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Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KERN – METROPOLITAN DIVISION

IN RE ROBERT WESLEY COWAN ON
HABEAS CORPUS,

Supreme Court Case No.: S158073
Kern County Case No.: SC059675A

REPORT OF REFEREE

PLEASE TAKE NOTICE that on September 11, 2013, this Referee was appointed to serve as Referee in this proceeding, and to take evidence and make findings of fact on questions regarding the case of *People v. Robert Wesley Cowan* (Kern County Superior Court No. 059675A, Judge Lee Phillip Felice).

Since appointment, this Referee has conducted the following:

1. Addressed and resolved discovery issues.
2. Taken evidence at an evidentiary hearing on June 25, 2014*, in which the subject juror provided live, sworn testimony. *("RT")

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- 1 3. Received and considered both pre-evidentiary hearing and post-
- 2 evidentiary hearing briefs submitted on behalf of the parties.
- 3 4. Considered oral argument on October 1, 2014, as to the questions
- 4 submitted.
- 5 5. Made findings of fact as set forth below.

6

7 **Findings of Fact as to Questions Submitted**

8 **Question No. 1:** *Is Juror No. 045882 the person who was cited for a*
9 *misdemeanor violation of Penal Code section 415, subdivision (1) on January 14, 1995,*
10 *was charged with a violation of that section on January 18, 1995, pled guilty to that*
11 *offense on February 6, 1995, and received a sentence of three years' probation and a*
12 *fine of \$225, as reflected in the court file in Bakersfield Municipal Court No. 506741-B?*

13 **Finding No. 1:** Yes. (RT 14-15, 34-37, 57-58, 66, 71-73.)

14 **Question No. 2:** *If so, what were Juror 045882's reasons for failing to*
15 *disclose these facts on his juror questionnaire and during voir dire at petitioner's trial?*

16 **Finding No. 2:** The juror did not believe the incident was significant when he
17 filled out the questionnaire and later during voir dire. (RT 37, 43, 71.) The juror was not
18 arrested or handcuffed or booked, but was cited and released by law enforcement. (RT
19 58, 66-67.) He had forgotten all about the incident and it did not cross his mind during
20 voir dire. (RT 31-33, 71.) The juror was not on formal probation and therefore did not
21 have to check in with any probation officer and only had to pay a fine and go. (RT 57-
22 58, 71-73, 83.)

23 This incident did not stick out in the juror's mind, which was in contrast to the
24 1991 incident where he believed he had unjustifiably been taken to juvenile hall, booked
25 and detained overnight, and where he believed his brother had been wrongly arrested.

1 (RT 19, 25-26, 69-70.)

2 The juror did not spend much time answering the questionnaire and did not give
3 much detail in response to any of the questions on the questionnaire. (RT 21-22, 64.)

4 The juror simply overlooked the misdemeanor conviction when he filled out the
5 questionnaire. (RT 31-33, 43, 71.)

6 **Question No. 3:** *Was the nondisclosure intentional and deliberate?*

7 **Finding No. 3:** No. (RT 23, 46, 47, 49-50, 72.)

8 **Question No. 4:** *Considering Juror 045882's reasons for failing to disclose
9 these facts, was his nondisclosure of the above facts indicative of juror bias?*

10 **Finding No. 4:** No. (RT 39-40, 77-78.)

11 **Question No. 5:** *Was Juror 045882 actually biased against the petitioner?*

12 **Finding No. 5:** No. (RT 23, 46, 64, 72-73.)

13
14 DATED: 11/5/14



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16
17 CHARLES R. BREHMER,
18 JUDGE OF THE SUPERIOR COURT

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1 Superior Court of California

2 **PROOF OF SERVICE BY MAIL**

3 STATE OF CALIFORNIA, COUNTY OF KERN

4 I am employed in the County of Kern, State of California. I am over the age of 18
5 years and not a party to the within entitled action; my business address is 1415 Truxtun
6 Avenue, Bakersfield, California 93301.

7 On November 5, 2014, I served the foregoing document described as:

8 **REPORT OF REFEREE** on the interested parties in said action, by placing a true copy
9 thereof enclosed in a sealed envelope addressed as follows:

10
11 *******SEE ATTACHED SERVICE LIST*******

12
13 I caused such envelope to be deposited in the mail at Bakersfield, California.
14 The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with
15 the County's practice of collection and processing correspondence for mailing. Under
16 that practice it would be deposited with the U.S. postal service on that same day with
17 postage thereon fully prepaid at Bakersfield, California in the ordinary course of
18 business. I am aware that on motion of party, service is presumed invalid if postal
19 cancellation date or postage meter date is more than 1 day after date of deposit for
20 mailing in affidavit.

21 I declare under penalty of perjury under the laws of the State of California the
22 foregoing is true and correct.

23 Executed on November 5, 2014, at Bakersfield, California.

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25 
Terry Halle, Declarant

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