

OFFICE OF THE FEDERAL DEFENDER
EASTERN DISTRICT OF CALIFORNIA
801 I STREET, 3rd FLOOR
SACRAMENTO, CALIFORNIA 95814
(916) 498-6666 Fax: (916) 498-6656

Daniel J. Broderick
Acting Federal Defender

Linda Harter
Chief Assistant Defender

June 22, 2010

Fresno Police Department
Attn: Records
2323 Mariposa Mall
Fresno, CA 93721

COPY

Re: **Douglas Stankewitz aka Doug Stankewitz**
DOB: 05/31/1958
SSN#: 565-13-2829

Dear Sir/Madam:

I hereby request a copy of any and all records pertaining to the above-referenced individual. In the late 1970s, Mr. Stankewitz was convicted of a capital murder case in Fresno County. Please search your records from 1970 through 2010. This request is made pursuant *Brady v. Maryland*, 373 U.S. 83 (1963), and to the California Public Records Act, Government Code sections 6250 et seq. This request includes, **but is not limited to**, booking, custody, movement, and visitation, forensic tests/reports, photographs, blood samples/tests, law enforcement reports, fingerprint analysis, gunshot residue testing, etc. It also includes any and all medical records; I have enclosed a HIPAA compliant authorization for release of medical records. **Essentially we would like any and all records that you have in your possession relating to the above referenced individual.**

Section 6256 of the Government Code requires that your written response to this request be made within ten days. I am open to any reasonable arrangement for copying of necessary portions of the files. My office will pay reasonable copying costs, so long as you provide an invoice in advance so that we may obtain prior approval for the expenditure. Please contact me at (916) 498-6666 concerning arrangements for the copying of these files.

If there are any records that you propose to withhold from inspection and copying, please send me a list identifying the nature of the records, the number of pages or documents, and the reason for withholding, including your legal authority for withholding it. (See Gov. Code., § 6255).

Pursuant to section 6257, if you believe that a reasonably segregable portion of a particular record is exempt from disclosure, please provide the remainder of the particular record and a description of the withheld portion and the reason for withholding including your legal authority for withholding it.

Please note, my client was arrested and sentenced in Fresno County for a murder that occurred in the late 1970s. **I would like copies of any and all records you have in your possession relating to this arrest or any other arrests not listed in this letter.**

OFFICE OF THE FEDERAL DEFENDER
EASTERN DISTRICT OF CALIFORNIA
801 I STREET, 3rd FLOOR
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(916) 498-6666 Fax: (916) 498-6656

Daniel J. Broderick
Acting Federal Defender

COPY

Linda Hart,
Chief Assistant Defender

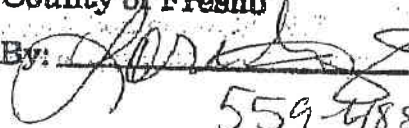
June 22, 2010

Fresno County Sheriff's Department
Attn: Records
2200 Fresno Street
Fresno, CA 93721

Release by Subpoena
only

Re: Douglas Stankewitz aka Doug Stankewitz
DOB: 05/31/1958
SSN#: 565-13-2829

Margaret Mims
Sheriff
County of Fresno

By:  JUN 29 2
559-488-3993

Dear Sir/Madam:

I hereby request a copy of any and all records pertaining to the above-referenced individual. In the late 1970s, Mr. Stankewitz was convicted of a capital murder case in Fresno County. Please search your records from 1970 through present. This request is made pursuant *Brady v. Maryland*, 373 U.S. 83 (1963), and to the California Public Records Act, Government Code sections 6250 et seq. This request includes, **but is not limited to**, booking, custody, movement, and visitation, forensic tests/reports, photographs, blood samples/tests, law enforcement reports, fingerprint analysis, gunshot residue testing, etc. It also includes any and all medical records; I have enclosed a HIPAA compliant authorization for release of medical records. **Essentially we would like any and all records that you have in your possession relating to the above referenced individual.**

Section 6256 of the Government Code requires that your written response to this request be made within ten days. I am open to any reasonable arrangement for copying of necessary portions of the files. My office will pay reasonable copying costs, so long as you provide an invoice in advance so that we may obtain prior approval for the expenditure. Please contact me at (916) 498-6666 concerning arrangements for the copying of these files.

If there are any records that you propose to withhold from inspection and copying, please send me a list identifying the nature of the records, the number of pages or documents, and the reason for withholding, including your legal authority for withholding it. (See Gov. Code., § 6255).

Pursuant to section 6257, if you believe that a reasonably segregable portion of a particular record is exempt from disclosure, please provide the remainder of the particular record and a description of the withheld portion and the reason for withholding including your legal authority for withholding it.

Please note, my client was arrested and sentenced in Fresno County for a murder that occurred in the late 1970s. **I would like copies of any and all records you have in your possession relating to this arrest or any other arrests not listed in this letter.**



County of Fresno

ELIZABETH A. EGAN
District Attorney

July 2, 2010

Sheree Cruz-Laucirica
Office of the Federal Defender
801 I Street, 3rd Floor
Sacramento, California 95814

COPY

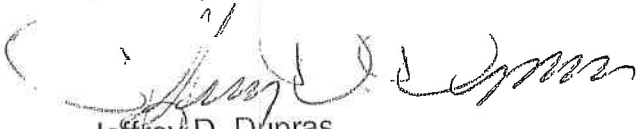
Re.: Douglas Stankewitz (aka Doug Stankewitz)
DOB: 05/31/1958
SSN#: 565-13-2829

Ms. Cruz-Laucirica,

On June 24, 2010 my office received your letter dated June 22, 2010. Pursuant to Government Code section 6254(f) and *Rivero v. Superior Court*, (1997) 54 Cal.App.4th 1048, no records or materials will be sent to you pursuant to Government Code section 6250 et seq., the California Public Records Act.

Also, no records or material will be sent to you based upon your request pursuant to *Brady v. Maryland*, (1963) 373 U.S. 83.

Sincerely,


Jeffrey D. Dupras
Deputy District Attorney

2220 Tulare Street / Suite 1000 / 10th Floor / Fresno, California 93721 / (559) 488-3141 / Fax (559) 488-2800
Equal Employment Opportunity • Affirmative Action • Disabled Employer

1 DANIEL J. BRODERICK, Bar #89424
Federal Public Defender
2 HARRY SIMON, Bar #133112
Assistant Federal Public Defender
3 801 I Street, 3rd Floor
Sacramento, California 95814
4 Telephone: (916) 498-6666

5 Attorneys for Petitioner
DOUGLAS RAYMOND STANKEWITZ
6
7

FILED

AUG 31 2011

FRESNO COUNTY SUPERIOR COURT

By _____ MMD - DEPUTY

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

10 PEOPLE OF THE STATE OF CALIFORNIA,)

11 Plaintiff,)

12 v.)

13 DOUGLAS RAYMOND STANKEWITZ,)

14 Defendant.)
15
16

CASE NO. 227015-5

**NOTICE OF MOTION FOR POST-
CONVICTION DISCOVERY UNDER PENAL
CODE § 1054.9; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
THEREOF**

17 TO THE PEOPLE OF THE STATE OF CALIFORNIA AND ITS ATTORNEYS HEREIN:

18 NOTICE IS HEREBY GIVEN that at a time, date and location to be set by the Fresno County
19 Superior Court, defendant Douglas Raymond Stankewitz will, and hereby does, move for discovery of
20 materials within the possession of the Fresno County District Attorney and law enforcement authorities
21 pursuant to Penal Code § 1054.9. Defendant makes this motion on the grounds that: (1) his counsel are
22 currently pursuing post-conviction remedies on his behalf in a case in which he suffered a sentence of
23 death, (2) his attorneys made good faith efforts to obtain discovery materials from his trial counsel and
24 were unsuccessful, and (3) all of the discovery materials defendant seeks to obtain are materials that this
25 Court ordered the prosecution to provide to defendant's trial counsel.
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27
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1 This motion is based on this notice of motion, the memorandum of points and authorities and
2 exhibits filed contemporaneously herewith, the file in this action, and any argument and evidence that may
3 be heard on this motion.
4

5 Dated: August 23, 2011

Respectfully submitted,

6 DANIEL J. BRODERICK
7 Federal Public Defender

8 By: 
9 HARRY SIMON
Assistant Federal Public Defender

10 Attorneys for Petitioner
11 DOUGLAS RAYMOND STANKEWITZ
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MEMORANDUM OF POINTS AND AUTHORITIES

FILED

AUG 24 2011

FRESNO COUNTY SUPERIOR COURT

By _____ DEPUTY

I. INTRODUCTION

Through this motion, defendant Douglas Ray Stankewitz seeks to reconstruct discovery pursuant to this Court's orders that was obtained from the prosecution by trial counsel Salvatore Sciandra and Hugh Goodwin. Defendant's current federal habeas counsel, the Office of the Federal Defender for the Eastern District of California (OFD) was appointed more than twenty five years after the retrial of defendant on capital charges. The files OFD inherited from previous post-conviction counsel contain missing discovery and discovery that is too jumbled to be comprehensible. Despite his best efforts, Assistant Federal Defender Harry Simon lacks the means to ascertain what discovery is missing from defendant's files due to the passage of time and multiple reassignments of appellate and habeas counsel. Pursuant to Barnett v. Superior Court, 50 Cal.4th 890 (2010), defendant is entitled to discovery under Penal Code § 1054.9 to fully reconstruct this discovery.

II. STATEMENT OF FACTS

On February 14, 1978, a criminal complaint was filed in this action charging defendant Douglas Raymond Stankewitz with the first degree murder of Theresa Graybeal. On April 3, 1978, defendant's trial counsel, Salvatore Sciandra filed a motion for discovery, which is attached hereto as Exhibit A. In that motion, Sciandra requested, among other items: (1) all statements made by defendant or witnesses who have information relevant to the prosecution or defense of petitioner's case; (2) all notes and reports made by law enforcement or members of the prosecution team in connection with the crimes charged against defendant; (3) all tape recordings, and all transcripts of tape recordings made of interviews with witnesses in the case; (4) written evidence of all promises made and consideration given to prosecution witnesses in the case; (5) results of all lab tests in the case together with any written reports that discuss such tests; (6) photos taken of fingerprints in the case, of defendant, of the crime scene, the victim, or anything else relating to the case; (7) photos exhibited to witnesses for purposes of identification; and (8) criminal records for all of petitioner's co-defendants. Exhibit A, Motion for Discovery, at CT 27-29. During a hearing held in this case on April 24, 1978, the Court granted this motion. Exhibit B, Reporter's Transcript of Discovery Motion, at RT 76-77.

1 Following a jury trial on the charges alleged in the complaint, defendant was convicted of one
2 count of first degree murder and sentenced to death in this action on October 12, 1978. On August 5,
3 1982, the California Supreme Court reversed defendant's conviction and death sentence. *People v.*
4 *Stankewitz*, 32 Cal.3d 80 (1982). Defendant was retried in this Court, and again convicted and sentenced
5 to death on November 18, 1983. The California Supreme Court appointed Robert Seligson as defendant's
6 appellate counsel in connection with this second appeal on February 8, 1984, and appointed John Ward as
7 associate counsel on June 24, 1987. Exhibit C, Docket of Proceedings in *People v. Stankewitz*, California
8 Supreme Court Case No. S004602.

9 On February 22, 1990, defendant's counsel filed a capital habeas petition with the California
10 Supreme Court on defendant's behalf. Exhibit D, Docket of Proceedings in *In Re Stankewitz*, California
11 Supreme Court Case No. S014015. On April 19, 1990, the California Supreme Court summarily denied
12 that petition. On July 5, 1990, the California Supreme Court affirmed Mr. Stankewitz's conviction and
13 death sentence on retrial. *People v. Stankewitz*, 51 Cal.3d 72 (1990).

14 On May 11, 1992, the United States District Court for the Eastern District of California appointed
15 Robert Bryan and Patience Milrod as counsel for Mr. Stankewitz in federal habeas proceedings arising
16 from his conviction and death sentence by this Court. Exhibit E, Docket of Proceedings in *Stankewitz v.*
17 *Brown*, Case No 1:91-cv-00616-AWI. On October 17, 1994, defendant's counsel filed a federal habeas
18 petition on Mr. Stankewitz's behalf. *Id.* Counsel filed an amended federal petition on May 20, 1996. *Id.*

19 Since the appointment of initial federal habeas counsel, defendant has undergone several changes
20 of counsel in federal and state court. In the California Supreme Court, Robert Seligson was relieved as
21 counsel and Robert Bryan and Nicolas Argimbau were appointed to replace him. Exhibit C. However,
22 counsel have filed no pleadings in the California Supreme Court since March 14, 1996, when the
23 California Supreme Court denied a second habeas petition filed by Mr. Bryan. Exhibit F, Docket of
24 Proceedings in *In Re Stankewitz*, California Supreme Court Case No. S047659.

25 The federal court first replaced Patience Milrod with Nicolas Argimbau; then relieved Mr. Bryan;
26 then appointed Katherine Hart as co-counsel with Mr. Argimbau; and then relieved Ms. Hart and Ms.
27 Argimbau. Exhibit E. Finally, on December 18, 2007, the federal court appointed the Office of the
28 Federal Defender as counsel for Mr. Stankewitz. *Id.*

1 In 2004, trial counsel Hugh Goodwin died. Exhibit H. In 2006, pursuant to a discovery order of
2 the federal court, defendant's federal habeas counsel Katherine Hart provided a copy of trial counsel's files
3 to the California Attorney General's Office. Exhibit E. On May 22, 2008, by agreement of the parties,
4 trial counsel's files were made part of the record in petitioner's federal habeas proceedings. *Id.*¹

5 Shortly after his appointment as defendant's habeas counsel, Assistant Federal Defender Harry
6 Simon contacted defendant's counsel from his original capital trial, Salvatore Sciandra. Exhibit J,
7 Declaration of Harry Simon, ¶ 8. Mr. Sciandra informed Mr. Simon that after he represented Mr.
8 Stankewitz, Sciandra left the Fresno County Public Defender's Office and that any files he had on the case
9 would have been left with that office. *Id.* at ¶ 8. Mr. Simon then contacted the Fresno County Public
10 Defender's Office. *Id.* at ¶ 9. Staff at that office informed Mr. Simon that they had none of the files from
11 Mr. Stankewitz's capital case. *Id.* at ¶ 9.

12 When the Federal Defender's Office was assigned to represent defendant, more than twenty-five
13 years after his retrial, it was not possible to ascertain what materials the prosecution provided to Mr.
14 Sciandra and Mr. Goodwin at the time of defendant's trial and retrial. Mr. Simon has thoroughly reviewed
15 trial counsel's files, which are part of the record in defendant's federal habeas proceedings. *Id.* at ¶ 5.
16 These files do not contain any index or log of the discovery materials obtained from the prosecution in this
17 action. *Id.* Mr. Simon sent a written request to the Fresno County District Attorney's Office for a log or
18 index of these materials, but the District Attorney's Office has not yet responded to that request. *Id.* at ¶ 6.

19 The discovery contained in trial counsel's files is unnumbered. *Id.* at ¶ 7. Trial counsel's files
20 contained what appear to be verbatim transcripts of interviews from defendant's alleged co-perpetrators:
21 Christine Menchaca, Teena Topping, Marlin Lewis and Billy Brown. *Id.* However, these transcripts are
22 jumbled: numerous pages are upside down, pages from transcripts of one witness are interspersed with
23 pages of others, and most pages lack information identifying the witness who is being interviewed. *Id.* In
24 addition, the photographs requested in the April 24, 1978 discovery motion are entirely missing. *Id.*

25 Because of these factors, a careful review of trial counsel's files discloses that the prosecutorial
26 discovery sought through this motion is either: (1) entirely missing from the files, (2) in such a jumbled
27 order that it is impossible to discern how the original document read, or (2) it is impossible to determine

28

¹These files are subject to a protective order, issued by the United States District Court on June 9, 2008, preventing their disclosure to law enforcement agencies and their use in this action. Exhibit I, Stipulated Protective Order in *Stankewitz v. Ayers*, United District Court Case No 1:91-cv-00616-AWI.

1 whether the materials provided by the prosecution that would be responsive to these requests represented
2 all documents that the prosecution possessed. As discussed below, each of these requests asks for
3 documents that this Court ordered the prosecution to provide to Mr. Stankewitz's counsel at the time of
4 trial. Accordingly, under Penal Code § 1054.9, this Court should order the prosecution to provide all
5 documents within the possession of the prosecution and law enforcement authorities that are responsive to
6 this motion.

7 **II. MATERIALS REQUESTED**

8 Through this motion, defendant seeks discovery of the following materials, to the extent that they
9 are in the possession of the Fresno District Attorney's Office, the Fresno Police Department, and any other
10 law enforcement agencies that provided assistance or information to the Fresno District Attorney's Office
11 in their prosecution of this case.

12 **Request No 1:** Complete and separate verbatim transcripts of the interviews of Christine Menchaca,
13 Teena Topping, Marlin Lewis and Billy Brown, with pages that reflect the order in which each interview
14 was conducted.

15 **Request No. 2:** Any numbered discovery provided to Salvatore Sciandra or Hugh Goodwin during the
16 course of their litigation of defendant's trial and retrial

17 **Request No. 3:** "All oral and written statements and/or admissions allegedly made by defendant, whether
18 signed or unsigned", as requested in Request No. 1 of the discovery request filed in this action on April 5,
19 1978. Exhibit A (CT 27).

20 **Request No. 4:** "All written statements, signed or unsigned, of persons known to the People who claim to
21 be witnesses to any transaction or event constituting part of, or which the People contend proves or tends
22 to prove, any element of the crime charged against defendants in the above-entitled action, or of persons
23 who have, or claim to have, any information relevant to the prosecution or defense of this case", as
24 requested in Request No. 2 of the discovery request filed in this action on April 5, 1978. Exhibit A (CT
25 27).

26 **Request No. 5:** "All notes or memoranda, handwritten or typed, and all reports known by the District
27 Attorney, his agents and employees, as made by any law enforcement officer or special agent or
28 investigator of the People, including reports of any investigator employed by the District Attorney's

1 Office, in connection with the crime charged against defendants in the above-entitled action, and/or any
2 other alleged crime or event which the People contend proves or tends to prove any element of the crime
3 charged herein, whether or not incorporated in any official report", as requested in Request No. 3 of the
4 discovery request filed in this action on April 5, 1978. Exhibit A (CT 27).

5 **Request No. 6:** "All transcripts made of tape recordings made of any persons know to the People who
6 claim to be witnesses to any transaction or event constituting part of, or which the People contend proves
7 or tends to prove any element of the crime charged against defendant in the above-entitled action", as
8 requested in Request No. 4 of the discovery request filed in this action on April 5, 1978. Exhibit A (CT
9 27).

10 **Request No. 7:** "One copy of all tape recordings made of statements or conversations of his co-defendants
11 or witnesses in the possession of, or subject to the control of, the People which relate to any crime charged
12 against the defendant herein", as requested in Request No. 6 of the discovery request filed in this action on
13 April 5, 1978. Exhibit A (CT 28).

14 **Request No. 8:** "One copy of all tape recordings, not specifically referred to in this particular motion,
15 which is or are in the possession of, or subject to the control of, the People which relate to the crime
16 charged against the defendants herein", as requested in Request No. 7 of the discovery request filed in this
17 action on April 5, 1978. Exhibit A (CT 28).

18 **Request No. 9:** "Copies of all promises made, and descriptions of considerations given to witnesses or
19 other persons, or matters implied to be given witnesses or their friends, relatives, or designates for
20 cooperation and/or testimony in this case", as requested in Request No. 8 of the discovery request filed in
21 this action on April 5, 1978. Exhibit A (CT 28).

22 **Request No. 10:** "Results of any and all laboratory tests conducted by the People and/or any other
23 governmental agents, concerning any examination, physical, photographic, written or other evidence
24 connected with the investigation of the above-entitled case, together with any or all written reports
25 concerning said evidence", as requested in Request No. 10 of the discovery request filed in this action on
26 April 5, 1978. Exhibit A (CT 28).

1 **Request No. 11:** "Photographs of latent fingerprints discovered and/or lifted at the scene; latent
2 fingerprints found at the scene of the crime; and any written reports of comparisons made", as requested in
3 Request No. 11 of the discovery request filed in this action on April 5, 1978. Exhibit A (CT 28-29).

4 **Request No. 12:** "Any and all photographs of the defendant, or any portion of his body, connected with
5 this alleged offense", as requested in Request No. 12 of the discovery request filed in this action on April
6 5, 1978. Exhibit A (CT 29).

7 **Request No. 13:** "Any and all photographs taken of the scene of the crime and/or the victims of the
8 crime, or otherwise relating to this case", as requested in Request No. 13 of the discovery request filed in
9 this action on April 5, 1978. Exhibit A (CT 29).

10 **Request No. 14:** "Photographs that have been exhibited to the victim for the purposes of establishing the
11 identity if the perpetrator of the crime", as requested in Request No. 14 of the discovery request filed in
12 this action on April 5, 1978. Exhibit A (CT 29).

13 **Request No. 15:** "Records of arrests and following convictions of the co-defendants", as requested in
14 Request No. 15 of the discovery request filed in this action on April 5, 1978. Exhibit A (CT 29).

15 **III. ARGUMENT**

16 This motion meets each of the requirements for post-conviction discovery under Penal Code §
17 1054.9. That statute requires issuance of discovery orders upon a showing that: (1) a defendant is pursuing
18 post-conviction relief in a case in which a sentence of death or life without possibility has been imposed;
19 (2) the defendant has made a good faith effort to obtain discovery from trial counsel and that effort was
20 unsuccessful, (3) the request is limited to materials in the possession of the prosecution and law
21 enforcement authorities, and (4) the defendant was entitled to these materials at the time of his trial.

22 The California Supreme Court made clear in *Barnett v. Superior Court* that Penal Code § 1054.9
23 was specifically designed to allow post-conviction counsel to reconstruct past discovery in capital cases:

24 The Legislature's purpose of enabling file reconstruction should not be difficult to implement.
25 Defendants should first seek to obtain their trial files from trial counsel. But if a defendant can
26 show a legitimate reason for believing trial counsel's current files are incomplete (for example, if,
27 as here, not all numbered discovery is available), the defendant should be able to work with the
28 prosecution to obtain copies of any missing discovery materials it had provided to the defense
before trial (assuming it still possesses them). (*See Steele, supra*, 32 Cal.4th at p. 692 [suggesting
informal efforts to resolve discovery matters].) If necessary, the trial court can order the
prosecution to provide any materials it still possesses that it had provided at time of trial. As the
Court of Appeal noted in a different case, "it is possible that a defendant seeking discovery under

1 section 1054.9 will simply have no idea whether the materials he obtained from trial
2 counsel--assuming he obtained any at all--amount to all of the materials the prosecution turned
3 over during trial." (*People v. Superior Court (Maury)*, *supra*, 145 Cal.App.4th at p. 482.)
4 Accordingly, we agree with *Maury* (and the Court of Appeal here, which followed *Maury* in this
5 regard) that, when trying to reconstruct files, defendants need not identify all missing discovery
6 materials that the prosecution had previously provided to the defense or show that they are still in
7 the prosecution's possession.

8 *Barnett*, 50 Cal.4th at 898.

9 **A. Defendant is Entitled to Seek Discovery Under Penal Code § 1054.9**

10 In *In Re Steele*, 32 Cal.4th 682 (2006), the California Supreme Court concluded that Penal Code §
11 1054.9 allows defendants convicted of capital crimes "to seek discovery if he or she is preparing to file a
12 petition as well as after the petition has been filed." *Id.* at 449. In addition, the California Supreme Court
13 observed that the superior courts are "generally the appropriate place to first file" motions under this
14 statute. *Id.* This Court has convicted Douglas Stankewitz and sentenced him to death, and he has a habeas
15 petition currently pending in the California Supreme Court. Accordingly, Mr. Stankewitz may
16 appropriately seek discovery from this Court under Penal Code § 1054.9.

17 **B. Defendant Has Made a Good Faith Effort to Obtain Discovery Materials From Trial
18 Counsel**

19 The Declaration of Harry Simon, which is attached hereto as Exhibit J, demonstrates that defendant
20 has made a good faith effort to obtain the materials requested from trial counsel. At the time of the
21 appointment of the Office of the Federal Defender as defendant's habeas counsel, defendant's counsel at
22 re-trial, Hugh Goodwin, was deceased. Following the OFD's appointment, Mr. Simon contacted
23 defendant's original trial counsel, Salvatore Sciandra, and the office that employed Sciandra at the time of
24 trial, the Fresno County Public Defender's Office. Exhibit J, Declaration of Harry Simon, ¶¶ 8-9. Neither
25 Mr. Sciandra nor the Fresno County Public Defender's Office had possession of trial counsel's files. *Id.*
26 Mr. Simon has thoroughly reviewed those files of trial counsel that were contained in the records of prior
27 post-conviction counsel, and as explained above, significant portions of the discovery provided to trial
28 counsel were either too jumbled to be usable or missing. *Id.* at ¶¶ 5, 7. The files themselves contained to
log or index of the recovery received and the Fresno District Attorney has not provided any log or index of
the discovery that was provided. *Id.* at ¶¶ 5-6. Based on the condition of trial counsel's files and despite
diligent efforts, Mr. Simon has not been able to determine whether the discovery documents contained in

1 the records he possesses include all of the discovery materials trial counsel received at the time of trial. *Id.*
2 at ¶ 10.

3 **C. Defendant Has Limited His Request to Materials in the Possession of the Prosecution**
4 **and Law Enforcement Authorities**

5 Each of these requests are limited, by their own terms, to materials that are in the possession of the
6 Fresno County District Attorney's Office, and various law enforcement agencies that may have provided
7 assistance or information to the Fresno District Attorney's Office in their prosecution of Douglas
8 Stankewitz's case.

9 **D. Defendant Would Have Been Entitled to All of the Materials Requested at The Time**
10 **of His Trial**

11 Defendant is entitled to all of the materials discussed in his requests under Penal Code § 1054.9,
12 because the materials were available to him at the time of trial. In *In Re Steele*, 32 Cal. 4th 682 (2006), the
13 California Supreme Court explained the scope of materials covered by Penal Code § 1054.9 as follows:

14 On a proper showing of a good faith effort to obtain the materials from trial counsel, trial courts
15 must order discovery of specific materials in the possession of the prosecution and law
16 enforcement that the defendant can show: (1) the prosecution provided, but have since become
17 lost; (2) the prosecution should have provided because they fell within the scope of a discovery
18 order, a statutory duty to provide discovery, or the constitutional duty to disclose exculpatory
19 evidence; (3) the prosecutor should have provided, because the defense requested documents at
20 trial and was entitled to receive them; or (4) the prosecution had no duty to provide them, but the
21 defense would have been entitled to them had they been requested at trial.

22 *Id.* at 697. The materials sought replicate materials that this Court ordered the prosecution to provide at
23 the time of trial, and counsel either lost them, or defendant lacks the ability to ascertain whether or not the
24 records of post-conviction counsel contain them.


25 As the California Supreme Court noted in *Barnett*, "defendants need not identify all missing
26 discovery materials that the prosecution had previously provided to the defense or show that they are still
27 in the prosecution's possession." 50 Cal.4th at 898. It is enough if, as in this case, counsel has reason to
28 believe that discovery materials are missing and no reasonable means to ascertain what discovery was
provided by the prosecution that defendant no longer possesses.

1 **CONCLUSION**

2 For the reasons stated above, the Court should direct the prosecution to provide defendant Douglas
3 Stankewitz with all of the materials sought through this motion.

4
5 Dated: August 23, 2011

DANIEL J. BRODERICK
Federal Public Defender

6
7 By: 
8 HARRY SIMON
Assistant Federal Public Defender
9 Counsel for Defendant DOUGLAS RAYMOND STANKEWITZ

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DECLARATION OF HARRY SIMON

I, Harry Simon, declare and state as follows:

1. I am an attorney duly licensed to practice law in the State of California. All of the facts contained in this declaration are known to me personally and if called as a witness, I could and would testify thereto.
2. I am an Assistant Federal Defender employed by the Office of the Federal Public Defender for the Eastern District of California ("OFD"). On December 18, 2007, the United States District Court for the Eastern District of California appointed my office as counsel for Douglas Ray Stankewitz for habeas proceedings pending in that Court.
3. Before the OFD represented Mr. Stankewitz, his files had passed through the hands of numerous other attorneys. In 2006, pursuant to a discovery order of the federal court, Mr. Stankewitz's former federal habeas counsel, Katherine Hart, provided a copy of trial counsel's files to the California Attorney General's Office. On May 22, 2008, by stipulation of the parties, trial counsel's files were made part of the record in petitioner's federal habeas proceedings. These files are subject to a protective order, issued by the United States District Court on June 9, 2008, preventing their disclosure to law enforcement agencies and their use in this action.
5. I thoroughly reviewed trial counsel's files, which are part of the record in defendant's federal habeas proceedings. These files do not contain any index or log of the discovery materials obtained from the prosecution in this action.
6. On August 12, 2011, I sent a written request to the Fresno County District Attorney's Office for a log or index of these materials. Exhibit 1. The District Attorney's Office

has not yet responded to this letter.

7. The discovery contained in trial counsel's files is unnumbered. Trial counsel's files contain what appear to be verbatim transcripts of interviews from defendant's alleged co-perpetrators: Christine Menchaca, Teena Topping, Marlin Lewis and Billy Brown. However, these transcripts are jumbled: numerous pages are upside down, pages from transcripts of one witness are interspersed with pages of others and most pages lack information identifying the witness who is being interviewed. In addition, the photographs requested in the April 24, 1978 discovery motion are entirely missing.

8. Shortly after our office's appointment as Mr. Stankewitz's habeas counsel, I called his counsel from his original capital trial, Salvatore Sciandra. Mr. Sciandra informed me that after he represented Mr. Stankewitz, he left the Fresno County Public Defender's Office and that any files he had on the case would have been left with that office.

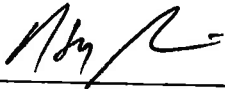
9. I then contacted the Fresno County Public Defender's Office. Staff at that office informed me that they had none of the files from Mr. Stankewitz's capital case.

10. When we were assigned to represent Mr. Stankewitz, more than twenty-five years after his retrial, I could not ascertain what materials the prosecution provided to Mr. Stankewitz's original trial counsel at the time of his trial and retrial. For this reason, I have drafted the attached discovery request, which seeks: (1) all numbered discovery provided to Mr. Stankewitz's original trial counsel; (2) the complete transcripts of police interviews with Christine Menchaca, Teena Topping, Marlin Lewis and Billy Brown, in their original form; and

(3) the same discovery ordered by the Fresno County Superior Court during the April 24, 1978 discovery hearing regarding the circumstances of the Graybeal homicide.

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

Dated: August 23, 2011



Harry Simon



County of Fresno

ELIZABETH A. EGAN
District Attorney

January 13, 2012

Harry Simon
Assistant Federal Defender
Office of the Federal Defender
801 I Street, 3rd Floor
Sacramento, California 95814

Re.: Douglas Stankewitz (227015-5)

Mr. Simon,

I have now had an opportunity to go through my file in the above referenced matter in response to your discovery request pursuant to Penal Code section 1054.9. Enclosed you will find a disk containing a pdf document with 3961 pages. These pages consist of all items contained in my file with the exception of items that I have deemed non-discoverable, i.e., attorney work product. If you feel there are items that I have not addressed or need further clarification on a specific item, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey D. Dupras".

Jeffrey D. Dupras
Deputy District Attorney

enclosure

2220 Tulare Street / Suite 1000/ 10th Floor / Fresno, California 93721 / (559) 488-3141 / Fax (559) 488-2800
Equal Employment Opportunity • Affirmative Action • Disabled Employer

DECLARATION OF PETER JONES

I, Peter M. Jones, declare as follows, except as to those items below which I indicate to be based on information and belief. If called to testify, I would testify as follows:

1. I am an attorney admitted to practice in the State of California.
2. In 2015, I entered my appearance on behalf of the Defendant, Douglas R. Stankewitz, in the matter of *People of the State of California v. Douglas Ray Stankewitz*, Superior Court of Fresno County case number CF78227015.
3. As a component of the defense of Mr. Stankewitz during the preparation for the penalty phase of his anticipated trial in which I served as his appointed counsel, Defendant sought the discovery of evidence related to an uncharged allegation against Mr. Stankewitz by the State involving the attempted murder, kidnapping and robbery of Jesus Meras (hereinafter “Meras allegation”). The State used the Meras allegation as a factor in aggravation in his first and second trials. The Meras crimes were, in my opinion, the most significant factor in aggravation offered by the prosecution to have Mr. Stankewitz sentenced to death.
4. On or about May 5, 2016, after several unsuccessful attempts to contact an attorney in the District Attorney’s Office to submit my discovery requests, I prepared and caused to be served a Subpoena Duces Tecum upon the Fresno County Sheriff’s Office, directly.
5. Said Subpoena sought production of documents, evidence and other records related to the Meras allegation, including reports by investigating officers and criminologists, physical evidence such as shell casings, interview notes, diagrams, and all other records. See attached copy of Subpoena.
6. Prior to August of 2017, the Fresno County Sheriff’s Office failed to comply with the Subpoena on the Meras allegations, as no documents or evidence were produced by the Sheriff’s or District Attorney’s Offices before that date.
7. In August of 2017, Defendant’s counsel was provided a report prepared by W. Sarment (hereinafter “Sarment reports”), a Sheriff’s officer/criminologist investigating and collecting

evidence on the Meras allegation. The Sarment report included a diagram of his work at the Meras crime scene.

8. Pursuant to the Sarment report, three .22 caliber casings had been collected at the crime scene, however, to date, none of those casings have ever been produced to the defense. Also pursuant to the Sarment report, photos were reportedly taken of the recovered .22 casings. No photos have ever been produced to the defense.

9. When the defense viewed the evidence at the Fresno's Sheriff's office on August 24, 2017, for both the Theresa Graybeal homicide and the alleged kidnap, robbery and attempted murder of Jesus Meras, an envelope purporting to contain the .22 caliber casings from the Meras crime scene was discovered, inside of it, however, were three .25 caliber casings, that had been test-fired from a Titan .25 caliber firearm. It appeared that the three .22 caliber casings Meras reported to have been collected at the Meras crime scene, had been removed and disposed of and three .25 caliber casings matching casings fired by the alleged homicide weapon, had been substituted in their place. None of the reports or documents provided to the defense made reference to the recovery of a .22 caliber firearm.

10. On or about May 23, 2016, I was informed that the Court was in possession of a stack of documents six to eight inches thick. These documents were reviewed in court by myself and D.D.A. Noelle Pebet. Some of the reports and documents contained in this material had not previously been provided to the defense.

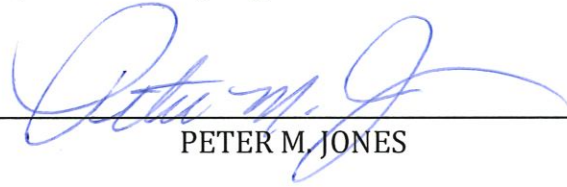
11. Among the documents was a sealed envelope marked "Confidential", which contents were never revealed. I asked to have duplicated all the documents in the Court's possession with the exception of the contents of the sealed "Confidential" envelope.

12. Given the assertions made in the unadjudicated Meras allegation, and the prosecution's subsequent use as evidence of that allegation to show an alleged pattern of behavior by the Defendant to support the prosecution's depiction of him, all investigative documents and evidence should have been made available pursuant to the Subpoena and subsequent discovery requests in order for the defense to challenge the legitimacy and accuracy of the allegations.

13. As of Mr. Stankewitz's sentencing date in May of 2019, my last day representing him, I was still of the opinion that the Fresno County Sheriff's Office had failed to fully comply with the Subpoena Duces Tecum served upon it and the District Attorney's Office by the Defendant. What had been produced did not include items of evidence which had either been disposed of and no longer existed (for example, the three .22 caliber casings), or were never produced in violation of the Subpoena Duces Tecum.

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

6/15/2020 Fresno, CA
Date and Place



PETER M. JONES

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Peter M Jones Wanger Jones Helsley PC 265 E. River Park Circle, #310 Fresno, California 93720 TELEPHONE NO.: 559-233-4800 FAX NO. (Optional): 559-233-9330 E-MAIL ADDRESS (Optional): pjones@joneshelsley.com ATTORNEY FOR (Name): DOUG STANKEWITZ	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO STREET ADDRESS: 1100 Van Ness Avenue MAILING ADDRESS: CITY AND ZIP CODE: Fresno, California 93721 BRANCH NAME: Central	
CASE NAME: The People of the State of California vs. Doug Stankewitz	
ORDER TO ATTEND COURT OR PROVIDE DOCUMENTS: Subpoena/Subpoena Duces Tecum	CASE NUMBER: CF8277015

You must attend court or provide to the court the documents listed below. Follow the orders checked in item 2 below. If you do not, the judge can fine you, send you to jail, or issue a warrant for your arrest.

- To: (name or business) Fresno County Sheriff's Department, Custodian of Records
- You must follow the court order(s) checked below:
 - Attend the hearing.
 - Attend the hearing *and* bring all items checked in c. below.
 - Provide a copy of these items to the court (Do not use this form to obtain Juvenile Court records):
 - Any and all photographs of crime scene and (3) shell casings taken by Criminologist W. Sarment
 - FSO, Case #78-1995
 - Any and all evidence log(s) relating to Case #78-1995.
 - If this box is checked, provide all items listed on the attached sheet labeled "Provide These Items."
 - If someone else is responsible for maintaining the items checked in c. above, that person (the Custodian of Records) must also attend the hearing.
 - If this box is checked and you deliver all items listed above to the court within 5 days of service of this order, you do not have to attend court if you follow the instructions in item 5.

- | | |
|--|---|
| Court Hearing Date:
Date: <u>May 23, 2016</u> Time: <u>09:00 a.m</u>
Dept.: <u>#62</u> Rm.: _____ | The court hearing will be at (name and address of court):
<u>Superior Court of California, County of Fresno,</u>
<u>1100 Van Ness Avenue, Fresno, California 93721</u> |
|--|---|

Call the person listed in item 4 below to make sure the hearing date has not changed. If you cannot go to court on this date, you must get permission from the person in item 4. You may be entitled to witness fees, mileage, or both, in the discretion of the court. Ask the person in item 4 after your appearance.

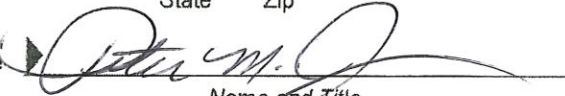
- The person who has required you to attend court or provide documents is:

Name: Peter M. Jones, Attorney at Law Phone No.: 559-233-4800

Address: 265 E. River Park Circle, #310

Number, Street, Apt. No.
Fresno, California 93720

City State Zip

Date: March 29, 2016 Signature:  Name and Title

FOR COURT USE ONLY

CASE NAME: The People of the State of California vs. Doug Stankewitz	CASE NUMBER: CF8277015
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- 5 a. Put all items checked in item 2c and your completed *Declaration of Custodian of Records* form in an envelope. (You can ask the person in item 4 where to get this form.) Attach a copy of page 1 of this order to the envelope.
- b. Put the envelope inside another envelope. Then, attach a copy of page 1 of this form to the outer envelope or write this information on the outer envelope:
- (1) Case name
 - (2) Case number
 - (3) Your name
 - (4) Hearing date, time, and department
- c. Seal and mail the envelope to the Court Clerk at the address listed in item 3 or The court address in the caption on page 1. You must mail these documents to the court within five days of service of this order.
- d. If you are the Custodian of Records, you must also mail the person in item 4 a copy of your completed *Declaration of Custodian of Records*. Do not include a copy of the documents.

— The server fills out the section below. —

Proof of Service of CR-125/JV-525

1. I personally served a copy of this subpoena on:
 Date: _____ Time: _____ a.m. p.m.
 Name of the person served: _____
 At this address: _____
 After I served this person, I mailed or delivered a copy of this Proof of Service to the person in item 4 on (date): _____
 Mailed from (city): _____
2. I received this order for service on (date): _____ and was not able to serve (name of person) _____ after (number of attempts) _____ attempts because:
- a. The person is not known at this address.
 - b. The person moved and the forwarding address is not known.
 - c. There is no such address.
 - d. The address is in a different county.
 - e. I was not able to serve by the hearing date.
 - f. Other (explain): _____
3. Server's name: _____ Phone no. _____
4. The server (check one)
- a. is a registered process server.
 - b. is not a registered process server.
 - c. is a sheriff, marshal, or constable.
 - d. works for a registered process server.
 - e. is exempt from registration under Business and Professional Code section 22350(b).
5. Server's address: _____
 If server is a registered process server:
 County of registration: _____ Registration no.: _____

I declare under penalty of perjury under the laws of the State of California that I am at least 18 years old and not involved in this case and the information above is true and correct.

Date: _____

TYPE OR PRINT NAME OF SERVER

SIGNATURE OF SERVER

MEMORANDUMS

TO : PETE JONES, ATTORNEY AT LAW
WANGER, JONES, HELSLEY PC

FROM : DAVID V. SCHIAVON
D. SCHIAVON INVESTIGATION

DATE : SEPTEMBER 12, 2016

SUBJECT: DOUG STANKEWITZ

RE : FSO CASE #78-1995

Attempts to located and obtain records relating to (3) Shell Casings referenced in Detectives Christensen/Lean report, FSO, Case #78-1995 found the following;

A Subpoena Duces Tecum for Criminologists W. Sarment's report(s) including but not limited to, photographs of incident location, evidence logs indicating the (3) cartridge casings collected at the crime scene were booked into evidence was forwarded to District Attorney's Office.

Recently your office discovered a Forensic Report indicating a comparison of the (3) cartridge casings relating to the Meras matter, FSO Case #78-1995 was made to the cartridge casing relating to Greybeal's matter, FSO Case #78-1809.

The cartridge casing were found not to match.

No other records have been located.

Detective Christensen and Criminologist W. Sarment are now deceased.

Detective Lean is retired and has not yet been located.

DAVID V. SCHIAVON, #PI 13508.

MEMORANDUMS

TO : PETE JONES, ATTORNEY AT LAW
WANGER, JONES, HELSLEY PC

FROM : DAVID V. SCHIAVON
D. SCHIAVON INVESTIGATION

DATE : APRIL 25, 2016

SUBJECT: DOUG STANKEWITZ

RE : SUBPOENA DT RE: FSO CASE NUMBER 78-1995

On May 24, 2016 met with Ms. Yang at FSO HQ Records regarding Subpoena DT that was severed for records on May 5, 2016.

Ms. Yang advised she recalled receiving Subpoena DT from the Court Liaison's Office.

Ms. Yang related after receiving the Subpoena DT, she forwarded the it to Sargent Alvarado.

Ms. Yang said Sargent Alvarado's Office door was closed and she did not know if he was available.

Ms. Yang requested my contact information and mentioned she would forward the Subpoena DT for records to Deputy DA Chris Gularte with the Fresno County District Attorney's Office.

I requested Ms. Yang to inform Deputy DA Gularte to contact me or Attorney Peter Jones's office at phone number listed on the Subpoena DT.

DAVID V. SCHIAVON, #PI 13508.

2-8-78 was Jesus.

STATE DEPARTMENT OF JUSTICE
OF CRIMINAL IDENTIFICATION AND INVESTIGATION
A. L. COPPEY, Chief of Bureau
P. O. Box 1859, Sacramento, California

1. CASE NO.
78-1995

CRIME REPORT
COUNTY SHERIFF'S DEPARTMENT

1000

3. CRIME Attempt Murder/Kidnap/ Armed Robbery		4. CLASSIFICATION Vehicle/Roadway		5. REPORT AREA	
6. DATE AND TIME OCCURRED - DAY 2-8-78 approx 2200 hrs		7. DATE AND TIME REPORTED 2-13-78 0900		8. LOCATION OF OCCURRENCE Hayes Avenue 1/2 Mile North of California Avenue	
9. VICTIM'S NAME LAST, FIRST, MIDDLE (FIRM IF BUSINESS) MERAS, Jesus Rodriguez				10. RESIDENCE ADDRESS [REDACTED] Goldenrod Avenue	
12. OCCUPATION Labor		13. RACE - SEX MM		14. AGE 38	
15. DOB [REDACTED]		16. BUSINESS ADDRESS (SCHOOL IF JUVENILE) Giusti Farms, Inc.		17. BUS. PHONE [REDACTED]	
CODES FOR BOXES 20 AND 30 V-VICTIM W-WITNESS P-PARENT RP-REPORTING PARTY DC-DISCOVERED CRIME					
19. NAME - LAST, FIRST, MIDDLE		20. CODE		21. RESIDENCE ADDRESS	
23. OCCUPATION		24. RACE - SEX		25. AGE	
26. DOB		27. BUSINESS ADDRESS (SCHOOL IF JUVENILE)		28. BUSINESS PHONE	
29. NAME - LAST, FIRST, MIDDLE		30. CODE		31. RESIDENCE ADDRESS	
32. RESIDENCE PHONE		33. OCCUPATION		34. RACE - SEX	
35. AGE		36. DOB		37. BUSINESS ADDRESS (SCHOOL IF JUVENILE)	
38. BUSINESS PHONE		MODUS OPERANDI (SEE INSTRUCTIONS)			
39. DESCRIBE CHARACTERISTICS OF PREMISES AND AREA WHERE OFFENSE OCCURRED Rural bar, vehicle on county road, rural agricultural area					
40. DESCRIBE BRIEFLY HOW OFFENSE WAS COMMITTED Suspect #1 solicits victim for act of prostitution, victim agrees and upon entering suspects' vehicle in parking lot is pushed into back seat. Suspect #2 places knife at throat and suspect #3 holds pistol on him while being robbed.					
41. DESCRIBE WEAPON, INSTRUMENT, EQUIPMENT, TRICK, DEVICE OR FORGE USED Victim ordered out of vehicle and suspect fires 3 shots at him.					
42. MOTIVE - TYPE OF PROPERTY TAKEN OR OTHER REASON FOR OFFENSE Monetary gain					
43. ESTIMATED LOSS VALUE AND/OR EXTENT OF INJURIES - MINOR, MAJOR \$20.00 cash, payroll check \$163.12, hat, boots and belt					
44. WHAT DID SUSPECT/S SAY - NOTE PECULIARITIES "In Spanish, Don't move and keep quiet."					
45. VICTIM'S ACTIVITY JUST PRIOR TO AND/OR DURING OFFENSE Drinking in bar					
46. TRADEMARK - OTHER DISTINCTIVE ACTION OF SUSPECT/S AFTER kidnapping prior victim and killing same attempts to kill second victim					
47. VEHICLE USED - LICENSE NO. - ID NO. - YEAR - MAKE - MODEL - COLORS (OTHER IDENTIFYING CHARACTERISTICS) [REDACTED], California license [REDACTED] over maroon					
48. SUSPECT NO. 1 (LAST, FIRST, MIDDLE) MENCHACA, Christine		49. RACE - SEX MF		50. AGE 25	
51. HT.		52. WT.		53. HAIR	
54. EYES		55. ID NO. OR DOB [REDACTED]		56. ARRESTED YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
57. ADDRESS, CLOTHING AND OTHER IDENTIFYING MARKS OR CHARACTERISTICS					
58. SUSPECT NO. 2 (LAST, FIRST, MIDDLE) LEWIS, Marlin Edwin		59. RACE - SEX Ind M		60. AGE 22	
61. HT. 5-3		62. WT. 120		63. HAIR brn	
64. EYES brn		65. ID NO. OR DOB [REDACTED]		66. ARRESTED YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
67. ADDRESS, CLOTHING AND OTHER IDENTIFYING MARKS OR CHARACTERISTICS					
68. CHECK IF MORE NAMES IN CONTINUATION <input checked="" type="checkbox"/>					
REPORTING OFFICERS Dets. Christensen/Lean		RECORDING OFFICER Christensen		TYPED BY vk	
DATE AND TIME 2-14-78 0920		ROUTED BY		[REDACTED]	
FURTHER ACTION <input type="checkbox"/> YES <input type="checkbox"/> NO		COPIES TO: <input type="checkbox"/> DETECTIVE <input type="checkbox"/> CII <input type="checkbox"/> JUVENILE <input type="checkbox"/> PATROL <input checked="" type="checkbox"/> DIST. ATTNY <input type="checkbox"/> OTHER <input type="checkbox"/> SD./PD. <input type="checkbox"/> OTHER <input type="checkbox"/>		REVIEWED BY [REDACTED]	

FRESNO COUNTY SHERIFF'S DEPARTMENT
Fresno, California

69. CASE NO.
78-1995

-2-

DATE _____

70. CODE SECTION PC 217/207/211a	71. CRIME	72. CLASSIFICATION		
73. VICTIM'S NAME - LAST, FIRST, MIDDLE (FIRM IF BUS.) MERAS, Jesus Rodriquez		74. ADDRESS	BUSINESS	75. PHONE

Suspect #3: STANKEWITZ, Douglas Ray Ind Male DOB [REDACTED] Arrested

Suspect #4: TOPPING, Teena Ind Fem DOB [REDACTED] Arrested

1130 hours, 2-10-78. Det. T. LEAN received from Mr. PAWLOWSKI a check which was found in the victim's vehicle, THERESA GREYBEAL, case #78-1809, PC 187. The check was issued by Giusti Farms, Inc., [REDACTED], Suite [REDACTED] Fresno, California, to JESUS MERAS and drawn on the Security Pacific National Bank, Fresno Center Office, check #7520. Det. Sgt. J. HAMILTON was contacted in an attempt to determine if any reports reflected a theft of the above-listed check. Det. HAMILTON contacted the Giusti Farms office and was referred to a Mr. ROCKO DINUBILO, the foreman for the firm. It was also learned that the check had been reported stolen by the victim JESUS MERAS, but not reported to any law enforcement authority.

Mr. DINUBILO was contacted by phone and learned that the victim had been robbed and arrangements made to have the employee brought to this Department on 2-13-78, to be interviewed.

0900 hours, 2-13-78. Mr. ROCKO DINUBILO, the foreman for Giusti Farms, residence phone [REDACTED] business phone [REDACTED] brought the victim, Mr. JESUS MERAS, to this Department and contacted the undersigned. In addition Mr. MERAS also had an interpreter, Mr. MORRIS RAMIREZ, [REDACTED] phone [REDACTED].

REPORTING OFFICERS Dets. Christensen/Lean	RECORDING OFFICER Christensen	TYPED BY vk	DATE AND TIME 2-14-78 0950	ROUTED BY
FURTHER ACTION <input type="checkbox"/> YES <input type="checkbox"/> NO	COPIES TO: <input type="checkbox"/> DETECTIVE <input type="checkbox"/> CII <input type="checkbox"/> JUVENILE <input type="checkbox"/> PATROL <input type="checkbox"/> DIST. ATTNY <input type="checkbox"/> OTHER <input type="checkbox"/> SO./P.D. <input type="checkbox"/> OTHER	REVIEWED BY		DATE

FRESNO COUNTY SHERIFF'S DEPARTMENT
Fresno, California

69. CASE NO.
78-1995

-3-

DATE _____

70. CODE SECTION PC 217/207/211a	71. CRIME	72. CLASSIFICATION		
73. VICTIM'S NAME - LAST, FIRST, MIDDLE (FIRM IF BUS.) MERAS, Jesus Rodriguez		74. ADDRESS	RESIDENCE	BUSINESS
		75. PHONE		

Mr. RAMIREZ related the following information obtained from the victim.

The victim had gone to the Rolinda Bar around 9:30 PM, Wednesday, February 8th, 1978, and had two beers when he was approached by a Mexican female he described as approximately 23-25 years, 5-4, 135 lbs., brown hair and brown eyes, wearing blue jeans and a black 3/4 length coat. The victim advised that the female (later identified as CHRISTINE MENCHACA) came in with another female which he paid no attention to. He advised that MENCHACA asked him if he wanted to go out with her and told him her price was \$10.00. He continued that he followed her out to a car which was parked near the west end of the bar and described the car as being a two door, possibly a Monte Carlo, and believed it was dark in color, possibly blue. He advised he opened the passenger door and as he did so he was pushed into the back of the car and a male subject came in from the drivers side and placed a knife at his throat. This male subject (suspect #2) crawled in and sat behind the driver and the female suspect (MENCHACA) sat in back with him and they placed him in the middle. He related that a second male subject entered the front and sat on the passenger side and held a pistol on him and a second female subject entered the vehicle and began driving.

The victim advised that the female (MENCHACA) spoke to him in Spanish and ordered him DON'T MOVE AND KEEP QUIET and while the knife was held at his throat she began removing his boots and belt and wallet. He continued

REPORTING OFFICERS Dets. Christensen/Lean	RECORDING OFFICER Christensen	TYPED BY vk	DATE AND TIME 2-14-78 1000	ROUTED BY
FURTHER ACTION <input type="checkbox"/> YES <input type="checkbox"/> NO	COPIES TO: <input type="checkbox"/> DETECTIVE <input type="checkbox"/> JUVENILE <input type="checkbox"/> DIST. ATTNY <input type="checkbox"/> S.O./P.D.	<input type="checkbox"/> CII <input type="checkbox"/> PATROL <input type="checkbox"/> OTHER	REVIEWED BY	
			DATE	

FRESNO COUNTY SHERIFF'S DEPARTMENT
Fresno, California

69. CASE NO.
78-1995

-4-

DATE _____

70. CODE SECTION PC 217/207/211a	71. CRIME La	72. CLASSIFICATION		
73. VICTIM'S NAME - LAST, FIRST, MIDDLE (FIRM IF BUS.) MERAS, Jesus Rodriguez		74. ADDRESS	RESIDENCE	BUSINESS
		75. PHONE		

that they drove to the vicinity of California and possibly Garfield and ordered him out of the car and he related he pushed the front seat back forward and as he exited he slammed it back and started running and he related that three shots were fired at him.

The victim advised that he ran from the area and reported the incident to his boss, Mr. DINUBILO.

The victim was unable to describe the male subject who held the knife to his throat or the female who drove the vehicle.

The victim did give the following description on the suspect who held the gun on him.

Possibly a Mexican male, shoulder length dark hair, wearing a headband, had a headband which measured approximately 1½ to 2 inches in width, a light mustache which drooped around the edges of the mouth and wearing an army colored shirt (green).

The undersigned requested that the victim attempt to locate the scene where he was ordered out of the vehicle and with the assistance of Mr. DINUBILO drove to the area of Hayes and California Avenues. The scene was located on Hayes Avenue approximately 1/2 mile north of California Avenue and the scene was found on the east side of the road. At this location the undersigned located three spent casings and the I. Bureau was requested 1045 hours, 2-13-78, and Criminologist W. SARMENT responded and photographed

REPORTING OFFICERS Dets. Christensen/Lean	RECORDING OFFICER Christensen	TYPED BY vk	DATE AND TIME 2-14-78 1014	ROUTED BY
FURTHER ACTION <input type="checkbox"/> YES <input type="checkbox"/> NO	COPIES TO: <input type="checkbox"/> DETECTIVE <input type="checkbox"/> G11 <input type="checkbox"/> JUVENILE <input type="checkbox"/> PATROL <input type="checkbox"/> DIST. ATTN. <input type="checkbox"/> OTHER <input type="checkbox"/> S.O./P.D. <input type="checkbox"/> OTHER	REVIEWED BY		DATE

Petition for Writ of Habeas Corpus - EXHIBITS

FRESNO COUNTY SHERIFF'S DEPARTMENT
Fresno, California

69. CASE NO.
78-1995

-5-

DATE _____

70. CODE SECTION PC 217/207/21	71. CRIME 1a	72. CLASSIFICATION		
73. VICTIM'S NAME - LAST, FIRST, MIDDLE (FIRM IF BUS.) MERAS, Jesus Rodriquez		74. ADDRESS	RESIDENCE	BUSINESS
		75. PHONE		

the scene and secured the spent casings.

See attached property loss.

REPORTING OFFICERS Dets. Christensen/Lean		RECORDING OFFICER Christensen	TYPED BY vk	DATE AND TIME 2-14-78 1050	ROUTED BY
FURTHER ACTION	<input type="checkbox"/> YES <input type="checkbox"/> NO	COPIES TO:			
		<input type="checkbox"/> DETECTIVE	<input type="checkbox"/> CII		
		<input type="checkbox"/> JUVENILE	<input type="checkbox"/> PATROL		
		<input type="checkbox"/> DIST. ATTN.	<input type="checkbox"/> OTHER		
		<input type="checkbox"/> SO./P.D.	<input type="checkbox"/> OTHER		
REVIEWED BY				DATE	
Petition for Writ of Habeas Corpus - EXHIBITS					

FRESNO COUNTY SHERIFF'S DEPARTMENT
Fresno, California

69. CASE NO.

78-1995

-6-

DATE _____

70. CODE SECTION PC 217/207/211a	71. CRIME	72. CLASSIFICATION		
73. VICTIM'S NAME - LAST, FIRST, MIDDLE (FIRM IF BUS.) MERAS, Jesus Rodriguez		74. ADDRESS	RESIDENCE	BUSINESS
				75. PHONE

PROPERTY REPORT

1. One pair Western boots, brown in color
2. One grey felt western style hat
3. One black belt with white colored buckle with a green stone in center.
4. Approximately \$20.00 in currency and one payroll check (recovered)
amount of \$163.12

REPORTING OFFICERS Dets. Christensen/Lean		RECORDING OFFICER Christensen	TYPED BY vk	DATE AND TIME 2-14-78 1055	ROUTED BY
FURTHER ACTION	<input type="checkbox"/> YES <input type="checkbox"/> NO	COPIES TO:	<input type="checkbox"/> DETECTIVE <input type="checkbox"/> JUVENILE <input type="checkbox"/> DIST. ATTNY <input type="checkbox"/> SO./P.D.	<input type="checkbox"/> CII <input type="checkbox"/> PATROL <input type="checkbox"/> OTHER	
REVIEWED BY Petition for Writ of Habeas Corpus - EXHIBITS OTHER				DATE	

Marshall, Clements 1-4-80

FRESNO COUNTY SHERIFF'S DEPARTMENT
Division of Identification and Records
Technical Service Report

D & T RPT. TO ID 2-13-78, 1109 Hrs.	SPECIFIC OFFENSE UNDER INVESTIGATION PC 211a, Armed Robbery		CR NO. 78-1995
D & T ID OFF. ARR. 2-13-78, 1115 Hrs.	ID NO.		
D & T OCCURRED-DAY OF WEEK Approx. 2200 Hrs.; Wed.; 2-8-78.		LOCATION OF OFFENSE Hayes Ave. approx. 200 yds north of Calle Ave.	
VICTIM'S NAME Jesus R. Meras	VICTIM'S ADDRESS 3761 S. Golden Rod	RES. PHONE	WEATHER Cold Rain
BUSINESS NAME	BUSINESS ADDRESS	BUS. PHONE	

EVIDENCE: PHOTOS (X) TRACKS () LATENTS () PHYSICAL (X) WHEEL MARKS () DIAGRAMS ()

DETAILS: SYNOPSIS, EVIDENCE OBTAINED & COMMENTS

Synopsis: Follow up to a armed robbery occurring on 2-8-78, Dets. Lean and Christensen located the area where suspect fired a .22 Cal. gun at victim. Recovered three (3) empty .22 Cal. cartridge cases alongside the blacktop on the east side of the roadway.

Evidence:

Photos:

- 1/2. Views of the cartridge cases recovered.
- 3. View east of the above location
- 4. View west of the above location.

Physical:

Three empty cartridge cases; see photo 1/2. (INTD BUIA WS)

Diagram:

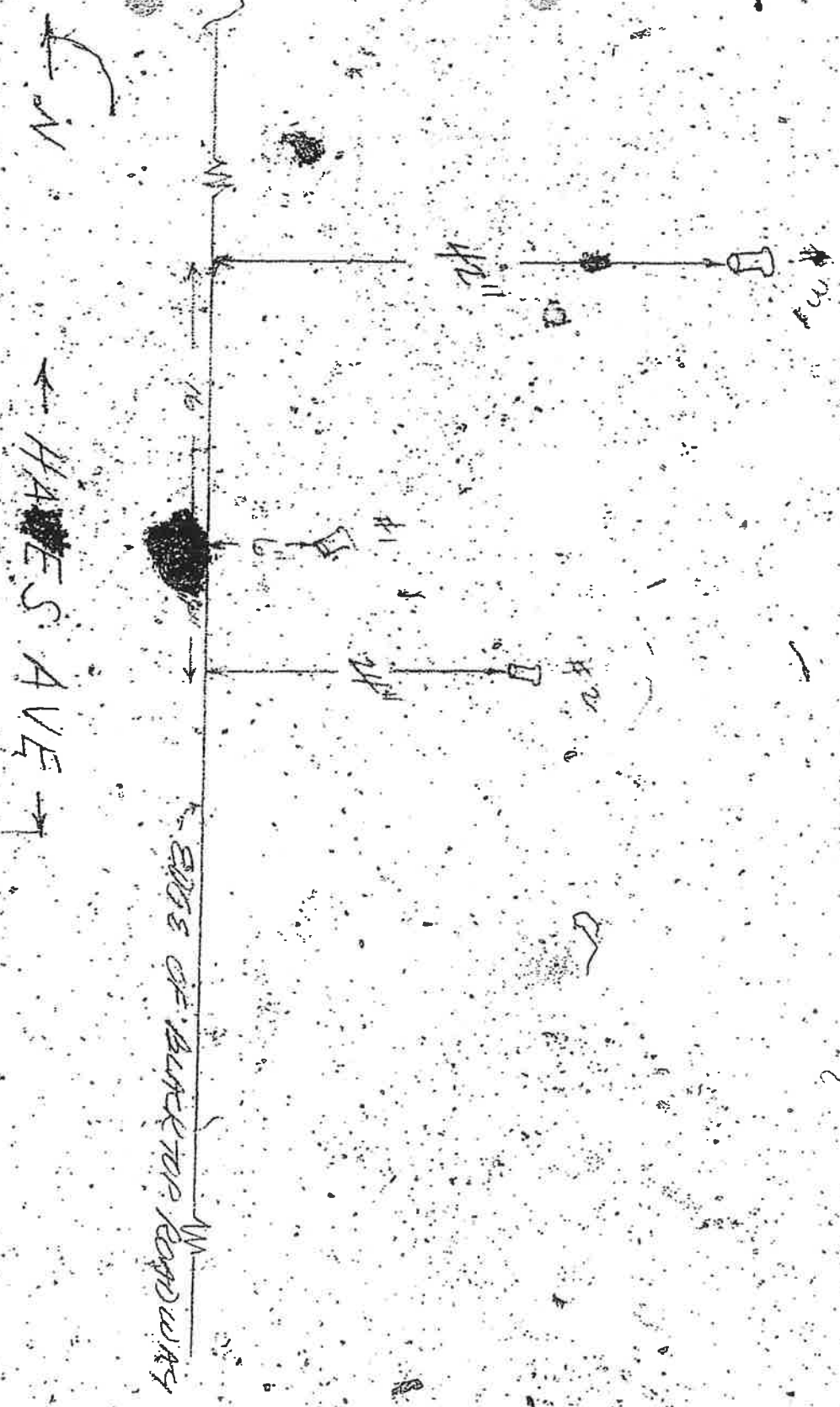
Of the location of the recovery of the above cartridge cases.

Note: Refer to case 77-1809, above cartridge cases may be from the gun involved in this case.

INVESTIGATING OFFICER Dets. Lean & Christensen ID OFFICER W. Sarment, Crim.

SO-85

Arnold, Clements 1-4-80



2-13-78
 PC 211A
 78-1995
 WS

RELATED TO

GARY BEAL CASE

City & Address: **PC 187** Case #: _____ Date: _____ Page: _____

Suspect: _____

Victim: _____

Offense: _____

Officer: _____

Remarks: **CHRIS KEAN**

PROPERTY DESCRIPTION	OUT BY	RET BY	LOCATION
	2-16-78	Blms	
	3:20 pm	2-15-78	Evidence
			From. Crim.
			Cabinet

Rec'd By: _____ City & Address: _____ Release Authorized By: _____

Date: _____ Lic. # _____ Released By: _____ Date: _____

FRESNO COUNTY SHERIFF'S DEPT. - PROPERTY RECORD

RETAIN + EVALUATE: None

1 J. Tony Serra, SBN 32639
2 Curtis Briggs, SBN 284190
3 Tyler R. Smith, SBN 289188
4 Pier 5 Law Offices
5 3300 Geary Blvd., 3rd Floor East
6 San Francisco, CA 94118
7 Tel: (415) 986-5591
8 Fax: (415) 421-1331

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11 PO Box 28340
12 Fresno CA 93720
13 Tel: (559) 233-4800
14 Fax: (559) 233-9330

15 Attorneys for Defendant
16 DOUGLAS RAY STANKEWITZ

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

No. CF78227015

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

DOUGLAS STANKEWITZ,

Defendant.

(AMENDED) NOTICE OF MOTION
AND SECOND MOTION TO DISMISS
FOR FAILURE TO PRESERVE, OR
DESTRUCTION OF EVIDENCE,
PURSUANT TO P.C. §§ 1054.1,
1054.5(b); *Brady v. Maryland* (1963) 373
U.S. 83; *Arizona v. Youngblood* (1988)
488 U.S. 51; AND *California v. Trombetta*
(1984) 467 U.S. 479; REQUEST FOR
EVIDENTIARY HEARING

Date: January 4, 2019

Time: 9:00 a.m.

Dept: 62

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO THE DISTRICT
2 ATTORNEY FOR THE COUNTY OF FRESNO:

3 PLEASE TAKE NOTICE that defendant DOUGLAS STANKEWITZ, by and through
4 counsel, submits his Second Motion for Dismissal of the Charges against him pursuant to Penal
5 Code sections 1054.1 and 1054.5(b); *Brady v. Maryland, Arizona v. Youngblood, and California*
6 *v. Trombetta.*

7
8
9 Dated: December 5, 2018



10 _____
11 CURTIS BRIGGS
12 Attorney for Defendant
13 DOUGLAS STANKEWITZ
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1 **INTRODUCTION**

2 As the record develops in this case, it is becoming clear that Mr. Stankewitz has endured
3 extensive prosecutorial misconduct including tampered evidence, failure to disclose exculpatory
4 physical evidence and material police and investigative reports, and prosecutors allowing their
5 star witness to testify at two trials, even though he admitted to untruthful testimony at the
6 Preliminary Hearing in the case. This motion addresses one major aspect of prosecutorial
7 misconduct that occurred in this case: the disappearance of the District Attorney’s file. However,
8 because the Prosecution both withheld exculpatory evidence and failed to preserve evidence on
9 multiple occasions, the misconduct committed by the Fresno District Attorney’s office
10 constitutes both *Brady* and *Trombetta* violations. Therefore, to demonstrate that the actions of
11 the Prosecution are part of a pattern and practice of misconduct and that this misconduct
12 constitutes bad faith, this motion includes both *Brady* and *Trombetta* violations. Mr. Stankewitz
13 prays this Court examine the widespread and devastating effect of the misconduct and takes the
14 missing evidence seriously, in light of the other issues of misconduct previously pled.

15 One example of the outrageous conduct of the Prosecution in this case is the fact that
16 original files of Mr. Stankewitz and his co-defendants have been suddenly lost. At no time
17 previously in the forty year history of this case has the Prosecution ever claimed files were lost.
18 The guilt phase in this case has been overturned twice; the sentencing phase overturned once;
19 and this case has lived infamously, with eight different courts hearing the case at both the state
20 and federal appellate levels. This has always been a capital case, so all attorneys knew that
21 appeals were likely to occur and therefore that complete record retention was imperative.

22 In 2017, after the Defense discovered solid evidence of misconduct and publicly asserted
23 that Mr. Stankewitz was framed by the Fresno County prosecutors, the Prosecution suddenly
24 asserted that they had lost all of the original files. This evidence included a forensic report
25 demonstrating that shell casings from a separate robbery did not match those from the Graybeal
26 murder scene, a stunning development given how the Prosecution had argued about the
27 significance of the shell casing in the guilt phase of the second trial and had relied on this
28 argument at sentencing.

1 The Assistant District Attorney, Noelle Pebet, has stated unequivocally that her office
2 does not have any of the original DA files on the Douglas Stankewitz case prior to 2012,
3 including files, notes or any other documents related to Billy Brown, Christina Menchaca, Teena
4 Topping, Marlin Lewis for either the Theresa Graybeal or Jesus Meras cases.

5 The now-missing DA files are extraordinarily significant to the guilt or innocence of Mr.
6 Stankewitz because they likely contain exculpatory evidence, including but not limited to notes
7 regarding the trial testimony preparation of the Prosecution's star witness Billy Brown, who later
8 recanted his trial testimony telling defense investigators that he did not see who shot Graybeal,
9 and that the 1978 prosecutor (Ardaiz) "cooked it into his brain" what to say when he testified
10 against Mr. Stankewitz.¹ The Prosecution destroyed this evidence so that Mr. Stankewitz would
11 be deprived of the proverbial 'smoking gun' regarding Billy Brown's perjured testimony. The
12 disappearance of the Prosecution's casefile in such a high-profile death penalty case is
13 inexcusable; carelessness or recklessness cannot explain or excuse the "loss" of these files.

14 It will be established in an evidentiary hearing that exculpatory documents were hidden
15 from the Defense for thirty-five years, and that prosecutors repeatedly, consistently, and
16 inexcusably failed to comply with discovery orders and obligations as far back as 1978. A
17 thorough evidentiary hearing on this issue is required, as it is the only way to show that the
18 Prosecution's actions were not merely negligent, grossly negligent, or reckless. Indeed, their
19 actions constituted bad faith. This bad faith included a coordinated plan by all of the law
20 enforcement agencies involved: Fresno Police Department, Fresno Sheriff's Office, Fresno
21 District Attorney's Office and other agencies working on their behalf, worked in concert to
22 withhold, hide, and manipulate evidence, and to manufacture testimony to cover up and obscure
23 their misconduct. Without this Court's intervention, Mr. Stankewitz will be wholly deprived of

24 ¹ The numerous inconsistencies in Billy Brown's statements before, during, and after his trial testimony
25 support Brown's 1993 recantation, that the shooter could have been Marlin Lewis or Teena Topping, and that Lewis
26 was in fact outside the car when the fatal shot was fired. Teena Topping, Christina Menchaca, and Marlin Lewis all
27 stated that Lewis was outside the car when Graybeal was shot. At trial, however, Brown testified that only
28 Stankewitz was outside the vehicle when Graybeal was shot.

See Exhibit 1, DA Investigation Report by J. Spradling, dated 4/27/1978, attached hereto, also supports
Brown's 1993 recantation. The report describes an interview by DDA James Ardaiz with Brown on 4/14/1978,
wherein Brown states that he did not testify truthfully at the Preliminary Hearing for the Defendant. The report also
makes it clear that Brown did not witness the shooting because his re-enactment of the shooting, specifically, where
victim was shot in the head conflicted with the autopsy report.

1 his constitutional rights. Given all of the misconduct, if the Court does not have enough
2 information to dismiss the case, an evidentiary hearing is needed to perfect the record regarding
3 the pervasive prosecutorial bad faith and misconduct in this case, specifically with regard to the
4 mysteriously missing DA casefile.

5
6 **STATEMENT OF FACTS**²

7 Since October 2016, the Defense has discovered a shockingly wide array of misconduct,
8 which falls into several categories:

9 **Withholding of material exculpatory evidence while lying to the Court about it:**

10 **1)** On 2/27/1978, Deputy District Attorney James Ardaiz falsely stated that he was sure
11 that Counsel had all police reports in his possession; in fact, however, he had a report dated
12 2/13/1978 which confirmed that the casings from the Meras robbery did not match the murder
13 weapon and the 2/13/1978 report detailing the Meras attempted robbery incident, neither of
14 which had been turned over to defense counsel (*See Exhibits 3 & 4*);

15 **2)** Exculpatory forensic documents related to shell casings were withheld from Mr.
16 Stankewitz's lawyers for thirty-five years or more until after the case was remanded to the trial
17 court in 2012. These documents would have dramatically impacted the strategic decisions of all
18 of Mr. Stankewitz's prior trial and appellate counsel because they indicate shell casings
19 recovered from the Meras robbery and the Graybeal murder weapon were of a different caliber
20 and thus did not match the alleged Graybeal murder weapon;

21 **Witness tampering:**

22 **3)** The Prosecution's only eyewitness against Mr. Stankewitz, Billy Brown, recanted his
23 testimony, declaring that he was forced to testify untruthfully at both guilt phase trials by DDAs
24
25
26

27

² *See* Exhibit 2, Defendant's first Trombetta motion, filed 03/16/2017. This motion is intended to and does
28 incorporate the entirety of the first Trombetta motion, including the entirety of the Statement of Facts therein, and all
arguments based thereon.

1 Ardaiz and Robinson. Brown explained in his recantation that DDA Ardaiz plied him with
2 alcohol and rehearsed false testimony with him.³

3 **Manipulation of, tampering with, and fabrication of evidence**

4 **4)** The alleged murder weapon was supposedly located by Fresno Police Department in
5 the “possession of Stankewitz” and identified as having a “removed” serial number, but days
6 later it was identified by Fresno County Sheriff’s Office as having been found inside the car and
7 having a serial number, raising doubt as to whether a weapon was located at all when Mr.
8 Stankewitz was apprehended;

9 **5)** The holster containing the alleged murder weapon has a metal pocket clip which bears
10 chain of custody engravings clearly indicating the investigating detective’s initials and dates that
11 predate the murder of Ms. Graybeal by several years, giving rise to the inference that the holster
12 and the alleged murder weapon were removed from police custody where they were stored from
13 an unrelated case and planted in Ms. Graybeal’s car for the purpose of staging photographs and
14 fabricating physical evidence that would falsely incriminate Mr. Stankewitz at all stages of the
15 proceeding;⁴

16 **6)** Both Ardaiz and Robinson manipulated evidence and benefitted through acts and
17 omissions at all phases of the prosecution in order to secure an illegal conviction against
18 Stankewitz, including lying about the trajectory of the bullet that killed Ms. Graybeal in the guilt
19 phase,⁵ failing to introduce or admit the autopsy report⁶ for Ms. Graybeal into evidence during
20 either the first or second trial because it showed not only Graybeal’s height but also that the
21 bullet entered the right side of her head and exited the left side of her head, presenting false
22 evidence that Mr. Stankewitz was the shooter at the guilt phase and that the same gun was used

23
24 ³ Brown’s recantation is validated by the District Attorney’s investigator at the time, James Spradling, who
25 wrote a report regarding one of these meetings between Ardaiz and Brown. The report shows that Brown admitted to
26 Ardaiz that he did not testify truthfully at the preliminary hearing, and that Ardaiz knew Brown was did not witness
the shooting of Graybeal because when Brown re-enacted the shooting, he pointed the “gun” at the back of
Spradling’s head; but Graybeal was shot in the side of her head, per the autopsy report. (See Exhibit 21)

27 ⁴ See Exhibit 17.

28 ⁵ See Exhibits 5 & 6.

⁶ See Exhibit 7.

1 to kill Graybeal and to shoot at Meras, and lying about circumstances in aggravation at the
2 sentencing phase.

3 The Mysteriously Missing DA Casefile

4 The Defense first requested that the Prosecution produce discovery in 1978. The trial
5 court entered an Order requiring said production in 1978.⁷ Since the case was sent down from
6 the Ninth Circuit in 2012, the Prosecution and the trial court have addressed discovery multiple
7 times.⁸ Despite those orders, which included the production of notes regarding statements by
8 Billy Brown to the Prosecution or their agents, the Prosecution has failed for decades to produce
9 all of the discovery in their possession.

10 In 2012, the Fresno County District Attorney's Office produced, for the first time, a small
11 handful of documents appearing to be from the original DA file, including one investigative
12 report, with "Supp # 1" written at the top, dated April 27, 1978, and detailing an interview
13 between Billy Brown and DDA James Ardaiz which transpired on 4/14/1978.⁹ Other copies of
14 original DA file reports were also in the 2012 production.¹⁰ Exhibit 13 is a report regarding DDA
15 Robinson's visit to Marlin Lewis, in custody at Tracy Prison, in 1983. These documents were
16 scattered among 3,961 pages of documents.

17 The April 27, 1978, document, Exhibit 1 hereto, is particularly significant because it
18 contains exonerating evidence. It shows that DDA Ardaiz knew that Billy Brown gave false
19 testimony in the Preliminary Hearing. DDA Ardaiz never informed the Court or defense counsel
20 about the false testimony. The report shows that Billy Brown did not witness the shooting of Ms.
21 Graybeal because when he re-enacted the shooting, using the DA Investigator Spradling as the

22 _____
⁷ See Exhibit 8.

23 ⁸ See Exhibit 9 – 'Pebet Original Files are missing'
24 'Reporter's Transcript Vol. XXIV 6-23-17 at page 289, lines 5 – 7
25 'Reporter's Transcript' Vol. XX 10-17-16 at page 242, lines 20- 2
26 'Reporter's Transcript Vol. VI 6-6-14 at Page 87 line 23-24
27 'Reporter's Transcript Vol. V 1-24-14 at page 82, Lines 8 – 26
28 'Reporter's Transcript Vol. XXV 8-11-2017 at Page 339, lines 9 – 24
'Reporter's Transcript Vol. XXVII 10-12-17 at Page 408, lines 7-9.

⁹ See Exhibit 1.

¹⁰ See Exhibits 10, 11 & 12.

1 victim, he pointed his arms at the back of Spradling’s head. This directly contradicted the
2 autopsy report, which showed that Ms. Graybeal was shot on the left side of her head.¹¹ So, as
3 documented by the Prosecution, as early as April 14, 1978, DDA Ardaiz knew that Billy Brown
4 did not see the shooting of Ms. Graybeal. This report demonstrates the types of exonerating
5 documents that were likely contained in the DA file.

6 In 2017, after counsel for Stankewitz publicly asserted that Mr. Stankewitz was framed
7 by prosecutors, DDA Pebet told this Court that the District Attorney’s Office did not have the
8 original files on this case for Douglas Stankewitz, Billy Brown, Christina Menchaca, Teena
9 Topping, or Marlin Lewis.¹² DDA Pebet gave no explanation for why her office did not have
10 these files or when the Fresno County District Attorney’s Office determined that it did not have
11 the files. Despite distributing a number of discovery items previously in 2017, DDA Pebet failed
12 to mention, at any time, that no original files existed. Only in response to Defense efforts to view
13 evidence and after substantial misconduct allegations were levied, did DDA Pebet state that all
14 original files were lost.

15 At that same hearing, counsel for Stankewitz informed the Court that the Defense was
16 also seeking – and the Prosecution had agreed to provide – an inventory list from the Prosecution
17 that was prepared by the DA Investigator, Mr. Ciaccio. DDA Pebet responded that the Defense
18 had been given the opportunity to view evidence, and confirmed that the Defense had requested
19 an inventory of what had been turned over.¹³ She stated that “Mr. Ciaccio” was preparing a list
20 and indicated that she would produce the list to the Defense once she had reviewed it in its
21 entirety: “I have not seen that full list yet. I would like to talk to [Mr. Ciaccio] about it before I
22 provide it. But I have definitely let defense counsel know that I would be willing to provide that
23 list that [Mr. Ciaccio] has been keeping for me[.]”¹⁴ Nearly one year has passed since DDA
24 Pebet said this, but she has still not produced this list. Furthermore, in the hallway prior to the
25

26 ¹¹ See Exhibit 7.

27 ¹² See Exhibit 9 at page 404, line 24 through 405, line 1.

28 ¹³ Reporter’s Transcript Vol. XXVII Oct. 12, 2017 at page 405.

¹⁴ Reporter’s Transcript Vol. XXVII Oct. 12, 2017 at page 406.

1 hearing, DDA Pebet informed defense counsel “I will give you a copy of our inventory. I don’t
2 think I am required to, but I will do so as soon as my detective finishes the list in a few weeks.”¹⁵

3 DDA Pebet also stated that she would provide transcripts of audio cassette tapes of a
4 Billy Brown interview which took place on February 11, 1978, contained in evidence at the
5 Fresno County Sheriff’s office. Nearly one year has passed and, to date, the Defense has yet to
6 receive any of those transcripts or a copy of the tapes.

7
8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 ARGUMENT

10 I.

11 THE DESTRUCTION AND/OR FAILURE TO PRESERVE THE
12 EXCULPATORY EVIDENCE WARRANTS A DISMISSAL
13 UNDER *BRADY* v. *MARYLAND*.

14 Prosecutors have a constitutional mandate to disclose exculpatory evidence to the defense
15 in criminal cases. This mandate was first articulated by the United States Supreme Court in
16 *Brady v. Maryland* (1963) 373 U.S. 83, in which the court states that the suppression by the
17 prosecution of evidence “favorable to an accused” violates due process where the evidence is
18 material either to guilt or punishment, “irrespective of the good faith or bad faith of the
19 prosecution.” *Id.* at 87. In *United States v. Agurs*, (1976) 427 U.S. 97, the Supreme Court held
20 that the *Brady* rule imposes on prosecutors a constitutional duty to volunteer favorable and
21 exculpatory matter to the defense even without a request. *See also, Kyles v. Whitley* (1995) 115
22 S.Ct. 1555; *Moore v. Illinois* (1972) 408 U.S. 786, 794; and *Kowalczyk v. United States*, 936
23 F.Supp 1127 (E.D.N.Y. 1996). The California Supreme Court summarized the duty of the
24 prosecutor as follows:

25
26 There is a duty on the part of the prosecution, even in the absence of a request
27 therefore, to disclose all substantial material evidence favorable to an accused,
28 whether such evidence relates directly to the question of guilt, to matters relevant

¹⁵ *See* Exhibit 14, Declaration of Curtis Briggs.

1 to punishment, or to the credibility of a material witness. *People v. Ruthford*
2 (1975) 14 Cal.3d 399, 406; *In re Sassounian*, 9 Cal.4th 535, 543 (Cal. 1995).

3 Regardless of whether a defendant files a *Brady* request, disclosure must be made at a
4 time when the disclosure would be of value to the accused. *United States v. Davenport* (9th Cir.
5 1985) 53 F.2d 1460, 1462. In light of this holding, prosecutors must disclose all *Brady* materials
6 early enough to be of use to the defendant. No statute can limit the due process rights of criminal
7 defendants; the discovery statutes contemplate disclosure outside the statutory scheme pursuant
8 to constitutional requirements as enunciated in *Brady (Ibid)*.

9 California Penal Code section 1054.7 mandates that all parties make the required
10 disclosures at least 30 days prior to trial or, if the information is not known to or in the
11 possession of the party 30 days prior to trial, as soon as the party acquires such information. A
12 witness who tells a prosecutor something different from what he or she previously said, and the
13 difference in the statements is potentially exculpatory, such statements both must be timely and
14 produced to the defense.

15 II.

16 THIS WILLFUL DESTRUCTION OF AND/OR FAILURE TO 17 PRESERVE EVIDENCE WARRANTS DISMISSAL UNDER 18 CALIFORNIA v. TROMBETTA.

19 Closely related to the *Brady* rule requiring the prosecution to disclose material evidence
20 favorable to the defense is the prosecution's obligation to retain evidence. Its failure to retain
21 evidence violates due process when that evidence "might be expected to play a significant role in
22 the suspect's defense," and has "exculpatory value [that is] apparent before [it is] destroyed."
23 *California v. Trombetta* (1984) 467 U.S. 479, 488-489. Whereas under *Brady*, when the good or
24 bad faith of the prosecution is irrelevant when it fails to disclose to the defendant material
25 exculpatory evidence, a different standard applies when the prosecution fails to retain evidence
26 that is potentially useful to the defense. Due process violations occur where the government acts
27 in bad faith. *Arizona v. Youngblood* (1988) 488 U.S. 51. The distinction between *Trombetta's*
28 "exculpatory value that was apparent" criteria and the standard set forth in *Youngblood* , is that

1 Youngblood established a new standard for “potentially useful” evidence. If the higher
2 *Trombetta* standard of apparent exculpatory value is met, the motion is granted in the defendant's
3 favor. But if the best that can be said of the evidence is that it was “potentially useful,” the
4 defendant must also establish bad faith on the part of the police or prosecution. See *Youngblood*,
5 *supra*, 488 U.S. at p. 58; *Trombetta, supra*, 467 U.S. at pp. 488–489.

6 In *People v. Alvarez* (2014) 229 Cal. App. 4th 761, the Fourth Appellate District Court
7 upheld the dismissal of robbery charges because the police failed to preserve video allegedly
8 showing that an officer repeatedly encouraged the victim to point the finger at defendants. The
9 trial court held an evidentiary hearing where bad faith was shown because the detective and
10 prosecutor acknowledged the potential usefulness of the video, yet failed to preserve it. Here,
11 Mr. Stankewitz alleges that there is exonerating evidence in the District Attorney’s casefile and
12 that the DA knew it; there is no question that the District Attorney’s Office has failed to preserve
13 that potentially exonerating evidence.

14 In *United States v. Cooper* (1993) 983 F.2d 928, the Ninth Circuit found bad faith where
15 the government, without any excuse, destroyed the purported methamphetamine lab, including
16 equipment that had been requested by the defense, which was necessary to establish their defense
17 — a defense of which the government was aware. The defendants asserted that, had the
18 laboratory and the equipment not been destroyed by the government, they would have been able
19 to prove that they were used for legitimate, legal purposes. The court stated:

20 [Defendants] might be lying; weighty, exculpatory evidence might never have
21 existed. If it did not exist, the stipulation¹⁶ certainly would put them in a better
22 position. If it did exist, however, the stipulation likely would put them in a worse
23 position. We will not adopt the government's belief that they are lying. The
24 defendants’ version of the facts, which was repeatedly relayed to government
25 agents, had at least a ring of credibility. They should not be made to suffer
because government agents discounted their version and, in bad faith, allowed its
proof, or its disproof, to be buried in a toxic waste dump.

26 ¹⁶ The government suggested that their proposed stipulation would remove any potential prejudice from the
27 lack of the equipment. "The United States is prepared to stipulate that the defendants were engaged in the legitimate
28 manufacture of dextran sulfate, naval jelly and other legitimate chemicals. The United States is also prepared to
stipulate that the equipment that was destroyed could not have been used to manufacture methamphetamine or P-2-P
[a methamphetamine precursor]." This, the government argued, put the defendants in a better position than they
would have been if the equipment had not been destroyed.

1 Based on this, the Ninth Circuit Court of Appeals upheld the district court's dismissal of
2 the indictment.

3 Here, with regard to the DA's casefile, the questions mount. It is unlikely the Fresno
4 County District Attorney's Office could produce original casefile documents as recently as 2012,
5 but then now be unable to account for any of the files. Defense contends that the Prosecution had
6 possession of original files of Defendant's, Billy Brown's, Christina Menchaca's, Teena
7 Topping's, and Marlin Lewis's, but that in light of defense allegations of misconduct, Fresno
8 County and its prosecutorial agents destroyed the files to hide evidence to support Mr.
9 Stankewitz's allegations of prosecutorial misconduct and, most importantly, to deprive him of an
10 opportunity to be heard in an appellate court.

11 The other instances of misconduct in this case provide even more evidence of a pattern of
12 bad faith misconduct by the Prosecution. A prosecutor violates the federal Constitution when he
13 or she engages in a pattern of misconduct so egregious that it infects the trial with such
14 unfairness that it makes the conviction a denial of due process. *People v. Hill* (1998) 17 Cal.4th
15 800, 819.

16 The Prosecution's bad faith is not limited to the destruction of evidence, but given the
17 knowledge on the part of the Prosecution of the withheld evidence discussed above, the
18 Prosecution's argument against the merits of the previous motion to dismiss are an extension of
19 bad faith and misconduct.

20 In its previous pleadings, the Prosecution does not even argue that it failed to produce the
21 casings reports that showed that a different gun was used in the Meras shooting than the gun
22 used in the Graybeal homicide. Their statement that there was ample damning overwhelming
23 evidence proving that Defendant shot Ms. Graybeal, revealed even more lies and misconduct.
24 Specifically, the Defense identified how the Prosecution's own bullet angle trajectory argument
25 actually supported the theory that a shorter person, either Marlin Lewis or Teena Topping, both
26 about 5'2", shot and killed her.

27 The handling of evidence surrounding the Jesus Meras robbery is the most glaring
28 example of bad faith misconduct. The casing comparison report was not produced to the Defense

1 until 2012, and the two-page Wes Sarmant scene report was not disclosed until 2017.¹⁷ When the
2 Defense inspected the physical evidence on August 23rd, 2017, it appeared the three .22 caliber
3 casings were intentionally thrown out and that three of the casings from bullets that Boudreau
4 test fired¹⁸ from the .25 caliber Titan murder weapon mysteriously ended up in the Meras
5 evidence envelope, an apparently successful attempt to deceive the jury, judge and Defense into
6 believing that the physical evidence supported the notion that the same weapon was used in both
7 crimes. This is documented in a report prepared by Mike Garcia, Senior Investigator, DA's
8 office, dated July 20, 2017.¹⁹

9 Another recently discovered instance of misconduct occurred when the alleged murder
10 weapon that was originally located by Fresno Police Department in Ms. Graybeal's car was
11 identified as having a "removed" serial number, but days later was identified by Fresno County
12 Sheriff's Office as indeed having serial number 146425.²⁰

13 Additionally, the gun holster containing the alleged murder weapon had a metal pocket
14 clip bearing chain of custody engravings clearly indicating the investigating detective's initials,
15 as well as dates several years prior to the Graybeal homicide. This gives rise to the inference that
16 the holster and the alleged murder weapon were possibly removed from a police evidence locker
17 and planted in Ms. Graybeal's car for the purpose of staging photographs and fabricating
18 physical evidence in order to falsely incriminate Mr. Stankewitz.

19 Billy Brown's 1993 recantation²¹ provides the motive for some of the bad faith present
20 here: to hide the fact that the Prosecution manipulated him to testify a particular way against
21 Douglas Stankewitz, who has been sitting in his prison cell on Death Row for over 40 years.

23 ¹⁷ See Exhibit 4.

24 ¹⁸ See Exhibit 13. Boudreau examined the gun and test fired it and noted it on February 11, 1978.

25 ¹⁹ See Exhibits 15 & 16, photos showing the alleged Meras casings that were test fired.

26 ²⁰ See Exhibit 17, reports and pictures of the Titan .25 and the holster. The Titan was noted by Officers
27 Garnsey and Bonesteel on February 9, 1978 to have had the serial number removed. Detective Lean noted that the
28 serial number was removed on February 10, 1978 when he gave it to Boudreau. On February 11, 1978,
Boudreau allegedly examined the gun and test fired it, and wrote the serial number as being 146425.

²¹ See Exhibit 18.

1 Potentially, the most important material in the now-missing casefiles would be the prosecutors'
2 notes during the preparation of Billy Brown for his trial testimony.

3 As this Court is well aware, in Billy Brown's 1993 statements to defense investigators, he
4 stated that he was essentially told word-for-word what to say by the 1978 prosecutor, James
5 Ardaiz. DDA Ardaiz presumably wrote notes from those meetings with Brown before the trial. If
6 Brown's 1993 recantation is given a momentary benefit-of-the-doubt, those notes would contain
7 what Ardaiz needed Brown to say when he testified, or highlight problems he saw with Brown's
8 planned testimony. If he was indeed cooking it into Brown's brain what Brown had to say on the
9 witness stand, then Ardaiz had likely carefully thought out what he wanted Brown to say and
10 jotted those thoughts onto paper to use when he sat down with Brown in his office. If such
11 materials, which have obvious evidentiary value on the issue of guilt, had been properly
12 preserved, inspected, and examined, the Prosecution's star witness would have been impeached,
13 or perhaps the Prosecution would need to try to rely on the other witnesses who were present
14 when Ms. Graybeal was shot. The impeachment value of these notes cannot be overstated. Since
15 the entire file is gone, the notes will never be found.

16 Given the pattern of misconduct by law enforcement agencies in this case, it is evident
17 that DDA Robinson, the prosecutor in the second trial, used the same coercive methods with the
18 star Prosecution witness, Billy Brown. His notes regarding meetings with Billy Brown should
19 also have been preserved. Without the DA's files, the Defense cannot prove it. There may be
20 other exculpatory materials and other proof of prosecutorial misconduct in the DA's files. Of
21 course, because the DA claims that the files are gone for good, Mr. Stankewitz is forever
22 prejudiced by the loss of files.

23 ///

24 ///

25 ///

1 III.

2 AN EVIDENTIARY HEARING IS NECESSARY TO
3 DETERMINE WHETHER THE PROSECUTION ACTED WITH
4 BAD FAITH WITH REGARD TO THE DISAPPEARANCE OF
5 THEIR CASEFILE.

6 The presence or absence of bad faith turns on the government's knowledge of the
7 apparent exculpatory value of the evidence at the time it was lost or destroyed. *Youngblood*, 488
8 U.S. 56 at 56-57 n. * At this juncture, an evidentiary hearing is the only way to assess the
9 circumstances around the disappearance of the file so that the Court can make an informed
10 decision about whether the District Attorney's Office acted with bad faith in that regard. A
11 hearing is needed to determine what knowledge the government employees have about what was
12 in the file.

13 *Cain v. Cullen* (2011) 2011 WL 941057, a federal case from the Central District of
14 California, detailed the standard for an evidentiary hearing according to the local rules of the
15 Central District.²² A request for evidentiary hearing must "include a specification of the factual
16 issues and the legal reasoning that require a hearing and a summary of the evidence of each
17 claim the movant proposes to offer at the hearing." L.R.C.D. 83-17.7(g) (2003).

18 The federal district court's standard of review dictates precisely why this Court must hold
19 an evidentiary hearing:

20 Prior to the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), the
21 decision to grant an evidentiary hearing was generally left to the sound discretion
22 of district courts. That basic rule has not changed." *Schriro v. Landrigan*, 550
23 U.S. 465, 473 (2007) (citations omitted). "Because a federal court may not
24 independently review the merits of a state court decision without first applying the
25 AEDPA standards," however, *the [federal] court "may not grant an evidentiary
26 hearing without first determining whether the state court's decision was an
27 unreasonable determination of the facts.... If, for example, a state court makes
28 evidentiary findings without holding a hearing ... such findings clearly result in
an unreasonable determination of the facts."* *Earp v. Ornoski*, 431 F.3d 1158,
1166-67 (9th Cir. 2005) (internal quotation omitted) (emphasis added). Likewise,
where "an evidentiary hearing is needed in order to resolve the [] factual

28 ²² Counsel for Stankewitz has researched whether any local rules exists in the Fresno County Superior Court with regard to the standard(s) for an evidentiary hearing, but the only local rule standards apply to evidentiary hearings in family law court.

1 allegations ... the state court's decision was based on an unreasonable
2 determination of the facts." *Id.* at 1173.

3 Here, the factual allegations are of great consequence. A pattern of misconduct has
4 already been uncovered. The more closely the current Defense team examines what has occurred
5 over the last forty years, the more misconduct is uncovered, and the discovery of such is
6 ongoing. The fact that the District Attorney's casefile is now, suddenly, missing is not
7 inadvertent, but rather, intentional. The Defense has exhausted all resources in developing the
8 record regarding missing evidence and judicial intervention is required.²³ No other comparable
9 source for this evidence exists. If this Court fails to grant or otherwise act on Stankewitz's
10 allegations, there is a high likelihood that a reviewing court would deem that "an unreasonable
11 determination of the facts."

12 The following list specifies the factual issues and legal reasoning that require a hearing,
13 and a summary of the evidence of each claim that the Defense proposes to offer at the hearing:

- 14 • Over a year ago, DDA Pebet stated that she would have the audio recording of the
15 Billy Brown interview by the Fresno Sheriff's office transcribed and provided to the
16 Defense. To date, the Defense has not received a transcript. Stankewitz has long
17 asserted that Billy Brown's 1993 recantation, if true, would expose the bad faith and
18 prosecutorial misconduct that illegally, unconstitutionally resulted in his death
19 sentence. The Defense proposes that DDA Pebet testify about her statements to the
20 Defense in this regard. Further, the Defense is prepared to offer evidence of DDA
21 Pebet's statements.
- 22 • The missing DA casefile is believed to contain an extensive amount of exculpatory
23 information. The factual issue here is determining the "who, what, when, where,
24 how, and why" surrounding the disappearance of the casefile. It is believed to
25 contain **1**) tape recorded police interviews of Billy Brown on February 8th and 9th,
26 1978; **2**) tape recordings of Marlin Lewis's 'confession' per G Snow's report dated

27 ²³ DDA Pebet indicated that she wanted to speak with Mr. Ciaccio before producing the inventory to the
28 Defense, but also indicated that she would produce it once she had spoken with Mr. Ciaccio. Nearly a year has
passed since she made this representation to the Court, but the list has still not been produced. This is evidence of
bad faith.

1 February 9th, 1978; **3**) tape recorded police interview of Marlin Lewis on February
2 9th, 1978; **4**) tape recorded interview with Marlin Lewis from February 11th, 1978;
3 **5**) tape recorded police interviews with Christina Menchaca on February 9th, 12th
4 and 15th, 1978; **6**) tape recorded police interview with Teena Topping on February
5 9th, 1978; **7**) tape recorded police interview of Patricia Hernandez with Mockalis
6 and Snow on February 9th, 1978; **8**) a copy of Patricia Hernandez immunity
7 agreement; **9**) notes from DA meetings with Billy Brown **10**) tape recordings of DA
8 meetings with Billy Brown 4/14/1978; **11**) jury notes from both the 1978 and 1983
9 trials; **12**) tape recorded interview of Frank Richardson (See Exhibit 19); **13**) tape
10 recorded interview of Troy Jones; **14**) tape recorded interview of Michael Hammett.
11 The legal reasoning to understand the circumstances around the loss or destruction of
12 this material is to determine whether the DA's Office acted with bad faith. Such a
13 determination would then fall squarely within the purview of *Brady, Youngblood,*
14 *and Trombetta.*

- 15 • Partial list of witnesses to be called (if still living) at an evidentiary hearing
16 indicating their relevant knowledge:
 - 17 ○ **District Attorneys and Investigators:**
 - 18 ▪ DDA James A. Ardaiz: Knowledge of DA files in 1978, including file
19 maintenance and preservation procedures, preservation of witness audio
20 tapes;
 - 21 ▪ DDA Warren P. Robinson: Knowledge of DA files in 1982 and 1983,
22 including file maintenance procedures;
 - 23 ▪ District Attorney Lisa Smittcamp: Knowledge of DA file maintenance,
24 from 2014 to the present;
 - 25 ▪ James Spradling, DA Investigator: Knowledge of DA files in 1978;
 - 26 ▪ Jerry Jones, DA's office: Knowledge of DA case files in 1982;
 - 27 ▪ DDA Lisa Gamoian: Knowledge of existing DA files in 2014;

- 1 ▪ DDA Jeffrey Dupras: Knowledge of existing DA files in 2012 through
- 2 2014;
- 3 ▪ DDA Lynmarc Jenkins: Knowledge of existing DA files in 2015;
- 4 ▪ DDA Noelle Pebet: Knowledge of existing DA files from 2016 to
- 5 present;
- 6 ▪ DDA William Terrence: Knowledge of existing DA files in 2018;
- 7 ▪ Mike Garcia, Senior DA Investigator: Knowledge of DA investigation
- 8 procedures, including report writing and preservation;
- 9 ▪ John Ciaccio, DA Investigator, 2017: Knowledge of DA investigation
- 10 procedures, including report writing and preservation;
- 11 ▪ William A. Martin, DA Investigator, 1982-83, Knowledge of DA
- 12 investigation report procedures;
- 13 ○ **Fresno Sheriff's Officers, Investigators and Employees:**
- 14 ▪ Sheriff Margaret Mimms: Knowledge of FSO case files, file maintenance
- 15 and preservation protocols and procedures and coordination of files with
- 16 Fresno DA;
- 17 ▪ Officer W. Prince: Knowledge of FSO case files;
- 18 ▪ Officer McDaniel: Knowledge of FSO case files;
- 19 ▪ J. Duty 3I18: Knowledge of FSO case files;
- 20 ▪ Deputy S. Morrison: Knowledge of FSO case files;
- 21 ▪ Lt. Margarian: Knowledge of FSO files;
- 22 ▪ Sgt. Garnsey: Knowledge of FSO case files;
- 23 ▪ Bonesteel: Knowledge of FSO case files;
- 24 ▪ Officer G. Elliott: Knowledge of FSO case files;
- 25 ▪ Criminalist Alan Boudreau: Knowledge of FSO case files;
- 26 ▪ Detective T. Lean: Knowledge of FSO case files;
- 27 ▪ Detective Christensen: Knowledge of FSO case files;
- 28 ▪ Officer T. Ronlake: Knowledge of FSO case files;

- 1 ▪ Detective Satterberg: Knowledge of FSO case files;
- 2 ▪ Criminologist W. Sarment: Knowledge of FSO case files and evidence;
- 3 ▪ Evidence Technician Lisa Barretta: knowledge of copied audio tapes in
- 4 FSO evidence;
- 5 ▪ Kevin Wiens, SSI: Knowledge of FSO files and coordination of files with
- 6 Fresno DA;
- 7 ▪ Monelle Clements: Knowledge of FSO files;
- 8 ▪ Scott Karsh: Knowledge of FSO files;

9 ○ **Fresno Police Department Officers and Investigators**

- 10 ▪ Jerry P. Dyer, Chief of Police: Knowledge of FPD case files and
- 11 coordination of files with FSO & Fresno DA;
- 12 ▪ Officer Gary Snow: Knowledge of FPD case files and coordination of
- 13 files with Fresno DA;
- 14 ▪ Officer L. Brown: Knowledge of FPD case files and coordination of files
- 15 with Fresno DA;
- 16 ▪ Captain Mockalis: Knowledge of FPD case files and coordination of files
- 17 with Fresno DA;
- 18 ▪ Lt. Large: Knowledge of FPD case files and coordination of files with
- 19 Fresno DA;
- 20 ▪ Officer J. Callahan 386: Knowledge of FPD case files and coordination
- 21 of files with Fresno DA;
- 22 ▪ Officer Rodriguez 342: Knowledge of FPD case files and coordination of
- 23 files with Fresno DA;
- 24 ▪ Lieutenant Fries: Knowledge of FPD case files and coordination of files
- 25 with Fresno DA;
- 26 ▪ Officer Mora #358: Knowledge of FPD case files and coordination of
- 27 files with Fresno DA;

- 1 ▪ Officer Webb #280: Knowledge of FPD case files and coordination of
- 2 files with Fresno DA;

- 3 ○ **Other Witnesses:**

- 4 ▪ Matilda Rice, Court Clerk: knowledge of case evidence from 2017 to
- 5 present;
- 6 ▪ Dr. T.C. Nelson, prepared autopsy report 2-9-78: knowledge of evidence;
- 7 ▪ Coroner Flaherty, coroner in 1978: Knowledge of evidence;
- 8 ▪ Fresno Superior Court Clerk: knowledge of maintenance of court files
- 9 and evidence;
- 10 ▪ Cameron Pishione, Court Clerk: knowledge of existing case evidence in
- 11 2017.

12 A determination of bad faith turns on the government’s knowledge at the time of the
13 destruction. *United States v. Cooper*, 983 F.2d 928, 931 (9th Cir.1993). On one extreme, the
14 Court may find that an agent of the Fresno County District Attorney’s Office made a conscious
15 effort to suppress exculpatory evidence, thereby acting in bad faith. On the other extreme, there
16 may be a perfectly innocent and understandable explanation for why the casefile disappeared. An
17 evidentiary hearing is necessary to hear from the government employees what the internal
18 policies and procedures are for maintaining and preserving files and evidence, and whether those
19 policies and procedures were followed here. This is especially important here, given that this is a
20 death penalty case and is subject to higher standards. One thing is clear though: if the Court does
21 not dismiss the case per *Trombetta*, then the Court, at this juncture, does not have enough
22 information to make an informed decision regarding the missing files.

23 It is not too late to remedy the situation. Substantive due process mandates that an
24 evidentiary hearing be held to determine what happened to the conveniently missing files, and
25 whether the notes were indeed created prior to, during or after Billy Brown’s trial preparation
26 visits with DDA Ardaiz and DDA Robinson. The Defense cannot just sit by idly and *assume* that
27 DDA Ardaiz, a skillful and thoughtful prosecutor at the time, and DDA Robinson, who used the
28 same deceptive methods and tactics, did not take notes while preparing Brown, and neither

1 should this Court. In the alternative, the only just sanction for this governmental breach of duty
2 and irresponsible behavior is dismissal.

3
4 **CONCLUSION**

5 Defendant Stankewitz cannot effectively argue lingering doubt at retrial on punishment
6 without fully exploring the prosecutorial misconduct because the Fresno County District
7 Attorney's Office inexplicably did not preserve casefiles for Douglas Stankewitz, Billy Brown,
8 Christina Menchaca, Teena Topping, Marlin Lewis and Jesus Meras. Such failure to preserve
9 this evidence in the midst of Stankewitz's ongoing legal battles over the last forty-plus years,
10 appears to be willful. It is an attempt to cover up the truth of what occurred on the night of
11 February 8, 1978, and during the ensuing investigation and amounts to obstruction of justice.
12 Such willful failure to preserve is not surprising given the overall pattern of deceit and
13 misconduct briefed for this Court since March, 2017. As a result of this misconduct, Mr.
14 Stankewitz is being denied his constitutional rights to substantive and procedural due process of
15 law. The only just sanction for this governmental breach of duty and egregious behavior is
16 dismissal of the Prosecution's case. In the alternative, an evidentiary hearing is needed to
17 determine what happened to the original files.

18
19 

20
21 Dated: December 5, 2018

22 _____
23 CURTIS BRIGGS
24 Attorney for Defendant
25 DOUGLAS STANKEWITZ
26
27
28

1 PROOF OF SERVICE

2 I am a citizen of the United States, over the age of eighteen years, and not a party to the
3 above entitled action. My business address is 3300 Geary Blvd., 3rd Floor East, San Francisco,
4 CA 94118. On the date specified below, I served the attached

5
6 (AMENDED) NOTICE OF MOTION AND SECOND MOTION TO DISMISS FOR FAILURE
7 TO PRESERVE, OR DESTRUCTION OF EVIDENCE, PURSUANT TO P.C. §§ 1054.1,
8 1054.5(b); *Brady v. Maryland* (1963) 373 U.S. 83; AND *California v. Trombetta* (1984) 467 U.S.
9 479

10 on the following parties via U.S. Mail:

11 Fresno County District Attorney
12 2220 Tulare St, Suite 1000
13 Fresno, CA 93721

14 The above is declared under penalty of perjury this 5th day of December, 2018, in the
15 City and County of San Francisco, in the state of California.

16 Respectfully Submitted,

17 

18
19
20 _____
21 CURTIS BRIGGS

DECLARATION OF DR. JERRY NELSON, M.D.

I have reviewed the autopsy report attached to this declaration as Exhibit A. The attached autopsy report appears to be a report prepared by my brother, Dr. Thomas C. Nelson, M.D. I recognize his signatures on the report. The name of the decedent recorded on the report is Theresa Graybeal. The report indicates it was prepared at 1:00 p.m. on February 9, 1978.

My Brother and I worked as forensic pathologists for the County of Fresno from ^{Began} Approx. 1965 to 1992. During that time we performed thousands of autopsies. I have personally performed ~~approximately~~ 8,500 autopsies; and I have testified in court as an expert in forensic pathology 434 times. } *JCN*

The attached autopsy report notes on the first page the "length" of the body being examined. This is the place on every autopsy report that I am familiar with where the pathologist notes the full height of the decedent as measured from the bottom of the foot to the top of the head. In the attached report there appears to be the number 160 written to record the full length of the body. This would indicate that the decedent's actual height was 160 centimeters.

I also noted that there was a 10 degree upward angle from the entry wound to the exit wound. If rods were used to determine this angle, based upon my experience and training, this would be the most accurate method of determining this measurement. It is customary for a forensic pathologist to use rods for this purpose.

I declare under penalty of perjury that the foregoing is true and correct. This declaration is being executed in the County of Fresno in the State of California.

Date Mar. 19, 2019

Signed *Jerry Nelson, M.D.*
Dr. Jerry Nelson, M.D.

EXHIBIT A

COUNTY OF FRESNO - OFFICE OF SHERIFF-CORONER
POST MORTEM RECORD

Name Theresa Graybeal
Age 22 Height 160 Weight _____ Date & Time of Death 1:23 AM 2-9-78
Date, Time & Place of Autopsy: 1 PM 2-9-78 VMC

INSPECTION

- 1. Marks of Identification _____
- 2. Eyes _____ 3. Ears _____ 4. Mouth _____
- 5. Rigor Mortis arms + legs loosely
- 6. Wounds and General Remarks _____

AUTOPSY

1. Examination of Thoracic Cavity The heart is normal in size. The coronary vessels are uniform. The valves and muscle are not altered. The lungs are smooth and diffusely and moderately darkly congested. Neck organs are patent.

2. Examination of Abdominal Cavity The stomach contains some partly digested food like orange jelly. The liver, spleen and kidneys are smooth. The pancreas and adrenals and intestines are not remarkable. The right ovary has a Corpus luteum and the endometrium is thick.

3. Examination of Cranial Cavity The vagina & vulva are not altered. The scalp and skull are intact. The brain and vessels are uniform, but a little subarachnoid hemorrhage is on the base of the cerebellum and in the 1st Cur of the Cord that is roughly transected.

We, the undersigned, have made the above examination, find the cause of death to have been due to:
(A) Sunshot Wound of the Neck
Due to (B) _____
Due to (C) _____
Other Conditions: _____

Test to be made for:
Alcohol <input checked="" type="checkbox"/>
Drugs <input checked="" type="checkbox"/>
Toxic Chemicals <input type="checkbox"/>

Harold McKinney M.I.

HAROLD McKINNEY, Sheriff-Coroner, Fresno County

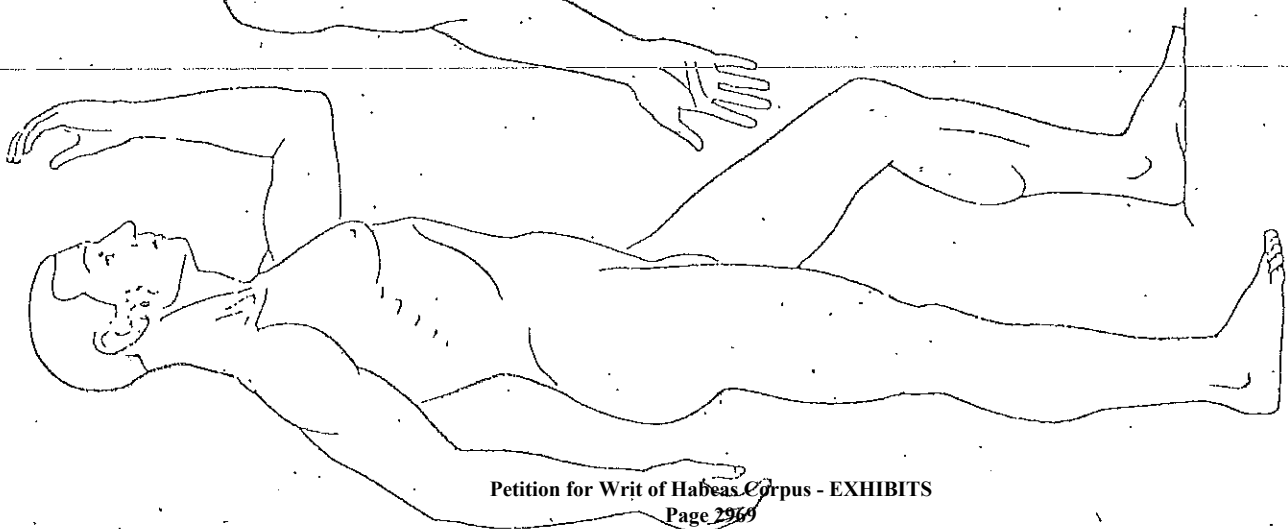
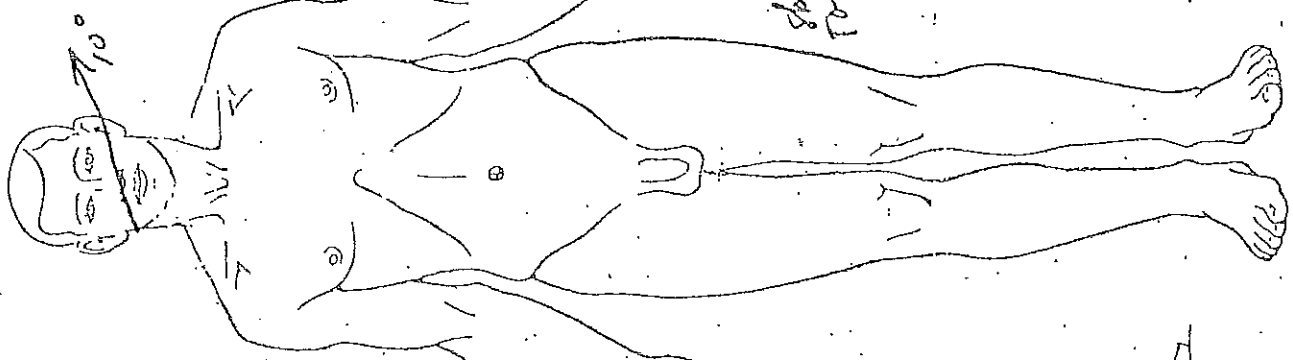
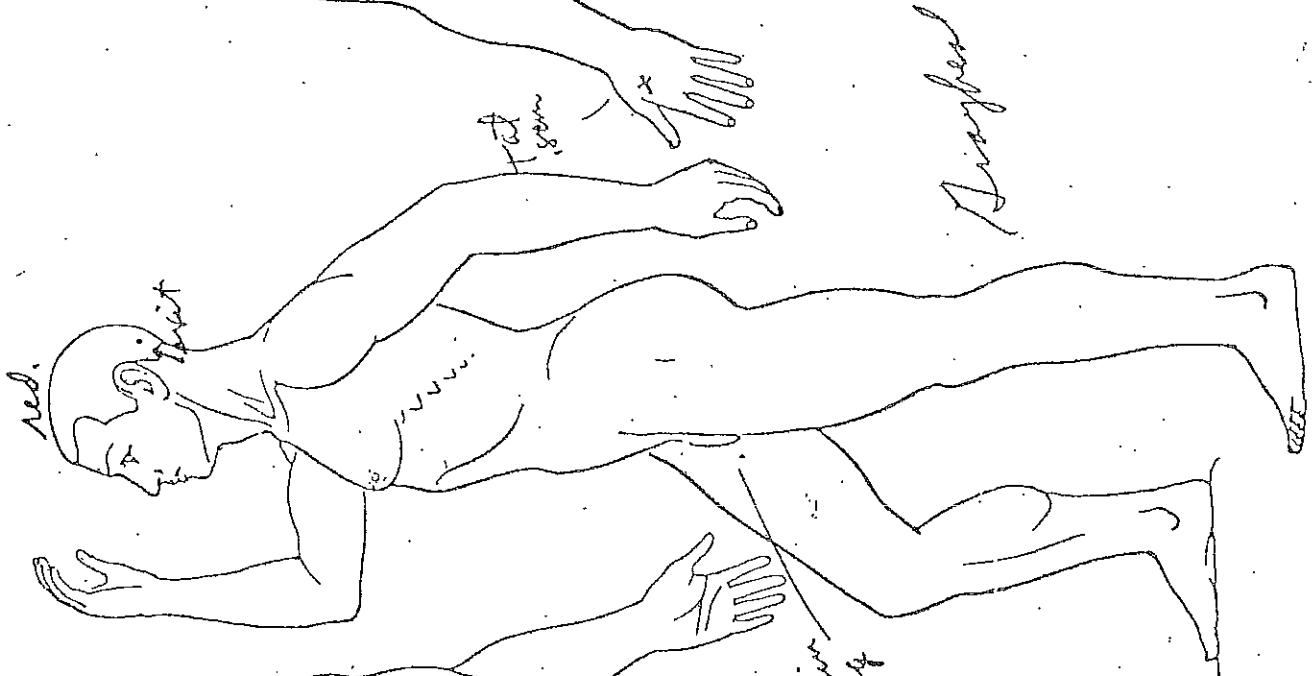
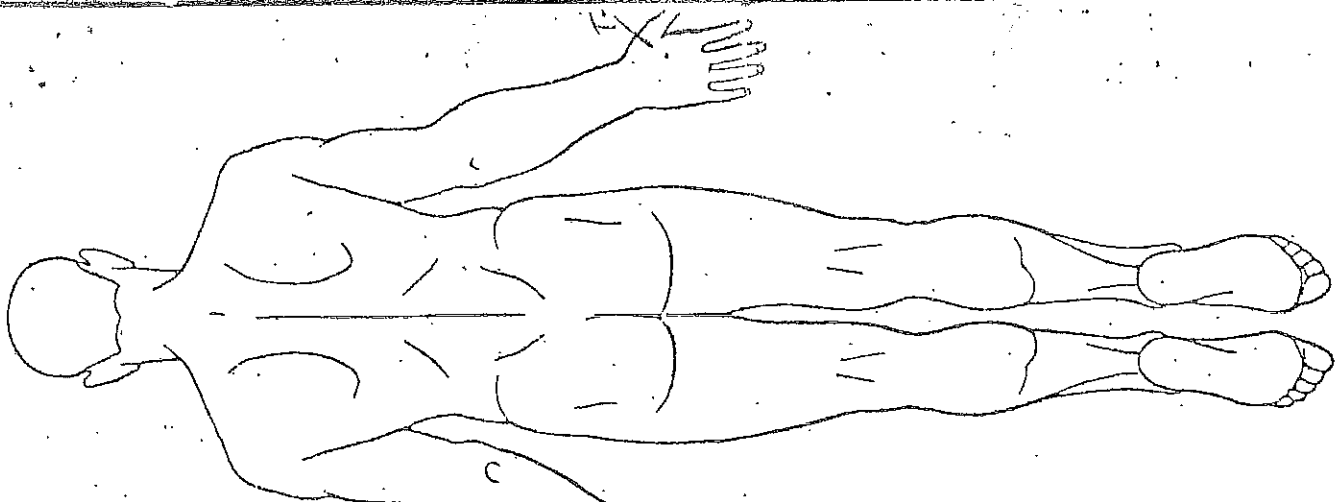
Petition for Writ of Habeas Corpus - EXHIBITS

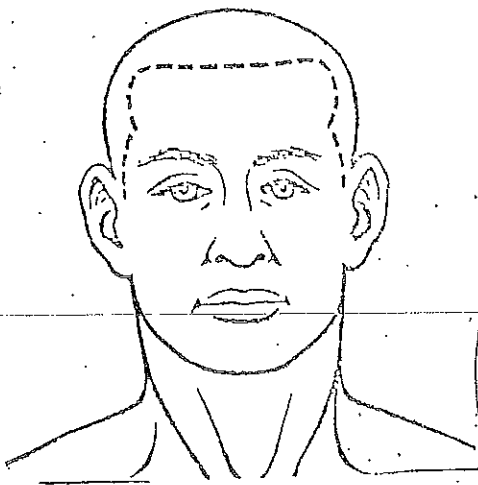
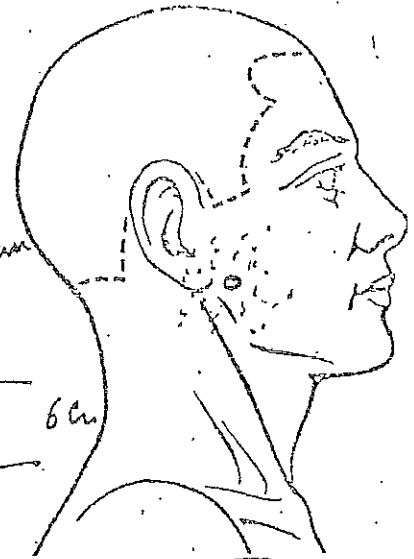
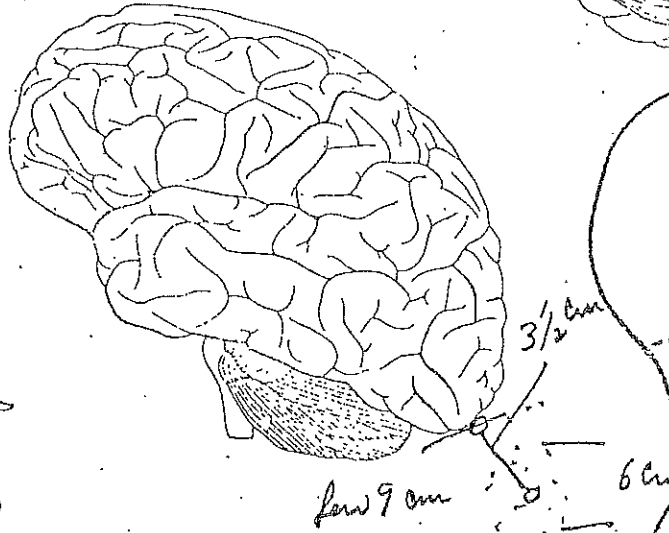
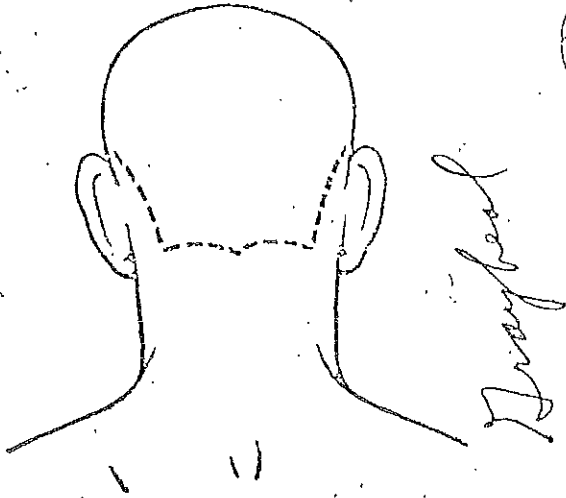
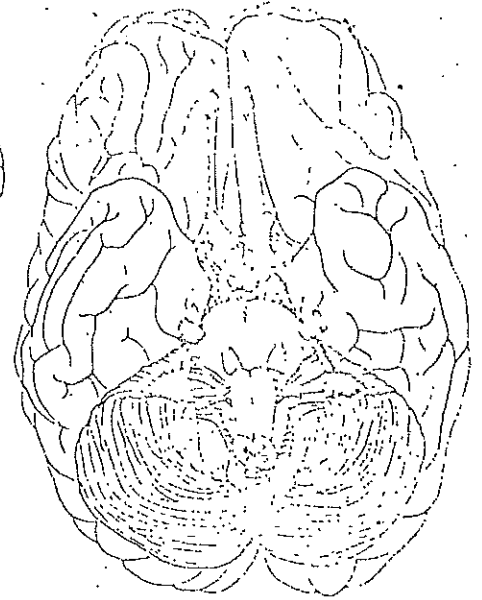
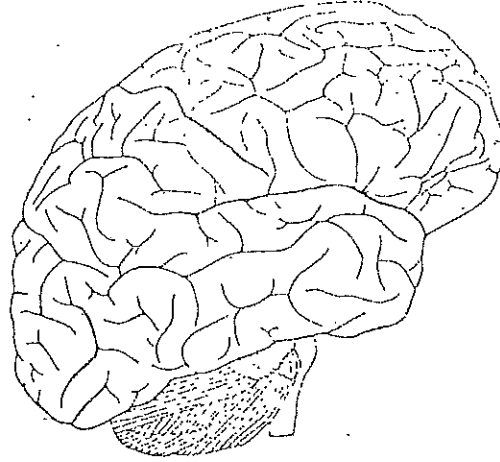
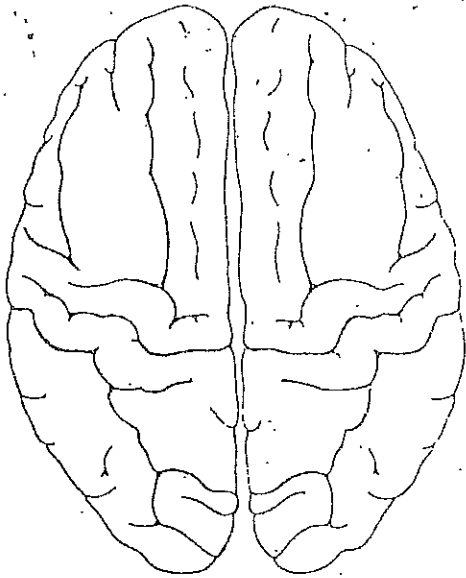
COUNTY OF FRESNO - OFFICE OF SHERIFF-CORONER
POST MORTEM RECORD

Name Theresa Graybeal

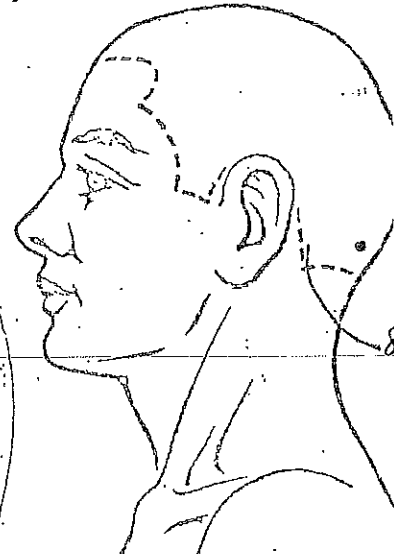
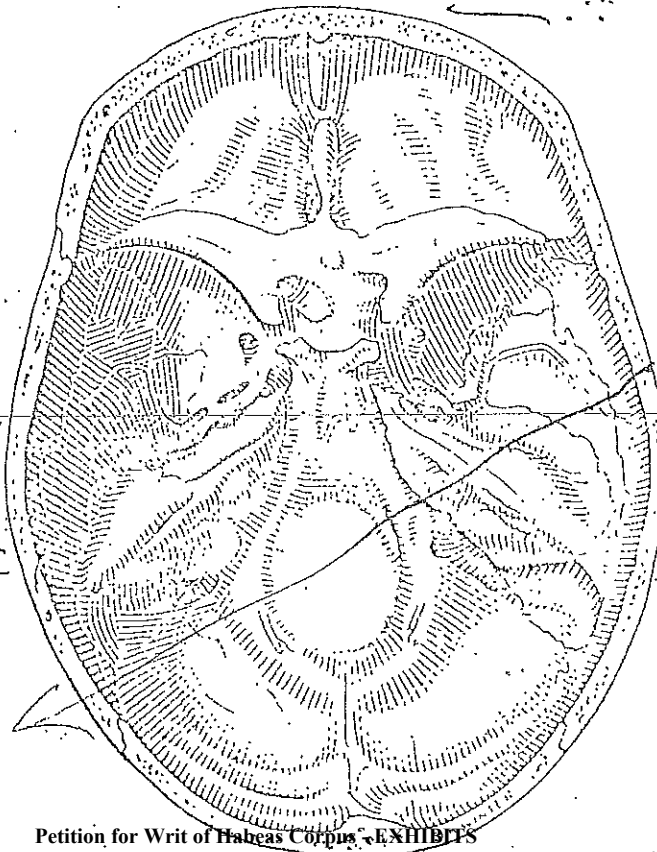
Harold McKinney M.D.

HAROLD McKINNEY, Sheriff-Coroner, Fresno County





20-25°



Date of this report 2/9/78		Type of Original Report MVA (OR FORM)		Case No. 78-5010	
Date crime occurred 2/8/78		Location of occurrence 3300 HIGHWAY 99		Reporting Division Duluth	
Victim (as listed on orig. report) Theresa Theresa		List connecting property report(s) by type and Case No.			
Persons interviewed (not on orig. report)		Race - Sex - Age		Residence Address	
1.				Res. Phone	
2.				Bus. Phone	
3.					
4.					
5.					
Persons arrested		Race - Sex - Age		Filed on?	
1. STANKWITZ, Douglas Raymond				Charge	
2. ██████████		I M 21		Date	
3. SEE BELOW				H.T.A.	
4.				Date	
5.				Court Divn.	
<input checked="" type="checkbox"/> Cleared		<input checked="" type="checkbox"/> Closed		<input checked="" type="checkbox"/> Incorrectly classified - change to:	
				<input checked="" type="checkbox"/> Unfounded	
				<input checked="" type="checkbox"/> Continued	

(1) Explain investigation progress and status. (2) When victim and/or witnesses listed in crime report have not been interviewed, give reason. (3) If all or no property recovered so state. If partial recovery, list property recovered, description and value as it appears on original stolen or lost report.

- PERSONS ARRESTED:
- STANKWITZ, Douglas Raymond; IMA-21; DOB ██████████; 6'1"; 190 lb; brown eyes; brown hair (in custody; PC 836, PC 187, PC 211, PC 207, CVC 10851).
 - LEWIS, Marlin Edwin; IMA-22; DOB ██████████; address 1410 F St., Sacramento, Calif. (in custody; PC 836, PC 187, PC 211, PC 207, CVC 10851).
 - TOPPING, Teona Elaine; IFA-19; DOB ██████████; address 272 W. Pinedale St. (in custody; PC 836, PC 187; CVC 10851, PC 211, PC 207).
 - MENCHACA, Christina Garcia; MPA-25; DOB ██████████; res address 3455 E. Liberty, Fresno (in custody; PC 836, PC 187, CVC 10851).

ASSISTING OFFICERS: SGT R. BOWEN, OFFICERS R. RODRIGUEZ #342, J. CALLAHAN #386, PSO deputy G. ELLIOT #245, PSO detective MC DANIELS

2/8/78, approx 1125 hours, Wednesday

RO and detective SNOW were dispatched from their residences to FPD HDQ in regards to the possible PC 187 vict not found at this time. At this time ROs arrived at HDQ and received details from SGT R. BOWEN in regards to a missing person missing from the Modesto area and her veh being recovered in the Fresno area as a recovered 10851 by officers, with susp in custody.

If additional space is required, use Continuation Report, Form 3-C	Time Called In	Time Typed	By	TOTAL VALUE \$	
		2/9/78	HW		
Supervisor	Officer(s) Reporting		Coded By	Filed By	
CAPT. MOCKALIS	RODRIGUEZ, R. #342				
Approving Sgt.	Review Sgt.		Xeroxed By	Total Copies	

FOLLOW-UP REPORT

CONTINUATION REPORT

Page Number

2

Case No.

73-5610

2/3/73

~~7/7/73~~, Theresa
GREVIALCVC 10851/RECOVERED
(OUT OF TOWN)

The preliminary information in regards to this investigation will be given on detective Gary SNOW's follow-up report and patrol officers R. RODRIGUEZ and J. CALHOUN's reports.

It should be noted that the above susps listed in this case were arrested in the vict's veh in the ~~area~~ at approx 2304 hrs on 2/3/73.

Accompanying Det. Gary SNOW to FPD interview room where an interview was done, was susp in this case Teena TOPPING. During the process of this interview the susp TOPPING related information to RO as to where the vict's body could possibly be located in regards to this case.

At this time, RO, in conjunction with detective G. SNOW in company with the susp Teena TOPPING, proceeded to check the area in Calawa ~~area~~ the vict in this case's body. Details of the interview will be ~~for~~ covered in the det G. SNOW's follow-up report. Upon RO following det SNOW in the Calawa area, the vict's body was located at Tenth and Vine St.s. The body was originally found by det G. SNOW at approx 0123 hrs. RO was directly behind officers G. SNOW upon finding the body, and the crime scene was turned over to det L. BROWN to handle and process untill FSO units could be dispatched to the crime scene as this was their jurisdiction as it is in the Fresno County area.

Upon RO's original viewing of the crime scene area, RO noted the vict to be laying face up on the shoulder of the road at the S.E. corner of Tenth and Vine St. It should be noted that she was laying approx 15 feet south of the south curb line of Vine and approx 3 feet east of the east curb line of Tenth St. Vict was laying face up with her head in an easterly direction and her feet in a wasterly direction. It should be noted that the vict had extremely noticeable red hair, very long. Also RO noted that the vict had blood around her ear area and it possibly appeared to be the origin area of the wound that had possibly killed her. RO then viewed the vict and noted that she was clothed in a gray coat, under the coat area RO noted that she had on a blue sweater with a multi colored print on a stripe on the bottom area of the sweater. Subj had on a red shirt underneath the sweater and had on blue jeans and possible navy blue socks. She further had on brown shoes. Subj's purse was draped over her left shoulder and laying on the ground directly next to vict's left side. The purse was red and brown in color, made of a vinyl looking leather. It should be noted that the change flap on the outside coin section of the purse, was unshaped and open. Subj had on a turquoise ring on her right hand, the second finger. Vict also had, on her left hand, another ring on her middle finger. It should be noted that; in viewing the area around the vict's body, a filter tip cigarette was found laying next to the vict's right arm. Also found, approx 15 feet west of the vict's body, was a 25 caliber shell casing.

Approx 0200 hrs, deputy Sheriff G. ELLIOT arrived at the crime scene and the security of the scene was turned over to deputy Sheriff ELLIOT. At this time deputy Sheriff advised RO that det ~~MC DANIELS~~ would be en route to that location to handle the crime scene investigation for their office. It should

CONTINUATION REPORT

CONTINUATION REPORT

Page Number

3

Case No.

78-5019

2/9/78

GREVEAL, Theresa

CVC 10251/RECOVERED

(OUT OF TOWN)

Further he noted that the FSG dispatched their own IB unit to process the crime scene.

It should be noted that RO only contact with the body was when RO approached the body, checked the body for signs of life. RO's heel print was left in the damp ground, just north of the vict's body when RO checked the body for signs of life.

Approx 0230 hrs Deputy Sheriff de tective MC DANIELS arrived at the crime scene and the crime scene was again turned over to him for his investigation.

At this time RO proceeded to FPD HDQ where RO assisted det G. SNOW in the interriqation of the susps in regards to this case. The results of those interroqations will be on his reports, same case number.

RO also took all 4 of the susps directly to the IB where at his request had the susps hands all processed by IB tech J. BONESIDEL. The processing of their hands consisted of swabs, done, the details of that will be on IB tech J. BONESIDEL's follow-up report, same case number.

This report will be continued.

CAPT. MOCIBALIS
BROWN, L. #189

2/9/78 twd

CONTINUATION REPORT

Petition for Writ of Habeas Corpus - EXHIBITS

Page 2974

FOLLOW-UP REPORT

FROTH DET Date of this report: 2/9/78 Date dictated: 2/8/78		Type of Original Report: CVC 10851/RECOVERED (OUT OF TOWN)		Case No: 78-5819	
Name of person: GREVEAL, Theresa GREVEAL		Location of occurrence: 1400 block of Kern		Reporting Division: Detective	
Race Sex Age: [Blank]		Residence Address: [Blank]		Res. Phone: [Blank]	
Name of person: STANKEWITZ, Douglas Raymond (DOB 5/21/56) Race Sex Age: I M 21		Filed on: [Blank]		Charge: [Blank]	
Date dictated: [Blank]		Date: [Blank]		Court Div: [Blank]	
SEE BELOW		(A) Incorrectly classified: [Blank]		(B) Unfounded: [Blank]	

- PERSONS ARRESTED:
1. STANKEWITZ, Douglas Raymond; IMA-21; DOB 5/21/56; 6'1"; 190 lb; brown eyes; brown hair (in custody; PC 836, PC 187, PC 211, PC 207, CVC 10851).
 2. LEWIS, Marlin Edwin; IMA-22; DOB [REDACTED]; address [REDACTED]; (in custody; PC 836, PC 187, PC 211, PC 207, CVC 10851).
 3. TOPPING, Teena Elaine; IFA-19; DOB 5/20/58; address [REDACTED]; (in custody; PC 836, PC 187; CVC 10851, PC 211, PC 207).
 4. MENCHACA, Christina Garcia; MEA-25; DOB [REDACTED]; res address [REDACTED]; (in custody; PC 836, PC 187, CVC 10851).

ASSISTING OFFICERS: SGT R. DOWNS, OFFICERS R. RODRIGUEZ #342, J. CALLAHAN #386, FSO deputy G. ELLIOT #245, FSO detective MC DANIELS.

2/8/78, approx 1125 hours, Wednesday

Officer and detective SNOW were dispatched from their residences to FPD HDQ in regards to the possible PC 187 vict not found at this time. At this time SNOW arrived at HDQ and received details from SGT R. DOWNS in regards to a missing person missing from the Modesto area and her veh being recovered in the Fresno area as a recovered 10851 by officers, with susp in custody.

2/9/78 twd

APT. MOCKALIS BROWN, L. #189

[Signature]

FOLLOW-UP REPORT

FRESNO POLICE DEPARTMENT
CONTINUATION REPORT

Page Number

2

Case No.

78-5819

2/9/78

~~XXXXXXXX~~, Theresa
GREVEAL

CVC 10851/RECOVERED
(OUT OF TOWN)

The preliminary information in regards to this investigation will be given on detective Gary SNOW's follow-up report and patrol officers R. RODRIGUEZ and J. CALLAHAN's reports.

It should be noted that the above susps listed in this case were arrested in the vict's veh in the 1400 block of Kern St. at approx 2304 hrs on 2/8/78.

Accompanying Det. Gary SNOW to FPD interview room where an interview was done, was susp in this case Teena TOPPING. During the process of this interview the susp TOPPING related information to ROs as to where the vict's body could possibly be located in regards to this case.

At this time, RO, in conjunction with detective G. SNOW in company with the susp Teena TOPPING, proceeded to check the area in Calawa ~~where~~ the vict in this case's body. Details of the interview will be ~~for~~ ^{for} covered in the det G. SNOW's follow-up report. Upon RO following det SNOW in the Calawa area, the vict's body was located at Tenth and Vine St.s. The body was originally found by det G. SNOW at approx 0123 hrs. RO was directly behind officers G. SNOW ~~and the~~ upon finding the body, and the crime scene was turned over to det L. BROWN to handle and process until FSO units could be dispatched to the crime scene as this was their jurisdiction as it is in the Fresno County area.

Upon RO's original viewing of the crime scene area, RO noted the vict to be laying face up on the shoulder of the road at the S.E. corner of Tenth and Vine St. It should be noted that she was laying approx 15 feet south of the south curb line of Vine and approx 3 feet east of the east curb line of Tenth St. Vict was laying face up with her head in an easterly direction and her feet in a westerly direction. It should be noted that the vict had extremely noticable red hair, very long. Also RO noted that the vict had blood around her ear area and it possibly appeared to be the origin area of the wound that had possibly killed her. RO then viewed the vict and noted that she was clothed in a gray coat, under the coat area RO noted that she had on a blue sweater with a multi colored print on a stripe on the bottom area of the sweater. Subj had on a red shirt underneath the sweater and had on blue jeans and possible navy blue socks. She further had on brown shoes. Subj's purse was draped over her left shoulder and laying on the ground directly next to vict's left side. The purse was red and brown in color, made of a vinyl looking leather. It should be noted that the change flap on the outside coin section of the purse, was unshaped and open. Subj had on a turquoise ring on her right hand, the second finger. Vict also had, on her left hand, another ring on her middle finger. It should be noted that ; in vieing the area around the vict's body, a filter tip cigarette was found laying next to the vict's right arm. Also found, approx 18 feet west of the vict's body, was a 25 caliber shell casing.

Approx 0200 hrs, deputy Sheriff G. ELLIOT arrived at the crime scene and the security of the scene was turned over to deputy Sheriff ELLIOT. At this time deputy Sheriff advised RO that det MC DANIELS would be en route to that location to handle the crime scene investigation for their office. It should

CONTINUATION REPORT



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FRESNO POLICE DEPARTMENT
CONTINUATION REPORT

Page Number

3

Case No
78-5819

2/9/78

GREVEAL, Theresa

CVC 10851/RECOVERED
(OUT OF TOWN)

further be noted that the FSO dispatched their own IB unit to process the crime scene.

It should be noted that RO only contact with the body was when RO approached the body, checked the body for signs of life. RO's heel print was left in the damp ground, just north of the vict's body when RO checked the body for signs of life.

Approx 0230 hrs Deputy Sheriff de tective MC DANIELS arrived at the crime scene and the crime scene was again turned over to him for his investigation.

At this time RO proceeded to FPD HDQ where RO assisted det G. SNOW in the interrigation of the susps in regards to this case. The results of those interrogations will be on his reports, same case number.

RO also took all 4 of the susps directly to the IB where at his request had the susps hands all processed by IB tech J. BONESTEEL. The processing of their hands consisted of swabs, done, the details of that will be on IB tech J. BONESTEEL's follow-up report, same case number.

This report will be continued.

CAPT. MOCKALIS
BROWN, L. #189

2/9/78 twd

CONTINUATION REPORT

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FRESNO COUNTY SHERIFF'S DEPARTMENT
Fresno, California

69. CASE NO.

78-1809
78-39-26

FPD No. 78-5819

DATE 2-9-78

-1-

70. CODE SECTION 187 PC	71. CRIME Murder	72. CLASSIFICATION Roadway
73. VICTIM'S NAME - LAST, FIRST, MIDDLE (FIRM IF BUS.) GREYBEAL, Theresa		74. ADDRESS RESIDENCE BUSINESS Modesto
		75. PHONE

On Thursday, 2-9-78, at approximately 0137 hours, RO was dispatched to Vine and Tenth Streets to contact Fresno Police Officers in regards to a homicide.

Upon arrival at approximately 0139 hours, RO made the following observations:

A white female, approximately 20 years old, was stretched out upon her back on the southeast corner of Tenth and Vine Streets. The victim, unknown name as of RO's arrival, was clad in a grey coat, blue sweater (turtle necked with light colored pattern just above the waist), blue jeans, light brown earth shoes and a light brown leather purse.

The victim's position was raised and off the paved roadway with her head pointed slightly to the northeast, approximately 6½' onto the grassy portion of the dirt siding. Her feet, both turned outwardly, were approximately (1) one foot off the paved roadway and were also in a north-eastern direction (as RO looked from the paved roadway).

RO also noted that the victim was deceased apparently from a single shot to victim's right ear area.

RO did not approach or touch the victim's person.

RO noted that the following Fresno Police Department and Fresno Sheriff Officers were at the scene during the investigation which was turned over to Det. McDANIELS from Fresno Sheriff's Office.

REPORTING OFFICERS G. Elliott	RECORDING OFFICER Same	TYPED BY rvk	DATE AND TIME 2-10-78 0916	ROUTED BY
FURTHER ACTION <input type="checkbox"/> YES <input type="checkbox"/> NO	COPIES TO <input type="checkbox"/> DETECTIVE <input type="checkbox"/> JUVENILE <input type="checkbox"/> DIST. ATTNY <input type="checkbox"/> SO./P.D.	<input type="checkbox"/> CII <input type="checkbox"/> PATROL <input checked="" type="checkbox"/> FPD <input type="checkbox"/> OTHER	Sheriff's Department on _____ for the official use of: Name _____ REVIEWED BY _____ and not to be revealed to any unauthorized persons Date 2-9-78	

FRESNO COUNTY SHERIFF'S DEPARTMENT
Fresno, California

69. CASE NO.
78-1809
78-39-26

-2-

DATE _____

70. CODE SECTION 187 PC	71. CRIME Murder	72. CLASSIFICATION		
73. VICTIM'S NAME - LAST, FIRST, MIDDLE (FIRM IF BUS.) GREYBEAL, Theresa		74. ADDRESS	RESIDENCE	BUSINESS
		75. PHONE		

1. Det. SNOW, not present upon RO's arrival, FPD
2. Det. BROWN, FPD
3. R. H. RODRIGUEZ, FPD, #342
4. J. CALLAHAN, FPD, #386
5. Sgt. R. DOWNS, FPD
6. Sgt. T. GATTIE, FSO
7. S. MORRISON, FSO
8. B. PREHEIM, FSO, I.B.
9. J. DUTY, FSO, I.B.
10. W. FLAHERTY, Coroner, FSO
11. Det. W. McDANIELS, FSO
12. G. ELLIOTT, FSO
13. Personnel from Madison Service: A Mr. DAVE ROPER

RO then spoke with Det. BROWN from Fresno Police Department for further briefing. Det. BROWN stated that he and Det. SNOW had been questioning suspects of a PC 207 from Modesto (Modesto #78-06706) concerning the whereabouts of a THERESA GREYBEAL, the possibly victim of a kidnap. Det. BROWN developed information that the victim had been shot and left in the Calwa area (See FPD #78-5819 for details) and he and Det. SNOW, along with one of the suspects went to Calwa to investigate.

REPORTING OFFICERS G. Elliott	RECORDING OFFICER Same	TYPED BY vk	DATE AND TIME 2-10-78 0930	ROUTED BY
FURTHER ACTION <input type="checkbox"/> YES <input type="checkbox"/> NO	COPIES TO: <input type="checkbox"/> DETECTIVE <input type="checkbox"/> JUVENILE <input type="checkbox"/> DIST. ATTNY. <input type="checkbox"/> S.O./P.D.	<input type="checkbox"/> CII <input type="checkbox"/> PATROL <input type="checkbox"/> OTHER <input type="checkbox"/> OTHER	REVIEWED BY 77	DATE

FRESNO COUNTY SHERIFF'S DEPARTMENT
Fresno, California

69. CASE NO.
78-1809
78-39-26

-3-

DATE _____

70. CODE SECTION 187 PC	71. CRIME Murder	72. CLASSIFICATION		
73. VICTIM'S NAME - LAST, FIRST, MIDDLE (FIRM IF BUS.) GREYBEAL, Theresa		74. ADDRESS	RESIDENCE	BUSINESS 75. PHONE

Det. BROWN further related that Det. SNOW found the victim at Tenth and Vine and noted that was deceased at approximately 0123 hours.

Det. BROWN further brought to RO's visual attention that an unsmoked cigarette was on the ground next to the victim's right arm. Also that a spent .22 or .25 caliber casing was in the roadway on Tenth just south of Vine. (See I. Bureau report for exact measurements.)

Deputy MORRISON then was assigned to canvass the neighborhood and make special vehicle notations (see Deputy S. MORRISON'S report) via Sgt. GATTIE

Det. McDANIELS then investigated the crime scene while I. Bureau Deputy PREHEIM and Deputy J. DUTY processed for evidence value.

At approximately 3:37 AM, this date, Coroner FLAHERTY and Madison Service removed the victim's remains and went to Valley Medical Center for further investigation. At that time RO was advised that the victim's purse contained identification for THERESA GREYBEAL.

See FPD case #78-5819.

See Modesto case #78-06706.

See I. Bureau/Detective's reports #78-39-26, 78-1809.

See Deputy MORRISON'S follow up #78-39-26.

REPORTING OFFICERS G. Elliott		RECORDING OFFICER Same	TYPED BY vk	DATE AND TIME 2-10-78 0945	ROUTED BY
FURTHER ACTION <input type="checkbox"/> YES <input type="checkbox"/> NO	COPIES TO: <input type="checkbox"/> DETECTIVE <input type="checkbox"/> JUVENILE <input type="checkbox"/> DIST. ATTNY. <input type="checkbox"/> S.O./P.D.	<input type="checkbox"/> CII <input type="checkbox"/> PATROL <input type="checkbox"/> OTHER <input type="checkbox"/> OTHER	REVIEWED BY 78		DATE

CERTIFICATE OF DEATH
STATE OF CALIFORNIA

1097 0474

STATE FILE NUMBER			LOCAL REGISTRATION DISTRICT AND CERTIFICATE NUMBER				
1A. NAME OF DECEDENT—FIRST <i>Theresa</i>		1B. MIDDLE <i>Kay</i>	1C. LAST <i>Graybeal</i>		2A. DATE OF DEATH (MONTH, DAY, YEAR) <i>February 9, 1978</i> Found		
3. SEX <i>Female</i>	4. RACE <i>White</i>	5. ETHNICITY <i>American</i>	6. DATE OF BIRTH <i>April 20, 1956</i>	7. AGE <i>21</i> YEARS	IF UNDER 1 YEAR MONTHS	IF UNDER 24 HOURS HOURS	
8. BIRTHPLACE OF DECEDENT (STATE OR FOREIGN COUNTRY) <i>California</i>		9. NAME AND BIRTHPLACE OF FATHER <i>Gerald Pawloski — Illinois</i>		10. BIRTH NAME AND BIRTHPLACE OF MOTHER <i>Naomi Moseley — Oklahoma</i>			
11. CITIZEN OF WHAT COUNTRY <i>U.S.A.</i>		12. SOCIAL SECURITY NUMBER <i>563 - 17 - 3016</i>	13. MARITAL STATUS <i>Married</i>		14. NAME OF SURVIVING SPOUSE (IF WIFE, ENTER BIRTH NAME) <i>David Graybeal -</i>		
15. PRIMARY OCCUPATION <i>Cannery worker</i>		16. NUMBER OF YEARS THIS OCCUPATION <i>2</i>	17. EMPLOYER (IF SELF-EMPLOYED, SO STATE) <i>Tri-Valley Cannery</i>		18. KIND OF INDUSTRY OR BUSINESS <i>Food Processing</i>		
19A. USUAL RESIDENCE—STREET ADDRESS (STREET AND NUMBER OR LOCATION) <i>1614 Las Vegas</i>				19B. ZIP CODE <i>98-000</i>	20. NAME AND ADDRESS OF INFORMANT—RELATIONSHIP <i>David Graybeal, Husband</i> <i>1614 Las Vegas</i> <i>Modesto, California</i>		
19C. CITY OR TOWN <i>Modesto</i>		19D. COUNTY <i>Stanislaus</i>		19E. STATE <i>Ca.</i>			
21A. PLACE OF DEATH <i>Street Corner</i>			21B. STREET ADDRESS (STREET AND NUMBER OR LOCATION) <i>10th, and Vine streets</i>				
21C. CITY OR TOWN <i>Calma</i>			21D. COUNTY <i>Fresno</i>				
22. DEATH WAS CAUSED BY: ENTER ONLY ONE CAUSE PER LINE FOR A, B, AND C) IMMEDIATE CAUSE (A) <i>Gunshot wound of the neck</i>						24. WAS DEATH REPORTED TO CORONER? Yes	
CONDITIONS, IF ANY, WHICH GAVE RISE TO THE IMMEDIATE CAUSE, STATING THE UNDERLYING CAUSE LAST							25. WAS BIOPSY PERFORMED? No
23. OTHER CONDITIONS CONTRIBUTING BUT NOT RELATED TO THE IMMEDIATE CAUSE OF DEATH							
27. WAS OPERATION PERFORMED FOR ANY CONDITION IN ITEMS 22 OR 23? OPERATION No DATE							
28A. I CERTIFY THAT DEATH OCCURRED AT THE HOUR, DATE AND PLACE STATED FROM THE CAUSES STATED. I ATTENDED DECEDENT SINCE (ENTER MO. DA. YR.)		28B. PHYSICIAN—SIGNATURE AND DEGREE OR TITLE		28C. DATE SIGNED		28D. PHYSICIAN'S LICENSE NUMBER	
I LAST SAW DECEDENT ALIVE (ENTER MO. DA. YR.)		28E. TYPE PHYSICIAN'S NAME AND ADDRESS					
29. SPECIFY ACCIDENT, SUICIDE, ETC. Homicide		30. PLACE OF INJURY Street		31. INJURY AT WORK No	32A. DATE OF INJURY—MONTH, DAY, YEAR 2-8-78	32B. APPROX. HOUR 2000	
33. LOCATION (STREET AND NUMBER OR LOCATION AND CITY OR TOWN) Southeast corner of 10th & Vine Fresno			34. DESCRIBE HOW INJURY OCCURRED (EVENTS WHICH RESULTED IN INJURY) Shot by another. (.25 Cal. Auto.)				
35A. I CERTIFY THAT DEATH OCCURRED AT THE HOUR, DATE AND PLACE STATED FROM THE CAUSES STATED. AS REQUIRED BY LAW I HAVE HELD AN (INQUEST- <u>INVESTIGATION</u>)			35B. SHERIFF/CORONER'S SIGNATURE By: <i>Mary Birnbaum</i>		35C. DATE SIGNED 2-13-78		
36. DISPOSITION <i>Burial</i>	37. DATE—MONTH, DAY, YEAR <i>Feb. 14, 1978</i>	38. NAME AND ADDRESS OF CEMETERY OR CREMATORY <i>Ceres Cemetery - Ceres, California</i>			39. ENBALMER'S LICENSE NUMBER 6670		
40. NAME OF FUNERAL DIRECTOR (OR PERSON ACTING AS SUCH) <i>Franklin - Downs Funeral Home</i>			41. LOCAL REGISTRAR—SIGNATURE <i>Linda J. [Signature]</i> by: <i>JD</i>		42. DATE ACCEPTED BY LOCAL REGISTRAR FEB 13 1978		
A.	B.	C.	D.	E.	F.	<i>113</i>	



STATE OF CALIFORNIA

This is to certify that this is a true transcript copy of this document, recorded and/or filed in this office, as provided by law.

Galen Larson, County Recorder, By Deputy

COUNTY OF FRESNO

Dated *7-26-78*

Book *123* Page *113*

[Signature]

DECLARATION OF ALLEN J. BOUDREAU

I, Allen J. Boudreau, declare under penalty of perjury the following, except as to those items below which I indicate to be based on information and belief. If called to testify, I would testify as follows:

1. I was employed as a criminalist and later as Supervising Criminalist, by the Fresno County Sheriff's Department (FCSD) – June 12, 1972 – March 29, 2001. I was the only criminalist working for FCSD in 1978. After 29 years, I retired, in 2001. Between 2002 or 2003 and present, I have worked as a defense consultant. During my career, I have assisted in the investigation of about 1,000 homicides. Prior to signing this declaration, I have reviewed copies of some of the reports which bear my signature, provided to me by the investigator for defense counsel. I have also reviewed my testimony from the First Trial in 1978 and Second Trial in 1983, also provided by said investigator. Additionally, I reviewed a “Report of Investigation,” “Bureau of Investigations,” “Fresno County District Attorney”, prepared by Mike Garcia, Senior Investigator, 7-20-2017.

2. In 1978, I worked on the Theresa Graybeal homicide case. My job was to do evidence examination, as requested by case detectives and investigators from FCSD. I was not necessarily doing a lot of communications with others in the Sheriff's Department, other than the detectives, in order to determine what testing could be done on particular physical evidence. The standard procedure at FCSD was that homicide detectives always worked in a team.

3. In the Graybeal homicide, I recall analyzing casings and a .25 caliber Titan pistol. I recall that the deceased died of a gunshot wound from a hand gun. At both trials, I testified about the bullet trajectory. Forensically, the height of the victim may or may not matter because it depends upon the relative position of the shooter. When you have witnesses or anecdotal evidence regarding a shooting, the trajectory and distance of the shooter to the victim are all estimates. Given that they are estimates or reported as a range of metrics, there is a broad latitude regarding the specifics of what actually occurred. These things may be hypotheticals,

unless working with empirical data rather than testimonial evidence. Although I testified regarding the trajectory of the bullet that killed the victim, I did not state the victim's height listed in autopsy report during my trial testimony. The autopsy report was not admitted into evidence as a part of my testimony.

4. In reviewing Document No. 272 - Request for Evidence Examination, dated 2-10-78 Time 1454, Bates Stamp 00328, under For Laboratory Use Only, Examination Results, I wrote those results on 2-11-78 and that is my signature.

5. In reviewing Document No. 273 - Request for Evidence Examination, that is my signature at the bottom. I do not remember what FPD Case #75-41415 was about or why I was requested to compare the casing from that case to the .25 Titan pistol.

6. In reviewing Document No. 292 – Request for Evidence Examination dated 2-12-78, Time 1340 (?), Bates Stamp 001827, I did not perform the requested evidence testing. Examination Results not filled in. Hand written lettering of “Neg” , “10-22” and an apparent signature. Under the language ‘For Laboratory Use Only’, the word ‘Neg’ is short for negative. I do not recognize the signature in that section. In looking at it more closely, however, if, the first vertical line of the signature were crossed at the top it would be the letter “T”. The next three letters appear to be “lea”. A fourth possible letter could be an “n”. If that is the case the signature would be “Tlean” , Detective Tom Lean. The same Detective that submitted the Request For Evidence Examination, would be the person to cancel the request. I remember a lot of the people who worked in the FCSD Field Identification Bureau in 1978. In thinking about who was working in the FCSD Field Identification Bureau in 1978, I cannot think of any other person who would have signed the form. The only other person that did firearm analysis for FCSD at that time, was my late father-in-law, Edward F. Lamb. That is not his signature. FURTHER, THE CRIME SCENE INVESTIGATION REPORT of case 78-1995 DATED 2-13-1978, BY CRIMINOLOGIST W. SARMENT (LISTED BELOW UNDER DOCUMENTS REVIEWED), RECORDS THREE 22 CALIBER CARTRIDGE CASES RECOVERED. 22 CALIBER CARTRIDGE CASES CANNOT BE COMPARED TO 25 CALIBER CARTRIDGE CASES.

7. Regarding the evidence and testing procedures, all evidence was stored in the Property & Evidence room. I do not know what happened to missing evidence because I was not responsible for storing evidence. The Supervisor of the Field Identification Unit also supervised the Crime Lab and the Property & Evidence Unit. Those deputies were trained and experienced in photo documentation, measurements, sketches and diagrams, collecting and packaging physical evidence at the crime scene.

8. Blood evidence came into my hands for testing. For example, FCSD Request for Evidence Examination Property and Evidence envelope No. 271, requesting comparative blood tests, bears my signature. In 1978, we did not write formal reports, we stated our examination results on the bottom of the Request form. The Request for Evidence Examination forms were one page and printed in pads. A detective or investigator would tear off a form, fill out the top portion and submit it to the ID Unit or crime lab for analysis of some physical evidence.

The procedure that I used was to retrieve the blood from the evidence room and take it to the lab, where we had a refrigerator. The liquid blood sample would go into the refrigerator and then when we were done with testing it, it would be returned to the Property & Evidence room. I would have signed it out on a sheet that shows that it went from Property & Evidence to me at a particular date and time. Then I would return it and it would be signed back in from me to Property & Evidence at a particular date and time. I was not responsible for maintaining the evidence records. For evidence that I checked out, I do not know why it does not list that I returned it. If it is missing, I do not know what happened to it.

9. In reviewing Document #749 - Request for Examination, dated 4-12-78 Time 11:45 am, under For Laboratory Use Only, Examination Results, I wrote those results on 6-14-78 and that is my signature.

10. In reviewing the Evidence cards which contain my initials, they show that I checked out the following evidence on the dates listed below, but did not return it:

Evidence Card: Victim: Teresa Graybeal, Case No. 78-1809, dated 3-8-78, 1-Levi type jacket – checked out 3/23/1978

Evidence Card: Suspect: M. Lewis Case No. 78-1809, dated 2-10-78, (1) Blue jacket – checked out 3/23/1978

It is my recollection that I returned the items. However, apparently, the FCSD property officer did not document that I returned them. I do not recall why I checked these items out.

11. Regarding whether I did a comparison of .22 casings to .25 casings, I would not have done that because the class characteristics are substantially different. You cannot shoot rim fire ammunition in a .25 caliber pistol and you cannot fit .25 caliber bullets into the chamber of a .22 caliber pistol. So, at most, I would open both envelopes with the .22 casings and .25 casings and determine that there was nothing to test. They are not compatible in either direction.

12. At the time that I testified at the trials, I was not aware of Document #292. Regarding the prosecution theory that the same gun was used in both the Graybeal and Meras crimes, prosecutors are licensed but they are not forensic scientists. So, what a prosecutor thinks might be something to explore is not really something to explore because it is excluded on the face of it. If .22 casings were recovered from the Meras crime scene, and Theresa Graybeal was shot with a .25 caliber pistol, the same gun could not have been used in both crimes.

13. I have read the report from Mike Garcia, DA Investigator, dated 7-20-2017, stating that an Evidence Property Card referencing '3 Empty .22 Cartridge Cases' was attached to a container bearing my initials with the date 2-11-78, #78-1809, and the words 'Test Fired Cases'. I have no knowledge regarding the Empty .22 Cartridge Cases or how the Evidence Property card became attached to the cannister with the Test Fired Cases.

14. I never went to the crime scene in the Graybeal homicide case, nor the Meras crime scene. I was not present for the autopsy. I remember going to trial and testifying in the People v. Stankewitz case.

15. As I testified at the second trial, the purpose in determining the height up to the defendant's shoulders was to provide information that DDA James Ardaiz wanted to present as part of his case in chief. The autopsy report prepared by Dr. T. C. Nelson shows that

the height of the victim was 160 cm, approximately 5'3". This refers to her height from head to toe. When DDA Warren Robinson asked me to assume that the victim was 5'7", I did not correct him despite the actual height of the victim as stated in the autopsy report.

16. DOCUMENTS REVIEWED:

First Trial Testimony, Bates Stamp Pages 3512 thru 3537

First Trial Testimony, Bates Stamp Pages 4415 thru 4420

Second Trial Guilt Testimony, Bates Stamp Pages 144 thru 171

County of Fresno – Office of Sheriff Coroner, Post Mortem Record, Five Pages. Hand numbered Pages 252, 253, 254, 255 and 263.

Report of Investigation, Bureau of Investigations, Fresno County District Attorney. Investigator, Mike Garcia, Senior Investigator. Dated 7-20-2017.

Crime Lab Report, No. 272 Titan Pistol v. Cartridge Case, 2-11-1978

Crime Lab Report, No. 273 Fresno P.D. Case 75-41415, Cartridge Case, 2-11-1978

Document No. 292 Fresno County Sheriff's Department, Request For Evidence Examination. Submitted by Det. T. Lean. Comparison of cartridge case from FCSD 78-1809 to cartridge case from FCSD 78-1985 (? Hard to read) could be 78-1995, see below.

Fresno County Sheriff's Department, Division of Identification and Records, Technical Services Report. Dated 2-13-1978. Case number 78-1995, by Deputy Sheriff, Criminologist W. Sarment. Reports recovery of three 22 caliber cartridge cases.

Crime Lab Report, No. 271 vials of Blood and Bag of Clothing, Request for Blood type Comparison. 3-16-1978.

Crime Lab Report, No. 749 Titan Pistol and autopsy photographs of gunshot residue on the face of the deceased. A distance determination of firearm muzzle to target.

17. IMAGES REVIEWED:

Property Card, Clothing

Property Card, Clothing

Property Card, Three 22 Caliber Cartridge Cases

Photograph of the rear of small evidence envelope with Chain Of Custody adhesive label attached, first entry "FROM PROP", "TO M.GARCIA", "7-19-17", "0910". I have no photograph of the front of the envelope which could well have case number, names, dates, description and so on.

Photograph of small metal container with writing – "AJB", "2-11-78", "78-1809" AND "TEST FIRED CASES."

Photograph of same container opened to show three center fire cartridge cases.

16. Until now, I have never been contacted by any attorney, investigator or anyone representing Douglas Stankewitz.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed in Fresno, California on March 14, 2020.


Allen J. Boudreau



Report of Investigation Bureau of Investigations Fresno County District Attorney



[\[Email Me\]](#) Double click!

Date of Report: 7-20-2017		DA Report #: 1978H001		Agency Report#: Fresno SO 78-1809	
Date of Incident: 1978					
Unit: Homicide Unit		Code: pc 187(A)		Description/Classification: Homicide	

<u>Suspect / Defendant Information</u>												
[Add New Section] [Remove This Section]												
Suspect 1	Last: Stankewitz			First: Douglas			Middle: Ray			DOB: 5/31/1958		Age: 59
Residence Address California Department of Corrections				City/State/Zip				Phone		Prim Lang. Eng		
Race Hispanic	Sex M	Eyes Brn	Hair Blk	Hgt. 6-1	Wgt. 170	SSN		CDL	CII A04958460	CDC B097879	FBI	
Miscellaneous Descriptors (Aka's, Scars, Tattoos, Etc.)												
Work Address				City/State/Zip				Phone				
Vehicle	License	State	Make	Model		Year	Color		Style			

<u>Victim / Witness Information</u>												
[Add New Section] [Remove This Section]												
Victim	Last: Graybeal			First: Theresa			Middle:			DOB:		Age:
Residence Address				City/State/Zip				Phone		Prim Lang.		
Race Select	Sex	Eyes	Hair	Hgt.	Wgt.	SSN		CDL	CII	CDC	FBI	
Miscellaneous Descriptors (Aka's, Scars, Tattoos, Etc.)												
Work Address				City/State/Zip				Phone		Willing To Testify Select One		
Vehicle	License	State	Make	Model		Year	Color		Style			

SOURCE:

On 12-19-12, case was assigned for any other possible investigation or contact with possible witnesses. On 7-15-17 a request was received from SDA Pebet to view and document evidence that had been booked at the Fresno County Sheriff's Office. An appointment was made and on 7-19-17, I met with Evidence Technician Lisa Barretta at the Property Room of the Sheriff's Office.

INVESTIGATION:

Lisa Barretta had already had contact with SDA Pebet regarding several items needing to be documented and examined by this investigator. Barretta already had the items in question selected and we went into the evidence room for the viewing and documentation. All of the items viewed were photographed by this investigator. There were photographs in one of the items and those photographs were scanned and placed onto a CD disc by another Evidence Technician. Audio tapes were also found and a work order was completed to have them copied for further use.

SUSP/DEF: **Stankewitz, Douglas Ray** DA CASE #: **1978H001**
 INVESTIGATOR: **Mike Garcia, Senior Investigator** DATE: **7-20-2017**
 APPROVED BY: **Kevin Wiens, SSI, DA08, 07/20/2017**

PAGE: 1 of 3

Listed below are the items viewed by this investigator:

Item #27 was a small brown paper bag with the Sheriff's Office property tag affixed. Inside the paper bag I found a pair of sunglasses, a crayon drawn picture of an Indian riding on a horse, a small paper lunch bag decorated into a hand puppet, a payment stub from Best Chevron for R. Gonzales, and a pay stub for Gerald Pawlowski from Modesto Welding and Tank Works.

Item #26 was a small brown paper bag with the Sheriff's Office property tag affixed. Inside the paper bag I found a wood handle Vinyl Guard brush, 2 DMV vehicle registration suspense receipts for a vehicle belonging to G. Pawlowski, a black vinyl eyeglass case and a brown vinyl eyeglass case, 2 Inland Electronics Suppliers receipts, a receipt from Auto Lube for Jerry Pawlowski, a receipt from Welders Supply Service, a receipt from Sears for a timer, a receipt from Paul Hughes Chevron in the name of Jerry Pawlowski, a receipt from Lee Jewelers for Jerry Pawlowski, an unopened piece of mail for Gerald Pawlowski with a return address of 117 W. Main Turlock CA. 95380, 2 pay stubs for Gerald Pawlowski from Modesto Welding and Tank Service, an unopened roll of Pep O Mint Life Savers, a partial roll of Spearmint Certs and a blue/white dish towel.

Item listed as 2 – 8 was a small brown paper bag with the Sheriff's Office property tag affixed. Inside the paper bag I found a crushed Pepsi can and an open pack of Virginia Slims cigarettes.

Item listed as a Dagger type knife found in the trunk of a 1971 Mercury vehicle having a Sheriff's Office property tag attached by a metal wire. The knife had a single blade edge and brown wood handle. Using a measuring stick, the knife overall length was 10" with a 6" blade.

Item listed as 3 empty .22 Caliber cartridge casings was found to be a small yellow evidence envelope with the Sheriff's Office property tag affixed. On the copy of the property booking card I was given had the victim listed to be Jesus R. Meras who was a victim of a PC 211a under Sheriff's Office case #78-1995. Also found on the booking card is a reference of this item being related to the Graybeal PC 187 investigation. On the outside of the envelope was written case #78-1809 AJB 2-11-78 3 test fired cases from Titan 25 auto #146425. I cut the top end of the envelope open with a pair of scissors and found a silver tin container inside. On the top of the container was written 78-1809 AJB 2-11-78 test fired cases. When I opened the container there was cotton that appeared to be protecting objects within the container. I removed the top portion of the cotton and found 3 spent cartridge casings. In checking the head stamp of the casings, using a magnifying glass I found the stamp R-P (Remington Peters) 25 auto. After photographing the casings, they were placed back into the tin container along with the cotton.

All items viewed and photographed were placed back into their appropriate bags and those bags were sealed and returned to the custody of Technician Barretta. There was also an evidence envelope, which was not opened. This envelope was to have been property obtained from the Fresno Police Department and was listed under their case #78-5819 and being related to this case. This envelope was referenced for viewing due to a possibility items found in items listed as

26, 27 and 2-8 might have originally come from this envelope and were mismarked. This was not found to be true and none of the listed items were from this envelope.

ADDITIONAL INFORMATION:

Defendant had been arrested for the homicide of this victim. Defendant was found guilty and sentenced by the court. Evidence collected during the investigation was viewed and documented.

PICTURES/EVIDENCE: Yes See Attachment

Photographs were placed onto a CD disc and given to SDA Pebet. CD disc with the scanned photographs was also given to SDA Pebet.

Approvals

Mike Garcia, Senior Investigator

Reporting Investigator:

Kevin Wiens, SSI, DA08, 07/20/2017

Approved By:

PROPERTY POLICE DEPARTMENT
INVENTORY FORM

Check for police hold

Case Number: **7E-5719**
 Date: **2-8-78**
 Description of Vehicle: **PATROL**
 Year: **71** Make: **CADILLAC** Body Type: **COUPE** Year: **2/79** State: **CA** License No. [REDACTED]
 Vehicle Identification No. (VIN) [REDACTED] Engine Number (EN) [REDACTED]
 Registered Owner: **PAWELSKI, GERALD CHRIS** Address: [REDACTED] City: **MODESTO** State: [REDACTED]
 Legal Owner: [REDACTED] Address: [REDACTED] City: [REDACTED] State: [REDACTED]
 Driver or Person Last in Possession: [REDACTED] Address: [REDACTED] City: [REDACTED] State: [REDACTED]

CIRCUMSTANCES SURROUNDING (IMPOUND) RECOVERY-STORAGE
 Name of Garage: **MEL WEST TOWING** City: **FRESNO**
 Location from Which Towed: **1400 KERN**
 Person Reporting Occurrence: **R. RODRIGUEZ / J. CALLAHAN** Address: [REDACTED] City: **FPD**
 Location of Vehicle: **(Driveable)**
 Time and Date Towed: **0030, 2-9-78**
 Time and Date Reported: **2233, 2-8-78**
 Phone No.: [REDACTED]
 Cracked? Shipped?

VEHICLE INVENTORY				Condition	List Property Tools Other Items	
Yes	No	Yes	No			
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Spotlight(s)	<input checked="" type="checkbox"/>	L.F. Tire	GOOD	2 CTNS CAMEL CAS
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Foglight(s)	<input checked="" type="checkbox"/>	R.F. Tire		1 CTN VIOLET SUN CAS
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Bumper (Front)	<input checked="" type="checkbox"/>	R.R. Tire		
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Bumper (Rear)	<input checked="" type="checkbox"/>	L.R. Tire		
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Motor	<input checked="" type="checkbox"/>	Spare Tire		
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Battery	<input checked="" type="checkbox"/>	Wheels		
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Air Conditioner	<input type="checkbox"/>	Fenders		
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Hub Caps	<input checked="" type="checkbox"/>	Body, Hood		
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Fender Panels	<input checked="" type="checkbox"/>	Top		
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Transmission	<input checked="" type="checkbox"/>	Grill		
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Jack	<input checked="" type="checkbox"/>	Upholstery		

REMARKS: **MINOR DING, RIF FENDER MARKS**
 (If mirror is made give all items charges, where booked)
VEH POSSIBLY INVOLVED IN PC187 - P. WICK HEAT
VEH TOWED TO FPD JWR =
TO FSC - 2-9-78
TOWED BY [REDACTED]

Officer entering vehicle stored (signature): **[Signature]**
 SAGE No: **350**
 Garage principal or agent storing vehicle (signature): **[Signature]** Date: **2-9-78**
 If Notices Have Not Been Sent Indicate Reason: _____
 Impound Release: _____
 Vehicle Description: _____

Signature: _____
 OWNER OR LEGAL OWNER OR AGENT OF OWNER
 I hereby certify that I am legally authorized and entitled to take possession of the vehicle described above.

December 7, 2019

Fresno County Sheriff's Office
P.O. Box 1788
Fresno, CA 93717

Re: Access to Public Records

TO WHOM IT MAY CONCERN:

This letter is to request access to records in your possession for the purpose of inspection and copying pursuant to the California Public Records Act (Government Code Section 6250 et seq.).

The information I seek to inspect is as follows:

1. any and all training manuals or instructions; policies; protocol; memoranda; bulletins; notices; or procedures, however described, regarding departmental processing, storage, retention of evidence in effect from 1972 - present, including any information related to whether officers mark or initial evidence, by law enforcement agents in the course of their employment.
2. any and all training manuals or instructions; policies; protocol; memoranda; bulletins; notices; or procedures, however described, regarding procedures for arrest and interrogation of suspects in effect from 1972 - present by law enforcement agents in the course of their employment.
3. any and all training manuals or instructions; policies; protocol; memoranda; bulletins; notices; or procedures, however described, regarding procedures for homicide investigations. in effect from 1972 - present by law enforcement agents in the course of their employment.
4. any and all policies on recorded interviews. in effect from 1972 - present by law enforcement agents in the course of their employment.
5. any and all policies on witness statements. in effect from 1972 - present by law enforcement agents in the course of their employment.

This request reasonably describes identifiable records or information produced therefrom, and I believe that no express provisions of law exempt the records from disclosure. Pursuant to Government Code Section 6253(b), I ask that you make the record(s) "promptly available," for inspection and copying, based on my payment of "fees covering direct costs of duplication, or statutory fee, if applicable." Accordingly, I hereby authorize up to \$50 for reasonable fees and kindly request that you mail the documents to my law offices at 2171 Francisco Blvd. E, Suite D, San Rafael, CA 94901 (or notify me as to any costs so I may arrange for payment or viewing and copying).

Fresno County Sheriff's Office
Public Records Act Request
12-7-2019
Page 2

If a portion of the information I have requested is exempt from disclosure by express provisions of law, Government Code Section 6253(a) additionally requires segregation and deletion of that material in order that the remainder of the information may be released. If you determine that an express provision of law exists to exempt from disclosure all or a portion of the material I have requested, Government Code Section 6253(c) requires signed notification to me citing the legal authorities upon which you rely and of the reasons for the determination, not later than 10 days from your receipt of this request.

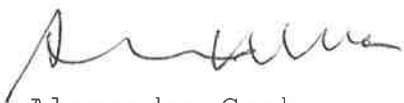
Government Code Section 6253(d) prohibits the use of the 10-day period, or any provisions of the Public Records Act "to delay access for purposes of inspecting public records."

To expedite compliance, I am sending a copy of this request to the office of your legal adviser.

If I can provide any clarification that will help expedite your attention to my request, please contact me at 415-457-8936 or Alexandraatty@wealthplusinc.com.

Thank you for your time.

Very truly yours,



Alexandra Cock

cc: Daniel C. Cederborg
Fresno County Counsel
2220 Tulare St. Fifth Floor
Fresno, CA 93721

Alexandra Cock
Attorney
Washington Bar #11775
2171 Francisco Blvd. E., Suite D
San Rafael, CA 94901
(415) 457-8936

From: [Devins, Frances](#)
To: "[alexandra cock](#)"
Subject: RE: Request for Information-FSO PRA 19-153
Date: Monday, January 27, 2020 2:18:11 PM

Dear. Ms. Cock,

We are still researching/reviewing your request as it is a voluminous request and we are searching various locations within the agency to see what we have.

As soon as we have collected the information, we will process it and be in contact with you regarding the cost.

For reference, our current policy is online and available on our website.

Thank you,

Lt. Frances Devins
Records Unit Commander
ICS Team Commander
Fresno County Sheriff's Office
(559) 600-8617 Office
(559) 488-1899 FAX
Frances.Devins@fresnosheriff.org

From: alexandra cock <alexandraatty@wealthplusinc.com>
Sent: Monday, January 13, 2020 7:50 PM
To: Devins, Frances <Frances.Devins@fresnosheriff.org>
Subject: RE: Request for Information-FSO PRA 19-153

**** EXTERNAL EMAIL ** Use caution opening attachments or clicking on links from unknown senders. ****

Dear Lt. Devins,

I am following up regarding your email and letter dated 12-16-2019. Can you please tell me when you will complete processing my request?

Thanks

Alexandra

Alexandra Cock, Attorney
2171 Francisco Blvd. E, Suite D
San Rafael, CA 94901
(415) 457-8936

CONFIDENTIALITY NOTICE: Privileged/Confidential information may be contained in this message. If you are not the addressee indicated in this message (or responsible for delivery of the message to such person), you may not copy or deliver the message to anyone. In such case, you should destroy this message and kindly notify the sender by reply email.

From: Devins, Frances <Frances.Devins@fresnosheriff.org>

Sent: Monday, December 16, 2019 4:59 PM

To: 'alexandraatty@wealthplusinc.com' <alexandraatty@wealthplusinc.com>

Subject: Request for Information-FSO PRA 19-153

Dear Alexandra Cock,

The Fresno County Sheriff's Office is in receipt of your Public Records Act Request pursuant to California Public Records Act California Government Code 6250, now internally identified as FSO PRA 19-153, for the information listed below:

1. Any and all training manuals or instructions; policies; protocol; memoranda; bulletins; notices; or procedures, however described, regarding departmental processing, storage, retention of evidence in effect from 1972 – present, including any information related to whether officers mark or initial evidence, by law enforcement agents in the course of their employment.
2. Any and all training manuals or instructions; policies; protocol; memoranda; bulletins; notices; or procedures, however described, regarding procedures for arrest and interrogation of suspects in effect from 1972 – present by law enforcement agents in the course of their employment.
3. Any and all training manuals or instructions; policies; protocol; memoranda; bulletins; notices; or procedures, however described, regarding procedures for homicide investigations. [sic] in effect from 1972 – present by law enforcement agents in the course of their employment.
4. Any and all policies on recorded interviews. [sic] in effect from 1972 – present by law enforcement agents in the course of their employment.
5. Any and all policies on witness statements. [sic] in effect from 1972 – present by law enforcement agents in the course of their employment.

Please be advised SB 978 requires all agencies to conspicuously post all of their current standards, policies, practices, operating procedures and their education and training materials on their website. This information will be located on our webpage at www.fresnosheriff.org after January 1, 2020.

As your request is very broad and the information you are requesting is voluminous, be advised your request will require some time to process, which will exceed 10 days.

If there is something you are looking for specifically, please advise us of that information so we can narrow our search and expedite your request.

A paper copy of this acknowledgement letter will be sent via USPS mail.

Thank you,

Lt. Frances Devins

Records Unit Commander

ICS Team Commander

Fresno County Sheriff's Office

(559) 600-8030 Office

(559) 488-1899 FAX

Frances.Devins@fresnosheriff.org

DECLARATION OF ALEXANDRA COCK

I, Alexandra Cock, declare and state as follows:

1. I am an attorney, duly licensed to practice law in the State of Washington. All of the facts contained in this declaration are known to me personally and if called as a witness, I could and would testify thereto.
2. On December 16, 2015, I reviewed the Fresno Superior Court case docket for case #CF22701505, which started with 3/13/1978. On or about the same date, I reviewed the existing case file.
3. Starting in 2016, when J. Tony Serra and Curtis L. Briggs began representing Mr. Stankewitz, I have assisted them as paralegal.
4. From early 2017 – present, I have done the following:
 - a. Read 3,961 pages provided in discovery in 2012, including Fresno Police Department and Fresno County Sheriff's Department police reports. Prepared a list of all evidence referred to in the police reports. Read and reviewed the discovery materials provided to the defense in August, 2017 and described in the Discovery Receipt prepared by the District Attorney's Homicide Unit.
 - b. Arranged for the defense to view and was present to view the evidence in the possession of Fresno County Sheriff's Department and Fresno Superior Court on August 24, 2017, and May 25, 2018.
 - c. Arranged for and viewed evidence in the possession of Fresno County Sheriff's Department and Fresno Superior Court with defense experts on March 21, 2019.
 - d. Starting in May, 2019 – present, assisted with researching and preparing the Petition for Writ of Habeas Corpus in the above referenced case. During this time, I extensively reviewed the files and records provided by previous defense counsel of approximately 52 bankers boxes.
 - e. Prepared the Table of Missing Evidence attached as an exhibit to the Petition. In addition to reviewing the police reports described above, my preparation included reviewing all of the property record cards viewed at the

Fresno County Sheriff's Department. On information and belief, the Chart of Missing Evidence lists all evidence that is known to be lost in this case.

- f. Prepared the list of second trial testimony where Billy Brown refers to his first trial testimony.
 - g. On December 7, 2019, prepared and submitted a California Public Records Act request to the Fresno County Sheriff's Department, which is attached hereto. I received a response on December 16, 2019, stating that they would need at least 10 days to respond. I received an additional response on January 27, 2020, stating that they were still researching my request. These three documents are attached as Exhibit A hereto. To date, I have never received any documents in response to my request.
 - h. On December 7, 2019, prepared and submitted a California Public Records Act request to the Fresno Police Department, which is attached hereto. On June 1, 2020, I received a response stating that they were unable to locate any responsive records for the years 1973 – 1987. These two documents are attached as Exhibit B hereto.
 - i. On May 6, 2020, I prepared and submitted a request for jury questionnaires for individuals summoned to jury duty in Petitioner's second trial to the Superior Court of Fresno. I received a response dated 5-15-2020 stating that the Fresno court has no records responsive to my request.
 - j. Transcribed the March, 2020 voicemail from Det. Thomas Lean III, Retired, left for Jonah Lamb, defense investigator.
5. Regarding specific items of evidence:
- a. There are no documents provided in discovery that state that the vehicle involved in the crimes was searched at the time of the arrests.
 - b. The photos taken by R. Smith, Criminologist, are listed on the Court's First Trial Exhibit Record as Exhibits 46A through 46F, however, they are no longer contained in either the court evidence nor the FCSD evidence.
 - c. There are no documents provided in discovery that discuss whether Jesus Meras received anything of value for his interview or whether he had ever been arrested or convicted of a crime.
 - d. The reports discovered to the defense do not document that a search was conducted at the Meras crime scene for a gun or other evidence. There are no reports discovered to the defense which indicate that the police did a follow up investigation regarding the Meras crimes, including interviewing witnesses at the bar in Rolinda. The codefendants' police statements do not confirm that the Meras crimes occurred. There are no records of search

warrants issued nor any search conducted of Christina's Menchaca's residence at the Olympic Hotel, for a gun or other evidence of the Meras crimes.

- e. No police or district attorney reports indicate that Billy Brown's parents were present for any of his interviews.
- f. I have listened to the Billy Brown police interview taped on 2-11-78. Throughout Brown's February 11, 1978 interview, someone can be heard writing.
- g. Billy Brown's Motion and Order of Immunity are not contained in either the Fresno Superior Court file nor the Clerk's Transcripts for either the first or second trial.
- h. No records of weekend meetings of Billy Brown with DDA Ardaiz have been discovered to the defense.
- i. The Superior court records show that Fresno Municipal Court case #F32495 was transferred to Fresno Superior Court on 3-3-1978. I searched the Fresno Superior court file for the Douglas Stankewitz case. No copy of said Order for Stankewitz Blood Sample signed by Judge Armando Rodriguez can be found. I reviewed Clerk's Transcript for 1978 trial, Volumes I & II, and the Clerk's Transcript for 1983 trial, Volumes I & II – no Order was found.
- j. The only report which documents the storage of Stankewitz's blood sample is FCSD Request for Evidence Examination #271, dated 2-10-78. There are no other reports which document the storage of the February 9, 1978 blood sample. The sample is not found in either court evidence or FSO evidence. The piece from Petitioner's t-shirt documented in the same FCSD Request for Evidence Examination #271 is not in evidence.
- k. I have searched the case files referred to above and have not found any documentation that either of Stankewitz's trial counsel attempted to seek an independent examination of Petitioner's blood sample.
- l. This are no Property Record Card showing that Teena Topping's blood was drawn. No court order for Topping's blood draw can be found.
- m. There are no reports to indicate that the police or prosecution did any testing of clothing, prior to the second trial.
- n. Deputy District Attorney James Ardaiz's name appears on at least 15 FPD and FCSD investigation reports.
- o. There is no spent bullet in either the court evidence or the FSO evidence.

p. A review of the police case files supplied by DDA Pebet in 2017, for both the Graybeal homicide and Meras crimes shows that they only contain 222 pages and 5 pages, respectively.

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

September 18, 2020
San Rafael, CA



Alexandra Cock

December 7, 2019

Fresno County Sheriff's Office
P.O. Box 1788
Fresno, CA 93717

Re: Access to Public Records

TO WHOM IT MAY CONCERN:

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2. any and all training manuals or instructions; policies; protocol; memoranda; bulletins; notices; or procedures, however described, regarding procedures for arrest and interrogation of suspects in effect from 1972 - present by law enforcement agents in the course of their employment.
3. any and all training manuals or instructions; policies; protocol; memoranda; bulletins; notices; or procedures, however described, regarding procedures for homicide investigations. in effect from 1972 - present by law enforcement agents in the course of their employment.
4. any and all policies on recorded interviews. in effect from 1972 - present by law enforcement agents in the course of their employment.
5. any and all policies on witness statements. in effect from 1972 - present by law enforcement agents in the course of their employment.

This request reasonably describes identifiable records or information produced therefrom, and I believe that no express provisions of law exempt the records from disclosure. Pursuant to Government Code Section 6253(b), I ask that you make the record(s) "promptly available," for inspection and copying, based on my payment of "fees covering direct costs of duplication, or statutory fee, if applicable." Accordingly, I hereby authorize up to \$50 for reasonable fees and kindly request that you mail the documents to my law offices at 2171 Francisco Blvd. E, Suite D, San Rafael, CA 94901 (or notify me as to any costs so I may arrange for payment or viewing and copying).

EXHIBIT A

Fresno County Sheriff's Office
Public Records Act Request
12-7-2019
Page 2

If a portion of the information I have requested is exempt from disclosure by express provisions of law, Government Code Section 6253(a) additionally requires segregation and deletion of that material in order that the remainder of the information may be released. If you determine that an express provision of law exists to exempt from disclosure all or a portion of the material I have requested, Government Code Section 6253(c) requires signed notification to me citing the legal authorities upon which you rely and of the reasons for the determination, not later than 10 days from your receipt of this request.

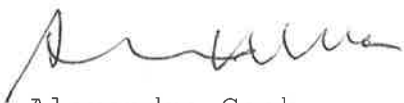
Government Code Section 6253(d) prohibits the use of the 10-day period, or any provisions of the Public Records Act "to delay access for purposes of inspecting public records."

To expedite compliance, I am sending a copy of this request to the office of your legal adviser.

If I can provide any clarification that will help expedite your attention to my request, please contact me at 415-457-8936 or Alexandraatty@wealthplusinc.com.

Thank you for your time.

Very truly yours,



Alexandra Cock

cc: Daniel C. Cederborg
Fresno County Counsel
2220 Tulare St. Fifth Floor
Fresno, CA 93721

Alexandra Cock
Attorney
Washington Bar #11775
2171 Francisco Blvd. E., Suite D
San Rafael, CA 94901
(415) 457-8936



December 16, 2019

Alexandra Cock
Attorney-Washington Bar #11775
Wealth Plus Inc.
2171 Francisco Blvd. E., Suite D
San Rafael, CA 94901

Email: Alexandraatty@wealthplusinc.com

RE: FSO PRA 19-153

Dear Alexandra Cock,

The Fresno County Sheriff's Office is in receipt of your Public Records Act Request pursuant to California Public Records Act California Government Code 6250, now internally identified as FSO PRA 19-153, for the information listed below:

1. Any and all training manuals or instructions; policies; protocol; memoranda; bulletins; notices; or procedures, however described, regarding departmental processing, storage, retention of evidence in effect from 1972 – present, including any information related to whether officers mark or initial evidence, by law enforcement agents in the course of their employment.
2. Any and all training manuals or instructions; policies; protocol; memoranda; bulletins; notices; or procedures, however described, regarding procedures for arrest and interrogation of suspects in effect from 1972 – present by law enforcement agents in the course of their employment.
3. Any and all training manuals or instructions; policies; protocol; memoranda; bulletins; notices; or procedures, however described, regarding procedures for homicide investigations. [sic] in effect from 1972 – present by law enforcement agents in the course of their employment.
4. Any and all policies on recorded interviews. [sic] in effect from 1972 – present by law enforcement agents in the course of their employment.
5. Any and all policies on witness statements. [sic] in effect from 1972 – present by law enforcement agents in the course of their employment.

Please be advised SB 978 requires all agencies to conspicuously post all of their current standards, policies, practices, operating procedures and their education and training materials on their website. This information will be located on our webpage at www.fresnosheriff.org after January 1, 2020.

As your request is very broad and the information you are requesting is voluminous, be advised your request will require some time to process, which will exceed 10 days. If there is something you are looking for specifically, please advise us of that information so we can narrow our search and expedite your request.

Dedicated to Protect & Serve

Sincerely,



Lieutenant Frances Devins
Records Unit Commander
Fresno County Sheriff's Office
(559) 600-8617 Office
(559) 488-1899 Fax
frances.devins@fresnosheriff.org

From: [Devins, Frances](#)
To: "[alexandra cock](#)"
Subject: RE: Request for Information-FSO PRA 19-153
Date: Monday, January 27, 2020 2:18:11 PM

Dear. Ms. Cock,

We are still researching/reviewing your request as it is a voluminous request and we are searching various locations within the agency to see what we have.

As soon as we have collected the information, we will process it and be in contact with you regarding the cost.

For reference, our current policy is online and available on our website.

Thank you,

Lt. Frances Devins
Records Unit Commander
ICS Team Commander
Fresno County Sheriff's Office
(559) 600-8617 Office
(559) 488-1899 FAX
Frances.Devins@fresnosheriff.org

From: alexandra cock <alexandraatty@wealthplusinc.com>
Sent: Monday, January 13, 2020 7:50 PM
To: Devins, Frances <Frances.Devins@fresnosheriff.org>
Subject: RE: Request for Information-FSO PRA 19-153

**** EXTERNAL EMAIL ** Use caution opening attachments or clicking on links from unknown senders. ****

Dear Lt. Devins,

I am following up regarding your email and letter dated 12-16-2019. Can you please tell me when you will complete processing my request?

Thanks

Alexandra

Alexandra Cock, Attorney
2171 Francisco Blvd. E, Suite D
San Rafael, CA 94901
(415) 457-8936

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From: Devins, Frances <Frances.Devins@fresnosheriff.org>

Sent: Monday, December 16, 2019 4:59 PM

To: 'alexandraatty@wealthplusinc.com' <alexandraatty@wealthplusinc.com>

Subject: Request for Information-FSO PRA 19-153

Dear Alexandra Cock,

The Fresno County Sheriff's Office is in receipt of your Public Records Act Request pursuant to California Public Records Act California Government Code 6250, now internally identified as FSO PRA 19-153, for the information listed below:

1. Any and all training manuals or instructions; policies; protocol; memoranda; bulletins; notices; or procedures, however described, regarding departmental processing, storage, retention of evidence in effect from 1972 – present, including any information related to whether officers mark or initial evidence, by law enforcement agents in the course of their employment.
2. Any and all training manuals or instructions; policies; protocol; memoranda; bulletins; notices; or procedures, however described, regarding procedures for arrest and interrogation of suspects in effect from 1972 – present by law enforcement agents in the course of their employment.
3. Any and all training manuals or instructions; policies; protocol; memoranda; bulletins; notices; or procedures, however described, regarding procedures for homicide investigations. [sic] in effect from 1972 – present by law enforcement agents in the course of their employment.
4. Any and all policies on recorded interviews. [sic] in effect from 1972 – present by law enforcement agents in the course of their employment.
5. Any and all policies on witness statements. [sic] in effect from 1972 – present by law enforcement agents in the course of their employment.

Please be advised SB 978 requires all agencies to conspicuously post all of their current standards, policies, practices, operating procedures and their education and training materials on their website. This information will be located on our webpage at www.fresnosheriff.org after January 1, 2020.

As your request is very broad and the information you are requesting is voluminous, be advised your request will require some time to process, which will exceed 10 days.

If there is something you are looking for specifically, please advise us of that information so we can narrow our search and expedite your request.

A paper copy of this acknowledgement letter will be sent via USPS mail.

Thank you,

Lt. Frances Devins

Records Unit Commander

ICS Team Commander

Fresno County Sheriff's Office

(559) 600-8030 Office

(559) 488-1899 FAX

Frances.Devins@fresnosheriff.org

December 7, 2019

Fresno Police Department
2323 Mariposa
Fresno, CA 93721

Re: Access to Public Records

TO WHOM IT MAY CONCERN:

This letter is to request access to records in your possession for the purpose of inspection and copying pursuant to the California Public Records Act (Government Code Section 6250 *et seq.*).

The information I seek to inspect is as follows: any and all training manuals or instructions; policies; protocol; memoranda; bulletins; notices; or procedures, however described, regarding the following:

1. departmental processing, storage, retention of evidence in effect, including any information related to whether officers mark or initial evidence, from 1972 – present;
2. departmental policies on recorded interviews in effect from 1972 – present;
3. departmental policies on witness statements in effect from 1972 – present;
4. departmental procedures for arrest and interrogation of suspects in effect from 1972 – present; and
5. departmental procedures for homicide investigations in effect from 1972 – present;

by law enforcement agents in the course of their employment.

Also, a copy of the police file for Case #75-41415.

This request reasonably describes identifiable records or information produced therefrom, and I believe that no express provisions of law exempt the records from disclosure. Pursuant to Government Code Section 6253(b), I ask that you make the record(s) "promptly available," for inspection and copying, based on my payment of "fees covering direct costs of duplication, or statutory fee, if applicable."

Accordingly, I hereby authorize up to \$50 for reasonable fees and kindly request that you mail the documents to my law offices at 2171 Francisco Blvd. E, Suite D, San Rafael, CA 94901 (or notify me as to any costs so I may arrange for payment

Fresno County Sheriff's Office
Public Records Act Request
12-7-2019
Page 2

or viewing and copying).

If a portion of the information I have requested is exempt from disclosure by express provisions of law, Government Code Section 6253(a) additionally requires segregation and deletion of that material in order that the remainder of the information may be released. If you determine that an express provision of law exists to exempt from disclosure all or a portion of the material I have requested, Government Code Section 6253(c) requires signed notification to me citing the legal authorities upon which you rely and of the reasons for the determination, not later than 10 days from your receipt of this request.

Government Code Section 6253(d) prohibits the use of the 10-day period, or any provisions of the Public Records Act "to delay access for purposes of inspecting public records."

To expedite compliance, I am sending a copy of this request to the office of your legal adviser.

If I can provide any clarification that will help expedite your attention to my request, please contact me at 415-457-8936 or Alexandraatty@wealthplusinc.com.

Thank you for your time.

Very truly yours,



Alexandra Cock

cc: Douglas T. Sloan
Fresno City Attorney
2220 Tulare St.
Fresno, CA 93721

Alexandra Cock
Attorney
Washington Bar #11775
2171 Francisco Blvd. E., Suite D
San Rafael, CA 94901
(415) 457-8936

From: [Kathleen Abdulla](#)
To: [alexandra cock](#)
Cc: [Francine Kanne](#); [Romi Morgan](#)
Subject: RE: PRA Response to Alexandra Cock - FPD Policies and Procedures
Date: Monday, June 1, 2020 9:21:20 AM

Ms. Cock,

The City was unable to locate responsive records for the years 1973-1987, or for 1989-2002. The City located and produced responsive records for the years 1988, and 2003-present. The City has no additional records to produce.

Thank you.

Kathleen Abdulla
Paralegal
Fresno City Attorney's Office
2600 Fresno Street
Fresno, CA 93721-3602
(559) 621-7525
Kathleen.Abdulla@fresno.gov

From: alexandra cock <alexandraatty@wealthplusinc.com>
Sent: Saturday, May 30, 2020 12:36 PM
To: Kimberly Hernandez <Kimberly.Hernandez@fresno.gov>
Cc: Francine Kanne <Francine.Kanne@fresno.gov>; Romi Morgan <Romi.Morgan@fresno.gov>; Jennifer Davis <Jennifer.Davis@fresno.gov>; Ricardo Farfan <Ricardo.Farfan@fresno.gov>; Kathleen Abdulla <Kathleen.Abdulla@fresno.gov>
Subject: RE: PRA Response to Alexandra Cock - FPD Policies and Procedures

External Email: Use caution with links and attachments

Hi Kimberly,

I notice that the documents that you sent are from 1988. As I requested, will you be sending the procedures from 1973 – 1988?

Thanks

Alexandra

Alexandra Cock, Attorney
2171 Francisco Blvd. E, Suite D
San Rafael, CA 94901
(415) 457-8936

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you are not the addressee indicated in this message(or responsible for delivery of the message to such person), you may not copy or deliver the message to anyone. In such case, you should destroy this message and kindly notify the sender by reply email.

From: Kimberly Hernandez <Kimberly.Hernandez@fresno.gov>
Sent: Thursday, April 02, 2020 4:37 PM
To: alexandraatty@wealthplusinc.com
Cc: Francine Kanne <Francine.Kanne@fresno.gov>; Romi Morgan <Romi.Morgan@fresno.gov>; Jennifer Davis <Jennifer.Davis@fresno.gov>; Ricardo Farfan <Ricardo.Farfan@fresno.gov>; Kathleen Abdulla <Kathleen.Abdulla@fresno.gov>
Subject: PRA Response to Alexandra Cock - FPD Policies and Procedures

Please see attached response and exhibits.

Here is a link to Exhibit "A":

<http://m3.fresno.gov/upload/files/43741529/122802A.pdf>

Here is a link to Exhibit "B":

<http://m3.fresno.gov/upload/files/113345865/122772B.pdf>

NOTE: The above link will be valid for 72 hours. If you are unable to access the documents by following the link, please notify the office

Thank you,

Kimberly Hernandez
Executive Assistant
Fresno City Attorney's Office
(559) 621-7500
Kimberly.Hernandez@fresno.gov

This e-mail message is intended only for the named addressee(s) and may contain privileged and confidential information that is protected pursuant the attorney-client privilege and the attorney work-product doctrine. Any dissemination, distribution or copying is strictly prohibited. If you received this e-mail message in error, please destroy the message, and notify the sender immediately by replying to this e-mail or by calling Kimberly Hernandez at the number provided above. Thank you.