

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

In re:) Case No. SC055500A
) HC-3201
)
SCOTT PETERSON) **ORDER**
)
)
On Habeas Corpus.)
)

The court has reviewed Petitioner’s August 4, 2025 habeas corpus petition (Petrn.), along with the People’s informal response, and Petitioner’s reply to the informal response. The court determines that all claims are procedurally barred except Claims 4, 6, 7, 11A, 11E, and 11F. The court finds that Petitioner has not alleged facts sufficient to bring any of the procedurally barred claims within an exception for fundamental miscarriage of justice or actual innocence. The court further determines that Claims 4, 5, 6, 7, 8, 11A, 11B, 11D, 11E, 11F, 11G, 11H, 11I, 12, 13, and 14 fail to establish a prima facie showing that the Petitioner is entitled to relief. The court therefore declines to issue an order to show cause and denies all claims.

“When presented with a petition for a writ of habeas corpus, a court must first determine whether the petition states a prima facie case for relief – that is, whether it states facts that, if true, entitle the petitioner to relief – and also whether the stated claims are for any reason procedurally barred.” (*People v. Romero* (1994) 8 Cal.4th 728, 737 (*Romero*).) “To assist the court in determining the petition’s sufficiency, the court may request an informal response from

1 the petitioner’s custodian or the real party in interest.” (*Id.* at p. 737; see Cal. Rules of Court,
2 rule 4.551(b).) “If the petition states a prima facie case and is not procedurally barred, ‘the court
3 must issue a writ of habeas corpus or order to show cause, receive a return and traverse, and
4 may, if necessary, order an evidentiary hearing on the claims.’ ” (*In re Tuilaepa* (2025) 108
5 Cal.App.5th 1262, 1273.)

6 CLAIM 1

7 In Claim 1 of the 2025 habeas petition, Petitioner asserts that he was “denied his right to
8 due process when the prosecution presented false scientific by Dr. DeVore regarding Conner’s
9 date of death; new evidence undermines the prosecution’s entire theory of the case and
10 exonerates Petitioner.” (Petrn. p. 284.) In its informal response, the People argue that Claim 1 is
11 procedurally barred on multiple bases, and that the claim fails to state a prima facie case for
12 relief. (Inf. Resp. p. 36.)

13 In particular, Petitioner contends in Claim 1 that the People adduced materially false and
14 scientifically unreliable evidence at trial by Dr. Gregory DeVore regarding Conner’s fetal age at
15 the time of his death. Petitioner alleges that this resulted in violations of his federal due process
16 rights and his statutory rights under Penal Code section 1473. In support of this claim, Petitioner
17 relies on the declaration of Dr. Peter Doubilet. (Petrn. pp. 286-290, 519-526; Exh. 1 to Petn.)
18 This claim also references the declaration of Petitioner’s investigator Danielle Leaf, who
19 recounts the December 2024 interview that she and counsel for Petitioner conducted with Dr.
20 DeVore. (Exh. 2 to Petn.)

21 Petitioner filed his first habeas petition in 2015. In Claim 2 of the 2015 petition,
22 Petitioner asserted that his conviction was unlawfully imposed, in violation of the federal
23 constitution and his rights under Penal Code section 1473, because the People introduced false
24 evidence of Conner’s fetal age at the time of death.¹ (2015 Petn. pp. 109-116; 2015 Pts. & Auth.

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26 ¹ In addition, Claim 3 of the 2015 petition raised a claim of ineffective assistance of counsel
27 (IAC) related to the fetal biometry evidence. In this claim, Petitioner asserted that trial counsel
28 committed IAC when he failed to consult with Dr. Jeanty, the expert on whose formula Dr.
DeVore relied to reach his conclusion, or any other expert qualified in fetal biometry, to
determine if Dr. Devore relied on the wrong formula. (2015 Petn. pp. 117-122; 2015 Pts. &

1 pp. 19-25, 41-50.) In support of this claim, habeas counsel attached the declaration of Philippe
2 Jeanty. (2015 Petn., Exh. 7.) The California Supreme Court denied this claim on the merits on
3 October 14, 2020.

4 **CLAIM 1 IS PROCEDURALLY BARRED UNDER *MILLER***

5 The *Miller* rule establishes that a claim raised in a habeas petition that is based on the
6 same grounds of those previously denied in prior habeas petition(s) will be denied when there
7 has been no change of facts or law substantially affecting the rights of the petitioner. (*In re Reno*
8 (2012) 55 Cal.4th 428, 496-497 (*Reno*); *In re Miller* (1941) 17 Cal.2d 734, 735 (*Miller*).) Our
9 Supreme Court has recognized exceptions to this procedural bar where a fundamental
10 miscarriage of justice resulted in a trial so unfair that no reasonable judge or jury would have
11 convicted the defendant, or where the petitioner is actually innocent of the crime of conviction.
12 (*In re Clark* (1993) 5 Cal.4th 750, 797-798 (*Clark*); *Reno*, 55 Cal.4th at p. 497.)

13 The People argue that the court should summarily deny Claim 1 as procedurally barred
14 under the *Miller* rule, because this claim was previously raised in Petitioner's first petition and
15 rejected by the California Supreme Court. (Inf. Resp. p. 70.) The People assert that the *Miller*
16 bar applies because this claim is grounded in the same factual basis as Claim 2 in the 2015
17 petition, without any substantial change in facts or law, and without demonstrating that the
18 fundamental miscarriage of law exception applies. (*Id.* at pp. 70-71.) Petitioner counters that the
19 *Miller* rule and other procedural bars do not bar Claim 1 because there have been changes in the
20 law and changes in the factual basis for the claim. He argues in the alternative that exceptions to
21 the procedural bar apply, because denying this claim on the merits would result in a fundamental
22 miscarriage of justice, and because he is actually innocent of the crime. (Reply at pp. 42-43, 67-
23 68.)

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Auth. pp. 67-70.) This claim relied in part on the declaration from Dr. Jeanty. (See 2015 Petn.
28 p. 119; 2015 Pts. & Auth. p. 69; Exh. 7 to 2015 Petn.) The California Supreme Court denied this
claim on the merits on October 14, 2020.

1 **Petitioner cannot avoid the *Miller* bar for Claim 1 based on purported new facts**

2 The factual bases as set forth in Claim 1 of the current petition do not constitute “a
3 change of facts substantially affecting the rights of the petitioner” such that they enable this
4 claim to overcome the *Miller* bar. (*Reno, supra*, 55 Cal.4th at pp. 496-497.)

5 Petitioner argues in Claim 1 that Dr. DeVore presented false scientific evidence regarding
6 Conner’s date of death, and that new scientific evidence renders Dr. DeVore’s opinion false and
7 unreliable. (Petrn. pp. 284-290, 514-528.) In particular, Petitioner contends that the People
8 presented “false” evidence at trial through the testimony of Dr. DeVore that Conner died on
9 December 23, 2002 (Petrn. p. 285, ¶ 12), and that Petitioner now presents “new” evidence in
10 Claim 1, through the declaration of Dr. Doubilet, to support the conclusion that Conner instead
11 died between December 28, 2002 and January 5, 2003. (Petrn. p. 287, ¶¶ 23-25)

12 An examination of the 2015 false evidence claim related to Dr. DeVore’s testimony
13 reveals that the purported new facts regarding Claim 1 are not in fact new. Claim 2 in the 2015
14 petition was supported by a declaration from Dr. Jeanty, who stated that Dr. DeVore had used
15 the incorrect formula to calculate the date of Conner’s death. (Exh. 7 to 2015 Petn., pp. 10-13.)
16 Dr. Jeanty stated further in his declaration that when he applied the correct formula it showed
17 that Conner died on January 3, 2003. (Exh. 7 to 2015 Petn., p. 10, ¶ 16; p. 13, ¶ 21.) Notably,
18 Dr. Jeanty also stated in his declaration that he would have been able to testify to all of these
19 facts at the time of trial, but he was not contacted by either the People or Petitioner prior to trial.²
20 (*Id.* at p. 14.)

21 The California Supreme Court reviewed and rejected this claim on the merits. In the
22 current petition, Petitioner presents the same claim with a different expert (Dr. Doubilet) who
23 points to newer studies to support the same conclusion reached by Dr. Jeanty: *i.e.*, that Conner
24 did not die on December 23, 2002, but instead “the likely date of death of the fetus in this case

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26 ² Dr. Jeanty stated in his declaration that the formula Dr. DeVore erroneously relied upon came
27 from a study published in 1984 in which he (Dr. Jeanty) was a co-author. (Exh. 7 to 2015 Petn.,
28 pp. 10-11, ¶¶ 18, 19.) Dr. Jeanty opined in the declaration that Dr. DeVore should have instead
applied a formula from another 1984 study that was also co-authored by Dr. Jeanty. (*Id.* at pp. 6-
9, ¶¶ 10, 12, 14, 15.)

1 was 5 to 13 days later than the date DeVore calculated, with the mean and median date of death
2 calculated to be January 1, 2003.” (Exh. 1, p. 24, ¶ 65.) Indeed, Dr. Doubilet’s declaration
3 acknowledges that he has reached the same conclusion as Dr. Jeanty. (Exh. 1, p. 25, ¶ 70 [noting
4 Dr. Jeanty concluded that the most likely date of death being January 3, 2003, “a date very
5 similar to the dates that I have determined in my analysis described above”].)

6 Dr. Doubilet states in his declaration that he does not find Dr. Jeanty’s conclusions
7 “useful” because the studies Dr. Doubilet relies are based on data that is “superior” to the “charts
8 and equations” Dr. Jeanty used. (Exh. 1, p. 25, ¶ 71.) Notably, however, Dr. Doubilet does not
9 suggest that the study Dr. Jeanty relied upon was inaccurate or has otherwise been repudiated;
10 instead he asserts that the “the most recent, reliable, robust and substantiated data” available for
11 calculating gestational age and fetal growth rates are the upon studies which he relies. (Exh. 1, p.
12 26, ¶ 74.)

13 Dr. Doubilet’s declaration at best asserts that there is more rigorous and reliable data
14 available to support his conclusion, but he ultimately agrees with the conclusions and
15 methodology relied upon by Dr. Jeanty, who in turn possessed the data to support his
16 conclusions not only at the time of the first habeas petition but also at time of trial. In fact, in his
17 reply Petitioner explicitly states that the opinion of Dr. Doubilet is “based on *the very same*
18 *methodology* Dr. DeVore used to support his opinions at trial” and that it is “the underlying
19 scientific data that is new, not the methodology.” (Reply p. 84, fn. 54, emphasis in original.)

20 In sum, Claim 1 does not present a change in the facts that substantially affects
21 Petitioner’s rights such that the *Miller* bar is overcome. (*Reno, supra*, 55 Cal.4th at pp. 496-497;
22 Cf. *Shiffer v. CBS Corp.* (2015) 240 Cal.App.4th 246, 255-256 [expert’s declaration which
23 purported to reach a new opinion based on evidence that was available during earlier proceedings
24 was not “new evidence”]; *In re H.S.* (2010) 188 Cal.App.4th 103, 105-106 [belated submission
25 of an expert’s opinion, based on evidence that was available at the time of the jurisdiction
26 hearing, was not “new evidence” that provided a basis for setting aside the juvenile court’s
27 order].)

1 **The amendments to section 1473 do not provide a basis for avoiding the *Miller* bar**

2 Petitioner asserts that changes in the statutory language of section 1473 allow him to
3 overcome the *Miller* bar as to Claim 1 because amendments to the California habeas statute now
4 permit relief based on definitions of “new evidence” and “false evidence” that have created a
5 lower threshold for petitioners than was required prior to the amendments. (Reply pp. 40-53,
6 60.) This argument fails because, to the extent that post-2015 amendments to the statute may
7 have broadened the scope of claims that a habeas petitioner may make under section 1473,
8 Petitioner has not shown that Claim 1 as currently constituted is based on evidence that meets the
9 amended standards.

10 **Amendments to section 1473 related to new evidence**

11 Prior to 2017, the standard for granting habeas relief based on new evidence was not
12 codified in section 1473, but was instead based upon case law that allowed for habeas relief on
13 the basis of newly discovered evidence demonstrating that a petitioner was actually innocent.
14 (See *In re Lawley* (2008) 42 Cal.4th 1231, 1238 [a petitioner may collaterally attack a criminal
15 judgment on the basis of newly discovered evidence if such evidence casts fundamental doubt on
16 the accuracy and reliability of the proceedings].)

17 Effective January 1, 2017, section 1473 was amended to explicitly authorize prosecution
18 of a habeas corpus petition on the basis of new evidence. The Legislature added language to the
19 statute permitting a habeas claim based on new evidence that is “credible, material, presented
20 without substantial delay, and of such decisive force and value that it would have more likely
21 than not changed the outcome at trial,” and that defined new evidence as “evidence that has been
22 discovered after trial, that could not have been discovered prior to trial by the exercise of due
23 diligence, and is admissible and not merely cumulative, corroborative, collateral, or
24 impeaching.” (S.B. 1134 (2015-2016 Reg. Sess.), amending section 1473.)³

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27 ³ Petitioner filed his first habeas petition in the California Supreme Court on November 23, 2015.
28 The People filed their informal response to the petition on August 10, 2017, and Petitioner filed
his reply to the informal response on August 7, 2018. The California Supreme Court ruled on
the petition on October 14, 2020. (Docket, case no. S230782.)

1 In 2023, the Legislature modified the language in section 1473 regarding new evidence.
2 Effective January 1, 2024, Senate Bill 97 renumbered and amended the subdivision regarding
3 new evidence to read that a habeas writ could be prosecuted on the basis of “[n]ew evidence []
4 that is presented without substantial delay, is admissible, and is sufficiently material and credible
5 that it more likely than not would have changed the outcome of the case.” The statute was
6 further amended to read: “(ii) For purposes of this section, ‘new evidence’ means evidence that
7 has not previously been presented and heard at trial and has been discovered after trial.” (S.B. 97
8 (2023-2024 Reg. Sess.), amending section 1473.)

9 Petitioner argues that the 2023 amendment lowers the burden on petitioners who are
10 presenting new evidence because it removes the due diligence requirement as well as the
11 requirement that it not be “merely cumulative, corroborative, collateral, or impeaching.” (Reply
12 pp. 51-52.) But Petitioner has not shown that the amended definition of new evidence includes
13 newly-generated expert declarations that ultimately support the same opinions and conclusions
14 of experts whose declarations were submitted in preceding habeas petitions. The amended
15 definition of new evidence contains the requirement that it was “discovered” after trial.⁴ The
16 court is not persuaded that “discovered” in this context includes what is asserted here: that the
17 evidence was newly discovered where habeas counsel became aware of recent studies that affirm
18 the opinion of experts that were already provided in an earlier petition, but now contain more
19 updated and extensive data to support those same conclusions.

20 **Amendments to section 1473 related to false evidence**

21 Statutory language allowing for a habeas claim based on false evidence was first added to
22 section 1473 in 1975 in response to the U.S. Supreme Court’s decision in *Napue v. Illinois*
23 (1959) 360 U.S. 264. (See *In re Wright* (1978) 78 Cal.App.3d 788, 807.) As modified by the
24 1975 amendment, the statute allowed for relief on the basis of “[f]alse evidence that is
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26 ⁴ In his arguments about why the procedural bars do not apply, Petitioner often relies on
27 comparisons between the evidence offered in his current petition and the expert evidence that
28 was presented *at trial*. The relevant inquiry for this analysis, however, is the comparison with
the evidence offered at the time of the first habeas petition. (See, e.g., Reply pp. 48-49
[comparing Dr. Doubilet’s opinion with Dr. DeVore’s testimony at trial].)

1 substantially material or probative on the issue of guilt or punishment [that] was introduced
2 against a person at any hearing or trial relating to his incarceration.” (Former § 1473, subd.
3 (b)(1) [as modified by Stats.1975, c. 1047, p. 2466, § 2].)

4 The false evidence provision of section 1473 was amended in 2015, following the
5 California Supreme Court’s decision in *In re Richards* (2012) 55 Cal.4th 948 (*Richards I*). In
6 *Richards I*, the Supreme Court held that an expert witness’s repudiation of his prior testimony
7 did not fall within section 1473’s definition of “false evidence,” and instead that provision
8 applied only to lay witnesses. (*Id.* at p. 966.) In response to *Richards I*, the Legislature amended
9 the statute to include an additional provision which stated that “false evidence shall include
10 opinions of experts that have either been repudiated by the expert who originally provided the
11 opinion at a hearing or trial or that have been undermined by later scientific research or
12 technological advances.” (S.B. 1058 (2013–2014 Reg Sess.), adding former § 1473(e)(1).)

13 In 2022, the Legislature further modified the false evidence language in section 1473 as it
14 relate to evidence from experts. (S.B. 467 (2021-2022 Reg. Sess.), effective 1/1/23.) Senate Bill
15 467 added a provision that allows a petitioner to prosecute a writ “if a significant dispute has
16 emerged or further developed in the petitioner’s favor regarding expert medical, scientific, or
17 forensic testimony that was introduced at trial and contributed to the conviction, such that it
18 would have more likely than not changed the outcome at trial.” (§ 1473(b)(1)(4).)

19 The “significant dispute” provision sets forth multiple elements a petitioner must
20 establish by a preponderance of the evidence to obtain relief. (*Id.*, subd. (b)(1)(D)(vi).) A
21 significant dispute may concern “the reliability or validity of the diagnosis, technique, methods,
22 theories, research, or studies upon which a medical, scientific, or forensic expert based their
23 testimony.” (*Id.*, subd. (b)(1)(D)(ii).) The statute provides that a significant dispute “can be
24 established by credible expert testimony or declaration, or by peer reviewed literature showing
25 that experts in the relevant medical, scientific, or forensic community, substantial in number or
26 expertise, have concluded that developments have occurred that undermine the reliability or
27 validity of the diagnosis, technique, methods, theories, research, or studies upon which a
28 medical, scientific, or forensic expert based their testimony.” (*Id.*, subd. (b)(1)(D)(iii).) The

1 “significant dispute” section of the statute provides further that “[i]n assessing whether a dispute
2 is significant, the court shall give great weight to evidence that a consensus has developed in the
3 relevant medical, scientific, or forensic community undermining the reliability or validity of the
4 diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific, or
5 forensic expert based their testimony or that there is a lack of consensus as to the reliability or
6 validity of the diagnosis, technique, methods, theories, research, or studies upon which a
7 medical, scientific, or forensic expert based their testimony.” (*Id.*, subd. (b)(1)(D)(iv).)

8 Petitioner contends that the declaration of Dr. Doubilet meets all the elements for a
9 “significant dispute” regarding expert medical testimony as set forth in section 1473, subdivision
10 (b)(1)(D)(i)-(iv). (Reply p. 48.) Following from this, Petitioner argues that because the
11 amendments to the statute regarding a significant dispute post-date the Supreme Court’s denial
12 of his first habeas petition, Claim 1 – which is based upon Dr. Doubilet’s declaration – is not
13 subject to a procedural bar. (Reply pp. 49-50.)

14 As noted *supra*, Dr. Doubilet’s opinion and conclusions mostly reiterate or at best
15 elaborate upon the opinions set forth by Dr. Jeanty in his declaration from the 2015 habeas
16 petition. Dr. Doubilet states in his declaration that the data he relied upon in reaching his
17 conclusions is “superior,” but at the same time he acknowledges that “Dr. Jeanty’s conclusion
18 about the date of Conner’s death is similar to mine.” (Exh. 1, p. 25, ¶ 71.) Dr. Doubilet adds
19 that it is “widely accepted” within the medical community that the standards and charts
20 “published in the last 10 years” that he has relied upon “are the best available measures” for
21 establishing gestational age. (*Id.* at p. 26, ¶ 75.) Again, however, he does not dispute the
22 conclusion of Dr. Jeanty, and Petitioner acknowledges that Dr. Doubilet employed the same
23 general methodology as Dr. Jeanty. (See Reply, p. 84, fn. 54.)⁵

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25 ⁵ Dr. DeVore is quoted in the declaration of Danielle Leaf as having said to her that “ ‘it would
26 have been better’ if he had the NICHD 2022 study at the time he testified.” (Exh. 2, p. 4, ¶ 23.)
27 The court finds that this does not meet the statutory definition of repudiation of prior expert
28 testimony as set forth in the statute. (See § 1473, subd. (b)(2) [“ ‘false evidence’ includes
opinions of experts that have either been repudiated by the expert who originally provided the
opinion at a hearing or trial or that have been undermined by the state of scientific knowledge or
later scientific research or technological advances”]).

1 Dr. Doubilet's declaration does not show that a significant dispute as defined by the
2 statute has emerged in Petitioner's favor. Instead, it merely repeats and elaborates upon the same
3 contested theories that existed at the time of trial. (See Reply, p. 68 fn. 44 [acknowledging that
4 the evidence relied upon by Dr. Jeanty in his declaration for the first habeas petition was
5 available at the time of trial].) Thus, even to the extent that the amended statute lowers the
6 threshold for presenting claim related to a changing consensus in the scientific community, these
7 amendments regarding "significant dispute" do not provide a basis for Petitioner to avoid the
8 *Miller* procedural bar. (See *People v. Johnson* (2015) 235 Cal.App.4th 80, 91 [analyzing false
9 evidence claim under former § 1473 and noting that while the declaration of Petitioner's expert
10 referred to growing skepticism regarding Petitioner's diagnosis in a new version of the DSM, the
11 declaration mostly elaborated on the conclusions of the trial experts, who similarly questioned
12 the legitimacy of Petitioner's diagnosis].)

13 **Change of habeas counsel is not a valid basis for overcoming the *Miller* bar**

14 In his reply, Petitioner appears to make an equitable argument in support of why he
15 should again be able to raise a "false evidence" claim that was already raised in his 2015 petition.
16 Here he points not only to the "fluidity in the law" as the statutory language evolved (Reply p. 69
17 fn. 45) but also to the withdrawal of habeas counsel, which occurred after the 2015 petition was
18 filed but before the informal response was filed. He asserts that his false evidence claims "were
19 never really given a fair and complete hearing," in part due to "the loss of his IHP counsel."
20 (Reply p. 70.)

21 The Supreme Court has held that a "change of counsel is irrelevant to whether the merits
22 of claims raised for the first time in a successive petition should be entertained." (*Clark, supra*, 5
23 Cal.4th at p. 779.) It follows from this that this court may not consider Petitioner's change in
24 counsel during the proceedings following the filing of his 2015 petition as a basis for
25 determining whether this claim is procedurally barred.

26 **The miscarriage of justice and actual innocence exceptions do not apply**

27 Finally, Petitioner has not shown that he can meet the exceptions to the *Miller* procedural
28 bar as to Claim 1 on the basis of fundamental miscarriage of justice or actual innocence.

1 A fundamental miscarriage of justice will involve “error[s] of constitutional magnitude
2 [that] led to a trial that was so fundamentally unfair that absent the error no reasonable judge or
3 jury would have convicted the petitioner.” (*Reno, supra*, 55 Cal.4th at pp. 473-474.) To qualify
4 under this narrow exception, the claim “must be such that it would ‘undermine the entire
5 prosecution case and point unerringly to innocence or reduced culpability.’ ” (*Id.* at p. 474.)

6 A constitutional claim based on presentation of false evidence requires a reversal of the
7 conviction only “if (1) the testimony was actually false, (2) the prosecutor knew it was false, and
8 (3) the false testimony was material (i.e., there is a reasonable likelihood that the false testimony
9 could have affected the judgment).” (*Dow v. Virga* (9th Cir. 2013) 729 F.3d 1041, 1048.)

10 Petitioner has not shown that an error of constitutional magnitude occurred here because the
11 subjective disagreement between experts does render the testimony “false” for purposes of
12 federal due process error. (See *United States v. Workinger* (9th Cir.1996) 90 F.3d 1409, 1416
13 (*Workinger*).) The argument Petitioner makes here regarding the purported falsity of Dr.
14 DeVore’s testimony is instead reflective of the disagreement between experts about fetal
15 biometry methods and inputs, and in fact, the jury was exposed to and given the opportunity to
16 evaluate the competing theories when it heard the testimony of the defendant’s expert, Dr.
17 Charles March. Neither has Petitioner shown that additional expert testimony disputing the date
18 of Conner’s death would have convinced the jury that Petitioner did not murder Laci and their
19 unborn son, given all the other evidence presented at trial. Petitioner has not shown that an error
20 of constitutional magnitude occurred that would undermine the entire prosecution case. (*Reno,*
21 *supra*, 55 Cal.4th at p. 474.)

22 Petitioner has similarly failed to show that the *Miller* bar is applicable to Claim 1 based
23 on the actual innocence exception. For purposes of this exception, the California Supreme Court
24 has stated that “[e]vidence relevant only to an issue already disputed at trial, which does no more
25 than conflict with the trial evidence, does not constitute ‘new evidence’ that fundamentally
26 undermines the judgment.” (*Clark, supra*, 5 Cal.4th at p. 798, fn. 33.) A petitioner bears “a
27 heavy burden of satisfying the court that the evidence of innocence could not have been, and
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1 presently cannot be, refuted.” (*Ibid.*) Additionally, the actual innocence standard “cannot be met
2 with evidence that a reasonable jury could have rejected.” (*Ibid.*)

3 Here, the purportedly new evidence of actual innocence presented in Claim 1 is evidence
4 “relevant only to an issue already disputed at trial” (*Clark, supra*, 5 Cal.4th at p. 798, fn. 33), and
5 therefore it does not fundamentally undermine the judgment. As noted, the defense presented a
6 counter-expert at trial who disputed Dr. DeVore’s conclusions and thus put this evidence into
7 dispute. Defense counsel also cross-examined Dr. DeVore regarding other researchers, and Dr.
8 DeVore told the jury that the calculation of Conner’s gestational age would change depending on
9 which research study was applied. Finally, Petitioner has not shown that the “new evidence”
10 from Dr. Doubilet is irrefutable. For all of these reasons, the court determines that the actual
11 innocence exception does not apply.

12 CLAIM 2

13 Claim 2 of the instant petition asserts that Petitioner was “denied his right to due process
14 when the prosecution presented false and unreliable evidence by Dr. Cheng that Conner’s body
15 was anchored in the bay at the precise location where Petitioner fished; new scientific evidence
16 undermines the prosecution’s entire theory of the case and exonerates Petitioner.” (Petn. p. 290.)
17 In its informal response, the People contend that Claim 2 is procedurally barred on multiple
18 bases, and that the claim fails to state a prima facie case for relief. (Inf. Resp. p. 141.)

19 More specifically, Petitioner argues in Claim 2 that the prosecution relied on false and
20 scientifically unreliable evidence when it presented the testimony of Dr. Ralph Cheng, an expert
21 in hydrology, on the issue of the migration of Laci and Conner’s bodies to shore. As part of this
22 claim, Petitioner argues there is new scientific modeling technology that undermines the
23 prosecution’s entire case theory. Petitioner alleges that this violated his federal due process
24 rights as well as his statutory rights under Penal Code section 1473. To support this claim,
25 Petitioner relies on the declaration of Russell Feagin, Ph.D. (Petn. pp. 290-309, 528-555; Exh. 3
26 to Petn.)

27 Petitioner asserted in Claim 6 of his 2015 petition that his conviction was obtained in
28 violation of the federal constitution and Penal Code section 1473 when the People introduced

1 false evidence that the bodies of Laci and Conner could only have originated from the area where
2 Petitioner said he was fishing.⁶ (2015 Petn. pp. 154-173; 2015 Pts. & Auth. pp. 35-50.) In
3 support of this claim, habeas counsel attached the declaration of Russell Feagin. (2015 Petn.,
4 Exh. 9.) This claim also relied on a declaration from Dr. Cheng, which was dated July 31, 2012.
5 (2015 Petn., Exh. 10.) The California Supreme Court denied this claim on the merits on October
6 14, 2020.

7 On direct appeal, Petitioner argued that the trial court erred in admitting the expert
8 testimony of Dr. Cheng without first holding a hearing under *People v. Kelly* (1976) 17 Cal.3d
9 24 (*Kelly*), to establish a foundation for his testimony. The California Supreme Court rejected
10 this argument, and ruled that the trial court did not abuse its discretion in admitting Dr. Cheng's
11 testimony without first conducting a *Kelly* hearing. (*People v. Peterson* (2023) 10 Cal.5th 409,
12 460 (*Peterson*).)

13 **CLAIM 2 IS PROCEDURALLY BARRED UNDER *MILLER***

14 As was the case for Claim 1, the People argue that the court should summarily deny
15 Claim 2 as procedurally barred under the *Miller* rule, because this claim was previously raised in
16 Claim 6 of Petitioner's first petition and rejected by the California Supreme Court. (Inf. Resp.
17 pp. 195-196.) The People assert that there has been no change in the facts or law substantially
18 affecting the rights of the Petitioner related to this claim, and that Petitioner has failed to
19 demonstrate that an exception to the procedural bar applies. (*Id.*) Petitioner responds that the
20 *Miller* rule does not apply here because of changes in the law and changes in the factual basis for
21 the claim, and, in the alternative, that exceptions to the *Miller* bar apply because denial of this
22 claim would result in a fundamental miscarriage of justice, and because Petitioner is actually
23 innocent of the crime. (Reply at pp. 42-43, 67-71.)

24
25 ⁶ In addition, Claim 7 of the 2015 petition raised an IAC claim related to the evidence presented
26 by Dr. Cheng. In this claim, Petitioner asserted that trial counsel was constitutionally ineffective
27 for failing to present an expert in the field of the movement of bodies in bays and estuaries, and
28 for failing to effectively cross-examine the People's expert in this area. (2015 Petn. pp. 174-178;
2015 Pts. & Auth. pp. 63-67.) This claim relied in part on the declaration from Dr. Feagin. (See
2015 Petn. p. 176; 2015 Pts. & Auth. p. 66; Exh. 9 to 2015 Petn.) The California Supreme Court
denied this claim on the merits on October 14, 2020.

1 **Claim 2 is not based on new facts that render the *Miller* bar inapplicable**

2 Petitioner has not set forth in “a change of facts substantially affecting the rights of the
3 petitioner” in Claim 2 of the current that enables this claim to overcome the *Miller* bar. (*Reno*,
4 *supra*, 55 Cal.4th at pp. 496-497.)

5 Petitioner argues in Claim 2 that Dr. Cheng presented false scientific evidence that
6 Conner’s body was anchored in the bay in the location where Petitioner fished. (Petr. pp. 290-
7 308; 535-555.) Petitioner asserts that he presents new evidence in Claim 2, through the
8 declaration of Dr. Feagin, to show that an object anchored at Dr. Cheng’s hypothesized anchor
9 point would not have travelled to Conner’s recovery site. (Petr. pp. 31, 301-302.) Dr. Feagin’s
10 new modeling evidence, argues Petitioner, shows that the evidence presented by Dr. Cheng was
11 false. (Petr. p. 304.)

12 The court concludes that this claim does not present a change of facts substantially
13 affecting the rights of Petitioner so as to avoid the *Miller* bar. (*Reno, supra*, 55 Cal.4th at pp.
14 496-497.) Claim 6 in the 2015 petition was supported by a declaration from Dr. Feagin, the
15 same expert who provided a declaration for Claim 2 in the current petition. (2015 Petr., Exh. 9.)
16 This 2015 claim was also supported by a declaration from Dr. Cheng himself. (2015 Petr., Exh.
17 10.)

18 Dr. Feagin stated in his earlier declaration that in reaching his conclusions, he researched
19 the weather, wind, and tidal conditions in the months preceding the discovery of the bodies in
20 April, 2012. (2015 Petr., Exh. 9, ¶ 12.) Dr. Feagin opined that based on this research, the
21 bodies of Conner and Laci could have originated from three locations, one of which was “at least
22 marginally consistent” with Dr. Cheng’s testimony (*id.* at ¶ 18A), but he stated that two other
23 scenarios were also plausible. (*Id.* at ¶ 20.) Dr. Feagin added that even to the extent that Dr.
24 Cheng’s scenario was plausible, he found various portions of Dr. Cheng’s testimony to be
25 “scientifically unreliable.” (*Id.* at ¶ 19.) Dr. Feagin also said that the scientific principles on
26 which he based his analysis were well known to the scientific community in 2003, and that he
27 could have provided the analysis contained in his declaration at the time of trial. (*Id.* at ¶ 21.)
28

1 Dr. Cheng stated in his declaration that he assumed as part of his testimony that the
2 bodies began moving during the April 12-13 storm and that the bodies reached the shore on the
3 dates that they were discovered there. In his declaration, he emphasized that because it is
4 unknown when the bodies started moving, it was not possible to pinpoint with high probability
5 the starting location of the bodies' movements, and the bodies could have been placed in the bay
6 anywhere along the two-mile vector path described in his trial testimony. (See 2015 Pts. &
7 Auth., pp. 40-41.)

8 The California Supreme Court reviewed and rejected this claim on the merits. In the
9 current petition, Petitioner presents the same claim with the same expert (Dr. Feagin), who now
10 points to modelling that he has completed using the Delft3D computer modelling system. (Exh.
11 3, ¶ 14.) He concludes that Dr. Cheng's hypothesized anchor point for the bodies is "unlikely"
12 and "scientifically unreliable" when the actual historic wind, tidal current, and freshwater inflow
13 discharge data are run through the Delft3D modelling system. (*Id.* at ¶ 94.)

14 Dr. Feagin reaches the same conclusion in his 2025 declaration as he did in his earlier
15 declaration submitted in support of the 2015 habeas corpus petition. Dr. Feagin again opines that
16 Dr. Cheng's testimony was not reliable because Dr. Cheng did not use the then-available inputs
17 regarding the actual wind, wave and tidal data to test his hypothesis. (Exh. 3, ¶ 36.) He also
18 says that Dr. Cheng could have used the UnTRIM modelling technology at the time of trial,
19 which – while he notes was "not as precise" as Delft3D – he nevertheless implies would have
20 provided a more scientifically sound result than the "progressive vector" analysis employed by
21 Dr. Cheng. (*Id.* at ¶¶ 26, 35.)

22 As was the case for Claim 1, the "new evidence" presented in support of Claim 2
23 amounts to a declaration of an expert (in this case, the same expert) who ultimately agrees with
24 the conclusions and assertions put forth in the evidence submitted in support of the 2015 habeas
25 petition. While Dr. Feagin now relies on the Delft3D modeling system, which he says did not
26 exist at the time of trial (Exh. 3, ¶ 96), he does not explain whether that system was available at
27 the time of his 2013 declaration. Also, beyond the use of the computer modeling system, Dr.
28 Feagin makes clear in his current declaration that he arrived at his conclusions by using the

1 inputs (actual data) which Dr. Cheng did not take into consideration at the time of trial, and
2 which are the same inputs that he relied on in his 2013 declaration to contrast his research to that
3 of Dr. Cheng. (Compare Exh. 3, ¶ 16B with 2015 Petn., Exh. 9, ¶ 2015 Petn., Exh. 9, ¶¶ 12, 18.)

4 In sum, the court concludes that Claim 2 does not present a change in facts that
5 substantially affects Petitioner’s rights to the extent that the *Miller* bar is inapplicable.

6 **Claim 2 is subject to the *Miller* bar despite the amendments to section 1473**

7 Petitioner asserts that the *Miller* bar is not applicable to Claim 2 because of changes in
8 the statutory language of section 1473 regarding “new evidence” and “false evidence” that have
9 widened the availability of claims that petitioners may make under the statute. (Reply pp. 40-53,
10 61.) As was the case with Claim 1, this argument is unavailing. Petitioner has failed to show
11 that the evidence he puts forth as to Claim 2 states a prima facie claim under the amended
12 statutory language.

13 As set forth *supra*, Petitioner asserts that the 2023 amendment to section 1473 regarding
14 new evidence lowered the burden for making a claim on that basis because it removed the due
15 diligence requirement as well as the requirement that the new evidence not be “merely
16 cumulative, corroborative, collateral, or impeaching.” (Reply, pp. 51-52.) The 2023 bill also
17 amended the definition of “new evidence” to mean “evidence that has not previously been
18 presented and heard a trial and has been discovered after trial.” (S.B. 97 (2023-2024 Reg. Sess.)
19 He argues that his current claim has a factual basis “unknown at the time of trial” because it is
20 based on “newly discovered evidence.” (Reply, p. 68.)

21 Petitioner has not shown, and the court does not find, that the amended definition of “new
22 evidence” applies to a declaration from the very expert who provided a declaration in the
23 previous habeas proceeding, where that expert presents conclusions and opinions consistent with
24 the ones set forth in his earlier declaration. It is particularly noteworthy that while Petitioner
25 emphasizes that Dr. Feagin’s most recent declaration is supported by “new scientific data and
26 Delft3-FLOW technology that was not presented at trial” (Reply, p. 61), Petitioner never
27 explains whether Delft3-FLOW technology was available at the time of the 2015 habeas petition.
28 Instead, he states in his current declaration that for his earlier consultation he “was asked to

1 spend no more than a few hours analyzing the data” and that he “was not asked to perform any
2 modeling at that time” (Exh. 3, ¶ 86), which may explain the failure to employ Delft3 modelling
3 when he acted as an expert for the 2015 habeas petition. Petitioner has failed to demonstrate that
4 changes to the definition of “new evidence” since the filing of his earlier habeas petition provide
5 a basis for avoiding the Miller procedural bar as to Claim 2.

6 Petitioner additionally argues that Claim 2 is based on changes to the statute that allow a
7 claim based on a significant dispute or lack of scientific consensus that has developed in
8 Petitioner’s favor. (Petrn., p. 553, Reply, p. 61.) He asserts that experts in the relevant scientific
9 community have concluded that scientific developments have occurred that undermine the
10 reliability of Dr. Cheng’s research upon which he based his testimony. (Petrn., p. 553, citing
11 § 1473, subd. (b)(1)(D)(iii).)

12 The court concludes that the amendments to section 1473 related to allowing claims
13 based on a changing consensus in the scientific community do not provide a basis for Petitioner
14 to avoid the *Miller* procedural bar as to Claim 2. Petitioner has not demonstrated that the
15 modeling technology Dr. Feagin relies upon in his 2025 declaration was unavailable at the time
16 of his previous petition.⁷ In addition, to the extent that Dr. Feagin dispute the scientific methods
17 employed by Dr. Cheng, he already did so in his 2013 declaration, and indeed he stated in the
18 earlier declaration that the scientific principles on which he based his critique of Dr. Cheng’s
19 analysis “were well-known to the general scientific community in 2003.” (2015 Petn., Exh. 9, ¶
20 21.)

21
22
23
24 ⁷ Dr. Feagin’s declaration references a scholarly article on the history of 2D and 3D
25 hydrodynamic modeling for the court’s reference. (Exh. 3 to Petn., p. 4, ¶ 13.) The article itself
26 is not provided, but the on the court’s review its abstract describes the genesis of 3D shallow
27 water modeling as occurring in the late 1980s due to advances in computing power. While the
28 court has no doubt that advances in computing power and the availability of more sophisticated
modeling go hand-in-hand, Petitioner’s failure to plead with specificity why the level of
technology available at the time of the 2015 petition was insufficient for Dr. Feagin to offer a
comparable conclusion at that time is fatal to his attempt to avoid a procedural bar – particularly
when Dr. Feagin himself indicates that he was simply never asked to do the requisite modeling.

1 **Miscarriage of justice and actual innocence exceptions are not applicable to Claim 2**

2 Regarding the miscarriage of justice exception, Petitioner has not shown that there was an
3 error of constitutional magnitude so fundamentally unfair that no reasonable trier of fact would
4 have convicted him. (*Reno, supra*, 55 Cal.4th at pp. 73-74.) Petitioner has not met the
5 requirement of showing an error of constitutional magnitude because he has not demonstrated
6 that Dr. Cheng’s testimony was “actually false,” where instead it was an example of subjective
7 disagreement between experts. (*Workinger, supra*, 90 F.3d at p. 1416.) He has also not shown
8 that “new” evidence from Dr. Feagin which criticizes the methodology and limitations of Dr.
9 Cheng’s testimony would cause a jury to reach a different result, given that Dr. Cheng himself
10 told the jury “that the model’s accuracy was dependent on a host of initial assumptions, many of
11 which were uncertain.” (*Peterson, supra*, 10 Cal.5th at p. 459 [noting that “the jury had ample
12 basis to take [Dr. Cheng’s] opinions with more than a dash of salt” because divers found no
13 evidence to confirm Conner or Laci had ever been at the starting location Dr. Cheng suggested].)

14 For similar reasons, Petitioner has also not shown that the actual innocence exception
15 applies to Claim 2. The “new evidence” presented through Dr. Feagin’s declaration is evidence
16 “relevant only to an issue already disputed at trial, which does no more than conflict with the
17 trial evidence,” and thus it does not constitute new evidence that fundamentally undermines the
18 judgment. (*Clark supra*, 5 Cal.4th at p. 798, fn. 33.) Indeed, as noted, at trial Dr. Cheng himself
19 acknowledged the limitations of his testimony, and the evidence from Dr. Feagin “does no more
20 than conflict” with this area of testimony that was already in dispute at trial. (*Ibid.*)
21 Furthermore, Petitioner has not met his “heavy burden” of showing that the purported evidence
22 of innocence that he presents for Claim 2 “could not have been, and presently cannot be,
23 refuted.” (*Ibid.*)

24 **CLAIM 3**

25 Claim 3 of the instant petition asserts that “new evidence shows Petitioner was denied his
26 right to due process when the prosecution presented false evidence by scent dog handler Eloise
27 Anderson, who testified her dog ‘picked up’ Laci’s scent at Berkeley Marina on December 28,
28 2002; new evidence in Claims 1 & 2 exposes the falsity of Anderson’s testimony and

undermines the prosecution’s theory of the case.” The People argue that the claim is procedurally barred on several grounds and lacks merit. Petitioner bases his claim of the falsity of Anderson’s testimony on other claims in the petition, asserting that the fetal biometry evidence produced in support of Claim 1 demonstrates that Laci Peterson was not yet dead when Anderson’s dog detected the scent; that the hydrology evidence in Claim 2 proves that Laci Peterson’s remains were deposited near the Albany Bulb and she was never at the Berkeley Marina; and that the new evidence produced in Claim 4 shows that Laci Peterson was still alive while Petitioner was at the Berkeley Marina and thus was never there. The claim pleads generalized assertions of timeliness and lack of successiveness.

CLAIM 3 IS PROCEDURALLY BARRED UNDER *CLARK*

“In this state a defendant is not permitted to try out his contentions piecemeal by successive proceedings attacking the validity of the judgment against him.” *In re Connor* (1940) 16 Cal.2d 701, 705. Before considering the merits of a second or successive habeas corpus petition, a California court will first ask whether the failure to present the claims underlying the new petition in a prior petition has been adequately explained, and whether that explanation justifies the piecemeal presentation of the petitioner’s claims. This requirement is reasonable in view of the interest of the state in carrying out its judgments, the interest of the respondent in having the ability to respond to the petition and retry the case should the judgment be invalidated, and the burden on the judicial system. (*Clark, supra*, 5 Cal.4th at pp. 774-775.) A petitioner justifying delayed presentation of claims is expected to demonstrate due diligence in pursuing potential claims. If a petitioner had reason to suspect that a basis for habeas corpus relief was available, but did nothing to promptly confirm those suspicions, that failure must be justified. Where the factual basis for a claim was unknown to the petitioner and he had no reason to believe that the claim might be made, or where the petitioner was unable to present his claim, the court will continue to consider the merits of the claim if asserted as promptly as reasonably possible. Claims based on a change in the law which is retroactively applicable to final judgments will be considered if promptly asserted and if application of the former rule is shown to have been prejudicial. (*Id.* at p. 775.)

1 In a second or successive habeas corpus petition, a petitioner’s failure to both
2 acknowledge the limitations of habeas corpus as an avenue of collateral attack and to make a
3 plausible effort to explain why the claims raised are properly before the court can be considered
4 an abuse of the writ process. (*Reno, supra*, 55 Cal.4th at p. 453.) Where the grounds presented
5 are based on matters known to the petitioner at the time of a previous petition, the applicant for
6 habeas corpus “not only had his day in court to attack the validity of [the] judgment, but ... had
7 several such days, on each of which he could have urged [the] objection, but did not do so.” (*Id.*
8 at p. 455, quoting *In re Drew* (1922) 188 Cal.717, 722.) *Clark* established a strict pleading
9 standard: “The petitioner ... bears the initial burden of alleging the facts on which he relies to
10 explain and justify delay and/or a successive petition.” (*Ibid.*) Counsel have an ethical duty to
11 notify the court if an issue in the petition is procedurally barred, and justification must be stated
12 in the petition itself and not in later pleadings such as the informal reply or traverse. (*Id.* at p.
13 459.) A petitioner must allege, *with specificity*, facts showing when information offered in
14 support of the claim was obtained, and that the information neither was known, nor reasonably
15 should have been known, at any earlier time. It is not sufficient simply to allege in general terms
16 that the claim recently was discovered, to assert that second or successive postconviction counsel
17 could not reasonably have discovered the information earlier, or to produce a declaration from
18 present or former counsel to that general effect. A petitioner bears the burden of *establishing*,
19 through his or her specific allegations, which may be supported by any relevant exhibits, the
20 absence of substantial delay. (*Id.* at p. 461-462, quoting *In re Robbins* (1998) 18 Cal.4th 770,
21 780.)

22 The instant petition asserts timeliness and lack of successiveness in the same way as to
23 each claim: “This claim is timely because the factual bases supporting it were unknown to
24 Petitioner until recently and he has asserted those claims as promptly as reasonably possible.”
25 (See, e.g., *Petrn.*, p. 312.) “This claim is not successive because it has not been presented to the
26 court before; it is based on information that was only recently discovered by counsel through
27 diligent investigation.” (*Ibid.*) Such general allegations of timeliness and lack of successiveness
28 are patently insufficient to meet the burden established by *Clark* and *Reno* to allege specific facts

1 demonstrating *when* information in support of the claim was obtained, and that the information
2 neither was known, nor reasonably should have been known at any earlier time. Failure to
3 affirmatively address the applicability of procedural obstacles to consideration of the claims
4 raised in a habeas corpus petition justifies summary denial without the court's consideration of
5 the merits. (*Clark, supra*, 55 Cal.4th at p. 511.)

6 As noted *supra* in the court's determination that Claims 1 and 2 are procedurally barred,
7 Petitioner's proffered expert opinions in support of those claims are not new evidence within the
8 meaning of section 1473. Petitioner partially asserts in paragraph 19 that: "(t)he jury did not
9 hear the new evidence presented in Claims 1 and 2 because the science had not yet been
10 developed at the time of trial." The declarations submitted by Drs. Jeanty and Feigin in support
11 of the 2015 petition belie that assertion. Dr. Jeanty offered a conclusion regarding Conner's date
12 of death substantially similar to Dr. Doubilet's, using the same methodology but a different data
13 set for his analysis. Dr. Feigin opined in support of the 2015 petition that Dr. Cheng's
14 methodology was scientifically unreliable and provided no basis to believe that his stated opinion
15 was any more plausible than two other possible origination sites. The pleadings in support of the
16 2015 petition demonstrate that Petitioner was aware of conclusions substantially similar to those
17 he now asserts as a basis for claiming that Anderson's dog scent trailing testimony was false
18 within the meaning of section 1473. Although he brought a false evidence challenge to
19 Anderson's testimony in the 2015 petition, he did not assert falsity on the basis of the conflict
20 between her testimony and the fetal biometry and hydrology evidence that he now contends
21 rendered the testimony false. The court rejects Claim 4, *infra*, for lack of merit. Like Claims 1
22 and 2, Claim 4 presents evidence cumulative of points already argued by Petitioner at the time of
23 trial in support of the proposition that Laci Peterson was alive when Petitioner left home on
24 December 24. At best the new evidence offered in support of Claim 4 conflicts with Anderson's
25 testimony rather than demonstrating its falsity. The court finds Petitioner's attempt to plead an
26 exception to the bar under the *Clark* rule based on new evidence unpersuasive.

1 Claim 4 asserts 201 separately pled allegations in support. Some establish background
2 material to the claim and some make general allegations of timeliness, lack of successiveness,
3 and reasonable diligence by counsel. Of those assertions that plead specific facts rather than
4 legal conclusions or argument, the court has examined each individually to determine whether
5 they rely on evidence that was 1) not previously presented at trial and 2) discovered after trial.
6 (Section 1473, subdivision (b)(1)(C)(ii).) For those allegations that rely on new evidence as
7 defined in section 1473, the court has further assessed whether the petition establishes a prima
8 facie showing that the new evidence is 1) admissible and 2) presented without substantial delay
9 as required by section 1473(b)(1)(C)(i). The court has then examined whether, taken as a whole,
10 the new admissible and timely evidence is sufficiently material and credible that it establishes
11 prima facie the likelihood that it would have changed the outcome of Petitioner's trial.

12 **Facts pled in support of Claim 4 that meet Section 1473 definition of "new evidence"**

13 Based on its review of the Petition and incorporated exhibits, Informal Response, Reply,
14 trial record, and record of the 2024 section 1054.9 post-conviction discovery pleadings and
15 exhibits, the court concludes that the following numbered factual allegations pled in support of
16 Claim 4 either completely or partially allege facts that were not previously presented at trial and
17 were discovered after trial: 8, 26, 27, 29, 30, 31 subparagraph d, 32, 34, 44, 55, 57, 61-70, 81-85,
18 87, 88, 90, 112, 114-121, 123-126, 128, 132-134, 136, 138-143, 145-147, 150, 152-154, 161-
19 162, 167, 170, 171, 173-180, and 184. The court has compiled Table 1, attached, briefly
20 summarizing the new evidence alleged in each of the identified numbered paragraphs. Some
21 paragraphs not included in Table 1 cited to post-conviction sources of information. The court
22 did not include them in Table 1 because the post-conviction interviews re-iterated information
23 either presented at trial or discovered before trial and therefore did not meet section 1473's
24 definition of new evidence. In particular, some of the information alleged to be discovered post-
25 conviction through interview of Bryan Spitulski was discovered to Petitioner's trial team on May
26 2, 2003 in Bates 4095-4110. Those Bates pages were not included in Exhibit 2A to the instant
27 petition, but were provided in the 2024 section 1054.9 proceedings as referenced Bates material
28 to the People's opposition filed May 20, 2024. Because the court is relying on that portion of the

1 record to determine that some information asserted in the petition was discovered before trial, the
2 court has attached the referenced Bates pages and the discovery log acknowledging production
3 as Exhibit A to this order.

4 **Admissibility and timeliness of new evidence**

5 Although the People's Informal Response argues that many of the declarations
6 incorporated in the petition are inadmissible, the court is aware that at the pre-OSC stage of a
7 habeas corpus petition, the court is to take the factual allegations of the petition as true and
8 decide whether they state a claim for relief based on that assumption. California Rule of Court
9 4.551(c)(1). However, a claim asserted under section 1473, subdivision (b)(1)(C)(i) requires a
10 prima facie showing that new evidence "presented without substantial delay, is admissible, and is
11 sufficiently material and credible that it more likely than not would have changed the outcome of
12 the trial." The court has compiled Table 2, attached. Table 2 lists each source of evidence
13 determined in Table 1 to be new within the meaning of section 1473, accompanied by the court's
14 assessment of its potential admissibility in light of the pled allegation it supports. Where the
15 petition and its exhibits establish a reasonable basis to conclude that the facts in support of the
16 claim can be produced in admissible form, the court has found a prima facie showing of
17 admissibility. Where the petition and exhibits fail to demonstrate such a reasonable basis, the
18 court has found a failure of proof in the prima facie showing of admissibility.

19 Table 2 identifies several categories of evidence as both new and prima facie admissible.
20 Admissible evidence of MPD's investigation of the orange van fire on December 25 would
21 include the testimony of Bryan Spitulski and Det. Shipley of their observations of the condition
22 of the van and the investigative steps they took. Photographs of the condition of the van,
23 evidence of samples of material taken from the mattress in the van, and testimony of laboratory
24 analysts of the results of testing of those samples would be admissible. The testimony of defense
25 expert Mehul Anjaria would be admissible to explain possible reasons for inconsistent
26 presumptive blood test results on the stained areas of the mattress. The court finds no substantial
27 delay in the presentation of this evidence despite disclosure of some of the orange van fire
28 materials to Petitioner's counsel at trial and the balance in 2016 in post-conviction discovery.

1 Substantial delay is measured from the time the petitioner or counsel knew or reasonably should
2 have known of the information offered in support of the claim and the legal basis for the claim.
3 *Reno, supra*, 55 Cal.4th at p. 460-461. Prior to 2023, section 1473 required new evidence to be
4 more than “cumulative, corroborative, collateral, or impeaching.” Petitioner obtained the first
5 admissible evidence of some connection between Todd and Pearce and the burned orange van in
6 2025, when Melissa Rodriguez Morales executed her declaration stating that she had seen them
7 driving the orange van at some point prior to Laci Peterson’s murder. Until that point and under
8 the prior version of section 1473, evidence related to the orange van was at best collateral.

9 Various evidence regarding the quality of the MPD investigation is both new and
10 admissible. Evidence and property records demonstrating the destruction of the recordings of
11 Todd’s and Pearce’s January 2 interviews would be admissible. There is no substantial delay in
12 presentation of that evidence because the record demonstrates that fact of destruction was not
13 disclosed to Petitioner until 2025 when the People produced court-ordered post-conviction
14 discovery pursuant to section 1054.9. Likewise, the proffered expert opinion of retired Lt. Adam
15 Bercovici about the failures of the MPD investigations of the van fire, the Medina burglary, and
16 Laci Peterson’s disappearance are likewise not substantially delayed because the recently
17 discovered destruction of the tapes forms a significant component of that opinion. In this
18 category, however, the statement of Det. Stough presented to George Gudgell in 2015 has been
19 substantially delayed in its presentation. The petition and exhibits demonstrate that Gudgell has
20 been communicating information regarding his investigation to Petitioner’s former counsel since
21 early 2016. Det. Stough made his statement about failing to investigate the alibis of Todd and
22 Pearce for December 24 in 2015. Petitioner’s 2015 petition asserted ineffective assistance of
23 counsel for failure to present evidence that Todd saw Laci Peterson alive during the Medina
24 burglary on December 24. (See 2015 Petn., Claim 10.) In that context, the significance of Det.
25 Stough’s statement to a habeas corpus claim was evident.

26 Some of the potentially admissible new evidence relates to Deanna Renfro and the
27 pawned Croton watch. The testimony of Officer Hicks regarding the March 2003 investigation
28 of Deanna Renfro and others living in her home for methamphetamine manufacture and sale is

1 prima facie admissible, but the court finds that there has been substantial delay in asserting it.
2 Deanna Renfro herself disclosed in 2004 interviews that she had been arrested for
3 methamphetamine manufacture. The reports of Renfro's statements describing her arrest were
4 disclosed to Petitioner before the close of evidence, and so the general subject matter was not
5 discovered after trial. The specific nature of Officer Hicks' involvement in the investigation of
6 Renfro was discovered after trial, but in 2006 in a publicly accessible court opinion – 19 years
7 before Petitioner brought it forward. Petitioner proffers that Officer Hicks' investigation is
8 relevant because the relative timing of the investigation and Renfro's statements about
9 investigators seizing the pawn ticket for the second pawn of the Croton watch suggest that the
10 officers who seized the watch were part of the drug investigation. Renfro's statements about the
11 alleged seizure of the pawn ticket by police officers were also known to Petitioner at the time of
12 trial. The information contained in the unpublished *People v. Shivar* opinion potentially
13 admissible through Officer Hicks has been substantially delayed.

14 Likewise, the potentially admissible testimony of Sam Newnam that police first put a
15 hold on and then seized the pawned Croton watch from The Pawn Shop because they believed it
16 to belong to Laci Peterson has been substantially delayed. Unlike the orange van fire, evidence
17 of the potential third party culpability significance of the pawn of a Croton watch has been a core
18 element of Petitioner's claims of innocence since trial. Sam Newnam made his first on-camera
19 statement that MPD put a hold on the watch in 2017, after codification of the standards for
20 bringing a habeas claim on the basis of new evidence and during the pendency of his 2015
21 petition. In its analysis of Claim 9, *infra*, the court details why the inconsistencies between
22 Newnam's 2004 statements that the pawned Croton watch was sold to a member of the public
23 and his 2017 statement that it was held for MPD should have reasonably alerted Petitioner to his
24 *Trombetta/Youngblood* claim. The same analysis applies here. Regardless, even if the court
25 found no substantial delay in the presentation of Newnam's testimony, it would still find that
26 either standing alone or in combination with other new evidence, there is not a prima facie
27 showing that it is sufficiently material or credible to have created a reasonable likelihood of a
28 different outcome. Newnam's recent statements about what happened to the watch flatly

1 contradict those he made in 2004. More importantly, while Newnam now says that MPD seized
2 the pawned watch, Petitioner has presented no evidence that Newnam has ever retracted his
3 statements at the time of trial that the pawned watch could not possibly have belonged to Laci
4 Peterson.

5 The 2024 statements of Carlos Hernandez regarding his observations of a van parked in
6 front of the Medina home with three men in or around it on the morning of December 24 and his
7 attempt to report that information to MPD are admissible and presented without substantial
8 delay. The 2023 reinterview of Kim V. regarding her observation of a “junky” and “beat up”
9 van selling what appeared to be stolen property in the neighborhood is also presented without
10 substantial delay to the extent that it adds the words “junky” and “beat up.” Other than that, her
11 van sighting was reported to MPD in January 2003, relayed to Petitioner at the time of trial, and
12 is not new information.

13 Petitioner proffers the testimony of three witnesses – RR, ST, and KD – that would be
14 admissible as impeachment of DM only if he were to testify and deny involvement in the Medina
15 burglary, knowledge of Laci Peterson’s disappearance, and deny having made statements on
16 those subjects to RR, ST, and KD. Petitioner has demonstrated a reasonable likelihood through
17 DM’s interview with investigator Jason DeWitt that DM would make such denials. (Exh. 34 to
18 Petn.) ST and KD were discovered in 2022. Their information has been presented without
19 substantial delay. Although RR’s declaration indicates that she first reported her information to
20 investigators or attorneys for Petitioner in 2019, the statements she attributes to DM are
21 inadmissible hearsay in the absence of DM himself being presented as a witness. Petitioner first
22 obtained a declaration from DM in 2024. RR’s information is therefore also presented without
23 substantial delay.

24 **Admissible and timely new evidence not reasonably likely to change outcome**

25 Claim 4 asserts that new evidence demonstrates that Laci Peterson confronted the Medina
26 burglars on December 24 after Petitioner had left for the day, therefore exonerating Petitioner.
27 The prima facie admissible and timely new evidence on the subject of the Medina burglary pled
28 in support of the petition is as follows:

1 At an unspecified time prior to Laci Peterson's disappearance, Melissa Rodriguez
2 Morales saw Todd, Pearce, Richard Zarate, and Tony Lugo driving around the Airport District in
3 an orange van that was later found burning in an alley at about 8:30 AM on December 25, 2002.
4 (Exh. 4 to Petn.) The alley where the van was burned is adjacent to the home of Todd's son's
5 mother's sister. (Exh. 6 to Petn.)

6 Carlos Hernandez, age 17 at the time, rode his bicycle past the Peterson and Medina
7 homes on Covenia Ave. on December 24, 2002 between 10:30 and 11:00 AM. (Exh. 30 to Petn.)
8 He saw a woman he believed to be Laci Peterson wearing black leggings or sweats and a white
9 blouse or smock walking a golden retriever toward the park. He passed her from behind as he
10 was riding his bike down the hill into the park and startled the dog, causing it to bark. He stayed
11 a short time at a friend's place, then rode home using the same path back down Covenia Ave. On
12 his way back (time unspecified), he saw a white van parked on the east side of Covenia facing
13 north toward the park. He could see through the windshield of the van that the back doors of the
14 van were open. There was a white man in the back of the van hitting or pushing down on
15 something. The man had long brownish-blond hair. Two other men were standing near the back
16 of the van. One was a tall White man and the other a shorter Hispanic, possibly Mexican man.
17 One of the men slammed the back van door. Hernandez "didn't think anything of it at the time."
18 (*Ibid.*)

19 Three or four days later, Hernandez went to visit the same friend but had to use a
20 different route because Covenia Ave. was blocked off. When he told his friend what he had seen
21 the last time he came to visit, the friend told her parents. His friend's father drove Hernandez to
22 the police station to report what he saw. The trip to the police station occurred a day or two
23 before the police announced that they had caught the burglars. Hernandez approached an officer
24 he identified as Det. Brocchini standing outside the station. He said "Hey, I don't know if this is
25 going to help the search for Laci at all but I remember seeing Laci walking her dog in the park
26 the morning when she went missing," and also said he saw a white van. The officer said, "we
27 got our guy, but thank you" or words to that effect. (*Ibid.*)
28

1 DM denies any direct involvement in either the Medina burglary or Laci Peterson's
2 abduction and murder. (Exh. 34 to Petn.) He denies ever telling anyone that he was involved in
3 Laci Peterson's abduction or murder. (Exhs. 34 to Petn., p. 3.) In 2018, DM told a former dating
4 partner, RR, that he and some other guys were involved in a house burglary. (Exh. 45, p. 1.)
5 During the burglary, a pregnant woman with a dog (whom he later admitted was Laci Peterson)
6 confronted them. (*Ibid.*). He said Laci came over and looked in the backyard of the house and
7 saw several men there. (*Id.* at p. 2.) When she turned to walk away, they grabbed her from
8 behind and "had to shut her up." (*Ibid.*) The details of DM's statements to RR changed over
9 time. He told her they held Laci in a vacant house, but also gave different locations for the
10 house. His mood would change when he discussed the topic and he would get upset and do a
11 "weird walk." (*Ibid.*)

12 In 2022, two people at a social gathering heard DM say that he was part of the Medina
13 burglary and that Laci Peterson had confronted them. ST heard DM say that he and the other
14 burglars staked out the Medina home in a white van, and they knew when the owners were away
15 because the house was under construction. (Exh. 46 to Petn.) While they were dragging a safe
16 out of the house, Laci Peterson caught them and threatened to call the police. (*Ibid.*) They had
17 to "shut her up." (*Ibid.*) KM heard DM say they were robbing a house under construction and
18 knew when the owners were away. (Exh. 47 to Petn.) KM heard DM say that Laci caught them
19 robbing the house and they couldn't get caught. (*Ibid.*)

20 MPD and the Modesto Fire Department investigated the burning orange van found on the
21 morning of December 25. MFD concluded the fire was arson. The van still had its radio, spare
22 tire, and all wheels, tires, and lug nuts. (Exh. 2B to Petn. AHCP-035.) At the time of his initial
23 investigation, fire investigator Bryan Spitulski determined the fire started from a single ignition
24 point in the front passenger area of the van. (Exh. 2B, ACHP-036.) In his 2023 declaration, he
25 recalled two separate ignition points – one in the front and one in the rear cabin. (Exh. 5 to Petn.,
26 p. 3.) In the back of the van, investigators found a charred mattress with a fuel container sitting
27 on top of it. Underneath the fuel container, there was an unburned area of mattress fabric heavily
28 stained with what appeared to be blood. (*Id.* at pp. 7-8.) CSO Doug Lovell conducted a

1 presumptive test for blood and got a faint positive reaction. (Exh. 2A, Bates 3781.) Testing by
2 the California Department of Justice was unable to replicate that result in 2003, but that may be
3 because the sample's exposure to high heat caused the presumptive blood test to be unreliable
4 due to the degradation of the sample and the size of the stained area sampled by DOJ. (Exh. 21
5 to Petn.) The mattress cuttings were re-tested in 2019. The lab was again unable to detect the
6 presumptive presence of human blood. Small amounts of male DNA were recovered from the
7 mattress but no typing of the DNA was done. (*Id.* at p. 6.)

8 Under section 1473, evidence that is sufficiently material and credible that it would have
9 "more likely than not changed the outcome at trial." (Section 1473, subd. (b)(1)(C)(i).) At the
10 pre-OSC stage, the court takes the allegations pled as true and determines whether the pleading
11 states a prima facie case for relief. The present version of section 1473 does not require unerring
12 demonstration of innocence, or proof that the new evidence would lead to acquittal. Petitioner
13 must show that the new proffered evidence – viewed in relation to the evidence actually
14 presented at trial – would raise a reasonable doubt as to guilt in the mind of at least one juror. *In*
15 *re Sagin* (2019) 39 Cal.App.5th 570, 579.

16 The prosecution did not present evidence at trial for the purpose of proving that the
17 Medina burglary occurred on December 26. The only evidence of the burglars' statements
18 regarding the date of the burglary came from Officer Hicks, called by the defense to demonstrate
19 the bias and ineptitude of the MPD's investigations of both the burglary and Laci Peterson's
20 disappearance. The jury was specifically instructed that Todd's statements to Hicks about the
21 details of the burglary – including its date - were inadmissible for their truth. (107 RT 20015.)
22 By contrast, the statement of Diane Jackson was admitted for its truth. (99 RT 18651.) The jury
23 heard that Jackson told the police that she saw a burglary on Covenia on the morning of
24 December 24 at 11:40 AM. She saw a van and the safe being removed from the house. The jury
25 heard that Detective Stough interviewed her after her initial call. (99 RT 18565.) She identified
26 the house where she saw the burglary as the Medinas. (*Ibid.*) She said that she saw three short,
27 dark-skinned men who were not African American in the front yard. (*Ibid.*) They were standing
28 near a van, and turned to look at her as she drove by. (*Ibid.*) That was all she could remember

1 about their appearance, and she did not think she would be able to identify them if she saw them
2 again. (*Id.* at 18565-18566.) The van was parked on the street in front of the house. Two of the
3 men were standing at the back of the van and one was in the front yard near the van. She thought
4 they were unusual because she first thought they were landscapers, but they were watching the
5 traffic go by and not working. (*Id.* at 18566.) Initially she believed the van was white, but on
6 reflection thought that it was darker – a tan or brown color. The van was older, and had a rear
7 door, but she didn't remember if it was a single door or two. (*Id.* at 18566-18577.)

8 Susan Medina testified about the burglary. From her, the jury heard that the Medinas left
9 home on December 24 at 10:33 AM, which Medina verified against her phone records because
10 she made a call to her son just as the Medinas left. (49 RT 9593.) She saw nothing unusual as
11 they left. (49 RT 9594.) Her husband checked the mail just before they left, and their outgoing
12 mail was still waiting to be picked up. (49 RT 9592.) The Medinas returned home on December
13 26 shortly after 4:12 PM, which Medina also verified based on making a call to her son as they
14 passed the police station and saw all of the activity. (94 RT 9597-9598.) When they arrived,
15 their hand cart or dolly was on the front lawn. (49 RT 9600.) The French door to the dining
16 room was broken and wide open. (49 RT 9602.) Susan Medina went to the front yard and told
17 the police that they were "robbed". (49 RT 9604.) The police came in to investigate. (49 RT
18 9604-9605.) Later, the police asked her to come to the police station to look at some property to
19 see if it was hers. (49 RT 9505-9506.) A safe was stolen from the house. (49 RT 9506-9507.)
20 The Medinas told the police they weren't interested in the safe anymore. (49 RT 9608.) When
21 they got back from their trip, the outgoing mail was gone and there were a few letters in the
22 mailbox that couldn't be seen from outside of it. (49 RT 9614-9615.) Susan Medina made a
23 partial list of property stolen from the house. (49 RT 9627.) The list included a weed eater, a
24 large rolling toolbox with tools in it, a reciprocating saw, a Black & Decker drill, hammers,
25 pliers, automotive tools, cameras and camera equipment, jewelry that wasn't in the safe
26 including two watches and pearl earrings, and the safe and its contents. The safe was so heavy
27 that when they bought it, her husband had two of his cousins help him bring it into the house.

1 (49 RT 9628-9631.) Two guns were stolen. (49 RT 9632.) The guns were recovered, but the
2 tools and some of the jewelry was not. (*Ibid.*)

3 Sgt. Craig Wend went to the Medina residence on December 26. He spoke mostly to
4 Rudy Medina. Sg. Wend saw signs of forced entry and saw the dolly out front. (49 RT 9711-
5 9712.) No one else reported the burglary before the Medinas made their report on December 26.
6 (49 RT 9715-9716.) Sgt. Helton testified that he was present for the arrest of Todd and Pearce at
7 Tenaya. (53 RT 10344-10355.) The responding officers searched the entire property. They
8 found the Medina's safe, which had been forced open and damaged. (53 RT 10366.) They also
9 found jewelry , a wooden box, and a weed eater. (53 RT 10377.) During the search of the
10 Tenaya property the police found no evidence related to the Laci Peterson case. (53 RT 10361.)
11 The owners of the Tenaya property gave the police consent to search the entire property. (*Ibid.*)

12 Detective Craig Grogan testified that Petitioner's counsel asked for access to the safe in
13 July 2003 and had a consent form from Susan Medina authorizing its release to Petitioner's legal
14 team. Detective Grogan made a request to have the safe tested for forensics before releasing it to
15 the defense. The same day he made the request, a member of MPD's technical services
16 department told him the safe had been destroyed as part of the burglary investigation. (99 RT
17 18613-18614.)

18 In closing argument, the prosecutor said one time "It didn't happen on December 24th."
19 (111 RT 20654.) The immediately following sentence made clear the theory that the prosecution
20 argued for the remainder of closing: "It didn't have anything to do with Laci Peterson's
21 disappearance, because the Medinas were home at the time the dog was found.... But one thing
22 we know without any doubt whatsoever is that Medina burglary had nothing to do with this
23 crime whatsoever. Because the dog was found before the Medinas ever left their home." (*Ibid.*)
24 The defense made no objection to the prosecutor's isolated reference to the burglary not having
25 occurred on December 24.

26 Adding the admissible, timely new evidence to the evidence actually presented at trial,
27 the court finds that the Petitioner has failed to plead a prima facie showing that the admissible
28 new evidence is sufficiently material and credible to demonstrate a reasonable probability of a

1 more favorable trial outcome. The jury heard that the possible window of time for the burglary
2 to have occurred was from 10:33 AM on December 24, 2002 to just after 4:12 PM on December
3 26, 2002. The jury heard that the Medinas' mail carrier was on Coven Ave. between 10:35 AM
4 and 10:50 AM, and that the Medinas left outgoing mail sticking out of their mailbox when they
5 left that was no longer there when they returned. The jury heard that when police arrested Todd
6 and Pearce on January 2, 2003, they were found in possession of jewelry, the Medina's safe, and
7 a weed eater – corroborating that Todd and Pearce had been involved in committing the burglary.
8 The jury saw pictures of Todd and Pearce. The jury heard Officer Hicks testify that he has
9 known Todd for seven years during his time as a police officer and has never known him to have
10 a car. In that time Todd had always ridden a bicycle. (110 RT 20399.)

11 Neither Todd nor Pearce testified at trial. Any statements Todd made to DM asserting
12 that Laci saw him during the burglary, or telling DM that he was located inside the Medina home
13 would therefore have been inadmissible among the trial evidence actually presented. DM denies
14 participating in the Medina burglary. RR, ST, and KM's reports of his inconsistent statements
15 would therefore only be heard if DM first denied his involvement. Melissa Rodriguez Morales
16 does not include DM among the people that she saw driving the orange van, or who regularly
17 visited her home in the Airport District. The petition does not allege that DM is dark-skinned but
18 not African American, or short – so there is no indication he would have matched Diane
19 Jacson's description of what she saw. The petition does not allege that in December 2002 DM
20 was a White man with long brownish-blond hair as described by Carlos Hernandez. While the
21 court is required to accept the facts as pled in the petition as true (eg that DM actually told RR
22 the things she relates), the court is not required to accept the truth of facts asserted in hearsay
23 statements that conflict with one another. DM's hearsay statements of seeing Laci Peterson
24 during the Medina burglary through RR, ST, and KM lack any indicia of reliability in the trial
25 evidence presented or the admissible new evidence in the petition - and DM denies saying them
26 at all.

27 Carlos Hernandez reported being on Coven Ave. between 10:30 and 11:00 AM – during
28 the same window of time that the Medinas were leaving home and Russell Graybill was on his

1 mail route. Neither the Medinas nor Graybill, both of whom were familiar with Laci Peterson,
2 saw her on the street during the time they were there. Hernandez's testimony would therefore
3 have conflicted with theirs. His description of his opportunity to view the woman he saw
4 demonstrates that he saw her from behind while passing on his bicycle. He had never seen her
5 before. The jury heard ample trial testimony about thousands of tips the police received claiming
6 to have seen Laci Peterson. The woman Hernandez saw wore black pants – inconsistent with the
7 pants Laci had on when her remains were recovered. Hernandez's description of his timing of
8 seeing Laci entering the park and the van on his way home would have required that Laci
9 complete her walk in the "short time" that he visited his friend, enter her home leaving the dog
10 leashed in the back yard, change her pants, then come back out into the street in time to get
11 pushed into the white van and be sufficiently subdued that he neither heard nor saw any sign of
12 foul play when he rode back by the van on the way home and "didn't think anything of it".

13 As to the van, on his return sometime after 11 AM, Carlos Hernandez reported seeing a
14 white van, similar to Diane Jackson's initial statement. He described the men associated with it
15 as one Hispanic man and two White men, one of whom had long hair. Neither Todd nor Pearce
16 have long hair, and neither are Hispanic. Diane Jackson described three dark-skinned, short, not
17 African-American men, consistent with neither Todd, Pearce, nor the description of the men
18 Carlos Hernandez saw. Neither Jackson nor Hernandez described the van they saw as orange –
19 the color of the van that Melissa Rodriguez Morales reported Todd and Pearce had access to, in
20 conflict with Officer Hicks' testimony that he hadn't seen Todd have a car in seven years. The
21 arson of the van the next day lacks materiality where no witness identifies its use in the crime,
22 and the available forensic evidence neither demonstrates Laci's presence in the van nor
23 establishes the presence of blood. Whether taken alone or in combination, the admissible new
24 evidence asserted by the petition fails to state a prima facie case for relief under section 1473.

25 To the extent that the claim asserts that the prosecutor's single reference to the burglary
26 occurring on December 26 was false argument, the court finds that claim without merit. It is
27 well settled that it is misconduct for a prosecutor to base argument on facts not in evidence.
28 *People v. Mendoza* (2016) 62 Cal.4th 856, 906. It is also misconduct for a prosecutor to "suggest

1 that evidence available to the government, but not before the jury, corroborates the testimony of
2 a witness.” (*Id.* at p. 927.) “A prosecutor’s misconduct violates the Fourteenth Amendment to
3 the United States Constitution when it ‘infects the trial with such unfairness as to make the
4 conviction a denial of due process’. [Citations.] In other words, the misconduct must be ‘of
5 sufficient significance to result in the denial of a defendant’s right to a fair trial.’” (*Id.* at p. 960,
6 citing *People v. Clark* (2011) 52 Cal.4th 856, 860.) Even if the misconduct does not rise to that
7 level, it may be error under state law “if it involves the use of deceptive or reprehensible methods
8 to attempt to persuade either the trial court or the jury.” (*Ibid.*) When a claim of misconduct is
9 based on the prosecutor’s comments before the jury, the question is whether there is a reasonable
10 likelihood that the jury construed or applied any of the complained-of remarks in an
11 objectionable fashion.” (*Id.* at p. 905.) While a prosecutor may not misstate the facts or the law,
12 prosecutors enjoy “wide latitude in commenting on the evidence, including urging the jury to
13 make reasonable inferences and deductions therefrom.” *People v. Coffman and Marlow* (2004)
14 34 Cal. 4th 1, 96. The Medinas’ testimony established a possible window for the burglary
15 including December 26. Even without the hearsay statements of Todd and Pearce claiming that
16 the burglary occurred on December 26, the prosecutor’s single reference in closing found basis
17 in evidence admitted before the jury. It was not false.

18 Claim 4 fails to state a prima facie case for relief, and is denied on its merits.

19 CLAIM 5

20 Claim 5 of the instant petition asserts that Petitioner was “denied his right to due process
21 when Detectives Grogan and Brocchini falsely testified there were no credible witness sightings
22 of Laci and that Petitioner was the last person to see her alive.” (Petr. p. 356.) In its informal
23 response, the People contend that Claim 5 is procedurally barred on multiple bases, and that the
24 claim fails to state a prima face case for relief. (Inf. Resp. p. 403.)

25 More specifically, Petitioner argues in Claim 5 that Detective Grogan was the lead
26 detective in his case and Detective Brocchini was assigned the task of eliminating him as a
27 suspect. Despite their primary investigative roles, they failed to follow up personally with
28 witnesses who reported seeing Laci Peterson or the dog in her neighborhood on the morning of

1 December 24, failed to familiarize themselves with interviews of those witnesses by other
2 officers or provided by the defense in discovery, and testified falsely at trial that there were no
3 credible sightings of Laci Peterson after Petitioner left his residence on December 24. Petitioner
4 alleges that the prosecution failed to correct the false testimony when it was offered. He asserts
5 the false testimony entitles him to relief under section 1473, subd. (b)(1)(A).

6 Petitioner further asserts that new evidence within the meaning of section 1473
7 demonstrates that Detectives Grogan and Brocchini testified falsely. He relies on the declaration
8 of Dr. James Lampinen, an expert witness in eyewitness identification and memory. Dr.
9 Lampinen reviewed the statements of 11 of the reported eyewitness sightings of Laci Peterson.
10 While Dr. Lampinen's declaration does not conclude that the eyewitness identifications he
11 reviewed provide "definitive" evidence that Laci Peterson was alive on Christmas Eve 2002, he
12 does conclude that "there is strong evidence that on the morning of December 24, 2002, there
13 was a pregnant White woman, walking a golden retriever, or similar dog, within a relatively
14 constrained geographical area of approximately 1/3 square mile of Modesto, California, as
15 described by those witnesses."

16 **CLAIM 5 IS PROCEDURALLY BARRED UNDER *CLARK***

17 "In this state a defendant is not permitted to try out his contentions piecemeal by
18 successive proceedings attacking the validity of the judgment against him." *In re Connor* (1940)
19 16 Cal.2d 701, 705. Before considering the merits of a second or successive habeas corpus
20 petition, a California court will first ask whether the failure to present the claims underlying the
21 new petition in a prior petition has been adequately explained, and whether that explanation
22 justifies the piecemeal presentation of the petitioner's claims. This requirement is reasonable in
23 view of the interest of the state in carrying out its judgments, the interest of the respondent in
24 having the ability to respond to the petition and retry the case should the judgment be
25 invalidated, and the burden on the judicial system. (*Clark, supra*, 5 Cal.4th at pp. 774-775.) A
26 petitioner justifying delayed presentation of claims is expected to demonstrate due diligence in
27 pursuing potential claims. If a petitioner had reason to suspect that a basis for habeas corpus
28 relief was available, but did nothing to promptly confirm those suspicions, that failure must be

1 justified. Where the factual basis for a claim was unknown to the petitioner and he had no
2 reason to believe that the claim might be made, or where the petitioner was unable to present his
3 claim, the court will continue to consider the merits of the claim if asserted as promptly as
4 reasonably possible. Claims based on a change in the law which is retroactively applicable to
5 final judgments will be considered if promptly asserted and if application of the former rule is
6 shown to have been prejudicial. (*Id.* at p. 775.)

7 In a second or successive habeas corpus petition, a petitioner's failure to both
8 acknowledge the limitations of habeas corpus as an avenue of collateral attack and to make a
9 plausible effort to explain why the claims raised are properly before the court can be considered
10 an abuse of the writ process. (*Reno, supra*, 55 Cal.4th at p. 453.) Where the grounds presented
11 are based on matters known to the petitioner at the time of a previous petition, the applicant for
12 habeas corpus "not only had his day in court to attack the validity of [the] judgment, but ... had
13 several such days, on each of which he could have urged [the] objection, but did not do so." (*Id.*
14 at p. 455, quoting *In re Drew* (1922) 188 Cal.717, 722.) *Clark* established a strict pleading
15 standard: "The petitioner ... bears the initial burden of alleging the facts on which he relies to
16 explain and justify delay and/or a successive petition." (*Ibid.*) Counsel have an ethical duty to
17 notify the court if an issue in the petition is procedurally barred, and justification must be stated
18 in the petition itself and not in later pleadings such as the informal reply or traverse. (*Id.* at p.
19 459.) A petitioner must allege, *with specificity*, facts showing when information offered in
20 support of the claim was obtained, and that the information neither was known, nor reasonably
21 should have been known, at any earlier time. It is not sufficient simply to allege in general terms
22 that the claim recently was discovered, to assert that second or successive postconviction counsel
23 could not reasonably have discovered the information earlier, or to produce a declaration from
24 present or former counsel to that general effect. A petitioner bears the burden of *establishing*,
25 through his or her specific allegations, which may be supported by any relevant exhibits, the
26 absence of substantial delay. (*Id.* at p. 461-462, quoting *In re Robbins* (1998) 18 Cal.4th 770,
27 780.)
28

1 The instant petition asserts timeliness and lack of successiveness in the same way as to
2 each claim: “This claim is timely because the factual bases supporting it were unknown to
3 Petitioner until recently and he has asserted those claims as promptly as reasonably possible.”
4 (Petrn., p. 389.) “This claim is not successive because it has not been presented to the court
5 before; it is based on information that was only recently discovered by counsel through diligent
6 investigation.” Such general allegations of timeliness and lack of successiveness are patently
7 insufficient to meet the burden established by *Clark* and *Reno* to allege specific facts
8 demonstrating *when* information in support of the claim was obtained, and that the information
9 neither was known, nor reasonably should have been known at any earlier time. Failure to
10 affirmatively address the applicability of procedural obstacles to consideration of the claims
11 raised in a habeas corpus petition justifies summary denial without the court’s consideration of
12 the merits. (*Clark, supra*, 55 Cal.4th at p. 511.)

13 The court’s examination of the factual allegations pled in support of Claim Five amply
14 demonstrate that the majority of the pertinent information in support of the claim that Detectives
15 Grogan and Brocchini testified falsely was known to Petitioner at or before his trial. Claim 5
16 cites the eyewitness accounts of 15 witnesses who claim to have seen Laci Peterson or a woman
17 resembling her alive on the morning of December 24, 2002. Of those 15, Petitioner’s trial
18 counsel knew of 14 – either because their tips and statements were contained in pretrial
19 discovery or because Petitioner’s defense investigators and counsel interviewed them prior to
20 trial. Petitioner was obviously aware of when his own defense team turned over their
21 investigators’ statements of interviewed witnesses to the prosecution in discovery. All of the
22 statements of the fourteen eyewitnesses were known to Petitioner and his trial counsel at the time
23 that Detectives Grogan and Brocchini testified at trial. In cross-examination of Det. Grogan, trial
24 counsel elicited the entire content of the tips relating the alleged Laci Peterson sightings by Tony
25 Freitas, Grace Wolf, Homer Maldonado, and Tom Harshman. Petitioner’s trial counsel also
26 elicited, through cross-examination of Det. Grogan, a statement by Victoria Pouches reporting to
27 Officer Beffa that she saw an unattended yellowish dog “barking like crazy” in La Loma Park
28 between 9:30 and 10 AM on December 24. All of the trial testimony alleged to have been false

1 by Dets. Brocchini and Grogan appears on the face of the trial record. Petitioner also knew at or
2 before trial that the Modesto Police Department had failed to interview Martha and Frank
3 Aguilar, Vivian Mitchell, Dean Thomas, Sharon Paulson, and Colleen Fisher at any time; that
4 neither Det. Grogan nor Det. Brocchini had interviewed any of the fourteen witnesses prior to
5 trial; and the timing of 2004 interviews that Det. Grogan, DA Inspector (DAI) Bill Grogan, and
6 DAI Kevin Bertalotto conducted of some of the witnesses during trial.

7 In Claims 8 and 9 of his 2015 petition, Petitioner asserted that his trial counsel rendered
8 ineffective assistance by failing to call the following witnesses who claimed to have seen Laci
9 Peterson alive on the morning of December 24: Homer Maldonado, Tony Freitas, Tom
10 Harshman, Diana (sic) Campos, Frank and Martha Aguilar, and Bill Mitchell.⁸ (2015 Petn. pp.
11 179-199.) The claim demonstrates Petitioner's awareness of the content of their statements prior
12 to the filing of his 2015 petition, including Vivian Mitchell's report of calling the police and not
13 receiving a call back.

14 In the prefatory argument to the factual allegations of the Petition, Petitioner asserts that
15 Claim 5 is supported by newly discovered evidence – including a press conference that occurred
16 on December 25, 2002 where Detective Brocchini said there had been credible witness sightings
17 in La Loma Park; new declarations signed in 2023 and 2024 by Homer and Helen Maldonado,
18 Tony Freitas, and Thomas Harshman; and the opinion of Dr. Lampinen. The pled allegations
19 also reference the 2025 declaration of retired Lieutenant Adam Bercovici, and an on-camera
20 interview by reporter Gloria Gomez aired in 2017 alleging that investigators shared information
21 with her, including “the bleach” – referencing a false rumor that was published by several media
22 outlets that officers smelled bleach during the initial walkthrough of Petitioner's home on the
23 night Laci Peterson was reported missing.⁹

25 ⁸ The 2015 Petition asserted that Bill Mitchell would have been able to relate the Laci Peterson
26 sighting reported by his wife Vivian, who was interviewed by Petitioner's investigator pretrial
27 but passed away prior to Petitioner's trial.

28 ⁹ Claim 5 asserts that declarations were obtained from Homer and Helen Maldonado and Tony
Freitas in 2023. (Exhs. 9, 10, 11 to Petn.) While the declarations were executed in 2023, they
provide no new substantive information relevant to Petitioner's claim of false testimony.

1 Much of the cited information is not genuinely new. Det. Brocchini's press conference
2 first aired publicly on December 25, 2002. The clip Petitioner refers to was a rebroadcast in
3 2017, but Petitioner does not plead with specificity in the factual allegations to the claim that
4 either he or his trial counsel were unaware of Det. Brocchini's 2002 statement at the time it was
5 made. The announcement of the press conference at issue is contained in the exhibits supporting
6 the petition, and the affixed Bates number demonstrates that announcement was provided to
7 Petitioner's defense team pretrial. (Exh. 2A to Petn., Bates 5032.) The information provided in
8 Ms. Gomez's 2017 statement also is not genuinely new. The trial record demonstrates that
9 Petitioner's trial counsel accused Det. Brocchini of being the source of that false information,
10 which a Stanislaus County Superior Court judge alleged that he mentioned while at her home
11 obtaining a signature on a search warrant in an unrelated case. The trial judge indicated that he
12 would allow Petitioner's trial counsel to cross-examine Det. Brocchini on that subject before the
13 jury if trial counsel could produce a reporter who would identify Det. Brocchini as the source of
14 the false information. (54 RT 10675-10679.) Trial counsel was apparently unable to do so, and
15 the statement attributed to Ms. Gomez in Claim 5 still fails to specify which investigator
16 mentioned "the bleach" to her.

17 Dr. Lampinen is an expert witness in the areas of eyewitness identification and memory.
18 Dr. Lampinen's curriculum vitae indicates that he published his first book, entitled The
19 Psychology of Eyewitness Identification in 2012. (Exh. 16 to Petn., Exh. A, p. 5). His second
20 book, Memory 101, followed in 2014. (*Ibid.*) He has served as an invited lecturer at law-
21 focused events in multiple states since 2012, including a seminar entitled "Eyewitness
22 Identification: What Attorneys Should Know." (*Id.* at p. 13.) Dr. Lampinen's report indicates
23 that scientific studies of eyewitness memory go back more than 100 years, and that high quality
24 peer reviewed studies of eyewitness memory conducted since the 1970's have resulted in
25 thousands of peer reviewed articles. Based on Dr. Lampinen's declaration, the Petitioner asserts
26 that much of the research Dr. Lampinen relied upon in formulating his opinion was not yet
27 published at the time of the Petitioner's trial. (Petn., p. 276; Exh. 16 to Petn., p. 2.) Examination
28 of Dr. Lampinen's report, however, demonstrates that the studies he cites as relevant to his

1 conclusions regarding the likelihood of the presence of a pregnant White woman walking a dog
2 similar to a Golden Retriever in a 1/3 square mile of Modesto, CA on December 24, 2002 were
3 all published between 2003 and 2012, prior to the filing of the 2015 petition. (Exh. 16 to Petn.,
4 Exh. B.) The studies he cites in support of his comments about the impact of confirmation bias
5 were published between 2004 and 2009. (*Ibid.*) His report amply demonstrates that the
6 scientific concepts on which he based the opinions necessary for Petitioner to assert the falsity of
7 the testimony of Dets. Brocchini and Grogan were well-established at the time of the 2015
8 petition. Dr. Lampinen prepared his report on March 13, 2025, and his declaration indicates he
9 did so at the request of Petitioner's present counsel. His declaration does not specify when that
10 request was made.

11 Retired LAPD Lt. Adam Bercovici is an expert in police procedures and practices. (Exh.
12 7 to Petn.) Lt. Bercovici's curriculum vitae indicates that he has offered expert testimony and
13 advisory services in the pertinent areas of police best practices and complex investigations since
14 2012. (Exh. 7 to Petn., Exh A.) Lt. Bercovici's declaration asserts that Petitioner's present
15 counsel contacted him in August 2024. (Exh. 7 to Petn., p. 2.) Lt. Bercovici states that he based
16 his opinions regarding the deficiencies in the conduct of the Modesto Police Department missing
17 person investigation in Petitioner's case on investigative standards that he identified as
18 "foundationally the same" as those existing in 2002. (*Id.* at p. 3.)

19 In short, both experts now proffered as a basis for Claim 5 were qualified to offer the
20 relevant opinions that they assert in their respective declarations before the filing of the 2015
21 petition. Petitioner fails to assert when he engaged the services of Dr. Lampinen and Lt.
22 Bercovici, why he did not seek their services prior to his first petition, and why they would have
23 been unable to offer their respective conclusions relevant to Claim 5 had he engaged their
24 services for the 2015 petition.

25 **No relevant change in section 1473**

26 Petitioner argues that changes to section 1473's standards for claims based on both new
27 and false evidence excuse any procedural bar. (Reply, p. 101.) While a change in law can
28 excuse an otherwise applicable procedural bar, Petitioner must demonstrate that application of

1 the former rule would have been prejudicial to his claim. The petition’s prefatory argument
2 cursorily acknowledges that “some of [the] evidence could have been obtained before now, it
3 would not have been compelling enough to prejudice to Petitioner in the absence of the newer
4 scientific and other exculpatory evidence developed in the last year and presented in Claims 1-
5 4.” (Petn., pp. 276-277.) In reply, Petitioner cites to section 1473’s amended definitions of
6 “new” and “false” evidence to assert that newly discovered evidence demonstrates the falsity of
7 Dets. Brocchini and Grogan’s testimony, and that new evidence also allows Petitioner to
8 demonstrate that Officer Hicks’ testimony about the date of the Medina burglary was false.
9 (Reply, p. 101.)

10 Petitioner references the change in section 1473’s definition of false evidence to assert an
11 excuse to a procedural bar. As Petitioner sets forth in reply, section 1473’s requirements for
12 presentation of claims based on false evidence by lay witnesses have not changed since 1975.
13 (Reply, pp. 44-47.) The only amendments to section 1473’s definitions of false evidence that
14 post-date the Supreme Court’s 2020 denial of the 2015 petition relate to false expert testimony
15 presented at trial. As the reply describes, the purpose of the 2022 amendment as described in
16 legislative history was to “expand the definition of false evidence to include the opinion of
17 experts that are undermined by the state of scientific knowledge.” (Reply, p. 46.) The false
18 evidence Petitioner seeks to attack in Claim 5 did not come from experts, but from lay witnesses.
19 The changes in section 1473 between 2020 and 2023 would have had no bearing on any claim by
20 Petitioner of false evidence offered at trial by lay witnesses. Petitioner neither pleads with
21 specificity nor addresses in argument why he failed to assert his false evidence claim in 2015.

22 As noted in the discussion of Claim 1, *supra*, prior to 2017 habeas claims of actual
23 innocence based on new evidence were based on case law rather than statute. Petitioner asserts
24 that the former standard at the time of filing of the 2015 petition was prejudicial to Claim 5
25 because he would have been unable to demonstrate that his new evidence “undermine[d] the
26 entire prosecution case and point[ed] unerringly to innocence or reduced culpability.” (*Lawley*,
27 *supra*, 42 Cal.4th at p. 1239.) The California Supreme Court decided the 2015 petition in 2020,
28 after section 1473 was amended to codify a lower standard for claims dependent on new

1 evidence – so the applicable comparison to determine if Petitioner was prejudiced by the former
2 rule is to the 2017 new evidence standard, not the *Lawley* standard. In 2020, section
3 1473(b)(3)(A) provided that the new evidence had to be “of such decisive force and value that it
4 would have more likely than not changed the outcome at trial.” Section 1473(b)(1)(C)(i)
5 presently provides that new evidence must be “sufficiently material and credible that it more
6 likely than not would have changed the outcome of the case.” The standard for materiality of
7 new evidence that the Supreme Court applied in 2020 is the same as that existing in present law
8 – that it “more likely than not” would have changed the trial outcome. As Petitioner points out
9 in reply, there was a substantial delay between the filing of the 2015 petition and the filing of the
10 People’s Informal Response after the law on new evidence changed in 2017. The instant petition
11 neither pleads with specificity nor addresses in argument why he could not have sought to amend
12 his 2015 petition to assert the present Claim 5 once the standard no longer required him to
13 produce new evidence that entirely undermined the prosecution’s case and unerringly
14 demonstrated his innocence. While he points to the cumulative impact of assertedly new
15 evidence subsequently developed in support of Claims 1 and 2, that argument is unavailing given
16 the court’s conclusion that those claims are procedurally barred under the *Miller* rule.

17 Petitioner correctly points out that the present definition of new evidence was amended
18 after the California Supreme Court’s 2020 denial of his first petition to remove the requirement
19 that new evidence “could not have been discovered prior to trial by the exercise of due
20 diligence.” Presently, section 1473, subd. (b)(1)(C)(ii) defines new evidence as evidence that
21 has not previously been presented and heard at trial and has been discovered after trial. To
22 qualify for habeas relief, such evidence must also be “presented without substantial delay.”
23 Those changes also do not relate to Claim 5 as presently pled. Fourteen of fifteen eyewitnesses
24 that demonstrated the asserted falsity of Detectives Brocchini and Grogan’s testimony were
25 known to Petitioner prior to trial – they were not “discovered after trial” as required by both the
26 current and former versions of section 1473 at issue. Though the declarations of Dr. Lampinen
27 and Lt. Bercovici were not presented at trial and were discovered after trial, they fail to meet
28 subdivision (b)(1)(C)(i)’s requirement of having been presented “without substantial delay.”

1 Substantial delay for purpose of habeas corpus is “measured from the time the petitioner or
2 counsel knew, or reasonably should have known, of the information offered in support of the
3 claim and the legal basis for the claim.” (*Reno, supra*, 55 Cal.4th at pp. 460-461.) Petitioner
4 knew of the eyewitness sightings that Dr. Lampinen relies upon to formulate his opinion and of
5 the investigative failures that form the basis of Lt. Bercovici’s opinions at trial. He reasonably
6 should have known, at the time of his 2015 petition, of his claim of false evidence by lay
7 witnesses based on then-existing law. He reasonably should have known, at the time of the 2017
8 amendments to section 1473 during the pendency of his 2015 petition, of the availability of his
9 new evidence claim based on the existing evidence of eyewitness identification and police
10 investigative procedure that he now cites. While the amendments to section 1473 eliminated the
11 requirement for exercise of due diligence in discovery of evidence prior to trial, the continued
12 statutory directive that new evidence be “presented without substantial delay” left untouched the
13 long-standing requirement that a habeas corpus petitioner act in a timely way to mount a
14 collateral attack on a final judgment, and explain and justify any failure to do so. (*Id.* at p. 459.)
15 Petitioner has failed in those requirements as to Claim 5.

16 **No miscarriage of justice**

17 The court may consider the merits of a procedurally barred claim if it presents an error of
18 constitutional magnitude that led to a trial so fundamentally unfair that absent the error no
19 reasonable judge or jury would have convicted the petitioner, or if the petitioner is actually
20 innocent of the crimes of which he was convicted.¹⁰ (*Reno, supra*, 55 Cal4th. at p. 472.) These
21 exceptions demand that petitioner meet high bar – demonstrating that the allegations cast
22 fundamental doubt on the accuracy and reliability of the trial proceedings, undermine the
23 prosecution’s entire case, and “point unerringly to innocence.” (*Ibid.* citing *Lawley, supra*, 42
24 Cal.4th at p. 1239.) Evidence relevant only to an issue already disputed at trial that does no more
25 than conflict with the trial evidence does not meet that standard. “Rather, a petitioner must show
26 ‘the evidence of innocence could not have been, and presently cannot be, refuted.’” (*Id.* at p.
27

28 ¹⁰ *Clark* enumerates additional exceptions not applicable to this case.

1 474, quoting *Clark, supra*, 5 Cal.4th at p. 798, fn. 33.) Even taken as a whole, the instant petition
2 fails to meet that high bar.

3 Petitioner’s first two claims echo his prior attacks on the reliability of expert testimony on
4 fetal biometry and hydrology offered at trial. His present expert offers a conclusion substantially
5 similar to that of Dr. Jeanty, whose opinion he proffered in the 2015 petition. His second claim
6 offers an updated opinion from the same expert on the movement of bodies in water that he
7 presented in 2015, Dr. Feigin. Dr. Feigin’s own declaration establishes that despite having the
8 ability to conduct some form of software modeling in support of the 2015 petition, he was not
9 asked to do so. The California Supreme Court rejected Petitioner’s prior false evidence
10 challenge to Dr. DeVore and Dr. Cheng’s testimony on the merits without issuing an OSC –
11 thereby finding that either his contention of falsity, his contention of materiality or both were
12 wanting. The California Supreme Court’s comments¹¹ rejecting Petitioner’s challenge to the
13 admission of Dr. Cheng’s testimony on direct appeal suggest that they found the persuasive
14 value of his testimony to the jury questionable. This court agrees, and further finds in light of the
15 evidence adduced at trial that its probative value was so minimal that conflicting expert opinion
16 was not reasonably likely to change the outcome of the proceeding.

17 Petitioner’s third claim rebrands a prior attack on the reliability of Eloise Anderson’s dog
18 scent evidence that the California Supreme Court rejected on direct appeal. This time, Petitioner
19 claims that because his conflicting fetal biometry and hydrology evidence conclusively
20 demonstrate that Laci Peterson died after Petitioner reported her missing and her remains were

21
22 ¹¹ “Dr. Cheng apprised the jury of the ways in which the model’s accuracy was dependent on a
23 host of initial assumptions, many of which carried with them a considerable degree of
24 uncertainty. For example, it was unknown when Conner’s body had actually washed ashore,
25 which would have altered best estimates of his starting point, and no starting point could be
26 estimated at all for Laci, who was found a day later at a point nearly one mile away from Conner.
27 Moreover, because divers found no evidence to confirm Conner or Laci had ever been at the
28 starting location Dr. Cheng suggested, the jury had ample basis to take his opinions with more
than a dash of salt.” In corresponding footnote 20, the California Supreme Court observed
“[R]ecognizing that Dr. Cheng’s testimony might help the defense as much as it hurt, defense
counsel said before Dr.Cheng testified, ‘[i]n some ways, I want it to come in because I believe
his ultimate conclusion is that he can’t say anything about Laci.’” *Peterson, supra*, 10 Cal.5th at
p. 421, fn. 20.

1 deposited in the water near the Albany Bulb, their conclusions also demonstrate that Laci's
2 remains could not have been at the Berkeley Marina on December 24, so the dog scent evidence
3 must be false. Petitioner overstates the strength of his first two claims, which in the court's view
4 do no more than conflict with the expert opinion offered at trial and seek to use different tactics
5 to re-litigate the same evidentiary issues previously argued and lost at his trial, on direct appeal,
6 and in his 2015 petition. On Petitioner's direct appeal contesting admission of the dog scent
7 evidence, the California Supreme Court again expressed a dim view of its overall materiality in
8 the constellation of circumstantial evidence supporting Petitioner's guilt.

9
10 While we see no error in the admission of Trimble's scent trailing, we also see no
11 reasonable probability that the jury would have returned a different verdict had
12 the scent trailing evidence been excluded. Peterson contends that the evidence
13 was crucial because the prosecution relied heavily on it. But the prosecutor
14 devoted only a few sentences to the subject in the course of closing and rebuttal
15 arguments that stretched for 150 pages of transcript. If credited by the jury, the
16 trailing evidence would have shown that Laci was at the Berkeley Marina in late
17 December 2002. The jury, however, already knew Laci's body had been
18 deposited in the San Francisco Bay months before she washed ashore in April
19 2003, and there were a limited number of access points, among which the
20 Berkeley Marina was closest to where she was found. The trailing evidence did
21 not add much beyond what could already be inferred from other evidence. It also
22 did not rule out defense's theory that "somebody [else] abducted her" and then
23 disposed of her in the bay. And the trailing testimony aside, there was
24 considerable other circumstantial evidence incriminating Peterson, from the
25 simple fact that Laci's and Conner's bodies washed ashore 90 miles from their
26 home but within sight of where Peterson admitted he went fishing the day they
27 disappeared; to the research Peterson did on bay currents in the weeks preceding
28 her disappearance and the fishing boat he bought but mentioned to no one; to
Peterson's inability to explain what he was fishing for in the middle of the day; to
his repeated surreptitious trips to the marina in the weeks after her disappearance;
to the many steps he took in the weeks after she went missing – selling her car,
exploring sale of the house, turning the nursery into a storage room – that
indicated he already knew Laci and Conner were never coming back. Even under
the most stringent harmlessness standard, for federal constitutional error
(*Chapman v. California* (1967) 386 U.S. 18, 24), it is clear beyond a reasonable
doubt exclusion of the limited dog-trailing evidence admitted by the trial court
would have had no impact on the jury's determination that Peterson was guilty.
(*Peterson, supra*, 10 Cal.5th at pp. 97-98.)

1 The California Supreme Court's trenchant observations omitted other circumstantial
2 evidence that Petitioner downplays in the pleading of his actual innocence claim – including the

1 presence of a hair matching Sharon Rocha's mitochondrial DNA clamped in the jaws of a pair of
2 pliers found in the Petitioner's boat, the presence of concrete debris in the boat cover that
3 matched both the homemade boat anchor and the concrete debris on his flatbed trailer¹², his
4 direct lies to police when confronted with evidence of his extramarital affair with Amber Frey,
5 and his recorded statement to Frey admitting that he told her weeks prior to Laci's disappearance
6 that he had "lost his wife" and that it would be his first holiday without her. (*Id.* at pp. 420-421.)
7 Petitioner's reply reduces those comments to a footnoted observation that Respondent's reliance
8 on it demonstrates the point that Petitioner was convicted for who he was, rather than for what he
9 did. (Reply, p. 12, fn. 4.) Not so. His statements predicting Laci's disappearance were powerful
10 evidence of pre-planning, and his lies about the existence of the affair during the police
11 investigation evidence of consciousness of guilt. The lies about losing his wife to both Shawn
12 Sibley and Frey were additionally probative because of their timing. As the trial record
13 demonstrates, Sibley confronted him about being married and gave him a deadline to tell Frey
14 himself the day before he started searching online for boat advertisements. He made the "first
15 holiday without her" statement to Frey on the same day he purchased the boat. (*Peterson, supra*,
16 10 Cal.5th at pp. 420-421, 424.)

17 In the face of the circumstantial evidence described, the balance of Petitioner's Claims 4-
18 12: 1) offer indirect evidence of conflicting and increasingly speculative theories about an ever-
19 broadening number of Medina burglary accomplices inconsistent with the condition of Laci's
20 remains when found,¹³ 2) posit the "cumulative weight" of the sometimes-conflicting statements

21
22 ¹² 93 RT 17556.

23 ¹³ Taking Petitioner's account and those of the various eyewitnesses who alleged seeing Laci
24 Peterson walking McKenzie in the neighborhood as true, she left home and walked the dog
25 wearing black pants. Her remains were found in light-colored pants variously described as
26 khaki, cream, or stone, with a tag consistent with a purchase receipt for Motherhood Maternity
27 pants that she bought on August 30, 2002. (50 RT 9957-9974.) There was no sign of a
28 disturbance inside the Peterson home, and the dog was in the backyard still wearing his leash
when Petitioner arrived. If, as posited, the Medina burglars abducted Laci while she was
walking the dog, there is no evidence – old or newly asserted – supporting the proposition that
the burglars entered the Peterson home to get a change of pants for Laci, or a reason why they
would do so. The further assertion that the burglars held Laci alive until at least December 28
without detection, then dumped her body in the bay to pin responsibility on Petitioner but also

1 of eyewitnesses whom Petitioner’s own expert opines “could well be mistaken” individually to
2 prove the presence of a White woman walking a dog similar to a Golden Retriever in the La
3 Loma area when the presence of one such woman – Kristen Dempewolf – was established at trial
4 without contradiction,¹⁴ 3) prove that Laci was aware of the boat when admitted trial evidence
5 already demonstrated the likelihood of that fact,¹⁵ 4) raise procedurally barred claims of bad-faith
6 destruction of exculpatory evidence either known at the time of trial or immaterial, and 5) allege,
7 largely without merit, suppression of *Brady* material. Whether considered separately or
8 cumulatively, the court finds that Petitioner’s claims as pled fail to undermine the prosecution’s
9 entire case or point unerringly to innocence, and therefore fail to demonstrate a miscarriage of
10 justice to overcome the procedural bar. Claim 5 is denied as procedurally barred.

11 CLAIM 5 LACKS MERIT

12 Were the court to reach Claim 5, taking all of Petitioner’s non-conclusory allegations as
13 true, the court would still find no prima facie case for relief. *Napue v. Illinois (Napue)* (1959)
14 360 U.S. 264 held that a conviction obtained through use of false evidence, known to be such by
15 representatives of the state violates due process under the Fourteenth Amendment to the United
16 States Constitution. “[T]he prosecution has a duty to correct the testimony of its own witnesses
17 that it knows, or should know is false or misleading.” *In re Hill* (2024) 104 Cal.App.5th 804,
18 826. Due process also bars a prosecutor’s knowing presentation of false or misleading argument.
19 (*Ibid.*) Reversal of a conviction is required if the false evidence used by the prosecution “may
20 have had an effect on the outcome of the trial.” (*Ibid.* quoting *Napue, supra*, 360 U.S. at p. 272.)
21 A *Napue* claim fails if, absent the false testimony or evidence, the petitioner still received a trial
22 resulting in a verdict worthy of confidence. (*Ibid.*, quoting *Panah v. Chappell* (9th Cir. 2019) 935
23 F.3d 657 at p. 664.) Testimony not technically false may still result in a *Napue* violation if,

24
25
26 weighted her body to delay its discovery defies both evidence and logic. The alternative
27 conclusion – that Petitioner was untruthful with police about both Laci’s apparel and her plans
28 for the morning of December 24 – finds support in the record based on his demonstrated
mendacity on other subjects.

¹⁴ Petn., Exh. 16, Exh. B, p. 36; 87 RT 16732-16741.

¹⁵ 94 RT pp. 17782, 96 RT 18220, 98 RT 18415-18419.

1 taken as a whole, it is highly misleading and leaves the fact-finder with a false impression. (*Id.* at
2 p. 831.)

3 Petitioner’s allegations fail to demonstrate that either Det. Brocchini or Det. Grogan
4 testified falsely. Claim 5 alleges that Det. Brocchini testified falsely in the following particulars:
5 he testified he “had no information anybody came forward and said they saw Laci walk in the
6 park” or “any information that the dog was seen barking like crazy” on December 24. (Petn., p.
7 383.) The falsity of that testimony is alleged based on a statement by Det. Brocchini at a press
8 conference on December 25, 2002, stating “We have received credible witnesses stating they
9 saw her in La Loma Park”, and on testimony by Det. Phil Owen at Petitioner’s preliminary
10 hearing. Det. Owen testified that he interviewed Diane Campos on December 27, and that she
11 reported seeing a woman she believed was Laci walking a golden retriever that was “constantly
12 barking” while being followed by two white mails telling her to “Shut the fuckin’ dog up.” Det.
13 Owen testified that he told both Dets. Grogan and Brocchini about Diane Campos’s statement
14 within a day of his December 27, 2002 interview. (*Ibid.*) The record of Det. Brocchini’s cited
15 testimony demonstrates the following exchange with Petitioner’s trial counsel:

16 “Q: You go down at some point to the park East La Loma Park on the 25th?

17 A: Yes.

18 Q: The park area. You do a briefing at some point at that park; is that correct?

19 A: Yes.

20 Q: Okay. You know who was present at the briefing?

21 A: I think I was briefed by Sergeant Beffa. I’m not sure. Had a couple briefings. Not sure
22 which one you are talking about.

23 Q: There was one that you had a briefing with a – you know a Doug Mansfield from the DOJ?

24 A: I do. But he wasn’t in the park.

25 Q: Where did you brief him?

26 A: I don’t think I briefed him. I may have been there and saw him. But I think he was briefed
27 by Buehler and Grogan.

1 Q: Okay. You got – you received information that somebody by the name of Victoria Pouches
2 was walking on 12-24, and saw a large yellowish dog running loose in the park north of the
3 Covenaden with – a dog with a collar and a leash attached, but no one attempting to control
4 the animal; is that correct?

5 A: I received that information?

6 Q: Didn't somebody tell you that information on the 25th?

7 A: Can I see what you are looking at?

8 Q: Sure.

9 A: I don't recall somebody said this to me or not.

10 Q: You what?

11 A: I don't recall.

12 Q: Did you have information that on the 25th two witnesses had come forward and said that they
13 saw Laci walking in the park. Did you have that information on the 25th?

14 A: I have no information anybody came forward and said they saw Laci walk in the park.

15 Q: So any briefing that Mansfield was present, in which it was discussed that two witnesses had
16 seen Laci walking the day before, or any information that the dog was seen barking like crazy,
17 you didn't have that information; is that a fair statement?

18 A: It's a fair statement. I never had information that Laci was seen walk in the park. I remember
19 hearing information about a dog being seen in the park with a leash on. I don't know when I
20 heard that information.

21 Q: Okay. Was that – would that have been a lot later than the 25th, Christmas Day?

22 A: No, I wouldn't say it would be a lot later. But I just don't know. It's not something I
23 followed up on, that I knew about, that I could testify about.

24 Q: Who would have followed up on a dog being seen in the park with a leash on with nobody
25 around, that was barking like crazy? Who would have been assigned to that?

26 A: That probably would have been one of the 40 or 50 officers that were working in the park.”¹⁶
27
28

¹⁶ 57 RT 11132-11134

1 The context of the above-quoted exchange makes clear that Detective Brocchini was
2 being asked about information he had at a specific point in the investigation – the morning of
3 December 25, 2002 at a briefing with Sgt. Beffa that he attended in the park. By Det. Owen’s
4 above-cited testimony, Diane Campos did not make her report of seeing Laci until December 27,
5 and Det. Owen communicated it to Det. Brocchini within a day – on or around December 28.
6 Det. Brocchini would not have had Diane Campos’s report yet because it had not been made on
7 December 25. Victoria Pouches, who reported seeing the unattended leashed yellowish dog
8 “barking like crazy” to Sgt. Beffa, did not say that she saw Laci Peterson walking in the park.
9 (Petr. Exh. 2A, Bates 2716.) Sgt. Beffa’s report of Ms. Pouches’ statement, taken at 10:30 AM
10 on December 25, states he was contacted by a second person – identified in the report as John
11 King. King reported that his friend Christopher Van Sandt told King that Van Sandt thought he
12 had seen Laci Peterson in the park while there. (*Ibid.*) Sgt. Beffa’s report indicates he gave Van
13 Sandt’s name and phone number to Det. Brocchini for follow-up.

14 Christopher Van Sandt testified at trial. He testified that he got Det. Brocchini’s phone
15 number from his friend Steve King. Van Sandt contacted Det. Brocchini by phone in the
16 morning on December 25th and described seeing a pregnant woman in the park walking a dog on
17 the morning of December 24. Det. Brocchini asked him to describe the woman he saw, and he
18 did. On the evening of Christmas Day, Van Sandt saw a picture of Laci Peterson on the news.
19 He immediately realized that she was not the woman he saw. Because it was late, he waited until
20 the next morning before calling Det. Brocchini and leaving him a message that he had not seen
21 Laci Peterson. On cross-examination, Van Sandt testified that parts of Det. Brocchini’s reports
22 of Van Sandt’s statements were wrong. Det. Brocchini’s report said that Van Sandt had told
23 Brocchini that he didn’t see the pregnant woman’s face, and that was not what Van Sandt had
24 said to Brocchini. Van Sandt further testified that Det. Brocchini didn’t seem interested in his
25 report and did not offer to show him a picture of Laci Peterson even though Van Sandt offered to
26 look at it by having it faxed to him. Van Sandt was 100% positive that the woman he saw was
27 not Laci Peterson. (RT 16705-16716.)
28

1 The court has not found, and Petitioner has not cited any exhibit or testimony
2 demonstrating that any other witness had reported seeing Laci Peterson walking in the park by
3 the morning of December 25. Taken as a whole, Det. Brocchini did not testify falsely in that
4 exchange, nor was his testimony misleading. Van Sandt did not say he saw Laci walking in the
5 park. As to the allegation that the prosecution failed to correct any falsity, the prosecution called
6 Van Sandt to testify to what he had seen and what he told Det. Brocchini on December 25. The
7 exhibits to the Petition also reflect that the press conference at which Det. Brocchini stated there
8 had been credible witnesses stating they saw her in the park occurred at 12:30 PM. Sgt. Beffa's
9 report identified the time of King identifying Van Sandt as a witness as 10:30 AM. Van Sandt
10 testified that he first called Detective Brocchini to report what he saw on Christmas morning
11 after getting Det. Brocchini's number from King. (57 RT 16711.) He called Det. Brocchini back
12 to tell him it was not Laci Peterson on December 26. Petitioner's own exhibits demonstrate that
13 Det. Brocchini's press conference statement was also true when made, based on Van Sandt's
14 initial report of seeing a pregnant woman walking a dog in the park that had not yet been ruled
15 out as a sighting of Laci Peterson.

16 Petitioner goes on to cite a second exchange between Det. Brocchini and the trial judge,
17 without identifying the question that Petitioner's trial counsel had asked immediately prior.

18 (Petn. p. 383.) The complete exchange is as follows:

19 "Q: Now, at that point, did you --- you had information, at least as reported in the media, that
20 there were various witnesses who had seen Laci walking; is that correct?

21 Mr. Distaso: Objection, your Honor. Assumes facts not in evidence.

22 Mr. Geragos: I'm asking him.

23 The Court: Objection overruled. Did you have that information?

24 The Witness: I seen it in the news, your Honor. And yes, I read it in the paper.

25 Mr. Geragos: Okay. One of those people was a gentleman by the name of Homer Maldonado?

26 A: I saw him on the news.

1 Q: Did you go out, after this September date, once you received the information from Kristin
2 Reed that suggested that there was at least a conflict on this assumption that Laci hadn't been
3 walking, did you go interview Homer Maldonado to see what it was he had seen that morning?

4 A: I didn't. I know another officer did. I don't know anything about that interview.

5 Q: Okay. How long was that after your interview?

6 A: I don't know when Homer Maldonado was viewed.

7 Q: It's your belief, as you sit here today, that Homer Maldonado was interviewed by the Modesto
8 PD?

9 A: I don't know. I didn't interview him.

10 Q: Did you say another officer did?

11 A: I don't know. I don't know if another officer did or not.

12 Q: How about a – is there a Bill and Vivian Mitchell? Are you familiar with them?

13 A: I have heard of them.

14 Q: Okay. You heard of them because they had been interviewed by some TV stations saying that
15 they had seen Laci walking that day; is that correct?

16 A: Yes.”¹⁷

17 The exchange immediately prior to this segment of testimony established that the time
18 period referenced by the words “at that point” was September 2003. Petitioner asserts that Det.
19 Brocchini's testimony was false because the defense had turned over videotaped interviews of
20 Homer Maldonado's and Vivian Mitchell's interviews by defense investigator in December
21 2003, six months before Det. Brocchini testified. That allegation ignores (and omits from its
22 quotation of the cited testimony) that Det. Brocchini was specifically being questioned about
23 what he knew in September 2003, because defense counsel was trying to establish that he heard
24 various information on the news and then failed to follow up on it. In September 2003, Det.
25 Brocchini did not know about the defense investigator's interviews with Homer Maldonado and
26 Vivian Mitchell, because by Petitioner's own pleadings they were not disclosed in discovery

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28 ¹⁷ 58 RT 11407-11409.

1 until December 2003. Taken as a whole, Det. Brocchini’s testimony was not false. Any falsity
2 in his initial answer that Homer Maldonado was interviewed by the Modesto Police Department
3 in 2003 was immediately corrected, by Det. Brocchini himself, when he testified that he did not
4 know whether another officer had interviewed Maldonado or not.

5 Having selectively quoted the record to omit the question framing the time period that
6 Det. Brocchini was testifying about, Petitioner goes on to assert without basis in fact that: “The
7 prosecution either hid those reports [defense investigator’s interview with Homer Maldonado]
8 from Det. Brocchini – who was the one detective responsible for eliminating Scott Peterson as a
9 suspect – or Det. Brocchini knew of those reports, which were *not* from ‘the news,’ and he
10 testified falsely about it.” (Petrn., p. 384, paragraph 150.) Petitioner repeats the same allegation
11 about the Vivian Mitchell interview. (Petrn., p. 384, paragraph 153.) Petitioner’s Reply
12 justifiably chided the People’s Informal Response for misciting the standard for pleading a prima
13 facie case in a habeas corpus petition, correctly emphasizing that at the pre-OSC stage, the court
14 is required to take the petition’s factual allegations as true.¹⁸ Given that standard of pleading,
15 counsel has a corresponding ethical duty to ensure that allegations in a verified pleading that the
16 court is required to accept as true actually *are* true. The instant petition’s above-cited incomplete
17 and misleading allegations regarding Det. Brocchini’s purportedly false testimony skirt
18 precariously close to a violation of counsel’s ethical duty of candor to the tribunal.

19 Petitioner cites further instances of testimony by Det. Craig Grogan that he alleges were
20 false. First, when working with a diagram plotting reported sightings of Laci Peterson on a map
21 of Modesto, the prosecutor asked Det. Grogan whether he considered the “particular sightings
22 we have been talking about, as well as the various other ones which are indicated on the diagram
23 up there, do you consider any of these verifiable sightings? A: No, ma’am.” (Petrn. p. 388.)
24 Petitioner asserts the testimony was false, and that “the truth, as Detective Grogan admitted, is
25 that MPD made no effort whatsoever to verify those sightings. As Det. Grogan himself testified,
26 investigators did not make it a priority to gather or investigate information that Laci was alive
27

28 ¹⁸ California Rule of Court 4.551(c)(1).

1 and walking in the neighborhood the morning of December 24.” (*Ibid.*) Petitioner again cites
2 the testimony in isolation, ignoring the standard articulated in *Napue* that requires the court to
3 assess whether the testimony as a whole was false or misleading. Immediately following the
4 asserted answer, Det. Grogan was asked:

5 “Q: Of the ones that we are look at here on the screen, Homer Maldonado, Freitas, and Grace
6 Wolf, given the timeframe of 10:08 to 10:18, would any of these work to be Laci Peterson?

7 A: No.

8 Q: With the distance between these locations and the Covenia Avenue home – well, let me just
9 ask it this way. Why wouldn’t they work?

10 A: Well, none of them fall within that time range that I – that you just spoke of, 10:08 to 10:18.
11 And they are spread out quite a distance away. La Loma Avenue, if you – when we watched the
12 video the other day, starting from the house and driving over to La Loma, it takes a few minutes
13 even to drive that. I didn’t time it, but you watched it I think in real time at least once. It’s a
14 distance to walk.” (99 RT 18678.)

15 Petitioner asserts that he was prejudiced by Det. Grogan’s testimony because he was lead
16 investigator and the testimony “conveyed to the jury that the police had information that justified
17 ignoring those eyewitness reports without investigating them.” (Petn., p. 388.) As a whole, his
18 testimony did no such thing. Det. Grogan admitted that he had never heard of Grace Wolf until
19 the Petitioner’s preliminary hearing, that Tony Freitas called in his tip on December 30, 2002
20 and was not interviewed by law enforcement until July 29, 2004, and that the reason no one
21 contacted Freitas was because Det. Grogan “[couldn’t] say that sightings were automatically a
22 priority for us at that time in the investigation.” (98 RT 18280-18283.) He further testified that
23 as more sightings continued to “pour in”, the police used less resources to try to deal with them.
24 (98 RT 18284.) Det. Grogan’s testimony on whether or not the sightings were “verifiable” was
25 presented as his opinion – an opinion only admissible because defense elicited hearsay witness
26 reports to demonstrate that the police investigation was shoddy and incomplete. The trial judge
27 permitted the testimony to explain what the police did (or did not do) in their investigation so
28 that the jury could evaluate whether the alleged investigative failures gave rise to reasonable

1 doubt. Det. Grogan was asked the reasons that he did not consider the sightings verifiable. He
2 described the reasons for that opinion – that, as of the time of trial, they did not fit with other
3 evidence that the police had about the relative timing of the Petitioner leaving home for the
4 morning and Karen Servas’s interaction with the Peterson’s dog at 10:18 AM. The jury was
5 provided with the reasons that Det. Grogan did not believe the sightings were verifiable to make
6 their own evaluation. Based on the record, the court concludes the petition fails to establish a
7 prima facie claim that Det. Grogan’s testimony was either false or material.

8 **CLAIM 6**

9 **CLAIM 6 LACKS MERIT**

10 Claim 6 of the instant petition asserts: “new evidence by forensic document examiner Dr.
11 Linton Mohammed shows that Petitioner did not, as the jury was told, secretly buy a fishing boat
12 without telling Laci, as part of a premeditated plan to kill her and secretly dispose of her body in
13 the Bay.” The factual allegations cite to various portions of the trial record referencing the
14 prosecutions’ theory of the boat purchase as evidence of premeditation, Petitioner’s declaration
15 stating that Laci Peterson knew of the boat because she and Petitioner agreed to purchase it as a
16 surprise Christmas gift for Ron Grantski, and new evidence by forensic document examiner Dr.
17 Linton Mohammed. Petitioner argues that the handwriting shows that Laci Peterson was aware
18 of the boat because the notes reflect that she called local marine stores to find out the cost of an
19 anchor. (Petn., pp. 390-392.) Trial evidence reflected that when Petitioner bought the fishing
20 boat from Bruce Peterson¹⁹, it didn’t include an anchor because Bruce Peterson wanted to keep
21 the anchor he had to use with his next boat. (62 RT 12155.) Other trial testimony reflected that
22 Laci Peterson visited Petitioner’s warehouse on December 20, 2002. The boat had been
23 purchased on December 9, 2002, and Petitioner was storing it in the warehouse. (97 RT 18199.)

24 There was one Post-It™ sized note with handwriting on both sides. One side had the
25 words “Bob’s Marine” with a telephone number, drawings of a die and a domino, and the
26 numbers 59.99 and 20” written on it. The second had the words “C+C Marine, Richard, a phone
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28 ¹⁹ No relation to Petitioner.

1 number and address, and the words “\$60 – Bob’s” written on it. (Petr. p. 391.) Discovery
2 provided to Petitioner’s trial team in the first batch signed for by investigator William Pavelic in
3 May 2003 documented that Det. Owen checked the handwritten note out of evidence. (Petr.,
4 Exh. 2A, Bates 1814; Exh. 2B, ACHP 003-004.) He then called Bob’s Marine. He spoke to an
5 employee, who told him that he didn’t know Petitioner, thought he might have seen him in the
6 shop before, but couldn’t say when. Det. Owen asked the employee if the shop had any items
7 that cost about \$59.99 and were 20 inches long. The employee told him that a 20-pound anchor
8 would cost \$58, and a “motor toter”²⁰ would cost between \$56 and \$60. The employee didn’t
9 know of any other items that met the description, so he told Det. Owen he would check the shop
10 and get back to him. (*Ibid.*) No evidence in the record or the petition indicates that any other
11 information was ever provided by the employee. Neither side called Det. Owen as a trial
12 witness.

13 Dr. Mohammed, a qualified forensic document examiner, compared the handwritten note
14 to other exemplars of both Petitioner’s and Laci Peterson’s handwriting. (Petr., Exh. 18, pp. 1-
15 3.) Exemplars of Petitioner’s handwriting included envelopes from mail addressed and sent to
16 his counsel, day planner entries, photographs of Petitioner’s handwriting on a whiteboard, a bank
17 transaction ledger, and a “Happy Thanksgiving” note. (*Ibid.*) Exemplars of Laci Peterson’s
18 handwriting included sticky notes with menu planning and shopping lists found in her purse,
19 handwritten journal entries, a patient information form from her medical records that she
20 completed, an address book page, and handwritten entries on a calendar. (*Ibid.*) After
21 performing his comparison, Dr. Mohammed concluded that Laci Peterson was the likely author
22 of the questioned sticky note and that Petitioner was not. (*Id.* at pp. 6-7.) Dr. Mohammed’s
23 curriculum vitae demonstrates that he has been a qualified expert offering testimony in forensic
24 document examination available to non-government entities since 1997. (Petr., Exh. 18,
25 Appendix 6, p. 2.) Dr. Mohammed’s report indicates that he generously provided his services
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28 ²⁰ Described in the report as a device that locks a boat engine in an upward position.

1 *pro bono* in this case but did not indicate when Petitioner or his counsel first contacted him to
2 arrange his services. (Petrn., Exh. 18, p. 2.)

3 Section 1473, subdiv. (b)(1)(C)(i) permits a habeas corpus claim when new evidence
4 exists that is presented without substantial delay, is admissible, and is sufficiently material and
5 credible that it more likely than not would have changed the outcome of the case. Taking the
6 petition's factual allegations as true, the court finds that the petition fails to demonstrate that the
7 claim has been presented without substantial delay and fails to demonstrate that the new
8 evidence is material to the degree that it more likely than not would have changed the outcome
9 of the case.

10 Substantial delay for purpose of habeas corpus is "measured from the time the petitioner
11 or counsel knew, or reasonably should have known, of the information offered in support of the
12 claim and the legal basis for the claim." (*Reno, supra*, 55 Cal.4th at pp. 460-461.) The exhibits
13 to the petition demonstrate that the existence of the handwritten note related to anchor prices was
14 disclosed to the defense in May 2003. (Petrn., Exh. 2A, Bates 1814; Exh. 2B, ACHP 003-004.)
15 Petitioner knew, prior to Laci's murder, that he had discussed the idea of buying a boat with his
16 friends Guy and Jodi Miligi in November 2002, that he and Laci had decided to buy a fishing
17 boat to surprise Grantski for Christmas, and that Laci had been to the warehouse and seen the
18 boat there. (Petrn., Exh. 19, pp. 51-55.) Petitioner was familiar with the appearance of both his
19 own handwriting and Laci's. (*Id.* at p. 56.) Petitioner and his counsel knew that the prosecution
20 was relying on the secrecy of the boat purchase as part of its theory of premeditation at the
21 preliminary hearing, where Petitioner himself asserts that Sharon Rocha testified that Grantski
22 would have been interested in learning about the boat purchase because of Grantski's interest in
23 fishing. (*Id.* at p. 52.) Handwriting analysis and forensic document examination are not new
24 evidentiary concepts. Handwriting comparison is such a well-established avenue of proof that
25 the law has permitted a trier of fact to do it without the assistance of an expert since 1967.
26 (California Evidence Code section 1417.)

27 The instant petition and its exhibits show that Petitioner and his trial counsel were aware
28 of all of the information required to prove that Laci authored the anchor-pricing note, that her

1 authorship would show her awareness of the boat purchase, and that her awareness of the boat
2 purchase could undercut the prosecution's assertion of its secrecy. The long-standing use of
3 handwriting comparison as an avenue of proof in California means that Petitioner and his
4 counsel reasonably should have been aware of the availability of expert testimony on the subject,
5 and the potential of such testimony to assist Petitioner's defense. Petitioner neither pleads with
6 specificity, nor at all, why he failed to seek the assistance of a forensic document examiner and
7 bring his resulting habeas corpus claim at any earlier point in the 21 years between his conviction
8 and the filing of the instant petition. While the amendments to section 1473 eliminated the
9 requirement for exercise of due diligence in discovery of evidence prior to trial, the continued
10 statutory directive that new evidence be "presented without substantial delay" left untouched the
11 long-standing requirement that a habeas corpus petitioner act in a timely way to mount a
12 collateral attack on a final judgment, and explain and justify any failure to do so. (*Reno, supra*,
13 55 Cal.4th at p. 459.)

14 Claim 6 of the instant petition also fails to demonstrate that introduction of the new
15 evidence of Laci's knowledge of the boat would more likely than not have changed the outcome
16 of the case. That is because the jury did hear evidence from multiple sources that Petitioner
17 discussed a boat before Laci's murder, that Petitioner told police that Laci knew about the boat,
18 and that Laci had been to the Petitioner's warehouse on December 20 while the boat was being
19 stored there. Brian Ullrich, who assisted the Petersons with financial planning, testified that
20 Petitioner talked to him about a boat over three months before Laci's murder. (71 RT 13819.)
21 Det. Brocchini testified that Jodi Miligi told him that Petitioner mentioned something about a
22 boat to her sometime prior to Thanksgiving. (57 RT 11244.) Det. Craig Grogan testified that two
23 witnesses – Peggy O'Donnell and Rosemary Ruiz - told police that Laci had visited Petitioner's
24 warehouse on December 20 and asked to use the bathroom in the adjacent business where
25 O'Donnell and Ruiz worked. Det. Grogan also testified that Petitioner had not pointed the police
26 to those witnesses, they had been located through a canvass of the warehouse. (98 RT 18413-
27 18419.) Det. Grogan also said that Petitioner told him that Laci knew about the boat, and that
28 Laci "possibly" knew about the boat. (*Ibid.*, and 94 RT 17782.) In closing and rebuttal

arguments spanning over 150 pages of transcript, the prosecution referenced the secrecy of the boat and Laci's potential knowledge of it only twice, as follows:

What else do we know about the boat? Nobody knew about it. No one – all the friends, family, the Peterson family, Rochas, nobody knew the defendant had bought a boat. So you've got this secret purchase going on.

Why do you keep that boat secret? Remember Ron and Sharon were I think at the defendant's home on December 15th with the defendant and Laci. Remember Ron said Hey, you know what, I got Sharon out fishing today. It was kind of a rare event because it's not something she did a lot. Oh, yeah, they talked about fishing, talked about what they did. Nobody mentioned the boat.

The boat was bought on December 9th. Why not? If Laci knew about the boat, remember what Sharon said. She would talk to her about purchases. She would talk to her about what was going on in her life. Nobody said she was a wallflower, afraid to talk. In fact, the testimony was kind of contrary to that.

Nobody knew about the boat, even his own family. (109 RT 20295-20296.)

In rebuttal, the prosecutor referenced the possibility that Laci knew about the boat:

So right out of the gate let's ask ourself, if Laci – although she never told anybody she saw the boat or knew of the boat or anything else, if we assume that she did, just for the sake of argument, and she leaned over somehow into the boat, how did her hair get into the needle-nose or jaw portion of the pliers? (109 RT 20306.)

The prosecution argument primarily focused on the secrecy of the purchase from others close to the Petersons, including Rocha, Grantski, and Petitioner's parents; and the fact of the purchase not being discussed as unusual for Laci. The prosecutor's rebuttal comment expressly recognized the possibility that the jury might find from the evidence that Laci was aware of the boat. Given the evidence that the jury heard from multiple sources regarding Petitioner's discussion of a boat and Laci's knowledge of the boat, the court does not find that Petitioner has stated a prima facie claim of a reasonable likelihood that introduction of the handwritten anchor-pricing note and expert testimony showing Laci's authorship of it would have changed the outcome of the trial. Claim 6 is denied for lack of merit.

CLAIM 7

Claim 7 of the instant petition asserts that: reversal is required because Petitioner was denied his right to due process when the prosecution intentionally and in bad faith destroyed the Modesto Police Department's January 2 videotaped interviews with Medina burglars Todd and

Pearce and destroyed the Medinas' safe in violation of *Trombetta/Youngblood*. As to the destruction of the safe, the court finds that the claim is procedurally barred under the *Clark* rule. As to the January 2 videotaped interviews of Steven Todd and Donald Glen Pearce, the court finds that Petitioner's fails to state a prima facie claim for relief under *Trombetta* on the merits.

Claim 7 for destruction of the safe is barred under the *Clark* rule

California v. Trombetta (Trombetta) (1984) 467 U.S. 479 requires law enforcement agencies to preserve exculpatory evidence where its exculpatory value was apparent before it was destroyed and if the evidence is of a type not obtainable by other reasonably available means. *Trombetta* involved no allegation of bad faith, official animus, or a conscious effort to suppress exculpatory evidence. (*Id* at p. 488.) *Arizona v. Youngblood (Youngblood)* (1988) 488 U.S. 51 provides a more limited remedy for destruction of evidence that is not exculpatory but potentially useful to defense when the destruction is done in bad faith. Under *Youngblood*, "unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law." (*Ibid* at pp. 57-58.)

With regard to the safe, Claim 7 asserts that key investigators in the Modesto Police Department met on May 6, 2003. The report documenting the meeting states that the attendees discussed organizing video and audiotapes for discovery to the defense. After that meeting, on May 7, 2003 recordings made of Officer Michael Hicks' January 2 post-arrest interviews of Todd and Pearce were destroyed. The Medinas' safe, found at the time of Todd and Pearce's arrest, was destroyed on May 27, 2003. Based on the relative timing of those events and other instances of the mishandling of evidence described below, Petitioner asserts a conscious effort to suppress exculpatory evidence by the prosecution done in bad faith. The petition alleges that the court can and should infer bad faith based on the pattern of mishandling evidence. Examples pled in support include Det. George Stough's failure to book recordings of Todd's and Pearce's videotaped polygraph interviews into evidence in violation of MPD evidence procedure; Det. Stough's similar failure to book videotaped hypnosis interviews of witnesses Diane Jackson and Kristen Dempewolf into evidence; MPD's use of an unqualified individual to hypnotize Jackson

1 and Dempewolf – which later caused their testimony to be inadmissible at trial; Det. Craig
2 Grogan’s failure to ensure recording of the audio portion of his interview with Petitioner on
3 January 3; and Det. Craig Grogan’s failure to book the video of that interview into evidence in
4 violation of MPD evidence handling policy.

5 The facts pled in support of Claim 7 for destruction of the safe demonstrate that
6 Petitioner and his trial counsel were aware at or before trial that the Medina safe was destroyed
7 on May 27, 2003, and that no forensic testing on the safe had been completed. (Petn., p. 404;
8 Exh. 2A to Petn., Bates 026046-026047; 44 RT 8648-8649.) Petitioner had been provided the
9 record of the May 6, 2003 discovery meeting in pretrial discovery. (Exh. 2A to Petn., Bates
10 025947-025949.) The petition exhibits and trial record also show that Petitioner and his trial
11 counsel were similarly aware at or before trial of all of the asserted instances of mishandling of
12 evidence pled in support of the claim of bad faith.²¹

13 Claim 7 pleads the following facts relevant to the destruction of the safe to have been
14 discovered after the filing of the 2015 petition: fact and date of destruction of the Todd and
15 Pearce January 2 recordings on May 7, 2003²², disclosure of the evidence and property report
16 documenting that the January 2 recordings were marked for destruction on May 6, 2003²³, the
17 content of the Modesto Police Department policies on evidence handling²⁴, opinion by Lt.
18 Bercovici that the tapes’ destruction were in bad faith and that various conduct by both the
19 Modesto Police Department and prosecution support that conclusion²⁵; asserted lack of *Brady*
20 policy in place in the Stanislaus County District Attorney’s Office in 2002.²⁶

21
22 ²¹ Stough and polygraph tapes: Exh. 2A to Petn., Bates 31296; Stough hypnosis tapes: Exh. 2A
23 to Petn., Bates 21572; exclusion of Jackson and Dempewolf: 100 RT 18686; Grogan audio
24 failure: Exh. 2A to Petn., Bates 0200; Grogan not booking video of interview: trial testimony of
25 CSO Veronica Holmes, 69 RT 13465-13470.

26 ²² Alleged to have been discovered in January 2025 based on court-ordered disclosure pursuant
27 to section 1054.9. (Exh 2B to Petn., AHCP-060-061).

28 ²³ Alleged to have been discovered in January 2025 based on court-ordered disclosure pursuant to
section 1054.9. (Exh 2B to Petn., AHCP-060-061).

²⁴ Obtained through CPRA request by Petitioner’s present counsel. (Exh. 2B to Petn., AHCP-
245-309.

²⁵ Contacted by present counsel August 2024. (Exh. 7 to Petn., p. 2.)

²⁶ Asserted based on Stanislaus County District Attorney’s Office production of 2011 Brady

1 A *Trombetta* claim has three necessary elements: 1) destruction 2) of material with
2 exculpatory value known at the time of destruction that 3) is not reasonably attainable by other
3 means. A *Youngblood* claim has three elements: 1) destruction 2) of potentially useful evidence
4 3) in bad faith. The above evidence demonstrates that Petitioner and his trial counsel were
5 reasonably aware of all three elements of each claim with regard to the safe at the time of trial
6 and well before the filing of the 2015 petition. Petitioner's counsel referenced the destruction of
7 the safe and lack of associated forensic testing in opening statement, indicating knowledge of
8 both the destruction and the exculpatory or potentially useful nature of the safe. The reference to
9 inability to test for fingerprints or other forensics showed awareness of the lack of ability to
10 obtain similar evidence by reasonable means. Petitioner and his counsel had both the report
11 describing the May 6, 2003 discovery meeting and the date of the safe's destruction. Each of the
12 incidents of mishandling of evidence now asserted by Petitioner to support an inference of bad
13 faith was also known prior to trial. Based on those disclosures, Petitioner or his counsel had
14 sufficient facts that reasonably should have alerted them to a *Youngblood* claim of bad faith
15 destruction both at the time of trial and at the time of filing of the 2015 petition. Petitioner pleads
16 no specific basis for failing to bring the *Trombetta/Youngblood* claims in the 2015 petition. To
17 the extent that he pleads discovery of new evidence providing additional corroboration of bad
18 faith based on the destruction of the January 2 recordings the day after the May 6 meeting, that
19 contention would not excuse the delay. "The rule has been that the court will look to what
20 petitioner and/or his counsel knew at the time of the appeal or the filing of the first habeas corpus
21 petition, and demand that the failure to raise all issues in a single, timely petition be justified...A
22 petitioner who is aware of facts adequate to state a prima facie case for habeas corpus relief
23 should include the claim based on those facts in the petition even if the claim is not fully
24 'developed.'" (*Clark, supra*, 5 Cal.4th at pp.779, 781.)

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policy in partial response to CPRA request by present counsel and declining to respond to
balance as unduly burdensome and exempt from disclosure. (Exh.2B to Petn., AHCP-115-127.

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Had the court reached the merits of the safe claim, it would have determined that the petition failed to state a prima facie claim for the exculpatory value of the safe under *Trombetta*. As was the case in *Youngblood*, no more can be said of the safe than that it could have been subjected to tests, the result of which might have led to additional suspects in the Medina burglary. Even had testing of the safe identified other potential suspects, further investigation would have been necessary to establish any connection between those suspects and Laci Peterson's murder. The safe was potentially useful, not exculpatory. Assessing the trial record as a whole and the nature of the circumstantial evidence presented, the court does not find that the destruction of the safe resulted in a trial proceeding so fundamentally unfair that no reasonable judge or jury would have convicted defendant had it been presented. The court further incorporates its findings as to the actual innocence exception to a procedural bar in Claim 5, *supra*, and finds no exception to the *Clark* rule. Claim 7 as to the destruction of the Medina's safe is denied.

Claim 7 for destruction of the January 2 videotapes lacks merit

As to the destruction of the recordings of the January 2 interviews of Todd and Pearce, the court finds no procedural bar. The petition sufficiently asserts discovery of the actual destruction of the tapes in January 2025 pursuant to this court’s post-conviction discovery order under section 1054.9. Destruction is a necessary element of a claim under either *Trombetta* or *Youngblood*, and the absence of affirmative proof of the tape’s destruction rendered Petitioner unable to plead a prima facie *Trombetta* or *Youngblood* claim earlier. The People’s Informal Response argues that Petitioner reasonably should have inferred from the failure to provide the tapes in discovery that they had been destroyed. The court does not find that argument persuasive. Petitioner completely denied involvement in Laci Peterson’s murder. The occurrence of the burglary after Laci’s disappearance was one key reason that police concluded that the burglary was unrelated to her murder. Officer Hicks’ report of the interviews of Todd and Pearce demonstrated that Todd and Pearce initially gave conflicting statements about when the burglary occurred, and that Todd changed his statement regarding the date of the burglary.

1 Since Todd's statement that the burglary occurred on December 26 was inculpatory, his
2 inconsistent statement about the date impeached his credibility and therefore helped the
3 defense's case and hurt the prosecution's. The tape containing the inconsistency had exculpatory
4 value that was apparent at the point Petitioner was arrested and charged with Laci's murder. The
5 prosecution had a duty to preserve and turn over the tapes even in the absence of a defense
6 request for them. But there was a request, and both the petition and attached exhibits assert
7 without contradiction that once the request was made, the People failed to notify Petitioner and
8 his counsel that compliance was not possible because the tapes had been destroyed. The People
9 continued in that failure of notification throughout the 2024 section 1054.9 proceedings. To find
10 a procedural bar based on Petitioner's failure to assume earlier that the People destroyed
11 exculpatory evidence without confirmation would be a tacit reward for failure to comply with
12 *Brady v. Maryland* (1963) 373 U.S. 83, which this court is not willing to countenance.

13 The court nonetheless finds that the petition fails to establish a prima facie basis for relief
14 on the third *Trombetta* prong: the inability to obtain the exculpatory material by reasonably
15 available other means. The petition identifies the following categories of exculpatory material
16 present on the interview recordings: 1) the recorded interviews would have revealed that Todd
17 and Pearce lied about the burglary and contradicted the prosecution's theory that it happened
18 after December 24; 2) the recording of Todd's interview would have demonstrated police bias
19 against Petitioner in the investigation by revealing their statements that they thought Petitioner
20 and not Todd had been responsible for Laci's disappearance; 3) the recordings of Todd would
21 have demonstrated the unreliability of his memory because of his drug use; 4) the recording of
22 Todd would have demonstrated that he made calls to others from inside the Medina home
23 seeking assistance in the burglaries.

24 The petition and exhibits establish that every category of exculpatory material alleged
25 was reasonably attainable to Petitioner by other means. First, Petitioner had the written report of
26 Off. Hicks. (Exh. 2A to Petn., Bates 4111-4120.) Second, Petitioner's trial counsel called Off.
27 Hicks as a trial witness. In trial counsel's examination of Off. Hicks, he questioned him about
28 Todd's inconsistent statements regarding the date of the burglary and the fact that he first

1 claimed it occurred on December 27, a date after the Medinas had already returned home. (RT
2 20014-20023.) Third, Petitioner's investigator Carl Jensen interviewed both Todd and Pearce in
3 person prior to trial. (Exh. 24 to Petn., p. 10, 18) He interviewed Todd three times, with the last
4 occurring on August 27, 2004 while Todd was in the San Mateo County Jail. (*Ibid.*, Exh. 32 to
5 Petn.) In those interviews, Pearce disclosed that although he told the police he went to help
6 Todd take the safe out of the Medina home on December 26, that really happened on the
7 morning of December 25. (Exh. 24 to Petn., pp. 10-11). Pearce also told Jensen that Todd had
8 begun the burglary of the Medinas on December 24 and that Todd had made several trips on his
9 bicycle bringing the Medinas' property to Pearce's home. (*Ibid.*) Petitioner did not call Pearce as
10 a trial witness. The interview of Pearce also led to an interview of his children's mother. She
11 confirmed to Jensen that Pearce left home to help Todd with the burglary on December 25, not
12 December 26.²⁷ She was also not called at trial. For his part, Todd revealed to Jensen that Off.
13 Hicks and a "short, maybe Italian" cop²⁸ had told him that they knew he didn't have anything to
14 do with Laci Peterson's disappearance because they "knew Scott did it." (*Id.* at p. 19.) In their
15 third interview Todd told Jensen that between December 24 and December 26, 2002, he was "so
16 high on meth and crack for three days that I don't really remember anything I did." (Exh. 32 to
17 Petn., p. 2.) Fourth, on September 12, 2003, Petitioner received recorded interviews of the
18 polygraph examinations of Todd and Pearce that occurred on January 3, 2003. (Exh. 2B to Petn.,
19 AHCP-005-006.) In his recorded polygraph interview, Todd told the examiner he used
20 marijuana and methamphetamine daily and had both smoked a joint and eaten "a dime's worth"
21 of meth on the day of his arrest. (Exh. 2B to Petn., ACHP-201.) Finally, Jensen interviewed
22 Adam Tenbrink on December 4, 2004. Tenbrink told Jensen that Todd called him on December
23 24 from inside the Medina home looking for assistance with the burglary. (Exh. 24 to Petn., p.
24 13.) Although that interview occurred after trial, as discussed in claim 11 *infra*, the prosecution
25 had disclosed a tip describing Adam Tenbrink's statement to his brother that Todd told him Laci
26 saw Todd commit the burglary in May 2003. (2015 Petn., p. 204.) The 2015 petition asserted

27 ²⁷ Exh. 24 to Petn., p. 11, interview conducted April 22, 2004.

28 ²⁸ Petitioner argues this is a reference to Det. Brocchini.

1 that Jensen was personally aware of that tip by June 25, 2004, and the trial record shows that
2 Jensen was in Modesto attempting to interview Adam Tenbrink in October 2004, prior to the
3 close of defense evidence. (*Id.* at p. 205, 106 RT 19702-19704.) The test for *Trombetta* is
4 whether the destroyed material is reasonably available to the petitioner through alternative
5 means. The record and exhibits to the petition demonstrate that Tenbrink's information was
6 timely discovered and reasonably available through alternative means. As to the destruction of
7 the tapes, Claim 7 fails to demonstrate a prima facie claim for relief and is denied on its merits.

8 CLAIM 8

9 Claim 8 of the instant petition asserts that: reversal is required because Petitioner was
10 denied his right to due process when the prosecution intentionally and in bad faith destroyed the
11 Aponte tapes and reports, which had exculpatory value in violation of *Trombetta/Youngblood*.
12 The factual allegations pled in support of this claim are summarized as follows. In January 2003,
13 Lt. Xavier Aponte of the California Department of Corrections²⁹ called the Modesto Police
14 Department tip line to report a conversation between inmate Shawn Tenbrink and his brother
15 Adam Tenbrink. According to the tip, during the conversation Adam Tenbrink told his brother
16 that "Steve Todd said Laci witnessed him breaking in." Only one of Aponte's two tip line calls
17 was disclosed to defense. That disclosure occurred May 13, 2003. (20 CT 6380.) When
18 interviewed by investigator Jensen, Lt. Aponte said that he had separately recorded the
19 conversation between the Tenbrink brothers. Lt. Aponte further told Jensen that a Modesto
20 Police Department detective whose name he could not remember came to the prison facility to
21 interview Shawn Tenbrink. Shawn Tenbrink denied any knowledge of Laci Peterson's
22 disappearance in that interview. As soon as he was returned to his housing unit after the
23 interview, Lt. Aponte said that Shawn Tenbrink called his mother in an attempt to contact Adam.
24 When Adam wasn't home, Shawn Tenbrink told his mother to tell Adam to "keep his mouth
25 shut" because he didn't know who he was dealing with. Lt. Aponte was uncertain whether he
26 gave a copy of the recorded conversation between the Tenbrink brothers to the MPD detective,

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28 ²⁹ Renamed the California Department of Corrections and Rehabilitation (CDCR) in 2005.

1 but did say the detective asked him to monitor Shawn Tenbrink's communications more closely.
2 The defense never received any recording of the taped conversation or any report by MPD
3 documenting an interview with Shawn Tenbrink. After the guilt phase concluded, Petitioner's
4 trial counsel attempted to subpoena the recording from the CDCR, but it had been lost or
5 destroyed due to a change in the data storage vendor and system for inmate phone calls.

6 The trial record and 2015 petition contain additional information relevant to the
7 evaluation of Claim 8. Petitioner brought a motion for new trial pursuant to section 1181 in
8 February 2005 based on newly discovered evidence. The motion asserted that the defense only
9 discovered the Aponte tip of Adam Tenbrink's recorded conversation after the prosecution
10 turned over its investigation of James Romano's tip in late October 2004. (20 CT 6254-6255.)
11 According to the new trial motion, Romano provided a list of names that might be of interest in
12 the investigation to Jensen and trial counsel Pat Harris. Those names included Adam Tenbrink's.
13 A few days later, another of the defense team members ran those names through the defense
14 discovery database and discovered the Aponte tip.

15 Jensen interviewed Lt. Aponte, wrote a report, and obtained Lt. Aponte's initials on the
16 report verifying its accuracy. That report was submitted as an exhibit to the new trial motion and
17 contains the information that Petitioner presently asserts in Claim 8. (20 CT 6261-6263.) Jensen
18 also interviewed Adam Tenbrink, who told Jensen that Todd sought Tenbrink's assistance with
19 the burglary on December 24, not December 26. (20 CT 6255, Exh. 24 to Petn., p. 13.) The new
20 trial motion asserted that the defense never received any interview notes of Shawn Tenbrink, any
21 record of Modesto Police conversations with Lt. Aponte, or any follow-up interviews the police
22 may have conducted. (*Ibid.*) The prosecution opposed the new trial motion, submitting
23 declarations by both Lt. Aponte and Det. Grogan filed March 9, 2005. Lt. Aponte's declaration
24 differed from the statement he provided to Jensen only slightly. In the declaration, Lt. Aponte
25 stated that the interview that MPD conducted with Shawn Tenbrink was telephonic, not in person
26 at the CDCR facility. (20 CT 6434.) Lt. Aponte also averred that he did not recall mailing a
27 copy of the audio tape of the Tenbrink brothers' conversation to MPD, nor whether he was asked
28 to do so. (*Ibid.*) Lt. Aponte stated that the telephonic interview he arranged and monitored

1 between the MPD detective and Shawn Tenbrink was the only interview that took place of which
2 he knew. (*Ibid.*) Lt. Aponte searched for the recording on both the old and new telephone
3 recording system and could not find it. (*Id.* at p. 6435.) He was also unable to locate any notes
4 he made with the name of the detective who spoke to Shawn Tenbrink. (*Ibid.*) Det. Grogan
5 denied going to CDCR at any point during the Peterson investigation. (20 CT 6438.) Det.
6 Grogan searched the automated and handwritten files of the Modesto Police Department. (*Ibid.*)
7 Other than the tip disclosed in May 2003, Det. Grogan found no other reports mentioning either
8 Lt. Aponte or Tenbrink. (*Ibid.*) The trial court denied the new trial motion.

9 In claim 10 of the 2015 petition, Petitioner asserted that his trial counsel rendered
10 ineffective assistance by failing to 1) investigate the Aponte tip timely, 2) obtain the recording of
11 the Tenbrink brothers' conversation, 3) interview Adam Tenbrink prior to the guilty verdicts, 4)
12 interview Shawn Tenbrink prior to the guilty verdicts, and 5) present evidence that Steven Todd
13 saw Laci Peterson alive during the Medina burglary when she confronted him. (2015 Petn., pp.
14 200-214.) In the process of preparing the 2015 petition, habeas corpus counsel's investigator
15 successfully interviewed Shawn Tenbrink and attempted to interview both Adam Tenbrink and
16 Todd. Shawn Tenbrink executed a declaration on February 26, 2009 in which he stated he
17 recalled the conversation with Adam. Adam told Shawn that "someone told him that Laci had
18 seen Todd rob the house," and that Shawn didn't "remember if Adam told me if Todd robbed the
19 house with others." (Exh. 48 to Petn.) Adam Tenbrink first agreed to an interview with
20 Petitioner's post-conviction investigator but refused to answer the door at the scheduled time.
21 (2015 Petn., p. 212.) Todd, by way of a profane expletive, declined an interview. (*Ibid.*) The
22 2015 petition did not assert a *Trombetta/Youngblood* claim based on destruction of the recording
23 or associated investigation.

24 **CLAIM 8 IS BARRED UNDER THE *CLARK* RULE**

25 A *Trombetta* claim has three necessary elements: 1) destruction 2) of material with
26 exculpatory value known at the time of destruction that 3) is not reasonably attainable by other
27 means. A *Youngblood* claim has three elements: 1) destruction 2) of potentially useful evidence
28 3) in bad faith. The above evidence demonstrates that Petitioner and his trial counsel were

1 reasonably aware of all three elements of each claim at or before filing of the 2015 Petition. The
2 present petition asserts bad faith by inference based on Aponte's statement that further
3 investigation occurred, MPD's failure to follow routine procedure by booking the recording into
4 evidence and generating reports of that investigation, and MPD's subsequent denial that such
5 investigation occurred. All of those facts were known at the new trial motion in 2005 and at the
6 filing of the 2015 petition. To the extent that Petitioner has incorporated by reference the
7 mishandling of evidence by Dets. Stough, Grogan, and others discussed in Claim 7, *supra*, those
8 instances of mishandling and their relevance to inferring bad faith were also known at the filing
9 of the 2015 petition. Petitioner fails to plead with specificity any reason why he did not bring the
10 *Trombetta/Youngblood* claim in the 2015 petition.

11 **No miscarriage of justice**

12 Had the court reached the merits of the claim, it would have found that the tape of the
13 Tenbrink recording met the *Trombetta* standard for exculpatory material, not merely material
14 that was potentially useful under *Youngblood*. The recording contained a statement by Adam
15 Tenbrink that Todd told him that Laci Peterson saw Todd committing the burglary. The court
16 would further have found that the Petitioner failed to demonstrate, even *prima facie*, that the
17 exculpatory material on the tape was not reasonably attainable by other means. The other means
18 available to prove the tape's content had Petitioner's trial team wished to do so were 1) Lt.
19 Aponte himself, who heard the entire call and recalled its relevant content, 2) Shawn Tenbrink,
20 who the trial record demonstrates was still incarcerated at the time of the trial and was apparently
21 never interviewed by Jensen despite his later cooperation in 2009 with Petitioner's post-
22 conviction investigator, and 3) Adam Tenbrink, who was cooperative with Jensen's interview in
23 December 2004 and whom Jensen himself indicated was cooperative in October 2004. (106 RT
24 19702-19704.) Even with the destruction of the tape, Petitioner had alternative means to
25 demonstrate its content available to him at the time of trial. Assessing the trial record as a whole
26 and the nature of the circumstantial evidence presented, the court does not find that the
27 destruction of the Aponte tape or any associated MPD investigation resulted in a trial proceeding
28 so fundamentally unfair that no reasonable judge or jury would have convicted defendant had it

1 been presented. The court further incorporates its findings as to the actual innocence exception
2 to a procedural bar in Claim 5, *supra*, and finds no exception to the *Clark* rule. Claim 8 is barred
3 by the *Clark* rule with no exception.

4 **CLAIM 8 LACKS MERIT**

5 As stated *supra* in finding lack of any exception to the *Clark* rule, the court further finds
6 that Claim 8 of the instant petition fails to state a prima facie claim for relief under *Trombetta* for
7 failure to demonstrate the lack of a reasonably available alternative means of proof. The
8 petition, its exhibits, and the trial record demonstrate that reasonably alternative means of proof
9 of the tip and its contents were available to Petitioner's trial team.

10 **CLAIM 9**

11 Claim 9 of the instant petition asserts that: reversal is required because Petitioner was
12 denied his right to due process when the prosecution intentionally and in bad faith destroyed the
13 Croton watch that the Modesto Police Department collected from The Pawn Shop and related
14 investigation reports, which had exculpatory value in violation of *Trombetta/Youngblood*.
15 In summary, the claim pleads the following facts. (See generally, Petn., pp. 415-431.) Petitioner
16 reported to the police that among other jewelry, Laci Peterson was wearing a gold watch with
17 diamonds around the face before he left home on the morning she disappeared. The police
18 investigated her jewelry by documenting what items of jewelry remained in the Peterson home,
19 examining family photos depicting Laci wearing various items of jewelry, interviewing family
20 and friends about jewelry Laci acquired through inheritance and how frequently she wore it,
21 interviewing local jewelers where Laci had taken items for repair, interviewing pawn shops to
22 locate jewelry that she had sold, and investigating the Petersons' eBay history to determine if any
23 of Laci's jewelry had been sold through that platform or outside the platform to a buyer who saw
24 the eBay advertisement. Through the investigation, police determined that the only watch of
25 Laci's that was unaccounted for was a Croton ladies' watch she had inherited from her
26 grandmother that had a yellow gold basket weave band and a round face surrounded by
27 diamonds. Both Petitioner and Amy Rocha stated that the Croton watch was not to Laci's taste
28 in jewelry. Petitioner and Laci had tried to sell the Croton watch through eBay, but it did not sell

1 either through that platform or outside of eBay to any of the potential buyers who expressed
2 interest through eBay. Det. Grogan located a home video of various watches, including the
3 Croton watch, apparently used to generate a still picture of the Croton watch for advertisement
4 online. In the video, the Croton watch did not keep time – leading Det. Grogan to surmise that
5 its battery did not work. The jewelers interviewed by police said that Laci had not brought in the
6 Croton watch for repair or battery replacement.

7 On March 6, 2003, Det. Grogan contacted CSO Bronda Smith of the Modesto Police
8 Department pawn detail. At his direction, she searched pawn records for a Croton watch and
9 identified only one Croton watch in the records. It had been pawned at The Pawn Shop on
10 December 31, 2002. The Pawn Shop is approximately three miles from the Peterson home. The
11 record located by CSO Smith indicated that Deanna Renfro had pawned the watch for \$20. The
12 pawn ticket described the pawned watch as “1 14K yellow gold quartz watch with scratches
13 used” and the word “Croton” in the fields marked for brand and make of the watch. (Exh. 2A to
14 Petn., Bates 0699.) Det. Grogan authored a report regarding his March 6 jewelry investigation,
15 in which he stated: “The pawn slip did not appear to match the description of the ‘Croton’ watch
16 belonging to Laci Peterson.” (*Id.* at Bates 0691.) The report did not indicate that Det. Grogan
17 took any additional investigative steps in March 2003 to confirm his conclusion, such as visiting
18 The Pawn Shop and attempting to examine the pawned watch or locating and interviewing
19 Renfro. Det. Grogan initialed his own report in the area where a supervisor would normally
20 approve a report under existing MPD policies. No reports of any 2003 investigation into the
21 Croton watch after March 6, 2003 by MPD were ever disclosed to Petitioner.

22 Renfro redeemed the original pawn of the Croton watch on January 9, 2003. She pawned
23 it a second time, again for \$20, on February 14, 2003. At the second pawn, she was
24 accompanied by Anthony Scarlata. She did not have identification with her and Scarlata did, so
25 the watch was pawned with his identifying information on the pawn ticket. The February 14,
26 2003 pawn ticket described the watch as follows: “14KT Y/G watch used and worn”. (Exh. 2A
27 to Petn., Bates 042678.) In the second pawn ticket, the fields for “brand” and “make” were left
28 blank. (*Ibid.*)

1 During trial, the defense introduced a copy of the December 31 pawn ticket. The
2 Stanislaus County District Attorney's Office (SCDAO) then conducted further investigation into
3 Renfro's pawn of a Croton watch. DAI Mark Smith generated a supplemental report
4 documenting interviews he conducted between June 22, 2004 and July 6, 2004. DAI Smith did
5 not finalize his report until September 13, 2004. (Exh. 2A to Petn., Bates 042673-042678.)
6 Smith's report indicated that Renfro's mother told him she had moved to Oklahoma. Smith
7 solicited assistance from Investigator Marc D. Sanders of the Office of the District Attorney for
8 the 2nd Judicial District of Oklahoma in Ardmore. Inv. Sanders interviewed both Renfro and her
9 boyfriend, James Broyer twice³⁰. The first interview occurred on July 6, 2004. The second
10 occurred the next day. Both were recorded and provided to Petitioner's trial team with the
11 report that Inv. Sanders authored describing the interviews at the same time as DAI Smith's
12 report, on September 15, 2004. (People's Opposition to Post-Conviction Discovery motion filed
13 5/20/2024, Bates materials referenced in opposition, Disk 4 .pdf p. 278.)

14 According to Inv. Sanders' report, on July 6, Renfro said she first got the pawned watch
15 in November 2002 from Broyer, who got it from a heroin addict named "Jenny" in trade for "a
16 little money and some weed." (Exh. 2A to Petn., Bates 042679.) Renfro acknowledged pawning
17 the watch twice – first on December 31 and again on February 14, 2003. The second time she
18 pawned the watch, Scarlata was with her and they pawned it using his identification because she
19 didn't have hers with her. Renfro and Scarlata got \$20 for the watch and used it to buy alcohol.
20 Renfro said that in either late February or early March 2003, detectives that Renfro believed
21 were private investigators for Petitioner came to her home and told her the watch she pawned
22 might have been stolen from Laci Peterson. Renfro gave them the pawn ticket from the
23 Valentine's Day pawn and her permission to redeem the pawn. Renfro denied knowing the
24 Petersons in any way other than seeing the case in the media. Renfro remembered the timing of
25 the detectives' visit because it happened prior to March 13, 2003. In the early morning on March
26

27 ³⁰ At the time of the Sanders interviews, Broyer and Renfro were in a relationship. At the time
28 of later interviews by Det. Dodge Hendee referenced *infra* in Claim 11, Broyer stated they had
ended their relationship.

1 13, her sister and brother-in-law (both named in Sanders' report) were involved in a police chase.
2 The chase ended in a crash which killed her brother-in-law. Shortly afterwards the police raided
3 the home where Renfro was living and arrested her and all of the other occupants for
4 manufacturing drugs. Renfro was jailed for three days and claimed in her statement to have been
5 released without charges. (*Id.* at Bates 42680.) The instant petition alleges that these
6 investigators were either MPD or SCDAO inspectors because Petitioner had not yet been
7 arrested and his private investigator neither knew of Renfro's December pawn nor interviewed
8 her or Broyer. (Exh. 13 to Petn., p. 16.)

9 Inv. Sanders showed Renfro a picture of Laci's missing Croton watch that DAI Smith
10 had provided. Renfro immediately said it was not the watch she pawned. She said that the
11 watch she pawned had a more smooth and rounded band with heart shaped diamond accents, that
12 did not have the same texture of the band on the watch in the photograph. She also said the face
13 of her watch was more oblong, with diamonds on the outside. (*Ibid.*)

14 Broyer initially told Inv. Sanders that he bought the watch for Renfro around Valentine's
15 Day 2002. (*Id.* at Bates 042682.) He also claimed to have bought it from a girl named Jenny for
16 \$25 and a quarter ounce of marijuana. A friend of Jenny's named "Stephen" was present for the
17 sale. Stephen was bald, in his late 20's, shorter than 5'9", and drove a white primer colored
18 280Z.³¹ (*Ibid.*) Broyer gave Renfro the watch for Valentine's Day. Later he noticed she didn't
19 wear it. When he asked, she first told him that she lost it and later admitted she pawned it and
20 used the money to get drunk with Scarlata. (*Ibid.*) Broyer told Inv. Sanders he was only aware
21 of one pawn of the watch. (*Ibid.*)

22 Broyer told Inv. Sanders that an investigator came to Broyer's home looking for Renfro.
23 Broyer thought he was a private investigator. The private investigator spoke to Renfro about the
24 watch. Because the investigator hadn't disclosed the purpose of the visit, Broyer interrupted the
25 conversation. The investigator told them the pawned watch might belong to Laci Peterson.

27
28 ³¹ Steven Todd's booking sheet from January 2, 2003 describes him as 35 years old and 6'1".
(Exh. 2A to Petn., Bates 020313.)

1 Broyer told the investigator how he got the watch. He gave the pawn slip to the investigator and
2 told him to redeem the watch himself. The investigator did not record their conversation. (*Ibid.*)

3 Between two and four weeks after the investigator visited, two police detectives came to
4 Broyer's home asking about the watch. Broyer believed that the investigator and the detectives
5 had spoken to one another. The detectives asked him how Jenny got the watch, and Broyer told
6 them that Jenny told him she got it from her mother. The detectives also did not record Broyer's
7 statement. Broyer contacted some of Jenny's friends to find out more about the watch, and they
8 told him she got it from "a Mexican male named Raul" whose last name they didn't know. He
9 didn't know the names of Jenny's friends, and had not spoken to Jenny since the investigator
10 showed up. (*Id.* at Bates 042683.)

11 Broyer described the watch as a ladies' 14K gold watch with spiral links on the band.
12 Inv. Sanders showed Broyer a photograph of Laci's missing Croton watch. Broyer immediately
13 said that the watch was not the one that he bought from Jenny. He said the band of the watch he
14 bought from Jenny was about one-quarter the width of the band of Laci's watch, and that the
15 band did not "flare out" as he saw in the picture. He told investigator Sanders that the watch face
16 was rectangular, and that the band extended straight out and did not taper into the form of the
17 watch's case. Broyer didn't remember the brand name of the watch he got, but did remember
18 that the brand name was written on the face of the watch below the 12. Broyer recalled the face
19 of the watch as being similar to the size of a dime, but shaped like a rectangle. (*Ibid.*)

20 Inv. Sanders re-interviewed both Broyer and Renfro on July 7, 2004 at DAI Smith's
21 request. Inv. Sanders asked both of them to describe the visits from investigators in more detail.
22 Broyer said the first investigator was a private investigator employed by Petitioner. He gave the
23 pawn slip to that investigator, who he said drove a white sedan. Broyer said he didn't recall the
24 second pair specifically saying they were detectives, but they had guns and wore star shaped
25 badges on their belts. They drove an unmarked dark blue sedan. Broyer also told Inv. Sanders
26 that he had mistaken the date he first got the watch from Jenny. He said that he got it between
27 August 2002 and Thanksgiving 2002, and that he'd confused the date he got it because Renfro
28

1 pawned it on Valentine's Day. (*Id.* at Bates 042684.) The instant petition asserts that DAIs from
2 SCDAO wear star-shaped badges. (Petn. at p. 429.)

3 In her second interview with Inv. Sanders, Renfro told him that Broyer had given her the
4 watch in mid-November 2002. She first pawned it for grocery money. She redeemed it when
5 her sister loaned her money to get it back. She pawned it on Valentine's Day because she
6 planned to make a meal for Broyer, but instead bought a bottle that she drank with "a friend."
7 Renfro said the pawned watch had diamond accents, by which she meant to describe the way the
8 metal was cut. She said she didn't believe the watch had actual stones. (*Id.* at Bates 042685.)
9 She further described the watch as a "skinny design" with a smoother texture than the one in the
10 picture that Sanders showed her. Renfro said the clasp of the watch was broken, and the clasp
11 had a slide mechanism with a locking hook. (*Id.* at Bates 042686.)

12 While incarcerated in Stanislaus County Jail in Modesto, James Romano reported to
13 Stanislaus County Sheriff's Office personnel that he had information about the Peterson case.
14 The timing of the various reports is discussed in further detail in Claim 11, *infra*. MPD
15 interviewed Romano on October 18 and 19, 2004. (Exh. 24 to Petn., p.32.) The reports were
16 disclosed to the defense on October 21, 2004, during the defense case. Investigator Jensen
17 interviewed Romano in custody on October 23, 2004. (*Ibid.*) Defense rested evidence on
18 October 25, 2004. Relevant to Claim 9, Romano told Jensen that Renfro and Scarlata had
19 approached him in mid-February 2003 to ask if he wanted to buy a watch. (*Id.* at p. 34.)
20 Romano declined. He described the watch they showed him as medium size with a lot of
21 diamonds, which he was able to describe from previously working in his brother's jewelry shop
22 in the 90's. (*Ibid.*) Romano told the police that the watch had a 6-7 mm band, was white gold or
23 silver, more oval than circular, and had 20 to 40 stones that were possibly diamonds. (Exh. 2A
24 to Petn., Bates 042987.) It looked expensive. (*Ibid.*) Romano said he was prompted to recall
25 the interaction with Renfro because he saw a report on CourtTV while he was in jail describing a
26 watch being pawned in the neighborhood. (Exh. 24 to Petn., p. 32.) He started to think the
27 watch pawned by Renfro might be related to Laci's when he found out that Renfro moved to
28 Oklahoma. (*Ibid.*)

1 Jensen interviewed Scarlata on October 23, 2004. (Exh. 24 to Petn., p. 38.) Scarlata told
2 Jensen that he assisted Renfro in pawning the watch on Valentine's Day. (*Ibid.*) They got \$20
3 for it and used it to buy alcohol and cigarettes. (*Ibid.*) They went to James Romano's house
4 after buying the alcohol. (*Ibid.*) Broyer was there and he and Broyer got into an argument.
5 (*Ibid.*) Scarlata gave the pawn slip back to Renfro because he said she wanted to redeem it so
6 she could pawn it again. (*Ibid.*) Scarlata told Jensen the watch was either gold or silver.³²
7 (*Ibid.*) Jensen showed Scarlata a picture of Laci's missing Croton watch. Scarlata could not say
8 whether it was or was not the watch he helped Renfro pawn. Scarlata told Jensen the police
9 never interviewed him. (*Ibid.*)

10 On January 6, 2003, an anonymous caller phoned the television show America's Most
11 Wanted. The caller stated they heard Jason Nolan outside his home on Santa Cruz in Modesto
12 bragging about Laci Peterson's disappearance. The caller heard Nolan say "when they did it
13 they thought it was going to be just another murder case and now it's a big case all over T.V.
14 news and they blaming husband and they not getting attention." (Exh. 2A to Petn., Bates 4752.)
15 The tipster said they last saw or heard Jason Nolan talking on "Tues 4:00-6:00 PM". (*Ibid.*) On
16 January 7, 2003, Off. Fainter of MPD contacted Jason Nolan.³³ Renfro redeemed the first pawn
17 of the Croton watch on January 9, 2003. (Exh. 2A to Petn., Bates 042674.) Petitioner's present
18 counsel found a 2014 list of Renfro's Facebook friends, which demonstrated her connection to
19 Jason Nolan. Claim 9 also asserts, based on an unpublished 2006 California appellate case, that

22 ³² The Petition and exhibits contain multiple pictures of Laci's missing Croton watch. See, e.g.,
23 Petn., p. 428, Exh. 24 to Petn., p. 34, Exh. 19 to Petn., p. 36. The photograph in Exh. 19 clearly
24 shows that Laci's Croton watch had a yellow gold band. The photographs in the petition and
25 Exh. 24, taken with a different background and lighting than the picture in Exh. 19, make the
26 band appear white gold in color.

27 ³³ Although not specifically pled in Claim 9, the exhibits to the Petition establish that Off.
28 Fainter's interview was brief. He asked Jason Nolan where he was on December 24, 2002.
Nolan replied, "locked up." Fainter then contacted Stanislaus County Sheriff's Deputy Dixon,
who checked the Stanislaus County Men's Jail computer system and confirmed that Nolan was
in custody from October 30, 2002 to January 3, 2003. The AMW tip was called in on Monday,
January 6, 2003. The previous Tuesday would have been December 31, 2002 – while Nolan was
confirmed to be in jail. (Exh. 2A to Petn., Bates 4749.)

1 Renfro was known to the police as a user and seller of methamphetamine and that her home was
2 under surveillance for methamphetamine manufacture by the MPD in early March 2003.

3 Sam Newnam, owner of The Pawn Shop, gave an on-camera interview in a 2017
4 documentary about Petitioner’s case. Newnam’s comments were made public as part of the
5 “extra content” published online about the documentary. (Exh. 8 to Petn., p. 2.) At that time,
6 Newnam said that Renfro pawned a “trashed” 14K gold Croton watch with a bent bracelet and a
7 movement that didn’t work on December 31 for \$20. Exh. 8 to Petn., Exh. A, p. 5.) Newnam
8 said he was then contacted by MPD looking for a Croton watch. (*Ibid.*) MPD told him that his
9 was the only one that had “popped up in the system” in the last six months. (*Id.* at p. 6.)
10 Newnam stated he put a hold on the watch. (*Ibid.*)³⁴

11 In 2023, Newnam gave an interview for a different documentary. In the streamed footage,
12 his entire comment was: “On December 31, 2002, a lady came in and she sold us a 14-karat-gold
13 Croton watch. Everything we loan or buy goes to a master computer. I was contacted by the
14 Modesto Police Department. They thought maybe it was Laci Peterson’s watch. They just came
15 in and said they’re here to pick up the watch, and they took the watch.” (Exh. 8 to Petn., Exh. B,
16

17 ³⁴ Also contained in the “extra content” but not pled in the factual allegations of the petition, one
18 of Petitioner’s trial team attorneys interviewed for the same documentary stated, “I did get the
19 pawn slip.” Dalton also “went over there trying to get ... the watch..” but Newnam wouldn’t
20 show it or sell it to Dalton. (Exh. 8 to Petn, Exh A, pp. 5-6.) Dalton worked for Petitioner from
21 April 2003 to September 2003. (Exh. 37 to Petn., p. 1.) Dalton’s comments are consistent with
22 trial counsel Mark Geragos’ statement to the trial judge at an *in camera* hearing outside of the
23 prosecution’s presence on October 21, 2004 that he “bought the pawn slip and tried to go – and
24 buy the watch.” (106 RT 19702.) Geragos’ statement is also conspicuously absent from the
25 petition’s verified factual allegations, which assert: “At the time Renfro handed the February 14,
26 2003 pawn slip over *to the police*, Laci was still missing. Petitioner had not been arrested, and
27 no discovery or police reports had been provided to Petitioner regarding Det. Grogan’s
28 investigation into the pawned Croton watch. The only investigator working for Petitioner at that
time was Gary Ermoian and he had no knowledge of a Croton watch being pawned until after
Petitioner’s arrest. (Exh. 13 at ¶ 62.)” (Italics added by court.) While Renfro’s statement about
the timing of her surrender of the pawn ticket to a private investigator is prior to Dalton’s
employment, the court is troubled by the verified petition’s failure to assert forthrightly **all** of the
facts relevant to the determination of who acquired the pawn ticket and explain the statements of
counsel claiming to have acquired it themselves. Once again, the petition treads unsettlingly
close to the bounds of permissible advocacy under Rule 3.3 of the Rules of Professional
Conduct.

1 p. 8.) The producer of the documentary also attributes the following statement to Newnam in
2 connection with the 2023 interview: “I never got the watch back. Because probably something
3 like that I would have put it somewhere and framed it. I doubt if I would have scrapped it. I
4 probably would have framed the watch.” (Exh. 8 to Petn., p. 3.)

5 Both Newnam’s 2017 and 2023 statements are inconsistent with statements he gave to
6 police that were discovered to Petitioner’s defense team in October 2004. DAI Smith
7 interviewed Newnam first on June 22, 2004. (Exh. 2A to Petn., Bates 042674.) Newnam told
8 Smith that once the media picked up the story from court proceedings, he had been contacted by
9 several and refused to comment. He checked his computer records of transactions and confirmed
10 that Deanna Renfro had first pawned the watch on December 31 for \$20 and redeemed it for \$26
11 on January 9, 2003. Newnam told DAI Smith that if the pawned watch had diamonds, they
12 would have been listed on the pawn ticket. He further stated the business had a diamond
13 detection device that employees were required to use, and the results would have been noted on
14 the pawn ticket. (*Ibid.*) DAI Smith showed Newnam a picture of Laci Peterson’s missing
15 Croton watch. Newnam told DAI Smith that the pictured watch did not match the watch on the
16 pawn ticket. He further said that he had a jeweler regularly appraise his items and report back to
17 Newnam. Newnam said he never saw that happen with the watch. (*Ibid.*)

18 DAI Smith recontacted Newnam on July 6, 2004. (*Id.* at Bates 042676.) Newnam
19 located the Scarlata pawn ticket for the watch from February 14, 2003. Newnam gave DAI
20 Smith a printed copy of the pawn ticket, and confirmed that Renfro received \$20 for the watch.
21 According to Newnam, the computer showed the watch was never redeemed and went into the
22 public cabinet for sale on June 14, 2003. Newnam checked the case and stated that he no longer
23 had the watch. He also told DAI Smith that he had no way to determine who purchased it.
24 Based on the February 14 pawn ticket description of the watch, Newnam told DAI Smith that
25 there was “no chance” that the watch was the same watch shown in the picture of Laci’s missing
26 Croton watch. (*Id.* at Bates 042677.) Newnam said his employees are required to list diamonds.
27 Once the watch was not redeemed, Newnam said he would have had his jeweler examine it and
28 would have discovered if it had real diamonds on it. (*Ibid.*) Newnam told DAI Smith that he

1 checked with his shop jeweler and the jeweler did not remember a ladies' watch with diamonds
2 around the face coming through the store. (*Ibid.*) DAI Smith told Newnam about Renfro's
3 statement that private investigators had gotten the pawn slip from her so that they could redeem
4 the watch. (*Ibid.*) Newnam repeated to DAI Smith that the computer records indicated that the
5 pawn had not been redeemed and he had no recollection of any private investigators trying to
6 redeem the watch. (*Ibid.*)

7 **Claim 9 is untimely**

8 *Reno* sets forth a three-step analysis for assessing the timeliness of a claim. First, the
9 court assesses whether the claim has been presented without substantial delay, as measured from
10 the time the petitioner or counsel knew or reasonably should have known of the information
11 offered in support of the claim and the legal basis for the claim. *Reno, supra*, 55 Cal.4th at p.
12 460-461. If there is substantial delay, the court will still consider a claim on the merits if the
13 petitioner can establish good cause for the delay. Finally, even in the absence of good cause, the
14 court will consider an otherwise untimely claim if it meets the exceptions articulated in *Clark*
15 and enumerated *supra* in the discussion of Claim 5. (*Ibid.*) The petitioner bears the burden of
16 pleading, with specific allegations, the absence of substantial delay. (*Id.* at p. 462.)

17 A *Trombetta* claim has three necessary elements: 1) destruction 2) of material with
18 exculpatory value known at the time of destruction that 3) is not reasonably attainable by other
19 means. A *Youngblood* claim has three elements: 1) destruction 2) of potentially useful evidence
20 3) in bad faith. From the time that Petitioner reported that Laci Peterson was wearing a Croton
21 watch when he last saw her, proof that jewelry Laci was wearing on December 24 had been
22 pawned by someone unrelated to Petitioner would have supported a third-party culpability
23 defense by demonstrating a motive for someone else to have harmed her. If the watch at The
24 Pawn Shop belonged to Laci, it was exculpatory within the meaning of *Trombetta*. If it didn't, it
25 was neither exculpatory nor potentially useful. As long as the possibility that the pawned watch
26 belonged to Laci could not be ruled out, the existence of the watch and investigation tending to
27 show the watch could have belonged to Laci were potentially useful under *Youngblood*.

1 The above-cited evidence demonstrates that Petitioner and his trial counsel were actually aware
2 of the existence and potential significance of the pawned Croton watch in 2003 and 2004.

3 The court further finds that Petitioner and his counsel were aware of the facts they now
4 plead as giving rise to an inference of bad faith destruction or suppression of investigative
5 materials associated with the watch in 2003 and 2004 as well. Petitioner asserts that Renfro and
6 Broyer both said police came and interviewed Renfro about the watch in mid-February or early
7 March 2003. The petition demonstrates that Petitioner first came into possession of that
8 information on September 15, 2003, when his counsel picked up discovery of the Sanders and
9 Smith reports referenced above. Petitioner and his trial counsel would have known at that point
10 that the prosecution had not provided any prior reports documenting interviews with Renfro or
11 Broyer. In addition, the instances of other evidence mishandling that Petitioner has asserted as
12 giving rise to an inference of bad faith and incorporated into all of his *Trombetta/Youngblood*
13 claims were known to him and to his counsel at trial. (See fn. 21, *supra*.)

14 The facts permitting Petitioner to plead a prima facie allegation of destruction of the
15 watch itself were neither known nor reasonably could have been known until 2017, when
16 Newnam first publicly stated that the MPD had put the pawned watch on hold. Although
17 Newnam did not state that MPD actually took custody of the watch until 2023, timeliness is
18 measured from the point when a petitioner has reason to suspect that a claim might be brought.
19 If a petitioner had reason to suspect that a basis for habeas corpus relief was available, but did
20 nothing to promptly confirm those suspicions, that failure must be justified. (*Clark, supra*, 5
21 Cal.4th at p. 775.) Here, Petitioner and his counsel knew beginning in 2003 that Newnam had
22 come into possession of a watch that might have belonged to Laci Peterson. (106 RT 19702-
23 19704.) Petitioner’s trial counsel told the trial judge in camera that while the case was still in
24 Modesto³⁵, trial counsel “kept subpoenaing the watch in” and Newnam refused to comply.
25 (*Ibid.*) Counsel then “bought the pawn slip and tried to go – and buy the watch.” Newnam
26 wouldn’t give it to him. (*Ibid.*) As of September 15, 2004, Petitioner and his trial team knew that

27
28 ³⁵ Change of venue out of Stanislaus County occurred in January 2004.

1 Newnam had reported that the Croton watch was no longer at The Pawn Shop, having been sold
2 to an unknown member of the public that he had no way to identify. (Exh. 2A to Petn. at Bates
3 042676.)

4 Other facts that Petitioner asserts as new regarding Renfro's arrest history for
5 methamphetamine manufacture and her asserted connection with Jason Nolan are either not new
6 or tangential to the facts necessary to assert a prima facie *Trombetta/Youngblood* claim. For
7 example, Petitioner cites the 2006 unpublished California appellate decision in the case of Curtis
8 Shivar as new evidence of the circumstances of Renfro's arrest. The record cited above
9 demonstrates that Renfro told Inv. Sanders about her arrest and the basis for it. The trial record
10 further demonstrates that Curtis Shivar was a potential defense witness. (106 RT 19903.) Since
11 Jason Nolan was in jail from December 24 when Laci was reported missing to January 3 – after
12 the pawn of the Croton watch, the instant petition fails to raise even a prima facie inference that
13 the timing of his interview by Off. Fainter was related to Deanna Renfro's redemption of the first
14 pawn.

15 Once Newnam gave his 2017 interview and publicly stated that MPD "put a hold" on the
16 watch, there were only a limited number of possible conclusions. First, if Newnam's 2017
17 statement was inaccurate and his 2004 statement was correct – Petitioner had no habeas corpus
18 claim for destruction because the police did not have possession of the watch. Second, if neither
19 of Newnam's statements were accurate – he neither sold the watch to a member of the public nor
20 held it for police, Petitioner still had no habeas corpus claim because the police did not possess
21 the watch. Third, if Newnam's 2004 statement that the watch had been sold to a member of the
22 public was inaccurate and his 2017 statement that the police had put a hold on it was accurate,
23 then Petitioner reasonably should have known he had a *Trombetta/Youngblood* claim. In that
24 case, the MPD hold Newnam disclosed in 2017 would have given rise to the inference that MPD
25 seized the watch, thereby explaining why the watch was no longer in Newnam's possession
26 when DAI Smith investigated it in 2004. As of 2017, Petitioner had reason to suspect that
27 Newnam's 2004 statement had been inaccurate based on its inconsistency with his 2017
28 statement. The instant petition does not plead what action, if any, Petitioner or his counsel took

1 between 2017 and the filing of the instant petition to investigate Newnam's claim that MPD put a
2 hold on the watch, or why such investigation would not earlier have revealed Newnam's 2023
3 statement that MPD seized the watch. In addition, section 1473 was amended in 2017 to codify
4 the standards for bringing a habeas corpus claim based on new evidence and Petitioner's 2015
5 petition was pending and undecided before the California Supreme Court. Petitioner does not
6 plead any justification for failing to seek leave to amend his 2015 petition to bring this claim
7 based on the discovery of Newnam's 2017 statement and the amendment to section 1473.
8 Petitioner has not pled with specificity any good cause for his failure to bring Claim 9 earlier,
9 and the court finds none.

10 **No miscarriage of justice**

11 The court does not find that claim 9 as pled, alone or in combination with the other
12 claims of the instant petition, establishes a fundamental miscarriage of justice in the trial
13 proceedings or points unerringly to Petitioner's actual innocence. The trial record demonstrates
14 that Petitioner's counsel was aware early in the case of the existence of the pawned watch and its
15 potential significance. Petitioner's trial strategy already relied heavily on assertions of police
16 incompetence based on their unfounded early suspicion of him. Petitioner's trial counsel argued
17 that Det. Grogan's failure to seize the watch was unreasonable, and that the timing of the pawn
18 in connection to Laci's murder gave rise to reasonable doubt. Witnesses were available to
19 Petitioner – Renfro and Broyer – whom he could have called to establish that unidentified law
20 enforcement both looked for the watch and failed to share that investigation with him. Even had
21 Newnam testified consistent with his later statements that MPD seized the pawned watch, that
22 statement was at best inconsistent with Newnam's earlier claim that he sold the watch to
23 someone else. Calling Newnam as a witness would have permitted the prosecution to elicit
24 Newnam's multiple denials that it was even possible for the pawned watch to be Laci's. Every
25 witness who could have supported an argument that MPD suppressed the pawned watch had told
26 police that the pawned watch either was not or could not have been Laci's. None of the instant
27 petition's allegations contradict those prior statements. Even Newnam described the pawned
28 watch as having a bent bracelet and "trashed" in 2017, which is inconsistent with the condition

1 depicted in the photographs of Laci's Croton watch. Asserting MPD's incompetence allowed
2 Petitioner to argue that the pawned watch was exculpatory and its loss generated reasonable
3 doubt. Calling the actual witnesses ran the risk of establishing the prosecution's case for them
4 by demonstrating that the pawned watch was neither exculpatory nor relevant. The court
5 incorporates its prior comments on the actual innocence exception stated in Claim 5, *supra*.
6 Claim 9 is denied as untimely with neither justification nor exception permitting its
7 consideration.

8 **CLAIM 10**

9 Claim 10 of the instant petition asserts that: reversal is required because Petitioner was
10 denied his right to due process when the prosecution intentionally and in bad faith failed to
11 collect exculpatory evidence by systematically ignoring eyewitnesses who reported seeing Laci
12 alive and walking the dog in the neighborhood and park in violation of *Trombetta/Youngblood*.
13 The claim incorporates by reference all of "the factual allegations set forth above, and with
14 particularity the allegations in Claims 9, 10, and 12." The allegations that are specifically pled
15 under the Claim 10 heading in the petition largely consist of conclusory assertions. From the
16 title of the claim, the incorporation by reference, Petitioner's citation to the declarations of Dr.
17 Lampinen and Lt. Bercovici, and the points and authorities pled in support of Claim 10 the court
18 gleans that the alleged systematic failure to collect and document eyewitness sightings relates to
19 those eyewitnesses who form the basis for Dr. Lampinen's opinions presented in Claim 5.

20 **Claim 10 is barred under the *Clark* rule**

21 Claim 10 of the instant petition fails to specify when information offered in support of the
22 claim was obtained, and that the information neither was known, nor reasonably should have
23 been known, at any earlier time. As with all other claims in the petition, Claim 10 summarily
24 asserts that the claim is neither timely nor successive, pleading in relevant part that "the factual
25 bases supporting it were unknown to Petitioner until recently and he has asserted those claims as
26 promptly as possible", and "it has not been presented to the court before; it is based on
27 information only recently discovered by counsel through diligent investigation." (Petn., p. 439.)
28 As *Clark* holds, the pleading failure justifies summary denial of the claim. (*Clark, supra*, 55

1 Cal.4th at p. 511.) Examination of the points and authorities supporting Claim 10 further
2 demonstrates the insufficiency of the general allegations of both timeliness and lack of
3 successiveness.

4 The points and authorities cite to the sworn testimony of Dets. Grogan and Brocchini
5 admitting their failure to familiarize themselves with tips and reports to other officers of
6 eyewitness sightings, the failure of MPD in general to immediately contact witnesses who
7 reported seeing Laci alive on the morning of December 24, the statements of Homer and Helen
8 Maldonado, Tony Freitas, Tom Harshman, Martha Aguilar, Grace Wolf, Vivian Mitchell, Gene
9 Pedrioli, and John Brazil, and Det. Grogan's testimony that tips were "not a priority." As
10 discussed in relation to Claim 5, *supra*, all of that information was known to Petitioner and his
11 counsel at or before trial. Petitioner references only three pieces of information that are
12 genuinely new: the opinion of Dr. Lampinen, the opinion of Lt. Bercovici, and the declaration of
13 Carlos Hernandez. Of those three pieces of evidence, both Dr. Lampinen and Lt. Bercovici were
14 qualified to offer the opinions they now present prior to the filing of the 2015 petition. The
15 information they used to formulate their opinions has not substantially changed since 2015. Dr.
16 Lampinen's opinion is based on the collective effect of the various sightings, and neither he nor
17 Petitioner assert that the absence of the Hernandez sighting would have substantially altered his
18 conclusions. For all of the same reasons articulated in the procedural bar analysis applicable to
19 Claim 5, *supra*, the court finds that Claim 10 is barred under the *Clark* rule with no applicable
20 exception for miscarriage of justice.

21 CLAIM 11

22 Claim 11 of the instant petition asserts that "Petitioner is entitled to relief because he was
23 prejudiced by the prosecution's suppression of evidence favorable to the defense in violation of
24 his right to due process under *Brady* and its progeny." In nine separate subparts, Claim 11
25 asserts the prosecution's failure to disclose or delayed disclosure of material exculpatory
26 evidence.

Law applicable to Claim 11

There are three components of a true *Brady* violation. The evidence at issue must be favorable to the accused, either because it is exculpatory or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued. *In re Hill* (2024) (*Hill*) 104 Cal.App.5th 804, 848-849, quoting *Strickler v. Greene* (1999) (*Strickler*) 527 U.S. 263, 281-282. “Although the prosecution may not withhold favorable and material evidence from the defense, neither does it have a duty to conduct the defendant’s investigation for him.” *People v. Morrison* (2004) (*Morrison*) 34 Cal.4th 698, 715. “If the material evidence is in a defendant’s possession or is available to a defendant through the exercise of due diligence, then, at least as far as evidence is concerned, the defendant has all that is necessary to ensure a fair trial, even if the prosecution is not the source of the evidence. (citation omitted.) Accordingly, evidence is not suppressed unless the defendant was actually unaware of it and could not have discovered it ‘by the exercise of due diligence.’ (citations omitted.)” *People v. Salazar* (2005) (*Salazar*) 35 Cal.4th 1031, 1048-1049. Evidence that is presented at trial is not considered suppressed, regardless of whether or not it had previously been disclosed during discovery. *People v. Verdugo* (2010) 50 Cal.4th 263, 281, citing *Morrison, supra*, 34 Cal.4th at p. 715. Evidence is “material” if there is a reasonable probability that its disclosure would have led to a different result. Materiality requires more than a showing that the suppressed evidence would have been admissible, that its absence made a conviction more likely, or that using the suppressed evidence to discredit a witness’s testimony might have changed the outcome of the trial. The materiality standard is met when the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict. *Banks v. Dretke* (2004) 540 U.S. 668, 672.

When the question is delayed disclosure rather than total non-disclosure, the applicable test under *Brady* is whether defense counsel was prevented by the delay from using the disclosed material effectively in preparing and presenting the defense case. *People v. Mora and Rangel* (2018) 5 Cal.5th 442. To satisfy due process, an untimely disclosure must not be too late for the defendant to make use of any of its benefits. *U.S. v. Warhop* (10th Cir. 1984) 732 F.2d, 775, 777;

1 *U.S. v. Davenport* (9th Cir. 1985) 753 F.2d 1460, 1462. Untimely disclosure at trial might be
2 considered suppressed within the meaning of *Brady* if the delay caused prejudice. *U.S. v. Burke*
3 (10th Cir. 2009) 571 F.3d 1048, 1055-1056.

4 **Subpart A: January 2 videotaped interviews of Todd/Pearce**

5 The court identified two separate aspects of this claim: a claim for failure to disclose the
6 content of the January 2, 2003 videotaped interviews of Todd and Pearce, and a claim for
7 suppression of the fact that the prosecution had destroyed the tapes on May 6, 2003. The court
8 concludes that any *Brady* claim related to the failure to disclose the content of Todd and Pearce's
9 January 2 interviews is both procedurally barred by the *Clark* rule and lacks merit. The court
10 concludes that the claim for suppression of the fact of the tapes' destruction also lacks merit.

11 **Suppression of tape content is procedurally barred by the *Clark* rule**

12 Pleading of a prima facie *Brady* claim requires evidence of three elements: 1) evidence
13 favorable to the accused because it is exculpatory or impeaching that was 2) suppressed and is 3)
14 material. When a habeas corpus claim is raised in a second or subsequent petition, the petitioner
15 bears the burden of pleading with specificity facts demonstrating why the claim either was not
16 known or could not have been reasonably known at the time of the prior petition. Failure to so
17 plead justifies summary denial of the claim as procedurally barred. (*Clark, supra*, 55 Cal.4th at p.
18 511.)

19 The instant petition and attached exhibits demonstrate Petitioner's actual awareness of
20 the following facts related to his *Brady* claim for suppression of the content of the Todd/Pearce
21 January 2 interviews on or before the filing of the 2015 petition. Petitioner knew that Off. Hicks
22 interviewed Todd and Pearce on January 2, 2003 and that those interviews were recorded in May
23 2003. (Exh. 2A to Petn., Bates 4116-4120; Exh. 2B to Petn., AHCP-003-004.) Defense
24 requested the recordings and did not receive them, known as early as September 24, 2003. (Exh.
25 24 to Petn., pp.15, 19; Exh. 2B to Petn., AHCP-007, AHCP-063.) Thus, Petitioner was actually
26 aware of fact supporting a prima facie allegation of suppression at the time of his conviction.

27 Petitioner asserts that the tapes contained the following categories of exculpatory
28 information: discussion about the date of the burglary, Todd's statement likely included a

1 discussion of Laci seeing him casing the house or confronting him, Hicks and another “short,
2 maybe Italian” officer telling Todd they believed the evidence was pointing to Petitioner and not
3 Todd, and Todd discussing making phone calls from inside the Medina residence. (Petrn., pp.
4 444-445). The petition and attached exhibits demonstrate that Petitioner had actual knowledge
5 of each of the alleged types of exculpatory evidence present on the tapes on or before the filing
6 of the 2015 petition on November 23, 2015.

7 Petitioner actually knew the following facts about the date of the burglary. Todd and
8 Pearce initially made inconsistent statements to Off. Hicks about the date of the Medina
9 burglary, known May 2, 2003 on disclosure of Hicks’ written report of their statements in
10 discovery. (Exh. 24 to Petn. p.16; Exh. 2A to Petn., Bates 4113, 4116; Exh. 2B to Petn. AHCP-
11 003-004.) Todd changed his statement to Officer Hicks about the date of the burglary. (Exh 24
12 to Petn., p. 9.) On March 25, 2004, Pearce told defense investigator Jensen that he helped Todd
13 remove the safe on December 25, not December 26 as Pearce originally told the police. (Exh. 24
14 to Petn., p. 10) In the same interview, Pearce told Jensen that Todd started the burglary on
15 December 24. (*Ibid.*) On April 22, 2004, Pearce’s children’s mother told Jensen that Todd
16 asked for Pearce’s help with the burglary on Christmas Day, not December 26. (*Id.* at p. 12)

17 Petitioner should reasonably have known that Todd had said that Laci saw him
18 committing the burglary as of May 2003, when the tip called in by Lt. Aponte was disclosed in
19 discovery. (20 CT 6380.) Petitioner’s trial team actually knew that Todd had made that
20 statement on or about June 25, 2004, when Jensen’s notes indicate he began his follow-up
21 investigation with CDCR to try to interview Lt. Aponte. (2015 Petn., Claim 10, p. 205.)
22 Petitioner actually knew in May 2003 at the disclosure of Off. Hicks’ written report that Todd
23 denied having anything to do with “the missing woman with the baby.” (Exh. 2A to Petn., Bates
24 4116.)

25 Petitioner knew that Jensen interviewed Todd on April 23, 2004, May 7, 2004, and
26 August 27, 2004. (Exh. 24 to Petn., p. 18; Exh. 32 to Petn.). Petitioner knew that in one of those
27 interviews, Todd told Jensen that Officer Hicks and a “short, maybe Italian” cop who “may have
28 been” Det. Brocchini told Todd that they knew Petitioner “did it” and not Todd. (Exh. 24 to

1 Petn., p. 19.) Finally, Petitioner knew on December 3, 2004 that Jensen interviewed Adam
2 Tenbrink. He knew Tenbrink told Jensen that Todd had called Tenbrink from the Medina home
3 on December 24 asking for help getting things out of the Medina's house because Todd didn't
4 have a car. (Exh. 24 to Petn., p. 13.) Petitioner knew that the prosecution had argued that the
5 Medina burglary occurred after Laci's disappearance and therefore was not related to her murder.

6 Thus, the instant petition and exhibits demonstrate that Petitioner actually knew that the
7 tapes had been suppressed, that they contained exculpatory information, and that he had reason
8 to allege the materiality of that information as of December 3, 2004. Petitioner failed to plead
9 those facts with specificity in Claim 11 – the court identified them on its own based on its review
10 of the voluminous materials attached to the instant petition and record of the 2015 petition.
11 While the instant petition asserts bad faith in the suppression of evidence, bad faith is immaterial
12 to a *Brady* violation. If exculpatory and material evidence is suppressed, *Brady* is violated
13 regardless of the good or bad faith of the prosecution. Petitioner could have brought the *Brady*
14 claim for suppression of the contents of the January 2 interviews in the 2015 petition and failed
15 to do so. A claim for suppression of the contents of the interviews is procedurally barred by the
16 *Clark* rule.

17 **Suppression of tape content lacks merit**

18 Had the court reached the merits of Claim 11A based on suppression of the content of the
19 January 2 interview tapes, the court would still find the claim fails to demonstrate a prima facie
20 case of suppression within the meaning of *Brady*. As noted above, evidence is not suppressed
21 for *Brady* purposes unless the defendant was actually unaware of it and could not have
22 discovered it by the exercise of reasonable diligence. Taking as true every well-pled assertion in
23 the instant petition about the favorable evidence contained on the tapes, the above-cited record
24 amply demonstrates that Petitioner's trial team had acquired virtually all of the exculpatory
25 material from other sources, including Todd and Pearce themselves, and had it in their
26 possession at or before trial. The only exception is the statement of Adam Tenbrink relating that
27 Todd called him from inside the Medina home on December 24, which was acquired after the
28 guilt verdict. As to that statement, the record affirmatively demonstrates that there was no

1 suppression because the material was available to Petitioner with the exercise of reasonable
2 diligence. The prosecution disclosed Lt. Aponte's tip containing Todd's hearsay statement that
3 Laci saw him committing the burglary in May 2003. The instant petition affirmatively
4 demonstrates that the police never interviewed Adam Tenbrink about the call to his brother, so
5 they would not have had the further information that Tenbrink gave Jensen when interviewed on
6 December 3. (Exh. 24 to Petn., p. 12.) Petitioner's trial team was actually aware of the Aponte
7 tip as early as June 25, 2004. Had they exercised reasonable diligence in attempting to interview
8 him when the tip was disclosed or even beginning in June 2004, they could have obtained his
9 statement for use at trial. Insofar as it alleges suppression of the content of the January 2
10 interview tapes of Todd and Pearce, Claim 11, subpart A lacks merit.

11 **Suppression of fact of tape destruction lacks merit**

12 Petitioner sufficiently alleges that he did not learn of the fact of destruction of the January
13 2 recordings until 2025, when the prosecution disclosed the evidence and property records of the
14 destruction and its timing pursuant to this court's order under section 1054.9. The court
15 therefore finds no procedural bar to his *Brady* claim alleging suppression of the fact of the
16 recordings' destruction on May 6, 2003. Petitioner alleges that had he known the tapes were
17 destroyed, the destruction was both material and exculpatory because he could have used it to
18 impeach Dets. Grogan, Brocchini, Buehler, and Skultety, who attended the May 6, 2003
19 discovery meeting. He asserts the tapes' destruction would have demonstrated that the attendees
20 of that meeting committed a crime by destroying evidence and therefore been particularly potent
21 impeachment material.

22 Taking the instant petition's factual allegations as true, the court concludes that the
23 petition pleads a prima facie claim of the first two elements of *Brady* suppression of the fact of
24 the tapes' destruction, but fails to assert materiality sufficiently to merit issuance of an order to
25 show cause. The court finds that the fact of the tapes' destruction was sufficiently pled to be
26 favorable to the accused as either impeaching or exculpatory. Petitioner premised his entire trial
27 defense on the police having identified the wrong suspect "within an hour" of learning of Laci's
28 disappearance. (110 RT 20339.) Evidence of destruction of tapes containing the Medina

1 burglars’ inconsistent statements about timing of the burglary that demonstrated that they might
2 be lying about it happening after Laci’s disappearance would have impeached the various police
3 witnesses by providing evidence in support of Petitioner’s assertion that their investigation was
4 either incompetent or motivated by actual animus against him.

5 The court further finds that the petition adequately alleges suppression of the fact of the
6 tapes’ destruction. Evidence is “suppressed” within the meaning of *Brady* if the defendant is
7 unaware of it and it could not have been discovered through the exercise of reasonable diligence.
8 The petition demonstrates that Petitioner was unaware of the actual destruction of the tapes until
9 January 2025, when the prosecution disclosed the property record documenting their destruction.
10 He exercised due diligence at the time of trial by requesting the tapes through the reciprocal
11 discovery provisions of section 1054 *et seq.* The prosecution neither responded to the request by
12 turning over the recordings nor by informing Petitioner that the recordings had been destroyed.
13 The trial record contains multiple instances of the People representing full discovery compliance
14 to the court on dates after September 14, 2003, when at least one documented request for the
15 production of the January 2 recordings was still outstanding. Documentary evidence showing
16 that the People informed Petitioner of the destruction of the recordings during the trial process is
17 conspicuously absent from the Informal Response.

18 The court does not find that the petition sufficiently alleges materiality of the fact of
19 destruction. The instant claim alleges that the fact of destruction could have been used to
20 impeach Dets. Grogan, Brocchini, Skultety, and Buehler – attendees of the May 6 meeting where
21 the discovery discussion occurred. (Exh. 2A, Bates 25947.) The property record documenting
22 the destruction of the recordings shows that none of those detectives authorized it. (Exh. 2B to
23 Petn., AHCP-060-061.) Instead, Det. Sebron Banks, who did not attend the May 6 meeting,
24 marked the tapes for destruction. Det. Banks did not testify at trial. His credibility was never at
25 issue. Given that the witness who authorized the destruction of the tapes did not attend the
26 meeting where the Petitioner alleges the decision to destroy was made and did not testify at trial,
27 the court finds that the Petitioner’s allegations at best establish no more than that the
28

1 impeachment of the testifying witness *might* have led to a different outcome – not a reasonable
2 probability of a different trial result. Claim 11, subpart A is denied for lack of merit.

3 **Subpart B: Medina safe**

4 Subpart B of Claim 11 makes a *Brady* argument for suppression of material evidence
5 based on the same operative facts alleged in support of Claim 7. The court incorporates its
6 findings on Claim 7, *supra*, on both the procedural bar under the *Clark* rule and the failure to
7 demonstrate materiality of the safe on the merits. For the same reasons articulated in Claim 7,
8 the court finds that Claim 11, subpart B is procedurally barred under the *Clark* rule without
9 exception. The court further finds that the claim fails to plead a prima facie case either that the
10 safe was exculpatory or material.

11 **Subpart C: Croton watch**

12 Subpart C of Claim 11 makes a *Brady* argument for suppression of material evidence
13 based on the same operative facts alleged in support of Claim 9. The court incorporates its
14 findings on Claim 9, *supra*, finding that the claim is untimely with neither good cause nor
15 exception meriting consideration despite its untimeliness. The court denies Claim 11, subpart C
16 as untimely.

17 **Subpart D: Stough’s admission that MPD lied when it stated at the January 3, 2003 press**
18 **conference that police verified the Medina burglars’ alibis**

19 In subpart D, the instant petition alleges that Det. George Stough gave a press conference
20 on January 3, 2003, announcing the arrest of Todd and Pearce. At that press conference, he
21 stated that the police “have been able to verify the truthfulness of their statements.” Petitioner
22 asserts that the defense relied on Det. Stough’s statement as a “truthful and accurate
23 representation of the thoroughness of MPD’s investigation into the Medina burglary and its
24 possible link to Laci Peterson’s disappearance.” (Petrn, p. 455.) In a post-conviction interview
25 on October 26, 2015, Det. Stough told a journalist that police had not investigated Todd’s and
26 Pearce’s alibis because it was “expected” that “criminals” would “tell themselves lies enough
27 that they will believe it.” (Exh. 6 to Petn., p. 7.) The petition asserts that Petitioner was
28

1 prejudiced by the suppression of exculpatory evidence that MPD actually did not investigate
2 Todd's and Pearce's alibis.

3 **Subpart D is untimely without good cause or exception**

4 The exhibits to the petition establish that Petitioner knew of Det. Stough's press
5 conference statement prior to trial. (Exh. 24 to Petn., p. 5.) Petitioner again fails to plead with
6 specificity when he discovered Det. Stough's conflicting 2015 statement. In the absence of any
7 specific allegation of delay, the court therefore assumes that Petitioner was aware of the
8 statement when it was made in 2015. Thus as pled, the petition establishes that subpart D of
9 Claim 11 was first asserted ten years after Petitioner knew or should have known of the conflict
10 between Det. Stough's two statements giving rise to the claim. Petitioner pleads no good cause
11 for his failure to bring the claim in the intervening ten years, and the court finds none. Even
12 were the court to find the claim timely, the court would find that the petition and exhibits
13 demonstrate its lack of merit.

14 **Subpart D lacks merit**

15 Petitioner's exhibits actively contradict his conclusory assertion in paragraph 114 of the
16 claim that he "relied on" the "thoroughness" of MPD's investigation into the Medina burglary.
17 Carl Jensen states: "I reviewed the police reports provided to the defense concerning the
18 investigation of the Medina burglary that occurred across the street from the Petersons' home
19 sometime between December 24 and December 26, 2002, and determined that a more in-depth
20 investigation was needed into exactly when that burglary occurred and who may have been
21 involved." (*Ibid.*) Jensen's declaration further establishes that based on his determination that
22 further investigation was necessary, he interviewed both Todd and Pearce, as well as four other
23 witnesses in an attempt to establish their movements between December 24 and December 26.
24 The other witnesses included Todd's son's mother, Pearce's children's mother, Todd's sister,
25 and Todd's son's grandfather. All of those interviews occurred in 2004. (See generally Exh. 24
26 to Petn., pp. 5-21.) Based on the information obtained in those interviews, Jensen concluded that
27 Todd had in fact begun the burglary on December 24 – as stated by Pearce on March 25, 2004
28 and corroborated by Pearce's children's mother on April 22, 2004. (*Ibid.*) Jensen further

1 concluded that Todd had no alibi between 9 AM and 3 PM on December 24, based on his
2 interviews with Todd's sister, Todd's son's mother, and Todd's son's grandfather.

3 A *Brady* claim requires proof of suppression of material, exculpatory evidence. Evidence
4 is not suppressed if Petitioner actually knew it or could have discovered it with the exercise of
5 reasonable diligence. The petition demonstrates that based on Jensen's investigation, Petitioner
6 knew the police did not actually investigate Todd's or Pearce's alibis prior to trial. Furthermore,
7 the petition fails to allege a prima facie case that the conflict between Det. Stough's 2003 press
8 conference and his 2015 statement was material. Det. Stough did not testify at trial, so the
9 evidence did not impeach him. His 2003 press conference statement was not introduced into
10 evidence, so the jury did not rely on it in assessing the comprehensiveness (or lack thereof) of
11 MPD's investigation. Finally, Todd's and Pearce's statements regarding the burglary came in
12 through Officer Hicks' testimony not for their truth, but for the purpose of assessing the quality
13 of the MPD's investigation of the burglary. Since the jury was expressly instructed during Off.
14 Hicks' testimony that Todd's statement was not being admitted for its truth, not even Todd's
15 credibility was properly at issue. (107 RT 20015-20016.) The court concludes that the petition
16 fails to state a prima facie claim establishing either suppression or materiality. Claim 11, subpart
17 D is denied as both untimely and lacking in merit.

18 **Subpart E: MPD interviews with Susan and Rudy Medina**

19 Subpart E asserts that new evidence proves that Todd made calls from inside the Medina
20 residence on December asking for help getting things out of the house because he didn't have a
21 car. The claim further states that the prosecution suppressed material exculpatory information
22 that Rudy Medina told them that the burglary had to have happened on December 24 because of
23 Todd's statement that he saw mail sticking out of the mailbox. Additionally, the prosecution is
24 alleged to have suppressed exculpatory evidence that one of the police officers who spoke to
25 Susan Medina told her that the burglars admitted making calls from inside the house. Petitioner
26 asserts the suppression was prejudicial because he could have elicited the information from
27 Susan Medina at trial during her testimony and called the officer who told her that to establish
28

1 that Todd or Pearce had said it. Such evidence would have supported Petitioner's claim of third-
2 party culpability and raised further doubt about the reasonableness of MPD's investigation.

3 Subpart E adequately alleges timeliness based on Susan Medina's 2023 declaration. The
4 court has read the entirety of Susan Medina's trial testimony and each of her various reported
5 statements to police and defense investigators provided in the exhibits to the petition. Those
6 exhibits demonstrate that until 2023, Susan Medina never stated that a police officer told her that
7 the burglars of her home made a call or calls from inside the house.

8 Nevertheless, the court determines that subpart E fails to plead a prima facie claim for
9 suppression of material evidence in violation of *Brady*. Evidence is not suppressed within the
10 meaning of *Brady* unless the defendant was actually unaware of it or could not have discovered it
11 through the exercise of reasonable diligence. (*Salazar, supra*, 35 Cal.4th at pp. 1048-1049.) The
12 petition and its exhibits demonstrate that at or before trial Petitioner was actually aware of all of
13 the information in the Medinas' new statements alleged to be both exculpatory and material.
14 Petitioner knew that Todd told the police he identified the Medina house as a target based on
15 seeing mail sticking out of the mailbox because Jensen interviewed both Todd and Susan Medina
16 about that subject, with the last interview taking place August 27, 2004. (Exh. 24 to Petn., pp.7-
17 8.) Petitioner also knew that Jensen had interviewed mail carrier Russell Graybill, who told
18 Jensen he recalled that the Medinas had outgoing mail for collection on December 24. Based on
19 those interviews, Jensen concluded that Todd couldn't have seen the mail sticking out of the box
20 on any day except December 24. (*Ibid.*) Petitioner knew that the Medinas had noticed a
21 suspicious-looking man on a bicycle as they drove away from their home on December 24, based
22 on their March 27, 2004 interview with Jensen. (Exh. 24, p. 18, ¶ 76.)

23 As for the information about Todd making calls from inside the residence, that
24 information was available through Adam Tenbrink had Petitioner's trial team exercised
25 reasonable diligence. As noted *supra* in the discussion of Claim 8, the prosecution disclosed Lt.
26 Aponte's tip containing Tenbrink's statement that Todd said Laci had seen him during the
27 burglary in May 2003. When Jensen interviewed Adam Tenbrink in December 2004, Tenbrink
28 told him that Todd called him from the Medina home on December 24 to ask for help with the

1 burglary. Jensen represented to the trial judge that he was in Modesto attempting to interview
2 Adam Tenbrink in October 2004, while the defense case was still ongoing. (106 RT 19702-
3 19704.) Had Jensen interviewed Tenbrink timely, Petitioner would have discovered the
4 information about the call from inside the house with reasonable diligence. The court finds that
5 the petition fails to plead an adequate prima facie case that suppression within the meaning of
6 *Brady* occurred. Subpart E is denied for lack of merit.

7 **Subpart F: MPD investigation into the van fire**

8 Subpart F alleges that the prosecution suppressed material and exculpatory evidence
9 related to the investigation of an incendiary fire of an orange van located in an alley adjacent to
10 612 Thrasher in Modesto on the morning of December 25, 2002. The petition pleads with
11 specificity that the following investigative materials were not obtained by Petitioner or his
12 counsel for the first time until 2016, when they were provided by the Attorney General's office
13 following a request from Petitioner's habeas corpus counsel: MPD Detective Shipley's
14 investigative report documenting an interview of the last known driver of the orange van; Det.
15 Shipley's report describing the location from which the van was stolen; six color photographs
16 taken by CSO Doug Lovell during the processing of the van which showed heavy red-brown
17 staining on a mattress in the back of the van; the DOJ lab report of testing of samples from the
18 mattress which failed to detect the presence of blood; the vial used by CSO Lovell to test
19 mattress samples from which he obtained a presumptive positive result for the presence of blood;
20 and evidence/property records and chain of custody records showing the status of physical
21 evidence from the van.

22 Although the trial record demonstrates that some discovery related to the orange van fire
23 was provided to Petitioner's trial counsel in May 2003, the court finds that the petition
24 adequately pleads the failure to disclose the above-specified materials until 2016. The court also
25 finds that the 2025 statement of Melissa Morales Rodriguez asserting that she saw Todd, Pearce,
26 and others associated with them driving the van in 2002 is newly available evidence of potential
27 materiality of the van that provides good cause for failure to assert this claim between 2016 and
28 2025.

1 The court finds that the petition adequately pleads a prima facie case on the first two
2 elements of a *Brady* claim – suppression of evidence favorable to the defense – as to at least
3 some of the suppressed materials. The court does not find that suppression of the DOJ report
4 implicates *Brady* because the test conducted by the DOJ failed to detect the presence of blood. A
5 test demonstrating the *presence* of blood on the mattress would tend to establish a connection
6 between the van and Laci Peterson’s murder if the blood were Laci’s, but a test demonstrating
7 the *absence* of blood is neutral or hurtful to the defense case by tending to undercut the
8 conclusion that the staining on the mattress is blood. The rest of the materials identified in the
9 petition are favorable to the defense. The petition pleads that the burned van was discovered
10 adjacent to the home of Todd’s son’s mother’s sister. When taken in combination with the
11 timing of the van fire on Christmas morning, its temporal proximity to Laci’s disappearance, its
12 physical proximity to the Peterson home, and the various eyewitness reports that a van might
13 have been used in the Medina burglary, reports related to the investigation of the burned van
14 were potentially helpful to the defense. The identified reports and photographs were not
15 disclosed until 2016. Those facts are sufficiently pled to establish both favorable evidence and
16 suppression within the meaning of *Brady*.

17 The court finds that the petition fails to plead a prima facie case of materiality of the
18 suppressed information related to the orange van fire. The petition alleges two bases for
19 materiality: trial counsel would have insisted on conducting DNA testing on mattress cuttings
20 from the van to determine whether the forensic evidence would link the van and mattress to
21 Laci’s murder, and trial counsel would have investigated any connection between the last known
22 driver of the van and Todd and Pearce. The petition alleges those investigative avenues would
23 have been likely to result in a different trial outcome because evidence obtained would have
24 supported Petitioner’s theory that the Medina burglary occurred on December 24, that the
25 Medina burglary was related to Laci’s abduction and murder, and the Medina burglars were
26 linked to the orange van.

27 In support of those allegations, the petition presents the 2025 statement of Melissa
28 Rodriguez Morales. (See generally Exh. 4 to Petn.) Morales says that she saw Todd, Pearce,

1 Tony Lugo, Richard Zarate, and others who lived in the Airport District driving the burned
2 orange van at unspecified times prior to Laci Peterson's murder. She overheard Richard Zarate
3 discussing the Medina burglary, and relates that he said Laci Peterson interrupted the burglary
4 and was told to "go home." Morales overheard that a van was used, but cannot say if it was the
5 orange van that she saw Todd, Pearce, and the others drive. Morales did not overhear any
6 participant in the conversation admit to harming Laci Peterson or seeing or hearing any other
7 person do so. The petition also asserts that Richard Zarate was arrested in 2010 sleeping in a
8 stolen vehicle in the same trailer park where the last known driver of the orange van lived in
9 2002 and 2003. The petition pleads no other link between the last known driver of the van and
10 Todd or Pearce.

11 The record of post-conviction discovery proceedings conducted before this court
12 demonstrates that in 2019 the parties agreed to forensic testing of the mattress cuttings recovered
13 from the orange van. Based on the testing conducted in 2019, DOJ concluded that neither the
14 presence nor absence of blood on the mattress could be confirmed. Presumptive tests performed
15 for human hemoglobin were negative, but the mattress's exposure to high temperatures made the
16 results of a presumptive hemoglobin test inconclusive. Low levels of male DNA were found on
17 the mattress, but it could not be determined if they were associated with the staining on the
18 mattress or not.

19 Taken as a whole, the petition, attached exhibits, and record establish the following.
20 Melissa Rodriguez Morales saw Steven Todd, Glenn Pearce, and Richard Zarate driving the
21 burned orange van at unspecified times prior to Laci Peterson's murder. Richard Zarate was
22 overheard admitting he was part of the Medina burglary and that Laci saw it and was told to go
23 home. The burglars used a van, but Morales can't say if it was the burned van. The last known
24 driver of the burned van's only connection to Todd, Pearce, or Zarate is that Zarate was found
25 eight years after the van burned sleeping in a stolen car in the parking lot of the trailer park
26 where the van driver lived in 2002/2003. MPD interviewed the last known driver of the van and
27 searched his residence pursuant to the terms of his probation on December 31, 2002 – before
28 Todd and Pearce were identified or arrested. Police found a safe and tools at the last known

1 driver's home. Det. Banks came to the location and said that the safe and tools found were not
2 consistent with those reported stolen in the Medina burglary. Two days later, on January 2,
3 2003, police arrested Todd and Pearce. They found the Medinas' safe, identified by the Medinas
4 as theirs, on the property where Todd and Pearce lived. They found items of Susan Medina's
5 jewelry and some of the tools stolen from the Medinas. Todd and Pearce identified others to
6 whom they had distributed stolen property, and MPD recovered some of the property stolen from
7 those individuals. Neither Todd nor Pearce said a van was used – they claimed it was Pearce's
8 mother's Honda, which police saw him driving immediately prior to his arrest. The mattress
9 cuttings from the orange van were tested in 2019 and no female DNA was found, failing to
10 demonstrate any forensic link between the van and Laci Peterson's murder.

11 *Brady* materiality requires more than a showing that the suppressed evidence would have
12 been admissible, that its absence made a conviction more likely, or that using the suppressed
13 evidence to discredit a witness's testimony might have changed the outcome of the trial. Only
14 when the favorable evidence could reasonably taken to put the whole case in such a different
15 light as to undermine confidence in the verdict has the standard been met. (*Banks v. Dretke*,
16 *supra*, 540 U.S. 668, 672.) While the absence of the orange van evidence may have made a
17 conviction at trial more likely, the court is not persuaded that the petition states a *prima facie*
18 basis for believing it would have been reasonably likely to change the outcome of the trial.
19 Subpart I of Claim 11 is denied for lack of merit.

20 **Subpart G: James Romano reports**

21 Subpart G asserts a *Brady* claim based on the delayed disclosure of information conveyed
22 to law enforcement by James Romano. In part, Romano provided information relevant to the
23 Croton watch discussed *supra* in Claim 9 and Claim 11, subpart C. The court incorporates its
24 discussion of those facts by reference in this section. While incarcerated in the Stanislaus
25 County Jail, Romano began telling personnel in June 2004 that he had information about the Laci
26 Peterson case. Stanislaus County Sheriff's Deputy Kevin Safford called the MPD tipline on July
27 22, 2004 to report that Romano had information. (Exh. 24 to Petn., p. 36.) After he received no
28 response, Romano reported a tip to "Friends Outside", who called the MPD tipline on August 19,

1 2004 on his behalf. (Exh. 2A to Petn., Bates 42491.) That tip was disclosed to Petitioner’s trial
2 team on September 9, 2004 and consisted of “James Romano has information regarding Peterson
3 case.” (*Ibid.*) Deputy Terry Johnson then informed Lisa McOwen, a clerk with MPD, that
4 Romano told Johnson that a “Diana Harburn”³⁶ came to his house to sell him a watch and then
5 pawned it with her boyfriend “Jimmy” when Romano didn’t buy it. On October 14, 2004,
6 McOwen e-mailed Sgt. Mike Zahr of MPD relaying Johnson’s tip and adding that Romano had
7 told Dep. Johnson that Renfro and Broyer were involved in the Medina burglary in a brown van,
8 and that Laci came outside and yelled at them. (Exh. 2A to Petn., Bates 43055.)

9 Det. Dodge Hendee followed up on Dep. Johnson’s report by interviewing Romano in
10 custody on October 18 and 19, 2004. Romano told Hendee that he first contacted Sgt. Campbell
11 of the Stanislaus County Sheriff’s Office two months prior, and that Sgt. Campbell had assigned
12 Dep. Safford to follow up. (Exh. 2A to Petn., Bates 42987.) After talking to Romano, Det.
13 Hendee interviewed Michilene Potter on October 20. (*Id.* at Bates 49286-49289.) Det. Hendee
14 audio recorded both interviews. Det. Hendee’s reports were provided to Petitioner’s trial team
15 on October 21, 2004 and the audio recordings were provided on October 25, 2004. Petitioner
16 rested evidence in his guilt-phase trial on October 26, 2004.

17 Carl Jensen interviewed Romano on October 23, 2004. Romano told Jensen that he
18 overheard a conversation in Potter’s garage with five or six men talking about the Medina
19 burglary. They said there was a van with five or six people in it. Laci was coming up from the
20 park and told the driver to “get the hell out of here before I call the cops,” or words to that effect.
21 Romano didn’t recall the names of the men in the discussion. (Exh. 24 to Petn. p. 33.) Jensen
22 did not have Det. Hendee’s audio recordings at the time. Det. Hendee’s written report did not
23 include information that Michilene Potter had told him about an incident with Romano that
24 Jensen would have used to “jog” Romano’s memory had he known it. (*Id.* at p. 32, 36.) Because
25 of the timing of the disclosure, Jensen was not able to interview Potter himself before trial
26 evidence closed. (*Id.* at p. 35.)

27
28 ³⁶ A reference to Deanna Renfro using a misspelling of her maiden name.

1 In Det. Hendee's report, Potter said she knew Romano but did not hear the conversation
2 he claimed to have overheard and he never told her about it. (Exh. 2A to Petn., Bates 042990.)
3 She further told Hendee that she had never had five or six men in her garage. (*Ibid.*) To the best
4 of her recollection, the largest gathering of men in her garage was about three, and they would
5 have been repairmen that she called from the phone book who had nothing to do with Romano.
6 (*Ibid.*) The report said Potter said Romano was "a truthful person." (*Ibid.*). The petition alleges
7 that Det. Hendee omitted from his report that Potter told him Romano left her a note one day
8 while she was at the store with her mother. Potter no longer had the note. She recalled that it
9 said that he needed to tell her something in case something happened to him, and that he knew
10 she wouldn't rest until she found out who did it if something did happen to him. Romano
11 expressed fear for his life in the note. Potter told Det. Hendee it was very unlike Romano to do
12 something like that, and that he'd "always been pretty truthful" with her. (Exh. 24 to Petn. p.
13 36.)

14 The petition alleges that Det. Hendee's failure to include the conversation about the note
15 and Romano's character for truthfulness deprived Jensen of critical information and rendered
16 Petitioner's trial team unable to effectively use the disclosed information. The claim further
17 alleges that had the prosecution turned over Romano's information in July 2004, the defense
18 would have interviewed Romano and Potter earlier and it would have supported a third-party
19 culpability defense. In combination with the other allegedly suppressed evidence, Petitioner
20 alleges that the late-disclosed Romano information was reasonably likely to have changed the
21 trial outcome.

22 **Subpart G is procedurally barred by the *Clark* rule**

23 Subpart G of Claim 11 relies entirely on information known to Petitioner prior to the
24 close of trial. The statements that Det. Hendee obtained from Romano and Potter were turned
25 over in both written summary and audio recording in October 2004. Jensen's interview of
26 Romano occurred in October 2004, and he became aware of the omission of Potter's discussion
27 of the note from Det. Hendee's report when he listened to the audiotape of the Potter interview at
28 the time of its disclosure. Thus, the alleged suppression, the favorable nature of the material to

1 the defense, and the impact on the delay in disclosure on the defense's ability to make use of the
2 information were all known to Petitioner in October 2004 eleven years prior to the filing of the
3 2015 petition. Petitioner asserts no basis for failure to plead the claim in his first petition.

4 The court finds that the allegedly late disclosure of Romano's and Potter's statements
5 was not an error of constitutional magnitude that rendered the proceeding so unfair as to result in
6 a miscarriage of justice, nor did it "point unerringly" to actual innocence alone or in combination
7 with the other asserted claims in the petition. By his own admission to Det. Hendee, Romano
8 had a "sketchy" memory of the events he reported to both Det. Hendee and Jensen. (Exh. 2A to
9 Petn, Bates 042987.) Romano attributed his memory difficulties to a surgery for appendicitis on
10 Christmas Day 2002 and to his long-term drug use. (*Ibid.*) His description of the watch pawned
11 by Renfro and Scarlata varied considerably from both the picture of Laci's watch and from the
12 watch that Renfro and Broyer described. For example, Romano described the watch he saw as
13 silver or white gold. (Exh. 2A to Petn., Bates 042987.) Based on the lighting and background of
14 the photos of Laci's watch, some of them appeared to show yellow gold and some appeared
15 more like white gold. (See fn. 31, *supra*.) Both of the tickets for the pawned Croton watch
16 described it as yellow gold. (Exh. 2A to Petn., Bates 0699, 042678.) Romano described the face
17 of the watch he saw as more oval than round. (Exh. 2A. to Petn., Bates 042987.) Laci's Croton
18 watch face was round. Renfro described the face of the pawned watch as oblong, Broyer
19 described it as rectangular. (See Claim 9, *supra*.) Romano's information about Laci confronting
20 the burglars was third-hand hearsay from unidentified sources. Potter's statement contradicted
21 Romano's by asserting that the meeting he described between five or six men could not possibly
22 have taken place in her garage. Romano asked Hendee for a favor in exchange for his
23 information. (Exh. 2A to Petn., Bates 042986.) He also conveyed unsubstantiated rumors that
24 the Border Brothers may have killed Laci because Petitioner owed them money, or that the
25 Hell's Angels had been involved. (Exh. 2A to Petn. Bates, 042989.) Romano told Det. Hendee
26 that even he doubted the rumor about the Hell's Angels. (*Ibid.*)

27 Potter didn't say that the note Romano left referenced any information he had about Laci
28 Peterson's murder. Potter denied that Romano ever told her about the overheard conversation.

1 Romano's potentially exculpatory information – that he overheard others talking about Laci
2 confronting the Medina burglars – was inadmissible hearsay. Potter's opinion of Romano's
3 character for truthfulness would only have been admissible if his testimony was admissible or
4 presented at trial. As to the Medina burglary rumor, it was inadmissible. As to the pawn of the
5 Croton watch, the basis for his conclusion that it was Laci's watch was highly impeachable based
6 on his description. The court finds no exception to the procedural bar under the *Clark* rule for
7 subpart G.

8 **Subpart G lacks merit**

9 The court concludes that Claim 11, subpart G fails to plead a prima facie claim of
10 delayed *Brady* disclosure in two respects. First, the petition does not establish that disclosure
11 was actually delayed. Second, the petition fails to establish a prima facie claim of materiality for
12 the information delayed.

13 Prosecutors have a constitutional duty to produce exculpatory material to the defense
14 voluntarily without demand. The duty to learn of and disclose exculpatory material extends to
15 all other prosecutorial and investigative agencies acting on the prosecution's behalf, including
16 police agencies. A prosecutor has a duty to search for and disclose exculpatory evidence if the
17 evidence is possessed by a person or agency that has been used by the prosecutor or the
18 investigating agency to assist the prosecution or the investigating agency in its work. The
19 important determination is whether the person or agency has been acting on the government's
20 behalf or assisting the government's case. *People v. Superior Court (Barrett)* (2000) 80
21 Cal.App.4th 1305, 1315. A prosecutor does not have a duty to disclose exculpatory evidence to a
22 defendant unless the prosecution team actually or constructively possesses the information.
23 Information possessed by an agency that has no connection to the investigation or prosecution of
24 the criminal charge against the defendant is not possessed by the prosecution team, and the
25 prosecution has no duty to search for or disclose such material. (*Ibid.*)

26 Where an agency serves a hybrid role – part investigatory and part third party, the
27 prosecution's duty to search for exculpatory information in the possession of that agency extends
28 only to the agency in its investigative role. Records kept by an agency in the course of its

1 administrative and security function in housing prisoners serving sentences are not subject to the
2 prosecution's duty to seek out favorable material. Those records are obtainable by defense
3 subpoena duces tecum. (*Id.* at p.1318-1319; see also *People v. Madrigal* (2023) 9 Cal.App.5th
4 219 [subpoena duces tecum issued by defense to obtain jail recordings of inmate phone calls of
5 former co-defendant who testified as government's cooperating witness in exchange for plea
6 agreement.]])

7 The instant petition alleges the relevant period of delayed disclosure was from July 2004.
8 Under *Barrett, supra*, statements Romano made to custodial staff of the Stanislaus County Jail in
9 the execution of their duties supervising his incarceration while serving a sentence were not
10 subject to the prosecution's duty to seek out favorable material. The prosecution had no duty to
11 seek out or disclose information obtained by the Stanislaus County Sheriff's Office obtained in
12 the operation of the jail until the favorable information was disclosed to either MPD or another
13 investigative agency assisting in the prosecution.

14 While the petition incorporates allegations in Jensen's declaration that Deputy Safford
15 called the MPD tipline on July 22, 2004, the relevant portion of the declaration states only that
16 "Deputy Kevin Safford called the MPD tip line to report that inmate Romano had information."
17 (Exh. 24 to Petn., Bates 36.) The bare allegation that Dep. Safford told MPD that "Romano had
18 information," without more, does not establish the prosecution's possession of favorable
19 information. By contrast, the petition does provide the full text of both the "Friends Outside" tip
20 and the Dep. Terry Johnson's tip. (Petn., p. 37.) The "Friends Outside" tip, produced to the
21 defense on September 9, 2004, said Romano "has information regarding Peterson case." Dep.
22 Johnson's tip conveyed specific information about Romano's statements about both the pawned
23 watch and the overheard conversation. The timeline pled in the petition establishes that Dep.
24 Johnson reported the tip to MPD on October 15. Det. Hendee interviewed Romano in custody
25 on October 18 and 19. He interviewed Potter on October 20. His written report of all of those
26 statements and the Dep. Johnson tip was disclosed to the defense on the morning of October 21,
27 and the full audio recordings of the interviews on October 25. Trial recessed early for the day on
28 Thursday, October 21, 2004 to give the defense team time to go to Modesto and interview

1 Romano and Adam Tenbrink, with Mr. Geragos telling the trial judge that “if [he] hit a deadend
2 over the weekend, I’m just going to shut this thing down on Tuesday.” (RT 19701-19711.)
3 Defense then rested its evidence on Tuesday, October 26, 2004 without calling Romano or
4 Potter. Once the prosecution received Dep. Johnson’s disclosure of favorable information, they
5 caused it to be investigated and turned over to the defense within two days of interviewing the
6 favorable witness. Petitioner’s trial team requested and received a trial recess to investigate the
7 information. They sought no further extension and did not use the information provided. The
8 petition fails to establish a prima facie case that the delay of two days between the prosecution’s
9 interview of Romano and the report being provided to the defense is of constitutional
10 significance under *Brady*.

11 The court also finds that the petition fails to plead a prima facie case of the materiality of
12 Romano’s information under *Brady*. Romano’s report of Laci confronting the burglars was
13 inadmissible third-hand hearsay from unidentified sources. His claim of seeing the pawned
14 watch was admissible, but ambiguous as a means of proving that the pawned watch belonged to
15 Laci. Calling him would have run the risk of the prosecution using their rebuttal case to present
16 testimony of Renfro, Broyer, and Newnam that the pawned watch was not and could not have
17 been Laci’s. The court finds that there is no reasonable probability that presenting Romano’s
18 testimony – either alone or in combination with the other material alleged in the petition – would
19 have resulted in a more favorable outcome at trial. Claim 11, subpart G is denied for lack of
20 merit.

21 **Subpart H: Laci knew about the boat purchase**

22 Subpart H asserts that the prosecution suppressed evidence of a statement given by Peggy
23 O’Donnell, whose business was in Petitioner’s warehouse complex. O’Donnell told police that
24 Laci Peterson came to her business and asked to use her bathroom on December 20 or December
25 23. The visit was significant because Petitioner had purchased the fishing boat on December 9,
26 and Laci’s presence at the warehouse after that date would be evidence tending to demonstrate
27 that she was aware of the boat. Petitioner asserts that Dets. Brocchini and Grogan attempted to
28 prevent him from learning of O’Donnell’s statement. As to Det. Brocchini, Petitioner cites

1 Brocchini’s testimony that he “excised” O’Donnell’s statement from a written report he
2 authored. As to Det. Grogan, the petition avers that he authored a report about a month after Det.
3 Brocchini’s testimony about the “excising” in which Det. Grogan documented having “a vague
4 memory of a conversation with a reporting party regarding Laci Peterson planning to visit or
5 having visited the warehouse.” The petition states that Det. Grogan also removed the
6 information from a report because he wanted to review it before turning it over to defense
7 investigators.

8 **Subpart H is procedurally barred by the *Clark* rule**

9 Every piece of evidence cited by Petitioner in support of subpart H of the *Brady* claim
10 appears either on the face of the trial record or in Bates material disclosed to Petitioner’s trial
11 team at or before trial. The petition incorporates by reference the facts pled in Claim 6
12 demonstrating that Laci Peterson was aware of the boat purchase, but makes no allegation that
13 the prosecution either knew of or suppressed any statement by Sharon Rocha that Petitioner had
14 told her that he and Laci purchased the boat for Grantski as a surprise gift. Those facts are
15 neither relevant to his *Brady* claim nor necessary for its assertion. The petition pleads no reason
16 for the failure to bring this claim in the 2015 petition, and the court finds no exception requiring
17 its consideration. Claim 11, subpart H is procedurally barred.

18 **Subpart H lacks merit**

19 Subpart H fails to plead a prima facie claim for *Brady* violation. The pled factual
20 allegations also contain significant omissions and misrepresentations that are revealed by other
21 portions of the petition itself and the incorporated exhibits.

22 Paragraph 280 pleads: “When Brocchini learned *from O’Donnell* that Laci was at the
23 warehouse after the boat was purchased – which was counter to their theory that Scott ‘secretly’
24 bought the boat – he ‘excised’ that information from the written interview report he filed, which
25 was given to the defense. (57 RT 11195.)” (Petn., p. 475, italics added by court.) Det.
26 Brocchini never interviewed Peggy O’Donnell. (57 RT 11192.) In the cited portion of the
27 transcript, Petitioner’s trial counsel is cross-examining Det. Brocchini regarding a report of an
28 interview conducted with Greg Smith, a real estate agent for Petitioner’s warehouse space. The

1 discussion of the subject begins several pages earlier. (57 RT 11187.) In the earlier portion of
2 the transcript, the examination demonstrates that Det. Brocchini's report was a telephone
3 interview, which the petition itself documents. (57 RT 11188, Petn., p. 121, fn. 65.) The
4 allegation also omits reference to the portion of the exchange one page before the cited material
5 where Det. Brocchini testified that O'Donnell was interviewed by someone else. The petition
6 reveals that Det. Brocchini knew that because in the "excised" portion of his interview with
7 Smith, Smith told him that "he had spoken to Peggy several times regarding Laci using Peggy's
8 restroom on 12-23, and Peggy told Smith that she had already been interviewed by law
9 enforcement." (Petn. p. 121, fn. 65.)

10 Paragraph 281 pleads: "Det. Brocchini's misconduct *did not come to light until June 24,*
11 *2004*, when he was testifying at trial and admitted to excising information from his police report
12 that a witness saw Laci at Petitioner's warehouse where the Petersons' boat was stored. (57 RT
13 11195.)" (Petn., p. 475.) By contrast, the petition exhibits establish that the August 8, 2003
14 dictation tape of Det. Brocchini's interview with Smith – which trial counsel played in open
15 court during Det. Brocchini's exam to impeach him on the "excised" information – was turned
16 over to the defense in discovery in September 2003, approximately 9 months prior to Det.
17 Brocchini's testimony. (Exh. 2B to Petn., AHCP-199.)

18 Paragraph 283 pleads: "The only reason the defense learned Det. Brocchini had
19 suppressed the exculpatory *Brady* evidence was because a defense investigator discovered that
20 fact as part of the defense investigation." (Petn., p. 475.) By contrast, footnote 65 of the petition
21 attributes the "discovery" of Detective Brocchini's alleged suppression to the court's order that
22 Det. Brocchini provide his notes and audiotapes of his report dictations during discovery. (Petn.,
23 p. 121, fn. 65.) Footnote 65 also cites to another source of information from which Petitioner
24 learned of O'Donnell's statement - cited only once in the entire petition and nowhere in the
25 allegation of *Brady* suppression of O'Donnell's statement – the report of Detective Denis
26 Holmes, authored December 30, 2002. Det. Holmes took the statement of O'Donnell that Laci
27 Peterson used her warehouse bathroom on either December 20 or December 23. (Petn., p. 121,
28 fn. 65; Exh. 2A to Petn., Bates 1973.) That report was disclosed to defense and signed for by

1 Pavelic on May 2, 2003 in the first batch of discovery provided to trial counsel Geragos on the
2 same day that he first appeared in the action. (Exh. 2B to Petn., ACHP-003-004.)

3 To establish materiality, Paragraph 287 pleads: “Had the defense known Det. Brocchini
4 and Det. Grogan were suppressing evidence that Laci knew about the boat purchase, the defense
5 would have used that information to impeach both detectives when they testified.” (Petn., p.
6 476.) First, the trial testimony cited in support of Paragraphs 280 and 281 establish that trial
7 counsel did impeach Det. Brocchini with his alleged suppression at trial. The additional portions
8 of the exchange cited by the court and the exhibits to the petition show that Petitioner’s trial
9 counsel confronted Det. Brocchini with the removal of the information and then played the
10 dictation tape in Det. Brocchini’s own voice before the jury to establish what information had
11 been removed. (57 RT 11191; Exh. 2B to Petn. AHCP-199.) Second, the record partially cited
12 by Petitioner regarding Det. Grogan’s removal of similar information from a report demonstrates
13 that Petitioner’s trial counsel was aware of the removal and contemplated using it in cross-
14 examination. The Petitioner cites a portion of a chambers conference where trial prosecutor
15 Fladager admits that Det. Grogan removed information. (94 RT 17734.) The rest of the
16 exchange reveals that the trial court ruled that it would permit Mr. Geragos to cross-examine
17 Det. Grogan on the removal. If he did, the trial court ruled that it would permit Ms. Fladager to
18 elicit information explaining why Det. Grogan withheld the information. (94 RT 17732-17738.)
19 Det. Grogan indicated he removed the information because witnesses had alleged that defense
20 investigators were showing cash to witnesses to try to get statements, had removed property from
21 the Petitioner’s warehouse without the owners’ permission, had surveilled law enforcement
22 agents, and had purchased title to and seized a van that was the only means of transportation for
23 a group of individuals unrelated to the case. (*Ibid.*, Exh. 2A to Petn., Bates 041593.) In
24 chambers, Mr. Geragos expressed dissatisfaction that he would have to make the decision about
25 whether to pursue the cross-examination “in flight.” (94 RT 17738.) His cross-examination of
26 Det. Grogan shows he did not pursue questioning on the subject.

27 As noted *supra*, information that is presented at trial is not suppressed within the meaning
28 of *Brady*. Information that is actually known to the Petitioner at trial or which could be

1 discovered by the exercise of reasonable diligence is also not suppressed within the meaning of
2 *Brady*. Petitioner's own citations establish that the jury heard, through Det. Grogan's testimony,
3 the statements of both Peggy O'Donnell and Rosemary Ruiz that Laci Peterson visited
4 Petitioner's warehouse on December 20, after he had acquired the boat and it was being stored
5 there. That information was not suppressed. The exhibits to the petition not cited in the factual
6 allegations to this claim demonstrate that O'Donnell's statement was disclosed by the
7 prosecution to the defense on May 2, 2003, the day that Mr. Geragos first appeared in the case.

8 Petitioner's allegations of materiality also lack merit. The petition claims that knowing
9 of Det. Brocchini's and Det. Grogan's removal of information from reports would have altered
10 trial counsel's cross-examination strategy. The record contradicts that assertion. Trial counsel
11 did cross-examine Det. Brocchini's removal of information from his report, quite effectively
12 based on the trial transcript. The record affirmatively establishes that trial counsel was aware of
13 Det. Grogan's removal of information, considered using it in cross-examination, and apparently
14 elected not to do so based on an adverse trial court ruling that would have allowed the
15 prosecution to counter the examination by revealing unflattering information about the alleged
16 conduct of Petitioner's investigators.

17 *Brady* materiality requires more than a showing that the suppressed evidence would have
18 been admissible, that its absence made a conviction more likely, or that using the suppressed
19 evidence to discredit a witness's testimony might have changed the outcome of the trial. Only
20 when the favorable evidence could reasonably taken to put the whole case in such a different
21 light as to undermine confidence in the verdict has the standard been met. (*Banks v. Dretke*,
22 *supra*, 540 U.S. 668, 672.) As indicated *supra* in the ruling on Claim 6, the jury heard evidence
23 from several sources suggesting that Laci was aware of the purchase of the boat. In the court's
24 view, additional cross-examination of Det. Grogan on that subject alone or in combination with
25 all of the other allegedly suppressed evidence would not reasonably have put the entire case in a
26 different light. Claim 11, subpart H fails to state a prima facie claim of *Brady* suppression and
27 lacks merit.

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In view of the allegations pled in support of Claim 10 in the 2015 petition, previously denied on its merits by the California Supreme Court, a *Brady* claim for suppression of Lt. Aponte's tip is patently meritless. Information actually known to the defendant or available to him through the exercise of reasonable diligence is not suppressed within the meaning of *Brady*. (*Salazar, supra*, 35 Cal.4th at pp. 1048-1049.) Both the 2015 petition and the instant petition demonstrate that the prosecution turned over Lt. Aponte's tip containing the entire substance of Adam Tenbrink's statement that Todd said Laci saw him committing the Medina burglary to Petitioner's trial counsel on May 13, 2003. Assuming there was a follow-up investigation by MPD that was suppressed, Lt. Aponte witnessed the only interview between Shawn Tenbrink and the unnamed MPD detective and verified that Shawn Tenbrink denied having any information about the Peterson case. That denial is not favorable to the defense and therefore not *Brady* material. Adam Tenbrink told Jensen that the police never interviewed him. This subpart fails to plead a prima facie case of suppression under *Brady*. In addition to being procedurally barred, it lacks merit and is denied on that basis.

Claim 12 of the instant petition asserts that: “Petitioner was denied his right to due process when the prosecution presented false arguments to the jury; new evidence undermines the prosecution’s entire circumstantial case against Petitioner and lays bare the falsity of the prosecution’s entire argument presented at trial.” More specifically, the factual allegations pled

1 in support of the claim attack the prosecution’s argument that Petitioner used the boat cover to
2 conceal Laci Peterson’s body while driving to the Berkeley Marina and assert that the prosecutor
3 falsely argued during a pretrial hearing that Laci Peterson’s remains were found in the same
4 pants she wore on the night of December 23, 2002. The People’s Informal Response asserts
5 various procedural bars to Claim 12 and that it fails to establish a prima facie claim for violation
6 of the Petitioner’s due process rights by false argument. In reply, Petitioner claims that any
7 procedural bar is inapplicable because the claim is based on new evidence not introduced at trial
8 that now demonstrates the falsity of the closing argument offered at trial.

9 It is well settled that it is misconduct for a prosecutor to base argument on facts not in
10 evidence. *People v. Mendoza* (2016) 62 Cal.4th 856, 906. It is also misconduct for a prosecutor
11 to “suggest that evidence available to the government, but not before the jury, corroborates the
12 testimony of a witness.” (*Id.* at p. 927.) “A prosecutor’s misconduct violates the Fourteenth
13 Amendment to the United States Constitution when it ‘infects the trial with such unfairness as to
14 make the conviction a denial of due process’. [Citations.] In other words, the misconduct must
15 be ‘of sufficient significance to result in the denial of a defendant’s right to a fair trial.’” (*Id.* at p.
16 960, citing *People v. Clark* (2011) 52 Cal.4th 856, 860.) Even if the misconduct does not rise to
17 that level, it may be error under state law “if it involves the use of deceptive or reprehensible
18 methods to attempt to persuade either the trial court or the jury.” (*Ibid.*) When a claim of
19 misconduct is based on the prosecutor’s comments before the jury, the question is whether there
20 is a reasonable likelihood that the jury construed or applied any of the complained-of remarks in
21 an objectionable fashion.” (*Id.* at p. 905.) While a prosecutor may not misstate the facts or the
22 law, prosecutors enjoy “wide latitude in commenting on the evidence, including urging the jury
23 to make reasonable inferences and deductions therefrom.” *People v. Coffman and Marlow*
24 (2004) 34 Cal. 4th 1, 96.

25 **Claim 12 is procedurally barred by the *Dixon* rule**

26 The trial record demonstrates that Petitioner’s counsel raised no objection to the portions
27 of closing argument alleged to be false, and did not challenge the assertedly false argument on
28 direct appeal. “[T]he writ [of habeas corpus] will not lie where the claimed errors could have been,

1 but were not, raised upon a timely appeal from a judgment of conviction. ... [T]he *Dixon* rule is
2 consistent with the concept of habeas corpus as an extraordinary remedy available in those
3 infrequent and unusual situations in which regular appellate procedures prove inadequate. In short,
4 a litigant is not entitled to raise an issue on habeas corpus after having failed to raise the same issue
5 on direct appeal.” *Reno, supra*, 55 Cal.4th 428, 490. In reply, Petitioner asserts an exception to all
6 procedural bars because his claim is based on new evidence, apparently referencing the entirety of
7 the factual allegations pled in support of his claim to argue that the prosecutor’s argument *at the*
8 *time of trial* was later proven to be false by evidence *not previously introduced at trial* and (by the
9 present definition of new evidence) *discovered after trial*. Such an argument might have merit for
10 avoiding a procedural bar if the claim asserted that evidence discovered after trial by the defense
11 but known to the prosecution at trial demonstrated that the prosecutor relied on false evidence in
12 argument, but that is not what Claim 12 pleads. Claim 12 as clarified in reply appears to argue
13 that because the petition now asserts information unknown to either side at trial that contradicts
14 the People’s theory argued in closing, the prosecutor violated Petitioner’s due process rights by
15 presenting argument that neither side at the time could know was false. The court finds that
16 argument unavailing, since the gravamen of a due process claim for misconduct in closing
17 argument is the use of “deceptive or reprehensible” methods to persuade the trier of fact.

18 In any event, the factual allegations pled in support of claim 12 are not newly discovered
19 evidence. Petitioner bases his present claim of false argument on his own declaration asserting
20 that he did not use the boat cover when driving to the Berkeley Marina. That is not “new evidence”
21 within the meaning of section 1473 because it was not discovered after trial – he knew it both
22 before and at trial. Nor is evidence of the condition of the tie-down loops on the boat cover
23 “discovered after trial.” The boat cover was physically seized by the police, forensically tested,
24 held in evidence, and available for inspection to Petitioner’s trial team before and at trial. Evidence
25 of the presence of apparent red paint transfer and wood fragments on the side of the boat in a
26 position inconsistent with the theory that Petitioner had the cover on the boat when he backed it
27 down the dock at the marina was also not “discovered after trial.” The lack of any forensic
28 evidence of blood, urine, or feces on the boat cover was presented at trial and not discovered after

1 trial. The presence and location of the “End of Ramp” signs on the dock at the Berkeley Marina
2 and the lack of any forensic testing of samples of the red paint on those signs was known at trial
3 and not discovered afterwards. In summary, none of the facts pled in support of the allegation that
4 the prosecution offered false argument regarding the boat cover meets section 1473(b)(1)(C)(ii)’s
5 definition of “new evidence.” Similarly, each piece of evidence pled in the factual allegations to
6 Claim 12 asserting the falsity of the prosecution argument that Laci Peterson’s remains were found
7 in the same pants she wore on the night of December 23 is based on either testimony presented at
8 trial or statements given to police and disclosed to Petitioner’s trial team before trial.

9 The court finds that Claim 12 is procedurally barred by the *Dixon* rule without good cause
10 and without applicable exception.

11 **Claim 12 lacks merit**

12 Were the court to reach the merits of Claim 12, the court would find that it fails to
13 establish a prima facie showing of false argument violating Petitioner’s due process rights.
14 Prosecutors are permitted wide latitude in commenting on the evidence at trial, including
15 reasonable inferences and deductions thereon. The prosecution’s boat cover argument at trial
16 was a reasonable inference from the admitted trial evidence. The trial evidence established that
17 Petitioner had told police he went to the Berkeley Marina to fish with the aluminum boat towed
18 by a trailer. The boat’s former owner told police that the boat was sold with a cover, and
19 identified photographs depicting how the cover could be secured to the boat while it was being
20 towed on a trailer. Both the cover and the blue tarp were observed by police in the bed of
21 Petitioner’s truck on the night he reported Laci Peterson missing, even though the boat had been
22 left at the warehouse at that point. The cover was later found in Petitioner’s shed under a leaf
23 blower that had leaked gas on it. The trial evidence further demonstrated that the boat cover had
24 concrete debris in it which was consistent with the concrete composition of the homemade
25 anchor for the boat and the cement debris on the Petitioner’s makeshift workbench at the
26 warehouse. Laci Peterson’s body washed up 90 miles from Modesto but within two miles of the
27 location Petitioner admitted he was fishing on the day she disappeared. The prosecution’s
28 argument regarding the use of the blue tarp and boat cover to conceal her body during

1 transportation were reasonable inferences that could have been drawn from the admitted trial
2 evidence to explain how Petitioner (who admitted taking the boat to the marina) was able to
3 transport the body (which was later found near the same marina) without being seen using the
4 physical evidence police observed in his truck the night he reported her missing. The existence
5 of potentially conflicting evidence in the record does not render the argued inferences
6 unreasonable.

7 Petitioner complains that no witness testified that the boat cover was “soaked in gasoline”
8 as argued by the prosecution in opening statement. The complaint is without merit. Witnesses
9 testified to a wet stain on the cover and an odor of gas coming from it that was so strong that it
10 had to be aired out over a fence before it could be transported in a closed vehicle. The
11 criminalist who later tested it commented on the lingering odor of gas. Use of the word “soaked”
12 a single time in opening statement was neither unreasonable based on the anticipated trial
13 evidence nor sufficiently pervasive to have “infected the trial with such unfairness as to make a
14 conviction a denial of due process.”

15 Finally, the facts pled in support of Claim 12 assert that the prosecution falsely stated in a
16 pre-trial hearing that the pants in which Laci Peterson’s remains were recovered were “the exact
17 same” pants that Amy Rocha described from the night of December 23. Petitioner cites no case,
18 and the court has found none, suggesting that a comment by the prosecution in a pretrial hearing
19 not repeated in argument to the jury could possibly create “a reasonable likelihood that the jury
20 construed or applied any of the complained-of remarks in an objectionable fashion.” *People v.*
21 *Mendoza, supra*, 62 Cal.4th at p. 960. Claim 12 fails to plead a prima facie claim for false
22 argument resulting in denial of due process, and the court denies it as meritless.

23 **CLAIM 13**

24 Claim 13 of the instant petition asserts: “Claim 13: Cumulative Error.” (Petn., p. 499.) It
25 contains a single allegation pled in support: “Petitioner realleges the factual allegations set forth
26 above in Claims 1-12.”

27 “In theory, the aggregate prejudice from several different errors occurring at trial could
28 require reversal even if no single error was prejudicial by itself. “[A] series of trial errors, though

1 independently harmless, may in some circumstances rise by accretion to the level of reversible
2 and prejudicial error.’ (See *People v. Hill* (1993) 17 Cal.4th 800, 844.) To the extent these errors
3 are based on the appellate record, however, a petitioner cannot wait and raise the cumulative
4 error claim for the first time on habeas corpus; he must raise the claim on appeal. (Citation
5 omitted.) Alternatively, if a petitioner has a previously unraised claim based on newly
6 discovered evidence that was not reasonably discovered at the time of trial (or even the first
7 habeas corpus petition), the cumulative prejudice flowing from that single error, when combined
8 with the prejudice from other errors already raised and rejected on appeal for lack of individual
9 prejudice, could rise to a level at which the court could conclude the petitioner was denied a fair
10 trial, even if no single error required reversal. (*In re Jones* (1996) 13 Cal.4th 552, 583.) As
11 noted, claims previously rejected on their substantive merits – i.e., this court found no legal error
12 – cannot logically be used to support a cumulative error claim because we have already found
13 there was no error to cumulate.” *Reno, supra*, 55 Cal.4th at pp. 483-484.

14 The court has found the lack of a prima facie case of a meritorious claim as to every
15 claim pled in the instant petition to which no procedural bar applies. Petitioner has not asserted a
16 meritorious “previously unraised claim based on newly discovered evidence” that entitles him to
17 the court’s reconsideration of any cumulative error as to procedurally barred claims. The court
18 finds the petition fails to establish a prima facie claim of cumulative error. Claim 13 is denied.

19 CLAIM 14

20 Claim 14 reincorporates the allegations of each of the previous 13 claims, arguing that
21 collectively the petition and supporting exhibits establish a prima facie claim for actual
22 innocence. Petitioner contends that in reviewing a claim of actual innocence, the court “must
23 consider all the evidence, old and new, incriminating and exculpatory, without regard to whether
24 it would necessarily be admitted under rules of admissibility that would govern at trial.” *House v.*
25 *Bell* (2006) 518, 538. That is the standard for determining whether a habeas petition passes
26 through the actual innocence “gateway” for federal review of a state court habeas denial of
27 procedurally defaulted claims. (*Id.* at 519.) It appears to be inconsistent with the statutory
28 standard articulated in section 1473, subd. (b)(1)(C)(i) for a new evidence claim, which requires

1 the new evidence to be admissible. As demonstrated in the court's review of the 13 previously
2 asserted claims raised and denied either as procedurally barred, meritless, or both, much of what
3 Petitioner pleads now is neither new, admissible, nor material. The court has reviewed the
4 allegations and supporting evidence of the petition against the trial record, in its entirety.
5 Considering in its totality that which is genuinely newly discovered, admissible to a prima facie
6 standard, and material against the evidence adduced at trial in support of a conviction, the court
7 remains unpersuaded that Petitioner has stated a prima facie claim for relief on the basis of actual
8 innocence. Claim 14 is therefore denied.

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11 DATED: 4/27/2026



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ELIZABETH M. HILL
Judge of the Superior Court of California
County of San Mateo

Table 1: Claim 4 summary of paragraphs alleging section 1473 new evidence

Paragraph #	New evidence alleged	Source
8, 61-67, 112	Laci saw and confronted Medina burglars on 12/24/02 and circumstances thereof	Exh 4 - Melissa Rodriguez Morales
26, 29, 30, 44	Destruction of 1/2/2003 Todd/Pearce interviews	Exh 2B ACHP 052-063
27	Police told Todd they knew Scott did it	Exh. 31 – DM
31 sub d, 32	Carlos Hernandez reported seeing white van with three men outside Medina residence on morning of 12/24/02 and reported to MPD	Exh. 30 – Carlos Hernandez
34	2023 interview Kim V, added “junky” and “beat up” to prior description of beige two-tone van selling stolen stuff at Yosemite, added that she never saw van again after 1/1/03 report to tip line	Exh. 34 – Paige McGrail, paragraphs 26-33
55	Det. Stough gave post-conviction interview stating MPD never checked Todd/Pearce alibis because he expected they would lie	Exh. 6 – Geoge Gudgell, paragraph 28
57	Tioga address that Todd claimed to visit family on Christmas Day was uninhabitable in 12/2002	Exh. 6 -George Gudgell, paragraph 32
66, 112	Orange van fire – burned to cover up a crime	Exh. 5 - Bryan Spitulski
68	Police told Susan Medina a burglar admitted to making call from inside her home	Exh. 23 - Susan Medina
69	Todd called DM from inside Medina home asking for help removing safe	Exh. 31 - DM
71	Todd called Adam Tenbrink from Medina home asking for help removing property	Exh. 24 - Carl Jensen, Exh. 43 - Jason DeWitt
81	2013 letter to Petitioner from Danny Chapman re: statements of DM to Chapman	Exh. 6, George Gudgell, paragraph 33
82-83	Danny Chapman statements to DLB	Exh. 44 - DLB
84	DM statements to RR	Exh. 45 - RR
85	DM statements to ST and KD	Exh. 46 – ST, Exh. 47 - KD
87-88	JE statements re: involvement of Modesto Hardcore Skinheads and social media re: connections between inmate hearsay declarants	Exh. 49 – JE, Exh 2.- Danielle Leaf
90	Todd was known to ride around on his bike to commit burglaries	Exh. 24 – Carl Jensen; Exh. 31 DM
114-121, 123-126, 128, 132-136, 138-139, 143, 170, 173	Orange van fire Shipley report and other content disclosed in 2016	Exh. 5 – Bryan Spitulski, Exh. 2B – AHCP-015-050, Exh. 21 – Mehul Anjaria
140	Arrest of R.Z. in 2010	Exh. 2B AHCP-105, Exh. 4, Melissa Rodriguez Morales
141	Arrest of T.L. in 2010	Exh. 2B AHCP-202-203

Table 1: Claim 4 summary of paragraphs alleging section 1473 new evidence

142, 143	7/29/2010 destruction of physical evidence from van	Exh. 2B AHCP-043
145-146, 153	Association between Deanna Renfro and Jason Nolan	Exh. 2 – Danielle Leaf
147	MPD surveillance of Deanna Renfro resulting in arrest for methamphetamine sales/manufacture	Exh. 2B AHCP-079-080
150, 154, 173, 184	Morales overheard RZ and TL conversation about Medina burglary at 335 S. Santa Cruz, same house where AMW tipster alleged Jason Nolan bragging about murder of Laci Peterson	Exh 4 - Melissa Rodriguez Morales,
152	1999 Modesto Bee reported that Nolan brothers were investigated in connection with Yosemite murders	Exh 7 – Lt. Adam Bercovici
161-162	Post-conviction Sam Newnam said MPD put a hold on pawned Croton watch and seized it	Exh. 8 - Shareen Anderson
167, 171, 174-180	MPD investigation failed to conform to basic police procedures	Exh.7 – Lt. Adam Bercovici

Table 2: Claim 4 summary of admissibility of section 1473 new evidence

Source	Testimony/evidence	Admissible/potentially admissible
Exh.2 – Danielle Leaf	Allegations 87 & 88: social media investigation of marriage history of inmates who made hearsay statements to JE demonstrating the two inmates he spoke to each married the same woman, who is presently married to a former member of the Modesto Hardcore Skinheads Allegations 145, 146, 153: printout of Deanna Renfro’s 2014 Facebook friends list, results of commercial background search and Ancestry.com research	No basis for admissibility. The social media posts at issue are hearsay without exception. Relevance contingent on admissibility of hearsay statements of inmates who spoke to JE, which are also inadmissible multiple hearsay with no exception. No basis for admissibility. Database and Ancestry.com searches at issue are hearsay without exception. 2014 Facebook friends list not relevant/probative of relationship existing between Renfro and Nolan twelve years prior.
Exh. 2B ACHP 015-050	015-018: report of SCDAI Craig Grogan documenting collection of MPD and MFD investigative materials related to orange van fire 019-021 not newly discovered. Disclosed to Petitioner on 5/2/2003 as Bates 4105-4106, see Exhibit A. Allegation 116, 117, 118, 119, 120, 121, 170, 173: 022-023 – Det. Shipley report of investigation of van theft, interview and search of last known driver, collection of evidence. 024-025 – Bryan Spitulski supplemental report of collecting samples from van at A&R Towing 026-027 – Bryan Spitulski supplemental report of contact with Borden insurance adjustor	015-018 – potentially admissible/likely to lead to admissible evidence related to chain of custody of materials gathered, timing of production, degree to which investigated prior to Petitioner’s trial. 022-023 – admissible/likely to lead to admissible evidence. Documents first-hand activities and observations of percipient witnesses available or likely to be available. 024-025 – admissible/likely to be admissible. First-hand observations of percipient witness. 026-027 – no prima facie showing of admissibility. Multiple hearsay without

Table 2: Claim 4 summary of admissibility of section 1473 new evidence

	re: insurance claim submitted by Borden 028 – response to 2015 CPRA request by George Gudgell asserting exemption 029-033 – duplicates of 024-027 034-036 – not newly discovered. Disclosed to Petitioner on 5/2/2003 as Bates 4102-4104, see Exhibit A. Allegation 138, 139, 142, 143: 037-044 – evidence/property logs of orange van and materials collected from it Allegation 121, 132, 136: 045-049 – DOJ lab report of presumptive negative blood test on mattress cuttings and notes of criminalist 050 – SCDAO property receipt form	exception – Borden to Brevig to Spitulski. Content irrelevant to any connection between van/burglars/Peterson case 028 – inadmissible. Irrelevant, Evid. Code 352 undue consumption of time vs. limited probative value 037-044 – admissible/likely admissible business or public records 045-049 – admissibility dependent on availability of analyst who performed test. See <i>Melendez-Diaz v. Massachusetts</i> (2009) 557 U.S. 305. Prima facie admissibility shown since analyst not demonstrated to be unavailable. 050 – admissible business/public record
Exh. 2B ACHP 052-063	Allegations 26, 29, 30, 44: 052-062 – custodian of record declarations documenting search and production of copies of records, or search and inability to locate evidence/records 063 – e-mail between SCDAO and William Pavelic	052-062 - admissible. 063 – potentially admissible for non-hearsay purpose of documenting demand for recording or receipt of polygraph recordings
Exh. 2B ACHP 079-080	Allegation 147: Portion of 2006 unpublished opinion, <i>People v. Curtis Shivar</i>, F045811 describing MPD	Inadmissible as proffered but likely to lead to admissible evidence – document indicates that Officer Hicks is percipient

Table 2: Claim 4 summary of admissibility of section 1473 new evidence

	surveillance of 2921 Rimrock (residence of Deanna Renfro), use of confidential informant to purchase methamphetamine from her, and arrest of all occupants for methamphetamine manufacture	witness to events described. Prima facie admissibility shown since pleadings demonstrate no basis to believe Officer Hicks is unavailable.
Exh. 2B ACHP 105	Allegation 140: Press release announcing June 11, 2010 vehicle theft arrest of Richard Zarate.	No prima facie case of admissibility because no statement of Zarate. Only potential relevance is impeachment of Zarate based on felony/moral turpitude conviction. Irrelevant for proffered purpose of demonstrating connection between Zarate arrest and return of cloth rag from orange van to MFD.
Exh. 2B ACHP 202-203	Allegation 141, 142: Partial printout of Stanislaus County Superior Court public records portal of traffic case docket	Inadmissible – irrelevant. Proffered relevance is timing of originally scheduled traffic arraignment in relation to asserted destruction of cloth from fuel tank and re-election of DA Fladager. First, EPR shows that fuel tank cloth dispo was “To MFD”, not destruction. (See AHCP-043.) Second, portrait orientation of printed document omits the portion of the portal that shows what occurred at the hearing. The complete listing of case hearings, attached as Exhibit B, demonstrates that the arraignment asserted in the petition to have occurred on 7/26/2010 (sic) was continued twice on the court’s motion and not completed until 12/2/2010, well after DA Fladager’s election concluded.
Exh. 4 – Melissa Rodriguez Morales	Allegation 8: Medina burglary occurred on December 24 and Laci witnessed it	Allegations 8, 61, 62, 63, 64, 65, 69, 150, 154, 173, 184. Inadmissible hearsay. Morales

Table 2: Claim 4 summary of admissibility of section 1473 new evidence

	Allegation 61, 69: Richard Zarate and Tony Lugo helped Todd with the Medina burglary on December 24 Allegation 62, 150, 154, 173, 184: Morales was at 335 S. Santa Cruz after Laci Peterson was reported missing. There, she heard Richard Zarate say that when he was helping Todd commit the burglary “a pregnant lady from across the street came over and confronted them” and “told them she knew the neighbors weren’t home.” Allegation 63: They told her to “go home.” Zarate said her dog was barking. Allegation 64: It was clear to everyone there that they were talking about Laci Peterson and that the burglary happened on December 24. Allegation 65: Morales heard Zarate say Todd needed help getting items out of the house and a van was used.	did not witness the burglary. Admission to participation in a burglary is a hearsay exception for statement against penal interest per Evidence Code 1230, but only if the declarant is unavailable and only as to portions that are “specifically dis-serving to the hearsay declarant’s penal interests.” <i>People v. Gallardo</i> (2017) 18 Cal.App.5th 51, 71. Section 1230 does not authorize the admission of “those portions of a third party’s confession that are self-serving or otherwise appear to shift responsibility to others.” (<i>Id.</i>, quoting <i>People v. Grimes</i> (2016) 1 Cal.5th 698 at p. 715.) It also does not allow “admission of non-self-inculpatory statements ... made within a broader narrative that is generally self-inculpatory.” (<i>Id.</i>, quoting <i>Williamson v. U.S.</i> (1994) 512 U.S. 594, 600-601.) The petition makes no showing of unavailability of Zarate. Even if Zarate is unavailable, only the portion of the statement where he admitted participating in the burglary would be admissible under Evidence Code section 1230, not any portion where he shifts responsibility to Todd, describes who else was present, or describes telling a pregnant woman to “go home.” Those statements are not against Zarate’s penal interests. If Zarate is available, the petition fails to plead prima facie that he would admit making the statements Morales attributes to him.
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Table 2: Claim 4 summary of admissibility of section 1473 new evidence

	Allegations 66, 112, 140: Morales had seen Todd, Pearce, Zarate, Tony Lugo, and others driving the burned orange van Allegation 67: Many people in the Airport District used drugs and regularly committed burglaries to get things they could sell fast to get money to buy drugs, they helped each other out when they did burglaries and split the goods they were able to steal. Todd lived in the Airport District.	Allegations 66, 112, 140: admissible as first-hand observations of a percipient witness. Allegation 67: inadmissible as irrelevant, vague. Statement that Todd lived in the Airport District admissible.
Exh. 5 - Bryan Spitulski	Allegations 66, 112: Opinion by Spitulski that van likely burned to cover up a crime. Allegation 114: Spitulski learned on 12/31/02 that Laci Peterson was missing and police were looking for a van. He notified MPD Detective Shipley of the orange van fire. Allegation 115: Spitulski and Det. Shipley went to the business of the van's registered owner to investigate the van theft. Allegation 123: Spitulski located a mattress in the rear passenger side of the van. He saw a metal can on top, and when Spitulski moved the can found an unburned area of cloth mattress covering that had stains consistent with bloodstains. Allegation 124: The presumptive test performed was done by putting a cutting	Allegations 66, 112: Spitulski's declaration establishes his qualification to opine that the van fire was arson, but his opinion for the reason for the arson is speculative and inadmissible. Allegation 114: admissible. Allegation 115: admissible. Allegation 123: admissible. Allegation 124: observation of how the presumptive test was performed admissible, unclear

Table 2: Claim 4 summary of admissibility of section 1473 new evidence

	of stained fabric into test kit liquid, which reacted by turning a violet shade, indicating a presumptive positive result for blood. Allegation 125: Spitulski describes reactions of those present to positive presumptive test. Allegation 126: Spitulski based his conclusion about incendiary nature of fire on two separate ignition points and burn patterns, one in the front and one in the rear cabin. Allegation 128: MPD took over the investigation of the van fire after the presumptive positive blood test.	from Spitulski's declaration if he is qualified to interpret results but likely that information could be presented in admissible form. Allegation 125: Admissible. Allegation 126: Admissible. Allegation 128: Admissible.
Exh. 6 - George Gudgell	Allegation 55: Det. Stough gave a post-conviction interview where he admitted not verifying the alibis of Todd/Pearce, saying: "You expect that kind of stuff from criminals It's expected, and all these jailhouse snitches and all these other people, you know meth addicts can be – they will tell themselves lies enough tha they will believe it, they truly, truly believe it." Allegation 57: the residence at 1131 Tioga Dr, where Todd claimed he visited his children on 12/25, was uninhabitable in December 2002.	Allegation 55: Reasonably likely to be proffered in admissible form, no indication that Det. Stough is unavailable. Allegation 57: Cited paragraph 32 of Exh. 6 is conclusion by George Gudgell based on unspecified property records indicating that Todd's ex-wife and kids no longer lived at that address because of severe flooding in that area of Modesto and abandonment of the residence. Inadmissible hearsay. No prima facie basis for admission because affidavit's vague description of records examined does not allow the court to conclude they are admissible records – ie from a primary source, not multiple

Table 2: Claim 4 summary of admissibility of section 1473 new evidence

	Allegation 81: In 2013, Danny Chapman sent Petitioner a letter relating hearsay from DM. P. 33 Allegation 143: References color photographs of orange van fire scene obtained from an anonymous source through Gudgell and provided to Petitioner’s counsel at an unspecified time in 2016.	hearsay, potentially able to be authenticated as either business or public records. Allegation 81: cited paragraph 33 states George Gudgell read the letter that Danny Chapman sent to Petitioner and summarized Chapman recounting hearsay from DM recounting hearsay from Todd about the burglary. Inadmissible. Pleadings indicate Chapman is deceased. DM’s statements as related to Chapman are not self-inculpatory so even if DM were demonstrated to be unavailable, EC 1230 would not permit admission of DM’s statements through Chapman if he were alive. Allegation 143: photographs reasonably likely to be admissible based on ability of Spitulski to authenticate.
Exh. 7 - Lt. Adam Bercovici	Allegation 152: Jason and Johnny Nolan, Jr. were known to police because Johnny was investigated in 1999 connection with the Yosemite murders, as reported in the <i>Modesto Bee</i>.	Allegation 152: Inadmissible – No probative value because article had been demonstrated by the time of Laci Peterson’s murder to be false. The court takes judicial notice pursuant to Evidence Code section 451(a) of <i>People v. Larwick</i> (2002), unpub. 2002 WL 2017187: “Negative newspaper articles connecting defendant [Larwick] with the Sund-Pelosso case dropped off in late July 1999 following Cary Stayner’s confession of the murders to the Federal Bureau of Investigation. Between August and December 1999, three articles appeared in the <i>Modesto Bee</i>

Table 2: Claim 4 summary of admissibility of section 1473 new evidence

		concerning the Sund-Pelosso case in which defendant was briefly mentioned. In each article, defendant's name appeared in the context of his role as one of a group of individuals erroneously linked to the case early in the investigation."
	Allegation 167: Alleges expert opinion that Laci Peterson missing person investigation, orange van fire, and Medina burglary should all have been assigned to Det. Craig Grogan as lead investigator but were not, as stated in paragraph 54 of Exh. 7.	Allegation 167: Admissible.
	Allegation 171: Alleges expert opinion that lack of coordination of the investigations of Laci Peterson's missing person case, the orange van fire, and the Medina burglary compromised the integrity of all three investigations. Cites paragraph 54.	Allegation 171: Admissible.
	Allegation 174: Summarizes witness's credentials and expert qualifications, citing paragraphs 1-2	Allegation 174: Admissible.
	Allegation 175: Describes witness's relevant work experience in support of his qualifications as an expert, citing paragraph 3.	Allegation 175: Admissible.
	Allegation 176: Offers expert opinion that MPD did a rushed, biased, and cursory investigation into the Medina burglary.	Allegation 176: Admissible.

Table 2: Claim 4 summary of admissibility of section 1473 new evidence

	Allegation 177: Alleges that none of the leading detectives on the Peterson missing person case interviewed Todd/Pearce when they were arrested on January 2, 2003 with Medina's stolen property. Allegation 178: Alleges that no police reports document Det. Grogan investigating the date of the Medina burglary. Allegation 179: Offers opinion that determining date of burglary was the central/only question Det. Grogan needed to know from Todd/Pearce in ruling in or ruling out a connection between the burglary and Laci Peterson's murder. Allegation 180: Offers opinion that Det. Grogan's failure to investigate possible connection between Medina burglary and Laci Peterson's murder is among the most serious investigative failures of the case.	Allegation 177: Admissible. Allegation 178: Admissible. Allegation 179: Admissible. Allegation 180: Admissible.
Exh. 8 - Shareen Anderson	Allegation 161: Sam Newnam gave on-camera interview in 2017 that MPD put a hold on the pawned Croton watch because it was the only one that "popped up in the system" in the last six months. Cites to paragraph 10. Allegation 162: Newnam said that MPD told him they thought the pawned Croton watch might be Laci Peterson's	Allegation 161: Reasonably likely to be admissible through Newnam. Allegation 162: Seizure of watch admissible. No prima facie admissibility of hearsay from unidentified officer.

Table 2: Claim 4 summary of admissibility of section 1473 new evidence

	and they took the watch. Cites to paragraph 12.	
Exh. 21 - Mehul Anjaria	Allegation 123: reproduces photos of sampled areas of mattress cuttings from DOJ 2019 blood testing, citing paragraph 16. Allegation 133: CSO Lovell took a larger sample of mattress fabric for presumptive testing than the DOJ lab. Allegation 134: exposure to high heat from the fire might have impacted the accuracy of the human hemoglobin test, which could explain why CSO Lovell's larger sample tested presumptively positive but DOJ test did not	Allegation 123: Photos reasonably likely to be admissible. Allegation 133: Admissible Allegation 134: Admissible
Exh. 23 - Susan Medina	Allegation 68: an unidentified police detective doing the burglary investigation told Susan Medina that one of the burglars admitted to making a call from inside her home.	No prima facie admissibility to prove phone call made. Multiple layers of hearsay without exception. Burglar to officer only admissible as statement against penal interest (EC 1230) if burglar is unavailable. Pearce is deceased and therefore unavailable, but there is no pleading of Todd's unavailability. Since Susan Medina neither identifies the officer who told her nor which burglar said it to that officer, no prima facie showing of reasonable likelihood of admissibility.
Exh. 24 - Carl Jensen	Allegation 70: Steven Todd called Adam Tenbrink on December 24 asking for help to get things out of a house he was burglarizing, which Tenbrink "understood" to be the Medina residence. Cites to paragraphs 53-54.	Allegation 70: Inadmissible multiple hearsay with no exception. Adam Tenbrink's statement is not against his own penal interest because he denies assisting Todd when called, so no basis for Jensen to relate Tenbrink's hearsay. Assuming Tenbrink can be produced, Todd's

Table 2: Claim 4 summary of admissibility of section 1473 new evidence

	Allegation 90: Adam Tenbrink said that Todd was known to ride around on his bike looking for houses to break into so that he could steal things. Cites to paragraph 54.	statements to him are only admissible under EC 1230 if Todd is unavailable. The petition pleads no basis for believing Todd is unavailable. Even if Todd unavailable, Tenbrink denies going to help Todd so has no personal knowledge of where Todd was when he called and no admissible basis for his “understanding” that it was the Medina home. Allegation 90: inadmissible character evidence. Would be admissible as evidence of modus operandi against Todd in a prosecution of Todd for burglary under EC 1101(b), but no theory of Evidence Code admissibility is proffered for its use to demonstrate character or MO when he is not charged.
Exh. 30 – Carlos Hernandez	Allegation 31d.: Carlos Hernandez reported to Det. Brocchini that in the late morning on December 24, Hernandez rode down Coven Ave and saw a white van parked on the street in front of the Medina residence. He saw two men standing near the back of the van and one man inside the back of the van hitting or pushing down on something. The men outside the van were a tall White man and a shorter Hispanic man who might have been Mexican. The man inside the van was White. When he spoke to Det. Brocchini, Det. Brocchini did not write down his statement and said words to the effect of	Allegation 31d: Admissible.

Table 2: Claim 4 summary of admissibility of section 1473 new evidence

	“we’ve already got our guy, but thank you”. Allegation 32: References Hernandez among other witnesses who had reported seeing a white van parked near the Medina residence with men who did not fit the description of Todd/Pearce in or around it on December 24. No specific citation to Hernandez statement.	Allegation 32: Admissible
Exh. 31 – DM	Allegation 27: Todd told DM that the “cops who interviewed him said they knew Todd wasn’t involved with Laci Peterson’s disappearance because they already knew Scott did it,” or words to that effect. Allegation 69: DM said that Todd called him from inside the Medina house on 12/24 to ask him for help getting a safe out because Todd didn’t have a car. Allegation 90: DM said that Steven Todd was known to ride around on his bike looking for houses to break into so that he could steal things. Cites to paragraph 2.	Allegation 27: multiple hearsay with no exception. No prima facie basis pled for admissibility. Allegation 69: Hearsay. Inadmissible as a statement against Todd’s penal interest because no prima facie demonstration of Todd’s unavailability. Potentially admissible as prior inconsistent statement if Todd were to testify that he did not make calls to DM from Medina home during burglary, but no prima facie case pled that Todd would deny making the calls. Allegation 90: inadmissible character evidence. Would be admissible as evidence of modus operandi against Todd in a prosecution of Todd for burglary under EC 1101(b), but no theory of Evidence Code admissibility is proffered for its use to

Table 2: Claim 4 summary of admissibility of section 1473 new evidence

		demonstrate character or MO when he is not charged.
Exh. 34 – Paige McGrail	Allegation 34: 2023 re-interview of Kim V. regarding tip line call. Kim V. reiterated information in tip, adding that the van was “junky” and “beat up”, and that she never saw it again after reporting it to the tip line on 1/1/2003. Confirmed she was never interviewed by police about her tip.	Reasonably likely to be admissible.
Exh. 38 – Mehul Anjaria	Allegation 136: No testing was done on Item 1, mattress material	Admissibility depends on availability of percipient lab analyst, but reasonably likely to be admissible.
Exh. 43 – Jason DeWitt	Allegation 69: DM said that Todd called him from inside the Medina house on 12/24 to ask him for help getting a safe out because Todd didn’t have a car. Cites to paragraph 15.	Inadmissible multiple layers of hearsay. DM denied assisting Todd, so DM’s statement to Jason DeWitt is not against DM’s penal interest and therefore inadmissible through DeWitt.
Exh. 44 - DLB	Allegation 82: In 2016 or 2017, Danny Chapman told DLB that Chapman’s former cellmate (whom he did not name to DLB but implied was Adam Tenbrink) said that the cellmate was part of the Medina burglary. Five people were involved – three outside the house and two inside. Laci saw them burglarizing the house and yelled at them that she was going to call the police. Allegation 83: Chapman told DLB the same unidentified former cellmate said that “they were going to put an innocent man in jail for something we did. Scott Peterson did not kill Laci.” Chapman further said that when Laci caught the	Allegation 82: Inadmissible multiple hearsay without exception, and no reasonable likelihood of admissibility. Chapman is deceased and did not tell DLB who the cellmate was. Through hearsay to Carl Jensen, Adam Tenbrink denies participation in the burglary. Allegation 83: same conclusion as Allegation 82.

Table 2: Claim 4 summary of admissibility of section 1473 new evidence

	burglars, one of the men had been up for weeks on drugs. That man grabbed Laci from behind as she was walking away, put his hand over her mouth, and threw her into the back of a white van. Then the man hit her over the head with a rock. The van was then burned. Chapman didn't say when or how Laci was killed.	
Exh. 45 - RR	Allegation 84: In 2017, DM told RR that DM and some other guys were involved in a burglary. During the burglary, a pregnant woman with a dog saw one of the burglars and confronted them. DM confirmed he was talking about Laci Peterson, and he was involved with other men who abducted and killed her. RR didn't believe him at first but later began to change her mind. DM would do a "weird walk", get upset, and seem traumatized when he talked about it. DM said as Laci turned to walk away "they" grabbed her from behind and had to shut her up.	Allegation 84: Reasonably likely to be admissible as prior inconsistent statement of DM contingent on DM testifying. Exh. 43, declaration of Jason DeWitt, provides reasonable basis to believe that if DM testified he would deny any involvement in the Medina burglary or Laci Peterson's murder and would further deny ever telling any person he had been involved. Standing alone, RR's statements are hearsay and not admissible as a statement against DM's penal interests (EC 1230). Unavailability of DM has not been alleged. Even if DM were unavailable, his statement shifts responsibility for the abduction and murder to the "other men" he was with. Section 1230 does not authorize the admission of "those portions of a third party's confession that are self-serving or otherwise appear to shift responsibility to others." (<i>Id.</i>, quoting <i>People v Grimes</i> (2016) 1 Cal.5th 698 at p. 715.) It also does not allow "admission of non-self-inculpatory statements ... made within a broader narrative that is generally self-inculpatory." (<i>Id.</i>,

Table 2: Claim 4 summary of admissibility of section 1473 new evidence

		quoting <u>Williamson v. U.S.</u> (1994) 512 U.S. 594, 600-601.)
Exh. 46 – ST	Allegation 85: Alleged that while attending a social event, DM made statements that he and others were “robbing a house” and that Laci Peterson saw them and threatened to call police. She was then killed to “shut her up” and her body was put in the bay where Petitioner fished. ST’s declaration says she heard DM say that he and others were robbing a house that was under construction and they knew the owners were away. He and the others were dragging a safe out to a white van. Laci caught them and threatened to call the police. They had to “shut her up”, so the others he was with killed Laci. “They” saw on the news where Petitioner went fishing and took Laci’s body there to dump it.	Reasonably likely to be admissible as a prior inconsistent statement of DM contingent on DM testifying. Exh. 43, declaration of Jason DeWitt, provides reasonable basis to believe that if DM testified he would deny any involvement in the Medina burglary or Laci Peterson’s murder and would further deny ever telling any person he had been involved. Standing alone, ST’s statements are hearsay and not admissible as a statement against DM’s penal interests (EC 1230). Unavailability of DM has not been alleged. Even if DM were unavailable, his statement shifts responsibility for the murder to the “other men” he was with. Section 1230 does not authorize the admission of “those portions of a third party’s confession that are self-serving or otherwise appear to shift responsibility to others.” (<i>Id.</i>, quoting <i>People v Grimes</i> (2016) 1 Cal.5th 698 at p. 715.) It also does not allow “admission of non-self-inculpatory statements ... made within a broader narrative that is generally self-inculpatory.” (<i>Id.</i>, quoting <u>Williamson v. U.S.</u> (1994) 512 U.S. 594, 600-601.)
Exh. 47 – KD	Allegation 85: KD declares that during a discussion of Laci Peterson’s murder, she heard DM say that he and two others were robbing a house across	Reasonably likely to be partially admissible as a prior inconsistent statement if DM testifies based on same reasons stated as to ST and RR hearsay.

Table 2: Claim 4 summary of admissibility of section 1473 new evidence

	the street. The house was under construction and they knew the dates the owners would be out of town. Laci caught them robbing the house and they couldn't get caught. KD "got the impression" that "the men with DM killed Laci Peterson." DM said "they" saw on the news where Petitioner went fishing and took Laci's body there to dump it..	Standing alone, ST's statements are hearsay and not admissible as a statement against DM's penal interests (EC 1230). Unavailability of DM has not been alleged. Even if DM were unavailable, his statement shifts responsibility for the murder to the "other men" he was with. Section 1230 does not authorize the admission of "those portions of a third party's confession that are self-serving or otherwise appear to shift responsibility to others." (Id., quoting <i>People v Grimes</i> (2016) 1 Cal.5th 698 at p. 715.) It also does not allow "admission of non-self-inculpatory statements ... made within a broader narrative that is generally self-inculpatory." (Id, quoting <i>Williamson v. U.S.</i> (1994) 512 U.S. 594, 600-601.)
Exh. 49 - JE	Allegation 87 & 88: in 2024, CDCR inmate JE made statements relating hearsay from two other inmates, DR and CT. DR and CT both admitted membership in a white supremacist gang called the Modesto Hardcore Skinheads. DR told JE that Petitioner did not kill Laci Peterson, but that DR's "homeboys did it and their raggedy ass van was involved." DR did not tell JE the identity of the "homeboys" he was talking about, or how he knew of their involvement.	No prima facie showing of admissibility for any of JE's statements. They relate multiple layers of hearsay without exception. Neither DR nor CT made any self-inculpatory statements, so no exception for statements against penal interest under EC 1230.

Exhibit A



Stanislaus County District Attorney's Office

Discovery Request and Record

DA#: 1056770

DEF: SCOTT PETERSON

Discovered to:

CA I ☐

CA II ☐

PD ☐

PVT ☒

DDA: RICK DISTASO / DAVE HARRIS

Date: 5/2/03

Name: WILLIAM PAVELIC

MISD ☐

Court #: 1056770

Address:

FEL ☒

Event Date: 5/2/03

APPT ☒

Agency #: MPD 02-142591

Phone:

PVT ☒

Charges: 187 PC

✓	Description	Seq	#
	Blood Alcohol		
	Booking Sheet		
	Calibration		
	CII/FBI/DMV		
	Drug/Intox.		
	Photos		
X	Police Reports	C1-C2	2 CD-R
	Registration		
	AUTOPSY		
X	MEMO		1 PG
Total:			

Reciprocal Discovery Request:

Pursuant to Penal Code §§ 1054.3, James C. Brazelton, District Attorney of Stanislaus County, requests that within ONE (1) week of the date of the pretrial hearing you disclose to the District Attorney the following information and evidence which relate to the case described above:

1. The names and addresses of persons (excluding the Defendant) you intend to call as witnesses at the trial;
2. Any relevant written or recorded statements of the person described in item 1 above, including reports and statements of experts made in connection with the connection with the case, and the results of physical and mental examinations, scientific tests, experiments, and comparisons which you intend to offer in evidence at the trial.
3. Any real evidence you intend to offer at the trial. This request is a continuing request intended to include not only material currently in existence, but also all material which comes into existence prior to the conclusion of this case.

Pursuant to Penal Code §§ 1054.1 (a), you are advised that the names and addresses of all persons that the District Attorney intends to call as witnesses at trial, are listed on the accompanying police reports and any attached exhibits, to the extent currently known. As additional witnesses become known, their names and addresses will be provided in the same manner. The attached material is also provided in furtherance of the People's duty of discovery pursuant to Penal Code §§ 1054.1 (b) through (f).

Please Note: A minimum charge of \$10.00 each will be charged for audio tapes unless a blank is provided. Video tapes are \$35.00 each unless a blank is provided. *****PHOTOS ARE NOW AVAILABLE ON 3.5 DISKS OR CD-R.***** Disks will be used unless the volume of photos exceeds capacity, at which time a CD will be used. Disks are \$4.00 and CD-R's are \$8.00. Color printouts of the pictures are available for \$.50 a page.

Prepared By:

Received By:

Charges: 0

Initial: JWG

X

Amt. Due: 0

Print: 5-2-03

Cash:

Date: 5/2/03

Date:

Check:

Felony Discovery Log

Def: SCOTT PETERSON

DA#: 1056770

Page 1

[illegible]

4083

Incident History for: #MF02020253 Xref: #MP023590101
Case Numbers: \$MF02019142

Entered 12/25/02 07:57:12 BY CT01/Z524
Dispatched 12/25/02 07:57:45 BY FD01/Z119
Enroute 12/25/02 07:57:45
Onscene 12/25/02 08:03:19
Closed 12/25/02 11:18:49

Initial Type: VEH Final Type: VEH (VEHICLE FIRE)

Initial Priority: 1

Initial Alarm Level: 1 Final Alarm Level: 1

Disposition: Source: T Primary Unit: MI02

Police BLK: M468 Fire BLK: M121 EMS BLK: 1

Group: MF Beat: 08 Map Page: 077KC

Loc: MONTEREY AV/THRASHER AV ,MO (V)

Loc Info: IN ALLEY BTWN THRASHER AND EMPIRE

Name: CITIZEN

Addr: 612 THRASHER

Phone: 529-7466

/0757 (Z524) ENTRY RPTING VEH FIRE IN ALLEY BTWN THRASHER AND EMPIRE
/0757 (Z119) DISPER MO28 #M240 JOLLY, CAPT. DELBERT
#M382 VALLEDOR, DJANGO
#M161 CURLESS, MATTHEW

MORE

4095

4084

/0758 ASNCAS MO28 \$MF02019142 ,RSP
 /0803 ONSCNE MO28 , UTL SO FAR
 /0805 MISC MO28 ,ALLEY NORTH OF LARKIN, VAN ON FIRE
 /0808 MISC MO28 ,ARSON FIRE -- RAG STUCK IN THE GAS TANK, DIDN'T CA
 USE FIRE
 /0812 REMING MO28 LCHK,MO28,6S88512,C,
 /0812 MISC MO28 ,CHEVY VAN
 /0813 MISC MO28 ,REG VALID FROM: 12/31/01 TO 12/31/02LIC#:6S86512 Y
 RMD:89 MAKE:CHEV BTM :VN VIN :1GCEG25H0K7176973 R/O
 :BORDEN/SONS CRANE/RIGGING, 1112 E SERVICE RD CITY
 :CERES C.C.:50 ZIP#:95307
 /0817 MISC MO28 ,REQ CSO FOR PRINTS .. CHECKING W/INV
 /0823 MISC MO28 ,HOLD OFF ON ADVISING RO AND ON CSO TILL INV OS
 /0831 \$CROSS #MP023590101
 /0832 MISC MO28 ,12/25/02 08:31:55 TO FD01 FROM PD02: LET JOLLY KNO
 W, I HAVE NO ONE TO RESPOND, NO CSO'S AVAIL .. THEY
 ARE ON THE 10-53
 /0834 CONTCT MO28 Contact in 30 Minute(s)
 /0839 ASSTER MI01 [MONTEREY AV/THRASHER AV ,MO]
 #M230 JACKSON, RAY
 /0840 MISC MO28 ,MI01 REQ MO28TO REMAIN OS TILL INV ARRIVES
 /0842 MISC MI01 ,ENR TO P/U VEH THEN ENR TO MO28'S CALL
 /0850 ASSTER MI02 [MONTEREY AV/THRASHER AV ,MO]
 MORE

4096

4085

#M387 SPITULSKI, BRYAN A.

/0851 \$PREMPT MI01
 /0906 CONTCT MO28 Contact in 20 Minute(s)
 /0913 ONSCNE MI02
 /0918 MISC MI02 ,BORDEN AND SON'S CRANE & RIGGING: 538-4601
 /0922 MISC MI02 ,DOTTIE BORDEN @ 1112 E SERVICE ROAD ADVISES ORANGE
 VAN SHOULD HAVE BEEN PARKED BEH THE BUSN. UNREPORT
 ED 10851. X IS CALLING MI02 ON HIS CELL
 /0927 SUPP TXT: VEH IS IN THE ALLEY SOF OREGON AND NOF LARKIN
 BTWN EMPIRE AND THRASHER
 /0953 CONTCT Contact in 30 Minute(s)
 ,SECURE
 /1023 AOR MO28
 /1029 MISC MI02 ,ROTATION TOW ... ETA FOR CSO
 /1031 SUPP TXT: FIRE INV OS REQ ETA FOR SCO AND ROTATION VEH T
 OW.
 /1031 SUPP TXT: CORRECTION: REQ ETA FOR CSO AND ROTATION TOW F
 OR VEH
 /1032 CONTCT MI02 Contact in 30 Minute(s)
 /1032 (Z105) SUPP ,NO MPD UNITS AVAIL..ALL 106 ON 1053..HOWEVER MPD H
 AS REQ'D S/O ID RESPOND FOR ID WORK IF THEY ARE AVL
 /1039 (Z119) SUPP TXT: PER FIRE INV CSO CAN CANCEL, REQUESTED MPD GAS
 MORE

4097

4086

E NUMBER (ISSUED), REQ CLOSURE OF RFT. STILL NEED T
OW.

/1048	MISC	MI02 ,12/25/02 10:48:01 TO FD01 FROM PD02: A&R TOW
/1116	CONTACT	MI02 Contact in 20 Minute(s)
/1118	AOR	MI02
/1118	CLOSE	MI02

4098

Incident Repo:
2002-0019142-000

MST-Modesto Fire Department

4087

Basic	
Alarm Date and Time	07:57:00 Wednesday, December 25, 2002
Arrival Time	08:03:00
Controlled Time	08:03:01
Last Unit Cleared Time	10:48:00
Response Time	0:06:00
Priority Response	Yes
Completed	Yes
Release to Public	Yes
Fire Department Station	08
Shift	C
Incident Type	131 - Passenger vehicle fire
Aid Given or Received	N - None
Alarms	1
Action Taken 1	11 - Extinguish
Apparatus - Suppression	2
Personnel - Suppression Personnel	4
Property Loss	\$0.00
Contents Loss	\$0.00
Property Value	\$0.00
Contents Value	\$0.00
Property Use	962 - Residential street, road or residential driveway
Location Type	In Rear Of
Address	In rear of 621 EMPIRE AVE
City, State Zip	MODESTO, CA 95354
District	MFD
Census Tract	0021.00

Fire	
Area of Origin	81 - Operator/passenger area of transportation equip.
Heat Source	56 - Incendiary device
Item First Ignited	64 - Flammable liquid/gas in container or pipe
Type of Material	23 - Gasoline
Cause of Ignition	1 - Intentional
Human Factors	None
Mobile Equipment Involved	1 - Not involved in ignition, but burned

Arson	
Case Status	1 - Investigation open
Investigator Personnel ID	387
Investigator Last Name	SPITULSKI
Investigator First Name	BRYAN
Investigator Rank	FF
Investigator Assignment	3
Availability of Material First Ignited	1 - Transported to scene
Extent of Fire Involvement on Arrival	5 - Fully involved

Apparatus - MO-28	
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Incident Report

MST-Modesto Fire Department

4088

2002-0019142-000

Apparatus - MO-28

Apparatus ID	MO-28
Response Time	0:06:00
Apparatus Dispatch Date and Time	07:57:00 Wednesday, December 25, 2002
En route to scene date and time	07:57:00 Wednesday, December 25, 2002
Apparatus Arrival Date and Time	08:03:00 Wednesday, December 25, 2002
Apparatus Clear Date and Time	10:48:00 Wednesday, December 25, 2002
Apparatus priority response	Yes
Number of People	3
Apparatus Use	1
Apparatus Action Taken 1	11 - Extinguish
Apparatus Type	11 - Engine
Personnel 1	161 - CURLESS, MATTHEW Position: FF
Personnel 2	292 - PETERS, MICHAEL P Position: ENG
Personnel 3	362 - VALLEDOR, DJANGO R Position: ENG

Apparatus - MO-IN

Apparatus ID	MO-IN
Response Time	0:06:00
Apparatus Dispatch Date and Time	07:57:00 Wednesday, December 25, 2002
En route to scene date and time	07:57:00 Wednesday, December 25, 2002
Apparatus Arrival Date and Time	08:03:00 Wednesday, December 25, 2002
Apparatus Clear Date and Time	10:48:00 Wednesday, December 25, 2002
Apparatus priority response	Yes
Number of People	1
Apparatus Use	1
Apparatus Action Taken 1	11 - Extinguish
Apparatus Type	002 - Investigator Truck
Personnel 1	387 - SPITULSKI, BRYAN Position: FF Personnel Action Taken 1: 86 - Investigate

Authority

Reported By	240 - JOLLY, DELBERT B 11:21:35 Wednesday, December 25, 2002
Officer In Charge	240 - JOLLY, DELBERT B 11:21:34 Wednesday, December 25, 2002
Reviewer	-

Narratives

Narrative Name	Company
Narrative Type	Incident
Narrative Date	11:15:55 Wednesday, December 25, 2002
Author	240 - JOLLY, DELBERT B

Incident Report
2002-0019142-000

MST-Modesto Fire Department

4089

Narratives

Author Rank

CAPT

Author Assignment

I

Narrative Text

This was a fully involved van fire. There was a rag hanging out of the gas fill hole with the gas cap on the ground but this was not the cause of the fire. There were three or more gas cans in the vehicle with evidence of flammable liquid usage in the interior of the vehicle. This was an arson fire. The battery was missing.

End of Report

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FIRE INVESTIGATION REPORT

MODESTO FIRE DEPARTMENT
FIRE & ARSON INVESTIGATION UNIT
600 11TH STREET
MODESTO, CALIFORNIA 95354
PHONE: 209-491-5722

FIRE INCIDENT NUMBER: 02-19142
POLICE INCIDENT NUMBER: 02-2142687
LOCATION OF INCIDENT: 612 Thrasher Ave. Modesto CA. 95354
DATE OF INCIDENT: 25th December 2002

SUMMARY

On Wednesday December 25th 2002, at approx. 0850 hours, I was contacted by Emergency Dispatch at my residence and requested to respond to a vehicle fire. I arrived on scene and met with JOLLY. He advised me they had a van heavily involved in fire when they got on scene. There was some cloth hanging from the gas fill hole. I then began my origin and cause determination, which included photographs, scene diagram, and statements.

This fire is classified as incendiary.

NAMES TO APPEAR

(W) JOLLY, Delbert Captain
C/O Modesto Fire Department

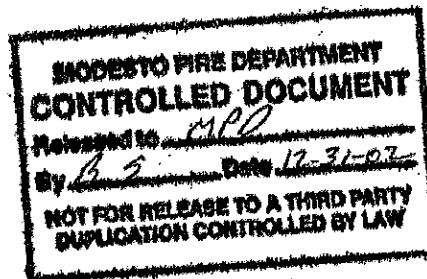
(V) BORDEN, Terry

DOB [REDACTED]
CA DL# [REDACTED]
([REDACTED]

(V) BORDEN, Dorth

[REDACTED]

FRINGS, Mark
DOB [REDACTED]



V - VICTIM	W - WITNESS	R - RESPONSIBLE	S - SUSPECT
PO - PROPERTY OWNER	RO - REGISTERED OWNER	RP - REPORTING PARTY	

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PROPERTY INVOLVED

1989 Chevrolet Van. Lic# 6S66512 VIN # 1GCEG25H0K7176973

AREA OF ORIGIN

The front passenger side area of the van.

STATEMENTS

BORDEN, T told me the following information.

He didn't know the van was missing until he was contacted by Emergency Dispatch. He owns a crane business called BORDEN & SON'S CRANE and RIGGING. He had another vehicle taken from his yard about two weeks ago. He didn't have insurance on the vehicle other than liability. He didn't know when the last time he saw it. The van was paid off. He said he has about 25 vehicles and didn't know when this one was last used. There were some house jacks and some fuel cans in the van. I asked him if there was a mattress in the back of the van. He said no. He said that anyone of his workers could have had the keys to the van. There had not been any repairs to the van and he didn't know of anyone that wanted to do something like this to him. He said he was home all night with his wife. He didn't hear anyone leave the yard this morning where the van should have been parked.

EXTERIOR EXAMINATION

When E-28 arrived on scene, the van was well involved in fire. The heaviest fire activity was in the front of the van. The scene was secured and an Investigator was requested.

There was a cloth hanging from the fuel fill hole on the driver's side. The gas cap was on the ground at the rear wheel. The driver's side door had heavy heat damage from the bottom of the door all the way up to the top. The window was in the down position. The upper portion of the door had heavy fire, heat, and smoke damage. There was no visible damage to the door lock on the driver's side. The front of the van had heavy fire, heat, and smoke damage. The paint had burned off the passenger side. The passenger side grill and headlight had heavy fire, heat, and smoke damage. The passenger side door had moderate heat damage to the lower portion. The passenger door window was missing. Both the slider door window and the rear window on the passenger side was broken out during fire suppression. The slider door could not be opened, do to damage to the door. The rear doors were locked. The driver's side rear door was broken out during fire suppression.

The spare tire was mounted on the rear of the van. It was worn. All tires appeared to match and all lug nuts were in place. The battery was missing. The oil fill cap was missing.

There were no utilities in the area. The weather was cold, damp, and overcast.

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INTERIOR EXAMINATION

The front of the van had the most fire damage. The driver's side door had heavy fire and heat damage. The dashboard had heavy fire and heat damage. The steering column had heavy fire and heat damage. Unable to determine if key was in the ignition. A radio was still in place. The engine cover was made of fiberglass and had heavy fire and heat damage. Both front seats had heavy fire and heat damage. In the rear of the van, there was a red, plastic 3-gallon fuel container at the slider door. There was a metal fuel container in the center on a mattress. Below the slider window was a yellow plastic fuel container marked "Diesel".

EVIDENCE OBTAINED

Item # 1- Cloth from fuel tank fill hole.

Photographs were taken

Latex gloves were used to collect all evidence items and changed before each evidence item was collected.

EVIDENCE DISPOSITION

Item # 1 was packaged and booked into the Modesto Police Department Evidence and Property Room.

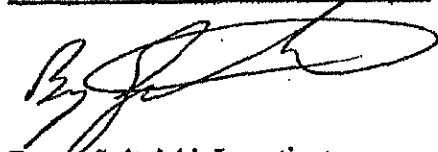
Photographs will be retained for court presentation.

OPINION AND CONCLUSION

There were no utilities in the area. I can rule out natural causes. The ignition source was an open flame device. Materials first ignited were ordinary common combustibles. This was an incendiary fire started in the front interior cab of the van.

CASE DISPOSITION

XX Open Closed Cleared By Arrest

REPORTING INVESTIGATOR

Bryan Spitulski, Investigator
Modesto Fire Department

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X-REF MFD 02-19142

ORDS
Y
Net
apt. Ops.
apt. Spt.
field Op. Div.
invest. Div.
records Mgr.
band. Auto
animal Cont.
crime Analys.
crime Prevnt.
town
ISD
ITAT
RAF
NPU
Prop. Clk.
Reporting. Clk.
Warnt Offs.

N.E. #
N.W. #

S.E. Area Cmd
S.W. Area Cmd

ABC
CII
City Attorney
Court Liaison
DEA
Diversions
IS.O.

Press

Other

OFFICER
REQUESTS
OR
COPIES

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MPD Class, Code ☐ Misd. ☒ Felony		☐ Booked ☐ Dispatched ☐ Cited ☐ On View ☐ C/R ☐ TRU ☐ D.A. Complaint		MODESTO POLICE DEPARTMENT POLICE REPORT		Page No.	Report No.
Offense Code No. & Description 451		☐ I & B WANT ☐ HATE CRIME ☐ DOMESTIC VIOLENCE		Date/Time Reported 12-25-02 0757	Platoon	Beat	R.D.
Date(s) of Occurrence 12-25-02		Day(s) of Week WEDNESDAY		Time(s) of Occurrence 0757		Location of Occurrence / Business Name / City, County IN ALLEY BETWEEN MODESTO, STANISLAUS	
C - COMPLAINANT D - DEFENDANT S - SUSPECT W - WITNESS V - VICTIM							
Code	Name (Last, First, Middle) BORDEN TERRY			Residence Address		Residence Phone	
Occupation CONTRACTOR	Race W	Sex M	Age	Date of Birth	Business/School Address		Business Phone
Code	Name (Last, First, Middle)			Residence Address		Residence Phone	
Occupation	Race	Sex	Age	Date of Birth	Business/School Address		Business Phone
Desc.	Hair	Eyes	Height	Weight	Clothing		
Personal Oddities (unusual features, scars, tattoos, etc.)				WEAPON (verbal threats, bodily force, simulated gun, etc. If knife or gun, describe fully)			
Code	Name (Last, First, Middle)			Residence Address		Residence Phone	
Occupation	Race	Sex	Age	Date of Birth	Business/School Address		Business Phone
Desc.	Hair	Eyes	Height	Weight	Clothing		
Personal Oddities (unusual features, scars, tattoos, etc.)				WEAPON (verbal threats, bodily force, simulated gun, etc. If knife or gun, describe fully)			
☐ Suspect	Year	Make	Model	Body Style	Color / Color	License No.	State
☐ Victims	1989	CHEV	VAN.		ORANGE	6566572	CA
Add Veh. Identifiers (Damage, Custom Wheels, etc.)				Vin No.	Vehicle Disposition		
				1GCEG25H0K7126973			
Registered Owner Name		Residence Address		Residence Phone		Business Phone	
BORDEN/SONS CRANE/RIGGING							
PROPERTY/CASE NARRATIVE							
Qty	ID/Serial Article Name	Numbers	Model Name and Brand, Make or Manufacturer	Model Numbers	Complete Description (color, size, etc.)		Value
	NARRATIVE						
	ON SCENE I MET WITH MPD CAPTAIN JOLY.						
	HE ADVISED ME THEY HAD A VAN FULLY ENVELOPED WITH FIRE						
	NO ONE WAS IN THE AREA, THERE WAS A CLOTH HANGING						
	FROM THE FUEL TANK. THE CAP FOR THE FUEL TANK WAS						
	ON THE GROUND. UNABLE TO DETERMIN IF KEY WAS IN						
	THE IGNITION. THE BATTERY FOR THE VAN WAS MISSING.						
	CONTACTED OWNER, BORDEN. HE DIDNT KNOW THE VAN WAS						
	MISSING. HAS ONLY LIABILITY INS. THIS IS CLASSIFIED AS						
	AN INCENDIARY FIRE. SEE MFD REPORT #02-19142 FOR MORE INFORMATION.						
INSURANCE COMPANY				ADDITIONAL PROPERTY		TOTAL VALUE \$	
CITIZEN ARREST		I hereby arrest the above defendant on the charge indicated and request a peace officer to take him into custody. I will appear as directed and sign a complaint against the person I have arrested.				Signature of Arresting Citizen	
☐ Yes ☐ No							
CASE DISPOSITION		☐ Unfounded ☐ Exceptionally Cleared		☒ Open ☐ Cleared by Arrest		☐ Suspended Pending Further Information ☐ Closed	
Date / Time of report 12-25-02		Reporting Officer B. SPITULSKI		IBM # 9899		Reviewer's Initials	
						Dictated Narrative ☐ Yes ☐ No	
						Follow-up Required ☐ Yes ☐ No	

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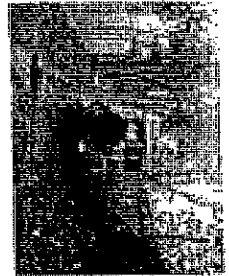
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MFD#
X-REF 02-19142

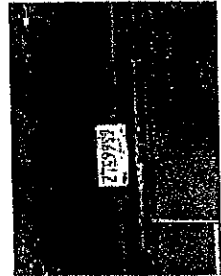
Location Deposited (Locker#, Annex, etc.) #16		MODESTO POLICE DEPARTMENT		Case # 02-2142687	
Date/Time Deposited 12-25-02		Evidence/Property Record Location/Address Items Found/Seized MONTEREY + THRASHER (Alley)		Incident Type-Crime Code 451	
Investigating Officer/Detective (Name & IBM#) R. SP. TULSKI #9899		Evidence/Property Booked By (Name & IBM#) SAME		☒ Felony ☐ Misdemeanor	
☐ Firearm ☐ Drugs ☐ Money ☐ Search Warrant ☐ Asset Seizure ☐ 5150/8102 Hold ☐ Destroy					
SUBJECT INFORMATION					
Subject#	Name (Last, First Middle)	Address (home)	City	Zip	Phone (home)
1	BORDEN TERRY	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	Subject Type	Date of Birth	Address (work)		Phone (work)
	☒	[REDACTED]			
Subject#	Name (Last, First Middle)	Address (home)	City	Zip	Phone (home)
2					
	Subject Type	Date of Birth	Address (work)		Phone (work)
Subject#	Name (Last, First Middle)	Address (home)	City	Zip	Phone (home)
3					
	Subject Type	Date of Birth	Address (work)		Phone (work)
PROPERTY INFORMATION					
Item #	Subject (1-3)	Serial#	Property Shelf	Dispo	Bar Code Label
1					
	Evidence Found Safekeeping	Make/Model	Color	Final Dispo Date	
	Description	CLOTH FROM FUEL TANK			
Item #	Subject (1-3)	Serial#	Property Shelf	Dispo	Bar Code Label
	Evidence Found Safekeeping	Make/Model	Color	Final Dispo Date	
	Description				
Item #	Subject (1-3)	Serial#	Property Shelf	Dispo	Bar Code Label
	Evidence Found Safekeeping	Make/Model	Color	Final Dispo Date	
	Description				
Item #	Subject (1-3)	Serial#	Property Shelf	Dispo	Bar Code Label
	Evidence Found Safekeeping	Make/Model	Color	Final Dispo Date	
	Description				
Item #	Subject (1-3)	Serial#	Property Shelf	Dispo	Bar Code Label
	Evidence Found Safekeeping	Make/Model	Color	Final Dispo Date	
	Description				

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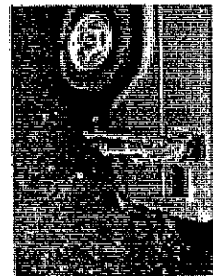
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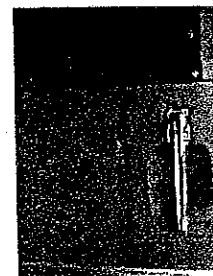
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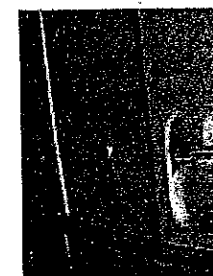
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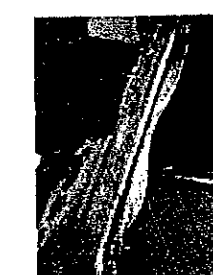
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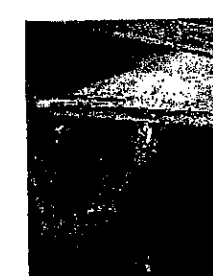
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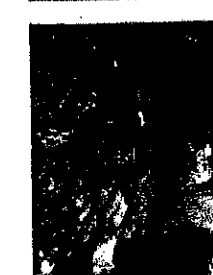
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PC240037.JPG



PC240038.JPG



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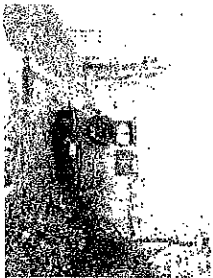


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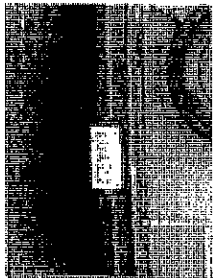


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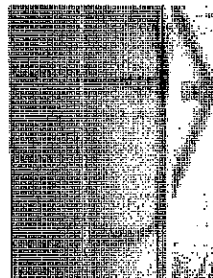
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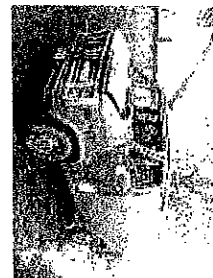
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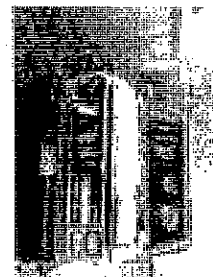
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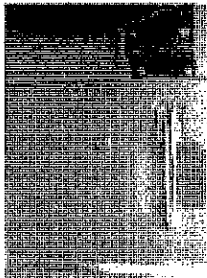
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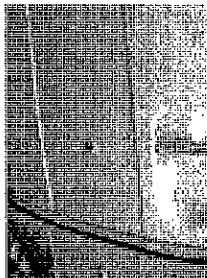
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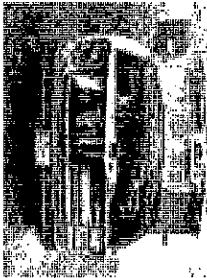
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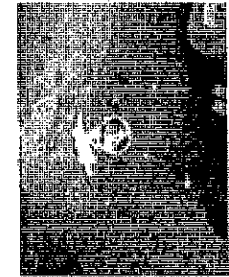
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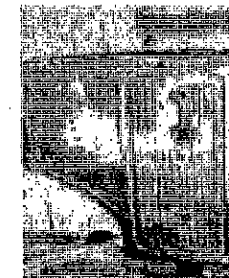
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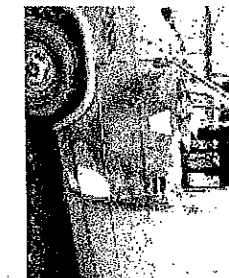
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