S188275

TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re	) Case No. E049135
WILLIAM RICHARDS	) San Bernardino Superior Court) Case No. SWHSS700444) Criminal Case No.FVI00826
Petitioner and Respondent,	) Related Appeal Case No. E024365
On Habeas Corpus.	)

REPLY IN SUPPORT OF PETITION FOR REVIEW

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Appointed by the Court of Appeal under
the Appellate Defenders, Inc.
Independent Case System

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REPLY IN SUPPORT OF PETITION FOR REVIEW

TO THE HON. CHIEF JUSTICE OF CALIFORNIA AND THE HON. ASSOCIATE JUSTICES OF THE SUPREME COURT OF CALIFORNIA:

Petitioner William Richards, petitioner and respondent below, respectfully submits this Reply in support of his Petition for Review. In this Reply, Petitioner will not attempt to address the myriad of misstatements of law and fact that infect the Answer submitted by the District Attorney. Nor will he repeat the arguments made in the Petition. This Court is fully capable of separating the wheat from the chaff. However, there are a few points raised in the Answer that merit additional attention.

I.

RESPONDENT'S OWN ARGUMENT SUGGESTS THE IMPORTANCE OF GRANTING REVIEW.

At the end of the Answer (Point VII), the District Attorney makes the following claim:

> Petitioner argues that we must examine the "new" evidence cumulatively, rather than individually. The defect in that analysis is that, logically, at least one of those pieces of

evidence must meet the standard under *In re Lawley*.

(Answer, p. 30.) Neither logic nor case law supports that assertion.

As this case illustrates, convictions – which require proof beyond a reasonable doubt – can be supported by pieces of circumstantial evidence which, individually, do not "unerringly" point towards guilt.[1] In this case, the prosecution relied on motive, opportunity, the absence of evidence of others at the scene, a bite mark, unfounded statistics regarding Richards' dentition, some blue fibers, and a deputy sheriff's subjective determination that Richards did not behave in the way an innocent husband, confronted by the gruesome death of his wife, should have behaved. So why does "logic" require that any piece of exonerating evidence be sufficient unto itself?

For example, one could easily imagine an alibi which requires two witnesses: a first witness who is certain that he was with the defendant for a particular length of time but who cannot specifically swear to the date of this encounter and a second witness who was not with the defendant, but who could provide proof that the occasion witness one testifies to occurred on the date of the crime. Neither witness, alone, can provide an alibi, but the combined testimony of the two witnesses can.

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The District Attorney is correct in suggesting that circumstantial cases can be quite strong. However, this is not such a case. While the jury in Richards' second trial hung 11-1, the jury was split 6-6 after the first trial. (Tr. C.T. 871.)

As for precedent, one could examine the law under *Brady v. Maryland* (1963) 373 U.S. 83 as providing support for the importance of considering the cumulative impact of information. In *Kyles v. Whitley* (1995) 514 U.S. 419, 436-437, the Supreme Court specifically discussed how courts should review the cumulative effect of the material in front of it in order to determine whether there has been a *Brady* violation: "The fourth and final aspect of *Bagley* materiality to be stressed here is its definition in terms of suppressed evidence considered *collectively, not item by item.*" (Id. at p. 436. Emphasis added; internal citations omitted.)

The trial court below considered the cumulative effect of the evidence presented, specifically, the recantations regarding the bite mark testimony, the new bite mark evidence, the DNA evidence from the murder weapon, the DNA results from the hair under one of the victim's fingernails, and the photographs undermining the claim that blue fibers were in another one of the victim's fingernails prior to autopsy. By contrast, the Court of Appeal picked each piece apart as being insufficient to meet the *Hall* standard. (*In re Hall* (1981) 30 Cal.3d 408.)

This Court needs to determine which approach is correct.

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II.

THE CLAIM THAT RICHARDS PRODUCED NO NEW EVIDENCE IGNORES THE FACTS AS FOUND BY THE COURT BELOW.

In arguing that there was no new evidence, the District Attorney **boldly** states:

> The new DNA testing done on the hair gathered from underneath the victim's nails at autopsy **does not conclusively demonstrate** petitioner's innocence. The human hair fragment in the scrapings of the fingernails on the victim's right hand had no anogen root and was "historical" in origin, meaning it was likely picked up in the course of the victim's everyday life.

(Answer, p. 24. Emphasis in original.)

While an appellate court properly engages in a *de novo* review of legal questions, deference should be given to the factual determinations of the judge who hears the testimony presented at an evidentiary hearing on a petition for writ of habeas corpus. Here, the court below heard the testimony of an expert concluding that the hair was not historical and relied on that testimony in concluding that Richards had met his burden. The District Attorney adduced no evidence in opposition and did not call its own expert. Accordingly, deference is owed to the trial court's conclusion that the hair – belonging to a stranger – was *not* historical.

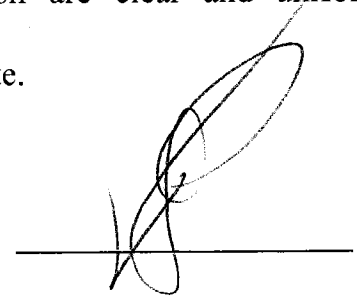
A related flaw exists with regard to the bite mark evidence. The District Attorney argues that photographs of the bite mark were available at the

time of trial, so the digital rectification is cumulative of what was presented and represents nothing "new." (Answer, p. 29.) However, the same argument could be made about most of the recent post-conviction DNA exonerations. In each case, DNA testing was performed on evidence that existed at the time of trial. But advances in science enabled petitioners to extract more information from the evidence. That is exactly what happened here: digital rectification enabled Richards to extract more probative – and exculpatory – information from an existing photograph. The results gleaned from the application of new technology to existing evidence are appropriately considered on habeas review. That is the whole point of having some mechanism to rectify errors that result in the incarceration of the innocent.

CONCLUSION

No one benefits from the continued incarceration of an innocent man. This Court should ensure that the standards used for determining whether there has been a wrongful conviction are clear and uniformly enforced. Accordingly, review is appropriate.

Respectfully submitted,



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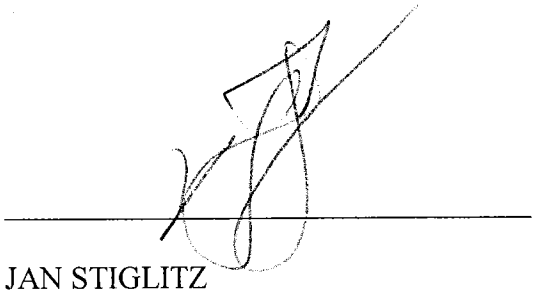
WORD COUNT CERTIFICATION

I hereby certify that the foregoing Reply in Support of Petition for Review contains 1,047 words and 6 pages, including footnotes, not including the cover or tables, as ascertained by the word count function of the computer program (WordPerfect) used to prepare the memorandum.

Dated: January 24, 2011



JAN STIGLITZ

PROOF OF SERVICE

I declare as follows:

I am over the age of eighteen years, not a party to this action, my business address is 225 Cedar Street, San Diego, CA 92101. On the date shown below, I served Petitioner's Reply in Support of his Petition for Review in case No. E049135 to the following parties by:

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

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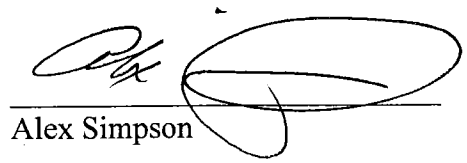
I declare under penalty of perjury the foregoing is true and correct. Executed this 24th day of January, 2011, at San Diego, California.



Alex Simpson