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By dfranco
DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO

CENTRAL DIVISION

In re Douglas R. Stankewitz, Petitioner, On Habeas Corpus.	Habeas Case No. 21CRWR685993 Criminal Case No. CF78227015 Dept. 62 ORDER

Petitioner Douglas R. Stankewitz was convicted of the 1978 first-degree special circumstances murder, kidnapping, and robbery of Theresa Graybeal[1] in Superior Court of California, County of Fresno case number CF78227015. In this habeas corpus proceeding, Petitioner seeks to vacate his convictions on several grounds, including, but not limited to, actual innocence, false evidence, and that the prosecutors withheld material exculpatory evidence in violation of *Brady v. Maryland* (1963) 373 U.S. 83. After this Court issued an order to show cause and a return and denial were filed, an evidentiary hearing was conducted. After written closing arguments were filed, this matter was taken under submission. The matter was taken out from submission and the Court issued an order for supplemental briefing. Petitioner filed

[1] The Court notes that the victim's last name is spelled both "Graybeal" and "Greybeal" in the record of case number CF78227015. The California Supreme Court used the "Greybeal" spelling in *People v. Stankewitz* (1990) 51 Cal.3d 72. However, this Court will spell the victim's name as "Graybeal" in conformity with her death certificate.

a supplemental brief. When the time for Respondent to file a supplemental brief expired, the case was again taken under submission.

The Court now takes the matter out from under submission and denies the petition for writ of habeas corpus.

BACKGROUND

I. The Underlying Offense

This statement of facts is derived from *People v. Stankewitz* (1990) 51 Cal.3d 72, 81-84.

On the evening of February 7, 1978, Petitioner, who was 19, Petitioner's mother, Petitioner's brother, an older man named J.C., Marlin Lewis, Tina Topping, and fourteen-year-old Billy Brown all left Sacramento in a white Oldsmobile, heading towards Fresno. Petitioner was driving the vehicle.

At about 1 a.m. on February 8, 1978, the group stopped at a 7-Eleven store in Manteca to purchase vehicle oil. After Manteca police noticed that the vehicle was irregularly parked, they ran a license plate check and received information indicating that the vehicle had been stolen. Officers then approached the vehicle and frisked several of the occupants. One of the passengers, who identified herself as "Tina Lewis," stated that the car had been borrowed from her uncle in Sacramento. The Manteca police contacted the Sacramento Police Department, but were unable to confirm whether, in fact, the vehicle had been stolen. Upon request, Petitioner and the others accompanied the officers to the Manteca police station, where officers unsuccessfully attempted to contact the vehicle's owner. After approximately an hour and a

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half, the group was permitted to leave, but the vehicle was impounded.

The group traveled to the local bus depot, but it was not open. After several hours, Petitioner, Marlin Lewis, Billy Brown, and Tina Topping decided to hitchhike to Fresno. Petitioner's mother, Petitioner's brother, and J.C. remained at the bus depot.

Petitioner, Lewis, Brown, and Topping successfully hitchhiked as far as Modesto. Unable to find a ride further south, the four individuals walked to a Modesto Kmart, where Petitioner announced the group was going to look around for a car. While Petitioner and Topping looked for a vehicle, apparently to steal, in the parking lot, Brown went inside the Kmart. When Brown exited the store, he saw Topping pointing toward a woman walking to her parked vehicle. Petitioner, Lewis, and Topping followed the woman. As the woman opened the door of her vehicle, Topping pushed the woman inside and then sat in the driver's seat of the vehicle herself. Lewis jumped into the vehicle's back seat and opened the passenger side door for Petitioner. Brown then got into the vehicle's back seat with Lewis. In the meantime, Petitioner had produced a gun and Lewis had produced a knife.

As the vehicle exited the Kmart parking lot, Topping was driving, Petitioner was sitting in the passenger seat, the victim, Theresa Graybeal, was seated on the console between Topping and Petitioner, and Lewis and Brown were seated in the back seat. The vehicle drove south toward Fresno. "Once on the freeway, Ms. Graybeal stated that none of this would have happened if she had her dog with her. [Petitioner] responded by pulling out his gun and stating, 'This would have took care of your dog.'" (*People v.*

Stankewitz, supra, 51 Cal.3d at p. 82.) After several miles, Topping asked Graybeal for money. Graybeal handed Lewis $32 from her purse and gave Topping her wristwatch.

When the group arrived in Fresno, they drove straight to a bar called the "Joy and Joy." Topping went into the bar and then returned to the vehicle with a woman named Christina Menchaca. Menchaca and Topping got into the vehicle and they drove around the corner to the Olympic Hotel. Topping and Menchaca went into the hotel, but, a few minutes later, returned to get Petitioner. All three then went into the hotel. Several minutes later, Petitioner returned to retrieve the gun from Lewis. Then, Petitioner, Topping, and Menchaca all returned to the vehicle. Brown described them as moving slowly and having glassy eyes.

Topping suggested that they go to Calwa to obtain heroin. The group drove to Calwa, stopping near a house with a white picket fence. Topping then told everyone to get out because she did not want a lot of company when they went to obtain heroin. Petitioner, Graybeal, Brown, and Lewis exited the vehicle. Brown asked Graybeal for a cigarette and she gave him one and took one for herself. After two to three minutes, Topping told Brown to get back into the vehicle and both Brown and Lewis reentered the car. From inside the car, Brown saw Petitioner walk toward Graybeal, who was standing five or six feet away, facing away from the vehicle. Petitioner raised the gun in his left hand, braced it with his right hand, and shot Graybeal once in the head from a distance of about one foot. Fatally wounded, Graybeal collapsed to the ground.

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"[Petitioner] returned to the car and said, 'Did I drop her or did I drop her?' Marlin Lewis responded, 'You dropped her.' Both were giggling." (*Stankewitz*, 51 Cal.3d at p. 83.) As the vehicle pulled away, Petitioner warned Topping to drive slowly so they would not be caught. After noticing that Graybeal's purse was not in the vehicle, Lewis stated that they had "'made a bad mistake.'" (*Ibid.*)

The vehicle returned to Fresno and drove to the Seven Seas Bar. Menchaca went into the bar in order to try and sell Ms. Graybeal's watch. While Menchaca and Lewis were inside the bar, two police officers approached the car. Topping told Brown to give a false name. Brown did so and the officers left after some brief questioning. Menchaca then returned and reported that she had not succeeded in selling the watch. Petitioner suggested that they try to sell the watch in Clovis. However, Petitioner's attempts to sell the watch there were also unsuccessful. While the group was in Clovis, a girl informed Brown that his mother had reported him as a missing person. Brown then asked to be driven home to Pinedale.

When Brown arrived home, he began to cry and told his mother what had happened. Brown's mother called the police and an investigator responded and took Brown's statement. Later that night, Fresno police caught Petitioner, Topping, and Lewis, who were still in possession of Graybeal's vehicle. The gun used to shoot and kill Graybeal was located in the vehicle. After Menchaca was arrested nearby, Graybeal's watch was located in Menchaca's jacket.

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The account of the murder came primarily from Brown, but other witnesses corroborated various portions of the account. Graybeal's father testified that Graybeal had left his residence on the evening of the murder to pick up cigarettes from Kmart, that Graybeal was driving her father's car, which was the vehicle in which Petitioner was apprehended, and that Graybeal owned two dogs. "A ballistics expert confirmed that the victim had been shot from a distance of six to twelve inches; an expended shell case found in the vicinity of the body was determined to have been fired from the gun recovered from the victim's car." (*Stankewitz*, 51 Cal.3d at 83.) Testimony established that Graybeal's purse and an unlit cigarette were found near her body. "The coroner who performed the autopsy confirmed that the victim had been killed by a single gunshot wound to the neck, severing the spinal cord and causing immediate paralysis and death." (*Id.* at pp. 83-84.)

Finally, five yellow sheets of paper seized during a routine search of contraband of Petitioner's cell were introduced as evidence at trial. The handwriting on all of the sheets of paper was identified as Petitioner's. "The five sheets of paper contained narrative scripts for Tina Topping, Marlin Lewis and Christina Menchaca indicating how the kidnapping, robbery and homicide had supposedly occurred. These fictional accounts blamed the killing on Lewis." (*Stankewitz*, 51 Cal.3d at 84.)

II. Procedural History

On March 10, 1978, Petitioner was charged by information in case number CF78227015.

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On March 17, 1978, the trial court appointed the Fresno County Public Defender's Office (Deputy Public Defender Salvatore Sciandra) to represent Petitioner.

On September 27, 1978, the jury in Petitioner's first trial found Petitioner guilty of the murder, kidnapping, and robbery of Ms. Graybeal in violation of Penal Code sections 187, 207, and 211, and found two special circumstances true (former Pen. Code, § 190.2, subd. (c)(3)(i), (ii)). Following the trial's penalty phase, a judgment of death was imposed.

State Public Defender Quin Denvir and Deputy State Public Defender Steven W. Parnes represented Petitioner in the automatic appeal of his 1978 judgment of death. While that appeal was still pending, Deputy State Public Defender Parnes also filed a petition for writ of habeas corpus with the California Supreme Court.

On August 5, 1982, the California Supreme Court reversed the judgment of death rendered against Petitioner and denied the petition for writ of habeas corpus. (*People v. Stankewitz* (1982) 32 Cal.3d 80, 95.) Specifically, the Supreme Court held that the trial court prejudicially erred by not granting Petitioner's request for a competency hearing, or, at a minimum, by not substituting Petitioner's appointed counsel. (*Id.* at pp. 91-94.)

On remand, Petitioner was given both a competency hearing and a hearing on whether Petitioner's appointed counsel, Salvatore Sciandra, should be substituted pursuant to *People v. Marsden* (1970) 2 Cal.3d 118. After a conflict between Petitioner and Sciandra was found, the trial court relieved the Fresno County Public Defender's Office and appointed private counsel, Hugh

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Goodwin, to represent Petitioner. Petitioner was found competent to stand trial.

On September 22, 1983, the jury in Petitioner's second trial found Petitioner guilty of the first-degree murder of Ms. Graybeal, kidnapping, and robbery. (Pen. Code, §§ 187, 207, & 211.) The jury found true the allegation that Petitioner personally used a firearm during the commission of the offenses in violation of Penal Code section 12022.5 and the special circumstances allegations that "the murder was willful, deliberate and premeditated and was committed by [Petitioner] during the commission of a robbery and a kidnapping. (Former § 190.2, subd. (c)(3)(i), (ii).)" (*People v. Stankewitz* (1990) 51 Cal.3d 72, 81.) Following the second trial's penalty phase, the jury returned a verdict of death.

Petitioner was represented during the automatic appeal of his second judgment of death by Robert A. Seligson and John P. Ward. On February 2, 1990, while this second appeal was pending, Petitioner's counsel, John P. Ward, filed a petition for writ of habeas corpus with the California Supreme Court. However, on April 19, 1990, the California Supreme Court summarily denied Petitioner's habeas corpus petition.

On July 5, 1990, the California Supreme Court affirmed the judgment of death against Petitioner in its entirety. (*Stankewitz II, supra*, 51 Cal.3d 72.) On April 1, 1991, the U.S. Supreme Court denied Petitioner's timely petition for writ of certiorari. (*Stankewitz v. California* (1991) 499 U.S. 954.)

"On October 17, 1994, [Petitioner] filed a habeas petition in federal district court under 28 U.S.C. § 2254. Because several

claims were unexhausted, the district court stayed the proceedings to enable [Petitioner] to exhaust the claims." (*Stankewitz v. Woodford* (9th Cir. 2004) 365 F.3d 706, 712.) At the time, Petitioner's federal habeas corpus petition was filed, Petitioner was represented by Robert Bryan, Nicholas Arguimbau, and Maureen M. Bodo.

On July 14, 1995, Petitioner's counsel, Bryan, Arguimbau, and Bodo, filed a second habeas corpus petition with the California Supreme Court. On March 14, 1996, the California Supreme Court denied three of Petitioner's claims on procedural bars and also denied the entire habeas corpus petition on the merits.

On May 18, 1996, Petitioner's counsel, Bryan, Arguimbau, and Bodo, filed an amended habeas corpus petition with the U.S. District Court for the Eastern District of California. (*Stankewitz v. Woodford, supra,* 365 F.3d 706, 712.) On December 22, 2000, the District Court denied Petitioner's habeas corpus petition in its entirety. Petitioner filed a timely appeal.

On April 8, 2004, the Ninth Circuit Court of Appeals affirmed the District Court's denial of Petitioner's habeas corpus petition with respect to Petitioner's guilt-phase challenges. (*Stankewitz v. Woodford* (9th Cir. 2004) 94 Fed. Appx. 600.) However, the Ninth Circuit Court of Appeals reversed the District Court's denial of Petitioner's habeas corpus petition with respect to Petitioner's contention that Hugh Goodwin rendered ineffective assistance during the penalty phase of Petitioner's second trial by failing to investigate and present available mitigating evidence. Specifically, the Ninth Circuit Court of Appeals held that, since Petitioner's penalty phase ineffective assistance of

counsel claim was colorable, the District Court abused its discretion in denying Petitioner's evidentiary hearing request as to that claim. (*Stankewitz v. Woodford, supra,* 365 F.3d 706, 708, 725.) Nicholas Arguimbau and Katherine Hart represented Petitioner in this appeal before the Ninth Circuit Court of Appeals.

On remand, Petitioner was represented by various counsel while his habeas corpus petition was pending before the U.S. District Court for the Eastern District of California, including Joseph Schlesinger and Harry Simon of the Federal Public Defender's Office for the Eastern District of California, and private attorneys Katherine Hart, Patience Milrod, Nicholas Arguimbau, and Robert Bryan. On September 22, 2009, the U.S. District Court for the Eastern District of California granted Petitioner's federal habeas corpus petition and reversed Petitioner's death sentence on the ground that Hugh Goodwin committed ineffective assistance of counsel when he failed to investigate and present available mitigating evidence during the penalty phase of Petitioner's second trial. (*Stankewitz v. Wong* (E.D.Cal. 2009) 659 F.Supp.2d 1103, 1112.) The State of California timely appealed.

On October 29, 2012, the Ninth Circuit Court of Appeals affirmed the U.S. District Court's order granting Petitioner "a writ of habeas corpus directing the State of California to either: (a) vacate and set aside the death sentence in *People v. Douglas Ray Stankewitz*, Fresno County Superior Court Case No. 227015-5, unless the State of California initiates proceedings to retry [Petitioner's] sentence within 90 days; or (b) resentence

[Petitioner] to life without the possibility of parole." (*Stankewitz v. Wong* (9th Cir. 2012) 698 F.3d 1163, 1176.) Daniel J. Broderick and Harry Simon from the Federal Public Defender's Office for the Eastern District of California represented Petitioner during this appeal.

Given the Ninth Circuit Court of Appeals' decision, case number CF78227015 was placed back on the trial court's calendar. On December 20, 2012, the trial court appointed Richard Beshwate to represent Petitioner. On March 4, 2015, Petitioner's *Marsden* motion for new appointed counsel was granted, Richard Beshwate was relieved, and Phillip Cherney was appointed to represent Petitioner. On December 14, 2015, Peter Jones was substituted into the case as Petitioner's attorney of record. On January 3, 2017, J. Tony Serra and Curtis Briggs were designated as *pro bono* co-counsel to assist Jones in Petitioner's defense.

Numerous motions were then litigated in this case. On April 19, 2019, the People of the State of California filed a notice requesting that the trial court resentence Petitioner to life without the possibility of parole, choosing not to retry the penalty phase of Petitioner's trial. On May 3, 2019, the trial court vacated Petitioner's death sentence and resentenced Petitioner to life without the possibility of parole for the first-degree special circumstances murder of Ms. Graybeal, a 4-year upper term for the robbery conviction, plus 2 years for the Penal Code section 12022.5 enhancement, and a 5-year upper term for the kidnapping conviction, plus an additional 2 years for the section 12022.5 enhancement. The trial court directed that the

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sentences on all counts were to be run concurrent with each other. Petitioner timely appealed from the newly imposed sentence.

On June 28, 2022, the Fifth District Court of Appeal held that the trial court erred when it failed to recognize that it had the sentencing discretion to strike the special circumstance findings and the Penal Code section 12022.5 firearm enhancements. Accordingly, the appellate court vacated Petitioner's sentence and remanded the case back to the trial court for resentencing, but otherwise affirmed the judgment of conviction against Petitioner. (*People v. Stankewitz* (Jun. 28, 2022, F079560) [nonpub. opn.].)

Petitioner awaits resentencing in case number CF78227015 after the trial court granted Petitioner's request to be resentenced after the resolution of the current habeas corpus proceedings.

III. Current Habeas Corpus Proceedings

On January 28, 2021, Petitioner, through his counsel, J. Tony Serra and Curtis Briggs, filed a petition for writ of habeas corpus. On February 23, 2021, the Court found that the habeas corpus petition was insufficient due to the lack of legally sufficient verification, but granted Petitioner leave to file a properly verified amended habeas corpus petition.

On March 8, 2021, Petitioner filed a verified amended petition for writ of habeas corpus, raising nineteen claims for relief.

On June 2, 2021, the Court issued a request for informal response with respect to all of Petitioner's claims. On September 1, 2021, the Fresno County District Attorney's Office, counsel for

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Respondent, filed an informal response. Petitioner's informal reply was filed on October 13, 2021.

On September 29, 2022, the Court issued an order to show cause on Petitioner's first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fifteenth, seventeenth, and nineteenth claims for habeas corpus relief. The order to show cause denied Petitioner's fourteenth, sixteenth, and eighteenth claims for habeas corpus relief.

On July 19, 2023, Respondent filed its return to the order to show cause. Petitioner filed his denial on September 8, 2023. On September 29, 2023, the Court ordered that, since there was a reasonable likelihood that Petitioner may be entitled to relief and that Petitioner's entitlement depended upon the resolution of issues of fact, an evidentiary hearing was necessary in this proceeding.

The evidentiary hearing was conducted from January 22, 2024 through January 31, 2024. Petitioner, his counsel, Curtis Briggs and Marshall Hammons, and his paralegal, Alexandra Cock all appeared personally in court. Respondent was represented by Fresno County Deputy District Attorney Elana Smith. At the conclusion of the evidentiary hearing, the Court directed Petitioner and Respondent to file written closing arguments.

Petitioner filed his closing argument brief on April 29, 2024. Respondent filed its written closing argument on April 30, 2024. Petitioner filed his written rebuttal brief on May 10, 2024, at which time the matter was taken under submission.

On August 5, 2024, the Court took the matter out from under submission and issued an order for supplemental briefing. On

August 28, 2024, Petitioner filed his supplemental brief. After Respondent did not file either a supplemental brief or a request for an extension of time within the time allotted, the matter was again taken under submission.

EVIDENTIARY HEARING PROCEEDINGS

I. Roger Clark

Petitioner's first witness was Roger Clark, a police procedures consultant. As a police procedures consultant, Clark confers with various entities throughout the country regarding police procedures on use of force, ethics, training, detective administrative, detective procedures, jail administration, jail procedures, and patrol administration. Before becoming a consultant, Clark worked as for the Los Angeles County Sheriff's Department for 27-and-a-half years, starting as a deputy, then becoming a detective, a sergeant, and, finally, retiring as a lieutenant. Clark was proffered as an expert witness in law enforcement investigations and police practices and Respondent had no objection.

Clark testified that he has been working on Petitioner's case since 2019. Clark reviewed the "murder book" for Petitioner's case, which is the investigative file that is collected and maintained by the investigators involved in the case and the trial testimony. Clark also scrutinized the review of the physical evidence in the case conducted by Chris Coleman, a forensic expert.

Clark asserted that chain of custody in criminal investigations is a linchpin issue because physical evidence is neutral and does not lose its memory. The preservation of

evidence is a set procedure in agencies throughout the nation. Clark stated that, once a piece of physical evidence is observed, the evidence is to be carefully documented and then acquired for further examination. This process requires packaging the evidence in a specific way, which includes a document that lists how the piece of evidence moves from one place to another and how and where it is kept so that there is no question about contamination or mishandling or destruction of the evidence. According to Clark, the design of a proper chain of custody would prevent, or, at least, hinder, a police officer from planting evidence. Clark opined that, based upon his viewing the physical evidence from Petitioner's case, the chain of custody was not maintained as it should have been as shown by how the evidence items were boxed, kept and marked.

Clark further stated he observed several irregularities with the case during his review of the physical evidence and documents. First, Clark testified that, while there are police reports from February 1978 that state that there is a Titan .25 caliber semi-automatic with "serial number removed" that was seized as a piece of evidence in Petitioner's case, in 1999 he examined the Titan .25 caliber firearm that is a trial exhibit and, in his opinion, the serial number on the firearm is clearly readable. Clark acknowledged that the area around the serial number of the Titan firearm looks a bit clearer than the rest of the gun, but he did not know where that clearing came from. Also, while there are a couple of scratches through the serial number, the scratches did not make it more difficult for him to read the firearm's serial number. Given that the serial number of a firearm would be a key

lead or piece of evidence in a case, the serial number of a firearm would be something that would be well-documented. In his opinion, nothing about the serial number visible on the Titan firearm justifies a police report stating that the serial number on that firearm was "removed." Further, he questioned whether the Titan firearm in the Court's possession is the actual firearm originally seized in Petitioner's case because its serial number is clearly readable.

Clark also expressed concern about a February 10, 1978 request for evidence examination report regarding the Titan .25 caliber firearm seized in Petitioner's case. At the top of the report, Fresno County Sheriff's Department Detective Lean requests that a criminalist check and see if a Titan .25 caliber firearm with the serial number removed and a .25 caliber shell casing allegedly found at the murder scene match. At the bottom of the report, the criminalist has written that the seized shell casing was compared to shell casings from bullets fired from a Titan .25 caliber firearm with the serial number 146425, and the shell casings were found to be a match. However, Clark noted that the report has no comment or explanation that the serial number of the Titan firearm previously marked as removed had been harvested or otherwise determined by some process to be serial number 146425.

For Clark, this lack of an explanation about where the serial number came from gives rise to a question about whether the Titan firearm with serial number removed is the same firearm as the Titan firearm with serial number 146425. In fact, according to Clark, this report is consistent with evidence planting or tampering. Additionally, Clark noticed that, in other police

reports, the description of the Titan firearm is altered from serial number removed to serial number 146425, which is unusual because there is no documentation explaining how the Titan firearm now has a serial number that can be noted for the record. Clark testified that, under the POST standard, there should have been a document or report that explains why the Titan .25 caliber firearm is now said to have a specific serial number, rather than serial number "removed."

On cross-examination, Clark testified that he knew the serial number of the Titan .25 caliber firearm in evidence before he physically viewed the firearm because the serial number was listed in the police reports. Further, Clark acknowledged that he never spoke with Officer Bonesteel about why he wrote "serial number removed" in relation to a Titan .25 caliber firearm, that no one has ever been able to ask Bonesteel to explain the notation, and that Bonesteel is deceased. Additionally, Clark admitted that it is possible that an officer who handwrote a serial number for a firearm into earlier reports, rather than writing a supplemental report, may just be an officer who needed to be retrained on proper policies, rather than an officer who was planting evidence. Lastly, Clark stated that, if he had sent out a firearm for testing to ascertain the serial number, he would expect to obtain the serial number within hours.

Second, Clark also noticed some irregularities with the holster recovered from Graybeal's vehicle. Specifically, during his inspection of the holster, Clark noted two separate etchings on the holster's clip – one etching is on the flat side of the clip and the other etching is on the top edge of the clip. One of

the etchings is from Fresno County Sheriff's Department Detective Lean. The other etching consists of a pattern of numbers. Since the CLETS teletype for a Titan firearm with the serial number 146425 states that the firearm was stolen in Sacramento in 1973 and the second etching contains the numbers "73", Clark believes that the second etching is a badge number and a date indicating that the holster was recovered by a police officer in 1973.

However, on cross-examination, Clark admitted that there was nothing on the physical firearm or in the CLETS report for the serial number of the firearm indicating that the firearm was in law enforcement custody in 1973. Also, Clark acknowledged on recross examination that, while he considers it more probable than not that the Titan firearm was with the holster, he has no personal knowledge that the firearm was always with the holster.

Third, Clark noticed that there were some irregularities about photographs taken during the homicide investigation in this case. Initially, Clark opined that it was unusual for a homicide investigation that there is no way to tell when the photographs of the holster in Ms. Graybeal's car were actually taken. The photographs do not contain a placard or a color code to make sure that the color of the photograph is accurate. Further, the photograph of the holster has no context to the surroundings. Lastly, Clark stated that, while he would have expected to see photographs of the removed serial number if a gun was listed as serial number "removed," he never saw any photographs showing a removed serial number when he reviewed the documents in this case.

Fourth, Clark opined that it would have been unusual in 1978 for homicide investigators to never have at least attempted to

obtain fingerprints from a gun and/or a holster seized during a homicide investigation. Moreover, if homicide investigators had tried to obtain fingerprints, then that testing process or evaluation should have been documented.

Fifth, during his review of the evidence in this case, Clark viewed an item of evidence that purported to be three .22 caliber shell casings from the Jesus Meras attempted robbery and shooting, but three .25 caliber, not .22 caliber, cartridges were found inside of the container. Clark opined that it was unreasonable to take .25 caliber cartridges and put them in an envelope that says that they are .22 caliber cartridges, especially where the .25 caliber cartridges are test fire cartridges from an entirely different crime involving the same suspect. Clark testified that, in his professional opinion, this error was suggestive of wrongdoing and contamination because you would never take evidence from one crime scene and claim that it is evidence from another crime scene.

Sixth, Clark noted that, while the case file indicated that interviews with the suspects were recorded, only one cassette tape remains today. Petitioner's interview with Officer Gary Snow is one of the recorded interviews that is no longer part of the case file. Further, Clark opined that it is unusual for police officers to lose any recording of a suspect interview, but it is particularly suspicious where the police lose the recording of an interview where the suspect denied being involved in the crime being investigated.

Seventh, Clark had numerous thoughts about the actual murder scene investigation. Initially, Clark testified that he had

problems with the prosecution's trajectory theory in this case because Petitioner is tall, Graybeal was short, and the upward trajectory makes little sense when the events of the murder occurred as testified to by Billy Brown. Further, the police failed to recover the slug and failed to do a thorough investigation of the possibility that Graybeal was shot in the vehicle and then moved to where her body was found before the police released the vehicle. However, on cross-examination, Clark admitted that numerous pieces of information, such as where a person is standing and the height of where they were standing, could affect a trajectory analysis and that he is not an expert in trajectory analysis.

Lastly, Clark testified that a police practices expert or even just someone with experience in law enforcement or police investigations would have been helpful in preparing Petitioner's trial attorney in this case. This is because attorneys often miss some of the nuances of investigations that are common. Clark asserted that, hypothetically, if a defense attorney had come to him in 1978 with a number of police reports that initially said serial number removed and then the weapon suddenly has a serial number without an explanation, he would have been able to point that issue out for the attorney so that an investigation could be done to determine if this issue might lead to a defense at trial. Clark stated that, if he had hypothetically been approached in the late 1970s to early 1980s by the defense attorney, he would have noticed the second engraving on the holster and then assisted the attorney in discovering more about the second engraving.

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II. Tayce Contreras

Tayce Contreras is Roger Clark's daughter. She assisted the Petitioner's legal team in interpreting the CLETS report of the Titan .25 caliber firearm with the serial number 146425. Contreras was proffered as an expert in CLETS interpretation without any objection from Respondent.

Contreras testified that the top entry on the CLETS report for the Titan firearm with the serial number 146425 states that the gun was stolen, the date of the transaction was June 7, 1973, and the stolen firearm entry was made by Sacramento Police Department. The other entry on the CLETS report is a dealer report of new sale indicating that the firearm was originally sold to Pat Crow on May 26, 1973 and that the Stockton Police Department made the new sale entry into the automated firearms system. Nothing in the CLETS report for the Titan .25 caliber firearm with the serial number 146425 shows that the firearm was ever recovered.

Contreras also testified that, when she first looked up the originating case agency number in 2022 to see which agency made the stolen firearm entry, she did not have a CLETS manual with her and, so, she looked online, typed in ORI index, and an unknown website informed her that the originating agency was Sacramento Internal Affairs Division. However, when Contreras tried to find the website again, she could not find it. Furthermore, she could not recall if the website she initially consulted was operated by the Department of Justice. After she could not relocate the website, Contreras ordered a CLETS manual directly from the Department of Justice, which is dated March 4, 1981. The March 4,

1981 CLETS manual stated that the originating case agency number belonged to the Sacramento Police Department, not the Sacramento Internal Affairs Division as she was led to believe from her internet search.

III. Chris Coleman

At the time of the evidentiary hearing, Chris Coleman was a senior forensic scientist with the Forensic Analytical Crime Lab, a private independent crime lab based out of Hayward, California. Coleman has worked in forensics as a criminalist or a forensic scientist for about 29 years for various agencies and employers. Additionally, for approximately 29 years, Coleman has also been a crime scene responder. Coleman asserted that he has worked on handling evidence, processing evidence, and issues related to chain of custody for his entire career. The parties stipulated that Coleman is an expert in forensic law enforcement investigations.

When Coleman was hired, he was asked to consult on a few different issues, but the main thing that he was asked to do was come to Fresno and look at the physical evidence that had been used or collected in Petitioner's criminal case. When Coleman reviewed the physical evidence, he noted several things that he found were very interesting.

First, Coleman noticed that it appeared that certain items of evidence, specifically clothing from three of Petitioner's co-defendants, Lewis, Menchaca, and Topping, had not been opened since the items had been collected. It looked like the seals on the evidence packaging had been in place since 1978. When Coleman opened that evidence packaging, he noticed that the clothes of

Petitioner's three co-defendants appeared to have been untested and/or unexamined bloodstains. Coleman found this interesting because the three individuals who had bloodstains on their clothes were the ones that had accused Petitioner of committing the crime and Petitioner's own seized clothing did not have any bloodstains.

Coleman testified that, while he did not personally test the bloodstains, the biology unit of the lab Coleman worked for did. Coleman asserted that the biology unit found that the bloodstains on the co-defendants' clothing belonged to Graybeal. Coleman had familiarized himself with the co-defendants' statements and their statements did not "match" the blood findings. Coleman noted that, in 1978, it was not possible to DNA test bloodstains on clothing. Instead, the tests for bloodstains on clothing were conventional serology techniques that were not as concise and specific as DNA testing. However, Coleman said that, if a defense attorney wanted to get a DNA test in 1995, the DNA technology would have been available by that time.

Second, when Coleman first looked at the holster and photographed it, he noticed that there were two etchings on the stainless steel clip of the holster. The first etching was along the side of the clip and read "T dot L with a 3, a Roman numeral 3, and parenthesis with 2, dash, 10, dash, 78." This etching was from the investigators that purportedly removed the holster from Graybeal's car when they were collecting evidence. The second etching was along the top edge of the metal holster clip and bore a "351" and "7, slash, 25, slash 73." Coleman asserted that, while he could read the "7, slash, 25, slash 73" portion of the second etching with the naked eye, the "351" portion was not as

visible due to scuffs and other things over time until Coleman looked at it with a stereomicroscope and lighting. Coleman found the second etching to be very interesting because it appeared to be evidence that the holster had previously been in law enforcement property in 1973. Coleman testified that it was common up through the late 1980s or early 1990s for an officer's badge number and the date that the piece of evidence was checked into property to appear on recovered evidence. The number "351" did check back to an investigator badge number from the Fresno County Sheriff's Department from the early 1970s, but Coleman never saw a report in Petitioner's criminal case from an officer with that badge number. Further, as far as Coleman knows, no specific officer with that badge number has been identified.

Additionally, on cross-examination, Coleman admitted that, while he testified that the numbers on the holster's clip near the 1973 date were a badge number, he was only assuming that those numbers were a badge number for a Fresno County Sheriff's Deputy or an investigator. Coleman further admitted that he did not really know what those three numbers related to and could not say for certain that the person that etched the 1973 number into the holster's clip was law enforcement personnel or where the holster was between 1973 and 1978 when it was found in Graybeal's car. Coleman acknowledged that, in his experience with law enforcement evidence, sometimes the evidence is released to family members after the case is over and, so, even if the 1973 etching had been made by law enforcement, then the holster could have been released back into the world before 1978 and then ended up in the car without any clear understanding of who the person was that brought

the holster into the vehicle. Coleman also admitted that specific etchings and evidence related to the holster do not necessarily mean that the holster is connected to the firearm that was also found in the vehicle.

Third, Coleman had reviewed reports of the Titan .25 caliber firearm that stated that the serial number was "removed," but when he first inspected the firearm himself, Coleman did not believe that the serial number was removed. Coleman testified that, to him, a person with law enforcement and evidence experience, the term "serial number removed" means that the serial number was obliterated in an attempt to hide what the actual serial number was. Based on his observations of the firearm, the police reports should not have said "serial number removed," but, rather, should have stated that the firearm has the serial number that is visible on the firearm. Coleman said that, if part of the serial number was hard to read and other numbers were discernable, then reports would typically say that a partial serial number was observed or some of the characters could be observed and those characters would be denoted.

However, on cross-examination, Coleman admitted that when a detective or officer describes a piece of evidence, the description can be subjective because it is based on the officer's perception of the piece of evidence. Coleman also admitted that he does not know what the serial number on the Titan firearm looked like to Officer Bonesteel and he did not know if the firearm had already been polished or cleaned with steel wool when the law enforcement personnel described the firearm as "serial number removed" in the evidence report.

Coleman further testified that there are several different techniques that can be used to revive or restore an obliterated serial number on a gun, including using an acidic compound or a heat technique, but Coleman declared that there is no evidence that any type of restoration attempt was made on the firearm in Petitioner's case.

Coleman acknowledged that the metal of the firearm where the serial number is located looked as if someone used steel wool and/or a polishing cloth to rub over the numbers in order to try and see the serial number more clearly because, while the surface bluing of the metal has been removed in the area of where the serial number is, the numbers are still blue inside. Coleman asserted that, if he was going to use steel wool or a polishing cloth to try and clean the area of a firearm where the serial number is located, then he would have documented such a procedure by taking a picture of what the gun looked like before trying to do any enhancement, making a written note of what he was doing, and then taking another photograph of the gun after he was done with the enhancement process. However, Coleman never reviewed any documentation in this case evincing that someone tried to restore the serial number of the firearm or did anything to the firearm in the area of the serial number. Coleman testified that there was a request for examination asking for a Titan .25 caliber automatic with serial number removed to be compared to a fired cartridge case found at the scene to see if they are a match, but, at the bottom of the request form, the technician states that the .25 caliber case found at the scene was compared to test fired bullets from a Titan pistol with serial number 146425 without any

explanation of how the Titan firearm went from "serial number removed" to a specific, determinable serial number. Coleman asserted that he would have expected to see a note explaining that the technician buffed out the area around the serial number or the technician cleaned up the area around the serial number so that the serial number could be read.

Due to the lack of documentation, Coleman could not determine when the surface of the firearm around the area of the serial number was cleaned. Coleman stated that the area could have been cleaned in 1978 or it could have been done at a much later time. Further, Coleman stated that, even if the surface bluing of the firearm had not been removed near the serial number, a person would still be able to see that there were numbers there.

Additionally, Coleman acknowledged that there are some scratches through the middle of the serial number of the firearm, but he asserted that the scratches did not disfigure the number badly enough that you could not read it.

Coleman stated that, in his job, he has had experience testing guns that have been linked to police conduct. So, when Coleman is conducting his examinations and analysis, he is cognizant of the possible planting of evidence and he tries to stay abreast of situations involving officers taking contraband and planting it on people.

On cross-examination, Coleman admitted that, back in the 1970s and 1980s, a lot of things were handwritten versus now, where there are scanners and labels and more ways of being very precise. Coleman then acknowledged that the fact that things were handwritten back in the late 1970s does not necessarily mean that

the person who handwrote something on an evidence report was being dishonest with the way in which they were documenting the evidence. Further, Coleman stated that the reason why evidence preservation and tracking has developed since 1978 is because of errors and problems that happened previously and, so, now things are tracked a lot more vigorously. Coleman agreed that not all of the errors that happened in the 1970s and 1980s were because law enforcement was dirty. Instead, some of the errors happened because law enforcement was stupid, careless, or had not been properly trained by people who knew how to preserve evidence.

Fourth, after receiving the evidence from Petitioner's case in his lab for examination in 2023, Coleman noted that, when the evidence box was opened, envelopes inside of the box were ripped open and evidence such as bullets and cartridge cases had spilled out, were mixed up, and were not in the bags that they were supposed to be in. So, Coleman had to figure out what items went where inside of the evidence box. While he was validating everything in the box that came from the Court with the Titan firearm and holster inside of it, Coleman discovered an additional unfired .25 caliber auto cartridge in the box that he had not documented in 2019. Coleman denied receiving any access log or sign-in sheet for the evidence that had been in the Court's possession showing who accessed that evidence while it was under the Court's control.

On cross-examination, Coleman stated that he had no idea how many people had touched the evidence before it was ever delivered to the lab in Hayward. Coleman further denied knowing how the

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evidence got into the state it was in, but stated that the evidence was not in that condition when he saw it in 2019.

Fifth, in 2019, when Coleman went to the Fresno County Sheriff's Department Office to physically inspect the evidence, Coleman discovered that there was a small manila envelope that had three test fired shell casings from the .25 caliber Titan firearm from Petitioner's case in it, even though the property card associated with the small envelope stated that the envelope contained .22 caliber Meras shell casings. Coleman had previously read a report that was attempting to link a robbery attempt against Jesus Meras to the gun in Petitioner's case. That report was interesting because the gun in Petitioner's case and the shell casings from the Meras incident were different calibers. When Coleman saw the property card's description of what was in the envelope as compared to what was found inside the envelope, he was not sure what to think. Coleman was not sure if it was merely a mistake on the property card.

In response to a hypothetical querying if it would be confusing if a property card from a robbery where a shooting occurred with a .22 caliber firearm was affixed to an envelope with test fired shell casings from an alleged murder weapon from an entirely separate incident, Coleman said that it would cause confusion why the wrong evidence tag or property card was with the wrong evidence. While it could have just been a mistake and that the wrong property card or evidence tag was inadvertently swapped with the correct property card at some point, this discrepancy could also be a sign of dishonesty. When asked to then add to the hypothetical that the attempted robbery and shooting and the

murder which occurred separately happened within a couple of hours of each other plus assume that the holster found with the alleged murder weapon on the floorboard of a car had a law enforcement badge number and date proceeding the murder by five years, Coleman said that he would have stronger concerns about dishonesty on the part of law enforcement because evidence tags that belong to what appears to be a different crime and then a holster that was in law enforcement property at some point and then ends up found in close proximity to an alleged murder weapon five years later suggests that there is something going on that does not seem right.

Next, Coleman stated that he had fingerprinted guns before, but that he had found that fingerprint processing was not very good on guns. In fact, Coleman testified that he attempted to lift fingerprints from firearms between 150 to 180 times, but that he was only successful at lifting fingerprints from firearms two times. However, it would definitely be worth it for law enforcement officers to try fingerprinting a gun because, in 1978, it was the main way of trying to identify a suspect. It was Coleman's experience that efforts to fingerprint by investigating officers would have been documented whether the fingerprinting effort was successful or not.

Subsequently, Petitioner's counsel asked Coleman if, in Coleman's experience, law enforcement officers would try to run a lab analysis to see if .22 caliber shell casings from one scene and .25 caliber shell casings from another separate scene matched to the same firearm. Coleman said no, because any law enforcement officer would know that .22 caliber ammunition are rim fire cartridges and .25 caliber auto cartridges are different

mechanisms and, hence, are incompatible with each other. Coleman also asserted that law enforcement officers would not confuse or mix up .22 caliber test fired shell casings with .25 caliber test fired shell casings unless they were being sloppy.

Lastly, after Coleman was provided with evidentiary hearing Exhibit No. 6, Coleman stated that the document appeared to be a property card or evidence report. Item 1 listed on that document was described as Titan .25 automatic, serial number removed, but then underneath, someone wrote in the serial number. Then Coleman stated that there appeared to be a check-out date of February 9, 1978 and in the box designated remarks, Coleman stated that the document said number determined to be 146425, February 9, 1978. When asked if that information had any significance based upon Coleman's examination of the evidence in Petitioner's case, Coleman stated that it looked like the firearm went to somebody and somebody confirmed or determined what the serial number was.

When Coleman was asked if he would have expected to see a report or documentation if the information in evidentiary hearing Exhibit No. 6 was meant to memorialize having the firearm sent out to have the serial number determined, Coleman said yes, depending on where the firearm was sent. Coleman stated that, typically, a mere note on the property report was not the sort of report that would be written by a criminalist saying we did this and determined the serial number, even in 1978. Additionally, Coleman asserted that the note on the property report did not explain how the serial number was determined or establish that the serial number was truly determined because there is no accompanying documentation explaining how the number was determined. Coleman

then agreed that, if police wanted to plant a firearm in place of another firearm that had the serial number removed, all the police would need to do is cross out the serial number removed notation and write on the property report that the serial number was determined to be the serial number from the planted weapon.

Two days later, Coleman was recalled to correct inaccurate testimony that he had previously given. Coleman asserted that he was accurate when he stated that he did not find anything resembling bloodstains on Petitioner's clothing. Additionally, while he had accurately stated that he saw several areas on shirts, shoes, and a pair of pants belonging to Petitioner's co-defendants that had stains that appeared to be blood drips, blood splatter, or a transfer stain, his previous testimony that the DNA tests had established that the stains were Graybeal's blood was inaccurate. Instead, the laboratory tests of the stains on the co-defendants' clothing did not, in fact, detect any blood DNA.

IV. Jason Tovar

The parties stipulated that Dr. Jason Tovar is an expert in the field of pathology and medical investigations. Tovar testified that, for this case, he reviewed the autopsy report, photographs from the scene and autopsy, multiple transcripts from criminalists and a pathologist, and the police report of the investigation.

Initially, Tovar asserted that, when an individual's height needs to be determined during an autopsy, the height is typically measured with some instrument like a yard-stick or a ruler of some sort, from either the heel to the top of the head or from the head to the top of the heel. Tovar himself has measured an

individual's height during an autopsy hundreds of times and, as far as he knows, the process of measuring a person's height was not done much differently in 1978. Further, Tovar asserted that the Graybeal autopsy report stated that the height was "160," which he assumes means 160 centimeters, or about 5'3", because 160 inches would be very high. Additionally, it was Tovar's opinion that the 160 centimeters listed on the autopsy report is Graybeal's height to the top of her head and not to the location of the wound. Tovar stated that he has no reason to believe that the height of Graybeal listed in the autopsy report would be unreliable, but Tovar acknowledged on cross-examination that he has personally seen errors in autopsy reports during his time as a pathologist.

Next, Tovar testified about the bullet trajectory in this case. From a pathology standpoint, a bullet trajectory is simply the path that the bullet took as it moved through a body. Tovar has determined the trajectory of a projectile approximately 1,000 times. To determine a bullet's trajectory, the body is artificially placed into the anatomic position, because the anatomic position permits a pathologist to determine how the projectile traveled through the body – right to left, front to back, up or down, etc. However, Tovar remarked that the limitation of artificially placing the body into the anatomical position is that the position does not necessarily reflect the position of the body when the projectile actually entered the body.

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For example, after reviewing the autopsy photographs, other photographs of Graybeal that had measurements likely created by the criminalist, and a cut-out plywood board also used by the criminalist, Tovar stated the bullet's trajectory entered on the right side of Graybeal's head and exited the back left side of her head and, in the anatomical position, that trajectory went upward a slight amount to the horizontal. However, since the position of Graybeal's body when the bullet actually entered is unknown, a pathologist cannot really make much interpretation based upon the deviations, i.e., front to back, right to left, or up or down.

When asked if he could ascertain the height of a shooter with only one witness describing the shooting position and approximate distance, Tovar testified that yes, a pathologist could say that a description of a shooting was consistent with the measured height of the alleged shooter, but you would have to measure the heights of the alleged shooter and victim and make a lot of assumptions about the variables in a scenario, like assuming everyone's standing up straight, wearing a specific pair of shoes, that the ground that the shooting victim was standing on was level, and how the alleged shooter was holding the gun, in order to make that determination. Additionally, anyone attempting to make that determination would also want to make assumptions about the witness' position relative to both the shooter and the individual, because the witness' position would affect how the witness viewed things like the body positions of the alleged shooter and/or victim. Additionally, when asked how a change in the height of the victim from five-foot, three-inches tall to five-foot, seven-inches tall would affect a calculation of where a shooter was

standing or how tall the shooter was, Tovar stated that the change in height would be a minor alteration or a very negligible change in the calculation, given that the change is only 4 inches of variation, which is roughly the width of a person's hand.

After looking at pictures of where Graybeal's body was found, Tovar noted that Graybeal's body was on the ground beyond where a curb would be. The picture looked to be of a corner, and the land appeared to have some slope heading upward to where the corner of the walkway would be. The scene was wet, appeared muddy, and there was water pooling in the gutter around the corner. Tovar remarked that, as compared to the street, Graybeal's body was higher up in elevation. So, if the shooter was at street level, the shooter would have been in a lower position than Graybeal. If the shooter was higher back on the walkway, then the shooter would have been in a higher position than Graybeal. The heights of the shooter and victim and where they were standing at the time of the shooting are all factors that show that you cannot just take simple measurements from an anatomical position and make conclusions solely based upon those measurements.

Tovar also testified that, based on the description of Graybeal's wound and the injury that she sustained when the bullet traversed through her brain stem and spinal cord, if Graybeal had been standing where her body was found, she would have just collapsed on the spot when she was shot. However, nothing in the information that Tovar reviewed would allow him to know or determine the height of the person who shot Graybeal.

Tovar then explained that trial exhibit number 39 is a photograph of the right side of Graybeal's face and head, which

shows the entry wound. Tovar testified that he cannot determine anything about the caliber of the bullet that hit Graybeal based upon the photograph. In fact, Tovar could not determine the caliber of the bullet even if he was viewing Graybeal's body in person. Next, Tovar testified that the marks around the entry wound in the photograph are stippling, which is small particulate matter that also leaves the muzzle of the gun at the same time as the bullet. The fact that stippling is visible on Graybeal's skin classifies the wound as an intermediate range of fire, which means that the bullet was fired from a distance of where the muzzle of the firearm was not in contact with the victim up to a rough estimate of approximately three feet. As a pathologist, Tovar will take measurements from the center of the wound to the farthest distance where he sees stipple, but that is just documentation and those measurements do not tell you anything about the weapon that was fired, such as the caliber, or where the shooter was located in relation to the victim.

Instead, to fully and completely determine the distance from the wound that the bullet was shot, a criminalist must create test fire patterns using the exact weapon and ammunition used in the shooting and then compare the test fire patterns to the stippling pattern on the victim. Since Tovar did not have any test fire patterns of the weapon involved in Graybeal's murder, he could not tell the Court how far the muzzle of the gun was from Graybeal when she was shot. Nevertheless, Tovar asserted that the stippling pattern around Graybeal's entry wound was not only consistent with a scenario where the victim was seated in a car and was shot in the side of the face by someone else seated in the

car, but was also consistent with a scenario that the shooter and victim were standing a couple of feet away from the car when the shooting occurred.

Next, Tovar testified that he had created death certificates during his forensic pathologist training and, currently, he determines the cause of death in his office, but the coroner actually creates the death certificates. After Tovar was given Graybeal's death certificate, Tovar stated that he saw that the death certificate indicated that the cause of death was shot by another and then said "25 cal auto." However, Tovar asserted that a pathologist would not be able to determine the caliber of the projectile if no projectile was recovered.

Lastly, Tovar did not see any documentation of a description and/or measurements of where the wound was located on Graybeal's body. Typically, when Tovar was conducting an autopsy and writing an autopsy report for cases involving gunshot wounds, he takes measurements of the location of each gunshot wound and documents the measurements of every wound in the report. Tovar stated that, when documenting a gunshot victim's autopsy, documenting the location of the wound or wounds is more important to him than documenting the victim's height because there are various ways to determine the victim's height if it is not recorded at the autopsy, including by asking family members of the victim what the victim's height was.

V. Laura Wass

Petitioner's counsel informed the Court that they wished to call Laura Wass as a witness, making an offer of proof that Wass would testify that Marlon Lewis admitted to being the actual

shooter of Graybeal. When the Court asked how Wass' testimony about Lewis' out-of-court statement would be admissible, Petitioner's counsel argued that her testimony would be admissible under the declarations against social interest exception to the hearsay rule. After Respondent objected to Wass' testimony on hearsay grounds, the Court conducted an Evidence Code section 402 hearing to determine whether Lewis' out-of-court statement was admissible under Evidence Code section 1230.

At the Evidence Code section 402 hearing, Wass testified that she is an interior designer, the executive director of the Many Lightnings American Indian Legacy Center, and the Central California director of the American Indian Movement. Many Lightnings American Indian Legacy Center is a nonprofit organization built to reconnect families to American Indian culture and tradition and Wass has been involved with this organization since 2007. American Indian Movement is a national organization that focuses on social justice advocacy for native families that Wass has been involved with since the 1970s. During the late 1990s through the early 2000s, Wass was involved with tribal disenrollment advocacy issues.

Wass became involved with Petitioner's case after Petitioner contacted her by letter around 1997. At that point, Wass began studying Petitioner's case and Petitioner and her began writing back and forth to each other. Before Petitioner contacted Wass by letter, Wass had already known the members of Petitioner's family who lived at Big Sandy Rancheria for years. After Wass reviewed Petitioner's case and spoke with Petitioner's family members about
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Petitioner's case, she decided that there was something amiss with the case.

Beginning around 1998, Wass met Marlon Lewis when Lewis called her from Sacramento to discuss tribal disenrollment issues. Lewis believed that he was a rightful member of the Table Mountain Rancheria. Between 1998 and the time of Lewis death in approximately November 2000, Wass was helping Lewis prove that he was a rightful member of his tribe. As such, Wass interacted with Lewis approximately 25 to 35 times. Near the very end of the time Wass interacted with Lewis, she witnessed a phone call between Lewis and Petitioner's brother, Willie, which occurred in her home. Wass admitted that she was told of Lewis' death by Lewis' sister, Berniece, but that she has no information about his death other than the information that she heard from other people.

Wass testified that she had no sense of how Lewis fit into his particular tribe because Lewis lived in Sacramento and was not active in the Fresno area, but she was able to help Lewis reunite with two of his sisters, who were members of the tribe. Further, Wass asserted that she had no sense of what Lewis' reputation was in his tribal community, but she did know that his reputation with his family was not good. Wass never saw Lewis interact with his tribe, other than protesting, and, while Wass saw Lewis interact with individual members from his tribe when Lewis was asking for their support to become a member of the tribe, those interactions were unsuccessful.

Petitioner's counsel argued that they had met their burden of showing that Lewis' out-of-court statement was admissible as a declaration against social interest. Respondent disagreed.

The Court ultimately sustained Respondent's hearsay objection to the admission of any testimony about Lewis' out-of-court statements. The Court reasoned that, since Wass was not familiar with Lewis' reputation in the community, other than that it was not a good reputation, and the statement was made during a time when his tribe already did not accept him, the Court was not satisfied that Lewis' out-of-court statement was a declaration made against his social interest.

VI. Mimi Kochuba

On January 8, 2024, prior to the evidentiary hearing, Petitioner filed a motion to admit hearsay statements made by unavailable witnesses whose statements qualify under one or more of the hearsay exceptions. In that motion, Petitioner sought admission of, among other statements, Billy Brown's recantation to defense investigator Mimi Kochuba. Petitioner argued that Brown was unavailable to testify at the evidentiary hearing because he is deceased and that his recantation is admissible under the declarations against penal interest and social interest exceptions to the hearsay rule. On January 18, 2024, Respondent filed a written objection to the admission of any out-of-court statements made by Billy Brown.

At the Evidence Code section 402 hearing to determine if Brown's out-of-court recantation was admissible under Evidence Code section 1230, Kochuba testified that, in 1990, the firm for which she was a licensed investigator, Paul Anderson Associates, was contracted by attorney Robert Bryan's office to find evidence that would be helpful to Petitioner.

In 1993, the focus of Kochuba's investigative work on Petitioner's case was mostly for mitigation purposes. That year, 15 years after Graybeal's murder, Kochuba conducted an interview with Billy Brown. Petitioner's wife, Evelyn, set up the appointment with Brown at which the interview occurred. Kochuba denied being able to recall any specific things that Petitioner's wife stated to Kochuba before the interview took place, but Kochuba admitted that Petitioner's wife gave Kochuba some direction as to what questions to ask Brown during the interview. Also, Kochuba denied being able to recall if Brown was, at least in part, the initiator of the attempts to communicate with attorney Bryan.

The interview with Brown occurred during an afternoon at a diner in Fresno, possibly on Blackstone, that was open to the public. Along with Kochuba and Brown, Rocky Pipkin and his father, who were also licensed investigators that Kochuba believed worked for Patience Milrod, were also at the table during the interview. Petitioner's wife and Patience Milrod were not present during the interview. Kochuba primarily asked the questions during the interview.

Kochuba testified, that to the best of her knowledge, nothing was offered or promised to Brown in exchange for his statement and Brown was not compensated for his statement. Kochuba stated that, to the best of her memory, Brown had a fairly good recollection of what happened. Additionally, Kochuba recalled that, if Brown did not know something, he would let the interviewers know that he did not recall certain actions. Further, Kochuba asserted that, based on her personal observations, it did not appear that, during the

interview, Brown was under the influence of drugs or alcohol. Brown was not nodding off, he was not slurring his words, and Kochuba did not notice any odor of alcohol or drugs such as cannabis coming from Brown. Brown never made any statements to Kochuba about why he wanted to talk to her, but Kochuba said that he did not hesitate to speak with her and the other individuals at the diner's table.

While Kochuba was uncertain of the exact length of the interview, she knew that it was more than an hour long and could have been about two hours long. The interview was recorded on a cassette recorder that was on the table. Kochuba stated that she does not know where the audio recording of the interview currently is. A transcript of the recording was produced, but Kochuba could not recall who generated the transcript or exactly when the transcript was prepared, even though she believes that the transcript was made soon after the interview. Based upon her review of the transcript shortly after it was generated, Kochuba believes that it is a fair and accurate representation of the interview with Brown at the diner.

Kochuba testified that she witnessed Brown signing and dating a typewritten declaration after Brown had an opportunity to review the declaration. However, Kochuba could not remember during her testimony who prepared the declaration, if the typewritten declaration was brought already prepared to the interview, if she provided Brown with the declaration at the diner, or if she had a follow-up interview or meeting with Brown. However, on cross-examination, Kochuba clearly stated that the interview at the diner was the only time she met with Brown. Kochuba affirmed that

the declaration was a fair and accurate statement of her interview with Brown at the diner.

Kochuba stated that she knew that Brown was deceased because, a few years ago, an attorney who was then working on Petitioner's case informed her that Brown had died.

Lastly, Kochuba testified that she did not remember why she included in her declaration statements that Petitioner was in a different tribe, the Mono tribe, and that, if she had known that fact, she would have asked Brown if he had an obligation to protect a fellow member of his tribe, Lewis, during the trial. Kochuba then denied knowing what tribe Brown was a member of or what Brown's relationship was like with his tribe.

At the conclusion of Kochuba's testimony, the Court sustained Respondent's hearsay objection to Brown's out-of-court recantation. The Court found that Brown's statement is insufficiently trustworthy to admit under the declaration against penal interest exception. Brown did not recant until after he had testified three separate times under oath and was involved in an interview more than 15 years after the murder that was set up by individuals who have an interest in protecting Petitioner and attempting to assist him. Further, Kochuba was unable to provide any information about Brown's relationship with his tribe or how his belated statement would impact his relationship in his community.

VII. Cameron Pishione

Cameron Pishione worked for the Fresno County Superior Court for approximately 10 years. From approximately 2015 through the end of 2018, Pishione was a supervisor in the appeals and exhibits

departments. In that role, Pishione was the sole person in charge of handling of the exhibits in and out of the courthouse. Specifically, Pishione's job as the exhibits person entailed receiving exhibits from courtrooms and other agencies outside of the courthouse, cataloguing, maintaining, and distributing exhibits, and everything else that was necessary for the exhibits.

Pishione testified that he believed that the exhibits related to Petitioner's criminal case were stored in the main courthouse, but he was not certain of that. Pishione stated that, during the time that he was working with exhibits, he only remembered facilitating an inspection of the evidence in Petitioner's case with Petitioner's current counsel. Pishione affirmed that he was familiar with the term chain of custody. Pishione asserted that he maintained the chain of custody for exhibits during evidence inspections by being personally present in the room with the exhibits and watching at any time that the exhibits were being viewed by anyone else, such as Petitioner's counsel. Lastly, Pishione testified that there was no type of procedure or log where he would document who was handling or viewing the evidence in Petitioner's case.

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VIII. Juan Meneses

At the time of his testimony, Juan Meneses was a judicial assistant at the Fresno County Superior Court in the Family Law department. However, from 2019 through 2021, Meneses was the exhibits clerk for the Fresno County Superior Court and his job

entailed storing, releasing, and destroying exhibits and subpoenas.

Meneses testified that, to protect the chain of custody on exhibits, there is a paper record of items brought into the courthouse and released from the courthouse. Additionally, there is an Excel spreadsheet of those same records. Meneses asserted that, while he was standing in the room during the evidence inspection, his role was simply to observe.

While Meneses was the exhibits clerk, he facilitated one inspection of a firearm that was an exhibit in a case, but that he did not recall if the firearm exhibit was from Petitioner's case. Specifically, Meneses remembered the individuals handling and taking pictures of the firearm to determine the firearm's serial number. Meneses denied recalling seeing any person handle any of the bullets that were also in the exhibit box.

Meneses asserted that the inspection of the firearm was conducted by three individuals that he believed to be with the District Attorney's office or with the defense, two Caucasian women and a male. Meneses testified that he might be able to recognize the two Caucasian women if he were shown a picture of them, but he denied having any memory of what the male looked like. When asked if the male was James Ardaiz, Meneses said that the name sounded familiar. But, when Meneses was shown a picture of Ardaiz after being recalled for additional testimony, Meneses did not recognize Ardaiz and again stated that he does not have any memory of what the male looked like. Meneses testified that, since the exhibits were not released, there is no record or documentation of who had been at the inspection handling the

firearm. Additionally, while the evidence inspection was scheduled with Meneses by e-mail, Meneses stated that he has no recollection of who he was e-mailing with.

IX. Maureen Bodo

Maureen Bodo started working as an attorney for Nicholas Arguimbau in 1993. At the end of 1993 or the beginning of 1994, Robert Bryan, who was then lead counsel for Petitioner, brought Arguimbau onto the case and Bodo also began working on Petitioner's case under Arguimbau's direction. Bodo testified that she continued to work on Petitioner's case until 2000 but was not actively involved with the case after 1998.

When Bodo worked on the habeas corpus petition filed in Spring of 1994, Arguimbau directed Bodo to work on issues relating to voir dire and jury instructions in Petitioner's second trial. Bodo did not directly work on anything related to the penalty phase of Petitioner's second trial, but she heard, and received memos from Arguimbau and Bryan, about the problems with the penalty phase. Additionally, Bodo stated that, since she was the copy editor and proofreader for the office, she reviewed the entire petition multiple times and saw Bryan's and Arguimbau's work product in addition to her own work product on the case.

Bodo stated that, during the scope of her work on Petitioner's case, she did not have an investigator inspect the physical evidence in the case at the court and she denied inspecting the physical evidence in the case herself. Additionally, Bodo stated that she did not consult with any experts during her work on Petitioner's case. Nor did she recall hearing that a ballistics expert, a pathologist, or an ineffective

assistance of counsel expert was ever consulted while she worked on the case. However, Bodo remarked that Bryan had expertise as an IAC expert witness, so she believed that Bryan was handling the IAC issues himself. Further, Bodo testified that she did not do any investigation into Petitioner's underlying guilt or innocence.

Bodo asserted that, while she was working on Petitioner's case, she became aware of some of the deficiencies in Goodwin's representation of Petitioner during the guilt phase of Petitioner's second trial. Bodo denied being aware that Goodwin did not present an opening statement during the guilt phase, that Goodwin did not investigate the physical evidence in the case, that Goodwin did not attempt to try and refute the trajectory theory put forth by the prosecution during the guilt phase, that Goodwin did not interview any potential witnesses that could have been near the scene of where Graybeal's body was found, that Goodwin did not investigate the possibility that Graybeal was shot at a different location from where the prosecutor asserted she was shot, that Goodwin did not consult with any experts before and/or during Petitioner's second trial, and that Goodwin did not address any issues regarding the serial number of the firearm. Bodo acknowledged that she was aware that Goodwin had failed to file a motion for change of venue, even though a co-defendant, Marlin Lewis, had a change of venue motion granted and that this issue was considered a major flaw in Goodwin's representation.

While Bodo was representing Petitioner, numerous IAC claims for the guilt phase, issues related to jury instructions, and penalty phase IAC issues were ultimately raised and filed with the courts.

X. Steven Parnes

From 1978 to 1982, Steven Parnes worked on Petitioner's automatic appeal to the California Supreme Court after the state public defender was appointed to represent Petitioner on appeal from his first trial. Parnes filed appellate briefing and argued the case at the California Supreme Court. Parnes testified that, in addition to the appellate briefing and argument, he also filed a petition for writ of habeas corpus raising a claim challenging the death qualification of the guilt phase jury in capital cases under the pending case of *Hovey v. Superior Court*. After the California Supreme Court issued its opinion setting aside the judgment against Petitioner in 1982, the case was remanded to the Superior Court and Parnes' work on Petitioner's case ended.

Parnes testified that, during his time representing Petitioner, he never consulted with any experts, such as ballistics experts, pathologists, and/or ineffective assistance of counsel experts. Parnes also stated that neither he nor anyone else from his team ever did a forensic inspection of the physical evidence from the guilt phase of Petitioner's first trial or did any investigation into Petitioner's actual innocence. Parnes asserted that all he did was review the transcripts and he performed no investigation.

XI. Joseph Schlesinger

From December 2007 through 2013, the Capital Habeas Unit of the Federal Defender's Office for the Eastern District of California was appointed to represent Petitioner during federal habeas corpus proceedings. For that entire period, Joseph Schlesinger was the supervisor of the Capital Habeas Unit.

Schlesinger met with Petitioner, talked with Petitioner on the phone a few times, and reviewed pleadings that were prepared by subordinate attorneys, but Petitioner did not do any of the actual writing or drafting himself.

Schlesinger testified that, while the Capital Habeas Unit was working on Petitioner's case, they did not send investigators to view the physical evidence in Petitioner's case and no ballistics experts or pathologists were consulted, but an ineffective assistance of counsel expert may have been consulted on penalty phase claims only. Schlesinger explained that the Capital Habeas Unit had been appointed after the U.S. District Court had ruled that guilt phase challenges could not be reopened and, so, after conducting a preliminary investigation and determining that it would be virtually impossible to add additional guilt phase challenges into the federal habeas proceeding, the Capital Habeas Unit's work on Petitioner's case focused on penalty phase issues.

Schlesinger stated that, while he was aware that Hugh Goodwin was Petitioner's counsel for the second trial, Schlesinger never personally reviewed Petitioner's case file or the second trial transcripts. Additionally, Schlesinger never investigated any potential issues with the prosecution's trajectory theory, any potential issues with the firearm's serial number, any potential issues with the holster, or the possibility that Graybeal had been shot at a different location from where her body was found by law enforcement. Schlesinger reiterated that he never investigated any of those issues or possibilities because those issues went to the guilt phase and, since it would have been virtually impossible to add any guilt phase issues, substantive investigation into

guilt phase issues was not done. Lastly, Schlesinger asserted that, since a freestanding actual innocence claim is not a claim that can be raised on federal habeas, that claim would not have been able to be raised in the federal habeas proceedings, even if the Capital Habeas Unit attorneys had found anything to support such a claim.

XII. Gary Gibson

Gary Gibson has been a lawyer for more than 30 years. The first 25 years of his career was spent at the San Diego Public Defender's Office, where he worked as a member of the homicide team among other roles. After Gibson left the Public Defender's Office, he entered private practice and has been lead counsel on seven homicides in San Diego County. Gibson asserted that he has qualified as an expert in ineffective assistance of counsel in Fresno County, Riverside County, Los Angeles County, and San Diego County.

Gibson testified that he became familiar with the relevant legal standards and professional practices for homicide cases when he became one of the primary trainers for homicide cases for the San Diego County Public Defender's Office, which allowed him to evaluate the case preparation, theory, and trial strategy in approximately 400 to 500 homicide cases. Furthermore, of the 100 cases that he has personally tried during his career, 20 were homicides. Gibson has personal experience with appointed criminal defense counsel, including locating resources for appointed cases, because he was appointed in all his cases as a public defender. He also had the opportunity to review cases where outside counsel was appointed for indigent defendants during the last nine years

he worked for the San Diego County Public Defender's Office. At this point in Gibson's testimony, Gibson was proffered without objection and accepted as an expert in whether Hugh Goodwin provided effective assistance of counsel in Petitioner's case.

Initially, Gibson stated that his process in determining whether a counsel provided ineffective assistance begins with looking at the entire record of the proceedings, including the trial transcript, the police reports, and the filings by all parties, to get as much information as you can. Normally, Gibson would also talk to the lawyer he is looking into, but, in this case, Goodwin was already deceased. However, Gibson found it interesting that, immediately before Goodwin became involved with Petitioner's case, he had been counsel in a case called *People v. Jones*. Years later, the California Supreme Court found that Goodwin had provided ineffective assistance of counsel in the *Jones* case, which was a special circumstances murder case involving firearms, like Petitioner's case. Additionally, Gibson noted that Goodwin has already been found to have provided ineffective assistance of counsel at the penalty phase of Petitioner's second trial by the federal courts. Gibson found it concerning that Petitioner's appellate counsel struggled to obtain Petitioner's files from Goodwin so that the appellate counsel could perfect the record for Petitioner's new automatic appeal to the California Supreme Court. Furthermore, from letters written by Goodwin and sent to Petitioner's appellate counsel, Gibson learned that Goodwin believed that the issues that were valid for Petitioner's automatic appeal were focused on insanity, diminished capacity, and voir dire issues, but not guilt issues.

Next, Gibson's testimony moved on to discuss his findings about whether Goodwin had provided ineffective assistance of counsel on specific issues. First, Gibson looked at whether Goodwin should have done more with the .25 caliber firearm based on the fact that a "non-serialized" gun was taken from the car, but, after the gun was turned over to Mr. Boudreau, the gun appeared to have a serial number on it and the fact that there were inadequate pictures taken of the gun being recovered from the car. While Gibson found that Goodwin acted below the standard of care in not investigating the fact that the gun suddenly had a serial number after it was recovered without one, he cannot find that Goodwin's lack of investigation was prejudicial because there is no way to tell what the result of any investigation would have been.

Second, Gibson opined that, assuming Goodwin knew that Marlon Lewis, a co-defendant, had apparent bloodstains on his shoes and that other clothes in evidence had apparent blood on them, Goodwin's failure to have those alleged bloodstains tested would be below the standard of care. Specifically, testing the apparent bloodstains on Lewis' shoes would be important because Billy Brown's story about where Lewis was while Graybeal was shot kept changing throughout the proceedings. However, Gibson opined that he could not find any prejudice because it is unknown whether any testing would have shown that the stains were actual blood or whether the test results would have made any difference in the outcome of Petitioner's second trial.

Third, concerning the Meras shell casings, Gibson noted that evidence related to the Meras case was not admitted in

Petitioner's trial. However, Gibson opined that Goodwin might have been able to make something of the fact that the prosecution believed that the gun used at the Meras incident and the Graybeal murder was the same. Nevertheless, Gibson could not find any prejudice caused by Goodwin's failure to investigate the Meras shell casings.

Fourth, Gibson noted that, while Goodwin was provided with alibi witnesses, there is no documentary or other physical evidence that Goodwin contacted any of those potential witnesses. Gibson opined that failing to contact and speak with potential alibi witnesses is below the standard of care. However, Gibson asserts that no prejudice can be found because it is unclear what any alibi witnesses would have said if they were contacted.

Fifth, with regards to the scripts, which are the five pages seized from Petitioner's jail cell that Petitioner allegedly wrote as to be a confession by Marlon Lewis to having committed the shooting, that were admitted into evidence at Petitioner's second trial, Gibson remarked that the jurors specifically asked to see the scripts during their deliberations. However, the judge, the prosecutor, and Goodwin all incorrectly agreed that the scripts were not admitted into evidence and the jury was told that they could not see them. Further, Goodwin could have used the scripts to argue how the murder occurred in Petitioner's own words, but Goodwin did nothing with the scripts. Nevertheless, Gibson opined that any prejudice cannot be assigned based upon the errors by Goodwin with regards to the scripts because it is unclear if the result of the case would have been different if the jury had gotten to actually see the scripts during their deliberations.

Sixth, Gibson asserted that, since the only eyewitness to the murder who testified during Petitioner's second trial was Billy Brown, Goodwin's entire defense should have been focused on attacking Brown's testimony. In that light, Gibson stated that Goodwin should have had the trial court determine that Brown was an accomplice as a matter of law, rather than letting the jury determine if Brown was an accomplice. During his cross-examination of Brown, Goodwin failed to elicit the information that actually mattered with regard to Brown's accomplice liability, which allowed the prosecutor to argue to the jury that Brown was not an accomplice. Gibson asserted that Goodwin's failure to litigate the accomplice liability issue before testimony was taken was below the standard of care, but he could not find that Goodwin's error was prejudicial.

Lastly, seventh, Gibson noted that, as far as he could tell, Goodwin did not talk to any experts at all. In fact, Gibson said that he did not see any documentation to suggest that Goodwin ever filed a request for funding pursuant to Penal Code section 987.9 to obtain investigators and/or expert resources. Gibson testified that Goodwin's prejudicial error in Petitioner's second trial was failing to talk to a pathologist in combination with a ballistics or scene reconstruction expert to attack Billy Brown's testimony about how the murder occurred. Gibson asserted that, since Brown's testimony was the centerpiece of the case against Petitioner and since Brown's version of events cannot be true based upon Dr. Tovar's testimony, Goodwin should have hired a pathologist to testify at trial that Brown's story about how the shooting occurred cannot be true based upon the physical evidence

in the case. Gibson opined that Goodwin's failure to hire a pathologist or other expert to cast doubt on Brown's testimony is clearly prejudicial because the jury only asked about two pieces of evidence during their deliberations – they wanted to see the scripts and they wanted a readback of Brown's specific testimony of what occurred at Tenth and Vine, the location where the shooting occurred according to Brown.

XIII. Katherine Hart

Katherine Hart began working as an attorney on Petitioner's case in approximately 2000 when she was asked by Nicholas Arguimbau to assist him with penalty phase research, arguments, and exploration of Petitioner's history. Hart testified that Arguimbau enlisted her to assist him only with penalty phase issues and, so, she worked exclusively on penalty phase issues in Petitioner's case.

Hart denied either personally inspecting or directing an investigator to inspect the physical evidence in Petitioner's case. Hart stated that she knew that Arguimbau had enlisted experts, but she could not remember if they were for guilt phase or penalty phase issues. Hart also asserted that she spoke with an expert located by Arguimbau, but they only spoke regarding Petitioner's life history for penalty phase mitigation issues. Hart further denied that either she or anyone on her staff ever consulted with experts in pathology, ballistics, ineffective assistance of counsel, and/or scene reconstruction while she worked on Petitioner's case. Additionally, Hart testified that, while she was aware that Goodwin did not do anything to attack the

prosecution's bullet trajectory theory, she did not personally investigate refuting the trajectory theory herself.

Hart represented Petitioner until 2004 when the Ninth Circuit Court of Appeal remanded the case for an evidentiary hearing on the penalty phase. At that point, other attorneys were substituted in to represent Petitioner.

Lastly, Hart spoke with Arguimbau about filing a petition for writ of certiorari with the U.S. Supreme Court on the guilt phase issue of Petitioner's competence to stand trial. Hart calculated the deadline for filing a petition for writ of certiorari incorrectly and Arguimbau had relied on Hart's calculation, rather than calculate the deadline himself. The U.S. Supreme Court denied Petitioner's motion for leave to file a late petition for writ of certiorari.

XIV. Taylor Long

As of the date of her testimony, Taylor Long had been the Public Information Officer for the Fresno County District Attorney's Office for just shy of two years. Her job as the Public Information Officer is to ensure that the public is updated on information that they need to be aware of, whether that is case-related, public safety, or legislative matters. Hence, Long corresponded with media, handles social media platforms, works with state legislatures, and attends media events.

Long testified that she remembered having an exchange with Pablo from the Fresno Spotlight about Petitioner's case in around August 2022. Long testified that, to discuss Petitioner's case with the Fresno Spotlight, she obtained the information about the case from Assistant District Attorney Steve Wright. After

discussing Petitioner's case with Wright, Long informed the Fresno Spotlight that the claims of misconduct made by the defense have been investigated and found to be false.

XV. Lisa Barretta

Lisa Barretta has been a property and evidence technician for the Fresno County's Sheriff's Office for approximately 16 years. Barretta does not have a supervisory position and does not make policies or procedures.

People can request to view evidence in a case by coming into the office or sending an e-mail requesting to see case items. Requests to view evidence are typically done pursuant to an e-mail form request. Barretta testified that evidence is stored at an off-site location, a locked warehouse that has an alarm and a security gate but does not have people working on site daily. Since evidence is stored off-site, once a request for an evidence inspection is received, then Barretta or someone else from her office would go and retrieve the evidence to bring it to the evidence viewing room. There is no log at the off-side evidence storage location stating who is picking up evidence from a particular case and taking it anywhere.

Once the evidence had been retrieved from the off-site location and was available to be viewed, someone from Barretta's office would inform the requester. Once the requester arrives, either Barretta or her partner will meet the requester and escort them to the evidence room, where the evidence may be viewed. Every person who enters the evidence room, but who is not normally assigned to work in the evidence room, must sign the visitor's sign-in sheet, regardless of whether the person is there to view

evidence or do non-evidence related tasks, such as janitorial work, in the room. The visitor's sign-in form requests the person's name, the date, a time, and the general reason why the person is in the evidence room, like evidence review, examination, janitorial tasks, etc. The sign-in form does not require that a defendant's name or case number be listed.

When a person arrives to view or examine evidence, then the evidence is placed inside the room along with green property cards that list the chain of custody for each piece of evidence. The evidence is checked out for viewing and/or examination inside of the evidence room by a law enforcement representation, such as a case detective, or an employee of the District Attorney's Office, typically an investigator, who signs the chain of custody on the property cards either before, or at the time that, the evidence is actually viewed and/or examined. The record of who actually viewed and/or examined any specific piece of evidence in a case would be signed onto the chain of custody on the property cards. Once the evidence inspection is done and the evidence items are returned, or signed back in, on the property cards, then the items are taken out of the evidence room and placed into a separate locked, secured room that only Barretta, her partner, and Barretta's supervisor has access to until the evidence can be taken back to the off-site warehouse. Barretta testified that there was no log showing that Barretta or other individuals are moving evidence from a case in and out of the locked, secured room.

Barretta testified that she could not recall if she had been personally contacted by anyone to view evidence from Petitioner's

case or if she had ever facilitated a viewing of the evidence from Petitioner's case. However, Barretta did know that viewings of the evidence from Petitioner's case have occurred because the chain of custody on the evidence cards indicated that the evidence was checked out for the viewing and then returned after the viewing was over.

Barretta initially stated that, if a person is not on the prosecution team or the defense team, they would not be able to go into the evidence room and view any evidence. However, Barretta later clarified that if a person is brought to an evidence viewing by someone from either the District Attorney's Office or the defense attorney's office, then that person would be allowed to enter the evidence room and view evidence with the individual from the prosecution or defense.

XVI. Michael Koop

Michael Koop is the director of the Fresno County Sheriff's Department forensic lab. The forensic lab analyzes evidence in criminal cases based upon the needs of the investigation and the lab's basic units are drugs, firearms, and DNA. Koop stated that he provided Petitioner's counsel with a CD containing the laboratory case file for Petitioner's case. The laboratory case file contained notes and analysis and a couple of photographs contained in the case file from 1978. Koop asserted that all of the items in the laboratory case file had been previously subpoenaed and provided and that, to his knowledge, there was no new evidence on the CD provided to Petitioner's counsel.

Koop further testified that he had never been involved in testing anything related to Petitioner's case. Koop also stated

that he did not believe that he was contacted by any member of the District Attorney's Office and asked to retest a gun from Petitioner's case.

The day after his original testimony, Koop was recalled for further examination. Koop testified that he brought the CD that he provided to Petitioner's counsel the day before pursuant to a subpoena duces tecum requesting the documents relating to case 78-1809. Koop said that the CD contained two image files and one PDF file of the entire file of case 78-1809. The CD files were created when Koop scanned the case file for case 78-1809, which was county paperwork from 1978 and, to the best of his knowledge, preparing those documents would have been within the scope of the county employees during that time.

Koop testified that he had provided the documents inside the case file on at least two different prior occasions. As best as he could recall, Koop prepared the CD the same way he did the previous two times. He did not take anything out that he had provided previously, and he just scanned the entire file, but did not really pay attention to the documents.

XVII. Danielle Isaac

Danielle Isaac has been an investigator with the Fresno County District Attorney's Office for approximately 10 years. As an investigator, her job consists of assisting the attorneys, gathering witnesses for court, and helping to prepare cases for trial. Prior to becoming investigator with the District Attorney's Office, Isaac was a deputy sheriff.

Isaac has been assigned to Petitioner's case since 2018 or 2019. In 2019, Isaac began getting requests to assist with

viewing evidence in Petitioner's case. Isaac testified that she viewed the evidence in Petitioner's case three separate times – one time with Petitioner's paralegal, Ms. Cock, one time with Petitioner's counsel, and one time with Deputy District Attorney Freeman. Isaac stated that she did not document how many times that she looked at the evidence in Petitioner's case. When she needed to view evidence from Petitioner's case at the Sheriff's Department, she would always contact Hector Tello or Lisa Barretta to get the evidence viewing set up. Additionally, Isaac said that she was not aware of any chain of custody documents that were filled out or completed in order to view evidence in the Superior Court's possession. However, when she viewed the evidence at the Sheriff's Department, she would document the viewing on the chain of custody each time by signing out the evidence to herself for viewing and then signing it back in. Isaac denied having viewed the evidence in Petitioner's case, either at the Sheriff's Office or the Superior Court, with anyone that she had not mentioned. Isaac also specifically denied ever personally viewing the evidence in Petitioner's case with Justice Ardaiz, although she knew who he was.

Isaac testified that she remembered writing a report dated August 20, 2021, in which she discussed the TL3 being engraved on the holster. Isaac asserted that she wrote the report after she and Deputy District Attorney Freeman had gone to view the holster from Petitioner's case in the court exhibits. Petitioner's counsel made Deputy District Attorney Freeman aware that Petitioner believed that there were two dates engraved on the holster. Isaac confirmed that she wrote a report about that and confirmed her

observations that TL3 and a date were engraved on the holster. Isaac stated that her report did not include anything about the other engraving because she did not focus on the other engraving and that she did not remember what the date is or what the question about it was. Isaac denied omitting anything from her report about the alleged second date because there was nothing to report and that she did not recall seeing that date. However, Isaac said that, as Petitioner's counsel was talking, her memory was refreshed that there was apparently a second date engraved on the holster.

Isaac asserted that she was involved last year when Petitioner was attempting to get the gun retested through the Forensic Analytical Crime Lab. The prosecution wanted to see if they wanted to retest the gun at the Fresno County Sheriff's Department crime lab before sending it to the other crime lab. Isaac stated that either she or Deputy District Attorney Kelsey Peterson reached out to the Sheriff's Department crime lab to see if they would retest the gun. Then, Deputy District Attorney Peterson and Isaac went to the Sheriff's Department crime lab to speak informally with Mike Koop. Isaac did not have the gun or any other evidence from Petitioner's case with her at the informal meeting. Koop refused to retest the gun because it had already been tested and any retesting was unnecessary. Isaac stated that she did not make any report of the meeting between herself, Koop, and Peterson.

After that, Isaac personally took the court exhibit box containing the Titan .25 caliber firearm to the Forensic Analytical Crime Lab in Hayward, which is where Chris Coleman

works. When Isaac arrived at the lab, she opened the box of evidence to fill out a form that the lab required her to fill out before submitting the evidence to them. Isaac had taken photographs of everything in the evidence box before she took the box up to Hayward. When she opened the box in Hayward, Isaac saw a loose round in the box that she believed had come out of an envelope also in the box. So, Isaac put the loose round into the envelope that she had thought it came out of. However, once the evidence was submitted, there was a question about whether the loose round that had been in the box had been transported up to the crime lab. Consequently, Isaac had to call Chris Coleman and explain that she had accidentally placed the loose round from the box into the wrong envelope inside of the box.

XVIII. Margaret Mims

Margaret Mims is currently retired, but she previously served as a Fresno County Deputy Sheriff and the Fresno County Sheriff. Mims was the elected Fresno County Sheriff for 16 years. As elected sheriff, Mims' was responsible for patrols, court services, civil processes, search and rescue, and various law enforcement activities throughout unincorporated Fresno County.

Mims acknowledged that she was acquainted with James Ardaiz and knew that he was a Deputy District Attorney and prosecutor. Mims denied ever having met with Ardaiz about Petitioner's case or having discussed Petitioner's case with Ardaiz. Mims also denied recalling an e-mail from Greg Gularte to Brandon Purcell, which she was not copied on, stating that: "A request has come down from the sheriff to sequester the case file for possible review by former Judge Ardaiz. She has not decided if he will review, but

wants them available." Mims then testified that she did not recall asking any member of her staff to sequester or set aside Petitioner's case file for Ardaiz's review. Mims stated that she did remember that some documents had been requested, but that the request was not through a normal process like discovery or a subpoena and, so, she let staff know that, unless the office received a discovery order or a subpoena, that the documents would not be released.

Approximately 30 minutes after Mims' initial testimony concluded, she was recalled to provide additional testimony. Mims stated that, after she was questioned about Ardaiz, she remembered something about a film documentary and Ardaiz. So, she searched her text messages and found a January 2021 text from Ardaiz requesting to review the reports for a film documentary. In response to Ardaiz's text message, Mims told Ardaiz that they would pull the records and Mims let the detectives know via the chain of command that Ardaiz might be coming to review Petitioner's files. After that, Mims contacted Fresno County District Attorney Smittcamp through her then-work e-mail and informed the District Attorney about Ardaiz's request. District Attorney Smittcamp responded and told Mims to stand by on giving Ardaiz anything until after the District Attorney's Office had spoken to Ardaiz. Mims then sent Ardaiz a screenshot of Smittcamp's response to Mims and told Ardaiz that he needed to contact the District Attorney's Office. Mims acknowledged that Ardaiz's request to review criminal case files in an active case where he had previously been the Deputy District Attorney was unusual, but Mims stated that Petitioner's case was an unusual

case. Mims testified that the last time she communicated with Ardaiz was during the previous year sometime regarding a memorial project being built.

Mims acknowledged that, after receiving a letter regarding Petitioner's file and knowing that a hearing was coming up in Petitioner's case, she instructed her staff not to respond to the letter and to not turn over the requested documents unless a request through the normal channels – subpoena or discovery – was made. When Mims' agency was provided with a Public Records Act request, the Sheriff's Department complied with that request. Additionally, when provided with a proper subpoena, Mims and the Sheriff's Department always turned over the information requested that they had access to.

Mims was again recalled the next day to provide further testimony. Initially, Mims agreed that she had provided a series of screenshots of text messages between herself and Ardaiz to Petitioner's counsel. When Ardaiz texted Mims a request to review Petitioner's file, Ardaiz made it very clear that he only wanted to review police reports from Petitioner's case and that he did not want to look at the evidence from the case. Mims confirmed that she initially responded that the Sheriff's Department would make the arrangements for Ardaiz to review the file. However, Mims testified that she then realized that, since Petitioner's case was still ongoing, she should not allow Ardaiz to review the files until after she talked to the District Attorney. At that point, Mims believed that it would be improper for Ardaiz to review the documents from Petitioner's file. After Mims reached out to the District Attorney by text, the District Attorney

responded with a comment that the optics of allowing Ardaiz to review the file were not good, a list of five questions, and a request to have Ardaiz contact the District Attorney's Office directly. Based on that comment, Mims believed that the District Attorney did not approve of Ardaiz viewing Petitioner's file.

Then, Mims took a screenshot of District Attorney Smittcamp's response and pasted the screenshot into her text message conversation with Ardaiz so that Mims could pass along the information that Ardaiz should be contacting the District Attorney's Office directly and so that Ardaiz could know the reasons why there was hesitation in allowing him to review Petitioner's file and why Mims would not be allowing Ardaiz to review the file at that time. After Mims sent the District Attorney's response to Ardaiz, Ardaiz responded, expressing frustration because he wanted to look at the files to refresh his memory before being questioned in the documentary. Mims believed that, while she directed her staff to set aside Petitioner's file pending any decision from the District Attorney's Office, Mims did not believe that she ever received a decision or approval from the District Attorney.

Mims denied ever looking at the contents of Petitioner's file at any time. Mims also denied that Captain Gularte hand-delivered Petitioner's file for Mims to review and did not recall if she handed Petitioner's case file back to Captain Gularte during a staff meeting. Mims stated that she did not recall that Petitioner's file was ever brought to her office, because, if Ardaiz was going to review the file, the review would not have occurred in her office. Mims also denied ever handing Ardaiz

Petitioner’s file from the Sheriff’s Department and ever having any in-person contact with Ardaiz in 2021 or 2022 regarding Petitioner’s case file.

Lastly, after being asked if she knew who the Tom Lean mentioned in Ardaiz’s text messages was, Mims confirmed that she knew who Tom Lean is. Mims denied having any interactions with Lean regarding Petitioner’s file. However, Mims testified that she had sat next to Lean at the first day of Petitioner’s evidentiary hearing and that she and Lean had discussed Petitioner’s case. Mims stated that Lean had talked about being frustrated that he was being accused of manipulating evidence.

XIX. Amythest Freeman

From March 2018 through November 2022, Amythest Freeman was a Deputy District Attorney assigned to work on Petitioner’s case. Freeman testified that she was provided banker boxes full of District Attorney’s office files, work product, discovery, and transcripts from Petitioner’s case. There was no actual evidence from Petitioner’s case in the boxes. The boxes were kept on the same floor where she worked in the Homicide Unit. Freeman testified that she never prepared any discovery index or a list of what documents had been turned over to Petitioner’s legal team. Additionally, from what she could recall, no list or index of documents that had been turned over to Petitioner’s legal team was ever in the boxes or came along with the case. Freeman stated that she never looked through the boxes to determine if each document in the boxes had been turned over to Petitioner’s legal team.

Freeman only interacted with the evidence from Petitioner's case one time when Freeman, Investigator Danielle Isaac, Deputy Seth Yoshida, and Petitioner's attorney, Curtis Briggs, all viewed the firearm from Petitioner's case. The deputy was present to view who handled the evidence, but Freeman did not remember filling out or signing any chain of custody documents related to this evidence inspection. Further, Freeman recalled that there was a discrepancy between the parties regarding the etching on the holster and, so, Freeman wanted to inspect the holster before responding to Petitioner's motion. When asked if she remembered Danielle Isaac's report about the evidence inspection omitting any mention of the second engraving on the holster, Freeman stated that, while she had reviewed Isaac's report, she does not have a recollection if Isaac's report omitted anything or not.

Freeman denied ever having any interactions with Ardaiz regarding Petitioner's case.

XX. Warren Robinson

Warren Robinson was a Deputy District Attorney with the Fresno County District Attorney's Office from 1977 through 1991. While at the District Attorney's office, Robinson did felony cases, was on the homicide team for a period of time, and then served as a Chief Deputy District Attorney that supervised a team of 10 attorneys. Robinson handled roughly ten homicide trials while he was at the Fresno County District Attorney's Office.

In 1983, Robinson was the Deputy District Attorney assigned to prosecute Petitioner's case after the case was reversed on appeal. By then Ardaiz had left the office and become a judge. Robinson stated that he had access to the transcript of the first

trial and to the police reports. Robinson denied conducting any investigation of his own into Petitioner's case, but Robinson also asserted that he would not personally investigate a case. Instead, if he wanted additional information, he would reach out to the investigators with the District Attorney's office or the police department involved in the case. For most of his homicide cases, Robinson believed that the investigation was thorough and complete before he received the case. Additionally, Robinson stated that he did not believe that he ever went to inspect the physical evidence in Petitioner's case. Robinson also asserted that he did not view the evidence booked into custody in most cases because he did not feel it was necessary to aid him in prosecuting the cases.

Robinson asserted that there was nothing different about the way that he took over prosecuting Petitioner's case versus his other homicide prosecutions. Additionally, Robinson testified that he looked at the evidence in Petitioner's case with his own critical judgment and that he did not assume that Petitioner was guilty simply because he had been convicted once before. Robinson denied having noticed any issues with the chain of custody of the evidence in Petitioner's case. Robinson did not recall at all that some of the initial Fresno Police Department reports listed the gun as not having a serial number or that the holster had chain of custody engravings on it. However, Robinson stated that, if, in 1983, counsel for a defendant had contacted him and said that they thought there were problems with evidence or issues with the chain of custody for evidence, Robinson would have investigated that claim and determined if it had any validity.

A week or two before being called to testify at the evidentiary hearing, Petitioner's counsel conducted a recorded interview of Robinson. During that interview, Robinson stated that Ardaiz had called him once regarding Petitioner's case in late 2022 or early 2023. Robinson asserted that the call was very brief and that Ardaiz called to give Robinson a heads up that he might be contacted regarding Petitioner's case and that Petitioner's attorneys were claiming that the prosecution had pressured Billy Brown into identifying Petitioner as the shooter. Robinson further testified, since that interview, he and Ardaiz had one additional five to ten-minute conversation where Ardaiz asked Robinson if he had been subpoenaed. After that, Ardaiz and Robinson talked about Petitioner's case, including some things that Robinson had not remembered or recalled, like that some of the other participants in Graybeal's kidnapping had pled guilty or had been convicted of murder, that Petitioner had admitted to a psychiatrist that he was the shooter, and that the murder weapon had been recovered. It was not Robinson's impression that Ardaiz was trying to convince Robinson of Petitioner's guilt. Robinson stated he and Ardaiz were simply colleagues in the District Attorney's Office who did not have much contact with each other and that they were not personal friends. Robinson asserted that, other than those two conversations, he had not spoken with anyone from the 1978 prosecution team in the previous two years.

XXI. Kelsey Kook

Kelsey Kook, née Petersen, was a Deputy District Attorney assigned to work on Petitioner's habeas corpus case. After Kook

received this assignment, she asked her paralegal to order the District Attorney's file on Petitioner's case. Since Kook's office was in the Writs and Appeals Unit at the Juvenile Justice Center, Kook's paralegal contacted the Homicide Unit and Kook was told that the boxes were sent to her from the downtown Fresno office.

Kook stated that, when she was first assigned to Petitioner's habeas corpus case, she opened each box and generally went through it. When Kook handled a response to a motion to compel discovery in Petitioner's habeas corpus case, Kook conducted an investigation to determine what documents had been turned over or not. During that investigation, Kook discovered that a previous prosecutor on the case, Noelle Pebet, had also filed an opposition to a motion to compel discovery. As part of Pebet's opposition, Pebet filed an affidavit that listed everything that had been provided to the defense. Based on what Kook recalled, what Pebet said that she turned over was basically what was in the boxes in Kook's office.

After Petitioner had filed a request to have the gun tested in a lab other than the Fresno County Sheriff's Department lab, Danielle Isaac set up a meeting with herself, Kook, and Michael Koop. Kook wanted to discuss with Koop Petitioner's case, the request to retest the gun, and the lab that Petitioner had requested that the gun be sent to for retesting. Kook denied that Koop said that the lab would not retest the gun. Instead, Kook stated that Koop said that Allen Boudreau had tested everything and that they were standing behind his testing. Kook did not bring the gun or any other evidence to the meeting with Isaac and

Koop. When asked if she knew any reason why Koop testified that he was never requested to retest the gun, Kook stated that, since Isaac scheduled the meeting and Kook was not a party to the conversations leading up to the meeting, Kook was unaware of whether Isaac told Koop what Kook's requests were going to be before the meeting.

XXII. Greg Gularte

Greg Gularte has been with the Fresno County Sheriff's Department for more than 29 years. At the time of the evidentiary hearing, Gularte was the Assistant Sheriff of the Administrative Services Division. In early 2021, Gularte was a Sheriff's Captain overseeing the Investigations Bureau for the Sheriff's Office.

At some point, Sheriff Mims contacted Gularte and asked him to see if they had Petitioner's file in their records in the Homicide Unit and, if so, to deliver it to her. Gularte contacted his Sheriff's Lieutenant, Brandon Purcell, and directed the Lieutenant to locate the file, if it existed. Purcell delivered the file to Gularte's office. Gularte took a cursory look at the file to make sure that it was Petitioner's file and noticed that the file contained some investigative request forms, reports, and some photographs. After that, Gularte hand-delivered the file to Mims' office and left it with Mims' executive secretary.

The next time Gularte saw Petitioner's file was maybe a couple of months later. At an executive staff meeting, Mims handed the file back to Gularte. Gularte took a look at the file and it appeared to be the same size and material that it was before he had delivered it to Mims' office.

When asked if Gularte knew what Mims had done with the file or if Mims had given the file to Ardaiz, Gularte testified that Mims had just asked to review the file and he assumed that Mims had reviewed it. Gularte stated that there were no follow-up communications about what happened with Petitioner's file. Gularte denied that Mims had contacted him within the previous year about anything related to Petitioner's file and/or Gularte's testimony in the evidentiary hearing.

DISCUSSION

"A person unlawfully imprisoned or restrained of their liberty, under any pretense, may prosecute a writ of habeas corpus to inquire into the cause of the imprisonment or restraint." (Pen. Code, § 1473, subd. (a).) "Because a petition for writ of habeas corpus seeks to collaterally attack a presumptively final criminal judgment, the petitioner bears a heavy burden initially to *plead* sufficient grounds for relief, and then later to *prove* them. 'For purposes of collateral attack, all presumptions favor the truth, accuracy, and fairness of the conviction and sentence; *defendant* thus must undertake the burden of overturning them. Society's interest in the finality of criminal proceedings so demands, and due process is not thereby offended.'" (*People v. Duvall* (1995) 9 Cal.4th 464, 474.) Therefore, Petitioner bears the burden of proving his entitlement to habeas corpus relief by a preponderance of the evidence. (*In re Cudjo* (1999) 20 Cal.4th 673, 687.)

I. Claims 1 and 2

In Claim 1, Petitioner contends that the .25 caliber Titan

handgun that was admitted into evidence at his second trial is not the firearm used to commit the murder, kidnapping, and robbery, and that the prosecution's assertion that the .25 caliber handgun was the weapon used during the commission of the crimes is false evidence. In Claim 2, Petitioner argues that the prosecution knew that Petitioner did not commit the murder of Ms. Graybeal, the prosecution failed to disclose overwhelming exculpatory evidence in its possession to defense counsel or the court, and, instead, presented false and misleading testimony throughout the preliminary hearing, the first trial, and the second trial in order to obtain a conviction against Petitioner.

A. False Evidence

1. Legal Standard

Habeas corpus relief is available if a petitioner establishes, by a preponderance of the evidence, that "[f]alse evidence that is material on the issue of guilt or punishment was introduced against a person at a hearing or trial relating to the person's incarceration." (Pen. Code, § 1473, subd. (b)(1)(A).) "Any allegation that the prosecution knew or should have known of the false nature of the evidence is immaterial" to a false evidence claim pursuant to section 1473, subd. (b)(1)(A). (Pen. Code, § 1473, subd. (b)(3).)

The first step in establishing a false evidence claim is demonstrating that a piece or pieces of evidence is false. (*In re Figueroa* (2018) 4 Cal.5th 576, 588.) Next, "[t]he statute and the prior decisions applying section 1473 make clear that once a defendant shows that false evidence was admitted at trial, relief is available under section 1473 as long as the false evidence was

'material.'" (*In re Richards* (2016) 63 Cal.4th 291, 312.) "Our courts have held that [f]alse evidence is substantially material or probative if it is of such significance that it may have affected the outcome, in the sense that *with reasonable probability* it *could* have affected the outcome …. [Citation.] In other words, false evidence passes the indicated threshold if there is a reasonable probability that, had it not been introduced, the result would have been different." (*Ibid.* [internal quotation marks omitted].) "This required showing of prejudice is the same as the reasonably probable test for state law error established under *People v. Watson* (1956) 46 Cal.2d 818, 836[.] [Citation.] We make such a determination based on the totality of the relevant circumstances." (*Id.* at pp. 312-313.)

2. Analysis

a. **The Firearm Admitted at Trial is Not the Murder Weapon**

Petitioner contends that any testimony that the firearm admitted into evidence at trial is the actual murder weapon is false for six reasons.

First, Petitioner contends that the firearm admitted into evidence as the murder weapon is false evidence because there are false and conflicting police reports regarding the serial number of the firearm allegedly found in Graybeal's car. It is undisputed that the police reports and/or property reports initially listed the firearm allegedly seized from Graybeal's car as "serial number removed." It is also undisputed that, at some point in time, one of the property reports, Exhibit 6, had the words "serial number removed" crossed out and "serial number 146425" handwritten in underneath the crossed out words, and an

additional handwritten notation on the form that states "number determined to be 146425, February 9, 1978." After February 11, 1978, the reports regarding the firearm all state that the firearm has the serial number 146425.

Petitioner's experts, Roger Clark and Chris Coleman, both opine that the changes in the firearm's stated serial number – either as "removed" or as "146425" – are consistent with evidence planting or tampering because there is no report indicating exactly when, how, and by who the serial number was determined. Additionally, both experts state that, to them, the serial number of the firearm in evidence is clearly readable, even though there are scratches through the serial number. However, both experts admitted that the area around the serial number of the Titan firearm in evidence appeared to have been cleaned in some manner, probably with steel wool or a polishing cloth, which would have made the serial number more clear, even though when the cleaning was done is unknown because there is no documentation that the area of the firearm around the serial number was ever cleaned.

Furthermore, both experts also conceded that they were never able to ask the individual who wrote the reports that stated that the firearm had a removed serial number why he wrote that description since that individual is deceased. Coleman further acknowledged that the description of a piece of evidence can be subjective because it is based on the particular officer's perception of that piece of evidence and that he did not know what the serial number on the firearm looked to Officer Bonesteel when he wrote the initial reports about the Titan .25 caliber firearm.

Additionally, both experts agreed that it was possible that a

lot of things were handwritten back in the late 1970s and that it does not necessarily mean that an officer who handwrote something on an evidence report was being dishonest regarding the evidence. Clark stated that it was possible that an officer who handwrote a serial number for a firearm into earlier reports, rather than writing a supplemental report, might just be an officer who needed to be retrained on proper policies, rather than an officer who was planting evidence. Moreover, Coleman also testified that not all evidence-related errors by law enforcement are because the law enforcement is dirty. Instead, some of the errors regarding evidence that happened prior to modern evidence preservation and tracking occurred because law enforcement was stupid, careless, or had not been properly trained by people who knew how to preserve evidence. Therefore, Petitioner has not established that the conflicting police reports regarding the serial number of the firearm allegedly found in Graybeal's car are false.

Second, Petitioner contends that the firearm admitted into evidence as the murder weapon is false evidence because there are false and conflicting police reports regarding where the firearm was recovered. It appears that Petitioner is arguing that there is a conflict between a February 8, 1978 vehicle inventory form, which listed only three cartons of cigarettes as the vehicle's property, and Bonesteel's trial testimony that he processed Graybeal's vehicle and found the firearm under the driver's seat and the holster in the same area of the car as the gun.

However, the Court notes, and Petitioner acknowledges, that the vehicle inventory form also states that the vehicle was

possibly involved in "PC 187", i.e., a murder. Petitioner has not presented any evidence that it was Fresno Police Department policy in 1978 to include every piece of property in a vehicle on the vehicle inventory form filled out while the vehicle is being impounded, when the officers who are impounding the vehicle know that the vehicle was possibly involved in a murder. In fact, the stolen vehicle report provided to the Court as Habeas Corpus Petition Exhibit 1v, which was completed by the same officers who wrote the vehicle inventory form, specifically stated that Graybeal's vehicle was towed to the Fresno Police Department for processing and that one of the officers saw what appeared to be a "25 automatic revolver" lying on the floor partially concealed by the driver's seat and that there was a black holster with a metal belt clip lying next to the gun. Therefore, there is no evidence that the vehicle inventory form and Bonesteel's trial testimony are actually in conflict with each other.

Additionally, Petitioner argues that photographs of the firearm and holster also demonstrate that police reports have conflicting information regarding where the gun was recovered. Specifically, Petitioner asserts that the photographs of the gun and holster were not properly documented pursuant to police procedure because the photographs are undated and lack a color-coded placard, there are no close-up photographs, and no measurements of the distance between the holster and the firearm. Nevertheless, the fact that the location of the firearm and

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holster in the vehicle may not have been sufficiently documented through photographs does not establish that police reports have

conflicting information regarding where the firearm was recovered.

Third, Petitioner contends that the firearm admitted into evidence as the murder weapon is false evidence because the holster allegedly found near the gun in Graybeal's car has two scribed dates on it, indicating that the holster has been in law enforcement custody since 1973. Petitioner argues that, since the holster and firearm were found together, evidence that the holster was in law enforcement custody since 1973 also demonstrates that the firearm was in law enforcement custody since 1973.

In support of Petitioner's argument, Petitioner's experts, Clark and Coleman, both testified that they saw two separate etchings on the metal clip of the holster. One of the etchings is located on the flat side of the clip and is from Fresno County Sheriff's Department Detective Lean, one of the investigators in Petitioner's criminal case, and is dated February 10, 1978. The other etching viewed by Petitioner's experts is on the top edge of the clip and states three numbers "351," and "7, slash, 25, slash, 73." Both Clark and Coleman testified that, due to their experience in law enforcement, they believed that the etching with the "73" in it was the etching of a badge number and a date, which indicated that the holster was recovered by law enforcement in 1973.

However, Coleman admitted that he only assumed that the "351" etching on the clip was a badge number, that he did not really know what those three numbers related to, and that he could not say for certain that the person who etched the 1973 numbers into the holster's clip was a member of law enforcement. Coleman also admitted that, even if 1973 etching had been made by law

enforcement, the holster could have been released from law enforcement custody prior to 1978 after the case that the holster was a piece of evidence in was over.

Additionally, Clark acknowledged that there was nothing on the physical firearm or the CLETS report for the serial number of the firearm in evidence indicating that the firearm itself was in law enforcement custody since 1973. Lastly, neither expert could testify that the firearm was with the holster in 1973 or that evidence related to the holster could be imputed to the firearm, just because both the firearm and the holster were found in Graybeal's car. Therefore, Petitioner has not demonstrated that the firearm admitted into evidence as the murder weapon is false evidence because the holster was allegedly in law enforcement custody since 1973.

Fourth, Petitioner contends that the firearm admitted into evidence as the murder weapon is false evidence because there is no forensic evidence tying Petitioner to the gun. Specifically, Petitioner states that his fingerprints were not found on the gun and his gunshot residue test was negative.

It is undisputed that Petitioner's fingerprints were not found on the firearm in evidence. However, evidentiary hearing testimony showed that lifting fingerprints from firearms is extremely difficult. Coleman testified that he had attempted to lift fingerprints from firearms between 150 and 180 times, but that he was only successful in lifting fingerprints twice. Further, it is also undisputed that Petitioner's gunshot residue test was negative. Nevertheless, Petitioner has presented no expert testimony establishing that, since Petitioner's gunshot

residue test was negative, Petitioner never fired a firearm on February 8, 1978.

Fifth, Petitioner contends that the firearm admitted into evidence as the murder weapon is false evidence because the prosecution withheld reports that the crimes related to Jesus Meras were committed with a .22 caliber firearm, even though the prosecution's theory was that Petitioner and his codefendants used the same .25 caliber firearm to commit both the Meras and Graybeal crimes. However, the police reports and documents related to the Meras offenses only state that .22 caliber shell casings were collected from the scene of the Meras crimes. There is no specific physical evidence, such as a bullet, establishing that the Meras crimes were committed with a .22 caliber firearm. Meras did not testify at the preliminary hearing that any specific caliber firearm was used to commit the crimes against him.

Additionally, the prosecution theory that the same firearm was used to commit both the Meras and Graybeal crimes was not apparent until Meras testified at the penalty phase of Petitioner's second trial, which has been vacated and set aside. No evidence related to any offense pertaining to Meras was admitted, and the prosecution did not make any argument pertaining to Meras, at the guilt phase of Petitioner's second trial. Therefore, Petitioner has not demonstrated that the firearm admitted into evidence against him is false evidence because of the shell casings at the Meras crime scene.

Sixth, Petitioner contends that the firearm admitted into evidence as the murder weapon is false evidence because Allen

Boudreau and Billy Brown testified falsely at the guilt phase of Petitioner's second trial. Initially, as discussed below in the Court's analysis of Claim 6, Petitioner has failed to prove that Brown testified falsely at Petitioner's second trial. Further, it is unclear to the Court exactly what portions of Boudreau's testimony that Petitioner is challenging as false. To the extent that Petitioner is alleging that Boudreau's testimony that the first time he saw the firearm admitted into evidence was on February 10, 1978, two days after the murder, Petitioner has not provided any evidence that this statement is not true. Therefore, Petitioner has not proven that the firearm admitted into evidence as the murder weapon is false evidence because Allen Boudreau and Billy Brown testified falsely at the guilt phase of Petitioner's second trial.

Consequently, Petitioner has not met his burden of proof on this false evidence claim. He has not demonstrated that it is more likely than not that any evidence that the Titan .25 caliber firearm admitted at his second trial is the firearm that fired the fatal bullet is false.

b. **Any evidence that Graybeal Was Killed With a .25 Caliber Firearm is False**

Petitioner contends that any evidence that Graybeal was killed with a .25 caliber bullet shot from a .25 caliber firearm is false. Specifically, Petitioner asserts that there is a disparity about the distance that the .25 caliber shell casing was found from Graybeal's body, no .25 caliber bullet was ever recovered from the crime scene, and there is no forensic evidence that Graybeal was shot with a .25 caliber firearm. It is

undisputed that there is a disparity in the police reports about how far the .25 caliber shell casing was found from Graybeal's body, that there was no testimony about how far a .25 caliber casing would travel, that no .25 caliber expended bullet was ever recovered from the crime scene, and that there is no forensic evidence that Graybeal was shot with a .25 caliber firearm.

Nevertheless, a lack of forensic evidence showing that Graybeal was shot with a .25 caliber bullet and a disparity in police reports about the exact distance that the .25 caliber shell casing was found from the body does not establish that any evidence offered to prove that Graybeal was killed with a .25 caliber firearm is false. Brown explicitly testified that he saw Petitioner fatally shoot Graybeal and then identified the Titan .25 caliber firearm admitted into evidence at Petitioner's second trial as the gun that Petitioner shot Graybeal with.

Therefore, Petitioner has not met his burden of proof on this false evidence claim. He has not demonstrated that is more likely than not that any evidence that Graybeal was killed by a bullet shot from a .25 caliber firearm is false.

c. **The Physical Evidence in This Case Establishes Petitioner Was Not the Murderer**

Petitioner contends that the physical evidence in this case establishes that he was not the person who killed Graybeal and, thus, any evidence to the contrary is false. Specifically, Petitioner states that Graybeal's true height, the bullet's actual trajectory, and the fact that Petitioner tested negative for gunshot residue make it highly unlikely for Petitioner to have been the shooter.

First, Petitioner asserts that, since the autopsy report listed Graybeal's height as 160 cm, which converts to approximately 5'3" tall, any evidence that Graybeal was 5'7" is false. However, Graybeal's father specifically testified that his daughter was 5'7" tall. Further, while Jason Tovar, one of Petitioner's experts, testified at the evidentiary hearing that he has no reason to believe that the autopsy report was unreliable, he also acknowledged that he had previously encountered errors in autopsy reports during his years as a pathologist. Moreover, Tovar specifically testified that documenting the location of the wound during a gunshot victim's autopsy was more important to him than documenting the victim's height since there are various ways to determine height if not recorded at the autopsy, including by asking family members.

Additionally, when asked how a change in the height of the victim from 5'3" tall to 5'7" tall would affect a calculation of where a shooter was standing or how tall the shooter was, Tovar testified that such a change in height would be a minor alteration or a very negligible change in the calculation, given that the change is only 4 inches of variation, which is roughly the width of a person's hand. Therefore, Petitioner has not demonstrated that it is more likely than not that any testimony that Graybeal was 5'7" tall is false.

Second, Petitioner argues that any testimony that the trajectory of the bullet could be accurately determined and that the only possible shooter was taller than Graybeal is false. Tovar testified at the evidentiary hearing that, to determine a bullet's trajectory through a victim's body, the body is artificially

placed in the anatomic position, but placing the body into the anatomic position means that the body's position does not necessarily reflect the actual position of the body when it was struck by the projectile. This means that, without knowing exactly how the victim's body was positioned when the projectile struck the victim, a pathologist cannot really make much interpretation based upon the deviations, i.e., front to back, right to left, or up or down.

Further, when asked if he could tell the height of a shooter from one witness describing the shooting position and approximate distance, Tovar testified that a pathologist determine whether a description of a shooting was consistent with such a description. The pathologist would need the measured height of the alleged shooter and victim and would make assumptions about the variables in a scenario, like assuming everyone's posture, specific footwear, whether the shooting victim stood on level ground, and how the alleged shooter held the firearm. Additionally, anyone attempting to make that determination would also want to make assumptions about the witness' position relative to both the shooter and the individual, because the witness' position would affect how the witness viewed things like the body positions of the alleged shooter and/or victim. Finally, Tovar testified that nothing in the information that he reviewed would allow him to know or determine the height of the person who shot Graybeal.

Tovar testified that he reviewed the autopsy report, photographs from the scene and autopsy, transcripts from criminalists and a pathologist, and the police report of investigation for this case. However, it is unclear whether Tovar

reviewed the trial testimony of Brown, who was the only witness who testified about how the murder occurred. Additionally, Petitioner's counsel did not propose a hypothetical question to Tovar that asked him whether he could determine the height of the shooter based on all of the specific details about how the murder occurred from Brown's testimony. Therefore, Petitioner has not demonstrated that it was more likely than not that any testimony that the trajectory of the bullet could be accurately determined and that the only possible shooter was taller than Graybeal is false.

Third, Petitioner argues that any testimony that he shot Graybeal is false because his gunshot residue test was negative. It is undisputed that Petitioner tested negative for gunshot residue. However, Petitioner presented no expert testimony establishing that a negative gunshot residue test conclusively means that a person did not fire a firearm.

Therefore, Petitioner has not met his burden of proof on this false evidence claim. He has not demonstrated that it is more likely than not that the physical evidence in this case establishes that he was not the person who killed Graybeal and, thus, any evidence to the contrary is false.

d. **False Testimony at Preliminary Hearing, First Trial, and Second Trial**

Throughout Claims 1 and 2, Petitioner asserts that various witnesses provided false testimony at the preliminary hearing, his first trial, and his second trial.

First, with respect to any arguments that witnesses provided false evidence at Petitioner's first trial, the Court finds that

those claims are moot. In 1982, the California Supreme Court reversed the judgment rendered against Petitioner during his first trial without any qualifications or directions. (*People v. Stankewitz* (1982) 32 Cal.3d 80, 95; see *People v. Moore* (2006) 39 Cal.4th 168, 174; *People v. Welch* (1971) 20 Cal.App.3d 997, 1004.)

Second, Petitioner contends that Billy Brown provided false testimony during the preliminary hearing. According to Fresno County District Attorney Investigator J. Spradling's report, Brown informed Deputy District Attorney Ardaiz and Spradling that he incorrectly testified at the preliminary hearing that Petitioner was a couple of feet away from Graybeal when the shot was fired. Instead, according to Spradling's report, Brown stated that the gun that Petitioner was holding was actually between ten and fifteen inches away from Graybeal when the shot was fired. Nevertheless, given the remainder of the evidence presented at the preliminary hearing, the Court finds that there is no reasonable probability that this evidence could have affected the outcome of Petitioner's preliminary hearing. Therefore, since the false evidence was not substantially material or probative on the issue of guilt, Petitioner is not entitled to any habeas corpus relief due to this false evidence.

Third, Petitioner contends that Billy Brown provided false testimony during Petitioner's first trial. However, again, this argument is moot, given that the judgment rendered against Petitioner during his first trial was reversed without any qualifications or directions. (*People v. Stankewitz* (1982) 32 Cal.3d 80, 95; see *People v. Moore* (2006) 39 Cal.4th 168, 174; *People v. Welch* (1971) 20 Cal.App.3d 997, 1004.)

Fourth, Petitioner argues that Billy Brown provided false testimony during Petitioner's second trial. However, as discussed in the Court's analysis of Claim 6, Petitioner has failed to establish that Brown's testimony at Petitioner's second trial is false.

Fifth, Petitioner asserts that Officer Bonesteel testified falsely at Petitioner's second trial that a photograph taken of the interior of Graybeal's car behind the left passenger seat showed a .25 caliber firearm and that the gun admitted into evidence at the second trial was the gun that he had removed from Graybeal's vehicle when he processed the vehicle. However, as discussed above, Petitioner has failed to establish that the firearm admitted into evidence at his second trial is not the firearm that Bonesteel removed from Graybeal's car. Therefore, Petitioner has not proven that Bonesteel's testimony is false.

Sixth, Petitioner contends that Dr. Nelson testified falsely at Petitioner's second trial when Nelson testified that, in his experience, the stippling pattern on Graybeal's entry wound indicated that the gun was fired anywhere from three to four inches away up to a little bit beyond a foot. Petitioner asserts that his own expert, Tovar, testified at the evidentiary hearing that the stippling on Petitioner's entry wound only indicated that the gun had been fired from a distance of up to maybe three feet away and not from where the muzzle was in contact with Graybeal's body. However, Nelson's estimate was within the range that Tovar testified about. Additionally, Nelson also testified that he could not be certain of the exact distance that the gun was from Graybeal when the trigger was pulled because he did not know the

load or the type of gun. Therefore, Petitioner has not demonstrated that Nelson's testimony was false.

Accordingly, Petitioner has not proven by a preponderance of the evidence that any material false evidence was introduced against Petitioner at his preliminary hearing or at the guilt phase of his second trial.

B. *Brady v. Maryland*

1. *Legal Standard*

"'In *Brady*, the United States Supreme Court held 'that suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.' [Citation.] The high court has since held that the duty to disclose such evidence exists even though there has been no request by the accused [citation], that the duty encompasses impeachment evidence as well as exculpatory evidence [citation], and that the duty extends even to evidence known only to police investigators and not to the prosecutor [citation]'" (*In re Hill* (2024) 104 Cal.App.5th 804, 848.)

"There are three components of a true *Brady* violation: The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued. [Citation.] Prejudice, in this context, focuses on the materiality of the evidence to the issue of guilt or innocence. [Citations.] Materiality, in turn, requires more than a showing that the suppressed evidence would have been admissible [citation], that

the absence of the suppressed evidence made conviction more likely [citation], or that using the suppressed evidence to discredit a witness's testimony might have changed the outcome of trial [citation]. A defendant instead must show a reasonable probability of a different result. [Citation.] The requisite reasonable probability is a probability sufficient to undermine confidence in the outcome on the part of the reviewing court." (*Id.* at pp. 848-849 [internal quotation marks omitted].)

2. *Analysis*

First, Petitioner argues that the loss of the small cut-out stained piece of the shirt he wore on the night of the murder that tested positive for blood and the jacket that Lewis was wearing at the time of the murder and when his booking photograph was taken violates his due process rights under *Brady*. However, analysis of whether the loss of evidence violates a defendant's due process rights falls squarely under *California v. Trombetta* (1984) 467 U.S. 479, and *Arizona v. Youngblood* (1988) 488 U.S. 51, not *Brady*.

"Under *Trombetta*, law enforcement agencies must preserve evidence only if the evidence possesses exculpatory value that was apparent before it was destroyed and if the evidence is of a type not obtainable by other reasonably available means. [Citations.] As an alternative to establishing the apparent exculpatory value of the lost evidence, *Youngblood* provides that a defendant may show that potentially useful evidence was destroyed as a result of bad faith." (*People v. Fultz* (2021) 69 Cal.App.5th 395, 424-425.)

With respect to the small piece of Petitioner's shirt, the law enforcement testing of the small piece of shirt indicated that

the stain was blood, but that the blood sample was too small to type. Since DNA testing did not exist in 1978 and Petitioner has not established when the small piece of shirt was lost or destroyed, Petitioner has not demonstrated that the small piece of shirt possessed any exculpatory or impeachment value that was apparent before it was lost or destroyed. Further, even assuming that the small piece of shirt was potentially useful evidence under *Youngblood*, Petitioner has not demonstrated that the small piece of shirt was lost or destroyed as a result of bad faith. Further, with respect to Lewis' jacket, Petitioner only speculates that the jacket likely had the victim's blood on it. Petitioner has presented no evidence that Lewis' jacket possessed any exculpatory or impeachment value that was apparent before it was lost or destroyed or that Lewis' jacket was lost or destroyed as a result of bad faith. Therefore, Petitioner has not proven that his due process rights under *Trombetta* and/or *Youngblood* were violated by the loss of the small piece of his shirt and Lewis' jacket.

Second, Petitioner argues that his *Brady* due process rights have been violated because the tape recordings of the law enforcement interviews of Petitioner's codefendants have gone missing. Again, since this argument relates to lost or destroyed evidence, the argument must be analyzed under *Trombetta* and *Youngblood*, not *Brady*.

In this case, Petitioner has not demonstrated that any of the interrogation or interview tapes possessed any exculpatory or impeachment value that was apparent before they were lost or destroyed. Additionally, even if the tapes possessed any

exculpatory or impeachment value, Petitioner admits that he has statements by the codefendants, which were not signed pursuant to Fresno Police Department procedure at the time, which may be comparable evidence satisfying Petitioner's due process rights. Lastly, Petitioner has not demonstrated that, even if the interview tapes were potentially useful evidence under *Youngblood*, they were lost or destroyed as a result of bad faith. Therefore, Petitioner has not proven that his due process rights under *Trombetta* and/or *Youngblood* were violated when the tape recordings of his codefendants' interviews were lost.

Third, Petitioner asserts that the prosecution continued to cover up the 1973 date on the holster until they admitted its existence at the evidentiary hearing, which violated Petitioner's due process rights under *Brady*. However, "'[i]nformation subject to disclosure by the prosecution [on discovery] [is] that "readily available" to the prosecution and not accessible to the defense.'" (*In re Pratt* (1999) 69 Cal.App.4th 1294, 1317.) In this case, there is no evidence that Petitioner was not able to access the holster at any time while it was in the evidence storage of the Fresno County Sheriff's Department and then in the trial exhibits storage of the Fresno County Superior Court. Therefore, Petitioner's due process rights under *Brady* were not violated when the prosecution allegedly failed to disclose the existence of a second etching on the holster's metal clip to Petitioner.

Fourth, Petitioner contends that his due process rights under *Brady* were violated when potential blood evidence was lost when the dried stains on the clothing confiscated by law enforcement from he and his codefendants became too degraded to be tested. As

stated before, claims regarding lost or destroyed potentially exculpatory and/or impeaching evidence are analyzed under *Trombetta* and *Youngblood*, not *Brady*.

In this case, since Petitioner has failed to demonstrate that the stains on any clothing seized from he and his codefendants contained exculpatory value that was apparent before it was destroyed, Petitioner has not established that his due process rights under *Trombetta* were violated by the degradation of the potential bloodstains. Instead, like in *Youngblood*, all that can be said about the potential bloodstains on the clothing is that "it could have been subjected to tests, the results of which might have exonerated the defendant." (*Youngblood, supra,* 488 U.S. 51, 57.) Since the potential bloodstains were simply potentially useful evidence and Petitioner has not established that the potential blood evidence was destroyed as a result of bad faith, Petitioner has not proven that his due process rights under *Youngblood* were violated by the degradation of the potential bloodstains on the clothing of Petitioner and his codefendants.

Accordingly, Petitioner has not proven by a preponderance of the evidence that his due process rights under *Brady*, *Trombetta,* and/or *Youngblood* have been violated.

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C. Due Process Rights under Fourteenth[2] Amendment to the U.S.

[2] Throughout Petitioner's amended petition, Petitioner refers to his due process rights under the Fifth Amendment. However, since the Fifth Amendment's due process clause only applies to the federal government, the Court interprets

Constitution and Article I, section 7 of the California Constitution

1. *Legal Standards*

"*Napue [v. Illinois* (1959)] 360 U.S. 264 … reiterated the 'established' rules that 'a conviction obtained through use of false evidence, known to be such by representatives of the State' violates due process under the Fourteenth Amendment to the United States Constitution, and '[t]he same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears.'" (*In re Hill* (2024) 104 Cal.App.5th 804, 826.) "Relief for a *Napue* violation requires proof of materiality. [Citation.] Reversal of the conviction is required if the false evidence used by the prosecution 'may have had an effective on the outcome of the trial" [citation], meaning there is any '"reasonable likelihood that the false testimony could have affected the judgment of the jury."'" [Citations.] This standard 'generally has been equated with the "harmless beyond a reasonable doubt" standard of *Chapman v. California* (1967) 386 U.S. 18[.]'" (*Ibid.*)

"'Due process also bars a prosecutor's knowing presentation of false or misleading argument.'" (*Ibid.*) "'A prosecutor's conduct violates the Fourteenth Amendment to the federal Constitution when it infects the trial with such unfairness as to make the conviction a denial of due process. Conduct by a prosecutor that does not render a criminal trial fundamentally unfair is prosecutorial misconduct only if it involves the use of

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Petitioner's federal due process argument as being brought pursuant to the Fourteenth Amendment, which does apply to states and state actors. (See *Castillo v. McFadden* (9th Cir. 2005) 339 F.3d 993, 1002, fn. 5.)

deceptive or reprehensible methods to attempt to persuade either the trial court or the jury.' [Citation.] When a claim of misconduct is based on the prosecutor's comments before the jury, … '"the question is whether there is a reasonable likelihood that the jury construed or applied any of the complained-of remarks in an objectionable fashion."'" (*People v. Gonzales and Soliz* (2011) 52 Cal.4th 254, 305.)

2. *Analysis*

First, Petitioner asserts that, at the preliminary hearing, Deputy District Attorney James Ardaiz committed misconduct when he referred to a February 10, 1978 Weapon Disposition Report, which stated that a gun with serial number 146425 was in the possession of Douglas Stankewitz. However, when this Court reviewed the cited page of the preliminary hearing transcript, the Court finds no reference to a Weapon Disposition Report. Instead, on that page, Ardaiz simply stated that he had given defense counsel all police reports that he had in his possession, except for one that simply showed the transfer of the firearm from the police department to the sheriff's office for purposes of custody and that Ardaiz had informed the defense counsel of the existence of that report. Therefore, there is nothing on the page cited by Petitioner demonstrating that Ardaiz committed misconduct by attempting to argue that Petitioner had possession of the firearm by referring to a false, unsupported Weapon Disposition Report.

Second, Petitioner argues that Ardaiz committed misconduct when he directed Officer Mora and Officer Satterberg to change or add to their reports to support his theory of the case. However, Officer Mora testified at the preliminary hearing that, even if

Ardaiz had not asked him to fill out a report on the routine I.D. check, Officer Mora would have done so anyway once he had learned about Graybeal's murder. Further, Petitioner admits in his amended petition that Officer Satterberg stated that he wrote a follow-up report because he realized that he had left out a portion out of his previous report that Ardaiz needed to know about so that Ardaiz could tell the defense attorney. Therefore, Petitioner has failed to demonstrate that Ardaiz committed misconduct when he directed Officers Mora and Satterberg to write or modify their reports.

Third, Petitioner contends that Ardaiz committed misconduct when he had Brown testify at the preliminary hearing even though he knew that Brown's testimony was false. However, Petitioner has failed to present the Court with any evidence demonstrating that Ardaiz knew that any of Brown's testimony was false before the preliminary hearing. While Petitioner has provided the Court with a report from District Attorney Investigator Spradling stating that Brown admitted that he incorrectly estimated the distance between Petitioner and Graybeal when Graybeal was shot, the interview with Brown occurred after the preliminary hearing concluded. Further, while Petitioner asserts without any supporting evidence that Ardaiz failed to correct Brown's false testimony, the Court finds that there is no reasonable likelihood that the false testimony could have affected the judgment of the magistrate at the preliminary hearing. Therefore, Petitioner has failed to demonstrate that Ardaiz committed prejudicial misconduct with regards to Brown's preliminary hearing testimony.

Fourth, Petitioner contends that Ardaiz committed misconduct during Petitioner's first trial when he offered expert testimony that contradicted the autopsy reports and police reports and when he stated at closing argument that Petitioner was the leader. However, the Court finds that these claims are moot. The California Supreme Court reversed the judgment rendered against Petitioner during his first trial without any qualifications or directions. (*People v. Stankewitz* (1982) 32 Cal.3d 80, 95; see *People v. Moore* (2006) 39 Cal.4th 168, 174; *People v. Welch* (1971) 20 Cal.App.3d 997, 1004.)

Fifth, Petitioner contends that Deputy District Attorney Robinson committed misconduct when he used his opening statement to tie a gun to Petitioner and called Brown as a witness despite issues with coercion and credibility. Initially, given that Brown testified at Petitioner's second trial that he saw Petitioner shoot Graybeal with the firearm admitted into evidence, Robinson's comment in his opening statement is not misconduct. Further, as discussed in the Court's analysis of Claim 6, Petitioner has failed to establish that Brown's testimony at Petitioner's second trial is false.

Sixth, Petitioner asserts that Robinson committed misconduct when he asked Boudreau to assume that Graybeal was 5'7" when he allegedly knew that Graybeal was actually 160 centimeters tall, or approximately 5'3" and when he asked Boudreau whether the entry angle of the bullet was five degrees. However, initially, since Graybeal's father testified that his daughter was 5'7" tall, Robinson did not commit misconduct when he asked Boudreau to assume that Graybeal was that height. Further, since T.C. Nelson,

the pathologist who conducted Graybeal's autopsy testified at the second trial that the angle entry of the bullet was about five or ten degrees upward, Robinson did not commit misconduct when he asked Boudreau if the entry angle of the bullet was five degrees.

Seventh, Petitioner asserts that Robinson committed misconduct when he made several specified comments during his closing argument at the guilt phase of Petitioner's second trial. Initially, Petitioner argues that Robinson's statement that Petitioner planned Graybeal's kidnapping in order to take her car is false because the statements of Petitioner's codefendants stated that one of the codefendants, Topping, admitted that she initiated the kidnapping. However, Robinson's comment is not misconduct because the codefendants' out-of-court statements were not in evidence at Petitioner's second trial and Robinson did not have to believe the codefendants' statements either. Next, Petitioner asserts that Robinson committed misconduct when he stated that Brown's testimony was not contradicted by any other evidence and that the uncontradicted evidence showed that it was Petitioner who fired the shot that killed Graybeal. However, a prosecutor has wide range when stating their views as to what the evidence shows and the conclusions to be drawn from that evidence. (*People v. Rivera* (2019) 7 Cal.5th 306, 383.) Lastly, Petitioner argues that Robinson's comment that Petitioner killed Graybeal because he wanted to eliminate a witness was misconduct. Nevertheless, since a prosecutor has wide latitude in commenting on the evidence, including the reasonable inferences from the evidence, Robinson's comment about Petitioner's motive for killing Graybeal was not misconduct.

Eighth, Petitioner contends that Robinson committed misconduct by offering Graybeal's death certificate, which stated that Graybeal was "shot by another (.25 Cal. Auto.)," as evidence at Petitioner's second trial. However, given that Brown testified that Petitioner killed Graybeal by shooting her with the .25 caliber firearm seized from Graybeal's car, Robinson did not commit misconduct when he offered the death certificate as evidence.

Ninth, Petitioner contends that Robinson committed misconduct when he incorrectly commented that a slug or expended bullet had been found. Petitioner is correct that Robinson's comment was incorrect. It is undisputed that no slug or expended bullet has ever been found. However, given all of the evidence presented at Petitioner's second trial, especially Brown's testimony that he witnessed Petitioner fatally shoot Graybeal, the Court finds that there is no reasonable likelihood that the false testimony could have affected the judgment of the jury. Therefore, Petitioner has failed to demonstrate that Robinson committed prejudicial misconduct with regards to Robinson's incorrect comment in his opening statement that an expended bullet had been found. At trial, jurors were informed before Robinson's opening statement that "[w]hat the attorneys say is not evidence."

Tenth, Petitioner contends that Robinson committed misconduct when he elicited false or misleading testimony that Graybeal was shot from a distance of a few inches. However, Petitioner's own expert, Tovar, testified at the evidentiary hearing that the stippling on Graybeal's entry wound indicated that the gun had been fired from a distance of up to maybe three feet away from,

and not in contact with, Graybeal's body. Therefore, Petitioner has not demonstrated that Nelson's testimony that, in his experience, the stippling pattern indicated that the gun was fired anywhere from three to four inches away up to a little bit beyond a foot, was false. Therefore, Robinson did not commit misconduct when he elicited Nelson's testimony about the distance between Graybeal and the gun when the trigger was pulled.

Accordingly, Petitioner has not proven by a preponderance of the evidence that his due process rights under the Fourteenth Amendment to the U.S. Constitution and Article I, section 7 of the California Constitution have been violated due to the use of any material false evidence or any prejudicial prosecutorial misconduct.

D. Sixth Amendment Right to Present a Defense

Other than a cursory mention of his Sixth Amendment right to present a defense, Petitioner has not alleged what actions or inactions caused a violation of his Sixth Amendment right to present a defense. However, since Petitioner has failed to prove that the prosecution presented any material false evidence at his preliminary hearing and/or the guilt phase of his second trial, that his due process rights under *Brady*, *Trombetta*, or *Youngblood* have been violated, or that the prosecution committed any prejudicial misconduct, the Court finds that Petitioner has not proven by a preponderance of the evidence that his Sixth Amendment right to present a defense has been violated.

E. Sixth Amendment Right to Counsel

Petitioner contends that he received ineffective assistance

of counsel because neither of his trial counsel ever interviewed his alibi witnesses and his second trial counsel did not hire any investigators or experts. However, these claims will be addressed in the Court's analysis of Petitioner's Claim 12 below.

II. Claim 3

Petitioner contends that he has presented the Court with new evidence undermining the case against him and demonstrating that he is innocent.

A. Legal Standard

Pursuant to Penal Code section 1473, subdivision (b)(C)(ii), new evidence is defined as "evidence that has not previously been presented and heard at trial and has been discovered after trial." Habeas corpus relief is available if a petitioner proves that, "[n]ew evidence exists that is presented without substantial delay, is admissible, and is sufficiently material and credible that it more likely than not would have changed the outcome of the case." (Pen. Code, § 1473, subd. (b)(1)(C)(i); see *Masellis v. Law Office of Leslie F. Jensen* (2020) 50 Cal.App.5th 1077, 1093 ["Requiring proof that something is 'more likely than not' is a preponderance of the evidence standard."].)

"A changed trial outcome means a result different from the guilty verdict [that the] jury returned. Significantly, that definition does not require an acquittal, but also encompasses a hung jury." (*In re Sagin* (2019) 39 Cal.App.5th 570, 579.) Therefore, Petitioner's "burden in this habeas corpus proceeding is to show it is more likely than not the new … evidence would have led at least one juror to maintain a reasonable doubt of guilt." (*Ibid.*) "Since the standard requires that we engage in

the retrospective analysis of deciding whether the new evidence would have changed the trial outcome, we consider only the new evidence identified by the petitioner and the trial record. We do not consider other evidence outside the record." (*Id.* at p. 579, fn. 2.)

B. Analysis

1. *All of the Evidence in Petitioner's Case is Compromised and Contaminated*

Petitioner contends that there is new evidence that the whole chain of physical evidence that was introduced at Petitioner's second trial is contaminated and compromised. Specifically, Petitioner asserts that the firearm introduced at trial was compromised due to mishandling during the initial investigation by law enforcement, and its storage at the Fresno County Sheriff's Department. Also Petitioner again references the police reports that initially listed the firearm seized from Graybeal's car as having its serial number removed, but then attributing a specific serial number to that gun without further explanation. The ballistics evidence is compromised, according to Petitioner, because the envelope stored by the Fresno County Sheriff's Department labeled as containing three .22 caliber shell casings from the Meras crime scene actually contained the three .25 caliber test fired shell casings from the firearm allegedly discovered in Graybeal's car. Lastly, Petitioner claims that trial exhibits, including the box containing the firearm admitted at his second trial and an undocumented, unfired round, were stored in an unsecure manner and, thus, their integrity is compromised.

Initially, the Court notes that at least some of the evidence included in this claim – specifically, the police reports regarding the firearm's serial number – does not appear to be evidence that was discovered after Petitioner's trial. However, since the opinions of Petitioner's experts rely, in part, on those reports and the expert opinions were obtained after Petitioner's second trial, the Court will treat all of the evidence supporting this argument as new evidence. Further, there does not appear to be any dispute regarding the admissibility of any of the evidence supporting this argument.

Therefore, the ultimate question here is whether the addition of Petitioner's new evidence to the evidence presented at the guilt phase of his second trial would have produced a reasonable doubt in the mind of at least one juror. In answering this question, the Court notes that "the relative strength required of new evidence depends on how close the case was." (*In re Sagin, supra,* 39 Cal.App.5th 570, 580.) "The statute creates a sliding scale: in a case where the evidence of guilt presented at trial was overwhelming, only the most compelling new evidence will provide a basis for habeas corpus relief; on the other hand, if the trial was close, the new evidence need not point so conclusively to innocence to tip the scales in favor of the petitioner." (*Id.* at pp. 579-580.)

In Petitioner's second trial, the case was close. There was no physical evidence linking Petitioner to Graybeal's murder. As such, the jury had to decide which witnesses to believe, which is evident from the fact that the jury specifically asked to have Brown's testimony about the events at Tenth and Vine in Calwa read

back to them and asked to see the narrative scripts that Petitioner wrote for his codefendants, blaming the killing on his codefendant, Lewis.

It is important to be clear about what Petitioner's new evidence shows and what it does not. Expert opinions about how the law enforcement investigation into Graybeal's kidnapping, robbery, and murder was conducted and that the firearm and ballistics evidence has been compromised due to mishandling during the initial investigation and subsequent storage does not prove that Petitioner was not present at the crime scene and did not commit Graybeal's murder. It shows only that there is a chance that the law enforcement investigation was sloppy and rushed and that there is a possibility that evidence might have been planted or tampered with.

Moreover, while Petitioner's experts testified that the problems they identified gave rise to suspicions of potential law enforcement misconduct, both experts also acknowledged that they only had suspicions and questions about the way the investigation was conducted and the integrity of the evidence, as they likely would when considering the investigation decades after the fact. Neither expert had any solid proof that law enforcement or the prosecution had in fact tampered with, or planted, any evidence in Petitioner's case.

Additionally, the changing description of the firearm's serial number in the police reports, the discovery of .25 caliber test fired shell casings from the weapon allegedly found in Graybeal's car when the property card indicated that the contents were .22 caliber shell casings from the Meras crime scene, and the

extra unfired bullet in the court exhibits that one of Petitioner's experts had not documented previously do not, by themselves, prove that Petitioner did not commit Graybeal's murder. Again, this new evidence only raises a possibility or doubt as to the integrity of the investigation and the evidence collected and stored in this case. Nothing in Petitioner's new evidence would prove that someone other than Petitioner committed Graybeal's murder. Therefore, Petitioner's new evidence could be used to impeach some of the witnesses against Petitioner, but the new evidence is not exculpatory.

Hence, the jury would have considered Petitioner's new evidence in the context of the rest of the evidence presented at trial. Such trial evidence included Brown's testimony that he witnessed Petitioner shoot and kill Graybeal with the Titan .25 caliber firearm law enforcement found in Graybeal's car. The jury also would have heard Officer Bonesteel's testimony that he personally found the firearm admitted into evidence when he processed Graybeal's car, and the testimony that a .25 caliber shell casing was discovered at the location where Graybeal's body was found. Petitioner did not testify at the guilt phase of his second trial and no alibi witnesses provided any testimony that, if credited, would have established that Petitioner was not Graybeal's killer. Rather, at the guilt phase of Petitioner's trial, Petitioner's defense was, first, that Brown was an accomplice and the prosecution does not have any evidence to corroborate Brown's testimony and, second, that Marlin Lewis committed Graybeal's murder. However, as stated above, nothing in

Petitioner's new evidence even suggests that Marlin Lewis committed Graybeal's murder.

Further, Petitioner's new evidence suggesting that the law enforcement investigation was either carelessly done or that law enforcement intentionally planted or manipulated some of the physical evidence is relatively weak and does not reasonably point towards Petitioner's innocence. Learning that there is some evidence from police reports and a property card raising doubts about the integrity of the physical evidence admitted at Petitioner's second trial would not have caused the jury to view more favorably Petitioner's argument that Brown was an accomplice whose testimony should be viewed with distrust or that Lewis fired the fatal shot. Therefore, the Court finds that Petitioner has not proven that it is more likely than not that his new evidence raising a doubt as to the integrity of the physical evidence presented at Petitioner's second trial would have led at least one juror to maintain a reasonable doubt regarding Petitioner's guilt. Consequently, Petitioner's argument fails.

2. *Reports that .22 Caliber Shell Casings Were Found at Meras Crime Scene*

Petitioner contends that the two police reports indicating that .22 caliber shell casings were collected by law enforcement from the Meras crime scene is new evidence that would have more likely than not changed the outcome of his trial. Petitioner asserts that, if the prosecution had turned over the Meras-related police reports prior to Petitioner's second trial, Petitioner's trial counsel would have investigated sooner and likely realized that the entire claim that Petitioner was one of the people

involved in the Meras offenses was false.

Initially, the Court agrees that, since it is undisputed, that the police reports regarding the collection of .22 caliber shell casings from the Meras crime scene were not turned over to Petitioner until after Petitioner's second trial, the Meras-related police reports are new evidence discovered after trial.

However, Jesus Meras did not testify until the penalty phase of Petitioner's second trial and no evidence regarding the Meras offenses was admitted at the guilt phase of the second trial. Further, the Ninth Circuit Court of Appeal affirmed the order of the U.S. District Court for the Eastern District of California granting Petitioner a writ of habeas corpus directing the State of California to vacate and set aside Petitioner's death sentence unless the State initiated proceedings to retry the penalty phase of Petitioner's case, or to resentence Petitioner to a sentence to life without the possibility of parole. (*Stankewitz v. Wong* (2012) 698 F.3d 1163, 1176.)

Once the prosecution elected not to retry the penalty phase of Petitioner's case for a third time, Petitioner's death sentence was set aside and vacated. As such, the penalty phase of Petitioner's second trial has been annulled in its entirety. Therefore, Petitioner has not established by a preponderance of the evidence that at least one juror would have maintained a reasonable doubt regarding Petitioner's guilt based on the two Meras-related police reports. Consequently, Petitioner's argument fails.

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3. *Testing on Apparent Stains on Codefendants' Clothing*

Petitioner contends that the results of testing conducted on apparent stains on clothing worn by Petitioner's codefendants is new evidence that would have more likely than not changed the outcome of trial.

Initially, the Court agrees that, since the testing of the apparent stains was performed in 2020, the results of the testing of the stains on the codefendants' clothing conducted by the Forensic Analytical Crime Lab is new evidence discovered after trial. However, Coleman testified at the evidentiary hearing that the laboratory tests of the stains on the codefendants' clothing did not detect any blood DNA, let alone any specific DNA from Graybeal.

Further, the September 2, 2020 laboratory report states that the stains on Topping's, Menchaca's, and Lewis' clothing and on Lewis' shoes did not presumptively test positive for blood, but stains on Petitioner's clothing gave a positive indication that they were bloodstains. Since very little or no DNA was recovered from any stained areas on any piece of clothing and what DNA was recovered was extremely degraded, it was unclear if any DNA from human blood was recovered. Hence, the results of the testing were that there was no support for a determination that there was Graybeal's blood on any of the clothing seized from Petitioner or his codefendants.

While the laboratory report also states that the test results may reflect deleterious long-term evidence storage conditions, Petitioner has not provided any evidence that the stains on the codefendants' clothing were blood and, hence, would have tested positive for blood and usable amounts of non-degraded

DNA at some time between when the murder was committed and the testing was done.

Since the jury would have considered these test results in the context of the rest of the evidence, including Brown's eyewitness testimony that Petitioner is the individual who fatally shot Graybeal, Petitioner has not established by a preponderance of the evidence that at least one juror would have maintained a reasonable doubt regarding Petitioner's guilt based on these test results. Consequently, Petitioner's argument fails.

4. *Fresno Police Department Homicide Detective Garry Snow's Interview with Petitioner on February 9, 1978*

Petitioner contends that his interview with Detective Snow on February 9, 1978 is new evidence that would have more likely than not changed the outcome at trial. However, Petitioner has not established that this interview with law enforcement is actually new evidence "discovered after trial." Petitioner was the other party involved in the interview and, thus, he knew about the interview as it was occurring on February 9, 1978. Also, Petitioner has not provided any evidence that he did not know that the interview was being taped or recorded. The fact that Petitioner's various counsel over the years may or may not have known about the interview is irrelevant where Petitioner himself knew about the interview. Therefore, Petitioner's interview with Detective Snow is not new evidence within the meaning of Penal Code section 1473, subdivision (b)(1)(C)(ii).

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5. *Scripts*

Petitioner argues that the fact that the jury asked to see the scripts and was incorrectly told that the scripts were not in evidence is new evidence. However, since this fact occurred during the second trial, this fact was not "discovered after trial" and, hence, this fact is not new evidence within the meaning of Penal Code section 1473, subdivision (b)(1)(C)(ii).

6. No Spent Bullet or Slug Ever Recovered from the Area Where Graybeal's Body was Found

Petitioner claims that the fact that no spent bullet or slug was ever recovered from where Graybeal's body was found is new evidence. However, since Petitioner admitted in his amended petition that a witness testified at the second trial that no bullet was recovered, the fact that no bullet or slug was ever recovered from the crime scene was not "discovered after trial" and, hence, this fact is not new evidence within the meaning of Penal Code section 1473, subdivision (b)(1)(C)(ii).

7. Marlon Lewis' Admission that He Shot Graybeal

Petitioner claims that, in 2000, Marlon Lewis admitted that he shot and killed Graybeal. Petitioner asserts that Lewis' admission is new material, credible, and admissible evidence that is presented without substantial delay.

Since Lewis is deceased, Petitioner sought to introduce Lewis' alleged out-of-court admission through the testimony of Laura Wass. Since Respondent objected to the admission of any out-of-court statements made by Lewis pursuant to the hearsay rule, Petitioner asserted that Lewis' out-of-court admission or statement was admissible under the exception to the hearsay rule for declarations against social interest in Evidence Code section

1230.

Evidence Code section 1230 provides, in relevant part, that: "Evidence of a statement by a declarant having sufficient knowledge of the subject is not made inadmissible by the hearsay rule if the declarant is unavailable as a witness and the statement, when made, … created such a risk of making him an object of hatred, ridicule, or social disgrace in the community, that a reasonable man in his position would not have made the statement unless he believed it to be true."

To be eligible for admission under the exception for declarations against social interest, the declarant must be unavailable, the declaration must be against the declarant's social interest when made, and the declaration must be sufficiently reliable or trustworthy to warrant admission despite the fact that it is hearsay. (*In re Weber* (1974) 11 Cal.3d 703, 721-722.) "But in order for a declaration to be against the declarant's social interest to such an extent that it becomes admissible under section 1230 of the Evidence Code, both the content of the statement and the fact that the statement was made must be against the declarant's social interest." (*Id.* at p. 722.)

In this case, it is undisputed that Lewis is deceased and, thus, unavailable to testify. However, Petitioner has not established that Lewis' alleged admission of guilt created a risk of "making him an object of hatred, ridicule, or social disgrace in the community[.]" (Evid. Code, § 1230.) At the evidentiary hearing, Wass testified, that based on the times that she interacted with Lewis, she had no sense of how Lewis fit into his

particular tribe because Lewis lived in Sacramento and was not active in the Fresno area, but she was able to help Lewis reunite with two of his sisters, who were members of the tribe. Further, Wass asserted that she had no sense of what Lewis' reputation was in his tribal community, but she did know that his reputation with his family was not good. Wass never saw Lewis interact with his tribe, other than protesting, and, while Wass saw Lewis interact with individual members from his tribe when Lewis was asking for their support to become a member of the tribe, those interactions were unsuccessful. Therefore, the Court finds that Lewis' alleged out-of-court admission of guilt is not admissible under the hearsay exception for declarations against social interest.

Since Lewis' alleged out-of-court admission of guilt is inadmissible hearsay that was not received into evidence at the evidentiary hearing, Petitioner has failed to establish, by a preponderance of the evidence, that Lewis' alleged admission of guilt is new evidence pursuant to Penal Code section 1473, subdivision (b)(2)(C).

Accordingly, Petitioner's third claim for habeas corpus relief is denied.

III. Claims 4, 5, and 11

In Claim 4, Petitioner contends that law enforcement and the prosecution engaged in prejudicial misconduct starting with the initial investigation and continuing through both of Petitioner's trials in violation of Petitioner's due process rights under the Fourteenth Amendment and Article I, section 7 of the California Constitution, and his Sixth Amendment right to counsel. In Claim 5, Petitioner contends that the State withheld material

exculpatory evidence from the defense and the juries, notwithstanding its affirmative duty under *Brady v. Maryland* to disclose all potentially exculpatory and material evidence to the defense. The allegedly withheld evidence was relevant to the impeachment of prosecution witnesses and also demonstrated that the prosecution manufactured false testimony in violation of Petitioner's due process rights and his Sixth Amendment rights to present a defense and to counsel. In Claim 11, Petitioner contends that the prosecution engaged in misconduct starting in 2010 and continuing to the present day in violation of Petitioner's rights under *Brady v. Maryland*, his due process rights under the Fourteenth Amendment to the U.S. Constitution and Article I, section 7 of the California Constitution, and his Sixth Amendment right to present a defense.

A. Legal Standards

1. *Prosecutorial Misconduct*

"*Napue[v. Illinois* (1959)] 360 U.S. 264 … reiterated the 'established' rules that 'a conviction obtained through use of false evidence, known to be such by representatives of the State' violates due process under the Fourteenth Amendment to the United States Constitution, and '[t]he same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears.'" (*In re Hill* (2024) 104 Cal.App.5th 804, 826.) "Relief for a *Napue* violation requires proof of materiality. [Citation.] Reversal of the conviction is required if the false evidence used by the prosecution 'may have had an effective on the outcome of the trial" [citation], meaning there is any '"reasonable likelihood that the false testimony could have

affected the judgment of the jury."'" [Citations.] This standard 'generally has been equated with the "harmless beyond a reasonable doubt" standard of *Chapman v. California* (1967) 386 U.S. 18[.]'" (*Ibid.*)

"'Due process also bars a prosecutor's knowing presentation of false or misleading argument.'" (*Ibid.*) "'A prosecutor's conduct violates the Fourteenth Amendment to the federal Constitution when it infects the trial with such unfairness as to make the conviction a denial of due process. Conduct by a prosecutor that does not render a criminal trial fundamentally unfair is prosecutorial misconduct only if it involves the use of deceptive or reprehensible methods to attempt to persuade either the trial court or the jury.' [Citation.] When a claim of misconduct is based on the prosecutor's comments before the jury, … '"the question is whether there is a reasonable likelihood that the jury construed or applied any of the complained-of remarks in an objectionable fashion."'" (*People v. Gonzales and Soliz* (2011) 52 Cal.4th 254, 305.)

2. *Brady, Trombetta, and Youngblood*

a. ***Brady v. Maryland*** **(1963) 373 U.S. 83**

"'In *Brady*, the United States Supreme Court held 'that suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.' [Citation.] The high court has since held that the duty to disclose such evidence exists even though there has been no request by the accused [citation], that the duty encompasses impeachment evidence as well as exculpatory

evidence [citation], and that the duty extends even to evidence known only to police investigators and not to the prosecutor [citation]'" (*In re Hill* (2024) 104 Cal.App.5th 804, 848.)

"There are three components of a true *Brady* violation: The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued. [Citation.] Prejudice, in this context, focuses on the materiality of the evidence to the issue of guilt or innocence. [Citations.] Materiality, in turn, requires more than a showing that the suppressed evidence would have been admissible [citation], that the absence of the suppressed evidence made conviction more likely [citation], or that using the suppressed evidence to discredit a witness's testimony might have changed the outcome of trial [citation]. A defendant instead must show a reasonable probability of a different result. [Citation.] The requisite reasonable probability is a probability sufficient to undermine confidence in the outcome on the part of the reviewing court." (*Id.* at pp. 848-849 [internal quotation marks omitted].)

b. ***California v. Trombetta* (1984) 467 U.S. 479 and *Arizona v. Youngblood* (1988) 488 U.S. 51**

"Under *Trombetta*, law enforcement agencies must preserve evidence only if the evidence possesses exculpatory value that was apparent before it was destroyed and if the evidence is of a type not obtainable by other reasonably available means. [Citations.] As an alternative to establishing the apparent exculpatory value of the lost evidence, *Youngblood* provides that a defendant may

show that potentially useful evidence was destroyed as a result of bad faith." (*People v. Fultz* (2021) 69 Cal.App.5th 395, 424-425.)

B. Analysis

1. *Prosecutorial Misconduct*

First, Petitioner argues that law enforcement, as part of the prosecution, committed misconduct when they mishandled and failed to properly test material evidence in Petitioner's case. Petitioner asserts that law enforcement: (1) failed to properly process and secure Graybeal's vehicle; (2) failed to maintain over sixty items subject to a discovery motion; (3) failed to maintain tapes containing the statements of the codefendants and the handwritten notes of law enforcement made during the codefendants' interrogations; (4) failed to maintain the evidence containing blood; (5) failed to properly store clothing belonging to Petitioner and his codefendants to enable DNA testing; (6) failed to properly measure location of the .25 caliber shell casing in relation to Graybeal's body; (7) failed to conduct any testing to determine if Graybeal had been shot with a .22 caliber firearm; (8) failed to conduct testing to determine the actual time of death of the victim; (9) failed to look at the victim's shoes; (10) failed to properly test Graybeal's clothes for forensic evidence; (11) failed to consider or investigate other suspects; and (12) that law enforcement manipulated the codefendants' statements.

However, as discussed above in the Court's analysis of Claims 1 and 2, Petitioner has not met his burden of proving that his conviction was obtained through the use of material false evidence. Further, Petitioner has not provided any evidence

creating more than just questions about the integrity of the physical evidence in this case. He has not demonstrated that any of the apparently lost or destroyed evidence items were lost or destroyed in bad faith. Moreover, Petitioner has not established that the Fresno County Sheriff's Department failed to adhere to the standards appropriate for the storage of biological evidence in homicide cases at the time the clothing was collected. This point is especially significant given that DNA testing was not in existence when Petitioner was arrested and convicted at his second trial.

Additionally, while Petitioner asserts that law enforcement conducted a wholly inadequate investigation because they failed to properly test pieces of material evidence, look at the bottom of the victim's shoes, determine the actual time of Graybeal's death, and investigate any other potential suspects, Petitioner has not provided the Court with any evidence that had such investigation and testing been done that law enforcement would have determined that Petitioner was innocent of Graybeal's murder, kidnapping and/or robbery. Finally, the alleged manipulations of the statements of Petitioner's codefendants did not rise to the level of making the codefendants' statements coerced, involuntary, or unfair. Therefore, the Court finds that the conduct of law enforcement has not infected Petitioner's trial with such unfairness as to make Petitioner's conviction a denial of due process and, thus, law enforcement has not committed prejudicial misconduct.

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Second, Petitioner argues that the prosecution committed

misconduct when it apparently lost or destroyed materials in the District Attorney's file concerning Petitioner's case prior to 2012. However, Petitioner has not demonstrated that the District Attorney's office lost or destroyed the file's materials from prior to 2012 in bad faith. Petitioner has also not proven that some document in the lost or destroyed portion of the District Attorney's file would have established that material false evidence was used to obtain Petitioner's conviction. Therefore, the Court finds that the prosecutor's loss of all materials prior to 2012 in its file concerning Petitioner's case did not infected Petitioner's trial with such unfairness as to make Petitioner's conviction a denial of due process and, thus, the prosecutor's loss of its file is not prejudicial misconduct.

Third, Petitioner contends that the prosecution committed misconduct when the gun was misrepresented to the preliminary hearing magistrate, the trial judges, and the jury as the murder weapon and that Deputy District Ardaiz directed officers to manipulate their reports. However, as explained in the Court's analysis of Claims 1, 2, and 7, Petitioner has failed to prove that the firearm admitted into evidence as the murder weapon is false evidence or that Deputy District Attorney Ardaiz inappropriately directed officers to supplement their reports. Therefore, Petitioner has not demonstrated that the prosecution committed any prejudicial misconduct with respect to admitting the Titan .25 caliber firearm into evidence and directing officers to complete supplemental or follow-up reports.

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Fourth, Petitioner contends that the prosecution committed

misconduct by allowing their witnesses to refer to documents in their testimony, but not having those documents marked for identification or admitted into evidence. However, the prosecution is not required to admit into evidence every document that their witnesses refer to in their testimony. Additionally, Petitioner has not demonstrated that the prosecution prevented Petitioner's counsel from having those documents marked and admitted into evidence. Therefore, Petitioner has not proven that the prosecution committed any prejudicial misconduct with respect to not admitting all documents that their witnesses referred to into evidence.

Fifth, Petitioner contends that the prosecution committed misconduct by allowing law enforcement witnesses to misrepresent evidence or offer false or misleading testimony at both of Petitioner's trials and by misrepresenting evidence themselves in court. However, initially, to the extent that this argument relies on testimony and comments made during Petitioner's first trial and/or the penalty phase of Petitioner's second trial, this argument is moot because Petitioner's first trial was reversed on appeal and Petitioner's second trial penalty phase was set aside and vacated after a writ of habeas corpus was granted by a federal court.

Further, to the extent that this argument relies on testimony and comments made at Petitioner's preliminary hearing or second trial guilt phase, Petitioner has not proven that any of the challenged witness testimony or comments by the prosecutor are false and/or misleading. Therefore, Petitioner has not established that the prosecution committed any prejudicial

misconduct by allowing law enforcement witnesses to misrepresent evidence or offer false or misleading testimony at both of Petitioner's trials and by misrepresenting evidence themselves in court.

Sixth, Petitioner argues that the prosecution committed misconduct by failing to follow discovery rules. Specifically, Petitioner asserts (1) that the Fresno County Sheriff refused to provide any discovery that Petitioner's federal habeas corpus counsel requested pursuant to *Brady* and the California Public Records Act, (2) that Deputy District Attorney Dupras also refused to provide any records or materials to Petitioner's federal habeas corpus counsel that was requested pursuant to *Brady* and the California Public Records Act, (3) that the prosecution failed to fully provide all relevant materials in response to Petitioner's Penal Code section 1054.9 motion for post-conviction discovery, (4) that the Fresno County Sheriff's Department failed to fully comply with a subpoena duces tecum, and a 2019 California Public Records Act request, and (5) that the prosecution has failed to fully comply with the April 24, 1978 discovery order issued in Petitioner's underlying criminal case. However, even assuming that these actions are prosecutorial misconduct, a judgment or conviction should only be reversed or set aside if the misconduct so infected the trial or proceedings with such unfairness as to result in a denial of due process, or involves the use of deceptive or reprehensible methods. Petitioner has failed to demonstrate that his post-conviction proceedings have been so infected with unfairness to cause a due process violation and/or that the misconduct stems from the use of any deceptive or

reprehensible methods. Therefore, Petitioner has not proven that the prosecution committed prejudicial misconduct by allegedly failing to follow discovery rules.

Seventh, Petitioner contends that Deputy District Attorney Pebet committed misconduct when he knowingly made false statements regarding Graybeal's height. However, as discussed several other places in this order, Graybeal's father testified that his daughter was approximately 5'7" tall. Therefore, Petitioner has failed to demonstrate that Pebet committed any misconduct when she stated that Graybeal was 5'7" inches tall.

Eighth, Petitioner contends that prosecution committed misconduct when Pebet stated that she might or might not use the Meras crime in the penalty phase retrial and when the prosecution failed to file a notice of aggravation before the retrial of the penalty phase. However, even assuming that the prosecution's comments and failure to file a notice of aggravation were misconduct, Petitioner has failed to establish that he suffered any prejudice because the prosecution decided not to retry Petitioner's penalty phase for a third time.

Ninth, Petitioner contends that the prosecution committed misconduct when Fresno County District Attorney Investigator Danielle Isaac prepared a report in August 2021 that failed to disclose that there are two etchings, not just one, on the holster's metal clip. However, in her testimony at the evidentiary hearing, Isaac stated that she did not omit the second etching because she had not recalled the second etching when she wrote the report. Further, Petitioner was aware of the second etching when the report was written and the prosecution has never

argued in these habeas corpus proceedings that the second etching does not exist. Therefore, Petitioner has failed to establish that Investigator Isaac and/or the prosecution committed any prejudicial misconduct when Isaac's August 2021 report failed to disclose the existence of a second etching on the holster's clip.

Tenth, Petitioner contends that the prosecution committed misconduct when it failed to disclose that, in 2021, former Deputy District Attorney Ardaiz had requested to look at the Sheriff's file of Petitioner's case. However, even assuming that the prosecution committed misconduct by failing to disclose Ardaiz's request, Petitioner could not have suffered any prejudice because there is no evidence that Ardaiz's request was granted and he gained access to the Sheriff's file of Petitioner's case. In fact, all of the evidence before the Court proves that Ardaiz's request was denied. Therefore, Petitioner has failed to prove that the prosecutor committed any prejudicial misconduct by failing to immediately disclose Ardaiz's request to Petitioner.

Eleventh, Petitioner contends that the prosecution committed misconduct when it covered up ballistics testing issues in 2022 and 2023. However, even assuming that the prosecution's actions or inactions constituted misconduct, Petitioner has failed to prove that those actions caused him any prejudice. Therefore, Petitioner has not demonstrated that the prosecution committed any prejudicial misconduct by covering up ballistics testing issues.

Twelfth, Petitioner contends that the prosecution committed misconduct when former Deputy District Attorney Robinson testified that he spoke about Petitioner's case with former Deputy District Attorney Ardaiz about a week and a half prior to Robinson's

evidentiary hearing testimony. It is unclear whether two former prosecutors can commit prosecutorial misconduct. Nevertheless, Petitioner has failed to prove that any misconduct arising out of this discussion was prejudicial.

Accordingly, Petitioner has not proven by a preponderance of the evidence that his due process rights under the Fourteenth Amendment to the U.S. Constitution and Article I, section 7 of the California Constitution have been violated due to the use of any material false evidence or any prejudicial prosecutorial misconduct.

2. *Brady, Trombetta, and Youngblood*

First, Petitioner argues that the loss of the recording and transcript of Petitioner's interview with Fresno Police Department Detective Garry Snow violates his due process rights under *Brady*. However, analysis of whether the loss of evidence violates a defendant's due process rights falls squarely under Trombetta and Youngblood, not *Brady*. However, the evidence is of a type obtainable by other reasonably available means – Petitioner could have called Detective Snow as a witness at his second trial and Petitioner himself could have testified regarding the interview if he chose to do so. Further, Petitioner has not established that the recording and transcript were lost or destroyed as a result of bad faith. Therefore, Petitioner has not proven that his due process rights under Trombetta and/or Youngblood were violated by the loss or destruction of the recording and transcript of Petitioner's interview with Detective Snow.

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Second, Petitioner argues that the prosecution suppressed any

evidence regarding Petitioner's interview by Detective Lean sometime in the days following the murder. However, Respondent explicitly denied that such an interview ever took place and Petitioner has not provided the Court with any proof that he was ever interviewed by Detective Lean in the days following Graybeal's murder. Therefore, Petitioner has not proven that his due process rights under *Brady* were violated when the prosecution suppressed any evidence regarding Petitioner's interview with Detective Lean.

Third, Petitioner argues that the prosecution suppressed any evidence regarding the bullet that killed Graybeal. However, Respondent explicitly denied that such a spent bullet was recovered, and Petitioner has not provided the Court with any proof that the prosecution was ever in possession of the spent bullet that struck and killed Graybeal. Therefore, Petitioner has not proven that his due process rights under Brady were violated when the prosecution allegedly suppressed any evidence regarding the spent bullet that killed Graybeal.

Fourth, Petitioner asserts that the prosecution suppressed the chain of custody for the .25 caliber gun, the .25 caliber test fired shell casings, and photographs of the .25 caliber test fired shell casings, which could be used to show that the gun in evidence is not the murder weapon. Petitioner asserts that this information was not provided to the defense prior to trial or at trial. However, initially, Petitioner has failed to demonstrate that the .25 caliber test fired shell casings or the photographs of such cases was either exculpatory or impeaching evidence. Further, with respect to the chain of custody for the .25 caliber

Titan firearm, for the reasons discussed above in the Court's analysis of Claim 3, Petitioner has failed to establish a reasonable probability that, if evidence relating to the chain of custody of the firearm had been disclosed to Petitioner, the result of the guilt phase of his second trial would have been different. Therefore, Petitioner's argument fails.

Fifth, Petitioner contends that the prosecution suppressed law enforcement reports that two different caliber shell casings were taken from the Graybeal crime scene and the Meras crime scene, photographs of the recovered shell casings, and the .22 caliber gun used to "test casings." However, as discussed several places in this Court's order, testimony and evidence related to the Meras offenses was only introduced during Petitioner's first trial, which was entirely reversed on appeal, and the penalty phase of Petitioner's second trial, which was vacated and set aside after a federal writ of habeas corpus was granted. Therefore, Petitioner cannot establish a reasonable probability that, if evidence relating to the Meras offenses had been disclosed to Petitioner before trial, the result of the guilt phase of his second trial would have been different. Therefore, Petitioner's argument fails.

Sixth, Petitioner contends his rights under *Brady* were violated when the autopsy report that showed the location of the fatal gunshot wound was referenced at the guilt phase of the second trial, but was not marked for identification nor admitted into evidence. However, since Petitioner has failed to prove that the prosecution suppressed the autopsy report and did not timely and appropriately disclose it to Petitioner and his counsel,

Petitioner's *Brady* argument fails.

Seventh, Petitioner contends that his rights under *Brady* were violated when the prosecution failed to disclose Graybeal's x-rays to Petitioner and, now, the x-rays are missing. Since this argument relates to lost or destroyed evidence, the argument must be analyzed under Trombetta and Youngblood, not *Brady*.

Here, Petitioner has not established that the x-rays of Graybeal possessed any exculpatory or impeachment value that was apparent before they were lost or destroyed. Also, even if the x-rays were potentially useful evidence under *Youngblood*, Petitioner has not established that they were lost or destroyed as a result of bad faith. Therefore, Petitioner has not proven that his due process rights under *Trombetta* and/or *Youngblood* were violated when the x-rays of Graybeal were lost or destroyed.

Eighth, Petitioner asserts that his *Brady* rights were violated when the prosecution failed to disclose the existence of Petitioner's blood samples and/or the codefendants' blood samples to the defense and all of these blood samples have been lost or destroyed. Since this argument relates to lost or destroyed evidence, the argument must be analyzed under *Trombetta* and *Youngblood*, not *Brady*.

Here, Petitioner has not demonstrated that any of the blood samples possessed any exculpatory or impeachment value that was apparent before they were lost or destroyed. Additionally, even if some or all of the blood samples were potentially useful evidence under *Youngblood*, Petitioner has not established that they were lost or destroyed as a result of bad faith. Therefore, Petitioner has not proven that his due process rights under

Trombetta and/or *Youngblood* were violated when some or all of the blood samples were lost or destroyed.

Ninth, Petitioner asserts that his due process rights under *Brady* were violated when Graybeal's vehicle was released to her family two days after the crimes and the defense never had an opportunity to inspect or examine the vehicle. Further, Petitioner states that, while the car seat pad from the vehicle was in the possession of the Fresno County Sheriff's Department, the "car seat pad … was never discovered to the defense" and is now missing. Since this claim is about the loss of his opportunity to inspect or examine Graybeal's vehicle and seat pad, this argument must be analyzed under *Trombetta* and *Youngblood*, not *Brady*.

In this case, Petitioner has not demonstrated that the portion of Graybeal's car that was released to Graybeal's family members or the vehicle seat pad possessed any exculpatory or impeachment value that was apparent before the seat pad and/or access to the vehicle and any evidence in it were lost. Additionally, even if the vehicle and the seat pad contained potentially useful evidence under *Youngblood*, Petitioner has not established that the vehicle was returned to Graybeal's family members or the seat pad was lost as a result of bad faith. Therefore, Petitioner has not proven that his due process rights under *Trombetta* and/or *Youngblood* were violated when the seat pad went missing or was destroyed and Graybeal's vehicle was released to her family members and his opportunity to inspect the vehicle was lost.

Tenth, Petitioner argues that his *Brady* rights have been

violated because the photographs taken by Criminalist Smith on the afternoon of February 9, 1978, which had been admitted into evidence at Petitioner's first trial, are no longer in the court's possession. However, initially, there is no *Brady* violation. "[E]vidence that is presented at trial is not considered suppressed, regardless of whether or not it had previously been disclosed during discovery." (*People v. Morrison* (2004) 34 Cal.4th 698, 715.)

Further, since it appears that Petitioner may be intending to allege and prove that these photographs are not just no longer in the court's possession, but have been lost entirely, the Court will also analyze Petitioner's argument under *Trombetta* and *Youngblood*. In this case, Petitioner has not demonstrated that any of the photographs any exculpatory or impeachment value that was apparent before they were lost or destroyed. Additionally, even if some or all of the photographs were potentially useful evidence under *Youngblood*, Petitioner has not established that they were lost or destroyed as a result of bad faith. Therefore, Petitioner has not proven that his due process rights under *Trombetta* and/or *Youngblood* were violated when the photographs taken by Criminalist Smith were lost or destroyed.

Eleventh, Petitioner contends that his *Brady* due process rights have been violated because the prosecution suppressed impeachment evidence relating to Billy Brown, favorable evidence about what happened during law enforcement and prosecution interviews with Michael Hammett, Frank Richardson, and Troy Jones, and potentially exculpatory and impeaching information regarding Jesus Meras. However, Respondent explicitly denied each of these

claims, and Petitioner failed to present any evidence about these disputed claims at the evidentiary hearing. Therefore, Petitioner has failed to meet his burden of proving by a preponderance of the evidence that there were any *Brady* violations regarding these specific allegations.

Twelfth, Petitioner contends that his *Brady* due process rights were violated when the prosecution suppressed evidence that could have been used in mitigation at the penalty phase of Petitioner's trial, namely, Petitioner's mother's rap sheet and Dr. Zeifert's EEG report. However, even assuming that the evidence was favorable to the defense and the prosecution suppressed it, Petitioner has not suffered any prejudice. Petitioner's second trial penalty phase was set aside and vacated after a federal court granted a writ of habeas corpus and the prosecution declined to retry the penalty phase of Petitioner's case and requested that a sentence less than death be imposed. Therefore, Petitioner has failed to meet his burden of proving by a preponderance of the evidence that there were any *Brady* violations regarding these specific allegations.

Thirteenth, Petitioner asserts that there is an extensive list in Amended Petition Exhibit 4o of likely exculpatory documented evidence that is lost or missing. Since Petitioner is contending that this evidence has been lost, this argument must be analyzed under *Trombetta* and *Youngblood*, not *Brady*.

In this case, Petitioner has not demonstrated that any of the items in the Exhibit 4o table of missing evidence possessed any exculpatory or impeachment value that was apparent before those items were lost or destroyed. Additionally, even if some or all

the items on the table of missing evidence were potentially useful evidence under *Youngblood*, Petitioner has not established that any or some of the items were lost or destroyed as a result of bad faith. Therefore, Petitioner has not proven that his due process rights under *Trombetta* and/or *Youngblood* were violated when some or all of the items listed in the table of missing evidence were lost or destroyed.

Fourteenth, Petitioner asserts that his *Brady* rights were violated when potential blood evidence on the clothing seized from his codefendants was lost when the dried stains on the clothing became too degraded to be tested, when the tape recordings of the Fresno Police Department's and Fresno County Sheriff's Department's interviews with Petitioner's codefendants were lost, and when the prosecution withheld the fact that there are two etchings on the metal clip of the holster admitted into evidence at Petitioner's second trial. However, the Court analyzed and denied these *Brady*, *Trombetta*, and *Youngblood* claims in its analysis of Claims 1 and 2 above.

Consequently, Petitioner has not proven by a preponderance of the evidence that his due process rights under *Brady*, *Trombetta*, and/or *Youngblood* have been violated.

C. Sixth Amendment Rights to Counsel and to Present a Defense

Other than a cursory mention of his Sixth Amendment rights to counsel and to present a defense, Petitioner has not alleged what actions or inactions caused a violation of his Sixth Amendment rights. Nevertheless, since Petitioner has failed to prove that the prosecution committed any prejudicial misconduct or that his due process rights under *Brady*, *Trombetta*, or *Youngblood* have been

violated, the Court finds that Petitioner has not proven by a preponderance of the evidence that his Sixth Amendment right to counsel and to present a defense has been violated with regards to the allegations raised in Claims 4, 5, and 11.

Accordingly, Petitioner's fourth, fifth, and eleventh claims for habeas corpus relief are denied.

IV. Claim 6

Petitioner contends that the prosecution prejudicially coerced the false testimony given by Billy Bob Brown at Petitioner's preliminary hearing, first trial, and second trial, as evidenced by Brown's recantation in 1993.

A. Petitioner's Claim that Prosecution Prejudicially Coerced Brown's Testimony

First, in the amended petition, Petitioner argues that the prosecution used a pattern of pressure and coercion to secure Brown's cooperation and testimony. According to Petitioner, this pressure and coercion included: (1) multiple interviews and meetings with law enforcement and the Deputy District Attorneys prosecuting Petitioner's case, without Brown's parents present, to remind Brown how to testify; (2) the fact that a juvenile delinquency petition was filed that charged Brown with murder, kidnapping, and robbery; and (3) Brown being plied with alcohol by the prosecution before he testified at the first trial. Further, Petitioner contends that, since Brown's testimony was critical to the prosecution proving its case against Petitioner, the prosecution sought cooperation from jailhouse snitches as a backup plan if Brown refused to testify. Lastly, Petitioner argues that Deputy District Attorney Robinson committed misconduct to ensure a

conviction.

However, Petitioner failed to provide any evidence at the evidentiary hearing to prove the truth of these allegations. (*In re Rhoades* (2017) 10 Cal.App.5th 896, 909 ["Regardless of the order to show cause, [the petitioner] is still required to *prove* as a factual matter the *truth* of his allegations[.]"].)

Furthermore, Petitioner's citations to his amended petition in his written closing argument regarding these allegations raises the possibility that Petitioner is attempting to argue that the exhibits cited in the relevant portion of his amended petition are sufficient evidence to prove these allegations.

Exhibits attached to a habeas corpus petition are only evidence if the exhibits were admitted into evidence at the evidentiary hearing. (*In re Rosenkrantz* (2002) 29 Cal.4th 616, 675 ["The various exhibits that may accompany the petition, return, and traverse do not constitute evidence, but rather supplement the allegations to the extent they are incorporated by reference. [Citation.] At the evidentiary hearing, such exhibits are subject to admission into evidence in accordance with generally applicable rules of evidence."].)

Since the exhibits cited in the portion of Petitioner's amended petition relevant to these allegations were not admitted into evidence, these exhibits are not sufficient evidence to prove the truth of these allegations.

Second, Petitioner argues that Brown's testimony was prejudicially coerced because Brown was a reluctant witness with an immunity agreement. However, "although there is a certain degree of compulsion inherent in any plea agreement or grant of

immunity, it is clear that an agreement requiring only that the witness testify fully and truthfully is valid." The law is clear that "testimony given under an immunity agreement does not violate the defendant's right to a fair trial, if the grant of immunity is made on condition the witness testifies fully and fairly." (*People v. Badgett* (1995) 10 Cal.4th 330, 354-355.) Since Brown's immunity agreement and subsequent grant of immunity was only conditioned on the fact that Brown testify fully and truthfully, Brown's testimony was not prejudicially coerced simply because his testimony was given under a grant of immunity.

Consequently, Petitioner has failed to meet his burden of proving that his rights were violated when the prosecution allegedly prejudicially coerced Brown into testifying against Petitioner.

B. Petitioner's Claim that Brown's Testimony is False

First, Petitioner asserts that Brown's testimony against him is false because Brown's statements to law enforcement and the prosecution and his testimony at the preliminary hearing and Petitioner's first and second trials were inconsistent and unreliable. Nevertheless, "inconsistencies between a witness's trial testimony and [a witness's] prior statements do not prove the falsity of the testimony." (*People v. Vines* (2011) 51 Cal.4th 830, 874, *overruled on other grounds by People v. Hardy* (2018) 5 Cal.5th 56.)

Additionally, this Court "cannot reject the testimony of a witness the trier of fact chose to believe, unless the testimony is physically impossible, or its falsity is apparent without resorting to inference or deduction. [Citation.] 'The mere fact

that there are contradictions and inconsistencies in the testimony of a witness, or that the truth of his evidence is open to suspicion, does not render it inherently improbable within the meaning of the rule. It is for the jury to consider such inconsistencies and determine whether they were such as to justify the repudiation of the testimony of the witness in its entirety." (*People v. Gaines* (2023) 93 Cal.App.5th 91, 133-134.)

Since nothing in Brown's testimony is physically impossible or false on its face, this Court will not reject Brown's second trial testimony on the ground that the testimony contains inconsistencies.

Second, Petitioner argues that the prosecution's manipulation of circumstantial evidence to corroborate Brown's testimony is evidence that Brown's testimony is false. Specifically, Petitioner states that the prosecution relied upon other false evidence about the bullet trajectory calculation and Graybeal's height to corroborate Brown's testimony at trial. However, as discussed in the Court's analysis of Claim 2, Petitioner has not met his burden of establishing that the evidence regarding the bullet trajectory and/or Graybeal's height was false. Therefore, Petitioner has not established that the prosecution falsely manipulated circumstantial evidence to corroborate Brown's false testimony.

Third, Petitioner maintains that Brown provided false testimony throughout Petitioner's criminal proceedings as evidenced by the fact that Brown recanted his testimony against Petitioner in 1993. However, there is no admissible evidence before the Court to prove this contention.

Since Brown is deceased, Petitioner sought to introduce Brown's out-of-court recantation through the testimony of defense investigator Mimi Kochuba, who conducted the interview at which Brown recanted. Since Respondent objected to the admission of any out-of-court statements made by Brown pursuant to the hearsay rule, Petitioner asserted that Brown's out-of-court recantation was admissible under the exceptions to the hearsay rule for declarations against penal interest and social interest in Evidence Code section 1230.

Evidence Code section 1230 provides, in relevant part, that: "Evidence of a statement by a declarant having sufficient knowledge of the subject is not made inadmissible by the hearsay rule if the declarant is unavailable as a witness and the statement, when made, … so far subjected him to the risk of … criminal liability, … or created such a risk of making him an object of hatred, ridicule, or social disgrace in the community, that a reasonable man in his position would not have made the statement unless he believed it to be true."

Initially, to demonstrate that an out-of-court statement is admissible as a declaration against penal interest, "[t]he proponent of such evidence must show that the declarant is unavailable, that the declaration was against the declarant's penal interest when made and that the declaration was sufficiently reliable to warrant admission despite its hearsay character." (*People v. Duarte* (2000) 24 Cal.4th 603, 610-611.) "In determining whether a statement is truly against interest within the meaning of Evidence Code section 1230, and hence is sufficiently trustworthy to be admissible, the court may take into

account not just the words but the circumstances under which they were uttered, the possible motivation of the declarant, and the declarant's relationship to the defendant. [¶] 'The decision whether trustworthiness is present requires the court to apply to the peculiar facts of the individual case a broad and deep acquaintance with the ways human beings actually conduct themselves in the circumstances material under the exception.'" (*People v. Frierson* (1991) 53 Cal.3d 730, 745.)

Here, it is undisputed that Brown is unavailable due to the fact that he is deceased. Further, the Court finds that Brown's recantation was against his penal interest when made because the recantation subjected him to the risk of criminal liability for perjury, even if the risk that Brown would actually be prosecuted for perjury was low.

However, the Court finds that Brown's recantation was not sufficiently reliable or trustworthy to warrant admission despite its hearsay character. Brown's recantation was made to Mimi Kochuba, a defense investigator, and two other licensed investigators who worked for Patience Milrod, an attorney who also represented Petitioner. The recantation was made approximately 15 years after Graybeal's murder and 10 years after Petitioner was convicted a second time for Graybeal's murder. The recantation occurred during an interview set up by Petitioner's wife, Evelyn, who gave Kochuba some direction as to what questions to ask during the interview. Additionally, while Kochuba testified that she witnessed Brown signing and dating a typewritten declaration that contained his recantation, Kochuba could not remember if the declaration was brought already prepared to the interview and/or

if she provided Brown with the declaration at the diner where the interview occurred. However, given that Kochuba specifically testified that she witnessed Brown sign the declaration and that the only time that Kochuba met with Brown was during the interview at the diner, it appears that either Kochuba or one of the other two individuals prepared the typewritten declaration in a diner that was open to the public at the time of the interview or the declaration brought to the interview at the diner already prepared and ready to be signed.

Applying the peculiar facts of this individual case and a broad and deep acquaintance with the ways human beings actually conduct themselves in the circumstances material under the exception, the Court found at the evidentiary hearing and now that Brown's out-of-court recantation is insufficiently trustworthy to be admissible under the hearsay exception for declarations against penal interest.

Petitioner also argued that Brown's out-of-court recantation was admissible pursuant to the hearsay exception for declarations against social interest. To be eligible for admission under the exception for declarations against social interest, the declarant must be unavailable, the declaration was against the declarant's social interest when made, and the declaration was sufficiently reliable or trustworthy to warrant admission despite the fact that it is hearsay. (*In re Weber* (1974) 11 Cal.3d 703, 721-722.) "But in order for a declaration to be against the declarant's social interest to such an extent that it becomes admissible under section 1230 of the Evidence Code, both the content of the statement and the fact that the statement was made must be against

the declarant’s social interest.” (*Id.* at p. 722.)

Again, it is undisputed that Brown is deceased and, thus, unavailable to testify. However, there is no evidence in the record of what Brown’s reputation was with the general community he lived in or what his reputation was with the tribe that he was a member of. In fact, Kochuba testified that she did not know what tribe Brown was a member of or what his relationship was like with the tribe. Therefore, Petitioner has not demonstrated that Brown’s recantation created a risk of “making him an object of hatred, ridicule, or social disgrace in the community[.]” (Evid. Code, § 1230.) As such, the Court finds that Brown’s out-of-court recantation is not admissible under the hearsay exception for declarations against social interest.

Consequently, Petitioner has not met his burden of proving that Brown’s testimony against him is false. Accordingly, Petitioner’s sixth claim for habeas corpus relief is denied.

V. Claim 7

Petitioner contends that the prosecution presented false and misleading testimony that Petitioner was a serial killer involved in the attempted murder of Jesus Meras on the same night as Graybeal’s murder in violation of Petitioner’s right to due process under the Fifth Amendment to the U.S. Constitution and Article I, section 7 of the California Constitution, his rights under *Brady v. Maryland*, and his Sixth Amendment right to counsel.

First, Petitioner contends that the prosecution presented false and misleading testimony regarding the alleged Meras attempted robbery and attempted murder during Petitioner’s first trial. However, “[i]f the court reverses a judgment without

further directions, that unqualified reversal is an order for a new trial, placing the parties in the same position as if the cause had never been tried." (*People v. Moore* (2006) 39 Cal.4th 168, 174; see also *People v. Welch* (1971) 20 Cal.App.3d 997, 1004 ["In the absence of express limitations by the appellate court, a reversal of a judgment of conviction annuls and expunges not only the judgment of conviction but also the record of trial, leaving the accusatory pleading standing against the defendant as if no trial be had."].) Here, Petitioner's first trial was reversed by the California Supreme Court in 1982 without any qualifications or directions. (*People v. Stankewitz* (1982) 32 Cal.3d 80, 95.) Therefore, Petitioner's claim that the prosecution presented false testimony and argument regarding the alleged Meras offenses during his first trial is moot.

Second, Petitioner contends that the prosecution presented false and misleading testimony regarding the alleged Meras offenses during Petitioner's second trial. Again, with regards to the penalty phase of Petitioner's second trial, the Ninth Circuit Court of Appeal affirmed the order of the U.S. District Court for the Eastern District of California granting Petitioner a writ of habeas corpus directing the State of California to vacate and set aside Petitioner's death sentence. (*Stankewitz v. Wong* (2012) 698 F.3d 1163, 1176.) Once the prosecution elected not to retry the penalty phase of Petitioner's case for a third time, Petitioner's death sentence was set aside and vacated. As such, the penalty phase of Petitioner's second trial has been annulled in its entirety. Therefore, Petitioner's claim that the prosecution presented false testimony and argument regarding the alleged Meras

offenses during the penalty phase of his second trial is moot.

Further, with regards to guilt phase of Petitioner's second trial, Jesus Meras did not testify during the guilt phase of Petitioner's second trial. Additionally, the Court has reviewed the transcript of the guilt phase of Petitioner's second trial and finds that no testimony or evidence regarding the alleged Meras offenses was presented during the guilt phase. In the allegations of Claim 7 in his amended petition, Petitioner raises challenges to specific comments by Deputy District Attorney Robinson in his opening and closing statements at the guilt phase and Boudreau's testimony about the bullet shell casing and the gun's magazine capacity. However, all of these comments and the testimony related to the actual crime that Petitioner was on trial for – Graybeal's murder, not the alleged Meras offenses.

Also, while Petitioner asserts in Claim 7 of his amended petition that Deputy District Attorney Robinson made various factual misstatements related to the alleged Meras offenses during argument to the trial court, outside of the presence of the jury, at page 880 and 883 of the second trial transcript, and moved Exhibit No. 2 into evidence with a comment about how Jesus Meras referred to that photograph, at page 1029 of the second trial transcript, all of these events actually occurred during the penalty phase of Petitioner's second trial, not the guilt phase. Therefore, the Court finds that Petitioner has not proven that the prosecution presented any false or misleading evidence about the alleged Meras offenses during the guilt phase of Petitioner's second trial.

Third, Petitioner contends that the prosecution presented

false and misleading testimony during the preliminary hearing and the motion to sever the Meras-related charges from the Graybeal-related charges. Petitioner asserts that the evidence related to the alleged Meras offenses is false because (1) the shell casings at the Meras crime scene and the Graybeal crime scene were different, incompatible calibers, (2) law enforcement did not question Petitioner's codefendants about the Meras crime, (3) Meras failed to identify Petitioner or some of Petitioner's codefendants at a live lineup, (4) Meras' testimony about the vehicle conflicted with other evidence, and (5) in a recent interview, Meras stated that the robbery occurred in 1975 or 1976, not 1978.

As discussed above, false evidence is only a viable ground for habeas corpus relief under Penal Code section 1473, subdivision (b)(1)(A) and the state and federal constitutional right to due process if Petitioner proves that the evidence is actually false. (*In re Hill* (2024) 104 Cal.App.5th 804, 826, *In re Parks* (2021) 67 Cal.App.5th 418, 444.) In fact, little about the Meras offenses came into evidence at the evidentiary hearing because the Court ruled that most of the evidence that Petitioner attempted to admit regarding the Meras offenses was irrelevant due to the fact that the Court believed that Claim 7 was almost entirely moot due to the fact that Petitioner's first trial was reversed and Petitioner's second trial penalty phase was entirely set aside.

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Nevertheless, even presuming that Petitioner had presented

evidence that law enforcement did not question Petitioner's codefendants about the Meras offenses, that Meras failed to identify Petitioner and/or his codefendants at a live lineup, and that Meras' testimony at the preliminary hearing conflicts with other evidence and appears unlikely and improbable does not establish that Meras' testimony at the preliminary hearing was false. Further, while Petitioner asserts that, in a recent interview, Meras stated that the robbery occurred in 1975 or 1976, not 1978, the only evidence that Meras made such a statement is in an unverified memo written by Jonah Lamb, which purports to be a non-verbatim transcription of a recorded interview between Lamb and Meras on March 15, 2020. An unverified non-verbatim transcription of an out-of-court recorded interview is insufficient proof that Meras actually made such a statement.

Lastly, Petitioner asserts that Meras' testimony, and any statements by the prosecution that the same gun was used for both the Graybeal murder and the Meras offenses, was false because the shell casings collected by law enforcement at the Meras crime scene and the shell casings at the Graybeal crime scene were different, incompatible calibers. There is credible evidence before this Court that .22 caliber shell casings were collected from the Meras crime scene, that .25 caliber shell casings were collected from the Graybeal crime scene, and that .22 caliber ammunition and .25 caliber ammunition cannot be fired from the same gun. However, the fact that .22 caliber shell casings were collected from the Meras crime scene does not establish on its own that the Meras offenses were committed with the use of a .22 caliber firearm. Therefore, Petitioner has not proven that Meras'

testimony at the preliminary hearing and/or any comments made by the prosecutor at the 1978 motion to sever counts were false and/or misleading.

Fourth, Petitioner claims that the prosecution violated *Brady v. Maryland* (1963) 373 U.S. 83 by not disclosing the 1978 Christensen and Lean crime report and the 1978 Lean, Christensen, and Sarment Technical Service Report until August 2017. However, initially, Petitioner has failed to explain how the two reports are evidence favorable to Petitioner, i.e., either exculpatory or impeaching, with regards to the order holding Petitioner to answer, and, later, to Petitioner's convictions, for the Graybeal offenses.

Further, even presuming that the two reports are evidence favorable to Petitioner with regards to the Meras offenses for which Petitioner was held to answer at the preliminary hearing and that the reports were suppressed by the prosecution until 2017, Petitioner has not established any prejudice, i.e., a reasonable probability of a different result. (*In re Hill* (2024) 104 Cal.App.5th 804, 848-849.) Meras did not testify at the preliminary hearing that the gun that fired three bullets at him was any specific caliber of firearm and no other evidence regarding the caliber of the firearm used in the Meras charges was presented during the evidentiary hearing. While the two reports may have been able to raise some doubt at the preliminary hearing about whether Petitioner committed the Meras offenses, given that the standard of proof for holding a defendant to answer is only reasonable or probable cause, Petitioner has not demonstrated that there is a reasonable probability that Petitioner would not have

been held to answer to the Meras-related charges at the conclusion of the preliminary hearing. (*Garcia v. Superior Court* (2009) 177 Cal.App.4th 803, 818 ["'Reasonable and probable cause may exist although there may be some room for doubt.'"].)

Additionally, given that Petitioner's later motion to sever the Meras-related charges was granted, Petitioner was never brought to trial on the Meras-related charges, and the penalty phase of Petitioner's second trial, where evidence regarding the Meras offenses was presented, has been vacated in its entirety, Petitioner has not demonstrated that there is a reasonable probability of a different result if the two reports had been disclosed to Petitioner prior to the preliminary hearing. Therefore, Petitioner has failed to prove that the prosecution's failure to disclose the two 1978 reports to Petitioner prior to the preliminary hearing violates *Brady*.

Fifth, Petitioner alleges that his Sixth Amendment right to counsel was violated when the prosecution presented false and misleading testimony and argument regarding the Jesus Meras incident. Initially, the Court notes that Petitioner does not allege in Claim 7 exactly how his Sixth Amendment right to counsel was violated by the other allegations made in Claim 7. Nevertheless, since the Court has found that the prosecution did not present any false and misleading testimony or argument at the preliminary hearing, the motion to sever, and/or the guilt phase of Petitioner's second trial, and any issues with testimony or argument at Petitioner's first trial or the penalty phase of Petitioner's second trial are moot, the Court finds that Petitioner has not established that he has suffered any prejudice

from his trial, appellate, or prior habeas corpus counsel's performance or lack of performance. (*People v. Holt* (1997) 15 Cal.4th 619, 703.)

Accordingly, Petitioner's seventh claim for habeas corpus relief is denied.

VI. Claim 8

Petitioner argues that the prosecution unlawfully charged Petitioner with first-degree murder even though it knew that Petitioner had a mental defect diagnosed by psychiatric experts that prevented formation of the intent necessary for premeditation and deliberation in violation of Petitioner's right to due process under the Fifth Amendment and Article I, section 7 of the California Constitution, and Petitioner's Sixth Amendment right to counsel.

However, it is undisputed that Petitioner failed to provide any evidence at the evidentiary hearing to prove the truth of these allegations. (*In re Rhoades* (2017) 10 Cal.App.5th 896, 909 ["Regardless of the order to show cause, [the petitioner] is still required to *prove* as a factual matter the *truth* of his allegations[.]"].) Furthermore, in Petitioner's written closing argument, Petitioner simply stated that Claim 8 was submitted. After the Court asked Petitioner to provide a supplemental brief to explain what the term "submitted" meant in this context, Petitioner's supplemental brief stated that, since Respondent only denied Claim 8 pursuant to a "general denial" and failed to plead the factual basis on which Respondent's denial was based, Petitioner was prevented from disputing Respondent's denial at the evidentiary hearing. Thus, Petitioner asserts that Respondent has

impliedly admitted Claim 8, which is sufficiently supported by the exhibits attached by the amended petition.

The Court does not need to determine whether Respondent's denial of Claim 8 is an insufficient general denial or is a sufficient denial such that Petitioner needed to provide actual evidence at the evidentiary hearing to prove up his claim. The Court has reassessed Petitioner's allegations in Claim 8 and has determined that an Order to Show Cause should have never been issued as to Claim 8.

In Claim 8, Petitioner contends that the prosecution unlawfully charged Petitioner with first-degree murder even though the prosecution knew, in light of various reports and medical records from the 1960s and 1970s, that Petitioner had a mental defect diagnosed by psychiatric experts that prevented formation of the intent necessary for premeditation and deliberation. However, while the exhibits related to Claim 8 demonstrate that Petitioner had psychological problems and had a significantly abnormal EEG in years prior to Graybeal's, none of these exhibits contain any indication of what, if any, effect that Petitioner's psychological problems and abnormal brain function had on Petitioner's ability to form the necessary intent to premeditate and deliberate at the time that Graybeal's murder occurred in 1978. (*People v. Seastone* (1969) 3 Cal.App.3d 60, 70 ["Briefly stated, the doctrine of diminished capacity, as applied to a charge of murder, proscribes a conviction of murder in the first degree if, at the time of the offense, the defendant was incapable of acting with malice aforethought, or with premeditation and deliberation, whether such mental condition was caused by

intoxication, trauma, or mental disease.”].)

Therefore, even assuming *arguendo* that a criminal defendant’s rights to due process and counsel are violated when the prosecution files charges against the defendant when the prosecution knows that the defendant has a diminished capacity defense to the charges, Petitioner has not alleged any facts and/or provided the Court with any documentary evidence demonstrating that Petitioner had a mental defect that prevented formation of the intent necessary for premeditation and deliberation at the time of Graybeal’s murder and/or that the prosecution knew about Petitioner’s mental defect and resulting diminished capacity when the prosecution charged Petitioner with first-degree murder.

Further, Petitioner alleges that his Sixth Amendment right to counsel was violated when the State charged Petitioner with first-degree murder even though it knew Petitioner had a mental defect that prevented formation of the intent necessary for premeditation and deliberation. Initially, the Court notes that Petitioner’s eighth claim does not identify which of Petitioner’s many attorneys provided ineffective assistance or exactly what the attorneys did or did not do with respect to the allegations made in Claim 8. Nonetheless, the Court notes that, in the allegations made in Claim 9, Petitioner alleges that his second trial counsel did not contact, interview, or call as a trial witness any of the psychiatric experts that tested, evaluated, treated, and/or prescribed a regimen of anti-psychotic drugs for Petitioner. However, Petitioner has failed to allege any facts showing that any of the psychiatric experts were available to be interviewed by

his second trial counsel or provided a declaration from those experts setting forth that they were available to testify at Petitioner's second trial and setting forth the substance of the expert's proposed testimony. (*People v. Beasley* (2003) 105 Cal.App.4th 1078, 1093.) Therefore, Petitioner has failed to allege that he received any ineffective assistance of counsel with respect to the allegations made in Claim 8.

Consequently, Petitioner's eighth claim fails to state a prima facie case for habeas corpus relief and the Court mistakenly issued an order to show cause on this claim. Accordingly, Petitioner's eighth claim for habeas corpus relief is denied.

VII. Claim 9

Petitioner contends that the jury in his second trial would have found the two special circumstances not true if the jury had heard about evidence withheld by the prosecution and had his second trial counsel done any investigation. Petitioner states that this withholding of evidence violated his due process rights under the Fifth Amendment to the U.S. Constitution and Article I, section 7 of the California Constitution and *Brady v. Maryland*.

First, Petitioner argues that, as established in Claims 1, 2, 3, 5, 6, and 8, he is not guilty of murder and, therefore, the special circumstances also cannot stand. However, as discussed above, Petitioner has not met his burden of pleading as to Claim 8 or his burden of proof as to Claims 1, 2, 3, 5, and 6. Therefore, this argument also fails.

Second, Petitioner argues that his rights were violated when the prosecution committed prejudicial misconduct by arguing to the jury that Petitioner had not used any heroin and was perfectly

sober at the time of the homicide. "Improper comments by a prosecutor require reversal of a resulting conviction when those comments so infect a trial with unfairness that they create a denial of due process. [Citation] Conduct by a prosecutor that does not reach that level nevertheless constitutes misconduct under state law, but only if it involves the use of deceptive or reprehensible methods to persuade the court or jury." (*People v. Watkins* (2012) 55 Cal.4th 999, 1032; see also *People v. Morrison* (2004) 34 Cal.4th 698, 717 ["Due process also bars a prosecutor's knowing presentation of false or misleading argument."].)

Specifically, Petitioner states that the prosecutor's argument was false and/or misleading because the prosecutor was well aware that Petitioner's codefendants had admitted to the police that some of them and Petitioner had injected heroin at the Olympic Hotel prior to Graybeal's murder.

However, the prosecution was not required to believe any of the statements that Petitioner's codefendants made to the police regarding Petitioner's alleged heroin use prior to the murder. In fact, Petitioner admitted in the amended petition that the blood taken after Petitioner was arrested tested negative for heroin pursuant to the only test in use at the time. The prosecution was also not required to present any evidence regarding Petitioner's alleged heroin intoxication at the time of the murder. There are no allegations that the prosecution suppressed any evidence relating to Petitioner's alleged heroin use. Petitioner could have called his codefendants to testify, and, if they refused, Petitioner himself could have testified about his own heroin use before the murder. Instead, given that Brown could not have

testified about Petitioner's alleged use of heroin in the Olympic Hotel because Brown was seated in the car while Petitioner was inside of the hotel and Officer Rodriguez testified during the second trial that Petitioner did not appear to be under the influence of anything when Petitioner was arrested and, later, while Petitioner was at the police station, the prosecutor's statements during closing argument that Petitioner had not used any heroin and was sober at the time of the murder were not false or misleading and were also not a deceptive or reprehensible method to persuade the jury.

Third, Petitioner asserts that the special circumstances would have been rejected by the jury if they had heard evidence withheld by the prosecution in violation of *Brady v. Maryland* during Petitioner's second trial. However, Petitioner does not allege in the allegations of Claim 9 what evidence was purportedly withheld or suppressed by the prosecution in violation of *Brady*. To the extent that Petitioner is arguing that *Brady* was violated because the jury did not hear out-of-court statements from Petitioner's codefendants made to law enforcement about Petitioner's alleged heroin use before the murder, *Brady* does not require the prosecution to present specific evidence at trial.

Since Petitioner has not alleged or proved that the prosecution failed to disclose the reports about his codefendants' interviews with law enforcement to Petitioner in timely manner, Petitioner has not alleged any violation of *Brady* with respect to his codefendants' interviews with law enforcement.

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Further, to the extent that Petitioner is asserting a *Brady*

violation with respect to the vial of his own blood, Petitioner has not alleged or proven that the prosecution failed to disclose the existence of the blood vial and the results of the chemical testing of Petitioner's blood to the defense until after the blood vial was lost or destroyed or after Petitioner suffered some prejudice due to the delay in disclosure. Therefore, Petitioner has not met its burden of proving that he suffered a *Brady* violation related to the now-lost blood vial. Consequently, Petitioner has not proven that the special circumstances would have been rejected by the jury if the jury had heard evidence withheld by the prosecution in violation of *Brady v. Maryland* at Petitioner's second trial.

Fourth, based on the allegations in Claim 9 about the lost vial of Petitioner's blood and the comments about the lost vial of blood at the evidentiary hearing, the Court believes that Petitioner is arguing that his due process rights were violated under the standards set forth in *California v. Trombetta* (1984) 467 U.S. 479 and *Arizona v. Youngblood* (1988) 488 U.S. 51 when the blood vial was lost. However, as discussed above in the Court's discussion of Claim 4, Petitioner has not met his burden of proving that his due process rights under *Trombetta/Youngblood* were violated when the blood vial was lost. Therefore, this argument also fails.

Fifth, Petitioner alleges that his Sixth Amendment right to counsel was violated in two ways in the allegations of Claim 9. Initially, Petitioner asserts that his second trial counsel provided ineffective assistance by failing to contact, interview, or call as a trial witness any of the psychiatric experts that

tested, evaluated, treated, and/or prescribed a regimen of anti-psychotic drugs for Petitioner. However, as stated in the Court's discussion of Claim 8, Petitioner has not met his burden of pleading ineffective assistance of trial counsel with respect to this contention. (*People v. Beasley* (2003) 105 Cal.App.4th 1078, 1093.)

Next, Petitioner asserts that his second trial counsel provided ineffective assistance by failing to present any evidence showing the length of time that someone's symptoms would be evident after having injected heroin. However, Petitioner has failed to allege or prove that there was an expert available to be hired by Petitioner's second trial counsel on this topic. Nor has Petitioner shown how the unknown expert providing an opinion about the length of time that someone's symptoms of heroin use would be evident would have been helpful to Petitioner. Hence, Petitioner has not demonstrated that there is a reasonable probability that such expert testimony would have altered the result of the trial. Therefore, Petitioner has not met his burden of proving that he received ineffective assistance of trial counsel with respect to this contention. (*People v. Holt* (1997) 15 Cal.4th 619, 703.)

Accordingly, Petitioner's ninth claim for habeas corpus relief is denied.

VIII. Claim 10

Petitioner contends that the jury's true finding on the Penal Code section 12022.5 firearm use enhancement was based on false evidence presented by the prosecution in violation of Petitioner's due process rights under the Fifth Amendment to the U.S. Constitution and Article I, section 7 of the California

Constitution and *Brady v. Maryland*.

First, Petitioner argues that, as discussed in length in Claim 1, although the prosecution knew that the gun currently in evidence was stolen and in the possession of law enforcement starting five years prior to the murder, the prosecution presented the gun at Petitioner's second trial and falsely represented to the jury that it was the gun used in the murder, kidnapping, and robbery. However, as discussed in the Court's analysis of Claim 1, Petitioner has not met his burden of proving that the gun was actually in the possession of law enforcement prior to the Graybeal murder. Additionally, Petitioner also argues that, as discussed in Claim 1, police reports listed the descriptions of multiple Titan .25 caliber firearms, but the prosecution never presented any evidence that any gun was ever in Petitioner's possession. However, as also discussed above in the analysis of Claim 1, Petitioner has not proven that the gun admitted into evidence at Petitioner's second trial is not the gun that fired the fatal shot that killed Graybeal or that he was not in possession of that gun when the murder was committed, given Brown's testimony identifying the fatal weapon and Petitioner's use of it throughout these proceedings.

Second, Petitioner argues that, as discussed in Claim 6, no direct credible testimony places a gun in Petitioner's hands during any of the incident with Graybeal because Brown's testimony is not credible and Brown recanted his testimony in 1993. Nonetheless, as discussed above in the Court's analysis of Claim 6, Brown's 1993 out-of-court recantation is inadmissible hearsay and Petitioner has failed to establish that Brown's testimony is

false on its face. (See *People v. Gaines* (2023) 93 Cal.App.5th 91, 133-134.) Therefore, Brown's testimony is direct credible testimony that Petitioner fatally shot and killed Graybeal.

Third, Petitioner asserts that the jury's true finding is based on false evidence because the jury was never told that Petitioner tested negative for gunshot residue, his fingerprints were not found on the gun, and police reports contained descriptions of what appears to be two different Titan .25 caliber firearms. However, as discussed above in the Court's analysis of Claims 1 and 2, the fact that Petitioner tested negative for gunshot residue, that Petitioner's fingerprints were not found on the gun, and that the earliest police reports state that the Titan .25 caliber firearm seized from Graybeal's car had its serial number removed do not establish that the gun in evidence is not actually the murder weapon or that Brown's testimony that Petitioner fatally shot Graybeal is false.

Fourth, Petitioner argues that the jury's true finding is based on false evidence because, while the jury was told that the gun was found under the seat directly in front of where Marlon Lewis was sitting in the car when Petitioner and some of his codefendants were arrested, the jury was never told that, in 2000, Lewis admitted that he, not Petitioner, killed Graybeal. However, as discussed above in the Court's analysis of Claim 3, Lewis' 2000 out-of-court statement is inadmissible hearsay and, thus, does not establish that the jury's true finding that Petitioner personally used a firearm during the commission of the crimes alleged under the meaning of Penal Code section 12022.5 is false.

Consequently, Petitioner's tenth claim for habeas corpus

relief is denied.

IX. Claims 12 and 13

Petitioner contends that he was deprived of his right to the effective assistance of counsel under the Sixth Amendment to the U.S. Constitution and Article I, section 15 of the California Constitution due to the prejudicially deficient performance of his trial counsel at Petitioner's first and second trials, his appellate counsel from his first and second appeals, and his prior post-conviction counsel.

A. Legal Standard

"In order to demonstrate ineffective assistance of counsel, a [petitioner] must first show counsel's performance was deficient because [their] representation fell below an objective standard of reasonableness … under prevailing professional norms. [Citations.] Second, [the petitioner] must also show prejudice flowing from counsel's performance or lack thereof. [Citation.] Prejudice is shown when there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." (*In re Richardson* (2011) 196 Cal.App.4th 647, 657 [internal quotation marks omitted].) "If the defendant makes an insufficient showing on either one of these components, the ineffective assistance claim fails. Moreover, a court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies." (*People v. Holt* (1997) 15 Cal.4th 619, 703 [internal quotation marks omitted].)

B. Analysis

1. *Trial Counsel*

a. **Petitioner's First Trial Counsel, Salvatore Sciandra**

The Court notes that, while Petitioner asserts in the heading of Claim 12 that he is alleging that his counsel at his first trial provided ineffective assistance, the allegations in the body of Claim 12 are directed solely against Petitioner's second trial counsel. Likewise, Petitioner's written argument regarding Claim 12 pertains only to the actions of Petitioner's second trial counsel.

Nevertheless, to the extent that Petitioner is attempting to raise a claim that his first trial counsel provided ineffective assistance of counsel, Petitioner's claim that his first trial counsel provided ineffective assistance of counsel is moot because the judgment against Petitioner that resulted from the first trial was unconditionally reversed on appeal in 1982. (*People v. Stankewitz* (1982) 32 Cal.3d 80, 95; see *People v. Moore* (2006) 39 Cal.4th 168, 174; *People v. Welch* (1971) 20 Cal.App.3d 997, 1004.)

b. **Petitioner's Second Trial Counsel, Hugh Goodwin**

Petitioner argues that he was deprived of the effective assistance of counsel because his second trial counsel, Hugh Goodwin, failed to competently prepare for trial and failed to perform competently during the trial, and, as a result of Goodwin's failures, Petitioner suffered prejudice.

First, Petitioner asserts that Goodwin provided ineffective assistance by failing to go to the crime scene to understand the evidence and by failing to consult with, and obtain the files from, Petitioner's prior trial and appellate counsel. However,

Petitioner has not demonstrated that the outcome of his trial would have been different if Goodwin had gone to the crime scene, consulted with Petitioner's prior attorneys, or obtained the files from Petitioner's prior attorneys. Consequently, Petitioner has failed to prove that he was prejudiced by his counsel's alleged errors.

Second, Petitioner asserts that Goodwin provided ineffective assistance by failing to interview the following individuals: (1) the detectives who wrote key reports in Petitioner's criminal case; (2) the alleged primary eyewitness, Billy Brown; (3) Brown's family members; (4) neighbors close to the crime scene to see if they heard or saw anything relevant to Petitioner's defense; and (4) Petitioner's seven alibi witnesses. However, initially, with respect to the detectives who wrote reports in Petitioner's case and Brown, actual and prospective witnesses have no legal obligation to give an interview to the defense. (*People v. Valdez* (2012) 55 Cal.4th 82, 118.)

Additionally, with respect to all of the individuals listed above, Petitioner has failed to provide the Court with any evidence demonstrating that any one of the listed individuals was available to be interviewed by Goodwin, was willing to be interviewed by Goodwin if they had been asked, and what information and/or testimony beneficial to the defense that they would given if Goodwin had interviewed them. Therefore, Petitioner has not demonstrated that the outcome of his trial would have been different if Goodwin had interviewed some or all of the individuals identified above. Consequently, Petitioner has failed to prove that he was prejudiced by his counsel's alleged

errors.

Third, Petitioner asserts that Goodwin provided ineffective assistance by failing to either personally look at the physical evidence in the case or have a defense investigator do so. Since Goodwin failed to do so, Goodwin did not realize that there were potential bloodstains on the clothing that law enforcement had seized from Petitioner and his codefendants that needed to be tested, including apparent blood stains on Marlon Lewis' shoes.

However, when Petitioner conducted tests on the apparent bloodstains on the clothes and shoes, only Petitioner's clothes gave a positive indication for blood. None of the stains on his codefendants' clothes presumptively tested positive for blood.

Further, Petitioner has not presented any evidence demonstrating that the results of the tests would have been any different if Goodwin had the stained clothing and shoes tested at an earlier time. Therefore, Petitioner has not demonstrated that the outcome of his trial would have been different if Goodwin had realized that there were potential bloodstains on clothes seized from Petitioner and his codefendants. Consequently, Petitioner has failed to prove that he was prejudiced by his counsel's alleged errors.

Fourth, Petitioner argues that Goodwin provided ineffective assistance by failing to file a motion in limine to prevent the prosecution from raising the Meras crimes during the guilt phase. However, since the prosecution did not present any testimony or make any argument about the Meras crimes during the second trial guilt phase, Petitioner has failed to prove that he was prejudiced by his counsel's alleged errors.

Fifth, Petitioner argues that Goodwin provided ineffective assistance by failing to object to the use of testimony from the first trial by witnesses in the second trial. In fact, Goodwin had Brown refer to his testimony from the first trial. However, it is common practice for attorneys to use prior trial testimony to impeach witnesses and to refresh their recollection. (Evid. Code, §§ 770, 771, 780, subd. (h).) Further, Petitioner has not provided any evidence demonstrating that the outcome of his trial would have been different if Goodwin had either objected to the prosecution's use of testimony from the first trial or not used testimony from the first trial himself. Therefore, Petitioner has failed to prove that he was prejudiced by his counsel's alleged errors.

Sixth, Petitioner contends that Goodwin provided ineffective assistance by failing to subpoena and use Dr. Zeifert's records from 1966 to 1970. Due to this failure, Petitioner was deprived of showing that he had a mental defect which prevented him from forming the requisite intent to commit first-degree murder. However, as discussed in the Court's analysis of Claim 8, Petitioner has failed to allege, or prove, that Dr. Zeifort's records would have established that Petitioner had a mental defect that prevented him from forming the requisite intent to commit first-degree murder. Therefore, Petitioner has not established that the outcome of his trial would have been different if Goodwin had subpoenaed and introduced Dr. Zeifort's records. Consequently, Petitioner has failed to prove that he was prejudiced by his counsel's alleged errors.

Seventh, Petitioner argues that Goodwin provided ineffective

assistance by failing to present any evidence of third-party culpability at the second trial guilt phase. However, Petitioner has failed to prove that there were any witnesses willing to testify as to any third-party culpability for Graybeal's death and what those witnesses would have testified to if they had been called. Therefore, since Petitioner has not demonstrated that there was any available evidence of third-party culpability to offer at trial, Petitioner has failed to prove that he was prejudiced by his counsel's alleged errors.

Eighth, Petitioner argues that Goodwin provided ineffective assistance by failing to file a motion to dismiss after Deputy District Attorney Robinson gave a closing argument that was not backed up by evidence and greatly prejudiced Petitioner. Additionally, Goodwin did not object when Robinson argued in his closing statement that Petitioner was guilty of the Meras crimes. However, as discussed above, Robinson did not argue that Petitioner was guilty of the Meras crimes, or otherwise commit prejudicial misconduct, during his guilt phase closing argument. Therefore, Petitioner has failed to prove that he was prejudiced by his counsel's alleged errors.

Ninth, Petitioner argues that Goodwin provided ineffective assistance when, in response to the jury's request to see the scripts written by Petitioner that had been admitted into trial evidence, he agreed with the trial judge and prosecutor that the scripts should not be provided to the jury because they were not in evidence. It is clear that Goodwin, the trial judge, and the prosecutor were all incorrect. The scripts had been admitted into the evidence at Petitioner's second trial guilt phase. However,

Petitioner has not provided any evidence demonstrating that the outcome of his trial would have been different if Goodwin had disagreed with the trial judge and prosecutor and stated that the scripts were actually in evidence and the scripts had actually gone to the jury for them to consider while they were deliberating. In fact, Petitioner's own *Strickland* expert, Gary Gibson, indicated that he could not assign any prejudice to Goodwin's error because it was unclear if the result of the case would have been different if the jury had gotten to see the scripts during their deliberations. Therefore, Petitioner has failed to prove that he was prejudiced by his counsel's alleged errors.

Tenth, Petitioner argues that Goodwin provided ineffective assistance by failing to make any discovery requests, "including on Brown's burglary case," or subpoena Graybeal's medical records to see if they contained any information about Graybeal's height. However, Petitioner has failed to prove what information that Goodwin would have learned if he had made any discovery requests, including one related to "Brown's burglary case," or had subpoenaed Graybeal's medical records. Therefore, Petitioner has not demonstrated that, if Goodwin had subpoenaed Graybeal's medical records or otherwise investigated Graybeal's height, he would have been able to adequately cross-examine the prosecution's witnesses, including Boudreau and Graybeal's father, about Graybeal's true height. Consequently, Petitioner has not established that the outcome of his trial would have been different if Goodwin had made any discovery requests or had subpoenaed Graybeal's medical records. Accordingly, Petitioner

has failed to prove that he was prejudiced by his counsel's alleged errors.

Eleventh, Petitioner argues that Goodwin provided ineffective assistance by failing to investigate the inadequate photographs of the alleged murder weapon and the issues raised regarding the discrepancies with the alleged murder weapon's serial number. Petitioner asserts that Goodwin could have interviewed officers or obtained experts in firearms and/or police investigation to investigate the issues with the alleged murder weapon and adequately cross-examine or impeach Officer Bonesteel regarding his conflicting property reports about the alleged murder weapon's serial number. However, Petitioner has not established that there were officers, firearms experts, or police investigation experts who were both available to be interviewed or hired in 1983 and what those individuals would have stated about the discrepancies with the alleged murder weapon's serial number and/or the problems with how the murder weapon was photographed and documented.

Further, even presuming that Goodwin could have obtained the same expert opinions about the police investigation and the police reports regarding the firearm as Petitioner presented at the evidentiary hearing, the Court has already found in this order that the testimony from Clark and Coleman was relatively weak. While Petitioner's experts testified at the evidentiary hearing that the problems they identified with the investigation and the physical evidence gave rise to suspicions of potential law enforcement misconduct, both experts also acknowledged that they only had suspicions and questions about the way that the investigation was conducted and the integrity of the evidence.

Neither expert had any solid proof that law enforcement or the prosecution had actually tampered with, or planted, any evidence in Petitioner's case.

Lastly, even presuming that Goodwin had investigated the issues related to the alleged murder weapon, had obtained testimony identical to that given at the evidentiary hearing by Clark and Coleman, and had used the testimony to cross-examine Officer Bonesteel regarding his conflicting property reports about the alleged murder weapon's serial number, it is entirely unclear what Bonesteel would have said in response to Goodwin's questions. Bonesteel may have been able to provide a satisfactory explanation of his conflicting property reports, but, at the same time, he might not have.

Hence, Petitioner has not established that the outcome of his trial would have been different if Goodwin had investigated the issues and discrepancies with the alleged murder weapon. Accordingly, Petitioner has failed to prove that he was prejudiced by his counsel's alleged errors.

Twelfth, Petitioner argues that Goodwin provided ineffective assistance by failing to pursue making Brown an accomplice as a matter of law. In Petitioner's direct appeal from the judgment rendered in Petitioner's second trial, the California Supreme Court held that the question of Brown's status as an accomplice was a factual one properly submitted to the jury because there was no evidence that Brown provided any meaningful assistance to Petitioner in the commission of any of the crimes or that he intended to encourage or facilitate their execution. (*People v. Stankewitz* (1990) 51 Cal.3d 72, 90-93.) The Supreme Court further

stated that, where the facts as to the asserted accomplice's knowledge and intent are in dispute, the determination of whether the witness is an accomplice is a question for the jury. (*Id.* at p. 92.)

Here, Petitioner has not provided the Court with any evidence establishing that, if Goodwin had pursued making Brown an accomplice as a matter of law, Goodwin could have introduced undisputed evidence showing that Brown provided meaningful assistance to Petitioner in the commission of any of the crimes against Graybeal and that Brown intended to encourage or facilitate the crimes against Graybeal. Therefore, Petitioner has not established that the outcome of his trial would have been different if Goodwin had pursued making Brown an accomplice as a matter of law. Accordingly, Petitioner has failed to prove that he was prejudiced by his counsel's alleged errors.

Thirteenth, Petitioner argues that Goodwin provided ineffective assistance by not hiring pathologist and ballistics experts to adequately attack testimony given by prosecution witnesses on cross-examination. Specifically, Petitioner asserts that, if Goodwin had hired pathologist and ballistics experts like Petitioner's expert, Dr. Tovar, Goodwin would have been able to attack Boudreau's testimony regarding a hypothetical that presumed that Graybeal was 5'7" tall, Boudreau's testimony provided in support the prosecution's bullet trajectory theory, and Brown's testimony about how the shooting actually occurred.

Initially, with respect to Goodwin's ability to effectively attack any testimony that Graybeal was approximately 5'7" tall, Tovar testified that he believed that the autopsy report stated

that Graybeal was 160 centimeters tall. However, Tovar also acknowledged that he had seen errors and mistakes on autopsy reports that he had reviewed over his career. Further, while Jason Tovar, one of Petitioner's experts, testified at the evidentiary hearing that he has no reason to believe that the autopsy report was unreliable, he also acknowledged that he had previously encountered errors in autopsy reports during his years as a pathologist.

Additionally, Tovar's testimony does not establish that Goodwin would have been able to more adequately or effectively attack any testimony provided in support of the prosecution's bullet trajectory theory or Brown's testimony that Petitioner is the individual who fatally shot Graybeal. When asked how a change in the height of the victim from five-foot, three-inches tall to five-foot, seven-inches tall would affect a calculation of where a shooter was standing or how tall the shooter was, Tovar stated that the change in height would be a minor alteration or a very negligible change in the calculation, given that the change is only 4 inches of variation, which is roughly the width of a person's hand. Tovar further testified that a pathologist could say that a description of a shooting was consistent with the measured height of the alleged shooter, but you would have to measure the heights of the alleged shooter and victim and make a lot of assumptions about the variables in a scenario, including about the witness' position relative to both the shooter and the individual, in order to make that determination.

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Moreover, Tovar specifically testified that documenting the

location of the wound during a gunshot victim's autopsy was more important than documenting the victim's height since there are various ways to determine height if not recorded at the autopsy, including by asking family members. It is noted that Graybeal's father specifically testified during the guilt phase of Petitioner's second trial that his daughter was 5'7" tall.

While Tovar testified that nothing in the information that he reviewed would allow him to know or determine the height of the person who shot Graybeal, it was unclear whether Tovar had reviewed the testimony that Brown gave at the guilt phase of Petitioner's second trial. Lastly, Petitioner's counsel did not propose a hypothetical question to Tovar that asked him whether he could determine the height of the shooter based on all the specific details about how the murder occurred from Brown's testimony. Therefore, Petitioner has not established that the outcome of his trial would have been different if Goodwin had hired pathologist and ballistics experts to effectively attack Boudreau's and Brown's testimony on cross-examination. Consequently, Petitioner has failed to prove that he was prejudiced by his counsel's alleged errors.

Accordingly, Petitioner has not proven by a preponderance of the evidence that Hugh Goodwin rendered ineffective assistance during the guilt phase of Petitioner's second trial.

c. **Petitioner's Appellate and Post-Conviction Counsel**

Petitioner contends that he was deprived of his right to the effective assistance of counsel under the Sixth Amendment to the U.S. Constitution and Article I, section 15 of the California Constitution due to the prejudicially deficient performance of his

appellate counsel from his first and second appeals and his prior post-conviction counsel.

First, Petitioner argues that all of his appellate and prior post-conviction counsel provided ineffective assistance by not investigating Petitioner's claims of innocence, discovering at least the evidence that Petitioner has presented to the Court in this amended petition, and raising at least all of the claims included in Petitioner's current amended habeas corpus petition.

However, the Court has denied all of the other claims that Petitioner has raised in his amended petition. Additionally, Petitioner has failed to provide the Court with any evidence establishing that, if the claims raised in this amended petition had been filed sooner, Petitioner would have been reasonably more likely to succeed on these claims. Therefore, Petitioner has not established that the outcome of his appeals and/or prior state or federal petitions for writ of habeas corpus would have been different if any or all of his previous appellate and post-conviction counsel had investigated and brought the claims included in the current amended petition at an earlier time. Consequently, Petitioner has failed to prove that he was prejudiced by his appellate and former post-conviction counsels' alleged errors.

Second, Petitioner argues that all of his prior post-conviction counsel who represented him after DNA testing became available in 1995 provided ineffective assistance by not seeking to have the clothing worn by Petitioner and his codefendants tested for DNA. The clothing worn by Petitioner and his codefendants was tested for DNA in 2020, but very little DNA was

recovered from the clothing and what DNA was recovered was so degraded that it could not be determined if any DNA from human blood was recovered. However, Petitioner has failed to establish that had the clothing been tested for DNA at any time between 1995, when DNA testing became available, and 2020, it would have still been possible to determine if the DNA recovered from the clothing came from human blood and, identify which specific human the blood DNA came from. Therefore, Petitioner has not established that the outcome of his appeals and/or prior state or federal petitions for writ of habeas corpus would have been different if any or all of his previous appellate and post-conviction counsel had the clothing DNA tested prior to 2020. Consequently, Petitioner has failed to prove that he was prejudiced by his appellate and former post-conviction counsels' alleged errors.

Accordingly, Petitioner has not proven by a preponderance of the evidence that any of his appellate or prior post-conviction counsel rendered ineffective assistance during Petitioner's appeals or prior state or federal habeas corpus proceedings.

Hence, Petitioner's twelfth and thirteenth claims for habeas corpus relief are denied.

X. Claim 15

Petitioner contends that the judgment rendered against him must be vacated and set aside because he has not and, can never receive, a fair trial. Specifically, Petitioner argues that, as detailed in all of his previous claims, he has never received a fair trial, and cannot receive one now, because: (1) the prosecution presented false evidence and committed misconduct at

his trials; (2) exculpatory evidence was suppressed by the State; (3) potentially exculpatory evidence was lost or destroyed; (4) the prosecution lost its entire file for Petitioner and his codefendants; (5) numerous items or groups of items are missing from the court file for Petitioner's underlying criminal case, the Sheriff's files, and the District Attorney's file; and (6) all of Petitioner's trial, appellate, and post-conviction counsel provided ineffective assistance by failing to investigate Petitioner's innocence claim and the facts surrounding the Graybeal incident and by failing to preserve witness testimony.

However, as discussed in the Court's analysis of all of Petitioner's previous claims, Petitioner has not met his burden of proving that the prosecution presented false evidence and/or committed misconduct, that the State suppressed exculpatory evidence or lost or destroyed potentially exculpatory evidence, that the fact that items or groups of items may be missing from the court's, the Sheriff's, and the District Attorney's files for Petitioner's underlying criminal case, and/or that he received any prejudicial ineffective assistance from his trial, appellate, and/or post-conviction counsel. Therefore, Petitioner has not proven that he has not received, and can never receive, a fair trial regarding the Graybeal murder.

Accordingly, Petitioner's fifteenth claim for habeas corpus relief is denied.

XI. Claim 17

Petitioner contends that, since he was wrongfully convicted and is actually innocent, his conviction violates his due process rights under the Fifth Amendment and Article I, section 7 of the

California Constitution, and his rights against cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution.

First, Petitioner maintains that he has steadfastly proclaimed his innocence from the beginning. Specifically, Petitioner asserts that, when interviewed by Detective Garry Snow on the night of the murder, Petitioner is the only person who denied being involved in the Graybeal incident. Additionally, Petitioner states that he cooperated with the law enforcement investigation, he never confessed, and he did not testify at any phase of either trial. However, the fact that Petitioner has never confessed, that he has always denied being involved in the murder, and he never testified is not evidence that Petitioner is actually innocent of the first-degree special circumstances murder, kidnapping, and robbery of Graybeal.

Second, Petitioner argues that the physical evidence shows that he is innocent because the gun in evidence was planted by law enforcement and it is not the murder weapon, no physical evidence ties the gun in evidence to Petitioner, and the trajectory evidence points to the likelihood of a different shooter. However, for the same reasons as those discussed above in the Court's analysis of Claims 1 and 2, Petitioner has failed to meet his burden of proving that the physical evidence establishes that he is actually innocent.

Third, Petitioner argues that witness and cellmate statements point in his innocence. However, to the extent that this argument is based on the out-of-court recantation of Billy Brown and the alleged admission of guilt by Marlon Lewis, the Court has previously determined that both out-of-court statements are

inadmissible hearsay and, hence, are not part of the evidence before this Court. Further, to the extent that the out-of-court statements of Petitioner's codefendant, Christina Menchaca, and Petitioner's former cellmate, Michael Hammett, are even properly before this Court – given that neither statement was presented or admitted into evidence at the preliminary hearing – neither statement establishes Petitioner's actual innocence. According to Petitioner, Menchaca simply told police that she did not see who shot Graybeal. However, since Menchaca allegedly did not see who shot Graybeal, her statement does not establish that Petitioner did not shoot Graybeal. Also, since Hammett allegedly only said that Petitioner never said anything incriminating while they lived together in the same cell, this statement also does not establish that Petitioner did not rob, kidnap, and/or murder Graybeal. Therefore, this argument fails.

Fourth, Petitioner asserts that law enforcement and prosecutorial misconduct led to his wrongful conviction. However, for the same reasons as those discussed above in the Court's analysis of Claims 4, 5 and 11, Petitioner has failed to meet his burden of proving that law enforcement and prosecutorial misconduct led to his wrongful conviction.

Fifth, Petitioner asserts that the ineffective assistance of trial, appellate, and post-conviction counsel has prevented him from demonstrating that he is actually innocent. However, for the same reasons as those discussed when addressing Petitioner's ineffective assistance of counsel claims, Petitioner has failed to meet his burden of proving that ineffective assistance of counsel has prevented him from establish his actual innocence.

Consequently, Petitioner's seventeenth claim for habeas corpus relief is denied.

XII. Claim 19

Petitioner contends that the judgment rendered against him must be vacated due to the cumulative effect of all of the errors and constitutional violations established in these habeas corpus proceedings. Petitioner asserts that the cumulative effect of all of the errors and violations was so prejudicial that it deprived Petitioner of a fair trial.

"In theory, the aggregate prejudice from several different errors occurring at trial could require reversal even if no single error was prejudicial by itself. '[A] series of trial errors, though independently harmless, may in some circumstances rise by accretion to the level of reversible and prejudicial error.'" (*In re Reno* (2012) 55 Cal.4th 428, 483.)

However, as set forth above, this Court has concluded Petitioner has not met his burden of proving that: (1) material false evidence was presented during the guilt phase of his second trial, (2) that new evidence demonstrates that Petitioner is innocent, (3) that law enforcement and the prosecution committed prejudicial misconduct before, during, and after Petitioner's second trial, (4) that the prosecution violated *Brady*, *Trombetta*, and/or *Youngblood*, and (5) that Petitioner has never received, and never can receive, a fair trial. Additionally, the Court is also not persuaded that the performance of Petitioner's second trial counsel, appellate counsel, and post-conviction counsel resulted in any prejudice. Therefore, since the Court has rejected each of Petitioner's individual claims of error, there are no errors or

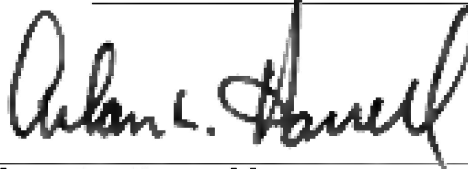
prejudice to cumulate.

Therefore, Petitioner's nineteenth claim for habeas corpus relief is denied.

Disposition

Accordingly, the petition for writ of habeas corpus is denied. The order to show cause is discharged.

DATED: 12/24/2024



Arlan L. Harrell
Judge of the Superior Court

COUNTY OF FRESNO
Fresno, CA