

FILED

NOV 22 2021

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8 DOUGLAS RAY STANKEWITZ

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 IN AND FOR THE COUNTY OF FRESNO

11 PEOPLE OF THE STATE OF CALIFORNIA,)

Case No. 21CRWR685993

12 Plaintiff,)

NOTICE OF MOTION AND MOTION FOR
RELEASE ON OWN RECOGNIZANCE OR

13 vs.)

SETTING OF BAIL AT REASONABLE
AMOUNT; DECLARATION OF COUNSEL;

14 DOUGLAS R. STANKEWITZ,)

AND MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF

15 Defendant.)

Date: _____

Time: _____

Dept: _____

16 TO THE SUPERIOR COURT OF FRESNO COUNTY AND TO THE DISTRICT ATTORNEY
17 OF FRESNO COUNTY:

18 PLEASE TAKE NOTICE that on the ___ day of _____, 2021 at the hour
19 of ___ a.m., or as soon thereafter as the matter may be heard, Petitioner Douglas Ray
20 Stankewitz, through his counsel, will move the Court in the above-entitled matter for a formal
21 bail hearing and an order granting own-recognizance release or release on appropriate financial
22 or non-financial conditions. This motion is based upon the Eighth and Fourteenth Amendments
23 to the United States Constitution, Article I, Sections 12 and 28 (f) of the California Constitution,
24 on Penal Code §§ 1275, 1319, 1318.1, 1476, the accompanying Declaration of Counsel and
25 Memorandum of Points and Authorities, the records and files in this case including the pleadings

1 on appeal for sentencing and the Petition for Habeas Corpus, and on any argument and/or
2 evidence that the Court may consider at the hearing on this matter.

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1 **II. INTRODUCTION AND BACKGROUND**

2 At the age of 19, Douglas Ray Stankewitz was arrested and incarcerated for a murder he
3 did not commit. He is now 63 years old and is currently California's longest-serving inmate on
4 Death Row. As explained at length in the Amended Petition for Writ of Habeas Corpus
5 [hereinafter Petition], the failure and inadequacies of the court system, ineffective assistance of
6 counsel, and prosecutorial misconduct, have caused this case to appear in front of courts for over
7 four decades, though none have heard the full facts until the filing of the Petition.

8 This Court should grant Mr. Stankewitz's motion for release on own recognizance for
9 five reasons: (1) Mr. Stankewitz has filed an Amended Petition for Writ of Habeas Corpus that
10 raises substantial legal issues that will likely result in his conviction being overturned; (2) Mr.
11 Stankewitz has an appeal that raises substantial legal issues that will likely result in reversal of
12 his sentence and the consideration of a motion for new trial; (3) Mr. Stankewitz does not pose a
13 danger to public safety or the community; (4) Mr. Stankewitz is not a flight risk; and (5) Mr.
14 Stankewitz cannot afford money bail as he has been indigent his entire life.

15
16 **III. PROCEDURAL HISTORY OF BAIL MOTION**

17 Mr. Stankewitz has not previously filed a bail motion with any court. Bail in the
18 underlying criminal case is currently set at no bail, as it was set before present counsel entered
19 the case.

20 **IV. PROCEDURAL HISTORY OF CASE¹**

21 **A. Guilt Phases**

22 Mr. Stankewitz was originally arrested and tried in front of a jury for the murder
23 of Mrs. Graybeal in 1978. The conviction was overturned, and a new trial granted in
24

25

¹ For complete tables of all Stankewitz Case Dispositions from 1978 – 2012, *see* Exhibit 20a.

1 1982. At a second trial in 1983, Mr. Stankewitz was again convicted of murder,
2 kidnapping and robbery.

3 **B. Sentencing Phases**

4 After being convicted of murder, kidnapping and robbery, on November 18, 1983,
5 Petitioner was sentenced to death in Fresno County Superior Court. On April 9, 2019,
6 after multiple attempts by defense counsel to raise issues of newly discovered evidence of
7 misconduct, the Fresno District Attorney's Office filed a Request to Sentence Mr.
8 Stankewitz to Life Without Possibility of Parole. The Request stated that the District
9 Attorney did not know that mitigation was never presented at Mr. Stankewitz's second
10 trial. On April 30, 2019, the defense requested an opportunity for a sentencing hearing,
11 including the preparation of a sentencing memorandum. On May 1, 2019, Hon. Arlan
12 Harrell denied the request citing that he had no discretion to hear sentencing arguments.
13 As a result, on May 3, 2019, this court sentenced Mr. Stankewitz to life without the
14 opportunity for parole [hereinafter LWOP].
15

16 **C. Writs**

17 Mr. Stankewitz has never had an evidentiary hearing post-conviction. On August
18 4, 1999, pursuant to a federal writ of habeas corpus, U.S. District Court Judge Anthony
19 W. Ishii granted an evidentiary hearing to consider whether his second trial attorney,
20 Hugh Goodwin, had investigated Mr. Stankewitz's mental competency. On September 6,
21 2000, Judge Ishii issued an order vacating the evidentiary hearing stating that it had been
22 improvidently granted. As a result, no evidentiary hearing was held. The writ was granted
23 and the State appealed. The case was heard in both the U.S. District Court and the Ninth
24 Circuit between 2000 and 2012, litigating this issue.
25

1 On October 29, 2012, the Ninth Circuit affirmed the original District Court's order
2 granting Mr. Stankewitz' writ of habeas corpus in reference to *People v. Douglas R. Stankewitz*,
3 Fresno County Superior Court Case No. 227015-5. The penalty phase was overturned on several
4 grounds, due to trial counsel's ineffective assistance of counsel, including failure to investigate
5 and present mitigating evidence. The Ninth Circuit directed the State of California to either: (a)
6 vacate and set aside the death sentence, unless the State of California initiates proceedings to
7 retry Mr. Stankewitz's sentence within 90 days; or (b) resentence Mr. Stankewitz to LWOP. The
8 matter was sent back to the Fresno trial court.. The 1983 conviction and his LWOP sentence,
9 entered on May 3, 2019, are being challenged in the Amended Emergency Petition for Writ of
10 Habeas Corpus and Appeal.

11 **D. Current Appeal**

12 On June 27, 2019, Mr. Stankewitz appealed his case to the Fifth District Court of
13 Appeal, Case No. F079560. The issues on appeal include 1) Trial Court's Refusal to
14 Exercise its Sentencing Discretion violated due process and right to counsel; 2) Trial
15 Court's Refusal to Grant a Continuance for Sentencing violated due process and right to
16 counsel; and 3) Trial Court Erred in Ruling that Motion for New Trial and Related
17 Motions were untimely and violated due process and right to counsel. The case has been
18 fully briefed and is pending a decision by the Court.

19 **E. Proceedings Between 2012 – 2019**

20 On August 10, 2015, Peter Jones was appointed to represent Mr. Stankewitz. Two
21 years later, on March 17, 2017, J. Tony Serra and Curtis Briggs were approved to
22 represent Mr. Stankewitz as additional counsel, *pro bono*. Since 2017, both Mr. Serra and
23 Mr. Briggs, in conjunction with Mr. Jones, began an in-depth investigation, focusing on
24 reasonable doubt as to guilt.
25

1 On December 6, 2018, the defense filed an Amended *Trombetta* Motion to
2 Dismiss, documenting the bad faith actions by the prosecution they had recently
3 uncovered. However, the prosecution never replied to the Motion and the Superior Court
4 never ruled on the Motion.

5 Based on additional experts' observations, the defense then filed a Motion to
6 Compel DNA Testing with the Superior Court on May 1, 2019. The Fresno County
7 District Attorney did not respond to the Motion. Because this Court had not ruled on the
8 Motion, on September 10, 2019, Petitioner then filed a Writ of Mandate with the 5th
9 District Court of Appeal. On October 24, 2019, the court denied the Motion without
10 prejudice. On November 27, 2019, the defense filed an Amended Motion for DNA
11 Testing in Fresno Superior Court. On May 11, 2020, the court granted the Amended
12 Motion for DNA Testing.
13

14 **F. Current Motions/Filings Pending Before the Court**

15 With the above appeal pending, on October 2, 2020, the Petition was filed
16 with the Fifth District Court of Appeal, State of California, Case No. 081806. On January
17 7, 2021, the court entered an Order dismissing the Petition without prejudice, stating that
18 Mr. Stankewitz needed to exhaust his remedies by first petitioning the Fresno Superior
19 Court. As a result, the defense filed the original petition with the Fresno Superior Court
20 on January 28, 2021. On February 23, 2021, this Court denied the original petition
21 without prejudice due to the lack of a wet signature. On March 8, 2021, the Petition was
22 filed with this Court.
23

24 On May 28, 2021, Petitioner filed a Notice and Request for Hearing on
25 Emergency Petition for Writ of Habeas Corpus. On June 2, 2021, this Court filed an

1 Order for an Informal Response. On June 10, 2021, this Court denied Petition's Request
2 for Hearing on the Petition. On June 16, per this Court's Order, Petitioner re-filed the
3 Petition and accompanying documents in electronic form with the Court. On June 17,
4 2021, the California Attorney General submitted a letter to the Court stating that it would
5 not prepare an Informal Response. On June 28, the Fresno District Attorney filed a
6 Request for an Extension of Time to file an informal response.

7 On June 30, 2021, the Court granted the District Attorney's Request for more
8 time. Also on June 30, Petitioner filed a Motion for Conditional Examination to Preserve
9 Testimony and a Request to Deny Any Further Requests for Continuance by the Fresno
10 District Attorney and Request for an Expedited Process. On August 9, 2021, this Court
11 filed an Order Denying Petitioner's Request to Deny Any Further Requests for
12 Continuance By The Fresno District Attorney And Request For An Expedited Process
13 and an Order Denying Petitioner's Motion For Conditional Examination To Preserve
14 Evidence. On August 11, 2021, Petitioner filed Petitioner's Renewed Objection to Any
15 Further Requests for Continuance by the Fresno District Attorney and Request for an
16 Expedited Process and Formal Request for a Hearing Date and/or Briefing Schedule for
17 Previously Filed Motion for Conditional Exam to Preserve Evidence. On August 27,
18 2021, this Court entered an Order Denying Petitioner's Renewed Objection to Any
19 Further Requests for Continuance By The Fresno District Attorney And Request For
20 Expedited Process and an Order Denying Request For Hearing For Conditional Exam To
21 Preserve Evidence.
22

23 On September 1, 2021, the Fresno District Attorney filed an Informal Response to
24 the Petition. On October 13, 2021, Petitioner filed his Reply.
25

1
2 **V. RELEVANT FACTS AS TO MR. STANKEWITZ'S PERSONAL**
3 **CIRCUMSTANCES**

4 **A. AGE** – Petitioner is 63 years old.

5 **B. MEDICAL HEALTH** - San Quentin is not safe for Mr. Stankewitz, who is 63
6 years old. While in prison, he has been subjected to horrific prison conditions, including
7 spending over 20 years in solitary confinement. He has also suffered from inadequate
8 medical and dental care and chronic health conditions.² Sadly, in June 2020, Mr.
9 Stankewitz had COVID-19 and continues to suffer from post-COVID³ symptoms,
10 including brain fog, memory loss, exhaustion, shortness of breath and joint pain. The
11 prison system is not providing proper care for active COVID-19 infections. Although he
12 is fully vaccinated, he has several medical conditions that make him more vulnerable to a
13 breakthrough COVID-19 infection, including: (1) chronic high blood pressure (he has
14 been on medication to control high blood pressure for over 20 years); (2) genetic risk for
15 diabetes and liver disease (both his mother and sister died of these in their 60s); (3)
16 prediabetes; (4) obesity; and (5) Hepatitis C (currently in remission due to anti-viral
17 medication). San Quentin state prison is now facing a huge fine for COVID-19 safety
18 violations.⁴ U.S. District Judge Jon Tigar recently stated that the COVID risk is still
19 present in the California Prison system.⁵
20
21
22

23
24 ² During the time that Mr. Stankewitz has been incarcerated at San Quentin, the California prison medical system
has been under receivership due to the poor quality and negligent medical care of inmates.

25 ³ See CDC website for information: <https://www.cdc.gov/coronavirus/2019-ncov/long-term-effects/index.html>

⁴ See *In re Von Staich*, Case No. A160122 CA 1st App. District10-20-2020

⁵ See Exhibit 20b, Judge won't delay vaccine mandate for California prison staff, Courthouse News Service, 11-17-
2021.

1 **C. SUBSTANDARD DENTAL CARE** – throughout his years of imprisonment,
2 Mr. Stankewitz has been subjected to substandard dental care. Dental treatment in the
3 California prison system is provided primarily on an emergency basis. The primary care
4 is to pull teeth. As a result, due to tooth decay, Mr. Stankewitz has ad many teeth pulled.
5 He has denture plates, which have to be custom made within the prison denture factory.
6 There are often delays of months or years in getting dentures fitted, made and refitted. On
7 more than one previous occasion, Mr. Stankewitz went for over a year without dentures.
8 During his bout with COVID, his jaw shrank, and his dentures no longer fit. Therefore,
9 after over seventeen months, he is still without lower dentures and cannot chew properly.

10 **D. FAMILY AND CHILDHOOD** – Given his over 43 year incarceration, most of
11 his family is now deceased. His remaining living Brothers are incarcerated.
12

13 At the age of six, Mr. Stankewitz was removed from the custody of his mother
14 due to abuse. Like many Native American children, he was separated from his family and
15 placed into foster care in Sebastopol, California. He lived with his foster family for three
16 happy years. His foster family treated him with love, care, and respect. He was in nature
17 with animals: guinea pigs, monkey, etc. He had a dog named Lulu that he cared for and
18 went with him everywhere. He went to church twice a week, one of which was to attend
19 Bible study. After three years , for unknown reasons, he was removed from his foster
20 home and sent back to his mother,

21 Mr. Stankewitz’s incarceration has resulted in his being deprived of a relationship
22 with his family, having children, and being alienated from his Indian tribe.
23

24 **E. TRIBAL AFFILIATION** – Enrolled member, Monache Indian Tribe, Big Sandy
25 Rancheria, Auberry, CA. Mr. Stankewitz’s grandfather, Herbert Sample, was the chief of

1 the tribe. Mr. Stankewitz has extended family who are presently in leadership with the
2 tribe. Although the tribe has a casino, apparently the gaming contract terms stopped all
3 income to tribal members effective 1/1/2021.

4 **F. EDUCATION** - Mr. Stankewitz attended Sierra High School in Tollhouse, CA,
5 his freshman year, where he was a B+ student. After freshman year, because none of his
6 family members would house him, he was sent to California Youth Authority [hereinafter
7 CYA] in Chino, CA. While there, in 1975, he received his high school diploma and
8 GED. He also attended Youth Training School [hereinafter YTS], where they had about
9 50 – 60 training shops. There, he took numerous classes in the trades, including
10 construction: brick laying, window and door installation, plumbing; and body and fender.
11 He also received a lifeguard certificate.
12

13 While on Death Row, he has not had access to the regular prison library.
14 Nonetheless, by borrowing books and magazines from other inmates, he has read
15 extensively. During periods that he has been confined at the Fresno County Jail, he has
16 had access to reading materials. To stay informed regarding current events and news, he
17 listens to the radio about sixteen hours a day.

18 **G. EMPLOYMENT** – Although he worked prior to entering prison, Mr. Stankewitz
19 is not currently employed.

20 **H. MENTAL HEALTH** -He has been sober for over 23 years. He recognizes that
21 because he was an using addict for most of his life, he will always be a recovering addict.
22 As discussed elsewhere, Mr. Stankewitz, upon realizing that there were no resources,
23 other than medication, available to assist him with mental health, created his own
24 spiritual practices to keep himself emotionally and mentally well.
25

1 **I. PRISON YEARS, INCLUDING SELF HABILITATION: 1978 – present -**

2 Because they are considered condemned to death, Death Row prisoners do not have
3 access to self-help, the prison library or prison programs. They are on their own to
4 survive and navigate a dangerous prison environment. Although Petitioner is now
5 habilitated, he committed some serious misconduct when he first entered the prison
6 system. His behavior was largely based on his drug addiction, and the violent nature of
7 prisons in the late 1970's and early 1980's. He was placed in isolation for misconduct and
8 because he refused to cut his hair (it is against his Native American religion to do so).
9 Despite a prison environment permeated with gang activity, he has never been in a prison
10 gang. Petitioner is not the same person that he was in 1978 – he is a changed man. He is
11 now 63 years old. Since his time in isolation ended in 2001, with the hope of freedom in
12 his mind, he has been working on his case and has been a model inmate. In the prison's
13 cold, stale, and inhumane environment, Mr. Stankewitz continues to smile and fight for
14 his case. Even given the violent nature of prisons, he has had no infractions for over 20
15 years. Due to his good behavior, Petitioner has been Grade A classification for many
16 years. Recent cell searches showed that his cell was clear of any contraband.⁶⁷

17 Peticioner has attended the Native American spiritual circle (when allowed), and
18 Catholic Church, both at San Quentin, on and off, since 2005. As documented by San
19 Quentin Rabbi Paul, he consistently attended Jewish temple between 2016 - 2019.⁸ He
20 has spiritual practices, including spiritual reading and meditation. He does physical
21 exercise in his cell.

24 _____
25 ⁶ Note: Exhibits referenced herein as 'Petition Exhibit ____' are Exhibits to the Petition.

⁷ See Petition Exhibit 16a, SQSP Confiscated Property Receipts 2020

⁸ See Petition Exhibit 16b, Records of Temple attendance. Temple has been suspended at San Quentin SP since Dec. 2019, largely due to COVID.

1 He has many people who attest to his good character, including the current San
2 Quentin rabbi,⁹ former San Quentin chaplain¹⁰ and corrections officers. Mr. Stankewitz
3 has also received eight laudatory chronos (Form 128) from prison officers during the
4 years, indicating that Mr. Stankewitz has “demonstrated to be courteous and respectful to
5 other inmates and staff.”¹¹ There are approximately 30 other officers who have stated that
6 if subpoenaed, they would testify as to Petitioner’s good behavior over the last 23 years.

7 As explained in the Release Plan in paragraph VII below, when he is released,
8 Petitioner has committed housing.
9

10 **VI. MEMORANDUM OF POINTS AND AUTHORITIES**

11 **A. THIS COURT SHOULD EXERCISE ITS DISCRETION TO RELEASE**
12 **MR. STANKEWITZ AND SET BAIL PENDING THE DISPOSITION OF**
13 **HIS APPEAL**

14 **1. Legal Standard For Bail Pending Appeal**

15 The California Constitution states: “A person may be released on his or
16 her own recognizance in the court’s discretion.” Cal Const, Art. I § 12.

17 Specifically,

18 A person shall be released on bail by sufficient sureties, except for:

19 (a) Capital crimes when the facts are evident or the presumption great;

20 (b) Felony offenses involving acts of violence on another person, or
21 felony sexual assault offenses on another person, when the facts are
22 evident or the presumption great and the court finds based upon clear and
23 convincing evidence that there is a substantial likelihood the person's
24 release would result in great bodily harm to others; or

25 ⁹ See Petition Exhibit 16c, Letter from Rabbi Paul, dated 8-21-2018

¹⁰ See Petition Exhibit 16d, Letter from Rev. Earl Smith 8-28-2018

¹¹ See Petition Exhibits 16e – 16j, eight laudatory chronos from SQ prison officers.

1 (c) Felony offenses when the facts are evident or the presumption great
2 and the court finds based on clear and convincing evidence that the person
3 has threatened another with great bodily harm and that there is a
substantial likelihood that the person would carry out the threat if released.

4 Excessive bail may not be required. In fixing the amount of bail, the court
5 shall take into consideration the seriousness of the offense charged, the
6 previous criminal record of the defendant, and the probability of his or her
7 appearing at the trial or hearing of the case.

8 A person may be released on his or her own recognizance in the court's
9 discretion.

10 A trial court must grant bail pending appeal of a felony judgment if
11 the court finds that: (1) the defendant, by clear and convincing evidence, is
12 not likely to flee; (2) by clear and convincing evidence, the defendant does
13 not pose a danger to others or to the community; and (3) the appeal is not
14 for the purpose of delay and the defendant's appeal raises substantial legal
15 questions which, if decided in his favor, is likely to result in a reversal of
16 his conviction. Pen. Code, § 1272.1; *In re Weiner*, 32 Cal. App. 4th 441,
17 444 (1995). "The fact that the defendant has been convicted of a felony,
18 sentenced, and has appealed, does not deprive the trial court of jurisdiction
19 to grant bail pending the appeal." *People v. Hall*, 115 Cal. App. 2d 144,
20 148 (1952); see also *People v. McNiff*, 57 Cal. App. 3d 201, 203-204
(1976).

21 **2. Mr. Stankewitz Has An Appeal Pending That Raises Substantial**
22 **Legal Questions That Would Likely Result In Resentencing To A**
23 **Lesser Sentence And A New Trial.**

24 Mr. Stankewitz's appeal is not for the purpose of delay, and it raises substantial legal
25 questions which, if decided in his favor, would likely result in a new trial or resentencing. The

1 issues on appeal include 1) Trial Court's Refusal to Exercise its Sentencing Discretion violated
2 due process and right to counsel; 2) Trial Court's Refusal to Grant a Continuance for Sentencing
3 violated due process and right to counsel; and 3) Trial Court Erred in Ruling that Motion for
4 New Trial and Related Motions were untimely and violated due process and right to counsel.

5 In its Reply brief, the California Attorney General has conceded:

6 The Trial Court had Full Sentencing Discretion at Resentencing; Remand for Full
7 Resentencing is Therefore Necessary; and

8 The Trial Court Was Mistaken Regarding the Scope of Its Discretion When Resentencing
9 Appellant – it had the discretion to strike the special circumstances and the firearm
10 enhancement.¹²

11 Therefore, Mr. Stankewitz has an appeal that is not for delay and, by the Attorney General's own
12 admission, should result in a full resentencing.

13 **3. If Bail Is To Be Set, It Should Be Set At \$0 With Release on Own**
14 **Recognizance**

15 **a. Bail Should Not be Denied Under California Constitution**
16 **Article I, Section 12.**

17 California Constitution Article 1, section 12 provides for the denial
18 of bail given certain relevant conditions. Cal. Const. Art. 1, § 12(a).

19 However, it must be to a clear and convincing standard or the presumption
20 great and facts evident that pretrial release would result in great bodily
21 harm to another. *Id.* Clear and convincing proof requires a high probability
22 that a fact is true. (*In re Angela P.* (1981), 28 Cal.3d 908, 919). "The
23

24
25 ¹² See Exhibit 20c, Respondent's Brief, People v. Stankewitz, Fifth District Court of Appeal, Case No.
F079560

1 evidence must be 'so clear as to leave no substantial doubt;' 'sufficiently
2 strong to command the unhesitating assent of every reasonable mind.'" *In*
3 *re Nordin* (1983) 143 Cal.App. 3d 538, 543 citing *Sheehan v. Sullivan*
4 (1899) 126 Cal. 189, 193 and *Id.* Here, the presumption is not great, nor
5 are the facts evident, to a clear and convincing standard that pretrial
6 release would result in great bodily harm.

7 **b. Applying the Factors in California Constitution Article I,**
8 **Section 28(f) and Penal Code 1275 Favor Release on Own**
9 **Recognizance**

10 The court is to factor in protection and safety of the public and
11 victim as primary considerations, then the seriousness of the offense
12 charged, the prior criminal history of the arrestee, the probability of
13 appearing for trial or hearing, and ability to pay money bail. *Humphrey.*
14 *Slip Op.* S247278. at 18; Cal. Const. Art. I, section 28, subdivision (f)(3).
15 Furthermore, Penal Code section 1275 addresses the issue of setting,
16 reducing, or denying bail "a judge or magistrate shall take into
17 consideration the protection of the public, the previous criminal record of
18 the defendant, and the probability of his or her appearing at trial or at a
19 hearing of the case. . ." Cal. Pen. Code §1275(a)(1). And when
20 "considering the seriousness of the offense charged, a judge or magistrate
21 shall include consideration of the alleged injury to the victim, and alleged
22 threats to the victim or a witness to the crime charged, the use of a firearm
23 or other deadly weapon" and "possession of controlled substances . . ."
24 Cal. Pen. Code §1275(a)(2).
25

1 In determining whether a financial condition of release is required,
2 the court should not simply apply the bail schedule to the charges.
3 Decisions that may result in pretrial detention must be based on factors
4 related to the individual defendant's circumstances. *Humphrey. Slip Op.*
5 S247278. at 18. Because bail schedules are just the opposite—it does not
6 look at any individualized factors aside from the charge. *Id.* at 10-11. If
7 this court determines that a financial condition of release is necessary to
8 ensure court appearance, the individualized circumstances require that
9 money bail be set in a minimal amount. *Humphrey. Slip Op.* S247278. At
10 10-11, 24. Just focusing on the severity of the sentence is improper in
11 adjudging likelihood of reappearance; the court should balance
12 individualized factors: ties to the community, prior court attendance record
13 to decide. *Id.* at 19.

14 **i. Public Safety**

15 The protection and safety of the public and victim are the
16 primary considerations. Cal. Const. Art. I, section 28, subdivision
17 (f)(3). In the recent *Humphrey* decision, the Supreme Court of
18 California provided that “the [trial] court [must] first [find] clear
19 and convincing evidence that no other conditions of release could
20 reasonably protect” the interests of the public and victim.
21 *Humphrey. Slip Op.* S247278 at 19. As the Court of Appeal and
22 Judge Breyer of the Northern District of California have held,
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1 money bail alone should not be imposed in response to concerns
2 about public safety.¹³

3 **ii. Seriousness of Offense and Criminal History**

4 The seriousness of an offense alone is not determinative of
5 flight risk or public safety. In the recent *Humphrey* decision, the
6 Supreme Court of California provided that the seriousness of a
7 charge is not a *per se* that the defendant will be a flight risk or
8 danger to public safety. *Humphrey. Slip Op. S247278. at 20.*
9 However, the Supreme Court of California said that while the
10 seriousness of the charge *may* be a factor of consideration, it is not
11 an automatic and the court must turn to other alternative conditions
12 unless it is not possible. *Id.* In determining whether a financial
13 condition of release should be imposed to address flight risk
14 concerns, the court should make certain findings to ensure that the
15 financial condition does not result in detention solely based on
16 wealth status. *Id.* at 24.

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21 ¹³ *Humphrey, supra*, 19 Cal.App.5th at 1029 (“*Money bail, however, has no logical connection to protection of the*
22 *public, as bail is not forfeited upon commission of additional crimes. . . . Accordingly, when the court’s concern is*
23 *protection of the public rather than flight, imposition of money bail in an amount exceeding the defendant’s ability*
24 *to pay unjustifiably relieves the court of the obligation to inquire whether less restrictive alternatives to detention*
25 *could adequately protect public or victim safety and, if necessary, explain the reasons detention is required.”[italics*
added.]); *Reem v. Hennessy* (N.D. Cal. Dec. 21, 2017) No. 17-CV-06628-CRB, 2017 WL 6539760, at *4 (“The state
constitution requires state courts to set bail in cases [where defendant is not eligible for detention under article I,
section 12], yet it has no rational basis for doing so where the defendant only poses a threat to public safety—not a
flight risk.”).

1 While the seriousness of the offense is perhaps the
2 most serious type of crime possible, it is not automatic and is the
3 beginning of the analysis. Considering all the other factors, release
4 on own recognizance is appropriate.

5 **iii. Flight Risk**

6 “[O]ur Constitution prohibits pretrial detention to combat
7 an arrestee’s risk of flight unless the court first finds, based upon
8 clear and convincing evidence, that no condition or conditions of
9 release can reasonably assure the arrestee’s appearance in court.”
10 *Humphrey. Slip Op. S247278. at 19-20.* The court reasoned that
11 the quantum of evidence should not differ from that of public
12 safety. *Id.* This cleared up the ambiguity created in the state
13 constitution in that it was silent on the quantum of evidence. *Id.*

14 **iv. Ability to Pay**

15 Mr. Stankewitz is indigent and has had no income for
16 almost his entire adult life because he has been incarcerated. To the
17 extent those around him can put down money for bail, those
18 resources have been mostly exhausted to pay for investigations and
19 other critical legal work for Mr. Stankewitz.
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1 **B. THIS COURT SHOULD EXERCISE ITS DISCRETION TO RELEASE**
2 **MR. STANKEWITZ ON HIS OWN RECOGNIZANCE PENDING THE**
3 **DISPOSITION OF HIS AMENDED PETITION FOR WRIT OF HABEAS**
4 **CORPUS**

5 **1. Legal Principles Of A Motion For Bail Pending Disposition Of A State**
6 **Habeas Petition**

7 Penal Code section 1476 provides that “if the person by or upon whose
8 behalf the application for the writ is made be detained upon a criminal charge,
9 may admit him to bail, if the offense is bailable, pending the determination of the
10 proceeding.” Pen. Code § 1476.

11 The California Const., Art. I, Section 12, provides that a person shall be
12 released on their own recognizance, except under limited circumstances. The
13 California Supreme Court stated “this court may admit a petitioner to bail pending
14 determination of habeas corpus proceedings, Pen. Code Sect. 1476”. *In re*
15 *Peterson* (1958) 51 Cal. 2d 177, 181; Accord, *In re Smiley* (1967) 66 Cal. 2d 606,
16 612. ... [W]e also have the power to release him on his own recognizance. *Id.*, at
17 613. **Pending** the outcome of the **habeas** corpus proceeding, the court may order
18 that the petitioner be temporarily released from custody. *People v. Romero* (1994)
19 8 Cal. 4th 728, 744; *People v. Standish* (2006) 38 Cal. 4th 858, 887. The issue of
20 appropriate bail may be raised at various times throughout the criminal
21 proceedings, citing Penal Code § 1476. *In re Weiner* (1995) 32 Cal. App. 4th 441,
22 444.

23 Pen. Code § 1319 provides for a hearing to determine whether a person
24 may be released on his own recognizance. It states:
25

1 (a) No person arrested for a violent felony, as described in subdivision (c) of
2 Section 667.5, may be released on his or her own recognizance until a hearing is
3 held in open court before the magistrate or judge, and until the prosecuting
4 attorney is given notice and a reasonable opportunity to be heard on the matter. In
5 all cases, these provisions shall be implemented in a manner consistent with the
6 defendant's right to be taken before a magistrate or judge without unreasonable
7 delay pursuant to Section 825.

8 (b) A defendant charged with a violent felony, as described in subdivision (c) of
9 Section 667.5, shall not be released on his or her own recognizance where it
10 appears, by clear and convincing evidence, that he or she previously has been
11 charged with a felony offense and has willfully and without excuse from the court
12 failed to appear in court as required while that charge was pending. In all other
13 cases, in making the determination as to whether or not to grant release under this
14 section, the court shall consider all of the following:

15 (1) The existence of any outstanding felony warrants on the defendant.

16 (2) Any other information presented in the report prepared pursuant to
17 Section 1318.1. The fact that the court has not received the report required
18 by Section 1318.1, at the time of the hearing to decide whether to release
19 the defendant on his or her own recognizance, shall not preclude that
20 release.
21

22 (3) Any other information presented by the prosecuting attorney.

23 (c) The judge or magistrate who, pursuant to this section, grants or denies release
24 on a person's own recognizance, within the time period prescribed in Section 825,
25

1 shall state the reasons for that decision in the record. This statement shall be
2 included in the court's minutes. The report prepared by the investigative staff
3 pursuant to subdivision (b) of Section 1318.1 shall be placed in the court file for
4 that particular matter.

5
6 **2. Mr. Stankewitz Has Filed an Amended Petition for Writ of Habeas
7 Corpus that Raises Substantial Factual and Legal Issues that Will
8 Likely Result in Reversal or Dismissal**

9 **a. The Prosecution Introduced a Gun into Evidence That Was in
10 Law Enforcement's Possession for Years Before the Murder
11 through the Date of the Murder**

12 In the Petition, Mr. Stankewitz contends that it is impossible for
13 the gun relied upon for his convictions to be the murder weapon for the
14 follow reasons: (1) the firearm was in the possession of law enforcement
15 for five years prior to the time Mr. Stankewitz is alleged to have shoot Ms.
16 Graybeal, (2) there is no forensic evidence tying Mr. Stankewitz to the
17 gun.

18 "Substantial forensic evidence link[ing] defendant to [a victim]"
19 includes: "fingerprints...DNA evidence." *People v. Jones*, 57 Cal. 4th 899
20 (2013). "To convict an accused of a criminal offense, the prosecution must
21 prove that (1) a crime actually occurred, and (2) the accused was the
22 perpetrator." *People v. Alvarez*, 27 Cal. 4th 1161, 1164 (2002).

23 In *People v. Jones*, the Supreme Court of California affirmed the
24 conviction of the defendant for first degree murder, attempted murder and
25 committing forcible rape, sodomy and oral copulation. *People v. Jones*,
supra, at 908. In this case, law enforcement discovered "defendant's

1 fingerprints and one of his palm prints” on items involved in the killings
2 and a “garbage bag containing the victim's body” *Id.* at 911, 927. The
3 defendant claimed that the cumulative effect of numerous errors requires
4 reversal. *Id.* at 981. The Supreme Court of California reasoned that “[t]he
5 key issue in this case was identity” and that “substantial forensic evidence
6 linked defendant” to the killing. *Id.* at 930. Within this reasoning, the court
7 articulated that “fingerprints on the trash bag, DNA evidence, the afghan
8 blanket, carpet fibers” are substantial forensic evidence. *Id.* Additionally,
9 the Supreme Court of California held that “[a]mple evidence supports
10 defendant's conviction for murdering [the victim]” in the form of the
11 “defendant's fingerprints on the plastic garbage bags” *Id.* at 930.

12
13 **i. The Serial Number of the Alleged Murder Weapon and**
14 **the Fresno Sheriff's Office Detective's Engraving on the**
15 **Holster in Evidence Demonstrates That Mr.**
16 **Stankewitz's Convictions Rest Upon a Planted Gun.**

17 The firearm relying upon by the prosecution to convict Mr.
18 Stankewitz was in the possession of law enforcement personnel as
19 a recovered stolen firearm for five years before the murder took
20 place. On February 10, 1978, Detective T.L. Lean III ordered a
21 Serial Trace Report for a .25-caliber FIE Titan semi-automatic
22 pistol, serial number 146425, that shows that the gun utilized in the
23 prosecution of Mr. Stankewitz was recovered in 1973.¹⁴ There is
24 nothing is indicating that the firearm was outside of the possession
25 of law enforcement until alleged recovery in 1978. Thus, it is

¹⁴ See Petition Exhibit 1a, FSO Lean Serial Number Trace Report, dated 2-10-78.

1 impossible that the firearm used to convict Mr. Stankewitz was the
2 murder weapon.

3 Furthermore, the holster in evidence, allegedly recovered
4 from the same area of the victim's car as the gun, contains
5 engraving as follows: "351" and "7-25-73" in addition to "T L III"
6 and "2-10-78," which clearly matches Detective T.L. Lean III's
7 initials.¹⁵ Fresno Police Department Procedure Handling and
8 Property Standing Order No. 3.8.12 dictates: "Members shall mark
9 all items of property and evidence with their initials and, where
10 space permits, the date the item was booked."¹⁶ This apparent past
11 possession of the firearm by law enforcement is galvanized and
12 given credence in an interview in March 2020, retired Detective
13 Lean.¹⁷ Detective Lean confirmed that if some evidence had his
14 initials on it, "he collected it somewhere." *Id.* The engraving of
15 Detective Lean's initials on the firearm holster used by the
16 prosecution to convict Mr. Stankewitz demonstrates that the gun
17 was in the possession of law enforcement for five years before Ms.
18 Graybeal was murdered.
19

20 Therefore, as the evidence indicates, the gun used to
21 convict the defendant was in clearly in the possession of law
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25 ¹⁵ See Petition Exhibit 1c FSO Lean, Photo of holster in court evidence, dated 7-25-1973

¹⁶ See Petition Exhibit 1d, Fresno Police Department Procedure 3.8.12.

¹⁷ See Petition Exhibit 1e Transcript of Detective Lean Interview, dated 2-7-2020, at 4.

1 enforcement before the murder and could not have been the murder
2 weapon.

3 **ii. Mr. Stankewitz's Fingerprints Were Not Found on the**
4 **Firearm and Authorities Failed to Verify That the**
5 **Victim Was Shot with the Same Caliber Pistol, resulting**
6 **in a Lack of Evidence Linking Him as the Gunman**

7 Additionally, Mr. Stankewitz documents in the Petition that
8 there is no forensic evidence tying him to the gun that was used in
9 the murder because there no testing performed to verify that the
10 victim was shot with a .25-caliber pistol.¹⁸ Furthermore, Mr.
11 Stankewitz's fingerprints were not found on the firearm purported
12 to be the murder weapon. FPD Officer Jack Bonesteel performed
13 the inventory search of the vehicle recovered. (T2 Vol. I RT 123).
14 Bonesteel testified that he was not able to obtain any latent
15 fingerprints from the items in the car. (T1 Vol. 20 RT 3418), (T2
16 Vol. I RT 132).

17 As described in *People v. Jones, supra*, one key issue
18 raised in the Petition is the identity of the killer, therefore
19 "substantial forensic evidence" in the form of "fingerprints" and
20 "DNA" evidence should be considered in determining Mr.
21 Stankewitz's innocence. In light of the lack of fingerprints linking
22 Mr. Stankewitz to the murder and the failure of investigating
23 authorities to verify that the victim was shot with the same caliber
24

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¹⁸ See Petition Exhibit 2a Declaration of Roger Clark, dated 12-4-2019 at 5.

1 pistol, substantial forensic evidence supports his contention that he
2 was not the shooter.

3 **b. Physical Evidence Shows That Mr. Stankewitz was Not the**
4 **Person Who Fired the Handgun.**

5 “To convict an accused of a criminal offense, the prosecution must
6 prove that (1) a crime actually occurred, and (2) the accused was the
7 perpetrator.” *People v. Alvarez*, 27 Cal. 4th 1161, 1164 (2002). In light of
8 “the lack of physical evidence linking defendant to the crime, and the
9 serious impeachment of [a witness], upon whose testimony the People’s
10 case primarily depended,” the court may “conclude it is ‘reasonably
11 probable that a result more favorable to defendant would have been
12 reached. *People v. Duarte*, 24 Cal. 4th 603, 607, 619 (2000) (citing *People*
13 *v. Watson*, 46 Cal. 2d 818, 837 (1956)). “[A] finding of gunshot residue is
14 consistent with the subject having recently fired a gun.” *People v.*
15 *Sassounian*, 182 Cal. App. 3d 361, 373, 380 (1986).

16 In *People v. Duarte, supra*, the Supreme Court of California
17 affirmed the judgment of the Court of Appeal in which reversed
18 defendant’s convictions for shooting at an inhabited dwelling, conspiracy
19 to shoot at an inhabited dwelling, and assault with a firearm. *People v.*
20 *Duarte, supra* at 619. In *Duarte*, subsequent to the execution of a search
21 warrant at the defendant’s residence, “[n]one of the recovered guns or
22 ammunition matched those used in the attack at the [victim’s] home. *Id.* at
23 607. The court reasoned that “[n]o physical evidence tied defendant to the
24 [victim’s] residence, nor did he make any incriminating statements” in
25 concluding that “the trial court erred.” *Id.*

1 In the Petition, Mr. Stankewitz documents that physical evidence
2 proves his innocence in the case at bar because: (1) the bullet trajectory
3 analysis excludes the defendant as the shooter, (2) Gunshot Residue
4 (GSR) Tests performed on Mr. Stankewitz on the night of the murder were
5 negative, and (3) forensic DNA analysis does not support the presence of
6 the victim's blood on Mr. Stankewitz's clothing.

7 **i. Bullet Trajectory Analysis of the Angle of the Entry**
8 **Wound Eliminates Mr. Stankewitz As the Shooter Due**
9 **to His Height.**

10 The trajectory of the bullet through the victim's body
11 excludes Mr. Stankewitz as the shooter based upon his tall stature
12 in comparison to the victim's much shorter height. The physical
13 evidence shows that the victim was shot by someone
14 approximately 160 cm (5', 2 1/2") tall, and by contrast, he is 6 feet
15 1 inch tall.¹⁹ The physical evidence shows that the victim was shot
16 by someone approximately the same height as the shooter because
17 of the angle of the entry bullet being approximately ten degrees
18 upward. *Id.*, at 1. This conclusion is supported by Roger Clark,
19 Police Practices expert, in his declarations.²⁰

20 If the jury had been presented with the correct facts
21 regarding height, angle, and trajectory, they would likely have
22 come to the conclusion that Mr. Stankewitz is too tall to have been
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25 ¹⁹ Petition Exhibit 2a FSO Nelson, Dr. T.C., Graybeal Postmortem Record, dated 2-9-78.

²⁰ See Petition Exhibit 2a Declaration of Roger Clark, dated 12-4-2019 at 5; and Petition Reply Exhibit 19c Declaration of Roger Clark, dated 10-8-2021 at 14.

1 the shooter. In light of the critical bullet trajectory analysis
2 information which effectively excludes Mr. Stankewitz from being
3 the person who fired the gun. As documented in the Petition, the
4 physical evidence clearly demonstrates that he was not the
5 murderer and raises the issue of the identity of the shooter. These
6 facts would likely result in reversal of his conviction.
7

8 **ii. Results from Gunshot Residue Tests Performed on Mr.**
9 **Stankewitz's Hands Were Inconsistent with the**
10 ***Sassounian* Standard for a Subject Having Recently**
11 **Fired a Gun.**

12 On the night the murder occurred, Gunshot Residue Tests
13 were performed on Mr. Stankewitz's hands, which were negative
14 for GSR. Mr. Stankewitz's negative GSR results demonstrate that
15 he was not the shooter. This contention is supported by a Bureau of
16 Alcohol Tobacco and Firearms (ATF) Report of Laboratory
17 Examination which confirms that "[l]evels of barium and antimony
18 indicative of gunshot residue were not found on any of the
19 submitted hand swabs" after analysis of Mr. Stankewitz's hand
20 swab.²¹ Mr. Stankewitz's negative GSR test results from the night
21 of the murder demonstrates that the physical evidence relied on the
22 by the prosecution makes clear that Mr. Stankewitz was not the
23 murderer and raises the issue of the true identity of the shooter.
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²¹ See Petition Exhibit 2m, ATF Kinard Report of Lab Exam: GSR Test Results, dated 3-24-78.

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4 Accordingly, under the standard set forth in *Sassounian*, the
lack of “a finding of gunshot residue” on Mr. Stankewitz’s hands
described in the 1978 ATF GSR Test Results demonstrate that Mr.
Stankewitz had not “recently fired a gun.”

5
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7 **iii. Recent Forensic Evidence Examination and DNA
Analysis Fail to Establish the Presence of Human Blood
on Mr. Stankewitz’s Clothing and Thus Confirms That
He Did Not Pull the Trigger.**

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11 Postconviction forensic DNA Testing analysis indicated the
absence of the victim’s blood on Mr. Stankewitz’s clothing, which
supports his innocence in the killing. Pursuant to the defendant’s
Motion and the Court’s May 11, 2020 Order, articles of Mr.
12
13 Stankewitz’s clothing, namely a white t-shirt and blue corduroy
pants from the night of the shooting were submitted to Forensic
14
15 Analytical Crime Lab (FACL) by Investigator Danielle Isaac of the
Fresno County, District Attorney’s Office on June 6, 2020. An
16
17 examination for human blood and blood of the victim resulted in a
lack of blood detected.²²

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20 The FACL Summary of Findings states: “There is no
support for the presence of blood from the victim on any of the
21
22 defendants’ clothing tested.” *Id.*, at 2. Furthermore, the court
ordered Evidence Examination and DNA Analysis found when

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 ²² See Petition Exhibit 31, FACL Summary Report dated 9-2-20, at 1, 2.

1 “testing the proposition that Theresa Graybeal is a contributor” to
2 the profile obtained on Mr. Stankewitz’s t-shirt, that the scientific
3 and forensic “comparisons provided no support for this
4 proposition.” *Id.* at 7. This forensic DNA analysis verifies that Mr.
5 Stankewitz was not the person who pulled the trigger resulting in
6 Ms. Graybeal’s death and raises the issue of the identity of the
7 shooter.

8 The facts in this case are closely similar to those in *People*
9 *v. Duarte, supra*, in which Duarte’s conviction was reversed partly
10 due to the lack of physical evidence tying him to the scene of the
11 shooting. As in *Duarte, supra*, here, there is a critical lack of
12 physical evidence linking Mr. Stankewitz to the crime. Moreover,
13 just as “[n]one of the recovered guns or ammunition matched those
14 used in the attack at the [victim’s] home” in *Duarte*, the bullet
15 trajectory analysis, the gunshot residue test, and the forensic DNA
16 testing analysis of Mr. Stankewitz’s clothing described in the
17 instant motion are inconsistent with Mr. Stankewitz being the
18 murderer. Accordingly, as the defendant’s conviction was reversed
19 in *Duarte*, in light of the “the lack of physical evidence linking
20 defendant to the crime,” Mr. Stankewitz has raised the issue of the
21 identity of the shooter on appeal, due to the lack of physical
22 evidence connecting him to the murder, which would likely result
23 in reversal.
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iv. The Physical And Circumstantial Evidence Points To Marlin Lewis As The Likely Murderer.

As discussed at length in the Petition, Claim 2, the physical evidence of the height of the victim being approximately the same height as Marlin Lewis, along with the trajectory of the bullet, points to Marlin Lewis as the likely murderer. This is confirmed by police practices expert, Roger Clark²³, who has stated that it is likely that the victim was shot by a shorter person than Mr. Stankewitz. This is further confirmed by the new evidence explained in Claim 3 of the Petition, of Marlin's admission to Laura Wass,²⁴ that he shot the victim. .

c. Petitioner Has A High Likelihood Of Success Of His Petition Being Granted Because Cases With Less Prosecutorial Misconduct Have Been Dismissed By The Prosecution Or Courts

There are many examples of California convictions that have been dismissed or vacated where there has been only one incidence or type of misconduct. Here is a list of such cases with the specific misconduct found by the court:

California Supreme Court cases:

²³ See Petition Exhibit 2a Declaration of Roger Clark, dated 12-4-2019 @ 5; and Petition Reply Exhibit 19c Declaration of Roger Clark, dated 10-8-2021 @ 14

²⁴ See Petition Exhibit 3f, Declaration of Laura Wass, dated 1-8-20.

1 *In re Figueroa* (2018) 4 Cal. 5th 576 (2018) Decision: Petition for
2 Writ of Habeas Corpus Granted, Conviction vacated. Reason: False
3 evidence presented by the People which was subsequently repudiated.

4 *People v. Young* (2019) S148462 CA SC Decision: Penalty
5 phase reversed. Reason: Prosecution accentuated the defendant's Neo-
6 Nazi views.

7 *People v. Hill* (1998) 17 Cal. 4th 800 Decision: Conviction
8 reversed. Reason: Prosecutor's trial methods were deceptive and
9 reprehensible.

10 *In re Ferguson* (1971) 5 Cal. 3d 525 Decision: Conviction vacated
11 and new trial granted. Reason: *Brady* violation – failure to turn over
12 material information from the District Attorney's file.

13 Ninth Circuit cases:

14 *United States v. Kohring* (9th Cir. 2011) 637 F. 3d 970 Decision:
15 Conviction vacated and remanded for new trial. Reason: Prosecution
16 violated *Brady/Giglio*.

17 *Hayes v. Brown* (2002) 399 F.3d 972 (9th Cir. 2002) Decision:
18 Reversed and remand with instructions to grant the petition for writ of
19 habeas corpus. Reason: Prosecutor's knowing presentation of false
20 evidence and failure to correct the record violate a criminal defendant's
21 due process rights.

22 California Court of Appeal cases:
23
24
25

1 *People v. Uribe* (Ca. Ct. App. 2008) 162 Cal.App.4th 1457

2 Decision: Judgment reversed and remanded for new trial. Reason:

3 Nondisclosure of SART video by the prosecution constituted

4 prejudicial *Brady* error.

5 *People v. Hudson* (1981) 126 Cal. App. 3d 733 Decision:

6 Judgment reversed. Reason: Prosecution resorted to prejudicial trial

7 tactics.

8 California Superior Court cases:

9 Ignacio Ixta, Jr. (2021) Ventura Superior Court. Decision:

10 Conviction reversed and attempted murder charge dismissed. Reason:

11 Prosecution failed to turn over search warrants to defense which called

12 into question the credibility of the State's main witness.

13 Samuel Bonner (2019) Los Angeles Superior Court - Judge

14 Lowenthal Decision: Murder and robbery convictions dismissed. Reasons:

15 'Convicted because of prosecutorial misconduct' 'Gross prosecutorial

16 misconduct'

17 *People v. Rose* (2004) San Joaquin Superior Court S.C. 058356A

18 (October 29, 2004) Decision: Habeas granted: conviction vacated and case

19 dismissed. Reasons: (two) Pretrial investigative activities constituted

20 misconduct and exculpatory evidence was withheld by the prosecution.

21 In the instant case, the Petition alleges at least eight different types

22 of prosecutorial misconduct:

23 Planted evidence (Claim 1)

1 False evidence (Claims 2, 10)

2 Mishandled evidence, including 'lost' evidence and files (Claim 4)

3 Brady violations (Claims 4, 5, 9)

4 Coerced testimony (Claim 6)

5 False and Misleading testimony (Claims 4, 7)

6 Unlawful first-degree murder charge (Claim 8)

7 Misrepresentations to the court (Claim 11)

8 **C. CALIFORNIA CONSTITUTION ART. I, § 28 (f) and CA Penal Code § 1275**
9 **outline the applicable criteria for determining how to set bail.**

10 Although the presumption may appear great given Mr. Stankewitz's conviction in
11 1983, the Petition establishes that Mr. Stankewitz did not commit the murder. Therefore,
12 the Court should use its discretion and grant bail.

13 The applicable criteria for setting bail are:

- 14
- 15 1. Public safety;
 - 16 2. Seriousness of the charges and criminal history;
 - 17 3. Flight risk; and
 - 18 4. Ability to pay.

19 Mr. Stankewitz's suitability for temporary release with bail under the criteria is
20 discussed in paragraph VII, *infra*.

21 **VII. FACTORS TYPICALLY RELATED TO A BAIL PENDING APPEAL MOTION**
22 **AND A BAIL PENDING DISPOSITION OF HABEAS PETITION WEIGH IN**
23 **FAVOR OF A TEMPORARY RELEASE**

24 **A. There Is Clear and Convincing Evidence That Mr. Stankewitz Will Not Flee**

25 **1. He doesn't have the means or knowhow, money, or resources**

Typically, a trial court would consider a defendant's ties to the
community, his record of appearances at court, and the severity of the sentence, in

1 determining whether he might flee. Mr. Stankewitz should not be considered to
2 pose a flight risk because his elderly age, poor health condition and lack of
3 financial resources. He doesn't have any money, doesn't know how to use the
4 internet or other technology, he has limited mobility and chronic medical issues
5 that need care. For the last few years, due to his age and medical conditions, Mr.
6 Stankewitz has been assigned to the disabled yard at San Quentin. He has a
7 number of medical conditions that make him more vulnerable to life threatening
8 illness. They include: chronic high blood pressure, for which he has been on
9 medication to control high blood pressure for over 20 years; genetic risk for
10 diabetes and liver disease, as his mother and sister perished of these causes at
11 approximately the same age as the defendant; prediabetes; obesity; and hepatitis
12 C.
13

14 **2. No indication that he would flee if released**

15 Mr. Stankewitz has proclaimed his innocence and fought for his freedom
16 for decades. If given temporary release, he will do everything necessary to abide
17 by the court's restrictions on his release. Moreover, to ensure he does not flee, Mr.
18 Stankewitz would not oppose being placed on electronic monitoring with fees
19 waived, house arrest, or an order to routinely check in with probation. Neither
20 would he oppose the imposition of a curfew.
21

22 **3. He has been a model inmate for over 20 years now**

23 He is obeying the prison rules and wants to continue to do so. Mr.
24 Stankewitz has had no prison disciplinary infractions for over two decades. Due
25 to his outstanding behavior and conduct as an inmate, Mr. Stankewitz has been

1 Grade A classification for many years and two recent cell searches showed that
2 his cell was clear of all contraband.²⁷

3 **4. Care by those around him**

4 Over the last 7 years, the legal team has successfully worked with Mr.
5 Stankewitz. Throughout these years, he has been optimistic and positive. The
6 legal team has found him to be sincere. During prison visits, the legal team has
7 witnessed his relationship to his fellow inmates and officers. His relationship to
8 those whom he knows is heartfelt and emotional and he has a deep connection to
9 some of them.

10 **B. There Is Clear and Convincing Evidence That Mr. Stankewitz Does Not Pose**
11 **a Threat to Public Safety**

12
13 **1. There is also clear and convincing evidence that Mr. Stankewitz does**
14 **not pose a danger to the safety of anyone in the community.**

15 Mr. Stankewitz is 63 years old, making it statistically unlikely that he will
16 recidivate. Indeed, one study found that, nationally, persons between the ages of
17 18 to 29 recidivate after release at a rate exceeding 50 percent, but persons who
18 are released at the age of 55 or higher, recidivate at a rate of only 2 percent. U.S.
19 Department of Justice, Bureau of Justice Statistics, "Trends in State Parole",
20 (1999-2000).

21 **2. Crime itself was not committed and the alleged events occurred over**
22 **43 years ago.**

23 See Petition filed in this court on 3-8-2021.
24 The crime itself, even if true, was over 43 years ago.

25

²⁷ See Petition Exhibit 16a, SQSP Confiscated Property Receipts 2020.

1 **3. Mr. Stankewitz has not had any disciplinary issues in prison for many**
2 **years**

3 Mr. Stankewitz has not been and is not a member of any gang.

4 **4. Medical issues**

5 As stated in paragraph VII.A. above, Mr. Stankewitz has substantial
6 medical issues that require ongoing medical care and monitoring.

7 **5. Self-Habilitation**

8 As stated in paragraph V.H. Prison Years, including Self Habilitation,
9 above, Mr. Stankewitz has become sober and created his own spiritual practices.
10

11
12 **VIII. RELEASE PLAN**

13 The legal team, including Curtis Briggs, Alexandra Cock and Marshall Hammons, will
14 meet him at the gate upon his release and provide assistance to Mr. Stankewitz for a successful
15 adjustment to living on the outside.

16 **A. Housing**

17 Ms. Cock will provide committed housing in Sebastopol at no charge. She will
18 provide transportation for medical care and employment. She will also provide computer
19 and internet access to assist Mr. Stankewitz in looking for employment.²⁹ During his
20 years in prison, Mr. Stankewitz has developed sophisticated cooking skills. These skills
21 could enable him to get a food related job. Mr. Stankewitz previously lived in Sebastopol
22 in foster care when he was age 6 – 11. His time in foster care was a very good time in his
23 life and he has many, many fond memories of that time. He lived in the country and had a
24

25

²⁹ See Exhibit 20d, Declaration of Alexandra Cock, dated 11-18-2021.

1 dog and pet guinea pigs. He used to ride his bicycle to school and to Santa Rosa. Due to
2 its rural nature, Sebastopol is an ideal place for him to live. Sonoma County has an
3 abundance of local parks, nature, including animals and trees. Sebastopol has a Walk
4 Score of 92 out of 100 and has easy walking distance to the library, grocery stores, movie
5 theater, Post office, parks and banks. It has a small-town atmosphere with an acceptance
6 of diversity.

7 If Ms. Cock, is for any reason unable to provide housing, Mr. Briggs will provide
8 sober housing for Mr. Stankewitz.³⁰

9
10 **B. Financial Support**

11 Marshall Hammons and Jackie Simion will provide financial assistance,
12 emotional support and friendship to Mr. Stankewitz. They will also assist him with
13 learning technology.³¹

14 **C. Recovery**

15 Mr. Briggs will be his AA and/or NA sponsor. Mr. Stankewitz understands that
16 once an addict, always a recovering addict. He is willing to commit to sobriety and
17 attending AA meetings. AA meetings are easily accessible. There are dozens of weekly
18 AA meetings within walking distance of downtown Sebastopol. Mr. Stankewitz will also
19 have access to Wellbriety, an online resource for Native Americans provided by White
20 Bison which provides sobriety, recovery, addictions and wellness services.

21
22 **D. Medical, Employment and Social Support**

23 In Sonoma County, Petitioner will have the following resources available to him:

24 Sonoma County Indian Health Project: <https://www.scihp.org/>, including:

25

³⁰ See Declaration of Counsel, *infra*.

³¹ See Exhibit 20e, Declaration of Marshall Hammons and Jacqueline Simion, dated 11-18-2021.

1 Medical Services
2 Anger Management
3 Adult Talking Circles

4 Sonoma County Re-entry Resources:
5 [http://www.partnershiphp.org/Community/Documents/Sonoma/Sonoma_ReEntry%20Re](http://www.partnershiphp.org/Community/Documents/Sonoma/Sonoma_ReEntry%20Resources.pdf)
6 [sources.pdf](http://www.partnershiphp.org/Community/Documents/Sonoma/Sonoma_ReEntry%20Resources.pdf), including:
7 Job training resources

8
9
10 **E. Tribal Cultural Support**

11 Sonoma County is on Pomo and Miwok lands has a number of Indian tribes,
12 which will allow him to connect to his Native American culture:

- 13 • Cloverdale Rancheria of Pomo Indians of California.
- 14 • Dry Creek Rancheria Band of Pomo Indians.
- 15 • Federated Indians of Graton Rancheria.
- 16 • Kashia Band of Pomo Indians of the Stewarts Point Rancheria.

17 **F. Reentry Support**

18 Prisoner Reentry Network.org will provide assistance with money, a cell phone,
19 assistance with obtaining government documents, and connection to inmate release
20 programs upon release.

21 **G. Desire to contribute to youth**

22 Mr. Stankewitz has a strong desire to contribute to his community, especially at-
23 risk youth. Living in Sonoma County would give him that opportunity.

24 **IX. CONCLUSION**

25 For the foregoing reasons, this Court should release Mr. Stankewitz on his own
recognizance pending the resolution of his Petition and Appeal.

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Dated: 11/20/21

Respectfully submitted,

J. TONY SERRA
CURTIS BRIGGS

Attorneys for Petitioner
DOUGLAS RAY STANKEWITZ


by Curtis L. Briggs

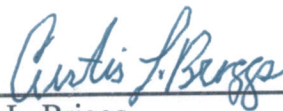
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1 **X. DECLARATION OF COUNSEL**

2 I, Curtis L. Briggs, counsel for Douglas R. Stankewitz, declare as follows:

- 3 1. I am an attorney licensed to practice law in the State of California and have my
4 professional office located at 3330 Geary Blvd., 3rd Floor East, San Francisco, CA 94118. I
5 am one of the attorneys of record for Petitioner, Douglas R. Stankewitz, in this action.
6 2. I have read the foregoing MOTION FOR RELEASE ON OWN RECOGNIZANCE OR
7 SETTING OF BAIL AT REASONABLE AMOUNT and know the contents thereof to be
8 true based on my representation of the Petitioner.
9 3. I am authorized to file this Motion on Petitioner's behalf.
10 4. All facts alleged in the above document not otherwise supported by citations to the record,
11 exhibits, or other documents are true of my own personal knowledge.
12 5. I have been sober for over five years. I attend AA meetings regularly. I am willing to be an
13 AA/NA sponsor for Mr. Stankewitz.
14 6. I own a home and if needed, I am willing to provide housing in a sober environment for Mr.
15 Stankewitz.
16

17 I declare under penalty of perjury under the laws of the State of California that the foregoing is
18 true and correct and that this declaration was executed on November 20, 2021, at San Francisco,
19 California.

20 

21 _____
Curtis L. Briggs

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PROOF OF SERVICE

The undersigned declares:

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

On the date set forth below, I caused a true copy of the within

NOTICE OF MOTION AND MOTION FOR RELEASE ON OWN RECOGNIZANCE OR SETTING OF BAIL AT REASONABLE AMOUNT; DECLARATION OF COUNSEL; AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

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

Mail Overnight mail Personal service Fax

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

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration is executed on November 20, 2021, at Sebastopol, California.



Alexandra Cock