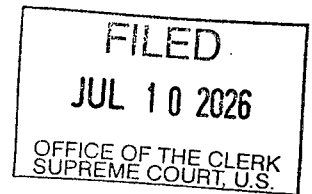


No. 26-5517

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



Lonnie Koontes — PETITIONER
(Your Name)

vs.

California — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

California Supreme Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

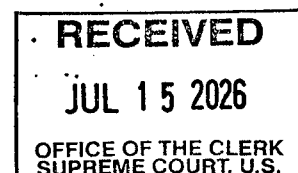
PETITION FOR WRIT OF CERTIORARI

Lonnie Koontes #BN 8076
(Your Name)

480 Alta Rd
(Address)

San Diego, CA 92179
(City, State, Zip Code)

None (incarcerated)
(Phone Number)



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1. Questions Presented

1. Whether California violated due process by asserting territorial (subject matter) jurisdiction over an alleged homicide on a Bahamian-flagged cruise ship occurring off the Italian coast that never ported in the U.S., based on a 1905 statute entitled "Performance of an act in this state culminating in a crime in another state," when the only legislative history is a notation exactly tracking the title?

2. Does the grant of Congressional authority in Art. I, § 8, Cls. 10 of the U.S. Const. to "define and punish piracies and felonies committed on the high seas" preempt California from exercising jurisdiction over the above-described allegation, or, does the decedent's California residency allow state-court jurisdiction under a "detrimental effects" policy analysis?

3. Does the U.S.' entry into international treaties granting exclusive jurisdiction to the ship's flag country over on-board crime when at sea preempt California from asserting jurisdiction over an alleged homicide on a foreign-flagged ship?

4. Whether law enforcement violates the 5th, 6th, and 14th Amendments to the U.S. Const. by invading the defense camp when it solicits information from a private investigator who is known to have participated in defense activities, including meeting with defense counsel, or may law enforcement rely solely on the investigator's assertion that he was never retained by the defense?

5. If law enforcement intentionally solicits defense information from a defense investigator working on a defendant's behalf, is prejudice established by just obtaining privileged information, and if not, is any use of that information constitutional? (An

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issue left open in Weatherford v Bursey, 429 U.S. 545, 554 (1977), resulting in a split in the circuits.)

2 List Of Parties

The parties are Lonnie Koontes and the State of California.

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3. Decisions Below/Appendices

The decision of the California Supreme Court is Appendix A. A relevant decision by the California Court of Appeals, 4th Dist, Div. 3 is reported at 86 Cal. App. 5th 787. The jurisdictional order of the Orange County Superior Court at issue is Appendix B.

4. Jurisdiction

The jurisdiction of this Court is invoked under 28 U.S.C.

§1257(a). The order to be reviewed was entered 4/15/2026 (ApX.A).

5. Constitutional And Statutory Provisions Involved

Constitution: (1) Art. I, Cls. 10: The Congress shall have the power to... Define and punish piracies and felonies committed on the high seas, and offenses against the law of nations.

(2) Art VI, Cls. 2: This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the Supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

(3) Amend. V: No person shall be held to answer... nor be deprived of life, liberty, or property, without due process of law.

(4) Amend. VI: In all criminal prosecutions, the accused shall enjoy the right... to have the assistance of counsel for his defense.

(5) Amend. XIV §1: All persons born or naturalized in the

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United States, No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law [.] "

Statutes: The following statute is at issue:

(1) California Penal Code § 778a: "An Act Within This State Culminating In Crime In This Or Another State; Kidnaping.

(a) Whenever a person, with intent to commit a crime, does any act within this state in execution or part execution of that intent, which culminates in the commission of a crime, either within or without this state, the person is punishable for that crime in this state in the same manner as if the crime had been committed entirely in this state.

(b) Whenever a person who, within this state, kidnaps another person within the meaning of Sections 207 and 209, and thereafter carries the person into another state or country and commits any crime of violence or theft against that person in the other state or country, the person is punishable for that crime of violence or theft in this state in the same manner as if the crime had been committed within this state. "①

6. The Provisions Of International Treaties At Issue:

(1) The Geneva Convention On The High Seas Act Of 1958, Art. VI § 1, which provides in pertinent part that, "Ships shall sail under the flag of one State only and, save in exceptional cases expressly pro-

① As originally enacted in 1905, the text was solely subd. (a). Subd. (b) was added in 1991.

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^{treaties}

vided for in international, or in these articles, shall be subject to its exclusive jurisdiction on the high seas." (As a prisoner, Petitioner has no internet access and cannot provide the full text of the treaty, which is available at https://www.gc.noaa.gov/documents/8_1_1958_high_seas.pdf.) The U.S. is a party to this and the next treaty. (See https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mt=dsg_no=XXI-2&chapter=21.)

(2) The United Nations Convention Of The Law Of The Sea (UNCLOS) of December 10, 1982, Part VII, Arts. §§ 91 and 92 provide that "[s]hips have the nationality of the State whose flag they are entitled to fly and save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas." (For the full text see https://www.un.org/depts/los/convention_agreements/texts/unclos/part7.htm)

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7. Statement Of The Case

Petitioner Lonnie Koontes was convicted in June 2020 of first degree murder for financial gain after a jury trial in the Orange County Superior Court. He was accused of murdering his ex-wife, Micki Kanasaki, while on a Mediterranean cruise that began and ended in Spain. The only California connection was the couples' residency where they lived together in Orange County. The cruise ship, the "Island Escape," was flagged in the Bahamas. Lonnie is an American citizen, Micki's citizenship was not established at trial, but she was born in Japan. The cruise occurred in May 2006. Charges were filed in Feb. 2013.

This was the 3rd prosecution of Lonnie for the same charge by the Orange County District Attorney. The first, initiated by complaint, was dismissed by Judge William Evans in May 2013 after an evidentiary hearing after he concluded Cal. Penal Code § 778(a) did not extend jurisdiction to crimes culminating outside the 50 states of the U.S. That same day, the prosecutor refiled the identical complaint as a new case to ensure Lonnie's continued detention. After Lonnie refiled his motion to dismiss on jurisdiction, the prosecutor obtained an indictment, without notifying the defense of the grand jury presentation. This allowed the case to go before the master calendar judge overseeing grand juries, a former prosecutor, Judge Prickett. Contrary to Calif. Rules of Court 4.115(a) and 10.951(a), both of which require dispositional motions to be assigned to a trial dept, Prickett decided he would rule on the jurisdiction motion.

Before Prickett denied the dismissal motion, the prosecution appealed Evans' dismissal of case #1 to prevent finality. After it got Prickett to hold that jurisdiction existed, and after forcing Lonnie

irrationally jealous of Lonnie's contact with Micki despite his explanation of their joint ownership, and the newlyweds quickly began arguing over several things, including Amy's unrestrained expenditures of money from their joint account. To punish Lonnie for his contact with Micki, Amy had revenge sex with an old boyfriend which ended the marriage after only 3 months. Amy admitted this before a federal grand jury in December 2006 and testified that she had no knowledge in May 2006 that Lonnie was going on a cruise. ②

When Lonnie left Amy in Sept 2005, Micki told him that she wished to rekindle their romantic relationship and Lonnie moved back in with her in their jointly-owned residence.

Micki and Lonnie's reconciliation was not without challenges. Micki had experienced depression since 1996 when she decided to abort a fetus expected to have Down's Syndrome after carrying it for over 5 months. Micki would sometimes drink alcohol, exacerbating her depression. In 2000 she threatened suicide. At the time of the cruise, Micki and Lonnie were in joint counseling. They planned to remarry.

Lonnie's long-time friend and private investigator, Bill Price, suggested that Lonnie take Micki on a cruise, which was something Bill and his life partner, Susan McQueen, did several times. (Bill and Susan had done investigations for Lonnie since the early 1990's. At trial, Bill admitted that Lonnie was not enthusiastic about cruising.

Lonnie, after a few months and discussions with Bill, decided to try a cruise. Micki was interested in seeing the Mediterranean, and the

② At the 2013 hearing on jurisdiction, Amy claimed she lied to the fed'l grand jury because Lonnie threatened her. But at trial in 2020 she said there were no threats and she lied just to "make him look good."

to expend money briefing the appeal, the prosecution abandoned its appeal on the eve of oral argument. When Lonnie ran out of money, he was forced to go to trial with a public defender.

Although the pending appeal in case #1 should have removed Judge Prickett's jurisdiction over the identical issue, he not only effectively overruled another superior court judge, but ruled that, even if Judge Evans' dismissal order became final, it still would not have issue or claim preclusive effect. (See Appendix B at 7, 4th full paragraph.) When Lonnie challenged Prickett's decision once Judge Evans' order became final upon the prosecution's abandonment of its appeal, the Court of Appeal held that Prickett did not overrule Evans because this was a different case number, and there was no preclusive effect because Judge Evans was acting as a "magistrate." (A term applied when Calif. still had municipal courts who were empowered to conduct felony preliminary hearings but not trials.) The Calif. Supreme Court, which had originally issued the habeas order to show cause, denied review, republishing the Court of Appeals decision. (See 244 Cal.App. 4th 1229, republished 6/8/2016.)

Lonnie and Micki met ^{in 1993} at a law firm where Lonnie was an associate attorney and Micki a secretary, O'Melveny + Myers, Los Angeles. Micki developed rheumatoid arthritis in her fingers about a year after they married in 1995. Her sole source of income for the last 10 years of her life was disability insurance. The couple divorced in 2002 (amicably) but continued to share their joint residence.

In 2005, Lonnie married Amy Nguyen, a school teacher, who he had casually dated since 2002. Lonnie maintained his friendship with Micki, returning to the home to perform maintenance while he discussed a potential agreement to sell his interest to Micki. Amy became

Island Escape, which Lonnie found on the internet, had balcony cabins available on short notice. Contrary to the Court Of Appeals opinion, no evidence at trial showed that Lonnie knew the Island Escape was "a converted ^{car} ferry with nonexistent security systems." 86 Cal App 4th at 892. ^③

Bill Price testified at trial that he and Susan decided not to go because the ship was not up to his standards, but when interviewed by FBI agent Stokes in July 2006 in a recording Price made, he said he "loved it" over there and the only reason he and Susan did not go was that Susan's mother was unexpectedly scheduled for surgery at the same time. But that interview preceded the FBI's seizure of nearly ^{*}2 million in Lonnie's assets, alleging all of it to be proceeds of Micki's murder. In November of 2012, Lonnie obtained summary judgment in that forfeiture case, prompting the government to get the state to file the case after the AUSA in the criminal division declined to file. (See the summary judgment order, Appendix C.) It was the seizure of Lonnie's assets that prompted Bill Price to become a double agent for the FBI, as Bill had been participating before that in the defense investigation, e.g., he and Susan accompanied Lonnie's counsel on the same cruise in August 2006. Bill told Lonnie to formally retain only Susan as defense investigator so Bill could use his FBI contacts for information about their investigation, but they would not talk to him if was officially Lonnie's investigator. As a former D.C. police ofcr. with experience on a DEA task force, Bill was aware of asset seizures and informant rewards.

On the 3rd day of the cruise, Lonnie awoke at about 4:30AM to find Micki missing, the light above her bed still on, and her bed still made. He

③ Bill testified at trial that he told Lonnie there were "security cameras on cruises."

immediately went to the 24 hr buffet where Micki said she was going to get herbal tea at about 12:30 AM. Lonnie was falling asleep, having taken an ambien when they returned to the cabin shortly before midnight because he was still having trouble adjusting to the time change. They each also had a glass of wine when they returned. When Lonnie could not find Micki after going to all their prior locations, he reported her missing. That evening when Lonnie was at a hotel awaiting word of the Italian Coast Guard's search, the American Consulate called to tell him that the search was called off, Micki was certainly dead, and this had occurred previously with no success finding the body. He said, "It would be a miracle if they found her body."

After that conversation, Lonnie spoke to Bill who told Lonnie he may as well return to the U.S. as there was nothing to be done there. Bill admitted this conversation at trial on cross, and that Lonnie's demeanor was distraught. Lonnie flew back to California the next day.

The following day, a scientific research vessel found Micki's body. The Italian pathologist estimated she was in the water 36-42 hours and death resulted from strangulation, although burst blood vessels in the eyes - which always occur in strangulation sufficient to cause death - do not appear in any of the autopsy photos. Micki's hyoid bone was intact. Lonnie's public defender had an email from Micki to friends stating she was diagnosed with low bone density, but she neglected to give it to the defense expert. The Italian pathologist also wrote that Micki died within 30 minutes of a meal, and that bruising in the thigh was evidence of an attempted sexual assault.

The defense expert testified that there was no strangulation, and the cause of death was blunt force trauma to the head occurring

on the ship. Apparently the public defender was unaware of this opinion as she told the jury in opening that Micki died from a broken neck when she hit the water. But all 3 pathologists agreed Micki died in the early stages of digesting a meal. The prosecution's theory was that the couple returned to the cabin about 9:00 PM after eating in the more formal restaurant, where Lonnie hit Micki over the head with the wine bottle purchased at dinner, then strangled her and threw her over the balcony. ⁽⁴⁾ When the local ME was asked what if Micki ate at midnight, he said, "Then all bets are off."

Lonnie voluntarily participated in 2 FBI interviews lasting several hours. His account of the events never changed. He voluntarily gave the FBI a DNA sample, which turned out to be a ruse to see if Lonnie would refuse, as the pathologist never attempted to scrape Micki's fingernails, testifying that the ^{fingerprint ink} ~~waiter~~ would have destroyed any DNA. The sheriff's own forensic criminologist contradicted that testimony.

After the cruise, Lonnie hired a 2 person law firm, as well as Bill and Susan as investigators, to try to find out what happened. All 4 went on the same cruise, but learned little as the ship captain, who testified at trial that Lonnie was "cold" when they spoke, refused to cooperate. Lonnie initially paid Bill by wire transfer and check (over \$20,000), but after seizure of Lonnie's assets in November '08, the FBI asked Bill about the payments so Bill insisted on cash thereafter. After he was charged, Lonnie learned that Bill told the FBI the first payment was a settlement for Lonnie's client, and the next

④ Although defense counsel made no attempt to admit any evidence of cruise staff's reports, the waiter said each of the couple drank 1 glass of wine at dinner and took the bottle. The Italian pathologist said there was no alcohol in Micki's blood, but he did not run the test - a harmless confrontation clause violation per the Court of Appeal. Apparently learning that ship staff saw the couple in a show at least 2 hrs after dinner, the pathologist changed to 30 minutes to 4 hrs after eating

was partial repayment of a cash loan Bill made to Lonnie without any documentation. Desirous of Bill's continued cooperation, the FBI never questioned these explanations. At trial, Bill claimed all money he got from Lonnie was to bribe Amy Nguyen, Lonnie's ex-wife. Defense counsel never impeached Bill with his FBI statement and allowed Bill's claim that he was "laundering" Lonnie's bribe money to go unchallenged.

At trial Bill contradicted nearly all of the exculpatory information he gave in his 2006 FBI interview, including: (1) Lonnie had earned the majority of what the couple had; (2) Lonnie's marriage to Amy ended when she had sex with another man; (3) Micki was depressed over miscarriages; (4) the couple had good days when Micki was not drinking, but if she drank Micki would sometimes rage and break things; (5) even after "all that nonsense" Lonnie still cared for Micki; and (6) the only reason Bill and Susan did not accept Lonnie's offer to go on the cruise had to do with the surgery of Susan's mother. Bill also told the FBI that, "Lonnie has never, in all the time I met (sic) him, advocated that he wanted to, should, or would do anything to her."

Following the seizure of Lonnie's assets in November '08, Lonnie hired attorney Mark Werksman, and reengaged Bill and Susan. Unbeknownst to Lonnie, Bill contacted the FBI and offered his assistance, insisting that he was never a defense investigator. From Nov '08 to 2011, Bill had at least 8 documented contacts with the FBI. During that period, Bill and Susan went on multiple investigative trips to Italy and California, including a meeting with new counsel to discuss investigative strategy. (See Appendix D, Declaration Of Mark Werksman.) Lonnie paid all of Bill's expenses during this period, as well as thousands of dollars in cash.

the cruise and "throw Micki off the boat," as Bill had "big connections." At the end of the recording, Bill tells Amy that Lonnie left her, "because he wanted the money.... He wanted her [Micki] because she had the money." Bill testified that he told Lonnie about the recording and what Amy said upon returning to Florida, to which Lonnie replied that Amy would never be believed because she had already testified differently to the federal grand jury, so it did not matter. The public defender never pointed out to the jury that Lonnie's purported response was nonsensical given Bill's testimony about Lonnie's instructions to find out Amy's grand jury testimony as the trip's purpose. When Bill and Susan returned, they actually told Lonnie Amy said she knew nothing about the cruise beforehand, and no one from the FBI had contacted her. Although Bill sent the recording of Amy to the FBI shortly thereafter, Lonnie did not know of its existence until 2012 when the U.S. tried to file it under seal in the asset forfeiture case and was ordered to produce it. Bill also testified that when they returned he told Lonnie he was sending the recording of Amy to the FBI. In reality Bill and Susan continued to perform and be paid for investigative tasks, including another trip to Italy to obtain the autopsy report, which Bill also disclosed to the FBI.

Despite Bill's assistance for 3 years and the resources of the federal government, the FBI was unable to mount sufficient evidence to defeat a summary judgment motion in the forfeiture case against Lonnie's assets. On November 20, 2012, in granting summary judgment, the court wrote:

While suspicion naturally would focus on the domestic partner in a case such as this, suspicion is not enough to survive summary judgment. When all is said and done, the government has presented

lies about Lonnie including that (1) Lonnie threatened to take Susan McQueen's license as a private investigator when Bill supposedly confronted Lonnie with the recording in 2009; (2) Bill kicked Lonnie out of his house when they confronted him with the recording of Amy and Bill had not spoken to Lonnie since. (Bill and Susan continued to do investigation regarding Micki's death for over 2 more years); (3) When Bill confronted Lonnie about Amy's statements, Lonnie called Amy a "whore" "who loved to get it in the ass; and (4) Lonnie "raped a 15 yr old girl and this poor girl was damaged." Bill also offered Amy a bribe, saying, "If you run into financial problems I will come to your aid. I'm a very wealthy person." Bill also implied that if she didn't back his story she would be charged after she expressed concern about what the authorities might do to her, saying, "I'll get everything you want, I promise, because guess what, not only do I want them to give it to you, I want it for myself. Amy you followed my cue (in 2009?). If we're straight enough with them, we'll walk out of this thing."

Bill's conduct violated several Penal Code sections, including § 133, "Deceiving A Witness To Affect Testimony" and § 137, "Influencing Testimony Or Information Given To Law Enforcement, which makes offering a bribe in such circumstances a felony. Although they monitored Bill's manipulative crimes in real time, DDA Susan Price and Sheriff's Investigator Don Voght did not intervene until it was clear Amy was ready to support Bill. (Both Price and Voght were promoted after bringing this case.)

Remarkably, Amy told Bill she could not remember what she said on the recording. Price and Voght let her listen to it before interviewing Amy, and they never asked if Bill influenced her story. Amy told them, "Everything I know came from Bill. Lonnie was arrested 3 days later.

8. Reasons To Grant The Petition

Q1: California Lacked Territorial (Subject Matter) Jurisdiction Over An Alleged Homicide On A Foreign-Flagged Ship On The High Seas, Both As A Matter Of Statutory Construction And Due Process.

Judge Evans' dismissal of case #1 was based on the legislative purpose behind Penal Code § 778a (a) [When passed in 1905 only subd. (a) existed; subd. (b) was added in 1991 to address the jurisdictional problem of inter-country kidnapping when additional crimes against the victim occur in a foreign country.]

Section 778a in its current form since 1991 provides:

778a. Act Within This State Culminating In Crime In This Or Another State; Kidnapping
(a) Whenever a person, with intent to commit a crime, does any act within this state in execution or part execution of that intent, which culminates in the commission of a crime, either within or without this state, the person is punishable for that crime in this state in the same manner as if the crime had been committed entirely in this state.

(b) Whenever a person who, within this state, kidnaps another person within the meaning of Sections 207 and 209, and thereafter carries the person into another state or country and commits any crime of violence or theft against that person in the other state or country, the person is punishable for that crime of violence or theft in this state in the same manner as if the crime had been committed in this state.

This section in its original form when it was recommended to the Calif. Legislature by the Code Commissioner in 1905 consisted solely of subd. (a), and was titled, "Performance of an act in this state culminating in a crime in another state." The Code Commission was created in 1870 to revise existing statutes, correct errors, and to "recommend all such enactments as shall, in the judgment of the commission, be necessary to supply the defects of and give completeness to the existing legislation of the state." Keeler v. Superior Court (1970) 2 Cal 3d 619, 629. The proposed statute (§ 778a) appears on pg. 692 of the bill. In the margin, the Code Commissioner explains the purpose of the bill as "Performance of an act in this state culminating in the commission of a

crime in another state." The Code Commissioner's note, printed at the bottom of the bill and beneath the official version of the statute when published, read, "This section is designed to provide for the punishment of persons who in this state do an act culminating in the commission of a crime in another state." The Code Commissioner's notes are entitled to "substantial weight in construing statutes." *Van Arsdale v.*

Hollinger (1968) 68 Cal 2d 245, 249. That court further explained:

This is particularly true where the statute proposed by the Commission is adopted by the Legislature without any change whatsoever and where the Commission's comment is brief, because in such a situation there is ordinarily strong reason to believe that the Legislators' votes were based in large measure upon the explanation of the commission proposing the bill. *Id.* at 250.

Also, the 1991 amendment adding subd. (b) shows that the Legislature intended to create inter-country jurisdiction in California in only a narrow category of crimes, i.e., when a California kidnapping culminates in additional crimes of violence or theft (obviously in Mexico). If subd. (a)'s language of "without the state" had the expansive meaning ascribed to it by Judge Prickett when he overruled Judge Evans, a judge of the same court, i.e., anywhere outside California, there would have been no need for subd. (b) to be added. The California kidnapping would be the predicate California act in "part execution" of the subsequent foreign crimes under subd. (a). Thus, the interpretation of subd. (a) used to convict Lonnie renders subd. (b) complete surplusage. But California follows the universal rule that, "where (sic) a statute, with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject is significant to show that a different intention existed." *People v. Cottle* (2006) 39 Cal 4th 246, 254.

California also follows the rule of statutory interpretation that "our fundamental task is to determine the Legislature's intent so as to effectuate

the law's purpose." *Heckart v. A-1 Self Storage, Inc.* (2018) 4 Cal 5th 748, 757.

Although the government argues that the "plain meaning" of the statute's "within or without this state" phrase should end the analysis; but in applying the "plain meaning" rule, California courts are supposed to consider the statute's purpose and reject a literal interpretation at odds with the obvious purpose. As the Calif. Supreme Court explained:

"The plain meaning rule does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose or whether such a construction of one provision is consistent with other provisions of the statute. The meaning of a statute may not be determined from a single word or sentence; the words must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible. [Citation.] Literal construction should not prevail if it is contrary to the legislative intent apparent in the statute. The intent prevails over the letter, and the letter will, if possible, be read as to conform to the spirit of the act. [Citations.] An interpretation that renders related provisions nugatory must be avoided."

Lungren v. Deukmejian (1988) 45 Cal 3d 727, 733. This rule is often explained as one of latent ambiguity when the literal construction would cause an unintended expansion of a statute beyond that contemplated.

E.g., *Bruce v. Gregory* (1967) 65 Cal 2d 666, 674 ("Words will not be given their literal meaning when to do so would evidently carry the operation of the enactment far beyond the legislative intent and thereby make its provisions apply to transactions never contemplated by the legislative body").

Moreover, given the original title and its retention in the official version of the statute to the present day (showing inter-state application only), there is also a patent ambiguity. See *Siskiyou County Farm Bureau v. Dept. of Fish And Wildlife* (2015) 237 Cal App 4th 411, 433 (A patent ambiguity "arises from the face of [the statute]... whereas a latent ambiguity requires a provisional examination of extrinsic matters"). And under this Court's precedent, "the title of a statute and heading of a section are tools available for the resolution of doubt about the meaning of a statute."

Almendariz-Torres v. U.S. (1998) 523 U.S. 224, 234 (citations omitted).

The trial court's determination that section 778a(a) bestows jurisdiction over an alleged crime on the high seas on a foreign-flagged ship conflicts with the historical construction of the state in cases such as *People v. McDonald* (1938) 24 Cal App 2d 702. The relevant facts of *McDonald* are indistinguishable from this case. *McDonald* was charged with "contracting for an incestuous marriage" with his minor daughter and statutory rape. California asserted jurisdiction over the incestuous marriage, which occurred in Arizona, under section 778a(a) [then just 778a]. The appellate court rejected the assertion that forming criminal intent in California and then traveling to another jurisdiction to commit the crime was sufficient for jurisdiction:

It is true that it was in Indio [Calif] that the parties formed the intention of marrying. They boarded a train there and went to Phoenix. They returned to Indio and resumed cohabitation until Marjorie [the daughter] ran away. This is the only evidence that would tend in anyway to give a California court jurisdiction over a prosecution for the incestuous marriage.

Id. at 708. Here, the prosecution alleged that Lonnie formed the intent to murder Micki while he was in California, made travel arrangements, then committed the murder overseas, eventually returning to California. This is precisely the scenario held insufficient for jurisdiction under the statute. And because *McDonald* was decided much closer to the passage of section 778a(a), its precedential value is enhanced. E.g., *Gonzalez v. Dept. of Correcs. And Rehab.* (2011) 195 Cal App 4th 89, 94 ("The court [when construing a statute] should take into account matters such as context, the object in view, the evils to be remedied, the history of the times and of legislation upon the same subject, public policy and contemporaneous construction").

In 1905 when the statute passed, the automobile was in its infancy and air travel did not exist. The Legislature would not have perceived that forming intent in California to commit a crime on the high seas or

in a foreign country was an ill requiring legislative. It was not until 1991 that subd. (b) was added to section 778a, and jurisdiction over intercountry crime was limited to offenses after a Calif kidnapping.

Furthermore, in 1905, under the common law viewed territorial jurisdiction over a crime as lying in only a single state. *People v. Betts* (2005) 34 Cal 4th 1039, 1046. Betts applied section 778a(a) to interstate crime as the statute was intended, but had no occasion to consider whether it applied to crime occurring outside the U.S.

Public Policy Cannot Justify Jurisdiction: Judge Prickett tried to justify his order on policy grounds that did not exist when section 778a(a) was enacted and were ^{not} considered by the Legislature. (Appx. B at 15-17.) He wrote, "The determining factor in territorial jurisdiction is whether the connection between the crime and the prosecuting state is strong enough so that prosecuting an offense committed outside its borders is reasonable." *Id.* at 15. He cited a single case to support this claim, *U.S. v. Layton* (1981) 509 F.Supp. 212, 215-16, *aff'd* 855 F.2d 1388 (9th Cir), overruled on other grounds, *Guam v. Ignacio*, (9th Cir 1993) 10 F.3d 608, 612 n.2. Layton involved conspiracy and murder of an American congressperson in Guyana. Although the U.S. had no extra-territorial jurisdictional state that applied, the court used the policy of "detrimental effects" to establish jurisdiction. Because he was in Congress, Layton's murder had a "detrimental effect on the functioning of the federal government."

The detrimental effects [on governmental functions] theory of jurisdiction has its origins in *Strassheim v. Daily* (1911) 221 U.S. 280, 285. The defendant, an agent for an Illinois company, conspired with the company's executive to sell used equipment to the State of Michigan as if it were new. This Court held that Michigan could impose penal sanctions on the agent

"although he had never set foot in the state until after the fraud was complete. Acts done outside a jurisdiction, but intended to produce and producing detrimental effects within it, justify a State in punishing the cause of the harm as if he had been present at the effect." *Id.*

But just 11 years later, this Court clarified that crimes against private individuals having no impact on governmental operations "must be committed within the territorial jurisdiction of the government where it may properly exercise it." *U.S. v. Bowman* (1922) 260 U.S. 94, 98. Crimes specifically falling under this jurisdictional rule include murder. *Id.* The issue in *Bowman* was whether four individuals, 3 Americans and a Brit, could be indicted for conspiring to defraud an American corporation in which the U.S. held stock, when the conspiracy occurred on the high seas and in Brazil. The defense argued that § 35 of the U.S. Crim. Code made no mention of the high seas and Congress always expressly identified locations of extra-territorial jurisdiction, so there was none. This Court disagreed because conspiracy fell within those "criminal statutes which are, as a class, not logically dependent on their locality for the government's jurisdiction, but are enacted because of the right of the government to defend itself against obstruction or fraud wherever perpetrated[.]". *Id.*

Assuming that Micki's death had a detrimental effect on private individuals residing in California, that does not involve the governmental harm required for detrimental effects jurisdiction. ⑥ Micki's death was tragic and devastating (including to Lonnie), but it did not impact the functioning of California's government.

Lastly, Judge Prickett sought to justify jurisdiction on ^{current} principles of international law that were never considered by the 1905 Legislature and do (ad)

⑥ The only trial testimony about the impact of Micki's death was by her niece, a Florida resident.

not apply because they involve inter-country crime in which a national government exercises jurisdiction, not a political subdivision attempting to usurp an exclusive power of a national government. (See pgs

All of Prickett's remaining policy rationales are in stark conflict with the singular stated purpose for § 778a(a) - to allow California jurisdiction over interstate crime that begins in California. Disregarding that purpose, his policy pronouncements amount to judicial legislation based on what he thinks the Legislature would have done if inter-country crime had been at issue

That type of speculation as justification for jurisdiction was rejected in *Morrison v. Nat'l Australia Bank Ltd* (2010) 561 U.S. 247, 260-61. The bank had purchased a Florida loan-servicing company. It sued the company's executives, claiming they fraudulently the company's value. Because the bank traded on foreign exchanges, and the write-down it had to take caused its stock to fall, it filed securities fraud allegations under §§ 10(b) and 20(a) of the Securities Exchange Act of 1934. This Court held that no jurisdiction lied under the Act because no bank shares traded on any U.S. exchange. The decision criticized the Second Circuit's analysis of the Act in which it determined whether Congress would want extraterritorial jurisdiction to apply given the Act's silence on the issue. *Id.* at 225. In rejecting that approach, this Court called it, "judicial-speculation-made-law [divining what Congress would have wanted] if it had thought of the situation before the court." *Id.* at 261. The proffered justification for speculating included an "effects test," whether the wrongful conduct had a substantial effect in the U.S. or upon U.S. citizens." *Id.* at 257. This Court criticized this test as having no textual support, being difficult to apply, and, most importantly, contrary to the presumption against extra-territoriality.

California's Exercise Of Jurisdiction Violates Due Process:

This Court held long ago that due process is violated when a criminal defendant is convicted in the absence of subject matter jurisdiction. E.g., *Ex Parte Siebold* (1880) 100 U.S. 371, 375 (at the time lack of jurisdiction was the only ground cognizable on habeas, as the Court noted). In *Siebold*, the Court allowed convictions of state election judges to stand, even though Maryland and the U.S. are separate sovereigns, "where the subject matter is one of a national character, or one that requires a uniform rule, it has been held that the power of Congress is exclusive." *Id.* at 385.

A split in the circuits has developed when the basis for challenging jurisdiction is a matter of state law only. ^⑦ In *Lowery v. Estelle*, the 5th Circuit held that a lack of jurisdiction under state law is a federal due process violation. 696 F.2d 333, 337 (1983). The 6th and 8th Circuits agreed. E.g., *Bocook v. Huffman* (S.D. Ohio 2000) 2000 U.S. Dist LEXIS 23891 *10;

Respondent next argues that Petitioner has presented a question of state law, regarding interpretation of a state statute... which is not appropriate for [federal] review. This court does not agree. Petitioner argues his constitutional rights were violated because the trial court lacked subject matter jurisdiction because no hearing was held under Oregon Rev. Code § 313.9. (citing *Houser v. U.S.* (8th Cir 1974) F.2d 509, 512.

Cf. *Soloman v. Moseley* (10th Cir 1972) 457 F.2d 1223, 1227, cert. denied, 473 U.S. 919 (1973) ("It may be argued force fully that where a later opinion decides that jurisdiction did not exist as to some subject matter, it must apply retroactively"); *Yellowbear v. Wyoming Atty. Gen.* (10th Cir 2008) 525 F.3d 921, 924 (Petitioner asserted the state's application of its jurisdictional statute violated federal law; the court, in reversing and remanding wrote, "The issue of whether the state court properly exercised jurisdiction over Mr. Yellowbear is an important federal constitutional question [and]... is indeed a basis for

⑦ Petitioner also claims that the exercise of Calif jurisdiction violates Congress' exclusive authority to punish felonies on the high seas and is further preempted by treaty, but the Court could also resolve this split in this case.

federal habeas corpus relief cognizable under the due process clause").

On the other hand, the 2nd Circuit rejects habeas jurisdictional arguments based solely on state law. *U.S. ex rel Harrington v. Mancusi* (2nd Cir. 1969) 415 F.2d 205, 209 ("No federal court has to our knowledge ever granted a writ where a state court's asserted lack of jurisdiction resulted solely from the provisions of state law"); see also *U.S. ex rel Roche v. Scully* (2nd Cir. 1984) 739 F.2d 739, 741-42. The 4th Circuit concurs, but leaves open a narrow exception:

while it is axiomatic that we may grant the writ of habeas corpus on the ground of lack of jurisdiction... nothing in *Hailey* [*Hailey v. Dorsey* (4th Cir. 1978) 580 F.2d 112] suggests that when the alleged defect is based solely on an interpretation of state law that we may resolve the issue contrary to the highest state court absent a showing of a 'complete miscarriage of justice.'

Wright v. Angelone (4th Cir. 1998) 151 F.3d 151, 158.

As the 2nd Circuit has observed, "The Supreme Court has not had occasion to say how far a state may go in expanding its criminal jurisdiction." *Carvajal v. Artus* (2nd Cir. 2011) 633 F.3d 95, 111. This case presents an opportunity to provide guidance on the limits of state criminal jurisdiction as was needed in *Carvajal*.

Another reason that Judge Prickett's jurisdictional ruling violated due process is because he effectively overruled Judge Evans' ruling in the first case that § 778a(a) does not create territorial jurisdiction outside of crimes occurring in the U.S. as a matter of law. In effectively overruling Judge Evans' ruling in case #1—after an evidentiary hearing, full briefing, and careful consideration of the legislative history—Judge Prickett became a "one-judge appellate court" prohibited even under any sensible reading of California law. E.g., *In Re Alberto* (2002) 102 Cal App 4th 421, 427 ("For one superior court judge, no matter how well intended, even if correct as a matter of law, to

nullify a duly made, erroneous ruling of another superior court judge places the second judge in the role of a one-judge appellate court"); see also *People v. Goodwillie* (2007) 147 Cal App 4th 695, 713. To evade this salutary rule, the Court of Appeal engaged in the fiction that Judge Prickett did not really overrule Judge Evans because "they presided over different causes," a distinction without a difference that elevates form over substance. *In Re Koontes* (2016) 244 Cal App 4th 1229, 198 Cal Rptr 3d 839, 853, Revw denied and ordered not to be published, June 8, 2016, Cal. Supreme Court. The rule forbidding judges of the same court from overruling each other was already well-established by the 19th century. E.g., *Shreve v. Cheesman* (8th Cir. 1895) 69 F. 785, 790:

It is a principle of general jurisprudence that courts of concurrent or coordinate jurisdiction will follow the deliberate decisions of each other, in order to prevent unseemly conflicts, and to preserve uniformity of decision and harmony of action.

Cf. *New Haven Inclusion Cases* (1970) 399 U.S. 392, 426:

[T]he conflict was... 'between two coordinate courts of concurrent jurisdiction'... And given that conflict, the three-judge court could have followed the settled proposition that 'the court which first acquired jurisdiction through possession of the property is vested, while it holds possession, with the power to determine all controversies related thereto.' (citations omitted.)

The evils engendered by allowing coordinate judges to reverse each other are on full display here. The prosecutor was allowed to refile, judge shop to the master calendar judge overseeing the grand jury, then appeal the first case to avoid issue or claim preclusion. The master calendar judge enabled the prosecutor by keeping the renewed motion to dismiss for lack of jurisdiction, even though Calif. Rules of Court required him to send the dispositive motion to a trial dept. (He refused the request to send it back to Judge Evans, then engaged in the scheme by overruling Evans.) Allowing such prosecutorial

manipulation destroys public perception of judicial fairness, especially when the prosecution had the availability of an appeal in the first case. The prosecutor was allowed to both appeal and refile. Then, once she obtained the desired ruling, she waited until Lonnie's paid counsel briefed the appeal to abandon it. That contributed to the resource drain that eventually sent Lonnie to the public defender.

Petitioner prays that this Court establish, as a matter of due process, that one judge of the same court cannot overrule another coordinate judge on the same issue when the party who lost in the first instance has a right to appeal the loss or otherwise secure appellate review, e.g., by writ petition.

Q2: Art. I § 8, Cls. 10 Of The U.S. Const. Grants Congress The Exclusive Authority To "Define And Punish Piracies And Felonies," Pre-empting California Jurisdiction Here.

When the Constitutional Convention met on July 16, 1787, it agreed without opposition "that the national legislature ought to possess the legislative rights vested in Congress by the Confederation." *U.S. v. Flores* (1933) 289 U.S. 137, 147 n.2. Art. IX of the Articles of Confederation provided that, "the United States, in Congress assembled, shall have the sole and exclusive right and power... of appointing courts for the trial of piracies and felonies committed on the high seas." *Id.* In *Flores*, the exclusive nature of federal jurisdiction in admiralty matters was explained as historical fact: "The two clauses [Art. III § 2 and Art. I § 8, Cls 10] are the result of separate steps independently taken in the Convention, by which the jurisdiction in admiralty, previously divided between the Confederation and the States, was transferred to the national government." *Id.* at 149.

In fact, the criminal statute at issue in Flores, 18 U.S.C. § 272, contained an oft-repeated phrase that would be superfluous if a state, by operation of inserting "without this state" in its jurisdictional statute, could create territorial jurisdiction anywhere in the world. Section 272 provided in pertinent part:

The crimes and offenses defined in this chapter shall be punished as herein prescribed: First: When committed on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular state. *Id.* at 451, n.1.

If the states had the power to punish crime on the high seas anywhere in the world there would have been no reason to include the phrase "and out of the jurisdiction of any particular state." Moreover, the phrase contemplated that certain waterways were in state jurisdiction, but by implication the high seas were specified because of their distinctly federal jurisdiction.

Taken to its logical limit, if California is allowed territorial jurisdiction anywhere, so long as the defendant formed the intent while in California, this allows greater jurisdiction than exercised by the federal government, including on the high seas. Federal criminal statutes applicable to the high seas require a greater U.S. connection than just having been in the U.S. For instance, the statute at issue in Flores, 18 U.S.C. § 272, required that the ship involved belong to the U.S. or a U.S. citizen. See also 18 U.S.C. § 7, defining "special maritime and territorial jurisdiction of the U.S." to require ownership by the U.S. or a U.S. corporation or U.S. citizen, U.S. registration, or a departure/arrival at a U.S. port re: the sailing on which an offense occurred. No federal law creates jurisdiction over a foreign-flagged ship on the high seas with no connection to the U.S.

Consider the following scenario, which, under a "plain meaning" construction of "without the state" in section 778a(a) would bestow jurisdiction in California: Two Mexican nationals with U.S. work permits decide to bring their ten year-old son to Disneyland in Orange County, California where they visit the amusement park with the mother's sister, the boy's aunt. At the park, the boy misbehaves to the point in a fit of anger the father announces that, "I'm going to kill that kid" and the family abruptly leaves the park, packs their clothes, and checks out of their hotel. A few hours later the aunt gets a frantic call from the mother saying the father just beat the boy to death. The aunt calls local police and tells them about the father's comment and actions. Police secure an arrest warrant, drive to Mexico and bring the father to the Orange County jail. When Mexico demands the return of the father for prosecution, the district attorney refuses, asserting jurisdiction under § 778a(a), asserting he will seek the death penalty Mexico does not have based on a torture special circumstance. When California refuses to extradite, Mexico refuses to extradite a cartel member accused of murdering a DEA agent.

The potential chaos and international tension that can result in such or similar cases should not be dismissed. And if Orange County police decline to enter Mexico, what if the father flees into the U.S. and is apprehended in California, after which the D.A. refuses to extradite him back to Mexico. Chaos will ensue.

The need to carefully consider which powers held by the federal government may properly be shared with the states was thoughtfully analyzed in *Day v. Buffington* (C. Mass. 1871) 7 F. Cas. 222, 226:

Cases arise where it is held that the mere grant of power to Congress

unaccompanied by any legislation under the grant does not imply a prohibition on the states to exercise the same power. Such cases are not numerous, however, and whenever the nature of the power granted or the terms in which the grant is made are of a character to show that the framers of the Constitution intended that it should be exclusively exercised by Congress, the subject is completely taken away from the state legislatures as if the Constitution contained an express prohibition to that effect.

The Day court concluded that "most of the powers upon the government of the United States are exclusive." *Id.* at 229. See also *Taylor v. U.S.* (2016) 579 U.S. 301, 311-12 (J. Thomas dissenting) (Detailing the limits of Congressional authority over crime, but noting the plenary power granted to Congress under Art. I § 8.

In 1866 this Court made it clear that admiralty jurisdiction is the exclusive purview of the federal government:

"The admiralty jurisdiction," says Mr. Justice Story, 'naturally connects itself, on the one hand, with our diplomatic relations, the duties to foreign nations and their subjects; and, on the other hand, with the great interests of navigation and commerce, foreign and domestic.' There is, then, a peculiar wisdom in giving to the national government a jurisdiction of this sort.

The Moses Taylor (1866) 71 U.S. 411, 430-31 (Holding that California did not have jurisdiction in an in rem case involving a steamer that operated in international waters) (citation omitted).

Q3: The U.S. Entry Into Two International Treaties Giving The Nation Under Which A Ship Is Flagged Exclusive Jurisdiction Over All On-Board Conduct While On The High Seas Also Preempts State Jurisdiction Because Art. VI, Cls. 2 Of The Constitution Makes Treaties The Supreme Law Of The Land.

The U.S. has entered into 2 international treaties regarding admiralty law, both of which contain identical language giving the flag country exclusive jurisdiction over conduct on the ship while on the high seas. (See pg. VII.) When this language has been asserted as a bar to U.S.

criminal jurisdiction, the lengthy and complicated debate has often been whether the jurisdictional language is self-executing. E.g. *U.S. v. Postal* (5th Cir. 1979) 589 F.2d 862. In *Postal*, the jurisdictional issue arose from a U.S. Coast Guard boarding of a drug smuggling ship on the high seas. The defense asserted that the U.S. lacked jurisdiction of a foreign-flagged ship on the high seas under ^{the} Geneva Convention On The High Seas of 1958. *Id.* at 873-76. The *Postal* court viewed the question of whether a treaty is self-executing as one of contractual intent between the signatory nations. *Id.* at 876. Recognizing that "the self-execution question is perhaps one of the most confounding in treaty law," the *Postal* court engaged in a tortured analysis to avoid concluding that the exclusive-jurisdiction clause was self-executing. The court acknowledged that, "On its face, this language would bear a self-executing construction because it purports to exclude the exercise of jurisdiction by foreign states in the absence of an exception embodied in treaty." (sic.) *Id.* at 877. Although the fact that the drugs were intended for the U.S. makes the result in *Postal* understandable, the analysis contains a heavy dose of result-oriented reasoning.

None the less, even the *Postal* court's reasoning would bar California's jurisdiction in this case: "Congress, which has a role to play in the ratification of a treaty, has the power to enact legislation that conflicts with a treaty provision, while state legislatures do not." *Id.* at 878 n.25. The *Postal* court also recognized that Art. VI, Cls. 2 of the Const. makes treaties "the Supreme law of the land." *Id.* at 875. Moreover, California's expansive view of § 778a's jurisdiction violates the principle that, "An act of Congress ought never to be construed to violate the law of nations if any other possible construction remains." *Murray v. Schooner Charming Betsy* (1804) 6 U.S. 64; see also *Postal*, 589 F.2d at 873 n.16; and, ^{US v.} *Vasquez-Velasco* (9th Cir. 1994) 15 F.3d

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833, 839 ("[I]n the absence of an explicit Congressional directive, courts do not give extraterritorial effect to any statute that violates principles of international law"). Cf. *U.S. v. Yousef* (2003) 327 F.3d 56, 86.

In this case, California has elevated its status as a separate sovereign from the U.S. to implement its police powers worldwide. In ignoring the treaties at issue, Judge Prickett relied on a case⁽⁸⁾ holding that a criminal defendant had no standing to enforce a series of treaties with European governments that prohibited seizures of alcohol in international waters during prohibition. The question in *Skiriotes v. Florida* was whether Florida could enforce a misdemeanor statute prohibiting the use of "diving equipment in the [commercial] taking of sponges from the Gulf of Mexico off the coast of Florida [more than 3 miles out]." 313 U.S. 69 (1941). The treaties at issue here did not exist when *Skiriotes* was decided. In dictum, the Court rejected the defendant's reliance on treaties, writing, "none of the treaties are applicable to his case. He is not in position to invoke the rights of other governments or of the nationals of other countries." *Id.* at 74. The decision did not even discuss the language of the treaties involved.

Skiriotes does not support the superficial treatment of the treaty issue by Judge Prickett. Unlike this case, *Skiriotes* relied on the rationale of the "detrimental effects" theory of jurisdiction — that the regulated conduct was harmful to the government, presumably because of the deleterious impact on the sponge fishing industry. *Id.* at 73-74 (Describing the misdemeanor as "a criminal statute dealing with acts that are directly injurious to the government, and are capable of perpetration without regard to particular locality[.]" The court

(8) See Appendix B at 22, citing *Skiriotes v. Florida*.

cited to *U.S. v. Bowman* for support of this statement, which specifically held that the charge of murder must be prosecuted in the territorial jurisdiction where it occurred (see *supra* at 16). The court also relied on the fact that the boat used by the defendant was registered in Florida and noted that "a vessel at sea is regarded as part of the territory of the State [whose flag it flies]." *Id.* at 78.

The principle that a treaty provision will override conflicting state law is not a frivolous claim as suggested by Judge Prickett's decision. See 1A Sutherland Statutory Construction § 32:6 (7th ed. 2020). ("The power of a treaty to override conflicting state law, based on the Supremacy Clause, is well settled.") As recently as 1953, this Court explained: "This Court has said that the law of the flag supercedes the territorial principle, even for purposes of criminal jurisdiction of personnel of a merchant ship, because it 'is deemed to be a part of the territory of that sovereignty [whose flag it flies], and does not lose that character when in navigable waters within the territorial limits of another sovereignty." *Lauritzen v. Larsen* (1953) 345 U.S. 571, 585 (Disallowing a negligence claim brought under the Jones Act by a Danish seaman who joined a Danish ship in New York and was injured while ported in Havana, Cuba. Furthermore, this Court has dismissed cases in which a treaty violation occurred because, by entering into a treaty, the U.S. "had imposed a territorial limitation upon its own authority." *Cook v. U.S.* (1933) 288 U.S. 102, 121. Even before *Cook*, federal courts dismissed criminal cases involving seizures of alcohol in violation of treaties. E.g., *U.S. v. Schouweiler* (S.D. Cal 1927) 19 F.2d 387 and *U.S. v. Ferris* (N.D. Cal 1927) 19 F.2d 925.

Petitioner is aware that ^{a presumption} against preemption applies as a general

rule. But that presumption does not apply when the federal government has historically regulated the field to a significant degree:

An assumption of non-preemption is not triggered when the State regulates in an area where there has been a history of significant federal presence.... The state laws now in question bear upon national and international maritime commerce, and in this area there is no beginning assumption that concurrent regulation by the state is a valid exercise of police powers.

U.S. v. Locke (2000) 529 U.S. 89, 108.

Petitioner has shown that allowing California to expand its police powers to the high seas, or actually worldwide, encroaches on Congress's exclusive authority, conflicts with the supreme law of the land in form of international treaties, and creates serious risks to international relations. This Court has the opportunity to prevent this overreach by enforcing the common-sense restrictions on this attempt by California to operate as if it were an independent nation.

Q4: Law Enforcement Violates The 5th, 6th, and 14th Amendments When It Solicits Privileged Information From An Obvious Defense Investigator And Calls Him At Trial To Disclose It.

The evidence that Bill Price functioned as Lonnie's defense investigator beginning August 2006 when accompanied defense counsel on the same cruise through 2011 when his work on the investigation into Micki's death ended. And contrary to the prosecutor's representations to the superior court, she knew that Bill had access to privileged information and that his testimony at trial regarding conversations he had with Lonnie about the case were privileged. She used it at trial anyway.

The prosecutor had all of the FBI's reports about its communications with Bill at the inception of the first case. The report of

12/11/2008 indicated that Bill Price said he "recently met with Mark Werksman, attorney for Lonnie Koontes, in regards to the death of Micki Kanesaki. Werksman indicated he views Price as part of Koontes' defense team. Werksman intends to argue that Koontes' conversations with Price are 'privileged communications.' Although Bill falsely claimed that he told Werksman he had not been hired as a defense investigator, Werksman's declaration and Bill's inconsistent stories reveal Bill's lie. (Werksman's declaration is Appendix D, which he signed more than 3 years after his representation of Lonnie ended, and he received no compensation for his time preparing it.) In an 11/18/2008 FBI interview, Bill claimed that Lonnie's original counsel, Keller and Rauckkus, "purposefully did not hire Price because they viewed him as a witness." But when Bill testified at trial, his story was that Werksman "structured it" so Bill would not be a defense investigator because Werksman wanted Bill to be "an expert witness."

Evidence that the prosecutor knew Bill had privileged information at the onset of the investigation came from her own files. On 2/13/2013, her investigator wrote a file memo stating, "at the request of Deputy District Attorney Susan Price, I [D.A. Investigator Robert Erickson] telephoned Bill Price.... I reiterated to Bill Price that it was imperative that he refrain from telling DDA Price or anyone on the OCDA investigative team any information that he may have obtained while accompanying his partner and ex-defense investigator, Susan McQueen, on any trips associated with the investigation of Micki Kanesaki's death."

Two days after this admonishment, Bill was interviewed at his home in Florida by OCSD Investigators Voght and Quinlantan. A considerable portion of this interview focused on the January 2009 trip to California

by Bill and Susan in which they "interviewed" Amy Nguyen (Lonnie's ex-wife) and Bill eventually recorded Susan asking Amy a series of leading questions eliciting inculpatory statements purportedly made by Lonnie, i.e., that Lonnie would have "Bill's people throw Micki off the boat." Bill claimed that Lonnie told them not to tell his lawyer (Werksman) about the interview of Amy and that Lonnie "admitted" making the statement about "Bill's people." Thus, after giving lip service to protecting the defense privilege, Orange County law enforcement promptly and intentionally invaded it. And a review of Bill Price's trial testimony reveals that the prosecutor, Susan Price, fully exploited this invasion.

At trial, Bill testified extensively on direct about his and Susan's interactions with Amy Nguyen in January 2009, as well as numerous and incriminating conversations he claimed to have had with Lonnie after he began investigating for the defense in August 2006. (See pgs. 6-7 *infra*). His trial testimony conflicted sharply with his July 2006 pre-asset seizure FBI interview, but included such outlandish claims that Lonnie was paying the federal public defender who represented Amy before the fed. grand jury for information about what said before them. (He may not have realized that her counsel was not allowed in the grand jury rm.)

Before trial, Lonnie's private defense counsel moved to dismiss the indictment because of the invasion of the defense camp, or alternatively to bar Bill Price from testifying about information he learned as an investigator. Counsel argued that California law holds "the investigator is a person encompassed by the [attorney-client] privilege; he stands in the same position as the attorney for purposes of the analysis and operation of the privilege." *People v Meredith* (1981) 29 Cal. 3d 682, 690 n.3. This motion was filed on 6/21/2017 and asserted violation of the 5th, 6th, and 14th

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Amendments. It was denied without an evidentiary hearing — which was requested — on 9/5/2017.

In *Weatherford v Bursey*, this Court rejected the argument that a 6th Amendment violation occurs any time a prosecutorial agent obtains privileged defense information. (1977) 429 U.S. 545, 552 ("[W]hen conversations with counsel have been overheard, the constitutionality of the conviction depends on whether the overheard conversations have produced, directly or indirectly, any of the evidence at trial.") *Weatherford* was an undercover cop who met with Bursey and his counsel to discuss defense strategy, as *Weatherford* was a supposed codefendant. But *Weatherford* never communicated any of that strategy with the prosecution team, nor did he disclose it when unexpectedly called to testify at trial. (He had told Bursey and his counsel that he would not testify.) Although this Court required a showing of prejudice, it rejected the government's position that mere disclosure waived any protection. The Court had no occasion to define the contours or degree of prejudice required for a 6th Amendment violation, but it noted:

Had *Weatherford* testified at Bursey's trial as to the conversations between Bursey and Wise; had any of the state's evidence originated in these conversations; had these overheard conversations been used in any other way to the substantial detriment of Bursey; or even had the prosecution learned from *Weatherford*, an undercover agent, the details of the Bursey-Wise conversations about trial preparation, Bursey would have had a much stronger case.

Id. at 554; see also *U.S. v. Morrison* (1981) 449 U.S. 361. This case presents an opportunity to address the question left open in *Weatherford* as to the type of showing required to establish prejudice in this context to make out a 6th Amend. violation.

Here, it makes no difference whether Bill Price was paid or formally a defense investigator. He indisputably performed investigative functions such as attending strategy sessions and partici-

pating in defense activities such as the cruise trip, where, at trial, he was forced to admit his participation when confronted with a photo of him measuring a balcony railing height with his shoe. And once the FBI seized nearly \$2 million of Lonnie's assets claiming it was all the proceeds of Micki's murder, there is no question Bill Price became a government agent. At first he aided the FBI. When Lonnie obtained summary judgment in the forfeiture case and the government appealed, he became the state prosecutor's agent. Before the state grand jury in June 2013, Bill said, "I was asked by [FBI Agent] Stokes and by Simpson [Stokes' replacement] that if any information came to my privy, that I should contact them and let them know."

The prosecutor not only exploited the information Bill Price learned in his functional capacity as defense investigator, but she also used him to flip Amy Nguyen from defense to prosecution witness in the ambush at the courthouse resulting from a bogus subpoena for the grand jury. The prosecutor monitored Bill's pressure tactics, including his lies, threats, and offers of bribery, but did nothing to stop it. (See pgs. 9-10, *supra*.) This change in Nguyen's testimony was the only trial evidence of premeditation in California on which the prosecution could base jurisdiction under section 778a(a).

Petitioner asserts that using his own investigator to spy on him over 3 yrs in attempt to build a case against him and ultimately using that investigator to commit crimes to coerce the only witness who could create jurisdiction to repeat statements the investigators previously led her to say is outrageous government conduct that violates due process under the 5th and 14th Amendments. (Lonnie brought a separate motion to dismiss on this allegation on 6/21/2017 that

was also denied without allowing an evidentiary hearing.)

This Court has never identified the types of conduct that would qualify as sufficiently outrageous government conduct to violate due process, other than to say that it must "shock the conscience." *Rochin v. California* (1952) 342 U.S. 162, 172 (Forcibly pumping a suspect's stomach to recover heroin that he swallowed was sufficiently shocking). Ironically, California courts addressing the question have adopted a liberal approach of what conduct is sufficiently shocking. E.g., *Boulas v. Superior Court* (1986) 188 Cal. App. 3d 422 (Intentional interference with the selection of defense counsel); *Morrow v. Superior Court* (1994) 30 Cal. App. 4th 1252 (The D.A. had her investigator spy on a conversation between the defendant and his lawyer in the courtroom); *People v. Velasco-Palacios* (2015) 235 Cal. App. 4th 439, 445-46 (The D.A. altered an interrogation transcript to show a confession that would justify a life sentence, giving it to defense counsel to pressure his client into taking a deal).

California purports to hold its prosecutors to a high standard when it comes to the protection of a criminal defendant's constitutional rights. E.g. *Morrow, supra*, 30 Cal. App. 4th at 1254 ("The prosecutor is not only the defendant's adversary, but is also the guardian of the defendant's constitutional rights"). Yet every California court that has been confronted with the transcript (Appendix E) and recording of the Bill Price ambush of Amy Nguyen has merely shrugged, even with the knowledge that the prosecutor was monitoring it live and did nothing to stop it. Petitioner respectfully requests that this Court accept his case and address the scope of due process and the degree of prejudice required when the prosecution invades the defense camp and uses its ill-gotten gains at trial.

Q5: The Substantial Risk Of Prejudice When Confidential Defense Information Is Intentionally Invaded By A Prosecution Agent And Then Transmitted To The Prosecution Team Warrants Dismissal Because The Extent To Which The Information Is Used To A Defendant's Substantial Detriment Is Unknowable And Any Lesser Remedy Will Not Deter Such Misconduct.

Several of the federal circuits interpret *Weatherford* to require an analysis of 4 factors when assessing an invasion of the defense camp and an appropriate remedy: (1) was trial evidence produced directly or indirectly by the intrusion; (2) was the intrusion by the government intentional; (3) did the prosecution receive otherwise confidential information about trial preparations or defense strategy as a result of the intrusion; and, (4) were the overheard conversations and other information used in any other way to the substantial detriment of the defendant? *U.S. v. Kelly* (D.C. Cir. 1986) 790 F.2d 130, 137. However, the *Kelly* court did not determine the weight to be given to each factor, or whether any particular one would be sufficient to establish a 6th Amend. violation. Instead, the court remanded for a new trial preceded by an evidentiary hearing to decide the 6th Amend. issue. *Id.* at 138. But the *Kelly* court did not consider an earlier civil rights suit in which a D.C. panel held that "mere possession by the prosecution of otherwise confidential knowledge about the defense's strategy or position is sufficient in itself to establish detriment to the criminal defendant." *Briggs v. Goodwin* (D.C. Cir. 1983) 698 F.2d 486, 494-95.

Rather than adopt a per se rule like *Briggs* or a factor analysis like *Kelly*, the 1st Circuit focuses on the showing of prejudice regardless of the nature of the invasion. Once a defendant makes a prima

facie showing, the burden of proof shifts to the prosecution to show that the illicitly-obtained information was not used to the defendant's detriment. *U.S. v. Mastroianni* (1st Cir. 1984) 749 F.2d 900, 908.

The 9th Circuit uses a similar approach, but to make a prima facie showing, the government agent "must have acted affirmatively to intrude into the attorney-client relationship and thereby obtain the privileged information." *U.S. v. Danielson* (9th Cir. 2003) 325 F.3d 1054, 1071. Both the 9th and 4th Circuits have discussed and applied the Kelly factors seriatim, suggesting that each factor is independently sufficient to establish a violation. E.g., *Clutchette v. Rushen* (9th Cir. 1985) 770 F.2d 1469, 1471-72, cert. denied, 475 U.S. 1088; *U.S. v. Brugman* (4th Cir. 1981) 655 F.2d 540, 546.

The 2nd Circuit appears to focus on whether law enforcement's intrusion was intentional, and if yes, it would apply a per se rule; but if not, a showing of actual prejudice is required. *U.S. v. Ginsberg* (2nd Cir. 1985) 758 F.2d 823, 833. Similarly, the 3rd Circuit rejects the position that *Weatherford* requires a showing of prejudice in all circumstances:

We think that the [*Weatherford*] court was suggesting by negative implication that a 6th Amend. violation would be found where, as here, defense strategy was actually disclosed or where, as here, the government enforcement officials sought confidential information.
U.S. v. Levy (3rd Cir. 1978) 577 F.2d 200, 209-10.

In *Levy*, Dismissal was held to be the only appropriate remedy. The 10th Circuit adopts an approach very similar to the 3rd Circuit, but stops short of mandating dismissal in situations where the taint could be neutralized in a retrial. E.g., *Shillinger v. Hayworth* (10th Cir. 1995) 70 F.3d 1132, 1142.

Although the 4th and 8th Circuits follow approaches similar to the 9th, the 8th Circuit places added emphasis on the defendant's burden to prove specific prejudice. See *U.S. v. Crow Dog* (8th Cir. 1976) 532 F.2d 1182, 1198. And both the

8th and 6th Circuits require an intentional intrusion as well as a specific showing of prejudice. *U.S. v. Singer* (8th Cir. 1986) 785 F.2d 228, cert. denied, 479 U.S. 883; *U.S. v. Steele* (6th Cir. 1984) 727 F.2d 580, 586, cert. denied, 467 U.S. 1209 ("Even when there is an intentional intrusion by the government into the attorney-client relationship, prejudice to the defendant must be shown before any remedy is granted").

Petitioner submits that when an intentional intrusion into the defense camp produces privileged information in the knowledge of prosecution team, prejudice should be presumed unless the prosecution can prove that it did not use the information. This should be the rule for 2 reasons. First, it is often difficult for a defendant to discover and prove how the privileged information was used to his detriment. Second, without such a rule, the prosecution has perverse incentives to cheat. This case is a perfect example. The prosecutor knew Bill Price held privileged information as she had her own investigator caution him not to disclose it. Just 3 days later the sheriff's investigators asked him all about it, including what he learned on defense investigative trips and in conversations Bill claimed occurred between him, Lonnie and/or Susan McQueen. The prosecutor did not ignore this information. She introduced it at trial through Bill, and to date has done so with impunity.

Regarding a due process violation based on the total circumstances of the invasion of the defense through Bill and the prosecutor's deployment of him to coerce Amy Nguyen to tell Bill's story through criminal means, an objective test is needed for outrageous government conduct. The "shock the conscience" test of *Rochin* was announced at a time in history when a consensus may have existed. But in this digital age, that is no longer true as political and social divides grow ever

wider as people consume only media that comports with their world view, e.g., the January 2021 attack on the Capitol was merely a "tour." An objective test would give clear guidance on when law enforcement should be the recipient of the ultimate sanction of dismissal. The test should be difficult to meet, such as requiring that law enforcement engage in actual criminal behavior itself in its efforts to obtain a conviction.

9. Conclusion

California violated Petitioner's right to due process when it prosecuted him without territorial (subject matter) jurisdiction. Judge Prickett ignored the legislative intent underlying the applicable statute, disregarded principles of statutory construction, and gave short shrift to the presumption against extraterritorial application, especially for penal laws. E.g., *Kiobel v. Royal Dutch Petro. Co.* (2013) 569 U.S. 108, 115 ("When a statute gives no clear indication of extraterritorial application it has none"); *U.S. v. Flores* (1933) 289 U.S. 137, 155 ("Criminal states" are not by implication given extraterritorial effect").

California also violated the exclusive authority of Congress to define felonies on the high seas, as well as the supreme law of the land in the form of international treaties.

Finally, California violated Petitioner's 5th, 6th, and 14th Amend. rights by intentionally invading the defense camp and using criminal means to coerce a witness into changing her testimony. Petitioner requests that certiorari be granted.

Dated: July 8, 2026

Respectfully submitted,

Ronnie Korantz

Petitioner, In Propria Persona