

No. _____

IN THE
UNITED STATES SUPREME COURT

STANLEY WILLIAMS,
Plaintiff-Petitioner,

v.

S.W. ORONSKI,
Warden, California State Prison at San Quentin, et al.

ORIGINAL PETITION FOR WRIT OF HABEAS CORPUS

CAPITAL CASE

IMMINENT EXECUTION SCHEDULED FOR DECEMBER 13, 2005

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CAPITAL CASE

QUESTIONS PRESENTED

1. Whether a reasonable juror would have found petitioner guilty beyond a reasonable doubt if it heard new evidence that the firearms testimony was “junk science at best”?
2. Whether a reasonable juror would have found petitioner guilty beyond a reasonable doubt if it had heard new impeachment evidence long suppressed by the prosecution about the criminal informants, the circumstances of their statements, and the promises made in exchange for their testimony violated petitioner’s due process rights?
3. Whether a reasonable juror would have found petitioner guilty beyond a reasonable doubt if it heard that petitioner was forcibly and involuntarily drugged while a pretrial detainee as management control?

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ORIGINAL PETITION FOR WRIT OF HABEAS CORPUS

Petitioner, STANLEY WILLIAMS, respectfully presents this original petition for a writ of habeas corpus and asks this Honorable Court to grant relief from his unconstitutional conviction and sentence of death.

JURISDICTION

Petitioner asks this Court to exercise jurisdiction over this matter under 28 U.S.C. § 2241. See Felker v. Turpin, 518 U.S. 651, 658-62 (1996).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional and statutory provisions are set out in the Appendix.

STATEMENT OF THE CASE

Petitioner stands convicted of the murder of four individuals: Albert Owens, a clerk at a convenience store, and three Yang family members who ran a motel in Los Angeles where they were robbed and brutally killed. The facts are discussed at length in the various published decisions issued by the lower courts. People v. Williams, 44 Cal. 3d 1127 (1988); Williams v. Woodford, 306 F.3d 665; Williams v. Woodford, 384 F.3d 567 (9th Cir. 2004); Williams v. Woodford, 396 F.3d 1059 (9th Cir. 2005).

Petitioner is a condemned inmate who is scheduled to be executed at 12:01 a.m. on December 13, 2005, at San Quentin, California. He is factually innocent of the four homicides of which he stands convicted. He has steadfastly asserted his factual innocence since

his arrest. His factual innocence justifies review and relief pursuant to Schlup v. Delo, 513 U.S. 298 (1995).

The Ninth Circuit found Petitioner's conviction was based on "circumstantial evidence and the testimony of witnesses with less-than-clean backgrounds and incentives to lie in order to obtain leniency from the state in either charging or sentencing." Williams v. Woodford, 384 F.3d 567, 624 (2004). The lone piece of forensic evidence against Petitioner was a shotgun casing found at the crime scene, assertedly connected to a gun that Petitioner lawfully owned, but which was in the possession of James Garrett, a convicted felon.

The prosecution expert initially found no connection between the casing found at the crime scene and Petitioner's gun, but pressured by a prosecutor, the expert retested it repeatedly (18 times) and finally changed his opinion. He offered no scientific basis for the change, and an exceptionally qualified expert, hired by Petitioner's newly appointed counsel, has flatly refuted the conclusion as "junk science."¹

Putting aside the questionable forensic tie to Petitioner's gun, there was no forensic proof as to who fired the fatal shots. Further, the manner in which police initially obtained the firearm is highly suspect. In a successful diversionary tactic, while under police interrogation Garrett pulled it from under his own bed. Doing so, he managed to divert the police attention and stop the questions of him about a different homicide in which he was the suspect.

¹ Declaration of David Lamagna, ¶ 5 Exhibits at 4. In recent days, Petitioner has submitted to this Court 1462 pages of supporting documentation, denominated herein as "Exhibits" followed by the specific page, both by the printed pagination and the electronic pagination in the PDF presented this Honorable Court on CD-Rom. In addition, Petitioner has submitted an additional 250 pages, denominated herein as "Supplemental Exhibits" or "SE" and also referred to by the pinpoint page reference.

Whether alone or coupled together, these two weak links fail at the slightest tug. There was no reliable forensic evidence connecting Petitioner to the crimes of which he has been convicted.

When these heretofore unknown defects in the forensic evidence are considered, and then coupled with the prosecution's suppression of numerous matters that should have been disclosed, it is clear a miscarriage of justice is afoot. Petitioner could not and did not know about the deficiencies in the forensic evidence before this stage. Moreover, as discussed herein, he has learned of additional proof that the prosecution repeatedly violated its constitutional duties by suppressing impeachment evidence. Under Banks v. Dretke, 540 U.S. 668 (2004), Petitioner is entitled to relief even at this stage. This Court has been clear: at any time, the prosecution has a duty first and foremost to "set the record straight." 540 U.S. at 676.

There is an additional, compelling, justification for permitting Petitioner to secure review and relief: the persistent refusal of the Ninth Circuit to afford Petitioner the qualified counsel 21 U.S.C. § 848(q) mandates.² Petitioner's primary federal habeas and appellate counsel had no prior capital experience, no prior criminal defense experience, no prior prosecution experience, no prior habeas experience, and no prior appellate experience.

Capital habeas representation is a demanding and increasingly arcane area of practice that draws upon knowledge of criminal trial skills, of the civil rules that govern, and of the appellate procedures it spawns. Petitioner's counsel had none of this experience and Petitioner, an innocent man, faces the consequences. As demonstrated herein, Petitioner arrives

² Section 848(q) requires that counsel appointed for a capital habeas petitioner have been admitted to practice in the court of appeals for a minimum of five years and have not less than three years of experience in handling appeals in felony cases. Declaration of Federal Public Defender Maria Stratton, Supplemental Exhibits at 154.

at this Court after seriously deficient federal habeas corpus proceedings. Most importantly, a key reason for the deficiency was the Ninth Circuit's refusal to address his legitimate - and timely - complaints about his counsel's incompetence. He stressed to the Ninth Circuit that he was innocent and counsel was ignoring his pleas to investigate and raise relevant claims. Qualified counsel would have identified and pursued these claims affecting his innocence in the original petition, and the instant petition would have been unnecessary.

In fact, due to counsel's incompetence two critical claims of innocence were lost to petitioner because counsel did not alert to the federal court to facts that were easily verifiable. The Ninth Circuit held that Samuel Coleman's testimony was not coerced despite being beaten by police because he had a lawyer to represent him at trial. Williams v. Woodford, 384 F.3d at 593. This, however, was not true. The record does not reflect that he had a lawyer at trial but only that there was a lawyer who handled who handled signed off on the immunity papers at the preliminary hearing. Coleman does not remember ever retaining a lawyer or having one at the trial and the lawyer does not remember ever having anything to do with petitioner's case.

In addition, the Ninth Circuit found that there was no undisclosed deal between the prosecutor and James Garrett to receive probation for his pending receiving stolen property charges even though Garrett's sentencing judge gave him probation after having a long talk with DA Martin. 384 F.3d at 597. DA Martin and Garrett's lawyer denied the existence of a deal. However, James Garrett himself told his probation officer on this case that he had been given a deal and would possibly get probation. This probation report was discovered by the undersigned – who was appointed by the California Supreme Court on October 21, 2005, and who had only

begun reviewing the files in petitioner's case some months before – in the files of the Federal Public Defender's Office.

This last-minute petition is simply not Petitioner's fault. The Ninth Circuit has known since at least November, 2000, that Petitioner was not receiving the statutorily qualified counsel to which he was entitled.³ Petitioner tried repeatedly to get relief from the Ninth Circuit; his counsel even joined in the request. The Ninth Circuit repeatedly denied the requests, until finally counsel was compelled to herself seek such relief. When Petitioner finally gained a change in counsel, his appeal had already been denied and a petition for rehearing was already pending. He had no meaningful opportunity to identify the instant issues, or to seek to amend his original petition to add them. When this background is reviewed, it becomes clear this Court should intercede, review, and act to preserve the integrity of the habeas proceedings occurring in its lower courts.

CLAIMS FOR RELIEF

Petitioner's right to due process, and a fundamentally fair determination of his guilt or innocence and the appropriate sentence has been repeatedly undermined throughout the history of his trial and appeals. As the Ninth Circuit Court of Appeals has recognized, the case against Petitioner was based on "circumstantial evidence and witnesses with less than clean

³ This problem is documented extensively at SE 21-156. This Honorable Court's attention is most respectfully and specifically directed to the declaration executed by Maria Stratton, Federal Public Defender for the Central District of California, in which she notes habeas counsel's deficient qualifications, and to the most unusual order of the Ninth Circuit, dated April 20, 2001, in which the court acknowledged it could not determine what issues were presented by Petitioner's appeal to that court. SE 152, 154.

backgrounds and incentives to lie.” (Williams v. Woodford, 384 F.3d 567, 624 (2004)). During the course of his trial, the prosecution withheld exculpatory evidence that critically compromised Petitioner’s ability to mount a defense and cross-examine the witnesses against him. To that end, the prosecutor and the main witness against Petitioner, James Garrett, consistently mislead first the jury and then the appellate courts about the deal they had struck for Garrett’s testimony. Further, Petitioner has always maintained that he was drugged during his trial, making it impossible for him to participate in his defense. While many psychiatric records of death row inmates have been maintained, Petitioner’s records have been destroyed by the Los Angeles County Jail, thus making it impossible to test this claim.

1. It is now clear the firearm evidence was inherently unreliable and its use rendered Petitioner’s conviction and sentence unconstitutional.

The prosecution’s firearms examiner in this matter was James Warner. On March 15, 1979, Warner opined that he could not determine if the expended shotgun shell came from Williams’ shotgun, because there were “not enough” characteristics “for a positive comparison.” Exhibits at 52. Then prosecutor Robert Martin⁴ stepped in and directed Warner to retest. Warner fired the shotgun eighteen (18) times. RT 1515-1516. He compared those shells with the expended shell found at the motel under a comparison microscope. RT 1516-1517. He found only two (2) shells that had “sufficient marks” to enable any “comparison.” RT 1520.

⁴ DA Martin - who was directing Warner - has twice been found by the California Supreme Court to lack integrity for not being honest with the trial court about his reasons for striking black jurors from the venire. As a result the California Supreme Court reversed two death penalty cases. People v. Fuentes, 54 Cal.3d 707, 725, 727 (1991); People v. Turner, 42 Cal.3d 711, 720 (1986).

“The other shells were not getting a significant hit to get good marks from the breach face.” RT 1521. Reversing himself, this time he concluded there was a match to Petitioner’s shotgun.

Petitioner had never had any counsel challenge this evidence, the only forensic evidence that supposedly tied him to the crimes. The undersigned habeas counsel, appointed by the California Supreme Court approximately two months ago, has corrected this. According to David Lamagna, an extremely well qualified scientist and firearms examiner, Warner’s testimony is “junk science at best.” As Lamagna explains, Warner’s opinion lacked scientific basis, lacked the traditional firearms examination techniques employed at the time the testimony was offered, and was not even corroborated by photographs as had been the norm for decades. Under pressure, Warner simply changed his opinion without any scientific basis for doing so.

Lamagna notes that Warner did not make any effort to examine and compare ejector and extractor marks on the recovered spent shotgun shell with those of his test firings, important class characteristics (and potentially sub-class characteristics) that should be examined and identified. Warner’s report lacks specificity regarding the type, location, and dimensions of any toolmark impressions that he utilized in his comparison and subsequent identification. Lamagna notes there is simply no scientific basis for Warner’s claim that there was a “match.” Exhibits 5-6.

Significantly Warner did not even provide any photomicrographs of the spent shotgun shells he fired, which would have allowed independent review of his opinion. Traditionally, firearm examiners use an optical comparison microscope to compare striae and other toolmarks on the evidence bullet or cartridge case with those from a test firing. The comparison microscope allows the two images to be merged so that a comparison may be readily

observed and photographed. This has been standard practice as far back as 1921. Without the photomicrographs, the evidence is solely one individual's subjective untested opinion. Exhibits 6-7.

Trial counsel did not make any effort to secure an independent assessment of this evidence, and federal habeas counsel failed to recognize or challenge this issue.⁵ This failing was crucial since it allowed an untested forensic link to tie Petitioner to the crimes. Given his consistent assertion of factual innocence, the omission is stark.

If the jury had heard that the firearms examiner's opinion was highly unreliable, "junk science" at best, given that the only other evidence against Petitioner was false and/or highly unreliable informant testimony, "it is more likely than not that no reasonable juror would have found Petitioner guilty beyond a reasonable doubt." Schlup, 513 U.S. at 327. Ordinarily, ineffective assistance of counsel claims are governed by the standards set forth in Strickland v. Washington, 466 U.S. 668, 687 (1984), which require a showing of both deficient performance by the attorney and resulting prejudice to the defense. Trial counsel could have tested the firearms evidence at the inception of the case. CT 16. However, neither he, nor anyone else, requested funds for an independent firearms expert or investigate the credibility of this aspect of the case until the undersigned counsel assumed representation of Petitioner.

Because the firearms evidence is the only physical evidence linking Petitioner to these crimes there is a reasonable probability that but for trial counsel's failure to conduct his

⁵ There are serious additional issues surrounding the firearms evidence. Petitioner's expert notes significant inconsistencies in the type of wounds the decedents suffered, and opines there may have been more than one firearm used in the killings. Exhibits at 8-9. If granted discovery and an opportunity, Petitioner would address these additional points to establish the falsity of the prosecution's case.

own testing, Petitioner would not have been convicted. Strickland, 46 U.S. 694. The failures of predecessor counsel to address this evidence cannot be said to have been reasonable. Relief is warranted.

2. An unethical prosecutor, building a case on felons and informants, repeatedly violated this Court’s consistent authorities compelling complete and truthful disclosures about witnesses and promises.

Petitioner acknowledges having had some impeachment evidence against the informant witnesses. Even with just what was previously known, the Ninth Circuit has described the cast of characters as “witnesses with less-than-clean backgrounds and incentives to lie in order to obtain leniency from the state in either charging or sentencing.” Williams v. Woodford, 384 F.3d 567, 624 (9th Cir. 2002).

But the prosecution actively suppressed, and mislead the courts, concerning additional impeachment evidence that has now come to light. These developments put the entire matter in a new light, and this Court should act and grant relief to ensure that an actually innocent man is not executed. The context requires development for a complete appreciation of the gravity of the errors.

James Garrett - The police first turned their attention to Petitioner when, while interviewing Garrett⁶ (a career criminal, convicted armed robber, and police informant with pending felony charges) about the murder of Gregory Wilbon, Garrett’s crime partner,⁷ Garrett

⁶ Garrett’s trial testimony is found at Exhibits 912-1057.

⁷ Gregory Wilbon was Garrett’s crime partner in an insurance fraud ring. (Reporter’s Transcript “RT” 1655.) In 1978, Garrett and Wilbon staged over one hundred automobile accidents on the freeway using cars obtained from auctions. RT 1658. After Wilbon’s death, Garrett took over Wilbon’s business. RT 1663. Garrett also planned the armed robberies of two

deflected them by producing the shotgun at issue here. Thereafter the prosecution simply withheld from Petitioner all evidence relating to the circumstances of Wilbon's death. In fact, it appears the police simply stopped investigating Wilbon's murder altogether after Garrett implicated Petitioner in these offenses. Wilbon's sister, Theresa Daniels', only contact with the police was when they asked her to identify his body. She never heard from police again. Exhibit 283.

In his initial interview, Garrett described the motel murders in detail and also said that Petitioner admitted to committing the 7-11 murder. RT 1690. Garrett denied committing the motel murders himself and said that his wife and children could verify he was home asleep that day. RT 1788.

This perverted Petitioner's trial in two significant ways. First, whereas in fact Wilbon's body was "markedly decomposed" when found so that the date and time of death could not have been known, Deputy Sheriff Gilbert Gwaltney testified in Petitioner's trial, and shielded Garrett from attack, providing him with an alibi for the asserted date and time of Wilbon's murder. Gwaltney knew the date and time could not be established since he personally attended the Wilbon autopsy and knew the condition of the body. Therefore, Gwaltney knew it would have been impossible to determine when Wilbon was killed and impossible for James Garrett (or

Big Five stores (in Torrance and Inglewood) in which over one hundred weapons and an unknown quantity of ammunition was taken. Arrested by the FBI, Garrett began cooperating with authorities about the insurance fraud scam. RT 1648, 1658, 1748-1758. Garrett was paid to act as an informant to snare one of the insurance scam's dishonest attorneys, Stephen Burke. RT 1661-1667. Garrett in turn double-crossed the police by extorting money from Burke. For a hefty sum, Garrett offered to testify falsely on Burke's behalf. RT 1668.

anyone else) to have an alibi. When he testified to the contrary, Deputy Gwaltney willfully misled the jury.⁸ These facts were all withheld from Petitioner.

An additional point merits note: Wilbon's body was found in the trunk of a car. Garrett has been known to force his crime victims into car trunks. In one instance, Garrett hijacked a truck driver at gunpoint, and then placed him in the trunk of a car. The truck and its contents were sold. When the prosecution suppressed this detail, it denied Petitioner a necessary opportunity to impeach this vital prosecution witness and to establish doubt as to the quality of the police investigation.⁹

At trial, Garrett testified: "I didn't know what the Brookhaven Motel was until after I heard it from Stan." RT 1789. Garrett's testimony that he had never heard of the Brookhaven Motel was a lie which DA Martin allowed to go uncorrected. Garrett had told Sheriff's Deputies Hetzel and Solar that he had heard about the murders from his sister-in-law, Martha Hamilton, who worked right next to the motel. Exhibits at 294, 307.

The police had other reasons to know Garrett was dishonest about these crimes. Garrett initially told them that Petitioner had described the murders in detail, "the same way that it had happened, you know, the way my wife had heard it over, you know, the TV and the

⁸ It is well settled that the prosecution's knowing use of perjured testimony is a violation of due process. Mooney v. Holohan, 294 U.S. 103 (1935); Alcorta v. Texas, 355 U.S. 28 (1957); Pyle v. Kansas, 317 U.S. 213 (1942); Miller v. Pate, 386 U.S. 1 (1967); Napue v. Illinois, 360 U.S. 264 (1959).

⁹ The single expended shotgun shell at issue herein was made by Browning. The police established there were only two stores where such ammunition could have been purchased in the previous year, one of which was "Big Five" stores. Big Five advised police that only one of their stores had stocks of this type ammunition at the end of 1978, and that store was in Inglewood. In 1978, Garrett robbed the Inglewood Big Five of more than one hundred firearms and an unknown quantity of ammunition.

newspapers.” Exhibits 308. When informed that no details regarding how the victims were dressed and/or where they were located had been publicly disclosed, Garrett backpedaled: “No, no, it wasn’t nothing like that, it was just that some people had gotten killed at a motel on Vermont, you know –that’s all that she heard” Exhibits 308-309.

Ester Garrett - Garrett’s wife Ester,¹⁰ herself facing multiple felony charges, also claimed that she overheard Petitioner confess. For their cooperation, the Garretts were given money to pay living expenses by DA Martin. When this money ran out, DA Martin instructed her to apply for welfare. As she had done in the past, Ester committed perjury in order to receive welfare. She admitted that she perjured herself because it did not bother her to lie under oath. RT 1958, 1988-2001.

Alfred Coward - The prosecution withheld significant evidence about Coward as well. Alfred Coward testified under a grant of immunity about the murder of Albert Owens. He was a Canadian citizen and had three prior prosecutions for robbery and loaded guns, one of which took place right in front of the motel where the Yang family was murdered, crucial facts that, had they not been withheld by the prosecution, would have allowed Petitioner to properly impeach this crucial witness.

Samuel Coleman - According to DA Martin, Samuel Coleman was given immunity at the insistence of an attorney he had retained. At the preliminary hearing on April 18, 1979, just prior to a preliminary hearing, DA Martin informed the court that Coleman had waived his right to a hearing. In fact, an immunity order had been signed by the Hon. B.

¹⁰ To avoid confusion, James Garrett will be referred to as “Garrett” and Ester Garrett as “Ester.” Her testimony is in at Exhibits 1058-1167.

Donahue on April 17, 1979. CT 106; Exhibits 1337-1345. Just prior to Coleman's testimony at Petitioner's trial, DA Martin told defense counsel that Coleman had never been charged with anything but he had been given immunity at the insistence of his attorney, Walter Gordon. RT 1550-1551; Exhibits 1347-1348. When defense counsel said that he "could not envision that he would be granted immunity to testify in this case unless he were charged with something having to do with this case, Martin replied, "We've turned over all the discovery to you counsel. Have you ever found anything that would indicate that Samuel Coleman was ever charged with anything?" RT 1551; Exhibits 1348.

A. Key Witnesses' Ongoing Criminal Activity and Benefits from the Prosecution

The criminal activity of the primary witnesses against Petitioner in this matter has continued since Petitioner's trial, and most notably, has consistently gone unpunished or punished minimally. The clear explanation, particularly when coupled with the additional evidence Petitioner has garnered and explains herein, is that Garrett, Coleman, and Coward remained shielded by the Los Angeles County District Attorney for years after Petitioner's trial. This was not only to reward them for their testimony against Petitioner, but also to ensure they did not recant their trial testimony at any time.

On December 17, 1984, Coward was convicted of federal conspiracy and given five years probation. Coward and others were involved in a scheme to steal student loan checks and sell them. Exhibits 547-548. On June 9, 1989, Coward was arrested for possession of narcotics for sale. The District Attorney declined to prosecute. Exhibits 548. On July 11, 1989, Coward was arrested for burglary. Once again, the District Attorney declined to file charges. Exhibits 548. On May 16, 1990, Coward was arrested for receiving stolen property. Again the

District Attorney declined to file charges. Exhibits 548. In October, 1990, Coward was charged with burglary and pled guilty. Exhibits 544. The probation officer recommended state prison, noting that Coward:

has a criminal history dating back several years. His various periods of incarceration on the county and federal level have had little effect in changing his life style. He recently completed a five year federal probation grant and then became involved in this present matter. ¶ It is apparent that the defendant has no respect for the rights and property of other people. His criminal behavior goes on unabated. Exhibits 553.

Despite the officer's recommendation, on October 29, 1990, Coward was placed on probation by the agreement of the District Attorney. Exhibits 596.

Today, Coward is incarcerated in Canada for having killed a man during a robbery. Although the beating and subsequent robbery was caught on tape by a security surveillance camera, Coward maintained his innocence until sentencing, as reported by the CanWest News Service:

Initially charged with murder, but later with manslaughter, Coward claimed throughout the trial that he was in bed with the flu on the night of the killing, and that he had never seen [the victim], and that he was an innocent victim of mistaken identity facing prison because of blurred images from a faulty camera.

But after he was found guilty and was facing sentencing, Coward admitted that he was, in fact, the man who had beaten and robbed [the victim], leaving him to die.

SE 19. Coward has shown himself not only to be a violent criminal for more than 30 years, but to be someone willing to lie under oath for as long as it benefitted him to do so.

The same is true of James Garrett and Samuel Coleman. Both men continued to commit various violent crimes but were treated in an extraordinarily lenient fashion by the District Attorney's office. After petitioner's trial, Garrett shot his bookie in the chest but served

no more than two years in prison before being paroled. Exhibits 472-473. He later shot a bank teller in the hand. He pled guilty to four counts of armed robbery and received a sentence of 2 years time served. Exhibits 514-515. Garrett continued to employ the same *modus operandi* in crimes he committed long after Petitioner was sentenced to death. In 1990, James Garrett masterminded the armed robbery of a credit union. He admitted to the FBI that he was involved in the plan. Exhibits 358.

Samuel Coleman also continued to violate the law but was consistently placed on probation rather than incarcerated. Even after repeatedly violating probation he was continued on probation. Such lenient treatment was clearly the result of secret deals made by DA Martin with Coward, Garrett and Coleman. The prosecution had previously denied such agreements existed.

B. Practice of Los Angeles District Attorney's Office to Keep Informants Happy

Such lenient treatment is also consistent with a training memorandum written by Los Angeles DA Elliot Alhadeff that warns prosecutors that informants must be kept happy long after they have left the witness stand.

If you alienate the informant you run the risk of his recanting the testimony you agreed to useSo, nurse the witness. This does not mean you have to cave in but the witness should be confident you will be there to take care of the important requests.

Exhibits 529.¹¹

¹¹ Garrett's lifetime pass to commit violent crimes but spend little time in prison is a tragic example of prosecutors using winking and nodding to get around Brady and Giglio. See e.g. Campbell v. Reed, 594 F.2d 4 (4th Cir. 1979); Willhoite v. Vasquez, 921 F.2d 247 (9th Cir. 1990); and Randolph v. California, 380 F.3d 133 (9th Cir. 2004), for examples of winking and nodding to avoid constitutional obligations.

These events are troublesome for more than just the criminality they witness. They are intertwined with a prosecutor has been less than candid, both with Petitioner and the courts, about his own conduct as well. DA Martin had consistently maintained that he had no undisclosed deal with Garrett in regard to the charges that were pending when he testified against Petitioner. Williams v. Woodford, 384 F.3d at 597. However, a few days ago Martin finally revealed that he had a secret side deal with Garrett's attorney. Martin told the Contra Costa Times:

The only thing I told Garrett's attorney – this is quite usual – is that if his judge called me and asked if he gave honest truthful testimony, I'd say yes," said Martin, now retired. "If ... the judge learns that he testified truthfully in a murder case, he's **probably going to get some consideration**.

SE 16, emphasis added. Nevertheless Martin failed repeatedly to disclose this agreement to Petitioner. Garrett did get probation for his then pending cases, though Martin denied making any promises to him. Martin's recent statements to the newspaper reveals that he lied.

These unlawful suppressions prevented Petitioner from establishing the truth: the primary prosecution witnesses, James Garrett and Alfred Coward, falsely accused Petitioner in order to deflect suspicion away from themselves. See Kyles v. Whitley, 514 U.S. 419 (1995) (death judgment reversed after prosecution failed to disclose numerous items of evidence that would have supported Kyles' claim that the prosecution's informant was the true killer).

It is well settled that prosecutors must disclose all material impeachment evidence that casts doubt upon the credibility of its witnesses. Brady v. Maryland, 373 U.S. 83 (1963); Giglio v. United States, 405 U.S. 150 (1972); United States v. Agurs, 427 U.S. 97 (1976); United States v. Bagley, 473 U.S. 667 (1985); Kyles v. Whitley, 514 U.S. 419 (1995). The

events described herein offended these principles, particularly when assessed with the newly obtained expert opinion that the firearms evidence was “junk science.” Each and all of these reasons justify this Court’s grant of relief.

To the extent some of the factual predicate to the claims was previously presented, each of the predecessor claims are now cast in a bold new light: the newly obtained evidence that the firearm evidence consists of “junk science,” and Petitioner’s having finally secured properly qualified counsel consistent with 21 U.S.C. §848(q).

Petitioner is actually innocent, the prosecution has a duty to set this record straight, and the writ should issue, or this Court should grant such alternate relief as it finds warranted.

- 3. At the Los Angeles County Jail, Petitioner was forcibly drugged before and during his trial. The California Assembly investigated and documented that the practice existed, and that such abusive and unwarranted drugging was a pervasive problem. State authorities have selectively destroyed Petitioner’s medical records in an effort to prevent these facts from surfacing, but even the trial judge recalls that Petitioner had a strange affect during the trial.**

While awaiting trial and during his trial, Petitioner was an inmate at the Los Angeles County Jail. Petitioner has long complained that he was drugged against his will while a pretrial detainee. He remembers very little about his trial. Petitioner has recently discovered evidence that clearly documents there was widespread forcible drugging at that, and other, facilities during the relevant time period. He has also received evidence from an individual who was incarcerated with Petitioner and who recalls first-hand observations about Petitioner’s drugging.

In 1976, the California Assembly had investigated and found that inmates were being forcibly drugged to control them. In the report entitled, “An Investigation into the Practice of Forced Drugging/Medication in California’s Detention Facilities” (“Assembly Report”) (Exhibits 716-857), the Assembly Report found that “[f]orced drugging is a widespread phenomena (sic) affecting state prisons, major county jail facilities as well as local juvenile detention centers. Exhibits at 726.

Major tranquilizers have been employed for extended periods of time, greatly exceeding recommended time limitations fo use ¶ ... **Forced drugging/medication is being utilized as an indirect threat to the general prison population as a form of management control.** i.e. resident [sic] displaying a non-conforming type of behavior may be subjected to forced drugging/medication.

Exhibits at 727, emphasis added.

In some instances there is a possibility that **forced drugging/ medication has been employed solely as a form of management control.**

Id. at 729, emphasis added.

The Assembly documented that powerful tranquilizers were indeed administered involuntarily and surreptitiously. “Few, if any, residents and former residents on forced drugging/ medication were ever told the reasons for being placed on the drug or medication, or the ramifications of the use of the particular drug or medication.” Id. at 728.

Steven Derrick Irvin was an inmate in the Los Angeles County Jail at the same time as Petitioner. Irvin recently read about Petitioner’s post judgment discovery motion and recently declared under oath that he saw Petitioner forcibly sedated while pending trial. SE 4. Thereafter, Irvin often saw Petitioner moved about by staff in a wheelchair because he could not

walk. *Id.* The judge at Petitioner’s trial, a juror, and his mother all saw that Petitioner appeared to be “out of it.” RT A-15; Exhibits at 692.

The State’s psychiatrist, Dr. Ronald Markman, M.D., conceded that at that time the jail personnel gave inmates “high doses of tranquilizers” which were “not clinically mandatory.”

[I]t is my understanding that the general practice of medical personnel in the County Jail is to **withhold on trial days¹² any medications that are not clinically mandatory that might affect a defendant’s level of function or conscious awareness. High doses of tranquilizers, if administered, could have slowed his thought processes and analytic thinking,** but there would certainly have been overt signs of somnolence easily observable by untrained personnel.

Exhibits 701.

It goes without saying that inmates who are being drugged by powerful tranquilizers are easy prey for other unscrupulous inmates. Part of the prosecution’s case against Petitioner relied on numerous notes purportedly written by Petitioner to jailhouse informant Ogelsby during the time Petitioner was forcibly drugged. They were introduced at trial purporting to show that Petitioner planned an escape. Petitioner denies having had any role in writing the notes. Even assuming he did, it could not have been a volitional one given the strong medications he was receiving. Petitioner was in such a state that Ogelsby would have been able to manipulate him. A well-known stratagem of jailhouse informants is to procure notes from vulnerable inmates by trickery and then use them in falsified contexts, or to learn to forge the inmate’s handwriting. Recently, in Hall v. Director of Corrections, 343 F.3d 976 (9th Cir.

¹² As a psychiatrist, Markman was certainly aware that even if Petitioner had not been given any medication on the trial day, the lingering effects of such drugs would already have taken their toll on his mental alertness.

2003), a murder conviction was overturned after the jailhouse informant confessed that he had written Hall questions to which Hall had responded in writing. The informant erased and altered the questions so that the answers appeared incriminating. Id. at 981-985.

If the jury had heard that Petitioner was drugged with powerful tranquilizers and/or other psychotropic medication, and that a common stratagem of jailhouse informants is to procure notes from vulnerable inmates by trickery, no reasonable juror would have believed anything that Ogelsby testified about. Nor would the jury have believed any of the handwritten notes to be incriminating. Had the jury heard this evidence, “it is more likely than not that no reasonable juror would have found Petitioner guilty beyond a reasonable doubt.” Schlup, 513 U.S. at 327.

In sum, the prosecution, through its agency the county jail, forcibly drugged Petitioner with powerful tranquilizers and/or other psychotropic medication as a form of management control, failed to disclose that it was doing so, and now claims to have lost or destroyed his medical /psychiatric/medication records even though they kept the records of other death row inmates who were incarcerated at the county jail at the same time. This destruction of his medical/psychiatric/medication records was the intentional destruction of exculpatory evidence and an additional violation of Petitioner’s rights.

In California v. Trombetta, 467 U.S. 479 (1984) and Arizona v. Youngblood, 488 U.S. 51 (1988), the Supreme Court held that due process is implicated only when the police destroy material evidence in bad faith. Material evidence is that which might be expected to play a significant role in the defense. It must also possess an exculpatory value that was apparent before the evidence was destroyed and be of such a nature that the defendant would be unable to

obtain comparable evidence by any other reasonably available means. Clearly the records at issue here, given all of the surrounding circumstances peculiarly known to the prosecution, satisfy that standard.

“Involuntary medication with antipsychotic drugs poses a serious threat to a defendant’s right to a fair trial.” Riggins v. Nevada, 504 U.S. 127, 138 (1992) Kennedy, J., concurring. “[A]bsent an extraordinary showing by the State, the Due Process Clause prohibits prosecuting officials from administering antipsychotic medicines....” Ibid.

When the State commands **medication during the pretrial and trial phases of the case for the avowed purpose of changing the defendant’s behavior, the concerns are much the same as if it were alleged that the prosecution had manipulated material evidence.** Riggins v. Nevada, *supra*, 504 U.S. at 138, Kennedy, J., concurring, citing Brady v. Maryland, *supra*, 373 U.S. at 87 [“suppression by the prosecution of material evidence favorable to the accused violates due process”] and Arizona v. Youngblood (1988) 488 U.S. 51, 58 [“bad faith failure to preserve potentially useful evidence constitutes a due process violation.”] emphasis added.

Had the jury heard this evidence, “it is more likely than not that no reasonable juror would have found Petitioner guilty beyond a reasonable doubt.” Schlup, 513 U.S. at 327.

CONCLUSION

Each and all of the points and authorities discussed herein reveal that Petitioner has a meritorious claim of actual innocence. In addition, he was deprived his statutorily guaranteed right of qualified habeas counsel, and this Honorable Court should fashion an appropriate remedy, such as permitting him to re-open his original federal petition for a writ of habeas corpus.

For each and all of the foregoing reasons, this original petition for writ of habeas corpus should be granted. In the alternative, this Court should remand this matter to the lower court for further proceedings to allow Petitioner to develop his additional claims and adduce a complete record to establish his factual innocence as well as the pervasive effect of the constitutional and statutory deprivations related herein.

Date: December 11, 2005

Respectfully submitted,

VERNA WEFALD

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