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IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

SUPREME COURT
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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.

S223651

Superior Court No. **FVI00826**
Prior Supreme Court Case No. **S189275**
Direct Appeal Case No. **E024365**
Additional Related Case Nos. **E049135, E023171, E013944**

RETURN TO PETITION FOR A WRIT OF HABEAS CORPUS

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

WILLIAM JOSEPH RICHARDS, Petitioner, v. **ROBERT A. FOX,** Warden, California Medical Facility, and **CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION,** Respondents.	**S223651** Superior Court No. **FVI00826** Prior Supreme Court Case No. **S189275** Direct Appeal Case No. **E024365** Additional Related Case Nos. **E049135, E023171, E013944** **RETURN TO PETITION FOR A WRIT OF HABEAS CORPUS**

TO THE HONORABLE PRESIDING JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

This Court has ordered respondent to file a formal return to the petition for a writ of habeas corpus in the instant case concerning William Richards (petitioner) and to show cause before this Court why the relief sought should not be granted. Real party in interest, the People of the State of California, by and through its attorney, Michael A. Ramos, District Attorney for the County of San Bernardino, State of California (People), hereby file this single formal return and admit, deny, and allege, as follows:

I.
PETITIONERS' ALLEGATIONS 1-15

1. The People admit the allegations in paragraphs 1-3.

2. The People admit the procedural allegations in paragraph 4 and affirmatively deny petitioner's characterization of claims of false or new evidence.

3. The People admit the allegations in paragraphs 5-14, solely relating to the procedural timeline of this matter.

4. The People admit the allegations in paragraph 15 to the extent they reference legislative changes to Penal Code § 1473 and deny any allegation or inference that petitioner has presented false evidence that is substantially material or probative in this matter. Further, the People affirmatively allege that, despite petitioner's assertions regarding legislative changes, he has not shown the disputed evidence was substantially material or probative.

II.
PETITIONER'S ALLEGATIONS 16-47

1. The people admit the allegations in paragraph 16 regarding the manner of the victim's death- strangulation and blunt force trauma to her head shortly thereafter. (6/10/97 Vol. III R.T. 354:19; 356:22; *Id.* 377:13; 381:28; 385:6; 386:7.)

2. The People deny petitioner's characterization in paragraph 17 that "[i]t must have been Richards". The People affirmatively allege that the investigation evolved based on a review of all evidence, petitioner's demeanor, and other

circumstantial evidence tending to show motive, means, and opportunity. (6/11/97 Vol. IV R.T. 627:14-16, 23-24; 628:1-12.) The People specifically aver that these other pieces of evidence served to convict petitioner, not simply the expert testimony with which petitioner takes issue.

3. The People deny petitioner's characterization of facts in paragraphs 18-19 to the extent they are self-serving. Additionally, this Court found that "[t]he time clock at petitioner's work indicated that he had left there at 11:03 p.m. on the night of the murder" and that that "[petitioner] would have been home for 11 minutes when he called 911." (*In re Richards* (2012) 55 Cal. 4th 948, 954-955.) The state's evidence belied the "cradling" theory (Petition, p. 10 ¶18) and, notwithstanding petitioner's assertion "[he] had only eight minutes to kill his wife" (Petition, ¶ 19), forensic testimony was offered by Dr. Sheridan, the county's medical examiner, which indicated that strangulation renders a victim unconscious in just a couple of minutes. The victim was in an agonal state, meaning she had a very slow heart rate, just prior to her head being smashed with a cinder block- an act that takes very little time. In any case, this timeline has been repeatedly parsed throughout numerous appeals and petitions.

4. The People admit the claims in paragraphs 20-21.

5. The People admit the claims in paragraph 22 and also aver that, due to petitioner's demeanor which vacillated from rehearsed calmness to bawling, sobbing, and falling

down (6/11/97 Vol. IV R.T. 627:14-16, 23-24; 628:1-12), Dep. Nourse started thinking things were odd. (*Id.* Vol. IV R.T. 628:11-12.)

The People further allege petitioner told Nourse, "That brick right there, that's the one that killed her, that's what they used to finish her off with" and began to illustrate what he believed to have happened. (*Id.* Vol. IV R.T. 625:21-27; 626:1-16.) Petitioner also said there was a stepping-stone with blood on it; deputies could not immediately see it. (*Id.* Vol. IV R.T. 625:28; 626:5.) Petitioner had peculiar knowledge of the evidence despite the dark conditions of the remote murder scene, "like he had first-hand knowledge." (*Id.* Vol. IV 645:1-25.) Moreover, "[h]e described many things in explicit detail[] that even in the daytime, we had a hard time finding." (6/11/97 Vol. IV 686:21-24; 6/16/97 Vol. V. R.T. 855:4-9.)

6. The People admit the allegations in paragraphs 23-24.

7. The People admit the allegations in the first portion of paragraph 25 and that the terrain of the crime scene was comprised of sand and gravel and, thus, not good for leaving shoe prints. The People aver that Det. Parent accounted for all shoeprints, including everyone at the crime scene, and found none for which he could not account. (6/9/97 Vol. II, R.T. 272-274.) Three of the victim's shoeprints were found. (*Id.*; Vol. II, R.T. 271:6-25.) Richards' shoes were very worn and left very few shoe tracks. (*Id.*; Vol.

II, R.T. 273:2-28.) Only one of Richards' shoeprints was found. (*Id.*)

The People aver that Parent and his team fanned out in about a 100-yard perimeter down a hill around the crime scene to check for *any* signs that someone other than Richards and his wife had come up the hill. They found none. (*Id.*; Vol. II, R.T. 275:7-28, 278-282.) Parent also checked Nourse's patrol car's tires and ascertained where it had been driven. (*Id.* Vol. II R.T. 268:2-28; 269:1-9.) He also checked the tires of the family cars, a Ford Ranger and a Suzuki Samurai. (*Id.* Vol. II R.T. 269:1-28; 270:1-22.) He tracked where they had come up the driveway and stopped. (*Id.*) There were no other tread marks. (6/9/97 Vol. II R.T. 268:10-28; 270:1-22.) There was no evidence of disturbed soil or vegetation within a hundred-yard perimeter. (*Id.*; Vol. II, R.T. 279:17-20; 280:1-28; 281:1-22; 282:1-18.)

8. The People admit the allegations in paragraph 26. They further aver that Gregonis testified the manner in which the fibers were found within the nail crack was significant. They were not simply placed, they were jammed under the nail as though part of a struggle. (E049135, C.T. 288.) Mr. Gregonis testified that after examination of the blue fibers with a stereomicroscope, they were then visible to the naked eye. (1/18/09 Vol. II, R.T. 59:23-25.)

9. The People admit the allegations in paragraph 27. They further aver that petitioner's own Exhibit "I" to his underlying petition for habeas corpus relief previously heard

by this Court in case number S189275 (Vol. II, C.T. 116-122) discusses the fact that postmortem examination of the victim was intended to focus upon the broken conditions of the fingernails rather than any fibers that may have been observed. (*Id.* at p. 122.) Additionally, "...the position of the hands in the photographs taken at autopsy [citations omitted] do not clearly show the right side of the fingernail from which the fibers were recovered. One can only assume that the fibers were not observed at that time, or their significance was discounted." (*Id.*)

10. The People admit the allegations in paragraphs 28-29. They aver that Dr. Sperber testified that, given a sample of one-hundred people "a very, very few of that hundred" would have the under-erupted canine that Richards had. (6/18/97 Vol. VI, R.T. 1212:23-27; 1213:17-25.)

11. The People deny the allegations in paragraph 30 and aver that, at trial, Dr. Sperber opined the relevant mark was consistent with the abnormality of Richards' teeth. (6/18/97 Vol. VI, R.T. 1201:11-1203:11; 1209:17-1210; 1215; 1218:1-6.) Dr. Sperber was not absolutely certain that it was Richards' bite mark because of the angle at which the picture of the bite mark was taken. (*Id.*; Vol. VI, R.T. 1198-1199; 1214:24; 1215:4; 1217; 1248:8-24.) He could not, however, rule out Richards as the person who left the bite mark. (*Id.*; Vol. VI, R.T. 1202; 1271:7-28; 1230:1-14.) At trial, Dr. Sperber testified that, given a sample of one-hundred people "a very, very few of that hundred" would have the

under-erupted canine that Richards had. (*Id.*; Vol. VI, R.T. 1212:23-27; 1213:17-25.) Dr. Sperber testified that it was "even more unusual" to have an individual with a "perfectly normal lineup of the teeth" on one side and abnormal positioning of teeth on the other side. (*Id.*; Vol. VI, R.T. 1213:17-25; 6/18/97 R.T. 32:10-14.) In fact, "[t]hat's kind of a unique feature." (*Id*; see also 6/26/1997 Vol. VII, R.T. 1537:10-26.) However, petitioner's trial counsel specifically asked "...about how often [will] you yourself ... see this dental abnormality with the offset canines?" (6/18/97 R.T. 47:5-9.)

The People further aver that, despite all of Dr. Sperber's trial testimony, he simply could not rule petitioner out as the biter. Dr. Sperber's ultimate conclusion at trial was that the bite mark was consistent with petitioner's dentition, "consistent" being on the lower range of a positive odontological judgment. (Vol. VI, R.T. 1213:17-25; 1/26/09 Vol. I R.T. 85:7-15.) Moreover, Dr. Sperber discussed, in front of the jury, distortion issues with the bite mark photograph. (R.T. 1195:17.) Dr. Sperber only testified that Richards' teeth were capable of making a mark like the one seen in the photograph of the victim's hand (6/18/97 Vol. VI R.T. 1214).

12. The People deny the allegations in paragraphs 31-36 to the extent they simply set forth defendant's theory of the case. Conflicting expert testimony was presented on each of these points and considered by the convicting jury.

13. The People deny the allegations in paragraph 37 to the extent they, again, simply set forth defendant's theory of the case. At hearing and on appeal, the People presented evidence contrary to the facts set forth in this paragraph. Petitioner did not meet his burden at any subsequent proceedings.

14. The People admit the allegations in paragraph 38.

15. The People admit the allegations in paragraph 39 to the extent the transcripts discuss Dr. Sperber's testimony.

16. The People admit the allegations in paragraph 40 in that Dr. Sperber did, at evidentiary hearing, indicate he based his trial opinion on one photograph that included some distortion. The People aver, however, that concerns over photo distortion and the quality of the bite mark photo were discussed at length in the 1997 trial and the jury considered and dispensed with them. (E049135, C.T. 48-49; 6/18/97 (Vol. VI R.T. 1198-1199; 1214:24; 1215:4; 1217; 1248:8-24.)

17. As to paragraph 41, the People admit that Dr. Sperber testified at the evidentiary hearing in this manner.

18. As to paragraph 42, the People admit that Dr. Golden testified at the evidentiary hearing in this manner. They aver that, at trial, Dr. Golden opined that the bite-mark evidence should be disregarded due to the "low value" of the photograph, despite later testifying that the photo still had some use. (6/26/97 Vol. VII R.T. 1532:4-10; 1532:20.) Again, the People aver that concerns over photo distortion and the quality of the bite mark photo were discussed at

length in the 1997 trial. (E049135 C.T. 48-49; 6/18/97 (Vol. VI R.T. 1198-1199, 1214:24; 1215:4; 1217; 1248:8-24.)

19. As to paragraphs 43-45, the People aver that Dr. Bowers discussed the photographic distortion of the photo of Mrs. Richards' hand injury. Dr. Bowers described his Photoshop efforts as "fixing" or "forcing" the image. (1/26/09 Vol. II R.T. 232:18-22.) On cross-examination, he acknowledged the subjectivity of "forcing" a match. (*Id.* Vol. II 284:11-25.)

The People allege Dr. Bowers presented Styrofoam exemplars of Richards' teeth. He also noted the abnormality in Richards' lower teeth, specifically number 27. (*Id.* Vol. II R.T. 223:7-28; 224:1-17.) Dr. Bowers discussed how he made an exemplar of Richards' teeth by taking existing dental molds and pressing them into the Styrofoam. (*Id.* Vol. II R.T. 227.) In fact, he made two exemplars – one with lighter pressure to create a shallow exemplar and another with more pressure that would be deeper. (*Id.*) Dr. Bowers solely controlled the amount of pressure exerted between the molds and the Styrofoam exemplar. (*Id.* Vol. II R.T. 256; 281.) He had no way of knowing how hard the victim was bitten. (*Id.* Vol. II R.T. 281:27-28; 282:1-6.) Contrary to significant previous trial testimony of multiple dental experts, at evidentiary hearing, Dr. Bowers believed Richards' tooth number 27 was "at the same level with all the other lower front teeth that [he] has." (*Id.* Vol. II R.T. 233:4-11.) Yet the impression the exemplars made did not make an indentation

at tooth number 27. (*Id.* Vol. II R.T. 233:12-24.) He testified that tooth number 27 made an indentation in the Styrofoam exemplar, contrary to Dr. Sperber's initial testimony. (*Id.* Vol. II R.T. 237:19-22; 238:14-15.)

20. As to paragraph 46, the People admit that Dr. Johansen testified in this manner. The People aver that he further testified that "the Adobe technique," making overlays, was in existence and being used in 1996 and 1997, during the time of Richards's trial. (1/26/09 Vol. I. 120:10-17.) Dr. Johansen could not discuss the technological intricacies, such as coding or algorithms that provide the basis for the program's conclusions. He was "just familiar with the program, how it works." (*Id.* Vol. I R.T. 127:23-28; 128:1-3.) Dr. Johansen then described how he used the "rectification," "distort function," and the program's "magic wand" functions to arrive at his conclusions. (*Id.* Vol. I R.T. 132:7-8, 11; 138:5-6; 139:1-28; 141:25-28; 142:1-6; 147:1-28; 171:21-28.) The People objected to Dr. Johansen's computer program testimony, given his training as a dentist. (*Id.* Vol. I R.T. 148:28; 149; 159-160.) At evidentiary hearing, Dr. Johansen analyzed Richards' upper arch pattern because he "felt [it] was more consistent" with the victim's injury pattern. (*Id.* Vol. I R.T. 178:20-28.) Yet, the target exemplar was the Richards' lower arch. Dr. Johansen made no effort to present an Adobe analysis of the lower arch. (*Id.*) Even after his Photoshop efforts, he could still not rule Richards out as the biter. (*Id.* Vol. I R.T. 189:1-25.)

21. The People admit the allegation in paragraph 47.

III.
ADDITIONAL AFFIRMATIVE ALLEGATIONS AND DENIALS

The People further affirmatively allege and deny as follows:

1. Except as expressly admitted herein, the People deny each and every allegation of the Petition.

2. The People aver that petitioner is properly in the custody of Warden Robert Fox at the California Medical Facility.

3. As to paragraphs 17-19, above, the People aver that, despite testimony of Drs. Golden, Bowers, and Johansen at evidentiary hearing, "they found no match, although they could not definitely rule out petitioner's teeth as a *possible* source of the lesion." (*In re Richards* (2012) 55 Cal. 4th 948. 964 [italics in original].)

4. The People aver the judgments and resulting sentence underlying petitioner's confinement is proper.

5. The People aver that petitioner's constitutional rights have not been violated. He has received ample due process in the form of multiple appeals, habeas petitions, motions and petitions for review.

6. This return is based upon the records and files in case numbers FVI00826, E024365, SWHSS700444, E049135, and S189275, and the memorandum of points and authorities attached to this return, which are all incorporated by this reference as though fully set

forth herein.

WHEREFORE, the People respectfully request that this Court deny petitioner's Petition.

Dated this 15th day of April, 2015.

Respectfully submitted,

MICHAEL A. RAMOS
District Attorney

____

STEPHANIE H. ZEITLIN
Deputy District Attorney
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MEMORANDUM OF POINTS AND AUTHORITIES
FACTUAL AND PROCEDURAL HISTORY

On July 6, 1994, Richards' first jury trial began (Vol. I C.T.[1] p. 228). On August 29, 1994, the court declared a mistrial because the jury could not agree on a verdict. (Vol. II C.T. pp. 417-420, 781.) On October 24, 1994, Richards' second trial began (Vol. II C.T. pp. 431-432). Just three (3) days later, the trial court recused itself during voir dire and declared a "mistrial." (C.T. pp. 433, 781.)

On November 15, 1994, Richards' third jury trial began (C.T. p. 438). On January 9, 1995, the court declared a mistrial because the jury was hung eleven to one in favor of guilt. (C.T. pp. 474, 871.)

On May 29, 1997, Richards' fourth jury trial began. (C.T. p. 532.) On July 8, 1997, he was convicted of murder. (*Id.* at p. 563.)

Richards' previous appellate efforts and requests for habeas corpus relief were unsuccessful. (E049135, C.T. Vol. II pp. 392-418.) In fact, in an opinion the appellate court issued regarding petitioner's direct appeal from his conviction, belief in a sufficient motive was discussed at length. (E049135, C.T. Vol. II p. 410.)

After petitioner's 2007 filing for habeas corpus relief, the cause proceeded to several days of evidentiary hearing and concluded on June 18, 2009. (Vol. IV C.T.[2] p. 1183.) Closing

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[1] Case Number E024368.

[2] Until further notice, "C.T." refers to the appeal bearing the Case Number E049135 within this section.

arguments were made on August 10, 2009, and the trial court, from the bench, issued its order immediately thereafter, granting relief. (Vol. IV C.T. p. 1185.)

In response to the lower court's August 10, 2009, order, the People filed a Notice of Appeal under Penal Code § 1506 and a Request for an Immediate Stay at the trial court level on August 20, 2009. (Vol. IV C.T. p. 1187.)

The People appealed the ruling to the Court of Appeal after the trial court declined to act on the People's request for an Immediate Stay. (See *In re Clark* (1993) 5 Cal.4th 750; *People v. Gonzalez* (1990) 51 Cal.3d 1179**Error! Bookmark not defined.**; *In re Lawler* (1979) 23 Cal.3d 190.) On appeal, the People contended that Richards failed to present new evidence to justify habeas relief.

On November 19, 2010, the Court of Appeal reversed the trial court's findings in total. On December 10, 2010, petitioner filed a Petition for Review with this Court and review was granted on February 23, 2011. This Court affirmed the judgment on December 3, 2012 in a 4-3 decision. Thereafter, petitioner filed a petition for rehearing and was denied by a 4-3 vote on February 13, 2013.

On October 9, 2013, petitioner filed a Post-Conviction Discovery Motion under Penal Code § 1405 before Judge Margaret Powers, the prior trial court judge. Petitioner's motion was denied after hearing on January 22, 2014. Petitioner filed a Writ of Mandate seeking to challenge that

decision but was summarily denied on March 25, 2014 (Court of Appeal Case Number E060568).

Petitioner filed for review on June 18, 2014 and this Court granted review while transferring the matter to the Court of Appeal to consider the matter in light of *Richardson v. Superior Court* (2008) 43 Cal. 4th 1040 and *People v. Jointer* (2013) 217 Cal. App. 4th 759, 765-766. After formal briefing, the court again denied petitioner's motion on November 2, 2014.

On January 7, 2015, petitioner filed a petition for habeas corpus relief basing his claims upon recently effective legislative revisions of Penal Code § 1473. Petitioner asserts that, as it applies to expert testimony, he is *de facto* entitled to relief. The People disagree as additional evidence supported his underlying conviction. This Court sought an informal response from the People pursuant to California Rule of Court § 8.385(b), petitioner responded, and this Court issued an order to show cause on March 18, 2015.

I.
ARGUMENT

Preliminarily, the People set forth the trial testimony of each party's forensic odontological experts as, at least with respect to petitioner's current claims, such testimony is relevant. However, such testimony was only a portion of evidence that was introduced at trial and, thus, only a portion of what the jury considered when reaching the underlying guilty verdict. Additionally, as the People have pointed out

during each and every iteration of this matter, petitioner's counsel was the catalyst for the introduction of such evidence at the convicting trial. Only after the People learned petitioner intended to call Dr. Golden, did they secure the testimony of Dr. Sperber. The People raised this issue in their informal response *not* simply for the sake of semantics, but rather to demonstrate that the bite mark testimony was not a "pillar" of or substantially material or probative to their case, as petitioner has repeatedly claimed. As a result, there was an abundance of other convicting evidence. In securing petitioner's odontological expert, it also bears noting that petitioner had new counsel at his third trial. The People have consistently asserted that the pursuit of such testimony and, ultimately the associated conviction could, quite feasibly, simply be the result of attorney strategy and a different jury rather than inexorably tied to three trials and bite mark evidence, as petitioner asserts.

A. BITEMARK EVIDENCE AT TRIAL

1. Dr. Norman Sperber

Norman Sperber, a forensic odontologist practicing for more than forty years, examined autopsy photos of the victim's hand and identified a wound consistent with a human bite mark. (6/18/97 Vol. VI R.T. 1179:1-3, 24; 1179-1181; see also E049135, Vol. I C.T. p. 43.) At trial, Dr. Sperber testified for the prosecution. He came to the conclusion that teeth in a lower jaw made the bite mark and that the biter had an abnormality, an under-erupted tooth

No. 27, in the lower jaw. (*Id.* Vol. VI 1183:16-17; 1184:1-16.) He noted the abnormality in the biter's dentition based upon the injury to the victim's hand prior to taking molds of Richards' teeth.

Dr. Sperber opined that the mark was consistent with the abnormality of Richards' teeth. (*Id.* Vol. VI R.T. 1201:11-1203:11; 1209:17; 1210; 1215; 1218:1-6.) Dr. Sperber was not absolutely certain that it was Richards' bite mark because of the angle at which the picture of the bite mark was taken. (*Id.* Vol. VI R.T. 1198-1199, 1214:24; 1215:4; 1217; 1248:8-24.) He could not, however, rule out Richards as the person who left the bite mark. (*Id.* Vol. VI R.T. 1202; 1271:7-28; 1230:1-14.) At trial, Dr. Sperber testified that, given a sample of one-hundred people "a very, very few of that hundred" would have the under-erupted canine that Richards had. (*Id.* Vol. VI 1212:23-27; 1213:17-25.) Dr. Sperber testified that it was "even more unusual" to have an individual with a "perfectly normal lineup of the teeth" on one side and abnormal positioning of teeth on the other side. (*Id.* Vol. VI R.T. 1213:17-25.) In fact, "[t]hat's kind of a unique feature." (*Id.*; see also 6/26/1997 Vol. VII R.T. 1537:10-26.)

Despite all of Dr. Sperber's trial testimony, he simply could not rule petitioner out as the biter. The opinion presented to the convicting jury was not earth-shattering or even definite. In fact, Dr. Sperber's ultimate conclusion at trial was that the bite mark was consistent with petitioner's dentition, "consistent" being on the lower range of a positive

odontological judgment. (Vol. VI, R.T. 1213:17-25; 1/26/09 Vol. I R.T. 85:7-15.) Moreover, Dr. Sperber discussed, in front of the jury, distortion issues with the bite mark photograph. (R.T. 1195:17.) He further indicated he was conservative in his opinions. (R.T. 1198.) Evidentiary shortcomings were presented to the jury. They still convicted petitioner.

2. Dr. Gregory Golden

Dr. Gregory S. Golden, D.D.S., testified for the defense. It was not until the defense asked him to be a witness that the bite mark issue was introduced. (*Id.* Vol. VII R.T. 1522:19-22.) At trial, Dr. Golden testified that the bite mark on the victim's hand was consistent with a human bite. (*Id.* Vol. I R.T. 96:9-16.) Regardless, he testified then that the evidence should be disregarded. (*Id.*)

While looking through models of his own patients' teeth, Dr. Golden randomly picked, in half an hour, five people whose teeth were similar to Richards'. (*Id.* Vol. VII R.T. 1528:22; 1529:12.) Golden thought that a "canine, to be submerged like this, would probably be less than five percent of the population."[3] (6/18/97 Vol. VI R.T. 1249:14, 17, 19-21.) Ultimately, however, Dr. Golden opined that the bite-mark evidence should be disregarded due to the "low value" of the photograph, despite later testifying that the photo still

[3] Notably, petitioner's own witness, Dr. Golden, used a five percent estimation, only a few points within that of Dr. Sperber and, thus, the People argue a statistical insignificance.

had some use. (6/26/97 Vol. VII R.T. 1532:4-10; 1532:20.) Concerns over photo distortion and the quality of the bite mark photo were discussed at length in the 1997 trial. (Case Number E049135, C.T. 48-49.)

B. BITE MARK TESTIMONY AT EVIDENTIARY HEARING

1. Dr. Sperber

At evidentiary hearing, Dr. Sperber claimed that the bite mark photo he relied upon for the 1997 trial was distorted and not "well done." (1/26/09 Vol. I R.T. 67:10-24.) Dr. Sperber testified that he should not have stated any percentages as to the number of people who shared Richards' dental peculiarity. (1/26/09 Vol. I R.T. 74:16-28.)

In his declaration in support of the petition, Dr. Sperber stated that "[b]ecause the photograph was of such poor quality and because only a single arch injury was present for analysis, the photograph of the injury should never have been relied upon as conclusive evidence of Richards' guilt." (E049135, Augmented C.T. Vol. II pp. 251-253.) He testified that he had "essentially" ruled petitioner out. (R.T. 91.)

2. Dr. Golden

At evidentiary hearing, Dr. Golden testified that the relevant bite could have been a dog bite in an effort to rule Richards out as the biter. (*Id.* Vol. I R.T. 100:1-4.) Curiously, on re-direct, Dr. Golden testified that his initial opinion that the victim's hand injury was a human bite mark had not changed. (*Id.* Vol. I R.T. 109:27-28; 110:1-8.)

Dr. Golden also testified that, despite his awareness of photographic distortion issues at the convicting trial in 1997, he made no attempt to remedy the distortion. (1/26/09 Vol. I R.T. 103:1-7.)

C. PREVIOUSLY INTRODUCED DOCTOR REPORTS

At trial, the jury was presented with a three-to-one enlarged photograph of the lesion (6/18/97 Vol. VI R.T. 1173:19-26), an exemplar of petitioner's teeth (R.T. 1185:11; 1186:14; 1188:23-27), and the testimony of two highly qualified experts - one testifying for the prosecution, the other for the defense.

In his current petition, petitioner again presents argument regarding evidentiary hearing testimony of both Drs. Raymond Johanson and Michael Bowers and, thus, the People must respond. Importantly, neither of these experts testified at the convicting trial. Rather, they were presented only at evidentiary hearing in an effort to highlight alleged distortion in the bite mark photograph – a fact already established and presented to the convicting jury – and in an attempt to explain how Adobe Photoshop could be manipulated to distort digital images. The fact that the photograph used in this case was distorted is not a revelation. The trial testimony fully addressed the distortion present in the photograph. (6/18/97 Vol. VI R.T. 1195:13; 1196:24.) The net result of each doctor's testimony was uncompelling and lacking a legitimate scientific foundation with regard to

purported "advances". The evidence had inherent weaknesses, which the jury considered.

<u>1. Dr. Johanson</u>

Dr. Johansen was called as a defense witness at evidentiary hearing. He co-authored a book on Adobe Photoshop and distortion correction methods. (1/26/09 Vol. I R.T. 116:18-28.) Dr. Johansen testified that he has been using Photoshop for eight (8) to (10) years prior to his testimony. (*Id.* Vol. I R.T. 118:4-5.) Additionally, he testified that "the Adobe technique", making overlays, was in existence and being used in 1996 and 1997, during the time of petitioner's convicting trial. (*Id.* Vol. I. 120:10-17.) Further, Dr. Johansen testified that he began compiling data regarding Photoshop in 1998 and 1999 for a self-published article and that "photo distortion has been corrected for many, many years." (*Id.* Vol. I 161:9-23; 174:21-25; 175:1-12.) The witness discussed a report he compiled and presented Dr. Bowers, another witness in 2000. (*Id.* Vol. I R.T. 186:12-25; 187.)

Dr. Johansen described a sort of self-designated expert qualification as he stated he "wrote the book" on Adobe and people came to him wanting to learn more "[a]nd so we taught them." (*Id.* Vol. I 119:15-20.) The People objected to his testimony on *Kelly-Frye* grounds. (*Frye v. United States* (D.C. Cir. 1923) 293 F. 1013; *People v. Kelly* (1976) 17 Cal. 3d 24.) (*Id.* Vol. I R.T. 1219.)

Unsurprisingly, Dr. Johansen stated that "in his opinion", the use of Adobe Photoshop for rectification of digital distortion is "very proven". (*Id.* Vol. I. R.T. 121:25.) In response to a query regarding Photoshop's use in the odontological community, Dr. Johansen gave an unresponsive answer that "[a]ll the odontologists I've spoken with, we speak the language." (*Id.* Vol. I R.T. 123:4-9). He alluded to citations in journals. (*Id.*) However, when pressed, he could give no citations or peer review results of the efficacy and accuracy of the Photoshop program in the scientific community. (*Id.* Vol. I R.T. 123-125; 177: 6-28; 178:1-2.)

At evidentiary hearing, Dr. Johansen analyzed the upper arch pattern of petitioner because he "felt was more consistent" with the victim's injury pattern. (*Id.* Vol. I R.T. 178:20-28.) This was despite the fact the mark was believed to have been made by a lower arch. (*Id.* Vol. VI 1183:1183: 16-17; 1184:1-16.) Dr. Johansen then went on to describe how he uses Photoshop to distort photos. (*Id.* Vol. I 127:1-10.) Again, the People raised *Kelly-Frye* concerns. (*Id.* Vol. I. R.T. 11-24.) Dr. Johansen could not discuss the technological intricacies, such as coding or algorithms that provide the basis for the program's conclusions. He was "just familiar with the program, how it works." (*Id.* Vol. I R.T. 127:23-28; 128:1-3.) He could only testify that he stuck a disk into a computer and watched it work. Dr. Johansen then described how he used the "rectification", "distort function", and the program's "magic wand" functions to arrive

at his conclusions. (*Id.* Vol. I R.T. 132:7-8, 11; 138:5-6, 139:1-28; 141:25-28; 142:1-6; 147:1-28; 171:21-28.) The People objected to Dr. Johansen's computer program testimony, given his training as a dentist. (*Id.* Vol. I R.T. 148:28-149; 159-160.)[4]

A discussion about the well-established fact that the bite mark photo was of poor quality occurred with Dr. Johansen still being unable to include or exclude petitioner as the biter, despite his Photoshop efforts. (*Id.* Vol. I R.T. 156-157; 189:1-25.) He opined the mark could have been made by fencing material. (*Id.* Vol. I R.T. 157:25-28.) Ultimately, however, the witness acknowledged his report wherein he characterized victim's hand injury as a human bite and admited he reviewed only one set of teeth. (*Id.* Vol. I R.T. 188.)

2. Dr. Bowers

Dr. Bowers was also called as a paid defense witness. (January 26, 2009 Vol. II R.T. 280:13-15.) Former defense counsel first contacted Dr. Bowers about the petitioner's case in 1998. (*Id.* Vol. II R.T. 259:25-28- 260:1-4.) In fact, he generated a report in 1998 analyzing many of the very same issues contained within petitioner's initial petition, including rectification of photo distortion. (*Id.* Vol. II R.T. 260; 262-

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4 In addition to the arguments the People outline here, they do not waive any arguments concerning their prior *Kelly/Frye* objections (see Vol. I R.T. 1219; Vol. I. R.T. 11-24) to the Adobe Photoshop evidence presented at evidentiary hearing.

266.) Additionally, Dr. Bowers published an article regarding digital imagine in bite mark cases just a year after petitioner's murder conviction. (*Id.* Vol. II R.T. 297:12-24.)

Dr. Bowers testified similarly to Dr. Johansen in that he was familiar with the Adobe Photoshop program. He too became, by his own admission, "self-qualified" in the use of Photoshop. (*Id.* Vol. II R.T. 209:4-14.) He opined that Photoshop distortion techniques began in earnest in the late 1990's. (*Id.* Vol. II R.T. 209:17-28; 210:7, 9.) Dr. Bowers also discussed the photographic distortion of the photo of victim's hand injury. Similarly to Dr. Johansen, Dr. Bower's described his Photoshop efforts as "fixing" or "forcing" the image. (*Id.* Vol. II R.T. 232:18-22.) He acknowledged the subjectivity of "forcing" a match. (*Id.* Vol. II 284:1-25.)

Dr. Bowers presented in court Styrofoam exemplars of petitioner's teeth and also noticed the abnormality in petitioner's lower teeth, specifically number 27. (*Id.* Vol. II R.T. 223:7-28; 224:1-17.) Dr. Bowers discussed how he made an exemplar of petitioner's teeth by taking existing dental molds and pressing them into the Styrofoam. (*Id.* Vol. II R.T. 227.) In fact, he made two exemplars- one with lighter pressure to create a shallow exemplar and another with more pressure that would be deeper. (*Id.*) Dr. Bowers solely controlled the amount of pressure exerted between the molds and the Styrofoam exemplar. (*Id.* Vol. II R.T. 256; 281.) He had no way of knowing how hard the victim was bitten. (*Id.* Vol. II, R.T. 281:27-28; 282:1-6.) Contrary to significant

previous trial testimony of multiple dental experts, at evidentiary hearing, Dr. Bowers believed petitioner's tooth number 27 was "at the same level with all the other lower front teeth that [petitioner] has." (*Id.* Vol. II R.T. 233:4-11.) Yet the impression made by the exemplars he used did not make an indentation at tooth number 27. (*Id.* Vol. II R.T. 233:12-24.) He testified that tooth number 27 made an indentation in the Styrofoam exemplar, contrary to Dr. Sperber's initial testimony. (*Id.* Vol. II R.T. 237: 19-22; 238: 14-15.) Dr. Bowers also attempted to claim similarities between other injuries on the victim's body caused by, perhaps the fencing material, and the bite mark on her hand. (*Id.* Vol. II R.T. 243:21-25.)

II.
THE PRACTICAL RESULT OF PETITIONER'S ARGUMENT RESULTS IN AN ATTEMPT TO PRESENT A SUFFICIENCY OF THE EVIDENCE CLAIM; A CLAIM SPECIFICALLY NOT COGNIZABLE ON HABEAS

Preliminarily, petitioner via his informal reply in this matter, asserts respondent mischaracterizes the strength of their case. Petitioner's counsel championed a legislative change to Penal Code § 1473. As a result, petitioner believes that the revised statute renders his conviction void due to its effects upon Dr. Sperber's testimony. Unwinding a conviction based upon an ancillary component is untenable. As this Court stated in its previous opinion, "Price had a sexual relationship with Pamela, who was planning to move with Price to an apartment in Ventura County." (*In re Richards*

(2012) 55 Cal. 4th 948, 952.) "Investigators found a note in Pamela's purse in which petitioner proposed a division of their assets and personal property. Petitioner and his wife had been having financial and marital difficulties, and both had sexual relationships outside the marriage." (*Id.* at 954.) There is no "mischaracterization." Clearly, petitioner and the People have differing theories of the case. Nothing more.

As on initial review and every prior hearing on the matter, the parties take issue with the interpretation of expert testimony. Petitioner mentions the blood spatter evidence and again asserts "mischaracterization." (Informal Reply, pp. 3-4.) Again, differing expert opinion is not synonymous with "mischaracterization". Additionally, this Court stated "[a] criminalist determined the stains were from blood spatter, not from drips or contact, indicating that the blood hit petitioner's pants and shoes when Pamela's skull was smashed." (*In re Richards* (2012) 55 Cal. 4th 948, 954.)

A. A PROPER READING OF PENAL CODE § 1473 REQUIRES INTEGRATION OF BOTH SUBSECTIONS (b)(1) and (e)(1)

The only relevant analysis is whether the changes to Penal Code § 1473 require relief here. The People assert it does not. Removing Dr. Sperber's or even Dr. Golden's testimony from consideration does not unwind the remaining evidence. Obviously, petitioner takes issue with the term "evaluative process". However, the practical result of petitioner's claim is precisely an evaluative process. To be clear, *if* a portion of evidence is eliminated from consideration

as petitioner claims is the result of revisions to Penal Code § 1473, the remaining evidence necessarily must be evaluated for its strength and this Court must determine whether it is sufficient to support the underlying conviction. In other words, a determination must be made as to whether the disputed evidence is "substantially materially or probative on the issue of guilt" by weighing the remainder of the case and by also evaluating the import of the evidence at trial and the totality of the cirecusmtances. (Penal Code § 1473(b)(1).) Such a process is not permitted on habeas review.

Penal Code § 1473 states:

> (a) Every person unlawfully imprisoned or restrained of his or her liberty, under any pretense, may prosecute a writ of habeas corpus to inquire into the cause of his or her imprisonment or restraint.
>
> (b) A writ of habeas corpus may be prosecuted for, but not limited to, the following reasons:
>
> (1) False 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 or her incarceration.
>
> (2) False physical evidence, believed by a person to be factual, probative, or material on the issue of guilt, which was known by the person at the time of entering a plea of guilty, which was a material factor directly related to the plea of guilty by the person.
>
> (c) Any allegation that the prosecution knew or should have known of the false nature of the evidence referred to in subdivision (b) is immaterial to the prosecution of a writ of habeas corpus brought pursuant to subdivision (b).

> (d) This section shall not be construed as limiting the grounds for which a writ of habeas corpus may be prosecuted or as precluding the use of any other remedies.
>
> (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.
>
> (2) This section does not create additional liabilities, beyond those already recognized, for an expert who repudiates his or her original opinion provided at a hearing or trial or whose opinion has been undermined by later scientific research or technological advancements.

Petitioner hangs his proverbial hat upon subsection (e)(1)'s new definition of changed expert testimony. However, that subsection cannot be read in a vacuum. Under the revised provision, "false" expert testimony provides an additional avenue through which one may bring a petition for habeas corpus relief. Petitioner seems to equate the statutory revision with *de facto* relief when he states "[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." (italics omitted) (Petition, p. 30.) Something more than a "falsity" delineation must occur for ultimate relief, particularly in a case such as this where "significant evidence" pointed persuasively to petitioner's guilt. (*In re Richards* (2012) 55 Cal. 4th 948, 969.) Common sense and notions of statutory interpretation require as much. One examines the statute's

words "because they generally provide the most reliable indicator of legislative intent. [Citation omitted.] If the statutory language is clear and unambiguous [the] inquiry ends." (*In re D.B.* (2014) 58 Cal. 4th 941, 946 citing *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103, 56 Cal.Rptr.3d 880, 155 P.3d 284; see also *People v. Harrison* (2014) 57 Cal. 4th 1211.) Section (e)(1) appears to modify, relate back to, and further clarify those circumstances under which the prosecution of a writ for habeas corpus relief would be appropriate as delineated in section (b)(1)[5]. As such, even if petitioner is successful in labeling Dr. Sperber's testimony "false" by way of supporting new legislation, he must then show that such evidence was "*substantially* material or probative on the issue of guilt or punishment" pursuant to subsection (b)(1). (Emphasis supplied.) Revised section (e)(1) merely gives an additional jurisdictional platform upon which one may rest their claims.[6]

The record in the instant case is rife with evidentiary considerations concerning motive, means, and opportunity. It is further rife with discussions about how Dr. Sperber was not sure it was Richards' bite at trial, that the singular photo

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5 The People assert that (e)(1) would similarly relate back to subsection (b)(2). However, that subsection is not relevant to the instant case.

6 To preserve their interests, the People also note Penal Code § 3 and its very clear language that no statute is retroactive, unless expressly so declared. The pertinent provisions of Penal Code § 1473 became effective January 1, 2015.

was distorted, and that Dr. Sperber's ultimate conclusion that the mark was "consistent" with petitioner's dentition was on the lower end of the forensic odontological identification continuum. Further, jurors at the convicting trial were aware that Dr. Sperber testified "...based solely on his experience as a practicing dentist, and expressly without the benefit of any scientific studies...". (*In re Richards, supra,* at p. 955.) To be clear, jurors at petitioner's convicting trial were aware of inherent issues with Dr. Sperber's testimony. The convicting jury only heard Dr. Sperber tell them Richards' bite was "consistent" with the bite mark in a distorted photograph. (6/26/97 Vol. VII R.T. 1530:9-28; 1531:28.) Nevertheless, they found petitioner guilty.

Petitioner's mention of the trial prosecutor's closing argument is mere distraction. As has been argued previously, the closing argument was not evidence and the jury was instructed as much. The People assert that what remains is simply yet another attempt to retry the case after abundant due process.

If, as petitioner seems to argue, Dr. Sperber's testimony were eliminated from consideration due to the application of revised Penal Code § 1473, petitioner still must address all of the remaining pieces of evidence the convicting jury considered in rendering its verdict[7]. In doing so, the People

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[7] The People assert that this premise holds true even *if* Dr. Golden's testimony was eliminated for similar reasons. Odontological evidence was not the only convicting factor. Speculation about juror state of minds as to weight of evidence and credibility determinations are specious.

contend that the resulting evaluative process amounts to nothing more than a sufficiency of the evidence analysis in determining whether the disputed evidence is *substantially* material or probative on the matter. The subsequent introduction of Adobe Photoshop evidence and additional dentist testimony at evidentiary hearing, necessarily not heard by the convicting jury, does not, in itself render such evidence "substantially material or probative" as Penal Code § 1473 (b)(1) requires. It is well-established that such post-conviction analyses are prohibited on habeas. (*See In re Reno* (2012) 55 Cal. 4th 428 and *In re Lindley* (1947) 29 Cal.2d 709.) Additionally, because habeas corpus proceedings seek to collaterally attack a presumptively final judgment, petitioner bears a heavy burden to plead sufficient grounds for relief and prove them. (*In re Bolden* (2009) 46 Cal. 4th 216.) For purposes of collateral attack, all presumptions favor the truth, accuracy, and fairness of the conviction and sentence rendered after a procedurally fair trial; defendant must undertake the burden of overturning it. (*In re Lawley* (2008) 42 Cal. 4th 1231.)

Ultimately, it cannot be reasonably argued that the remaining evidence was inadequate to support the petitioner's conviction or that the evidence with which he currently takes issue was "substantially material or probative" on the matter. The dissent in the underlying case *In re Richards* (2012) 55 Cal. 4th 948, while acknowledging the circumstantial nature of the case, pointed out that "...this evidence was substantial

and the conviction would survive a sufficiency-of-the-evidence review." (*Id.* at p. 981.)

Simply, petitioner has not made a prima facie case for relief. A court can summarily deny a petition for habeas corpus for the same reasons that justify summarily denying a petition for writ of mandate because the petition fails to state a prima facie case or because it is procedurally defective. (*Gomez v. Superior Court* (2012) 54 Cal. 4th 293.)

Resolution of any conflicts or inconsistencies in testimony is the "exclusive province of the trier of fact"—the jury. (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) The testimony of a single witness can support a conviction, unless it is physically impossible or inherently improbable. (*Ibid.*) A reviewing court does not resolve credibility issues or evidentiary conflicts. (*Ibid.*) Similarly, the United States Supreme Court in *Jackson v. Virginia* (1979) 443 U.S. 307 [99 S.Ct. 2781, 61 L.Ed.2d 560] stated "it is the responsibility of the jury – not the court – to decide what conclusions should be drawn from evidence admitted at trial. A reviewing court may set aside the jury's verdict on the ground of insufficient evidence only if no rational trier of fact could have agreed with the jury." (*Id.* at p. 319.)

Regardless of changes to Penal Code § 1473, the jury considered the breadth of additional evidence when reaching their verdict. Additionally, belief in sufficient motive was discussed at length in petitioner's direct appeal (Case Number

E049135, C.T. Vol. II, p. 410)[8] and by the majority in the prior habeas proceeding when this Court noted other "significant evidence pointing persuasively to petitioner's guilt" (*In re Richards* (2012) 55 Cal. 4th 948, 969) such as petitioner's in depth knowledge about crime scene details that "only the murderer could know, and evidence of blood spatter on petitioner's clothes and shoes, indicating that he was present when Pamela's head was smashed." (*Id.*) Further, "...the case against [petitioner] was strong, including evidence that defendant and victim were in the process of ending their marriage, that no other motive appeared for the murder, that the murder took place on a remote property guarded by several dogs that were hostile to strangers, [in fact, the same dogs barked and snarled at Deputy Nourse] and that footprints and tire tracks indicated that no one else had been present." (*Id.* at p. 967; see also *Id.* at p. 953.) This Court also noted facts in the trial record noting that petitioner's responses to law enforcement "seemed rehearsed". (*Id.*)

> Deputy Nourse also said that although it was an overcast night and very dark, and although only half an hour had transpired between petitioner's reported arrival at his property and Nourse's arrival there, petitioner was able to take the

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[8] In this response, the People primarily address petitioner's contentions regarding bite mark evidence. They do not, however, waive any arguments regarding the state of the remaining evidence petitioner offered at evidentiary hearing. Despite petitioner's presentation of hair, blood spatter, DNA, and fiber evidence, he has not successfully proven any of his claims made at evidentiary hearing to be sufficient bases for relief.

> deputy on a detailed tour of the crime scene. Petitioner knew that Pamela's pants were lying next to the generator, and that they had not come off easily, telling the deputy "trust me on this." He knew that her underwear was inside the camper. He knew that her blood was inside the camper on the pillow. He knew that there was "blood on rocks up against the hill" (referring to the rough, upward-sloping terrain to the southwest of the crime scene). He knew that a bloodstained paving stone had been thrown "over the side of the hill" (referring to the rough, downward-sloping terrain to the north of the crime scene). He theorized about what Pamela was doing when her murderer arrived, where the murderer confronted Pamela, and what she did in her defense. And he surmised that the murderer had used a cinderblock to kill Pamela. He also told the deputy: "[A]ll the evidence that relates to this case I already touched and moved trying to figure out how this whole thing happened."

(*Id.* at p. 953.)

Notwithstanding petitioner's claims regarding legislative developments, the convicting jury certainly considered more than just Dr. Sperber's less than definitive trial testimony in reaching their decision.

CONCLUSION

Each and every iteration of expert testimony, its weight, its effects, and, ultimately, certain intrinsic weaknesses were considered and evaluated by both the convicting jury and multiple courts in hearings, motion proceedings, appeals, and multiple petitions for writs of habeas corpus. There is no dispute this matter is a circumstantial one. That fact alone is not dispositive of its merits. Common sense dictates that,

regardless what effect Penal Code § 1473 may have, if any, upon this proceeding, there is still substantial additional evidence that may not simply be discarded in the interests of granting the current petition. There is nothing inherently impossible or improbable about the testimony, facts, and physical evidence that established petitioner's guilt and, even when considering his claims regarding odontological testimony, he cannot carry his burden. Simply, the disputed evidence, when viewed under the totality of the circumstances and when considering its inherent weaknesses presented at the convicting trial, is not substantially material or probative to the instant case. The People respectfully request that the Court deny the petition.

Dated: April 15, 2015.

Respectfully submitted,

MICHAEL A. RAMOS
District Attorney

____

STEPHANIE H. ZEITLIN
Deputy District Attorney
Appellate Services Unit

CERTIFICATE OF COMPLIANCE

I certify that, pursuant to Rule 8.204(c)(1) of the California Rules of Court, the enclosed **RETURN TO PETITION FOR A WRIT OF HABEAS CORPUS** was produced using 13-point Bookman Old Style typeface and it contains 8,668 words including footnotes.

Done this 15th day of April 2015, at San Bernardino, California.

Respectfully submitted,

MICHAEL A. RAMOS
District Attorney

____
SHEILA A. WALKER
Secretary II
Appellate Services Unit

SAN BERNARDINO COUNTY
OFFICE OF THE DISTRICT ATTORNEY
PROOF OF SERVICE BY UNITED STATES MAIL

STATE OF CALIFORNIA	)	**WILLIAMS RICHARDS**
	) ss.	**S223651**
COUNTY OF SAN BERNARDINO	)	FVI00826/S189275/E024365/ E049135/E023171/E013944

Sheila Walker says:

That I am a citizen of the United States and employed in San Bernardino County, over eighteen years of age and not a party to the within action; that my business address is 412 W. Hospitality Lane, First Floor, San Bernardino, California 92415-0042.

That I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business.

That on April 15, 2015, I served the within:

RETURN TO PETITION FOR A WRIT OF HABEAS CORPUS

on interested parties by depositing a copy thereof, enclosed in a sealed envelope for collection and mailing on that date following ordinary business practice, addressed as follows:

Superior Court
County of San Bernardino
401 North Arrowhead Avenue
San Bernardino, CA, 92415-0063

Court of Appeal
Fourth District, Division Two
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P.O. Box 85266-5299
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Jan Stiglitz
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San Diego, CA 92101

I certify under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at San Bernardino, California, on April 15, 2015.

Sheila Walker