IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

WILLIAM RICHARDS,

Petitioner,

v.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent,

Case No. **S189275**

(San Bernardino Superior Court Case No. **SWHSS700444**)

(San Bernardino Superior Court Criminal Case No. **FVI00826**)

(Related Appeal Case Nos. **E049135, E024365, E023171, E013944**)

ANSWER TO PETITION FOR REVIEW

After a Decision of the Court of Appeal for the Fourth Appellate District, Division Two, Reversing the Grant of a Petition for Writ of Habeas Corpus

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

PRELIMINARY STATEMENT

This case presents no important or novel question of law and highlights no conflict with existing law meriting this Court's intervention. The appellate court's ruling comported with long-established law and

was soundly reasoned. This Court should deny petitioner's Petition for Review.

ISSUES PRESENTED FOR REVIEW.

Petitioner queries 1) whether an expert's testimony may be considered "false" under Penal Code § 1473(b)(1) if "recanted"; (2) whether the standard outlined in *In re Hall* is applicable to a habeas petition based upon "false" evidence; and (3) whether there must be a consideration of cumulative "new" evidence under *In re Hall.*

The People have consistently asserted that petitioner's queries must be answered in the negative and that the body of habeas law supporting their claim has been firmly established generally and by this Court in its decision in *In re Lawley.* Petitioner's claim that a lower preponderance standard applies is misplaced. **No false evidence was propounded** either at trial or evidentiary hearing. Similarly, petitioner presented **no new evidence** to support his claim for habeas relief. Petitioner, through the course of this litigation, merely repackaged old evidence and attempted to relitigate the jury's findings. Weaknesses presented to and considered by the jury in 1997 are not resurrected by mere relitigation or changed defense strategy.

REVIEW IS NOT NECESSARY HERE.

Review is not necessary as this case ***does not*** present an important question of law or settle a dispute between panels of the court of appeal. (Rule of Court 8.500(b).) Richards' petition presents no more than his wish to revisit and reexamine rulings in the trial court, in the Court of Appeal's opinion in Case Number E049135.

This court does not sit merely to grade the court of appeal's performance or otherwise to "correct" errors that litigants assert lesser courts have made. (*People v. Davis* (1905) 147 Cal. 346, 347-350; 9 Witkin, *California Procedure*, Appeal, § 915 (Lexis 2009 Ed.) This court sits to settle issues of statewide importance and resolve conflicts among court of appeal opinions. (Rule of Court 8.500(b).) This is not such a case. This petition seeks a yet another review of evidentiary questions the appellate court properly resolved against Richards after evaluating the facts presented and the settled law on the issues. No more. In short,

> The district courts of appeal are established for the purpose of ascertaining and enforcing, according to the rules of law, the particular right of each case committed to their arbitrament. The state has done its full duty in providing appellate relief for its citizens when it has provided one court to which an appeal may be taken as of right. There is no abstract or inherent right in every citizen to take every case to the highest court. The district courts must be deemed competent to the task of correctly ascertaining the facts from the records before them in each case decided therein, and they should be held solely responsible to that extent for their judgments.

(*People v. Davis, supra,* at p. 349.)

STATEMENT OF 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.)

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1 Case Number E024368.

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.) As will be shown to be very relevant, no bite mark evidence was introduced at this trial.

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 arguments were made on August 10, 2009 and the trial court, from the bench, issued its order immediately thereafter. (Vol. IV C.T. p. 1185.) The trial court found that the various pieces of evidence undermined the People's case and pointed unerringly to petitioner's innocence. (*Id.*)

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.)

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

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; *In re Lawler* (1979) 23 Cal.3d 190.) On appeal, the People contended that Richards failed to present new evidence to justify habeas relief. Rather, the evidence presented at evidentiary hearing merely rehashed issues already considered throughout the lengthy procedural history of this case. Further, petitioner did not meet his stringent burden of proof by "completely undermining" the "entire structure of the prosecution's case" as required. (*People v. Gonzalez* (1990) 51 Cal.3d 1179.) Portions of evidence petitioner submitted were of questionable value and methodologies. The People largely asserted that petitioner failed to meet his extremely heavy burden of proof, relied upon "new evidence" claims that considered materials and testimony well-considered at his convicting trial and, thus, were not subject to unilateral trial court review, presented experts who relied upon questionable methodologies to support their opinions and/ or did not have sufficient background to offer expert testimony and presented evidence claiming it "exonerated" him when, in reality, it merely caused unjustified distraction for the lower court.

On November 19, 2010, the Court of Appeal agreed with the People. It reversed the trial court's findings in total. Richards now requests review of that decision. The People maintain the appellate court's findings were sound and should stand in their entirety.

SUMMARY OF FACTUAL HISTORY.[3]

On August 10, 1993, William Richards strangled his wife, Pamela Richards, beat her with fist-sized rocks, and crushed her skull with a cinderblock. He was convicted on July 8, 1997 of the murder of his wife, Pamela Richards. He was sentenced on December 4, 1998 to twenty five years to life in prison.

Eleven years later, however, another superior court in San Bernardino granted Richards' habeas corpus relief based on his assertion that "new forensic evidence" meant that his conviction was fatally flawed.

On appeal, the People argued the lower court erred. Rehashed old evidence, speculation regarding the import of recent DNA analyses, misconduct accusations without proof, and changed "expert" opinions do not render Richards "innocent" of his wife's murder. Richards failed to meet his extremely heavy burden of proof of innocence under, e.g., *In re Lawley* (2008) 42 Cal.4th 1231, 1239-1241.

SUMMARY OF FACTS AT TRIAL.

By his account, Richards found his dead wife when he got back from work late one evening. (R.T. Vol. III 352:3-18.) He told Sheriff's deputies that he found her naked from waist to ankles, drenched in blood, having lost a large portion of her skull, with one of her eyes hanging from its socket. (R.T. Vol. IV 561:1-9.) Richards called 9-1-1 ***only*** after a friend of his wife's urged him to do so. (R.T. Vol. IV 561: 10-28.)

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[3] To limit redundancy, the People incorporate the statement of facts contained within the Court of Appeal's opinion in Case Number E049135 and the Statement of Facts contained within Appellant's Opening Brief by reference herein.

When the first Sheriff's deputy, Mark Nourse, arrived, Richards volunteered that his wife was "stone cold. You don't have to go back there and check her. She has been dead a long time." (*Id.* Vol. IV R.T. 589:9-12, 24; 590:2-3, 11-15; 624-625; 640:8, 10; 6/11/97 Vol. IV R.T. 685:21-22, 26, 28.) When Nourse checked Mrs. Richards' corpse for a pulse, however, her arm "just fell down. It went limp." In fact, "her arm felt just like if [he] walked up and picked your arm or someone else's, still alive, not dead." (*Id.* Vol. IV 635:7-8, 10-16; 636:4-5, 7-10.) Mrs. Richards' body was neither warm nor cold. To Nourse, it seemed "very fresh." (*Id.* Vol. IV R.T. 636:11-14, 23, 25.)[4] The blood near her head had the same consistency, wet and damp. It had yet to soak in to the ground. (*Id.* Vol. IV R.T. 638:8-14; 639:3-4.) Nourse noticed the blood there *starting* to be absorbed; it was still wet to the touch. (*Id.* Vol. IV R.T. 638:15-16; 639:3-6.)

Richards told Nourse he had found his wife face down. He had rolled her over. (6/11/97 Vol. IV R.T. 592:24-25.) If, in fact, the victim had died face down, she would have had marks from gravel and the sandy terrain on her chest. (E049135, C.T. Vol. I pp. 119-120.) There were none. (6/10/97 Vol. III R.T. 412:2-10.) Post-mortem abrasions indicated the victim's body had been moved after she died. (*Id.*, Vol. I 120-121; 122:18.)

At the murder scene, Richards' demeanor 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

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[4] At trial, Dr. Frank Sheridan, the pathologist, testified that it typically takes about **two hours for rigor mortis to set in**. (E049135, C.T. Vol. I 135: 4-5.) ***There was no evidence of rigor mortis when first responders arrived.***

odd. (*Id.* Vol. IV R.T. 628:11-12.) Richards made him uneasy. (8/29/04 Vol. II 328:15-28.)

Richards 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;[5] 626:1-16.) Richards 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.) According to Nourse, Richards "stated, pointing, he goes, there's the block that killed her. If he was the one that did it – if he wasn't the one that did it, how did he know that block and not a different one killed her? He explained that her pants were back by a generator, and that there was blood on rocks. It's dark. He stated he had no flashlight. I couldn't even see something as big as a body in a sleeping bag and he is explaining to me where little drops of blood are in the dark. The freshness of the body. Just the many things he was telling me just didn't add up. I was beginning to view him as – view the whole thing as something was wrong." (11/30/94 Vol. I R.T. 229:6-21.) Moreover, "[h]e described many things in explicit detail[] that even in the daytime, we had a hard time finding." Richards' thorough

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[5] Richards interchangeably referred to the cinderblock as a brick. (12/7/94 Vol. IV R.T. 889:16-18; 6/1/97 Vol. IV R.T. 625:22-23.) The terminology is relevant as Richards later argued the significance of the weapon's name at the evidentiary hearing on the instant petition. (i.e. "stepping stone" vs. "cinderblock.") It was also apparent to Det. Tom Bradford "[t]hat [the] cinderblock that was by her head was used as a stepping stone that led from their motor home area out to --the impression I got was to their shed. *There was a series of blocks that acted as stepping stones."* (Emphasis supplied.) (12/6/94 Vol. II R.T. 431: 15-24.)

explanation of the crime scene was odd. (6/11/97 Vol. IV 686:21-24; 6/16/97 Vol. V. R.T. 855:4-9.)

When Nourse told Richards to leave the crime scene so as not to disturb it, Richards repeatedly fell to his knees and wailed, "It don't matter any ... all the evidence that relates to this case I already touched and moved trying to figure out how this whole thing happened." (*Id.* Vol. IV R.T. 645:11-21.) At that point, "[i]t seemed like something was seriously wrong." Nourse retrieved a tape recorder to capture Richards' statements. (*Id.* Vol. IV R.T. 645:24-25, 28.)

Sheriff's Criminalist Dan Gregonis found significant[6] evidence of crime scene manipulation. (6/16/97 Vol. V R.T. 1082:28-1083:1-2.) Richards' apparent intimate knowledge of the scene, his dubious responses to law enforcement inquiries, and the crime scene manipulation, made Richards the prime suspect in his wife's murder.

In addition to infliction of the massive injury to her skull, Mrs. Richards also had been strangled. (6/10/97 Vol. III R.T. 354:19-356:22.) The strangulation came first; the blunt-force trauma followed within minutes.[7] (*Id.* Vol. III R.T. 377:13-381:28; 385:6-386:7.)

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[6] Petitioner took issue in the Court of Appeal with the State's characterization of manipulation as being "significant". The fact the evidence showed victim's body was moved post mortem, her pants were removed after her head was crushed and her undergarments were removed so as to create the impression of a sexual assault would be, in the People's estimation, "significant".

[7] The order of the atrocities inflicted on Mrs. Richards' person is important, as Richards told Nourse, "That brick right there, that's the one that killed her, that's what they used to ***finish her off with.***" (*Id.* Vol. IV R.T. 625:21-27; 626:1-16.) Who but the killer or the expert pathologist would come to such a conclusion?

Criminalists discovered a tuft of light blue cotton fibers jammed into a crack in one of the victim's fingernails. (6/16/97 Vol. V R.T. 917:7-918, 921-923.) Those fibers were indistinguishable from the fibers of the shirt Richards was wearing the night of the murder. (*Id.* Vol. V R.T. 923:15-925:21; 92713-15.) Five hairs found in the victim's hands were tested and found to be consistent with the victim's hair. (6/18/97 Vol. VI R.T. 1265.)

There were 30 to 40 bloodstains on the victim's pants, 12 of which consisted of medium energy blood spatter. (6/16/97 Vol. V R.T. 972:13-974:25, 976:21-977:1.) There was *no* spatter on her bare legs. (*Id.* Vol. V R.T. 977:7-18.) The findings indicated the victim was wearing her pants when her skull was crushed. (*Id.* Vol. V R.T. 978:1-7.) Investigators believed that Richards removed his wife's pants after killing her in an apparent attempt to create a sexual assault scenario. A sex kit was performed on Mrs. Richards (whose pants and panties were discovered strewn about). The results were negative for semen or any other evidence of sexual assault. (6/16/97 Vol. V R.T. 915:17-917:5.)

Experts determined that the cinderblock was used to crush Mrs. Richards' head. (*Id.* Vol. V R.T. 975:25-28, 998:8-21.) Medium energy blood spatter was found on Richards' right shoe. (*Id.* Vol. V R.T. 1002:4-1003:12.) There were three medium energy spatter stains on Richards' pants. (*Id.* Vol. V R.T. 1006:14-1009:11.)

Sheriff's homicide investigator Norm Parent and his team found no signs that anyone other than Mr. and Mrs. Richards had been on the property the night of the murder. (6/9/97 Vol. II R.T. 275:7-28, 277:1-28; 278-282.) Parent 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. (*Id.* Vol. II R.T. 268:10-28; 270:1-22.)

Parent accounted for all shoeprints, including everyone at the crime scene, and found *none* for which he could not account. (*Id.* 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.*)

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 nothing. (*Id.* Vol. II R.T. 275:7-28, 278-282.) 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.)

Richards' wife was having an affair with Eugene Price. (6/16/97 Vol. V R.T. 843-848.) Richards was afraid his wife was going to leave him because she would repeatedly come home and tell him about her trysts with Price. (*Id.*; see also E049135, Vol. I C.T. p. 22.) The affair bothered Richards. (*Id.* Vol. V R.T. 856:8-28- 857:4.)

In June 1993, two months prior to the murder, Richards closed the couple's joint bank accounts. (*Id.* Vol. V 845:3-28-846:1-11.) He told bank teller Betsy Otte that henceforth he would have an individual account. (12/6/94 Vol. II 483: 9-19.)

Susan Ellison, a counselor the victim had started seeing, revealed Mrs. Richards' fear of her husband. The counseling sessions began only

a month before the murder. (E049135, C.T. Vol. I pp. 30-33.) Mrs. Richards sought to leave her husband and enter a battered women's shelter. (*Id.*)

On September 3, 1993, Richards spoke to Sheriff's Det. Kathleen Cardwell. Richards told her that he and his wife had had marital and financial problems. (6/16/97 Vol. V R.T. 855:10-28; 856:1-7.) Richards' wife had handled the finances until he discovered she allowed the payments on his Ford Ranger to lapse, causing the original $14,000 loan to have an additional $11,000 tacked onto it. (*Id.*) (*Id.* Vol. V R.T. 856:8-28.) In fact, Steve Browder, a "repo man," visited Richards the day before the victim was killed, attempting to repossess the truck. (12/6/94 Vol. II R.T. 491:28; 492:1-2, 12-14; 494:27; 497:20-22.)

I.
ARGUMENT.

As a preliminary matter, petitioner has made much ado of the fact the People successfully convicted him with elements of circumstantial evidence. Claiming that a case predicated, in part, upon circumstantial evidence is somehow weaker is clearly not supported by case law. The courts have long established the viability of circumstantial cases in support of first degree murder charges. (See *People v. Proctor* (1992) 4 Cal.4th 499; *People v. Scott (1959)* 176 Cal.App.2d 458; *People v. Huizenga* (1950) 34 Cal.2d 669.)

Moreover, the bite mark evidence that petitioner argues was so distorted so as not to be reliable and such a "critical" part of the People's convicting case in 1997 was a mere side issue at the convicting trial. (Petition for Review, p. 23.) It was not introduced until the third trial

when petitioner's defense attorney hired a forensic odontologist.[8] Therefore, it cannot be legitimately argued that it was of such a nature that the People relied upon it to the extent that, if it was discounted, it rendered the People's case ineffectual.

II.
THIS CASE DOES NOT PRESENT A NOVEL OR UNSETTLED QUESTION OF LAW. PETITIONER FAILED TO MEET THE WELL-SETTLED BURDEN OF PROOF UNDER HABEAS CORPUS LAW AND IS NOT ENTITLED TO REVIEW NOW.

"Habeas corpus will lie to vindicate a claim that **newly discovered evidence** demonstrates a prisoner is **actually** innocent." (Emphasis supplied.) (*In re Hardy* (2007) 41 Cal.4th 977, 1016.) This Court has long recognized the viability of an actual innocence habeas corpus claim, at least insofar as the claim is based on newly discovered evidence or on proof false evidence was introduced at trial. (*In re Bell* (2007) 42 Cal.4th 630, 637 [false evidence]; *In re Johnson* (1998) 18 Cal.4th 447, 453–454 [both]; *In re Hall* (1981) 30 Cal.3d 408, 415–417, 424 [both]; *In re Weber* (1974) 11 Cal.3d 703, 724 [new evidence].)

To obtain habeas corpus relief, the burden is on the petitioner to show **there is newly discovered evidence that undermines the entire structure of the case upon which the prosecution is based**. The evidence must point unerringly to the petitioner's innocence, and it must be conclusive.[9] "It is not sufficient that the evidence might have

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[8] It should be noted that petitioner had different counsel at his third trial. Therefore, it is entirely feasible that the bite mark "angle" was simply the product of a different attorney's strategy.

[9] Petitioner assigns inflated value to the word "point" when examining the applicable standard for habeas relief. (Petition for Review, p. 30.) The People submit that petitioner's focus is misguided. The

weakened the prosecution case or presented a more difficult question for the judge or jury." (*In re Clark* (1993) 5 Cal.4th 750, 766; *In re Weber* (1974) 11 Cal.3d 703, 723-725.)

This standard is firmly established; it dates back to *In re Lindley* (1947) 29 Cal.2d 709.

> "A criminal judgment may be collaterally attacked on habeas corpus on the basis of newly discovered evidence if such evidence casts 'fundamental doubt on the accuracy and reliability of the proceedings. At the guilt phase, such evidence, if credited, must undermine **the entire prosecution case *and* point unerringly** to innocence or reduced culpability.

(Emphasis supplied.) (*People v. Gonzalez* (1990) 51 Cal.3d 1179, 1246 [citations omitted].) If "a reasonable jury could have rejected" the evidence presented, petitioner has **not** satisfied his burden. (*In re Clark* (1993) 5 Cal.4th 750, 798, fn. 33.)

Petitioner claimed that the DNA results discussed here "conclusively bear witness to his innocence." (Petition, p. 2:2-3.) This exuberance is unjustified in light of the ambiguities obvious in the results. The mere presence of the DNA does not, in fact, exonerate petitioner. Nor is it conclusive. All it shows is that, at some point, someone touched, sneezed, spoke over or handled the stone. It does not negate the myriad of elements of motive, both financial and romantic, the impression of multiple law enforcement officials that something was just not right given the circumstances and petitioner's peculiar familiarity with the scene, the interview reports tending to show a violent relationship between petitioner and the victim or the hard evidence

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firmly entrenched standard that the new evidence point ***unerringly*** to innocence is what is relevant.

negating the presence of anyone else at the crime scene but the victim and petitioner.

Despite an evidentiary hearing, petitioner has raised the same issues litigated at trial. Contrary to the trial court's findings, nothing he presents "completely undermines" the **entire** state's case. Petitioner's alternative theories regarding the alleged presence of a third party at the scene are purely speculative. Conflicting expert testimony about the possible historical nature of a hair does not undermine the state's **entire** case. The presence of unknown male DNA on the stepping-stone is easily explained, and was so at trial. Use of Adobe Photoshop techniques were, according to petitioner's own witnesses, being enlisted around the time of the jury's 1997 guilty verdict. That petitioner happened upon a different strategy through a different lawyer, does not support a claim of "new" evidence. All of the parties have been well-aware of the photo distortion issues since the inception of this criminal case. **It is not new evidence.**

Motive and opportunity do not lie. Nor does the fact that the People presented ample evidence at trial that the crime scene had been substantially manipulated. Nor does the fact that no evidence of another person's presence was ever found at the scene. Nor does the fact the physical evidence at the scene did not comport with petitioner's version of events.

III.
PETITIONER POSITS THAT "FALSE" EXPERT TESTIMONY LATER "RECANTED" CONSTITUTES "FALSE EVIDENCE" UNDER PENAL CODE § 1473(b)(1) AND WARRANTS A LOWER STANDARD OF REVIEW. GIVEN THAT NO FALSE TESTIMONY WAS OFFERED AT TRIAL AND NO RECANTATION OCCURRED, PETITIONER'S QUERY IS IMMATERIAL AND DISTRACTING.

First and foremost, petitioner presents arguments discounting the reliability of forensic bite mark analysis. It should be noted, however, that ***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. As such, it cannot be logically argued that the allegedly problematic bite mark testimony was a "pillar" of the State's case. If petitioner believes such evidence to be unreliable, notably only after a conviction, then why did he initiate the introduction of such evidence to the proceedings?

One of petitioner's claims is that Dr. Sperber "recanted" his trial testimony and that "recantation" thus rendered the evidence presented to the jury during the convicting trial "false". The People disagree. First, there is no basis for petitioner's characterization of Dr. Sperber's trial testimony as "unfounded." Dr. Sperber was qualified and accepted by the Court as an expert. There mere fact that Dr. Sperber testified as to his opinion regarding petitioner's dentition is nothing more than opinion. The testimony was not false. Dr. Sperber was not forced into testifying the way he did. He did so under penalty of perjury and with the benefit of a lengthy odontological career to support his opinion. The fact that, over a decade later and after being contacted by defense counsel, Dr. Sperber thinks perhaps he should not have placed a statistical value upon petitioner's dental defect does not render his trial testimony "false". Instead, his change of opinion may be attributed, perhaps even solely, to

the benefit of additional years of dental practice and experience. Nothing more.

Petitioner's claim that the trial prosecutor should not have used the two-percent statistic in his closing argument is similarly unpersuasive as jurors were admonished that closing arguments do not constitute evidence in accordance with well-accepted case law.

A. EXPERT TRIAL TESTIMONY.[10]

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 1183:1183:16-17; 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;

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[10] To avoid redundancy, the People incorporate by reference herein their more lengthy accounting of trial testimony contained within Appellant's Opening Brief in Case Number E024365.

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.* [emphasis supplied.]; 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. (R.T. 1213: 17-25.) 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.) At trial, Dr. Sperber testified that **his "mission" was to teach others to use bite mark evidence properly so that the wrong people are not convicted.** (Emphasis supplied.) (R.T. 1231-21-23.) 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.**[11] It was not until the defense asked him to be a witness that the bite mark issue

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11 Richards argued that Dr. Golden presented "false evidence" against him at trial. However, that argument *must* fail given that Dr. Golden was *his* witness. Such false purported evidence must be "introduced *against* a person at ... trial." (Penal Code § 1473(b)(1) [emphasis supplied].)

was brought up. (*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.**"[12] (Emphasis supplied.) (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 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. (E049135, C.T. 48-49.)

B. TESTIMONY AT THE EVIDENTIARY HEARING.

Richards claimed in his habeas petition that the bite mark evidence was the linchpin of the prosecution's case. (1/26/09 Vol. I R.T. p. 53.) However, ***Richards*** requested bite mark analysis first and the prosecution responded to it. (*Id.* Vol. VII R.T. 1522:16-21; 1523-1524.)

1. SPERBER AND GOLDEN.

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.)

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[12] Notably, petitioner's own witness, Dr. Golden, used a five percent estimation, not much different than that of Dr. Sperber.

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 [emphasis supplied].) Dr. Sperber's declaration in support of the petition did not "recant" his testimony regarding Richards' dental abnormality. In fact, he testified that he had "essentially" ruled petitioner out. (R.T. 91.) The modifier "essentially" hardly constitutes hard, definitive evidence.

At evidentiary hearing, Dr. Golden testified that the relevant bite could have been a dog bite[13] 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.)

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[13] The distinction of whether the bite was "human" or "canine" in origin was a significant argument at the evidentiary hearing. However, "the canine teeth of a dog are usually most prominent." (6/18/97 Vol. VI R.T. 1211: 24-28.) An article published in 2003 in *The New England Journal of Medicine* points out that it is **difficult to confuse a human bite mark with a dog's bite mark**. (Howard Fischer, M.D., Pamela W. Hammel, DD.S., L.J. Dragovic, M.D., "Human Bites versus Dog Bites," *The New England Journal Of Medicine*, Vol. 349:311, No.11 (Sept. 11, 2003).) Richards' argument that a dog made the bite mark is not a good one.

IV.
BECAUSE NO FALSE EVIDENCE WAS INTRODUCED AT TRIAL ALLEGEDLY WARRANTING A LOWER BURDEN OF PROOF, THE STANDARD ENUMERATED BY THIS COURT IN *IN RE LAWLEY* APPLIES HERE.

In *In re Lawley* (2008) 42 Cal.4th 1231, 1239-1241, petitioner disputed this standard, arguing that it applied ***only*** to the determination whether a petitioner has shown actual innocence for purposes of overcoming procedural bars to habeas corpus relief. Lawley argued that he needed only to show by a preponderance of the evidence that he was entitled to relief. (*e.g. In re Sassounian* (1995) 9 Cal.4th 535, 546 [habeas corpus petitioner bears the burden of proving facts entitling him to relief by a preponderance of the evidence].)

This Court rejected his claim and pointed out that:

> "[W]e have consistently and consciously applied this higher standard, rather than the preponderance standard, to actual innocence claims. (*See*, e.g., *In re Hardy*, *supra*, 41 Cal.4th at pp. 1016–1021 [implicitly applying preponderance standard to ineffective assistance of counsel claim, but applying heightened *Lindley* standard to newly discovered evidence claim]; *In re Johnson*, *supra*, 18 Cal.4th at pp. 460–462 [acknowledging generally applicable preponderance standard, but applying higher *Lindley* standard to actual innocence claim]; *In re Branch* (1969) 70 Cal.2d 200, 210, 217 [implicitly applying preponderance standard to ineffective assistance of counsel claim, but applying ***heightened*** *Lindley* standard to newly discovered evidence claim]; *In re Imbler* (1963) 60 Cal.2d 554, 560, 569 [applying preponderance standard to perjured testimony claim and heightened *Lindley* standard to newly discovered evidence claim].)."

(*Id.* at p. 1240.)

Even *if* petitioner could successfully argue the existence of new evidence to prove actual innocence, petitioner must show that his claims (1) undermine the prosecution's ***entire*** case and (2) the claims must **point unerringly to petitioner's innocence**. (*In re Bell* (2007) 42 Cal. 4th 630; *In re Robbins* (1998) 18 Cal. 4th 770, 812; *In re Clark* (1993) 5 Cal. 4th 750, 766.) In order to warrant relief, newly discovered evidence must be of such a character as to completely undermine the entire structure of the prosecution's case; this standard is met if: "(1) the new evidence is conclusive; and (2) points unerringly to innocence." (*In re Weber* (1974) 11 Cal.3d 703, 724.)

"Evidence relevant only to an issue already disputed at trial which does no more than conflict with trial evidence, does not constitute new evidence . . . ." (*Id.* at p. 798 n. 33.) Rather, the "'new' evidence must cast fundamental doubt on the accuracy and reliability of the proceedings." (*Clark, supra,* 5 Cal.4th at p. 766.) For instance, "[a]n example of such evidence **is a confession of guilt by a third party**." (Emphasis supplied.) (*In re Hardy* (2007) 41 Cal.4th 977, 1015.) "Depriving an accused of facts that 'strongly' raise issues of reasonable doubt is not the standard. Where newly discovered evidence is the basis for a habeas corpus petition, as alleged [by petitioner], the newly discovered evidence must 'undermine' the prosecution's entire case. In is not sufficient that the evidence might have weakened the prosecution case or presented a more difficult question for the judge or jury. [Citations.]" (*Id.* at p. 1017 citing *In re Clark, supra.*)

Petitioner failed to produce ***conclusive*** "new" evidence that **undermines the prosecution's entire case** and points **unerringly** to his

innocence. His theories were speculative at best. The Court of Appeal agreed.

V.
ASSUMING *ARGUENDO*, THIS COURT ELECTED TO CONSIDER PETITIONER'S ASSERTION THAT THE *IN RE HALL* STANDARD WAS INSTRUCTIVE, THAT CASE IS VASTLY DISTINGUISHABLE FROM THE INSTANT MATTER.

In *In re Hall* (1981) 30 Cal. 3d 408, this Court granted the pending petition for habeas corpus relief in a murder case. In *Hall*, a referee found petitioner had sustained his burden of proof in showing newly discovered and credible evidence existed to completely undermine the State's case. Additionally, petitioner's counsel acted incompetently.

Petitioner's attempts to point out similarities to the instant matter are futile. First, in *Hall*, newly discovered evidence was at issue in addition to other evidence available at trial but not introduced. The **withheld** evidence was, *inter alia*, directly tied to counsel's incompetence in failing to follow up with material witnesses and relying upon police to, essentially, conduct the defense investigation. Moreover, the *Hall* case dealt with an **express recantation** wherein a primary witness determined she had identified the wrong assailant based upon a significant variation in his stature. Also, a cellmate of the actual triggerman overheard his confessions to other inmates. In *Hall*, the identification testimony of witnesses was "virtually the only damning testimony" against petitioner. (*Id.* at p. 420.) When it was later expressly recanted, the State's case was no longer viable.

Our case is not so black and white. Here, the great weight of the evidence implicated petitioner. No recantation occurred. Petitioner had motive, means and opportunity. He had a violent past with the victim,

who was having an affair. Petitioner's reliance upon *Hall* is unconvincing.[14] The only evidence he presents is either cumulative or contradictory. It is not a basis for habeas corpus relief.

VI.
EVEN AFTER CONSIDERATION OF EVIDENCE PETITIONER DUBS "NEW", PETITIONER STILL FAILED TO *CONCLUSIVELY* DEMONSTATE HIS INNOCENCE.

Petitioner's arguments are inherently flawed. While he attempts to argue applicability of a lower preponderance standard to his "false" evidence claims, he cannot escape the applicability of the "actual innocence" standard to his claims of new evidence. In other words, none of the "new" evidence petitioner presented conclusively pointed to his innocence. For example:

A. THE HAIR.

Petitioner posits that the DNA on the hair under the victim's fingernails conclusively reflects the "victim's struggle with a third party." (Petition, p. 2:6.) This evidence, petitioner says, shows he is innocent. Not so.

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

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[14] Similarly, petitioner's reliance on *In re Bell* (2007) 42 Cal. 4th 630 presupposes that false evidence was actually introduced against him. It was not.

Ogino described the contents of the nail scrapings in C-8 and C-9 as coming from contact with items in daily life. (6/12/97 Vol. IV R.T. 701-702, 704.) They were "historical" in nature (R.T. 713-714.) Thus, the presence of a fragment hair not belonging to the victim or petitioner does not inexorably lead to the conclusion that the donor of the hair killed Pamela Richards. Pamela Richards worked at a restaurant, which brought her into contact with numerous individuals every day. Anyone she contacted could have been the contributor of the hair.

Petitioner offered testimony of Dr. Patricia Zajac at hearing to refute the People's assertion that the hair was historical in nature. Dr. Zajac never examined the photos of the hair or the hair itself. (*Id.* Vol. II R.T. 345:7-28-346:1-13; 358:21-28-359:1-5.) She never conducted nor asked to conduct a microscopic analysis of the hair to include or exclude Richards and she conceded that she "would have" compared the hair to the victim to attempt to include or exclude Richards. (*Id.* Vol. II R.T. 359:1-5.) Dr. Zajac testified that hairs with telogen roots, like the one found underneath the victim's artificial nail, are mature and at a stage they are ready to fall out. (2/11/09 Vol. II R.T. 347:3-16.) Dr. Zajac opined that the hair was "forcibly" pushed under the victim's nail. (2/11/09 Vol. II R.T. 312:21-28.)

Thus, at best, Zajac's untested opinion regarding the nature of the hair only creates a conflict with the trial record. It does not refute what Mr. Ogino had to say, it merely conflicts with it. This is insufficient. "Evidence relevant only to an issue already disputed at trial which does no more than conflict with trial evidence, *does not* constitute new evidence [leading to habeas relief]..." (*In re Weber, supra,* 11 Cal.3d at p. 798 n. 33 [emphasis supplied.].)

B. TUFT.

At hearing, Richards attempted to prove that criminalist Dan Gregonis "planted" a tuft of blue fibers beneath the victim's fingernail. No motive for such allegation was ever shown. The trial court seems to have rejected the accusation.

Gregonis testified that the manner in which the fibers were found within the nail crack was significant. They were not simply ***placed***, as you might expect had they been "planted," 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.) That is, they were visible because Mr. Gregonis knew where to look.

Moreover, Petitioner's own Exhibit "I" (C.T. Vol. II 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.**" (Emphasis supplied.) (*Id.*) Even petitioner's own documents belie a "planting" conspiracy.

C. THE STEPPING-STONE.

Similarly, the "unknown male DNA" found on the stepping-stone does not conclusively demonstrate petitioner's innocence. Petitioner's claim of "exoneration" is over-reaching. The mere existence of a minor

contributor's DNA (at 1/6th or 1/10th the potency of the victim's blood) shows **only** that another may have handled the stone or that it may have been contaminated during the course of this case's lengthy history.

Petitioner argued that the DNA found on the stepping-stone means the "actual killer" left it and thus he is "actually innocent." Not only is this argument legally defective, as petitioner's evidence must **exonerate** him, it fails to account for the accessibility of the stone to potential DNA donors before it was seized and inside the criminal justice system after it was seized.

First, the DNA could have been deposited at the place where the stepping-stone was purchased. The DNA could be from anyone in the stream of interstate commerce leading to its purchase and placement on the Richards property or from a person subsequently visiting the Richards' house. The stone was used as a method of ingress and egress from a camper on the property. (8/29/94 Vol. II R.T. 431:15-24.)

Further, the stepping-stone was a trial exhibit beginning in 1994 and remained in the superior court clerk's exhibits section until 2003 when it was taken from the court exhibits for transport to the DOJ lab. Any number of DNA contributors prior to the new testing have handled it and subjected it to contamination. Accordingly, the minute traces of unknown DNA on the stepping-stone hardly constitute evidence of petitioner's "actual innocence."

The court does not have a record of those who came into contact with the stepping-stone during this period. Based on its status as a trial exhibit at the courthouse over a period of at least ten years, a myriad of individuals may have handled the stone, including petitioner's various defense counsel, the prosecutor, numerous Innocence Project personnel;

defense investigators; court clerks; and any of their substitutes in the course of the trials; bailiffs at the trials and any of their substitutes in the course of the trials; and up to 36 different jurors. The stepping-stone has been in open court where individuals could have deposited DNA on the stepping-stone by speaking near the exhibit or coughing or sneezing in its direction.

Given the exposure of the stepping-stone to likely contamination, the finding of minute traces of male DNA belonging to someone other than petitioner does **not constitute conclusive evidence** that an unknown male deposited the DNA on the night of the murder. There are simply too many possibilities. The traces of DNA fail to undermine the prosecution's entire case and point unerringly to petitioner's innocence. Simply, there is no conclusive method to ascertain when the unknown DNA was deposited. (i.e. before, during or after the murder.)

D. REVIOUSLY INTRODUCED DOCTOR REPORTS.

The reports of Drs. Bowers, Johansen and Sperber do not constitute "new evidence" supporting petitioner's "actual innocence." At the convicting trial in 1997, all parties acknowledged that the bite mark photo was of less than perfect quality. Manipulation of the photograph of the bite mark with digital imaging fails to yield conclusive evidence that undermines the prosecution's entire case and fails to support unerringly petitioner's "actual innocence."

Petitioner's argument regarding the bite mark testimony is merely an **attempt to relitigate an issue covered at trial**. This invades the province of the jury as the **exclusive fact finder** to determine the credibility of witnesses. (*People v. Jones* (1990) 51 Cal.3d 294, 314.) 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. Any attempt to claim that "new photographs" were considered showing the presence of fencing material and its possible link to the victim's hand injury at the scene is specious. Neither witness could explain away the fact the injury to victim's hand was semi-circular, as in a bite, and the fencing material contained solely right-angles. Photos were available throughout the course of the criminal matter. Petitioner's experts should have considered them then. Additionally, arguing this section of fence caused the bite mark would undermine petitioner's statement to law enforcement that he found his wife's body, face down, and that he turned her body over. (6/11/97 Vol. IV R.T. 592:21-25.) Whether he rolled her to the right or to the left, the **upper part of her right hand** would not have come into contact with the fence. The evidence negates petitioner's claim that he found her face down.

"Evidence relevant only to an issue already disputed at trial which does no more than conflict with trial evidence, **does not constitute new evidence** . . . ." (Emphasis supplied.) (*In re Clark* (1993) 5 Cal.4th 750, 798 n. 33, *internal quotations removed, emphasis added*; *see also In Re Hall* (1981) 30 Cal.3d 408, 421-22 ["evidence reinforcing evidence presented at trial "is cumulative and may not be considered 'new.'"].

Petitioner argues that Dr. Bowers' report extracts new evidence from the old. This argument must fail. Dr. Bowers' **reanalysis** of the bite mark photograph is cumulative, and merely reinforces evidence presented at trial. The fact that the photograph used in this case was distorted is not a revelation nor is it new. The trial testimony fully

addressed the distortion present in the photograph. (6/18/97 Vol. VI R.T. 1195:13-1196:24.) Petitioner, through his experts or otherwise, failed to undermine the prosecution's entire case and failed to point unerringly to his innocence.

VII.
"CUMULATIVE" EXAMINATION OF THE EVIDENCE IS IMPOSSIBLE WHEN NOT ONE PIECE OF EVIDENCE PETITIONER PRESENTS COMPLETELY UNDERMINES THE STATE'S CASE OR POINTS UNERRINGLY TO HIS INNOCENCE.

Petitioner argues that we must examine the "new" evidence cumulatively, rather than individually. The defect in that analysis is that, logically, at least one of those pieces of evidence must meet the standard under *In Re Lawley*. **None** of them do. Strengths and weaknesses in the case were presented to the jury in 1997 for consideration. This includes the distortion in the bite mark photo, the fact that the bite mark was on a less than ideal place on victim's body for purposes of odontological analysis, the fact dental experts could merely not rule petitioner out as the biter, and the fact that petitioner disagreed with the first responders' analysis of the scene. The list of petitioner's perceived concerns goes on and on. Regardless, a jury of petitioner's peers, having the benefit of all of the evidence while considering witness testimony and credibility found petitioner guilty of murder.

CONCLUSION

Petitioner had the opportunity, the means and the motive. The appellate court's opinion is supported in law and fact. Petitioner did not carry his many burdens under the habeas corpus law of this State. Repackaged old evidence is not "new evidence." Re-purchased opinions

are not "new evidence." Changed expert opinions are not "false" or "new" evidence, especially not where those changing their opinions were then and are now ***defense*** witnesses. There is no basis for applying a lower burden of proof, as petitioner suggests. No false evidence was presented at trial, or otherwise.

The location of the presence of unknown DNA on a possible murder weapon in 2007 does not conclusively prove that someone else wielded it the night Pamela Richards was murdered in 1993. The presence of a hair under her nail likewise does not conclusively prove it came from her killer. Such suppositions require a leap of logic that defies law or common sense. The great weight of the evidence at trial implicated petitioner. His intimate knowledge of the crime scene made even a veteran law enforcement official uneasy.

Review is not appropriate here. Petitioner's conviction should stand. The People respectfully request this Court deny the pending Petition.

Done this January 12, 2011.

Respectfully submitted,

MICHAEL A. RAMOS,
District Attorney,

STEPHANIE H. ZEITLIN,
Deputy District Attorney
Appellate Services Unit

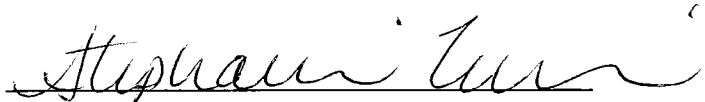
CERTIFICATE OF COMPLIANCE

I certify that the attached **ANSWER TO PETITION FOR REVIEW** uses a 13 point Bookman Old Style font and contains 8,350 words, excluding required tables, this certification, signature blocks and the proofs of service pursuant to California Rule of Court 8.500.

Executed on January 12, 2011, at San Bernardino, California.

Respectfully submitted.

MICHAEL A. RAMOS,
District Attorney,



STEPHANIE H. ZEITLIN,
Deputy District Attorney
Appellate Services Unit

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

STATE OF CALIFORNIA	)	**WILLIAMS RICHARDS**
	) ss.	**S189275/ SWHSS700444/**
COUNTY OF SAN BERNARDINO	)	**FVI00826**

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, 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 January 12, 2011, I served the within:

ANSWER TO PETITION FOR REVIEW

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

Jan Stiglitz, Esq.
California Innocence Project
225 Cedar Street
San Diego, CA 92101

Howard C. Cohen
Appellate Defenders Inc.
555 West Beech Street, Suite 300
San Diego, CA 92101-2396

Office of the Clerk
California Court Of Appeal
Fourth Appellate District, Division Two
3389 Twelfth Street
Riverside, Ca 92501

Gary w. Schons
Senior Assistant Attorney General
Attorney General's Office
P.O. Box 85266
San Diego, CA 92186-85266

I certify under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at San Bernardino, California, on January 12, 2011.

Sheila Walker

OFFICE OF THE DISTRICT ATTORNEY
SAN BERNARDINO COUNTY

PROOF OF SERVICE BY INTEROFFICE MAIL

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN BERNARDINO)

WILLIAMS RICHARDS
S189275/ SWHSS700444/
FVI00826 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 inter-office mail used by the County of San Bernardino;

That on January 12, 2011, I served the within:

ANSWER TO PETITION FOR REVIEW

on interested party by providing a copy thereof by depositing a copy thereof, enclosed in an inter-office envelope for collection by the County Inter-Office Mail Service addressed to:

Clerk of the Court for delivery to
Hon. Brian McCarville
Department S-12
San Bernardino Superior Court
IOM 0240

I certify under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at San Bernardino California, on January 12, 2011.

Sheila Walker