IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

In re JOSEPH HATHORN NUCCIO, Petitioner On Habeas Corpus.	Case No._____ Case No. STK-CR-FMISC-2021-0006365 (SF101949A)

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS
MEMORANDUM OF POINTS AND AUTHORITIES;
SUPPORTING EXHIBITS

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TABLE OF CONTENTS **Page(s)**

TABLE OF AUTHORITIES....4

PETITION....7

PRAYER FOR RELIEF....12

VERIFICATION....13

I. STATEMENT OF THE CASE....14

II. STATEMENT OF THE FACTS....27

III. INTRODUCTION....29

MEMORANDUM OF POINTS AND AUTHORITIES....38

IV. THE NEWLY DISCOVERED EVIDENCE CONSTITUTES STRONG EVIDENCE OF PETITIONER'S ACTUAL INNOCENCE....38

A. New DNA Evidence....40

B. Newly Discovered False Evidence....49

V. THE STATE FAILED TO DISCLOSE MATERIAL, EXCULPATORY EVIDENCE THAT UNDERMINED CONFIDENCE IN THE OUTCOME OF PETITIONER'S TRIAL IN VIOLATION OF HIS RIGHT TO DUE PROCESS UNDER *BRADY*....62

A. Law Enforcement Officers, Including the Attorney General and DOJ Criminalists, Suppressed Material, Exculpatory Evidence In Violation Of *Brady*....67

VI. THE STATE FAILED TO MAINTAIN AND DISCLOSE MATERIAL AND EXCULPATORY EVIDENCE THAT UNDERMINED CONFIDENCE IN THE OUTCOME OF PETITIONER'S TRIAL, IN VIOLATION OF HIS RIGHT TO DUE PROCESS UNDER *TROMBETTA* AND YOUNGBLOOD....94

A. Factual and Procedural Background....99

B. The "Lost," Unretained or Destroyed Evidence Related to Sprinkle Constitutes a Violation of Due Process Under *Trombetta/Youngblood*, Requiring Reversal....102

VII. THE PROSECUTION PRESENTED FALSE TESTIMONY AND FALSE EVIDENCE THROUGHOUT PETITIONER'S TRIAL, UNDERMINING THE CONFIDENCE IN THE OUTCOME OF PETITIONER'S TRIAL IN VIOLATION OF HIS RIGHT TO DUE PROCESS UNDER *BRADY* AND *NAPUE*.....113
A. Factual and Procedural Background.....114
B. The Prosecution Knowingly Presented False Testimony.....118

VIII. CONCLUSION.....122

TABLE OF AUTHORITIES

Page(s)

Federal Cases

Alcorta v. Texas (1957) 355 U.S. 28 ..... 113, 114

Arizona v. Youngblood (1988) 488 U.S. 51 ..... 94, 95, 96, 97, 99, 102, 103, 110

Barbee v. Warden (4th Cir. 1964) 331 F.2d 842 68

Brady v. Maryland (1963) 373 U.S. 83 ..... 62, 63, 67, 94, 118

California v. Trombetta (1984) 467 U.S. 479 ..... 94, 95, 97, 102, 103

Dow v. Viga (9th Cir. 2013) 729 F.3d 1041 ..... 113, 114, 120, 121

Giglio v. United States (1972) 405 U.S. 150 ..... 113, 114, 120

Hayes v. Brown (9th Cir. 2005) 399 F.3d 972 ..... 114, 121

Jackson v. Brown (9th Cir. 2008) 513 F.3d 1057 ..... 114, 120, 121

Kyles v. Whitely (1995) 514 U.S. 419 ..... 64, 114, 120

Limone v. U.S. (D. Mass. 2007) 497 F.Supp.2d 143 29

Milke v. Ryan (9th Cir. 2013) 711 F.3d 998 ..... 65, *passim*

Miller v. Vasquez (9th Cir. 1989) 868 F.2d 1116 97

Moldowan v. City of Warren (6th Cir. 2009) 578 F.3d 351 68

Mooney v. Holohan (1935) 294 U.S. 103 ..... 67, 113

Napue v. Illinois (1959) 360 U.S. 264 ..... 113, 118

Olmstead v. United States (1928) 277 U.S. 438 38

Reis-Campos v. Biter (9th Cir. 2016) 832 F.3d 968 113

Soto v. Ryan (9th Cir. 2014) 760 F.3d 947 113

Strickler v. Greene (1999) 605 F.3d 754 ..... 64, 65, 92, 120

United States v. Bagley (1985) 473 U.S. 667 ..... 63, 64, 65, 68, 94

United States v. Blanco (9th Cir. 2004) 392 F.3d 382 68

United States v. Bohl (10th Cir. 1994) 25 F.3d 904. 112

United States v. Cooper (9th Cir. 1993) 983 F.2d 928. ..... 109, 110, 112

United States v. Giglio (1972) 405 U.S. 150 90

United States v. Kearns (1993) 5 F.3d 1251 112
United States v. Olsen (9th Cir. 2013) 737 F.3d 625 62
United States v. Sedaghaty (9th Cir.2013) 728 F.3d 885 65

State Cases

In re Cook (2019) 7 Cal.5th 439 38
In re Jenkins (2023) 14 Cal.5th 493 ..... 63, 64, 72
In re Jones (1962) 57 Cal.2d 860 7
In re Parks (2021) 67 Cal.App.5th 418 39
In re Sagin (2019) 39 Cal.App.5th 570 ..... 39, 46
In re Sassounian (1995) 9 Cal.4th 535 ..... 63, 64
Izazaga v. Superior Court (1991) 54 Cal.3d 356 63
People v. Davis (2014) 226 Cal.App.4th 1353 63
People v. Fultz (2021) 69 Cal.App.5th 395 ..... 96, 97, 99, 111
People v. Garcia (1993) 17 Cal.App.4th 1169 63
People v. Greenberger (1997) 58 Cal.App.4th 298 45
People v. Memro (1995) 11 Cal.4th 786 111
People v. Montes (2014) 58 Cal.4th 809 97
People v. Salazar (2005) 35 Cal.4th 1031 64
People v. Velasco (2011) 194 Cal.App.4th 1258 97
People v. Villa (2009) 45 Cal.4th 1063 38
People v. Watson (1956) 46 Cal.2d 818 39
People v. Zambrano (2007) 41 Cal.4th 1082 65

California Constitution

Article V/I, section 10……..... 7, 38

California Statutes

Penal Code Section 187..... 14
Penal Code Section 667.5(b) 14
Penal Code Section 1054.9(a) 16

Penal Code Section 1405 15
Penal Code Section 1473 ..... 38, 39
Penal Code Section 12022(b)(1) 14

Miscellaneous

Rules of Professional Conduct 3.8. 63

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TO THE HONORABLE JUSTICE LAURIE M. EARL, ADMINISTRATIVE PRESIDING JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE THIRD DISTRICT COURT OF APPEAL:

Petitioner, Joseph Nuccio, by and through his counsel, respectfully petitions this court for a writ of habeas corpus and by this verified petition sets forth the following facts and causes for the issuance of said writ:

I.

Petitioner is presently restrained of his liberty in state custody based upon his conviction rendered by the San Joaquin County Superior Court in case numbered SF101949A, as Petitioner is currently in state custody for the present offense. (*In re Jones* (1962) 57 Cal.2d 860.)

II.

This petition is being filed in this Court pursuant to its original habeas corpus jurisdiction. (Cal. Const., Art. VI, § 10.)

III.

No other appellate proceedings exist with regard to the present confinement. No other petitions are pending in any other court with respect to this judgment.

IV.

Petitioner's conviction in case no. SF101949A is unlawful because he was wrongfully convicted and is in fact innocent. Through the present petition and attached exhibits, Petitioner presents the following basic claims:

> A) **New Evidence** - Forensic Expert Brent Turvey submits a preliminary report (1/29/25), finding that the Department of Justice (DOJ) conducted comparative DNA testing of physical evidence from the murder scene in 2001, as set forth in the DOJ DNA lab report BK 01-00181. While the full report has been suppressed, documents in the record and subsequent DNA testing include portions of the findings from BK 01-00181. Remarkably, Turvey finds that report BK 01-00181 reflects the comparative DNA testing of the 4 items of evidence submitted by Officer Anderson days after the murder, including the following items[1]: 1) the tank top that Jody Zunino was wearing when she was murdered; 2) the swab collected from a bloody handprint on Zunino's back; 3) the sexual assault kit [including the anal swab which was subsequently resubmitted for testing]; and 4) the 2 blood swabs and 2 control swabs collected from the blade of the knife. This report is critical, as it includes suppressed DNA testing of blood evidence found with Zunino's body and on the murder weapon. Since Zunino was stabbed to death in a struggle, blood is extremely material evidence. In addition to the DNA comparison testing of individual material items of evidence, Turvey notes that the 2001 DOJ report included at least one Cold Hit CODIS match and report. Obviously, one of the CODIS matches was Petitioner's DNA from the sperm discovered on the anal swab, but there are several points of the DNA testing which reference multiple hits. As Turvey explains, the CODIS hits are referenced in the 2002 subsequent report (presented as the "first" round of testing) which repeatedly cites the "OCJP"[2] DNA case

[1] Petitioner uses the DOJ numbering for the evidence associated with the DNA reports as these are the refence numbers for the items (rather than the Stockton Police Department evidence numbers which are totally separate). The DOJ document for DNA comparison testing which sets forth the DOJ numbering is attached hereto as Exhibit PP.

[2] "OCJP" refers to the California Office of Criminal Justice Planning (OCJP) DNA Cold Hit Grant Program, which was a Governor-created program from 2000-2005 that provided grant assistance for rapid DNA testing and CODIS review. An OCJP case number was assigned if a CODIS review resulted in a "hit," as it did here. (See Exh. NN.)

number and references case BK 01-00181 as the "original case" relied upon by DOJ analyst Young Keung throughout the 2002 DNA report. Here, Turvey's finding of the newly discovered 2001 DNA report completely contradicts the State's case against Petitioner with material, exculpatory evidence and provides additional evidence of the State's ongoing suppression of significant exculpatory evidence under *Brady*.

B) **False Evidence** – The newly discovered chain of custody related to the knife swabs and DNA testing, along with the findings of three expert witness reports related to this evidence, reveals that the DNA evidence presented at trial constituted false evidence. First, DNA Expert Dr. Ballard submits a review and report comparing the 2019 FACL DNA findings with the DOJ DNA findings at Petitioner's trial which finds that the DOJ DNA evidence presented to the jury in support of the prosecution's theory was in fact false. (See Exh. BBB.) In addition, both Turvey and Police Procedure Expert Beth Mohr provide additional evidence that the newly revealed chain of custody and the absence of trace blood on the knife in 2007 knife suggests that the knife was altered or cleaned while in the State's possession. (See Exhs. MM, TT.) Moreover, both Mohr and Turvey acknowledge, the chain of custody is broken with respect to the original "blood swabs" collected by the State from the blood found on the blade of the knife 9/28/01. (Exhs. MM, TT.) This fact was also confirmed by the FACL DNA analysts described receiving this evidence in a corrupted state – there was only one "blood swab" and it was blackened and did not appear to be blood. (See Exh. C.) The lack of evidence integrity is further called into question by the arbitrary and questionable handling of the evidence by Officer Rodriguez who took the knife from the evidence locker for additional latent print testing[3] along with the victim's blood sample and Petitioner's buccal swab. Officer Rodriguez hand-delivered the knife to the Central Valley Lab to test for latent prints and subsequently requested the lab test for trace blood. The Central Valley Lab found no trace blood on the knife and then made new swabs for DNA testing. As both Mohr and Turvey note, this process is counter to basic police practice and evidence integrity;

[3] Officer Rodriguez removed the knife from the evidence locker ostensibly to obtain "latent fingerprint" review. Both Turvey and Mohr question the integrity of Rodriguez's purported review over five years after it was originally tested for latent prints with no results. (See Exhs. MM, TT.)

C) **Suppression of Evidence** - The State, including the Attorney General, suppressed and continues to suppress material, exculpatory evidence in violation of *Brady*, and to the extent that the suppression has persisted despite ordered discovery and valid subpoenas for exonerating evidence, the suppression constitutes outrageous government misconduct. Petitioner presents overwhelming evidence that the State suppressed material exculpatory evidence prior to, during and after trial – including the DNA evidence identified in Petitioner's first claim - and continues suppress it. In addition, Petitioner contends that the State's outrageous misconduct in suppressing evidence counter to the express order of the Court warrants exoneration and a declaration of actual innocence in this case, barring the State from reinstating the charges as set forth in the Information;

D) **Loss, Destruction or Failure to Collect Evidence** – In addition to the suppression of evidence, the State lost, destroyed and failed to maintain potentially exculpatory evidence in violation of its constitutional obligations under *Trombetta/Youngblood.* In addition to the significant *Brady* evidence, there were systemic problems with the original investigation, specifically regarding all of the evidence related to the initial suspect, Terry Sprinkle. This is detailed in this petition and further set forth in police procedural expert, Beth Mohr's report. Mohr's report emphasizes the astounding misconduct and failures in this case where the forensic evidence was not collected despite its obvious investigative value or it was not retained in a manner that would preserve its integrity. The systemic failure in this case rises to the level of a constitutional violation based upon the repeated, related *Brady* violations by the State. Here, the gaps in chain of custody for material evidence (in some cases for decades), the lack of collected or retained evidence following the series of evidence collection and forensic investigation conducted by the State, considered in light of the systemic *Brady* violations, presents significant evidence of bad faith by government actors in support of Petitioner's *Trombetta/Youngblood* claims; and,

F) **Prosecutorial Misconduct Under *Napue*** – The recently discovered evidence supports a finding that the State presented false evidence and failed to correct the false evidence under *Napue*. Petitioner provides this summary of the claims, and incorporates the attached original habeas petition.

The evidence in support of the claims in this petition are set forth in full in the body of the petition and the accompanying points and authorities, as well as the attached Exhibits. The attached evidence is incorporated into the formal petition and allegations by reference herein.

Ultimately, the evidence in the present petition completely undermines the State's theory, highlights systemic government misconduct and presents affirmative evidence of Petitioner's actual innocence.

V.

This petition is being filed in this Court, requesting relief from the conviction in San Joaquin County Superior Court No. SF101949A, the conviction this petition challenges as unlawful. Petitioner has no plain, speedy, or adequate remedy at law, save this petition, since the allegations of this petition involve matters outside the record, to wit, the matters contained in the exhibits attached thereto.

VII.

By this reference, the accompanying memorandum of points and authorities and exhibits are made part of this petition as if fully set forth herein. Petitioner's claims under this petition will be based on this petition, the accompanying memorandum of points and authorities, the exhibits attached thereto, and any further material to be developed at any future hearing which may be ordered.

PRAYER

WHEREFORE, Petitioner respectfully requests that this Court:

1. Appoint present post-conviction counsel, Jennifer M. Sheetz, to represent Petitioner in the present proceedings based upon Petitioner status as an indigent individual and counsel's prior representation. Counsel represents Petitioner in the present petition on a *pro bono* basis, and she represented Petitioner in the San Joaquin County Superior Court both on a *pro bono* and appointed basis.

2. Issue an Order to Show Cause with a Return to this Court under California Rules of Court, Rule 8.36.

3. Pursuant to the Order to Show Cause, affirm Petitioner's subpoena power to issue subpoenas directly to the Department of Justice.

4. Appoint a referee and order an evidentiary hearing at an impartial venue for the presentation of any disputed factual matters that remain after Petitioner is given the opportunity to expand the record to include the necessary documentary evidence from the Department of Justice;

5. After full consideration of the issues raised in this petition, issue a writ ordering the court to vacate the judgment of conviction in the San Joaquin County Superior Court No. SF101949A, based upon the manifest constitutional violations in this case as well as Petitioner's actual innocence;

5. Declare Petitioner actually innocent; and,

6. Grant Petitioner such other and further relief as is appropriate in the interests of justice.

Dated: February 20, 2025

Respectfully submitted,

Jennifer M. Sheetz

VERIFICATION

I, Jennifer M. Sheetz, state:

I am an attorney admitted to practice before the courts of the State of California, and have my office in the City of Mill Valley, California. I am the *pro bono* attorney for Petitioner herein and am authorized to file this Petition by virtue of my representation of Petitioner.

I am verifying this petition because the facts herein are within my knowledge as Petitioner's attorney, with the exception of those facts specifically set forth in the exhibits which are attached to this petition.

I have read the foregoing Petition for Writ of Habeas Corpus and verify that all the facts alleged herein are supported by citations to the record in *People v. Joseph Nuccio*, No. SF101949A, and are supported by declarations and the exhibits attached hereto.

I certify under penalty of perjury under the laws of the state of California that the foregoing is true and correct. Executed at Mill Valley, California on February 20, 2025.

Jennifer M. Sheetz

I. STATEMENT OF THE CASE[4]

Petitioner is confined pursuant to the judgment of the California Superior Court for San Joaquin County rendered on May 6, 2008. Petitioner was charged by felony information with one count of murder (Pen. Code § 187), one count related to his personal use of the weapon (Pen. Code § 12022(b)(1)), and it was further alleged that Petitioner had suffered a prison prior for a felony conviction for receiving stolen property (Pen. Code § 667.5(b)). In a bifurcated proceeding, a jury found Petitioner guilty of the charged allegations, and the court found the prison prior to be true. On May 6, 2008, Petitioner was sentenced to an indeterminate term of 25 years to life. Petitioner filed a notice of appeal two days later.

Petitioner raised several issues not relevant to the present proceedings in his direct appeal. On November 5, 2009, the Court of Appeal affirmed Petitioner's conviction. The California Supreme Court denied review on January 13, 2010. Petitioner subsequently filed a federal petition, raising the same claims in the United States District Court, Eastern District Court of California. The district court denied Petitioner's claims on March 7, 2014. Petitioner appealed the denial to the Ninth Circuit Federal Court of Appeal. On April 7, 2016, the Ninth Circuit Court denied Petitioner's claims.

A. Post-Conviction Habeas Related Proceedings

1. DNA Motion

In 2017, Petitioner filed a *pro se* motion for DNA testing of the knife. The contested motion was granted over the District Attorney's Opposition. The Court appointed Petitioner's trial counsel, Jeffrey Sylvia, to represent him during the testing, and D.A. Rasmussen represented the prosecution. FACL's final report, which excluded

[4] Petitioner acknowledges that this Court has original habeas jurisdiction with *de novo* review, thus in the normal habeas proceeding a detailed summary of the procedure below would not be relevant to the habeas proceedings in this Court. However, due to the unusual circumstances in the proceedings below are both relevant and instructive to the current procedural posture, the prayers for relief requested and a fair consideration of the process due to Petitioner. (See Exh. B.)

Petitioner from the DNA on the murder weapon but included two other male profiles, was sent to Petitioner in December of 2019.

2. Motion for Chain of Custody Under Penal Code section 1405(c)[5]

Present counsel entered the post-conviction case on a *pro bono* basis on or about September 9, 2020. (See Exh. B.) On or about January 21, 2021, present counsel filed a Motion for Disclosure of Chain of Custody, Reports and Status of Physical Evidence under Penal Code section 1405(c). District Attorney Robert Himelblau represented the State throughout the subsequent post-conviction discovery and habeas proceedings. The chain of custody motion was granted, and the Court ordered the discovery of Department of Justice (DOJ) materials related to the forensic review related to the initial suspect, Terry Dean Sprinkle. (Exh. MMM.) Initially, D.A. Himelblau represented that no DOJ report existed because no physical evidence was collected. However, D.A. Himelblau indicated that he had been in touch with DOJ Criminalist Yoshida, and she had agreed to put together a report from her notes**.** (Exh. MMM.) Petitioner received the newly constructed DOJ report at a subsequent case status conference. At the same case status conference, D.A. Himelblau stated that he had *sua sponte* taken Petitioner's case into the Conviction Integrity Unit. Following a subsequent status conference before Judge Villapudua, the Court signed an order for comparison DNA testing (as suggested in the 2019 FACL DNA report). (Exh. H.) As part of the Conviction Integrity Unit status, the prosecution provided informal post-conviction discovery related to the initial suspect, Terry Sprinkle, in June 2021.

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[5] In the initial filing, Petitioner acknowledged the potential conflicts of interest presented by the claims in this case, as the State was represented by D.A. Rasmussen in the prosecution of this case, and he is now a Commissioner for the San Joaquin County Superior Court. In addition, in his filing Petitioner acknowledged that the presiding judge in the underlying case was Judge Saiers, who was removed from the bench (after retirement) by the California Supreme Court in 2010. (See e.g. https://www.recordnet.com/story/news/courts/2010/07/03/final-day-on-bench-arrives/51551135007/.)

Petitioner attempted to pursue FACL comparison DNA testing, but was informed that the DNA for Terry Sprinkle was not accessible. (Exh. B.) With the initial discovery and complete Stockton Police Department interview with Terry Sprinkle, Petitioner understood that the State had taken Sprinkle's blood as part of this case following the interview. (Exh. B.) Petitioner began seeking access to this evidence for the purpose of comparison testing.

Petitioner received a copy of a letter from the Attorney General to then District Attorney Tori Verber-Salazar**.** (Exhs. B and PPP.) In the letter, the Attorney General denied District Attorney Verber-Salazar's request to represent the state in the underlying habeas matter. Petitioner responded directly to Attorney General representative and confirmed that they were declining the District Attorney's request to represent the state in this case. (Exh. B.) Petitioner informed the Attorney General that he would be serving them with all filings in this case. Petitioner has served the Attorney General's Office with all of the Court filings in this case since December 1, 2021. (See Exh. B.)[6]

3. Motion Under Penal Code Section 1054.9(a)

Petitioner filed a Motion for Discovery under Penal Code section 1054.9(a) on or about November 24, 2021. Judge Humphreys subsequently recused herself from the case, and it was transferred to the Honorable Judge Linda L. Lofthus, at the Lodi Courthouse. Judge Lofthus granted Petitioner's motion over the D.A. Himelblau's Opposition on April 26, 2022.

Upon reviewing the evidence at the Stockton Police Department, Petitioner discovered that all of the tire tread evidence had been destroyed in 2012. (Exh. B.) Judge Loftus ordered the Court's file for review, in order to confirm that there was no court order in the record. Upon review of the file, Judge Lofthus confirmed that the tire treads were destroyed by the Stockton Police Department *without a court order*. While reviewing the Court's file, Judge Lofthus discovered an unmarked sealed envelope

[6] The Attorney General was given legal notice of the chain of custody, physical evidence and DOJ reports sought by Petitioner since December 1, 2021. (See Exh. B.)

without a corresponding Motion to Seal the Record or an order sealing any portion of the record. Subsequently, Petitioner filed a Motion to Unseal the Record on or about July 25, 2022. Judge Lofthus unsealed the envelope and revealed a CLETS for Terry Sprinkle. The CLETS was not referenced in the record on appeal, nor was any Motion to Seal the Record.

Petitioner filed a Motion to access/print negative strips. At the time that the motion was filed, D.A. Himelblau did not have any record of prints being made from the negative strips, nor did he claim that there were prints in the D.A.'s file. D.A. Himelblau opposed the motion and suggested that the prosecution would print the negatives. The Court granted the motion. Petitioner was granted access to the negative strips on or about September 16, 2022.

Petitioner filed a *Pitchess* Motion on or about July 22, 2022. Following a contested hearing, Judge Lofthus granted the *Pitchess* Motion, conducted a review of the personnel file for Officer Anderson, and provided Petitioner with two disciplinaries involving Anderson's delinquency of duty. (See Exh. Z.)

B. Habeas Proceedings

1. Initial Pro Se Habeas

On or about January 22, 2021, Petitioner filed a *pro se* habeas petition, based primarily upon the newly discovered DNA evidence from the murder weapon which identified Zunino as a contributor along with two male profiles, and affirmatively excluded Petitioner as a contributor. This petition was later denied without prejudice based upon present counsel's filings for discovery in Petitioner's case.

2. First Amended Habeas

Petitioner filed an Amended Habeas Petition on June 21, 2021. On or about September 17, 2021, the Hon. Judge Humphreys appointed present counsel to represent Petitioner. Judge Humphreys denied the petition without prejudice pending additional post-conviction discovery.

3. Second Amended Habeas – Judge Lofthus

Petitioner filed the second amended habeas petition on November 4, 2022. The Court ordered informal briefing on or about December 20, 2022. Judge Loftus' Order provided for a case status conference on January 13, 2023. Petitioner did not receive the order until January 14, 2023 (postmark from the Clerk indicates that it was mailed to present counsel on January 12, 2023). (Exh. B.)

Petitioner filed a Motion to Recuse the District Attorney's Office on or about February 23, 2023.

On March 14, 2023, Judge Lofthus signed an *Ex Parte* Order for expert witness funds to be provided for Petitioner to retain the services of Beth Mohr, a police procedure expert.

On May 15, 2023, Judge Lofthus found that Petitioner had presented *prima facie* evidence in support of Petitioner's Motion to Disqualify the District Attorney's Office and ordered an evidentiary hearing.[7] Petitioner incorporates Judge Lofthus' Order, filed on her final day on the bench, as it summarizes the proceedings that were before her and incorporates her findings of fact that remain central to the proceedings and the due process issue that remains unresolved.[8] Judge Lofthus found, in pertinent part:

> After careful consideration of the facts, the briefs and arguments of counsel, and the pertinent authorities, and good cause appearing therefore, the Court hereby confirms its March 30, 2023, tentative ruling as follows:
> On November 4, 2022, Petitioner Joseph H. Nuccio ("Petitioner") filed an amended petition for writ of habeas corpus alleging both wrongful conviction and of factual innocence. In support of these claims, Petitioner offers four volumes of evidence and cites new DNA evidence, the purported failure of the prosecution to disclose exculpatory evidence under *Brady, Trombetta*, and *Youngblood* (citations omitted), and the possible presentation of false testimony at the trial in violation of *Brady* and *Napue* (citation omitted). The record shows that this petition is based upon years of post-conviction discovery, which ultimately resulted in the April 26,

[7] Prior to her retirement on May 15, 2023, Judge Lofthus announced that *the entire bench of the San Joaquin County Superior Court had recused themselves* from this case.
[8] Petitioner requests that the Court take judicial notice of Judge Lofthus' finding of fact set forth in the Order of the Court, issued May 15, 2023, which is largely reproduced here.

2022 “Order for Discovery” and in a formal evidence log filed in this action on May 24, 2022.

The Motion to Recuse

On February 8, 2023, Petitioner filed this motion to recuse the San Joaquin County District Attorney’s Office. As in the underlying habeas petition, Petitioner asserts that the District Attorney’s Office suppressed, lost, or destroyed evidence in Petitioner’s case and even claims that the “State was aware of Petitioner’s innocence prior to arrest and prosecution”. (Motion at p. 3.)

On March 6, 2023 the Office of the Attorney General for the State of California filed an opposition. On March 7, 2023, the San Joaquin County District Attorney’s Office filed its opposition and an accompanying declaration from Deputy District Attorney Robert Himelblau, the district attorney presently assigned to this case.

On March 10, 2023, Petitioner filed a 46-page reply. The reply stated “a much larger issue that has come to light . . . which dramatically changes the nature of the motion and the substance of the Attorney General’s Opposition”. (Reply filed Mar. 10, 2023, at p. 1.)

On March 8, 2023, the District Attorney’s Office had turned over additional, new discovery.

On March 13, 2023, the matter came on for hearing. Deputy Attorney General Sean McCoy appeared for the Office of the Attorney General. Deputy District Attorney Robert Himelblau appeared for the Office of District Attorney. Jennifer Sheetz, Esq. appeared for Petitioner Joseph Nuccio, who was not present but in custody serving his sentence. At the hearing on the matter the Court ordered the following briefing schedule: Petitioner to file an amended reply/supplemental reply on March 17, 2023; the district attorney and attorney general to file supplemental responses on March 24, 2023. Further hearing on the matter was set for April 3, 2023.

Thereafter, on March 20, 2023, Petitioner filed his amended reply. On March 24, 2023, the Office of the District Attorney filed its supplemental opposition and accompanying declaration of Robert Himelblau. On March 27, 2023, the attorney general filed its supplemental response.

The parties appeared and argued the motion on April 3, 2023, and on April 10, 2023.

3. This Case.

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In this habeas matter, the record shows that on April 26, 2022, the Court issued an "Order for Discovery" wherein the prosecution team was ordered to turn over nearly everything in its possession. (See Order filed April 26, 2022.) The order also required the parties to meet and confer and file a formal Evidence Log in this action. (Id.) This was done on May 24, 2022. (See Evidence Log filed May 24, 2022.) In large part, the purpose of the Evidence Log was to assist in the location of evidence and establishment of the chain of custody of evidence alleged to have been misplaced, lost, or destroyed going as far back as 2001. At the May 24, 2022, hearing regarding the Evidence Log, Deputy District Attorney Himelblau represented to the counsel and to the court that all discovery has been put onto a CD Rom and was ready for Attorney Sheetz. (Minute Order, dated May 24, 2022.)

On June 17, 2022, the parties through their counsel appeared for a further status conference. The Court ordered Deputy District Attorney Himeblau and Attorney Sheetz to meet regarding the photo negatives that were noted in police records as being taken next to the victim's body in order that the photos could be developed and turned over to the Petitioner. (Minute Order date, June 17, 2022.)

On July 22, 2022, the parties appeared yet again for a status conference. At that conference, the parties discussed a Pitchess issue that arouse during the post-conviction discovery proceedings.

The Court ordered Petitioner to file his amended habeas petition by October 28, 2022, and set a Pitchess Motion for September 16, 2022.

On September 16, 2022, the Court conducted in camera review of the Pitchess material. (Minute Order, dated Sept. 16, 2022.)

On September 27, 2022, the parties appeared again. The Court granted Petitioner's request to unseal additional confidential material and again ordered that the amended petition for writ of habeas corpus be filed on or before October 28, 2022. (Minute Order, dated Sept. 27, 2022.)

On November 4, 2022, Petitioner filed his amended petition under the guise of having been provided all the requested and ordered post-conviction

discovery in the possession of the prosecution team that had not been lost, destroyed, and/or misplaced.

Yet, four months later, on March 7, 2023, in response to the instant motion, District Attorney Himelblau provided a declaration under penalty of perjury stating:

> 28. After Petitioner's counsel examined evidence located at the Stockton Police Department on April 26, 2022, I requested the latent print cards be retrieved and compared to the prints of Jody Zunino, Terry Sprinkle and Petitioner.
> 29. On or about October 4, 2022, I received a report from the California Department of Justice. The report indicated (1) Print Card #1 did not yield sufficient details for comparison; (2) Print Card #2 excluded Jody Zunino, Terry Sprinkle or Petitioner; and (3) Print Card #3 identified Elaine Marie Barnes.
> 29a. This California Department of Justice has not been discovered to Petitioner's counsel at time of this declaration but will be prior to the March 13, 2023, hearing.
> 30. On October 4, 2022 Investigator Rodriquez determined that Elaine Marie Barnes had convictions for prostitution; four convictions for Penal Code section 647(b) from 1989 to 1993.) In addition, he located a 1994 Stockton Police report (SPD CR# 94-42225) listing an Elaine Mullholland as a reporting party. Elaine Mullholland is also known as Elaine Marie Barnes.
> 30a. A reading of the report reveals, in brief, Mullholland and Sprinkle argued while in a motel room. Mullholland said he raised a knife during the argument. She grabbed the knife and cut herself. Sprinkle said he caught Mullholland stealing money and they argued and she raised a pair of pliers. He pushed her into the shower where she cut her hand on a broken shower handle. A broken shower handle, a knife, and a pair of pliers were all found in the room.
> 30b. No charges were ever filed.
> 30c. I reviewed Sprinkle's CLETS printout printed on or about August 29, 2007 and provided to the trial

> court. I also reviewed Sprinkle's CLETS printout printed on or about July 28, 2022. The incident referred to in SPD CR# 94 42225 does not appear on either print out.
> 30d. Report SPD CR# 94-42225 has not been discovered to Petitioner's counsel at time of this declaration but will be prior to the March 13, 2023, hearing.
> 31. The latent prints lifted by Technician Nasello have not been lost or suppressed.
> (Decl. Himelblau, filed March 7, 2023 (emphasis added).)

Petitioner's initial reply offered in support of this motion filed on March 10, 2023, confirms that Attorney Sheetz did not receive the above-noted new discovery from the Office of the District Attorney until March 8, 2023. (Supp. Decl. of Sheetz, filed March 10, 2023, ¶ 4.)

Pursuant to Rules of Professional Conduct, Rule 3.8, the Office of the District Attorney has an ongoing duty to turn over new, credible and material evidence creating a likelihood that a convicted defendant did not commit an offense of which the defendant was convicted. (CA STRPC Rule 3.8.) The District Attorney also has a duty to "undertake further investigation, or make reasonable* efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit" if the prosecution occurred in the prosecutor's jurisdiction. (CA ST RPC Rule 3.8.) (See also, *In re Jenkins* (2023) 14 Cal.5th 493 (discussing duties post-conviction).)

In addition, pursuant to this Court's order issued on April 26, 2022, the District Attorney (inclusive of the prosecution team) has been ordered to turn over to Petitioner's counsel all the discovery identified therein. This includes materials discoverable under Penal Code section 1054.9. Rather alarming, at no point during any of the almost monthly status conferences between April 2022 and October 2022 did Deputy District Attorney Himelblau disclose to Petitioner's counsel or to the court that the missing latent finger print evidence had be located after Attorney Sheetz' April 26, 2022, visit to the Stockton Police Department, (Decl. Himelblau filed March 7, 2023, ¶ 28), and that the fingerprint evidence was "tested" or run through the DOJ system at some point prior to October 4, 2022, (Decl. Himelblau filed March 7, 2023, ¶¶ 28-29a.). Instead, Deputy District Attorney Himelblau disclosed that material and a related police report detailing an altercation involving a knife between another prostitute and

Terry Sprinkle for the first time on or about March 8, 2023—approximately 10 months after the latent fingerprint evidence was initially found in April 2022 and nearly four months after Petitioner's amended habeas petition was filed. (Decl. Himelblau filed March 7, 2023, ¶ 30d.) This is troublesome as this "delay" prohibited Petitioner from addressing this new evidence in the amended habeas petition.

The Court notes that these March 2023 disclosures are not the only pieces of evidence that appear to have been lost, misplaced, destroyed, and/or untimely produced during these postconviction proceedings. For example, the March 7, 2023, Declaration of District Attorney Himelblau notes that Investigator Eduardo Rodriguez's chain of custody report for Terry Sprinkle's blood vial was not provided prior to the filing of the amended habeas petition, (Decl. Himelblau filed March 7, 2023). Until recently, the prosecution had represented to Petitioner's counsel and to the court that the vial had been lost. (See Decl. Himelblau filed March 7, 2023, ¶ 51.) And in July of 2021, the Office of the District Attorney only provided Petitioner's counsel with "Side A" of a cassette tape containing an interview with Terry Sprinkle, although arguably a mistake. (See Decl. Himelblau filed March 7, 2023, ¶ 70-70b.)

The operative habeas petition—and the motion to recuse—allege, in essence, a "systematic" breakdown of the handling of the evidence in this case beginning in 2001 (shortly after the murder) and continuing up to the present. It appears that members of the prosecution team (which includes attorneys, investigators, office staff, and local law enforcement personnel) may need to be called as witnesses at a future evidentiary hearing on the merits of the Petitioner's wrongful conviction and actual innocence claims. True, "[t]he fact that an employee of the district attorney's office might be a witness . . . and credibility of that witness may have to be argued by the prosecuting attorney," is not enough reason alone to recuse an entire prosecutorial office. (*People v. Cannedy* (2009) 176 Cal.App.4th 1474, 1482.) However, given the evidence before this court, the prosecution's recent "delays" in production in this proceeding and seeming disregard of this Court's discovery orders in combination with the many allegations of prosecutorial misconduct in the pending habeas petition (including, Brady, Trombetta, Youngblood, and more), it is foreseeable that the "office as a whole, would likely be influenced by the personal interest of the district attorney" and that of the involved employees and agents as opposed to the interests of justice. (*Melcher v. Superior Court* (2017) 10 Cal.App.5th 160, 167.) Stated otherwise, it is foreseeable that there could be a conflict between prosecution's desire to defend the reputation of the office and the

> prosecution's duty to evenhandedly assist in the determination of the validity of Petitioner's conviction.

(Judge Lofthus' Order, attached hereto as Exh. QQQ.)

4. Post-Order to Show Cause Habeas Proceedings

Judge Lofthus issued an Order to Show Cause on May 15, 2023, ordering the State (Respondents) to file a Return (within 30 days) addressing all claims for relief set forth in the Amended Petition. The order further provided that the parties would attend a case status on May 17, 2023, before visiting judge Judge Hashimoto[9].

The parties met with visiting Judge Hashimoto on May 17, 2023, at the Manteca Courthouse and discussed further dates for case status. Judge Hashimoto recused himself from the case via email to the Court Administration. The parties learned of Judge Hashimoto's recusal by email on or about May 24, 2023. (See Exh. LLL.)

On May 31, 2023, present counsel attempted to file an Emergency Motion for Change of Venue. (Exh. LLL.) Counsel was prohibited from filing the motion at the Clerk's Office. On June 5, 2023, present counsel filed a letter with the Judicial Officers of the San Joaquin County Superior Court, requesting a change of venue due to the pervasive conflict of interest and violation of Petitioner's right to due process. (Exhs. B, LLL.) The Court denied the request and informed the parties that a visiting judge had accepted the case.

On June 13, 2023, visiting Judge Clark held a case status conference for this case in a department at the Stockton Courthouse. (Attached hereto as Exh. RRR.) At the status conference, Judge Clark vacated Judge Lofthus' order for an Evidentiary Hearing and held that the State's Return would be stayed pending the Motion to Disqualify. (See Exh. RRR.) In response to the Court's stay of the habeas proceedings, Petitioner withdrew the Motion to Disqualify. Judge Clark further extended the time for filing of

[9] Following the recusal of the entire San Joaquin County Superior Court bench, Judge Lofthus arranged for visiting Judge Hashimoto to accept the case. Parties met with Judge Hashimoto informally before the case was formally transferred to his assigned department in Manteca.

the State's Return by 30 days, ordering that the State's Return was due for filing by July 13, 2023. The Court stated that Petitioner's Traverse was due 30 days from July 13, 2023, or August 12, 2023.

Petitioner filed *ex parte* requests for the appointment experts. Petitioner requested the appointment of a Film Photography expert, Keith Rosenthal, to review the negative strips for possible dating of the film and comparison with crime scene collection. In addition, Petitioner requested the appointment of Brent Turvey, a forensic expert, to review the conflicting DNA reports and chain of custody for the forensic evidence.[10] Judge Clark denied both requests.

Petitioner utilized his post-Order to Show Cause subpoena power to issue subpoenas to the Department of Justice, Bureau of Forensic Services, Jan Banshinski DNA and Central Valley Laboratories. The subpoenas, issued on July 11, 2023, requested disclosure of records pertaining to the forensic testing conducted in the present case as well as chain of custody documentation. (See Exh. DDD at pp. 8-18.)

The State filed a Return based solely upon general argument, with only this Court's decision on direct appeal attached as evidence.

On July 21, 2023, the Attorney General filed Motions to Quash both subpoenas based in large part upon an argument that 1054.9(a) did convey subpoena powers, as it appeared that the Attorney General was not aware that an Order to Show Cause had issued. (Exh. DDD.) Petitioner filed an Opposition to the Motion to Quash, clarifying the procedural posture of the post-OSC proceedings and detailing Petitioner's due process right to the subpoenaed documents from the DOJ. (Exh. EEE.)

On July 29, 2023, Petitioner filed a request to extend time for filing the Traverse to after the hearing on the Motion to Quash. (Exh. B.) Judge Clark denied the request to extend time. (Exh. B.) Petitioner received the Court's denial of the extension of time

[10] As noted in present counsel's declaration, Forensic Expert Brent Turvey was privately retained by Petitioner following the Court's decision denying relief requested in the petition.

request on or about August 9, 2023, or approximately three days before the Traverse was due for filing. (Exh. B.)

Judge Clark set the hearing for Motion to Quash on August 21, 2023. (Exh. GGG.) On August 21, 2023, Judge Clark granted the Attorney General's Motion to Quash based upon a finding that Petitioner did not have the procedural authority to issue or sign the subpoenas without the Court's prior authorization. (See Exh. GGG.) Petitioner "corrected" the subpoenas and filed the a new request for judicial "issuance" of the post-OSC subpoenas for the DOJ case information pursuant to the suggested procedure. (See Exhs. EEE, FFF.) Judge Clark *never* responded to Petitioner's filing, and the Attorney General never provided any of the requested evidence from the DOJ files on this case.

On September 8, 2023, Judge Clark found that the claims that evidence was suppressed, lost or destroyed constituted "matters wholly within the record of proceedings," and denied an evidentiary hearing on these matters.[11] Instead, Judge Clark ordered a "limited" evidentiary hearing specific questions related to the materiality of DNA evidence.

Petitioner filed an *ex parte* request for the appointment of DNA Expert, Dr. Ballard. Judge Clark granted a restricted appointment, denying a request for travel reimbursement.

[11] Petitioner respectfully requests that this Court take judicial notice of the Court of Appeal's holding in *Vallejo v. Superior Court of Santa Clara County* (2021) 73 Cal.App.5th 132 [In 2021, the Sixth District Court of Appeal found that Judge Clark did not have authority to withdraw a prior decision or order of the court where she took over a case after a judicial officer recused himself] as it pertains to both the procedural posture below and Judge Clark, specifically. Here, Judge Clark entered the present habeas proceedings after Judge Lofthus made specific findings of fact related to the suppression of evidence by D.A. Himelblau and issued an Order to Show Cause on all claims in the amended petition. Respondent filed a Return *without presenting any responsive evidence*. Accordingly, the subsequent decisions of the Court had the procedural effect of withdrawing Judge Lofthus' prior orders and findings.

The evidentiary hearing was held on October 24, 2023. (Transcript of the hearing attached hereto as Exh. AAA.) The Court ordered post-hearing briefing which included an initial brief from both parties and then subsequent responsive pleadings. Respondent filed its brief as a Supplemental Return. In response to the Supplemental Return, Petitioner filed a Supplemental Traverse, which included a final report from expert witness, Beth Mohr. (Supplemental Mohr report attached hereto as Exh. TT.) In Petitioner's Supplemental Traverse, Petitioner noted the change in law related to the new evidence presented in this case which went into effect on January 1, 2024.

The Court extended time for its decision for approximately five months, filing its decision on or about May 31, 2024. The Court served the decision on present counsel by mail on or about mid-June, 2024. With the Court's decision, present counsel lost the appointment of the Court. Accordingly, present counsel has worked *pro bono* on the present petition since receiving a copy of the decision in mid-June, 2024. (Exh. B.)

Present counsel raised funds to retain Forensic Expert Brent Turvey for review of the record and production of a preliminary report concerning the chain of custody of physical evidence, forensic testing and DNA reporting in the present case. (Exh. B.) Turvey finalized his report on January 29, 2025. (See Exh. MM.) The present petition incorporates the findings as new evidence and additional evidence of ongoing *Brady* violations in the present case.

II. FACTUAL AND PROCEDURAL BACKGROUND[12]

The following statement of facts is taken from this Court's decision on direct appeal:

> This was a "cold hit" DNA case. On October 11, 2006, defendant was charged with killing Jody Lynn Zunino on

[12] Petitioner requests that the Court take judicial notice of the record of the proceedings in Petitioner's underlying case before San Joaquin County in case no. SF101949A, as set forth in the transcripts of the record on appeal and the Court's decision affirming Petitioner's conviction in *People v. Joseph Nuccio*, No. C058865. Petitioner also requests that the Court take judicial notice of the record of the post-conviction discovery proceedings related to the underlying case, as well as the habeas proceedings which followed.

September 26, 2001. She was a prostitute who had been picked up by a customer in the Wilson Way area of Stockton, and whose body was found in a nearby field.

An eyewitness saw the victim on Wilson Way that night, talking to a man who looked like defendant.

Three witnesses testified the victim did not like to perform or would refuse to perform anal sex. Because her anus had a slight injury, and defendant's semen was found inside her rectum, this tended to show defendant forced himself upon her.

The victim's body was found nearly nude in a field, with tire tread marks nearby and across her arm and leg, and with a knife she had borrowed from a friend that night next to her. Her throat had been cut and her body bore other slashing injuries.

An eyewitness saw the victim get into a vehicle she described as a white Bronco with tinted windows, but she was not familiar with vehicles and identified photographs of defendant's white Chevrolet Blazer, which the witness referred to at trial as a "Bronco." She had previously told an officer that a photograph of a Bronco the officer had printed off the Internet "looked similar" to the vehicle she had seen, and the photographs in evidence of defendant's Blazer and the Bronco from the Internet show that the vehicles are similar to each other.

The day after the murder, a peace officer saw a Ford Bronco in the Wilson Way area, and it was registered to Terry Sprinkle, a parolee. Sprinkle's house and Bronco were searched, but nothing was found.

A criminalist testified defendant's Blazer had tire treads consistent with the tread marks found near and on the victim's body, but the tread was not unique, that is, she could not testify defendant's Blazer, to the exclusion of other similar vehicles with similar tires, made the tread marks at the scene. Terry Sprinkle's Bronco could not have made those tread marks.

> Defendant did not testify, but in argument challenged the drug-using percipient witnesses, challenged the expertise of the tire-tread analyst, and pressed the theory that a desperate, heroin-addicted prostitute might not be choosy about what type of services to perform; therefore, while defendant may have had anal sex with the victim, there was a reasonable doubt whether he killed her.
>
> The jury convicted defendant of first degree murder and found the deadly weapon (knife) enhancement true.
>
> A new trial motion based on newly discovered evidence included the declaration of the victim's former boyfriend, who claimed they regularly had anal sex, and the declaration of a prostitute who claimed the victim admitted having anal sex. After hearing testimony from these witnesses, each of whom had abused drugs and had convictions reflecting moral turpitude, the trial court denied the motion for a new trial.

People v. Joseph Nuccio, No. C058865 (Cal. Ct. App. Oct. 26, 2009).

III. INTRODUCTION

> No man's liberty is dispensable. No human being may be traded for another. Our system cherishes each individual. We have fought wars over this principle. We are still fighting those wars.
>
> Sadly, when law enforcement perverts its mission, the criminal justice system does not easily self-correct. We understand that our system makes mistakes; we have appeals to address them. But this case goes beyond mistakes, beyond the unavoidable errors of a fallible system. This case is about intentional misconduct, subornation of perjury, conspiracy, the framing of innocent men. While judges are scrutinized — our decisions made in public and appealed — law enforcement decisions like these rarely see the light of day. The public necessarily relies on the integrity and professionalism of its officials.

(*Limone v. U.S.* (D. Mass. 2007) 497 F. Supp. 2d 143, 153.)

> The defense has tried to say this is just a big conspiracy, and I think I'm supposed to be the head of that snake.... The big conspiracy.

(RT 913-914, District Attorney's Rasmussen's Closing Argument attached hereto as Exh. L.)

Joseph Nuccio ("Petitioner") challenges the judgment based upon his conviction for the 2001 murder of Jody Zunino, in case numbered SF101949A. Petitioner sets forth the present petition with emphasis on the first two claims, as the State's own evidence in these claims tells a "new" story, a very profound story of the two separate investigations and the evidence that was lost or destroyed along the way. Perhaps D.A. Rasmussen's snake metaphor is apt. Or, perhaps D.A. Himelblau's unintended metaphor about a "credenza"[13] obstructing the evidence is better. D.A. Himelblau suggested that the suppressed evidence fell behind a "credenza," obstructing the State's direct line of sight of the exculpatory evidence until 2023. Regardless the stylistic presentation or metaphoric musings, the present case presents two very different and conflicting narratives – the original investigation in 2001 and the "cold case" prosecution of Petitioner in 2006. In truth, the snake did not swallow all of the original evidence, and the credenza did not obstruct the view of this profound evidence- not entirely, at least.

In simple terms, the State conducted comparison DNA testing of the most material evidence discovered immediately after the murder – the only clothing left on the victim (a tank top), a swab of a bloody handprint on the victim's back, the sexual assault exam kit, and the blood swabs taken from the blade of the knife when it was discovered next to the victim. This evidence (DOJ report BK01-00181) is identified by forensic expert, Brent Turvey, based upon the chain of custody evidence, suppressed documents, the procedural practices of forensic science, and the State's own data. Turvey explains that the

[13] D.A. Himelblau declared that he had not unlawfully suppressed the exculpatory *Brady* evidence in violation of the Court's Order for Discovery under Penal Code section 1054.9(a), but had in fact recently discovered the evidence had fallen behind a credenza (it was unclear if this piece of furniture was meant to be in the D.A.'s Office or his personal residence). (See Exh. CCC at pp. 31-32.)

Department of Justice (DOJ) Jan Bashinski Lab report BK 01-00181 was in fact the first review of DNA evidence in this case. Unfortunately, despite Petitioner's best efforts – repeated requests, court-ordered discovery, repeated, lawful subpoenas issued post-OSC – the report itself remains hidden behind the State's credenza or in the belly of its snake. However, as noted by Turvey, the subsequent 2002 DNA report reveals portions of this report.

Portions of the State's initial DNA evidence, as set forth in full in BK 01-00181, are included in the 2002 subsequent report. As identified by Turvey, this new DNA evidence is not just exculpatory, but exonerating. The physical evidence subject to testing in the 2001 report reflects the most material evidence in the violent stabbing of Jody Zunino. The chain of custody is straightforward (though still mostly suppressed by the State) and the biological evidence includes the blood that was produced in the violent struggle that ended with Zunino's life – most poignantly by the bloody handprint on her back and the blood on the blade of the knife. The portions of the 2001 DOJ DNA report that are incorporated into the 2002 DNA report are remarkable because they show that biological evidence was located on the four pieces of evidence submitted to the DOJ, DNA was extracted from these pieces of evidence, and the DNA profiles were uploaded to CODIS, resulting in CODIS matches.

This was where the chain of custody began to unravel at the hands of the State, as none of the evidence from the initial DNA comparison testing has integrity. As both Turvey and Mohr note, the evidence lacks integrity once the chain of custody is broken. Without a chain of custody, evidence is spoliated, and its evidentiary value is lost forever. As noted in both Turvey and Mohr's reports, the troubling state of the evidence in this case reflects the process by which spoliated evidence becomes false evidence. The knife reflects the most poignant example of spoliated evidence that was presented as false evidence to the jury in order to secure Petitioner's conviction.

The State presented the jury with a straightforward narrative of "cold case" prosecution beginning with the discovery of Petitioner's DNA in 2006. However, the

newly discovered evidence and chain of custody establishes that this was a false narrative in every respect. The new evidence definitively proves that the State identified Petitioner's DNA with the first round of testing in 2001. This was identified on the anal swab upon initial testing. This swab was separated from the rest of the sexual assault exam kit by the DOJ Central Valley Lab and then resubmitted. The chain of custody for this transaction and the subsequent requests for DNA testing related to the anal swab have been suppressed, and Petitioner has not received this part of the record despite repeated requests, a court ordered discovery request, and repeated targeted post-OSC subpoenas. Remarkably, the 2006 DNA report cited as the catalyst for "reopening" the cold case against Petitioner recites the language "as previously reported" when referencing the CODIS match to Petitioner. (See Exh. SSS.)

Turvey identifies a remarkable irregularity in the forensic record of this case which further suggests that the DOJ reports are not complete or accurate, particularly with respect to the DNA testing. As acknowledged by Turvey, the DOJ DNA reports for the forensic review of evidence in this case were recreated by D.A. Rasmussen in 2007. (See Exh. OO.) As Turvey notes, this is both unprecedented and unreliable. Normally, the prosecution receives the DOJ reports in response to law enforcement requests for testing, and the DOJ reports are incorporated into the State's file for the case as they are received. The DOJ testing and reports are not created *sua sponte*. Rather, they are a product of law enforcement investigation, a response to a direct request. Turvey opines that the prosecution's recreation of the DNA files "indicates that their office did not have a complete set of the original DNA files; and that what has been provided from them is also likely not a complete set of the original files." (Exh. MM.)

Initially, the State presented false evidence to suggest that the murder investigation of Zunino was "reopened" based upon the discovery of Petitioner's DNA in 2006. As set forth above and in the petition in full, this is clearly false evidence. This provides the basic framework for the false narrative that followed from the start of the 2006 "investigation." In addition to suppressing the original evidence, the State created an

entirely new set of evidence starting in 2006, with the creation of *new* swabs from a cleaned knife. The convoluted chain of custody and gaps in the record provided to the defense confused even the defense into believing that the swabs created from a cleaned knife in 2007 were legitimate. However, it is clear from an intensive review of the record that the new swabs were created in order to provide a new narrative for the prosecution of Petitioner. Turvey in his review of the forensic evidence, the chain of custody for the knife is extremely problematic and suggests that all testing derived from the knife after 2006 is unreliable and lacks integrity. Noting that the chain of custody reflects that the knife was altered or cleaned while in the possession of the Stockton Police Department, Turvey concludes, "this record indicates serious problems with the reliability/integrity of this evidence and any subsequent testing efforts." (Exh. MM.)

While the suppressed and destroyed evidence is troubling, it is the false evidence related to the identified murder weapon that is the most significant as the State used this false evidence to create new DNA evidence (*which still never included Petitioner*) and a false narrative in order to secure Petitioner's conviction. Due to the expansive nature of this issue, Petitioner focuses on the false evidence of the spoliated knife as the second integral piece of evidence to understanding the wrongful conviction in this case. In many ways, the spoliated knife is in fact new evidence of false evidence.

The State's alteration of the knife evidence and creation of new swabs for DNA testing is the most troubling form of false evidence in this case, because this false evidence suggests that it was created with the specific intent of suppressing the material evidence that was discovered and collected within hours of Zunino's murder, in 2001. This includes the original "blood" swabs taken from the knife which were subject to comparative DNA testing in 2001. In essence, the false evidence related to the identified murder weapon became the State's credenza, hiding all of the relevant, material evidence inside and behind it.

Petitioner presents the claims in this petition, emphasizing that the first two claims provide context for his claims that the State has suppressed, "lost" or destroyed exculpatory evidence, including:

> 1) The State has suppressed an initial DNA comparison testing report conducted by the DOJ Jan Bashinski Laboratory in the murder investigation in this case, as set forth in the BK 01-000181. As Turvey explains, the DOJ report BK 01-000181 reflects the testing of the physical evidence collected from the victim and her immediate surround within 24 hours of her murder in 2001, including : the tank top that the victim was wearing, the blood swab of the bloody handprint on the victim's back, the sexual assault exam kit, and the blood swabs from the blood on the blade of the knife found next to the victim. As noted by Turvey, the subsequent 2002 DNA report references DNA that was discovered on at least Items numbered 1, 2 and 3.
>
> 2) The State suppressed several CODIS "match" reports from the DOJ Jan Bashinski Lab from 2001-2006. As noted in Turvey's report, the DOJ DNA reports from 2001 to 2006 all reflect CODIS matches and reports. These reports were not disclosed at any point in time to defense. The State has presented the 2006 CODIS report as the first CODIS "hit" and match to Nuccio. The suppressed CODIS "match" reports would prove this to be false evidence.
>
> 3) The State suppressed chain of custody of physical evidence from this case, particularly related to evidence received and released by the DOJ Central Valley Lab in 2001. This includes the evidence sent to the DOJ DNA Jan Bashinski Lab for Comparison DNA testing. As noted by Turvey, this is corroborated by the DNA testing conducted in 2001 and the 2007 DOJ Central Valley Lab document that reflects Terry Sprinkle as a subject in a request for testing of physical evidence.
>
> 4) The State suppressed a 1994 police report in which Terry Sprinkle stabbed a streetworker with the knife from his "knife belt" at a motel on Wilson Way. This was suppressed at trial, on appeal, after the court-ordered discovery. It was not provided to Petitioner – ***until 2023*** – in violation of *Brady*

obligations and a direct court order for discovery in this case. The police report reflected that Sprinkle was arrested at the scene, and the case was referred to the District Attorney's Office for prosecution. Despite these facts, there was no subsequent prosecution, and more importantly, the arrest does not appear in Sprinkle's CLETS report.

5) The State suppressed initial DNA testing of the knife "blood swabs" collected from the scene of the murder and then presented false evidence with the alteration of the knife itself (cleaning it) and testing of new 2007 swabs from a "cleaned" knife. As presented by Dr. Ballard, the DNA evidence from the 2007 "cleaned" knife swabs was presented to the jury as corroborating evidence of the prosecution's theory that the DNA from the knife provided corroborating evidence of Petitioner's guilt because the victim's DNA appeared on the knife whereas Petitioner's did not. This evidence was false in several respects.

6) The Stockton Police Department "lost" or failed to maintain Terry Sprinkle's blood-like spattered clothes, shoes and cash collected for testing two days after the murder;

7) The Stockton Police Department "lost" or failed to maintain latent fingerprints taken from the passenger area of Terry Sprinkle's vehicle within a week of the murder. Petitioner includes the prosecution's "recent discovery" of the latent fingerprint evidence from Sprinkle's vehicle as "lost" evidence because there is no chain of custody for this evidence at all. As Mohr notes, it lacks integrity and is therefore devoid of evidentiary value;

8) DOJ Criminalist Yoshida "lost" or failed to maintain evidence from blood-like spatter throughout Terry Sprinkle's vehicle, presented to the DOJ for testing and review within a week of the murder (see Exhs. J, K). As Mohr notes, the failure to collect and maintain this evidence is extremely troubling in light of the fact that Yoshida's actions are all counter to law enforcement training and basic evidence collection. Moreover, Mohr finds that Yoshida failed to properly test for blood, thus even her explanation for failing to collect evidence from Sprinkle's vehicle is inexplicable and contrary to basic law enforcement training;

9) DOJ Criminalist Yoshida "lost" or failed to maintain evidence and document evidence related to the knife-like stab marks on the ceiling and passenger seat of Terry Sprinkle's vehicle, presented to the DOJ for testing and review within a week of the murder (see Exhs. J, K);

10) The DOJ failed to maintain evidence of the tire tread prints and/or casts of the tires from Terry Sprinkle's vehicle, presented to the DOJ for testing and review within a week of the murder;

11) The Stockton Police Department and District Attorney's Office suppressed and subsequently "lost" Terry Sprinkle's blood vial, taken upon his arrest following the interrogation by Officers Anderson and Rodriguez, on 9/28/01 and put into evidence locker for this case as part of the investigation into Jody Zunino's murder. The vial was last in Ed Rodriguez's custody on 2019 (Exh. E), and the prosecution has since admitted that it was never returned by Rodriguez (see Exh. B);

12) The Stockton Police Department and District Attorney's suppressed and lost or destroyed the negative strips, representing Items #3 and #6, found near Zunino's body on the morning of the murder (See Exhs. M, P, Q, R, S and T);

13) D.A. Rasmussen suppressed the CLETS, or criminal record, for Terry Sprinkle, printed by Rasmussen on 8/29/07, and erroneously put under Court Seal with the court (Exh. U.);

14) D.A. Rasmussen suppressed police reports and interviews related to Terry Sprinkle's suspected murder of Richard Abreu in San Joaquin County, in 1980 (Sprinkle was charged with murder on or about January 24, 1980 and charges were dismissed by the San Joaquin County District Attorney on or about May 16, 1980). As set forth in the record on appeal, D.A. Rasmussen represented to the defense and the Court that the prosecution did not maintain the file related to the Abreu homicide and the case against Sprinkle as the primary suspect in that murder. (See Exh. U.)

15) D.A. Rasmussen and Stockton Police Department suppressed the "complete" interviews of Terry Sprinkle. An edited version of the full interview was transcribed and provided to the defense and the Court. The edited transcription excludes Sprinkle's admission that he had defensive stab wounds on his hands. The exchange appears in the first half of the interview and was intentionally altered by the State. In addition, the law enforcement version of the transcription is essentially the first half of the recorded interview with Sprinkle. It does not include the second half of the interview which contains significant exculpatory evidence. In particular, the suppressed portion of the interview includes Sprinkle's arrest - when he refuses to answer additional questions and is transported to the hospital for his blood to be taken. *Sprinkle's unlabeled blood vial was one of the first pieces of evidence received by the Stockton Police Department evidence locker as evidence for the murder of Jody Zunino*. Consistent with the general theme in this case, the chain of custody for the blood vial is unknown, as the chain has been suppressed and irreversibly broken. In addition to the suppression of the "full" interview of Sprinkle on 9/28/01 (saved in the District Attorney's file with the label, "9/16/01 Interview of Terry Sprinkle"), which is well-documented in the record, it is believed that there were other unrecorded or recorded and destroyed interviews with Sprinkle. This belief flows from the fact that throughout the recently discovered documents, the DOJ and others cite to Sprinkle's admission that he was in the Wilson Way area between 1 a.m. and 3 a.m. on the night that Zunino was murdered, that he picked up a prostitute who was armed with a knife, and that he told officers that he took her knife and she got out of the car. (See Exh. K.) Sprinkle's admission to Anderson does not appear in either version of the interview. (See Exhs. W, X.)

16) D.A. Rasmussen suppressed Officer Anderson's record of misconduct as detailed by the Internal Affairs reviews and findings, requested by Petitioner's attorney prior to trial (Exh. Z);

17) The Stockton Police Department destroyed *all tire tread evidence* related to the case in 2012 *without a court order*,

> including the casts and prints of Petitioner's tire treads (Exh. Y);

As set forth above and the attached petition in full, the State has suppressed, "lost" and destroyed exculpatory evidence in an effort to wrongfully convict an innocent man for murder, depriving him of his most basic right to liberty for over 18 years.

> Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means — to declare that the Government may commit crimes in order to secure the conviction of a private criminal — would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face.

(*Olmstead v. United States* (1928) 277 U.S. 438, 485 [Justice Brandeis' dissent].)

Petitioner prays that this Court imparts the justice that is long overdue and restore his rightful liberty. As of this past October, Petitioner has spent more than 18 years as a prisoner of this State. Justice demands that he is declared actually innocent and ordered released in expedited fashion.

MEMORANDUM OF POINTS AND AUTHORITIES

IV. THE NEWLY DISCOVERED EVIDENCE CONSTITUTES STRONG EVIDENCE OF PETITIONER'S ACTUAL INNOCENCE

"The Supreme Court, courts of appeal, superior courts, and their judges have original jurisdiction in habeas corpus proceedings." (Cal. Const., art. VI, § 10.) "The writ of habeas corpus enjoys an extremely important place in the history of this state and this nation. Often termed the 'Great Writ,' it 'has been justifiably lauded as " 'the safe-

guard and the palladium of our liberties.' "' " (*People v. Villa* (2009) 45 Cal.4th 1063, 1068.)

"The availability of the writ is implemented by section 1473, subdivision (a), which provides: 'A person unlawfully imprisoned or restrained of his or her liberty, under any pretense, may prosecute a writ of habeas corpus to inquire into the cause of his or her imprisonment or restraint.'" (*In re Cook* (2019) 7 Cal.5th 439, 452.) All courts in California have original jurisdiction in habeas corpus proceedings. (Cal. Const., art. VI, § 10.)

By statute, new evidence is defined as "evidence that has not previously been presented and heard at trial and has been discovered after trial." (§ 1473, subd. (b)(1)(C)(ii).) Habeas relief is available if the petitioner proves, by a preponderance of the evidence, that "[n]ew evidence exists that is presented without substantial delay, is admissible, and is sufficiently material and credible that it more likely than not would have changed the outcome of the case." (*Id.*, subd. (b)(1)(C)(i).)

A changed case outcome "means a result different from the guilty verdict [Petitioner's] jury returned." (*In re Sagin* (2019) 39 Cal.App.5th 570, 579.) It "does not require an acquittal, but also encompasses a hung jury." (*Ibid.*) Petitioner's burden "is to show it is more likely than not the new ... evidence would have led at least one juror to maintain a reasonable doubt of guilt." (*Ibid*.)

A writ of habeas corpus may also be prosecuted when "[f]alse 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." (§ 1473, subd. (b)(1)(A).) To obtain habeas relief based on the admission of false evidence, the petitioner must "prove, by a preponderance of the evidence [citation], that (1) '[f]alse evidence' was introduced against him or her at trial, and (2) that the false evidence was ... material ... on the issue' of his or her guilt." (*In re Parks* (2021) 67 Cal.App.5th 418, 444.)

" 'Materiality is shown if there is a reasonable probability the result would have been different without the false evidence.' [Citation.] 'This required showing of

prejudice is the same as the reasonably probable test for state law error established under *People v. Watson* (1956) 46 Cal.2d 818, 836. [Citation.] [The Court makes] such a determination based on the totality of the relevant circumstances.'" (*Masters, supra*, 7 Cal.5th at p. 1078.) "Any allegation that the prosecution knew or should have known of the false nature of the evidence is immaterial to the prosecution of a writ of habeas corpus" based on the admission of false evidence. (§ 1473, subd. (b)(3).)

A. New DNA Evidence

Petitioner presents new DNA evidence of his actual innocence which was not previously presented and heard at trial and is presented without substantial delay. On January 29, 2025, Petitioner received the attached report from Forensic Expert, Brent Turvey, who provides conclusive new DNA testing evidence of physical evidence collected from the murder scene. (Exh. MM.) Forensic review of the DNA evidence and corresponding documentation provides new evidence that the State conducted comparison DNA testing of the most material evidence discovered immediately after the murder – the victim's tank top, a swab of a bloody handprint on the victim's back, the sexual assault exam kit, and the blood swabs taken from the suspected murder weapon. (See Exh. MM.) Forensic expert, Brent Turvey, opines that the DOJ Jan Bashinski Lab report BK 01-000181[14] was in fact the *first* review of DNA evidence in this case. (Exh. MM.) While complete report is still suppressed by the State, portions of the DOJ's findings from BK 01-000181 are included in the 2002 subsequent DOJ DNA report, which is cited repeatedly as the "original" case. As identified by Turvey, this new DNA evidence is not just exculpatory, but exonerating.

The portions of the 2001 DOJ DNA report that are incorporated into the 2002 DNA report are remarkable because they show that biological evidence was located on the four pieces of evidence submitted to the DOJ, DNA was extracted from these pieces

[14] Petitioner notes that some of the DOJ DNA reports cite to the same case using 6 numbers in the case number and others cite to 5 numbers, dropping a preceding zero (i.e. BK01-000181 or BK01-00181). They are referring to the same case, despite the difference in digits. Petitioner uses 6 numbers to cite to the DOJ DNA cases.

of evidence, and the DNA profiles were uploaded to CODIS. This included the most material evidence related to the stabbing of Zunino – the swab of the bloody handprint from Zunino's back as well as the blood swabs from the knife. It is not known if the CODIS uploads related to those items resulted in matches with another individual. However, it is known that the DNA on these items did not match Petitioner's DNA. Only the sperm on the anal swab matched Petitioner's DNA profile on CODIS. This is reflected in the 2002 subsequent report which compares the anal swab to other DNA profiles in other BK cases. (Exh. UU.) This is profound, exculpatory evidence as it contradicts the State's case against Petitioner and suggests that DNA evidence in the suppressed DOJ report would exonerate Petitioner entirely.

1. Factual and Procedural Background

Physical evidence collected from the victim's body and surrounding area near her body constituted the focus of initial forensic testing in this case. This evidence was secured at the Stockton Police Department evidence room under the Tag # A00184044. (Exh. N.) This includes the evidence initially sent for DNA testing by Officer Dave Anderson on or about October 6, 2001. (See Exhs. PP, QQ.) Specifically, Officer Anderson requested that DNA testing be conducted on the following pieces of evidence, identified by the DOJ as follows: 1) Blue/White Tank Top – collected from the victim on the day of the murder (Item # 7 from Stockton PD); 2) Swabbing of Bloody Handprint from Victim's Back – collected from victim on the day of the murder (Item # 10 from Stockton PD); 3) "Sexual Assault Exam Kit" – collected from the victim at autopsy (Item #12 from Stockton PD); and 4) Swabbing from the Knife – collected from the scene on the day of the murder (Item # 13). (Exh. PP.) The "Date Needed" portion of the form requests "Soon." (Exh. PP.) The "Reason" portion of the form identifies "Comparison DNA" as the reason for the testing. (Exh. PP.)

At the time of the evidence submission for DNA testing in 2001, the DNA testing in this case and for Northern California was conducted by the Jan Bashinski DNA Laboratory in Richmond, CA. The Central Valley Lab for the DOJ did not receive DNA

testing technology until the expansion of DNA services with the "Rapid DNA Service" (RADS) over a decade later. (Exh. MM.) The DNA testing conducted in the investigation of the Zunino murder was all conducted at the Jan Bashinski Lab. Based upon Officer Anderson's request for "DNA Comparison Testing," all four items of evidence would have been sent to the Jan Baskinski Lab for testing. The DOJ evidence submission form notes that the four items of evidence submitted for DNA testing were received by the DOJ on 10/16/01. (Exh. PP.)

Again, as both Turvey and Mohr explain, the chain of custody for this case is extremely troubling, and the gaps in custody and spoliation of evidence begin after the initial DNA testing of the four pieces of evidence in 2001. (See Exhs. MM and TT.) The record of DNA testing is part of this curious, troubling record. Here, the anal swab was tested as part of the initial 2001 testing, and the testing was successful. The DOJ discovered sperm on the anal swab, they were able to upload it to CODIS, they were notified of a DNA match in the CODIS database, and they were able to identify it as Petitioner's DNA. As noted by Turvey, each DOJ DNA inquiry is prompted by a law enforcement request for testing. Yet, the record is devoid of any further requests for testing of the anal swab. The subsequent testing in 2002, 2003, 2005 and 2006 each present a successful CODIS identification report on the summary of the reports. As Turvey notes, this is not surprising, because the DOJ identified Petitioner as the contributor to the DNA discovered in the sperm on the anal swab. (See Exh. MM.) Moreover, multiple "cases" for DNA comparison are identified at the top of each subsequent testing form in 2002, 2003, 2005 and 2006. The DOJ does not create the request for testing, so there had to have been law enforcement requests. No such request appears in the record for this testing. and none has been provided in the discovery. (See Exh. MM.)

In addition to the direct references to DNA testing and CODIS hits in 2001, the current state of the evidence suggests that it was tested in 2001. The official record in this case, from the Stockton Police Department and San Joaquin County District Attorney's

Office, fails to account for the current state of the original evidence that was sent to the DOJ for Comparative DNA testing by Officer Anderson in early October, 2001. The current state of the four pieces of physical evidence was discovered by Petitioner in 2021, when the Court ordered post-conviction comparative DNA testing at FACL (Forensic Analytical Crime Lab), based upon Petitioner's motion.

The 2002 DNA report related to case #BK-02-000015, dated 3/25/02, reported by Analyst, Yeung Kung, provides direct evidence that suggests that the initial evidence submission from Officer Anderson was received and tested by the Jan Bashinski Lab and the testing yielded at least one CODIS hit. As previously noted, the initial DOJ Submission of Evidence form for this case, (submitted by Officer Anderson) references four pieces of evidence submitted for Comparison DNA Testing. On the submission form, these pieces of evidence are renumbered by the DOJ as evidence items # 1-4. These numbers are referenced in Kung's report, along with case numbers assigned by the Jan Bashinksi Lab.

Initially, the Case Review Checklist indicates in both the Administrative Review section and Additional Documentation section, that there was a Cold Hit entry: OCJP# 003-433. There was also a completed CODIS upload and a CODIS Specimen Report. As discussed by Turvey, this is definitive evidence that the four items were subject to DNA testing in 2001, and there was at least one CODIS match as a result of the upload. (See Exh. MM.) The current record provided by the District Attorney's Office does not contain any CODIS reports related to this case until 2006. Turvey notes that this documentation would be a part of each report where the CODIS upload and report are identified in the summary, but they are missing from the DNA reports that were reconstructed by D.A. Rasmussen in the present case. (See Exh. MM.)

In his bench notes, Kung describes retrieving the envelope containing the evidence from the DOJ DNA lab evidence freezer on 2/15/02, to start the testing process. Kung notes that the following information was labeled on the envelope: "Items 3F and 3A" along with the Central Valley case number and "OCJP 003-433." As Turvey concludes,

the assigned OCJP case number on the evidence when it was received in 2002 indicates that the evidence had been tested for DNA and the testing resulted in a Cold Hit in 2001. (Exh. MM.) "OCJP" is the initials for the Office of Criminal Justice Planning, a program run by the Governor's Office for Cold Hit files. (Exh. NN, pp. 6, 64-65.) The OCJP program ended in approximately 2005. As Turvey notes, the pre-assigned OCJP case number to the evidence indicates that the DNA evidence from this case was tested by the DOJ DNA lab in 2001, with the initial testing. Kung's subsequent DNA report in 2002 and the 2003, 2005 and 2006 reports all refer to CODIS matches and reports. Again, as Turvey explains, this is evidence that a DNA profile was previously discovered, uploaded to CODIS and the upload resulted in the identification of a DNA contributor from the CODIS database. (Exh. MM.) Turvey also notes that the 2007 reconstruction of the DNA evidence by D.A. Rasmussen is troubling precisely because it is an indication that the "full" DNA testing history and the "full" reports are not in the record and likely have not been provided to Petitioner. (See Exhs. MM, OO.)

Further, in the "Differential Extraction Protocol" portion of the report, Kung identifies four different cases under the "Case #" identification. These case numbers include the current case number for the DNA testing of the anal swab "Item # 3F-1,"with reference to the new case started by this inquiry initiated in case number BK 02-000015. Importantly, Kung repeatedly refers to his notes related to the "original" case BK01-000181. Again, Turvey opines that the original case is in fact the DNA comparison testing of the four physical evidence items, as requested by Officer Anderson. Case BK 01-000181 is the result of the DOJ's DNA testing of "Item #1A," which was the tank top worn by the victim at the time of her death. Kung also compares DNA evidence derived from "Item #2" in his bench notes. Kung refers to the DNA evidence from Item #2 as part of case BK01-000181. This further corroborates that the original submission of evidence for Comparison DNA testing is reflected in BK01-000181.

In addition to this case, Kung includes two cases as "related cases," BK 01-000194 and BK 01-000264. Without access to the underlying case information, it is

unknown if the DNA cases are related to the subsequent testing of the anal swab (Item #3F) and the victim's blood stain (Item #3A), reflected in case BK02-000015, or if these cases were randomly selected by law enforcement to justify the subsequent comparison DNA testing of the anal swab after Petitioner was identified as the DNA contributor. As noted by Turvey, DOJ DNA case numbers reference the year that the evidence was received. (Exh. MM.) Accordingly, "BK 01" numbers reference physical evidence that was subject to testing which was received by the Jan Bashinski Lab in 2001.

2. The Material, Exculpatory DNA evidence Discovered by Petitioner Constitutes New Evidence Under the Law

Here, Turvey's review of new discovery documents and the portions of DNA DOJ reports uncovered new evidence that the DOJ conducted DNA testing of material evidence in this case in 2001. The newly discovered initial DNA DOJ report from 2001 is material and exculpatory, provides definitive evidence that the State had identified Petitioner's DNA in 2001, which was limited to the sperm within the sexual assault exam kit (DOJ Item #3) and not blood. It is clear based on the facts of this case that the exculpatory DNA evidence could not have been discovered prior to the access to discovery documentation that he has been given access to over the past five years. Moreover, Petitioner received Turvey's forensic review and report on January 29, 2025. Petitioner now presents this significant new DNA evidence within a reasonable period of time after the evidence was made available. Petitioner notes that he has long sought the new evidence set forth in this claim by way of informal discovery requests, a formal discovery request and order (Judge Lofthus), and two valid post-OSC subpoenas. While the new evidence set forth in the present claim is substantial, Petitioner looks to supplement this evidence with the full DOJ report as set forth in BK 01-000181, which contains material evidence in support of his actual innocence claim.

3. The exculpatory DNA evidence is not merely cumulative, corroborative, collateral, or impeaching

The "merely cumulative, corroborative, collateral, or impeaching" element of the new statutory definition of "new evidence" for habeas corpus purposes is similar to the considerations for excluding evidence under Evidence Code section 352. "Cross-examination is subject to restriction under Evidence Code section 352 if it is cumulative or if it constitutes impeachment on collateral issues." (*People v. Greenberger* (1997) 58 Cal.App.4th 298, 352.)

Here, the new exculpatory DNA evidence includes the DNA profiles discovered from the original "blood swabs" from the murder weapon and the swab of blood from the bloody handprint on the victim's back. Regardless of whether the DNA on these items affirmatively identified a different individual through a successful CODIS upload and match, Petitioner was not identified as a contributor to these items of evidence. Here, excluding Petitioner from the bloody murder weapon (before it was cleaned in 2006) is not collateral or merely impeaching. In this context, the newly discovered DNA evidence both exonerates Petitioner and implicates others.

4. The exculpatory DNA evidence constitutes strong and decisive evidence of Petitioner's actual innocence that it would have more likely than not changed the outcome at trial

In *In re Sagin*, the Court of Appeal granted habeas relief on a claim of actual innocence where the Petitioner presented DNA evidence which excluded him from the evidence at the crime scene that was available for testing. (See *In re Sagin, supra,* 39 Cal.App.5th at p. 570.) Unlike the present case, the DNA evidence in *Sagin* could not affirmatively exclude Petitioner from the crime since there were potentially multiple participants involved in the murder. However, the court noted that it was significant, given the violent struggle, that the Petitioner could be excluded as a contributor to the DNA evidence found under the victim's fingernails and objects in her immediate surroundings. (*Id*. at p. 581) The Court further found that the DNA evidence which excluded Petitioner, taken with the lack of physical evidence linking him to the crime and

the general closeness of the case, made it more likely than not that at least one juror would have maintained a reasonable doubt regarding guilt. (*Id.* at p. 582.)

The exculpatory DNA evidence in the present case is much stronger than that presented in *Sagin*, as it not only excluded Petitioner from the murder weapon, it points to a third party responsible for the violent stabbing of Zunino. In the present case, there is overwhelming and compelling evidence implicating Terry Sprinkle (though much of it was suppressed at trial). The evidence implicating Sprinkle fulfills the categorical trinity of criminal investigation, corroborating motive, means and opportunity. In this case, police procedural expert Mohr identifies a litany of exculpatory third party culpability evidence of motive, means and opportunity that was kept from the jury despite being part of the initial police investigation, including:

> At the time of Mr. Nuccio's trial, the jury was not informed that a balding white male with a mustache had been described by witnesses as being the last person to pick up Ms. Zunino, nor that a witness had provided the license place to the last vehicle that picked up Ms. Zunino, which was to a Ford Bronco belonging to Terry Sprinkle, a man who looked like the bald man described by witnesses. Mr. Nuccio did not resemble the suspect seen last picking up Ms. Zunino, but the description matched Mr. Sprinkle quite precisely.
> The jury was also not informed that this other man, Mr. Sprinkle, had cuts on his hands consistent with injuries that occur when using a knife, they were not told that his vehicle was covered with splatter of what appeared to be blood, nor that his vehicle had stab marks consistent with a knife. The jury was not told that this man admitted to having picked up a sex worker when and where Ms. Zunino was picked up, nor that he admitted to having slapped a female sex worker who was in his car, causing her to bleed. Finally, the jury was not informed that Mr. Sprinkle had, on another occasion, attacked a sex worker with a knife. In fact, not even Mr. Nuccio's defense attorney was told about Mr. Sprinkle's prior violent history involving attacking a sex worker with a knife. When taken all together, all of this evidence presents Terry Sprinkle as a very likely suspect, and the investigation of him should have been completed, running all the relevant leads to their logical conclusion.

(Exh. TT at p. 8.)

In addition, there was other very specific evidence that tended to implicate Sprinkle as a suspect and exclude Petitioner. Sprinkle has a criminal history involving extremely violent behavior – much of it while wielding a knife that he kept at hand on a "*knife belt*" that he infamously wore. (See Exh. I, including a prior murder.) He had trained as a professional street fighter, and he was often described as "extremely violent," particularly when on crack cocaine. (See Exhs. X, AA.) Sprinkle admitted to having been in the area of Wilson Way on the night of the murder and picking up prostitutes. (Exh. K.) Sprinkle had cuts to his hands that Officers Anderson and Rodriguez observed during his interrogation. (See Exh. X.) Despite his initial denials, Sprinkle knew Zunino and had attended Lodi High School with her. (Exh. X.) This is also the area where Sprinkle was known to buy crack cocaine. (See Exh. X.) Sprinkle's white Ford Bronco was identified by its make and model, as well as license plate number, as the last vehicle that Zunino was seen getting into prior to her murder. (Exh. AA.) The autopsy report found cocaine in Zunino's blood at the time of her murder. (Exh. BB.) The vehicle's interior had directional spatter on the ceiling, across the ceiling in the middle seat area. (Exhs. J, K.) As noted in the DOJ notes, the "blood-like" spatter had been cleaned on the ceiling and the windows. (Exh. K.) Expert witness Mohr identifies the blood-like spatter as representing a "cast off" pattern typically scene in cases of repeated stabbing. (Exh. TT at p. 10.) Mohr further notes the incriminating fact of Sprinkle's defensive wounds to his hands within 24 hours of the murder. (Exh. TT at p. 10.) There were knife-like stab marks in the ceiling fabric of the vehicle. (Exhs. J, K.) Officer Nasello took latent prints from the passenger side of Sprinkle's vehicle and forwarded them for print analysis. (Exh. CC.) Officers Anderson and Rodriguez located clothes, shoes and cash at Sprinkle's home which had blood-like spatter on them. (Exhs. DD, EE.)

Conversely, the prosecution had an excruciatingly weak case against Petitioner, with no evidence of means, motive or opportunity. Petitioner has no prior convictions for violence. His prior convictions involve self-destructive behavior and substance abuse.

There was no evidence to suggest that Petitioner knew Zunino prior to engaging her as a prostitute. In addition, police procedural expert Mohr notes that there was no evidence to support a sexual assault investigation as there was an "absence of trauma" and "no evidence of sexual assault." (Exh. TT at p. 6.) Moreover, since Zunino was a sex worker, it was to be expected that sperm would be found on her person. (Exh. TT at p. 6.) This evidence weighs heavily against any pattern to suggest motive or means, as Petitioner had never done anything remotely violent towards another person and did not have any personal connection to Zunino.

In addition to the extremely weak case presented by the prosecution, the new DNA evidence would have been further exculpatory because the DNA results pointed to an alternate suspect. The prosecution relied heavily upon the fact that there was no DNA evidence on the knife implicating a third party as implicit evidence of Petitioner's guilt. As D.A. Rasmussen aptly pointed out, "If [Petitioner] had brought up – if the DNA on the knife, on the blade or the handle, had shown that it was possibly another person because it could not be the victim in this case, we would have an issue." (RT 1089.)

Now, we most certainly have *that* issue. As police procedure expert Beth Mohr opines, the prosecution's theory that Petitioner raped and killed Zunino depends upon "a fact pattern that is not consistent with the physical evidence in this case." (Exh. TT at p. 6.) Given the lack of physical evidence to support the prosecution's theory, the new DNA evidence connected to material physical evidence is critical. The new DNA evidence from the original DOJ testing excludes Petitioner as a contributor to the "blood swabs" taken from murder weapon and from the bloody handprint on the victim's back. This constitutes strong and decisive evidence that would have more likely than not changed the outcome at trial.

B. Newly Discovered False Evidence

With the newly discovered 2001 DOJ DNA testing and the broken chains of custody that followed, the nature of all subsequent DNA tests and related evidence is inextricably altered. Indeed, the discovery of the 2001 DNA evidence has rendered much

of the forensic evidence in this case categorically false evidence, manipulated to support a narrative to secure the conviction of Petitioner. This is particularly true for the knife swabs created by the State in 2007. Both Mohr and Turvey repeatedly reference the "questionable" chain of custody in this case as rendering "what would have and should have been evidence in the murder into nothing more than an object of curiosity." (Exh. TT at p. 17.) The unreliable, questionable evidence was nonetheless presented to the jury in support of the prosecution's theory. As such, this evidence was false evidence presented to the jury in order to secure Petitioner's conviction. Accordingly, Petitioner is entitled to habeas relief.

1. False Evidence of the Discovery of Petitioner's DNA

As set forth in the first claim of new evidence, the 2001 DNA test (BK 01-000181) resulted in at least one CODIS match. The match is identified in the 2002 DNA report for the resubmitted anal swab, which had identified Petitioner as the contributor to the DNA (from the sperm located on the swab). With this new understanding of the evidence as well as the knowledge that the record contains large gaps, the subsequent tests of the anal swab in 2002, 2003, and 2006, come into new focus.

At trial, D.A. Rasmussen presented the subsequent testing of the anal swab as efforts to find a CODIS match for the DNA on the anal swab. Based upon the aforementioned new evidence, this is obviously false, as the DNA on the anal swab was uploaded to CODIS and there was a noted match to Petitioner in 2001. In addition, the systemic mendacity becomes clear with a closer look at the DNA reports.

First, all of the subsequent tests are actually DNA comparison tests, testing the known DNA profile of Petitioner to other cases. This is clear because each of these reports list at least three other "cases" in the case profile (which is typically just a single case that is being analyzed for its DNA profile). For instance, in the 2002 subsequent DNA test, the anal swab was given a new case number for the purposes of the comparative DNA review. The new case number becomes BK 02-000015, and this report is focused on the anal swab and the victim's blood sample (i.e. items numbered 3A

and 3F) from Zunino's murder as compared to other DNA profiles from the original case BK 01-000181 and two other separate cases – BK 01-000194 and BK 01-000264. This report was focused entirely upon a comparison of the DNA profiles set forth in the DNA samples in each case. The report was not for, as the prosecution suggested, the purpose of isolating a single DNA profile on the anal swab and uploading it to CODIS to find a match for the contributor. If it was, there would only be one case listed in the report, and the report would focus on the process of uploading the DNA profile to CODIS. This had already been done (as noted repeatedly in the 2002 report), and a CODIS match was discovered - Petitioner. Each subsequent DNA test for the anal swab similarly represents a comparison between Petitioner's DNA and DNA samples in other cases, and the DNA lab provided the same CODIS report for Petitioner in each subsequent testing.

Second, as noted by Turvey, every single DOJ test is the product of a law enforcement request. The DOJ DNA lab does not conduct DNA testing as an independent investigation. Here, there were no associated request for testing in 2002, 2003, 2005 and 2006 provided to Petitioner. Indeed, they are the subject of Petitioner's repeated requests and subpoenas that have never been fulfilled. The prosecution utilized the edited DNA reports (each edited to remove the CODIS report) as false evidence to support the prosecution's narrative that Petitioner's DNA was first identified in 2006, serving as a catalyst for "reopening" the investigation into Zunino's murder.[15]

This false evidence was presented to the jury as a catalyst for "reopening" the Zunino murder investigation, and as a means of providing a plausible explanation for the 5-year delay in prosecution. On a practical level, the false evidence was necessary to suppress the 2001 DNA test and results and redirect the attention away from the findings. The subsequent resubmission of the anal swab created a new case number and diverted attention from the original DNA findings as set forth in BK 01-000181. The false

[15] Of course, this false narrative also presents a "serendipitous" reopening of the cold case just as Internal Affairs investigated Officer Anderson's past cases of delinquency of duty and failure to investigate crimes contrary to his duty, in 2005-6. This evidence is set forth in full in the *Brady* claim related to the *Pitchess* evidence relevant to this case.

evidence of the 2006 "discovery" of Petitioner's DNA was an important aspect of the false narrative provided to the jury, as it fundamentally turned the focus away from the original investigation of the murder in 2001, and, as such, created the blatantly false notion that there were no investigative leads in 2001.

2. False Evidence of DNA Testing on Altered Knife in 2007

The State also presented false evidence with the alteration (cleaning) of the knife itself (cleaning it) and creation of new 2007 swabs from a "cleaned" knife. Much like the false narrative pertaining to the "discovery" of Petitioner's DNA in 2006, the 2007 knife swabs were presented as part of the overall false narrative that suppressed the 2001 investigation with nuance. Mohr notes that the original blood swabs from the knife were sent for DNA testing in October of 2001, but no report was ever provided. (Exh. TT at p. 6.) Contrary to the new evidence set forth above, the State has repeatedly represented that no testing of the knife had taken place until 2006. Remarkably, in 2006 the knife itself was sent for testing. As Mohr and Turvey both note, "There is no mention of the original "blood swabs: from the knife despite the fact that they were last catalogued as stored with the DOJ Lab at Ripon." (Exh. TT at p. 6; see also Exh. MM at p. 7.) Turvey further opines, "The Chain of Custody documents provided in this case related to the DNA swabs of knife, are problematic. They indicate a lack of evidence integrity with respect to evidence examination and related Chain of Custody.... The lack of a reliable Chain of Custody — and negative evidentiary findings — evident in this record indicates serious problems with the reliability/integrity of this evidence and any subsequent testing efforts." (Exh. MM.) The State never offered an explanation for the disappearance of the blood from the blade of the knife while in State custody. The State never offered a reason for creating new swabs in 2007, six years after the original swabs were made from the blood located on the knife – within 24 hours of the murder.

Turvey and Mohr repeatedly identify a very problematic chain of custody with the knife and the "blood' swabs from the knife that call into question all of the DNA evidence presented at trial. (See Exhs. MM at p. 7, TT at p. 6.) In particular, Turvey

emphasizes the complete lack of transparency with respect to the creation of new swabs from a knife that no longer had blood on it, and the 2001 evidence of blood on the blade of the knife and "blood" swabs created from the blade of the knife. (See Exh. MM, at p. 7.) Turvey notes that DOJ criminalist "Schreiber created 6 new swabs from the 'clean' knife. Again, Schreiber does not reference or explain the creation of these swabs with respect to the initial 'blood swabs' which were last reported as stored at the Central Valley Lab in 2002." (Exh. MM, at p. 7.) It is through this process that the newly created swabs from a cleaned knife replaced the actual blood swabs created from the blood on the knife blade, discovered next to the body, within hours of the murder.

The State then sent the cleaned knife swabs to the DOJ DNA lab for testing. Unsurprisingly, the new swabs had very little DNA. Thus, the testing revealed incomplete DNA profiles, as the DNA technology at the time was not sensitive enough to provide profiles from insufficient samples – like that which might be derived from a cleaned knife. Despite the absence of reliable DNA evidence, the prosecution presented the lack of evidence as evidence of Petitioner's guilt. The theory was that, since there was no blood on the murder weapon (in 2006-2007), Petitioner must have cleaned the knife after he murdered Zunino. As noted in the chain of custody, the cleaned knife swabs represented quintessentially false evidence, altered while in State custody. The false DNA evidence is predicated upon the false, cleaned knife evidence.

At trial, the DOJ DNA Analyst S. Calvin testified at trial that the DNA evidence from the swabs showed the victim's DNA on the knife but excluded Petitioner's DNA from the knife. (RT 711-735.) The prosecution argued that this evidence showed that Petitioner had cleaned the knife after murdering Zunino. However, as Dr. Ballard explained, this is not what the DNA on the knife revealed in 2007-8. Dr. Ballard revealed at the evidentiary hearing in 2023, that the DNA evidence presented to the jury in support of the prosecution's theory was evidence. Dr. Ballard opined that the testimony regarding the DNA evidence was false because there was too little DNA to either include Zunino or exclude Petitioner. It was therefore impossible to positively

include or exclude any individual as a DNA contributor based upon the evidence at the time.

3. Factual and Procedural Background for the Knife Evidence

There was a knife found next to Zunino's body. It was identified as the suspected murder weapon by law enforcement, and this was the prosecution's theory at trial. Officer McGinnis (#5219) filed the initial police report regarding the chain of custody for the knife and "blood swabs" from the knife. (See Exh. VV.) In his report, Officer McGinnis describes collecting "blood" and "control" swabs from the knife that he collected from next to Zunino's body, on 9/28/01. (Exh. VV.) Officer McGinnis further noted that he "processed the knife for possible latent prints with negative results." The blood and control swabs were placed in the property room refrigerator, identified as Item #13, Tag #A00184044. (Exh. N.)

There are several photos of the knife, and a few of those photos position the blade next to a ruler so as to display the width of the blade. (Exh. WW.) One photo of the knife is on an exam table with arrows pointing to the base of the blade, with the word "blood" next to the arrows. (Exh. WW.) Four swabs were taken from the knife within 48 hours of the murder – 2 "blood swabs" and 2 "control swabs." Officer Anderson requested that Comparative DNA testing be conducted on the blood swabs from the knife as part of the initial submission of evidence to the Jan Bashinski Lab. (Exh. PP.) It is assumed that the blood swabs identified as Item #13 (#4 for the DOJ) were included in the case BK 01-000181 testing, since the other three items of evidence submitted for Comparison DNA testing were referenced as part of that case in the 2002 report, and only one blood swab remained in 2018 when received by FACL. (See Exhs. C, PP, and Evidentiary hearing.)

The false evidence in this case begins with the chain of custody related to the "blood swabs." In the record, there is a Stockton Police Department report authored by Officer Anderson which is identified as the "third" subsequent report, with a total of 5 pages. (Exh. QQ.) This report relates to Officer Anderson's request for DNA testing of

the four pieces of evidence collected from the initial murder scene. In this report, Officer Anderson notes that the Stockton Police Department received a DOJ report on 10/25/01. (See Exh. QQ.) At the time of the police report, there were no other outstanding requests for forensic evidence testing requests other than his request for DNA Comparison Testing. As repeatedly noted in the record, Petitioner never received the cited three page 10/25/01 DOJ report. The DOJ report has never been discovered to Petitioner despite repeated requests to the District Attorney, as well as Petitioner's repeated subpoenas to the DOJ. Brent Turvey notes that this report appears to be connected to Anderson's submission of evidence for DNA comparison testing, as set forth in the DOJ form, as this document is identical to the second report noted below (which, inexplicably, appears to be altered by Officer Anderson). (See Exh. MM.)

Officer Anderson authored a second, mostly identical police report (i.e. it appears to have been created from a Xeroxed copy of the original police report as it is also the "third" subsequent report and has all of the same idiosyncratic stamps and marks in the same places) which notes that it is page 1 and 2 of "4," and the second page identifies a DOJ report from 1/25/22. (Exh. RR.) The identified DOJ report is attached to this version of Officer Anderson's report. This DOJ report, authored by Criminalist William Hudlow, identifies the same physical evidence submitted to the Jan Bashinski Lab for comparison DNA testing. Criminalist Hudlow reports that the bulk of the evidence was "inventoried," "not examined" by the lab, except for the anal swab from the Sexual Assault Kit. He notes that the anal swab was sent to the Jan Bashinski Lab for testing after review on 1/14/02, and the other 3 items of evidence were stored at the Central Valley Lab. Turvey notes that this (resubmission) report is the last reference to the "blood swab" evidence until Petitioner motioned for DNA testing in 2017-2018. (Exh. MM at p. 7.)

a. 2007 Knife Swabs

Officer Rodriguez removed several items from the evidence locker in October of 2006, including the knife (Item #1, Tag #A00184044). (See Exh. M.) On October 10,

2006, Officer Rodriguez removed evidence from the Stockton Police evidence locker Tag #A00184044, for the purpose of taking it to the lab, including: the knife (Item #1), blue plastic from Zunino's hair (Item #9), and the swab from Zunino's back (Item #10). (Exh. M.) The master list for the Stockton Police Department also indicates that Officer Rodriguez removed Nuccio's DNA buccal swab (Item #1, Tag#B33421) "to lab" on 10/10/06. (Exh. M.) The chain of custody report for the knife (Item #1) refers to release for a second round of latent print testing. (See Exh. M.)

The Stockton Police Chain of Custody form indicates that on October 17, 2006, Officer Rodriguez removed additional evidence from the evidence locker Tag #A00184044, with the stated purpose of sending to the lab, including the following: tire cast impression taken near Zunino's body from 9/28/01 (Item #2), negative strip found near Zunino's body (Item #3), tire cast from near Zunino's body taken 9/28/01 (Item #4), tire cast from 9/28/01 (Item #5), negative strips found near Zunino's body (Item #6), blue plastic from Zunino's hair (Item #9), and the Sexual Assault Exam Kit (Item #12). (Exh. M.) Many of the individual pieces of the Sexual Assault Exam Kit (Item #12, Tag #A00184044) are now identified individually identified as Items #1-12 in Tag# B42932, newly booked into evidence by Officer Rodriguez on 8/17/07. (See Exhs. M, N.) Again, there is no DOJ report for this evidence to explain the re-booking of the original evidence, individually, under the new Tag # B42932.

Officer Rodriguez removed the knife (Item #1) from the evidence locker on 10/10/06, and delivered it to the Central Valley Lab for a second-round latent print review. The latent print review, 5 years after the initial latent print review, found no prints. Following the latent print review, the knife was tested for trace blood. (Exh. YY.) No blood was detected on the knife. (Exh. YY.) The DOJ report does not reference or distinguish the original blood swabs (Item #13, Tag# A00184944) taken from the knife and stored by the Central Valley Lab in 2002. (Exh. YY.) In the Assignment Notification Report, authored by E. Schreiber, dated 12/20/07, the Subjects (victim and suspects) listed on the report are : Jody L. Zunino, Terry D. Sprinkle, and Joseph Nuccio.

(Exh. XX.) No other reports or submission of evidence released to Nuccio lists "Terry D. Sprinkle," including reports from 2001-2002. The lab created new trace DNA swabs from the clean knife, identifying the new swabs as Items #16A (2 trace swabs from the blade), #16B (2 trace swabs from the handle of the knife), and #16C (2 DI water blank swabs). (Exh. YY.) On December 21, 2007, the Central Valley Lab mailed the 6 swabs via Fed-ex, to the DOJ's Jan Bashinski DNA Lab.

On 1/9/08, the Jan Bashinski DNA Lab issued a report summarizing its analysis of the trace DNA knife swabs. (Exh. ZZ.) The DOJ report summarized the DNA findings from the analysis, finding that Zunino could not be excluded as a contributor to the DNA found on the blade and handle (Item #16 A, B) of the knife, whereas Nuccio could be excluded as a contributor. (Exh. ZZ.)

The prosecution presented the results of the BK DNA lab testing in its case in chief against petitioner, arguing that the absence of petitioner's DNA and general lack of DNA evidence on the knife suggested that it was cleaned by petitioner before it was left next to the victim. BK Criminalist Sarah Calvin testified on behalf the prosecution regarding her testing of the 2007 swabs and the results. (See RT 711-735.) Specifically, Calvin testified that petitioner could be excluded as a contributor to the DNA found on the blade and the handle of the knife. (RT 726.) Calvin also testified that the victim could not be excluded as a contributor to the DNA on the knife. (RT 726.) The prosecution relied upon the DNA evidence related to the knife as the murder weapon throughout their closing argument, arguing that Petitioner had cleaned the knife and repeatedly identifying Jody Zunino's DNA on the knife as proof that it was used to murder her. (RT 851, 912, 913, 915.) The prosecution further argued that the victim's DNA on the knife presented uncontroverted evidence that the knife was the murder weapon in opposing petitioner's request for a new trial. (RT 1089.)

b. The Knife – FACL 2019 Report and 2023 Ballard Review

The FACL Forensic Scientist Nancy Dinh testified that many of the items of evidence that were received for DNA testing in 2018 did not have integrity necessary for

testing and were not tested despite the court order. (See Exh. AAA, at pp. 23-25.) When FACL lab analyst Nancy Dinh received the evidence for testing, she noted several irregularities with the evidence. Dinh explained that due to the irregularities, some pieces of evidence were not sampled or tested. The noted irregularities included : 1) several pieces of the missing evidence from the original rape kit; 2) the victim's blood vial which contained no DNA; 3) an item labeled "blood vial" which was not properly labeled with the information pertaining to the blood in the vial and without chain of custody information (item number corresponds with blood taken from Terry Sprinkle upon his initial arrest on 9/28/01); and, 4) an envelope labeled as containing the original two "blood swabs" from the knife (9/28/01), but which only contained a single blackened swab with no reliable chain of custody. (Exh. AAA at p. 23-25.) Accordingly, FACL limited its DNA collection to the 2007 swabs and their own direct collection of DNA from the knife itself.

The evidence that did not appear with proper chain of custody and integrity included items within the Sexual Assault Exam Kit,[16] like the victim's blood vial which did not appear to be actual blood as it had no detectible DNA. (See Exhs. C, AAA at pp. 23-24.) The questionable integrity of the evidence included items of evidence added to the order for testing by the District Attorney, including: Petitioner's DNA buccal swab, the unlabeled blood vial (identified in 2022 as Terry Sprinkle's blood vial), and the original "blood swabs" taken from the knife blade in 2001. (See Exh. AAA at pp. 23-25.) Petitioner's buccal swab was never located, and the Court ordered the Stockton Police to provide a lost evidence declaration.[17] The last known location of Petitioner's buccal

[16] FACL received the Sexual Assault Exam Kit that was originally entered into evidence as A00184044, item 12. The evidence locker does not provide an itemized list of the individual pieces of evidence in the original kit. On 8/17/07, Officer Rodriguez booked a series of evidence into the evidence locker that would have been in the Sexual Assault Exam Kit and renumbered the items under B42932. It is unknown why Officer Rodriguez altered and renumbered the original Sexual Assault Exam Kit.

[17] D.A. Himelblau indicated at the final hearing with Judge Loftus that much of the evidence had been "found," behind a credenza. (See Exh. CCC at pp. 31-32.) It is unknown if Petitioner's buccal swab is among the items that D.A. Himelblau and now

swab was identified with Officer Rodriguez in 2006, when Rodriguez took the knife and other evidence to the Central Valley DOJ lab for latent fingerprint analysis. The unlabeled blood vial was not identified to FACL by state representatives, and the technicians noted that the vial contained a greenish, brown liquid. (Exh. AAA at p. 25.) As revealed during the 2022 discovery process, the current location of the unlabeled blood vial containing Terry Sprinkle's blood from 9/28/01, is unknown. The last known location of the blood vial was with Officer Rodriguez, when he received the evidence from FACL in 2018.

At the limited evidentiary hearing ordered in this case, Dr. Ballard reviewed the DNA evidence discovered in 2019 as compared to the DOJ Jan Bashinksi (BK) DNA Lab evidence derived from the secondary 2007 swabs (derived from the cleaned knife). (See Exh. BBB.) As Dr. Ballard noted, the secondary 2007 swabs contained a very small amount of DNA, which rendered the DNA results very general and imprecise by modern standards. (Exh. AAA at p. 50-51.) These swabs were the basis for DNA evidence presented against petitioner at trial.

The 2019 FACL DNA evidence derived from DNA collected from the exterior of the murder weapon represents significant scientific and technical advances in DNA testing and analysis. As acknowledged by Dr. Ballard, the 2019 FACL DNA evidence was largely derived from the same evidence tested in 2008 and from the same portion of the knife (the handle). (Exh. AAA at p. 50.)

Dr. Ballard described the DOJ DNA testing and results that were discovered by the Jan Bashinski Lab in 2008. (See Exh. AAA at p. 51.) In particular, Dr. Ballard noted that the BK lab used ABI's Identifiler system and noted that this system was standard in the DNA testing at the time of trial, in 2008. (Exh. AAA at p. 51.) Dr. Ballard further noted that she would not have attempted to make any conclusions regarding the DNA composition, because there was simply insufficient DNA. (Exh. AAA at p. 50.) Despite

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D.A. investigator Rodriguez have "found" after missing several years in the chain of custody.

the lack of DNA evidence, Calvin compared the profile to the reference profile of Petitioner (obtained from a reference swab from him; Item 8) and, finding that he carried only one of the five detected alleles, excluded him as a contributor. (Exh. AAA at p. 51.) Calvin was also unable to conclusively exclude the victim, Dr. Ballard noted that the evidence did not "include" the victim either. (Exh. AAA at p. 55, 58.) Rather, it was inconclusive and insufficient.

In reviewing the evidence from the BK lab's 2008 testing, Dr. Ballard opined that the results were inconclusive in every respect. The DNA evidence did not place the victim's blood or DNA on the knife. (Exh. AAA at p. 55, 58.) Therefore, the 2008 DNA evidence did not provide evidence that the knife was, in fact, the murder weapon. (Exh. AAA at p. 55, 58.) In the end, Dr. Ballard noted that currently, the 2008 DNA results were so vague that they could not be reliably interpreted to exclude the defendant or establish anything with respect to the victim's DNA. (Exh. AAA at pp. 50, 55, 58.)

2. False DNA Material Evidence Was Introduced Against Petitioner At Trial, Prejudicing the Jury on the Issue of Guilt

At trial, the prosecution theorized that the knife found next to Zunino's body was the murder weapon. The prosecution identified the knife as the murder weapon based upon what D.A. Rasmussen described as the discovery of the victim's DNA on the 2007 knife swabs. The case was described as a "cold case" prosecution, and the prosecution described the "reopening" of the case as directly related to the 2006 "discovery" of Petitioner's DNA (sperm) on the anal swab. The prosecution theorized that the motive for the murder was that Petitioner murdered Zunino because he wanted to pay for anal sex, and Zunino did not provide this service. The nature of the cold case prosecution and narrative provided a reasonable explanation for the lack of record in the case prior to 2006-2007. However, the narrative does not withstand scrutiny when reviewed in light of the new evidence and chain of custody evidence now provided in this case. It is clear that the DNA evidence presented to the jury was presented as false evidence in support of a constructed narrative that is not supported by the physical evidence in this case.

D.A. Rasmussen relied heavily upon the limited DNA evidence and the knife as the murder weapon in his closing and rebuttal, declaring:

- The knife that's found right by her elbow, there's pictures that you can take back there, this knife that's found right there that's clean.... It's clean, there's nothing on it. She did a swab, or a swab was done, and she analyzed it and other partial profile was found and it was consistent with Jody Zunino, and it excluded the defendant, this was on the blade. Whose DNA would you expect to find on the blade of a knife found next to the murder victim that's been stabbed to death and slashed to death?.... Whose DNA would you expect to find on their? Jody's. (RT 851.)
- The statements, the measurements on the defense exhibit, he again went to Terry Sprinkle, why didn't we test his DNA? We know he is a convicted offender so we know it's in CODIS. It has been tested. (RT 912.)
- They could have retested the knife, the DNA on the knife, they didn't. The alleles, the additional location, the loci. He didn't. Why? Because he can't argue it. He didn't want to know. It would have said it was more Jody. But he didn't want to do that. (RT 913.)
- The knife evidence not requested to be tested by the defense does not exclude Jody. Does not exclude Jody. (RT 915.)

In the motion for a new trial, the D.A. Rasmussen argued:

> It all points at the defendant, regardless of whether or not she consented to anal sex. You know, if they brought up evidence that contradicted the DNA evidence, then maybe we'd have something to consider. .. If they had brought up – if the DNA on the knife, on the blade or the handle, had shown that it was possibly another person because it could not be the victim in this case, we would have an issue, but that's not the case, it was all consistently showing that it was Jody Zunino's DNA.

(RT 1089.)

Here, the newly discovered DNA evidence from 2001 and a review of the prior DNA reports show that the prosecution relied heavily upon the false DNA evidence – stating that the DNA evidence affirmatively revealed portions of Jody's DNA and excluded Petitioner's DNA from the "cleaned" knife. Based upon the prosecution's repeated reliance upon the false DNA evidence, it is clear that the evidence was central to the prosecution's case. As previously noted by Mohr, the physical evidence did not

support the prosecution's theory of the murder of Jody Zunino. Thus, the extensive false DNA evidence presented in support of the prosecution's theory of guilt more likely than not influenced the outcome at trial, resulting in Petitioner's conviction based upon a foundation of false evidence.

V. THE STATE FAILED TO DISCLOSE MATERIAL, EXCULPATORY EVIDENCE THAT UNDERMINED CONFIDENCE IN THE OUTCOME OF PETITIONER'S TRIAL IN VIOLATION OF HIS RIGHT TO DUE PROCESS UNDER *BRADY*

> The fact that a constitutional mandate elicits less diligence from a government lawyer than one's daily errands signifies a systemic problem: Some prosecutors don't care about *Brady* because courts don't *make* them care... *Brady* violations have reached epidemic proportions in recent years, and the federal and state reporters bear testament to this unsettling trend... When a public official behaves with such casual disregard for his constitutional obligations and the rights of the accused, it erodes the public's trust in our justice system, and chips away at the foundational premises of the rule of law. When such transgressions are acknowledged yet forgiven by the courts, we endorse and invite their repetition.

(*United States v. Olsen* (9th Cir. 2013) 737 F.3d 625, 631-632 (Kozinski, J., dissenting from denial of reh'g en banc).)

In present case, the State withheld critical evidence and permitted related false testimony which gravely undermines confidence in Petitioner's conviction. Here, the state, through law enforcement – Stockton Police Department, the San Joaquin County District Attorney's Office, the California Attorney General and the California Department of Justice –actively suppressed critical evidence, presented false evidence and failed to correct false evidence presented to the jury. Due process demands that the Court reverse Petitioner's unlawful judgment and conviction. Moreover, the outrageous government misconduct presented throughout this case requires that the Court order a dismissal of the case should this Court not make a finding of actual innocence.

Under *Brady v. Maryland* (1963) 373 U.S. 83, "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." (*Id*. at p. 87.) Accordingly, the State has a duty to disclose any favorable and material evidence even without a request. (*Ibid*.; *United States v. Bagley* (1985) 473 U.S. 667, 678; *In re Sassounian* (1995) 9 Cal.4th 535, 543.)

Although *Brady* "secure[s] a fair trial as required by the due process clause" (*Izazaga v. Superior Court* (1991) 54 Cal.3d 356, 378), California appellate courts have acknowledged that "the People's obligations under *Brady* are ongoing, even postjudgment." (*People v. Davis* (2014) 226 Cal.App.4th 1353, 1366; *People v. Garcia* (1993) 17 Cal.App.4th 1169, 1179 ["The duty of disclosure [] does not end when the trial is over."].) In the same vein, our Supreme Court recently "conclude[d] that where a habeas corpus petitioner claims not to have received a fair trial because a trial prosecutor failed to disclose material evidence in violation of *Brady* - and where the Attorney General has knowledge of, or is in actual or constructive possession of, evidence that the trial prosecutor suppressed in violation of *Brady* – the Attorney General has a constitutional duty under *Brady* to disclose the evidence." (*In re Jenkins* (2023) 14 Cal.5th 493, 512, fn. omitted.) Our high court explained that the purpose of habeas corpus proceedings is to "hold open a final possibility for prisoners to prove their convictions were obtained unjustly." (*Jenkins, supra*, 14 Cal.5th at p. 508.) The court added, "Under *Brady* and its progeny, securing a conviction by failing to disclose material exculpatory evidence violates due process. [Citations.] Imposing a continuing duty of disclosure on the government in this context is consistent with both the due process right on which *Brady* is based, and the 'principles of substantial justice' on which our state's long-standing habeas corpus tradition is founded." (*Ibid*.)

In addition to relying on *Brady* principles, the *Jenkins* court invoked Rule 3.8(d) of the Rules of Professional Conduct (Rule 3.8(d)) to conclude that "in responding to a petition for writ of habeas corpus alleging a *Brady* violation, the Attorney General has an

ethical duty to make timely disclosure to the petitioner of all evidence or information known to the Attorney General that was available but not disclosed at trial that the Attorney General knows or reasonably should know tends to negate the guilt of the petitioner, mitigate the offense, or mitigate the sentence, except when the Attorney General is relieved of this responsibility by a protective order of the tribunal." (*Jenkins, supra*, 14 Cal.5th at p. 518, fn. omitted.)

There are three elements to a *Brady* violation. First, evidence must be suppressed, either willfully or inadvertently. (*People v. Salazar* (2005) 35 Cal.4th 1031, 1035.) Second, the suppressed evidence must be favorable to the prosecution, meaning it "either helps the defendant or hurts the prosecution" (*In re Sassounian, supra*, at p. 544) in that it is exculpatory or has impeachment value. (*Strickler v. Greene* (1999) 527 U.S. 263, 282.) Lastly, the suppressed evidence must be "material," meaning there is "a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." (*United States v. Bagley, supra*, at p. 682.) "Moreover, the rule encompasses evidence 'known only to police investigators and not to the prosecutor.' [Citation.] In order to comply with *Brady*, therefore, 'the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in this case, including the police.'" (*Strickler, supra*, 527 U.S. at pp. 280-281.)

Evidence is "suppressed" where it is known to the State and not disclosed to the defendant. (*Strickler, supra*, 527 U.S. at p. 282.) The State's duty to disclose is affirmative; it applies "even though there has been no request by the accused." (*Id.* at p. 280 (citing *United States v. Agurs* (1976) 427 U.S. 97).) To satisfy its duty, the State must disclose evidence known to the prosecutor as well as evidence " 'known only to police investigators and not to the prosecutor.' " (*Id*. at pp. 280–81 (citing *Kyles v. Whitley* (1995) 514 U.S. 419, 438).) Thus, the prosecutor has an obligation "to learn of any favorable evidence known to the others acting on the government's behalf in [the]

case, including the police." (*Id*. at p. 281 (citing *Kyles, supra*, 514 U.S. at p. 437).) Once the prosecutor acquires favorable information, even if she "inadvertently" fails to communicate it to the defendant, evidence has been suppressed. (*Id*. at p. 282.)

Evidence is "favorable to the accused" for *Brady* purposes if it is either exculpatory or impeaching. (*Strickler*, *supra*, 527 U.S. at pp. 281–82.) If information would be "advantageous" to the defendant (*Banks v. Dretke* (2004) 540 U.S. 668, 691), or "would tend to call the government's case into doubt," (*Milke v. Ryan* (9th Cir.2013) 711 F.3d 998, 1012), it is favorable. Whether evidence is favorable is a question of substance, not degree, and evidence that has any affirmative, evidentiary support for the defendant's case or any impeachment value is, by definition, favorable. (See *Strickler, supra*, 527 U.S. at pp. 281–82.) Although the weight of the evidence bears on whether its suppression was prejudicial, evidence is favorable to a defendant even if its value is only minimal. (See *Ibid*.; *Milke, supra*, 711 F.3d at p. 1012.)

The suppression of favorable evidence is prejudicial if that evidence was "material" for *Brady* purposes. (*Strickler*, *supra*, 527 U.S. at 282.) Evidence is "material" if it "could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." (*Id.* at p. 290 (citing *Kyles*, *supra*, 514 U.S. at p. 435.) Similarly, California courts have held, "Evidence is material [under *Brady*] if there is a reasonable probability its disclosure would have altered the trial result." (*People v. Zambrano* (2007) 41 Cal.4th 1082, 1132.)

To establish materiality, a defendant need not demonstrate "that disclosure of the suppressed evidence would have resulted ultimately in [his] acquittal." (*Kyles, supra*, 514 U.S. at p. 434.) Rather, the defendant need only establish "a 'reasonable probability' of a different result." (*Ibid.* (quoting *United States v. Bagley* (1985) 473 U.S. 667, 678).) A "reasonable probability" exists if "the government's evidentiary suppression 'undermines confidence in the outcome of the trial.' " (*Ibid*. (quoting *Bagley*, *supra*, 473 U.S. at p. 678.); see also *United States v. Sedaghaty* (9th Cir.2013) 728 F.3d 885, 900 ("In

evaluating materiality, we focus on whether the withholding of the evidence undermines our trust in the fairness of the trial and the resulting verdict.".)

In the present case, the State, through the Stockton Police Department, the San Joaquin County District Attorney's Office, the California Attorney General's Office, and the California Department of Justice suppressed favorable, exculpatory, and material evidence – all related to the original suspect, Terry Sprinkle. The suppressed evidence was kept from the jury and has been kept from Petitioner for almost 20 years. In her review of the police procedure here, expert witness Mohr offhandedly lists (not inclusive) some of the basic third party culpability evidence related to Sprinkle in this case as follows:

> Witnesses described that Ms. Zunino was last seen getting into a white Ford Bronco, driven by a bald male with a mustache. One witness provided officers with a license number of the vehicle, written on a piece of paper. The license number corresponded to a white Ford Bronco belonging to Terry D. Sprinkle, a white male who was balding, with a mustache. Mr. Sprinkle was a parolee. An FBI Task Force Agent found what appeared to be bloody shoes and clothing at Mr. Sprinkle's home, as well as $30 in cash that appeared to be bloody. This evidence was seized, and provided to the Stockton Police, but was never subsequently booked into evidence, or tested for the victim's blood. The location of this evidence remains unknown at this time.
>
> Mr. Sprinkle was detained and interviewed by Stockton Police. It was noted that Mr. Sprinkle had cuts on his hands, and referred to being cut during his interview. Mr. Sprinkle gave a statement indicating that he didn't know the victim, but when confronted, later admitted that they had gone to school together. He told police that he slapped a different prostitute a year ago, and any blood in his vehicle would be from her, he also stated that any blood could be from prostitutes who had shot up heroin in the back seat of his car. Mr. Sprinkle was taken to the hospital and his blood was drawn and the blood vial was booked as evidence in the Zunino murder case. Mr. Sprinkle did not did not offer any

> explanation or statement that would exclude him as the primary suspect in Ms. Zunino's murder.
>
> Mr. Sprinkle's vehicle, the white Ford Bronco with the exact license plate number provided by witnesses, was searched and partially processed by Stockton police and California DOJ Criminalist Sarah Yoshida. As depicted from photographs, the vehicle's white interior had dark red liquid splatter emanating from the passenger's seat and throughout the interior, which appeared consistent with blood splatter. The vehicle had cuts to the seat and headliner, that may have been from a knife. The vehicle was partially processed by police and crime scene investigators. Fingerprints were lifted from the interior passenger door of the vehicle, and photographs were taken.

(Exh. TT at p. 2.)

As forth below, the suppression of critical, exculpatory evidence related to a very strong third party culpability was prejudicial to Petitioner and his defense.

A. Law Enforcement Officers, Including the Attorney General and DOJ Criminalists, Suppressed Material, Exculpatory Evidence In Violation Of *Brady*

Brady held "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." (*Brady, supra*, 373 U.S. at 87.) This holding was an "extension" of *Mooney v. Holohan* (1935) 294 U.S. 103, which held the government's presentation of testimony it knew to be false, as well as its suppression of evidence that would have impeached that testimony, could require reversal of a conviction. (See *Brady*, *supra*, 373 U.S. at p. 86.) The Supreme Court reasoned:

> The principle of *Mooney v. Holohan* is not punishment of society for misdeeds of a prosecutor but avoidance of an unfair trial to the accused. Society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly.

(*Id*. at p. 87.) *Brady* framed the right to material, exculpatory evidence in terms of the defendant rather than the state actor responsible for the nondisclosure. As the Court later explained, the "purpose" of *Brady's* disclosure requirement is "to ensure that a miscarriage of justice does not occur." (*United States v. Bagley* (1985) 473 U.S. 667, 675.) Just one year after *Brady*, the Fourth Circuit held police officers as well as prosecutors were bound to disclose material, exculpatory evidence, explaining:

> [I]t makes no difference if the withholding is by officials other than the prosecutor. The police are also part of the prosecution, and the taint on the trial is no less if they, rather than the State's Attorney, were guilty of the nondisclosure . . . . The duty to disclose is that of the state, which ordinarily acts through the prosecuting attorney; but if he too is the victim of police suppression of the material information, the state's failure is not on that account excused. We cannot condone the attempt to connect the defendant with the crime by questionable inferences which might be refuted by undisclosed and unproduced documents then in the hands of the police.

(*Barbee v. Warden* (4th Cir. 1964) 331 F.2d 842, 846.)

Requiring police officers as well as prosecutors to disclose material and exculpatory evidence follows logically from *Brady*'s rationale. "As far as the Constitution is concerned, a criminal defendant is equally deprived of his or her due process rights when the police rather than the prosecutor suppresses exculpatory evidence because, in either case, the impact on the fundamental fairness of the defendant's trial is the same." (*Moldowan v. City of Warren* (6th Cir. 2009) 578 F.3d 351, 379.) Because police officers play an essential role in forming the prosecution's case, limiting disclosure obligations to the prosecutor would "undermine *Brady* by allowing the investigating agency to prevent production by keeping a report out of the prosecutor's hands." (*United States v. Blanco* (9th Cir. 2004) 392 F.3d 382, 388 (quoting *United States v. Zuno*-Arce (9th Cir. 1995) 44 F.3d 1420, 1427).)

In the present case, the State has repeatedly and systemically deprived Petitioner of exculpatory evidence, over the course of decades, in violation of his right to due process and fundamental fairness. Constitutional protections, justice and basic human decency require reversal and dismissal in the present case.

Petitioner presents all of the secondary suppressed evidence with the same set of procedural facts as represented in the post-conviction discovery process that began in 2021. Beginning in 2021, when the State *sua sponte* took the present case into its "Conviction Integrity Unit," Petitioner has received evidence that was not provided before or during trial. Petitioner notes that the discovery process over the course of two years provides contemporaneous, incontrovertible evidence that the discovered evidence was previously suppressed.

As set forth specifically and individually in the claims below, beginning with the DOJ evidence from the initial 2001 investigation, the evidence has been suppressed. The evidence of the suppression is apparent in the fact that, at every turn, the State has had to "create" the evidence anew. This is in the record before the Court and is represented by the transcripts of the two-year post-conviction discovery process and Judge Lofthus' findings. Petitioner suggests that if there were no suppression of evidence, then the process of post-conviction discovery could have been completed with a single hearing in 2021 – after Petitioner initially requested the DOJ report from Terry Sprinkle's Bronco. This was not the case. Over the course of two years, the State produced discovery in dribs and drabs – a newly constructed DOJ report from Criminalist Yoshida's "notes," a full transcript of the interrogation of Terry Sprinkle (which included reference to his defensive stab wounds and the arrest and blood draw which was entered into evidence in this case), photos from the interior of Sprinkle's Bronco which contained evidence markers for evidence which was apparently never collected, photos – *printed in July of 2022*- from negative strips that appear demonstrably different from the actual negative strips that were found next to Zunino's body in 2001, and more.

1. The Attorney General Has Suppressed DOJ Reports and Files From This Case In Violation Of Petitioner's Right To Due Process

a. 2001 DNA Report for Physical Evidence in this Case

Forensic review of the DNA evidence and corresponding documentation provides new evidence that the State conducted comparison DNA testing of the most material evidence discovered immediately after the murder – the victim's tank top, a swab of a bloody handprint on the victim's back, the sexual assault exam kit, and the blood swabs taken from the suspected murder weapon. (See Exh. MM.) Forensic expert, Brent Turvey, opines that the DOJ Jan Bashinski Lab report BK 01-000181 was in fact the first review of DNA evidence in this case. (Exh. MM.) As identified by Turvey, this new DNA evidence is not just exculpatory, but exonerating.

The physical evidence subject to testing in the 2001 report reflects the most material evidence in the violent, stabbing of Jody Zunino. The portions of the 2001 DOJ DNA report that are incorporated into the 2002 DNA report are remarkable because they show that biological evidence was located on the four pieces of evidence submitted to the DOJ, DNA was extracted from these pieces of evidence, and the DNA profiles were uploaded to CODIS. This included the most material evidence related to the stabbing of Zunino – the swab of the bloody handprint from Zunino's back as well as the blood swabs from the knife. It is not known if the CODIS uploads related to those items resulted in matches with another individual. However, it is known that the DNA on these items did not match Petitioner's DNA. Only the sperm on the anal swab matched Petitioner's DNA profile on CODIS. This is reflected in the 2002 subsequent report which compares the anal swab to other DNA profiles in other BK cases. (Exh. UU.) This is profound, exculpatory evidence as it contradicts the State's case against Petitioner and suggests that DNA evidence in the suppressed DOJ report would exonerate Petitioner entirely.

b. CODIS "Match" Reports

The State suppressed several CODIS "match" reports from the DOJ Jan Bashinski Lab from 2001-2006. As noted in Turvey's report, the DOJ DNA reports from 2001 to 2006 all reflect CODIS matches and reports. These reports were not disclosed at any point in time to defense. The State has presented the 2006 CODIS report as the first CODIS "hit" and match to Nuccio. The suppressed CODIS "match" reports would prove this to be false evidence.

c. Chain of Custody and Related Case Documents from DOJ CVL

The State suppressed chain of custody of physical evidence from this case, particularly related to evidence received and released by the DOJ Central Valley Lab in 2001. This includes the evidence sent to the DOJ DNA Jan Bashinski Lab for Comparison DNA testing. As noted by Turvey, this is corroborated by the DNA testing conducted in 2001 and the 2007 DOJ Central Valley Lab document that reflects Terry Sprinkle as a subject in a request for testing of physical evidence.

i. Procedural History

Petitioner utilized his post-Order to Show Cause subpoena power to issue subpoenas to the Department of Justice, Bureau of Forensic Services, Jan Banshinski DNA and Central Valley Laboratories. The subpoenas, issued on July 11, 2023, requested disclosure of records pertaining to the forensic testing conducted in the present case as well as chain of custody documentation from the evidence in this case. On July 21, 2023, the Attorney General filed Motions to Quash both subpoenas based in large part upon an argument that 1054.9(a) did convey subpoena powers, as it appeared that the Attorney General was not aware that an Order to Show Cause had issued. (Exh. DDD.) Petitioner filed an Opposition to the Motion to Quash, clarifying the procedural posture of the post-OSC proceedings and detailing Petitioner's due process right to the subpoenaed documents from the DOJ. (Exh. EEE.)

Judge Clark set the hearing for Motion to Quash approximately one week after the Traverse was due for filing, or August 21, 2023. (Exh. GGG.) On August 21, 2023, Judge Clark granted the Attorney General's Motion to Quash based upon a finding that Petitioner did not have the procedural authority to issue or sign the subpoenas without the Court's prior authorization. (See Exh. GGG.) Petitioner "corrected" the subpoenas and filed the a new request for judicial "issuance" of the post-OSC subpoenas for the DOJ case information pursuant to the suggested procedure. (See Exhs. EEE, FFF.) Judge Clark never responded to Petitioner's filing, and the Attorney General never provided any of the requested evidence from the DOJ files on this case.

d. The State Has Suppressed And Continues to Suppress Exculpatory DOJ Evidence, Material to Petitioner's Defense and Exoneration, Prejudicing Petitioner

The Attorney General was noticed of the requested DOJ records related to this case during the post-conviction discovery process, after the Order to Show Cause issued, and with the issuance of the post-OSC subpoenas. Throughout the process, the Attorney has had notice of the request for the suppressed evidence. Whether the Attorney General's duty to provide *Brady* evidence attached at the Court ordered formal post-conviction discovery under 1054.9(a), following the issuance of an Order to Show Cause, or with Petitioner's post-OSC subpoena, the Attorney General has not complied with its duty to disclose material evidence. As noted in *In re Jenkins*, "where a habeas corpus petitioner claims not to have received a fair trial because a trial prosecutor failed to disclose material evidence in violation of *Brady* – and where the Attorney General has knowledge of, or is in actual or constructive possession of, evidence that the trial prosecutor suppressed in violation of *Brady* – the Attorney General has a constitutional duty under *Brady* to disclose the evidence." (*In re Jenkins* (2023) 14 Cal.5th , 512.)

Here, as Turvey notes, the suppressed DOJ DNA and forensic evidence is central to the investigation and evidence related to the murder of Zunino. To the extent that the DNA evidence relates to a suspect's DNA contributing to the blood evidence, this is exonerating evidence. Moreover, to the extent that the DNA and forensic evidence

contradicts the prosecution's theory of Petitioner's guilt, this evidence is exculpatory. Accordingly, the suppression of material exculpatory and exonerating DOJ forensic evidence by the State, including the Attorney General, has prejudiced Petitioner, requiring a reversal of Petitioner's conviction.

2. The State Suppressed a 1994 Police Report of Original Suspect, Sprinkle, Stabbing a Sex Worker at a Hotel on Wilson Way

The State suppressed a 1994 police report in which Terry Sprinkle stabbed a streetworker with the knife from his "knife belt" at a motel on Wilson Way – ***until 2023*** – in violation of *Brady* obligations and a direct court order for discovery in this case. The police report reflected that Sprinkle was arrested at the scene, and the case was referred to the District Attorney's Office for prosecution. Despite these facts, there was no subsequent prosecution, and more importantly, the arrest does not appear in Sprinkle's CLETS report.

a. Procedural Summary

As set forth in full in Judge Lofthus' Order for an Evidentiary Hearing on Petitioner's Motion to Recuse the District Attorney's Office, the 1994 police report was suppressed by the State until 2023. (See Exh. CCC.) Specifically, the State suppressed the 1994 report until D.A. Himelblau provided the report to Petitioner a few days before the hearing on the Motion to Recuse, despite the Court's Order for formal discovery for the preceding year, despite the ongoing duty to provide exculpatory evidence, and despite the basic discovery obligations under *Brady*. D.A. Himelblau provided a declaration, signed under penalty of perjury, describing the "discovery" of the 1994 police report. Judge Lofthus cited some portions of D.A. Himelblau's declaration[18] in her Order, citing conflicting evidence in the record.

[18] The Attorney General filed its Opposition to the Motion to Recuse in this case, relying upon D.A. Himelblau's declaration which included the premise that the State had misplaced critical evidence linked to Sprinkle under a piece of furniture. Petitioner reached out repeatedly, as an officer of the court, directly to the Attorney General regarding the basic perjury set forth in this evidence that they relied upon. (Exh. B.) The

As summarized by police procedural expert Mohr:

> When sought in this [post-conviction case], a CD containing the 1994 report, along with scans of latent prints, and other potentially relevant information was purportedly discovered "under a credenza" in 2022. The location of the information between its collection and reporting 1994, its transfer to a CD, and its later appearance under a piece of furniture in 2022 is unknown; the discussion of the CD in the April 10, 2023 hearing, does not make the situation any clearer. It is noted that Mr. Himelblau represented that he sent the latent print cards for analysis in the automated fingerprint system in July of 2022. The CD itself would not be considered evidence, merely a copy of the evidence, but it is still disturbing that copies of the evidence in a criminal case could disappear under a piece of furniture, then be sent for testing or analysis with no notification to the Court, despite a complete lack of appropriate chain of custody. It's unclear what happened to the original evidence that was depicted on the CD; it's possible that the CD itself is now the best remaining evidence, although it has no chain of custody.
>
> It is also unknown whether the knife from the 1994 incident is still in evidence connected with that or any case, or has been destroyed, or otherwise disposed of, since no charges were ever filed in connection with this incident. It's unclear why charges were never filed in the 1994 case.

(Exh. TT at pp. 15-16.)

b. The State Suppressed a Material Police Report of the Original Suspect, Sprinkle, Being Arrested for Stabbing a Sex Worker on Wilson Way

Regardless of whether the police report was hidden behind a piece of furniture in the District Attorney's Office, in a Stockton Police Department file or in the Attorney General's files, the police report involving Terry Sprinkle stabbing a sex worker on Wilson Way is and was clearly exculpatory. It formed part of what increasingly appears to be a pattern of

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Attorney General never withdrew its Opposition or its reliance upon this evidence. (Exh. B.)

incriminating evidence and criminal behavior that clearly and poignantly pointed to Sprinkle as the most likely suspect in the murder of Zunino. Prior to trial and throughout the trial itself, law enforcement and the prosecution suppressed all of the critical evidence which supported this very likely narrative of the murder of Zunino. As a result, Petitioner was repeatedly and continually deprived of material, significant evidence of a third party culpability defense. Indeed, the State continues to deprive Petitioner of this evidence, suppressing it even to this day.

The 1994 police report detailing Terry Sprinkle stabbing a sex worker on Wilson Way, and then getting away with it, is one of the most material and exonerating pieces of suppressed evidence in this case. Judge Lofthus acknowledged it as such. Judge Lofthus further made a record of the State's dishonest and unethical conduct in this case. Here, the State's suppression of the 1994 police report is representative of the mendacious manner this case has proceeded – with a wink and a nod – for over 18 years now. It is impossible to divorce this piece of evidence from the litany of suppressed, destroyed and lost evidence – all implicating Terry Sprinkle and exonerating Petitioner. However, it is with confidence that Petitioner presents this evidence as so material and exculpatory that – had the jury been made aware of it – the jury would not have convicted Petitioner.

3. Stockton Police Department Photographs of Sprinkle's Vehicle

a. Procedural History Related to Stockton Police Department Photographs of Sprinkle's Vehicle

Officer Nasello of the Stockton Police Department took photographs of the interior and exterior of Sprinkle's Bronco. (See Officer Nasello's police report, attached hereto as Exh. CC; see also Exh. J.) Nasello noted that the photos depict "what appeared to be blood on the headliner and plastic window trim on the passenger side, rear seat and storage area... knife marks in the headliner above the front passenger seat" and the tire treads. (Exhs. J, CC.) In one photograph, there is a yellow evidence placard "#1" next to

what appears to be a blood-like stain on the floor of the vehicle. (Exh. J.) The photographs depict accordingly. (See Exh. J.)

b. The State Suppressed Exculpatory Photographs of Evidence, Material to Petitioner's Defense, Prejudicing Petitioner

Throughout the record on appeal, Petitioner's trial counsel requests evidence from the vehicle and person of Terry Sprinkle which led the State to "rule him out" as a suspect. Trial counsel formally requested, on numerous occasions, the DOJ analysis on the physical evidence taken from the vehicle, including the tires. (See Exh. O; see also RT 62-128, attached hereto as Exh. HH.) During an *in limine* request to present a third party culpability defense, trial counsel argued:

> [S]o we never had an opportunity to look at Terry's Sprinkle's Bronco, we never got to look at his tires. There is going to be tire track evidence in this case. There was never any test prints made on Terry Sprinkle's Bronco so that we could compare the tires on his Bronco with the evidence that's presented in this case. We never had an opportunity to scientifically test what this police officer indicated to you in a declaration under oath that he believed was blood, we never got to see any of that.

(RT 66; see also Exh. HH.) It is clear from counsel's repeated requests and argument as set forth above, that the Stockton Police Department never provided the photographs to Petitioner prior to or during trial. The State suppressed these images, which depict blood-like spatter on the ceiling of Sprinkle's vehicle, next to knife marks in the ceiling and passenger seat. (See Exh. J.)

As the average person could ascertain from viewing the photographs, the photographs are provocative, material, and exculpatory. (Exh. J.) The photographs are particularly material because the State failed to preserve ***any*** evidence from the vehicle other than the photographs. Moreover, they are both material and exculpatory because there is no evidence in the police report related to the vehicle, and the DOJ declined to take any evidence from the vehicle -- despite the directional spatter on the ceiling which the DOJ criminalists note, there had been "an attempt to clean," despite the "knife marks"

in the ceiling amongst the spatter, despite the initial notation that the tire treads "appeared to be the same." (See Exhs. J, K.) Further, the photographs are exculpatory and prejudicial because they serve to reinforce the extensive, and undeniable evidence implicating Sprinkle in the murder of Zunino. As set forth below, the DOJ notes reveal that Officer Anderson obtained an admission from Sprinkle that he was in Stockton, on Pinchot near Wilson Way, between 1 a.m. and 3 a.m. on Wednesday September 26, 2001 and picked up a prostitute who had a knife in her purse. (See Exh. K.) As noted by the Court during the *in limine* proceedings:

> Yeah, a Bronco II. And then they talked to Sylvia Valtierra, who said the following. She saw Jody Zunino early in the morning of 9/26, 1:00 a.m. in the Pinchot and Wilson Way streets. She was working as a prostitute. She got into a white colored Bronco which had tinted rear windows. Sylvia described the driver as male. Sylvia watched Jody ride away in the Bronco. She last saw the Bronco turn eastbound on Harding from Wilson, never saw the Bronco or the victim again.

(RT 63, Exh. HH.)

It is axiomatic that the suppression of photographs - memorializing a vehicle with directional spatter of a "blood-like" substance, knife marks, a blood-like hand print on the back of the driver's seat, a pool of blood-like substance on the floor, the last vehicle that Zunino was scene getting into, armed with the knife which became the murder weapon in this case – was prejudicial to Petitioner.

4. Stockton Police Department Interviews With Terry Sprinkle

a. Procedural History Related to Sprinkle Interviews

Less than 48 hours after Jody Zunino's murder, Officers Anderson and Rodriguez interviewed Terry Sprinkle at Angel's Camp Police Station. (See Exh. X.) There are two versions of the interview – the full interview, labeled as 9/16/01 interview by D.A. Rasmussen and the first half of the interview, labeled as 9/28/01, misleadingly offered by D.A. Rasmussen as Terry Sprinkle's *complete* interview to the defense and the Court. (See Exhs. W, X.) Neither version contains Terry Sprinkle's statement - that he was at

Wilson Way, on Pinchot, between 1a.m. and 3 a.m. on Wednesday, September 26, 2001, where he picked up a prostitute during that time, but he took a knife from her purse so she got out of his vehicle. (See Exh. K, notes from both DOJ criminalists and Stockton Police Officer Nasello.)

In addition, Officers Anderson and Rodriguez ended the "full interview" of Sprinkle in an accusatory manner, explicitly acknowledging the incriminating evidence made him the prime suspect in Jody Zunino's murder. (See Exh. X.) Immediately following his interview, a blood sample was taken from Sprinkle and put into the Evidence Locker as evidence in the murder of Zunino. (See Exh. E.) Sprinkle was released from custody at 7:00 a.m. on the morning of October 1, 2001. (Exh. GG.) Officer Anderson filed the Search Warrant for Sprinkle's vehicle on October 1, 2001. (Exh. AA.)

b. The State Suppressed Exculpatory Statements of Sprinkle, Material to Petitioner's Defense, Prejudicing Petitioner

Again, the record is replete with Petitioner's pre-trial requests for evidence related to Terry Sprinkle, and replete with the State's suppression of the evidence related to Sprinkle, *which it had in its possession*. As set forth below, the DOJ notes reveal that Officer Anderson obtained an admission from Sprinkle - that he was in Stockton, on Pinchot near Wilson Way, between 1 a.m. and 3 a.m. on Wednesday September 26, 2001, and picked up a prostitute who had a knife in her purse. (See Exh. K.) Prior to the review of Sprinkle's Bronco II, Officer Anderson reported to the DOJ and Officer Nasello that Sprinkle had made a pointed admission to him. Anderson told them that, during the interview of Sprinkle, Sprinkle admitted: that he was actually in Stockton on the night of the murder; that he was driving around the Wilson Way area looking for a prostitute during the hours of 1 a.m. and 3 a.m.; that he picked up a prostitute on Pinchot between the hours of 1 a.m. and 3 a.m.; that the woman had a knife in her purse; that he took the knife from her purse; and, that she got out of the vehicle once he took the knife. (See Exh. K.) This admission is not contained in the "full," recorded interview of Terry

Sprinkle, on 9/28/01, which was suppressed by D.A. Rasmussen. (See Exh. X.) The statement was solely in Officer Anderson's control. Accordingly, Officer Anderson was the State's representative that suppressed Sprinkle's admission. Sprinkle's admission was exculpatory and material because it corroborated the other evidence that suggested Zunino was last seen getting into Sprinkle's vehicle, and when she was last seen entering Sprinkle's vehicle, she was armed with the knife which became the weapon used to murder her. Clearly, the suppression of this evidence, in light of the overwhelming corroborating evidence of Sprinkle's guilt, was prejudicial because it deprived Petitioner of a convincing third party culpability defense.

5. Negative Strips - #3 and #6 of Evidence Log

a. Chain of Custody of Negative Strips and Sleeve

The Stockton Police Department identified two negative strips near Zunino's body. The negative strips were identified as relevant to the murder and booked into evidence as Items #3 and #6, by Officer McGinnis on September 28, 2001. (Exh. N.) The chain of custody indicates that the negative strips were taken out of the evidence locker by Ed Rodriguez and sent "to the lab," ostensibly for printing, on October 17, 2006. (Exh. M.) The negatives strips were returned on October 19, 2006, to Officer Allman. (Exh. M.) The chain of custody indicates that the negatives were released on October 17, 2006 to Officer Chapman for identification, and they were returned on April 18, 2008, to Officer Dillard. (Exh. M.) In addition, the chain of custody provides that the negative strips were released to Ed Rodriguez on October 15, 2007, to be used in court (in February of 2008.) (Exh. M.) The negative strips were returned to the evidence locker and received by Officer Sayaphet, *over ten years later*, on February 1, 2018. (Exh. M.)

Petitioner's trial attorney requested the prints from the negative strips throughout pre-trial discovery in 2007. (Exh. O.) Prints made from the original negatives were never made available to the defense. Rather, like all other evidence connected to Sprinkle, the evidence was suppressed and described in opaque fashion and admitted into

evidence as the People's Exhibits (Exhibits 34 and 36.). The officer who collected the negatives never described the images on the two strips, but described the state of the negative strips themselves as "poor." (See RT 341-344, attached hereto as Exh. P.) Remarkably, the State never described the negative strips as "immaterial" or "unconnected." (See Exh. P.) No representative of the State ever discussed the prints made from the negatives in 2006, when they were sent to "the lab" for printing. (Exh. T.) The chain of custody in this case supports the understanding that this evidence was anything but "immaterial." (See Exh. T.) The State carefully controlled the negative strips before and after trial – from 2006 to 2018, and critically suppressed any prints or images from the negative strips discovered in 2001 or 2006, when negatives were sent to the lab for printing.

The current state of the evidence will be discussed in Petitioner's *Trombetta* claim, set forth in full in Claim III.

b. The State Suppressed Exculpatory Film Negatives Evidence, Material to Petitioner's Defense, Prejudicing Petitioner

The negative strips found near Zunino's body, the knife, and the casts of the tire tracks were the only physical evidence collected from the scene where the body was found. (See Exh. N.) They were photographed as part of the scene. (See Exh. Q.) Investigating officers believed (based upon the absence of blood at the scene where the body was discovered) that Zunino was murdered elsewhere and then dumped at the scene. There were tread marks around the body and on the body, thus, the tire tread evidence was important to determining the vehicle used to dump Zunino at the scene. Similarly, the negative strips collected near the body were believed to have come from the same vehicle when the body was dumped. They constituted important physical evidence connected to the murder of Zunino, but no prints from the negatives, no information from the negatives was ever disclosed to Petitioner prior to or during trial, despite his specific discovery request. (See Exh. O.)

Given the central role of the negatives in connecting a suspect and his vehicle to the scene, the negatives constituted material evidence. The fact that the negatives were sent to the lab to be printed in 2006, and no prints were ever turned over in pre-trial or post-trial discovery, is evidence that they were suppressed by the State. (See Exh. B.) Accordingly, the negative strips constituted material, exculpatory evidence that was suppressed by the State in violation of Petitioner's due process rights.

6. Department of Justice Photographs and Notes From Sprinkle's Vehicle

a. Factual and Procedural Background of DOJ Photos and Notes

The Department of Justice investigated Terry Sprinkle's Bronco on October 2, 2001, pursuant to the search warrant obtained by Stockton Police Officer Anderson. (See Exhs. K, AA.) The DOJ did not file a report, and they declared that they did not take any evidence from the vehicle. This was the subject of the initial post-conviction proceedings in this case, back in 2021. As noted by Petitioner, there was no DOJ report in existence in 2021, and it was created from DOJ Criminalist Yoshida's notes in 2021. DOJ notes indicate that Officer Anderson met with them prior to the search of the Bronco, advising them of several background details, including:

> 1) The Bronco was owned by suspect, Terry Dean Sprinkle;
> 2) He is the only person who drives the vehicle;
> 3) Sprinkle claimed to have stayed South East of where Zunino's body was found;
> 4) Sprinkle claimed to have slapped a prostitute in the back seat of the Bronco a year ago (2000), and she bled;
> 5) Sprinkle admitted that he was in the Wilson Way area of Stockton on Wednesday, September 26, 2001;
> 6) Sprinkle admitted that he picked up a prostitute on Pinchot between 1 a.m. and 3 a.m.;
> 7) Sprinkle claimed that he grabbed the female's purse and took a knife out of her purse, so she got out.

(Exh. K.)

The Bronco had been repaired and had new tires put on it in April of 2001, following a police chase and accident. (See Exh. K.) Upon and inspection of the inside of the vehicle, the DOJ noted:

1) The seat covers were fairly new;
2) The interior panel from the rear gate had been removed;
3) There was directional spatter on the ceiling which someone had "attempted" to clean;
4) "Blood" spatter on the right side in the back where cleaning attempt indicated;
5) There were cuts to the headliner and ceiling;
6) Partial handprint on the back of the driver's seat;
7) "No blood" detected;
8) Tire track stance noted as "different" from the scene;
9) Tire prints a scene "recalled to be slightly different";
10) No evidence taken from vehicle (including swabs or casts of tire treads)

(Exh. K.)

b. The State Suppressed Exculpatory DOJ Photos and Notes, Material to Petitioner's Defense, Prejudicing Petitioner

It is clear from Petitioner's repeated discovery requests and discussions during the third party culpability hearings in the record on appeal that the DOJ photographs and notes were not discovered to Petitioner prior to trial. (See Exhs. O, HH.) On one of the last days of trial, in the last hearing on the defense request to present third party culpability evidence, trial counsel beseeched the court, "We never had an opportunity to scientifically test what this police officer indicated to you in a declaration under oath that he believed was blood, we never got to see any of that." (RT 66; see also Exh. HH.) Just as with the other evidence of Sprinkle and his Bronco, the DOJ notes and photos were suppressed by the State.

As argued above in full, much like Stockton Police Department photographs, the DOJ photos and notes were material and exculpatory for Petitioner for the depictions and notes set forth therein. The DOJ photographs - memorializing a vehicle with directional spatter of a "blood-like" substance, knife marks, a blood-like hand print on the back of the driver's seat, a pool of blood-like substance on the floor, the last vehicle that Zunino was scene getting into, armed with the knife which became the murder weapon in this case – was prejudicial to Petitioner.

Furthermore set forth above, the DOJ notes themselves were also exculpatory and material because they included the admission from Sprinkle - that he was in Stockton at the exact time and place that Zunino was last seen getting into his white Bronco bearing the license plate affixed to his vehicle. (See Exh. K.) Again, the suppression of this evidence, in light of the overwhelming corroborating evidence implicating Sprinkle, was prejudicial because it deprived Petitioner of a convincing third party culpability defense.

7. Blood Vial Containing Terry Sprinkle's Blood From 9/28/01

a. Factual and Procedural Background of Sprinkle's Blood Vial

On September 28, 2001, Officers Ramirez and Stubblefield of the Stockton Police Department transported Terry Sprinkle from Angel's Camp to the local hospital for a blood sample, on his way to booking. (See Exh. E.) Officer Ramirez subsequently filed the blood vial into the Evidence Locker as evidence in the murder of Zunino. (See Exh. E.) The blood vial was not identified in the Property for the case, and it was assigned Tag #A00184743. (Exh. N.)

The blood vial was transported to FACL in 2017, along with other evidence. FACL did not open or attempt to test the blood vial because it was not labeled. (See Exh. B.) On March 6, 2019, FACL turned over the blood vial to Ed Rodriguez. (Exh. E.) Ed Rodriguez never returned Terry Sprinkle's blood vial to the Evidence Locker. Accordingly, it is no longer in evidence.

b. The State Suppressed Terry Sprinkle's Blood Vial, Which Was Exculpatory Evidence, Material to Petitioner's Defense, Prejudicing Petitioner

As argued above in full, much like DOJ and Stockton Police Department photographs, Terry Sprinkle's blood vial was material and exculpatory for Petitioner. The State suppressed Sprinkle's blood as evidence listed at property in the evidence locker related to this case, as it was not identified in the Property List, nor was it labeled. (Exh. B.) The suppression of the evidence was material to Petitioner, as it refuted the State's argument that Sprinkle was ruled out as suspect following his interview on

September 28, 2001, thus preventing Petitioner from relying upon the evidence as part of a very strong third party culpability defense.

8. CLETS of Terry Sprinkle

D.A. Rasmussen was personally responsible for suppressing the following evidence in violation of Petitioner's right to due process and a fair trial.

a. Factual and Procedural Background of Sprinkle's CLETS

During trial, defendant requested formal discovery on Sprinkle's past criminal conduct, particularly related to the prior 1980 murder in Lodi. (See Exh. M.) Petitioner was not provided with a complete criminal background for Sprinkle as part of discovery. (See Exh. M; see also RT 123-124.) Rather, D.A. Rasmussen provided limited information on Sprinkle's criminal history. (See Exh. M.) The lack of a thorough criminal history for Sprinkle put Petitioner at a significant disadvantage in developing his third party culpability defense. In particular, Sprinkle's CLETS set forth a 9-page criminal history which included his numerous arrests for criminal conduct that was never formally prosecuted, including murder. (See Exh. I.)

b. The State Suppressed Sprinkle's CLETS Which Was Material And Exculpatory, Prejudicing Petitioner

D.A. Rasmussen suppressed the evidence of Sprinkle's CLETS by erroneously and improperly filing the CLETS under seal. There is no citation to the procedure in the record on appeal, which means that it was not done on the record, in open court. (See Record on Appeal.) Moreover, there is no legitimate, legal reason for the CLETS print out to be "sealed," or incorporated into the record on appeal. This is particularly troubling given the repeated request for this information by the defense throughout the pretrial process and even during trial. (See Exhs. O, HH.) In this context, the D.A.'s surreptitious sealing of Sprinkle's CLETS, rather than discovering the document to the defense, constitutes suppression.

Here, in light of the evidence implicating Sprinkle in this violent murder, the suppressed evidence of Sprinkle's significant, violent criminal history served as

corroborating evidence of his "means" and "opportunity" in committing the offense. Further, Sprinkle's numerous arrests without prosecution is evidence of pattern of failure to prosecute that Petitioner could have utilized in his third party culpability defense. In the context of the cold case prosecution of this case, the evidence of Sprinkle's past criminal conduct that wasn't prosecuted was as compelling as his actual convictions. The suppression of these details deprived Petitioner of evidence to support for his third party culpability defense (in several ways), thus prejudicing him.

9. Terry Sprinkle "Interviews"

a. Factual and Procedural Background of the Transcripts for Terry Sprinkle's 9/28/01 Interview

Stockton Police Officers Anderson and Rodriguez interviewed Terry Sprinkle at Angel's Camp Police Station on September 28, 2001. (See Exh. X.) During trial, D.A. Rasmussen presented the defense and the court with an edited version of a transcript representing the first half of the interview. (See Exh. W.) This portion of the interview was the "good cop" portion of the interview, where the officers joke around with Sprinkle and never make any direct accusations. (Exh. W.) The edits to the original interview included the portion of the interview related to Sprinkle's defensive wounds on this hands. In the unedited, true version of the interview, Officer Anderson asks Sprinkle if he has cuts on his hands. (See Exh. X, at p. 8.) Sprinkle responds in the affirmative and shows Officer Anderson his hands, who exclaims, "Oh, wow." (Exh. X.) The edited version of the exchange which was discovered to the Court and the defense portrays a subdued response from Anderson in viewing the cuts on Sprinkle's hands, with Anderson viewing Sprinkle's hands and stating, "Oh (unintelligible) oh, I see, yeah." (Exh. W, at p. 8.) There are other similar edits to the same portion of the original interview, but the most significant edit is D.A. Rasmussen's edit of *the entire second half of the interview*.

D.A. Rasmussen provided the edited portion of the interview to the Court and defense and represented it was the entire Sprinkle interview. (See RT 783.) This is clear both from the record on appeal which only contains Rasmussen's edited version of the

interview, and from D.A. Rasmussen's representations to the Court, including the that Sprinkle's "statement" is approximately 25 to 30 pages. (RT 783.) The true transcript of Sprinkle's interrogation was approximately 64 pages. (Exh. X.)

During the suppressed, full interview, Officers Anderson and Rodriguez became accusatory and aggressive in their questioning. The full interview of Sprinkle included numerous acknowledgments of the incriminating evidence implicating Sprinkle and ended with the officers explicitly acknowledging the incriminating evidence made him the prime suspect in Jody Zunino's murder. (See Exh. X.) Eventually, Sprinkle asked for a lawyer, and the interview ended. (Exh. X.) Immediately following his interview, Sprinkle was taken into custody and brought to a local hospital where a blood sample was taken. (Exh. E.) This blood sample was put into the Evidence Locker as evidence in the murder of Zunino. (See Exh. E.) The most important part of the second half of the interview is at the end of the interview where Sprinkle is arrested and taken to get his blood drawn for evidence in this case. The edit to the end of the interview obscured the blood evidence in the record – as one of the first pieces of evidence in the murder investigation of Zunino.

b. The State Suppressed Exculpatory DOJ Photos and Notes, Material to Petitioner's Defense, Prejudicing Petitioner

D.A. Rasmussen actively suppressed the full interview of Sprinkle by providing a carefully edited version of half of the interview to the defense and Court and falsely describing it as the entirety of the interaction with Sprinkle. (See Exhs. W, X.) D.A. Rasmussen's active suppression is apparent through: 1) Rasmussen's careful edits to the original, "full" transcript; 2) Rasmussen's representations to both defense and the Court that the edited version of the interview was in fact a complete and accurate portrayal of law enforcement's interview of Terry Sprinkle on 9/28/01; 3) Rasmussen's surreptitious submission of the full interview of Terry Sprinkle as a sealed, Confidential Document, purporting to represent a 9/16/01 interview transcript (see CT 633-696; see also Exh. KK). D.A. Rasmussen actively suppressed the true transcript of Sprinkle's 9/28/01

interview with Officers Anderson and Rodriguez. Indeed, D.A. Rasmussen's mendacious suppression technique was the same as used in suppressing Sprinkle's CLETS report – falsely "sealing" the document as "Confidential" and "under seal." As with the CLETS report, the transcript of Sprinkle's 9/28/01 interview was not in fact "Confidential," nor was the interview conducted on 9/16/01.

The suppressed version of the Sprinkle interview was exculpatory and material because it presented many examples of Sprinkle's incriminating statements as set forth in full and repeatedly within this petition. The suppression of Sprinkle's interview and his numerous incriminating statements, along with the evidence that the Stockton Police believed that Sprinkle was directly involved in the murder of Zunino – *presumably which is why he was arrested at the end of the interview and a sample of his blood was taken and put into evidence in this case* – was prejudicial to Petitioner because it prevented Petitioner from presenting a very strong third party culpability defense.

10. Terry Sprinkle File Related to "Bar Fight"

a. Factual and Procedural Background of Sprinkle's Lodi Murder

D.A. Rasmussen also actively suppressed the police reports and interviews related to a stabbing at a Lodi bar which resulted in the death of a patron. Trial counsel repeatedly requested discovery of past criminal conduct involving Terry Sprinkle. (See Exhs. O.) D.A. Rasmussen represented to the defense and the Court that the District Attorney's file on the criminal investigation had been lost, so he had provided a news article to the defense in lieu of the file. (See RT 89.) D.A. Rasmussen argued against the relevance of case as exemplary of Sprinkle's past criminal acts, stating:

> And again, here we have – I believe that the defense is trying to bring in a prior murder case, it was a murder case, the People did file it, it was dismissed, lack of evidence, because I think what happened, and I have not found the D.A. file, but there was some snitches that we would not turn over, or I don't know the exact – I think Mr. Sylvia and I are both reading out of a Stockton Record or Lodi Sentinel newspaper article on where we are getting that evidence.

> But he used a knife in that, it was a knife fight between two – it was a bar fight and then he ended up arguing with someone who he thought was the same person he was in the fight with, and in that case he did kill him. There were other people present that were with the defendant, but when the victim was found, there was a knife underneath him, so there was some kind of fight going on there, and mutual combat of some type. He may have been outnumbered, but there was some mutual combat, but because he used a knife and the victim in this case was cut by a sharp instrument, that that somehow is direct and circumstantial evidence. It isn't. That's a bar fight with a man at a bar.

(RT 89-90.)

The CLETS shows that Sprinkle was charged with murder in this case, on or about January 24, 1980. (See Exh. I.) The case was subsequently dismissed.

The investigation of the murder during that time period was substantial. (See Exh. V.) The investigation included many statements from witnesses, including the victim who stated that he did not know Sprinkle or his three associates, and did not really understand why he was stabbed. (See Exh. V.) Prior to the stabbing, Sprinkle asked him if he was a cop several times, and the victim tried to run from Sprinkle and his associates. He thought that he had successfully evaded them until he ran into Sprinkle in the middle of the street. Sprinkle stabbed him in the chest. (See victim's statement attached hereto, in Exh. V.) Several of the witnesses, including the Confidential Reliable Informant (CRI), described Sprinkle as "quick-tempered" and prone to "crazyness" (sic). The CRI noted that, at the time, Sprinkle wore a large knife which hung from the left side of his belt. (Exh. V.)

b. The State Suppressed Exculpatory Evidence of Sprinkle's Past Murder Offense which was Material to Petitioner's Defense, Prejudicing Petitioner

D.A. Rasmussen suppressed the evidence related to Sprinkle's involvement in the Lodi murder from 1980. Here, based upon the representations of D.A. Rasmussen and

the sparse evidence of the "bar fight," the evidence of the murder was excluded by Judge Spaiers, as not directly relevant. (RT 123-124.)

Ultimately, the suppressed evidence related to Sprinkle's involvement in the Lodi murder was exculpatory and material to Petitioner, because it provided evidence that Sprinkle had violent tendencies, had used a knife in prior violent crimes, had potentially committed a prior murder by stabbing someone to death with a knife. The suppression of these details deprived Petitioner of strong evidence to support for his third party culpability defense, thus prejudicing him.

11. Officer Anderson's Misconduct and Internal Affairs Investigation

a. Factual and Procedural Background of Officer Anderson's Misconduct and Internal Affairs Investigations

Petitioner filed a post-conviction *Pitchess* motion in this case, pertaining to Officer Dave Anderson. In part, the motion was based upon the fact that Officer Anderson was the lead investigator in Zunino's murder. During the initial investigation, Anderson collected substantial evidence implicating Sprinkle, in 2001. Despite the overwhelming evidence implicating Sprinkle, he was not ultimately implicated. The case went "cold" for several years, and then Petitioner was arrested in 2006, at the same time public accusations of Officer Anderson's misconduct were reported in the press. (See Exh. HHH.) The article noted that there had been an Internal Affairs investigation of Officer Anderson in 2005-2006. (Exh. HHH.) The public nature of the Internal Affairs investigation into Officer Anderson would have put the prosecution on notice of this potential evidence related to this case.

Despite remaining an active duty police officer with the Stockton Police Department and being the lead investigator in Zunino's murder, Officer Anderson was not involved in the cold case investigation and prosecution of Petitioner. Petitioner opined that there could be a connection between the Internal Affairs investigation of Officer Anderson and the cold case prosecution of Petitioner.

The *Pitchess* motion was granted, and this Court released information related to two separate Internal Affairs investigations of misconduct to Petitioner. (See Exh. Z.) The two investigations that resulted in reprimands took place in 2005 and 2006. (Exh. Z.) Both incidents involved Officer Anderson's dereliction of duty, in so far as he failed to file official reports or investigate crimes that were reported to him as the responding officer. (Exh. Z.) Officer Anderson received reprimands for his misconduct. (Exh. Z.)

b. The State's Suppression of Officer Dave Anderson's Misconduct Constitutes a *Brady* Violation Under *Milke*

> The jury [had] nothing more than [the detective's] word that Milke confessed. Everything the [S]tate claims happened in the interrogation room depends on believing the detective's testimony. Without [his] testimony, the prosecution had no case against Milke[.] [T]he Constitution requires a fair trial, and one essential element of fairness is the prosecution's obligation to turn over exculpatory evidence. This never happened in Milke's case and so the jury trusted [the detective] without hearing of his long history of lies and misconduct.

(*Milke v. Ryan* (9th Cir. 2013) 711 F.3d 998, 1002–03.)

In 1990, a jury convicted Debra Milke of murdering her four-year-old son based solely upon the testimony of Officer Armando Saldate, Jr. Officer Saldate testified that Milke, then twenty-five years old, had waived her *Miranda* rights and confessed during an interrogation. There were no other prosecution witnesses or direct evidence linking Milke to the murder. The judge and jury believed Saldate, and found Milke guilty of capital murder. However, the jury didn't know about Saldate's long history of lying under oath and other misconduct. The state knew about this misconduct but failed to disclose it, despite the requirements of *Brady* and *Giglio v. United States* (1972) 405 U.S. 150, 153–55. The Ninth Circuit found the State's suppression of Officer Saldate's prior misconduct to be unconstitutional under *Brady* and reversed Milke's conviction.

"As more than two decades passed while Milke lived on death row, exoneration reform expanded and litigation exposed the reality of wrongful convictions, including

those based on *Brady* violations and false confessions procured through coercive interrogations or fabricated by police officers." (Reflections on the *Brady* Violations in *Milke v. Ryan*: Taking Account of Risk Factors for Wrongful Conviction; Catherine Hancock, NY 2015.) In *Milke*, the Ninth Circuit found that post-conviction counsel's discovery of the court records concerning Officer Saldate's past misconduct revealed a "pattern" of misconduct and constituted "highly relevant" and "highly probative" evidence that "would certainly have cast doubt" on the detective's credibility if used to impeach his testimony at trial. (*Milke, supra*, 711 F.3d at p. 1008.) Ultimately, the court found that the State suppressed the past officer misconduct when it failed to affirmatively provide the information to the defense in pre-trial discovery, preventing Milke from presenting a defense, and the court reversed her conviction under *Brady* and *Giglio*. (*Id*. at p. 1019.)

Any evidence that would tend to call the State's case into doubt is favorable for *Brady* purposes. (*Milke, supra*, 711 F.3d at p. 1012, citing *Strickler, supra*, 527 U.S. at p. 290.) In the present case, Officer Anderson's pattern of misconduct and the ongoing Internal Affairs investigation would have tended to call into question both the timing and substance of the State's prosecution of Petitioner. This is especially true given the central role of Officer Anderson in the initial investigation and his complete absence from the investigation and prosecution of Petitioner. Comparably, in *Milke*, the court found that evidence of the officer's past misconduct would have been useful to the jury in determining whether the officer or the defendant was telling the truth. (*Ibid.*) Moreover, the court found that the past evidence of misconduct showed that the officer "lied under oath in order to secure a conviction or to further a prosecution" in past cases, and the same law enforcement and prosecutorial agencies were involved in those cases. (*Id.* at p. 1013.) Ultimately, the court found that if Milke had been able to present the jury and judge with evidence of the officer's past "menagerie of lies and constitutional violations," she likely would have been able to develop "legitimate questions concerning guilt." (*Id*. at p. 1015.)

The courts have long held that the State bears a *Brady* obligation "to produce any favorable evidence in the personnel records" of an officer. (*Milke, supra,* 711 F.3d at p. 1016, citing *United States v. Cadet* (9th Cir. 1984) 727 F.2d 1453.) Moreover, a defendant does not have to make an affirmative request for exculpatory or impeachment evidence: "[T]he duty to disclose [exculpatory] evidence is applicable even though there has been no request by the accused, and ... the duty encompasses impeachment evidence as well as exculpatory evidence." (*Strickler, supra*, 527 U.S. at p. 280.) In *Milke,* the court found that the evidence of the misconduct and constitutional violations had an obligation to produce the documents related to the misconduct as they "no doubt knew of this misconduct... [and t]he police must have known, too." (*Milke, supra,* 711 F.3d at p. 1016.)

i. The State Suppressed Officer Dave Anderson's Pattern Of Misconduct Which Constituted Material and Exculpatory Evidence

Much as in *Milke,* the prosecution's suppression of the Internal Affairs investigation of Officer Anderson and his past misconduct prevented Petitioner from presenting a defense related to his cold case prosecution. Here, just as in *Milke*, the law enforcement misconduct presented a pattern - Officer Anderson's failure to investigate and report on certain crimes. As in *Milke*, the pattern of misconduct could have been presented as a defense. Here, Zunino's unsolved murder was arguably at risk of being reviewed by Internal Affairs as a past unsolved crime where Officer Anderson was the lead investigator. Moreover, just as in his cases of misconduct, Officer Anderson's abrupt failure to investigate and report came in response to substantial evidence that crimes had been committed by known individuals. (See Exh. Z.) Officer Anderson's pattern of misconduct and failure to investigate crimes is compelling in light of Anderson's abrupt end to the investigation of Sprinkle in the present case. Further, the timing of the Internal Affairs investigations in 2005 and beginning of 2006 is important with respect to the timing and unusual circumstances surrounding the investigation and prosecution of Petitioner.

In this context, the suppressed pattern of misconduct, along with Officer Anderson's ongoing Internal Affairs investigation in 2006, was a violation of *Brady*, and the suppression prevented Petitioner from presenting a defense and an alternate theory of culpability.

ii. The Suppression of Officer Anderson's Pattern Of Misconduct Prejudiced Petitioner's Defense

"To find prejudice under *Brady* and *Giglio*, it isn't necessary to find that the jury would have come out differently. (Citation.) Prejudice exists "when the government's evidentiary suppression undermines the confidence in the outcome of the trial. (Citation.)" (*Milke, supra*, 711 F.3d at p. 1018.) In *Milke*, the court found that the suppression of the lead investigator's past misconduct was prejudicial because the officer's testimony was the only evidence linking Milke to the murder, thus his credibility was critical.

In the present case, just as in *Milke*, there were suspicious circumstances and irregular procedures which stood out in Officer Anderson's initial investigation. First and foremost, Officer Anderson abruptly ended the investigation of Sprinkle despite the significant, incriminating evidence *that is unresolved to this day*. This unusual circumstance raises many questions related to law enforcement conduct. Secondarily, law enforcement's failure to file and properly maintain incriminating evidence in the Evidence Locker – i.e. the blood-like spattered clothes – is highly suspicious. In this context, Officer Anderson's suppressed pattern of misconduct was directly relevant to Petitioner's case. Here, Officer Anderson's pattern of failing to investigate obvious leads and individuals involved in criminal activity mirrors Petitioner's case. Moreover, the fact of the ongoing Internal Affairs investigation in 2006 was also relevant and material to Petitioner's defense, as Officer Anderson, the DOJ, and the Stockton Police Department had a keen interest in reviving the investigation to avoid appearances that the case fit the pattern of Officer Anderson's misconduct.

As set forth in full above, the third party culpability defense was critical to Petitioner. The lack of collected and maintained incriminating evidence from Officer Anderson's investigation of Sprinkle was therefore material to the present case. Had the judge and jury been informed of Officer Anderson's prior pattern of misconduct and the timing of the ongoing Internal Affairs investigation, this would have given the jury further legitimate questions concerning the failure to further investigate Sprinkle, as well as the investigation and prosecution of Petitioner. The State's suppression undoubtedly prejudiced Petitioner as "the government's evidentiary suppression undermine[d] the confidence in the outcome of the trial. (Citation.)" (*Milke, supra*, 711 F.3d at p. 1018.) Accordingly, this *Brady* violation requires reversal of Petitioner's conviction.

VI. THE STATE FAILED TO MAINTAIN AND DISCLOSE MATERIAL AND EXCULPATORY EVIDENCE THAT UNDERMINED CONFIDENCE IN THE OUTCOME OF PETITIONER'S TRIAL IN VIOLATION OF HIS RIGHT TO DUE PROCESS UNDER *BRADY, TROMBETTA,* AND *YOUNGBLOOD*

The prosecution's duty to disclose and retain evidence stems from the due process clause of the United States Constitution, as explained and interpreted by the three leading United States Supreme Court decisions on this subject — *Brady v. Maryland* (1963) 373 U.S. 83; *California v. Trombetta* (1984) 467 U.S. 479, and *Arizona v. Youngblood* (1988) 488 U.S. 51 (*Youngblood*). As set forth in full in the prior claim, *Brady* is the leading case on the duty to disclose exculpatory evidence. "[T]he suppression... of evidence favorable to an accused upon request violates due process where the evidence is material to either guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." (*Brady*, *supra*, 373 U.S. at p. 87.) Such evidence must be disclosed if it is material, that is, if there is a reasonable probability the evidence might have altered the outcome of the trial. (*United States v. Bagley* (1985) 473 U.S. 667, 682.)

The duty to retain, rather than simply disclose, potentially exculpatory evidence is somewhat different. *Trombetta* concerned a driving under the influence case involving two drivers. The *Trombetta* court found that although breath samples taken from the

defendant had not been preserved, the test results were nonetheless admissible. The court rejected the defendant's argument that the state had a duty to retain the samples for a number of reasons. The police officers were acting in good faith and according to normal procedure, the chance the samples would have been exculpatory were slim, and defendants had other means to prove their innocence. (*Trombetta*, *supra*, 467 U.S. at pp. 488-490.) "Whatever duty the Constitution imposes on the States to preserve evidence, that duty must be limited to evidence that might be expected to play a significant role in the suspect's defense. To meet this standard of constitutional materiality, [citation], evidence must both possess an exculpatory value that was apparent before the evidence was destroyed, and be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means." (*Id*. at pp. 488-489, fn. omitted.)

Youngblood, the most recent of the three cases, explains the requirements for demonstrating a due process violation based on the failure to retain evidence under somewhat different circumstances. *Youngblood* was a sexual assault case in which the state had failed to properly preserve fluid samples from the victim's clothing and body. Unlike the situation in *Trombetta*, where the evidence was destroyed after all relevant testing was complete, in *Youngblood*, only limited testing was initially performed to determine whether sexual contact had indeed occurred. (*Youngblood*, *supra*, 488 U.S. at p. 53.) By the time more rigorous testing was attempted, it was no longer possible, because the victim's clothing had been improperly refrigerated. (*Id.* at p. 54.) The defendant's principal argument was mistaken identity, and he argued that if the victim's clothing had been properly preserved, the physical evidence might have exonerated him. (*Ibid.*) The defendant was found guilty, and ultimately, the Supreme Court upheld the conviction.

The court stated: "The Due Process Clause of the Fourteenth Amendment, as interpreted in *Brady,* makes the good or bad faith of the State irrelevant when the State fails to disclose to the defendant material exculpatory evidence. But we think the Due

Process Clause requires a different result when we deal with the failure of the State to preserve evidentiary material of which no more can be said than that it could have been subjected to tests, the results of which might have exonerated the defendant." (*Youngblood*, *supra*, 488 U.S. at p. 57.) As explained in *Trombetta,* determining the materiality of permanently lost evidence can prove problematic. The court also declined to impose on the police an absolute duty to retain and preserve anything that might possibly have some significance. (*Id.* at p. 58.)

Accordingly, "We think that requiring a defendant to show bad faith on the part of the police both limits the extent of the police's obligation to preserve evidence to reasonable bounds and confines it to that class of cases where the interests of justice most clearly require it, *i.e.,* those cases in which the police themselves by their conduct indicate that the evidence could form a basis for exonerating the defendant. We therefore hold that unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law." (*Youngblood*, *supra*, 488 U.S. at p. 58.) The court held that at worst, the conduct of the police in *Youngblood* could at best be characterized as negligent. (*Ibid.*)

Thus, there is a distinction between *Trombetta's* "exculpatory value that was apparent" criteria and the standard set forth in *Youngblood* for "potentially useful" evidence. If the higher standard of apparent exculpatory value is met, the motion is granted in the defendant's favor. But if the best that can be said of the evidence is that it was "potentially useful," the defendant must also establish bad faith on the part of the police or prosecution. (See *Youngblood*, *supra*, 488 U.S. at p. 58; *Trombetta*, *supra*, 467 U.S. at pp. 488-489.)

Here, the state was required to maintain the exculpatory evidence that was discovered during the original investigation of the murder in this case as its material value was apparent at the time it was discovered. However, should this Court find that the exculpatory value of the evidence was not discernable at the time of discovery, then this Court should find that the collective suppression, "loss" and destruction of evidence

related to the initial suspect, in violation of *Brady* and contrary to basic law enforcement procedure, establishes bad faith under the law. (See *Arizona v. Youngblood, supra* , 488 U.S. at pp. 57-58; see also *People v. Fultz* (2021) 69 Cal.App.5th 395, 424.)

" ' "Due process does not impose upon law enforcement 'an undifferentiated and absolute duty to retain and to preserve all material that might be of conceivable evidentiary significance in a particular prosecution.'" [Citation.] At most, the state's obligation to preserve evidence extends to "evidence that might be expected to play a significant role in the suspect's defense."' [Citation.] Whether the loss of evidence rises to the level of a due process violation is governed by the principles set forth by the United States Supreme Court in *Trombetta* and *Youngblood*. [Citation.] Under *Trombetta,* law enforcement agencies must preserve evidence only if the evidence possesses exculpatory value that was apparent before it was destroyed and if the evidence is of a type not obtainable by other reasonably available means. [Citations.] As an alternative to establishing the apparent exculpatory value of the lost evidence, *Youngblood* provides that a defendant may show that'" 'potentially useful'"' evidence was destroyed as a result of bad faith. [Citations.]" (*People v. Fultz,* supra, 69 Cal.App.5th at pp. 424-425, fn. omitted, *citing Trombetta, supra*, 467 U.S. at pp. 488-489 and *Youngblood, supra*, 488 U.S. at p. 58.)

"It is axiomatic that the constitutional due process guaranty is a bulwark against improper state action. '[T]he core purpose of procedural due process [is] ensuring that a citizen's reasonable reliance is not frustrated by arbitrary government action.' [Citation.] If the state took no action, due process is not a consideration, because there is no 'loss of evidence attributable to the Government.'" (*People v. Velasco* (2011) 194 Cal.App.4th 1258, 1263.) Nevertheless, the California Supreme Court and United States Court of Appeals, Ninth Circuit, have at times suggested that there may be an appropriate case where the failure to collect evidence might warrant due process considerations. (*People v. Montes* (2014) 58 Cal.4th 809, 838 ["we have suggested that cases may arise in which the failure to collect evidence could justify sanctions against the prosecution at trial"];

Miller v. Vasquez (9th Cir. 1989) 868 F.2d 1116, 1119 [sanctions for bad faith failure to collect evidence].)

In the present case, the post-conviction discovery process and chain of custody for the case has revealed a pattern of lost or destroyed potentially exculpatory evidence at the hands of the State. The potentially exculpatory nature of the evidence was known at the time of its loss or destruction. However, even if the Court were to find that the lost and destroyed evidence was only "potentially useful" to Petitioner's defense or exoneration, then there is overwhelming and substantial bad faith that pervades this case which satisfies the required showing so as to rise to the level of a due process violation.

The chain of custody in this case is extremely important to understanding the new evidence, *Brady,* and *Trombetta* claims set forth in the underlying petition, as there are significant gaps in the chain of custody and subsequent alteration of evidence which in and of itself constitutes new evidence of Petitioner's actual innocence. This is emphasized in the reports of expert witnesses Beth Mohr and Brent Turvey. The overwhelming impact of this evidence cannot be understated. As succinctly articulated by Mohr based upon the available evidence (with the quashed DOJ subpoenas):

> It cannot be known whether the list of lost, damaged, or unaccounted for evidence is the result of a failure in process, police and procedures at the Stockton Police Department's evidence and investigative units, the result of some sort of intentional malfeasance by one or more individuals, or is merely the result of ineptitude, lack of training, or lack of supervision in this instance... However, regardless of the cause, the cumulative weight of the sheer number and variety of issues with the investigation, evidence collection, and chain of custody of evidence in this case is gravely concerning.
>
> As a retired police officer, nationally certified law enforcement trainer, investigator, and expert witness with over 30 years of experience, I have never seen a case where so many things went so wrong, with so many different pieces of evidence, via so many different means, in a single case. I have seen various cases where evidence was lost, destroyed,

> improperly collected, or simply missed, and where investigations went awry in nearly every way imaginable. ***However, prior to this matter, I have never seen them all occurring in the same case***.

(Exh. TT, emphasis added.)

Accordingly, Petitioner further asserts that this Court should find that the collective suppression, "loss" and destruction of evidence related to the initial suspect, in violation of *Brady* and contrary to basic law enforcement procedure, establishes bad faith under the law. (See *Arizona v. Youngblood, supra* , 488 U.S. at pp. 57-58; see also *People v. Fultz, supra,* 69 Cal.App.5th at p. 424.)

A. Factual and Procedural Background

During trial, Petitioner requested discovery regarding Sprinkle's criminal history. The prosecution opposed defendant's request for discovery – arguing that Sprinkle had an alibi and the investigation of the Ford Bronco did not reveal any incriminating evidence. The prosecution's opposition at trial is troubling for its lack of foundation and for the absence of actual evidence in the irregular forensic report. At trial, Petitioner's counsel repeatedly requested disclosure of the Department of Justice reports and analysis of Sprinkle's vehicle. (RT 64, 106-108, 110-116.)

As it stands now, the following potentially exculpatory and actually exculpatory evidence in this case has been suppressed, "lost" or destroyed by the State:

> **1) Blood-Like Spattered Clothing, Shoes and $30 Cash**
> The Stockton Police Department "lost" or failed to maintain Terry Sprinkle's blood-like spattered clothes, shoes and cash collected for testing two days after the murder. Officer Anderson acknowledges receipt of the "white tennis shoes, turquoise shorts, and $30 in cash" which had blood-like stains on them and states that the evidence was taken to the Stockton Police Department and "booked for further processing." (See Exh. EE, p. 13.) Terry Sprinkle's blood-like spattered effects do not appear in the list of property taken into evidence in this case. (Exh. N.) It was not discovered by the prosecution during post-conviction discovery. It is therefore deemed lost;
>
> **2) Latent Fingerprints From Terry Sprinkle's Bronco**

The Stockton Police Department "lost" or failed to maintain latent finger prints taken from the passenger area of Terry Sprinkle's vehicle within a week of the murder. Officer Nasello took three latent prints from Terry Sprinkle's Bronco, labelled #1-#3, and he submitted the latents to the Latent Print Section at the Stockton Police Department. (Exh. CC.) The three latents do not appear in the list of property taken into evidence in this case. (Exh. N.) They were not discovered by the prosecution during post-conviction discovery. They are therefore deemed lost;

3) Blood-Like Spatter From Terry Sprinkle's Bronco
DOJ Criminalist Yoshida "lost" or failed to maintain evidence from blood-like spatter throughout Terry Sprinkle's vehicle, presented to the DOJ for testing and review within a week of the murder. (See Exhs. J, K.) Yoshida did not maintain or collect any swab samples of the blood-like spatter and pool in Sprinkle's Bronco. This evidence was not discovered by the prosecution during post-conviction discovery. It should therefore deemed lost;

4) Knife-Like Stab Marks In Bronco Ceiling and Passenger Seat
DOJ Criminalist Yoshida "lost" or failed to maintain evidence and review related to the knife-like stab marks on the ceiling and passenger seat of Terry Sprinkle's vehicle, presented to the DOJ for testing and analysis within a week of the murder. (See Exhs. J, K.) Yoshida did not maintain or collect any samples of the knife marks or analysis connected to the knife marks in Sprinkle's Bronco. This evidence was not discovered by the prosecution during post-conviction discovery. It should therefore deemed lost;

5) Tire Treads From Terry Sprinkle's Bronco
The DOJ failed to maintain evidence of the tire tread prints and/or casts of the tires from Terry Sprinkle's vehicle, presented to the DOJ for testing and review within a week of the murder. (See Exh. K.) Yoshida did not maintain or collect any samples of the tire treads by making a cast or prints of Sprinkle's Bronco tires. This evidence was not discovered by the prosecution during post-conviction discovery. It should therefore deemed lost;

6) Terry Sprinkle's Blood Vial
The Stockton Police Department and District Attorney's Office suppressed and subsequently "lost" Terry Sprinkle's blood vial, taken upon his arrest following the interrogation by Officers Anderson and Rodriguez, on 9/28/01 and put into evidence locker for this case as part of the investigation into Jody Zunino's murder. The vial was last in Ed

Rodriguez's custody on 2019 (Exh. E), and the prosecution has since admitted that it was never returned by Rodriguez. (See Exh. B.) It must be deemed "lost";

7) Negative Strips #3 and #6

The Stockton Police Department and District Attorney's Office suppressed and lost or destroyed the negative strips, representing Item's #3 and #6, found near Zunino's body on the morning of the murder. (See Exhs. M, P, Q, R, S and T.) During the post-conviction discovery process, Petitioner was given access to the negative strips for the purpose of printing. With the assistance of hobbyist photographers, Karen and Brad Pecchenino, post-conviction counsel took photos of the exhibit envelopes, the negative strips and the negative sleeve at the Stockton Police Department evidence locker. Karen and Brad Pecchenino compared the photographs that they took of the negative strips at the evidence and compared them to photographs of the negative strips and sleeve when they were discovered at the crime scene in 2001 and the description of the evidence provided by Officer McGinnis at trial. (See Exhs. P, Q, R, S.) Upon a basic comparison, Karen and Brad Pecchenino opined under oath that the negative strips currently in evidence do not appear to be the same as those collected at the scene in 2001. (Exh. S.) A review of the chain of custody puts the negative strips last in Ed Rodriguez's custody, in 2018. Based upon the foregoing, particularly in light of the pattern of evidence loss and destruction by the Stockton Police Department in this case, the negative strips and sleeve originally identified as #3 and #6 should be deemed lost or destroyed;

8) Cuts On Terry Sprinkle's Hands 9/28/01

The Stockton Police Department "lost" or failed to maintain photographic evidence of the cut(s) on Terry Sprinkle's hands within two days of the murder. (Exh. X, at p. 9.)[19] During the "full" interview of Terry Sprinkle, Officer Anderson inquired about possible cuts or injuries to Sprinkle's hands. Sprinkle admitted that he had cut(s) on his hand and presented the cut(s) to Officer Anderson who exclaimed, "Oh, wow" in response. (Exh. X, at p. 9.) Photographs of the cuts to Sprinkle's hands were not discovered by the prosecution during post-conviction discovery. They are therefore deemed lost;

[19] Petitioner notes that the Stockton Police Department took photographs of his hands after his interrogation and arrest in 2006. The photos of Petitioner's hands do not reflect any scars or visible healed injuries.

9) Tire Treads From Scene And Petitioner's Vehicle

The Stockton Police Department destroyed *all tire tread evidence* related to the case in 2012 *without a court order*, including the casts and prints of Petitioner's tire treads. (Exh. Y.) During the post-conviction discovery process, Petitioner was given access to the evidence locker for the purpose of viewing the property filed in this case. The records revealed that all of the casts from the scene and Petitioner's vehicle were destroyed by the request of the Stockton Police Department in 2012. (See Exhs. M, N, Y.) The record is devoid of a court order for the destruction of this evidence.

The foregoing cited evidence constitutes the material, potentially exculpatory and exculpatory evidence that the State failed to collect and maintain under *Trombetta*.

B. The "Lost" or "Unretained" Evidence Related to Sprinkle Constitutes a Violation of Due Process Under *Trombetta/Youngblood*, Requiring Reversal

In considering the evidence of a *Trombetta/Youngblood* claim, the court must first inquire whether the lost or destroyed evidence held by the state meets either the "exculpatory value that was apparent" or the "potentially useful" standards for materiality under *Trombetta* or *Youngblood*. (See *Youngblood*, *supra*, 488 U.S. at p. 58; *Trombetta*, *supra*, 467 U.S. at pp. 488-489.) Second, if the evidence qualified as "potentially useful" under *Youngblood* but did not meet the *Trombetta* standard, was the failure to retain it in bad faith? (*Youngblood*, *supra*, 488 U.S. at p. 58.)

During the original investigation days after the murder, officers discovered significant evidence of means, opportunity and motive linking Sprinkle to the murder. The record is devoid of any evidence which might have excluded Sprinkle as the primary suspect or which would contradict this evidence. At trial, Petitioner's primary defense was a third party culpability defense focused on Sprinkle. However, Petitioner was largely prevented from presenting this defense– including presenting Sprinkle himself as a defense witness. (See RT 92, 119, 121-122.) In the context of Petitioner's right to present a defense, the exculpatory value of much of the lost or destroyed evidence was readily apparent at the time that the State either chose not to maintain it, lost or destroyed it.

Police procedural expert Beth Mohr reviewed the lost and destroyed evidence in the context of this case and provided her opinion as to the proper procedure with respect to the specific evidence. Mohr found generally, "a number of concerns exist with the investigation, the collection and preservation of evidence, and the maintenance of a proper chain of custody for that evidence. Pieces of evidence have disappeared completely, important items of evidence were improperly destroyed, and evidence was not preserved properly so that the evidentiary value no longer exists. Additionally, pieces of evidence in this case lack an appropriate chain of custody – having an unknown chain of custody for a number of years – before mysteriously reappearing." (Exh. TT at p. 12.) Specifically, the following evidence had obvious exculpatory value at the time, and has been "lost," not maintained or destroyed:

- Terry Sprinkle's blood-like spattered clothes, shoes and cash collected from his residence for testing two days after the murder. (See Exhs. DD, EE.) Mohr notes the police procedural failures relate to this evidence, finding "these items evidently never made it to the Stockton Police Department's evidence locker, there is no chain of custody to indicate that they were ever properly accepted, preserved, or booked into evidence, much less tested for the victim's blood. The loss of these potentially vital pieces of evidence means that these items, purportedly seized from Mr. Sprinkle's home, can never be tested for the victim's blood" (Exh. TT at p. 14.);
- Latent fingerprints taken from the passenger area of Terry Sprinkle's vehicle within a week of the murder. (Exh. CC.) Mohr notes the latent fingerprint evidence, finding "Other new evidence has been found that was evidently previously lost or otherwise not provided to Mr. Nuccio's trial defense counsel. This includes several fingerprints and smears which were lifted from the inside passenger window of Mr. Sprinkle's car, when the vehicle was partially processed in 2001." (Exh. TT at p. 16.) Mohr explains that this potentially important evidence was "purportedly discovered 'under a credenza' in 2022. The location of the information between its collection.... its transfer to CD, and its later appearance under a piece of furniture is unknown... It is noted that Mr. Himelblau represented that he sent the latent print cards for analysis in the automated fingerprint system in July of 2022. The CD itself would not be

considered evidence, merely a copy of evidence, but it is still disturbing that copies of the evidence in a criminal case could disappear under a piece of furniture, then be sent for testing or analysis with no notification to the Court, despite a complete lack of appropriate chain of custody." (Exh. TT at p. 15.);

- Evidence from blood-like spatter throughout Terry Sprinkle's vehicle, including a saturated portion of the carpet, within a week of the murder. (See Exh.'s J, K.) Mohr notes that DOJ Criminalist Yoshida's processing of Sprinkle's vehicle did not comply with basic standards of practice and her notes and testimony do not reflect the proper procedure for testing for the presence of blood. Specifically, Mohr finds, "Ms. Yoshida thus appears to have wrongly determined that the sample wasn't blood, by conducting an incomplete test, numerous times.... Additionally, the swabs were not preserved, and photos were not taken of the test swabs. Once Criminalist Yoshida determined to her satisfaction, using and incomplete and incorrect testing procedure described in her testimony, that the liquid splatter was not blood .... the investigation and processing of the vehicle as a crime scene appears to have essentially stopped. " (Exh. TT at pp. 3-4.);
- Knife-like stab marks on the ceiling and passenger seat of Terry Sprinkle's vehicle. (See Exhs. J, K.) Mohr notes the police procedural failures relate to this evidence, finding "There is also nothing to suggest that the cut or stab marks in the vehicle were compared to the murder weapon. Once the vehicle was processed, and the improper testing protocol was used to conclude that there was no blood in Mr. Sprinkle's Bronco (sic), there is no evidence that additional investigation was conducted, or that the homicide investigation continued at all, beyond the fall of 2001." (Exh. TT at p. 4.);
- Tire tread prints and/or casts of the tires from Terry Sprinkle's vehicle. Mohr notes the police procedural failures relate to this evidence, finding, "[D]espite the appearance of the vehicle as a possible or even likely crime scene... tire treads were not recorded via the standard procedure for documenting tire tread and wear patterns. The tire tread and wear patterns were not scientifically analyzed for consistency with the tire tread impressions left at the scene or on the victim's body.... Criminalist Yoshida, who had just recently taken a course on documentation and analysis of tire tread evidence, visually looked at the tires, without comparing them to the casts at the scene, nor with photographs of the tire marking on the victim's

body, but nevertheless decided that the tires were inconsistent with the murder evidence. Criminalist Yoshida failed to collect any evidence of the Bronco's tire tread and wear patterns. The partial processing of the Bronco does not conform to proper practices for the complete collection of evidence, nor does Criminalist Yoshida's visual determination, lacking comparative evidence, conform to the proper procedure for judging whether or not the tire tread evidence is matching or consistent with casts taken from a crime scene." (Exh. TT at pp. 2-3.);

- Terry Sprinkle's blood vial, taken upon his arrest following the interrogation by Officers Anderson and Rodriguez, on 9/28/01, was lost or destroyed. Mohr notes the police procedural failures relating to this evidence, finding, "The blood vial was placed into evidence in Ms. Zunino's murder case, but there's no evidence that it was tested, nor matched to anything at the scene. The vial remained in evidence for this case. However, when the blood vial was personally delivered to a private forensic laboratory in 2017, as part of Mr. Nuccio's appeal, the lab received the vial in an unlabeled condition, and described it as being dark brown and damaged or contaminated. This means that at some point, the vial of Mr. Sprinkle's blood shed its label, and was improperly stored or handled in such a way as to destroy it for the purposes of testing. The lack of label on the vial also means that the chain of custody for this item cannot be properly documented." (Exh. TT at p. 4.);
- The negative strips, representing Item's #3 and #6, found near Zunino's body on the morning of the murder. (See Exhs. M, P, Q, R, S and T.) Mohr notes the police procedural failures relating to this evidence, finding, "It is unknown whether these belonged to the victim, the killer, or were unrelated to the crime scene in any way. The photo negative strips appear scratched and damaged in the crime scene photos. There is no record of the negative strips being printed prior to 2022. The photo negatives were properly placed into evidence, and preserved. However, according to the chain of custody, the negatives were checked out of evidence in 2006 for Mr. Nuccio's trial, and not checked in again until 2019, 13 years later. The evidence is unaccounted for between 2006 and 2019, until they reappear in the evidence room, having been checked back in by Officer Rodriguez, who was the person who had checked them out in 2006. The chain of custody for the film negative strips is thus broken, and at this point cannot be accounted for during the period of roughly 13 years. The lack of chain of custody means

that it cannot be stated with any certainty that the item placed back in evidence in 2019 is the exact same item that was collected at the murder scene in 2001, and checked out for Mr. Nuccio's trial in 2006. The negative film strips in the photos at the crime scene look more damaged than the ones now in evidence. It is unknown if they underwent a cleaning and restoration process, or why the appear to look so different from the original items photographed at the scene. The film strip sleeve (sic) also appears to be different; it is depicted in the crime scene photos as being torn, but 13 years later it is not torn. The evidentiary value of the film strips... has been forever clouded, due to the lack of a complete chain of custody." (Exh. TT at pp. 14-15.);

- Photographic evidence of the cut(s) on Terry Sprinkle's hands within two days of the murder. (See Exh. X at p. 9.) Mohr notes the police procedural failures relate to this very relevant evidence, finding, "Mr. Sprinkle had cuts on his hands consistent with a knife attack. When someone has a knife and stabs something deeply, their hand will frequently slip off the knife handle and come into contact with the blade; this is a commonly seen injury in individuals who have stabbed someone." (Exh. TT at p. 10.);
- All tire tread evidence including the casts and prints of Petitioner's tire treads destroyed in 2012. (Exh. Y.) Mohr addressed the procedural failure for the tire tread evidence, finding, "The cases of the tire tread imprints from the scene of the murder were all destroyed shortly after Mr. Nuccio's trial. On August 06, 2012, a police officer at the Stockton Police Department filed a request for destruction of the evidence, requesting the destruction of all of the casts and the impressions from Nuccio's Blazer. The form was not filled out completely, and the officer who made the request did not put his or her name on the form. There was no court order granted for the destruction of the evidence, and no D.A. filed a motion or proposed order for the destruction of the casts. Proper procedure for requesting the destruction does not appear to have been followed; certainly, the form was not filled out in its entirety, and should not have been processed." (Exh. TT at p. 13.).

The "uncollected," lost or destroyed evidence listed above meets the heightened standard. All of the evidence set forth above would have normally been collected and maintained throughout the investigation and prosecution of any murder – as it was with

Petitioner. This case involved a violent, bloody murder with a knife. It is elemental that any and all evidence related to Terry Sprinkle which was collected, viewed or analyzed by the State with respect to potential blood-like substance, knife marks (including potential stab wounds) constituted evidence that had "readily apparent" exculpatory value.

Secondly, this case involved evidence related to the vehicle used to transport and dump Zunino's body where she was found, represented by the tire tread evidence. The State, particularly the DOJ, did not preserve any of the evidence related to Sprinkle's vehicle, including the tire treads. Given the importance of the tread evidence from the scene, it was clear that the State should have been on notice that the evidence of Sprinkle's tires should be preserved for analysis and future inquiry. Likewise, given the central focus of the tire tread evidence at trial, the Stockton Police Department was on notice that the tire tread evidence was critical to the case. Indeed, this was the primary evidence used to convict Petitioner. In this context, the State was readily aware of the potential the exculpatory value of tire tread evidence related to Sprinkle's vehicle. Again, it would have been obvious to the Stockton Police Department, in 2012, that the casts of the scene and Petitioner's vehicle could prove exculpatory upon further expert review.

Should the Court find that the above evidence was "potentially useful," then the State's failure to collect and maintain the evidence, must be considered in the context of law enforcement compliance with basic procedure in the regular course of an investigation. The Court may infer bad faith where there is evidence of *Brady* violations or improper police procedure and systemic failures. There is evidence of bad faith that may be inferred from the *Brady* violations and systemic police failures in this case as set forth in Mohr's report.

Indeed, Beth A. Mohr opines:

> The failure of the Stockton Police Department's investigators and evidence technicians along with DOJ Criminalist Yoshida, to properly plan the investigation, collect and

> preserve evidence, process that evidence using appropriate forensic techniques, all the while maintaining a proper chain of custody, is quite stunning. These actions are not consistent with the minimum accepted standards of professional police procedures, and is not consistent with how law enforcement and criminal investigative personnel are trained to conduct themselves in a serious criminal investigation such as a homicide.

(Exh. TT.)

1. Materiality

As we discussed above, *Trombetta* defines material evidence as that which "might be expected to play a significant role in the suspect's defense. To meet this standard of constitutional materiality, [citation] evidence must both possess an exculpatory value that was apparent before the evidence was destroyed, and be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means." (*Trombetta*, *supra*, 467 U.S. at pp. 488-489, fn. omitted.) Under *Youngblood*, the standard is whether the destroyed evidence, had it been subjected to analysis, would have been "potentially useful" to defendants. (*Youngblood*, *supra*, 488 U.S. at p. 58.)

Here, the evidence related to Sprinkle was clearly relevant to the murder inquiry of Zunino prior to the State's failure to collect, loss or destruction of the evidence. As noted by expert witness Mohr throughout her report, the Stockton Police Department repeatedly and significantly failed to preserve typical evidence collected during a murder investigation and failed to complete the logical investigation of their initial suspect – Terry Sprinkle. The evidence that Morh cites in coming to this conclusion includes a litany of facts, including:

> In this case, officers initially investigated Mr. Sprinkle as a suspect. Mr. Sprinkle was seen at the scene, a witness provided his license number as being the vehicle that Jody Zunino got into the last time she was seen alive. Mr. Sprinkle met [the] physical description of the person described by witnesses – a bald, white male with a mustache; Mr. Nuccio did not meet this description. Mr. Sprinkle admitted being at

> the scene and picking up a sex worker, and stated that she brought a knife with her, into his vehicle.
>
> Mr. Sprinkle had cuts on his hands consistent with a knife attack. When someone has a knife and stabs something deeply, their hand will frequently slip off the knife handle and come in contact with the blade; this is a commonly seen injury in individuals who have stabbed someone. Mr. Sprinkle's Ford Bronco, bearing the license plate provided by a witness, had dark liquid splatter consistent with a knife attack as well as liquid splatter pattern consistent with cast-off created by repeated stabbing. A cast-off splatter pattern is a blood stain pattern resulting from blood droplets released from an object that cast-off the splatter. The pattern can indicate the direction and velocity of the motion of the object that cast-off the splatter. Mr. Sprinkle's vehicle also had actual stab-like cuts in the seat and headliner. ***In other words, given the totality of the evidence, Mr. Sprinkle was a very likely suspect in Ms. Zunino's murder***.

(Exh. TT at p. 9-10.)

Here, it is elemental that the evidence which makes an individual a likely suspect in a murder is "potentially useful." As set forth in full above and in full in her report, police procedural expert Mohr states specifically why the pieces of evidence related to the initial investigation were both probative and material to the investigation. (See Exh. TT.) Petitioner further notes that evidence is "material" if the evidence is relevant as to either guilt or punishment. (See *Brady*, *supra*, 373 U.S. at p. 87.) Petitioner maintains that the evidence which was not collected, maintained or properly analyzed related to Sprinkle was material, because it was all relevant to Sprinkle's guilt and Petitioner's potential third party culpability defense.

This case has similarities to *U.S. v. Cooper* (9th Cir. 1993) 983 F.2d 928 (*Cooper*). In that case, the defendants were charged with conspiracy to manufacture methamphetamine. (*Id.* at p. 930.) After searching the premises, various pieces of equipment were destroyed and put into large drums pursuant to Drug Enforcement Agency policy. (*Ibid.*) The government was aware the drums would only be stored for a

short time before destruction. (*Ibid.*) The defendants contended they were engaged in lawful manufacturing activity. (*Id.* at p. 929.) They argued the government's destruction of the entire lab deprived them of the ability to establish their defense. The government offered no reasoning for its decision. Destruction of the evidence occurred after government investigators knew the nature of the defense and after the defendants had made several requests for return of the equipment. (*Id.* at p. 931.)

"Agents involved in the search knew that the lab was ostensibly configured to make [a legal chemical]. In conversations following the seizure, agents repeatedly confronted claims that the equipment was specially configured for legitimate chemical processes and was structurally incapable of methamphetamine manufacture. In response to defense requests for return of the equipment, government agents stated that they held it as evidence. This statement was repeated even after the equipment had been destroyed." (*Cooper*, *supra*, 983 F.2d at p. 931.) The government did not challenge the defense's argument regarding the evidence's materiality or the bad faith of the law enforcement officers, instead arguing that comparable evidence was reasonably available. (*Id.* at p. 931.) The court rejected this argument and upheld the dismissal of the indictment. (*Id.* at p. 933.) "The defendants' version of the facts, which was repeatedly relayed to government agents, had at least a ring of credibility. They should not be made to suffer because government agents discounted their version and, in bad faith, allowed its proof, or its disproof, to be buried in a toxic waste dump." (*Ibid.*)

Similarly, here, the evidence related to Sprinkle had the potential to exonerate Petitioner. As repeatedly emphasized in Mohr's report, the police knew of the importance of the evidence at the time it was reviewed, as it was all basic investigation procedure related to a likely suspect, Sprinkle. In this context, the evidence meets the *Trombetta* standard of possessing "exculpatory value that was apparent before the evidence was destroyed." (*Trombetta*, *supra*, 467 U.S. at pp. 489)

However, should this Court find that the evidence does not meet that standard, the evidence clearly meets the lesser standard set forth in *Youngblood* as "potentially useful"

to Petitioner. (*Youngblood*, *supra*, 488 U.S. at p. 58.) To the extent that the evidence is found to be "potentially useful," Petitioner sets forth *Youngblood*'s bad faith requirement below.

2. Bad Faith

If the evidence is "potentially useful" under *Youngblood*, then the court turns next to the question of whether the government acted in bad faith. (*Youngblood*, *supra*, 488 U.S. at p. 58.) As this Court found in *Fultz,* "bad faith" may be established based upon the collective suppression, "loss" and destruction of evidence related to an initial suspect, violations of *Brady,* and law enforcement conduct contrary to basic law enforcement procedure. (See *People v. Fultz, supra*, 69 Cal. App.5th at p. 424.)

Moreover, the "lost" evidence recently discovered in the post-conviction process of this case reveals a pattern of misconduct by the State. As noted above, the Stockton Police Department destroyed all evidence related to the tire treads from the scene and Petitioner's vehicle in 2012. The destruction was done without a court order or any legal process. Again, given the central nature of this evidence to this case and to Petitioner's conviction, the destruction of this evidence demonstrates a malicious intent or bad faith. The Stockton Police Department, through Officer Rodriguez, also "lost" Petitioner's DNA sample while personally transporting it. It should be noted that the last time that Officer Rodriguez was transporting Petitioner's DNA, *he was also personally transporting the murder weapon*. The Stockton Police Department, through Rodriguez, "lost" Terry Sprinkle's blood vial in 2019, when Petitioner was conducting DNA testing on the murder weapon. All of the evidence that has been lost or destroyed by the State is of material value, both in the context of its loss or destruction, and to the case itself. Bad faith, extremely bad faith, is the only reasonable explanation for this pattern of lost and destroyed evidence in this case.

3. Remedy

With respect to the proper remedy, courts have a large measure of discretion in determining the appropriate sanction for failure to preserve material evidence. (*People v.*

Memro (1995) 11 Cal.4th 786, 831.) There are few cases after *Youngblood*, where the bad faith destruction of material exculpatory evidence warranted anything less than reversal, and reversal is proper if less drastic alternatives are unavailable. (See *U.S. v. Kearns*, *supra*, 5 F.3d at p. 1254.)

For example, the *Cooper* court found that a proposed jury instruction would pale in comparison to the potential value of the destroyed evidence. (*Cooper*, *supra*, 938 F.2d at p. 932.) The destruction of the lab equipment itself deprived the defendants the ability to establish their innocence, because experts could not determine by viewing photographs whether or not the lab was constructed for methamphetamine production. (*Ibid*; see also *U.S. v. Bohl* (10th Cir. 1994) 25 F.3d 904, 914 [bad faith destruction of evidence required dismissal because the effect of destruction and dearth of adequate secondary evidence violated the defendants' due process rights].)

Moreover, it is far from obvious what lesser remedy might come anywhere close to addressing the state's bad faith failure to retain material evidence. The importance of holding the police and the prosecution to their obligations under *Brady*, *Trombetta* and *Youngblood* cannot be overstated. Police and prosecutors are more than willing to avail themselves of technology when it is to their advantage; there must be a level playing field that gives defendants equal access to the same evidence. Equal and fair treatment in this respect is nothing less than the foundation upon which due process is built. The same is true of *Trombetta* and *Youngblood*; what is so disturbing about unretained or destroyed evidence is that we can never truly know what was lost.[20] While judges must act as "quality control" to remedy constitutional errors, it is ultimately up to the police and prosecutors to end the failure to retain evidence or its bad faith destruction. Here,

[20] The defendant in *Youngblood* provides a disturbing cautionary note. Twelve years after the Supreme Court decided the case, the science had sufficiently improved over time to permit testing of the evidence in the case. The defendant was then exonerated due to the new DNA evidence. (See Whitaker, *DNA Frees Inmate Years After Justices Rejected Plea* (Aug. 11, 2000) The New York Times, http://www.nytimes.com/2000/08/11/us/dna-frees-inmate-years-after-justices-rejected-plea.html.)

Petitioner asks the Court to consider a remedy in accordance with all of the claims and evidence presented herein. Accordingly, Petitioner asks this Court to order Petitioner's judgment and conviction reversed with a declaration of actual innocence – barring the State from reinstating charges in this case.

VII. THE PROSECUTION PRESENTED FALSE TESTIMONY AND FALSE EVIDENCE THROUGHOUT PETITIONER'S TRIAL, UNDERMINING THE CONFIDENCE IN THE OUTCOME OF PETITIONER'S TRIAL IN VIOLATION OF HIS RIGHT TO DUE PROCESS UNDER *BRADY* AND *NAPUE*

In this case, the State suppressed evidence related to the likely murderer and instead prosecuted an innocent man based upon a tenuous motive and even more tenuous tread mark evidence. The tire tread evidence constituted the most critical false evidence. The prosecution relied heavily upon this false evidence and even misstated the evidence to the jury. Ultimately, D.A. Rasmussen's presentation of this false evidence violated Petitioner's right to due process under *Napue*.

The Supreme Court has long held that a conviction obtained using knowingly perjured testimony violates due process. (*Mooney v. Holohan* (1935) 294 U.S. 103, 112.) It has long been held that knowingly presenting false testimony to a fact-finder necessitates reversal of a conviction if "the false testimony could . . . in any reasonable likelihood have affected the judgment of the jury." (*Giglio v. United States* (1972) 405 U.S. 150, 153, 154 (quoting *Napue v. Illinois* (1959) 360 U.S. 264, 271; *Dow v. Virga* (9th Cir. 2013) 729 F.3d 1041, 1047-1049.) This is known as a *Napue* violation. (See *Dow*, *supra,*729 F.3d at p. 1047.) "In addition, the state violates a criminal defendant's right to due process of law when, although not soliciting false evidence, it allows false evidence to go uncorrected when it appears." (*Soto v. Ryan* (9th Cir. 2014) 760 F.3d 947, 957-958; *Reis-Campos v. Biter* (9th Cir. 2016)832 F.3d 968; *Alcorta v. Texas* (1957) 355 U.S. 28.

The Supreme Court in *Napue* held that "a conviction obtained through use of false evidence, known to be such by representatives of the State," violates the Fourteenth

Amendment. (*Napue, supra*, 360 U.S. at p. 269.) Prosecutorial misconduct in the form of false testimony violates the constitutional rights of the defendant and requires a reversal of the conviction if the following three elements are met: "(1) the testimony was actually false, (2) the prosecutor knew it was false, and (3) the false testimony was material (i.e., there is a reasonable likelihood that the false testimony could have affected the judgment)." (*Dow, supra*, 729 F.3d at p. 1050; citing *Napue,* 360 U.S. at 271-72); see also *Alcorta v. Texas* (1957) 355 U.S. 28, 31 [the state cannot allow a witness to give a material false impression of the evidence].)

Napue applies whenever a prosecution "'knew or should have known that the testimony was false.'" (*Hayes v. Brown* (9th Cir. 2005) 399 F.3d 972, 984 (en banc).) As described in the previous Claim II, D.A. Rasmussen had a clear *Brady* obligation to disclose the exculpatory evidence regarding Sprinkle as well as the pattern of prior misconduct of Officer Anderson. (*Kyles, supra*, 514 U.S. at p. 438 ["any argument for excusing a prosecutor from disclosing what he does not happen to know about boils down to a plea to substitute the police for the prosecutor, and even for the courts themselves, as the final arbiters of the government's obligation to ensure fair trials"]; *Giglio, supra,* 405 U.S. at p. 154 [whether the nondisclosure was a result of negligence or design, it is the responsibility of the prosecutor].) If the prosecutor has a duty to investigate and disclose favorable evidence known only to the police, he "should know" when a witness testifies falsely about such evidence. (*Jackson v. Brown* (9th Cir. 2008) 513 F.3d 1057, 1075.) The prosecution in the present case had a duty to correct the false testimony of Criminalist Yoshida, and the prosecution's failure to correct the testimony violated Petitioner's right to due process.

A. Factual Background

As set forth in the *Brady* claims above, D.A. Rasmussen is at least partly responsible for suppressing much of the original investigation evidence implicating Terry Sprinkle, including: Sprinkle's CLETS, the details of Sprinkle stabbing a man to death with the knife from his "knife belt," the details of Sprinkle stabbing a sex worker at a

hotel on Wilson Way with a knife from his "knife belt," the "full" interrogation of Sprinkle that included the reference to the cuts to his hands (within 48 hours of the murder) and his arrest and blood draw for evidence in this case, the extensive evidence related to Sprinkle's vehicle as the likely murder scene – even the photos (taken by Stockton Police Department) of the tire tread from Sprinkle's vehicle. The foregoing is only part of the recently discovered suppressed evidence by the prosecution.

DOJ Criminalist Yoshida testified regarding the tire tread analysis at trial. (See RT 419-599; Exh. A.) It was either the first or second tire tread forensic case that she had worked on for the DOJ. (Exh. A.) Yoshida explained that Petitioner's tires were relatively new at the time that she analyzed them, so they did not have many individualizing characteristics which could be used to identify them. (RT 530, 532.) Yoshida described the process that she used to compare the casts from the scene to the casts of Petitioner's Blazer tires, and noted that some of the impressions from the scene were "consistent" with the casts of Petitioner's Blazer tires. However, Yoshida noted repeatedly that the impressions of the treads could not be considered a positive "match." (RT 450, 457-459, 563-564.)

Yoshida also described the tire stance measurements reflecting the distance between the left and right tires of the vehicle. Stance measurements were taken by DOJ agents and Stockton Police Officer McGinnis the dirt field near Zunino's body. Officer McGinnis recorded the measurements and described the area where the measurements were taken as having a "shallow indentation, a very shallow indentation." (RT 345-347.) Yoshida did not personally take the measurements, nor did she supervise them. (RT 519-520.) Yoshida reported that the stance measurements from the crime scene were "60" inside, 66" center, and 75.5" outside. (RT 556.) She further provided the stance measurements for Petitioner's vehicle as 58.5" inside, 65.5" center, and 72.5" outside. RT 554.) To compensate for the disparity, Yoshida falsely testified that the area where the measurements "dips significantly." (RT 437-438.) Yoshida further suggested that the significant dip in terrain could make up for the disparity of 3" in length between

Petitioner's vehicle and the crime scene measurements. (RT 438, 590.) Finally, Yoshida suggested that Petitioner's vehicle could leave tracks as wide as 77" across. (RT 590.) This figure is at least 4.5" wider than the original measurements that Yoshida gave for Petitioner's vehicle. (RT 554.)

As set forth in police procedural expert Mohr's report, tire tread analysis is a recognized area of forensic science, and there are bona fide experts in this field as well as complete databases of tire impressions that competent law enforcement officers regularly utilize in analyzing tire tread evidence. (See Exh. TT at p.7.) Mohr described Yoshida's unprofessional, patently incorrect and biased review of tire tread in this case in several instances. (See Exh. TT.) Specifically, with respect to Petitioner's vehicle (reviewed 5 years after the murder), Mohr notes:

> Mr. Nuccio owned a white Chevy Blazer at the time of the murder, by 2006 when the vehicle was processed by criminalists, the vehicle had been wrecked, and was sitting unused, and open to the weather, in his father's yard. It is unknown whether the tires on the vehicle in 2006 were the same tires present on the vehicle in 2001, when the murder occurred, but investigators presumed that they were the same tires.
>
> Mr. Nuccio's Blazer was fully processed by evidence technicians including Criminalist Yoshida. However, unlike Mr. Sprinkle's Bronco, the Blazer did not have any visible liquid splatter. Criminalists processed numerous presumptive tests for blood, and found Mr. Nuccio's blood to be present on the driver's side door, likely from the accident which disabled the vehicle. Ms. Yoshida testified that she performed tests for blood properly on Mr. Nuccio's vehicle. The area tested was in the driver's portion of the vehicle, and it was known that the last time that Mr. Nuccio drove the vehicle he suffered a head injury in an accident. The trace amount of blood on the driver's side of the vehicle was consistent with the description of the accident. Mr. Nuccio's vehicle didn't have cut marks on the headliner and upholstery, it lacked pooled liquid, liquid splatter, or any of the other characteristics of concern found in Mr. Sprinkle's Bronco. The fact that the presumptive tests showed blood

would indicate that Criminalist Yoshida performed the 2-step test properly for Mr. Nuccio's vehicle.

Criminalist Yoshida had "visually determined" that Mr. Sprinkle's Bronco wasn't a match for tire tread impressions left at the scene or on the victim's body. This is not the proper analysis that should have been conducted to determine whether or not the tires on Mr. Sprinkle's vehicle were the tires that left impressions at the murder scene, and on Ms. Zunino's body. Ms. Yoshida fully and properly processed Mr. Nuccio's vehicle tires, including following the proper procedure for applying petroleum jelly to the tires, and rolling the vehicle over butcher paper, whereupon print powder is applied to the transferred material, bringing up a visual depiction of the tire impressions; she testified that she rolled up the paper and properly preserved it. This is the procedure that should have been performed with Mr. Sprinkle's Bronco, but Ms. Yoshida failed to perform that test.

Criminalist Yoshida variously described the tires on Mr. Nuccio's Blazer as being a "match" to the crime scene where Ms. Zunino's body was dumped, later the tires are described as being "consistent" with the tire impressions left at the crime scene, and finally, at trial, stated that while the tires were not a match, the "could not be eliminated" as potentially matching the crime scene. This is a series of extremely fine distinctions. Studies show that juries do not understand this type of terminology, and are unable to parse through these types of distinctions around forensic evidence without the assistance of a *bona fide* expert to explain these scientific nuances.

There is no record to indicate that either the cases of the tire tracks left at the scene, or the photographs of the tire marks on the victim's body, were submitted for expert identification with the FBI or other forensic experts who possess complete databases of tire impressions. It is unknown why this wasn't done, particularly since Criminalist Yoshida testified that she had a difficult time getting the tire manufacturer to provide her with information.

(Exh. TT at p. 7.)

In light of the evidence above, it is with significant bad faith and a disregard to his duties as a government official, that D.A. Rasmussen both lied about Yoshida's findings and encouraged the jury to disregard an entire field of forensic science, telling the jury, "It doesn't take an expert. She showed you how to do it. You will have all of that back there. Look at the pictures, look at the casts, look at defendant's tire.... It doesn't take an expert.... It's the same. It's the same." (RT 855.) Petitioner asks this Court to consider D.A. Rasmussen's false representations, intentionally misleading the jury, as an abuse of his office. Petitioner asks this Court to apply the rule of law.

B. The Prosecution Knowingly Presented False Testimony

In Petitioner's case, the prosecution's use of false testimony regarding the tire tread and stance evidence constituted prosecutorial misconduct which violated Petitioner's right to due process under *Napue* and *Brady*. (See *Napue v. Illinois* (1959) 360 U.S. 264, 269; *Brady v. Maryland, supra,* 373 U.S. at p. 83.) This issue has only truly come to light with the newly discovered evidence and chain of custody in this case – including the destruction of the tire tread evidence without a legal court order. Thus, while a *Napue* claim might typically be presented on direct appeal, here the evidence in support of this claim was only recently discovered due to the bad faith actions of the State. Accordingly, Petitioner asks that this Court consider the claim timely and appropriately brought by way of the present habeas claim.

In the present case, D.A. Rasmussen knowingly relied upon Yoshida's false testimony and even misstated the substance of her testimony to create the false narrative necessary for the discrepancy in physical evidence and to confuse the jury. In his closing arguments, D.A. Rasmussen relied heavily upon a carefully constructed narrative that portrayed the tire tread and stance evidence at the scene as an "exact match" to Petitioner's vehicle. As the record bears out, this was in fact false, and D.A. Rasmussen was acutely aware of this fact.

Initially, D.A. Rasmussen misstated the facts with regard to Yoshida's analysis of the tire tread comparison itself as an forensic expert, repeatedly articulating the analysis

as simplistic, something that the jury can do with the evidence before them. Rasmussen emphasized to the jury, "It doesn't take an expert. She showed you how to do it. You will have all of that back there. Look at the pictures, look at the casts, look at defendant's tire.... It doesn't take an expert.... It's the same. It's the same." (RT 855.) Rasmussen argued, "It's not rocket science, ladies and gentlemen. Take a look at the evidence back there, look at it. It's straightforward. You align things and you look. It's the same." (RT 904.)

During his closing D.A. Rasmussen emphasized Yoshida's false testimony describing the area of the scene where the measurements were taken as "uneven ground" and "a bit of a ditch." (RT 837.) He further emphasized that the State had presented the physical casts of the crime scene and Petitioner's vehicle in court, so that the jury could view it with their own eyes. (RT 838.) In addressing the defense questioning of Yoshida's "remeasurements" of Petitioner's tire stance (which led her to provide a 4" variance for the tire stance), D.A. Rasmussen argued that Yoshida remeasured "because [she] couldn't remember how [she] did that measurement. Then it fits." (RT 912.)

D.A. Rasmussen compared Sprinkle's vehicle, stating, "the defense is trying to make you say, hey, the Bronco II, this Terry Sprinkle, he is the guy that did that, look at his measurements, that Bronco II up there, and the defense did not put that on any of these exhibits so you could see them face to face... he tried to mislead you by not putting it up there." (RT 842.) Again, emphasizing false and unsubstantiated evidence, D.A. Rasmussen told the jury, "You heard Sarah Yoshida say, we thought we had our guy... She said that she tested [the blood-like substance] and it was sugar. She looked at the tire tread, they didn't match.... the tire stance... was off, too." (RT 843.) Rasmussen emphasized, "The Bronco II that we've shown you pictures of, it doesn't even come close to the tread on the defendant's Blazer or the tread left out at the scene." (RT 843.)

Of course, the defense never had access to Sprinkle's vehicle or any evidence preserved from it, and D.A. Rasmussen was keenly aware of this fact. Here, D.A. Rasmussen not only did not correct the false testimony provided by Yoshida, he restated

the false evidence in a manner that emphasized that the details did not matter, because tire tread analysis is an imperfect science, or not a science at all. Yoshida's "remeasurements," her testimony, and the evidence presented to the jury regarding the tire treads and tire stance was false. As D.A. Rasmussen conceded to the jury, it was not science. Ultimately, D.A. Rasmussen was not merely misstating the facts, he was being mendacious.

1. The False Evidence Was "Material" and Prejudicial

A "prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police." (*Kyles v. Whitley, supra*, 514 U.S. 419 at pp. 437-438; *Strickler v. Greene* (1999) 527 U.S. 263, 280-281. Further, the Ninth Circuit has observed that "[b]ecause the prosecution is in a unique position to obtain information known to other agents of the government, it may not be excused from disclosing what it does not know but could have learned." (*Amado v. Gonzalez* (9th Cir. 2014)758 F.3d 1119, 1134; *Carriger v. Stewart* (9th Cir. 1997) 132 F.3d 463, 480 (en banc).

In order to assess their materiality, *Napue* and *Brady* violations should be considered collectively. (*Jackson v. Brown* (9th Cir. 2008) 513 F.3d 1057, 1071 (stating that courts should evaluate the "cumulative effect of the prosecutorial errors for purposes of materiality separately and at the end of the discussion.") (citing *Kyles v. Whitley*, *supra*, 514 U.S. at p. 436 n.10) (internal quotation marks omitted).) If the *Napue* errors are not material standing alone, the Court must consider the *Napue* and *Brady* errors together and determine whether "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." (*Id*.)

In this case, whether relief is warranted hinges upon the definition of "materiality" under *Napue* and *Brady*. It is well-established that a *Napue* violation is "material" and results in the reversal of a conviction "if the false testimony could in any reasonable likelihood have affected the judgment of the jury." (*Dow v. Virga* (9th Cir. 2013) 729 F.3d 1041, 1047 (citing *Napue*, *supra*, 360 U.S. at p. 271; and *Giglio v. United States*

(1972) 405 U.S. 150, 153.) Although the government's knowing use of false testimony does not per se require reversal, the *Napue* materiality standard is "less demanding" than "ordinary" harmless error review. (See *Dow, supra*, 729 F.3d at p. 1048 (citations omitted).) Furthermore, in discussing materiality under *Napue*, the Ninth Circuit has "gone so far as to say that 'if it is established that the government knowingly permitted the introduction of false testimony, reversal is virtually automatic.'" (*Jackson, supra*, 513 F.3d at p. 1076 (quoting *Hayes, supra,* 399 F.3d at p. 978) (emphasis added). Thus, the question of materiality is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a "verdict worthy of confidence." (*Hayes, supra*, 399 F.3d at p. 984 (citations omitted).)

Ultimately, the false testimony of DOJ Criminalist Yoshida directly contributed to Petitioner's conviction. Her false testimony served to strengthen the very weak case which lacked motive, means and true opportunity. The false testimony impacted the fairness of Petitioner's trial, and now casts extreme, grave doubt on whether the verdict can be viewed as "worthy of confidence" given the evidence presented to this Court. To assess the materiality of this error, the Court need look no further than the direct impact of the false testimony. This is not a case where the false testimony could have had any other impact than to contribute to the wrongful conviction of Petitioner. The prejudice is undeniable. Petitioner's conviction secured by the false testimony of the State's witnesses must be reversed.

VIII. CONCLUSION

Petitioner incorporates by reference all of the claims and evidence set forth in the attached original petition filed by Petitioner. Petitioner asks the Court to issue an Order to Show Cause, and order the State, through the Attorney General, to file a Return. Petitioner further asks this Court to explicitly state Petitioner's subpoena powers with respect to the Order to Show Cause in this case. Ultimately, after a consideration of the evidence set forth herein and developed before the Court through an evidentiary hearing (if necessary), Petitioner asks this Court to reverse his conviction an declare him "actually innocent" of the murder of Zunino.

Dated: February 18, 2025

Respectfully submitted,

JENNIFER M. SHEETZ
Counsel for Petitioner

CERTIFICATION

I, Jennifer M. Sheetz, declare under penalty of perjury:

I am an attorney admitted to practice law in the State of California. I represent Petitioner in the above case.

Pursuant to the California Rule of Court, rule 8.240, subd. (c), I hereby certify that the Appellant's Petitioner's Petition for Writ of Habeas Corpus in this matter contains 40,683 words, inclusive of footnotes. Petitioner submits an Application for leave from the Court to file an oversized brief.

Executed under penalty of perjury this 22nd day of February, 2025, at Mill Valley California.

Jennifer M. Sheetz

PROOF OF SERVICE

Re: People v. Joseph Hathorn Nuccio

I declare that I am over the age of 18, not a party to this action and my business address is 775 E. Blithedale Ave., PMB 146, Mill Valley, California 94941. My electronic service address is jmsheetz@hotmail.com/jennifermsheetz@gmail.com. On the date shown below, I served the within Petition for Writ of Habeas Corpus and Exhibits to the following parties hereinafter named by electronic mail to each of the following parties using the email addresses indicated:

Rob Bonta, Attorney General
Office of the Attorney General
SacAWTTrufiling@doj.ca.gov
(Respondent)

X Placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Mill Valley, California, addressed as follows:

San Joaquin County Superior Court
Office of the Clerk Criminal Div.
180 E. Weber Ave.
Stockton, California 95202

San Jaquin County District Attorney
222 E. Weber Ave., #202
Stockton, CA 95202

Joseph Nuccio

I declare under penalty of perjury the foregoing is true and correct. Executed this 22nd day of February 2025, at Mill Valley, California.

Jennifer M. Sheetz