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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 IN AND FOR THE COUNTY OF FRESNO

11 DOUGLAS R. STANKEWITZ,

12 Petitioner,

13 On Habeas Corpus.

Case No. 21CRWR685993

SUPPLEMENTAL FILING TO
EMERGENCY PETITION FOR WRIT
OF HABEAS CORPUS

Related Appeal Pending – LWOP
SENTENCE
NO. F079560

(Fresno Superior Court Case
#CF78227015)

14 TO THE SUPERIOR COURT FOR THE COUNTY OF FRESNO AND TO THE DISTRICT
15 ATTORNEY FOR THE COUNTY OF FRESNO:

16 YOU WILL PLEASE TAKE NOTICE that Defendant DOUGLAS R. STANKEWITZ,
17 through counsel, hereby submits this Supplemental Filing of recent cases and CDCR COVID
18 update.

19 Dated: January 10, 2021

Respectfully Submitted,

J. TONY SERRA
CURTIS BRIGGS

Attorneys for Defendant
DOUGLAS RAY STANKEWITZ

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By CURTIS L. BRIGGS

1 **Petitioner hereby submits the following additional case law:**

2 **Memo of Points and Authorities**

3 Section B. Burdens of Proof:

4 *People v. Lewis, Case# S260598 (7/26/2021, CA SC, slip op).* In reviewing a Penal Code
5 Section 1170.95 resentencing petition, it stated "Like the analogous prima facie inquiry in habeas
6 corpus proceedings, 'the court takes petitioner's factual allegations as true and makes a
7 preliminary assessment regarding whether the petitioner would be entitled to relief if his or her
8 factual allegations were proved. If so, the court must issue an order to show cause.'" (*Drayton,*
9 *supra*, 47 Cal.App.5th at p. 978, quoting Cal. Rules of Court, rule 4.551(c)(1)). "[A] court should
10 not reject the petitioner's factual allegations on credibility grounds without first conducting an
11 evidentiary hearing." (*Ibid.*, fn. omitted, citing *In re Serrano* (1995) 10 Cal.4th 447, 456
12 (*Serrano*)). "However, if the record, including the court's own documents, 'contain[s] facts
13 refuting the allegations made in the petition,' then 'the court is justified in making a credibility
14 determination adverse to the petitioner.'" (*Drayton*, at p. 979, quoting *Serrano*, at p. 456.)" @23 –
15 24. In other words, on habeas, a court must not do fact finding but instead take petitioner's factual
16 allegations as true and make a preliminary assessment regarding whether the petitioner would be
17 entitled to relief if his or her factual allegations were proved.

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21 Accord, *People v. Murillo*, Case #G059845 (10/25/2021) CA4th Div 3, citing *People v*
22 *Lewis*, *supra* @6

23 Accord, *People v. Harrison*, Case #A159115 (12/30/2021) CA1st Div 4, citing *People v*
24 *Lewis*, *supra*, @11

25 Section E. IAC – Prosecutorial Misconduct: *People v Velasco-Palacios*, CA 5th District,
26 2015, outrageous government misconduct interferes with right to counsel.

27 Section I. False Evidence:

1 *Devereaux v. Abbey*, 263 F.3d 1070, 1074-75 (9th Cir. 2001) held that "[T]here is a clearly
2 established constitutional due process right not to be subjected to criminal charges on the basis of
3 false evidence that was deliberately fabricated by the government."

4 *Dennis v Pennsylvania*, CA 3rd Cir. Decided 11/23/2021 slip op @ 18. Detectives withheld
5 exculpatory and impeachment evidence that would have supported his alibi and defense, but that
6 they also failed to correct testimony they knew was false and concealed from the defense the
7 evidence that revealed that trial testimony as false. "The right not to be convicted on perjured
8 testimony used by prosecutors at trial has been clearly established by the Supreme Court
9 since at least 1935 in *Mooney v. Holohan*, 294 US 103. Seven years later, in *Pyle v.*
10 *Kansas*, 317 U.S. 213, 216 (1942), the Court extended this right by recognizing as a due
11 process violation the conviction of a defendant through perjured testimony and the
12 deliberate suppression of evidence favorable to the accused."

13 Accord, *Brown v City of Ontario*, US Dist LEXIS-172559 (USDC, Central District CA
14 4/5/2021) "... the Ninth Circuit has emphatically held that "there is a clearly established
15 constitutional due process right not to be subjected to criminal charges on the basis of false
16 evidence that was deliberately fabricated by the government." *Devereaux*, 263 F.3d at 1074-75.
17 Although the facts may not be identical, the Ninth Circuit and other circuits have found it
18 "virtually self-evident" that officials have fair warning that deliberately fabricating evidence is a
19 violation of Due Process. *Id.* at 1075; see also *Halsey v. Pfeiffer*, 750 F.3d 273, 293 (3d Cir. 2014)
20 ("[W]e think it self-evident that a police officer's fabrication and forwarding to prosecutors of
21 known false evidence works an unacceptable corruption of the truth-seeking function of the trial
22 process.") (citation and internal quotation marks omitted); *Whitlock v. Brueggemann*, 682 F.3d
23 567, 585-86 (7th Cir. 2012) ("[A]ll courts that have directly confronted the question before us
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1 agree that the deliberate manufacture of false evidence contravenes the Due Process Clause." @
2 32-33.

3 Accord, *Lanuza v Love* 899 F3d 1019 (9th Cir. 2018), "The Supreme Court has long
4 recognized that "[t]he principle that a State may not knowingly use false evidence ... to obtain a
5 tainted conviction [is] implicit in any concept of ordered liberty," and a violation of due process.
6 *Napue v. Illinois* , 360 U.S. 264, 269, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959) ; see also *Pyle v.*
7 *Kansas* , 317 U.S. 213, 215-16, 63 S.Ct. 177, 87 L.Ed. 214 (1942) ; *Mooney v. Holohan* , 294 U.S.
8 103, 110, 112-13, 55 S.Ct. 340, 79 L.Ed. 791 (1935) (per curiam)." @ 1025.

10 *People v Turner*, Case #A15982 (CA1 Div 3 12/23/2021) A new trial was ordered where
11 the jury was influenced improperly by evidence of a second crime committed by the defendant
12 that was presented at trial. This influence was such that even though the cases were severed
13 during the trial, the court ordered a new trial.

14 **Petitioner hereby submits the following CDCR COVID update dated 1-7-2022, as Exhibit 21**
15 **hereto (also available at: <https://www.cdcr.ca.gov/covid19/covid-19-updates/> :**

16 Due to the recent surge in omicron COVID cases, CDCR has placed all prisons on Modified
17 Program, including, *inter alia*, suspending non-emergency medical and dental care, yard and
18 visiting. Due to his incarceration, Petitioner's health continues to be put at high risk.

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PROOF OF SERVICE

The undersigned declares:

I am a citizen of the United States. My business address is P. O. Box 7225, Cotati, California 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

SUPPLEMENTAL FILING TO EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS

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

Mail X Overnight mail Personal service Fax

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

Courtesy copy sent via email to: afreeman@fresnocountyda.gov

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration is executed on January 10, 2021, at Sebastopol, California.


Alexandra Cock