

**(Case Summary)**

**The People of California**

**V.**

**Mr. Glenn S. Sunkett**

**Mendocino County Superior Court**

**Case Number: SCUKRCR 09-89877**

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## I. AGENCY INVOLVEMENT.

- 1). Mendocino County Sheriff's Office.
- 2). Mendocino County Courthouse.
- 3). Jill Ravitch, Chief District Attorney for M.C.
- 4). Detective Gregory Van Patten, Lead Detective for M.C.S.O.
- 5). Lynda Thompson, Chief Public Defender (Trial Attorney) for M.C.
- 6). William Kidd, Chief investigator appointed by Lynda Thompson.
- 7). David Eyster, Appointed (private) Counsel for New trial hearing and Sentencing.

**Note\***David Eyster is currently the Chief D.A. for Mendocino County.

## II. PROCEDURAL HISTORY

Sunkett was convicted by jury on June 29, 2009, of residential robbery, violations of Penal Code sections 211/212.5/213(A)(1)(A) as to each victim alleged (Dusty Miller, Michael Bennet, Mathew Graves, Max Stover), as well as kidnapping, section 207(a), and false imprisonment, section 236. Sunkett was also convicted of residential burglary of an inhabited dwelling, section 459, two violations of criminal threats, section 422. It was also found that Sunkett was armed, violating section 12022.53(b) and 12022(a), as well as section 12021, felon in possession of a firearm. Marsden Motions were heard and denied in the trial court on September 30, 2009, October 23, 2009, January 8, 2010, January 22, 2010, and February 24, 2010. addressing Ineffective Assistance of Counsel claims alleged by Sunkett.

On October 15, 2010, the trial court denied Mr. Sunkett's Motion for a new trial as well as Mr. Sunkett's habeas petition. He was sentenced to 63 years in State Prison. On this same date, Mr. Sunkett filed a Notice of Appeal.

On October 25, 2010, Mr. Sunkett filed a Habeas Petition in the First Appellate District Court of Appeals In Propria Persona. Mr. Sunkett's Direct Appeal was filed shortly after.

On September 28, 2013, the First Appellate Court affirmed judgment and denied Sunkett's direct appeal, filed by appointed appellate counsel Mr. Roger Paul Curnow SB # 103660; as well as Sunkett's Writ of Habeas Corpus Petition filed In Pro Per.

On October 25, 2012, Sunkett filed a Petition for Review in the California Supreme Court. On January 3, 2013, the California Supreme Court summarily denied Sunkett's petition for review without giving opinion.

On January 6, 2014, the Sunkett filed a federal writ of habeas corpus in the Northern District Court of California. The court found the petition 'mixed' and GRANTED the Sunkett's motion for a Rhines stay to return to the State Court and exhaust arguments 1, 2, 8, 9, 10, 11, 12, and denied the defendant's motion to dismiss.

On March 25, 2015 the California Supreme Court summarily denied the habeas petition without opinion on the merits.

On July 20, 2015 the District Court dissolved the stay and ordered the Respondent to Answer Sunkett's federal habeas petition.

On May 1, 2016 Petitioner filed a traverse to Respondent's answer.

On December 6, 2016 the District Court denied Sunkett's federal habeas corpus petition, and entered judgment on the same date. Also, in the same ruling, the District Court denied "sua sponte" a COA in the District Court.

On December 18, 2016 Sunkett filed a timely notice to appeal judgement in the District Court.

On December 30, 2016 Sunkett submitted a motion for reconsideration in the District Court on the grounds that the court was not partial in it's review and based it's ruling on evidence unsupported by the trial record. The District Court denied this motion April, 2017.

On February 10, 2017, Sunkett petitioned for COA in the U.S. 9th Circuit Court of Appeal. The Ninth Circuit denied a COA , without written opinion, on August 18, 2017.

On September 10, 2017, Sunkett filed a motion for reconsideration in the Ninth Circuit. The Court denied Sunkett's motion on November 8, 2017 without Opinion.

**On January 4, 2018, Sunkett filed a Writ of Coram Vobis/Nobis in the Ninth Circuit Court of Appeals. As of January 4, 2019, this extraordinary writ is still pending.**

On February 6, 2018, petitioner filed a Writ of Certiorari in the United States Supreme Court. The High Court denied this writ, without Opinion, on April 2, 2018.

### III. CASE BACKGROUND

On January 10, 2008, in the city of Fort Bragg California, a inhabited home was burglarized, and four people inside were robbed at gunpoint point by three intruders. The homeowner, Michael Bennett, fundamentally used the home as a prop to house, build and operate a complex illegal marijuana growing operation. Bennett and three other people, Matthew Graves, Dusty Miller, and Max Stover were encountered by the intruders in the driveway and kitchen of the home. Graves, Miller, and Stover testified that the intruders were three armed African-American men wearing camouflage pants, black shirts, black boots, black gloves, and hats, in seek of money and/or “dope.”

Graves and Miller testified that Suspect #1, the first to enter the home, did not wear a mask, but Suspect #2 and #3 wore camouflage neoprene ski masks that covered their faces. However, Stover testified that all three men wore masks.

Bennett and Stover were approached first in the driveway, Graves and Miller were approached in the kitchen. Bennett was knocked unconscious upon approach, carried inside his home along with Stover (unharmd), and brought inside the living room by the intruders. All four victims were then moved from the living room and escorted to a smaller room inside the home (approximately 15-25 apart), which was used to 'dry-out' marijuana plants. Inside this room, all four were bound with duct-tape, zip-ties, and/or electrical cord,; found by the intruders on the premises.

The intruders then "ransacked" the property. Although, marijuana was abundant on the premises, the victims testified that only \$300, a cellphone, and a gold ring was taken from the home by the intruders. Shortly, after the intruders left the premises, all four victims were eventually able to escape

the room on their own through a hole in the drying room, that was concealed by a wall fan. Bennett was immediately hospitalized after the incident. Mendocino County Sheriff's Office was contacted by the hospital who reported Bennett's injuries. Sheriff's Deputy Detective Gregory Van Patten arrived at the hospital and interviewed Graves and Miller. Stover was not present.

Graves and Miller gave similar accounts, but conflicting descriptions of all three suspects. The key suspect was Suspect #1, who they agreed did not wear a mask. They described him as a "armed black man," wearing an unzipped hooded sweatshirt or jacket, black ball cap, black gloves, black boots, and camouflage BDU tactical pants. His hair was "closely shaven or bald" and "he did not have any facial hair at all." (2 RT 210-211, 405) They both claimed he was a "very, very dark skinned" man who "looked like Barry Bonds". (2 RT 473). They described him as being anywhere between 6'0, to 6'5 inches, and weighing between 230-265 pounds. (2 RT 210, 345). Bennett later testified that he was hit with a blunt object he could not identify and couldn't remember anything about the incident.

Mendocino County Sheriff's obtained a warrant for Bennett's residence. Upon arrival they found Max Stover there attempting to "cover up the crime scene," and was in the process of "cutting down and attempting to remove the marijuana plants. Detective Van Patten interviewed Stover, on site, about the incident. Stover then offered a similar account as given by both Graves and Miller. Sheriff's Deputies then searched the home and surrounding property. On the property, Sheriff's found (and seized) approximately 850 marijuana plants, 5 lbs. of processed marijuana, weaponry fitted and made for an AR-15 assault rifle, and all equipment, chemicals, and records that were directly contributing to the illegal grow. Stover was not arrested on site. Nor was homeowner Bennett, Graves, Miller, or anyone else arrested or cited who was directly linked to or found at the illegal grow.

After the first day, Detective Van Patten solely conducted about 90% of the investigation in this case on his own. Van Patten eventually testified that he started this investigation by interviewing all

hotels (and their employees) in the city of Fort Bragg that had a African American male(s) as a resident, on or around the date the crime occurred. Van Patten found that Glenn Sunkett was an African American man who rented two hotel rooms in the city around this time. Both hotels employees provided Van Patten Sunkett's driver's license, and credit/debit card information used to rent the rooms. All hotel employees who claimed to have encountered Sunkett on the days in question, all described Sunkett as having hair on his head and face, and looked exactly like the photo on his driver's license (as well as the same way he looked there in the courtroom).

Detective Van Patten met with Both Graves and Miller again, 10 days after the incident, at their private attorney, Keith Fulder's office. He conducted a 6 pack photo line-up with them, placing Sunkett's driver's license photo on the first page. Van Patten admitted that he only 'audio' recorded the actual "interview" portion of this meeting. Van Patten admitted "turning the recorder off," and removing attorney Keith Fulder from the room, when he began conducting the "identification" portion of the meeting. He offered no explanation for why he did this.

At this time, allegedly, Miller marked a total of seven photos of African American men, all of different Shades, Shapes, and Sizes, who she believed could have been suspect #1. Almost all had hair on their head and face, which contradicted her original description of this suspect, captured on audio only minutes before. Sunkett's picture was one of those circled photos. Graves however, circled only one picture, Sunkett's, which also contradicted his previous description also captured on audio. Graves allegedly told Van Patten 'verbally' that he believed the man in the picture "is one of the suspects." (\***But Note:** Graves in his first and second interview told Van Patten that only "one" person was without a mask. But at this point of identification, Graves did not specify what suspect this person was suppose to be, or what role this suspect allegedly played).

Based on Graves alleged "positive" identification of Sunkett, Van Patten served an arrest warrant for Sunkett, search warrants for his Personal and business banking accounts, and search and seizure warrants for his office and residence. Review of the bank records showed that Sunkett made several purchases in the Fort Bragg area throughout the year of 2008 and on the day the crime occurred. Further review the bank records reflected Sunkett purchased a GPS "Tracking" device in February of 2008. Van Patten got a search warrant for those records. The Covert Track "tracking" records showed the device traveled from the Bay area to Fort Bragg on several occasions throughout the year of 2008, and was found to be at or near the grow operation on the night of the crime.

Sunkett's arrest warrant was served on September 11, 2008. He was arrested at his business office in Oakland California, and another person, Aziza Washington was detained. Both search warrants for his office and residence were executed at this same time. Black boots, a pair of camouflage sweatpants, a black and white jacket, blue gardening gloves, a pair of black tactical pants, pruning shears, and a postal scale were seized from Sunkett's business office as evidence; nothing was seized from his residence. (**\*Note** None of the items seized from the office were positively identified by the victims as being worn/used by the intruders, but they were used as circumstantial evidence at trial).

Sunkett's trial started on July 12, 2009. Ms. Jill Ravitch of the D.A.'s office represented the People. Ms. Lynda Thompson of the Public Defender's Office represented the defense. Three prosecution witnesses (all hotel employees), and two defense witness (Jamila Thomas and Guy Sunkett) all testified that Sunkett looked the same way in trial, that he did on July 10, the day they interacted/engaged with him (light-skinned, head and facial hair, ect. ect..) At trial, Graves gave a 'positive' identification of Sunkett in court by stating, "I can Identify the defendant here in court by his Negroid Features. He has a standard icoyophilac skull shape, There's nothing Caucasoid about him." A second witness, Dusty Miller, who did not provide a pretrial identification, ultimately identified Sunkett in court stating, "I can tell it's

him by his demeanor." (Although he was seated, and quiet in court). At the defense's request, The court denied Sunkett an eyewitness identification expert (present in court) for evidence against these generalized identifications because Thompson was 'late' in her request to introduce this witness.

In defense Sunkett testified on his own behalf. Sunkett stated that he always appeared or looked the same way he did right there in the courtroom, as he did on July 10, 2008; a light-skinned African American man, 6'2in. tall, 195 lbs., with hair on his head and face. Sunkett admitted that he was involved in the marijuana industry solely as a purchaser and distributor, and had business relationships in the local area where the incident occurred. Sunkett claimed and identified all purchases found on his bank records. He testified that he was the actual cardholder present at each location where a purchase was made. He also admitted to buying the GPS tracking device, and claimed ownership of it. However, Sunkett adamantly denies having any prior knowledge of, or any participation in this crime. He testified that he purchased the tracking device for the sole purpose of what the manufacturer designed it to do, to track the device's location. Sunkett stated that he used the device and its global positioning system to 'track' and monitor the travel of his marijuana purchases from a separate location as the device. Sunkett stated that at no point was he ever in possession of the tracking device, nor did he ever share the same location as the tracking device from July 9th, through July 14, 2008. Sunkett testified that the device was always in the possession of the "hired" transporters/carriers who he paid to drive the marijuana from Fort Bragg, to Sacramento, then to Los Angeles. Sunkett stated that he checked the device's travel on several occasions on the night of the robbery, by personally logging into the global positioning system. On one particular instance, records reflected the device's location was being accessed either just before, or during the time the crime was occurring. GPS records combined and compared with Sunkett's bank records fully supports Sunkett's defense.

**\*It's important to note, the Tracking device only has one function, "to give transmission of the device's approximate location, and all of it's movement. It has absolutely no ability to give directions, produce address, or allow the user to give it such information. It is manufactured strictly to "track."**

#### **IV. RELEVANT (PRE)TRIAL FACTS**

After Sunkett was booked into the Mendocino County Jail, and shortly after reading the Discovery, Sunkett requested an eyewitness identification expert for trial evidence against Graves identification. Sunkett made a written request for this witness to his then Attorney Richard Peterson (a local attorney, very reputable), who received his letter and put it in Sunkett's file. Peterson also received a letter written in code that was mailed to Sunkett at the jail allegedly from the suspects in this case. Once translated, the letter stated "Sorry didn't know GPS on car but you snitch you die." Jail officials turned over the letter to Richard Peterson who then entered the letter into Sunkett's investigative file for investigation.

However, on January 4, 2009, Peterson was forced to hand the case over to the Public Defender's office because of pressure applied by the trial court, for Sunkett to prove where he was getting the money to pay Peterson for his defense. Sunkett has to choose to accept a court appointed Public Defender, or represent himself. So, on January 4th 2009, Linda Thompson of the public defender's office took over Sunkett's defense and inherited his case file from Peterson. Thompson then appointed Mr. William Kidd as her lead investigator on this case.

Thompson and Sunkett had no attorney-client relationship and no communication at all from the very beginning. To this day, Sunkett has Never had a single conversation with Thompson over the telephone. During his entire incarceration, Sunkett had only had three visits from Thompson, totaling

2.5 hours, and one visit by Kidd for 45 min. Two of Thompson's three visits were in the first 30 days of Thompson's appointment (according to the county jail visiting Log).

In a span of seven months, Sunkett wrote approximately 15 letters to Thompson, all of which she acknowledged receiving and entering into her investigative file. Approximately 10 of those letters included alibi, investigation requests, names, phone numbers, and addresses of alibi Witnesses that Sunkett wanted Thompson to interview. In the letters he also requested that she investigate a cross race identification expert to retain for trial "to challenge the discrepancies in the witnesses descriptions." Sunkett also requested she investigate a Tape Recording Authenticator or Expert to validate the alleged taped confession of one of the alleged suspects in this crime (dubbs, voice-overs, ect.). The recording was sent to the District Attorneys office, who then turned it over to Lynda Thompson, who then lost the tape. (The recording was that of an alleged suspect in this crime, and a woman named Danielle Hamilton (recorder), talking in confidence about the role this individual played in this crime, and the lack thereof of Sunkett's involvement. Thompson did not investigate or interview ANY of the witnesses Thompson knew had a connection to this recording: Aziza Washington and Danielle Hamilton). Thompson did not do anything asked of her in Sunkett's letters.

Thompson's investigative notes shows that she didn't start any investigation whatsoever, or began to prepare for trial until May 15th 2009, approximately four weeks before the start of Sunkett's trial. Her notes (and both Thompson's and Kidd's corroborating testimony provided later) revealed that William Kidd, also recommended that Thompson investigate and retain an eyewitness identification expert 6 months prior to trial,

On March 31, 2009, Detective Van Patten sent Dusty Miller a suggestive photograph of Sunkett. In his attempt to illicit a positive identification before trial, Van Patten emailed Miller, Sunkett's booking/arrest photo, his name, and all of his arrest information. Van Patten stated he did this because

he wanted Miller to view items taken from Sunkett's office to see if any of them looked familiar to her (3 RT 744). Van Patten showed Miller pictures of the items seized from Sunkett's office. Miller was unable to positively identify any of the items except the Black Tactical pants that she NOW believed were the same pants worn by suspect number one. (This conflicted mightily with her, Stover, and Graves' statements that all Intruders wore camouflage BDU pants). When Van Patten confronted her with the conflict, Miller offered no response. Van Patten then emailed Miller Sunkett's arrest information. She again offered no response. Miller then emailed Van Patten saying that she was "still unsure if Sunkett is the right guy based on the previous photo I was shown of him". She asked if her first time seeing a more recent image of Sunkett would be on the witness stand. Van Patten then emailed Miller two of Sunkett's booking photographs (front and side view). Van Patten attached an admonishment to the photograph advising Miller to "not be influenced by the photograph." After seeing a California Identification photo and photos taken of Sunkett at the time of his arrest, Miller was still unable to identify Sunkett as a suspect in this crime. However, Miller retained Sunkett's photo, and was under the spell of the suggestive nature of that photo for over 3 months leading up trial.

**V. GRAPH SHOWING EVIDENCE RELIED UPON BY THE PROSECUTION AT TRIAL, AND REBUTTAL BY CLEAR AND CONVINCING CONTRARY EVIDENCE.**

**(See 28 USC § 2254(e).)**

| #  | PROSECUTION EVIDENCE AGAINST PETITIONER             | REBUTTAL & EVIDENCE FOR PETITIONER  |
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| 1. | Mathew Graves Pre-Trial and in-court identification | According to P.C. 683.3, 686.3 and guidelines found in the California Criminal Law Procedure and Practice (CEB), almost all facets of the |

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|           | <p>of Mr. Sunkett (For Prosecution Identification Evidence, please see: (pg. 9, of the Appellate Court Opinion).</p>                                      | <p>identification process used by Detective Van Patten to elicit Graves identification of Mr. Sunkett is unlawful, suggestive, and conducted erroneously. The taint in his procedure compromised the reliability of the identification, failed to protect the integrity of the procedure, failed to preserve any certainty expressed by Graves. These failures and errors in the process are known to prompt false identifications. (See Detective Van Patten's testimony regarding his I.D. Process, at 3 RT 727-729; 4 RT 859, 863; 7 RT 1576).</p> <p>Originally, Graves described suspect #1 as being 5'11, having a beefy build, weighing approximately 230 lbs., had no facial hair, and "looked like Barry Bonds." He also said suspect #1 was <u>not</u> the tallest of the 3 men. At trial, Graves description remained almost the same, but he raised the suspect's height to 6'0 (See Graves original description of suspect #1, given 5 days after the crime occurred, Also see Transcript of interview #1, pgs. 12, 25-26, 28.</p> <p>The error in the identification process, and the likely-hood of misidentification in Graves' i.d. of Mr. Sunkett was spotlighted during Graves' trial testimony. When asked how he recognized Sunkett as a perpetrator in this crime, he stated that he recognized him "...on facial features that I can recognize", "The subject no. 1 exhibits negroid features.", "There's no---anything Caucasoid.", "He has a standard squared, isocephalic skull shape." When asked if Sunkett looks as if he weighs 230 lbs., Graves stated "No Ma'am." He was then asked did Sunkett look the same way there in trial as his did the night of the crime. Graves responded, "No. On July 10 he was clean shaven, no mustache, no beard." (See Mathew Graves' Testimony at 2 RT 344, 345, 393, 394, 404, 405, 406, 486).</p> |
| <p>2.</p> | <p>Dusty Miller's in-court identification of Mr. Sunkett. (For Prosecution Identification Evidence, see: (pgs. 8-10, of the Appellate Court Opinion).</p> | <p>10 days after the crime, Miller was subjected to the same unlawful pre-trial identification process conducted on Graves by Detective Van Patten. Yet, unlike Graves, she failed to identify Sunkett as a perp at that time. Miller described suspect #1 as being 6'1, "really huge," approximately 27 years old, "very black" or dark-skinned, "all shaven," and the hair on his head was cut very "close to the scalp." She also added that suspect #1 <u>was</u> the tallest of the three suspects. (For Miller's original description of suspect #1, see Transcript of Interview #2 on pgs. 14-15, 29-31).</p> <p>Then, approximately 3 months before the start of Sunkett's trial, lead Det. Van Patten subjected Miller to another unlawful and highly suggestive procedure when he emailed her two (2) singular booking</p>  |

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|    |   | <p>photos of Sunkett and attached his full name. He informed her that he was the only person arrested, charged, and held to stand trial for this crime. He referred to Sunkett several times as "the defendant." He then emailed her photos of evidence seized from Mr. Sunkett's office that he believed was possibly linked to the crime. Yet, Miller still did not identify Mr. Sunkett as being a perp in this crime. Although, she did indicate that at least one of the items shown to her looked similar to the items she saw during the crime. (See Van Patten's testimony at 3 RT 724-747; 4 RT 839, 874-878; 7 RT 1576; also see EXHIBIT I at p. 248-251; Detective Van-Patten's e-mails to Miller).</p> <p>Then, during her testimony at trial, and after retaining possession of Sunkett's booking photos for over <u>3 months</u>, Miller altered her description of suspect #1 as NOW being 6'2 or 6'3, and having sideburns on his face, conflicting with her original description. Under oath, She also attempted to retract her original statement that suspect #1 was "really huge." She then proceeded to identify Sunkett in court by "his demeanor." (See Miller's testimony at 2 RT 210, 211, 250-252, 255, 256, 306-311, 314).</p> |
| 3. | <p>Testimony of witness Max Stover, a victim in this crime.</p>   | <p>Max Stover <u>did not</u> identify Sunkett as a perpetrator in this crime neither pre-trial or at trial. (See Stover's trial testimony at 1 RT 132-134).</p>   |
| 4. | <p>Records of a GPS tracking device owned by Mr. Sunkett that placed the device at the crime scene. (For Prosecution GPS Evidence, see: (pg. 12, of the Appellate Court Opinion).</p> | <p>Sunkett testified that he used this device to track the transport of marijuana he purchased from the city of Fort Bragg California, and this device was in possession of transporters during it's entire route to and from Fort Bragg. (See Sunkett's trial testimony at 4 RT 1004-1005, 1021, 1022, 1047).</p> <p>This device was never found to be in the possession of Mr. Sunkett during any of the dates and times related to this crime. In fact, these GPS records and it's coordinates combined with bank, hotel, and email records, along with prosecution witnesses testimony, directly places Mr. Sunkett in separate locations during the days and times in question. (See GPS records and coordinates in Exhibit 'J' attached to the habeas petition pgs. 180-181; also for an outline of the device's exact location and Mr. Sunkett's exact location during the days and times in question based on the evidence on record, please see habeas petition at pgs. 24-26).</p> <p>Mr. Sunkett testified that the GPS was always in the possession of transporters hired to drive 30 lbs. of marijuana he purchased from one city to another. GPS and Yahoo email records show Mr. Sunkett logged</p>  |

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|    |  | into his GPS Covert Track account using his email address and password to track the location of the device within an hour of the crime occurring. (For GPS account and email log-in records, please see Petitioner's federal writ EXHIBIT J, p. 180-181).   |
| 5. | Hotel records and several bank debit/credit card records placing Mr. Sunkett in the city in which the crime occurred. (For Prosecution Evidence please see: (pg. 12, of the Appellate Court Opinion).  | At no time in this case did Mr. Sunkett ever deny being in the city of Fort Bragg. He also admitted to being the person who rented these hotel rooms as well as the person who owned and used his bank cards to pay for them. He also claimed responsibility for all other retail purchases made using these bank cards during all of the dates and times in question. In turn, these records in combination were actually beneficial to the defense because these records/receipts <u>always</u> showed Mr. Sunkett to be in a separate location than the GPS device and the people he claimed possessed it. (See Sunkett's trial testimony at 4 RT 1001-1004, 1036, 1044; also for an outline of these records of evidence and their significance, please see habeas corpus petition at pgs. 24-26).  |
| 6. | Prosecution witness Gabriella Salazar identified Mr. Sunkett as being the man she checked out of the Beachcomber Hotel. She also stated that she saw two other men in the lobby with him at the time of check out. (For Prosecution Witness Evidence please see: (pg. 12, of the Appellate Court Opinion). | <p>Mr. Sunkett never denied being the person who checked out of this hotel. He and Jamila Thomas both testified that they were the two people who checked in and out of the Beachcomber hotel. (See Sunkett's trial testimony at 4 RT 1036; also see Thomas's testimony at 4 RT 915, 917).</p> <p>The hotel receipt shows that the room rented contained one bed. It also shows that it was <u>two</u> occupants that the hotel employee checked into this room around midnight of July 10. (For Hotel records/receipt, please see Exhibit D, p. 160-163, attached to this traverse).</p> <p>Mrs. Salazar was the clerk who checked him out of this hotel later that morning at approximately 11:30 a.m. That being, her testimony was very relevant to the defense and to the question of a reliable identification made by the victims because she interacted and saw Mr. Sunkett on the same day the crime occurred. She testified that Sunkett looked exactly like his driver's license photo on this day and he wore a mustache, beard, and hair on his head at the time he departed her hotel. (See Mrs. Salazar's trial testimony at 3 RT 562).</p> <p>*Once again, the victims testified that on this day the perpetrator they believed to be Mr. Sunkett, had a clean shaven face and scalp.</p> |
| 7. | Prosecution witness Mrs. Edith Silva identified Mr. Sunkett as the man she checked into the Ocean  | Mr. Sunkett admitted to being the person who checked into this hotel. Mrs. Jamila Thomas also testified to being present and a witness to this fact. (See Sunkett's trial testimony at 4 RT 1044; also  |

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|    | <p>View Hotel on the day the crime occurred. (For Prosecution Witness Evidence please see: (pg. 12, of the Appellate Court Opinion).</p>   | <p>see Thomas's testimony at 4 RT 916, 921-925.</p> <p>Mrs. Silva was another prosecution witness who's testimony corroborated with the defense that Mr. Sunkett did not fit the description of the man the victims claimed was a perpetrator in this crime. Mrs. Silva also had an opportunity to view Mr. Sunkett just hours before the crime was committed and her identification testimony also conflicted with the victims description of Mr. Sunkett. Mrs. Silva was the second prosecution witness who testified that Mr. Sunkett wore a mustache, beard, and hair on his head on the day the crime occurred. (See Silva's trial testimony at 3 RT 599-601).</p> <p>Jamila Thomas also stated that Sunkett looked this way during her trip with him to Fort Bragg and stated that she'd "never seen him without any facial hair and without hair on his head." Also defense witness Guy Sunkett testified that he saw Sunkett a couple hours after the crime commenced, fitting this same description given by both Silva and Thomas. All three witnesses went even further and testified that Sunkett looked the exact same way on the day of the crime as he did right there in trial. (See Guy Sunkett's testimony at 4 RT 904, 905).</p> <p>Silva also added that she witnessed Sunkett return to his car and leave the premises immediately after he purchased the rental without first going to his room. Silva said she never saw Sunkett return to the hotel nor did he check out. This evidence corroborated with Sunkett's and Thomas's testimony that after Sunkett rented the room, he immediately returned to the car, left the premises, headed back to the Bay Area where they picked up Guy Sunkett, and never returned to the hotel or the city of Fort Bragg. Sunkett testified that he rented this room in the event the transporters need a place to wait safely for the announcement of the marijuana pickup.</p> |
| 8. | <p>Two pair of black steel-toe boots seized from Mr. Sunkett's office were similar in description as to the boots worn by the intruders. (For Prosecution Evidence related to these items see: (pg. 11, of the Appellate Court Opinion).</p> | <p>At trial, Mathew Graves was asked if he could identify the boots worn by the suspects. Graves replied, "Probably not, No." (See Graves testimony at 2 RT 347).</p> <p>Dusty Miller stated that she "...could not be definite that these boots are the same boots worn by the intruders." (See Miller's testimony at 2 RT 217).</p>   |

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|  |  | <p>Max Stover stated that these boots "looked familiar" because they were black in color. (See Stover's testimony at 1 RT 194).</p> <p>Mr. Sunkett testified that he is a Union worker and a member of LOCAL 251, a Laborers Union in San Francisco California. He also testified that he was part owner of a towing service in Richmond, Ca. He stated that he wore these steel-toe boots for safety purposes related to his construction and towing jobs. (See Sunkett's testimony at 4 RT 990, 991-992).</p> |
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| 9. | <p>A pair of camouflage sweatpants seized from Mr. Sunkett's office were similar in description as to the pants worn by the intruders. (For prosecution Evidence related to this item, see: (pg. 10-11, of the Appellate Court Opinion).</p> | <p>Graves testified that these particular pants were not the same pants he saw worn by the intruders. He stated that the pants shown to him in trial we're "sweatpants style" B.D.U.'s. "The other ones were military style B.D.U.'s, like the police or military officials use during training operations." He also added that he specifically recalled exterior pockets being located on the pants worn by the intruders. Graves was never shown these pants at trial for him to attempt to identify. (See Graves testimony at 2 RT 346, 408).</p> <p>Miller stated that the pants worn "looked like the same pants" worn by the intruders. But it should also be noted that at no time during the pretrial stages did Miller state to Detectives that the pants worn by the intruders were camouflage sweatpants. (See Miller's testimony at 2 RT 216).</p> <p>Stover testified that he only saw a photo of these pants and that the camo pattern looked similar to the pants worn by the intruders. He also stated that the pants worn by the intruders had pockets on the sides. Stover was never physically shown these pants in trial for him to observe in person. (See Stover's testimony at 1 RT 195).</p> <p>Sunkett testified that these were pants he occasionally wore to work as a construction worker. (See Sunkett's testimony at 4 RT 990, 993).</p> <p>*Note, there were no pockets whatsoever on the sweatpants seized</p> |
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|     |  | from Sunkett's office.   |
| 10. | A pair of blue and white gloves seized from Mr. Sunkett's office. (For Prosecution Evidence related to this item, see: (pg. 11, of the Appellate Court Opinion).   | <p>Graves was never shown these gloves at trial for identification purposes. But Graves did testify that the Gloves worn by the intruders were black in color and looked like mechanics or baseball style gloves. (See Graves testimony at 2 RT 344).</p> <p>Miller was shown these gloves by email and she stated she did not recognize these gloves. At trial, Miller testified that the gloves worn by the suspects were "black gloves," "kind of a soft leather." (See Miller's testimony at 2 RT 259, 315).</p> <p>Stover was shown these gloves at trial and he testified that he'd "never seen them before." He stated that the only gloves he saw worn by the suspects were black. (See Stover's testimony at 1 RT 194-195).</p> <p>Sunkett testified that these were gloves he used for work purposes related to his full time job in construction. (See Sunkett's testimony at 4 RT 990, 994).</p>   |
| 11. | A butane bar-b-que lighter seized from Mr. Sunkett's office was similar in description as to a small torch used to threaten the victims in this crime. (For Prosecution Evidence related to this item, see: (pg. 10-11, of the Appellate Court Opinion). | <p>This lighter was different in either shape, style, or color as the small torch described as being used by the intruders.</p> <p>Graves testified that the torch looked similar to the one possessed by the intruders. But the top part of the torch that emits the flame appeared different. (See Graves testimony at 2 RT 358).</p> <p>Miller did not recognize the lighter shown to her in trial. When asked if she recognized the lighter, Miller stated, "No, I do not," "..the one that was used was red." (See Miller's testimony at 2 RT 226).</p> <p>Stover testified that the butane lighter shown to him at trial looked similar, but it had it's differences. When asked "So your not even able to tell us if this is consistent with what you saw?", Stover responded "No, I can't." (See Stover's testimony at 1 RT 131).</p> <p>Sunkett testified that this was a lighter he used for work purposes related to his full time job in construction. (See Sunkett's testimony at 4</p> |

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|     |   | RT 990, 1070).  |
| 12. | Two rolls of duct tape seized from Sunkett's office was similar to a style of tape used on the victims during the commission of the crime. (For Prosecution Evidence related to these items, see: (pg. 11, of the Appellate Court Opinion). | <p>These items were not shown to any of the victims for identification purposes because the tape used on the victims originated from the victim's own home and was recovered at the scene. (See Detective Van Patten's testimony regarding the recovery of the tape at 3 RT 717-718).</p> <p>Sunkett testified that these rolls of tape were used for work purposes related to his full time construction job. (See Sunkett's testimony at 4 RT 990, 994, 996).</p>   |
| 13. | A handcuff key seized from Mr. Sunkett's apartment that was similar in color only to a set of handcuffs found at the crime scene. (For Prosecution Evidence related to this item, see: (pg. 11, of the Appellate Court Opinion).            | This handcuff key was not shown to have any direct link to the handcuffs found at the crime scene. This particular key was a universal key that was capable of unlocking any set of novelty cuffs. This fact was demonstrated at trial by defense investigator, Mr. William Kidd using a pair of unrelated handcuffs bought from a random military surplus store. (See Kidd's testimony at 4 RT 978-981).   |
| 14. | A black 9 millimeter handgun found in the purse of Mrs. Aziza Washington at the time of Mr. Sunkett's arrest. (For Prosecution Evidence related to this item, see: (pg. 10-12, of the Appellate Court Opinion).                             | <p>The handgun was found in the possession of Ms. Aziza Washington. Washington denied ownership of this weapon. She claimed she had never seen this gun before nor did she see Sunkett possess or put this gun inside her purse. Although Washington stated that she'd never saw this gun before, she told Detectives shortly after it's recovery that her prints may possibly be found on the gun. (See Washington's testimony at 4 RT 795-796, 873-874).</p> <p>Mrs. Linda Senteny, an expert in latent print analysis, collected fingerprints from the gun, the cartridge, and the bullets inside it. None of the prints recovered from these items matched Sunkett's prints.</p> <p>Also, during the search of Sunkett's office, no ammunition or other firearm related material was found there. This gun could not be directly linked to Mr. Sunkett or this crime.</p> <p>Graves testified that this gun looked familiar, but there are many, many firearms similar" to this one. "I'm going to say I can't identify this object directly and say without a doubt that this is the firearm that was directed</p> |

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|     |   | <p>at my face." (See Graves testimony at 2 RT 347).</p> <p>When shown this gun at trial, Miller testified, "I couldn't tell specifically if it's the exact one." (See Miller's testimony at 2 RT 318).</p> <p>Stover testified that the gun looked familiar to the one possessed by the intruders. But unlike the one collected as evidence and used at trial, Stover stated that the grips or handle of the gun used by the intruders was wooden. (See Stover's testimony at 1 RT 137, 195).</p> <p>Sunkett testified that this was not his gun and that he'd never saw it before. (See Sunkett's testimony at 4 RT 1051, 1069).</p>  |
| 15. | <p>A flashlight and a spotlight seized from Mr. Sunkett's office. (For Prosecution Evidence related to these items, see: (pg. 10-11, of the Appellate Court Opinion).</p> | <p>Graves recalled a flashlight being shined in his eyes during the incident. He later found an unfamiliar mag light style flashlight at the scene of the crime that he believed could've been the one used by the intruders, and he promptly turned it over to authorities. (See Graves testimony at 2 RT 479-480).</p> <p>Miller recalled a flashlight being shined in her eyes. But previously stated that she had no recognition of that happening. She could not identify these flashlights seized from Sunkett's office as the ones possessed by the intruders. (See Miller's testimony at 2 RT 313-314).</p> <p>Stover stated that no flashlight was ever shined in their eyes. (See Stover's testimony at 1 RT 175).</p> <p>Sunkett testified that he used these flashlights for work purposes related to his towing business. (See Sunkett's testimony at 4 RT 1072).</p> |
| 16. | <p>A copied receipt of three neoprene masks and a pair of camouflage sweatpants purchased at a Navy supply store by Mr. Sunkett days before this crime occurred. (For</p> | <p>Mr. Sunkett testified that on July 4th he was invited to a paintball event scheduled for July 11th, by Mr. Alan Gordon. Sunkett testified to purchasing the items found on the receipt for the purpose of wearing for protection and safety at this event. He stated that these items were not the same style, color, and physical description as the masks described by the victims. (See Sunkett's testimony at 4 RT 1032-1033).</p>  |

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| <p>Prosecution Evidence see: (pg. 13 of the Appellate Court Opinion).</p> | <p>The masks linked to this receipt were never recovered or brought to trial as evidence by the prosecution. Sunkett stated that these masks were always in the possession of Mr. Alan Gordon since the day of purchase. Mr. Gordon brought the three mask and the original receipt of purchase to the Public Defenders office during trial to present as evidence and testify to this fact, but trial Counsel Thompson and/or her investigator Kidd failed to meet with and interview him to weigh the value of this evidence and his testimony. Trial Counsel ordered her office to send Mr. Gordon away and inform him that he would not be needed before first speaking with him and viewing and evaluating the weight and value of the evidence he possessed. (See Exhibit 'B' attached to federal writ of habeas corpus at pgs. 154-157,</p> <p>Mr. Alan Gordon's affidavit; Also see 7 RT 1608, 1688-1689, Trial Counsel Lynda Thompson and Defense Investigator William Kidd's testimony.</p> <p>*It should be noted that Gordon was placed on the defense witness list by Trial Counsel Thompson to testify at trial about this exact evidence she was aware he had in his possession <u>prior to trial</u>.</p> |
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## VI. RELEVANT (POST)TRIAL FACTS

Several Marsden motions were heard after the trial ended in which Sunkett accused Thompson of Ineffective Assistance of Counsel, Thompson's failure to disclose conflict, and demanded her immediate removal from his case. All Matsden we're denied. Sunkett's Ferretta motion was granted temporarily until Mr. David Eyster was appointed by the court to represent Sunkett on his Motion for New Trial, and Sentencing.

At the motion for New trial hearing, Thompson, Kidd, and Sunkett provided testimony. **Thompson admitted** to several factors of ineffective assistance that Sunkett was claiming in motion. Her lead investigator Kidd's testimony also supported her own admissions. On particular issues directly addressed at this hearing, Thompson and Kidd provided the following testimony:

(a) Thompson stated that after receiving discovery she was aware of Graves' identification since the beginning of her appointment. She said she knew early on that the witnesses had "discrepancies in their physical descriptions that did not match Mr. Sunkett." (7RT 1639).

(b) Thompson stated that she "knew there was always an issue of cross-racial" identification, and that the identification process which birthed the identification was tainted" and "suggestive" (7RT 1640, 1662).

(c) She said that she was "well aware" of experts and case studies that could explain to a jury how various complicating factors she observed in this case are found to be

"highly prejudicial to a defendant in an identification case" (7RT 1641,1662-66).

(d) She explained how she knew it was highly likely

that the jury in this case would consist of all Caucasians whom she believed "have a difficulty" making accurate cross-racial identifications (7RT 1645-46).

(e) However, after acknowledging all of this Thompson admitted "I did

not file a motion to suppress, whether statutory or non-statutory, to suppress or attack the taint or influence" she believed the suggestive identification process and other psychological factors would have on the identification of her client (7RT 1663-64).

(f) David Eyster specifically asked Thompson, "did she herself

conduct any investigation, or order her investigator to

investigate, any of this information she'd just described to the

Court, whether on her own, or with help from an expert?" **Thompson**

**admitted "I did not."** (7RT 1641, 1645, 1655), (see *Wiggins*

*v. Smith*, 539 U.S. 510, 527-528 (2002)).

(g) Six months before trial started, Sunkett made a formal request

in a letter to Thompson dated January 29, 2009, asking her to investigate

and retain a cross-race identification expert. He stated he believed the expert

could help attack (1) the discrepancies in the witnesses identifications, (2) the

tainted identification processes Miller and Graves were both subjected to, and

(3) cross-race identification issues. Thompson **admitted to receiving**

**this letter** on February 2, 2009. (7RT 1644-45) (also see Traverse,

Exhibit F, p. 171-172; Sunkett's January 29, 2009 hand-written

letter to Thompson). Thompson then **admitted that she did not**

**read this letter** from Sunkett. (7RT 1644-45).

(h) Mr. William Kidd testified that after reviewing discovery, he also

believed an Eyewitness Identification Expert was necessary. He

stated, "I talked to the attorney about.." contacting an eyewitness

expert for trial very early on in the case. (7RT 1612-13).

Thompson ignored her own appointed investigator's advice. She **admitted** that she conducted **absolutely no investigation** into the matter until the middle of trial, after Graves, and Miller provided in-court identifications. (7RT1645).

(i) Thompson failed to investigate and interview critical alibi witness Alan Gordon. 6 months before trial, Thompson was informed Gordon once was in possession of evidence directly related to this case that could help prove Sunkett's innocence. Both Thompson and Kidd admitted that they never interviewed Gordon. Even after Gordon showed up at her office during trial, they still failed to interview him. **Both Thomas and Kidd admitted** to knowing that Gordon was present at the courthouse, and that they both failed to meet with him, interview him, and take possession of this evidence, and potentially use his testimony (7RT 1608, 1688-89).

(j) Thompson failed to investigate and introduce an audio recording, and a coded letter that was given to her by the District Attorney's Office. Both were allegedly produced by possible suspects in this crime, and both expressed Sunkett's innocence (7RT 1671-74). Thompson admitted

that she made no attempt to investigate any of this evidence, and concluded that she knew of no way to authentic these items so she did not introduce them (7RT 1674-75). However, **she admitted** that Sunkett suggested hiring a voice analysts, an audio forensic expert, or a cryptography expert to authenticate this evidence (Sealed RT p. 1436; 7RT 1673-74). **Thompson admitted** to the court that she did not know what a voice analysts' was or how it could be helpful to the defense, **so she didn't investigate it.** (Sealed RT 1436; 7RT 1673-74).

**\*In Summary\* Thompson conducted no investigation into a viable defense. She didn't investigate any of the contributing factors that she herself testified could cause misidentification; all of which she acknowledged were present in this case. Her error resulted in the Judge prohibiting the expert testimony from being heard due to her "late" request to introduce. Her incompetence resulted in a complete withdraw of a viable defense against the Central Issue of this case. Sunkett left with a weak defense of mistaken identification that was based on**

**Thompson's own theories and conclusions that were unsupported and uncorroborated by anything. The eyewitness expert was necessary to properly educate, explain, and validate such complex information that a lay jury was not expected to fully understand. Therefore, Thompson was responsible for removing anything of substance that would have validated the misidentification defense.**

## **VII. SUNKETT'S LEGAL ARGUMENTS FOR RELIEF**

### **A. Ineffective Assistance of Counsel Claims.**

- 1). Sunkett was denied due process and the effective assistance of counsel entitled under the 4th, 5th, 6th and 14th Amendment, when public defender Lynda Thompson failed to 'timely' move the court to admit expert testimony on eyewitness identification; which was the central issue of this case.
- 2). Sunkett 5th, 6th and 14th right to effective assistance and due process was violated when Sunkett's public defender failed to move the court to suppress Dusty Miller's identification testimony, and the "highly suggestive" pretrial identification procedure that elicited it.
- 3). Sunkett's 5th, 6th and 14th Amendment rights to effective assistance of counsel and due process were violated when public defender Thompson failed to move the court pursuant to either 995 or 1118.1 (at the close of the prosecutions case) to dismiss the four kidnapping charges due to the insufficiency of evidence to support penal code 207 (a).

- 4). Sunkett's 5th, 6th, and 14th Amendment rights were violated when P.D. Thompson failed to investigate, interview, and call to trial a key alibi witness who's name was included on the defense witness list, and whose testimony was critical to establishing the alibi.
- 5). Sunkett's constitutional rights to due process and effective assistance of counsel were violated when Thompson failed to communicate with Sunkett to elicit all matters of defense, failed to introduce exculpatory evidence showing Sunkett's innocence, failed to move the court to dismiss suggestive evidence seized from Sunkett's office that was not positively identified or had a direct link to this case, and failed to perform the basic duties expected of a competent and diligent advocate for the defendant.
- 6). Sunkett's 4th, 5th, 6th, and 14th Amendment rights were violated when the Trial Court made multiple errors when determining and calculating the Sunkett's sentence of 63 years, and appellate attorney Roger Curnow failed to raise and argue this issue on direct appeal.
- 7). Cumulative errors and combined deficiencies of public defender Lynda Thompson violated Sunkett's 4th, 5th, 6th, and 14th amendment rights to due process and effective assistance of counsel, and warrants relief.

#### **B. Due Process and Trial Fairness Claims**

- 1). The trial court abused its discretion by denying the defense's motion to introduce a cross-race eyewitness identification expert to provide testimony highly relevant to the central issue of this case.
- 2). The identifications made against Petitioner at trial were tainted and made untrustworthy by the erroneous and highly suggestive pretrial eyewitness identification procedures conducted by law enforcement that elicited them.

3). The trial court instructed the jury with a prejudicial instruction on eyewitness identifications of a Defendant made at trial.

4). Four charges of Penal Code section 207(a), kidnapping, are not supported by the trial evidence; thus the evidence is insufficient to sustain guilt beyond a reasonable doubt.

5). Prosecution evidence presented at trial supported the Petitioner's alibi defense and was insufficient to demonstrate guilt beyond a reasonable doubt as determined by the jury.

## **VIII. LAW AND TREATISES SUPPORTING RELIEF.**

*Alcala v. Woodford* (9th Cir. 2003) 334 F.3d 862

*Avila v. Galaza*, (9th Cir. 2002) 297 F. 3d 911)

*Baylor v. Estelle* (9th Cir. 1996) 94 F.3d 1321;

*Blackledge v. Allison*, 431 U.S. 63, 76 (1977)

*Boling v. Chappell* (E.D. Cal.; August 21, 2012, No. C.V. 99-05279)

*Brag v. Galaza*, 242 F.3d 1082-1089 (9th Cir. 2001

*Brodes v. State* (2005) 279 Ga. 435; 614 S.E. 2d 766

*Brodit v. Cambra*, 350 F.3d 985 1003 (9th Cir. 2003)

*Cheney v. Washington*, 614 F.3d 987, 995 (9th Cir. 2010))

*Coles v. Peyton* (4th Cir. 1968) 389 F.2d 224, 226)

*College Hospital v. Superior Court* (1994) 8 Cal. 4th 704

*Commonwealth v. Santoli* (1997) 424 Mass. 837; 680 N.E. 2d 1116

*Cox v. Donnelly*, 387 F.3d 193, 198 (2nd Cir. 2004)

*Deutscher v. Whitley*, (9th Cir. 1989) 884 F.2d 1152, 1160

*Duncan v. Ornoski* (9th Cir. 2008) 528 F.3d 1222

*Earp v. Oronski*, 431 F. 3d 1158, 1167 (9th Cir. 2005))

*Edwards v. Lamarque*, 475 F.3d 1121, 1126 (9th Cir. 2007)

*Frierson v. Woodford* (9th Cir. 2006) 463 F.3d 982, 992

*Harrington v. Richter*, 131 S.Ct. 780-788

*Henderson v. Sargent*, 926 F. 2d 706, 711 (8<sup>th</sup> Cir. 1991)

*Herrera v. Collins*, 506 U.S. 390 (1993)

*Huffington v. Nuth*, 140 F.3d 572, 580 (4th Cir. 1998)

*Hughes v. Borg*, 898 F.2d 695, 702 (9th Cir. 1990)

*In re Arena*, 12 Cal.4th 695,722 (1996)

*In re Cordero* (1988) 46 Cal. 3d. 161, 181 n8

*In Re Cordero*, Supra, at p. 180

*In re Edwards*, (2009) 174 Cal. App 4th 387, 407)

*In re Harris*, 5 Cal.4th 813, 827 (1993)

*In re Lucas*, 33 Cal.4th 682 (2001)

*In re Newly*, 6 Cal.4th , 919 (1993))

*In re Worship*, 397 U.S. 358 (1970)

*In Re Worship*, 397 U.S. at 365-368

*Jackson v. Virginia*, 433 U.S. 307, 318-319, 99 S.Ct. 2789, 61 L. Ed. 2d 560, 573, (1979).

*Juan H. v. Allen III*, 408 F.3d 1262, 1270, fn. 8 (9th Cir. 2005)

*Juan H. v. Allen*, 408 F.3d 1262 (9th Cir. 2005)

*Kimmelman v. Morrison*, 477 U.S. 365, 381 (1986);

*Lambert v. Blodgett* 393 F. 3d 943, 976 (9th Cir. 2004))

*Leavette v. Brave*, 682 F.3d 1138, 1141 (9th Cir. 2012)

*Luna v. Cambra*, 311 F. 3d 928, 960 (9th Cir. 2002))

*Makal v. State of Arizona*, 544 F.2d 1030, 1035 (9th Cir. 1976)

*Manson v. Brathwaite*, Supra, 432 U.S. 98, 106)

*Mason v. Hanks*, 97 F.3d. 887, 902 (7th Cir. 1996);

*Miles v. Martel*, 696 F.3d at p. 906, fn. 9 (9th Cir. 2012)

*Miller-El v. Cockrell*, 537 U.S. 322, 346 (2003)

*Nation* (1980) 26 Cal. 3d 179)

*Ortiz v. Stewart*, 149 F. 3d 923, 934 (9th Cir. 1988)

*Pavel v. Hollins*, 261 F.3d 210, 218 (2d Cir. 2001))

*People v. Bell* (2009) 179 Cal.App.4th 428, 435).

*People v. Brandon* (1995) 32 Cal. App. 4th 1033. 1044

*People v. Corcoran* (2006) 143 Cal.App. 4th 272, 279)).

*People v. Diaz* (2000) 78 Cal. App. 4th 243, 247

*People v. Duvall*, supra, 9 Cal.4th at p. 475 (1995)

*People v. Fossleman* (1983) 33 Cal. 3d 572, 583-584).

*People v. Johnson* (1992) 3 Cal. 4th 1183, 1231, 1232

*People v. Johnson* (2004) 115 Cal. 4th 186, 213

*People v. Jones* (2003) 108 Cal. App. 4th 455, 462

*People v. Martinez* (1999) 20 Cal.4th, at p. 237

*People v. McDonald*, 37Cal. 3d 351, 377 (1984))

*People v. Nation* (1980) 26 Cal.3d 169, 178-182).

*People v. Pope*, Supra 23 Cal. 3d at p. 425).

*People v. Prieto* (2003) 30 Cal. 4th 226, 247

*People v. Rodriguez* (1977) 68 Cal. App. 3d 874. 881

*People v. Shadden* (2001) 93 Cal.App. 4th 164, 167, 169-170

*People v. Snow* (2003) 30 Cal. 4th 43, 70)

*People v. Watson*, supra, 46 Cal. 2d 818, 836

*People v. Ledesma*, *Supra*, at pp. 217-218))

*Renoso v. Giubino* (9th Cir. 2006) 462 F.3d 1099, 113).

*Renoso v. Giubino*, (9th Cir. 2006) 462 F.3d 1099, 1113

*Riley v. Payne* (9th Cir. 2003) 352 F. 3d 1313, 1321

*Rose v. Superior Court*, 81 Cal.App.4th 564, 573, (2000)

*Sanders v. Ratelle* (9th Cir. 1994) 212 F.3d 1446, 1457)

*Sanders v. Ratelle* (9th Cir. 1994) 212 F.3d,1446, 1457)

*Simmons v. United States* (1968) 390 U.S. 377, 383-384.)).

*Simmons v. United States*, *Supra*, 390 U.S. at p. 384)

*State v. Guzman* (Utah 2006) 133 p. 3d 363

*State v. Long* (Utah 1986) 721 p. 2d 483

*Stovall v. Denno* (1967) 388, U.S. 293, 301-302

*Stovall v. Denno*, *supra*, 388 U.S. at p. 302

*Strickland v. Washington*, 466 U.S. 668, 687-688 (1984)

*Strickland*, 466 U.S. 668

*Strickland*, 466 U.S. at 687, 104 S.Ct. at 2064

*Taylor v Maddox*, *supra*, 366 F.3d 992, 1000-1001)

*United States v. Burrows* (9th Cir. 1989) 872 F.2d 915, 918)

*United States v. Gray*, 878 F.2d 702, 711 (3rd Cir. 1989).

*United States v. Span*, 75 F.3d 1383, 1389 (9th Cir. 1996)

*United States v. Wade* (1967) 388 U.S. 218, 234)

*Wiggins v. Smith*, 539 U.S. 510, 526-527, 528 (2002)

*Wiggins v. Smith*, (2003) 539 U.S. 510

*Williams v. Taylor* (2000) 529 U.S. 362, 402-403

## **Statutes:**

United States Code, Title 28 subsection 2254(d)

Antiterrorism and Effective Death Penalty Act

California Evidence Code Subsections: 210, 351, 352, 402

California Penal Code subsections: 207, 207(a), 211, 212.5-213(a)(1)(A), 236, 422, 459, 460(a), 654, 995, 1118.1, 1387, 2254(d)(1), 12021(a), 12022(a)(1), 12022.53(b).

## **Constitutional Provisions:**

United States Constitution 4th Amendment, 5th Amendment, 6th Amendment, and 14th Amendment.

## **Other Authorities:**

Judicial Counsel of California Jury Instructions:

CALCRIM 252, 315, 780

CALJIC 2.92

## **Treatises.**

Cutler et. al., "The Reliability of Eyewitness Identifications," Law And Human Behavior, V. 11, 1987

Wells, G.L. & Quinlivan, D.S. "Suggestive Eyewitness Procedures and the Supreme Court's Reliability Test In Light Of Eyewitness Science 30 years later," Law and Human Behavior.

