

FILED

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FRESNO COUNTY SUPERIOR COURT
By JL DEPUTY

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 IN AND FOR THE COUNTY OF FRESNO

11 In Re
12 DOUGLAS STANKEWITZ,
13
14 On Habeas Corpus.

15 Case No. CRWR685993

16 PETITIONER'S REPLY TO
17 INFORMAL RESPONSE

18 TO THE SUPERIOR COURT FOR THE COUNTY OF FRESNO AND TO THE DISTRICT
19 ATTORNEY FOR THE COUNTY OF FRESNO:

20 YOU WILL PLEASE TAKE NOTICE that Defendant DOUGLAS STANKEWITZ,
21 through counsel, hereby files his Reply to Respondent's Informal Response.

22 Dated: October 12, 2021 Respectfully Submitted,

23 J. TONY SERRA
24 CURTIS BRIGGS

25 Attorneys for Petitioner
26 DOUGLAS RAY STANKEWITZ

27 Curtis L. Briggs
28 By CURTIS BRIGGS

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INTRODUCTION

Petitioner does not abandon any argument made in the original and Amended Petitions for Writ of Habeas Corpus.¹ Without reiterating the content of the Petition, this Reply to the Informal Response [Reply] will address the highlights of how Respondent has grossly neglected to present the true facts and applicable law to the Court and why Respondent's contentions lack merit. In general, the Response fails to meet the Petition's allegations head on.² Further, much of the Response contains mere speculation and bald assertions, unsupported by any evidence, reports or declarations.

Unfortunately, despite the prosecution's assertions, human error is not a valid explanation here. Given the amount of egregious prosecution misconduct over 43 years, and continuing today, bad faith is the more likely explanation. To this day, the prosecution is so focused on Petitioner being guilty, and upholding the conviction, that it focuses solely on evidence which might implicate him and ignores the evidence which points to another codefendant as the killer.

One of the nagging questions in this case is why did they frame and railroad Douglas Stankewitz? Petitioner proffers several reasons. First, he was involved in an officer shooting by his brother, Johnnie Stankewitz, in 1973 in Fresno County. Although Petitioner was not the shooter, during the shooting, Officer Reid, CHP, was shot and injured.³ Officer Reid testified in the penalty phase at both of Petitioner's trials as to aggravation. Second, Petitioner's brother Gary Stankewitz shot Fresno Police Officer Mendoza in 1975 and engaged police in a public gun battle endangering the lives of numerous Fresno officers and the public.⁴ Third, the Stankewitz family had a reputation for violent criminal activity (see Petition Exhibit 2o, Declaration of Det. Garry

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¹ This Reply uses the same numbering system for Claims as the Petition, starting with Exhibit 19a.

² Unlike the Amended Petition [Petition], Respondent's Informal Response, nor any part of it, is verified. Given the evidence of initial and ongoing misconduct, including filing false reports, Petitioner request this court to support their Informal Response based on penalty of perjury and then note how the representations by the People will change.

³ Exhibit 19a, Officer Hansen, dated 4-25-73

⁴ Exhibit 19b, dated 1975

1 Snow at p. 272, para 6 and Petition Exhibit 1gg, Transcript of Ardaiz interview at p.164). The
2 bottom line is that Fresno law enforcement believe that if a Stankewitz was anywhere near a
3 crime then it is the Stankewitz who did it. Much of their bias is understandable, but in this case
4 they made a murderer out of the wrong codefendant.

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6 **MISSTATEMENTS AND MISLEADING STATEMENTS IN THE
PROSECUTION'S INFORMAL REPLY**

7 The following are examples of the misstatements and misleading statements in the
8 Response:

9 Pg. 31 – “There was no evidence tampering”. DA Investigator admitted that the shell
10 casings in evidence at the FSO were tampered with. See Petition Exhibit 7h.

11 ‘Further evidentiary hearing’⁵

12 Pg. 22 “all interviews with co-defendants were transcribed and turned over.”⁶

13 Pg. 16, ‘with none of the reports or notes available to them’⁷

14 Pg. 24 to claim that previous prosecutors did not conduct ‘a thorough search for all
15 materials in their possession’ is speculative at best.”⁸

16 “Stankewitz position that Ms. Moreno was the only Native American juror on the panel is
17 speculative at best”. A review of the juror *voir dire* transcripts confirm that she was the only
18 known Native American juror.

19 Pg. 31, “Stankewitz received a fair trial in 1983, the result of which has been upheld by
20 several higher courts.” The problem with this statement is that, as documented in the Petition,
21 none of those courts had the information contained in the Petition. Upon consideration of the

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25 ⁵ This statement is not verified. It is unclear what this representation is based upon. In fact, as documented in the
Petition, Petitioner has never had an evidentiary hearing at any stage of the proceeding to date.

26 ⁶ Tape recordings and notes are missing and were never turned over. See Petition Claims 4 & 5.

27 ⁷ Both Lean and Ardaiz met with the defense investigator voluntarily and were provided with reports and documents to
review.

28 ⁸ It is unclear what this representation is based upon. There are no declarations from DA prosecutors stating that they
did a thorough search. Therefore, we have to assume that they did not.

1 claims contained in the Petition, there is overwhelming proof that Petitioner did not receive a fair
2 trial.

3 Pg. 32 “Stankewitz was found guilty . . . based on sound evidence.” This statement is yet
4 another bald assertion.

5 As it has throughout the underlying criminal case, the District Attorney’s office has
6 continually misrepresented the facts of the case to the Court, omitted material evidence and
7 continues to assert that Petitioner’s case has been resolved through his two trials, appeals and
8 previous habeas petitions. However, when, as in this case, the defense does not have crucial
9 evidence starting from the initial investigation, which should have been provided under the
10 discovery rules and Brady, it is impossible for it to attack the facts asserted by the prosecution
11 without discovery and investigation.
12

13 Except for Claim 14, the juror claim, as explained in depth in the Petition, the claims
14 presented in the Petition have never been heard by any court. This is largely due to misconduct
15 and *Brady* violations on the part of the prosecution, including the Fresno Sheriff’s Office, Fresno
16 Police Department, etc. See Petition, Claims 1 – 11, none of which have ever been heard by any
17 court in an adversarial hearing.
18

19 The Response contains extensive use of boilerplate and contains opposition to arguments
20 which do not exist in the Petition and are not applicable. For example, stating that ‘Conclusory
21 allegations made without any explanation of the basis for the allegations do not warrant relief . . .
22 ‘(Response pg. 9) On the contrary, the Petition’s allegations are supported by police reports,
23 declarations and transcript references.
24

25 Contrary to what is stated in the Response, the Petition does not contain general claims
26 suggesting constitutional violations. (Response p. 13) Every claim in the Petition outlines specific
27 claims of constitutional violations.
28

1 Notwithstanding the People's protestations here, during the second trial, when he was
2 arguing that the Meras crimes were part of the record, according to Deputy DA Robinson, the
3 Preliminary Hearing was part of the trial. (T2 Vol. IV RT 883). Further, as documented in the
4 Petition, during the second trial, the prosecution read testimony from the first trial into the record.
5 Therefore, for both of these reasons, the content of the Preliminary Hearing and the first trial are
6 both relevant to, and a part of the case.
7

8 As detailed throughout the Petition, the prosecution misconduct affected every aspect of
9 the law enforcement investigation and tainted the convictions. Despite the second trial penalty
10 phase being reversed, misconduct in the second trial penalty phase is relevant because it
11 demonstrates the pattern and practice of misconduct which deprived Petitioner of a fair trial.

12 **DISTRICT ATTORNEY'S AFFIRMATIVE DUTY TO INVESTIGATE**

13 Given the extensive documentation of misconduct by both law enforcement and the district
14 attorney's office, the district attorney has an affirmative duty to investigate what has happened in
15 this case.
16

17 Rule 5-110 Special Responsibilities of a Prosecutor (also Rule 3.8 CA Rules of Professional
18 Conduct)

19 (Rule approved by the California Supreme Court, effective Nov. 2, 2017)

20 The prosecutor in a criminal case shall:

21 . . .

22 (D) Make timely disclosure to the defense of all evidence or information known to the prosecutor
23 that the prosecutor knows or reasonably should know tends to negate the guilt of the accused,
24 mitigate the offense, or mitigate the sentence, except when the prosecutor is relieved of this
25 responsibility by a protective order of the tribunal; and . . .

26 (F) When a prosecutor knows of new, credible and material evidence creating a reasonable
27 likelihood that a convicted defendant did not commit an offense of which the defendant was
28 convicted, the prosecutor shall:

(1) Promptly disclose that evidence to an appropriate court or authority, and

(2) If the conviction was obtained in the prosecutor's jurisdiction,

1 (a) Promptly disclose that evidence to the defendant unless a court authorizes delay,
2 and

3 (b) Undertake further investigation, or make reasonable efforts to cause an
4 investigation, to determine whether the defendant was convicted of an offense that the
5 defendant did not commit.

6 (G) When a prosecutor knows of clear and convincing evidence establishing that a defendant in the
7 prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the
8 prosecutor shall seek to remedy the conviction.

9 As stated in *People v. Force*, (2019) 39 Cal.App.5th 506, 508-509, it is the prosecution's
10 burden to seek justice and be sure that the accused receives a fair trial. In that case, the court held
11 that prosecutorial misconduct was not harmless and deprived the defendant of a fair trial.

12 **ADMISSIONS, CONCESSIONS, AND OMISSIONS BY THE PROSECUTION**

13 The prosecution concedes the validity of the investigatory reports attached to the Petition
14 as exhibits.⁹

15 In general, the Response ignores any unfavorable fact or law asserted in the Petition which
16 goes to Petitioner's innocence. In addition, the prosecution admits or concedes the following:

17 Claim 2: In the Response, the People admit that the victim was 5'2.99" and that the prosecution
18 trial testimony was that she was 5'7". This testimony was critical to persuade the jury that
19 Petitioner was the shooter. This admission contrasts with the prosecution stating as recently as
20 2017,¹⁰ that it stands by the testimony of Boudreau that the victim's height was 5'7". Moreover,
21 perhaps most tellingly, the Response ignores Petitioner's discussion of the false testimony given
22 during the second trial guilt phase.

23 Claim 3: The Response concedes 1) that a .22 caliber weapon was used in the Meras crimes; 2)
24 that the Meras reports are new evidence; and 3) that a *Brady* violation occurred: that the audio tape
25 of Petitioner's police interview the night of the murder was not turned over to the defense. The
26

27 _____
28 ⁹ The Response does not contain any new reports or argument regarding the reports.

¹⁰ (PRH Vol. XXVI RT 372). See Petition, p. 171.

1 Response concedes that the DNA testing is new evidence.

2 Claim 4: The Response concedes that it cannot explain the over 50 items of evidence that are
3 missing.

4 Claim 14: The Response concedes that the juror questionnaires from the second trial have been
5 lost.

6 Claim 16: Response does not address Petitioner's claim.

7 Claim 18: Response does not address Petitioner's claim.

8 Claim 19: Response does not address Petitioner's claim.

9
10 **PETITIONER HAS STATED A PRIMA FACIA CASE FOR RELIEF**

11 So-called new opinions from the lead detective and original prosecutor about evidence in
12 the case are included in the Petition to meet the prima facie burden of alleging the specific
13 underlying facts that show or establish the ultimate fact itself. See *People v. Duvall* (1995), 9 Cal.
14 4th 464, 474; see e.g., *In re Seaton* (2004) 34 Cal.4th 193, 206; *In re Swain*, 34 Cal.2d at pp. 301-
15 302.)

16
17 **THE PETITION IS TIMELY AND NOT OTHERWISE PROCEDURALLY BARRED**

18 In addition to the law cited in the Petition at 204, Paragraph C, Petitioner cites the
19 following:

20 Unlike appeals or federal habeas petitions, there is no fixed time period in which to seek
21 habeas corpus relief in a non-capital case. Generally, habeas relief must be sought in a "timely
22 fashion." (*In re Sanders* (1999) 21 Cal.4th 697, 703; *In re Robbins* (1998) 18 Cal.4th 770, 777.)
23 To avoid the bar of untimeliness, a petitioner has the burden of establishing either: (1) absence of
24 substantial delay; (2) good cause for the delay; or (3) that his claims fall within an exception to
25 the bar of untimeliness. (*In re Robbins, supra*, 18 Cal.4th at p. 780.) The same is true for
26 successive petitions. (*In re Clark* (1993) 5 Cal.4th 750, 797.) All three exceptions apply here.
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1 Petitioner fully explained and documented that his claims are not procedurally barred. See
2 Petition IV. and V. at pages 18 to 44.

3 Without making any argument or rebutting Petitioner's argument showing that his Petition
4 is not procedurally barred, the People asks that if this court summarily denies the Petition . . . that
5 it do so both on procedural grounds, "with citations to the applicable procedural bars and claims. .
6 ." See page 11, fn 2. Respondent having presented no argument regarding procedural bars,
7 concedes that the Petition is timely. Further, the request to summarily deny the Petition is no
8 longer allowed. The current Rules of Court state that an order denying a petition for writ of
9 habeas corpus must contain a brief statement of the reasons for the denial. CA Rules of Court
10 4.551 (g).
11

12 **REPLY REGARDING SPECIFIC CLAIMS**

13 **CLAIM 1**

14 Claim 1 disputes as to fact include, *inter alia*,

- 15 - whether the gun in evidence is the murder weapon;
- 16 - whether a gun was found in the car at the time of the arrests;
- 17 - what caliber of gun the victim was killed with (Petition Exhibit 1ff, page 3) and Ardaiz
18 (PH Vol. 2 RT 429).
19

20 Respondent purports to make a new 'report' Exhibit A to Response (FCDA Report
21 #78DA000001 – Supplemental – 1 Report' (hereinafter FCDA Report)) regarding the holster and
22 CLETS report. As is typical of the DA's misleading work, this FCDA Report is a false report
23 because it misleads the court by failing to include all relevant data, specifically failing to describe
24 the other etching on the holster which has a 1973 date and officer badge number.¹¹
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28 ¹¹ The 1973 date can be seen in the photos included as Exhibits to the Response – Exhibits A & B.

1 As explained in his Declaration, making a false report is a crime under Penal Code 118.1.
2 See Exhibit 19c¹², Declaration of Roger Clark. The insufficiency in this Report is glaring because
3 it shows that the DA does not want to give the complete facts. This action by the District
4 Attorney's office is also in violation of the Fresno County District Attorney Bureau of
5 Investigation Law Enforcement Code of Ethics and Policy 612 *Brady Material Disclosure*.¹³ CA
6 Penal Code Section 141(c) which makes it unlawful for a prosecuting attorney to manipulate
7 evidence, may also have been violated.
8

9 In the FCDA Report, they apparently concede that according to the serial trace/CLETS
10 report, the gun was a 6 shot. This conflicts with the second trial guilt phase testimony of Alan
11 Boudreau, wherein he testified that the gun in evidence held 7 bullets. (T2 Vol. 1 RT 148). (T2
12 Vol. 1 RT 156). Boudreau's testimony that the gun in evidence held 7 bullets was to establish a
13 critical part of the prosecution's case: that the gun in evidence was the murder weapon. The
14 testimony that the gun could hold 7 bullets provided an accounting for 1) the bullet that allegedly
15 killed the victim, 2) the three bullets remaining in the cartridge and 3) the three casings expended
16 in the Meras attempted murder. This testimony is another example of prosecutorial misconduct.
17

18 The serial number on the gun in court evidence can clearly be seen despite police reports
19 saying the gun hand no serial number. See Exhibit 19c, Declaration of Roger Clark¹⁴. A Request
20 for Examination Report #273, prepared by Det. Lean, dated 2-10-1978, requests that a .25 caliber
21 shell casing from FPD case #75-41415 be compared to the Titan .25 cal auto in the Graybeal
22 case.¹⁵ The defendant in that case was one of Petitioner's brothers, Gary Stankewitz. During the
23 incident that was the subject of case #75-41415, Gary Stankewitz shot FPD officer Mendoza.¹⁶
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26 ¹² See Exhibit 19c, Declaration of Roger Clark at 12, line 8 *et seq*, dated 10-8-21.

27 ¹³ See Exhibit 19d, FCDA Bureau of Investigation Manual at 2 and 385.

28 ¹⁴ See Exhibit 19c, Declaration of Roger Clark, *Supra* at 14, line 11 *et seq*.

¹⁵ See Exhibit 19e, FSO Lean, Request for Evidence Examination Report #273, dated 2-10-78.

¹⁶ See Exhibit 19b attached hereto.

1 On 2-11-1978, Criminalist Boudreau stated that the cartridge case from FPD case #75-41415 was
2 probably not fired from the Titan .25 cal pistol. One possibility is that law enforcement was
3 planning to use the gun from that case, which it still had, as the alleged murder weapon in this
4 case.

5 CLAIM 2

6 Claim 2 disputes as to fact, *inter alia*:

- 7
- 8 - Where the victim was shot;
 - 9 - whether Billy Brown actually witnessed the shooting;
 - 10 - whether the testimony put on regarding the victim's height was an intentional act of
11 deceit.¹⁷

12 CLAIM 3

13 Claim 3: disputes as to fact, *inter alia*:

- 14
- 15 - Whether Marlin Lewis was the actual shooter;
 - 16 - whether the prosecution had knowledge that Lewis was the murderer.

17 Claim 3, disputes as to application of law:

- 18 - dispute as to whether 3 items are presented is new evidence. The Stankewitz interview
19 tape with Detective Snow is exculpatory. Further, trial testimony from Snow did not
20 include the fact that he interviewed Petitioner (and all of the co-defendants) on the
21 night of the murder and that he was the only one who denied that he shot the victim.
22 - Whether Marlin Lewis's statement to Laura Wass is admissible.

24 CLAIM 4

25 Claim 4: disputes as to fact, *inter alia*:

- 26 - whether processing the car was standard practice in Fresno in 1978.

27

28 ¹⁷ The Response states that it was not. However, the prosecution did not provide any declarations to confirm this.

- 1 - what the co-defendants told the officers who interviewed them about the events on the
2 night of the murder.
- 3 - whether the physical evidence was consistent with the prosecution's case.
- 4 - whether DA Ardaiz directed the investigation and manipulated law enforcement to
5 write reports and make findings that supported his plan to mislead the court and
6 convict Petitioner.
- 7
- 8 - Whether the codefendants verbal statements, as transcribed by law enforcement, were
9 accurate or coached, given that the audio tapes of those interviews are missing.
10 Whether those statements were consistent with Billy Brown's version of events.¹⁸

11 Claim 4: disputes as to application of law:

- 12 - The prosecutorial misconduct in the Petition regarding the 1978 trial and 1983 penalty
13 phase documents the prosecutorial misconduct that has pervaded this entire case from
14 the initial investigation until the present. This misconduct has deprived Petitioner of
15 his due process rights.
16

17 **CLAIM 5**

18 Claim 5, Disputes as to application of law, *inter alia*:

- 19 - whether the evidence withheld by the prosecution, undermines confidence in the
20 outcome of the trial, and if produced, would have resulted in a more favorable
21 outcome for Petitioner at trial.
22

23 **CLAIM 6**

24 Claim 6, disputes as to fact, *inter alia*:

- 25 - Whether Billy Brown's testimony was coerced, including whether he was pressured to
26 testify that Petitioner was the shooter.
27

28 ¹⁸ The codefendants's statements were never subject to scrutiny by defense counsel or cross examination because they did not testify at trial.

1 - Whether DDA Robinson committed misconduct regarding whether Billy Brown was
2 available as a witness when he told the court that Billy was in the hospital when he
3 was not.

4 **CLAIM 7**

5 Claim 7, disputes as to application of law,

6 - Whether the prosecution's withholding of the Meras crime reports and related gun
7 reports violated Petitioner's rights under *Brady*.
8

9 **CLAIM 8**

10 Claim 8, disputes as to fact, *inter alia*:

- 11 - Whether Petitioner's temporal lobe damage negated his ability to form the intent to
12 kill.
13 - Whether the prosecution withheld evidence of Petitioner's frontal lobe damage from
14 the defense and the jury.
15

16 **CLAIM 9**

17 Claim 9, dispute as to fact, *inter alia*:

18 - Whether the prosecution withheld evidence pertaining to the finding of special
19 circumstances.

20 Claim 9, dispute as to application of law, whether the failure of the defense to investigate
21 Petitioner's mental defect was below the *Strickland* standard for effective assistance of counsel.
22

23 **CLAIM 10**

24 Claim 10, disputes as to fact, *inter alia*,

25 - whether there is any credible physical evidence which ties Petitioner to the gun in
26 evidence.
27

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1 **CLAIM 11**

2 Claim 11, disputes as to fact:

- 3 - What happened to the DA files for Petitioner, co-defendants, etc.

4 **CLAIM 12**

5 Claim 12, disputes as to application of law:

- 6 - As stated in the Petition, the issue of IAC during the guilt phase regarding failure to
7 investigate Petitioner's innocence have never been raised in any previous proceeding.
8 Petitioner's second trial counsel's performance fell far short of the *Strickland* standard.
9 Had counsel performed the basic tasks of investigation, interviewing witnesses and
10 examining the evidence, he would have likely discovered that the actual shooter was
11 Marlin Lewis.
12
13 - The denial of IAC by Goodwin in Petitioner's 1983 trial was done without an
14 evidentiary hearing. In other words, it was never litigated. In light of the Troy Jones
15 case, which is on all fours compared to Petitioner's case on IAC, where Jones was
16 represented at about the same time as Petitioner and where Goodwin failed to present a
17 defense, was wrongly decided. In the Jones case, Goodwin's IAC failures were
18 detailed in an evidentiary hearing, and the guilt and penalty phases were remanded. In
19 Petitioner's case, if Goodwin had performed the basic duties of a defense lawyer,
20 which he admitted in declarations that he did not, the result would have been more
21 favorable for Petitioner.
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24 **CLAIM 13**

25 Claim 13, disputes as to application of law:

- 26 - Whether the failure of appellate counsel to allege that Petitioner's second trial counsel's
27 performance did not meet the Strickland standard was ineffective assistance of counsel.
28

1 There is no doubt that had Petitioner's appellate or habeas counsel looked at the
2 evidence, at least one of them would have discovered the evidence tampering and
3 prosecutorial misconduct. As has been true with Petitioner's current habeas counsel,
4 proper investigation has brought to light his innocence. It is counsel's responsibility to
5 pursue both a mental defense and investigate the evidence and facts of the case to
6 determine whether the client is innocent. See American Bar Association, Fourth Edition
7 (2017) of the *CRIMINAL JUSTICE STANDARDS* for the *DEFENSE FUNCTION*,
8 *specifically Standard 4-3.7 Prompt and Thorough Actions to Protect the Client*,
9 *specifically subsections (b) & (c)*.¹⁹ This is especially true when the defendant instructs
10 his counsel to do so. Petitioner has the right to the defense of his choosing. *McCoy v.*
11 *Louisiana* (2018) 584 U.S. ____.

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14 **CLAIM 14**

15 Claim 14, disputes as to application of law,

- 16 - Whether current law entitles Petitioner to a review of whether the exclusion of Ms.
17 Moreno, the only known Native American juror, violated Petitioner's right to a jury of
18 his peers.
- 19 - Whether the loss of the juror questionnaires and the failure to provide the district
20 attorney's notes regarding jury selection violates Petitioner's right to an impartial jury.

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23 _____
24 ¹⁹ (b) Defense counsel should promptly seek to obtain and review all information relevant to the criminal matter,
25 including but not limited to requesting materials from the prosecution. Defense counsel should, when relevant, take
prompt steps to ensure that the government's physical evidence is preserved at least until the defense can examine or
evaluate it.

26 (c) Defense counsel should work diligently to develop, in consultation with the client, an investigative and legal
27 defense strategy, including a theory of the case. As the matter progresses, counsel should refine or alter the theory of
the case as necessary, and similarly adjust the investigative or defense strategy.

1 **CLAIM 15**

2 Claim 15, disputes as to fact, inter alia,

- 3 - Whether given all of the factors listed in Claim 15 of the Petition, Petitioner received a
4 fair trial.

5 **CLAIM 17**

6 Claim 17, disputes as to fact, inter alia,

- 7 - Whether Petitioner is innocent of murder.

8 **CLAIM 18**

9 Claim 18, disputes as to application of law,

- 10 - Whether given Petitioner's innocence, the court should make an expedited
11 determination of his innocence and he should be released now.

12 **CLAIM 19**

13 Claim 19, disputes as to fact, inter alia,

- 14 - Whether cumulative error has occurred.

15 Claim 19, disputes as to application of law,

- 16 - Whether due to cumulative error, Petitioner's convictions and sentence should be
17 vacated.

18 **REQUEST TO TRANSFER THIS CASE TO ANOTHER COUNTY**

19 Petitioner requests a new venue and recusal of the Fresno District Attorney.

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Petitioner cannot get a fair hearing on these issues in Fresno due to the conflict of interest on the part of the district attorney's office, in that for them to candidly address the issues raised by defense counsel they are given two choices: take unreasonable positions or concede egregious misconduct on the part of many investigators and prosecutors over the span of this case.

1 The District Attorney's office should also be recused on the basis they are witnesses in
2 this case because much of Petitioner's arguments relate to evidence tampering and *Brady*
3 violations. Declaration of Roger Clark²⁰. As documented in Petition Claims 1 - 11, it and the other
4 Fresno agencies committed extensive misconduct over 43 years. There is much that needs to be
5 explained, including but not limited to, how the shell casings in FSO were tampered with, how
6 witnesses were manipulated to give false testimony, how the gun was planted, what happened to
7 the over 50 items of evidence that are missing and discovery violations as recent as 2019. Further,
8 several deputy DAs were assigned to Petitioner's case in the years 2012 – 2019. Several of them
9 are now Fresno Superior Court judges or commissioners and should therefore be ineligible to hear
10 Petitioner's case: Noelle Pebet²¹, Lisa Gamoian²² and William Terrence²³.

11 **Unfair Superior Court actions and rulings**

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13 “[J]udges, individually and collectively, must respect and honor the judicial office as a public trust
14 and strive to enhance and maintain confidence in our legal system.” – *Preamble, California Code*
15 *of Judicial Ethics*

16 This Court has demonstrated repeatedly since it was assigned Petitioner's criminal case in
17 2010, that it will not be fair in its treatment of Petitioner²⁴. The Court has been openly hostile to
18 Petitioner, demonstrated in part by summarily denying motions filed and failing to give Petitioner
19 due process in his underlying criminal case. *See Exhibit 19f, Table of Motions and Rulings in*
20 *People v. Stankewitz, Fresno Superior Court Case No. CF78227015*. The court's actions in this
21 habeas proceeding have also been manifestly unfair to Petitioner and deprived him of his due
22 process rights. *See Exhibit 19g, Chart of Motions and Rulings in In Re Stankewitz, Fresno*
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25 ²⁰ See Exhibit 19c, Declaration of Roger Clark, Supra at 12, line 8 *et seq* and 14, line 1 *et seq*.

26 ²¹ Hon. Noelle E. Pebet is a commissioner for the Fresno County Superior Court in California.

27 ²² Hon. Lisa Gamoian is a judge for the Superior Court of Fresno County, California.

28 ²³ Hon. William Terrence is a judge for the Fresno County, California Superior Court.

²⁴ At one point prior to undersigned counsel's representation of Petitioner, he repeatedly told the judge to “Suck my
d***.” Undersigned counsel has observed considerable tension in the courtroom, and this served as a basis for an
unsuccessful CCP 170.1 challenge on the court in 2018.

1 *Superior Court Case No. 21CRWR685993*. Further, although the court rules and case law support
2 such a ruling, the court ruled that the habeas proceeding has not yet commenced. *See Order*
3 *Denying Petitioner's Motion For Conditional Examination To Preserve Evidence*, entered 8/9/21.
4 Until the habeas proceeding has begun, Petitioner is not entitled to appointed counsel. Given that
5 his current counsel is working *pro bono*, and without appointed counsel, there are no state paid funds
6 for experts or investigators, this is a denial of Petitioner's due process rights. Therefore, Petitioner
7 does not believe that he can get a fair hearing in the Fresno Superior Court, nor fair treatment by
8 the Fresno District Attorney's office. Further, the weight and influence of the original prosecutor,
9 James Ardaiz, makes fair consideration in Fresno impossible.

11 **ADDITIONAL POINTS AND AUTHORITIES**

12 To the Amended Petition, paragraph G. @207, **Brady/Prosecutorial Misconduct**,
13 Petitioner adds the following:

14 Police Officers must disclose material, exculpatory evidence.

15
16 In *Carrillo v. County of Los Angeles*, we concluded that "[t]he law in 1984 clearly
17 established that police officers were bound to disclose material, exculpatory evidence." 798 F.3d
18 1210, 1219 (9th Cir. 2015). *Carrillo* cited approvingly *United States v. Butler*, 567 F.2d 885 (9th
19 Cir. 1978) (*per curiam*), an even earlier case that concluded that police investigators violate Brady
20 when they fail to disclose material impeachment evidence to prosecutors. *Carrillo*, 798 F.3d at
21 1220 (citing *Butler*, 567 F.2d at 891); see also *id.* at 1222 ("[T]he vast majority of circuits to have
22 considered the question have adopted the view that police officers were bound by Brady."). In
23 *Butler*, we observed that "[s]ince the investigative officers are part of the prosecution, the taint on
24 the trial is no less if they, rather than the prosecutor, were guilty of nondisclosure." 567 F.2d at
25 891.
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1 There, the impeachment evidence was the officers' assurances to the witness that he
2 would be treated favorably by the judge if he testified successfully in the criminal trial— evidence
3 that could have been used to undermine the credibility of the witness's testimony. Carrillo also
4 relied on Kyles, the case where the Supreme Court expressly extended Brady obligations to police
5 officers. Carrillo, 798 F.3d at 1221 (quoting Kyles, 514 U.S. at 438). Kyles, decided in 1995,
6 involved police officers' suppression of prior inconsistent statements that defense counsel could
7 have used to impeach key eyewitnesses in a homicide trial. 514 U.S. at 441–54. We noted in
8 Carrillo that “Kyles itself rejected the state’s argument that ‘it should not be held accountable
9 under Bagley and Brady for evidence known only to police investigators and not to the
10 prosecutor.’” 798 F.3d at 1221 (quoting Kyles, 514 U.S. at 438). *Mellen v. Winn*, (Case No. 17-
11 55116 9th Cir 2018)

12 Failure to properly preserve exculpatory or potentially exculpatory evidence violates due process

13 *People v. Fultz* (Case #C088566 CA COA Third District - -- Cal. Rptr. 3d ---- (2021), [citing
14 *Trombetta* and *Youngblood*]

15 **Petitioner adds the following applicable legal authority:**

16 Use of coerced testimony violates due process

17 *People v. Medina*, 41 Cal.App.3d 438 (Cal. Ct. App. 1974) Where witness was coerced to testify
18 as to particular facts.

19 False report by peace officer:

20 Penal Code Section 118.1: Every peace officer who files any report with the agency which
21 employs him or her regarding the commission of any crime or any investigation of any crime, if
22 he or she knowingly and intentionally makes any statement regarding any material matter in the
23 report which the officer knows to be false, whether or not the statement is certified or otherwise
24 expressly reported as true, is guilty of filing a false report punishable by imprisonment in the
25 county jail for up to one year, or in the state prison for one, two, or three years. This section shall
26 not apply to the contents of any statement which the peace officer attributes in the report to any
27 other person. (*Amended by Stats. 1992, Ch. 427, Sec. 124. Effective January 1, 1993.*)

28 //

1 Manipulation of evidence by prosecuting attorney

2 Penal Code Section 141(c): A prosecuting attorney who intentionally and in bad faith alters,
3 modifies, or withholds any physical matter, digital image, video recording, or relevant exculpatory
4 material or information, knowing that it is relevant and material to the outcome of the case, with
5 the specific intent that the physical matter, digital image, video recording, or relevant exculpatory
6 material or information will be concealed or destroyed, or fraudulently represented as the original
7 evidence upon a trial, proceeding, or inquiry, is guilty of a felony punishable by imprisonment
8 pursuant to subdivision (h) of Section 1170 for 16 months, or two or three years. (Amended by
9 Stats. 2016, Ch. 879, Sec. 1. (AB 1909) Effective January 1, 2017.)

8 **CONCLUSION**

9 In addition to the court *sua sponte* granting Respondent an additional 30 days to respond
10 beyond that provided for in Cal. Rules of Court 4.551(b)(2), Respondent sought and received
11 additional time of 45 days to respond to Petitioner's writ. Despite being given 90 days to respond,
12 Respondent failed to directly address Petitioner's allegations or rebut the documentation contained
13 in the Exhibits. Nonetheless, Respondent concludes by saying only that there has been no new
14 evidence. Respondent fails to explain why Petitioner's writ should be denied or why this Court
15 should fail to grant Petitioner the relief he seeks.
16

17 Petitioner asks this court to:

- 18 1. Transfer this case to another county;
- 19 2. Grant an evidentiary hearing; and/or
- 20 3. Issue an order to show cause to Respondent.
- 21 4. In the interest of justice, dismiss the case.

22 Respectfully submitted,

23
24 J. TONY SERRA
25 CURTIS L. BRIGGS
26 Attorneys for Petitioner
27 DOUGLAS RAY STANKEWITZ

28 
By Curtis L. Briggs

PROOF OF SERVICE

The undersigned declares:

I am a citizen of the United States. My business address is P. O. Box 7225, Cotati, CA 94931. I am over the age of eighteen years and not a party to the within action.

On the date set forth below, I caused a true copy of the within
PETITIONER'S REPLY TO INFORMAL RESPONSE

to be served on the following parties in the following manner:

Mail Overnight mail Personal service Fax

Office of District Attorney
2220 Tulare Street, Suite 1000
Fresno, CA 93721

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration is executed on October 12, 2021, at Sebastopol, California.


ALEXANDRA COCK