

Name: Shawn Rodriguez #V16387Address: PO Box 290066Represa, Ca. 95671CDC or ID Number: V16387**FILED**  
Superior Court of California  
County of Placer

JUL 24 2015

Jake Chatters  
Executive Officer & Clerk  
By: M. Anderson, DeputySuperior Court of CaliforniaCounty of Placer

(Court)

Shawn Rodriguez

Petitioner

vs.

Jeff MacComber, Warden, CSP-SAC

Respondent

## PETITION FOR WRIT OF HABEAS CORPUS

No. WHC-0001400

(To be supplied by the Clerk of the Court)

**RECEIVED**

JUL 24 2015

## INSTRUCTIONS - READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the superior court, you only need to file the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal and you are an attorney, file the original and 4 copies of the petition and, if separately bound, 1 set of any supporting documents (unless the court orders otherwise by local rule or in a specific case). If you are filing this petition in the Court of Appeal and you are *not* represented by an attorney, file the original and one set of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and 10 copies of the petition and, if separately bound, an original and 2 copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court (as amended effective January 1, 2007). Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

## This petition concerns:

☒ A conviction☐ Parole☒ A sentence☐ Credits☐ Jail or prison conditions☐ Prison discipline☐ Other (specify): \_\_\_\_\_1. Your name: Shawn Michael rodriguez2. Where are you incarcerated? California State Prison-Sacramento3. Why are you in custody? ☒ Criminal conviction ☐ Civil commitment*Answer items a through i to the best of your ability.*

a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

Conspiracy to Commit First Degree Murder / Felony Auto TheftAggravated Kidnap for Extortion / Using another's name to obtain Creditb. Penal or other code sections: 182/187;209;530.5-PC/VC 10851c. Name and location of sentencing or committing court: Ca. Superior Court, Placer CountyAuburn, Ca.d. Case number: Placer County # 62-034689e. Date convicted or committed: October 6, 2003f. Date sentenced: December 8, 2003g. Length of sentence: 25-life;7-life;4 more yearsh. When do you expect to be released? Death.i. Were you represented by counsel in the trial court? ☒ Yes ☐ No *If yes, state the attorney's name and address:*Jesse Serafin, Placer county Public Defenders Office (Deceased)

4. What was the LAST plea you entered? (Check one):

☒ Not guilty☐ Guilty☐ Nolo contendere☐ Other: \_\_\_\_\_

5. If you pleaded not guilty, what kind of trial did you have?

☒ Jury☐ Judge without a jury☐ Submitted on transcript☐ Awaiting trial

**Ground 1:** State briefly the ground on which you base your claim for relief. For example, "The trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page 4. For additional grounds, make copies of page 4 and number the additional grounds in order.)

The use of False Evidence at Trial Denied Petitioner his Rights to Due Process and a Fair Trial, as guaranteed by the 5th and 6th Amendments to the U.S. Constitution and its Analogous California statutes.

**a. Supporting facts:**

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts on which your conviction is based. *If necessary, attach additional pages.* CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel, you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is, *who did exactly what to violate your rights at what time (when) or place (where).* (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

In 2003, Alleged Victim Nicholas Hamman testified in the above referenced case, which resulted in the conviction and sentence at issue here. While on the stand, he told several lies, including, but not limited to, a fabricated story in which the petitioner used a ruse in order to lure him into the crime scene and the phisically Assaulted him to accomplish the crime of Kidnapping; a story in which he claimed not to have seen the petitioner take steps to free him from the confinement at issue and also preserve his life by preventing the attempt on his life.

On April 6, 2015, the Ca. Attorney Generals Office recieved a letter from Mr. Hamman, at least the second, in which he swears under penalty of perjury that he lied at the trial.

On April 29, 2015, he contacted the petitioner in response to a request for an Affidavit, and again made reference to lying at trial.

While in prison, he has repeatedly told Prisoners that he commit perjury to put the petitioner in prison for life. Several of those prisoners have volunteered declarations

(See Attached Continuation Page)

**b. Supporting cases, rules, or other authority (optional):**

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

Ca. Penal Code §1473(b)(2); In Re Richards, (2012) 55 Cal.4th 948; In Re Malone, (1996) 12

Cal.4th 935; In Re Sassounian, (1995) 9 Cal. 4th 535; U.S. V. Rahman, (1999) 189 F3d 88;

Hayes V. Woodford, (2002) (9th Cir.) 301 F3d 1054; Hall V. Director of Corrections, (2003)

(9th Cir.) 343 F3d 976; U.S. V. Vaziri, (1999) 164 F3d 556; Cline V. Wal-Mart Stores, Inc., (1998) 144 F3d 294; Mesarosh v. U.S. (1956) 352 U.S. 1

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Continuation of Ground 1-Supporting facts

(Continued From Previous Page)describing what exactly he told them,ranging from his perjured testimony having been solicited by Counsel for the people,to lying about receiving a Bruise from the petitioner in a struggle to kidnap him,to the petitioner not having even been present at that time and place,to having lied about the level of the water in the room he was held in order to convince the jury he was in grave danger and feared for his life,to having seen the petitioner try to remove the screws of a widow to allow him to go free,and also attempt to break said window,and most compellingly,having seen,himself,that petitioner removed the garden hose from the vent to prevent his death by carbon monoxide poisoning.

Taken as a whole,and viewed in the entire context of the trial,these claims, if true,serve to negate Most,if not All of the Elements neccesary for guilty findings regarding the charges of Aggravated Kidnap for extortion (7-Life)and Conspiracy to commit murder(25-Life).

For Instance:Conspiracy to Commit Murder requires a unanimous finding by a jury that the defendant had the specific intent to kill the victim,and also requires a finding that overt acts were committed in futherance of the Murder(CALJIC 8.69) Removal of the hose,witnessed by the victim,therefore,would tend to negate the Existence of Intent to kill,as would an overt act be negated in this instance. Given how shaky the verdict was to begin with,after 5 days of deliberations,and several Jurors having voluntarily admitted to never have found intent to kill in the first place(See Attached unsworn declarations[CT 371-378]and Article from the Auburn Journal dated October 5,2003 by Ryan McCarthy),and that the petitioner did testify to these claims at trial,it seems probable thatthe jury would have sided with the petitioners statement of the case at trial if not for the perjured claims by the victim,to the contrary.

Likewise,CALJIC §9.53 requires unanimous finding of 2 elements by a jury: First,that a defendant held a person,and second,that he did it with the specific intent to commit Extortion.The People submitted that a plan(Premeditation)was made the night before the confining of the victim,that the petitioner willfully and Physically participated in that plan,physically striking Mr. Hamman to accomplish that goal,and did so,with the goal,from the start,of extorting Mr.Hamman.

Counsel for the People further stated,in support of this theory,that 1)the petitioner could release the victim at any time,knew so and refused to;and 2)the petitioner used the rising water level in the room to extort Mr.Hamman,with use of testimony By Mr. Hamman that the water rose to his neck at one point cuasing



him to fear for his life, facilitating the crime of extortion.

By that logic, Mr. Hammans assertions that the petitioner attempted in Two separate ways to free him from his confinement would necessarily point to a) an assumption by the petitioner that he could not free the victim or was not aware that he could (Negating the theory that the continued confinement was intentional) b) a lack of intent to hold the victim or otherwise detain him with the intent to commit extortion.

Secondarily, and also by that logic, Mr. Hammans assertions that he lied about being lured into the building and the cell, and further, about being Kicked by the petitioner to facilitate that confinement, Indeed, his statement (Consistent with that of the petitioner and of The Denied witness Erin Hughes,) that the petitioner was not even present at the time of confinement, would tend to render that theory of premeditation, a plan, and specific intent to extort throughout, completely void.

In fact, these assertions mean, necessarily, that the weight of testimony on this issue would have undeniably sided with the petitioner's testimony, and thus, would have resulted in a finding of not guilty of the 7-life offense, given that the petitioner testified that he did not plan it, did not know he could open the door, did not intentionally hold the victim to commit extortion (Only extorting as a matter of convenience separate from the holding/confining) did not lure the victim, did not kick him or otherwise participate in that aspect of the codefendants criminality...

Which, not only negating the elements of the 7-life crime, would have also have provided a basis for instructing the Jury regarding the lesser included offense of Misdemeanor False Imprisonment, which, for the record, most if not all jurors in the case stated they would have voted for. Indeed, answering that they would have voted "Guilty" for False Imprisonment if not for the word "Violence" in the instructions, they did necessarily "Defer" to the 7-life crime due to a factor in mitigation; namely, a perceived lack of violent conduct on the part of the petitioner, Amounting to a miscarriage of justice which, if not for the false evidence, would have been prevented at trial.

In any case, given that Mr. Hamman admits perjury, his credibility is lacking, and this showing presents a scenario in which the defense theory of the case must be given substantially more weight as a result, which would have definitely resulted in a different result both in the guilt finding phase and the sentencing phases of the trial, given that there was not allowed any other testimony from witnesses to the crime itself.

As Supporting documentation for these facts,petitioner submits the following:

1)Exhibit a:Sworn Statement from Victim Nicholas Hamman,in his letter addressed to California Attorney Generals office and Attached to the letter by Deputy Attorney General Rachelle A. Newcomb,Dated 3-29-2015;

2)Exhibit b:Letter from Victim Nicholas Hamman to Petitioner dated 4-29-2015 in which he refers to lying at trial three seperate times in one page, and in which he refers to an interview with the Placer county District Attorneys Investigator,who Attempted to Dissuade him as a witness by telling him that his attempt to right his wrong would come to nothing;

3)Exhibit c:Sworn Declaration of Prisoner Thurl Light#F68745,In which he states that Mr. Hamman Admitted to him that 1)He committed Perjury,2)He had entered the building on his own,free of trickery by anyone but had been afraid to admit so initially;3)That Defendant Anna Rugg Had kidnapped him on her own,4)That petitioner and his then-girlfreind had been outside of his presence when he was kidnapped;5)That he had lied about a bruise he knew had come from Anna Rugg slamming his leg in the door having come from the petitioner in order to Implicate him in the kidnapping;6)that the level of the water in the room he was locked in had reached his waist only,while he had lied under oath in order to portray a more threatening situation,which would have petitioner punished more severely, among other things;

4)Exhibitd:Sworn Staement of AnaAl-Rad Guinn#H73336,In whichhe States, similar to Mr. Light,that he Heard Mr. Hamman admit to perjuring himself at the petitioners trial,hearing all of the same statements made to Mr. Light;

5) Exhibit e:Sworn statement of Jose "Katalina" Witrage#G24066,In which She states that Mr. Hamman Committed Perjury in the Petitioners trial,and the details Mr.Hamman provided to her were consistent with those provided to Prisoners Light and Guinn with few Exceptions,To Wit:1)The petitioner had attempted to let him out of the room he was locked into;and 2)that the petitioner had been seen by Mr. Hamman removing the Hose from the vent in order to prevent his murder by Carbon Monoxide Poisoning,before he took it away for good(Cosistent with the trial testimony of the petitioner).

6)Exhibit f:sworn Statement of Daniel Rowe#T33781,in which he States that he overheard the conversations of Mr.sHamman and Light,and affirms many of Mr. Light's assertions;

7)Exhibit g:sworn Statement of Thurl Light,in which he States that he again spoke to Mr. Hamman during a visit to AdSeg,and was told,by Mr. Hamman, that 1)the district Attorney had sent someone to see him,who attempted to

1 dissuade him as a witness;2)that he was "Afraid"to make a full disclosure of the  
2 events that surrounded his having commit perjury in 2003,and that 3)he "Felt  
3 bad" about the totality of the circumstances involved.  
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## 7. Ground 2 or Ground \_\_\_\_\_ (if applicable):

Cumulative Effect of State Court Errors not necessarily singularly Predudicial, In  
Violation of Petitioners Rights to Due Process, a Fair Trial, Confrontation of Witnesses,  
as guaranteed by the 5th, 6th, and 14th Ammendments to the U.S. Constitution and its  
Analogous California Statutes.

## a. Supporting facts:

As Stated in Ground 1, above, The Victim in Petitioners Criminal Case has repeatedly  
Admitted to having Commit Perjury at the Trial which resulted in the Petitioners term  
of 25-life, 7-life plus 4 years, and absent details from him thus far, petitioner has been  
able to ontain statements from witnesses to his admissions with specific details which  
serve to undermine confidence in the guilty findings of the trial by negating most of  
the Elements neccesary to establish Guilt Beyond a Reasonable Doubt in the State of  
California as a matter of Law.

Petitioner would now submit to this court that, Having raised several grounds in  
prior Appellate and Habeas proceedings, and hereby incorporating them by reference, with  
Ground 1 of the instant petition, would present a Prima Facie Case for relief on the  
ground that, when viewed in the proper context, the overall effect of all of the built up  
Errors did deny him a Fair Trial, Due process, and Freedom from Self Incrimination, and  
Confrontation of Witnesses.

To support this Claim, Petitioner re-alleges the following facts and claims:

1) The facts stated at Trial supported jury instruction on the Offense of  
Simple Kidnapping. Forcing the jury to choose between Aggravated Kidnap for Extortion and  
Felony False imprisonment By Violence, Menace, Fraud or Deceit, without separation of the  
Extortion charge from the kidnapping charge did force them to Choose either a non-

## b. Supporting cases, rules, or other authority:

Please see attached Memorandum of points and Authorities.

1 violent Mandatory Minimum "Life" term based on a belief that his conduct was not at all  
2 violent, a factor in mitigation, which in reality resulted in an aggravated sentence; or  
3 a crime they deemed inherently violent which prevented them the ability to render a  
4 guilty finding as to Extortion, which the Petitioner had, without any reservation, admit-  
5 ted throughout all proceedings, therefore forcing them into an "All or Nothing" verdict  
6 which exacerbated the petitioners punishment based on a factor in mitigation, a real  
7 and true miscarriage of justice.

8 2) As Stated in §1 above, failure to instruct on Misdemeanor false imprison-  
9 ment, forcing the jury to find guilt as to a "Life" term offense in order to vindicate  
10 their finding of Non-Violent Conduct as to the petitioner, as well as their belief that  
11 he had committed the Crime of extortion, as he had repeatedly admitted, a denial, as above,  
12 of Due Process, A fair trial, trial by Jury, and Fundamental Fairness;

13 3) Inconsistent Verdicts: As matters of both Fact and Law, the jury's inability  
14 to reach a verdict as to the Attempted Commit Murder, based on the very same set of  
15 facts alleged in the Conspiracy Charge is inconsistent and therefore unreliable. If  
16 the Jury could not Unanimously find all the Elements, Beyond a Reasonable Doubt as  
17 to the Attempt, How is it reasonable that they could then find all of Those Same  
18 Elements, plus, the two additional Elements required for the Conspiracy charge? That is  
19 patently irrational.

20 We need look no further than simple logic: Both crimes require a finding of Specific  
21 Intent to Kill. Both Require acts in furtherance of that killing. The commonalities end  
22 there. Since the petitioner admitted to acts in furtherance of the crime, (While claim-  
23 ing not to have intent to follow through, only participating as a ruse) this leaves us  
24 only a question of Intent.

25 Intent is requisite for both crimes. Intent for one crime necessarily means intent  
26 for the other, if they are alleged on the same set of facts, as they were here. Likewise,  
27 lack of intent for the one is also a lack of intent for both, again, as a matter of  
28 rational necessity.

29 Referring again to CT pgs. 371-378 and the Article written By Reporter Ryan  
30 McCarthy, The jury in this case readily admitted, for the most part, an inability to find  
31 the requisite intent to kill AT ALL, having misunderstood the jury instructions (Which  
32 is understandable, given that in the packet of instructions given to the jury for  
33 their reference in deliberations, the Elements of intent to kill and of overt act were on  
34 a separate page and out of order, being several pages away from their attached page,  
35 easily able to cause confusion to lay persons).

36 4) Juror Misconduct: On his uniform Juror Questionnaire, meant in fact to reveal

any potential bias of prospective jurors, Juror number ten, Robert J. Stefun answered "No" to a question regarding having Freinds or family in law Enforcement. On Voire dire, he answered "No" to a question to the Judge regarding whether or not anything the other jurors had been questioned about had any bearing on his ability to serve as a juror in the trial in question, to which he responded "Not that I know of."

More than one potential juror had been challenged for cause and excused due to ties to law enforcement through family by that point, in Mr. Stefuns presence.

Other Jurors claim (CT 371-378) that Mr. Stefun went on to nominate himself as the foreman.

Other jurors described him later as "Unreasonable, wanting guilty verdicts on everthing without further discussion".

According to Ryan McCarthy, a news reporter for the Auburn Journal, He was told minutes after the trial ended, while still in the courthouse, by Mr. Stefun, "My Father was a Federal prison Warden, Some people make the right choice and avoid crimes and others dont."

In the hearing on the defense Motion for a New Trial based in part on this issue, much ado was made about technicalities such as the semantics of the term "Law enforcement" and whether or not Warden of a prison full of ALREADY CONVICTED CRIMINALS WHO CONSISTENTLY COMMIT ACTS OF VIOLENCE AGAINST EACH OTHER AND HIS GUARDS qualifies as someone who would be biased as a result of their job.

Petitioner asserted then and does assert now that bias is inherent and Implied, as a matter of REALITY.

Additionally, there was question as to whether the answer in the negative was "Mistaken or inadvertant" or whether the fact that the mans father might be deceased played a role in the existence of bias; Again, petitioner views this as a Cop-Out: A fathers role in his sons life, leaves deep and lasting impressions, Neccesarily. Hearing stories from a father at the dining table, as a child, about his rough day working to "Enforce" the Sentances of "Law" breakers creates an obvious bias, regardless of when he dies, and so... How is an omission on this point possibly a mistake? And how convenient that the mistaken amnesia lasts until minutes after it would matter, at least according to the People's assertions as to the statute involved.

Petitioner stands by the assertion that there was an Inherent bias, proven by Mr. Stefuns post trial statement, that prevented a Fair Trial and Due Process, and a trial by a fair and impartial jury.

5) Failure to preserve or disclose Exculpatory Evidence: Pre-Trial, several peices of Evidence which pointed to a diminished culpability of the part of the petitioner were collected. Among those items were a latent fingerprint and a video

1 of the Inside of the "Shell" Gas Station in which the Note was left by Co-Defendant Rugg.

2 During his Interview with Detectives Coe and Hutchins, Petitioner stated very  
3 clearly that he had tried to loosen the screws of the window to the room in which  
4 Mr. Hamman was locked, in an effort to set him loose. (Clerk's Augmented transcript,  
5 exhibit 85, pg. 12) Petitioner again made this claim at trial. While Placer County  
6 Sheriff's deputy Jane Xepoleas logged in the "Standard latent tape lift", a finger-  
7 print, which petitioner had told the Detectives to look for in order to support his  
8 claims, as "item No. 2", it was never tested, to petitioners knowledge, to see who it  
9 belonged to, nor did it make it to trial; it was somehow "Lost".

10 During his Interview with detectives, Petitioner explained that he had pumped  
11 gas into the stolen car, after Co-Defendant Rugg had paid for it with the victim's  
12 debit card. He then told them how he had walked calmly into the station, bought a  
13 cigarillo with loose change, and conversed, calmly with the station Attendant, Robert  
14 Hammer. (Clerk's Augmented transcript, Pg. 15) Petitioner Testified in the Trial to this  
15 effect.

16 During the trial, the people called Robert Hammer as a witness, and he testified  
17 that the petitioner Entered the station, approached the door to the restroom where  
18 Co-Defendant Rugg was writing the Note, and Violently, Loudly, Demanded that she come  
19 out and leave with him. This was very Infammatory to the jury, who was presented an  
20 image of a crazed psychopath kidnapping his codefendant, which understandably gave  
21 little room for them to believe his story at all. (CT 145-146)

22 However, it was revealed later that his assumption was wrong, and the facts in  
23 dispute, petitioners demeanor and actions, could have been proven beyond any doubt, by  
24 the video from the station's surveillance cameras. That video, logged into evidence by  
25 Officer J. Roye, as "Item No. 24", was somehow "Lost" before the trial without any report  
26 as to its depictions whatsoever.

27 Petitioner asserts that this denies him the right to present Exculpatory  
28 evidence known to, and possessed by, the prosecuting agency, and also, by extension, denial  
29 of the right to confront the witness against him, Robert Hammer, and impeach his  
30 testimony, while strengthening that of the petitioner,

31 Further, petitioner asserts that, but for this denial of constitutionally Guar-  
32 anteed rights, the outcome of trial would have been different.

33 6) Use of Involuntary "Confession", Which, due to its condition was also unreliable  
34 as a matter of Fact, not just Law, to obtain Conviction.

35 Petitioner was arrested at 0215 on the morning of March 17, 2003, and was beaten

into custody,soaking wet and sleep deprived.

1 He was subsequently transported to an Auburn police Department Station on  
2 Maple Street,Where he was Handcuffed,behind his back,to a bench,in a cold anteroom  
3 and held for hours.

4 During this preiod,On several Occasions,he told officers,including detectives  
5 Daniel Coe,Dale hutchins,and arresting Officer Gary Hopping,that he was ready to go  
6 to jail.At one point,the petitioner told officer Hopping,"Everything you need is on  
7 my I.D.,Take me to jail".

8 Petitioner became ill due to complications with his stomach ulcer,and was denied  
9 medication or access to medical care,and was told he would receive none untill he  
10 consented to interveiw with Detectives.

11 Petitioner repeatedly requested the use of Toilet facilities,and was told he  
12 could not use the restroom to releive himself until he consented to speak with  
13 detectives.

14 Petitioner refused several times to speak to detectives and incriminate himself,  
15 explicitly invoking his right to remain silent,and was told,often,that he could not  
16 leave until he confessed to detectives Coe and hutchins.

17 Between 0215 and 0610,several people attempted to make the petitioner confess  
18 to crimes,and some were creative,using emotional leverage,threats,faked empathy,and  
19 even offers of gifts and gratuities such as the use of the restroom,or petitioner's  
20 ulcer medication or food to ease the Acid Burning in his stomach.

21 Finally,as a matter of law,when petitioner could hold his urine no longer,and  
22 could no longer endure the cold of sitting in the exposed anteroom,soaking wet and  
23 shivering from the weather at 3500 feet in March,and was no longer capable of  
24 tolerating the pain in his gut,his will was overborne and he agreed to speak with  
25 the detectives,in return for bread,water,the use of the restroom,and warmer  
26 accomodations.This agreement,forced by duress,is refrred to at the beginning and  
27 end of the transcript of the interview,and was spoken of breifly by detective  
28 coe in his trial testimony,as well as that of the petitioner.

29 This Blatant denial of,and disregard for,the petitioners right to be free from  
30 self-incrimination was made worse when the video was presented to the jury at trial  
31 a few snatches at a time:in an interveiw which lasted at least 90 minutes,the video  
32 was corrupted,to the point of Static,for as long as 7 seconds at a time,no less than  
33 138 times,according to the 22 page transcription.It was later described by defense  
34 counsel Jesse Serafin as appearing to be a video tape corrupted by a magnet.

35 Detective Coe tried to rationalize these damages to the integrity of the video



and its contents as the result of radio transmissions from the hipmounted radios of various officers standing in the observation room during the intervei.(Petitioner cannot cite RT Pgs,as he has been deprived of pgs 421-end by CDCR Officials.)

This theory fails on SEVERAL points:1)On pg 397 of th reporters transcript, Daniel Coe states that they were the result of the transcriptionist simply being unable to hear the low voices in the interview room,and he calls it common,which absolutely and directly contradicts what he answers defense counsel on Cross examination;2)If,arguendo,that were the case...did half of the county's officers abandon their posts to come observe?For 90 minutes?Or was the large volume of localized radio traffic attributable to a shift change,which,at the time,occurred at 7am and 7pm?According to Daniel Coe,in his announcement on tape,the intervei coomenced at 6:33am,so this is Possible,however...What about earlier in the mornig,between 3am and 6am,when Co-Defendant Anna Rugg was interveiwd?In that 28 page transcript it is corrupted 176 times.And what of the victims interview?On 3-20-03,Nicholas Hamman was interviewed by the same detective,in the same room.Over the 24 pages,it is "Inaudible"a whopping three times.It must have been a very slow day in placer county that day.

There is another differencein the videos of the defendants Vs.the victims:on 3-18-2003,2 days before the victims intervei,according to a supplement by detective Coe With that date,Detective Hutchins transferred the videos from VHS to DVD.Is it possible that defense counsel Serafin was right,and that during this process,the magnetic tape was corrupted by a magnet of some sort.

Additionally,over time,learning to repair electronics in prison as a trade,the petitioner has become aware thatthe theory presented at trial by detective Coe,is utterly without any foundation in reality.Maybe it sounds plausible to the layperson, but basic principles of radio wave propogation and reception dictate that it is absolutely impossible for those police band radios to have affected that transmission of the video;That would be much the same concept as your cellphone or cable sattelite interrupting your cordless phone or baby monitor.The transmission frequencies are so far apart the are in SEPERATE CATEGORIES.this can be proven in theory with literature or by expert testimony.

Petitioner asserts that first the the coercion/duress that resulted in the video,and then the severely diminished quality,and therefore reliability,served to deny petitioner the right to be free from self incrimination,Denial of the right to confront witnesses,to due process and of fundamental fairness.To Coerce the "Confession",and then to show only peices of it to the jury unduly prejudiced the petitioner with unreliable evidence he could not mitigate,except with his own testimony,

1 which he claimed, but was unable to prove, due to the damaged video, was consistent  
2 with statements made to the detectives, but which was lost due to the damage.

3 But for the use of this unreliable evidence, the result of the Trial would have  
4 been vastly different.

5 7) Denial of right to present a defense, to call witnesses and to have jury  
6 instructed on defense theory of the case.

7 At trial it was alleged that the petitioner kidnapped and then conspired to  
8 kill the victim. Petitioner, conversely, denied having been around for the kidnapping  
9 of the victim, denied having planned to do so, denied having lured him into the place  
10 to do so, denied having had the intent to extort the victim by way of kidnapping  
11 and denied having had the intent to kill the victim.

12 To support these assertions, the petitioner presented the ugly truth of the mat-  
13 ter to the jury: That Co-Defendant Anna Rugg DID have this intent and did do these  
14 things, and that though he did participate in a convenient robbery, drive away in  
15 the victim's car, use his ATM card, and did not go to great lengths to have the victim  
16 released before he could be thrown under the bus by Co-Defendant Rugg, his reason  
17 for further participation was to a) Assuage the co-defendant while buying time, to  
18 b) keep the victim alive and c) prevent being blamed for the whole snowballing ordeal  
19 by Co-defendant Rugg, who he knew had a history of doing just that which he feared.

20 As the basis for this defense, petitioner tried to call Girlfreind Erin Hughes  
21 to the trial as a witness; Though counsel for the people knew all the details of her  
22 involvement through pre-trial recorded interviews, and originally had put her on  
23 THEIR witness list, he waited until she was on the stand in a 402 hearing to  
24 openly threaten her with prosecution should she answer questions which would under-  
25 mine his case, causing her to invoke her privilege against self incrimination, so  
26 that he could call her an "Unavailable" witness and keep the truth out of the trial.  
27 (RT520-546)

28 Also as the basis for this defense, the people having paraded the Codefendant  
into court for identification with freshly grown hair and feminine make-up applied,  
no longer the Masculine Butch Lesbian with a shaved head she had been 5 months  
prior, petitioner sought to present testimony of six civilian witnesses and also,  
of Yolo county Police Officers, to prove a pattern by Co-Defendant Rugg, of initia-  
ting situations of a similar nature, and then using the young male cohort as a scape-  
goat or "Fallguy".

The judge at trial severely limited petitioners ability to do so by insisting  
that only those instances where he had Personally witnessed the crime were to be  
allowed. This hogtied the petitioner, and unnecessarily so: Hearing of and knowing of  
these situations had the same fearful impact as seeing them would have, and the

1 people actually involved in the situations themselves were willing to testify, so  
2 its not like it would have been a parade of out of court, hearsay statements.

3 Without this evidence of the CoDefendant's Character and Modus Operandi, and  
4 therefore the possibility that the petitioner lacked that same character and M.O.,  
5 it was impossible to present this defense with any real credibility, though the  
6 credibility was there to be presented all along. (CT Pgs 175-177; 211-213)

7 It should be noted that While available during trial, Eric Carter Werve is no  
8 longer available: as a result of depression brought on by the severe injuries caused  
9 as a result of CoDefendant Anna Rugg having implicated him in a crime to which he  
10 was not a party, and incarceration, Eric Killed himself in Kern Valley State Prison  
11 in 2008.

12 Parallel to all of this, and in step with the things petitioner admitted to  
13 doing, It seems fair that the jury should have been offered instruction on the  
14 lesser offenses to which the petitioner HAD ADMITTED; I.E. Misdemeanor False  
15 Imprisonment, Simple Extortion, Simple Kidnapping, ect, so the jury would have had  
16 options to choose from that did not carry mandatory minimum "Life" terms for the  
17 smaller crimes that, again, petitioner had already admitted to.

18 Having backed the petitioner into a corner with his admissions of guilt on  
19 small crimes, and denying him the ability to mitigate those admissions with a sense  
20 of perspective that could be brought with witness testimony that was denied, these  
21 unfair tactics were compounded by a "Go for the throat" attack which gave the jury  
22 several "All or Nothing" choices to trap them into finding guilt on mandatory minimum  
23 life term charges, instead of charges reasonably suited to the real culpability  
24 of the petitioner.

25 The petitioner asserts that this compound error resulted in an extremely  
26 unfair trial environment which infected the entirety of the guilt and punishment  
27 proceedings, and if not for this denial of a fair trial, the outcome, both in guilt and  
28 in sentencing, would have been vastly different, BOTH LIFE SENTENCES DIFFERENT.

8) Conviction on evidence known to be false: Petitioner had raised this issue  
in 2006 on habeas based on the same set of facts raised in ground one of this  
petition, but without the admission of the victim to back it up, and now renews that  
claim here.

9) Misinstruction as to the crime of Aggravated Kidnap For Extortion by the  
prosecution: In his Closing Argument, Prosecutor William Marchi, Several times, made  
statements to the jury which served to lighten his burden of proof, and the judge  
allowed this to go uncorrected. Specifically, Mr. Marchi told the jury that it was  
not relevant whether or not the petitioner had actually participated in the actual  
kidnapping of the victim, or even knew about it or had even been around when it

1 had taken place. He told the jury that it was enough simply that Shawn had not  
2 taken measures enough to extricate the victim from the room he was locked into.

3 This is not the way the law works. CALJIC 9.53 requires finding of 2 elements  
4 beyond a reasonable doubt: 1) A person was Confined, inveigled, enticed, decoyed,  
5 held, or detained; and 2) the confining, ect. was done with the Specific Intent to  
6 (Commit robbery, or in this case Extortion).

7 The finding of guilt as to this Crime is a mandatory minimum 7-life term of  
8 imprisonment.

9 Nothing in the CALJIC or annotated Penal code can be construed to mean that  
10 if, as a matter of Convenience, a robber happens upon a confined victim and then  
11 decides to rob or extort them, he can be found to have Kidnapped them for robbery  
12 or extortion, merely by refusing to free them or by not being able to do so, or  
13 even by not doing so in a timely manner.

14 By the logic presented to the jury at trial, the very same set of facts meets  
15 the criteria for guilty finding as to three separate, but vastly differing crimes.  
16 The first, as has been seen, is the mandatory life term 209, the next, a two-part  
17 charging of Kidnap then Robbery/Extortion; the last, Either of two False imprison-  
18 ment crimes Then the Robbery/Extortion crimes.

19 The differences lie in the level of criminal Culpability and, therefore, in the  
20 sentences which come from conviction; 7-Life; 2-3-5 + whatever Robbery/Extortion  
21 will carry, or 6-36 months + whatever the Robbery/Extortion would carry, respectively.

22 In this Case the prosecution hedged by only charging the life crime and the  
23 Felony false imprisonment crime, then backing the jury into the corner with a slick  
24 mischaracterization of their required findings, to get his Life Term verdict.

25 Stopping for a second to look closer though, we see a flaw that serves to  
26 violate due process and equal protection rights: How can the same set of facts  
27 support instruction or guilt as to so many different crimes, and who arbitrarily  
28 decides who will be charged how and why?

Why even have the Crime of False Imprisonment to begin with, if the facts which  
amount to it are also the facts which amount to Aggravated Kidnap For Extortion?

Is it because of the vast amount of semantics and nuance involved in human  
behavior and its complexities, and by extension, the complexity of nuance and  
semantics involved in determining criminal culpability?

Petitioner argues so; in the case at bar, the jury was presented with 2 theories  
of the case: 1) the prosecutions, which said that he Slammed a door on the victim's  
leg, and Kicked him into the room to facilitate a Planned Kidnapping for the

1 express purpose of extortion,decided upon the previous day;or,2)Defense theory,  
2 that,while not having a plan quite yet settled,Anna Rugg convinced the victim to  
3 follow her into the room to have sex and then locked him in while the petitioner  
4 and his girlfreind were outside,and then,later,used the opportunity to extort  
5 the victim with the threat of harm and the promise of securing his release from  
6 the room,without a plan,and seperate from Ms. Rugg's having confined him all by  
7 herself.

8 There are a large variety of choices here for the jury,regarding what actually  
9 happened.

10 But what if Mr. Marchi had not told them that Not Being a Hero or Good  
11 Samaritan,or not being able to,was"just as good"(RT)as actually beating the  
12 victim into the room?What if he had not Nullified the Concept of Semantics or of  
13 nuances?What if he had not ,in essence said to the jury,unchecked,that as long as  
14 the victim was in the room and as long as Shawn Knew,you have to give him this  
15 mandatory life sentance in prison?

16 While,for over a decade I have heard the same regurgitations of theAlmighty  
17 Ca. Evidence code and how it serves to keep evidence out of court which would  
18 eliminate the need for guesswork and which would point unerringly to what justice  
19 in this case actually looks like...These are exceptional curcumstances,and I do  
20 believe that the cause of justice (Wheter anyone but me actually cares about it  
21 or not anymore)dictates that what the jury had to say on this point is actually  
22 worth hearing,and it does not hurt anyone at all to listen to them;in fact it  
23 serves the public interest.

24 Thusly prefaced,the facts that so many people dont want to be heard are that  
25 1)the jury says pretty unequivically that they wanted to find the petitioner  
26 guilty of false imprisonment without the WORD"Violence"Attached to it;and 2)They  
27 deferred from the lesser offense to the greater ,based on a factor in mitigation:  
28 the Kidnap Chargedid not include the WORD"VIOLENCE"and therefore was a better fit.  
Further,in this regard they"Felt tricked into these decisions by the prosecution".  
(CT371-379)

Further...What,if instead of unfairly mischaracterizing the law tofit his  
desires and illegally shifting the burden of proof away from himself to the defense,  
the prosecution had charged the misdemeanor False Imprisonment and,as is his duty,  
pointed out its difference from the 209?

Petitioner asserts that had this error not occurred,the Jury would have ren-  
dered a guilty finding as to the misdemeanor false imprisonment charge,and a very

1 separate robbery or extortion charge, and instead of 7-life, the petitioner would  
2 have been sentenced to 6 months for False Imprisonment + 2-3-5 years for robbery  
3 or whatever for extortion.

4 At any rate, when any of these nine errors are reviewed alone, its possible to  
5 Maybe call them harmless, but when considered together, with or without the fact  
6 that the Victim admits to having committed perjury on several very material issues,  
7 it seems beyond unlikely that a rational trier of fact can conclude that an  
8 error that affects the Framework of the trial did not exist/occur, or that the  
9 trial would have had the same result if not for the error affecting the framework  
10 of the trial itself.

11 The results would have been vastly different, both on the issue of guilt, and  
12 also, as a direct result, on the sentence: Guaranteed Parole after time in prison  
13 spent Rehabilitating, instead of a less than slim chance of Parole by a board  
14 ill advised to parole offenders and politically pressured to deny parole for up  
15 to 15 years at a time, after a Minimum of 25 years, when parole is unlikely to be  
16 successful due to Institutionalization, lack of real job skills or world experience  
17 and no support system in place due to death of family and freinds over time.

18 Without the errors—a chance at redemption and a real chance to reintegrate  
19 into society and have a life and the pursuit of happiness; With the errors—the  
20 current, relatively hopeless existence in a stagnant cesspool of gangmembers, drug  
21 addicts, sexual deviants, with no offer of rehabilitative programs that ARE made  
22 available to NON-Life prisoners.  
23  
24  
25  
26  
27  
28

7. Ground 2 or Ground 3 (if applicable):

Violation of Time Constraints set forth in Cal. Rules of court §4.551(f), In violation of Petitioner's Rights to Due Process and a Speedy Trial, as guaranteed by the 5th and 6th Amendments to the U.S. Constitution and its Analogous California Statutes.

## a. Supporting facts:

The Petition Was Filed on 7-24-2015. Judge Garen Horst disqualified himself on 7-29-2015. Judge Mark S. Curry Issued the OSC on 8-3-2015, to both the Ca. Attorney General and the Placer District Attorney. On 8-26-2015, the Placer District Attorney filed the Return. On 11-21-2015 the Petitioner filed the Traverse, Expressly denying ALL of the allegations of the People, and, Per People V Duvall, requesting Ruling on the merits without Evidentiary Hearing, the People having not placed facts in dispute enough to require one.

California Rules of Court Section 4.551(f) states, without ambiguity, that within thirty days of the filing of either the Traverse or the Denial, a ruling must be issued by the Court, or an Evidentiary hearing must be held to determine any facts which are in dispute.

120 days having elapsed since the filing of the Petitioner's Traverse, and no ruling having had been issued or Evidentiary Hearing having been held, the law as described in the California rules of court has been violated and the Petitioner has been denied Due Process and the Right to a Speedy Trial on the Facts.

Petitioner requests the Appellate Court Rule on the Merits or remand to the Superior Court with an order to Rule or Hold a hearing Immediately.

## b. Supporting cases, rules, or other authority:

California Rules of Court §4.551(f)

In Re Scott, (2003) 29 Cal4th 783 @ 824

8. Did you appeal from the conviction, sentence, or commitment? ☐ Yes ☐ No If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Division of Superior Court"):

Ca. State appellate Court, third district

b. Result: Modified c. Date of decision: January 4, 2005

d. Case number or citation of opinion, if known: C045882

e. Issues raised: (1) Failure to Instruct on Lesser Offenses (Two Times)

(2) Inconsistent Verdicts

(3) Calculation of Credits

f. Were you represented by counsel on appeal? ☒ Yes ☐ No If yes, state the attorney's name and address, if known:

John F. Schuck; 4083 Transport St. Ste. B, Palo Alto, Ca. 94303

9. Did you seek review in the California Supreme Court? ☒ Yes ☐ No If yes, give the following information:

a. Result: Denied b. Date of decision: March 30, 2005

c. Case number or citation of opinion, if known: S131239

d. Issues raised: (1) See §§e(1 and 2) above

(2) \_\_\_\_\_

(3) \_\_\_\_\_

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

Newly Discovered Evidence not available until now.

11. Administrative review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500.) Explain what administrative review you sought or explain why you did not seek such review:

N/A

b. Did you seek the highest level of administrative review available? ☐ Yes ☐ No  
Attach documents that show you have exhausted your administrative remedies.



12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? ☒ Yes If yes, continue with number 13. ☐ No If no, skip to number 15.

13. a. (1) Name of court: Placer County Superior Court  
 (2) Nature of proceeding (for example, "habeas corpus petition"): Habeas Petition (Case# WHC-1400)  
 (3) Issues raised: (a) False Evidence Adduced @ Trial  
 (b) Cumulative Effect of Errors not Singly Prejudicial  
 (4) Result (attach order or explain why unavailable): Time ConsyRAINTS Violated [See CRC §4.551(f)]  
 (5) Date of decision: Still Pending, in Violation of Cal. Rules of Court §4.551(f)
- b. (1) Name of court: N/A  
 (2) Nature of proceeding: \_\_\_\_\_  
 (3) Issues raised: (a) \_\_\_\_\_  
 (b) \_\_\_\_\_  
 (4) Result (attach order or explain why unavailable): \_\_\_\_\_  
 (5) Date of decision: \_\_\_\_\_

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:  
See Above

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)  
N/A

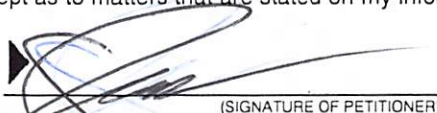
16. Are you presently represented by counsel? ☐ Yes ☒ No If yes, state the attorney's name and address, if known:

17. Do you have any petition, appeal, or other matter pending in any court? ☒ Yes ☐ No If yes, explain:  
See Above

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:  
Violation of Cal. Rules of Court §4.551(f) time Constraints

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: March 12, 2016

  
 (SIGNATURE OF PETITIONER)

Memorandum of Points and Authorities  
In Support of Petition for Writ of Habeas Corpus

I

Statement of the Case

On October 6, 2003, Petitioner was found Guilty of Conspiracy to commit 1st degree murder, Aggravated Kidnap for extortion, Using another's Name to obtain Credit or Goods (2 Counts) and felony Vehicle theft, following a trial by jury that lasted three weeks.

On December 8, 2003, He was sentenced to 25-life, plus 7-life, plus 4 additional years, and sent to state prison.

A timely notice of appeal was filed and the subsequent appeal resulted in an award of a few extra days of "Good Time Credit".

Petitioner initiated Habeas proceedings pro se, on several grounds, in the Placer county Superior court, the third district of appeal and then the State Supreme Court, All of which were unceremoniously denied, and none of which were ever heard on the merits.

Petitioner then filed petition in the Eastern District Federal court, and after several years of arguing, it was denied, on procedural grounds, pursuant to the AEDPA, and never heard on its merits.

After receiving the district court ruling several months late, due to the incompetence of prison staff, and without his personal property or transcripts (which were at the time in the possession of prison staff), the petitioner was forced to abandon his claims, unable to timely request a review or a certificate of appealability to the circuit court, due to the above stated inability to meet time constraints even if he had had his property to facilitate the drafting of the necessary papers, which, again, he did not.

In January 2015, petitioner began hearing stories of how his alleged victim was admitting to lying on the stand at trial to get him "Life" sentences, and how the detective and prosecutor had put him up to it, offering leniency on his own pending criminal matter at the time.

Petitioner Immediately began securing Affidavits to this effect from the witnesses.

On April 10, 2015, while preparing for what seemed would be a very up-hill fight, he received correspondence from the Deputy Attorney General who had

1 bested him at the Appellate and habeas Levels of review. The letter was a copy  
2 of a notice sent to Prosecutor Bill Marchi, recommending investigation of the  
3 letter she had received from the Alleged Victim in this case, Nicholas Hamman,  
4 in which he Admitted, in writing, under penalty of perjury, that he had commit  
5 perjury in the case at bar. The language of the letter's salutary line suggests  
6 that this was not the first time he has tried to notify the highest prosecu-  
7 torial Authority in the state of his crime and its consequences-Undeserved "Life"  
8 in prison for the petitioner. (Petitioner's Exhibit "A")

9 Petitioner sought immediately to contact Mr. Hamman for further information,  
10 but has been stymied by prison Bureaucracy.

11 The Placer county District Attorneys Office sent an investigator to inter-  
12 view Mr. Hamman on April 24, 2015.

13 In a Letter dated April 29, 2015, Mr. Hamman Suggests that during this inter-  
14 view he was gently dissuaded as a witness, by the investigating party. Also, he  
15 makes three separate references to lying under oath at the trial that resulted  
16 in the Petitioners Life Sentences. (Petitioner's Exhibit "B")

17 In the Meantime, the petitioner has continued receiving information and  
18 then witness statements regarding the nature of the perjury and the conditions  
19 surrounding use of this perjured testimony by the prosecutor, as well as the rea-  
20 sons for the victim's shifting desires as to what he will admit and what he  
21 seems afraid to speak about.

22 The week of May 1, 2015, petitioner was placed into Administrative Segregation  
23 for unfounded Allegations, and was quickly released after vindication.

24 A few days before release, contact was made with victim Hamman, in person.  
25 He expressed fear of full disclosure of the circumstances surrounding his having  
26 been Invited to commit perjury, and seemed to hint that his fear was the result  
27 of his recent encounter with Agents of the Placer County District Attorneys  
28 Office. (Petitioner is currently awaiting written statements under penalty of  
perjury from witnesses to the Encounter.)

On April 17, 2015, Petitioner contacted the Placer County District Attorney,  
R. Scott Owens, by mail. Petitioner at that time made a Lawful request for discov-  
ery regarding the fruits of the April 24, 2015 interview of Mr. Hamman, and attempt-  
ed to offer reasonable and less costly resolution of these matters.

To Date, there has been no response whatsoever to even the request for  
discovery from the District Attorney or his Employees.

A copy of that letter is attached as Exhibit "I".

II

Points Of Law and of Fact

Initially, Petitioner would like to point out that repeatedly, courts have held that the pleadings of prisoners must be construed liberally, and thus, any mistakes of law made by the petitioner are not the product of underhandedness; just the result of not having had the benefit of an Ivy League education in Law.

Next, petitioner would refer the court to Griffin V. Illinois, 351 U.S. 12, and its analogous California statutes, which guarantee an indigent Appellant or petitioner a complete copy of prior proceedings with which to argue his issues. Petitioner has been deprived of Reporters Transcript pages 421 to end, and the entirety of the habeas proceedings in the district court, and thus cannot make reference to that material in this petition.

On a related note, the petitioner would call the courts attention to the attached motion to provide these transcripts to the petitioner for use in pleadings related to this action, and request that his inability to adequately reference them at this time not result in adverse action in lieu of the requested remedy.

Moving now to the matter of the admissability of the statements of witnesses regarding the Alleged victims admissions of perjury and the nature of that perjury; While still a bit confused regarding the intricacies of hearsay Law, the petitioner asserts that should these statements qualify as hearsay, they also qualify as exceptions to the hearsay rules.

As to the statement under penalty of perjury by Victim Hamman, Should it qualify as Hearsay, Petitioner would argue that under Evidence Code §1230, it would qualify as a "Statement against interest" because, as stated in E.C. §1230, making the statement "created such a risk of making him an object of hatred, ridicule, or social disgrace in the community, that a reasonable man in his position would not have made the statement unless he believed it to be true."

In the case of Mr. Hamman, not only can he be charged with the crime of perjury for his previous testimony, and face criminal liability for it, his standing in the community at large suffers for it, as does his standing in the microcosm that is the prison community, for his misdeeds against a fellow prisoner, which, so often it has become a film and literary cliché, often results in very violent repercussions by fellow prisoners.

As to the Statements made by other prisoners who have made the acquaintance of Mr. Hamman and heard the details of his admitted perjury under oath, Petitioner would

again point to the evidence code referenced above, as well as People V. Cain, 10 Cal 4th 1 (Pg 32) which points out that "'Relevant Evidence' means evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency to prove or disprove any disputed fact that is of consequence to the determination of the action." (Evidence Code §210) "...The trial court is vested with wide discretion in determining relevance under this standard."

A quick perusal of the results of a "Lexis-Nexis" search for the term "declaration against interest" leads us to Skelton V. Superior Court, 1 Cal 3d 144, and about a thousand other citations, most all of which cite E.C. 1230, also bringing us to several hundred references to 29 American Jurisprudence 2d-Evidence §§495 and 496, which says "Hearsay Evidence, taken out of the general rule against the admissibility of hearsay evidence, in the interest of justice, and in accord with sound policy, so as to be admissible notwithstanding the rule, for example, a dying declaration, a declaration against interest, Ect."

Addressing first the issue of "Against Interest"...Whose interest Exactly?

The Declarant? If so, each declarant is Volunteering to testify against another criminal who resides within the same jurisdiction as the person making each declaration and therefore, each person (from virtually all walks of prison life, by the way, from a young white man to a very black 40-something Crip, to a transexual in "Her" 30s) is necessarily placing themselves at the mercy of their various prison faction, which as mentioned before, typically considers testifying against another criminal an offense for which the consequence is being stabbed with a homemade stabbing implement. If this were not a very real dynamic, California would not have protective custody in the form of its "Sensitive Needs Yards".

Thus it cannot be argued that these are "Declarations Against" each person's respective "Interests".

Or is it the Victim, and his interest that these declarations must be against?

I believe that it's self evident from either perspective that either his making the statements was against his interest, or that these Declarants reporting his having made them is against his interest.

Additionally, as a safety net of sorts, the California Evidence Courtroom Manual and the evidence code §1201 speak to the subject of multiple hearsay thusly: "A statement that is hearsay is admissible on the ground that the evidence of such statement is hearsay evidence if such evidence consists of one or more statements, each of which meet the requirements of an exception to the hearsay rule."

As such, hard as I'm sure they will try, if the people are unable to exclude even

one of these statements, then they all are admissible under the statute presented here.

Moving Next to "the interest of justice": In the case at bar, we have, at best, a petitioner who, at age 19, was sent to state prison for the entirety of his youth, if not until death, because a vengeful victim admittedly lied under oath to make the reality of the crime itself seem much worse to the jury in order to secure a sentence which was grossly disproportionate to the real circumstances of the crime; or, at worst a petitioner who will die a gruesome and violent death at the hands of other prisoners at the end of his "Life" sentence, because Placer County Law Enforcement and Counsel for the People promised the victim leniency on his separate criminal offense if he could commit enough perjury to secure a "Life" sentence for the petitioner.

There is no question that a meeting to discuss this or a related topic took place; when counsel for the defense tricked Mr. Hamman into admitting as much on the stand; Counsel for the people flew into a rage, or panicked, and shouted "SHUT UP!" across the courtroom. (RT 258, 263, 299, 307)

Moving Last to the People V. Cain (Supra) angle, there may be facts in dispute at a hearing regarding these matters, as Mr. Hamman has, since his session with the Placer County Investigator, very much narrowed the scope of what he feels like admitting.

By the standard described in Cain and its cited statutes, these declarants have "evidence relevant to..." "His" ...Credibility" and also having "a tendency to prove any fact that is of consequence to the determination of the action." Namely, the instant petition.

Lastly, regarding admissibility of exhibits hereto attached, are the issues surrounding the Post Trial Declarations from the jury members, as well as their statements after the trial, as reported by the Auburn Journal and Reporter Ryan McCarthy.

Of course there is the Evidence Code § that Bill Marchi referenced in his opposition originally, which would serve to remove the focus from the issue of justice and what is right, to the realm of technicality and viewing this strictly in the abstract... but as the Court observed in People V. Dillon, 194 Cal. Rptr 390, that does not quite serve the interest of justice. The Dillon Court, referencing In Re Foss (19740, pointed out that while the Facts in the abstract serve as a baseline, the goal is "to consider the offense in the abstract—as defined by the legislature—but also to consider the facts of the crime in question—

1 the totality of the circumstances surrounding the commission of the offense in the  
2 case at bar, including such factors as its motive, the way it was committed, the  
3 extent of the defendants involvement, and the consequences of his acts." (Dillon@319)

4 If this seems familiar to the reviewer, that is because it was brought to this  
5 court in the motion for a new trial. (CT pgs. 355-378)

6 This way of regarding these issues has never been more important than it is now;  
7 while relevant then, the magnitude of its import has only improved with time: the  
8 recent developments serve to affect a different, but more beneficial view of the facts  
9 of the case at bar, since there now appears a reduced culpability with regard to  
10 the petitioner, a change in the facts regarding the way the crime was committed,  
11 and there is an admission that the consequences of his acts were less than what was  
12 presented at trial.

13 While most of the Post Trial Questionnaires were admitted to the record, the late  
14 ones were not, and are presented here along with a printed article from the Auburn  
15 Journal, By reporter Ryan McCarthy, which serves the same purpose: to prove to the  
16 court that a) there was no finding of the requisite intent to kill on the behalf of  
17 the defendant by the jury unanimously; b) they, in the majority, were interested in a  
18 guilty finding on the charge of Misdemeanor False Imprisonment, a lesser included  
19 offense not afforded as an option to them as a tactical maneuver by The People in  
20 order to promote an "All Or Nothing" decision which forced a 7-life sentence or  
21 nothing; and c) a partial juror was allowed onto the panel after providing mislead-  
22 ing answers on Voire Dire, who voiced his bias, at the first opportunity, minutes after  
23 the trial, to the first person who would listen, by saying that his "Father was a  
24 federal Prison Warden," and that "Some people make the right choice and avoid crimes  
25 and others dont."

26 What other reason could there be that his father's occupation was forefront in  
27 his mind, than that it impacted his decision making?

28 Admission of this document is proper under the Evidence Code, and as stated in  
Cain (Supra), in that it is unquestionably relevant to the facts and allegations at  
issue here.

In the Cain court, Media records were used by the prosecution to impeach a  
defendant with his own prior statements. This was upheld by reviewing courts and  
remains good Law. If its good for the goose, its good for the gander - fair is fair.

Now onward to the meat of this petition: the use of False or Perjured testimony  
at trial to secure convictions against the petitioner. A look at statements made, in  
writing, by Mr. Hamman leaves absolutely no doubt that he told fibs to get the pet-  
itioner sent to prison and for longer.

1 A look at the Statements of the witnesses to what Mr. Hamman has admitted tells  
2 the reader that the following claims are now in question, if not completely defeated:

3 1) the allegation that the petitioner was part of a conspiracy to "Lure" the  
4 victim into the crime scene for criminal purposes;

5 2) The Allegation that the petitioner was present during the kidnapping of  
6 the victim;

7 3) the allegation that the petitioner had any part in the confining/kidnap-  
8 ping of the victim;

9 4) the allegation that the petitioner assaulted the victim in the fabricated  
10 story about a conspiracy to kidnap the victim for criminal purposes;

11 5) the allegation the water in room the victim was confined to rose to the  
12 level of the victim's neck;

13 6) the allegation the victim was in mortal danger due to the life threatening  
14 water level in the room;

15 7) the allegation that the petitioner caused the victim to be in mortal  
16 danger by causing the water level to rise to the level of his neck, either to  
17 commit extortion by means of fear of death by drowning, or to commit murder;

18 8) the allegation that the petitioner was the instigator/mastermind of this  
19 set of circumstances, and therefore must be the one with the requisite intent(s)  
20 necessary to support a finding of guilt as to various crimes;

21 9) the allegation that the petitioner had faked his attempt to break the  
22 widow to the room in which the victim was confined in order to set him free;

23 10) the allegation that the petitioner seriously, and with intent to kill  
24 the victim, committed all of the overt acts alleged in support of the conspiracy  
25 to commit murder by gassing, in that the victim has now, 12 years later, admitted  
26 to witnessing the removal of the hose, thereby corroborating petitioner's claim  
27 at trial.

### 28 III

#### False Evidence

According to Appeals and Writs in Criminal Cases, Chapter 9, §9.41, this issue  
is currently controlled by Ca. Penal Code §1473 (b)(1), and further by the most  
recent ruling of In Re Richards, (2014) 55 C4th 948, as well as the relied upon  
cases of In Re Malone, (1996) 12 C4th 935 and In Re Sassounian (1995) 9 C4th 535.

PC 1473(b)(1) holds that if "False Evidence" that is substantially material



or probative on the issue of guilt or punishment was introduced against him at any hearing or trial related to his incarceration", a habeas petitioner is entitled to relief.

The Court in Richards (supra) clarified this issue by requiring that two facts be proven in order to prevail on this claim: 1) that False Evidence was adduced at trial, and 2) that, after proving of the Falsity, by a preponderance of the Evidence, that the false evidence is "of such significance that it may have affected the outcome" of the trial. That is, that, "With reasonable probability, it Could have affected the outcome. (Bold and underline substituted for original italics)

So, starting with the most simplistic analysis, let's see; since the victim himself has confessed, in writing, under penalty of perjury, to giving false evidence at trial, there can be no question that we have met the burden of proof as to that prong of the review.

That leaves its affect to be determined! On the first tier, let's assume that his entire testimony is false, and then wonder if it is possible that the jury would have rendered a different finding based solely on the testimony of the petitioner; Had the jury not been told that he had "lured" the victim into the building to commit a crime, would they have believed petitioner when he said he had not done so? Yes. Would this have changed their decision to find that petitioner Kidnapped the Victim for purposes of extortion? Probably. Could it have? Yes.

Petitioner Claimed repeatedly to have not even been around when the "kidnap" took place. Had the jury not been told by the victim that he saw the petitioner take part in a violent altercation that left him Bruised by the petitioner, would would they have still found the petitioner guilty of the Aggravated Kidnap crime? Probably Not. Could they have decided differently if not for the lie the victim told them? Yes.

The jury was told by the victim that the petitioner callously and maliciously caused the water in the room to rise to the level of the victim's neck, both to scare and to kill him. Petitioner Argued otherwise. If not for this testimony by the victim, would the jury have found for extortion by means of using this fear? Or an attempted Murder? Probably not.

Could they have come to a conclusion dispositive to guilt if not for these lies? Yes.

The petitioner testified at trial that his CoDefendant, Anna Marie Rugg, had instigated and prosecuted the crimes in question, and that his participation was the result of a complicated mixture of fear, confusion, indecisiveness, and to affect a tempering of the situation, and buy time, to look for a way out of the situ-

1 ation. The victim went to lengths to persuade the jury that the opposite was true,  
2 which served to undermine the petitioners defense. Whether the victim did so out  
3 of sentiment for Ms. Rugg is Immaterial. The fact is that it happened.

4 Had the jury not heard the victims false testimony regarding the extent  
5 and spirit of the petitioners participation, and had to decide solely on the  
6 version presented by the petitioner, would they have rendered every finding of  
7 guilt the same? Probably not.

8 Could they have decided differently, and more favorably for the petitioner?

9 Yes.

10 The petitioner maintained that he attempted to break the window of the room  
11 in which the victim was confined, and also tried to loosen the screws of the  
12 window, attempting to set him free behind Ms. Rugg's back.

13 The victim Falsely testified that this had been a ruse, and that the petition-  
14 er had never displayed any concern for his welfare, or attempt to undermine the  
15 criminal goals of Ms. Rugg.

16 If not for this false testimony, Would the jury have found that the petition-  
17 er intended to kidnap or keep confined, or extort, or murder, the victim, and would  
18 they have disbelieved the petitioner when he stated that he did not know (much as  
19 the Police did not know) that the Door to the room could be opened? Probably not.

20 Could they have rendered a "not Guilty" verdict on any of the current guilty  
21 findings, based on the defense alone, without the False testimony of the victim?

22 Yes.

23 And the biggest coup of all here, one completely unbeknownst to the defense  
24 at trial... The petitioner testified at trial that he had removed the hose that  
25 was connected to the cars exhaust from the vent after Ms. Rugg's visual inspect-  
26 ion, to convince her that it was real, but also protect Mr. Hamman.

27 At trial, Mr. Hamman testified that he had not ever seen anyone at the crime-  
28 scene that night whatsoever.

He now has Admitted to witnessing the removal of the hose from the vent by  
the petitioner, in his effort to sustain the victims status quo instead of murder-  
ing him.

Would the jury have found guilt on the Conspiracy to commit murder charge  
based solely on the testimony of the petitioner at trial on this issue? Yes, it  
seems they would.

But would they have found guilt if Mr. Hamman had spoke up and told the  
truth, that he had witnessed with his own eyes that the petitioner had taken steps  
to ensure his wellbeing? No. They would not.

Could they have found the petitioner not guilty, and not had him sentenced to

serve Twenty-five years to Life in prison?

1        YES.

2            Viewed less simply, In one fell swoop, the victim has provided cause to  
3        question the reliability of both Life term verdicts.

4            Taken as a whole, these admissions serve to negate several of the elements  
5        necessary for guilt findings as to Conspiracy to commit Murder, and Aggravated  
6        Kidnap for extortion both according to the 2003 Versions of California Jury  
7        Instructions-Criminal (CAL-JIC).

8            Slowing down, for the sake of argument, What if it does not?

9            Does it not at least make the petitioner eligible for a new trial, one that  
10        is not fundamentally unfair due to the use of perjury to obtain conviction?

11            And what if the dissuading of the victim as a witness on April 24th by the  
12        Placer County District Attorney's Representative was effective, and Mr. Hamman  
13        wants to clam up, as his most recent missive suggests he might?

14            In Re Malone (Supra) illustrates this perfectly: in that case, that petitioner  
15        was convicted based on testimony that he had confessed to a crime to a jailhouse  
16        informant.

17            Later, as a result of some sort of epiphany, the informant recanted and admit-  
18        ted he had made it all up.

19            Next, he must have gotten scared, and he recanted the recant.

20            While the California Supreme court did not completely overturn the convic-  
21        tion in that case due to a finding of falsity, they did reverse the findings  
22        supported by the informant's testimony, based on a very practical assessment of  
23        the situation: "First, in an interview with defendant's attorneys and investiga-  
24        tor, the witness admitted to having fabricated the confession. On later occasion,  
25        however, he denied fabrication... the admissions of fabrication were more credible  
26        than the later denials, because those admissions to perjury were against his penal  
27        interest... a prosecution witness probably lied ..."

28            Strengthening this view, petitioner reminds the court that this is the case  
29        relied upon in Richards, the most current and controlling case.

30            Distinguishing from this case only makes the instant petition stronger, not  
31        weaker: In both cases cited, the perjurer was a collateral witness, not the back  
32        that carries the entire case, so to speak, as the witness in this case is, with his  
33        having been the star, the Victim; in each of those cases, the rulings were in favor  
34        of the petitioner, even in light of overwhelming evidence of guilt of heinous cri-  
35        mes, because it was the right thing to do, while this case does not have an over-

whelming evidence of guilt as to the two contested charges, separate from the admittedly perjured testimony of the victim, Mr. Hamman.

In any event whatsoever, perjured testimony was crucial to securing the guilty findings in two verdicts, and there is no question that a) it was perjured, or b) the outcome Could have been different if not for the perjury.

#### IV

#### Knowing Use of Perjured Testimony

The current version of events available points to not only a knowing use of perjured testimony by the Placer County District Attorney's Office in this case, but also an implication that Mr. Hamman was enticed by the authorities to do what he has done.

The petitioner sees no point in arguing this claim for several reasons:

1) The standard of review is higher, and would be more costly in the time resource, given that the People would never say "Die" in the face of the allegation;

2) Simply arguing the "False Testimony" Claim has the same result at less cost, and, according to statute, does not require a proving that anyone from the people's side knew that the testimony was False, and also has the benefit of rendering the "Why" of the perjury "Immaterial";

3) From a more practical perspective—Who Cares? It's done, and cannot be taken back. The "Who" or "Why" is not important when compared to the real issue: the petitioner wants only to have his life back. That's it. To participate in fatherhood before his son reaches adulthood. To Exit prison and this chapter of life with enough time to settle down, have a family and start a career with time to work it to retirement at an Appropriate age, instead of sleeping under bridges and living check to check into his sixties.

The "Who" or "Why" has no bearing on any of this; it is sufficient to prove that it happened.

...However: The petitioner would like for the Court to keep an open mind and bear the possibility outlined by the allegations of governmental misconduct, above, when reviewing the "Cumulative Effect" claim outlined below.

#### V

#### Cumulative Effect of Errors Not Singly Prejudicial

While the volume of statute related to this issue is too daunting to cite

While the volume of statute related to this issue is too daunting to cite

extensively, there can be no question that certain cases speak very directly to the issues presented here. It is well established that Federal Courts recognize the ability of several non-prejudicial errors to amount to a prejudicial and reversible error when viewed cumulatively in the wider context of a trial.

The Ninth Circuit Court of Appeals has Consistently, and Recently, held that "cumulative effect of errors in murder trial warrant grant of habeas corpus relief." (Thomas V. Hubbard, 273 F3d 1164); "Cumulative Error Applies when, although no single trial error examined in isolation is sufficiently prejudicial to warrant reversal, the cumulative effect of multiple errors may still prejudice the defendant." (Mancuso V. Olivarez, 292 F3d 939); "multiple Errors, even if Harmless individually, May entitle petitioner to habeas relief if their Cumulative Effect prejudiced the defendant." (Ceja V. Stewart, 97 F3d 1246); "Cumulative prejudicial Effect of multiple trial errors must be considered in determining whether habeas relief is warranted." (Phillips V. Woodford, 267 F3d 966).

Other Circuits have ruled similarly: "In context of Criminal trial, Accumulation of errors can be grounds for a new trial." (Latiolais V. Whitley, 93 F3d 205). It seems therefore unlikely that a) the 9th Circuit would rule unfavorably on this issue, or that b) the district court would allow to stand, a contrary ruling made by c) the California Supreme Court. As such, it stands to reason that, in step with statutory Precedent, if there is observed by the reviewer, a cumulation of errors such that it renders the trial "Structurally deficient" or "unfair" and infects "the Framework" of the trial, then reversal is warranted, and failure to grant a new trial at the sooner opportunity would only serve to delay the relief that would be granted at the later opportunity.

Yes, a defendant "is entitled to a fair trial but not a perfect one." (US V. Ramirez, 426 F3d 1344, and its analogous California rulings, but, as has been stated in the very cases used to make this point, Fair is one thing, Perfect is another, much loftier goal, and this statement made in reference to patently petty grounds used to request relief does not serve as a license to any court wanting to "Pass the buck" to uphold convictions which serve to violate a petitioners right to fundamental fairness.

Yes, all but one of these issues have been before this court before, and in response, the Hon. J. Richard Couzens, seemingly with a snicker, informed the petitioner that he was not entitled to a "perfect trial".

Of course not, but then, the facts were not then as well developed as they are now, and were not bolstered by an explicit admission that False Testimony was used to obtain these convictions.

Further, pre-emptive of a claim by the People that these pleadings would qualify as a successive petition, The Miller Rule instructs that "a habeas petition based on the same grounds as those in a previously denied petition will be denied when there has been no change in the law or facts substantially affecting the rights of the petitioner." (In Re Reno, 55 C4th @496)

Thus, given the newly discovered evidence of the False Testimony used at trial, the facts have changed, and they do affect the other claims when presented under the Cumulative Effect standard.

Of note also, as the petitioner's claims were never heard on the merits due to procedural default under the AEDPA, the abovementioned denial by Judge Couzens is the last reasoned opinion as to those issues.

Moving now to the claims themselves, petitioner would proceed in an order, not necessarily illustrative of individual importance of each claim.

1

- Failure to Instruct on Lesser-Included Offenses -

Again, the petitioner was charged with two crimes in relation to the Confining and subsequent robbery or extortion of the victim; felony False Imprisonment by violence, Menace, Fraud or deceit, and Aggravated Kidnap for extortion. The false Imprisonment charge has a lesser included offense which is a misdemeanor, not a felony, and the difference is that the jury must not make a finding of violence, fraud menace or deceit. (Ca. Penal Code § 236)

In the case at bar, the facts did support instruction on the misdemeanor 236 just as much as the Felony, in that while the prosecution argued for active participation in the two felony crimes, the defense argued that while not taking a more active role in securing the release of the victim, the petitioner did not employ any of the actions necessary to constitute the felony crimes.

Indeed the jury later expressed a belief that the defendant was guilty of False Imprisonment "Without the 'Violence' part."

At trial, the prosecution employed an "All or nothing" strategy in which the jury was forced to conclude that either the defendant had committed a "Life" sentence felony, or nothing, counting on the fact that defense counsel would refute the claims of violent participation by the petitioner, but that the jury would feel him unquestionably guilty of something, and opt instead for the innocuous sounding "Kidnap for extortion" charge. Indeed, the prosecutor stated in closing argument that it was not important that the defendant did not violently assault the victim in the commission of this crime, it was enough that it happened and the petitioner did nothing to stop it.

This left the jury feeling swindled when they found out; Juror Jennifer Baran stated that she "felt tricked into these decisions by the prosecution." She also noted that she did not "understand why these particular charges were brought when I know that others could have been brought that would accomplish the same goal."

Well, petitioner finds at least two sets of fault with this; a) Beck v. Alabama 447 US 625, dictates that in capital cases it is mandatory that all lesser included offenses be instructed on, and b) the prosecution's misstatement of law is precluded by a boatload of statute; "a misstatement of Law by a prosecutor can invalidate a conviction" (Whitehead v. Cowan, 263 F3d 708)

Of course, the statement that the petitioner is still guilty of the kidnapping even if the jury finds he did not participate in it is a misstatement of law; so much so that there are precedents that preclude just such conduct, e.g. U.S. v. Zimmerman, 943 F2d 12049 "Person who sees a crime being committed has no legal duty to stop it or report it." Similarly, "People are entitled to refuse to provide information to the police," (Moya v. U.S., 761 F2d 322; Brown v. Texas, 443 US 47).

Not to mention the fact that there is no support in statute for telling a jury that they can and should find a defendant guilty of a crime he did not take part in. Moreover, if the prosecutor were attempting to convince the jury that the defendant was guilty of the kidnapping due to his admitted participation in the extortion, this fails also as a matter of law: "a defendant cannot be held liable ... for losses caused by other conspirators in a scheme prior to the time the defendant entered the conspiracy". (U.S. v. Badwound, 203 F3d 1072)

Accordingly, this is cause to reverse a conviction: "Prosecutor's Closing arguments may be grounds for reversing conviction." (Bell v. Evatt, 72 F3d 421); "prosecutorial Misconduct during closing arguments may be grounds for reversal of a conviction." (U.S. v. Beckman, 222 F3d 512)

Moving now to the Beck ruling, while this was a capital case and the case at bar was not, not to mention the division of the circuit courts regarding this issue, petitioner would argue that the same logic is valid in this case, and the lack of death penalty should not change the logic employed.

Arguably, petitioner would contend that death is preferable to life in prison, and not without conviction: fed up with life in prison, petitioner committed suicide on July 2nd 2012 and had to be revived by paramedics. So what really is the huge difference that would negate use of solid logic?

In any event, the logic is supported by caselaw: Francis v. Franklin, 471 U.S. 307; Sandstrom v. Montana, 442 U.S. 510: "Trial Court's instructions may not impermissibly shift the burden of proof to the defendant." U.S. v. Wolny, 133 F3d 758: "It is reversible error not to instruct jury on theory of defense that is suppo-

rted by evidence and Law."

1 In U.S. V. Miller, 263 f3d 1, the 2d Circuit ruled that "due process requires  
2 that a convicted person not be sentenced on materially untrue assumptions or mis-  
3 information." While this applies to the False Evidence issue, it arguably applies  
4 here as well in that the prosecution created a materially untrue assumption when  
5 he provided misinformation to the jury in his closing argument. In U.S. V. Hankton,  
6 432 F3d 1249, it was held that "a defendant has the due process right to be senten-  
7 ced on the basis of accurate information." which, again, is applicable here as well  
8 as in the False Evidence context.

9 The Circuit courts have found, and the Supreme Court agrees, that "While a  
10 prosecutor is clearly authorized to strike hard blows in an earnest and vigorous  
11 prosecution, he is not at liberty to strike foul ones." Berger V. U.S., 295 U S 78;  
12 Boyle V. Million, 201 F3d 711.

13 In U.S. V. Yazzie, 188 F3d 1178, it was Made clear that "four criteria for  
14 determining entitlement to instruction on lesser included offense are (1) a pro-  
15 per request, (2) the lesser included offense contains some but not all of the  
16 elements of the offense charged, (3) the elements differentiating the two offenses  
17 are in dispute, and (4) a jury could rationally convict defendant of the lesser  
18 offense and acquit on the greater offense."

19 Well, since the conviction in 2003, petitioner has absolutely argued three  
20 out of four of these requirements, the only exception being the "Proper Request"  
21 element.

22 On Direct Appeal, Appellate Counsel John F. Schuck properly raised this issue  
23 on appeal; He Appropriately brought the courts' attentions to an overwhelming  
24 amount of precedent, both California State, and Federal, including such perfectly  
25 fitting cases as Hopper V. Evans, 456 U S @610-611; People V. Breverman, 19 cal 4th  
26 @166; Hogan v. Gibson, 197 F3d @1312; People V. Ray, 14 Cal 3d @32; People V. Webber, 228  
27 Cal App 3d 21165; People V. Greenberger, 58 cal app 4th @380; People V. Morrison,  
28 228 Cal App 2d @713; People V. Gibbs, 12 Cal App 3d @547; and more importantly,  
29 People V. Matian, 35 Cal App 4th @487.

30 The federal law seems to agree that the strategy employed as outlined above  
31 was, if not underhanded, inappropriate: Schad V. Arizona, 501 U S @646-647; Schmuck  
32 V. U.S., 489 U.S. @717 and footnote #9; Hopkins V. Reeves, 524 U.S. @95; Hopper V. Evns,  
33 Supra; People V. Avena, 13 Cal 4th @424; People V. Kaurish, 52 Cal 3d @696; People  
34 V. Rayford, 9 Cal 4th @12 & Footnote 8.

35 No-one, Not a court, not counsel, ever advanced the requirements set out in



1 Yazzie, Supra, as the test for determining this issue, even though they were there  
2 at least four years before trial in the case at bar.

3 Is it now necessary to tarnish the memory of Deceased defense Counsel  
4 Serafin with a n Ineffective Assistance of counsel Claim, as well as one for  
5 Mr. Schuck, in order to rightly prevail on this issue?

6 If so, the court can liberally construe a petition by a pro se litigant (Clark  
7 V. Oklahoma, 468 F3d 711; Perruquet V. Briley, 390 F3d 505) and should consider this  
8 a request to do so in favor of the above Ineffective Assistance Claim in the  
9 furtherance of the instant request for relief;

10 But this may not be necessary, the trampling of Jesse's memory in order to  
11 obtain relief on this ground: In Harris V. U.S. RR Retirement Bd., 198 F3d 139,  
12 it was held that "it is generally preferred that a blameless party not be dis-  
13 advantaged by the procedural errors or neglect of his Attorney." This would serve  
14 to make a sixth amendment claim unnecessary in the pursuit of relief sought  
15 here, in that, as a defendant, the petitioner was lost in the legal proceedings  
16 and their statutes, and was therefore blameless regarding the decisions of  
17 counsel relating to jury instructions.

18 Also of Note, our Circuit has held that "Once a state's criminal laws are  
19 written, a defendant has the federal due process right to insist that the state  
20 prove beyond a reasonable doubt every element of the offense charged" (Medley  
21 V. Runnels, 506 F3d 857.)

22 Petitioner contends that with regard to the Kidnap charge in this case, the  
23 state has not met its burden, and if the reviewer thinks differently, petitioner  
24 would then make reference to a ruling in our circuit in Forbes V. Napolitano, 236  
25 F3d 1009, which held that "Under due process clause, Statute which criminalizes  
26 conduct may not be impermissibly vague in any of its applications."

27 This concept seems to be implicated by the notion that it is perfectly  
28 acceptable that if a jury can find guilt on both Misdemeanor False imprisonment  
and a separate but related robbery or extortion crime together; but also,  
with zero factual difference, find guilt as to Aggravated Kidnap for Extortion,  
and give a "Life" sentence, instead of the five years or less for the above  
alternate, lesser offenses, there must be (has to be,) a vagueness in the statutes  
that allows the crimes to be interchangeable and allow for precluded arbitrary  
enforcement of those laws. there is too much left to chance, and it violates due  
process.

Inconsistent Verdicts

This issue was extensively argued on direct appeal and habeas, with the end result a finding of "So what?"

The logic is simple though—how can an irrational finding such as this be allowed to stand as a matter of due process? It's akin to a jury finding that "Ok, yes, we find you guilty of using a gun to commit that robbery, but not guilty of committing the robbery that you used the gun to commit."

This is beyond absurd.

As stated in Medley, supra, Miller, Supra, Hankton, Supra, if the jury did not find even one element of a crime beyond a reasonable doubt, the verdict cannot be reliable, it must be reversed. The law is not ambiguous in this: It only takes one juror, with reasonable doubt regarding one element.

We have that in spades here, without ambiguity or room for debate: Our Jurors told us with almost unprecedented specificity that intent to kill, a required element of Conspiracy to kill, was not found by all jurors, and not beyond a reasonable doubt.

This is not a matter of symmetry, as one court tried to describe this issue, it's a matter of due process and fundamental fairness: Did the jury unanimously find all of the elements necessary, beyond a reasonable doubt, before a nineteen year old kid was sent to our nation's most violent prison system for at least 25 years, and likely, until his death?

Those jurors say no. The logic, through extrapolation, says they could not find intent to kill; and the jurors themselves, often in their own handwriting, say, they found no intent to kill.

If this is fine in the eyes of our legal system, why did the petitioner not also receive an additional 25-life for the attempted murder with identical requirements and facts?

While it seems there is some question of how to reason out some decisions as to this issue historically, one theme remains solidly consistent: Identical charges with identical facts and identical elements cannot satisfy due process requirements, without identical, or at least not contrary, verdicts.

Appellate counsel unsuccessfully argued this issue on appeal, citing California statute related to the issue: People V. Calpito, 9 Cal App 3d @219; People V. Doxie, 34 Cal App 2d @512-513; People V. Carner, 117 Cal App 2d @364; for the inconsistency of the two verdicts, and, for the due process issue presented by less

1 than a finding of guilt on all elements of the Conspiracy charge: People V. Cortez  
2 18 Cal 4th @1228 &1232; People V. Fenenbock, 46 Cal App 4th @1707; People V. Santa  
3 scoy, 153 cal app 3d @913; People V. Montes, 112 Cal app 4th @1549.

4 This argument was rejected by the state supreme court, who advanced alternative  
5 theories of their own to conclude what the jury "may have" or "could have" thought  
6 or decided; petitioner would assert that this is improper: not only is the courts'  
7 duty not to manipulate law or facts for the sole purpose of finding a way to keep  
8 a litigant incarcerated in the face of evidence contrary to his conviction, but  
9 there is no question regarding why the jury did what they did: they told us in  
10 very specific language, leaving no room for question or manipulation.

11 They could not, and did not, find intent to commit murder in either offense,  
12 and thus, reversal is required.

13 3

### 14 Juror Misconduct

15 This issue was not brought on direct appeal, though the objections post-  
16 trial are a matter of record.

17 In a post-trial hearing on a motion for a new trial submitted by counsel  
18 for the defense, it was alleged that jury foreman Robert Stefun had concealed his  
19 having relatives in law enforcement, and, having grown up as the son of a federal  
20 prison warden, by his own admission Minutes after the trial ended, he was prejudiced  
21 against the defendant and a biased juror.

22 The subsequent argument focused on such oblique issues as his age and the  
23 semantics of the term "law Enforcement".

24 The petitioner will now re-allege the same, referring the court to the att-  
25 ached News article authored by Auburn journal reporter Ryan McCarthy.

26 Without wasting your time making a whole lot of nothing out of irrelevant  
27 issues such as age, Petitioner will get right to the heart of it: What is expected  
28 to prevail on this issue?

Does Mr. Stefun need to walk into court and announce "Yes, after reading about  
this case in all three of the local newspapers, and seeing Mr. Rodriguez on the  
television news for the last nine months, consistently, I was delighted to be cal-  
led for jury duty so I could not tell anyone that I spent my childhood hearing  
my father speak of "Enforcing" "law"ful sentences of Already Convicted criminals  
who were deprived of their rights, by "Law" for crimes they were Already found  
guilty of. He told me horror stories, in my formative years, of their brutality and

1 of their inherent propensity toward lying, which renders them completely untrust-  
2 able.

3 "I was not going to let simple questions at jury selection prevent me from  
4 being the voice of reason on this jury and making sure this criminal couldnt  
5 lie his way out of this, so I kept my mouth shut, got on the jury, got myself  
6 elected foreman, and demanded guilty verdicts on all charges, without further dis-  
7 cussion, to bring this lying criminal to justice. I never trusted him, as soon as  
8 I saw his lying, criminal face in the paper and on the news.

9 "and I was thinking exactly this when all the other jurors stayed to speak  
10 with defense counsel, but I went swiftly and expiditiously to the closest news  
11 reporter to say the first thing at the forefront of my mind- 'My father was a  
12 federal prison warden, some people make the right choice and avoid crimes and  
13 others dont.' That was what was on my mind because that is what caused me to feel  
14 the way I felt."

15 We should be so lucky.

16 Where does the question lie here?

17 He was on the jury.

18 He got there by omitting information which would have resulted in his  
19 dismissal had it been known.

20 His bias isnt open for argument: Arguably, Convicted Criminal Prisoners are  
21 due less trust or credibility by their keepers, because a) they are convicted  
22 criminals already, and b) who out of the demographic is ever seen admitting every-  
23 thing and being completely truthful?

24 Is "Prison Warden Law" Enforcement?

25 The sentences being served are as a result of laws enacted to put the cri-  
26 minals there, right? The rights denied to them are a result of Laws which serve  
27 to strip other rights, no?

28 Ambiguity here is irrational.

As such, he was biased, a fair trial was denied, and reversal is required.

This is the poster child for reversal, with more cases devoted to it than  
most other issues, and the Ninth Circuit has spoken loudly and repeatedly on the  
issue: "The presence of a biased juror cannot be harmless; the error requires a  
new trial without a showing of actual prejudice because it introduces a structu-  
ral defect not subject to harmless error analysis." (Dyer V. Calderon, 151 F3d 970)  
"Defendant's sixth Ammendment rights are violated even if only one juror was un-  
duly biased or improperly influenced." (U.S. V. Sarkisian, 197 F3d 966)

1 "If court determines there was actual juror bias, juror's inclusion in jury is never  
2 harmless error." (U.S. v. Carpa, 271 F3d 962 [11th Cir.]) "presence of a biased juror  
3 cannot be harmless; error requires new trial without showing of actual prejudice,  
4 ... "defendant is denied right to an impartial jury even if only one juror is  
5 biased or prejudiced." (Feilds v. Woodford, 281 F3d 963, 309 F3d 1095) "the presence  
6 of a biased juror introduces a structural defect not subject to harmless error  
7 analysis" (Feilds v. Brown, 431 F3d 1186; and the other Circuits agree: "Where a bi-  
8 ased juror was impaneled, prejudice under Strickland was presumed in counsel's  
9 failure to move to strike the juror for cause, and a new trial was required." (this  
10 ruling in one stroke establishes that our Circuit's view is supported elsewhere,  
11 and also that it would not matter if counsel had objected; Prejudice would still  
12 be assumed, and reversal required.)) (Hughes v. U.S., 258 F3d 453 [6th Cir. 2001])

4

#### 11 Failure to preserve Exculpatory Evidence

12 This issue was raised on habeas but, as has been seen, was procedurally de-  
13 faulted due to the AEDPA.

14 Petitioner renews the claim in light of the new evidence and asserts, as  
15 before, the following: In his purported "Confession", petitioner asserted that he  
16 had, at one point, attempted to break the window to the room Mr. Hamman was  
17 confined in, as well as loosen the screws of its frame to allow Mr. Hamman to  
18 escape on his own.

19 Evidence Exhibits logged by Placer county Sheriffs Office Evidence Tech Jane  
20 Xepoleas reflects a latent fingerprint from the window sill of the very same  
21 window the petitioner claimed to have attempted to loosen in his interview.

22 Also in the interview, and throughout, petitioner maintained that he had not  
23 entered the gas station and violently demanded that Co-defendant Rugg exit and  
24 leave with him. Gas Station attendant and several time felon Robert Hammer claimed  
25 the opposite, and gave testimony to inflame the jury against the petitioner to the  
26 effect that a violent confrontation had taken place in which petitioner had for-  
27 ced Ms. Rugg to leave with him.

28 Logged into evidence was the Video surveillance footage from inside the gas  
station, proving the petitioner truthful in his account of events, and also demol-  
ishing the credibility of Mr. Hammer.

Both of these pieces of exculpatory evidence, which served to impeach wit-  
nesses against the defense, as well as bolster his credibility, vanished while in  
possession of the prosecution and/or his agents.

This is well regarded as grounds for reversal on appeal/habeas: "Suppression  
of favorable evidence violates due process" (Brady v. Maryland, 373 US 83;

1 "Under Brady an inadvertant nondisclosure has the same impact on the fairness  
of the proceedings as deliberate concealment." (Strickler V. Greene, 527 US 263)

2 "prosecution's obligation under Brady to disclose exculpatory evidence extends to  
3 impeachment evidence, and to evidence that was not requested by the defense."

4 (Paradis V. Arave, 240 F3d 1169) "Brady obligations apply to a prosecutor's conduct  
5 even when the defense has not requested the discovery of exculpatory evidence  
6 and ... a prosecutor's duty to disclose exculpatory evidence under Brady extends  
beyond his personal knowledge of such evidence." (McCambridge V. Hall, 266 F3d 12)

7 "Even an inadvertant failure to disclose information may constitute a Brady vio-  
8 lation." (Bailey V. Rae, 339 f3d 1107) "Prosecutor's duty to disclose evidence fav-  
9 orable to the accused extends to information known only to the police." (Jack-  
son V. Brown, 513 F3d 1057)

10 "Under Brady and its progeny, the state violates due  
process when it suppresses or fails to disclose material exculpatory evidence."  
11 (Richter V. Hickman, 521 F3d 930)

12 "Prosecution's Failure to disclose favorable evidence violates due process  
13 when the evidence is material" (Horton belmontes, V. Brown, 414 F3d 1094) "Brady claim  
has two requirements for overrturning a verdict: (1) that evidence in the possess-  
14 ion of the government was actually suppressed, and 2) that the evidence was  
material."

15 Attached as Exhibit "K" is a three page inventory of items logged into evidence  
16 for the case at bar. Items 2 and 24 are at issue here. Petitioner submits that a)  
17 this log proves the state to have been in possesion of these exculpatory items,  
18 and b) materiality was claimed at the time of trial, and is re-asserted thusly-

19 1) Had the jury been presented with evidence that the petitioner was truthful  
when he claimed to have attempted to help the victim escape his confinement in the  
20 room, his credibility overall would have benefitted significantly and, as well, the  
21 view of him as the instigator in the criminal acts would have been significantly  
22 diminished in the eyes of the jury; and

23 2) had the jury been allowed to see the videotape from the inside of the gas  
station, they would have had much reason to doubt the credibility of witness  
24 Hammer, and would have given an inverse amount of credibility to the petitioner as  
25 a result, again resulting in a diminished prosecution claim that the petitioner  
26 was instigating and persuing the goals of the charged crime, instead of Co-defen-  
27 dant Rugg, which, taken together may have shifted the wieght of credibility enough  
28 in favor of the petitioner that the outcome of the trial may have been signifi-  
cantly different.

Use of Involuntary "Confession"

While the petitioner was questioned on the stand as to the circumstances surrounding this "Confession", and, as well, the detectives involved were lightly challenged at trial, no hearing to determine the admissibility of the recording was ever held; its reliability, regarding not just how much of it was damaged goods, but also whether it was voluntary, was taken completely for granted by all those charged with ensuring that foul play not be allowed.

Petitioner raised this issue on habeas, but was barred from review under the AEDPA.

Here now, he re-alleges the same issues, but into a context which includes the consideration of the Use of False testimony to obtain his conviction.

Examining first its reliability in relation to how damaged its content was, let us turn the tables: If the petitioner tried to use, as impeachment evidence, a video that was interrupted 138 times in 90 minutes, sometimes for as long as 7 seconds at a time, would the people allow it to go uncontested? Would the court allow it anyway?

What if instead of butchering 138 sections out of the tape, only those 138 portions currently missing were available, would Detective Coe have testified that nothing material was missing? Would the court deem it reliable? Would the people object to its use?

Of note, when the claim was made at trial that police radio transmission was responsible for the missing content, it was an absurd statement that can be proven untrue very easily by any expert in the field of radio propagation/transmission; this would be similar to a claim that your satellite dish stopped working because you turned on your cellphone—the signals are sent on bands of radio so far apart that, by law, devices must not be able to cause interference, like how their respective licenses prohibit your local country music station from transmitting in a way that affects your local rock station, even though they both transmit on the frequency modulation Mega-hertz band... While police radios transmit on a band that is literally Magnitudes apart from the band used by small FM devices such as baby monitors and.... localized video surveillance, like that used in the interview at issue here.

The content is not reliable and is so affected as to deny the petitioner due process rights, and there is something much more insidious than mundane radio traffic at cause here.

1 Moving now to the issue of "Voluntariness"; as was stated in the petition,  
2 petitioner invoked his right to counsel and to remain silent immediately upon  
3 arrest.

4 These invocations were ignored, completely, and over a period of time, and  
5 environment was created and maintained whose goal was to overcome the will of  
6 the petitioner to continue to resist the demands of the police to submit to an  
7 interrogation. In the video that is available, there are several references to the  
8 attempt by the petitioner to resist, as well as the actions of the police in  
9 their pursuit of the video they finally obtained.

10 The circumstances of the interrogation were violative of the petitioner's  
11 rights to counsel and to remain silent and to be free from self incrimination.

12 The courts have consistently ruled in support of this assertion: "When a per-  
13 son in police custody requests the presence of an attorney, the authorities must  
14 cease interrogation." (Sanna V. DiPaolo, 265 F3d 1); "The Fifth Amendment right to  
15 remain silent carries an implicit assurance that silence will carry no penalty."  
16 (U S v. Velarde-Gomez, 269 F3d 1023) "Counsel Must Be present at custodial inter-  
17 rogation." (Edwards V. Arizona, 451 U.S. 477) "reversal is mandated if prejudice is  
18 proven on Attorney-client relationship." (U.S. V. Morrison, 449 U.S. 361) "The  
19 purpose of a Kastigar Hearing is to determine if the government's evidence was  
20 obtained in violation of the defendant's 5th Amendment rights." (U.S. V. McKee,  
21 192 F3d 535) "Where defense counsel is absent during critical Stage of criminal  
22 proceedings, prejudice to the defendant is presumed" (U.S. v. Hamilton, 391 F3d 1066)  
23 "Suspect who has requested presence of counsel cannot be questioned concerning  
24 any crime, not just the one that got him in custody." (Alston V. Redman, 34 F3d  
25 1237; Edwards V. Arizona, Supra) "burden is on the government to show that defend-  
26 ant was aware of his Miranda rights and waived them." (U.s.v. Cazares, 121 F3d 1241)  
27 "If suspect requests counsel in an interrogation context, 6th Amendment affords  
28 him protection regardless of subject of interrogation." (U.S. V. Melgar, 139 f3d  
1005) "When agent does more than just listen, but also initiates discussion of case  
which leads to incriminating statements from accused after right to counsel has  
attached, 6th Amendment violation occurs." (Blackmon V. Johnson, 145 F3d 205) "Due  
process test for evaluating voluntariness of defendant's confession Requires  
inquiry into whether defendant's will was overborne by the circumstances surround-  
ing the giving of the confession." (Dickerson V. U.S., 530 U.S. 428; Bolding and  
underlining added for emphasis; no such inquiry was ever even considered in the  
instant case.) "State court's admission of testimony in violation of Miranda



1 violated defendants due process rights,"and,"It is a violation of Miranda to  
2 question an individual who is in custody after he has requested counsel."(Ghent  
3 V. Woodford,297 F3d 1121)"the appropriate remedy for violations of Miranda rights  
4 is exclusion of the evidence at trial"(Jocks V. Tavernier,316 F3d 128)"The Gov-  
5 ernment bears the burden of showing,by a preponderance of the evidence,that a  
6 confession is voluntary."(U.S. V. Lopez,437 F3d 1059)"A statement is involuntary  
7 when it was extracted by threats,violence,or express or implied promises sufficient  
8 to overbear the defendant's will..."(U.S. V. Jordan,472 U.S. 575)

9 As has been shown,the law does not support a conviction which rests on a  
10 "Confession" obtained under the circumstances petitioner has maintained,and the  
11 people have not refuted),since before the trial in question,especially,as we  
12 have seen,with its questionable reliability due to damage it had suffered,and as  
13 such,reversal is required.

14 6

#### 15 Denial of material defense witnesses

16 This was an issue at trial,and with respect to Ms. Erin Hughes,as has been  
17 seen,steps were deliberately taken by the people to keep her from providing any  
18 corroboration of the defense theory to the jury,when the interest of justice would  
19 have supported finding a way to present the truth,as the people knew it,to the  
20 jury,instead of intentionally burying it to obtain bigger convictions.

21 With respect to the testimony of the Yolo County Police and of the six young  
22 men who had been on the receiving end of Ms. Rugg's scheming,the court unreason-  
23 ably ruled that only those witnesses would be allowed that the defendant had  
24 personally had knowledge of through witnessing their respective situations.

25 The rationale for this ruling is still a mystery to the petitioner;those  
26 witnesses gave great weight to the defense theory of the case and would have  
27 prejudiced the people's case only as much as the use of prior convictions as  
28 evidence against the defendant would.

29 The requirement that personal knowledge,and therefore,possible incrimination  
30 and waiver of Fifth Amendment privilege,was unreasonable and is irrational and  
31 impractical when viewed through a real world application:who develops opinions,  
32 beliefs,fears,ect.,based solely on what they personally observe?

33 If personal witness were the standard of review from the judicial perspec-  
34 tive,Abrahamic Religion would not be acknowledged to exist as a matter of law,  
35 and as such,a sworn oath to be truthful in court proceedings,in the eyes of God,  
36 would hold no water,as a matter of law,making the whole thing a sham,as a matter

of Law.

So which is it? It can't work both ways depending on who is asking for their developed belief to be accepted; that's not how the law works. It cuts both ways; if it's good for the goose it's good for the gander, there are no double standards.

What makes the defendant's beliefs, based on evaluation of witnesses to those other situations, any less acceptable than the testimony, mostly disparaging of the petitioner, of his foster brother, Richard Romines, regarding What he heard, not personally witnessed, about the crime in the case at bar?

What is the difference? How is it fair to take testimony from a source for the prosecution, but not, under identical circumstances, for the defense?

There is no difference, and it is not fair, and it, while denying fundamental fairness, also serves to deny the defendant the right to present a defense.

The Law does not Allow this.

As an allegorical example: The people say John Doe was killed by petitioner, with a gun, but the gun cannot be found. Petitioner states that he saw Dave Mathews shoot John Doe with a gun. The people contend that Dave Mathews has no gun, and couldn't shoot it if he did.

Petitioner then says to the court: Here is a witness who says he sold Dave Mathews a gun consistent with that used to kill John Doe, and Here are Five Witnesses who see him practicing at the range every day.

Does the court now say: these witnesses are only allowed if the petitioner was present when the gun was sold by the witness, to Dave, and the others, only if the petitioner was also at the range watching Dave shooting at targets.

This is non-sensical... What's the point of the witnesses if petitioner can attest to those facts? Does his not being there and only knowing through the witnesses make the facts not exist? If the witnesses are available to testify to first hand knowledge, it's not hearsay, right? So what's the problem? Credibility? Is that not a function of the jury: to assess the credibility of the witnesses for themselves?

The Law speaks to these issues, voluminously at the federal level: "the government has a special responsibility to ensure the integrity of the criminal judicial process by living up to a code of professional ethics and fair play at all times." (U.S. V. White, 222 F3d 363) "Suppression of evidence material to the guilt or punishment violates defendant's due process rights." (Dowthitt V. Johnson, 230 F3d 733) "A state may not arbitrarily prevent defendant from presenting evidence that is material, trustworthy, and important to his defense" (Gray V. Klauser, 282 F3d 633); "Only when error in excluding evidence deprives a defendant of a fair trial does

1 it amount to a constitutional violation."(U.S. V. Lathern,488 F3d 1043);the state  
2 may not prosecute a case with an "Evil eye and uneven hand."(Yick Wo V. Hopkins,  
3 118 U.S. 356)"Prosecutorial Misconduct is not harmless when it renders defendant's  
4 evidence worthless."(Marshall V. Hendricks,307 F3d 360;"The prosector is an offi-  
5 cer of the court whose duty is to present a forceful and truthful case to the jury,  
6 not to Win at any cost."(u.s. v.Filion,335 F3d 119[Emphasis not original])"threat-  
7 ening a witness with prosecution...are violations ofthe 6th Ammendment right of a  
8 defendant to obtain witnesses in his favor"(U.S. V. Golding186 F3d 700)"govern-  
9 ment interference with defendant's right to present a defense,including calling  
10 defense witnesses,violates the constitution."(U.S. V. Deering,179 F3d 592)"def-  
11 endants 6th Ammendment right to present witnesses for his defense may be violated  
12 if governmental interference prevents a witness from testifying."(U.S. V. George,  
13 363 F3d 666);"Substantial government interference with a defense witnesses' free  
14 and unhampered choice to testify amounts to a violation of due process."(Earp V.  
15 Stokes,423 F3d 1024);"Few rights are more fundamental than that of an accused to  
16 present witnesses in his own defense."(Hawkins V. Costello,460 F3d 238)

17 Further,should someone bring up confrontation of witnesses regarding whether  
18 or not to allow witnesses against Co-defendant Rugg at the trial of the petition-  
19 er,it should be remembered that where she was not on trial,and petitioner was,  
20 she had no right to confrontation that could be implicated,by virtue of not being  
21 the person on trial.

22 7

23 False Evidence Adduced at Trial

24 This issue is incredibly well represented in caselaw,it is so extraordinarily  
25 powerful as a reason to overturn a conviction that it is the only ground speci-  
26 fically mentioned in the California Penal Code as grounds for Habeas Releif;it has  
27 its own sub-section.

28 In §III of this memorandum,state law supporting reversal was spoken of,bre-  
29 ifly.Specifically the rulings and definitions,standard of reveiw and burden of  
30 proof as articulated in Rchards,Sassounian and Malone,Supra.

31 Here will be a discussion of federal law and the effect ofthis issue in the  
32 context of the instant cumulative effect claim.

33 It cannot be denied that,as the only eyewitness to any alleged crime in the  
34 case at bar,the Testimony of Nicholas Hamman was enormously probative on the issue  
35 of guilt;Crucial,in fact,is an accurate description of his testimony.

1 Without this testimony, there was no evidence of a crime whatsoever: Both  
2 detectives presented their evidence, gathered as a result of Mr. Hamman's state-  
3 ments, and allowable based only on his testimony; The evidence presented by Emergen-  
4 cy room physician Andrea Harris is similarly irrelevant without Mr. Hamman, as is  
5 the testimony of Robert Hammer and all evidence of the electronic transactions  
6 that gave rise to the robbery allegations.

7 And Now, Mr. Hamman swears, under penalty of perjury, that he lied about facts  
8 used to obtain this conviction?

9 Its hard to say, with the extreme necessity of his testimony, to determine  
10 where the damage starts and ends.

11 Of course, yes, a crime was committed here, but to what extent, and the question  
12 by Whom now starts from scratch.

13 Its well settled in state and federal realms of law that a crime may not be  
14 prosecuted solely on the basis of confession. "Conviction must rest upon firmer  
15 ground than the uncorroborated admission or confession of the accused." (U.S. V.  
16 Smallwood, 188 F3d 905)

17 But especially a "confession" as unreliable as the one proffered here, dropped  
18 up as it is, and extracted in violation of defendants' invoked rights to counsel  
19 and to remain silent, which "Should be scrupulously honored." (US V. Rodriguez, 518 F3d 1072)

20 Having demonstrated the probative value of the testimony given by Mr. Hamman  
21 as the victim, and therefore star witness, and sole accuser, we assume its effect on  
22 the jury to be a profound one and move to the federal law which determines this  
23 issue: "Due process requires that a convicted person not be sentenced on materially  
24 untrue assumptions or misinformation." (US V. Miller, *Supra*) "defendants' convictions  
25 must be reversed on due process grounds where the government knowingly elicits,  
26 or fails to correct, materially false statements from its witnesses." (Daniels V.  
27 Lee, 316 F3d 477; U S V. Haese, 162 F3d 359) "governments knowing use of false testi-  
28 mony, or failure to correct testimony, violates Due Process." (US V. Burke, 425 F3d  
400; Phillips V. Woodford, 267 F3d 966) "a Defendant has the right to be sentenced  
on accurate information" (US V. Hankton, *Supra*) "Prosecutor may not obtain criminal  
conviction through use of false evidence." (Thompson v. Calderon, 109 F3d 1358) "The  
prosecution may not use or solicit false evidence or allow it to go uncorrected."  
(U S V. Goodson, 165 F3d 610) "Prosecutor has constitutional duty to correct evi-  
dence he knows to be false." (Hayes V. Woodford, 301 F3d 1054) "denial of due process  
occurs where state allows false evidence to go uncorrected." (Hall V. Director of  
corrections, 343 F3d 976) "Government, not the defendants, bears the burden of estab-  
lishing harmlessness of an error in admission of evidence." (U.S. V. Rodriguez-  
marrero, 390 F3d 1) "New trial will be granted if verdict... (2) is based upon evi-

1   ence which is false..."(Cline V. Wal-Mart Stores, inc., 144 F3d 294) "New trial is  
2   required if perjured testimony could in any reasonable likelihood have affected  
3   the judgement of the jury."(U S V. Viziri, 164 f3d 556) "New Trial must be ordered  
4   whenever substantial rights are effected by error at criminal trial and the gov-  
5   ernment cannot prove harmlessness beyond a reasonable doubt."(U S V. Levy-Cor-  
6   dero, 156 F3d 244) "The dignity of the United States Government will not permit  
7   the conviction of any person on tainted testimony."(Mesarosh V. U.S., 352 U.S. 1)  
8   " ' perjury' requires willful intent to provide false testimony, rather than con-  
9   fusion, mistake, or faulty memory."(U.s. v. Fawley, 137 F3d 458) "District Court did  
10   not abuse its discretion in ordering new trial, in light of dubious testimony of  
11   two of governments main witnesses."(U.S. V. Autuori, 212 F3d 105) "Conviction will  
12   be set aside if there is any reasonable likelihood that the false testimony could  
13   have affected the judgement of the jury."(Hayes v. woodford, Supra) "a new trial is  
14   required if perjured tesimony could in any reasonable likelihood have affected  
15   the judgement of the jury."(U.S. V. Agurs, 427 U S 97) "few rules are more central  
16   to an accurate determination of innocence or guilt than the requirement that one  
17   should not be convicted on false testimony."(Ortega v. Duncan, 333 F3d 102) 'a pro-  
18   secution's giving a witness behifits, such as leniency...or anything else, can be  
19   used by a cross-examining defense counsel to undermine the witness."(Wisehart  
20   V. Davis, 408 f3d 321) "Where a key witness has received consideration or potential  
21   favors in exchange for testimony and lies about those favors, the trial is not  
22   fair."(Tassin V. Cain, 517 F3d 770)

23       So, as has been demonstrated, state and federal law expressly preclude the  
24   use of false or perjured testimony to secure convictions.

25       In the Cumulative effect context, the effect on the jury that this false  
26   testimony has had on the jury becomes undeniable, as one card after another is  
27   stacked against the petitioner.

## 8

### Summary

28       Alone, the Law seems to require reversal of these convictions on the issue  
29   of False Evidence.

30       But this issue is heavily exacerbated by the impact of several other issues  
31   that, in concert, when accumulated, so infect the trial as to deny the petitioner of  
32   due process and are of a magnitude that affects the very framework of the trial.

33       Petitioner asserts that without these accumulated errors, the jury would have  
34   aquitted him of Conspiracy to commit murder, and of kidnap for extortion, and as a

1 result,he would have been sentenced to a determinate term of approximately a dec-  
2 ade,instead of more than one "Life" exposure sentence,plus that decade.

3 Chronologically:if.The Placer County Sheriffs Detectives had adhered to law  
4 and vindicated petitioner's rights to Silence and counsel after he invoked them,  
5 no interrogation would have taken place;if no interrogation had taken place,it  
6 could not have been shown,in its severely altered state,to the jury;If it had not  
7 been shown to the jury,only the victims testimony could have affected their deci-  
8 sion;If the victim had not provided false testimony,niether would the detectives  
9 had done so,and MANY lies that were probative of guilt and of punishment would  
10 not have been told to the jury;If Erin hughes had not been forced to refuse to  
11 testify out of fear of the retaliation the prosecutor threatened her with,the  
12 jury would have heard evidence very contrary to the prosecution's theory;if the  
13 testimony of the Yolo County Police and other witnesses of prior,similar acts  
14 perpetrated by Co-Defendenat Rugg,they would have heard credible evidence very  
15 contrary to the prosecution's theory of the case;if both of these sets of witness  
16 testimony were not excluded,they would have bolstered,very much,the credibility  
17 of the defendants testimony;if the jury had been given proper instruction on the  
18 crime of Misdemeanor false imprisonment,they would have convicted the petitioner  
19 of that crime instead of the 7-Life Kidnap charge;if the jury had not bee told  
20 they could convict the petitioner of Kidnap simply for not releasing the victim  
21 from his restraint,despite having had nothing to do with the victims kidnap to  
22 begin with,they would not have convicted the petitioner ofthe Kidnap charge;if  
23 Jury Foreman Robert stefun had not concealed the employment of his father as a  
24 federal prison warden,he would not have been allowed on the jury,and;if he had  
25 not been allowed on the jury,he could not have been "Unreasoable"and "Demanded"  
26 guilty verdicts on everything,without further discussion.

27 And if not for the deck being stacked so much against the petitioner,he would  
28 have been afforded a fair trial and been allowed to fairly defend himself,which  
29 would have resulted in a determinate sentence of approximately ten years in  
30 prison.

31 9

### 32 Conclusion

33 As stated above,the convictions that resulted from the use of false tesimony  
34 and from the cumulative effect of the errors stated above requires reversal and  
35 a new trial that is not so skewed as to deny the petitioner the constitutionally  
36 guaranteed rights of due process and a fundamentally fair trial.



1 Petitioner is without relief,save by writ of Habeas Corpus,Wherefore,the  
petitioner prays this court:

2 1)Issue the Writ;

3 2)Declare the rights of the parties;

4 3)Set aside the findings of Guilt as to the charges of Conspiracy to  
Commit First Degree Murder and of Aggravated kidnap for Extortion in Placer  
5 County Case #62-03489,based on the facts of this petition;

6 4)Order a new trial on the charges aforementioned;

7 5)Rescind the petitioners current sentences of 7-life and of 25-life  
8 pending a new trial on those charges;and

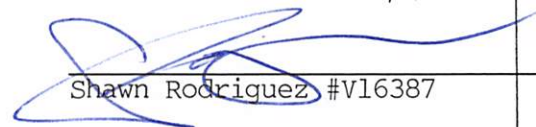
9 6)Order any other relief deemed appropriate by this court but not  
requested by petitioner at this time.

10 7)Alternatively to the request above,should an Order to show Cause  
11 issue,petitioner requests this court

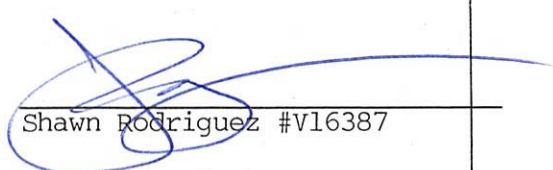
12 8)Order the clerk of the court to prepare a replacement transcript  
of prior proceedings to substitute that which was destroyed by correctional off-  
13 ials,for petitioner's reference;and

14 9)Order representation by the placer County Public Defender for  
those proceedings which the petitioner may not attend and if he may be ignorant  
15 of the law relating to those issues.

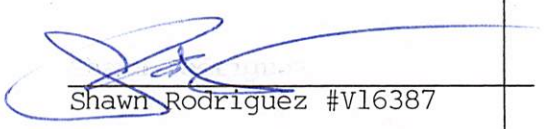
16 Respectfully Submitted this 22<sup>nd</sup> day of July,2015,By

17  
18   
Shawn Rodriguez #V16387

19 I,Shawn Rodriguez,do declare the foregoing to be true and correct,to the  
20 very best of my knowldge and belief.As to those items stated on belief,I do  
21 believe them to be true.

22  
23   
Shawn Rodriguez #V16387

24 Executed this 22<sup>nd</sup> day of July,2015,at Represa,California,by

25  
26   
Shawn Rodriguez #V16387

27  
28 ///////////////  
////////

# PROOF OF SERVICE

(C.C.P. §§1013(a); 2015.5; 28 U.S.C. §1746)

I, Shawn Rodriguez, am over the age of eighteen (18) years,  
and I (am) (am not) a party to the within cause of action. My address is:

Shawn rodriguez #V16387

P.O.box 290066

Represa, Ca. 95671

On, March 14, 2016, I served the following documents:

Petition for Writ of Habeas Corpus

With Exhibits

on the below named individual(s) by depositing true and correct copies thereof in  
the United State mail in Represa, California, with postage fully prepaid thereon,  
addressed as follows:

1. Ca. Court of Appeal, In and For

The Third District

900 N street, room 400

Sacto, Ca. 95814-4869

2. Placer Couty District Attorney

10820 Justice Center Dr.

Roseville Ca. 95678

And

Placer County superior Court Dept 33

10810 Justice Center Dr.

Roseville, Ca. 95661

I have read the above statements and declare under the penalty of perjury of  
the laws of the State of California that the foregoing is true and correct.

Executed this 14th day of March April, 2016, at California State  
Prison - Sacramento, Represa, California.

(Signature)





Documentary Exhibits in the Second  
or Successive Petition for Writ  
of Habeas Corpus Regarding Placer  
County Case Number 62-034689

The People V. Shawn Rodriguez(2003)

\*\*\*

In Re Rodriguez on Habeas Corpus  
Placer County Case Number WHC-1400

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Documentary Exhibits for second order  
The exhibits for the second order are as follows:  
(1) A copy of the order of the court.  
(2) A copy of the report of the jury.  
(3) A copy of the verdict.  
(4) A copy of the judgment.  
(5) A copy of the bill of costs.  
(6) A copy of the bill of exceptions.  
(7) A copy of the bill of review.  
(8) A copy of the bill of appeal.  
(9) A copy of the bill of writ.  
(10) A copy of the bill of habeas corpus.

# EXHIBIT COVER PAGE

A

EXHIBIT

Description if this exhibit: Letter dated April 7, 2015 From deputy a.G. Rachelle A. Newcomb, with attached letter from Victim Hamman, in which he volunteers a sworn admission of Perjury at Petitioners Trial.

Number of pages to this exhibit: 3 pages.

**JURISDICTION:** (Check One Only)

- ☐ MUNICIPAL COURT
- ☒ SUPERIOR COURT
- ☐ APPELLATE COURT
- ☐ STATE SUPREME COURT
- ☐ UNITED STATES DISTRICT COURT
- ☐ STATE CIRCUIT COURT
- ☐ UNITED STATES SUPREME COURT
- ☐ GRAND JURY

Wrote: 3-29-2015  
Mailed: 3-30-2015  
Newcomb/Bernardin

DOCKETED

APR - 3 2015

By: R. Ferris  
No. SA2004DA0164  
SA2004DA1469

Mr Harris

Maame Mabey you didn't understand.

But I Perjured myself in The ANNA RUGG  
and Shawn Rodriguez Cases.

Shawn Rodriguez case # C045882

ANNA RUGG case # C047245

In There ORIGINAL TRIAL I Perjured myself  
2 Times once in ANNA'S TRIAL and once  
in Shawn's TRIAL

Thats why I Need The Names of ~~The~~ The ADDRESSE.  
of The Judge and The PROSECUTOR so I can  
Let them know.

Also I'm the Victim in The case

SWORN TO BE TRUE UNDER PENALTY OF PERJURY.

Signed: Mr. Nicholas W. Hamman #

Printed: MR. NICHOLAS W. HAMMAN # J98016

A-4 ~ 209

HOUSING + CELL

Also me and some of The guys are going on a

HUNGER STRIKE I'll write and Tell you why  
and ARE demands later once its in Full swing.

# EXHIBIT COVER PAGE

B

EXHIBIT

Description of this exhibit: Letter dated 4-29-2015, from victim Hamman to petitioner in which he refers to lying at trial, several times, and hints at an attempt by agents of the Placer County District Attorneys Office to Dissuade him from his Attempts to come clean.

Number of pages to this exhibit: 1 pages.

## JURISDICTION: (Check One Only)

- ☐ MUNICIPAL COURT
- ☒ SUPERIOR COURT
- ☐ APPELLATE COURT
- ☐ STATE SUPREME COURT
- ☐ UNITED STATES DISTRICT COURT
- ☐ STATE CIRCUIT COURT
- ☐ UNITED STATES SUPREME COURT
- ☐ GRAND JURY

Wrote: 4-29-2015  
mailed: 4-30-2015

Dear Sir

if you want to know what exactly I  
forgived myself about I suggest you  
have your lawyer come see me.

~~Dear the Flar County DA's investigator or~~  
Friday 4-24-2015 + I told him what I  
did about the bad nothing would come  
of it cause ~~the~~ then appeal over all


I'm not saying anyone in a letter.  
So I suggest you have your lawyer come see me.  
the form you sent has to work on it + your help  
about a ~~company~~ conspiracy + there is issue  
in the one who had

Yours truly  
Jesse B. Nichols



**PLACER COUNTY DISTRICT ATTORNEY**  
**R. SCOTT OWENS**  
**10810 Justice Center Drive, Suite 240**  
**Roseville, CA 95678**  
**916-543-8000 fax 916-543-2554**

**BUREAU OF INVESTIGATIONS**  
*Supplemental Information*

**CASE NAME:** RODRIGUEZ, SHAWN MICHAEL  
**NUMBER:** 32-034689  
**CHARGES:** 664/187 P.C.  
**DATE:** April 23, 2015  
**INVESTIGATOR:** J. Potter #25 

---

Person contacted: V/Nicholas Hamman, CDC #J98016

I was contacted by Deputy D.A. B. Marchi who asked me to contact V/Hamman regarding the above case. (V/Hamman is currently housed at Folsom Prison on an unrelated incident). This request came about because of a letter that V/Hamman sent to the California Attorney General. In this letter, V/Hamman said that he "perjured" himself in the above case. The Attorney General's Office sent the information to DDA Marchi who was the prosecuting Attorney. (See attached letter from the AG'S Office and the letter from V/Hamman). In V/Hamman's letter, he was not specific in how he "perjured" himself but only requested the names and addresses of the Judge and prosecutor in the case.

Note: The original crime occurred in March of 2003 and was investigated by the Auburn Police Department. D/Rodriguez was found guilty, at jury trial, on numerous felony charges and sentenced in December of 2003. D/Rodriguez's co-defendant, Anna Marie Rugg, 10-02-1982, negotiated a plea agreement for numerous felony charges.

I contacted Sacramento County D.A. Investigator J. Simms. Inv. Simms is assigned to Folsom Prison and assisted me with arranging an interview with V/Hamman on 04-23-15.

On 04-22-15, DDA Marchi provided me with two more letters from V/Hamman. These letters were addressed to D.A. "Phenochio", who was the District Attorney at the time of prosecution and D.A. "Scott" (Owens), who is the current District Attorney.

In these letters V/Hamman said that he lied about how deep the water was in the cell. He said that the water did not get up to his neck but only reached the lower part of his thighs. He said that he removed the rags that D/Rodriguez and Rugg placed under the door and the water was able to run out. (See attached).

I  
04-23-15

0930 Hrs. I contacted V/Hamman at Folsom Prison. The interview took place in the Sacramento County D.A. Investigators office in the prison. Also present for the interview was Inv. Simms. V/Hamman told me the following in summary:

I identified myself as an Investigator with the Placer County District Attorney. I told V/Hamman that we had received the letters that he sent regarding his "perjury" in the Rodriguez case. I showed V/Hamman the letter that he sent to the Attorney General's Office. He said it was the letter he wrote. I also showed him the two copies that he sent to "Phenochio" and "Scott". He said that they were the letters he wrote. I also told him that I had a copy of his statement that he provided Auburn Police at the time of the incident. I told him that we were not going to review his entire statement and asked him if his statement was truthful and accurate when he gave it. V/Hamman said that it was truthful but the part about the water in the trial was not true. I confirmed with V/Hamman that he mentioned the water depth in his letter. He said yes. I asked him what he lied about. He said that the water did not come up to his neck and that it was only up to his thighs. I confirmed with V/Hamman that the original report said that the water was up to his shoulders and that the water drained down once the items were removed from the bottom of the door. He again said that the water never got higher than his mid thighs.

I asked V/Hamman if that was the only issue he wanted to tell us about. He said yes. I told him that I would write a report and send it to the public defender's office. I asked him why he told us the information. He said that he wanted to clear his conscience.

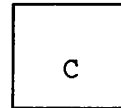
I asked V/Hamman if he has spoken or communicated with D/Rodriguez. He said no. I asked him if D/Rodriguez tried to persuade him in any way or is looking for a favor to help his case. He said no. I asked him if he has had any contact with Anna Rugg. He said no. I asked him if he had ever communicated with D/Rodriguez in the yard. (I learned through Inv. Simms that D/Rodriguez and V/Hamman were not housed together but probably had yard time at the same time and could communicate through the chain link fence). He said no initially and then asked if D/Rodriguez was housed there. I told him that I did not know and was wondering why he was bringing this to our attention since it had been since 2003. He said that he has been praying a lot and that the Lord told him to come clean about the incident. I told him that the Police arrived at the incident and saw what had occurred. He said that the water was not high when the Police arrived. I asked him if he had anything to add. He said no. I again told him that I would send his information to the proper authorities and that the case has already gone before the appeals court and may not proceed any farther at this point.

The above conversation was recorded. Please listen to recording for further detail. I made copies of the recording and gave them to DDA Marchi.

Nothing further.



# EXHIBIT COVER PAGE



EXHIBIT

Description of this exhibit: Declaration of prisoner Thurl Light, in which he tells of Conversations between him and Victim Hamman, with details which tend to cast doubt upon the reliability of guilt findings by negating, specifically, elements of both Life Term Crimes under CALJIC.

Number of pages to this exhibit: 3 pages.

## JURISDICTION: (Check One Only)

- ☐ MUNICIPAL COURT
- ☒ SUPERIOR COURT
- ☐ APPELLATE COURT
- ☐ STATE SUPREME COURT
- ☐ UNITED STATES DISTRICT COURT
- ☐ STATE CIRCUIT COURT
- ☐ UNITES STATES SUPREME COURT
- ☐ GRAND JURY

Declaration of Prisoner

Thurl Light #F68745

I, Thurl Light #F68745, Do declare the following, under penalty of perjury, as defined by the laws of the state of California;

1) I am not a party to this action;

2) I was, at all times described herein, a prisoner in the CDCR, at the California State Prison-Sacramento;

3) On December 17, 2014, I was placed into Administrative Segregation at said prison:

4) As such, I was housed in facility A, Building 5 (Known commonly as "A5") cell 106;

5) For the duration of the period described herein, My next door neighbor in "A5" was a prisoner known to me as Nicholas Hamman #J98016, whose moniker was then "Gray wolf";

6) Due to the adjoining of our two cells (A5-106 and A5-107) we were able to freely and semi-privately converse between ourselves, him and I, and during that time we had the conversations described in this affidavit:

7) Mr. Hamman asked me if I ever went to the Facility law Library, as he needed some things from it. I responded that yes, I went and was on good terms with its Inmate clerk, Who I had met through his Cellmate, Known to me and popularly as, "Suspect";

8) Mr. Hamman asked me if this person "Suspect" was indeed Shawn Rodriguez, to which I responded that, yes, his last name was "Rodriguez".

9) Mr. Hamman's reply was that Rodriguez was a "Peice of Shit" and had committed a crime against him several years previously. I asked him to tell me about it, and he did.

10) Later on, I spoke with Mr. Rodriguez, and relayed these events and the story to him, and he has asked me to declare portions of what I heard from Mr. Hamman under penalty of perjury, TO Wit:

11) Mr. Hamman told me he was in the building with his girlfriend at the time the crime started, but did not admit it to the authorities due to his fear of being charged with burglary and having his parole violated;

12) Mr. Hamman stated that he was in the room he was locked into because "That bitch wanted to fuck," and she locked him in to get his car keys;

13) In his story, Mr. Hamman told me Suspect and his girlfriend were outside when it started;

14) Mr. Hamman said that a bruise on his leg came from it getting slammed in the door, however, the detective told him to say it came from Suspect because it was a very public case and they needed a conviction;

15) Mr. Hamman said he was promised a lighter sentence on his "DUI", by the prosecutor, which was not all he was led to believe it would be;

16) Mr. Hamman thought his girlfriend was getting out, and she is not;

17) Mr. Hamman said in his story, that the water in the room got as high as his waist, but he was told that if it was high enough to make him scared to death, Suspect would get Life without Parole, so that is what Mr. Hamman said under oath;

18) I have not been offered any compensation by or from Shawn Rodriguez #V16387 nor have I received any in return for this declaration, nor have I been coerced;

19) I declare under penalty of perjury, as defined by the laws of the state of California, and its analogous Federal Statutes that the foregoing is true and Correct to the best of my knowledge and belief, and as to those items stated on belief, I sincerely believe them to be true, and willingly promise to testify

to these statements under oath if called to do so;

Thurl Light F-68745

Thurl Light#F68745

Executed this 11th day of January, 2015, at Represa, California, by

Thurl Light F-68745

Thurl Light#F68745

# EXHIBIT COVER PAGE

D

EXHIBIT

Description of this exhibit: Declaration of Prisoner Ana Al-Rad Guinn, in which he tells of overhearing conversations between prisoner Light and Victim Hamman, and corroborates the statements of declarant Light.

Number of pages to this exhibit: 2 pages.

## JURISDICTION: (Check One Only)

- ☐ MUNICIPAL COURT
- ☒ SUPERIOR COURT
- ☐ APPELLATE COURT
- ☐ STATE SUPREME COURT
- ☐ UNITED STATES DISTRICT COURT
- ☐ STATE CIRCUIT COURT
- ☐ UNITED STATES SUPREME COURT
- ☐ GRAND JURY

Declaration of Prisoner

AnaAl-Rad Guinn #H73336

I, AnaAl-Rad Guinn #H73336, Do declare the following under penalty of perjury, as defined by the laws of the state of California;

- 1) I am not a party to this action;
- 2) I was, at all times herein described, a prisoner in the California Department of Corrections, at the California State Prison-Sacramento;
- 3) On December 8th, 2014, I was placed into Administrative Segregation at said Prison;
- 4) As such, I was housed in Facility A, Building 5 (Known Commonly as "A5"), cell 105;
- 5) For the duration of the period described herein, My immediate neighbors were prisoners known to me as Light and Hamman, in cells A5-106 and A5-107, respectively;
- 6) Due to our proximity and the relative quiet of "AdSeq", I was able to, and did, overhear many conversations between those two prisoners, To Wit:
- 7) They spoke often and at length about a person known to me as both "Suspect" from Sacramento and as Shawn Rodriguez variously;
- 8) I came to understand that Prisoner Hamman had testified against Rodriguez in the trial that resulted in his sentence to Multiple "Life" terms;
- 9) In relation to this testimony, Hamman stated that he was promised a lighter sentence on his Alcohol related charge from that time, by the prosecutor in the case at bar, if he could secure conviction of a charge resulting in "Life Without The Possibility of Parole" for Rodriguez, due to its High Profile nature;
- 10) Additionally, Mr. Hamman stated that in furtherance of this agenda, he knowingly gave false witness against Mr. Rodriguez, of which I can only remember a few specifics that stuck in my mind since then, described below;
- 11) First, Prisoner Hamman Explained that due to his fear of being "Violated" on his Parole at that time, he had Willfully and Knowingly lied to investigators and in court, regarding the circumstances by which he had come to be inside the government building where the alleged crime took place, Fabricating a story which implied he had been lured into the building by Mr. Rodriguez for the crime;

12)Second,he stated that he had further embellished this base fabrication to portray Mr. Rodriguez as more Violent and Criminally sophisticated,by claiming that he had been kicked by Mr. Rodriguez during his kidnapping,and that indeed,Mr.Rodriguez had not even been present when his girlfreind had kidnapped him;

13)Again,displaying Braqqadacio and defiance,Mr.hamman explained that the prosecutor and investigators knew this was a fabrication but encouraged him to present this story to the court under oath;

14)When questioed as to how these claims equated to a life sentence for Mr.Rodriguez,Mr.Hamman explained that he had lied to portray a life threatening circumstance regarding water being as high as his head,when in fact it was only ever as high as his waist,and then only briefly;

15)At one point,Mr.Hamman stated that Rodriquez had tried to break a window to free him,and also loosened its screws,but it was not enough to let him escape;

16)Mr.Hamman emphasized that he had hoped to ease the punishment of his apologetic girlfreind and be with her when she got out;

17)I personally heard Mr.Hamman Say the things decsribed herein while he spoke to my neighbor Light;

18)I have not been offered any compensation by or from Shawn Rodriquez, nor have I received any in return for this declaration,nor have I been coerced to give it;

19)I declare under penalty of perjury,as defined by the laws of the State of California,and its analogous federal statutes that the foregoing is true and correct to the very best of my knowledge and belief,and as to those items stated on belief,I firmly believe them to be true,and willingly volunteer and promise to testify to these statements under oath if called upon to do so;

Ana Al-Rad L. Guinn

AnaAl-Rad Guinn #H73336

Executed this 16th Day of January,2015,at Represa,California,by

Ana Al-Rad L. Guinn

AnaAl-Rad Guinn #H73336

# EXHIBIT COVER PAGE

E

EXHIBIT

Description of this exhibit: Declaration of Jose "Katalina" Witrago, In which he tells of conversations between her and victim Hamman, wherein Mr. Hamman again has admitted to giving false testimony at trial, the details of which are consistent with the other declarants, and which tend to disprove the required elements of the Life Term Crimes under their respective CAL JIC Sections.

Number of pages to this exhibit: 2 pages.

## JURISDICTION: (Check One Only)

- ☐ MUNICIPAL COURT
- ☒ SUPERIOR COURT
- ☐ APPELLATE COURT
- ☐ STATE SUPREME COURT
- ☐ UNITED STATES DISTRICT COURT
- ☐ STATE CIRCUIT COURT
- ☐ UNITED STATES SUPREME COURT
- ☐ GRAND JURY



Declaration of Prisoner  
Jose "Katalina" Witrageo  
CDCR# G24066

---

I, Jose "Katalina" Witrageo #G24066, Do declare the following, under penalty of perjury, as defined by the State of California and its analogous federal statutes;

- 1) I am not a party to this action;
- 2) I was, at all times described herein, a prisoner in the CDCR, at the California State Prison-Sacramento;
- 3) As such, I was housed in Facility "A", Building 4 (Known commonly as "A4") cell 110;
- 4) For the duration of the period described herein, I was in close proximity and contact with an Inmate known to me as Nicholas Hamman, with the Moniker "Wolf"
- 5) Due to our proximity and frequent contact, I came to know Mr. Hamman on a casual basis, and thus became aware of his having testified to being the victim of a crime some years ago, perpetrated by another prisoner I have known for a few years previously, Shawn Michael Rodriguez #V16387, Alias "Suspect";
- 6) In conversation and through listening to his conversations with others, I came to be informed by Mr. Hamman, frequently and repeatedly, that he had intentionally Perjured himself at Shawn's trial, at the request of both A Detective and a Prosecutor, to gain special treatment in another criminal matter he himself was in jail for at the time of his testimony;
- 7) Mr. Hamman made no secret of the fact that he was asked by both Law Enforcement Employees to say whatever was necessary, under oath, to win conviction of Shawn on any charges with potential "Life" terms;
- 8) While it is not possible to remember all the details of his admitted perjury, the following points do stick out in my mind:
- 9) He lied about being "Lured" into a building when he had entered it on his own, because that would show "Premeditation" by the defendants;
- 10) He had lied about being kicked by Shawn to make the jury believe he had been involved with locking him into a holding cell, when in fact Shawn had been elsewhere with his girlfriend at the time;

11)Shawn had attempted to let him out,but to tell this on the stand would risk not securing convictions for "Life" term crimes;

12)Mr. Hammans girlfreind had locked him into the cell,not shawn;

13)Mr. Hamman said that a Detective had told him to say a bruise on his leg had come from being kicked by Shawn,which never happened;

14)Mr. Hamman explained that he was told that he should say the water got as high as his head and made him fear death from drowning so that a conviction for Attempted Murder could be won against Shawn,when in fact it had only made it as high as his waist;

15)Mr. Hamman said that the reason they wanted such harsh sentences because it was a very public case and was all over the news and would make them famous;


16)Mr.Hamman said something I could not understand about Shawn pulling a hose out of something when his girlfreind left on the last night of the crime, and taking the hose away later that night;

17)Me and other prisoners have several times told Mr. Hamman that he should admit to what he did becuae it is wrong to have someone serving Life in prison for such a selfish reason,and Alot of us know Shawn to be a decent person overall;

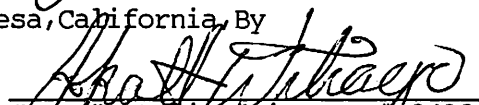
18)All of this occurred between November 2014 and January 2015 in CSP-SAC A4 and the Individual Exercise Module yard cages we went to for rec;

19)I have not been offered,nor have I received or plan to receive,any compensation for this declaration or for future sestimony in support of it.

20)I declare under penalty of Perjury,as defined by the laws of the State of California and its analogous Federal statutes that the foregoing is true and correct to the very best of my knowledge and belief,and as to those things stated on belief,I do believe them to be true,and willingly volunteer and promise to testify to these statements under oath should it become neccesary to do so.

  
Jose "Katalina" Witrage #624066

Executed this 27th day of February,2015,at Represa,California,By

  
Jose "Katalina" Witrage #624066

# EXHIBIT COVER PAGE

F

EXHIBIT

Description of this exhibit: Declaration of prisoner Daniel Rowe, in which he details his version of the Conversations between Victim Hamman and Prisoner Light, which are thoroughly consistent with those provided supra; and of his own conversations with Victim Hamman, in which he admits to lying under oath at trial to secure convictions on LIFE Term crimes, the details of which serve to negate elements of the CALJIC.

Number of pages to this exhibit: 2 pages.

**JURISDICTION:** (Check One Only)

- ☐ MUNICIPAL COURT
- ☒ SUPERIOR COURT
- ☐ APPELLATE COURT
- ☐ STATE SUPREME COURT
- ☐ UNITED STATES DISTRICT COURT
- ☐ STATE CIRCUIT COURT
- ☐ UNITED STATES SUPREME COURT
- ☐ GRAND JURY

# EXHIBIT COVER PAGE

G

EXHIBIT

Description of this exhibit: Declaration of Prisoner Thurl light, in which he reports of a second visit to the Prison's AdSeg and a follow-up conversation with Victim Hamman, in which the latter again spoke of committing perjury at the petitioner's trial, but also of fear in regard to casting light upon the government's invitation, Pre-trial, to do so, since his having been contacted by the D.A.' office in April.

Number of pages to this exhibit: 2 pages.

## JURISDICTION: (Check One Only)

- ☐ MUNICIPAL COURT
- ☒ SUPERIOR COURT
- ☐ APPELLATE COURT
- ☐ STATE SUPREME COURT
- ☐ UNITED STATES DISTRICT COURT
- ☐ STATE CIRCUIT COURT
- ☐ UNITED STATES SUPREME COURT
- ☐ GRAND JURY

Supplementary Declaration  
of Prisoner  
Thurl Light #F68745

I, Thurl Light #F68745, Do Declare the following, under penalty of perjury, as defined by the laws of the State of California;

1) I am not a party to this action;

2) I was, at all times herein described, a prisoner in the CDCR, at the California State Prison-Sacramento (CSP-SAC);

3) I have already, once before, declared witness in this matter, and regarding facts related to these, on January 11th, 2015, to which these are a supplement, and are hereby incorporated by reference;

4) On or around May 30, 2015, I was placed into CSP-SAC A5, for Administrative Segregation;

5) As such I was able to speak freely with Inmate Nicholas Hamman, through a Chainlink Fence, while I was participating in "Individual Exercise Module" (IEM) yard, and as a GP/EOP inmate, he was going to and coming from yard on A facility;

6) I spoke to him a few times during the week I was in AdSeg, and the following facts resulted from those encounters, to wit:

7) Mr. Hamman told me that he had contacted the State Attorney General to rectify the wrongs done to Inmate Rodriguez as a result of his having committed perjury in the Trial which resulted in Multiple "Life" sentences for Mr. Rodriguez;

8) He also told me he had contacted Mr. Rodriguez by mail as well;


9) He stated that the Placer county District Attorney's Office had dispatched an Investigator to interview him relative to these facts, who told him he should just quit, it won't ever help and that the Appeals of Mr. Rodriguez and his Co-Defendant were over;

10) He also conveyed to me that he was scared to "Rat Out" the D.A. and Cop who had put him up to committing perjury against Mr. Rodriguez, and who had coached him in doing so, Asking me if I thought simply admitting to perjury, and leaving the others out of it, would be enough to reverse the wrongs done to Mr. Rodriguez by securing him a new trial or release from prison.


11) He pointed out that he had told this to Mr. Rodriguez as well, in May, while he was in Segregation, but felt bad when he saw how Mr. Rodriguez reacted to that fear of telling the truth;

12)I have not been offered any compensation by or from anyone in relation  
to this statement,nor have I been Coerced;

13)I declare under penalty of perjury,as Defined by the laws of the State of  
California,and its analogous Federal Statutes,that the foregoing is true and  
correct to the very best of my knowledge,and belief,and as to those items stated  
on belief,I beleive them to be true.

  
Thurl Light #F68745

Executed this 16th day of June,2015,at Represa,California,by

  
Thurl Light #F68745

# EXHIBIT COVER PAGE

H

EXHIBIT

Description of this exhibit: Front Page News article of the Auburn Journal dated October 5, 2003, by reporter Ryan McCarthy, in which several jurors voice a lack of the finding of Specific Intent to Kill, an Element Required by The CALJIC, minutes after their verdicts were read. Article presented pursuant to People v. Cain (1995) 10 Cal4th 1 (Pg. 32) and evidence code § 210, as quoted in Cain, supra.

Number of pages to this exhibit: 2 pages.

## JURISDICTION: (Check One Only)

- ☐ MUNICIPAL COURT
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- ☐ STATE SUPREME COURT
- ☐ UNITED STATES DISTRICT COURT
- ☐ STATE CIRCUIT COURT
- ☐ UNITED STATES SUPREME COURT
- ☐ GRAND JURY

# Auburn Journal

A Gold Country Media Online Edition

Print Page

Wednesday, February 1, 2006 Last modified: Sunday, October 5, 2003 10:00 PM PDT

## Rodriguez found guilty; sentencing set for Oct. 23

By Ryan McCarthy *Journal Staff Writer*

Shawn Rodriguez, 20, was found guilty of kidnapping for extortion and of conspiracy to commit murder in the 40-hour confinement of an Ophir man at the closed county juvenile hall in Auburn.

Jurors said Monday they were deadlocked 9-2 — with one abstention — for acquittal on attempted murder charges stemming from the March 15-17 events at the county facility next to Gottschalks. Prosecutors said Rodriguez and Anna Marie Rugg, 20, who faces her own trial next month, tried to drown and then gas 40-year-old Nicholas Hamman after luring him into a holding cell.

Rodriguez will be sentenced Oct. 23. He faces 38 years to life. Rugg has pleaded not guilty.

Jury Foreman Bob Stefun, 66, of Roseville, said a videotaped interview by Auburn Police detectives of Rodriguez proved crucial during the five days of deliberations.

"They asked the right questions," Stefun said of Auburn Police Detectives Danny Coe and Dale Hutchins. "They got the facts."

Foreman Stefun said that Rodriguez's testimony about the events at the juvenile hall differed from the account he provided detectives.

"If it was different we trusted the video," the jury foreman said.

Juror Michael Parsons, 45, of Meadow Vista said, "There were something things that were very damaging on the videotape."

Jury Foreman Stefun said that the criminal past of victim Hamman, a four-time felon and registered sex offender, wasn't a factor during deliberations.

"His background didn't have any effect," Stefun said.

The foreman said jurors weren't swayed by arguments that Rodriguez, who stayed at the Elmwood Motel in Auburn the day before the 40-hour confinement of the victim began, was looking for a place for his pregnant girlfriend to stay and went along with Rugg because he had little choice.

"It didn't seem to sway the jury," Stefun said.

Stefun said his father was a federal prison warden. Some people make the right choice and avoid crimes and others don't, Stefun said.

The 9-2 deadlock for acquittal on attempted murder stemmed from the jury not being convinced Rodriguez intended to kill Hamman.

"Did they plan it? Yes. They conspired," the foreman said. But, "We didn't see the next step — that they really intended to do anything."



Juror Parsons said, "There was no demonstration of intent."

The attempted murder charge took up about three of the five days of deliberations, said juror Sharon Fields, a Placer High School teacher. "We spent a significant amount of time on the attempted murder," Fields said.

Juror Louise Daggett, 58, of Loomis, said the panel agreed that Rodriguez sought to get along with Rugg during the March 15-17 events at the juvenile hall.

"He was kind of appeasing her," Daggett said. "We all felt that."

Victim Hamman's try to alert officials to his plight by striking a cigarette lighter next to the sprinkler system left him soaked and was followed by attempts by Rodriguez to seal and flood the cell in order to extort Hamman's ATM card and access code, the prosecution said.

Rodriguez later participated in an effort to gas Hamman by connecting a garden hose from the exhaust pipe of a car to the cell where he was held, according to the prosecution. The District Attorney's Office said the defendant lured Hamman to the hall with a story of a friend being in trouble there.

Deputy District Attorney William Marchi, had told jurors in his closing argument that "there's no license to kill or attempt to kill a four-time felon — not in this country.

"We don't go out to the church choir and pick our victims," Marchi said of the prosecution.

The Journal's Ryan McCarthy can be reached at [ryanm@goldcountrymedia.com](mailto:ryanm@goldcountrymedia.com).

Close Window

# EXHIBIT COVER PAGE

I

EXHIBIT

Description if this exhibit: Letter Dated April 17, 2015, Addressed and sent to R. Scott Owens, Placer County District Attorney, Formally Requesting Discovery of the Fruits of his Office's 4-24-2015 interview Perjurious Witness Nicholas Hamman Offer of Informal resolution.

Number of pages to this exhibit: 4 pages.

## JURISDICTION: (Check One Only)

- ☐ MUNICIPAL COURT
- ☒ SUPERIOR COURT
- ☐ APPELLATE COURT
- ☐ STATE SUPREME COURT
- ☐ UNITED STATES DISTRICT COURT
- ☐ STATE CIRCUIT COURT
- ☐ UNITES STATES SUPREME COURT
- ☐ GRAND JURY

Shawn Rodriguez #V16387  
PO Box 290066  
Represa, Ca. 95671

April 17, 2015

R. Scott Owens  
Placer County District Attorney  
10810 Justice Dr. Ste. 240  
Roseville, Ca. 95678

Re: People v. Shawn Rodriguez  
Placer County Superior Court #6234689

Dear Mr. Owens:

I am the Defendant/Petitioner in the above referenced case. I was made aware, last April 9th, that my alleged victim, Nicholas Hamman wrote the Attorney General's Office; Not for the first time, it would appear, concerning his committing Perjury in the trial that resulted in my sentence to multiple Life Terms in state Prison.

Around April 12th, I contacted the Public Defender's Office regarding any assistance they may have to offer, and so far, they are silent.

Fair Enough.

Today I was made aware that your office sent an Investigator to interview Mr. Hamman as to the basis for his assertions.

Even though, as a participant in the events that led us here, I am well aware of the details of his severe perjurious embellishments and fabrications, I would very much like to know the results of your investigation thus far.

As such, Here and Now, I am formally requesting that your Office Discover me a copy of both the Audio recording (CD Format please, as I am limited to that medium) and a transcript of the interview.

While there is some ambiguity to be found, I believe that Statute calls for this, as 1) I am a Pro Se litigant, and 2) the materials I am requesting are, necessarily, Impeachment material, and as such, potentially exculpatory evidence pointing to "A Reduced Culpability" having "a Substantially material or Probative" impact "On the Issue of guilt or punishment" within the meaning of P.C. §1473(b)(1).

While initially I rely on Brady v Maryland (1963) 373 U.S. 83 as the basis of this request, and see no statute which undermines my use of the case for this purpose, as there seems to be no ruling confining its use to pre-trial or sentencing, or even the appellate level.

1 While there seems to be a large volume of analogous State and Federal  
2 cases which also bolster my request,I see no reason to reason to dump them on  
3 you now if it is not neccesary.

4 I would also like to be quite frank with you,if I may;12 years ago I  
5 learned as a matter of fact and neccesity,to strongly distrust your office.

6 I would love to not need to think that way;however,in hindsight,knowing  
7 the things I do now,I have become aware of several facets of the railroading  
8 I got back then.

9 I have learned alot since then,and I will fight with all of my faculties  
10 this time,as hard and as far as I need to.

11 In the spirit of candor I will tell you that I am not adverse to resolution  
12 outside of the public eye,quietly.I am willing to own what I did do,always have  
13 been;I am just not willing to serve a day for the things I didnt do.

14 I just want my life back.

15 Im broken,Im scared straight.I just want to go home to my family before  
16 any more of them die.I want to finally meet my son.I want to get married and  
17 have a normal life.I dont use drugs,dont drink,Im not a gang member;I can  
18 successfully complete parole.There is a job and a home waiting for me.

19 Before we initiate a Knock down,drag out legal fight,why not take a  
20 new look at the record.His perjury notwithstanding,does it look to you that as  
21 a 19 year old I commit an act so heinous that I should shrivel and die alone in  
22 prison for it without a chance to apply the lesson learned with enough time  
23 to have a successful life,to work to retirement,to pay off a homeloan,to  
24 have some influence in-my teenaged son's life?

25 The jurors did not beleive so;Im sure you have access to what they wrote  
26 to the court post-trial.

27 Leo Lewis "Was shocked when (he)heard how severe the punishment could be."  
28 "Nobody was hurt"he said,"Where is the justice?"It was his "Opinion that Shawn  
should spend no more than a year in confinement."

Jennifer Baran sai that"at no time did"she "Feel that Shawn was deserving  
of life in prison."She did not"feel that this 'Go for the throat'attitude on  
the part of the district attorney was appropriate in this case."She did not  
beleive that I was "a cold-blooded killer"or "Deserving of this punishment,one  
that is usually given to those who are."

Another Juror did"Absolutely Not!"think this "Was a fair Punishment".

1 He or she said they "Felt tricked into these decisions by the prosecution."They  
2 implored the court"give him 10-15-20 years in prison.But do not send him to  
3 prison for the rest of his life."

4 They further followed that request with a plea:"I beg the court...Please  
5 do not throw this young life away".

6 Another Stated that they did"not feel it was a fair punishment."They  
7 suggested "10-15-20 years or so,but not life."

8 Have I not paid my debt yet?The people who heard all the prosecutions  
9 "Facts",and not ALL of Mine,sure seem to be saying that they think so.

10 Yet another Juror stated that the sentence seemed "Very harsh given that  
11 I do not think he intended to kill him."

12 Jury Foreman Robert Stefun,by far the most conservative member of our  
13 jury,said publicly that they found no intent to kill.

14 Michael Parsons,Sharon Feilds,and Louise Dagget all Stated publicly that  
15 the agreed.

16 That not to mention the others who said that in their post trial state-  
17 ments that half of Placer County didnt read.

18 So let us put it all on the table and what I feel is the proper perspective;  
19 The lights and camera's are off,no-one cares anymore.Its been over a decade.No  
20 one can politically benefit from Crucifying me publicly this time.

21 Even The Victim wants to make this right.He had to try Twice to make him-  
22 self heard on this point,and feels stongly enough about the issue that he took  
23 the time and made the effort.

24 Would it be political suicide for you to not heavily contest my petition,  
25 and work with me to plead to the things I did do?This is an opportunity to  
26 discreetly dispose of what could be an embarrassing situation for your Office,  
27 and give Real Justice in this case.

28 Im not concerned with the politics of it;I dont care for civil litigation  
or receiving a hand out some slick used-car salesman lawyer could get me.

I just want to take a bath,or even a shower that didnt have a 5-minute  
timer on it.To hold my neice's newborn without being scolded for "Excessive  
Contact"by a power drunk prison guard.

Am I wrong for wanting this out of life?I dont feel I am.Look at my prison  
record:a handfull of fistfights,no real injury,typical guys disagreeing-stuff.  
What about before that?Fist fights in CYA,while I did a term forJOYRIDING.

1 Im not a Violent criminal.I see guys get struck out,while I never got a  
2 chance to learn and grow,then try again.The prospect of violent or lonely death  
in prison,no matter what...That changes a man;It changed me.

3 Now,look:Im not adverse to meeting with you and talking,to settle this  
4 like a couple of fellas sitting at the table together.

5 Im very uncomfortable with the prospect of sitting down with Bill Marchi;  
6 If I am forced to,I can surpass the burden of proof for "Knowing Use of Perjured  
7 Testimony"with the evidence I have amassed.I have the New evidence neccesary  
to now put this in front of a court,and to restate previous claims on the  
ground of "Cumulative Effect of Errors not Singly prejudicial".

8 Its not a bluff or a threat,in fact I am loathe to go that far.I just  
9 mean to illustrate that I have ample reason to distrust him.

10 But again,I am Amenable to meeting with you for a discussion;bring your  
11 recorder--At this point,I have nothing to hide;the truth can only help me  
now.

12 From the outset,Ill put this on the table:

13 Felony False Imprisonment

14 Second Degree Robbery

15 Unlawful Driving or Taking Of a Vehicle

16 Second Degree Commercial Burglary

17 Using Anothers Name To Obtain Credit or Goods

18 All at mid term.Thats at least ten years.ALL of my Twenties.

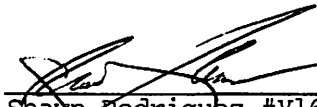
19 I will admit to those things because I did Do Them.I have never denied  
20 them.

21 Im just asking you for a fair shake here,a chance to get what I had Coming  
and move on with my life.

22 I really hope you can look at this in a wider perspective,historically and  
23 otherwise,and give me a shot.

24 PLEASE-Consider it.

25 If I must,I plan to file my petition by July 1st.I sincerely hope to hear  
from you before then.Thank you for your time and for your consideration.

26  
27  4-17-2015-  
Shawn Rodriguez #V16387  
PO Box 290066  
Represa, Ca. 95671  
28

# EXHIBIT COVER PAGE

J

EXHIBIT

Description of this exhibit: Post Trial jury questionnaires from Jurors Leo Lewis, Jennifer Baran, Etc. (5 Jurors Total) In which they, by and large, admit to not finding intent to kill beyond a doubt on the part of the Petitioner, and express to the court that the punishment far outweighed the crime, was disproportionate, and expressed a desire to find guilt on a lesser included offense to P.C. 236.

Number of pages to this exhibit: 15 pages.

JURISDICTION: (Check One Only)

- ☐ MUNICIPAL COURT
- ☒ SUPERIOR COURT
- ☐ APPELLATE COURT
- ☐ STATE SUPREME COURT
- ☐ UNITED STATES DISTRICT COURT
- ☐ STATE CIRCUIT COURT
- ☐ UNITED STATES SUPREME COURT
- ☐ GRAND JURY



# Fax Cover Sheet

**Attn:** Jesse Serafin  
Placer County Public Defender

**From:** [REDACTED]  
Juror #1 for the People vs. Shawn Rodriguez  
Case # 62-34689

**Phone:** 1-916-631-9030 ext. 2014  
**Fax:** 1-916-631-9714 or 631-9715

**Date:** 10/21/03

**# of pages including cover page:** 4

000373



1. *How was the jury foreman selected? Did he elect, nominate, or vote for himself?*  
Bob had stated that he had served on two other juries, and he seemed to have a good understanding of the process in general. I nominated him, and nobody disagreed.
2. *Did you vote Not Guilty on attempted murder?*  
Yes.
3. *Did you conclude that the defendant had the specific intent to murder Nicholas Hamman?*  
For me, the point at which "conspiracy" became actual "attempt" was when the car was turned on and gas went into the cell. At this point, I concluded that it was not Shawn Rodriguez's intent to kill Hamman.
4. *How did you conclude that there was no intent for the attempted murder, but there was intent for the conspiracy to commit murder?*  
This was a huge issue for us while we discussed this charge. I tried as much as I could to follow the jury instructions, and I read and re-read the definitions of conspiracy and attempted murder, as well as all the other definitions we had. Those who were leaning towards a "guilty" verdict on the attempted murder charge also posed this question to me. As I understood the definitions, "conspiracy" is an agreement, and deals with only the time during which the agreement is made, who it is made between, the overt acts committed to accomplish the goal of the conspiracy and if there was malice aforethought. I believed at the time that all these criteria were met. Shawn willfully entered into the agreement with Anna and committed the overt acts, i.e. getting duck tape and hoses, taping the door shut, hooking up the hoses to the car and running it to the cell. At the time I also believed that there was malice aforethought, namely the intent to kill, though I will admit it now, I had some doubts. I told myself however, that despite my doubts as to Shawn's intent, he still entered into an agreement with Anna, and he knew she wanted Nick Hamman dead. He helped formulate the plan. He helped Anna Rugg get everything together. He was, therefore, a conspirator. So how could I come to a guilty verdict on this charge and not on the attempted murder? Simple - according to the instructions as I understood them, I could not use the presence of a conspiracy to point to guilt in an attempted murder. The instructions said that all acts done in preparation to commit a murder could not be used as evidence of guilt in the actual attempt. I thought I had to treat these charges separately, and that conspiracy became attempt when the car was turned on. According to the instructions as I understood them, Shawn could do everything in the world to prepare to murder someone, but unless he had the intent to kill while the attempt was taking place, he was not guilty of attempted murder.
5. *Did the jury seem to discuss and understand that the law requires the same specific intent to kill for conspiracy as it does for attempted murder?*  
Yes, I believe we understood that.
6. *Did you or any of the jurors ever suggest asking the judge a clarifying question regarding the intent necessary for the conspiracy charge?*  
No.
7. *If so, why was such a question never given to the judge?*  
N/A
8. *Did the jury discuss the False Imprisonment charges before debating the kidnap?*  
No, we discussed the Kidnapping charge first. All the elements pointing to guilt were being met until we came to the issue of whether or not Nick Hamman was kidnapped with the specific intent to extort him. The question was, did the intent have to be formulated before the confinement took place, or could the plan to extort be formulated during the confinement. While we were waiting for the answer from the judge, we explored the other lesser charges of

000374

robbery, false imprisonment and the lesser charge of extortion that was attached to count one. We all agreed that Shawn took an active part in extorting, robbing, and falsely imprisoning Nick Hamman. However, the words "violence and menace" in the false imprisonment charge threw a wrench in these discussions. We all agreed that Shawn took part in Nick Hamman's confinement. He did nothing to get Nick out after the door was shut, but we saw no proof that Shawn had anything to do with actually getting him in the cell. There was no violence or menace on Shawn's part as far as we could see. It was looking like we would be forced to vote not guilty on that charge because of the presence of those two words. However, as you know, the judge's answer came back telling us that the plan to extort someone can occur after the confinement or detainment has taken place. Thus, in our eyes, all the criteria were met for a guilty verdict on the Kidnapping for Extortion charge.

9. *Would you have voted guilty for false imprisonment if it did not include the term "violence"?*  
Yes, though I don't know what that would have meant once we got the answer back from the judge regarding count one.

10. *At what point did you conclude that the defendant formed the intent to kidnap Nicholas Hamman?*

Going by the jury instructions and the definitions we were given, I concluded that the intent was formed when Shawn saw that Nick was locked in the cell and did nothing to get him out. According to the definition of kidnapping, just confining or detaining someone against his will constitutes kidnapping. Shawn intended to leave him in the cell, he intended to confine Nick when it was clear Nick did not want to be in that cell. Thus Shawn intended to "kidnap" him.

11. *Did you conclude that when the defendant intended to kidnap Mr. Hamman, he did so with the goal of getting money from him?*

I concluded that when Shawn initially decided to not let Nick Hamman out of the cell, it was not necessarily his intention to get money from him. By his own admission, though, once Nick was in there, a plan was formulated to leave him in there until they got his money, PIN number and ATM cards. Based on what the judge told us, it didn't matter that the initial kidnapping was not done with the intent to extort. That plan could be formulated later - the intent could change from one thing to another.

12. *Do you have any regrets regarding your decision in this case?*

I regret my decision on Count Two. I should have listened to what my gut was telling me and insisted that we explore that charge further. Perhaps I was unclear in regards to the definitions and should have re-read them one more time. Upon further reflection, and believe me there has been a lot of further reflection, I no longer believe that Shawn had malice aforethought, namely the intent to kill when he entered into the agreement with Anna Rugg. It is not because I now know that this charge carries a life sentence that I feel this way. It is because now I realize that maybe I did not have as clear an understanding as I thought I did when it came to the instructions and the definitions regarding this charge.

13. *Is there anything about the jury instructions that you feel you may not have understood clearly?*

Yes, as I said in the previous answer, I am not as certain of my understanding of the instructions to Count 2 as I thought I was. I don't think I fully understood that Shawn himself had to possess the intent to kill when the conspiracy took place. As I stated before, I thought at the time that Shawn did have this intent, but at the same time I had doubts of that fact, if that makes sense to you. However, I thought the greater issue was that someone in the conspiracy definitely had this intent, and that Shawn willfully entered into this agreement and committed acts to carry out the goal of this agreement.

000375

14. *Is it your conclusion after hearing all the evidence that Shawn Rodriguez wanted to kill Nicholas Hernandez?*

No. Upon further reflection, I do not believe that Shawn ever wanted Nick dead, much less kill him himself.

15. *Based on the evidence you have heard in this case, do you feel that life imprisonment is a fair punishment for Shawn Rodriguez? Please explain.*

No, at no time during the trial or during the deliberations did I feel that Shawn was deserving of life in prison. Shawn is unquestionably guilty of many horrible things, and I believe that he most definitely must be punished for the crimes he committed. I am not saying that he does not deserve prison time. What I am saying is that I believe justice could have been served and punishment been meted out without the kid spending the rest of his life in jail. I don't understand why the district attorney brought these particular charges to the table when I know that other charges could have been brought that would have accomplished the same goal. I also don't understand why Shawn was not offered a plea bargain. Why did the charge of Kidnapping for Extortion have to be brought? Why did the words "violence and menace" have to be added on to the False Imprisonment charge? I just don't feel that this "go for the throat" attitude on the part of the district attorney was appropriate in this case. I do not believe that Shawn Rodriguez is a cold-blooded killer, and I do not believe he is deserving of this punishment, one that is usually given to those who are.

Hopefully these answers will be helpful to you. If you need further explanation, or if you have any other questions, please don't hesitate to call. If you need to meet with me, I am willing to do that also. Here's my contact information if you need it:

Work:  
916-631-9030 2014

Home:  
916-797-1308

email:  
baranjp0@lyc. com

000376

## JURY QUESTIONNAIRE

The following is a list of questions designed to explore some of the thought process behind your findings and to clarify some of the actual conclusions. There is no right or wrong answer, and please understand it is not our goal to challenge your conclusions - only to clarify them.

Please feel free to expand on or explain in as much detail as you like any of your answers.

1. How was the jury foreman selected? Did he elect, nominate, or vote for himself?

Bob volunteered for the position. When we all got into the deliberation room, he was very outspoken and seemed to be someone who knew what he was doing. When he volunteered, everyone seemed to go along with it. No one else really volunteered.

2. Did you vote Not Guilty on attempted murder? At the time the last vote was taken, I voted "yes", however, I also stated that that was where I was leaning unless someone could convince me otherwise.

3. Did you conclude that the defendant had the specific intent to murder Nicholas Hamman? I concluded that the defendant had the specific intent to

go now through on the initial agreement he made with Anna Rugg. It was more about a "I said I'd help you, so here I am" type of agreement.

4. How did you conclude that there was no intent for the attempted murder, but there was intent for the conspiracy to commit murder? I felt like the attempt was made initially, but then abandoned. Even if I had thought there was no attempt, I believe a person can conspire to do something and then actually not do the intended event.

5. Did the jury seem to discuss and understand that the law requires the same specific intent to kill for conspiracy as it does for attempted murder? Yes and no. I personally brought to the attention of the jurors that I felt there was an inconsistency in their regarding the 2 charges. I read to them the law regarding the "same frame of mind" that needed to be present. I felt that the group had the thinking that they knew even though Shawn did not want to personally kill Nicolas, he still conspired with.

6. Did you or any of the jurors ever suggest asking the judge a clarifying question regarding the intent necessary for the conspiracy charge? <sup>gave - yes I do now!</sup> ~~I honestly cannot remember~~ One of the jurors wanted to ask the judge if a guilty verdict on one charge could have a bearing on how he weighed the next charge (it had to do with the conspiracy/attempted murder charges). He didn't because I believe he felt the answer was found on the "specific intent" instruction. Had the question been asked, I do believe it would have clarified it for everyone else. If so, why was such a question never given to the judge? <sup>because I didn't believe the other jurors really understood that there had to be the same connection of motive, intent, heart etc in both charges. even though we read "specific intent" instruction a number of times.</sup>

8. Did the jury discuss the False Imprisonment charges before debating the kidnap?

Yes we did. However, the full charge was False Imprisonment with violence. Since we felt that Shawn was not present at the time Anna lured Nicolas into the holding cell, that would mean that he did not falsely imprison him with violence. There was no "violence" evident. So we had to defer to Kidnapping.

answer is found  
in the paragraph

000374

#5 (con't)

so therefore he was guilty of  
piracy

Anna with obvious "overt" actions. However, ~~the~~ I saw the inconsistency come into play with the attempted murder charge. The majority of the group believed Shawn that he knew "15 minutes would not kill the guy" and did it only to appease Anna. So they felt he should not be guilty of attempted murder. The same intent was present at each point along with overt actions, however, they judged each one differently. Hopefully you can understand what I am trying to say - it is very difficult to explain in words.

377B

9. Would you have voted guilty for false imprisonment if it did not include the term "violence"? Yes, absolutely.

10. At what point did you conclude that the defendant formed the intent to kidnap Nicholas Hamman? I concluded that the intent came after Anna had already imprisoned Nicolas. Shawn came onto the scene after the fact and then took advantage of the situation.

11. Did you conclude that when the defendant intended to kidnap Mr. Hamman, he did so with the goal of getting money from him? Yes, at least to help Anna get money from him.

12. Do you have any regrets regarding your decision in this case? My biggest regret is that I wanted to ask the judge if we could have the charge "false imprisonment w/ violence" changed to just "false imprisonment." Some of the jurors said that it was impossible to get a charge changed. My regret is not pushing that issue to ask the judge regardless of what the other jurors said.

13. Is there anything about the jury instructions that you feel you may not have understood clearly? Jury instructions can be very complicated. There were definitely times when I wished we could have a lawyer there to interpret the laws. It seemed as if the laws at times were very subjective to individuals.

13. Is it your conclusion after hearing all the evidence that Shawn Rodriguez wanted to kill Nicholas Hamman? It was my conclusion that Shawn did not "want" to kill Nicolas, but that he had told Anna he would help and was doing what he did because of his word to Anna - not because he had any bad feelings toward Nicolas.

14. Based on the evidence you have heard in this case, do you feel that life imprisonment is a fair punishment for Shawn Rodriguez? Please Explain Absolutely Not!

Did Shawn commit some bad stuff? Yes! He was guilty of falsely imprisoning & detaining Nicolas, taking the PIN & money, the car, and taking money out of ATM. He was guilty of going along w/ Anna & even making it seem like he was going to kill Nicolas (whether or not his final intentions were to or not). He definitely made some very bad choices and needs to take responsibility for them. However, I do not feel that life in prison is fair at all. What this young man needs is not life in prison w/ hardened criminals, but rather, a punishment that would include some time in prison along with counseling to help this young man learn about choices and consequences, respect and responsibility. Shawn seems to be a basically good kid. He needs help, not to be thrown away. I have to be honest, that when I learned that these charges brought a "life sentence," I felt tricked into the decisions by the prosecution. I always believed that our justice system was to help criminals to reform them (at least that's what punishment is meant for).

000378

But how can "reformation" take place when you know you'll spend the rest of your life in prison? Why bother? There's no hope! Personally, I believe the jury should be able to have a say in the sentence term. After all, if we are capable of sending or not sending someone to prison, why not let us help determine the length of stay. After all, we are a jury of his "peers" Shawn deserves a good chunk of time behind bars. Give him 10-15-20 years in prison. But do not send him to prison for the rest of his life.

I'm sure I sound like someone who has seen too many "Perry Mason" programs as a kid or too many episodes of "The Practice". It's not my intent to come across like that, however, it is my intent for the court to reconsider the sentence for this young man. I beg the court to consider a punishment for Shawn that will help him to come out of his prison term a new, different and better person. Please do not throw this young life away.

378B

**JURY QUESTIONNAIRE**

1. *How was the jury foreman selected? Did he elect, nominate or vote for himself?*  
Bob jumped right in there to get us focused as a group. When it was apparent that he seemed to be a leader that was willing to take on the position, someone in the group nominated him and the group responded with a yes.
2. *Did you vote Not Guilty on attempted murder?*  
No. At the last vote I made it clear to the group that I as of that point I felt that the defendant was guilty based on how we had determined the conspiracy verdict.
3. *Did you conclude that the defendant had the specific intent to murder Nicholas Hamman?*  
I felt that the defendant had the specific intent to follow through on the promise he had made to his co-conspirator.
4. *How did you conclude that there was no intent for attempted murder, but there was intent for the conspiracy to commit murder?*  
This question is not applicable to me.
5. *Did the jury seem to discuss and understand that the law requires the same specific intent to kill for conspiracy as it does for attempted murder?*  
I remember bringing that point up to the group and reading that particular rule to the group. There seemed to be confusion among some of them regarding this. I remember the argument was that some felt these were two separate charges and should be regarded as so.
6. *Did you or any of the jurors ever suggest asking the judge a clarifying question regarding the intent necessary for the conspiracy charge?*  
I do believe I brought that up to the group.
7. *If so, why was such a question never given to the judge?*  
A number of the more "outspoken" of the group did not see the need to do so, so I did not push the matter. I'm not sure why, however it seemed that any time someone wanted to ask the judge a question, some in the group argued about it. It did not seem an easy thing to do within this group.
8. *Did the jury discuss the False Imprisonment charges before debating the kidnap?*  
Yes.
9. *Would you have voted guilty for false imprisonment if it did not include the term "violence"?*  
Yes.
10. *At what point did you conclude that the defendant formed the intent to kidnap Nicholas Hamman?*  
After the defendant was already imprisoned by Anna Rugg and the issue arose between her and Shawn as to what they should do.
11. *Did you conclude that when the defendant intended to kidnap Mr. Hamman, he did so with the goal of getting money from him?*  
I concluded that after he saw the defendant was imprisoned, then it was a good opportunity to get what he could from him.

⑦

Not Filed



**12. Do you have any regrets regarding your decision in this case?**

Only that I did not push the matter regarding asking the judge about the above stated question. I saw an inconsistency in the group regarding the conspiracy and attempt charges.

**13. Is there anything about the jury instructions that you feel that you may not have understood clearly?**

I do not believe so.

**14. Is it your conclusion after hearing all the evidence that Shawn Rodriguez wanted to kill Nicholas Hamman?**

It was my conclusion that Shawn Rodriguez was following through with what he had told Anna Rugg he would do. It was an issue of being true to his word.

**15. Based on the evidence you have heard in this case, do you feel that life imprisonment is a fair punishment for Shawn Rodriguez? Please explain.**

No I do not feel it is a fair punishment. I felt that Shawn definitely needs to spend time in prison, maybe 10, 15 or even 20 years or so, but not life. I believe Shawn made some very poor choices and needs to pay the penalty for doing so, however, he is not an evil person that society should never look upon ever again. He was at the wrong place, at the wrong time, with the wrong friends. I believe Shawn needs to be "reformed", not discarded. I personally would like to see him put in an environment that will allow him to change, not harden his heart any more, so that possibly one day he can walk out of prison and live his life before he turns 50 years old.

## JURY QUESTIONNAIRE

The following is a list of questions designed to explore some of the thought process behind your findings and to clarify some of the actual conclusions. There is no right or wrong answer, and please understand it is not our goal to challenge your conclusions - only to clarify them.

Please feel free to expand on or explain in as much detail as you like any of your answers.

1. How was the jury foreman selected? Did he elect, nominate, or vote for himself?

*Volunteer*

2. Did you vote Not Guilty on attempted murder? *Yes*

3. Did you conclude that the defendant had the specific intent to murder Nicholas Hamman? *No*

4. How did you conclude that there was no intent for the attempted murder, but there was intent for the conspiracy to commit murder?

*He gathered materials, hose, tape which indicated a plan was formulated.*

5. Did the jury seem to discuss and understand that the law requires the same specific intent to kill for conspiracy as it does for attempted murder?

*We discussed but obviously, did not understand that the law requires*

6. Did you or any of the jurors ever suggest asking the judge a clarifying question regarding the intent necessary for the conspiracy charge?

*Yes*

7. If so, why was such a question never given to the judge?

*We concluded that we should evaluate each charge independently*

8. Did the jury discuss the False Imprisonment charges before debating the kidnap? *Yes*

9. Would you have voted guilty for false imprisonment if it did not include the term "violence"?

*yes, absolutely; many of the jurors would have*

10. At what point did you conclude that the defendant formed the intent to kidnap Nicholas Hamman?

*after Hamman was in the cell*

11. Did you conclude that when the defendant intended to kidnap Mr. Hamman, he did so with the goal of getting money from him?

*NO*

12. Do you have any regrets regarding your decision in this case? *That we did not have an understanding the law requires the same specific intent to kill as it does for conspiracy.*

13. Is there anything about the jury instructions that you feel you may not have understood clearly?

*All 12*

13. Is it your conclusion after hearing all the evidence that Shawn Rodriguez wanted to kill Nicholas Hamman?

*No, I did not believe Shawn wanted to kill N. Hamman.*

14. Based on the evidence you have heard in this case, do you feel that life imprisonment is a fair punishment for Shawn Rodriguez? Please Explain

*It seems very harsh given that I do not believe he intended to kill him. I do believe Shawn did not want to open the cell door for fear of N Hamman. Shawn obtained a hack saw to turn the water off. We'll never know if he would have called the police to report. I believe he would have. I don't believe Shawn was part of a plan to entrap the victim that weekend. They just happened to run into him.*

NOV 6, 2003

## JURY QUESTIONNAIRE

The following is a list of questions designed to explore some of the thought process behind your findings and to clarify some of the actual conclusions. There is no right or wrong answer, and please understand it is not our goal to challenge your conclusions - only to clarify them.

Please feel free to expand on or explain in as much detail as you like any of your answers.

1. How was the jury foreman selected? Did he elect, nominate, or vote for himself?  
*HE DOMINATED HIMSELF AND THE REST OF THE PEOPLE ON THE JURY CONCURRED NO ONE ELSE WANTED THE POSITION.*
2. Did you vote Not Guilty on attempted murder?  
*YES*
3. Did you conclude that the defendant had the specific intent to murder Nicholas Hamman?  
*NO*
4. How did you conclude that there was no intent for the attempted murder, but there was intent for the conspiracy to commit murder?  
*I BELIEVED THAT MR. RODRIGUEZ DID NOT INTEND TO KILL MR. HAMMAN, HOWEVER DURING HIS TAPED CONFESSION MR. RODRIGUEZ STATED THAT HE AND MS RUGG (CONSPIRED TO GAS MR. HAMMAN) AND ASKED HIS FOSTER BROTHER (WAYS TO KILL SOMEONE)*
5. Did the jury seem to discuss and understand that the law requires the same specific intent to kill for conspiracy as it does for attempted murder?  
*NO, I DO NOT BELIEVE SO*
6. Did you or any of the jurors ever suggest asking the judge a clarifying question regarding the intent necessary for the conspiracy charge?  
*YES*
7. If so, why was such a question never given to the judge?  
*WE DID ASK THE JUDGE FOR CLARIFICATION AND SHE RESPONDED WITH A WRITTEN ANSWER.*
8. Did the jury discuss the False Imprisonment charges before debating the kidnap?  
*YES, THE MAJORITY OF THE JURY WAS LEANING TOWARD FALSE IMPRISONMENT. HOWEVER AFTER RECEIVING CLARIFICATION ON THE QUESTION OF EXTORTION AFTER KIDNAPING WE WENT THE OTHER WAY, BECAUSE IT WAS AFTER MR. HAMMAN WAS CONFINED, THAT MR. RODRIGUEZ TOOK HIS ATM CARD*

000371

9. Would you have voted guilty for false imprisonment if it did not include the term "violence"? *YES*

10. At what point did you conclude that the defendant formed the intent to kidnap Nicholas Hamman?

*WHEN MR HAMMAN ASKED TO BE LET OUT OF THE HOLDING CELL AND WAS REFUSED HIS REQUEST*

11. Did you conclude that when the defendant intended to kidnap Mr. Hamman, he did so with the goal of getting money from him?

*YES*

12. Do you have any regrets regarding your decision in this case?

*YES, PUNISHMENT IS TOO SEVERE*

13. Is there anything about the jury instructions that you feel you may not have understood clearly?

*NO*

13. Is it your conclusion after hearing all the evidence that Shawn Rodriguez wanted to kill Nicholas Hamman?

*NO, HE WANTED TO PLEASE MS RUGG, BUT NO I DO NOT BELIEVE THERE WAS INTENT ON HIS BEHALF*

14. Based on the evidence you have heard in this case, do you feel that life imprisonment is a fair punishment for Shawn Rodriguez? Please Explain

*NO, I WAS SHOCKED WHEN I HEARD HOW SEVERE THE PUNISHMENT COULD BE. EVEN THOUGH JURY INSTRUCTIONS STATED THAT WE COULD NOT REFERENCE THE PUNISHMENT TO OUR DECISION MAKING.*

*IT IS OF MY OPINION THAT THE PUNISHMENT DOES NOT FIT THE CRIME.*

*NOBODY WAS HURT, WHERE IS JUSTICE??*

*I FEEL SHAWN WAS A VICTIM OF CIRCUMSTANCE AND MADE SOME POOR CHOICES WHEN HE HAD THE OPPORTUNITY TO CORRECT THE SITUATION.*

*IT IS ALSO OF MY OPINION THAT SHAWN*

*COULD*

000372

(Should spend no more than a year in confinement")  
THERE WERE 2 JURORS ON JULY WHOM I FELT  
WOULD NOT LISTEN TO REASON, THEY WANTED GUILTY  
VERDICTS ON EVERYTHING, WITHOUT FURTHER DISCUSSION  
MOST OF THE OTHER JURY MEMBERS WERE GOING TO  
VOTE FOR FALSE IMPRISONMENT "THE LESSEN CHARGE"  
AFTER CLARIFICATION FROM THE JUDGE ON WHAT  
WE THOUGHT "EXTORTION" AFTER YOU HAVE THE  
INDIVIDUAL CONFINED "WE HAD TO GO WITH  
THE MORE SERIOUS OFFENSE, BECAUSE WE THOUGHT  
THAT IT WAS THE WAY THE LAW & INSTRUCTIONS  
WERE WRITTEN,

I MUST ADD THAT ATTORNEY JESSE SERAFINI;  
IN MY OPINION, DID A GREAT JOB REPRESENTING  
MR. RODRIGUEZ, AND PRIOR TO DELIBERATING  
OUR VERDICTS, I PERSONALLY THOUGHT  
MR. RODRIGUEZ WAS GUILTY OF, FALSE IMPRISONMENT,  
ROBBERY AND AUTO THEFT ONLY AND INCOMPETENT  
ON ALL OTHER CHARGES

IT WAS OUR INSTRUCTIONS & DEFINITIONS &  
THE TAPED CONFESSION WHICH CHANGED THINGS

Sincerely,  
Leo Lerch  
JUROR

372 B

# EXHIBIT COVER PAGE

K

EXHIBIT

Description of this exhibit: Evidence record indicating existence of exculpatory items of evidence, in the possession of the people; items which were of tremendous impeachment value and Supportive of defense theory of the case. Both items disappeared and were unavailable for defense at trial.

Number of pages to this exhibit: 3 pages.

JURISDICTION: (Check One Only)

- ☐ MUNICIPAL COURT
- ☒ SUPERIOR COURT
- ☐ APPELLATE COURT
- ☐ STATE SUPREME COURT
- ☐ UNITED STATES DISTRICT COURT
- ☐ STATE CIRCUIT COURT
- ☐ UNITED STATES SUPREME COURT
- ☐ GRAND JURY

AUBURN POLICE DEPT 3101  
CRIME REPORT SUPPLEMENT (30317003/6)

DR 307602

CODE SEC: 664/187 PC Attempted murder V-1  
SECONDARY: 211 PC Robbery  
236 PC False imprisonment w/violence/etc V-1  
459 PC Burglary  
10851 VC Auto theft

DATE/TIME REPORTED: Mon. 03/17/03 13:20 hrs.

DATE/TIME OCCURRED: Sun. 03/16/03 09:00 hrs. - Mon. 03/17/03 02:00 hrs.

LOCATION OF OCCURENCE: 200 Epperle Ln BLOCK AREA: 1

VICTIM-1: HAMMAN, NICHOLAS WILLIAM WM39 (05/28/63) 889-1615  
ADDRESS: 10550 Werner Rd, Auburn, CA 95603  
OCCUPATION: unemployed  
INJURY EXTENT: Non specific. DESCR: Transported to SAFH

ASSIST OFFICE-7: JANE XEPOLEAS - PLACER COUNTY SHERIFFS DEPT

ASSIST OFFICE-8: OFFICER JOHN ROYE - AUBURN POLICE DEPARTMENT

ASSIST OFFICE-9: OFFICER GARY HOPPING - AUBURN POLICE DEPARTMENT

REPORT OFFCR-1: DETECTIVE DALE HUTCHINS - AUBURN POLICE DEPARTMENT

SUSPECT-1: HUGHES, ERIN RACHEL WF28 (07/23/74) 889-9015  
ADDRESS: 3420 Ridge Ln, Auburn, CA 95603  
DL NO./STATE: B6905914/CA A# NO.: 0  
EMPLOYER: PRIDE INDUSTRIES BUS. PHONE: 888-0331  
BUS. ADDRESS: 12524 Earhart Ave, Auburn, CA 95603  
RACE: White SEX: F HT: 63 WT: 140 HAIR: BRO EYES: HAZ

VEHICLES INVOLVED:

VICTIM-1: RED 1992 CHEV BER 2D 3FHS432 CA  
Victim Vehicle, Recovered: See 180

PROPERTY:

	QTY	VALUE
1. Evidence, Miscellaneous, NOTE "HELP ME, SER:TRAPPED INSIDE", OAN:076-02-03, collected from front door area - under water	1	0.00
2. Evidence, Miscellaneous, STANDAR LATENT, SER:TAPE LIFT FROM CELL, OAN:076-02-03, lift from cell window (exterior)	1	0.00
3. Evidence, Miscellaneous, TOWEL FROM TABLE, SER:INSIDE CELL, OAN:076-02-03	1	0.00
4. Evidence, Miscellaneous, TOWEL FROM, SER:SPRINKLER INSIDE, OAN:076-02-03, cell	1	0.00
5. Evidence, Misc. music instrument/access., TAPE FROM, SER:EXTERIOR OF CELLDOR, OAN:076-02-03	1	0.00
6. Evidence, Gauge, TIRE GAUGE, SER:LOCATED AT CELL DOOR, OAN:076-02-03, (exterior)	1	0.00

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AUBURN POLICE DEPT 3101  
CRIME REPORT SUPPLEMENT (30317003/6)

DR 307602  
Page 2

PROPERTY:

	QTY	VALUE
7. Evidence, Miscellaneous, SPRINKLER FROM, SER:INSIDE CELL, OAN:076-02-03	1	0.00
8. Evidence, WINDOW, FROM CELL WALL, OAN:076-02-03	1	0.00
9. Evidence, Miscellaneous, VENT FRM ABOVE, SER:CELL DOOR STUFFED W/, OAN:076-02-03, tissue	1	0.00
10. Evidence, Miscellaneous, PIPE COLLECTED, SER:IN KITCHEN, OAN:076-02-03	1	0.00
11. Evidence, Miscellaneous, VIDEO OF CRIME, SER:SCENE, OAN:076-02-03	1	0.00
12. Evidence, Miscellaneous, CHECK CARD, SER:4789-4784-4170-2013, OAN:076-02-03, "WASHINGTON MUTUAL" recovered from his center console., (V-1)	1	0.00
13. Evidence, Miscellaneous, CHP CITATION, SER:#18304RL ISSUED TO, OAN:076-02-03, issued to suspect Rodriguez while driving HAMMAN's vehicle, on 03-15-03 at 1859 hours	1	0.00
14. Evidence, Hacksaw, Crescent, FOUND ON L-REAR, SER:FLOORBOARD, OAN:076-02-03, of Hamman's vehicle	1	0.00
15. Evidence, Miscellaneous, WOOD BILLY-CLUB, SER:FOUND ON R/FRONT, OAN:076-02-03, floor area of Hamman's vehicle	1	0.00
16. Evidence, Jacket, BLK, SER:"LETTERMAN STYLE", OAN:076-02-03, found on r/front seat of Hamman's vehicle with latex gloves, in the pocket	1	0.00
17. Evidence, Glove, BLK, FOUND ON REAR, SER:SEAT OF HAMMAN'S VEH, OAN:076-02-03, consistent with glove found at crime scene	1	0.00
18. Evidence, Miscellaneous, BLUMING FIXTURE, SER:FOUND IN REAR SEAT, OAN:076-02-03, area of Hamman's vehicle	1	0.00
19. Evidence, Miscellaneous, PLASTIC BAG W/, SER:LATEX GLOVES, OAN:076-02-03, found in rear seat area of Hamman's vehicle	1	0.00
20. Evidence, Knife, IN BRO LEATHER, SER:CASE FOUND IN REAR, OAN:076-02-03, seat area of Hamman's vehicle	1	0.00
21. Evidence, Telephone (All Kinds), Nokia, FOUND IN RT/FRNT, SER:OASSENGER AREA OF, OAN:076-02-03, Hamman's vehicle possibly belongs to Rugg	1	0.00
22. Evidence, Miscellaneous, GRY, GARDEN HOSE, SER:CONNECTED TO, OAN:076-02-03, grn garden hose found in the trunk of Hamman's vehicle	1	0.00
23. Evidence, Letter, WRITTEN BY, SER:RODRIGUEZ TO FEMALE, OAN:076-02-03, friend Erin Hughes during interview with police detectives	1	0.00
24. Evidence, Miscellaneous, SER:VIDEO SURVEILLANCE, OAN:076-02-03, from 49er Shell station 390 Grass Valley Hwy	1	0.00
25. Evidence, Miscellaneous, WITHDRAWAL, SER:RECEIPT FOUND ON, OAN:076-02-03, Rodiguez	1	0.00

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PROPERTY:

	QTY	VALUE
26. Evidence, Miscellaneous, ACCOUNT BALANCE, SER:INQUIRY FOUND ON, OAN:076-02-03, Rodriguez	1	0.00
27. Evidence, Miscellaneous, ALBERTSON'S, SER:RECEIPT FOUND ON, OAN:076-02-03, Rodriguez	1	0.00
28. Evidence, Miscellaneous, TRANSACTION, SER:RECEIPT, OAN:076-02-03, found on Rugg	1	0.00
29. Evidence, Miscellaneous, TRANSACTION, SER:RECEIPT FOUND ON, OAN:076-02-03, Rugg	1	0.00
30. Evidence, Miscellaneous, NOTE LEFT BY, SER:RUGG AT THE SHELL, OAN:076-02-03, station	1	0.00
31. Evidence, Wrench, ALLEN WRENCH, SER:FOUND ON RUGG, OAN:076-02-03 '	1	0.00

\*\*\* Evidence:

0.00

DETAILS OF INVESTIGATION:

Refer to Property Record.

ADULT BOOKED/CLEARED

REPORTED: 03/17/03 by DETECTIVE DALE HUTCHINS  
RECORDED: 03/20/03 by JUDY JOHNSON  
REVIEWED: by

INCIDENT: 30317003  
SUPPLEMENT: 6

Follow up: Yes/ / No/ / Copies to:Pat/ / Det/ / DA/ / Prob/ / Capt/ / Other

261

# EXHIBIT COVER PAGE

L

EXHIBIT

Description if this exhibit: Documentary evidence of all physical injuries sustained by the victim in the case at bar, as recorded pursuant to pre-trial investigation.

Number of pages to this exhibit: 5 pages.

**JURISDICTION:** (Check One Only)

- ☐ MUNICIPAL COURT
- ☒ SUPERIOR COURT
- ☐ APPELLATE COURT
- ☐ STATE SUPREME COURT
- ☐ UNITED STATES DISTRICT COURT
- ☐ STATE CIRCUIT COURT
- ☐ UNITED STATES SUPREME COURT
- ☐ GRAND JURY

DR # 76-02-03

SUPPLEMENT

664/187 P.C. / CA

3-24-03 AT 1300 HOURS

V- HAMMAN, NICHOLAS W.

5-28-63

CA- RUGG, ANNA M.

10-2-82

CA- RODRIGUEZ, SHAWN M.

8-30-83

On 3-20-03 at approx. 1520 hours, I went out to Sutter Auburn Faith Hospital to retrieve Hamman's medical records for when he was treated on 3-17-03. A copy of those medical records are attached to this supplement.

D. Coe #8  
D. COE # 8

APPROVED.

MAR 24 2003

73  
03/12 204

CR3300KI  
22.20  
AFHIS03G

SUTTER AUBURN FAITH HOSPITAL  
Clinical Repository Results

3/20/03 15:24:29  
SACTODC1

Patient: 00020885331 HAMMAN, NICHOLAS

Location: Medical Record#:

Page: 1  
Age: 39 Years Sex: M

03/17/2003

Expected

03:26

Units

Range

76-02-07

CHEST 1 VIEW MOBILE

PATIENT: HAMMAN, NICHOLAS

MRN: 0238825

EXAM: Chest 1 View Mobile 03/17/2003

CLINICAL INDICATION: Chest pain.

COMPARISON: No previous studies for comparison.

FINDINGS: AP portable chest, 03-17-03, at 0340 hours. Lungs are grossly clear except for what appears to be a 1-cm-diameter calcified granuloma versus some sort of material underlying or overlying the patient just to the left of the spine in the cardiac region.

Cardiac silhouette is not enlarged. Skeletal structures are unremarkable.

IMPRESSION:

POSSIBLE OLD GRANULOMATOUS DISEASE BUT NO CLEAR-CUT SIGN OF CURABLE CARDIOPULMONARY DISEASE. WE ARE ATTEMPTING TO OBTAIN OLD STUDIES FOR COMPARISON PURPOSES.

Report Dictated By:

DOFFER, GLENN A M.D. (AF)

Radiological Associates of Sacramento

DATE: 03/17/2003

TIME: N RC: N

Copy to Physician(s): HARRIS, ANDREA L  
24075

MRN: 0238825 ACCT#: 20885331

PATIENT: HAMMAN, NICHOLAS

ROOM: AF Emergency

DOB#: AFR0304225

AGE/SEX: 39Y M

ORDERING PHYSICIAN: HARRIS, ANDREA L

TENDING PHYSICIAN: HARRIS, ANDREA L

TENDING PHYSICIAN: HARRIS, ANDREA L

\* \* \* \* \* E N D O F L I S T I N G \* \* \* \* \*

MAR 24 2003

45

03/18 206

76-02-03

## EMERGENCY ROOM NOTE

DATE OF SERVICE: 3/17/03

TIME SEEN: 2:50 a.m.

CHIEF COMPLAINT: "Cold".

HISTORY OF PRESENT ILLNESS: This is a 39 year-old male, who states that he was "kidnapped" by some people that he apparently knows and then locked in a Juvenile Hall cell for at least two or three days. Apparently, somehow, he was coaxed into going into this old Juvenile Hall facility where he was then put into a cell, which he could not get out of and eventually the police got a tip that this happened and they went there and found the patient in this cell, which was being flooded with water. Apparently, they were trying to drown the patient.

He complains of feeling cold and states that he has been in cold water for the last couple of days. He has at least been standing in six inches of water with cowboy boots on and he states at one point, the water was up to his shoulders last night. The patient complains of being cold. He also states he has abdominal pain, nausea, cough, some chest pain and some difficulty breathing. He complains of pain in his feet.

The patient states that the pain in his chest and his heart feels like "angina". He states he takes nitroglycerin pills for this. He states the pains started about twenty minutes ago.

PAST MEDICAL HISTORY: Psychiatric disease, ventricular septal defect, asthma and possible coronary artery disease as well as depression and bipolar.

PAST SURGICAL HISTORY: He had a gunshot wound to his heart in 1981. He states that he had an injury near his aortic valve and it is unclear exactly the detail of the cardiac injury.

MEDICATIONS: Nitroglycerin, Depakote, Zyprexa, Cogentin and Paxil.

ALLERGIES: PENICILLIN AND THORAZINE.

SOCIAL HISTORY: The patient smokes and drinks. He denies drugs. He lives in a halfway house.

REVIEW OF SYSTEMS: GENERAL: The patient is shivering and he states he is cold. ENT: He has a sore throat. RESPIRATORY AND CARDIOVASCULAR: He states he is coughing and coughed up some blood in the ambulance. He also has chest pain and shortness of breath which started on the way to the ER. ABDOMEN: The patient states he vomited on the way to the ER. He denies abdominal pain or diarrhea. He has not eaten since he was "kidnapped" by these

SUTTER AUBURN FAITH HOSPITAL  
1815 Education Street Auburn, CA 95602  
Page 1 of 3

PATIENT NAME: HAMMAN, NICHOLAS  
MR#: 23-88-25  
DATE: 03/17/2003 ANDREA HARRIS, M.D.

MAR 24 2003

03/12 212

## EMERGENCY ROOM NOTE

76-02-03

people. GU: He denies dysuria or hematuria. EXTREMITIES: He states his feet hurt. NEUROLOGIC: No headache, no syncope.

PHYSICAL EXAMINATION: GENERAL: Well-developed, well-nourished male who is anxious and shivering. VITAL SIGNS: His temperature was 94.4 orally, but the rectal temperature was 97 on two occasions. Pulse was 120, respiratory rate 30, blood pressure 118/76. HEENT: The head is normocephalic, no trauma. The pupils equal, round and reactive to light. Extraocular muscles are intact. There is no icterus and no injected. TMs are not visualized. Nose without discharge. Oral mucosa pink. Mucous membranes are slightly dry. The pharynx is clear. NECK: Nontender. CHEST: Clear. CARDIOVASCULAR: Shows tachycardia with regular rhythm. Pulses are +2 radially, femorally and dorsalis pedis bilaterally. ABDOMEN: Shows mild diffuse tenderness. It is soft. Bowel sounds are present. It is nondistended. There is no hepatosplenomegaly. No rebound or guarding. There is a midline surgical scar. EXTREMITIES: Shows that the patient's feet and hands are whitish and look as though they have been soaking in water for a long period of time. The skin is macerated. On the feet especially are noted to be some callus like lesions which may be chronic. The feet and the hand are very cold to touch, but the rest of the skin is okay. The patient does have good sensation in both the hands and the feet. Pulses are intact in the feet bilaterally. There is good dorsalis pedis pulses and capillary refill is intact. NEUROLOGIC: Examination is unremarkable. The patient is awake, alert and somewhat anxious, but has no focal deficits. He is not lethargic. The cranial nerves are intact. He has full strength and sensation in the upper and lower extremities.

MEDICAL DECISION MAKING/ER COURSE: The patient states that he was somehow kidnapped and put into a Juvenile Hall cell that he was unable to get out of and apparently he was exposed to a lot of standing water and was having exposure of his extremities to the water. The patient complains of being cold. He also is somewhat anxious and tachycardic, but he is given IV fluids and this seems to improve. His Accu-Chek in the field was 86 with a good blood sugar control despite the fact that the patient had not eaten for a couple of days. He was able to eat here after being given some Phenergan. He initially had some dry heaves and some coughing. He then ate well without difficulty. Heart rate was still mildly elevated, but did come down to about 110. The patient was talking to the police officers through most of his ER course and this could have contributed to his tachycardia.

The patient had laboratories which showed a white count of 18.5, hemoglobin was 16.2, 81% neutrophils. The white count is slightly elevated although the etiology is unclear. Chem-7 showed mild dehydration with a BUN of 31 and creatinine of 1.3 and this was treated with over two liters of normal saline and

SUTTER AUBURN FAITH HOSPITAL  
11815 Education Street Auburn, CA 95602  
Page 2 of 3

PATIENT NAME: HAMMAN, NICHOLAS  
MR#: 23-88-25  
ANDREA HARRIS, M.D.

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MAR 24 2003

03/12 213

# EMERGENCY ROOM NOTE

76-02-03

then 175 cc an hour of saline. The CO2 was 18 consistent with dehydration as well. EKG showed a heart rate of 130 but there is a lot of artifact in the baseline. I believe it represents sinus tachycardia. The monitor also shows sinus tachycardia and some intermittent artifact. The patient gives a history of cardiac disease. He states that he had an injury to his heart in the 1980's and since that time, has taken nitroglycerin and been told that he has coronary artery disease and angina. However, this is unclear and there is no documentation of this in the old chart. Portable chest x-ray did not show any evidence of CHF, infiltrate, pneumothorax or pneumonia.

Basically, the patient is observed here in the emergency room for about two and a-half hours, after which time, his tachycardia improves. His tremulousness and anxiety improve and the white discoloration and coldness of his hands and feet is much improved. On reexamination, the patient is calm and sitting with his board and care person, who helps to take care of him and his hands and feet are now warm. He complains of some numbness in them, but states that the sensation is coming back. The initial discoloration has resolved and they basically appear pretty much normal.

At this time, I do not think that the patient has sustained any significant hypothermia or cold injury and there is some mild dehydration which has been treated. He is able to eat. There is no evidence of other significant abnormality. No evidence of significant trauma. Other than a small abrasion which was noted on the patient's right inner thigh, which I did not earlier mention. The patient states that he may have been kicked in the groin a couple of times, but there is no evidence of any other trauma.

DISPOSITION: The patient is discharged back to his halfway house and board and care facility with his board and care person. He is told to followup with Dr. Klistoff at the clinic in the next couple of days for a recheck to see if he has any injury to his hands and feet from this cold exposure. He is told to return if worse and rest.

FINAL IMPRESSION: (1) Mild "trench foot" and cold injury to the hands and feet which has now improved. (2) Mild dehydration. (3) Psychiatric disease. (4) History of possible cardiac disease.

ANDREA HARRIS, M.D.

AH/TL:332 /632589 D:03/17/2003 T:03/17/2003

SUTTER AUBURN FAITH HOSPITAL  
11815 Education Street Auburn, CA 95602  
Page 3 of 3

PATIENT NAME: HAMMAN, NICHOLAS  
MR#: 23-88-25  
ANDREA HARRIS, M.D.

MAR 24 2003

03/12 214



# EXHIBIT COVER PAGE

M

EXHIBIT

Description of this exhibit: Documentary evidence of financial injuries sustained by the victim in the case at bar, as recorded pursuant to pre-trial investigation.

Number of pages to this exhibit: 2 pages.

**JURISDICTION:** (Check One Only)

- ☐ MUNICIPAL COURT
- ☒ SUPERIOR COURT
- ☐ APPELLATE COURT
- ☐ STATE SUPREME COURT
- ☐ UNITED STATES DISTRICT COURT
- ☐ STATE CIRCUIT COURT
- ☐ UNITED STATES SUPREME COURT
- ☐ GRAND JURY

DR # 076-02-03

SUPPLEMENT

664/187 P.C. / CA

5-14-03 AT 0940 HOURS

V- HAMMAN, NICHOLAS W.

5-28-63

CA- RUGG, ANNA

10-02-82

CA- RODRIGUEZ, SHAWN M.


8-30-83

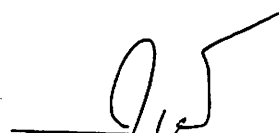
C- GARCIA, KAREN  
ASSISTANT BRANCH MANAGER WASHINGTON MUTUAL BANK  
2520 GRASS VALLEY HIGHWAY, AUBURN, CA 95603 823-6157

On 5-13-03 at approx. 1145 hours, I met with Hamman at the Placer County Jail to ask him about his bank records. I had previously asked Hamman to get me those records, but he was unable to do so due to being incarcerated. I typed up a letter for Hamman to sign, which would give me authorization to get those records. Hamman looked at the letter and agreed to sign it. Hamman said that I would be looking for three fraudulent transactions made with his check card. Two of them were withdrawals in the amount of \$41.50, and one was a purchase at the Auburn Shell in the amount of \$29.00. Hamman said that since his account was overdrawn at the time, he was charged an additional \$21.00 for each of the transactions.

I went to the Washington Mutual Bank located on Grass Valley Highway and spoke to Garcia. I gave her the letter that was signed by Hamman so I could get a copy of his bank statement. Garcia printed me out a copy of his statement starting with the date of 3-14-03. The printout showed the two \$41.50 withdrawals from 2220 Sunset Blvd in Rocklin, and it also showed the \$29.65 purchase at the Shell Station. The \$41.50 transactions posted to the account on 3-17-03. Garcia said that the actual transactions were probably made on the fifteenth or sixteenth. The Shell Station purchase posted to the account on 3-19-03. Garcia said that that purchase most likely took place on the seventeenth because it normally takes two days to post on an account. A copy of those transactions is attached to this supplement.

Forward this supplement to the D.A.'s office.

  
D. COE # 8

  
APPROVED

MAY 15 2003

118 21



Washington Mutual Bank, FA

Dr# 76-02-03  
ACCOUNT TRANSACTION HISTORY

ACCOUNT #  
048600000779912

ACCOUNT NAME  
HAMMAN NICHOLAS

PRODUCT  
FREE CHECKING

CURRENT BALANCE: -\$121.95

DATE	WITHDRAWALS	DEPOSITS	CHECK #	DESCRIPTION
05/07/2003	-\$21.00			
05/07/2003		\$21.00		OVERDRAFT CHARGE FROM 3/20/03
05/06/2003	-\$450.00		1012	
05/06/2003	-\$20.00			CUSTOMER WITHDRAWAL
05/05/2003	-\$1.95			VISA-Bargain Network 800-333-1915 CA
05/02/2003	-\$39.00			CUSTOMER WITHDRAWAL
05/01/2003		\$757.00		US TREASURY 310 SUPP SEC
05/01/2003	-\$100.00			CUSTOMER WITHDRAWAL
04/22/2003	-\$21.00			NON SUFFICIENT FUNDS CHARGE
04/17/2003	-\$5.00			PLUS PACKAGE MEMBERSHIP
04/09/2003	-\$21.00			OVERDRAFT CHARGE
04/09/2003	-\$21.00			NON SUFFICIENT FUNDS CHARGE
04/08/2003	-\$400.00		1005	
04/03/2003	-\$56.32			CUSTOMER WITHDRAWAL
04/02/2003	-\$200.00			CUSTOMER WITHDRAWAL
04/01/2003		\$757.00		US TREASURY 310 SUPP SEC
04/01/2003	-\$169.88			CUSTOMER WITHDRAWAL
03/31/2003		\$21.00		REFUND OD CHARGE - BANK ERROR
03/27/2003		\$29.65		VCC CLAIM HONORED
03/24/2003		\$42.00		REFUND OF OVERDRAFT FEE
03/24/2003		\$4.00		FOREIGN ATM FEES
03/24/2003		\$83.00		ATM/POS PROVISIONAL CREDIT
03/20/2003	-\$21.00			OVERDRAFT CHARGE
03/19/2003	-\$5.00			*PLUS PACKAGE MEMBERSHIP
03/19/2003	-\$1.00			*ATM BALANCE INQUIRY FEE - DOMESTIC
03/19/2003	-\$8.00			*ATM WITHDRAWAL FEE - DOMESTIC
03/19/2003	-\$29.65			VISA-SHELL OIL 2040402AUBURN CA
03/18/2003	-\$21.00			*OVERDRAFT CHARGE
03/18/2003	-\$21.00			*OVERDRAFT CHARGE
03/17/2003	-\$21.00			*OVERDRAFT CHARGE
03/17/2003	-\$41.50			2220 SUNSET BLVD ROCKLIN 0316 P
03/17/2003	-\$41.50			2220 SUNSET BLVD ROCKLIN 0316 P
03/14/2003	-\$100.00		100	

119 211

# EXHIBIT COVER PAGE

N

EXHIBIT

Description of this exhibit: Order Setting Evidentiary Hearing, By Judge Mark  
S. Curry.

Number of pages to this exhibit: 4 pages.

**JURISDICTION:** (Check One Only)

- ☐ MUNICIPAL COURT
- ☐ SUPERIOR COURT
- ☒ APPELLATE COURT
- ☐ STATE SUPREME COURT
- ☐ UNITED STATES DISTRICT COURT
- ☐ STATE CIRCUIT COURT
- ☐ UNITED STATES SUPREME COURT
- ☐ GRAND JURY

Name: Shawn Rodriguez #V16387Address: PO Box 290066Represa, Ca. 95671CDC or ID Number: V16387**FILED**  
Superior Court of California  
County of Placer

JUL 24 2015

Jake Chatters  
Executive Officer & Clerk  
By: M. Anderson, DeputySuperior Court of CaliforniaCounty of Placer

(Court)

Shawn Rodriguez

Petitioner

vs.

Jeff MacComber, Warden, CSP-SAC

Respondent

## PETITION FOR WRIT OF HABEAS CORPUS

No. WAC-0001400

(To be supplied by the Clerk of the Court)

**RECEIVED**

JUL 24 2015

## INSTRUCTIONS - READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the superior court, you only need to file the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal and you are an attorney, file the original and 4 copies of the petition and, if separately bound, 1 set of any supporting documents (unless the court orders otherwise by local rule or in a specific case). If you are filing this petition in the Court of Appeal and you are *not* represented by an attorney, file the original and one set of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and 10 copies of the petition and, if separately bound, an original and 2 copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court (as amended effective January 1, 2007). Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

## PETITION FOR WRIT OF HABEAS CORPUS

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF PLACER**

**DATE:** 7/29/15

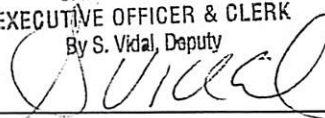
**TIME:**

**DEPT:**

**HON.** Garen Horst


, Judge

Sandy Vidal , Deputy Clerk

<p>People of the State of California,</p> <p style="text-align: center;">vs.</p> <p>Shawn Michael Rodriguez,</p> <p style="text-align: center;">Defendant.</p>	<p style="text-align: center;"><b>FILED</b> SUPERIOR COURT OF CALIFORNIA COUNTY OF PLACER</p> <p style="text-align: center;"><u>JUL 29 2015</u> JAKE CHATTERS EXECUTIVE OFFICER &amp; CLERK By S. Vidal, Deputy</p> 
<p><b>Order of Disqualification Pursuant to Code of Civil Procedure §170.1</b></p>	<p><b>CASE NO. 62-34689</b></p>

The Honorable Garen Horst hereby disqualifies himself/herself from hearing any further matters of contested law or fact in the above entitled matter pursuant to Code of Civil Procedure §170.1, subsection subsection (a)(6)A(i). Judge Horst will hear no further matters involving the parties as stated above.

DATED: 7/29/15

  
The Honorable Garen Horst  
Judge of the Placer Superior Court

SUPERIOR COURT OF CALIFORNIA  
IN AND FOR THE COUNTY OF PLACER

CLERK'S CERTIFICATE OF MAILING (C.C.P. § 1013a(4))

Case no.: 62-34689

Case name: People of the State of California vs. Shawn Michael Rodriguez

I, the undersigned, certify that I am the clerk of the Superior Court of California, County of Placer, and I am not a party to this action.

I mailed copies of the document(s) indicated below:  
CCP 170.1 Judge Horst

True copies of the document(s) were mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as follows:

Shawn Rodriguez # V16387  
P.O. Box 290066  
Represa, CA. 95671

Placer County District Attorney  
Interoffice

Placer County Public Defender


I am readily familiar with the court's business practices for collecting and processing correspondence for mailing; pursuant to those practices, these document(s) are delivered to

☒ the US Postal Service      ☐ UPS      ☐ FedEx      ☒ Interoffice mail  
☐ Other:

on 7/29/15, in Placer County, California  
(date)

Dated: 7/29/15

Jake Chatters  
Clerk of the Placer County Superior Court

  
By: Sandy Vidal, Deputy Clerk

**SUPERIOUR COURT OF CALIFORNIA  
IN AND FOR THE COUNTY OF PLACER**

**CLERK'S CERTIFICATE OF MAILING (C.C.P. §1013a(4))**

---

**Case number: WHC-1400**

**Case name: In Re: Shawn Rodriguez**

I, the undersigned, certify that I am the clerk of the Superior Court of California, County of Placer, and I am not a party to this case.

I mailed copies of the document(s) indicated below:

**Court Order Finding Prima Facie for Relif, In Part, and Issuance of Order to Show Cause; Finding of No Prima Facie Case for Relief Re: Other Contentions.**

True copies of the documents were mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as follows:

**Placer County District Attorney  
10810 Justice Center Drive, Suite 240  
Roseville, CA 95661**

**Office of the Attorney General  
Writ Department  
1300 I Street, Suite 1101  
PO Box 944255  
Sacramento, CA 94244-2560**

**Shawn Rodriguez #V16387  
California State Prison-Sacramento  
P.O. Box 290066  
Represa, CA 95671**

**Jeff Macomber, Warden  
P.O. Box 290002  
Represa, CA 95671**

**Placer County Public Defender  
11760 Atwood Rd  
Auburn, CA 95603**

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☒ the US Postal Service

☐ UPS

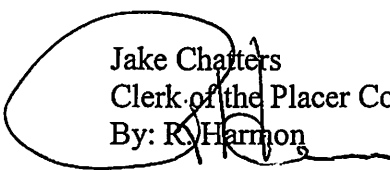
☐ FedEx

☐ Interoffice mail

☐ Other (via email)

On 08/05/15, Placer County, California

Dated: 08/05/15

  
Jake Chatters  
Clerk of the Placer County Superior Court  
By: R. Harmon, Deputy Clerk



**FILED**  
Superior Court of California  
County of Placer

AUG 03 2015

Jake Chatters  
Executive Officer & Clerk  
By: R. Hampton, Deputy

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

DEPARTMENT 3

HON. MARK S. CURRY, JUDGE

IN RE PETITION FOR WRIT OF  
HABEAS CORPUS,

Case No.: WHC 1400  
62- 34689

SHAWN RODRIGUEZ,  
#V16387

Petitioner.

COURT ORDER FINDING PRIMA  
FACIE FOR RELIEF, IN PART, AND  
ISSUANCE OF ORDER TO SHOW  
CAUSE; FINDING OF NO PRIMA  
FACIE CASE FOR RELIEF RE: OTHER  
CONTENTIONS.

*Procedural History*

The petitioner is serving a life sentence for his 2003 conviction for conspiracy to commit murder, kidnapping for extortion, Vehicle Code 10851, and Penal Code 530.5. The conviction was affirmed in the court of appeal on January 4, 2005. [*People v. Rodriguez* 3rd DCA #C045882 unpub.] On July 24, 2015, the petitioner caused to be filed in the Superior Court a petition for writ of habeas corpus. In a lengthy and somewhat unclear petition, the petitioner raises many issues. As discussed below, the Court finds no prima facie case for relief has been demonstrated for most of his claims. However, regarding the claim of possible new evidence, specifically, the alleged recantation of a material witness, the Court finds a prima facie case for relief has been set forth and the Court will issue an Order to Show Cause concerning that issue only.

1                                    *Alleged Recantation of Victim/Witness*

2            In his declaration, the petitioner has attached, as an exhibit, a copy of  
3 a two handwritten letters purportedly written by the Hamman, the alleged  
4 victim of the defendant's crime. It is alleged Hamman testified at the  
5 petitioner's trial in 2003. Apparently, these letters were mailed to the  
6 Attorney General's Office on or about April 2015. On their face, the letters  
7 appear to indicate that Hamman is stating that he "perjured" himself at the  
8 defendant's trial. However, the letters do not specify the precise nature of  
9 the perjury. The petitioner has also attached declarations from prison  
10 inmates who claim to have overheard Hamman (who is now apparently also  
11 an inmate) make statements concerning false testimony at the petitioner's  
12 trial.

13            A court receiving a petition for writ of habeas corpus evaluates it by  
14 asking whether, assuming the petition's factual allegations are true, the  
15 petitioner would be entitled to relief. (*In re Clark* (1997) 5 Cal.4th 750 at p.  
16 769, fn. 9.) In this case, although the precise nature of the alleged  
17 perjurious testimony or its materiality is not set forth with clarity, the Court  
18 nonetheless finds the petitioner has set forth sufficient facts to support a  
19 prima facie case for relief. Accordingly, the Court issues an Order to Show  
20 Case regarding this issue.

21  
22                                    *Other Claims – No Prima Facie Showing*

23            In his petition, the petitioner makes other various unsupported and/or  
24 unclear allegations concerning alleged errors from his trial in 2003. For  
25 example, the use of his "confession," the prosecutions failure to disclose or  
26 preserve evidence, and the denial of his right to present a defense.  
27 Additionally, he raises the same issues that were raised and rejected by the  
28

1 appellate court in his appeal, specifically, instructional error or inconsistent  
2 verdicts.

3 For these claims, the Court finds the petitioner has failed to set forth a  
4 prima facie case for relief. These issues could have been, or were, raised in  
5 the appellate court. Habeas corpus cannot serve as a substitute for an  
6 appeal, and, in the absence of special circumstances constituting an excuse  
7 for failure to employ that remedy, the writ will not lie where the claimed  
8 errors could have been, but were not, raised upon a timely appeal from a  
9 judgment. Further, alleged errors addressed by the appellate court may not  
10 be renewed again by writ. (*In re Harris* (1993) 5 Cal.4th 813, 828 – 829.)  
11 In addition, the Court finds the raising of these issues now untimely given  
12 that the trial occurred in 2003, and he has offered no explanation for the  
13 untimeliness.

14  
15 *Order*

16 Finding a prima facie case for relief concerning the existence of  
17 possible new evidence (witness recantation), the Court issues an Order to  
18 Show Cause as to this contention only and thereby directs the respondent  
19 (Attorney General or District Attorney) to file a **Return** within 30 days from  
20 receipt of this order (CA Rule of Ct. 4.551), or later, if an extension is  
21 requested. Further, the Court will appoint the public defender to represent  
22 the petitioner on this matter.

23  
24 Dated this 3<sup>rd</sup> Day of August, 2015.

25  
26  
27 MARK S. CURRY  
28 JUDGE OF THE SUPERIOR COURT  
COUNTY OF PLACER

**SUPERIOUR COURT OF CALIFORNIA  
IN AND FOR THE COUNTY OF PLACER**

**CLERK'S CERTIFICATE OF MAILING (C.C.P. §1013a(4))**

---

**Case number:** WHC-1400

**Case name:** In Re: Shawn Rodriguez

I, the undersigned, certify that I am the clerk of the Superior Court of California, County of Placer, and I am not a party to this case.

I mailed copies of the document(s) indicated below:

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**Placer County District Attorney  
10810 Justice Center Drive, Suite 240  
Roseville, CA 95661**

**Office of the Attorney General  
Writ Department  
1300 I Street, Suite 1101  
PO Box 944255  
Sacramento, CA 94244-2560**

**Shawn Rodriguez #V16387  
California State Prison-Sacramento  
P.O. Box 290066  
Represa, CA 95671**

**Jeff Macomber, Warden  
P.O. Box 290002  
Represa, CA 95671**

**Placer County Public Defender  
11760 Atwood Rd  
Auburn, CA 95603**

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☒ the US Postal Service

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☐ Other (via email)

On 08/05/15, Placer County, California

Dated: 08/05/15

Jake Chatters  
Clerk of the Placer County Superior Court  
By: R. Harmon, Deputy Clerk

KAMALA D. HARRIS  
Attorney General

State of California  
DEPARTMENT OF JUSTICE



1300 I STREET, SUITE 125  
P.O. BOX 944255  
SACRAMENTO, CALIFORNIA 94244-2550

Public: (916) 445-9555  
Telephone: (916) 324-5246  
Facsimile: (916) 324-2960  
E-Mail: Michael.Farrell@doj.ca.gov

August 10, 2015

The Honorable R. Scott Owens  
Placer County District Attorney  
10810 Justice Center Drive, Suite 240  
Roseville, California 95678

RE: In re Petition for Writ of Habeas Corpus, Shawn Rodriguez V16387  
Placer County Superior Court No. WHC 1400 62-34689

Dear Mr. Owens:

Our Office is in receipt of the Order to Show Cause in the above-referenced matter. Since this pertains to action in the superior court, we are deferring to your Office for handling. If the assigned deputy has any questions, he or she may contact Supervising Deputy Attorney General Eric Christoffersen at (916) 322-0792 or Deputy Attorney General David Eldridge at (916) 324-6291.

Sincerely,

MICHAEL P. FARRELL  
Senior Assistant Attorney General

For KAMALA D. HARRIS  
Attorney General

MPF:drb

cc: Hon. Mark S. Curry  
Shawn Rodriguez

8-23-15

Superior Court of the State of California  
In and for the County of Placer

Department 3

Hon. Mark S. Curry, Judge

In Re Rodriguez )

Case # WH01400

# Vl6387 )

(62-34689)

Notice of Motions and Motions for  
Discovery per PC§§1054-1054.10;  
for Bail or Release on O.R.  
pending decision; Motion to pro-  
vide Trial transcripts; Memo-  
randum of points and Authorit-  
ies in support and Exhibits.

To the Placer County District Attorney, and the Clerk of the Above Captioned  
Court:

Please take notice that, as soon as the matter may be heard in Department 3,  
Petitioner Shawn Rodriguez will move the Court for orders as set forth herein.

The Motions, and the grounds are set forth below. Exhibits attached.

Discovery

The Petitioner has, once informally, then formally, in his Petition, request-  
ed Discovery of transcripts of the Interview conducted with Perjurous Victim  
Hamman, on April 24, 2015, by a representative of the Placer County District Att-  
orney's Office.

To date, there has been no response whatsoever.

California has reciprocal Discovery Laws, described in the PC Sections descr-  
ibed above, and Petitioner has provided, in his petition, Discovery of relevant  
facts, to opposing counsel. Opposing Counsel seems to be "Sandbagging" the Peti-  
tioner by holding on to potentially exculpatory evidence for purposes of Brady  
V. Maryland, probably intending an ambush with an unknown and, for petitioner, un-  
knowable, fact or string of facts at a later date, in order to prejudice petitioner  
in the instant case, as was done with transcripts of the Erin Hughes interview at  
trial in 2003.

Additionally, Petitioner seeks any other material in possession of the Plac-  
er County District Attorney's Office or its related Law Enforcement departments,  
which may be reasonably linked to the facts or outcome of the case at bar.

Further, Petitioner seeks to develop, for further review, the Facts Allegged  
in both Grounds one and two of the petition, by review of any material discoverable  
pursuant to Pitchess V. Superior Court, 11 C3d 531.



This request is proper pursuant to, Hurd V. Superior Court, (2006)50 C4th 890.  
Specifically, Petitioner seeks an order for provision of any Pitchess Material involving the Following Participants in the 2003 Pre-trial and Trial of  
Petitioner: Detective Daniel Coe, Currently or formerly of the Auburn Police  
Department;  
Detective Dale Hutchins, Currently or Formerly of the Auburn Police  
Department;  
Officer Gary Hopping, Currently or Formerly of the Auburn Police  
Department;  
Sergeant Scott Burns, Currently or Formerly of the Auburn Police Department;  
Jane Xepoleas, Currently or Formerly of the Placer County Sheriffs  
Office;  
Assistant District Attorney William Marchi, Currently of the Placer  
County District Attorney's office.

#### Provision of trial Transcripts

The Petitioner Has requested the Court order provision of transcripts of prior related proceedings, to replace those lost over the last decade by the Mishandling of his personal Property by Correctional Staff.

Specifically, Petitioner has been deprived of Pages 421-end, of the Reporter's Transcript, and fairly litigate the case at bar without reference to the reporter's transcript, in that a large portion of the testimony of Victim Nicholas Hamman, which is at the heart of the issue cited in the OSC, is contained in those missing Pages.

This request, in the request for relief at the end of the Habeas Petition, seems to have been overlooked.

As such, Petitioner Now renews this request in the instant motion, asserting that a Due Process interest arises out of the requirement that a petitioner will be made to prosecute this action without fair ability to review and cite the transcript of proceedings in question.

(While Petitioner recognizes that the "Legal Corporation" of Richard A. Ciummo has been appointed as counsel, acting as Public Defender, it's very troubling that the named Party has taken no steps toward making contact with the Petitioner, and those Offices seem to have their telephone blocked against calls from him. In Addition, Due to the primary function of the P.D. being a paralegal and trial one, and due to what seems to be relative inexperience in habeas proceedings, this appointed representation rings somewhat hollow to petitioner, who has already twice

1 been ineffectively assisted by counsel relative to his current Multiple Life term  
2 conviction. As such, A motion pursuant to People V. Marsden, 2 C3d 118 is being con-  
3 sidered, in which case, petitioner may be without representation and will have to  
4 prosecute the instant petition Pro Se. Then, there are Possible Appellate remedies  
in the future that must be prepared for in case. Hence, a real need for the requ-  
5 ested transcript excerpts.)

6 Petitioner Makes this request pursuant to GC§69952(a)(1); People V. Smith,  
7 34 C2d 449; ca. rules of court§8,320(a) and§§(c), as well as Griffin V. Illinois,  
351 US 12.

#### 8 Bail

9 Petitioner Moves this court to consider Bail or release of the Petitioner  
10 on his Own Recognizance (O.R.) and or House Arrest pending the outcome of the  
habeas proceedings.

11 While not common, this request, and a grant of the request, is not unprece-  
dented. (See In Re Smiley, 66 C2d 606; In Re Newborn, 53 C2d 786.)

12 While not approved in People V. Correa, 54 C4th 331, Neal V. State, 55 C2d 11  
13 points out that a grant of the Writ in this case may discharge the petitioner  
14 from the excess portion of the restraint without releasing the petitioner from  
all restraint, which seems to mean that if, for instance, a petitioner were co-  
15 mmitted for a term of 100 years, and on habeas, won a 50 year reduction, he would  
16 still have to serve the remaining 37 years.

17 If this were a similar circumstance, this issue would not be brought up,  
18 however, If cause to deny the Writ in this case is not shown, the petitioner has  
19 only admitted to facts supporting conviction on charges amounting to 6yrs/4mos  
on the low end, to 17 years on the high end, with the Mid term set at 9 years  
even.

20 This means that, should the Writ issue, the Petitioner could, at the Court's  
21 discretion, be long overdue for release, not counting "Goodtime" credits to be  
22 recalculated given the new earning status declared by the sentencing guidelines  
for a non-"Life" prisoner.

23 Petitioner would present the following facts in support of consideration  
24 of Bail or O.R.:

25 1) Local residence-petitioner has a solid Parole Plan that includes living  
Locally, in Roseville, at 321 Canterbury Ave., Roseville, Ca. 95678. This means  
26 It would not be hard for law enforcement to keep tabs on him or to be pre-  
27 sent at proceedings related to the instant petition, or to facilitate prompt  
return to custody in the event the Writ does not issue;



1       2)Lack of Financial resources-Petitioner is mostly without means to do  
2 much more than live a simple existence. This makes ability to abscond next  
3 to nil. He would not get far and is very much aware of this.

4       3)Ties to Community-Petitioner has, in Placer and Sacramento Counties, the  
5 entirety of his family. Not only a support system necessary to success on  
6 Parole, several members would greatly benefit from the joining of the Petitioner  
7 into the workforce, including his elderly father and grandfather, his  
8 very young neices and infant children of them, his Mentally ill baby sister,  
9 a single mother with two children of her own;

10       4)No Substance Abuse Issues-While never Addicted to any drug or to Alcohol,  
11 Petitioner has been Sober for 2,295 days as of August 19th, 2015, and has  
12 not used any illegal drug since June 22, 2002. Petitioner has never been  
13 arrested for, or issued a rules violation report for, any drug or alcohol  
14 related accusation at all. This very much decreases the likelihood of re-  
15 cidivism in this case;

16       5)No Gang Involvement/Ties-initially, upon entry to CDCR, Petitioner was routinely  
17 labeled a gang member simply by virtue of having fair hair and skin.  
18 However, in the twelve years since, not a single time has he been accused of  
19 any participation whatsoever in gang related activity; records show active  
20 participation in efforts to deescalate racial tensions and ease relations  
21 between various gang factions. He has taken an active role in locating  
22 and reporting inmate manufactured weapons in the interest of prison security,  
23 and reporting gang activity which presents immediate threat to prison  
24 security.

25       6)Relatively Non-Violent History-The Court has sentenced Petitioner to serve  
26 a lengthy, indefinite sentence in an environment which has a recurring role  
27 on the evening news due to its level of violence. Notably, The California  
28 State Prison Sacramento "B" Facility was recently on the news for a violent  
riot between Black and White inmates, in which initially, one inmate was  
stabbed to death, and twelve others left in ambulances due to their injuries.  
More than fifteen deadly weapons were involved, in an altercation lasting  
twenty minutes and involving over seventy inmates. Stabbing another inmate  
has become a right of Passage. Petitioner resides on the facility mentioned  
above, is a white prisoner and went to lengths to stay uninvolved. This has  
been a theme: Petitioner has never been involved in a group disturbance, never  
stabbed another person, and has had a significantly low number of simple fist-  
fights (6, in 12 years, with 4 of these resulting in findings that the other

1 inmate was observed, or admitted to being, the aggressor). This lack of tendency  
2 toward violence, so prevalent in the Petitioner's home, and ability to refrain,  
3 would serve to dramatically reduce the likelihood of recidivism as to this  
4 petitioner.

5 7) Employability - As is evinced by the documents labeled Exhibit "A" to this  
6 Motion, petitioner is possessed of above average work ethic, ability to learn  
7 and overall capability. His ability to problem-solve and to deal with peers  
8 and authority figures has resulted in never having been "Fired" from a job  
9 in prison. Currently, he is Barber to a section of mentally ill and Develop-  
10 mentally disabled prisoners, while earning nine units this semester toward  
11 an AA in Social Science; Functions as Secretary of the Mens Advisory Council  
12 to the prison's Warden, and concurrently makes time to research and prose-  
13 cute the instant petition. He is experienced in the following prison occu-  
14 pations: Chapel Clerk; Literacy Tutor, Janitor; Lead Kitchen Cook; Librarian;  
15 Law Clerk; Barber; Electrician; Plumber; and has ten years experience repair-  
16 ing consumer Electronics in prison. This makes the petitioner infinitely  
17 Employable, and means that finding and maintaining gainful employment should  
18 not be a problem; indeed, there is a tentative offer from the Concrete com-  
19 pany petitioner's Father works for. These Facts serve to greatly decrease  
20 the likelihood of recidivism in the case of this petitioner;

21 8) Rehabilitation - Petitioner has sought to better himself during his term,  
22 and in addition to the higher education mentioned above, has gained sig-  
23 nificant mental health insights in order to promote better function in  
24 society at large. Petitioner has participated in, voluntarily, hundreds of  
25 hours of Anger Management classes. He took initiative to find and partici-  
26 pate in Cognitive Behavior Therapy long before it became a standard in CDCR  
27 (See Ca. Code of Regulations §§3040.1) by mail (See Attached letter from Roy  
28 Frye, Exhibit "B"). Before, but especially since, his Suicide, and subsequent  
revival by paramedics, in July, 2012, has participated in group and individual  
Psycho-therapy sessions to gain insight into his behavior, its causes and  
effects. The amount of time dedicated to this runs into the thousands of  
hours. He is Currently a Participant in the CDCR Mental Health Services De-  
livery System (MHSDS) at the Enhanced Outpatient (EOP) level of Care (LOC).  
He is not on any psychotropic Medications, participates in weekly group  
and individual Psycho-therapy sessions, and functions well in the micro-  
cosmic society that is the prison world.


1       9) Benefits of Release—Many people benefit from the petitioner's release  
2 from custody pending the outcome of these proceedings, as described in §3  
3 above, but also for other reasons: a) Petitioner himself will benefit from an  
4 opportunity to catch up on the over a decade he is behind his peers, soci-  
5 ally and especially financially; b) While petitioner manages 4-6 hours per  
6 week of access to legal materials to further litigation, release would allow  
7 unhindered access to both material and the opportunity to retain counsel  
8 that is not the Public Defender's Office; c) Petitioner's Presence in court  
9 and availability to counsel for both sides would eliminate the costs asso-  
10 ciated with mailing documents to prison, conducting interviews in prison, and  
11 Producing the petitioner for proceedings which would require his presence;  
12 d) the People of the State of California benefit from easement of the tax  
13 dollars spent to house the petitioner in the interim, which runs into sev-  
14 eral thousands of dollars each month. A matter of Judicial economy can be  
15 considered as well: Like so many Prisoner release plans in recent years,  
16 this issue is slowed, plagued by concerns over what will come to pass if  
17 the release does take place. In this case, an answer will come sooner, not la-  
18 ter, and an answer which tends to show a success on the part of the petition-  
19 er may eliminate the need for further argument by counsel for the people,  
20 saving both time and money in connection with protracted court proceedings.

21  
22 Conclusion

23       For the Reasons stated above, the petitioner moves this Court for the Follo-  
24 wing orders: 1) Discovery from the People, of Transcripts of the April 24th inter-  
25 view of the victim, any other relevant documents, and Pitchess material regarding  
26 the 6 named parties to the 2003 actions; 2) Preparation and mailing, by the Clerk,  
27 of the requested portion of the Reporter's Transcript, to the Petitioner; and 3)  
28 bail in an amount to be determined by the court, or release of the Petitioner on  
his own recognizance or on a supervised release.

      These Motions will be based on this notice of motions, and the pleadings  
contained herein.

      Executed this 19th day of August, 2015, at Represa, Ca., By the Petitioner,

  
Shawn Rodriguez #V16387

# EXHIBIT COVER PAGE

A

EXHIBIT

Description of this exhibit: Supervisory Opinion of Correctional Officer H. Dang, Evincing work ethic of Petitioner upon his promotion to Lead Cook; Request of Senior Librarian Arno Nappi and Librarian David Green to hold Law Clerk job for Petitioner and Assign him to it.

Number of pages to this exhibit: 2 pages.

JURISDICTION: (Check One Only)

- ☐ MUNICIPAL COURT
- ☒ SUPERIOR COURT
- ☐ APPELLATE COURT
- ☐ STATE SUPREME COURT
- ☐ UNITED STATES DISTRICT COURT
- ☐ STATE CIRCUIT COURT
- ☐ UNITED STATES SUPREME COURT
- ☐ GRAND JURY

March 4, 2014

To: Assignments Lt. Schultz

From: Inmate Rodriguez, # V16387

Re: Assignment of Inmate to open clerk position in Facility A Library

I am currently an EOP inmate, Awaiting a drop in Level Of care, which is projected for March 12, 2014.

This means that I cannot currently, technically, be hired into the library as a clerk.

Given the acute shortage of inmates on this facility who are actually qualified to work in the library here, the librarians, both Mr Nappy and Mr. D. Greene are enthusiastic at the prospect of hiring me, but are worried that you may fill the open position with someone un- or under-qualified in the interim.

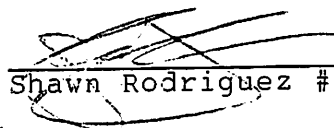
The purpose of this memo is to formally request that you keep the position open pending my drop to the CCCMS Level of care and subsequent move to Bldg. 8 of this facility in order to assign me to it.

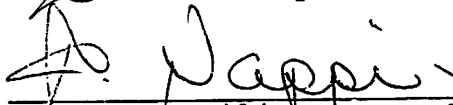
I will, this morning, request that Mr's Nappy and Greene sign this document if they endorse the contents of it.

Thank you so much for your time and anticipated cooperation in this matter, and you have a good one.

Respectfully submitted this 6th day of March, 2014

  
LIBRARIAN  
D. Greene Facility A Librarian

  
Shawn Rodriguez # V16387

  
Nappy, Facility A Law Librarian

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**  
**INMATE JOB DESCRIPTION**

LOCATION CODE: A223      JOB TITLE: 1ST COOK      POSITION #: DRCFA.007  
HRS W/MEAL BREAK:      1200-1500 / 1530-1930      RDO'S: SUM      PAY: 2 / \$40.00  
WIP CODE: S      MAXIMUM CUSTODY: CLOB      SKILL LEVEL: Yes  
DOT: 315.361.010      REQUIREMENTS/RESTRICTIONS: \_\_\_\_\_

**SPECIFIC DUTIES:**

Your responsibilities are listed below, but are not limited to those duties only. You will be expected to perform any additional duties requested or ordered by your supervisor and staff. When you have completed your duties for the day, report to your supervisor. If you are doing duties that are not on this list, please let your supervisor know so that they can be added to the list if needed. If you have any questions regarding your job duties or expectations, you should ask your supervisor for clarification.

Your responsibilities as the First Cook will be preparation of the meal, inventory of food items, and helping in the general cleanup. You will also be required to perform other duties as required by staff. You must be medically cleared as a food handler, and be free of communicable diseases. Prior experience as a cook is desirable, but not mandatory.

**ACCEPTABLE STANDARDS:**

You are expected to perform your assigned work duties and responsibilities to the BEST of your ability at all times. You must maintain a good working relationship with staff and peers. You are expected to report to work on time and may not leave work without permission from the work supervisor. You are expected to maintain and display an acceptable attitude and demeanor at all times. Personal appearance and hygiene are to be neat and clean. You must be dressed in state issued clothing and wear all applicable safety items. You must perform assigned tasks diligently and conscientiously and must not pretend illness or otherwise evade attendance in your assigned work and program activities. The expected amount of work hours is to be kept as near to eight hours per day as the institutional procedure and security needs will allow. You may be required to work more than eight hours when institutional need occurs. Performance will be evaluated continually and a written report (CDC 101) will be submitted quarterly. "You are responsible for notifying your supervisor immediately should you receive any duty limitations (CDCR Form 128-C or CDCR Form 1845) from the Medical Department. Failure to comply could result in disciplinary action and unassignment."

**FAILURE OR REFUSAL TO MEET WORK PERFORMANCE EXPECTATIONS:**

If you fail to comply with the requirements of this job and/or the California Code of Regulations, Title 15, progressive discipline will be adhered to. Any "A" time, regardless of duration, will preclude the earning of work time credit for the day (California Code of Regulations, Title 15, Section 3043.4).

I have read and received a copy of this signed job description and fully understand my duties and responsibilities.

Inmate's Signature

Date

Inmate's Printed Name

CDCR Number

Work/Training Supervisor's Signature and Title.

Date

One copy each to work supervisor and inmate

*Exceptionnally Unique Individual, work extremely hard and a blessing to have him work in A1 Dining.*  
*C/O H. DAVIS*  
*12/05/13*

# EXHIBIT COVER PAGE

B

EXHIBIT

Description of this exhibit: Referral Letter from Mr. Roy Frye regarding five years CBT therapy and insights

Number of pages to this exhibit: 1 pages.

**JURISDICTION:** (Check One Only)

- ☐ MUNICIPAL COURT
- ☒ SUPERIOR COURT
- ☐ APPELLATE COURT
- ☐ STATE SUPREME COURT
- ☐ UNITED STATES DISTRICT COURT
- ☐ STATE CIRCUIT COURT
- ☐ UNITED STATES SUPREME COURT
- ☐ GRAND JURY

California Superior Court  
Sacramento, California

7/25/15

Re: Shawn Rodriguez (# V16387)  
Rational Self-Counseling Skills Education

Dear Honorable Justice:

The purpose of this letter is to inform the court that I have been in contact with Shawn for almost five years, in a teaching and emotionally supportive capacity, via the mail. I am retired from the State of Alaska System after twenty years of service in the fields of Child Protection Social Work and Juvenile Probation. For approximately eight years I taught this cognitive / behavioral skill at the Youth Facility in Anchorage. Individual classes, for the more violent youth who requested them, were conducted as well as one hour groups, twice a week, with 5 to 13 youth. I have been teaching this skill nationwide by mail, in the prison system, for the last five years.

Because of the basic ABC homework format (Rational Self-Analysis form), adolescents and adults relate to this factual and common sense approach very well. The various, pictorial printouts and information on brain physiology also add to the clarity of this process for most levels of intellect. A strong focus on semantic ads even more clarity. This is very evident in the elimination of "demands and negative, non-factual self-labeling", in thinking, that are the major causes of almost all major, negative feelings.

Shawn readily filled out the Rational Self Analysis form, with vital background information, and I have completed and corrected the incorrect, irrational and non-factual thoughts that were the basic cause of his self-defeating and harmful behavior.

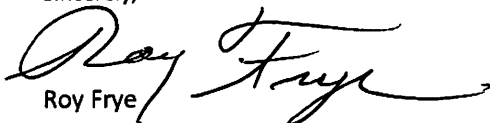
Shawn has been willing to entertain some of the information to better his situation and view the world and himself differently. His attitudinal change, for the better, since my initial contact with him, is very evident. He is more aware of his self-defeating thoughts and seems to have progressed well in the system, in regards to jobs, staying free of troubles and acting in a more altruistic manner to those less fortunate.

Over the last five years, Shawn has never given me the impression that he has an innate criminal, nature or any sociopathic thinking. He continues to have a sincere determination to better his life situation by engaging in honest work and staying connected to his supportive family members. Shawn is very intelligent and able to use his intellect to correct self-defeating thinking and better his future living situation. From the onset, I have not viewed him as a danger to society and do not view him this way now, after five years of contact. It is likely that a manic, depressive condition could have added to his previous harmful behaviors.

Brain Control: Rational Self-Counseling Skills is a clear thinking skill that teaches psychological independence, how to control your brain instead of it controlling you and how to better learn to think about your thinking. Physiological and psychological factors of feelings, and the brain, are discussed for the purpose of eliminating or lessening self-hate and the three major negative feelings of anger, depression and unnecessary fear which most people want to have less of.

I hope this information has been helpful in regards to any deism you make. Please contact with any questions regarding this matter.

Sincerely,



Roy Frye

726 "O" Place #404

Anchorage, Alaska 99501

[rofrye2003@yahoo.com](mailto:rofrye2003@yahoo.com)

907-332-0428(home)



**VERIFICATION**

(C.C.P. §§ 446, 2015.5; 28 U.S.C. § 1746)

I, Shawn Rodriguez, declare under the penalty of perjury that:

I am the Movant/Petitioner in the attached matter; I have read the foregoing documents(s) and know the contents thereof; and the same is true of my own personal knowledge, or upon information and belief therein that they are true; that if called to testify as to the contents hereof I could do so competently as a sworn witness.

Executed this 19th day of August, 2015, at California State Prison/Sacramento, Represa, California 95671.

(Signature) \_\_\_\_\_

Declarant

\*\*\*\*\*

**DECLARATION OF SERVICE BY MAIL**

(C.C.P. §§ 1013(a), 2015.5; 28 U.S.C. § 1746)

I, Shawn Rodriguez, declare:

That I am a resident of California State Prison/Sacramento, State Of California; I am over the age of 18 years; I am/am not a party to the above entitled action; My address is P.O. Box 290066, Represa, California 95671-0066; I served the attached document(s) entitled:  
Notice of motion; Motion for Discovery; Bail or release on O.R.; Production of transcripts; Exhibits

On the persons/parties specified below by placing a true and duplicated copy of said documents into a sealed envelope with appropriate First Class Postage affixed thereto and prepaid, and placing said envelope(s) into the United States Mail in a deposit box provided at the California State Prison/Sacramento, Represa, California, addressed as follows:

Hon. Mark S. Curry, Dept. #3,  
10820 Justice Center Dr.  
P.O. Box 619072  
Roseville, Ca. ~~95661~~ 95661-9072  
Placer County Public Defender  
11760 Atwood Rd.  
Auburn, Ca. 95603

Hon. R. Scott Owens  
Placer County District Attorney  
10820 Justice Center Dr. Ste. 240  
Roseville, Ca. 95661

There is First Class mail delivery service by United States Mail at the places so addressed and/or regular communication by mail between the place of mailing and the addresses above. I declare under the penalty of perjury that the foregoing is true and correct and that I executed this service on this 23d day of August, 2015, at California State Prison/Sacramento, Represa, California 95671.

(Signature) \_\_\_\_\_

Declarant

Shawn Rodriguez #V16387  
CSP-SAC-B5-217  
P.O.Box 290066  
Represa, Ca. 95671

8-23-15

August 19, 2015

James Shin, Chief Defense Attorney  
Placer County Public Defender  
11760 Atwood Rd.  
Auburn, Ca. 95603

Re: Request for case file

Persuant to Professional rules of Conduct 3-700

People V. Rodriguez, Case #62-34889

Dear Public Defender,

My name is Shawn Rodriguez #V16387. I am the Defendant in the abovecaptioned case and Current Petition attacking its judgement of Conviction.

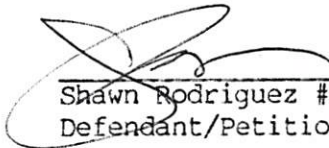
Persuant to Prof. Rules of Conduct 3-700, I am requesting that you provide me my complete casefile, Commonly referred to as a "Trial File".

I was recently made aware of issues which appear to be Cognizable as ineffective Assistance of Counsel Claims, and the Case file is necessary to prepare my Petition for Writ of Habeas Corpus.

If it helps, Jesse Serafin, Esq., Now deceased, was assigned trial Counsel, and before him, Patrick Benca Botched my defense before resigning and skipping town.

I would very much appreciate your prompt assistance in this Matter.

Thank you.



Shawn Rodriguez #V16387  
Defendant/Petitioner

CC: Ca. State Bar association

Hon. Mark S. Curry, Placer County Superior Court, Dept. 3

# PROOF OF SERVICE

(C.C.P. §§1013(a); 2015.5; 28 U.S.C. §1746)

I, Shawn Rodriguez, am over the age of eighteen (18) years, and I (am) (am not) a party to the within cause of action. My address is:

CSP-SAC-BS-217  
P.O. Box 290066  
\_\_\_\_\_  
\_\_\_\_\_

On, 8-22-15, I served the following documents:

Informal Request for Case File, People v. Rodriguez  
Placer County # ~~00~~ 62-34689  
\_\_\_\_\_

on the below named individual(s) by depositing true and correct copies thereof in the United State mail in Represa, California, with postage fully prepaid thereon, addressed as follows:

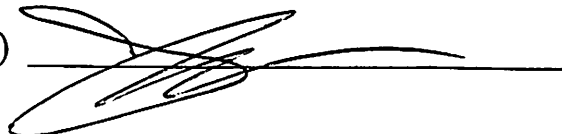
1. JAMES SHIN  
Placer County Public Defender  
11760 Atwood Rd  
Arboretum, Ca. 95603  
\_\_\_\_\_

2. State Bar of Ca.  
845 S. Figueroa St.  
LA Ca. 90017-2515  
Hon. Mark S. Curry  
Placer County Superior Court  
Roseville, Ca. 95661  
\_\_\_\_\_

I have read the above statements and declare under the penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Executed this 22- day of August, Ca., at California State Prison - Sacramento, Represa, California.

(Signature)



Shawn Rodriguez #VI6387  
CSP-SAC-B5--217  
P.O.Box 290066  
Represa, Ca. 95671

8-26-15

August 25, 2015

Deputy Attorney General  
David Eldridge  
C. Department of Justice.  
P.O.Box 944255  
Sacramento, Ca. 94244-2550

Re: Informal request for discovery  
US V. Agurs, 427 U.S. 97  
Kyles v. Whitley, 514 U.S. 419  
People V. Ruthford, 14 Cal 3d 399  
Merril V. Superior Court, 27 Cal App 4th 1586  
Rules of Professional Conduct 5-220

In Re Rodriguez on Habeas Corpus, Placer #WHC-1400

Dear Dep.A.G. Eldridge: My name is Shawn Rodriguez, I am the Petitioner in the abovementioned Habeas Proceedings. I was forwarded a letter from Sr.Ass.A.G. Michael Farrel which informed the Placer County District Attorney's office to contact you for any questions.

I hope that extends to me as well?

As your Office is aware, The Superior Court issued an OSC on 8-3-15.

Pursuant to constitutional Due Process and established Statute, I am serving this informal Request on your office, seeking Material Evidence I do not have and was not provided, To wit:

1) Letter to your office From Victim Nicholas Hamman, sent prior to 3-30-15, Admitting to Perjury in People V Rodriguez.

In the Letter to your Office Dated 3-30-15, Mr. Hamman's Salutation is followed by an opening line which indicates that he contacted your office Re: his Perjury previously: "Mame Mabey you didnt understand: But I perjured Myself In"... "Sawn Rodriguez case #C045882" (Sic).

Please take notice that Material exculpatory Evidence Must be Disclosed whether a defendant makes a specific request, general request, or none at all.  
(U.S. V. Agurs, 427 US 97)

The Scope of the disclosure obligation extends beyond the contents of the

1 case file and encompasses the duty to ascertain,as well as divulge,any favor-  
2 able evidence known to others acting on the governments behalf.(Kyles V. Whitley  
3 514 US 419,437)

4 There is a duty on the part of the Prosecution,even in the Absence of a  
5 request thereof,to disclose all substantial Material evidence favorable to the  
6 accused which relates to the credibility of a material witness.(People v. Ruth-  
7 ford,14 Cal 3d 399,406)

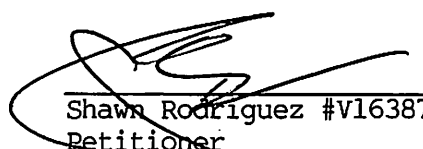
8 The Ca. Court of Appeals has established that rules of ethical Conduct  
9 for attorneys prohibits suppression of evidence that they have a legal obli-  
10 gation to disclose.(Merril V. Superior Court,27 Cal App 4th 1586)

11 Professional Rules of Conduct mandate that a member shall not suppress any  
12 evidence that the Member has a legal obligation to reveal or to provide.(Rule  
13 5-220)

14 I request that you provide the requested document and anything reason-  
15 ably related to it within thirty days.After that,I will seek an order to compel  
16 the disclosure of this material .

17 I will appreciate your prompt attention to this Matter.

18 Sincerely,

19   
20 Shawn Rodriguez #V16387  
21 Petitioner

22 C.C.Clerk of the Placer County Superior Court  
23 Placer County District Attorney's Office  
24  
25  
26  
27  
28

# PROOF OF SERVICE

(C.C.P. §§1013(a); 2015.5; 28 U.S.C. §1746)

I, Shawn Rodriguez #V16387, am over the age of eighteen (18) years, and I (am) (am not) a party to the within cause of action. My address is:

Shawn Rodriguez #V16387

POBox 290066

Represa, Ca. 95671

On, August 26, 2015, I served the following documents:

Informal request for discovery to Ca.A.G. for Hammans 1st Letter

on the below named individual(s) by depositing true and correct copies thereof in the United State mail in Represa, California, with postage fully prepaid thereon, addressed as follows:

Dep.A.G. David Eldridge

P.O.Box 944255

Sacramento, C. 94244-2550

Placer County District Attormey

10810 Justice Center Dr.Ste. 240

Roseville, Ca. 95678

2. Clerk,

Placer County Superior Court

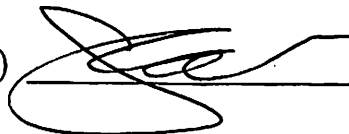
10820 Justice Center Dr.

Roseville, Ca. 95661-9072

I have read the above statements and declare under the penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Executed this 26th day of August, 2015, at California State Prison - Sacramento, Represa, California.

(Signature)



**RICHARD A. CIUMMO & ASSOCIATES**  
A PROFESSIONAL LAW CORPORATION

PLACER COUNTY PUBLIC DEFENDER  
James Shin, Chief Defense Attorney

11760 Atwood Road, Suite 4  
Auburn, CA 95603

Tel: (530) 889-0280  
Fax: (530) 889-0276

---

August 28, 2015

Mr. Shawn Rodriguez  
CSP-SAC-B5-217  
P.O. Box 290066  
Represa, CA 95671

RE: Writ of Habeas Corpus  
Case No.: WHC 1400

Dear Mr. Rodriguez:

Enclosed please find the Placer County District Attorney's Response to Order to Show Cause.

Sincerely,



Martin A. Jones

Enc.

MJ

1 R. SCOTT OWENS,  
2 Placer County District Attorney  
3 State Bar No. 146406  
10810 Justice Center Drive, Suite 240  
Roseville, CA 95678-6231

4 Tel: (916) 543-8000

5  
6  
7  
8 SUPERIOR COURT OF PLACER COUNTY

9 STATE OF CALIFORNIA

10 --oOo--

11 THE PEOPLE OF THE STATE OF  
12 CALIFORNIA,

13 Plaintiff,

14 vs.

15 SHAWN MICHAEL RODRIGUEZ

16  
17 Defendant.

No. 62-034689 & WHC 1400

RESPONSE TO ORDER TO SHOW  
CAUSE

18  
19 The People hereby respond to the court's issuance of an  
20 order to show cause on the above-captioned matter as  
21 follows:

22 I

23 BACKGROUND

24  
25 On or about March 17, 2003 at 2 A.M., Officers  
26 Hopping, Hamblin and Sgt. Burns of the Auburn Police



1 Department responded to the old juvenile hall located at  
2 200 Epperle Lane in downtown Auburn, Placer County,  
3 California. This hall had been locked up and abandoned as  
4 a holding facility for some time prior to this incident.  
5 The officers found a broken window at the hall and entered  
6 the facility. (RT 62-64, 96-99) Just prior to responding to  
7 the hall, Officer Hopping had received information that  
8 there may be someone trapped inside the abandoned hall.  
9 The officers found Nicholas Hamman, the victim, locked  
10 inside a holding cell inside the facility. The door could  
11 only be opened from outside the cell. When the officers  
12 arrived outside the holding cell, the victim appeared up  
13 against a window in the cell door and yelled at the  
14 officers to get him out of the cell. (RT 68-69, 103-105,  
15 113, 247-248) The victim had water dripping on his head  
16 from overhead fire sprinklers inside the cell and a great  
17 deal of water was inside the cell. The officers removed  
18 the victim who they described as hysterical and suffering  
19 from hypothermia. (RT 71, 73, 108-109) The victim named  
20 the parties responsible for locking him in the cell as  
21 Shawn Rodriguez and Anna Rugg. (RT 74, 249) The victim was  
22 taken to Auburn Faith Hospital and was treated for  
23 hypothermia and trench foot and then he was released.  
24  
25

26 (RT 127-129)  
27  
28

1 The victim indicated to the police that he was locked  
2 in the cell by Rodriguez and Rugg after 9:30 A.M. Saturday  
3 March 15, 2003; he was not released until the police  
4 arrived on Monday March 17, 2003 at about 2 A.M. The  
5 victim was pushed into the cell and the door slammed shut  
6 on him. The victim could not unlock the door from inside  
7 of the cell. (RT 204-207, 210, 212) Between 1 P.M. and 2  
8 P.M. on that same day, the victim decided to use his  
9 lighter to hold against the fire sprinklers on the ceiling  
10 of the holding cell since no one had returned to the hall.  
11 The victim believed that the sprinklers would be activated  
12 and the fire department would respond to his location. The  
13 sprinklers activated releasing a constant stream of water  
14 in the holding cell, but the fire department did not  
15 respond (the alarm system had been deactivated after the  
16 juvenile hall had been closed and abandoned). (RT 220-221,  
17 223) Later that afternoon, Rodriguez and Rugg reappeared  
18 at the hall. Rodriguez walked up to the holding cell door  
19 and demanded the victim's ATM card and pin number.  
20 Rodriguez promised to break the window in the cell door and  
21 let the victim out if the victim gave up those items. The  
22 victim indicated he would give up the pin number only. The  
23 victim did so and Rodriguez struck the cell window a couple  
24 of times and it did not break. (RT 223-224, 225, 227)

1 Rodriguez came back 20 minutes later and told the victim  
2 that he wanted the victim's ATM card, money, ID card and  
3 car keys. If the victim gave up these items, Rodriguez  
4 promised to call the police to get the victim out. The  
5 victim refused to give up the items. Rodriguez and Rugg  
6 placed towels and a large box in front of the holding cell  
7 door and told the victim that he was going to drown if he  
8 didn't give up the items. (RT 225-230) Rodriguez and Rugg  
9 left the hall and were gone about two hours. By the time  
10 Rodriguez and Rugg returned, the victim claimed the water  
11 had risen above his shoulders (both Rodriguez and Rugg in  
12 their statements stated the water was about waist high or  
13 three feet high in the holding cell). This time the victim  
14 gave up the items that Rodriguez and Rugg wanted.  
15

16 Rodriguez and Rugg pulled away the items placed outside the  
17 cell door and the water drained down to about 4 inches  
18 inside the cell. (RT 236-239, 463, 578) Rodriguez and Rugg  
19 said they would call the police—they did not.  
20

21 On Saturday 3/15/03 and Sunday 3/16/03 Rodriguez and  
22 Rugg stayed in Sacramento County with Richard Romines, a  
23 foster brother of Rodriguez. Rodriguez and Rugg told  
24 Romines that they had locked the victim in a holding cell  
25 in the old juvenile hall. Romines told them to let the  
26 victim go. Romines indicated that Rodriguez and Rugg told  
27  
28



1 him about the water in the cell and that Rodriguez and Rugg  
2 were planning to kill the victim by filling the cell with  
3 water; then they developed a separate plan of gassing the  
4 victim with carbon monoxide. (RT 115-158, 160, 173, 177,  
5 181) Romines was told that Rodriguez and Rugg were going  
6 to place a hose in the vehicle tail pipe and run the hose  
7 to the cell in order to kill him. Rodriguez and Rugg  
8 returned to the juvenile hall after they obtained duct tape  
9 and two hoses. They tried to connect the hoses to a duct  
10 near the cell and the other end in the vehicle exhaust.  
11 They were not successful in killing the victim since the  
12 hose kept coming out of the exhaust pipe. (RT 400, 459-  
13 461) Rodriguez and Rugg left the hall and stopped at a  
14 Shell gas station in Auburn. Rugg went to the bathroom and  
15 left a note indicating where the victim was, and requesting  
16 that the police be called. Rugg told the attendant that he  
17 needed to check the women's bathroom. The attendant found  
18 the note and called the Auburn Police Department. (RT 143-  
19 141, 148) Rodriguez and Rugg were going to return to cut  
20 the water line and reroute the water. (RT 580-581) Both  
21 Rodriguez and Rugg were arrested together and made several  
22 admissions/confessions regarding this conduct. During the  
23 trial Detective Coe related the statements made by  
24 Rodriguez. Rodriguez also testified about what had  
25  
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1 happened that weekend. Rodriguez claimed the water in the  
2 cell was about three feet high. Rodriguez admitted he  
3 plugged up the crack under the door to get the water to  
4 rise so as to scare the victim. Rodriguez admitted to  
5 obtaining the ATM card and pin number which he and Rugg  
6 used thereafter. Rodriguez also admitted the plan to gas  
7 the victim in the holding cell after they had obtained his  
8 property. Rodriguez admitted that he and Rugg went to  
9 Albertsons to buy the duct tape and then went to the Dewitt  
10 Center in Auburn to get two hoses. (CAT 1-18, CLERKS  
11 AUGMENTED TRANSCRIPT) He further admitted to duct taping  
12 the bottom of the cell door. He then stated that he and  
13 Rugg attached one end of the hoses to the duct leading into  
14 the holding cell and the other end of the hose to the tail  
15 pipe of the victim's car. However, the plan to gas the  
16 victim did not work. (RT 459-461)

17  
18 Defendant Rodriguez was charged in an Information  
19 dated June 4, 2003 with Kidnapping For Ransom with a  
20 special allegation of confining in a manner which exposed  
21 the victim to a substantial likelihood of death in Count  
22 one, Conspiracy to Commit Murder with four over acts in  
23 Count two, Attempted Murder in Count three, Robbery in  
24 Count four, False Imprisonment in Count five, Unlawful  
25  
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1 Taking of a Vehicle in Count six, and two counts of  
2 Identity theft in Counts seven and eight. (CT 201-206)

3 On October 3, 2003, defendant Rodriguez was convicted  
4 of Count one Kidnapping for Extortion, a violation of  
5 209(a) of the Penal Code (the special allegation was found  
6 to be not true), Count two, a violation of 182(a)(1)/187(a)  
7 of the Penal Code, Conspiracy to Commit Murder, Count 6, a  
8 violation of 10851(a) of the Vehicle Code, Unlawful  
9 Taking/Driving of a Vehicle, and Counts 7 and 8, 530.5 of  
10 the Penal Code, Identity Theft. (CT 313-318)

11  
12 On December 5<sup>th</sup>, 2003, Defendant Rodriguez was  
13 sentenced to 25 years to life on Count 2, Conspiracy to  
14 commit premeditated murder. Count one, Kidnapping for  
15 Ransom, was run concurrent to Count 2. Count six, seven  
16 and eight were run concurrent to count one with count six,  
17 10851 of the Vehicle Code, also stayed pursuant to 654 of  
18 the Penal Code. (CT 465-469)

19 On April 7, 2015 the District Attorney's Office  
20 received a letter from Attorney General Rachelle Newcomb--  
21 the AG who was the assigned AG opposing the defendant's  
22 appeal. Attached to her letter was a letter from the  
23 victim who claimed he had perjured himself. The victim did  
24 not indicate in his letter what the discrepancy was in his  
25 testimony. It is to be noted that when this letter was  
26  
27  
28



received both the victim and the defendant were housed in Folsom prison at the same time. For the first time after 12 years, the victim now indicates there is a part of his testimony that was not true. Since it was not known what the witness was recanting, Investigator Jeff Potter from the Placer County District Attorneys' Office was sent to Folsom prison to interview the victim. Attached as Exhibit "A" is a report from Investigator Potter of his interview of the victim Hamman on April 23, 2015. The interview was taped and the tape can be supplied to the court upon request. The only change in the victim's testimony is that he says the water only came up to his thighs and not his neck. This was the first time the victim came up with this version. Even the defendants Rugg and Rodriguez stated that the water was waist high/three feet high. A copy of the tape and Investigator Potter's report were sent to both the Public Defender's office, who represented Rodriguez, and to Conflicts Counsel, who represented Rugg. Attached as Exhibits "B" and "C" are copies of the letters to the defense attorneys. It was indicated to the defense that the level of the water did not seem to be material to the overall facts of the case as it related to the crimes Rodriguez was convicted of. Neither counsel for the defense brought a Writ of Habeas Corpus after receiving

1 this information. As will be discussed in subsequent  
2 paragraphs, the water level does not seem to rise to the  
3 level of materiality regarding the facts needed to support  
4 the crimes the defendant was convicted of by the jury.

## 5 II

### 6 CASE LAW REGARDING NEW TRIAL BASED ON "NEW EVIDENCE"

7 The trial court is to determine whether the new  
8 evidence is credible-worthy of belief by the jury-after  
9 reviewing all the facts regarding the issue. If the court  
10 finds the recantation credible, it must then decide whether  
11 it would render a different result on a retrial reasonably  
12 probable. People v. Minnick (1989) 214 Cal. App. 3d 1478;  
13 People v. Cole (1979) 94 Cal.App.3d 854 [155 Cal.Rptr.  
14 892]. The evidence must show that the defendant's  
15 conviction was based upon false testimony in order to grant  
16 habeas corpus relief. The false evidence must be  
17 substantially material or probative on the issue of guilt  
18 or punishment. False evidence is substantially material or  
19 probative if there is a reasonable probability that, had it  
20 not been introduced, the result would have been different.  
21 The court must consider all the evidence on the particular  
22 issue under consideration and determine if it undermines  
23 the confidence in the outcome. In re Larry H. Roberts  
24 (2003) 29 Cal. 4<sup>th</sup> 726; In re Sassounian (1995) 9 Cal. 4<sup>th</sup>  
25  
26  
27  
28



1 535,546 [37 Cal.Rptr. 2d 446]; People v. Marshall (1996) 13  
2 Cal. 4<sup>th</sup> 799, 830.

3 It has long been recognized that "the offer of a  
4 witness, after trial, to retract his sworn testimony is to  
5 be viewed with suspicion." In re Weber (1974) 11 Cal. 3d  
6 703, 722 [114 Cal.Rptr. 429]; People v. Minnick, supra, at  
7 p. 1481; People v. McGaughran (1961) 197 Cal.App. 2d 6, 17  
8 [17 Cal.Rptr. 121]. In the matter before this court, it is  
9 suspicious that the victim comes forward after 12 years  
10 when both the victim and defendant Rodriguez are housed in  
11 the same state prison. However, as it will be discussed  
12 below, the new statement does not change the outcome of any  
13 of the counts the defendant was convicted of. The new  
14 level of water as claimed by the victim was not known to  
15 the police or prosecution until Detective Potter obtained  
16 this information from the victim in April 2015. The two  
17 suspects believed the water level was waist high and the  
18 jury heard defendant Rodriguez' statement to that effect.  
19 The victim's new statement is not entirely consistent with  
20 defendant Rodriguez, who has the water level at waist high  
21 or about three feet-not thigh high. The jury had Rodriguez'  
22 statement to consider at the time of the trial.

25 ///

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III

COUNT TWO CONVICTION NOT AFFECTED BY NEW EVIDENCE

Defendant Rodriguez was convicted in count two of the Information of a violation of 182/187(a) of the Penal Code, Conspiracy to Commit Premeditated Murder. The Information contained the following four overt acts with respect to said count:

OVERT ACT NO. 1

Defendants Shawn Michael Rodriguez and Anna Marie Rugg drove to Albertson's Supermarket in the city of Auburn, County of Placer and purchased duct tape.

OVERT ACT NO. 2

Defendants Shawn Michael Rodriguez and Anna Marie Rugg drove to the DeWitt Center, in the City of Auburn, County of Placer, and obtained two garden hoses.

OVERT ACT NO. 3

Defendants Shawn Michael Rodriguez and Anna Marie Rugg drove to the old juvenile hall in the City of Auburn, County of Placer and taped duct tape around the outside of the holding cell door behind which Nicholas Hamman was confined.

OVERT ACT NO. 4

Defendants Shawn Michael Rodriguez and Anna Marie Rugg

1 drove to the old juvenile hall in the City of Auburn,  
2 County of Placer and attached one end of a garden hose to a  
3 vent above the holding cell door behind which Nicholas  
4 Hamman was confined, and tied the other end of the garden  
5 hose to the exhaust system of a 1992 Chevrolet Beretta,  
6 California License number 3FHS432.  
7

8 The jury convicted defendant Rodriguez of count two  
9 with the Four overt acts charged. None of the evidence  
10 used to convict the defendant was based on the water level  
11 in the holding cell even if the court believes the victim's  
12 new statement. The victim's change in his statement that  
13 the water level was lower in the cell than he had testified  
14 to is immaterial. Based on the above case law, defendant  
15 Rodriguez's Writ must fail as to this count. The court  
16 sentenced the defendant to 25 years to life based on this  
17 count alone. All other counts were either run concurrent  
18 or stayed pursuant to 654 of the Penal Code. The claimed  
19 partial recantation has no effect on the defendant's  
20 sentence of 25 years to life.  
21

#### 22 IV

#### 23 COUNT ONE CONVICTION NOT AFFECTED BY NEW EVIDENCE

24  
25 Defendant Rodriguez was convicted in Count One of a  
26 violation of Penal Code Section 209(a), Kidnapping For  
27  
28

1 Ransom. The jury found the special allegation that the  
2 victim was confined in a manner which exposed him to a  
3 substantial likelihood of death to be not true. The  
4 victim's change in his statement about the water level in  
5 the cell may have had some materiality if the jury had  
6 found the special allegation to be true. They did not, so  
7 the water level discrepancy, if the new information is to  
8 be believed, would not be material to the conviction in  
9 this count.

10  
11 The evidence was uncontroverted by the victim and  
12 defendants that ultimately the victim gave up his property  
13 so that the defendants would contact the police to let him  
14 out of the cell, however high the water level was. The  
15 police found the victim suffering from hypothermia and was  
16 hysterical. The water was constantly hitting the victim on  
17 the head as the officer observed. Once the victim gave up  
18 his property after being confined for some time, this crime  
19 was complete and was not dependent on the water level in  
20 the cell. The jury had the discrepancy in the water level  
21 before it anyway, since Rodriguez thought it was three feet  
22 high. The new claim by the victim that the water level was  
23 thigh high would not be material to this count. It is to  
24 be noted that this crime was run concurrent to count two.  
25  
26 Therefore, there would not be a change in the sentence no  
27  
28



1 matter how high the water level actually was in the holding  
2 cell if in fact it has any materiality.

3 V

4 COUNTS SIX, SEVEN, AND EIGHT NOT AFFECTED BY NEW EVIDENCE

5 Count Six, a violation of 10851 of the Vehicle Code  
6 and Counts Seven and eight, violations of 530.5 of the  
7 Penal Code, were not affected by the new statement of the  
8 victim regarding water level in the holding cell. However  
9 high the water level was (neck high per victim, waist high  
10 or three feet high per defendants, or thigh high per  
11 victim's new statement), the victim gave up his keys, ATM  
12 card, and cash under the cell door after items were removed  
13 from the bottom of the cell door and the water receded to  
14 four inches. However high the water was, these items were  
15 given up by the victim with the hope that the defendants  
16 would let the victim out of the holding cell or call the  
17 police. (RT 236-239) The suspects then used the vehicle  
18 and ATM card without the permission of the victim.  
19 Defendant Rodriguez was found driving the victim's vehicle  
20 without permission. Found within the vehicle were documents  
21 supporting the unauthorized use of the victim's ATM card.  
22 (RT 79-81, 84-85, 253-255, 495). The level of the water  
23 was not material to the victim giving up these items and  
24 the unlawful use of these items by the defendant.  
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1 If the court were to find any materiality to the new  
2 statement of the victim, Counts Six, Seven, and Eight were  
3 all run concurrent to count Two and would not affect the  
4 sentence the defendant received of 25 years to life.

5 VI  
6 CONCLUSION

7 Based on the foregoing facts and law, the claimed  
8 change in water level in the cell by the victim would not  
9 be material to any of the convictions the jury rendered if  
10 this new information had been available. The jury heard  
11 from defendant Rodriguez that he thought the water was  
12 three feet high or waist high. If the victim's new  
13 information were brought before a jury, the jury would  
14 consider whether the water was thigh high or three feet  
15 high—a difference without a distinction. In view of the  
16 fact that the jury did not find true the special allegation  
17 to count one (the kidnapping subjected the victim to a  
18 substantial likelihood of death), the water level was not  
19 material to the convictions rendered. The jury was told by  
20 the victim that he stepped on top of the seat next to the  
21 table so the water only reached his stomach. (RT 235-236)  
22 With this information, it seems clear that the water level  
23 was not material to the decisions made by the jury. The  
24 conspiracy to commit murder charge that the defendant was  
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1 convicted of resulted in a sentence of 25 to life. This  
2 count did not involve the water level as demonstrated by  
3 the overt acts charged.

4 The People respectfully request that the writ be  
5 denied in its entirety.

6  
7 Dated: August 26, 2015.

8 Respectfully submitted,

9 R. SCOTT OWENS,  
10 DISTRICT ATTORNEY

11  
12 BY: William D. Marchi  
13 WILLIAM D. MARCHI  
14 DEPUTY DISTRICT ATTORNEY  
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PL. ACER COUNTY DISTRICT ATTORNE .  
R. SCOTT OWENS  
10810 Justice Center Drive, Suite 240  
Roseville, CA 95678  
916-543-8000 fax 916-543-2554

**BUREAU OF INVESTIGATIONS**  
*Supplemental Information*

CASE NAME: RODRIGUEZ, SHAWN MICHAEL  
NUMBER: 32-034689  
CHARGES: 664/187 P.C.  
DATE: April 23, 2015  
INVESTIGATOR: J. Potter #25

---

Person contacted: V/Nicholas Hamman, CDC #J98016

I was contacted by Deputy D.A. B. Marchi who asked me to contact V/Hamman regarding the above case. (V/Hamman is currently housed at Folsom Prison on an unrelated incident). This request came about because of a letter that V/Hamman sent to the California Attorney General. In this letter, V/Hamman said that he "perjured" himself in the above case. The Attorney General's Office sent the information to DDA Marchi who was the prosecuting Attorney. (See attached letter from the AG'S Office and the letter from V/Hamman). In V/Hamman's letter, he was not specific in how he "perjured" himself but only requested the names and addresses of the Judge and prosecutor in the case.

Note: The original crime occurred in March of 2003 and was investigated by the Auburn Police Department. D/Rodriguez was found guilty, at jury trial, on numerous felony charges and sentenced in December of 2003. D/Rodriguez's co-defendant, Anna Marie Rugg, 10-02-1982, negotiated a plea agreement for numerous felony charges.

I contacted Sacramento County D.A. Investigator J. Simms. Inv. Simms is assigned to Folsom Prison and assisted me with arranging an interview with V/Hamman on 04-23-15.

On 04-22-15, DDA Marchi provided me with two more letters from V/Hamman. These letters were addressed to D.A. "Phenochio", who was the District Attorney at the time of prosecution and D.A. "Scott" (Owens), who is the current District Attorney.

In these letters V/Hamman said that he lied about how deep the water was in the cell. He said that the water did not get up to his neck but only reached the lower part of his thighs. He said that he removed the rags that D/Rodriguez and Rugg placed under the door and the water was able to run out. (See attached).

**EXHIBIT**

"A"



I  
04-23-15

0930 Hrs. I contacted V/Hamman at Folsom Prison. The interview took place in the Sacramento County D.A. Investigators office in the prison. Also present for the interview was Inv. Simms. V/Hamman told me the following in summary:

I identified myself as an Investigator with the Placer County District Attorney. I told V/Hamman that we had received the letters that he sent regarding his "perjury" in the Rodriguez case. I showed V/Hamman the letter that he sent to the Attorney General's Office. He said it was the letter he wrote. I also showed him the two copies that he sent to "Phenochio" and "Scott". He said that they were the letters he wrote. I also told him that I had a copy of his statement that he provided Auburn Police at the time of the incident. I told him that we were not going to review his entire statement and asked him if his statement was truthful and accurate when he gave it. V/Hamman said that it was truthful but the part about the water in the trial was not true. I confirmed with V/Hamman that he mentioned the water depth in his letter. He said yes. I asked him what he lied about. He said that the water did not come up to his neck and that it was only up to his thighs. I confirmed with V/Hamman that the original report said that the water was up to his shoulders and that the water drained down once the items were removed from the bottom of the door. He again said that the water never got higher than his mid thighs.

I asked V/Hamman if that was the only issue he wanted to tell us about. He said yes. I told him that I would write a report and send it to the public defender's office. I asked him why he told us the information. He said that he wanted to clear his conscience.

I asked V/Hamman if he has spoken or communicated with D/Rodriguez. He said no. I asked him if D/Rodriguez tried to persuade him in any way or is looking for a favor to help his case. He said no. I asked him if he has had any contact with Anna Rugg. He said no. I asked him if he had ever communicated with D/Rodriguez in the yard. (I learned through Inv. Simms that D/Rodriguez and V/Hamman were not housed together but probably had yard time at the same time and could communicate through the chain link fence). He said no initially and then asked if D/Rodriguez was housed there. I told him that I did not know and was wondering why he was bringing this to our attention since it had been since 2003. He said that he has been praying a lot and that the Lord told him to come clean about the incident. I told him that the Police arrived at the incident and saw what had occurred. He said that the water was not high when the Police arrived. I asked him if he had anything to add. He said no. I again told him that I would send his information to the proper authorities and that the case has already gone before the appeals court and may not proceed any farther at this point.

The above conversation was recorded. Please listen to recording for further detail. I made copies of the recording and gave them to DDA Marchi.

Nothing further.



R. SCOTT OWENS  
DISTRICT ATTORNEY

**PLACER COUNTY DISTRICT ATTORNEY**

10810 Justice Center Drive, Suite 240 • Roseville, CA 95678-6231

916 543-8000 • FAX 916 543-2550

www.placer.ca.gov

April 24, 2015

Placer County Public Defender

Re: Shawn Michael Rodriguez, case #62-034689

To Whom It May Concern:

Your office represented this defendant for a crime that occurred in March 2003. The defendant was sentenced to 25 years to life for Conspiracy to Commit Murder and other charges. I am enclosing a statement from the victim who is housed at the same prison (Folsom) as your client. The victim has indicated that he lied about how deep the water was in the holding cell of the old Juvenile Hall. However, the water level was not material to the conspiracy to commit murder. The police described the water level when they freed the victim from the holding cell and a cousin of your client testified regarding the way in which your client tried to kill the victim. Your client attempted to kill the victim by carbon monoxide poisoning. I am enclosing the DVD of the victim's recent information regarding this case for you to decide what if anything this means. David Cohen of the conflicts firm represented the co-defendant Anna Rugg who plead guilty after your client's trial to a different charge and was sentenced to 7 years to life. If you have any questions give me a call. Your trial attorney was Jessie Serafin who is deceased.

Very truly yours,

R. SCOTT OWENS, DISTRICT ATTORNEY

BY: 150

William D. Marchi

Deputy District Attorney

**EXHIBIT**

"B"



R. SCOTT OWENS  
DISTRICT ATTORNEY

**PLACER COUNTY DISTRICT ATTORNEY**

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April 24, 2015

Conflicts Level #1  
Attn: David Cohen

Re: Anna Rugg, case #62-034689

Dear Dave:

You represented this defendant for a crime that occurred in March 2003. The defendant, as you probably remember was sentenced to 7 years to life for her part in this matter—codefendant was Shawn Michael Rodriguez. Your client plead guilty after Mr. Rodriguez went to trial and was convicted of Conspiracy to Commit Murder. This is the case where the victim was locked in a holding cell of the old abandoned Juvenile Hall. Your client and Rodriguez tried to extort property from the victim. Later they tried to kill the victim by carbon monoxide poisoning. The victim and Rodriguez are housed at the same prison (Folsom) currently. The victim has now indicated that he lied about how deep the water was in the holding cell of the old Juvenile Hall. However, the water level was not material to the conspiracy to commit murder. The police described the water level when they freed the victim from the holding cell and a cousin of Rodriguez testified regarding the way in which Rodriguez tried to kill the victim. I am enclosing the DVD of the victim's recent information regarding this case for you to decide what if anything this means. I do not believe the recent information contained on the DVD would exonerate either defendant and was not material to any issue in this matter. If you have any questions give me a call.  
Very truly yours,

R. SCOTT OWENS, DISTRICT ATTORNEY

BY: 15)

William D. Marchi  
Deputy District Attorney

**EXHIBIT**

"C"



Shawn Rodriguez V16387  
CSP-SAC-B5-217  
P.O.Box 290066  
Represa, Ca. 95671

Superior Court of the State of  
California, County of Placer

Department 3

Hon. Mark S. Curry

In Re Rodriguez #V16387)

Case No: WHC-1400

On Habeas Corpus )

(62-34689)

)

Motion Requesting initiation of  
Contempt Proceedings, and/or a  
finding of Contempt, and sanctions  
against Deputy District Attorney;  
Defendant's Declaration in Support

To: The Honorable Mark S. Curry, Department 3, Placer county Superior Court

I, Shawn Rodriguez #V16387, do declare the Following:

1) I am the Petitioner In the Abovecaptioned case, proceeding in Pro Per;

2) On August 26, 2015, Deputy District Attorney William Marchi did, knowingly  
and intentionally, submit claims to this court which he knows to be false, in an  
effort to use his own perjury to secure a conviction he has obtained by use of  
perjured testimony;

3) Having submitted a document sworn by him, under penalty of perjury, Mr. Marchi,  
did attempt to perpetrate a fraud upon this Court, to wit:

4) On page 2 of his response to the OSC, he claims that responding officers  
removed the victim from the holding cell, implying to the court that it occurred  
without incident; in fact Mr. Marchi is well aware, due to his participation in  
the preliminary hearing and trial proceedings, that, contrary to what he would have  
this court believe, it was not understood, by anyone, that the door could be opened,  
and as such, responding officers contacted the Auburn Fire Department to help  
free the victim (CT pg 58);

5) On page 5 of his response, he claims that the petitioner was not successful  
in an attempt to kill the victim due to "the hose kept coming out of the exhaust  
pipe", while he spent the entirety of the trial trying to convince the jury that  
the petitioner's misleading statement to the codefendant that fifteen minutes  
was enough, when creating plausible cause to leave the scene that would leave the  
victim alive, was evidence that the petitioner had quit only because he thought  
the victim was dead, Not, as he would have the court believe, simply because it did

not work.

1       6) On Page 6 of his response, he claims that the Petitioner admitted to Duct  
2       Taping the Bottom of the Holding Cell Door. Not only is this False and misleading,  
3       given the water flowing out the bottom of the Door, continuously, It is not even  
4       possible for this to have happened;

5       7) Most Importantly, on pages 7 & 8 of his response, Mr Marchi has attempted the  
6       most outlandish fraud: he claims, on page 8, that on April 7, 2015, Mr. Hamman, the  
7       Victim in the case at bar, the A.G.'s office received the first peice of informa-  
8       tion indicating that False Testimony had been adduced at trial, Calling it "The  
9       first time after 12 years". In fact, as will be discussed later, he attempts to use  
10      this claim in conjunction with another, to diminish the Crediblity of the admission  
11      by the Victim... However, a look at his Exhibit "A" to the response tells a much  
12      different story:

13      8) The Exhibit, A report from Placer County District Attorney's Investigator  
14      Jeff Potter, Indicates, at Paragraph four, that Bill Marchi, and the D.A.s  
15      office, has been in possession of two additional letters from the Victim, one of  
16      which was addressed to Former District Attorney Bradford Fennochio, who has not  
17      been in office this year.

18      9) Not only is Mr. Marchi well aware of these letters, the opening line of the  
19      April 7, 2015 letter Makes reference to a prior letter sent to the A.G.s office,  
20      and, as Petitioner Has repeatedly been denied Discovery on this issue, we still  
21      cannot rule out that a) there are other letters, or that b) the Letter to Bradford  
22      Fennochio is not much older than currently, conservatively, thought;

23      10) On page 13 of his response, Mr. Marchi states that "ultimately the victim  
24      gave up his property so that the Defendants would contact the police to let him  
25      out of the cell." This is a falsehood designed to make the court think that the  
26      kidnapping allegation was predicated on these events, which is an outright lie.  
27      All throughout trial, Mr. Marchi told the Jury that it was the threat of death by  
28      drowning that caused the victim to surrender his property. The "Substantial Like-  
29      lihood Of Death" special Allegation is irrelevant: The jury was told that if they  
30      found that the fear of drowning, as a proximate result of the petitioner's cond-  
31      uct, was the Cause of the Victim surrendering his property, than they must make  
32      a finding of guilt as to the 7-Life 209 charge.

33      11) Knowing this as he does, after spending the better part of 2003 arguing it,  
34      Mr. Marchi now commits perjury to dissuade the Court from finding now that the  
35      current attacks miss their mark, when in fact, he knows firsthand that they are  
36      precisely on target: the lack of Intentional confining, and the use of force or  
37      fear to extort property completely undermines the verdict under attack;

12)On page 14 of his response,he again makes this Demonstrably false claim,  
1 even going so far as to cite the Reporter's Transcript(RT),but a Look at the cite  
2 reveals the depth of his deceit:(RT 237,line 14)"He said'you got one choice,  
3 either give up your ATM card,keys,cash,or youre going to drown.'"

13)To be clear,these are answers by the victim,at trial,elicited by Bill  
4 Marchi personally,so he cannot in any way claim to be unaware that he is lying to  
5 the court on this point.At line 16,we continue:

6 Q. At that point were you starting--were you afraid--

7 A. Yes,sir.

8 Q. --for your safety?

9 A. yes,sir.

10 Q. And what did you say back to Mr. Rodriguez?

11 A. I said,"Let the water out,"and I'd give it to him.

12 14)Very clearly,the items were allegedly given as a result of fear of death,  
13 a fear allegedly brought about by the water level,and just as clearly,Mr. Marchi  
14 knows this,and knows that he Fruadulently attempted to use his perjurous version  
15 of the RT to indicate otherwise,hoping that the court would just take his word for  
16 it;

17 15)Lastly,the Respondent claims,at page 8,10,and in his Exhibit "A",that both  
18 the Petitioner and the Victim are in "Folsom Prison" and can communicate between  
19 their separate facilities through a fence of some sort.He knows this to be a  
20 falsehood,or he should,given that he,or his representative has been,here,to  
21 California State Prison-Sacramento (Not Folsom Prison) and seen that several  
22 hundred,if not thousant feet,and two- and three-story concrete walls,sveral inches  
23 thick and rebarred,separate the facilities.Several of these walls.It is a flagrant  
24 lie that communication is possible between the three facilities,and records will  
25 prove that the Inmates in question were not housed on the same facility until  
26 May 1,2015,and only for 15 days,separated by walls and staff the entire time,  
27 with no opportunity to privately converse.

28 16)The fraud perpetrated by Mr. Marchi is to serve two exponential purposes:  
First,misinforming the Court about the location of the Inmates does bring to  
mind images of an old prison with lax security,and images of communication of this  
nature taking place,from hollywood movies,so that,second he can fraudulently  
claim to the court that this happened and thus undermine the credibility of the  
victim he once championed,and whose credibilty he vehemently argued for.

17)As stated,there is factual evidence to show that Deputy District Attorney

perjured himself before this court concerning these Matters, Namely, the Transcripts for Placer Case #62-34689, the Report by Investigator Jeff Potter, Pictures of the prison from above, which would be provided by prison officials at the courts request, and testimony of witnesses, the two letters from the victim reference in the report by the Investigator, Mr. Potter (Which still, to date, Have been denied to the petitioner in violation of Brady V. Maryland);

#### Statutory support for findings and sanctions

Black's Law Dictionary defines Perjury as: "The act or an instance of a person's deliberately making material false or misleading statements while under oath."

California Business and Professions Code §6068(d) states that the duties of an attorney include "To employ, for the purpose of maintaining the causes confided to him or her, those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law."

The commission of an act involving moral turpitude, dishonesty, or corruption constitutes a cause for an attorney's suspension from practice. Moral turpitude, broadly defined, is conduct that is contrary to justice, honesty, and good morals.

(Calzada V. Sinclair, 86 Cal Rptr 387)

An Attorney's misrepresentation of a fact to a court for the purpose of obtaining a continuance, that was a deliberate deceit and a willful obstruction of the orderly processes of the court, amounted to an intentional violation of his duties as a member of the Bar and officer of the Court, and constituted contempt. (Vaughn V. Municipal Court of Los Angeles Judicial dist., 60 Cal Rptr 575)

The concealment of facts from a court, when it is an attorney's duty to speak amounts to deceit and may form the basis of a charge for contempt. (Daily V Superior Court, 4 Cal App 2d 127)

(Dealing Specifically with Concealing letters relevant to pending litigation) ...he admitted he did not disclose the letter's receipt or its contents to the court. Under business and professions code 6068(d) and 6128(a) an attorney has an unqualified duty to refrain from acts that mislead or deceive the court. (Sullins V State Bar of California, 125 Cal Rptr 471)

B&P C § 6068(d) (Duty of Truthfulness), requires an attorney to refrain from misleading and deceptive acts, without qualification or exception. (Rodgers V State Bar, 256 Cal Rptr 381)

Attorney's for plaintiff breached their duty of candor and truthfulness to the court and the defendant under Ca. Rules of Professional Conduct 5-200, 5-220,



and B & P Code §6068 by repeatedly asserting that there was no evidence supporting  
1 defendants position when, in fact, there was such evidence. (Oliner V. Kontrabecki,  
2 2009 Bankr LEXIS 639)

The offense of misleading the court need not be successful, but merely tend  
3 to mislead, in order to violate this section. (Pickering V. State Bar of California,  
4 24 cal 2d 141)

The presentation to a court of a statement of fact known to be false presumes  
5 an intent to secure a determination based thereon and is a clear violation of this  
6 section (Pickering, supra; Vickers V. State Bar of California, 32 cal 2d 247)

It is not necessary that actual harm result to merit disciplinary action  
7 against attorney where actual deception is intended and shown. (Coviello V.  
8 State Bar of California, 45 cal 2d 57)

Under Business and Professions Code §6068(d), the conduct denounced is not  
9 the act of an attorney by which he successfully misleads the court, but the pre-  
10 sentation of a statement of fact, known to him to be false, that tends to do so. It  
11 is the endeavor to secure an advantage by means of falsity that is denounced.  
12 (Vaughn, supra)

A member of the State Bar should not under any circumstances attempt to  
13 deceive another person; whether or not any harm is done, an attorney's practice of  
14 deceit involves moral turpitude. (Cutler V. State Bar of California, 78 Cal Rptr  
15 172)

B&P Code §6068(d) unqualifiedly requires an attorney to refrain from acts  
16 that mislead or deceive the court. Concealment of material facts is just as mis-  
17 leading as explicit false statements, and, accordingly, is misconduct calling for  
18 discipline. (Di Sabatino V. the State Bar, 27 Cal 3d 159)

Counsel may not offer testimony of a witness that he knows to be untrue,  
19 since to do so may constitute subornation of perjury. (People V. Davis, 48 Cal 2d  
20 241)

An attorney who attempts to benefit his client through use of perjured test-  
21 imony may be subject to criminal prosecution as well as severe disciplinary  
22 action. (The People of the State of California are the D.D.A.'s client for pur-  
23 poses of this section) (In RE Branch, 70 cal 2d 200)

Untruthful testimony from a Deputy District Attorney, following reversal on  
24 Brady grounds, did not support dismissal of an information in the absence of an  
25 impact to a fair resolution of the case; however, the reviewing court did not con-  
26 done the breach of the prosecutor's ethical obligations under B&P Code §6068(d).  
27 (People V. Uribe, 132 Cal rptr 3d 102)

Presentation to a court of an account that an attorney knew to be misleading  
28

is ground for disciplinary action. (Clark V. State Bar of California, 39 cal 2d 161)

"A member shall not Suppress any evidence that the member or the member's client has a legal obligation to reveal or to produce." (California Rules of Professional Conduct, Rule # 5-220)

Suppression of favorable Evidence vioates Due Process. (Brady V. Maryland, 373 U.S. 83)

Prosecution's obligation under Brady to disclose exculpatory evidence extends to impeachment evidence, and to evidence that was not requested by the defense. (Paradis V Arave, [9th Cir] 240 f3d 1169)

Even an inadvertant failure to disclose information may constitute a Brady violation. (Bailey V. Rae [9th cir 2003] 339 F3d 1107)

Under Brady and its progeny, the State violates Due Process when it suppresses or fails to disclose material Exculpatory evidence. (Richter V. Hickman, [9th cir. 2008] 521 F3d 1222)

There is a duty on the part of the Prosecution, even in the absence of a request thereof, to disclose all material evidence favorable to the accused. (People V. Ruthford, 14 Cal 3d 399, 406)

The suppression of substantial material evidence bearing on the credibility of a key prosecution witness is a denial of due process within the meaning of the 14th ammendment. (People v. Ruthford, Supra.)

### Conclusion

Wherefore, the petitioner requests that this court issue an order to Deputy District Attorney William Marchi, requiring him to show Cause, if he has any, why he should not be judged in civil and criminal contempt of court by reason of his actions, as alleged above, and should cause not show, levy sanctions against him by way of fines, suspension from practice of law, and or imprisonment in the County jail as recommended by the California Penal Code.

Additionally, the petitioner requests the court take notice that this filing is not a Traverse responsive to the District Attorney's response to this court's OSC. The traverse will be submitted, separately and expiditiously, upon petitioner's receipt and reveiw of the items requested in the prior formal and informal discovery requests, which, thus far, have been completely ignored not only by the People, but this court as well for some reason.


Lastly, The petitioner urges this court to consider that, while he is technically represented by the Public Defender's office at this time, a refusal by the superior court to receive and consider the filings of a Pro Se litigant, in the absence of action by appointed counsel, could be construed by a reveiwing court as

1 an abuse of discretion which denies the petitioner Due Process, and a Judicial  
2 sanctioning of ineffective Assistance of counsel, as the petitioner, by this filing  
3 and the filings of August 23, 2015, seeks to overcome a lack of experience and  
4 expertise in Habeas Proceedings on the Part of Appointed Counsel, without alien-

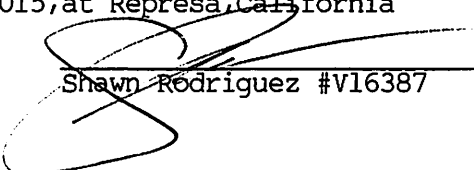
5 Please note, that petitioner is not seeking to anger or alienate the court, is  
6 not merely being recalcitrant, or arrogant, or even any hint of belligerent; he seeks  
7 only to highlight the existence of strong and weak points in himself and the  
8 public defender's office and an attempt to make do and vindicate a right to fair  
adversarial proceedings and Assistance of counsel, as guaranteed by the rights  
articulated in the 5th and sixth amendments.

9 It is not unprecedented for a court to acknowledge Appointed Counsel in an  
10 assisting, as opposed to a representation, role; indeed, in the first of two written  
11 communications from the public defender's office since the issuance of the order,  
12 Martin A. Jones does characterize his role and intentions this way: "I received  
13 notice by mail that I was appointed to assist you with your writ on August 10,  
2015."

14 I do declare under penalty of Perjury as defined by California Law and its  
15 analogous Federal Statutes that the foregoing is true and Correct.

16   
Shawn Rodriguez #V16387

17 Executed this 16th Day of September, 2015, at Represa, California

18   
Shawn Rodriguez #V16387

19  
20  
21 C.C.: Office of Chief Trial Counsel

22 The State Bar Of California  
23 845 S. Figueroa street  
24 Los Angeles, Ca. 90017-2515  
25  
26  
27  
28

# PROOF OF SERVICE

(C.C.P. §§1013(a); 2015.5; 28 U.S.C. §1746)

I, Shawn Rodriguez #V16387, am over the age of eighteen (18) years, and I (am) (am not) a party to the within cause of action. My address is:

Shawn Rodriguez #V16387

CSP-SAC-B5-217

P.O.Box 290066

Represa, Ca. 95671

On, September 20, 2015, I served the following documents:

Motion For Contempt Proceedings, Sanctions, Against DDA William Marchi

on the below named individual(s) by depositing true and correct copies thereof in the United State mail in Represa, California, with postage fully prepaid thereon, addressed as follows:

Placer County Superior Court  
Department 3  
1. 10820 Justice Center Dr.  
Roseville, Ca. 95661

State Bar Cheif Trial Counsel  
845 S. Figueroa St.  
Los Angeles, Ca. 90017-2515

Martin A. Jones Esq.  
Richard A. Ciummo and Associates  
2. 11760 Atwood Rd. Ste. 4  
Auburn, Ca. 95603

Placer County District Attorney's  
10810 Justice Center Dr. Ste. 240  
Roseville, Ca. 95678

I have read the above statements and declare under the penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Executed this 20th day of September, 2015, at California State Prison - Sacramento, Represa, California.

(Signature)

Shawn Rodriguez #V16387

Shawn Rodriguez#V16387  
CSP-SAC-B5-217  
P.O.Box 290066  
Represa, Ca. 95671

10-18-15

Superior Court of the State of California  
County of Placer

In Re Shawn Rodriguez)  
On Habeas Corpus)  
\_\_\_\_\_)

Case#WHC-1400  
(62-34689)  
In Dept 3  
Hon. Mark S. Curry  
Petitioners Traverse  
[Ca. Rules of Court 4.551(e)]

Petitioner hereby responds to the People's Response to the Order to Show cause (OSC) in the above captioned Habeas Proceedings, As follows:

Denial

The Return "Must allege FACTS tending to establish the legality of the Petitioner's Detention." (People V. Duvall, [1995] 9 C4th 464, at 476) More than the existence of a judgement and sentence are required. The factual allegations in the return must be responsive "To the allegations of the petition that form the basis of the petitioners claim that the confinement is unlawful." (Duvall, Supra) "General Denial" is insufficient to place the facts alleged in the petition in dispute. (Duvall, Supra; In Re Lewallen, [1979] 23 C3d 274 @ 258).

"any Material Allegation of the Petition not controverted by the return is deemed admitted for purposes of the proceeding." [Ca. Rules of Court 4.551(d)]

"Return must be responsive to allegations of petition." [Duvall, Supra, @ 474; In Re Connor, (1940) 16 C2d 701 @ 711; People V. Green, (1980) 27 C3d 1 @ 43 n.28]

The people have not, therefore met their burden and, as a colorary, have not placed facts in dispute enough to a) require an evidentiary hearing, or b) deny the truth of the allegations made in the Petition, which form the basis for relief the OSC is predicated on.

The extent of the People's response seems to be "yes, false testimony was used, we knew it, but who cares? we have a conviction, that is enough."

As will be shown, the two other points made by the people fail on their own lack of merit; a) Nicholas Hamman cannot be trusted, and b) if he is, only so far as their investigator deems appropriate, and only regarding what they Misrepresent to the Court as Fact, when in reality is a perjurious misstatement of the trial record.

### Material Allegations

The court issued an OSC pursuant to the claim of Newly Discovered Evidence, Specifically, Recantation by a witness who happens to be the Victim, the only victim, and therefore, the STAR witness, who admits giving false testimony at a trial proceeding which affected the guilt and sentencing phases of the petitioners court proceedings.

As such, the OSC requires response to the following material allegations;

1) False Testimony was adduced at trial which was Significantly Probative on the Issues of Guilt and/or Punishment;

2) The allegation that Petitioner used a ruse to lure the victim into the crime alleged was false and a fabrication;

3) The allegation at trial that Petitioner Physically Assaulted the victim to Accomplish the purported Aggravated Kidnap for Extortion was False and a fabrication;

4) Therefore the Allegation that the Petitioner participated in the 7-Life crime and its planning, and its allegations tending to support that theory were Falsehoods and a fabrication;

5) The Victim, Nicholas Hamman has stated that he saw the petitioner take the hose out of the vent, preventing any real danger to him, consistent with the claims of the Petitioner at trial, and the omission of this at trial amounts to False Testimony bearing on the conviction of the Petitioner and his sentencing;

6) There was an allegation made that the victim was invited to commit perjury, by the people;

7) The Bruise Alleged to have been given by the petitioner and the kick that caused it were False and fabrications;

8) The Petitioner, Contrary to the Claims of the People at trial, was not anywhere near the victim when he was Kidnapped by Ms. Rugg, and the Claim that he was is false and a fabrication;

9) The claim that the water was caused to rise to the level of the Victims neck/Shoulders to cause sufficient fear to extort the victim with the threat of death, was false and a fabrication;

10) The Claim that the victim saw the petitioner attempt to remove the screws of the window to facilitate escape of the victim, the omission at trial of which was false and a fabrication;

11) These facts tend to negate the notion of the petitioners intent to kidnap the victim for purposes of extortion and render that verdict void;

12) These facts tend to negate the notion of the Petitioners intent to

commit a crime extended to a specific Intent to Kill Nicholas Hamman, therefore rendering the verdict as to that Crime Void as well.

## Response to OSC

In their Response to the OSC, the People Do Not expressly deny a single allegation made in the petition, which results in the Material Allegations of the petition, each and all, being deemed admitted, as a matter of Law.

To the extent that the Response is aimed at any material allegation, it has only addressed the Water Level in the Room Mr. Hamman was confined in at the time of the Extortion/Robbery.

In their response, the People Allege that Yes, false testimony was adduced re this issue, which seems to be perfectly fine with them, but that is was not significantly Probable on the issue of guilt or of punishment.

Their argument seems rooted in another perjurious claim: that the alleged extortion was a result of a promise by the Petitioner that Mr. Hamman would be released should he relinquish his property, and the People Even quote the RT in thier argument, hoping, probably, that the Court will just take their word for it (and why shouldnt they think this--How often does a judge question the People or their claims?)

However, as stated in the Petitioners request for contempt proceedings and sanctions against the people for their perjury, they are lying to the court, pretty blatantly. Referring the court to the trial transcript, the Reporter's Transcript (RT) page 237, starting at line 14, these are questions asked of the victim, Nicholas Hamman, by the Prosecutor, William Marchi, who is also the Author of the Peoples Response to the OSC:

A. "He said 'You got one choice, either give up your ATM card, keys, cash, or you're going to drown.'"

Q. At that point were you starting--were you afraid--

A. Yes, sir.

Q. --for your safety?

A. yes, sir.

Q. And what did you say back to Mr. Rodriguez?

A. I said, "Let the water out," and I'd give it to him.

Obviously, at trial, the People presented to the jury a theory that the charge of Aggravated kidnap for extortion was predicated on the extortion being accomplished through fear of death, which in turn was predicated on the victim-

1 s claim that the petitioner caused the water level to reach the height of the  
2 victim's shoulders/neck, then threatening death by drowning.

3 The People have gone to great lengths to gain evidence that yes, it is true  
4 that this was a fabrication, and willingly admit to using it at trial.

5 They now must stick with the consequences of it, they cannot change the  
6 prosecutions theory after trial; Courts time and again have ruled against such  
7 practice, as it denies a Defendant/Petitioner Due process and the right to con-  
8 frontation of witnesses and to present evidence and a defense, as they were not  
9 given notice.

10 The facts being what they are, being forced to rely on the trial record and  
11 having no other facts in dispute, an evidentiary hearing does not seem necessary  
12 to grant the Petitioner a new trial as to the affected crimes/verdicts.

13 However, knowing that it is never that easy for justice to prevail and that  
14 the deck is stacked to heavily favor the side opposite a criminal defendant, we  
15 will itemize a further denial to the response.

#### 16 Express Denial

17 On page 1, the people make reference to "officers...Hamblin". this is factual  
18 error, and the petitioner believes the people mean to refer to Officer Stanley  
19 Hamelin of the Auburn Police Department;

20 On Pg.2 the people Allege that the victim was simply removed from the  
21 room in that building, and the petitioner disputes this, as it is well held that  
22 the Auburn Fire Department was called to "Extricate Hamman from the Cell".

23 On Pg.3 the People Allege that the petitioner pushed the victim into the  
24 cell, the petitioner disputes this, as he presented at trial that it was not  
25 so and the victim has now come to admit this as a fabrication;

26 On Pg.4 the people Allege that the Water level in the room was up to the  
27 Victim's shoulders and that this was used to extort the Victim, The petitioner  
28 disputes this and refers the court to his testimony at trial and the Current  
recantation of the victim;

On Pg.4 the people Allege that Witness "Romines indicated that Rodriguez  
and Rugg told him about the water level in the cell and that Rodriguez and Rugg  
were planning to kill the victim by filling the cell with water", The petitioner  
disputes this as false and perjurious, as Mr. Romines Testimony covers Pg.s 152-186  
of the RT, and NOT ONE SINGLE TIME does he say that, in fact, on Pages 173 (Line  
2) and 181 (Line 6), among others, Mr. Romines says exactly the opposite of what  
the People are trying to convince the court;

On Pg.5 the people Allege that the petitioner was not successful in the  
alleged attempt to kill the victim with Carbon Monoxide "Since the Hose kept



1 coming out of the exhaust pipe.",Petitioner Disputes this,as it was clear at the  
2 Preliminary hearing and at trial that the petitioner told Co-Defendant Rugg  
3 they should leave after 15 minutes and convincing her that it was enough,without  
4 actually believing this to be true himself;

5 On Pg.5 the people claim that Rugg told the Attendant to Check the Women's  
6 Bathroom,this is factual error,there was no Women's Bathroom,Rugg used an Em-  
7 ployee Restroom;

8 On Pg.6the People allege that the petitioner Admitted to a plan to "Gas  
9 the victim in the Cell" and would like the court to infer that he therefore  
10 admitted to intent to kill the victim by that act-this is a smokescreen and  
11 the people are well aware that the petitioner maintained,from arrest to the  
12 present,that he had no intent to kill the victim this or any other way,and had  
13 only agreed to the plan assuming it would not harm the victim and that it would  
14 pacify Codefendant Rugg and Buy him time to find a way out of the situation;

15 On Pg.6 the People State that the petitioner Admitted to Duct taping the  
16 Bottom of the Holding Cell door,Petitioner Disputes this as it is no where in  
17 evidence and is,indeed,not physically possible,given the continuously flowing  
18 water beneath that door;

19 On Pg.6 the PeopleAllege that the Petitioner Attached the Hoses to the  
20 places indicated and attempted to "Gas" the Victim to death;What the People do  
21 not tell the court while telling them this,is that virtually in the same breath,  
22 the Petitioner also stated that he a)removed the end of the hose from the Vent,  
23 and b)never intended,in any way,for the victim to be harmed by the actions  
24 described.Indeed,he was not.Therefore,Petitioner disputes the People's present-  
25 ation of the allegation as untrue and misrepresented;

26 On Pg. 7 the people characterize the perjury of the victim at trial as a  
27 "Discrepancy",the petitioner diputes this as an attempt by the prosecutor to  
28 minimize the affect of the illegal actions described;

On Pg.s7-8,the People describe the letter received at the D.A.s office on  
April 7th,2015 as"the first time after 12 years" that the victim has attempted  
to bring all this to light.Petitioner Disputes this and points to the People's  
own investigator and his statement,that William "Bill" Marchi gave him two  
letters sent to the Placer County District Attorney's Office from the Victim.  
These letters are still,at the writing of this document,being suppressed by the  
People,despite three written requests by the petitioner.The existence of these  
prior letters and the one alluded to in the first sentence of the one in evidence  
which was the catalyst for these instant proceedings,proves Mr. Marchi an out-  
right Liar and a Perjurer,and also dispute,on their own,this allegation;

Also on Pg. 8, the People claim that the Victim and the petitioner were at "Folsom Prison" together at the time. This Demonstrably false claim was to serve two purposes: to have the reviewer envision a 100 year old prison where, as seen in films, both parties could communicate through a fence, and to therefore, convince the reviewer that this was all set up by the Petitioner and victim working in cahoots to swindle the court and legal system. Petitioner Disputes this claim, pointing out that he has never set foot in Folsom Prison, and is currently, and for two years prior, housed at California State Prison Sacramento, which is **HUGELY** separate and different from Folsom Prison, and where the two prisoners Cannot communicate as Perjurally described, because they are separated by over 1,000 feet of Space Occupied by 20+ foot high concrete walls averaging a foot thick, with rebar. The two have not ever been housed near each other previously. If that is not enough to show this claim for what it is, What about the other Three letters, which pre-date the one at issue? Why have these letters been hidden so thoroughly from the petitioner?;

On Pg. 10 the people Allege that the true water level was not known to them until April 2015, Petitioner disputes this, and refers the court to, again, the prior letters, but also to the Transcripts of interviews with Richard Romines, Anna Rugg, Shawn Rodriguez, all Conducted by the People's Agents pre-trial, which told of a water level inconsistent with the claims the People presented, or allowed to be presented, uncorrected, at trial;

On Pg. 12, the People Allege that the fabricated Water Level and its story as presented to a jury at trial would have no Bearing on the Verdict rendered as to the Conspiracy to commit murder charge, Petitioner, while maintaining that the other Fabrications also affect this, will dispute this by asserting that: The verdict, as evidenced by the Post trial Affidavits from the Jurors, which are a part of the Clerks Transcript (CT) was already on very unstable footing, with several jurors Claiming to have found no Specific Intent to kill. A further look would show that, were there any finding that the petitioner DID have this intent, it must be based on testimony at trial, which, when accumulated, convinced a jury that the petitioner had the Capacity to kill, had a callous disregard for the victims safety, was indifferent to his plight or his pleadings.

A Drawn out story about how the Petitioner Watched the victim suffer in fear, callously disregarding his safety while the water reached his neck, and still demanding the victim's property, exploiting his fear, and reveling in his pleas for help... would very obviously have been a factor that influenced the jury to believe the petitioner might have had intent. The Petitioner thus disputes the Peoples claim: without this information, they might have decided to

him not guilty of Conspiracy to commit Murder;

On Pg.12 The people Allege that if the Current Evidence of False Testimony Adduced at trial is found true only to the extent they claim(While The petitioner Does Not Stipulate to their very skewed version of the current information)and does nothing to upset the 25-life Conviction,it has no effect on the conviction and sentence imposed as to that crime;Petitioner Disputes this claim,asserting that without the 209,several factors covered by various Due Process are affected. For instance,One less felony count would neccesarily force a reduction of restitution.One "Life"sentence instead of "Multiple Life Terms"affect several aspects of prison life that implicate due process issues,such as Custody level, Classification Score,Access to employment and rehabilitative programs bearing on parole eligibility and ability to earn wages which pay restitution,ect.

Thus,Petitioner very much disputes the People's VERY Narrowminded and ignorant view of the implications of the sentences they seek to impose,and how those discretionary choices affect defendants in general and the petitioner in particular,in the DECADES that follow;

On Pgs 13,14,and 15,the People again attempt to decieve the Court by claiming that they did not argue the case to the jury in the light of Extortion based on fear of death,caused by the water level.Petitioner Again disputes this series of claims the same way as before:The Trial Record indicates,glaringly, that they are lying:they predicated their allegations at trial on the theory that the petitioner used the water level to cause fear,and used that fear to extort.Further this developed an image in the minds of the jurors that the petitioner was that person,who did that,which affected their decisionmaking as to the Conspiracy charge as well.

Without the Water level at his neck,alot changes,such that"the Outcome might have been Different" as to both of the "Life"term charges.

#### Analysis of Statute

The People Claim that some trial court is now to determine whether this evidence is"worthy of belief by..."some"...Jury."

This is not the case.

Currently we find ourselves in the position where it must be decided if, but for the False Evidence,it is "reasonably Probable" the out come"Might" have been different.

To Support its erroneous standard,counsel has misquoted and misapplied a small handful of state cases,most of which were decided prior to the revision of applicable law to the less stringent reveiw that we see today,where a petitioner need not prove Knowing Use by the Prosecutor.

1 firstly, the People make Reference to Minnick, and while that case does in-  
2 struct that recantation should often be viewed with suspicion, it does not say  
3 that it is never worthy of consideration. But, see People V. Smallwood, (1986) 228  
4 Cal Rptr 913: "Even if the recantation of the trial testimony was not reliable,  
5 these events cast some doubt on the credibility of (Insert witness name here)  
6 as a witness."

7 Killing two birds with one stone, let's skip ahead to the people's citation  
8 of the Larry Roberts case: 29 Cal 4th 726-While related to the issue here, this  
9 case is severely distinguishable, preliminarily because it was decided based on  
10 the Knowing Use of Perjured Testimony standard, and the petitioner has made it  
11 perfectly clear in this case that, while it is "Newly Discovered evidence", and  
12 that the People may have known it was perjured, the argument that has been pursued  
13 is False Testimony, which comes with a less stringent standard of review.

14 Next, The Declarant/Witness refused to testify at the reference hearing, and  
15 thus, a determination Re credibility could not be made by the reviewer. This is  
16 not the case here.

17 Last, similar to Sassounian, and helpful to the petitioner here, was the det-  
18 ermination that: "Because Long has made inconsistent declarations, it is clear  
19 that he has lied at some point..".

20 "...But would not reverse based on a declaration without personally as-  
21 sessing credibility in reference hearing. Thus, Petitioner, by witness refusal to  
22 testify at reference hearing, failed to show that the conviction was based on  
23 false testimony."

24 There are other commonalities that would serve to guide us here: In that  
25 case, Prison records were used to prove that those two prisoners were within 6  
26 cells of each other in AdSeg. Here, prison records can prove that petitioner and  
27 Victim were not ever in that sort of proximity, and also that the victim was  
28 in close proximity to those witnesses currently volunteering testimony as to  
his admissions of perjury.

Moving now to In RE Weber, yes, it is appropriate to "view the offer of a wit-  
ness, after trial, to retract his testimony, with suspicion." That does not seal  
the deal and bar review though.

A review of that decision is telling... While very similar to the case at  
bar, several factors, not present here, were considered in the denial of that case.

First, and again, It was a newly discovered evidence case, not a Case of  
False Evidence adduced at trial, as is here, and thus, the standard of review was  
more stringent. Under that other standard the petitioner could not "Point un-

erringly to innocence".

Next, as was made clear, "In the present case, on the other hand, there was corroboration for Devins' testimony, while Owen's testimony merely raised an issue of credibility without providing the petitioner with a complete defense establishing innocence."

While explaining that one of the reasons for denying the petition in the Weber case was the existence of other evidence which outweighed the recantation of a single, peripheral witness, they went to the trouble of specifically distinguishing it from People V. Williams, 57 Cal. 2d 263, where, similar to the case at bar, "The sole evidence of the defendants guilt was the testimony of a single witness... 'Whose' testimony was uncorroborated, and, subsequently, four unbiased persons executed affidavits which provided the defendant with a complete defense..."

Arguably, Williams is a template for the relief sought here, where the victim is the sole witness which contradicts the defense theory of the case, and where several unbiased witnesses, including the victim himself, have provided evidence such that "A complete defense" has emerged; that is, that as a defense, it has been shown that he is guilty of other crimes, similar and related, yes, but not those currently used to sentence him to multiple "Life" terms in prison.

Is not a "Reduced Culpability" both a defense and a reason permitting grant of a habeas petition, in accordance with statute?

It should also be pointed out that, upon close inspection, the bases for such suspicion regarding witness recantation seems to be born of the overwhelming numbers of victims of sexual molestation who are guilted into recantation by their family members, who often are related to the perpetrators of the crimes. Of course this makes perfect sense that in case after related case the petitioner read related to this issue, the victim, often a child, was stigmatized so badly, or outcasted from their family or peers, or guilted, that they chose to eat crow and retract their statements rather than bear the brunt of their disenfranchisement as a result of their testimony.

Again, that only points to the need for subjective and individual review of recanting witness declarations; hence the purpose of the Evidentiary hearing.

#### Conclusion

Petitioner Generally denies the Allegations made by the People in their response to the OSC, and Expressly denies those items as stated herein above.

Petitioner Reallges all the Material Allegations set forth in the petition, and incorporates the petition by reference.

Petitioner asserts that as a matter of law, the people have not made a show-

ing of cause to deny the petition, and similarly that in their admission of facts not disputed, they have not disputed enough facts to require an Evidentiary hearing, relying instead on the record and the evidence presented by document.

A case has been made that false testimony was indeed presented at trial, and it was significantly probative on the issues of guilt and of punishment, and, if not for whichever degree of false evidence is accepted as true by the reviewer, the result Might have been different, thus reversal is required, and the People may conduct a new, and more fair, trial of the petitioner on the facts which remain now, if they choose.

Overwhelmingly, the courts, in their opinions, make the decision here very distinct and simple: Abiding by the parameters of the "False Evidence" rubric, does the evidence, taken as a whole, serve to undermine the reviewer's confidence in the results of the trial?

The petitioner votes "~~No~~" and hopes the courts agrees.

It is clear that the victim lied, to whatever extent, at trial, motivated by vengeance, enticement, romance, or any other reason or combination of reasons.

There is a clear legal doctrine that has shifted over the last several decades to almost exclusively working For the prosecution, rarely against it, due in part, to an assumption that the fella on trial must be dishonest or dishonorable, one would guess. Even so, it does make its own sense: "Falsus en uno; Falsus en Omnibus."

For those of us who didn't go to law school or take Latin: False in one thing; False in all.

So where is the appropriate place to draw the line between true and false here? To err on the side of caution, one must first determine which side caution lies with.

Petitioner would argue, naturally, that it is his side.

The facts tend to agree: The totality of the evidence available for review including the record and the current offerings by both sides, but also the pre-trial interviews of witnesses; even the ones who did not get in front of the jury, seems to paint a picture consistent with the current allegations: No Kick or shove to force the victim into that room; no luring of the victim into the building; The petitioner was not present at the time the kidnap or false imprisonment occurred; there was no intent to kill; it was all a snowballing situation that got out of hand, could have been handled differently, but the level of malicious intent was not at all what it was made out to be at trial.

The totality of the evidence for review, consistent with Evidence Code §210 and People V. Cain, 10 Cal 4th 1 (@32) (Relevant evidence means evidence, in-

cluding evidence relevant to the credibility of a witness or hearsay declarant,  
1 having any tendency in reason to prove or disprove any disputed fact that is of  
2 consequence to the determination of the action."...the trial court is "Vested  
3 with wide discretion in determining relevance under this standard.")is indicative  
4 of a very shaky verdict to begin with:The jurors went to great lengths to tell  
5 us that they were uncomfortable with it.There was evidently doubt already;it  
6 could have gone either way.

Now come several revelations,any of which could have been that straw that  
7 would break the Proverbial camel's back,that would tip the scales.

And this is evidence that beat the Odds:It is clear from recent developments,  
8 like the inadvertant admissions by Investigator Potter that the D.A.s office has  
9 hidden exculpatory evidence,and even now that the cat is out of the bag,so to  
10 speak,will not disclose it,or a transcript of their 4-23-15 interveiw of the  
11 victim to the petitioner...Its clear as day that they have not been playing fair;  
12 where does that end,but more important,where did it start?What else is unknown?

It is particularly significant that the victim has gone to such great  
13 lengths,after so long:Even the recipient of the criminal acts feels that this  
14 has gotten out of hand,has gone way too far.

After almost 13 years,he went so far as to write at least four letters;when  
15 the first two were ignored by the Placer County District Attorney,he went above  
16 their heads,to the State Attorney General!He somehow got ahold of the Appellate  
17 Court case numbers;The petitioner Doesnt even have his in memory,and had no  
18 idea that Anna Rugg had Appealed her Plea Bargain.

That is compelling.

And one must wonder:Why the sudden change?All of a sudden its just a  
19 twenty inch difference in water level...but he desires a private meeting with  
20 counsel for the petitioner?Why?What is he afraid of saying in a more public forum  
21 like non-confidential mail?

And does the court really buy that after all this time and effort,his  
22 Conscience is eating at him over that twenty inch difference in water level?

This seems unlikely.

So we make our way back around to two important questions:

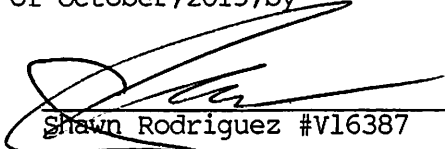
Inside proper context amd perspective,is this all significantly probative  
24 on the issues of guilt and punishment such that without the falsehoods a diff-  
25 erent result Might have been rendered?

And is this all such that confidence in the trial proceedings must be  
26 questioned?

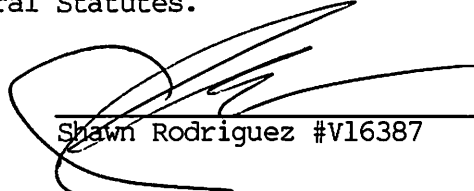
The word "Yes" can change a life for the better;"No"virtually ends it.

For the reasons stated above, the petitioner prays this court issue the  
1 Writ, reverse the findings of guilt as to the charges of Aggravated Kidnap for  
2 Extortion and Conspiracy to Commit Murder, and order a new trial.

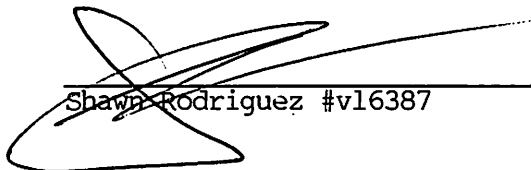
3 Respectfully submitted this 17th day of October, 2015, by

4  
5   
6 Shawn Rodriguez #V16387

7 I, Shawn Rodriguez #V16387, Declare the foregoing to be true and correct to  
8 the best of my knowledge and belief, and as to those items stated on belief, I do  
9 believe them to be true, under penalty of perjury as defined by the Laws of the  
10 State of California and its analogous Federal Statutes.

11   
12 Shawn Rodriguez #V16387

13 Executed this 17th Day of October, 2015, at Represa, California, by

14   
15 Shawn Rodriguez #v16387  
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# PROOF OF SERVICE

(C.C.P. §§1013(a); 2015.5; 28 U.S.C. §1746)

I, Shawn Rodriguez #V16387, am over the age of eighteen (18) years,  
and I (am) (am not) a party to the within cause of action. My address is:

CSP-SAC-B5-217  
P.O.Box 290066  
Represa, Ca. 95671  
\_\_\_\_\_

On, October 18, 2015, I served the following documents:

Petitioners Traverse/Denial  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

on the below named individual(s) by depositing true and correct copies thereof in  
the United State mail in Represa, California, with postage fully prepaid thereon,  
addressed as follows:

Placer County Superior Court  
10820 Justice Center Drive  
1. Roseville, Ca. 95661

Martin A. Jones Esq.  
11760 Atwood Road Suite 4  
2. Auburn, Ca. 95603

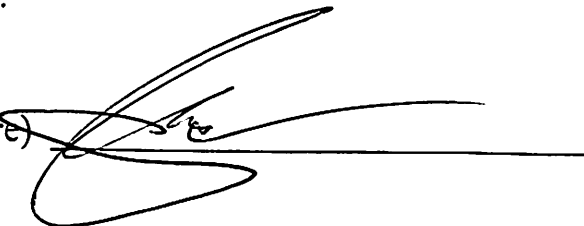
Placer County District Attorney  
10810 Justice Center Dr. Ste. 240  
Roseville, Ca. 95678

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I have read the above statements and declare under the penalty of perjury of  
the laws of the State of California that the foregoing is true and correct.

Executed this 18th day of October, 2015, at California State  
Prison - Sacramento, Represa, California.

(Signature)



Shawn Rodriguez #V16387  
CSP-SAC-B5-217  
P.O.Box 290066  
Represa, Ca. 95671

11-2-15

Superior Court of California  
County of Placer

Department 3

In Re Rodriguez )  
On Habeas Corpus )

Hon. Mark S. Curry

Case #WHC-1400

(62-34689)

Petitioner's Augmentation of  
Exhibits in Support of Petition  
for writ of Habeas Corpus  
(Ca. Evid. Code § 210; People V.  
Cain, 10 Cal 4th 1)

Having discovered another witness to victim Nicholas Hamman's Admissions to Perjury in the 2003 trial of Case#62-34689, People V. Shawn Rodriguez, and obtained a Declaration Under Penalty of Perjury regarding such, the Petitioner in Placer County Case#WHC-1400 hereby submits it to this court as Exhibit "N" to the Petition For Writ of Habeas Corpus

Attached as Pages 2&3 to this motion, Offered as Discovery and served to The People by mail before the decision of the court or possible Evidentiary Hearing, it does not prejudice the ability of The People to effectively and fairly litigate the case at bar.

Indeed, The People, in their Response to the Order to Show Cause, have implied that they have no wish at all to comment on the Affidavits of the petitioner's Witnesses or their veracity, and as this newest witness only restates what has been previously alleged in the case at bar, no prejudice can be claimed or assumed.

As such, Petitioner hereby submits the Sworn Declaration of Mauro Moreno CDCR#V31661 as Exhibit "N" to the Petition.

I declare the Foregoing to be true and correct under Penalty of Perjury, as Defined by the Laws of the State of California and its analogous Federal Statutes

Shawn Rodriguez #V16387  
Petitioner

Executed this 1st day of November, 2015, at Represa, California, by

Shawn Rodriguez #V16387

# PROOF OF SERVICE

(C.C.P. §§1013(a); 2015.5; 28 U.S.C. §1746)

I, Shawn Rodriguez, am over the age of eighteen (18) years, and I (am) (am not) a party to the within cause of action. My address is:

CSP-SAC. BS. 217

P.O. Box 290066

Repres, Ca. 95671

On, 11-2-15, I served the following documents:

Augmentation of Exhibits

on the below named individual(s) by depositing true and correct copies thereof in the United State mail in Represa, California, with postage fully prepaid thereon, addressed as follows:

Placer County Superior Court  
10820 Justice Center Dr.  
1. Roseville, Ca. 95661

2. Martin A. Sones Esq  
11760 Atwood Rd. Ste. 4  
Dubuque, Ca. 95603

Placer County District Attorney  
10810 Justice Center Dr  
504246  
Roseville, Ca. 95678

I have read the above statements and declare under the penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Executed this 2 day of November, 2015, at California State Prison - Sacramento, Represa, California.

(Signature)



Shawn Rodriguez #V16387  
CSP-SAC-B5-217  
P.O.Box 290066  
Represa, Ca. 95671

11-23-15

In Pro Per

Superior Court of California  
County of Placer

In regard to ) In Dept.33 Case #WHC-1400  
Shawn Rodriguez ) (62-34689)  
on Habeas corpus ) Hon. Mark S. Curry

Petitioner's Motion Stipulating  
to withdrawal of the Public  
Defender as Counsel of Record;  
Reinstatement of Pro Per Repre-  
sentation; Request for "Necessary  
Defense Services"; Request for  
Disposition of motions filed  
previously.

To the Honorable Mark S. Curry, and the District Attorney of Placer  
County, Please take note that on December 2, 2015, at 1:30 p.m., in department 33  
of the above captioned court, or as soon thereafter as the Matter may be heard,  
the Petitioner will move this Court for the Following: a) Petitioner will stip-  
ulate to the motion by the Public Defender to withdraw as counsel of record; b)  
Petitioner requests to represent himself in Propria Persona; c) Petitioner requests  
the Court order "Necessary Defense Services"; and d) Will respectfully request this  
Court make Disposition of the motions filed by the Petitioner, dated as Follows:

- 1) 8-23-15 Motion for Discovery; Bail/O.R.; trial Transcripts
- 2) 9-20-15 Motion for Contempt proceedings against the Placer D.A.
- 3) 10-18-15 Petitioner's Traverse
- 4) 11-2-15 Motion to Augment Exhibits to Petition

This motion is based on this notice of motion and the attached Memorandum  
of Points and Authorities and Petitioner's Declaration in support.

Memorandum of points and Authorities

Stipulation to Withdrawal of counsel

Having initially moved this court to appoint Counsel due to the extreme  
difficulty presented by the circumstances of prison life, Petitioner is now of  
the opinion that, for the reasons articulated in this section, Pro Per represen-

tation seems the lesser of two evils in this situation.

1 The "Legal Corporation" of Richard Ciummo and Associates seems ill  
2 equipped and unprepared to prosecute Habeas Corpus Proceedings. Indeed, their  
3 Assistant Chief Defense Counsel, Martin A. Jones evinced at the outset that he  
4 was not sure if he was adversarial to the State Attorney General or the Placer  
5 D.A., and had to have this explained to him by the petitioner, who in August  
6 took measures to brief him on the case developments he had missed, by mail.

7 Inexperienced in Habeas Law and the practice of representation of, and  
8 communication with, a client by mail, Mr. Jones has not been communicative with  
9 the Petitioner in a manner which could be construed as productive. Written  
10 Communication since the OSC was issued consists of Approximately 165 words over  
11 the course of two missives. Each of these had something provided by the D.A att-  
12 ached: the Summary of the D.A's investigator the first time, and the response to  
13 the OSC the other.

14 In fact, Petitioner did provide counsel, per his request, with Transcripts  
15 of Pretrial interviews of the victim and Codefendant Rugg, by mail. Attached was  
16 a letter to counsel, with seven, numbered, questions. When finally the materials  
17 were returned, the letter was also returned, with no reply whatsoever to any of  
18 the questions or the statements. The letter is still in the possession of the  
19 Petitioner.

20 The rest of the efforts to communicate are thus: Petitioner made express  
21 request that a Face to Face meeting be had before a traverse was filed. On  
22 9-18-15, Mr. Jones Converssed with the Petitioner for Approximately thirty  
23 minutes, and took three notes on a notebook page: A note to ask the District  
24 attorney to hand over the Two letters received at their office from the victim  
25 prior to the filing of the petition; a note to ask the Attorney General's Office  
26 to provide the Last missing letter from the victim, and another note, about the  
27 transcripts mentioned above; In October, Petitioner Spoke by phone, for thirty of  
28 the sixty seconds GlobalTelLink (The Prison Collect Call phone Service Provider)  
allows free to First time call recipients, the other thirty was spent on hold.  
Prior to this, Petitioner was routinely hung up on by the Receptionist for coun-  
sel, and arrangements still have not been made to facilitate phone contact with  
counsel. During that call, Petitioner was finally able to confirm receipt by  
Counsel of the Abovementioned Transcripts.

Petitioner was grateful to be served with a copy of counsel's motion to  
withdraw, as he had spent the entire month of November 2015 assuming that the  
court had filed a traverse of some sort and would, any day, be calling him to

Evidentiary hearing or some proceeding Any Day.

1 Having now received the motion, provided almost Two weeks after it was filed  
2 by counsel, as an afterthought, Petitioner at least now knows What has been  
3 transpiring, unbeknownst to him, in the case that will affect the entirety of  
his life.

4 To be blunt, Petitioner can see no action taken by Counsel other than two  
5 requests for extension of time, the most recent of which being completely unnec-  
6 cessary and a waste of Everyones time. While having claimed to have left a copy  
7 of the Interview of the victim conducted by the D.A.'s investigator on 4-23-15,  
8 for the Petitioner, with prison officials, it never materialized, and questions  
9 about this went unanswered. To date, Two letters that were admitted to be in the  
10 possession of the District Attorney's office have somehow not been obtained by  
11 counsel, the disclosure of which is required by law, and has been requested by  
12 the petitioner several times. Similarly, the first letter sent to the Attorney  
13 General's Office has not been Acquired by counsel, not even after the Petitioner  
14 Requested it by mail explicitly (A copy of the request was submitted to this co-  
15 urt on 8-26-15). On 8-23-15, Petitioner formally requested access to the file  
16 kept at trial by Public Defender Counsel Jesse Serafin. A copy of that request  
17 was also sent to this court. It went unacknowledged by counsel.

18 If the parties in possession of the abovementioned exculpatory evidence  
19 have dragged their feet or refused a request by counsel to provide lawful  
20 discovery, a motion to the court compelling discovery, by appointed counsel, has  
21 not been forthcoming, to the petitioner's knowledge.

22 The net profit of the Petitioner's Request for appointment of counsel  
23 seems to be sixty days of wasted time and frustration, for himself, and probably  
24 for the court as well. The hope that, as a result of the truth finally coming to  
25 light, that the petitioner would spend the first Christmas since 1993 with a  
26 blood relative, seems to be completely unfounded due to the time lost to  
27 failure to prosecute.

28 For these reasons, Petitioner Realistically fears the result of continued  
representation by the "Legal Corporation" of Richard Ciummo and associates, and  
even while the case cited by counsel in his motion picks up exactly where he  
left off in his motion and continues by permitting this court to allow hybrid  
representation "when the interests of justice support such an arrangement," the  
fear remains even under those circumstances.

Cognizant of the time required to acclimate substitution counsel, and desir-  
ing to get to the heart of this matter as soon as possible if it will facilitate

reunion with his family and entry to the workforce at the job being held for him,  
Petitioner will forego request of Substitutue Counsel.

### Pro Per Representation

For the reasons articulated above, and having mentioned these issues in his previous filings with this court, Petitioner moves this court to allow him to assume representation In Propria Persona. Should the Court have any doubts, the petitioner would at this time call the courts attention to People V. Marsden, (1970)2 C3d 118, and assert that there does exist a conflict that cannot be overcome, between counsel and the petitioner, and, of course Farretta V California, (1975)422 U.S. 806.

### Request for Services

The Public Defender having cited People V. Moore, (2011)127 Cal Rptr 3d 2, the Petitioner will now elaborate in his request for services: "The Federal and state Constitutional Provisions concerning the Assistance of Counsel for criminal defendants Include the right to access reasonably Neccesary Defense services. depriving a Self-represented defendant of all means of presenting a defense violates the right of Self-representation under the sixth Ammendment to the Federal Constitution. thus, a defendant who is representing himself or herself may not be placed in the position of presenting a defense without access to a telephone, Law Library, Runner, Investigator, Advisory Counsel, or any other means of developing a defense. But the 6th Ammendment requires only that a self represented defendant's access to the resources neccesary to present a defense be reasonable under all the circumstances. In assessing the reasoableness of the access provided under all the circumstances, institutional and security concerns ...may be considered in determining what means will be accorded to the defendant to prepare his or her defense."

In the prosecution of the instant petition, the petitioner plans for the requirement of an evidentiary hearing if the Court does not agree with the assertions of the Traverse, which are that the People Have not met the burden neccesary to require the hearing.

As such, it will be neccesary to produce witnesses and documents, by Subpeona, which, in some cases, will entail locating the witnesses or documents, and and in some cases, making requests by phone or person that would preclude the expenditure of time and resources associated with the use of Subpeonae. in addition, interveiw of witnesses to further develop facts and evidence, as well



1 as service of documents that need be served by a non-party to this action will be impossible for the Petitioner.

2 As such the Petitioner will move this court for the following, should it be  
3 decided that the petition cannot be decided on the documentary evidence sub-  
4 mitted thus far, requiring an Evidentiary hearing: 1) An order to the California  
5 Department Of Corrections and Rehabilitation to Stop Violating Ca. Code of Reg-  
6 ulations, Title 15, §3139(b), and allow the petitioner to contact the inmate  
7 Witnesses by mail. (Petitioner has already utilized the proper vehicle to attempt  
8 lawful approval of contact by mail. This Effort and the Administrative Appeal to  
9 overcome the arbitrary denial of the right articulated in CCR §3139(b), was met  
10 with a refusal to even process the Administrative Appeal in CDCR log# SAC-B-15-  
11 03041.);

12 2) Use of a regular, Non-Collect-Call phone in a confidential setting during  
13 reasonable hours and for reasonable periods of time to conduct business in  
14 furtherance of litigation;

15 3) The use of , or funds for, a "runner" and/or Investigator to conduct that  
16 business outside the realm of prison and beyond the reach of the Petitioner;

17 4) A competent and willing member of the Bar Association in good standing  
18 who may be contacted for privileged dialogue concerning advice or guidance in  
19 the furtherance of the pendent litigation. (Being Familiar with the case and held  
20 in high esteem by the judges of the Third District of Appeal, David Cohen Esq.,  
21 Conflict Counsel for Codefendant Rugg in 2003, comes to mind.)

#### 22 Disposition of previously filed documents

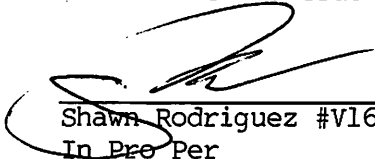
23 The Petitioner here incorporates by reference and renews the requests set  
24 forth in the motions and the Traverse filed by him previously in this court.

25 Specifically, Petitioner would like some reaction by the court to the motions  
26 filed on 8-23-15, 9-20-15, and 11-2-15, as well as the Traverse filed on 10-18-15.

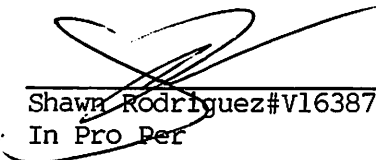
27 On a related note, Petitioner would call the courts attention to California  
28 Rules of Court, rule 4.551(f), and, bearing in mind the Public Defender's Assertion  
in his motion, that the Traverse was filed in court on October 21, 2015, and, 30  
days having elapsed, and the Extension of time to December 2, 2015 never having  
been communicated to the Petitioner, would very respectfully beg this court to  
render a decision soon if it can, please. After thirteen years incarceration, if  
relief is to be found with this court, the Petitioner is very eager to return to  
his family, go to work, and catch up in life, to put this unfortunate chapter of  
his life far behind him.



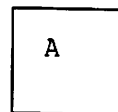
1 I, Shawn Rodriguez, do declare under penalty of perjury, as defined by the  
2 laws of the State Of California and its analogous Federal Statutes that the  
3 foregoing is true and correct to the very best of my knowledge and belief, and  
4 as to those matters stated on belief, I do believe them to be true.

5   
Shawn Rodriguez #V16387  
In Pro Per

6 Executed this 21st day of November, 2015, at Represa, California, by

7   
8 Shawn Rodriguez #V16387  
In Pro Per

# EXHIBIT COVER PAGE



EXHIBIT

Description of this exhibit: Declaration of Petitioner Shawn Rodriguez in support of Motion to stipulate; For Pro Per; For Defense Services; and for disposition of previously filed motions, ect.

Number of pages to this exhibit: 2 pages.

**JURISDICTION:** (Check One Only)

- ☐ MUNICIPAL COURT
- ☒ SUPERIOR COURT
- ☐ APPELLATE COURT
- ☐ STATE SUPREME COURT
- ☐ UNITED STATES DISTRICT COURT
- ☐ STATE CIRCUIT COURT
- ☐ UNITED STATES SUPREME COURT
- ☐ GRAND JURY

Declaration of Petitioner Shawn Rodriguez

In support of November 21, 2015 motion

I, Shawn Rodriguez, Do declare the following under penalty of Perjury, as defined by the Laws of the State of California, and its analogous Federal statutes:

1) I am a party to this action;

2) I am currently represented by the Placer county public defenders office;

3) I have experienced several conflicts with the counsel of record, including a communication barrier that cannot be overcome, and a lack of action on the part of Appointed counsel that places their performance below any reasonable contemporary standard of practice and which renders the assistance ineffective ;

4) Counsel has not provided me any real updates regarding the status of my case, and as such, has forced me to assume that nothing has been done and to therefore file my own documents;

5) This issue has been exacerbated by the inaction of counsel, the cause of which could not be determined by the petitioner, including a failure to obtain Exculpatory evidence, at least as far as can be ascertained by the declarant, as well as the unnecessary delay in the filing of documents with the court to prosecute the petition which the representation is predicated on;

6) Counsel has refused to answer specific questions posed to him in writing which are relevant to the case at bar, and refused to provide copies of evidence he admits to possessing which are material to the case at bar;

7) On September 18th, 2015, during a very short visit in person, counsel was made aware of the filings of the petitioner and the plan to file a traverse independently by the Petitioner, and his response was the prediction that the court would simply deny the filings, no admonishment against such action was given, nor indication that he would quit as a result;

8) On November 5, 2015, counsel scheduled a legal visit with the Petitioner at the California State Prison-Sacramento and simply never showed up, causing much confusion and expenditure of institutional resources as a result, a good example of the character of the representation rendered thus far;

9) No mention of a second request for extension of time in this case was ever communicated to the Petitioner, nor confirmation of any extension granted by the court, either in September or October 2015, thus petitioner was left, without choice, to assume, in October, that it was time to file the Traverse;

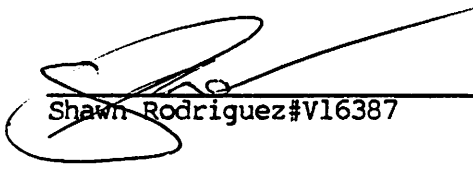
10) Petitioner has, on several occasions, requested discovery of material,

1 exculpatory evidence known to be in the possession of the Placer county Dis-  
2 trict Attorney's office and that of the Attorney General, and has been uniform-  
ly ignored and denied access to this evidence;


3 11) Petitioner is still without the second half of the reporter's Transcript  
4 of the trial in 2003, portions of which are at issue in the case at bar, rendering  
the provision of the transcript very much necessary;

5 12) As another demonstration of the deficiency of counsel, Petitioner would  
6 point out that Counsel, during the September 18 meeting mentioned that the  
7 extent of his research into the trial was to read the decision rendered in  
8 the Direct Appeal of the case. With the central issue of the Petition here  
being the trial testimony of the Victim, and its details, this approach seems  
ridiculous;

9 13) I, Shawn Rodriguez, do declare the foregoing to be true and correct to  
10 the very best of my knowledge and belief, and as to those matters stated on  
11 belief, I believe them to be true. I declare so under penalty of perjury, as defined  
12 by the Laws of the State of California and its analogous federal statutes.

13   
Shawn Rodriguez #V16387

14  
15 Executed this 21st day of November, 2015 at Represa, California, by

16   
17 Shawn Rodriguez #V16387  
18  
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28

# PROOF OF SERVICE

(C.C.P. §§1013(a); 2015.5; 28 U.S.C. §1746)

I, Shawn Rodriguez#vl6387, am over the age of eighteen (18) years, and I (am) (am not) a party to the within cause of action. My address is:

CSP-SAC-B5-217  
P.O. Box 290066  
Represas, Ca. 95671

On, November 22, 2015, I served the following documents:

Motion stipulating to Withdrawal of counsel, ect, w/ Exhibits

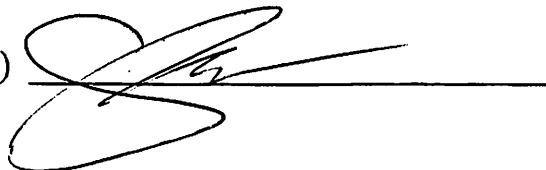
on the below named individual(s) by depositing true and correct copies thereof in the United State mail in Represa, California, with postage fully prepaid thereon, addressed as follows:

1. <u>Placer County Superior Court Clerk</u>	2. <u>Placer county District Attorney</u>
<u>10820 Justice center drive</u>	<u>10810 Justice center drive</u>
<u>Roseville, Ca. 95661</u>	<u>Roseville, Ca. 95678</u>
<u>Richard Ciummo &amp; Associates</u>	
<u>11760 atwood rd. suite 4</u>	
<u>Auburn, Ca. 95603</u>	

I have read the above statements and declare under the penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Executed this 23 day of November, 2015, at California State Prison - Sacramento, Represa, California.

(Signature)



# PLACER COUNTY SUPERIOR COURT

## ARRAIGNMENT / PLEA / JUDGMENT & SENTENCE

Date: 12/2/2015 Court met at: 1:30:00PM Department: 33 Judicial Officer : Mark S Curry  
 Rodriguez, Shawn - In Re the Petition of Nature of Proceedings: Motion Hearing Case Status: Case Number: W-HC-0001400

ated Case Information: PD Withdrawal

Additional Case Information: Attorney Withdrawal

Clerk: Renee Harmon / Reporter: Teresa Munz Kenworthy Custody Status: Petitioner

Defense Counsel: / Jones

DDA: Moore

Interpreter: ☐ Certified ☐ qualified Language:

☐ oath on file

### NEXT COURT APPEARANCE:

Time Estimate: \_\_\_\_\_

*Writ is taken under Submission*

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> Defendant present <input checked="" type="checkbox"/> not present.                                  | <input type="checkbox"/> Ordered booked/released                     | <input type="checkbox"/> Prob. summarily revoked <input type="checkbox"/> Prob. Reinstated                               |
| <input type="checkbox"/> Ann waived <input type="checkbox"/> Ann completed <input type="checkbox"/> Viol of prob             | <input type="checkbox"/> Advised pymt of booking/incarceration fees. | <input type="checkbox"/> BW ordered. Bail \$ _____ <input type="checkbox"/> NCIC   |
| Appt. <input type="checkbox"/> Public Defender <input type="checkbox"/> Conflict Firm  | <input type="checkbox"/> Advised financial resp.                     | <input type="checkbox"/> Arrest warrant ordered  |
| <input type="checkbox"/> Not guilty <input type="checkbox"/> Denied  | <input type="checkbox"/> Arbuckle Waiver                             | <input type="checkbox"/> BW Held <input type="checkbox"/> O/R revoked  |
| <input type="checkbox"/> Guilty <input type="checkbox"/> Nolo contendere <input type="checkbox"/> Admitted                   | <input type="checkbox"/> Appeal Waiver                               | <input type="checkbox"/> BW recalled <input type="checkbox"/> Warrant remains active                                     |
| <input type="checkbox"/> Viol of prob <input type="checkbox"/> Mandatory Sup Vid   | <input type="checkbox"/> Stipulate to Pro Tem                        | <input type="checkbox"/> Bail forfeited <input type="checkbox"/> Exonerate <input type="checkbox"/> Forfeiture set aside |
| <input type="checkbox"/> PRCS Viol. <input type="checkbox"/> Parole Violation  | <input type="checkbox"/> CLETS filed & served                        | <input type="checkbox"/> Bail is Reinstated <input type="checkbox"/> Reinstatement fee is waived                         |
| PLX time waived <input type="checkbox"/> 10 <input type="checkbox"/> 60 <input type="checkbox"/> not waived                  | <input type="checkbox"/> Amended CLETS filed & served                | <input type="checkbox"/> Defendant shall pay reinstatement fee   |
| Trial time waived <input type="checkbox"/> to next date <input type="checkbox"/> general <input type="checkbox"/> not waived | <input type="checkbox"/> Dropped from calendar                       | Reinstatement <input type="checkbox"/> is <input type="checkbox"/> is not based upon payment                             |
| <input type="checkbox"/> Time waived for sentencing <input type="checkbox"/> RPO waived                                      | <input type="checkbox"/> Civil assessment ordered                    | <input type="checkbox"/> Bail to be applied to fine  |
| <input type="checkbox"/> Dismissed _____   | <input type="checkbox"/> Civil assessment confirmed                  |  |
| <input type="checkbox"/> Amended _____   |  |  |
| <input type="checkbox"/> Boykin/Tahl rights waived. <input type="checkbox"/> Oral <input type="checkbox"/> Written           |  |  |
| <input type="checkbox"/> Preliminary examination waived <input type="checkbox"/> Complaint deemed Information                |  |  |
| <input type="checkbox"/> Proof <input type="checkbox"/> Shown <input type="checkbox"/> Not shown                             |  |  |
| <input type="checkbox"/> Attend & provide proof of _____ self help meetings per week until further order of the court        |  |  |

### Defendant ordered to report to the:

- ☐ Criminal Division ☐ Public Defender  
☐ Revenue Services ☐ Probation Department  
☐ Forthwith ☐ On \_\_\_\_\_  
☐ BAC \_\_\_\_\_ ☐ DUI with Drugs

☐ Transcript request date \_\_\_\_\_ Reporter \_\_\_\_\_ requested by ☐ Court ☐ Defense Counsel ☐ District Attorney

Evaluation: ☐ Full ☐ Consultation ☐ General ☐ EC730 ☐ EC1017 ☐ PC1368 ☐ PC1026 ☐ PC288.1 ☐ WI3051

Requested by: ☐ Court ☐ DA ☐ Defense, with Dr. \_\_\_\_\_

☐ Doubt declared, criminal proceedings suspended ☐ Referred to MH Director for placement report ☐ Placement report reviewed by court.

☐ Court finds Defendant ☐ IS NOT ordered suitable for MHC ☐ IS suitable & placed in \_\_\_\_\_

☐ On stipulation of parties, waive jury trial, proceed to court trial, submit on report dated \_\_\_\_\_

Court finds Defendant ☐ IS competent to stand trial, criminal proceedings reinstated ☐ IS NOT competent to stand trial

☐ Request for new jail turn in date ☐ granted ☐ denied. New jail turn in date \_\_\_\_\_ Previous jail turn in date \_\_\_\_\_

*P.D.'s motion to withdraw as Atty of record is granted*

☐ REMANDED to custody of Sheriff until next appearance. Bail ☐ as set or \$ \_\_\_\_\_ ☐ CDC ☐ CRC ☐ PC1170(h) ☐ PC1170(h)(5)

☐ Committed to \_\_\_\_\_ state hospital

☐ DISCHARGED (present case only) ☐ RELEASED OR ☐ OR Terms on back of form Supervised: ☐ OR Release ☐ Bail ☐ Pretrial EMP

☐ Committed to custody of Sheriff until sentence is satisfied: Jail \_\_\_\_\_ Credits \_\_\_\_\_ (actual+ \_\_\_\_\_ goodtime+ \_\_\_\_\_ pretrial)

PROMISE TO APPEAR- I will appear at all times and places as ordered by the Court and have read and understand all conditions set forth on reverse side of this form.

Defendant's signature \_\_\_\_\_ Address \_\_\_\_\_

Defendant Jail Revenue Services Probation DA Defense Counsel

shared/print shop forms/Criminal/Arraignment Plea Minutes Revised 6-2012

**FILED**  
Superior Court of California  
County of Placer

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

DEC 22 2015  
By: Jake Chatters  
Executive Officer & Clerk  
Deputy

DEPARTMENT 3

HON. MARK S. CURRY, JUDGE

IN RE PETITION FOR WRIT OF  
HABEAS CORPUS,

Case No.: WHC 1400

62- 34689

SHAWN RODRIGUEZ,  
#V16387

COURT ORDER SETTING  
EVIDENTIARY HEARING.

Petitioner.

**Procedural History**

The petitioner is serving a life sentence for his 2003 conviction for conspiracy to commit murder, kidnapping for extortion, Vehicle Code 10851, and Penal Code 530.5. The conviction was affirmed in the court of appeal on January 4, 2005. [*People v. Rodriguez* 3rd DCA #C045882 unpub.] On July 24, 2015, the petitioner caused to be filed in the Superior Court a petition for writ of habeas corpus. Upon review of the petition, the Court found a prima facie case for relief was stated regarding the issue of whether there was new evidence in the form of the recantation of a material witness. The Court issued an Order to Show Cause to the respondent and appointed the public defender to represent the petitioner for this writ. Subsequently, on August 27, 2015, the respondent (Placer County District Attorney) filed a "response."<sup>1</sup> The petitioner, through his counsel, filed a request to extend

<sup>1</sup> The correct response should have been a "Return." The return ... must allege facts establishing the legality of the petitioner's custody. In addition to stating facts, the return should also, "where appropriate, ... provide such

1 the time to file a Traverse, however, in the meantime, the petitioner filed  
2 his own Traverse on October 21, 2015, and a motion "stipulating to the  
3 withdrawal of the public defender." On December 2, 2015, the public  
4 defender withdrew their representation citing the petitioner's desire to  
5 represent himself.

### 7 **Evidentiary Hearing Ordered**

8 In their "response," the People do not dispute that the witness  
9 Hamman has recanted portions of his prior statements and trial testimony,  
10 however, they argue the recantation is not material and does not affect the  
11 petitioner's ultimate conviction. Further, they suggest the witness'  
12 recantation is not credible. However, the People did not attach any trial  
13 exhibits, transcripts, or even a copy of the actual letter written by the  
14 witness for the Court to review to make such a determination. In his  
15 Traverse, the petitioner's disputes the People's rendition of the trial evidence  
16 and its significance.

17 Accordingly, the Court will order this matter to be set for an  
18 evidentiary hearing to allow the Court to review the trial evidence, the  
19 alleged recantation, and to permit the parties to argue their respective  
20 positions regarding the significance and materiality of the witness' alleged  
21 recantation.

22 The Court directs the clerk to calendar the matter for **January 13,**  
23 **2016**, or soon thereafter, in Department 33, for a hearing setting  
24 conference. [The actual evidentiary hearing will be set thereafter once the  
25 petitioner is personally present] The People are directed to prepare for the

26  
27 documentary evidence, affidavits, or other materials as will enable the court to determine which issues are truly  
28 disputed." (*People v. Duvall* (1995) 9 Cal.4th 464.)



1 clerk and the court an order for production sufficient to produce the  
2 petitioner from the Department of Corrections and Rehabilitations for such  
3 hearing.

4  
5 It is so ordered.

6  
7  
8 Dated this 22<sup>rd</sup> Day of December, 2015.

9  
10  
11  
12 MARK S. CURRY  
13 JUDGE OF THE SUPERIOR COURT  
14 COUNTY OF PLACER

**SUPERIOUR COURT OF CALIFORNIA  
IN AND FOR THE COUNTY OF PLACER**

**CLERK'S CERTIFICATE OF MAILING (C.C.P. §1013a(4))**

---

**Case number: WHC-1400**

**Case name: In Re: Shawn Rodriguez**

I, the undersigned, certify that I am the clerk of the Superior Court of California, County of Placer, and I am not a party to this case.

I mailed copies of the document(s) indicated below:

**Court Order Setting Evidentiary Hearing**

True copies of the documents were mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as follows:

**Placer County District Attorney**

**Attn: Bill Marchi**

**10810 Justice Center Drive, Suite 240**

**Roseville, CA 95661**

**Office of the Attorney General**

**Writ Department**

**1300 I Street, Suite 1101**

**PO Box 944255**

**Sacramento, CA 94244-2560**

**Shawn Rodriguez #V16387**

**California State Prison-Sacramento**

**P.O. Box 290066**

**Represa, CA 95671**

**Jeff Macomber, Warden**

**P.O. Box 290002**

**Represa, CA 95671**

I am readily familiar with the court's business practices for collecting and processing correspondence for mailing; pursuant to those practices, the documents are delivered to

☒ the US Postal Service

☐ UPS

☐ FedEx

☐ Interoffice mail

☐ Other (via email)

On 12/22/15, Placer County, California

Dated: 12/22/15

Jake Chatters

Clerk of the Placer County Superior Court

By: R. Graham, Deputy Clerk

#1

**PLACEK COUNTY SUPERIOR COURT**  
**ARRAIGNMENT / PLEA / JUDGMENT & SENTENCE**

Date: 1/13/2016

Court met at: 1:30:00PM

Department:

Judicial Officer: Mark S Curry

Defendant: **Rodriguez, Shawn - In Re the Petition of**Case Number: **W-HC-0001400**Nature of Proceedings: **Habeas Corpus**

Case Status:

Related Case Information: **Set Evidentiary Hearing/62-34689**

Additional Case Information:

Clerk: **Sheryl Steves**Reporter: **No Court Reporter**Custody Status: **Petitioner**Defense Counsel: / YapundichDDA: WespInterpreter: ☐ Certified ☐ qualified Language:☐ oath on file**NEXT COURT APPEARANCE:**

Time Estimate

Cont 1.27.16 1:30 D33

- |  |   |  |
|--|---|--|
| <input checked="" type="checkbox"/> Defendant present <input type="checkbox"/> not present.                                  | <input type="checkbox"/> Ordered booked/released                      | <input type="checkbox"/> Prob. summarily revoked <input type="checkbox"/> Prob. Reinstated                               |
| <input type="checkbox"/> Arr. waived <input type="checkbox"/> Arr. completed <input type="checkbox"/> Viol of prob           | <input type="checkbox"/> Advised pymt of booking/ incarceration fees. | <input type="checkbox"/> BW ordered. Bail \$ <input type="checkbox"/> NCIC   |
| Appt. <input checked="" type="checkbox"/> Public Defender <input type="checkbox"/> Conflict Firm                             | <input type="checkbox"/> Advised financial resp.                      | <input type="checkbox"/> Arrest warrant ordered  |
| <input type="checkbox"/> Not guilty <input type="checkbox"/> Denied  | <input type="checkbox"/> Arbuckle Waiver                              | <input type="checkbox"/> BW Held <input type="checkbox"/> O/R revoked  |
| <input type="checkbox"/> Guilty <input type="checkbox"/> Nolo contendere <input type="checkbox"/> Admitted                   | <input type="checkbox"/> Appeal Waiver                                | <input type="checkbox"/> BW recalled <input type="checkbox"/> Warrant remains active                                     |
| <input type="checkbox"/> Viol of prob <input type="checkbox"/> Mandatory Sup Vid   | <input type="checkbox"/> Stipulate to Pro Tem                         | <input type="checkbox"/> Bail forfeited <input type="checkbox"/> Exonerate <input type="checkbox"/> Forfeiture set aside |
| <input type="checkbox"/> PRCS Viol <input type="checkbox"/> Parole Violation   | <input type="checkbox"/> CLETS filed & served                         | <input type="checkbox"/> Bail is Reinstated <input type="checkbox"/> Reinstatement fee is waived                         |
| PLX time waived <input type="checkbox"/> 10 <input type="checkbox"/> 60 <input type="checkbox"/> not waived                  | <input type="checkbox"/> Amended CLETS filed & served                 | <input type="checkbox"/> Defendant shall pay reinstatement fee   |
| Trial time waived <input type="checkbox"/> to next date <input type="checkbox"/> general <input type="checkbox"/> not waived | <input type="checkbox"/> Dropped from calendar                        | Reinstatement <input type="checkbox"/> is <input type="checkbox"/> is not based upon payment                             |
| <input type="checkbox"/> Time waived for sentencing <input type="checkbox"/> RPO waived                                      | <input type="checkbox"/> Civil assessment ordered                     | <input type="checkbox"/> Bail to be applied to fine  |
| <input type="checkbox"/> Dismissed   | <input type="checkbox"/> Civil assessment confirmed                   |  |
| <input type="checkbox"/> Amended   |   |  |
| <input type="checkbox"/> Boykin/Tahl rights waived. <input type="checkbox"/> Oral <input type="checkbox"/> Written           |   |  |
| <input type="checkbox"/> Preliminary examination waived <input type="checkbox"/> Complaint deemed Information                |   |  |
| <input type="checkbox"/> Proof <input type="checkbox"/> Shown <input type="checkbox"/> Not shown                             |   |  |
| <input type="checkbox"/> Attend & provide proof of _____ self help meetings per week until further order of the court        |   |  |

**Defendant ordered to report to the:**

- ☐ Criminal Division ☐ Public Defender  
☐ Revenue Services ☐ Probation Department  
☐ Forthwith ☐ On \_\_\_\_\_  
☐ BAC ☐ DUI with Drugs

☐ Transcript request date \_\_\_\_\_ Reporter \_\_\_\_\_ requested by ☐ Court ☐ Defense Counsel ☐ District Attorney

**Evaluation:** ☐ Full ☐ Consultation ☐ General ☐ EC730 ☐ EC1017 ☐ PC1368 ☐ PC1026 ☐ PC288.1 ☐ WI3051

Requested by: ☐ Court ☐ DA ☐ Defense, with Dr. \_\_\_\_\_

☐ Doubt declared, criminal proceedings suspended ☐ Referred to MHD Director for placement report ☐ Placement report reviewed by court.

☐ Court finds Defendant ☐ IS NOT ordered suitable for MHC ☐ IS suitable & placed in \_\_\_\_\_

☐ On stipulation of parties, waive jury trial, proceed to court trial, submit on report dated \_\_\_\_\_

Court finds Defendant ☐ IS competent to stand trial, criminal proceedings reinstated ☐ IS NOT competent to stand trial

☐ Request for new jail turn in date ☐ granted ☐ denied. New jail turn in date \_\_\_\_\_ Previous jail turn in date \_\_\_\_\_

PD to investigate

☒ REMANDED to custody of Sheriff until next appearance. Bail ☒ set or \$ \_\_\_\_\_ ☐ CDC ☐ CRC ☐ PC1170(h) ☐ PC1170(h)(5)

☐ Committed to \_\_\_\_\_ state hospital

☐ DISCHARGED (present case only) ☐ RELEASED OR ☐ OR Terms on back of form Supervised: ☐ OR Release ☐ Bail ☐ Pretrial EMP

☐ Committed to custody of Sheriff until sentence is satisfied: Jail \_\_\_\_\_ Credits \_\_\_\_\_ ( \_\_\_\_\_ actual+ \_\_\_\_\_ goodtime+ \_\_\_\_\_ pretrial)

PROMISE TO APPEAR- I will appear at all times and places as ordered by the Court and have read and understand all conditions set forth on reverse side of this form.

Defendant's signature \_\_\_\_\_ Address \_\_\_\_\_

Defendant Jail Revenue Services Probation DA Defense Counsel

shared/print shop forms/Criminal/Arraignment Plea Minutes Revised 6-2012

#1

# PLACER COUNTY SUPERIOR COURT

## ARRAIGNMENT / PLEA / JUDGMENT & SENTENCE

Date: 1/27/2016

Court met at: 1:30:00 PM

Department: 33

Judicial Officer: Mark S Curry

le vs. Rodriguez, Shawn  
 Nature of Proceedings: Further Proceedings

Case Number: 62-034689

Case Status: General Time Waiver 10/23/2003

Related Case Information: Set Evidentiary Hrg WHC/ WHC 1400

Additional Case Information: Other

Clerk: Renee Graham /

Reporter: Ruth Eileen Hunter

Custody Status: Sentenced Defendant

Defense Counsel: Placer County Public Defender JonesDDA: MooreInterpreter: ☐ Certified ☐ qualified Language:☐ oath on file

## NEXT COURT APPEARANCE:

Time Estimate

FP 02.10.16 130.D33

☒ Defendant present ☐ not present☐ Arrn waived ☐ Arrn completed ☐ Viol of probAppt. ☐ Public Defender ☐ Conflict Firm☐ Not guilty ☐ Denied☐ Guilty ☐ Nolo contendere ☐ Admitte☐ Viol of prob ☐ Mandatory Sup Vid☐ PRCS Viol ☐ Parole ViolationPLX time waived ☐ 10 ☐ 60 ☐ not waivedTrial time waived ☐ to next date ☐ general ☐ not waived☐ Time waived for sentencing ☐ RPO waive☐ Dismissed☐ Amended☐ Boykin/Tahl rights waived ☐ Oral ☐ Written☐ Preliminary examination waived ☐ Complaint deemed Information☐ Proof ☐ Shown ☐ Not shown☐ Attend & provide proof of self help meetings per week until further order of the court☐ Ordered booked/released☐ Advised pymt of booking/ incarceration fees.☐ Advised financial resp.☐ Arbuckle Waiver☐ Appeal Waiver☐ Stipulate to Pro Tem☐ CLETS filed & served☐ Amended CLETS filed & served☐ Dropped from calendar☐ Civil assessment ordered☐ Civil assessment confirmed☐ Prob summarily revoked ☐ Prob. Reinstated☐ BW ordered. Bail \$ ☐ NCIC☐ Arrest warrant ordered☐ BW Held ☐ O/R revoked☐ BW recalled ☐ Warrant remains active☐ Bail forfeited ☐ Exonerate ☐ Forfeiture set aside☐ Bail is Reinstated ☐ Reinstatement fee is waived☐ Defendant shall pay reinstatement feeReinstatement ☐ is ☐ is not based upon payment☐ Bail to be applied to fine

Defendant ordered to report to the:

☐ Criminal Division ☐ Public Defender☐ Revenue Services ☐ Probation Department☐ Forthwith ☐ On☐ BAC ☐ DUI with Drugs☐ Transcript request date ☐ Reporter ☐ requested by ☐ Court ☐ Defense Counsel ☐ District AttorneyEvaluation: ☐ Full ☐ Consultation ☐ General ☐ EC730 ☐ EC1017 ☐ PC1368 ☐ PC1026 ☐ PC288 ☐ WI3051Requested by: ☐ Court ☐ DA ☐ Defense, with Dr.☐ Doubt declared, criminal proceedings suspended ☐ Referred to MHD Director for placement report ☐ Placement report reviewed by court.☐ Court finds Defendant ☐ IS NOT ordered suitable for MHC ☐ IS suitable & placed in☐ On stipulation of parties, waive jury trial, proceed to court trial, submit on report datedCourt finds Defendant ☐ IS competent to stand trial, criminal proceedings reinstated ☐ IS NOT competent to stand trial☐ Request for new jail turn in date ☐ granted ☐ denied. New jail turn in date ☐ Previous jail turn in date ☐☒ REMANDED to custody of Sheriff until next appearance. Bail ☐ as set or \$ ☐ CDC ☐ CRC ☐ PC1170(h) ☐ PC1170(h)(5)☐ Committed to ☐ state hospital☐ DISCHARGED (present case only) ☐ RELEASED OR ☐ OR Terms on back of form Supervised: ☐ OR Release ☐ Bail ☐ Pretrial EMP☐ Committed to custody of Sheriff until sentence is satisfied: Jail ☐ Credits ☐ ( ☐ actual+ ☐ goodtime+ ☐ pretrial)

PROMISE TO APPEAR- I will appear at all times and places as ordered by the Court and have read and understand all conditions set forth on reverse side of this form.

Defendant's signature ☐ Address ☐

Defendant Jail Revenue Services Probation I A Defense Counsel

shared/print shop forms/Criminal/Arraignment Plea Minutes Revised 6-2012

#1

**PLACER COUNTY SUPERIOR COURT**  
**ARRAIGNMENT / PLEA / JUDGMENT & SENTENCE**

Date: 2/10/2016 Court met at: 1:30:00PM Department: 33

Judicial Officer: Mark S Curry

**People vs. Rodriguez, Shawn Michael**  
 Title of Proceedings: Further Proceedings

Case Number: 62-034689

Case Status: General Time Waiver 10/23/2003

Related Case Information: Set Evidentiary Hrg WHC/ WHC 1400

Additional Case Information: Other

Clerk: Renee Graham / Reporter: Pam Ruth Katros

Custody Status: Sentenced Defendant

Defense Counsel: Placer County Public Defender Jones

DDA: Moore

Interpreter: ☐ Certified ☐ qualified Language:

☐ oath on file

**NEXT COURT APPEARANCE:**

Time Estimate

Status Conference 02-24-16 130 D33

<input checked="" type="checkbox"/> Defendant present <input type="checkbox"/> not present.	<input type="checkbox"/> Ordered booked/released	<input type="checkbox"/> Prob. summarily revoked <input type="checkbox"/> Prob. Reinstated
<input type="checkbox"/> Arr. waived <input type="checkbox"/> Arr. completed <input type="checkbox"/> Viol of prob	<input type="checkbox"/> Advised pymt of booking/ incarceration fees.	<input type="checkbox"/> BW ordered. Bail \$ <input type="checkbox"/> NCIC
Appt. <input type="checkbox"/> Public Defender <input type="checkbox"/> Conflict Firm	<input type="checkbox"/> Advised financial resp.	<input type="checkbox"/> Arrest warrant ordered
<input type="checkbox"/> Not guilty <input type="checkbox"/> Denied	<input type="checkbox"/> Arbuckle Waiver	<input type="checkbox"/> BW held <input type="checkbox"/> O/R revoked
<input type="checkbox"/> Guilty <input type="checkbox"/> Nolo contendere <input type="checkbox"/> Admitted	<input type="checkbox"/> Appeal Waiver	<input type="checkbox"/> BW recalled <input type="checkbox"/> Warrant remains active
<input type="checkbox"/> Viol of prob <input type="checkbox"/> Mandatory Sup Viol	<input type="checkbox"/> Stipulate to Pro Tem	<input type="checkbox"/> Bail forfeited <input type="checkbox"/> Exonerate <input type="checkbox"/> Forfeiture set aside
<input type="checkbox"/> PRCS Viol <input type="checkbox"/> Parole Violation	<input type="checkbox"/> CLETS filed & served	<input type="checkbox"/> Bail Reinstated <input type="checkbox"/> Reinstatement fee is waived
PLX time waived <input type="checkbox"/> 10 <input type="checkbox"/> 60 <input type="checkbox"/> not waived	<input type="checkbox"/> Amended CLETS filed & served	<input type="checkbox"/> Defendant shall pay reinstatement fee
Trial time waived <input type="checkbox"/> to next date <input type="checkbox"/> general <input type="checkbox"/> not waived	<input type="checkbox"/> Dropped from calendar	Reinstatement <input type="checkbox"/> is <input type="checkbox"/> is not based upon payment
<input type="checkbox"/> Time waived for sentencing <input type="checkbox"/> RPO waived	<input type="checkbox"/> Civil assessment ordered	<input type="checkbox"/> Bail to be applied to fine
<input type="checkbox"/> Dismissed	<input type="checkbox"/> Civil assessment confirmed	
<input type="checkbox"/> Amended		
<input type="checkbox"/> Boykin/Tahl rights waived. <input type="checkbox"/> Oral <input type="checkbox"/> Written		<b>Defendant ordered to report to the:</b>
<input type="checkbox"/> Preliminary examination waived <input type="checkbox"/> Complaint deemed Information		<input type="checkbox"/> Criminal Division <input type="checkbox"/> Public Defender
<input type="checkbox"/> Proof <input type="checkbox"/> Shown <input type="checkbox"/> Not shown		<input type="checkbox"/> Revenue Services <input type="checkbox"/> Probation Department
<input type="checkbox"/> Attend & provide proof of _____ self help meetings per week until further order of the court		<input type="checkbox"/> Forthwith <input type="checkbox"/> On _____
		<input type="checkbox"/> BAC <input type="checkbox"/> DUI with Drugs

☐ Transcript request date \_\_\_\_\_ Reporter \_\_\_\_\_ requested by ☐ Court ☐ Defense Counsel ☐ District Attorney

**Evaluation:** ☐ Full ☐ Consultation ☐ General ☐ EC730 ☐ EC1017 ☐ PC1368 ☐ PC1026 ☐ PC288.1 ☐ WI3051

Requested by: ☐ Court ☐ DA ☐ Defense, with Dr. \_\_\_\_\_

☐ Doubt declared, criminal proceedings suspended ☐ Referred to MHD Director for placement report ☐ Placement report reviewed by court.

☐ Court finds Defendant ☐ IS NOT ordered suitable for MHC ☐ IS suitable & placed in \_\_\_\_\_

☐ On stipulation of parties, waive jury trial, proceed to court trial, submit on report dated \_\_\_\_\_

Court finds Defendant ☐ IS competent to stand trial, criminal proceedings reinstated ☐ IS NOT competent to stand trial

☐ Request for new jail turn in date ☐ granted ☐ denied. New jail turn in date \_\_\_\_\_ Previous jail turn in date \_\_\_\_\_

977 Waiver Signed & filed in open Court  
 Def. may be transported back to CDC

☒ REMANDED to custody of Sheriff until next appearance. Bail ☐ as set or \$ \_\_\_\_\_ ☐ CDC ☐ CRC ☐ PC170(h) ☐ PC170(h)(5)

☐ Committed to \_\_\_\_\_ state hospital **Return to CDC**

☐ DISCHARGED (present case only) ☐ RELEASED OR ☐ OR Terms on back of form Supervised: ☐ OR Release ☐ Bail ☐ Pretrial EMP

☐ Committed to custody of Sheriff until sentence is satisfied: Jail \_\_\_\_\_ Credits \_\_\_\_\_ ( \_\_\_\_\_ actual + \_\_\_\_\_ goodtime + \_\_\_\_\_ pretrial)

PROMISE TO APPEAR- I will appear at all times and places as ordered by the Court and have read and understand all conditions set forth on reverse side of this form.

Defendant's signature \_\_\_\_\_ Address \_\_\_\_\_

Defendant Jail Revenue Services Probation DA Defense Counsel

shared/print shop forms/Criminal/Arraignment Plea Minutes Revised 6-2012



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

People of the State of California	Case No. <u>WHC 1460</u>
Plaintiff,	WAIVER OF DEFENDANT'S PRESENCE (PC 977)
vs.	<b>FILED</b> Superior Court of California County of Placer
<u>SHAWN RODRIGUEZ</u>	FEB 10 2016
Defendant.	Jake Chatters Executive Officer & Clerk By: <u>[Signature]</u> Deputy

The undersigned defendant, having been advised of the right to be present at all stages of the proceeding, including but not limited to presentation of and arguments on questions of fact and law, and to be confronted by and cross-examine all witnesses, hereby waives the right to be present at the hearing of any motion or other proceeding in this cause. The undersigned defendant hereby requests the court to proceed during every absence of the defendant that the court may permit pursuant to this waiver, and hereby agrees that his or her interest is represented at all times by the presence of his or her attorney the same as if the defendant were personally present in court, and further agrees that notice to his or her attorney that his or her presence in court on a particular day at a particular time is required is notice to the defendant of the requirement of his or her appearance at that time and place.

Executed in open court on Feb. 10, 2016 at Auburn, California  
Roseville

Date: <u>2/10/2016</u>	Defendant: <u>[Signature]</u>
Attorney for Defendant: <u>Markin Jones</u>	Address: <u>[Signature]</u>
	Phone Number: <u>530-889-0280</u>

1 James Shin, State Bar Number 169274  
2 Chief Defense Attorney  
3 PLACER COUNTY PUBLIC DEFENDER  
4 11760 Atwood Road, Suite 4  
5 Auburn, California 95603  
6 Telephone: (530) 889-0280  
7 Facsimile: (530) 889-0276  
8 Martin A. Jones, State Bar No. 250598  
9 Assistant Chief Defense Attorney

10 Attorneys for Defendant

**FILED**  
Superior Court of California  
County of Placer

JUL 05 2016

Jake Chatters  
Executive Officer & Clerk  
By: T. Bernal, Deputy

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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF PLACER

In re:

SHAWN RODRIGUEZ

Petitioner,

On Habeas Corpus.

Case No.: WHC 1400

BRIEF REGARDING SCOPE OF  
EVIDENTIARY HEARING

Date: July 15, 2016

Time: 9:00 a.m.

Dept: 3

MEMORANDUM OF POINTS AND AUTHORITIES

I. PROCEDURAL HISTORY

On August 3, 2015, the Court issued an Order to Show Cause. On August 26, 2015, the District Attorney of Placer County filed a Response to Show Cause. (Hereinafter referred to as the "Return", for clarity.) Petitioner filed a Traverse on October 21, 2015.

On December 22, 2015, the Court ordered an evidentiary hearing in this matter. The Court stated that the evidentiary hearing was "to allow the Court to review the trial evidence, the alleged recantation, and to permit the parties to argue their respective positions regarding the significance and materiality of the witness' alleged recantation."

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## II. DISCUSSION

### A. *No Material Issues of Fact Exist That Justify An Evidentiary Hearing*

“In habeas corpus procedure the return to the order to show cause must allege facts tending to establish the legality of the petitioner's detention; it is thus analogous to the complaint in civil actions. [Citations.] The traverse, which may incorporate the allegations of the petition, must deny or controvert each material fact or matter alleged in the return or such fact or matter will be deemed admitted; it is therefore analogous to the answer in civil actions. [Citation.] In this relatively uncomplicated manner both factual and legal issues are joined for review. [Citation.]” (*In re Lewallen* (1979) 23 Cal.3d 274, 277-278.)

Review on habeas corpus, unlike an appeal, is not limited to the trial record. However, when the People offer nothing more in support of their claim that petitioner's confinement is lawful than a conclusory statement of ultimate fact in their return, the People indicate a willingness to rely on the record. (*Id.* at p. 278.)

“Because the issuance of an order to show cause reflects the issuing court's determination that the petition states facts which, if true, entitle the petitioner to relief [citations], the respondent should recite the facts upon which the denial of petitioner's allegations is based, and, where appropriate, should provide such documentary evidence, affidavits, or other materials as will enable the



1 court to determine which issues are truly disputed.” (*Id.*  
2 at p. 278, fn. 2.)  
3

4 In the Petition, which was incorporated by reference in the Traverse,  
5 Petitioner Rodriguez alleged that the victim in the crime had perjured himself  
6 during trial. The People, in their Return, did not dispute this fact, and argued as if  
7 this fact were true. The central fact in this writ proceeding – that the victim offered  
8 perjured testimony – is undisputed. The People did argue that the recantation itself  
9 was unreliable due to the delay in reporting the perjury and that “both the victim  
10 and the defendant were both housed in Folsom prison at the same time.” (Return,  
11 p. 8.) However, the People offered no “documentary evidence, affidavits, or other  
12 materials” to support the allegation that the victim’s recantation was somehow  
13 tainted or unreliable – as the Court noted in its Order Setting Evidentiary Hearing,  
14 page 2. As cited above, while habeas review may reach matters outside the court  
15 record, when a party fails to offer anything other than conclusory facts, that party  
16 indicates a willingness to rely on the record. (See *In re Lewallen*, *supra*, 23 Cal.3d  
17 at p. 278.)  
18

19 The court in *People v. Duvall* (1995) 9 Cal.4th 464, developed an exception  
20 to this arguably strict rule of construction.  
21

22 “When one party (respondent for the return, petitioner for  
23 the traverse) can allege: (i) he or she has acted with due  
24 diligence; (ii) crucial information is not readily available;  
25 and (iii) that there is good reason to dispute certain  
26 alleged facts or question the credibility of certain  
27 declarants, courts evaluating the return and traverse  
28 should endeavor to determine whether there are facts

1 legitimately in dispute that may require holding an  
2 evidentiary hearing.” (Id., at p. 485.)  
3

4 However, *Duvall* requires that “the return *should set forth with specificity*:  
5 (i) why information is not readily available; (ii) the steps that were taken to try to  
6 obtain it; and (iii) why a party believes in good faith that certain alleged facts are  
7 untrue.” (*Ibid*, italics added.) It its Return, the people fail to make any of these  
8 assertions regarding their conclusory statement about the victim and Mr. Rodriguez  
9 being housed in the same prison. As such, any such allegations must be disregard  
10 by this Court.  
11

12 The habeas procedure discussed in *Lewallen, supra*, is akin to the civil  
13 summary judgment procedure. The Court must determine if, between the Return  
14 and the Traverse, there exist any disputed issues of material fact. In the absence of  
15 any dispute, the court may rule on those facts, as a matter of law. “There being no  
16 disputed factual questions as to matters outside the trial record, the merits of  
17 petitioner's claim can be reached without ordering an evidentiary hearing.” (*In re*  
18 *Lewallen, supra*, 23 Cal.3d at p. 278.) Further, “[w]hen the return effectively  
19 acknowledges or “admits” allegations in the petition and traverse which, if true,  
20 justify the relief sought, such relief may be granted without a hearing on the other  
21 factual issues joined by the pleadings.’ [Citation.]” (*People v. Duvall, supra*, 9  
22 Cal.4th at p. 477.)  
23

#### 24 B. Standard of Review

25 “A writ of habeas corpus may be prosecuted for . . . [f]alse evidence that is  
26 substantially material or probative on the issue of guilt or punishment was  
27 introduced against a person at a hearing or trial relating to his or her incarceration.”  
28 (Pen. Code, § 1473, subd. (b)(1).)

1  
2 “False evidence is ‘substantially material or probative’ if  
3 it is ‘of such significance that it may have affected the  
4 outcome,’ in the sense that ‘*with reasonable probability*  
5 *it could have* affected the outcome ....’ [Citation, italics  
6 in the original.] In other words, false evidence passes the  
7 indicated threshold if there is a ‘reasonable probability’  
8 that, had it not been introduced, the result would have  
9 been different. [Citation.] The requisite ‘reasonable  
10 probability,’ we believe, is such as undermines the  
11 reviewing court’s confidence in the outcome. [Citation.]  
12 It is dependent on the totality of the relevant  
13 circumstances. [Citation.] It is also, we believe,  
14 determined objectively. [Citation.]” (*In re Sassounian*  
15 (1995) 9 Cal.4th 535.)  
16

17 The Petitioner has no obligation to show that the prosecutor or his agents  
18 were aware of the impropriety. (*In re Hall* (1981) 30 Cal.3d 408, 424.)  
19

20 “In issuing an order to show cause in such a proceeding, a court makes ‘an  
21 implicit preliminary determination’ as to claims within the order that the petitioner  
22 has carried his burden of allegation, that is, that he ‘has made a sufficient prima  
23 facie statement of specific facts which, if established, entitle him to ... relief ....’  
24 [Citation.]” (*In re Sassounian, supra*, 9 Cal.4th at p. 547.)  
25

26 ///

27 ///

28 ///

1 C. *False Evidence Presented By Victim Hamman Affected Outcome of*  
2 *Trial With Reasonable Probability*

3 Petitioners (sic) Traverse sets forth numerous arguments why the false  
4 evidence of Hamman is substantially material or probative to the outcome of trial.  
5 (See Petitioners Traverse, pp. 2-3.) Victim Hamman was the only percipient  
6 witness, apart from the co-defendant Rugg, to the acts central to the crimes Mr.  
7 Rodriguez's convictions. Victim Hamman's credibility was therefore central to  
8 both the Prosecution and the Defense

9 During trial, both Hamman and Rodriguez testified. Rugg did not testify,  
10 and settled her case separately. Ultimately, the defense relied upon a theory that  
11 Rodriguez had no specific intent to either kidnap or kill Mr. Hamman. Mr.  
12 Rodriguez testified that he at no time harbored any intent to kidnap or kill Mr.  
13 Hamman. However, there were conflicts between the testimony of Mr. Rodriguez  
14 and Mr. Hamman specifically regarding whether Mr. Rodriguez kicked Mr.  
15 Hamman, and the height of the water. A jury presented with evidence that Mr.  
16 Hamman presented false evidence of the height of the water would reasonably tilt  
17 the balance in credibility away from Mr. Hamman towards Mr. Rodriguez, and  
18 would change the outcome of the trial.

19  
20 III. CONCLUSION

21 In light of the above discussion, counsel for Petitioner Rodriguez hereby  
22 requests that the Court proceed without holding an evidentiary hearing. Further,  
23 Petitioner Rodriguez requests the Court sustain its preliminary determination, and  
24 find that the Petitioner has established specific facts which entitle him to relief, and  
25 therefore grant his Writ of Habeas Corpus. Petitioner hereby prays that the court  
26 vacate the convictions against Mr. Rodriguez and order a New Trial.

27 ///

28 ///

1 Dated this 5th day of July, 2016



Martin A. Jones

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**PROOF OF PERSONAL SERVICE**

The undersigned deposes and says:

I am an employee of the Placer County Public Defender's Office; that I am over the age of 18 years and not a party to this cause, that my business address is 11760 Atwood Rd., Suite 4, Auburn, CA 95603.

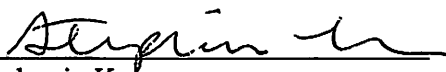
That on July 5, 2016, I personally served a true copy of **BRIEF REGARDING SCOPE OF EVIDENTIARY HEARING**, below named:

Placer County District Attorney  
10810 Justice Center Drive Suite #240  
Roseville, CA 95678

Placer County Superior Court  
10820 Justice Center Drive  
Roseville, CA 95678

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 7/5/16 at Auburn, California.

  
Stephanie Kasper

**PROOF OF PERSONAL SERVICE**

The undersigned deposes and says:

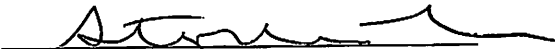
I am an employee of the Placer County Public Defender's Office; that I am over the age of 18 years and not a party to this cause, that my business address is 11760 Atwood Rd., Suite 4, Auburn, CA 95603.

That on July 5, 2016, I personally mailed a true copy of **BRIEF REGARDING SCOPE OF EVIDENTIARY HEARING**, below named:

Office of Attorney General  
P.O. Box 94425  
Sacramento, CA 94244

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 7/5/16 at Auburn, California.

  
Stephanie Kasper

1 R. SCOTT OWENS,  
2 Placer County District Attorney  
3 State Bar No: 146406  
4 10810 Justice Center Drive, Suite 240  
5 Roseville, CA 95678-6231  
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## SUPERIOR COURT OF PLACER COUNTY

STATE OF CALIFORNIA

--oOo--

THE PEOPLE OF THE STATE OF  
CALIFORNIA,

Plaintiff,

vs.

SHAWN MICHAEL RODRIGUEZ,

Defendant.

No. WHC-0001400

62-034689

RESPONDENT'S SUPPLIMENTAL  
RETURN AND ARGUMENT TO  
PETITIONER'S PETITION FOR WRIT  
OF HABEAS CORPUS (Penal Code  
Section 1480; CA Rules of  
Court, Rule 4.551(d))

STATE OF THE CASE

20 The Court filed a "Court Order Setting Evidentiary  
21 Hearing" on December 22, 2015. Subsequently, on April 16,  
22 2016, the case was conferenced with the Hon. Judge Curry.  
23 It was agreed by all parties that a hearing on physical  
24 evidence was not needed in this case because the People had  
25 stipulated to certain facts regarding the recantation of  
26  
27  
28



1 the victim Nicolas Hamman in their "Response to Order to  
2 Show Cause" filed on August 27 2015.

3 Specifically, the People conceded that Nicolaus Hamman  
4 recanted his trial testimony on the issue of "water height"  
5 while he was locked in his cell. Although he maintains  
6 that all other aspects of his testimony were truthful,  
7 Hamman concedes that the water only reached his thighs  
8 (three feet high) as opposed to coming up to his neck.

9  
10 ARGUMENT

11 A. Habeas Corpus relief should be denied because  
12 substantial independent evidence exists to justify  
13 the convictions in this case.

14 False evidence presented at trial does not result in a  
15 right to a new trial unless the new evidence provided by  
16 recantation would render a different result on a retrial  
17 reasonably probable. (*People v. Minnick* (1989) 214 Cal.  
18 App. 3d 1478). The false evidence must be substantially  
19 material or probative on the issue of guilt. False  
20 ~~evidence is substantially material or probative if there is~~

21 a reasonable probability that, had it not been introduced,  
22 the result would have been different. The court must  
23 consider all the evidence on the particular issue under  
24 consideration and determine if it undermines the confidence  
25 of the outcome. (*In re Larry H. Roberts* (2003) 29 Cal. 4<sup>th</sup>  
26 726; *In re Sassounian* (1995) 9 Cal.4th 535).

1 i. The petitioner's own statements and  
2 testimony clearly shows that he is  
3 guilty of Conspiracy to Commit Premeditated  
4 Murder and Kidnapping for Ransom.

5 The following facts are taken from the petitioner's  
6 own testimony:

7 The petitioner admits to being with the victim and  
8 Anna Rugg the night before the incident. (R.T. 561). Rugg  
9 and the petitioner have a conversation about wanting to  
10 "rob" the victim (R.T. 564). The petitioner sees the  
11 victim and gets into the victim's car. (R.T. 568). The  
12 petitioner then aids co-D Rugg by climbing into the  
13 abandoned Juvenile Hall through a window to open the door  
14 to the facility. (R.T. 569). While the petitioner claims  
15 Rugg locked the victim in the cell, the petitioner admits  
16 that he discusses leaving the victim in the cell and then  
17 takes the victim's car. (R.T. 572-571).

18 The petitioner had an "unspoken agreement" as to what  
19 to do with the victim while he was locked in a cell against

20 his will with water running on him. (R.T. 573). The  
21 petitioner conceded that "robbing" was the plan. (Id.) The  
22 petitioner assisted in blocking the water from exiting the  
23 cell using towels and moving a shelf in front of the door.  
24 (R.T. 577) These actions had an effect on the water level.  
25 (R.T. 578). The petitioner was successful in getting the  
26

1 victim's ATM card using the water level. The petitioner  
2 and Rugg used the ATM card to obtain gas money (R.T. 579).

3 While the victim was locked in the cell, the  
4 petitioner discussed ways to kill the victim with Rugg.  
5 (R.T. 582). The petitioner also discussed ways to dispose  
6 of the victim's body. (R.T. 581) During these  
7 conversations, the petitioner relayed the method of carbon  
8 monoxide poisoning to Rugg. (R.T. 584). Subsequently to  
9 giving this information to Rugg, the petitioner left their  
10 location at Rick's home for the purpose of implementing the  
11 carbon monoxide poison scheme. (R.T. 585). The petitioner  
12 admits to agreeing to go along with the plan to kill the  
13 victim with carbon monoxide. (R.T. 586). The petitioner  
14 then goes and gets duct tape at Albertsons, ties multiple  
15 hoses together, takes the hoses to the juvenile hall and  
16 sticks it into a vent that vented into the victim's cell.  
17 (R.T. 587-588). At this point, the petitioner has a

18 ~~cigarette as he watches Rugg duct tape the other end of the~~  
19  
20 hose to the exhaust pipe on the vehicle. (R.T. 588). The  
21 petitioner then allows the car to pump deadly gas into the  
22 victim's cell for 15-20 minutes. (R.T. 589)

23  
24 It is clear from the petitioner's own testimony that  
25 he conspired to commit premeditated murder with Rugg. The  
26 petitioner then implemented the plan by obtaining the  
27  
28

1 necessary items and pumping a deadly gas into the enclosed  
2 cell of the victim.

3 It is also clear from the petitioner's own testimony  
4 that the defendant used the false imprisonment and a rising  
5 water level to extort an ATM card from the victim.

6 The petitioner's own testimony along with the fact  
7 that Auburn Police Department found the victim in the cell,  
8 (providing corpus), is sufficient to sustain a conviction  
9 for Conspiracy to Commit Murder and Kidnapping for  
10 Extortion. The victim's testimony about what occurred is  
11 totally unnecessary for the conviction to stand.  
12

13 Therefore, it is clear that a recantation about the water  
14 level is not substantially or probative. This change of  
15 fact would have no change on the result of the trial.  
16

17 ii. HAMMAN'S CREDIBILITY WAS ALREADY DAMAGED  
18 DURING THE TRIAL AND CONSIDERED BY THE JURY.

19 Victim Hamman gave a false statement to officers

20 regarding the location of his car keys during the  
21 kidnapping. (RT 479-480). The fact that he lied to law  
22 enforcement was considered by this jury in deliberations.  
23 Additionally, victim Hamman admitted to "hearing voices"  
24 and being delusional during the time period of this case.  
25 (R.T. 548). Clearly Hamman had issues with his credibility  
26  
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28

1 at trial. These issues were presented to the jury to  
2 consider in this case. The bottom line is that Hamman's  
3 credibility in this case doesn't matter. Law Enforcement  
4 officials found Hamman locked in a cell with water falling  
5 on him. Physical evidence of the extortion and attempt to  
6 kill him was found on scene. The petitioner admits to all  
7 the physical acts to which he was accused. The only issue  
8 disputed by the petitioner at the time of trial was his  
9 intent (state of mind) during the incident. Importantly,  
10 Hamman could not and did not testify to the petitioner's  
11 state of mind. This fact was inferred by the physical  
12 evidence and testimony of the other witnesses having  
13 nothing to do with the purported height of water in the  
14 cell+. Thus, there clearly is no reasonable possibility  
15 that the recantation about the level of the water would  
16 have any impact on the verdict in this case..  
17  
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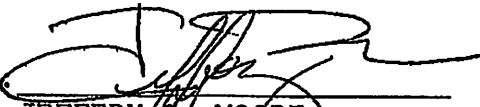
#### 20 CONCLUSION

21 For the foregoing reasons, Respondent requests  
22 that the Writ of Habeas Corpus be denied. The People  
23 are willing to provide the audio version of the  
24 victim's recantation and the letters written to the  
25 District Attorney by the victim upon request.  
26  
27  
28

1  
2 Dated: July 7, 2016.  
3

4 Respectfully submitted,

5 R. SCOTT OWENS,  
6 DISTRICT ATTORNEY

7 BY   
8 JEFFERY C. MOORE,  
9 DEPUTY DISTRICT ATTORNEY  
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PROOF OF SERVICE

STATE OF CALIFORNIA     )  
                                  ) ss.  
COUNTY OF PLACER        )

I, the undersigned, declare:

1. That I am a citizen of the United States.
2. That I am over 18 years of age.
3. That I am a resident of Placer County, California.
4. That I am not a party to the within action.
5. That my business address is Placer County District Attorney's Office, 10810 Justice Center Drive, Suite 240, Roseville, CA 95678-6231
6. That I am readily familiar with the business practices of the County of Placer for collection and processing of correspondence for mailing with the United States Postal Service on the same date of placement for collection.
7. That on this date I served a copy of the within

SHAWN MICHAEL RODRIGUEZ

☒ by placing a true copy thereof and placing it for collection following ordinary business practices and addressed as follows:

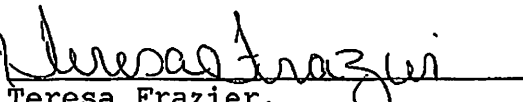
☐ transmitting said document(s) by facsimile to the number(s) set forth below:

☐ personally served said document(s) to the person(s) at the address(es) set forth below:

PLACER COUNTY PUBLIC DEFENDER  
(Served at front counter)

Executed under penalty of perjury this 7th day of July, 2016, at Roseville, Placer County, California.

(CCP 1013A, 2015.5)

  
Teresa Frazier,  
LEGAL SECRETARY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF PLACER

#1 Date: 7/15/16 Time: 9:00AM

Department 3 Special Set Judge: Mark S Curry

People vs. Rodriguez; Shawn  
 Name of Proceedings: Further Proceedings

Case Number: 62-034689A

Custody Status: Sentenced Defendant

Motion Detail:

Time Waiver: General Waived through:

Additional Information: Status Conference WHC 1400 PC\$977

Clerk: Renee Graham /

Reporter: Ruth Eileen Hunter

Defense Counsel: Placer County Public Defender,

Atty: Jones D.D.A. Broady for Moore  
 Interpreter: [ ] certified [ ] qualified Language: [ ] Oath on File

NEXT COURT APPEARANCE:

Time Estimate:

Writ Hearing 07-27-16 1:30pm D33  
 [ ] vacate open events

[ ] Defendant present [ ] not present [ ] PC977 [ ] BW ordered. Bail \$ [ ] NCIC  
 [ ] Arrn waived [ ] Arrn completed [ ] Viol of Prob [ ] Referred to DA for Arrest Warrant [ ] O/R revoked  
 Appt. [ ] Public Defender [ ] Conflict Firm [ ] BW held [ ] BW recalled [ ] Warrant remains active  
 [ ] Defendant was not transported to PCJ from CDC [ ] Probation [ ] summarily revoked [ ] reinstated [ ] terminated  
 [ ] Not guilty [ ] Denied [ ] Admitted [ ] Bail forfeited [ ] Exonerated [ ] Forfeiture set aside  
 [ ] Advised financial responsibility [ ] Bail is reinstated [ ] Reinstatement fee is waived  
 [ ] Case dismissed [ ] Petition dismissed [ ] Defendant shall pay reinstatement fee \$  
 [ ] Amended [ ] Civil assessment [ ] ordered [ ] confirmed  
 [ ] General time waiver [ ] Time not waived [ ] Criminal Protective Order filed & served  
 [ ] Time waived to [ ] next hearing [ ] to [ ] Dropped from calendar  
 Preliminary hearing time waiver [ ] 10 [ ] 60

Trial time waiver [ ] general [ ] 60 days [ ] to next date [ ] not waived  
 Attend and provide proof of self help meetings per week until further order of the Court

Proof [ ] shown [ ] not shown

[ ] Motion for new jail turn in date [ ] granted [ ] denied. New turn in date Previous date

[ ] Transcript request date Reporter requested by [ ] Court [ ] Defense [ ] DA

PREP CENTER: Defendant is ordered to report to probation for an assessment within 72 hours to determine qualification into the PREP center. Defendant is ordered to fully comply with case plans as established by probation if deemed qualified after assessment.

[ ] Defendant transitioned from Prop 36, the plea is withdrawn, case is dismissed and fees/fines are waived and set aside

[ ] Defendant ordered to undergo treatment pursuant to PC1210.1 in county.

[ ] Defendant is found to be indigent and qualifies for court appointed counsel

[ ] DEJ [ ] PC1000 completed, plea withdrawn and case is dismissed [ ] See Formal Order

The Court was informed by the jail that the defendant was not transported from CDC on 07-14-16.  
 [ ] Ordered booked and released  
 Defendant ordered to report to the: [ ] Criminal Division [ ] Revenue Services [ ] Public Defender  
 [ ] Probation Department [ ] Forthwith [ ] on

[X] Remanded to custody of Sheriff until next appearance. Bail [ ] as set or \$ [ ] Bail terms if released  
 [ ] CDCR [ ] PC1170(h) [ ] PC1170(h)(5) Charge: [ ] Felony [ ] Misd  
 [ ] Committed to serve: jail credits (actual good time pretrial)

[ ] Committed to state hospital

[ ] Discharged [ ] O/R [ ] with terms [ ] Supervised Pretrial Release: [ ] O/R [ ] EMP [ ] Bail

Defendant Jail Revenue Services Probation DA Defense Counsel

05-2016





**SUPERIOR COURT OF CALIFORNIA, COUNTY OF PLACER**

#19 Date: 7/20/16 Time: 1:30PM Department 33 Judge: Mark S Curry  
 People vs. Rodriguez and Rugg Case Number: 62-034689A  
 Nature of Proceedings: Review Custody Status: Placer County Jail  
 Motion Detail: Time Waiver: General Waived through :

Additional Information: (Set at 3:00) Writ of Habeas Corpus WHC-1400

Clerk: Renee Graham / Heaton

Reporter: Ruth Eileen Hunter

Defense Counsel: Placer County Public Defender,

Atty: M. Jones D.D.A. J. Moore

Interpreter: [ ] certified [ ] qualified Language: [ ] Oath on File

**NEXT COURT APPEARANCE:**

Ruling on writ

**Time Estimate:**

10.26.16 3:00 D-33  
[ ] vacate open events

- ☒ Defendant present ☐ not present ☐ PC977
- ☐ Arrn waived ☐ Arrn completed ☐ Viol of Prob
- Appt. ☐ Public Defender ☐ Conflict Firm
- ☐ Not guilty ☐ Denied ☐ Admitted
- ☐ Advised financial responsibility
- ☐ Case dismissed ☐ Petition dismissed
- ☐ Amended
- ☐ General time waiver ☐ Time not waived
- ☐ Time waived to ☐ next hearing ☐ to
- Preliminary hearing time waiver ☐ 10 ☐ 60
- Trial time waiver ☐ general ☐ 60 days ☐ to next date ☐ not waived
- Attend and provide proof of ☐ self help meetings per week until further order of the Court
- Proof ☐ shown ☐ not shown
- ☐ Motion for new jail turn in date ☐ granted ☐ denied. New turn in date ☐ Previous date ☐
- ☐ Transcript request date ☐ Reporter ☐ requested by ☐ Court ☐ Defense ☐ DA
- ☒ PREP CENTER: Defendant is ordered to report to probation for an assessment within 72 hours to determine qualification into PREP center. Defendant is ordered to fully comply with case plans as established by probation if deemed qualified after assessment. Discussion + Argument Heard / Matter taken under
- ☐ Defendant transitioned from Prop 36, the plea is withdrawn, case is dismissed and fees/fines are waived and set aside.
- ☐ Defendant ordered to undergo treatment pursuant to PC1210.1 in Submission when all TX's
- ☐ Defendant is found to be indigent and qualifies for court appointed counsel have been Rec'd.
- ☐ DEJ ☐ PC1000 completed, plea withdrawn and case is dismissed ☐ See Formal Order

Exh 1 Letter by Def Marked + admitted  
Exh 2 Letter by Def Marked + admitted

☐ Ordered booked and released

Defendant ordered to report to the: ☐ Criminal Division ☐ Revenue Services ☐ Public Defender

☐ Probation Department ☐ Forthwith ☐ on

\* Def to remain at PCJ until next Hrg.

- ☒ Remanded to custody of Sheriff until next appearance. Bail ☐ as set or \$ NO Bail ☐ Bail terms if released
- ☐ CDCR ☐ PC1170(h) ☐ PC1170(h)(5) Charge: ☐ Felony ☐ Misd
- ☐ Committed to serve : jail ☐ credits ☐ ( ☐ actual ☐ good time ☐ pretrial)

☐ Committed to ☐ state hospital

☐ Discharged ☐ O/R ☐ with terms ☐ Supervised Pretrial Release: ☐ O/R ☐ EMP ☐ Bail

Defendant Jail Revenue Services Probation DA Defense Counsel 05-2016



1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 IN AND FOR THE COUNTY OF PLACER  
3

**FILED**  
Superior Court of California  
County of Placer

SEP 9 2016

4 DEPARTMENT 3

HON. MARK S. CURRY, JUDGE

Jake Chatters  
Executive Officer & Clerk  
By: Deputy

6 IN RE PETITION FOR WRIT OF HABEAS

Case No.: WHC 1400

7 CORPUS,

62- 34689

8 SHAWN RODRIGUEZ,

COURT ORDER DENYING PETITION FOR  
WRIT OF HABEAS CORPUS.

10 #V16387

11 Petitioner.

12  
13 *Procedural History*

14 In 2003, Petitioner Shawn Michael Rodriguez was convicted by a jury of kidnapping for  
15 extortion, conspiracy to commit murder, vehicle theft, and two counts of using another's name to  
16 obtain credit or property. He was sentenced to 25 years to life in prison. The conviction was  
17 affirmed in the court of appeal on January 4, 2005. (*People v. Rodriguez* 3rd DCA #C045882  
18 unpub.)

19 On July 24, 2015, the Petitioner filed in the Superior Court a petition for writ of habeas  
20 corpus. The Court found a prima facie case for relief was established concerning the issue of  
21 whether there was new evidence in the form of the recantation of a material witness. The Court  
22 issued an Order to Show Cause and appointed Petitioner the Public Defender. On August 27,  
23 2015, the respondent (Placer County District Attorney) filed a "response."<sup>1</sup> The Petitioner,  
24 through his counsel, filed a request to extend the time to file a Traverse, however, in the  
25 meantime, the Petitioner filed his own Traverse on October 21, 2015, and a motion "stipulating  
26 to the withdrawal of the public defender." On December 2, 2015, the Public Defender withdrew

27 <sup>1</sup> The correct response should have been a "Return." (*People v. Duvall* (1995) 9 Cal.4th 464.)  
28

1 their representation citing the Petitioner's desire to represent himself. Subsequently, however, the  
2 Public Defender was re-appointed. On December 22, 2015, the Court ordered an evidentiary  
3 hearing.

4 On July 20, 2016, in Department 33, an evidentiary hearing was held. The Petitioner was  
5 personally present, represented by Public Defender Martin Jones. The People were represented  
6 by DDA Jeff Moore. It was stipulated by the parties that no actual testimony was required. The  
7 People conceded that witness Hamman had presented false testimony at the trial regarding the  
8 depth of the water in the cell, as described in a statement/letter he had written to the District  
9 Attorney. A copy of the letter was admitted as evidence without objection. (Exb. #1, # 2;  
10 [Attached] ) It was further stipulated that in the determination of whether the "new evidence"  
11 warrants a new trial, the Court would consider and review the 2003 trial evidence. Thereafter, the  
12 Court took the matter under submission.

### 13 *Contested Issue*

14 The Petitioner contends that because a material witness lied during his testimony at the  
15 2003 trial, a new trial is required. The prosecution, on the other hand, contends that other  
16 evidence of the Petitioner's guilt at trial was so strong that a different result is not probable upon  
17 retrial.

### 18 *Summary of 2003 Trial Evidence*

19 It was uncontested at trial that prosecution witness, Nicholas Hamman (hereinafter  
20 referred to as "Hamman"), was locked against his will in a holding cell of an abandoned juvenile  
21 detention facility in Auburn, California. He remained locked in the cell for nearly 40 hours until  
22 found by law enforcement. While locked in the cell Hamman relinquished to others his ATM  
23 card, PIN number, car keys, and cash. In addition, Hamman intentionally activated a fire  
24 sprinkler on the ceiling of the cell thereby causing water to spray into the cell.

25 Hamman was the prosecution's chief witness who provided his account of what occurred.  
26 (Summarized below.) He testified how the Petitioner and Anna Rugg<sup>2</sup> (hereinafter referred to as  
27

28 

---

<sup>2</sup> Ms. Rugg was charged and tried separately.

1 "Anna") locked him in the cell against his will, threatened him, and demanded his property. He  
2 testified that ultimately he surrendered his property to the Petitioner and Anna. The prosecution  
3 introduced as evidence a statement made by the Petitioner to the police following his arrest  
4 wherein he admitted being present when Hamman was locked in the cell.

5 The Petitioner testified in his own defense. (Summarized below.) He admitted  
6 committing many of the acts alleged by the prosecution to form the basis for the charged crimes,  
7 but denied that he ever formed an intent to kill Hamman. He attributed the plan to rob and to kill  
8 Hamman to his accomplice "Anna" and explained that he went along with her plans only to  
9 "appease her."

10 The Prosecution's theory of criminal liability was that the Petitioner and Anna locked  
11 Hamman in the cell with the intent to rob him. Subsequently, they conspired to kill Hamman by  
12 planning to introduce carbon monoxide into the cell. The defense contended the Petitioner  
13 lacked the requisite criminal intent for the charged crimes. The contested issue at the trial,  
14 therefore, was the Petitioner's mental state and intent.

#### 15 *Summary of Hamman's Trial Testimony*

16 At about 9:30 a.m. Hamman was driving his car when he was flagged down by the  
17 Petitioner, Anna, and Erin Hughes, who requested his help moving out of a motel room.  
18 Hamman agreed. Hamman drove to the hotel where a discussion occurred about going to the old  
19 juvenile hall. Anna was the one who suggested they go to the juvenile hall. Hamman drove  
20 Anna and Erin to the abandoned facility and the Petitioner rode his bicycle. Once at the facility,  
21 Hamman assisted bringing their bags from his vehicle into the building. When they were finished  
22 unpacking, Hamman asked whether there was anything else he could do. Anna told him that  
23 Erin was hurt inside and needed help. Anna appeared hysterical so he ran inside looking for  
24 Erin. Anna pointed to a room and told him that Erin was inside. Anna was leading the way.  
25 When Hamman ran into the cell, he saw the room was empty. Anna attempted to slide the cell  
26 door shut, but Hamman jammed his leg in the door jamb to prevent it from closing. The  
27 Petitioner then kicked him in the thigh, so he pulled his leg back and the cell door closed. He  
28 was trapped in the cell. Anna said she would open the door when he calmed down. The  
Petitioner began stuffing toilet paper in a vent and said he was going to burn the building down.

1 The Petitioner also threatened to shoot him. The Petitioner, Erin, and Anna then departed and  
2 Hamman remained locked in the cell. While they were gone, Hamman noticed a sprinkler on the  
3 ceiling, so he used a lighter to set the sprinkler off thinking the fire department would be  
4 notified. Water from the sprinkler began to spray into the cell.

5 Later that afternoon, Petitioner and Anna returned. The Petitioner wanted Hamman to  
6 give them his ATM card and PIN number, but the Hamman said no. The Petitioner said he  
7 (Hamman) would drown if he didn't. Hamman agreed to provide his PIN number, but would  
8 not give them the ATM card. He observed the Petitioner and Anna talking. The Petitioner said  
9 he would turn off the water, but he did not. The Petitioner got a crate and put it in front of the  
10 cell door with some cans stuffed with rags. The rags were put under the cell door. Hamman told  
11 them (Anna and Petitioner) that the water level was rising. The Petitioner told Hamman he would  
12 drown unless he gave them his ATM car, keys, and cash. The water level in the cell rose to  
13 approximately his shoulders and neck. He was afraid for his life. [Hamman RT 47; 52]  
14 (Hamman also told the police during an interview that the water level had reached his shoulders.)  
15 Hamman agreed to surrender his ATM card and the towels were removed and he slid his ATM  
16 card, cash, and keys under the cell door, as directed. Anna picked them up. The Petitioner was  
17 standing by the door. Anna said the Petitioner would attempt to break the window and the  
18 Petitioner hit the window with a fixture one time, but the window did not break. The Petitioner  
19 told Hamman that he had friends in YA who would make sure he disappeared if he ever testified  
20 or said anything. The Petitioner and Anna departed and Hamman remained locked in the cell.  
21 He never saw them again. Hamman was locked in the cell for a total of about 40 hours. He was  
22 not aware there was any plan to kill him with carbon monoxide and he never saw anyone put a  
23 hose into the cell. Hamman admitted he was a convicted felon and a registered sex offender

#### 24 *Summary of Petitioner's Trial Testimony*

25 The Petitioner went to the juvenile hall facility with Anna, Erin, and Hamman. Anna  
26 had a plan to rob Hamman to get his ATM card. She was talking about stabbing and killing  
27 Hamman, but Petitioner did not take it seriously. Without the Petitioner's knowledge, Anna  
28 locked Hamman in the cell. She was smiling and holding the keys. Hamman was banging on  
the window and telling Anna to get him out. Thereafter, Petitioner, Erin, and Anna left the

1 building and took Hamman's car. The drove to the Foresthill Bridge and then to Sacramento.  
2 They returned to the juvenile hall building about 7-8 hours later. There was water running in the  
3 cell where Hamman was confined. Anna had a plan to get Hamman's ATM PIN number. She  
4 told Hamman that if he gave her the PIN number she would break the glass and let him out. The  
5 Petitioner asked Hammon for the PIN number to his ATM card. Eventually, Hamman did give  
6 them his PIN number and the Petitioner tried unsuccessfully to break the window. However,  
7 Anna did not want to break the window and said to wait until Hamman dies. The Petitioner  
8 could hear a loud water sound coming from the cell. Anna then demanded that Hamman  
9 surrender his ATM card. The Petitioner climbed up on a counter in order to yell to Hamman  
10 what Anna was saying. Hamman would not give up his ATM card. The Petitioner and Anna  
11 attempted to block the cell door with some towels and he moved a shelf in front of the door.  
12 They blocked the door in an effort to scare Hamman. The Petitioner assumed the towels would  
13 raise the water level in the cell, but he could not see the water level because it was dark. The  
14 Petitioner was unable to see the water level in the cell, but heard Hamman say the water level  
15 was about three feet. After about 20 minutes, Hamman slid his ATM card and some cash under  
16 the door. The Petitioner pulled the plug allowing the water to drain. Afterwards, the Petitioner  
17 tried to turn off the water, but he was unsuccessful.

18 It was not his intention to kill or injure Hamman. Anna was talking about various  
19 locations to bury the Hamman's body. Sporadically, over a two-hour period of time Anna talked  
20 about shooting, stabbing, and beating the Hamman with a barbed wire pole. The Petitioner was  
21 "kind of non-committal" about Anna's suggestions. The Petitioner figured that once they had  
22 Hamman's ATM card they could leave the state or call the cops from Reno.

23 The Petitioner and Anna departed leaving Hamman still locked in the cell. They went to  
24 the Petitioner's step-brother's house where it was suggested by his stepbrother that Hamman  
25 could be killed with carbon monoxide. The Petitioner relayed that suggestion to Anna. Anna  
26 wanted to do it. She wanted to "gas him." The Petitioner, however, did not want to go with her  
27 and requested to be dropped off at a friend's house, however, the friend was not home. The  
28 Petitioner went along with Anna's plan because it would "shut her mouth" and the plan would  
not work. Anna obtained some hose while the Petitioner went into Albertsons to get some duct  
tape. The Petitioner tied the hoses together and took them into the juvenile hall. He put the end

1 of the hose through a vent of the cell where Hamman was located. Anna hooked the other end  
2 of the hose to the car exhaust and started the engine. The Petitioner waited in the car and  
3 smoked a cigarette . After about 15 minutes, he told Anna to turn off the engine. He told Anna  
4 that Hamman should be dead by now, but in fact, he did not think 15 minutes would have been  
5 enough time to kill Hamman. He did not intend to kill the Hamman. He wanted to get out of  
6 there because he had court the next morning He went along with her plan to make her think he  
7 was on board, but he did not want to kill Hamman. When they discovered the Hamman was still  
8 alive, he pulled out the hoses and put them in the trunk. Anna wanted to kill Hamman with  
9 barbed wire poles, but the Petitioner would not agree to it. He told Anna that if she wanted him  
10 dead, she was going to have to do it. They decided to leave Hamman and drove away. It was  
11 on the drive home that they were stopped by the police. He never intended to kill Hamman and,  
in fact, he prevented it. He was fearful of Anna.

12 During cross-examination, the Petitioner said he had lied to police when he told them  
13 during an interview that he had hit Hamman in the cell. He never hit Hamman. Prior to going  
14 with Hamman to the juvenile hall, it was Anna who wanted to rob Hamman, and he  
15 (Petitioner) went along with her, but he did not want to "beat him down." He put duct tape  
16 around the cell door to "to appease Anna." He asked his step-brother how to kill people. He  
17 asked Hamman for the PIN number to his ATM card while Hamman was locked in the cell. He  
18 also pushed a bookcase against the cell door to "scare him." He assumed it was a possibility  
19 Hamman could drown. After they had obtained Hamman's ATM card and PIN number, Anna  
20 used it at an ATM and the Petitioner used cash from the card to obtain gas for Hamman's car.

#### 21 *Hamman's Recantation*

22 On February 15, 2015, Hamman prepared a handwritten letter addressed to the District  
23 Attorney. (Exb. 1 & 2) In the letter, the Hamman wrote the following:  
24

25 "Let me come right to the point. I perjured myself in a trial against two different  
26 defendants, back in 2003; But I am a Christian now! In your county. It was in two  
27 separate trials involving me as a Hamman + Anna Rugg#X02326 DOB 10-2-1982  
28 sentenced to 15 year to life on 12-3-2003 currently housed at C.I.W.in CA. + the other  
one was Shawn M. Rogriguez #V16387 D.O.B. 12-8-1993 sentenced to 25 to life on  
12-8-2003. Currently housed at P.B.S.P"

1 "I lied about how deep the water in the cell got it didn't get up to my kneck it  
2 only got up to my lower part of my thighs + then, I was able to move the rags they had  
3 stuffed under the door+ it went down, that water that is.

4 "Sworn to be true under penalty of perjury.

5 Signed Nicolas W. Hamman #J98016"

### 6 *Standard*

7 A defendant is entitled to a new trial if the new evidence renders a different result  
8 probable if a new trial is held. A motion for a new trial should be granted when the newly  
9 discovered evidence contradicts the strongest evidence introduced against the defendant.  
10 However, a new trial on the grounds of newly discovered evidence is not granted where the only  
11 value of the newly discovered testimony is as "impeaching evidence" or to contradict a witness  
12 of the opposing party. (*People v. Hall* (2010) 187 Cal.App.4th 282, 298.) When a defendant  
13 makes a motion for a new trial based on newly discovered evidence, he has met his burden of  
14 establishing that a different result is probable on retrial of the case if he has established that it is  
15 probable that at least one juror would have voted to find him not guilty had the new evidence  
16 been presented. ." (*People v. Soojian* (2010) 190 Cal.App.4th 491, 519-521 (*Soojian* ).)

### 17 *Analysis*

18 For the sake of this analysis, it is assumed that Hamman did in fact lie during his  
19 testimony concerning the depth of the water in the cell. The People concede this fact. He  
20 testified the water level had risen to his shoulder/neck area, however, according to his letter it  
21 had only risen to his thighs. There is no evidence before the Court that Hamman lied in respect to  
22 any other portion of his testimony.

23 The Prosecution's evidence at trial was strong. Through his testimony and statements to  
24 police, the Petitioner essentially admitted his role in the robbery of Hamman. For example, he  
25 admitted that he was present when Anna locked Hamman in the cell and was aware of her plan to  
26 rob him. The Petitioner knew there was water running in the cell and participated in the sealing  
27 the cell door with towels to cause the water level to rise in order to "scare" Hamman. He  
28 communicated to Hamman Anna's demands and threats. The Petitioner also admitted he took  
possession of the victim's vehicle and ATM card and he was with Anna when it was used to  
obtain cash, goods, or gas for the vehicle.



1 In light of the above, the Court finds that the Petitioner's testimony standing alone was  
2 strong evidence of the Petitioner's commission of robbery and kidnapping for the purpose of  
3 extortion, despite his claim he went along with Anna's plan only to "appease" her or to "shut her  
4 mouth." In this regard, therefore, the actual depth of the water in the cell, whether it was to  
5 Hamman's thighs or his neck, was essentially irrelevant to the issue of whether the Petitioner  
6 meant to rob or extort Hamman.

7 The thrust of the Petitioner's testimony and his main defense at trial was that he never  
8 intended to kill Hamman, a defense to conspiracy to commit murder. The People's theory of the  
9 conspiracy to kill centered on the Petitioner and Anna's attempt to introduce carbon monoxide  
10 into the cell via a hose attached to the exhaust pipe of the car. [See DA Markey Arg. RT 709-  
11 710] The overt acts alleged to form the basis of conspiracy were the purchasing of duct tape,  
12 obtaining garden hoses, duct taping the cell door, and attaching hose to the vent of the cell.  
13 During his testimony, the Petitioner admitted he and/or Anna performed all these acts,

14 In that regard, during his testimony, the Petitioner admitted that he knew Anna wanted to  
15 kill Hamman; that he asked his step-brother how to kill someone; that he procured the duct tape  
16 and sealed the cell door; and that he placed the end of the hose into Hamman's cell. He also  
17 admitted that he did these acts *knowing* that Anna was attaching the other end of the hose to the  
18 car exhaust, intending to kill Hamman. He also admitted that he knew Anna had started the  
19 engine of the car and that he waited with Anna in the car as exhaust was presumably being  
20 pumped into Hamman's cell. However, the Petitioner claimed he did these acts only to make  
21 Anna believe he was "on board" and that he never actually formed an intent to kill Hamman.  
22 Similar to the earlier robbery, the Petitioner's testimony and admissions were strong evidence of  
23 his participation in a conspiracy with Anna to kill Hamman, despite his claim of lack of intent.  
24 Thus, the Court finds that there is no reasonable probability of a different result at a new trial if  
25 the true level of the water in the cell were known, i.e. to Hamman's thighs rather than to his neck  
26 or shoulders.

27 However, Hamman also testified that Petitioner threatened to shoot him and burn the  
28 building down. Hamman testified that Petitioner kicked him in the thigh as Anna was attempting  
to shut the cell door. During testimony, Petitioner denied making these statements and denied  
kicking Hamman. However, the Petitioner conceded that he did tell investigators that he had hit

1 the Hamman, but explained that was lie to the detectives. Thus, the credibility of Hamman  
2 regarding the defendant's threats and act of kicking him was at issue. It could be argued that a  
3 jury, knowing that Hamman was lying about the depth of the water, might look less favorably  
4 upon his testimony, as a whole.

5 If the chief evidence of the Petitioner's guilt at trial was largely dependent upon  
6 Hamman's credibility, the Petitioner's argument for a new trial could have greater merit.  
7 However, in this case, given the strength of the Prosecution's case based mainly upon the  
8 admissions made by the Petitioner, both in his statements to police and during trial testimony, the  
9 credibility of Hamman is much less important. As discussed, it was uncontested that Hamman  
10 was locked in a cell against his will for nearly 40 hours. The Petitioner admitted most of the acts  
11 the Prosecution pointed to as evidence of robbery, extortion, and a conspiracy to commit murder,  
12 i.e., placing rags under the cell door to raise the water level to scare Hamman; taking Hamman's  
13 property; purchasing duct tape; putting the hose in the vent and sealing the cell with duct tape.  
14 As such, the Prosecution had a very strong case. Even without Hamman's testimony concerning  
15 the Petitioner's threats or kicking him in the thigh, the Court finds there was overwhelming  
16 evidence the Petitioner committed robbery and actively participated with Anna in a plan to kill  
17 Hamman. Therefore, the Court finds that Hamman's lie about the depth of the water does not  
18 contradict sufficiently the Prosecution's strongest evidence to warrant a new trial. The Court  
19 finds that Petitioner's admissions were so damning that there is no reasonable probability that a  
20 different result would occur upon retrial. There is no reasonable probability that even one juror  
21 would render a contrary verdict upon a retrial. (*Soojian*, supra.) Accordingly, the petition for  
22 writ if habeas corpus is denied.

23 The Sheriff is directed to return the Petitioner forthwith to the CDCR.

24  
25  
26  
27 MARK S. CURRY  
28 JUDGE OF THE SUPERIOR COURT  
COUNTY OF PLACER

September 9, 2016

~~W~~ = With

Wrote: 2-15-2015

32-034687

Mailed: 2-18-2015

Mr. D.A. Scott

62-81545

Let me come right to the point.

I PERJURED MYSELF IN A TRIAL AGAINST  
TWO DIFFERENT DEFENDANTS, BACK IN  
2003; BUT I'm a Christian NOW! IN YOUR COUNTY.

IT WAS IN TWO SEPARATE TRIALS INVOLVING ME  
AS A VICTIM + ANNA RUGG #X02316 D.O.B.  
10-2-1982 SENTENCED TO 15 TO LIFE ON 12-3-

2003 CURRENTLY HOUSED AT C.I.W. IN CA. +  
THE OTHER ONE WAS SHAWN M. RODRIGUEZ #V16387  
D.O.B. 8-30-1983 SENTENCED TO 25 TO LIFE ON  
12-8-2003 CURRENTLY HOUSED AT P.B.S.P.

I LIED ABOUT HOW DEEP THE WATER IN THE CELL  
GOT IT DIDN'T GET UP TO MY KNECK IT ONLY GOT  
UP TO MY LOWER PART OF MY THIGHS + THEN  
I WAS ABLE TO MOVE THE RAGS THEY HAD STUFFED  
UNDER THE DOOR + IT WENT DOWN, THE WATER THAT  
IS. RECEIVED

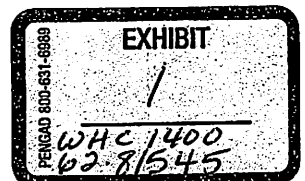
SWORN TO BE TRUE UNDER PENALTY OF PERJURY.

SIGNATURE: MR. NICHOLAS W. HAMMAN #J98016

PRINT NAME: MR. NICHOLAS W. HAMMAN #J98016

A-4 - 209

HOUSING AND CELL



W=With

Wrote 2-15-2015

Mailed 2-18-2015

Mt. D. A. 32-034689

62-81545

Phenochio

Let me come right to the point.

I PerJured myself in A TRIal against Two  
DIFFERANT DEFENDANTS, Back IN 2003; But I'm  
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It was in Two Separate TRIALS involving me as A  
Victim + ANNA Rugg #X02316 D.O.B. 10-2-1982  
Sentenced To 15 to Life on 12-3-2003 currently  
Housed at C.I. W. EA. The other one was Shawn  
M. Rodriguez #V16387 D.O.B. 8-30-1983 senten-  
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I Lied about how deep the water in the cell got it did not  
get up to my knee, it only got up to my lower  
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they had stuffed under the door + it went down,  
the water that is.

Sworn To Be TRUE under Penalty of PerJury.

SIGNATURE: Mr. Nicholas W. Hannaman #J98016

PRINT NAME: MR. NICHOLAS W. HANAMAN #J98016

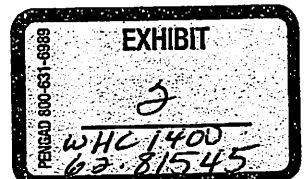
RECEIVED

RECEIVED

FEB 23 2015

A-4 - 209  
HOUSING and cell

Superior Court of California  
County of Placer



**SUPERIOUR COURT OF CALIFORNIA  
IN AND FOR THE COUNTY OF PLACER**

**CLERK'S CERTIFICATE OF MAILING (C.C.P. §1013a(4))**

---

**Case number: WHC-1400**

**Case name: In Re: Shawn Rodriguez**

I, the undersigned, certify that I am the clerk of the Superior Court of California, County of Placer, and I am not a party to this case.

I mailed copies of the document(s) indicated below:

**Court Order Denying Petition for Writ of Habeas Corpus**

True copies of the documents were mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as follows:

**Placer County District Attorney**

**Attn: Jeff Moore**

**10810 Justice Center Drive, Suite 240  
Roseville, CA 95661**

**Placer County Public Defender**

**Attn: Martin Jones**

**11760 Atwood Drive, Suite 4  
Auburn, CA 95603**

**Office of the Attorney General**

**Writ Department**

**1300 I Street, Suite 1101**

**PO Box 944255**

**Sacramento, CA 94244-2560**

**Shawn Rodriguez #V16387**

**California State Prison-Sacramento**

**P.O. Box 290066**

**Represa, CA 95671**

**California State Prison-Sacramento**

**Attn: Jeff Macomber, Warden**

**P.O. Box 290002**

**Represa, CA 95671**

I am readily familiar with the court's business practices for collecting and processing correspondence for mailing; pursuant to those practices, the documents are delivered to

☒ the US Postal Service

☐ UPS

☐ FedEx

☐ Interoffice mail

☐ Other (via email)

On 09/09/16 Placer County, California

Dated: 09/09/16

Jake Chatters

Clerk of the Placer County Superior Court

By:  R. Graham

, Deputy Clerk

W=With

Wrote: 2-15-2015

32-034687

Mailed: 2-18-2015

Mr. D.A. Scott

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10-2-1982 sentenced TO 15 TO LIFE ON 12-3-  
2003 CURRENTLY housed at C.I.W. IN CA. +  
Thee other ONE was Shawn M. Rodriguez #V16387  
D.O.B. 8-30-1983 sentenced TO 25 TO LIFE ON  
12-8-2003 CURRENTLY housed at P.B.S.P.

I Lied about how deep the water in the cell  
got it didn't get up to my neck it only got  
up to my lower part of my thighs + then  
I was able to move the Rags they had stuffed  
under the door it went down the water that  
SWORN TO BE TRUE under Penalty of PERJURY.

Signature: Mr. Nicholas W. Hamman #J98016

PRINT Name: MR. NICHOLAS W. HAMMAN #J98016

A-4 - 209

HOUSING and cell



W=With

Wrote 2-15-2015

Mailed 2-18-2015

Mr. D.A. 3A-034689

62-81545

Phenochio

Let me come right to the point.

I PerJured myself in A TRIal against Two  
DIFFERANT DEFENDANTS, Back IN 2003; But I'm  
a christian Now IN your county.

It was in Two Separate TRIALS involving me as A  
Victim + ANNA Rugg #X02316 D.O.B. 10-2-1982  
Sentenced To 15 to Life on 12-3-2003 CURRENTLY  
Housed at C.I.W. EA. The other one was Shawn  
M. Rodriguez #V16387 D.O.B. 8-30-1983 Senten-  
ced To 25 to Life on 12-8-2003 CURRENTLY housed  
at P.B.S.P.

I Lied about how deep the water in the cell got it didn't  
get up to my kNEck, it only got up to my Lower  
Part of my Thighs + then, I was Able to move the Rags  
they had Stuffed under the door + it went down,  
the water that is.

SWORN TO BE TRUE UNDER PENALTY OF PERJURY.

SIGNATURE: Mr. Nicholas W. Hannaman #J98016

PRINT NAME: MR. Nicholas W. Hannaman #J98016

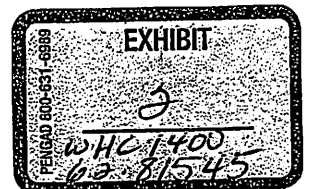
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FEB 23 2015

A-4 - 209  
Housing and Cell

Superior Court of California  
County of Placer



**SUPERIOR COURT, PLACER COUNTY  
IN AND FOR THE STATE OF CALIFORNIA  
10820 Justice Center Drive  
Roseville CA 95678  
PO Box 619072  
Roseville CA 95661**

Case Name: People vs. Shawn Rodriguez

Case Number: 62-034689 & WHC-1400

Add'l Info:

☒ In Custody:      ☐ JDF      ☒ PCJ      ☒ Other to be transported back to CDC

Request to be placed on calendar for:

Request for continuance of: Drop From Calendar

Hearing is set for: 10/26/16 at 130 pm. department 33

Hearing is continued from: Drop from Calendar at \_\_\_\_\_ am/pm. department \_\_\_\_\_

Requested by:

Date:

☐ In person      ☐ By phone      ☒ Written request      ☐ Other: \_\_\_\_\_

☐ District Attorney's office is directed to notify victim of hearing.

Parties Served:

☒ Defendant / Minor      ☒ by mail

☒ Public Defender

☒ District Attorney /

☒ Court Liaison

By Deputy Clerk: 

Date: 9.9.16