J. TONY SERRA, SBN 32639
350 Townsend St., Ste. 307
San Francisco, CA 94107
Tel 415-986-5591
Fax 415-421-1331

CURTIS L. BRIGGS, SBN 284190
1211 Embarcadero #200
Oakland, CA 94606
Tel (415) 205-7854
BriggsLawSF@gmail.com

MARSHALL D. HAMMONS, SBN 336208
1211 Embarcadero #200
Oakland, CA 94606
Tel (510) 995-0000

Attorneys for Petitioner
DOUGLAS R. STANKEWITZ

SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO

CENTRAL DIVISION

DOUGLAS R. STANKEWITZ, Petitioner, On Habeas Corpus.	Case No. 21CRWR685993 EVIDENTIARY HEARING – CLOSING ARGUMENT BRIEF (Fresno Superior Court Case #CF78227015)

TO THE HONORABLE ARLAN L. HARRELL, JUDGE, SUPERIOR COURT FOR THE COUNTY OF FRESNO AND TO THE DISTRICT ATTORNEY FOR THE COUNTY OF FRESNO:

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I. Procedural History

On September 29, 2022, This Court granted an Order to Show Cause on sixteen of nineteen claims. On July 19, 2023, the People filed their Return. Starting on January 22, 2024, all parties participated in a ten-day evidentiary hearing. Petitioner presented twenty-two witnesses, including an expert on IAC, forensic pathology, and police practices. Petitioner entered into the record 23 exhibits. Respondent did not introduce witnesses or evidence. The Court requested a written closing argument which is the subject of this brief.[1]

II. Introduction

The prosecution secured Mr. Stankewitz's 1983 conviction on scientifically flawed firearm evidence where they created false certainty that Mr. Stankewitz was the shooter due to his height. This ruled out the much-shorter-in-height-co-defendant Marlin Lewis as the shooter. Unlike Mr. Stankewitz, Lewis admitted to the police that he held the "gun case"[2] to Mrs. Graybeal's back during the car ride to Calwa later claiming in his interview he "must have" gave the gun to Mr. Stankewitz before the shooting. ("I had the gun").[3] "The gun was in my pocket all the time"[4]; "I

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[1] **Explanatory Notes and Abbreviations**

Petitioner incorporates the statement of facts in the Amended Petition (hereinafter Petition) filed in Fresno County Superior Court. Therefore, he will not be repeating the facts in the Petition. The primary focus of this closing argument brief is the evidence presented at the evidentiary hearing.

We have simplified the Petition organization by grouping claims together. The order is a bit different; however, all of the claims and subclaims are included. We have included the habeas Petition page numbers (Petition ____) for ease of reference. Citations to evidentiary hearing testimony are in the following format: (p ___, ln ___). New evidence was introduced at the evidentiary hearing (hereinafter EH), therefore there are new post-petition new arguments. We have reframed some of our arguments to incorporate the new evidence. These sections do not have references to Petition page numbers. Where appropriate, we have expanded our Petition arguments to include new evidence from the EH. At the end of each section, we have listed as submitted the sub claims for which we did not present evidence at the EH. Much of the evidence applies to more than one claim or subclaim. When that is true, we have either repeated the content in more than one place or cross-referenced to the discussion elsewhere.

Although we realize that the court may not reach our remaining claims, as it only need to find IAC to grant the habeas, we have included those where we have presented evidence to prove them.

[2] (p 27, 28)

[3] Habeas Exh 6dd, dated 2/11/78 at 4.

[4] (p. 5)

must have, yeah I think I did give him when we got into China Town".[5]; "I gave the gun back to him, when we was parked in front of the Olympic Hotel".[6] I had the gun case on her, the gun was in my pocket.[7]; I had the gun when we first got in the car.[8] You took the gun out and pointed it at her didn't you? Only for a split second and … put it back in my pocket and took out the gun case.[9] he repeats this. At his first police interview he said "you know me, personally, I wanted to hit her cold down and I didn't want Doug and Tina and Bill there.[10] He also said that he had the gun in his pocket and used the gun case to scare her.[11]

Despite Mr. Stankewitz insisting on his innocence of the shooting as a prerequisite for accepting trial counsel as his attorney, counsel did nothing to assert that Mr. Stankewitz was not guilty. Trial counsel did not even give an opening statement and presented no evidence or witnesses in the guilty phase. His penalty phase tactics were egregious and overturned on appeal. Unfortunately, due to a comedy of errors, Mr. Stankewitz's prior attorneys never raised guilt phase deficiencies.

Trial counsel never voiced awareness, let alone indicated he was aware that Lewis had admitted to possessing and pointing the gun at Mrs. Graybeal during the robbery. Trial counsel never homed in on the significance of the trajectory evidence even though Marlin Lewis was 5'3" versus Mr. Stankewitz being 6'1". Counsel allowed unchallenged, and therefore adopted as credible, all firearm forensics and pathology related evidence when even a cursory look would have identified the flaws with the prosecution's case. Unfortunately, no pathologist or ballistics experts were consulted.

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[5] (p 6)
[6] (p 27)
[7] (p 28)
[8] (p 29 – 30)
[9] (p 30)
[10] Habeas Exh 3h, dated 2/9/78/ at 10.
[11] Habeas Exh 3h, dated 2/9/78/ at 15.

This is an unusual case where there was never an attempt to mount a defense, not even trying to create a reasonable doubt as to the identity of the shooter, the integrity of the physical evidence, or the credibility of the single eyewitness. Counsel took no steps to preserve the record or to memorialize the state of government's evidence, conducted no inspections of evidence, and took no investigative steps to contact alibi witnesses.

In 1983, the Stankewitz family had a notorious reputation in law enforcement. Frankly, it was well earned. Two of Mr. Stankewitz's brothers shot Fresno law enforcement officers in two separate incidents five years prior to Mrs. Graybeal's death. The physical evidence alleged against Mr. Stankewitz should have at least been examined by trial counsel to ensure proper chain of custody to safeguard against the framing of a Stankewitz by police due to abnormally strong motive to get another Stankewitz off the street.

Trial counsel failed to identify that there were substantial anomalies with the gun, including the holster having a law enforcement identification number engraved in it five years before the shooting of Mrs. Graybeal. Furthermore, there were significant discrepancies in whether the firearm recovered had a serial number or not, and whether a process was used to determine the serial number. Counsel failed to notice anomalies with the Meras shell casing evidence which, if noticed, would have raised red flags about the integrity of the evidence.

Trial counsel's lack of effort on this case made counsel an easy mark for the prosecution and resulted in counsel the metaphorical holding open the door to the gas chamber for the prosecution. Had Mr. Stankewitz's trial counsel engaged experts and conducted investigation, been familiar with Lewis's statement to police, or otherwise prepared himself for trial, he would have mounted a defense and made a record that we could all sleep with at night. Instead, we have person who has maintained he is not the shooter for 46 years and was only able to litigate these

issues for the first time in this proceeding—after witnesses have died, physical evidence degraded, and memories failed.

III. Standard of Review

Petitioner refers the court to his Pre-Hearing Brief and Denial (p 21 - 37) which discusses current applicable habeas law.

IV. Burden of Proof

The petitioner's burden of proof is merely a preponderance of the evidence. (*People v. Ledesma* (1987) 43 Cal.3d 171, 218; *In re Imbler* (1963) 60 Cal.2d 554, 560.)

The phrase "more likely than not" has the same meaning as the phrase "preponderance of the evidence." (See *Beck Development Co. v. Southern Pacific Transportation Co.*, *supra*, 44 Cal.App.4th at p. 1205.) "A fact is proved by a preponderance of the evidence if you conclude that it is more likely than not that the fact is true." (CALCRIM No. 1191.) Further, a changed outcome includes not just an acquittal but also a deadlock or hung jury. (*People v. Brown*, *supra*, 46 Cal.3d at p. 471, fn. 1; *see People v. Mason*, *supra*, 218 Cal.App.4th at p. 826; see also *People v. Bowers*, *supra*, 87 Cal.App.4th at pp. 735-736.)

V. Claim 12 IAC – Trial Counsel[12] (Petition 175) (completely reframed)

Goodwin was a highly capable and lauded former public defender and former judge, but he fell victim to an intense caseload, lack of resources, and fatigue, which caused him to be ineffective at all stages of this case. The finding of Goodwin being ineffective at the penalty phase is significant because the guilt and penalty phase in this case were during consecutive weeks back-to-back with the same jury. In other words, any factors which contributed to Goodwin's IAC in the

[12] Because it assists in clarifying our other claims and we believe it to be our strongest argument, we have put the ineffective assistance of counsel (hereinafter IAC) discussion first.

penalty phase were present days before in the guilt phase as well. The evidence at the Hearing shows that Goodwin was overextended, tired, and under resourced, which is the perfect storm for IAC given the intensity of trial work and the sustained stress of death penalty work.

The reason the timing of the penalty IAC finding is critical is that it sheds light on Goodwin's ineffectiveness at the guilt phase. For example, if Goodwin's case load being too high, or his health being poor, were substantial factors in his inability to mount an effective penalty phase defense, then those factors were also a direct influence on this inability to mount an effective guilt phase defense as well since it takes time off and lengthy continuances to remedy those types of conditions on trial counsel.[13] There was a spillover effect of IAC on the entire case and not just the penalty phase but since the issue had never been raised, this Court is the first to hear the issues presented. Goodwin's numerous failures meant that he never established a defense, nor did it allow Mr. Stankewitz to attack the prosecution evidence or theory of the case despite taking on the representation with the clear understanding that the Petitioner insisted on presenting a defense he was not the shooter or even attempted a reasonable doubt defense by eroding the strength of the evidence.

As discussed in the Reply, it is counsel's responsibility to pursue both a mental defense and investigate the evidence and facts of the case to determine whether the client is innocent.[14] Without a defense being developed, it was impossible for him to look at either the details or connect the dots of what happened in the overall prosecution case and Petitioner was steamrolled at trial by the prosecution's faulty firearm forensic and bullet trajectory theory and uncontroverted eye witness testimony.

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[13] IAC as to the guilt phase by Goodwin has never been raised in prior appeals or writs. (see Petition, p 175 and Denial, p 26, #7) Regarding procedural bars, none of the claims here have been raised before, Petitioner refers to all prior habeas pleadings for explanation: Petition, Reply to Informal Response and Denial.

[14] See American Bar Association, Fourth Edition (2017) of the CRIMINAL JUSTICE STANDARDS for the DEFENSE FUNCTION, specifically Standard 4-3. 7 Prompt and Thorough Actions to Protect the Client, specifically subsections (b) & (c). 19 This is especially true when the defendant instructs his counsel to do so. Petitioner has the right to the defense of his choosing. McCoy v. Louisiana (2018) 584 U.S. __ .

IAC expert Gary Gibson testified in the hearing and illuminated the context of Goodwin's IAC. Based on Goodwin's review of the record and related documents, Goodwin's work-product had been suffering for an extended period of time encompassing his representation of Petitioner. Goodwin represented Petitioner starting in the Fall of 1982 (p 440, l 11 - 12). In the months prior to taking Petitioner's case, Goodwin represented Troy Jones in *People v. Jones*. That resulted in a subsequent finding of IAC by the CA Supreme Court against Goodwin for providing guilt phase IAC in, just as in Petitioner's case, a special circumstance murder case in a neighboring count but involving a firearm chain of custody issues linked to Fresno Police. It was very similar to this case. (p 440, l 25) However, unlike here, in *Jones*, Goodwin seemed to have a strategy but simply did not conduct investigation to support it.

In June, 1982, the CA Supreme Court found Goodwin failed to perform a competent investigation preventing the strategy from having any value. Goodwin failed his client in *Jones* The material in *Jones* says that Goodwin immediately followed that trial 13 days later with another homicide case. Considering the nearly identical explanations by Goodwin in his declarations on behalf of Petitioner outlining lack of investigation and therefore lack of real strategy in an almost identical case that occurred immediately after Troy Jones, it is apparent the Goodwin's ability to prepare for murder trials and mount legal defenses were lacking during the time period he should have been working up Petitioner's case for trial.

Goodwin's overall ineffectiveness is reflected in *Stankewitz v. Wong*[15], where Goodwin was found ineffective in this case in the penalty phase. Goodwin therefore represented Stankewitz immediately following a case where he was also ineffective as evidenced by the finding in the *Jones* case. (p 442, l 1-4). Goodwin's strategy at the penalty phase was mostly a religious one but

[15] 698 F.3d 1163 (9th Cir. 2012)

he violated the timeless adage "Call on God, but row away from the rocks." Goodwin simply was too exhausted to pick up the oar for the guilt phase.

Further evidence that Goodwin did not focus on Petitioner's guilt phase comes from his communications to appellate lawyer Seligson wherein he listed what he thought were the issues that he believed were valid for the appeal: insanity, diminished capacity and voir dire. Mr. Goodwin completely failed to even identify the prosecution's theory about the height of the shooter and failed to recognize the need to diminish Billy Brown's credibility. In finding prejudice in Petitioner's case, Gary Gibson discussed the significance of *Strickland v Washington*, (1984) 466 U. S. 668 which is the standard, but especially poignant here because it was published a year after Petitioner's conviction. Strickland outlined the duties of a defense attorney under the Sixth Amendment: "duty of loyalty, duty to avoid conflicts of interest"[16] and 'the overarching duty to advocate the defendant's cause".[17] It cites the 'more particular duties to consult with the defendant on important decisions and to keep the defendant informed of important developments in the course of the investigation'.[18] Lastly it says that counsel has a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process'.[19]

The duty at issue in Strickland was counsel's duty to investigate.[20]

A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction or death sentence has two components. First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the

[16] *Strickland*, at 688, citing *Cuyler v Sullivan*.
[17] *Strickland v Washington*, 466 U.S 668, 688 (1984)
[18] *Strickland*, at 688.
[19] *Strickland*, at 688, citing *Powell v. Alabama*, 287 US, at 68-69.
[20] *Strickland* at 690.

defense. Any deficiencies in counsel's performance must be prejudicial to the defense in order to constitute ineffective assistance under the Constitution.[21] Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim.[22]

The general requirement is that the defendant must affirmatively prove prejudice, meaning that they actually had an adverse effect on the defense.[23] The defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.[24]

The 40-year progeny of Strickland has refined the standard but not subjective. (p 445, ln 14 - 17) Gibson discussed at length that when a client claims he is innocent of a murder and there is only one eyewitness, it is textbook IAC not to physically inspect the evidence, conduct an investigation, including alibi witnesses, or hire experts to analyze the firearm and medical evidence. Counsel must have a strategy for trial, including refuting the prosecution theory through experts and effective cross examination.[26] These are all things that even the most sparsely funded jurisdictions would have provided had Goodwin made any funding requests from the courts.

According to Gary Gibson, Goodwin specifically performed below the Stickland standard of care in the following ways:

A. Not performing an investigation of any kind.

Based on both his 1989 and 1995 declarations, Goodwin did not perform an investigation of any kind. (p 455, ln 24 – 26) This means he did not go to the scene to understand the evidence, he spoke to no alibi witnesses, he never obtained medical records

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[21] *Strickland* at 687.
[22] *Strickland* at 699.
[23] *Stickland* at 693.
[24] *Strickland* at 694. See also *People v. Zaheer*, supra, at 339 (habeas granted), citing *In re Jones* (1996) 13 Cal.4th 552, 586.
[26] *Strickland* at 690.

and documents from Graybeal's doctor about Graybeal's height, he never interviewed neighbors close to the scene to confirm if they had heard shots at the time in questions to support or disprove Brown's theory, he never interviewed Brown or his family members, he failed to make any discovery requests, including on Brown's burglary case, and much more.

B. Investigation of the gun

He acted below the standard of care of a reasonable lawyer in a special circumstances murder case not investigating the inadequate photos of the alleged murder weapon and the fact that it wound up having a serial number when it was recovered without one. (p 448, l 3 – 8) Goodwin could have interviewed officers, obtained an expert in firearms, and police investigations to account for the anomalies of how they preserved the evidence.

C. Testing the blood on codefendant Marlin Lewis' shoes

'I think that in a special circumstance murder case, one of the things that you do is you go and look at the impounded evidence.' (p 455, l 10 – 11) 'If Goodwin went to see the evidence, he could have discovered the apparent blood stains on the shoes.' If he discovered the stains, he could have had them tested. (p 455, l 15 – 21) 'Failing to look at the impounded evidence is below the standard of care.' (p 455, l 12 – 13)

D. Interviewing alibi witnesses

'Goodwin was provided alibi witnesses, and we have no information that any alibi witnesses were contacted, including documentary evidence, physical evidence or discussion in the transcripts.' (p 457, l 12 - 14) Goodwin doesn't talk about it in his declarations other than to say that he did no investigation, which may cover it. (p 457, l 16 – 18) But although he was provided alibi witnesses, he then failed to contact them, even

though he asked for a continuance to do that, (See EH Exhibit 20 / judicial notice CT). (p 457, l 18 – 20) 'That failure in a special circumstance murder case is below the standard of care.' (p 457, l 21 – 22)

E. Failing to realize that the scripts were admitted into evidence as Trial Exhibit 32

The jurors had a number of questions while they were deliberating. (p 458, l 15 – 16) They wanted to see the scripts. (p 458, l 21 - 22) The judge and the DA both said that the scripts were not admitted and Goodwin agreed. (p 458, l 23 – 26) This was a major oversight and strategic error because in the scripts, Marlin Lewis admits to the shooting of Mrs. Graybeal for no reason. (p 459, l 18 – 25) 'The scripts provided an absolute description of how the shooting happened that did not involve Mr. Stankewitz.' (p 460, l 13 – 15) These were Petitioner's own words about how he believed Marlin Lewis should have testified because it was Petitioner's understanding of the events. Since Goodwin totally missed the opportunity to present evidence that Lewis was the shooter, he also missed this opportunity to introduce this theory to the jury by not realizing the jury was asking for something that actually had been admitted into evidence that would have supported the theory that Lewis was the shooter. Goodwin failed to provide effective assistance of counsel that when he wasn't aware that Trial Exhibit 32 actually was in evidence. 'Exhibit 32 actually should have gone to the jury and the jury was interested in Exhibit 32 perhaps for that very reason.' (p 460, l 7 – 11) 'So it was below the standard of care for Goodwin to sign onto the fact that the jurors shouldn't receive an admitted exhibit.' (P 460, l 16 - 18)

F. Not pursuing making Billy Brown an accomplice as a matter of law

'The only one that puts a gun in Douglas Stankewitz's hand is Billy Brown.' (p 461, l 16 – 17) 'If Billy Brown fails, the prosecution case fails.' (p 461, l 17 – 18) 'So the entire focus of this case is the attack on Billy Brown, the unreliability of his testimony.' (p 461, l

18 – 20) Accomplice liability was big. 'Making Billy Brown an accomplice as a matter of law and not having the jury determine it by a preponderance of the evidence, should have been the focus of Goodwin's case.' (p 461, l 20 – 23) He cross examined Billy Brown but failed to elicit the things that mattered with regard to Billy Brown's accomplice liability in the case. We were left with the prosecutor arguing that Billy Brown was in the car along for the ride the whole time and not an accomplice. (p 461, l 24 – p 462, l 2) 'Even throughout portions of the transcript he is hiding the knife under the seat, he is in control of the knife at some point. An open question is that he touched Graybeal's watch at some point.' (p 462, l 2 – 6) 'All of these things are crucial to litigating his accomplice liability in limine and not at being surprised in closing argument the prosecutor saying he is not an accomplice.' (p 462, l 6 – 10) 'These are things that should have been accomplished early in the case. It was below the standard of care not to litigate the accomplice liability issue before testimony was taken.' (p 462, l 9 – 12)

G. Not hiring pathologist and ballistics experts

'Goodwin didn't talk to any experts.' (p 462, l 17 – 18) This is supported by the lack of any documentation for 987.9 funding from the court (p 481, l 3-6), his declarations in support of IAC and his lack of cross examination on any material issue related to the subject matter. He didn't talk to a pathologist, ballistics expert, blood pattern expert. He didn't talk to anybody. (p 462, l 18 – 20) 'But the greatest failing was failing to talk to a pathologist in combination with a ballistics or scene reconstruction expert.' (p 462, l 20 – 22) Everything to be done with the experts is to attack Billy Brown and that's where we come back to the shooting scene and failure to call experts to say what Billy Brown happened didn't happen was the greatest failure in the case.' (p 462, l 24 – 463, l 2) This is where Gibson adamantly found prejudice. (p 463, l 3) The prejudice here would be to

show, using scientific and expert testimony, that Billy Brown's testimony was incompatible with the evidence in the case. Again, since Billy Brown was the entire case, this would have been able to change not just the outcome of a given hearing, but the entire trial.

Billy Brown's the only one in this case that can put the gun in Douglas Stankewitz's hands, the only one who does put the gun in his hand. There's no confession, no ballistics evidence. There's nothing that supports Douglas Stankewitz is the shooter but for Billy Brown. (p 463, l 7 – 11) Billy Brown is about 40 – 45% of the testimony given in the case. The center piece of the case is attacking everything that Billy Brown says. How the shooting happened is one of the most important things in the case. (p 463, l 14 – 18)

'As reported by Dr. Tovar, the angle of the shot from low to high and the rear right to left angle of the shot are incredibly important. It's important because Billy Brown at least two different times said that Graybeal was looking away and standing erect and that she was shot from either the side or the back. Those things can't be true based on the angles of the shot. If Goodwin hired a pathologist, he would have said that based on the entry wound and the exit wound and them being at least twenty degrees off center, that Graybeal must have been shot off to her right front in visual range. However, that's not what Billy Brown said.' (p 463, l 19 – p 464, l 8)

The use of experts isn't to create a different reality. Experts are there to create doubt of what Billy Brown said was true. Without experts the prosecution's case went untested. Experts are to create doubt of what Billy Brown, an inexperienced, distracted, juvenile eyewitness, said was true using their scientific and unbiased methods. (p 464, l 9 – 12)

Gibson indicated that there are additional problems with the height issue of the victim. Gibson testified that he is confused as to how the height went from 160 cm, which is 5'3" that Goodwin was looking at, but then he allowed that to turn into 5'7" on the

record, despite the trial one transcript refuting that fact. That difference allowed the shot to be more of a level shot to match the prosecution's theory of a ten degree up angle. It was 5 to 10 degrees according to the pathologist who performed the autopsy, but it was always pushed down to 5 degrees by the government witness. They used the 5-degree measurement to show that the shot more likely didn't come from a 6'1" man against a 5'3" woman. Gibson testified that he can't figure out how Goodwin allowed the hypothetical to be set as 5'7". (p 464, l 12 – 23)

'I understand Graybeal's dad said she was 5'7" but the autopsy said she was 5'3"' ("I didn't have any trouble reading the numbers as anything other than 160 cm" (p 470, l 11 - 12). Those 4 inches make a big difference because the shot is at an up angle, not a down angle. A 6'1" man will create a different wound track.

This shows that what Billy Brown said was wrong and 'Billy Brown was the center piece of this case.' (P 465, l 4-5) There should have been a thorough investigation of the shooting at the time of the shooting. However, when Gibson looked at Billy Brown's testimony, it's about, through the preliminary hearing, trial one, trial two, it was about twenty pages total on all 3 cases. Less than that, fifteen to twenty pages, talk about the actual shooting itself. 'That is perhaps the most important thing in the case because that's where the forensic evidence comes into play to show that Billy Brown's incorrect about his standing outside the car, not correct about Stankewitz's participation, and incorrect about how the shooting actually happened.' (p 465, l 8 – 19)

Although Meras's testimony was part of the preliminary hearing, Goodwin did not investigate the Meras incident. Meras'**s** testimony at the preliminary hearing was crucial to the defense case, in part because it showed how the prosecution was attempting to use false evidence against the Petitioner. Meras failed to identify Petitioner at a live lineup in the

courtroom, (PT Vol. 1 RT 205) nor at the first trial (T1 Vol. 25 RT 4400) (Petition 151) Nor could he identify Petitioner at the Preliminary Hearing (PH Vol. 2 RT 340) nor the photo lineups that he was shown. (PH Vol. 2 RT 340) Also, Meras's testimony describing the vehicle conflicted with other evidence regarding Graybeal's vehicle, which was allegedly used in both crimes. (PH Vol. 2 RT 338-339) (Petition 152) Because Goodwin did not examine the physical evidence, he missed the false evidence regarding whether Graybeal was killed with a .25 caliber pistol.

H. Gibson testified to the following Goodwin failures that had an actual adverse effect on the defense and therefore were prejudice:

Failure to impeach Billy Brown with scientific evidence. Prejudice is demonstrated by Goodwin's failure to call a pathologist and ballistics expert to discredit Billy Brown's testimony regarding the fixed position of the body with these wounds. When the prosecution relies on the victim's height to establish the height of the shooter, subpoenaing the victim's medical records is required to contradict the prosecution's theory and to clarify the dispute between autopsy height and testimony from the father. Goodwin did not dispute Billy Brown's testimony on these points.

'The governing legal standard plays a critical role in defining the question to be asked in assessing prejudice from counsel's error. …[T]he question is whether there is a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt.'[27] A different outcome doesn't mean acquittal. Different outcome means that one juror would change their mind on conviction because of the presentation of this evidence. *People v. Soojian* (2010 5DCA) 190 Cal. App. 4th 491. Further support for a different outcome is demonstrated by the jury's request to have testimony read back. Jury

[27] *Strickland* at 694.

requests to hear testimony again indicate that "deliberations were close." *People v Zaheer* (4DCA Div 1 2020) 54 Cal. App. 5th 326, 340.

The reason that Mr. Gibson reaches this conclusion is because of the only two substantive things the jurors cared about: they cared about the scripts and they cared about Billy Brown's testimony, but not all of Billy Brown's testimony. They only cared about the testimony from 10th & Vine, something that took approximately three minutes, two - three minutes, according to the testimony of Billy Brown. Just a read back of the 10th & Vine testimony. What happened at 10th & Vine, what happened during the shooting, was incredibly important to the jury. Those two things, in combination that a different reality with regard to the height of the shooter, a different reality with regard to the angle of the shooter both impeaching Billy Brown, coupled with the jurors' interests in those issues lead me to say yes, there is a reasonable probability that one juror would have changed their mind because Billy Brown's sole testimony uncorroborated, getting back to the accomplice liability issue about the shooting, would have mattered. (p 465, l 24 – p 466, l 16)

VI. Claim 13 IAC Appellate & Habeas Counsel (Petition 181)

Petitioner's Appellate and Habeas Counsel Was Ineffective at Representing Mr. Stankewitz as they did not properly investigate the factual and legal claims, many of which were raised in the Petition before this Court, and Mr. Stankewitz was prejudiced, as he would have reasonably been able to succeed on these claims had they been brought prior at a time when witnesses were alive and before documents and physical evidence had been misplaced.

The analysis for whether or not appellate counsel was ineffective at representation is measured with the same standard as outlined in *Strickland*.[28] *Smith v. Roins* (2000) 528 U.S. 259 citing *Smith v. Murray* (1986) 477 U.S. 527, 535-36; Jones *v. Barnes* (1983) 463 U.S. 745.

[28] See Section V. above, on *Strickland* standard.

Appellate counsel must find arguable claims on appeal and must reasonably discover nonfrivolous issues as well that a petitioner would have had a reasonable probability of succeeding in but for appellate counsel's failures. *Roins* 528 U.S. at 285-86 citing *Murray* 477 U.S. at 694. While there is no affirmative duty to raise nonfrivolous claims on appeal or in a habeas writ if there are tactical reasons using professional judgment, and professional judgment requires winnowing out weaker claims from stronger claims, appellate counsel still is held to the standards of effective representation. *Barnes* 463 U.S. at 751-52. Furthermore, attacking the ineffective assistance of trial counsel is more limited by means of appeal rather than by habeas because the record on appeal is limited to the record only and does not allow for an opportunity to bring in extrinsic evidence to explain the existence or nonexistence, or reasoning behind, tactical decisions. *People v. Mickel* (2016) 2 Cal.5th 181, 198 citing *People v. Snow* (2003) 30 Cal.4th 43; *People v. Mendoza Tello* (1997) 15 Cal.4th 264. Appellate counsel, although themselves not necessarily the same as habeas counsel, have a duty in capital cases have a duty to investigate the factual and legal grounds for filing a writ of habeas corpus, and later file a motion should they have grounds. *In re Sanders* (1999) 21 Cal.4th 967, 718 citing *People v. Roins* (1998) 18 Cal.4th 770, 808.

Here, appellate counsel for Mr. Stankewitz did not act within their duty to investigate the factual and legal claims giving rise to a habeas writ, including but not limited to, trial counsel being ineffective at representing Mr. Stankewitz.

A. Robert Bryan

Mr. Stankewitz was represented around the 1993 timeframe by Robert Bryan. (P 326 Ln. 8-10) (RT Vol. 2 Pg. 326 Ln. 24-26); (p 327 Ln. 1-18). Mr. Bryan hired Paul Anderson Associates, an investigative firm, to perform investigations relating to Mr. Stankewitz's case. (RT Vol. 2 Pg. 326 Ln. 6-26). Mimi Kochuba, a licensed investigator, was working for Paul Anderson Associates and working on Mr. Stankewitz' case for about

ten years. (RT Vol. 2 Pg. 327 Ln. 9-18); (RT Vol. 2 Pg. 328 Ln. 19-26); (RT Vol. 2 Pg. 329 Ln. 1-3); (RT Vol. 2 Pg. 349 Ln. 16-24). Ms. Kochuba's investigations were primarily focused on mitigation, not investigating issues of innocence. (RT Vol. 2 Pg. 328 Ln. 19-26); (RT Vol. 2 Pg. 329 Ln. 1-3). When a potentially materially-exculpatory need for investigations came up – the possible recantation of the only eyewitness at Mr. Stankewitz's trials – the attorney and investigator did not provide the circumstances to ensure a reliable recantation of the witness. Ms. Kochuba was not sure who transcribed the interview and the recording was somehow lost. (RT Vol. 2 Pg. 342 Ln. 14-16). The attorney in charge of Ms. Kochuba's investigations, permitted Mr. Stankewitz's wife Evelyn to set up the meeting with Billy Brown. (RT Vol. 2 Pg. 343 Ln. 10-13). Ms. Kochuba used some of the questions provided by Evelyn to ask Billy Brown. (RT Vol. 2 Pg. 344 Ln. 5-8). The investigator didn't interview family members of Billy Brown to corroborate his recantation or issues relating to the Stankewitz case. (RT Vol. 2 Pg. 345 Ln. 19-21).

During the time Mr. Bryan, Mr. Stankewitz' federal habeas lawyer, was working on Mr. Stankewitz' case, he was primarily focused on mitigation and not looking into issues of actual innocence. When perhaps one of the most important pieces of exculpatory evidence presented itself – the recantation of the sole eyewitness – the attorney failed to have the investigations done properly, and effectively botched the credibility of such a recantation. The interview was set up by Mr. Stankewitz's wife and she provided at least some of the questions to ask Billy Brown.

Even after this interview, no further investigation to support Mr. Brown's recantation was ever performed, such as interviewing Brown's family and friends to corroborate the information. Mr. Bryan does not appear have looked into any of the issues raised in Petitioner's current Petition, let alone attack the issues relating to innocence of

Mr. Stankewitz, after receiving information that would otherwise have a reasonable probability of overturing Mr. Stankewitz conviction.

Therefore, Robert Bryan, as evidenced by the botched investigations of Ms. Kochuba and primary focus on mitigation, failed to properly investigate and then later raise claims in a habeas writ or on appeal relating to Mr. Stankewitz' innocence in the case. Considering the strength of the evidence and arguments as provided for in the other claims, there was a reasonable probability that had Mr. Bryan uncovered this information with even the slightest investigations and then raised them, Mr. Stankewitz' could have succeeded on at least one of them, albeit the most likely one as being IAC for trial counsel.

B. Nicholas Arguimbau and Maureen Bodo

Another one of Mr. Stankewitz' federal habeas lawyers was Nicholas Arguimbau, who had the assistance of Maureen Bodo, an attorney, working on the case. (RT Vol. 2 Pg. 389 Ln. 1-7, 21-23) Ms. Bodo was tasked with looking on the issues of voir dire in the second trial and other jury selection issues, but nothing relating to the penalty phase. (RT Vol. 2 Pg. 390 Ln. 1-19). Although Ms. Bodo describes having recalled receiving "memos" about "problems with the penalty phase," she did not recall there ever having investigations done looking into the physical evidence. (RT Vol. 2 Pg. 390 Ln. 15-19, 25-26); (RT Vol. 2 Pg. 391 Ln. 1-6). Nor did she recall there ever being experts hired or consulted with, including ballistics or pathologists. (RT Vol. 2 Pg. 391 Ln. 7-20) Ms. Bodo likewise did not recall potential issues regarding Mr. Goodwin's defects at the penalty phase, such as not making an opening statement, attempting to refute the trajectory theory, location of where the body was found, and not hiring experts. (RT Vol. 2 Pg. 392 Ln. 21-26); (RT Vol. 2 Pg. 393 Ln. 1-26); (RT Vol. 2 Pg. 394 Ln. 1-7).

Ms. Bodo did not look into or investigate the actual underlying guilt or innocence

of Mr. Stankewitz, let alone issues regarding the serial number of the firearm. (RT Vol. 2 Pg. 395 Ln.6-18). Ms. Bodo recalls that the only issues that were raised for IAC went to failure to investigate mental defense, change of venue, and various issues regarding deficiencies in the penalty phase, such as failing to call witnesses that would have been favorable to Mr. Stankewitz. (RT Vol. 2 Pg. 396 Ln. 1-15). Considering Ms. Bodo was the "copy editor and proofreader for the office" she "saw the work product of both other attorneys in addition" to what she had worked on, she would be knowledgeable about what investigations, experts, theories, and claims would have been worked on. (RT Vol. 2 Pg. 399 Ln. 5-10).

Habeas counsel here was likewise deficient. From the record, there were no investigations done whatsoever into the key issues raised in this Petition, including issues relating to the gun, trajectory theory, and other exculpatory evidence. Counsel herself was focusing on voir dire and jury selection, but also would have had an overview of the work product of the other attorneys during this relevant timeframe. During this time, no investigations or even considerations of actual innocence, claims that would stem from as such, and the requisite investigations and/or consultations with experts were ever done. Therefore, because counsel failed to obey their duty and was deficient in their performance, they were ineffective. Counsel raises the same argument relating to prejudice as above.

C. Steve Parnes

Mr. Stankewitz' appellate attorney, as an automatic appeal of the conviction due to it being a death penalty case, was Steve Parnes from 1978 through 1982. (RT Vol. 2 Pg. 402 Ln. 6-26); (RT Vol. 2 Pg. 304 Ln. 1-19). Mr. Parnes filed a single-issue habeas writ challenging the guilt phase death qualification under the *Hovey* standard, which relates to jury selection in capital cases. (RT Vol. 2 Pg. 404 Ln. 23-26); (RT Vol. 2 Pg. 405 Ln. 1-17).

He and his co-counsel, Quin Denver (deceased), didn't do any investigations at all in pursuing this claim. (RT Vol. 2 Pg. 406 Ln. 1-5). Mr. Parnes did not consult with a ballistics expert, pathologist, or IAC expert. (RT Vol. 2 Pg. 406 Ln. 13-26). Mr. Parnes did not investigate the physical evidence or do any form of inspection of it. (RT Vol. 2 Pg. 407 Ln. 1-5). In summation, as Mr. Parnes testified, he never performed any investigations to actual innocence in Mr. Stankewitz' case. (RT Vol. 2 Pg. 408 Ln. 3-7).

Similar to the other appellate attorneys above, Mr. Parnes' representation fell below the prevailing norms by ignoring his duty to investigate potential habeas claims. Mr. Parnes did nothing more than read the transcripts and raise a sole claim regarding jury selection in the first trial. There were absolutely no investigations or consultations with experts relating to the claims brought before this Court in the instant Petition. Since nothing at all was done in this respect in violation of his duty to investigate and raise nonfrivolous claims, many of which are in the Petition before this Court, he fell below the prevailing professional norms. Likewise, Counsel raises the same argument to prejudice as before.

D. Joseph Schlesinger

Mr. Stankewitz was also represented on federal habeas by Joseph Schlesinger from 2007-2013. (RT Vol. 2 Pg. 415 Ln. 12-26); (RT Vol. 2 Pg. 416 Ln. 1-9). Mr. Schlesinger was working in a supervisory capacity at the Capital Habeas Unit of the Federal Defender Office of the Eastern District of California. (RT Vol. 2 Pg. 415 Ln. 23-26). During this time, Mr. Schlesinger does not recall any investigators being sent to inspect the physical evidence. (RT Vol. 2 Pg. 416 Ln. 15-21). Mr. Schlesinger was likewise confident no experts were consulted with. (RT Vol. 2 Pg. 416 Ln. 25-26); (RT Vol. 2 Pg. 417 Ln. 1-3). Specifically, no experts were consulted with relating to ballistics, pathology, or IAC for guilt claims. (RT Vol. 2 Pg. 417 Ln. 4-18).

Although Mr. Schlesinger and his colleague working on the habeas determined guilt phase claims could not be brought, that analysis was limited only to *federal guilt claims*. (RT Vol. 2 Pg. 418 Ln. 13-26); (RT Vol. 2 Pg. 418 Ln. 1-2). The extent of their investigations was that they "knocked on a few doors and did a little . . ." but since they concluded, as federal public defenders, their federal claims could not move forward, they didn't pursue or look into anything further. (RT Vol. 2 Pg. 419 Ln. 19-14). When asked if there were any focused investigations into actual guilt or innocence, Mr. Schlesinger said "[o]h, absolutely, absolutely not." (RT Vol. 2 Pg. 419 Ln. 16-18). Mr. Schlesinger provided that the reason he stopped investigating guilt was due to the nature of a federal habeas claim having a different standard, so they concluded they could not meet it. (RT Vol. 2 Pg. 425 Ln. 15-22).

Although Mr. Schlesinger was aware of Mr. Goodwin's representation and that Mr. Goodwin did not do an opening statement, he did not investigate many other issues that could result in claims. (RT Vol. 2 Pg. 420 Ln. 1-16). No investigation was done into the trajectory theory, the serial number of the firearm, the holster, or the location of where the body was found. (RT Vol. 2 Pg. 421 Ln. 24-26); (RT Vol. 2 Pg. 422 Ln. 1-18). Although Mr. Schlesinger thinks he did a good job on penalty phase issues, they "did essentially no job on the guilt phase . . ." (RT Vol. 2 Pg. 423 Ln. 8-13).

Therefore, Mr. Schlesinger was deficient in his representation of Mr. Stankewitz. Mr. Schlesinger, although aware of some deficiencies of Mr. Goodwin, such as not making an opening statement, did nothing more than a very cursory "knocking on doors" as part of their investigation. It was not focused, and Mr. Schlesinger confirms they did not do any form of a detailed look into actual guilt or innocence. No experts were retained and no inspection of the physical evidence was done. Counsel argues this was deficient under the

prevailing norms and likewise raises the same arguments about prejudice.

E. Katherine Hart and Nicholas Arguimbau

Ms. Hart worked on Mr. Stankewitz' case from about 2000 through December 2004, when the Ninth Circuit rendered its opinion. (RT Vol. 2 Pg. 483 Ln. 11-19). Ms. Hart worked with Nicholas Arguimbau. (RT Vol. 2 Pg. 483 Ln. 11-19). Ms. Hart was working on penalty phase issues only. (RT Vol. 2 Pg. 484 Ln. 13-18). Ms. Hart testified that she did not have an investigator go and physically inspect the evidence. (RT Vol. 2 Pg. 484 Ln. 20-23). Ms. Hart testified that they did consult with two experts, a Dr. Riley and a Dr. Rosenthal. (RT Vol. 2 Pg. 484 Ln. 24-26) (RT. Vol. 2 Pg. 485 Ln. 1-13). However, these experts were for the purposes of mitigation in penalty phase arguments. (RT Vol. 2 Pg. 485 Ln. 14-26) (RT. Vol. 2 Pg. 486 Ln. 1-8). No experts were retained for ballistics, pathology, scene reconstruction or IAC. (RT Vol. 2 Pg. 486 Ln. 23-26) (RT Vol. 2 Pg. 487 Ln. 1-18).

Ms. Hart and Mr. Arguimbau were generally aware of the issues, such as Mr. Goodwin not inspecting the physical evidence, attacking the trajectory theory of the bullet, and the general lack of investigation by Mr. Goodwin. (RT Vol. 2 Pg. 488 Ln. 18-21) (RT. Vol. 2 Pg. 489 Ln. 25-26) (RT Vol. 2 Pg. 490 Ln. 1-26) (RT. Vol. 2 Pg. 491 Ln. 1-9). After the Ninth Circuit's ruling, Ms. Hart and Mr. Arguimbau wanted to file a petition for certiorari to the Supreme Court of the United States. (RT Vol. 2 Pg. 491 Ln. 2-26) (RT. Vol. 2 Pg. 492 Ln. 1). Ms. Hart was tasked with calculating this deadline, and she counted the days wrong. (RT Vol. 2 Pg. 492 Ln. 2-3) (Ln. 13-18). The Supreme Court of the United States then denied the request for motion to leave to extend the deadline. (RT Vol. 2 Pg. 492 Ln. 19-22).

Perhaps most telling of the deficiency of Ms. Hart and by extension Mr. Arguimbau was the fundamental miscalculation of filing the petition for certiorari, as Ms. Hart

"counted wrong." Falling in line with the other post-conviction attorneys, no investigations were done into issues regarding actual innocence. No experts regarding guilt-phase issues were consulted. These deficiencies were done even with the general knowledge of some of Mr. Goodwin's inadequacies as trial counsel. These deficiencies likewise prejudiced Petitioner, under the same arguments as others, but also regarding the petition to the Supreme Court of the United States; had the writ actually been filed, Mr. Stankewitz would have had a reasonable opportunity for at least some of the issues to be heard before the high court. But Mr. Stankewitz was denied that opportunity due to a "miscalculation."

F. IAC Appellate and Habeas Lawyers Conclusion

In sum, it's clear the Petitioner's post-conviction counsel was ineffective at representing Mr. Stankewitz and he was prejudiced as a result. None of the attorneys actually looked into underlying issues regarding actual innocence or attacks on the prosecution's theory at trial. They either did so out of ignorance or a simple lack of doing anything to start such a process. For the one lawyer that did, he botched it terribly both in the manner and scope he did it. Regardless, it is clear that none of these attorneys (1) inspected the evidence, (2) consulted with relevant experts, (3) performed their own investigations, save for Mr. Bryan who did so wholly inadequately, and (4) even made incorrect determinations that foreclosed Mr. Stankewitz' from advancing further claims. Mr. Stankewitz was prejudiced as not only have countless parts of investigations, such as witnesses and evidence, have gone missing, died, or otherwise unable to be located, but had counsel actually done this investigation, the claims brought now before the Court could have been advanced much sooner.

VII. False Evidence (Claims 1, 2 and 6) Was Gathered During Prosecution Investigation, Was Used At The First Trial Was Also Presented At The Second Trial (reframed):

> CA Penal Code 1473(b)(1)(A) False evidence that is material on the issue of guilt or punishment was introduced against a person at a hearing or trial relating to the person's incarceration.[29]

Ardaiz's credibility is a serious issue in this case. Most recently, during the evidentiary hearing, former DDA Robinson testified that Ardaiz, a subpoenaed witness to the hearing, called Robinson to see if he had been subpoenaed. Once Robinson said that he had been, Ardaiz went on to attempt to influence Robinson's perspective and memory of events. (p 565, l 7 – 11) This is improper for a lay person let alone a retired appellate judge.

Ardaiz was so insecure about Petitioner's conviction that he insisted on influencing the public's opinion on this case. In 2017 he made public statements in the press against Petitioner to the extent that Petitioner moved for a gag order.[30] When Petitioner's LWOP sentence was imposed in 2019, Ardaiz again wrote letters to the editor against Petitioner.[31]

In 2021, Ardaiz read Petitioner's writ and feverishly persuaded then Sheriff Mims to allow him special access to Petitioner's sheriff's file so he could review it and counter public allegations. "Margaret. Thanks. I am really upset about this.. . I want to see the reports to refresh my recollection and insure I can answer questions being raised." (Text excerpt, HE 23) When the elected DA, Lisa Smittcamp found out that Ardaiz, well into his retirement, was trying to access these files she adamantly objected, citing the poor optics of allowing him special access. (Text, HE 23)

Ardaiz's lack of credibility and intense bias toward Petitioner are a dark cloud over the first trial. Second trial DDA Warren Robinson admitted that he did not do any of his own investigation

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[29] As amended in 2023, effective 1/1/2024. Counsel could find no cases decided since the law was amended.

[30] On March 16, 2017, the defendant filed a Motion to Enjoin Presiding Judge Ardaiz from Discussing Information and Opinions re: People v. Stankewitz. The Motion asked for Ardaiz to be enjoined from discussing the case either privately or publicly. On April 7, 2017, the People filed their Opposition to Defense's Motion to Enjoin Judge Ardaiz from Speaking to the Media. On April 13, 2017, the defendant filed his Reply to the People's Opposition to Motion to Enjoin Judge Ardaiz. On April 14, 2017, this court held a hearing and denied defendant's Motion.

[31] Letter to the Editor, Fresno Bee, May 15, 2019, Title: Stankewitz Guilty of Cold-Blooded Murder; Letter to the Editor, Modesto Bee, May 16, 2019, title: Stankewitz Guilty of Cold-Blooded Murder.

regarding the case. (p 568, l 1 – 3) As a result, he used the same playbook that Ardaiz used for the first trial despite his duty to investigate on his own.[32] Therefore, the same false theory that victim Graybeal was shot by Petitioner at the corner of 10th and Vine, was used at the second trial. No new testing was done, no examination of evidence, no interviewing of witnesses. The prosecution's case, from the beginning, used false evidence to obtain a conviction. From the Time of the Murder on, the Prosecution Was Aided By the Defense Lack of Investigation. (Petition 76).

As discussed in detail below, the prosecution's use of false testimony began with evidence gathered during the initial investigation and used at the preliminary hearing, the first trial guilt phase and the second trial guilt phase. The six key false elements or theories are:

A. FALSE EVIDENCE #1 - The firearm used at trial is the murder weapon.

B. FALSE EVIDENCE #2 - The victim was killed with a .25 caliber firearm.

C. FALSE EVIDENCE #3 - The victim was 5'7".

D. FALSE EVIDENCE #4 - The trajectory of the bullet could be accurately determined.

E. FALSE EVIDENCE #5 - The only possible shooter was taller than the victim.

F. FALSE EVIDENCE #6 - Billy Brown testified truthfully that he witnessed the actual shooting.

The false evidence is material because it was used by the Prosecution to Convict Petitioner.

A. FALSE EVIDENCE #1 – The firearm used at trial is the murder weapon.

The prosecution relied *inter alia*, on false and conflicting police reports, the false and misleading testimony of law enforcement witness Allen Boudreau and the testimony of Billy Brown to promote the false gun theory. The prosecution has continued to promote all of this false evidence until the evidentiary hearing, where the DA Investigator admitted one

[32] See *People v. Pilipina* (2021 Cal.App. Unpub.LEXIS 3143 (unpublished), citing *Jackson v. Brown* (9th Cir. 2008) 513 F.3d 1057, 1075 which held that the prosecutor has a duty to investigate. Petitioner asserts that given that his first trial was reversed and the issues cited in the CA Supreme Court decision, *People v. Stankewitz* (1980) 32 Cal. 3d 80, DDA Robinson had a heightened duty to investigate.

element: the existence of 1973 date on holster. As discussed below, there are many evidentiary factors which show that these theories are false.

1. <u>There is Substantial Evidence That the Gun Used at Trial Against Petitioner is not the Gun That Killed Mrs. Graybeal. (Petition 56) (reframed)</u>

Given the notoriety of the Stankewitz name, an acute suspicion looms over whether the gun in evidence is the gun that killed Mrs. Graybeal. Had Goodwin been effective on this issue it could have been definitively proved or disproved, but he was not. Therefore, the prosecution is nagged by how the purported gun went from having no serial number to having a serial number absent any documentation about the process, and why was the gun found with engravings of an officer's ID number and a date predating the murder by five years?

When Chris Coleman and Roger Clark saw the holster they immediately recognized the 1973 engraving as a law enforcement chain of custody marking. Both Coleman and Clark are former law enforcement and were unequivocal about their observations. The fact that the date on the holster predating the Graybeal homicide by five years raised serious concerns for Coleman. (p 236, l 2 – 6.) That leans much more toward the side of dishonesty on the part of law enforcement because there was a key piece of evidence in sheriff's property at one time. It begs the question of how would it end up in the car, a vehicle that's purportedly belonging to people involved in a homicide five years later. (p 236, ln 11-14)

2. <u>The weapon in evidence has a clearly readable serial number. The serial number discrepancy is highly suspicious and should have been investigated by trial counsel.</u>

When Chris Coleman saw the gun himself in 2019, he did not believe the serial number was removed. “The numbers were visible when I looked at them in 2019 and it didn’t look like a restoration attempt had been done.” (P 93, 20) “There probably was not the chemical restoring of the serial numbers and certainly no burning attempt” (p 96, l 19). He didn’t see anything notated anywhere about trying to restore the number or anything done to the area of the serial number other than a slight buffing with steel wool. (p 99, l 5) Given that, Coleman testified that he would expect the serial number on the Titan to be documented with the serial number that was present because the serial number can clearly be seen. (p 99, l 25)

3. The holster has two scribed dates (Petition 56).

One of the most interesting questions in this case is why did Fresno City police seize the alleged holster on 2/8/1978, but the holster bore a 2/10/78 evidence processing date by the FCSD. If the police evidence is to be believed, the holster sat around for two days before being marked as evidence. This is unusual and raises suspicion in itself. None of the pictures with the holster in the car are dated as would be expected.

The evidence at the Hearing shows the holster was seized by an officer in 1973. (p 67, l 25 – p 68, l 2.) When FPD recovered the holster, they should have engraved it. However, none of the FPD reports document the 1973 date that appears on the holster clip. See HE 1, 4, 6 and 7. A visual inspection of the holster in 2019 showed a 7/25/73 date (p 89, l 10). Coleman could not make out the other number next to the date with the naked eye. (p 90, l). But in 2023, when Coleman looked at it microscopically, he determined that it had been scribed in 1973 and appeared to have been scribed again in 1978 (p 89, l 10). It got his attention because he

wondered why would a holster that looked like it had been in evidence in 1973 all of a sudden show up again in 1978. (p 200, l 24 – 26). However, whoever recovered the gun and holster in 1978 did not document the 1973 date. See HE 1, 4, 5, 6, 7, 11. Despite testifying that she did not omit anything, (p 528, l 2 – 9), Isaac and Freeman failed to document 1973 holster date and number inscription in August, 2021 when Isaac wrote a report.[33]

4. Prosecution continued to cover up the 1973 date on the holster until admitting so at the evidentiary hearing.

The Prosecution had the opportunity to retest the gun and document the etchings on the holster in 2022/2023 and did not. After the defense pointed to the existence of 2 dates on the holster, in August, 2021, as part of preparing their Informal Response, DDA Freeman and DAI Isaac went to inspect the ballistics evidence. DAI Isaac wrote a report regarding that inspection,[34] which was filed with the court by then DDA Freeman. The report contained Freeman and Isaac's observations of the firearm and holster, without any scientific tools. Despite Isaac's testimony to the contrary, that report omitted exculpatory evidence: the fact that there are 2 etchings on the holster – one with the date 7/25/73, five years prior to the murder. The Report has a photo of the holster, which shows the 1973 date. It wasn't until Isaac was under oath at the EH that she admitted that the holster has a second date on it. (p 528, l 2 – 9).

Pursuant to habeas allegations regarding both the firearm and holster, in Fall, 2022, Petitioner sought to get the firearm and holster inspected and tested by

[33] Report #78DA00001 – Supplemental – 1 Report, Exhibit A to Informal Response.
[34] Report #78DA00001 – Supplemental – 1 Report, Exhibit A to Informal Response.

Forensic Analytical Crime Lab.[35] After the Motion was filed, the prosecution informed Petitioner's counsel that they wanted to test the firearm first. Petitioner acceded to their request and prepared a court order providing for such testing. After many months of delays, Petitioner's counsel was subsequently told that the prosecution had changed its mind and would not be testing the firearm. The reason given was because the Fresno Sheriff's Crime Lab was not willing to perform the testing.

DDA Kelsey Kook and DAI Danielle Isaac (p 530, l 20) both testified that they met with Fresno Sheriff's Crime Lab director Koop to discuss retesting the firearm. Their testimonies conflicted with each other regarding who arranged the meeting and what mode of transportation they used to go to the meeting. Isaac admitted that no report was made regarding the meeting with Koop. (p 531, 11 – 13), nor does she have any emails or texts wherein she set up the meeting. (p 535, l 14) This suspicious because government agencies keep records, including emails. Further, Isaac is still employed in the same position and would have access to her email account. Therefore, Petitioner has no way to verify that the meeting took place, much less what was discussed.

As to why the Lab would not test the firearm, Kook testified that director Koop said that the gun was tested in 1978 and therefore did not need to be tested again now. (p 593, ln 22 – p 594, ln 1) Isaac testified that Koop said that retesting the gun was unnecessary. (p 531, l 7 – 10). However, Director Koop said that he had not ever been involved in testing related to Mr. Stankewitz's case. When he was asked whether he was contacted by any member of the District Attorney's Office

[35] See Notice of Motion and Motion to Access Court Exhibits for Examination and Testing, filed 9-19-2022.

and asked to retest a gun in Mr. Stankewitz's case, he stated "I do not believe I was." (p 522, l 18 – 24)

5. Gun and holster go together – Prosecution has always presented them that way until recently.

The firearm and holster going together is demonstrated by them being strapped together as one exhibit: Trial Exhibit 5a. See HE 14, FACL Laboratory Report, p. 1, description of Exhibit 5-A "Titan .25 cal firearm and holster." Clark testified that the implications are that the gun and holster are together. (p 69, l 9) Further that in his opinion, the Titan 25 (HE 3) fits in the holster (HE 3A). (p 125, l 24 – 26) At the hearing, the parties stipulated that the Titan 25 (HE 3) could be carried in the holster marked 3A. (p 124, l 4 – 10).

6. The FPD reports which describe the firearm that was allegedly recovered are consistent with tampering.

The report which shows serial number removed on top, then includes a serial number on bottom is consistent with tampering (p 59, l 26 – p 60, l 9) and possible intentional misconduct; proper language would have been serial number scratched or serial number degraded (p 105, l 8 - 10) After a serial number was discovered, a detective would write a separate supplemental report of explanation (p 109, l 19 - 24). Coleman testified that he would expect to see some sort of documentation about how it went from serial number removed to it has a serial number. (p 100, l 3)

7. There Was No Forensic Evidence Tying Petitioner to the Gun. (Petition 58)

No fingerprints were taken on the gun or holster (See Section VII.A.12 Lack of Proper documentation, infra) It was a common practice in 1978, so it is

surprising and below standard that they didn't try to fingerprint the gun or holster (p 71, l 26 – p 72, l 11) and (p 72, line 17, 22). An attempt to lift fingerprints or test for fibers would have been documented (p 73, line 3, 6) Coleman testified similarly that in 1978 they would have at least tried to fingerprint the gun because it was the main way of trying to identify a suspect at the time. (p 251, l 16 – 23) He further testified that efforts to fingerprint by investigating officers are documented whether they're successful or not. (p 251, l 24 – p 252, l 1).

8. Chain of evidence at FCSD pertaining to ballistics evidence is contaminated.

Upon analyzing the evidence at FCSD, including HE 9, the Meras property casings card and HE 13, the envelope that contains .25 cal test fires, both Clark and Coleman testified that it was unreasonable to place .25 casings in an envelope marked .22 casings from a separate homicide because the chain of evidence needs to be pristine and not be contaminated from one case to another (p 82, l 8 - 16) (p 80, l 5 – 12) (p 234, ln 16 – p 235, ln 8). This undermines the integrity of all the physical evidence used against Petitioner.

9. Whole chain of evidence at FCSC and FCSD is contaminated.

Given the facts and evidence in this case, the whole chain of evidence is contaminated. Here we have a clear example of evidence not being sequestered between the Graybeal and Meras cases. (p 84, l 22) This could be intentional misconduct (p 84, l 26) used to bolster a prosecution or bolster the strength of evidence against a person. (p 85, l 3) If some evidence that the gun used in the first crime didn't have a serial number, then a couple of days later after several officers have handled it and documented that the serial number is removed, it suddenly goes

to a lab and has a serial number, that's indicative of some possible intentional misconduct (p 85, 6 – 12 and 16). As a result, Clark testified that he doesn't have any confidence in any evidence in the case. (p 102, l 22-23) and (p 84, l 14 – 22)

10. There Were Conflicting Reports Made by the FCSD as to Description of the Gun. (Petition 57)

The police reports show both serial number removed and serial number determined to be 146425. (p 56, ln 24 – p 57, ln 6) See Hearing Exhibits 1, 4, 5, 6. The weapon in evidence has a clearly readable serial number. The serial number discrepancy is suspicious. When Coleman saw the gun himself in 2019, he did not believe the serial number was removed. 'The numbers were visible when I looked at them in 2019 and it didn't look like a restoration attempt had been done.' (p 93, l 20) 'There probably was not the chemical restoring of the serial numbers and certainly no burning attempt.' (p 96, l 19) He didn't see anything notated anywhere about trying to restore the number or anything done to the area of the serial number. (p 99, l 5) Given that, Coleman testified that he would expect the serial number on the Titan to be documented with the serial number that was present because the serial number can clearly be seen. (p 99, l 25)

11. Police Reports Have Conflicting Information Regarding Where the Gun Was Recovered. (Petition 59)

The inventory search of the vehicle placed the gun under a seat in the car. However, the photo of the alleged gun and holster in the car was not properly documented per police procedure. It is undated and lacks a color-coded placard and a date. (p 69, l 24 – p 70, l 4). There should also have been close-up photos and measurements of the distance between the holster and the firearm. (p 71, l 3) The

Bonesteel reports state that a gun was recovered from the car, not Douglas Stankewitz's person. See HE 1,6,7,12.

12. Lack of proper documentation reinforces that gun is false evidence

Without a placard to document it, Photo 8-F is contrary to proper police procedure (p 69, l 24 – p 70, l 4.), also no photos were taken of the 'serial # removed' firearm (p 71, l 15 - 22). There was no fingerprinting done of the firearm or holster (p 71, l 25) Clark's observations about whether she was shot in the car is that it was possible because no slug[36] was recovered and the car was released so early without a thorough look at it. No indication that there was a good workup of the car, which is unusual. (p 95, l 10).

13. The Deputy District Attorney Offered Unsupported and Conflicting Evidence to Demonstrate the Gun Used at Trial Was the Murder Weapon. (Petition 60)

This included introducing Trial Exhibit 50, the death certificate, stating that the victim was killed with a .25 cal. Tovar testified that without a projectile being recovered, there is no way to determine the caliber of the weapon. (p 290, l 23 – p 291, l 3) In addition, Trial Exhibit 39, a photo of the victim (known because there is a placard in the photo), shows the right side of her face and head. In reviewing the photo, Tovar testified that even looking at the victim in person, there is no way to determine the caliber of the gun that killed her. (p 284, l 18 – 22)

14. DDA Robinson Elicited False Testimony About the Gun used at Trial in Order to Tie the Gun to Petitioner. (Petition 73)

[36] The term slug, expended bullet and spent bullet are used interchangeably in this brief.

Robinson argued in his opening statement that Boudreau testified that a slug had been found. (T2 Vol. 1 RT 1-L) Further he elicited testimony from Bonesteel that the firearm presented was the murder weapon and that Bonesteel removed it from the car. (See HP Claim 2.C.3 and Denial at 43, l 19). If Bonesteel did remove the gun from the car, his mark should be on the firearm or holster. (p 54, ln 1-5) Robinson's statements are controverted by the second trial testimony of Boudreau (T2 Vol. I RT 160), and both Clark and Coleman. (p 94, ln 9 & p 94, ln 24).

15. DDA Robinson Used His Opening Statement to Tie a Gun to Petitioner. (Petition 72) (T2 Vol. I RT 1-L)

He used three false evidence elements.[37] Respondent conceded that no slug or expended bullet was found. See Return at 34, l 19. Clark confirmed this. (p 94, l 9).

16. DDA Robinson Used the Same Expert Witnesses as the First Trial, and Also Used False or Misleading Testimony By the Experts to Achieve a Conviction. (Petition 73)

He used five of six false evidence elements.[38] In trial two, DDA Robinson elicited testimony that the victim was shot from a distance of a few inches (T2 Vol. 1 RT 70) and that the .25 cal firearm in evidence was the murder weapon. (T2 Vol. RT 126) (T2 Vol. IV RT 880) However, Tovar testified that given the stippling shown in Trial Exhibit 39, the finding of that stippling classifies the wound as an intermediate range of fire, which is very vague. As a result, 'you have a distance

[37] **FALSE EVIDENCE #1: The firearm used at trial is the murder weapon; FALSE EVIDENCE #2: The victim was killed with a .25 caliber firearm; and FALSE EVIDENCE #6: Billy Brown testified truthfully that he witnessed the actual shooting.**

[38] **FALSE EVIDENCE #1: The firearm used at trial is the murder weapon; FALSE EVIDENCE #2: The victim was killed with a .25 caliber firearm; FALSE EVIDENCE #3: The victim was 5'7"; FALSE EVIDENCE #4: The trajectory of the bullet could be accurately determined; and FALSE EVIDENCE #5: The only possible shooter was taller than the victim.**

from not contact up to maybe 3 feet.' (P 285, l 16 – 20) 'The stippling does not tell you anything about the weapon that was fired nor the caliber.' The type of stippling is consistent with the victim being shot in a car in the side of the face. (p 286, l 23 – p 287, l 3). From the stippling, Tovar couldn't determine the distance between the cheek and the muzzle. He also doesn't know how much farther back the muzzle was if the arms are stretched or bent to where the person is with a test fire. (p 288, l 7 – 10) He further testified that the stippling does not depend upon the type of ammunition. (p 288, l 23).

17. DDA Robinson's guilt phase closing argument misstated the facts and evidence. (Petition 75)

In his closing he argued that Billy Brown's testimony was uncontradicted. (T2 Vol. III RT 600) and that there was no evidence at all to show that his testimony was not what really happened. (T2 Vol. III RT 600) Robinson also stated that Brown was there to see everything that happened despite the fact that the physical evidence conflicted with of his testimony regarding the actual shooting. DDA Robinson knew that Billy's testimony was critical. When Billy's resisted appearing to testify, Robinson filed an affidavit with the court stating that Billy's testimony was critical to the case. (Habeas Exh 6aa)

18. All six elements of False Evidence were used by the prosecution to convict Petitioner, as demonstrated in the below **subclaims**[39]:

[39] **FALSE EVIDENCE #1: The firearm used at trial is the murder weapon; FALSE EVIDENCE #2: The victim was killed with a .25 caliber firearm; FALSE EVIDENCE #3: The victim was 5'7"; FALSE EVIDENCE #4: The trajectory of the bullet could be accurately determined; FALSE EVIDENCE #5: The only possible shooter was taller than the victim; and FALSE EVIDENCE #6: Billy Brown testified truthfully that he witnessed the actual shooting.**

a. The State Agencies Engaged in a Pattern and Practice of Perpetuating a False Theory of the Case and Offering False and Misleading Testimony to Achieve a Conviction in the First Trial. (Petition 67)

Specifically that the firearm was the murder weapon. Despite his statement at the Preliminary Hearing that he had turned over all reports to the defense. (PH Vol. 1 RT 54). DDA Ardaiz withheld the reports regarding Jesus Meras. These reports were material because they contained the fact that the Meras attempted shooting was committed with a .22 caliber.

b. The shell casings at the Meras crime scene (.22 cal.) and Graybeal crime scene (.25 cal.) came from different types of bullets. (Petition 139)

As was explained by the law enforcement experts, no one in law enforcement would do a comparison of .22 casings to .25 casings, because the class characteristics are substantially different. You cannot shoot rim fire ammunition in a .25 caliber pistol and you cannot fit .25 caliber bullets into the chamber of a .22 caliber pistol. They are not compatible in either direction. (p 81, ln 3-12) (p 252, ln 8-20)

c. Deputy District Attorney Ardaiz Presented His Closing Argument Based on the False Testimony of the Main Witness. (Petition 71)

Contrary to both the autopsy report and Boudreau's testimony, Ardaiz characterized Boudreau's testimony as the trajectory being a straight trajectory. (T1 Vol. 21 RT 3528) Billy Brown was the whole case. Absent Billy Brown there's no conviction in this case. (p 453, l 26 – p 454, l 1) Ardaiz needed to be sure that the prosecution's physical evidence descriptions matched Billy's testimony. He was given an immunity

agreement to ensure that he would testify as directed by DDA Ardaiz. (Judicial notice)

d. The State Agencies Continued to Engage in a Pattern and Practice of Perpetuating a False Theory of the Case and Offering False and Misleading Testimony in the Second Trial in Order to Achieve a Conviction. (HP 72)

'Billy Brown was the whole case.' 'Absent Billy Brown there's no conviction in this case.' (p 453, l 26 – p 454, l 1) His immunity agreement (judicial notice) was in effect through the second trial, to ensure that he would testify as directed by DDA Robinson. Robinson testified that did not do any investigation of the case. (p 568, l 3); nor did he inspect the physical evidence. (p 568, l 6)

B. FALSE EVIDENCE #2 - The victim was killed with a .25 caliber firearm.

Despite medical examiner Nelson (T2 Vol. I RT 70) testifying that no testing was done to confirm the gun caliber, the prosecution used this falsehood to strengthen their theory that the victim was shot with a .25 cal. firearm. However, the evidence contradicts their theory.

1. There Is No Forensic Evidence that the Victim was shot with a . 25 Caliber firearm, the Gun Offered as the Murder Weapon. (Petition 61)

At the preliminary hearing, one of the defense attorneys for a codefendant argued that the cause of death had not been proved to be a .25 cal bullet. (PH Vol. 2 RT 429) DDA Ardaiz concurred, saying that he had no problem in removing the caliber of the weapon from the death certificate. (PH Vol. 2 RT 429) The court then struck the caliber of the gun from that exhibit. (PH Vol. 2 RT 430) As has been confirmed by Respondent, no spent bullet was recovered. Tovar stated that based on

the available information, the caliber of the gun that killed the victim could not be determined. (p 290, l 23 – p 291, l 3) In addition, Trial Exhibit 39, a photo of the victim (known because there is a placard in the photo), shows the right side of her face and head. In reviewing the photo, Tovar testified that even looking at the victim in person, there is no way to determine the caliber of the gun that killed her. (p 284, l 18 – 22)

2. No Testing Was Done to Verify That the Victim Was Shot With a .25-Caliber Pistol. (Petition 99)

Despite both criminalist Boudreau and medical examiner Nelson (T2 Vol. I RT 70) testifying that no testing was done to confirm the gun caliber, the prosecution presented evidence that the victim was killed with the .25 cal used at trial. In fact, it was not possible to do testing without a bullet being recovered. As Tovar testified, as a pathologist, there's no way to determine what the caliber was if there's no projectile recovered. (p 290, l 23 – p 291, l 3)

3. The Deputy District Attorneys Offered Expert Testimony at Trial That Directly Contradicted the Autopsy Reports and Police Reports. (Petition 70)[40]

At the first trial, the autopsy report was referred to but not marked for identification nor admitted into evidence. (T1 Vol. 21 RT 3527) At the second trial, DDA Robinson, likely wanting the avoid the problem regarding the victim's height shown on the autopsy report that occurred in the first trial, did not bring up the autopsy report at all. If he had, it would have happened during Boudreau's

[40] **Three elements of False Evidence were used by the prosecution to convict Petitioner: FALSE EVIDENCE #3: The victim was 5'7"; FALSE EVIDENCE #4: The trajectory of the bullet could be accurately determined; and FALSE EVIDENCE #5: The only possible shooter was taller than the victim.**

testimony (T2 Vol. I RT 151 - 154) As discussed in the IAC section, supra, Goodwin erred in failing to effectively cross examine regarding the autopsy report. Boudreau testified falsely about the victim's height being 5'7" and that the victim's wound would be at 5 foot 3 inches from the ground. (T1 Vol. 21 RT 3528-3529) DDA Ardaiz then characterized that testimony as being a straight trajectory through the head. (T1 Vol.21 RT 3528) Despite the autopsy report stating that the angle of the bullet was ten degrees, Boudreau testified that it was five degrees. (T1 Vol. 21 RT 3528) DDA Ardaiz then characterized that testimony as being a straight trajectory through the head. (T1 Vol. 21 RT 3528) The prosecution also misled the court and jury regarding the distance of the shooter from the victim. Boudreau testified at the first trial that the gun was between six and twelve inches from the victim when she was shot. (T1 Vol. 21 RT 3529)

At the second trial, although he performed the autopsy, Dr. T. C. Nelson had limited testimony. He was not asked about his autopsy report. (T2 Vol. 1 RT 60, 67) When Boudreau testified, he did not state the victim's height from the autopsy report; nor was the autopsy report admitted into evidence. (T2 Vol. 1 RT 145 – 155).

4. DDA Robinson Used the Same Expert Witnesses as the First Trial, and Also Used False or Misleading Testimony By the Experts to Achieve a Conviction. [41](Petition 73)

In trial two, DDA Robinson elicited testimony that the victim was shot from a distance of a few inches (T2 Vol. 1 RT 70) and that the .25 cal. firearm in evidence was the murder weapon (T2 Vol. RT 126) (T2 Vol. IV RT 880) However,

[41] He used five of six False Evidence elements: **FALSE EVIDENCE #1: The firearm used at trial is the murder weapon; FALSE EVIDENCE #2: The victim was killed with a .25 caliber firearm; FALSE EVIDENCE #3: The victim was 5'7"; FALSE EVIDENCE #4: The trajectory of the bullet could be accurately determined; and FALSE EVIDENCE #5: The only possible shooter was taller than the victim.**

Tovar testified that given the stippling shown in Trial Exhibit 39, the finding of that stippling classifies the wound as an intermediate range of fire, which is very vague. As a result, 'you have a distance from not contact up to maybe 3 feet'. (p 285, l 16 – 20) The stippling does not tell you anything about the weapon that was fired nor the caliber. The type of stippling is consistent with the victim being shot in a car in the side of the face. (p 286, l 23 – p 287, l 3). From the stippling, Tovar couldn't determine the distance between the cheek and the muzzle. He also doesn't know how much farther back the muzzle was if the arms are stretched or bent to where the person is with a test fire. (p 288, l 7 – 10) He further testified that the stippling does not depend upon the type of ammunition. (p 288, l 23).

C. FALSE EVIDENCE #3: The victim was 5'7".

To support their false theories that Petitioner was the shooter, the prosecution used false testimony from her father (T2 Vol. 1 RT 8, ln 5-7), despite saying that he had not seen her driver's license; (T2 Vol. 1 RT 7, ln 14-15) and a false hypothetical by criminalist Boudreau. (T2 Vol. 1 RT 151-4) They did so despite knowing that that based on the autopsy report, the victim's height is listed as 160 cm, which converts to 5'3" and without having any independent evidence to verify a different height. Dr. Tovar testified that based on the autopsy report, Graybeal was 160 cm. (p 273, l 11) Further, that 160 cm translates to approximately 5'3". (P 273, l 25) He also testified that there is nothing in any of the reports documenting the height of the wound. (P 291, l 21 – p 292, l 1).

Boudreau testified falsely about the victim's height being 5'7" and that the victim's wound would be at 5 foot 3 inches from the ground. (T1 Vol. 21 RT 3528-3529) DDA Ardaiz then characterized that testimony as being a straight trajectory through the head. (T1 Vol.21 RT 3528) Despite the autopsy report stating that the angle of the bullet was ten

degrees, Boudreau testified that it was five degrees. (T1 Vol. 21 RT 3528) DDA Ardaiz then characterized that testimony as being a straight trajectory through the head. (T1 Vol. 21 RT 3528) The prosecution also misled the court and jury regarding the distance of the shooter from the victim. Boudreau testified at the first trial that the gun was between six and twelve inches from the victim when she was shot. (T1 Vol. 21 RT 3529)

1. DDA Robinson Used the Same Expert Witnesses as the First Trial, and Also Used False or Misleading Testimony By the Experts to Achieve a Conviction.[42] (Petition 73)

In trial two, DDA Robinson elicited testimony that the victim was shot from a distance of a few inches (T2 Vol. 1 RT 70) and that the .25 cal. firearm in evidence was the murder weapon (T2 Vol. RT 126) (T2 Vol. IV RT 880) However, Tovar testified that given the stippling shown in Trial Exhibit 39, the finding of that stippling classifies the wound as an intermediate range of fire, which is very vague. As a result, you have a distance from not contact up to maybe 3 feet. (p 285, l 16 – 20) The stippling does not tell you anything about the weapon that was fired nor the caliber. The type of stippling is consistent with the victim being shot in a car in the side of the face. (p 286, l 23 – p 287, l 3). From the stippling, Tovar couldn't determine the distance between the cheek and the muzzle. He also doesn't know how much farther back the muzzle was if the arms are stretched or bent to where the person is with a test fire. (p 288, l 7 – 10) He further testified that the stippling does not depend upon the type of ammunition. (p 288, l 23).

[42] He used five of six false evidence elements: **FALSE EVIDENCE #1: The firearm used at trial is the murder weapon; FALSE EVIDENCE #2: The victim was killed with a .25 caliber firearm; FALSE EVIDENCE #3: The victim was 5'7"; FALSE EVIDENCE #4: The trajectory of the bullet could be accurately determined; and FALSE EVIDENCE #5: The only possible shooter was taller than the victim.**

2. DDA Robinson's guilt phase closing argument misstated the facts and evidence. (Petition 75)

In his closing he argued that Billy Brown's testimony was uncontradicted. (T2 Vol. III RT 600) and that there was no evidence at all to show that his testimony was not what really happened. (T2 Vol. III RT 600) Robinson also stated that Brown was there to see everything that happened despite the fact that the physical evidence conflicted with of his testimony regarding the actual shooting. DDA Robinson knew that Billy's testimony was critical. When Billy's appearance to testify was at issue, he filed an affidavit with the court so stating. (Habeas Exh 6aa)

D. FALSE EVIDENCE #4: The trajectory of the bullet could be accurately determined.

In order to persuade the jury that Petitioner was the shooter, the prosecution argued that the trajectory of the bullet could be accurately determined. They did so despite the fact that no slug or spent bullet was recovered. DDA Robinson knew the importance to a jury of the existence of a spent bullet was to confirm that the victim was shot with the gun used at trial. So, he lied to the jury and said that criminalist Boudreau testified that a spent shell was found even though that was patently false. He then compounded the lie by saying that a spent bullet had been found, which was also untrue.[43]

Tovar testified that the trajectory of a projectile is the pathway and the direction of the bullet through the body. (p 275, l 9 et seq. p 276, l 8-10) In this particular case, regarding trajectory, there's a small deviation from the horizontal. (p 277, l 19-20) The height of the shooter can only be determined if the position of the victim at the time she was shot is known. (P 279, l 8 – 11) The prosecution's height of the shooter theory was false because of the number of variables involved to establish the height of the shooter,

[43] Respondent admitted as much in their Return at 34, l 11).

including whether the victim and the shooter are standing up straight, the shoes that they are each wearing, whether the ground they're standing on is level and the angles of their heads and arms. (p 279, l 9 – 22). 'You also need to know how the shooter was holding the gun.' (p 279, l 24). The actual observation by the witness is also affected by the relative position of the victim, the shooter and the witness. (p 279, l 25 – p 280, l 11). Based on the change in elevation between the gutter and where the victim was standing, she was higher up. 'The relative position of the victim and the shooter and the deviations discussed above, show the limitations of just taking a simple measurement and saying that's what the height of the shooter was.' (p 282, l 9 – 112)

1. <u>No Spent Bullet or Slug was Recovered nor Is There an Indication the Bullet Was Searched For. (Petition 62)</u>

Respondent admits as much. See Return, p 34, l 19. Clark's testimony confirmed this. (p 94, l 9). There Is No Forensic Evidence that the Victim was shot with a . 25 Caliber firearm, the Gun Offered as the Murder Weapon. (HP 61) At the preliminary hearing, one of the defense attorneys for a co-defendant argued that the cause of death had not been proved to be a .25 cal. bullet. (PH Vol. 2 RT 429) DDA Ardaiz concurred, saying that he had no problem in removing the caliber of the weapon from the death certificate. (PH Vol. 2 RT 429) The court then struck the caliber of the gun from that exhibit. (PH Vol. 2 RT 430) As has been confirmed by Respondent, no spent bullet was recovered.

Tovar stated that based on the available information, the caliber of the gun that killed the victim could not be determined. (p 290, l 23 – p 291, l 3) In addition, Trial Exhibit 39, a photo of the victim (known because there is a placard in the photo), shows the right side of her face and head. In reviewing the photo, Tovar

testified that even looking at the victim in person, there is no way to determine the caliber of the gun that killed her. (p 284, l 18 – 22)

2. No Testing Was Done to Verify That the Victim Was Shot With a .25-Caliber Pistol. (Petition 99)

Despite both criminalist Boudreau and medical examiner Nelson (T2 Vol. I RT 70) testifying that no testing was done to confirm the gun caliber, the prosecution presented evidence that the victim was killed with the .25 cal used at trial. In fact, it was not possible to do testing without a bullet being recovered. As Tovar testified, as a pathologist, there's no way to determine what the caliber was if there's no projectile recovered. (Tovar p 290, l 23 – p 291, l 3)

3. DDA Robinson's opening statement misstated the evidence regarding whether a spent bullet or slug was recovered, stating that Boudreau said there was, which was untrue.

There Is No Forensic Evidence that the Victim was shot with a .25 Caliber firearm, the Gun Offered as the Murder Weapon. (Petition 61) At the preliminary hearing, one of the defense attorneys for a co-defendant argued that the cause of death had not been proved to be a .25 cal bullet. (PH Vol. 2 RT 429) DDA Ardaiz concurred, saying that he had no problem in removing the caliber of the weapon from the death certificate. (PH Vol. 2 RT 429) The court then struck the caliber of the gun from that exhibit. (PH Vol. 2 RT 430) As has been confirmed by Respondent, no spent bullet was recovered. Tovar stated that based on the available information, the caliber of the gun that killed the victim could not be determined. (p 290, l 23 – p 291, l 3) In addition, Trial Exhibit 39, a photo of the victim (known because there is a placard in the photo), shows the right side of her face and head.

In reviewing the photo, Tovar testified that even looking at the victim in person, there is no way to determine the caliber of the gun that killed her. (p 284, l 18 – 22)

4. No Testing Was Done to Verify That the Victim Was Shot With a .25-Caliber Pistol. (Petition 99)

Despite both criminalist Boudreau and medical examiner Nelson (T2 Vol. I RT 70) testifying that no testing was done to confirm the gun caliber, the prosecution presented evidence that the victim was killed with the .25 cal used at trial. In fact, it was not possible to do testing without a bullet being recovered. As Tovar testified, as a pathologist, there's no way to determine what the caliber was if there's no projectile recovered. (p 290, l 23 – p 291, l 3) A review of EH Exhibits 1,4,6,7 shows that none of them list an expended bullet or slug recovered from the scene.

5. The Prosecution's Physical Evidence Shows That Petitioner Was Not the Murderer.[44] (Petition 65)

In addition to the false trajectory evidence, the prosecution used four of six false evidence elements:[45]

6. The Physical Evidence Does Not Match the Prosecution Theory of the Case.

As a result, critical evidence was withheld from the jury. The Victim's Height and the Bullet Trajectory Make It Highly Unlikely for Petitioner to Have Been the Shooter.[46] (Petition 65)

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[44] The prosecution used two of six false evidence elements: **FALSE EVIDENCE #5: The only possible shooter was taller than the victim; and FALSE EVIDENCE #6: Billy Brown testified truthfully that he witnessed the actual shooting.**

[45] **FALSE EVIDENCE #1: The firearm used at trial is the murder weapon; FALSE EVIDENCE #2: The victim was killed with a .25 caliber firearm; FALSE EVIDENCE #3: The victim was 5'7"; and FALSE EVIDENCE #5: The only possible shooter was taller than the victim.**

E. FALSE EVIDENCE #5: The only possible shooter was taller than the victim.

The diagrams prepared as part of autopsy report, which was written by Dr. T. C. Nelson,[47] show that the angle of the shot was from low to high and from rear right to left. Nonetheless, the prosecution promoted the theory that the only possible shooter was taller than the victim and presented evidence to that effect.

1. Deputy District Attorney Robinson and DA Investigator Martin Focused Their Efforts on Petitioner, Rather Than Any Codefendants. (Petition 75)

Tovar testified that the trajectory of a projectile is the pathway and the direction of the bullet through the body. (p 275, l 9 et seq. and p 276, l 8-10) In this particular case, regarding trajectory, there's a small deviation from the horizontal. (p 277, l 19-20) The height of the shooter can only be determined if the position of the victim at the time she was shot is known. (p 279, l 8 – 11) The prosecution's height of the shooter theory was false because of the number of variables involved to establish the height of the shooter, including whether the victim and the shooter are standing up straight, the shoes that they are each wearing, whether the ground they're standing on is level and the angles of their heads and arms. (p 279, l 9 – 22). You also need to know how the shooter was holding the gun. (p 279, l 24). The actual observation by the witness is also affected by the relative position of the victim, the shooter and the witness. (p 279, l 25 – p 280, l 11). Based on the change in elevation between the gutter and where the victim was standing, she was higher up. The relative position of the victim and the shooter and the deviations discussed

[46] The prosecution used four of six false evidence elements: **FALSE EVIDENCE #1: The firearm used at trial is the murder weapon; FALSE EVIDENCE #2: The victim was killed with a .25 caliber firearm; FALSE EVIDENCE #3: The victim was 5'7"; and FALSE EVIDENCE #4: The trajectory of the bullet could be accurately determined.**

[47] See HE 16, Autopsy Report.

above, show the limitations of just taking a simple measurement and saying that's what the height of the shooter was. (p 282, l 9 – 112)

2. The State Agencies Continued to Engage in a Pattern and Practice of Perpetuating a False Theory of the Case and Offering False and Misleading Testimony in the Second Trial in Order to Achieve a Conviction. (Petition 72)

'Billy Brown was the whole case. Absent Billy Brown there's no conviction in this case.' (p 453, l 26 – p 454, l 1) His immunity agreement (judicial notice) was in effect through the second trial, to ensure that he would testify as directed by DDA Robinson. Robinson testified that did not do any investigation of the case. (p 568, l 3); nor did he inspect the physical evidence. (p 568, l 6)

3. The Blood Type Analysis That Could Have Exonerated Petitioner Has Been Lost or Destroyed. (Petition 66)

Had testing been done on the stains of what appears to be blood evidence on all the defendants' clothing been done in 1978, it could have been used to either include or exclude possible shooters. (p 380, ln 25 – p 381, ln 21) The blood evidence was too degraded to be tested in 2020, when FACL examined the clothing.[48]. Because Goodwin failed to inspect the evidence, nor hire any experts to do so, he did not look at the clothing of the defendants. Therefore, he did not realize that it had stains. This is another example of IAC by Goodwin. The clothing was in evidence in 1983 and should have been tested them.

F. FALSE EVIDENCE #6: Billy Brown testified truthfully that he witnessed the actual shooting. (Petition 118)

Although his testimony was not consistent with the physical evidence, the prosecution used Billy Brown's testimony that he witnessed the shooting while he was

[48] See Habeas Exh 3l, FACL report, dated 9/2/2020 at 2.

outside the car and saw that the victim was looking away and standing up erect, and that she was shot from either the side or the back.

Billy Brown's statements and testimony are not reliable. They conflict with the physical evidence. (Petition 125) His statements regarding the location of gun (Petition 125) conflict with the physical evidence.

His description of the actual shooting of the victim (Petition 126) was incorrect. See Section IAC

He was a reluctant witness with an immunity agreement: (Petition 128) There would have been no need for immunity agreement for Billy Brown if he was not an accomplice and/or not subject to prosecution. (See Billy Brown Immunity Agreement (judicial notice taken))

Evidence was withheld from the defense that Billy Brown testified falsely (Petition 129) (See Sections VII.A, VII.B, VII.C., VII.D and VII.E, supra.

DDA committed misconduct to insure a conviction: (Petition 131) (See Section VII.D. False Evidence #4 - The trajectory of the bullet could be accurately determined, supra)

The prosecution falsely manipulated circumstantial evidence to corroborate Billy Brown's testimony (Petition 133) (See Section VII.D. False Evidence #4 – The trajectory of the bullet could be accurately determined, supra)

Petitioner was prejudiced by Billy Brown's lies not being controverted by an expert: reframed (Petition 134) (see Section V.G. Not hiring pathologist and ballistics experts, describing the actual shooting, supra)

Deputy District Attorney Ardaiz Had His Primary Witness Testify Despite Knowing the Testimony Was False. (Petition 69) (See Sections VII.C. False Evidence #3 – The

victim was 5'7"; VII.D. False Evidence #4 – The trajectory of the bullet could be accurately determined, supra; and VII.E. False Evidence #5 – The only possible shooter was taller than the victim.)

G. Petitioner submits the following false evidence <u>subclaims</u> on the record:

1. Petitioner's GSR Test Was Negative. (Petition 67) submit

2. There is a Disparity About the Distance of the Cartridge Case Found from the Body. (reframed) (Petition 99) submit

3. The Gun Was a Key Part of the Prosecution Story Which Was Provided to the Media to Prejudice Potential Jurors to Find Petitioner Guilty. (Petition 63) submit

4. The Media Stories At the Time of the First Trial Referred to a Gun In the Possession of Petitioner. (Petition 63) submit

5. Deputy District Attorney Ardaiz Participated in the Codefendant Interrogations, But Almost All the Evidence That Might Have Been Exculpatory Went Missing or Was Destroyed. (Petition 68) submit

6. Deputy District Attorney Ardaiz Directed Law Enforcement to Change or Add to Their Reports in Order to Support His Theory of the Case. (Petition 68) submit

7. DDA Robinson Used the Same Primary Witness, Billy Brown, Despite Issues of Coercion and Credibility in Order to Achieve a Conviction. (Petition 72) submit

8. The prosecution used a pattern of Pressure and Coercion to secure Billy Brown's cooperation and testimony (Petition 118) submit

9. Billy Brown's testimony was critical to the prosecution proving its case so they sought cooperation from jailhouse snitches as a backup plan (Petition 130) submit

10. Billy Brown recanted his testimony, which confirmed his previous false statements in police interviews and court testimony (Petition 134) submit

11. The prosecution had evidence in its possession that different guns were used in the Graybeal and Meras crimes yet represented to the court and jury that the same gun was used in both crimes. (Petition 139) submit

12. Prosecutor presented argument and/or circumstantial evidence at various stages in the proceedings, including pretrial hearings, guilt and penalty phases of T1 and guilt and penalty phases of T2 to imply Petitioner's guilt in the Meras crime and Paint the Petition as a habitual, violent offender. (Petition 143) Submit

13. Prosecution had no corroborating evidence to support their theory that Pet committed the Meras crimes and in fact had evidence that contradicted that theory. (Petition 150) submit

14. Law enforcement did not question the codefendants about the Meras crime (Petition 150) submit

15. Meras crimes were key part of prosecution story which was provided to the Media to prejudice potential jurors to find Petitioner guilty (Petition 152) submit

16. Media stories at the time of T1 tied the Meras crimes to the Graybeal Murder (Petition 152) submit

17. In a recent interview, Meras said that the robbery occurred in 1975 or 1976, not 1978 (Petition 153) submit

VIII. New Evidence Presented At The Evidentiary Hearing Undermines The Case Against Stankewitz And Shows That He Is Innocent (Claim 3 reframed) (Petition 78):

CA PC 1473 (b)1)(C):[49] New evidence is evidence not previously been presented and heard at trial and has been discovered after trial, admissible and sufficiently material and credible that it more likely than not would not would have changed the outcome of the case.[50]

A. No testing was done on apparent blood stains on clothing.

According to Coleman's testimony, when he examined the co-defendant's clothing in the Sheriff's evidence, it had stains that appeared to be blood. (p 241, l 22) He also testified that there was a stain on Lewis's shoe that appeared to be blood. When he examined Petitioner's clothing, he did not see any stains. Given these observations, he

[49] As amended in 2023, effective 1/1/24. Counsel could find no relevant cases decided since the law was amended.
[50] ~~Admissibility~~, Not merely cumulative, corroborative, collateral or impeaching and ~~credible~~ sections omitted as unnecessary due to the law being amended.

testified that the clothing should have been tested in 1978 for blood because there might have been answers with blood typing. (p 376, l 23)

B. Firearm evidence presented at trial was compromised due to mishandling during the initial investigation by FPD & FCSD. and storage at FCSD.

The FPD reports which describe the firearm that was allegedly recovered are consistent with tampering. The report which shows serial number removed on top, then includes a serial number on bottom is consistent with tampering (p 60, ln 8-9), and possible intentional misconduct; proper language would have been serial number scratched or serial number degraded (p 105, ln 8-10) After a serial number was discovered, a detective would write a separate supplemental report of explanation (p 109, ln 19-24). Coleman testified that he would expect to see some sort of documentation about how it went from serial number removed to it has a serial number. (P 100, l 3) HE Exhibits 4, 5, 6, and 7, FPD and FCSD Reports contain "serial # removed" and "serial number 146425" at various points in the reports.

C. Chain of evidence at FCSD pertaining to ballistics evidence is contaminated.

Upon analyzing the evidence at FCSD, including HE 9, the Meras property casings card and and HE 13, the envelope that contains .25 cal test fires, both Clark and Coleman testified that it was unreasonable to place .25 casings in an envelope marked .22 casings from a separate homicide because the chain of evidence needs to be pristine and not be contaminated from one case to another (Clark) (Coleman). This undermines the integrity of all the physical evidence used against Petitioner.

D. Whole chain of evidence at FCSC and FCSD is contaminated.

Given the facts and evidence in this case, the whole chain of evidence is contaminated. Here we have a clear example of evidence not being sequestered between the Graybeal and Meras cases. (p 84, l 22) This could be intentional misconduct (p 84, l 26)

used to bolster a prosecution or bolster the strength of evidence against a person. (p 85, l 3) If some evidence that the gun used in the first crime didn't have a serial number, then a couple of days later after several officers have handled it and documented that the serial number is removed, it suddenly goes to a lab and has a serial number, that's indicative of some possible intentional misconduct (p 85, 6 – 12 and 16). As a result, Clark testified that he doesn't have any confidence in any evidence in the case. (p 84, ln 14-16 & p 102, ln 22-23)

E. There Were Conflicting Reports Made by The FCSD as to Description of the Gun. (Petition 57)

The police reports show both serial number removed and serial number determined to be 146425. (p 56, ln 24 – p 57, ln 6) See Hearing Exhibits 1, 4, 5, 6. The weapon in evidence has a clearly readable serial number. The serial number discrepancy is suspicious, When Coleman saw the gun himself in 2019, he did not believe the serial number was removed. 'The numbers were visible when I looked at them in 2019 and it didn't look like a restoration attempt had been done.' (p 93, 20)' There probably was not the chemical restoring of the serial numbers and certainly no burning attempt.' (p 96, l 19) He didn't see anything notated anywhere about trying to restore the number or anything done to the area of the serial number. (p 99, l 5) Given that, Coleman testified that he would expect the serial number on the Titan to be documented with the serial number that was present because the serial number can clearly be seen. (p 99, l 25)

F. Court exhibits were stored in an unsecure manner and integrity is compromised.

As a result, firearm evidence in the court exhibits has been and is compromised. Coleman testified that when FACL received that ballistics evidence in 2023, there was a cartridge (unfired bullet) that he had not documented in 2019. (p 220, l 13; p 221, l 7 – 10)

DA Investigator Isaac testified that there's never been any chain of custody sign out or process through the court exhibits. (p 526, l 8-11). Pishione testified that when he was the exhibit person, he was in charge of all the handling, handling of the exhibits in and out of the Courthouse. Further, that there was not any type of procedure or log where he would document who was handling or viewing the evidence for Mr. Stankewitz. (p 356, l 19 – 21) Meneses, who was an FCSC exhibit clerk in 2019 – 2021, testified that as an exhibit clerk his only role was to observe. (p 365, l 10 – 12)

G. Evidence maintained at the Fresno CSD is stored in an unsecure manner and its integrity is compromised. The FCSD files could have been subject to tampering.

In 2017, at the request of the DA's office, former DA Investigator Mike Garcia inspected the Stankewitz case evidence located at the Sheriff's office. Upon completion of the inspection, Garcia wrote a report documenting the evidence that he inspected. His report, HE 10, at 2, described an item listed as 3 empty .22 cal cartridge casings with a property tag attached. The item actually had 3 .25 cal test fires in the envelope.

Coleman testified that HE 13 was used to repackage HE 15. (p 225, l 16 – 23; p 226, l 26 – p 227, l 4). The little envelope with the 3 .25 test fires was associated with an evidence tag, HE 9. (p 228, l7 – 13) Consistent with Garcia's report, when he inspected the case evidence at the Sheriff's office in 2019, the little envelope (HE 13A) said there was test fired shell casings from a .25 and then the evidence tag said .22 Meras shell casings. (p 228, l 17 – 19). He thought that it was odd because the label is supposed to be .22 cal cartridge cases but it was a .25 auto, so the caliber doesn't match. In 2019, HE 13A wasn't with the envelope 13. It was with the evidence tag which is HD 9. (p 234, l 3 – 6) Coleman testified that he would be confused if he found that the evidence tag from the incident with the 22-caliber was affixed to the envelope with test fired shell casings from the alleged

murder weapon. Further that it could it be a sign that something dishonest was happening. (p 235, ln 6-8)

Lisa Barretta, FCSD property and evidence technician, referring to HE 21, testified that there are sign in sheets used for non-employees. The sign-in sheets do not ask for a case number or defendant's name. (p 510, l 4 – 12). County employees do not use the sign-in sheets. After being taken into the room by one of the technicians, they sign onto the chain of custody forms on specific items of evidence. (p 509, l 8 – 12). Isaac testified that there is no sign-in sheet at the Sheriff's Department to view evidence. (p 529, l 22 – 26).

In January, 2021, around the time that the within habeas petition was originally filed with this court, T1 DDA Ardaiz, saying that he needed a favor, contacted then Sheriff Margaret Mims regarding the Stankewitz case file. Mims (p 612, l 4 – 6). As revealed by texts between them (HE 23), Ardaiz wanted to bring in Det. Tom Lean to review the case file, including the initial arrest reports and statements. Ardaiz said that he was very upset about the convoluted arguments made by the defense attorneys. (HE 23) Mims testified that she did not ever take DS's file into her possession. (p 615, l 1 – 3). However, Capt. Gularte, FCSD, testified that upon her request, he requested the file and perused it to make sure it was the DS file. (p 600, l 7 – 8). He then hand delivered the file to her office. (p 600, l 15 – 17) Subsequently, maybe a month's time later, while attending an executive staff meeting together, she returned to file to him personally. He reviewed it and it appeared to be the same size and material that it was before he delivered it. (p 600, l 23 – p 601, l 8). However, we don't know whether Ardaiz ever looked at the file or took anything from it. Given the concerns reflected in his texts[51], it raises a specter of wrongdoing.[52]

[51] See texts, HE 23.

[52] Elected DA Smittcamp recognized that his request was improper. See Smittcamp text to Margaret Mims, HE 23)

H. The Meras Weapon Reports were not turned over until after the second trial. (Petition 78)

Respondent admits as much. See Return, p. 50, l 22- 24.

I. The Meras Weapon Reports Evidence Would Have More Likely Than Not Changed the Outcome at of the case. (Petition 79) reframed: changed the outcome of the case

If the prosecution had turned the Meras weapon reports over as part of initial discovery, Petitioner's first trial counsel would have realized that there was an issue with the one-gun theory being advanced by the prosecution. Trial counsel would have then investigated further and likely realized that the entire Meras attempted murder case was untrue.

J. This Meras Evidence Was Discovered After Trial, Notwithstanding the Due Diligence of Trial Counsel. (Petition 80)[53]

Respondent admits as much. See Return, p. 50, l 22- 24.

K. DNA Testing of All Defendants Clothing (Petition 86) was not done.[54]

DNA testing was available in 1995 and could have been used by the defense then to test the clothing in evidence. (p 195, l 23 – 26) Given the IAC of appellate and habeas counsel, none of them ever looked at the evidence, much less hired any experts to test it. See Section VI. IAC Appellate and habeas counsel, supra.

L. Fresno Police Department Interview with Petitioner Early on February 9, 1978 has been lost. (Petition 82)

Clark inspected all of the evidence at FCSD in March, 2019. At that time, an inventory was prepared that listed all of the evidence viewed. As a result, he is familiar

[53] ~~Admissibility~~, Not merely cumulative, corroborative, collateral or impeaching and ~~credible~~ sections omitted as unnecessary due to the law being amended.

[54] ~~Admissibility~~, Not merely cumulative, corroborative, collateral or impeaching and ~~credible~~ sections omitted as unnecessary due to the law being amended.

with what evidence is missing. He testified that the fact that the recorded interviews of the defendants are missing is significant. (p 87, l 3 – 9)

M. Petitioner's Interview by Detective Snow, FPD on the Night of the Murder Has Decisive Force and Value That Would Have More Likely Than Not Changed the Outcome at Trial[55] (Petition 82)

According to Clark, it is significant that recordings are missing. (p 87, line 7) The interviews needed to be recorded and preserved because they are evidence. (p 88, l 6) Under standard police procedures, police would not lose any recording.(p 88, l 16) "It's suspicious that law enforcement lost the recording of the person who denied doing the shooting." (p 88, l 24)

N. The jury asked to see the scripts and was told that the scripts were not in evidence, when they were.

The scripts are Trial Exhibit 32. Trial Exhibit 32 was admitted into evidence at T2 Vol. 3 RT 574, l 8. Gibson testified regarding the importance to the jury of Trial Exhibit 32. (p 458, l 26).

O. The fact that no spent bullet or slug was recovered from the victim's body's location was not known prior to T2. (See False Evidence #4 Trajectory of the Bullet, discussed above).

P. Petitioner submits the following new evidence subclaims on the record:

1. Marlin Lewis Admission That He Shot Theresa Graybeal (Petition 84) submit

2. Marlin Lewis' Admission Against Interest Made in 2010, Has Decisive Force and Value That Would Have More Likely Than Not Changed the Outcome at Trial (Petition 84) submit

3. Marlin Lewis' Admission Occurred in 2010, Some 27 Years After the Second Trial (Petition 84) submit

Q. Conclusion

[55] ~~Admissibility~~, Not merely cumulative, corroborative, collateral or impeaching and ~~credible~~ sections omitted as unnecessary due to the law being amended.

The new evidence that has been exposed since the second trial has brought to light the impact of material and credible evidence on the outcome of this case. Neither the prosecution nor any of Defendant's trial counsel conducted investigatory due diligence to examine the evidence and determine that blood evidence existed on clothing and a shoe belonging to the co-defendants. That this failure occurred is a post-trial discovery that is probative into the lack of competent investigation. The effect of the failure to have the clothing tested, which could have shown that the victim's blood was on one or more codefendants' clothing would have provided admissible and material evidence at trial that would have more than likely changed the outcome of this case.

Inspection by ballistics and police practices experts of the evidence used in both the investigation and trial led to the discovery of numerous deficiencies, defects and inaccuracies in reports documenting characteristics of the gun and ballistics. Said inspection also led to the discovery of the mishandling of evidence, improper storage and custody records. Together with the Meras investigation file, admittedly produced by the prosecution after the second trial, and are therefore, new evidence. These deficiencies, defects and inaccuracies are sufficient such that a juror to find reasonable doubt and thereby change the outcome of the case.

This evidence of the improper storage, mishandling and general failings in maintaining the integrity of the chain of custody of key evidence, was yet another discovery made in the course of post-conviction investigations, and therefore, new evidence. The court's failure to maintain the integrity of the court exhibits, as required by PC 1471 et seq, raises concerns regarding the authenticity and admissibility of key evidence. If these failures would have been known by the defense, they would have

allowed the defense to argue that the evidence should not be admitted. The inability of the prosecution to use the court exhibits would have changed the outcome of the case.

IX. Claim 5: Brady and Jenkins[56,57]

The prosecution withheld exculpatory evidence from the defense starting during the initial investigation until the evidentiary hearing. Specifically:

A. The prosecution withheld the fact that no spent bullet or slug was recovered.

There is no report from either police agency which lists a spent bullet or slug as being recovered. EH Exhibits 1,4,6. Instead, the DDA lied and said that criminalist Boudreau testified that a spent bullet or slug was recovered. See False Evidence #___ above.

B. The prosecution withheld the fact that there are two inscriptions on the holster.

DAI Isaac testified that DDA Freeman had received some documents from your team just with a discrepancy on the date or an unknown date, so she wanted to view the evidence herself, so we went over and did that. (p 526, l 26). "Then you wrote a report[58] about that and you confirmed your observations that TLIII and then there was a date engraved on it, remember that? Yes. But you didn't mention anything about the other engraving? 'I did not focus on the other engraving. I don't remember what that date is or what the question about it was.' (p 528, l 19 – 26) Do you remember -- so you omitted that

[56] Prosecution stating that they turned over evidence without any proof of doing so, including logs or other documentation, should carry no weight [DDA Pebet prepared a Discovery Receipt in 2017 but there are no others]. As one example, DDA Smith stated that they had turned over reports from 2015; however, they only turned over excerpts of the reports in question.

[57] Petitioner refers the court to his Fourth Supplemental Filing Re: *In re Jenkins* (2023 2023 Cal. LEXIS 1585) for a thorough discussion of the applicable law.

[58] Report #78DA00001 – Supplemental – 1 Report, Exhibit A to Informal Response.

other -- anything about the other date, not the TLIII, 2/10/78 date, but the other date, you omitted anything about that out of your report, right?

A: I didn't omit anything. I mean, there was nothing to report. I don't even recall seeing that date. But once you say it, that does refresh my memory that there was apparently a second date engraved on there. (p 528, l 2 – 9)

C. Petitioner's Interview Tapes (Petition 107) See FPD Interview with Petitioner discussed above.

D. Gun Evidence (Petition 108)

E. Caliber Inconsistencies: (Petition 108) .22 vs .25 Meras report – prosecution admitted that they didn't turn over until after T2. (See Return, p 50, l 22 – 24).

F. Chain of Custody and Serial # Inconsistencies: (Petition 109) Prosecution withheld 1973 date and badge number info from multiple reports between 1978 – 2021. (See VII.A.3. Holster has two scribed dates, supra)

G. Meras Description Inconsistencies (See VII.B. False Evidence #2 – the victim was killed with a .25 caliber firearm) (Petition 110)

H. Medical Reports

Autopsy Report (HP 111) In the second trial, the autopsy report was referenced but not marked for identification nor admitted into evidence.[59] (cite T2 record)

I. Physical Evidence Capable of Testing

1. Blood Samples (Petition 111)

(See VII.E.3. False Evidence #5 – The blood type analysis could have exonerated Petitioner has been lost or destroyed, supra)

2. Blood on Clothing (Petition 112) reframed: stains on clothing:

[59] This was IAC either way: If it was turned over and Goodwin didn't cross examine regarding its contents; or if it was not turned over and Goodwin did not object.

(See VII.E.3. False Evidence #5 – The blood type analysis could have exonerated Petitioner has been lost or destroyed, supra)

3. Blood in Vehicle (Petition 112)

(See VII.A.12. False Evidence #1: Lack of Proper Documentation.

J. Evidence that has gone missing: reframe: failure to properly safeguard the court exhibits and the sheriff's evidence means that the exhibits and evidence are compromised. (Petition 117)

See Section VIII.B. Firearm evidence presented at trial was compromised due to mishandling during the initial investigation by FPD & FCSD, and storage at FCSD; Section C. Chain of Evidence at FCSD pertaining to ballistics evidence is contaminated; and Section D. Whole Chain of evidence at FCSC and FCSD is contaminated, supra.

K. Petitioner submits the following Brady/Jenkins subclaims on the record:

1. Petitioner's Interview Tapes – Det. Lean (Petition 107) submit

2. Medical Reports – x-rays of victim (Petition 111) submit

3. Criminalist Smith: his photos are missing from court evidence. (Petition 112) Submit

4. Reports (Petition 112) submit

5. Witnesses (Petition 113) submit

Co-defendants
Billy Brown, Primary Pros Witness
Pet's Cellmates
Jesus Meras
Frank Richardson

6. Mitigating Evidence at Penalty Phase (Petition 115)

Petitioner's mother's history-submit

Dr. Zeifert's report submit

Evidence gathered in the police investigations by FPD and FCSD of this crime are subject to disclosure to Defendant's counsel pursuant to Brady and Jenkins. Even if evidence was not offered or admitted at trial, if used as the basis for avenues of inquiry that lead to further investigation of the Defendant, such evidence would be material and thereby discoverable to the defense.

The reason for the non-disclosure is irrelevant to the failure. Whether due to lack of proper preservation, failure in maintaining the integrity of the chain of custody or simply the incompetent handling of the evidence reviewed by multiple people, no explanation is sufficient to justify the failure or inability to disclose Brady material. This is clearly demonstrable in the mishandling of gun and ballistic evidence. It renders impotent any attempt by Defendant to demonstrate the prosecution's failure to meet its burden of proof. But for the violations under Brady and Jenkins, Defendant would have clearly had several avenues to use exculpatory evidence to challenge the reliability and authenticity of the evidence and claims advanced by the Prosecution.

That duty under *Jenkins* continues post-trial. With a habeas petition being his last chance to prove his wrongful conviction, the continued withholding of exculpatory evidence has meant that Petitioner is hamstrung and unable to prove his innocence. In the strictest sense, the inability of defense counsel to re-examine any piece of evidence used or referenced at trial is tantamount to a failure to disclose pursuant to Brady. Whether the inability stems from mishandling, failure to properly store and preserve, questionable procedures in maintaining the integrity of the chain of custody, or simply not being able to locate it, matters not when considering the effect on the outcome of the case.

X. CLAIMS 4 AND 11 COMBINED: Prejudicial Misconduct and Ethical Violations from beginning to end (reframed) [Pretrial/Trial/Post-Conviction] [in chronological order]

The ultimate responsibility of a prosecutor is to see a just outcome, not merely a win. *People v. Purvis* (1963) 60 Cal.2d 323, 343; *People v. Vance* (2010) 188 Cal.App.4th 1182, 1199; *Berger v. United States* (11935) 295 U.S. 78, 88. In this case, over the last 46 years, the prosecution has been focused solely on winning this case by their misconduct. Starting in 2017, despite numerous direct communications with the DA's office and pleadings filed with the court pointing to discovery violations, ethical violations, misconduct, and the like, the DA has failed to admit the misconduct nor rectify it. This misconduct includes the following actions and omissions:[60]

A. Investigation

1. Material Evidence Was Mishandled. (Petition 90)

See Section VII.A. False Evidence #1: The firearm used at trial is the murder weapon, including Sections VII.A.3. Holster has 2 scribed dates; Section VII.A.10: There Were Conflicting Reports Made by The FCSD as to Description of the Gun; Section VII.A.11: Police Reports Have Conflicting Information Regarding Where the Gun Was Found; Section VII.D. False Evidence #4: The trajectory of the bullet could be accurately determined; Section VII.D.1.: No spent bullet was recovered nor searched for; False Evidence #1, Section VII.A.8: Chain of Evidence at FCSD regarding ballistics evidence is contaminated; and False Evidence #1, Section VII.A.9: Whole Chain of Evidence at FCSC and FCSD is Contaminated.

2. The Vehicle Involved in the Crimes Was Not Secured nor Properly Processed. (Petition 90)

[60] Almost all of these have been discussed earlier in this brief. Therefore, we have referenced the earlier discussion, rather than repeat the content here.

Clark testified that the presence of the gun in the vehicle was not properly documented. (p 49, l 19 – p 50, l 13) Further that the car was released without what would be considered a very thorough look at the car for blood . . . (p 94, l 25 – p 95, l 1). Further that he didn't see any indication this was a good workup of the care ever occurred and it was given back. (p 95, l 9 – 10).

3. Petitioner's and Codefendants' Clothing Was Not Properly Stored and Cannot Produce DNA Results. (Petition 98)[61]

See Section VII.K. DNA Testing of All Defendants Clothing (Petition 86) was not done, supra.

4. Material Evidence Was Not Tested or Tested Properly: (Petition 99)

See Section X.A.1. Material Evidence was mishandled, supra.

5. No Testing Was Done to Determine Whether the Victim Was Shot With a .22 Caliber Gun, Rather Than a .25 Caliber Gun: (Petition 99)

Despite both criminalist Boudreau and medical examiner Nelson (T2 Vol. I RT 70) testified that no testing was done to confirm the gun caliber, the prosecution left the note that the victim was killed with a .25 cal on the death certificate. (See HE 17)

6. The Investigators Failed to Properly Test the Victim's Clothes for Forensic Evidence. (Petition 100)

(See The only possible shooter was taller than the victim:

7. The Blood Type Analysis That Could Have Exonerated Petitioner Has Been Lost or Destroyed (See VII.E.3. False Evidence #5), supra. (Petition 66)

[61] See Habeas Exh 31, dated 9/2//2020, at 2.

Had testing been done on the stains of what appears to be blood evidence on all the defendants' clothing been done in 1978, it could have been used to either include or exclude possible shooters. (p 380, ln 25 – p 381, ln 21) The blood evidence was too degraded to be tested in 2020, when FACL examined the clothing.[62]

B. Trials One and Two.

1. Evidence Was Manipulated and Misrepresented to Triers of Fact and the Court. (Petition 101)

As discussed above, the prosecution relied on false evidence to obtain a conviction.[63]

2. The Gun Was Misrepresented to the Jury and the Court as the Murder Weapon.[64] (Petition 101)

3. The prosecution has perpetuated the fabricated theory of the murder weapon.[65] (Petition 172)

4. Deputy District Attorneys Misrepresented Evidence During Trial.[66] (Petition 103)

5. Law Enforcement Failed to Investigate or Consider Other Suspects. (Petition 100)

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[62] See Habeas Exh 31, dated 9/2//2020, at 2.

[63] The prosecution used all six false evidence elements: **FALSE EVIDENCE #1: The firearm used at trial is the murder weapon; FALSE EVIDENCE #2: The victim was killed with a .25 caliber firearm; FALSE EVIDENCE #3: The victim was 5'7"; FALSE EVIDENCE #4: The trajectory of the bullet could be accurately determined; FALSE EVIDENCE #5: The only possible shooter was taller than the victim; and FALSE EVIDENCE #6: Billy Brown testified truthfully that he witnessed the actual shooting.**

[64] The prosecution used: **FALSE EVIDENCE #1: The firearm used at trial is the murder weapon.**

[65] The prosecution used: **FALSE EVIDENCE #1: The firearm used at trial is the murder weapon.**

[66] The prosecution used all six false evidence elements: **FALSE EVIDENCE #1: The firearm used at trial is the murder weapon; FALSE EVIDENCE #2: The victim was killed with a .25 caliber firearm; FALSE EVIDENCE #3: The victim was 5'7"; FALSE EVIDENCE #4: The trajectory of the bullet could be accurately determined; FALSE EVIDENCE #5: The only possible shooter was taller than the victim; and FALSE EVIDENCE #6: Billy Brown testified truthfully that he witnessed the actual shooting.**

Robinson's testimony: Did you conduct an investigation of your own in this case? No. Did you ever inspect the physical evidence in this case? I don't believe I did. Therefore, Robinson followed Ardaiz's playbook, using the same witnesses and evidence. (p 568, l 1 – 6). See also Deputy District Attorney Robinson and DA Investigator Martin Focused Their Efforts on Petitioner, Rather Than Any Codefendants, supra.

6. The Law Enforcement Witnesses Misrepresented Evidence During Trial and Offered False or Misleading Testimony.[67] (Petition 104)

7. The Prosecution Knowingly Made False Statements regarding the victim's height.[68] (Petition 170)

8. DDA Robinson agreed with the court that the scripts (Trial Exhibit 32) were not in evidence. (T2 Vol. III RT 697, l 13-17)

DDA Robinson was the one who had them admitted. Trial Exhibit 32 was admitted into evidence at (T2 Vol. III RT 575, l 21 – 24). Gibson testified regarding the importance to the jury of Trial Exhibit 32. (p 458, l 26).

C. Post-Conviction Proceedings

1. The prosecution failed to follow discovery rules.[69] (Petition 167)

FCSD violated discovery rules by failing to turn over discovery to defense counsel. On June, 22, 2010, Petitioner's federal habeas counsel requested discovery from the FPD and FCSD pursuant to *Brady v. Maryland* and the California Public Records Act. In response, Sheriff Margaret Mimms refused to turn over any records,

[67] The prosecution used all six false evidence elements: **FALSE EVIDENCE #1: The firearm used at trial is the murder weapon; FALSE EVIDENCE #2: The victim was killed with a .25 caliber firearm; FALSE EVIDENCE #3: The victim was 5'7"; FALSE EVIDENCE #4: The trajectory of the bullet could be accurately determined; FALSE EVIDENCE #5: The only possible shooter was taller than the victim; and FALSE EVIDENCE #6: Billy Brown testified truthfully that he witnessed the actual shooting.**

[68] The prosecution used: **FALSE EVIDENCE #3: The victim was 5'7".**

[69] See *In re Jenkins*, supra.

writing "Release by Subpoena Only." (See Petition Exh 11b) At the evidentiary hearing, former Sheriff Mims testified that she directed her staff that unless her office got a request through discovery or a subpoena, it wouldn't release the documents. (p 542, l 4 - l 6) So apparently it was her practice not to follow the discovery rules.

2. FCDA filed a false report regarding the two inscriptions on the holster.

The report omitted exculpatory evidence, in violation of discovery rules. On August 20, 2021,[70] DA Investigator Isaac prepared a report: Here is her testimony regarding the preparation of the report: DDA Freeman had received some documents from your team just with a discrepancy on the date or an unknown date, so she wanted to view the evidence herself, so we went over and did that. (p 526, l 26). Then you wrote a report about that and you confirmed your observations that TLIII and then there was a date engraved on it, remember that? Yes. But you didn't mention anything about the other engraving? I did not focus on the other engraving. I don't remember what that date is or what the question about it was. (p 528, l 19 – 26). Do you remember -- so you omitted that other -- anything about the other date, not the TLIII, 2/10/78 date, but the other date, you omitted anything about that out of your report, right?

A: I didn't omit anything. I mean, there was nothing to report. I don't even recall seeing that date. But once you say it, that does refresh my memory that there was apparently a second date engraved on there. (p 528, l 2 – 9)

3. FCDA failed to disclose Ardaiz request to 'look' at Sheriff's file in 2021.

[70] Report #78DA00001 – Supplemental – 1 Report, Exhibit A to Informal Response.

In January, 2021, Ardaiz read Petitioner's writ and feverishly persuaded then Sheriff Mims to allow him special access to Petitioner's sheriff's file so he could review it and counter public allegations. When the elected DA, Lisa Smittcamp found out that Ardaiz, well into his retirement, was trying to access these files she adamantly objected, citing the poor optics of allowing him special access. Under various discovery laws, orders and cases previously discussed in Petitioner's pleadings, the interactions between Ardaiz and Mims should have been discovered to the Petitioner. However, Petitioner did not learn of the interactions until the EH.

4. For a partial list of discovery violations by the prosecution in this case, see Petitioner's Fourth Supplemental Filing re: *In re Jenkins*.

5. The District Attorney's File Is Unaccounted For. (Petition 97)

DDA Pebet informed the court of this. (PRH Vol. XXVII RT 404- 405.)

6. The prosecution lost the entire case file for Petitioner and his co-defendants. (Petition 169)

DDA Pebet informed the court of this. (PRH Vol. XXVII RT 404- 405.)

7. DA continued to promote false information to the media about DS's case and to taint public opinion about his innocence up until 2023.

DA Public Information Officer Taylor Long testified that she gave a Fresno reporter the following statement regarding the habeas proceeding: "The claims of misconduct made by the defense have been investigated and found to be false." (p 505, l 8 – 13). She stated that she relied on DDA Wright for the information.

8. Prosecution continued to cover up ballistics testing issues in 2022/2023:

DDA Kelsey Peterson who was assigned to the case in 2022 – mid-2023, told the court at a hearing on February 2, 2023 that FSO denied her request to test

all the ballistics evidence and that was why the People changed their position about getting the gun tested (PRH 02-02-23 RT 10) However, the prosecution had the opportunity to retest the gun and document the etchings on the holster in 2022/2023 and did not. In August, 2021, as part of preparing their Informal Response, DDA Freeman and DAI Isaac went to inspect the ballistics evidence. DAI Isaac wrote a report regarding that inspection, which was filed with the court by then DDA Freeman. The report contained Freeman and Isaac's observations of the firearm and holster, without any scientific tools. Despite Isaac's testimony to the contrary, that report omitted exculpatory evidence: the fact that there are 2 etchings on the holster – one with the date 7/25/73, five years prior to the murder.

Pursuant to habeas allegations regarding both the firearm and holster, in Fall, 2022, Petitioner sought to get the firearm and holster inspected and tested by Forensic Analytical Crime Lab. (see Motion to Examine Court Exhibits) After the Motion was filed, the prosecution informed Petitioner's counsel that they wanted to test the firearm first. Petitioner conceded to their request and prepared a court order providing for such testing. After many months of delays, Petitioner's counsel was subsequently told that the prosecution had changed its mind and would not be testing the firearm. The reason given was because the Fresno Crime Lab was not willing to perform the testing.

DDA Kelsey Kook and DAI Danielle Isaac (p 530, l 20) both testified that they met with Fresno Sheriff's Crime Lab director Koop to discuss retesting the firearm. Their testimonies conflicted with each other regarding who arranged the meeting and what mode of transportation they used to go to the meeting. Isaac admitted that no report was made regarding the meeting with Koop. (p 531, 11 –

13), nor does she have any emails or texts wherein she set up the meeting. (p 535, l 14) Therefore, there is no way to verify that the meeting took place, much less what was discussed. As to why the Lab would not test the firearm, Kook testified that director Koop said that the gun was tested in 1978 and therefore did not need to be tested again now. (p 593, ln 22 – p 594, ln 1) Isaac testified that Koop said that retesting the gun was unnecessary. (p 531, l 7 – 10). However, Director Koop stated "I don't believe that meeting took place." (p 522, l 18 – 24)

It wasn't until Isaac was under oath at the EH that she admitted that the holster has a second date on it. (p 528, l 2 – 9).

9. Second trial DDA Robinson testified that he spoke to first trial DDA Ardaiz.

DDA Robinson spoke to DDA Ardaiz about one and a half weeks prior to his evidentiary hearing testimony. During the call, they discussed the case. The defense's 2017 Motion to Enjoin Justice Ardaiz[71] from making out of court statements – public or private regarding this case was prescient, because from 2017 to January, 2024, former Justice Ardaiz has continued to attempt to sway both the public and private individuals, including witnesses.

D. Petitioner submits the following misconduct subclaims on the record:

1. Over Fifty Items Subject to a Discovery Motion Are Unaccounted For. (Petition 92) submit

2. The Tapes Containing the Statements of the Codefendants and the Handwritten Notes by Law Enforcement Made During the Interrogations Are Unaccounted For. (Petition 93)

[71] On March 16, 2017, the defendant filed a Motion to Enjoin Presiding Judge Ardaiz from Discussing Information and Opinions re: People v. Stankewitz. The Motion asked for Ardaiz to be enjoined from discussing the case either privately or publicly. On April 7, 2017, the People filed their Opposition to Defense's Motion to Enjoin Judge Ardaiz from Speaking to the Media. On April 13, 2017, the defendant filed his Reply to the People's Opposition to Motion to Enjoin Judge Ardaiz. On April 14, 2017, this court held a hearing and denied defendant's Motion.

3. The Evidence Containing Blood Is Unaccounted For (Petition 94) Submit

4. The Shell Casings Were Not Properly Measured in Relation to the Body. (Petition 99) submit

5. No Testing Was Done to Determine the Actual Time of Death of the Victim. (Petition 99) submit

6. The Investigators Failed to Look at the Victim's Shoes. (Petition 100) submit

7. Deputy District Attorney Ardaiz Directed Officers to Manipulate Reports. (Petition 101) submit

8. The Codefendants Statements Were Manipulated. (Petition 101) submit

9. The prosecution never filed a Notice of Aggravation Prior to the Penalty Re-Trial (Judicial notice of the record of Post Conviction Proceedings) (Petition 173) submit

XI. Claim 8: Mental Defect (Petition 154) submit

XII. Claim 9 – Special Circumstances (Petition 156)

Special circumstances are specific findings that must be made by the sentencing body in order to permit a death penalty sentence being imposed. Cal. Pen. Code § 190.4(a)(1); *Gregg v. Georgia* (1976) 428 U.S. 153, 187-89; *People v. Crittenden* (1994) 9 Cal.4th 83, 154; *People v. Green* (1980) 27 Cal.3d. 1, 48. The specific findings are outlined in Penal Code section 190.4 pursuant to Penal Code section 190.2. *People v. Snow* (2003) 30 Cal.4th 43, 125-26 citing *People v. Anderson* (2001) 25 Cal.4th 543; *People v. Ochoa* (1998) 19 Cal.4th 353, 479; *People v. Frye* (1998) 18 Cal.4th 894, 1029. Special findings under Penal Code section 190.2 require written findings or unanimity as to aggravating factors, proof of all factors to be found beyond a reasonable doubt, the factors in aggravation outweighs mitigation beyond a reasonable doubt, and death is the appropriate penalty. *Snow* (2003) 30 Cal.4th at 126 citing *People v. Kipp* (2001) 26 Cal.4th 1100, 11237; *Ochoa* 19 Cal.4th at 429; *Frye* 18 Ca.4th at 1029.

A special circumstance of robbery under Penal Code section 190.2(a)(17)(i) requires and intent to kill. *People v. Hayes* (1985) 38 Cal.3d 780; *People v. Guerra* (1985) 40 Cal.3d 377; *People v. Silbertson* (1985) 41 Cal.3d 296. The kidnapping special circumstance, however, requires that the jury find an independent felonious purpose for the kidnapping. *People v. Brents* (2012) 53 Cal.4th 599; *Pensinger v. Chappell* (9th Cir. 2015) 787 F.3d 1014. In either event, a finding of guilt for murder is required. Cal. Pen. Code § 190.2; *Allen v. Superior Court* (5th Dist. 1980) 113 Cal.App.3d 42 overruled on other grounds in *People v. Superior Court (Engert)* (1982) 31 Cal.3d 797. Counsel incorporates by reference the CALJIC references and other case law from the Petition, Reply to the Informal Response, and the Denial.

Petitioner submits on the other sections showing that but for Mr. Stankewitz' conviction for the underlying homicide, the special circumstances could not be found.

XIII. CLAIM 10 - Personal Use Of A Firearm Under PC 12202.5 (Petition 164)

The jury had to decide beyond a reasonable doubt that Petitioner personally used the gun is true. Had he not been found guilty of the underlying homicide; gun enhancement would not apply. If jury had found Petitioner not guilty of homicide, there was no evidence of personal use of the firearm. (See Section VII.A. False Evidence #1 – The firearm used at trial is the murder weapon, supra)

XIV. Claim 15 – Mr. Stankewitz Never Received a Fair Trial (Petition 191)

The right to a fair trial is protected both by the Constitution of the United States, Sixth Amendment by and through the Due Process clause of the 14th Amendment and by the Constitution of California Article I § 15. As provided for in other sections of this closing argument, the Petition and the Reply to the Informal Response, these protections include effective assistance of counsel, *Brady* issues, various forms of prosecutorial misconduct, among many others.

Strickland stands for the proposition that counsel's errors can be so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.[72] "The purpose of the effective assistance guarantee of the Sixth Amendment … is simply to ensure that criminal defendants receive a fair trial.'[73] The right to effective counsel serves to protect the defendant's constitutional right to a fair and reliable trial.[74]

Petitioner submits on the other sections showing that Mr. Stankewitz was never effectively represented by trial counsel or post-conviction counsel, the false evidence produced by the prosecution team, and other forms of prosecutorial misconduct. In *In re Sodersten* (2007) 146 Cal.App.4th 1163, the court granted a habeas petition posthumously. In the opinion, written by Justice James Ardaiz, the court found that had four tape recordings been disclosed to the defense, there was a reasonable probability of a different result. "Because of the nature and quality of the exculpatory evidence that was suppressed here, "the factual underpinnings upon which the jury relied to make its critical decisions were seriously eroded" citing (People v. Kasim (1997) 56 Cal.App.4th 1360, 1382), and petitioner was denied a fair trial."" "This case raises the one issue that is the most feared aspect of our system – that an innocent man might be convicted. While that consequence unfortunately does occur in the most protective justice system ever devised by man, it cannot be allowed to occur as a result of the dereliction of their duty by law enforcement and prosecutorial authorities sworn to protect that system." *Sodersten*, supra, at 1236.

A finding of any one of these claims shows Mr. Stankewitz never received a fair trial in violation of his Due Process rights under the Federal and California constitutions. However, even in the event the Court does not find a single section rises to the level needed to provide relief, if it clear that the cumulative combination of the errors shows he never had a fair trial. In either

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[72] *Strickland v. Washington* (1984) 466 U. S. 668, 687.
[73] *Strickland* at 689.
[74] *People v. Ledesma* (1987) 43 Cal.3d 171, 215.

situation, the jury never heard Mr. Stankewitz' actual case, and therefore Mr. Stankewitz was deprived of his Constitutional right to a fair trial.

XV. Claim 17: Wrongfully Convicted and Innocent (Petition 196)

A. Petitioner has steadfastly proclaimed his innocence from the beginning.

Although the tape of his interview with Detective Snow has disappeared, Petitioner has consistently proclaimed his innocence. This is demonstrated by his demand that each of attorneys, starting with his first trial attorney, his second trial attorney and all his appellate and habeas attorneys, over decades, pursue an innocence claim. A guilty man would not do this for fear of his guilt being revealed.

B. Physical evidence shows that he is innocent.

No physical evidence ties the gun in evidence to Petitioner. The trajectory evidence points to the likelihood of a different shooter.

C. Law enforcement and Prosecutorial Misconduct led to his wrongful conviction.

As explained in Section X, Claims 4 & 11, supra, the misconduct has been rife in this case. The misconduct has included, but is not limited to withholding exculpatory evidence, losing other potentially exculpatory evidence, failing to meet discovery obligations and continuing to cover up what the existing physical evidence shows

D. IAC prevented him from showing his innocence.

Both his second trial attorney and his appellate and habeas attorneys were ineffective. As a result, none of them investigated, looked at the evidence or hired experts to examine the prosecution theories. Even when one attorney did some investigation, he botched it by failing to employ basic investigation standards. As a result, he has been prevented from showing his innocence.

E. Conclusion.

Given the passage of time, it is almost impossible to demonstrate Petitioner's innocence. Many important witnesses have died or cannot be located. Evidence has been lost. Nonetheless, his continued proclamation of his innocence, the failure of the physical evidence to show that he was the shooter, the misconduct from the initial investigation until 2023 and IAC for the first 35 years of the case show that Petitioner is innocent.

F. Petitioner submits the following wrongful conviction subclaim.

Witness and cellmate statements point to his innocence. (Petition 197) submit

XVI. Claim 19: Cumulative Effect of all the Errors (Petition 201)

As testified by Coleman, 'this particular case, for me at least, there's several things that kind of stood out on top of bloodstains, evidence tags belonging to what appears to be a different crime, and then a holster that was in sheriff's property at some point and then five years later ends up in suspect's car. So to me it just seems like there's -- it just doesn't seem right. There's something going on.'(p 236, l 15 – 21)

As Gibson testified, the multiple IAC failures by Goodwin amounted to cumulative error. Goodwin's committed multiple errors by failing to meet the Strickland standard. When taken in combination with the prosecution's false evidence, new evidence of misconduct, Brady and discovery violations, a powerful mix of error and wrongdoing transpired.

As stated in the Petition, if the court does not find that any one claim establishes Petitioner's right to relief by having the Petition granted, the cumulative errors outlined in all Petitioner's habeas pleadings, shows that the Petition compels reversal of the conviction and issuance of the writ.

XVII. Conclusion

The DA presented no witnesses nor evidence at the evidentiary hearing, so the court only needs to determine whether Petitioner has proved each of his claims by a preponderance of the evidence. Given the totality of the circumstances, this court should no longer have any confidence in Stankewitz's conviction. Petitioner asks this court to grant his Petition for habeas corpus relief, grant him a new trial and release him from custody.

Dated: March 31, 2024

Respectfully Submitted,

J. TONY SERRA
MARSHALL D. HAMMONS
CURTIS L. BRIGGS

Attorneys for Defendant
DOUGLAS RAY STANKEWITZ

By CURTIS L. BRIGGS

PROOF OF SERVICE

The undersigned declares:

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

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

EVIDENTIARY HEARING – CLOSING ARGUMENT BRIEF

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

Mail ____ Overnight mail ____ Personal service ____ Fax ____ Email as agreed by DDA Elana Smith __X___ : earon@fresnocountyca.gov

Office of District Attorney
2100 Tulare Street
Fresno, CA 93721

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration is executed on April 1, 2024, at Sebastopol, California.

Alexandra Cock