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# SUPREME COURT COPY

John Henry Yablonsky AL0373  
18-147  
1 480 Alta rd.  
2 Sandiego,ca,92179

SUPREME COURT  
LODGED EXHIBITS

JUL 18 2019

CONFIRMED COPY

3 FACTUAL INNOCENCE CLAIM  
4 SECOND AND SUCCESSIVE ALL WRITS ACT

Deputy

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7  
8 CLERK OF THE COURT  
9 SUPREME COURT FOR THE STATE  
10 OF CALIFORNIA

11 In Re John Henry Yablonsky;  
12 On habeas corpus;

§ No.# \_\_\_\_\_

§ Trial Court #FVI900518  
§ The honorable Judge J. Tomberlin  
§ SanBernardino County

§ PURSUANT TO P.C. §§ 141, 1473  
§ SENATE BILLS 261, 1134, 1909

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19 HYBRID ALL WRITS ACT PETITION FOR ERROR CORAM NOBIS/HABEAS CORPUS

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21 Book THREE of four

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25  
26 John Henry Yablonsky  
27 in propria persona  
28

# EXHIBIT COVER PAGE

36

EXHIBIT

Description of this exhibit:

Number of pages to this exhibit: \_\_\_\_\_ pages.

**JURISDICTION:** (Check One Only)

- MUNICIPAL COURT
- SUPERIOR COURT
- APPELLATE COURT
- STATE SUPREME COURT
- UNITED STATES DISTRICT COURT
- STATE CIRCUIT COURT
- UNITES STATES SUPREME COURT
- GRAND JURY

(6)

**COURT COPY**

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2016 OCT -5 AM 11:43

FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO

OCT 05 2016

BY V. Thompson  
V THOMPSON, DEPUTY

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO**

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<b>THE PEOPLE OF THE STATE OF CALIFORNIA,</b>	)	<b>CASE NO. FVI900518</b>
	)	
Plaintiff,	)	<b>OPPOSITION OF SAN BERNARDINO COUNTY DA'S OFFICE TO DEFENDANT'S MOTION TO RECUSE SBCDAO</b>
vs.	)	
<b>JOHN HENRY YABLONSKY,</b>	)	
	)	<b>DATE: October 8, 2010</b>
Defendant.	)	<b>TIME: V-2</b>
	)	<b>DEPT: 8:30 AM</b>
	)	
	)	

**PRELIMINARY STATEMENT**

Defendant is charged with murder in the course of a rape or attempted rape (Penal Code §§ 187, 189, 190.2(a)(17)(C).) He moves to recuse the San Bernardino County District Attorney, Michael Ramos, and his office, from this case<sup>1</sup> because DA Ramos used this particular "cold case" in one of his political

<sup>1</sup> Defendant's proof of services fails to show service on the Attorney General's Office, which is a condition precedent for this motion (Penal Code § 1424(a)(1).)

**OPPOSITION OF SAN BERNARDINO DA'S OFFICE TO DEFENDANT'S MOTION TO RECUSE SBCDAO**

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1 mailers<sup>2</sup> during his recent re-election campaign and defendant subsequently  
2 filed a civil suit<sup>3</sup> against DA Ramos for such use.  
3

4  
5 **STATEMENT OF FACTS**

6 On Monday, September 23, 1985, Darryl Kraemer and his present wife,  
7 Marta Kraemer, discovered his mother Rita Cobb's corpse in her residence at  
8 35435 Highway 18 in Lucerne Valley, California. Cobb's body was located in her  
9 bedroom with a wire coat hanger wrapped tightly around her neck. Cobb's body  
10 was positioned with her legs splayed. There appeared to be semen stains on a  
11 felt pad underneath her. There was also a white pair of shorts stuffed in Cobb's  
12 mouth. Cobb's clothing was located at the foot of the bed.

13 When Darryl and Marta Kraemer arrived, the garage door was open.  
14 Cobb's Cadillac was inside the garage. The drapes were pulled over the front  
15 windows -- which were normally left open. Additionally, the front screen door  
16 and the sliding glass door to the patio area were unlocked -- but were normally  
17 locked.

18 Rita Cobb was 55 years old. She lived alone in Lucerne Valley, and worked  
19 at the Spring Valley Lake Country Club. She was last seen late the preceding  
20 Friday night (September 20, 1985) leaving a friend's house after a small get-  
21 together. She had been drinking. Cobb had Saturday, Sunday, and Monday off  
22 from work. As far as Cobb's personal life, she did not have a boyfriend but  
23 dated.

24 Criminalist Don Jones arrived at the Cobb residence with the homicide  
25 team on September 23. He collected and photographed the physical evidence.  
26 Jones collected a vaginal swab from Rita Cobb's body. Jones also collected a felt

27 <sup>2</sup> We assume that the original of defendant's motion includes an  
28 original color mailer.

<sup>3</sup> Defendant's paperwork does not tell the court much about the civil  
suit. (See *Yablonsky v. Ramos*, CIVDS-1010254.)

**OPPOSITION OF SAN BERNARDINO DA'S OFFICE TO DEFENDANT'S  
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1 pad from under Cobb's body that contained possible semen stains. Additionally,  
2 Jones collected a pair of panties. Criminalist David Stockwell detected semen  
3 stains on the vaginal swab and the stains found on the felt pad. However, he  
4 did not detect any semen on the panties.

5 The next day, Dr. Bill Saukel (who was at the time completing his  
6 fellowship in Pathology) performed an autopsy. He determined that the cause of  
7 death was ligature and/or manual strangulation. Cobb's body was in a  
8 moderate stage of decomposition. Cobb's hyoid bone had been fractured in two  
9 places. Microscopic examination done on the pap stain of a vaginal swab done  
10 on Cobb revealed a moderate number of sperm heads present.

11 Over the years, the Sheriff's Department developed numerous leads and  
12 suspects. None matched the ABO type B nonsecretor the crime lab had  
13 discovered. In 1998, Criminalist Don Jones did additional testing on the vaginal  
14 swab and the stain on the felt pad. He performed RFLP and PCR DNA analysis.  
15 Both samples containing sperm were consistent with one profile. With this  
16 additional analysis, the ongoing list of suspects who had items available for DNA  
17 testing were compared to the results from the vaginal swab and the stain from  
18 the felt pad. *All* suspects were excluded as being the semen donors.

19 In 2003, Criminalist Monica Siewertsen did additional DNA analysis on  
20 the vaginal swab taken from Rita Cobb's body in 1985. She was able to obtain a  
21 complete male STR-DNA profile from the sperm fraction. This profile was  
22 subsequently entered into the CODIS database to be searched among profiles  
23 obtained from convicted offenders throughout the nation.

24 On October 29th 2008, the Signal Hill P.D. arrested John Yablonsky on a  
25 misdemeanor warrant for disturbing the peace. He was subsequently booked  
26 into a jail facility -- where a DNA buccal swab was taken because he had prior  
27 multiple felony convictions for second degree burglary and receiving stolen  
28

1 property. His DNA profile was subsequently placed into the CODIS database.  
2 The crime lab was notified of a "hit" on the Rita Cobb case in December 2008.

3 On Sunday, March 8th 2009, Detectives Myler and Alexander went to  
4 John Yablonsky's residence in Long Beach. Myler and Alexander told Yablonsky  
5 that they were following up on a case and had some photographs to show  
6 him. Yablonsky invited them inside, where his wife Melody and other family  
7 members were present. When shown a photograph of Rita Cobb, Yablonsky was  
8 visibly shaken. He told the detectives that he and his ex-wife Holly rented the  
9 back house from Rita back in 1984-1985 for about nine months.  
10 Yablonsky said that while they were living there, Rita was living alone in the  
11 main house. He helped do maintenance work on Cobb's property. Prior to Cobb  
12 being murdered, he and Holly moved to another property just down the  
13 road. Yablonsky also gave the detectives a lot of background.

14 When asked about whether he knew anything about Cobb's  
15 murder, Yablonsky told the detectives that he heard from his father George that  
16 Rita was murdered with a nylon. Myler and Alexander asked Yablonsky if he  
17 ever had sex with Rita or had any intimate relations with Cobb. He responded  
18 that he had not. The detectives asked Yablonsky if he would go down to the  
19 Signal Hill P.D. to finish the interview so that they could question him in a more  
20 private setting. Yablonsky agreed.

21 Once at the station, the detectives reiterated to Yablonsky that he was not  
22 under arrest and was free to leave at any time. Yablonsky agreed to stay for the  
23 interview. Yablonsky told the detectives that he was using methamphetamine  
24 while he was living in Lucerne Valley around the mid-1980's. He was living in  
25 Long Beach with Holly's mother at the time Cobb was murdered and that he  
26 learned of the murder from his father George while he was visiting him in  
27 Lucerne Valley. Yablonsky also told the detectives that he had heard that  
28 Cobb's son Daryl was convicted of her murder.

OPPOSITION OF SAN BERNARDINO DA'S OFFICE TO DEFENDANT'S  
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1 Myler and Alexander then asked Yablonsky if he had any type of intimate  
2 relationship with Cobb back in 1985 such as kissing, romance, or  
3 sex. Yablonsky responded that he did not. Detectives then told Yablonsky that  
4 the physical evidence had convinced them that he committed the murder and  
5 asked him about the DNA that was taken from him months earlier when he was  
6 arrested. Yablonsky replied that he did not do it.

7 The detectives then confronted Yablonsky about two alleged prior rapes,  
8 one that occurred in 1982 and the other in 1996. Yablonsky denied committing  
9 the two rapes. Yablonsky then told the detectives that he didn't even think he  
10 was living in Lucerne Valley when Cobb's murder happened. Shortly after that,  
11 Yablonsky requested an attorney.

12 Myler and Alexander then placed Yablonsky under arrest for the murder of  
13 Rita Cobb.

14  
15 I.  
16 DEFENDANT HAS NOT AND CANNOT MEET HIS STATUTORY BURDEN OF  
17 SHOWING A "CONFLICT OF INTEREST" SUFFICIENT TO CONSTITUTE A  
18 THREAT TO HIS RIGHT TO A FAIR TRIAL.

19 "The recusal of an entire prosecutorial office is a serious step, imposing a  
20 substantial burden on the People, and the Legislature and the courts may  
21 reasonably insist upon a showing that such a step is necessary to assure a fair  
22 trial." (*People v. Hamilton* (1989) 48 Cal.3d 1142, 1156.) Moreover,  
23 "[d]isqualification of an entire prosecutorial office from a case is disfavored by  
24 the courts, absent a substantial reason related to the proper administration of  
25 justice." (*People v. Hernandez* (1991) 235 Cal.App.3d 674, 679-680.) The  
26 showing of a conflict of interest necessary to justify so drastic a remedy must be  
27 especially persuasive. (*Hernandez, supra*, at p. 678; see also, *People v. Petrisca*  
28 (2006) 138 Cal.App.4th 189, 195.)

In considering a motion for recusal, the court must presume the district  
attorney properly and conscientiously will discharge his or her duties and has

1 performed official duty properly. (*People v. Superior Court (Martin)* (1979) 98  
2 Cal.App.3d 515, 521.) In *Martin*, the appellate court pointed out that an  
3 erroneous judicial recusal denying the district attorney his or her lawful power  
4 is much more than "ordinary judicial error." In overturning the trial court's  
5 order of recusal, the court emphasized the importance of the district attorney's  
6 function:

7 "The district attorney is the public prosecutor. [¶] He  
8 shall attend the courts, and conduct on behalf of the  
9 people all prosecutions for public offenses." (Gov.  
10 Code, § 26500.) He is the People's choice of an  
11 attorney to represent them in their public affairs. (See  
12 Gov. Code, § 24009.) "He acts as both a county officer  
13 and a state officer in the exercise of the powers for  
14 which he has been elected." [Citation.] In the  
15 performance of his duties he is thus primarily  
16 responsible to the electorate. "There is [ordinarily] no  
17 review [of his power to prosecute] nor can a court  
18 control this statutory power by mandamus."  
19 [Citation.]

20 (*Martin, supra*, at p. 519; similarly see *People ex. rel. Younger v. Superior Court*  
21 (1978) 86 Cal.App.3d 180, 203-204.)

22 Recusal deprives county residents of the services of their elected  
23 representative in the prosecution of criminal cases. "The attorney general is, of  
24 course, an elected state official, but unlike the district attorney, is not  
25 accountable at the ballot box exclusively to the electorate of the county." (*People*  
26 *v. Lopez* (1984) 155 Cal.App.3d 813, 822.)

27 Prosecutors are public fiduciaries. They are servants  
28 of the People, obliged to pursue impartially in each  
case the interests of justice and of the community as a  
whole. When conflicts arise that compromise their  
ability to do so, they can and should be recused. But  
defendants bear the burden of demonstrating a  
genuine conflict; in the absence of any such conflict, a  
trial court should not interfere with the People's  
prerogative to select who is to represent them.

(*Haraguchi v. Superior Court* (2008) 43 Cal.4th 701, 709, fn. omitted.)

OPPOSITION OF SAN BERNARDINO DA'S OFFICE TO DEFENDANT'S  
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1           The disqualification statute, Penal Code § 1424, does not permit recusal  
2 just because the District Attorney's participation in the case would appear  
3 improper or unseemly, or could reduce public confidence in the integrity and  
4 impartiality of the criminal justice system. (*Hambarian v. Superior Court* (2002)  
5 27 Cal.4th 826, 835; *see also People v. McPartland* (1988) 198 Cal.App.3d 569,  
6 573-574; *People v. Lopez, supra*, 155 Cal.App.3d at pp. 827-828.) "[S]ection  
7 1424 does not exist as a free-form vehicle through which to express judicial  
8 condemnation of distasteful, or even improper, prosecutorial actions."  
9 (*Hollywood v. Superior Court* (2008) 43 Cal.4th 721, 735.)

10  
11           [W]e emphasize that recusal motions are not  
12 disciplinary proceedings against the prosecutor. The  
13 ultimate focus of the section 1424 inquiry is on  
14 protection of the defendant's rights, not whether  
15 recusal may be just or unjust for the prosecutor.  
16 Thus, in some cases a prosecutor may have committed  
17 misconduct but not be subject to recusal because the  
18 misconduct does not impair the defendant's right to a  
19 fair proceeding; in other cases, a prosecutor may  
20 commit no misconduct but nevertheless be subject to  
21 recusal because a conflict, through no fault of the  
22 prosecutor's, jeopardizes the defendant's rights.

23 (*Hollywood v. Superior Court, supra*, 43 Cal.4th at p. 731.)

24           Finally, there must be "no other alternative available but to recuse the  
25 entire district attorney's office." (*People v. Merritt* (1993) 19 Cal.App.4th 1573,  
26 1579; *see also People v. Cannedy* (2009) 176 Cal.App.4th 1474, 1482.) Such  
27 less drastic alternatives that may suffice under the circumstances include, for  
28 example, "walling-off" a district attorney employee witness from the prosecution  
or transferring the case to another branch office. (*People v. Cannedy, supra*, 176  
Cal.App.4th at p. 1491.)

          Against this backdrop of law, this defendant presents what amounts to  
three arguments for recusal of the DA and his office<sup>4</sup>: (I) that his case was

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<sup>4</sup> "DAO."

1 utilized in political mailers to all eligible jurors, (2) that he (the defendant) has  
2 filed suit against the sitting DA as a result, and (3) as a consequence of filing  
3 that civil suit, he has been abused at the West Valley Detention Center.<sup>5</sup>  
4

5 The court can dispatch portions of these arguments immediately. First,  
6 any effect a political mailer had on the jury venire surely has *dissipated* in the  
7 four months between today's date and the primary election at which DA Ramos  
8 was victorious on June 8, 2010. Second, assuming any wisp of memory of *one*  
9 political mailer among the torrents of mailers voters received remains in a  
10 venireman's mind, it becomes an issue for voir dire, just like any other "excess  
11 publicity" issue in a murder trial.

12 Third, while defendant may *perceive* a causal connection between the  
13 mailer, the civil suit, and his problems at the WVDC, he cannot *prove* one.  
14 Finally, even if he could, his problems at the WVDC are, for the most part, the  
15 province of the administrative wing of the Sheriff's Department for which  
16 remedies may be sought from this court. They are matters over which the DA  
17 and the DAO have no control.

18  
19 **II.**

20 **DEFENDANT'S CASE WAS PROMINENT IN A POLITICAL MAILER IN THE**  
21 **DISTRICT ATTORNEY'S RACE FOR REELECTION. HOWEVER, THAT**  
22 **MAILER FELL WITHIN CASE LAW AND THE RULES OF PROFESSIONAL**  
23 **CONFLICT.**

24 Mr. Yablonsky's face,<sup>6</sup> name, and case adorn a political mailer the Ramos  
25 campaign sent before the June 2010 primary election. In that mailer, the  
26 incumbent district attorney is quoted as saying, "Twenty five years after the  
27 crime, Rita Cobb's family *will have closure.*" The mailer also indicates that

28  
5 "WVDC."

6 So far as we can tell from a photocopy of the mailer, the defendant's  
picture is from a booking photograph.

1 defendant is "*charged with murder* in the 1985 slaying of Lucerne Valley  
2 mother Rita M. Cobb - *on trial this year* by Mike Ramos' Cold Case Unit."<sup>7</sup>

3 Defendant tells us that

4  
5 "Having used the defendant for the purposes of getting  
6 elected puts the district attorney in a conflict situation.  
7 He has implied that defendant has already been  
8 convicted and that the victim's family 'will have  
9 closure.' ... In doing so, he has, in essence, staked  
10 himself to a conviction. He now has a dog in the fight  
11 in more ways than he does with any other prosecution.  
12 He has singled out the defendant and has not treated  
13 him in an even-handed fashion."

14 (*Defendant's Motion to Recuse, p. 6.*)

15 We think not. The mailer tells the voting public that this defendant is one  
16 of many *charged* with murder because of the DA's Cold Case Unit. It suggests  
17 that the victim's family will finally be able to resolve the issue of their loved one's  
18 murder during the coming trial. No more. There are no opinions regarding  
19 defendant's guilt beyond those inherent in *any* district attorney's charging  
20 decision. That is, no district attorney files an accusatory pleading without  
21 believing that the accused "did it." Defendant is "singled out" for use in a  
22 political mailer; that hardly translates into being "singled out" in the criminal  
23 system. This is no proof that defendant has been treated "unevenhandedly"  
24 within the criminal system.

25 **A. PEOPLE V. NEELY (1999) 70 CAL.APP.4TH 767 IS INSTRUCTIVE.**

26 In *People v. Neely* (1999) 70 Cal.App.4th 767, Charles Neely robbed and  
27 killed an individual. His initial death penalty was reversed. (*People v. Neely*  
28 (1993) 6 Cal.4th 877; *In re Neely* (1993) 6 Cal.4th 901 [counsel ineffective for  
failure to object to evidence obtained in violation of *Massiah v. United States*  
(1964) 377 U.S. 201].) When the case was returned for re-trial, the sitting  
district attorney did not prosecute it as a "death" case. His opponent in the

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<sup>7</sup> Emphasis ours.

1 election made comments to the effect that the incumbent's assessment was  
2 incorrect; some thought the challenger's comments implied that he would seek  
3 death if elected. When he *was* elected, the case was reassessed and the death  
4 penalty was sought. (*People v. Neely, supra*, 70 Cal.App.4th at p. 776.) The trial  
5 court ordered the new district attorney and his entire staff recused because of a  
6 potential public perception of paying off a campaign promise. (*Id.* at pp. 777-  
7 779.)

8 The Attorney General appealed that decision. The effect of that appeal  
9 was that the recusal order was stayed. (*Id.* at p. 779.) While the district  
10 attorney's office continued to participate, the trial court "reconsidered" a prior  
11 ruling and determined that the People had not been sufficiently "punished" with  
12 the prior reversal of the murder conviction. The trial court barred the People  
13 from seeking the death penalty. Mr. Neely subsequently was sentenced to life  
14 without parole.

15 The court of appeal determined that the trial court *abused its discretion*  
16 in ordering recusal of the entire District Attorney's office. The recusal order  
17 should not have been made and, due to subsequent events, that is, barring the  
18 death penalty, the only purpose of the recusal was obviated. Defendant could  
19 not show prejudice. (*Id.* at pp. 780-781.)

20 Thus, § 1424 does not allow disqualification merely because the district  
21 attorney's further participation in the prosecution would be unseemly, would  
22 appear improper, or would tend to reduce public confidence in the impartiality  
23 and integrity of the criminal justice system. (*Neely, supra*, at p. 778.) Put  
24 another way, **a trial court must find it likely the defendant will be treated**  
25 **unfairly**. Here, the evidence and findings were to the contrary. (*Id.* at p. 775.)

26 Here, of course, there is no lingering issue of the death penalty. The  
27 primary election is in the distant past, politically-speaking. Whether defendant  
28

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1 is convicted or not cannot affect anyone's political future. Such futures are  
2 hardly "staked" to its outcome. There is no "dog in the fight" larger than any  
3 rooting interest the elected DA normally has in a case charged under his name  
4 or during his term of office. That some might say the use of this case in a  
5 political mailer is "distasteful" or "unseemly" is, *as a matter of law*, no cause  
6 for recusal.

7  
8 **B. THERE WAS NO "PRETRIAL EXPRESSION OF PERSONAL BELIEF  
IN THE DEFENDANT'S GUILT."**

9 Defendant suggests that the mailer expresses a personal belief in his  
10 guilt. This allegation, in turn, suggests the District Attorney himself **advertised**  
11 **a personal belief for political advantage, and that he or she now has a**  
12 **personal stake in the outcome of the trial.**

13 In *People v. Phillips* (1985) 169 Cal.App.3d 632, recusal was sought  
14 because the prosecutor spoke about the case while being interviewed on a live  
15 radio show. The trial court denied recusal and the Court of Appeal, Fourth  
16 Appellate District, Division III, affirmed, stating that while participation in the  
17 show had been "ill-advised," the transcript of the interview showed he had  
18 "cautiously avoided references to the merits of [the defendant's] case and his  
19 expressed concern for [the victim] was within the realm of proper prosecutorial  
20 functions." (*Id.* at p. 641.)

21 As noted, the political mailer here did the same: there are no references to  
22 the merits of the case, there is no proclamation of defendant's guilt, there are  
23 appropriate references to the victim's family. No more. Those references are  
24 "within the realm of proper prosecutorial functions."

25 Indeed, a prosecutor should generally avoid pretrial expressions of an  
26 opinion as to the accused's guilt because of the particular danger of prejudice.  
27  
28

1 Rule of Professional Conduct 5-120 provides:  
2

3 (A) A member who is participating or has participated  
4 in the investigation or litigation of a matter **shall not**  
5 **make an extra judicial statement** that a reasonable  
6 person would expect to be disseminated by means of  
7 public communication if the member knows or  
8 reasonably should know that it will have a substantial  
9 likelihood of materially prejudicing an adjudicative  
10 proceeding in the matter.

11 (B) Notwithstanding paragraph (A), a member may  
12 state:

13 (1) the claim, offense or defense involved and, except  
14 when prohibited by law, the identity of the persons  
15 involved;

16 (2) the information contained in a public record;

17 (3) that an investigation of the matter is in progress;

18 (4) the scheduling or result of any step in litigation;

19 (5) a request for assistance in obtaining evidence and  
20 information necessary thereto;

21 (6) a warning of danger concerning the behavior of a  
22 person involved, when there is reason to believe that  
23 there exists the likelihood of substantial harm to an  
24 individual or the public interest; and

25 (7) in a criminal case, in addition to subparagraphs (1)  
26 through (6):

27 (a) the identity, residence, occupation, and family  
28 status of the accused;

(b) if the accused has not been apprehended, the  
information necessary to aid in apprehension of that  
person;

(c) the fact, time, and place of arrest; and

(d) the identity of investigating and arresting officers or  
agencies and the length of the investigation.

(C) Notwithstanding paragraph (A), a member may  
make a statement that a reasonable member would  
believe is required to protect a client from the  
substantial undue prejudicial effect of recent publicity  
not initiated by the member or the member's client. A  
statement made pursuant to this paragraph shall be  
limited to such information as is necessary to mitigate  
the recent adverse publicity.

The mailer at issue here stays within Rule of Professional Conduct 5-120's  
boundaries.



1 In *People v. Marshall* (1996) 13 Cal.4th 799, 863, the California Supreme  
2 Court found no violation of ethics or law when a prosecutor informed a reporter  
3 of public record facts in a death penalty case. While the facts in *Marshall*  
4 preceded adoption of Rule 5-120, the court implicitly recognized the principle in  
5 Rule 5-120(b) which permits an attorney to report the information in a public  
6 record.

7 However, an expressed personal belief, standing alone, is not a proper  
8 ground for recusal because it does not create a conflict of interest. First, as  
9 stated above, if the prosecutor is "honestly convinced of the defendant's guilt" he  
10 is "obliged" to be "deeply interested in urging that view by any fair means."  
11 (*People v. Eubanks* (1996) 14 Cal.4th 580, 590.)

12 Again, to disqualify a prosecutor or an entire prosecutorial agency, the  
13 defendant must demonstrate a conflict of interest *so severe as to render it*  
14 *unlikely the defendant will receive a fair trial.* (§ 1424.) Merely because a  
15 prosecutor is personally and honestly convinced of a defendant's guilt -- as, of  
16 course, a prosecutor is "obliged" to be (*People v. Eubanks, supra*, 14 Cal.4th at  
17 p. 590) -- and that he has expressed this conviction, does not create a recusable  
18 conflict of interest. Moreover, the expression of belief in the defendant's guilt,  
19 even if it could create in the abstract a conflict, surely is not one so severe as to  
20 render it unlikely the defendant will receive a fair trial, because the prosecutor's  
21 opinion was expressed pretrial and therefore was presumably not heard by the  
22 jury.

23 Thus, by itself; a prosecutor's personal belief in a defendant's guilt,  
24 whether expressed or unexpressed, does not by itself create a recusable  
25 conflict of interest unless it somehow prejudices the defendant's case by coming  
26 to the attention of the jury and improperly influencing the trier of fact. (See  
27 *People v. Espinoza* (1992) 3 Cal.4th 806, 820 ["[C]onduct by a prosecutor that  
28 does not render a criminal trial fundamentally unfair is prosecutorial

1 misconduct under state law only if it involves "the use of deceptive or  
2 reprehensible methods to attempt to persuade either the court or the jury."  
3

4 C. WHILE DEFENDANT HAS SUED THE SITTING DISTRICT  
5 ATTORNEY, HE CANNOT SHOW THE SINE QUA NON OF CONFLICT  
6 "PERSONAL EMBROIDMENT."

7 A prosecutor should not prosecute a defendant with whom he is  
8 *personally embroiled* in civil litigation. That much is obvious. (*Greer, supra*,  
9 19 Cal.3d at 261.) In *People v. Battin* (1978) 77 Cal.App.3d 635, the court of  
10 appeal held that this rule applies *only* when the civil litigation is related to the  
11 acts of the very case the prosecutor is called upon to prosecute. Thus, the mere  
12 existence of a civil suit between prosecutor and defendant is insufficient to  
13 justify recusal if the suit deals with unrelated matters.

14 In *Battin*, the pending civil suit involved *members of the district*  
15 *attorney's office* who desired pay raises and the defendant, who was a county  
16 supervisor. The court of appeal recognized that *Greer* had stated a prosecutor  
17 should avoid trying a defendant when civil litigation is pending. The court then  
18 analyzed the two cases *Greer* relied upon:

19 "In *Sinclair*, [*Sinclair v. State, supra*, 383 A.2d 468.] the  
20 defendant was accused of passing bad checks. The  
21 prosecutor was also the attorney for the bank upon  
22 which the checks were drawn. In addition, in an  
23 earlier civil suit, brought against the defendant, if he  
24 persisted in filing an appeal in that suit, that the  
25 district attorney would prosecute defendant for  
26 passing bad checks. Under these circumstances, the  
27 court found that an evidentiary hearing into the  
28 conflict of interest issue was necessary. In *Ganger*,  
[*Ganger v. Peyton, supra*, 379 F.2d 709.] the state  
prosecuting attorney assigned to a wife beating case  
also represented the wife in her divorce action that  
was based on the beating incident. The defendant  
claimed that the attorney offered to drop the criminal  
charges against him if he would agree to a properly  
settlement favoring the wife (the attorney's fee in the  
divorce action depended on the amount of the wife's

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settlement). The court found that there was a conflict of interest.”

*Battin, supra*, 77 Cal.App.3d at p. 671. The court in *Battin* concluded:

“The facts in *Greer, Sinclair and Ganger* reveal *intense personal involvement of district attorneys* in the very cases they are called upon to prosecute. In contrast, the suit between the employees’ association and the county involved an effort to compel the board of supervisors to grant pay raises to deputy district attorneys and public defenders commensurate with the raises enjoyed by other county workers. Because of the nature of defendant’s position as supervisor, such suits were not uncommon, and the fact that this particular one occurred does not, in itself, establish a conflict of interest, as it did in *Greer, Sinclair and Ganger*.”

*Battin, supra*, 77 Cal.App.3d at p. 671(emphasis added).

In short, where a prosecutor is personally involved in civil litigation with a defendant, recusal is still inappropriate if the civil suit deals with matters unrelated to the facts that gave rise to the criminal charges. Here, the issues of the civil suit *involve the use of the mailer*, not the facts that gave rise to the criminal charges. There is *no* “intense personal involvement” in either the criminal case or the civil litigation. The DA will make no appearance in this criminal case; it will be tried far away from his office. Attorneys other than the DA will defend the civil litigation. The civil litigation, to the extent that defendant presents any proof of it or to what it relates, brooks of no conflict for the DA or the DAO, let alone a “recusable conflict.”

**CONCLUSION**

The Motion to Recuse the San Bernardino District Attorney’s Office should be denied, as defendant presents no evidence of a recusable conflict, let alone an

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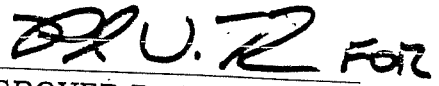
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on-going threat to his right to a fair trial based on a political mailer or his civil suit umbrage to it.

Done this October 4, 2010, at San Bernardino, California.

Respectfully submitted,

MICHAEL A. RAMOS,  
District Attorney,



GROVER D. MERRITT,  
Lead Deputy District Attorney,  
Appellate Services Unit

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SAN BERNARDINO COUNTY  
OFFICE OF THE DISTRICT ATTORNEY  
PROOF OF SERVICE BY UNITED STATES MAIL

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF SAN BERNARDINO )

GROVER D. MERRITT says:

That I am a citizen of the United States and employed in San Bernardino County, over eighteen years of age and not a party to the within action; that my business address is 412 West Hospitality Lane, First Floor, San Bernardino, California 92415-0042.

That I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business.


That on October 4, 2010, I served the within:

**OPPOSITION OF SAN BERNARDINO DA'S OFFICE TO DEFENDANT'S MOTION TO RECUSE SBCDAO**

on interested parties by depositing a copy thereof, enclosed in a sealed envelope for collection and mailing on that date following ordinary business practice at 412 West Hospitality Lane, First Floor, San Bernardino, California 92415-0042, addressed as follows:

Mr. Gary W. Schons  
Senior Assistant Attorney General  
Attorney General's Office  
110 W. A Street, Suite No. 1100  
San Diego CA 92101

I certify under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at San Bernardino, California, on October 4, 2010.

  
\_\_\_\_\_  
GROVER D. MERRITT

T-23

1  
2 SAN BERNARDINO COUNTY  
3 OFFICE OF THE DISTRICT ATTORNEY  
4 PROOF OF SERVICE BY ELECTRONIC MAIL (E-Mail)

5 STATE OF CALIFORNIA )  
6 COUNTY OF SAN BERNARDINO ) ss.

7 Grover D. Merritt says:

8 I am a citizen of the United States and am employed in and by the County  
9 of San Bernardino, State of California, I am over the age of eighteen years and  
10 am not a party to the within action. My business address is 412 W. Hospitality  
11 Lane, San Bernardino, California 92415-0042. My e-mail address is  
gmerritt@da.sbcounty.gov.

12 That on October 4, 2010, I served the attached document(s):

13 **OPPOSITION OF SAN BERNARDINO DA'S OFFICE TO DEFENDANT'S**  
14 **MOTION TO RECUSE SBCDAO**


15 on interested party(ies) by transmitting a true copy by electronic mail (e-mail),  
16 pursuant to California Rules of Court ("CRC"), Rule 2060. The e-mail  
address(es) of the party(ies) being served is:

17 dsanders@pd.sbcounty.gov  
18 Public Defender's Office

19 David Sanders, Deputy Public Defender  
20 14344 Cajon Avenue, Suite 201  
21 Victorville, CA 92392.

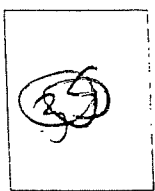
22 The document was served electronically and the transmission was  
23 reported as complete and without error (CRC Rule 2060(c)(1)(D)). If possible, I  
24 caused the machine to print a record of the transmission, and the "delivery  
25 receipt" I received for the transmission, copies of which are attached to this  
26 declaration.

27 I declare under penalty of perjury that the foregoing is true and correct,  
28 and that this declaration was executed at San Bernardino, California, on  
October 4, 2010.

  
Grover D. Merritt

PROOF OF SERVICE

37



# EXHIBIT COVER PAGE G&g

## DESCRIPTION OF THIS EXHIBIT:

Number of pages to this exhibit: \_\_\_\_\_ pages.

~~1229186~~

Jurisdiction: (Check only one)

- Municipal Court
- Superior Court
- Appellate Court
- State Supreme Court
- United States District Court
- Federal Circuit Court
- United States Supreme Court
- Grand Jury

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO  
VICTORVILLE DISTRICT  
MINUTE ORDER

CASE NO: FVI900518

DATE: 10/08/10

CASE TITLE: PEOPLE OF THE STATE OF CALIFORNIA  
vs.  
JOHN HENRY YABLONSKY

DEPT: V2 10/08/10 TIME: 8:30 am PRE-TRIAL

CHARGES: 1) 167(A) PC-F

JOHN M TOMBERLIN, JUDGE

Clerk: Tobi Andre

Certified Court Reporter: Shawna Manning; CSR# 12827

Bailiff J Patrick

Deputy District Attorney GROVER MERRITT present.  
(for motion to recuse SBCDAO)

Deputy District Attorney MICHAEL FERMIN present.  
(for Pre-Trial/Motion)

Deputy Public Defender DAVID SANDERS present

Defendant present in custody.

PROCEEDINGS

Action came on for Pretrial

OFF THE record, Court and Counsel confer in Chambers

MOTIONS

DEFENSE Motion TO RECUSE DISTRICT ATTORNEY'S OFFICE is DENIED.

DEFENSE Motion TO CONTINUE is GRANTED.  
(further investigation)

HEARINGS

Jury Trial set for 11/29/2010 at 9:30 in Department V2;  
Estimated 0 days.

(SPECIAL SET)

Readiness Calendar set for 11/19/2010 at 8:30 in Department V3A.

Pretrial set for 11/05/2010 at 8:30 in Department V2.  
(also motions)

TIME WAIVERS

Set Last Date for Trial to 11/29/2010.

Time waived for Trial; plus 60 days.

CUSTODY STATUS

Case Custody - In Custody

37-1  
148

APPENDIX 33

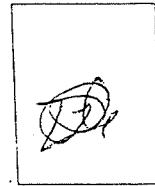
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F-25

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38



# EXHIBIT COVER PAGE G&g

## DESCRIPTION OF THIS EXHIBIT:

Number of pages to this exhibit: \_\_\_\_\_ pages.

15-29186

Jurisdiction: (Check only one)

- Municipal Court
- Superior Court
- Appellate Court
- ~~State Supreme Court~~
- United States District Court
- Federal Circuit Court
- United States Supreme Court
- Grand Jury

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3 SUPERIOR COURT, STATE OF CALIFORNIA  
4 IN AND FOR THE COUNTY OF SAN BERNARDINO  
5

6 PEOPLE OF THE STATE OF CALIFORNIA, ) THE HONORABLE JUDGE JOHN TEMBERLIN  
7 Plaintiff, ) CASE NO.  
8 vs. ) MOTION TO SHOW ORDER TO  
9 JOHN HENRY YABLONSKY ) GRANT SUBPOENA  
10 Defendant, ) POINTS AND AUTHORITIES  
11 ) DATE: 1-10-11  
12 ) TIME: 8:30 AM  
13 ) PLACE: DEPT. 2

14 THIS MOTION IS TO BE HEARD BY THIS COURT THIS  
15 JUDGE AND ALL APPOINTING PARTIES ON THIS 10<sup>TH</sup> DAY OF JANUARY  
16 OF 2011 IN DEPARTMENT 2 AT 8:30 AM OR SOON THERE AFTER.

17 THIS MOTION PRAYS THAT HIS HONOR FIND FAVOR IN  
18 GRANTING THIS MOTION TO GRANT SUBPOENAS POWER WITHIN THIS  
19 STATES JUDICIAL BOUNDARIES THAT THE TWO FOLLOWING  
20 INDIVIDUALS BE ORDERED TO STAND WITNESS IN THESE  
21 COURTS FOR THIS SPECIFIC CASE AND SPECIFIC TRIAL.

22 ORDERS THAT LINDA MITCHELL AND HOLLY  
23 MARIE MITCHELL YABLONSKY BROWN, BE ORDERED TO APPEAR  
24 BEFORE THIS JUDICIAL HEARING TO ANSWER QUESTIONS  
25 OF THE ACCUSED DEFENDANT WITHIN THE TRIAL  
26 OF THIS CASE.

27 I.

28 THESE TWO INDIVIDUALS MADE STATEMENTS OF  
INTEREST REGARDING THE DEFENDANTS PAST BEHAVIOR  
THAT MAY HAVE INTERESTED THE PROSECUTOR'S AGENDA

APPENDIX 34-1

MOTION TO GRANT SUBPOENA

(38-1)

(39)

POINTS AND AUTHORITIES

II.

VI AMENDMENT OF THE UNITED STATES CONSTITUTION,  
IS THE RIGHTS OF THE ACCUSED IN ALL CRIMINAL  
PROSECUTIONS; TO BE CONFRONTED WITH THE WITNESSES  
AGAINST HIM/HER; TO HAVE COMPULSORY PROCESS FOR  
OBTAINING WITNESSES IN HIS FAVOR.

PROCESSED SEPT. 25<sup>TH</sup>, 1789 RATIFIED DECEMBER 15, 1791

CONCLUSORY OF FACTS

III.

SINCE IT IS THE RIGHT OF THE ACCUSED, AND THIS  
DEFENDANT WISHES TO EXERCISE THIS RIGHT, AND THIS  
COURT FIND FAVOR IN DOING SO, THAT THE ORDERS  
OF SUBPOENA POWERS BE GRANTED AND THESE TWO  
SPECIFIC WITNESSES BE ORDERED TO ATTEND THE  
DEFENDANTS TRIAL THAT STARTS ON JANUARY 10, 2011  
TO BE CONFRONTED WITH THE STATEMENTS THAT BOTH  
PARTIES MADE.

RESPECTFULLY:

[Signature]  
JOHN HENRY HABLONSKY  
DEFENDANT

DATE 12/21/10

DATE \_\_\_\_\_

DAVE SANDERS  
ATTORNEY FOR THE DEFENDANT

APPENDIX 34-2

38-2

39

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): <b>DAVE SANDERS</b> 14344 CAJON AVE SUITE #201 V.V. CA. 92392		TELEPHONE NO.: 7602410413	FOR COURT USE ONLY
ATTORNEY FOR (Named):			
Insert name of court, judicial district or branch court, if any, and post office and street address: SUPERIOR COURT OF CALIFORNIA 14455 CIVIC DRIVE VICTORVILLE CA. 92392.			
Title of case: STATE OF CALIFORNIA V. JOHN HENRY YABLONSKY			
SUBPENA (CRIMINAL OR JUVENILE) <input checked="" type="checkbox"/> DUCES TECUM      CRIMINAL			CASE NUMBER:
THE PEOPLE OF THE STATE OF CALIFORNIA, TO (NAME): LINDA MITCHELL			

1. YOU ARE ORDERED TO APPEAR AS A WITNESS in this action at the date, time, and place shown in the box below UNLESS you make a special agreement with the person named in item 3:

a. Date: JANUARY 10, 2011	Time: 8:30 a.m.	<input checked="" type="checkbox"/> Dept.: 2	<input type="checkbox"/> Div.:	<input type="checkbox"/> Room:
b. Address: 14455 CIVIC DR. V.V. CA. 92392				

2. AND YOU ARE

- a.  ordered to appear in person.
- b.  not required to appear in person if you produce the records described in the accompanying affidavit and a completed declaration of custodian of records in compliance with Evidence Code sections 1560, 1561, 1562, and 1271. (1) Place a copy of the records in an envelope (or other wrapper). Enclose your original declaration with the records. Seal them. (2) Attach a copy of this subpoena to the envelope or write on the envelope the case name and number, your name and date, time, and place from item 1 (the box above). (3) Place this first envelope in an outer envelope, seal it, and mail it to the clerk of the court at the address in item 1. (4) Mail a copy of your declaration to the attorney or party shown at the top of this form.
- c.  ordered to appear in person and to produce the records described in the accompanying affidavit. The personal attendance of the custodian or other qualified witness and the production of the original records is required by this subpoena. The procedure authorized by subdivision (b) of section 1560, and sections 1561 and 1562, of the Evidence Code will not be deemed sufficient compliance with this subpoena.
- d.  ordered to make the original business records described in the accompanying affidavit available for inspection at your business address by the attorney's representative and to permit copying at your business address under reasonable normal business hours, conditions during normal business hours.

3. IF YOU HAVE ANY QUESTIONS ABOUT THE TIME OR DATE FOR YOU TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:

a. Name: DAVE SANDERS      b. Telephone number: 7602410413

4. WITNESS FEES: You may be entitled to witness fees, mileage, or both, in the discretion of the court. Contact the person named in item 3 AFTER your appearance.

DISOBEDIENCE OF THIS SUBPENA MAY BE PUNISHED BY A FINE, IMPRISONMENT, OR BOTH. A WARRANT MAY ISSUE FOR YOUR ARREST IF YOU FAIL TO APPEAR.

FOR COURT USE ONLY	Date:	_____
		(SIGNATURE OF PERSON ISSUING SUBPENA)
		(TYPE OR PRINT NAME)
	(See reverse for proof of service)	(TITLE)

Form Adopted by Rule 982  
Judicial Council of California  
982(a)(16) [Rev. January 1, 1991]

SUBPENA  
(CRIMINAL OR JUVENILE)

Penal Code, § 1326 et seq.  
Welfare and Institutions Code, §§ 341, 664, 1727

38-3

39

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): DAVE SANDERS 14344 CASON AVE SUITE 201 V.V. CA. 92392	TELEPHONE NO.: (760)2410413	FOR COURT USE ONLY
ATTORNEY FOR (Named):	Insert name of court, judicial district or branch court, if any, and post office and street address: SUPERIOR COURT OF CALIFORNIA 14455 CIVIC DRIVE VICTORVILLE CA, 92392	
Title of case: THE STATE OF CALIFORNIA V. JOHN HENRY YABLONSKY		CASE NUMBER:
SUBPENA (CRIMINAL OR JUVENILE) <input checked="" type="checkbox"/> DUCES TECUM      CRIMINAL		

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (NAME): HOLLY MARIE MITCHELL YABLONSKY BROWN

1. YOU ARE ORDERED TO APPEAR AS A WITNESS in this action at the date, time, and place shown in the box below UNLESS you make a special agreement with the person named in item 3:

a. Date: JANUARY 10, 2011	Time: 8:30am	<input checked="" type="checkbox"/> Dept.: 2	<input type="checkbox"/> Div.:	<input type="checkbox"/> Room:
b. Address: 14455 CIVIC DR V.V. CA, 92392				

2. AND YOU ARE

- a.  ordered to appear in person.
- b.  not required to appear in person if you produce the records described in the accompanying affidavit and a completed declaration of custodian of records in compliance with Evidence Code sections 1560, 1561, 1562, and 1271. (1) Place a copy of the records in an envelope (or other wrapper). Enclose your original declaration with the records. Seal them. (2) Attach a copy of this subpoena to the envelope or write on the envelope the case name and number, your name and date, time, and place from item 1 (the box above). (3) Place this first envelope in an outer envelope, seal it, and mail it to the clerk of the court at the address in item 1. (4) Mail a copy of your declaration to the attorney or party shown at the top of this form.
- c.  ordered to appear in person and to produce the records described in the accompanying affidavit. The personal attendance of the custodian or other qualified witness and the production of the original records is required by this subpoena. The procedure authorized by subdivision (b) of section 1560, and sections 1561 and 1562, of the Evidence Code will not be deemed sufficient compliance with this subpoena.
- d.  ordered to make the original business records described in the accompanying affidavit available for inspection at your business address by the attorney's representative and to permit copying at your business address under reasonable normal business hours, conditions during normal business hours.

3. IF YOU HAVE ANY QUESTIONS ABOUT THE TIME OR DATE FOR YOU TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:

a. Name: DAVE SANDERS      b. Telephone number: 760 2410413

4. WITNESS FEES: You may be entitled to witness fees, mileage, or both, in the discretion of the court. Contact the person named in item 3 AFTER your appearance.

DISOBEDIENCE OF THIS SUBPENA MAY BE PUNISHED BY A FINE, IMPRISONMENT, OR BOTH. A WARRANT MAY ISSUE FOR YOUR ARREST IF YOU FAIL TO APPEAR.

FOR COURT USE ONLY	Date: _____	_____ (SIGNATURE OF PERSON ISSUING SUBPENA)
		_____ (TYPE OR PRINT NAME)
		_____ (TITLE)

(39)

(See reverse for proof of service)

(38-4)

# EXHIBIT COVER PAGE G.S.g.

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39

## DESCRIPTION OF THIS EXHIBIT:

Number of pages to this exhibit: \_\_\_\_\_ pages.

15-29186

Jurisdiction: (Check only one)

- Municipal Court
- Superior Court
- Appellate Court
- ~~State Supreme Court~~
- United States District Court
- Federal Circuit Court
- United States Supreme Court
- Grand Jury

County of San Bernardino

- REQUEST FOR FURTHER ACTION
- FOR YOUR INFORMATION

Judge TOMBERLIN

Date 12/14/10

Name JOHN YABLONSKY

Case No. FVI900518

DEFENDANT/PLANTIFF REQUESTS:

LETTER RECEIVED FROM DEFENDANT. PLEASE SEE ATTACHED AND ADVISE.

Signed SONYA CRAIG/38943

Deputy Clerk

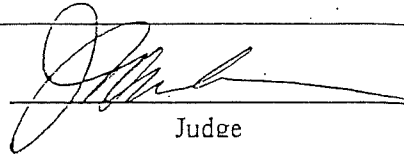
COURT ORDER

Granted \_\_\_\_\_

Denied  \_\_\_\_\_

Remarks \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date 12-16-10

  
Judge

16-10915-360 Rev. 1/93 (ALL)

39-1 L2 R1 K2 (52)

JOHN YABLONSKY  
9500 ETIWANDA  
P.O., CA. 91789

RECEIVED  
DEC 10 2010  
VICTORVILLE DISTRICT

SUPERIOR COURT OF CALIFORNIA

SAN BERNARDINO DISTRICT

CRIMINAL DIVISION

STATE OF CALIFORNIA,  
  
Plaintiff,  
  
vs.  
  
JOHN HENRY YABLONSKY,  
  
Defendant

) Case No.: No. FV190051F  
)  
) PLEA FOR TEMPORARY INJUNCTIVE  
) RELIEF, GRANT AN ORDER FOR A LEGAL  
) RUNNER, GRANT AN ORDER FOR THE  
) RELEASE OF OFFICIAL VISIT  
) RESTRICTIONS

YOUR HONOR THE FOLLOWING PAGES ARE AN EFFORT TO SEEK INJUNCTIVE RELIEF FROM THIS FACILITY'S RESTRICTIONS THAT BURDEN AND HINDER MY LEGAL INTERESTS.

1. THE PRIVILEGE/RIGHT OF ACCESS TO OFFICIAL VISITS
2. THE REFUSAL TO HONOR YOUR COURT ORDER TO TRANSPORT ME TO MY CIVIL COURT DATES. (4 COURT APPEARANCES WITH THE RAMOS MATTER)
3. THE CONSTANT OPENING OF MY LEGAL MAIL OUT OF MY PRESENCE
4. TAKING DOCUMENTS OUT OF MY OUTBOUND MAIL OF LEGAL VALUES WITHOUT MY CONSENT, AND THEN DENYING THAT THE INCIDENTS OCCURRED.
5. NOT ALLOWING ME ACCESS TO THE TELEPHONES AT RESPECTABLE HOURS. (THEY HOUSE ME IN A UNIT THAT STARTS THE DAYBOOKS AT 7 A.M. AND IN 1 1/2 HOUR INTERVALS THAT ONLY ALLOW ME ACCESS TO THE PHONES EVERY THREE AND FOURTH DAY, BUT SEEMS TO ALWAYS BE BEFORE NOON AND THEN THIS IS

RELIEF OF RESTRICTIONS - 1

APPENDIX 30

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN BERNARDINO

PEOPLE OF THE STATE OF  
CALIFORNIA,  
Plaintiff,

v  
JOHN HENRY YABLONSKY,  
Defendant.

Case No.: CIVRS1009885

POINTS AND AUTHORITIES  
IN SUPPORT OF MOTION TO  
SAFEGUARD THE  
DEFENDANT'S RIGHT OF  
ACCESS TO COUNSEL

Defendant submits the following points and authorities in support of the motion for an order directing the Sheriff of SAN BERNARDINO County to remove the restrictions on the defendant's ability to communicate with counsel by telephone and mail:

I

THE CONSTITUTIONAL RIGHT TO COUNSEL INCLUDES THE RIGHT TO  
COMMUNICATE BY TELEPHONE

The right of access to counsel is an essential component of the right of access to the courts. (Bounds v. Smith, 430 U.S. 817, 97 S. Ct. 1491, 52 L. Ed. 2d 72 (1977)). In Proconier v. Martinez, 416 U.S. 396, 419, 94 S. Ct. 1800, 40 L. Ed. 2d 224 (1974) (overruled by, Thornburgh v. Abbott, 490 U.S. 401, 109 S. Ct. 1874, 104 L. Ed. 2d 459 (1989)) the United States Supreme Court declared that this right of access requires that inmates be given a "reasonable opportunity to seek and receive the assistance of attorneys," and "[r]egulations and practices that unjustifiably obstruct the availability of professional representation or other aspects of the right of access to the courts are invalid." This right is possessed not only by convicted prisoners, but by pretrial detainees who are jailed pending trial. ( U.S. ex rel. George v. Lane, 718 F.2d 226, 230 (7th Cir. 1983); Lock v. Jenkins, 641 F.2d 488, 489 (7th Cir. 1981).

Starting, "from the premise that telephone communication is essential for inmate contact with attorneys," the Court of Appeal upheld a trial court order that the local jail must provide

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inmates a cost-free telephone line to the County Public Defender office. The court reasoned that the use of a collect-calls only system "unreasonably restricts communications between inmates at the jail and their attorneys." (In re Grimes, 208 Cal. App. 3d 1175, 256 Cal. Rptr. 690 (1st Dist. 1989)).

II

THE CONSTITUTIONAL RIGHT TO COUNSEL INCLUDES THE RIGHT TO COMMUNICATE BY MAIL

An incarcerated defendant has an absolute constitutional right to correspond confidentially with any attorney. Pen C §2601(b) guarantees inmates the right "to correspond, confidentially, with any member of the State Bar or holder of public office, provided that the prison authorities may open and inspect incoming mail to search for contraband." Although an institution may check for contraband, it may not under any circumstances read the correspondence (In re Jordan, 7 Cal. 3d 930, 103 Cal. Rptr. 849, 500 P.2d 873 (1972)). This right is also guaranteed by the federal Constitution (Wolff v. McDonnell, 418 U.S. 539, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974)).

III

THE TRIAL COURT HAS JURISDICTION TO REMEDY CUSTODIAL CONDITIONS WHICH RESULT IN VIOLATIONS OF CONSTITUTIONAL RIGHTS

The courts have consistently held that the parameters of judicial intervention into conditions for pretrial detainees are less restrictive than those relating to sentenced prisoners. (See Mitchell v. Dupnik, 75 F.3d 517, 523-524 (9th Cir. 1996)). It is clear that jail regulations restricting pretrial detainees' contact with their attorneys are unconstitutional where they "unjustifiably obstruct the availability of professional representation." (Benjamin v. Fraser, 264 F.3d 175, 178 (2d Cir. 2001)).

The Court of Appeal in In re Grimes, 208 Cal. App. 3d 1175, 256 Cal. Rptr. 690 (1st Dist. 1989), acknowledged that "[c]ourts are properly reluctant to interfere with prison administration, given the manifold factual difficulties inherent in that task. (citation) The function of a court is limited to determining whether a constitutional violation has occurred, and to fashioning a remedy that does no more and no less than correct that particular constitutional violation (citation). But the deference to which prison administrators are ordinarily entitled has never been construed as requiring judicial abstention. (citation) [P]rison administrators are in the best position to control inmates but this control cannot violate statutory or constitutional right (citation) Thus, the courts' traditional deference to administrative expertise in prison matters does not foreclose judicial intervention to remedy statutory or constitutional violations."

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IV

STATUTORY REGULATIONS MUST BE INTERPRETED TO FOSTER THE EXERCISE OF CONSTITUTIONAL RIGHTS

In 1994 the state legislature amended Pen C §§ 2600 and 2601 to reduce prisoner's rights. The new amended law allows an inmate to be deprived of "only such rights, as is reasonably related to legitimate penological interests." (Pen C §2600). Although on its face, Pen C §2600 applies only to those confined in state prisons, the California Supreme Court declared that equal protection principles required its application to county jail inmates (*De Lancie v. Superior Court*, 31 Cal. 3d 865, 872, 183 Cal. Rptr. 866, 647 P.2d 142 (1982)). In response to these changes, the legislature directed the Department of Corrections to develop guidelines for "local detention facilities." (Pen C §6030). These regulations, codified in Title 15 of the California Code of Regulations, mandates that the administrator of each local detention facility develop written policies concerning the rights and privileges of inmates, as long as these policies do not conflict with the Regulations (15 CCR §1005).

Under these regulations, an inmate is entitled to "confidential consultation with attorneys" (15 CCR §1068) and to "correspond confidentially" with any attorney (15 CCR §1063(c)). Jail authorities "may open and inspect such mail only to search for contraband...in the presence of the inmate" (15 CCR §1063(c)). An in-custody defendant must be allowed "reasonable access to a telephone" (15 CCR §1067).

However these regulations must be implemented so as not to invalidate a constitutional right. The standards set forth in Title 15 "constitute contemporary notions of decency and are advisory in nature," but the courts do not rely blindly on these standards as fixing constitutional minima. (*Inmates of the Riverside County Jail v. Clark*, 144 Cal. App. 3d 850, 860, 192 Cal. Rptr. 823 (4th Dist. 1983)).

V

THE TEST TO DETERMINE THE REASONABLENESS OF JAIL REGULATIONS

The California Supreme Court has held that the amendment to Pen C §2600 has resulted in a different test the courts must apply to determine the reasonableness of jail regulations (*Thompson v. Department of Corrections*, 25 Cal. 4th 117, 130, 105 Cal. Rptr. 2d 46, 18 P.3d 1198 (2001)). This test, as enunciated in *Turner v. Safley*, 482 U.S. 78, 107 S. Ct. 2254, 96 L. Ed. 2d 64 (1987), directs that the following factors be considered in determining whether a prison restriction is reasonable: (1) whether there is a " 'valid, rational connection' between the prison [restriction] and the legitimate governmental interest put forward to justify it"; (2) whether there are alternative means of exercising the right; (3) how the accommodation of the asserted right will impact guards, other inmates and the allocation of prison resources; and (4) whether the restriction is an "exaggerated response" to prison concerns. *Turner v. Safley*, 482 U.S. 78, 89-91, 107 S. Ct. 2254, 2261-2263, 96 L. Ed. 2d 64 (1987)

(39-5)  
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(57)

The Turner test was applied to regulations for sentenced prisoners, not pretrial detainees and the issue before the Court was not the constitutional right to the effective assistance of counsel. It would appear that the proper standard applicable to a pretrial detainee is whether the restrictions "unjustifiably obstruct the availability of professional representation or other aspects of the right of access to the courts." (Benjamin v. Fraser, 264 F.3d 175, 178 (2d Cir. 2001)).

We doubt that [the reasonably related to legitimate penological interests] standard properly applies to this case. Turner [v. Lewis] involved convicted prisoners rather than pretrial detainees, and the standard it promulgated depends on 'penological interests.' Penological interests are interests that relate to the treatment (including punishment, deterrence, rehabilitation, etc.) of persons convicted of crimes. Although some of the concerns of pretrial detention, especially protection against further criminal conduct, overlap with the concerns of penology, there are important differences. Penological interests are therefore arguably not an appropriate guide for the pretrial detention of accused persons.

However, assuming that the Turner test applies, the restrictions placed upon the defendant's access to counsel must still be held to be unreasonable and unrelated to any legitimate penological interest.

[Relate the facts of the case to the factors in the Turner test]

YOUR HONOR, THE ACCESS TO OFFICIAL VISITS DOES NOT HINDER THE SHERIFFS DEPARTMENT AND IS AN INALIENABLE NECESSITY TO THE DUE PROCESS OF ACCUSED INMATES AND IT CAUSES NO BREACH IN FACILITY TRANQUILITY.

VI

DISCIPLINARY PUNISHMENT CANNOT DEPRIVE AN INMATE OF ACCESS TO COUNSEL

The act of disciplining an inmate for the violation of jail rules cannot result in the denial of access to counsel. If an inmate's visitation privileges have been suspended or even if an inmate is on disciplinary isolation status in an isolation cell, "[i]n no case shall access to courts and legal counsel be suspended as a disciplinary measure." (15 CCR §1083(i)).

PLEASE YOUR HONOR THIS HAS BECOME A FIASCO OF ABRIDGING YOUR ORDERS, THE CONSTITUTION, AND MY RIGHTS. THIS FACILITY DOES WHAT IT WANTS, REGARDLESS OF THE NEEDS OF THE INMATES. I'VE WRITTEN THE COMMANDER ABOUT THE APPOINTMENT OF A LEGAL RUNNER, AT NO COST TO THE COUNTY, 2 1/2 MONTHS AGO. NO RESPONSE, ONLY RETALIATORY BEHAVIORS

(396)  
161

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(58)

§ 15:3 Appointment of expert — Points and authorities

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN BERNARDINO

JOHN YABLONSKY,            }  
                  Plaintiff,        }  
                  V.                    }  
WEST VALLEY DETENTION }  
FACILITY, SAN BERNARDINO }  
COUNTY SHERIFFS }  
DEPARTMENT,            }  
                  DEFENDANT,        }

Case No.: CIVRS1009885  
POINTS AND AUTHORITIES  
IN SUPPORT OF MOTION  
FOR APPOINTMENT  
OF LEGAL RUNNER

KIETH D. DAVIS  
DEPT; R6  
FILED; 9-20-10  
TRIAL DATE; UNASSIGNED

Defendant submits the following points and authorities in support of the motion for an order appointing an expert: IF IT PLEASES THE COURTS THAT THIS MOTION BE CONSIDERED TO GRANT A COURT ORDER TO THE PLAINTIFF THAT WILL ALLOW AN ASSIGNED LEGAL RUNNER TO ASSIST MR. YABLONSKY WITH HIS TRANSPORTATION OF LEGAL DOCUMENTS FOR PHOTO COPYING AND FILING.

THE COMMANDER OF THE FACILITY HAS INTERRUPTED THE PASSAGE OF ANY AND ALL OFFICIAL VISITERS FOR MR. YABLONSKY THAT HAS INTERVIENED THE SAFE PASSAGE OF CRUCIAL DOCUMENTS THAT PERTAINNE TO A CIVIL SUIT IN ANOTHER COURT WITHIN THIS COUNTY. THIS INTERUPTION WAS NOT A MATTER OF DISCIPLINE OR PERTINANT TO THE SAFETY OF THE FACILITIES TRANQUILITY; IT HAS NO OTHER PURPOSE THAN TO INTERFERE WITH MR. YABLONSKY'S INTERESTS WITH HIS EFFORTS TO LEGAL RESOLVE.

IT IS THEREFORE THAT THIS REQUEST FOR A JUDICIAL COURT ORDER BE ORDERED FOR MR. YABLONSKY THAT THIS SHERIFFS DEPARTMENT IN San Bernardino COUNTY BE ORDERED TO ALLOW;

GEOFFERY MICHAEL BEVERIDGE  
C.D.L. # C4632672  
D.O.B. JULY 31<sup>ST</sup> 1968            *CELL (562) 577-825*

AS THE OFFICIAL LEGAL RUNNER FOR JOHN YABLONSKY THAT PERTAINS TO THIS SPECIFIC CASE THAT IS TO BE HEARD IN YOUR COURTS. THIS SERVICE WILL BE OF NO CHARGE TO THE FACILITY OR THE COUNTY IN ANY WAY.

THERE HAD BEEN SEVERAL REQUESTS TO THE COMMANDER WITH REGARDS TO THIS SPECIFIC NEED AND THAT THIS FACILITY HAD TAKEN IT UPON THEM SELVES TO DENY "ANY "PASSAGE BY ANY OFFICIAL VISITORS FOR MR. YABLONSKY.

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*182*

*L9*

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*Rt*  
*(59)*

I THE RIGHT TO COUNSEL GUARANTEED BY BOTH THE FEDERAL AND STATE CONSTITUTIONS REQUIRES THE APPOINTMENT OF NECESSARY EXPERTS TO ASSIST IN THE PREPARATION OF A DEFENSE

It cannot be doubted that the right to counsel guaranteed by both the federal and state Constitutions includes, and indeed presumes, the right to effective counsel, and "the right to effective counsel also includes the right to ancillary services necessary in the preparation of a defense." (Keenan v. Superior Court, 31 Cal. 3d 424, 428, 180 Cal. Rptr. 489, 640 P.2d 108 (1982)). "A fundamental part of the constitutional right of an accused to be represented by counsel is that his attorney. . . is obviously entitled to the aid of such expert assistance as he may need. . . in preparing the defense." (In re Ketchel, 68 Cal. 2d 397, 399-400, 66 Cal. Rptr. 881, 438 P.2d 625 (1968)).

"[T]here can be no question that in a proper factual situation a court must appoint an expert that is needed to assist an indigent defendant in his defense." (Torres v. Municipal Court, 50 Cal. App. 3d 778, 785, 123 Cal. Rptr. 553 (2d Dist. 1975)).

II THE RIGHT TO SUCH COURT-ORDERED SERVICES IS SUPPORTED BY STATUTE

Ev C §730 explicitly provides for court-appointed expert witnesses:

When it appears to the court, at any time before or during the trial of an action, that expert evidence is or may be required by the court or by any party to the action, the court on its own motion or on motion of any party may appoint one or more experts to investigate, to render a report as may be ordered by the court, and to testify as an expert at the trial of the action relative to the fact or matter as to which such expert evidence is or may be required. The court may fix the compensation for such services, if any, rendered by any person appointed under this section, in addition to any services as a witness, at such amount as seems reasonable to the court.

Ev C §731(a) and Gov C §29603 clearly state that the county must pay those court-ordered expenses.

While these statutes, of course, do not enumerate the type of experts to be appointed, the Supreme Court has held that "the right to such services is to be inferred from at least two statutes respecting an indigent defendant's right to legal assistance." (Corenevsky v. Superior Court, 36 Cal. 3d 307, 319, 204 Cal. Rptr. 165, 682 P.2d 360 (1984)).

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III THE RIGHT TO COUNSEL INCLUDES THE RIGHT TO HAVE ANY COMMUNICATION MADE TO EXPERTS REMAIN CONFIDENTIAL

The Court of Appeal has held that the right to counsel guaranteed by the Sixth Amendment to the United States Constitution "also includes the right to have any communications made to experts remain confidential." (Torres v. Municipal Court, 50 Cal. App. 3d 778, 784, 123 Cal. Rptr. 553 (2d Dist. 1975)).

IV A DEFENSE MOTION FOR THE APPOINTMENT OF AN EXPERT MAY BE HEARD IN CAMERA

The Supreme Court has observed that a defense motion for the appointment of an expert "was entitled to have been heard *in camera*, and would therefore not normally be subject to disclosure. . . ." (Corenevsky v. Superior Court, 36 Cal. 3d 307, 321, 204 Cal. Rptr. 165, 682 P.2d 360 (1984)).

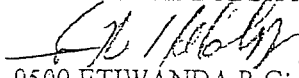
V THE ISSUE TO BE ADDRESSED BY THE EXPERT IS LIKELY TO BE A SIGNIFICANT FACTOR AT TRIAL

While it is understood that the defendant has the burden of establishing the need for expert assistance, that burden is met when a "preliminary showing" is made that the issue requiring expert assistance is "likely to be a significant factor at trial." (Ake v. Oklahoma, 470 U.S. 68, 74, 105 S. Ct. 1087, 84 L. Ed. 2d 53 (1985))

Because of the early stage at which this request typically arises, it will often be difficult for counsel to demonstrate a clear need for funds (Corenevsky v. Superior Court, 36 Cal. 3d 307, 320, 204 Cal. Rptr. 165, 682 P.2d 360 (1984)). Therefore, the trial court should, in appropriate circumstances, "view with considerable liberality a motion for such pretrial assistance" (Keenan v. Superior Court, 31 Cal. 3d 424, 430, 180 Cal. Rptr. 489, 640 P.2d 108 (1982)).

A right to ancillary defense services arises once the defendant has demonstrated a need for such services by reference to "the general lines of inquiry he wishes to pursue, being as specific as possible." (People v. Fixel, 91 Cal. App. 3d 327, 330, 154 Cal. Rptr. 132 (2d Dist. 1979)).

JOHN H. YABLONSKY



9500 ETIWANDA R.C. CA.91739

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN BERNARDINO

PEOPLE OF THE STATE OF  
CALIFORNIA,  
Plaintiff,

v  
JOHN YABLONSKY,  
Defendant.

Case No.: CIVRS1009885

NOTICE OF MOTION TO  
SAFEGUARD DEFENDANT'S  
RIGHT OF ACCESS TO  
COUNSEL

Date: JAN. 6<sup>TH</sup>, 2010  
Place: R6

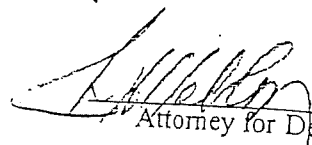
TO THE DISTRICT ATTORNEY OF SAN BERNARDINO COUNTY AND/OR  
HIS/HER REPRESENTATIVE:

PLEASE TAKE NOTICE that on JAN. 6<sup>TH</sup> 2010, at the hour of 8:30 A.M. or as soon thereafter as counsel may be heard in the courtroom of the above-entitled court, the defendant will move the court for an order directing the Sheriff of SAN BERNARDINO County to remove the restrictions on the defendant's right to communicate confidentially with, and have access to, his counsel.

This motion will be made on the grounds that unless such private communications are guaranteed, the defendant will be deprived of the right to counsel under Article I, §15 of the California Constitution and the Sixth and Fourteenth Amendments to the United States Constitution.

This motion will be based on this notice of motion, on the attached declaration and memorandum of points and authorities served and filed herewith, on such supplemental memoranda of points and authorities as may hereafter be filed with the court or stated orally at the conclusion of the hearing on the motion, on all the papers and records on file in this action, and on such oral documentary evidence as may be presented at the hearing of the motion.

Dated: 12/8/10

  
Attorney for Defendant

K12

THIS ORDER ISNT BEING HEARD IN THE RANCH'S CIVIL AREAS

3910

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN BERNARDINO

PEOPLE OF THE STATE OF CALIFORNIA,  
Plaintiff,  
v  
JOHN HENRY YABLONSKY  
Defendant.

Case No.: CIVRS1009885

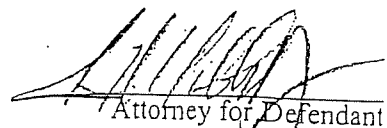
DECLARATION IN SUPPORT  
OF MOTION  
TO SAFEGUARD  
DEFENDANT'S RIGHT  
OF ACCESS TO COUNSEL

I, JOHN HENRY YABLONSKY, declare:

1. I am the attorney representing the defendant in this action.
2. The defendant is currently confined in the *SANBERNARDINO COUNTY JAIL*.
3. The custodial officials have restricted the defendant's ability to communicate with counsel in the following manner: [state the facts which constitute the restrictions placed on the defendant's ability to communicate with counsel by mail or telephone].  
*DENY OFFICIAL VISITS, INTERFERE WITH LEGAL MAIL PROCESSES, EXTREME LIMITED ACCESS TO PHONES*
4. I have attempted to resolve this matter with the appropriate custodial officials, but I have been informed that these procedures are the policy of the institution.
5. The failure of the custodial officials to remedy this matter has resulted in the inability of the defendant to effectively assist counsel in the preparation of a defense to the charges in this case and the inability of counsel to render effective assistance.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 30<sup>TH</sup> OF NOVEMBER, 2010, at SANBERNARDINO, California.

  
Attorney for Defendant

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# EXHIBIT COVER PAGE G.S.g.



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## DESCRIPTION OF THIS EXHIBIT:

Number of pages to this exhibit: \_\_\_\_\_ pages.

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Jurisdiction: (Check only one)

- Municipal Court
- Superior Court
- Appellate Court
- State Supreme Court
- United States District Court
- Federal Circuit Court
- United States Supreme Court
- Grand Jury

TO BE VERBATIM (ACCURATE)  
TO EXHIBIT 49 CD DISC OF INTERPOSITION

THIS IS  
IN STATES EXHIBIT  
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100 SCR

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40-1

49A

EXHIBIT # \_\_\_\_\_  
CASE #: FV190C518  
CASE NAME: PEOPLE-V-YABLONSKY, JOHN  
DATE: 1-27-11  
CASE NUMBER: 127-11

(21)

INTERVIEW WITH JOHN YABLONSKY

DR #1331036-07 / H #1985-100

(v) Rita Cobb

1 Interviewer: Det. Greg Myler

2 Interviewer: Det. Rob Alexander

3 Interviewee: John Yablonsky

4

5 RA: Test. -- Today's date is March 08, 2009. It's approximately 09:15 hours.

6 GM: Can we talk to you for one second?

7 RA: The following interview will be reference to case number 07-88. (overlapping  
8 conversation)

9 Radio Transmission GM: Alright, we'll be talking to him at the house.

10 Radio Response: We're still gonna stand by right?

11 (door closing)

12 Radio Response Transmission RA: Yes.

13 GM: Hey, how you doing?

14 RA: Hi.

15 (door closing)

16 RA: Hey, we're detectives, we're following up on a, on a case.

17 GM: I'm Greg. (overlapping conversation)

18 RA: We'd like to sit down and talk with you for a couple of minutes. I've got some  
19 photographs I'd like to show you. Do you have a couple of minutes?

20 JY: Yeah, absolutely.

21 RA: Ok, great.

22 JY: And your name is?

23 RA: Rob and Greg.

24 JY: Need to get my dog out of there.

25 RA: Move in the little area here. Is he an attack dog?

26 JY: No, he's a golden retriever. He'll lick you to death. We can go in here...make sure,  
27 c'mon.

28

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Reviewed by Det. Rob Alexander

Page 1 of 113

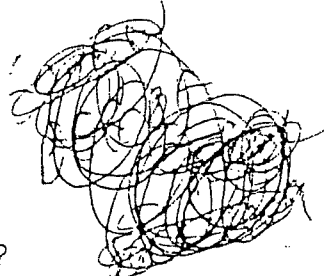
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November 23, 2010

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SAME DATE B.1

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21

COMMIT

INTERVIEW WITH JOHN YABLONSKY

DR #1331036-07 / H #1985-100

(v) Rita Cobb

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Interviewer: Det. Greg Myler

Interviewer: Det. Rob Alexander

Interviewee: John Yablonsky

RA: Test. -- Today's date is March 08, 2009. It's approximately 09:15 hours.

GM: Can we talk to you for one second?

RA: The following interview will be reference to case number 07-88. (overlapping conversation)

Radio Transmission GM: Alright, we'll be talking to him at the house.

Radio Response: We're still gonna stand by right?

(door closing)

Radio Response Transmission RA: Yes.

GM: Hey, how you doing?

RA: Hi.

(door closing)

RA: Hey, we're detectives, we're following up on a, on a case.

GM: I'm Greg. (overlapping conversation)

RA: We'd like to sit down and talk with you for a couple of minutes. I've got some photographs I'd like to show you. Do you have a couple of minutes?

JY: Yeah, absolutely.

RA: Ok, great.

JY: And your name is?

RA: Rob and Greg.

JY: Need to get my dog out of there.

RA: Move in the little area here. Is he an attack dog?

JY: No, he's a golden retriever. He'll lick you to death. We can go in here... make sure. c'mon.

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B-2

INTERVIEW WITH JOHN YABLONSKY

DR #1331036-07 / H #1965-100

(v) Rita Cobb

ALTERED HANDWRITING

1 had sex? Never got in any fights with her? She was a nice lady? You're nodding  
 2 your head no?  
 3 JY: Yeah, no  
 4 GM: Ok.  
 5 JY: (Inaudible)  
 6 GM: And this is, how was Holly back then? Was she ...  
 7 RA: Was she strictly with you or did she have boyfriends?  
 8 JY: I was hoping she would go. As far as I know she was always with me, just with  
 9 me.  
 10 GM: Ok.  
 11 RA: So you guys, you guys had a relationship where um, you didn't date outside of  
 12 yours and Holly's marriage. Cause I know that some people do that you know.  
 13 GM: Talked a lot of different types of people.  
 14 RA: Yeah, people do that. That's their thing but that wasn't your guy's thing?  
 15 JY: Uh-uh  
 16 RA: Ok.  
 17 GM: Anything else you can think about? You hear any other rumors back then?  
 18 JY: No.  
 19 RA: Any other ...  
 20 GM: Did she get you guys had a key for the rental or ...  
 21 JY: Yeah, I'm sure we had a key.  
 22 GM: Ok, did you guys also have a key to Rita's house?  
 23 JY: Um, yeah.  
 24 GM: Ok, so she wasn't like that it was strictly business? She didn't allow anybody in her  
 25 house?  
 26 JY: No  
 27 RA: Did, did she have a key to your apartment?

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 [um, /ft] SEE  
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ALTERED  
 (23)

INTERVIEW WITH JOHN YABLONSKY

DP #1684688-07 / H #1985-100

(v) Rita Cobb

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[YES SHE DID] AUDIOTUSUALLY  
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ALTERED ANSWERS

1 JY: No

2 RA: Did she have a passkey to your apartment?

3 JY: No

4 RA: So it would not be common for her to go over to your apartment though, right?

5 When you guys were living there she just wouldn't. . . .

6 JY: She was thoughtful. . .

7 RA: And you guys wouldn't go over to her house obviously because it's two separate

8 houses.

9 GM: Does she have any pets?

10 JY: I think she had a dog.

11 RA: What kind of dog?

12 JY: (Inaudible)

13 RA: You don't remember? Was it a big dog or a small dog or . . . .

14 JY: I don't remember you know I mean honest it's . . . .

15 RA: Did it have a dog house? Was it a outside dog? An inside dog?

16 JY: I don't remember.

17 RA: Excuse me?

18 JY: I don't even remember.

19 RA: Ck.

20 GM: Now what about the pistachio place? We talked to some people up there. Maybe

21 he might be able to help us on that.

22 RA: Yeah, um, there was a couple other pista- - or couple of other people that we

23 talked to that lived at the pistachio farm. I'm thinking it's out this way cause you

24 said Big Bear's over here.

25 JY: Yeah.

26 RA: So . . . .

27 GM: Is 13, does that take you to Big Bear?

1177

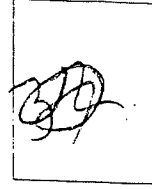
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# EXHIBIT COVER PAGE G.S.g



41

## DESCRIPTION OF THIS EXHIBIT:

Number of pages to this exhibit: \_\_\_\_\_ pages.

~~155-29786~~

Jurisdiction: (Check only one)

- Municipal Court
- Superior Court
- Appellate Court
- State Supreme Court
- United States District Court
- Federal Circuit Court
- United States Supreme Court
- Grand Jury



1 tomorrow morning at 9:00. Ladies and gentlemen,  
2 you're admonished that it is your duty not to converse  
3 among yourselves or with anyone else about any matter  
4 connected with this case nor form or express an  
5 opinion on it until it's submitted to you.

6 (Whereupon the following proceedings were  
7 held outside the presence of the jury:)

8 THE COURT: All right. The jurors are gone.  
9 Mr. Thomas, are you going to have enough people to  
10 fill up the day tomorrow?

11 MR. THOMAS: Depending how long they go.  
12 Just so the Court knows, this can be off the record as  
13 far as scheduling.

14 THE COURT: I want to make sure that you  
15 have extra people here. I don't mind if we don't get  
16 to someone.

17 MR. THOMAS: That's what I was going to  
18 explain to you. As far as tomorrow, I have  
19 John Sullivan coming in. I have Marshall Franey, who  
20 was the deputy coroner. Dr. Bill Saukel and  
21 Bruce Nash. Those are going to be the four witnesses  
22 I have.

23 Then my last witness, which will have to be on  
24 Thursday is Detective Alexander. The reason it has to  
25 be on Thursday is I need to wait for Mr. Sanders to take  
26 out any redactions that he has in the recording because  
27 that's what I was going to play on Thursday, and at that  
28 point the People would rest. So we're well ahead of

ALTERED  
TRANSCRIPTS

EXHIBIT D

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TRANSCRIPTS 403

1 schedule.

2 THE COURT: Can those redactions -- I am not  
3 sure why the redactions cannot be done before  
4 Thursday.

5 MR. THOMAS: Because Mr. Sanders has to look  
6 at them. Then I need to make the redactions.

7 MR. SANDERS: I can do those tonight.

8 MR. THOMAS: Then I can get it done tomorrow.  
9 I'll do that when I get home tomorrow night.

10 THE COURT: You don't have a secretary to do  
11 that?

12 MR. THOMAS: No. I have to do it because I  
13 have to ensure that everything's taken out that needs  
14 to be taken out. I don't want to leave that up to  
15 somebody else.

16 THE COURT: All right. Do you have jury  
17 instructions?

18 MR. THOMAS: I'll have those for you by  
19 Thursday.

20 THE COURT: Do you know how I like them?

21 MR. THOMAS: I have no idea. Last time I did  
22 a trial in here --

23 THE COURT: How about Wednesday? Don't you  
24 have the instructions ready? Here's what I want you  
25 to do. If you can't do it by tomorrow, that's  
26 understandable. I'd like to start working on them  
27 myself. What I'd like you to do is give me -- you  
28 know that piece of paper that you have, the checklist?

41-2

1 THE COURT: Make a copy for him. Anything  
2 else?

3 MR. SANDERS: Thank you, your Honor. I had  
4 indicated to the prosecutor the parts of the statement  
5 that I felt should be redacted.

6 THE COURT: Let's talk about a little  
7 information before we make assumptions.

8 MR. SANDERS: I believe we agree --

9 THE COURT: Statement that's going to be  
10 offered by the prosecution, and it's a statement  
11 alleged to be a statement by your client; is that  
12 correct?

13 MR. SANDERS: Yes, your Honor.

14 THE COURT: All right. You are not going to  
15 object to entry of the statements, but you believe  
16 there should be some things that were stated by your  
17 client that should be removed from the statement; is  
18 that correct?

19 MR. SANDERS: Mostly statements by the police  
20 officers but some statements by my client.

21 THE COURT: Mr. Thomas has not disagreed with  
22 you and attempted to provide you with specifics of how  
23 he intends to redact the statement of your client, so  
24 that it is not objectionable to you; is that correct?

25 MR. SANDERS: That's correct.

26 THE COURT: Mr. Thomas, you've seen that, and  
27 do you have any reason to disagree with the --

28 MR. THOMAS: No, as far as --

NEVER  
AGREE TO  
ANY  
STATEMENT  
I WAS  
INTERPRETED

(41-3)

1 THE COURT: -- statements that Mr. Sanders --

2 MR. THOMAS: As far as Mr. Sanders has  
3 provided, I don't have any problem with redacting the  
4 stuff. The only question I did have for Mr. Sanders  
5 is there's reference at the end of the interview where  
6 Mr. Yablonsky's invoking. I was planning on taking  
7 that out unless you wanted to keep it in.

8 MR. SANDERS: I did this very late last  
9 night, and I did forget when he invoked Miranda to  
10 take that out.

11 THE COURT: Other than that, sounds like  
12 we're in accord on what should be done. No  
13 disagreement between the two of you?

14 MR. SANDERS: I believe so.

15 THE COURT: All right. That can't be done  
16 until tomorrow.

17 MR. THOMAS: I wouldn't be able to do it  
18 until tonight. I'm going to start this afternoon once  
19 we're done.

20 THE COURT: How much is it?

21 MR. SANDERS: It's about a three-hour  
22 interview. I'm requesting redaction of ten minutes  
23 but in different parts of the interview.

24 MR. THOMAS: So I got to go through  
25 everything and find out where I got to cut the  
26 interview out and make sure it sounds good.

27 THE COURT: Can't be done between 11:05 and  
28 noon?

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MR. THOMAS: No. I'll be up late tonight  
doing it.

THE COURT: Have a nice lunch. Thank you.  
(Whereupon the lunch recess was taken.)

1 had had this before I let the jury go. I may very well  
2 allow either one of you to reopen to discuss this. I  
3 don't want the jury to be confused on something that is  
4 of no moment and should not enter into their  
5 consideration. I don't know how we're going to do it.

6 MR. THOMAS: I think we can draw up a  
7 stipulation that he was read his Miranda rights, and  
8 everything was done properly.

9 THE COURT: Maybe you guys can do whatever  
10 you want to do. I don't know the answer to what  
11 you're going to want to do. I need to have you here  
12 at 8:30 in the morning on Monday so we can get these  
13 things straight.

14 In the meanwhile, we're going to take a  
15 15-minute recess.

16 MR. THOMAS: Okay.

17 (Whereupon a recess was taken.)

18 THE COURT: Back on the record in the case of  
19 People of the State of California versus John Henry  
20 Yablonsky who is here with Mr. Sanders, his attorney.  
21 Mr. Thomas is here along with Detective Alexander.

22 Did you get a chance to review the exhibits?

23 MR. THOMAS: Yes, we did.

24 MR. SANDERS: Yes, sir.

25 THE COURT: Mr. Thomas, what are the -- there  
26 is the list right here.

27 THE CLERK: Yes.

28 THE COURT: Looks like we have 1 through 49A.

41-5

1 MR. THOMAS: And Mr. Sanders and I spoke. I  
2 think we've agreed to all the exhibits would go into  
3 evidence except for Exhibits 30, 31, 32, 38, and 40.

4 THE COURT: By stipulation?

5 MR. SANDERS: Yes, your Honor, we agree that  
6 all of them will go into evidence except the ones that  
7 the district attorney mentioned.

8 THE COURT: So stipulate, Mr. Thomas?

9 MR. THOMAS: Yes, your Honor.

10 (Whereupon Exhibits 1 through 29, 33 through 37 and 39  
11 through 49A were admitted into evidence.)

12 MR. THOMAS: As far as the transcript is  
13 concerned, both of us don't have a problem with the  
14 jury getting it as an aid to Exhibit 49 itself.

15 THE COURT: Okay.

16 MR. SANDERS: That's correct.

17 THE COURT: Fine. Did anybody want to do  
18 something like write a stipulation regarding the  
19 Miranda issue?

20 MR. SANDERS: I like the Court's suggestion,  
21 and I thought the words you used were even appropriate  
22 words.

23 THE COURT: Since I never listen to myself, I  
24 have no idea what I said.

25 MR. SANDERS: Something to the effect of,  
26 I'll instruct the jury that they are to disregard that  
27 issue.

28 THE COURT: You want me to do it informally

1 or do you want something we write up?

2 MR. SANDERS: If you prefer, I'll write  
3 something up, but I think it's fine if you do it  
4 informally.

5 MR. THOMAS: In the past, I used to do the  
6 drug cases, and an issue that would come up would be  
7 whether or not the defendant's vehicle or a person or  
8 house was searched in accordance to law. The special  
9 instruction that would be given usually in that case  
10 would be something to the effect that, it's -- this is  
11 a matter for the Court to decide, and the Court has  
12 decided that it was a lawful search.

13 THE COURT: Yeah, but that's not really what  
14 I'm asking you. I'm asking you whether you want to  
15 write something up or for me to informally advise  
16 them.

17 MR. THOMAS: I'm fine with the Court  
18 informally advising them.

19 MR. SANDERS: As am I.

20 THE COURT: Somebody remind me on Monday,  
21 somebody wearing glasses seated to my left. You can  
22 show me that note again on Monday.

23 All right. I drafted some instructions. You  
24 have them there, I think in blue. I'm going to run  
25 through these, and you all can tell me -- you can tell  
26 me what you think I should do when I get through telling  
27 you what I'm intending to do.

28 I'm intending to give 200, 201, 202, 207, 41-7



1 THE COURT: Mr. Sanders?

2 MR. SANDERS: I believe so, sir.

3 THE COURT: Now, I'm going to tell you to put  
4 down your pencils and pens and notebooks because I've  
5 got quite a bit of reading to do. These are the  
6 instructions that I'm going to give you on the law  
7 that applies to this case. Some of these are general  
8 instructions, some of these are specific instructions.

9 Just know that I'm going to go through them  
10 rather quickly as I read because I don't believe that  
11 reading them more slowly gives any benefit in your  
12 comprehension. I'm going to be flashing these  
13 instructions up on the board so you can read them along  
14 with me. I will give you copies of these instructions  
15 in writing to go back into the jury deliberation room,  
16 and you'll have plenty of chance to look at them when  
17 deliberations start.

18 I haven't been in the 21st Century for long  
19 yet. I'm kind of low-tech generally.

20 Remember when you saw the transcript, I told  
21 you to go by the transcript, see if it helps you  
22 understand what's on the tape, but the tape-recorded  
23 media is the original. Here we go.

24 "Members of the jury, I will now  
25 instruct you on the law that applies  
26 to this case. I will give you a copy  
27 of the instructions to use in the jury  
28 room. The instructions that you

418

# EXHIBIT COVER PAGE G&g

42

## DESCRIPTION OF THIS EXHIBIT:

Number of pages to this exhibit: \_\_\_\_\_ pages.

*15/27/86*  
Jurisdiction: (Check only one)

- Municipal Court
- Superior Court
- Appellate Court
- State Supreme Court
- United States District Court
- Federal Circuit Court
- United States Supreme Court
- Grand Jury

TO BE VERBATIM (ACCURATE)  
TO EXHIBIT 49 CD DISC OF INTERVIEW

THIS IS  
IN STATES EXHIBIT  
49A

103

113 FILED  
102504

EXHIBIT #  
CASE #: FV1900518  
NAME: FLEV-YABLONSKY JOHN  
DATE: 12-7-11  
CASE NUMBER: 127-11

49A

421

(21)

INTERVIEW WITH JOHN YABLONSKY

DR #1331036-07 / H #1985-100

(v) Rita Cobb

1 Interviewer: Det. Greg Myler

2 Interviewer: Det. Rob Alexander

3 Interviewee: John Yablonsky

4

5 RA: Test. -- Today's date is March 08, 2009. It's approximately 09:15 hours.

6 GM: Can we talk to you for one second?

7 RA: The following interview will be reference to case number 07-88. (overlapping  
8 conversation)

9 Radio Transmission GM: Alright, we'll be talking to him at the house.

10 Radio Response: We're still gonna stand by right?

11 (door closing)

12 Radio Response Transmission RA: Yes.

13 GM: Hey, how you doing?

14 RA: Hi.

15 (door closing)

16 RA: Hey, we're detectives, we're following up on a, on a case.

17 GM: I'm Greg. (overlapping conversation)

18 RA: We'd like to sit down and talk with you for a couple of minutes. I've got some  
19 photographs I'd like to show you. Do you have a couple of minutes?

20 JY: Yeah, absolutely.

21 RA: Ok, great.

22 JY: And your name is?

23 RA: Rob and Greg.

24 JY: Need to get my dog out of there.

25 RA: Move in the little area here. Is he an attack dog?

26 JY: No, he's a golden retriever. He'll lick you to death. We can go in here...make sure,  
27 c'mon.

28

29 49A  
Reviewed by Det. Rob Alexander

Page 1 of 113

#A1572

November 23, 2010

42-2  
CREATED

SAME  
DATE

(21)

B-1

CONFIDENTIAL

INTERVIEW WITH JOHN YABLONSKY

DR #1331036-07 / H #1985-100

(v) Rita Cobb

I'm  
Seemingly  
up interp  
no record  
p 120  
we know  
10/17/09 you  
killed her  
with a  
evid.  
pic  
Phase  
126

1 Interviewer: Det. Greg Myler  
 2 Interviewer: Det. Rob Alexander  
 3 Interviewee: John Yablonsky  
 4  
 5 RA: Test. -- Today's date is March 08, 2009. It's approximately 09:15 hours.  
 6 GM: Can we talk to you for one second?  
 7 RA: The following interview will be reference to case number 07-88. (overlapping  
 8 conversation)  
 9 Radio Transmission GM: Alright, we'll be talking to him at the house.  
 10 Radio Response: We're still gonna stand by right?  
 11 (door closing)  
 12 Radio Response Transmission RA: Yes.  
 13 GM: Hey, how you doing?  
 14 RA: Hi.  
 15 (door closing)  
 16 RA: Hey, we're detectives, we're following up on a, on a case.  
 17 GM: I'm Greg. (overlapping conversation)  
 18 RA: We'd like to sit down and talk with you for a couple of minutes. I've got some  
 19 photographs I'd like to show you. Do you have a couple of minutes?  
 20 JY: Yeah, absolutely.  
 21 RA: Ok, great.  
 22 JY: And your name is?  
 23 RA: Rob and Greg.  
 24 JY: Need to get my dog out of there.  
 25 RA: Move in the little area here. Is he an attack dog?  
 26 JY: No, he's a golden retriever. He'll lick you to death. We can go in here... make sure.  
 27 c'mon.

CREATED LAW SUIT  
AFTER SWITCHED  
ANSWERS SWITCHED  
AFTER LAW SUIT

FIRST SEEN  
AFTER  
JULY 2014

22

MIN. = MINUTES  
SEC. = SECONDS

~~CONFIDENTIAL~~

42-3493 3-2

INTERVIEW WITH JOHN YABLONSKY

DR #1331038-07 / H #1955-100

(v) Rita Ccbb

ALTERED RASHERS

1 had sex? Never got in any fights with her? She was a nice lady? You're nodding  
 2 your head no?  
 3 JY: Yeah, no  
 4 GM: Ok.  
 5 JY: (inaudible)  
 6 GM: And this is, how was Holly back then? Was she . . . .  
 7 RA: Was she strictly with you or did she have boyfriends?  
 8 JY: I was hoping she would go. As far as I know she was always with me, just with  
 9 me.  
 10 GM: Ok.  
 11 RA: So you guys, you guys had a relationship where um, you didn't date outside of  
 12 yours and Holly's marriage. Cause I know that some people do that you know.  
 13 GM: Talked a lot of different types of people.  
 14 RA: Yeah, people do that. That's their thing but that wasn't your guy's thing?  
 15 JY: Uh-uh.  
 16 RA: Ok.  
 17 GM: Anything else you can think about? You hear any other rumors back then?  
 18 JY: No.  
 19 RA: Any other. . . .  
 20 GM: Did she get you guys had a key for the rental or . . . .  
 21 JY: Yeah, I'm sure we had a key.  
 22 GM: Ok, did you guys also have a key to Rita's house?  
 23 JY: Um, yeah. *THE 7 TIMES*  
 24 GM: Ok, so she wasn't like that it was strictly business? She didn't allow anybody in her  
 25 house?  
 26 JY: No  
 27 RA: Did, did she have a key to your apartment?

ALTERED FROM  
 [NO] AUDIO + VISUAL  
 To [ ] SEE  
 EXHIBIT 4  
 CD 1

49A

B-3 424

23

INTERVIEW WITH JOHN YABLONSKY

DR #1631938-07 / H #1985-100

(v) Rita Cobb

ALTERED FROM  
[YES SHE DID] AUDIOTUSUALLY  
TO [NO] SEC CD DISC  
EXHIBIT 4757

ALTERED ANSWERS

1 JY: No

2 RA: Did she have a passkey to your apartment?

3 JY: No

4 RA: So it would not be common for her to go over to your apartment though, right?

5 When you guys were living there she just wouldn't. . . .

6 JY: She was thoughtful.

7 RA: And you guys wouldn't go over to her house obviously because it's two separate

8 houses.

9 GM: Does she have any pets?

10 JY: I think she had a dog.

11 RA: What kind of dog?

12 JY: (Inaudible)

13 RA: You don't remember? Was it a big dog or a small dog or . . . .

14 JY: I don't remember you know I mean honest it's . . . .

15 RA: Did it have a dog house? Was it a outside dog? An inside dog?

16 JY: I don't remember.

17 RA: Excuse me?

18 JY: I don't even remember.

19 RA: Ok.

20 GM: Now what about the pistachio place? We talked to some people up there. Maybe

21 he might be able to help us on that.

22 RA: Yeah, um, there was a couple other pista- - or couple of other people that we

23 talked to that lived at the pistachio farm. I'm thinking it's out this way cause you

24 said Big Bear's over here.

25 JY: Yeah.

26 RA: Sc. . . .

27 GM: Is 18, does that take you to Big Bear?

1137

49A

425 B4

105  
23

# EXHIBIT COVER PAGE G&g

43

## DESCRIPTION OF THIS EXHIBIT:

Number of pages to this exhibit: \_\_\_\_\_ pages.

~~15~~ ~~29~~ 86

Jurisdiction: (Check only one)

- Municipal Court
- Superior Court
- Appellate Court
- State Supreme Court
- United States District Court
- Federal Circuit Court
- United States Supreme Court
- Grand Jury



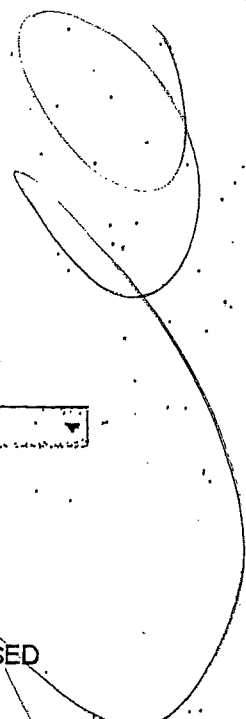
# Minutes

[Home](#)    [Charges](#)    [Actions](#)    [Minutes](#)    [Probation](#)  
[Case Report](#)    [Fine Info](#)

Case Number:

**Case FVI900518 Defendant 3114201 YABLONSKY, JOHN HENRY**

Defendant: 1 of 1

Action: 01/27/2011 - JURY TRIAL (IN PROGRESS) 

**Case FVI900518 Defendant 3114201 YABLONSKY, JOHN HENRY**

Action: JURY TRIAL (IN PROGRESS)    Date: 01/27/2011    Time: 9:00 AM  
 Division: V2    Hearing Status: DISPOSED

DHN M TOMBERLIN, J-JUDGE  
 CLERK: VICKIE LO VASCO  
 CERTIFIED COURT REPORTER: SM-SHAWNA MANNING CSR# SM-12827  
 DEPUTY DISTRICT ATTORNEY JOHN THOMAS PRESENT.  
 DEPUTY PUBLIC DEFENDER DAVE SANDERS PRESENT  
 DEFENDANT PRESENT IN CUSTODY.

PROCEEDINGS  
 ACTION CAME ON FOR JURY TRIAL-IN PROGRESS.

7TH DAY OF TRIAL.

9:15

COURT RECONVENES, ALL PARTIES PRESENT. ALL JURORS AND ALTERNATE JURORS ARE PRESENT AND IN THEIR PLACES.

PEOPLE'S EXHIBIT(S) 49-CD INTERVIEW WITH DEFENDANT MARKED FOR IDENTIFICATION.  
 PEOPLE'S EXHIBIT(S) 49A-TRANSCRIPT OF EXHIBIT 49 MARKED FOR IDENTIFICATION.

:16  
 PEOPLE'S WITNESS DETECTIVE ROBERT ALEXANDER SWORN AND TESTIFIES.

EXHIBIT 49 (CD) PLAYED IN OPEN COURT - COURT REPORTER WAIVED DURING THE PLAYING OF

8/13 - 10014859  
 7/11 - 10010007

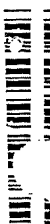


EXHIBIT 49  
 51  
 H1  
 43it  
 E1

BENCH CONFERENCE ENDS AT 2:37.

2:38

JURY QUESTION RECEIVED

RECESS DECLARED; JURORS ADMONISHED.

14:40

COURT RECONVENES; ALL PARTIES PRESENT.  
JURORS NOT PRESENT.

14:41

ACTION CAME ON FOR DEFENSE 1118.1 MOTION.

ARGUMENT PRESENTED BY COUNSEL FOR THE DEFENSE.  
ARGUMENT PRESENTED BY COUNSEL FOR THE PEOPLE.

DEFENSE MOTION 1118.1 IS DENIED.

COURT AND COUNSEL DISCUSS DEFENSE REQUEST TO HAVE COURT INSTRUCT JURY TO DISREGARD LINES 10 THROUGH 12 OF EXHIBIT 49A (TRANSCRIPT) DEFENSE MAY BRING AUTHORITY FOR COURT TO REVIEW.

RECESS DECLARED 2:57.

RECESS DECLARED 2:56

15:26

COURT RECONVENES; ALL PARTIES PRESENT.  
JURORS NOT PRESENT.

PEOPLE'S EXHIBIT(S) 1 THROUGH 29 ENTERED INTO EVIDENCE.

PEOPLE'S EXHIBIT(S) 33 THROUGH 37 ENTERED INTO EVIDENCE.

PEOPLE'S EXHIBIT(S) 39 ENTERED INTO EVIDENCE.

PEOPLE'S EXHIBIT(S) 41 THROUGH 49A ENTERED INTO EVIDENCE.

(EXHIBITS ENTERED BY STIPULATION)

COURT AND COUNSEL DISCUSS JUROR QUESTION.

COURT AND COUNSEL REVIEW JURY INSTRUCTIONS ON THE RECORD.

RECESS DECLARED 4:00

HEARINGS

JURY TRIAL (IN PROGRESS) CONTINUED TO 01/31/2011 AT 9:00 IN DEPARTMENT V2.  
DEFENDANT ORDERED TO APPEAR ON HEARING DATE.

JURORS ORDERED BACK AT 9AM - COUNSEL ORDERED BACK AT 8:30)

CUSTODY STATUS

EXHIBIT H3

J3

(43-2)

(E2)

10/13-10014859  
9/11-10010007

===== MINUTE ORDER END =====

PREVIOUS MINUTES PRINTED.

1) STATES EXHIBIT 49 (INTERROBATION RECORDING CD) IS 3 HR. 48 min. IN LENGTH.

2) MINUTES OF COURT HEARING ON JAN. 27, 2011 WHERE (?) RECORDING WAS PLAYED TO JURY LASTES 1 HR. 55 min.

3) TRIAL ATTORNEY UNDER OATH TOLD THE COURTS HE ONLY KNEW OF 15 MINUTES BEING REDACTED (THIS WAS WITHOUT YABLONSKY KNOWLEDGE, CONSENT, UNDERSTANDING)

4) STATE PROSECUTOR IS THE LAST ONE TO PHYSICALLY ALTER THE RECORDING "SO IT WOULD SOUND GOOD"

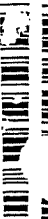
5) STATE PROSECUTOR'S LEAD DETECTIVE SNORE UNDER OATH, THIS VERSION (EXHIBIT 49A) WAS ACCURATE TO STATES EXHIBIT 49 (THE DISC)

6) THE JUDGE GAVE AN INSTRUCTION TO THE JURY, THE RECORDING THEY LISTED TO WAS "ORIGINAL MEDIA" JUST AFTER HE TOLD THEM HE WAS LOW TECH [NORMALLY/USUALLY]

(43-3)

54 (LES) EXHIBIT

1.713 - 10014859  
10/11 - 10010007



# EXHIBIT COVER PAGE G&g

44

## DESCRIPTION OF THIS EXHIBIT:

Number of pages to this exhibit: \_\_\_\_\_ pages.

### Jurisdiction: (Check only one)

- Municipal Court
- Superior Court
- Appellate Court
- State Supreme Court
- United States District Court
- Federal Circuit Court
- United States Supreme Court
- Grand Jury

THIS WAS GIVEN TO ATTORNEY TELLING HIM  
I WANTED TO TESTIFY HE TOLD ME I HAD TO  
I DECIDE 3 DAYS LATER THEY 15 MIN LATER ANNO DEF. REST.

(LIAR)

I HAVE TO TESTIFY AT THIS  
POINT I BELIEVE.  
THIS IS ALL TOO FAR IN THE  
WRONG UNDERSTANDING.  
THOMAS SACKED THAT DECISION  
IN HIS OPENING STATEMENT.

IF I DON'T TESTIFY THOMAS  
HAS PRESUMED MY LEVEL OF  
INVOLVEMENT.

IF THE "RAPE" LEADS TO THE  
MURDER, MY ONLY ESCAPE FROM  
MURDER IS TO EXPLAIN MY  
RELATIONSHIP. THOUGH IT LEADS  
ME BACK TO TWO ACCUSATIONS  
I'M STUCK WITH THIS JUDGE  
AND HIS PERPETUAL DENIAL OF  
ANY FAVOR TO PROBABILITY OF  
MY INNOCENCE

WHAT THE HELL DO I DO  
AND HOW DOES THIS HELP  
IN THE APPELLATES IF THIS GOES  
WRONG.

44-1

JUDGE SAID "IF DEF. ATTY SAYS HELL SUBMIT  
THE EVIDENCE ON RECORD, THAT'S DEF. RESTS"  
"TRIAL ATTY ONLY SAID DEF. RESTS"

# EXHIBIT COVER PAGE G&g

45

## DESCRIPTION OF THIS EXHIBIT:

Number of pages to this exhibit: \_\_\_\_\_ pages.

~~15~~ 186

Jurisdiction: (Check only one)

- Municipal Court
- Superior Court
- Appellate Court
- State Supreme Court
- United States District Court
- Federal Circuit Court
- United States Supreme Court
- Grand Jury

# HIGH DESERT

SECTION B • THURSDAY, FEBRUARY 1, 2011 • VICTOR VALLEY & HIGH DESERT

3 EACH

128  
role  
203  
motive  
had no  
and n  
had bee

## losing arguments heard in 1985 murder case

### Man accused of raping, strangling woman to death

BY NATASHA LINDSTROM  
STAFF WRITER

VICTORVILLE • DNA evidence suggesting John Yablonsky had sex with a Lucerne Valley woman shortly before she was killed some 25 years ago doesn't prove Yablonsky also murdered the woman, the defense argued Monday in Victorville court. Yablonsky, 47, is accused

of raping and strangling 55-year-old Rita M. Cobb to death with a wire coat hanger in her Lucerne Valley home in 1985. He is charged with murder and the special circumstance of rape or attempted rape.

In his closing argument, Deputy Public Defender Dave Sanders said the prosecution's evidence didn't directly link his client to the murder and suggested multiple other scenarios that could have led to her death.



DAILY PRESS FILE PHOTO  
**IN COURT:** Cold case murder defendant John Yablonsky, 47, right, talks with Deputy Public Defender David Sanders in in this recent file photo.

SEE YABLONSKY, PAGE 5

FROM PAGE 1

Sanders argued the prosecution hadn't proved someone forced upon Cobb — a doctor testified there wasn't any physical evidence of a sexual assault — nor that the sexual act happened the same time as the strangulation. An expert testified Cobb could have had sex several days or more than a day before she was killed. "The information we have in this case could add to a number of confusions," Sanders told jurors, reminding them that when there's multiple reasonable circumstances, "you must accept the one that points to innocence."

Among the alternative scenarios he cited, perhaps the victim asked

before her death, over to her home to make a repair and the two had consensual sex. A man whom Cobb had reportedly been on a date with the suspected night of her death, Joe Saunders, was waiting outside and then entered her unlocked home and killed her in a jealous rage.

After the hearing, Sanders said sheriff's officials had confirmed Saunders committed suicide a few months after Cobb's death, but Sanders wasn't able to submit that finding to the jury.

"I couldn't figure out a way to get it in with the rules of evidence," Sanders said. "The only way you can get something in is with a live witness or someone that can substantiate making a record back then and that was the problem. There's

Deputy District Attorney John Thomas dismissed Sanders' alternative situations as imaginative plots not backed by any evidence.

"There has not been any evidence presented in this case that links this crime to anybody else but the defendant," Thomas told jurors.

Thomas argued there was evidence showing signs of a rape struggle and reminded jurors Cobb was found dead fully nude in a sexual position. *body missing*

Thomas also replayed tape recordings of multiple interviews between the defendant and detectives in which Yablonsky repeatedly denied having sex with the victim — a finding Thomas said showed Yablonsky was lying to distance himself from the crime.

Sanders said was interviewed with his wife in the room, may have lied for fear of embarrassment that he slept with a woman double his age just before somebody killed her.

Many who would have been Cobb's contemporaries at the time of her death now can't be found or have died, and the prosecution has not reexamined the full list of 16 suspects initially brought in for questioning, Sanders added.

"We're ... trying to put a puzzle together where all we know is one or two little pieces," Sanders said. "Everything about it is circumstantial evidence. There is no direct evidence in this case that goes to the main issues." The prosecution also proved no motive, Sanders argued. Other

assault was the motive, as Cobb's home had not been ransacked and no items of value had been stolen.

Yablonsky opted not to testify. Just before he finished his closing, Sanders reminded jurors they could not use the fact that Yablonsky used his constitutional right not to testify as evidence of his guilt.

After jurors retired to deliberate, Sanders said he was confident the prosecution's evidence was so "spotty" that he didn't think any jury could "come back with a sure verdict."

If convicted, Yablonsky faces a maximum sentence of life in prison without the possibility of parole.

Natasha Lindstrom may be

12 TO 5 DAY BEFORE THE MURDER

(45A)

# EXHIBIT COVER PAGE G&G

46

## DESCRIPTION OF THIS EXHIBIT:

Number of pages to this exhibit: \_\_\_\_\_ pages.

~~TS-27786~~

Jurisdiction: (Check only one)

- Municipal Court
- Superior Court
- Appellate Court
- State Supreme Court
- United States District Court
- Federal Circuit Court
- United States Supreme Court
- Grand Jury



9/15

THIS TO BE PLACED BETWEEN PAGE 15 AND 16

124

199

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO  
VICTORVILLE DISTRICT  
MINUTE ORDER

CASE NO: FVI900518

DATE: 02/03/11

CASE TITLE: PEOPLE OF THE STATE OF CALIFORNIA  
vs.  
JOHN HENRY YABLONSKY

DEPT: V2 02/03/11 TIME: 9:00 am JURY TRIAL (DELIBERATIONS)

CHARGES: 1) 187(A) PC-F

How is this 30 min  
Allen and not prejudicial  
AND AN ATTORNEY IVE NEVER  
MET NOT PREJUDICE MY  
CASE WHO WAS THIS MAN  
THIS ATTORNEY STOOD IN  
WHEN JURY WAS DEADLOCKED  
AND SANDERS WAS IN  
COURT UNTIL 3 PM. MY  
FAMILY SAW HIM IN THE  
HALLWAY AS THEY WAITED  
FOR JURY. IVE NEVER  
MET SEEN OR SPOKE TO  
NOW HEARD OF, YET HE  
HAD AUTHORITY IN  
MY TRIAL  
97 MINUTES LATER

JOHN M TOMBERLIN, JUDGE  
Clerk: Vickie Lo Vasco  
Certified Court Reporter: Shawna Manning; CSR# 12827  
Deputy District Attorney JOHN THOMAS present.  
Deputy Public Defender DAVE SANDERS present  
Deputy Public Defender PHIL ZYWICIEL (PM) present  
Defendant present in custody.

PROCEEDINGS

Action came on for Jury Trial-In Progress

11TH DAY OF TRIAL.

9:10

Jury RESUME deliberations 9:10.

10:47

Recess declared 10:47

STILL DEAD LOCKED

11:09

Jury RESUMES deliberations 11:09.

STILL DEAD LOCKED 51 MINUTES LATER

Recess declared FOR JURORS - 12:00

13:30

Jury RESUME deliberations 1:30.

STILL DEAD LOCKED 112 MINUTES LATER

Recess declared FOR JURORS - 3:22

15:50

Jury RESUME deliberations 3:50.

(46-1)

16:35

Court reconvenes; all parties present. 45 MINUTES AFTER THREE MORE DEAD  
LOCKS A VERDICT WAS FORCED

WHERE DID THE JUDGES REQUEST FOR 30 MORE MINUTES

173

129  
2024

# Yablonsky guilty in cold case killing

BY TOMOYA SHIMURA  
STAFF WRITER

VICTORVILLE • John Yablonsky charged with the 1985 murder of a Lucerne Valley woman was convicted late Thursday afternoon in Victorville Superior Court.

After three days of deliberations, a jury came back with the verdict finding Yablonsky guilty of the murder of Rita M. Cobb and special circumstances of rape. The 47-year-old defendant is expected to be sentenced to life in prison without parole on April 8.



John Yablonsky

The jurors almost hung Wednesday night — eight for guilty and four for not guilty. But Judge John Tomberlin told them to continue deliberating one more day.

Hearing the guilty verdict, Daryl Kraemer, the victim's son who was sitting in the audience with his wife, quietly wiped away tears.

"It's just a boy," Kraemer said. "The jurors made the right decision."

SEE GUILTY • PAGE 7

Daily Press | Page edited by Mike Lamb

FROM THE FRONT

Friday, February 4, 2011 | PAGE A7

## GUILTY: Some jurors felt they needed more evidence

FROM PAGE 1  
Kraemer thanked the jurors in the courtroom. "I hope it brings peace to your family," Kraemer and his wife, Maria, discovered Cobb naked on her bed in her house more than 25 years ago. The victim had been strangled to death with a wire coat hanger. Yablonsky wasn't arrested until March 2009.

When San Bernardino County Sheriff's officials matched his DNA with evidence discovered at the murder scene, the investigation took so long because DNA science was still in its infancy in 1985. Some jurors told attorneys in the hallway it took them a while to reach the verdict because they felt they needed more evidence.

"I'm disappointed because I thought we had good evidence," said Deputy Public Defender Dave Sanders. Yablonsky's attorney, "I thought there was serious reasonable doubt concerning my client's guilt. I felt it wasn't entirely clear what happened 25 years ago."

Cold cases can be difficult to try because witnesses from decades earlier can't be found or have faded and evidence sometimes inadvertently gets lost or destroyed. John Thomas said, "I'm just happy they came back with a guilty verdict." Thomas said, "I hope it gives some closure to Daryl and Maria."

During the interview with detectives, Yablonsky recognized Cobb in a photo. He and his family used to rent Cobb's back house until they moved out about a year before her death. But Yablonsky repeatedly denied ever having a personal or sexual relationship with the victim during the interview with detectives.

Because Yablonsky's DNA was found on Cobb, some jurors said they felt like Yablonsky was lying. "Twenty-five years of guessing and thinking about what I could have done to change things at that time. It made me feel miserable," Kraemer said. Did the verdict help ease the burden? "Now I can start working on it," Kraemer said.

Tomoya Shimura may be reached at tshimura@vvdaily.com or (760) 955-5366.

AFTER STOCKWELL TESTIFIED THE DNA COULD BE AT SCENE BEYOND DOUBT WAS REASONABLE AND THERE IS NO OTHER EVIDENCE

A DOCTORED RECORDING WILL SURE HELP A CONVICTION

114

462

# Yablonsky convicted

BY TOMOYA SHIMURA  
STAFF WRITER

**VICTORVILLE** • John Yablonsky, charged with the 1985 murder of a Lucerne Valley woman, was convicted last Thursday afternoon in Victorville Superior Court.

After three days of deliberations, a jury came back with the verdict finding Yablonsky guilty of the murder of Rita M. Cobb and special circumstances of rape. The 47-year-old defendant is expected to be sentenced to life in prison without

SEE CONVICTED • PAGE 8

## CONVICTED

FROM PAGE 1

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Hearing the guilty verdict, Daryl Kraemer, the victim's son who was sitting in the audience with his wife, quietly wiped away tears.

"It's just a joy,"

Kraemer said. "The jurors made the right decision."

Kraemer thanked the jurors in the court hallway and a male juror told him, "I hope it brings peace to your family."

Kraemer and his wife, Marta, discovered Cobb naked on her bed in her house more than 25 years ago. The victim had been strangled to death with a wire coat hanger.

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Sheriff's officials matched his DNA with evidence discovered at the murder scene. The investigation took so long because DNA science was still in its infancy in 1985.

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Yablonsky's attorney, "I thought there was serious reasonable doubt concerning my client's guilt. I felt it wasn't entirely clear what happened 25 years ago."

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"I'm just happy they came back with a guilty verdict," Thomas said.

"I hope it gives some closure to Daryl and Marta."

During the interview with detectives, Yablonsky recognized Cobb in a photo. He and his family used to rent Cobb's back house, until they moved out about a year before her death. Yablonsky repeatedly denied ever having a personal or sexual relationship with the victim during the interview with detectives.

Because Yablonsky's DNA was found on Cobb,

some jurors said they felt like Yablonsky was lying.

"Twenty-five years of guessing and thinking about what I could have done to change things at that time. It made me feel miserable," Kraemer said.

He was asked if the verdict helped ease the burden.

"Now I can start working on it," Kraemer said.

Tomooya Shimamura be reached at [tshimura@VVDailyPress.com](mailto:tshimura@VVDailyPress.com) or (760) 955-5568.

463

# EXHIBIT COVER PAGE G&g

47

## DESCRIPTION OF THIS EXHIBIT:

Number of pages to this exhibit: \_\_\_\_\_ pages.

15-29186

Jurisdiction: (Check only one)

- Municipal Court
- Superior Court
- Appellate Court
- State Supreme Court
- United States District Court
- Federal Circuit Court
- United States Supreme Court
- Grand Jury

HONORABLE JUDGE M. TOMBERLIN

VICTORVILLE SUPERIOR COURT  
CRIMINAL DIVISION

FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
VICTORVILLE DISTRICT

FEB 25 2011

By *Marcia S. Ramirez*  
MARCIA S. RAMIREZ, DEPUTY

STATE OF CALIFORNIA,

) Case No.: FVI900518

Plaintiff,

) MARSDIN MOTION

vs.

JOHN HENRY YABLONSKY,

Defendant

I BEG THE COURTS TO HEAR THE REQUEST FOR THE MOTION TO  
RECUSE THESE SPECIFIC ATTORNEY DAVE SANDERS FOR THE FOLLOWING REASONS  
THAT I BELIEVE QUALIFY AS INEFFECTIVE COUNSEL, AS WELL AS CONFLICT OF  
INTEREST TO MY SELF AS WELL AS MY CASE.

1. LAST YEAR MR. SANDERS TOLD ME THAT I WAS PRECEDED BY TWO OTHER  
CASES, WHICH IN FACT TURNED INTO MANY THAT CONTINUALLY POSTPONED  
HIS EFFORTS AS WELL AS THE INTERESTS INTO MY VERY OWN CASE
2. THE BEGINNING OF THIS YEAR HE TOLD ME AGAIN THAT HE HAD ONLY THREE  
OTHER CASES BEFORE MY CASE, AND AGAIN THAT LED TO FURTHER  
INTERUPTION TO HIS INTERESTS TO MY CASE WHICH IN TURN LED US INTO  
THE SCENARIO OF THE RAMOS RE- ELECTION CAMPAIGN THAT PROVED TO BE  
BURDENSOME TO THE VERY LEAST, AND AGAIN FURTHER UNNECESSARY  
DELAYS AND CONTINUANCES.
3. RIGHT AFTER THE RE-ELECTION FLIER INCIDENT MR. SANDERS INFORMED ME  
THAT HE WAS GOING TO PREPARE AND FILE THREE MOTIONS WHICH WERE TO  
PERTAIN ADEQUATE DEFENSES IN MY BEST INTEREST, WHICH AGAIN WASTED  
THE COURTS TIME AND LED TO FUTILE EFFORTS BY MR. SANDERS BECAUSE HE  
HAD IN FACT ONLY PREPARED ONLY ONE MOTION A 995 FOR DISMISSAL.

TO TERMINATE COURT APPOINTED ATTORNEY - 1

*WCB*  
*47-1*

- 1 4. WHEN THE COURT APPEARANCE BEFORE HONORABLE JUDGE NIKKATA IN  
2 DEPARTMENT # 3, MR. SANDERS WAS NOT EVEN INCLINED TO LET THE JUDGE  
3 HEAR THE MOTION THAT HE'D TAKEN THE TIME TO PREPARE AND FILE, THE  
4 JUDGE HAD TO INTERRUPT THE TWO ATTORNEY'S SANDERS AND THOMPSON,  
5 WHICH WERE BOTH EAGER TO SET TRIAL DATES WITHOUT HEARING THE  
6 DECISION ON THE MOTION FILED BY THE JUDGE HIMSELF. THE JUDGE HAD TO  
7 TELL THE ATTORNEY'S THAT HE HAD TAKEN THE TIME TO REVIEW THE  
8 MOTION , THAT SINCE HE'D TAKEN THE TIME TO READ THE MOTION, THAT HE  
9 INSISTED ON HAVING THE MOTION HEARD THAT HE HIMSELF WAS NOT GOING  
10 TO "SLOUCH" ON HIS JOB THAT HE WAS GOING TO DO HIS JOB.
- 11 5. AFTER JUDGE NIKKATA TOLD THE ATTORNEY'S THAT ACCORDING TO THE  
12 MOTION AND THE EVIDENCES THAT THOMPSON HAD FILED THAT "THERE WAS  
13 NO CONNECTION WITH YABLONSKY TO THE MURDER CRIME" AND THAT IF  
14 THERE WAS OTHER EVIDENCES OR DOCUMENTS THAT NEEDED TO BE FILED  
15 THAT WENT TO THIS SPECIFIC CASE , WHERE WERE THEY? IMMEDIATELY  
16 BOTH MR. SANDERS AND MR. THOMPSON SAID THAT THEY WOULD BOTH  
17 AGREE THAT THIS EVIDENCE DID INFACT EXIST?????? JUDGE NIKKATA TOLD  
18 THEM THAT MAY VERY WELL BE BUT HE WANTED TO SE THEM PERSONALLY,  
19 THAT WHERE WERE THE DOCUMENTS, AND MR. THOMPSON SAID THAT HE  
20 MIGHT HAVE THEM IN HIS OFFICE; THE JUDGE TOLD HIM THAT HE HAD AN  
21 HOUR AND A HALF IN TO PRESENT THE DOCUMENTS IN QUESTION.
- 22 6. MR. SANDERS HAS CONTINUALLY NEGLECTED TO RELAY THE EVIDENCES TO  
23 ME THAT HE HAD "DISCOVERY" IN FULL AND ONLY THIS LAST MONDAY DID HE  
24 GET ANOTHER PORTION TO ME . THE EVIDENCES ARE INCOMPLETE AND NOT  
25 SUBSTANCIAL TO MY SATISFACTORY.
- 26 7. THERE ARE OTHER CASES THAT MY FIRST ATTORNEY WAS CLEAR WERE  
27 PERTINANT TO MY DEFENSE AND EVEN MR. SANDERS STATED THAT THE  
28 OTHER EVIDENCES WERE OF IMPORTANCE AND THAT INITIALLY THAT MR.  
29 THOMPSON WAS GOING TO RENDER THE OTHER EVIDENCES THAT I BELIEVE  
30 MAY QUALIFY AS EXCULPATORY EVIDENCES WHICH WOULD ASSIST IN MY

TO TERMINATE COURT APPOINTED ATTORNEY - 2

W 47-2

1 DEFENSE, BUT LATER MR. SANDERS STATED THAT MR. THOMPSON WAS NOW  
2 NOT GOING TO RELEASE THE EVIDENCES TO MR. SANDERS.  
3 8. THROUGH THE PROCESS OF CONTACTING THE WITNESSES THAT OUR  
4 INVESTIGATOR WAS TO INTERVIEW MR. SANDERS DIDN'T CONSIDER ANY OF  
5 THE INFORMATION THAT I HAD GIVEN HIM  
6 9. MR. SANDERS HAS LIED TO ME ON SEVERAL OCCAISONS THAT HAD TO DO  
7 WITH NUMEROUS POINTS OF INTERESTS, ONE BEING ABOUT HIS INQUIREING  
8 AS TO HOW MANY FLIERS WERE MAILED OUT, HIS STATEMENT WAS THAT  
9 ACCORDING TO THE PEOPLE HE'D ASKED THE ACTUAL COUNT OF FLIERS THAT  
10 DISTRICT ATTORNEY RAMOS HAD MAILED MR. SANDERS SAID THAT THERE  
11 WERE ONLY 3000 FLIERS MAILED. ON TWO OCCAISONS MR. SANDERS MADE  
12 THIS STATEMENT TO ME.  
13 10. AFTER I'D DONE MY OWN INVESTIGATING AND QUESTIONING SEVERAL  
14 PEOPLE THAT HAD FURTHER INTERESTS WHICH WEREN'T EVEN CLOSE TO THE  
15 ANSWER MR. SANDERS GAVE ME. I AGAIN QUESTIONED MR. SANDERS AND HIS  
16 STATEMENT WAS THAT HE HAD ASKED OTHER ATTORNERYS AND DISTRICT  
17 ATTORNEY'S AND THAT WAS WHAT THEY HAD TOLD HIM THE ANSWER WAS  
18 THAT ONLY ABOUT 3000 FLIERS WERE MAILED ON A MAJOR RE-ELECTION  
19 CAMPAIGN FOR "COUNTY DISTRICT ATTORNEY"?????????????  
20 11. WHEN I'D QUESTIONED MR. SANDERS ABOUT THE INCIDENT IN THE 995  
21 MOTION HEARING, HE DIDN'T REMEMBER ANY OF THE ACTIONS OR  
22 SEQUENCES, OR EVEN WHY HE HAD IN FACT NOT FILED THE THREE MOTIONS.  
23 12. AGAIN I ASKED MR. SANDERS ABOUT THE CASE BEING A DEATH PENALTY CASE  
24 AND WHAT WAS HAPPENIG THERE, HE'D TOLD ME THAT THERE WAS NEVER A  
25 DEATH PENALTY POSSIBILITY ON THIS MATTER, WHEN IN FACT THE  
26 ARRAIGNMENT IN SUPERIOR COURT WAS CONTINUED BECAUSE MR. SANDERS  
27 WASN'T SURE WHETHER HE WAS GOING TO BE ABLE TO REPRESENT THE CASE.  
28 I SEEN MY NAME ON A DOCUMENT THAT STATED THAT THE POSSIBILITY OF A  
29 SENTENCE OF DEATH WAS POSSIBLE FOR THIS ALLEGED CASE.  
30

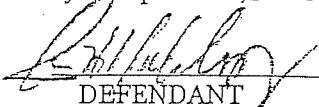
473

1 13. IF IN THIS MANY MONTHS THAT MR. SANDERS HAS BEEN APPOINTED MY  
2 COUNSEL HIS ABILITY TO RETAIN OR RECALL INFORMATION, IT IS TRULY  
3 UNACCEPTABLE AND IS IN FACT A DIRECT VIOLATION OF MY CONSTITUTION.

4 14. I CAN'T SEE HOW AN ATTORNEY THAT DOESN'T REMEMBER FACTS AND  
5 SEQUENCES OR EVEN EXISTANCES OF MATTERS THAT PERTAIN TO MY CASE  
6 SHOULD BE ACCEPTABLE ON ANY LEVEL. I'D WRITTEN HIM WITH MY  
7 CONCERNS AND MENTIONED THAT MY INTENTIONS WERE TO RECUSE HIM  
8 WITH A MARSDIN MOTION IF HE DIDN'T PULL HIS INTERESTS IN MY CASE  
9 TOGETHER.

10 15. HE'S LIED TO ME TOO MANY TIMES TO TIMES TO EVEN MENTION AND ON  
11 LEVELS THAT LEAVE ME NO OTHER CHOICE BUT TO NOT TRUST HIM. I BELIEVE  
12 THAT HIS ACTIONS IMPLICATE THAT HE IS IN FACT CONSPIREING TO AND  
13 WITH THE DISTRICT ATTORNEY'S OFFICE.

14  
15  
16  
17  
18 Dated this 21<sup>st</sup> day of September 2016



DEFENDANT  
JOHN H. YABLONSKY

14344 CAJON AVE. ST.#201  
VICTORVILLE, CA.  
92392  
PUBLIC DEFENDERS  
OFFICE  
ATT; DAVE SANDERS

1

WIS  
47-4



1 16. THERE WERE IN FACT NUMEROUS WITNESSES THAT THE  
2 COUNSEL NEGLECTED TO INVESTIGATE, SAYING HE DIDN'T  
3 HAVE ANY IDEA WHAT THEY HAD TO OFFER, THESE PEOPLE BEING  
4 LONG TIME RESIDENTS IN THE SHUTT COMMUNITY AS THE VICTIM HAD  
5 IN FACT LIVED. THAT PERSONALLY KNEW THIS VICTIM AND HER  
6 FAMILY AND COULD VERY WELL HAD INFORMATIONS THAT WOULD HAVE  
7 OFFERED FURTHER EVIDENCES THAT WOULD HAVE HELDED THE  
8 DEFENSE.

9 17. MR SANDERS FAILED TO PROPERLY PREPARE FOR THIS  
10 MURDER TRIAL, ONLY FILING 3 MOTIONS AND AS HE'D SAID  
11 VERBALLY SEVERAL OTHERS. HIS ATTEMPT TO DEFEND ME  
12 IN THAT COURT ROOM HE PRESENTED A LACKING OF  
13 PROFESSIONALISM AS WELL AS INTERESTS OF THE  
14 LEGAL NATURE IN HIS CLIENTS DEFENSE.

15 18. MR. SANDERS CONTINUAL DEFENSE ~~STRATEGY~~ WHICH  
16 WAS THAT HIS WHOLE DEFENSE STRATEGY EVOLVED AROUND  
17 THE DEFENDANTS TESTIMONY, EVEN THEN I GAVE HIM  
18 INFORMATION THAT HE NEEDED ONLY INVESTIGATE AND  
19 COLLECT DOCUMENTATION FROM ELPASO, TEXAS AND  
20 LONG BEACH CALIFORNIA IN ORDEE TO SUBSTRANTIATE  
21 HIS DEFENDANTS CLAIM OF WRONGFULL ACCUSATIONS  
22 BY THE TWO PROSECUTORS WITNESSES. BY NOT EVEN  
23 ATTEMPTING TO FOLLOW UP LEADS, HE HIMSELF SABOTAGED  
24 HIS OWN OPPORTUNITY TO DEFEND HIMSELF THROUGH  
25 TESTIMONY FROM THE STAND.

26 "

27 "

28 "

wife

TO TERMINATE COURT APPOINTED ATTORNEY - 5

47-5

1 18. DURING THE TRIAL MR. SANDERS HAD SEVERAL  
2 OPPORTUNITIES TO RESEARCH CASE LAW THAT WOULD  
3 ASSIST IN THE PRESENTATION OF CASES OF IMPERENTIAL  
4 VALUE AS WELL AS ARGUMENTATIVE STANDING THAT  
5 WOULD HAVE ASSISTED HIS CLIENTS DEFENSE.

6 19. THROUGH THE ENTIRE TRIAL MR. SANDERS  
7 MADE NO ATTEMPT TO DISCUSS "ANY" MATTERS  
8 AT HAND WITH HIS CLIENT EVIDENCES, WITNESSES,  
9 DEFENSES, STRATEGIES, OR EVEN PROCEDURES.

10 THIS MAN FAILED TO INTELLIGENTLY REPRESENT  
11 HIS CLIENTS INTEREST. CONTINUALLY SAYING DURING  
12 WITNESS EXAMINATIONS THAT "HE KNEW THE  
13 ANSWERS" WHEN I TOLD HIM THE JURORS  
14 NEEDED TO KNOW. MR. SANDERS KNOWING  
15 THAT THE JURY INSTRUCTION WOULD NOT ALLOW JURORS  
16 TO ACCEPT ATTORNEY'S OPENING OR CLOSING STATEMENTS  
17 AS EVIDENCES TO BE DELIBERATED UPON.

18 20. MR. SANDERS DECISION TO NOT PREPARE THE  
19 CASE FOR TRIAL, RESEARCH EVIDENCES, SCHEDULE  
20 ANY WITNESS, VERIFY ANY TESTIMONIES, MAKE  
21 ANY OPENING STATEMENTS, PRESENT ONE WORD,  
22 DOCUMENT, OR EVEN THEORY FOR HIS CLIENTS  
23 DEFENSE IS NOTHING MORE THAN AN OBVIOUS  
24 EXCUSE OF CLAIMING HIS LEGAL OBLIGATION TO  
25 INTELLIGENTLY AND PROFESSIONALLY PREPARE A  
26 DEFENSE FOR HIS CLIENT. THEN ANNOUNCING  
27 DEFENSE RESTS WITHOUT HIS CLIENT APPROX. I WAS  
28 TOLD = HAD 3 DAYS TO THINK ABOUT IT.

To THE COURT HAD TO BE HELD 4-6

W17

47-6

1 POINTS AND AUTHORITIES

2  
3 THE 6<sup>TH</sup> AMENDMENT OF THE UNITED STATES CONSTITUTION  
4 SECTION 1 IS CLEAR THAT MY RIGHT AS AN AMERICAN CITIZEN  
5 IS TO HAVE REPRESENTATION BY EFFECTIVE COUNSEL, AND TO  
6 BE ABLE TO RELY ON INTELLIGIBLE AND LEGALLY EDICATED  
7 AS WELL EXPERIENCED COUNSEL IN HIS/HER DEFENSE.

8 DOUGLIS V. COPLAN 428 F.3d 317, 332 (1<sup>ST</sup> CIR. 2005) TOTALITY OF CIRCUMSTANCES  
9 INDICATE COUNSEL'S FAILURE TO INVESTIGATE A POSSIBLE DEFENSE WAS INEFFECTIVE  
10 ASSISTANCE.

11 MARSHALL V. CATHEL 428 F.3d 452, 465-71 (3<sup>RD</sup> CIR. 2006) FAILURE TO  
12 CONDUCT INVESTIGATION WAS INEFFECTIVE COUNSEL, COULD HAVE PRODUCED  
13 PIVOTAL WITNESSES.

14 U.S. V. ROANE 378, F.3d 582, 406 (4<sup>TH</sup> CIR. 2004) FAILURE TO INTERVIEW  
15 AND CALL REBUTAL WITNESSES BECAUSE DEFENDANT DIDN'T SUPPLY COUNSEL  
16 WITH EVIDENCES THAT COULD HAVE CONTRADICTED PROSECUTOR'S WITNESSES.

17 MCMANN V. RICHARDSON 397, U.S. 759, 771 A.14 (1970) RIGHT TO EFFECTIVE  
18 COUNSEL PERTAINS TO RETAINED AND APPOINTED COUNSEL. SEE ALSO  
19 CULVER V. SULLIVAN 466 U.S. 335, 344-45 (1980) CHANDLER V. U.S.  
20 218 F.3d 1305, 1314 (11<sup>TH</sup> CIR. 2000) PRESUMPTION OF COUNSEL'S  
EFFECTIVENESS AND PETITIONER'S BURDEN OF PERSUASION TO  
REBUT PRESUMPTIONS IS VERY HIGH.

21 U.S. V. RUSSELL 221 F.3d 615, 621-22 (4<sup>TH</sup> CIR. 2000) COUNSEL  
22 FAILURE TO CONFIRM CONVICTIONS AFTER DEFENDANT INFORMED  
COUNSEL THAT CONVICTIONS WERE INVALID, WAS PREJUDICIAL BECAUSE  
DEFENDANT'S CREDIBILITY WAS CENTRAL TO GOVERNMENT'S CASE.

23 STEWART V. WOLFENBARGER 468 F.3d 538, 361 (6<sup>TH</sup> CIR. 2006)  
24 COUNSEL'S FAILURE TO INVESTIGATE A FAVORABLE WITNESS OR  
25 TO CALL 2 ADDITIONAL ALIBI WITNESSES WAS PREJUDICIAL  
BECAUSE TESTIMONY WOULD HAVE UNDER CUT SEVERELY THE  
26 PROSECUTION'S STRONG WITNESSES.

27 //

28 //

w18

TO TERMINATE COURT APPOINTMENT - 7

47-7

1 CONCLUSION

2 IT IS ONLY THROUGH EXTREME FACTS THAT  
3 THIS ATTORNEY MR. DAVE SANDERS HAS BEYOND PROVEN  
4 HIS INEFFECTIVENESS TO BE ABLE TO REPRESENT  
5 HIS CLIENT IN THIS MATTER AND HAS PROVEN TO  
6 BE INCOMPETANT OF HANDLING SUCH A TECHNICAL  
7 AND SERIOUS CASE, WHILE PERFORMING TRAILS THAT  
8 VERY WELL COULD BE INTERPRETED AS CONSPIRACY  
9 IN AND AGAINST HIS APPOINTED CLIENT THROUGHOUT  
10 HIS ENTIRE APPOINTMENT.

11 THESE FACT IN AND OF THEMSELVES PROVE  
12 BEYOND A REASONABLE SUSPICION THAT ATTORNEY  
13 DAVE SANDERS HAD NOT PREPARED OR PRESENTED  
14 A DEFENSE FOR HIS CLIENT, RELYING ON HIS  
15 DESCRIPTION OF BASEBALLS ARTICLES AND ITS  
16 PATRIOTIC VALUE WHILE SUGGESTING THE ROLE OF  
17 DICE WOULD IN FACT STYMIE THE STATES WITNESS  
18 OF PROFESSIONAL FORENSIC VALUE.

19 I ASK THAT THIS COURT ALLOW ME TO PREPARE  
20 AND PRESENT A MOTION FOR A NEW TRIAL AS WELL  
21 AS A WRIT OF HABEAS CORPUS.

22  
23 RESPECTFULLY SUBMITTED

24 2/21/11

25 [Signature]  
26 JOHN H. KREIBERGER

27 w19

28 THE TESTIMONY OF AT LEAST ONE OTHER WITNESS IS REQUIRED

47-8 488

ALPHABETS

12 1/2

John...  
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Supreme Court of California  
Victor L. KENNEDY, DEPT. 2  
Honorable Justice John J. Tanner - Jr.  
4455 Civic Drive STE 200

47-9  
W20

97397-2400

# EXHIBIT COVER PAGE G&g

48

## DESCRIPTION OF THIS EXHIBIT:

Number of pages to this exhibit: \_\_\_\_\_ pages.

~~18~~ 27/86

Jurisdiction: (Check only one)

- Municipal Court
- Superior Court
- Appellate Court
- State Supreme Court
- United States District Court
- Federal Circuit Court
- United States Supreme Court
- Grand Jury

2EA

MY COPY

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO

FV1400518

1 PEOPLES OF STATE OF  
2 CALIFORNIA  
3 PLAINTIFFS  
4 V.  
5 JOHN HENRY YABLONSKY SR.  
6 DEFENDANT

CASE NO. FV1900815  
POINTS AND AUTHORITIES IN  
SUPPORT OF NEW TRIAL  
PROSECUTORIAL MISFEASANCE  
DATE: APRIL 8, 2011  
TIME: 8:30 AM  
DEPT: V-2  
FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
VICTORVILLE DISTRICT  
MAR 24 2011

BY Marcia S. Ramirez  
MARCIA S. RAMIREZ, DEPUTY

8 DEFENDANT SUBMITS THE FOLLOWING POINTS  
9 AND AUTHORITIES IN SUPPORT OF THE MOTION FOR A NEW  
10 TRIAL BASED ON PROSECUTORIAL MISFEASANCE.

12 THE PROSECUTOR'S DUTY AS A CRIMINAL PROSECUTOR IS TO  
13 SEEK JUSTICE. THEREFORE THE PROSECUTOR SHOULD PROSECUTE WITH  
14 EARNESTNESS AND VIGOR "BUT MAY NOT USE IMPROPER METHODS  
15 CALCULATED TO PRODUCE A WRONGFUL CONVICTION" PROSECUTORIAL  
16 MISFEASANCE JUSTIFIES DECLARING A MISTRIAL WHERE IT "SO  
17 INFECTS THE TRIAL WITH UNFAIRNESS AS TO MAKE THE RESULTING  
18 CONVICTION A DENIAL OF DUE PROCESS".

I

20 THE PROSECUTOR MAY NOT USE THE DEFENDANT'S CASE,  
21 INFORMATION ABOUT THE DEFENDANT AND OR THE DEFENDANT'S  
22 CASE OUTSIDE OF PROSECUTORIAL RESPONSIBILITIES OF PROSECUTING  
23 ALLEGED CRIMES THAT INVOLVE THE DEFENDANT.

24 ON OR ABOUT MAY 19, 2010, IN THE COUNTY OF SAN BERNARDINO  
25 THE COUNTY DISTRICT ATTORNEY INJECTED INFORMATION INTO THE COUNTY'S  
26 REGISTERED VOTER WITH HIS RE-ELECTION CAMPAIGN, THEREBY  
27 VIOLATING THE DEFENDANT'S 6<sup>TH</sup> + 14<sup>TH</sup> AMENDMENTS OF THE  
28 U.S. CONSTITUTION, THEREBY COMMUNICATING WITH RESPECTIVE JURORS

PROSECUTORIAL POINTS & AUTHORITIES

48-1

X1

1 BUCKLEY 509 U.S. AT 272 (PROSECUTOR IMMUNE OF 1983 WHILE  
2 PREPARING FOR PROSECUTION WHICH OCCUR IN ROLE AS ADVOCATE FOR THE  
3 STATE) APPELLATE PROCEEDURE 3.21 (PROSECUTORIAL ABSOLUTE IMMUNITY  
4 COVERS "ACT UNDERTAKEN BY A PROSECUTOR IN SEQUENCE OF TRIAL")  
5 U.S. V. BOYLAN 898, F.2d 2301261 (1st CIR. 1990) PRESUMPTION OF PREJUDICE  
6 APPLICABLE ONLY WHEN THIRD PARTY PRESENTS EGRESSIVE TAMPERING OF  
7 THIRD PARTY COMMUNICATIONS WHICH DIRECTLY INJECTS ITSELF INTO THE  
8 JURY PROCESS.

9  
10 II.

11 WHEN GIVING THE DEFENSE COUNSEL EVIDENCES LESS THAN 30 DAYS  
12 TO THE TRIAL, SABOTAGING THE DEFENSES RIGHT TO INVESTIGATE  
13 AND OR PREPARE AN INTELLIGIBLE DEFENSE, STATING THE EVIDENCES  
14 WERE AMBIGUOUS BECAUSE THE PROSECUTIONS WEREN'T CHARGING THE  
15 DEFENDANT WITH THAT SPECIFIC CRIME, WHERE HAD FURTHER INVESTIGATION  
16 BEEN ALLOWED, PROOFS THAT THESE TWO CRIMES WERE IN FACT LINKED  
17 AND INVESTIGATED SEMI SIMULTANEOUSLY SINCE 1985, THEREBY  
18 LYING TO THE COURTS AND DEFENSE COUNSEL SINCE EXCULPATORY  
19 EVIDENCES PROVE THESE VERY FACTS, AND HAD THEY BEEN KNOWN  
20 WOULD HAVE ASSISTED IN THE DEFENSE STRATEGIES OF THE  
21 DEFENDANT. BRADY V. MD, 373 U.S. 83 (1963) U.S. V. STOKES  
22 124, F.3d 39, 45 (12 CIR. 1997)

23 III

24 WHEN DURING THE PROSECUTOR'S OPENING STATEMENT, THE  
25 PROSECUTOR MENTIONS THE FACT ABOUT THE DEFENDANTS COMMENTS  
26 THAT ARE EXPECTED WHEN HE TAKES THE WITNESS STAND IN HIS  
27 DEFENSE, VIOLATES THE DEFENDANTS RIGHT TO INVOKER HIS 5th AMEND.  
28 RIGHTS OR EXERCISE THEREOF.

PROSECUTORIAL POINTS AND AUTHORITIES. X2



1 U.S. V. THOMAS, 114 F.3d 228, 248 (D.C. CIR. 1997) (PROSECUTOR'S  
2 OPENING ARGUMENT IMPROPER BECAUSE PROSECUTOR LATER FAILED TO  
3 PRODUCE REFERENCED EVIDENCE)

4 THE FIFTH AMENDMENT GUARANTEES CRIMINAL DEFENDANTS  
5 AN UNQUALIFIED RIGHT TO CHOOSE WHETHER TO TESTIFY AT TRIAL  
6 AND AT SENTENCING. IF A DEFENDANT CHOOSES NOT TO  
7 TESTIFY, THE FIFTH AMENDMENT GENERALLY PROHIBITS  
8 THE PROSECUTOR, THE JUDGE AND THE COUNSEL FOR A  
9 CO-DEFENDANT FROM MAKING ADVERSE COMMENTS ABOUT  
10 THE DEFENDANT'S DECISION NOT TO TESTIFY.

11 U.S. V. LIZARDO, 443 F.3d 73, 86-87 (1<sup>ST</sup> CIR. 2006) (PROSECUTOR  
12 OPENING STATEMENT IMPROPER BECAUSE CONTAINED 3 STATEMENTS  
13 NOT SUPPORTED BY EVIDENCE) ALSO U.S. V. FLAHERTY 295 F.3d  
14 182, 202 (2<sup>ND</sup> CIR. 2002) COURT CONSIDER WHETHER PROSECUTOR  
15 REMARKS IMPROPERLY INJECTED TRIAL WITH UNFAIRNESS THEREBY  
16 VIOLATING THE DEFENDANTS DUE PROCESS.

17

18

#### IV.

19 DURING THE PROSECUTIONS WITNESS OF BRUCE NASH,  
20 THE WITNESS TESTIFIED THAT THE PROSECUTOR COACHED HIS  
21 TESTIMONY. (3 DAYS PRIOR TO TESTIFYING AT THE DEFENDANTS  
22 TRIAL) WHILE UNDER OATH THE WITNESS BRUCE NASH  
23 TESTIFIED THAT MRS COBB WAS GOING HOME AFTER  
24 THEIR FRIDAY NITE PARTY (GET TOGETHER) PARTY. YET ON  
25 MARCH 12<sup>TH</sup> 2009 BRUCE NASH TESTIFIED (STATEMENT) TO DET.  
26 MYLER (M4285) THAT THE VICTIM OF THIS CASE STATED "SHE WAS  
27 GOING TO THE ZODIAC BAR IN TOWN AFTER THE PARTY" AND  
28 WITNESSED THE VICTIM LEAVE IN HER CADILLAC

PROSECUTORIAL POINTS + AUTHORITIES

3

48-3 X3

1 BEFORE HE AND HIS GIRLFRIEND CYNTHIA DROVE HOME.  
2 MISTRACCHIO V. VOSE 274 F.3d 540 602 (1st Cir. 2002) (PROSECUTOR'S  
3 FAILURE TO CORRECT WITNESS FALSE STATEMENTS IMPROPER BECAUSE  
4 PROSECUTOR KNEW STATEMENT WAS FALSE) SEE SHI H WEI SU V.  
5 FILON 335 F.3d 119, 127-30 (2nd Cir. 2003) (PROSECUTION FAILURE  
6 TO CORRECT GOVERNMENT'S WITNESS FALSE TESTIMONY AND SUBSEQUENT  
7 ATTEMPT TO BOLSTER WITNESS CREDIBILITY IMPROPER AND VIOLATED  
8 DEFENDANT DUE PROCESS.

9  
10 IV

11  
12 THE PROSECUTOR PLACED HIS INVESTIGATING OFFICER AND  
13 SAN BERNARDINO COUNTY SHERIFF'S DETECTIVE ALEXANDER ON THE  
14 STAND TO TESTIFY, WHILE CROSS EXAMINATIONS HE (DET. ALEXANDER  
15 WAS ASKED HAD HE SEEN ALL THE EVIDENCES AND DISCOVERY  
16 WHICH PERTAINED TO THIS CASE, HIS ANSWER WAS "YES".

17 DET. ALEXANDER WAS THEN ASKED UNDER CROSS EXAMINATION  
18 HAD HE SEEN A FINGER PRINT REPORT WITH REGARDS TO THIS  
19 CASE, HE SAID "NO". HE WAS ASKED DOES HE RECALL A  
20 FINGER PRINT REPORT ABOUT A GLASS THAT WAS FOUND IN THE  
21 KITCHEN, HE SAID "NO".

22 TRUTH OF THE MATTER, THERE IS AND WAS A FINGER  
23 PRINT REPORT AS WELL AS A STATEMENT OR REPORT ABOUT  
24 A JOE SAUNDERS THAT HAD LEFT A PRINT ON A CUP THAT  
25 WAS FOUND BY CRIME SCENE OFFICERS, THAT WAS LATER  
26 TO BE IDENTIFIED BY POLICE OFFICIALS TO HAVE BELONGED  
27 TO JOE SAUNDERS. THE FACT THAT DETECTIVE ALEXANDER  
28 DENIED THE EXISTANCE OF THIS REPORT OR EVEN THE  
29 FINDINGS OF THIS REPORT WAS DONE TO PREJUDICE THE  
30 JURY AND IN DOING SO, VIOLATE THE DUE PROCESS OF THE

XH

1 DEFENDANT, LEADING THE JURY TO BELIEVE THAT JOE SAUNDERS  
2 WAS NEVER AT THE SCENE OF THE CRIME. MASTRACCHIO V.  
3 VOSE 274 F.3d 590 602 (1<sup>ST</sup> CIR. 2002) ALSO SHI H WEI SU V.  
4 FILIDN 335 F.3d 119, 127-30 (2<sup>ND</sup> CIR. 2003) MARRIS V. YLST  
5 F.3d 735, 744 (9<sup>TH</sup> CIR. 2006) U.S. V. VALLIE 1284 F.3d 917, 921 (8<sup>TH</sup> CIR. 2002)

## 6 VI.

7 DURING A MOTION HEARING ABOUT PRE-TRIAL  
8 DECISIONS, THE PROSECUTOR ARGUED THAT THERE WAS NO  
9 TIES BETWEEN THE COBB MURDER AND THE BROOKS  
10 MURDER, THAT THESE CASES WERE OF NO INTERESTS TO  
11 EACH OTHER AND THAT JOHN YABLONSKY WAS NOT A  
12 SUSPECT OF THE BROOKS CASE THEREFORE IT SHOULD  
13 NOT BE ALLOWED IN AS PART OF THE DEFENSES STRATEGIES  
14 THAT THERE WERE SEVERAL MURDERS THAT WERE LINKED.

15 THIS PROSECUTOR TOLD THE JUDGE IN THIS MATTER  
16 THAT HE HADN'T INVESTIGATED THE BROOKS CASE TO ANY  
17 LENGTHS AND THAT THAT CASE CARRIED "NO" VALUES TO  
18 THE COBB CASE. BECAUSE OF HIS DECEIT AND FALSE  
19 STATEMENTS TO THE COURT AND ON RECORD, HE VIOLATED  
20 THE DEFENDANTS DUE PROCESS AS WELL AS VIOLATING  
21 HIS RULES OF ETHICS TO THE COURTS AS WELL AS  
22 THE PEOPLE OF THE STATE OF CALIFORNIA.

23 PROSECUTOR HAS CONSTITUTIONAL DUTY TO INVESTIGATE POTENTIALLY  
24 EXCULPATORY EVIDENCES. THE TOO PAGE I PERSONALLY HAVE IN  
25 MY POSSESSION ARE PEPPERED WITH FACTS, STATEMENTS, AND REFER  
26 THAT THESE TWO CRIME SCENES HAVE BEEN LINKED TOGETHER SINCE 1985  
27 AND FBI HAD LINKED THESE TWO CRIMES WITH 3 OTHERS AS  
28 THE SAME SUSPECT)) NORTHERN MARIANNA ISLANDS V. BOWIE 1236  
29 F.3d 1083, 1090 (9<sup>TH</sup> CIR. 2001) POLICE PERSONEL FILES CONTAIN EXCULPATORY  
30 PEOPLES V. SUPERIOR COURT (GRIMMINGER), 55 CAL. APP. 4TH 397, 406 167 CAL.  
RATR 2d 910 (1997)

PROSECUTORIAL POINTS AND AUTHORITIES

X5  
48-5

VII.

THE PROSECUTOR ARGUED WITH DEFENSE COUNSEL IN CHAMBERS MOTION THAT THE VALIDITY OF ONE WE-TIP DOCUMENT THAT INVOLVED A "WILLIAM BACKOFF" CONFESSION ABOUT HIS INVOLVEMENT WITH THIS CASE, AND THAT THE CONFESSION IN FACT CARRIED NO PROBATIVE VALUE BARING ANY WEIGHT BETWEEN THE VICTIM COBB IN THIS CASE.

THE FACTS THAT THIS WE-TIP DOCUMENT CARRIED NOT ONLY CARRIED PROBATIVE VALUE, BUT ALSO FACTS THAT SEVERAL INVESTIGATING OFFICERS HAD DOCUMENTED, THAT HE WAS A PRIME SUSPECT TO NOT ONLY THE COBB CASE BUT THE BROOKS CASE AS WELL, THAT HE KNOWING ADMITTED HIS RELATIONSHIP WITH BOTH SUSPECTS, AND THAT HIS SALIVA WAS FOUND ON CIGARETTE BUTTS FOUND AT THE CRIME SCENE OF THE COBB CASE, NOT ONLY LINKED HIM TO THIS CASE BY CONFESSION BUT BY PHYSICAL EVIDENCES. THIS VOLUNTARY ACT AGAINST THE DEFENDANTS RIGHTS TO DUE PROCESS WAS AN ACT OF VINDICTIVE PROSECUTIONS. NORTHERN MARIANNA ISLANDS V. BONIE, 236 F.3d 1083, 1090 (9th Cir. 2001) PEOPLE V. SUPERIOR COURT (BREMINGER), 58 CAL. APP 4TH 397, 406, 67 CAL. RPTR. 2d 910 (1997) U.S. V. STOKES 124 F.3d 39, 45 (1st Cir. 1997) IT IS HORNAROCK LAW THAT A FEDERAL COURT MAY DISMISS AN INDICTMENT IF THE ACCUSED PRODUCES EVIDENCE OF PROSECUTORIAL VINDICTIVENESS SUFFICIENT TO ESTABLISH DUE-PROCESS VIOLATION OR EVEN LIKELINESS OF VINDICTIVENESS TO SUFFICIENTLY JUSTIFY A PRESUMPTION.

VIII.

THE PROSECUTOR IN THIS CASE AS WELL AS HIS INVESTIGATOR HAD TAKEN LIBERTY TO ALTER THE RECORDINGS OF THE SUSPECT + DEFENDANT'S INTERROGATION. THESE ALTERATIONS WERE

PROSECUTORIAL POINTS + MOTION #17

X6

48-6

1 IN ORDER TO PREJUDICE THE PANEL OF JURORS AND VIOLATE  
2 THE DEFENDANTS DUE PROCESS. AT ONE POINT OF THE INTERROGATION  
3 DET. MYLER AND DET. ALEXANDER WHILE AT THE DEFENDANTS  
4 HOME, SUGGESTED THAT THE QUESTIONING BE CONTINUED AT  
5 A MORE COMFORTABLE ATMOSPHERE BECAUSE OF SOME OF THE  
6 QUESTIONS THE DETECTIVES WERE ASKING ie "ABOUT SEXUAL  
7 ACTIVITY WITH THE VICTIM IN THIS CASE", MR. YASLOWSKY THE  
8 DEFENDANT IN THIS CASE SUGGESTED "THE RESTAURANT AROUND  
9 THE CORNER" IN WHICH EITHER MYLER OR ALEXANDER RESPONDED  
10 "MORE COMFORTABLE THAN THAT", THE DEFENDANT ASK "WELL  
11 THEN WHERE" OR "WHAT DID YOU HAVE IN MIND", THE DETECTIVES  
12 ANSWERED "THE SIGMUND HILL POLICE STATION", THE DEFENDANT'S  
13 RESPONSE WAS "MORE COMFORTABLE FOR WHOM".

14 THERE IS ANOTHER PORTION OF THE INTERROGATION THAT THE  
15 DETECTIVES MENTIONED THAT MY BLUE PINTO WAS SEEN AT THE  
16 CRIME SCENE. THERE WAS ANOTHER PORTION OF THE INTERROGATION  
17 WHERE THE DEFENDANT MADE A COMMENT OF AND ON A PHOTOGRAPH  
18 THE DETECTIVES SHOWED HIM OF THE VICTIM AND A COMMENT  
19 WAS MADE BY THE DEFENDANT. THE "THEY REALLY HURT HER  
20 BAD THIS TIME". IN FACT THE DISTRICT ATTORNEY PRESENTED  
21 AN ENTIRE INTERROGATION THAT WAS MISSING "PAGES" NOT JUST  
22 COMMENTS OR ANSWERS. THIS ACT WAS TO PREJUDICE JURORS  
23 AND TO VIOLATE THE DEFENDANTS RIGHT TO DUE PROCESS  
24 AND SEEK A CONVICTION AT "ALL" LENGTHS, EVEN TO  
25 DEFACE HIS HONOR AND THE JUDICIAL PRACTICES THAT  
26 HAS IS HELD TO AS A PROSECUTING ATTORNEY.

27 18 § 1001 OBSTRUCTION OF JUSTICE (A) EXCEPT AS OTHERWISE  
28 PROVIDED IN THIS SECTION, WHOEVER IN ANY MANNER WITHIN THE  
29 JURISDICTION OF THE EXECUTIVE, LEGISLATIVE, OR JUDICIAL BRANCHES  
30 OF THE GOVERNMENT OF THE UNITED STATES, KNOWINGLY AND WILLINGLY

PROSECUTORIAL POINTS AND INTER. T-ES X7

1 (1) FALSIFIES, CONCEALS, OR COVERS UP BY ANY TRICKERY, SCHEME,  
2 OR DEVICE A MATERIAL FACT.

3 (2) MAKES MATERIALLY FALSE, FICTITIOUS, OR FRAUDULENT  
4 STATEMENT OR REPRESENTATION, OR

5 (3) MAKE USES ANY FALSE WRITING OR DOCUMENT KNOWING THE  
6 SAME TO CONTAIN ANY MATERIALLY, FALSE, FICTITIOUS, OR FRAUD-  
7 ULANT STATEMENT OR ENTRY. SHALL BE FINED UNDER THIS

8 TITLE, AND IMPRISONED FOR NOT MORE THAN 5 YEARS OR IF  
9 THE OFFENSE INVOLVES INTERNATIONAL OR DOMESTIC TERRORISM (AS  
10 DEFINED IN SECTION 2331), IMPRISONED NOT MORE THAN 8 YEARS,  
11 OR BOTH. TITLE III IMPOSES AT LEAST FOUR POST AUTHORIZATION DUTIES  
12 UPON THOSE ACTING UNDER AN ELECTRONIC SURVEILLANCE ORDER. FAILURE  
13 TO COMPLY WITH ANY OF THESE DUTIES MAY RESULT IN SUPPRESSION  
14 OF EVIDENCE OBTAINED PURSUANT TO THE ORDER.

15 FIRST... THEN SECOND, TO PROTECT CONFIDENTIALITY AND TO  
16 PREVENT TAMPERING, THE COURT MUST SEAL THE APPLICATION FOR A  
17 TITLE III ORDER AND OF THE ORDER ITSELF, AS WELL AS THE  
18 RECORDINGS MADE PURSUANT TO IT, IMMEDIATELY AFTER THE SPECIFIED  
19 SURVEILLANCE PERIOD AND RELEVANT EXTENSIONS HAVE EXPIRED.

20 U.S. V. SURGER, 906 F.2d 977, 983-84 (4th CIR. 1990) (RECORDING  
21 NOT REQUIRED WHEN "RECORDING" OF NUMBERS SHOWN ON DIGITAL DISPLAY  
22 PAGER NOT POSSIBLE AND WRITTEN LOG KEPT BY AGENTS WAS  
23 SATISFACTORY, THOUGH SUBJECT TO EDITING AND ALTERATION; WHEN  
24 "RECORDING" NOT POSSIBLE, SEALING NOT REQUIRED.) THE  
25 RECORDING MUST BE DONE IN A WAY THAT PREVENTS EDITING OR  
26 ALTERATION, AND IT MUST NOT BE DESTROYED EXCEPT UPON THE  
27 ORDER OF THE ISSUING JUDGE.

28 " "  
29 " "  
30 " "

PROSECUTORIAL POINTS + AUTHORITIES

X8

48-8

## IX

1 THE PROSECUTION HAS A RESPONSIBILITY TO REFRAIN  
2 FROM PROSECUTORIAL MIS CONDUCT.

3  
4 THE DEFENSEE OWES EXCLUSIVELY LOYALTY TO ONE CLIENT,  
5 RESTRAINED BY ONLY THE RULES OF PROFESSIONAL CONDUCT, WHILE THE  
6 PROSECUTION, RESTRAINED BY THE SAME RULES, OWES THE GREATEST  
7 LOYALTY TO THE SYSTEM ITSELF. THE SPECIAL RESPONSIBILITIES OF THE  
8 PROSECUTOR TO REFRAIN FROM MISCONDUCT HAS BEEN EMPHASIZED  
9 REPEATEDLY BY THE SUPREME COURT AND OTHER APPELLATE COURTS

10 THE (PROSECUTOR) IS THE REPRESENTATIVE NOT OF AN  
11 ORDINARY PARTY TO A CONTROVERSY, BUT OF A SOVEREIGNTY WHOSE  
12 OBLIGATION TO GOVERN IMPARTIALLY IS AS COMPELLING AS ITS  
13 OBLIGATION TO GOVERN AT ALL; AND WHOSE INTEREST, THEREFORE, IN A  
14 CRIMINAL PROSECUTION IS NOT THAT IT SHALL WIN A CASE, BUT THAT  
15 JUSTICE SHALL BE DONE. AND AS SUCH, HE IS IN A PECULIAR  
16 AND VERY DEFINITE SENSE THE SERVANT OF THE LAW, THE  
17 TWO FOLD AIMS OF WHICH IS THAT GUILT SHALL NOT ESCAPE  
18 OR INNOCENCE SUFFER. HE MAY PROSECUTE WITH EARNESTNESS AND  
19 VIGOR - INDEED HE SHOULD DO SO. BUT, WHILE HE MAY STRIKE HARD  
20 BLOWS, HE IS NOT AT LIBERTY TO STRIKE FOUL ONES. IT IS AS  
21 MUCH HIS DUTY TO REFRAIN FROM IMPROPER METHODS CALCULATED  
22 TO PRODUCE A WRONGFUL CONVICTION AS IT IS TO USE EVERY  
23 LEGITIMATE MEANS TO BRING ABOUT A JUST ONE.

24  
25 PEOPLE V. LYONS, 47 CAL. 2d 311, 318, 303 P. 2d 329  
26 (1956); BERGER V. U.S., 295 U.S. 78, 88, 55 S. CT. 629, 79 L. ED.  
27 314. (1935)

28 DISTRICT ATTORNEYS ARE, OF COURSE, TO BE COMMENDED FOR  
29 INVESTIGATING CRIME AND IN PROSECUTING, WITH VIGOR, THOSE ACCUSED  
30 OF CRIME.

PROSECUTORIAL POINTS AND AUTHORITIES

1 CONVICTED BECAUSE THE DISTRICT ATTORNEY THINKS HE SHOULD, FOR  
2 WHAT THE GUARANTEES - A FAIR JURY TRIAL. DISTRICT ATTORNEYS ARE  
3 ACT THE ARBITERS OF GUILT OR INNOCENCE. A GUILTY MAN  
4 EVEN A WEALTHY GUILTY MAN, IS AS MUCH ENTITLED TO A FAIR  
5 TRIAL AS AN INNOCENT MAN. IF A CONVICTION IS SECURED BY  
6 MEANS NOT SANCTIONED BY LAW, THE CONVICTION CANNOT AND SHOULD  
7 NOT STAND.

8 PEOPLE V. TALLE, 111 CAL. APP. 2d 650, 678, 245 P.2d 633 (1952),  
9

10  
11 X.

12 BAD FAITH IS NOT REQUIRED TO ESTABLISH  
13 PROSECUTORIAL MISCONDUCT

14 PROSECUTORIAL BAD FAITH IS NOT REQUIRED FOR A FINDING OF PREJUDICIAL  
15 MISCONDUCT. THE PROSECUTOR'S BAD FAITH IS NOT CRUCIAL TO FINDING  
16 MISCONDUCT; AS THE STANDARD IS AN OBJECTIVE ONE. PEOPLE V.  
17 ALVAREZ, 14 CAL. 4TH 155, 213, 58 CAL. RPTER. 2d 385, 926 P.2d 365  
18 (1996)

19 WE OBSERVE THAT THE TERM PROSECUTORIAL "MISCONDUCT" IS  
20 SOMEWHAT OF A MISNUMBER TO THE EXTENT THAT IT SUGGESTS  
21 A PROSECUTOR MUST ACT WITH A CURPABLE STATE OF MIND. A MORE  
22 APPROPRIATE DESCRIPTION OF THE TRANSGRESSION IS PROSECUTORIAL ERROR.  
23 PEOPLE V. HILL, 17 CAL. 4TH 800, 823 N. 1, 72 CAL. RPTER. 2d 656,  
24 952 P.2d 643 (1998);

25 "

26 "

27 "

28 "

29 "

30 "

XII

POINTS AND AUTHORITIES PROSECUTORIAL

11

4811



XI.

1 PREJUDICIAL PROSECUTORIAL ERROR OCCURRED IN  
2 THIS REQUIRING A NEW TRIAL

3 THE PROSECUTOR COMMITTED PROSECUTORIAL ERROR IN THE  
4 AFORE MENTIONED MANNERS, AND IN THE LIGHT OF  
5 JUDICIAL REASONING, THAT THIS COURT FINDS THAT ONE  
6 OR MORE OF THE FACTS SUBSTANTIAL OR REASONABLY  
7 SUBSTANTIAL, IT WOULD BE OF JUDICIAL REASONING TO  
8 GRANT AND ORDER A NEW TRIAL IN THIS CASE.

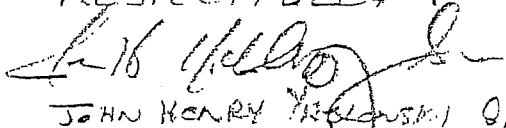
9 IT IS ALSO IN THE COURTS DISCRETION TO DECIDE IF  
10 IT SO CHOOSES TO FIND THE DEFENDANT IN THIS CASE  
11 GUILTY OF A LESSOR DEGREE OF THE CHARGE OR  
12 A LESSOR CHARGE IF IT SO STIPULATES.

13  
14  
15 VII

16 IT IS THE BELIEF THAT THE DEFENDANTS RIGHTS  
17 HAVE BEEN VIOLATED ON MANY LEVELS, PROSECUTORIAL  
18 MISCONDUCT IS JUST ONE OF THEM.

19  
20  
21 IT IS BECAUSE THE DEFENDANTS RIGHT TO EFFECTIVE  
22 COUNSEL HAS BEEN TERMINALLY VIOLATED THAT THE  
23 DEFENDANT PRAYS THE ACCEPTANCE OF THIS MOTION AS  
24 WELL AS THE OTHERS FILED WITHIN THE PAST 3  
25 MONTHS.

26  
27  
28 DATE: 3-18-11

29 RESPECTFULLY:  
30   
JOHN HENRY WILSON, JR.  
DEFENDANT

X12

PROSECUTORIAL POINTS AND AUTHORITIES

Supreme Court of California  
County of San Bernardino

1 PEOPLE OF THE STATE OF  
2 CALIFORNIA,  
3 PLAINTIFF  
4 V.  
5 JOHN HENRY YADLOWSKY JR.,  
6 DEFENDANT

CASE No. FV1900518  
NOTICE OF MOTION TO DIRECT THE  
JURY TO RECONSIDER ITS VERDICT  
CAL PEN. CODE § 1161  
DATE: APRIL 8, 2011  
TIME: 8:30 AM  
DEPT: V-2

7 TO THE DISTRICT AGENCY OF SAN BERNARDINO COUNTY  
8 AND/OR JOHN THOMAS THEIR REPRESENTATIVE.

9 PLEASE TAKE NOTICE THAT ON APRIL 8, 2011 AND AT THE  
10 HOUR OF 8:30 AM, OR AS SOON THEREAFTER AS THE MATTER  
11 MAY BE HEARD IN THE ABOVE ENTITLED COURT, THE DEFENDANT  
12 WILL MOVE THE COURT FOR AN ORDER THAT THE JURY  
13 BE DIRECTED TO RECONSIDER THE VERDICT OF  
14 CONVICTION THAT IT REACHED.

15 THIS MOTION WILL BE MADE ON THE GROUNDS THAT  
16 THE JURY IN REACHING ITS VERDICT WAS MISTAKEN  
17 AS TO THE LAW.

18  
19  
20 48-73-11

RESPECTFULLY SUBMITTED  
*[Signature]*  
JOHN HENRY YADLOWSKY JR.  
9200 FURNACE  
R.C. CH. 91739

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48-73

JULY 2102 COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO

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PEOPLE OF THE STATE  
OF CALIFORNIA  
PLAINTIFF  
V.  
JOHN HENRY YABLONSKY SR.  
DEFENDANT

CASE No: FV1900518  
POINTS AND AUTHORITIES IN  
SUPPORT OF MOTION TO DIRECT THE  
JURY TO RECONSIDER ITS VERDICT  
DATE: APRIL 8, 2011  
TIME: 8:30 AM  
DEPT.: U-2

DEFENDANT SUBMITS THE FOLLOWING POINTS AND AUTHORITIES  
IN SUPPORT OF THE MOTION TO DIRECT THE JURY TO RECONSIDER  
ITS VERDICT.

I.

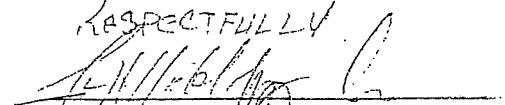
THE COURT MAY DIRECT THE JURY TO RECONSIDER ITS  
VERDICT IF THE JURY IS MISTAKEN AS TO THE LAW.

PEN. CODE § 1161 PROVIDES IN PART:

WHEN THERE IS A VERDICT OR CONVICTION IN WHICH IT APPEARS  
TO THE COURT THAT THE JURY HAVE MISTAKEN THE LAW, THE  
COURT MAY EXPLAIN THE REASON FOR THAT OPINION AND  
DIRECT THE JURY TO RECONSIDER THEIR VERDICT. . . .

DATE: 3-17-11

RESPECTFULLY



JOHN YABLONSKY SR.  
9500 EDINBURGH  
R.I.C. CA. 91739

X14  
48.14

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO

1

PEOPLE OF THE STATE  
OF CALIFORNIA  
PLAINTIFF.

CASE No. FVI 900518

NOTICE OF ACTION FILE

3

V.

NEW TRIAL

4

JOHN HERVY YABLONSKY JR.  
DEFENDANT

DATE: APRIL 8, 2011

5

TIME: 8:30 AM

6

DEPT: V-2

7

TO THE DISTRICT ATTORNEY OF SAN BERNARDINO  
COUNTY AND JOHN THOMAS THEIR REPRESENTATIVE

8

PLEASE TAKE NOTICE THAT ON APRIL 8, 2011  
AT THE HOUR OF 8:30 AM OR AS SOON THEREAFTER AS  
COUNSEL MAY BE HEARD IN THE COURTROOM OF THE ABOVE-  
ENTITLED COURT, THE DEFENDANT WILL FILE FOR AN  
ORDER SEEKING A NEW TRIAL IN THE ABOVE-ENTITLED  
CASE.

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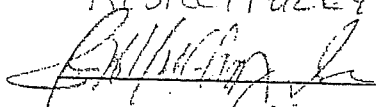
FILED BY: [Signature]

48-15 X 15

1 MEMORANDUM OF POINTS AND AUTHORITIES  
2 SERVED AND FILED HERewith, ON SUCH  
3 SUPPLEMENTAL MEMORANDA OF POINTS AND AUTHORITIES  
4 AS MAY HEREFTER BE FILED WITH THE COURT OR  
5 STATED ORALLY AT THE CONCLUSION OF THIS  
6 ACTION, AND ON SUCH ORAL AND DOCUMENTARY  
7 EVIDENCE AS MAY BE PRESENTED AT THE HEARING  
8 OF THE MOTION.

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DATE: 3-17-11

RESPECTFULLY  
  
John Henry Wislensky Sr.  
9500 ETTWANDA  
R.I.C. C. 91739

X/6

PROSECUTOR GENERAL MISCONDUCT

4816

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO  
Victorville District

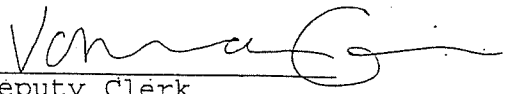
REQUEST FOR FURTHER ACTION

Judge Tombenin Date 03/17/11

CASE NUMBER: FVI900518  
VIOLATION DATE: 09/20/85  
CONVICTION DATE: 02/03/11 / SENTENCE DATE: 00/00/00  
DEFT NAME: JOHN HENRY YABLONSKY

Plaintiff/Defendant Requests:

Motion for points and authorities in  
support of a new trial on non statutory  
grounds as referenced on  
attached correspondence date received  
3/15/11. Please advise.

Signed   
Deputy Clerk ext 31731

COURT ORDER

Granted \_\_\_\_\_

Denied \_\_\_\_\_

Remarks Noted

Date 4-4-11

Judge 

9/99 RFA

X17  
4847

STATE OF CALIFORNIA  
SAN BERNARDINE COUNTY

THE HONORABLE JUDGE JOHN TOMBERLIN

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PEOPLE OF THE STATE OF  
CALIFORNIA  
PLAINTIFF

V.  
JOHN HENRY YABLONSKY SR.  
DEFENDANT

CASE NO. FVI 900518

POINTS AND AUTHORITIES IN  
SUPPORT OF A NEW TRIAL

DATE: APRIL 8, 2011  
TIME: 8:30 AM  
DEPT: UZ  
PEN. CODE § 1181

THE DEFENDANT SUBMITS THE FOLLOWING POINTS AND  
AUTHORITIES IN SUPPORT OF THE MOTION FOR A NEW TRIAL

I.

THE COURT IS AUTHORIZED TO GRANT A MOTION FOR  
NEW TRIALS ON NON STATUTORY GROUNDS.

IN ADDITION TO THE GROUNDS ENUMERATED IN P.C. § 1181  
A NEW TRIAL MAY BE BASED ON THE GROUNDS THAT CAUSED  
THE DENIAL OF A FAIR TRIAL. AS STATED BY THE APPELLATE  
COURT PEOPLE V. OLIVER 46 CAL APP. 3D 747, 751, 120 CAL  
RPTR. 368 (1975).

ALTHOUGH IT HAS BEEN STATED IN THAT MOTIONS FOR A  
NEW TRIAL MUST BE MADE ON ONE OR MORE OF THE  
GROUNDS ENUMERATED IN P.C. § 1181 (SEE EG. PEOPLE V. SAINZ,  
253 CAL. APP. 2D 469, 500, 61 CAL RPTR. 176 (1967)),  
NEW TRIALS ARE FREQUENTLY GRANTED ON NON-  
STATUTORY GROUNDS WHERE FAILURE TO DO SO WOULD RESULT  
IN A DENIAL OF A FAIR TRIAL TO A DEFENDANT IN A  
CRIMINAL CASE. (PEOPLE V. DAVIS, 31 CAL. APP. 3D 106, 109  
106 CAL. RPTR. 597 (1973)). THE DUTY OF A TRIAL COURT

NEW TRIAL POINTS AND AUTHORITIES 4/8/11

48

1 IS THE CONSTITUTIONAL DIMENSION, WHERE THE  
2 PROCEEDURE HAS FALLEN SHORT OF THE STANDARD, AN  
3 ACCUSED HAS BEEN DENIED DUE PROCESS, AND THE  
4 INHERANT POWER OF THE COURT TO CORRECT MATTERS  
5 BY GRANTING A NEW TRIAL TRANSCENDS STATUTORY  
6 LIMITATIONS;

## 7 II.

8 DUGHS V. COPLAN 428 F.3d 317, 332 (1<sup>ST</sup> CIR. 2005) SEE ALSO MARSHALL  
9 V. CATHAY, 428 F.3d 452, 465-71 (3<sup>RD</sup> CIR. 2005); ADAMS V.  
10 BERTRAND 453 F.3d 428, 437 (7<sup>TH</sup> CIR. 2006); U.S. V. ROANNE 378  
11 F.3d 382, 406 (4<sup>TH</sup> CIR. 2004); REMMER 347 U.S. AT 230; U.S. V.  
12 SCHWARZ 283 F.3d 76, 98-99 (2<sup>ND</sup> CIR. 2002); U.S. V. LIBYD 269  
13 F.3d 288, 243 (3<sup>RD</sup> CIR. 2001); U.S. V. SYLVESTER 143 F.3d 923, 933  
14 (5<sup>TH</sup> CIR. 1998); U.S. V. FLAHERTY 295 F.3d 182, 202 (2<sup>ND</sup> CIR. 2002);  
15 MARSHALL V. HENDRICKS 307 F.3d 36, 63-64 (3<sup>RD</sup> CIR. 2002); U.S. V.  
16 ARMSTRONG; U.S. V. STOKES 124 F.3d 39, 45 (1<sup>ST</sup> CIR. 1997); MCMANN V.  
17 RICHARDSON 397, U.S. 759, 771 n.14 (1970); CHANDLER V. SULLIVAN  
18 466 U.S. 335, 344-45 (1980); CHANDLER V. U.S., 218 F.3d 1305, 1314  
19 (11<sup>TH</sup> CIR. 2000); U.S. V. RUSSELL 221 F.3d 615, 621-22 (4<sup>TH</sup> CIR. 2000);  
20 STEWART V. WOLFENBARGER, 468 F.3d 338, 361 (6<sup>TH</sup> CIR. 2006); U.S. V.  
21 LITRELL 439 F.3d 875, 833 (8<sup>TH</sup> CIR. 2006); U.S. V. SMITH 982 F.2d 681,  
22 684 (1<sup>ST</sup> CIR. 1993); U.S. V. GARCIA-GUIZAR 160 F.3d 511, 520 (9<sup>TH</sup> CIR. 1998);  
23 MASTACCHIO V. VOSE 274 F.3d 590, 602 (1<sup>ST</sup> CIR. 2002); SHIH WEI SU  
24 V. FILION 335 F.3d 119, 127-30 (2<sup>D</sup> CIR. 2003); BRADY V. Md, 373  
25 U.S. 83 (1963); U.S. V. BRONN 426 F.3d 32, 37 (1<sup>ST</sup> CIR. 2005); U.S. V.  
26 WILLIAMS 205 F.3d 23, 136 (2<sup>ND</sup> CIR. 2000); U.S. V. MEDRANO, 836 F.2d 861, 865  
27 (5<sup>TH</sup> CIR. 1988) U.S. V. VAISETA 353 F.3d 815, 818 (7<sup>TH</sup> CIR. 2003); LAMBRIX V.  
28 SINGLETARY 72, F.3d 1500, 1507-08 (11<sup>TH</sup> CIR. 1996)



1 THE LISTED FREE LAW RESEARCH IS BASED ON THE  
2 DATA'S AVAILABLE THROUGH THE GEORGETOWN LAW  
3 JOURNAL THAT IS AVAILABLE THROUGH THE LIBRARY  
4 AT THE FACILITY I AM CURRENTLY HOUSED.

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DATE 3/8/11

RESPECTFULLY SUBMITTED  
John Henry Wislensky Sr.  
JOHN HENRY WISLANSKY SR.  
9500 EMMERDA  
R.I. CA. 01759  
PROPRIA PERSONA

NEW TRIAL POINTS AND RUTHERFORD 48 X ZC

THE HONORABLE JUDGE JOHN TEMBERLIN

SUPERIOR COURT OF CALIFORNIA  
SAN BERNARDINO COUNTY

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PEOPLE OF THE STATE  
OF CALIFORNIA  
PLAINTIFF

CASE NO. FVI 900518

NOTICE OF MOTION  
FOR NEW TRIAL

V.  
JOHN HENRY KIBLANSKY SR.  
DEFENDANT

PEN. CODE § 1181  
DATE: APRIL 8, 2011  
TIME: 8:30 A.M.  
DEPT.: VZ

TO THE DISTRICT ATTORNEY OF SAN BERNARDINO COUNTY AND JOHN THOMAS (PROSECUTING DISTRICT ATTORNEY) THE REPRESENTATIVE OF THE PEOPLE OF THE STATE OF CALIFORNIA

PLEASE TAKE NOTICE THAT ON APRIL 8, 2011, AT THE HOUR OF 8:30 AM OR AS SOON THEREAFTER AS COUNSEL MAY BE HEARD IN THE COURTROOM OF THE ABOVE ENTITLED COURT, THE DEFENDANT WILL APPEAR FOR AN ORDER GRANTING A NEW TRIAL IN THE ABOVE-ENTITLED CASE.

SUMMARY OF CASE

THIS IS A CASE OF MURDER THAT IS 25 YEARS OLD, 1/4 OF A CENTURY, THAT THE MAJORITY OF DETECTIVES, INVESTIGATORS HERE AND OF KRB UNLOCKED OR HAVE PASSED AWAY, THUS BY VIOLATING THE DEFENDANT'S RIGHT TO DEFEND HIMSELF BY CONSTITUTIONAL LAWS, THE CONSTITUTION IS CLEAR OF RIGHTS THAT ARE DUE TO ALL AMERICAN CITIZENS THAT CHOOSE TO ENJOY THE SACRIFICES OF FAIR, UNBIASED AND NONPREJUDICIAL TRIALS BY A JURY OF HIS FELLOW CITIZEN THAT TOO ARE NOT TO BE BIASED OR PREJUDICED.

NEW TRIAL

48 X 21

1 THIS MOTION WILL BE BASED ON SEVERAL GROUNDS  
2 THAT CAN BE PROVEN THROUGH DISCOVERY, DEFENDANTS  
3 MOTIONS, TRIAL TRANSCRIPTS, MOTION TRANSCRIPTS, AND  
4 EXCULPATORY EVIDENCES. THIS MOTION WILL INCLUDE ACTS  
5 OF INEFFECTIVE COUNSEL, PROSECUTORIAL MISCONDUCT,  
6 OBSTRUCTION OF JUSTICE, JURY MISCONDUCT, JURY  
7 TRAINING, PRESUDICIAL MISCONDUCT OF THE PROSECUTOR,  
8 AND JUDICIAL BIASED AND PRESUDICIAL MISCONDUCT.

9  
10 I.

11 THROUGH OUT THE ENTIRE REPRESENTATION BY DAVID  
12 SANDERS ATTORNEY AT LAW I HAVE BEGGED TO DISCUSS  
13 THIS CASE, THE WEIGHTS OF EVIDENCES, WITNESSES,  
14 EVIDENCES, MOTIONS FOR TRIAL PROPORITION, AND  
15 THE RELEASE OF "ALL" EXCULPATORY EVIDENCES.

16 I BELIEVE THIS MAN INTENTIONALLY MISREPRE-  
17 SENTED ME WITH EXTREME BIASED AND CONSPIRATORIAL  
18 BEHAVIOR TO STOP HIS FURTHER REPRESENTATION.

19 FROM THE VERY BEGINNING I REQUESTED  
20 AND FILED FOR EVIDENCES, RECORDS, EXHIBITS, AND  
21 FORENSIC INVESTIGATION, I ASKED FOR RECORDS AND  
22 EVIDENCE, AND ASKED HIM WHAT HAS HE RECEIVED FROM THE  
23 PROSECUTOR. BRADY V. MD 373 U.S. 83 (1963) THE CONSTITUTIONAL  
24 DOCTRINE AND FEDERAL RULES GOVERNING DISCOVERY, INCLUDING  
25 BRADY V. MARYLAND ARE DISCUSSED IN DISCOVERY AND ACCESS TO EVIDENCE.  
26 SEE ALSO U.S. V. ARMSTRONG (THE DEFENDANT IS ENTITLED TO  
DISCOVERY TO HELP PROVE A SELECTIVE PROSECUTION CLAIM).

27 IN NOT PROVIDING THESE EVIDENCES THIS ATTORNEY DAVID  
28 SANDERS DISPLAYED ACTS OF PREJUDICIAL BEHAVIOR AND

NEW TRIAL  
?

48 X 22

1 INEFFECTIVENESS OF HIS ABILITY TO REPRESENT THE  
2 DEFENDANT IN THIS CASE. McMANUS V. RICHARDSON 397 U.S.  
3 759, 771 A.14 (1970) RIGHT TO EFFECTIVE COUNSEL APPLIED  
4 TO BOTH RETAINED AND APPOINTED COUNSEL.

5 THIS ATTORNEY DALE SANDERS HAS DISPLAYED SEVERAL  
6 ACTS OF DISHONESTY AND PREJUDICIAL BEHAVIOR THROUGHOUT  
7 HIS ENTIRE REPRESENTATION. DURING HIS MOTION FOR 995  
8 MOTION OF DISMISSAL HEARING, BEFORE Hon. JUDGE NIKKITA IN  
9 DEPT. 3, MR. SANDERS EVEN AFTER PREPARING AND PRESENTING  
10 HIS 995 MOTION, DID NOT WANT IT HEARD AND EVEN  
11 CONSPIRED WITH THE PROSECUTION IN FRONT OF THE JUDGE AND  
12 ON THE RECORD THAT HE DIDN'T WANT TO HEAR THE MOTION  
13 AND ONLY WANTED TO SET TRIAL DATES. IT WAS THE JUDGE  
14 THAT MADE BOTH ATTORNEYS HEAR HIS DECISION, SINCE HE  
15 HAD REVIEWED THE DOCUMENT. THE JUDGE FOUND THERE WAS  
16 INSUFFICIENT EVIDENCES AT THAT TIME TO PROSECUTE  
17 THE DEFENDANT ACCORDING TO THE DOCUMENTS HE HAD  
18 RECEIVED. AT THAT TIME BOTH THE DEFENSE COUNSEL AND  
19 PROSECUTING ATTORNEY WERE WILLING TO STIPULATE THAT  
20 THESE EVIDENCES DID EXIST. THE JUDGE THEN GAVE THE  
21 D.A. 1 1/2 HOURS TO PRODUCE SUCH EVIDENCES.

22 THIS BEHAVIOR ON THE DEFENSES COUNSEL DISPLAYED  
23 HIS OBLIGATORY DUTIES "TO THE PROSECUTION" RATHER THAN HIS  
24 CLIENT,

25 ON A SEPERASE MATTER, ATTORNEY DALE SANDERS FAILED TO  
26 PROPERLY NOTIFY THE ATTORNEY GENERAL OF N. MEXICO TO  
27 RECUSE THE DISTRICT ATTORNEY AL. MICHAEL R. RAMES AND HIS  
28 ENTIRE OFFICE FROM THIS CASE, DENYING THE DEFENDANT TO  
HAVE THIS MOTION FAIRLY HEARD BY "ALL" PARTIES.

NEW TRIAL  
2

48 X. 23

1 THIS MOTION WAS UNTIMELY AND SUBSTANTIAL AND  
2 UNPROFESSIONALLY PRESENTED, ENDANGERING THE FAIRNESS  
3 OF THIS MOTION TO BE HEARD BY OUTSIDE PARTIES, OTHER  
4 THAN THIS COUNTY'S REPRESENTATIVES. THIS MOTION WAS  
5 BASED ON DISTRICT ATTORNEY MICHAEL R. SANDERS' MISCONDUCT  
6 IN USING INFORMATIONS AND FACTS ABOUT THIS CASE ON  
7 HIS REELECTION CAMPAIGN FLIER, WHICH 3 SEPERATE  
8 COPIES WERE MAILED TO THE GREATER POPULATION OF  
9 THIS COUNTIES REGISTERED VOTERS, THEREBY CONTAMINATING  
10 MY ENTIRE JURY POOL. 40 DAYS TO THE DEFENDANTS TRIAL.  
11 U.S. V. SYLVESTER 143 3rd 923, 933 (5th Cir. 1998) ABUSE OF  
12 DISCRETION TO CONDUCT INQUIRY INTO POSSIBLE JURY TAMPERING,  
13 SEE ALSO CHANDLER V. U.S. 218 F.3d 1305, 1314 (11th Cir. 2000)  
14 PRESUMPTION OF COUNSELS EFFECTIVENESS AND PETITIONERS BURDEN  
15 OF PERSUASION TO REBUT PRESUMPTION IS VERY HIGH.  
16 6th AMENDMENT OF THE UNITED STATES CONSTITUTION GUARANTEES  
17 A. DEFENDANT TO EFFECTIVE REPRESENTATION BY COUNSEL.

18 DURING THE TRIAL, ATTORNEY SANDERS FAILED TO INFORM  
19 HIS DEFENDANT ABOUT THE GRAVITY OR THE LEVEL OF EVIDENCES  
20 HE CLAIMING ~~THE~~ DISTRICT ATTORNEY HAD JUST PRESENTED TO  
21 HIM. AN IDENTICAL CASE AND THE LEVEL OF COMPLEXITY  
22 AND SIMILARITY. A IVETIP CALL THAT HE MENTIONED  
23 IN AN EXTREMELY VAGUE MANNER, FAILING TO QUESTION  
24 PROSECUTING WITNESSES OR OBJECTING TO FALSE TESTIMONY.

25 MR. SANDERS FAILED TO INTERVIEW WITNESSES I HAD  
26 GIVEN HIM NAMES OF, STATING HE HAD NO IDEA WHAT THEY  
27 COULD OFFER. HE FAILED TO RETRIEVE DOCUMENTS  
28 THAT WOULD HAVE UNDERMINED THE PROSECUTING WITNESSES'  
29 WITH REFERENCE TO THE DEFENDANTS PREVIOUS DEFENSE,  
30 THEREBY NOT ALLOWING HIS CLIENT TO SEEM HIMSELF.

NEUTRAL

48 X 24

1 THE WE-TIP RECORD WAS OF EXTREME LIKELINESS,  
2 THAT THE CALLER MENTIONED "WILLIAM BACKOFF" AS HIS  
3 TRUE AND NATURAL NAME, THE NAME OF THE ALLEGED  
4 VICTIM, AND THE CIRCUMSTANCES OF WILLIAM BACKOFF'S  
5 ARRANGEMENTS WITH THE VICTIM OF THE CASE. THAT  
6 HE'D MET HER AT A BAR AND WENT HOME WITH HER.

7 THAT HE CONFESSED TO THIS PERSON (W.E.T.H. CALLED)  
8 THAT THE VICTIM OF THIS CASE - JESSIE HAY, SAYING TO  
9 WILLIAM BACKOFF THAT SHE WAS SEXUALLY TURNED OFF  
10 BY HIM. UPSETTING WILLIAM BACKOFF TO THE POINT  
11 HE STRANGLERED HER TILL SHE TURNED BLACK, THEN  
12 MUTILATED HER BODY, MUST SEE CRIME SCENE PHOTOS.

13 ALL THIS BEING LIKELY TRUE SINCE WILLIAM  
14 BACKOFF (CODE NAME) HAD IN FACT BEEN A PRIME SUSPECT  
15 AROUND THE TIME THE INVESTIGATION WAS BEING DONE.

16 SINCE WILLIAM BACKOFF DIDN'T MATCH THE  
17 BLOOD FINDS AT THE SCENE (WHICH LATER TURNED OUT TO  
18 BE THE VICTIM'S BLOOD) WAS DISCARDED AS A SUSPECT,  
19 ALONG WITH THE OTHER 15 SUSPECTS THAT WEREN'T MATCHED  
20 TO THE BLOOD RELATIONS FOUND AT THE SCENE.

21 HAD THE DEFENDANT KNOWN THE TRUTH ABOUT THE  
22 ENTIRETY OF THIS WE-TIP DOCUMENT HE WOULD HAVE  
23 PROVIDED FURTHER INVESTIGATIONS.

24 SINCE THE DETECTIVE CHARGED THAT THE CALLER WAS  
25 ASSIGNED TO INVESTIGATE DIDN'T IMMEDIATELY  
26 REVEAL HIM BY THE TIME FURTHER FOLLOW UPS  
27 ON THE VALIDITY OF THE CALL TO VERIFY FACTS OR  
28 POSSIBILITIES -- W. BACKOFF WAS FOUND THAT HE HAD

48 X 25

1 ACTUALLY COMMITTED SUICIDE IN HIS HOME,  
2 THEREBY ELIMINATING THE DEFENDANT'S ABILITY  
3 TO PROPERLY PRESENT A DEFENSE. THE POSSIBILITY THAT  
4 A CONFESSION ON HIS DYING BED HAD INVADED THE  
5 DEFENDANT'S CONSTITUTIONAL RIGHT OF HIS 6<sup>TH</sup> AMENDMENT  
6 DENNELLY V. UNITED STATES (227 U.S. 1) 11 SUP. CT 449.  
7 ALSO SEE WIGMORES WORK ON EVIDENCE, VOL 2 (1476 1477  
8 (CHAPTER XLVI OF 2 WIGMORES EVIDENCE)).  
9 THIS PRINCIPLE WAS NOT ESTABLISHED IN ENGLAND UNTIL 1844,  
10 AND IN CERTAIN CASES THEREAFTER, THE RULE WAS NOT CONFINED  
11 WITHIN THIS LIMITS (2 WIGMORE EVIDENCE, 1476; HULEAS TRIAL  
12 5 HOW ST 1185 1192; POWELL V. HARBER, 5 C. AND P. 590;  
13 LESSEE OF CLYMER V. LITLER 1 WM. BLACK, 345)

14 THEREBY INDICATING THAT THE LIKELINESS OF A CONFESS-  
15 ION ON A DEATH BED SHOULD BE CONSIDERED, AND THE  
16 PROBABITIVE VALUE OF SUCH EXTRINSIC CIRCUMSTANCES NEED  
17 LIE WITHIN THE BOUNDARIES OF LIKELY SUSPECTS, THEREFORE  
18 ALLOWING FUTURE SUSPECT TO PRESENT THIS INFORMATION  
19 TO A JURY TO WEIGH ITS VALUES IN NATURE, DENYING  
20 THIS FACT PREVENTS THE DEFENDANTS FROM PROPERLY  
21 DEFENDING THEMSELVES.

22 THE FACT THAT THIS CONFESSION WAS 3 YEARS  
23 AFTER THE ACTUAL ALLEGED MURDER, THEN WITHIN  
24 MONTHS OR DAYS OF THE CONFESSION, THE CONFESSOR  
25 COMITS SUICIDE, LIKELY TAKING THE TRUTH TO THE  
26 GRAVE. ADAMS V. BERTRAND 453 F.3d 428, 437 (7<sup>TH</sup>  
27 CIR. 2006) FAILURE TO INVESTIGATE COULD HAVE PRODUCED  
28 PIVOTAL WITNESSES SEE ALSO DUGAS V. COPERS 428 F.3d 317, 332  
(1<sup>ST</sup> C.R. 2005) SEE ALSO STEWART V. WOLFENBARGER 418 F.3d  
338, 361 (6<sup>TH</sup> C.R. 2006)

48 X 26

NEW TRIAL

1 DAVE SANDERS' POOR AND LACK OF INVESTIGATIONS  
2 OR EVEN QUESTION WITNESSES ON THE STAND OR EVEN POINT  
3 OUT ILLEGAL FACTS ABOUT THE PROSECUTORS EVIDENCES  
4 WAS AN EAGER EXCUSE FOR REPRESENTATION.

5 AT TIMES STATING "I KNOW THE ANSWERS" OR  
6 "I CAN'T ASK THESE QUESTIONS". THEN FINALLY  
7 WHEN DAVE SANDERS ANNOUNCED "DEFENSE RESTS"  
8 HE DID SO JUST MOMENTS AFTER HE TOLD ME I  
9 HAD 3 DAYS TO DECIDE IF I WOULD TAKE THE  
10 STAND. THEREBY MY ATTORNEY CHEATED ME OUT OF  
11 MY RIGHT TO DEFEND MYSELF.

12 HIS DECISION TO NOT MAKE AN OPENING STATEMENT  
13 AND NOT INVESTIGATE THIS CASE, NOT PRESENT / RESUMPT  
14 OR EVIDENCE, WAS A FRIVOLOUS EXCUSE OF A DEFENSE  
15 STRATEGY THEREBY DISPLAYING NUMEROUS ACTS  
16 AND SIGNS OF INEFFECTIVE COUNSEL, AND CONSPIRATORY ACTS.  
17 U.S. V. ARMSTRONG, MICHAEL V. RICHARDSON, CULLEN V.  
18 SULLIVAN, CHANDLER V. U.S., U.S. V. RUSSELL, STENNIS V.  
19 WELLSBERGER, DUGAS V. COPLAN, MARSHALL V. CATHEL,  
20 NORTON V. BENTLEY, U.S. V. ROANE

21 II.

22 FROM JUST PRIOR TO MY TRIAL IN JANUARY  
23 OF 2001, THE COUNTY DISTRICT ATTORNEY HAS PERFORMED  
24 SEVERAL ACTS OF PROSECUTIVE MISCONDUCT WITH RESPECT  
25 TO MY CASE INCLUDING HISSELF AND OTHERS INTO THE  
26 RHELMS OF OBSTRUCTION OF JUSTICE, AND JURY TAMPERING  
27 WHILE HE UTILIZED MY NAME AS HIS SPRING BREEK INTO  
28 HIS RE-ELECTION CAMPAIGN.

11/24/2012  
-1-  
48X 27



1 ON OR ABOUT MAY 19, 2009 MICHAEL R. KRAMER PLACED  
2 SUGGESTIVE COMMENTS AS WELL DEFINING PHOTO GRAPHS  
3 ONTO ALL OF HIS RE-ELECTION CAMPAIGNING ADVERTISEMENT  
4 AS FLIERS THAT WAS MAILED AS MANY AS 3 TIMES  
5 TO EACH INDIVIDUAL REGISTERED VOTERS RESIDENTIAL  
6 ADDRESSES, JUST OVER 40 DAYS TIL A SCHEDULED  
7 TRIAL OF JULY 2009 FOR JOHN MARLONSKY,

8 BEING THE PROSECUTING DISTRICT ATTORNEY HE IS NOT  
9 TO UTILIZE MY NAME OR INCIDENTS AHEAD MY CASE  
10 OUTSIDE OF HIS PROSECUTORIAL RESPONSIBILITIES TO  
11 THE PUBLIC OF SAN BERNARDINO. OF HIS OBLIGATION  
12 TO TRY AND PROSECUTE CASES WITHIN HIS ASSIGNED  
13 COURTS, THEREFORE POSTING MY PHOTO AND MY CASE ON  
14 HIS RE-ELECTION FLIERS, HAD NEGLIGENTLY INJECTED  
15 INFORMATION TO MY PROPOSED POOL OF JURORS.

16 THE FURTHER ACT OF PROSECUTORIAL MISCONDUCT  
17 HAD LED TO MY TRIAL BEING CANCELLED AND THEREBY  
18 VIOLATING MY RIGHT TO A SPEEDY TRIAL OF NON  
19 BIAS OR PREJUDICIAL JURORS TO MY 6<sup>TH</sup>  
20 AMENDMENT OF THE U.S. CONSTITUTION OF THE  
21 UNITED STATES WAS VIOLATED. 14<sup>TH</sup> AMENDMENT SEC. 1,  
22 14<sup>TH</sup> AMENDMENT SEC. 3, SEE ALSO U.S. V. CHATHANDRA 230 F.3D  
23 1237, 1251 (10<sup>TH</sup> CIR. 2000), REIMER V. U.S. 347, U.S. 227, 229  
24 (1954) ALSO U.S. V. BOYLAN 829, F.3D 230, 261 (1<sup>ST</sup> CIR. 1990)  
25 BUCKLEY 509 U.S. AT 272, CRUZ V. KAUAI COUNTY  
U.S. V. STOKES 124 F.3D 39, 45 (11<sup>TH</sup> CIR. 1997) IT IS  
26 HORNBYBROOK LAW THAT A FEDERAL COURT MAY DISMISS ALL  
27 INDICTMENT IF THE ACCUSED PRODUCES EVIDENCE OF  
28 ACTUAL PROSECUTORIAL VINDICTIVENESS SUFFICIENT TO

NEW TRIAL

48X 28

1 ESTABLISH DUE PROCESS VIOLATION OR EVEN LIKELINESS OF  
2 VENICTIONESS TO SUFFICIENTLY JUSTIFY PRESUMPTION.

3 THE PROSECUTOR JOHN THOMAS DURING HIS OPENING  
4 STATEMENT IMPLIED TO THE PANEL OF JURORS THAT "HIS  
5 INTENTION WHILE THE DEFENDANT TOOK THE STAND"  
6 DURING TESTIMONY. THIS STATEMENT IMPLIED TO THE  
7 JURY THAT THE DEFENDANT WAS IN FACT GOING TO  
8 TAKE THE STAND, THERE BY VIOLATING MY FIFTH  
9 AMENDMENT OF THE CONSTITUTION, WHICH WHEN THE  
10 DEFENDANT CHOSE TO EXERCISE HIS RIGHTS, TO NOT  
11 TESTIFY, PREJUDICED THE JURY BY THE DISTRICT ATTORNEY'S  
12 OPENING STATEMENT LEAD THE JURY TO EXPECT A  
13 TESTIMONY FROM THE DEFENDANT.

14 U.S. V. FLAHERTY 299 F.3d 182, 202 (2<sup>nd</sup> Cir. 2002) COURT  
15 CONSIDER WHETHER PROSECUTOR REMARKS IMPROPER INFECTED TRIAL  
16 WITH UNFAIRNESS THEREBY VIOLATING DEFENDANT'S DUE PROCESS.

17 DURING A PRESENTATION OF THE PROSECUTION'S EVIDENCES,  
18 JOHN THOMAS (DISTRICT ATTORNEY) DISPLAYED FOR THE JURY  
19 AN ALTERED AUDIO RECORDINGS OF THE INTERROGATION  
20 THAT HAD WORDS THAT WERE MISREPRESENTED, ALTERED,  
21 OR ERASED. THIS ALTERATION OF THIS INTERROGATION  
22 PREJUDICED THE JURY AND IN SOME WAY VIOLATED  
23 THE DEFENDANT RIGHTS. THERE ARE 23 PAGES THAT  
24 WERE MISSING FROM THE ENTIRE INTERROGATION.

25 THIS WAS DONE IN ORDER TO PRESENT THE  
26 DEFENDANT IN A NEGATIVE MANNER THAT  
27 MISPRESENTED EVIDENCES TO THE JURY. ONCE THE  
28 RECORDING HAD BEEN INTERPOLATED AND DISPLAYED TO

NEW TRIAL

48X 29

1 THE JURY, THIS ACT WAS AN AGGRESSIVE ATTACK AGAINST  
2 THE DEFENDANT RIGHTS AS WELL AS OBSTRUCTION OF  
3 JUSTICE. ALTERED OR CONTAMINATED EVIDENCES THAT ARE  
4 LIKELY TO PREJUDICE JUROR IS A VICENT VIOLATION  
5 OF WHAT OUR CONSTITUTION STANDS FOR.

6 U.S. V. BOYLAN 898, F.2d 230, 261 (1st Cir. 1990) PRESUMPTION  
7 OF PREJUDICE APPLICABLE ONLY WHEN THIRD PARTY PRESENTS  
8 OBVIOUS TAMPERING OF THIRD PARTY COMMUNICATIONS  
9 WHICH DIRECTLY INJECTS ITSELF INTO THE JURY PROCESS

10 42 US § 1001 OBSTRUCTION OF JUSTICE.

11 JOHN THOMAS PUT DETECTIVE ALEXANDER ON  
12 THE STAND TO TESTIFY FOR THE PROSECUTIONS OF  
13 THIS CASE. WHILE UNDER THE COERCION OF AUTHORITY AND  
14 UNDER OATH, DETECTIVE ALEXANDER TESTIFIED HE  
15 HAD GOTTEN TO SEE ALL THE EVIDENCES IN THIS  
16 CASE, THEN TESTIFIED HE DIDN'T RECEIVE A POLICE  
17 CRIME SCENE REPORT OF FINGER PRINTS RECEIVED  
18 FROM A LABRATORY, INDICATING WHAT PRINTS WERE  
19 IN FACT FOUND AT THE SCENE OF THE CRIME, AND  
20 SPECIFICALLY A DRINKING CUP FOUND IN THE KITCHEN  
21 ON THE COUNTER. THIS CUP CONTAINED A PRINT LIFTING  
22 THAT BELONGED TO A PERSON BY THE NAME OF  
23 JOE SAUNDERS. THERE WAS ALSO A POLICE REPORT  
24 FROM JOE SAUNDERS STATING HE WAS IN FACT AT  
25 THIS ADDRESS. BY DETECTIVE ALEXANDER LYING ABOUT  
26 THIS FINGER PRINT REPORT, PREJUDICED THE JURORS  
27 ABOUT WHO IN FACT WAS AT THE CRIME SCENE.

28 SINCE THE PROSECUTOR DID NOT OBJECT TO THIS

NEW TRIAL

101

48 X 30

1 LIE BEING TOLD BY HIS INVESTIGATOR, HIS ARRESTING  
2 OFFICER, AND A PERSON UNDER THE CLOTH OF AUTHORITY  
3 HE CONSPIRED ALONG WITH THE DETECTIVE MRS ANDER  
4 TO INFLUENCE THE JURY WITH FALSE TESTIMONY AND  
5 EVIDENCE TAMPERING.

6 MASTRACCHIO V. VOSE 274, F.3d 590,602 (1st Cir. 2002)  
7 PROSECUTOR'S FAILURE TO CORRECT WITNESSES FALSE TESTIMONY  
8 WAS IMPROPER BECAUSE PROSECUTOR KNEW STATEMENT WAS FALSE. SEE ALSO  
9 SHIHWEI SU V. FILION 335, F.3d 119,127-30 (2nd Cir. 2003).  
10 PROSECUTOR FAILURE TO CORRECT WITNESSES FALSE TESTIMONY AND  
11 SUBSEQUENTLY ATTEMPT TO BOLSTER WIT'S CREDIBILITY IMPROPER AND  
12 VIOLATED DEFENDANT'S DUE PROCESS.

13 THE PROSECUTOR CALLED WITNESSES THAT TESTIFIED  
14 THAT THEY WERE IN FACT COACHED AS TO WHAT TO SAY JUST  
15 4 DAYS PRIOR TO THEIR TESTIMONIES ON THE STAND AND  
16 UNDER OATH. THESE WITNESSES TESTIFIED IN DIFFERENT  
17 MANNERS AS WHAT THEIR ORIGINAL STATEMENTS WERE MADE  
18 25 YEARS PRIOR, WHEN THEY WERE FIRST QUESTIONED.

19 PRIMARILY, THE ALLEGED VICTIM'S DESTINATION AFTER  
20 HER DRINKING PARTY WITH BRUCE NASH, JOHN SULLIVAN  
21 JOE SAUNDERS, FRANCESCA DRAKE, AND CYNTHIA (VICTIM'S GIRL  
22 FRIEND) AND RITA COBB. POLICE REPORTS STATE SHE WAS  
23 HEADED TO A BAR AFTER THE PARTY, WHILE THEIR  
24 TESTIMONY WAS AGAIN COACHED TO STATE SHE WAS TO  
25 GO HOME AFTER THE PARTY. WHILE JOHN SULLIVAN  
26 TESTIFIED AIR MASK GAVE RITA A RIDE HOME WITH NASH,  
27 STATED SHE DROVE BY HERSELF, THEN CYNTHIA TESTIFIED  
28 THAT RITA SAID SHE WAS GOING TO A BARR. RESEMBLES  
29 WILLIAM BUCKHOFFS CONFESSION WAS HE MET RITA COBB AT  
30 A BAR THAT WITH HE PLEDGED TO KILL AND MUTILATE HER.

REINTEGRAL 48X3/

1 ALL OF THESE STATEMENTS, BECAUSE THEY WERE  
2 IN FACT COINED PREVIOUSLY TO TESTIMONY HAD MISLED  
3 THE TRUTHS FROM THE JURY, SINCE THE JUDGE WOULDN'T  
4 ALLOW POLICE REPORTS TO THE DEFENSE TO UTILIZE  
5 WITH THESE WITNESSES AS REFERENCES, REFRESHERS  
6 OF MEMORY BUT CERTAINLY NOT COACHING OF LIES  
7 AND DECEPTAL TESTIMONY, THIS ACT PREJUDICED THE  
8 JURY BEYOND COMPREHENSION. THE WITNESS SULLIVAN EVEN  
9 ARGUED WITH THE DA AS TO WHAT HE REMEMBERED.  
10 MASTRACCHIO V. VOGS 274 F.3d 576 G12 (1<sup>ST</sup> CIR. 2002)  
11 SHIHNEI SU W. FILON 335 F.3d 119, 127-30 (2<sup>ND</sup> CIR. 2003)  
12 DURING THE VOIR DIRE PROCESS 4 OF THE JURORS  
13 RECOGNIZED AND REMEMBERED RECEIVING THE DISTRICT ATTORNEY  
14 RE-ELECTION FLIER, THAT IS 4 OUT OF THE 30 SELECTED.

15 IT WOULD STAND TO BELIEVE THAT ONLY 4 PERSONS WERE  
16 HONEST ENOUGH TO ADMIT THE FLIER WAS SENT TO THEM WHEN  
17 IT STANDS TO BELIEVE THAT THE DISTRICT ATTORNEY'S MAILINGS  
18 WERE DONE THROUGH ENTIRE COMMUNITIES AND NOT JUST  
19 SPOT DUSTING THE SCATTERED COMMUNITIES TO REGAIN VOTES  
20 FOR HIS RE-ELECTION. THE POOL OF JURORS WAS TO BE UNDER  
21 STOOD AS PREJUDICIAL BECAUSE OF THE FLIERS, AND EVEN THE  
22 JURORS ADMITTED THAT THERE WAS AN EXPECTANCY OF  
23 THEIR COUNTY REPRESENTATIVES IN TEASING, THAT THERE WOULD  
24 BE SOME PROOFS OR ENOUGH PROOFS IN ORDER TO RECUSE  
25 AND CHARGE A PERSON OF MISFEASOR IN MISFEASANTS.

26 THEREBY THIS INJECTION OF INFORMATION INTO A POOL OF  
27 JURORS DID IN FACT CONTAMINATE THE DEFENDANT'S RIGHT  
28 TO AN IMPARTIAL OR PREJUDICIAL JURY.

NEUTRAL

48X32

1 DURING THE PROSECUTIONS PRESENTATION OF  
2 WITNESSES, ONE FRANCESCA DENKE/SULLIVAN WAS  
3 RECOGNIZED BY THE JURY MEMBER NUMBER #12,  
4 FROM WORKING WITH HER. THE DA AS WELL AS  
5 THE DEFENDANTS COUNSEL HAS AGREED TO ALLOW  
6 THE JURY TO STAY ON THE PREMISES, EVEN WHEN  
7 THE LIKELINESS OF BIASED BEHAVIOR WAS EVIDENT.  
8 THIS OVERSIGHT VIOLATED THE DEFENDANTS 6<sup>TH</sup> AMENDMENT  
9 OF THE CONSTITUTION.

10 THROUGHOUT THE PROSECUTIONS PRESENTATION HE  
11 CONTINUALLY MADE DIRASGATORY STATEMENTS ABOUT THE  
12 DEFENDANTS STATUS OF GUILT OR INNOCENCE. HE HAD  
13 CONTINUALLY SAID THAT THE DEFENDANT JOHN  
14 YABLONSKY WAS A LIAR AND WAS GUILTY, THEREBY  
15 EXPRESSING HIS BELIEFS RATHER THAN PRESENTING  
16 THE EVIDENCES AND LETTING THE JURY MAKE THEIR  
17 OWN DECISIONS AS TO THE DEFENDANTS GUILT,  
18 AND ONLY THROUGH EVIDENCES AND NOT OPINIONS OR  
19 BELIEFS. U.S. V. STAKES 124 F.3d 39,43 (1<sup>ST</sup> CIR. 1997) ALSO U.S.  
20 V. FLAHERTY 295 F.3d 182, 202 (2<sup>ND</sup> CIR. 2002); MARSHALL V.  
21 HENDRICKS 307 F.3d 36, 63-64 (3<sup>RD</sup> CIR. 2004) U.S. V. LITRELL  
22 439 F.3d 875, 833 (8<sup>TH</sup> CIR. 2006) U.S. V. SMITH 982 F.2d 681, 684  
23 (1<sup>ST</sup> CIR. 1993) BOYD V. FRENCH 147 F.3d 319, 327-29 (4<sup>TH</sup> CIR. 1998)  
24 U.S. V. GARCIA-GUIZAR 160 F.3d 511, 520 (1<sup>ST</sup> CIR. 1998)  
25 MINSTRACCHIO V. VOSE 211 F.3d 590, 602 (1<sup>ST</sup> CIR. 2002) SHIH WAI SU V.  
26 FILICINI 335 F.3d 119, 127-30 (2<sup>ND</sup> CIR. 2003) BRADY V. MIA 373  
27 U.S. 83 (1963).

28 11

NEUTRAL  
13

48-33

III.

1 DURING THE VOIR DOIRE PROCESS WITH  
 2 THE JURY SELECTION, ALL OF THE SEQUESTERED JURORS  
 3 THAT WERE SELECTED TO BE QUESTIONED WERE ASKED  
 4 ABOUT A RE-ELECTION FLIER THAT WAS MAILED TO  
 5 THE COUNTY'S REGISTERED VOTERS, OF THE 30  
 6 MEMBERS SELECTED. 4 HAD ADMITTED TO RECEIVING  
 7 A COPY OF THE FLIER, THEN STATED THEY IN FACT  
 8 COULD SIT THROUGH THIS TRIAL AS NON BIASED OR  
 9 PREJUDICED MEMBERS OF THIS JURY, WHILE THAT LEFT  
 10 26 OF THE JURORS THAT WERE LIKELY TO HAVE BEEN  
 11 INFLUENCED IN A NEGATIVE MANNER (FORMING PREJUDICIAL  
 12 OPINIONS OF THIS DEFENDANT AND THIS CASE.

13 AFTER 3 DAYS OF DELIBERATION, THE JURY ANNOUNCED  
 14 THAT THEY WERE HOPELESSLY DEADLOCKED, EVEN AFTER  
 15 THE JUDGE ASKED WERE THEY SURE. THE JURY WAS  
 16 ASKED TO RETURN FOR 30 MORE MINUTES THE FOLLOWING  
 17 DAY, JUST 30 MINUTES TO DELIBERATE, AFTER AGREEING  
 18 THE JURY FORESMAN MADE A STATEMENT THAT THEY  
 19 "WE'LL GET THE JOB DONE YOUR HONOR", LEAVING  
 20 THE JURORS TO BE FURTHER PREJUDICED AND LED TO  
 21 UNDERSTAND THAT THERE WAS IN FACT AN OBLIGATION  
 22 TO THE COURTS OTHER THAN VOTING THEIR OWN INDIVIDUAL  
 23 OPINIONS.

24 THE NEXT DAY THE JURY WAS FORCED  
 25 TO DELIBERATE FOR 14 TIMES LONGER THAN THEY  
 26 ORIGINALLY AGREED TO THE PREVIOUS DAY.

27 U.S. V. BROOKS, 426 F.3d 52, 37 (1st Cir. 2005) U.S. V. WILLIAMS 209  
 28 F.3d 23, 36 (2d Cir. 2000) U.S. V. MEDRANO 836 F.3d, 861, 865 (5th Cir. 1998)  
 U.S. V. VANCE 833 F.3d 215, 18 (7th Cir. 2003) LAMARCA V. SECRETARY 72  
 F.3d 1500, 307-08 (11th Cir. 1999), U.S. V. BURTON, SHAW, & MORRIS.

MAIN TRIAL  
 14

48 X 34

IV,

1 THERE WERE SEVERAL MOTIONS THAT WERE DENIED  
2 THROUGHOUT THIS TRIAL THAT WOULD HAVE PRESENTED THE  
3 DEFENDANTS RIGHTS TO NOT BE VIOLATED, AND TO NOT  
4 PRESUDICE THE JURY BY THE INADMISSABILITY OF SEVERAL  
5 EVIDENCES. THAT THE DEFENSE NEEDED TO PRESENT BEFORE  
6 THIS PANEL OF JURORS.

7 THE DENIAL TO RECUSE THE DISTRICT ATTORNEY  
8 ALLOWED VINDICTIVE AND PREJUDICED PROSECUTING ATTORNEYS  
9 TO TRY THIS CASE, ALLOWING THE JURY TRIAL TO PROCEED UNDER  
10 UNDER EXTRINSIC CONDITIONS. THE DEFENSE ATTORNEY STATED  
11 THAT A CHAMBERS MOTION TO CHANGE VENUE WAS ALSO  
12 DENIED, IN DOING SO ALLOWED THIS DEFENDANT TO BE  
13 TRIED BY AN UNFAIR, BIASED AND PREJUDICED PROSECUTOR  
14 AS WELL AS JURY PANEL.

15 U.S. V. SCHWARTZ 283 F.3d 761, 98-49 (2ND CIR 2002) ABUSE  
16 OF DISCRETION TO HOLD HEARING, REGARDING ALLEGATIONS OF JURY CONTACT  
17 WITH EXTRINSIC INFORMATION BECAUSE SUCH INFORMATION LIKELY TO  
18 PREJUDICE JURY.

19 REMEMBER 347 U.S. AT 230 TRIAL JUDGES ARE GIVEN BROAD  
20 DISCRETION IN THEIR DECISION REGARDING EXTRINSIC INFLUENCE ON  
21 THE JURY.

22 THE HONORABLE JUDGE JOHN TEMBERLIN BY NOT ALLOWING  
23 POLICE REDDERS, OR SIMILAR OR IDENTICAL CRIME SCENE  
24 EVIDENCES VIOLATED THE DUE PROCESS OF THE DEFENDANTS  
25 RIGHT TO PRESENT A POSSIBLE DEFENSE. CASES THAT  
26 MAY HAVE GIVEN THE JURY MEMBERS FURTHER UNDERSTANDING  
27 OF THE PROSECUTOR'S PRESENTATION, BECAUSE THE EVIDENCES HE  
28 PRESENTED WERE IN FACT SO WEAK AND NON BINDING AS  
29 FAR AS FACTUAL SUSPECT AND MOTIVE OF CRIME. EXPLICITLY  
30 THE WETIP CALL DOCUMENT, STATING BECAUSE THE CALL  
31 WAS MADE BY AN UNKNOWN CALLER AND THE INVESTIGATION

1. NEW TRIAL

4835 X34



1 OFFICER ASSIGNED TO THE CALL A DETECTIVE CARR  
2 HAD PASSED AWAY, AS WELL AS THE SUSPECT AT THE  
3 TIME "WILLIAM BACK OFF" HAD COMMITTED SUICIDE, VIOLATED  
4 THE DEFENDANTS RIGHT TO PRESENT A DEFENSE, ALLOWING  
5 THE JURY TO WEIGH ALL EVIDENCES, NOT JUST THE PREJUDICIAL  
6 EVIDENCES AVAILABLE.

7 U.S. V. LLOYD 269 F.3d 288, 243 (3d Cir. 200) ABUSE OF DISCRETION TO  
8 GRANT NEW TRIAL BECAUSE NO ADMISSABLE EVIDENCE THAT  
9 JUROR EXPOSURE TO EXTRINSIC MATERIAL CREATED THE LIKELIHOOD  
OF PREJUDICE.

10 WHEN THIS PANEL OF JURORS ANNOUNCE THAT THEY WERE  
11 HOPELESSLY DEADLOCKED, AND THE JUDGE SUGGESTED THAT  
12 THEY RETURN TO DELIBERATE FOR 30 MORE MINUTES  
13 WAS AN ABSOLUTE ABUSE OF DISCRETION ON THE BEHALF  
14 OF THE JUDGE. THESE JURORS EXPECTED AND COMPLIED TO  
15 THE JUDGES ORDERS, SO WHEN THE SUGGESTION OF 30 MORE  
16 MINUTES OF DELIBERATION WAS AGREED TO, THEN FORCED TO  
17 DELIBERATE FOR 7 HOURS LONGER. 14 TIMES THE AGREED  
18 AMOUNT OF TIME LED THE SEVERELY PREJUDICED JURORS  
19 THAT THERE WAS AN OBLIGATION TO REACH A VERDICT.  
20 HOW MANY TIMES ON THAT 4TH DAY DID THE JURY ASK  
21 STATE THEY WERE DEADLOCKED - DID THE JUDGE SMOKE  
22 THE COMMENT MADE BY THE JURY FOREMAN "WELL GET  
23 THE JOB DONE YOUR HONOR" OR DID THE JUDGE CONSPIRE  
24 TO IGNORE THE EVIDENCES OF A PREJUDICED PANEL OF  
25 JURORS.

26 THE DEFENSE ATTORNEY STATED CONTINUALLY "THIS  
27 JUDGE WILL NOT HEAR MY ACTIONS, OR ALLOW ANY EVIDENCES.  
28 A JUDGE HAS OBLIGATIONS TO THE COMMUNITY AS WELL

NEW TRIAL  
16

X 35 48-36

1 AS THE SURGEON AND ESPECIALLY TO THE DEFENDANTS IN  
2 HIS COURTROOM, TO PROTECT THE RIGHTS OF THE DEFENDANTS  
3 WISHING TO ENJOY CONSTITUTIONAL PROTECTIONS AND SOLIDITY  
4 OF THE JUDICIAL SYSTEM, WHEN THIS OBLIGATION IS IMPOSED  
5 AND HAS TO FIT "THEY'RE SPECIFIC DECORUM" RATHER THAN  
6 THEIR OBLIGATORY DUTIES, IT IS THEIR FURTHER DUTY TO  
7 GRANT MOTIONS TO NEW TRIALS, IF IN FACT THE MOTION TO  
8 GRANT NEW TRIAL CARRIES PROBATIVE VALUES TO THE  
9 PROTECTION OF THE RIGHTS OF THE DEFENDANTS INSIDE  
10 HIS COURT ROOM. HIS OBLIGATION TO THE SOCIETY HE  
11 REPRESENTS CARRIES VAST RESPONSIBILITIES AND CAN BECOME  
12 TROUBLESOME AND EVEN EASILY CONFUSING, TO WHOM'S OBLIGATION  
13 TO THE CONSTITUTION ARE MISINTERPRETED OR LEVELS OF VIOLATION  
14 TO THAT CONSTITUTION BECOME QUESTIONABLY IDENTIFIABLES, AND  
15 MISTAKES ARE MADE.

16 THERE WERE A GREAT DEAL OF RESPONSIBILITIES  
17 TO THE CONSTITUTION THAT LEFT THE LEVY OF JUDICIAL  
18 DECISIONING MISTAKEABLE AT THE TIME.

19 SHOULD THE COURT DETERMINE ACT TO GRANT A  
20 NEW TRIAL, THE DEFENDANT WILL WISH THAT, IN LIEU OF  
21 ORDERING A NEW TRIAL, THE COURT FIND THE DEFENDANT  
22 GUILTY OF A LESSER DEGREE OF THE CRIME OF WHICH  
23 HE WAS CONVICTED, OR OF A LESSER CRIME INCLUDED THEREIN.

24 THIS MOTION WILL BE BASED ON THE NOTICE OF MOTION,  
25 ON THE ATTACHED DECLARATION AND MEMORANDUM OF POINTS  
26 AND AUTHORITIES SERVED AND FILED HEREWITH, ON SUCH  
27 SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES AS  
28 MAY HERE AFTER BE FILED WITH THE COURT OR STATED

NEW TRIAL  
17

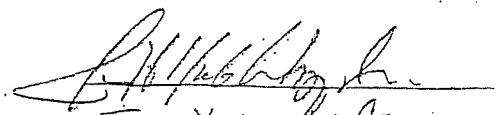
X 36 48-51

1 ORALLY AT THE CONCLUSION OF THE HEARING ON THE  
2 MOTION, ON ALL PAPERS AND RECORDS ON FILE IN THIS ACTION,  
3 AND ON SUCH ORAL AND DOCUMENTARY EVIDENCE AS MAY  
4 BE PRESENTED AT THE HEARING OF THE MOTION.

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RESPECTFULLY

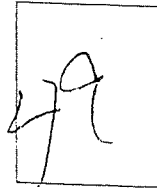


JOHN YABLONSKI SR.  
9500 ETIWAANDA  
R.I. CR. 91739  
PROPRIA PERSONA

NEW TRIAL  
18.

X 374838

# EXHIBIT COVER PAGE G&G



## DESCRIPTION OF THIS EXHIBIT:

Number of pages to this exhibit: \_\_\_\_\_ pages.

15-29186

Jurisdiction: (Check only one)

- Municipal Court
- Superior Court
- Appellate Court
- State Supreme Court
- United States District Court
- Federal Circuit Court
- United States Supreme Court
- Grand Jury

96  
16

1 DOREEN B. BOXER  
Public Defender  
2 LAURI FERGUSON  
Assistant Public Defender, Main Unit  
3 By: DAVID SANDERS  
State Bar # 78021  
4 Deputy Public Defender  
14344 Cajon Ave. St. 201  
5 Victorville, CA 92392  
760-241-0413  
6

7 *Attorney for Defendant, John Henry Yablonski*

8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN BERNARDINO, DESERT DIVISION

11  
12 PEOPLE OF THE STATE OF CALIFORNIA,  
13 *Plaintiff,*  
14  
15 vs.  
16 JOHN HENRY YABLONSKI  
17 *Defendant.*

Case No.: FVI 900518  
PROPOSED ORDER FOR  
DISCOVERY

18  
19 PLEASE TAKE NOTICE that after due consideration of the facts and the law **IT**  
20 **IS ORDERED** that the District Attorney provide the following items of discovery to the  
21 defendant as soon as possible but not later than the 15<sup>th</sup> of October, 2010.

- 22 1. All police reports, investigations and lab work completed during the  
23 investigation of the death of Helen Brooks.  
24 2. All notes and reports created in the investigation of and death of George  
25 Randolph/William Backoff.  
26 3. Any police reports regarding the death of Joseph Saunders.  
27 4. All police reports of the investigation of the death of Meryl gibbs.  
28

1 DICI @ LS (49-1)  
Discovery Order, YABLONSKI (MI) 128

- 1 5. Complete criminal investigations regarding the deaths of Deeble, Belcher,
- 2 Gibbons, and Kreismanis.
- 3 6. Contact information for Sun Kye and Lori amaro.
- 4 7. Current contact information or death information regarding betty Ball, Audrey
- 5 Scroggins, John Sullivan, Francesca Drake, Bruce Nash, Cynthia Nash, Dave
- 6 Leftwich, Doris Jackson, Fred Hollbrook, Rene Smith, Dawn Dismore, Sheryl
- 7 Broaddeus, Rebecca Townsend, Dianne Flagg, Don Stowe, Sherman Anderson,
- 8 Carol Tevis, Bud Turner, Ed Liebe, Glen Moritz, Bruce Lee, and Ed Wright or
- 9 Wight.
- 10 8. The current contact information for all the police or sheriff personel who took
- 11 part in the investigation of this matter.

BRUCE NASH (LIED ON STAND)  
JOHN SULLIVAN

It is so ordered.

- 14 (A) JOHN SULLIVAN TESTIFIED AT TRIAL
  - 15 (B) BRUCE NASH AT TRIAL
  - 16 (C) CYNTHIA NASH WAS AT TRIAL
  - 17 (D) FRANCESCA WAS AT TRIAL
- \_\_\_\_\_  
Judge of the Superior Court

(1) I TOLD SANDER DAVE LEFTWICH WAS IN VICTORVILLE, GAVE HIM AN ADDRESS AND PHONE NUMBER.

(2) DIANNE FLAG TESTIFIED SEEING A SILVER PINTO

(3) ROBERT EDWARDS IS IN SAN QUENTIN ON DEATH ROW FOR IDENTICAL CASE!!

I INFORMED SANDERS OF THESE PERSONS WHERE THEY WERE, BUT HE NEVER MADE EFFORTS TO INVESTIGATE!!

2

D.L.C. L 12/12/21

(m2) 12/21

1 PHYLLIS MORRIS  
Interim Public Defender  
2 CHRIS GARDNER  
Interim Assistant Public Defender, Main unit  
3 BY: David L. Sanders  
State Bar #: 78021  
4 Deputy Public Defender  
14344 Cajon Ave. Suite 201  
5 Victorville, CA 92392  
(760) 241-0413  
6  
7 Attorney for Defendant, George Yablonsky

CONFLICT OF  
INTEREST OR  
FAIL TO PERFECT  
THIS CRUCIAL  
MOTION THAT  
WENT TOWARD  
ABILITY TO  
~~INVESTIGATE~~  
INVESTIGATE

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN BERNARDINO, DESERT DIVISION

10  
11 PEOPLE OF THE STATE OF CALIFORNIA,  
12 Plaintiff,

Case No.: FVI 021929

13 vs.

14 GEORGE YABLONSKY,  
15

NOTICE AND MOTION TO  
CONTINUE (PENAL CODE  
SECTION 1050);  
POINTS, AUTHORITIES AND  
ARGUMENT IN SUPPORT  
THEREOF.

16 Defendant.

INSTEAD  
HE ANNOUNCED  
READINESS  
FOR TRIAL  
WHEN HE  
STAYED  
HE  
INCAMERA  
MOTION TO  
AND OBJECT  
DENIAL OR  
CONTINUANCE  
N-3

17  
18 PLEASE TAKE NOTICE that on January 14th, 2010, at 8:30 a.m., in  
19 Department V-3 of the above-entitled court, defendant will move the Court for an  
20 order continuing the jury trial in the above entitled matter to January 31st, 2011, or  
21 any other subsequent date permitted by the court.

22 Said motion is made pursuant to Penal Code section 1050 and is based on the  
23 attached Declaration and any evidence and argument that may be presented at the  
24 hearing.

25 DATED: January 12<sup>th</sup>, 2011

26 DAVID SANDERS  
Deputy Public Defender

27 *[Signature]*

28 JOHN YABLONSKY  
ATTORNEY  
CASE # FVI 900528

1 CH D4 (49-3)

YABLONSKY 1050 Motion

(113)

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DECLARATION IN SUPPORT OF MOTION

I, David L. Sanders, hereby declare:

1. That I am an attorney licensed to practice law in the State of California;
2. That I represent the defendant in this action;
3. That I believe that good cause exists to continue this matter based upon the following:

There are two potential witnesses who have been contacted by the prosecution to testify to Evidence Code Sec. 1108 evidence, that being alleged other instances of sexual criminal conduct. In prior conversations with the DA he informed me that he did not intend to call the two women. However, on Tuesday, January 11<sup>th</sup>, 2011, I was informed that the DA now does intend to call these women at the trial of this matter.

The defense needs contact information regarding these witnesses as he has not had an opportunity to interview them. One of the alleged instances is said to have occurred in El Paso, TX, in 1982. That woman now has a different last name. The other alleged incident is said to have occurred in 1996.

Neither of these women were located by the defense in their investigation.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 12th day of January, 2011, at Victorville, California.

\_\_\_\_\_  
David L. Sanders  
Deputy Public Defender

2 GS

DS 49-4  
M4 N4  
YABLONSKY 1050 Motion



How does a deputy go from county jail employee to homicide detective 18 months later, where did his training come from, didn't somebody tell him to not lie and not alter evidence why is he back as a county jail bailor? and a sergeant

9  
M  
W

Sanders, David

STILL ACTING AS PROSECUTOR LEAD INVESTIGATOR

FORGERER, PERJURER

From: Alexander, Robert [ralexander@sbcisd.org]  
Sent: Thursday, January 13, 2011 9:06 AM  
To: Sanders, David  
Cc: Thomas, John  
Subject: Contact info for DR 1331036-07

LIAR

TRIAL  
MAY STARTED

JAN 19 2011

1. ~~Kyle B. [redacted]~~  
~~[redacted]~~ 372  
~~[redacted]~~ home phone

THIS IS A WRONG POSSIBLE ADDRESS

THIS IS ONLY 6 DAYS TILL TRIAL STARTS

2. ~~[redacted]~~  
315 Pearson Drive, apt #1  
Porterville, Ca. 93257  
~~[redacted]~~ home phone

THIS IS A POSSIBLE WRONG ADDRESS

ON JAN 14, 2011 SANDERS (ATTY TRIAL) ANNOUNCED READY FOR TRIAL WITHOUT ONE CALL TO THESE WITNESSES.

Det. Alexander  
ralexander@sbcisd.org  
909-387-3556 (Desk)  
909-387-3455 (Fax)



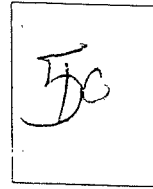
THE REQUEST FOR THIS WAS 60 DAYS PRIOR YET THIS WAS GIVEN ONLY DAYS BEFORE TRIAL STARTED

D3  
L7 C3

(49-5) 2

VIOLATION BEING ON PEOPLE WERE ON DISTRICT ATTORNEYS ROSTER WHERE IS A COMPETANT ATTORNEY (M44) 132

# EXHIBIT COVER PAGE G&g



## DESCRIPTION OF THIS EXHIBIT:

Number of pages to this exhibit: \_\_\_\_\_ pages.

*15-29786*

Jurisdiction: (Check only one)

- Municipal Court
- Superior Court
- Appellate Court
- State Supreme Court
- United States District Court
- Federal Circuit Court
- United States Supreme Court
- Grand Jury

281  
103

178

68

Law Offices of the Public Defender



SAN BERNARDINO COUNTY

Doreen B. Boxer  
Public Defender

LOOK AT SEQUENCE OF  
TIME November 2, 2009 TO NOV. 10, 2009

Blain Kern  
440 Business Center Court  
Redlands, CA 92373

HE KNOW THE SERIAL DNA'S  
FOR OVER 2 YEARS

Re: People v Yablonski

Dear Mr. Kern:

I would like to discuss with you the possibility of retaining your services in helping me to represent my client, John Yablonski. He was arrested in January of this year for the murder of Rula Cobb in September of 1985. This matter arises at this late date due to an alleged match in DNA between a swab taken this year when Mr. Yablonski was arrested in Long Beach and evidence that was reportedly collected at the scene of the crime in 1985 in the Lucerne Valley.

At this point I need an approximation of the costs of employing your services. I have attached a number of lab reports which the police and the DA are using to make their case. I need to know if there is any avenue of attack based on the manner in which the evidence was collected and tested by the authorities.

Please contact me at your earliest convenience regarding this matter.

Sincerely,

David Sanders  
Deputy Public Defender

SANDERS FIRST  
REQUEST TO FIND BILLING OR DNA TEST  
BUT NOTHING TO FOLLOW UP OR  
SECURE THIS REQUEST

HE WAS GOING  
TRY TO TEST  
MY DNA  
BUT NOT  
RED HAIR?  
OR  
CIGARETTEE BUTTS?

A

50-1

277  
K9  
I 11  
126

284  
104

179  
THIS REQUEST WAS A  
NOT SUBMITTED BY SANDER TO APPROVE HIS INITIAL REQUEST



# HUMAN IDENTIFICATION TECHNOLOGIES, INC. HITDNA.COM

November 10, 2009

Estimate prepared for:  
David Sanders  
Deputy Public Defender  
14344 Cajon Ave. Suite 201  
Victorville CA 92392  
Phone: (760) 241-0413  
Fax:  
Email: dsanders@pd.sbcounty.gov

Prepared by:  
Blaine Kern  
Human Identification Technologies, Inc.  
440 Business Center Court  
Redlands, CA 92373  
Phone: (909) 557-1828  
Fax: (909) 557-1831  
Federal Tax ID No. 26-2285633

Re: Estimate & Engagement Letter for Consultation (People v. Yablonski)

Mr. Sanders,

Thank you for contacting Human Identification Technologies, Inc. (HIT) regarding your DNA consultation needs. Based on our review of the laboratory reports mailed to our laboratory, we estimate it will require 11 to 14 hours to thoroughly review all of the laboratory notes, data, statistics, reports, protocols, procedures and guidelines, etc. associated with this case. The following is a breakdown of the hours required to review this case.

Summary of case review hours required:	Initials
Review of DNA reports and statistics:	2-3 hours _____
Review of analytical bench notes:	3-4 hours _____
Review of DNA protocols:	2 hours <u>Mandatory</u>
Review of DNA electronic data:	4-5 hours _____
<b>Total Hours:</b>	<b>11 to 14 hours</b>

AS

The quote has been broken down so that you may choose to focus your resources on the areas you deem most critical. Please place your initials next to the services you require. Our current hourly rates are presented below and are based upon desired turn around time. Please place your initials next to the turn around time you require.

<u>10 business day turn around</u>	<u>10-20 business day turn</u>	<u>20+ business day turn around</u>
<u>time*/\$300 per hour</u>	<u>around time*/\$275 per hour</u>	<u>time*/\$250 per hour</u>

\*Turn around time begins on the date that all discovery materials are received by Human Identification Technologies, Inc.

440 BUSINESS CENTER COURT, REDLANDS, CA 92373  
P: 909-557-1828 F: 909-557-1831

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I 12

287  
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180

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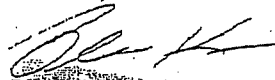
In the event that additional consulting/testimony services are requested by the client, the same per hour rate quoted herein will apply, and a new estimate may be prepared. Appropriate travel costs will apply. Please refer to our fee schedule for other potential costs associated with our services. The current fee schedule can be viewed or downloaded at [www.hitdna.com/consulting.htm](http://www.hitdna.com/consulting.htm).

If this case is dismissed after discovery is requested by HIT but prior to any case review being performed, then an administration fee of two consulting hours will be charged. You have the right to terminate your relationship with us at anytime. This may occur if our consultation is no longer required for some unforeseen reason. Notwithstanding this scenario, you will be obligated to pay all costs incurred prior thereto.

Please excuse the formal and mechanical nature of this letter. It is a necessary step to ensure that the nature of our business relationship is clearly understood.

Please feel free to contact me with any questions or concerns you might have regarding this letter. I am looking forward to ensuring that "Genetic Justice™" is being served in this case!

Sincerely,



Blaine Kern  
President/Forensic Scientist  
Human Identification Technologies, Inc.  
b.kern@hitdna.com.com  
(909) 557-1828

*SANDBASS NEVER  
TRIED TO TEST DNA  
B*

This is to confirm my understanding and acceptance of the terms set forth in this engagement letter as well as my receipt of Human Identification Technologies, Inc.'s 'Fee Schedule (s)'.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

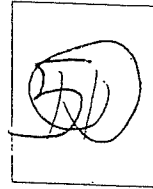
Please execute a copy of this letter and return to us. You can fax it to us at (909) 557-1831. We will also need to be provided with a 'wet-signature' copy for our records. Our mailing address is 440 Business Center Court, Redlands, California 92373.

440 BUSINESS CENTER COURT, REDLANDS, CA 92373  
1-877-DNA-2HIT

P: 909-557-1828 F: 909-557-1831

*Handwritten notes and signatures:*  
#12  
50-3  
#12  
#12  
#12  
#12

# EXHIBIT COVER PAGE G&g



51

## DESCRIPTION OF THIS EXHIBIT:

Number of pages to this exhibit: \_\_\_\_\_ pages.

~~5-22806~~

Jurisdiction: (Check only one)

- Municipal Court
- Superior Court
- Appellate Court
- State Supreme Court
- United States District Court
- Federal Circuit Court
- United States Supreme Court
- Grand Jury

JORGE NAVARRETE  
ASSISTANT CLERK  
ADMINISTRATOR

MARY JAMESON  
AUTOMATIC APPEALS  
SUPERVISOR



EARL WARREN BUILDING  
350 McALLISTER STREET  
SAN FRANCISCO, CA 94102  
(415) 865-7000

## Supreme Court of California

FRANK A. MCGUIRE  
COURT ADMINISTRATOR AND  
CLERK OF THE SUPREME COURT  
May 2, 2016

TITLE IS 3122

John Yablonsky AL-0373  
California State Prison  
P.O. Box 5002  
Calipatria, CA 92233

DECISION APRIL 1, 2016  
+ 60 DAYS  
CAL. B. COURT 9.13  
UNTIL JUNE 1, 2016

Dear Mr. Yablonsky:

A complainant in a State Bar disciplinary proceeding who is dissatisfied with the results thereof may file in the California Supreme Court a verified accusation against the attorney. (Bus. and Prof. Code, § 6108.) It is proper for the court to dismiss an accusation unless it appears therefrom "(1) that the accuser has set forth specific charges which, if proved, would constitute grounds for disciplinary action; (2) that the same specific charges have been previously presented in written form to the State Bar for the purpose of invoking its disciplinary powers; and (3) that following such presentation to the State Bar, it has arbitrarily failed or refused to grant a hearing on such specific charges or has arbitrarily failed or refused, after a hearing, to take appropriate action." (*In re Walker* (1948) 32 Cal.2d 488, 490.)

If you think that an accusation against your attorney is warranted and wish to file one, an original and ten copies in proper form should be presented to this court, together with proof of service of three copies on the **General Counsel, State Bar of California, 180 Howard Street, San Francisco, CA 94105**, and one copy on the **State Bar Court, 1149 South Hill Street, Los Angeles, CA 90015**.

While there is no form approved by the Judicial Council, your petition must be verified and conform as closely as possible to rule 8.204 of the California Rules of Court, regarding briefs. Please also include the correspondence from the State Bar indicating its action in the matter.

Very truly yours,

Sup. Ct. R.  
9.13

FRANK A. MCGUIRE  
Court Administrator and  
Clerk of the Supreme Court

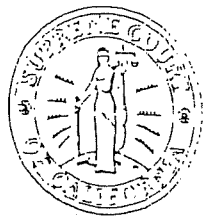
By: J. Hunter  
Senior Deputy Clerk

51-1

2108121

ETC  
FRANK ADMIN STRATOR

MARI JAMESON  
AUTOMATIC APPEALS SUPERVISOR



Setis  
DFO

LABOR WARDEN BUILDING  
333 CALLISTER STREET  
SAN FRANCISCO CA 94102  
(415) 387-0000

ST  
ORDER

Supreme Court of California

REORDER  
PLM

FRANK A. McGUIRE  
COURT ADMINISTRATOR AND  
CLERK OF THE SUPREME COURT

June 24, 2015

Debra Meyers  
Deputy Court Executive Officer/General Counsel  
San Bernardino County Superior Court  
247 W. 3rd Street, 11th Floor  
San Bernardino, CA 92415

+ 5  
DAYS WITHIN  
CAUSE

Re: S227210—John Yablonsky v. Superior Court

Dear Counsel:

Pursuant to rule 8.437 of the California Rules of Court, the court has directed that I request a preliminary opposition to the above referenced matter, petition enclosed. The opposition is to be served upon petitioner and filed in this court on or before July 15, 2015.

Petitioner will then have to and including twenty (20) days, to serve and file a reply to the opposition. If service is by mail, the provisions of Code of Civil Procedure section 1013 are applicable.

Very truly yours,

FRANK A. McGUIRE  
Court Administrator and  
Clerk of the Supreme Court

B. A. Newman

By: B. A. Newman, Paralegal

Enclosure

yablonsky.docx

cc: John Henry Yablonsky, Petitioner  
Rec.

51-2  
(72)  
I 10

RULE (a)24

ATL  
~~HP~~



~~THE STATE BAR OF CALIFORNIA~~

### ATTORNEY SEARCH

David Lynn Sanders - #78021

Current Status: Active

This member is active and may practice law in California.

See below for more details.

### Profile Information

The following information is from the official records of The State Bar of California.

Bar Number:	78021	Phone Number:	(760) 241-0413
Address:	San Bernardino County Public Defender's 14344 Cajon Ave Ste 201 Victorville, CA 92392 Map it	Fax Number:	(760) 261-5365
County:	San Bernardino	e-mail:	dsanders@pd.sbcounty.gov
District:	District 4	Undergraduate School:	Brigham Young Univ; Provo UT
Sections:	None	Law School:	Brigham Young Univ J Reuben Clark LS UT; UT

### Status History

Effective Date	Status Change
Present	Active
2/18/1997	Active
1/27/1997	Not Eligible To Practice Law
9/26/1996	Active
1/1/1996	Inactive
12/21/1977	Admitted to The State Bar of California

Explanation of member status

### Actions Affecting Eligibility to Practice Law

Effective Date	Description	Case Number	Resulting Status
	Disciplinary and Related Actions		

51-3

35

view of the attorney discipline system.

This member has no public record of discipline.

### Administrative Actions

1/27/1997 Admin Inactive/MCLE noncompliance

Not Eligible To Practice Law

H



THE STATE BAR  
OF CALIFORNIA

OFFICE OF CHIEF TRIAL COUNSEL  
AUDIT & REVIEW

180 HOWARD STREET, SAN FRANCISCO, CALIFORNIA 94105-1639

TELEPHONE: (415) 538-2000  
FAX: (415) 538-2220  
<http://www.calbar.ca.gov>

DIRECT DIAL: (415) 538-2452

April 1, 2016

Personal and Confidential

John Yablonsky  
AL0373, Inf 7 P.O. Box 5001  
Calipatria, CA 92233

RE: Respondent: David Sanders  
Case No.: 15-29186

Dear Mr. Yablonsky:

Due to your current circumstances I am unable to reach you by telephone.

The Audit and Review Unit of the State Bar's Office of the Chief Trial Counsel has completed its review of your request to re-open your complaint against the attorney in the above matter. After reviewing all the information provided, I have determined that there is not a sufficient basis to re-open your complaint.

Under applicable law and policy, the State Bar will re-open a complaint when there is significant new evidence or when we determine that there is good cause to reopen the matter. The State Bar Court is authorized to impose or recommend disciplinary sanctions only if there is clear and convincing evidence to establish that the attorney has committed violation of the Rules of Professional Conduct or the State Bar Act. Therefore, the State Bar will not reopen a matter unless there is a reasonable possibility that a disciplinary violation can be proven by clear and convincing evidence.

The pertinent facts in this matter are as follows:

You were arrested in March 2009 for the 1985 murder of Rita Cobb, after your DNA was found to match DNA sperm cells taken from the decedent's body after her murder. David Sanders of the Public Defender's office was assigned to represent you. In June 2009 Mr. Sanders mailed you the "first installment of discovery." You stated that the mailing included 300 pages of documents. In a subsequent letter you wrote to Mr. Sanders, you stated that an envelope had been opened and delivered in regular mail. It is not clear whether you were referring to the discovery packet. Following the preliminary hearing, which you apparently felt Mr. Sanders handled well, you were held to answer the charge against you.

2 1/2 A

(51.4)

(20)

(i)

(2)

In June 2010, you learned that Mike Ramos, the sitting district attorney, printed a photograph of you and the fact of your arrest in his campaign fliers. You filed a civil complaint against him, but the complaint was dismissed without prejudice due to a lack of evidence.

(3) In September 2010, a Motion to Recuse the district attorney's office was filed on your behalf. On October 6, 2010, a Motion to Compel Discovery was also filed on your behalf. On October 8, 2010, the court denied both motions. On February 3, 2011, the jury returned a guilty verdict against you. On February 25, 2011, you filed a *Marsden* motion. A Motion for New Trial based on ineffective assistance of counsel had also been filed on your behalf. Both motions were denied on February 24, 2012. Based on its observations of the trial, the court did not find that Mr. Sanders was incompetent or ineffective. Your *Faretta* motion was also denied.

You appealed your conviction in the Court of Appeals, case no. E055840. You raised various theories, including Mr. Sanders' ineffective assistance of counsel and third party culpability. Regarding Mr. Sanders' assistance, you alleged inter alia, that he failed to properly investigate, pursue evidence, prepare for trial, make motions, investigate and present evidence of other possible suspects, retain a forensic expert for trial testimony, or have DNA analysis conducted of certain evidence.

(4) The Court of Appeals filed its Opinion on December 4, 2013. In addition to assuming that Mr. Sanders exercised sound trial strategy, it rejected your argument that an investigation of Robert Mark Edwards should have been pursued. (Contrary to your assertions that Edwards was on death row for the same murder as you, it is my understanding that he was convicted of the rape and murder of a different woman). The court observed that it could not determine that Mr. Sanders "failed to conduct requisite investigation and preparation, or whether he did so and obtained evidence unfavorable to [you]." The court also noted that Mr. Sanders' efforts to present evidence was rejected by the trial court. Further, the court found no basis for Mr. Sanders' to have objected to the trial court's direction to jurors to continue deliberations or sought to change venue. Your Supreme Court petition for review was summarily denied.

(5) In 2014, you complained to the State Bar that Mr. Sanders failed to make your client file available (case no. 14- 19746). In response to your complaint, the State Bar directed Mr. Sanders to contact you and arrange for you to obtain your client file. In August 2014, the State Bar received correspondence from you which indicated that you had received an additional 1300 documents from Mr. Sanders, however, you still had not been provided the complete file. At that time, the State Bar contacted Mr. Sanders who reported that he had provided you with the complete file. Here you alleged that, including the 300 documents Mr. Sanders previously produced, there were 4000 documents that you should have received. You further alleged that some of the documents Mr. Sanders produced in July 2014 were different from what he produced in 2009.

In order to impose discipline against an attorney, the State Bar must prove by clear and convincing evidence that the attorney violated the State Bar Act or the Rules of Professional Conduct. The facts in this matter do not support a reasonable likelihood that the State Bar would meet its burden of proof.

The State Bar gives significant weight to Superior Court findings supported by substantial evidence. Here, most, if not all, of your allegations in your State Bar complaint were also raised in your appeal. As stated above, the Court of Appeals rejected your allegations against Mr. Sanders.

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(6) Further, many of your allegations involve Mr. Sanders' exercise of his professional judgment. As your attorney it was within the purview of his discretion to decide the investigation to be conducted, motions to file, and trial strategy, including evidence to present at trial and witnesses to call. He was not required to proceed in the manner you preferred.

Regarding the file Mr. Sanders provided to you, we have no information to refute his claims that he provided you with the entire file, and you have provided no proof in support of your contention that Mr. Sanders had 4000 documents. As far as discrepancies in the documents, you have not provided facts to support a finding that Mr. Sanders was responsible. Mr. Sanders initially provided documents shortly after you were charged. The subsequent production was more than three years after the trial. Also, Mr. Sanders' accumulation of discovery was ongoing. This is evidenced by the October 6, 2010 Motion to Compel Discovery.

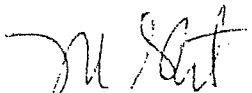
JUST SAID IT WAS DENIED

(7) Regarding the issues you raised regarding the CD of your interview, Exhibit 49, the minute order that you provided reflects that the court addressed the issue. There was no apparent finding of misconduct made against Mr. Sanders. Also, this was not an issue raised in your appeal.

For these reasons, we must deny your request to re-open your complaint.

If you disagree with this decision, you may file an accusation against the attorney with the California Supreme Court. A copy of the applicable rule is enclosed. (See Rule 9.13, subsections (d) through (f), California Rules of Court.) If you choose to file an accusation, you must do so **within 60 days of the date of the mailing of this letter**. The State Bar cannot give you legal advice or representation. If you have not already done so, you may wish to consult with an attorney for advice regarding any other remedies, which may be available to you. You may contact your local or county bar association to obtain the names of attorneys who might assist you further in this matter.

Very truly yours,

  
T. Stewart  
Deputy Trial Counsel

Enclosure

51-6

20

John Henry Yablonsky AL0373  
inf.#7  
Box 5001  
calipartria ca.92233

XXXXX

RE:Yablonsky v Sanders case no. 15-29186

OBJECTION

- 1) The state bar held a inquiry with the counsel without the presence or communication with the cleint and without allowing the client to respond to any replies by the attorney (I OBJECT)
- 2) Thta the state bar court embellished and mistated facts regarding the case that directly contradict the state records and therefore I am forced into correcting the embellishments and mistatements (I OBJECT)

EX FACTO ORITUR JUS

RESPONSE TO CHIEF TRIAL COUNSEL STATEMENT

- 1) The state bar attempts to exaggerate a verified and expert analysis of the findings about the petitioners DNA that was locate. First expert stated that the DNA was the result of a sexual encounter that occurred [SEVERAL[ ] days before the crime occurred (RI317- Criminailst Donald Jones)This was not challenged nor did the state enter an objection.Next ,the state other expert stated that the DNA that was collected was the result of a sexual encounter that was more than one and a half days olxder that the murder.(RI\$90-Dr.Saukel [pathologist])The state did not contradict nor enter an objection to this determination.  
There was no other experts regarding the [duration] of defendantrs DNA
- 2) The attorney stated thta an envelope arrived that was opened and that he did not know if it was related tothe discovery he sent.First,that incuiodent occurred several months after hte mailing of the discovery,and had nothijng to do with the twoi 9 X 12 enveloes he mailed to me thta were packing taped together. Next ne himself admitted on the records that he had witheld discopery,statinz that he gave hois client 300 page befotre trial,and more after the trial (see ecxhibit 4) filed here
- 2½) The preliminary hearing occurred a few months after the discovery was initially released inthe amount of three huindred pages,while he knowongly witheld 4200 pages,and the acts intne preliminary hearing did not exceed the 300 page information.

OBJECTION 1

51-7

3) The attorney stated that he filed a formal request for discovery, that was heard on October 2010, but that statement is false, he may have written a motion, but is it was not heard, (see exhibit 19)(CI148) That hearing was based on a recusal motion and was held off the records because the attorney failed to serve the correct parties. Maybe, just maybe when he failed to serve the attorney general he also failed to file the motion for discovery, since the court's minute record would indicate any motions that were before the court that date. It would be consistent with his ability to write motions in his clients names correctly, or to follow the rules of the state and courts by serving the correct parties timely. So it is not a stretch that he also failed to file the motion for discovery TOO!!!

4) The state bar court findings that the state appellate courts of the 4th appellate district was that the trial counsel's acts were (sound trial strategy) is bizarre

(a)(COA13-14)(The confession)(see exhibit 23 filed here)

The trial court rules the we-tip report was inadmissible hearsay. Hearsay is an out of court statement offered to prove the truth of the matter stated (Evid.C. sec.1200) Hearsay evidence in general is inadmissible (Ibid)The statement reports to the we-tip would be hearsay if the declarant offered it to prove the truth of what Backhoff said(i.e.) that he killed Rita Cobb. If the statements were offered to show what if anything the sheriff's department did in response to the we-tip report [THEN THE REPORT AND ITS CONTENT IS NOT HEARSAY].

(b)(COA15) (Bruce Nash testimony)(see exhibit 24 filed here)

Although admissible as a statement of intent, the trial court may exercise discretion under evidence code sec.1252 to exclude such statement if the trial court finds "The statement was made under some circumstance as to indicate its lack of trustworthiness..."

The trial court did not consider in ruling the statement inadmissible, it did not consider whether Cobb was drunk at the time the statement was made. Instead the trial court ~~refused~~ focused on defense counsel [FAILURE] to [cite] an exception to the hearsay rule. Absent that exception, the trial court viewed Cobb's statement as unreliable. [THE EXCEPTION PREVIOUSLY NOTED, IS EVIDENCE CODE SECTION 1250]. The trial court did w questions the relevance of Cobb's statement that she was going to a bar, because [several] witnesses apparently testified they did not see her in a bar that night in question. The trial court relevance analysis is [INCORRECT] and that [COBBS STATEMENT WAS RELEVANT!!!]

5-8

so now the trial court could think the court of appeals found his courtroom actions as sound is confusing. There is, filed here proof that his acts are not, and the courts findings on only [two]½ of the [numerous] possibilities the court of appeals does not agree with the trial courts analysis of this income tax attorney's actions that sacrificed his clients freedom because he failed to investigate and prepare for the courtroom, possible because he traded my freedom for his job, or promotion, in any way manner his acts failed, because of his incompetence!!

- 5) Here the state bar states that the attorney after release of the 1500 pages in July 2014, three years after the state trial and after the state appeal and the state bar habeas that petitioner wrote stating that this was not the whole file, that the attorney sent some [more] (???) There is no record of any mail being received in the institution that records all the mail, including a post card from a lawyer, and that attorney cannot show he sent them, because he did not, and again is lying to the state bar court. He released 300 pages in June 2009, stating that was all there was. Then 1500 more after trial and he was busted in his lie, admitting it on the records he lied the first time, telling the courts then he copied everything and sent it, in MARCH 2011 stating that was all there was. Then in July 2014 after the state bar gets involved he states he released all the evidence [again]. But then after he was busted again for lying, he stated he sent some more?? That is a lie, and this bar holder has already lied to the court and state bar three times, on the records.
- 6) The trial courts finding that the attorney exercised sound judgement is not only a disgrace to the profession, but to the constitution they are sworn to uphold while the entire records are filled the attorney lied to his client and then hid those lies until the state direct appeal had exhausted, and has nothing to show he even attempted to investigate anything in this case, besides read police reports and negotiate his clients rights without ever discussing them with his client. They had me in the COJ county jail for three years, there was plenty of time to discuss his clients case and possible strategies, considering his client was innocent, and the states evidence proves that, but because he had not investigated anything he failed at every challenge the courts and prosecutor placed before his client, and deliberately assisted the state in manufacturing evidence that he helped get into the states records where the clients answers were altered to create an element to the charge. (see exhibit 21, 22, 23) He even assisted the state in altering the trial transcripts after the trial had ended in the retroactive Alexanders false statement!!!!!!!

51-9

7) The state bar court states that the compact disc exhibit 49 (state FVI900518) states that the minute order reflects the accuracy for the transcription and that the courts addressed the issue. That is a blatant misstatement of the facts. The state courts in Habeas court stated that there was not enough proof to support my claim. Case WHCSS1200331 in \*June 2013)

Here the poor attorney and not released the proof until July 29 2014, meaning that if I had the state compact disc (exhibit 49) and the stated exhibit 49 (113 page transcript) they would have seen the proof, and certainly had I had the 136 page version to the transcript, they would not have made that determination,....

BUT DAVID LYNN SANDERS HELD THEM ~~XXXXXXXX~~ AWAY FROM HIS CLIENT UNTIL JULY 2014!!!!

AFTER THE HEARING HAD BEEN WITHHELD!!!!

Lastly, the client, petitioner here was not allowed to reply nor know what was held in the ~~trial~~ court of the state bar, and therefore prejudicial, especially since the complaint was so in depth, and detailed. The chief trial counsel stated that they could not call me, but the U.S.P.S. has been in business for many years and would have been glad to deliver a letter, so that the client's rights could remain protected, and the integrity of their decisions be sound.

But they did not, and petitioner here finds himself without any alternative but to enter upon this court objections for the above stated reasons, incorporating the accusations filed here, along with the exhibits to support that David Lynn Sanders had failed his ~~fiduciary~~ fiduciary obligations he intentionally ignored as he injured a party that relied on his expertise, training, and professional ethics, not some side show circus act. Especially when there was evidence he could have used to prove his client's innocence. My DNA was not on the red hair (I am blonde) nor the watch band pin, nor the wire around the victim's neck, my fingerprints were not located in the house, and these items make a reasonable jurist see that the defendant was not guilty. Knowing they existed, and hiding them from his client is not sound strategy, is conspiracy and against the constitution he was tied to his client by.

ESPECIALLY WHEN THE DEFENDANT'S DNA WAS MORE THAN ONE DAY OLDER THEN THE CRIME!!!!

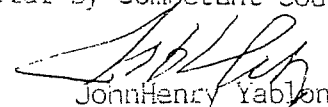
I cannot be held responsible for who she met after I left her and that other woman, on Wednesday or Thursday before she was killed after she left the Sullivan drinking party. That was that attorney's job to defend my interests and here my interests are my innocence.

The constitution guaranteed a guilty man of a fair trial by competent counsel representation, and that goes for an innocent man as well.

date

5-6-16

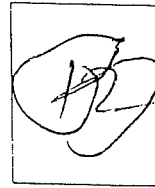
OBJECTION 4

  
John Henry Yablonsky

51-10



# EXHIBIT COVER PAGE G&H



51

## DESCRIPTION OF THIS EXHIBIT:

Number of pages to this exhibit: \_\_\_\_\_ pages.

~~15-27-18~~ 6

Jurisdiction: (Check only one)

- Municipal Court
- Superior Court
- Appellate Court
- State Supreme Court
- United States District Court
- Federal Circuit Court
- United States Supreme Court
- Grand Jury

51-11

1 larger amount that's taken some time.

2 THE COURT: The Court's going to sustain its  
3 own objection to vague. You want to restate?

4 MR. SANDERS: Yes, your Honor. Thank you.

5 BY MR. SANDERS:

6 Q You said you found a large amount of sperm  
7 cells.

8 A Relatively large amount compared to other  
9 sexual cases that I worked, yes, sir.

10 Q All right. But you have no knowledge of the  
11 person that -- that -- the sperm count of the person  
12 that made that deposit?

13 A Absolutely. That's correct.

14 Q So it could have been -- you can't tell the  
15 time based on just looking at what you looked at?

16 A No, sir.

17 Q Okay. In other words, from the information  
18 that you had, the sexual experience of the victim could  
19 have been at the time of death, hours before the time of  
20 death, or after death?

21 A That's probably true. I would say it probably  
22 wasn't days before in terms of she had intercourse,  
23 several days passed, and then she died.

24 Q Right.

25 A I'm fairly certain of that.

26 Q Okay.

27 A If you take those days and shrink it down into  
28 hours and so forth, I can't tell you.

51-12

1 postmortem?

2 A All of the liver mortis changes was on the  
3 dependent portions of the body. So we didn't have  
4 evidence that there had been a movement of the body  
5 after, say, specifically the liver mortis would become  
6 fixed after several hours. Didn't see any evidence that  
7 the body had been moved after -- the body was in the  
8 position that it was found within an hour or two of  
9 death.

10 MR. SANDERS: Thank you, sir. No further  
11 questions on cross-examination, your Honor.

12 THE COURT: Redirect.

13 MR. THOMAS: Thank you, your Honor.

14 REDIRECT EXAMINATION

15 BY MR. THOMAS:

16 Q Mr. Sanders asked you about the certainty on  
17 sexual assault cases as far as when sex took place.

18 Do you recall that line of questioning?

19 A Yes.

20 Q Okay. In this particular case, you have a  
21 death; correct?

22 A (No audible response).

23 Q Is that yes?

24 A Yes.

25 Q And as far as the sex was concerned, based on  
26 your training and experience and based on what you  
27 termed a moderate amount of sperm, can you say that this  
28 occurred a week prior to death?

5-13

SAUKEL

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A It would have to have been shorter than that.  
Q How short?  
A It could have been up to a day, day and a half.  
Q Within a day and a half?  
A Yes.  
MR. THOMAS: Nothing further.  
THE COURT: Mr. Sanders.  
MR. SANDERS: I have just another question.

RECROSS-EXAMINATION

BY MR. SANDERS:

Q Is there any possibility in this case that  
the -- that the sex was postmortem?  
A Yes.  
Q It could have been based on the things that you  
saw?  
A Yes.  
MR. SANDERS: I have nothing further, your  
Honor.  
THE COURT: Mr. Thomas.  
MR. THOMAS: Nothing further.  
THE COURT: May Dr. Saukel be excused?  
MR. THOMAS: Yes.  
THE COURT: Thank you for being with us, sir.  
You are excused.  
Call your next witness.  
MR. THOMAS: That was my only witness this  
afternoon.  
THE COURT: Okay. Folks, I told you it

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# EXHIBIT COVER PAGE

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EXHIBIT

Description if this exhibit:

Number of Pages to this exhibit: \_\_\_\_\_ Pages.

**JURISDICTION:** (Check One Only)

MUNICIPAL COURT

SUPERIOR COURT

APPELATE COURT

STATE SUPREME COURT

UNITED STATES DISTRICT COURT

STATE CIRCUIT COURT

UNITED STATES SUPREME COURT

GRAND JURY

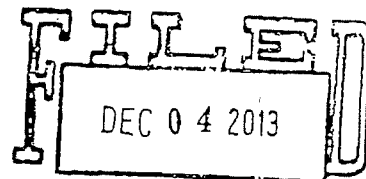
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California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO



COURT OF APPEAL FOURTH DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHN HENRY YABLONSKY,

Defendant and Appellant.

E055840

(Super.Ct.No. FVI900518)

OPINION

APPEAL from the Superior Court of San Bernardino County. John M. Tomberlin,  
Judge. Affirmed as modified.

Richard A. Levy, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General,  
Lilia E. Garcia and Peter Quon, Jr., Deputy Attorneys General, for Plaintiff and  
Respondent.

AT 1 521

The Attorney General's concessions are appropriate. Therefore, we will strike the \$10,000 parole revocation fine the trial court imposed on defendant under section 1202.45.

**DISPOSITION**

Defendant's sentence is modified by striking the \$10,000 fine the trial court imposed under section 1202.45. As modified, the judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

McKINSTER

J.

We concur:

HOLLENHORST

Acting P. J.

KING

J.

502  
AT 2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

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Defendant and Appellant.

E055840

(Super.Ct.No. FVI900518)

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Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General, Lilia E. Garcia and Peter Quon, Jr., Deputy Attorneys General, for Plaintiff and Respondent.

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Yablonsky's conviction was affirmed on appeal by this court in 2013. (*People v. Yablonsky* (Dec. 4, 2013, E055840) [nonpub. opn.] [2013 Cal.App.Unpub. LEXIS 8800].)<sup>1</sup> Review was denied by the California Supreme Court in 2014. Yablonsky's habeas corpus petitions filed in the state courts attacking his conviction were unsuccessful and he remained incarcerated.

On December 24, 2015, he filed his first amended complaint against defendants and respondents Michael Ramos, David Sanders and John Thomas (collectively, Defendants) on the grounds of negligence, professional negligence and violation of his federal Constitutional rights.<sup>2</sup> Ramos, who at the time of Plaintiff's conviction was the District Attorney of San Bernardino County; Sanders, who represented Yablonsky at his trial; and Thomas, who was the deputy district attorney who prosecuted Yablonsky's case, filed a demurrer. Yablonsky's request for a continuance to file opposition to the demurrer was denied.

The trial court granted the demurrer finding that the causes of action against Ramos and Thomas were all based on their actions prosecuting Yablonsky and they were immune pursuant to Government Code section 821.6. The trial court also granted the demurrer as to Sanders on the ground that each of the causes of action alleged against

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<sup>1</sup> We take judicial notice of the opinion and record in case No. E055840.

<sup>2</sup> Defendants are represented by San Bernardino County Counsel. Although Yablonsky named other persons in his action, the only persons who filed a demurrer were Ramos, Thomas and Sanders. Yablonsky only appeals the grant of the demurrer, which he acknowledges was filed only by Defendants. We need only be concerned with Defendants.

evidence regarding Cobb's promiscuous lifestyle; the exclusion of evidence that a person named William Backhoff had been bragging about murdering Cobb in 1988; the trial court erred by denying his motion for new trial based on ineffective assistance of counsel; instructional error; and improper denial of his motion to recuse the San Bernardino County District Attorney's office and denial of his request to change venue. He sought the change of venue and recusal on the ground that prior to his trial, Ramos had sent out fliers in connection with his reelection campaign with Yablonsky's photograph, stating he had finally been caught due to the cold case division started by Ramos. Yablonsky's conviction was affirmed and review in the California Supreme Court was denied. His state court habeas petitions attacking his conviction were also denied.

On February 3, 2015, Yablonsky filed a federal civil rights complaint pursuant to Title 42 United States Code section 1983 in *Yablonsky v. Ramos, et. al.*, case No. CV15-00197. He brought the action against Defendants due to illegal interrogation, use of altered evidence, and based on Ramos sending out the offending fliers. His causes of action were based on violations of his Fourth, Fifth, Sixth and Fourteenth Amendment rights. The federal court dismissed the first complaint with leave to amend on the grounds that to the extent his claims implicated the validity of his conviction, they were barred based on his conviction not being first overturned, and many of the persons named were entitled to immunity.

Yablonsky filed an amended complaint. The federal court issued an order that the gravamen of his claims in the amended complaint was that he was wrongfully convicted of Cobb's murder; specifically, the claims that Ramos tainted the jury pool by sending

Sanders, his counsel; Geoffery Canty, legal counsel; Phil Zywiciel, legal counsel; Mark Shoup, legal counsel; Robert Alexander, San Bernardino County Sheriff's Detective; Greg Myler, sheriff's detective; Don Boldt; Captain Wickham; "Defendant sheriff of the county (john doe)"; and John Thomas.

In the first portion of the FAC, he set forth facts showing his diligence in bringing the claims. He insisted he was never given all of the records in the case and could not bring the claims until he obtained the necessary records. He also attached a declaration in support of tolling under Code of Civil Procedure section 338, subdivisions (d) and 340.6; subdivision (3) and numerous exhibits in regard to his diligence in bringing the action.

As for the facts, Yablonsky alleged that on March 8, 2009, Detective Alexander, assisted by Detective Myler, interrogated Yablonsky in his home. They then transported him to the local police station where they continued their interrogation. They arrested Yablonsky. After the interrogation, the recordings were transcribed at the direction of Thomas. Yablonsky stated the transcriptions were altered numerous times by Alexander at the direction of Thomas. Ramos and Sanders assisted or were aware of the alterations.

Yablonsky's legal counsel—Sanders, Shoup, Canty and Zywiciel—hid the changes to the transcript from him. Canty, who first represented him, hid evidence from him despite Yablonsky asking for all of the discovery. Sanders, his second counsel, also hid discovery from him against the rules of professional conduct. This included information regarding William Backhoff who Yablonsky claimed was the true killer. Sanders also withheld reports from him. Yablonsky alleged that Shoup was the

rights under the state Constitution. The violation was based on the presentation of the interrogation to the jury, which caused him irreparable harm.

Yablonsky's third cause of action was for negligence and "right of access to court." He named Sanders, Shoup, Captain Wickham and Boldt. His First, Sixth and Fourteenth Amendment rights under the federal Constitution were violated and his state Constitutional rights were violated. The jail officials blocked access to his attorney and other public officials. Sanders and Shoup were aware of the restrictions and did not try to remedy the situation. Yablonsky would continue to suffer his loss of rights.

Yablonsky's fourth cause of action was for "negligence, false light, libel [and] equal protection of the laws." Yablonsky alleged violations of his Fourteenth Amendment rights under the federal Constitution and the equal protection clause. He also raised violations of his state Constitutional rights. This cause of action was based on Ramos distributing flyers to voters in his campaign depicting Yablonsky's photograph and stating he had been arrested for Cobb's murder. Yablonsky would continue to suffer a loss of his rights.

Yablonsky's fifth cause of action was based on negligence, professional negligence and right to an impartial jury. He named Defendants, Shoup and Detective Alexander. He alleged violations of his Fifth, Sixth and Fourteenth Amendment rights under the federal Constitution and his state Constitutional rights. He alleged that by Ramos sending out the flyers, his rights to an impartial jury were violated. Sanders and Shoup violated his rights by scheduling a trial in front of a biased jury.

Defendants also contended that any action under Title 42 United States Code section 1983, and any state negligence claim, should be dismissed as Yablonsky had not shown by sufficient facts that his conviction was reversed on appeal or otherwise reversed. This was an element of both of these types of claims. His claims were not cognizable. Yablonsky's claims of professional negligence were not cognizable because he had to prove exoneration by postconviction relief as an element of the cause of action. Further, any causes of action against the prosecutors of his case lacked merit because under both state and federal law they were entitled to immunity.

On January 21, 2016, along with the demurrer, Defendants submitted a request for judicial notice of the filing of the civil rights complaint and amendments pursuant to Title 42 United States Code section 1983 by Yablonsky in the federal court. On February 3, 2016, Yablonsky filed an intent to oppose defendants' demurrer. No opposition was filed.

On February 22, 2016, Yablonsky filed a request for a continuance to file his opposition to March 29, 2016. He stated he had limited access to the law library and his vision problems made it difficult to review materials.

### C. RULING

The matter was heard on February 29, 2016. The trial court stated that it had considered the demurrer of Defendants to the FAC. The court had read the moving papers and the "opposition." Yablonsky inquired about the continuance requested. The trial court denied the motion for continuance. Yablonsky argued that he had only just started researching his opposition to the demurrer but due to his vision problems was

denied. Yablonsky failed to present valid evidence that the continuance should have been granted. He argued he had suffered a stroke but provided no medical evidence. Further, he presented no new evidence that would support reconsidering the demurrer.

On March 28, 2016, Yablonsky filed a reply to the opposition. He contended he should have been granted a continuance to file opposition to the demurrer because he needed more time to research. He claimed to have limited access to the law library and suffered from double vision requiring more time to review documents.

On April 14, 2016, Yablonsky filed his notice of appeal. Based on Yablonsky filing his notice of appeal, the motion for reconsideration was stayed pending appeal.

#### DISCUSSION

Yablonsky entitles his appeal "Plaintiffs appeal regarding ruling of demurrer filed by said defendants Ramos, Thomas, Sanders of hearing date February 29, 2017 sustaining demurrer without allowing Plaintiff opportunity to file opposition." Most of Yablonsky's brief is unintelligible. However, it does appear he is arguing that the fact he was granted the opportunity to file the FAC included that he had a right to file his opposition. This appears to be an argument that the trial court erred by denying a continuance to file his opposition.

In addition, it appears Yablonsky is arguing Ramos violated his rights guaranteed under the federal Constitution and state statutes by mailing out fliers with his photograph and altering evidence of the interrogation transcripts. Ramos set Yablonsky's trial date to assist Ramos in his election campaign. Thomas violated Yablonsky's federal Constitutional rights and state statutes by altering the interrogation transcripts. Finally,

theory. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Although we accept as true all facts properly pled in the complaint, we do not assume the truth of “contentions, deductions or conclusions of law.” (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967.) We review the demurrer rulings on a de novo basis. (*Bame v. City of Del Mar* (2001) 86 Cal.App.4th 1346, 1363.)

Absent a reasonable possibility that any pleading defects can be cured by amendment, the trial court does not abuse its discretion by denying leave to amend. (*Aubry v. Tri-City Hospital Dist.*, *supra*, 2 Cal.4th at p. 967.) Appellant carries the burden of proving an amendment would cure any defect. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.)

Initially, the demurrer was appropriately granted under Code of Civil Procedure section 430.10, subdivision (f), which provides, “The pleading is uncertain. As used in this subdivision, ‘uncertain’ includes ambiguous and unintelligible.” Yablonsky’s entire FAC was unintelligible. Although Yablonsky alleged that his causes of action were based on negligence, professional negligence, and violations of his federal Constitutional rights, he provided nothing to support recovery on such theories. The trial court could grant the demurrer based on it being unable to understand the claims raised by Yablonsky.

To the extent that Yablonsky was raising claims that his civil rights were violated, e.g., claims under Title 42 United States Code section 1983, he was not entitled to relief and the trial court did not err by dismissing the FAC without leave to amend. Title 42 United States Code section 1983 provides in pertinent part that “Every person who, under

sentence has previously been invalidated.’ ” (*Yount v. City of Sacramento* (2008) 43 Cal.4th 885, 893.)

Here, Yablonsky failed to establish that his conviction had been overturned or that if he was successful his conviction would be invalidated. As such, his claims under Title 42 United States Code section 1983 were properly dismissed without leave to amend.

Moreover, to the extent he was raising negligence claims under state law, Ramos and Thomas, as prosecutors, were entitled to immunity. In order for Yablonsky to prevail on his negligence causes of action, he must show that Defendants owed him a legal duty, that they breached that duty, and the breach was a proximate or legal cause of his injuries. (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 477.) Government Code section 821.6 provides, “[a] public employee is not liable for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, even if he acts maliciously and without probable cause.” “[Government Code s]ection 821.6 covers the initiation or prosecution of judicial or administrative proceedings where the target may or may not be a state employee. The policy behind section 821.6 is to encourage fearless performance of official duties. [Citations.] State officers and employees are encouraged to investigate and prosecute matters within their purview without fear of reprisal from the person or entity harmed thereby. Protection is provided even when official action is taken maliciously and without probable cause.” (*Shoemaker v. Myers* (1992) 2 Cal.App.4th 1407, 1424.)



To the extent that Yablonsky is claiming malpractice or professional negligence on Sanders's part, he also has failed to show he achieved a reversal of his conviction as required. “ “[P]ermitting a convicted criminal to pursue a legal malpractice claim without requiring proof of innocence would allow the criminal to profit by his own fraud, or to take advantage of his own wrong, or to found [a] claim upon his iniquity, or to acquire property by his own crime.” ” ( *Wiley v. County of San Diego* (1998) 19 Cal.4th 532, 537.) Further, “ ‘allowing civil recovery for convicts impermissibly shifts responsibility for the crime away from the convict.’ ” ( *Ibid.* ) “Only an innocent person wrongly convicted due to inadequate representation has suffered a compensable injury because in that situation the nexus between the malpractice and palpable harm is sufficient to warrant a civil action, however inadequate, to redress the loss.” ( *Id.* at p. 539.)

Yablonsky has not shown that he obtained a reversal of his conviction. As such, he cannot show that he could allege a proper cause of action of malpractice or professional negligence against Sanders.

As stated, it is Yablonsky's burden to prove an amendment would cure any defect. ( *Schifando v. City of Los Angeles, supra*, 31 Cal.4th at p. 1081.) Here, Yablonsky has not met his burden of showing how he could amend his FAC to allege a cognizable claim. He certainly was unable to amend his complaint filed on identical grounds in the federal court to raise a cognizable claim. As such, the trial court properly granted the demurrer without leave to amend.

## FACTS

This case involves the September 1985 murder of Rita Cobb. Defendant was arrested for that crime in March 2009, after a sample of his deoxyribonucleic acid (DNA) matched DNA from sperm cells found in a vaginal swab taken from Rita Cobb's body following her apparent murder in 1985. His DNA, and the fact that when interviewed by law enforcement officers defendant admitted he knew Rita Cobb but denied having had sex with her, is the evidence that connects defendant with the murder and therefore is the evidence on which the jury relied to find defendant guilty.

That Rita Cobb was murdered is undisputed. Her son, Daryl Kraemer, and his girlfriend, found Cobb's nude, decomposing body on the bed in the bedroom of her Lucerne Valley home. A wire coat hanger was wrapped tightly around her neck and knotted on the side. Marshall Franey, a San Bernardino County Deputy Coroner assigned to investigate the death, estimated, based on the moderate decomposition of the body, that Rita Cobb died at least two days before her body was discovered.

Dr. George Saukel, the forensic pathologist who performed the autopsy on Rita Cobb's body, confirmed Franey's estimate regarding the time of death. He concluded Cobb's death had been caused by both manual strangulation, as evidenced by fractures to bones in Cobb's neck, and ligature strangulation, as evidenced by a wire coat hanger wrapped tightly and twisted twice around Cobb's neck. Dr. Saukel also found sperm cells in Rita Cobb's vagina. Based on the condition of those cells, Dr. Saukel estimated sexual intercourse could have occurred as much as a day and one-half before Cobb's death, or postmortem.

Cobb. Over the course of the interview, which began at defendant's home, then moved to the local police station, the detectives asked defendant three different times whether he had had a sexual relationship with Cobb. Each time defendant said no. At the conclusion of the interview, the detectives arrested defendant.

The detectives obtained a buccal swab, i.e., cells from the cheek, inside defendant's mouth. A DNA analysis of the buccal cells confirmed defendant's DNA matched the DNA obtained from the sperm and semen recovered from the vaginal swab taken from Rita Cobb.

Rita Cobb was last seen alive on Friday, September 20, 1985, at a social gathering at the home of her friends, John and Francesca. Cobb drank alcohol most of the evening. She appeared more intoxicated than usual by the time she got ready to leave around 10 or 11 p.m. Bruce Nash offered to drive Cobb home. He testified Cobb declined the offer. However, John recalled Nash did drive Cobb home in her own car, and Nash's girlfriend followed in Nash's car.

Daryl Kraemer had not been able to reach his mother by telephone over the weekend of September 21 and 22. On Monday he called her work, and learned Cobb had not come in, so he and his girlfriend drove to Cobb's home. They discovered her body around 11:30 a.m. and called authorities.

Additional facts will be recounted below as pertinent to the issues defendant raises on appeal.

his motion for new trial. That police report was not before the trial court when it ruled on the admissibility of the Brooks crime. Moreover, the police report, which lists several unsolved homicides involving older women, only discloses that on July 5, 1985, 63-year-old Helen Brooks was apparently killed and her body was found in an apartment located on Highway 18, in Apple Valley.

Defendant also made an offer of proof that DNA obtained in the Brooks case did not match defendant's DNA, and therefore defendant was eliminated as a suspect in that case. The prosecutor had told the trial court about the Helen Brooks case, in the course of putting on the record that he had made parts of the file in that case available to defense counsel. In describing the case to the trial court, the prosecutor said Brooks had been raped and murdered. Neither defense counsel's statement nor the facts contained in the record on appeal establish that the DNA obtained in the Brooks case was obtained from a vaginal swab of the victim. The record on appeal does not include any other details about that crime, such as how Brooks was killed or where and how her body was found. Absent those details, defendant failed to link the person who killed Helen Brooks with the homicide of Rita Cobb.<sup>3</sup>

We also do not accept defendant's assertion that the trial court precluded his attorney from making the necessary offer of proof. But even if we agreed, and thus

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<sup>3</sup> In his new trial motion, defendant argued that blood of his own rare blood type was also found at the Brooks crime scene, but he did not support that assertion with citation to any evidence submitted in support of his new trial motion. Moreover, that evidence cuts both ways in that it suggests defendant could have killed Brooks, even though his DNA was not found at the scene.

1985 understood, that Ms. Cobb did have a number of gentleman [sic] of different ages, and she entertained them at her residence. She invited them to be there, and it was not uncommon for her to have male guests at home.” The prosecutor objected on the ground such evidence was inadmissible character evidence. The trial court ruled the evidence was not relevant and excluded it. In doing so the court noted defendant had established through the testimony of Rita Cobb’s son and his wife that Ms. Cobb dated and had people over to her house. Although defense counsel protested “there was more,” presumably meaning he had additional questions he wanted to ask those two witnesses on that subject, the trial court denied that request and reaffirmed its ruling.

Although described as character evidence, the evidence in question is in fact evidence of third party culpability, i.e., evidence that one of the men Rita Cobb was dating or had dated could have been the person who killed her. Once again, defendant failed to make the necessary offer of proof, defendant’s contrary claim notwithstanding. Defendant claimed Rita Cobb was known to date many men, and to have them over to her house. However, he did not offer any facts to support that assertion. On appeal, he cites facts set out in his pretrial motion to dismiss. Defendant did not rely on those facts in arguing the admissibility of the evidence to the trial court, and did not refer to the pretrial motion in arguing the existence and admissibility of evidence regarding what we will refer to as the victim’s lifestyle. Defendant also cites a police report included in his motion for new trial. Because that motion was not filed until after trial, the trial court could not have considered the police report. Defendant claims the trial court “was probably already familiar” with that police report because in an unreported meeting in

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i.e., that he killed Rita Cobb. If the statement were offered to show what if anything the sheriff's department did in response to the WeTip report, the report and its content is not hearsay. Defendant however did not offer the statement for its nonhearsay purpose. Instead, he contends the trial court violated his due process right to present a defense by excluding the hearsay statement from evidence.

Defendant relies on *Chambers v. Mississippi* (1973) 410 U.S. 284 (*Chambers*) to support his claim that hearsay evidence is admissible if its exclusion would deprive defendant of his right to present a defense. Our state Supreme Court explained in *People v. Ayala* (2000) 23 Cal.4th 225, that *Chambers* is limited to the specific facts of that case: "Few rights are more fundamental than that of an accused to present witnesses in his own defense. [Citations.] [But i]n the exercise of this right, the accused, as is required of the State, must comply with established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence." [Citation.] Thus, "[a] defendant does not have a constitutional right to the admission of unreliable hearsay statements." [Citations.] Moreover, both we (*People v. Hawthorne* (1992) 4 Cal.4th 43, 56 []) and the United States Supreme Court (*United States v. Scheffer* (1998) 523 U.S. 303, 316 []) have explained that *Chambers* is closely tied to the facts and the Mississippi evidence law that it considered. *Chambers* is not authority for the result defendant urges here." (*Id.* at p. 269.)

The trial court did not violate defendant's due process right to present a defense by excluding the WeTip report. That report not only was hearsay, it was also provided by an unreliable anonymous source. We cannot say the trial court abused its discretion by

excluding that report from evidence at trial. (*People v. Waidla, supra*, 22 Cal.4th at p. 724.)

#### D. Victim's Hearsay Statement

Defendant contends the trial court erred by sustaining the prosecutor's hearsay objection when defense counsel asked Bruce Nash if Rita Cobb indicated when she left John and Francesca's house on the night of September 20 she was going somewhere other than home. Defense counsel argued the statement was relevant because Nash would testify, after Cobb declined his offer to drive her home, she said she was going to a bar. The trial court was of the view the statement was hearsay and irrelevant. Trial counsel did not address the hearsay issue. On appeal, defendant argues Cobb's statement to Nash was admissible under *People v. Alcalde* (1944) 24 Cal.2d 177, and Evidence Code section 1250, as a statement of Cobb's intent or statement of mind. We agree with defendant.

The Supreme Court held in *People v. Alcalde, supra*, 24 Cal.2d 177, the murder victim's statement she was going out with Frank was admissible as a statement of her future intent which in turn is circumstantial evidence she acted in accordance with that intent. (*Id.* at pp. 187-188.) As the Supreme Court explained in *People v. Jones* (1996) 13 Cal.4th 535, "the Legislature enacted Evidence Code section 1250, which provides in relevant part that 'evidence of a statement of the declarant's then existing state of mind . . . is not made inadmissible by the hearsay rule when . . . [t]he evidence is offered to prove or explain acts or conduct of the declarant.' The legislative history of section 1250 makes it clear that this provision specifically was intended, in part, to codify the

defense that someone other than defendant killed Cobb. Defendant argued as much in his closing argument.

Although we conclude the trial court erred in excluding Nash's testimony regarding Rita Cobb's statement of intent, that error requires reversal only if it was prejudicial, i.e., if it is reasonably probable the jury would have reached a result more favorable to defendant if Cobb's statement had been admitted into evidence at trial. (Evid. Code, § 354.) Defense counsel effectively argued to the jury that someone other than defendant could have killed Rita Cobb. According to the forensic evidence, Cobb died no later than noon on Saturday but she could have had sex as much as a day and a half before her death. Therefore, she could have had sex with A on Thursday night but then have been killed by B sometime after that. Defense counsel noted there was no evidence to show Cobb had been sexually assaulted. Defendant also argued that Joe Saunders, whose fingerprints were found on a glass in Cobb's kitchen, could have killed Rita Cobb. The excluded evidence does not add anything to defendant's argument.

Accordingly, we conclude the trial court's error in excluding the victim's statement she intended to go to a bar rather than home was harmless.

2.

### NEW TRIAL MOTION

Defendant moved for a new trial on the ground he had been denied the effective assistance of counsel. The trial court denied his motion. Defendant contends the trial court erroneously relied solely on trial counsel's performance in court as the basis for

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connection between the murder of Rita Cobb and Helen Brooks. In particular, defendant argued that he and the person who killed Helen Brooks have the same rare blood type, one that is found in less than two percent of the population. Unfortunately, Mr. Smith, the attorney who prepared and filed defendant's new trial motion, did not support that assertion with a citation to any of the evidence submitted in support of the motion, or any evidence contained in the trial court record. Therefore, neither the trial court nor this court can determine whether that assertion is accurate.

Mr. Smith also asserted trial counsel was ineffective because he did not retain an expert to review the forensic evidence and to testify at trial. According to the evidence submitted in support of his motion, trial counsel did contact an expert and obtained a cost estimate of \$3,300 to review the evidence. The record does not disclose whether trial counsel actually retained this or any other expert witness. It discloses only that trial counsel did not present expert testimony at trial. Absent a contrary showing by defendant, we must assume trial counsel's decision was sound trial strategy. (*People v. Dennis* (1998) 17 Cal.4th 468, 541.) Because defendant did not show in his new trial motion that expert testimony would have been beneficial to defendant, he has not shown trial counsel's decision was incorrect. (*Ibid.*)

Mr. Smith also argued in the new trial motion that trial counsel was ineffective because he failed to have DNA analysis conducted of hairs that were recovered from Rita Cobb's body and the bed where her body was found. According to the new trial motion one hair included a root that could have been analyzed for DNA. That hair was "completely different, color wise and lengthwise as to [defendant's] hair type." DNA

to show the results of such investigations. The record shows only that trial counsel did not present that evidence at trial.

We will not recount the other ways in which defendant claimed his trial attorney's representation was deficient because defendant did not present sufficient evidence in his motion for new trial to support such a finding. Absent additional evidence, such as a declaration from trial counsel, we cannot determine whether defendant's trial attorney failed to conduct the requisite investigation and preparation, or whether he did so and obtained evidence unfavorable to defendant. In short we simply cannot determine from this record whether trial counsel's representation was deficient. Because defendant failed to establish the first prong of his ineffective assistance of counsel claim the trial court properly denied defendant's motion for new trial.

3.

**EVIDENCE OF PRIOR RAPE CLAIMS**

Defendant contends the trial court erred when it ruled, if defendant testified at trial, the court would permit the prosecutor to present evidence under Evidence Code section 1108 that two women claimed defendant had raped them, one in 1982 and the other in 1996. Defendant did not testify at trial and as a result the women did not testify.

Because he did not testify, this claim is not preserved for review on appeal. "It is well established that the denial of a motion to exclude impeachment evidence is not reviewable on appeal if the defendant subsequently declines to testify. (See *Luce v. United States* (1984) 469 U.S. 38 [] (*Luce*) [denial of in limine motion to preclude impeachment of the defendant with a prior conviction is not reviewable on appeal if the

constitutional violation. Instead he contends simply that the trial court abused its discretion when it ruled the impeachment evidence was admissible.

Because defendant did not testify, the prior rape evidence was not presented at trial. Defendant contends the threat of the evidence being presented is what made him decide not to testify, and therefore was prejudicial. But that is precisely the rationale of the rule: “[I]f the defendant does not testify, any possible harm from the trial court’s ruling is wholly speculative.” (*People v. Ledesma, supra*, 39 Cal.4th at p. 731-732.) We simply cannot see how this case is distinguishable from *Collins*, notwithstanding defendant’s contrary assertion.

4.

#### INSTRUCTIONAL ERROR

Defendant contends, and the Attorney General concedes, the trial court’s instruction on the felony-murder special circumstance was incorrect because it did not include the requirement of intent to kill. In 1983, the Supreme Court held in *Carlos v. Superior Court* (1983) 35 Cal.3d 131, intent to kill is an element of the felony-murder special circumstance. The Supreme Court overruled *Carlos* in 1987 in *People v. Anderson* (1987) 43 Cal.3d 1104, 1147, and held that intent to kill must be proven only if the defendant is an aider and abettor. Because the crime here occurred in 1985, *Carlos* applies. (*People v. Wharton* (1991) 53 Cal.3d 522, 586, fn. 16, [intent to kill is a requirement in cases involving a felony-murder special circumstance committed after *Carlos* but before *Anderson*.]) The Attorney General concedes the trial court in this case

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and return the following morning to continue deliberating. His failure to object arguably waives the issue for review on appeal. (*People v. Neuffer* (1994) 30 Cal.App.4th 244, 254.) However, because defendant also claims he was denied the effective assistance of counsel as a result of counsel's failure to object, we will address the merits of his claim.

"The applicable legal principles are well established. Under section 1140, the trial court is precluded from discharging the jury without reaching a verdict unless both parties consent or 'unless, at the expiration of such time as the court may deem proper, it satisfactorily appears that there is no reasonable probability that the jury can agree.' We have explained that '[the] determination whether there is reasonable probability of agreement rests in the sound discretion of the trial court. [Citation.] The court must exercise its power, however, without coercion of the jury, so as to avoid displacing the jury's independent judgment "in favor of considerations of compromise and expediency." [Citation.]' [Citations.]" (*People v. Sheldon* (1989) 48 Cal.3d 935, 959; see also *People v. Neuffer, supra*, 30 Cal.App.4th at p. 254.)

The trial court in this case did not make any coercive remarks or engage in any other conduct directed at persuading the minority jurors to change their minds or acquiesce to the majority view. After questioning the foreperson, who confirmed the jurors had made progress toward reaching a unanimous verdict each day of their deliberations, the trial court simply ordered the jurors to return the following morning and "talk to each other." The court added it would not require the jurors to stay unless they felt like they were making progress. In arguing the trial court's action was coercive, defendant cites the foreperson's statement. when asked why he believed the jury was

deadlocked. that "[e]ach juror has indicated [that] they're solid in their position." The cited fact is the essence of a deadlocked jury; it adds nothing to the analysis. Moreover, as defendant acknowledges, the foreperson also volunteered his view that further discussion might change the count.

Defendant also contends the trial court, before ordering the jurors to continue deliberating, should have instructed the jurors according to CALCRIM No. 3551 not to change their positions just because their opinion is different from that of other jurors or just because other jurors want them to change. Defendant acknowledges that neither his attorney,<sup>5</sup> nor the prosecutor asked for the instruction. Defendant does not cite any authority to show the trial court should have given the instruction sua sponte. Instead, he relies on *People v. Keenan* (1988) 46 Cal.3d 478, in which the Supreme Court cited the fact the trial court had given such an admonition as additional support for the conclusion the jury's verdict was not the result of coercion. (*Id.* at p. 534.) The trial court's failure to give such an instruction in this case does not alter our conclusion the trial court did not coerce the jurors to reach a verdict of guilt.

Because the trial court's actions were not coercive, there was no reason for defendant's trial counsel to object to the trial court's order directing the jurors to continue deliberating. In other words, defendant has failed to show trial counsel's performance was deficient. Absent such a showing, defendant cannot establish he was denied the

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<sup>5</sup> Defendant's trial attorney apparently was ill so defendant was represented by an attorney specially appearing on behalf of his trial counsel.

## DENIAL OF MOTION TO RECUSE DISTRICT ATTORNEY

In September 2010, defendant filed a motion under section 1424 to disqualify the district attorney's office in this case because in his June 2010 reelection campaign, District Attorney Mike Ramos distributed campaign fliers that included a photograph of defendant and the fact of his arrest for the murder of Rita Cobb. Defendant appended one of the campaign fliers to his motion.<sup>7</sup> The flier includes a photograph of defendant, presumably his booking photo, with the caption, "John Henry Yablonsky [¶] Charged with murder in the 1985 slaying of Lucerne Valley mother Rita M. Cobb—on trial this year by Mike Ramos' Cold Case Unit." Next to the photo of defendant is a quotation, under the caption, printed all in bold letters, "It's Never a 'Cold Case.'" The quotation says, "A case is never cold to the family of a murder victim. That's why I have worked with the Sheriff to start the Cold Case Unit. Using DNA evidence, we have filed murder charges in 19 cold cases. Twenty five years after the crime, Rita Cobb's family will have closure." The quote includes the attribution, "Mike Ramos, District Attorney."

The trial court found defendant failed to make the showing required under section 1424 that the campaign flier created a conflict that rendered it unlikely defendant would receive a fair trial. Therefore, the trial court denied defendant's motion. Defendant

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<sup>7</sup> In his opening brief, defendant cites a second example but that one was attached to his motion for new trial and therefore was not part of the filing the trial court considered in ruling on defendant's motion to disqualify the district attorney's office.

‘especially persuasive’ showing. [Citation.]” (*People v. Gamache* (2010) 48 Cal.4th 347, 361.) “On review of the trial court’s denial of a recusal motion, “[o]ur role is to determine whether there is substantial evidence to support the [trial court’s factual] findings [citation], and, based on those findings, whether the trial court abused its discretion in denying the motion.’ [Citations.]” (*People v. Vasquez, supra*, 39 Cal.4th at p. 56.)

Defendant did not make the required showing in the trial court. Defendant’s only claim in his recusal motion was that as a result of singling defendant out in his campaign literature, the district attorney effectively committed himself to obtaining a conviction in defendant’s case. Defendant did not cite any examples in his moving papers of how the prosecutor’s commitment to a conviction might result in unfair treatment to defendant. Instead defendant submitted his own declaration in which he stated that in June 2010, after the district attorney’s campaign literature was mailed to voters, defendant filed a civil action against the district attorney. Within 24 hours after filing that lawsuit,<sup>8</sup> defendant claims he was “subjected to intense harassment in the West Valley detention Center, including, but not limited to, repeated and prolonged searches of [his] cell, having [his] court materials thrown about the cell and disorganized, having legal mail compromised, and the repeated denial of my court ordered right to use the law library.”

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<sup>8</sup> Defendant variously identifies the filing date of that lawsuit as June 28, 2010, and July 28, 2010.

the 1985 death of Rita Cobb, as a result of which her family would get closure. The mere existence of the campaign flyer does not support a conclusion defendant was denied the opportunity to negotiate a guilty plea to a lesser charge.

Defendant's need to question prospective jurors about the district attorney's campaign material in an election that occurred six months before trial also does not demonstrate prejudice. That need is not the result of a purported conflict on the part of the district attorney's office. Defendant conducted that questioning presumably to obtain a jury comprised of people who would be fair and impartial. Although defendant contends he was forced to expose the entire prospective jury pool to the district attorney's campaign flyer, that decision was not the result of the district attorney's purported conflict of interest. Moreover, by asking about the campaign flyer during voir dire, defendant presumably obtained a fair and impartial jury, i.e., one comprised of jurors who said they were not affected by the flyer and would base their verdicts only on the evidence presented in court.

In short, defendant has failed to show it is reasonably probable he would have received a more favorable result in this case if the trial court had granted defendant's section 1424 motion and the entire district attorney's office had been recused. Because he has not shown prejudice, we must conclude that even if the trial court had abused its discretion in denying his motion, that purported error is harmless in this case.



status of the defendant in the community, and the popularity and prominence of the victim.” [Citation.]” (*People v. Vieira* (2005) 35 Cal.4th 264, 279.)

Defendant has not made the required showing. Although he purports to address each of the factors set out above, in fact, he focuses on the district attorney’s campaign flyer and its effect on the jurors in his trial. Defendant has shown only that the prospective jurors in the courtroom arguably were tainted as a result of defense counsel displaying the district attorney’s campaign flyer and questioning them about it during jury selection. For example, although defendant mentions pretrial publicity, with respect to size of the community, defendant states that factor is not relevant in this case because all of the jurors were exposed to the campaign mailer. Defendant can only mean all of the jurors in the courtroom. To establish a meritorious motion for change of venue, however, defendant had to show he could not get a fair trial in the County of San Bernardino. (§ 1033.) Defendant has not made that showing.

Moreover, even if we were to conclude otherwise, and were to agree for purposes of this discussion that a motion for change of venue would have been meritorious, defendant has failed to demonstrate prejudice, i.e., it is reasonable defendant would have obtained a more favorable result if his trial had taken place in a different venue. In addressing prejudice, defendant contends the campaign flyer undoubtedly influenced the juror’s deliberations because it effectively amounted to the district attorney vouching for defendant’s guilt. Defendant’s argument is speculation. Moreover, we know from the fact that the juror’s were questioned about the campaign flyer during voir dire that they must have said they could be fair and impartial even though they had seen the flyer.

The Attorney General's concessions are appropriate. Therefore, we will strike the \$10,000 parole revocation fine the trial court imposed on defendant under section 1202.45.

**DISPOSITION**

Defendant's sentence is modified by striking the \$10,000 fine the trial court imposed under section 1202.45. As modified, the judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

McKINSTER  
J.

We concur:

HOLLENHORST  
Acting P. J.

KING  
J.

52-21

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# EXHIBIT COVER PAGE

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EXHIBIT

Description of this exhibit:

Number of Pages to this exhibit: \_\_\_\_\_ Pages.

**JURISDICTION:** (Check One Only)

- MUNICIPAL COURT
- SUPERIOR COURT
- APPELLATE COURT
- STATE SUPREME COURT
- UNITED STATES DISTRICT COURT
- STATE CIRCUIT COURT
- UNITED STATES SUPREME COURT
- GRAND JURY

TEA

*JP*

*DADS COPY HABEAS RULE*

FILED  
SUPERIOR COURT  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

AUG 20 2012

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

BY *B. B. B.*

DEPUTY

In re the Petition of

JOHN H. YABLONSKY,

Petitioner,

for Writ of Habeas Corpus.

Case no. WHCSS 1200311

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

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

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

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

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AT 3

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

3 The "screening function" of an informal response is particularly helpful in a case  
4 such as petitioner's, where the appellate proceedings are still far from over. An  
5 informal response "may demonstrate, by citation of legal authority and by submission  
6 of factual materials, that the claims asserted in the habeas corpus petition lack merit and  
7 that the court therefore may reject them summarily, without requiring formal pleadings  
8 (the return and traverse) or conducting an evidentiary hearing." (*People v. Romero*  
9 (1994) 8 Cal. 4th 728, 742.)

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

16 Claim One

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

22 Claim Three

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

24 <sup>2</sup>[http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=42&doc\\_id=2008047&doc](http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=42&doc_id=2008047&doc)

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AT 4

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1 EA

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

5 Claim Four

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

12 Claim Seven

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

20 Claim Nine

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

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AT 5

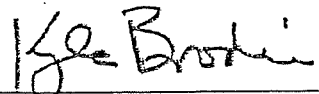
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1 and, if so, what efforts were made to cross-examine or otherwise challenge his  
2 testimony? (4) Were there police reports reflecting that fingerprints were found at the  
3 scene, and did Detective Alexander testify to the contrary, and, if so, did defense  
4 counsel ask any questions about that contradiction? (5) Was there any discussion of a  
5 confession by a third party to the crime, and, if so, what efforts (if any) did defense  
6 counsel make to admit that confession?

7 As required by California Rules of Court, Rule 4.551, subdivision (b)(2),  
8 petitioner is hereby notified that he may reply to the informal response within 15 days  
9 from the date of service of the response on petitioner.

10  
11 Dated: August 20, 2012

  
\_\_\_\_\_  
Judge Kyle Brodie

4 26

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# EXHIBIT COVER PAGE

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EXHIBIT

Description if this exhibit:

Number of Pages to this exhibit: \_\_\_\_\_ Pages.

**JURISDICTION:** (Check One Only)

- MUNICIPAL COURT
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- UNITED STATES SUPREME COURT
- GRAND JURY



1 SUPERIOR COURT OF THE STATE OF CALIFORNIA APR 12 2013

2 IN AND FOR THE COUNTY OF SAN BERNARDINO

3 BY B. B. B. DEPUTY

4 In re the Petition of  
5 JOHN H. YABLONSKY,  
6 Petitioner,  
7 for Writ of Habeas Corpus.

Case no. WHCSS 1200311  
SECOND ORDER REQUESTING  
BRIEFING ON WHETHER PETITION  
SHOULD BE STAYED PENDING  
RESOLUTION OF APPEAL

8  
9 On March 15, 2013, the Court signed an order asking for briefing on whether the  
10 petition for writ of habeas corpus should be stayed and extending the deadline by  
11 which to issue a ruling. The order was, due to a clerical error, not filed and served on  
12 the parties without delay. When the error was brought to light, on April 11, 2013, the  
13 order was filed and served on the parties, but, again due to a clerical error, that should  
14 not have occurred, as the briefing schedule set forth in the order had already expired.

15 In the meantime, petitioner has filed an order requesting a ruling. Given that the  
16 March 15 order was not served on him, his request is entirely understandable.

17 In order to clarify the status of the petition, the Court hereby issues the following  
18 order. As noted in the March 15 order, petitioner currently has an appeal pending in  
19 the California Court of Appeal. The pendency of that appeal complicates the resolution  
20 of the petition for writ of habeas corpus, though (as petitioner notes in his request for a  
21 ruling) it does not necessarily preclude the Court from ruling on the petition. However,  
22 the Court hereby requests the parties to file supplemental briefing regarding the  
23 following question: should the petition for writ of habeas corpus be stayed pending the  
24 resolution of petitioner's appeal?

25 The briefing submitted by the parties shall be limited to two pages in length, and  
26 is due on May 1, 2013. The order of March 15, 2013, is hereby vacated.

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

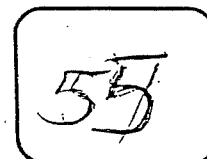
6  
7 Dated: April 12, 2013

Kyle Brodie  
8 Judge Kyle Brodie

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ATG

# EXHIBIT COVER PAGE



EXHIBIT

Description of this exhibit:

Number of Pages to this exhibit: \_\_\_\_\_ Pages.

**JURISDICTION:** (Check One Only)

- MUNICIPAL COURT
- SUPERIOR COURT
- APPELATE COURT
- STATE SUPREME COURT
- UNITED STATES DISTRICT COURT
- STATE CIRCUIT COURT
- UNITED STATES SUPREME COURT
- GRAND JURY

1 JOHN HENRY YABLONSKY #AL0373  
2 BOX # 409040  
3 IONE, CA. 95640  
4 PROPRIA\_PERSONA

HABEAS PETITION  
WHCSS 1200311  
criminal FVI900518

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3 SUPERIOR COURT CALIFORNIA  
4 SAN BERNARDINO COUNTY

5 JOHN HENRY YABLONSKY  
6 PETITIONER

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

7 RE: HABEAS CORPUS WRIT

8 e.g. :MOTION REQUESTING RULING

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

13 JOHN YABLONSKY REQUESTING PARTY  
14 ADA FERGUSON FOR RESPONDENT

15 YOUR HONOR:

16 AS PER YOUR ON APRIL 12, 2013 REQUESTING A TWO PAGE BRIEF  
17 FROM ALL PARTIES ON WHY THE COURTS SHOULD NOT STAY THE RULING  
18 WITH REGARDS TO THIS PETITION UNTIL THE PETITIONERS APPEAL  
19 HAS REACHED ITS APSOLUTE RESOLVE, WHICH IS NOW PENDING IN THE  
20 FOURTH APPELLATE COURT.

21 THE ISSUES IN MY APPEAL ARE MATTERS THAT OCCURED ON THE  
22 RECORD, AND ARE BEING REPRESENTED BY COMPETANT COUNSEL FOR  
23 PETITIONER IN THIS INSTANT CASE.  
24 PETITIONER IS INNOCENT OF THESE CHARGES, AND THE RECORDS THAT  
25 WERE GENERATED AND MADE AVAILABLE "AFTER" THE TRIAL, NOW SHOW  
26 THIS RECORD TO BE TRUE AND ACCURATE. I FILED THE PETITION ON  
27 TWELVE GROUNDS THAT I WAS MADE AWARE OF AFTER THE TRIAL WAS OVER.  
28 MY ATTORNEY'S OPEN AND REPLY BRIEFS ALONG WITH THE A.G. BRIEF  
MADE AWARE MORE GROUNDS THAT ARE ONLY APPROACHABLE THROUGH THE  
HABEAS WRIT. PETITIONER AT THIS TIME WISHES TO NOTIFY THE COURTS  
THAT WHILE ADA FERGUSON ARGUED FOR THE STATE, HAD IMPLICATED  
FALSE COMMENTS AND ACCUSATIONS, IN AN ATTEMPT TO FALSIFY THE  
RECORDS, AND MY ARGUEMENT ALONG WITH MY DISCOVERY SHOW THIS.

GROUND ONE

23 ACCORDING TO THE U.S. V. WILSON 149 f.3d 1298,1301  
24 (11th cir. 1998) (A. PROSECUTOR MAY NOT EXPRESS THEIR PERSONAL  
25 OPINION ABOUT A DEFENDANTS GUILT OR CREDIBILITY) SO WHEN COUNTY  
26 DISTRICT ATTORNEY INGESTED INTO THE HOMES OF [EVERY] REGISTERED  
27 VOTER HIS "PROMISE OF CLOSURE" TO THE VICTIMS FAMILY IN MY  
28 UPCOMING TRIAL "LATER THAT YEAR", WHICH WAS ONLY 49 DAYS AWAY,  
WHEN HE PERSONALLY MAILED THREE SEPERATE FLYERS INTO THESE  
HOMES, ALL DEPICTING THE EXACT SAME PROMISE "CLOSURE".  
CARGLE V. MULLIN 317 f.3d 1196,1218 (10th cir. 2003) ( WHERE  
PROSECUTORS STATEMENT THAT THE STATE DOES NOT PROSECUTE INNOCENT  
PEOPLE) WHICH IS EMPHESIZED BY U.S. V. BESS 593 f.2d 749,754  
(6th cir. 1979). *THAT A PROSECUTOR MAY NOT SUGGEST GUILT.*

551

AT9

233

1 UNDER CAL RULES OF PROFESSIONAL CONDUCT 5-120 AN ATTORNEY  
2 IS SUBJECT TO DISCIPLINARY ACTION FOR STATEMENTS MADE ABOUT  
3 UPCOMING TRIAL TO THE PUBLIC. THE RULE PROHIBITS EXTRAJUDICIAL  
4 STATEMENTS A REASONABLE PERSON WOULD EXPECT TO BE DISSEMINATED  
5 BY MEANS OF PUBLIC COMMUNICATIONS, WHEN THE ATTORNEY REASONABLY  
6 KNOWS THAT THE STATEMENT WILL HAVE A "SUBSTANCIAL LIKELIHOOD  
7 OF MATERIALLY PRODUCING AN ADJUDICATIVE PROCEEDING IN THE MATTER"  
8 CAL RULES OF PROF CONDUCT 5-120 (A)

9 THE SUBSTANCIAL LIKELIHOOD TEST HAS BEEN UPHELD AGAINST  
10 CONSTITUTIONAL ATTACK. GENTILE V. STATE BAR (1991) 501 US 1030,  
11 115 1 ed.2d 888, 111 s.ct. 2720. RULE 5-120 APPLIES EQUALLY TO  
12 [PROSECUTORS]. CAL RULES OF PROF COND 5-320, DURING TRIAL, NO  
13 ATTORNEY, WHETHER OR NOT CONNECTED WITH THE CASE MAY COMMUNICATE  
14 DIRECTLY OR INDIRECTLY WITH A JUROR OR JURORS FAMILY ABOUT THE  
15 CASE. PENAL CODE §95 EVERY PERSON WHO CORRUPTLY ATTEMPTS TO  
16 INFLUENCE A JUROR OR ANY PERSON, IN RESPECT TO THIS OR HER  
17 VERDICT, IN OR DECISION OF, ANY CAUSE OR PROCEEDING, PENDING  
18 OR ABOUT TO BE BROUGHT BEFORE HIM OR HER, BY ANY MEANS OF THE  
19 FOLLOWING,

20 (B) ANY BOOK, PAPER, OR INSTRUMENT EXHIBITED, OTHERWISE THAN IN  
21 THE REGULAR COURSE OF PROCEEDINGS.

22 (A) ANY WRITTEN OR ORAL COMMUNICATIONS EXCEPT IN THE REGULAR  
23 COURSE OF PROCEEDINGS.

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

ONE VENIREMAN

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

ANOTHER VENIREMAN

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

ANOTHER VENIREMAN

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

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

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

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

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

552

ATTC

234  
ON GROUND ONE WHERE THE COUNTY DISTRICT ATTORNEY RAMOS' ACTIONS SUBSTANTIALLY VIOLATED PETITIONERS CONSTITUTIONAL RIGHTS OF THE CALIFORNIA AND UNITED STATES, AND REQUIRES REVERSAL OF THE VERDICT AND BAR FROM FURTHER PROSECUTION WITH THIS CASE AND ANY OTHER RELIEF THIS COURTS DEEM JUSTIFIABLE.

GROUND THREE

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

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

THIS TESTING WOULD HAVE DRASTICALLY UNDERMINED THE PROSECUTORS CONTENTION " THAT YABLONSKY WAS THE ONLY SUSPECT". PETITIONERS HAIR WAS BLONDE AT THE TIME THIS CRIME TOOK PLACE AT THE AGE OF THE DEFENDANT 22 YEARS OLD. SINCE THE PROSECUTORS EXPERT WITNESS TESTIFIED THAT THE DNA BELONGING TO THE DEFENDANT WAS AT LEAST 1 1/2 DAYS OLDER THAN THIS CRIME AND LESS THEN SEVEN DAYS OLDER (RT 471;4-11 (2)490;25-491;16).

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

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

55.3  
UNDER THE STRICKLAND TEST WHERE COUNSELS PERFORMANCE FELL BELOW A STANDARD OF REASONABLENESS AND THAT HIS FAILURE RESULTED IN A TEXTBOOK EXAMPLE OF PREJUDICE THAT SO ERRODED HIS CLIENTS DEFENSE AND DISPARGED HIS DUTY TO PROVIDE CONSTITUTIONALLY

AT 11

1 \*\* MANDATED EFFECTIVE REPRESENTATION THROUGHOUT THE ENTIRE  
2 PRE TRIAL INVESTIGATIONS, STRICKLAND V. WASHINGTON 466 US 668,  
3 104 s ct 2052;80 1 ed2d674(1984) WHERE THE FILLED OUT BUT NOT  
4 COMPLETED APPLICATIONS FOR THE TESTING FACILITY PROVE THAT THE  
5 ATTORNEY WAS INCAPABLE TO TAKE THOUGHTS AND TURN THEM INTO ACTION  
6 THAT WOULD RESEMBLE COMPETANCE, PEOPLE V. WILLIAMS (1988)44 cal  
7 3d 883, 937. OR A REASONABLE DEFENSE.

8 UNDER PEOPLE V. POPE(2004) 115 ca 4th 229,237, 8 cr3d 862,  
9 (IAC), THE COURTS GIVE DECIDING COURTS THE AUTHORITY TO RULE  
10 WHILE MY UNDISPUTED EVIDENCE, THAT ATTORNEY FERGUSON FAILED TO  
11 REFUTE ITS VALIDITY OR AUTHENTICITY AS IT APPLIES TO THIS CASE  
12 AND SINCE HE REFUSED TO DISPUTE THE EVIDENCE IN THIS CLAIM HE  
13 CONCEDES THERE ARE NO DISPUTABLE FACTS. UNDER IN RE LEWALLEN  
14 (1979)23 c3d 274,278,,152 cr 528;IN RE LAWLER,SUPRA HE REFUSES TO  
15 DISPUTE THE ACCURACY OF MY EVIDENCES AND DOCUMENTS SUBMITTED  
16 BY PETITIONER, HE THEN THEREBY CONCEDES THAT THERE ARE ~~NO~~ UN-  
17 DISPUTABLE FACTS (CITATION).

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

25 GROUND FOUR

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

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

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

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

235

55.4

AT12

236

1 IT IS BY THE COURTS DECISIONS OF SHIH WEI SU V.  
2 FILLION(CITATION OMITTED) THAT ELABORATE ON THE RULINGS AGAINST  
3 PROSECUTION THROUGH PROSECUTORIAL MISCONDUCT CLAIMS, WHILE IN THE  
4 NAPUE V. ILLINOIS 360 US 264,79 s. ct. 1173, 3 1. ed2d 1217(1959)  
5 SCRUTINIZES THE ILLICITATION OF FALSE TESTIMONY BY THE STATES  
6 PROSECUTION WITNESSES THAT WEIGH ON WHETHER THE DEFENDANTS GUILT  
7 OR INNOCENSE TEETER ON THE TESTIMONIES OF TESTIFYING WITNESSES.

8 MOONEY V. HOLOHAN 294 US 103, 112, s. ct. 1340, 79,  
9 a 1. ed2d 791 ( 1935) DECLARE THAT CONVICTIONS OBTAINED THROUGH  
10 FALSE TESTIMONY THE PROSECUTOR KNOWS TO BE FALSE IS REPUGNANT  
11 TO THE CONSTITUTION.

12 THE SUPREME COURT MAKES READILY CLEAR THAT PREJUDICE IS READILY  
13 SHOWN IN SUCH CASES, AND THE CONVICTION MUST BE SET ASIDE,  
14 WHILE THERE IS NO UNRINGING OF THE BELL. ESPECIALLY WHEN THERE  
15 IS NO "REASONABLE LIKELIHOOD THAT THE FALSE TESTIMONY COULD ~~NEVER~~ HAVE  
16 EFFECTED THE JUDGEMENT OF THE JURY".

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

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

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

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

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

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

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

55:5

AT13



237

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

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GROUND SEVEN

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

I PHONED DAVE SANDERS AT HIS OFFICE AND DISCLOSED THESE DISCREPANCIES TO HIM, "WHAT I KNEW" TO BE MISSING FROM MY INTERROGATION, AREAS THAT SHOWED THAT THEY KNEW THAT MY PINTO WAS BLUE AND THAT I WAS UNDER ARREST BY THE DENIALS OF ALLOWING ME TO TERMINATE THE INTERROGATION, AND THAT I REPEATEDLY OFFERED A NON-CUSTODIAL PLACE TO CONTINUE THE INTERROGATION.

I TOLD THE ATTORNEY THAT THE PHONE CALLS WERE ALSO VERY INACCURATE AND THAT I WAS VERY CONCERNED. THE ATTORNEY TOLD ME THAT THE TRANSCRIPTS WERE ONLY INTERPRETATIONS AND THAT IF THIS CASE WENT TO TRIAL THAT VERBATIM TRANSCRIPTS WOULD BE USED.

IN THE INTERROGATION THERE WAS SEVERAL ARGUEMENTS ABOUT MY INVOLVEMENT AND THAT THERE WAS A MAN NAMED FRANK LEFTWICH THAT I PERSONALLY HAD TAKEN OFF THE PROPERTY TO PROTECT MRS. COBB. THAT ON BOTH OCCAISIONS MR. LEFTWICH WAS EXTREMELY DRUNK AND

THAT I HAD TO FORCE HIM OFF OF THE PROPERTY AND ESCORT HIM TO TOWN, ONCE I'D DRIVEN HIM IN THE BACK OF MY TRUCK AND THE OTHER I FOLLOWED IN MY TRUCK AS HE WALKED, AND AFTER A MILE OR SO I JUST TOOK OFF. THAT ON ONE OCCAISION MRS. COBB HAD ASKED IF I WOULD HELP HER TO STOP HER SON FROM BEATING ON HER, AMONG THE OTHER ARGUEMENTS THAT I HAD WITH THESE DETECTIVES.

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

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

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

55-6

AT 14

238

1 IT IS IN THE FONVILLE COURTS THAT RECORDINGS MUST BE  
2 VERIFIED FOR AUTHENTICITY BEFORE THEY CAN BE ENTERED INTO  
3 EVIDENCE FOR THE TRIAL. PEOPLE V. FONVILLE, 111 cal. rptr.53,  
4 35 cal. app. 3d 693,(cal app 5th 1973): PEOPLE V. GALLEGOS (1977)  
5 4 cal. 3d 242, 249-50, 93 cal rptr 292,481 p.2d 237. ( UNDOUBT  
6 ABLY THE USUSAL WAY OF LAYING A FOUNDATION FOR THE PLAYING OF  
7 A RECORDING IS TO CALL ONE OF THE PARTICIPANTS OR A MONITOR  
8 TO TESTIFY THE CONVERSATION WAS ACCURATELY RECORDED AND TRANS  
9 CRIBED): PEOPLE V. FINCH (1963)216 cal app2d 444,452-454,  
10 30 cal rptr 901,cert. den. 379 US 871 s.ct. 16,13 1 ed.2d 77).

11 EVIDENCE CODE §403(a)(3)(4) ( THE PROPONENT OF THE PROFFERED  
12 EVIDENCE HAS THE BURDEN OF PRODUCING EVIDENCE AS TO THE EXISTANCE  
13 OF THE PRELIMINARY FACT, WHEN ~~XXXXXXXXXX~~, AND PROFFERED  
14 EVIDENCE IS INADMISSABLE UNLESS THE COURT FINDS THAT THERE  
15 IS EVIDENCE TO SUSTAIN A SUFFICIENT FINDING OF THE EXISTANCE OF  
16 THE PRELIMINARY FACT, WHEN THE PRELIMINARY FACT IS THE AUTHEN  
17 TICITY OF A WRITING: OR THE PROFFERED EVIDENCE IS OF A STATEMENT  
18 OR OTHER CONDUCT OF A PARTICULAR PERSON, AND THE PRELIMINARY  
19 IS WHETHER THAT PERSON MADE THE STATEMENT OR SO CONDUCTED IT  
20 HIMSELF).

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

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

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

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

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

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

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

motion to rule 7

55-7

AT 15

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GROUND NINE

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

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

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

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

UNDER PEOPLE V. POPE (CITATION OMITTED) THIS ACT CAN BEST BE ADDRESSED IN THE HABEAS COURT SINCE THE EVIDENCE OF THIS FAILURE WAS NOT MADE AVAILABLE UNTIL AFTER THE TRIAL. BY IN RE LAWLEY (CITATION OMITTED) : IN RE BELL (CITATION OMITTED): IN RE KEEK HARDY (CITATION OMITTED) THAT PETITIONER IS ASSERTING ACTUAL INNOCENSE, AND THE NEWLY DISCOVERED EVIDENCE MADE AVAILABLE AFTER THE TRIAL ASSERTS THIS COURTS OBLIGATION WITH REGARDS TO THIS CLAIM OF INNEFFECTIVE ASSISTANCE OF COUNSEL. UNDER THE STRICKLAND TEST, COUNSELS FAILURE TO OBJECT TO ANY OF THE FIVE LYING WITNESSES FELL FAR BELOW THE REASONABLE EXPECTATION OF AN ATTORNEY'S COURT ROOM BEHAVIOR OR PROCEEDURE, AND THE SECOND PORTION OF THE TEST OF THE TWO PHASE PRONGS SHOWS, THAT THE OBJECTION TO STATES LYING WITNESSES WOULD HAVE PROVED THAT THE DISTRICT ATTORNEY DID INVESTIGATE THE HELEN BROOKS CASE. THAT THE OBJECTION TO BRUCE NASH, AND JOHN SULLIVAN WOULD HAVE PROVED THAT THE VICTIM WAS HEADED TO THE ZODIAC BAR, WHERE SHE HAD MET UP WITH GREGORY RANDOLPH, AND THAT IS WHEN HE TOOK HER HOME AND KILLED HER AND MUTILATED HER BODY. THE OBJECTION WOULD HAVE PROVEN THAT THERE WAS IN FACT A FINGERPRINT REPORT THAT WAS GENERATED FROM THIS CRIME SCENE AND THE RESULTS FROM THAT REPORT WOULD HAVE PROVEN PROBATIVE ELEMENTS THAT WOULD HAVE SUPPORTED THIRD PARTY CULPABILITY ISSUES WHEN THE DISTRICT ATTORNEY'S LEAD INVESTIGATOR HID THE REPORT WHEN HE WAS ASKED AND HE DECIDED TO LIE AND SAY THERE WAS NO SUCH REPORT, WHY WOULDN'T IT SUPPORT CULPABILITY ISSUES SINCE THE PERSON HIMSELF STATED THAT HE WAS INVITED TO THE VICTIMS HOME AFTER THE PARTY, BUT HE DID NOT GO?

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

motion to rule 8

558  
AT 16

240

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

~~petitioner asks the court to grant this~~

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

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

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

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

RESPECTFULLY:

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55.9

MOTION TO RULE 9

AT 17

# EXHIBIT COVER PAGE



EXHIBIT

Description of this exhibit:

Number of Pages to this exhibit: \_\_\_\_\_ Pages.

**JURISDICTION:** (Check One Only)

- MUNICIPAL COURT
- SUPERIOR COURT
- APPELLATE COURT
- STATE SUPREME COURT
- UNITED STATES DISTRICT COURT
- STATE CIRCUIT COURT
- UNITED STATES SUPREME COURT
- GRAND JURY

3147

FILED  
SUPERIOR COURT  
COUNTY OF SAN BERNARDINO

JUN 12 2013

BY *Jerry L. Simpson*  
JERRY L. SIMPSON, DEPUTY

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF SAN BERNARDINO

3  
4 In re the Petition of  
5 JOHN H. YABLONSKY,  
6 Petitioner,  
7 for Writ of Habeas Corpus.

Case no. WHCSS 1200311

ORDER DECLINING TO STAY  
PETITION AND EXTENDING TIME  
LIMITATIONS BY WHICH TO ISSUE  
RULING

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

DENIAL OF  
EXPANSION  
OF  
RECORD

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

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



*Kyle Brodie*

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24 Dated: June 12, 2013

Judge Kyle Brodie

AT 10

# EXHIBIT COVER PAGE

57

EXHIBIT

Description of this exhibit:

Number of Pages to this exhibit: \_\_\_\_\_ Pages.

**JURISDICTION:** (Check One Only)

- MUNICIPAL COURT
- SUPERIOR COURT
- APPELLATE COURT
- STATE SUPREME COURT
- UNITED STATES DISTRICT COURT
- STATE CIRCUIT COURT
- UNITED STATES SUPREME COURT
- GRAND JURY

JUL 12 2013

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 IN AND FOR THE COUNTY OF SAN BERNARDINO  
3  
4

BY *Sherril L. Simpson*  
SHERRI L. SIMPSON, DEPUTY

5 In re the Petition of  
6 JOHN H. YABLONSKY,  
7 Petitioner,  
8 for Writ of Habeas Corpus.

Case no. WHCSS 1200311  
ORDER DENYING PETITION FOR  
WRIT OF HABEAS CORPUS

9  
10 Following a jury trial, petitioner was convicted of first degree murder, and a  
11 special circumstance that the murder occurred during the course of a rape was found to  
12 be true. Petitioner was sentenced to life in prison without the possibility of parole. He  
13 filed a notice of appeal, and is represented by counsel in an appeal currently pending  
14 before Division Two of the Fourth Appellate District of the California Court of Appeal, in  
15 case number E055840. The Court takes judicial notice of the court of appeal's minutes  
16 from that case, as well as the contents of the superior court file from petitioner's  
17 underlying trial. (Evid. Code, § 452, subd. (d).) As of the date of this order, petitioner's  
18 appeal has been fully briefed and is awaiting a calendar date for oral argument.

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

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

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AT 19



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

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

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

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

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AT 20

1 and any amended or supplemental petition for which leave to file has been  
2 granted. [1] The court determines on the basis of the allegations of the  
3 original petition and the amended or supplemental petition, if any, as well  
4 as the supporting documentary evidence and/or affidavits, which should  
5 be attached if available, whether a prima facie case entitling the petitioner  
6 to relief if the allegations are proven has been stated.

7 (*In re Clark* (1993) 5 Cal.4th 750, 781, fn. 16, emphasis added.) The Court will consider,  
8 as an amendment to the petition, the exhibits which petitioner attached to his pleading  
9 of August 9, 2012.<sup>1</sup> Any arguments raised in other pleadings are not deemed to have  
10 raised new claims for relief. 2

11 Respondent has set forth a detailed factual summary of the evidence against  
12 petitioner in its informal response. Petitioner has not disputed it, as such, in his reply.  
13 He does disagree with many of respondent's positions and conclusions, but he does not  
14 dispute<sup>2</sup> the core of the evidence against him. 3

15 As a general rule, the pendency of an appeal precludes a lower court from taking  
16 any action which would interfere with the judgment under review. (*In re Carpenter*  
17

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

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

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HT 21

1 (1995) 9 Cal.4th 634, 645-646; *People v. Mayfield* (1993) 5 Cal.4th 220, 224-225.)

2 However, despite that general rule, claims which do not rely on the appellate record and  
3 claims of ineffective assistance of counsel may be raised in a habeas corpus petition  
4 despite the fact that petitioner's appeal is currently pending. (*In re Carpenter, supra*, 9  
5 Cal.4th at p. 646.)

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

9 Claim One

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

16 Claim Two

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

22 Respondent alleges, and the excerpts of the interview transcript supplied by  
23 petitioner confirm, that petitioner admitted possessing a "dark blue" Pinto. Presumably,  
24 any variance regarding the color of the Pinto was fully presented to the jury, and, more  
to the point, there is nothing to suggest any evidence was altered by the prosecution.

26 Petitioner bears a "heavy burden" to "plead sufficient grounds for relief[.]" (*People v.*

57.4

AT 22

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

5 **Claim Three**

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

15 In order to establish he is entitled to habeas corpus relief, petitioner must  
16 demonstrate that his counsel's performance was deficient, and that the deficient  
17 performance prejudiced him. (*Strickland v. Washington* (1984) 466 U.S. 668, 687.)  
18 Where a habeas petitioner alleges that counsel was ineffective in the investigation or  
19 presentation of evidence, he must demonstrate how the trial would have been different  
20 had the lawyer undertaken further investigation. (See *In re Hardy* (2007) 41 Cal.4th  
21 977, 1025.) If an ineffective assistance of counsel claim can be resolved solely on the  
22 basis of a lack of prejudice, then there is no need to separately determine whether  
23 counsel's performance was deficient. (*Strickland v. Washington, supra*, 466 U.S. at p.  
24 697.)

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

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AT 23

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

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

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

#### 15 Claim Four

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

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

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

57.6  
AT24

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

8 Petitioner’s claim fails because he has not shown that any of the evidence  
9 introduced was false. Respondent concedes that there were some inconsistencies  
10 regarding what certain witnesses remembered, such as Bruce Nash’s and John Sullivan’s  
11 recollection of who the victim had been with and her movements the night September  
12 20, 1985. Inconsistent evidence, however, is not synonymous with false evidence, even if  
13 the inconsistencies diminish a witness’s credibility. (*In re Roberts* (2003) 29 Cal.4th  
14 726, 742-743.) Petitioner’s assessment of the impact of those inconsistencies does not  
15 demonstrate that false evidence was used at trial.

16 Claim Five

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

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

57-7  
A 25

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

8 Claim Six

9 Petitioner's sixth claim is that the evidence introduced at trial was insufficient to  
10 prove his guilt. That claim is not cognizable in a habeas corpus petition. (*In re Lindley*  
11 (1947) 29 Cal.2d 709, 723.)

12 Claim Seven

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

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AT 26

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

3 Claim Eight

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

8 Claim Nine

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

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

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

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AT 27



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

9 Claim Ten

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

15 Claim Eleven

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

21 Claim Twelve

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

57-10  
AT 28

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CONCLUSION

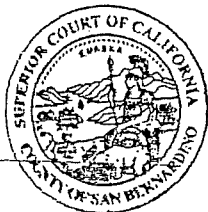
Petitioner's crime was committed roughly twenty-five years before his trial. That gap in time appears to have led to some gaps in the recollection of some witnesses. There is nothing remarkable about that fact, nor does it demonstrate that any of those witnesses lied, or that their testimony was inherently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

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

Dated: July 12, 2013

*Kyle Brodie*

\_\_\_\_\_  
Judge Kyle Brodie



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# EXHIBIT COVER PAGE



Description of this exhibit:

Number of Pages to this exhibit: \_\_\_\_\_ Pages.

**JURISDICTION:** (Check One Only)

- MUNICIPAL COURT
- SUPERIOR COURT
- APPELATE COURT
- STATE SUPREME COURT
- UNITED STATES DISTRICT COURT
- STATE CIRCUIT COURT
- UNITED STATES SUPREME COURT
- GRAND JURY

Name: John Henry Yablonsky AL-0373

Address: Box 8500

Coalinga, Ca. 93210

MC-275

SUPREME COURT  
**FILED**

MAY 1 2014

CDC or ID Number: AL-0373

Frank A. McGuire Clerk

SUPREME COURT OF THE STATE OF California Deputy

HABEAS CORPUS DIVISION

(Court)

<u>John Henry Yablonsky</u>	
Petitioner	vs.
<u>S. Fraueheim (Warden)</u>	
Respondent	CDCR Superintendant

PETITION FOR WRIT OF HABEAS CORPUS

No.

9218253  
(To be supplied by the Clerk of the Court)

INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.

- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the superior court, you only need to file the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal and you are an attorney, file the original and 4 copies of the petition and, if separately bound, 1 set of any supporting documents (unless the court orders otherwise by local rule or in a specific case). If you are filing this petition in the Court of Appeal and you are *not* represented by an attorney, file the original and one set of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and 10 copies of the petition and, if separately bound, an original and 2 copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court (as amended effective January 1, 2007). Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

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MAY - 1 2014

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# EXHIBIT COVER PAGE

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EXHIBIT

Description if this exhibit:

Number of Pages to this exhibit: \_\_\_\_\_ Pages.

**JURISDICTION:** (Check One Only)

- MUNICIPAL COURT
- SUPERIOR COURT
- APPELATE COURT
- STATE SUPREME COURT
- UNITED STATES DISTRICT COURT
- STATE CIRCUIT COURT
- UNITED STATES SUPREME COURT
- GRAND JURY

DD4 THOMAS  
CLOSING

648

1 I was waiting for him to pick somebody in the  
2 audience or pick Detective Alexander. Maybe  
3 Detective Alexander did it. Those are all just  
4 possibilities, ladies and gentlemen. They're all  
5 figments of Mr. Sanders' imagination. That's what they  
6 are. He's coming up with all these possibilities hoping  
7 that you as a jury will listen to one of his  
8 possibilities and ignore the evidence and ignore where  
9 the evidence points. The evidence points over there to  
10 Mr. Yablonsky.

11 At one point ~~he was talking about calling all~~  
12 ~~the witnesses; that we have an obligation to call all~~  
13 ~~the witnesses. Then this morning he was talking about~~  
14 ~~Diane Flagg... Why did the prosecution call her? Did you~~  
15 ~~hear me during closing arguments this morning talk about~~  
16 ~~Diane Flagg in any connection between the Pinto that she~~  
17 ~~saw and the Pinto of Mr. Yablonsky? No. Because there~~  
18 ~~was none.~~

19 Mr. Sanders talked about what could have been  
20 ~~done~~ what could the police have done back then? They  
21 could have done this. They could have done that,  
22 playing Monday-morning quarterback 25 years later.  
23 They're saying, they could have done this. They could  
24 have collected this evidence. What would that have  
25 proved? Nothing.

26 Let's say we did collect -- there was evidence  
27 that there were fingerprints, and you didn't hear any  
28 evidence, but let's say there was evidence that

1 fingerprints were collected, and it came back to  
2 Mr. Yablonsky. What would his excuse be? Of course  
3 Mr. Yablonsky was in the house at some point, but that  
4 fingerprint, that wouldn't tell us that he was in there  
5 that Friday night or Saturday morning. He'd have  
6 another excuse, just like the consensual sex. He has an  
7 excuse.

8 He wants you to speculate as to why  
9 Mr. Yablonsky didn't tell the detectives about the sex.  
10 Could have been his memory was failing. Look through  
11 that transcript. You'll see he remembers Rita Cobb had  
12 a dog. There was a question, and I think it was on  
13 Page 94 -- Page 94, Line 19, Detective Alexander asked,  
14 who else did you date back then? He responds Dana,  
15 Brittney, Julie, Lori, a couple more. He remembers.

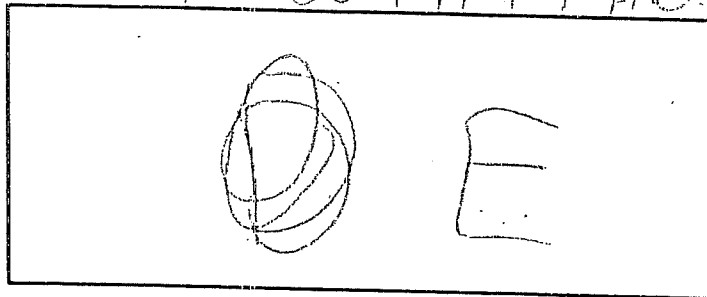
16 For Mr. Sanders to get up here and say his  
17 memory is faulty in some ways, that's not true. He has  
18 a great memory. He remembered the dog. For him to say,  
19 oh, he didn't remember something like sexual intercourse  
20 with a person who was found dead later on apparently  
21 according to his father, and his father told him days  
22 later that Rita Cobb was dead, but he couldn't remember  
23 having sex with this woman.

24 Put yourself in that situation. If you had  
25 consensual sex with Rita Cobb, and you were asked by  
26 detectives -- you knew that Rita Cobb was murdered  
27 afterward, and you were asked by detectives, you would  
28 be honest. You would say, look, I did have sex with

# EXHIBIT

## COVER PAGE

16 55441 (4 PAGES)



ALEXANDER

FINGER PRINT



DET. ALEXANDER

517

1 Q He did that for, I think it was three or four  
2 questions that were posed to him?

3 A There were many questions that he did that to,  
4 but those particular ones, yes.

5 MR. THOMAS: Nothing further at this point.

6 THE COURT: Mr. Sanders.

7 CROSS-EXAMINATION

8 BY MR. SANDERS:

9 Q Detective Alexander, you were familiar with the  
10 entire investigation that had been done up to 2009 when  
11 you spoke to my client; correct?

12 A Yes.

13 Q All of the reports that had ever been generated  
14 in this case were in your possession?

15 A All of the reports that I knew about were in my  
16 possession, yes.

17 Q Did you later find out there was others you  
18 didn't know about?

19 A No.

20 Q So when you spoke to my client, for example, I  
21 don't remember if it was you or your partner that day  
22 that was using the fingerprint example.

23 Was that you or your partner?

24 A That was probably me.

25 Q Okay. And you were making a point to my client  
26 in the room about if you wipe a table clean and you put  
27 your fingerprint on it, it's there; correct?

28 A That's correct.

593

1 Q And your point was that if someone examined  
2 that table down at the Signal Hill Police Station, they  
3 would know Mr. Yablonsky had been there because of his  
4 fingerprint?

5 A Yes.

6 Q Just to be clear, you knew that there was no  
7 evidence that my client's fingerprint was at Rita Cobb's  
8 house?

9 A That's correct.

10 Q In fact, you already knew whose fingerprints  
11 were at Rita Cobb's house?

12 A I'm not sure if there were any fingerprints  
13 developed.

14 Q You didn't read the fingerprint reports?

15 A I probably did, but I don't remember all the  
16 names.

17 Q Do you remember one of the glasses in the  
18 kitchen had a fingerprint on it?

19 A Yes.

20 MR. THOMAS: Objection. Calls for hearsay.

21 THE COURT: Sustained.

22 BY MR. SANDERS:

23 Q And you were aware of all of the blood-typing  
24 matches that had been done?

25 MR. THOMAS: Objection. Calls for hearsay.

26 MR. SANDERS: I'm not asking him for a  
27 result.

28 MR. THOMAS: Then I object on relevance.

San Bernardino Sheriff's Department  
Identification/Latent Print Section

88 SEP 25 PM 3:51

Case Number: 1331036-07

Agency: VICTORVILLE  
Result Date: 08-09-88  
Agent:  
Victim: COBB, RITA  
Offense: PC 187  
Suspect: MALLAN, LLOYD J. 10/26/43  
Assigned: CORNS

08/09/88 Assigned L. G. Corns

At the request of case agents McPhail and Palacios, this case was reviewed and the results are listed below:

There are twenty-nine photographs of latent prints. Twenty-eight are not suitable for comparison. one is a palm latent and is not computer quality. This latent was compared to the submitted palm prints of the below listed subjects with negative results.

There are fourteen latent lifts. The results are listed below:

<u>PERSONS COMPARED</u>	<u>ROLLED BY</u>	<u>DATE</u>	<u>DOB</u>
1. COBB, Rita	Moody (SBSD)	Victim	N/A
2. SAUNDERS, Joe	Baty (SBSD)	09/24/85	N/A
3. MALLAN, Lloyd	N/A	03/15/83	10/26/43
4. SIMBACH, Richard D.	Bellnap(SBSD)	09/25/85	N/A
5. GAY, Howard A.	Hawaii PD	05/09/86	01/01/43
6. BACKHOFF, William R.	Rercaff	09/26/85	N/A

<u>BOOKING #</u>	<u>CAL-ID #</u>	<u>PALMS</u>
1. N/A	N/A	N/A
2. N/A	N/A	N/A
3. N/A	N/A	N/A
4. 722173	N/A	YES
5. N/A	N/A	YES
6. N/A	36147584	N/A

LATENT #1: This latent was lifted by Deputy Moody on 09/23/85, from "Tall, clear drinking glass, left side of counter kitchen". This latent was compared to the #1 or right thumb of victim COBB and was a positive comparison.

LATENT #2&3: These latents were not suitable for comparison.

LATENT #4: This latent was lifted by Deputy Moody on

09/23/85, from "Tall drinking glass, clear, left side of counter top"; This latent was compared to the #1 or right thumb of victim COBB and was a positive comparison.

LATENT #5: This latent was lifted by Deputy Moody on 09/23/85, from "Red flowered drinking glass, left side of counter top, kitchen". This latent contained three images marked A, B, & C.

IMAGE A: This image was compared to the #2 or right index finger of victim COBB and was a positive comparison.

IMAGE B: This image was compared to the #8 or the left middle finger of subject SAUNDERS and was a positive comparison.

IMAGE C: This image does not contain enough minute ridge characteristics in order to make an identification.

LATENT #6: This latent was lifted by Deputy Moody on 09/23/85, from "Red flowered drinking glass, left side of counter top, kitchen". This latent contained three images marked A, B, & C.

IMAGE A: This image was compared to the #6 or left thumb of subject SAUNDERS and was a positive comparison.

IMAGE B&C: These images do not contain enough minute ridge characteristics in order to make an identification.

LATENTS 7-13: These latents were lifted by Deputy Moody on 09/23/85 and (glasses) on 09/27/85. These latents do not contain enough minute ridge characteristics in order to make an identification.

LATENT #14: This latent was lifted by Deputy Moody on 09/23/85, from "Red flowered drinking glass, left side counter top, kitchen". This latent was compared to the #7 or left index finger of subject SAUNDERS, Joe, and was a positive comparison.

All comparisons were checked and verified by Forensic Specialist R. Luna. Evidence retained in Identification/Latent section files.

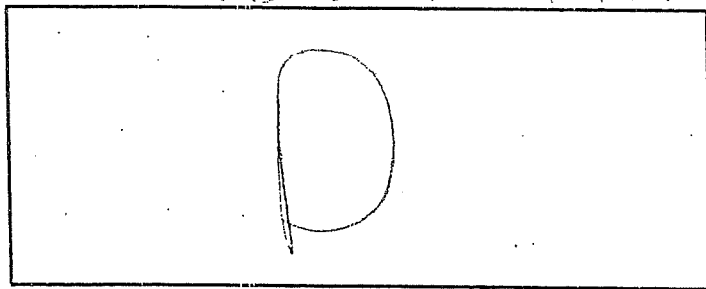
LGC/kc

133

# EXHIBIT

## COVER PAGE

16 554411 (106)



THOMAS ABOUT

PIN

59-7

1 it's on the floor shows there had been a struggle; that  
2 she was fighting.

3 What about the watchband pin? That's important  
4 because look where it is. It's above her right side.  
5 It's like if somebody were to hold their hand -- if a  
6 male were to hold their hand, and she was struggling,  
7 she might have gotten the watch pin out. It was the  
8 defendant's watch pin. You heard the testimony, that  
9 watchband pin does not match the watchband pin that Rita  
10 had.

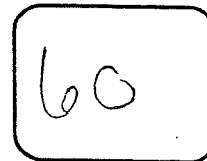
11 Look at the size. I would argue it's a male's  
12 watchband pin. That would show additional signs of a  
13 struggle and show additional signs that she was, in  
14 fact, raped and this was nonconsensual.

15 If you conclude the motive in this case was  
16 rape, then everything points to this person seated right  
17 here at the counsel table, Mr. Yablonsky, as the person  
18 who committed that rape.

19 DNA evidence showed that only the defendant had  
20 sex with Rita. There's no other evidence showing that  
21 anybody else had sex with Rita other than the defendant.  
22 If you conclude that the motive in this case was rape  
23 and that Rita Cobb was raped, then the only person the  
24 evidence points to is Mr. Yablonsky. That's it. Nobody  
25 else.

26 Then if you look at all of the DNA evidence,  
27 Item A dash 11 and Items A dash 18a and A dash 18b, they  
28 all match the defendant's DNA that was taken in Item J 59-8

# EXHIBIT COVER PAGE



EXHIBIT

Description of this exhibit:

Number of Pages to this exhibit: \_\_\_\_\_ Pages.

**JURISDICTION:** (Check One Only)

- MUNICIPAL COURT
- SUPERIOR COURT
- APPELLATE COURT
- STATE SUPREME COURT
- UNITED STATES DISTRICT COURT
- STATE CIRCUIT COURT
- UNITED STATES SUPREME COURT
- GRAND JURY

1 terms of who could touch it, the handle of a tooth  
2 brush, maybe a particular individual touches that and  
3 nobody else uses the tooth brush. That has a greater  
4 potential for showing a single source of DNA that would  
5 have come from the touching on the hands that was  
6 transferred to the tooth brush.

7 Q What you're saying is you can collect it, but  
8 it's often compromised? It's often --

9 A It is what I would call a true forensic sample  
10 in that you don't know what you're going to get and a  
11 lot of times you're going to get stuff that's not going  
12 to mean anything or not be helpful to you.

13 Q You can collect DNA from hair?

14 A Yes, sir.

15 Q You collect it from skin cells?

16 A Yes, sir.

17 Q You can collect it from sweat?

18 A I have done tests on items that pretty much it  
19 was in the sweaty area, and I have gotten good results,  
20 yes, sir.

21 Q All right. So when you went to the scene then,  
22 I think you said you have a protocol of when you enter  
23 the front to which way you go and what you do; is that  
24 correct?

25 A I don't know that I said that. I said that the  
26 way we processed that particular scene, we had a way of  
27 entering the primary bedroom. That was a decision we  
28 made at the time based upon the information we had about



1 the investigation.

2 Q So there was a decision made not to process  
3 other rooms in the house that same way because of the  
4 situation you found yourself in?

5 A Yes, sir. It was felt that our greatest  
6 probability of finding something that might be related  
7 to the perpetrator of the crime would be in this  
8 bedroom. The evidence seemed to point that everything  
9 happened in that room and, therefore, we should  
10 concentrate our efforts on that.

11 Q Let me ask you a question about that. Was  
12 there any thought in your mind that perhaps something  
13 had happened outside this bedroom causing blood spatter  
14 in the hallway?

15 A Well, the actual patterns that were in the  
16 hallway aren't what I would call blood spatter. They're  
17 probably more transfer. They were on some object and  
18 were transferred to the wall or the doorjamb. There was  
19 no other evidence outside in the hallway of any sort of  
20 blood stain patterns, whether impact or cast off or  
21 anything, other than these two what appear to be  
22 transfer spots.

23 There were other items in the house that we did  
24 collect for potential forensic biology examination.  
25 Those are the cigarette butts that were present in  
26 various ashtrays, but I think in terms of the rest of  
27 the house, that was almost the extent of what we  
28 collected.

DARYL  
TOLSON  
AND  
ELECT

60-3

LONG

1 Q What about the car that was out in the carport  
2 or the garage, did you process the car to look for  
3 evidence?

4 A No, sir.

5 Q Whose decision was that?

6 A That, I don't know. In general, speaking again  
7 by procedure, if the vehicle had been requested for  
8 processing, it would have been done at the crime  
9 laboratory.

10 Q You indicated when you went into the bedroom,  
11 the first thing you did was performed a vacuuming  
12 operation?

13 A Yes, sir.

14 Q And was that done by yourself?

15 A Both by myself and by my partner,  
16 Dave Stockwell.

17 Q Okay. And what, if anything, did you find when  
18 you examined the results of the vacuuming?

19 A I did not examine them. Dave Stockwell did,  
20 and he has a number of notes that he made with regard to  
21 hair and fibers that he pulled from -- from different  
22 parts, whether it be the vacuum sweeping or from  
23 articles of clothing, so when they were collected and  
24 there, but I did not do that examination.

25 Q All right. One of the things that you did was  
26 not only did you vacuum the floor, but you vacuumed the  
27 clothing?

28 A Actually, the clothing would have been examined

604

1 back at the laboratory, open it up and do any sort of  
2 collection --

3 Q And shake it out?

4 A -- or processing looking for stains and so  
5 forth. The vacuuming was on the areas of carpet around  
6 the bed and then the surface of the bed itself.

7 Q And I'm assuming you have some kind of a  
8 special vacuum cleaner that you --

9 A Yes, sir, we do. It looks like a regular  
10 vacuum. The one we used at the time was  
11 over-the-shoulder-type vacuum. It had a hose. Then at  
12 the hose end, there was a special trap. It was a round  
13 filter thing that you could unscrew, place a filter over  
14 a screen, screw it back on, and then go through your  
15 vacuuming. All the air would pass through and the  
16 filter would trap any hairs, fibers, debris, trace  
17 evidence and so forth onto the filter.

18 The filter would be taken out, placed in -- I  
19 could check my notes. I believe we had Ziploc bags, we  
20 placed the filters into. The trap would then be wiped  
21 out in terms of any residual dust, put another filter  
22 back into this cartridge and go on to the next section.

23 Q So you use a filter for the rug and then  
24 switched and used a different one for the bed?

25 A Yes, sir. I think there were two or three  
26 areas of the carpet that we did independently. We would  
27 have used a separate filter for each of those and then  
28 also a separate filter for the bed.

601-5

1 Q I'm assuming on the bed you did find hair  
2 samples and fibers?

3 A Honestly, I don't know. I did not physically  
4 examine the vacuum sweepings. We collect them because  
5 you only got one shot. If someone wants to look at them  
6 at a later time, I believe Mr. Stockwell may have done  
7 that, then at least we have them. In terms of what the  
8 sweepings contained, I couldn't tell you.

9 Q What about the -- when you approach the body, I  
10 believe you said you took some tapings; is that correct?  
11 How do you refer to that?

12 A Tape lifts.

13 Q Tape lifts.

14 A Yes, sir. My notes indicate that we took tape  
15 lifts of various sections of the body. The idea is that  
16 whatever occurred would be the most resent thing;  
17 therefore, any potential evidence would be on the top or  
18 the surface.

19 Q And in conjunction with that, you combed  
20 through the victim's hair; is that correct?

21 A I don't remember doing that at the scene, and I  
22 haven't seen any notes to indicate that we did comb  
23 through the hair. That may have been done at the  
24 autopsy, but I really can't tell you one way or the  
5 other.

Q My understanding is sometimes when there's even  
a suspicion that there was some type of sexual activity,  
they'll take a combing of pubic hair to see if there's *bob*

JNES

297

1 any foreign hair?

2 A That is a common collection technique that is  
3 used in sexual assault cases, yes, sir.

4 Q You do not know if that was done in this case?

5 A That's correct. I do not know.

6 Q Did you do any testing to the watch pin that  
7 was found close to the victim's head?

8 A No, sir.

9 Q Was that ever examined to see if it had any  
10 touch DNA?

11 A To have DNA, no, sir. I don't know if anybody  
12 has looked at it again. I did not, and, honestly, if  
13 someone requested we do touch DNA on it, I would find a  
14 way to convince them that we weren't going to do it.

15 Q Did you examine the victim's fingernails or any  
16 scraping from under her fingernails?

17 A I can check the autopsy notes that I have.

18 Q Thank you.

19 A In the notes that I have right here, a couple  
20 of things. One is, with regard to fingernail scrapings,  
21 no, sir. I don't have an indication of fingernail  
22 scrapings.

23 Earlier you asked me with regard to pubic  
24 combings. Pubic combings were done as part of a sex kit  
5 that was collected at autopsy prior to me arriving  
there. I received the sex offense kit from one of the  
detectives that was attending the autopsy,  
Detective Larry Brown, but there was an item called

60-7

# EXHIBIT COVER PAGE

61  
EXHIBIT

Description if this exhibit:

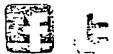
Number of Pages to this exhibit: \_\_\_\_\_ Pages.

**JURISDICTION:** (Check One Only)

- MUNICIPAL COURT
- SUPERIOR COURT
- APPELATE COURT
- STATE SUPREME COURT
- UNITED STATES DISCTRICT COURT
- STATE CIRCUIT COURT
- UNITED STATES SUPREME COURT
- GRAND JURY

AB-1909 Falsifying evidence. (2015-2016)

SHARE THIS:



## Assembly Bill No. 1909

## CHAPTER 879

An act to amend Section 141 of the Penal Code, relating to crimes.

[ Approved by Governor September 30, 2016. Filed with Secretary of State  
September 30, 2016. ]

## LEGISLATIVE COUNSEL'S DIGEST

AB 1909; Lopez; Falsifying evidence:

Existing law makes it a misdemeanor for a person, or a felony for a peace officer, to knowingly, willfully, intentionally, and wrongfully alter, modify, plant, place, manufacture, conceal, or move any physical matter, digital image, or video recording, with the specific intent that the action will result in a person being charged with a crime.

This bill would make it a felony punishable by imprisonment for 16 months or 2 or 3 years for a prosecuting attorney to intentionally and in bad faith alter, modify, or withhold any physical matter, digital image, video recording, or relevant exculpatory material or information, knowing that it is relevant and material to the outcome of the case, with the specific intent that the physical matter, digital image, video recording, or relevant exculpatory material or information will be concealed or destroyed, or fraudulently represented as the original evidence upon a trial, proceeding, or inquiry.

By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 141 of the Penal Code is amended to read:

141. (a) Except as provided in subdivisions (b) and (c), a person who knowingly, willfully, intentionally, and wrongfully alters, modifies, plants, places, manufactures, conceals, or moves any physical matter, digital image, or video recording, with specific intent that the action will result in a person being charged with a crime or with the specific intent that the physical matter will be wrongfully produced as genuine or true upon a trial, proceeding, or inquiry, is guilty of a misdemeanor.

61-1

the action will result in a person being charged with a crime or with the specific intent that the physical matter, digital image, or video recording will be concealed or destroyed, or fraudulently represented as the original evidence upon a trial, proceeding, or inquiry, is guilty of a felony punishable by two, three, or five years in the state prison.

(c) A prosecuting attorney who intentionally and in bad faith alters, modifies, or withholds any physical matter, digital image, video recording, or relevant exculpatory material or information, knowing that it is relevant and material to the outcome of the case, with the specific intent that the physical matter, digital image, video recording, or relevant exculpatory material or information will be concealed or destroyed, or fraudulently represented as the original evidence upon a trial, proceeding, or inquiry, is guilty of a felony punishable by imprisonment pursuant to subdivision (h) of Section 1170 for 16 months, or two or three years.

(d) This section does not preclude prosecution under both this section and any other law.

**SEC. 2.** No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

61-2





SB-1134 Habeas corpus: new evidence: motion to vacate judgment: indemnity. (2015-2016)

SHARE THIS:

Senate Bill No. 1134

CHAPTER 785

An act to amend Sections 1473, 1485.5, and 1485.55 of the Penal Code, relating to habeas corpus.

[ Approved by Governor September 28, 2016. Filed with Secretary of State September 28, 2016. ]

LEGISLATIVE COUNSEL'S DIGEST

SB 1134, Leno. Habeas corpus: new evidence: motion to vacate judgment: indemnity.

Existing law allows every person who is unlawfully imprisoned or restrained of his or her liberty to prosecute a writ of habeas corpus to inquire into the cause of his or her imprisonment or restraint. Existing law allows a writ of habeas corpus to be prosecuted for, but not limited to, false evidence that is substantially material or probative to the issue of guilt or punishment that was introduced at trial and false physical evidence which was a material factor directly related to the plea of guilty of the person.

This bill would additionally allow a writ of habeas corpus to be prosecuted on the basis of new evidence that is credible, material, presented without substantial delay, and of such decisive force and value that it would have more likely than not changed the outcome at trial.

Existing law requires the California Victim Compensation Board to recommend an appropriation be made by the Legislature for the purpose of indemnifying a person if the evidence shows that a crime with which the person was charged was either not committed at all, or, if committed, was not committed by that person. Existing law requires that the appropriation recommended shall be a sum equivalent to \$140 per day of incarceration served. If a court grants a writ of habeas corpus or vacates a judgment on the basis of new evidence and finds that the new evidence points unerringly to innocence, existing law requires the board to recommend an appropriation to the Legislature pursuant to these provisions without a hearing.

This bill would require the board, without a hearing, to recommend an appropriation to the Legislature if the court finds that the person is factually innocent. The bill would make additional clarifying and technical changes.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

613

SECTION 1. Section 1473 of the Penal Code is amended to read:

1473. (a) A person unlawfully imprisoned or restrained of his or her liberty, under any pretense, may prosecute a writ of habeas corpus to inquire into the cause of his or her imprisonment or restraint.

(2) False physical evidence, believed by a person to be factual, probative, or material on the issue of guilt, which was known by the person at the time of entering a plea of guilty, which was a material factor directly related to the plea of guilty by the person.

(3) (A) New evidence exists that is credible, material, presented without substantial delay, and of such decisive force and value that it would have more likely than not changed the outcome at trial.

(B) For purposes of this section, "new evidence" means evidence that has been discovered after trial, that could not have been discovered prior to trial by the exercise of due diligence, and is admissible and not merely cumulative, corroborative, collateral, or impeaching.

(c) Any allegation that the prosecution knew or should have known of the false nature of the evidence referred to in paragraphs (1) and (2) of subdivision (b) is immaterial to the prosecution of a writ of habeas corpus brought pursuant to paragraph (1) or (2) of subdivision (b).

(d) This section does not limit the grounds for which a writ of habeas corpus may be prosecuted or preclude the use of any other remedies.

(e) (1) For purposes of this section, "false evidence" includes opinions of experts that have either been repudiated by the expert who originally provided the opinion at a hearing or trial or that have been undermined by later scientific research or technological advances.

(2) This section does not create additional liabilities, beyond those already recognized, for an expert who repudiates his or her original opinion provided at a hearing or trial or whose opinion has been undermined by later scientific research or technological advancements.

**SEC. 2.** Section 1485.5 of the Penal Code is amended to read:

1485.5. (a) If the district attorney or Attorney General stipulates to or does not contest the factual allegations underlying one or more of the grounds for granting a writ of habeas corpus or a motion to vacate a judgment, the facts underlying the basis for the court's ruling or order shall be binding on the Attorney General, the factfinder, and the California Victim Compensation Board.

(b) The district attorney shall provide notice to the Attorney General prior to entering into a stipulation of facts that will be the basis for the granting of a writ of habeas corpus or a motion to vacate a judgment.

(c) In a contested or uncontested proceeding, the express factual findings made by the court, including credibility determinations, in considering a petition for habeas corpus, a motion to vacate judgment pursuant to Section 1473.6, or an application for a certificate of factual innocence, shall be binding on the Attorney General, the factfinder, and the California Victim Compensation Board.

(d) For the purposes of this section, "express factual findings" are findings established as the basis for the court's ruling or order.

(e) For purposes of this section, "court" is defined as a state or federal court.

**SEC. 3.** Section 1485.55 of the Penal Code is amended to read:

1485.55. (a) In a contested proceeding, if the court has granted a writ of habeas corpus or when, pursuant to Section 1473.6, the court vacates a judgment, and if the court has found that the person is factually innocent, that finding shall be binding on the California Victim Compensation Board for a claim presented to the board, and upon application by the person, the board shall, without a hearing, recommend to the Legislature that an appropriation be made and the claim paid pursuant to Section 4904.

(b) In a contested or uncontested proceeding, if the court grants a writ of habeas corpus and did not find the person factually innocent in the habeas corpus proceedings, the petitioner may move for a finding of factual innocence by a preponderance of the evidence that the crime with which he or she was charged was either not committed at all or, if committed, was not committed by him or her.

61-47

was either not committed at all or, if committed, was not committed by him or her.

(d) If the court makes a finding that the petitioner has proven his or her factual innocence by a preponderance of the evidence pursuant to subdivision (b) or (c), the board shall, without a hearing, recommend to the Legislature that an appropriation be made and any claim filed shall be paid pursuant to Section 4904.

(e) A presumption does not exist in any other proceeding for failure to make a motion or obtain a favorable ruling pursuant to subdivision (b) or (c).

(f) If a federal court, after granting a writ of habeas corpus, pursuant to a nonstatutory motion or request, finds a petitioner factually innocent by no less than a preponderance of the evidence that the crime with which he or she was charged was either not committed at all or, if committed, was not committed by him or her, the board shall, without a hearing, recommend to the Legislature that an appropriation be made and any claim filed shall be paid pursuant to Section 4904.

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# EXHIBIT COVER PAGE

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EXHIBIT

Description if this exhibit:

Number of Pages to this exhibit: \_\_\_\_\_ Pages.

**JURISDICTION:** (Check One Only)

- MUNICIPAL COURT
- SUPERIOR COURT
- APPELATE COURT
- STATE SUPREME COURT
- UNITED STATES DISTRICT COURT
- STATE CIRCUIT COURT
- UNITED STATES SUPREME COURT
- GRAND JURY

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

JOHN HENRY YABLONSKY,

Plaintiff and Appellant,

v.

MICHAEL RAMOS et al.,

Defendants and Respondents.

E065773

(Super.Ct.No. CIVDS1506664)

OPINION

APPEAL from the Superior Court of San Bernardino County. Wilfred J.

Schneider, Jr., Judge. Affirmed.

John Henry Yablonsky, in pro. per., for Plaintiff and Appellant.

Michelle D. Blakemore and Jean-Rene Basle, County Counsel, Matthew J.

Marnell, Deputy County Counsel, for Defendants and Respondents.

Plaintiff and appellant John Yablonsky was found guilty of the first degree murder of Rita Cobb. In September 1985, Cobb was discovered nude and strangled by a hanger in her bedroom. A DNA sample taken from her vagina was matched to Yablonsky's DNA in 2009. Yablonsky was sentenced to life without the possibility of parole.

62-1

him were based on malpractice and Yablonsky had failed to show that he had obtained the required postconviction relief required to bring a malpractice claim.

Yablonsky filed this appeal appearing to argue that the trial court erred by denying his request for a continuance to oppose the demurrer and that the demurrer should have been denied.

## FACTUAL AND PROCEDURAL HISTORY

### A. STATEMENT OF FACTS

In September 1985, Rita Cobb's decomposing body was found by her son in her bedroom in her Lucerne Valley home. She was nude and had been strangled by a hanger. No suspect was found at the time. Semen was found in her vagina. DNA tests were performed on the semen in 1999 but no match was found. In 2003, the DNA was once again tested and at some point matched to Yablonsky. In 2009, Yablonsky was interviewed. He lived in Long Beach but advised interviewing San Bernardino County Sheriff's Detectives Rob Alexander and Greg Myler that in 1985, he and his wife rented a back house on Cobb's property in Lucerne Valley. When Yablonsky denied having sexual relations with Cobb, or any type of intimate relationship with her, he was arrested for her murder. (*People v. Yablonsky, supra*, E055840 at pp. \*2-4.)

### B. PROCEDURAL HISTORY

#### 1. *BACKGROUND*

Yablonsky was found guilty of first degree murder and sentenced to life without the possibility of parole. In his first appeal in this court, he raised several issues, including that he was denied his right to present third-party culpability evidence and

out fliers, the admission of altered evidence and Sanders's failure to adequately defend him. The federal court ruled that unless Yablonsky could show reversal of his conviction, he could not bring the Title 42 United States Code section 1983 action. Yablonsky was admonished that if he did not file a timely third amended complaint, the action would be dismissed with prejudice.

On November 25, 2015, Yablonsky moved to have the entire action in federal court dismissed without prejudice. He claimed that he had a stroke on October 11, 2015, and that he was having vision problems. He would be unable to timely file a third amended complaint. The motion was granted on December 3, 2015.

## 2. *COMPLAINT AND FIRST AMENDED COMPLAINT*

Yablonsky filed his original complaint in the trial court on May 11, 2015. He named Michael Ramos, John Thomas, John Doe, Robert Alexander, Greg Myler, David Sanders and Captain Wickham. A demurrer was filed on September 3, 2015, arguing it was not timely based on the requirement that notice be given to the County before such an action could be filed and then a timely filed complaint must be filed. Yablonsky filed opposition on October 21, 2015. After a hearing conducted on November 30, 2015, the trial court sustained the demurrer on the ground that Yablonsky's claims appeared to be time barred unless Yablonsky could plead facts to support a delay in filing. Yablonsky was given 30 days to file an amended complaint.

On December 24, 2015, Yablonsky filed his first amended complaint (FAC). He stated that his causes of action were for "CIVIL RIGHTS LOSS." He sought \$500,000,000 in damages. He named as respondents Michael Ramos, prosecutor; David

supervisor of Sanders and instructed his attorneys. Zywieciel had represented Yablonsky when Sanders got ill.

Yablonsky further claimed that Sanders failed to conduct appropriate investigation into the DNA evidence including a red hair found on Cobb's body and DNA on cigarette butts in the house; and investigate further defense witnesses. Sanders rested the case without Yablonsky making a decision whether to testify.

Yablonsky further alleged that Ramos was the District Attorney for the San Bernardino County District Attorney's Office. John Thomas was the deputy district attorney assigned to Yablonsky's case. Ramos, prior to Yablonsky's trial, printed flyers to be distributed to residents of San Bernardino County where he was running for reelection as district attorney. The flyers depicted a photograph of Yablonsky along with the information that a suspect was arrested in the cold case involving Cobb. It extolled Ramos's efforts in the cold case division and that Cobb's family would finally have closure. Sanders did not adequately address the issue prior to Yablonsky's trial.

Yablonsky's first cause of action for "to be secure in person" and "negligence" was against Detectives Myler and Alexander. Yablonsky alleged they improperly interrogated him. This violated his state and federal Constitutional rights. He continued to suffer irreparable harm due to the actions of Myler and Alexander.

Yablonsky's second cause of action was for negligence. It named Detectives Myler and Alexander, sheriff of the San Bernardino County Sheriff's office, Thomas, Sanders, Ramos and Shoup. They violated his Fifth and Fourteenth Amendment rights against self "compulsion," due process and equal protection. They also violated his



Yablonsky's sixth cause of action was for negligence, professional negligence, due process of law and equal protection. He alleged violations of the Fifth and Fourteenth Amendments of the federal Constitution and the California Constitution. He named Defendants, Shoup and Detective Alexander. He alleged fabrications of evidence.

Yablonsky's seventh cause of action was for negligence, professional negligence, right of access to counsel and equal protections of laws. He alleged violations of the Fifth, Sixth and Fourteenth Amendment under the federal Constitution and under the state Constitution. He named Shoup, Sanders, Canty and Zywieciel. This cause of action related to the failure to advise Yablonsky of all of the discovery in the case. His counsel violated rules of professional conduct and caused him irreparable harm, including his loss of rights.

Yablonsky then provided a list of Penal Code and Evidence Code violations committed by Defendants.

### 3. *DEMURRER*

On January 21, 2016, Defendants filed a demurrer to the FAC. They alleged that all of the causes of action were barred under the doctrine of judicial estoppel. Yablonsky had pursued the same claims in the federal court and twice had his complaint dismissed by the federal court. Yablonsky then dismissed his action in the federal court prior to filing a third amended complaint advising the federal court that he was too sick to pursue the matter. Defendants further alleged that all of the causes of action were uncertain as it was not clear whether they arose from a civil rights action under Title 42 United States Code section 1983 or a state tort action.

having trouble completing his opposition. Yablonsky insisted that the opposition he intended to file would cause the trial court to overrule the demurrer. The trial court stated, "Thank you very much, Mr. Yablonsky. Anything else?" Yablonsky stated there was nothing else. The matter was submitted.

The court's written ruling was as follows: "The Court SUSTAINS the demurrers of Mr. Ramos and Mr. Thomas to the First Amended Complaint (FAC), without leave to amend, on the ground that plaintiff's causes of action alleged against those defendants are based on their actions in initiating and prosecuting the criminal action against plaintiff and those defendants are thus immune from liability pursuant to Government Code section 821.6. The Court SUSTAINS Mr. Sander's demurrer to the FAC, without leave to amend, on the ground that each of the causes of action alleged against Mr. Sanders sound in malpractice and plaintiff fails to show that he has obtained the required post-conviction relief." Judgment was entered dismissing the case on March 18, 2016.

On March 4, 2016, Yablonsky filed a motion to reconsider the ruling on the demurrer. He argued that judicial estoppel did not apply to the case because he was addressing different state and federal actions. Further, the prosecutors did not have immunity for their actions. The trial court also erred by refusing to grant his request for a continuance to file the opposition.

On March 16, 2016, Defendants filed opposition to the motion for reconsideration. Defendants stated it was not clear if Yablonsky was seeking reconsideration of the denial of his request for a continuance, which was filed on February 22, 2016, or whether he was seeking reconsideration of the demurrer. The motion for reconsideration should be

Sanders committed professional negligence by lying about discovery, hiding evidence, and working with the State to alter evidence and keep records from Yablonsky.

Yablonsky contends that these parties were not immune from civil liabilities. His argument regarding Title 42 United States Code section 1983 contains numerous misspellings and is incoherent.

A. DENIAL OF CONTINUANCE

Yablonsky appears to contend that the trial court erred by failing to grant his continuance to file opposition to the demurrer. We review the trial court's decision to grant or deny a continuance for abuse of discretion. (*Oliveros v. County of Los Angeles* (2004) 120 Cal.App.4th 1389, 1395.) To obtain a continuance, a party must show good cause. (*Cotton v. StarCare Medical Group, Inc.* (2010) 183 Cal.App.4th 437, 444.)

The trial court did not abuse its discretion in denying Yablonsky's continuance. Yablonsky provided no evidence of his medical condition or what he would present in his opposition. Yablonsky had complained about his medical problems in the federal court in November 2015 insisting he could not file a third amended complaint, but in December 2015, he was able to file the FAC. No good cause for a continuance was shown by Yablonsky. The trial court could decide the case based on the allegations in the FAC and the demurrer without his opposition.

B. GRANT OF DEMURRER

When the trial court has sustained a demurrer without leave to amend, the appellate court will assume as true all facts that may be implied or inferred from those expressly alleged, to determine whether they state a cause of action on any available legal

62-7

color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.”

In *Heck v. Humphrey* (1994) 512 U.S. 477, 486 through 487, the court held that “in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such a determination, or called into question by a federal court’s issuance of a writ of habeas corpus. . . . Thus, when a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated.” Similarly, the California Supreme Court has held, “a state prisoner’s claim for damages is not cognizable under 42 U.S.C. § 1983 if ‘a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence,’ unless the prisoner can demonstrate that the conviction or

Government Code section 821.6 is not limited to “conduct occurring during formal proceedings.” (*Javor v. Taggert* (2002) 98 Cal.App.4th 795, 808.) “[I]t also extends to actions taken in preparation for formal proceedings. Because investigation is “an essential step” toward the institution of formal proceedings, it “is also cloaked with immunity.” ’ ’ (*Ibid.*) “Under California law the immunity statute is given an ‘expansive interpretation’ in order to best further the rationale of the immunity, that is, to allow the free exercise of the prosecutor’s discretion and protect public officers from harassment in the performance of their duties.” (*Ingram v. Flippo* (1999) 74 Cal.App.4th 1280, 1292.)

Thomas, who was the prosecuting attorney, clearly was entitled to immunity for claims that he altered transcripts or withheld evidence. Ramos was the District Attorney of San Bernardino County, and as such, was Thomas’s supervisor. Claims that the transcripts were altered was clearly within Government Code section 821.6. Broadly interpreting Government Code section 821.6, the fliers were reasonably related to Yablonsky’s prosecution as the cold case division was used to initiate the prosecution against Yablonsky. Ramos was entitled to immunity. As such, no negligence claim would be successful.

Yablonsky cites to *Imbler v. Pachtman* (1976) 424 U.S. 409 to support his claim that the prosecutor was not entitled to immunity. This case does not support his claim as the plaintiff in that case had been granted postconviction relief by having his petition for writ of habeas corpus granted. (*Id.* at p. 415.)

DISPOSITION

The grant of the demurrer without leave to amend is affirmed. The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER

Acting P. J.

We concur:

CODRINGTON

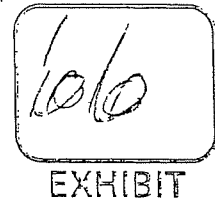
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SLOUGH

J.

6216

# EXHIBIT COVER PAGE



Description of this exhibit:

Number of Pages to this exhibit: 23 Pages.

**JURISDICTION:** (Check One Only)

- MUNICIPAL COURT
- SUPERIOR COURT
- APPELATE COURT
- STATE SUPREME COURT
- UNITED STATES DISTRICT COURT
- STATE CIRCUIT COURT
- UNITED STATES SUPREME COURT
- GRAND JURY

1 John Henry Yablonsky AL-0371  
2 Box 931  
3 Imperial, Ca. 92251

SERVED  
11/16/15

213  
No. 105

FILED  
SUPERIOR COURT  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

NOV 16 2015

BY [Signature]  
Christian Hernandez

6 SUPERIOR COURT OF CALIFORNIA

7 COUNTY OF SAN BERNARDINO

8 John Henry Yablonsky,  
9 Plaintiff,

) CASE NO. CIVDS1506664

10 vs.

) MOTION TO COURT TO HAVE DEEMED ADMITTED  
) REQUEST FOR ADMISSIONS OF DEFENDANT  
) DAVID LYNN SANDERS FOR FAILURE TO RESPOND  
) TIMELY UNDER C.C.P. §§2033.250, 2033.280

11  
12 Michael Ramos, et al.,  
13 Defendant.

) Date: 01-15-16  
) Time: 8:30  
) Dept: 532  
) Filed: May 11, 2015  
) Trial: unassigned

) The honorable Wilfred Schneider Jr.

14  
15 REQUESTING PARTY-PLAINTIFF-JOHN YABLONSKY  
16 ANSWERING PARTY- DEFENDANT-DAVID LYNN SANDERS

17 Comes plaintiff before this humble court on the date assigned above  
18 requesting this court take judicial notice of the defendant's failure to  
19 respond timely for request for admissions under section 2033.250. Plaintiff  
20 served this party on September 25, 2015 where the U.S.P.S. delivery within  
21 the following 5 days tolled the time to respond. The defendant thereafter  
22 failed to respond by admissions or denial to the requested admissions in a  
23 timely manner. The tolling of 30 days ended on October 30, 2015.

24 LEGISLATIVE INTENT

25 Legislative intended that deponent could be asked questions beyond  
26 the scope of questions allowed at trial was indicated by inclusions  
27 of former C.C.P. § 2016(e) and (f).

28 Greyhound Corp. V. Superior court, 55 Cal.2d 355(1961)

MOTION MUST BE SERVED

66  
SANDERS FAILURE TO DENY 1

1006-1



10/10/10

1 Under the guidance of C.C.P. § 2017.010 parties are entitled to [discovery]  
 2 unless limited by order of the court. Here the parties filed motion to  
 3 protect these practices, relying on the position as government officials  
 4 and employ[ees] of the state.

5 Under the guidance of C.C.P. § 2017.010 parties may request admission  
 6 that are reasonably related to facts that [may] lead to relevance, locations  
 7 of evidence that are relevant and [m]aterial to "[any]" discoverable matter.

8 Pico Furniture Co V Superior Court, 56 Cal.2d 407(1961)

9 " A PARTY MAY REQUEST ADMISSIONS WITHOUT LEAVE OF COURT"

10 C.C.P. § 2033.020

11 Here the defendant David Sanders was served admissions that he  
 12 failed to respond in a timely fashion regarding matters of his appointment  
 13 as counsel for the ~~WE~~ plaintiff, and [failures] by this defendant regarding  
 14 defendant Sanders obligations during the representation regarding evidences,  
 15 trial strategies, witnesses and specific investigations. The defendant's failures  
 16 injured the plaintiff here by refusing access to evidences that had been  
 17 reasonably requested, and expecting his client to make decisions regarding  
 18 evidences that had not been revealed to plaintiff until after the trial hearing  
 19 had ended. This party then held onto these evidences until the entire state  
 20 appeal process had expired, before he released 1) credible 2) reliable  
 21 3) material evidences that would have affected the results of the A) Trial  
 22 B) The appeal processes

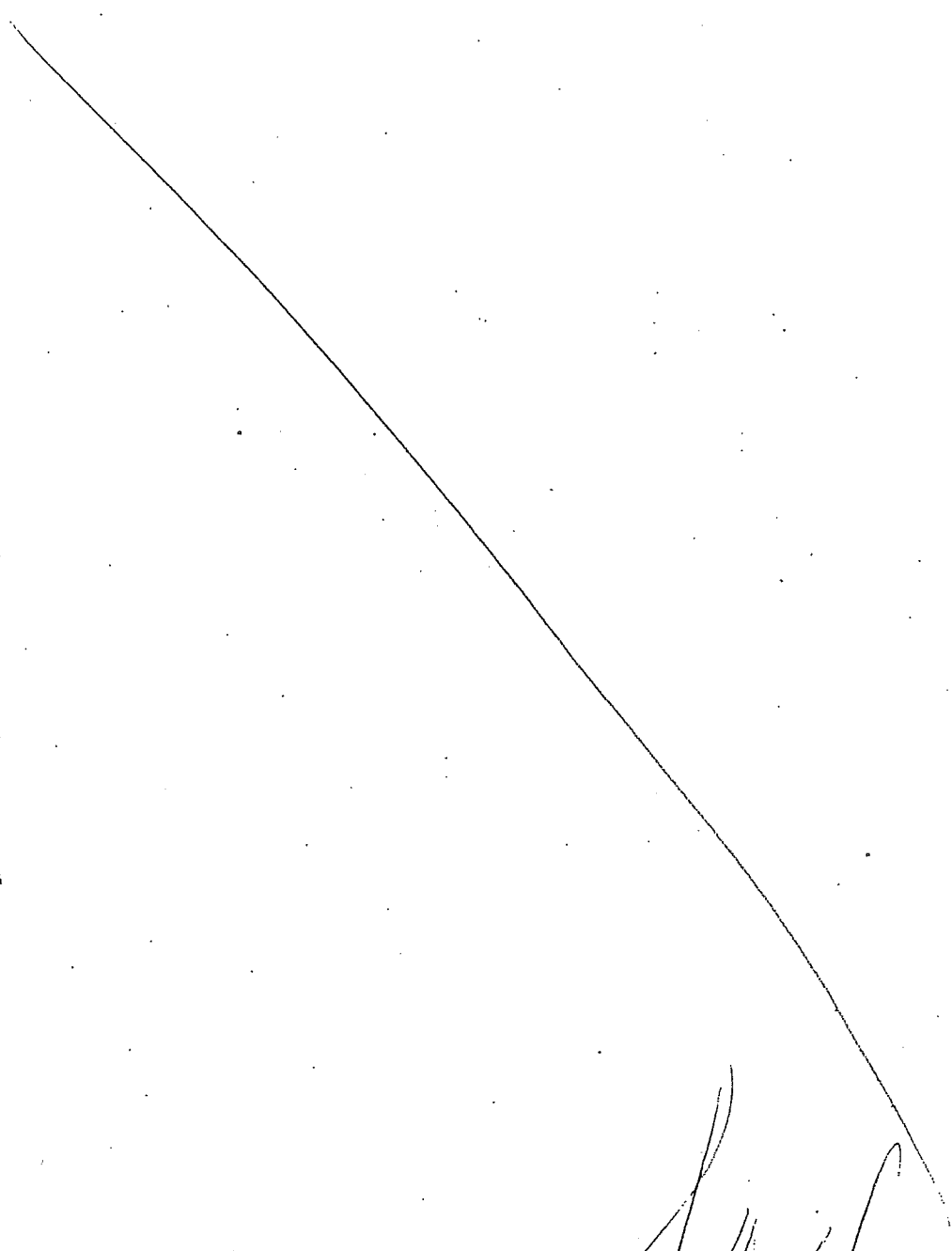
23 This parties errors were against state and federal laws in direct  
 24 violations of professions code and ethics regarding his representation of  
 25 plaintiff. Plaintiff now moves this court to deem admitted the defendant's  
 26 admissions as served to defendant according to C.C.P. § 2033.010. Plaintiff  
 27 will also ask this court to take judicial notice that defendant admits that  
 28 he made errors regarding material facts that include elements of

SANDERS FAILURE TO DENY 2

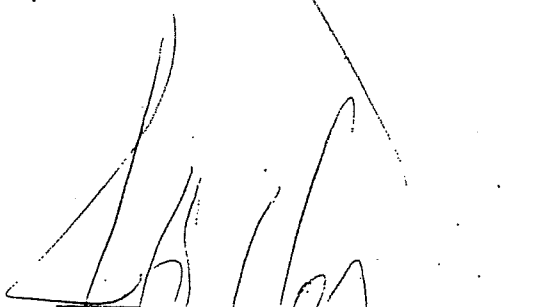
1006-2 64

of professional negligence as defined in the complaint. Plaintiff here asks  
this court to accept the request for admissions set one of David Lynn Sanders  
as admitted. See (exhibit SA) The request for admissions.

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Date 11/10/15

  
 \_\_\_\_\_  
 John Henry Jablonsky

SANDERS FAILURE TO OPNY 3 <sup>64</sup>

1006-3

1 John Henry Yablonsky AL-0373  
2 Box 931  
3 Imperial, ca. 92251  
4 (pro-se)

5  
6 IN THE SUPERIOR COURT OF CALIFORNIA  
7 COUNTY OF SANBERNARDINO

8 John Henry Yablonsky,  
9 Plaintiff,

CASE NO. CIVDS 1506664

10 vs.

11 REQUEST FOR ADMISSIONS PER C.C.P. § 2033.010  
12 REQUEST FOR ADMISSIONS OF DEFENDANT DAVID L  
13 LYNN SANDERS  
14 (BEING SUED AS AN INDIVIDUAL)

13 Michael Ramo,  
14 et al,  
15 Defendant/s,

16 Re: David Lynn Sanders

17 Trial: unassigned  
18 Filed: May 11, 2015  
19 The Honorable Judge Wilfred J. Schneider Jr.

20 Requesting party - John Henry Yablonsky (Plaintiff)

21 Answering party - David Lynn Sanders (Defendant)

22 REQUEST FOR ADMISSIONS SET ONE

23 The defendant named here as David Lynn Sanders is hereby requested

24 for admissions according to C.C.P. § 30 2033.010,

25 Any party may obtain discovery within the scope delimited by chapters  
26 2 and Chapters 3 (commencing with sections 2017.010 and 2017.710) and  
27 subject to restrictions set forth in Chapter 5 (commencing act set  
28 in 2019.010) by a written request that any other party to the action  
admit the genuineness of a specified document, or the truth of specified  
matters of facts, opinion relating to fact, or the application of law  
to fact. A request for admissions may relate to matters that is in  
controversy between parties.

The party plaintiff asks these admission be made by defendant David L. Sanders

REQUEST FOR ADMISSIONS OF DAVID LYNN SANDERS 1

1. ddb6-41

1 and must be answered under declaration made under the penalty of perjury. The  
2 defendant then has 30 days to serve his answer per C.C.P. § 2033.250(a). Failure  
3 to answer by the rules of discovery in the allotted time will waive rights  
4 to deny and others. C.C.P. § 2033.230 states that if a party to whom requests  
5 are directed fails to serve response [timely], the following rules apply, but  
6 not limited to,

7 a) The party to whom the request for admissions are directed waives any objection  
8 to the requests, including one based on privilege or on the protection for  
9 work product.

10 REQUEST FOR ADMISSION ARE AS FOLLOWS

11 Question 1 Admit that you represented plaintiff John Henry Yablonsky for  
12 case number FVI900518 and that you had agreed to have the DNA  
13 for that case expertly examined, and later made a decision not  
14 to without ever discussing this decision to your client on any  
15 level before you had changed the decision to have the DNA examined  
16 by a laboratory and experts.

17 Question 2 Admit that your client Yablonsky asked for the evidences to  
18 his case, and [only] agreed to withhold the DNA laboratory worksheets  
19 because Yablonsky would not be able to understand them.

20 Question 3 Admit that you released only 300 pages of the discovery that was  
21 asked for by Yablonsky before trial. (The 300 pages in an approximation  
22 of the release but is about 300 pages).

23 Question 4 Admit, that Yablonsky had to beg for discovery later, and that  
24 you admitted to giving Yablonsky 300 of the 4000 pages before  
25 trial, and then released 1300 more pages of the discovery, after trial.

26 Question 5 Admit that there was over 4000 pages of discovery to this case  
27 before the trial ever occurred, (4000 pages being a close estimate).

28 Question 6-Admit that you only released one set of the interrogation transcripts  
that was transcribed from the interrogation that occurred on March  
8, 2009, and the set you released was a 113 page set.

REQUEST FOR ADMISSIONS OF DAVID LYNN SANDERS 2

1066-5

- 1 Question 7 Admit that you expected your client to make reasonable decisions  
2 from the 300 pages you had given him before trial.
- 3 Question 8 Admit that you made decisions regarding a piece of evidence tag  
4 #B67999 ,A5 (1-8 and 1 hair with the root) without ever discussing  
5 the decisions with your client and whether this evidence would  
6 be expertly examined by a laboratory for DNA qualification. Choosing  
7 to not test this evidence to any degree by experts.
- 8 Question 9 Admit that you made decisions regarding a piece of evidence tag  
9 #B67999,A1 (8 slides with one red hair with the root bulb intact)  
10 without ever discussing the decisions with your client and whether  
11 this evidence would be expertly examined by a laboratory for DNA  
12 qualification. Choosing to not test this evidence to any degree  
13 by experts.
- 14 Question 10 Admit that you knew the state prosecutor was intending on presenting  
15 a piece of evidence Tag #B6777 B67999,A15 (watch band keeper  
16 pin)and that you made decisions to not examine this evidence  
17 by laboratory experts to qualify the DNA located on this evidence  
18 that was located right next to the victim ,and the prosecutor  
19 intended on presenting this evidence as belonging to Yablonsky,  
20 without ever discussing this decision with your client,choosing  
21 to not examine the evidence at all.
- 22 Question 11 Admit that you never authenticated the interrogation recording  
23 after your client told you that the transcript you gave him (113  
24 page set) was incorrect, and that the answers were not the same  
25 as what was said by Yablonsky in that March 8,2009 interrogation.  
26 Choosing to not have the recording devices expertly examine for  
27 errors without ever discussing this decision with your client.
- 28 Question 12 Admit that you participated in the altering of the interrogation  
recording that was to be played to the jury on January 27,2011,  
and that this participation on your part was without ever discussing  
this decision with your client first, AND THAT MIRANDA INVOKATION WAS  
REMOVED.

1 Question 13 Admit that you made decisions to not investigate or interview  
2 witnesses that you knew state prosecutor was intending on calling  
3 regarding witnesses Lori Amaro and Kye sun Delgado without ever  
4 discussing this decision with your client first.

5 Question 14 Admit that you had told your client that you were completed with  
6 investigation before you did set trial dates on April 2, 2010,  
7 and had in fact agreed to set trial dates with the state prosecutor.

8  
9 Question 15 Admit that you had set trial dates without fully investigating  
10 all the evidences that would be used in this case FVI900518.

11 Question 15 Admit\*that you did not practice professionally when you neglected  
12 to serve the attorney general for the motion to recuse according  
13 to the rules of court regarding recusal, and did not serve the  
14 attorney general according to the rules of California courts.  
P.C. 1424(a)

15 Question 17 Admit that you did not practice professionally when you wrote  
16 a motion for continuance for your client John Yablonsky in another  
17 parties name and case number, and instead declared trial readiness.  
WITHOUT ASKING IN CAMERA FOR CONTINUANCE TO INVESTIGATE AMARO + DELGADO.

18 Question 18 Admit that you did not conduct yourself professionally when you  
19 chose not to offer the state witness Robert Alexander the copy  
20 of the states fingerprint report as you were asking him about  
21 the content of the fingerprint report. EV. C. 901 1271

22 Question 19 Admit that you did not act professionally when the courts sustained  
23 an objection to the testimony of Bruce Nash about what the statement  
24 was that Rita Cobb gave him the night she left the drinking party,  
25 and that evidence code 1250 would have been been an exception  
to the hearsay standard that the state prosecutor had used.  
SHE SAID SHE WAS GOING TO ABAR NOT NAME.

26 Question 20 Admit that you did not investigate Gregory Randolph before you  
27 tried to move the courts to accept this persons alleged confession,  
28 knowing that had the investigation produces relevant or direct  
circumstantial evidence would have influenced the courts denial. REQUEST  
DNA. REQUEST FOR ADMISSIONS OF DAVID LYNN SANDERS 3

1 do b-7

- 1 Question 21 Admit that your client John Yablonsky had repeatedly told you  
2 that he was innocent from the very first interview you had had  
3 with him in the county jail, and had repeatedly told the same PERSONALLY  
4 in almost every letter he wrote trying to assist your investigations.
- 5 Question 22 Admit that you were told that Yablonsky's official visitation  
6 had been terminated by the county Jail West Valley Detention  
7 Center about September 2010, and that you verified this termination.
- 8 Question 23 Admit that you never interviewed the state witnesses Susan Anderson  
9 and Monica Siewertzen, the pathologist, and codis specialists  
10 before trial, <sup>OR</sup> ~~IF~~ WHAT EVIDENCE WERE ATTACHED TO THIS CASE BY STATE, OR OTHER
- 11 Question 24 Admit that your client Yablonsky had told you that his last  
12 encounter with Rita Cobb had been the week before she had been  
13 killed, and that the expert witnesses Donald Jones and Dr. Saukel  
14 testimony is consistent with what your client had told you, that  
15 his DNA would be older than the murder by more than one day.
- 16 Question 25 Admit that the representation you provided your client would  
17 not be acceptable by [yourself] if [you] had told your attorney you  
18 were "innocent", and you were charged for a murder that you did  
19 not do. BY ALL THE ACTIONS AND DECISIONS YOU EXPOSED YABLONSKY TO.
- 20 Question 26 Admit that you had lied to your client about the case, enough  
21 so to prevent him from fully understanding the gravity of the  
22 evidences that existed, and would be used, and that you had failed  
23 as a competent attorney that was to investigate the evidences  
24 of the case before making critical decisions regarding the case  
25 strategy, AND RELAYING THESE FINDINGS TO YOUR CLIENT.
- 26 Question 27 Admit that the attorneys office you work, you were the only person  
27 to represent your client Yablonsky after Geoffery Canty had passed  
28 the case to you, and until the trial had first  
declared deadlocked. And that there was no other attorney that  
stood in for you regarding the case until after the deadlock  
announcement. And that the case was passed to you before June  
2009, or thereabout.

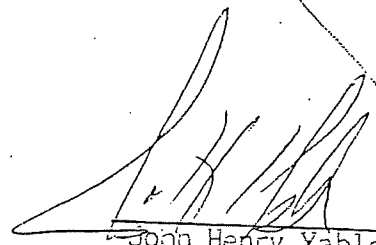
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This request for admissions was sent on \_\_\_\_\_

The clock tolls from the service date according to C.C.P. § 10134a) five days hereafter this date.

Date

9/25/15



John Henry Yablonsky

1006-9



50  
1 PROOF OF SERVICE ACCORDING TO PRISONER MAIL BOX RULE

2 This service and mailing was conducted by a party to this action  
3 and was conducted in accordance with facility practice and the  
4 Title 15, div. 3 section §3142, also Penal Code § 2601(h).

5 This mailing was inspected and sealed in the presence  
6 of an on duty correctional officer, in a fully pre-paid envelope  
7 that was addressed to the following,

8 COUNTY COUNSEL  
9 385 N. ARROWHEAD 4<sup>TH</sup> FL.  
S.B. CA. 92418

10 This service contained the following ;

11 SET TWO REQUEST FOR  
12 ADMISSION  
13

14 This service was conducted by an adult over the age of 18 years  
15 of age,, and mailed in compliance with ordinary daily mail pract-  
16 ices and routines that are processed and delivered by the  
17 U.S.P.S. from the city of;

18 IMPERIAL and 92251  
city zip code

19 This service was conducted on ))) \_\_\_\_\_ Date

20 ACCORDING TO THE PRISONER MAIL BOX RULE  
21 THIS SERVICE IS CONSIDERED FILED ON THE DATE OF THE SERVICE  
22

23 UNDER THE PENALTY OF PERJURY

24 The forgoing of this proof of service is the truth to  
25 the best and direct knowledge of;

26 John Henry Yablonsky \_\_\_\_\_ Date  
27 My address is Box 931 IMPERIAL CA. 92251  
28

1006-10

Sever 11/10/15

John Henry Yablonsky AL-0673  
Box #31  
Imperial ca. 92251

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANBERNARDINO

John Henry Yablonsky,  
Plaintiff,

CASE NO. CIVDS1506664

vs

REQUEST FOR ADMISSIONS UNDER C.G.P. § 2033.010  
OF DEFENDANT DAVID LYNN SANDERS  
(BEING SUEB AS AN INDIVIDUAL.)

Michael Ramos, et al.,  
Defendant/s.

Date: \_\_\_\_\_  
Time: \_\_\_\_\_  
Fees: \_\_\_\_\_  
Filed: May 11, 2015

Trial: unassigned  
The honorable Wilfred Schneider Jr.

REQUESTING PARTY: PLAINTIFF JOHN HENRY YABLONSKY  
ANSWERING PARTY-DEFENDANT DAVID LYNN SANDERS

REQUEST FOR ADMISSIONS SET TWO

- 28) Admit that you withheld evidences until after the state appeal process. from your cluient John Henry Yablonsky
- 29) Admit that you lied to your client regarding the investigations for casee no. FVI900518.
- 30) Admit that you withheld facts regarding the interrogation transcript from your clienynt about it being altered.
- 31) Admit that you provided ineffective assistance to your client regarding the investigations of case no. FVI900518
- 32) Admit tyhat you made decisons to not investigate sþecific evidences that were DNA qualified regarding case no. FVI900518 without discussions them with yopur client John Henry Yablonsky
- 33) Admit that your client John Henry Yablonsky told you that the transcript of the interrogation was inproperly transcribed before nat the trial ever occured.

SANDERS SET TWO ADMISSIONS 1

1066-11

1 34) Admit that when you released the 300 pages of evidences to  
2 your client John Henry Yablonsky you withheld police reports that were  
3 contradictory to the sets you released regarding witnesses.

4 35) Admit that you knew the transcripts were altered before you  
5 gave the 113 page set to your client Jophn Henry Yablonsky for case no FV190051.

6 "  
7 "  
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25 "  
26 "

27 Date \_\_\_\_\_

John Henry Yablonsky

106612

PROOF OF SERVICE BY AN INMATE  
ACCORDING TO PRISONER MAILBOX RULE

This service was conducted by a party to this action, and was conducted according to California State Prison Title 15, div. 3, section § 3142, and in accordance with Penal Code § 2501(b).

This mail was inspected and sealed in the presence of an on duty correctional officer in a fully pre-paid addressed envelope. The envelope was addressed as follows,

david lynn sanders  
385 N. Arrowhead 4 fl.  
s.b.,ca.92415

This service contained the following ,

request for admissions ccp 2033.010

This service was conducted by an adult over the age of 18 years of age and mailed according to ordinary daily mail routines to be delivered by the United States postal service, for the city of, from,

Imperial

92251

City

Zip Code

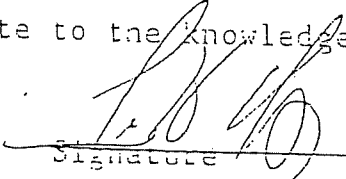
On This date 9 25 15  
month day year

ACCORDING TO PRISONERS MAILBOX RULE  
THIS SERVICE IS DEEMED FILED WITH THE COURTS ON THIS DAY

UNDER THE PENALTY OF PERJURY

The forgoing is the truth and accurate to the knowledge of

Joan Henry Yablonsky

  
Signature

My address is, Box 931 imperial ca.92251

1066-13

# EXHIBIT COVER PAGE

67

EXHIBIT

Description of this exhibit:

Number of Pages to this exhibit: \_\_\_\_\_ Pages.

**JURISDICTION:** (Check One Only)

- MUNICIPAL COURT
- SUPERIOR COURT
- APPELLATE COURT
- STATE SUPREME COURT
- UNITED STATES DISTRICT COURT
- STATE CIRCUIT COURT
- UNITED STATES SUPREME COURT
- GRAND JURY

VICTORVILLE  
**CASE SUMMARY**  
CASE NO. FVI900518

DATE  
Present  
1/19/09  
2/22/09  
1/6/09  
1/5/09  
7/1/09  
3/1/09

The People of the State of California vs. JOHN  
YABLONSKY

§  
§  
§  
§  
§  
§  
§

Location: Victorville  
Filed on: 03/10/2009  
Agency Case Number: 133103607  
Booking Number: 0903341068  
DMV Docket Number: FVI9005

CASE INFORMATION

Offense	Deg	Date	Case Type:	Felony
Jurisdiction: County				
1. PC187(A)-F: Murder	FEL	09/20/1985	Case Status:	02/12/2016 Closed
Charge #: 001				
Arrest: 09/20/1985				
999. CONVERSION-ZComms in Legacy	Z	09/20/1985		
Charge #: 999				

DATE CASE ASSIGNMENT

Current Case Assignment  
Case Number FVI900518  
Court Victorville  
Date Assigned 03/10/2009

PARTY INFORMATION

Plaintiff	The People of the State of California	Lead Attorneys
		Merritt, Grover Daniel
Defendant	YABLONSKY, JOHN HENRY	Smith, Hal Charles Retained

DATE EVENTS & ORDERS OF THE COURT INDEX

09/20/1985	New Filed Case	
03/10/2009	In Custody Arraignment (1:30 PM) (Judicial Officer: Allen, Larry W) Continued Court's motion;	
03/10/2009	Legacy Minutes LWA CLERK: LF-LORI FLORES CERTIFIED COURT REPORTER: CM-CHRISTIE MATHES; CSR# CM-6221 DEPUTY DISTRICT ATTORNEY JOHN THOMAS PRESENT. DEPUTY PUBLIC DEFENDER JEFF CANTY PRESENT DEFENDANT PRESENT IN CUSTODY. - PROCEEDINGS ACTION CAME ON FOR ARRAIGNMENT ATTORNEY FOR DEFENDANT WAIVES FORMAL ARRAIGNMENT AND ADVISAL OF CONSTITUTIONAL AND STATUTORY RIGHTS. - PLEA INFORMATION DEFENDANT PLEADS NOT GUILTY TO ALL COUNTS. - ATTORNEY INFORMATION COURT APPOINTS PUBLIC DEFENDER. COPY OF COMPLAINT AND DISCOVERY GIVEN TO DEFENSE COUNSEL.	

VICTORVILLE  
CASE SUMMARY  
CASE NO. FVI900518

HEARINGS  
PRE-PRELIMINARY HEARING SET FOR 03/18/2009 AT 8:30 IN DEPARTMENT V6.  
PRELIMINARY HEARING SET ON 03/23/2009 AT 9:00 IN DEPARTMENT V6.  
DEFENDANT ORDERED TO APPEAR ON HEARING DATE.

CUSTODY STATUS  
CASE CUSTODY - IN CUSTODY  
BAIL SET AT \$1000000.00.  
COMMITMENT ISSUED (PENDING)  
DISTRICT ATTORNEY NOTIFIED.  
PUBLIC DEFENDER NOTIFIED.  
===== MINUTE ORDER END ===== 0

CONT 1

03/18/2009 Pre-Preliminary Hearing (8:30 AM) (Judicial Officer: Allen, Larry W)  
Continued Court's motion;

03/18/2009 Legacy Minutes  
LWA  
CLERK: LF-LORI FLORES  
CERTIFIED COURT REPORTER: CM-CHRISTIE MATHES; CSR# CM-6221  
DEPUTY DISTRICT ATTORNEY JOHN THOMAS PRESENT.  
DEPUTY PUBLIC DEFENDER JEFF CANTY PRESENT  
DEFENDANT PRESENT IN CUSTODY.

PROCEEDINGS  
ACTION CAME ON FOR PRE-PRELIMINARY HEARING  
DEFENSE MOTION TO CONTINUE IS GRANTED.

HEARINGS  
PRELIMINARY HEARING SET ON 03/23/2009 VACATED.  
PRE-PRELIMINARY HEARING SET FOR 05/06/2009 AT 8:30 IN DEPARTMENT V6.  
PRELIMINARY HEARING SET ON 05/11/2009 AT 9:00 IN DEPARTMENT V6.  
DEFENDANT ORDERED TO APPEAR ON HEARING DATE.

TIME WAIVERS  
DEFENDANT WAIVES HIS/HER RIGHT TO A PRELIMINARY HEARING WITHIN 10  
COURT DAYS AND 60 CALENDAR DAYS UNDER PC859B AND 60 DAYS BEYOND  
05/11/2009.

CUSTODY STATUS  
CASE CUSTODY - IN CUSTODY  
===== MINUTE ORDER END ===== 0

CONT 2

03/23/2009 CANCELED Preliminary Hearing (9:00 AM)  
Vacated

05/06/2009 Pre-Preliminary Hearing (8:30 AM) (Judicial Officer: Allen, Larry W)  
Continued Court's motion;

CONT 3

05/06/2009 Legacy Minutes  
LWA  
CLERK: SJ1-SHIRLEY JAUREGUI  
CERTIFIED COURT REPORTER: LN-LINDY NUNO; CSR# LN-13180  
DEPUTY DISTRICT ATTORNEY JOHN THOMAS PRESENT.  
DEPUTY PUBLIC DEFENDER DAVID SANDERS PRESENT  
DEFENDANT PRESENT IN CUSTODY.

PROCEEDINGS  
ACTION CAME ON FOR PRE-PRELIMINARY HEARING

MOTIONS  
DEFENSE'S ORAL MOTION TO CONTINUE MATTER IS GRANTED.

VICTORVILLE  
CASE SUMMARY  
CASE NO. FVI900518

HEARINGS

PRE-PRELIMINARY HEARING SET FOR 06:15:2009 AT 8:30 IN DEPARTMENT V6.  
PRELIMINARY HEARING SET ON 06:17/2009 AT 9:00 IN DEPARTMENT V6.  
DEFENDANT ORDERED TO APPEAR ON HEARING DATE.

PRELIMINARY HEARING SET ON 05:11/2009 VACATED.

TIME WAIVERS

DEFENDANT WAIVES HIS/HER RIGHT TO A PRELIMINARY HEARING WITHIN 10  
COURT DAYS AND 60 CALENDAR DAYS UNDER PC859B AND 60 DAYS BEYOND  
06/17/2009.

CUSTODY STATUS

CASE CUSTODY - IN CUSTODY  
===== MINUTE ORDER END ===== 0

CONT 3

05/11/2009 CANCELED Preliminary Hearing (9:00 AM)  
Vacated

06/15/2009 Pre-Preliminary Hearing (8:30 AM) (Judicial Officer: Allen, Larry W)  
Continued Court's motion;

06/15/2009 Legacy Minutes  
LWA  
CLERK: E3582-BARBARA THOMPSON  
CERTIFIED COURT REPORTER: CM-CHRISTIE MATHES; CSR# CM-6221  
DEPUTY DISTRICT ATTORNEY JOHN THOMAS PRESENT.  
DEPUTY PUBLIC DEFENDER DA'E SANDERS PRESENT  
DEFENDANT PRESENT IN CUSTODY.

PROCEEDINGS

ACTION CAME ON FOR PRE-PRELIMINARY HEARING

MOTIONS

DEFENSE'S ORAL MOTION REQUESTING A CONTINUANCE IS GRANTED.  
CRIMINALIST IS UNAVAILABLE  
PRELIMINARY HEARING SET ON 06:17/2009 VACATED.

HEARINGS

PRE-PRELIMINARY HEARING SET FOR 07:02/2009 AT 8:30 IN DEPARTMENT V6.  
PRELIMINARY HEARING SET ON 07:07/2009 AT 9:00 IN DEPARTMENT V6.  
DEFENDANT ORDERED TO APPEAR ON HEARING DATE.

DEFENSE REQUEST OTHER ORDERS: BRING DOCUMENTS TO COURT

TIME WAIVERS

DEFENDANT WAIVES HIS/HER RIGHT TO A PRELIMINARY HEARING WITHIN 10  
COURT DAYS AND 60 CALENDAR DAYS UNDER PC859B AND 60 DAYS BEYOND  
07:02/2009.

CUSTODY STATUS

CASE CUSTODY - IN CUSTODY  
===== MINUTE ORDER END ===== 0

CONT 4

06/17/2009 CANCELED Preliminary Hearing (9:00 AM)  
Vacated

07/02/2009 Pre-Preliminary Hearing (8:30 AM) (Judicial Officer: Allen, Larry W)  
Continued Court's motion;

07/02/2009 Legacy Minutes  
LWA  
CLERK: LF-LORI FLORES  
CERTIFIED COURT REPORTER: CM-CHRISTIE MATHES; CSR# CM-6221  
DEPUTY DISTRICT ATTORNEY JOHN THOMAS PRESENT.



CASE SUMMARY

CASE NO. FVI900518

DEPUTY PUBLIC DEFENDER DAVE SANDERS PRESENT  
DEFENDANT PRESENT IN CUSTODY.

PROCEEDINGS  
ACTION CAME ON FOR PRE-PRELIMINARY HEARING

STIPULATED MOTION TO CONTINUE IS GRANTED.

HEARINGS  
PRELIMINARY HEARING SET ON 07/07/2009 VACATED.  
PRE-PRELIMINARY HEARING SET FOR 07/23/2009 AT 8:30 IN DEPARTMENT V6.  
PRELIMINARY HEARING SET ON 07/28/2009 AT 9:00 IN DEPARTMENT V6.  
DEFENDANT ORDERED TO APPEAR ON HEARING DATE.

TIME WAIVERS  
DEFENDANT WAIVES HIS/HER RIGHT TO A PRELIMINARY HEARING WITHIN 10  
COURT DAYS AND 60 CALENDAR DAYS UNDER PC859B AND 60 DAYS BEYOND  
07/28/2009.

CUSTODY STATUS  
CASE CUSTODY - IN CUSTODY  
===== MINUTE ORDER END ===== 0

copy 5

07/07/2009 CANCELED Preliminary Hearing (9:00 AM)  
Vacated

07/23/2009 Pre-Preliminary Hearing (8:30 AM) (Judicial Officer: Allen, Larry W)  
Continued Court's motion;

6 07/23/2009

Legacy Minutes  
LWA  
CLERK: SJI-SHIRLEY JAUREGUI  
CERTIFIED COURT REPORTER: RBI-RHONDA BORCHARD; CSR# RBI-9516  
DEPUTY DISTRICT ATTORNEY JOHN THOMAS PRESENT.  
DEPUTY PUBLIC DEFENDER DAVE SANDERS PRESENT  
DEFENDANT PRESENT IN CUSTODY.

PROCEEDINGS  
ACTION CAME ON FOR PRE-PRELIMINARY HEARING  
PARTIES ANNOUNCE READY FOR PRELIMINARY HEARING.

HEARINGS  
PRELIMINARY HEARING CONFIRMED.  
SET ON 07/28/09  
DEFENDANT ORDERED TO APPEAR ON HEARING DATE.

ESTIMATED TIME IS 3 HOURS.

CUSTODY STATUS  
CASE CUSTODY - IN CUSTODY  
===== MINUTE ORDER END ===== 0

P.H. 07/28/2009

Preliminary Hearing (9:00 AM) (Judicial Officer: Allen, Larry W)  
Continued Court's motion;

07/28/2009

Legacy Minutes  
LWA  
CLERK: E2761-SUNNY SALMOND  
CERTIFIED COURT REPORTER: ML-MISTI LATHAM; CSR# ML-13338

APPEARANCES  
DEPUTY DISTRICT ATTORNEY JOHN THOMAS PRESENT.  
DEPUTY PUBLIC DEFENDER DAVID SANDERS PRESENT  
DEFENDANT PRESENT IN CUSTODY.

VICTORYVILLE  
**CASE SUMMARY**  
CASE No. FVI900518

PROCEEDINGS

ACTION CAME ON FOR PRELIMINARY HEARING

PEOPLE'S EXHIBIT(S) 1-COLOR PHOTO VICTIM ON BACK ON A BED MARKED FOR IDENTIFICATION.

PEOPLE'S EXHIBIT(S) 2-COLOR PHOTO VICTIM ON BACK SHOWING HEAD WOUNDS MARKED FOR IDENTIFICATION.

PEOPLE'S EXHIBIT(S) 3-COLOR PHOTO VICTIM ON BACK WITH RIGHT KNEE OUT MARKED FOR IDENTIFICATION.

PEOPLE'S EXHIBIT(S) 4-CERTIFIED AUTOPSY PROTOCOL MARKED FOR IDENTIFICATION.

9:12

9:55

9:56

PEOPLE'S EXHIBIT(S) 5-PROP 115 REPORT BY SUSAN ANDERSON MARKED FOR IDENTIFICATION.

PEOPLE'S EXHIBIT(S) 6-PROP 115 REPORT BY MONICA SIEWERTSEN MARKED FOR IDENTIFICATION.

PARTIES STIPULATE TO ENTER PEOPLE'S EXHIBITS 5 AND 6 INTO EVIDENCE

PEOPLE'S EXHIBIT(S) 5 AND 6 ENTERED INTO EVIDENCE.

10:20

PEOPLE REST.

MOTIONS

PEOPLE'S MOTION TO ENTER EXHIBITS 1 - 4 IS GRANTED.

PEOPLE'S EXHIBIT(S) 1 2 3 4 ENTERED INTO EVIDENCE.

MOTIONS

MOTION BY PEOPLE TO HOLD THE DEFENDANT TO ANSWER IN THE SUPERIOR COURT.

DEFENDANT ADVISED THAT CASE IS ASSIGNED TO THE SUPERIOR COURT IN DEPARTMENT V2 JUDGE JMT FOR ALL PURPOSES.

ON MOTION OF DA, COURT ORDERS DEFENDANT HELD TO ANSWER IN SUPERIOR COURT TO ALL COUNTS/ALLEGATIONS AND/OR PRIORS.

HEARINGS

ARRAIGNMENT ON INFORMATION SET FOR 08/11/2009 AT 8:30 IN DEPARTMENT V2. DEFENDANT ORDERED TO APPEAR ON HEARING DATE.

BY STIPULATION EXHIBITS ORDERED RETURNED TO THE PEOPLE.

CUSTODY STATUS

CASE CUSTODY - IN CUSTODY

BAIL REMAINS AS SET.

===== MINUTE ORDER END ===== 0

08/03/2009

Note

RPTR TRNSCPT OF PRLM HRG ON 072809 FILED

08/03/2009

Claim Filed

CLAIM FILED FOR TRANSCRIPT BY M LATHAM FOR PRLM HRG ON 072809

08/06/2009

Forwarded:

FORWARDED INFORMATION TO V2

VICTORVILLE  
CASE SUMMARY  
CASE NO. FVI900518

08/11/2009 Arraignment on Information (8:30 AM) (Judicial Officer: Tomberlin, John M)  
Continued Court's motion;

08/11/2009 Legacy Minutes

JMT  
CLERK: VL-VICKIE LO VASCO  
CERTIFIED COURT REPORTER: SM-SHAWNA MANNING; CSR# SM-12827  
DEPUTY DISTRICT ATTORNEY JOHN THOMAS PRESENT.  
DEPUTY PUBLIC DEFENDER DAVE SANDERS PRESENT  
DEFENDANT PRESENT IN CUSTODY.

PROCEEDINGS  
ACTION CAME ON FOR ARRAIGNMENT

DEFENSE MOTION FOR CONTINUANCE IS GRANTED.  
(DUE TO SPECIAL CIRCUMSTANCE LISTED IN  
THE INFORMATION)

HEARINGS  
HEARING CONTINUED TO 08/12/2009 AT 8:30 IN DEPARTMENT V2.  
DEFENDANT ORDERED TO APPEAR ON HEARING DATE.

DEFENSE MOTION TO ALLOW DEFT TO TRANSPORT PAPERWORK IS GRANTED.

CUSTODY STATUS  
CASE CUSTODY - IN CUSTODY  
DEFENSE REQUEST OTHER ORDERS: TRANSPORT PAPERWORK TO & FROM COURT  
COMMITMENT ISSUED (PENDING)  
===== MINUTE ORDER END ===== 0

08/12/2009 Arraignment on Information (8:30 AM) (Judicial Officer: Tomberlin, John M)  
Continued Court's motion;

08/12/2009 Disposition (Judicial Officer: Tomberlin, John M)

1. PC187(A)-F: Murder  
Convicted  
Charge #: 001 Allegation:

08/12/2009 Plea (Judicial Officer: Pro Tem, Judge)

1. PC187(A)-F: Murder  
Not Guilty  
Charge #: 001 Allegation:

08/12/2009 Legacy Minutes

JMT  
CLERK: VL-VICKIE LO VASCO  
CERTIFIED COURT REPORTER: SM-SHAWNA MANNING; CSR# SM-12827  
DEPUTY DISTRICT ATTORNEY STEVE SINFIELD FOR JOHN THOMAS PRESENT.  
DEPUTY PUBLIC DEFENDER DAVE SANDERS PRESENT  
DEFENDANT PRESENT IN CUSTODY.

PROCEEDINGS  
ACTION CAME ON FOR ARRAIGNMENT  
ATTORNEY FOR DEFENDANT WAIVES FORMAL ARRAIGNMENT AND ADVISAL OF  
CONSTITUTIONAL AND STATUTORY RIGHTS.

PLEA INFORMATION  
DEFENDANT PLEADS NOT GUILTY TO ALL COUNTS.

HEARINGS  
PRETRIAL SET FOR 10/23/2009 AT 8:35 IN DEPARTMENT ---X---  
(AND TRIAL SETTING)  
DEFENDANT ORDERED TO APPEAR ON HEARING DATE.

DID NOT  
PLEA  
S.P. Q2C.  
FILE AFTER  
5 mo in CUST  
10 DAY ASY PRELIM

ENTER  
NOT GUILTY

VICTORVILLE  
CASE SUMMARY  
CASE NO. FVI900518

TIME WAIVERS

SET LAST DATE FOR TRIAL TO 10/23/2009.  
TIME WAIVED FOR TRIAL; PLUS 60 DAYS.

FINGER PRINT CARD FILED 8-11-09

PEOPLE'S MOTION TO SET BAIL AT NO BAIL IS GRANTED.

CUSTODY STATUS

CASE CUSTODY - IN CUSTODY  
BAIL SET AT \$0.00, NO BAIL; COMMITMENT PENDING ISSUED.  
COMMITMENT ISSUED (PENDING)  
===== MINUTE ORDER END ===== 0

10/23/2009

Pretrial (8:35 AM) (Judicial Officer: Tomberlin, John M)  
Continued Court's motion;

10/23/2009

Legacy Minutes

JMT  
CLERK: LF-LORI FLORES  
CERTIFIED COURT REPORTER: SM-SHAWNA MANNING; CSR# SM-12827  
DEPUTY DISTRICT ATTORNEY JOHN THOMAS PRESENT.  
DEPUTY PUBLIC DEFENDER DAVE SANDERS PRESENT  
DEFENDANT PRESENT IN CUSTODY.

PROCEEDINGS  
ACTION CAME ON FOR PRETRIAL

STIPULATED MOTION TO CONTINUE IS GRANTED.  
(DISCOVERY ISSUES)

HEARINGS  
HEARING CONTINUED TO 12/11/2009 AT 8:30 IN DEPARTMENT V2.  
CASE CONTINUED FOR DISPO/RESET.  
DEFENDANT ORDERED TO APPEAR ON HEARING DATE.

TIME WAIVERS  
SET LAST DATE FOR TRIAL TO 12/11/2009.  
TIME WAIVED FOR TRIAL; PLUS 60 DAYS.

CUSTODY STATUS  
CASE CUSTODY - IN CUSTODY  
===== MINUTE ORDER END ===== 0

12/11/2009

Pretrial (8:35 AM) (Judicial Officer: Tomberlin, John M)  
Continued Court's motion;

12/11/2009

Legacy Minutes

JMT  
CLERK: VL-VICKIE LO VASCO  
CERTIFIED COURT REPORTER: SM-SHAWNA MANNING; CSR# SM-12827  
DEPUTY DISTRICT ATTORNEY JOHN THOMAS PRESENT.  
DEPUTY PUBLIC DEFENDER HERB WILLIAMSON FOR DAVE SANDERS PRESENT  
DEFENDANT PRESENT IN CUSTODY.

PROCEEDINGS  
ACTION CAME ON FOR PRETRIAL

DEFENSE MOTION FOR CONTINUANCE IS GRANTED.  
(DPD SANDERS UNAVAILABLE)

HEARINGS  
HEARING CONTINUED TO 01/15/2010 AT 8:35 IN DEPARTMENT V2.  
DEFENDANT ORDERED TO APPEAR ON HEARING DATE.

4  
DISC. MOTION  
TO CONT.

2  
DEF. MOT. TO  
CONT. HEAR.

VICTORVILLE  
CASE SUMMARY  
CASE NO. FVI900518

TIME WAIVERS  
SET LAST DATE FOR TRIAL TO 01/15/2010.  
TIME WAIVED FOR TRIAL; PLUS 60 DAYS.

CUSTODY STATUS  
CASE CUSTODY - IN CUSTODY  
===== MINUTE ORDER END ===== 0

01/15/2010 Pretrial (8:35 AM) (Judicial Officer: Tomberlin, John M)  
Continued Court's motion;

01/15/2010 Legacy Minutes  
JMT  
CLERK: VL-VICKIE LO VASCO  
CERTIFIED COURT REPORTER: SM-SHAWNA MANNING; CSR# SM-12827  
DEPUTY DISTRICT ATTORNEY JOHN THOMAS PRESENT.  
DEPUTY PUBLIC DEFENDER DAVE SANDERS PRESENT  
DEFENDANT PRESENT IN CUSTODY.

PROCEEDINGS  
ACTION CAME ON FOR PRETRIAL

STIPULATED MOTION FOR CONTINUANCE IS GRANTED.  
(DISPO RESET)

HEARINGS  
HEARING CONTINUED TO 04/02/2010 AT 8:35 IN DEPARTMENT V2.  
CASE CONTINUED FOR DISPO.RESET.  
DEFENDANT ORDERED TO APPEAR ON HEARING DATE.

TIME WAIVERS  
SET LAST DATE FOR TRIAL TO 04/02/2010,  
TIME WAIVED FOR TRIAL; PLUS 60 DAYS.

CUSTODY STATUS  
CASE CUSTODY - IN CUSTODY  
===== MINUTE ORDER END ===== 0

04/02/2010 Pretrial (8:35 AM) (Judicial Officer: Tomberlin, John M)  
Continued Court's motion;

04/02/2010 Legacy Minutes  
JMT  
CLERK: VL-VICKIE LO VASCO  
CERTIFIED COURT REPORTER: SM-SHAWNA MANNING; CSR# SM-12827  
DEPUTY DISTRICT ATTORNEY JOHN THOMAS PRESENT.  
DEPUTY PUBLIC DEFENDER DAVE SANDERS PRESENT  
DEFENDANT PRESENT IN CUSTODY.

PROCEEDINGS  
ACTION CAME ON FOR PRETRIAL

STIPULATED MOTION TO SET TRIAL DATES IS GRANTED.

HEARINGS  
JURY TRIAL SET FOR 07/12/2010 AT 9:00 IN DEPARTMENT V3A; ESTIMATED 0 DAYS.  
READINESS CALENDAR SET FOR 07/09/2010 AT 8:30 IN DEPARTMENT V3A.  
PRETRIAL SET FOR 06/11/2010 AT 8:35 IN DEPARTMENT --X--  
DEFENDANT ORDERED TO APPEAR ON HEARING DATE.

TIME WAIVERS  
SET LAST DATE FOR TRIAL TO 07/12/2010.  
TIME WAIVED FOR TRIAL; PLUS 60 DAYS.

CUSTODY STATUS  
CASE CUSTODY - IN CUSTODY

3  
CONT. TO  
INVEST

INVEST  
CEMP  
13 mo  
AFTER  
ARREST

CASE SUMMARY

CASE NO. FVI900518

===== MINUTE ORDER END ===== 0

05/14/2010 Letter Received  
LETTER DATED 05/10/2010 RECEIVED FROM DEFT RE: ATTENDANCE AT HEARINGS

06/09/2010 Ex Parte Hearing (2:11 PM) (Judicial Officer: Tomberlin, John M)  
Held;

06/09/2010 Forwarded:  
FORWARDED MTN TO V2 CLERK BIN

06/09/2010 Motion  
MOTION TO DISMISS ALLEGATION FILED 06/09/2010

06/09/2010 Copy Sent:  
COPY OF 6/9/10 MINUTE ORDER SENT TO DEFT VIA MAIL.

06/09/2010 Legacy Minutes  
JMT  
CLERK: VL-VICKIE LO VASCO  
REPORTER NOT REPORTED  
-  
PROCEEDINGS  
ACTION CAME ON FOR POST DISPO HEARING  
-  
COURT HAS READ AND CONSIDERED LETTER SUBMITTED  
BY DEFENDANT REQUESTING THAT HE BE ALLOWED  
TO ATTEND COURT HEARINGS REGARDING CIVIL COMPLAINT  
AGAINST THE COUNTY.  
-  
DEFENDANT'S MOTION TO ATTEND CIVIL COURT HEARINGS IS GRANTED.  
DEFENDANT TO BE TRANSPORTED FOR COURT APPEARANCES  
-  
DEFENDANT REQUESTS AN ORDER ALLOWING HIM TO USE  
THE LAW LIBRARY AT WEST VALLEY DETENTION.  
-  
COURT GRANTS PRO PER PRIVILEGES ACCORDING TO  
JAIL POLICY.  
-  
CLERK'S OFFICE TO NOTIFY DEFENDANT.  
(AND PROVIDE DEFENDANT WITH A COPY OF THIS  
MINUTE ORDER)  
-  
CUSTODY STATUS  
CASE CUSTODY - IN CUSTODY  
===== MINUTE ORDER END ===== 0

NOTICE  
I AGAINST  
REJUDGE  
M.P.

PRO PER  
GRANTED  
MANNING

06/11/2010 Pretrial (8:35 AM) (Judicial Officer: Tomberlin, John M)  
Continued Court's motion;

06/11/2010 Legacy Minutes  
JMT  
CLERK: VL-VICKIE LO VASCO  
CERTIFIED COURT REPORTER: SM-SHAWNA MANNING; CSR# SM-12827  
DEPUTY DISTRICT ATTORNEY JOHN THOMAS PRESENT.  
DEPUTY PUBLIC DEFENDER DAVE SANDERS PRESENT  
DEFENDANT PRESENT IN CUSTODY.  
-  
PROCEEDINGS  
ACTION CAME ON FOR PRETRIAL  
OFF THE RECORD, COURT AND COUNSEL CONFER IN CHAMBERS  
-  
STIPULATED MOTION FOR CONTINUANCE IS GRANTED.  
(MOTIONS)

MOTION  
TO INVEST  
TO PREPARE TRIAL  
CAMARION  
FLYER

CASE SUMMARY

CASE NO. FVI900518

TRIAL DATE VACATED.  
PREAD HEARING SET ON 07/09/2010 AT 8:30 IS ORDERED VACATED.  
MOTN HEARING SET ON 06/25/2010 AT 8:30 IS ORDERED VACATED.

HEARINGS

PRETRIAL SET FOR 07/23/2010 AT 8:35 IN DEPARTMENT --X--  
MOTIONS RESERIVED FOR 07/23/2010 AT 8:35 IN DEPARTMENT V2.  
DEFENDANT ORDERED TO APPEAR ON HEARING DATE.

TIME WAIVERS

SET LAST DATE FOR TRIAL TO 07/23/2010.  
TIME WAIVED FOR TRIAL; PLUS 60 DAYS.

CUSTODY STATUS

CASE CUSTODY - IN CUSTODY  
===== MINUTE ORDER END ===== 0

SPEEDY TRIAL

SUSPENDED  
OFF VISIT.

SPEEDY  
TRIAL

SPEEDY  
TRIAL

06/18/2010

Letter Received  
LETTER DATED 06/15/2010 RECEIVED FROM DEFENDANT RE: TELEPHONE ACCESS

06/25/2010

CANCELED Motion Hearing (8:30 AM)  
Vacated

06/25/2010

Conversion event  
<0> HEARING ON <1> AT <2> IS VACATED.

07/09/2010

CANCELED Trial Readiness (8:30 AM)  
Vacated

07/09/2010

Conversion event  
<0> HEARING ON <1> AT <2> IS VACATED.

07/12/2010

CANCELED Jury Trial (9:00 AM)  
Vacated

07/20/2010

Opposition to Law and Motion Received & Filed  
OPPOSITION TO LAW AND MOTION RECEIVED AND FILED.

07/20/2010

Forwarded:  
FORWARDED OPPOSITION TO LAW AND MOTION TO V2

07/23/2010

Pretrial (8:35 AM) (Judicial Officer: Tomberlin, John M)  
Continued Court's motion;

07/23/2010

Legacy Minutes  
JMT  
CLERK: VL-VICKIE LO VASCO  
CERTIFIED COURT REPORTER: KMI-KELLIE MOSS; CSR# KMI-10796  
DEPUTY DISTRICT ATTORNEY MICHAEL FURMAN FOR JOHN THOMAS PRESENT.  
DEPUTY PUBLIC DEFENDER DAVE SANDERS PRESENT  
DEFENDANT PRESENT IN CUSTODY.

PROCEEDINGS

ACTION CAME ON FOR PRETRIAL

PEOPLE'S MOTION FOR CONTINUANCE IS GRANTED.  
(DDA JOHN THOMAS UNAVAILABLE)

HEARINGS

HEARING CONTINUED TO 07/30/2010 AT 8:30 IN DEPARTMENT V2.  
DEFENDANT ORDERED TO APPEAR ON HEARING DATE.

TIME WAIVERS

VICTORVILLE  
CASE SUMMARY  
CASE NO. FVI900518

DEFENDANT HAS REQUESTED THAT HE BE ALLOWED  
PRO-PER PRIVILEGES REGARDING A CIVIL CASE  
THAT HE WILL BE FILING - COURT GRANTS REQUEST  
AS ALLOWED BY SHERIFF'S DEPT.

CUSTODY STATUS  
CASE CUSTODY - IN CUSTODY  
===== MINUTE ORDER END ===== 0

07/30/2010 Pretrial (8:30 AM) (Judicial Officer: Nakata, Eric M)  
Continued Court's motion;

07/30/2010 Legacy Minutes  
EMN  
CLERK: E3582-BARBARA THOMPSON  
CERTIFIED COURT REPORTER: SM-SHAWNA MANNING; CSR# SM-12827  
DEPUTY DISTRICT ATTORNEY JOHN THOMAS PRESENT.  
DEPUTY PUBLIC DEFENDER DAVE SANDERS PRESENT.  
DEFENDANT PRESENT IN CUSTODY.

PROCEEDINGS  
ACTION CAME ON FOR PRETRIAL  
-  
MOTIONS  
DEFENSE'S MOTION TO DISMISS IS DENIED.

HEARINGS  
JURY TRIAL SET FOR 09/27/2010 AT 9:30 IN DEPARTMENT V3; ESTIMATED 0 DAYS.  
READINESS CALENDAR SET FOR 09/24/2010 AT 8:30 IN DEPARTMENT V3A.  
PRETRIAL SET FOR 09/10/2010 AT 8:30 IN DEPARTMENT. ~X~  
DEFENDANT ORDERED TO APPEAR ON HEARING DATE.

TIME WAIVERS  
SET LAST DATE FOR TRIAL TO 09/27/2010.  
TIME WAIVED FOR TRIAL; PLUS 45 DAYS.

CUSTODY STATUS  
CASE CUSTODY - IN CUSTODY  
===== MINUTE ORDER END ===== 0

09/07/2010 Letter Received  
LETTER DATED 08/18/2010 RECEIVED FROM DEFENDANT RE: LIBRARY ACCESS

09/10/2010 Pretrial (8:30 AM) (Judicial Officer: Tomberlin, John M)  
Continued Court's motion;

09/10/2010 Legacy Minutes  
JMT, J-JUDGE  
CLERK: VL-VICKIE LO VASCO  
CERTIFIED COURT REPORTER: SM-SHAWNA MANNING; CSR# SM-12827  
DEPUTY DISTRICT ATTORNEY JOHN THOMAS PRESENT.  
DEPUTY PUBLIC DEFENDER DAVE SANDERS PRESENT  
DEFENDANT PRESENT IN CUSTODY.

PROCEEDINGS  
ACTION CAME ON FOR PRETRIAL  
-  
DEFENSE MOTION FOR CONTINUANCE IS GRANTED.  
(FURTHER INVESTIGATION)

TRIAL DATE VACATED.  
PREAD HEARING SET ON 09/24/2010 AT 8:30 IS ORDERED VACATED.

HEARINGS  
JURY TRIAL SET FOR 10/25/2010 AT 9:00 IN DEPARTMENT V3; ESTIMATED 0 DAYS.

999  
SPEEDY TRIAL

ACCESS 20  
CT. DEN.

INVEST  
CONT. 4



VICTORYVILLE  
**CASE SUMMARY**  
**CASE NO. FVI900518**

READINESS CALENDAR SET FOR 10/22/2010 AT 8:30 IN DEPARTMENT 13A.  
 PRETRIAL SET FOR 10/08/2010 AT 8:30 IN DEPARTMENT --X--  
 DEFENDANT ORDERED TO APPEAR ON HEARING DATE.

TIME WAIVERS  
 SET LAST DATE FOR TRIAL TO 10/25/2010.  
 TIME WAIVED FOR TRIAL; PLUS 60 DAYS.

-----SUBSEQUENTLY-----

10:14  
 JMT, J-JUDGE  
 CLERK: VL-VICKIE LO VASCO  
 CERTIFIED COURT REPORTER: SM-SHAWNA MANNING; CSR# SM-12827  
 DEPUTY DISTRICT ATTORNEY CARRIE HALGRIMSON FOR JOHN THOMAS PRESENT.  
 DEPUTY PUBLIC DEFENDER DAVE SANDERS PRESENT  
 DEPUTY DISTRICT ATTORNEY CARRIE HALGRIMSON FOR JOHN THOMAS PRESENT.  
 DEPUTY PUBLIC DEFENDER DAVE SANDERS PRESENT  
 DEFENDANT PRESENT IN CUSTODY.

LETTER RECEIVED BY THE DEFENDANT WAS REVIEWED  
 IN COURT - PREVIOUS ORDERS ARE TO REMAIN IN EFFECT

CUSTODY STATUS  
 CASE CUSTODY - IN CUSTODY  
 ===== MINUTE ORDER END ===== 0

*SPEEDY TRIAL*

09/24/2010 CANCELED Trial Readiness (8:30 AM)  
 Vacated

09/24/2010 Conversion event  
 <0> HEARING ON <1> AT <2> IS VACATED.

*MOTION (1)*

09/27/2010 CANCELED Jury Trial (9:30 AM)  
 Vacated

*DUE PROCESS FILE NOT REOPENED*

09/27/2010 Motion  
 MOTION TO DISMISS INFO FOR DENIAL OF DUE PROCESS FILED 09/27/20

09/27/2010 Forwarded:  
 FORWARDED MOTION TO TICKLER BIN CLERK OFFICE

*MOTION (2)*

09/28/2010 Motion  
 MOTION TO RECUSE FILED 09/28/2010

09/28/2010 Forwarded:  
 FORWARDED MTN TO RECUSE TO TICKLER BIN IN CLERKS OFC

10/04/2010 Note  
 OPPOSITION TO MOTION TO DISMISS FILED

10/04/2010 Forwarded:  
 FORWARDED OPPOSITION TO MOTION TO DISMISS TO TICKLER BIN

10/05/2010 Note  
 OPPOSITION OF SB CO DA'S OFFICE TO DEFT'S MTN FILE

*MANNING NAME*  
*MO... DISC.*

10/05/2010 Note  
 OPPOSITION TAKEN TO DEPT V2

10/06/2010 Note  
 NTC OF MTN TO COMPEL DISCOVERY/P&A'S FILED

10/06/2010 Note

VICTORVILLE  
CASE SUMMARY  
CASE NO. FVI900518

DECLARATION OF DAVID SANDERS FILED

10/08/2010 Pretrial (8:30 AM) (Judicial Officer: Tomberlin, John M)  
Continued Court's motion;

10/08/2010 Legacy Minutes  
JMT, J-JUDGE  
CLERK: TLA-TOBI ANDRE  
CERTIFIED COURT REPORTER: SM-SHAWNA MANNING; CSR# SM-12827  
BAILIFF J PATRICK  
DEPUTY DISTRICT ATTORNEY GROVER MERRITT PRESENT.  
(FOR MOTION TO RECUSE SBCDAO)  
DEPUTY DISTRICT ATTORNEY MICHAEL FERMIN PRESENT.  
(FOR PRE-TRIAL/MOTION)  
DEPUTY PUBLIC DEFENDER DAVID SANDERS PRESENT  
DEFENDANT PRESENT IN CUSTODY.

RECUSE  
DENIED

PROCEEDINGS  
ACTION CAME ON FOR PRETRIAL  
OFF THE RECORD, COURT AND COUNSEL CONFER IN CHAMBERS

MOTIONS  
DEFENSE MOTION TO RECUSE DISTRICT ATTORNEY'S OFFICE IS DENIED.  
DEFENSE MOTION TO CONTINUE IS GRANTED.  
(FURTHER INVESTIGATION)

HEARINGS  
JURY TRIAL SET FOR 11/29/2010 AT 9:30 IN DEPARTMENT V2; ESTIMATED 0 DAYS.  
(SPECIAL SET)  
READINESS CALENDAR SET FOR 11/19/2010 AT 8:30 IN DEPARTMENT V3A.  
PRETRIAL SET FOR 11/05/2010 AT 8:30 IN DEPARTMENT --X--  
(ALSO MOTIONS)

TIME WAIVERS  
SET LAST DATE FOR TRIAL TO 11/29/2010.  
TIME WAIVED FOR TRIAL; PLUS 60 DAYS.

CUSTODY STATUS  
CASE CUSTODY - IN CUSTODY  
===== MINUTE ORDER END ===== 0

SPEEDY TRIAL

10/22/2010 CANCELED Trial Readiness (8:30 AM)  
Vacated

10/25/2010 CANCELED Jury Trial (9:00 AM)  
Vacated

11/05/2010 Pretrial (8:30 AM) (Judicial Officer: Tomberlin, John M)  
Continued Court's motion;

11/05/2010 Legacy Minutes  
JMT, J-JUDGE  
CLERK: VL-VICKIE LO VASCO  
CERTIFIED COURT REPORTER: SM-SHAWNA MANNING; CSR# SM-12827  
DEPUTY DISTRICT ATTORNEY KATHLEEN DIDONATO PRESENT.  
(FOR JOHN THOMAS)  
DEPUTY PUBLIC DEFENDER DAVID SANDERS PRESENT  
DEFENDANT PRESENT IN CUSTODY.

PROCEEDINGS  
ACTION CAME ON FOR PRETRIAL  
STIPULATED MOTION FOR CONTINUANCE IS GRANTED.  
(DDA THOMAS CURRENTLY IN TRIAL)

INVEST  
CENT.  
DON NOT ALLOW

VICTORVILLE  
CASE SUMMARY  
CASE NO. FVI900518

TRIAL DATE VACATED.  
PREAD HEARING SET ON 11/19/2010 AT 8:30 IS ORDERED VACATED.

HEARINGS  
JURY TRIAL SET FOR 12/06/2010 AT 9:00 IN DEPARTMENT V2; ESTIMATED 0 DAYS.  
READINESS CALENDAR SET FOR 12/03/2010 AT 8:30 IN DEPARTMENT V3A.  
PRETRIAL SET FOR 11/19/2010 AT 8:35 IN DEPARTMENT ~X~.  
DEFENDANT ORDERED TO APPEAR ON HEARING DATE.

TIME RUNS ON 12/27/2010.

CUSTODY STATUS  
CASE CUSTODY - IN CUSTODY  
===== MINUTE ORDER END ===== 0

11/19/2010 CANCELED Trial Readiness (8:30 AM)  
Vacated

11/19/2010 Pretrial (8:41 AM) (Judicial Officer: Tomberlin, John M)  
Continued Court's motion;

11/19/2010 Conversion event  
<0> HEARING ON <1> AT <2> IS VACATED.

11/19/2010 Legacy Minutes  
JMT, J-JUDGE  
CLERK: YL-VICKIE LO VASCO  
CERTIFIED COURT REPORTER: KD-KENYNIA DARDEN; CSR# KD-12704  
DEPUTY DISTRICT ATTORNEY JOHN THOMAS PRESENT.  
DEPUTY PUBLIC DEFENDER DAVE SANDERS PRESENT  
DEFENDANT PRESENT IN CUSTODY.

PROCEEDINGS  
ACTION CAME ON FOR PRETRIAL  
TRIAL DATE VACATED.  
PREAD HEARING SET ON 12/03/2010 AT 8:30 IS ORDERED VACATED.

STIPULATED MOTION FOR CONTINUANCE IS GRANTED.  
(NEED FURTHER TIME TO PREPARE FOR TRIAL)

HEARINGS  
JURY TRIAL SET FOR 12/20/2010 AT 9:00 IN DEPARTMENT V2; ESTIMATED 0 DAYS.  
READINESS CALENDAR SET FOR 12/17/2010 AT 8:30 IN DEPARTMENT V3A.  
PRETRIAL SET FOR 12/03/2010 AT 8:31 IN DEPARTMENT ~X~.  
DEFENDANT ORDERED TO APPEAR ON HEARING DATE.

TIME WAIVERS  
SET LAST DATE FOR TRIAL TO 12/20/2010.  
TIME WAIVED FOR TRIAL; PLUS 60 DAYS.

CUSTODY STATUS  
CASE CUSTODY - IN CUSTODY  
===== MINUTE ORDER END ===== 0

11/29/2010 CANCELED Jury Trial (9:30 AM)  
Vacated

12/03/2010 CANCELED Trial Readiness (8:30 AM)  
Vacated

12/03/2010 Pretrial (8:36 AM) (Judicial Officer: Tomberlin, John M)  
Continued Court's motion;

12/03/2010 Conversion event

SPEEDY TRIAL  
(5)  
PRETRIAL  
MOTION  
CONT.

VICTORVILLE  
CASE SUMMARY  
CASE No. FVI900518

<0> HEARING ON <1> AT <2> IS VACATED.

12/03/2010

Legacy Minutes

JMT, J-JUDGE

CLERK: VL-VICKIE LO VASCO

CERTIFIED COURT REPORTER: DR-DEBBIE ROGERS; CSR# DR-4639

DEPUTY DISTRICT ATTORNEY JOHN THOMAS PRESENT.

DEPUTY PUBLIC DEFENDER DAVE SANDERS PRESENT

DEFENDANT PRESENT IN CUSTODY.

PROCEEDINGS

ACTION CAME ON FOR PRETRIAL

OFF THE RECORD, COURT AND COUNSEL CONFER IN CHAMBERS

STIPULATED MOTION FOR CONTINUANCE IS GRANTED.

TRIAL DATE VACATED.

PREAD HEARING SET ON 12/17/2010 AT 8:30 IS ORDERED VACATED.

HEARINGS

JURY TRIAL SET FOR 01/10/2011 AT 9:00 IN DEPARTMENT V2; ESTIMATED 0 DAYS.

READINESS CALENDAR SET FOR 01/07/2011 AT 8:30 IN DEPARTMENT V3A.

DEFENDANT ORDERED TO APPEAR ON HEARING DATE.

TIME WAIVERS

CUSTODY STATUS

CASE CUSTODY - IN CUSTODY

===== MINUTE ORDER END ===== 0

12/06/2010

CANCELED Jury Trial (9:00 AM)

Vacated

12/14/2010

Letter Received

LETTER DATED 12/10/2010 RECEIVED FROM DEFENDANT RE: VARIOUS

12/14/2010

Forwarded:

FORWARDED CASE AND LETTER TO JUDGE TOMBERLIN V2

12/17/2010

CANCELED Trial Readiness (8:30 AM)

Vacated

12/17/2010

Conversion event

<0> HEARING ON <1> AT <2> IS VACATED.

12/17/2010

Note

(121610)JUDGE TOMBERLIN/S CRAIG

12/17/2010

Note

DENIED

12/20/2010

CANCELED Jury Trial (9:00 AM)

Vacated

01/05/2011

Forwarded:

FORWARDED MTN TO V3

01/05/2011

Motion

MOTION FOR CONTINUANCE FILED 01/05/2011

01/07/2011

Trial Readiness (8:30 AM) (Judicial Officer: Nakata, Eric M)

Continued Court's motion;

6  
MOTION  
TO INVES

7  
MOTION  
TO INVES

VICTORVILLE  
CASE SUMMARY  
CASE NO. FVI900518

01/07/2011

Legacy Minutes

EMN, J-JUDGE  
CLERK: C4272-HEATHER MACDONALD  
CERTIFIED COURT REPORTER: GM-GLENORA MELENDEZ; CSR# GM-10414  
BAILIFF Z. HEINER

APPEARANCES  
DEPUTY DISTRICT ATTORNEY JOHN THOMAS PRESENT.  
ATTORNEY PD DAVE SANDERS PRESENT.  
DEFENDANT PRESENT IN CUSTODY.

PROCEEDINGS  
ACTION CAME ON FOR TRIAL READINESS

MOTIONS  
PEOPLES 1050 MOTION FOR CONTINUANCE IS GRANTED.

HEARINGS  
HEARING CONTINUED TO 01/14/2011 AT 8:30 IN DEPARTMENT V3A.  
AND:  
995 MOTION AND MOTION TO COMPEL  
JURY TRIAL SET FOR 01/18/2011 AT 9:00 IN DEPARTMENT V2; ESTIMATED 0 DAYS.  
COURT FINDS GOOD CAUSE FOR CONTINUANCE.

CASE IS TO HAVE PRIORITY FOR TRIAL

CUSTODY STATUS  
CASE CUSTODY - IN CUSTODY  
===== MINUTE ORDER END ===== 0

01/10/2011

CANCELED Jury Trial (9:00 AM)  
Vacated

01/14/2011

Trial Readiness (8:30 AM). (Judicial Officer: Nakata, Eric M)  
Continued Court's motion;

01/14/2011

Trial Readiness (8:31 AM) (Judicial Officer: Tomberlin, John M)  
Continued Court's motion;

01/14/2011

Legacy Minutes

EMN, J-JUDGE  
CLERK JANA WESTBROOKS  
CERTIFIED COURT REPORTER: GM-GLENORA MELENDEZ; CSR# GM-10414  
BAILIFF Z. HEINER  
DEPUTY DISTRICT ATTORNEY JOHN THOMAS PRESENT.  
ATTORNEY PD DAVE SANDERS PRESENT.  
DEFENDANT PRESENT IN CUSTODY.

PROCEEDINGS  
ACTION CAME ON FOR TRIAL READINESS  
PARTIES ANNOUNCE READY FOR TRIAL  
ESTIMATED TIME IS 3 WEEKS.  
MATTER IS ASSIGNED TO DEPARTMENT V2 FORTHWITH  
HEARING CONTINUED TO 01/14/2011 AT 8:31 IN DEPARTMENT V2.  
DEFENDANT ORDERED TO APPEAR ON HEARING DATE.

CUSTODY STATUS  
CASE CUSTODY - IN CUSTODY  
===== MINUTE ORDER END ===== 0

01/14/2011

Legacy Minutes

JMT, J-JUDGE  
CLERK: TLA-TOBI ANDRE  
CERTIFIED COURT REPORTER: SM-12827; CSR# SM-SHAWNA MANNING

SPEEDY  
TRIAL

CASE SUMMARY

CASE NO. FVI900518

DEPUTY DISTRICT ATTORNEY JOHN THOMAS PRESENT.  
DEPUTY PUBLIC DEFENDER DAVE SANDERS PRESENT  
DEFENDANT PRESENT IN CUSTODY.

PROCEEDINGS

ACTION CAME ON FOR TRIAL READINESS  
OFF THE RECORD, COURT AND COUNSEL CONFER IN CHAMBERS  
TRIAL DATE VACATED.  
PARTIES ANNOUNCE READY FOR JURY TRIAL

HEARINGS

JURY TRIAL SET FOR 01/18/2011 AT 10:00 IN DEPARTMENT V2; ESTIMATED 15 DAYS.  
DEFENDANT ORDERED TO APPEAR ON HEARING DATE.  
DEFENDANT WAIVES RIGHT TO A CONTINUOUS JURY TRIAL

COURT ORDERS: DEFENDANT BE ALLOWED TO PRINT  
LEXIS/NEXIS UP TO 30 PAGES PER SESSION AND  
TRANSPORT SAID DOCUMENTS TO AND FROM COURT

CUSTODY STATUS

CASE CUSTODY - IN CUSTODY  
DEFENSE REQUEST OTHER ORDERS: SEE ATTACHED MINUTE ORDER  
COMMITMENT ISSUED (PENDING)  
===== MINUTE ORDER END ===== 0

SPEEDY TRIAL

TRYING TO ASSIST IN DEFENSE LAW LIBRARY

01/18/2011

CANCELED Jury Trial (9:00 AM)  
Vacated

01/18/2011

Jury Trial (10:00 AM) (Judicial Officer: Tomberlin, John M)  
Continued Court's motion;

01/18/2011

Legacy Minutes  
JMT, J-JUDGE  
CLERK: YL-VICKIE LO VASCO  
CERTIFIED COURT REPORTER: SM-SHAWNA MANNING; CSR# SM-12827  
DEPUTY DISTRICT ATTORNEY JOHN THOMAS PRESENT.  
DEPUTY PUBLIC DEFENDER DAVE SANDERS PRESENT  
DEFENDANT PRESENT IN CUSTODY.

PROCEEDINGS

ACTION CAME FOR JURY TRIAL

1ST DAY OF TRIAL.

11:04

OFF THE RECORD, COURT AND COUNSEL CONFER IN CHAMBERS

13:59

COURT CONVENES ALL PARTIES PRESENT.

14:00

MOTION(S) IN-LIMINE HELD.

COURT RESERVES RULING OF DEFENSE MOTION TO DISMISS (DUE TO DELAY IN TRIAL)

BENCH CONFERENCE OFF THE RECORD AT 3:03.  
BENCH CONFERENCE ENDS AT 3:04.

RECESS DECLARED 3:06

HEARINGS

JURY TRIAL (IN PROGRESS) CONTINUED TO 01/19/2011 AT 8:30 IN DEPARTMENT V2.  
DEFENDANT ORDERED TO APPEAR ON HEARING DATE.

JURY PANEL ORDERED FOR 8:30M ON 1/19/2011.

SPEEDY TRIAL MOTION

VICTORVILLE  
CASE SUMMARY  
CASE NO. FVI900518

CUSTODY STATUS  
CASE CUSTODY - IN CUSTODY  
===== MINUTE ORDER END ===== 0

01/19/2011

Jury Trial (In Progress) (8:30 AM) (Judicial Officer: Tomberlin, John M)  
Continued Court's motion;

01/19/2011

Legacy Minutes

JMT, J-JUDGE  
CLERK: VL-VICKIE LO VASCO  
CERTIFIED COURT REPORTER: SM-SHAWNA MANNING; CSR# SM-12827  
CERTIFIED COURT REPORTER: MS2-MICHELLE SWAL; CSR# MS2-13580  
(10:54)  
DEPUTY DISTRICT ATTORNEY JOHN THOMAS PRESENT.  
DEPUTY PUBLIC DEFENDER DAVE SANDERS PRESENT  
DEFENDANT PRESENT IN CUSTODY.

PROCEEDINGS  
ACTION CAME ON FOR JURY TRIAL-IN PROGRESS

2ND DAY OF TRIAL.

9:25  
COURT RECONVENES; ALL PARTIES PRESENT.

MOTION(S) IN LIMINE HELD.

RECESS DECLARED 9:49

10:54  
CERTIFIED COURT REPORTER: MS2-MICHELLE SWAL; CSR# MS2-13580

COURT RECONVENES, ALL PARTIES PRESENT. ALL PROSPECTIVE JURORS ARE  
PRESENT AND IN THEIR PROPER PLACES

10:54  
JURY PANEL CALLED IN AND ROLL CALL TAKEN.

10:59  
PROSPECTIVE JURY PANEL HAVING BEEN SUMMONED, IS SWORN REGARDING  
THEIR QUALIFICATIONS TO ACT AS TRIAL JURORS.

11:44  
VOIR DIRE CONDUCTED BY COURT AND COUNSEL.

12:00  
RECESS DECLARED; JURORS ADMONISHED.

14:06  
COURT RECONVENES, ALL PARTIES PRESENT. ALL PROSPECTIVE JURORS ARE  
PRESENT AND IN THEIR PROPER PLACES

14:06  
VOIR DIRE CONTINUES.

BENCH CONFERENCE ON (WITH JUROR #26) THE RECORD AT 2:50.  
BENCH CONFERENCE ENDS AT 2:52.

15:17  
RECESS DECLARED; JURORS ADMONISHED.

15:47  
COURT RECONVENES, ALL PARTIES PRESENT. ALL PROSPECTIVE JURORS ARE  
PRESENT AND IN THEIR PROPER PLACES

PREJUDICE  
KNOWS  
FRANCESCA  
SULLIVAN

VICTORVILLE  
CASE SUMMARY  
CASE NO. FVI900518

15:47  
VOIR DIRE CONTINUES.

BENCH CONFERENCE OFF THE RECORD AT 4:01.  
BENCH CONFERENCE ENDS AT 4:02.

16:05  
RECESS DECLARED; JURORS ADMONISHED.

COURT ORDERS DEFENDANT BE ALLOWED A DAILY SHAVE  
AND BE ALLOWED TO TRIM HIS BEARD EVERY 3 DAYS.

HEARINGS  
JURY TRIAL (IN PROGRESS) CONTINUED TO 01/20/2011 AT 8:30 IN DEPARTMENT V2.  
DEFENDANT ORDERED TO APPEAR ON HEARING DATE.

RECESS DECLARED 4:09

CUSTODY STATUS  
CASE CUSTODY - IN CUSTODY  
DEFENSE REQUEST OTHER ORDERS: DAILY SHAVE TRIM BREAD EVERY 3 DAYS  
COMMITMENT ISSUED (PENDING)  
===== MINUTE ORDER END ===== 0

JAIL NOT  
ALLOWING  
PROPER APPEARANCE  
SHAVE

01/20/2011 Jury Trial (In Progress) (8:30 AM) (Judicial Officer: Tomberlin, John M)  
Continued Court's motion;

01/20/2011 Legacy Minutes  
JMT, J-JUDGE  
CLERK: TLA-TOBI ANDRE  
CERTIFIED COURT REPORTER: SM-SHAWNA MANNING; CSR# SM-12827  
DEPUTY DISTRICT ATTORNEY JOHN THOMAS PRESENT.  
DEPUTY PUBLIC DEFENDER DAVE SANDERS PRESENT  
DEFENDANT PRESENT IN CUSTODY.

PROCEEDINGS  
ACTION CAME ON FOR JURY TRIAL-IN PROGRESS  
3RD DAY OF TRIAL.  
JURY PANEL NOW PRESENT, ROLL CALL TAKEN AT 9:20.  
COURT RECONVENES AT 9:23  
VOIR DIRE CONTINUES.  
BENCH CONFERENCE ON THE RECORD AT 10:45 WITH JUROR #15 FROM SEAT #17.  
BENCH CONFERENCE ENDS AT 10:47.  
RECESS DECLARED AT 10:48 PROSPECTIVE JURORS ADMONISHED

JURY PANEL NOW PRESENT, ROLL CALL TAKEN AT 11:08.  
COURT RECONVENES AT 11:10  
VOIR DIRE CONTINUES.  
BENCH CONFERENCE ON THE RECORD AT 11:12.  
BENCH CONFERENCE ENDS AT 11:14.  
RECESS DECLARED AT 12:00 NOON-PROSPECTIVE JURORS ADMONISHED

JURY PANEL NOW PRESENT, ROLL CALL TAKEN AT 1:30.  
COURT RECONVENES AT 1:39  
VOIR DIRE CONTINUES.  
BENCH CONFERENCE ON THE RECORD AT 1:55 WITH JUROR #55.  
BENCH CONFERENCE ENDS AT 1:57.  
12 JURORS AND 0 ALTERNATES ARE SWORN TO TRY THE CAUSE. THE NAMES OF  
THE SWORN JURORS AND ALTERNATES ARE SEALED UPON THE RECORDING OF  
THE VERDICT.  
AND PLACED IN A SEALED ENVELOPE WITHIN THE CASE FILE AT 2:12.

AT 2:21 THREE (3) ALTERNATE JURORS SWORN.  
BENCH CONFERENCE OFF THE RECORD AT 2:26.  
BENCH CONFERENCE ENDS AT 2:28.



VICTORVILLE  
CASE SUMMARY  
CASE NO. FVI900518

COURT PRE-INSTRUCTS THE JURY.  
RECESS DECLARED AT 2:57-JURY ONLY:JURY ADMONISHED  
RECESS DECLARED AT 2:57 JURY ADMONISHED

MOTION(S) IN LIMINE HELD.  
RECESS DECLARED AT 3:53

HEARINGS  
JURY TRIAL (IN PROGRESS) CONTINUED TO 01/24/2011 AT 9:00 IN DEPARTMENT V2.  
DEFENDANT ORDERED TO APPEAR ON HEARING DATE.

CUSTODY STATUS  
CASE CUSTODY - IN CUSTODY  
DEFENSE REQUEST OTHER ORDERS: COURT ORDERS DAILY SHAVE/TRIM BEARD  
EVERY 3 DAYS  
COMMITMENT ISSUED (PENDING)  
===== MINUTE ORDER END ===== 0

01/24/2011 Jury Trial (In Progress) (9:00 AM) (Judicial Officer: Tomberlin, John M)  
Continued Court's motion;

01/24/2011 Note  
MEDIA REQUEST AND ORDER FILED

01/24/2011 Legacy Minutes  
JMT, J-JUDGE  
CLERK: YL-VICKIE LO VASCO  
CERTIFIED COURT REPORTER: SM-SHAW'NA MANNING; CSR# SM-12827  
DEPUTY DISTRICT ATTORNEY JOHN THOMAS PRESENT.  
DEPUTY PUBLIC DEFENDER DAVE SANDERS PRESENT  
DEFENDANT PRESENT IN CUSTODY.

PROCEEDINGS  
ACTION CAME ON FOR JURY TRIAL-IN PROGRESS

4TH DAY OF TRIAL.

9:01  
COURT RECONVENES; ALL PARTIES PRESENT.  
JURORS NOT PRESENT.

PEOPLE'S EXHIBIT(S) 1 THROUGH 40 MARKED FOR IDENTIFICATION.  
(SEE EXHIBIT LIST FOR DESCRIPTIONS)

9:16

9:17  
OPENING STATEMENTS GIVEN BY THE PEOPLE.

9:36  
OPENING STATEMENTS RESERVED BY THE DEFENSE.

9:36  
PEOPLE'S CASE IN CHIEF.

9:37

9:37

RECESS DECLARED; JURORS ADMONISHED.

10:48  
COURT RECONVENES, ALL PARTIES PRESENT. ALL JURORS AND ALTERNATE  
JURORS ARE PRESENT AND IN THEIR PLACES.

BENCH CONFERENCE ON THE RECORD AT 10:48.

VICTORVILLE  
CASE SUMMARY  
CASE NO. FVI900518

BENCH CONFERENCE ENDS AT 10:51.

10:52

11:28

WITNESS DARYL KRAEMER MAY REMAIN IN COURTROOM  
AS AN EXCEPTION TO THE WITNESS EXCLUSION ORDER.

11:29

11:58

RECESS DECLARED; JURORS ADMONISHED.

13:38

COURT RECONVENES, ALL PARTIES PRESENT. ALL JURORS AND ALTERNATE  
JURORS ARE PRESENT AND IN THEIR PLACES.

13:38

14:06

MARTA KRAEMER MAY REMAIN IN THE COURTROOM AS AN  
EXCEPTION TO THE WITNESS EXCLUSION ORDER.

14:08

14:22

14:24

14:52

RECESS DECLARED; JURORS ADMONISHED.

15:08

COURT RECONVENES, ALL PARTIES PRESENT. ALL JURORS AND ALTERNATE  
JURORS ARE PRESENT AND IN THEIR PLACES.

15:08

BENCH CONFERENCE ON THE RECORD AT 3:32.  
BENCH CONFERENCE ENDS AT 3:33.

15:34

15:35

16:27

RECESS DECLARED; JURORS ADMONISHED.

16:28

COURT RECONVENES; ALL PARTIES PRESENT.  
JURORS NOT PRESENT.

RECESS DECLARED 4:34

HEARINGS

JURY TRIAL (IN PROGRESS) CONTINUED TO 01/25/2011 AT 10:00 IN DEPARTMENT V2.  
DEFENDANT ORDERED TO APPEAR ON HEARING DATE.

CUSTODY STATUS

CASE CUSTODY - IN CUSTODY

===== MINUTE ORDER END ===== 0

D  
KRAEMER

M.  
KRAEMER

01/25/2011

Jury Trial (In Progress) (10:00 AM) (Judicial Officer: Tomberlin, John M)  
Continued Court's motion;

VICTORVILLE  
CASE SUMMARY  
CASE NO. FVI900518

01/25/2011

Legacy Minutes

JMT, J-JUDGE

CLERK: T'L-VICKIE LO VASCO

CERTIFIED COURT REPORTER: SM-SHAWNA MANNING; CSR# SM-12827

DEPUTY DISTRICT ATTORNEY JOHN THOMAS PRESENT.

DEPUTY PUBLIC DEFENDER DAVE SANDERS PRESENT

DEFENDANT PRESENT IN CUSTODY.

-  
PROCEEDINGS

ACTION CAME ON FOR JURY TRIAL-IN PROGRESS

-  
5TH DAY OF TRIAL.

-  
10:00

COURT RECONVENES; ALL PARTIES PRESENT.

JURORS NOT PRESENT.

-  
PEOPLE'S EXHIBIT(S) 41 THROUGH 47 MARKED FOR IDENTIFICATION.  
(SEE EXHIBIT LIST FOR DESCRIPTIONS)

-  
10:00

MOTION(S) IN LIMINE HELD.

-  
10:06

-  
10:08

-  
11:15

RECESS DECLARED; JURORS ADMONISHED.

-  
11:27

COURT RECONVENES, ALL PARTIES PRESENT. ALL JURORS AND ALTERNATE  
JURORS ARE PRESENT AND IN THEIR PLACES.

-  
11:27

-  
11:27

-  
11:28

-  
11:57

RECESS DECLARED; JURORS ADMONISHED.

-  
13:34

COURT RECONVENES, ALL PARTIES PRESENT. ALL JURORS AND ALTERNATE  
JURORS ARE PRESENT AND IN THEIR PLACES.

-  
13:34

-  
13:57

-  
13:58

-  
BENCH CONFERENCE ON THE RECORD AT 2:39.  
BENCH CONFERENCE ENDS AT 2:42.

-  
14:47

-  
14:47

RECESS DECLARED; JURORS ADMONISHED.

-  
15:03

COURT RECONVENES, ALL PARTIES PRESENT. ALL JURORS AND ALTERNATE  
JURORS ARE PRESENT AND IN THEIR PLACES.

-  
15:04

VICTORVILLE  
CASE SUMMARY  
CASE NO. FVI900518

PREJUDICE  
JUROR

15:06  
RECESS DECLARED; JURORS ADMONISHED.

15:08  
COURT RECONVENES; ALL PARTIES PRESENT.  
JURORS NOT PRESENT.  
JUROR IN SEAT 12 PRESENT - JUROR MAKES DISCLOSURE  
ON THE RECORD REGARDING WITNESS FRANCESCA  
SULLIVAN.

BENCH CONFERENCE ON THE RECORD AT 3:14.  
BENCH CONFERENCE ENDS AT 3:16.

BENCH CONFERENCE ON THE RECORD AT 3:17.  
BENCH CONFERENCE ENDS AT 3:18.

15:20

15:21

15:32

15:33  
RECESS DECLARED; JURORS ADMONISHED.

15:34  
COURT RECONVENES; ALL PARTIES PRESENT.  
JURORS NOT PRESENT.

RECESS DECLARED 3:39

HEARINGS  
JURY TRIAL (IN PROGRESS) CONTINUED TO 01/26/2011 AT 9:00 IN DEPARTMENT V2.  
DEFENDANT ORDERED TO APPEAR ON HEARING DATE.

CUSTODY STATUS  
CASE CUSTODY - IN CUSTODY  
===== MINUTE ORDER END ===== 0

01/26/2011 Jury Trial (In Progress) (9:00 AM) (Judicial Officer: Tomberlin, John M)  
Continued Court's motion;

01/26/2011 Note  
STIP TO WAIVE DEFTS PRESENCE AT READ BACK FILED

01/26/2011 Note  
STIP RE: JURY ADMONITION ETC FILED

01/26/2011 Legacy Minutes  
JMT, J-JUDGE  
CLERK: VL-VICKIE LO VASCO  
CERTIFIED COURT REPORTER: SM-SHAWNNA MANNING; CSR# SM-12827  
DEPUTY DISTRICT ATTORNEY JOHN THOMAS PRESENT.  
DEPUTY PUBLIC DEFENDER DAVE SANDERS PRESENT  
DEFENDANT PRESENT IN CUSTODY.

PROCEEDINGS  
ACTION CAME ON FOR JURY TRIAL-IN PROGRESS

6TH DAY OF TRIAL.

PEOPLE'S EXHIBIT(S) 48-AUTOPSY PROTOCOL MARKED FOR IDENTIFICATION.

9:44  
COURT RECONVENES, ALL PARTIES PRESENT. ALL JURORS AND ALTERNATE

VICTORVILLE  
**CASE SUMMARY**  
**CASE NO. FVI900518**

JURORS ARE PRESENT AND IN THEIR PLACES.

JUROR IN SEAT #1 NOT PRESENT.

BENCH CONFERENCE OFF THE RECORD AT 9:44.  
BENCH CONFERENCE ENDS AT 9:47.

9:47  
JUROR IN SEAT #1 PRESENT.

9:47

BENCH CONFERENCE ON THE RECORD AT 10:01.  
BENCH CONFERENCE ENDS AT 10:03.

10:07

10:08

10:31

10:32

10:59

11:00  
RECESS DECLARED; JURORS ADMONISHED.

11:01  
COURT RECONVENES; ALL PARTIES PRESENT.  
JURORS NOT PRESENT.

RECESS DECLARED 11:08

13:35  
COURT RECONVENES, ALL PARTIES PRESENT. ALL JURORS AND ALTERNATE  
JURORS ARE PRESENT AND IN THEIR PLACES.

13:36

14:33

14:35  
RECESS DECLARED; JURORS ADMONISHED.

14:36  
COURT RECONVENES; ALL PARTIES PRESENT.  
JURORS NOT PRESENT.

RECESS DECLARED 2:44

14:51  
COURT AND COUNSEL REVIEW JURY INSTRUCTIONS OFF  
THE RECORD IN OPEN COURT - DEFENDANT PRESENT.

15:47  
COURT RECONVENES; ALL PARTIES PRESENT.  
JURORS NOT PRESENT.

BY STIPULATION COURT REPORTER IS WAIVED  
DURING THE PLAYING OF THE RECORDING TOMORROW.

RECESS DECLARED 3:55

HEARINGS  
JURY TRIAL (IN PROGRESS) CONTINUED TO 01/27/2011 AT 9:00 IN DEPARTMENT 12.  
DEFENDANT ORDERED TO APPEAR ON HEARING DATE.

VICTORVILLE  
CASE SUMMARY  
CASE NO. FVI900518

CUSTODY STATUS  
CASE CUSTODY - IN CUSTODY  
===== MINUTE ORDER END ===== 0

01/27/2011 Jury Trial (In Progress) (9:00 AM) (Judicial Officer: Tomberlin, John M)  
Continued Court's motion;

01/27/2011 Legacy Minutes  
JMT, J-JUDGE  
CLERK: VL-VICKIE LO VASCO  
CERTIFIED COURT REPORTER: SM-SHAWNA MANNING; CSR# SM-12827  
DEPUTY DISTRICT ATTORNEY JOHN THOMAS PRESENT.  
DEPUTY PUBLIC DEFENDER DAVE SANDERS PRESENT  
DEFENDANT PRESENT IN CUSTODY.

PROCEEDINGS  
ACTION CAME ON FOR JURY TRIAL-IN PROGRESS

7TH DAY OF TRIAL.

9:15

COURT RECONVENES, ALL PARTIES PRESENT. ALL JURORS AND ALTERNATE JURORS ARE PRESENT AND IN THEIR PLACES.

PEOPLE'S EXHIBIT(S) 49-CD INTERVIEW WITH DEFENDANT MARKED FOR IDENTIFICATION.

PEOPLE'S EXHIBIT(S) 49A-TRANSCRIPT OF EXHIBIT 49 MARKED FOR IDENTIFICATION.

9:16

9:27  
EXHIBIT 49 (CD) PLAYED IN OPEN COURT - COURT REPORTER WAIVED DURING THE PLAYING OF EXHIBIT 49.

10:35  
RECESS DECLARED; JURORS ADMONISHED.  
(ADMONISHED OFF THE RECORD)

10:51  
COURT RECONVENES, ALL PARTIES PRESENT. ALL JURORS AND ALTERNATE JURORS ARE PRESENT AND IN THEIR PLACES.  
(OFF THE RECORD)

10:52  
PLAYING OF EXHIBIT 49 (CD) CONTINUES.

11:58  
RECESS DECLARED; JURORS ADMONISHED.  
(ADMONISHED OFF THE RECORD)

13:34  
COURT RECONVENES, ALL PARTIES PRESENT. ALL JURORS AND ALTERNATE JURORS ARE PRESENT AND IN THEIR PLACES.  
(OFF THE RECORD)

13:35  
PLAYING OF EXHIBIT 49 (CD) CONTINUES.

14:17  
EXHIBIT 49 (CD) ENDS.

14:17  
BACK ON THE RECORD

46-49A  
IN COURT

VICTORVILLE  
CASE SUMMARY  
CASE NO. FVI900518

COUNSEL STIPULATES THAT MORNING AND LUNCH RECESSES WHERE JURY WAS ADMONISHED (OFF THE RECORD) WAS DONE ACCORDING TO COURT PROCEDURES. COUNSEL STIPULATES THAT COURT PROCEDURES WERE FOLLOWED WHEN COURT RECONVENED (OFF THE RECORD)

14:18

14:35

14:34

PEOPLE REST.

14:35

DEFENSE REST.

BENCH CONFERENCE OFF THE RECORD AT 2:35.  
BENCH CONFERENCE ENDS AT 2:37.

14:38

JURY QUESTION RECEIVED  
RECESS DECLARED; JURORS ADMONISHED.

14:40

COURT RECONVENES; ALL PARTIES PRESENT.  
JURORS NOT PRESENT.

14:41

ACTION CAME ON FOR DEFENSE 1118.1 MOTION.

ARGUMENT PRESENTED BY COUNSEL FOR THE DEFENSE.  
ARGUMENT PRESENTED BY COUNSEL FOR THE PEOPLE.

DEFENSE MOTION 1118.1 IS DENIED.

COURT AND COUNSEL DISCUSS DEFENSE REQUEST TO HAVE COURT INSTRUCT JURY TO DISREGARD LINES 10 THROUGH 12 OF EXHIBIT 49A (TRANSCRIPT)  
DEFENSE MAY BRING AUTHORITY FOR COURT TO REVIEW.

RECESS DECLARED 2:57

RECESS DECLARED 2:56

15:26

COURT RECONVENES; ALL PARTIES PRESENT.  
JURORS NOT PRESENT.

PEOPLE'S EXHIBIT(S) 1 THROUGH 29 ENTERED INTO EVIDENCE.  
PEOPLE'S EXHIBIT(S) 33 THROUGH 37 ENTERED INTO EVIDENCE.  
PEOPLE'S EXHIBIT(S) 39 ENTERED INTO EVIDENCE.  
PEOPLE'S EXHIBIT(S) 41 THROUGH 49A ENTERED INTO EVIDENCE.  
(EXHIBITS ENTERED BY STIPULATION)

COURT AND COUNSEL DISCUSS JUROR QUESTION.

COURT AND COUNSEL REVIEW JURY INSTRUCTIONS ON THE RECORD.

RECESS DECLARED 4:00

HEARINGS

JURY TRIAL (IN PROGRESS) CONTINUED TO 01/31/2011 AT 9:00 IN DEPARTMENT V2.  
DEFENDANT ORDERED TO APPEAR ON HEARING DATE.  
(JURORS ORDERED BACK AT 9AM - COUNSEL ORDERED BACK AT 8:30)

NO DEFENSE  
NO OBJECTION  
BY  
COUNSEL  
EVERY MOTION  
IMPROPERLY  
WRITTEN OR  
RESERVED

LACK OF  
AUTHORITY  
TO DEFEND

VICTORVILLE  
CASE SUMMARY  
CASE NO. FVI900518

CUSTODY STATUS  
CASE CUSTODY - IN CUSTODY  
===== MINUTE ORDER END ===== 0

01/31/2011 Jury Trial (In Progress) (9:00 AM) (Judicial Officer: Tomberlin, John M)  
Continued Court's motion;

01/31/2011 Legacy Minutes  
JMT, J-JUDGE  
CLERK: TLA-TOBI ANDRE  
CERTIFIED COURT REPORTER: SM-SHAWNA MANNING; CSR# SM-12827  
DEPUTY DISTRICT ATTORNEY JOHN THOMAS PRESENT.  
DEPUTY PUBLIC DEFENDER DAVE SANDERS PRESENT  
DEFENDANT PRESENT IN CUSTODY.

PROCEEDINGS  
ACTION CAME ON FOR JURY TRIAL-IN PROGRESS  
8TH DAY OF TRIAL.

COURT RECONVENES AT 8:44 JURY NOT PRESENT/DEFENDANT NOT PRESENT  
DEFENDANT'S PRESENCE WAIVED.  
COURT AND COUNSEL DISCUSS JURY INSTRUCTIONS  
RECESS DECLARED AT 8:50

COURT RECONVENES AT 9:17-JURY NOT PRESENT  
COURT AND COUNSEL DISCUSS JURY INSTRUCTIONS

COURT GIVES JURY INSTRUCTIONS.  
RECESS DECLARED AT 10:17

COURT RECONVENES AT 10:34

CLOSING ARGUMENTS PRESENTED BY DDA JOHN THOMAS (10:35).  
CLOSING ARGUMENTS PRESENTED BY DPD DAVE SANDERS (11:10).  
RECESS DECLARED AT 12:00-JURORS ADMONISHED

COURT RECONVENES AT 1:38  
CLOSING ARGUMENTS PRESENTED BY (CONTINUE) DPD DAVE SANDERS (1:38).  
REBUTTAL BY DDA JOHN THOMAS (2:15).  
COURT GIVES JURY INSTRUCTIONS.  
JURY INSTRUCTIONS FILED.  
BAILIFF PETE FLIEGNER SWORN AT 2:44  
JURY COMMENCES DELIBERATIONS AT 2:44.  
ALTERNATE JURORS (3) RELEASED TO BE ON CALL  
RECESS DECLARED AT 2:51  
JURY RECESS DELIBERATIONS AT 4:30.

HEARINGS  
JURY TRIAL (JURY DELIBERATION) CONTINUED TO 02/01/2011 AT 8:30 IN  
DEPARTMENT V2.  
DEFENDANT ORDERED TO APPEAR ON HEARING DATE.

CUSTODY STATUS  
CASE CUSTODY - IN CUSTODY  
===== MINUTE ORDER END ===== 0

02/01/2011 Jury Trial (Deliberations) (8:30 AM) (Judicial Officer: Tomberlin, John M)  
Continued Court's motion;

02/01/2011 Legacy Minutes  
JMT, J-JUDGE  
CLERK: TLA-TOBI ANDRE  
CLERK: VL-VICKIE LO VASCO  
(PM SESSION)  
CERTIFIED COURT REPORTER: SM-SHAWNA MANNING; CSR# SM-12827

CLOSING  
STATEMENTS



VICTORVILLE  
CASE SUMMARY  
CASE NO. FVI900518

DEPUTY DISTRICT ATTORNEY JOHN THOMAS PRESENT.  
DEPUTY PUBLIC DEFENDER DAVE SANDERS BY PHIL ZYWICIEL PRESENT  
DEFENDANT PRESENT IN CUSTODY.

PROCEEDINGS

ACTION CAME ON FOR JURY TRIAL-IN PROGRESS  
9TH DAY OF TRIAL.

JURY RESUMES DELIBERATIONS AT 8:40.  
JURY RECESS DELIBERATIONS AT 10:30.

JURY RECESS DELIBERATIONS 1:30.  
JURY RESUMES DELIBERATIONS 2:55.

RECESS DECLARED FOR JURORS

HEARINGS

JURY TRIAL (JURY DELIBERATION) CONTINUED TO 02/02/2011 AT 8:30 IN  
DEPARTMENT V2.  
DEFENDANT ORDERED TO APPEAR ON HEARING DATE.

CUSTODY STATUS

CASE CUSTODY - IN CUSTODY

===== MINUTE ORDER END ===== 0

02/02/2011 Jury Trial (Deliberations) (8:30 AM) (Judicial Officer: Tomberlin, John M)  
Continued Court's motion;

02/02/2011 Legacy Minutes  
JMT, J-JUDGE  
CLERK: YL-VICKIE LO VASCO  
CERTIFIED COURT REPORTER: SM-SHAWNA MANNING; CSR# SM-12827  
DEPUTY DISTRICT ATTORNEY JOHN THOMAS PRESENT.  
DEPUTY PUBLIC DEFENDER DAVE SANDERS PRESENT  
DEPUTY PUBLIC DEFENDER PHIL ZYWICIEL FOR DAVE SANDERS (2:44) PRESENT  
DEFENDANT PRESENT IN CUSTODY.

PROCEEDINGS

ACTION CAME ON FOR JURY TRIAL-IN PROGRESS

10TH DAY OF TRIAL.

8:30  
JURY RESUME DELIBERATIONS 8:30.

8:41  
JURY QUESTION(S) 1.

9:16  
COURT RECONVENES; ALL PARTIES PRESENT.  
DEFENDANT NOT PRESENT.  
JURORS NOT PRESENT.

JURY QUESTION 1 DISCUSSED AND REPLY SENT BACK  
TO JURY.

9:36  
JURY QUESTION(S) 2.

JURY QUESTION 2 DISCUSSED OFF THE RECORD AND  
REPLY SENT BACK TO JURY.

10:05  
READ BACK BEGINS

10:14

SANDERS  
QUEST.

VICTORVILLE  
CASE SUMMARY  
CASE NO. FVI900518

READ BACK ENDS

10:45  
RECESS DECLARED FOR JURORS

11:00  
JURY RESUMES DELIBERATIONS 11:00.

12:00  
RECESS DECLARED FOR JURORS

13:35  
JURY RESUMES DELIBERATIONS 1:35.

14:44  
COURT RECONVENES; ALL PARTIES PRESENT.  
DEFENDANT NOT PRESENT.  
JURORS NOT PRESENT.

DPD PHIL ZYWICIEL PRESENT FOR DPD DAVE SANDERS.

14:56  
DEFENDANT PRESENT.

JURY INDICATES THAT THEY MAY BE DEAD LOCKED BUT  
FURTHER DELIBERATIONS MAY BE HELPFUL.

JURY ORDERED BACK AT 9AM ON 2/3/2011 TO  
CONTINUE DELIBERATIONS.

15:03  
RECESS DECLARED; JURORS ADMONISHED.

RECESS DECLARED 3:08

HEARINGS  
JURY TRIAL (JURY DELIBERATION) CONTINUED TO 02/03/2011 AT 9:00 IN  
DEPARTMENT V2.  
DEFENDANT ORDERED TO APPEAR ON HEARING DATE.

CUSTODY STATUS  
CASE CUSTODY - IN CUSTODY  
===== MINUTE ORDER END ===== 0

02/03/2011 Jury Trial (Deliberations) (9:00 AM) (Judicial Officer: Tomberlin, John M)  
Continued Court's motion;

02/03/2011 Legacy Minutes  
JMT, J-JUDGE  
CLERK: VL-VICKIE LO VASCO  
CERTIFIED COURT REPORTER: SM-SHAWNA MANNING; CSR# SA-12827  
DEPUTY DISTRICT ATTORNEY JOHN THOMAS PRESENT.  
DEPUTY PUBLIC DEFENDER DAVE SANDERS PRESENT  
DEPUTY PUBLIC DEFENDER PHIL ZYWICIEL (PM) PRESENT  
DEFENDANT PRESENT IN CUSTODY.

PROCEEDINGS  
ACTION CAME ON FOR JURY TRIAL-IN PROGRESS

11TH DAY OF TRIAL.

9:10  
JURY RESUME DELIBERATIONS 9:10.

10:47  
RECESS DECLARED 10:47

DEADLOCK

DEADLOCK

DEADLOCK

VICTORVILLE  
CASE SUMMARY  
CASE NO. FVI900518

DEADLOCK

DEADLOCK

VERDICT

ATTEMPTED

11:09  
JURY RESUMES DELIBERATIONS 11:09.  
-  
RECESS DECLARED FOR JURORS - 12:00

13:30  
JURY RESUME DELIBERATIONS 1:30.  
-  
RECESS DECLARED FOR JURORS - 3:22

15:50  
JURY RESUME DELIBERATIONS 3:50.

16:35  
COURT RECONVENES; ALL PARTIES PRESENT.  
DPD PHIL ZYWICIEL FOR DPD DAVE SANDERS  
JURY PRESENT

16:37  
VERDICT READ BY COURT CLERK

VERDICT  
WE THE JURY IN THE ABOVE-ENTITLED ACTION, FIND THE DEFENDANT JOHN HENRY YABLONSKY, GUILTY IN COUNT 1, A VIOLATION OF SECTION 187(A) PC. JURY FINDS THAT THE MURDER OF RITA MABEL COBB WAS COMMITTED BY JOHN HENRY YABLONSKY WHILE SAID DEFENDANT WAS ENGAGED IN THE COMMISSION OF AND/OR THE ATTEMPTED COMMISSION OF THE CRIME OF RAPE (PC190.2(A)(17)) (THE ABOVE FOUND "TRUE")

16:39  
JURORS POLLED ON VERDICT(S).

16:41  
COURT GIVES JURY INSTRUCTIONS.

16:44  
JURORS THANKED AND EXCUSED.

HEARINGS  
SENTENCING SET FOR 04/08/2011 AT 8:30 IN DEPARTMENT V2.  
DEFENDANT ORDERED TO APPEAR ON HEARING DATE.  
DEFENDANT WAIVES TIME FOR SENTENCING.  
DEFENSE MOTIONS DUE BY 3/25/2011

REFERRAL  
REFERRED TO PROBATION OFFICE FOR PRESENTENCE INVESTIGATION AND REPORT.

CUSTODY STATUS  
CASE CUSTODY - IN CUSTODY  
PROBATION OFFICE NOTIFIED.  
===== MINUTE ORDER END ===== 0

02/08/2011

Exhibits List Filed  
EXHIBITS LIST FILED

02/08/2011

Exhibit(s) & Exhibit List Received From Court; Clerk's Copy  
EXHIBIT(S) & EXHIBIT LIST RECEIVED FROM COURTROOM; CLERK'S COPY RETURNED TO COURTROOM.

02/28/2011

Note  
MARSدين MTN FILED 022511

MARSدين  
5  
TRIN

VICTORVILLE  
CASE SUMMARY  
CASE NO. FVI900518

*Off Motion*

*COA  
APPEALS  
MINUTES*

02/28/2011 Forwarded:  
*FORWARDED MTN TO V2*

02/28/2011 Note  
*NOTICE OF APPEAL RC'D BY MAIL (2/25/11)*

02/28/2011 Note  
*MOTION FOR APPT FOR COUNSEL ON APPEAL RCV 2/25/11*

02/28/2011 Faxed Documents  
*ALL NECESSARY DOCUMENTS FAXED TO APPEALS.*

02/28/2011 Note  
*NOTICE OF APPEAL RC'D (2/25/11) BY MAIL*

03/01/2011 Note  
*PREMATURE APPEAL RECEIVED ON 2/25/11*

03/11/2011 Received An Order From The Court Of Appeal On This Date  
*RECEIVED AN ORDER FROM THE COURT OF APPEAL ON THIS DATE.*

03/14/2011 Letter Received  
*LETTER DATED 03/10/2011 RECEIVED FROM SB CO SHERIFF RE: PRO PER STATUS*

03/14/2011 Note  
*CORRESPONDENCE REC'D FROM W'VC*

03/17/2011 Note  
*RFA REC'D SENT TO APPELLATE COUNSEL*

03/24/2011 Forwarded:  
*FORWARDED LETTER DATED 03/10/11 TO V2*

03/28/2011 Copy Sent:  
*COPY OF MINUTE ORDER 02/03/11 SENT TO PROBATION DEPT.*

04/04/2011 Ex Parte Hearing (1:51 PM) (Judicial Officer: Tomberlin, John M)  
Held;

04/04/2011 Legacy Minutes  
*JMT, J-JUDGE  
CLERK: VL-VICKIE LO VASCO  
REPORTER NOT REPORTED*  
-  
*PROCEEDINGS  
ACTION CAME ON FOR POST DISPO HEARING*  
-  
*COURT HAS READ AND CONSIDERED LETTER RECEIVED  
FROM ROBERT DORROUGH SUPPORT SERVICES -W'VC  
SERGEANT.*  
-  
*THE COURT PREVIOUSLY ISSUED AN ORDER TO PERMIT  
DEFENDANT TO PRINT OUT INFORMATION FROM THE  
COMPUTERS IN THE WEST VALLEY DETENTION CENTER  
LAW LIBRARY.*  
-  
*THE COURT HAVING READ AND CONSIDERED THE LETTER  
FINDS THAT THIS ORDER WAS CONTRARY TO JAIL  
POLICY.*  
-  
*COURT'S MOTION TO FOLLOW JAIL POLICY IS GRANTED.*  
-  
*CUSTODY STATUS*

VICTORYVILLE  
CASE SUMMARY  
CASE NO. FVI900518

OFFENSE  
MOTIONS  
VASCO

CASE CUSTODY - IN CUSTODY  
===== MINUTE ORDER END ===== 0

04/05/2011

Note  
MTN TO RECEIVE TRANSCRIPTS FILED 03/21/11

04/05/2011

Note  
P & A IN SUPP OF NEW TRIAL FILED 03/24/11

04/05/2011

Forwarded:  
FORWARDED MTN TO V2

04/05/2011

Forwarded:  
FORWARDED P & A TO V2

04/07/2011

Forwarded:  
FORWARDED PROBATION REPORT TO V2

04/07/2011

Probation Officer's Report filed  
PROBATION OFFICER'S REPORT FILED 04/07/2011

04/08/2011

Sentencing (8:30 AM) (Judicial Officer: Tomberlin, John M)  
Continued Court's motion;

04/08/2011

Legacy Minutes  
JMT, J-JUDGE  
CLERK: V'L-VICKIE LO VASCO  
CERTIFIED COURT REPORTER: KM3-KELLY MAGGS; CSR# KM3-13384  
DEPUTY DISTRICT ATTORNEY CARRIE HALGRIMSON FOR JOHN THOMAS PRESENT.  
DEPUTY PUBLIC DEFENDER DAVE SANDERS PRESENT  
DEFENDANT PRESENT IN CUSTODY.

PROCEEDINGS  
ACTION CAME ON FOR SENTENCING

STIPULATED MOTION FOR CONTINUANCE IS GRANTED.  
(FOR COURT TO REVIEW MOTIONS)

HEARINGS  
HEARING CONTINUED TO 04/15/2011 AT 8:30 IN DEPARTMENT V2.  
DEFENDANT ORDERED TO APPEAR ON HEARING DATE.  
DEFENDANT WAIVES TIME FOR SENTENCING.

CUSTODY STATUS  
CASE CUSTODY - IN CUSTODY  
===== MINUTE ORDER END ===== 0

04/15/2011

Sentencing (8:30 AM) (Judicial Officer: Tomberlin, John M)  
Continued Court's motion;

04/15/2011

Legacy Minutes  
JMT, J-JUDGE  
CLERK: V'L-VICKIE LO VASCO  
CERTIFIED COURT REPORTER: KM3-KELLY MAGGS; CSR# KM3-13384  
DEPUTY DISTRICT ATTORNEY JOHN THOMAS PRESENT.  
DEPUTY PUBLIC DEFENDER DAVE SANDERS PRESENT  
DEFENDANT PRESENT IN CUSTODY.

PROCEEDINGS  
ACTION CAME ON FOR SENTENCING

ACTION CAME ON FOR MARSDEN MOTION

COURT STAFF: DPD DAVE SANDERS/DPD STEVE BREMSER/

VICTORYVILLE  
CASE SUMMARY  
CASE No. FVI900518

DEFENDANT PRESENT.

DDA JOHN THOMAS WAIVES HIS PRESENCE.

MASDEN MOTION IS CONTINUED TO 4/22/2011.  
POINTS AND AUTHORITIES ARE TO BE FILED REGARDING  
MOTION FOR NEW TRIAL BASED ON INEFFECTUAL  
COUNSEL.

TRANSCRIPTS OF IN-CAMERA HEARING ORDERED SEALED.

RESUME OPEN COURT

STIPULATED MOTION FOR CONTINUANCE IS GRANTED.

HEARINGS  
HEARING CONTINUED TO 04/22/2011 AT 8:30 IN DEPARTMENT V2.  
DEFENDANT ORDERED TO APPEAR ON HEARING DATE.

CUSTODY STATUS  
CASE CUSTODY - IN CUSTODY  
===== MINUTE ORDER END ===== 0

04/22/2011 Sentencing (8:30 AM) (Judicial Officer: Tomberlin, John M)  
Continued Court's motion;

04/22/2011 Legacy Minutes  
JMT, J-JUDGE  
CLERK: JL-JACKIE LAWRENCE  
CERTIFIED COURT REPORTER: SM-SHAWNA MANNING; CSR# SM-12827  
SPECIAL APPEARANCE BY DDA JOHN FERMINA FOR DDA JOHN THOMAS.  
DEPUTY PUBLIC DEFENDER DAVE SANDERS PRESENT  
DEFENDANT PRESENT IN CUSTODY.

PROCEEDINGS  
ACTION CAME ON FOR SENTENCING

9:36  
IN-CAMERA HEARING HELD.  
DEFENDANT'S MOTION FOR FURTHER ARGUMENT RE: MARSDEN.  
DEFENDANT'S MOTION RE: MARSDEN IS DENIED.  
TRANSCRIPTS OF IN-CAMERA HEARING ORDERED SEALED.

PEOPLE STATE THAT MOTION FOR NEW TRIAL BE  
CONSIDERED DUE TO UNEFFECTIVE REPRESENTATION  
BY COUNSEL.

COURT WILL APPOINT CONFLICT PANEL TO REVIEW  
MOTION FOR NEW TRIAL.

ATTORNEY INFORMATION  
COURT APPOINTS CONFLICT PANEL ATTORNEY.  
PUBLIC DEFENDER REAPPOINTED.  
NO DISCOVERY IN FILE.

HEARINGS  
HEARING ON MOTION RE: SENTENCE RE: NEW TRIAL SET FOR 05/06/2011 AT 8:30 IN  
DEPARTMENT V2.  
DEFENDANT ORDERED TO APPEAR ON HEARING DATE.  
DEFENDANT WAIVES TIME FOR SENTENCING.

CUSTODY STATUS  
CASE CUSTODY - IN CUSTODY  
===== MINUTE ORDER END ===== 0  
CONFLICT PANEL NOTIFIED.

4/15/11  
MARS DEN  
HEARING

MARS DEN  
HEARING

CONFLICT  
APPOINTED

CASE SUMMARY

CASE NO. FVI900518

05/06/2011 Motion Hearing (8:30 AM) (Judicial Officer: Tomberlin, John M)  
Continued Court's motion:

05/06/2011 Legacy Minutes  
JMT, J-JUDGE  
CLERK: JL-JACKIE LAWRENCE  
CERTIFIED COURT REPORTER: SM-SHAWNA MANNING; CSR# SM-12827  
DEPUTY DISTRICT ATTORNEY JOHN THOMAS PRESENT.  
DEPUTY PUBLIC DEFENDER DAVE SANDERS PRESENT  
ATTORNEY CONFLICT PANEL- RON POWELL PRESENT.  
DEFENDANT PRESENT IN CUSTODY.

PROCEEDINGS  
ACTION CAME ON FOR SENTENCING  
REQUEST FOR NEW TRIAL  
CONFIRMATION OF COUNSEL

MOTIONS  
CONFLICT PANEL MOTION TO CONTINUE MATTER.  
CONFLICT PANEL ATTORNEY RON POWELL STATES  
THAT STUART O'MEL'ENY WILL BE CONNSEL ON  
THIS MATTER.

COURT'S MOTION TO CONTINUE TO CONFIRM COUNSEL IS GRANTED.

HEARINGS  
HEARING CONTINUED TO 05/13/2011 AT 8:30 IN DEPARTMENT V2.  
(TO CONFIRM COUNSEL AT NEXT HEARING)

CUSTODY STATUS  
CASE CUSTODY - IN CUSTODY.  
===== MINUTE ORDER END ===== 0

05/13/2011 Motion Hearing (8:30 AM) (Judicial Officer: Tomberlin, John M)  
Continued Court's motion;

05/13/2011 Forwarded:  
FORWARDED ORIGINAL REMITTITUR TO VICTORVILLE FOR REVIEW

05/13/2011 Decision By Reviewing Court:  
APPEAL IS DISMISSED BY REVIEWING COURT

05/13/2011 Remittitur filed  
REMITTITUR FILED.

05/13/2011 Legacy Minutes  
JMT, J-JUDGE  
CLERK: JL-JACKIE LAWRENCE  
CERTIFIED COURT REPORTER: DR-DEBBIE ROGERS; CSR# DR-4639  
DEPUTY DISTRICT ATTORNEY GARY ROTH PRESENT.  
DEPUTY PUBLIC DEFENDER PHILIP ZYWICIEL PRESENT  
SPECIAL APPEARANCE BY ATTORNEY CDP-BRANDON WOOD FOR ATTORNEY CDP-  
HARLIN BRANSKI.  
DEFENDANT PRESENT IN CUSTODY.

PROCEEDINGS  
ACTION CAME ON FOR SENTENCING

MOTIONS  
CONFLICT PANEL'S MOTION TO CONTINUE IS GRANTED.  
SO THAT ATTORNEY HARLIN BRANSKI CAN MEET AND  
TALK WITH THE DEFENDANT

HEARINGS  
HEARING CONTINUED TO 05/20/2011 AT 8:30 IN DEPARTMENT V2.

CONFLICT  
APPEAL

CONFLICT  
APPEAL

CASE SUMMARY

CASE NO. FVI900518

DEFENDANT ORDERED TO APPEAR ON HEARING DATE.  
DEFENDANT WAIVES TIME FOR SENTENCING.

CUSTODY STATUS

CASE CUSTODY - IN CUSTODY

===== MINUTE ORDER END ===== 0

05/17/2011 Remittitur Received And Sent To Department  
REMITTITUR RECEIVED AND SENT TO DEPARTMENT V2

05/20/2011 Motion Hearing (8:30 AM) (Judicial Officer: Tomberlin, John M)  
Continued Court's motion;

05/20/2011 Legacy Minutes  
JMT, J-JUDGE  
CLERK: JL-JACKIE LAWRENCE  
CERTIFIED COURT REPORTER: SM-SHAWNA MANNING; CSR# SM-12827  
SPECIAL APPEARANCE BY DDA MIKE FERMIN FOR DDA JOHN THOMAS.  
SPECIAL APPEARANCE BY ATTORNEY CDP-**RON POWELL** FOR ATTORNEY CDP-HAL SMITH.  
DEPUTY PUBLIC DEFENDER DAVE SANDERS PRESENT  
DEFENDANT PRESENT IN CUSTODY.

PROCEEDINGS  
ACTION CAME ON FOR SENTENCING

MOTIONS  
DEFENSE'S MOTION TO CONTINUE MATTER IS GRANTED.  
CONFIRM COUNSEL AND SET DATES

HEARINGS  
HEARING CONTINUED TO 06/15/2011 AT 8:30 IN DEPARTMENT V2.  
DEFENDANT ORDERED TO APPEAR ON HEARING DATE.  
DEFENDANT WAIVES TIME FOR SENTENCING.

CUSTODY STATUS  
CASE CUSTODY - IN CUSTODY  
===== MINUTE ORDER END ===== 0

05/23/2011 Note  
(5/20/11) JUDGE TOMBERLIN-NO ACTION

06/15/2011 Motion Hearing (8:30 AM) (Judicial Officer: Tomberlin, John M)  
Continued Court's motion;

06/15/2011 Legacy Minutes  
JMT, J-JUDGE  
CLERK: JL-JACKIE LAWRENCE  
CERTIFIED COURT REPORTER: SM-SHAWNA MANNING; CSR# SM-12827  
DEPUTY DISTRICT ATTORNEY JOHN THOMAS PRESENT.  
DEPUTY PUBLIC DEFENDER DAVE SANDERS PRESENT  
ATTORNEY CONFLICT PANEL-H. CHARLES SMITH PRESENT.  
DEFENDANT PRESENT IN CUSTODY.

PROCEEDINGS  
ACTION CAME ON FOR POST DISPO HEARING  
COURT CONFIRMS CONFLICT PANEL H. CHARLES SMITH  
AS ATTORNEY TO REVIEW RECORDS TO DETERMINE  
IF MOTION FOR NEW TRIAL IS NEEDED

HEARINGS  
HEARING CONTINUED TO 09/09/2011 AT 8:30 IN DEPARTMENT V2.  
DEFENDANT ORDERED TO APPEAR ON HEARING DATE.

CSR SHAWNA MANNING IS DIRECTED BY THE COURT TO PREPARE A TRANSCRIPT

HAC SMITH  
NPP

H.S.



CASE SUMMARY

CASE NO. FVI900518

RECORDED  
REQ

OF THE PROCEEDINGS HELD ON ENTIRE TRIAL. COPY OF MINUTE ORDER GIVEN TO REPORTER.  
ORIGINAL PLUS ONE COPY TO H. CHARLES SMITH OF THE CONFLICT PANEL  
ONE COPY TO DISTRICT ATTORNEY'S OFFICE

CSR MICHELLE SWAL IS DIRECTED BY THE COURT TO PREPARE A TRANSCRIPT OF THE PROCEEDINGS HELD ON 011911. COPY OF MINUTE ORDER GIVEN TO REPORTER.  
ORIGINAL PLUS TWO COPIES

CUSTODY STATUS  
CASE CUSTODY - IN CUSTODY  
===== MINUTE ORDER END ===== 0

09/02/2011 Reporter's Claim For Transcript Received And Processed  
REPORTER'S CLAIM FOR TRANSCRIPT DATED 01/18/2011, RECEIVED AND PROCESSED.

09/02/2011 Transcript  
TRIAL TRANSCRIPT TO DISTRICT ATTORNEY

09/02/2011 Transcript  
TRIAL TRANSCRIPT TO DEFENSE ATTORNEY LOCATED AT FRONT COUNTER

09/09/2011 Motion Hearing (8:30 AM) (Judicial Officer: Tomberlin, John M)  
Continued Court's motion;

09/09/2011 Legacy Minutes  
JMT, J-JUDGE  
CLERK: VL-VICKIE LO VASCO  
CERTIFIED COURT REPORTER: SM-SHAWNA MANNING; CSR# SM-12827  
DEPUTY DISTRICT ATTORNEY JOHN THOMAS PRESENT.  
ATTORNEY CONFLICT PANEL-H. CHARLES SMITH PRESENT.  
DEFENDANT PRESENT IN CUSTODY.

NO  
RECORDS

PROCEEDINGS  
ACTION CAME ON FOR POST DISPO HEARING  
(MOTION FOR NEW TRIAL/SENTENCING)  
  
DEFENSE MOTION FOR CONTINUANCE IS GRANTED.  
(TO REVIEW TRANSCRIPTS)

HEARINGS  
HEARING CONTINUED TO 12/02/2011 AT 8:30 IN DEPARTMENT V2.  
DEFENDANT ORDERED TO APPEAR ON HEARING DATE.

CUSTODY STATUS  
CASE CUSTODY - IN CUSTODY  
===== MINUTE ORDER END ===== 0

12/02/2011 Motion Hearing (8:30 AM) (Judicial Officer: Tomberlin, John M)  
Continued Court's motion:

12/02/2011 Legacy Minutes  
JMT, J-JUDGE  
CLERK: VL-VICKIE LO VASCO  
CERTIFIED COURT REPORTER: MS2-MICHELLE SWAL; CSR# MS2-13580  
DEPUTY DISTRICT ATTORNEY GARY ROTH PRESENT.  
ATTORNEY CONFLICT PANEL-H. CHARLES SMIT PRESENT.  
DEFENDANT PRESENT IN CUSTODY.

PROCEEDINGS  
ACTION CAME ON FOR SENTENCING  
(MOTION FOR NEW TRIAL)

VICTORVILLE  
**CASE SUMMARY**  
CASE NO. FVI900518

-  
DEFENSE MOTION FOR CONTINUANCE IS GRANTED.  
(TO FURTHER PREPARE FOR TRIAL)

-  
HEARINGS  
HEARING CONTINUED TO 01/20/2012 AT 8:30 IN DEPARTMENT V2.  
(STATUS HEARING)  
DEFENDANT ORDERED TO APPEAR ON HEARING DATE.

-  
DEFENSE MOTION FOR NEW TRIAL DUE 01/20/2012.

-  
CUSTODY STATUS  
CASE CUSTODY - IN CUSTODY  
===== MINUTE ORDER END ===== 0

01/20/2012 Motion Hearing (8:30 AM) (Judicial Officer: Tomberlin, John M)  
Continued Court's motion;

01/20/2012 Legacy Minutes  
JMT, J-JUDGE  
CLERK: VL-VICKIE LO VASCO  
CERTIFIED COURT REPORTER: JB-JENNIFER BOROS; CSR# JB-13355  
DEPUTY DISTRICT ATTORNEY JOHN THOMAS PRESENT.  
ATTORNEY CHARLES SMITH PRESENT.  
DEFENDANT PRESENT IN CUSTODY.

-  
PROCEEDINGS  
ACTION CAME ON FOR POST DISPO HEARING  
(MOTION FOR NEW TRIAL)  
-  
DEFENSE MOTION FOR CONTINUANCE TO FILE MOTION IS GRANTED.

-  
HEARINGS  
HEARING CONTINUED TO 02/24/2012 AT 10:00 IN DEPARTMENT V2.  
(SPECIAL SETTING FOR 10AM)  
DEFENDANT ORDERED TO APPEAR ON HEARING DATE.

-  
CUSTODY STATUS  
CASE CUSTODY - IN CUSTODY  
===== MINUTE ORDER END ===== 0

02/15/2012 Motion  
MOTION FOR NEW TRIAL P&A'S FILED 02/15/2012

02/15/2012 Forwarded:  
FORWARDED MOTION FRO NEW TRIAL TO V2 BIN

02/21/2012 Note  
CORRESPONDENCE RCVD FROM DEFENDANT 021712

02/23/2012 Motion  
MOTION OPPOSITION TO DEFTS MOTION FOR NEW TRIAL FILED 02/23/201

02/23/2012 Forwarded:  
FORWARDED OPPOSITION MOTION TO DEPT V2

02/24/2012 Motion Hearing (10:00 AM) (Judicial Officer: Tomberlin, John M)  
Held;

02/24/2012 Sentenced (Judicial Officer: Tomberlin, John M)  
1. PC187(A)-F: Murder  
09/20/1985 (FEL) 187(A) (PC187(A)-F)  
Charge #: 001 Allegation:

*REC  
EC. JUST  
REC.*

VICTORVILLE  
CASE SUMMARY  
CASE NO. FVI900518

Adult Confinement

Type: County Jail  
Facility: San Quentin  
Life  
Credit for Time Served - Actual: 1084 Days  
Conduct Credit: 542 Days  
Balance to be served at credit rate of PC 2933.2 (No Credit)  
Comment: 40610B Flag: N Drug Court Flag: N

Converted Disposition:

02/24/2012

Legacy Minutes

JMT, J-JUDGE  
CLERK: SJI-SHIRLEY JAUREGUI  
CERTIFIED COURT REPORTER: FM-FRANCES MACIAS; CSR# FM-10918  
DEPUTY DISTRICT ATTORNEY JOHN THOMAS PRESENT.  
ATTORNEY CHARLES SMITH PRESENT.  
DEFENDANT PRESENT IN CUSTODY.

PROCEEDINGS

ACTION CAME ON FOR POST DISPO HEARING  
(SENTENCE/RE: NEW TRIAL)  
COURT HAS READ AND CONSIDERED PROBATION OFFICER'S REPORT.

MOTIONS

DEFENSE MOTION FOR NEW TRIAL IS HEARD.  
ISSUES ARGUED AND SUBMITTED.  
THE COURT HAS READ AND CONSIDERED THE MOTION FOR  
A NEW TRIAL AND THE POINTS AND AUTHORITIES IN  
SUPPORT OF MOTION FOR A NEW TRIAL AND THE EXHIBITS  
CONTAINED WITHIN.

COURT FINDS:

DEFENSE MOTION FOR A NEW TRIAL IS DENIED.  
THE COURT DID OBSERVE THE TRIAL AND DID NOT FIND  
DEFENSE COUNSEL TO BE INCOMPETENT OR INEFFECTIVE.

THE COURT ORDERS EXHIBIT "P" REMOVED FROM MOTION  
FOR NEW TRIAL AND BE PLACED IN A SEPARATE ENVELOPE  
IN THE COURT FILE AND SEALED.

THE COURT FURTHER ORDERS THE FOLLOWING IN THE  
MOTION FOR NEW TRIAL:

\*\*LINE #6 ON PAGE 14-COURT ORDERS THE NAMES OF  
THE TWO WITNESSES BE REDACTED FROM THE MOTION.

\*\*LINE #9 ON PAGE 14-THE SENTENCE SHALL END AFTER  
THE WORD "INFORMATION" AND THE COMMA WILL BE  
REPLACED WITH A PERIOD. THE REST OF THE SENTENCE  
AFTER "INFORMATION" SHALL BE DELETED FROM THE  
MOTION. (THROUGH LINE #12)

ATTORNEY CHARLES SMITH TO PREPARE AN AMENDED  
PAGE 14 OF THE MOTION FOR NEW TRIAL.

DEFENDANT REQUESTS A FARETTA MOTION.  
THE COURT INQUIRES THE DEFENDANT.  
THE COURT DENIES THE FARETTA MOTION.

VICTIM IMPACT STATEMENT MADE BY DARYL KRAEMER.

FINDINGS/ADVISALS:

FORMAL ARRAIGNMENT FOR PRONOUNCEMENT OF JUDGMENT IS WAIVED; NO  
LEGAL CAUSE WHY JUDGMENT SHOULD NOT NOW BE PRONOUNCED.  
PURSUANT TO SECTION 13350, VEHICLE CODE, THE COURT FINDS A MOTOR  
VEHICLE WAS NOT USED IN THE COMMISSION OF THE OFFENSE.  
COURT FINDS DEFENDANT IS NOT ABLE TO REIMBURSE THE COUNTY FOR

ADVISE  
DISC  
COUNSEL  
APPEARANCE  
IN CT  
NOT INLETT  
POINT ON  
MOTION

CASE SUMMARY

CASE NO. FVI900518

ATTORNEY FEES.

THE COURT FINDS THAT THE DEFENDANT DOES NOT HAVE THE PRESENT ABILITY TO PAY THE COST OF CONDUCTING THE PRE-SENTENCE INVESTIGATION AND PREPARING

THE REPORT PURSUANT TO SECTION 1203.1(B) OF THE PENAL CODE. PURSUANT TO PC296(A)(1) THE SHERIFF IS DIRECTED TO OBTAIN THE REQUIRED SAMPLES FROM THE DEFENDANT UNLESS THE SHERIFF VERIFIES THAT A PC 296 SAMPLE

HAS BEEN PREVIOUSLY BEEN OBTAINED FROM THE DEFENDANT AND IS CURRENTLY ON FILE CRIMINAL ASSESSMENT AND COURT OPERATIONS ASSESSMENT OF \$70 PER CONVICTION FOR COUNT(S) 1 PAYABLE TO THE DEPARTMENT OF CORRECTIONS. COURT RETAINS JURISDICTION ON ISSUE OF RESTITUTION PURSUANT TO PC1202.46.

SENTENCING INFORMATION

PROBATION IS DENIED AND SENTENCE IS IMPOSED AS FOLLOWS: SENTENCED TO LIFE WITHOUT POSSIBILITY OF PAROLE AS TO COUNT(S) 1. PRINCIPAL COUNT DEEMED COUNT #1. SENTENCED TO STATE PRISON FOR A TOTAL INDETERMINATE SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE. CREDIT FOR TIME SERVED (1084 ACTUAL + 542 CONDUCT) FOR A TOTAL OF 1626 DAYS. CONDUCT CREDIT PURSUANT TO I-PC4019 SENTENCE TO RUN CONCURRENT TO ANY OTHER TIME OBLIGATED TO SERVE.

COURT FULLY ADVISES DEFENDANT OF HIS/HER APPEAL RIGHTS.

CUSTODY STATUS

CASE CUSTODY - STATE PRISON DEFENDANT REMANDED TO THE CUSTODY OF THE SHERIFF TO BE DELIVERED TO CALIFORNIA DEPARTMENT OF CORRECTIONS AT CHINO. PROBATION OFFICE NOTIFIED. ==MINUTE ORDER CHANGED OR CORRECTED BY SHIRLEY JAUREGUI TO DISPO HEARING; CHANGES MADE ARE AS FOLLOWS: DELETE PC1203.45 FINE-NO PAROLE== CLERK'S OFFICE TO NOTIFY DEPT. OF CORRECTIONS. =====MINUTE ORDER CORRECTED ON 04/14/2014===== ==MINUTE ORDER CHANGED OR CORRECTED BY SHIRLEY JAUREGUI TO DISPO HEARING; CHANGES MADE ARE AS FOLLOWS: STRIKE ALL PC1202.4 FINE== =====MINUTE ORDER CORRECTED ON 06/24/2014===== CLERK'S OFFICE TO NOTIFY DEPT. OF CORRECTIONS..

- 02/28/2012 Motion  
MOTION FOR NEW TRIAL PG 14 MODIFIED FILED 02/28/2012
- 02/28/2012 Forwarded:  
FORWARDED MODIFIED MOTION TO V4 BIN
- 03/05/2012 Certified Copy Sent  
CERTIFIED COPY OF 022412 MIN ORDER SENT TO SAN BERN DA OFFICE.
- 03/05/2012 Abstract of Judgment - State Prison  
ABSTRACT OF JUDGMENT-PRISON COMMITMENT FILED.
- 03/05/2012 Prison Pack Sent Via Sheriff's Transportation  
PRISON PACK SENT VIA SHERIFF'S TRANSPORTATION
- 03/09/2012 Ex Parte Hearing (4:25 PM)
- 03/09/2012 Notice of Appeal Filed  
NOTICE OF APPEAL FILED 03:09:2012.
- 03/09/2012 Clerk's Notification of Filing Of Notice of Appeal Sent

RES  
70

VICTORVILLE  
CASE SUMMARY  
CASE NO. FVI900518

CLERK'S NOTIFICATION OF FILING OF NOTICE OF APPEAL SENT

03/09/2012 Legacy Minutes  
CLERK: S0529-DIANNE TRUJILLO  
NOTICE OF APPEAL FILED  
CUSTODY STATUS  
CASE CUSTODY - STATE PRISON

03/14/2012 Case Reassigned to Another District  
CASE REASSIGNED TO AS- APPEALS DISTRICT.

03/14/2012 Records received  
EXHIBITS/RECORDS RECEIVED 03/14/2012 FROM VICTORVILLE

03/14/2012 Copies Of Exhibits Sent To Appeals  
COPIES OF EXHIBITS SENT TO APPEALS: 38 39 40 41 42 43 44 45 46 47 48 49A.

04/04/2012 Original Clerk's transcript submitted - 1-5 volumes  
ORIGINAL CLERK'S TRANSCRIPT CONSIST OF \*V1-5 VOLUME(S).

04/09/2012 Case Reassigned to Another District  
CASE REASSIGNED TO VS- VICTORVILLE DISTRICT.

05/22/2012 Note  
REC'D 987.2 REQUEST FOR ATTY FEES

05/24/2012 Claim Filed  
CLAIM FILED FOR RT'S BY S MANNING FOR 073010 100810 011811 011911 012011

05/24/2012 Reporter's Transcript On Appeal And Bill Rcvd On This Date  
REPORTER'S TRANSCRIPT ON APPEAL AND BILL RECEIVED ON THIS DATE.

05/24/2012 Claim Filed  
CLAIM FILED FOR RT'S BY S MANNING FOR 012411 012511 012611 012711 013111

05/24/2012 Claim Filed  
CLAIM FILED FOR RT'S BY S MANNING FOR 020111 020211 020311 042211

05/24/2012 Claim Filed  
CLAIM FILED FOR RT'S BY M SWAL FOR 011911

05/24/2012 Claim Filed  
CLAIM FILED FOR RT'S BY F MACIAS FOR 022412

05/25/2012 Record on Appeal Certified to Reviewing Parties & Court  
RECORD ON APPEAL CERTIFIED TO REVIEWING COURT AND PARTIES.

05/25/2012 Note  
REQUEST FOR SPECIAL ATTY FEES-NUNC PRO TUNC

06/01/2012 Attorney Fee Claim Received Verified And Forwarded To Depart  
ATTORNEY FEE CLAIM RECEIVED VERIFIED AND FORWARDED TO DEPARTMENT 14  
FOR SIGNATURE.

06/05/2012 Receipt for Record on Appeal Returned from Court of Appeal  
RECEIPT FOR RECORD ON APPEAL RETURNED FROM THE COURT OF APPEAL.

06/12/2012 Received Appointment of Appellant's Counsel  
RECEIVED APPOINTMENT OF RICHARD A LEVY AS APPELLANT'S COUNSEL.

06/15/2012 Received An Order From The Court Of Appeal On This Date

EVY

VICTORVILLE  
CASE SUMMARY  
CASE NO. FVI900518

RECEIVED AN ORDER FROM THE COURT OF APPEAL ON THIS DATE.

07/24/2012 Note  
ORDER FROM APPEALS RE: AUGMENTATION RC'D 7/24/12

07/25/2012 District Attorney Notified  
DISTRICT ATTORNEY NOTIFIED.

07/25/2012 Attorney Of Defendant Notified  
ATTORNEY OF DEFENDANT NOTIFIED.

07/27/2012 Motion Hearing (8:30 AM) (Judicial Officer: Tomberlin, John M)  
Continued Court's motion;

07/27/2012 Case Reassigned to Another District  
CASE REASSIGNED TO 1'S- VICTORVILLE DISTRICT.

07/27/2012 Legacy Minutes  
JMT, J-JUDGE  
CLERK: VL-VICKIE LO VASCO  
CERTIFIED COURT REPORTER: NF-NUMIA FATA; CSR# NF-12678  
DEPUTY DISTRICT ATTORNEY JOHN THOMAS PRESENT.  
ATTORNEY BRANDON WOOD FOR CHARLES SMITH PRESENT.  
DEPUTY PUBLIC DEFENDER RICHARD LA FIANZA FOR DAVE SANDERS PRESENT  
DEFENDANT PRESENT IN CUSTODY.  
(STATE PRISON NOT TRANSPORTED)

PROCEEDINGS  
ACTION CAME ON FOR POST DISPO HEARING  
(ORDER RE AUGMENTATION)

COURT REQUESTS DDA JOHN THOMAS AND DPD DAVE SANDERS PREPARE A DRAFT STATEMENT AS TO THEIR RECOLLECTION OF WHAT OCCURED AT THE 10/8/2010 HEARING.

COURT ORDERS COPIES OF THE COURT OF APPEAL ORDER FILED 7/20/2012 BE GIVEN TO DDA JOHN THOMAS/ATTORNEY CHARLES SMITH AND DPD DAVE SANDERS.

ATTORNEY BRANDON WOOD TO NOTIFY ATTORNEY SMITH.  
DPD RICHARD LA FIANZA TO NOTIFY DPD DAVE SANDERS.

HEARINGS  
HEARING RE: SETTLED STATMENT SET ON 08/10/2012 AT 8:30 IN DEPARTMENT V2.  
NON APPEARANCE FOR DEFENDANT.

COPY OF THIS MINUTE ORDER ALONG WITH A COPY OF THE COURT OF APPEALS ORDER HAS BEEN MAILED TO ATTORNEY SMITH - ATTORNEY SMITH MAY APPEAR ON 8/10/2010 IF HE WOULD LIKE TO ADD HIS INPUT.

CUSTODY STATUS  
CASE CUSTODY - STATE PRISON  
===== MINUTE ORDER END ===== 0

08/03/2012 Ex Parte Hearing (8:43 AM) (Judicial Officer: Tomberlin, John M)  
Continued Court's motion;

08/03/2012 Legacy Minutes  
JMT, J-JUDGE  
CLERK: VL-VICKIE LO VASCO

JUDGMENT  
RECORD

VICTORVILLE  
**CASE SUMMARY**  
CASE NO. FVI900518

PROCEEDINGS  
ACTION CAME ON FOR POST DISPO HEARING

COURT HAS READ AND CONSIDERED AN EMAIL RECEIVED  
ON 8/3/2012 FROM DPD DAVE SANDERS REQUESTING  
THAT THE HEARING SET FOR 8/10/2012 BE SET  
FOR 8/14/2012 - REQUEST IS GRANTED.

HEARINGS  
HEARING CONTINUED TO 08/14/2012 AT 8:30 IN DEPARTMENT V2.  
DEFENDANT ORDERED TO APPEAR ON HEARING DATE.

MR GROVER MERRITT TO NOTIFY DDA JOHN THOMAS

CUSTODY STATUS  
CASE CUSTODY - STATE PRISON  
===== MINUTE ORDER END ===== 0

08/14/2012 Ex Parte Hearing (8:30 AM) (Judicial Officer: Tomberlin, John M)  
Held;

08/14/2012 Legacy Minutes  
JMT, J-JUDGE  
CLERK: C5062-LISA GAETA  
CERTIFIED COURT REPORTER: SM-SHAWNA MANNING; CSR# SM-12827  
BAILIFF J PATRICK  
  
DEPUTY DISTRICT ATTORNEY GROVER MERRITT PRESENT.  
DEPUTY PUBLIC DEFENDER DAVE SANDERS PRESENT  
DEFENDANT IN CUSTODY - NOT TRANSPORTED.  
  
PROCEEDINGS  
ACTION CAME ON FOR POST DISPO HEARING  
STIPULATED MOTION FOR CHAMBERS CONFERENCE IS GRANTED.  
OFF THE RECORD, COURT AND COUNSEL CONFER IN CHAMBERS.  
DA IS TO SUBMIT A COMPOSED SETTLED STATEMENT  
CASE CUSTODY - STATE PRISON  
===== MINUTE ORDER END ===== 0

08/17/2012 Note  
SETTLED STATEMENT ON APPEAL FILED

08/22/2012 Claim Filed  
CLAIM FILED FOR RT'S BY S MANNING FOR 012411 012011

08/22/2012 Reporter's Transcript On Appeal And Bill Rcvd On This Date  
REPORTER'S TRANSCRIPT ON APPEAL AND BILL RECEIVED ON THIS DATE.

08/22/2012 Claim Filed  
CLAIM FILED FOR RT'S BY K MAGGS FOR 041511

08/22/2012 Claim Filed  
CLAIM FILED FOR RT'S BY M SIVAL FOR 011911

09/05/2012 Note  
RECEIVED VOLUME III

09/05/2012 Case Reassigned to Another District  
CASE REASSIGNED TO VS- VICTORVILLE DISTRICT.

09/06/2012 Receipt for Record on Appeal Returned from Court of Appeal  
RECEIPT FOR RECORD ON APPEAL RETURNED FROM THE COURT OF APPEAL.

VICTORVILLE  
CASE SUMMARY  
CASE NO. FVI900518

10/03/2012 Received An Order-From The Court Of Appeal On This Date  
*RECEIVED AN ORDER FROM THE COURT OF APPEAL ON THIS DATE.*

04/05/2013 Received An Order From The Court Of Appeal On This Date  
*RECEIVED AN ORDER FROM THE COURT OF APPEAL ON THIS DATE.*

04/18/2013 Exhibits Transferred  
*EXHIBITS TRANSFERRED TO: APPEALS C SOLBERG #11 #36 #37 AND #49 ORIGINALS*

04/23/2013 Records received  
*EXHIBITS:RECORDS RECEIVED 04/22/2013 FROM VICTORVILLE-ORIGINAL 11 36 37 & 49*

04/23/2013 Exhibits Transferred  
*EXHIBITS TRANSFERRED TO: DCA FROM APPEALS-ORIGINAL 11 36 37 & 49*

04/30/2013 Receipt of Records/Exhibits filed  
*RECEIPT OF RECORDS/EXHIBITS APPEALS FILED 04/30/2013.*

12/04/2013 Opinion Filed  
*OPINION FILED*


12/06/2013 Forwarded:  
*FORWARDED OPINION TO VICTORVILLE FOR JUDGE TOMBERLIN*

01/03/2014 Forwarded:  
*FORWARDED OPINION TO JUDGE TOMBERLIN-V2*

01/03/2014 Opinion Received And Sent To Department  
*OPINION RECEIVED AND SENT TO DEPARTMENT V2*

01/15/2014 Note  
*(1/10/14)JUDGE TOMBERLIN-OPINION REVIEWED.*

03/18/2014 Decision By Reviewing Court:  
*JUDGMENT IS AFFIRMED AS MODIFIED BY REVIEWING COURT*

03/18/2014  Remittitur filed  
*REMITTITUR FILED.*

03/18/2014 Forwarded:  
*FORWARDED ORIGINAL REMITTITUR TO VICTORVILLE*

03/25/2014 Remittitur Received And Sent To Department  
*REMITTITUR RECEIVED AND SENT TO DEPARTMENT V2*

04/16/2014 Amended Abstract Of Judgment Sent To Doc  
*AMENDED ABSTRACT OF JUDGMENT FILED AND SENT TO DOC*

04/16/2014 Certified Copy Sent  
*CERTIFIED COPY OF AMENDED 02/24/12 MO SENT TO DOC-LPU.*

04/16/2014 Note  
*VOL 3 PLACED BACK IN BOX*

05/23/2014 Records received  
*EXHIBITS:RECORDS RECEIVED 05/21/2014 FROM DCA IN APPEALS-ORIG 11 36 37 & 49*

05/29/2014 Exhibits Transferred

*BEST  
EDUCATION*