JOHN HENRY YABLON SKY
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IN PROPRIA PERSONA

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANBERNARDINO

THE PEOPLE Plaintiff, vs. JOHN HENRY YABLONSKY, Defendant	Case No.: FVI900518 NOTICE OF MOTION FOR THIS COURT TO TAKE NOTICE THAT THE DISTRICT ATTORNEY STRIKING MOTION DOES NOT RISE TO THE REQUISITE BURDENS SET OUT BY SB775 AND THE TRIAL RECORD DOES NOT SUPPORT THE CLAIMS WITHIN THE STRIKING MOTION DATE;NOVEMBER 22, 2024 TIME;0830 DEPT;V-3 THE HORORABLE JUDGE ENRIQUE GUERRERO

TO; JASON ANDERSON YOUR EVIDENCE DOES NOT MEET THE REQUISITE BURDENS SET OUT BY SENATE BILL 775

Please take notice that John Henry Yablonsky (PETITIONER) moves this Court to attack the integrity of the evidence provided by county district attorney Jason Anderson that there is no possible way that a reasonable jurist would find petitioner, or, anyone else guilty of felony murder based simply on an uncorroborated statement that had to be changed by the

district attorney office to even suggest an inference of guilt which only relates to an act which occurred days before any felony or murder occurred.

Our 4th appellate district court held on March 28, 2024 held, "having considered" the principle of law of equity the foundational framework legislature recognized when enacting SB 1437 amending the felony-murder rule attached to the natural and probable consequence doctrine. In essence the operative language in 1437 eliminated the natural and probable consequence liability. (CITING) (CURIEL 15 Cal5th @462) That the court should not reject petitioner's allegations on credibility without first issuing an order to show cause. (CITING) (CAMPBELL 98 Cal.app.5th @356-7) "INTENT TO KILL FINDINGS IN OF ITSELF DOES NOT OVERCOME PETITIONERS ALLEGATIONS" under 1172.6. (GARRISON 73 Cal.app.5th @ 743) "Whether the record conclusively shows only one person accused, but, all the other direct kill evidence indicates another perpetrator". Then the record is insufficient. At this point petitioner clearly points out the fact the DA as well as the 4th appellate district court clearly pointed out there was at least 17 suspects to this murder mystery. (DSM 3; 4-8) Most importantly the jury were informed there were at least 16 other suspects, and at least one of them named Joseph Sounder's left his fingerprint at the scene.(DSM 4;5-8) (RT 245, 265, 267, 287) (COA @ 4) This is important because the record conclusively shows that petitioner DNA was not a product of the actual crimes alleged in this felony- murder. (RT 317, 491) (COA @ 17, 11) Therefore the jury could have legally concluded that petitioner was guilty of murder solely based on the meaning of "NATURAL AND PROBABLE CONSEQUENCE" once the DNA of the case does not place petitioner at the crime in the time frame the murder actually occurred. (317- SBSD JONES-"DNA there several days before the crime of murder) (491- SBSD PATHOLOGIST SAUKEL-"At least one and a half days passed then she died")

(PICKETT 93 Cal.app.5th @ 993) (DELGADILLO 14 Cal.5thy @ 233) This same legal conclusion attaches to the special circumstances, considering the DNA is older than the alleged felony by at least one and a half days! The court further held 1172.6 [shall] be held in light of reasonable applications of the evidences codes. (BECERRA 92 Cal.app.5th @ 103) The question here is whether the district attorney assertions that an uncorroborated statement about an unrelated event rises sufficiently to overcome the verified petition at the prima facie stage. "This statement evidence is the proof a felony occurred?" To suggest a deceptive answer about an unrelated event amounts to actual proof of an actual killer forces us to take a closer look at the actual statement evidence in its entirety. It is the district attorney's "THEOERY" that the lie amounts to proof of guilty conscience, without telling the jury what the conscience was about. They showed the jury DNA from an act that occurred days before the alleged crimes, but never made that connection and allowed the jury to speculate the DNA was in fact related to the crimes alleged, when it was not.

> "Can any statement actually prove an act of malice aforethought, or, is it an act that suggests a speculative inference that the deceptive context of this admission to an unrelated event which occurred days before any actual crimes. Therefore in truth the deceptive response only proves deception to an unrelated event which actually proves the truth to the question j now before this court, "WHETHER YABLONSKY LIED ABOUT THE CONSENSUAL SEX TO HIDE A RAPE WHICH OCCURRED SOMETIME AFTER HIS DNA WAS PLACED INTO RITA." The district attorney never said!

Therefore the jury were never actual apprised of the actual facts as to whether Yablonsky was to be found as the actual killer, a new requisite, because their instructions never asked them to make that conclusion. (EDMUND V FLORIDA 458 US 782) (1982) (STRONG @ 708) (BANKS @ 803. The legal gymnastics on this issue is complex so we must consider what the

laymen who was told the defendant is the subject of a theory that allegedly a felony- murder occurred and that the defendant's actions are the result of "NATURAL AND PROBABLE CONSEQUENCES" which resulted in a murder. This "PRESUMPTION" that the juror's conclusions meant this is [UNFOUNDED] at best. **COULD A REASONABLE JURISTS ACTUALLY BELIEVE A STATEMENT COULD ACTUALLY KILL ANYONE? [OR] WAS THERE MORE TO THIS THAN THE DENIAL?** (IN RE SCOGGINS 9 Cal. 5th @ 676-67) (CLARK @ 618-22) (CODY 92 Cal.app.5th @ 107)The court is to act as an independent fact finder and the people are to prove the [charges] beyond reasonable doubt. As we know the statement evidence, once we learn which copy the district attorney office decides which copy of the actual recording they intend to use, should supply us these answers. This leaves us as to whether the jury were properly instructed in the first place, as discussed in earlier briefs on this issue. (CODY @ 107) As stated, petitioner has exhaustively addressed this issue. This panel of jurists were repeatedly illegally instructed on how to determine guilt, but, none of this jury were ever asked to find Yablonsky as the actual killer as required now, therefore the instructions were insufficient to meet today's burdens set out by SB 775. The jury were only asked whether they could conclude whether under theory that petitioner's actions amounted to natural and probable consequences which led to an illegal act described within the charging papers. (CALCRIM 540A) "THE DEFENDANT IS CHARGED WITH MURDER UNDER A THEORY", AND, "the natural and probable consequences of the act were dangerous to human life" .None of these instructions asked the jury to conclude whether Yablonsky personally committed these crimes! In this case there is absolutely no evidence supporting the verdict outside the theory and "THE STATEMENT EVIDNECE". (Williams 57 Cal.app.5th 663) (CODY @ 110)

As best we can glean, the district attorney expect the court to rely primarily on a statement that 1) is uncorroborated 2) is unrelated to the actual crimes alleged 3) has been altered until it changed the actual conversation between petitioner and the cops.

Because the court instructed Yablonsky jury on "THEORY" and "NATURAL AND PROBABLE CONSEQUENCES" **THE JURY WERE ILLEGALLY INSTRUCTED UNDER 1437, 775 AND STRONG!** In this case there is actual murder evidence, but, the trial record is silent about its content, but, not by mistake! (MEDINA 46 Cal.4th 913) That imposes a vicarious liability to the targeted offense, but, not Yablonsky, for these intended crimes. (CHIU 59 Cal.4th 164) (CALCRIM 540A) was rewritten for this very reasons.

This jury heard that petitioners DNA placed him at the scene physically, but, at a different time, days before any crime actually occurred, and according to the theory, this is not enough. But the actual murder evidence found on the victim, on here body, under her body, at the immediate scene of the murder [must] be considered. Because the jury relied on the statement and none of the actual murder evidence there is a clear path that the jury found guilt based solely on the content of the statement. **THIS RAISES SEROUS CONCERNS ABOUT THE ACTUAL CONTENT AND WHETHER THAT EVIDNECE SURIVIVES THE EVIDENCES CODES TODAY, IF THERE WAS A NEW TRIAL CA EV 1402 & 1521 SAYS THAT IT CANNOT.** At the time of the verdict the killer and non- killer were guilty just the same. That law changed and now must be the reason this court weighs these facts now, whether the district attorney office has been able to navigate the verified petition. So, we consider whether the statement evidence actually proves anything other than a lie about an affair. The DNA suggests that is the case here, because there is no DNA contradicting it.

We then consider whether the DNA claims by the district attorney striking motion that "YABLONKSY DNA IS THE PRODIUCT OF AN ACT WHICH OCCURRED DAYS BEFORE THE ACTUAL MURDDER". **IF THAT'S THE CASE THEN THIS IS NOT A FELONY MURDER AND PETITIONER SHOULD HAVE BEEN GIVEN TWO SEPARATE TRIALS. ONE FOR THE ALLEGED FELONY AND ONE FOR THE ACTUAL MURDER, WHICH IS THE CASE IN THIS PRE-PROPOSITION 115 CASE.**

But to conclude there is DNA and that is all there is needed, somebody is wrong, and it is not the petitioner. The states leading experts clearly placed petitioner at the scene days before the crime, but not one scintilla of fact or theory that stated, suggested petitioner was in that house on the day Rita was killed, not one fact that petitioner was the one who actually killed Rita. Or whether he actually raped her….if a rape even occurred. The facts of this case tells us there was no rape until the district attorney created one for trial purpose in this "THEORY OF FELONY- MURDER". Even if the district attorney can prove the statement is credible, he cannot prove all the elements of the rape or the murder because the DNA and other evidence prevents him from making that showing. In fact is they had these facts they would have presented them here, but, they did not, and why? Because those evidences point at someone other than petitioner as the actual killer. According to the district attorney Yablonsky is a killer by theory alone!