

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

7 MARSHALL D. HAMMONS, SBN 336208  
8 1211 Embarcadero #200  
9 Oakland, CA 94606  
10 Tel (510) 995-0000

11 Attorneys for Defendant  
12 DOUGLAS R. STANKEWITZ

13 SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO

14 CENTRAL DIVISION

15 DOUGLAS R. STANKEWITZ,  
16  
17 Petitioner,  
18  
19  
20 On Habeas Corpus.

Case No. 21CRWR685993

THIRD SUPPLEMENTAL FILING TO  
AMENDED EMERGENCY PETITION  
REGARDING CLAIM 1: THE GUN IN  
EVIDENCE IS NOT THE MURDER  
WEAPON

(Fresno Superior Court Case  
#CF78227015)

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

24 YOU WILL PLEASE TAKE NOTICE that Defendant DOUGLAS R. STANKEWITZ,  
25 through counsel, files this supplemental brief to provide new facts, evidence, and to clarify the  
26 previously alleged facts regarding Claim 1 that Petitioner has uncovered since his Petition for  
27 Writ of Habeas Corpus was first filed in this Court on January 28, 2021. Specifically, the new  
28 facts and evidence show that the gun introduced against Petitioner at trial was planted several  
days after police reported recovering it in Ms. Graybeal's vehicle. Petitioner requests a hearing to  
further educate the court on these issues.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

## NEW FACTS AND INFORMATION

### Clarification Regarding the Reports on the Firearm Between 2/9/1978 to 8/20/2021

Petitioner has prepared a Firearm and Ballistic Evidence Chart to track the reports which pertain to that evidence. See Exhibit 23d hereto. The Chart is divided into sections for each agency that was involved in processing the ballistics evidence in this case. The Chart and its attendant Exhibits, demonstrates the following:

1. Forensic analysis of the holster confirms the defense allegation that the firearm was in evidence is not the murder weapon (*i.e.* it was planted by police). Specifically, FACL identified the following engraving on the metal portion of the holster: "351 7-25-1973" (hereinafter "1973 etching").<sup>1</sup> Further the FACL report states, 'The scratches were deliberate and appeared to be markings to denote when the holster was recovered.'<sup>2</sup> It is difficult to see with the naked eye.<sup>3</sup> Roger Clark has determined that the 1973 etching is consistent with law enforcement evidence processing protocol in which the employee etches his/her identification number and the date it was booked into evidence.<sup>4</sup>
2. The firearm in evidence, with serial number 146425, was reported stolen on 6/7/73<sup>5</sup>. Approximately six weeks later, the holster was engraved by law enforcement with the date of 7-25-73<sup>6</sup>. This establishes that law enforcement had the firearm from that date forward

<sup>1</sup> See Exhibit 23a, FACL Report, dated 3/21/23, at 2; and Addendum 2 holster photos at 4 and 5.

<sup>2</sup> See Exhibit 23a, FACL Report, dated 3/21/23, at 2.

<sup>3</sup> The fact that Detective Lean overlooked the previous evidence processing marks when engraving his own initials and the 1978 date demonstrate that there was no real effort to carefully examine the holster or obtain fingerprints to ascertain whether Petitioner handled the weapon. It's also a reasonable inference that Fresno police planted the weapon without Lean's knowledge, so he did not think to check of prior evidence processing marks. Again, they can easily be overlooked if you aren't aware they are there.

<sup>4</sup> Despite the presence of the 1973 on the holster, no law enforcement report, from any agency, documents the date, contrary to police practices and procedures at that time. See Reply Exhibit 19c, Declaration of Roger Clark, dated 10/8/21, at 13; also see Exhibit 23b, Declaration of Tayce Conteras, dated 3/15/23, at 2.

<sup>5</sup> See Habeas Exhibit 1a, and Exhibit 23b, Declaration of Tacye Contreras, dated 3/15/23, at 2.

<sup>6</sup> See Exhibit 23a, FACL report, dated 3/21/23, at 2.

1 as there is no CLETS report or any other information showing the firearm was released to  
2 anyone.

3 3. The CLETS report also contains a reference to Sacramento PD Internal Affairs Division.<sup>7</sup>  
4 This indicates that Internal Affairs investigated the firearm. The PRA response from  
5 Sacramento PD pertaining to the investigation states that not all information regarding the  
6 incident can be provided because the records are ‘investigatory law enforcement records.’<sup>8</sup>  
7 This is a further indication that law enforcement had possession of the firearm because  
8 there appears to have been further investigation by Internal Affairs with respect to the  
9 firearm.  
10

11 4. There are no further entries on either the CLETS report, the holster or the firearm until 2-  
12 10-78. On 2/10/1978, Det. Lean had the firearm and ran the CLETS firearm report.  
13 Therefore, it could not have been in the possession of Petitioner during that period,  
14 including the evening of the murder on 2/8/78 as shown by the CLETS report, engraving  
15 on the holster, and result of the Public Records Act Request.  
16

17 5. Forensic testing of the holster, combined with dated entries in CLETS, now establishes a  
18 logical timeline and scenario for how the weapon was planted:

19 a. Proffered timeline and scenario with consideration of the new facts:

20 i. Titan handgun stolen out of Stockton in 6/7/73<sup>9</sup>

21 ii. Titan handgun and holster recovered by police 7-25-73<sup>10</sup>, however, an  
22 officer chooses to keep the weapon as a backup or “throwaway” weapon.<sup>11</sup>  
23

24 iii. Titan handgun remains in close proximity and in control of at least one  
25

26 <sup>7</sup> See Habeas Exhibit 1a and Exhibit 23b, Declaration of Tacye Contreras, dated 3/15/23, at 1.

27 <sup>8</sup> See Exhibit 23c, Sacramento PRA Response, dated 2/8/23, at 1.

28 <sup>9</sup> Stockton and Fresno are approximately 120 miles apart, both located on Highway 99.

<sup>10</sup> We infer the gun was recovered in Fresno.

<sup>11</sup> “A firearm held by police for the purpose of framing an innocent person for a shooting.” Habeas Exhibit 1b, Declaration of Roger Clark, dated 12/4/19, at 10.

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

Fresno area law enforcement officer or agency until 2/10/78.

- iv. Ms. Graybeal is murdered on 2/8/78, but no firearm is located on or near Petitioner. A .25 caliber shell casing is located at the scene. Officers are informed that one of their peers is on their way with a .25 caliber. Officers assume it will have the serial number removed to scrub the origin.
- v. Between 2/8/78 and 2/10/78, officers place the planted weapon in the car and take photographs as if they discovered the gun and holster for the first time.
- vi. Detective Lean takes possession of the gun on 2/10/78 and begins processing it as though it is legitimate evidence. Detective Lean is not aware that the serial number should have been removed, nor does he look closely to identify that the holster has evidence processing indicators from 1973.

6. The firearm in evidence, with serial number 146425, was not recovered by FPD. The firearm allegedly recovered by FPD did not have a serial number and was therefore a different gun than the one in evidence, perhaps even the one from the Lewis case.<sup>12</sup> The firearm that FPD recovered was not entered into the CLETS system because it did not have a serial number.<sup>13</sup> There are no markings on the holster or the firearm in evidence from FPD. Further, despite the many reports and photos documenting the firearm and holster, none of the FPD reports mention the 7-25-1973 date or 3-digit badge number on the holster. According to police procedures, this should have been done if it were noticed.<sup>14</sup>

---

<sup>12</sup> See **Examination of the casing and firearm from FPD Case #75-41415** section, *infra*.  
<sup>13</sup> See Exhibit 23b, Declaration of Tacye Contreras, dated 3/15/23, at 2.  
<sup>14</sup> See Habeas Exhibit 1d, FPD Procedure regarding marking of evidence upon recovery, dated 5/30/2003 at 2; See Petitioner’s Third Supplemental Filing to Amended Emergency Petition - 4 -

- 1 7. The photos of the firearm, and even clearly visible today, shows the firearm in evidence's  
2 serial number is clearly visible with some very minor scratching and/or wear and tear;<sup>15</sup>  
3 however, none of this would result in a "no serial number" finding by anyone. This  
4 indicates that the photo introduced at trial was not a representation of Mr. Graybeal's car  
5 at the time Petitioner was arrested, but rather a representation after officers planted the  
6 murder weapon several days later.
- 8 8. Despite the many reports and photos documenting the firearm and holster, no report from  
9 either FPD or FCSD documents the 1973 date on the holster. This includes reports  
10 prepared by Det. Lean who likewise did not document the 1973 holster date in any reports.
- 11 9. As Petitioner stated in his Reply, the People submitted Exhibit A, a report regarding their  
12 inspection of the holster.<sup>16</sup> In that report, they omitted Date #1 on the holster: 7-25-73.  
13 The date of 7-25-73 is exculpatory evidence because it shows that the firearm was in the  
14 possession of law enforcement as of that date.

### 16 **FACL Examination and Testing Results**

17 FACL tested the firearm and ballistics evidence during March, 2023. As a result of that  
18 examination and testing, the following key facts were revealed:

- 19 1. The firearm does not bear any marks from the Fresno Police Department. This is  
20 consistent with the CLETS report.<sup>18</sup>
- 22 2. A loose round unfired round is contained in the Court Exhibits, which the defense labeled  
23 as 5x<sup>19</sup>. The round is not listed on the Court Exhibit list for either the first or second trial.<sup>20</sup>

---

25 also Reply Exhibit 19c, Declaration of Roger Clark, dated 10/8/21, at 13.

26 <sup>15</sup> Exhibit 23e, photo of firearm from DA discovery

27 <sup>16</sup> See Exhibit A to Informal Response - FCDA Report #1978H001, dated 8/20/21.

28 <sup>18</sup> See Declaration of Tacye Contreras, Exhibit 23b hereto, dated 3/15/23, at 2.

<sup>19</sup> See Exhibit 23a, FACL Report, dated 3/21/23, at 1, 2 Item #9; and Addendum 2 Photos at 1: photo  
#20230307\_221238252.

<sup>20</sup> See Habeas Exhibit 5z, First Trial Exhibit Record; and Exhibit 23f, Second Trial Exhibit Record.

1 So it was apparently placed in the court exhibits sometime after 1983. The existence of  
2 that round is unexplained but raises further doubt about the integrity of the court  
3 exhibits.<sup>21</sup>

4 3. In 2017, DA Investigator Mike Garcia wrote a report stating that Evidence Property Card  
5 attached to the envelope containing .25 cal test fire casings labeled them as .22 casings  
6 from the Meras case. The report specifically stated that the label had “.22 cal casings,”  
7 however, the casings themselves that were in the envelope were .25 caliber. Det. Boudreau  
8 in his prior declaration provides that he did not label the envelope, however, he did put the  
9 casings in the envelope.<sup>22</sup> The DA never investigated how this happened or who was  
10 responsible.

11 4. According to the head of the forensics team who tested the materials and co-author of the  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
560  
561  
562  
563  
564  
565  
566  
567  
568  
569  
570  
571  
572  
573  
574  
575  
576  
577  
578  
579  
580  
581  
582  
583  
584  
585  
586  
587  
588  
589  
590  
591  
592  
593  
594  
595  
596  
597  
598  
599  
600  
601  
602  
603  
604  
605  
606  
607  
608  
609  
610  
611  
612  
613  
614  
615  
616  
617  
618  
619  
620  
621  
622  
623  
624  
625  
626  
627  
628  
629  
630  
631  
632  
633  
634  
635  
636  
637  
638  
639  
640  
641  
642  
643  
644  
645  
646  
647  
648  
649  
650  
651  
652  
653  
654  
655  
656  
657  
658  
659  
660  
661  
662  
663  
664  
665  
666  
667  
668  
669  
670  
671  
672  
673  
674  
675  
676  
677  
678  
679  
680  
681  
682  
683  
684  
685  
686  
687  
688  
689  
690  
691  
692  
693  
694  
695  
696  
697  
698  
699  
700  
701  
702  
703  
704  
705  
706  
707  
708  
709  
710  
711  
712  
713  
714  
715  
716  
717  
718  
719  
720  
721  
722  
723  
724  
725  
726  
727  
728  
729  
730  
731  
732  
733  
734  
735  
736  
737  
738  
739  
740  
741  
742  
743  
744  
745  
746  
747  
748  
749  
750  
751  
752  
753  
754  
755  
756  
757  
758  
759  
760  
761  
762  
763  
764  
765  
766  
767  
768  
769  
770  
771  
772  
773  
774  
775  
776  
777  
778  
779  
780  
781  
782  
783  
784  
785  
786  
787  
788  
789  
790  
791  
792  
793  
794  
795  
796  
797  
798  
799  
800  
801  
802  
803  
804  
805  
806  
807  
808  
809  
810  
811  
812  
813  
814  
815  
816  
817  
818  
819  
820  
821  
822  
823  
824  
825  
826  
827  
828  
829  
830  
831  
832  
833  
834  
835  
836  
837  
838  
839  
840  
841  
842  
843  
844  
845  
846  
847  
848  
849  
850  
851  
852  
853  
854  
855  
856  
857  
858  
859  
860  
861  
862  
863  
864  
865  
866  
867  
868  
869  
870  
871  
872  
873  
874  
875  
876  
877  
878  
879  
880  
881  
882  
883  
884  
885  
886  
887  
888  
889  
890  
891  
892  
893  
894  
895  
896  
897  
898  
899  
900  
901  
902  
903  
904  
905  
906  
907  
908  
909  
910  
911  
912  
913  
914  
915  
916  
917  
918  
919  
920  
921  
922  
923  
924  
925  
926  
927  
928  
929  
930  
931  
932  
933  
934  
935  
936  
937  
938  
939  
940  
941  
942  
943  
944  
945  
946  
947  
948  
949  
950  
951  
952  
953  
954  
955  
956  
957  
958  
959  
960  
961  
962  
963  
964  
965  
966  
967  
968  
969  
970  
971  
972  
973  
974  
975  
976  
977  
978  
979  
980  
981  
982  
983  
984  
985  
986  
987  
988  
989  
990  
991  
992  
993  
994  
995  
996  
997  
998  
999  
1000

were all inside a taped sealed orange cardboard box. There were separate manila envelopes in the box labeled for individual items and all of them were opened and unsealed as received. The evidence was all loose inside the box. . . This is an unacceptable way to store evidence and compromises the integrity of the items.’<sup>23</sup>

In preparation of a report filed with this Court, the court ballistics exhibits were accessed by the District Attorney’s office on August 20, 2021.<sup>24</sup> This is the last known access of the court exhibits.

5. The integrity of the court exhibits are further at issue because we don’t know who has accessed them over the decades. Despite Petitioner’s request in January, 2023<sup>25</sup>, no log or

<sup>21</sup> See Exhibit 23a, FACL Report, dated 3/21/23, at 1 and Addendum 1 FACL Evidence Submission Form and Addendum 2 at 1: photo #20230228\_192420620.

<sup>22</sup> See Habeas Exhibit 2g, Declaration of Allen J. Boudreau, dated 3/14/20, at 4.

<sup>23</sup> See Exhibit 23a, FACL Report, dated 3/21/23, at 1.

<sup>24</sup> See Exhibit A to Informal Response - FCDA Report #1978H001, dated 8/20/21.

<sup>25</sup> See Exhibit 23i, Email sent to Dept 62, dated 1/9/23.

1 record of who has accessed the court exhibits over the years has been provided by the  
2 court.

3 **Examination of the casing and firearm from FPD Case #75-41415**

- 4
- 5 1. From the various reports uncovered after trial, namely the reference to the FPD Case #75-  
6 41415 which was discovered by Public Records Act Request in 2020, Det. Lean inspected  
7 the firearm and shell casing from this 1975 case while investigating Petitioner's case. The  
8 defendant in the 1975 case was one of Petitioner's brothers.
  - 9 2. On February 10, 1978, Det. Lean, along with his numerous other actions, prepared a  
10 Request for Evidence Examination for a comparison of the shell casing re FPD case #75-  
11 41415 to the Titan .25 cal auto in the Graybeal case. The Examination Results at the  
12 bottom of the report were prepared by FCSD Criminalist Allen J. Boudreau. The results  
13 state that the cartridge case from case #75-41415 was probably not fired from the Titan  
14 pistol in Petitioner's.<sup>26</sup> It is important to note that FPD case #75-41415 involved one of  
15 Petitioner's brothers, Gary D. Lewis a/k/a Stankewitz.<sup>27</sup> The gun was turned in by a  
16 citizen and alleged to be used by Gary Lewis.<sup>28</sup> The gun in case #75-41415 was missing a  
17 serial number.<sup>29</sup> The case file indicates that the case against Gary Lewis was closed in  
18 1975.<sup>30</sup>
  - 19 3. Even though a shell casing from case #75-41415 was compared to the Titan pistol in  
20  
21 Petitioner's case, Petitioner was never given the opportunity to perform the same test, nor  
22 examine the weapon from case #75-41415. According to the police report, despite PC  
23 Section 12028, which provides for destruction of evidence after a case is closed, the  
24  
25

26 <sup>26</sup> See Exhibit 23h, FCSD Request for Examination #273 re: case #75-41415, dated 2/10/1978.

27 <sup>27</sup> See Exhibit 23g, FPD file Case #75-41415, dated 11/6/1975.

28 <sup>28</sup> See Exhibit 23g, FPD file Case #75-41415, dated 11/6/75, at 20.

29 <sup>29</sup> See Exhibit 23g, FPD file Case #75-41415, dated 11/6/75, at 21.

30 <sup>30</sup> See Exhibit 23g, FPD file Case #75-41415, dated 11/6/75, at 17.

1 firearm in that case was still being held in evidence well after it should have been  
2 destroyed. It was not destroyed until 9/27/78, twelve days after Petitioner's first  
3 conviction.<sup>32</sup> Given that the firearm in Petitioner's case was planted, it seems likely that  
4 Det. Lean was considering using the gun from the Lewis case as the firearm to plant when  
5 he inspected the firearm and casings from the Lewis case.  
6

7 These reports and further facts indicate that the initial reports with respect to the firearm in  
8 Petitioner's case was actually the firearm from the Lewis case, which was then switched out for  
9 the firearm currently in evidence. See the previous section, **Clarification Regarding the Reports**  
10 **on the Gun Between 2/9/1978 to 8/20/2021**, for more detailed explanation.

### 11 MEMO OF POINTS AND AUTHORITIES

12 This supplemental filing provides additional facts and clarification for Claim 1 of the  
13 Amended Emergency Petition. A supplemental filing requires leave of court only if it alleges new  
14 claims. *Board of Prison Terms v. Superior Court* (2005 CA6) 130 Cal. App. 4<sup>th</sup> 1212, 1235.  
15 Accord, *In Re Kavanaugh* (2021 CA4, Div. 1) 61 Cal. App. 5<sup>th</sup> 320, 342.  
16

### 17 CONCLUSION

18 The firearm currently in evidence and was used to convict Petitioner at both his first and  
19 second trials was not actually the murder weapon, and law enforcement not only planted the  
20 firearm as shown implicitly by their own reports and subsequently mirrored by the 1973 date, but  
21 there may have been additional firearms that were either planted or considered for planting.<sup>40</sup> A  
22 review of all evidence paints a picture of officers searching for an appropriate murder weapon to  
23 plant in the vehicle over the span of several days.  
24  
25

26 \_\_\_\_\_  
27 <sup>32</sup> See Exhibit 23g, FPD file Case #75-41415, dated 11/6/75, at 22.

28 <sup>40</sup> When Det. Lean was asked whether he had a pistol like the one in the case, that was stolen, rather than unequivocally answering 'no', he answered that he didn't recall. See Habeas Exhibit 1e, Transcript of Interview of Det. Lean, dated 3-27-20, at 4.



1 In summary, the firearm in evidence was reported stolen on 6/7/73, and collected by law  
2 enforcement on 7-25-73. The firearm remained in law enforcement custody, and even was the  
3 subject of a potential Internal Affairs investigation. Petitioner's brother was involved in a case on  
4 or about 11/6/75 where a firearm with no serial number and a shell casing were collected but not  
5 destroyed. The homicide in Petitioner's case occurred on 2/8/78 whereby an unknown caliber  
6 firearm<sup>41</sup> was used in the homicide. On 2/9/78, photos are taken of what appears to be a firearm  
7 and a holster in the vehicle, however, the photos do not depict the specific identifying features,  
8 such as the serial number, engravings on the holster, nor even make/model of firearm. Reports on  
9 this date show "serial number removed."  
10

11 On 2/10/78, Det. Lean gathers the holster and firearm from FPD, and on the same date, he  
12 requests inspection of the firearm and shell casing from the Lewis case. During this time, the  
13 reports list a firearm with a serial number matching what is now in evidence. Det. Lean's initials  
14 and the 2/10/78 date also now appear on the holster. From this date onward, the reports have  
15 conflicting information about there being a serial number on the firearm, sometimes with both  
16 "serial number removed" and the serial number appearing on the same report. No references to  
17 the 1973 date nor the potential badge number also on the holster are listed anywhere in any  
18 reports or notes. Petitioner's first trial ended on 9/15/78, and the firearm from the Lewis case was  
19 destroyed on 9/27/78. These facts and evidence demonstrate that the firearm used to convict  
20 Petitioner in his first and second trials could not have been the murder weapon as it was in law  
21 enforcement custody the entire time from when it was collected in 1973 through today.  
22  
23

24 //

25 //

---

27 <sup>41</sup> As discussed in the initial Habeas Petition, DDA Ardaiz, at the preliminary hearing, even withdrew his statement  
28 that the caliber of the firearm was a .25, and trial counsel for Petitioner never properly cross-examined on this point.  
See Amended Emergency Petition, p. 63. Also see Habeas Exhibit 1b, Declaration of Roger Clark, dated 12/4/19, at 5.

1 Dated: March 21, 2023

Respectfully Submitted,

2  
3 CURTIS BRIGGS  
4 J. TONY SERRA  
5 MARSHALL D. HAMMONS

6 Attorneys for Defendant  
7 DOUGLAS RAY STANKEWITZ

8   
9 By CURTIS L. BRIGGS

10 //  
11 //  
12 //  
13 //  
14 //  
15 //  
16 //  
17 //  
18 //  
19 //  
20 //  
21 //  
22 //  
23 //  
24 //  
25 //  
26 //  
27 //  
28 //

