(Incorporated by reference with grounds nine and ten)

GROUND ELEVEN

Trial Attorney Dave Sanders(Attorney) ,public defender committed Ineffective Assistance of Counsel(IAC) when he failed to object to inadmissible evidence, violating VI and XIV Amendments of the United States Constitution.

FACTS

During trial DDA John Thomas (prosecutor) presented as states witness Bruce Nash, to testify for the state as to where the (victim) Rita Cobb had said she was going after the Sullivan drinking party at the mini springs ranch,just over a half mile from her home,(victim).
This states witness had on three seperate occaisions made statements, twice to the sheriff's investigators and once to the defense investigator, all three identical in nature, and all three disclosing the fact the las t discussion between the (victim) and himself was that, she was offered a ride home after the party by Bruce and his wife because they felt she was too intoxicated to drive home safely, but that she refused their offer and instead stated that she was going to go to a bar in town called the Zodiac Lounge, and that after she refused their offer they drove home while the (victim) headed to the Zodiac Lounge.
During the trial the witness Bruce Nash stated that he offered the (victim) a ride home , but that she refused his offer and said she was fine to drive home herself.(direct examination by the prosecutor)
During the cross-examination the defense counsel neither objected to this absolute mistatement of fact nor did he attempt to illicit the truth, though he was called to the bench for a side bar. During this side bar the court(the honorable judge John Tomberlin) admonished the defense from further attempting to illicit the truth from the states witness.
As a direct result, the attorney failed to preserve for appellate purposes this perjured statement by the states witness, and allowed the court to abuse it's discretion, and refuse the defendant his right to confront his witnesses, guaranteed by the VI Amendment US Const.
Bruce Nash did state when questioned by defense, he was coached.

CASE RULE AND AUTHORITY

PENAL CODE § 118

PENAL CODE § 127
CAL.CRIM.LAW PROC. AND PRAC. § 2.21

Failure to object to inadmissible evidence, People V Ledesma,supra (other grounds as well);People V. Stratton (1988)205 ca3d 87,252 cr 157.
PENAL CODE § 1473(b)(1)
Cal. Crim.Law § 42.22 reaching issues that cannot be as effectively argued in the direct appeal, because the supporting facts are outside the record of appeal(see People V Pope(1979)23 c3d 412,428,152 cr 732(IAC);People V. Baustia(2004) 115 ca4th 229,237,8 cr3d 862(same), and challenging false evidence"that is substancially material or probative on the issue of guilt or punishment" was introduced against the petitioner at a hearing or trial(penal code §1473(b)(1).see also InRe Pratt (1999)69 ca4th 1294, 82 cr2d 260.
Cal. Crim.Law §2.31 In RE Branch (1969) 70 c2d 200,210,74 cr 238, whgen a state offers testimony in good faith, and testifies falsely, the ninth circuit held that the government had an independant obligation(buis.+prac. § 6068(d) to take steps to correct his witness[immediately]known false statements, even when the state did not illicit the false testimony
(yet during cross-examination Nash did admit to be coached by the state)

(Attorney) Q. were you coached by the prosecutor before testifying ?

(Nash) A. yes I was , this last friday.(nash testified on monday)
U.S. V. Whibey 75 f3d 761 (1st cir 1995) Where Robert Whibey and Claude Whitman were tried by a jury and convicted of conspiracy to distribute marijuana,a very different standard is applied when the party forfeits an error by failing to make a contemporaneous objection, as whibey did with respects to comment two. In that case, we have the discretion to reverse only for"plain error", i.e. error that is "clear" and "obvious" and that was"prejudicial" to the defendant in that it"affected the outcome of the district court proceedings",,Olano, 507 US at 732-36,1134 s.ct.at 1777-78. And we exercise that discretion only if the plain error is one that causes the conviction of an actual innocent defendant.Id at 736-37,113 s.ct.at 1779.
People V, Baustia(2004)115 cal.app.4th 229, where Dave Baustia brought habeas along with their,appeal,where the petitioner failed to make a motion or otherwise raise the point in the trial court.
(again this witness stated three seperate times that the (victim) was headed to the bar in the town called the ZodiacLOunge, and it is at this bar that Gregory Randolph professed to have picked the (victim) up and taken her home and killed her because she was sexually turned off.

SEE EXHIBIT (H) then (M)

Since it was states position the (victim) was headed home, and this witness just testified falsely, about the states need for the witness to state she was headed home in order for them to cover up the fact that (William Backoff) Gregory Randolph had in fact confessed to picking the (victim) up, and that Randolphs DNA was received from this scene when the evidences were collected,surely if the (victim) was headed home, she had no need to go to the bar, but had the (victim) in fact went to the bar as she stated , this was the direct circumstancial evidence the defense needed to apply the [Hall Theory] of third party culpabilities.

The fact the judge interviened, and admonisg the defense from persuing the truth through further questions, he certainly didn't mean to violate the defendants rights in the federal, constitution, but that is exactly what he did, while the defense attorney followed the states lead and allowed the false evidence to be undisputed, by failin g to object to the [perjured] testimony by Nash. Nash did state that his (previous state ments would be more accurate, he failed to tell the jury what those statements were , thereby leaving them the thoughts that his [previous statements were the same], when in fact they were not.People V Lempia(1956)144 cal. app.2d 393,[221 cal.rptr.p2d 40](collecting cases) ;InRe Moss (1985) 175 cal.app.3d 913,922 [221 ca. rptr. 645];People V Haskett(1990)52 cal.3d 210, 248 [276 cal.rptr.80,801 p2d 323],)People V. Lucas (1995)12 cal.4th 436[48 cal.rptr.2d 525,907 p2d 373];People V Pope,(cal1979)152 cal. rptr 732,23 cal.3d 412, where the record does illuminate the basis for challenged acts or ommissions,claim of IAC is more appropriately made in a petition of habeas corpus where there is oppertunity in an evidentiary hearing to have counsel fully disclose and describe his/her reasons for acting or failing to act in manner complained of.
U.S. V. Sumeru,449. fed.appx.617 trial courts excessive and biased intervention in criminal trial prejudiced the defendants substancial rights warranting [New Trial]. where court persistantly interupted the defendeants presentation of their evidence,sua sponte, it allowed the government to admit evidence without the same scrutiny degree and intervention, terminating defendants cross-examination of the prosecutors witness without valid reason.;US V. Chico 343 Fed Appx 197,;Tritchler V. County of Lake, 358 f3d 1150,1155(9th cir 2004)
Cal.Crim Law Pro.Prac.§ 8.12RIGHT TO CONFRONT AND CROSS_EXAMINE PROSECUTION WITNESS

cross examination may be for the purpose of raising an affirmative defense

(Jennings V Superior court (1967) 66 c2d 867,59 cr 440)negating an element of offense (Jennings V Superior court ,supra), or impeaching a witness. Cal.Crim. Law Pro.Prac. §45.22 Federal Habeas corpus relief will not be granted for erroneous interpretations or application of state law. Estelle V. Mcguire (1991) 502 US 62,;Engle V Issac(1982) 456 US 107,; Hinman V. Mccarthy (9th cir. 1982), but if the state law, whether statutory or decisional, creates a liberty interest protected by the federal due process clause, or if the error in interpretation or application of state law is so egregoreous as to offend federal due process standards , federal habeas relief may be available,Carter V. Kentucky (1981)450 US 188,;Hicks V. Oklahoma (1980) 447 US 343,;Ellard V. Alabama bd. of Pardons&Paroles(11th cir. 1987)

The states witness stated to the states detectives Myler and Alexander (lead investigator) during an interview in 2010 , that he remembers the (victims)last known destination as she relayed to him in 1985, that she was going to go to a bar in town after the party and that she didn't want to go home right then ,as he offered her the ride she refused. It was this states detective Alexander that was in the trial as the states lead investigator, who directly knew the states witness just perjured his testimony, and that there was in fact another police report from 1985 that stated the exact same thing as the witness had told him in 2010, and then as the prosecutions lead investigator in this case did nothing to correct their witness, and allowed the court to intimidate the defnse attorney from objecting to the perjured testimony.

People V Pope,Supra ,;People V. Ibarra,supra.

Cal. Rules of Pro.Cond. RULE 5-200 TRIAL CONDUCT

Cal.Rules of Prof.Cond.Rule 5-220 SUPPRESSION EVIDENCE

The staes position was to prevent the defendant from presenting the reprt from where the county coroner Gregory Randolph had been arrested for this case after he had confessed to this crime, while his DNA was located at this scene, and his sucide scene months later produced [dozens]of photographs of murdered suspects(women) at his home

SEE EXHIBIT (H) and (M)

GROUND ELEVEN (4)

Strickland V. Washington(1984) 466 US 668, the prejudicial impact of this witnesses false statement applies to the strickland test for prejudices and the determination if the prejudice ammounts to harmful error. The fact that this witness had made three seperate statements, of which are recorded in the prosecutors evidence and the third being to the defnse investigations, would show that the three identical statements were true and considered as accurate. The laws of oath are designed for the courts assurance that the witness[will] testify truthfully, and if this law is broken and the result was prejudicial to the defendant on trial, being that this was the prosecutors witness, the perjured statement was exculpatory in nature. Since it was the staes questioning that revealed the testimony, and the state knew the truth, and knew that this statement was false, and failed to correct his witness, then allowed the defense to cross examine their witness, while exercising a side bar with the court,and influencing the defense from further asking the witness the truth, after the states witness just told the jury a [lie], is extremely prejudicial. Had the states witness Nash told the truth, the defense could have used the third party culpability elements that are established in the Hall Theory,showing that the (victim) did in fact go to the Zodiac Lounge, meet up with Randolph and was taken home. The states contention that the bartender didn't see that the (victim) had shown up on Friday nite, doesn't mean that the (victim) didn't go to the bar, it only shows that the bartender didn't see her while she was working behind the bar, in the restroom, in the backroom for supplies, on break out back or even in her car parked across the parkinglot. The state insisted the bartenders statement that she didn't see the (vitim) means that the (victim) didn't go to the bar. There is other witnesses that not only seen Rita Cobb at the Zodiac Lounge on friday nite , but the witness stated that she was in an altercation with another person, a man. This altercation could have happened in the front parking lot, outside the bar and definately outside the bartenders view,and the fact that she would have been at this bar after 10:30 P.M., means that it was in fact dark outside, and there is [no] way the bar tender can see around corners of the bars entrence, nor through walls that are between the bar counter and the ouitside of the building, and the fact that it was dark makes it even more difficult to identify someone, and the bartender didn't say that she had probably already drank quite

a bit that nite, being that it was [friday] nite and the bar was probably full of partying citizens of that town, drinking ,dancing, and listening to the juke box. The state also failed to consider the front door to this bar was less than ten feet from the liquor store entrance, and it is conceivable probable the (victim) had met up with the [killer] on her way to the bar and just feet away was diverted by a more inviting offer [a man] that she liked to drink with, and decided to go to the liquor store instead, andunfortunately had a dispute. The (victim) could then have been discouraged to the point that she chose to just call it a nite, or did in fact buy another bottle of bourbon and go home with Mr.Randolph, for the purposes of getting more drunk. Under these conditions, the [William Backoff] confession establishes probative strengths and then thereby meets the conceivable truth, that Gregory Randolph did infact kill Rita Cobb, because she was in fact sexually turned off by hi.s carnal influence on her,strangling her till she turned black, and then performed a variety of sexual acts that would prevent his leaving any type of seminal fluids on the body, ejaculating in his cloths,a condom, etc. Randolph did err in a very influencial way though, as he strangled Rita (a very healthy active and aggressive woman), his hair was pulled out by the roots as Rita fought for her life, as this maniac was trying to wrap a coat hanger around her neck. This [red] hair with a root attached was placed in to the evidence, and the three cigarette butts with Randolphs DNA was also placed into the evidence,also the fact that this brass (deputy county coroner) took it upon hiself to confess!!

The defense attorney was suppose to object to inadmissible evidence, regardless whether the judge admonished the further questioning or not, and had the judge overuled the objection the error that was extremely prejudicial that would have assisted his client in getting a new trial would have been preserved for appellate purposes, and been adressed more appropriately in a higher appellate court, but this attorney failed to do constitutional duty as a court appointed attorney[and defend his clients substancial rights] guaranteed by the state and federal const-itutio ns.

SEE EXHIBIT (M) + (H)

GROUND ELEVEN (6)

(Incorporated by reference with grounds nine through eleven)

GROUND TWELVE

Trial Attorney Dave Sanders,(public defender)(attorney) committed Ineffective Assistance of Counsel(IAC) when he failed to object to inadmissible evidence, violating VI and XIV Amendments of the United States Constitution.

FACTS

During trial DDA John Thomas (prosecutor) presented states witness John Sullivan, to testify for the state as to the last known destination of the victim after she left the Sullivan drinking party at the mini springs ranch,just over a half mile from the (victims) home.

This witnes stated to detectives in 1985, that he remembers the(victim) had left his house on Friday nite after he had already fallen asleep around 10:30p.m., and that he was told she was headed to a bar afterwards. This witness also made a statement to detectives in 2009, that he recalls the (victim) didn't leave after he went to bed, but that he seen the (victim) being driven home by Bruce Nash,as Bruce got into the drivers seat and his wife cynthia followed in their pinto, to, take Rita home. This witness spoke to the defense investigator in 2010, and states that if he was called to testify, that he would testify that she had left after he had in fact fallen asleep. The defense investigator had to show him the report from his 1985 statement to refreshen his memory, since it had been over twenty five years since he had last mad e that statement.

During trial this witness stated that he seen the (victim) being driven home by Bruce Nash, as Bruce' wife followed in their pinto. The state had two different statements from previous interviews with this witness, and chose not to correct his witnesses statement that just contradicted his other witnesses statement (BRUCE NASH), there by confusing the jury. During cross examination the defense did not challenge these discrepencies in testimony, nor did he enter an objection. There was no side bar, there was no other court influence to prevent the attorney from doing his constitutional job, and defend his client. This witness also stated his testimony was coached.

CASE,RULE AND AUTHORITY

Cal.Ev.Code § 352,Adkins V. Brett,184 cal. 258,193 pac.251,252 (1920); see Due Process Const. Art1§ 15

PENAL CODE § 118 Perjury Defined
penal code §127 Subornation of Perjury
Cal. Ev. Code § 607
PENAL CODE § 1473 (b)(1)
Cal.Crim.Law Proc.and Prac. § 2.21 failure to object to inadmissible evidence, People V Ledesma,supra (other grounds as well) ;People V Stratton,supra
Cal. Crim.Law Proc. and Prac. § 42.22 reaching issues that cannot be as efectively argued in direct appeal, because the supporting facts are outsid the record of appeal(see People V Pope(1979) 23 c3d 412,428,152 cr 732 (IAC); People V Baustia(2004)115 ca4th 229,237,8 cr3d 862(same,) and challenging false evidence "that substancially material or probative on the issue of guilt or punishmrent" was introduced against the petitioner at a hearing or trial(penal code §1473 (b)(1). see also InRe Pratt (1999) 69 ca4th 1294,82 cr2d 260.
Cal.Crim.Law Proc. and Prac. § 2.31 In Re Branch (1969) 70 c2d 200,210,74 cr 238, when a state offers testimony in good faith, and testifies falsely the ninth circuit held the government had an independant obligation (buis.prac.§6068(d) to take steps to correct his witnesses statements immediately, whether the statements were influenced or not, and to illicit the truth.
US V Whibey,75 f3d 761 (1sy cir. 1995) where Robert Whibey and Claude Whitman were tried by a jury and convicted of conspiracy to distribute marijuana, a very different standard was applied when the party forfeits an error by failing to make a contemporanious objection, as Whibey di with respects to comment two. In that case , we have the discretion to reverse"only" for plain error that is "clear" and "obvious" and that was "prejudicial" to the defendant in that it"affected the outcome of the district court proceedings",Olano,507 US at 732-36,1134 s.ct. at 1777-78. And we exercise that discretion only iof the plain error is one that causes the conviction of an actual innocent defendant.Id at 736-37,113 s.ct. at 1779,
People V Baustisa (2004) 115 cal.app.4th 229, where David Baustia brought habeas along with their appeal,where the petitioner failed to make a motion or otherwise raise the point in the trial court.
(again this Attorney was admonished from questioning the witness Bruce Nash and probably just assumed the court would also admonish this witness as well, but that he did nothing,

GROUND TWELVE (2)

he failed to even attempt to atttcak the states lying witness, thereby forfeiting his clients substancial rights to appeal,the discrepency inthis witnesses deliberate mistatement of facts, and professed "I now remember what happened,and I witnessed Nash give her a ride home" which was by then over twenty five years after the fact, that he had stated to the detective s in 1985 "That she left after he had fallen asleep". The objection would have produced the 1985 statement , as a map to refresh his first memrory three days after the crime took place, and not to expect the courts to accept his [postponed] memory as a more accurate recollection of the facts,while comparewd to the one just days later, than decades later.

People V Lempia (1956) 144 cal.app.2d 393,[221 ca rptr p2d 40];(collecting cases); In Re Moss (1985)175 calapp3d 913,922[221 cal.rptr 645];People V lucas (1995) 12 cal.4th 436[48 cal.rptr.2d 525,907 p2d 373]; People V Pope,(cal.1979)152 cal.rptr.732,23 cal.3d 412, where the record does illuminate the basis for challenged acts or ommissions,claims of IAC is more appropriately made in a habeas petition where there is an oppertunity in an evidentiary hearing to have counsel fully disclose and describe his/her reasons for acting or failing to act in manner complained of.U.S. V Sumeru,449 fed.appx.617 trial courts excessive and biased inter vention in criminal trial prejudiced the defendants substancial rights warranting a[new trial]. Where court persistantly interupted the defendants presentation of theirr evidence,suasponte, it allowed the government to admit evidence without the same scrutiny degree and interrvention, terminating defendants cross-examination of the prosecutors witness without valid reason.US V. Chico 343 fed.appx.197,; Tritchler V County Of Lake,358 f3d 1150,1155 (9thcir.2004)

Cal.Crim.Law Proc.Prac. §8.12 RIGHT TO CROSS EXAMINE PROSECUTION WITNESS (Jennings V Superior Court (1967)66 c2d 867,59 cr 440)Negating an element of the charged offense(Jennings VSuperior Court ,supra) ,or impeaching a witness.

Cal.Crim,Law Proc.Prac. § 45.22 Federal habeas relief will not be granted for erroneous interpretations or applications of state law .Estelle V. MCguire(1991)502 US 62:Engle V. Issav(1982) 456 US 107: Hinman V McCarthy(9th.cir.1982), if the state law, whether statutoryy or decisional, creats a liberty interest protected by the Due Process Clause, or if the error in interpretation or application of states law is so egregrious as t o offend Federal Due Process standards , federal relief may be available, Carter V Kentucky (1981) 450 US 188;

GROUND TWELVE (3)

Hicks v Oklahoma (1980) 447 US 343: Ellard V, Alabama bd. of Pardons & Paroles (11th cir. 1987)

This states witness made declarations to the defense investigator after the investigator show Sullivan his 1985 police report, that he was going to testify to the same as the 1985 statement, since it would be more accurate, yet he stated differently during trial, and doing so after he stated the prosecution had coached his testimony, and this attorney neither objected, nor offered rebuttal witness (defense investigator) to impeach this witnesss statement.

Cal Rules Of Prof.Cond RULE 5-200 Trial conduct

Cal. Rules of Prof.Cond. 5-220 Suppression of evidence

SEE EXHIBIT S (I) and (M)

Strickland V Washington(1984) 466 US 668, the standard of prejudicial application to this witnesses perjured testimony and the Attorneys failure to challenge the staes witness are the same as the prejudicial application in ground eleven, since this witness and the witness Nash were brought to testify as to the (victims) last known destination after she left ~~kke~~ Sul;livan drinking party, and that both witnesse testified differently and contradictorily to each other of the same incident, this court should consider the descriptive prejudicial impact of this testimony as the same as ground eleven

(Incorporated by reference with grounds ninethrough twelve)

GROUND THIRTEEN

Defense Counsel Dave Sanders(attorney),public defender committed Ineffective Assistance of Counsel (IAC),when he failed to object to inadmissible evidence, violating VI and XIV Amendments of the United States Constitution.

FACTS

During trial DDA John Thomas presented as states witness,Daryll Kramer to testify that his mother,the (victim) was generally a good person and that he (Daryll) and her had a good relationship.Daryll also testified that he had in fact re-entered the crime scene against the detectives demands,before the scene was properly processed,that nite he found the crime had happened. Daryll also testified that his mother had left a disturbing message on his answering machine the Friday before she was killed and that she needed his help because someone had [terribly] frightened her. Daryll stated for the record that, the last time he had seen her was six weeks prior to this incident, and that on that visit all thing were[arguementative] but nothing more.

After the crime took place though, detectives spoke to Ronald Kobs at a local tavern, who was the local, propane tank repairman, and that he was out to the Cobb residence just six weeks prior to her being found murdered, and was there to conduct buisness.Mr.Kobs states that on that specific day he drove up to the property and found [someone]very violently accausting his customer Rita Cobb in her driveway, and didn't find out until the altercation was stopped by him, that Ritas' assailant was none other than her very own son (Daryll Kramer), he state also that Rita wasn't in condition to defend herself that day.

This police report from Kobs is strikingly different than Darylls sworn testimony" that his last visit with mom six weeks prior to her death was good, and only arguementative". Since this was states witness , and was called to testify that his relations was [good] with his mother, and his testimony wasn't quite as honest as the police report, the state knowingly presented a witness that mistated facts. During cross=examination defense attorney did not challenge this mistatement, nor did he persue the fact that this states witness just testified he violated police authority, and crime scene integrities and re-entered the crime scene thereby contaminating the scene,

GROUND THIRTEEN (1) SEE EXHIBIT (K)

and failed to follw up or even investigate into the possibilities of the scene being contaminated, and since another states witnesses testified that there was in fact evidence that was removed from the scene, that he knew of (another 12-pack of beer off of the dining table) that had possibilities of fingerprints on that carton, since there is no other way to carry a 12-pack than to handle it out side of the (possible bag), that to move it with the full open spread of a hand/s, therefore leaving fingerprints. There is also the possibility that there was [other] evidence that was taken from this scene since Daryll was told [not] to re-enter the house until the scene had been properly processed, and he removed the caution tape and re-entered any way, and removing evidence from this crime scene. Since Gregory Randolph had professed to meeting the (victim) that Friday nite, they possibly had in fact bought that 12-pack to drink together, but since the evidence was [taken] there is no real way of telling.

CASE, RULE AND AUTHORITY

PENAL CODE §118 Perjury defined
PENAL CODE § 127 Subornation of perjury
PENAL CODE § 1473 (B)(1)
Ca. Ev. CODE § 604
Ca. Ev.CODE § 607
Cal Rules of Prof.Cond RULE 5-200
Cal.Rules of Prof.Cond RULE 5-220
Cal.Rules of Prof.Cond. RULE 3-110 (A)(B)(C)
Cal.Rules of Prof.Cond. RULE 3-500
Cal.Rules of Prof.Cond. 5-220
Cal.Crim.Law Proc.and Prac.§ 2.20 Duty to investigate,a common ground for IAC is failure to adequately investigate the case. The defense counsel must explore all potential meritorious defenses before making a tactical decision about what defense(if any) to present,In Re Cordero (1988) 46 c3d 161,181 n8,249 cr 342,see also Riley v. Payne (9thci. 2003) 352 f3d 1313,1321
Cal.Crim. Law Proc.and Prac. §2.21Challenged IAC,failure to supress evidence People V Ledesma(1987) 43 c3d 171,233 cr 404,;Failure to object to inadmissible evidence,People V Ledesma,supra;People V Stratton(1988) 205 ca3d 87,252 cr 157,

ShihWei SU V. Fillion, 335 f3d 119,127,128-130 (2d.cir.2003) The courts held that the prosecution had breached its duty to not illicit false testimony that it knows to be false;see e.q.Napue V. Illinois,360 US 264(1959)
Rose V Clark,478 US 570 (1986), where here , the prosecution was witholding information that is covered by the brady act, of full disclosure of [all] exculpatory evidences. Knowing that this witness just stated that there is a great possibility that he had in fact contaminates the crime scene before the processing of all the evidences and that the states witness did in fact statee there was evidence [missing], the defense attorney should have challenge the state for missing evidence that would have producedpromising evidence in the form as [fingerprints], and may very well have come from the actual [killer] of Rita Cobb, but since this evidence was missing there is no way to tell.
Giglio V United States,450 US 105(1976)
People V Strickland (1974) 11 c3d 946,955,114 cr 632,prosecutorial misconduct refers to the reprehensible and deceptive methods used to influence the jury.;People V prysock (1982),supra, while had the defense done his investigations, and the prosecutor had not put this witness on to state his relations were good and giving the jury the wrong impression of Rita Cobb and Daryll Kramers relationship, indicating that [it] was good when in fact [everyone] knew it was not. Giving the jury a [wrong] impression of their relationship, when in fact the relationship was anything but good, and could be considered very volitile.Napue V Illinois,supra,The supreme court in Napue held, The jury's estimate of truthfulness and relibility may well be determined of guilt or innocense, and it is upon such subtle factors as the possibility interests of the witness in testifying falsely that a [defendant] life or liberty may depend,While in the murder trial of Napue,states principal witnes testified that he had not been promised consideration to testify, whi;le in fact he had,and did nothing to correct his witness false testimony, Mr. Justice Schaffer, joined by chief justice Davis, Rightly opined in their dissent , that testimony that can be misleading jurors of the truth may weigh on the jury's ability to reason and must be considered, and that such false testimony on behalf of the staes witness and the states principal may not use false testimony to obtain a false and tainted conviction, the judgement was reversed in Napue.Jencks V United States,353 US 657,668,77 s.ct. 1007,1013.

This witness opened several doors for the defense had the attorney just done his investigations thoroughly,

and paid attention to the states witness, that would have allowed the defense to impeach this states witness with the discovery the prosecutor had given to the defense, This attorney didn't even give this evidence to the defendant until the trial was completely over and was threatened with a law suit by the defendant for his continual failures. This evidence was in his possession, and was probative in nature and carried volitile strengths to impeaching this states witness. Under the Strickland V. Washington prejudicial standard. Had the attorney entered the objection to states false evidence, they could have seen that the state was using liars to prosecute the defendant, show them that that state was hiding the fact the crime scene was contaminated by this witness, and that this witness had a history of abusing his mother in a violent manner the defnse could have persued the fact that the evidence that was taken from this scene might very well have been done to cover up that Daryll's best friend Robert Mark Edwards had in fact killed his mother, and Daryll was trying to help his friend out, or was affraid that Mr Edwards would come back to get him, or that Daryll lied about who really went back into the crime scene. Daryll and Robert were good friends at the time this crime was conducted, and were amidst criminal activity themselves, being that Daryll was convicted for manufacturing methamphetamine, and his friend Robert mark Edwards was fortunately convicted of one of the five Murders that F.B.I. Vicap typed same, and Rita Cobb Was one of those five. Neither of their convictions were to discredit that they were part of the same group of people that were making methamphetamine and selling these drugs, and it is possibly conceivable that they were in on this together to profit on the insurance that Rita had on her life.
Petitioner in this case told the defense attorney this, and even gave this attorney from Edwards to Yablonsky a letter that implies that [he] Edwards knew the (victims)son and that he knew details of this crime, and the defense attorney stated that he would investigate into this, but obviously he had not. Failing to object to the inadmissible evidence was prejudicial and violated the defendants substancial rights guaranteed by the state and federal constitutions

SEE EXHIBIT (K)

GROUND THIRTEEN (4)

(Incorporated by reference with grounds nine through thirteen)

GROUND FOURTEEN

Defense attorney Dave Sanders,(attorney),public defender, committed Ineffective Assistance of Counsel(IAC), when he failed to be at all critical stages of the Trial, this failure was prejudicial, violating VI Amendment of the United States Constitution.

FACTS

The attorney failed to be present during the trial, when the courts recognized that this trial was acceptable to "trial delays" and that the defendant authorized by waiving the right to a continual trial, and allowing the interuption if needed. During the trial and during the deliberation stages, the jury returned with a [hoplessly deadlocked] stand. During this stand the jury declared that they were in unanomous form that they were (firm in their decision) and that their decision was that they were [Hopelessly Deadlocked]. The jury forman declared that further deliberations would only change the number, as he opined that there would still not be a verdict if they were forced to delibeate. Trial attorney was not present at this hearing, though he[was] in the hallway just[minutes] before that my family witnessed. Yet during this announcement of [deadlock] he was absent, and some attorney defendant never met was there. There was discussion of possible further closing arguements, but since the attorney present was not in (any) sense at the trial, nor had he any kind of knowledge of what happened in this trial that would allow him to say one word that this jury could understand, nor even consider, but since the attorney wasnot there , this chance to remind the jury that there was"No evidence" showing the defendant committed [any] crime was forfeited. When the judge aked the jury to deliberate for 30 more minutes, after the whole court room heard the jury foreman state the count was 8 guilty and 4 not guilty, this was prejudicial, and violated Allen rules, but this phantom attorney did not enter an objection, showing that he was not competant to be a murder trial litigator, and to constitutionally defend the defendant. After the jury agreed to deliberate for [only] thirty more minutes, the jury foreman declared to the judge "DONT WORRY YOUR HONOR, WE'LL GET THE JOB DONE", illuminating and red flagging the defense that the jury had now just beeen prejudiced by the judges order to continue deliberation, and that [they] knew what he meant, "there needed to be a ruling,

and since they knew the count was heavy towards [guilt] that they "must" reach a verdict of guilty on the following day", and the defense attorney in the court room failed to move the court for mistrial, and even object to these highly prejudicial action on behalf of the court, and jury and the prosecutor.It was as if the defense attorney knew there was going to be a deadlock, and that the standin counsel would fail to preserve these errors. The following day the jury was forced to deliberate for over seven hours," fourteen times longer than they agreed to", and came out of the jury room [still hopelessly deadlocked] three more times that day, but was continually forced back in the deliberation room to ["REACH THAT GUILTY VERDICT"] an d did:(
These failures were severly prejudicial, and even when the jury spoke of the trial in the hallway after the verdict that day they stated "THEY NEEDED MORE EVIDENCE, THERE WASN'T ENOUGH FOR THEM TO DECIDE ON"

SEE EXHIBIT (N)

CASE, RULE AND AUTHORITY

Under the VI and the XIV Amendments of the United States Const. and California law, defense counselmust be present at [all] critical stages of the proceedings(United States V. Cronic(1984)466 US 648,659),; People V. Cudjo,supra,6 cal 4th 585,615)

A federal court recently held that the all too comon practice of using stand in counsel during critical stages of jury deliberations constitutes the deprivation of the right to counsel under the VI Amendment,Mortiz V Woods(e.d. Mich.2012)844 f.supp.2d 231. In mortiz, when the jury announced it was deadlocked, the court gave it " a supplimental instruction to continue deliberation"(Id at p. 84) "Retained counsel ,however was not present on this day, he had"been detained" for unexplained reasons, and the court therfore had another lawyer stand in for him, and the stand in knew littlee or nothing about thee case. As the court explained.

> Moreover, there is nothing from the record to indicate that the stand-in counsel had any opportunity to meet with the petitioner to discuss the facts of the case in any meaningful dimention, nor was there any indication that stand-in counsel was prepared to address the judges suggestion to give jurors a deadlocked jury instruction. In fact it appears that stand-in counsel had only minimal time to decide how to respond to the judges decision to instruct the jury to continue to deliberate.

The district court held the courts instruction to resume deliberation a critical stage of the proceeding.

GROUND FOURTEEN (2)

This case is the same as Mortiz
The denial of the counsel at this courts critical stage is reversible per se, without any further showing of prejudice.
Penson V.Ohio (1988) 488 US 75,88:Bell V CONE (2002)535 US 685,695-696:FRench V Jones,supra,323 f3d at p.438-439: Mortiz V. Woods,supra
Under the Strickland test ,stand-in failed to investigate before acquiring to the courts decision to continue deliberating,and this counsel failed to object to any of the prejudicial errors that this impacted the defendants substancial rights, for example,
had the attorney objected to the coersed deliberations the court would have been forced into giving the jury a supplimental jury instruction, that they must not forfeit their posotion just to reach a verdict, as per cal. crim. no. 3551,, and thereby allowing the jury to hol;d their decision with out being bullied by the other jurors to change their votes, and coming to a verdict, and since the jury did anounce(ach and seperately) they were firm in their position, which was [deadlocked], the jury may have still come back with the same[hopelessly deadlocked].
Had the stand=in attorney objected to the jury foremans statement that "don't worry your honor we'll get the job done" ,could have influenced the courts into replacing the foreman, with one of the replacements, this fresh set of opinions could have even convinced the jury to reach a verdict of not guilty, since the jury that did deliberate told the press that there wasn't enough evidence, or could still have come back "deadlocked". Certainly had the trial counsel been present, he could have reminded the jury with supplimental closing arguements that there was in fact [no] evidence that shows the defendant committed [any] crimes to Rita Cobb, and reminded them that it was the states leading expert criminalist that stated that the defendants DNA was at least "ONE AND A HALF DAYS OLDER THAN THE CRIME" and not as many as a full seven day week, and that the prosecutor didn' dispute his experts calculations.

Giving the jury an oppertunity to really look at the overwhelming lack of evidence and allow them to reach an acquittal.

SEE EXHIBIT (N) (o)

GROUND FOURTEEN (3)

(Incorporated by reference with grounds nine through fourteen)

GROUND FIFTEEN

Defense counsel Dave Sanders (attorney), public defender, committed Ineffective Assistance of Counsel (IAC), when he failed to show and give a copy of [ALL] the discovery to his client, violation due process clauses in the VI and XIV Amendments of the United States COnstitution.

FACTS

Petitioner in this instant case was represented by the public defenders office, and was represented by several different attorney's from the San Bernardino county office. Dave Sanders was at one point assigned to represent defendant, and in the early stages of this representation the defendant Yablonsky told the attorney that he wanted a copy of all of the evidence to this case, because he was unsure of [who] was going to represent him next out of that office, or whether he was going to hire another. The attorney gave Yablonsky [300 pages] of discovery and declared that this was [all] there was. The defendant seen there was several issues in this 300 pages and addressed them with the attorney, and was always under the impression that when the attorney said this is [all] there is , that that is exactly all there was.

During trial the defense attorney showed the defendant three file folders that were at least three inches thick each and said that was the evidence to this case. After the trial ,defendant told the attorney that he was goingf to sue him for witholding evidence, and that I had an attorney that needed this evidence to straighten this problem out, the problem being that the defendant was convicted of a murder that he did not do, and the defendant believed the evidence that the attorney was witholding could help. Before sentencing, but definately after the trial, attorney Dave Sanders gave the defendant, fourteen hundred more [seperate] pages than the initial 300 pages before the trial, but not until after the defendants rights were violated, in the prosecution by the courts, prosecutor's, trial attorney's, and the witnesses, which this evidence clearly shows, and would have defended the substancial rights of the defendant.

CASE, RULE AND AUTHORITY

The fifth and the fourteenth amendments guarantee the government to disclose all exculpator evidence to the defendant's,Brady V. Maryland, 373 US 83 (1963). Being that there was no written contract withthe public defenders office as the [illegible]

defenders office, and who was actually going to be in the court room, and in all the proceedings, nor to do the much required investigations in order to adequately defend this case. For example the confession that exists in this evidence,373 US 83,87 (1963), or the exculpatory evidence in this case,Bagley,473 US at 676,or even the credibility of the states witnesses.e.g. US v. Duval,496 f3d 64, and certainly the third party culpability that includes (Joseph Saunders,Robert Edwards, Or Gregory Randolph),DiSimone V Phillips,461 f3d 181,see also US V. Frost,125 f3d 346. The need to impeach the states lying witness' Thomas,Alexander,Nash, Sullivan, Kramer, see Cone V Bell,129 s.ct. 1769;Slutzker V. Johnson, 393 f3d 373(3d cir.2004).

Even the twelve or thirteen letters my wife gave sanders, from my associates and coustomers in society, and other prominent citizens, this attorney failed to use, or even return them to the defendant,being that the letters were of extme character referance, ansd were from buisness ownwers, home owners, and developers in the community' throughoput southern california.

SEE EXHIBT (O)

Cal Rules of Prof Cond. RULE 3-300 Avoiding adverse interests to client, had the attorney told me he was affraid of the prosecutor or told me they wouldn't allow him to use [any] of the evidences that favor my iincense he should have at least informed me of this adverse interest .

Cal. Rules of Prof. Cond. RULE 3-310(A)(1)

Cal. Rules opf Prof. Cond. 3-500 Communication

Cal. Rules Of Prof. cond. RULE 3-110 Fail;ing to act competantly

The failure of this attorney to reveal the evidences, would not allow the aassistance of the defendant in the investigation phases of this trial, and being that this case was over 25 years old and most of the witnesses were already dead or couldn't be found, it was imperative he disclose the evidences. The defendant on this case [never] had the opportunity to discuss [any] of this case with this attorney, and this attorney did on several occaisions lie to the defendant, which agains establishes that this attorney had an obligation to reveal to his client [ALL] possible existances and of discovery to thsi case, and allow the defendant to decide which type of defense the defendant wanted to persue, and whether there was going to be a new attorney hired, or whether the defendant was going to represent himself. Instead the attorney lied of the quantity

GROUND FIFTEEN (2)

and type of evidences that existed. Being so, this attorney ,when told by the defendant that the interrogation was very innaccueate, he professed to XXXXXX the defendant that the verbatim transcripts would be used in trial;instead of showing an effort to challenge the validity of this transccript for possible defects and contamination, or illegal altering, or the fact that the defendant told the attorney that several attempts were made to terminate this interrogation, and that the interrrogation was held outside of the Miranda rights guaranteed by the IV amendment US Constitution.

There were at least four seperate attorney's that appeared for the defendant in this case and there is no showing that any or all four were competantly prepared to defend this case

SEE EXHIBIT (o)

GROUND FIFTEEN (3)

(incorporated by reference with grounds nine through fifteen)

GROUND SIXTEEN

Defense attorney Dave Sandere(attorney),public defender, committed Ineffective Assistance of Counsel (IAC), when he failed to test the states evidence of DNA, that was going to used at trial, violating VI and XIV Amendments of the United States Constitution.

FACTS

During pre-trial discovery , the attorney for the defense was given the states test results as the states position and was being used for trial purposes. Defense attorney failed to challengre the states test results or have them tested by expert DNA specialists. This DNA was taken from inside the body in 1985, and for all intents purposes, stored by the state for investigative purposes. The attorney was told by the states expert witnesses that this DNA was older than the crime, and had he tested the DNA through the Available labratories he could have verified that this DNA was in fact older than this murder, or possibly contaminated, thereby eliminating the states evidence. The attorney did request for proposal of this testing but failed to follow through, and thereby forfeiting this right of the defendant, to test the states evidence. When the states expert during trial testified that the defendants DNA was in fact older than this murder, by at least one and a half full days and not quite a full seven day week. This testing could have been used in the trial to corroberate the states expert and verified that the DNA was in fact older than this crime.

CASE, RULE AND AUTHORITY

Strickland V. Washington, 466 US 668,104 s.ct.2052(1984) The Supreme court began its decision with the idea that the VI Amendment right to counsel " exists , and is needed in order to protect the fundamental fairness and right to a fair trial". A fair trial is one that "the evidence is subjected to adversarial testing, and is presented to an impartial tribunal for resolutions of issues defined in advance of the proceedings" Criminaol trials require the counsels skills and knowledge in order to be able to successfully rebuff the states attempt to imprison or execute them accordingly;Yarbrough V. Johnson,520 f3d 329,336-37(4th cir.2005) (presumption applicable when counsel did not seek funds to hire DNA expert) Williams V. Taylor,529 US 362(2000),

(counselor failure to investigate and present substancial and mitigating adversarial evidence durin g trial) .See Evid.C § 733. An indigent defendant may request the appointment of such experts at the publics expense because the sixth amendment right to effective assistance of counsel incorporates court-appointed experts necessary for preperation of the defense, Corenevsky V. Superior Court (1984) 36 c3d 307,318,204 cr 165.
It was the states leading expert that testified that the testing sequences conducted in their investigations, that the state retested these DNA's to obtain a sequencial, and identical test to verify the exactness of the testing process, but only presented one such result, because there was in fact no two Identical testing results of sequential or otherwise, leading the defense an oppertunity to challenge the states expert testimony, and certainly had the attorney for the defendant tested the DNA himself throught expert labratories that are recognized by the courts, could have presented yet other results and possibly proof that the defendants DNA was in fact older than this crime, thereby dramatically undermining the states position "Yablonsky's DNA was the product result of a Murder/Rape" and supporting the states expert that testified that "Yablonsky's DNA was older than this murder by at least ONE AND A HALF FULL DAYS,but not as many as a full seven day week. Since this states contension was that Rita Cobb was murdered during the commission or attempted commision of rape, and the states expert testified for the state that this contension was in fact not accurate on any level, and had the defense attorney presented the anticipated results of the labratories he asked to bid these DNA'S, would have dramatically undermined the states position and proven that "Yablonsky's DNA was in fact older than this murder" or possibly even come back contaminated, making the staes evidence [unusable] in this trial. Because the defense attorney failed to test [any] evidences, he incompetantly forfeited his clients substancial rights, and therefore rendered this trial an unfair trial and prejudiced the jury of the truth and subsequently prodecuted his own client with his failures and inadequate representation.
Cal.Rules of Prof.Cond. RULE 3-110 Competant actions, skill and application to perform

Defense attorney requested from an agency for testing these DNA"s and the labratory responded with an informal bid that calculated to just under $3,000.00, and this evaluation/testing was indicative of competant

representation for the defendant, XX and the labratory ewen declared that there was at the very least a minimal evaluation of [protocal[] necessary for this testing, and included further XXXXX tests that would have helped support the defendants contension, the DNA was in fact not in any way a part of this murder, nad this testing could have proved that the states evidence was in fact unusable and contaminated, since it was in fact over a quarter of a century old, and unusable for prosecution purposes.

PENAL CODE § 987.9 Indigent defendants; funds for preparation of defense (a) In the trial of a capital case or a case under subdivision of section 190.05, the indigent defendant, through the defendant's counsel, may request the court for funds for the specifis payment of investigators, experts , and others for the preperation or presentation of the defense.

This attorney assured me that he was going to have the DNA tested that was located inside the body as weal as the DNA XXat was located in other areas, to show that there was in fact a relationship betweenx the victim and the defendant, and assisting in the defense,

The attorney states that there was DNA found in at least two seperate locations, while in the states trial presentation they produced the existance of more than [one DNA].

The failure to test the DNA was prejudicial, and had the attorneyt tseted the DNA XXXXXXX that was recovered he could have supported the states expert" that Yablonsky's DNA was not a product of this murder", whilt the state presented [NO] evidence that Yabl;onsky committed the murder, and only surmised that because Yablonsky had sex with the murder victim at some point, that Yablonsky was in fact the one who could have killed Rita Cobb.

SEE EXHIBIT (P)

GROUND SIXTEEN (3)

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Wiggins V. Smith (2003) 539 US 510, A capital case, the courts described the significance of thorough investigations br the defense counsel "[S]trategy choices made after thorough investigation of law and the facts that are relevant to plausible options are virtually unchall-engeable; and strategic choices made after lees than complete investigations are reasonable precise to the extent thatreasonable professionals judge-ments support the limitations on investigations'"thus" 'counsel has a duty ,

SEE EXHIBIT (P)

to make reasonable investigations or to make a reasonable decision that makes particular investigatioins unnecessary. In any case of IAC, a particular decision not to investigate must be directly assesssed for reasonableness in all the circumstances, applying a heavy measure of deference to counsels judgement's" (123 s.ct.2535,156,l.ed.2d 485, strickland V Washington, supra, in this case counsel failed to investigate and heence to discover powerful admissible evidence to mitigate of the deaht penalty that, if presented, might have persuaded the jury toi render a lesser punishment,123 s.ct.2535,156 1.ed.2d 486. Rompilla V. Beard (2005)545 US 374(defense counsel must make reasonable effort to ontain and review material that counsel knows the prosecution will probably rely on as evidence of aggrivating at the sentancing phase of the trial; citing Wiggins:In Re Cox(2003) 30 c4th 974(same) In Re Lucas (2004) 33 c4th 683; People V. Jones (2010) 186 ca4th 216, where investigations showeed that there was no possible way the testifying officer could have seen the defendant run the stop sign. In Re Hill,(2011) 198 ca4th 1008,1023,129 cr3d 856. defense counsel in childmolestation case was (IAC) in failing to obtaian assistance of independant mediaal expert to aid in investigations of [possible] medical defense. People V. Wright (1989) 62 ca4th 31; Morganti,aas to scientific acceptance of PCR (polymerase chain reactioin) analysis; defendants contention of samples and lack of rigorousness of labratory procedures went to the weight of evidence(PCR) People V Morganti(1996) 43 ca4th 643, preejudice that the prosecution conceded above that without DNA evidence there was insufficient evidence for finding of guilt beyond reasonable doubt and the attorney general did not argue to the contrary. People V Henderson (2003)107 ca4th 769,.Here in this instant case , the DDA constant;ly argued that the DNA was so overwhelming that there was no other way to refute the charges against Yablonsky. While in the habeas writ before the superior court the deputy dist,attorney out of the appellate office , again states that the only evidence that exists as incriminating wsas the DNA,yet he also attempted to suggest that there was DNA found under the body which was [untrue[] and stating that the (desk blotter) was also found under the body, abd this was also untrue. SEE EXHIBIT (Q)

Since the DNA inside the body was not the only DNA found at this scene, and the desk blotter that was found also had DNA on it, the watch pin found,

GROUND SIXTEEN (4)

and the red hair with the root attached also had DNA, and all four of these were presented to the jury in this trial. When I first met with the attorney, we [never] discussed this case, (he didn't have time)but he was absolute that he was going to [test] all the evidences. The fact that he faild to test these DNA reports for possible protocal errors, since it was the concensous of the labratory that initially reviewed the evidences that the attorney had sent them as (mandatory) for review and inspection, it would be that there resumes the characters of possible defects in the states protocal procedures. The fact there was no testing to the DNA that was inside the body, and the state did not present any evidence saying or XWX XWX showing there was [any] DNA found outside of the body, and the deskblotter was located in another location, and incapable of being considered as part of the murder scene since it was located in another part of the room and under some quilted blankets.The only DNA that indicated that the murder was committed by Yablonsy wass the DNA that was located on the inside walls of the vaginal area. The states expert testified that the hardiness opf the DNA that was located wasthere because of the hardiness for no leesthan One and a Half days before this crime was ever committed and that there was [NO] sign of rape, thereby concluding for the stae that this DNA was not a part of the murder/rape scenarion the prosecutor was displaying for the jury. Had the attorney tested this DNA, thatwas in storage for over twenty five yaars and had been handled by dozens of scientists, experts and trainees as well could very well have located protocals that did not meet the requirements for prosecution purposes, and possibly proven the DNA to be contaminated, and therefore unusable for trial purposes as well.Since it was the states case, that this murder was committed in the commission of rape or attempted rape,, and the omly evidence that suggests that Yablonsky was the perpetrator was the DNA located in the body, that had been there for at least one and a half prior to the murder of Rita Cobb, and there was [NO] other evuidence that implies Yablonsky committed any crimes in this case.People V Ledesma,43 cal.3d 171 (1987):Quoting ,People V Pope,(2004) 115 ca4th 229,237,8 cr3d 862,(IAC), that is best argued in the Habeas Writ petition, to allow thee courts to review the defense attorney's explanaition for the actions or lack of actions as a defense for his client.

SEE EXHIBIT (P) (Q)

GROUND SIXTEEN (5)

People V. Wright (1989) 62 ca4th 31; Morganti as to scientific acceptance of PCR analysis; defendants contension regarding possible contamination of samples and lack of rigorousness of (lab procedures) went to weight of evidence,Polymerase Chain Reaction ,People V. Morganti (1996) 43 ca4th 643, Prejudice, the prosecutor conceded below that without the DNA evidence there was insufficient evidence for finding of guilty beyond reasonable doubt and the attorney general did not argue to the contrary. People V Henderson(2003) 107 ca4th 769.
Here whenx the attorney questioned the states leading expert to the integrities of the DNA results and the questions were without support because he had not conducted one second into the authentications or verifications of the states procedured, and just accepted the states witnesses on their face,.Without support to his questions that would carry verifiable results through procedural labratories results, had he just submitted the evidence, could very well have proven that the states expert was insufficient to support the existance of theses DNA's and therefore unqualified to testify as an acceptable expert that could answer, who tested these DNA's, who designed the formula that is used to authenticate the DNA results that decide whether the results are 1 in 5,000 or as she stated 1 in & 7 quadrillion (with seventeen zeros) and then testify that she personally knows that there are in fact [ONLY] one point one million DNA's to compare the defendants DNA to.
The worlds combined population only amounts to 5 billion (or thereabouts) therefore giving the states expert the maximum of 1 in 5,000,000,000 instead of the sworn statement of 1 in 7,000,000,000,000,000,000.
The fact that no testing was conducted into the authenticity of these DNA results only bolstered the states witness rather than to intelligently challenge them and their accuracy. The results that could have come from the DNA tests woul;d have supported the states expert that earlier teatified, stating that the defendants DNA was in fact as few as one and half days older thab this crime, and therefore supported the fact, that the defendant was not at the home of Rita Cobb when she was killed, and that the list of suspects that the state kept trying to hide was!!!!

1 in 1,100,00 (her verifiable knowledge)

VERSUS

1 in 7,000,000,000,000,000 (her guess)

GROUND SIXTEEN (6)

ADD ON

(Incorporated by reference with grounds nine through sixteen)

GROUND SEVENTEEN

Defense counsel Dave Sanders(attorney),public defender,committed Ineffective Assistance of counsel(IAC), when he failed to test DNA htat was locatred on a desk blotter, violating VI and XIV Amendments of the United States Constitution.

FACTS

States evidence that was presented to the jury in the form of a desk blotter, and the state implied that this desk blotter had the defendants DNA on it. The attorney was given prior to trial ,the results of this evidence and access to this evidence for testing and inspection purposes for the defense.This desk blotter was located at this scene, and was found under a quilted blanket on the northen corner of the (victims) bed, and wsa aproximately 18 inches by 24 inches in dimention, as a form to cover the surface of a desk to prevent spills, or ink onto the surface of the desk. The state did not show or imply that this desk blotter was located under the body, or that this blotter was in any form a portion of this crime, and only showed that the DNA that was recovered from this blotter belonged to Yablonsky. DNA expert did state that the DNA htat was recovered from this blotter, was in mixture form with other DNA nad surmised that it was the DNA from the victim, but presented [NO] evidence to prove her implication, only that these DNA's were the product of two seperate people. She did suggest that Yablonsy's DNA was possibly deposited ontop of the other DNA or that the other DNA was depostited ontop of Yablonsky"s but at no point in her expert testimony did she state that these DNA's were deposited at the same time, or were the product of any crime, or that this was evidence that there was any crime committed.

The attorney not once questioned this evidence before the trial nor had he even made an attempt to inquire as to the way this DNA was deposited onto this desk blotter, or whether it had been the result of an earlier encounter between Yablonsky and Cobb, since it was the defendants contention that the relationship between CObb and himself had gone on for months prior to someone having killed her.

CASE, RULE AND AUTHORITY

Stricklan V. Washington,466 US 668,104 s.ct. 2052 (1984), The Supreme court began it's decision with the idea,

that the VI Amendment right to counsel " exists, and id needed in order to protect the fundamental fairness and right to a fair trial". A fair trial id one that " the evidence is subjected to adversarial testing, and is presented to an impartial tribunalfor resolutions of issues defined in advance of the proceddings'.
Criminal trials require the counsels skills and knowledge in order to be able to successfully rebaff the states attmmpt to imprdson or execute them accordingly. Yabbrough V.Johnsdon,520 f3d 329,336-37 (4th cir. 2005)(presumption applicable when counsel failed to seek funds to hire DNA expert); Williams V. Taylor, 529 US 362 (2000) (counselors failure to investigate and present substancial and mitigating adversarial evidence during trial),See evide. code § 733. An induigent [illegible] defendant may request the appointment of such experts at the publics expense because the sixth amendment right to effective assistance of counsel incorporates court-appointed experts necessary for preperatoin of the defense. Corenevsky V. Superior court (1984) 36 c3d 307,318,204 cr 165.
Cal Rules of Prof. Cond. RULE 3-110 competant actions ,skills and appilications to perform.
The defendant in this case told his first attorney there was was an ongoing rekationship withm the (victim) for months prior to the murder of Rita Cobb, and that there were w several sexual encounters between Yablonsky and Cobb, and these encounters were in several areas of her home and of the defendants home, and that there was xhx in one instance , another person with Rita at her home and the three of us had engaged in a three way encounter.Thge trial attorney sdated that he had in fact spoken to Mr Canty of the san bernardino county public defenders offices and that Mr Canty had told him everything I told MR. Canty, butm there was no proof that these two had spoken and at [no] time had i discussed this case in any dimension with Dame Sanders, only that he intended on defending my innocense. The one visit I had with the attorney in the county jail before they terminated my official visit right, was that he asked what I wanted him toi do in this case. I told him that I was innocent and that I wanted him to test the evidences as Mr. canty had suggested, and that my personal attorney in Downey had also stated that the testing of the DNA"s was an absolutex must. When canty spoke to me, he told me there were several DNA's recovered [illegible]

from this scene and that he suggested that we have all the DNA's tested, and to see if there were other suspects, since there was one confession, and there was one person who lied about the time he was locked up, stating he was in jail three months prior to this case and was in for one full year, but that there was a report that shows this person had lied to the police when he was questioned, and that this person was in prison for an identical murder.

Mr. Canty also told me there was a red hair that was recovered from the body and did I feel he needed that tested also. The point being is that there was other people from this pool of attorney's that knew there was a critical need for the states evidence to be tested, and since the stae did use these evidences in the trial it was the attorney's obligation to have these evidences tested.

PENAL CODE § 987.9 Indicates that there is funds for the indigent defendants to use for expert testings and witnesses(a) In the trial of a capital case or a case under subdivisaion of section 190.05, the indigent defendant, through the defendant's counsel, may request the court for funds for the specific payment of investigations, experts, and other for the purpose of trial preperations of the defense. Since the staee presented this evidence to the jury it was imperative that the defense have this evidence tested, since it was not the right to challenge the staes evidence was forfeited by the defendant attorney. The defendant was told this evidence was going to be tested abd didnot find out until after the trial that there was [no] testing of this evidence or any other evidence the staee used in this trial. Wiggins V. Smith (20030 539 US 510, A capital case, the courts described the significance of thorough investigations by the defense counse

"[S]trategy choices made after thorough investigations of law and the facts that are rtelevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigations are reasonably precise to the extent that reasonable professionals judgements support the limitations on the investigations' "thus" 'counsel has a duty , to make reasonable investigations or to make a reasonable decisions that makes particular investigations unnecessary. In any IAC, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying heavy measure of deference to thee counselss judgeement's "

(123 s.ct. 2535, 156 l.ed.2d 485, Strickland V. Washington, supra, in

this case counsel failed the investigations and hence to discover powerful admissible evidence to mitigate of the death penalty that, if presented, might have persuaded the jury to render a lesser punishment, 123 s.ct. 2536;Rompilla V. Beard (2005) 545 US 374 (defense counsel must make reasonable effort to obtain and review evidence of aggrivating at the sentenciong phase of the trial; citing Wiggins: In Re Cox (2003) 30 c4th 974(same); In Re Lucas (2004) 33 c4th 683; People V Jones (2010) 186 ca4th 216, where investigations showed that there was no possible way the testifying officer could have seen the defendant run the stop sign. In Re Hill , (2011) 198 ca4th 1008,1023,129 cr3d 856,defense counsel in child molestation case was XXXX(IAC) in failing to obtain assistance of independant mediacal expert to aid in investigations of [possible] medical defense. People V Wrtight (1989) 62 ca4th 31; Morganti, as to scientific acceptance or PCR (polymere chain reaction) analysis; defendants contention of samples and lack of rigorous testing of labratory procedured went to the weight of evidence (PCR) People V Ledesma,43 cal.3d 171(1987); quoting People V.Pope,(2004), 115 ca4th 229,237,8 cr3d 862,(IAC) claims that is best brought before the Heabeas Writ, in order to allow the defense attorney an oppertunity to explain his/her lack of actions orchoices of defense that weigh on the cusps of his clients constitutional rights in the VI and XIV Amendments of the United States Constitution, where the reviewing court through the evidentiary process may consider the evidences before them

(Incorporated by reference with grounds nine through seventeen)

GROUND EIGHTEEN

Defense counsel Dave Sanders(attorney) public defender, committed Ineffective Assistance of Counsel (IAC), when he failed to tests states evidence of a [watch pin] that was presented at trial, violating VI and XIV Amendments of the United States Constitution.

FACTS

During pre-trial discovery, the prosecution gave the attorney (all) the evidedces he intended to call upon during the trial. During the trial, the state presented as proof of a struggle, a watchpin that was located on the bed to the upper right hand side of the (victims) head. This watchpin was part of the states evidence and the defense attoeney knew of its existance abd the states intent, and failed to challenge this evidence on any realistic level, objection, or even to show that there was (NO WAY) this watchpin was the defendants. The defense attorney could have tested this evidence in the DNA labrotories, to prove that the states evidence did not belong to the defendant in any way.This evidence played a large role in the states presentation of the trial, and in the states arguements abouth the (victims) struggle they repeatedly told the jury this struggle produced, disheveled sheets,and this watchpin that was photographed at the upper right hand side of the (victims) head and was gold colored in nature. The fact that the defense attorney didn't challenge the fact that hid defendant was left handed, and that when the watch was ever worn it was worn on the right writs as any other person does, to wear their watch on the opposite hand they favor for writting, and that his client [only] wrote with his left hand and did not have a gold watch that had gold pins. This watch pin had DNA on it as every watchpin in the world has, and especially if the watchpin was worn by a construction worker that sweated at work, which the defendant was, a construction= worker. The state professed to have never tested this watchpin, but there is no proof they didn't test the pin either, nor did the defense counselor. During the trial when this evidence was presented, the defendant demanded the attorney to object, but he stated the objection would be futile.

When the states expert testified, he stated that there was in affective way of testing this pin for DNA, but that the state had not done so. The defense attorney during cross-examination did attempt to illicit possibility of the testing of this size of evidence, and the state stated that it would be futile. Yet due to the standards of forensics and scientoific advancement of this country, there are numerous methods that are well known practices of the scientific community that can be exercised to collect hte DNA off of this states Watchpin and would have been available to diminish the states position that YAblonsky is the perpetrator to this crime, since the watch pin was left behind by the [killer] during the struggle the state was presenting to the jury, as the product result of this murder.

CASE ,RULE AND AUTHORITY

Strickland V. Washington,466 US 668,104 s.ct.2052 (1984) The supremem court began its decision that the idea that the VI Amendment right to counsel"exists,and is needed in order to protect the fundamental fairness and right to a fair trial". A fair trial is one where the "evidences is subjected to adversarial testing, and then presented to an impartial tribunal for resolutions of issues defined in advance of the proceedings" Criminal trials require the defense counsels skills an knowledge inorder to successfully rebuff the states attempt to imprison or execute them accordingly;Yarbrough V Johnson,520 f3d 329,336-37(4th cir. 2005)(Presumtion applicable when counsel did not seek funds to hire DNA expert): Williams V. Taylor,529 US 362 (2000)(Counselor failure to investigate and present substancial and mitigating adversarial evidence during tria;l) See Evid. C. § 733. An indigant defendant may request at the appointment of such experts at the publics expense because the sixth amendment right to effective counsel incorporates court-appointed experts necessary for preperation of the defense.
Corenevsky V. Superior court (1984) 36 c3d 307,318,204 cr 165.

This evidence was given full access to the defense attorney, and when the defendant akked for [all] the evidence, he did not give me a copy of this states record that this evidence even existed, and was not givem to the defendant until (after the trial)

The fact that the

GROUND EIGHTEEN (2)

When the defense attorney asked the states expert about the possibility of recovering DNA from this evidence, he knew that this evidence had DNA possibilities, but still at no point did he attempt in the two years before the trial, that he was telling the courts he needed extensions for investigation purposes, did he even attempt to test these evidence possibilities that would have cleared hid client of these charges, and the results of those tests would have provided the stae with [another DNA profile] and this profile woulkd not have been hid clients, and possibly came back matching xx the DNA that was recovered that belonged to Gregory Randolph, or possibly the red hair that had the root bulb attached, that was recovered from the body, that was surely the product od of the struggle that took place when the (victim) was being strangled by a coat hanger wire that wsas beigg wrapped around her neck.

Cal. Rulkes of Prof.Cond. RULE 3-110 Competant actoons,skill and the application to perform.

PENAL CODE § 987.9, Indigent defendants, funds for preperation of defense,(a) in the trial,of a capital case or a case under subdivision of section 190.05, the indigent defendant, through the defendant's counsel, may request the court for funds for the preperation or presentation of investigators, experts, and others for the preperation and presentation of a defense,.

In the begining of Sandera appointment he told me and my family that he was going to defend my case, and when he spoke directly to me personally he told me that he was going to have the evidences tasted XXXXX from this case, but he witheld the fact that the staee had a watch pin that they intended on presenting in this trial. The fact that hewas given this XXXXXXXXX evidence to test, inspect, and to challenge and he refused to disclose this information to me, shows that he was extremely incompetant, and dihonest. The fact he attempted to question the expert during trial does not excuse his failure to thoroughly examine this evidence, and to test the DNA possibilities himself. Had he told me there was a watchpin from this scene, I could have told him that at this point in my life, when this crime took place I never owned a golden watch, and certainly had he swon me that this pin was located on the right side of the victims head, i could have exp½lained that I was left handed and only wore my watches on

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my right hand wrist, therby proving that if the person that wore that watch that the pin came from was a right handed person.
Wiggins V Smith(2003) 539 US 510, a capital case, the courts described the significance of thorough investigations by the defense counsel "[s]trategy choices made after thorough investigations of law and the facts are relevant to plausible options are virtually unchallengeable; and strategic choices made after lees than complete investigations are reasonably precise to the extent that reasonable professionals judgements support the limitations'"thus" 'counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. In any case of IAC, a particular decision not to investigate must be directly assessed for the reasonableness in all the circumstances, applying a heavy measure of defernece to counsel's judgement"(123 s.ct.2535,156 1. ed.2d 485,Strickland V. Washington,supra, in this case counsel failed to investigate and hence to discover powerful admissible evidence to mitigate of the death penalty that , if presented, might have persuaded the jury to render a lesser punishment,123 s.ct.2536,156 1.ed.2d 486.
Rompilla V. Beard (2005) 545 US 374 (defense counsel must make reasonable effort to obtain and review maaterial that counsel knows the prosecution will rely on as evidence of aggrivating at the sentence phase of the trial;); citing Wiggins;In Re Cox (2003)30 c4th 974(same);InRe Lucas (2004) 33 c4th 683; People V Jones (2010) 186 ca4th 216,where investigations showed that there was no possible way the testifying officer could have seen the defendant run the stop sign. In Re Hill,(2011) 198 ca4th 1008,1023,129 cr3d 856, defense counsel in childmolestation case was (IAC) in failing to obtain assistance of independant medical expert to aid in investigations of [possible] medical defense.
People V Wright (1989) 62 ca4th 31; Morganti, as to scientific acceptance of PCR analysis; defendant contention of samples and lack of rigorousness of labratory procedures went to the weight of evidence (PCR); Poeple V. Morganti(1996) 43 ca4th 643 , prejudice that the prosecution conceded above that without DNA evidence there was insufficient evidence for finding of guilt beyond reasonable doubt and the attorney general did not argue to the contrary.
People V. Henderson (2003) 107 ca4th 769,

Since this evidence was preswented at the trial and the prosecutors position was that this watchpin [was] left there at this murder scene by the person that committed this murder, it was the states position that this watchpin wsas left ther by Yablonsky when Yablonsky Killed the (victim) during the struggle. Had the defense attorney just had the watchpin tested before the trial he could have proven that this watchpin belonged to Berdard, Gregory Randolph, and possibly even Joseph Saunders, since all of these were provern to have violent confrontations with Rita Cobb, and or confessed to this case or admitted that he was in fact at this crime scene because the (victim) invited him to her home after the drinking party, but certainly this tseting would have proven that it did not belong to Yablonsky. The state repeatedly told the jury there was [no] other suspects to this case, and the results of this test would have in fact produced another set of DNA reports for the jury to consider as the state was declaring that Yablonsy was the only suspect. Why wouldn't the DNA that was recovered from the staets evidence(that was left behind by the killer from the struggle) that was recovered in this watchpin not prove there are other suspects. People V Ledesma,43 cal.3d 171 (1987); Quoting People V Pope, (2004) 115 ca4th 229 ,237 ,6 cr 862,(IAC) bringing arguements into the Habeas courts that are better argued, and givre the cttorney through the evidentiary process to explain the decisions or failures for his/he deficiencies.

SEE EXHIBIT (Q) (R)

GROUND EIGHTEEN (5)

(Incorporated by reference with grounds nine through eighteen)

GROUND NINETEEN

Defense counsel Dave Sanders(attorney)public defender, committed Ineffective Assistance of Counsel(IAC), when he failed to test states evidence [red hair with root[] that was states evidence, violating VI and XIV Amendments of the United States Constitution.

FACTS

BEFORE THE TRIAL AND AFTER defendantfirst met the defense counsel attorney, he told the attorney that he wanted the evidence to this case, to review and to see if he needed to try and hire an attorney. When defendant spoke to deputy public defender MR. Canty, he was told that none of the evidence shows that defendant commited this crime, and there was seveeral DNA's to this case.When I First met the attorney Sanders he told me that Canty had spoken with him, and I topld this attorney that I wanted all the evidence to this case. A couple months later he sent me an envelope and told me that this was all the evidence there was to this case. There was no list of evidence in this 300 pages he sent and he never told me the state had a watchpin from this murder, biut Canty ha d told me that there was a RED HAIR with roots on it that was recoverd from the body and did I want him to test this. During the trial, and during direct examination of the states expert the prosecutor never attempted to illicuit from this expert whether there was hair that was recovered, only that a watchpin was located from this scene. During cross-examination the defense attempted to illicit from this states expert,

Q. Did you conduct a lifting from the body with tape?

Q. What was recoverd from this tape lifting?

Q. What was recovered from the vaccum collections of the immediate area of the crime scene?

At no time did the states expert reveal that there was a red hair with the root bulb attached from this crime scene, and the defense accepted this as a true and accurate response from the expert testimony. This red hair was recovered from the b ody and had the [entire] root attached to the hair.

CASE & RULE AND AUTHORITY

CASE ,RULE AND AUTHORITY

Strickland V. Washington,466 US 668,104 s.ct.2052 (1984) The supreme court began it's decision with the idea that the VI amendment right to counsel "exists, and is neede to protect the fundamental fairness and right to a fair trial". A fair trial is one that "the evidence is subjected to adversarial testing, and it'sresults presented to an impartial tribunal for resolutions of issuers defined in advance of the proceedings" Criminal trials require the counsels skills and knowledge in order to be able to rebuff the states attempt to imprisom or execute them accordingly;Yarbrough V. Johnson,520 f3d 329,336-37 (4th cir. 2005)(presumptions applicable when the counsel did not seek funds to hire DNA expert) Williams V. Taylor,529 US 362 (2000)(Counselors failure to investigate and present substabcial and mitigating adversarial evidence during trial),see Evid. C § 733. An indigent defendant may request the appointment of such experts at the publics expense because the sixth amendment right to effective counsel incorporatess the court appointed experts necessary for preperation of the defense): Corenevsky V. Superios Court (1984)36 c3d 307 , 318,204 cr 165. This evidence was not new to the case and the attorney relied on the staee to be forthright and upfront of it's existance, and when the expert dodged the question, Q. what was recovered from the states tape lifting off of the body, and when the state ignored the question or thecontext of the question, it was the defense attorney's obligation to think of bringing the proof of this search before he relied so devotedly to their honesty, but since there was no investigation on the behalf of the defendant the defense attorney had [no] grounds to dispute this states expert testimony. He couldn't prove there was many hairs that were lifted off of this body and one specifically that was red in color an d had the [entire] bulb root attached. Had this attorney done a thorough investigations, he would have had the test results from this red hair to prove to this jury, that during this struggle the prosecutor was describing to them , and that the prosecution repeatedly stated that Yablonsky was the onlt suspect to thsi case, the DNA profile that would have been lifted from this hairs root would have dramatically undermined the state position that (there are no other suspects)Wouldn't a hair with the roots attached that was found on the body that wsa killed from a struggle , and the DNA results different than the defendants raise reasonable doubt?

GROUND NINETEEN (a)

Cal. Rules of Prof Cond. RLUE 3-110, COMPETANT ACTIONS, SKILL AND APPLICAYTION TO PERFORM

PENAL CODE § 987.9 Indigent defendants ,funds for preperation of defense (a) In the trial of a capital case or a case under subdivision of section 190.05, the indigent defendant, through the defendabnts counsel, may request the court for funds for the specific payments of investigators, experts, and other for the preperation or presentation of the defense.

In the initial comments from this defense attorney ,he clearly stated that he was going to test all the evidences, since anything fopund at this scene and was part of the states case, would in fact be from the killer of Rita Cobb, since Yablonsky did not kill this person, and the evidence from Yablonsky was at this crime scene before the crime was ever committed, and the states expert testified to that exact same result. thereby indicating that thius red hair with the root attached to it would be the resuklt of the struggle the prosecutor was describing tio the jury, and evenwent on to state this struggle last up to three full minutes, which in any struggle of this caliber would result in scratching, clawing, kicking and pulling at the assailants arms, neck, face and body, which may very well produce the evidence of at least one hair and possibly with the roots attasched, which is exactly what this states evidence is[red hair with the root attached].

Wiggins V Smith (2003) 539 US 510, a capital case, the courts described the significance of thorough investigations by the defense counsel "[s] trategy choiced made after thorough investigations of law an d the facts that are relevant to plausible options are virtually unchallengeable, and strategic choices made after lass then complete investigations are reasonably precise to the extent that reasonable professionals judgements supprot the limitations on investigations are reasonably "thus", counsel has a dutyto make reasonable investigations or to make a reasonable dedcision that makes particular investigations unnecessary. In any IAC case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a haavy measure of deference to counsel;s judgements (123 s.ct.2535,156,1.ed.2d 486 Strickland V. Washington,supra. in this case counsel failed to investigate and hence discover powerful admissible evidence to mitigate of the death penalty.

GROUND NINETEEN (3)

That if presented , might have persuaded the jury to render a lesser punishment.
While in this case , had the attorney just did a simple inspection of the evidence that the state was going to use, and had in their poeeseeion, he could have seen that the hair that was recovered from the body was not hte same colror as the (victims) and definately not hte same color as the defendants, thereby concluding that this hair was the product of the struggle the prosecutor described, and that this hair did not come from his client. Had this attorney done a preliminary inspection of the evidence that he stated the first attorney Mr. Canty had told him about, he would have seen the compelling evidence he needed to persuade the court to authorize payment for the forensics testing needed to recover the DNA profile that this X (one singular hair would have provided).
Rompilla V. Beard (2005) 545 US 374 (defense couinsel must make reasonable effort to obtain abn review material that counsel knows the prosecutionwillprc rely on as evidence of aggrivating at the sentencing phase of the trial, Citing Wiggins,; InRe Cox (2003) 30 c4th 974(same);In Re Lucas (2004) 33 c4th 683; People V. Jones (2010) 186 ca4th 216, where investigations showed that there was no possible way the testifying officer could see the defendsant run the stop sign. In Re Hill.(2011) 198 ca4th 1008,1023,129 cr3d 856, defense in childmolestation case was IAC in failing to obtain assistance of independant medical expert to aid in investigations of [possible[] mediaal defense.
People V Wright (1989) 62 ca4th 31; Morganti: as to scientific acceptance of PCR analysis;. defendants contention of samples and lack of rigorousness of labratory procedures went to the weight of the evidence(PCR).
People V Morganti(XXXXX1996) 43 ca4th 643,prejudice that the prosecution coinceded above that without hte DNA evidence there was insufficient evidence for the finding of guilt beyond reasonable doubt, ansd the attorney general did not argue to the contrary.
While had the attorney for this record investigated this red hair and it origin, he could have ingested enough x reasonable doubt, since at one poin the jury returned hopelessly deadlocked, and had they seen that the hair that was recovered from this [striggle] the prosecutor proclaimed happened, he could have shown that his defending client was not the actual perpetrating suspect to this case.

People V Henderson (2003) 107 ca4th 769.
People V Ledesma, 43 cal.3d 171 (1987); Quoting People V Pope, (2004) 115 ca4th 229,237 ,8 cr3d 862 ,(IAC, that is best brought in the Habeas Writ, yto allow thw ddefense attorney an oppertunity to explain to the reviewing courts in an evidentiary hearing his decisions or lack of decisions and actions as a defense for his client

SEE EXHIBITS (Q) (R)

GROUND NINETEEN (19)

(Incorporated by reference with grounds Nine through nineteen)

GROUND TWENTY

Defense counsel Dave Sanders (attorney) public defender committed inn-effective Assistanse of Counsel (IAC), when he failed to investigate states witness Lori Amaro,violating VI and XIV Amendments of the United States Constitution.

FACTS

During pre-trial defendant asked the attorney for all the evidences to this case. In the 300 pages he gave the defendant, there was police reports of an arrest for an incident that defendant's ex-fiance had filed charges against the defendant for. Defendabt told the attorney this report was [false] and that no charges were ever filed,and that the Long Beach courts had in fact given the defendant a permanent restraining order against Lori Amaro from the defendant and his children. Lori andd the defendant had broken up, and as a result, Lori had fabricated allegations that her fiance (Yablonsky) had broken into her home and held a (tazer) to her and raped her, forcing her to perform oral copulation on him, and that he had no buisness in the home. When the defendant was arrested for tthis charge, and booked into the L.B. police station, the defendant had called the alleged victim, and she told the defendant that he had raped her soul and deserved to pay the price. The defendant again called Lori to discuss her actions, and plead for her to tell the truth, but she insisted that because he raped her soul that he would have to pay for his actions. The defendant called the detective that was assigned to this specific case and explained the context of his calls to Lori Amaro, that she repeatedly stated that since she felt he had raped her soul that he should be charged with rape. The detective listened in on the next call to the alleged victim, demanding that she just come down and tell the police the truth, and again this person responded that since she felt as if her soul had been raped, that she felt he should be charged with rape. Ten minutes after the call the detective listened in on, the charges were dropped, and the detective offered a temporary restraining order against Lori Amaro, but that offer was refused. Within days Lori had began following the defendant, and the defendant filed for a permanent restraining order in the Long Beach court, on the basis of stalker, and the order was granted against Lori Amaro,

from John Yablonsky and his three children, Joseph, Kenneth, and Briana Yablonsky, for the duration of one year. Defense counsel in this case not once called this states witness, nor inquired with the Long Beach courts to retrieve this record that was ordered. This witness was to be caaled by the state to testify for Ewid.C. § 1101(b), about previous behavior of sexual deviance.

CASE RULE AND AUTHORITY

Evidence Code § 1101(b) Evidence of character to prove conduct,nothing in this section prohibits the admission of evidence that a person committed a crime....or other act when relevant to prove some fact... or whether a defendant in a prosecution for an unlawful act, sexual, or attmpmpted unlawful aexual act did not reasonably and in good faith believe that the victim consented, other than his or her disposititon to commit such an act.

Wiggins V. Smith (2003) 539 US 510, a capital case , the courts desdribed the significance of thorough investigation bt counsel "[S]trategy choices made after thorough investigatioins of law and facts relenant to plausible options are virtually unchallengeable; and strategic choices mead after less than complete investigations are reasonablyy precise ton the extent that reasonable professionals judgements support the limitations.' "thus",' counsel has a duty to make reasonable investigations ot to makXe reasonable investigations particularly unnecessary. In any effect, every ineffective case, a particular decision not to investigate must be directly assed for the reasonableness in all the circumstances, applying a heavy measure of deferance to counsels judgements"

(123 s.ct. 2535,156 1.ed.2d 485, Strickland V. Washington, in this case counsel failed to investigate and hence to discover powerful admissible evidence to mitigation of the death penalty, that if presented, might have persuaded the jury to render a lesser punishment,123 s.ct.2536,156 1.ed.2d 486.

While ink this case there was the connection between the public defenders offices, where the attorney could have had the sister office collect the court records showing that there was in fact a restraining order that was granted out of the Long Beach court, and the application to verify the defendants contention, that the rape charges were in fact falsely made by LOri Amaro against Yablonsky, and have that office fax records that they ccollectd from the courts files verifying.

Rompilla V Beard(2005) 545 US 374 (defense counsel must make reasonable effort to obtain and review material that counsel knows the prosecution will probably rely on as evidence of aggrivating at the sentencing phase of the trial,Citing Wiggins:In Re Cox (same): In Re Lucas (2004) 33 c4th 682 : People V Jones (2010) 186 ca4th 216, Where the testifying officer,after the investigations of defense counsel proved he could not possibly see the defendant run the stop sign , that the officer swore he saw the defendant run.

In Re Hill (2010) 198 ca 4th 1008,1023,129 cr3d 856, where defense counsel in child molestation case was (IAC) in failing to obtain forensic photographs of alleged victim and in failing to obtain assistance of independant medical expert to aid in the investigation of possible medical defense.

Here the records of this restraining order were in the courts records along with the application for the restraining ordere that was given to the defendant to prepare ,file and serne upon the alleged rape victim and her answer to the application, but the defebnse counsel did nothing to even attempt to gather this evidence that would have drastically undermined the states witness the prosecutor was going to use in this trial, and therefore prejudicing his client with his failure to conduct a simple investigation into the court records, to prove his clients position. People V Pope(Cal.1979) 152 cal.rptr 732,23 cal.3d 412,Right to effective representation is denied if counsel makes critical tactical decisions which would not be made by diligent, ordinary prudent lawyers in criminal cases even if the decision were not made from ignorance or fact of law. The sole defense by appellant counsel was that the robbery was committed by two other suspects, harbin and stoker. There was testimony that the two men were trouble makers and that they had followed appellant and the victim out of the bar on the nite of the robbery. Appellant's counsel did not seek to subpoena Harbin or Stoker before the trial. In cross-examination a police officer, appellants counsel sought to illicil extrajudicial statements made by one suspect to the other. the officer overheard Harbin tell Stoker that "we were seen leaving the Trade Winds (but the police) haven't got any evidence and we don't have anything to worry about" The prosecutor objected on haarsay grounds unless the counsel made a showing that the declarant was unavailable. Sbbpoenas were sent to Harbin and stoker, and the following day,

Harbin was called to testify, but with his counsels advice he invoked his Fifth amendment right to not testify, while Stoker had not been located, , the prodecutoon in that case questioned whether the public defenders office had exercised"reasonable diligence" in seeking [23 cal.3d 420] to procure Stoker's attendance,[500 p.2d 963] Defense counsel acknowledged that the only effort he made to obtain Stokers presence at trial had been made by phone call.
Here the defense counsel stated in a motion for discovery that he needed/ thecontact information for Lori Amaro on no later than Oct.15, 2010, and then on jan. 13,2011 this information was given to the defense counsel, and on Jan. 14, 2011 the defense announsed readiness for trial.

The attorney gave me the 300 pages in the beginning of his appointment and in those pages were the report made by the alleged victim, and immediately told the attorney over the phoine and in person that this report was falsely made and that there was a court record proving that it was false in the Long Beach courts. At some point the attorney did state that he tried to call the alleged victim ,but that he had a wrong number. If he wass given this informatiom XXXXXX via the fax on the 13th of january, why did he announce readiness for trial on the 14th?, at 9 a.m. ? When did he call// ? and where did he get hhe number from? In People V Ibarra(1963) 60 cal.2d 460,464,34 cal.rptr.863,866,386 p.2d 487,490, thios standard the court articulated a stridt standard to measure the constitutional right to "effective aid in the preperation and trial,of the case.'(Powell V. State of Alabama,287 US 45,71,53 s.ct. 55,77 l.ed.158.)" In order to obtain xxxxxxx relief on appeal,"(i)t must appear that the counsel's lack of diligence or competance reduced the trial to a "farce or sham", (citations)" (People V Ibarra,supra, 60 cal.2d at p.464,34 cal.rptr. at p. 866,386 p.2d at p.490.)
This attorney never called the alleged victim, because the staee just gave him the number the day before he announced readiness for trial ,and that fax he received from Det. Alexander had the Phoine number on to call. Had this defense counsel listened to me when I told him there was other people that could have corroberated that LOri only filed the charges against me , was because I had just broken up with LOri amaro for her Violence,and Lori then confided to her long friend Tony Larue, her alcoholics anonomous sponsor, and I told him where to locate this lady at, and told him that Tony would tell him the truth if he subpenead her to court.

This attorney had at least two years to investigate, and at least 90 percent of that with the information I gave him about the restraining order(which he declared in the court on the record, but the judge would not consider his statements"your just repeating what your client is saying") instead of doing his duty to investigate these avenues of defense. For this attorney to wait until the day before he announced trial readiness to attempt to locate this states leading witness, and resorting to phone calls to the alleged last home number he mysteriously found, when his client gave him an address to talk to Tony Larue, who definately would have given him the current address and phone number to Lori Amaro.
People V Vest (1974)43 cal.app.3d 728,736 118 cal.rptr.84,88, criminal attorney's have a duty to"investigate carefully all defenses of fact and law that may be available to the defendant...." In Re Williams,supra 1 cal.3d at p. 175,81 cal.rptr.at p. 789,460 p.2d at p.989. This obligation includes confering with the client "without undue delay and as often as necessary... to elicit matters of defense..."Coles V Payton (4th cir. (1968) 389 f2d 224,226

SEE EXHIBIT (S) and (T)

GROUND TWENTY (5)