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H. CHARLES SMITH #86494  
ATTORNEY AT LAW  
550 ORANGE ST., SUITE B  
REDLANDS, CA 92374  
909-307-9913  
FAX 307-9916

Attorney for John Yablonsky

FILED  
SUPERIOR COURT  
COUNTY OF SAN BERNARDINO  
VICTORVILLE DISTRICT

FEB 23 2012

BY

DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

VICTORVILLE DIVISION

People of the State of California,

Plaintiff,

vs.

John Yablonsky,

Defendant

) Case No.: FVI900518

) NOTICE OF MOTION

) FOR NEW TRIAL

) (Penal Code Section 1181)

) Motion Heard on 2/24/2012

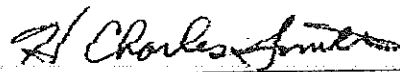
) Pursuant to Court Order - Page 14 is  
) hereby modified.

TO THE DISTRICT ATTORNEY OF SAN BERNARDINO COUNTY AND/OR HIS  
OR HER REPRESENTATIVE:

PLEASE TAKE NOTICE that on 2/24/2012 was heard, at the hour of 8:30 a.m., or as  
soon thereafter as the matter can be heard in the courtroom of department V2 of the above-  
entitled court, the defendant will move for an order granting a new trial in the above-entitled  
case. The motion will be made on the ground that Mr. Yablonsky's rights to due process were  
violated during the trial; and on the ground stated under Penal Code Section 1181 sub-sections 5:

1  
2 The motion will be based on this notice of motion, on the attached memorandum of  
3 points and authorities served and filed herewith, on all evidence presented at the trial of this  
4 matter, on all the papers and records in this action and on such oral and documentary evidence as  
5 may be presented at the hearing of the motion.

6  
7 Dated: 2-27-12



H. CHARLES SMITH,  
Attorney for John Yablonsky

1 H. CHARLES SMITH #86494  
ATTORNEY AT LAW  
2 550 ORANGE ST., SUITE B  
REDLANDS, CA 92374  
3 909-307-9913  
FAX 307-9916  
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6 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
7 FOR THE COUNTY OF SAN BERNARDINO  
8 VICTORVILLE DIVISION  
9

10 People of the State of California,	) Case No.: FVI900518
	)
11 Plaintiff,	) POINTS AND
	) AUTHORITIES
12 vs.	) IN SUPPORT
	) OF MOTION
13 John Yablonsky,	) FOR NEW TRIAL
	)
14 Defendant	)

15  
16 Defendant submits the following points and authorities in support of the motion for new  
17 trial:

18 IV

19 A MOTION FOR NEW TRIAL IS APPROPRIATE  
20 WHERE THE PERFORMANCE OF TRIAL COUNSEL IS AT ISSUE  
21

22 The standards and rules relating to proving ineffective assistance of counsel are well  
23 established. As recently restated by Justice Benke in *People v. Montoya* (2007) 149 Cal.App.4<sup>th</sup>  
24 1139, 1146-1148:  
25

1 An appellant claiming ineffective assistance of counsel has the burden to show: (1)  
2 counsel's performance was deficient, falling below an objective standard of  
3 reasonableness under prevailing professional norms; and (2) the deficient performance  
4 resulted in prejudice. (*Strickland v. Washington* (1984) 466 U.S. 668, 688 [104 S.Ct.  
5 2052] (*Strickland*); *People v. Ledesma* (1987) 43 Cal.3d 171, 216, 218 (*Ledesma*)). The  
6 same standard applies to retained and appointed counsel. (*Cuyler v. Sullivan* (1980) 446  
7 U.S. 335, 344-345.)

8  
9 To establish prejudice, "[t]he defendant must show that there is a reasonable probability  
10 that, but for counsel's unprofessional errors, the result of the proceedings would have  
11 been different," (*Strickland, supra*, 466 U.S. at p. 694; *Ledesma, supra*, 43 Cal.3d at pp.  
12 217-218.) "A reasonable probability is a probability sufficient to undermine confidence  
13 in the outcome." (*Strickland, supra*, 466 U.S. at p. 694.) In demonstrating prejudice, the  
14 appellant "must carry his burden of proving prejudice as a 'demonstrable reality,' not  
15 simply speculation as to the effect of the errors or omissions of counsel." (*People v.*  
16 *Williams* (1988) 44 Cal.3d 883, 937.)

17  
18 In determining whether counsel's performance was deficient, we exercise deferential  
19 scrutiny. (*Strickland, supra*, 466 U.S. at p. 689; *Ledesma, supra*, 43 Cal.3d at p. 216.)  
20 The appellant must affirmatively show counsel's deficiency involved a crucial issue and  
21 cannot be explained on the basis of any knowledgeable choice of tactics. (*People v.*  
22 *Jackson* (1980) 28 Cal.3d 264, 289, disapproved on other grounds in *People v. Cromer*  
23 (2001) 24 Cal.4<sup>th</sup> 889, 901, fn. 3.  
24  
25

1           Our Supreme Court recently reiterated the obligations of appellate courts in reviewing  
2 claims of ineffective assistance of counsel: “Reviewing courts defer to counsel’s reasonable  
3 tactical decisions in examining a claim of ineffective assistance of counsel [citation], and there is  
4 a strong presumption that counsel’s conduct falls within the wide range of professional  
5 assistance,” [Citation.] “[W]e accord great deference to counsel’s tactical decision” [citation],  
6 and we have explained that “courts should not second-guess reasonable, if difficult, tactical  
7 decisions in the harsh light of hindsight” [citation]. “Tactical errors are generally not deemed  
8 reversible, and counsel’s decision making must be evaluated in the context of the available  
9 facts.” [Citation.]” (*People v. Stanley* (2006) 39 Cal.4<sup>th</sup> 913, 954, citing *People v. Weaver*  
10 (2001) 26 Cal.4<sup>th</sup> 876, 925-926.)

11           “Competent counsel is not required to make all conceivable motions or to leave an  
12 exhaustive paper trail for the sake of the record. Rather, competent counsel should realistically  
13 examine the case, the evidence, and the issues, and pursue those avenues of defense that, to their  
14 best and reasonable professional judgment, seem appropriate under the circumstances. (See  
15 generally, *People v. Eckstrom* (1974) 43 Cal.App.3d 1002, 1003.)” (*People v. Freeman* (1994)  
16 8 Cal.4<sup>th</sup> 450, 509.)

17           Defendant’s burden is difficult to carry on direct appeal. We reverse on the ground of  
18 inadequate assistance on appeal only if the record affirmatively discloses no rational tactical  
19 purpose for counsel’s act or omission. (*People v. Lucas* (1995) 12 Cal.4<sup>th</sup> 415, 436-437; *People*  
20 *v. Osband* (1996) 13 Cal.4<sup>th</sup> 622, 700-701)

21           Thus, in appropriate circumstances justice will be expedited by avoiding appellate  
22 review, or habeas corpus proceedings, in favor of presenting the issue of counsel’s  
23 ineffectiveness to the trial court as a basis of a motion for new trial.” *Fosselman* at p. 582  
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1           On November 2, 2009, Mr. Sanders wrote a letter to Blain Kern of Human Identification  
2 Technologies, asking to discuss the possibility of retaining his services in helping to represent  
3 John Yablonsky. Mr. Sanders states in the letter that he needed an estimate of the costs of  
4 employing the services of Human Identification Technologies, and he attached some of the labs  
5 reports for review. (See Exhibit A)

6           On November 10, 2009, Blain Kern responded with a letter stating that based on his  
7 review of the laboratory reports, it was his estimate that 11-14 hours would be required to  
8 thoroughly review all of the laboratory notes, data, statistics, reports, protocols, procedures and  
9 guidelines associated with the case. The cost would be \$250 to \$300 per hour depending on the  
10 turnaround time needed. It would seem that the expenditure of approximately \$3,300.00 was not  
11 too much to ask in an LWOP case. (See Exhibit B)

12           After reviewing all of the discovery in this case that was turned over by Mr. Sanders,  
13 there was no DNA retesting done, or any review of the methodology used, and no follow through  
14 with Human Identification Technologies. This was absolutely essential for the proper  
15 representation of Mr. Yablonsky. Furthermore there was no motion made by Mr. Sanders for the  
16 court to pay for the examination both as to methodology and results. Likewise there is no  
17 indication in the reports that any effort was made to procure the funds necessary through the  
18 Public Defender's Office, and in fact no tests were ever done, nor evidence presented at trial.

19           Considering the nature of the case, the age of the case, and the overwhelming power of  
20 the DNA evidence being used against Mr. Yablonsky, this was in and of itself incompetency of  
21 counsel.

22           Due to the fact that there was no apparent struggle during the alleged rape, and nothing  
23 was taken from the residence after the murder, it is possible that Rita Cobb had consensual sex  
24 prior to her murder at some point and the actual person who committed the murder could have  
25

1 worn a condom. This is where the rare blood ABO B non secretor was important to establish  
2 reasonable doubt.

3 John Yablonsky, during that time was a methamphetamine user and a thief, which as we  
4 know go hand in hand. He had even stolen from his father and brother around this time. Would  
5 there have been anything of value left in that house had he been the actual person who  
6 committed this crime? Probably not.

7 We have no way of knowing whether or not Rita Cobb had sex with anybody else  
8 possibly using a condom which would have prevented other DNA from being found.

9 In addition to the vaginal swabs for the DNA, there was hairs recovered at the scene on  
10 the body and the bed, including a reddish brown hair, one to two inches long including a root.

11 On January 14, 2009, evidence was reviewed and photographed including microscopic  
12 slide box - Item B4F - Standard head hair, Item B4D - Standard pubic hair, Item A18 - Possible  
13 pubic hair from felt pad, Item A17 - Hair from gag, Item A16 - 1,2,3 hair, Item A5 - 1-8 and 1  
14 hair with root, Item A4 - 7 slides with hair, Item A1 - 8 slides, 1 with root.  
15 (See Exhibit C).

16 There is no indication that this hair was retested using the new methods applied to the  
17 DNA analysis. A new profile could have been developed establishing another individual as the  
18 donor of the particular hair. The hair was retained, and it contained a hair root, which at the  
19 time of the murder was not suitable for testing but under today's methods it would have been  
20 using the same methods used for the DNA from the seminal fluid.

21 This was essential due to the fact that it is completely different, color wise and length  
22 wise as to Mr. Yablonskys' hair type. This also could have resulted in a different DNA profile  
23 being developed and compared to other possible suspects.



1 This added to the rare blood type of both Mr. Yablonsky and the perpetrator of the Helen  
2 Brooks murder, would add reasonable doubt to the guilt of Mr. Yablonsky. Even if the court  
3 disallowed the inclusion of this evidence, it would have created an issue for appeal, which is now  
4 waived forever.

5 In reviewing the files of Mr. Sanders, there is no information contained therein indicating  
6 any effort to pursue this evidence, or this line of questioning at trial.

7 Although Mr. Sanders made an attempt to have the court allow him to go into this, there  
8 was no evidence offered at trial to bolster the argument for the purposes of trial as well as to  
9 establish that the effort had been made, and then denied by the court for the purpose of the  
10 appeal should Mr. Yablonsky have been convicted. There was no argument made at the 402  
11 Hearing to establish similarities in the ABO B non secretor on the record. All of these may have  
12 been a factor to consider for appeal issues. This is especially important due to the fact that the  
13 DNA evidence was so overwhelmingly important to the prosecution's case. Not to mention there  
14 was no defense presented at trial on this or any other issue.

15  
16 **Ms. Cobb's Promiscuity and Demeanor When Intoxicated**

17  
18 In the Motion to Dismiss the Information in Violation of Due Process filed by Mr.  
19 Sanders (See Exhibit D) , he lays out the complexities of the case, and this motion was very well  
20 done. I was very surprised and disappointed that the facts laid out in the motion were not  
21 pursued nor the evidence presented, or any attempt made to acquire evidence of the victim's  
22 disposition for promiscuity.

23 Mr. Sanders, in his statement of anticipated facts lays out the details of the Cobb murder  
24 in great detail, including the names of potential witnesses both alive and dead, as well as  
25 numerous statements concerning the victims reputation in the community for both promiscuity as

1 well as, to quote her son Daryl Kraemer "as having a Jekyll and Hyde personality when she  
2 drank." (See Exhibit E) These facts of the could have been and should have been pursued in  
3 cross examination of the Ms. Cobb's son, Daryl Kraemer, who had been estranged due to victim's  
4 Jekyll and Hyde disposition that was well known in the community.

5 In the interview with Don Stowe a neighbor, Mr. Stowe is quoted as describing "Ms.  
6 Cobb as a real ball buster." (See Exhibit F) Her personality is described as not only being an  
7 alcoholic but also has having a tendency to being involved with numerous men of all ages. In  
8 the interview with Francis Drake who lived with John Sullivan, it was said that Rita Cobb had a  
9 very caustic nature when she would drink. (See Exhibit G)

10 This would tend to indicate that due to her propensity to drink, as well as being very  
11 caustic when drinking, that she was most likely to have created numerous enemies in the area. In  
12 fact these tendencies caused her to be estranged from her own son Daryl due to a very intense  
13 argument. Mr. Sanders should have pursued this line of questioning in cross examination, but  
14 failed to do so. Due to his failure, this appellate issue is waived forever.

15 In the Motion to Dismiss, Mr. Sanders lays out individuals who would have been  
16 witnesses to the above, including 5 witnesses who may or may not be in the area, including Doris  
17 Jackson, Fred Holbrook, Dawn Dismore, Rebecca Townsend and Diane Flagg. It was incumbent  
18 upon the Defense to contact, or at least an exhaustive attempt to contact, these individuals to  
19 make a determination, at the very least, upon their recollection of Mrs. Cobb's nature, especially  
20 when intoxicated.

#### 21 22 Potential Defendants or Witnesses

23  
24 In the original interview with Diane Flagg, she indicated that on 09/20/1985 between the  
25 hours of 5:00 - 6:00 she saw several cars parked in front of Rita Cobb's house, including a silver

1 Pinto. The relevance of the Pinto was questionable in as much as Mr. Yablonsky owned a blue  
2 pinto, not a silver pinto. The relevancy of this is that numerous people had been at the Cobb  
3 residence on the last day she was seen alive. (See Exhibit H)

4  
5 Joseph Saunders

6  
7 Joseph Saunders was interviewed at the scene on 09/23/1985, and states that he was an  
8 acquaintance of Rita Cobb's, and he stated he had stopped by her home on Friday, 09/20/1985.  
9 He went inside for awhile, had a glass of water, wherein Rita Cobb invited him to meet her at  
10 John Sullivan's home to pick pistachios after she changed clothes.

11 They met and John & Pinky Sullivan's house about a half hour before sunset. After they  
12 finished picking pistachios, Joe Saunders stayed at the Sullivan's for about another half an hour.,  
13 and then went home where he states he remained for the rest of the night. He saw Rita drinking  
14 bourbon and water. (See Exhibit I)

15 Joseph Saunders was interviewed again on 09/24/1985, where he started crying violently.  
16 Wherein he stated that he, Rita Cobb, John Sullivan, and Pinky, picked pistachios for about 20 to  
17 30 minutes, and during that time he noticed that Rita, John and Pinky were drinking beer. They  
18 went inside the residence and sat for awhile. Joseph Saunders then said he had to go and went  
19 home. However, he back tracked and stated that as soon as he walked out to his vehicle to drive  
20 home that Rita followed him out. He stated that Rita was acting somewhat nervously and made  
21 the statement to him that she would not object to a platonic relationship, and if he wanted to stop  
22 by. Joseph Saunders stated that he did not comply, however, got in his vehicle and went home,  
23 and believes it was around 6:30 p.m. (See Exhibit J) When asked if his fingerprints would be  
24 found in the house anywhere beside the water glass, Mr. Saunders said possibly on the table.  
25 (See Exhibit K) At this point in time he started crying again.

1 Mr. Joseph Saunders committed suicide three months later. His DNA did not match the  
2 semen found in Rita Cobb, but again he could have used a condom, or came in after she had  
3 *consensual sex and then passed out drunk and killed her. This should have been brought out*  
4 during the trial, as a person of interest in the investigation and allow the jury to be aware that the  
5 victim had numerous involvements with a number of male individuals.

6  
7 **Robert Mark Edwards**  
8

9 A search was done by the police looking for similar murders that occurred around the  
10 same time as the Rita Cobb and Helen Brooks' murders. Four similar murders in four separate  
11 jurisdictions in that time frame were found, one having been committed on May 12, 1986 by  
12 Robert Mark Edwards. Robert Mark Edwards was convicted for the murder of Majorie Deeble  
13 in Los Alamitos, in 1998 and was sentenced to death, and he is currently on death row.

14 Investigator Witlow ran a records check on Robert Mark Edwards that showed he was  
15 arrested and in custody at CDC on 12/10/1985. Detective Espinoza contacted CDC Statewide  
16 *Paroleee Locater Service on November 27, 2002, and spoke to Record's Clerk Scott Johnson.*  
17 Upon a review of their records, Johnson confirmed that Robert Edwards was incarcerated from  
18 12/85 through 12/86. (See Exhibit L)

19 Detective Espinoza in his report states that based on this information Robert Mark  
20 Edwards could not be a suspect in Rita Cobb's murder investigation because he was incarcerated  
21 at the time of the murder. Rita Cobb was killed in September of 1985, how could Robert Mark  
22 Edwards, who wasn't incarcerated until three months later in December 1985, not be a suspect in  
23 her murder. This should have been investigated Mr. Sanders, and if appropriate brought up at  
24 trial, at the very least to preserve appellate issues.  
25

William Backoff

*William Backoff, aka George Randolph, was a prime suspect for a substantial period of time due to his familiarity with the victim Rita Cobb, his bizarre behavior at crime scenes where he worked for the coroner's department, and the fact that he kept photos of naked dead women in his home. When a comparison was done on cigarette butts that contained his DNA to cigarette butts found at the crime scene, his DNA was "consistent with" two of those butts found. (See Exhibit M)*

A We-Tip was received on 08/06/1988, wherein Mr. Backoff was bragging that he had strangled, raped and mutilated a victim by the name of Rita Cobb approximately 3 years ago. He was laughing, and bragging about the crime at a party over the weekend. He said he had picked up the victim at a bar called the Zodiac, and when the victim indicated that she was turned off sexually to suspect, he bragged he had strangled her until victim "turned black." Then he described other crimes against victim after victim was dead. (See Exhibit N)

This becomes especially important when the red brownish hair with root was found and was never tested for DNA by the prosecution or defense, and when taken into consideration with the above could very well have come back as a match to William Backoff.

On January 15, 2009, Detective Greg Mylar provided a list of evidence that was viewed and photographed, including Item A5 - 1-8 and 1 hair with root. There is no reports indicating that this item was ever processed for DNA using the current methodology that was used of the re-analysis of the semen swab.

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2  
3 *The Alleged Prior Rape Victim's*  
4

5 Mr. Sanders on October 8, 2010, did a motion to compel the production of the addresses  
6 of two witnesses, Jane Doe and Jane Doe2, both alleged rape victims, in separate incidents that  
7 the prosecution intended to use as 1101(b) evidence. (See Exhibit O)

8 On January 13, 2011, Mr. Sanders received a transmittal from D.D.A John Thomas,  
9 concerning the two alleged victims of the alleged rapes with their contact information. The  
10 names and contact information is contained in "Exhibit P," which is attached and filed under  
11 seal. (See Exhibit P)

12 In reviewing the discovery provided by Mr. Sanders, there is no indication anywhere that  
13 anyone attempted to contact these woman by the defense team. There are no reports of any  
14 contact, there are no reports of interviews, and in fact Mr. Sanders admits during the 402 hearing  
15 concerning the 1101(b) Penal Code, that he had not had the opportunity to follow up with these  
16 alleged victims. *This is especially interesting considering the fact that a 1050 Motion was filed*  
17 *on January 5th, 2011, and the motion was granted and the trial continued to January 14th, 2011.*  
18 (See Exhibit Q)

19 In as much as Mr. Sanders acquired the information on the alleged victims on January  
20 13th, 2011, it would seem that additional time was needed to get the necessary interviews and  
21 reports completed for the purposes of making a determination of the viability of these witnesses  
22 testimony. Considering the importance of whether or not these individuals would affect the trial,  
23 especially considering the special allegations concerning the murder occurring during a rape, and  
24 this was a life without the possibility of parole case, and due to the devastating effect of Mr.  
25 Yablonskys' DNA being found in the victim, it was essential that Mr. Yablonsky have the

1 opportunity to testify that the sex was consensual. This was especially important because Mr.  
2 Yablonsky wanted to testify, but was informed that if he did, the D.D.A. John Thomas would  
3 call the alleged prior rape victims as witnesses. *These two alleged victims refused to prosecute*  
4 back when these alleged incidents were said to have occurred, and did not want to press charges  
5 against Mr. Yablonsky.

6 On page 254 of Volume 1 of the trial transcripts, Mr. Sanders indicates that he had not  
7 received any interviews concerning what the witnesses statements would be at this time, that  
8 would have been provided by the prosecution. On page 254 he indicated that he tried to contact  
9 these witnesses using prior contact information but was unsuccessful. On line 6 of page 254, Mr.  
10 Sanders states that he was provided with current addresses and phone numbers, but indicated that  
11 that doesn't mean that they would talk to him. It would seem that prior to the trial beginning a  
12 continuance was necessary for the purposes of acquiring the information of the witnesses he  
13 requested. The trial started on January 18, 2011, and Mr. Sanders acquired the contact  
14 information of the alleged rape victims on January 13, 2011.

15 It was essential that a motion to continue be filed once Mr. Sanders had acquired the  
16 contact inform due to the fact of the *extremely prejudicial nature of that evidence as summarized*  
17 in Mr. Sanders 402 motion. Failure to be properly prepared for trial is inconsistent with  
18 answering ready for trial. Mr. Sanders failure to attempt to continue the case to contact these  
19 individuals would appear to be incompetency of counsel. When taking into consideration the  
20 nature of the charges and special allegations, there would be no possible way to present a proper  
21 defense without further investigation into these individuals. Mr. Sanders answered ready on the  
22 14th of January 2011, one day after acquiring the necessary contact information on the alleged  
23 rape victims. How can Mr. Sanders be ready for trial if these witnesses hadn't been interviewed,  
24 and they were the reason Mr. Yablonsky was going to precluded from testifying due to the  
25 1101(b) evidence.

1 A 1050 motion should have been filed on January 14th, 2011, the date of the assignment  
2 calendar, for approximately 30 days to allow for an investigator to contact both victims, at least  
3 to attempt to interview them to see what their testimony would have been. This was especially  
4 true, because neither case was ever filed.

#### 5 Change of Venue

6  
7 There should have been a motion for change of venue filed considering the extensive  
8 publicity, including the mass mailings by Mr. Ramos for his re-election propaganda, including a  
9 colored picture of John Yablonsky, with a title saying "It's never a cold case." As well as  
10 numerous newspaper articles that showed Mr. Yablonsky, and referred to the 1985 case has  
11 having been solved before the trial even started. (See Exhibit R)

12 This case should never have been tried in San Bernardino County. Mr. Sanders, to his  
13 credit attempted to have a motion granted to recuse the D.A.'s office, this created a potential  
14 appellate issue. A motion for a change of venue would also have created a potential appellate  
15 issue.

16 As I'm sure Mr. Sanders and the court knows, it is incumbent upon the defense to put  
17 forth all effort to allow the defense to present evidence, even if the court were to deny that  
18 evidence, a failure to do so is a complete waiver of the issue for appeal.

19 This is true not only to these issues but to all the issues mentioned above. By failing to  
20 pursue the issues I have mentioned in this motion, to create a record of good faith attempt by the  
21 defense to give Mr. Yablonsky a fair trial, Mr. Sanders effectively handcuffed the appellate  
22 attorneys and limited their access to appellate issues.

23 During the trial Mr. Sanders did not present any evidence, called no witnesses, failed to  
24 do numerous things as mentioned in this motion. His neglect to attempt to present the above-



1 referenced evidence, even if not allowed in by the court, would have preserved them for  
2 appellate issues.

3       *Even in his final argument Mr. Sanders restated the fact that the prosecution's evidence*  
4 *was not sufficient on its face, as well as going into numerous issues about ancient English,*  
5 *History, and common law.*

6       In discussing this case with defendant Mr. Yablonsky, I was informed that the jury came  
7 back hopelessly deadlocked 8 to 4, and it is foreseeable if the issues above were presented,  
8 especially the DNA testing on the red hair, the jury could have hung or came back not guilty.

9       For the reasons contained herein, along with the points and authorities, the defendant is  
10 requesting the court to set aside the jury verdict in this case, and grant the defendant a new trial.

11  
12 Respectfully Submitted:

13  
14  
15  
16  
17 Dated: 2.07.12



H. Charles Smith,  
Attorney for John Yablonsky