

CHRISTENSEN - LEAN - DET DIV 78-18 2-10-78

FROM CLET3:

CA030000.PP;SER/146425.
DATA ON AFS FILE.

*STOLEN-CONFIRM WITH ORIGINATING AGENCY.

SER/146425.MAK/TIA.CAL/25.TYP/PA.DOT/060773.FCN/430731581714.
ORI/CA0340400.DCA/7317877.

MIS/6 SHOT.

*DROS

SER/146425.MAK/TIA.CAL/25.TYP/PA.DOT/052673.FCN/475731700759.
NAM/CROW PAT L.ADR/347S SAN JOAQUIN ST.DOB/021936.

ORI/CA0390500.DCA/E512286.

MIS/FIE COMP TITAN E27B.CII/002806089.
END GUN.

SACRAMENTO PD STOLEN 6-7-73, CS#7317377

STOCKTON PD -DEALER REPORT OF SALE TO CROW, PAT L, 347 S. SAN JOAQUIN,
STOCKTON, CS# E512286,

1
2 IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
3 FIFTH APPELLATE DISTRICT, DIVISION NUMBER _____

4 In Re DOUGLAS R. STANKEWITZ,

5 Petitioner,

6
7 On Habeas Corpus,
8
9

Court of Appeal No. _____

ON HABEAS CORPUS, COURT OF

APPEAL NO. _____

10 J. TONY SERRA, SBN 32639
11 CURTIS L. BRIGGS, SBN 284190
12 3330 Geary Blvd., 3rd Floor East
13 San Francisco, CA 94118
14 Tel. 415-986-5591
15 Fax 415-421-1331

16 Attorneys for Defendant
17 DOUGLAS R. STANKEWITZ

18
19 **DECLARATION OF ROGER CLARK**

20 I, Roger Clark, declare under penalty of perjury the following, except as to those items
21 below which I indicate to be based on information and belief. If called to testify, I would testify
22 as follows:

23 1. I have been retained as a police practices expert in the above-entitled case.

24 2. I have the following relevant experience and education:

25 Police Procedures Consultant (self-employed) – 25 years:

26 I have been certified by Federal and State Courts. I have consulted in approximately 1950
27 cases thus far since my retirement from the Los Angeles County Sheriff's Department. I have
28 testified as an expert on use of force, jail procedures and jail administration, investigations, police
procedures, police tactics, investigative procedures, shooting scene reconstruction, and police

ON HABEAS CORPUS, COURT OF APPEAL NO. _____ - 1

1 administration in Arizona State Courts, California State Courts, Washington State Courts and
2 Federal Courts in Arizona, California, Colorado, Florida, Illinois, Indiana, Louisiana, Missouri,
3 Nevada, Ohio, Oregon, Pennsylvania, Texas, Utah, Washington, New Mexico, New York and
4 Wisconsin.

5 Los Angeles County Sheriff's Department – 27 years 4 months:

6 Note: When I retired from LACSD in 1993, the Department had 7,000 sworn and 3,000
7 civilian personnel and a daily County Jail inmate population of 23,000. During my 27 years of
8 active service, I was a Line Detective for two years and a Detective Bureau Commander for eight
9 years.

10 Service as a Lieutenant (15 years, 0 Months)

11 Service as a Sergeant (6 Years, 4 Months)

12 Service as a Deputy (6 Years, 0 Months)

13 I have the following DEGREES AND CERTIFICATION:

14 P.O.S.T. Command College (Class #5) POST 1988

15 Management Certification POST 1980

16 Advanced Certification POST 1975

17 Associate of Science Degree Chaffey College 1971

18 3. I have recently testified as an expert witness in the following wrongful conviction cases:
19 Mullen, Herrera v. City of Brea and Vargas v. City of Los Angeles.

20 4. I have recently served as an expert in the following notable cases:

21 2015 Ohio (Cleveland) Opinion & Testimony for Grand Jury – Shooting death of Tamir Rice.

22 2015 Delaware A.G. Written Opinion regarding the shooting death of Jeremy McDole.

23 2017 New York DOJ Written Opinion regarding the death of Eric Garner (US AG)

24 2018 California D.A. Written Opinion regarding San Jose PD Lt. Richard Weger for Santa Clara
25 County DA.

26 2018 New Mexico Written Opinion for New Mexico AG regarding the shooting death of
27 Teresa Anaya – and requested training opinions.

28 2018 Virginia Report and Trial Testimony regarding Estate of Kager – a shooting death

ON HABEAS CORPUS, COURT OF APPEAL NO. _____ - 2

RAC

1 by City of Virginia Beach SWAT.

2 4. This case involves the murder of Ms. Theresa Graybeal (Ms. Graybeal) who was allegedly
3 kidnapped in Modesto, California and shot to death in the City of Fresno on February 8, 1978.
4 The homicide was investigated under Case File No. 78-5819. The investigation eventually
5 connected five suspects to the crime:

- 6 - Douglas Stankewitz (age 19)
- 7 - Billy Brown (age 14)
- 8 - Marlin Lewis (age 22)
- 9 - Tina Topping (age 19)
- 10 - Christina Menchaca (age 25)

11 5. As a result of the statements given during intense interrogation, Billy Brown provided
12 specific details regarding the homicide. His statements and trial testimony categorically
13 implicated Mr. Stankewitz as the sole person who shot Ms. Graybeal. Consequently, Mr.
14 Stankewitz was convicted and sentenced to death. Mr. Stankewitz was re-tried in 1983 and once
15 again convicted and sentenced to death.

16 6. It is uncontested (and a key factor in any evaluation of this case) that Billy Brown's
17 testimony during both trials was the key factor resulting in Mr. Stankewitz' conviction (and death
18 sentence). At both trials, Billy Brown gave specific details regarding how Mr. Stankewitz shot
19 Ms. Graybeal. In my opinion, Billy Brown's account does not match the obvious physical facts.
20 Additionally, it must be noted that Billy Brown recanted his testimony in 1993. In 2012, Mr.
21 Stankewitz' penalty phase was reversed. On May 1, 2019, Mr. Stankewitz was re-sentenced to
22 life without the possibility of parole. I have been retained to give opinions regarding the police
23 practices in this case.

24 7. Accordingly, I have been provided the opportunity to examine the case with fresh eyes.
25 Almost immediately during my review process, it became apparent to me that the physical
26 evidence did not appear to support the case that was presented to the jury by the Prosecution
27 during Mr. Stankewitz' trials. Then, upon request, on March 21, 2019, I was provided the
28 opportunity to actually view and handle all of the physical evidence located at the Fresno Sheriff's

1 office and the Fresno County Superior Court with a defense forensic expert, Chris Coleman. I
2 can provide a list of the evidence and photographs examined.

3 8. Upon viewing the evidence, I determined that the evidence was not kept according to
4 acceptable standards. I see the following problems:

5 A. Key Evidence was mishandled and has disappeared. Some evidence appeared to
6 have been inappropriately handled in violation of basic rules of evidence, assessment and
7 accountability.

8 B. Some key items of documented evidence are now missing. For example, the jacket
9 belonging to one of the co-defendants, Marlin Lewis, was apparently taken from evidence
10 (it was documented and photographed) and not returned. In my opinion, such evidence
11 should not have been removed and indicates a specific intent to remove evidence. This
12 indicates that serious misconduct occurred in this case because Detective Boudreau
13 initialed the property card and may have removed the jacket. Evidence should not leave
14 the building. Based on the extensive misconduct that occurred in this case, Detective
15 Boudreau probably took Marlin Lewis' jacket because he saw the victim's blood on it and
16 realized that it was exculpatory for Stankewitz.

17 C. When evidence is taken out, a report must be written which explains the purpose
18 for which it is being taken. It should also be recorded when it is returned. Additionally,
19 the property custodian must inspect and track the evidence to be sure that it is returned in
20 the same condition as when it left. As is their duty, the Prosecution failed to safeguard
21 crucial evidence. These procedures were not followed in this case.

22 9. I have reviewed the police reports regarding the gun referenced in the Stankewitz Petition
23 for Writ of Habeas Corpus.

24 The Prosecution stated that one gun was used in two episodes, the Graybeal murder and
25 the Meras attempted murder. However, the evidence shows that there were two different guns
26 used in the crimes. In evidence, the Sheriff's Department labeled shell casings as a .22 caliber
27 (which are rim-fire cartridges) yet when I examined them, .25 shell casings (which are center-
28 fire cartridges) were in their place.

1 10. Furthermore, the serial number of the alleged murder weapon appears as recovered on 6-
2 7-1973, five years before the 1978 Graybeal case. I have reviewed a recovery report that
3 documented the gun was recovered in Sacramento in 6-7-1973. For some yet unknown reason,
4 the recovery was reported to the Internal Affairs unit rather than their detective bureau. (See
5 attached trace recovery report). Also, Detective Lean's initials (T L III) and date are inscribed
6 on the holster recovered with the murder weapon, and one date is 7-25-1973, approximately two
7 months subsequent to the gun being recovered, and approximately five years previous to the
8 1978 Graybeal murder. Police procedure required that Lean inscribe his initials (T L III) and
9 date on the holster when he recovered the holster from whatever case in which it was involved.
10 The gun and the holster are alleged to have been recovered during the Graybeal investigation
11 and linked to Stankewitz; however, no date or other form of standard evidence tracking was used
12 by police in 1978. This indicates the possibility of a 'throwaway' (a firearm held by police for
13 the purpose of framing an innocent person for a shooting) which was planted to satisfy the case
14 against Stankewitz, when it was already actually in the possession of the FPD or FCSD, before
15 listed as evidence in the Graybeal case.

16 11. Although the Graybeal death certificate states that she was shot with a .25 caliber, there
17 are no reports stating that testing was done to verify this.

18 12. Billy Brown, the main witness against Stankewitz, stated that Graybeal was shot in the
19 back of the head. However, the entry wounds on forensic diagrams puts the shooter to her right
20 and sharply below her. According to documented reports, Miss Graybeal was 5'2.5" and
21 Stankewitz was 6'1", indicating a very awkward and therefore unlikely shooting stance by
22 Stankewitz and more likely by a shorter person, including one of the co-defendants Brown (5'6"),
23 Lewis (5'3"), Menchaca (5'1") and Topping (5'1"). The autopsy photos show that the bullet
24 entered under Graybeal's right ear and exited through her left temple. The bullet trajectory was
25 front to rear, not rear to front. The Prosecution should have understood the obvious discrepancy
26 between how Brown said the bullet entered Graybeal and the trajectory of the bullet that went
27 through her head at a significantly different angle. Based on second trial testimony of Dr. T. C.
28 Nelson, who performed the autopsy, the second trial testimony of Criminologist Deputy Preheim,

1 and the autopsy report, the Prosecution knew that the victim was shot on the right side of the
2 head or neck, which contradicted Brown's testimony. Billy Brown's versions of events do not
3 match the physical evidence. Given these facts, the shooting theory presented to the jury by the
4 Prosecution could not be true.

5 13. There have been significant advancements in scientific analysis 1978 and 1983. These
6 included techniques of blood analysis, microscopic analysis and chemical analysis. In my
7 opinion, the clothing evidence should have been tested prior to the Defendant's 1983 re-trial. If
8 the stains on Lewis, Topping and Menchaca's clothing are in fact blood, they were probably
9 holding her when she was shot.

10 14. Investigation Bureau Deputy Preheim testified that the victim's body was in a dirt area
11 CT at 190 - 191, lines 22 -1. However, the Prosecution failed to examine or test victim's shoe
12 bottoms to see whether she was standing where her body was found. In my examination of the
13 crime scene photos and the bottom of the victim's shoes, I did not see any dirt or sand. A shoe
14 inspection done at the time of the investigation, could have impeached Billy Brown's testimony.

15 15. All of the Defendant's clothing should have been tested prior to second trial. Proper police
16 procedures were not followed in the keeping of evidence, maintenance of evidence room,
17 determination of location of victim's body and murder location. Physical evidence does not
18 match to Prosecution theory of the case and therefore the jury was given false facts to consider
19 when deciding the facts. Accordingly, crucial evidence was withheld from the jury.

20 16. Additionally, the Prosecution never tested the car for blood, gun shot residue, or the bullet;
21 these tests were standard procedure at the time of the incident and could have been exonerating
22 to Stankewitz. The car was returned to victim's family on 2-10-78, 2 days after the crimes,
23 without giving the defense the opportunity to inspect it or test it for evidence.

24 I declare under penalty of perjury that the foregoing is true and correct to the best of my
25 knowledge. Executed in Santee, California on December 4, 2019.

26
27 
28 _____
ROGER A. CLARK





FRESNO POLICE DEPARTMENT

STANDING ORDER NO. 3.8.12

Chapter: Specific Incident Procedures

Topic: Evidence Handling & Property Booking

Effective Date: May 30, 2003

Supersedes Order(s): 3.8.12
Previously issued: July 30, 2001

Chief of Police

PROCEDURES:

01.00 Property/Evidence Transportation

01.01 General Requirements

Members shall transport property and evidence in their assigned vehicles whenever possible.

A CSO pickup or a patrol wagon shall be requested when an item is too large for a car. **When an item is too large or too heavy for a CSO pickup or a patrol wagon, the member shall notify his/her supervisor who will coordinate with Property and Evidence Control Section (PECS) Personnel to arrange transportation.**

All property and evidence shall be booked by the end of the responsible members' shift.

Members shall indicate the disposition of all evidence in their report of the incident.

Property or evidence shall not be stored in a member's desk, locker, vehicle, or any other container at any time.

01.02 Flammable Materials

When flammable or volatile material evidence from an arson or related crime needs to be booked as evidence, the FFD Arson Investigator at the scene shall be responsible for the booking of these materials at the FFD Property and Evidence Storage Facility.

When an FFD Arson Investigator is not available, FFD shall be requested, via ComCen, to collect and book the evidence.

02.00 Dangerous/Unstable or Hazardous Materials

Dangerous and/or unstable substances shall not be booked into standard evidence storage lockers. All such property will be collected at the scene by FFD personnel for booking into their evidence storage facility.

Hazardous materials shall not be booked into PECS. A hazardous materials team (i.e., FFD) shall be called to handle the proper collection and/or disposal of all hazardous materials.

Dynamite, military explosives, etc., will be handled by the E.O.D. Team. Refer to S.O. 3.4.19.

Paint, glue, and ammunition (.50 caliber and smaller) shall be booked into evidence lockers.

Legal fireworks (Safe and Sane) that are booked into PECS and which do not have evidentiary value shall be transported to the Fire Marshall for destruction on the next business day by an EOD technician. Legal fireworks that are booked into PECS which do have evidentiary value shall be transported to the FPD explosives magazine on the next business day by an EOD technician. Illegal or homemade fireworks shall not be booked into PECS. An EOD technician shall respond to the scene to take custody of all illegal fireworks. The EOD technician shall transport the illegal fireworks to the explosives magazine to be retained as evidence or held for destruction.

03.00 Evidence Storage Locations

Property/evidence storage and [REDACTED] and at the Central, Southeast, Northeast and Northwest district stations.

All members are responsible for locking evidence storage facility lockers and doors after booking property/evidence.

04.00 Packaging Property/Evidence

04.01 Containers

Boxes, envelopes, hang tags, labels, tape and string are provided at all property booking stations. Members booking property or evidence shall package items in envelopes, boxes, or other designated containers using the smallest container available which will hold the item(s). All envelopes shall be sealed with transparent or evidence tape. Boxes shall be secured with tape so that the flaps do not open. All seals shall be initialed and dated by the booking member. Envelopes and boxes shall then be placed in an [REDACTED]. All evidence booked in envelopes will be placed in [REDACTED].” Larger items and evidence booked in boxes will be [REDACTED].

04.02 Large Items

Items which are too large for storage in [REDACTED]

Large items booked at the [REDACTED]
[REDACTED] The designated copies of the PER shall be [REDACTED] with a note attached which describes where the property is stored.

04.03 Property Tags & Labels

All containers of property or evidence, except for the pre-printed money envelope, shall have a property label attached. When a box is used, the label shall be attached to the smaller end panel. Items which do not fit into a container shall have a hang tag or label attached. All blank envelopes shall have a property label attached. The only pre-printed envelopes are the money envelopes. They are to be used for money only and shall be completed with all applicable information.

The labels are generated from the information typed on the PER in the “Property Room Inventory Management User System” (PRIMUS) booking system. The item numbers on the label should match the item numbers on the PER which are contained in the envelope/box or hang tag.

Hand written forms will be available for instances when the PRIMUS system is not functioning. The information will be inputted into the system when it becomes functional.

04.04 Marking of Property and Evidence

Members shall mark all items of property and evidence with their initials and, where space permits, the date the item was booked.

When possible, members shall apply the required evidence markings in a location and manner which does not outwardly damage or disfigure the item. Markings shall not be placed in any place which would in any way alter or damage the evidentiary or real value of an item.

Exceptions:

- (a) Very small items need not be marked individually but shall be identified by marking their containers;
- (b) Large quantities of like items need not be marked individually. It is necessary to mark only a representative sample of such items; and
- (c) Items which can be identified by serial numbers and/or unique identifying markings need not be marked as described above. In such cases, the number or unique marking shall be clearly listed on the PER and property label.

04.05 Preserving Minute Evidence

Small pieces of evidence, such as fingernail scrapings, hair, paint scrapings, etc., shall be placed in an envelope, glass vial or other suitable container and placed in a properly labeled evidence envelope. When minute evidence samples are placed in the 2½" x 4¼" or 3" x 5½" envelopes, those envelopes shall then be placed in a larger 5" x 7½" clasp envelope before being placed [REDACTED].

04.06 Bicycles

Bicycles shall be placed in the [REDACTED]. A property

hang tag shall be completed and tied to the handle bar of the bicycle.

One PER shall be completed for each bicycle. The serial number, owner applied number, or the license number shall be included on the PER. The PER shall be rolled up and secured between the spokes of the front wheel.

04.07 Vendor Carts

When storing a vendor cart, the storing member shall:

- (a) Contact COMCEN who shall contact Malibu Towing Company to respond to the member's location and store the cart;
- (b) Complete a VIR for the stored cart; and
- (c) Advise the vendor cart operator that their cart may be released by contacting a district investigator from the district where the cart was seized.

05.00 Property/Evidence Report (PER)

When property or evidence is booked, a PER shall be completed. The information will be typed into the PRIMUS booking system and the PER will be printed from that system.

The PER shall not be placed inside an evidence container or taped or tied to the container item. The original PER shall be placed [REDACTED] with the item. When property is stored in any place other than inside an [REDACTED], the PER shall be placed in [REDACTED] with a note attached which describes the location of the property.

The copy of the PER may be retained by the booking member or used as a citizen receipt.

It is not necessary to duplicate information contained on the PER in a police report. Instead, members may write the words "See PER" under the "Evidence Booked" heading of the narrative of the report.

Completion of a separate page of the PER is required when booking the following types of property:

- (a) Money (U.S. only);
- (b) Narcotics;
- (c) Bicycles;
- (d) Firearms and their associated equipment (i.e., ammunition, holster and case). Each firearm and its associated equipment requires a new page on the PER (i.e., two firearms with associated equipment requires two separate pages on the PER);
- (e) Video Tape evidence (refer to S.O. 3.4.9);
- (f) Blood/urine samples for drug analysis (refer to S.O. 3.5.1 section 02.00);
- (g) Blood/urine samples for alcohol analysis (refer to S.O. 3.8.12 section 09.02);
- (h) Blood samples for evidence comparison purposes (refer to S.O. 3.8.12 section 12.00); and
- (i) Wet articles which must be dried.

Additional pages on the PER's shall be completed for any other property being booked under the same case number.

06.00 Found Property

Members shall indicate on the PER any information identifying the owner on Found Property to allow notification by PECS. Identifying information may include name, driver's license number, social security number, etc.

Found property shall be packaged separately from evidence.

06.01 Stolen Property Check

Prior to reporting any property with serial or identification numbers as "found," members shall initiate a check into the stolen property system of CLETS and DMV (when an owner applied number resembles a CDL number). Items that have been checked for stolen status and determined to be clear may then be booked as "Found Property."

06.02 Citizen Claims for Found Property

Members shall inform the RP that they must submit a written claim to the Department when they want to claim an item which has been booked as found property. The claim letter must contain the case number under which the property is booked, the date the property was booked, a brief statement that the RP wishes to claim the property, and the type of property claimed. The claim letter should be addressed to the supervisor of the PECS and must be submitted within the following time limits:

Personal items: 30 days from the booking date.

Bicycles: 60 days from the booking date.

All other property: 90 days from the booking date.

Personal items include cosmetics, clothing, and other personal use items.

Firearms and other legal weapons may be claimed, but they will not be released until a background check on the finder has been completed. Ammunition, contraband, etc. will not be released to the finder.

07.00 Property Held for Safekeeping

When members come into possession of property which cannot be returned safely to the rightful owner, the member shall book the property for safekeeping. The member shall advise the person from whom the property is obtained that the property will be held for safekeeping by the PECS for no longer than sixty days. If the rightful owner of the property does not claim the property within the sixty days, it will be auctioned or destroyed consistent with the law.

When members take or receive property for safekeeping, they shall give the person a Fresno Police Department Property For Safekeeping - Receipt. This receipt has instructions notifying the person about the requirement to pick-up the property within sixty days. The person may also authorize another to pick-up the property in their place. The receipt also gives the person, if incarcerated, an additional ten month extension in which to make arrangements for the disposition of the property. In this case, the person must make a written request to the Department, addressed to the supervisor of the PECS, in order for an extension to be granted.

08.00 Narcotics Evidence

Narcotic evidence is divided into two categories.

- (a) Narcotic evidence which has no evidentiary value and does not require analysis; and
- (b) Narcotic evidence which has evidentiary value and requires immediate analysis.

When narcotics from both categories are seized together, they shall be booked separately according to the guidelines listed below.

08.01 Evidentiary Narcotics

Narcotics that have evidentiary value require immediate analysis. Immediate analysis is required when a suspect is in custody on charges related to the narcotics being booked, a citation has been issued, or a known suspect is at large for whom an arrest warrant will be sought.

08.02 Non-Evidentiary

Narcotics that have no evidentiary value, such as found narcotics or narcotics that are not related to pending charges against a suspect, will not be analyzed.

08.03 Packaging Narcotics

All narcotics seized shall be booked into [REDACTED] using the following form and envelopes:

- (a) PER; and
- (b) DOJ Controlled Substance Evidence Envelope.

Members shall provide all information requested on the forms and envelopes and, in the case of non-evidentiary narcotics, the member shall write "No Test Needed" in the description portion of the PER.

Except as provided in 09.00, members booking narcotics for analysis shall place the evidence inside the completed DOJ Controlled Substance Evidence Envelope and seal the flap of the envelope with tape to prevent tampering and the loss of evidence. Members shall sign or initial over the seal in letters large enough to extend beyond the edge of the flap so that booking members can determine if the seal has been broken.

When the items booked are very small or are powdery and subject to leaking through the envelope or their own containers, members may put them in smaller envelopes, KAPAK pouches, or other suitable containers before putting them in the DOJ envelope.

When different types of narcotics are seized under the same case and are all to be analyzed, or when narcotics are seized from different suspects under the same case and are to be analyzed, booking members shall put the different types of narcotics and/or narcotics seized from different suspects into separate KAPAK pouches labeled with appropriate identifying information, before putting all the evidence into the DOJ envelope.

Once all forms are completed and the evidence is sealed in the DOJ envelope, the DOJ envelope and the PER shall [REDACTED] in the [REDACTED].

08.04 Narcotics Analysis and Storage

It is the responsibility of CLO/PLO drug analysis CSO's or the Narcotics Section personnel to remove and forward all booked evidentiary narcotics for analysis. After the analysis, the CLO/PLO drug analysis CSO's or the Narcotics Section personnel shall return the evidence to the [REDACTED]. All non-evidentiary narcotics shall be removed from [REDACTED].

08.05 Narcotics Evidence Viewing Procedures

All requests to view narcotic evidence will be handled by CLO/PLO drug analysis CSO's or the Narcotics Section personnel who will arrange with the PECS to have the evidence retrieved from storage.

09.00 Special Procedures

09.01 PCP, Cocaine, LSD, Methamphetamine, and Other Synthetic Drugs

Once seized, PCP/LSD should be transported to HQ and booked immediately. Members should wear gloves to avoid direct contact with the PCP/LSD and should wash their hands thoroughly with soap and water after handling anything containing PCP/LSD. PCP/LSD should be transported either in the trunk of the vehicle or, when carried in the passenger compartment, with windows down to provide adequate ventilation. When PCP is spilled onto clothing (including shoes), the clothing must be removed immediately and will need to be discarded. Neither laundering nor dry cleaning will make the clothing safe to wear.

PCP/LSD shall not be brought into HQ before it is properly packaged to avoid spillage, breakage, and/or exposure to fumes. A heat sealer, and KAPAK pouches are stored in the property cage for this purpose. PCP/LSD in solid form need only be heat sealed in a KAPAK pouch before booking. PCP in liquid form should be placed in a capped bottle or jar. It may remain in its original container, if safe, or put into a jar available in the IB. The capped bottle or jar shall then be heat sealed in a KAPAK pouch. Once properly packaged, PCP/LSD evidence is to be booked the same as regular drug evidence.

Cocaine, Methamphetamine and other synthetic drugs shall first be heat sealed in KAPAK pouches prior to being booked the same as regular drug evidence.

09.02 Blood and Urine Evidence Samples to be Analyzed for Drugs

Blood or urine samples which are to be analyzed for drugs, or a combination of drugs and alcohol, are to be booked into the PECS. All such samples shall be booked as follows:

- (a) Blood samples from the same subject shall be enclosed in the same blood sample envelope. When more than one vial is

- enclosed, measures are to be taken in packaging (e.g., wrapping the vials with gauze and taping them together, etc.) to prevent breakage;
- (b) The blood/urine envelope headings shall be modified from "Sample for Alcohol Analysis" to "Sample for Drug (or Drugs and Alcohol) Analysis";
 - (c) All urine samples will be closed securely and sealed with the attached evidence tape and placed in the Urine Sample Envelope. Any blood samples (in the appropriate envelope) from the same suspect, may be included in the larger urine envelope with the proper heading modification "Urine and Blood Sample for Drug (or Drugs and Alcohol) Analysis";
 - (d) All blood and/or urine samples to be analyzed for alcohol, drugs, or drugs and alcohol shall be deposited into the [REDACTED]. Blood or urine samples are never to be deposited in the [REDACTED].
 - (e) A PER shall accompany all blood/urine samples [REDACTED] but shall not be placed in the sealed sample envelope;
 - (f) In cases with multiple suspects, evidence from each suspect shall be packaged and labeled separately from all other suspects. Each suspect's sample shall be listed as a separate item on the PER with the suspect's name listed in the "Description" column; and
 - (g) Members are to ensure that the suspects names match on the PER and sample envelopes.

09.03 Blood Samples for Comparison Purposes

Blood collected from a suspect for evidence comparison purposes shall be booked into [REDACTED]. A PER is to be completed and placed with the blood vial envelope in the refrigerator. Any blood sample drawn for drug and/or alcohol analysis shall be booked separately from the comparison sample as contained in 09.02.

09.04 Large Quantities of Narcotics

When the quantity of narcotics seized is so large that it will not fit into a DOJ envelope, a representative sample of the substance shall be booked for analysis using the DOJ envelope. A separate page shall also be completed on the PER. The remainder should be booked in [REDACTED] using standard evidence containers along with the separate page on the PER. When this procedure is followed, a note shall be left with the sample booked for analysis advising Narcotics Section personnel that more narcotic evidence from the same seizure was booked into regular lockers. A DOJ envelope may be taped to the box so the weight and quantity can be listed.

Large quantities of narcotics shall be booked by at least two members. Both members shall sign the PER and DOJ envelope.

09.05 Marijuana and Opium Plants

When marijuana or opium plants are booked, members shall complete the DOJ envelope and a PER. The marijuana or opium plant(s) shall then be booked into the [REDACTED].

Members who have received DOJ authorized training shall perform their own presumptive tests on marijuana or opium plant(s) that they seize. The results shall be recorded on a Presumptive Analysis Report and attached to the back of the DOJ envelope. The DOJ envelope with a PER shall be placed in [REDACTED].

When booking fresh, green plants or wet marijuana, the plants shall be placed in a box with the top left open. When fresh and/or green plants are booked, a sample shall be booked into the narcotics locker in a DOJ envelope. Once the plants have dried, PECS personnel shall then seal the box for storage. In the event PECS is closed, IB personnel will temporarily store the plants until PECS personnel take custody of the evidence on the next working day.

09.06 Paint & Glue Evidence

Evidence of possession or use of paint, glue or other prohibited substances (PC 381), (e.g., paint rags, plastic bags, etc.) is not subject to immediate lab analysis, nor to presumptive tests. All paint or glue saturated materials shall be placed in sealable metal containers available in the PECS. When all of the material will not fit, a representative sample (preferably wet) shall be placed in the container and booked. The remainder shall be placed in a heat sealed envelope, then put in a standard booking envelope. The metal container shall be identified with a standard property label. This material shall be deposited into [REDACTED] only. The booking of this type of evidence does not require completion of the DOJ envelope.

10.00 Narcotics Paraphernalia

Narcotics paraphernalia booked as evidence for paraphernalia charges (HS 11364, BP 4140) is not subjected to analysis. This evidence shall be booked in standard envelopes and placed in [REDACTED].

Narcotics paraphernalia, other than syringes, booked as evidence of possession of controlled substances charges (based on a usable quantity of narcotic) is subject to immediate analysis and shall be booked into [REDACTED]. When the material to be analyzed is in liquid form, it must be put in a sealed container prior to booking to avoid leakage.

11.00 Hypodermic Syringes and Needles

11.01 Booking and Analysis of Syringe Contents

In the absence of an exceptional circumstance (e.g., incidents involving the death or imminent death of a person) members shall not book hypodermic syringes and/or needles for analysis of contents. Syringes booked under an exceptional circumstance shall be handled according to S.O. 3.8.7 and secured in protective syringe containers provided by the Department. The container(s) shall be placed in an appropriate envelope and then booked into [REDACTED] using standard booking forms.

Special arrangements shall be made by the Narcotics Section, upon receipt of a special request, for the contents of syringes involved in exceptional cases to be transferred into containers suitable for delivery to, and analysis by, the DOJ laboratory.

11.02 Syringes and Other Paraphernalia

In narcotics paraphernalia cases (HS 11364, BP 4140), in which the syringe itself (rather than its contents) is physical evidence of the offense, the syringe shall be booked in a protective syringe container as outlined in 11.01. Other contents of "hype kits" shall be booked [REDACTED].

11.03 Disposal of Syringes and Needles

When syringes and needles are not needed as evidence in a criminal prosecution, they shall be disposed of in "Sharps containers" located in all district stations, and the PECS booking area. PECS personnel are responsible for the proper disposal of full containers.

12.00 Firearms

12.01 Teletype Inquiry

Members booking a firearm shall check it through CLETS and NCIC for stops and registration information. A printout of the inquiry shall be attached to the report of the incident prepared by the booking member. When CLETS and/or NCIC are down, a Teletype Message Form shall be completed and forwarded to Teletype to be run when the system is accessible. The results of the inquiry shall be forwarded by the Teletype operator to the investigative unit that has follow-up responsibility for the case.

12.02 Teletype Entry

A member booking a firearm into PECS shall complete a Teletype Message Form, which must be submitted on the date the firearm is booked.

The entry may be made via the telephone instead of completing the teletype form. In this case, the name of the teletype operator making the entry must be included in the report of the incident. Upon completion of the entry, the teletype operator shall forward a copy of the teletype entry to the firearms clerk in CAPERS.

The Teletype Message Form contains sections that are to be completed for "Crime Guns" only. A "Crime Gun" is a firearm that was used in a crime, suspected of being used in a crime, and/or illegally possessed.

When a Teletype Message Form is completed for a "Crime Gun," the "Mandatory Information For All Guns" section and the "Crime Gun Only" sections shall both be completed in addition to the other required information on the form.

When a Teletype Message Form is completed for a gun that does not meet the criteria of a "Crime Gun," the "Mandatory Information For All Guns" section shall be completed in addition to the other required information on the form.

12.03 Rap Sheet Submission

When a suspect is placed into custody for a firearms violation, a criminal history printout (rap sheet) of the suspect shall be submitted with the report of the incident. The charges on which the subject is booked shall be based upon any prior convictions discovered on the rap sheet.

12.04 Booking

The firearm shall be unloaded prior to placing it in an evidence locker. The firearm shall not be concealed or packaged but shall be placed in the locker in plain view. Rifles and shotguns booked with a gun case shall be removed from the case, and booked as separate items on the PER. The firearm shall be labeled with a completed property tag. The tag shall be attached with the string tied tightly to the trigger guard so that it does not dangle loosely.

When the firearm has a magazine or clip, the magazine or clip shall be unloaded and placed back into the firearm prior to being booked.

Exceptions:

- (a) When a firearm must be booked in a loaded condition (e.g., jammed weapons), or if the booking member is unable to determine if it is loaded, on duty PECS personnel shall be notified that it is loaded and/or possibly loaded when it is booked. When PECS personnel are not on duty, a memo shall be attached to the outside of the evidence locker in which the firearm is placed. The memo shall detail the condition of the loaded firearm including whether or not it is jammed. PECS personnel shall not attempt to unload the weapon. They shall contact a Department armor and make arrangements for him/her to clear the weapon prior to it being processed for storage; or
- (b) When a firearm is collected as evidence or is contaminated with bio-hazard material (e.g., bodily fluids), the booking member shall complete a PER and leave the firearm and the PER at the IDS for drying. Once the bio-hazard material on the firearm has dried, the IB Technician will package the firearm, mark it as a possible bio-hazard, book it [REDACTED], and write a follow-up report.

A firearm and associated equipment (i.e., ammunition, holster, and case), shall be booked together on one page of the PER. Other property/evidence not associated with the firearm shall be listed on an additional page of the PER. When more than one firearm is to be booked, a separate page of the PER is required for each firearm and its associated equipment.

12.05 Disposition

All firearm dispositions will be coordinated by the CIB firearms clerk. Prior to release, an Authorization for Release Form shall be signed by the CIB Commander or a designee.

Ammunition that is booked with a weapon shall not be released the same day the weapon is released. The owner can return the next business day to claim the ammunition.

13.00 Motor Vehicles

Small motor vehicles such as minibikes, mopeds, go-carts, etc., may be booked [REDACTED] rather than having them towed and impounded. Motorcycles, parts, and accessories may also be [REDACTED]. When these items are booked, they shall be [REDACTED] with a hang tag attached and a completed PER. Vehicles or vehicle parts which leak oil or which are otherwise [REDACTED] for storage indoors shall be impounded by tow truck. In determining whether to impound or book a vehicle, the size of the vehicle will be the primary consideration. When the vehicle and/or part can be placed into a vehicle by one person, it may generally be suitable for booking into the PECS.

14.00 Sharp Objects

Sharp or pointed objects shall be carefully wrapped with a piece of cardboard or paper envelope to ensure safe handling. The object shall then be placed in a sturdy container clearly marked as containing sharp objects.

15.00 Open Containers of Liquid

Containers of liquid which have no lids shall be sealed when possible, or the contents shall be transferred to a sealable container available in the PECS. Liquids sealed in their original containers shall be packaged so as to prevent spillage if they are knocked over. Liquids may be placed into a KAPAK pouch and heat sealed.

16.00 Wet Articles

When members possess articles which must be dried prior to booking, a separate PER shall be completed for the wet item(s). The item(s) shall be delivered to an IB technician who [REDACTED] when dry.

17.00 Bloody Objects

Members shall use cardboard, paper, or similar porous material to securely package any bloody object being booked into evidence. Members shall note the presence of blood in the description section of the PER. Wrapping materials can be obtained from the IB. The container shall be clearly marked with bio-hazard material labels.

18.00 Money

Money (U.S. currency and/or coin) shall be packaged separately from all other property being booked under the same case. It shall be placed in a pre-printed money envelope. When the quantity of bills or coins is too bulky to fit into a money envelope, a larger envelope or a box may be used with a money envelope taped to the outside.

The booking of money shall be done using the "Two Person Rule" where the money is counted and witnessed by two members prior to placing the money in the pre-printed money envelope.

The pre-printed money envelope shall be completed with the number of bills or coins in the left hand column, with the sub-totals for the bills and the coins and the total of the bills and coins. The booking members shall provide their name, badge number and date on the lines provided on the flap which shall then be closed and covered with transparent tape. The PRIMUS booking label shall be placed on the back side of the pre-printed envelope.

All money envelopes shall be listed as an individual item, indicating the total amount per envelope in the "Cash" box and in the "description" portion of the PER. Money envelopes shall be placed in the [REDACTED] [REDACTED]

Money will be held in the [REDACTED]. After six months, the money will be deposited into the Trust Fund account through City of Fresno Finance.

Exceptions: Money in the following categories will not be deposited into the Trust Fund account:

- (a) Money that has been processed and from which fingerprints were lifted;
- (b) Money that has DNA evidence;
- (c) "Bait Money": recorded, serialized bills, or bills containing a tracking device which were collected during a robbery investigation;
- (d) Money specifically requested to be left in the vault by the case investigator;
- (e) Money collected in PC 187 cases; and
- (f) Collectible coins.

Collectible coins, as identified by the owner due to their increased value, shall be booked as property, not as money.

Example: Coins mounted in books, stored in containers, etc.

When money is booked under the above exceptions, members shall write "Do Not Deposit" and a brief reason (e.g., "DNA," "Bait Money," etc.) in the description section of the PER.

19.00 Perishable Items

When stolen perishable items, such as food or beverages, have been recovered and a victim can be identified, the items shall be photographed and returned to the victim. Perishable items shall not be booked.

Exception:

If food or beverage samples need to be taken for contamination/poison analysis, packages should be clearly marked and stored [REDACTED]. Once an analysis has been completed, the samples shall be disposed.

20.00 Evidence to Court

When members anticipate appearing in a court proceeding where booked evidence may be required, members or CLO shall attempt to notify the PECS in advance to accommodate the retrieval of any evidence which is not [REDACTED].

When receiving narcotics from the Property and Evidence control section, all members checking out narcotics for court will be required to show their subpoena to the Property and Evidence Technician.

At the time evidence is removed from the [REDACTED] for court, all members shall procure a Receipt of Evidence Form in addition to signing for the evidence. When the evidence is left in court, the form must be completed by the member and signed by whomever takes custody of the evidence (i.e., the Deputy DA or the Court Clerk). The completed form shall be returned to the PECS. When evidence is listed on the Receipt of Evidence Form, the description should be the same as it appears on the corresponding PER.

All evidence not used in court shall be returned to the PECS immediately after the completion of the court hearing or at the time the member is advised the evidence will not be used. When the PECS is closed, members shall place the returned evidence [REDACTED] with the Receipt of Evidence Form and a memo stating that the property is being returned from court.

21.00 Unidentified Property

Property in the custody of the PECS supervisor that cannot be identified or is unclaimed by the owner shall be disposed of as provided for in PC 12028 and MC 3-304 through 305.

22.00 Sale of Property

Members may not bid on or purchase any item that has been in the possession or control of the Property and Evidence Control Section.

Exceptions: This does not prohibit members from purchasing property legally sold or auctioned by other City divisions provided the member has not had control over or participated in the decision that the property was surplus and could be sold.

23.00 Release of Property

When authorizing the release of property, members shall advise the party to contact the PECS to make an appointment to pick-up their property. When property is stored at a storage location away from HQ, 24 hours advance notice is required to retrieve the property.

When a victim is notified that their stolen property has been recovered they shall be provided with the case number. They shall also be informed that due to investigative requirements the property may not be immediately available for release.

24.00 Request for DOJ Analysis

Members wishing to have a DOJ laboratory examination of any item of evidence shall complete a DOJ Bureau of Forensic Services Form (BFS-4), and submit it to the IB, along with a copy of the original case report. IB personnel shall then [REDACTED] transport same to the DOJ Regional Laboratory for analysis. When a case is assigned for follow-up investigation, only the assigned investigator or his/her designee shall request a DOJ examination.

25.00 Evidence Requiring Special Processing

Members who wish to have an item of evidence processed in a special manner (e.g., chemical processing for latent prints, number restoration, etc.) shall:

- (1) Deliver the item(s), the completed PER, any packaging container(s), and label(s) to the IB; and

- (2) Complete a Request for Identification Services Form specifying the type of processing requested.

When IB personnel are unavailable, or when there is insufficient temporary storage space for the evidence, members shall book the item [REDACTED] with a copy of the completed request form and forward the original request form to the IB.

The IB member who conducts the processing shall prepare a FR describing the results of the processing and the disposition of the evidence.

26.00 Right of Refusal for Booked Property/Evidence

PECS will refuse incorrectly booked property/evidence. When property/evidence is booked incorrectly, the PECS supervisor shall be notified and, depending on the severity of the error(s), the following actions shall occur:

- (1) When the property is still at the district station, it shall be left with the day shift supervisor to have the corrections made and re-booked. When a day shift supervisor is not available, the items will be brought [REDACTED] or
- (2) When the property [REDACTED], the booking member's bureau supervisor shall be contacted. When the officer is no longer on duty, a day shift member shall be sent to immediately correct the problem.

REFERENCE ORDERS:

- 3.4.2 Crime Scene Investigation
- 3.4.19 Explosives and Bomb Threats
- 3.5.1 Drug Influence Cases
- 3.6.3 Driving Under the Influence
- 3.8.16 Explosives Ordnance Disposal Procedures

Confidential
Document
Fresno Police Department
Released To: [REDACTED]
Attorney [REDACTED]

November 28, 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,

/s/

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

TRANSCRIPT OF DET. LEAN INTERVIEW

Subject: Thomas Lean
Case: People v. Douglas Stankewitz
Date: March 27, 2020
Age: 74
Occupation: Retired sheriff detective
Residence: Fresno County
Relation to defendant: One of two lead investigators of the case

Jonah Owen Lamb
415-302-7416
P.O. Box 31981
Oakland, CA 94604
P.I License # 18434

IN-PERSON INTERVIEW CONDUCTED Feb. 7, 2020:

Lamb: Can you tell me what you remember about the case and how you got involved?

Lean: Long time ago. As I remember, my partner was Art Christiansen and I think we were notified by the Fresno Police Department. There had been a robbery in either Modesto or Merced. And a young lady was kidnapped, brought to Calwa area and Douglas and a couple other associates - Douglas pulled the trigger on her, shot her in the head as she stood on the corner. Fresno Police department got involved, I think they even made the arrest if I recall correctly. But because the murder took place in the county in Calwa, it got turned over to us.

Lamb: Where you the lead detective on the case?

Lean: I can't remember. Either Art or I was.

Lamb: And he was your partner?

Lean: Yes, he's deceased.

Lamb: Was there a detective Moon involved?

Lean: Oliver Moon, he could have been I don't remember.

Lamb: So you worked the case after the PD handed it over.

Lean: They kinda basically handed it over, as far as I remember. We interviewed Douglas and the others, the co-conspirators.

Lamb: Marlon Lewis and two women?

Lean: There was a young boy too. There were like three or four of them. It was my understanding that they were without a ride and they and they sort of ended up kidnapping her for the car.

Lamb: According to the transcripts, it said you guys did follow up interviews with all the co-defends and that includes Stankewitz. Did you typically record them?

Lean: We would have recorded them.

Lamb: There was an ADA who prosecuted the case, I butcher the name every time I say it: Ardaiz

Lean: James Ardaiz

Lamb: He's a judge now, I know that. Do you remember if he was involved in the investigation at any point? Or how that would work?

Lean: I don't remember. Other than him being involved in the prosecution, and we turned all our information over to him. But I don't remember him being actively involved in it as far as going out on follow-ups. I know he did on other cases. But I don't remember, it's been, it's too long ago.

Lamb: I think you testified in part of one of the trials, but not that much. Do you remember why you – I figured you and your partner were the main detectives – why you didn't testify that much verses your partner.

Lean: We used to exchange the position of being the lead investigator that would sit with the district attorney. And we would, if they needed some prepping or something on a certain area, or something that he or she had asked during the investigation, during the court trial we would be there to help.

Lamb: Do you remember if that was you in this case?

Lean: I don't, I don't. I want to say I was, at least during one. I think we had two death penalty retrials, if I remember.

Lamb: So you were involved in some but not all?

Lean: Yes.

Lamb: A couple documents I want to show you to see if you can recognize a signature, but we can get to that later. Just going through my notes, sorry for my slowness. There was an earlier robbery that was kinda linked to the case that these guys were involved in right. Where they had like robbed a farm worker that same day or something. Do you remember that? Meras I think was the guy's name.

Lean: Vaguely. I don't remember. Very, very, vague. There was something about a check that showed up somewhere along the line.

Lamb: A payroll check, right. I was reading some of the transcripts of the trial and the prosecutor was linking, kinda saying that this earlier robbery shows that they were, you know, on a tear and they were doing stuff the whole way through. I know that happened, that robbery I think was in Manteca before they got to Fresno so I know you wouldn't be involved in that. But that doesn't ring any bells?

Lean: I'm sorry it doesn't; I know there was something over but I can't say specifically.

Lamb: Do you remember where, when did they find the gun, do you recall?

Lean: No I cannot.

Lamb: Do you remember if they found it on Stankewitz or they found it in a house or...

Lean: I don't, I'm sorry.

Lamb: Let me just show you this document see if you can recognize this signature. You signed this, it's a request for review? This is document 292 of the Fresno County Sheriff's Department. And there are two items listed on it. They are shell casing; I think it's a comparison. And the investigating officer, let me take a look, right there it says I think your name and your partners, just to make sure.

Lean: T. Lean and, let me get my glasses. I don't think that's Christensen. His first name is Art. That's probably Art Christensen.

Lamb: But that's your signature next to it yeah?

Lean: Yeah, that's me.

Lamb: The question we have, do we know what this means and do you know who signed it?

Lean: Negative...um. We used to have a criminologist back then who was named Andrea Vanderverdebont.

Lamb: Do you recognize what their document is?

Lean: Well, it's got all the criminal charges. It's hard to read. It's got a case number.

Lamb: The part that I can read...they compared shell casings not just from the scene of the crime, to make sure the pistol that they found later had fired at the scene, with an earlier incident.

Lean: I can't recall, other than my signature.

Lamb: Do you remember, did you know the Stankewitzes?

Lean: They had a reputation in the community. I think there were several, 11 children by five different moms and several of them had gone to prison. So they were known in the law enforcement community.

Lamb: Speaking of the pistol involved, do you remember what type of pistol was involved? It was a Titan.

Lean: I think it was a small caliber.is

Lamb: I'm going to have you look at this document, which is a trace serial number report on the pistol involved. I think, I'm not used to looking at these things, but we think it says, and I may be wrong, that this gun had been stolen out of Sacramento some years before and take a look. How long were you with the sheriff here?

Lean: 31 years

Lamb: When'd you start? Was it your first law enforcement gig?

Lean: I started in 1967. I started right out of college. I was 21 years old.

Lamb: So this pistol and the trace report, did you ever have a pistol like this, years before, that was stolen?

Lean: No I don't recall, no. I can't, like I say if it was 10 years ago.

Lamb: And the trace document, does it ring any bells? I'm sure you're more used to reading these than I am.

Lean: Um, I'm not sure, this is a CLETS document. It's a computerized document it comes out of the computer. It's a statewide document.

Lamb: Do you know what this one is referring to? I see your name on the top, which I'm thinking, did you request the report or is this a report...

Lean: We probably did, this came out of San Joaquin County; .25 caliber. I was right about the small caliber. No, I don't. Sacramento PD stolen back in 73. Says Stockton PD report of sale. I'm thinking it was probably a stolen gun.

Lamb: The case that was found with the gun, a leather case. They said I had initials on it that were --again apologies for asking the question, but um that's what I'm here to do- that had your initials on it.

Lean: I can't recall do that. If my initials were on there then I collected it somewhere, but I don't recall.

Lamb: Do you remember any evidence go missing that was pertinent to the case, like her watch that disappeared?

Lean: I don't recall.

Lamb: And you don't remember in terms of a check mentioned. Do you remember how they found the check or where?

Lean: The district attorney asked me this a year or so ago right when Douglas was up for review. And I couldn't recall for her either. We had a lot of cases back then. Sometimes just in the county alone we had 75 murders. At this point in my life a lot of them run together.

Lamb: Did you have procedure for confidential informants? Did you have confidential informants?

Lean: We did not in our crimes against person detail, our narcotics people and our vice people did have confidential informants but I don't know. I didn't ever have one in homicides that I recall.

Lamb: and in terms of the robbery, you didn't do any investigation related to that at all?

Lean: No, no. That was another county.

Lamb: Anything else with this case that rings any bells? Did you go to the scene of the killing?

Lean: Yes. It was right on the corner down there on like 10th in Calwa.

Lamb: Do you remember any blood splattered clothes or a watch or some hair go missing?

Lean: No, I don't recall any of that.

Lamb: and you said the interviews were recorded.

Lean: Yes. As I recall we recorded everything,

Lamb: Do you know where the interviews took place?

Lean: In our office, our detective office. We didn't have an interview room at that time.

Lamb: Did you meet with Ardaiz before the trial and in any way coordinate the case?

Lean: Yes, I'm sure we did. We always did. We always had a sit down. We may have done more than that. Jim may have come over to the office and sat down with us.

Lamb: How early does that happen in the investigation?

Lean: You know it just depends on their availability. And if we had any legal questions regarding search and seizure.

Lamb: And since you had all the co-defendants and everybody with in hours of the crime, do you recall him coming in at an early stage then to talk to you guys?

Lean: I can't recall. There was cases where he did; he actually was out in the field with us when we were looking for suspects he would actually come to the field and help us. He would write search warrants in the field for us.

Lamb: But in this case you don't recall?

Lean: I don't recall, I don't.

Lamb: You don't know anyone named Jesus Meras? It doesn't ring any bells?

Lean: No I don't recall that name.

Lamb: He was the victim allegedly of that robbery that happened...

Lean: Somewhere along the line.

Lamb: ...before Fresno. The DA made an argument that the same gun was used in that robbery and there were three shots fired and there were shells that were found. And the murder weapon were the same. Do you remember anything connecting those things?

Lean: Sorry.

Lamb: would you be willing to sign a declaration ageing to all the things you've said?

Lean: Why are we doing all of this?

Lamb: I'm doing it for them because they want, this is part of their habeas filings, just trying to see what's there. They're trying to go over the case and see what's there.

Lean: He was sentenced to life without, so are they trying to get him...a possibility? I would think so. I would think that would be coming.

Lamb: I think so. I've just started on the case so I'm not strategic, I'm more tactical, coming down and talking to folks. Can I have your phone number and give you a call?

Lean: Sure.

END

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 DMC

INSPECTION

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

AUTOPSY

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. Vascular organs are patent.

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

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 on the 1st 1/2 of the cord that is raggedly transected.

Other Findings: Gunshot wound of the neck

Specimens for: _____
To: _____
Other Containers: _____

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

T. Wilson MD M.D.
By HAROLD MCKINNEY, Sheriff-Coroner, Fresno County
Deputy

78-5817

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

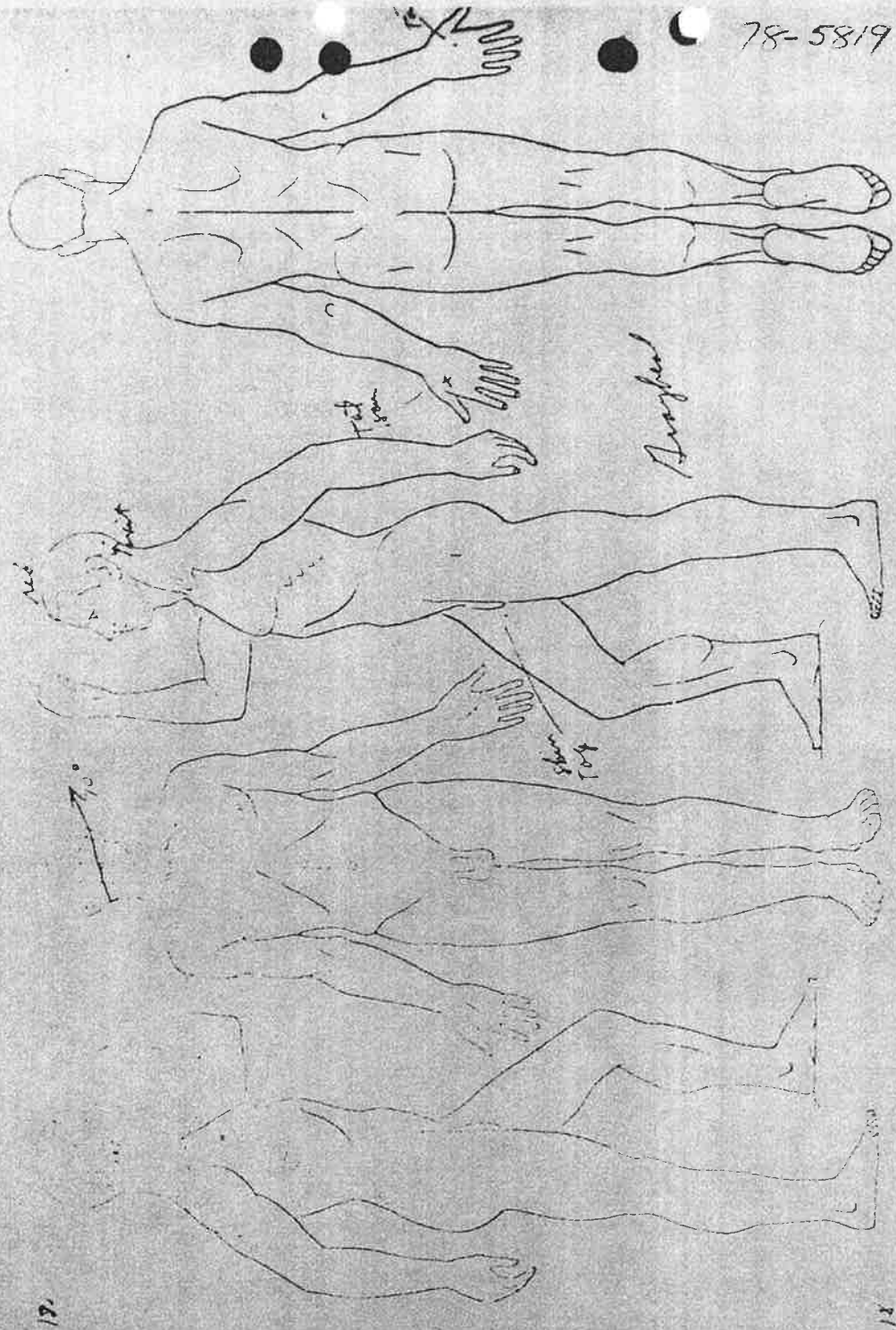
Name: *Theresa Graybeal*

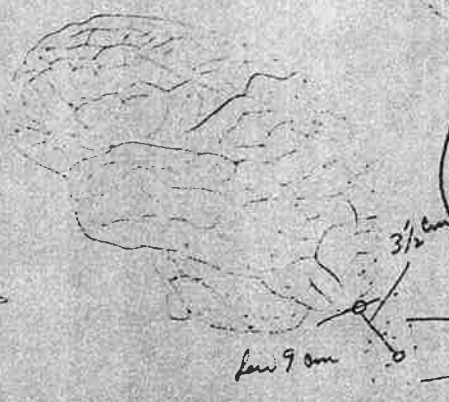
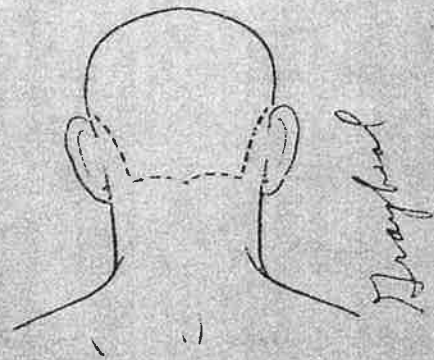
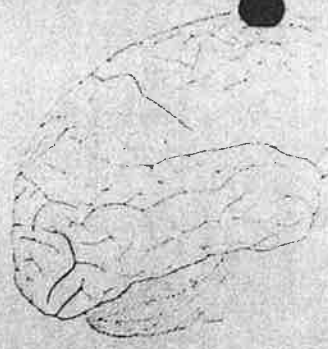
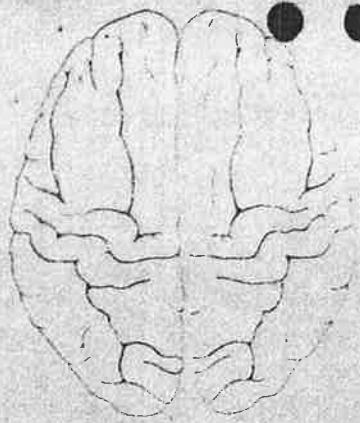
Harold M. Kinney

HAROLD M. KINNEY, Sheriff-Coroner, Fresno County

By _____ Date _____

253





TEST Prostatic Acid Phosphatase

PRECISE

RESULTS

Total Acid Phosphatase = 120 BLU

Tartrate Inhibited "Prostatic"

Acid Phosphatase = 110 BLU

78-5819

Specimen consisted of 0.5 ml of an opaque white viscous fluid in a plastic screw top tube, labeled "Theresa Graybeal."

Attention DA - Jim Arden

P. O. BOX 11866
FRESNO, CALIF.
(209) 226-3550

MISCELLANEOUS

NAME Graybeal, Theresa

DOCTOR Fresno County Coroner

B 18946 np

W. NELSON, M.D.
Director

Med. Tech.

Date Received 2/3/78

Date 2/28/78

NO

Name GRAYBEAL, THERESA

Dept. Fresno County Coroner's Office

78-5819-8-79
(TCN)

Oral smears: Negative for sperm. 78-1281

Vaginal smears: Negative for sperm.

Rectal Smears: Negative for sperm.

MISC.

fm Director

P. O. BOX 11866

PATHOLOGICAL & CLINICAL LABORATORY

TELEPHONE 226-3550

FRESNO, CALIF. 93778



Department
of the Treasury
Bureau of Alcohol,
Tobacco and Firearms

Headquarters Laboratory
Scientific Services Div.
Washington, D.C. 20226

Forensic Branch
Phone: 202-964-6277

Report of Laboratory Examination

Thomas C. Lean, III
Detective, Homicide Detail
Fresno County Sheriff's Department
P.O. Box 1788
Fresno, California 93717

Date: March 24, 1978

Your: #78-5819

Re: Douglas R. Stankewitz

Our: 8G-170

Date Exhibits Received:	March 14, 1978	Type of Examination Requested: Test for gunshot residue by Atomic Absorption
Delivered By:	Registered mail #1171	
Examination Requested by:	Addressee	

Exhibits:

Four items, hand swabs with controls of Lewis Marlin, Douglas R. Stankewitz, Tenna E. Topping and Cristina Menchaca, as described in your transmittal letter dated March 9, 1978.

Findings:

Levels of barium and antimony indicative of gunshot residue were not found on any of the submitted hand swabs. From these findings, no conclusions can be drawn as to whether the subject(s) did or did not handle or fire a weapon.

The exhibits will be returned by United Parcel Service.

Analyst:

William D. Kinard
William D. Kinard
Forensic Chemist

Reviewer:

Charles R. Midkiff
Charles R. Midkiff, Acting Chief
Forensic Branch

WDK:et
3/24/78

Declaration of Laura Wass

I, Laura Wass, under penalty of perjury, declare as follows:

1. On or about 1998 to present I worked as the Central California Director of the American Indian Movement. In the course of my profession, I assisted Indigenous Persons with issues pertaining to American Indian rights including but not limited to, land protection, religious and spiritual rights, CDCR Native inmate rights, and Indian Child Welfare.
2. On or about 1998, I assisted Marlin Lewis in securing his tribal membership into the Table Mountain Rancheria Tribe.
3. Between 1998 and 2000, I spoke with and/or met with Marlin approximately 30 times. Throughout this time, as a part of my duties, I gathered a lot of data from Marlin regarding his family history and its relationship with the tribe.
4. My phone calls with Marlin varied in length from several minutes to an hour or so.
5. I met with Marlin in Fresno many, many times over the two-year period. Our meetings lasted from a few hours to a day.
6. The process culminated in Marlin and other family members being accepted as members of the tribe.
7. On or about October 5, 2000, Marlin and his sister, Bernice Grubbs, were invited to attend the General Council meeting at the Table Mountain Tribal Building for the purpose of being formally accepted as members of the tribe, along with a few other families from our group. On information and belief, Marlin and Bernice lived in Sacramento at the time and had no transportation, so I purchased tickets for Greyhound for them to travel to Fresno and brought them to my home to prepare for the meeting.
8. Before the meeting began, I received a phone call from William Stankewitz, Douglas Stankewitz's brother, who was incarcerated. As a part of my professional responsibilities, I assisted William with his criminal case for a few years. I told William that Marlin and Bernice were there, and William asked to talk to Marlin. Based on information and belief, I overheard a good exchange between "Native brothers". Part way through the call, William brought up Douglas's name, and Marlin got a little quieter. After a few more words, Marlin handed me the phone. Then, William, referring to the Graybeal kidnapping, robbery and murder crimes, stated to me that "he knows what he did", and the call ended shortly after. When I hung up, I told Marlin that I didn't know he was that close with William. I also told him that as a part of my professional duties, I'd been working with Douglas on his criminal case. Marlin just stared at me and shrugged his shoulders as I talked. Referring to the Graybeal crimes, I then stated

"you're the one that did it" and Marlin shook his head yes. He then said that he had already paid for his actions, and that he was sorry Doug was still paying for Marlin's actions. I then told Marlin to consider coming forward, that Marlin had done his time, so Doug should not be paying the price for what Marlin did.

9. On information and belief, Douglas's penalty phase was reversed in 2012, and his case was returned to Fresno Superior Court. On or about September 19, 2013, I attended a court hearing in his case and was interviewed by Pablo Lopez, of the Fresno Bee. The article published by the Bee on September 19, 2013, which includes a quotation from me, accurately reflects my statements to Mr. Lopez and is Attached as Exhibit A.

I have given this three-page statement of my own free will. I have had an opportunity to review and revise this declaration. I swear under penalty of perjury that the above statements are true.

Executed on January 8, 2020, at Fresno, California.



Laura Wass

Summary Laboratory Report

<p>Hon. Arlan L. Harrell Fresno County Superior Court Criminal Department, Central Division 1100 Van Ness Avenue Fresno, CA 93724</p> <p>Curtis Briggs, Esq. Pier 5 Law Offices 3330 Geary Boulevard San Francisco, CA 94118</p> <p>Alexandra Cock, Esq. 2171 Francisco Boulevard, Suite D San Rafael, CA 94901</p> <p>Amythest Freeman, ADA Fresno County District Attorney's Office 2220 Tulare Street, Suite 1000 Fresno, CA 93721</p>	<p>Report Date: September 2, 2020 FACL Case #: 20190105 Client #: 21201 Client Case #: CF 78227015</p>
---	--

Case Name: CA v Douglas Stankewitz

Report Type: Evidence Examination and DNA Analysis

Purpose of Investigation

Pursuant to Mr. Stankewitz's request and subsequently, Judge Arlan Harrell's Order of May 11, 2020 certain items of clothing of defendants Douglas Stankewitz, Christina Menchaca, Teena Topping, and Marlin Lewis were examined for blood in an attempt to determine whether any of the specified items were stained with blood of victim Theresa Graybeal.

Summary of Results

There is no support for the presence of blood from the victim on any of the defendants' clothing tested. However, it is unclear whether DNA from human blood was recovered from any of the apparent bloodstains tested from the defendants' clothing. Most of the defendants'

clothing stains tested were presumptively negative for blood and no human hemoglobin was detected from any of them.

All of the defendants' clothing test results from apparent bloodstains also revealed little to no DNA was recovered and the recovered DNA was extremely degraded. Dried human bloodstains contain high levels of DNA which when stored at controlled temperatures will persist for decades and the blood DNA will degrade predictably. These results may reflect deleterious environmental long-term evidence storage conditions.

Items of Physical Evidence

The following items of physical evidence were submitted to FACL by Investigator Danielle Isaac of the Fresno County, California, District Attorney's Office on June 6, 2020 via Federal Express courier:

1. Theresa Graybeal's gray coat (Item #13).
2. Theresa Graybeal's clothing (Item #14) including a blue sweater.
3. Douglas Stankewitz' clothing (Item #3) including a white t-shirt and blue corduroy pants.
4. Teena Topping's clothing (Item #18) including a pink sweater and Levi's blue jeans.
5. Christina Menchaca's (Item #19) clothing including a rust sweatshirt (sweater).
6. Marlin Lewis' clothing (Item #15) including a blue/red shirt and brown shoes.

Evidence Examination

Table 1 below summarizes the sampling and the recovery and utilization of DNA from each specimen examined in this investigation.

Graybeal's Clothing: #1 Gray coat (Item #13) and #2-1 blue sweater (Item #14)

Cuttings from concentrated bloodstains on the Graybeal gray coat inside upper back lining (#1A) and blue knit cowl-neck sweater inside upper back (#2-1A) were utilized as secondary reference blood specimens for the victim. DNA from the blood from the Graybeal sweater was taken forward though analysis. A profile expected to be unique to one person who has ever lived was developed from this DNA.

#3 Douglas Stankewitz' Clothing (Item #3): #3-1 White t-shirt and #3-2 blue corduroy jeans

Twenty-one red/brown and rust colored stains scattered over the t-shirt were directly tested¹ with *ortho*-tolidine and hydrogen peroxide, a sensitive presumptive test for blood; of these, six stains along the right front and back side gave positive indication as blood. About half of three of these six (#3-1A/B/D) and most of a fourth (#3-1C) were sampled as cuttings for additional testing. Due to little or no DNA recovery, samples #3-1A,B, and D on the t-shirt were abandoned. The remainder of t-shirt area C was removed and combined with the initial sample (#3-1C) as #3-1.

Fifteen red/brown and rust colored stains scattered over the blue corduroy jeans were directly presumptively tested for blood; of these, a stain on the right lower leg (#3-2A) and a smear on the right rear pocket (#3-2B) gave positive indication as blood. About half of area A and all of area B were sampled as cuttings for additional testing. Due to no detectable DNA recovery sample #3-2B was abandoned. The remainder of jeans area A was sampled and combined with the initial sample (#3-2A) as #3-2.

#4 Teena Topping's Clothing (Item #18): #4-1 Pink sweater and #4-2 Levi's blue jeans

Three of a cluster of red/brown colored stains on the left sleeve, an orange-colored stain on the inside front chest area, and two small dingy stains on the lower outside left front of the sweater were directly presumptively tested for blood with negative results. Two of the darkest/most concentrated-appearing stains of the left sleeve cluster (#4-1A and B) were sampled as cuttings. Due to very low DNA recovery, most of the remainder of this stain cluster was sampled and combined with the initial samples (#4-1A/B) as #4-1.

A large (ca 2cm x 2cm) red/brown stain on the outside right front upper thigh area (#4-2A) and a small drop-like red/brown stain on the outside right front leg (#4-2B) of the blue jeans were directly presumptively tested for blood with negative results. About half of each stained area was sampled as cuttings for additional testing. Due to very low DNA recovery and small portion of area B stain remaining, sample #4-2B was abandoned. Due to very low DNA recovery a second large portion of the remainder of jeans area A was sampled and combined with the initial sample (#4-2A) as #4-2.

¹ Direct presumptive testing means a small portion of the stain itself is excised and tested; indirect testing means the stain is swabbed/scraped with filter paper and whatever is transferred to the paper is tested and is considered to be representative of the stain.

#5 Christina Menchaca’s Clothing (Item #19): #5-1 Rust-colored sweatshirt/sweater

Three dark stains and one dirty smear on the sweater were directly presumptively tested for blood with negative results. Of the three dark stained areas, a portion of a large stain on the right shoulder (#5-1A), and all of smaller stains on the left upper sleeve (#5-1B) and the left lower sleeve (#5-1C) were sampled as cuttings for additional testing. Due to very low DNA recovery and no remaining stain material, samples #5-1B/C were abandoned. A second large portion of the remainder of sweater area A was sampled and combined with the initial sample (#5-1A) as #5-1.

#6 Marlin Lewis’ Clothing (Item #15): #6-1 Blue/red shirt and #6-2 brown shoes

A large dark brownish stain on the outside front center area (#6-1A) of the shirt was directly presumptively tested for blood with negative result. A large portion of this stain was sampled as a cutting for additional testing. Due to very low DNA recovery, another large portion of stain area A from the shirt was sampled and combined with the initial sample (#6-1A) as #6-1.

A dark brown drop stain on the top of the right shoe toe area (#6-2-1A) was directly presumptively tested for blood with negative results. A similar but smaller dark brown drop stain on the top of the left shoe toe area (#6-2-2A) was not presumptively tested. All of both stains was sampled as cuttings for additional testing. Due to no detectable DNA recovery, samples #6-2-1A and #6-2-2A were abandoned.

Table 1. Recovery and Utilization of DNA from Clothing Samples

FACL Item No.	Item and Sample Description	Presumptive indication of blood	Human hemoglobin detected ²	Human DNA recovered, ng	DNA Typing Assay, ng
1A	Graybeal gray coat lining, saturating bloodstain	strong	yes, trace	2.5	not attempted
2-1A	Graybeal blue sweater, saturating bloodstain	strong	yes, weak	196.5	1.5
3-1	D. Stankewitz white t-shirt, all of stain area C	slow/weak	no	0.053	all
3-2	D. Stankewitz blue pants, right lower leg, all of stain area A	slow/weak	no	0.006	not attempted

² Human hemoglobin is assayed with a sensitive commercial immunochromatographic test card by generating an aqueous extract of the sample before digestion for DNA recovery.

FACL Item No.	Item and Sample Description	Presumptive indication of blood	Human hemoglobin detected ²	Human DNA recovered, ng	DNA Typing Assay, ng
4-1	Topping pink sweater, left sleeve, most of stain cluster area A	no	no	0.020	all
4-2	Topping blue jeans, large upper right leg stain area A	no	no	0.140	all
5-1	Menchaca blue sweater, right shoulder stain area A	no	no	0.024	all
6-1	Lewis blue/red shirt, most of front center stain area A	no	no	0.018	all
6-2-1A	Lewis right brown shoe stain A	no	not tested	undetected	not attempted
6-2-2A	Lewis left brown shoe stain A	not attempted	not tested	undetected	not attempted

Genetic Analysis of DNA

In this case several loci, or genetic markers, were amplified using the polymerase chain reaction [PCR] and subsequently typed using the **Investigator 24plex QS** genotyping system. The STR loci typed with 24plex are known as **TH01, D3S1358, vWA, D21S11, TPOX, DYS391, D1S1656, D12S391, SE33, D10S1248, D22S1045, D19S433, D8S1179, D2S1338, D2S441, D18S51, FGA, D16S539, CSF1PO, D13S317, D5S818, D7S820**, and amelogenin, a gene for sex determination. This system also includes one Y-STR marker, **DYS391**, to aid in determining the number of males in a mixed result.

Genetic analysis of the specimens in this case involved the following essential steps:

1. Evidence samples were digested with SDS and proteinase K.
2. DNA was extracted from sample digests with the EZ1 Advanced XL robot and concentrated via centrifugal filtration.
3. The various genes described above were amplified using the Polymerase Chain Reaction [PCR].
4. The STR genes and amelogenin were typed using capillary electrophoresis.

Interpretation of evidence profiles was assisted/supplemented with STRmix™ probabilistic genotyping software. STRmix™ uses laboratory specific parameters (STR kit, amplification protocols and capillary electrophoresis platform) and the quantitative allele peak data from an

electropherogram in a Markov Chain Monte Carlo (MCMC) analysis to interpret contributor profiles in a DNA result. During MCMC analysis the likely genotypes of the individual contributors to a DNA profile are determined and given a weight of probability. The more likely genotypes of the contributors to a DNA profile, as determined by this analysis, will have higher weights.

Comparison of a reference profile to an interpreted (or deconvoluted) evidence profile is performed using a likelihood ratio (LR), which assesses the probability of two alternative hypotheses. Typically, the hypothesis of the prosecution (H_p) includes the person of interest (POI) whereas the alternative hypothesis (H_d) attempts to explain the data in the absence of the POI as a contributor. The LR of any given proposition will indicate which hypothesis has more support.³ In general, a $LR > 1$ favors H_p and a $LR < 1$ favors H_d .

FACL likelihood ratio range:

<u>Likelihood ratio</u>	<u>Verbal equivalent</u>
≥ 1 million	Very strong support for POI inclusion
10,000 to 999,999	Strong support for POI inclusion
1000 to 9,999	Moderate support for POI inclusion
2 to 999	Limited support for POI inclusion
1	Uninformative
> 0.001 to < 1 ($1/LR = 2$ to 999)	Limited support for POI exclusion
0 to ≤ 0.001 ($1/LR \geq 1000$)	POI is excluded

Results

1. A single source DNA STR profile comprised of at least sixteen genotypes was developed from DNA from blood on the Theresa Graybeal sweater. This profile is expected to be unique.
2. Weak, partial, and highly degraded mixture profiles were obtained from the #3-1 Stankewitz t-shirt area C, the #4-1 Topping sweater area A, the #4-2 Topping jeans area A, the #5-1 Menchaca sweater area A, and the #6-1 Lewis red shirt area A samples. Each of these results were analyzed with STRmix testing the proposition that Theresa Graybeal

³ The FBI expanded CODIS core STR loci frequency data for the populations used in the LR calculations at FACL, provided with STRmix™, is described in: Population data on the expanded CODIS core STR loci for eleven populations of significance for forensic DNA analyses in the United States. *Forensic Science International: Genetics* 25 (2016) 175-181. The ABI STR loci frequency data used for LR calculations at FACL is from the Applied Biosystems GlobalFiler™ PCR Amplification Kit User Guide, Publication Number 4477604, Revision E.

is a contributor. These comparisons provided no support for this proposition. The resultant likelihood ratios are either neutral in this regard (LR = 1) or provide some support for the proposition that Graybeal is not a contributor to any of these results.

3. The STRmix analyses are summarized in Table 2 below. For example, the DNA recovered from the #3-1 Stankewitz t-shirt area C stain was determined to originate from at least three⁴ contributors. This typing result was analyzed with STRmix assuming three contributors. The calculated contributor proportions are approximately 42%, 38%, and 20%. Theresa Graybeal was compared to this result as a potential contributor.
4. Assuming only three contributors and Keel as one of the contributors, the DNA typing result from the #3-1 Stankewitz t-shirt area C stain is approximately seven times more likely if the DNA originated from Keel and two unknown persons than if the DNA originated from Keel, Graybeal, and an unknown person. This analysis provides limited support that Graybeal is not a contributor to this result.
5. Similarly, the DNA recovered from the #4-2 Topping jeans area A stain was determined to originate from at least two contributors. This typing result was analyzed with STRmix assuming two contributors. The calculated contributor proportions are approximately 93% and 7%. Theresa Graybeal was compared to this result as a potential contributor.
6. Assuming only two contributors, the DNA typing result from the #4-2 Topping jeans area A stain is approximately 10 trillion times more likely if the DNA originated from two unknown persons than if the DNA originated from Graybeal and an unknown person. This analysis eliminates Graybeal as a contributor to this result.
7. The remaining samples results may be described similarly using the assumed number of contributors and likelihood ratios provided in Table 2.

⁴ The #3-1 Stankewitz t-shirt sample was inadvertently contaminated with a low-level of biology/DNA from the analyst Alan Keel during processing (LR = 200 billion). The STRmix result assessing Graybeal as a contributor includes Keel as a known contributor and reflects deletion of alleles at higher molecular weight genes (\geq approximately 250 base pairs) wherein only alleles possessed by Keel were detected.

Table 2. Summary of STRmix analyses testing the proposition that Theresa Graybeal is a contributor to the mixtures of DNA recovered from the various stains on the defendants' clothing

Item #	Assumed number of contributors	Likelihood Ratio	Supports the Proposition for	Verbal Equivalent
3-1 Stankewitz t-shirt	3	1/LR = 7	Keel and two unknown contributors	Limited support for Graybeal elimination
4-1 Topping sweater	2	LR = 1	Uninformative	No support for Graybeal inclusion or exclusion
4-2 Topping jeans	2	1/LR = 10 trillion	Two unknown contributors	Graybeal eliminated
5-1 Menchaca sweater	3	1/LR = 40	Three unknown contributors	Limited support for Graybeal elimination
6-1 Lewis shirt	2	1/LR = 95	Two unknown contributors	Limited support for Graybeal elimination

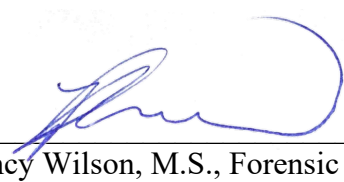
8. Reference specimens from persons of interest may be submitted for comparison to these defendants' clothing sample results.

Disposition of Evidence

All evidence items will be returned to the submitting agency.

Prepared by:


 Alan Keel, Senior Forensic Scientist


 Nancy Wilson, M.S., Forensic Scientist

The investigation described and documented herein was completed in compliance with the current ISO/IEC 17025 International Standard and FBI QAS accreditation requirements as defined by the ANSI-ASQ National Accreditation Board Forensic Testing Certificate and Scope of Accreditation (FT-0328).

San Quentin State Prison Confiscated Property Receipt

Inmate Name: STANKENITZ, DAVUS CDCR#: B97879 Cell/Area: 3-EB-62

Item(s)	Reason/Disposition
<u>CARDBOARD TRASH</u>	<u>TRASH</u>

Confiscated by: P. GEORGE / M. KROHN Date: 1-7-20

Distribution: White - Unit Supervisor Yellow - Inmate Pink - Confiscator SQ-0509 (11/12)

San Quentin State Prison Confiscated Property Receipt

Inmate Name: Stankewitz, D CDCR#: ~~B97879~~ B97879 Cell/Area: 3EB62

Item(s)	Reason/Disposition
<u>Cell search</u>	/
<u>Electronics working</u>	
<u>clear</u>	


Confiscated by: C. Costello Date: 01/24/2020

Distribution: White - Unit Supervisor Yellow - Inmate Pink - Confiscator SQ-0509 (11/12)

NAME and NUMBER **Stankewitz, Douglas** **B97879** **3 EB 062L** 24 CDC-128-B(Rev.4/74)

During the 3rd quarter of 2016, Inmate Stankewitz participated in the regular 'Jewish Congregation' program. Regular mainline programming includes standard Sabbath services, weekday and Festival Prayer, along with scheduled studies in Torah, Talmud and other sacred texts. During this quarter Mr. Stankewitz attended 2 activities, totaling 6 hours, and should be commended for his participation in this program.

Original: Central File
cc: Inmate
File



R. Paul F. Shleffar
Jewish Chaplain

DATE: 10/5/2016 **Laudatory Chrono - Jewish Congregation** **GENERAL CHRONO**

NAME and NUMBER **Stankewitz, Douglas** **B97879** **3 EB 062L** 151 CDC-128-B(Rev.4/74)

During the 3rd quarter of 2017, Inmate Stankewitz participated in the weekly 'Jewish Congregation' program. Regular mainline programming includes standard Sabbath services, weekday and Festival Prayer, along with scheduled studies in Torah, Talmud and other sacred texts. During this quarter Mr. Stankewitz attended 2 activities, totaling 4 hours, and should be commended for his participation in this program.

Original: Central File
cc: Inmate
File



Rabbi Shleffar
Program Facilitator

DATE: 9/14/2017 **Laudatory Chrono - Jewish Congregation** **GENERAL CHRONO**

Stankewitz, Douglas

B97879 3 EB 062L

During the 2nd quarter of 2019, Inmate Stankewitz participated in the weekly 'Jewish Congregation' program. Regular mainline programming includes standard Sabbath services, weekday and Festival Prayer, along with scheduled studies in Torah, Talmud and other sacred texts. During this quarter Mr. Stankewitz attended 8 activities, totaling 8 hours, and should be commended for his participation in this program.



Rabbi P. Shleffar
Jewish Chaplain

Laudatory Chrono - Jewish Congregation

GENERAL CHRONO

DATE: 7/18/2019

JEWISH CHAPLAIN

San Quentin State Prison
San Quentin, CA 94964



August 21, 2018

Lisa A. Smittcamp, Fresno District Attorney
2220 Tulare Street, Suite 1000
Fresno, CA 93721

RE: Support Letter for Douglas Stankewitz - B97879

Ms. Smittcamp,

I am writing this letter in support of Mr. Douglas Stankewitz, who is currently incarcerated on Death Row at San Quentin State Prison.

Currently, I serve as the Jewish Chaplain at San Quentin State Prison. I began working at San Quentin in January 2015, following two years of chaplaincy at the California Healthcare Facility (CHCF) at Stockton CA and at CDCR Headquarters in Sacramento on a regular basis for the last three years, with an additional two years of volunteer ministry in County Jails and Sierra Conservation Center (SCC). Prior to my rabbinical ordination, I served twenty-plus years as a Firefighter here in northern California.

I have known Mr. Stankewitz and he has been a regular attendee and member of the Jewish congregation since my arrival here at San Quentin. My experience of Mr. Stankewitz is of a friendly, kind and thoughtful man who exhibits an openness to self-inquiry and to his own personal growth. Most of my teaching to the population here in San Quentin is psycho-spiritual in nature and I find that Mr. Stankewitz's responses are often quite insightful. It is also my observation that Mr. Stankewitz is well respected by both his fellow inmates and staff members he comes in contact with on a daily basis.

In sum, I do believe that Mr. Stankewitz demonstrates maturity, a commitment to personal growth and if released, to a life outside of prison where he will be a positive force in his family, community and the hopefully the workforce moving forward.

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul Shleffar". The signature is stylized and somewhat cursive.

Rabbi Paul Shleffar
Jewish Chaplain, SQSP



Concerned About Recovery Education

August 28, 2018

Lisa A. Smittcamp
Fresno District Attorney
2220 Tulare Street, Suite 1000
Fresno, CA 93721

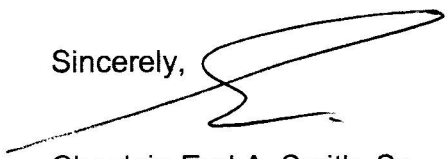
Re: Douglas 'Chief' Stankewitz,
B97879
California Department of Corrections and Rehabilitation

Dear Mrs. Smittcamp:

I am writing this letter on behalf of Douglas 'Chief' Stankewitz. As the Chaplain at San Quentin State Prison from 1983 to 2006 I interacted with Mr. Stankewitz on a regular basis after his second sentence to Condemned Row. When I first arrived at San Quentin, there was not a Native American Spiritual Advisor employed on a full-time basis at San Quentin, therefore, Mr. Stankewitz was on my caseload. During those years, I found Mr. Stankewitz to be of a single focused mindset, on many separate occasions, Mr. Stankewitz affirmed to me his innocence for the crime for which he was sentenced to death.

Since my retirement, I have attempted to stay abreast of the legal preceding pertaining to Mr. Stankewitz. For some reason, I have not been able to get the clarity and directness of his innocence proclamation out of my mind. When 'Chief' is released, he will be a positive contributing member of society. Please feel to contact me should you require any more information on Mr. Stankewitz and our ministerial relationship.

Sincerely,



Chaplain Earl A. Smith, Sr.
Retired, California State Prison, San Quentin
Chief Executive Officer, Concerned About Recovery Education (CARE)
Team Pastor-San Francisco 49ers
Team Pastor-Golden State Warriors
(209) 910-9572

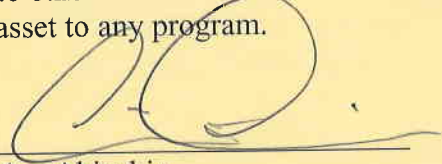
6333 Pacific Avenue, Suite 384, Stockton, CA 95207 | (888) 668-1101 | www.carenow.care

NAME and NUMBER STANKEWITZ

B-97879 3-EB-62

CDC 128-B CHRONO

This chrono is to acknowledge and commend the positive behavior of Inmate STANKEWITZ (B-97879 / 3-EB-62). For the past four (04) years that I have been assigned to East Block, Inmate STANKEWITZ has demonstrated to be courteous and respectful to other inmates and staff. Wherever Inmate STANKEWITZ is housed or transferred to, he will be a valued asset to any program.



A. Akinshin
Correctional Officer
San Quentin State Prison

Original: C-File
Cc: Counselor
Inmate

DATE: November 22, 2018

Laudatory Chrono

GENERAL CHRONO

NAME and NUMBER STANKEWITZ

B-97879 3-EB-62

CDC 128-B CHRONO

This chrono is to acknowledge and commend the positive behavior of Inmate STANKEWITZ (B-97879 / 3-EB-62). Inmate STANKEWITZ has demonstrated to be courteous and respectful to other inmates and staff. STANKEWITZ is a positive model Inmate and I would recommend STANKEWITZ for any future program.



M. J. Harris
Correctional Officer
San Quentin State Prison

Original: C-File
Cc: Counselor
Inmate

DATE: November 25, 2018

Laudatory Chrono

GENERAL CHRONO

NAME and NUMBER STANKEWITZ, DOUGLAS B-97879 3-EB-62 **CDC 128-B CHRONO**

The purpose of this Laudatory Chrono is to document Inmate STANKEWITZ (B-97879 / 3-EB-62) positive behavior, for the last eleven and half years, while I have been assigned to East Block. He was especially a positive model Inmate while working third tier Bayside for a little more than five (05) years. STANKEWITZ is responsible, helpful, and interacts well with staff and inmates alike. I would recommend STANKEWITZ for any future work program.

Original: C-File

Cc: Counselor

Inmate



T. Williams

Correctional Officer
San Quentin State Prison

DATE: August 20, 2018

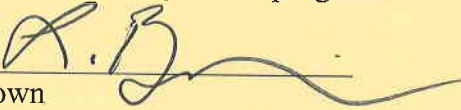
Laudatory Chrono

GENERAL CHRONO

NAME and NUMBER STANKEWITZ, DOUGLAS B-97879 3-EB-62 **CDC 128-B CHRONO**

The purpose of this Laudatory Chrono is to document Inmate STANKEWITZ (B-97879 / 3-EB-62) positive behavior, for the last twenty three years, when I have been assigned to East Block. In that time I have gotten to know Inmate STANKEWITZ to be courteous and respectful to me, my colleagues, and other inmates. I know that whenever and wherever Inmate STANKEWITZ is housed or transferred he will be a positive influence to those around him and a valued asset to any group or program he participate in. STANKEWITZ is a positive model Inmate and I would recommend STANKEWITZ for any future program.

Original: C-File
Cc: Counselor
Inmate



L. Brown
Correctional Officer
San Quentin State Prison


DATE: November 12, 2018

Laudatory Chrono

GENERAL CHRONO

Inmate STANKEWITZ (B-97879 / 3-EB-62) has demonstrated respectful behavior to other inmates and staff. During my time spent on 3rd tier Bayside I never encountered any problems with Inmate STANKEWITZ. This chrono is to acknowledge and commend the positive behavior of Inmate STANKEWITZ.

Original: C-File
Cc: Counselor
Inmate



A. Guttig
Correctional Officer
San Quentin State Prison

DATE: February 10, 2019


Laudatory Chrono

GENERAL CHRONO

NAME and NUMBER STANKEWITZ B-97879 3-EB-62 **CDC 128-B CHRONO**

This 128 chrono is to commend the positive behavior of Inmate STANKEWITZ (B-97879 / 3-EB-62). Inmate STANKEWITZ has demonstrated to be courteous to staff and other inmates. On numbers of occasions STANKEWITZ has been helpful and insightful due to his in-depth knowledge of the prison environment and its complicated cultures. STANKEWITZ is a positive model Inmate and I would recommend STANKEWITZ for any future program.

Original: C-File
Cc: Counselor
Inmate


E. Escalante
Correctional Officer
San Quentin State Prison

DATE: February 13, 2019

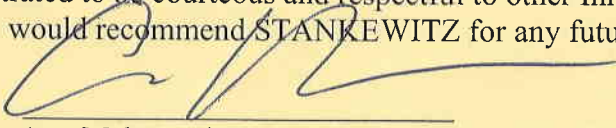
Laudatory Chrono

GENERAL CHRONO

NAME and NUMBER STANKEWITZ B-97879 3-EB-62 **CDC 128-B CHRONO**

This chrono is to acknowledge and commend the positive behavior of Inmate STANKEWITZ (B-97879 / 3-EB-62). Inmate STANKEWITZ has demonstrated to be courteous and respectful to other Inmates and staff. STANKEWITZ is a positive model and I would recommend STANKEWITZ for any future program.

Original: C-File
Cc: Counselor
Inmate


A. Mahmood
Correctional Officer
San Quentin State Prison

DATE: February 13, 2019

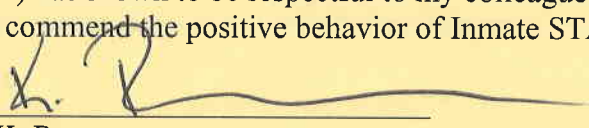
Laudatory Chrono

GENERAL CHRONO

NAME and NUMBER STANKEWITZ B-97879 3-EB-62 **CDC 128-B CHRONO**

I have been a correctional officer in East Block Condemned Row II for approximately seventeen (17) years. Inmate STANKEWITZ (B-97879 / 3-EB-62) has shown to be respectful to my colleagues, other inmates, and myself. This chrono is to acknowledge and commend the positive behavior of Inmate STANKEWITZ.

Original: C-File
Cc: Counselor
Inmate



K. Runge
Correctional Officer
San Quentin State Prison

DATE: February 28, 2019

Laudatory Chrono

GENERAL CHRONO

PETITION REPLY EXHIBIT 19c

1 J. TONY SERRA, SBN 32639
2 CURTIS L. BRIGGS, SBN 284190
3 3330 Geary Blvd, 3rd Floor East
4 San Francisco, CA 94118
5 Tel 415-986-5591
6 Fax 415-421-1331

7 Attorneys for Defendant
8 DOUGLAS R. STANKEWITZ

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 IN AND FOR THE COUNTY OF FRESNO

11 DOUGLAS R. STANKEWITZ,

12 Petitioner,

13 On Habeas Corpus.

Case No. 21CRWR685993

DECLARATION OF ROGER CLARK
IN SUPPORT OF PETITIONER'S
REPLY TO INFORMAL RESPONSE

Related Appeal Pending – LWOP
SENTENCE
NO. F079560

(Fresno Superior Court Case
#CF78227015)

14
15
16
17 **DECLARATION OF ROGER CLARK**

18
19 I, Roger Clark, declare under penalty of perjury the following, except as to those items
20 below which I indicate to be based on information and belief. If called to testify, I would testify
21 as follows:

- 22 1. I have been retained as a police practices expert in the above-entitled case.
- 23 2. My Qualifications To Review This Case: My opinions are based in part on my training,
24 professional experience and education. I am a twenty-seven-year veteran of the Los Angeles
25 County Sheriff's Department (LASD). I was hired on December 1, 1965, and I retired from active
26 service on March 31, 1993. My career included six years at the rank of Deputy Sheriff, six years
27 as a Sergeant, and fifteen years as a Lieutenant. I retired holding a California Peace Officer

1 Standards and Training (POST) Advanced Certificate, and I am a graduate of the POST
2 Command College (class #5, 1988). The POST Command College was a Masters level two-year
3 course of study requiring a thesis, in Police Administration, with the diploma awarded by the
4 California Department of Justice (and not the California University system). During the course of
5 my service with the department, I had a wide range of duties. Those duties included an 18 month
6 assignment as a staff jail deputy and two years as an Administrator/Lieutenant in the same jail
7 facility (Men's Central Jail). I also served on the department as a patrol officer, field supervisor,
8 jail watch commander and administrator, station watch commander, and commanding officer of
9 investigative units. I was a field training officer while assigned as a patrol deputy, and I trained
10 new officers in POST and department approved patrol procedures, field investigations,
11 apprehension techniques, and emergency procedures. I was a Station Detective and, as such,
12 reviewed and assessed cases passed on to me by the patrol officers. Those cases included possible
13 complaints relating to both misdemeanor and felony crimes. They frequently required follow up
14 investigations and interviews before the exact nature of the case could be determined. As a field
15 officer and detective, I was trained in interview and interrogation methods and subsequently
16 trained other officers. Among other assignments as a Sergeant, I supervised field officers and
17 station detectives as they took complaints and conducted preliminary investigations regarding
18 criminal and administrative matters. As a Sergeant and as a Lieutenant, I served on the training
19 staff of the Los Angeles County Sheriff's Department's Patrol School which taught the POST
20 accepted patrol tactics, and investigation and apprehension methods. As a Watch Commander and
21 as a Lieutenant, I responded to, investigated, and reported on the use of force and officer-involved
22 shootings. I was also assigned by my Department to sit as a member of Departmental review
23 committees regarding the reasonable or unreasonable use of force and tactics. As stated above,
24 during my career I was assigned to the Los Angeles County Men's Central Jail (MCJ) for a period
25 of 18 months as a line officer. Upon my subsequent promotion to Lieutenant, I returned to the
26 same facility approximately 10 years later. During that time, I was assigned as a Jail Watch
27 Commander, and as the Facility Training and Logistics Administrator. At the time of my
28 assignment, the MCJ held a daily population in excess of 7,000 inmates, including a hospital.

1 which was serviced by a staff of more than 900 sworn and civilian personnel. During my
2 assignment as the Administrative Lieutenant of the Department's Reserve Forces Bureau, I
3 worked closely with the State of California Peace Officer Standards and Training in revamping
4 our Reserve Academy to bring it into state compliance. This process gave me an expertise in the
5 POST Basic curriculum. I also supervised the training of cadets at our Reserve Training
6 Academy. They were taught proper investigation, interview, and apprehension procedures.
7 Among other topics, I lectured the Reserve Academy on the POST syllabus: "The Legal and
8 Moral Use of Force and Firearms." During the 1984 Olympics held in Los Angeles, I was
9 assigned and served as the Department's Intelligence Officer at the Los Angeles Olympics
10 Emergency Operations Center. During the last five and one half years of my career, I commanded
11 a specialized unit known as the North Regional Surveillance and Apprehension Team
12 (N.O.R.S.A.T.), which was created to investigate, locate, observe and arrest major (career)
13 criminals. I held this position until my retirement from the Department on March 31, 1993.
14 Criminals investigated and arrested by N.O.R.S.A.T. included suspects involved with homicide,
15 robbery, kidnaping, extortion, burglary, major narcotics violations and police corruption. The
16 majority of our cases were homicide cases, including the murder of police officers. Arrests
17 frequently occurred in dynamic circumstances including crimes in progress. My unit also
18 conducted major narcotics investigations including undercover narcotics buys, buy busts, and
19 reverse stings. We frequently deployed at the request of investigative units, such as Narcotics,
20 which provided the initial investigative leads for our operations. These narcotics cases usually
21 involved multiple kilogram quantities of drugs and amounts of money ranging from one hundred
22 thousand to more than one million dollars. Approximately 80% of cases assigned to N.O.R.S.A.T.
23 were active Homicide investigations. In that regard, the unit processed, under my command and
24 supervision, various aspects (depending on the complexity of the cases involved) of
25 approximately 1,000 Homicides ranging from deaths of police officers to serial homicide
26 suspects. Additionally, the majority of the over 1900 cases for which I have been retained as a
27 consultant (since 1993) have involved injuries or deaths connected with some aspect of force
28 during either apprehension or while in police custody. During the first three months of my

1 command of N.O.R.S.A.T., the unit had three justifiable shooting incidents. From that time, and
2 over the next five years of my command, N.O.R.S.A.T. established a remarkable record of more
3 than two thousand arrests of career criminals without a single shot fired – either by my officers or
4 by the suspects whom we arrested. Many of these suspects were armed and considered to be very
5 dangerous. Some were apprehended during the course of their crimes and were very prone to use
6 firearms to escape apprehension. This record of excellence was accomplished through the use of
7 proper tactics, management and supervision of personnel, training in correct apprehension
8 methods, and adherence to the moral and ethical standards endorsed by California POST and my
9 Department. These methods and principles are also embraced by every state training commission
10 of which I am aware, as well as the national standards established by the U.S. Department of
11 Justice. As a result of my position and record as the commanding officer of N.O.R.S.A.T., I was
12 assigned to author Field Operations Directive 89-3, “Tactical Operations Involving Detective
13 Personnel.” This order remained in force 20 years (until September 30, 2009), and included the
14 basic standards and considerations with which investigative officers must comply in the event of a
15 tactical deployment such as the dynamic entry into a building for the purpose of an arrest and/or
16 seizure of evidence. Since my retirement, I have testified as an expert on use of force, jail
17 procedures and jail administration, investigations, police procedures, police tactics, investigative
18 procedures, shooting scene reconstruction, and police administration in Arizona State Courts,
19 California State Courts, Washington State Courts and Federal Courts in Arizona, California,
20 Colorado, Florida, Illinois, Indiana, Louisiana, Missouri, Nevada, Ohio, Oregon, Pennsylvania,
21 Texas, Utah, Washington, New Mexico, New York and Wisconsin. I have testified before the Los
22 Angeles Police Department Board of Rights and the Los Angeles County Civil Service
23 Commission. I have testified before the Harris County (Texas) Grand Jury and the Cleveland
24 Grand Jury. I have also submitted written opinions in matters before Alaska, Delaware, Idaho,
25 Montana, North Carolina, New York, Oregon, Kentucky, and Wyoming Federal and State Courts.
26 I was selected (January 20, 2007) to present on the topic of: “Police Experts” at the National
27 Police Accountability Project held at Loyola Law School, Los Angeles, California. I was selected
28 (September 23, 2010) to present on the topic of: “Using POST Modules to Establish Police

1 Officer' Standard of Care" at the National Police Accountability Project, National Lawyers Guild
2 Convention, in New Orleans, Louisiana. I was selected (March 30, 2012) to present to the Kern
3 County Public Defenders in Bakersfield, California, on the topics of "Ethics, Police
4 Investigations, the California POST Curriculum, and the M26 and X26 Taser weapons." On
5 August 7, 2013 I was invited and presented to the Texas Civil Rights Project (TCRP) 2013
6 Annual Legal Summit in Austin, Texas on the topic: "Ethically Working with Experts from the
7 Prospective of a Police Expert." On October 15, 2015 I was the invited presenter at a Community
8 Forum in Victorville, California on the topics of Police Procedures, Community Policing, Use of
9 Force, and features of the M26, X26 and X2 Taser weapons. I was selected (January 24, 2020) to
10 present on the topic of: "Use of force litigation under California's negligence standard and the
11 impact of AB 392" at the National Police Accountability Project held at Loyola Law, Los
12 Angeles, California. On February 18, 2020, and on March 10, 2021, I lectured (at request) at the
13 University of California - Irvine, School of Law, Civil Rights Litigation Clinic. I have worked on
14 several projects with the Paso Del Norte (El Paso, Texas) Civil Rights Project and the Texas Civil
15 Rights Project (Austin, Texas). As a result of my expert testimony in *Border Network, et al. v.*
16 *Otero County, et al.*, Case No. 07-cv-01045 (D.N.M. 2008), a federal court issued a temporary
17 injunction to stop the illegal and widespread immigration raids in Chaparral, New Mexico,
18 implemented pursuant to Operation Stonegarden. The case resulted in the adoption of a model
19 policy for inquiring into a person's immigration status, which has been adopted nationwide and
20 has also been presented to the United States Senate, the Secretary of Homeland Security, and
21 other government officials seeking to reform immigration enforcement. I have been recognized,
22 and my expert report was quoted by the USDC in *Burns v. City of Redwood City*, 737
23 F.Supp.2d.1047. I have been recognized, and my expert report was quoted by, the United States
24 Court of Appeals for the Ninth Circuit as an expert in Police Administration and Use of Force in
25 *Blankenhorn v. City of Orange, et al.*, 485 F.3d 463, 485 (9th Cir. 2007). The Ninth Circuit also
26 drew from my expert report in a second published case involving Police Detective Investigations.
27 *Torres, et al. v. City of Los Angeles, et al.*, 540 F.3d 1031, 1042-43 (9th Cir. 2008). The Torres
28 case was appealed to the U.S. Supreme Court and returned for trial. I provided the expert opinion

1 in *Chavies Hoskin v. City of Milwaukee, et al.* (E.D. Wis Case No. 13-cv-0920), regarding field
2 strip and cavity searches, hiring, training, discipline and supervision, and which resulted in
3 significant policy changes within the MPD. My opinions supported argument in the Ninth Circuit
4 case: *A. D., a Minor; J. E., a Minor; Sue Casey, Plaintiffs-Appellees, v. State of California*
5 *Highway Patrol, Defendant, and Stephen Markgraf.*, No. 09-16460, D.C. No. 3:07-cv-05483-SI
6 (9th Circuit, Published Opinion). My opinions supported argument in the Ninth Circuit case:
7 *Chaudhry v. City of Los Angeles*, 751 F.3d 1096, 1102 (9th Cir. 2014). The Ninth Circuit also
8 drew from my expert reports regarding credible threats justifying the use of force, *Hayes v.*
9 *County of San Diego*, 658 F.3d 867 (9th Cir. 2011), and *Young v. County of Los Angeles*, 655
10 F.3d 1156 (9th Cir. 2011). The Ninth Circuit also drew from my expert reports regarding Jail
11 Administration and Administrative Responsibilities, *Starr v. Baca*, 652 F.3d 1202 (9th Cir. 2011).
12 The Ninth Circuit also drew from my expert reports regarding an officer's violation of the 14th
13 Amendment if an officer kills a suspect when acting with the purpose to harm, unrelated to a
14 legitimate law enforcement objective, in *AD v. California Highway Patrol*, 712 F. 3d 446 (9th
15 Cir. 2013). The Fifth Circuit drew from my expert report regarding search and seizure,
16 investigations and no-knock requirements in *Bishop et al. v. Arcuri et al.*, 674 F.3d 456 (5th Cir.
17 2012). The Ninth Circuit also drew from my expert report regarding the use of impact weapons
18 (PepperBall) on civilians in *Nelson v. City of Davis*, 685 F.3d 867 (9th Cir. 2012). I was the
19 expert in the Ninth Circuit opinion regarding the allegations proffered by police officers and their
20 use/display of firearms against civilians in *Green v. City and County of San Francisco*, 751 F. 3d
21 1039 (9th Cir. 2014). Most recently, I was the expert in an important Ninth Circuit opinion
22 regarding the allegations proffered by police officers and their use of lethal force against unarmed
23 persons in *Jennifer Cruz, et al., v. City of Anaheim, et al.*, 765 F.3d 1076 (9th Cir. 2014). I was
24 the expert at trial in the Ninth Circuit opinion regarding the order of evidence at trial in *Estate of*
25 *Manuel Diaz, v. City of Anaheim, et al.*, No. 14-55644. My opinion is quoted in the Ninth Circuit
26 opinion regarding the use of lethal force in *A.K.H. a minor, et al, v. City of Tustin, et al.*, No. 14-
27 55184. My opinions supported argument in the Ninth Circuit case: *Estate of Angel Lopez, et al.,*
28 *v. Kristopher Michael Walb*, No. 14-57007 (not for publication) wherein the Ninth Circuit

1 Affirmed the Denial of Summary Judgement by the District Court. My opinions supported
2 argument in the Ninth Circuit case: Estate of Shakina Ortega, et al., v. City of San Diego, et al.
3 No. 14-56824 (not for publication) wherein the Ninth Circuit Affirmed the Denial of Summary
4 Judgement by the District Court. My opinions supported argument in the Ninth Circuit case: Jerry
5 Newmaker, et al., v. City of Fortuna, et al. No. 14-15098 (for publication). My opinions supported
6 argument in the Ninth Circuit Case: Tonya E. Shirar, v. Miguel Guerrero, et al. regarding use of
7 lethal force and "suicide by cop," No. 15-55029 (not for publication). My opinions supported
8 argument in the Ninth Circuit Case Angel Mendez; Jennifer Lynn Garcia, v County of Los
9 Angeles, et al., Nos. 13-56686, and 13-57072 (for publication) and which was settled before the
10 Supreme Court, No. 16-369, regarding the use of lethal force and searches. My opinions
11 supported argument in the Ninth Circuit case: Chien Van Bui, et al, v City and County of San
12 Francisco, et al, No. 14-16585 (not for publication), regarding the use of lethal force. My opinions
13 supported argument in the Sixth Circuit opinion, Case No. 16-5322, Carey Woodcock v. City of
14 Bowling Green, et al, Originating Case No. 1:13-cv-00124 regarding the use of lethal force. My
15 opinions supported argument in the Ninth Circuit opinion, Case No. No. 14-17388 (for
16 publication), Johnathan Jones, et al v. Las Vegas Metropolitan Police Department, et al,
17 Originating Case No. 2:12-cv-01636- regarding the use of lethal force and Taser weapons. My
18 opinions supported argument in the Ninth Circuit opinion, Case No. 16- 15606 (for publication),
19 Christian Longoria, et al v. Pinal County, et al, Originating Case No. 2:15-cv-00043, PHX SRB,
20 regarding the use of lethal force after a vehicle pursuit. My opinions supported argument in the
21 Ninth Circuit case: S. B. v. County of San Diego, 864 F.3rd 1010 (9th Cir. 2017), (for
22 publication) regarding issues of qualified immunity. My opinions supported argument in the
23 Tenth Circuit case: Russell Tenorio v. Brian Pitzer, Case No. 2012-CV-01295 (U.S. Supreme
24 Court No. 15-795) regarding issues of qualified immunity and use of deadly force. I participated
25 as a retained expert in the USDC Fifth District case, Stephen McCollum et al., v. Texas
26 Department of Criminal Justice, et al., Case No.3:12-CV-02037 regarding in-custody
27 hyperthermia deaths. My opinions supported argument (and I was cited by name) in the Ninth
28 Circuit opinion, Case No. 17-55116 (for publication), Susan Mellen, et al v. Marcella Winn, et al,

1 D.C. Case No. 2:15-cv-03006, GW AJW, regarding Detective Investigations and Qualified
2 Immunity. My opinions supported argument in the Ninth Circuit Case Richard Vos; Jenelle
3 Bernacchi, v City of Newport Beach, et al., Nos. 16-56791 (for publication) and which was
4 settled by the Supreme Court, No. 16-56791, regarding the use of lethal force and mental illness.
5 My opinions (and quoted by name) supported argument in the Ninth Circuit Case S.R. Nehad, et
6 al. v. Browder, et al., No. 18-55035 (for publication) regarding the use of lethal force and custom
7 and practice. My opinions supported argument in the Ninth Circuit opinion, Case No. 17-55930
8 (not for publication), Estate of Kevin Brown, et al. v. Michael Lambert, et al., D.C. No. 3:15-cv-
9 01583-DMS-WVG, regarding Detective Investigations and Qualified Immunity. My opinions
10 supported argument in the Ninth Circuit opinion, Case No. 15-56339 (for publication), Shane
11 Horton, by his Guardian Ad, Litem Yvonne Horton, v. City of Santa Maria; Santa Maria Police
12 Department; Andrew Brice, D.C. Case No. 2:14-cv-06135- SJO-PJW, and Jonathan Michael
13 Castro v. County of Los Angeles, et al, D.C. Case No. CV 10-5425 DSF (JEMx), 833 F.3d 1060
14 (9th Cir. 2016) (en banc), regarding in-custody suicidal prisoners and qualified immunity. My
15 opinions supported argument in the Ninth Circuit opinion, Case No. 17-56270 (not for
16 publication), James Soler v. County of San Diego, et al., D.C. No. 3:14-cv-02470-MMA-RBB,
17 regarding required verification of persons taken into custody pursuant to a warrant of arrest. My
18 opinions supported argument in the Ninth Circuit opinion, Case No. 18-17404 (for publication)
19 Tan Lam, v. City of Los Banos, et al. D.C. No. 2:15-cv-00531-MCE-KJN, regarding the use of
20 lethal force. My opinions supported argument (and I was cited by name) in the Ninth Circuit
21 opinion, Case No. 19-56035 (for publication), Tiffany Tabares, et al v. City of Huntington Beach,
22 et al, D.C. Case No. 8:18-cv-00821, JLS-JDE, regarding use of force and subjects suffering
23 mental illness. I was retained as consultant regarding the October 15, 2019 Law Enforcement
24 Activity Related Death (including positional asphyxia) of Mr. Angel ZapataHernandez by San
25 Diego Metropolitan Transit System (MTS) Code Compliance Officers. My consultations included
26 recommendations and resulted in significant changes in policy and training by the MTS. I was a
27 retained expert in the Temporary Restraining Order restricting the use of kinetic weapons during
28 demonstrations issued April 19, 2021 in Black Lives Matter v. City of Los Angeles, et al, Case

1 No.: CV 20-5027 CBM (Asx). My opinions supported argument in the Ninth Circuit opinion,
2 Case No. 20-16351 (not for publication), Terrance Amons, et al., v. Dillon Tindall et al. D.C. No.
3 4:19-cv-00301 KAW regarding use of lethal force. The California Court of Appeal (Second
4 Appellate District) drew in part from my expert report regarding search warrant service, Macias v.
5 County of Los Angeles, 144 Cal. App.4th 313, 50 Cal. Rptr.3d 364 (2006). The California
6 Supreme Court drew in part from my expert opinion regarding police tactics and the use of deadly
7 force, Hayes et al. v. County of San Diego et al., 57 Cal.4th 622 (2013). I was quoted by the
8 California Appellate Court (Second Appellate District, Division Three) in B.B., a Minor, etc., et
9 al., v. County of Los Angeles, et al., Case No. B264946 Super. Ct. Nos. TC027341, TC027438,
10 BC505918 regarding positional asphyxia issues. On February 10, 1989, I was personally
11 commended at the Los Angeles County Hall of Administration by United States Attorney
12 General, the Honorable Edwin Meese III, for my work to establish California Penal Code Section
13 311.11 (forbidding the Possession of Child Pornography). On February 22, 1993 (at the time of
14 my retirement), Mr. Meese presented a second personal commendation for the success of this
15 critical five-year effort to bring this law into effect. California Penal Code Section 311.11 is
16 required training for all Law Enforcement Officers in California and taught extensively in the
17 POST Basic Learning Domain #9: "Crimes Against Children," pages 1-18 to pages 1-21. On
18 December 7, 2015 I was requested by the Cleveland District Attorney to present my opinions to
19 the Cleveland Grand Jury regarding the November 22, 2014 shooting death of Tamir Rice by City
20 of Cleveland police officers. In March, 2016 I was requested by the Delaware Attorney General to
21 review and provide my opinions regarding the shooting death of Jeremy McDole. The AG report
22 was published May 12, 2016. I provided a written Opinion for New Mexico AG regarding the
23 shooting Death of Teresa Anaya that included requested training opinions. I have also consulted
24 with, and provided written opinions at the request of the U.S. Attorney (New York), the Santa
25 Clara County District Attorney, and the San Francisco District Attorney. On June 16, 2021, I was
26 selected by the Los Angeles County District Attorney as a member of FACCT - an independent
27 team assigned to re-examine fatal use of force incidents by law enforcement officers and
28 recommend further action when appropriate. I have been found competent by both Federal and

1 State Courts to render opinions as to responsibilities as occurred in this case. A number of my
2 cases have involved law enforcement officers as civil plaintiffs and as criminal defendants. Since
3 my retirement, I have become an expert in the features and the use of TASER International's
4 products, including the Model M26, Model X26 and Model X2 ECDs. I own each, along with the
5 download software. I have reviewed all the TASER training materials and am familiar with the
6 risks and tactics associated with these potentially lethal devices. I have qualified as an expert on
7 TASER products and testified both in deposition and before juries on their usage. Two published
8 examples are Lee v. Nashville, 596 F. Supp. 2d 1101, 1121-22 (M.D. Tenn. 2009), and Heston v.
9 City of Salinas, 2007 U.S. Dist. LEXIS 98433, *25-*26 (E.D. Cal. 2007). My most recent Federal
10 acceptance/certifications as an expert in the general use and deployment of the TASER weapon
11 (including Taser International product warnings/bulletins sent to every agency using the Taser
12 weapon) occurred in Los Angeles, California on November 7, 2017 in William Mears, et al., v.
13 City of Los Angeles, et al, USDC Case No.: CV 15-08441 JAK (AJWx) and on February 22,
14 2018 in Maria Hernandez; A.J., Jr., et al, v. City of Los Angeles, et al, USDC Case No. 2:16-c-
15 02689 AB (JEMx), and on May 3, 2018 in Heleine Tchayou, et al. v. City of Los Angeles, et al.,
16 Case No. 16-cv-06073-TJH-MRW, and on November 1, 2018 in Alma Rosa Godinez, v. San
17 Diego County, et al. Case No. 3:16-cv00236 BAS-NLS. There are many others. Attached as
18 Exhibit 1 is a statement listing my law enforcement qualifications and experience; Exhibit 2 is a
19 listing of matters in which I have testified in the last four years as an expert. I reserve the right to
20 modify my opinions to the extent additional information is provided.

21 3. This case involves the murder of Ms. Theresa Graybeal (Ms. Graybeal) who was allegedly
22 kidnapped in Modesto, California and shot to death in the City of Fresno on February 8, 1978.
23 The homicide was investigated under Case File No. 78-5819. The investigation eventually

- 24 - Douglas Stankewitz (age 19)
25 - Billy Brown (age 14)
26 - Marlin Lewis (age 22)
27 - Tina Topping (age 19)

1 Christina Menchaca (age 25)

2 4. As a result of the statements given during intense interrogation, Billy Brown provided
3 specific details regarding the homicide. His statements and trial testimony categorically
4 implicated Mr. Stankewitz as the sole person who shot Ms. Graybeal. Consequently, Mr.
5 Stankewitz was convicted and sentenced to death. Mr. Stankewitz was re-tried in 1983 and once
6 again convicted and sentenced to death.

7 5. It is uncontested (and a key factor in any evaluation of this case) that Billy Brown's
8 testimony during both trials was the key factor resulting in Mr. Stankewitz' conviction (and death
9 sentence). At both trials, Billy Brown gave specific details regarding how Mr. Stankewitz shot
10 Ms. Graybeal. In my opinion, Billy Brown's account does not match the obvious physical facts.
11 Additionally, it must be noted that Billy Brown recanted his testimony in 1993. In 2012, Mr.
12 Stankewitz' penalty phase was reversed. On May 3, 2019, Mr. Stankewitz was re-sentenced to
13 life without the possibility of parole. I have been retained *pro bono* to give opinions regarding the
14 police practices in this case.

15 6. Respondent's Informal Response. I have reviewed the Respondent's Informal Response,
16 filed with this court on 9-1-2021, including Exhibit A: Fresno County District Attorney's Office
17 Report #78DA000001 – Supplemental – 1 Report [Report], Exhibit B: 4 photos of a holster clip
18 and firearm and Exhibit C: 1 photo of holster showing the holster clip.

19 In reviewing Exhibits A, B & C, I have observed that the Report was prepared by Fresno
20 DA Investigator Danielle Isaac #Z004 (dated Aug 20, 2021) and signed off on by Supervisor
21 Clark Crapo (dated Aug 23, 2021). The Report states that Deputy District Attorney Amythest
22 Freeman, Exhibits Clerk Juan Menses and court deputy Yoshida participated in viewing the
23 evidence and making observations about the holster, gun and CLETS report regarding the gun in
24 evidence. Accordingly, by their inspecting this evidence and preparing this Report, they are now
25 all witnesses in this case.

26 Given that the Stankewitz case was a death penalty case and he is now serving LWOP, the
27 procedure used by DA Investigator to inspect the gun and holster was unreliable because it was
28 not performed according to standards. The inspection would by necessity have been performed by

1 a qualified lab under a scientific magnification; this would have been especially so at the point
2 and time that the investigator was put on notice that their interpretation of the evidence of the date
3 conflicted with defense counsel's. Such a lab has the capability of documenting and
4 photographing all the etchings on the holster clip. The observations of Isaac, Freeman and
5 Yoshida using their naked eyes reveal nothing accurate about the evidence. The insufficiency of
6 the procedure and Report is glaring and indicates an unwillingness (and possibly an intention) to
7 avoid a full analysis of the holster.

8 The Report does not mention the 1973 date that I observed when I viewed the holster on
9 March 21, 2019. The existence of the 1973 date is confirmed by the first three photos contained in
10 Response Exhibit B, each of which show a 1973 date. As a DA Investigator, Ms. Isaac would
11 know how to verify evidence. However, in my opinion, she did not follow the procedures
12 provided in Basic POST, taught at the police academy.

13 Any officer who knowingly files a false report will be guilty of a crime. (Penal Code
14 Section 118.1)"

15 The applicable Basic POST sections state:

16 (POST Learning Domain #18: "Investigative Report Writing," page 1-4.)

17 "All reports are to be true, unbiased, and unprejudiced. These are easy words to say, but
18 sometimes hard to live by. It is not always easy to know or find out the truth. Clearly it is the
19 peace officer's moral obligation to seek the truth, lying is wrong. Truth and public trust cannot be
20 separated." (POST Learning Domain #18: "Investigative Report Writing," pages 1-5. Emphasis
21 Added.)

22 "When writing a report, the minimum requirements to accomplish your job ethically and preserve
23 the integrity of the criminal justice system [emphasis added] are:

24 "Never falsify any portion of your report or modify any aspect of the report away from the factual
25 truth.

26 "Objectively document every fact (or piece of evidence) known to you that could prove or
27 disprove the event you are reporting. If you are not sure, include the fact or piece of evidence
28 anyway and qualify it as possible evidence or investigative information. (POST Learning

1 Domain #1: Chapter 2 - "Professionalism and Ethics in Policing."

2 In my opinion, this Report is a false report because it excludes the exculpatory information
3 of the 1973 date and badge number on the holster.

4 The Report also refers to the CLETS hit of a handgun and Investigator Isaac's
5 interpretation of the report. In reviewing her interpretation of the CLETS report, she parsed her
6 words, which implies an awareness of how fragile her conclusions are. I reviewed the CLETS
7 report interpreted by Ms. Isaac, in a previous declaration, wherein I stated that the CLETS report
8 in part explains that the gun in evidence was a throwaway (See Petition Exhibit 1b: page 5, para
9 10).

11 11. Police Reports re: Gun – night of the murder. I have reviewed the police reports prepared
12 by the Fresno Police Department regarding the arrest of the suspects on the night of the murder
13 (Habeas Exhibits 1r, 1s, 1t, 1u, 1v, 1w, 1z and 1aa). None of those reports state that a gun was
14 recovered from Mr. Stankewitz. In fact, Exhibit 1w, a report by the arresting FPD officers
15 Callahan and Rodriguez states that "All suspects were then searched for weapons . . ." (Habeas
16 Exhibit 1w, p. 98, paragraph 1). Several reports, Petition Exhibits 1r, 1v and 1w, state that a gun
17 was either observed or recovered from under the left rear seat of the vehicle where suspect Marlin
18 Lewis was seated. There is no physical evidence that ties the weapon to Mr. Stankewitz: no
19 fingerprints, no GSR results. However, there are reports written after the arrests which conflict
20 with the night of the arrest reports which state that Petitioner had a gun. One report, Petition
21 Exhibit 1s, dated 2/10-1978, states that the gun was 'in possession of Douglas Stankewitz'. A
22 second report dated 4-12-1978, signed by DDA Ardaiz, states 'one .25 cal auto taken from
23 suspect'. (Petition Exhibit 1u)

24 12. Holster – night of the murder. The holster does not contain an etching by the Fresno Police
25 Department with a date of either 2-8-1978 or 2-9-1978. The initial arrests and investigation
26 occurred late evening on February 8 and into the early morning of February 9. So, either of those
27 dates could appear. According to proper police procedure, the officer who recovered the gun from
28 the car would have etched his initials and the date on the holster (and the gun?). This tends to
show that the holster in evidence was not recovered by the Fresno PD on the night of the murder.

1 13. Evidence Tampering. It is known that physical evidence is neutral, takes no sides and tells
2 the truth. The actions by the DA's office demonstrate that they continue to attempt to obscure any
3 truthful evaluation of the evidence in this case. This is confirmed by the DA Investigator Mike
4 Garcia's admission in his report dated 7-20-2017, page 2, paragraph 5, wherein he stated that the
5 shell casings in evidence were tampered with and mislabeled. (Habeas Exhibit 7h) This tampering
6 was done in an attempt to conceal the fact that the gun in the Meras crimes, in which Mr.
7 Stankewitz was not involved, was a different caliber than the gun used in the Graybeal murder.
8 The prosecution theory that the same gun was used in the Meras crimes and the Graybeal murder
9 was used to make it appear that Mr. Stankewitz was involved in both sets of crimes. The
10 implications of the tampering are that it casts doubt on how all physical evidence in this case,
11 including exculpatory evidence, was handled: it was handled casually and carelessly.

12 14. Gun in Court Evidence – serial number. When I inspected the physical evidence on March
13 21, 2019, including the alleged murder weapon, the serial number on the gun in evidence was
14 clearly visible. The police reports which state 'serial number removed' (Petition Exhibits 1f, 1o,
15 1p, 1q, 1r, 1t) must refer to a different gun.

16 15. Physical evidence points to a different shooter than Mr. Stankewitz. I continue to believe
17 that the trajectory of the fatal shot demonstrates that the victim, Ms. Graybeal was not shot by Mr.
18 Stankewitz but instead by a shorter person. This is probably reflected by the lack of truthfulness
19 of the testimony by the witness Billy Brown, which he later recanted. The autopsy report shows
20 that the victim was 160 cm tall. The police reports state that Mr. Stankewitz was 6'1" tall. The
21 April 27, 1978 DA Investigator Spradling report (Petition Exhibit 2v) confirms that Billy Brown
22 did not witness the shooting because his reenactment of the shooting does not match the location
23 of the entry wound on the victim. No police report indicates that the car was inspected for bullet
24 fragments, GSR or blood. In my opinion, standard police procedure dictates that this testing
25 should have been done. Because the car was returned to the victim's family on February 10, 1978,
26 before Mr. Stankewitz was appointed counsel, the defense never had an opportunity to inspect or
27 test the car. Accordingly, in my opinion, these circumstances make it possible that victim was
28 shot in the car. As I have stated in my previous declarations, the physical evidence does not match

1 the prosecution's theory of the case nor the testimony of the prosecution witnesses.

2

3 There are many things about this case which do not pass the smell test.

4

5 I declare under penalty of perjury that the foregoing is true and correct to the best of my
6 knowledge. Executed in Santee, California on October 8, 2021.

7

8

9



ROGER CLARK

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

MOTION FOR OR EXHIBIT 20a

V. TABLE OF PREVIOUS STANKEWITZ CASE DISPOSITIONS

Date of Offense: February 8, 1978

<u>File Date</u>	<u>Court</u>	<u>Cause No.</u>	<u>Plaintiff</u>	<u>Plnt Attorney</u>	<u>Defendant</u>	<u>Deft Attorney</u>	<u>Nature of Suit</u>	<u>Disposition</u>
03/10/1978 First Trial	Fresno County Superior Court Robert L. Martin, Judge	CF78227015	The State of California	Jeff Dupras, Lisa Gamoian, Lynmarc Jenkins	Douglas Ray Stankewitz	Salvatore Sciandra	Criminal: Murder, Robbery, Kidnaping	Guilty – 3 counts Sentence: Death Penalty
10/13/1978	Supreme Court of California	20705 21310 Pub Op.: 32 Cal.3d 80	The People (Plnt/Respondent)	George Deukmejian, AG, Robert H. Philibosian, Arnold O. Overoye, Paul V. Bishop, Edmund D. McMurray, Garrett Beaumont, Robert D. Marshall	Douglas Ray Stankewitz (Deft/Appellant)	Quin Denvir PD, Steven W. Parnes	Appeal Other issues on appeal not addressed due to reversal on other grounds Habeas Corpus	Judgment Reversed on issue of error in failure to address conflict w/ atty. Habeas denied (Jury selection issues Hovey v. Superior Court, 616 P.2d 1301)

11/04/1982 Case Reinstated – Second Trial	Fresno County Superior Court Robert L. Martin, Judge	CF78227015	The State of California	Jeff Dupras, Lisa Gamoian, Lynmarc Jenkins	Douglas Ray Stankewitz	Hugh Goodwin (2 nd Trial counsel) 12/20/12 Richard Beshwate J. Tony Serra, Peter M. Jones	Criminal: Murder, Robbery, Kidnaping	Guilty on 3 counts: Death Penalty on Count 1
11/18/1983	Supreme Court of California	S004602 Pub Op.: 51 Cal.3d 72 (793 P.2d 23)	The People	John K. Van de Kamp, AG, Steve White, Richard B. Iglehart, Arnold O. Overoye, Michael T. Garcia, George Hendrickson, Jane Lamborn, Thomas Y. Shegemoto and Robert D. Marshall	Douglas Ray Stankewitz	Robert A. Seligson, John P. Ward	Appeal	Judgment Affirmed in its entirety 7/5/90 US Sup.Ct. Petition for Writ of Certiorari denied, 4/1/91, 111 S.Ct. 1432 ** See Addendum 1

02/02/1990	Supreme Court of California	S014015	Douglas R. Stankewitz on Habeas Corpus				Petition for Writ of Habeas Corpus	Denied w/o hearing or findings 4/19/90
							Petition for Rehearing	Denied 8/28/90
11/15/1991	USDC E.D.Cal. Judge Anthony Ishii	CV-91-00616-AWI	Douglas Ray Stankewitz		Jeanne S. Woodford, Warden of San Quentin State Prison		Stay of Execution Petition for Writ of Habeas Corpus	Denied 12/22/00 ** See Addendum 2
7/14/1995	Supreme Court of California	S047659	In re Douglas Ray Stantewitz	Robert Bryan			Petition for Writ of Habeas Corpus	Order 3/15/96 ** See Addendum 3

12/28/2001	USCA 9 th Cir.	01-99022 Pub Op.: 365 F.3d 706 Unpub Memo Op.: 94 Fed.Appx. 600 – Affirm conviction, reject several grounds for reversing sentence, deny request to broaden cert of appealability, address claims under AEDPA standars	Douglas Ray Stankewitz	Nicholas C. Arguimbau Katherine L. Hart	Jeanne S. Woodford, San Quentin State Prison	John Gerald McLean, Deputy AG	3535 Habeas Corpus: Death Penalty Appeal from CV- 91-00616	Decided 4/8/2004 – Affirmed in part; reversed in part; remanded for further proceeds ** See Addendum 4 AEDPA does not apply Abuse of discretion by not allowing evidentiary hearing on ineffective assistance of counsel on failure to investigate and present evidence on mitigation
------------	------------------------------	--	---------------------------	--	---	-------------------------------------	---	---

2/6/2012	USCA 9 th Cir.	10-99001 Pub. Op. 698 F.3d 1163	Douglas Ray Stankewitz	Daniel J. Broderick, Fed.PD, Harry Simon	Robert K. Wong	Eric Christoffersen and John G. McLean, Deputy AGs	Appeal of USDC ruling on ineffective assistance of counsel during penalty phase and grant of habeas corpus	Affirmed 10/29/12 ** See Addendum 5

ADDENDUM 1
(Table of Previous Stankewitz Case Dispositions)

The People v. Douglas Ray
Supreme Court of California
Case No.: S004602
Pub. Op. 51 Cal.3d 72, 793 P.2d 23

11/18/83 Appeal filed (automatic)
7/5/90 Opinion published – Judgment affirmed in its entirety

Claim No.	Description	Disposition	Notes
II Guilt	Substitution of Counsel/Competence to Stand Trial	Contentions lack merit	
	Accomplice Instructions (Billy Brown as an accomplice)	Trial court proper instructed jury	
	Instruction on Oral Admissions (should be viewed with caution) – Court failed to instruct <i>sua sponte</i> on admission	Failure was error but no prejudicial	
	Shackling of Defendant	Lacks merit, no abuse of discretion	
	Admission of Writings Seized from Defendant's Cell	Contention without merit	
	Instruction on Aiding and Abetting	No reversible error	
	Aiding and Abetting related to the special circumstance finding – omission of unanimity instruction	No prejudice in omission	
	Sufficiency of the Evidence of Felony Murder (robbery terminated prior to killing)	Contention lacks merit	
	Comment on unavailability of witnesses (co-defendants did not testify at trial – prosecution's comment rebutting defense comment)	Contention lacks merit	

	Denial of Challenges for Cause	No error for denial	
	Death Qualification of the jury – denied constitutional rights due to death-qualifying voir dire	Uphold previous ruling – no denial of rights	
	Intent to Permanently Deprive (and not to steal). Trial court should have instructed Similar instruction (robbery) given in connection with special circumstance	Contention lacks merit No further instruction other than what was given required	
	Alleged Wheeler Error (peremptory challenge of Juror Moreno based on race)	No objection at trial/ no record for review	
III Penalty	Issues Relating to Evidence of Uncharged Criminal Activity		
	1. Admission violated 5 th and 8 th Amendments	No persuasive reason to depart from prior holdings	
	2. Failure to instruct <i>sua sponte</i> jury must unanimously agree offenses proven	Claim rejected per People v. Miranda	
	3. Error in instructing jury on aiding and abetting in unadjudicated offenses (Jesus Miras, George Key)	Omission had no effect	
	4. Officer Reid’s testimony inconsistent with report of car chase/shooting	Report not placed in evidence at 2 nd trial – no basis to find error	

	Sympathy Instructions – inadequate instruction of mitigating evidence	Contention lacks merit – given instructions and argument adequately advised jury	
	Changes in the Death Penalty Law – jury not instruction per ameliorative change in 1978 statute	Contention is without merit	
	Instruction on Reasonable Doubt (aggravation outweigh mitigation and death is appropriate penalty) – Defendant claim on due process and cruel and unusual	Court previously rejected similar – no reason to reconsider	
	Response to Jury Inquiry – inadequate response to jury question regarding LWOP	Court’s response was adequate	
	Victim Impact Evidence – testimony of Reid and Key regarding injuries Prosecution statement regarding victim’s family	Neither had appreciable affect on penalty verdict	
	Disproportionate Penalty – Defendant should be given proportionality review on an intercase and intracase basis per People v. Dillon	No similar factors in instant case	
	Ineffective Assistance of Counsel – Several assertions at Guilt and Penalty phases (see 51 Cal.3d at 113, 114) 1. Failure to impeach Billy B’s testimony; 2. Failure to request instruction re: oral admissions viewed with distrust; 3. Failure to object to admission of writings seized from prison cell; 4. Failure to establish first car was no stolen; 5. Failure to object to shackles. 6. Failure to call medical witnesses in penalty phase.	Contentions without merit	

ADDENDUM 2
(Table of Previous Stankewitz Case Dispositions)

Douglas Ray Stankewitz v. Jeanne S. Woodford, Warden of San Quentin State Prison,
United States District Court, Eastern District of California

Case No.: CIV F-91-616-AWI-P

10/17/94 Habeas Corpus Petition (Proceedings stayed pending exhaustion of claims in California Supreme Court – claims rejected prior to amendment of Habeas Corpus)

5/20/96 Amended Habeas Corpus Petition

12/30/97 Petitioner’s Brief in Support of Petition

6/6/98 Respondent’s Response to Petition

12/24/98 Petitioner’s Traverse

3/2/99 Petitioner’s Motion for Summary Judgment

4/21/99 Order Denying Motion for Summary Judgment

12/23/99 Order Denying 16 claims and 6 sub-claims on the merits and deferring resolution of 2 claims and four sub-claims

5/11/00 Second Order denying 20 claims on the merits

8/4/00 Petitioner’s Objections to 5/11/00 Order (Mtn for Reconsideration)

9/6/00 Order vacating evidentiary hearing as improvidently granted

12/22/00 Final Memorandum and Order Denying Petition for Writ of Habeas Corpus

2/22/01 Petitioner’s Motion to Reconsider Final Order Denying Petition and Denying Evidentiary Hearing for Five Claims for which Evidentiary hearing had previously been granted

11/7/01 Order Denying Stankewitz’s Motion for Reconsideration of Final Order Denying Petition for Habeas Corpus

12/28/01 APPEAL FILED – USCA 9th Cir. 01-99022

Claim No.	Description	Disposition	Notes
15	Petitioner was mentally incompetent to stand trial and the procedures utilized by the trial court to examine the competence issue were prejudicially inadequate	Denied on Merits 12/22/00	Evd Hrg set then vac 9/6/00
16	Petitioner’s trial counsel, Hugh Goodwin, failed to investigate, seek a hearing, and present extensive available evidence that Petitioner was mentally incompetent during all relevant 1982-1983 pretrial, guilt phase, and penalty phase of proceedings	Denied on Merits 12/22/00	Evd Hrg set then vac 9/6/00
17	Petitioner’s trial counsel, Hugh Goodwin, was prejudicially ineffective throughout all aspects of the proceedings		

17a	Ineffective counsel – Failure to raise mental competency issues	Denied on Merits 12/22/00	Evd Hrg set then vac 9/6/00
17b	Ineffective counsel – Failure to investigate and present evidence at the built and penalty phases as to specific organic mental defects including but not limited to Fetal Alcohol Syndrome	Denied on Merits 12/22/00	Evd Hrg set then vac 9/6/00
17c	Ineffective counsel – Failure to investigate and present evidence at the built and penalty phases as to diminished capacity	Denied on Merits 12/22/00	Evd Hrg set then vac 9/6/00
17d	Ineffective counsel – Failure to investigate and present evidence at the guilt phase as to insanity	Denied on Merits 12/22/00	Evd Hrg set then vac 9/6/00
17e	Ineffective counsel – Failure to investigate and present evidence at the guilt and penalty phases of Petitioner’s voluntary intoxication	Denied on Merits 12/22/00	Evd Hrg set then vac 9/6/00
17f	Ineffective counsel – Failure to investigate and present rebuttal to the People’s evidence in aggravation at the penalty phase	Denied on Merits 12/22/00	
17g	Ineffective counsel – Failure file a timely motion challenging the prosecutor’s improper use of a peremptory challenge against the only Native American in the jury pool	Denied on Merits 12/23/99 Denied on Merits 12/22/00	
17h	Ineffective counsel – Failure to investigate and present evidence as to prosecution star witness Billy Brown’s long history as a “snitch.”	Denied on Merits 12/23/99 Denied on Merits 12/22/00	
17i	Ineffective counsel – Failure to bring a timely motion under Penal Code §1538.5 to suppress the evidence obtained in a search of Teena Topping’s cell.	Denied on Merits 12/23/99 Denied on Merits 12/22/00	

17j	Ineffective counsel – Failure to move to strike “aggravating” evidence presented by the prosecution as lacking sufficient foundation under Penal Code §190.3	Denied on Merits 12/22/00	
17k	Ineffective counsel – Use of a bizarre and irrelevant “power of Jesus” defense at the penalty phase.	Denied on Merits 12/22/00	
17l	Ineffective counsel – Failure to seek suppression of Petitioner’s alleged statement to a corrections officer as to why he attacked inmate Hogan	Denied on Merits 12/23/99 Denied on Merits 12/22/00	
17m	Ineffective counsel – Cumulative failure to impeach witnesses, make objections at appropriate times, request appropriate instructions and otherwise aggressively represent Petitioner’s interests	Denied on Merits 12/22/00	
17n	Ineffective counsel – Failure to challenge the trial court’s repeated violation of state law concerning hardship excuses of jurors	Denied on Merits 12/23/99 Denied for failure to state a claim 12/22/00	
17o	Ineffective counsel – Failure to investigate and present evidence as to Johnny Stankewitz’s rather than Petitioner’s involvement and the shooter in the shoot-out with the police described at the penalty phase	Denied on Merits 12/23/99 Denied on Merits 12/22/00	
18	The ineffectiveness of trial counsel is apparent on the face of the trial record		
19	Petitioner’s trial counsel, Hugh Goodwin, failed to investigate and present at the guilt phase the available mental defenses of diminished capacity and insanity	Denied on Merits 12/22/00	Evd Hrg set then vac 9/6/00
20	Defense counsel failed to investigate and present a motion for change of venue, and	Denied on Merits 12/23/99	

	the trial court failed to pursue the matter on its own motion	Denied on Merits 12/22/00	
21	Ineffective assistance of counsel of a prejudicial nature occurred as a result of trial counsel's failure to present mitigating evidence concerning Petitioner's character and background that was available at time of trial	Fails to state right to relief, denied evidentiary hrg. And denied on Merits 12/22/00	Evd Hrg set then vac 9/6/00
22	Trial counsel, Hugh Goodwin, had a conflict of interest between his religious calling and his duty to Petitioner as an advocate, resulting in the prejudicial deprivation of effective assistance of counsel	Denied on Merits 12/22/00	
23	The trial court improperly granted hardship releases to potential jurors, and defense counsel failed to object	Denied on Merits 12/23/99 Denied for failure to state a claim 12/22/00	
24	Petitioner was improperly shackled at trial	Denied on Merits 12/23/99 Denied on Merits 12/22/00	
25	Petitioner's attorney, Hugh Goodwin, had a prejudicial conflict of interest due to having previously represented other members of the Stankewitz family	Denied on Merits 12/23/99 Denied on Merits 12/22/00	

26	Trial counsel, Hugh Goodwin, failed to investigate and present evidence on prosecution witness Billy Brown's history as a "snitch"	Denied on Merits 12/23/99 Denied on Merits 12/22/00	
27	Trial counsel erroneously failed to object to the admission of Petitioner's statement as to why he attached inmate Hogan	Denied on Merits 12/23/99 Denied on Merits 12/22/00	
28	The trial court improperly refused to instruct that Billy Bob Brown was an accomplice as a matter of law, and that his testimony required corroboration	Denied on Merits 5/11/00 Denied on Merits 12/22/00	Obj filed> Mtn Reconsideration 8/4/00, denied 12/22/00
29	Petitioner was deprived of his constitutional right to be tried by an impartial jury as the result of jury death qualification	Denied on Merits 5/11/00 Denied on Merits 12/22/00	Obj filed> Mtn Reconsideration 8/4/00, denied 12/22/00
30	The prosecutor discriminatorily used a peremptory challenge to remove the only prospective Native-American Juror from Petitioner's jury. Petitioner's counsel rendered ineffective assistance of counsel because he failed to raise the <i>Wheeler</i> objection timely.	Denied on Merits 12/23/99 Denied on Merits 12/22/00	Court did not reach the <i>Wheeler</i> timeliness issue or IAC, but held that the prosecution gave race neutral reasons to dismiss the juror – her voir dire answers.
31	Biased jurors were allowed to remain on the jury panel	Denied on Merits 12/23/99 Denied on Merits 12/22/00	

32	Misconduct of a prejudicial nature occurred regarding jurors Venable, Golding and Woodward	Denied on Merits 12/23/99 Denied on Merits 12/22/00	
33	There was juror misconduct relating to the issue of whether “life without possibility of parole” means life without possibility of parole.	Denied on Merits 12/23/99 Denied on Merits 12/22/00	
34	The prosecution knowingly used false testimony and improper argument to secure a conviction and death judgment against Petitioner	Denied on Merits 12/23/99 Denied on Merits 12/22/00	
35	The trial court failed to follow the prior determination that Billy Brown was an accomplice as a matter of law.	Denied on Merits 5/11/00 Denied on Merits 12/22/00	Obj filed> Mtn Reconsideration 8/4/00, denied 12/22/00
36	The trial court committed prejudicial error by failing to instruct that evidence of oral admissions of the Petitioner ought to be viewed with caution (a) Failure to Give Cautionary Instruction Regarding Admissions of Stankewitz (b) Failure to Give Cautionary Instruction Regarding Admissions of Stankewitz	Denied on Merits 5/11/00 Denied on Merits 12/22/00 Denied on Merits 12/22/00	Obj filed> Mtn Reconsideration 8/4/00, denied 12/22/00
37	Error occurred due to: (1) the admission of seized writings from Petitioner’s cell; (2) the instruction that if Petitioner attempted to persuade a witness to testify	Denied on Merits 12/23/99	

	falsely or tried to fabricate evidence to be produced at the trial, such attempt could be considered by the jury as a circumstance tending to show a consciousness of guilt; and (3) Petitioner's lawyer at the second trial failed to renew objections made at the first trial which had never been decided in the first appeal	Denied on Merits 12/22/00	
38	The trial court erred by instructing the jury concerning the factors to be considered in determining whether or not the homicide was committed while the robbery was still in progress	Denied on Merits 5/11/00 Denied on Merits 12/22/00	Obj filed> Mtn Reconsideration 8/4/00, denied 12/22/00
39	Instructions on principals and aiding and abetting were erroneous and unconstitutional because they did not advise the jury that conviction as an aider and abettor required not only that Petitioner have knowledge of the criminal purpose of the perpetrator of the offense, but also that Petitioner share that purpose or intent to commit, encourage or facilitate the commission of the crime	Denied on Merits 5/11/00 Denied on Merits 12/22/00	Obj filed> Mtn Reconsideration 8/4/00, denied 12/22/00
40	The accomplice instructions given by the trial court were defective	Denied on Merits 5/11/00 Denied on Merits 12/22/00	Obj filed> Mtn Reconsideration 8/4/00, denied 12/22/00
41	The trial court failed to instruct on the legal effect of the evidence introduced by the prosecution, that the intent to permanently deprive the victim of her car did not arise until after the killing	Denied on Merits 5/11/00 Denied on Merits 12/22/00	Obj filed> Mtn Reconsideration 8/4/00, denied 12/22/00
42	The trial court failed to properly instruct the jury in the response to its question about the likelihood of release pursuant to a sentence of life without parole	Denied on Merits 5/11/00	Obj filed> Mtn Reconsideration 8/4/00, denied 12/22/00

		Denied on Merits 12/22/00	
43	The trial court failed to instruct the jury: (1) that it could impose the death penalty only if the jury was convinced beyond a reasonable doubt that death was the appropriate punishment; (b) that the facts underlying any aggravating factor must be found beyond a reasonable doubt; and (c) as to any burden of proof at all in the finding of facts at the penalty phase	Denied on Merits 5/11/00 Denied on Merits 12/22/00	Obj filed> Mtn Reconsideration 8/4/00, denied 12/22/00
44	The trial court failed to instruct the jury at the penalty phase that it could not consider any evidence of other criminal activity by Petitioner, unless jurors unanimously agreed that the criminal activity had been proved beyond a reasonable doubt	Denied on Merits 5/11/00 Denied on Merits 12/22/00	Obj filed> Mtn Reconsideration 8/4/00, denied 12/22/00
45	Numerous errors were committed in the admission of evidence of unadjudicated criminal activity	Denied on Merits 5/11/00 Denied on Merits 12/22/00	Obj filed> Mtn Reconsideration 8/4/00, denied 12/22/00
46	The robbery special circumstance finding was invalid	Denied on Merits 5/11/200 Denied on Merits 12/22/00	Obj filed> Mtn Reconsideration 8/4/00, denied 12/22/00
47	The trial court failed to instruct the jurors that they had to agree unanimously: (1) on the particular act of taking which constituted robbery; (2) that the defendant was guilty of robbery with respect to that act of taking; and (3) that the murder took place during the commission of the act of taking	Denied on Merits 5/11/00 Denied on Merits 12/22/00	Obj filed> Mtn Reconsideration 8/4/00, denied 12/22/00
48	The robbery special circumstance finding was invalid	Denied on Merits 5/11/00	Obj filed> Mtn Reconsideration

		Denied on Merits 12/22/00	8/4/00, denied 12/22/00
49	Petitioner's death sentence was constitutionally disproportionate on its face and the facts of the case, and the California Supreme Court erroneously failed to grant Petitioner's request that it undertake a comparative sentence review to so determine.	Denied on Merits 12/23/99 Denied on Merits 12/22/00	
50	The California capital sentencing scheme, as applied and administered in this case, violated Petitioner's right to due process and equal protection, and to be free from cruel and unusual punishment because the death penalty is sought and imposed in California in an arbitrary, standardless, and discriminatory manner, and the California Supreme Court improperly denied Petitioner an evidentiary hearing with respect to this matter	Denied on Merits 12/22/00	
51	Petitioner was denied the benefits of ameliorative changes in the 1978 death penalty statute	Denied on Merits 5/11/00 Denied on Merits 12/22/00	Obj filed> Mtn Reconsideration 8/4/00, denied 12/22/00
52	California's 1977 death penalty statute is invalid on its face and as applied to the facts of this case	Denied on Merits 12/23/99 Denied on Merits 12/22/00	
53	There was no basis for a first-degree murder verdict under the felony murder rule, since the evidence established as a matter of law that the homicide was not committed in the perpetration of a robbery	Denied on Merits 5/11/00 Denied on Merits 12/22/00	Obj filed> Mtn Reconsideration 8/4/00, denied 12/22/00

54	The trial court failed to instruct the jury that it might consider any mitigating factor proffered by Petitioner, including sympathy or compassion for Petitioner	Denied on Merits 5/11/00 Denied on Merits 12/22/00	Obj filed> Mtn Reconsideration 8/4/00, denied 12/22/00
55	The trial court improperly ruled during closing argument on objections relating to the prosecution's failure to present the testimony of Teena Topping, Christina Menchaca, and Marlin Lewis, and in regard to the prosecutor's misconduct in related portions of his guilt phase closing argument	Denied on Merits 5/11/00 Denied on Merits 12/22/00	Obj filed> Mtn Reconsideration 8/4/00, denied 12/22/00
56	Petitioner's trial counsel, Hugh Goodwin, failed to investigate and present evidence of innocence at the guilt phase	Denied on Merits 12/22/00	
57	The prosecutor's presentation of evidence and argument on victim-impact matters, and the trial court's reliance on that evidence when it denied Petitioner's Penal Code section 190.4(e) motion, were improper	Denied on Merits 5/11/00 Denied on Merits 12/22/00	Obj filed> Mtn Reconsideration 8/4/00, denied 12/22/00
58	Impermissible race considerations including the fact that Petitioner is Native America, prejudicially affected the charging, trial, conviction, and death sentence.	Denied on Merits 12/23/99 Denied on Merits 12/22/00	

ADDENDUM 3
(Table of Previous Stankewitz Case Dispositions)

In re Douglas Ray Stankewitz on Habeas Corpus
In the Supreme Court of California
Case No.: S047659

7/14/95 Petition for Writ of Habeas Corpus
9/29/95 Response Filed
12/15/95 Reply filed
3/14/96 Order Denying Petition (entirety on merits)

Claim No.	Description	Disposition	Notes
1	[? Unknown but order states substantive issue could have been raised on appeal]	Denied	Could have been raised on appeal
	Related claim of ineffective assistance of counsel	Denied	Could have been raised in first petition for writ of habeas corpus
2	?	Denied	Untimely
3			
4			
5	?	Denied	Successive

ADDENDUM 4
(Table of Previous Stankewitz Case Dispositions)

Douglas Ray Stankewitz v. Jeanne S. Woodford, Warden, San Quentin State Prison
In the United States Court of Appeals, Ninth Circuit
Published Opinion: 365 F.3d 706 (2004)
Unpublished Opinion: 94 Fed.Appx. 600, 2004 WL 768969 (C.A.9 (Cal.))
Case No.: 01-99022
Appeal from District Court Case No.: CV-91-00616-AWI

	Description	Disposition	Notes
Published	Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) does not apply	Reversed D.C. Ruling on different grounds	Court applied pre-AEDPA standards to Defendant's Claims
	Ineffective assistance of counsel for failure to investigate and present evidence of mitigation during penalty phase, in particular, Defendant's abusive background.	Remanded for evidentiary hearing	
	Conflict of interest between Goodwin's religion and representation of Defendant	Denied.	(Footnote 9) No evidence of conflict
	Ineffective assistance for failure to investigate and present evidence during guilt phase of drug use on day of shooting in support of diminished capacity defense.	Denied.	(Footnote 7) Goodwin chose to attack Brown's credibility – diminished capacity defense would undercut choice and tend to corroborate Brown's version
Unpublished	Goodwin's conflict of interest in previous representation of Johnnie Stankewitz	Denied.	No evidence presented as to actual conflict or negative effect on representation
	Brady violation – failure to disclose Stankewitz's brother in car during 1973 shootout	Denied.	Goodwin possessed information. No objection to mention of brother should

			have been made available to testify.
	Court formulated supplemental instruction re: question regarding whether a person sentenced to LWOP could in fact be paroled.	Denied.	Court cautioned jury not to consider what LWOP meant. Jury presumed to follow instructions. No abuse of discretion.
	Jurors considered extrinsic evidence of family's reputation for violence.	Denied.	No evidence or facts alleged to suggest that knowledge affected decision.
	Expanded Certificate of Appealability (A) Not competent to stand trial	Decline to Expand COA	Reasonable jurists would not find DC's assesment of experts as debatable or wrong
	Expanded Certificate of Appealability (B) Failure to investigate competence to stand trial	Decline to expand COA	1983 evidence fails to show bona fide doubt re: competence
	Expanded Certificate of Appealability (C) Failure to investigate defense of diminished capacity due to mental illness	Decline to expand COA	No substantial showing that in 1983 Goodwin would have discovered info supporting diminished capacity
	Expanded Certificate of Appealability (D) Failure to investigate and pursue insanity defense	Decline to expand COA	No evidence that Stankewitz was insane at time of crime.
	Expanded Certificate of Appealability (E) Goodwin's failure to move for change of venue.	Decline to expand COA	Reasonable jurist would agree location had no bearing on outcome.
	Expanded Certificate of Appealability (F) Juror lied about material question on voir dire	Decline to expand COA	Juror's strong negative feelings about violence against women did not indicate bias against Stankewitz
	Expanded Certificate of Appealability (G) Incorrect aiding and abetting instruction	Decline to expand COA	Instruction did not comply with ruling in <i>Beeman</i> , but error

			could not have affected verdict
	ALL OTHER CLAIMS FOR WHICH DEFENDANT REQUESTS COA	Deny without specifically addressing	Duplicative of other claims for which COA has already been granted or for which court now declines to expand COA

ADDENDUM 5
(Table of Previous Stankewitz Case Dispositions)

Douglas Ray Stankewitz v. Robert K. Wong
In the United States Court of Appeals, Ninth Circuit
Published Opinion: 698 F.3d 1163 (2012)
Case No.: 10-99001
Appeal from District Court Case No.: CV-91-00616-AWI

1. USCA remand to USDC for evidentiary hearing on Defendant’s claim if ineffective assistance of counsel for failure to investigate and present evidence of mitigation during penalty phase (noting application of pre-AEDPA standards in review)
2. District Court expanded record to include files from first trial and other documents proffered by Stankewitz.
3. Parties agreed to brief merits based on evidence in the record.
4. Stankewitz argued he was entitled to relief based on documentary evidence, or alternatively, requested hearing.
5. State’s position was no hearing necessary and Stankewitz’s petition should be denied.
6. District Court granted Petition for Habeas Corpus
7. State appealed.
8. District Court grant of Habeas AFFIRMED.

Raised by State: Goodwin’s failures re investigation and presentation of mitigation	Key Findings		
District Court’s findings, generally	Each of Court’s findings adequately supported by the record		
Stankewitz was severely emotionally damaged by his upbringing	Court did not clearly err by concluding Stankewitz was severely damaged by his upbringing. (Extensive discussion on evidence in the record on this issue.)		
Stankewitz’s history of substance abuse and consumption of substantial quantities leading up to shooting	State fell well short of establishing error		
Record does not establish deficiency or prejudice – see following breakdown			

<p>Failure to investigate and present mitigating evidence was reasonable because Stankewitz opposed to penalty phase defense</p>	<p>Argument rejected in prior (2004) opinion. State did not introduce evidence on remand nor advance argument that undermines earlier analysis.</p>		
<p>“Dramatic” change to record, i.e. Goodwin in possession of Sciandra files from first trial undermine prior deficiency analysis</p>	<p>Goodwin’s possession of file being evidence of investigation defies logic. If anything, further supports finding of deficiency in that, having possession of file, further investigation would have been warranted based on review.</p>		
<p>No prejudice to Stankewitz using analysis in <i>Wong v. Belmontes</i></p>	<p>Analysis of whether mitigation evidence was a judgment based on severity of same being viewed more as aggravating rather than mitigating. Extensive discussion concluding that substantial evidence could have been presented with no risk of further aggravation of negative impression of Defendant given evidence presented by State to demonstrate violent anti-social behavior, the hesitation of some jurors regarding death penalty and potential for different outcome if presented to jury. Failures by Goodwin prejudiced Stankewitz.</p>		

MOTION FOR OR EXHIBIT 20b



Try our Docket Alerts

or Log in



Thursday, November 18, 2021

Judge won't delay vaccine mandate for California prison staff

Correctional officers will have to be vaccinated by Jan. 12, as a judge denied their request to hold off on imposing a vaccine mandate pending the outcome of their appeal.

MARIA DINZEO / November 17, 2021



A condemned inmate is led out of his east block cell on death row at San Quentin State Prison in San Quentin, Calif. in 2016. (AP Photo/Eric Risberg, File)

OAKLAND, Calif. (CN) — A federal judge has rejected a bid from California's prison guards to defer an order that all prison employees be vaccinated against Covid-19.

“This court has determined that its mandatory vaccination order is required to protect the constitutional rights of persons incarcerated by the State of California, and that plaintiffs face a substantial risk of serious harm, including serious illness and death, in the absence of a vaccine mandate,” U.S. District Judge Jon Tigar wrote in a [ruling](#) issued late Wednesday.

The threat of Covid-19 in California prisons has largely abated, lawyers for correctional staff told the judge at a virtual hearing that afternoon as they tried to [persuade](#) him to hold off on imposing the [vaccine mandate](#) he issued in late September.

His compliance deadline of Jan. 12, 2022, has given rise to fierce resistance from the state’s powerful prison guards’ union, the California Correctional Peace Officers Association, who along with Governor Gavin Newsom asked Tigar to postpone the vaccine mandate pending the outcome of their appeal to the Ninth Circuit.

“We have compelling reasons for a stay to protect our members. If the order goes into effect, we have tens of thousands of men and women who have dedicated their careers to keeping their communities safe — they worked through this pandemic while many of us sat in clean, safe offices — and now they're going to be asked to either take an unwanted medical procedure or potentially risk their careers,” union attorney Greg McLean Adam told Tigar.

He said the prisons have had remarkable success in keeping the virus at bay since March of this year, noting that case rates among inmates continue to hover [around 200](#).

“There have been no major spikes since March,” Adam said. “The case count has been pretty much at 200 since March. Yes there have been instances in individual prisons. But 50% of our prisons have no cases whatsoever yet are facing the same mandate applying to all.”

Active cases among prison employees has also dropped, he noted. “Not that we're out of the woods, but given the gravity of this case and the extraordinary relief the court has granted, the court can issue a stay given the current conditions in the prison without feeling there's a dramatic risk of injury to the residents by doing so.”

He said Tigar should not dwell on trying to "achieve perfection," to which the judge retorted, "My goal is not perfection but avoiding preventable death is among the considerations on the table."

He later addressed the correctional staff who may be watching the hearing on Zoom.

"I know that not all of you agree with what I'm doing. But I will say I feel the deaths of correctional and other staff from Covid very heavily and part of my mission is to protect you," Tigar said. "And I'm sorry if you don't like the way I'm doing it, but God I wish it wouldn't happen anymore."

Attorney Brad Brian, who represents a federal receiver appointed to oversee the prison system, said about 518 people have been sickened with Covid-19 and nine staff members have died in the span of time between Tigar's order dated Sept. 27 and the end of October. "A tenth one has died since then," he added. "There were major outbreaks in five institutions during that period, and there's now been a major outbreak in a sixth."

Laura Bixby, an attorney with the Prison Law Office who represents inmates, pointed to Newsom's recent pronouncement that winter may bring another rise in cases. "Is even one unnecessary death sufficient to justify not granting a stay? We would say yes," she said.

In his ruling Tigar said that while staff may choose to resign or retire rather than accept the vaccine, "Defendants' and CCPOA's dire predictions of what might happen in the absence of a stay are speculative" since the number of potential staff departures remains unknown.

The union did not respond to a request for comment by press time.

[Follow @MariaDinzeo](#)

Read the Top 8

Sign up for the CNS Top Eight, a roundup of the day's top stories delivered directly to your inbox Monday through Friday.

MOTION FOR OR EXHIBIT 20c

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

DOUGLAS RAY STANKEWITZ,

Defendant and Appellant.

Case No. F079560

Fresno County Superior Court, Case No. CF78227015
The Honorable Arlan Harrell, Judge

RESPONDENT'S BRIEF

XAVIER BECERRA
Attorney General of California
LANCE E. WINTERS
Chief Assistant Attorney General
MICHAEL P. FARRELL
Senior Assistant Attorney General
CATHERINE CHATMAN
Supervising Deputy Attorney General
ERIC L. CHRISTOFFERSEN
Supervising Deputy Attorney General
State Bar No. 186094
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 210-7686
Fax: (916) 324-2960
E-mail:
Eric.Christoffersen@doj.ca.gov
*Attorneys for Plaintiff and
Respondent*

Document received by the CA 5th District Court of Appeal.

TABLE OF CONTENTS

	Page
Statement of the Case	5
Statement of Facts.....	7
Argument.....	12
I. Since Appellant’s Death Sentence Was Vacated, the Trial Court had Full Sentencing Discretion at Resentencing; Remand for Resentencing is Therefore Necessary	12
A. Relevant Background	12
B. Relevant Law	14
1. Scope of federal habeas corpus authority.....	14
2. California’s “Full Resentencing Rule”	15
C. The Trial Court Was Mistaken Regarding the Scope of Its Discretion When Resentencing Appellant.....	16
II. Appellant’s Claim Regarding Denial of a Continuance Is Moot.....	18
A. The Trial Court Properly Denied Appellant’s Motion for New Trial As Untimely.....	19
Conclusion	24

TABLE OF AUTHORITIES

	Page
CASES	
<i>Douglas v. Jacquez</i> (9th Cir. 2010) 626 F.3d 501.....	14, 15, 16
<i>Fay v. Noia</i> (1963) 372 U.S. 391	14, 16
<i>In re Estrada</i> (1965) 63 Cal.2d 740	22
<i>In re Marriage of Cornejo</i> (1996) 13 Cal.4th 381.....	22
<i>People v. Betterton</i> (1979) 93 Cal.App.3d 406	19
<i>People v. Buycks</i> (2018) 5 Cal.5th 857.....	12, 15, 16
<i>People v. Chavez</i> (2018) 4 Cal.5th 771.....	22
<i>People v. Deere</i> (1991) 53 Cal.3d 705	23
<i>People v. Gamble</i> (2008) 164 Cal.App.4th 891	18
<i>People v. Hales</i> (1966) 244 Cal.App.2d 507	20
<i>People v. Lamb</i> (1999) 76 Cal.App.4th 664.....	19
<i>People v. McDaniels</i> (2018) 22 Cal.App.5th 420	18
<i>People v. McKenzie</i> (2020) 9 Cal.5th 40.....	22

**TABLE OF AUTHORITIES
(continued)**

	Page
<i>People v. Pineda</i> (1967) 253 Cal.App.2d 443	21, 22
<i>People v. Smyers</i> (1969) 2 Cal.App.3d 666	21
<i>People v. Stankewitz</i> (1990) 51 Cal.3d 72	5, 7, 23
<i>People v. Stuckey</i> (2009) 175 Cal.App.4th 898.....	19
<i>People v. Williams</i> (1981) 30 Cal.3d 470	17
<i>Stankewitz v. Wong</i> (9th Cir. 2012) 698 F.3d 1163.....	5, 6
<i>Stankewitz v. Woodford</i> (9th Cir. 2004) 94 F. App'x 600	5
<i>Tapia v. Superior Court</i> (1991) 53 Cal.3d 282	17
<i>Williams v. New York</i> (1949) 337 U.S. 241	19

STATUTES

Penal Code

§ 187.....	5
§ 207.....	5
§ 211.....	5
§ 1182.....	20
§ 1385.....	17, 19, 22
§ 1385.1.....	17
§ 12022.5.....	5, 17

STATEMENT OF THE CASE

Following a second jury trial, appellant, Douglas Stankewitz, was convicted of first degree murder (Pen.¹ Code, § 187), robbery (§ 211), and kidnapping (§ 207), all with personal use of a firearm (§ 12022.5). (*People v. Stankewitz* (1990) 51 Cal.3d 72, 81.) The jury further “found true the special circumstance allegations that the murder was wilful, deliberate and premeditated and was committed by defendant during the commission of a robbery and a kidnapping.” (*Ibid.*) Following a penalty phase, the jury returned a verdict of death. (*Ibid.*)

Following an automatic appeal, the California Supreme Court affirmed the guilt, special circumstance, and penalty findings by the jury. (*People v. Stankewitz, supra*, 51 Cal.3d at p. 116.) In 2012, following extensive litigation, the Ninth Circuit Court of Appeal affirmed the district court’s grant of habeas relief that reversed appellant’s death sentence for ineffective assistance of counsel. (*Stankewitz v. Wong* (9th Cir. 2012) 698 F.3d 1163, 1176.)² The court specifically affirmed

the district court’s order granting Stankewitz a writ of habeas corpus directing the State of California to either: (a) vacate and set aside the death sentence in *People v. Douglas Ray Stankewitz*, Fresno County Superior Court Case No. 227015-5, unless the State of California initiates proceedings to retry Stankewitz's sentence

¹ Unless otherwise specified, all further statutory references are to the Penal Code.

² The Ninth Circuit had previously affirmed the district court’s denial of appellant’s guilt-phase challenges. (*Id.* at p. 1165, citing *Stankewitz v. Woodford* (9th Cir. 2004) 94 F. App'x 600.)

within 90 days; or (b) resentence Stankewitz to life without the possibility of parole.

(*Id.* at p. 1176.)

On April 19, 2019, the People filed a request to resentence appellant to life without the possibility of parole. (CT 140-142.) On April 24, 2019, appellant filed a request to continue, among other matters, the resentencing hearing. (CT 143-148.) The court denied the motion to continue. (CT 151-152.) On April 30, 2019, appellant filed another motion to continue the scheduled sentencing hearing. (CT 153-155.) On May 1, 2019, the court denied the continuance, citing a lack of discretion to sentence appellant to anything other than life without possibility of parole. (CT 157-158.)

On May 3, 2019, the court vacated appellant's death sentence and resentedenced appellant to a total sentence of life without possibility of parole (LWOP) plus seven years. (CT 160, 162-164.) The court imposed LWOP for count 1, the murder with special circumstances conviction; seven years total on the kidnapping conviction (upper term of five years with a two-year gun use enhancement); and a concurrent term of four years on the robbery conviction. (CT 162-164.)

On June 27, 2019, appellant filed a notice of appeal. (CT 171.)

STATEMENT OF FACTS³

On the evening of February 7, 1978, defendant, then 19 years old, left Sacramento driving a white Oldsmobile. He was headed for Fresno. In his company were his mother and brother, an older man named J.C., and three young companions, Marlin Lewis, Tina Topping and fourteen-year-old Billy B.

The group reached Manteca about 1 a.m. on February 8, and stopped at a 7-Eleven store to buy oil for the car. Manteca police observed the car irregularly parked and ran a check on the license plate. Information was received indicating that the car had been stolen. Several officers then approached the car and frisked several of the occupants. One of the passengers who identified herself as “Tina Lewis” stated that the car had been borrowed from her uncle in Sacramento. Based on that information the officers contacted Sacramento police, but were unable to determine whether the car had in fact been stolen. The officers asked the group to follow them to the police station. Another attempt was made to contact the vehicle’s owner without success. After about an hour and a half, they were allowed to leave, but the vehicle was impounded. Before departing, the group obtained directions to the local bus depot.

The bus depot was not open when they arrived so they waited in a nearby donut shop. After several hours, defendant,

³ The facts are taken verbatim from the California Supreme Court’s 1990 published opinion. (*People v. Stankewitz* (1990) 51 Cal.3d 72, 81-84.) For ease of reading, block quotation format has not been used.

Tina Topping, Marlin Lewis, and Billy B. decided to hitchhike. Defendant's mother and brother and J.C. remained at the station. Defendant and his three companions succeeded in hitchhiking as far as Modesto. Unable to get a ride any farther, the four walked to a nearby Kmart, where defendant announced that they were "going to look around for a car." Defendant and Tina Topping proceeded to look for a car—apparently to steal—in the parking lot; Billy eventually went inside the K mart. When he exited, he saw Topping pointing toward a woman walking to her parked car. Defendant, Marlin Lewis and Topping followed the woman; as she opened her car door, Topping pushed her inside and entered the car herself. Marlin Lewis then jumped in the backseat and opened the passenger side door, admitting defendant. Topping honked the car horn. Billy, in response, started to walk back toward the store; Topping shouted "come on" and Billy reversed field, ran to the car and got in the backseat with Marlin Lewis. In the meantime, defendant had produced a pistol, and Marlin Lewis produced a knife.

They exited the K mart parking lot, Tina Topping driving, the victim—Theresa Greybeal—seated on the console, and defendant seated next to her in the passenger seat; Billy B. and Marlin Lewis were seated in the back. The group proceeded to the freeway and turned south toward Fresno.

Once on the freeway, Ms. Greybeal stated that none of this would have happened if she had her dog with her. Defendant responded by pulling out his gun and stating, "This would have taken care of your dog." After several miles, Tina Topping asked

Ms. Greybeal for money and Ms. Greybeal took \$32 from her purse and handed it to Marlin Lewis. She also gave Topping her wristwatch, with the comment that she could put in an insurance claim for the loss.

When the group arrived in Fresno they drove directly to a bar called the “Joy and Joy.” Tina Topping went into the bar and returned after a few minutes with a woman named Christina Menchaca. Menchaca joined the group, now totalling six, and they drove around the corner to the Olympic Hotel. Topping and Menchaca went into the hotel. A few minutes later they returned to get defendant and all three then reentered the hotel. Several minutes later defendant returned to retrieve the pistol from Marlin Lewis. Shortly thereafter, defendant, Topping and Menchaca returned to the car. They appeared to be moving more slowly; their eyes were glassy.

Tina Topping then suggested they go to Calwa to “pick up,” a slang expression meaning to obtain heroin. They drove to Calwa, stopping near a house with a white picket fence. Topping told everyone to get out, she did not want a lot of company when they went to “pick up.” Several of the group exited the car, including Billy B., Marlin Lewis, defendant, and the victim, Ms. Greybeal. Billy asked the victim for a cigarette; she gave him one and took one for herself. After two or three minutes, Topping told Billy to get back in the car. Billy reentered the car along with Marlin Lewis. From inside the car, Billy saw defendant walk toward Ms. Greybeal, who was standing five or six feet away. Ms. Greybeal was facing away from the car. Defendant raised the gun in his

left hand, braced it with his right hand, and shot her once in the head from a distance of about one foot. Ms. Greybeal fell to the ground, fatally wounded.

Defendant returned to the car and said, “Did I drop her or did I drop her?” Marlin Lewis responded, “You dropped her.” Both were giggling. As the car pulled away, defendant cautioned Tina Topping to drive slowly so they would not get caught. Marlin Lewis observed that the victim’s purse was not in the car and concluded, “we made a bad mistake.”

After returning to Fresno, the group drove to the Seven Seas Bar and Christina Menchaca went inside to try to sell the victim’s watch. Defendant asked her to try to get \$60 for it. While Menchaca and Marlin Lewis were inside the bar, two police officers approached the car. Tina Topping told Billy B. to give a false name. He did so and after some brief questioning the officers left. Menchaca returned saying that she had not succeeded in selling the watch and defendant suggested they move on and try to sell it in Clovis.

Defendant’s efforts to sell the watch, however, were also unsuccessful. In Clovis a girl informed Billy that his mother had filed a missing person’s report on him. Billy asked to be driven home to Pinedale.

When he arrived home, Billy B. began to cry and told his mother what had happened. His mother called the police and an investigator came to the house and took a statement from Billy. Later that evening, Fresno police apprehended defendant, Tina Topping and Marlin Lewis, still in possession of the victim’s car.

The pistol that had been used to kill Ms. Greybeal was found in the car. Her watch was recovered from the jacket of Christina Menchaca, who was arrested nearby.

The foregoing account of the murder came primarily from Billy B. Other witnesses corroborated various portions of the testimony. Ms. Greybeal's father confirmed that she had left his residence on the evening of the murder to pick up some cigarettes at the K mart; she was driving her father's car, the vehicle in which defendant was later apprehended. He also testified that the victim owned two dogs. The officers who arrested defendant were called as witnesses, as well the officers who found the victim's body and examined the crime scene. A ballistics expert confirmed that the victim had been shot from a distance of six to twelve inches; an expended shell case found in the vicinity of the body was determined to have been fired from the gun recovered from the victim's car. The victim's handbag and an unlit cigarette were also found near the body. The coroner who performed the autopsy confirmed that the victim had been killed by a single gunshot wound to the neck, severing the spinal cord and causing immediate paralysis and death.

Also introduced at the guilt phase were five yellow sheets of paper seized from defendant's cell during a routine search for contraband. The handwriting on the papers was identified as defendant's. The papers contained narrative scripts for Tina Topping, Marlin Lewis and Christina Menchaca indicating how the kidnapping, robbery and homicide had supposedly occurred. These fictional accounts blamed the killing on Lewis.

ARGUMENT

I. SINCE APPELLANT’S DEATH SENTENCE WAS VACATED, THE TRIAL COURT HAD FULL SENTENCING DISCRETION AT RESENTENCING; REMAND FOR RESENTENCING IS THEREFORE NECESSARY

Appellant first argues that the trial court violated his constitutional rights by failing to exercise its discretion when imposing sentence following a grant of federal habeas relief. (AOB 26-52.) Appellant’s constitutional arguments aside, respondent agrees that the trial court erred by failing to recognize its inherent sentencing discretion in this matter. Remand is therefore necessary for the court to properly exercise “full resentencing.” (*People v. Buycks* (2018) 5 Cal.5th 857, 893.)

A. Relevant Background

After the People moved to have appellant sentenced to LWOP (CT 140-142), the court denied appellant’s requests for a continuance of the sentencing hearing (CT 143-148, 153-155), which was scheduled for May 3, 2019. (CT 157-158; RT 35-36.) At the sentencing hearing, counsel for appellant again renewed the motion for a continuance. (RT 36-37.) Counsel argued that another of appellant’s attorneys, “wanted to present the Court with an argument and points and authorities that would allow the Court to strike the special circumstances and impose a sentence of life with parole. And I do believe the Court has that authority under 1385 and 1118.” (RT 37.)

In response, the court ruled, “on the continuance issue, the Court is denying the continuance, as I had denied it twice

previously.” (RT 39.) On the issue of sentencing, the court further ruled:

Frankly, at this point, the Court doesn't see – given the position taken by the People and the directive from the Federal Court, again, this Court's jurisdiction is based upon that order from the Court. And the order was to impose a specific sentence in the case if the People did not pursue the death penalty. . . . Now that [the penalty retrial] is being removed, it doesn't appear to the Court that it has any ability – and to be completely frank, I'm not sure how I would perform – if I did have the ability, I can't say what I would do. I'm a rule follower, basically, and I was given very specific directions from the Federal Court in this particular instance.

(RT 40.)

After further argument from appellant's counsel, the court stated:

Again, I'm afraid I tipped my hand a little bit, but it should be no surprise to anyone that when the Federal Court gives a directive to a State Court that the State Court is going to follow that directive. So the Court will proceed to sentencing. I have not heard anything concerning any other remedies that may be sought by Mr. Stankewitz, or on behalf of Mr. Stankewitz, that suggest that those remedies cannot be addressed post judgment.

(RT 42.) Ultimately the court ruled,

This Court has one option, and that is, to impose life without the possibility of parole [¶] In order to accomplish the directive set by the Federal Court, the Court hereby vacates the death sentence imposed concerning Mr. Stankewitz pursuant to that Federal directive and will resentence Mr. Stankewitz concerning the first degree murder conviction with

special circumstance to a term of life without the possibility of parole.

(RT 47-48.) The court proceeded to sentence appellant to LWOP on the murder conviction and imposed the same sentences for the kidnapping and robbery counts as had been originally imposed.

(RT 48-49.)

B. Relevant Law

The instant case implicates two principles of law: (1) the scope and nature of federal habeas relief; and (2) a trial court’s discretion on resentencing when a conviction has been vacated.

1. Scope of federal habeas corpus authority

“Habeas lies to enforce the right of personal liberty; when that right is denied and a person confined, the federal court has the power to release him.” (*Fay v. Noia* (1963) 372 U.S. 391, 430-431, overruled on other grounds by *Wainwright v. Sykes* (1977) 433 U.S. 72, 87.) However, as the United States Supreme Court has made clear, outside of the power to release a petitioner, a federal habeas court “has no other power.” (*Id.* at p. 431.) Specifically, the court “cannot revise the state court judgment; it can act only on the body of the petitioner.” (*Ibid.*)

This principle was recognized by the Ninth Circuit Court of Appeals in *Douglas v. Jacquez* (9th Cir. 2010) 626 F.3d 501, 505. In that case, the district court had granted habeas relief after concluding that the evidence was insufficient to sustain the defendant’s conviction for arson of an inhabited structure. (*Id.* at p. 504.) Specifically, the court had found that the evidence that the structure was “inhabited” was insufficient. (*Ibid.*) Given the

lack of evidence of only one element of the offense when it granted habeas relief, the district court specifically “instructed the state court to enter a sentence for arson of a structure.”

(Ibid.)

On appeal, the Ninth Circuit held that the district court “exceeded its habeas jurisdiction” and “impermissibly attempted to revise the state court judgment.” (*Douglas, supra*, 626 F.3d at p. 504.) The court recognized that “[t]he district court’s power under habeas corpus was either immediately to vacate the prisoner’s arson sentence, or to postpone such relief for a reasonable period to allow the state court properly to sentence the prisoner.” (*Ibid.*) The court further noted that since the California trial court had the authority to modify the judgment under state law, “it should be given the opportunity to do so.” (*Id.* at p. 505.) In other words, the state court should “have the opportunity to correct its own constitutional error” through the appropriate application of California law. (*Ibid.*)

2. California’s “Full Resentencing Rule”

In *People v. Buycks, supra*, 5 Cal.5th at page 893, our Supreme Court reaffirmed California’s “full resentencing rule” in the context of a Proposition 47 resentencing proceeding. Specifically, the Supreme Court recognized that “[w]e have held that when part of a sentence is stricken on review, on remand for resentencing ‘a full resentencing as to all counts is appropriate, so the trial court can exercise its sentencing discretion in light of the changed circumstances.’ [Citations].” (*Ibid.*) Thus, when a sentence has been recalled, “the resentencing court has

jurisdiction to modify every aspect of the sentence, and not just the portion subjected to the recall. [Citations].” (*Ibid.*) And, “the resentencing court may consider ‘any pertinent circumstances which have arisen since the prior sentence was imposed.’ [Citation].” (*Ibid.*)

C. The Trial Court Was Mistaken Regarding the Scope of Its Discretion When Resentencing Appellant

As the court below made clear, it operated under the impression that it had no discretion to deviate from the specific direction of the federal court that granted relief. Specifically, the court determined that it had no choice but to sentence appellant to LWOP if the People chose not to seek another death sentence. (RT 47-48.) The court was mistaken.

First, pursuant to *Fay* and *Douglas*, the federal court in this case had no power to limit or otherwise control the state court’s discretion at resentencing. The only power the federal court had was to order appellant’s death sentence to be vacated because it was unconstitutional. Thus, the federal court had no power to order the trial court to impose a specific sentence once the unconstitutional sentence had been vacated. To the extent that the trial court believed the federal court’s order limited its discretion, the court was mistaken.

Second, given that appellant’s death judgment had been vacated by the federal court, any resentencing would be subject to the full resentencing rule as articulated in *Buysks, supra*, 5 Cal.5th at page 893. Under that rule, the trial court here had full

discretion when resentencing appellant on his murder, kidnapping, and robbery conviction.

As appellant recognizes (AOB 34), in 1978, at the time of the offense in this case, a trial court had the authority pursuant to section 1385 to strike a jury's special circumstance finding. (*Tapia v. Superior Court* (1991) 53 Cal.3d 282, 298, fn. 17; *People v. Williams* (1981) 30 Cal.3d 470, 489.)⁴ Thus, at resentencing, the trial court had the authority under section 1385 to strike the special circumstance finding.

Moreover, the trial court also had the discretion to strike the firearm enhancement imposed pursuant to section 12022.5. Subdivision (c) of that law, as amended by SB 620, provides

The court may, in the interest of justice pursuant to Section 1385 and at the time of sentencing, strike or dismiss an enhancement otherwise required to be imposed by this section. The authority provided by this subdivision applies to any resentencing that may occur pursuant to any other law.

As the statutory language makes clear, this discretionary authority applies retroactively to any resentencing that may occur, like in the present case.

Accordingly, the trial court below was authorized to exercise its discretion on resentencing on two distinct matters: striking the special circumstance findings and the firearm enhancement.

⁴ Subsequent to *Williams*, the Legislature added section 1385.1, which prohibits a trial court from striking a special circumstance finding under section 1385. (*Tapia, supra*, 53 Cal.3d at 298, fn. 17.) However, that statutory change may not be imposed retroactively to offenses arising prior to the change. (*Id.* at p. 298.)

The court's failure to recognize the existence of this discretion was error. And, "[w]hen the record shows that the trial court proceeded with sentencing on the ... assumption it lacked discretion, remand is necessary so that the trial court may have the opportunity to exercise its sentencing discretion at a new sentencing hearing." (*People v. McDaniels* (2018) 22 Cal.App.5th 420, 425.)

Finally, remand is appropriate here because the record does not definitively show that the trial court would not have exercised its discretion to strike had it been aware of such authority. (Cf. *People v. Gamble* (2008) 164 Cal.App.4th 891, 901 [if "the record shows that the trial court would not have exercised its discretion even if it believed it could do so, then remand would be an idle act and is not required."].) Here, the trial court specifically indicated that it was not sure how it would rule if it had the discretion appellant urged him to exercise. (RT 40.) Given the court's express uncertainty regarding how it would exercise its discretion, remand is required.

II. APPELLANT'S CLAIM REGARDING DENIAL OF A CONTINUANCE IS MOOT

In his second claim of error, appellant asserts that the trial court erred in denying him a continuance to prepare for the sentencing hearing. (AOB 53-62.) Given respondent's concession that the matter should be remanded for a new sentencing hearing, this claim is moot.

Respondent would note, however, that appellant appears to misunderstand the nature and scope of any sentencing hearing in this matter. For example, appellant discusses the duty of counsel

to prepare “a defense.” (AOB 47-48.) However, the time to prepare and present a defense is the trial, and not sentencing. A sentencing hearing, while a critical stage of the criminal process, is not a forum for relitigating guilt or presenting defenses.

The Constitution does not demand the “full panoply of rights” at a sentencing hearing, such as the “trial by jury, confrontation and proof beyond a reasonable doubt.” (*People v. Betterton* (1979) 93 Cal.App.3d 406, 411.) Indeed, “[d]ue process does not require that a criminal defendant be afforded the same evidentiary protections at sentencing proceedings as exist at trial.” (*People v. Lamb* (1999) 76 Cal.App.4th 664, 683, citing *Williams v. New York* (1949) 337 U.S. 241, 251.) “Rather than focusing on factfinding, sentencing is addressed to the trial court's ‘power of decision exercised to the necessary end of awarding justice based upon reason and law but for which decision there is no special governing statute or rule.’ [Citation].” (*People v. Stuckey* (2009) 175 Cal.App.4th 898, 916.)

As discussed above, the trial court’s discretion on remand will be limited to striking matters pursuant to section 1385. Outside of that authority, the court has no discretion to deviate from a sentence of LWOP. Given such limited matters at issue, the trial court would be well within its discretion to limit the scope of any evidentiary presentation appellant could present.

A. The Trial Court Properly Denied Appellant’s Motion for New Trial As Untimely

Appellant finally argues that the trial court erred in denying appellant’s motion for new trial. (AOB 63-71.) The trial court properly concluded that it had no authority to entertain a motion

for new trial because appellant's convictions were long since final and were undisturbed by the reversal of appellant's death sentence. Accordingly, this claim should be denied.

Following remand, and while the penalty phase retrial was pending, appellant filed a motion for new trial. (2 ACT⁵ 402-417.) The People filed an opposition. (3 ACT 642-644.) The trial court denied the motion, finding it untimely. (3 ACT 794; 7 ART 437-438). Specifically, the court found, "The motion is properly to be brought before judgment is entered. In this case, judgment was entered quite some time ago." (7 ART 437.)

The permissible time in which a motion for new trial may be made is governed by statute.

The application for a new trial must be made and determined before judgment, the making of an order granting probation, the commitment of a defendant for observation as a mentally disordered sex offender, or the commitment of a defendant for narcotics addiction or insanity, whichever first occurs, and the order granting or denying the application shall be immediately entered by the clerk in the minutes.

(§ 1182.)

"It is axiomatic . . . that a motion for new trial cannot be entertained or granted after judgment is entered." (*People v. Hales* (1966) 244 Cal.App.2d 507, 511.) Moreover, "[i]f the judgment is vacated or set aside, the motion for new trial may then be entertained." (*Ibid.*) However, "[t]he rule permitting the entertaining of a motion for new trial where the judgment is

⁵ ACT refers to the Augmented Clerk's Transcript, and ART refers to the Augmented Reporter's Transcript.

thereafter vacated or set aside [citation], has no application where the appellate court affirms the conviction as such, and merely orders a limited reversal and remand for sentencing or other post trial procedures.” (*People v. Smyers* (1969) 2 Cal.App.3d 666, 668-669.)

The unavailability of a new trial motion when a case has been remanded for a limited matter was recognized in *People v. Pineda* (1967) 253 Cal.App.2d 443. In that case, the defendant’s conviction had been affirmed on appeal, but the appellate court found errors in sentencing. (*Id.* at p. 447.) Specifically, the court held, “The judgment, insofar as it decrees the sentence as entered, is reversed and the cause is remanded for further proceedings in conformity with this opinion.” (*Ibid.*) On remand for resentencing, the defendant filed a motion for new trial based on newly discovered evidence. (*Id.* at pp. 447-448.) The trial court ruled it did not have authority to entertain the motion, and the defendant appealed. (*Id.* at p. 448.)

The appellate court affirmed the trial court’s ruling. (*Pineda, supra*, 253 Cal.App.2d at 448.) The court recognized the power of appellate courts to issue limited reversals that do not reverse the underlying convictions. (*Id.* at p. 450.) Accordingly, “in the light of decisions decreeing limited reversals (see cases last cited) it is clear that the question of guilt was finally determined on the prior appeal, and that there was no intent to vacate the judgment to permit further inquiry regarding that issue.” (*Id.* at p. 450.) In rejecting the defendant’s arguments to the contrary, the court held “that an appellate court has power

and authority to open the penalty aspect of the judgment without affecting the finality of the adjudication of guilt.” (*Id.* at 451.) Otherwise, “[t]o permit a new attack on the conviction in the trial court is to grant the trial court the unwarranted power to rehear a decision of the appellate court.” (*Ibid.*)

Appellant argues that two decisions from the California Supreme Court have undermined the well-established rule of *Pineda*. (AOB 68-70, citing *People v. McKenzie* (2020) 9 Cal.5th 40 and *People v. Chavez* (2018) 4 Cal.5th 771.) Appellant’s reliance is misplaced. Both of those cases concerned the extent that an order granting probation may be considered a final judgment. In *McKenzie*, the court held that an order granting probation does not give rise to a final judgment for purposes of the *Estrada*⁶ retroactivity rule. (*McKenzie*, at pp. 46-47.) Similarly, in *Chavez* the court held that an order granting probation does not create a final judgment for purposes of section 1385 dismissal authority. (*Chavez*, at p. 784.)

Thus, both *McKenzie* and *Chavez* addressed unique issues of finality that arise in probation cases. Neither case, however, concerned the finality of criminal judgments in general or the effect, on a judgment, of a limited reversal for resentencing. “It is axiomatic that cases are not authority for propositions not considered.” (*In re Marriage of Cornejo* (1996) 13 Cal.4th 381, 388.)

⁶ *In re Estrada* (1965) 63 Cal.2d 740.

Turning to the present case, the trial court properly recognized that it had no authority to entertain a motion for a new trial in this matter. Appellant’s convictions became final in 1990, when the California Supreme Court affirmed those convictions on direct appeal. (*People v. Stankewitz, supra*, 51 Cal.3d at p. 116.) The reversal of appellant’s death sentence by the federal court in habeas corpus did not vacate the entire judgment nor undo the finality of the California Supreme Court’s affirmance of his criminal convictions. (See *People v. Deere* (1991) 53 Cal.3d 705, 713 [“Although the judgment was reversed as to penalty, it was ‘affirmed in all other respects.’ [Citation.] Thus, only errors relating to the penalty phase retrial may be considered in this subsequent appeal.”].)

CONCLUSION

Accordingly, the matter should be remanded for the trial court to conduct a full sentencing hearing consistent with California law. In all other respects, the judgment should be affirmed.

Dated: December 17, 2020 Respectfully submitted,

XAVIER BECERRA
Attorney General of California
LANCE E. WINTERS
Chief Assistant Attorney General
MICHAEL P. FARRELL
Senior Assistant Attorney General
CATHERINE CHATMAN
Supervising Deputy Attorney General

/s/ Eric L. Christoffersen

ERIC L. CHRISTOFFERSEN
Supervising Deputy Attorney General
Attorneys for Plaintiff and Respondent

SA2019104326

Document received by the CA 5th District Court of Appeal.

CERTIFICATE OF COMPLIANCE

I certify that the attached RESPONDENT'S BRIEF uses a 13-point Century Schoolbook font and contains 4,778 words.

Dated: December 17, 2020 XAVIER BECERRA
Attorney General of California

/s/ Eric L. Christoffersen

ERIC L. CHRISTOFFERSEN
Supervising Deputy Attorney General
Attorneys for Plaintiff and Respondent

Document received by the CA 5th District Court of Appeal.

**DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S.
MAIL**

Case Name: **People v. Stankewitz**
No.: **F079560**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On December 17, 2020, I electronically served the attached **RESPONDENT'S BRIEF** by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on December 17, 2020, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

Elizabeth M. Campbell
Attorney at Law
PMB 334
3104 O Street
Sacramento, CA 95816
**(1) Courtesy Copy for Counsel's
Client**

Fresno County Superior Court
1100 Van Ness Avenue
Fresno, CA 93724-0002

The Honorable Lisa A. Smittcamp
District Attorney
Fresno County District Attorney's
Office
2220 Tulare Street, Suite 1000
Fresno, CA 93721

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on December 17, 2020, at Sacramento, California.

/s/ D. Boggess

Declarant

SA2019104326
34677542.docx

Document received by the CA 5th District Court of Appeal.

MOTION FOR OR EXHIBIT 20d

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

J. TONY SERRA, SBN 32639
CURTIS L. BRIGGS, SBN 284190
3330 Geary Blvd, 3rd Floor East
San Francisco, CA 94118
Tel 415-986-5591
Fax 415-421-1331

Attorneys for Defendant
DOUGLAS R. STANKEWITZ

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

DOUGLAS R. STANKEWITZ,
Petitioner,

On Habeas Corpus.

Case No. 21CRWR685993

DECLARATION OF ALEXANDRA
COCK IN SUPPORT OF MOTION
FOR RELEASE ON OWN
RECOGNIZANCE

Related Appeal Pending – LWOP
SENTENCE
NO. F079560

(Fresno Superior Court Case
#CF78227015)

DECLARATION OF ALEXANDRA COCK

I, Alexandra Cock, 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. Since 1981, I have been a Washington attorney, Bar #11775.
2. Since being introduced to Douglas “Chief” Stankewitz in 2014, I have been researching his case. I have known Chief through legal visits, correspondence and phone calls since Spring, 2015.
3. I am willing to provide housing, financial support, emotional support and transportation to Mr. Stankewitz.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed in Sebastopol, California on November 20, 2021.



ALEXANDRA COCK

MOTION FOR OR EXHIBIT 20e

1 J. TONY SERRA, SBN 32639
2 CURTIS L. BRIGGS, SBN 284190
3 3330 Geary Blvd, 3rd Floor East
4 San Francisco, CA 94118
5 Tel 415-986-5591
6 Fax 415-421-1331

7 Attorneys for Defendant
8 DOUGLAS R. STANKEWITZ

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 IN AND FOR THE COUNTY OF FRESNO

11 DOUGLAS R. STANKEWITZ,

12 Petitioner,

13 On Habeas Corpus.

Case No. 21CRWR685993

DECLARATION OF MARSHALL
HAMMONS AND JACQUELINE
SIMION IN SUPPORT OF BAIL
MOTION

Related Appeal Pending – LWOP
SENTENCE
NO. F079560

(Fresno Superior Court Case
#CF78227015)

14
15
16
17
18 **DECLARATION OF MARSHALL HAMMONS AND JACQUELINE SIMION**

19 We, Marshall Hammons and Jacqueline Simion, declare under penalty of perjury the
20 following, except as to those items below which we indicate to be based on information and belief.

21 If called to testify, we would testify as follows:

- 22 1. Marshall is a California attorney, SBN 336208.
- 23 2. Marshall has assisted with this case since early 2020. He has known Chief both through
24 legal visits and correspondence since early 2020.
- 25 3. Marshall is engaged to Jacqueline Simion. She is a small business owner and is willing to
26 provide job training, job placement assistance and professional skill development to Mr.
27 Stankewitz.

1 4. We are willing to provide financial support, emotional support and technology education to
2 Mr. Stankewitz.

3 5. We are willing to provide housing to Mr. Stankewitz.

4
5

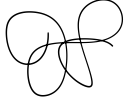
6 We declare under penalty of perjury that the foregoing is true and correct to the best of my
7 knowledge. Executed in Napa, California on November 19, 2021.

8
9

Marshall Hammons

MARSHALL HAMMONS

10
11



JACQUELINE SIMION

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28