petitioner does not meet the threshold requirement unless he persuades the district court that, in light of the new evidence, no juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt." Perkins, 569 U.S. at 386 (quoting Schlup, 513 U.S. at 329); see also House v. Bell, 547 U.S. at 522 (Schlup exception available only in "certain exceptional cases involving a compelling claim of actual innocence"); Schlup, 513 U.S. at 327 (observing that evidence sufficiently reliable to support a claim of actual innocence "is obviously unavailable in the vast majority of cases" and, therefore, "claims of actual innocence are rarely successful.").

In order to make a credible claim of actual innocence, a petitioner must "support his allegations of constitutional error with new reliable evidence – whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence – that was not presented at trial." Schlup, 513 U.S. at 324; see also Griffin v. Johnson, 350 F.3d 956, 963 (9th Cir. 2003) (holding that "habeas petitioners may pass Schlup's test by offering 'newly presented' evidence of actual innocence"), cert. denied, 541 U.S. 998 (2004); Shumway v. Payne, 223 F.3d 982, 990 (9th Cir. 2000) ("[A] claim of actual innocence must be based on

reliable evidence not presented at trial."). The court must consider "'all the evidence, old and new, incriminating and exculpatory,' admissible at trial or not." Lee, 653 F.3d at 938 (quoting House v. Bell, 547 U.S. at 538). On this record, the court must make a "probabilistic determination about what reasonable, properly instructed jurors would do." Id. (quoting House v. Bell, 547 U.S. at 538).

Here, petitioner has not made the requisite showing under Schlup. He claims that he is actually innocent based upon the declaration from the purported CIP intern, Charlotte James, who worked for the CIP in 2014, about her alleged interview of Day. Such declaration is not sufficiently reliable to support an actual innocence gateway claim. James's declaration appears to be based solely on her memory of events approximately three years prior without reference to any contemporaneous notes or reports. It contains only hearsay statements about Day's alleged recantation and offers no foundation to suggest that the person James spoke with actually was Day. The declaration is particularly suspect in that it makes observations about Day's alleged "psychological symptoms" evident at petitioner's trial in 1997, when Jones was not even involved in petitioner's case until 2014. See Pet. Ex. 13; compare United States v. Quiroz, 706 Fed. Appx. 423, 424 (9th Cir. 2017) (finding no error in dismissing actual innocence claim where there was no reliable evidence that a witness from trial had recanted). The declaration is also suspect given the post-2014 correspondence to petitioner from CIP intern Courtney Cummings which makes no reference to any such exonerating statement from Day and instead details CIP's unsuccessful efforts to locate Day (Pet. Exs. 8-10), as well as 2016 CIP declarations to the LASC which likewise omit any reference to such statement (Pet. Exs. 4, 5).

Even if the evidence of Day's alleged recantation were reliable, it would not be sufficiently reliable to serve as a gateway to consider petitioner's otherwise time-barred claims. Compare Jones v. Taylor, 763 F.3d 1242, 1251 (9th Cir. 2014) (where petitioner claimed innocence based on the recantation of three trial

witnesses, including the victim, petitioner failed to establish actual innocence; "The most that can be said of the new testimony is that it undercuts the evidence presented at trial. Evidence that merely undercuts trial testimony or casts doubt on the petitioner's guilt, but does not affirmatively prove innocence, is insufficient to merit relief on a freestanding claim of actual innocence.").

In short, petitioner has not made the requisite showing under Schlup. This is not one of the extraordinary cases meriting review of petitioner's otherwise time-barred claims under the actual innocence exception to the statute of limitations.

E. The Stay Motion Should Be Denied as Moot

Because petitioner's claims are untimely, the Stay Motion is moot and should be denied as such. See, e.g., Dang v. Sisto, 391 Fed. Appx. 634, 635 n.9 (9th Cir. 2010) ("Because the petition was untimely, we do not consider whether Dang was entitled to a stay and abeyance order [under Rhines] while he sought to exhaust additional claims before the state courts. A stay would have availed him nothing.") (internal citation to Rhines omitted), cert. denied, 562 U.S. 1183 (2011).

V. RECOMMENDATION

IT IS THEREFORE RECOMMENDED that the District Judge issue an Order: (1) approving and accepting this Report and Recommendation; (2) dismissing the Petition and this action with prejudice and directing that judgment be entered accordingly because petitioner's claims are barred by the statute of limitations; and (3) denying the Stay Motion as moot.

DATED: January 29, 2018

/s/

Honorable Jacqueline Chooljian
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DEMETRIUS FRANKLIN, Petitioner, v. RAYMOND MADDEN, Respondent.	Case No. CV 17-4281 DSF(JC) (PROPOSED) ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition for Writ of Habeas Corpus by a Person in State Custody ("Petition") and supporting documents, the parties' submissions in connection with the Motion to Stay, and all of the records herein, including the January 29, 2018 Report and Recommendation of United States Magistrate Judge ("Report and Recommendation"). The Court approves and accepts the Report and Recommendation.

IT IS HEREBY ORDERED that (1) the Petition and this action are dismissed with prejudice because petitioner's claims are barred by the statute of limitations; (2) the Motion to Stay is denied as moot; and (3) the Clerk shall enter judgment accordingly.

///

IT IS FURTHER ORDERED that the Clerk serve copies of this Order, the Report and Recommendation, and the Judgment herein on petitioner and counsel for respondent.

IT IS SO ORDERED.

DATED: _____

_____

HONORABLE DALE S. FISCHER
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DEMETRIUS FRANKLIN,

Petitioner,

v.

RAYMOND MADDEN, Warden,

Respondent.

Case No. CV 17-4281 DSF(JC)

(PROPOSED)

JUDGMENT

Pursuant to this Court's Order Accepting Findings, Conclusions and Recommendations of United States Magistrate Judge,

IT IS ADJUDGED that the Petition for Writ of Habeas Corpus by a Person in State Custody and this action are dismissed with prejudice.

DATED: _____

_____

HONORABLE DALE S. FISCHER
UNITED STATES DISTRICT JUDGE

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF CALIFORNIA) Plaintiff and Respondent, versus Demetrius Franklin, Defendant and Petitioner,	Case No. YA029506-01 ORDER SUMMARILY DENYING PETITION FOR WRIT OF HABEAS CORPUS (CRC 4.551(g))

The court erroneously issued a decision without giving the Petitioner the opportunity to respond as required by CRC 4.551. The decision was set aside on September 5, 2017.

The court has read the Petitioner's Reply filed on September 7, 2017. The court does not agree with the contentions of the Petitioner and reissues the denial.

The Clerk is ordered to serve a copy of this memorandum upon the petitioner and upon the District Attorney (Habeas Corpus Litigation Team), 320 West Temple Street, Room 540, Los Angeles, California 90012.

Dated: September 12, 2017

Mark Arnold

Mark S. Arnold
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF CALIFORNIA) Plaintiff and Respondent, versus Demetrius Franklin, Defendant and Petitioner,	Case No. YA029506-01 ORDER SUMMARILY DENYING PETITION FOR WRIT OF HABEAS CORPUS (CRC 4.551(g))

The defendant's petition along with the Peoples response has been read and considered.

Witness Day identified the defendant as a suspect in the killing of the victim to police on 07/11/96 and 07/15/96. Witness Day's "recanting" comes not from her but from a law clerk who supposedly met with her in 2014 and then provided a declaration three years later claiming that Day said the defendant was not involved in the killing of the victim.

The law clerk's declaration is inadmissible hearsay. Its veracity is also suspect because of the delay in reporting by the law clerk. The "recant" is not the type of new evidence that would have the force that would change the result of the trial.

Captain Mauro's request to the court to delete Ms. Day's fine was made a month after she testified at the defendant's trial. The request was not conditioned on any cooperation by Ms. Day in the defendant's case since she had already testified. Consequently, there was no Brady violation.

The petition is denied.

The Clerk is ordered to serve a copy of this memorandum upon the petitioner and upon the District Attorney (Habeas Corpus Litigation Team), 320 West Temple Street, Room 540, Los Angeles, California 90012.

Dated: August 28, 2017

Mark Arnold

Mark S. Arnold
Judge of the Superior Court

CV 17-04281-DSF-JC
Lodged Doc. No. 5_Order Denying Pet. for Review

Second Appellate District, Division Three, No. B113005
S075176

IN THE SUPREME COURT OF CALIFORNIA

THE PEOPLE, Respondent

v.

DEMETRIUS FRANKLIN, Appellant

Appellant's petition for review DENIED.

GEORGE
Chief Justice

CV 17-04281-DSF-JC
Lodged Doc. No. 3_Opinion

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

G. Lieberman

DOCKET
CR LA
No. 199704 2205
Date 10.28.98

THE PEOPLE, Plaintiff and Respondent, v. DEMETRIUS FRANKLIN, Defendant and Appellant.	B113005 (Super. Ct. No. YA029506)

COURT OF APPEAL - SECOND DIST.
FILED
OCT 28 1998
JOSEPH A. LANE Clerk
Deputy Clerk

APPEAL from a judgment of the Superior Court of Los Angeles County. Donald F. Pitts, Judge. Affirmed.

Anthony J. Dain, under appointment by the Court of Appeal, for Defendant and Appellant.

Daniel E. Lungren, Attorney General, George Williamson, Chief Assistant Attorney General, Carol Wendelin Pollack, Senior Assistant Attorney General, John R. Gorey, Supervising Deputy Attorney General, and Gary A. Lieberman, Deputy Attorney General, for Plaintiff and Respondent.

Appellant and defendant Demetrius Franklin appeals from the judgment entered following a jury trial which resulted in his conviction of first degree murder. (Pen. Code, § 187, subd. (a).) Appellant was sentenced to a total prison term of 25 years to life.

Appellant contends: (1) there was insufficient evidence of express malice; (2) the trial court prejudicially erred in failing to instruct on second degree murder upon a theory of implied malice; and (3) CALJIC No. 2.90 did not adequately define the burden of proof. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Facts.*

On July 11, 1996, at approximately 2:45 a.m., Shanti Day drove her friend Thomas, to his apartment on 104th Street, in Los Angeles. Day was staying with Thomas and his wife. As Day parked her car, appellant and two other men approached. Thomas knew one of the two men, Darnell. Day, Thomas and Darnell went into Thomas's apartment. Appellant and the third man remained downstairs.

About 15 minutes later, there were noises of roughhousing and horseplay coming from outside. Day, Thomas and Darnell left the apartment to see what was happening.

Day saw a man, Willie Ray King, running and yelling for help. King ran and slid underneath a car. Appellant and another male dragged King out from under the car, to the middle of the street. King's head bounced off the curb; he ceased resisting and making any sounds. He was motionless.

Appellant and the other man kicked King in the head and upper body; they stomped on King's chest, head and stomach. They jumped up and down on King. Blood spurted from King's mouth. The beating lasted for more than five minutes.

More than once appellant said, "This is 10-4 Crip hood and you don't walk on our block."

Darnell, appellant's homeboy, told Day to go inside. Day and Thomas went inside. Day could hear the beating, as it continued. King was dragged from the street and left on the grass.

Day did not call 9-1-1, as she feared retaliation. At approximately 6 a.m., Los Angeles Deputy Sheriff Tony Taylor arrived at the scene. King was bleeding, moaning and unconscious. As he was being lifted, King spit blood, a sign of a head injury.

King died two days later. His injuries were consistent with a person having received a prolonged beating by the use of fists and feet. King suffered a number of injuries to his head including bruises, swelling, abrasions, internal hemorrhaging, and a fractured skull. He had several broken ribs and abrasions to his shoulder, arm, neck, knees, and hand. The cause of King's death was blunt force trauma to the head.

At the time of trial, Day was still afraid. She had been told not to talk about what had occurred. She had received death threats.

Members of gangs would kill persons to enforce their claim of a territory. Innocent, non-gang members were occasionally victims. If a non-gang member entered a gang's territory, there was a chance the non-gang member would be beaten up, intimidated or killed. It was not uncommon for persons witnessing crimes in gang areas to refrain from assisting the police. It was also common for gang members to call out their gang affiliation while committing an assault. This informed persons being attacked they were in the wrong place and discouraged witnesses from speaking to police. The "10-4 Gangsters" were also known as the 104th Street Crips. They claimed as their territory the neighborhood where the killing occurred. Appellant was a member of the 104th Street Crips.

2. *Procedure.*

Trial was by jury. Appellant was convicted of first degree murder. (Pen. Code, § 187, subd. (a).) Appellant was sentenced to a total prison term of 25 years to life. He appeals from the judgment.

DISCUSSION

1. *There was sufficient evidence of express malice.*

Appellant contends there was insufficient evidence of express malice, and thus, his first degree murder conviction cannot stand. We find this contention unpersuasive.

Murder perpetrated by "any kind of willful, deliberate and premeditated killing with express malice aforethought is murder of the first degree." (CALJIC No. 8.20.) Malice is express when there is manifested an intention unlawfully to kill a human being. (Pen. Code, § 188; CALJIC No. 8.11.) "One who intentionally attempts to kill another does not often declare his state of mind either before, at, or after the moment he shoots. Absent such direct evidence, the intent obviously must be derived from all the circumstances of the attempt, including the putative killer's actions and words." (*People* v. *Lashley* (1991) 1 Cal.App.4th 938, 945-946.)

"On appeal we review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence -- that is, evidence that is reasonable, credible, and of solid value -- from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People* v. *Stanley* (1995) 10 Cal.4th 764, 792.) "The focus of the substantial evidence test is on the *whole* record of evidence presented to the trier of fact, rather than on ' "isolated bits of evidence." ' [Citation.]" (*People* v. *Cuevas* (1995) 12 Cal.4th 252, 261.) "The standard of appellate review is the same in cases in which

the People rely primarily on circumstantial evidence." (*People* v. *Bean* (1988) 46 Cal.3d 919, 932.)

Here, appellant and his accomplice dragged an innocent man into the street, knocking him unconscious. When the victim could no longer resist, appellant and his accomplice beat and kicked and stomped the victim to death. This unprovoked attack and prolonged aggression lasted more than five minutes. It was motivated by a desire to protect gang territory. These facts are sufficient to support the finding that appellant intended to kill.[1]

There was substantial evidence of express malice.

2. *The trial court did not prejudicially err in failing to instruct on second degree murder upon a theory of implied malice.*

Appellant contends the trial court prejudicially erred in failing to instruct, sua sponte, with CALJIC No. 8.31. We find this contention unpersuasive.

Trial courts must instruct on general principles of law relevant to the issues raised by the evidence. (*People* v. *Jackson* (1989) 49 Cal.3d 1170, 1199; *People* v. *Springfield* (1993) 13 Cal.App.4th 1674, 1680.) "[E]very lesser included offense, or theory thereof, which is supported by the evidence must be presented to the jury." (*People* v. *Breverman* (1998) 19 Cal.4th 142, ___ [77 Cal.Rptr.2d 870, 877].) However, "a failure to fulfill this duty is not a structural defect in the proceedings, but mere misdirection of the jury, a form of trial error committed in the presentation of the case. Hence, by virtue of the California Constitution, reversal is not warranted unless an examination of 'the entire cause, including the

---

[1] Appellant's citation to *People* v. *Beyea* (1974) 38 Cal.App.3d 176 is unavailing. In *Beyea,* a brawl involving a number of men resulted in the beating and death of one man. In addressing the substantial evidence question, the appellate court stated, without analysis, there was no substantial evidence of express malice.

evidence,' discloses that the error produced a 'miscarriage of justice.' (Cal. Const., art. VI, § 13.) This test is not met unless it appears 'reasonably probable' the defendant would have achieved a more favorable result had the error not occurred. (*People* v. *Watson* (1956) 46 Cal.2d 818, 836 (Watson).)" (*Id.*, at pp. ___ [77 Cal.Rptr.2d at pp. 872-873.)

Here, the jury was instructed with numerous instructions dealing with first and second degree murder, including CALJIC Nos. 8.20, 8.30 and 8.71. These instructions informed the jury that in order to convict appellant of first degree murder there had to be a murder perpetrated by willful, deliberate and premeditation with express malice aforethought. These instructions further informed the jury that second degree murder was the unlawful killing of another with an intent to kill, where there was *in*sufficient evidence of deliberation and premeditation. The instructions also stated that if there was an reasonable doubt as to whether the murder was first or second degree, appellant was to receive the benefit of the doubt and should be convicted of second degree murder.

The jury was *not* instructed with CALJIC 8.31, second degree murder - killing resulting from unlawful act dangerous to life.[2] However, the facts show a premeditated and deliberated murder. For more than five minutes, appellant and his accomplice beat to death an unarmed, innocent man. Appellant and his

---

[2] CALJIC No. 8.31 reads: "Murder of the second degree is [also] the unlawful killing of a human being when: [¶] 1. The killing resulted from an intentional act, [¶] 2. The natural consequences of the act are dangerous to human life, and [¶] 3. The act was deliberately performed with knowledge of the danger to, and with conscious disregard for, human life. [¶] When the killing is the direct result of such an act, it is not necessary to prove that the defendant intended that the act would result in the death of a human being."

accomplice kicked and stomped the victim, who was unable to defend himself because he had been rendered unconscious.

Further, in light of CALJIC Nos. 8.20, 8.30 and 8.71, the jury had to have found a premeditated, deliberate, first degree murder. Thus, assuming it was error to omit CALJIC No. 8.31, such omission was harmless. (*People* v. *Jackson, supra,* 49 Cal.3d at p. 1199 [jury instructed with CALJIC No. 8.20, 8.30 and the portion of 8.11 defining express malice, but not instructed with a definition of implied malice; omission to instruct with CALJIC 8.31 harmless in view of jury's finding there was a premeditated, deliberate, first degree murder].)

Additionally, contrary to appellant's suggestion, the jury was not given an "all or nothing" choice. It was directed to give appellant the benefit of the doubt and to convict him of the lesser offense of second degree murder if there was a reasonable doubt as to whether the murder was first of second degree.

The purported instructional omission is harmless.

3. *CALJIC No. 2.90 adequately defined the burden of proof.*

Appellant contends CALJIC 2.90 did not sufficiently define the burden of proof. We find this contention unpersuasive.

The trial court instructed the jury as to reasonable doubt in the language of CALJIC No. 2.90 (1994 Rev.) Appellant argues this instruction conflicts with his federal constitutional right to due process. The cases have repeatedly rejected the contention that this version of CALJIC 2.90 is insufficient. These cases properly hold this instruction comports with constitutional standards of due process. (*People* v. *Medina* (1995) 11 Cal.4th 694, 762; *People* v. *Godwin* (1996) 50 Cal.App.4th 1562, 1571-1572; *People* v. *Tran* (1996) 47 Cal.App.4th 253, 262-

/

/

/

263; *People* v. *Carroll* (1996) 47 Cal.App.4th 892, 895-896.)

CALJIC No. 2.90 sufficiently defined the burden of proof.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ALDRICH, J.

We concur:

KLEIN, P. J.

KITCHING, J.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT SWG HON. DONALD F. PITTS, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF	SUPERIOR COURT NO. YA029506
VS	
DEMETRIUS FRANKLIN, DEFENDANT	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APRIL 15, 16, 17, 18, 21, 23, MAY 19 AND 21, 1997

APPEARANCES:

FOR THE PEOPLE: GIL GARCETTI, DISTRICT ATTORNEY
BY: STEVEN SCHREINER, DEPUTY
LONG BEACH BRANCH OFFICE
415 WEST OCEAN BOULEVARD, ROOM 305
LONG BEACH, CALIFORNIA 90802

FOR THE DEFENDANT: CURTIS M. SHAW, ATTORNEY AT LAW
FIRST INTERSTATE BANK BUILDING
6255 SUNSET BOULEVARD, SUITE 2000
HOLLYWOOD, CALIFORNIA 90028

LISA K. CROWELL, CSR NO. 10782
ANGELA SABERI, CSR NO. 10716
KAREN LOUISE PECKHAM, CSR NO. 4930
OFFICIAL REPORTERS

CASE NUMBER: YA029506
CASE NAME: PEOPLE VS. DEMETRIUS FRANKLIN
TORRANCE, CALIFORNIA APRIL 17, 1997
DEPARTMENT G HON. DONALD F. PITTS, JUDGE
REPORTER: LISA K. CROWELL, CSR NO. 10782
TIME: 10:42 A.M.

APPEARANCES:

DEFENDANT DEMETRIUS FRANKLIN, APPEARING WITH HIS COUNSEL, CURTIS SHAW, ATTORNEY AT LAW; STEVEN SCHREINER, DEPUTY DISTRICT ATTORNEY, REPRESENTING THE PEOPLE OF THE STATE OF CALIFORNIA.

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: PEOPLE VERSUS FRANKLIN. MR. FRANKLIN AND ALL COUNSEL ARE PRESENT.

I UNDERSTAND THAT THERE IS A 402 ISSUE TO BE CONSIDERED BEFORE WE CALL THE JURY INTO THE COURTROOM.

MR. SCHREINER: YES, YOUR HONOR. IT'S TWO MATTERS.

FIRST OF ALL, THE SECOND WITNESS, SHANTI DAY, THE PERCIPIENT WITNESS TO THIS EVENT, SUFFERED IN MARCH OF 1995 A FELONY CONVICTION FOR GRAND THEFT. THAT IS ONE THAT SHE SUFFERED, SHE'S ON PROBATION FOR. AND ACCORDING TO THE TERMS OF THE DISPOSITION, SHE HAS FIVE YEARS PROBATION WITH THE IDEA THAT IF SHE SUCCESSFULLY COMPLETES THAT, THAT CAN BE REDUCED TO A MISDEMEANOR. SHE IS ON

TRACK TO DOING THAT NOW. I WOULD ASK THAT COUNSEL BE ADMONISHED AND NOT BE ALLOWED TO IMPEACH HER WITH THAT PRIOR CONVICTION.

THE COURT: MR. SHAW?

MR. SHAW: I WOULD OBJECT TO THAT, YOUR HONOR. SHE HAS A MOST RECENT NEW CONVICTION FOR THEFT OUT OF THE SOUTH BAY JUDICIAL DISTRICT.

THE COURT: A FELONY THEFT?

MR. SHAW: YES, YOUR HONOR. 666. I THINK SHE COMES UP FOR SENTENCING IN MAY.

THE COURT: SHE PLED TO THE 666 AS A FELONY?

MR. SHAW: I DON'T KNOW IF SHE PLED TO IT AS A FELONY AT THIS POINT, BUT I DO KNOW THAT AT THE TIME OF THE PRELIM SHE ADMITTED THAT SHE HAD A PENDING FELONY CASE AND SHE WAS ON PROBATION FOR A FELONY CASE. NOW, MY UNDERSTANDING FROM MY INVESTIGATION IS SHE WORKED OUT A DEAL THAT IN LIEU OF THE 666 SHE'S GOING TO PLEAD THE 484.

THE COURT: WELL --

MR. SHAW: OR HAS PLED THE 484.

THE COURT: LET'S TAKE THESE ONE AT A TIME. IN TERMS OF THE MARCH 1995 GRAND THEFT, THAT IS NOT A REMOTE CASE, AND GRAND THEFT IS A CRIME INVOLVING MORAL TURPITUDE. I DON'T KNOW THAT THERE'S ANY BASIS UPON WHICH I COULD REQUIRE THAT COUNSEL NOT USE THAT FOR IMPEACHMENT PURPOSES.

MR. SCHREINER: WELL, YOUR HONOR, MY SUGGESTION IS THAT IS ALWAYS DISCRETIONARY WITH THE COURT. UNDER THE CIRCUMSTANCES OF THAT AND THE PLEA, IT WAS ENVISIONED THAT

THAT WOULD BECOME A MISDEMEANOR UPON SUCCESSFUL COMPLETION OF THE PROBATIONARY PERIOD. WITH REGARD TO THIS OTHER MATTER, I'M LOOKING AT A RAP SHEET, AND I'M NOT AWARE ABOUT ANY OTHER CASE. THERE'S THAT --

MR. SHAW: I CAN GIVE YOU A CASE NUMBER. IN FACT, IT'S DOWNSTAIRS HERE IN THE CLERK'S OFFICE.

THE COURT: IT'S BEEN PLED IN THE MUNICIPAL COURT. ONE WONDERS IF IT'S A FELONY. AND IF IT IS NOT A FELONY, THEN THAT PRESENTS A DIFFERENT PICTURE.

MR. SHAW: THE CASE NUMBER AT THE TIME IT WAS IN DIVISION 5 WAS YA029764.

THE CLERK: 02 --

MR. SHAW: YA029764. THE CASE DATES BACK TO JULY OF '96, ABOUT THE TIME OF THIS INCIDENT.

THE COURT: IF IT'S IN THE MUNICIPAL COURT FROM JULY, I WOULD HAVE A SERIOUS DOUBT WHETHER IT'S A FELONY CASE.

MR. SHAW: I KNOW IT WAS FILED AS A FELONY, YOUR HONOR. IT WAS CHARGED AS PETTY THEFT WITH A PRIOR.

THE CLERK: DO YOU KNOW IF SHE'S A 01 OR 02 DEFENDANT?

MR. SHAW: I THINK SHE'S A 01.

THE CLERK: IT'S NOT IN SUPERIOR COURT. I'LL CHECK AGAIN.

MR. SCHREINER: JUST SO WE'RE CLEAR, YOUR HONOR, I'VE LOOKED AT THE RAP SHEET. MY VIEWING OF THAT SHOWS A SINGLE FELONY CONVICTION. THAT'S WHY I RAISED THE ISSUE OF THAT CONVICTION.

THE COURT: ALL RIGHT.

THE CLERK: NEXT EVENT IS DUE IN 5-2-97, SOUTH BAY. IT SAYS DIVISION 210. AND AT THAT TIME SHE IS SCHEDULED TO PAY A FINE.

THE COURT: THAT WOULD BE A MISDEMEANOR TYPE DISPOSITION CASE.

MR. SHAW: HOWEVER, YOUR HONOR --

THE CLERK: YOUR HONOR, IT SHOWS HERE THAT IT'S A FELONY 666 PC. AND I GUESS THAT WAS DISMISSED V.I.A. I GUESS IT WAS DISMISSED. IT WAS DISMISSED AND THEY PROCEEDED ON 484(A) PC, WHICH IS A MISDEMEANOR.

THE COURT: AS FAR AS THE MISDEMEANOR IS CONCERNED, THE FACT OF THE CONVICTION ITSELF WOULD BE HEARSAY. SO IT WOULD NOT BE USEFUL UNLESS COUNSEL IS PREPARED TO PROVE IT UP. HOWEVER, I DO BELIEVE THAT IT HAS SOME RELEVANCE IN TERMS OF THE EXERCISE OF THE COURT'S DISCRETION AS TO THE GRAND THEFT IN THAT IT SHOWS A CONTINUING PROPENSITY TO DO EVIL.

MR. SHAW: YOUR HONOR, I WOULD ASK THE COURT TO PERMIT ME BASED ON THE SERIOUSNESS OF THIS CASE TO INQUIRE ABOUT THE CONDUCT OF MISS DAY BECAUSE THE PROSECUTOR ONLY ALLUDED TO THE ONE FELONY, BUT SHE HAS A HISTORY OF MISDEMEANOR THEFT CONVICTIONS. AND BUT FOR THEM NEEDING HER TESTIMONY, SINCE HER ARREST CAME ON AT OR NEAR THIS INCIDENT THAT SHE ALLEGEDLY IS CLAIMING SHE OBSERVED, BUT FOR THAT INCIDENT, I THINK ONE COULD REASONABLY CONCLUDE THAT A CASE FILE THAT HAS A 666 FELONY, WHERE THE PERSON HAS A STRING OF PRIOR CONVICTIONS FOR THEFT, WHY WOULD

SUCH A CASE REMAIN SPECIALLY ON THE FAST TRACK SYSTEM THAT WE PRESENTLY HAVE? WHY WOULD THIS CASE REMAIN AT THE MUNICIPAL COURT LEVEL SINCE AUGUST OF '96, AND A PLEA MERELY ENTERED WITHIN THE LAST MONTH?

I WOULD -- I THINK AN ARGUMENT TO THE JURY -- I THINK THE JURY COULD CONCLUDE THAT THE REASON THIS CASE HAS STRUNG OUT SO LONG AND THE REASON SHE ENDS UP WITH A MISDEMEANOR WHEN ANYBODY ELSE UNDER THE SAME AND SIMILAR CIRCUMSTANCES WOULD HAVE HAD A FELONY AND WOULD HAVE BEEN SENT TO PRISON WITH THE TRACK RECORD SHE HAS, WITH THE ALIASES SHE USES, I THINK ONE COULD CONCLUDE THAT SHE HAS A DEFINITE BIAS AND A MOTIVE FOR WHICH SHE CLAIMS SHE HAS OBSERVED AND WAS A PERCIPIENT WITNESS TO SOME EVENT THAT NOBODY ELSE SAW, OR NOBODY ELSE ALLEGEDLY SAW. I GUESS I SHOULD SAY IT THAT WAY.

SO I THINK I SHOULD BE AT LEAST PERMITTED TO INQUIRE AS TO WHETHER SHE DID REACH SOME FORM OF DISPOSITION WITH THE D.A.'S OFFICE IN EXCHANGE FOR HER TESTIMONY.

THE COURT: MR. SCHREINER?

MR. SCHREINER: YOUR HONOR, I RAISED THIS ISSUE BECAUSE IN GOOD FAITH I BELIEVE THAT SHE, IN FACT, HAD THIS SINGLE FELONY CONVICTION BASED ON MY REVIEW OF THE RECORDS, THAT THE COURT HAS IN ITS DISCRETION THE ABILITY TO PRECLUDE OUR GOING INTO THAT. ALL OF THIS ABOUT ANY DEALS WITH OUR OFFICE -- FIRST OF ALL, LET ME REPRESENT TO THE COURT RIGHT AWAY, I'VE MADE NO DEAL WITH THIS WITNESS. THIS WITNESS MADE HER STATEMENT ON THE DATE OF THE

INCIDENT.

WE'VE ATTEMPTED TO PROTECT HER SINCE THAT TIME FROM HARM. BUT AS FAR AS HER CRIMINAL RECORD IS CONCERNED, THAT'S SOMETHING I ONLY PERSONALLY BECAME AWARE OF VERY RECENTLY. CERTAINLY, IF THERE WERE ANY DEALS MADE WITH HER, THAT IS SOMETHING THAT WOULD HAVE BEEN DISCOVERABLE. THAT WOULD HAVE BEEN MY OBLIGATION TO TURN OVER TO DEFENSE, AS I'VE TURNED OVER ALL DISCOVERY. WERE THERE SUCH A DEAL IN PLACE, THAT WOULD BE SOMETHING HE WOULD BE ENTITLED TO PRESENT.

BUT TO SIMPLY SUGGEST THAT HE CAN RAISE INFERENCES AND SUGGEST THINGS AND ASK THE JURY TO SPECULATE IS HIGHLY IMPROPER. IF THERE WAS ANY EVIDENCE OF THAT, WE'D BE TALKING ABOUT SOME SOMETHING ELSE. MY REVIEW OF THE RECORDS DOESN'T SHOW THIS CASE. NOW, I DON'T KNOW ABOUT THAT. AND I CAN CERTAINLY ASK HER. MY IDEA IN RAISING THIS ISSUE IS SIMPLY THAT THE COURT HAS THE DISCRETION TO DECIDE WHETHER OR NOT A FELONY CONVICTION FOR A CRIME THAT I AGREE IS OF MORAL TURPITUDE, WHETHER OR NOT THE DEFENSE COULD IMPEACH HER WITH THAT. BUT THAT'S ALL WE'RE TALKING ABOUT.

COUNSEL HAS RAISED AN ENTIRELY DIFFERENT ISSUE. I'M REPRESENTING TO THE COURT NOW THAT I HAVE NO AGREEMENT, NO ARRANGEMENT, NO UNDERSTANDING WITH THIS WITNESS. AND I WOULD HAVE BEEN OBLIGATED TO BRING THAT TO COUNSEL'S ATTENTION. I THINK COUNSEL KNOWS THAT THAT DOESN'T EXIST. WHAT HE WOULD LIKE TO DO IS SIMPLY PRESENT SOMETHING TO THE JURY AND INVITE THEIR SPECULATION, AND

I'M SUGGESTING THAT'S IMPROPER TO DO THAT.

THE COURT: I THINK CLEARLY THAT THE GRAND THEFT CONVICTION MAY BE USED BY THE DEFENSE TO IMPEACH THE WITNESS. AND I THINK THAT IN THE ABSENCE OF SOME EVIDENCE THAT THERE IS A PRIMA FACIE SHOWING A DEAL OF SOME SORT BETWEEN THE PEOPLE AND THE WITNESS, THAT INVITING THE JURY TO SPECULATE BASED UPON NOTHING MORE THAN INSINUATION AND INNUENDO WOULD BE IMPROPER IMPEACHMENT. THAT WOULD BE MY RULING.

MR. SCHREINER: YOUR HONOR, THE OTHER ISSUE WAS -- I'M NOT ASKING THE COURT TO MAKE ANY RULING, BUT SINCE I DON'T WANT TO DO THIS IN FRONT OF THE JURY AT SIDE BAR OR HAVING IT BY AMBUSH, I HAVE SHOWN COUNSEL MY PROPOSED PHOTOGRAPHS. I HAVE -- ON A BOARD I HAVE ATTACHED 9 LARGE, I BELIEVE 8-BY-10, PHOTOGRAPHS. AND I'VE SHOWN AN ADDITIONAL 9 CORONER'S PHOTOGRAPHS. AND I WANTED TO GIVE HIM THIS OPPORTUNITY IF HE HAD ANY OBJECTIONS TO THOSE BECAUSE WE PLAN TO CALL THE CORONER AS THE FIRST WITNESS.

THE COURT: REALLY? YOU HAVE SEEN THE PHOTOGRAPHS, MR. SHAW?

MR. SHAW: YES, I HAVE, YOUR HONOR.

THE COURT: DO YOU ANTICIPATE ANY OBJECTIONS?

MR. SHAW: NO.

THE COURT: VERY WELL. THEN WE'LL BE READY FOR THE JURY.

(PROCEEDINGS HELD IN PRESENCE OF JURY.)

A IT'S IN THE BACK OF THAT DRIVEWAY, RIGHT THERE (INDICATING).

Q SO YOU PULLED IN THERE WITH YOUR FRIEND, AND WHAT HAPPENED WHEN YOU PULLED INTO THE PARKING SPOT?

A WE WERE APPROACHED.

Q WHO WERE YOU APPROACHED BY?

A DEMETRIUS AND TWO OTHER GUYS.

Q WHEN YOU SAY "DEMETRIUS," ARE YOU REFERRING TO SOMEONE HERE IN COURT?

A YES.

Q WOULD YOU POINT HIM OUT AND TELL US WHAT HE'S NOW WEARING?

A HE'S RIGHT SITTING THERE. HE'S WEARING A BEIGE SHIRT WITH THE TIE.

THE COURT: INDICATING FOR THE RECORD MR. FRANKLIN.

MR. SCHREINER: THANK YOU, YOUR HONOR.

Q BY MR. SCHREINER: DID YOU RECOGNIZE THE DEFENDANT FROM HAVING SEEN HIM PRIOR TO THAT OCCASION?

A NO.

Q HAD YOU SEEN HIM BEFORE THAT?

A YES, BUT I DIDN'T PUT IT TOGETHER RIGHT THEN THAT THAT WAS WHO HE WAS. I HAD SEEN HIM IN THE NEIGHBORHOOD BEFORE.

Q ALL RIGHT. LET ME REPHRASE IT. WHEN I SAY "RECOGNIZE," LET ME PUT IT THIS WAY: HAD YOU SEEN HIM BEFORE THAT OCCASION?

A YES.

Q IN THAT SAME NEIGHBORHOOD?

A YES, DIRECTLY ACROSS THE STREET.
Q DID HE SPEAK TO YOU AT THAT TIME?
A HE INTRODUCED HIMSELF TO ME FORMALLY THAT TIME.
Q HOW DID HE DO THAT?
A HE SAID, "MY NAME IS DEMETRIUS, AND THEY CALL ME STONE."
Q WHAT WAS THE SETTING WHEN HE WAS SAYING THESE THINGS TO YOU?
A I WAS SITTING IN MY CAR, AND I WAS GETTING OUT. THE DOOR WAS OPEN. HE WAS STANDING WITH HIS ARM SORT OF PROPPED ON MY DOOR.
Q THIS IS SHORTLY BEFORE 3 O'CLOCK IN THE MORNING?
A YES.
Q DO YOU RECALL HOW HE WAS DRESSED AT THE TIME?
A HE WAS WEARING ALL WHITE, WHITE PANTS, WHITE SHIRT AND A WHITE CAP AND TENNIS SHOES.
Q WHEN YOU SAY "WHITE PANTS," WERE THOSE SHORTS OR LONG PANTS?
A THREE-FOURTHS DOWN, SHORTS THAT GO PAST YOUR KNEES BUT ABOVE YOUR ANKLE.
Q YOU SAID THERE WERE TWO OTHER MEN WITH HIM?
A YES.
Q WHERE WERE THEY WHEN YOU GOT OUT OF THE CAR AND YOU WERE TALKING TO THE DEFENDANT?
A ONE OF THEM WAS ON THE PASSENGER SIDE, AND THE OTHER ONE WAS SORT OF STANDING NEXT TO HIM.

LIKE, TWO, TAKING MAYBE FOUR -- TWO OR THREE STEPS FROM HERE --

Q LET ME INTERRUPT YOU JUST AGAIN, MISS DAY. I APOLOGIZE. FOR THE RECORD, YOU'RE IN THE CENTER PHOTOGRAPH, CENTER ROW, CENTER PHOTOGRAPH, WHICH WE'LL CALL 1E. IN THE PHOTOGRAPH, WHAT WERE YOU POINTING TO?

A I SAW -- BY THE TIME I HEARD ROUGHHOUSING AND HORSEPLAY, BY THE TIME WE CAME TO THE STAIR HERE, WE SAW THIS MAN RUNNING INTO THIS DRIVEWAY RIGHT HERE.

Q AND YOU'RE POINTING TO THE LEFT OF THE TWO DRIVEWAYS, WHICH WOULD BE THE SAME AS 1A?

A THIS HOUSE, UH-HUH. TRYING TO GET UNDERNEATH THE CAR HERE.

Q DID YOU SEE HIM ACTUALLY RUNNING?

A I SAW TWO -- I MEAN, IT HAPPENED SO FAST, BUT IT WAS AT LEAST THREE TO FOUR STEPS TRYING TO GET UNDERNEATH HIS CAR.

Q LAST FEW STEPS. DID YOU SEE HIM ACTUALLY GO UNDERNEATH THE CAR?

A YES, I DID.

Q WHY DON'T YOU GO AHEAD AND RESUME YOUR SEAT. WHAT HAPPENED AFTER YOU SAW THE MAN GO UNDERNEATH THE CAR?

A I HEARD THE MAN SAYING, "HELP ME," AND I SAW THE DEFENDANT AND SOME OTHER PERSON PULLING HIM OUT.

Q OKAY. HOW WERE THEY PULLING HIM OUT?

A BY HIS COATTAIL.

Q AND NOW THE CAR WAS PARKED IN THAT DRIVEWAY THAT YOU POINTED OUT IN 1E, AND I BELIEVE YOU POINTED TO

A BECAUSE I FELT BY THE WAY I WAS TOLD IT WASN'T THAT HE WAS ASKING ME; HE WAS TELLING ME TO GO INTO THE HOUSE AND THAT I DIDN'T NEED TO SEE THIS.

Q DID HE COME UP IN THE HOUSE WITH YOU?

A YES, HE DID. HE -- ACTUALLY, HE PUT HIS ARM AROUND MY SHOULDER AND PHYSICALLY ESCORTED ME INTO THE HOUSE.

Q SO NOW YOU WATCHED THIS BEATING TAKE PLACE FOR FIVE MINUTES OR MORE; IS THAT CORRECT?

A YES.

Q IT ENDED WHEN YOU WENT UP THE STAIRS?

A NO.

Q IT WAS STILL GOING ON?

A YES.

Q OKAY. WHAT HAPPENED WHEN YOU GOT BACK INSIDE THE APARTMENT?

A WE WERE SITTING INSIDE OF THE APARTMENT AND WE STILL HEARD NOISES GOING ON AS IF THIS MAN WAS STILL BEING BEAT UP ON.

Q WAS THE DOOR CLOSED TO THE APARTMENT?

A THE DOOR WAS NEVER CLOSED. IT WAS ALWAYS -- THE SCREEN DOOR WAS ALWAYS OPEN, MEANING THAT FRONT DOOR IS OPEN AND THE SCREEN DOOR IS ALSO OPEN. I MEAN, IT'S NOT PHYSICALLY OPEN, BUT YOU CAN HEAR AND SEE THROUGH THE SCREEN.

Q OKAY. SO IT'S A SCREEN DOOR IN AN OPEN POSITION OR IN A CLOSED POSITION?

A CLOSED POSITION.

CROSS-EXAMINATION

BY MR. SHAW:

Q MISS DAY, YOU INDICATED UNDER DIRECT EXAMINATION THAT TO THIS DAY YOU'RE BEING THREATENED?

A YES.

Q YOU DIDN'T LIVE IN THAT AREA, DID YOU?

A NO.

Q YOU'VE NEVER LIVED IN THAT AREA, RIGHT?

A NO.

Q AND PRIOR TO JULY 11TH YOU DIDN'T KNOW MY CLIENT, DID YOU?

A NO.

Q THE ONLY PEOPLE YOU KNEW IN THAT AREA WAS THOMAS AND HIS WIFE; IS THAT RIGHT?

A YES.

Q IS THOMAS A GANG MEMBER?

A NO.

Q HAS HE THREATENED YOU?

A NO.

Q YOU DON'T EVEN KNOW ANYBODY'S NAME IN THAT AREA, DO YOU?

A YES, I DO.

Q WHO?

A WHO ELSE DO I KNOW IN THAT AREA?

Q YEAH.

A I KNOW SEVERAL PEOPLE, NOT ON THAT STREET, BUT IN THAT AREA.

Q LET'S TALK ABOUT ON THAT STREET. WHO ELSE DO

YOU KNOW ON THAT STREET?

A NO ONE ON THAT STREET.

Q NOBODY KNOWS YOU; IS THAT RIGHT?

A NO, I WOULDN'T SAY THAT. THAT'S NOT RIGHT.

Q DO THEY?

MR. SCHREINER: OBJECTION. I BELIEVE SHE'S NOT FINISHED HER ANSWER.

THE COURT: FINISH YOUR ANSWER.

A I'VE ACTUALLY BEEN TOLD SEVERAL PEOPLE HAVE IDENTIFIED ME.

Q BY MR. SHAW: HAVE YOU BEEN BACK AND LIVED ON THAT STREET SINCE THIS EVENT?

A I'VE BEEN BACK ON THAT STREET, YES.

Q AND HOW OFTEN?

A RIGHT AFTER THE INCIDENT I WAS BACK THERE ABOUT TWO OR THREE TIMES EVERY DAY FOR THE NEXT TWO WEEKS. AND THEN AFTER THAT I WAS ADVISED THAT IT WAS PROBABLY NOT SAFE FOR ME TO GO IN THAT AREA ANYMORE.

Q OKAY. DOES ANYONE ON THAT STREET OTHER THAN THOMAS AND HIS WIFE HAVE YOUR ADDRESS?

A NOT THAT I KNOW OF.

Q ANYONE HAVE YOUR TELEPHONE NUMBER?

A NOT THAT I KNOW OF.

Q ANYBODY HAVE YOUR PAGER NUMBER?

A NOT THAT I KNOW OF.

Q BUT SOMEBODY HAS THREATENED YOU; IS THAT RIGHT?

A YES.

A THERE IS NO LIGHT. IT'S THREE IN THE MORNING.

Q THERE ARE NO LIGHTS, RIGHT?

A THERE'S NO LIGHT BY THE SUN, JUST LIGHT BY THE STREET LIGHTS.

Q NOW, THE STREET LIGHTS ARE DOWN THE STREET, AREN'T THEY?

A I DON'T KNOW.

Q IT WAS DARK OUT THERE, RIGHT?

A IT WAS DARK, YEAH.

Q HOW FAR AWAY WERE YOU?

A I WAS STANDING AT THE TOP OF THE STAIRS.

Q HOW FAR AWAY IS THAT FROM ACROSS THE STREET?

A I DON'T KNOW. I DON'T KNOW DISTANCE-WISE.

Q I'M SORRY?

A I DON'T KNOW DISTANCE-WISE. I'M SORRY. I DIDN'T MEASURE IT. IT WAS CLOSE ENOUGH FOR ME TO SEE WHAT WAS GOING ON. IT WAS FROM HERE TO THE BACK OF THE COURTROOM, WHICH IS -- I CAN STILL SEE IT VERY CLEARLY.

THE COURT: I'M GOING TO TRY TO GIVE YOU A DISTANCE. IT'S ABOUT 38 FEET.

Q MR. SHAW: IS IT YOUR TESTIMONY YOU WERE 38 FEET?

MR. SCHREINER: YOUR HONOR, I OBJECT. I THINK THAT MISSTATES WHAT SHE SAID.

THE COURT: SUSTAINED.

Q BY MR. SHAW: IS IT YOUR TESTIMONY THAT YOU WERE AS CLOSE AS WHERE YOU'RE SEATED TO THE BACK OF THE

Q WAS HE YELLING?
A WHEN HE WAS RUNNING UP THE DRIVEWAY?
Q YES.
A I HEARD HIM SAY, "HELP ME, HELP ME" TWICE.
Q NOW, YOU WERE ACROSS THE STREET?
A YES.
Q AND YOU COULD HEAR THIS, RIGHT?
A YES.
Q AND SO WE'RE TALKING ABOUT THE DRIVEWAY OF PEOPLE'S -- WELL, IT'S BOTH IN 1D AND 1E. BUT I GUESS WE'RE SPEAKING OF THIS HOUSE HERE, RIGHT?
A YES.
Q WHICH IS THE SAME AS THIS HOUSE HERE?
A YES.
Q THE YELLOWISH HOUSE?
A YES.
Q SO HE'S COMING UP THIS DRIVEWAY TOWARD THE FRONT DOOR OF THIS HOUSE; IS THAT RIGHT?
A WELL.
Q I MEAN, I SEE WHAT APPEARS TO BE A FRONT DOOR. IN OTHER WORDS, HE'S YELLING INWARDS?
A YES.
Q AND THAT'S WHEN YOU HEARD THE YELLING?
A YES.
Q AND THIS WAS LOUD ENOUGH WHERE YOU COULD CLEARLY HEAR IT?
A YES. IT'S VERY QUIET, AND THE STREET IS VERY NARROW. SO IT'S A SMALL-SPACED AREA.

Q WHY DON'T YOU GO AHEAD AND RETURN TO YOUR SEAT.

I THINK COUNSEL ALSO ASKED YOU SOME QUESTIONS ABOUT HAVING SEEN THE DEFENDANT BEFORE. AND JUST SO WE'RE CLEAR, WAS IT YOUR TESTIMONY THAT YOU HAD SEEN HIM IN THE NEIGHBORHOOD ON PRIOR OCCASIONS BUT DID NOT MEET HIM UNTIL THE DAY OF THIS INCIDENT?

A THAT'S CORRECT.

Q AND THE TIME THAT YOU MET HIM WAS RIGHT AFTER HAVING ARRIVED THERE BEFORE THE INCIDENT?

A YES.

Q HOW MUCH LATER WAS IT FROM THE TIME HE WALKED UP TO YOU AND SAID, "HI, MY NAME IS DEMETRIUS, THEY CALL ME STONE," OR WHATEVER IT WAS, HOW MUCH TIME BETWEEN THEN WHEN YOU WENT OUT AND SAW WHAT HE WAS DOING OUTSIDE?

A HALF AN HOUR.

Q WAS HE DRESSED THE SAME AS HE HAD BEEN BEFORE?

A YES.

Q COULD YOU MAKE HIM OUT FROM YOUR POSITION ON THE STEP THERE?

A ABSOLUTELY.

Q DID YOU REALIZE THAT WAS THE SAME PERSON YOU HAD SEEN 30 MINUTES BEFORE?

A OH, YEAH.

MR. SCHREINER: MAY I HAVE A MOMENT, YOUR HONOR?

THE COURT: YES.

MR. SCHREINER: THANK YOU. I HAVE NOTHING FURTHER,

CASE NO.: YA029506
CASE NAME: PEOPLE VS. DEMETRIUS FRANKLIN
TORRANCE, CALIFORNIA MAY 21, 1997
DEPARTMENT SWG HON. DONALD F. PITTS, JUDGE
REPORTER: ANGELA SABERI, CSR NO. 10716
TIME: 8:30 A.M.

APPEARANCES:

DEFENDANT, DEMETRIUS FRANKLIN, PRESENT WITH HIS COUNSEL, CURTIS M. SHAW, ATTORNEY AT LAW; DEPUTY DISTRICT ATTORNEY, CAROL PETERSON, REPRESENTING THE PEOPLE OF THE STATE OF CALIFORNIA.

THE COURT: PEOPLE VERSUS DEMETRIUS FRANKLIN, WHO IS PRESENT WITH COUNSEL MR. SHAW. MR. SCHREINER IS APPEARING FOR THE PEOPLE.

MR. FRANKLIN IS BEFORE THE COURT FOR SENTENCING. ON APRIL 23, 1997, THE JURY RETURNED A VERDICT OF GUILTY OF MURDER IN THE FIRST DEGREE.

I HAVE READ AND CONSIDERED YOUR MOTION FOR A NEW TRIAL, MR. SHAW.

ARE THE PEOPLE READY TO PROCEED ON THE MOTION?

MR. SCHREINER: WE WILL WAIT.

THE COURT: VERY WELL. DO YOU WISH TO ARGUE THE MOTION YOURSELF, COUNSEL?

MR. SHAW: I AM GOING TO SUBMIT IT ON THE MOTION, YOUR HONOR.

I THINK THE FIRST PART OF THE MOTION, YOUR HONOR, THE ARGUMENT WAS MADE PREVIOUSLY AND IN A 402 TYPE HEARING. THE COURT MAY BE AWARE OF THAT.

THE SECOND PART OF THE MOTION DEALS WITH THE ISSUE OF SPECIFIC INTENT.

AS I RECALL THE FACTS AND EVIDENCE OF THE CASE, YOUR HONOR, I DON'T THINK THAT THERE WAS EVIDENCE PRESENTED THAT WOULD DEMONSTRATE THAT TWO YOUNG MEN KICKING AN INDIVIDUAL HAD THE SPECIFIC INTENT TO KILL, AND I THINK THE COURT MAY BE AWARE OF THE CORONER'S STATEMENT FROM THE WITNESS STAND THAT IT WAS EVERYBODY'S BELIEF THAT SHE HAD HAD RECORDS AND REPORTS TO THE EFFECT THAT AFTER THE SURGERY TO THE MAN IT WAS EVERYBODY'S BELIEF THAT HE WOULD MAKE A COMPLETE RECOVERY, AND THEN, FOR WHATEVER REASON, HE, WITHIN A COUPLE OF DAYS OR A DAY LATER, DIED.

SO MY MOTION DEALS WITH THAT ISSUE OF THAT PARTICULAR ELEMENT OF THE INFORMATION THAT MR. FRANKLIN AND/OR ANYONE ELSE HAD THE SPECIFIC INTENT TO BRING HARM TO MR. WILLIE RAY KING.

MR. SCHREINER: WITH REGARD TO THE FIRST ISSUE IN TERMS OF IMPEACHMENT THIS DAY THE COURT DID, OF COURSE, ALLOW THE DEFENSE TO IMPEACH OVER THE PRIOR CONVICTION. WE HAD OBJECTED SPECIFICALLY TO IMPEACHMENT THAT WE CONSIDERED WAS SPECULATIVE WITH REGARD TO A PENDING CASE.

I REPRESENT TO THE COURT AT THAT TIME THAT I WASN'T AWARE -- AND THERE WERE NO ARRANGEMENTS MADE WITH HER -- TO ANY REGARD OF DISPOSITION OF THAT CASE. I DON'T KNOW WHAT HAS BECOME OF THAT CASE.

ABOVE THAT, I AM SURE THE CLERK WAS RELYING ON THE FACT THAT MISS DAY'S TESTIMONY WAS CONSISTENT WITH THE STATEMENT THAT SHE MADE ABOUT THE INTENT ON THE NIGHT OF THE INCIDENT BEFORE ANY OF THESE ISSUES WOULD HAVE ARISEN. FOR THOSE REASONS I THINK THE COURT MADE A CORRECT RULING IN TERMS OF EXCLUDING THAT TYPE OF PEOPLE.

WITH REGARD TO THE JURY'S FINDING THAT THIS IS FIRST DEGREE MURDER, THERE WAS, IN FACT, EVIDENCE BOTH IN TERMS OF QUOTE COMING FROM THE DEFENDANT'S OWN MOUTH IN TERMS OF MOTIVATION AND REASON FOR MURDER, BEING THAT THE VICTIM, MR. KING, HAD COME DOWN THEIR BLOCK AND GOTTEN INTO THE 10-4 CRIP 'HOOD, THAT WAS SUPPORTED BY TESTIMONY FROM TWO OF THE GANG EXPERTS WHO TESTIFIED -- DEPUTY FRANK SALERNO BEING ONE OF THOSE -- THAT THAT WAS A MOTIVATION FOR MURDER; THAT THAT PREEXISTED THIS CONFRONTATION WITH THE VICTIM, MR. KING.

SO THAT WAS THE BASIS FOR THE JURY TO REACH THAT VERDICT.

THE COURT: VERY WELL.

MR. SHAW, MATTER SUBMITTED?

MR. SHAW: YES, YOUR HONOR.

THE COURT: MOTION FOR NEW TRIAL IS DENIED ON ALL GROUNDS.

THE COURT HAS READ AND CONSIDERED THE PROBATION OFFICER'S REPORT.

COUNSEL, DO YOU WAIVE FORMAL ARRAIGNMENT FOR JUDGMENT AND SENTENCE?

MR. SHAW: SO WAIVE, YOUR HONOR. THERE IS NO LEGAL

MUNICIPAL COURT OF CALIFORNIA
COUNTY OF LOS ANGELES, SOUTH BAY JUDICIAL DISTRICT

ADDITIONAL COURT PROCEEDINGS

DEFENDANT(S): Day

CASE NUMBER: YA029764

DATE AND JUDICIAL OFFICER	DIV.	TYPE OF PROCEEDING	PROCEEDINGS AND RULINGS
MAY 02 1997	210		
			Defendant failed to appear for: 940 ☒ Payment of Fine of $ _____ ☐ AB 541: ☐ Enrollment ☐ Completion ☐ Payment of Court Costs of $ _____ ☐ SB 38: ☐ Report ☐ Completion ☐ [illegible] ☐ SB 1259: ☐ Completion ☐ [illegible] Jail Time ☐ Other: _____ ☐ [illegible] Service (____ hours) Cause referred to Division 1 for further order of the Court
MAY 19 1997 5/19/97			Court reviews letter from LAPD - Det. Mauro (Cypress Homicide Bureau) - DA Alan Jackson is no objection - Court finds file in interest of justice Bob recalled - Clerk to advise counsel - MC ABE
DEANNE SMITH MYERS CLERK: S. BRAY			

76A202 • SBF022 (Rev. 7-94)

IN THE MUNICIPAL COURT, INGLEWOOD JUDICIAL DISTRICT

COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

HON. RODNEY G. FORNERET, JUDGE DIVISION 002

PEOPLE OF THE STATE OF CALIFORNIA Plaintiff, v. DEMETRIUS FRANKLIN, Defendant.	No. YA029506

PRELIMINARY HEARING

REPORTER'S TRANSCRIPT

WEDNESDAY, DECEMBER 18, 1996

APPEARANCES:

FOR THE PLAINTIFF: TRACY WAXMAN
DEPUTY DISTRICT ATTORNEY

FOR THE DEFENDANT: CURTIS SHAW, ESQ.
(FOR ALL PURPOSES)

REPORTED BY: SANDRA RILEY, C.S.R. #8026

HTA: JANUARY 3, 1997
DEPT: "G"

SANDRA RILEY,
OFFICIAL REPORTER
C.S.R. 8026

COPY

I N D E X

PEOPLE'S WITNESSES	DIRECT	CROSS	REDIRECT
SHANTI DAY	4	22	43

PEOPLE'S EXHIBITS	FOR IDENTIFICATION	IN EVIDENCE
	(NONE)	

WEDNESDAY, DECEMBER 18, 1996; INGLEWOOD, CALIFORNIA

MORNING SESSION

--OOO--

THE COURT: CALLING THE CASE OF THE PEOPLE OF THE STATE OF CALIFORNIA VERSUS DEMETRIUS FRANKLIN, YA029506. COUNSEL, STATE YOUR APPEARANCES.

MR. SHAW: CURTIS SHAW ON BEHALF OF MR. FRANKLIN.

MS. WAXMAN: TRACY WAXMAN FOR THE PEOPLE. WE HAVE THE INVESTIGATING OFFICER HERE, OFFICER VIOW.

MR. SHAW: MOTION TO EXCLUDE ALL OTHER WITNESSES.

MS. WAXMAN: THE PEOPLE JOIN IN THE MOTION.

THE COURT: YOU HAD INDICATED SOMEONE ELSE?

MS. WAXMAN: NO, IT WAS ONE WITNESS AND A STIPULATION.

MR. SHAW: OH, YES. THERE WOULD BE A MOTION TO RELIEVE THE PUBLIC DEFENDER, YOUR HONOR. I HAVE BEEN HIRED BY THE FAMILY TO REPRESENT MR. FRANKLIN.

THE COURT: THE PUBLIC DEFENDER IS RELIEVED AND ATTORNEY CURTIS SHAW IS SUBSTITUTED AS ATTORNEY OF RECORD. ARE BOTH SIDES READY?

MR. SHAW: YES.

THE COURT: DO YOU WAIVE READING OF THE COMPLAINT, STATEMENT OF CONSTITUTIONAL RIGHTS?

MR. SHAW: SO WAIVED.

THE COURT: YOU MAY CALL YOUR FIRST WITNESS.

MS. WAXMAN: OUR DETECTIVE IS GETTING THE WITNESS, YOUR HONOR.

THE BAILIFF: RAISE YOUR RIGHT HAND AND FACE THE CLERK.

THE CLERK: YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY YOU ARE ABOUT TO GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

THE WITNESS: I DO.

THE CLERK: TAKE THE STAND, PLEASE.

SHANTI DAY,

CALLED AS A WITNESS BY THE PEOPLE, HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

THE BAILIFF: STATE YOUR FULL NAME AND SPELL YOUR LAST NAME, PLEASE.

THE WITNESS: SHANTI DAY, S-H-A-N-T-I, D-A-Y.

THE COURT: YOU MAY PROCEED.

MS. WAXMAN: THANK YOU.

DIRECT EXAMINATION

BY MS. WAXMAN:

Q GOOD MORNING, MISS DAY.

A MORNING.

Q MISS DAY, ON JULY 11TH, 1996, AT APPROXIMATELY 3:00 A.M., WHERE WERE YOU?

A 1108 104TH STREET, LOS ANGELES.

Q THAT'S IN THE COUNTY OF LOS ANGELES?

A YES.

Q AND WHO WERE YOU AT THAT LOCATION WITH?

Q OKAY.
A UNDER -- IT WAS RIGHT UNDER THE STREET LIGHT.
Q DID YOU SEE WHAT -- WERE THEY SUPPORTING ANY OTHER PART OF THE MAN'S BODY BESIDES DRAGGING HIM?
A NO.
Q DID YOU NOTICE WHAT WAS HAPPENING TO THE MAN'S BODY DURING THAT TIME PERIOD?
A I SAW HIS HEAD HIT THE GROUND WHEN IT CAME OFF THE CURB.
Q AND DID YOU HEAR IF THE DEFENDANT WAS SAYING ANYTHING DURING THAT TIME PERIOD?
A YES, I DID.
Q WHAT WAS THE DEFENDANT SAYING?
A HE WAS SAYING THE NAME OF HIS SET.
Q WHAT IS THAT?
A TEN-FOUR CRIPS.
Q OKAY. WHAT ELSE WAS HE SAYING?
A THAT'S WHAT YOU GET FOR COMING ON OUR BLOCK.
Q OKAY. DID HE SAY THIS ONCE OR MORE THAN ONCE?
A MORE THAN ONCE.
Q WERE BOTH OF THE GUYS, THE DEFENDANT AND THE OTHER GUY, SAYING THE SAME TYPE OF THING?
A I DON'T KNOW.
Q OKAY. AND WHEN THEY GOT THE VICTIM INTO THE MIDDLE OF THE STREET, DID YOU SEE WHAT THE DEFENDANT DID AT THAT TIME?
A YES, I DID.
Q WHAT DID HE DO?

THE WITNESS: CORRECT.
THE COURT: APPROXIMATELY 49-AND-A-HALF FEET.
Q BY MS. WAXMAN: AND IS THERE MORE THAN ONE STREET LIGHT?
A YES.
Q AND DO YOU KNOW IF THEY WERE IN BETWEEN THE TWO STREET LIGHTS OR NEARER TO ONE THAN THE OTHER?
A THEY WERE RIGHT UNDER IT BY CHANCE.
Q RIGHT UNDER ONE OF THE LIGHTS?
A CORRECT.
Q AND AT SOME POINT DID THEY STOP STOMPING ON THIS MAN?
A YES.
Q AND WHAT DID YOU SEE THE DEFENDANT DO AFTER HE STOPPED STOMPING ON HIM?
A HE DIDN'T STOP STOMPING ON HIM. I WAS TOLD TO GO INTO THE HOUSE.
Q WHO TOLD YOU TO GO INTO THE HOUSE?
A THE OTHER GUY WHO APPROACHED THE CAR.
Q DARNELL?
A CORRECT.
Q WHAT DID HE SAY TO YOU?
A THAT I DIDN'T NEED TO SEE THIS.
MR. SHAW: OBJECTION. CALL FOR HEARSAY.
THE COURT: WAS THIS ONE OF THE PERSONS THAT WAS STOMPING ON THE MAN?
THE WITNESS: NO.
THE COURT: WHY DON'T YOU CLARIFY WHERE THE OTHER

PERSON CAME FROM?

MS. WAXMAN: THIS IS THE OTHER PERSON THAT APPROACHED WITH THE DEFENDANT AT THE CAR; HE WAS INSIDE THE HOUSE.

THE COURT: CLARIFY THAT FOR ME.

Q BY MS. WAXMAN: YOU SAID YOU WERE CALLED INSIDE THE HOUSE. COULD YOU EXPLAIN TO ME WHO CALLED YOU INSIDE THE HOUSE?

A AFTER WHEN I --

MR. SHAW: OBJECT. NONRESPONSIVE.

Q BY MS. WAXMAN: TELL ME THE PERSON'S NAME.

A DARNELL.

Q AND WHO IS DARNELL AGAIN?

A DARNELL IS THE OTHER GUY THAT APPROACHED MY CAR WHEN I ORIGINALLY PULLED INTO THE PARKING LOT.

Q AND WHEN HE TOLD YOU TO COME INSIDE THE HOUSE, WHAT DID HE SAY TO YOU?

MR. SHAW: OBJECT --

THE COURT: PEOPLE, OFFER OF PROOF?

MR. SHAW: -- HEARSAY.

MS. WAXMAN: GOES TO HER STATE OF MIND.

MR. SHAW: HER STATE OF MIND IS IRRELEVANT.

THE COURT: WHAT'S THE ISSUE OF HER STATE OF MIND?

MS. WAXMAN: WHY AT THAT POINT THERE WAS NO INVESTIGATION OR ANYTHING LIKE THAT.

THE COURT: IT WILL BE OVERRULED SUBJECT TO A MOTION TO STRIKE.

Q BY MS. WAXMAN: WHAT DID HE SAY TO YOU?

A HE PUT HIS ARM ON MY SHOULDER AND HE SAID,

"YOU DON'T NEED TO SEE STUFF LIKE THIS."

Q AND DID YOU GO INTO THE HOUSE?

THE COURT: THAT WAS IT? THAT WAS THE STATEMENT? THE OBJECTION WILL BE SUSTAINED. THE ANSWER IS STRICKEN. YOU CAN ASK IF SOMEBODY TOLD HER AND IF IN FACT SHE DID GO INTO THE HOUSE.

MS. WAXMAN: I UNDERSTAND, YOUR HONOR.

Q WHEN YOU GOT INTO THE HOUSE WHAT DID YOU DO AT THAT TIME?

A I SAT DOWN IN THE CHAIR.

Q WERE THOMAS AND DARNELL STILL IN THE HOUSE WITH YOU?

A THEY FOLLOWED ME IN.

Q AND AT SOME POINT DID YOU LOOK OUTSIDE AGAIN?

A YES, I DID.

Q WHAT CAUSED YOU TO LOOK OUTSIDE AGAIN?

A DARNELL WENT TO THE RESTROOM AND -- NO, PRIOR TO THAT -- LET ME CORRECT MYSELF. I SAID, "I WONDER IF THAT MAN IS OKAY." DARNELL GOT UP AND HE WENT TO THE SCREEN AND HE SAID, "IT'S GONE."

MR. SHAW: OBJECT WHAT DARNELL SAID. HEARSAY.

THE COURT: THE OBJECTION WILL BE SUSTAINED.

THE WITNESS: AND --

THE COURT: THE ANSWER IS STRICKEN.

Q BY MS. WAXMAN: DID YOU HEAR ANYTHING ELSE OUTSIDE THAT DREW YOUR ATTENTION?

A I HEARD SEVERAL THINGS OUTSIDE, BUT I DID NOT GET UP PRIOR TO HIM SAYING THE MAN WAS GONE. I HEARD

A NO.
Q HAD YOU EVER TALKED TO HIM?
A NO.
Q HAD YOU EVER PASSED HIM ON THE STEPS?
A YES.
Q HAD HE EVER SAID ANYTHING TO YOU?
A NOT VERBALLY.
Q YOU DIDN'T SPEAK TO HIM?
A HE GESTURED, "WHAT'S UP" BEFORE.
Q JUST GESTURED?
A CORRECT.
Q SO YOU HAD SEEN HIM BEFORE?
A CORRECT.
Q AND YOU HAD SEEN HIM WITH OTHER PEOPLE APPARENTLY, IS THAT RIGHT?
A CORRECT.
Q AND FROM YOUR TESTIMONY YOU HAD BEEN AT THIS APARTMENT FOR HOW LONG? HOW LONG HAD YOU BEEN STAYING THERE?
A I DON'T LIVE THERE.
Q ON THE 11TH OF JULY WERE YOU STAYING THERE?
A YES.
Q AND PRIOR TO THE 11TH OF JULY HOW LONG HAD YOU BEEN STAYING OR RESIDING THERE?
A SIX MONTHS.
Q SO IS IT SAFE TO SAY YOU HAD SEEN THIS GENTLEMAN FOR SIX MONTHS OR OFF AND ON DURING THAT SIX-MONTH PERIOD?

A ALMOST EVERY TIME I WOULD PULL INTO THE DRIVEWAY I WOULD SEE HIM ACROSS THE STREET.

Q WOULD HE BE DOING ANYTHING IN PARTICULAR?

A ONLY OTHER THING BESIDES HANGING OUT WAS WORKING ON THAT GREEN CAR.

Q SO TO YOUR KNOWLEDGE THIS CAR DIDN'T RUN, DID IT?

A PARDON ME?

Q DID YOU EVER SEE HIM DRIVE THIS CAR?

A NO.

Q DID YOU EVER SEE ANYBODY ELSE DRIVE THIS CAR?

A NO.

Q SO EACH TIME YOU OBSERVED HIM AND YOU SAID YOU OBSERVED HIM MAYBE FIVE TIMES SINCE JULY 11TH, HE RIDES A BICYCLE?

A CORRECT.

Q NOW, I WANT TO DIRECT YOUR ATTENTION TO THE TWO O'CLOCK, 2:30 PERIOD OF TIME IN THE MORNING -- THIS IS A.M., IS THAT RIGHT?

A CORRECT.

Q AND WHY WAS IT THAT YOU HAPPENED TO PICK UP THOMAS? HAD THAT BEEN PREVIOUSLY ARRANGED?

A YES, IT WAS PRETTY STANDARD BECAUSE I WORKED AT NIGHT AND I GOT OFF BETWEEN 12:30 AND 1:30.

Q WHAT TYPE OF WORK DO YOU DO?

A I'M A DISPATCHER.

MS. WAXMAN: OBJECTION. RELEVANCE.

THE COURT: THAT WILL BE ALLOWED TO REMAIN.

RIGHT, TO YOUR LEFT?

A I DON'T RECALL EXACTLY WHERE THE STREET LIGHT WAS HOWEVER WHEN THE LIGHT -- THE WAY THE STREET LIGHTS ARE DESIGNED THE BULB IS SMALL, HOWEVER, THE SHADOW THAT IT COVERS IS LARGE AND THEY WERE DIRECTLY UNDER THE SHADOW OF THE LIGHT.

Q NOW, THIS IS IN FRONT OF A HOUSE, RIGHT?

A CORRECT.

Q AND I HAVE TO ASSUME THAT HAVING LIVED OVER IN THIS AREA FOR AT LEAST SIX MONTHS YOU KNOW THE AREA WELL, RIGHT?

A FAIRLY WELL, YEAH.

Q WAS THERE A LIGHT POLE AT OR NEAR WHERE THESE GUYS WERE?

MS. WAXMAN: OBJECTION. ASKED AND ANSWERED.

THE COURT: OVERRULED. YOU MAY ANSWER.

THE WITNESS: WHAT DID YOU SAY?

THE COURT: YOU MAY ANSWER.

THE WITNESS: YES.

Q BY MR. SHAW: SO WHERE THIS EVENT TOOK PLACE THERE WAS A LIGHT POLE?

A WITH A LIGHT ON IT THAT WAS SHOWING THE STREET,RIGHT.

Q AND THE POLE IS IN FRONT OF THIS HOUSE WHERE THIS EVENT TOOK PLACE?

A I CAN'T TELL YOU. AS I SAID BEFORE I DON'T EXACTLY KNOW WHERE THE POLE IS. WHERE THE ACTUAL PHYSICAL LIGHT ITSELF STANDING I CAN'T TELL YOU THAT BECAUSE --

A THROUGHOUT THE WHOLE INCIDENT. I MEAN, I ACTUALLY SAW BECAUSE IT WASN'T DARK. I COULD SEE AS CLEAR AS I SEE YOU RIGHT NOW.

Q YOU WERE 35 FEET AWAY APPROXIMATELY. WHAT WAS HE WEARING?

A A BEIGE COAT, LOOKED LIKE A COUPLE OF SWEATERS, SOME PANTS THAT -- DARK PANTS.

Q APPEARED THAT HE HAD ON A COUPLE OF SWEATERS?

A I SHOULD MAYBE -- LET ME CORRECT MYSELF. MAYBE NOT SWEATERS. A COUPLE OF LAYERS OF CLOTHES, SHIRTS OR WHAT HAVE YOU.

Q HAVE YOU EVER SEEN PICTURES OF THIS MAN?

A NO.

Q HAVE YOU EVER TALKED TO THE POLICE ABOUT WHAT HE WAS WEARING?

A NO.

Q HAVE THEY EVER TOLD YOU WHAT HE WAS WEARING?

A NO.

Q HAVE YOU EVER READ ANY REPORTS REGARDING THIS MAN?

A NO.

Q WHAT COMPLEXION WAS HE?

A HE WAS NOT AS LIGHT AS ME BUT HE WAS NOT AS BROWN AS YOU.

Q HOW OLD DID THIS MAN APPEAR TO BE?

A HE APPEARED TO BE AN OLD MAN.

Q YOUR DEFINITION OF OLD IS?

A FORTY-FIVE AND OVER.

A WELL, TECHNICALLY IT WASN'T EXACTLY THE FIRST VIEW. THE FIRST FLASH OF VIEW OF WHAT I GOT WAS THAT MAN RUNNING IN THE DRIVEWAY AND GOING DOWN, YOU KNOW, VOLUNTARILY PUTTING HIMSELF ON THE GROUND AS THOUGH HE WAS TRYING TO GET HIMSELF UNDER THE CAR.

Q DID YOU ACTUALLY SEE HIM RUN?

A I SAW HIM ON HIS FEET MAKING TWO TO THREE STEPS APPROXIMATELY TOWARDS THIS VEHICLE. SO AT THE MOMENT THAT WE WALKED OUT HE WAS TAKING THE LAST TWO TO THREE STEPS RUNNING UP THIS DRIVEWAY. I WOULD THINK IF I SAW THE LAST TWO OR THREE STEPS THEN IN ALL PROBABILITY THE STEPS BEFORE WAS GOING TOWARDS WHERE HE ENDED UP.

Q WHEN YOU SAW HIM TAKE THE LAST TWO STEPS, WHERE WERE THE OTHER INDIVIDUALS IN RELATIONSHIP TO HIM?

A RIGHT ON HIS TAIL.

Q RUNNING?

A I CAN'T SAY IF THEY WERE RUNNING OR NOT BECAUSE THEY WERE RIGHT BEHIND HIM AND THE MAN WAS RUNNING AND HE WAS -- THEY WERE RIGHT THERE. ALL OF THIS IS LIKE IN A MATTER OF GOING LIKE THIS (INDICATING). YOU SEE SOMEONE MOVING AND TO BREAK IT DOWN TO SECONDS OR MILLISECONDS IS, YOU KNOW, BEYOND WHAT I CAN DO.

Q DID YOU HEAR THIS MAN DOING ANY YELLING?

A NO.

Q DID YOU HEAR THIS MAN HOLLERING OUT FOR HELP?

A NO.

Q DID -- BUT DID YOU HEAR THE MAN SAY ANYTHING?

A NOT THAT I RECALL.

SHERMAN BLOCK, SHERIFF

4700 Ramona Boulevard
Monterey Park, California 91754-2169

(213) 890-5512

April 30, 1997

Judge Myers

~~William Hollingsworth~~
Judge, Superior Court
Torrance Branch Office
825 South Maple Street
Torrance, California 90503

Dear Judge Hollingsworth:

SHANTI MARIE DAY
CASE #YA029764

On July 13, 1996, Los Angeles Sheriff's Homicide detectives were assigned to investigate the murder of Willie Ray King. Mr. King was beaten to death on the street in the Lennox area by two members of the 104th Street Crip street gang.

During the course of the investigation Detectives contacted Shanti Marie Day. Miss Day provided detectives with suspect descriptions and the first name of one of the suspects.

As a result of this information, detectives were able to identify Demetrius Franklin as one of the persons responsible for the murder. Miss Day picked Franklin out of a photo line up and subsequently testified against him in Inglewood Municipal Court.

After the preliminary hearing and the suspect was bound over for trial, Miss Days' life was threatened by several companions of the suspect, who were also 104th Street Crip street gang members. She was told to change her testimony, and believed that she'd be killed if she testified truthfully at trial.

Because of this, Miss Day moved several times. Despite these threats, she continued to cooperate and assist detectives and the District Attorney's Office in the prosecution of Demetrius Franklin.

On April 18, 1997, Miss Day testified during a jury trial in Torrance Superior Court, Case #YA029506. Her testimony was consistent with the prior statements she had made, as well as her preliminary hearing testimony. Miss Day testified over a two day period, despite receiving death threats via telephone.

A Tradition of Service

Miss Day was the only eyewitness to this murder who came forward. Despite the use of search warrants, informants, surveillance, and other investigative tools, the case against Demetrius Franklin rested primarily with Miss Days' testimony.

Miss Day was never promised anything other than protection and assistance in relocating. Since her testimony in Superior Court, detectives have learned that she was convicted in a petty theft case pending in Torrance Superior Court, case #YA029764.

Detectives have learned that this case is the result of a dispute with a gas station attendant over the price of a car wash and fill up. (Los Angeles Sheriff's Department report # 196-03782-1713-389).

Detectives are requesting that the fine levied against Miss Day be dropped, and that she be allowed to continue her probation as she previously has been. Whatever assistance you may offer in this matter is most appreciated.

Any questions or replies should be directed to Detective Mark Lillienfeld or Sergeant John View, Los Angeles Sheriff's Homicide Bureau, 5747 Rickenbacker Road, Commerce, California 90040, (213)890-5500.

Sincerely,

SHERMAN BLOCK, SHERIFF

Don Mauro

Don Mauro, Captain
Homicide Bureau

T-53

RECORDS & STATISTICS BUREAU'S USE ONLY

COUNTY OF LOS ANGELES
SHERIFF'S DEPARTMENT
COMPLAINT REPORT DATE 7-11-96 PAGE 1 OF 3

ACTION: ACTIVE [X] PENDING [ ] INACTIVE [ ] | INDEX INFO: Yes [ ] No [X] | No of Adult Arrests: 0 | No of Subject Detentions: 0 | URN (File No): 496-08362-0372-054

CLASSIFICATION: ASSAULT WITH A DEADLY WEAPON (HANDS/FEET) 245(A) 2 PC

Sex Offense Victim Information ( )YES ( )NO

If Domestic Violence: Weapon Used ( )YES ( ) NO

DATE TIME DAY OF OCCURRENCE: 7-11-96 @ 0330-0415 THURSDAY

PRINT DEPUTY REQUESTED: NO [X] YES ( ) LOC ( ) STA ( ) MEN ( )

VIA SECTY. | TIME

LOCATION OF OCCURRENCE: 1115 104TH ST VERMONT

TYPE OF LOCATION: STREET | TRACT

CODE: V—VICTIM, W—WITNESS, I—INFORMANT, R—REPORTING PARTY, P—PARTY. LIST ONE WITNESS (IF NAMED) AND THE INFORMANT ON THIS PAGE.

CODE	No	LAST NAME	FIRST	MIDDLE	SEX	RACE	DOB	CHECK DAY PHONE BELOW
V	1 OF 1	KING	WILLIE	RAY	M	BLK	12-2-47	

RESIDENCE ADDRESS: 9129 S. MAPLE | CITY: L.A. | ZIP: 90044 | RES PHONE (AREA CODE): UNK

BUSINESS ADDRESS: UNEMP. | CITY | ZIP | BUS PHONE (AREA CODE)

CODE	No	LAST NAME	FIRST	MIDDLE	SEX	RACE	DOB	CHECK DAY PHONE BELOW
W	1 OF 1	ANONYMOUS	INFORMANT					

RESIDENCE ADDRESS | CITY | ZIP | RES PHONE (AREA CODE)

BUSINESS ADDRESS | CITY | ZIP | BUS PHONE (AREA CODE)

CODE	No OF	LAST NAME	FIRST	MIDDLE	SEX	RACE	DOB	CHECK DAY PHONE BELOW

RESIDENCE ADDRESS | CITY | ZIP | RES PHONE (AREA CODE)

BUSINESS ADDRESS | CITY | ZIP | BUS PHONE (AREA CODE)

CODE: S—SUSPECT, SJ—SUBJECT, M—PATIENT, S/V—SUSPECT/VICTIM, SJ/V—SUBJECT/VICTIM. CIRCLE CODE IF SUPP. PAGES USED FOR: V W S SJ M S/V SJ/V

CODE	No	LAST NAME	FIRST	MIDDLE	DRIVER'S LICENSE (STATE & No.)
S	1 OF 2		DEMETRIOUS		UNK

RESIDENCE ADDRESS: 1109 104TH ST. | CITY: L.A. | ZIP: 90044 | RES PHONE (AREA CODE): UNK

BUSINESS ADDRESS: UNK | CITY | ZIP | BUS PHONE (AREA CODE)

SEX	RACE	HAIR	EYES	HEIGHT	WEIGHT	DOB	AGE	WHERE DETAINED OR CITE No
M	BLK	BLK	UNK	510-602	UNK	UNK	20-25	NIC

OBSERVABLE PHYSICAL ODDITIES: 104TH ST CRIP | AKA NICKNAME | BOOKING No

CLOTHING WORN | MAIN

CHARGE | WEAPON USED: HANDS/FEET

CODE	No	LAST NAME	FIRST	MIDDLE	DRIVER'S LICENSE (STATE & No.)
S	2 OF 2	UNK			

RESIDENCE ADDRESS: UNK | CITY | ZIP | RES PHONE (AREA CODE)

BUSINESS ADDRESS: UNK | CITY | ZIP | BUS PHONE (AREA CODE)

SEX	RACE	HAIR	EYES	HEIGHT	WEIGHT	DOB	AGE	WHERE DETAINED OR CITE No
M	BLK	BLK	UNK	510-602	UNK	UNK	20-25	NIC

OBSERVABLE PHYSICAL ODDITIES: 104TH ST CRIP | AKA NICKNAME | BOOKING No

CLOTHING WORN | MAIN

CHARGE | WEAPON USED: HANDS/FEET

VEHICLE USED IN CRIME YES ( ) NO [X] UNKNOWN ( ) STORED ( ) IMPOUNDED ( ) | YR | MAKE | BODY TYPE | COLOR

LICENSE (STATE & No.) | VIN/FRAME No.

REGISTERED OWNER

IDENTIFYING CHARACTERISTICS

CHP 180 SUBMITTED YES ( ) NO ( ) | GARAGE NAME & PHONE

VICTIM DESIROUS OF PROSECUTION YES ( ) NO ( ) | VICTIM INSURED FOR LOSS YES ( ) NO ( ) | E A P No

SUSPECT/SUBJECT ARRESTED | TIME | ARREST REVIEW SUBMITTED YES ( ) NO ( )

BY DEPUTY T. TAYLOR B+ BADGE No 272585

DEPUTY P. BURK HUNTER 7+ BADGE No 290640

STATION LENNOX | UNIT/CAR No 31A | SHIFT DAY

APPROVED A.J. BERNEY BADGE No 0934 | DATE 0934

ASSIGNMENT LENNOX OSS, UNIX D.B.

SPECIAL REQUEST DISTRIBUTION

TT B/C BY | DATE | TIME | SECTY

USE FOR PROPERTY/NARRATIVE AS NEEDED

DATE 7-11-96 | TIME REC'D 0715 | OBS ( ) DET ( ) CALL ( ) | URN 496-08362-0372-054

INPUT/CHECKED BY/DOC, CII, ETC. | YES ( ) NO (X) EVIDENCE (CODE-EV) | HELD: YES ( ) MARKED, TAGGED, SEALED & PLACED NO ( ) IN STATION EVIDENCE LOCKER | INSIDE ( ) OUTSIDE ( ) | SAFE ( ) REFRIG. ( ) BY: | LEDGER PAGE No.

IF BURGLARY: FORCE USED YES ( ) NO ( ) | POINT OF ENTRY-DOOR ( ) WINDOW ( ) ROOF ( ) OTHER

PROPERTY: (TOTAL VALUE) RECOVERED $ 00 STOLEN $ 00 DAMAGED $ 00

PROPERTY CODE: S—stolen R—recovered L—lost F—found E—embezzled D—damaged (Use All Applicable Codes: For Example, If Property Is Both Stolen & Recovered, Code is S/R)

PROPERTY RELEASED TO

CODE	ITEM No.	QUAN.	DESCRIPTION (INCLUDE KIND OF ARTICLE, TRADE NAME, IDENTIFYING NUMBERS/PHYSICAL DESCRIPTION, MATERIAL, COLOR, CONDITION, AGE AND PRESENT MARKET VALUE)	SERIAL No.	VALUE
					$

WE WENT TO THE LOCATION RE POSSIBLE BATTERY VICTIM. WE SAW THAT V/KING HAD SEVERE TRAUMA TO HIS FACE AND HEAD (APPARENTLY FROM BEING BEAT UP). HE WAS ALSO BLEEDING FROM HIS NOSE AND MOUTH.

L.A. COUNTY FIRE STATION 14 (CAPT. WILCENT) ARRIVED + TREATED V/KING. V/KING WAS TRANSPORTED BY GOODIEW TO MARTIN L. KING HOSPITAL FOR FURTHER TREATMENT.

WE CONTACTED DR. ANDRE OF MLK WHO SAID THAT V/KING WOULD SURVIVE HIS INJURIES EVEN THOUGH THERE WAS SEVERE TRAUMA TO HIS FACE + HEAD. (NO INJURIES TO V/KINGS BODY)

VICTIM OF SEX CRIME'S REQUEST FOR CONFIDENTIALITY

PURSUANT TO SECTION 293(a) OF THE CALIFORNIA PENAL CODE, YOU ARE INFORMED THAT YOUR NAME WILL BECOME A MATTER OF PUBLIC RECORD, UNLESS YOU REQUEST THAT IT REMAIN CONFIDENTIAL AND NOT BE A PUBLIC RECORD, PURSUANT TO SECTION 6254 OF THE GOVERNMENT CODE.

1, _____ HEREBY (DO) (DO NOT) ELECT TO EXERCISE MY RIGHT TO PRIVACY.

SCREENING FACTORS

Did u guys even investigate this?

	YES	NO
1. SUSPECT IN CUSTODY		X
2. SUSPECT NAMED/KNOWN	X	
3. UNIQUE SUSPECT IDENTIFIERS		X
4. VEHICLE IN CUSTODY		X
5. UNIQUE VEHICLE IDENTIFIERS		X
6. WRITER/REVIEWER DISCRETION		
7. GENERAL SUSPECT DESCRIPTION	X	
8. GENERAL VEHICLE DESCRIPTION	X	
9. UNIQUE M.O. OR PATTERN		X
10. SIGNIFICANT PHYSICAL EVIDENCE		X
11. TRACEABLE STOLEN PROPERTY		X
12. MULTIPLE WITNESSES		

PART I STATISTICAL INFORMATION

ADDITIONAL CRIMES 1) _____ 2) _____ NUMBER OF VICTIMS: 1

PROPERTY: TYPE OF PROPERTY	STOLEN	RECOVERED
CLOTHING/FURS	$	$
CONSUMABLE GOODS	$	$
CURRENCY/NOTES	$	$
FIREARMS	$	$
HOUSEHOLD GOODS	$	$

TYPE OF PROPERTY	STOLEN	RECOVERED
JEWELRY	$	$
LIVESTOCK	$	$
LOCAL STOLEN VEHICLES	$	$
MISCELLANEOUS	$	$
OFFICE EQUIPMENT	$	$
TV/RADIO/STEREO	$	$

WEAPONS CODE

( ) ARTICLES THROWN
( ) CAUSTIC CHEMICALS
( ) CLUB/BLUNT INSTRUMENT
( ) DRUGS/NOXIOUS GAS
( ) FIRE/EXPLOSIVES
(X) HANDS/FEET/FIST/ETC.
( ) KNIFE/CUTTING INSTRUMENT
( ) POISON
( ) REVOLVER/PISTOL
( ) RIFLE
( ) SHOTGUN
( ) STRANGULATION
( ) VEHICLE
( ) UNKNOWN/OTHER

5

REPORT CONTINUATION – NARRATIVE | URN 496-08362-0372-054

V/KING WAS ISSUED PATIENT # 224 21 28.

WHILE AT THE LOCATION THE WITNESS CONTACTED A FRIEND AND TOLD HIM TO HAVE US (31A) MEET HER AT NORMANDIE AVE AND COLUMBIA BL. RE: INFORMATION ABOUT THE ASSAULT. WE WENT TO THE LOCATION WHERE THE WITNESS RELATED THE FOLLOWING:

AT APPROXIMATELY 3AM THE WITNESS WAS IN A FRIENDS APARTMENT DIRECTLY ACROSS FROM THE INCIDENT LOCATION, WHEN ARGUING WAS HEARD. THE WITNESS LOOKED OUT OF THE DOOR AND SAW S/1+S/2 ARGUING AT V/KING ABOUT WALKING DOWN THEIR (S/1+S/2) STREET. S/1+S/2 ARE 104TH ST. CRIPS. S/1+S/2 STARTED HITTING V/KING WITH THEIR FISTS UNTIL V/KING HIT THE GROUND. S/1+S/2 THEN TOOK TURNS JUMPING + STUMPING ON V/KINGS HEAD. S/1+S/2 THEN WALKED AWAY FROM V/KING AND WENT INTO THE HOUSE OF 1109 104TH ST (TWO DOORS EAST OF INCIDENT ADDRESS)

THE WITNESS DID NOT CALL 911 BECAUSE THERE WAS A 104TH ST CRIP MEMBER IN THE APARTMENT WHERE SHE WAS AND FEARED RETALIATION.

WE CONTACTED DET. O'HARA DSS. RE: THIS INCIDENT.

DECLARATION OF CHARLOTTE JAMES

I, CHARLOTTE JAMES, declare as follows, under penalty of perjury:

1. I was a law student working for the California Innocence Project (CIP) between January 2014 and April 2014.

2. Sometime between January 2014 and April 2014 I met with Ms. Shanti Day and her mother at a McDonalds at or near Long Beach, California with another CIP intern.

3. During the meeting with Ms. Day, I asked her about the events surrounding Demetrius Franklin's conviction. Ms. Day told me that she remembered an old man was killed on her block, but said that Mr. Franklin had nothing to do with the old man's death.

4. Based on my memory, Ms. Day also had a history of psychological issues. She had been in and out of treatment for various psychotic episodes. Although her psychological issues were not diagnosed until after Mr. Franklin's conviction, her symptoms were present at the time of his trial. By the time I interviewed Ms. Day, she did not remember accusing Mr. Franklin of the murder.

I declare, under penalty of perjury under the laws of the United States of American and the State of California, that the foregoing is true and correct. This declaration was executed on May 4, 2017 in San Diego, California.

C. James 5/4/17

Charlotte James, Esq.

CALIFORNIA
INNOCENCE
PROJECT

CALIFORNIA WESTERN
SCHOOL OF LAW | San Diego

March 14, 2017

Demetrius Franklin (K-55108)
California State Prison, Centinela
P.O. Box 921
Imperial, CA 92251

Dear Mr. Franklin,

I regret to inform you that after receiving the the California Innocence Project (CIP) has closed your case. Based on our investigation, CIP has been unable to yield sufficient new evidence to prove your factual innocence. New evidence is evidence that was not previously raised at trial or in any post-conviction petitions.

Although you may be innocent, there is not enough evidence in your case for us to meet the burden imposed by the Court to receive a post-conviction hearing. If any new information related to your innocence comes to light, please do not hesitate to forward it to CIP. I wish you the best of luck.

Sincerely,

The California Innocence Project
(Gemma, Student #3)

JUSTIN BROOKS
State Bar No. 214187
ALEXANDER SIMPSON
State Bar No. 235533
ALISSA BJERKHOEL
State Bar No. 261245
RAQUEL COHEN
State Bar No. 265526
MICHAEL SEMANCHIK
State Bar No. 272205
CALIFORNIA INNOCENCE PROJECT
225 Cedar Street
San Diego, CA 92101
Tel.: (619) 515-1527
Fax: (619) 615-1443
RCohen@cwsl.edu

Attorneys for Defendant
DEMETRIUS FRANKLIN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,	Superior Court Case No. YA029506 Appellate Court Case No. B113005 Supreme Court Case No. S075176
v.	**DECLARATION OF RAQUEL COHEN**
DEMETRIUS FRANKLIN, Defendant.	**(Motion to Open Sealed Documents)**

I, RAQUEL COHEN, hereby declare the following:

1. I am currently a staff attorney at the California Innocence Project [the Project], a non-profit law firm that investigates claims of wrongful convictions. In August of 2012, inmate Demetrius Franklin completed the Project's extensive screening process, and the Project commenced investigation into Mr. Franklin's claim of innocence.

2. During my investigation of Mr. Franklin's file, I discovered a potential *Brady* violation in the form of an undisclosed, immunity agreement. Hence, the Project commenced investigation into the content of the agreement.

3. During Demetrius Franklin's trial, Shanti Day acted as the prosecution's star witness. Day was the only individual to testify that she witnessed the murder and was also the only person to testify that Franklin committed the beating. At the time of the trial, Day also had her own pending legal problems. Franklin and his trial attorney speculated that Day was given an

immunity agreement in exchange for her testimony. However, the prosecutor in the case denied any deal at all.

4. During the sentencing of Shanti Day's Case No. YA029764 a letter was introduced by Los Angeles Sheriff's Department Deputy Mauro (Captain of the Homicide Bureau). The minute order of Shanti Day's case reflects that after this letter was introduced her case was dismissed and fines dropped in the interest of justice.

5. The Project has made the following attempts to locate this letter introduced at Shanti Day's sentencing.

A. On February 11, 2015, the Project wrote a letter to the Brady Compliance Unit in Los Angeles, California requesting information on Day's sentencing letter.

B. On March 11, 2015, the Project called the Los Angeles District Attorney's office requesting information regarding the letter. The Project was transferred to Marsha with the Brady Compliance Unit. Marsha told the Project she would call back with additional information. The Project never received a call back.

C. On March 16, 2015, the Project called Marsha at the Brady Compliance Unit office. Marsha was out of the office.

D. On March 18, 2015, the Project called Marsha again. She said she did not know where the letter was in the office. Marsha suggested that we had the wrong address. The Project confirmed the Brady Compliance Unit address as Los Angeles District Attorney's Office ATTN: Discovery Compliance Unit 320 W Temple Street - Room 540 in Los Angeles, California 90012. The Project sent out a duplicate letter on this day.

E. On April 1, 2015, the Project called the Brady Compliance Unit to confirm that the letter arrived. Marsha was busy at the time. The Project called again on April 2, 2015, but could not reach Marsha.

F. On June 2, 2015, Marsha with the Brady compliance called the Project. Marsha said that the Brady Compliance Unit had lost the second letter. Marsha asked that the Project email the letter in order to make sure she received it. The Project sent her the email version of the letter immediately.

G. On June 16, 2015, the Project called Marsha with the Brady Compliance Unit to make sure they received the letter and asked what the process was going to be moving forward. Marsha confirmed that they had the letter, she forwarded it to her supervisor and the Unit would call with any updates.

H. On October 1, 2015, the Project called Marsha and she said that her responsibilities were transferred to the Discovery Integrity Unit.

I. On November 9, 2015, the Project reached out to Ms. Nunez with the Discovery Integrity Unit. She asked the Project to fill out an additional questionnaire. This form was emailed to the Project and sent back immediately.

J. On November 10, 2015, the Project again reached out to the Discovery Integrity Unit. No additional information was provided at this time.

K. On November 20, 2015, Courtney Cummings, a clinical intern with the Project, went to the Los Angeles Superior Court - Archives & Records Department to search for the letter introduced at Shanti Day's sentencing hearing. Please see Exhibit B for additional information.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct to the best of my knowledge.

Executed on 2/3/16 in San Diego County.

RAQUEL COHEN

JUSTIN BROOKS
State Bar No. 214187
ALEXANDER SIMPSON
State Bar No. 235533
ALISSA BJERKHOEL
State Bar No. 261245
RAQUEL COHEN
State Bar No. 265526
MICHAEL SEMANCHIK
State Bar No. 272205
CALIFORNIA INNOCENCE PROJECT
225 Cedar Street
San Diego, CA 92101
Tel.: (619) 515-1527
Fax: (619) 615-1443
RCohen@cwsl.edu

Attorneys for Defendant
DEMETRIUS FRANKLIN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,	Superior Court Case No. YA029506 Appellate Court Case No. B113005 Supreme Court Case No. S075176
v.	**DECLARATION OF COURTNEY CUMMINGS**
DEMETRIUS FRANKLIN, Defendant.	**(Motion to Open Sealed Documents)**

I, COURTNEY CUMMINGS, hereby declare the following:

1. I am currently a clinical intern at the California Innocence Project [the Project], a non-profit law firm that investigates claims of wrongful convictions. In August of 2012, inmate Demetrius Franklin completed the Project's extensive screening process, and the Project commenced investigation into Mr. Franklin's claim of innocence. I am currently being supervised by an attorney, Ms. Raquel Cohen [Cal. Bar No. 265526]

2. During my investigation of Mr. Franklin's file, I discovered a potential *Brady* violation in the form of an undisclosed, immunity agreement. Hence, the Project commenced investigation into the content of the agreement.

3. During Demetrius Franklin's trial, Shanti Day acted as the prosecution's star witness. Day was the only individual to testify that she witnessed the murder and was also the only person to testify that Franklin committed the beating. At the time of the trial, Day also had her own pending legal problems. Franklin and his trial attorney speculated that Day was given an immunity agreement in exchange for her testimony. However, the prosecutor in the case

denied any deal at all.

6. During the sentencing of Shanti Day's case no. YA029764 a letter was introduced by Los Angeles Sheriff's Department Deputy Mauro (Captain of the Homicide Bureau). The minute order of Shanti Day's case reflects that after this letter was introduced, her case was dismissed and fines were dropped in the interest of justice.

7. The Project has made the following attempts to locate this letter introduced at Shanti Day's sentencing.

   A. On November 20, 2015, I went to the Los Angeles Superior Court - Archives & Records Department in Los Angeles, California.

   B. On the Archives & Records Department computers, I located a probation report to regards to Shanti Day's Penal Code section 487 violation. The probation report claims Day was not compliant with her probation officer and failed to respond to reasonable status inquiries. The probation report recommended Day be sentenced to a minimum term of one-year in county jail. I was unable to print these documents because they have been marked as confidential.

   C. I asked Samantha, a clerk at the Archives Department, to read some of the confidential files associated with Shanti Day's case. Within these documents, was a letter introduced at her sentencing by Office Mauro of the Los Angeles Sheriff's Department - Homicide Unit.

   D. This letter was dated April 30, 1996. It stated that prior to this letter, Day was not given an immunity deal for her involvement with Demetrius Franklin's case. Mr. Mauro asked the court to dismiss all fees and fines in the interests of justice while also reinstating probation.

   E. Samantha told me that she would be unable to provide these documents because they were previously sealed. Samantha and another clerk Jeremiah told me that the only way to achieve these documents would be through a court order.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct to the best of my knowledge.

Executed on 2/8/2016 in San Diego County.

COURTNEY CUMMINGS

INVESTIGATIVE MEMO

Client Name:	**Demetrius Franklin**
Interviewer:	Charlotte James
Subject of Interview:	**Shanti Day**
Subject:	Efforts to Interview Shanti Day

10.14.2013 Called (562) 355-7116, *Day's* phone number on record. She answered. She said she would be willing to recant her testimony. She says that she has a hard time writing so I need to figure out how to get around this. I am going to try to meet with her on Saturday, Oct. 19, 2013. CEJ

10.16.2013 Spoke with *Day*, she wants to meet on Friday, October 18 at 12:30 p.m. Her address is 36 E. Plymouth St. Long Beach, CA 90805. Reviewed case file to find her statements, what **Franklin** asserted, and how this discrepancy could have happened.

10.18.2013 Drove to Long Beach to meet with *Day*. She gave me her current address, which is 36 East Plymouth St. Long Beach, CA 90805. When I arrived with Jamie Sprenger, I called *Day* and heard her phone ring from inside her apartment as I was standing on the sidewalk outside of her apartment. She answered and told me could not meet me today. I will go back to her apartment unannounced. CEJ

10.25.2013 Missed a call from *Day*. In a voice mail, she apologized for not meeting. She says she still wants to meet. I called her back, no answer. CEJ

10.28.2013 I called *Day*, no answer. CEJ

10.30.2013 Called *Day*, she wants to meet next week, the week of Nov. 4 to Nov. 8. I will call her on Monday to follow up and schedule an exact time. CEJ

11.4.2013 Been trying to coordinate a visit to *Shanti Day*.; I feel that I need to go with another student because *Day* sounded loopy over the phone. She would tell me to come meet her on a Thursday, and then proceed to ask me what day of the week that was. I replied, Thursday? It is crucial to have this witness in a sound frame of mind when we get a declaration from her. Furthermore, it is crucial to have another CIP staff member present when I speak with *Day*. CEJ

1.23.2014 Went on an investigation with Jose Olivera and Andrew Campos to *Shanti Day's*

home in Long Beach, CA. Her address is 36 E Plymouth St. Apt. C Long Beach, CA. A man answered the door and said she had just got out of the hospital. He said she will be feeling better maybe next week. I will try again next week. CEJ

1.30.2014 Trying to coordinate another time to visit *Shanti Day*. CEJ

2.6.2014 Went on an investigation to Long Beach with Lexi Leibl. We met *Shanti Day* and her mother at a McDonald's close to *Day's* home. *Day* informed me she was moving before the end of the month. Upon visiting with *Day* and her mother, I was informed *Ms. Day* had recently had a stroke which affected her ability to communicate effectively, and think clearly. Further, her memory was also affected. *Day* is currently taking neurological medication to help with her health, however the medication "makes her loopy, and she does not think clearly while on the medication." These are the notes from the investigation.:

Went to 36 # Plymouth St.at 12:00 p.m. Called Witness and was told to come back in 30 min. She then called back and told us to meet her at McDonald's on Del Amo & Long Beach Blvd.

W initially said she knew **D** before the crime, but when we told her **D** said he met her for the first time on the night of the crime, she conceded this may have been the case. She knew **D's** friend *Thomas* before the crime.

W said she didn't actually see anything on the night of the crime, and she does not know why she named **D** as the perpetrator. Later in the interview, *W* said she does not remember what she testified at trial, or what happened on the night of the crime. She only remembers looking out the window, seeing a man being beaten, and either *Thomas* or **D** telling her, "don't watch that." She also remembers speaking to Detective *Mark Liliantheild* after the incident. He is from the LA County Sheriff's Dept. She has his contact information. *W* remembers being afraid of retaliation. She believed she was doing the right thing at the time when she testified against **D**. She was going to go into *W* protection, but instead she just moved and had the cost of moving paid for.

At age 17, after the crime, *W* was diagnosed with mental illness problems, but the diagnoses were inconclusive. She had the symptoms before the crime, but it was undiagnosed. Now she is age 46. W has a report stating she had mental illness dated 1985. She was diagnosed with bipolar disorder and extreme psychosis in 2011 when she was admitted to the hospital for another issue. Before her diagnosis, *W* was using drugs, she had seen a therapist, and she had a mental health crisis. *W* currently has doctors helping her with her illness, she is on heavy doses of psych medication, and she recently had a stroke. She had 2 kids in 1999 and 2002. Her child born in 2002 has cancer.

More Notes:

-*Mark Lilienfield* LA county sheriff's dept. was the detective handling *Day*.
-Mental illness for a long time
-Began mental problems at age 17, 46 years old now
-diagnosed with psychosis and extreme bipolar disorder around 2011, should have been diagnosed in 1985.
-Said she thought she was doing the right thing when she implicated

MINUTE ORDER
MUNICIPAL COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE PRINTED: 12/14/10

CASE NO. YA029764

THE PEOPLE OF THE STATE OF CALIFORNIA
VS.
DEFENDANT 01: SHANTI MARIELLE DAY

BAIL: APPEARANCE DATE	AMOUNT OF BAIL	DATE POSTED	RECEIPT OR BOND NO.	SURETY COMPANY	REGISTER NUMBER

CASE FILED ON 08/09/96.

COMPLAINT FILED, DECLARED OR SWORN TO CHARGING DEFENDANT WITH HAVING COMMITTED, ON OR ABOUT 07/28/96 IN THE COUNTY OF LOS ANGELES, THE FOLLOWING OFFENSE(S) OF:

COUNT 01: 666 PC FEL

ON 01/03/97 AT 830 AM IN TORRANCE COURTHOUSE DIV 005

CASE CALLED FOR PRELIM SETTING/RESETTING

PARTIES: DEANNE MYERS (JUDGE) CAREN COLE (CLERK)
SHERI NELSON (REP) JOHN A. DELAVIGNE (DDA)

DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY HUEY SHEPPARD PRIVATE COUNSEL

ON PEOPLE'S MOTION, COURT ORDERS COMPLAINT AMENDED BY INTERLINEATION TO ADD VIOLATION 484(A) PC MISD AS COUNT 02.

DEFENDANT ADVISED OF AND PERSONALLY AND EXPLICITLY WAIVES THE FOLLOWING RIGHTS:

WRITTEN ADVISEMENT OF RIGHTS AND WAIVERS FILED, INCORPORATED BY REFERENCE HEREIN

COURT FINDS THAT EACH SUCH WAIVER IS KNOWINGLY, UNDERSTANDINGLY, AND EXPLICITLY MADE;

DEFENDANT PLEADS GUILTY TO COUNT 02, 484(A) PC.

COUNT (02) : DISPOSITION: CONVICTED

COURT ACCEPTS PLEA

NEXT SCHEDULED EVENT:

PAGE NO. 1

PRELIM SETTING/RESETTING
HEARING DATE: 01/03/97

CASE NO. YA029764
DEF NO. 01 DATE PRINTED 12/14/10

SENTENCING

DEFENDANT WAIVES ARRAIGNMENT FOR JUDGMENT AND STATES THERE IS NO LEGAL CAUSE WHY SENTENCE SHOULD NOT BE PRONOUNCED. THE COURT ORDERED THE FOLLOWING JUDGMENT:

AS TO COUNT (02):

IMPOSITION OF SENTENCE SUSPENDED

DEFENDANT PLACED ON SUMMARY PROBATION

FOR A PERIOD OF 003 YEARS UNDER THE FOLLOWING TERMS AND CONDITIONS:

SERVE 002 DAYS IN LOS ANGELES COUNTY JAIL

LESS CREDIT FOR 2 DAYS

PAY A FINE OF $940.00

DEFENDANT TO PAY FINE TO THE COURT CLERK

TOTAL DUE: $940.00

IN ADDITION:

-DEFENDANT TO REPORT ANY NEW ARREST OR CHANGE OF ADDRESS TO THE COURT WITHIN 48 HOURS.

OBEY ALL LAWS AND FURTHER ORDERS OF THE COURT.

STAY OUT OF MERAGE CAR WASH.

COUNT (02): DISPOSITION: CONVICTED

REMAINING COUNTS DISMISSED:

COUNT (01): DISMISSAL IN FURTH OF JUSTICE PER 1385 PC

DMV ABSTRACT NOT REQUIRED

NEXT SCHEDULED EVENT:
05/02/97 830 AM FINE PAYMENT(S) DIST TORRANCE COURTHOUSE DIV 210

COUNTY OF LOS ANGELES

MEMORANDUM

SHERIFF'S DEPARTMENT

Date _____ File No. _____ Page 1 of 1

From: _____ To: _____

Subject: Δ- DEMETRIUS FRANKLIN, YA 029506

TRACY,

THE 666 PC CASE FILED ON WITNESS SHANTI DAY WAS FILED ON 8-8-96, UNDER CASE # YA 029764.

THIS WAS 28 DAYS AFTER THE 187 SHE WITNESSED; AND WE DID NOT KNOW OF HER CASE UNTIL AUG. 28, 1996, WHICH WAS OUR 2ND MEETING WITH HER.

WE HAVE MADE ARRANGEMENTS TO PUT HER ON THE PHONE WITH THE PUBLIC DEF. DURING THE WK. OF 10-21-96.

TALK TO YA LATER!

MARK LILLIENFELD
JOHN VIEW

LASD - HOMICIDE

☐ FOR YOUR INFORMATION. ☐ REPORT ON RESULTS REQUIRED. ☐ VERBAL REPORT ONLY; CONFIDENTIAL.

DECLARATION OF MARK LILLIENFELD

1. I am a retired Los Angeles County Sheriff's Department (hereinafter "L.A.S.D.") Homicide Detective.

2. In 1996, while assigned as a homicide detective in the Detective Division, Homicide Bureau of L.A.S.D., I investigated the murder of Willie Ray King that took place on 104th St. in Los Angeles on July 11, 1996. Ultimately, Demetrius Franklin (hereinafter "Petitioner,") was charged with and convicted of the murder of Willie Ray King in case YA029506.

3. I presently recall this case and any details that were forgotten have been refreshed by reviewing the petition, transcripts, and reports in this case. On July 11, 1996, I met with eyewitness Shanti Day (hereinafter "Ms. Day,") because she came forward as an eyewitness to Mr. King's murder.

4. Ms. Day gave numerous statements to law enforcement, identified Petitioner by photograph, and testified at both preliminary hearing and trial that Petitioner was one of Mr. King's assailants. Ms. Day was familiar with Petitioner before the assault on Mr. King, so Ms. Day knew Petitioner's name, gang affiliation, and approximate street address on 104th St.. Throughout the investigation, Ms. Day consistently identified Petitioner as an assailant and never wavered from her multiple identifications. To the best of my knowledge, Ms. Day has never recanted her identifications of Petitioner.

5. Because of her cooperation in the case against Petitioner, Ms. Day received numerous in person and telephonic death threats. Petitioner and his associates were active 104th St. Crip gang members. Ms. Day was afraid for her safety and requested relocation. My department provided relocation assistance to Ms. Day.

6. Ms. Day never requested any other quid pro quo for her assistance in case YA029506 other than protection and relocation, nor did we offer her any other assistance.

7. As of our second interview with Ms. Day on August 28, 1996, my partner and I became aware that Ms. Day was on probation in case YA029764. To the best of my knowledge, neither of us nor L.A.S.D. was involved in Ms. Day's plea to a reduced charge in that case.

8. After Ms. Day testified at trial on April 18, 1997, I became aware, through her attorney Henry Salcido, SBN 51493, of her court ordered fine and probation status for the misdemeanor theft conviction. I initiated the April 30, 1997 letter of consideration signed by Captain Mauro, through no urging of, nor promises to, Ms. Day or her attorney.

The letter was not written in exchange for Ms. Day's assistance with law enforcement on YA029764. She was in fact, unaware of its existence until it had been sent to the court.

9. Since my investigation of Petitioner's case, I have become aware of other cases occurring after Petitioner's case where Ms. Day assisted other law enforcement agencies not involved in the investigation of Petitioner's case.

Ms. Day's assistance to other agencies after Petitioner's case had no bearing on Ms. Day's multiple statements and testimony in Petitioner's case. Captain Mauro's letter, authored by me and approved and signed by him, was not written in exchange for any assistance provided to any other law enforcement agencies on other cases.

10. In approximately 1999 or 2000, after Petitioner's trial, I received a handwritten letter from the Petitioner in a California state prison. In the letter, Petitioner admitted his involvement in the assault on Mr. King. I kept the letter and filed it with the other case materials, including the 'murder book' in Petitioner's case, which is currently in the custody of L.A.S.D.

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

Executed on August 13, 2017, at Los Angeles County, California.

Mark Lillienfeld

MARK LILLIENFELD