

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

SUPREME COURT
FILED

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Deputy

WILLIAM JOSEPH
RICHARDS,

Petitioner,

v.

ROBERT A. FOX,

Warden, California Medical
Facility, and

CALIFORNIA DEPARTMENT
OF CORRECTIONS AND
REHABILITATION,

Respondents.

) Case No.
)
) (Prior Supreme Court
) Case No. S189275)
)
) Habeas:
) Court of Appeal No. E049135
)
) San Bernardino Superior Court
) Habeas Case No. SWHSS700444
)
) Direct Appeal:
) Court of Appeal No. E024365
)
) San Bernardino Superior Court
) Trial Case No. FVI 00826
)
)
)

HONORABLE MARGARET POWERS, JUDGE

PETITION FOR WRIT OF HABEAS CORPUS

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HONORABLE MARGARET POWERS, JUDGE

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner William Richards, by his attorneys, Jan Stiglitz, Justin Brooks, and Alexander Simpson, of the California Innocence Project, respectfully petitions this Court for a writ of habeas corpus and by this verified petition alleges the following:

STATEMENT OF JURISDICTION

Article VI, section 10 of the California Constitution provides that “[t]he Supreme Court, courts of appeal, superior courts, and their judges have original jurisdiction in habeas corpus proceedings.” (Cal. Const., art. VI, § 10.) This “original jurisdiction” means that a petition for writ of habeas corpus may be filed in the first instant in the superior court, Court of Appeal, or the California Supreme Court. (*In re Kler* (2010) 188 Cal.App.4th 1399, 1403; see also *People v. Romero* (1994) 8 Cal.4th 728, 737.) Filing in this Court is also appropriate since this Court most recently ruled on the merits of Richards’s prior petition in 2012. As such, this Court is the most familiar with the facts of the case and with how its prior holding is affected by the change in the law.

This Court has jurisdiction to hear the above-captioned matter.

INTRODUCTION

This case comes again before this Court after the passage of Senate Bill 1058, passed on August 13, 2014, and signed into law on September 26, 2014; the bill expands the definition of “false evidence” as defined in Penal Code section 1473 to include repudiations of expert testimony, as happened at Richards’s evidentiary hearing. (Sen. No. 1058, 113th Cong., 2d Sess., § 1 (2014).) Because of the change in the law, William Richards is now entitled to relief from his conviction.

On August 10, 1993, Richards arrived home to find his wife, Pamela

Richards, lying dead in their yard. Detectives immediately focused on Petitioner and built a case against him. William Richards was ultimately convicted of the murder; Richards has consistently maintained his innocence of the crime.

The evidence presented in this petition establishes William Richards's conviction was based on false scientific evidence, and there is a reasonable probability that, had the evidence not been introduced, the result of the proceeding would have been different.

As noted *post*, Richards was tried by two juries in two separate trials that resulted in hung juries. In Petitioner's final trial, after three days of deliberation, a jury convicted William Richards. The difference between the first two trials and the trial that resulted in a conviction was the introduction of testimony by Dr. Norman Sperber, a forensic odontologist. In stark contrast to the entirely circumstantial and weak evidence otherwise proffered by the prosecution in its case in chief, Dr. Sperber provided the most direct evidence of Richards's guilt. His testimony was that Richards's bite was "consistent with" an injury mark found on Pamela Richards's hand, and that the arrangement of Richards's teeth—which he testified matched the injury pattern on Pamela's hand—occurs in "only 1 or 2 percent of the general population." (*In re Richards* (2012) 55 Cal.4th 948, 955, 964.) After the introduction of this evidence, the jury convicted Richards.

Dr. Sperber's testimony was false as now defined in the Penal Code. Dr.

Sperber has now repudiated his trial testimony and determined Richards's bite is not a match to the injury found on Pamela's hand. Dr. Sperber also repudiated his testimony regarding the percentage of individuals with Richards's bite, explaining his original testimony and opinion was not based in science, not supported by statistics, and entirely misleading. Dr. Sperber testified in Richards's evidentiary hearing that Richards could not have made the mark found on Pamela's hand. Dr. Sperber's repudiation of his opinion was deemed credible and reliable by Judge Brian McCarville.

The testimony given by Dr. Sperber was substantially material and probative of Richards's guilt. It has now been repudiated by Dr. Sperber himself, the original expert who testified at Richards's trial. Had this testimony not been introduced, there is a reasonable probability the result would have been different. As such, under Penal Code section 1473, as amended, Richards is entitled to a reversal of his conviction.

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I.

STATEMENT OF THE CASE

1. The San Bernardino District Attorney's Office charged William Richards with one count of murder in violation of California Penal Code section 187.¹ (1 Tr. C.T. 5.)²
2. Richards's first jury trial commenced July 6, 1994. (1 Tr. C.T. 228.) On August 29, 1994, the court declared a mistrial after the jury could not reach a verdict. (2 Tr. C.T. 417-20, 3 Tr. C.T. 871.) Richards's second jury trial commenced October 24, 1994. (2 Tr. C.T. 431-32.) On October 27, 1994, the court recused itself during juror voir dire and declared a mistrial. (2 Tr. C.T. 433, 3 Tr. C.T. 871.) Richards's third jury trial commenced on November 15, 1994. (2 Tr. C.T. 438.) On January 9, 1995, the court again declared a mistrial after the jury could not reach a verdict. (2 Tr. C.T. 474, 3 Tr. C.T. 871.) On May 29, 1997, Richards's third full jury trial commenced. (2 Tr. C.T. 532.) At the conclusion of this trial, Richards was convicted of first degree murder

¹Unless otherwise noted, all subsequent sectional references will be to the Penal Code.

²Citations to the Clerk's and Reporter's Transcripts on Appeal from the grant of habeas relief (*In re William Richards*, San Bernardino Superior Court No. SWHSS700444; Court of Appeal No. E049135) will be designated as "C.T." and "R.T." respectively. References to the Augmented Clerk's Transcript on Appeal from the grant of habeas relief will be designated as "A. C.T." References to the record on appeal from the criminal conviction (*People v. William Richards*, San Bernardino Superior Court No. FVI 00826; Court of Appeal No. E024365) will be designated as "Tr. R.T" and "Tr. C.T."

and sentenced to twenty-five years to life. (3 Tr. C.T. 923.)

3. On August 17, 2000, the Court of Appeal, Fourth Appellate District, Division Two, affirmed the judgment. (Court of Appeal Case No. E024365.)
4. On December 5, 2007, Richards filed a Petition for Writ of Habeas Corpus in the San Bernardino Superior Court alleging that false evidence was introduced against him at trial and new evidence showed he was innocent. (*In re William Richards*, San Bernardino Superior Court No. SWHSS700444, 1 A. C.T. 1-86.)
5. Superior Court Judge Brian McCarville issued an order to show cause and subsequently held an evidentiary hearing. (1 C.T. 180-81.) At the conclusion of that hearing, Judge McCarville granted Richards's petition and vacated the judgment of conviction. (4 C.T. 1147-48, 1185.)
6. The prosecution appealed, and on November 19, 2010, the Court of Appeal reversed. (Court of Appeal Case No. E049135.) On December 3, 2010, the Court of Appeal denied a petition for rehearing.
7. Richards filed a Petition for Review with this Court on December 28, 2010 (California Supreme Court Case No. S189275.) This Court granted review on February 23, 2011. On December 3, 2012, the California Supreme Court affirmed the judgment by a 4-3 vote.
8. On December 21, 2012, Richards filed a Petition for Rehearing in this

Court. The petition for rehearing was denied by a 4-3 vote on February 13, 2013.

9. On October 9, 2013, the California Innocence Project filed a Post-Conviction Motion for DNA Testing pursuant to section 1405 (“Motion”) on behalf of Richards, requesting additional testing for other items of potentially exculpatory evidence.
10. On January 22, 2014, after a hearing, Judge Margaret Powers of the Superior Court of San Bernardino County denied the Motion. (H.T. 12.)
11. On February 11, 2014, Richards filed a Petition for Writ of Mandate challenging Judge Powers’s denial of the Motion in the California Court of Appeal, Fourth Appellate District, Division Two. The court summarily denied the petition on March 25, 2014. (Court of Appeal Case No. E060568.)
12. Thereafter, on April 4, 2014, Richards filed a Petition for Review of the Court of Appeal’s denial with this Court. (California Supreme Court Case No. S217583.)
13. On June 18, 2014, this Court granted review and transferred the matter back to the Court of Appeal, Fourth Appellate District, Division Two, with directions to issue an Order to Show Cause returnable before that court in light of *Richardson v. Superior Court* (2008) 43 Cal.4th 1040

and *People v. Jointer* (2013) 217 Cal.App.4th 759, 765-766.

14. On June 23, 2014, the Court of Appeal issued an Order to Show Cause and directed the parties to file formal briefing in the case. (Court of Appeal Case No. E060568.) On November 26, 2014, the Court of Appeal again denied Richards's Motion.

II.

STATEMENT OF FACTS

15. The issue before this Court is whether William Richards has presented false evidence that is substantially material or probative on the issue of guilt or punishment. (§ 1473, subd. (b)(1).) California's legislature has recently re-defined the standard for false scientific evidence. Under the current law, false evidence may be shown by establishing the expert opinion previously relied upon at trial has either been repudiated by the expert who originally provided the opinion, or by establishing the opinion has been undermined by later scientific research or technological advances. (§ 1473, subd. (e)(1).) Because this Court's determination rests on whether there is a "reasonable probability" that, had [the evidence] not been introduced, the result would have been different" (*In re Richards, supra*, 55 Cal.4th at 961; *In re Sassounian* (1995) 9 Cal.4th 535, 546), the facts from Richards's original trial and evidentiary hearing will be presented below.

A. Facts Adduced at Trial

16. On August 10, 1993, Pamela Richards (“Pamela”) was severely beaten with fist-sized rocks, manually strangled, and a cinder block and stepping stone were used to crush her skull. (*In re Richards, supra*, 55 Cal.4th at 954; 3 Tr. R.T. 280; 5 Tr. R.T. 962.) Testimony indicated that strangulation was most sufficient to cause her death. (*In re Richards, supra*, 55 Cal.4th at 954.) The beating took place on her property outside of her home. (*Id.* at 953-954.)

1. The Prosecution’s Case: “It Must Have Been Richards”

17. On the night of August 10, 1993, Richards clocked out of work at 11:03 p.m. and drove home. (*Id.* at 954.) San Bernardino County Sheriff Deputy John Navarro recreated the drive from Richards’s work to his home and determined that if Richards left his place of employment at 11:06 p.m. and kept up with the flow of traffic, it would have taken forty-one minutes for Richards to drive home. (*Ibid.*) Based on this analysis, police believed Richards arrived home at 11:47 p.m. (*Id.* at 955.)

18. According to Richards, upon his arrival at home on the night of Pamela’s murder, he initially noted that no lights were on. (*Id.* at 953.) Richards walked toward the trailer and found his wife laying face down by the porch. (*Ibid.*) He turned her over to see what was wrong, and realized

she was dead. (*Ibid.*) Richards cradled his wife, and then heard the phone ring. (*Ibid.*)

19. At approximately 11:55 p.m., Eugene Price (Pamela's former lover) called Richards's residence, and Richards answered the phone. (*Id.* at 952.) Thus, even relying on the prosecution's time line and theory of the case, Richards had only eight minutes in which to kill his wife. (*Id.* at 952-954.)
20. Richards told Price Pamela was dead. (*Id.* at 952.) Richards asked Price what he should do, and Price told him to call 911. (*Ibid.*) Price characterized Richards as being stressed and agitated. (*Ibid.*)
21. At 11:58 p.m., Richards called 911 and reported his wife was dead. (*Id.* at 954.) Richards placed two more calls to 911 at 12:06 a.m. and 12:33 a.m., frantically urging officers to hurry. (2 Tr. R.T. 168-69.)
22. The responding officer, Deputy Mark Nourse, arrived on the scene shortly after 12:30 a.m. (*Id.* at 953.) Nourse testified that it was very dark when he reached the scene and that he found Richards standing next to his truck. (*Ibid.*; 4 Tr. R.T. 584, 586.) Richards directed Nourse to the victim's body and told Nourse his wife was "stone cold dead, you don't have to check her out, she has been dead for a long time. I know that because the battery is dead on the Toyota." (4 Tr. R.T. 590.) Nourse later testified it seemed Richards was speaking "like he had

rehearsed or was reading from a script.” (*Id.* at 953.) Nourse checked the body; to his touch, the wrist was pliable and the body was neither cold nor warm. (*Ibid.*)

23. Nourse did not investigate the scene at that time. (4 Tr. R.T. 683.) Homicide detectives did not arrive on the scene until 3:15 a.m. (2 Tr. R.T. 228.) After the first officer responded to the scene, three or four dogs entered the crime scene. (4 Tr. R.T. 642.) Because it was dark, the detectives decided not to process the scene until first light (approximately 6:00 a.m.), more than six hours after the body had been found. (1 Tr. R.T. 94; 2 Tr. R.T. 327.) During that time, the dogs had partially buried Pamela’s body. (4 Tr. R.T. 674.)
24. Investigators found the victim covered by a sleeping bag; she was naked from the waist down except for a pair of socks. (*Id.* at 954.) A bloody cinderblock was found near her head. (*Ibid.*)
25. Investigators studied the shoe prints and tire tracks found at the scene; it appeared nobody had been present except for Richards. (*Ibid.*) However, the ground was not good for finding such prints and Richards’s shoe prints were not found in the areas where the struggle occurred. (Tr. R.T. 301-04. 323.)
26. At the autopsy, before Pamela’s right index and middle fingertips were severed and delivered to criminalist Daniel Gregonis, criminalist Craig

Ogino received scrapings from Pamela's fingernails. (*Id.* at 954; 4 Tr. R.T. 698.) Gregonis classified a tuft of blue cotton fibers that he later discovered as relevant to the investigation, because he found it "jammed" in a crack in the victim's right middle fingernail. (*Ibid.*) At trial, Gregonis testified that after microscopic testing, under a florescent microscope, and with microspectometry, this tuft of blue cotton fibers was indistinguishable from fibers in the blue cotton shirt Richards wore the night Pamela was murdered. (*Ibid.*)

27. Criminalist Ogino also looked at the fingernails under a stereo microscope. (*Id.* at 954.) He never reported a tuft of blue fibers was lodged in a crack in Pamela's right middle fingernail.
28. Dr. Norman Sperber, the chief forensic dentist for San Diego and Imperial Counties, testified for the prosecution. (*Id.* at 955.) He testified that he was board certified by the American Board of Forensic Odontology ("ABFO") and was a diplomat of the ABFO. (6 Tr. R.T. 1163.) Dr. Sperber testified that he examined a single autopsy photograph of the dorsal side of the victim's right hand and identified a lesion (i.e., bruise) which he concluded was a human bite mark made by the lower teeth. (6 Tr. R.T. 1170, 1172, 1177-78.)
29. Dr. Sperber opined whoever left the mark on Pamela's right hand had a rather distinctive feature relative to their lower right canine tooth. (*Id.*

at 955.) Based upon a molding he made of Richards's mouth, Dr. Sperber determined that Richards had the same distinctive feature. (*Ibid.*) Dr. Sperber testified "one or two or less" out of one hundred people would have an abnormality. (*Ibid.*)

30. Specifically, Dr. Sperber testified Richards's bite "matched and came close to or being consistent with" the injury mark found on Pamela's hand. (6 Tr. R.T. 1210.)

2. The Defense's Case: Shoddy Police Work and Inconsistent Evidence

31. Dr. Griffith Thomas testified that it was difficult to estimate a precise time of death, because tests routinely conducted to aid in that determination were not conducted by the coroner or the coroner's investigator. (*Id.* at 955.) According to Dr. Thomas, many of the injuries found on Pamela's body occurred several hours before her death. (*Ibid.*)
32. Perhaps because the focus was on Richards, officers failed to investigate several clues that could have established a clearer time line. They did not feel the hood of the victim's car, although the driver's door was ajar (2 Tr. R.T. 318, 521), and Richards told the police the car's battery was dead (4 Tr. R.T. 590). They did not feel the generator to determine if it had been in use, although the generator was the only source of electricity on the property, and the victim would have started the

generator had she been alive after dark. (2 Tr. R.T. 295; 4 Tr. R.T. 521, 530.)

33. Officers also failed to investigate for other clues that may have led to another suspect. They did not fingerprint the cars, the inside of the home (where blood had been found), or the shed. (2 Tr. R.T. 318, 338.) They did not swab the crescent-shaped mark found on Pamela's hand, which is routinely done with bitemarks in order to test for DNA from the biter's saliva. (6 Tr. R.T. 1151.)
34. Dr. Golden, who served as the chief odontologist for San Bernardino County, testified for the defense that he received a single photograph of the injury on the victim's right hand. (7 Tr. R.T. 1514, 1520.) He assumed it was a bitemark. (7 Tr. R.T. 1521.) He testified the injury was a typical arch shape, and although he could not rule out Richards as the biter, he also could not rule out several exemplars taken at random from his office collection. (*Id.* at 956.)
35. Dr. Golden testified that he and Dr. Sperber came to the exact same conclusions about the interpretation of the bitemark evidence. (7 Tr. R.T. 1534.) Golden also agreed that Richards's under-erupted canine would be found only in "maybe two percent of the population." (*Id.* at 956.)
36. Investigator Tom Bradford took Richards's clothing and photographed

him that morning. There were no cuts or scratches on his hands and only one small mark on his elbow. (4 Tr. R.T. 813, 821-22.)

B. Facts Adduced at the Evidentiary Hearing

37. Richards presented evidence at the hearing relating to three issues. First, Richards presented DNA evidence pointing to a person other than Richards as having murdered Pamela. Second, Richards presented expert testimony indicating that Richards could not have been responsible for bitemark attributed to the killer. That testimony included a recant by the prosecution's dental expert. Finally, Richards presented photographic evidence indicating that the fibers in the victim's fingernail, allegedly lodged during the victim's struggle, were not present until after the autopsy.³
38. At trial in 1997, Dr. Sperber and Dr. Golden testified they had formed their opinions about the crescent shaped injury on Pamela's right hand using a single, low resolution photograph of the injury. Post-conviction, at Richards's request, Dr. Sperber and Dr. Golden reexamined the photo of the crescent shaped injury on Pamela's hand. This photo was

³Because the issue before this Court has to do solely with whether false evidence was introduced at Richards's trial, this Petition will discuss those facts relating to the false evidence claim, specifically the introduction of bite mark evidence. The Petition will not be discussing the evidence adduced at the evidentiary hearing relating to new DNA testing or to the blue fibers found under the victim's fingernail, as these facts related to his new evidence claim.

also examined by experts Dr. Raymond Johansen and Dr. C. Michael Bowers. In 2006 and 2007, all of the experts were also provided with additional photographs of the crime scene and other crescent shaped injuries on Pamela's body. All four experts provided declarations in support of the petition and testified at the evidentiary hearing.

1. Dr. Norman Sperber's declaration and testimony

39. At the request of Richards, Dr. Sperber reviewed all evidence relevant to the bitemark analysis and provided a declaration stating that he would not testify now as he did in 1997. (*Id.* at 956.) At the evidentiary hearing, Dr. Sperber testified that he never should have provided an estimate regarding the percentage of the population that had the dentition abnormality he had identified in Richards, and he stated the statistic he provided was scientifically inaccurate. (*Ibid.*) At the time of trial, he was not aware of any studies which would have provided statistical support for his testimony. (1 R.T. 74.) He also testified that the American Board of Forensic Odontology now finds such testimony to be inappropriate in the absence of any scientific studies. (1 R.T. 74.)
40. Additionally, Dr. Sperber admitted he made his determinations about the "bitemark" and formed his opinions and testified at the 1997 trial based on a single distorted picture. (*Id.* at 956.) Dr. Sperber also acknowledged that he never attempted to use the mold of Richards's

teeth to determine if it would make a “bite registration” or “dental impression.” (1 R.T. 90; see also 1 R.T. 80.) Instead, Dr. Sperber’s trial testimony was based solely on his visual observation: “Because I had basically eyeballed this case and I saw one tooth that was shorter than the others. I saw a space in that collection of red lesion . . .” (1 R.T. 90; see also 1 R.T. 80.)

41. In the words of Dr. Sperber, “My opinion today is that [Richards’s] teeth, as we have seen, are not consistent with the lesion on the hand.” (1 R.T. 91.) “Nonconsistent means you don’t see similar patterns. I have essentially ruled [Richards] out.” (1 R.T. 91.)

2. Dr. Gregory Golden’s declaration and testimony

42. At the time of Richards’s trial, Dr. Golden was provided a single photograph of the injury on Pamela’s right hand. (C.T. 1217; 1 R.T. 99.) In 2007, Dr. Golden used Adobe Photoshop to correct the angular distortion visible in the photograph. (1 R.T. 97-98.) Dr. Golden testified that with advances in technology he has been able to do a more accurate analysis and, based on that analysis, Richards’s “dental signature does not line up as well with the injury as it did in the distortion [sic] injury.” Therefore, he excluded Richards as the suspected biter. (1 R.T. 100; 5 C.T. 1218.)

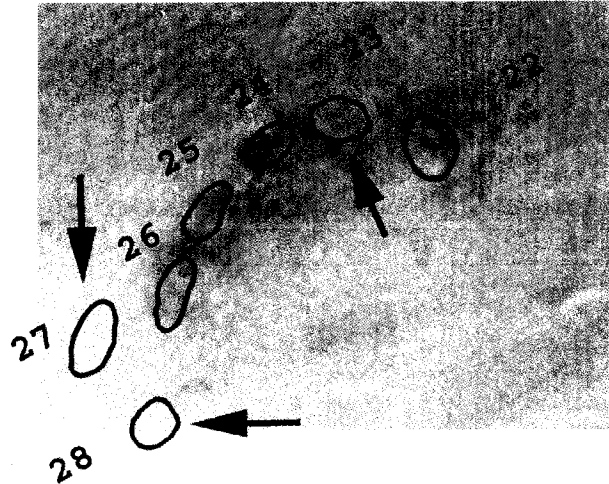
3. Report and testimony from Dr. C. Michael Bowers

43. Dr. Bowers, like the other experts, testified that the photograph of Pamela's hand, which was used at Richards's trial, was distorted. (2 R.T. 212.) Dr. Bowers testified he created a corrected version of the photograph using Adobe Photoshop. (2 R.T. 216.)

44. The new methods used by Dr. Bowers are considerably more precise than the visual methods available in 1997 and demonstrated numerous areas of discrepancy between Richards's lower arch teeth and the bitemark. (2 R.T. 218, 232, 234, 246.) Dr. Bowers testified he took measurements of the bruise and of Richards's dentition. (2 R.T. 218.) For example, he measured the bruise as 24 millimeters, yet Richards's lower teeth were 33 millimeters. Thus, the bruise was too small to have been made by Richards. (2 R.T. 218.) Additionally, as shown by Habeas Exhibit 36, when superimposing the digital exemplar of Richards's bottom teeth onto the digitally enhanced photograph of the bitemark, three of Richards's teeth matched and three did not. (2 R.T. 232, 234.)

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The red arrows indicate three "mismatches" between Richards and the skin injury.

45. The three teeth that did not match were in fact complete mismatches, and thus Dr. Bowers eliminated Richards as the possible biter. (2 R.T. 235-37.) Dr. Bowers also testified to making two Styrofoam impressions from the plaster mold of Richards's teeth. (2 R.T. 224.) At trial, Dr. Sperber had testified that one of the teeth, tooth 27, would not have come in contact with the skin because the higher teeth would have acted as "barriers." (6 R.T. 1207, 1209.) However, when Dr. Bowers used the mold of Richards's teeth to make impressions in Styrofoam, tooth 27 did leave marks. (2 R.T. 225-26, 238; Exh's. 29 and 39.)

4. Report and testimony from Dr. Raymond Johansen

46. Dr. Johansen testified at Richards's evidentiary hearing that he is the author of a book on the use of digital analysis of bitemark evidence using Adobe Photoshop, published in 2000. (1 R.T. 117.) Dr. Johansen

testified that there was some distortion in the photograph of Pamela's hand. (1 R.T. 130; 5 C.T. 1225-32.) Using Adobe Photoshop, Dr. Johansen created a version of the photograph which corrected the distortion contained in the original photograph. (1 R.T. 139; 5 C.T. 1237.) He also created a corrected photo with an outline of Richards's upper teeth. (1 R.T. 140-42; 5 C.T. 1239.) Dr. Johansen used the upper arch because it was "more consistent with the size and shape of the injury pattern." (1 R.T.178.) According to Dr. Johansen, there were marks on Pamela's hand which were outside the semi-circular dentition area of Richards's teeth. (1 R.T. 143.)

5. Evidence Introduced by the Prosecution

47. The District Attorney did not call any witnesses to testify in regard to the bitemark evidence Richards introduced.

III.

GROUND FOR RELIEF

48. A petitioner may prosecute a writ of habeas corpus where false evidence that is substantially material or probative on the issue of guilt was introduced against the petitioner at trial. (§ 1473, subd. (b)(1).) To meet the false evidence standard, the petitioner must show that false evidence was introduced against the petitioner at trial, and that the evidence was substantially material or probative on the issue of guilt. (§ 1473, subd.

(b)(1.) Evidence is substantially material or probative if it is “of such significance that it may have affected the outcome of the trial” (*In re Wright* (1978) 78 Cal.App.3d 788, 814), or if there is a “‘reasonable probability’ that, had it not been introduced, the result would have been different” (*In re Richards, supra*, 55 Cal.4th at 961; *In re Sassounian, supra*, 9 Cal.4th at 546).

49. False evidence, under newly-revised section 1473, now includes “opinions of experts that have either been repudiated by the expert who originally provided the opinion at a hearing or trial or that have been undermined by later scientific research or technological advances.” (§ 1473, subd. (e)(1).)
50. At trial, Dr. Norman Sperber testified Richards had a distinctive dental abnormality, one that would produce a mark identical to a mark found on Pamela’s right hand. Dr. Sperber testified “one or two or less” out of one hundred people would have such an abnormality. Dr. Sperber now repudiates his prior opinion, ruling out Richards as a possible contributor of the bite and renouncing his testimony regarding percentages as scientifically inaccurate and inappropriate.
51. Dr. Sperber’s testimony at trial was the single most significant piece of evidence proffered by the prosecution at Richards’s trial. Two prior trials ended in hung juries absent this evidence; with the addition of Dr.

Sperber's expert opinion, a third jury convicted Richards. Had this evidence not been introduced, there is a reasonable probability the result would have been different.

52. Further, the introduction of the false bitemark evidence against Richards amounted to a violation of his rights to due process under the Fifth and Fourteenth Amendments. (U.S. Const., 5th and 14th Amends; *Giglio v. United States* (1972) 405 U.S. 150 [92 S.Ct. 7633, L.Ed.2d 104]; *Napue v. Illinois* (1959) 360 U.S. 264 [79 S.Ct. 1173, L.Ed.2d 1217]; *Maxwell v. Roe* (9th Cir. 2010) 628 F.3d 486, 506; see also *Killian v. Poole* (9th Cir. 2002) 282 F.3d 1204, 1209; *In re Malone* (1996) 12 Cal.4th 935, 939; *In re Wright, supra*, 78 Cal.App.3d at p. 808.)

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PRAYER FOR RELIEF

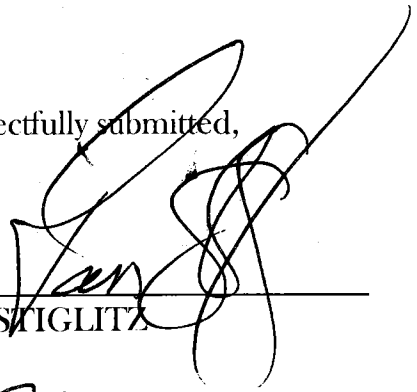
William Richards has no other plain, speedy, or adequate remedy at law other than by this petition. Wherefore, Richards requests this Court:

1. Pursuant to Evidence Code section 452, subdivision (d), take judicial notice of the transcripts, files, and briefs, in Case No. S189275, Court of Appeal Case Nos. E049135 and E024365, and San Bernardino Superior Court Case Nos. SWHSS700444 and FVI 00826;
2. Appoint the California Innocence Project or Jan Stiglitz as counsel for Richards;
3. Issue an order directing that Robert A. Fox, Warden, California Medical Facility in Vacaville, California, and the California Department of Corrections and Rehabilitation to show cause why this Court should not vacate the judgment and sentence in Richards's case;
4. Release Richards on his own recognizance pending resolution of the issues as authorized by the California Supreme Court in *In re Cox* (1970) 3 Cal.3d 205, 211, *In re Berry* (1968) 68 Cal.2d 137, 145 n.7, *In re Smiley* (1967) 66 Cal.2d 606, 613, and *In re Newbern* (1960) 53 Cal.2d 786, 788;
5. After full consideration of the issues raised by this petition, grant the petition and vacate the judgment and sentence imposed on Richards in San Bernardino Superior Court Case No. FVI 00826; and

6. Grant Richards any further relief as is appropriate in the interests of justice.

Respectfully submitted,

Dated: 12/30/14



JAN STIGLITZ

Dated: 12/31/14



ALEXANDER SIMPSON

Attorneys for Petitioner
WILLIAM RICHARDS

VERIFICATION

I, Alexander Simpson, declare as follows:

1. I am a member of the Bar of the State of California. As such, I am admitted to practice before the courts of the State of California.
2. I represent William Richards in filing and arguing his petition for writ of habeas corpus. Richards is confined at California Medical Facility in Vacaville, California.
3. I am authorized to file this petition for writ of habeas corpus on Richards's behalf. I make this verification because he is incarcerated and because some matters are more within my knowledge than his.
4. I have drafted and read the foregoing petition for writ of habeas corpus. I declare that all the matters alleged here are true of my own personal knowledge or are supported by the record.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my know ledge.

Executed on 12/31/14, in San Diego County, California.

Respectfully submitted,



ALEXANDER SIMPSON
Attorney for Petitioner
WILLIAM RICHARDS

MEMORANDUM OF POINTS AND AUTHORITIES

ARGUMENT

I.

NEWLY REVISED PENAL CODE SECTION 1473 MEANS RICHARDS IS ENTITLED TO RELIEF

A. Legislative Changes Since Richards's Last Petition Before this Court

As this Court is aware, William Richards previously appeared before this Court in 2012, after respondent appealed the reversal of his conviction for the murder of his wife, Pamela Richards. Richards had argued the introduction of the expert testimony of Dr. Norman Sperber in his third, ultimately successful, trial amounted to false evidence under section 1473, subdivision (b). That section allows an individual to obtain relief for his or her wrongful conviction provided he or she can establish the false evidence that is “substantially material or probative on the issue of guilt or punishment was introduced against a person at a hearing or trial relating to his or her incarceration.” (§ 1473, subd. (b)(1).)⁴

In a 4-3 decision, this Court found Richards had not met his burden of establishing false evidence was introduced against him at his trial. The Court

⁴The quoted language reflects the state of section 1473, subdivision (b)(1) as it stands after the passage of SB 1058. The prior version of this subdivision, in place at the time this Court ruled on Richards's prior petition, stated an individual was entitled to relief provided he or she established “[f]alse evidence that is substantially material or probative on the issue of guilt or punishment was introduced against a person at any hearing or trial relating to his incarceration[.]” (Former Pen. Code, § 1473, subd. (b)(1), as amended (Sen. Bill No. 1058, § 1, eff. Jan. 1, 2015).)

determined Richards's claims relied upon an assertion that expert testimony given at his trial was demonstrably "false" after the expert credibly repudiated his testimony in an evidentiary hearing. This Court disagreed, holding that, as the expert's original testimony was merely an opinion, a later recantation of that opinion or repudiation of it did not make the original testimony false.

When an expert witness gives an opinion at trial and later simply has second thoughts about the matter, without any significant advance having occurred in the witness's field of expertise or in the available technology, it would not be accurate to say that the witness's opinion at trial was *false*. Rather, in that situation there would be no reason to value the later opinion over the earlier. Therefore, one does not establish false evidence merely by presenting evidence that an expert witness has recanted the opinion testimony given at trial. Likewise, when new expert opinion testimony is offered that criticizes or casts doubt on opinion testimony given at trial, one has not necessarily established that the opinion at trial was *false*. Rather, in that situation one has merely demonstrated the subjective component of expert opinion testimony.

(*In re Richards, supra*, 55 Cal.4th at 963, emphasis in original.) The dissenting opinion pointed out that the decision of the majority placed "novel burdens" on petitioners (such as Richards) who were convicted on the strength of false scientific evidence, and noted there was "no reason to treat expert testimony differently from lay testimony under section 1473(b)." (*Id.* at 971 (J. Liu, dissenting).)

Subsequent to this Court's decision in *Richards*, the California legislature

introduced Senate Bill 1058.⁵ This bill erased the distinction this Court drew between lay and expert testimony. PIn pertinent part, the bill added the following section to section 1473:

- (e) (1) For purposes of this section, “false evidence” shall include opinions of experts that have either been repudiated by the expert who originally provided the opinion at a hearing or trial or that have been undermined by later scientific research or technological advances.

(§ 1473, subd. (e)(1).)

Senator Mark Leno, who introduced the bill along with co-authors Senator Joel Anderson and Assemblymember Phil Ting, specifically referenced the *Richards* decision when carrying the bill through the legislature. (See website of Mark Leno, “2014 Legislation,” <http://sd11.senate.ca.gov/legislation/2014> [last viewed 12/15/14].) The *Richards* case was discussed extensively and referenced exhaustively in committee and on the legislative floor. (Sen. Com. on Public Safety, Rep. on Sen. Bill No. 1058 (2013-2014 Reg. Sess.) as introduced Feb. 18, 2014, pp. 4-5; Sen. Rules Com., Off. of Sen. Floor Analysis, 3d reading analysis of Sen. Bill No. 1058 (2013-2014 Reg. Sess.) as introduced Feb. 18, 2014, pp. 2-4; Assem. Com. on Public Safety, Rep. on Sen. Bill No. 1058 (2013-2014 Reg. Sess.) as amended June 4, 2014, pp. 4-7; Sen. Rules Com., Off. of Sen. Floor Analysis, unfinished business analysis of Sen. Bill No. 1058 (2013-2014 Reg. Sess.) as amended June 4, 2014, pp. 3-4.)

⁵(Sen. No. 1058, 113th Cong., 2d Sess., § 1 (2014).)

Ultimately, the bill passed with broad bipartisan support in both houses of the legislature.⁶ It took effect January 1, 2014.

B. This Court’s Prior Determination Denying Richards Relief Was Based on a Prior Version of Section 1473; New Section 1473 Means Richards Can Present a Claim of False Scientific Evidence

In *Richards*, this Court determined an expert “‘opinion’ implies a subjective component to expert testimony,” and thus it was “conceivable—even reasonable—that an expert witness’s opinion may change over time without that change implying any lack of integrity on the expert’s part.” (*In re Richards, supra*, 55 Cal.4th at 962.) Because of this, the Court reasoned, it is only when “there has been a generally accepted and relevant advance in the witness’s field of expertise, or when a widely accepted new technology has allowed experts to reach an objectively more accurate conclusion” that an individual may claim an opinion given at trial was “objectively untrue” (and therefore false for purposes of section 1473). (*Id.* at 963.)

The change in the law addresses the majority’s holding in *Richards* that expert testimony is in some way qualitatively different than other forms of testimony. Indeed, the change in law from the Court’s prior determination to the present day means Richards’s claim is now fundamentally different than the one he presented in 2012. Where, previously, this Court drew a distinction

⁶SB 1058 passed through the Assembly by a vote of 61-7 and through the Senate by a vote of 26-9.

between the testimony of lay witnesses and the testimony of experts, section 1473 now eliminates that distinction entirely. A claim for habeas relief based on false evidence may now be established by presenting evidence that a witness—*any* witness—has recanted or repudiated his or her testimony at trial. Provided the false evidence is “substantially material or probative on the issue of guilt or punishment” (§ 1473, subd. (b)(1)), the fact that the testimony came from an expert (rather than an eyewitness) does not preclude relief. In fact, the law is now most in line with the reasoning found in Justice Liu’s dissent:

There is no reason to treat expert testimony differently. Just as the truth or falsity of eyewitness testimony under section 1473(b) depends on the truth or falsity of underlying facts concerning the witness’s perceptual abilities, the truth or falsity of expert testimony depends on the truth or falsity of underlying facts essential to the expert’s inferential method and ultimate opinion.

(*Id.* at 973.)

Importantly, the change in the law directly addresses what has occurred in Richards’s case: Dr. Norman Sperber, an expert who previously provided an opinion at trial has now repudiated his own opinion. (§ 1473, subd. (e).) Dr. Sperber testified at trial Richards’s bite was “matched” or was “consistent with” the injury he saw on Pamela’s hand. (6 Tr. R.T. 1210.) Dr. Sperber now repudiates that statement, and now states in his opinion Richards “has essentially [been] ruled out” as a contributor of that mark. At trial, Dr. Sperber testified that whoever left the mark on the victim’s hand had a rather distinctive abnormality in his bite, and Dr. Sperber testified Richards had the same

distinctive abnormality. (6 Tr. R.T. 1203.) Dr. Sperber testified “one or two or less” out of one hundred people would have an abnormality. (6 Tr. R.T. 1212-1213.) Dr. Sperber now repudiates these statements, denies they were based in scientific fact, and now states he should never have testified the way that he did. This type of repudiation—by an expert who testified at the original trial—is precisely what the legislature intended to cover when enacting SB 1058.⁷

Because of the change in the law, Richards is entitled to proceed with a false evidence claim.

II.

RICHARDS HAS MET HIS BURDEN OF ESTABLISHING THE EVIDENCE WAS SUBSTANTIALLY MATERIAL OR PROBATIVE

Penal Code 1473 requires that an individual pursuing relief from conviction on a false evidence claim must establish the evidence was “substantially material or probative on the issue of guilt or punishment.” (§

⁷Although not critical to the analysis, this Court should also note Dr. Golden, like Dr. Sperber, provided testimony at Richards’s trial. (7 Tr. R.T. 1513-1544.) Dr. Golden testified he could not “rule out” Richards as a match to the bitemark on the victim’s hand. (7 Tr. R.T. 1534.) Dr. Golden, like Dr. Sperber, has repudiated his trial testimony. (1 R.T. 110.) Today, Dr. Golden’s opinion is that he “would exclude” Richards as the contributor to the bitemark based on his subsequent analysis. (1 R.T. 110.) Therefore, as he has repudiated his opinion, his original testimony qualifies as false evidence pursuant to the change in the statute. (§ 1473, subd. (e)(1).) Further, Dr. Golden testified his opinion changed after reviewing corrected photos of the bitemark on the victim’s hand; these photos had been corrected for angular distortion using Adobe Photoshop. (1 R.T. 100.) Adobe Photoshop was not used to correct distorted photos at the time of Richards’s trial; since the trial, the program came into widespread use in forensic odontology. (1 R.T. 97-98.) Thus, Dr. Golden’s testimony also meets the standard for false evidence in an additional respect: his opinion has changed due to later scientific research or technological advances. (§ 1473, subd. (e)(1).)

1473, subd. (b)(1).) Evidence is substantially material or probative if it is “of such significance that it may have affected the outcome of the trial” (*In re Wright, supra*, 78 Cal.App.3d at 814), or “if there is a ‘reasonable probability’ that, had it not been introduced, the result would have been different.” (*In re Richards, supra*, 55 Cal.4th at 961, quoting *In re Roberts* (2003) 29 Cal.4th 726, 742.) An individual seeking relief must establish the facts supporting his or her claim by a preponderance of the evidence. (*In re Richards, supra*, 55 Cal.4th at 960; *In re Sassounian, supra*, 9 Cal.4th at 547.)

Because the majority in *Richards* held Richards was not entitled to present a false evidence claim by establishing the expert testimony he presented at his trial had been repudiated, this Court necessarily did not pass on whether Richards had met his burden of establishing the materiality of Dr. Sperber’s testimony. The dissent, however, did analyze Richards’s claim thoroughly. (*In re Richards, supra*, 55 Cal.4th at 979-982 (J. Liu, dissenting).)

In assessing whether Richards had met his burden with regards to false evidence being material, Justice Liu noted that the prosecution’s case was “circumstantial, and a guilty verdict was not a foregone conclusion.” (*Id.* at 980 (J. Liu, dissenting).) Indeed, Justice Liu pointed to the fact that Richards’s case resulted in two hung juries before the prosecution obtained a conviction. (*Id.* at 979 (J. Liu, dissenting).) In addition, the jury in the third trial deadlocked until it received further instruction on reasonable doubt. (*Id.* at 980-981 (J. Liu,

dissenting).)

As noted by the dissent, the difference between the first two unsuccessful trials and the third trial was the introduction of bite mark evidence through Dr. Sperber. (*Id.* at 981 (J. Liu, dissenting).) This testimony was rightly described by Justice Liu as

the evidence that most directly linked petitioner to the crime. Moreover, the bite mark evidence was not limited to Dr. Sperber's verbal testimony that a lesion on the victim's hand was a bite mark matching petitioner's unusual dentition. Dr. Sperber also prepared a mounted photograph of the lesion along with a plastic overlay created from dental molds of petitioner's lower teeth, which could be flipped up and down to demonstrate the "match" between the two. The photograph, overlay, and dental molds were all admitted into evidence and available to the jurors during deliberations. Further, Dr. Sperber estimated that only one or two out of a hundred people share petitioner's dental abnormality. Even taking into account Dr. Sperber's admission that he did not know of any scientific studies to back up that estimate, his expert testimony on the uniqueness of that feature, which was undisputed by petitioner's trial expert, increased the probative value of Dr. Sperber's testimony at the final trial.

(*Ibid.*) The dissent correctly concluded the introduction of this evidence clearly satisfied the standard:

Without the bite mark evidence, two juries hung. Even with that evidence, a third jury deadlocked before returning a guilty verdict. The totality of the circumstances leads me to conclude that Dr. Sperber's testimony was sufficiently probative and material to cast doubt on the outcome.

(*Ibid.*)

This Court should adopt the dissent's analysis as its reasoning in the instant case. Now that the law has changed, Justice Liu's dissent provides a clear

and logical roadmap establishing how Richards has met his burden on the issue of materiality under the statute. Richards has met his burden by a preponderance of the evidence. There is a reasonable probability that, had this false evidence not been introduced, the result would have been different. For these reasons, this Court should grant his Petition.

III.

THE PROSECUTION INTRODUCED FALSE EVIDENCE AGAINST RICHARDS IN VIOLATION OF HIS RIGHTS TO DUE PROCESS

The introduction of the false bitemark evidence against Richards amounted to a violation of his rights to due process under the Fifth and Fourteenth Amendments. (U.S. Const., 5th and 14th Amends; *Giglio v. United States, supra*, 405 U.S. 150; *Napue v. Illinois, supra*, 360 U.S. 264; *In re Malone, supra*, 12 Cal.4th at 939; see *In re Wright, supra*, 78 Cal.App.3d at p. 808.) A constitutional error resulting from the prosecution's failure to correct false testimony requires a new trial only if there is "any reasonable likelihood that the false testimony could have affected the judgment of the jury." (*Maxwell v. Roe, supra*, 628 F.3d at 507, quoting *Hayes v. Brown* (9th Cir. 2005) 399 F.3d 972, 985 (en banc).) "A government's assurances that false evidence was presented in good faith are little comfort to a criminal defendant wrongly convicted on the basis of such evidence. A conviction based in part on false evidence, even false evidence presented in good faith, hardly comports with fundamental fairness." (*Maxwell v. Roe, supra*, 628 F.3d at 506, internal

quotation marks omitted; see also *Killian v. Poole*, *supra*, 282 F.3d at 1209.)

As noted *ante*, the prosecution's introduction of Dr. Sperber's testimony—that Richards was a match to the injury mark on the victim's hand, and that only one or two out of a hundred people would have the same bitemark—was demonstrably false, as admitted by Dr. Sperber himself. That evidence changed the face of Richards's trial: it secured the conviction for the prosecution after two full trials resulted in hung juries. Thus, the evidence was both unquestionably false and unquestionably prejudicial. Whether the prosecution knew the evidence was false is largely immaterial to the analysis; the important question whether the false evidence could have affected the judgment of the jury, which it unquestionably did.

Because false evidence evidence was introduced against Richards in violation of his rights to due process, this Court should reverse his conviction.

IV.

CONCLUSION

In light of the foregoing, this Court should grant the relief requested. Richards respectfully asks this Court to reverse his conviction, and order him released on his own recognizance pending resolution of the issues.

Respectfully submitted,

Dated:

12/31/14



JAN STIGLITZ

Dated:

12/31/14



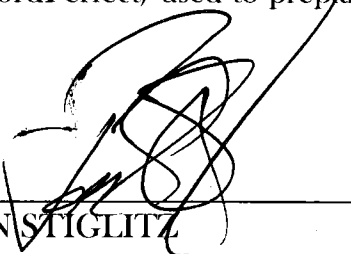
ALEXANDER SIMPSON

Counsel for Petitioner
WILLIAM RICHARDS

WORD COUNT CERTIFICATION

In accordance with California Rules of Court 8.384(a)(1) and 8.204(c), limiting the memorandum accompanying a petition to 14,000 words, I hereby certify that the attached Petition for Writ of Habeas Corpus contains 7,977 words, including footnotes and excluding tables, as ascertained by the word count function of the computer program (WordPerfect) used to prepare the brief.

Dated: 12/30/14



JAN STIGLITZ

Dated: 12/31/14



ALEXANDER SIMPSON

Counsel for Petitioner
WILLIAM RICHARDS

DECLARATION OF SERVICE

RICHARDS v. FOX & CALIFORNIA DEPARTMENT OF CORRECTIONS

I declare that I am over the age of 18, not a party to this action and my business address is 225 Cedar Street, San Diego, California 92101. On the date shown below, I served the within **PETITION FOR WRIT OF HABEAS CORPUS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** to the following parties hereinafter named by:

X **BY MAIL** - Placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Diego, California, addressed as follows:

San Bernardino District Attorney Attention: Stephanie Zeitlin Appellate Services Unit 412 W Hospitality Lane 1st Fl San Bernardino, CA 92415 Phone: (909) 891-3302	Robert W. Fox, Warden California Medical Facility 1600 California Dr. Vacaville, Ca 95696 Phone: (707) 448-6841
Office of the Attorney General 300 South Spring Street Los Angeles, CA 90013-1230 Phone: (213) 897-2000	Hon. Brian S. McCarville San Bernardino Superior Court 303 West Third Street San Bernardino, CA 92415-0210 Phone: (909) 708-8714
Hon. Margaret Powers San Bernardino County Superior Court 235 East Mountain View Avenue Barstow, CA, 92311 Phone: (760)256-4758	California Department of Corrections and Rehabilitation 1515 S Street Sacramento, CA 95811 Phone: (916) 445-7682

X **BY ELECTRONIC TRANSMISSION** - I transmitted a PDF version of this document by electronic mail/submission to the parties identified on the following service list using the e-mail addresses/websites indicated:

California Court of Appeal Fourth District, Division Two http://www.courts.ca.gov/4dca-esub.htm
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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on 1/5/14, in San Diego, California.


Alexander Simpson