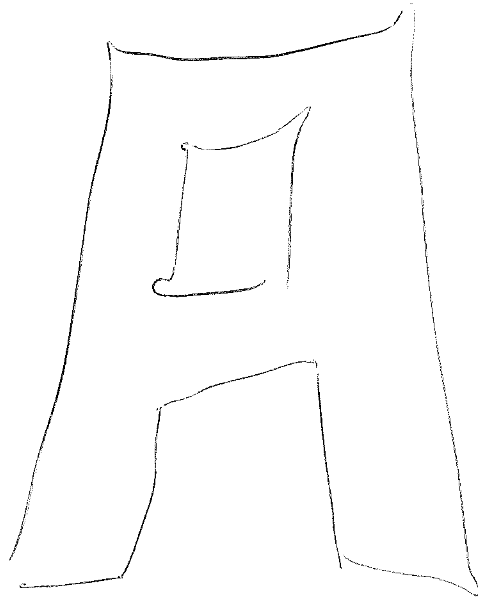

ATTACHMENTS

ATTACHMENT A

1EA Dads Copy Habeas Rule

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDIO DISTRICT
AUG 20 2012
BY ______ DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

In re the Petition of

JOHN H. YABLONSKY,

Petitioner,

for Writ of Habeas Corpus.

Case no. WHCSS 1200311

ORDER REQUESTING INFORMAL RESPONSE TO CERTAIN CLAIMS RAISED IN PETITION FOR WRIT OF HABEAS CORPUS

Petitioner raises twelve claims for relief in a petition for writ of habeas corpus filed on June 21, 2011.[1] He is represented by counsel in an appeal currently pending before Division Two of the Fourth Appellate District of the California Court of Appeal, in case number E055840. The Court takes judicial notice of the Court of Appeal's minutes from that case, as well as the contents of the Superior Court file from petitioner's underlying trial. (Evid. Code, § 452, subd. (d).)

The Court is somewhat limited in its ability to assess petitioner's claims, because the full record of petitioner's trial available is not available for review, and the Court of Appeal has not yet ruled on any claims that may be raised on appeal. Indeed, according to the minutes of the California Court of Appeal, as reflected on the publicly

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[1] Petitioner sent another petition for writ of habeas corpus, which was marked by the Clerk of the Superior Court as having been filed on August 9, 2011. Petitioner has attached a document to that petition titled "Motion to Courts to Consider Refiling Habeas Petition." His petition does not need to be filed a second time, as his first petition is currently pending. To the extent that petitioner is moving to amend his habeas corpus petition, that motion is denied. The Clerk is ordered to mark the petition as received but not filed.

DADS COPY

1EA

accessible website maintained by the Administrative Office of the Courts,[2] the complete record has still not been filed, and the opening brief does not even have a due date.

The "screening function" of an informal response is particularly helpful in a case such as petitioner's, where the appellate proceedings are still far from over. An informal response "may demonstrate, by citation of legal authority and by submission of factual materials, that the claims asserted in the habeas corpus petition lack merit and that the court therefore may reject them summarily, without requiring formal pleadings (the return and traverse) or conducting an evidentiary hearing." (*People v. Romero* (1994) 8 Cal. 4th 728, 742.)

The Court therefore requests respondent to file an informal response to certain claims in the petition. Respondent may respond to other claims, if it desires to do so, but the Court has preliminarily determined that those claims not addressed below are either procedurally barred from being raised in a habeas corpus petition, or do not set forth a prima facie claim for relief. The Court's specific request is limited to the following questions.

Claim One

Petitioner argues that the pool of jurors was tainted by the use of his name in reelection campaign materials sent on behalf of the San Bernardino County District Attorney. Respondent is asked to answer the following questions: (1) Was petitioner's name and likeness in fact used in campaign materials in the time shortly before his trial began? (2) If so, did the parties at trial address the impact of those campaign materials?

Claim Three

Petitioner's third claim alleges trial counsel was ineffective in various ways.

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[2]http://appellatecases.courtinfo.ca.gov)/search/case/dockets.cfm?dist=42&doc_id=2008047&doc_no=E055840

Respondent is requested to answer the following questions: (1) Was the effectiveness of defense counsel Sanders regarding the issue of DNA testing addressed by the trial court? (2) Did the parties at trial address the alleged confession of a man named "William Backoff" or any other person?

Claim Four

Petitioner's fourth claim raises allegations of prosecutorial misconduct. He has attached several documents, as "Exhibit D," in support of that claim. Before the Court can determine whether it can reach the merits of the claim, it must determine whether the documents contained in Exhibit D were submitted to the trial court or are otherwise included in the record of petitioner's pending appeal. Respondent is requested to answer that question.

Claim Seven

Petitioner alleges that various transcripts used at trial were inaccurate, and that his lawyer was ineffective in failing to raise those inaccuracies at trial. Respondent is the requested to answer, at a minimum, the following questions: (1) How were the transcripts used? (2) Did defense counsel raise any objections to any of the transcripts used at trial? (3) Did the trial court make any statements or rulings regarding the transcripts? (4) Was the jury given any instructions about how the transcripts were to be used?

Claim Nine

Petitioner claims that his lawyer was ineffective for not asking certain questions of four prosecution witnesses. Respondent is requested to answer the following questions: (1) Did Bruce Nash testify for the prosecution, and, if so, what efforts were made to cross-examine or otherwise challenge his testimony? (2) Did Daryll Kramer testify for the prosecution, and, if so, what efforts were made to cross examine or otherwise challenge his testimony? (3) Did John Sullivan testify for the prosecution,

B

ATTACHMENTS

ATTACHMENT B

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FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDIO DISTRICT

APR 12 2013

BY [signature] DEPUTY

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF SAN BERNARDINO

3

4 In re the Petition of

5 JOHN H. YABLONSKY,

6 Petitioner,

7 for Writ of Habeas Corpus.

Case no. WHCSS 1200311

SECOND ORDER REQUESTING BRIEFING ON WHETHER PETITION SHOULD BE STAYED PENDING RESOLUTION OF APPEAL

8

9 On March 15, 2013, the Court signed an order asking for briefing on whether the
10 petition for writ of habeas corpus should be stayed and extending the deadline by
11 which to issue a ruling. The order was, due to a clerical error, not filed and served on
12 the parties without delay. When the error was brought to light, on April 11, 2013, the
13 order was filed and served on the parties, but, again due to a clerical error, that should
14 not have occurred, as the briefing schedule set forth in the order had already expired.
15 In the meantime, petitioner has filed an order requesting a ruling. Given that the
16 March 15 order was not served on him, his request is entirely understandable.
17 In order to clarify the status of the petition, the Court hereby issues the following
18 order. As noted in the March 15 order, petitioner currently has an appeal pending in
19 the California Court of Appeal. The pendency of that appeal complicates the resolution
20 of the petition for writ of habeas corpus, though (as petitioner notes in his request for a
21 ruling) it does not necessarily preclude the Court from ruling on the petition. However,
22 the Court hereby requests the parties to file supplemental briefing regarding the
23 following question: should the petition for writ of habeas corpus be stayed pending the
24 resolution of petitioner's appeal?
25 The briefing submitted by the parties shall be limited to two pages in length, and
26 is due on May 1, 2013. The order of March 15, 2013, is hereby vacated.

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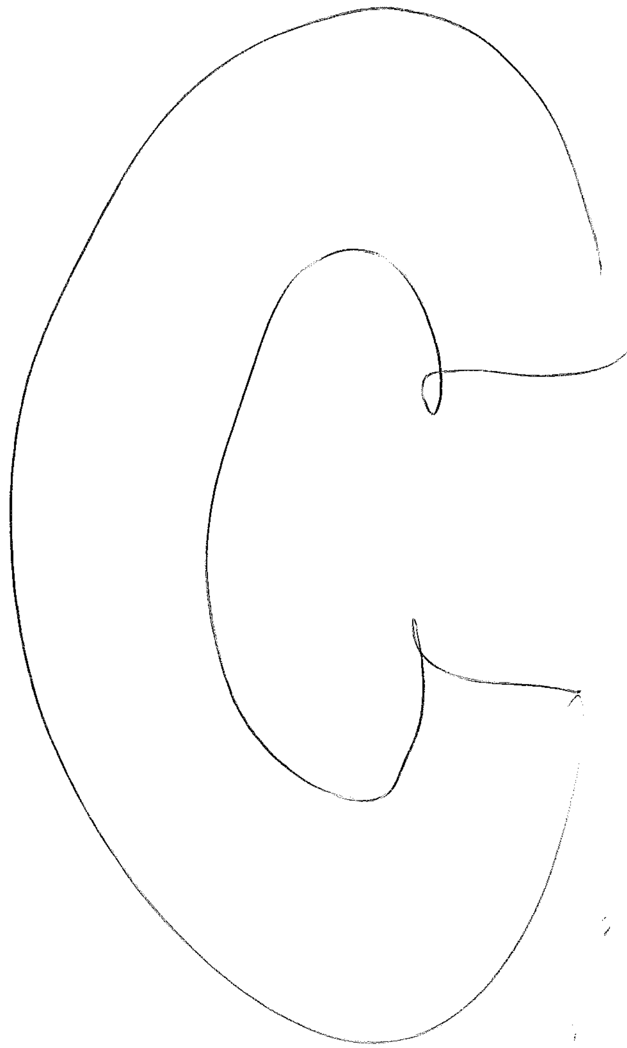
In order to provide adequate time for the parties to submit and the Court to consider the further briefing, the Court hereby finds good cause to extend the time limitations of California Rule of Court 4.551. The Court extends the time by which to issue a ruling to and including May 30, 2013. Due to the circumstances set forth above, petitioner's request for a ruling is denied as moot.

Dated: April 12, 2013

Judge Kyle Brodie



ATTACHMENTS

ATTACHMENT C

JOHN HENRY YABLONSKY #AL0373
BOX # 409040
IONE, CA. 95640
PROPRIA_PERSONA

HABEAS PETITION
WHCSS 1200311
criminal FVI900518

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SUPERIOR COURT CALIFORNIA
SAN BERNARDINO COUNTY

JOHN HENRY YABLONSKY
PETITIONER

FILED:6-21-12
THE HONORABLE JUDGE
KYLE BRODIE
DEPT. S-24

RE: HABEAS CORPUS WRIT

e.g. :MOTION REQUESTING RULING

ORDER REQUESTING INFORMAL: AUG-20 2012
ORDER CONSIDERING EVIDENTIARY: JAN.-14-2013
ORDER FOR EXTENSION OF TIME FOR COURTS TO REVIEW:MARCH-1-2013
ORDER WHETHER COURTS SHOULD STAY RULING:APRIL-12-2013

JOHN YABLONSKY REQUESTING PARTY
ADA FERGUSON FOR RESPONDENT

YOUR HONOR:
AS PER YOUR ON APRIL 12, 2013 REQUESTING A TWO PAGE BRIEF FROM ALL PARTIES ON WHY THE COURTS SHOULD NOT STAY THE RULING WITH REGARDS TO THIS PETITION UNTIL THE PETITIONERS APPEAL HAS REACHED ITS APSOLUTE RESOLVE, WHICH IS NOW PENDING IN THE FOURTH APPELLATE COURT.
THE ISSUES IN MY APPEAL ARE MATTERS THAT OCCURED ON THE RECORD, AND ARE BEING REPRESENTED BY COMPETANT COUNSEL FOR PETITIONER IN THIS INSTANT CASE.
PETITIONER IS INNOCENT OF THESE CHARGES, AND THE RECORDS THAT WERE GENERATED AND MADE AVAILABLE "AFTER" THE TRIAL, NOW SHOW THIS RECORD TO BE TRUE AND ACCURATE. I FILED THE PETITION ON TWELVE GROUNDS THAT I WAS MADE AWARE OF AFTER THE TRIAL WAS OVER.
MY ATTORNEY"S OPEN AND REPLY BRIEFS ALONG WITH THE A.G.BRIEF MADE AWARE MORE GROUNDS THAT ARE ONLY APPROACHABLE THROUGH THE HABEAS WRIT.PETITIONER AT THIS TIME WISHES TO NOTIFY THE COURTS THAT WHILE ADA FERGUSON ARGUED FOR THE STATE, HAD IMPLICATED FALSE COMMENTS AND ACCUSATIONS, IN AN ATTEMPT TO FALSIFY THE RECORDS, AND MY ARGUEMENT ALONG WITH MY DISCOVERY SHOW THIS.

GROUND ONE

ACCORDING TO THE U.S. V. WILSON 149 f.3d 1298,1301 (11th cir. 1998) (A PROSECUTOR MAY NOT EXPRESS THEIR PERSONAL OPINION ABOUT A DEFENDANTS GUILT OR CREDIBILITY) SO WHEN COUNTY DISTRICT ATTORNEY INGESTED INTO THE HOMES OF [EVERY] REGISTERED VOTER HIS "PROMISE OF CLOSURE" TO THE VICTIMS FAMILY IN MY UPCOMING TRIAL"LATER THAT YEAR" , WHICH WAS ONLY 49 DAYS AWAY, WHEN HE PERSONALLY MAILED THREE SEPERATE FLYERS INTO THESE HOMES, ALL DEPICTING THE EXACT SAME PROMISE "CLOSURE".
CARGLE V. MULLIN 317 f.3d 1196,1218 (10th cir. 2003)(WHERE PROSECUTORS STATEMENT THAT THE STATE DOES NOT PROSECUTE INNOCENT PEOPLE) WHICH IS EMPHESIZED BY U.S. V. BESS 593 f.2d 749,754 (6th cir. 1979). THAT A PROSECUTOR MAY NOT SUGGEST GUILT.

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UNDER CAL RULES OF PROFESSIONAL CONDUCT 5-120 AN ATTORNEY IS SUBJECT TO DISCIPLINARY ACTION FOR STATEMENTS MADE ABOUT UPCOMING TRIAL TO THE PUBLIC. THE RULE PROHIBITS EXTRAJUDICIAL STATEMENTS A REASONABLE PERSON WOULD EXPECT TO BE DISSEMINATED BY MEANS OF PUBLIC COMMUNICATIONS, WHEN THE ATTORNEY REASONABLY KNOWS THAT THE STATEMENT WILL HAVE A"SUBSTANCIALLY LIKELIHOOD OF MATERIALLY PRODUCING AN ADJUDICATIVE PROCEEDING IN THE MATTER" CAL RULES OF PROF CONDUCT 5-120 (A)
THE SUBSTANCIAL LIKELIHOOD TEST HAS BEEN UPHELD AGAINST CONSTITUTIONAL ATTACK. GENTILE V. STATE BAR (1991) 501 US 1030, 115 l ed.2d 888, 111 s.ct. 2720. RULE 5-120 APPLIES EQUALLY TO [PROSECUTORS]. CAL RULES OF PROF COND 5-320, DURING TRIAL,NO ATTORNEY, WHETHER OR NOT CONNECTED WITH THE CASE MAY COMMUNICATE DIRECTLY OR INDIRECTLY WITH A JUROR OR JURORS FAMILY ABOUT THE CASE. PENAL CODE§95 EVERY PERSON WHO CORRUPTLY ATTEMPTS TO INFLUENCE A JUROR OR ANY PERSON, IN RESPECT TO THIS OR HER VERDICT, IN OR DECISION OF, ANY CAUSE OR PROCEEDING, PENDING OR ABOUT TO BE BROUGHT BEFORE HIM OR HER, BY ANY MEANS OF THE FOLLOWING,
(B) ANY BOOK, PAPER, OR INSTRUMENT EXHIBITED, OTHERWISE THAN IN THE THE REGULAR COURSE OF PROCEEDINGS.
(A) ANY WRITTEN OR ORAL COMMUNICATIONS EXCEPT IN THE REGULAR COURSE OF PROCEEDINGS.

IS PROSECUTABLE IN THE SUPERIOR COURTS FOR JURY CORRUPTION. IN THIS CASE THE PETITIONERS TRIAL HAD BEEN SCHEDULED FOR OVER ONE MONTH PRIOR TO THE DISTRICT ATTORNEYS MAILINGS OF HIS P PREJUDICIAL FLYERS, AND THE TRIAL WAS ONLY 49 DAYS FROM THE TIME OF HIS FIRST MAILING.

ONE VENIREMAN

STATED THAT SHE BELIEVED THE COUNTY TO HAVE PROOF OF GUILT BEFORE THE RUNNING OF A FLYER LIKE THIS(AUG RT 164;24-166;12)

ANOTHER VENIREMAN

STATED THAT YABLONSKY WAS SHAFTED(AUG RT 113;27 - 114;1)

ANOTHER VENIREMAN

STATED THAT IF THERE IS SMOKE THEN THERE IS FIRE (AUG RT 77;14-17)

SINCE ADA FERGUSON DID NOT REFUTE THIS DISCOVERY AND ACCURATE INFORMATION WHEN THE PETITIONER INCLUDED THESE DATAS IN HIS REPLY HE CONCEDES THAT THESE ARE UNDISPUTED FACTS, IN RE LEWALLEN (1979)23 c3d 274,274,278,152 cr 528;IN RE LAWLER SUPRA.

I HAVE MET MY BURDEN OF PROOF , IN RE MIRANDA(2008)43 ca4th 541,544,76 cr3d 172.

PETITIONERS APPEAL ONLY ARGUES WHETHER THE COURTS PREJUDICED DEFENDANT IN DEFENDANTS MOTION TO RECUSE THE ENTIRE DISTRICT ATTORNEY OFFICE AND THE DENIAL OF THAT MOTION . THE ONLY VOIR DIRE QUESTION ABOUT PUBLICITY FROM THE COURT WAS WHETHER THEY READ ABOUT THE CASE IN THE NEWSPAPER(E.G. AUG. RT35;13-14)

UNDER PEOPLE V. POPE (1979)23 c3d 412,428,152 cr732, THIS HABEAS COURT HAS AUTHORITY TO GRANT THIS PETITION

ON GROUND ONE WHERE THE COUNTY DISTRICT ATTORNEY RAMOS" ACTIONS SUBSTANCIALLY VIOLATED PETITIONERS CONSTITUTIONAL RIGHTS OF THE CALIFORNIA AND UNITED STATES, AND REQUIRES REVERSAL OF THE VERDICT AND BAR FROM FURTHER PROSECUTION WITH THIS CASE AND ANY OTHER RELIEF THIS COURTS DEEM JUSTIFIABLE.

GROUND THREE

IN GROUND THREE, WHERE TRIAL ATTORNEY DAVE SANDERS FAILED TO TEST EVIDENCES THAT ALLEGEDLY CAME FROM THIS CRIME SCENE, WHEN HE ATTEMPTED TO GENERATE AN ESTIMATE FROM A LOCAL LABRATORY TESTING FACILITY, AND FOLLOW THROUGH WITH THE TESTIGS FOR AUTHENTICITY AND POSSIBLE CONTAMINATION SINCE THE CASE WAS OVER A QUARTWER OF A CENTURY OLD AND WAS IN TWO SEPERATE LOCATIONS WHERE THE EXPERT FROM THE TRIAL FOR THE STATE TESTIFIED THAT THE DEFENDANTS DNA WAS AT LEAST ONE AND A HALF DAYS OLDER THAN THE CRIME AND AS MANY AS FIVE DAYS OLDER THAN THE CRIME.

HIS LACK OF ACTION SEVERELY UNDERMINED ANY REASONABLE STRATEGY THAT A REASONABLE ATTORNEY WOULD HAVE CONSIDERED, AND HIS LACK OF JUDGEMENT SEVERELY PREJUDICED HIS CLIENT AND CATASTROPHICALLY DESTROYED ANY POSSIBLE VENUE OF DEFENSE. VIOLATING 6TH AMENDMENT. THE DISTRICT ATTORNEY"S RECORDS REFLECT THAT THERE WAS RED HAIR WITH THE ROOTS ATTACHED, JOSEPH SAUNDERS DNA, GREGORY RANDOLPHS DNA (WILLIAM BACKOFF), PETITIONERS DNA, AND OTHER HAIRS THAT WERE LIFTED OFF THE BODY, ALL CONTAINING DNA POSSIBILITIES, A WATCH PIN.

THIS TESTING WOULD HAVE DRASTICALLY UNDERMINED THE PROSECUTORS CONTENSION " THAT YABLONSKY WAS THE ONLY SUSPECT". PETITIONERS HAIR WAS BLONDE AT THE TIME THIS CRIME TOOK PLACE AT THE AGE OF THE DEFENDANT 22 YEARS OLD. SINCE THE PROSECUTORS EXPERT WITNESS TESTIFIED THAT THE DNA BELONGING TO THE DEFENDANT WAS AT LEAST 1½ DAYS OLDER THAN THIS CRIME AND LESS THEN SEVEN DAYS OLDER (RT 471;4-11 (2)490;25-491;16)

CON CLUDING THAT [YABLONSKY] WAS NOT THERE WHEN THIS CRIME TOOK PLACE AND THAT THIS CRIME WAS IN FACT NOT SEXUALLY MOTIVATED AS YABLONSKY AS THE SUSPECT, ACCORDING TO THE EXPERT TESTIMONY, AND SINCE THE DISTRICT ATTORNEY DID NOT DISPUTE THE EXPERT TEST_ IMONY, HE CONCEDES THAT THIS TESTIMONY AS FACT AND UNDISPUTABLE.

TRIAL ATTORNEY's FAILURE, EITHER INFLUENCED BY THE COURTS OR OR THE DA'S OFFICES COERSION, OR HIS OWN LACK OF TRIAL COMPETANCE AS A MURDER TRIAL LITIGATER HAD SEVERELY UNDERMINED HID FUDICIARY DUTY TO UPHOLD HIS CODE OF PROFESSIONAL CONDUCT, AND VIOLATED CONSTITUTIONAL GUARANTEES THAT ARE PROMISED TO THE PETITIONER THROUGHOUT HIS TRIAL. PETITIONER INCLUDED OVER A DOZEN OTHER FAILURES IN HIS REPLY AND RESPONSE TO SHOW THAT THIS ATTORNEY'S ACTIONS FELL FAR BELOW THE REASONABLE BAR OF EXPECTATIONS THAT THE CONSTITUTION MANDATES AS EFFECTIVE REPRESENTATION THE CONSTITUTION DEMANDS OF ATTORNEY'S, IN THE 6TH AMEND. U.S. CONST, THROUGH HIS OWN ADMISSIONS THAT HE THE ATTORNEY DAVE SANDERS ADMITTED ON THE RECORD THAT HE HAD SPENT LESS THAN SIX HOURS ON THIS CASE OUTSIDE OF THE COURT ROOM, AND THE DISCOVERY THAT PETITIONER INCLUDED IN HIS RESPONSE SHOWS THAT VIRTUALLY EVERY DECISION ,EVERY ACT FELL FAR BELOW ORDINARY PROFESSIONALISMS AND THAT THERE IS NO POSSIBLE WAY THAT HE CAN PASS HIS LACK OF COMPETANCE OFF AS ANY KIND OF STRATEGY,OR TRIAL TACTIC.

UNDER THE STRICKLAND TEST WHERE COUNSELS PERFORMANCE FELL BELOW A STANDARD OF REASONABLENESS AND THAT HIS FAILURE RESULTED IN A TEXTBOOK EXAMPLE OF PREJUDICE THAT SO ERRODED HIS CLIENTS DEFENSE AND DISPARGED HIS DUTY TO PROVIDE CONSTITUTIONALLY

AN MANDATED EFFECTIVE REPRESENTATION THROUGHOUT THE ENTIRE PRE_TRIAL INVESTIGATIONS, STRICKLAND V. WASHINGTON 466 US 668, 104 s ct 2052;80 l ed2d674(1984) WHERE THE FILLED OUT BUT NOT COMPLETED APPLICATIONS FOR THE TESTING FACILITY PROVE THAT THE ATTORNEY WAS INCAPABLE TO TAKE THOUGHTS AND TURN THEM INTO ACTION THAT WOULD RESEMBLE COMPETANCE, PEOPLE V. WILLIAMS (1988)44 cal 3d 883, 937. OR A REASONABLE DEFENSE.

UNDER PEOPLE V. POPE(2004) 115 ca 4th 229,237, 8 cr3d 862, (IAC), THE COURTS GIVE DECIDING COURTS THE AUTHORITY TO RULE WHILE MY UNDISPUTED EVIDENCE, THAT ATTORNEY FERGUSON FAILED TO REFUTE ITS VALIDITY OR AUTHENTICITY AS IT APPLIES TO THIS CASE AND SINCE HE REFUSED TO DISPUTE THE EVIDENCE IN THIS CLAIM HE CONCEDES THERE ARE NO DISPUTABLE FACTS. UNDER IN RE LEWALLEN (1979)23 c3d 274,278,,152 cr 528;IN RE LAWLER,SUPRA HE REFUSES TO DISPUTE THE ACCURACY OF MY EVIDENCES AND DOCUMENTS SUBMITTED BY PETITIONER, HE THEN THEREBY CONCEDES THAT THERE ARE UN_ DISPUTABLE FACTS (CITATION).

THIS TRIAL ATTORNEY's ACTION GROSSLY VIOLATED THE FUNDAMENTAL RIGHTS TO CONSTITUTIONALLY MANDATED REPRESENTATION AND DEFEND HIS CLIENT, ALLOWING THE STATE TO PROSECUTE HIS CLIENT WITH UNVALIDATED EVIDENCE. THIS COURT HAS AUTHORITY TO GRANT THIS PETITION AND VACATE THE CRIMINAL CONVICTION THROUGH THIS WRIT ON GROUNDS THREE AND GROUNDS ONE OF THIS PETITION, AND ANY OTHER RELIEF THAT THIS COURT DEEMS JUSTIFIABLE.

GROUND FOUR

WITH RESPECTS TO GROUND FOUR, WHERE THE ADA DISTRICT ATTORNEY JOHN THOMAS PRESENTED FOUR WITNESSES ON THE STATES BEHALF THAT TESTIFIED FALSELY (PERJUY),WHILE HE HIMSELF STATED ON THE RECORD THAT HE HADN'T INVESTIGATED A SPECIFIC CASE, WHICH CONTROLLED CULPABILITY ISSUES HAD HE NOT LIED AND COVERED PROBATIVE ELEMENTS, IT WOULD HAVE ALLOWED THE PETITIONER TO INGEST CULPABILITY ISSUES OF A THIRD PARTY. FOR HELEN BROOKS CASE.

WHILE ONE OF THE PERJURING WITNESSES THAT TESTIFIED FOR THE STATE WAS A DETECTIVE FOR THE SAN BERNARDINO SHERIFF'S DEPART_ MENT AND WAS ASSIGNED AS THE STATES LEAD INVESTIGATOR FOR THE PROSECUTING TEAM, DETECTIVE ROBERT ALEXANDER. THIS DETECTIVE TESTIFIED UNDER OATH THAT THERE WAS NO FINGERPRINT REPORT FROM THIS CRIME SCENE.THIS EVIDENCE WAS NOT AVAILABLE UNTIL AFTER THE TRIAL WAS OVER, UNDER PEOPLE V. POPE (1979)23 c3d 412,428,152 cr 732,THESE ARGUEMENTS CANNOT BE ADDRESSED EFFICIENTLY THROUGH THE APPEALS COURT: PEOPLE V. BAUSTIA (2004) 115 ca4th 229,237 8 cr3d 862,(CHAALEGING FALSE EVIDENCE THAT WAS MATERIAL FACTOR , AND UNDER IN RE PRATT(1999) 69 ca4th 1294,82 cr2d 260,

(CHAALENGING FALSE PHYSICAL EVIDENCE THAT WAS MATERIAL FACTOR) AND BY PENAL CODE §1473 (b),(1),(c), WHERE A HABEAS WRIT MAY BE PROSECUTED FOR , BUT NOT LIMITED TO (1) FALSE EVIDENCE THAT IS SUBSTANCIALLY MATERIAL OR PROBATIVE ON THE ISSUE OF GUILT OR PUNISHMENT WAS INTRODUCED AGAINST A PERSON AT ANY HEARING OR TRIAL (C) ANY ALLEGATION THAT THE PROSECUTION KNEW OR SHOULD HAVE KNOWN OF THE FALSE NATURE OF THE EVIDENCE REFERRED IN SUB_ DIVISION (b).

UNDER KILLIAN V. UNITED STATES, 368 US 231 (1961) THE FEDERAL COURT OUTLINES THE ARENA WHEN FALSE TESTIMONY IS GIVEN IN VIOLATION OF 14 USC §1001, FEDERAL OBSTRUCTION OF JUSTICE THAT IS PROSECUTABLE IN THE FEDERAL ARENAS.

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IT IS BY THE COURTS DECISIONS OF SHIH WEI SU V. FILLION(CITATION OMITTED) THAT ELABORATE ON THE RULINGS AGAINST PROSECUTION THROUGH PROSECUTORIAL MISCONDUCT CLAIMS, WHILE IN THE NAPUE V. ILLINOIS 360 US 264,79 s. ct. 1173, 3 l ed2d 1217(1959) SCRUTINIZES THE ILLICITATION OF FALSE TESTIMONY BY THE STATES PROSECUTION WITNESSES THAT WEIGH ON WHETHER THE DEFENDANTS GUILT OR INNOCENSE TEETER ON THE TESTIMONIES OF TESTIFYING WITNESSES.

MOONEY V. HOLOHAN 294 US 103, 112, s. ct. 1340, 79, a l. ed2d 791 (1935) DECLARE THAT CONVICTIONS OBTAINED THROUGH FALSE TESTIMONY THE PROSECUTOR KNOWS TO BE FALSE IS REPUGNANT TO THE CONSTITUTION.

THE SUPREME COURT MAKES READILY CLEAR THAT PREJUDICE IS READILY SHOWN IN SUCH CASES, AND THE CONVICTION MUST BE SET ASIDE, WHILE THERE IS NO UNRINGING OF THE BELL. ESPECIALLY WHEN THERE IS NO "REASONABLE LIKELIHOOD THAT THE FALSE TESTIMONY COULD NOT HAVE EFFECTED THE JUDGEMENT OF THE JURY".

WHEN THE WITNESS BRUCE NASH AND THE WITNESS JOHN SULLIVAN WERE HIDING THE FACT THAT THE VICTIM STATED THAT SHE WAS HEADED TO A BAR IN TOWN CALLED THE ZODIAC AFTER THEIR DRINKING PARTY AT THE SULLIVANS RESIDENCE. THESE LIES PREVENTED THIRD PARTY CULPABILITY ISSUES WHICH WOULD HAVE BEEN SUPPORTED WITH PROBATIVE ELEMENTS HAD THEY TOLD THE TRUTH. IT IS AT THIS BAR WHERE GREGORY RANDOLPH (WILLIAM BACKOFF) CONFESSED TO HAVE PICKED THE VICTIM UP TAKEN HER HOME AND THEN KILLED HER, WHICH HE WAS LATER ARRESTED BUT RELEASED BECAUSE THE EVIDENCE FROM THIS CRIME SCENE HAD NOT YET BEEN PROCESSED.

THE PROOF OF THESE LIES ARE IN THE PETITIONERS INFORMAL RESPONSE THROUGH THE DISCOVERY INCLUDED AND THE LOCATION OF THE TESTIMONIES THROUGHOUT THE TRIAL.

AGAIN THE DISTRICT ATTORNEY FAILED TO REFUTE THE EVIDENCE I DISCLOSED, OR THE VALIDITY AND ACCURACY OF THESE DOCUMENTS IN HIS INFORMAL BRIEF OR OTHERWISE, THEREFORE IN RE LEWALLEN (CITATION OMMITTED), AND IN RE LAWLER, SUPRA, HE DEEMS THESE FACTS AS UNDISPUTABLE

THESE MATTERS WERE NOT A MATTER IN THE PETITIONERS APPEAL, AND ARE EFFICIENTLY APPROACHABLE IN THE HABEAS WRIT. UNDER PEOPLE V. POPE (CITATION OMMITTED) : PEOPLE V. BAUSTIA (CITATION OMMITTED) THESE ARGUEMENTS ARE BEST BROUGHT IN THE HABEAS COURTS THROUGH THE GREAT WRIT. IN RE LAWLEY(2008) 42 ca4th 1231, 1238,74 cr3d 92, IN RE BELL (2007)42 ca4th 630, 637, 67 cr 781,;IN RE HARDY(2007) 41 ca4th 977, 1016, 63 cr3d 845, COURTS THE FALSE TESTIMONIES SHOULD BE BROUGHT INTO THE HABEAS ARENA.

IT IS UNETHICAL FOR AN ATTORNEY TO LIE OR MISLEAD THE COURT BUS. + PC §6068 (d); CAL RULES OF PROF CONDUCT 5-200(b):, DI SABATINO V. STATE BAR (1980)27 c3d 159,162,cr 458. IT IS A FELONY TO PRODUCE A FALSE BOOK , PAPER , WRITTING, OR OTHER MATTER WITH THE INTENT IT WILL BE INTRODUCED FOR FRAUDULANT OR DECEIT_FUL PURPOSES AT ANY TRIAL.

PENAL CODE § 127 SUBORNATION OF PERJURY, EVERY PERSON WHO WILLFULLY PROCURES ANOTHER PERSON TO COMIT PERJURY IS GUILTY OF SUBORNATION OF PERJURY. BOTH BRUCE NASH(RT (AREA)414) AND JOHN SULLIVAN(RT(AREA)432) ADMIT TO BEING COACHED THE FRIDAY BEFORE TESTIFYING AS TO WHAT TO SAY ON THE STAND, ADMITTING THAT THEY WERE COACHED BY THE PROSECUTION TEAM,i.e. THE DISTRICT ATTORNEY JOHN THOMAS AND THE STATES LEAD INVESTIGATOR ROBERT ALEXANDER ,A SAN BERNARDINO COUNTY SHERIFF.

THE STATES PROSECUTION TEAM SERIOUSLY VIOLATED PETITIONERS RIGHTS OF THE CALIFORNIA AND UNITED STATES CONSTITUTION, WHILE VIOLATING

PENAL LAWS ,PROFESSIONAL LAWS,CODES OF CONDUCT , AND RULES GOVERNED BY THE AMERICAN BAR ASSOCIATION.
IT IS THIS COURTS AUTHORITY TO REVERSE THIS CONVICTION AND BAR FURTHER PROSECUTION WITH THIS CASE. PETITIONER PRAYS THIS WRIT BE GRANTED ON GROUNDS FOUR , THREE AND ONE OF THIS HABEAS PETITION AND ANY OTHER RELIEF THAT THIS COURT DEEMS JUSTIFIABLE.

GROUND SEVEN

WITH GROUND SEVEN, WHERE THE TRIAL ATTORNEY DAVE SANDERS GAVE THE PETITIONER ONLY 300(THREE HUNDRED) PAGES OF THE FOUR THOUSAND PAGES THAT WERE ACTUALLY AVAILABLE, WHEN THE PETITIONER ASKED FOR [ALL] OF THE DISCOVERY TO THIS CASE. IN THE DISCOVERY HE GAVE ME THERE WAS A COPY OF THE INTERROGATION, A COPY OF THE JAILHOUSE PHONE CONVERSATIONS, A COPY OF AN INTERVIEW WITH AN EX_MOTHER INLAW, AND MY EX_WIFE. AFTER READING THESE TRANSCRIPTS I NOTICED THAT THERE WAS "ALOT" OF THE INTERROGATION THAT WAS MISSING AND THAT THE PHONE TRANSCRIPTS WERE ALSO INACCURATE.

I PHONED DAVE SANDERS AT HIS OFFICE AND DISCLOSED THESE DIS_ CREPENCIES TO HIM, "WHAT I KNEW" TO BE MISSING FROM MY INTERROGATION , AREAS THAT SHOWED THAT THEY KNEW THAT MY PINTO WAS BLUE AND THAT I WAS UNDER ARREST BY THE DENIALS OF ALLOWING ME TO TERMIN_ ATE THE INTERROGATION , AND THAT I REPEATEDLY OFFERED A NON_ CUSTODIAL PLACE TO CONTINUE THE INTERROGATION.
I TOLD THE ATTORNEY THAT THE PHONE CALLS WERE ALSO VERY INACCURATE AND AND THAT I WAS VERY CONCERNED. THE ATTORNEY TOLD ME THAT THE TRANSCRIPTS WERE ONLY INTERPRETATIONS AND THAT IF THIS CASE WENT TO TRIAL THAT VERBATIM TRANSCRIPTS WOULD BE USED.
IN THE INTERROGATION THERE WAS SEVERAL ARGUEMENTS ABOUT MY INVOLVEMENT AND THAT THERE WAS A MAN NAMED FRANK LEFTWICH THAT I PERSONALLY HAD TAKEN OFF THE PROPERTY TO PROTECT MRS. COBB. THAT ON BOTH OCCAISIONS MR. LEFTWICH WAS EXTREMELY DRUNK AND THAT I HAD TO FORCE HIM OFF OF THE PROPERTY AND ESCORT HIM TO TOWN, ONCE I'D DRIVEN HIM IN THE BACK OF MY TRUCK AND THE OTHER I FOLLOWED IN MY TRUCK AS HE WALKED, AND AFTER A MILE OR SO I JUST TOOK OFF. THAT ON ONE OCCAISION MRS. COBB HAD ASKED IF I WOULD HELP HER TO STOP HER SON FROM BEATING ON HER, AMONG THE OTHER ARGUEMENTS THAT I HAD WITH THESE DETECTIVES.

DURING THE TRIAL I NOTICED THAT THERE WAS OVER TWENTY PAGES MISSING FROM THE PROJECTORS PAGE COUNTER, AND WHEN THE INTERROG_ ATION WAS PLAYED EVEN MORE OF THE RECORDING HAD BEEN ERASED AND MISSING. I ASKED THE ATTORNEY WHY AND HE SAID HE GAVE THEM PERMISSION TO DO THIS. THE STATE PLAYED THE INTERROGATION THAT LEFT OUT VERY IMPORTANT FACTS, ONE THAT WAS LEFT OUT WAS THAT I OWNED A BLUE PINTO, WHILE THE STATE PRESENTED ONE WITNESS THAT TESTIFIED THAT SHE SEEN A SILVER PINTO AT THE CRIME SCENE.

I NEVER AUTHORIZED NOR GAVE PERMISSION TO DAMAGE , ALTER OR ERASE ANY PART,PORTION OR WORDING FROM THIS INTERROGATION.

I WAS TOLD AFTER THE TRIAL THAT MY ATTORNEY, ADA THOMAS ,AND THE DETECTIVE ALTERED THESE RECORDINGS.THE DAMAGED PORTION WOULD HAVE BEEN ABLE TO IMPEACH THE STATES WITNESS OR AT THE VERY LEAST UNDERMINE THEIR WITNESS THAT SAID SHE SEEN A SILVER PINTO AT THE CRIME SCENE WHEN THE CRIME WAS ALLEGEDLY BEING COMMITTED AND SINCE I DID NOT OWN A SILVER PINTO , THIS COULD HAVE PROVEN THAT I WAS IN FACT NOT AT THE SCENE WHEN THIS CRIME WAS BEING COMMITTED

IT IS IN THE FONVILLE COURTS THAT RECORDINGS MUST BE VERIFIED FOR AUTHENTICITY BEFORE THEY CAN BE ENTERED INTO EVIDENCE FOR THE TRIAL. PEOPLE V. FONVILLE, 111 cal. rptr.53, 35 cal. app. 3d 693,(cal app 5th 1973): PEOPLE V. GALLEGOS (1977) 4 cal. 3d 242, 249-50, 93 cal rptr 292,481 p.2d 237. (UNDOUBT_ ABLY THE USUSAL WAY OF LAYING A FOUNDATION FOR THE PLAYING OF A RECORDING IS TO CALL ONE OF THE PARTICIPANTS OR A MONITOR TO TESTIFY THE CONVERSATION WAS ACCURATELY RECORDED AND TRANS_ CRIBED): PEOPLE V. FINCH (1963)216 cal app2d 444,452-454, 30 cal rptr 901,cert. den. 379 US 871 s.ct. 16,13 l ed.2d 77).

EVIDENCE CODE§403(a)(3)(4) (THE PROPONENT OF THE PROFFERED EVIDENCE HAS THE BURDEN OF PRODUCING EVIDENCE AS TO THE EXISTANCE OF THE PREL:IMINARY FACT, WHENXXTHEXFACT, AND PROFFERED EVIDENCE IS IN_ADMISSABLE UNLESS THE COURT FINDS THAT THERE IS EVIDENCE TO SUSTAIN A SUFFICIENT FINDING OF THE EXISTANCE OF THE PRELIMINERY FACT,WHEN THE: PRELIMINERY FACT IS THE AUTHEN_ TICITY OF A WRITING: OR THE PROFFERED EVIDENCE IS OF A STATEMENT OR OTHER CONDUCT OF A PARTICULAR PERSON, AND THE PRELIMINERY IS WHETHER THAT PERSON MADE THE STATEMENT OR SO CONDUCTED IT HIMSELF).

EVIDENCE CODE § 1421(A WRITING REFERS TO OR STATES MATTERS THAT ARE UNLIKELY TO BE KNOWN TO ANYONE ELSE OTHER THAN THE AUTHOR THEMSELF WHO IS CLAIMED TO THE PROPONENT OF THE EVIDENCE TO BE THE ACTUAL AUTHOR).

CALIFORNIA V. TROMBETTA 476 US 479(1984) COURTS DEEM THAT IF THE AUTHENTICITY OF THE EVIDENCE CANNOT BE PRODUCED, OR RE_ CREATED TO IT'S ORIGINAL VERSION, THAT IT MUST BE DISMISSED FROM THE CASE AT HAND , WHILE ALLOWING CONTAMINATED EVIDENCE , ALTERED AND DOCTORED EVIDENCE INTO A TRIAL VIOLATES DUE PROCESS CLAUSES OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

UNITED STATES V. AGURS,427 US 97,(1976): BRADY V. MARYLAND 373 US 83(1963) INGESTS QUESTIONS THAT OF , AUTHENTICITY MUST BE QUESTIONED WHETHER THE FOURTEENTH AMENDMENT ALSO DEMANDS THAT THE STATE PRESERVE[ALL] EXCULPATORY EVIDENCE ON BEHALF OF THE DEFENDANT.

PENAL CODE § 132 (EVERY PERSON WHO UPON ANY PROCEEDING , INQUIRY, OR INVESTIGATION WHATEVER, AUTHORIZED OR PERMITTED BY LAW, OFFERS INTO EVIDENCE AS GENUINE OR TRUE, ANY BOOK, PAPER, DOCUMENT OR RECORD OR OTHER INSTRUMENT OF WRITING KNOWING THE SAME TO HAVE BEEN FORGED OR FRAUDULENTLY ALTERED OR ANTEDATED, IS GUILTY OF A FELONY).

PENAL CODE §182 (a)(1)(2)(5)(, (a) IF TWO OR MORE PERSONS CONSPIRE:(1) TO COMIT ANY CRIME,: (2) FALSELY AND MALICIOUSLY TO INDICT ANOTHER FOR ANY CRIME OR TO PRODUCE ANOTHER TO BE CHARGED OR ARRESTED FOR ANY CRIME,; (5) TO COMIT ANY ACT INJURIOUS TO THE PUBLIC HEALTH, TO PUBLIC MORALS, OR TO PERVERT OR OBSTRUCT JUSTICE, OR THE DUE ADMINISTRATION OF LAWS ARE GUILTY OF CONSPIRACY TO COMIT A FELONY AND IS PROSECUTABLE IN THE SUPERIOR COURTS.

WHEN THE INFORMAL RESPONSE BY THE ADA FERGUSON DID NOT REFUTE OR CONTEST MY EVIDENCE WHEN SUBMITTED, HE CONCEDES THERE ARE NO DISPUTABLE FACTS, IN RE LEWALLEN(CITATION OMMITTED),:IN RE LAWLER SUPRA, IN RE MIRANDA(CITATION OMMITTED) THESE COURTS HAVE THE AUTHORITY TO RULE .I HAVE MET MY BURDEN OF PROOF.

UNDER PEOPLE V. POPE(CITATION OMMITTED) THIS COURT HAS AUTHORITY TO RULE WITH REGARDS TO GROUND SEVEN, FOUR, THREE, ONE, VACATE THIS CRIMINAL CONVICTION AND ANY OTHER RELIEF THIS COURT DEEMS JUSTIFIABLE.

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GROUND NINE

WITH REGARDS TO GROUND NINE, WHERE THE TRIAL ATTORNEY DAVE SANDERS FAILED TO CHALLENGE STATES LYING WITNESSES AS THEY TESTIFIED FALSELY UNDER OATH, AND BY THIS FAILURE TO OBJECT WHEN BRUCE NASH LIED ON THE STAND ABOUT THE LAST KNOWN DESTINATION OF RITA COBB, HIS FAILURE TO CHALLENGE THE STATES LYING WITNESS HE BOLSTERED THE PROSECUTIONS INJECTION OF FALSE EVIDENCE WHEN THE RECORDS WERE AVAILABLE TO OBJECT SUCCESSFULLY, AND IMPEACH THE WITNESS.

WHEN JOHN SULLIVAN LIED FALSELY ABOUT THE LAST KNOWN DESTINATION OF RITA COBB, DEFENSE COUNSELS FAILURE TO OBJECT TO CHALLENGE THE STATES LYING WITNESS, HE BOLSTERED THE PROSECUTION INJECTION OF FALSE EVIDENCE WHEN THE RECORDS WERE AVAILABLE TO DEFENSE COUNSEL TO IMPEACH JOHN SULLIVAN.

WHEN DARYL KRAMER LIED TO THE JURY ABOUT HIS RELATIONSHIP WITH HIS MOTHER THE VICTIM, DEFENSE COUNSEL FAILED TO OBJECT WHEN THE RECORDS WERE AVAILABLE TO CHALLENGE STATES LYING WITNESS, THE ATTORNEY'S FAILURE BOLSTERED THE STATES EVIDENCE EVEN WHEN THE EVIDENCE WAS FALSE.

WHEN THE DETECTIVE ROBERT ALEXANDER, STATES LEAD INVESTIGATOR LIED TO THE JURY ABOUT THE EXISTANCE OF THE FINGERPRINT REPORT WHICH WAS GENERATED FROM THIS CRIME SCENE, TELLING THEM THAT "NO" FINGERPRINT REPORT EXISTS, DEFENSE COUNSEL FAILED TO OBJECT WHEN THE EVIDENCE WAS AVAILABLE TO IMPEACH THIS LYING WITNESS. THIS LIE CORRUPTLY COVERED THE FACT THAT EXCULPATORY EVIDENCE WAS BEING WITHHELD FROM THE DEFENDANT, AND THAT THIS FINGERPRINT REPORT HELD PROBATIVE ELEMENTS TO THIRD PARTY CULPABILITY ISSUES.

UNDER PEOPLE V. POPE (CITATION OMMITTED) THIS ACT CAN BEST BE ADDRESSED IN THE HABEAS COURT SINCE THE EVIDENCE OF THIS FAILURE WAS NOT MADE AVAILABLE UNTIL AFTER THE TRIAL. BY IN RE LAWLEY (CITATION OMMITTED) : IN RE BELL (CITATION OMMITTED): IN RE HARDY (CITATION OMMITTED) THAT PETITIONER IS ASSERTING ACTUAL INNOCENSE, AND THE NEWLY DISCOVERED EVIDENCE MADE AVAILABLE AFTER THE TRIAL ASSERTS THIS COURTS OBLIGATION WITH REGARDS TO THIS CLAIM OF INNEFFECTIVE ASSISTANCE OF COUNSEL.

UNDER THE STRICKLAND TEST, COUNSELS FAILURE TO OBJECT TO ANY OF THE FIVE LYING WITNESSES FELL FAR BELOW THE REASONABLE EXPECTATION OF AN ATTORNEY'S COURT ROOM BEHAVIOR OR PROCEEDURE, AND THE SECOND PORTION OF THE TEST OF THE TWO PHASE PRONG SHOWS, THAT THE OBJECTION TO STATES LYING WITNESSES WOULD HAVE PROVED THAT THE DISTRICT ATTORNEY DID INVESTIGATE THE HELEN BROOKS CASE. THAT THE OBJECTION TO BRUCE NASH, AND JOHN SULLIVAN WOULD HAVE PROVED THAT THE VICTIM WAS HEADED TO THE ZODIAC BAR, WHERE SHE HAD MET UP WITH GREGORY RANDOLPH, AND THAT IS WHEN HE TOOK HER HOME AND KILLED HER AND MUTILATED HER BODY. THE OBJECTION WOULD HAVE PROVEN THAT THERE WAS IN FACT A FINGERPRINT REPORT THAT WAS GENERATED FROM THIS CRIME SCENE AND THE RESULTS FROM THAT REPORT WOULD HAVE PROVEN PROBATIVE ELEMENTS THAT WOULD HAVE SUPPORTED THIRD PARTY CULPABILITY ISSUES WHEN THE DISTRICT ATTORNEY'S LEAD INVESTIGATOR HID THE REPORT WHEN HE WAS ASKED AND HE DECIDED TO LIE AND SAY THERE WAS NO SUCH REPORT, WHY WOULDN'T IT SUPPORT CULPABILITY ISSUES SINCE THE PERSON HIMSELF STATED THAT HE WAS INVITED TO THE VICTIMS HOME AFTER THE PARTY, BUT HE DID NOT GO?

THEN WHEN THE VICTIMS SON STATED THAT HIS RELATIONS WERE GOOD, BUT FORGOT TO SAY HE WAS INTERRUPTED BEATING HIS MOM.

ALL OF THESE PERJURIES PERVERTED THE ENTIRE
POOL OF JURORS WITH LIES AND DECEIT WHERE THEY COULD NOT TELL
WHAT THE REAL TRUTH REALLY WAS, BEING SEVERELY PREJUDICIAL TO THE
DEFENDANT IN THIS CASE BY THE ATTORNEY'S LACK OF COMPETANTS
ACTIONS AND FAILURE TO COMPLY WITH ORDINARY COURT ROOM BEHAVIOR
AND BY THE COURTS OF , IN RE LEWALLEN (CITATION OMMITTED): IN RE
LAWLER, SUPRA, BY ADA FERGUSONS FAILURE TO REFUTE THE PETITIONERS
DISCOVERY HE CONCEDES THAT THE EVIDENCE IS UN DISPUTABLE, AND THIS
COURT SHOULD RULE APPROPRIATELY WITH REGARDS TO GROUNDS NINE,
SEVEN, FOUR THREE , AND ONE, WITH REGARDS TO THIS PETITION
IN THIS JURISDICTIONAL COURT THE SUPERIOR COURT OF CALIFORNIA
IN THE COUNTY OF SAN BERNARDINO CASE NUMBER # WHCSS 1200311.

~~petitionerxnowxasksxthisxcourtxtoxgrantxthisxx~~

PETITIONER NOW PRAYS THIS COURT TO RULE ON THE ABOVE FIVE GROUNDS
AND EITHER GRANT THIS PETITION AND ORDER A NEW TRIAL , ALLOWING
ALL OF THESE EVIDENCE. GRANT THIS PETITION AND VACATE THIS
CRIMINAL CONVICTION AND BAR THE STATE FROM FURTHER PROSECUTIONS
WITH REGARDS TO THIS CASE.

GRANT THIS PETITION AND ANY OTHER RELIEF THAT THIS COURT SEEMS
JUSTIFIABLE.

OR GRANT THE PETITIONER A STAY ON THIS PETITION TO
ALLOW HIM TO AMEND HIS PETITION WITH THE OTHER THIRTEEN GROUNDS
THE PETITIONER NOW HAS THE EVIDENCE AND THE KNOWLEDGE TO APPROACH
THIS COURT WITH REGARDS TO THESE GROUNDS , SHOWING PRIMA FACIE
STANDING, AND ALLOW HIM (90) DAYS, NINETY DAYS TO PRESENT THIS
EXPANDED RECORD.

UNDER PENALTY OF PERJURY THE PETITIONER IN
THIS INSTANT CASE SWEARS THAT EVERY WORD IN THIS MOTION TO TRUE
AND ACCURATE TO THE BEST OF THE PETITIONERS ABILITY.

RESPECTFULLY:

____

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1 SUPERIOR COURT OF CALIFORNIA
SAN BERNARDINO COUNTY

IN RE

CASE NUMBER.WHCSS1200311

[PROPOSED]ORDER GRANTING THIS PETITION OF HABEAS CORPUS ON THE FOLLOWING GROUNDS (ONE),(THREE), (FOUR), (SEVEN), AND(NINE)

ON HABEAS CORPUS

FOR THE PETITION OF HABEAS CORPUS, WITH REGARDS TO THE FOLLOWING GROUNDS, THE COURT DOES FIND GOOD CAUSE AND RULES IN THE FOLLOWING MANNER:

GROUND ONE: THAT THE COUNTY DISTRICT ATTORNEY MICHAEL A. RAMOS DID VIOLATE DUE PROCESS CLAUSES OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION, WITH HIS USE OF THE PETITIONERS UPCOMING CASE IN HIS RE-ELECTION MAILING CAMPAIGN

PETITION IS GRANTED, AND THE CRIMINAL CONVICTION IS VACATED, BARRING FURTHER PROSECUTION

GRANTED: ______________________
THE HONORABLE JUDGE

AMENDED AS FOLLWS:

GROUND THREE: THAT THE TRIAL ATTORNEY DAVE SANDERS DID VIOLATE THE PETITIONERS SIXTH AMENDMENT RIGHT TO EFFECTIVE COUNSEL, WHEN HE FAILED TO TEST THE DNA EVIDENCES OF THE PETITIONER TO PRESENT A SOURCE OF DEFENSE.

PETITION IS GRANTED , AND THE SUPERIOR COURTS ARE ORDERED TO REVERSE THE PETITIONERS CONVICTION AND GRANT HIM A NEW TRIAL, WHILE ENTERING THE ENTIRE RECORD OF THIS PETITION TO BE A MATTER OF RECORD IN THE TRIAL FOR CASE NUMBER # FVI900518

GRANTED: ______________________
THE HONORABLE JUDGE

AMENDED AS FOLLOWS:

GROUND FOUR: THAT THE ADA JOHN THOMAS COMMITTED PROSECUTORIAL MISCONDUCT, VIOLATING THE FIFTH AND SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTIONAL RIGHT OF THE PETITIONER, WHEN HE PRESENTED FOUR WITNESSES THAT GAVE PERJURED TESTIMONY IN THE TRIAL OF JOHN HENRY YABLONSKY, DETECTIVE ROBERT ALEXANDER, BRUCE NASH, JOHN SULLIVAN, AND DARYLL KRAMER, WHILE THE ADA

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1
JOHN THOMAS GAVE THE COURT INACCURATE DATA DURING A PRE-TRIAL
2
IN CAMERA MOTION HEARING ON THE PROBATIVE ELEMENTS OF THIRD
PARTY CULPABILITY.
3
PETITION IS GRANTED, AND THE CRIMINAL CONVICTION IS
VACATED WITH REGARDS TO CASE NUMBER# FVI900518 , AND
4
THE STATE IS BARRED FROM FURTHER PROSECUTION

GRANTED:______________________
5
THE HONORABLE JUDGE

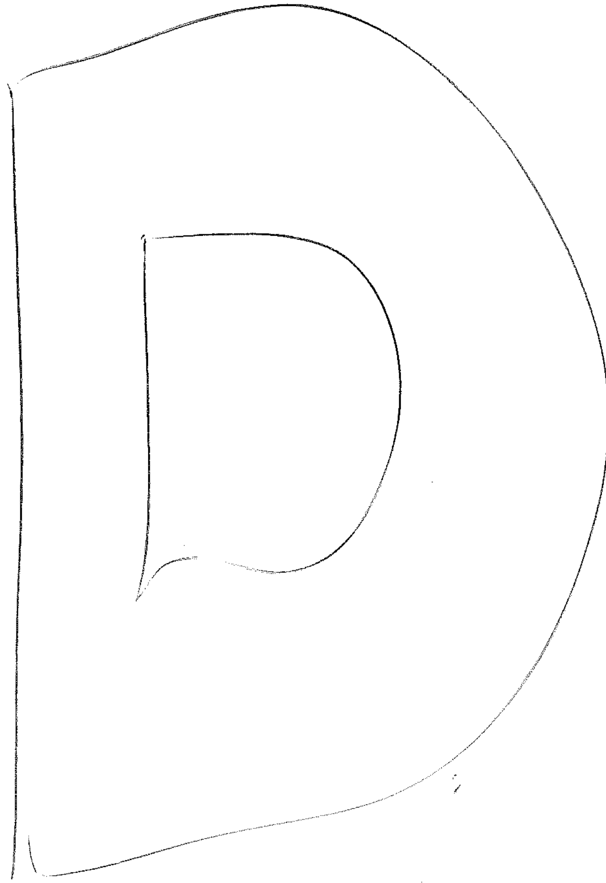
AMMENDED AS FOLLOWS:
6
GROUND SEVEN: WHERE THE TRIAL ATTORNEY DAVE SANDERS, DETECTIVE
7
ROBERT ALEXANDER, ADA JOHN THOMAS, DID WILLFULLY
AND INTENSIONALLY VIOLATE THE FIFTH AMENDMENT OF
8
THE UNITED STATES CONSTITUTION WHEN THEY ALL
THREE CONSPIRED TO ALTER AN INTERROGATION
9
RECORDING FOR THE PURPOSE TO PRESENT IT TO A JURY
AS TRUE AND ACCURATE, VIOLATING STATE AND FEDERAL
10
LAWS AND STATUES TO COMMIT 14USC§1001 OBSTRUCTION
OF JUSTICE IN THE TRIAL OF JOHN HENRY YABLONSKY
11
FOR THE PURPOSE OF DEFRAUDING THE JURY OF THE
TRUTH, IN CRIMINAL TRIAL CASE NUMBER#FVI900518.
12
VACATING THIS CONVICTION.

GRANTED:______________________
THE HONORABLE JUDGE
13
AMMENDED AS FOLLOWS:
14
GROUND NINE: WHERE THE TRIAL ATTORNEY DAVE SANDERS, DID
WILFULLY AND INTENSIONALLY VIOLATE PETITIONERS
15
SIXTH AMENDMENT RIGHT TO EFFECTIVE AND MEANINGFUL
FUL REPRESENTATION, FAILING TO FOLLOW ORDINARY
16
TRIAL PROCEDURE BY FAILING TO OBJECT TO THE
STATES WITNESSES STATES WITNESSES DARYL KRAMER, JOHN SULLIVAN,
17
BRUCE NASH, ROBERT ALEXANDER, AND ADA JOHN
THOMAS WHEN THEY GAVE FALSE TESTIMONY IN THE
18
TRIAL OF JOHN HENRY YABLONSKY IN THE CASE
NUMBER # FVI 900518, THEREBY COMMITTING
19
INNEFFECTIVE ASSISTANCE OF COUNSEL.
GRANTING THE PETITIONER A NEW TRIAL WITH REGARD
20
TO CASE NUMBER#FVI900518,REVERSING THIS VERDICT

GRANTED:______________________
21
AMMENDED AS FOLLOWS:
22
WITH REGARDS TO HABEAS PETITION CASE NUMBER#WHCSS
1200311
23
THIS CASE IS GRANTED A LEAVE TO AMMEND FOR THE DURATION OF
NINETY DAY FOR THE PETITIONER TO AMMEND HIS PETITION, AND HAVE IT
24
FILED AND SERVRD UPON THE OPPOSING PARTIES NO LATER THAN 90
DAYS FROM THESIGNING OF THIS ORDER.
25

GRANTED:______________________

AMMENDED AS FOLLOWS:
26
THE ORDERS OF THIS RULING SHALL TAKE EFFECT
27
IMMEDIATELY AND A STAY OF TIME SHALL
BE ORDERED AS OF THIS DATE.
28



ATTACHMENTS

ATTACHMENT D

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FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
JUN 12 2013
BY SHERRI L. SIMPSON, DEPUTY

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF SAN BERNARDINO

3

4 In re the Petition of	Case no. WHCSS 1200311
5 JOHN H. YABLONSKY,	ORDER DECLINING TO STAY PETITION AND EXTENDING TIME LIMITATIONS BY WHICH TO ISSUE RULING
6 Petitioner,	
7 for Writ of Habeas Corpus.	

8

9 For reasons already set forth in prior orders, the Court was considering staying
10 the petition pending a resolution of petitioner's appeal. The Court invited the parties to
11 address whether the petition should be stayed. Respondent takes the position that the
12 Court should not stay the petition. Petitioner filed a document titled "(rebuttal
13 summation)" which does not directly respond to the Court's question, but does state
14 that respondent sent a document "to the wrong address." In the interest of ensuring
15 petitioner had an adequate time to respond to the question of whether the petition
16 should be stayed, the Court waited for any further pleadings to arrive. None has.

17 Having considered respondent's argument and petitioner's "rebuttal
18 summation," the Court has determined that a stay is not warranted. Accordingly, the
19 Court will issue a ruling on the petition within the meaning of California Rule of Court
20 4.551, subdivision (a)(4), within thirty days of this order.

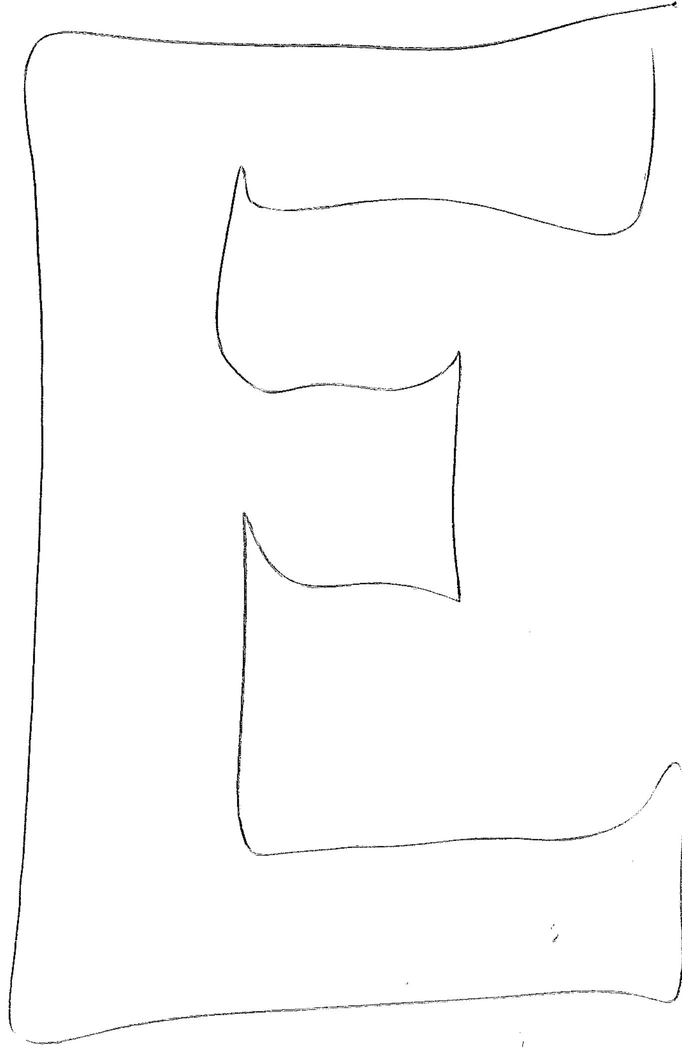
21 The parties are admonished that no further pleadings regarding the merits of the
22 claims will be considered by the Court unless the Court expressly grants permission to
23 file them.

24

25 Dated: June 12, 2013

Judge Kyle Brodie

26



ATTACHMENTS

ATTACHMENT E

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO

JUL 1 2 2013

BY Sherri L. Simpson
SHERRI L. SIMPSON, DEPUTY

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF SAN BERNARDINO

3

4 In re the Petition of 5 JOHN H. YABLONSKY, 6 Petitioner, 7 for Writ of Habeas Corpus. 8	Case no. WHCSS 1200311 ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

9

10 Following a jury trial, petitioner was convicted of first degree murder, and a
11 special circumstance that the murder occurred during the course of a rape was found to
12 be true. Petitioner was sentenced to life in prison without the possibility of parole. He
13 filed a notice of appeal, and is represented by counsel in an appeal currently pending
14 before Division Two of the Fourth Appellate District of the California Court of Appeal, in
15 case number E055840. The Court takes judicial notice of the court of appeal's minutes
16 from that case, as well as the contents of the superior court file from petitioner's
17 underlying trial. (Evid. Code, § 452, subd. (d).) As of the date of this order, petitioner's
18 appeal has been fully briefed and is awaiting a calendar date for oral argument.

19 In the meantime, petitioner has filed a petition for writ of habeas corpus, raising
20 twelve claims for relief. The Court requested an informal response from respondent, and
21 petitioner filed a reply. Petitioner has also filed many other documents, including a
22 second habeas corpus petition on August 9, 2012, and a host of pleadings making
23 various requests, presenting additional arguments, and discussing other potential (but
24 not always specified) claims.

25 The resolution of the petition is complicated by several circumstances, most
26 significantly that petitioner's appeal is still pending. The Court therefore does not have

available (for example) the court of appeal's distillation of the facts of petitioner's crime. The Court also does not have the court of appeal's view of the strength of the evidence, or what errors might have occurred and the potential prejudice from those errors. Also, the Court is mindful of the fact that if petitioner can convince the court of appeal that a reversible error occurred at his trial, his petition for writ of habeas corpus will almost certainly be rendered moot. Because of the pending appeal, the Court considered staying the petition and asked the parties to submit briefing on that subject. Respondent did so, asking that the petition not be stayed. Petitioner did not file a response to the Court's request, despite having been given additional time beyond that initially granted to do so. The Court then issued an order indicating its tentative decision that the petition should not be stayed.

In that order, the Court specifically admonished the parties that no further pleadings would be considered unless the Court granted permission to file them. Despite that admonition, petitioner later sent the Court a document in which he calls a "Motion Requesting Ruling," or, alternatively, a "Motion to Rule." The Court has reviewed the document, despite it being untimely, in the interest of affording petitioner every opportunity to make his position known regarding whether his petition should be stayed. His response is long (eleven typewritten, single-spaced pages, far exceeding the two pages that the Court had allowed – though respondent also exceeded that limit, so perhaps the Court's expectation that the issue could be addressed in two pages was unrealistic). In the end, both parties agree that the petition should not be stayed.

Because of the many pleadings submitted by petitioner since his petition was filed, it is important to emphasize that the Court's ruling is based on the petition that petitioner originally filed.

> The court will determine the appropriate disposition of a petition for writ of habeas corpus based on the allegations of the petition as originally filed

and any amended or supplemental petition *for which leave to file has been granted*. [¶] The court determines on the basis of the allegations of the original petition and the amended or supplemental petition, if any, as well as the supporting documentary evidence and/or affidavits, which should be attached if available, whether a prima facie case entitling the petitioner to relief if the allegations are proven has been stated.

(*In re Clark* (1993) 5 Cal.4th 750, 781, fn. 16, emphasis added.) The Court will consider, as an amendment to the petition, the exhibits which petitioner attached to his pleading of August 9, 2012.[1] Any arguments raised in other pleadings are not deemed to have raised new claims for relief.

Respondent has set forth a detailed factual summary of the evidence against petitioner in its informal response. Petitioner has not disputed it, as such, in his reply. He does disagree with many of respondent's positions and conclusions, but he does not dispute[2] the core of the evidence against him.

As a general rule, the pendency of an appeal precludes a lower court from taking any action which would interfere with the judgment under review. (*In re Carpenter*

[1] Respondent notes in its informal response that petitioner relied on the exhibits submitted with the second petition, and makes the respectful suggestion that the resolution of the issues would be facilitated by considering those documents. Respondent's suggestion is well taken. Petitioner, for his part, does not object to considering the materials submitted with his August 9, 2012, pleading.

[2] By "does not dispute," the Court does not mean to imply that petitioner concedes the accuracy and completeness of the testimony elicited by the prosecution. To the contrary, petitioner accuses various witnesses of perjury, and vigorously argues over what the testimony did or did not show, and what inferences can be drawn from it. Petitioner also emphatically disputes nearly every legal argument respondent raises, going so far as to call the Deputy District Attorney who prepared the informal response a "liar" who "should be ashamed of himself as a public servant." (He then proceeds to thank "all parties" for their "patience and professionalism," an expression of gratitude inconsistent with the insults which immediately precede it.) What matters here, for the purposes of resolving the petition, is that petitioner does not show respondent's factual summary of the evidence presented at trial to be inaccurate in any material way.

(1995) 9 Cal.4th 634, 645-646; *People v. Mayfield* (1993) 5 Cal.4th 220, 224-225.) However, despite that general rule, claims which do not rely on the appellate record and claims of ineffective assistance of counsel may be raised in a habeas corpus petition despite the fact that petitioner's appeal is currently pending. (*In re Carpenter, supra,* 9 Cal.4th at p. 646.)

In setting forth petitioner's claims, the Court has liberally construed his pro se pleading. (*Estelle v. Gamble* (1976) 429 U.S. 97, 106.) The Court addresses each one in turn.

Claim One

Petitioner's first claim is that his rights were violated when the San Bernardino County District Attorney used his name and photograph in campaign materials that were mailed while his trial was pending. The material in question was discussed at trial, and any claim regarding the impact of that material can be litigated on appeal. This Court therefore lacks jurisdiction to consider the claim. (*In re Carpenter, supra,* 9 Cal.4th at pp. 645-646.)

Claim Two

Petitioner's second claim is that recordings of his interrogation were altered before being shown to the jury. The alteration in question, according to petitioner, is that law enforcement officers told petitioner they knew he owned a blue Pinto. Petitioner alleges the altered recording would have impeached the witness who testified about seeing a silver Pinto.

Respondent alleges, and the excerpts of the interview transcript supplied by petitioner confirm, that petitioner admitted possessing a "dark blue" Pinto. Presumably, any variance regarding the color of the Pinto was fully presented to the jury, and, more to the point, there is nothing to suggest any evidence was altered by the prosecution. Petitioner bears a "heavy burden" to "*plead* sufficient grounds for relief[.]" (*People v.*

Duvall (1995) 9 Cal.4th 464, 474, emphasis in original.) Conclusory allegations unsupported by facts stated with particularity do not warrant habeas corpus relief. (*Id.*; see also *In re Swain* (1949) 34 Cal.2d 300, 304.) Petitioner's contention about the altered recordings do not meet his pleading burden.

Claim Three

Petitioner's third claim is that his trial counsel was ineffective for failing to investigate "all areas of the case in support of a defense," including conducting his own DNA tests of the evidence. There appears to be no dispute that the DNA evidence admitted by the prosecution constituted a very important part of the case against petitioner. Petitioner, for example, contends "The entire case evolved over DNA." The prosecution similarly refers to the evidence as "vital." Given that prosecution had charged petitioner with committing a murder in the course of raping his victim, those characterizations are correct: the presence of petitioner's DNA in the sperm cells found in and under the victim were powerful evidence of his guilt.

In order to establish he is entitled to habeas corpus relief, petitioner must demonstrate that his counsel's performance was deficient, and that the deficient performance prejudiced him. (*Strickland v. Washington* (1984) 466 U.S. 668, 687.) Where a habeas petitioner alleges that counsel was ineffective in the investigation or presentation of evidence, he must demonstrate how the trial would have been different had the lawyer undertaken further investigation. (See *In re Hardy* (2007) 41 Cal.4th 977, 1025.) If an ineffective assistance of counsel claim can be resolved solely on the basis of a lack of prejudice, then there is no need to separately determine whether counsel's performance was deficient. (*Strickland v. Washington*, *supra*, 466 U.S. at p. 697.)

Petitioner admits in his reply that, "Yes, my DNA was at the scene ... ." He also admits that he had sex with the victim, though he states that it was consensual sex that

occurred over a day before she was killed. He speculates that additional testing could have been conducted or additional questions asked that would have shown that another man's DNA was also present, but even if that were true (and it bears repeating that there is nothing in the petition or exhibits demonstrating that to be so), petitioner still would have been faced with evidence that he had sex with the victim. Additional expert testimony would not have been reasonably probably to change the result.

Regarding the alleged confession of a man named George Randolph, who went by the alias "William Backhoff," respondent contends that trial counsel did attempt to introduced evidence that Randolph had confessed to the crime. The trial court excluded that evidence. Petitioner does not refute respondent's contention, and does not explain what more counsel could have done to bring the third party confession before the jury.

Petitioner has not shown that counsel was ineffective, or that the result of his trial would have been reasonably likely to have changed had counsel undertaken the efforts now demanded by petitioner. His ineffective assistance of counsel claim therefore fails.

Claim Four

Petitioner's fourth claim is that the prosecutor committed misconduct by submitting false testimony. Petitioner's claim is based on what he alleges are inconsistencies between various witnesses' testimony, the police reports, and statements made over two decades ago.

In its request for an informal response, the Court asked respondent if the documents relied on by petitioner were submitted to the trial court or are otherwise included in the record of petitioner's pending appeal. Respondent has stated that the only document included in the appellate record is a fingerprint report.

To the extent petitioner's prosecutorial misconduct claim is based on the trial court record, this Court lacks jurisdiction to consider it. (*In re Carpenter, supra*, 9 Cal.4th at pp. 645-646.) To the extent it relies on evidence outside the record, it fails.

Petitioner appears to claim not that the prosecutor committed misconduct, as such, but that false evidence was used to convict him. A writ of habeas corpus may issue if "False evidence that is substantially material or probative on the issue of guilt or punishment was introduced against a person at any hearing or trial relating to his incarceration[.]" (Pen. Code, § 1473, subd. (b)(1).) If false evidence was used at trial, petitioner is not required to show that the prosecution knew it was false. (*In re Richards* (2012) 55 Cal.4th 948, 960-962.)

Petitioner's claim fails because he has not shown that any of the evidence introduced was false. Respondent concedes that there were some inconsistencies regarding what certain witnesses remembered, such as Bruce Nash's and John Sullivan's recollection of who the victim had been with and her movements the night September 20, 1985. Inconsistent evidence, however, is not synonymous with false evidence, even if the inconsistencies diminish a witness's credibility. (*In re Roberts* (2003) 29 Cal.4th 726, 742-743.) Petitioner's assessment of the impact of those inconsistencies does not demonstrate that false evidence was used at trial.

Claim Five

Petitioner's fifth claim is that his rights under *Miranda v. Arizona* (1966) 384 U.S. 436 were violated by the police when they interrogated him. A claimed *Miranda* violation can be raised in a habeas corpus petition where it relies on evidence outside the record. (*In re Sakarias* (2005) 35 Cal.4th 140, 169-170.) Petitioner's claim relies largely on the record of the proceedings at trial, and can be litigated on appeal. This Court therefore lacks jurisdiction to consider the claim. (*In re Carpenter, supra,* 9 Cal.4th at pp. 645-646.)

Petitioner also alleges that the evidence showing a *Miranda* violation had been altered, but he does not explain what the "unaltered" evidence would have shown. He instead states that he did not feel free to leave. In the same claim, however, he states

that the "recording shows defendant tried to leave and end interrogation, but was coersed [sic] through locked facility, and presence of several officers showing he was under arrest." Petitioner's own allegations demonstrate that any *Miranda* violation could have been supported (whether successfully or not, a question the Court does not consider) by the evidence before the trial court and, now, before the court of appeal. His conclusory allegations about "altered" evidence do not warrant habeas corpus relief. (*People v. Duvall, supra,* 9 Cal.4th at p. 474; *In re Swain, supra,* 34 Cal.2d at p. 304.)

Claim Six

Petitioner's sixth claim is that the evidence introduced at trial was insufficient to prove his guilt. That claim is not cognizable in a habeas corpus petition. (*In re Lindley* (1947) 29 Cal.2d 709, 723.)

Claim Seven

Petitioner's seventh claim is that his counsel "conspired to alter evidence presented before the jury." His claim is closely related to his second and fifth claims, in which he alleges that the recording of his interview was altered, and fails for the same reasons. Throughout the petition, petitioner places an extraordinary amount of significance on the fact that officers believed petitioner possessed a blue Pinto, while one of the witnesses saw a silver Pinto. Given the DNA evidence linking petitioner to the murder, and the fact that he admitted possessing a blue Pinto, there is no basis to conclude that further efforts to show what the officers did or did not believe regarding the color of his car would have been reasonably likely to change the trial's outcome. Because he has not shown how a more complete recording could have changed the trial's outcome, or how trial counsel's actions could have obtained such a recording, his claim fails. (*Strickland v. Washington, supra,* 466 U.S. at p. 697.) Furthermore, petitioner's conclusory allegations about his counsel conspiring to alter evidence do not warrant

habeas corpus relief. (*People v. Duvall*, *supra*, 9 Cal.4th at p. 474; *In re Swain*, *supra*, 34 Cal.2d at p. 304.)

Claim Eight

Petitioner also claims his trial counsel was ineffective because he failed to interview witnesses and did not adequately investigate the case. His claim fails because petitioner has not shown what further investigation would have revealed, or how it would have changed the trial's outcome. (*In re Hardy*, *supra*, 41 Cal.4th at p. 1025.)

Claim Nine

Petitioner's ninth claim alleges that his trial counsel was ineffective for failing to make various objections or impeach various witnesses in particular ways.

Respondent has alleged, and petitioner does not dispute, that each of the witnesses testified at trial. Whether those witnesses could have been asked additional questions is beside the point. It bears emphasizing that counsel's performance is presumed to be competent. (*People v. Lewis* (2001) 25 Cal.4th 610, 674.) Petitioner has not overcome that presumption. A failure to object to even inadmissible evidence is ultimately a tactical decision. (*People v. Rodrigues* (1994) 8 Cal.4th 1060, 1121.) Here, petitioner has not shown that any objections would have even been successful, and attorney was not required to raise objections which would have been futile. (*People v. Gutierrez* (2009) 45 Cal.4th 789, 804-805.) Ultimately, the criticisms levied by petitioner go to the particular tactical decisions made by trial counsel over the course of the trial. Given the "great deference" afforded to those tactical decisions (*People v. Farnam* (2002) 28 Cal.4th 107, 148), petitioner has not established he received ineffective assistance of counsel.

There are various other allegations in petitioner's ninth claim, such as a "crime that was investigated by Detective Carr of the S.B.P.D.," but they are entirely conclusory, and not pled with sufficient particularity to warrant habeas corpus relief. (*People v.*

1 *Duvall, supra*, 9 Cal.4th at p. 474; *In re Swain, supra*, 34 Cal.2d at p. 304.) If the crime
2 in question is referred to somewhere in the voluminous pleadings submitted by
3 petitioner, the Court has not located it. If it is a reference to the alleged confession of a
4 third party to the crime, then for the reasons set forth above regarding petitioner's third
5 claim, counsel was not ineffective in his efforts to bring that evidence before the jury. If
6 it is another crime, then then perhaps it is sufficient to note that "Judges are not like
7 pigs, hunting for truffles buried in briefs." (*United States v. Dunkel* (7th Cir. 1991) 927
8 F.2d 955, 956.)

9 **Claim Ten**

10 Petitioner's tenth claim is that the trial court "expressed prejudicial behavior" in
11 denying petitioner's motion for a new trial and violated his right to represent himself.
12 The claim relies entirely on the record of the proceedings at trial, and can be litigated on
13 appeal. This Court therefore lacks jurisdiction to consider it. (*In re Carpenter, supra*, 9
14 Cal.4th at pp. 645-646.)

15 **Claim Eleven**

16 The eleventh claim in the petition alleges that petitioner's rights were violated
17 when the trial court denied his motion raised pursuant to *People v. Marsden* (1970) 2
18 Cal.3d 118. The claim relies entirely on the record of the proceedings at trial, and can be
19 litigated on appeal. This Court therefore lacks jurisdiction to consider it. (*In re*
20 *Carpenter, supra*, 9 Cal.4th at pp. 645-646.)

21 **Claim Twelve**

22 The final claim in the petition alleges that petitioner was denied his right to be
23 present at every critical stage of the proceedings. The claim relies entirely on the record
24 of the proceedings at trial, and can be litigated on appeal. This Court therefore lacks
25 jurisdiction to consider it. (*In re Carpenter, supra*, 9 Cal.4th at pp. 645-646.)

26

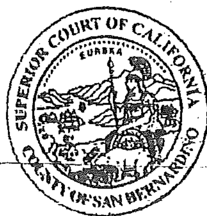
CONCLUSION

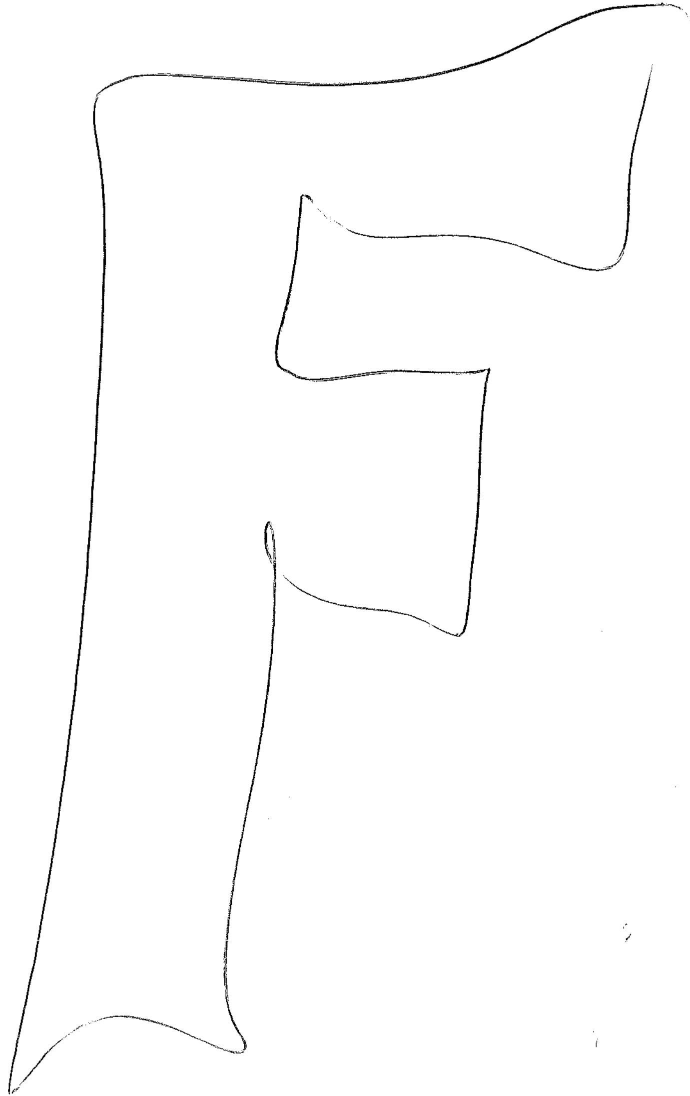
Petitioner's crime was committed roughly twenty-five years before his trial. That gap in time appears to have led to some gaps in the recollection of some witnesses. There is nothing remarkable about that fact, nor does it demonstrate that any of those witnesses lied, or that their testimony was inherently unreliable. The many attacks on trial counsel fail to recognize what the United States Supreme Court observed nearly thirty years ago: "There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way." (*Strickland v. Washington, supra,* 466 U.S. at p. 689.) It may be that there were errors committed at petitioner's trial – the court of appeal will make that determination soon enough. But in the context of those claims which are properly before this Court, petitioner has not demonstrated that to be so.

For the foregoing reasons, the petition for writ of habeas corpus is DENIED.

Dated: July 12, 2013

Judge Kyle Brodie





ATTACHMENTS

ATTACHMENT F

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COUNTY OF SAN BERNARDINO

Office of the District Attorney
Appellate Services Unit

October 19, 2012

The Hon. Kyle S. Brodie
Department S-24
San Bernardino County Superior Court
351 North Arrowhead Avenue
San Bernardino, California, 92415-0240

Re: *In re John Henry Yablonsky*
WHCSS1200311
(Case No. FVI900518)

Your Honor:

In 2011, a Victorville jury convicted Petitioner of the 1985 murder of Rita Mabel Cobb in Lucerne Valley. After his motion for a new trial was denied, Mr. Yablonsky was sentenced in February 2012 to life in state prison without the possibility of parole.

Wasting little time, Mr. Yablonsky filed both an appeal of his conviction at trial and the instant petition for Writ of Habeas Corpus. As the former is far from resolution, and indeed the Appellant's Opening Brief has only very recently been filed, this Court indicated that it lacked the ability to fully evaluate each of the claims brought forth here. Accordingly, Your Honor sought an informal response addressing only a limited number of the issues Mr. Yablonsky has raised.

None of his claims are adequately supported, and most are plainly false. The following should illustrate that the great majority of Petitioner's arguments depend on exaggerations or plain mischaracterizations of the actual case history. In reality, the trial record broadly demonstrates that Petitioner was treated fairly and his rights well-protected throughout, including by the efforts of the attorney he now challenges for competence,

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David Sanders. He was not convicted of murder on the basis of a conspiracy, a lie or a whim, but rather by the overwhelming impact of DNA evidence that linked him directly to the crime scene, and which he failed entirely to explain when interviewed by police.

Petitioner has, accordingly, not supported his claims with evidence, clearly because no such evidence exists. His petition should therefore be denied.

FACTUAL AND PROCEDURAL HISTORY[1]

Rita Cobb was found murdered in her home in desert community of Lucerne Valley on September 23, 1985. Though many suspects were apparently identified and investigated, the crime went unsolved until 2009; when a DNA "hit" linked Petitioner directly to the crime. He was contacted, interviewed and arrested on March 8, 2009, and charged by complaint and information with first-degree murder, with the special circumstance that the killing took place during a rape.

After various failed motions, including an attempt to recuse the district attorney's office, trial commenced in Victorville in January 2011. On Feb. 3, 2011, the jury conviced Mr. Yablonsky as charged. Before sentencing, Petitioner brought an unsuccessful *Marsden* motion, then a motion for a new trial alleging that his trial attorney, Deputy Public Defender Dave Sanders, had been ineffective. The motion was denied, and Mr. Yablonsky was eventually sentenced to life without the possibility of parole on Feb. 24, 2012.

Petitioner timely filed an appeal, now pending in the Court of Appeal, Fourth District, Division 2 under case no. E055840. The Appellant's Opening Brief, prepared by appointed attorney Richard A. Levy, was filed October 9, 2012.[2]

Meanwhile, Petitioner filed the instant petition *in pro per* on June 21, 2012. He subsequently delivered a second, very similar petition on August

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1 We respectfully ask that the court take judicial notice of its file and all relevant documents it may contain, including the minute orders generated in this case, and of the various documents provided as exhibits to Mr. Yablonsky's Petition(s) to the extent we make reference to them.

2 We have received a copy of that brief and can provide it to the court if desired. We did not attach it as an exhibit due to its length (some 142 pages) and general lack of overlap with this Petition. (See Discussion, § II, *post.*)

29c

9, 2012, but Your Honor determined that it should not be considered with the first one pending, and also declined to view it as a proper amendment. That petition has therefore been categorized as "received," but not "filed."

Following review of the June 21 petition, the court by order of August 20, 2012, sought the People's informal response to the allegations made in five specific arguments for relief. The court specifically expressed that the remaining "Grounds" (seven of the 12 contained in the petition) were either procedurally barred or, in the court's judgment, did not state a *prima facie* case for relief under habeas corpus even if proved.

Your Honor kindly granted the People's request for an extension of time to respond, setting a new deadline of October 19, 2012.

SUMMARY OF TRIAL PROCEEDINGS

Motions in limine. As further detailed *post*, the court addressed several major issues in pretrial motions.

First, it generally excluded the defense's proposed evidence of third-party liability, most notably a 1988 "We-Tip" (anonymous phone call) report to law enforcement that a man named George Randolph, aka William Backhoff, had at that time recently bragged of committing the murder of Rita Cobb. (See generally Reporter's Transcript [hereafter RT], 8-25.) In the course of the same discussion, the court also curtailed the proposed use of statements by now-deceased persons relating to the victim's alleged drinking habits and sexual character. (RT 7-13, 16-24.) Finally, after extensive discussion, Judge Tomberlin ruled that the People were entitled to bring in evidence of two prior claimed, but uncharged, sexual offenses, which had taken place in 1982 and 1996. (RT 77-96.) DDA John Thomas had earlier indicated that he did not intend to use this evidence in his case in chief, but rather in rebuttal if Mr. Yablonsky were to testify. (RT 27.)

Trial evidence. The victim's son, Daryl Kraemer (in places spelled as Darryl), recounted that he and his mother were originally from Canada. He stated that they had a good relationship, though he acknowledged they had occasional bad times and arguments. (RT 104.) He had lived with her in Lucerne Valley at one point in time. (*Id.*) He stated that he had not seen his mother for approximately one to one-and-a-half months before her death. He seemed to recall that she had left him a telephone message that somewhat alarmed him, and said he had tried to reach her by telephone all weekend prior to discovering her body. (RT 108-109, 142.) On Monday (September 23, 1985) he learned that she had not come to work, so he drove

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to her Lucerne Valley home from his residence in Phelan. He was accompanied by girlfriend and future wife, Marta. (RT 109.)

Inside Kraemer quickly discovered that the home was extremely warm, which was explained by the fact that the heater was on. The drapes were closed, which was unusual, and an awful odor filled the home. (RT 113-114.) He entered his mother's bedroom and discovered her body. She appeared to have been dead for "a period of time." He stated that he then went into shock and broke down crying, believing she had killed herself, because she had been lonely and despondent. (RT 118-120.) After Marta briefly viewed the body, however, she told him it was "more than that," and that it looked like "someody had been there." (RT 121.) The house did not appear to be ransacked or otherwise disturbed. (RT 125-126.) Kraemer was not familiar with Petitioner, but said he had known his father, George Yablonsky, some years before the murder.

On cross-examination he acknowledged that on the last occasion he had seen his mother, they had argued. He had stayed away from her for a time as a result. (RT 141-142.) He identified a previous boyfriend of his mother's as Fred Bidard. (RT 149.) The court sustained an objection to defense questioning about his knowledge of other men she might have dated, though when the question was later rephrased he stated that the only boyfriend he recalled was Bidard. (RT 150-152.) Kraemer agreed that his mother "liked to date," but he was unsure how regularly she did so. (RT 152.)

Marta Kraemer also testified that the house was very warm and the drapes were shut, which she had never seen before. The unpleasant odor was overpowering, such that she could scarcely notice anything else. (RT 169-170.) Though Darryl assumed suicide, she recalled seeing the position of the body and being sure that Rita had not killed herself. (RT 175-177.) She observed Rita's dentures on the pillow. (RT 178.) She called the authorities as Darryl went to try to locate the victim's friend John Sullivan. (RT 183-186.) The room did not show any signs of an altercation having occurred. (RT 191.)

On defense questioning Marta said she felt from the positioning of the body that "someone had sex with her." (RT 195.) She had no personal recall of Mr. Yablonsky or his father. She related to police that Rita had had a boyfriend named Fred. (RT 197.) The court sustained objections to questioning about other possible boyfriends. (RT 198.)

Lucerne Valley resident Diane Flagg testified that she had "known of" the victim and had stopped by the property after seeing numerous police

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cars on the day Rita's body was discovered. (RT 200-201.) She stated that she had seen a hitchhiker near Rita's property around that time, and described him. (RT 201-202.) She further indicated that she had seen many cars at the property on previous occasions, including a Ford Pinto. Though she reported at the time it was silver, it was "a possibility" that it was actually a different color. (RT 204.)

Retired San Bernardino County Sheriff sergeant Roger McCoy testified that he had responded to the scene as a homicide detective. There he "did the crime scene," which involved evidence recovery and various physical measurements and diagrams. (RT 215-217.) Among other items of evidence, he found two bloodstains in the hallway. (RT 228.) He then observed the victim's nude body, which showed moderate decomposition, and noted a white cloth that was covering the victim's face and could possibly have been used as a gag. (RT 232-233.) He agreed that the house, while somewhat disorganized, did not appear to have been ransacked. (RT 237-238.) There was a wire coat hanger wrapped tightly around the victim's neck, which was the apparent murder weapon. (RT 238.) The victim was wearing a bracelet and a watch. There were no signs of forced entry to the premises, nor of theft or burglary. (RT 242.)

Marshall Franey, a retired deputy coroner, also respnded to the murder scene. He likewise described finding the body completely nude, laying at an angle with legs wide apart. He found tissue paper and shorts around the face and mouth. (RT 438.) Based on his training and experience with decomposition, he testified that the body had been there at least two days, and possibly three or longer, based on "average" conditions, though excess heat could possibly cause faster-than-usual decomposition. (RT 440.) This estimate was consistent with a Friday-night time of death.

Franey further testified that heat is the biggest factor in decomposition, and that during decomposition items stuffed in a victim's mouth would be pushed outward by the various gases associated with the bloating of the body. (RT 448.) He described a discoloration to the victim's knee, which might have been bruising from a hand. (RT 443.) The wire coathanger was wrapped tightly around the victim's neck. He otherwise saw no injuries. (RT 445-446.) Fluids present on the bedding were consistent with the body having been there for a "period of time," which was another indication the corpse had not been moved after death. (RT 447.)

Forensic pathologist Dr. George Saukel conducted Rita Cobb's autopsy. Based in part on entomological analysis, he concluded Rita had probably been dead "at least two days" before being found. (RT 464.) She died of some type of strangulation, mostly or entirely by ligature, as

illustrated by injuries to the hyoid, the upper and lower cornu, and the cricoid cartilage. (RT 475-477.) The length of struggle would be hard to determine.

Saukel observed no genital injuries, but agreed that the lack of such injuries does not rule out the possibility of sexual assault. (RT 467, 470.) His analysis of the vaginal swab confirmed that Rita had engaged in sex prior to death, but he could not say whether it took place immediately before she died, or some earlier point. (RT 471.) However, he confirmed that the quantity of sperm in the vagina would decline over time, particularly if the woman were to walk around. Due to simple gravity, semen should "commonly," though not "necessarily," appear in the underwear in that situation. (RT 473, 486.)

Saukel further determined that if the body had not been in the position where it was found at time of death, it had been placed there within an hour or two of death. He opined that the sex had taken place "within a day to a day and a half" of Rita's death, and indeed could have been "post-mortem." (RT 489-491.)

Criminalist Donald Jones described the process of DNA analysis by polymerase chain reaction (PCR), which he said enables the use of very small samples. (RT 249.) Jones, who had also responded to the crime scene, described numerous items found there, including a watchband pin found near the victim's head and a pair of panties on the floor, and described taking a "vaginal swab" from the victim for purposes of analysis. (RT 254-260.) He also collected and swabbed the bloodstains in the hallway.

He testified that the sheriff's crime lab began criminal DNA analysis in 1992, and that in 1999[3] he revisited the samples he had taken at the scene and analyzed them using PCR. (RT 265-266.) He determined through this process that the blood in question was almost certainly the victim's own. (RT 266-267.) He then analyzed the vaginal swabs and found "sperm cells," indicating a male donor, as well as non-sperm cells almost certainly associated with the victim. Jones was then able to separate the "sperm" and "non-sperm" portions of the sample for later analysis. (RT 267-270.) He also collected and tested samples cut from a felt pad that had been underneath the victim's body, and again found and separated "sperm" and "non-sperm" fractions. (RT 283-284.) Jones also testified that the recovered panties contained no semen. (RT 287.)

3 Jones also refers at points in his testimony to having conducted portions of the analysis in 1997.

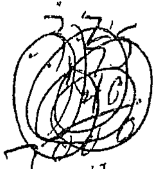
347.) Siewertsen confirmed on cross-examination that there was no sign of any other male profile in the sample. (RT 351.)

Criminalist Susan Anderson said she served as the crime laboratory's coordinator for CODIS, the DNA database maintained by the FBI. (RT 355.) Anderson explained that the vaginal-swab sample profile had been added to CODIS in 2003, and that at some point she was advised of a "hit" within the CODIS system to a profile from John Yablonsky. (RT 381.) This apparently occurred in late 2008. (RT 378.) Her laboratory then asked for a second "reference sample" from him, which was obtained following his arrest on March 8, 2009. This was done to confirm that the "hit" was accurate. (RT 381.) She analyzed this sample compared the result to the profiles obtained from two locations on the felt pad and the sperm fraction of the vaginal swab. Yablonsky's sample matched the sperm fraction across all locations, with random-match odds of trillions to one against. (RT 362-371.) She also confirmed that the "non-sperm fraction" matched Rita Cobb. The presence of female DNA in the semen stain on the felt pad required either that the female had first deposited DNA and the semen had happened to land atop it, or that the semen had been deposited in the female and then drained out. (RT 373.) Anderson said there had been approximately 1.1 million profiles in CODIS in late 2008, and Yablonsky's was the only "hit" as a match.

Francesca Drake (later Sullivan) and John Sullivan had hosted a small get-together at their home on Friday, September 20. Rita was present and drinking. Other attendees included Francesca's brother Bruce Nash, his girlfriend Cynthia, and, apparently, an individual named Joe Saunders. Francesca recalled Rita leaving somewhere between 10 and 11 o'clock, but agreed that her original interview estimate of 11:30 p.m. would likely have been more reliable. (RT 398-399.)

John Sullivan confirmed the party had been on Friday night, not Saturday night as once reported. Rita had attended, and he recalled her bringing and consuming a partial bottle of bourbon. He recalled her arriving around 8:00 p.m. and staying at least two or two-and-a-half hours, leaving somewhere in the 10:00-10:30 range. (RT 426-428.) He said he himself had drunk just a couple of beers, but that Rita had finished the bourbon and asked what else he had, at which time he provided her some "white lightning" that he had been given by a friend. (RT 432-433.)

Sullivan recalled Rita leaving in her own vehicle, but that Bruce Nash and Cynthia helped her reach home. He asserted that a statement in original police reports saying he had gone to bed was inaccurate, and that he was in fact still awake when they left. (RT 427-428.) Under cross-examination he said that he "knew" Bruce had driven Rita home, with



Cynthia following, because he believed he had seen them get in their cars. He did not recall Joe Saunders being present. (RT 432.)

Bruce Nash recalled attending the small party and seeing Rita. He apparently arrived between 7:30 and 7:45. Though he did not himself drink, he recalled that Francesca, John and Rita were all drinking hard liquor. In 1985 he recalled that Rita drank Jim Beam bourbon that night. (RT 408-411.) Rita appeared "fairly intoxicated," as were John and Francesca. In 1985 he told the police he and Cynthia had left about 9:45. He indicated that today he could not recall whether Rita had left before or after he departed. He recalled offering Rita a ride home, but said she declined it. (RT 412-413.)

On cross-examination Nash indicated that he remembered Joe Saunders, but had no recall of him being at the gathering. (RT 414.) He said he offered Rita a ride because he didn't think it was safe for her to drive. She seemed to be "more intoxicated than usual." (RT 415.) Defense counsel then sought to elicit a reported statement by Rita that she intended to go to a bar, but the court barred this as unreliable hearsay. (RT 415-416.) Nash said he did not remember whether he discussed the possibility of following her home. (RT 416-417.) On redirect, he naturally agreed that his recall of the details in 1985 was superior to his recollection when interviewed by police in 2009, and the details he provided in 1985 were likely more accurate. (RT 418-419.)

Finally, Detective Robert Alexander testified that he and his partner, Det. Greg Myler, had contacted and interviewed Petitioner on March 8, 2009, following the DNA "hit" linking him to the murder. The jury then heard and saw the interview.

In the interview, which was recorded partially by audio and partially in video, Mr. Yablonsky acknowledged familiarity with Rita Cobb, telling the detectives he had rented the "back house" on her property earlier in 1985. (Interview Transcript [IT] 4.) He had heard she was murdered, and mentioned her contacts with a family of "trouble-makers," implying that one of two brothers could be the guilty party. He said that after he and his wife moved out of the residence, he saw Rita periodically in the area, and he came over to her residence occasionally to do repairs. (IT 9.) He described Rita as "very polite, proper." (IT 12.) He said he "heard so many things about how she had gotten killed," and thought she'd been killed "with a nylon or something." (IT 15.)

Petitioner denied any closer contact with Rita, saying he "didn't party with her." (IT 27-28.) He said he thought Rita and his father, George

Yablonsky, had "traveled in the same circle." (IT 32.) He agreed that Rita did drink and go to bars, but denied he drank with her. (IT 33.) Here, and on many later occasions, he denied any sexual contact with Rita. (IT 40.) He also denied any physical altercations, kissing, or other contact. (IT 43-44.) He acknowledged having a key to Rita' shouse. (IT 44.) Asked about vehicles, he cited a Toyota pickup truck, then admitted he also possessed a "dark blue" Ford Pinto. Later he explained that he bought the vehicle to please his wife, and sold it when they split up. (IT 29-30, 85-86.)

At the detectives' urging, Mr. Yablonsky accompanied them from his home to the Signal Hill police station, where the interview continued. (IT 51.) At that point he perceived that he was a suspect in the crime, and soon stated that he was "scared to death here." (IT 51, 59.) He indicated he had heard from his father that Rita's son (Daryl Kraemer) had been arrested for the murder, but the detectives explained that was untrue. (IT 60.)

After providing much of his life history, including some years in the U.S. Army, Petitioner described coming to live on Rita's property with his wife. (The two were subsequently divorced.) However, he had moved from the property about April of that year to another nearby location. (IT 79-82.) He again said Rita was very nice, and that maybe she drank but he was not really sure. (IT 82.) He stated eventually that he had been in Rita's house only to pay rent, and on a couple of occasions to fix things. (IT 97.) At length the detectives made clear to him they suspected him of the murder, and implied they had his fingerprints. Although he had repeatedly denied any relationship, he ultimately stated that he was "not saying I wasn't around this lady," but denied that he killed her. (IT 110.) He continued to deny any involvement after being confronted with the DNA link. (IT 112-113.) The interview ended with Petitioner's arrest for the murder.

Alexander acknowledged that he had told various falsehoods to Mr. Yablonsky during the interview, consistent with standard techniques. (RT 508, 512-513.) In cross-examination he confirmed that he did not in fact have evidence of Petitioner's fingerprints at the scene, then stated that he was "not sure if there were any fingerprints developed" from the house. Responding to a followup question, he stated that he had probably read the fingerprint report, but did not "remember all the names." (RT 518.)

Notable court rulings. As noted, the trial court consistently declined to permit evidence of the victim's dating and lifestyle habits, and vague evidence of possible third-party involvement. The latter issue returned during a break in the testimony by criminalist Jones, when DDA Thomas placed on the record that he had taken note of another unsolved murder, of a 63-year-old woman named Helen Brooks. That murder featured a DNA

profile different from John Yablonsky's (see further discussion, § III(B)(2), *post*) but it had occurred fairly near in time and location to Rita Cobb's murder. Accordingly, Thomas told the court that he had opened his office's file on the case to the defense, and that Sanders had spent substantial time reviewing it.

Sanders then noted that the cases had some similarities, and that the sheriff's department had initially viewed them as likely committed by the same person. (RT 273-275.) He went on to indicate that because of those similarities, he wished to cross-examine the criminalist and others regarding Brooks's case. The People opposed, maintaining that nothing tangible linked the two cases and that Evidence Code 352 should bar evidence of the Brooks murder. The court agreed and excluded the evidence. (RT 275-276.)

The following day Sanders raised the topic of third-party liability again, based on the Brooks case. DDA Thomas continued to oppose all such evidence, noting that mere motive and opportunity was not enough. The court again excluded it under § 352. (RT 277-278.) Attorney Sanders then sought again to bring out evidence of "third party male guests" at the home. DDA Thomas opposed it as improper character evidence, and the court agreed. (RT 279.)

Following the playing of the interview with Mr. Yablonsky, attorney Sanders asked for a jury instruction to disregard a portion in which the detectives told Petitioner they could "see how it tore his stomach up" to look at a picture of Rita Cobb. Sanders indicated that he and DDA Thomas had agreed to remove that as a part of the redactions of the interview, but that was the sole change than had not been made. Judge Tomberlin declined to give the instruction, indicating that he himself would not have insisted on redacting that portion of the conversation, since the jury would already be aware the detectives were not entirely truthful in their comments to Mr. Yablonsky. Attorney Sanders stated that the redactions were otherwise "very well done." (RT 527-530.)

Arguments. Both sides made detailed and articulate closing arguments. DDA Thomas emphasized that the DNA proved Mr. Yablonsky had in fact had sexual relations with Ms. Cobb, that the other facts pointed to the murder being concurrent with that sex, and that his failure to acknolwedge the sexual contact showed consciousness of his own guilt. Mr. Sanders emphasized the circumstantial nature of the case, questioned why some further items of evidence were not tested for DNA, and proposed numerous alternative scenarios that could account for the evidence, including Petitioner's denial of having sex with Rita Cobb. However, he stated that he was not contending that Mr. Yablonsky's DNA was not at the

scene. It might have been, he allowed, but "that doesn't mean he killed her." He went on to suggest that Joe Saunders was the culpable person, even though no evidence to that effect had been allowed at trial. Mr. Thomas responded in rebuttal that the defense sought to demand the case be proved beyond all *possible* doubt, rather than *reasonable* doubt, and emphasized the unreasonable aspects of these alternative explanations.

After 2-3 days of deliberation, the jury indicated it had reached a deadlock. In conversation with the court, however, the jury foreman indicated that the positions of the jurors had been shifting by the day, and rejected the suggestion that further discussion was hopeless. (RT 668-673.) Accordingly, Judge Tomberlin ordered the group to adjourn for the day, but return the next morning for more deliberations. That next afternoon, the jury reached its verdict, finding Petitioner guilty of first-degree murder and the special circumstance true.

Petitioner subsequently brought and lost a post-conviction *Marsden* motion. He followed with a motion for new trial, put forth by a new attorney, alleging ineffective assistance of counsel. That was denied by the trial court. After further delays, he was sentenced to a life term on Feb. 24, 2012.

DISCUSSION

I.
A HABEAS CORPUS PETITIONER MUST PLEAD AND PROVE SPECIFIC GROUNDS FOR RELIEF

One who petitions for habeas corpus relief has a two-part obligation: he or she must first plead, and then prove with evidence, the existence of specific grounds for relief. (*In re Martinez* (2009) 46 Cal.4th 945, 955; *People v. Duvall* (1995) 9 Cal.4th 464, 474 [original italics].) Such a petition has the effect of attacking an otherwise-final judgment, and all presumptions favor the truth, accuracy and fairness of the conviction and sentence. These presumptions protect the strong social interest in the finality of judgments, and do not offend due process. (*People v. Gonzalez* (1990) 51 Cal.3d 1179, 1260.) One seeking the writ thus carries the burden of alleging and proving all the facts upon which he or she relies in attempting to overturn the judgment. (*In re Lawler* (1979) 23 Cal.3d 190, 195.)

The petition must first state a *prima facie* case for relief. This must be grounded in *specific facts*, rather than mere claims and assertions. (*People v. Karis* (1988) 46 Cal.3d 612, 656; *In re Swain* (1949) 34 Cal. 2d 300; *see also People v. Cooper* (1992) 7 Cal.App.4th 593, 597.) Then a petitioner must

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prove the alleged facts by a preponderance of the evidence. (*In re Viscotti* (1996) 14 Cal.4th 325, 351; *see also People v. Cudjo* (1999) 20 Cal.4th 673, 687.) If these burdens go unmet, the petition must be denied.

II.
THE PETITION IS TIMELY, AND GENERALLY AVOIDS DUPLICATING ISSUES RAISED ON APPEAL

We first note that this petition easily meets the requirements of timeliness, having been filed less than six months after judgment was finally pronounced. Having now had the opportunity to read the Appellant's Opening Brief in his pending appeal, we can also affirm that Mr. Yablonsky has for the most part properly avoided duplication of issues. Many general topics are the subject of argument both here and on appeal, but overall the appeal is targeted much more narrowly to legal arguments arising from specific court rulings and trial events. The appeal does not raise claims of ineffective assistance of counsel, appropriately leaving that question for resolution here.

III.
PETITIONER HAS PROVEN NONE OF THE CLAIMS IN ISSUE, AND THUS HAS NO BASIS FOR HABEAS RELIEF

Your Honor sought responses pertaining to five of the twelve Grounds, or Claims, advanced in the habeas corpus petition. Each claim fails entirely to support his demand for relief. We will address them in turn.

A. THE DISTRICT ATTORNEY DID USE MR. YABLONSKY'S NAME AND LIKENESS FOR CAMPAIGN PURPOSES. HOWEVER, THIS ISSUE AND ANY POTENTIAL PREJUDICE WAS FULLY CONSIDERED AND ADDRESSED BEFORE TRIAL BEGAN.

In Ground 1 (Claim One) of the Petition, Mr. Yablonsky seeks relief on the grounds of "[p]rosecutor misconduct," due process, jury tampering and the 14th Amendment to the U.S. Constitution because the county's elected district attorney, Michael Ramos, "used my case, name and photo 49 days till my trial in his reelection campaign sent 3 sets to every address in the county within a 7-day time period." TRIAL WAS SCHEDULED FOR OVER 30 DAYS WHEN THE FIRST MAILING WAS MAILED ALREADY!!

The court asked us to determine 1) whether Petitioner's name and likeness were in fact used in campaign materials shortly before his trial began, and 2) whether, if so, the potential impact of this usage was addressed. We

readily confirm that Mr. Yablonsky's image and name were indeed used as he describes, but the potential impact was, indeed, fully addressed.

Exhibit A, as attached to the Petition,[4] appears to be a poorly duplicated but accurate copy of a campaign mailer produced by Mr. Ramos's reelection campaign in 2010, which invoked this case as an example of the office's diligence toward unsolved crimes. (A clearer copy of the document appears on page 398 of the Clerk's Transcript on Appeal.) As the court can see, it does identify Mr. Yablonsky and the murder victim Rita Cobb, and refers to "closure" for the family members of the victim. However, it also clarifies that Petitioner was merely **charged** with the murder, and had not yet gone to trial.

Any potential effects were completely addressed at and prior to trial, in two ways. First, **the issues in question were fully litigated in a pre-trial motion to recuse the district attorney's office**, which was based entirely on the potential prejudicial effects of that flyer of Mr. Yablonsky's rights. The People's written opposition to the motion also directly addressed the mailer, arguing at length that it did not prejudice Mr. Yablonsky's rights or violate any professional norms, and further that since the campaign and election were already some months in the past, the mailer was surely fading from the memories of those persons who had seen it.

The motion was denied by the trial judge, the Hon. John M. Tomberlin, on October 8, 2010. As the mailer was the sole source of contention, that decision necessarily reflects the judge's assessment of its potential importance, and his determination that it created no constitutional problem in the trial to come.

Second, **the topic was discussed during jury selection.** In response to defense attorney Sanders mentioning the compaign mailer, one potential juror stated that she recalled receiving it, but discarded it immediately and remembered nothing of the details. (Voir Dire Transcript [VDT] at pp. 113-114.) A later juror also recalled the mailer and expressed the sense that Mr. Yablonsky thought he was being "shafted," but indicated she could be fair to both sides. (VDT at pp. 165-166.) In response to the court, none of the

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[4] As earlier noted, Mr. Yablonsky sought to file a second, possibly revised petition soon after the instant petition. Per the court's directive we do not concern ourselves with its content, but do note that this second petition contained many more supporting materials than the instant petition. Since it would seem Petitioner has relied on many of these materials for his factual assertions, we thought it would assist the court's resolution of the issues if we considered and noted these sources, even though Mr. Yablonsky has rarely made direct citation to them. By so doing, of course, we do not imply that we are considering the second petition on its substance.

remaining prospective jurors called forward for questioning reported having seen the mailer, and neither of the two individuals who did recall the mailer served on the jury.

The court's denial of recusal, and the topic's brief mention during *voir dire*, is among the trial issues being raised on appeal. For purposes of this petition, however, it is clear that any potential negative impact on Petitioner's rights was indeed "addressed" by the trial judge well before petitioner was placed in jeopardy here.

B. PETITIONER'S ATTORNEY WAS NOT INEFFECTIVE IN REGARD TO THE DNA EVIDENCE PRESENTED, AND HE ATTEMPTED TO USE THE BACKHOFF "CONFESSION" BUT WAS DENIED PERMISSION BY THE COURT.

Under Ground 3 (Claim 3) of the Petition, Mr. Yablonsky argues that his lawyer "failed to investigate all areas of case in support of a defense, test evidence or submit reports in support of defense." Claiming there "was several DNAs from this crime scene and several suspects," he contends that his attorney "failed to question, test or investigate into 'any' defense, strategies or case preparations." He goes to allege that "[t]here was a confession with that person's DNA on the crime scene as well as anothers [sic] scene. But Sanders failed to motion or submit to hire specialist to test these DNA's or even defendants [sic] DNA. There was a red hair with a root which holds DNA possibilities of yet another suspect . . . Defendants hair is blonde. The red hair was found on body and man that confessed his DNA at scene his hair was red."

This court sought a response to two questions: 1) whether or not Mr. Sanders' effectiveness regarding the issue of DNA testing was "addressed by the trial court," and 2) whether or not the alleged confession of a "William Back[h]off" (or any other person) to the murder of Rita Cobb was addressed.

1. COUNSEL'S TREATMENT OF THE DNA EVIDENCE WAS ENTIRELY REASONABLE THROUGHOUT TRIAL.

A defendant carries the burden of proving a claim that he was ineffectively assisted by counsel. This requires him to meet the well-established two-part test outlined in *Strickland v. Washington* (1984) 466 U.S. 668, and adopted by state law: a defendant must establish **deficient performance** and **prejudice**. (*People v. Williams* (1988) 44 Cal.3d 883, 937.)

The defendant must first show that his attorney committed mistakes so severe that he or she was, in essence, not functioning as the "counsel" guaranteed by the Sixth Amendment. (*Strickland*, *supra*, at p. 687.) Second, he

recovered samples to a sample provided years later by Yablonsky after an unrelated arrest, and confirmed that they were a perfect match.

Attorney Sanders cross-examined criminalist Jones in great detail, with his questions and their answers covering some 25 pages of the trial transcript. This included numerous questions about the viability of obtaining DNA from specific surfaces, collection techniques, and which crime scene items and areas were or were not tested. He went on to inquire at some length about the procedures for retaining and transporting items potentially carrying DNA, the factors that cause a risk of degradation of a sample, and about the relative "hardiness" of sperm cells as opposed to other cells.

These efforts clearly show an engaged and effective attorney, but also illustrate a longer-term plan, wherein Mr. Sanders argued during his closing statement that the police were derelict or worse for failing to obtain DNA from various other items and sources at the scene, including the murder weapon and the watch-pin. This chain of actions certainly does not amount to ineffective assistance of counsel.

Sanders cross-examined Siewertsen more briefly, but the bulk of her evidence was a foundational explanation of DNA testing in general, and there was nothing to suggest anything controversial about her methods or process of analysis. Finally, he cross-examined Susan Anderson quickly but with strong purpose, seeking to cast doubt on the Crime Lab's methodology and reliance upon a computerized statistical analysis. (RT at pp. 374-376.) In no sense did his questioning lack direction or relevance, and in neither case did an evidentiary conflict or ambiguity appear.

Petitioner further suggests that he received ineffective assistance because the public defender's office declined to hire its own DNA expert. Per the Motion for New Trial filed by attorney N. Charles Smith on Mr. Yablonsky's behalf, Mr. Sanders and his office did consider calling such a witness, but declined upon learning it would cost an estimated $3,300. Attorney Smith then contends that because the potential sentence was so severe, the public defender's office should have treated the cost as reasonable and hired Mr. Kern.

That claim was tacitly rejected by the court when the new trial motion was denied, and correctly so. While a court may direct the county, through its public defender, to pay for the hiring of an expert witness under appropriate circumstances (Government Code § 29602), counsel is constitutionally ineffective only when a defendant is *prejudiced* by deficient performance. DNA science is firmly established, and each expert testified that the tests were performed in accord with proper procedure and without abnormality or complication. (RT 282, 329-330, 362.)

This shows that there was no apparent point of fact that any expert had a likelihood of countermanding, and thus no reason to expect a different outcome if a defense DNA expert were to testify. And while the public defender was certainly free to ask the court to bear the cost, Petitioner provides nothing to suggest any such attempt had a serious chance of success.

2. COUNSEL ATTEMPTED TO OFFER EVIDENCE OF "WILLIAM BACKHOFF"'S CONFESSION, BUT IT WAS EXCLUDED BY THE COURT; PETITIONER HAS NOT SHOWN THAT HIS ATTORNEY ARGUED INADEQUATELY FOR ITS ADMISSION.

By way of pretrial motion, Attorney Sanders did indeed seek to introduce evidence, in the form of a "We-Tip" report made anonymously to law enforcement in 1988, that a man calling himself William Backhoff had publicly boasted that he had murdered Rita Cobb.

According to a 2005 police report by Sgt. T. Bradford of the San Bernardino County Sheriff's Department, provided by Mr. Yablonsky (see footnote 3, *supra*), William Backhoff was the pseudonym of an individual named George Randolph, who worked in the capacity of Deputy Coroner for San Bernardino County. Backhoff had demonstrated occasional "bizarre" behavior at some crime scenes, and was rumored to have a disturbing interest in postmortem photographs of murdered women. That report indicates that Backhoff had been considered as a suspect in both the Rita Cobb and Helen Brooks murders. An earlier report (Exhibit C-1 of the instant petition) indicated that Randolph, as "Backhoff," contacted police soon after the murder and acknowledged knowing Rita Cobb and having seen her within a few days of her murder, but denied any further knowledge of the crime. Three years later, around the time when the WeTip report appeared, Randolph was apparently re-interviewed by police and again denied involvement.

The 2005 report established that Randolph had died in 1999. At an autopsy following his death (which may have been by suicide), a blood sample was taken for further analysis. Testing then confirmed that Randolph/Backhoff was not the source of the sperm found at *either* murder scene.

Additionally, as DDA Thomas pointed out, Backhoff's statement had indicators of unreliability. First, he supposedly claimed that he "mutilated" Rita Cobb, committing "other crimes" against her after she was dead. To the extent it could still detect abnormalities, the physical examination and autopsy of the body yielded no sign of any such trauma, sexual or otherwise. Also, "Backhoff" claimed that he had picked up Rita Cobb at a local bar, the Zodiac, yet the bartender there, who was familiar with Rita, was interviewed at the time and

denied seeing her in the bar on either the Friday or Saturday night of the weekend when she died. Moreover, he specifically claimed to have raped Ms. Cobb, yet it was Petitioner's semen, and not his own, that was retrieved from her body and the scene.

The motion to introduce the "We-Tip" statement was fully considered by the Court, and rejected. Judge Tomberlin found that although it was not necessarily barred by the hearsay rule, the offered evidence did not have sufficient foundation under a framework outlined by the U.S. Ninth Circuit Court of Appeals. (See generally RT 8-25.) In no way, however, was this outcome attributable to poor work by attorney Sanders, who argued persistently for the statement's relevance.

Moreover, Mr. Yablonsky cannot show prejudice from the outcome. While Backhoff's reported statement was incriminating, no apparent physical evidence linked him to the murder scene, and the claimed DNA connection is not substantiated by the information Petitioner provides.

LIAR DNA CIGARRETS BUTTS!!

Per the 2009 report by Det. Greg Myler, as excerpted by Mr. Yablonsky, a number of potential DNA sources had been recovered at the murder scene, including item B4F, a "standard head hair"; item B4D, a "standard pubic hair"; item A18, a "possible pubic hair from felt pad"; item A17, a "hair from gag"; item A16, "1, 2, 3 hair"; item A5 "1-8 and 1 hair with root"; item A4, "7 slides with hair"; and item A1, "8 slides – 1 with root."

(IAC) ALL DNA POSSIB.

No reference to any of these items appears in the trial transcript, and there is no evidence any were tested for DNA. It is therefore unknown whether any matched Backhoff/Randolph, but in any case Petitioner has not shown that obtaining testing would have altered the outcome of his trial. ALL THE EVIDENCE WAS WITHELD FROM PETITIONER UNTIL AFTER TRIAL

First, he asserts that a specific hair found "on the body" was red, and that this matched Backhoff. However, he offers no useful support for either claim. From the record and the exhibits provided, we see no confirmation that the hair was red,[6] or that this was Backhoff/Randolph's hair color. Additionally, and

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6 The Clerk's Transcript on Appeal does include an entirely handwritten and unsigned report, the final page of "Exhibit C" to the Motion for New Trial prepared by attorney H. Charles Smith, which appears to be a comparison of *two* reddish-brown hairs, apparently under items A-1 and A-5/A-6. These may be the "standard head hair" and "standard pubic hair" recovered as items B4F and B4D. This report appears to have played no role in the trial whatsoever. Interestingly, however, the unsigned analyst of the hairs concluded they could **not** be linked by that analysis, though both were indeed described as reddish

allow it despite hearsay rules, but permit impeachment of it at the same time. (RT 23-24.) CLOSING ARGUEMENTS CANNOT INJECT EVIDENCE, AND MERE MENTION OF SOMEBODY DOES NOT SUFFICE AS EXHAUSTION OF INVESTIGATIVE RESPONSIBILITY!!!

Nonetheless, Sanders *did* elicit testimony that Saunders had been at the Friday-night gathering, and went to argue in closing, at some length, that he could have been the real killer. (RT 623-626.) While we do not see that the presence of his fingerprint on the glass was brought out in evidence, attorney Sanders could reasonably have believed that the court's rulings on the motions in limine had barred him from bringing this fact out. Moreover, any such evidence paled by comparison to the DNA evidence that Mr. Yablonsky, alone, left evidence of sexual contact at the scene. MORE THAN 1 1/2 DAYS BEFORE THIS CRIME, BUT LESS THAN SEVEN DAYS BEFORE!!!

4. SANDERS ALSO TRIED UNSUCCESSFULLY TO OFFER OTHER EVIDENCE OF THIRD-PARTY CULPABILITY.

We must also again emphasize that attorney Sanders made *several* effeorts to introduce third-party evidence. Although he indicated to the court that he lacked evidence of the involvement of any *specific* third person other than Backhoff (RT at p. 15), he tried repeatedly to bring in evidence implying that the killer could have been a different sex partner, largely by offering evidence that Cobb many male acquaintances, "dated" regularly, and may have been sexually promiscuous. The court repeatedly denied the defense permission to explore this area. (RT at 13-24, 197, 279-280.) Sanders also sought, without success, to use the statement of a now-deceased bartender, Barbara O'Roark (or O'Rourke), concerning a past confrontation between the victim and a male named Sam. (RT 9-10.)

Indeed, as the court noted, the defense actually proposed a remarkably wide circle of suspects in this case. (RT 16-17.) Unfortunately for Mr. Yablonsky, that diversity is no help to him here, because it is his own DNA – and only his – that was left at the scene of the killing. Whether he wishes to implicate the late George Randolph, the late Joseph Saunders, the victim's son Daryl Kraemer, the unknown killer of Helen Brooks, the victim's ex-boyfriend Bruce, the mysterious "Sam," or others, the tangible must defeat the hypothetical. The person who *actually* had sex with Ms. Cobb, at the very spot where her nude dead body was found, was Mr. Yablonsky. Speculation about the wide range of people who may have had contact or disputes with the victim, and even occasional suggestive facts, cannot overcome that critical connection. YABLONSKY DNA WAS AT LEAST 1 1/2 DAYS OLDER THAN THIS CRIME.

In sum, Mr. Sanders was not constitutionally ineffective for any of the reasons given under "Ground 3."

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verbatim transcripts were to be used in trial. However, he claims, duing trial he told Sanders that 26 pages were missing from transcripts. He claims that, among other things, this absence "eliminat[ed] the fact that detectives knew defendant's Pinto was blue, but state presented witness that saw Silver Pinto, that Defendant offered non-custodial destination, but no Mirandas were offered, violating Defendants right to impeach witness and proves that Fourth Amendment was violated. Sanders (atty) offered no motion to preserve, test, or verify these missing portions of the interrogation, which were crucial to defense of defendant's right through trial, nor was objection offered."

The court asks that, "at a minimum," we address 1) how transcripts were used at trial; 2) whether Mr. Sanders had raised any transcript-related objections; 3) whether the court made any statements or rulings on transcripts; and 4) whether the jury was given transcript instructions.

These questions have straightforward answers. The only transcript utilized at trial was that of Mr. Yablonsky's interview with detectives Alexander and Myler. This was shown to the jurors by way of the overhead projector during playback of the interview, and a hard copy was provided to assist the jurors during deliberation. Though not formally admitted into evidence, it was designated as Exhibit 49(a), and appears as such in the Clerk's Transcript.

There was no objection to the use of the transcript. Rather, it appears the parties viewed it as a routine device to relieve the court reporter and assist the jury during the presentation of obviously admissible evidence, Petitioner's crucial conversation with the police. DDA Thomas and DPD Sanders seem to have conferred at some point early in trial and reached a general agreement on material which would properly be redacted from the statement, and they then cleared the procedure with the court. Attorney Sanders indicated to the court that most of the redacted statements would be by the officers, but that some would statements by Mr. Yablonsky. (RT 454-456.) The parties stipulated, per normal court procedure, that the transcript could be used to relieve the court reporter of duties during the playing of the interview. (RT 499-500.)

The only small point of disagreement, as noted *supra*, derived from a single statement that attorney Sanders had sought to redact, but which had remained in the final version. The court found this disagreement inconsequential, noting that it saw no reason redaction of that small portion of the interview was necessary in the first place. By so doing, Judge Tomberlin rejected a request for a jury instruction that jurors disregard that brief statement, and this appears to have been the only substantive ruling the court made in regard to the transcript.

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Finally, the court indeed provided specific instruction to the jury on the use of the transcript before the recordings were played. Jurors were advised that this transcript was a form of secondary evidence, provided only to help them understand the taped conversation, which was the actual evidence. The court properly added that if any conflict between the transcript and recording seemed to arise, jurors should rely upon the recording. (RT 509.)

It seems necessary to go a step further, however, and observe that Petitioner's specific claims have no support. We see absolutely no reference anywhere in the record to any missing pages of material in the transcript, and note that Petitioner's clearest allegation is entirely false: the transcript played and submitted to the jury as Exhibit 49(a) **does** contain not one, but two full exchanges between the detectives and Mr. Yablonsky about his Pinto – and its color, which in both exchanges is confirmed as dark blue. (RT 29-30, 85-86.)

LIAR, THE BLUE PINTO WAS NEVER PLAYED TO JURY!!

THIS WAS NOT PLAYED TO THE JURY!! LIAR

His further complaints are cryptic. We do not, to be sure, see any reference in the transcript to Petitioner "offering a non-custodial destination," but it certainly does contain a full recounting of the exchange in which he was persuaded to accompany the detectives to Signal Hill police station. It is surely Petitioner's task to render his claims understandable, but even if we are to guess and decide it is an assertion that he offered to go a different location with the detectives, and that they rejected it, he does not explain how this might have affected the outcome. Indeed, if anything Mr. Yablonsky might have felt a greater freedom to provide information in such an atmosphere.

He also fails to explain when, and where, *Miranda* warnings should have been but were not made. The initial conversational setting was within Mr. Yablonsky's own home, and bears every hallmark of consensual contact. Petitioner came to the police station willingly, and upon arrival was advised that although the detectives were grateful he had accompanied them, he was not under arrest, and was free to leave at any point. (IT 60.) The transcript ends at the point of his formal arrest, more than 50 pages later. We cannot doubt that detectives Alexander and Myler advised him of *Miranda* at that time, but in any case Mr. Yablonsky made no further statements after that point. While *Miranda* issues may be raised at any juncture, there is nothing here to suggest that either 1) the officers wrongly failed to advise him, or 2) that any *Miranda*-elated discussion was improperly removed from the transcript.

In sum, no issue of improper transcript alteration appears in the record of this case at all, and Petitioner certainly does not support his petition for writ of habeas corpus by invoking such claims.

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earlier. (Exhibit D(1), police report by Detective Woods dated 9/26/85.) This claim is also frivolous.

As earlier described, Kraemer's actual testimony was that he and his mother had a good relationship, but that it included occasional disputes and arguments. He acknowledged that he had not seen his mother for approximately one to one-and-a-half months before her death, and that this had been the result of an argument. The dispute observed by Kobs fell precisely within that time frame.

Moreover, as the police report affirms, the witness did not observe actual physical violence on Daryl Kraemer's part, merely him grabbing her shirt and calling his mother "dirty names," and the witness added that Rita Cobb "was not acting as if she was all there either." (Exhibit D(1).)

Attorney Sanders extensively cross-examined Kraemer, and **specifically asked about that incident.**

> Q. Sometimes you guys would have arguments?
> A. Yes.
> Q. And I believe that the last time you had seen her, you and she had a pretty good argument?
> A. Yes.

(RT 141-142.)

YES IT WOULD, HIS LAST ACT WAS VIOLEN

This response by Kraemer left nothing to impeach, as it would not be contradicted by the statement of witness Kobs. And while nothing would have prevented Sanders from exploring the details of that argument, or even attempting to confront Kraemer with specifics from the report, it is easy to discern a tactical reason for choosing not to do so: such a tack might easily have struck the jury as a gratuitous and unfeeling treatment of a man whose mother had been a murder victim, and who was forced to relive the painful details of their last moments together. Under the well-established *Strickland* framework,. this is a choice far within the bounds of reasonable trial strategy, and it therefore cannot be ineffective assistance of counsel.

John Sullivan. Petitioner claims his lawyer should have done more to impeach a single inconsistency: that Sullivan had been quoted in earlier reports as saying he had gone to bed before Rita Cobb departed his house, but testified on the stand that he had been awake.

FERGUSON DOES NOT CONTEST THAT SULLIVAN WAS COACHED ADMITTINGLY WHILE ON THE STAND

Petitioner does not seem to have attached the previous reports in question, but John Sullivan *himself* pointed out this inconsistency. Having

E. BRUCE NASH, DARYL KRAEMER, JOHN SULLIVAN AND DET. ROBERT ALEXANDER ALL TESTIFIED AND WERE APPROPRIATELY CROSS-EXAMINED BY ATTORNEY SANDERS.

Finally, the court requests assessment of Petitioner's "Ground 9". (Claim 9), wherein he suggests that several witnesses testified falsely against him. These allegations essentially repeat the claims in Ground 4, discussed above, which in that section were intended to prove misconduct by the prosecutor. Your Honor asks that we discuss whether witnesses Bruce Nash, Daryl Kraemer, John Sullivan and Det. Alexander in fact testified, and whether they were appropriately challenged and cross-examined by attorney Sanders.

Each of the named witnesses did testify, as detailed, and each was suitably cross-examined. We will try to limit our discussion to Petitioner's specific allegations of dishonesty.

Bruce Nash. Mr. Yablonsky maintains that Nash stated in 1985 and 2009 that Rita Cobb left the party after he left and went to a bar, but that "on the stand after admitting he was coached, stated that that the victim left the party when he did and was headed home, he witnessed it." Attorney Sanders, he claims, should have objected or attempted to impeach this "lie."

LIAR HE DID ADMIT TO BEING COACHED

This is unsupported. First, Nash never "admitted he was coached," or anything remotely like it, during his testimony at trial, nor was any such suggestion ever made. His trial testimony was largely but not entirely consistent with his intervew in September 1985, but in any case his recall, and that of all witnesses, was obviously impaired by the 25-year time gap. Moreover, he did not testify as Petitioner suggests. As earlier detailed, when asked at trial whether Rita left before or after he did, he testified that **he could not recall**, not that she left the party at the same time he did, or that he "witnessed it." Rather, he recalled only that he offered her a ride home, and stated that he *did not* recall seeing her depart. (RT 412-413, 417.)

Thus there was no meaningful contradiction for his attorney to explore, but in any case attorney Sanders asked numerous followup questions, and also forcefully argued at sidebar to cross-examine Nash about statements Rita Cobb might have made about her plans for the night. There is no hint of inadequate assistance as to Nash's testimony. HIS REPORT BY DET. MYLER WAS RIGHT THERE, ALONG WITH 1985 REPORTS

Daryl Kraemer. Petitioner here has just one point of dispute, claiming that Sanders should have impeached Kraemer's claim of a "good" relationship with his mother with a statement from a witness, Ronald Kobs, who observed him being "very violent acting" toward his mother at her home about six weeks

been asked to review a prior report for another purpose, he stated that "I don't know where they got that I went to bed because I was still awake" when Rita Cobb departed. (RT 429.) He later confirmed that, as he now remembered it, he had been awake and "believed" he had seen Rita Cobb, Bruce Nash and Bruce's girlfriend Cynthia get in cars and depart. (RT 432.)

Since the disparity had already been brought into the open, there was, again, no reason for Sanders to emphasize the point. But more fundamentally, Sullivan's testimony was uncontroversial, and the details of how and when the murder victim left his home did nothing whatsoever to implicate Mr. Yablonsky. Indeed, testimony that Bruce Nash offered to assist her home, perhaps making him the last known person to see her alive, could even have served to deflect some degree of suspicion onto him, and away from Petitioner. This obviously demonstrates that Sanders was not ineffective in regard to Sullivan's testimony.

Det. Alexander. Finally, Petitioner blames his attorney for not confronting Det. Robert Alexander, whom he claims "testified there [were] no fingerprint results," and provides the report as Exhibit D(4)(a) and (b). As previously quoted, Alexander did not testify to that effect. Rather, he said first that he was "not sure if there were any fingerprints developed," then moments later agreed that he had probably read such a report, but did not remember details. (RT 518.) Since Petitioner's argument rests on flawed recall of the actual testimony, his claim has no basis.

Confession evidence. Lastly, the court asked us to (further) discuss whether there had been a third-party confession to the crime.

As we outlined in sections (III)(A)(2) and (3), the only purported confession to the crime that appears in the trial record or the exhibits offered here is that of George Randolph, aka William Backhoff, and attorney Sanders tried but failed to introduce it as evidence. Petitioner does make a further reference to a confession "investigated by Detective Carr of S.B.S.D.," but does not provide any supporting documentation, and leaves unclear whether this is a further reference to Backhoff. This leaves his claim not only implausible, but entirely without evidence to support it.

F. COUNSEL'S PERFORMANCE WAS ALSO HIGHLY COMPETENT IN ALL OTHER RESPECTS.

Finally, though Petitioner has not shown ineffective assistance by attorney Sanders in any event, we think it bears noting how competent and energetic counsel's performance actually was. Far beyond providing the minimum degree necessary to protect Mr. Yablonsky's constitutional rights,