

**FILED**  
**SAN MATEO COUNTY**

DEC 20 2022

Clerk of the Superior Court  
By EMILY GOMES  
DEPUTY CLERK

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF SAN MATEO**

In re ) Case No. SC055500A  
SCOTT LEE PETERSON ) Related to Cal. Supreme Court  
On Habeas Corpus ) No. S230782  
**ORDER ON WRIT OF HABEAS CORPUS**

**INTRODUCTION**

Scott Lee Peterson (“Petitioner”) was convicted of murdering his wife and unborn child after a jury trial. He claims in a Petition for Writ of Habeas Corpus that he was deprived of his constitutional right to a fair and impartial jury because of a trial juror’s<sup>1</sup> alleged concealment of bias during voir dire. (Petition for Writ of Habeas Corpus (“Petition”), p. 96.)<sup>2</sup> Petitioner

<sup>1</sup> The juror was identified by name during the evidentiary hearing with her consent, but this Court will continue to use the identifier used by the California Supreme Court and will refer to the juror as “Juror No. 7.”

<sup>2</sup> In an order dated February 15, 2022, this Court took judicial notice of the habeas pleadings filed in this case with the California Supreme Court, including the Petition for Writ of Habeas Corpus, Claim One, and the informal pleadings filed by the parties. (Order Re Respondent’s Request that the Court Take Judicial Notice of Respondent’s Pleadings, filed February 15, 2022.) The Petition included 9 exhibits as part of Claim One: Exhibits 8, 44-47, 49-52. To be comprehensive, the Court also takes judicial notice of the transcripts and court records in *People v. Peterson*, San Mateo County Superior Court, SC55500A; in the direct appeal, *People v. Peterson*, S132449; and in the habeas proceedings, *In re Scott Lee Peterson on Habeas Corpus*, S230782.

1 claims that his conviction should be vacated because the juror committed prejudicial  
2 misconduct by providing false answers in her jury questionnaire during the jury selection  
3 process.

4 Petitioner's Petition was originally filed in the California Supreme Court in conjunction  
5 with his direct appeal. In October 2020, the Supreme Court issued an Order to Show Cause,  
6 remanding the case to the San Mateo Superior Court and requiring Respondent "to show  
7 cause . . . why the relief prayed for should not be granted on the ground that Juror No. 7  
8 committed prejudicial misconduct by not disclosing her prior involvement with other legal  
9 proceedings, including but not limited to being the victim of a crime, as alleged in Claim 1."  
10 (*In re Scott Peterson on Habeas Corpus*, S230782, Order filed on Oct. 14, 2020.)

11 On remand, this Court reviewed the full record, conducted a five-day evidentiary  
12 hearing, and considered the extensive briefing submitted by the parties.<sup>3</sup> For the reasons set  
13 forth in detail below, the Petition is DENIED.  
14

#### 15 PROCEDURAL HISTORY

16 In April 2003, Petitioner was charged with the December 2002 murders of his wife Laci  
17 Peterson and their unborn child, Conner, in violation of Penal Code section 187. The  
18 information added a multiple murder special circumstance in violation of Penal Code section  
19 190.2, subdivision (a)(3). Petitioner pled not guilty and was tried by jury.

20 A five-month jury trial began on June 1, 2004. (Petition, p. 17.) The jury began  
21 deliberations on November 3, 2004. (*Ibid.*) The jury continued deliberating until noon on  
22 November 9, when the first of two jurors was dismissed.<sup>4</sup> (*Ibid.*) This juror was replaced by  
23 alternative juror No. 2—the juror who ultimately became Juror No. 7 and whose questionnaire  
24 and voir dire are the subject of Petitioner's habeas claim. Juror No. 7 ultimately deliberated in  
25

26 <sup>3</sup> Petitioner was represented by Clifford Gardner, Esq., Habeas Corpus Resource Center, by and through  
27 Shelley J. Sandusky, Esq., and Andras Farkas, Esq., and Pat Harris, Esq. of the Law Office of Pat  
28 Harris. Respondent was represented by the Stanislas District Attorney Birgit Fladager and Special  
Assistant District Attorney, David Harris.

<sup>4</sup> The reasons for dismissal of these two jurors are not relevant to the Petition.

1 both the guilt and penalty phases of the trial. (*See* Reporter’s Transcript (“RT”) 345:22-  
2 346:13.)

3       After another juror was dismissed and replaced, deliberations resumed and continued  
4 until November 12, 2004, when the jury found Petitioner guilty of first-degree murder and  
5 guilty of the lesser included offense of second-degree murder. (20 Trial Clerk’s Transcript  
6 (“CT”) 6133.) The jury found the multiple murder special circumstance true. (*Ibid.*) During  
7 the penalty phase, the jury returned a death verdict and Petitioner was sentenced to death.  
8 (*Ibid.*; 21 CT 6462-6469.)

9       Petitioner appealed the jury verdict and death sentence to the California Supreme Court.  
10 While his direct appeal was pending, Petitioner filed the instant Petition. On August 24, 2020,  
11 the California Supreme Court unanimously affirmed Petitioner’s conviction but reversed his  
12 death sentence. (*People v. Peterson* (2020) 10 Cal.5th 409, cert. denied sub nom. *Peterson v.*  
13 *California* (2021) 141 S.Ct. 1440.) On October 14, 2020, the Supreme Court issued its Order  
14 to Show Cause on the Petition. (*In re Scott Lee Peterson on Habeas Corpus*, S230782.)

15       The case was remanded to the Superior Court for further proceedings related to both the  
16 death penalty and the Petition. On May 28, 2021, the District Attorney informed the Court that  
17 it would no longer seek the death penalty and on December 8, 2021, the Court resentenced  
18 Petitioner to life in prison without the possibility of parole, leaving the Petition pending for  
19 further proceedings.  
20

21       On the Petition, Respondent filed a Return and Petitioner filed a Denial. Because  
22 Respondent’s Return contained new documentation regarding Juror No. 7, of which Petitioner  
23 was previously unaware, the Denial included additional factual allegations related to the juror  
24 misconduct claim.<sup>5</sup> A Supplemental Return and Supplemental Denial followed.  
25

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26 <sup>5</sup> In its Return, Respondent provided documentation showing that in November 2001, Juror No. 7’s ex-  
27 boyfriend, Eddie Whiteside, was charged with domestic violence against Juror No. 7 and pled no contest  
28 to battery. (Return, pp. 51-53.) Because Juror No. 7 had not disclosed the incident in response to  
Question 74 in the jury questionnaire asking if she had ever been the victim of a crime, Petitioner made  
additional factual allegations in his Denial to the Return. (*See* Denial, pp. 11-13.)

1 After reviewing the Returns and Denials, the Court scheduled an evidentiary hearing for  
2 February 25, 28, and March 1, 2022. Testimony resumed on March 24 and concluded on  
3 March 25, 2022. (RT 370:4-375:20; 400:13-18.) The parties filed post-evidentiary briefs, and  
4 oral argument was held on August 11, 2022. The matter was taken under submission on  
5 September 16, 2022, following the submission of proposed memorandums of decision by both  
6 sides.<sup>6</sup>

### 7 **FACTUAL BACKGROUND: CHALLENGED STATEMENTS**

8 Petitioner's claims concern statements made by Juror No. 7, both in her answers to  
9 questions in the jury questionnaire and during in-person voir dire.

#### 10 **A. Juror No. 7's Answers to the Jury Questionnaire**

11 The jury selection process began on March 4, 2004. (Petition, p. 17.) Prospective  
12 jurors were asked to complete a 116-question, 20-page, written questionnaire under penalty of  
13 perjury. (Exhibit ("Exh.") 4.)<sup>7</sup> On March 9, 2004, under penalty of perjury, Juror No. 7 filled  
14 out her jury questionnaire. (*Id.* at p. 20.) She did not seek a hardship discharge. (*Id.* at p. 21.)  
15 Relevant here are questions 54a, 54b, and 74.<sup>8</sup> Juror No. 7's answers were as follows:

17 54a. "Have you ever been involved in a lawsuit (other than divorce proceedings)?"  
18 Juror No. 7 checked "NO."

19 54b. "If yes, were you: \_\_\_The plaintiff \_\_\_The defendant \_\_\_Both."  
20 Juror No. 7 left 54b blank.

21 <sup>6</sup> The evidentiary hearing was briefly re-opened by order dated December 8, 2022, to correct an error in  
22 an exhibit that had been admitted at the request of Petitioner. Exhibit 1, now sealed, contained a full  
23 social security number of Marcella Kinsey. Ms. Kinsey's role in the habeas proceeding is explained  
24 later in this Order. Rule 1.201 of the California Rules of Court mandates, in pertinent part, that attorneys  
25 who file papers in the court's public file, redact all but the last four digits of a social security number  
26 and only file that portion of the social security number where required. (Cal. Rules of Court, rule  
27 1.201(a)(1) & (b).) The rule very clearly states that the purpose of this requirement is "[t]o protect  
28 personal privacy and other legitimate interests." (*Id.* at (a).) Exhibit 1 was replaced by stipulation of the  
parties dated December 15, 2022, with Exhibit 1A. The correction delayed the Court in issuing this  
Order by December 16, 2022.

<sup>7</sup> Unless otherwise indicated, all references to exhibits are to habeas evidentiary hearing exhibits.

<sup>8</sup> In the Petition, Petitioner also claimed Juror No. 7 gave a false answer to question 72 on the  
questionnaire, which asked if she had ever "participated in a trial as a party, witness or interested  
observer?" (*See* Petition, pp. 97-100, 107.) Petitioner failed to address question 72 at the evidentiary  
hearing or in his post-hearing brief. The Court addresses this claim below.

1 74. "Have you, or any member of your family, or close friends, ever been the VICTIM or  
2 WITNESS to any crime?"

3 Juror No. 7 checked "NO."

4 (*Id.* at pp. 9-10, 14.)

5 In addition to these questions, Juror No. 7 gave answers to other questions that provided  
6 the trial attorneys additional information about her and her views of the case. For instance,  
7 Juror No. 7 was unable to state where her parents were born, putting "?" in the space for her  
8 answers. (Exh. 4, p. 3.) She listed high school as her educational background, (*id.* at p. 4),  
9 with "[s]ome [c]ollege or [t]ech [s]chool" as a "medical asst., CNA." (*Id.* at p. 6.) Despite  
10 answering that she received training as a medical assistant, she responded "NO" to the very  
11 next question which asked "[h]ave you ever studied or received training in medicine,  
12 psychology, psychiatry, social work, sociology, or counseling?" (*Ibid.*) Her questionnaire  
13 answers also contained misspellings.<sup>9</sup>

14 Juror No. 7 provided her view on the death penalty as well. Question 107 asked "[w]hat  
15 are your feelings regarding the death penalty?" Juror No. 7 responded, "if without a doubt  
16 someone did something that bad, all the evidence was there then if that is the sentence given  
17 then the person needs to have that sentence." (Exh. 4, p. 19.) Similarly, when asked "[w]hat  
18 are your feelings regarding life in prison without the possibility of parole?" in Question 108,  
19 she responded "same as above. 'if' without a doubt all evidence is there."<sup>10</sup>

#### 20 **B. In-Person Voir Dire of Juror No. 7**

21 After filling out her questionnaire, Juror No. 7 returned in person on April 12, 2004, to  
22 be questioned by the trial court and counsel during the phase of the trial known as "voir dire."<sup>11</sup>  
23

24 <sup>9</sup> Juror No. 7 wrote out "Home Heath care" in response to Q. 32; "police acadamey class" (Q. 44); "no  
25 feeling's" (Q. 40); "cat & dog's" (Q. 63); "just the basic's." (Q. 91); "They help serv the people." (Q.  
26 73).

27 <sup>10</sup> The standard applied in criminal proceedings is "proof beyond a reasonable doubt." (*See* CALCRIM  
28 Nos. 103, 220.) Based on her answers to the questionnaire, Juror No. 7 was, at the time, using a different  
standard of "without a doubt" yet neither side followed up with her regarding this response during in  
person voir dire.

<sup>11</sup> Voir dire is the examination, by oral and direct questioning, of the prospective jurors, following the  
completion of the trial judge's initial examination. (*See* Code Civ. Proc., section 223.)

1 (Exh. 5.)<sup>12</sup> Initially, the trial court asked Juror No. 7 how long her employer would pay her for  
2 jury service given that the expected length of the trial was set for five months. When Juror No.  
3 7 responded that her employer would only pay for “two weeks” the trial judge excused her.  
4 (*Id.* at pp. 4598:22-4599:3.) Juror No. 7 did not protest or indicate on the record any hesitation  
5 with being excused. (*Id.* at p. 4599:4-7.)

6 Juror No. 7 testified at the evidentiary hearing that after she was excused, she “grabbed  
7 [her] things” and was starting to leave when Petitioner’s counsel, Mark Geragos, requested that  
8 she remain. Juror No. 7 recalled that she had stepped across “about three chair lengths” before  
9 Mr. Geragos asked that she not be dismissed. (RT 247:21-248:6.)

10 Q. And when you said the Judge dismissed you, the Judge basically did what?

11 A. I don’t remember exactly how it went, but he said your job is not paying and  
12 you’re dismissed. And I grabbed my things and I stood up from the chair and I  
13 thanked him. And I started to walk out, and Mr. Geragos said I object or  
14 something along those lines of whatever his legal term was, and I sat back down.

15 (*Id.* at 133:6-13.) Juror No. 7 recalled that during voir dire she informed the trial judge that she  
16 did not fill out a hardship because she “lived with [her] mother and [her] kid’s father, so  
17 financially [she] would be okay.” (*Id.* at 133:19-23; *see also* Exh. 5, pp. 4600:10-19, 4610:2-  
18 18.)

19 The transcript of the April 12, 2004, voir dire is consistent with Juror No. 7’s memory  
20 of her interaction with the trial judge. (Exh. 5, pp. 4598:22-4599:26.) After Mr. Geragos  
21 interceded, Juror No. 7, like some of the other prospective jurors, indicated her willingness to  
22 serve despite only limited jury service payment by her employer. (*Id.* at p. 4600:1-17.)

23 During voir dire, Mr. Geragos expressed to Juror No. 7 that what he was “really”  
24 concerned about were the answers to publicity questions that she listed on her questionnaire.  
25 (Exh. 5, p. 4623:12-24.) Mr. Geragos asked Juror No. 7 about publicity and out of court  
26 discussions she had about Petitioner’s guilt or innocence, including discussions about cheating.

27  
28  

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<sup>12</sup> Juror No. 7’s juror number for the jury selection phase of the trial was 6756. (Exh. 4, p. 20.)

1 Q. Yeah. Now when the people would express their opinions to you, kind of what I'm  
2 getting at, is did you, I mean did you express any kind of an opinion back? Did you say  
Yeah, that looks bad, or he was cheating on his wife, or anything along those lines?

3 A. Yeah, I mean, I --yeah, it does look bad. If anything I said it's not looking good.

4 Q. Okay. Now when you come in here, do you think that you -- I know that we asked those  
5 questions, and who knows, I mean, you know you've never been through this.

6 A. Right.

7 Q. I've never been through this; the judge has never been through a case like this. But do  
8 you think that you can set that kind of -- the fact that you have expressed an opinion  
aside?

9 A. I think I can.

10 (*Id.* at p. 4624:10-25.)

11 There was no follow-up regarding Juror No. 7's opinion about Petitioner's cheating  
12 after this limited colloquy. In addition, at no time during the voir dire did either side ask Juror  
13 No. 7 about issues pertaining to domestic violence, define the term "lawsuit," or make any  
14 additional inquiries to refine the questions in the questionnaire, despite the District Attorney  
15 acknowledging in open court that other jurors had informed the court that at least some of the  
16 questions were not clear. (*See* Exh. 5, pp. 4618:21-4619:8.)

#### 17 **PETITIONER'S CLAIMS**

18 According to Petitioner, Juror No. 7 committed misconduct by intentionally providing  
19 false answers in her jury questionnaire. Petitioner's theory is that, because of the unmatched  
20 pre-trial publicity in the case, prospective jurors were aware of the People's theory that  
21 Petitioner assaulted his pregnant wife, killing her and their unborn child, while cheating on her.  
22 During jury selection, Petitioner contends, Juror No. 7 concealed that when she was five-  
23 months pregnant, she too had been threatened, and she sought (and received) a restraining order  
24 after hearing, stating in her restraining order petition that she feared for herself and the life of  
25 her unborn child. The restrained party was Marcella Kinsey, the ex-girlfriend of Juror No. 7's  
26 ex-boyfriend, Eddie Whiteside. She also failed to reveal an alleged domestic violence incident  
27 that occurred in 2001 involving Mr. Whiteside. Petitioner contends that Juror No. 7 concealed  
28

1 this material and relevant information because she was actually biased against Petitioner and  
2 wanted to be on the jury to punish him for what she believed he had done to his unborn child.

3         Following the filing of Respondent's Return and Supplemental Return, and Petitioner's  
4 Denial and Supplemental Denial, the following core material factual allegations are in dispute:

5         Factual allegation No. 22: "Petitioner alleges that [Juror No. 7] wanted to sit in  
6 judgment of Mr. Peterson, in part to punish him for a crime of harming his unborn child – a  
7 crime that she personally experienced when Marcella Kinsey threatened [Juror 7]'s life and the  
8 life of [Juror 7]'s unborn child." (Petition, p. 102; Denial to the Return ("Denial"), p. 21.)

9         Factual allegation No. 23: "For this reason, [Juror No. 7] was actually biased against  
10 Petitioner." (Petition, pp. 102-103; Denial, p. 21.)

11         Factual allegation No. 24: "Juror [No. 7]'s bias, based on her own victimization as a  
12 woman whose unborn child was threatened by another, was confirmed during deliberations.  
13 Ten jurors voted to convict Mr. Peterson of second degree murder of the unborn child. Juror  
14 [No. 7] was a holdout juror, who strenuously argued that the killing of the unborn child was  
15 first degree murder. (Exh. 8 to the Petition at HCP-000238.) During deliberations, Juror [No.  
16 7] passionately, and personally, argued to her fellow-jurors, 'How can you not kill the baby?,  
17 [Juror No. 7] said, pointing to her stomach.' (*Ibid.*) As the jurors recounted the deliberations,  
18 'The issue of fetus versus a living child also came into play for some jurors, but not for [Juror  
19 No. 7.] "That was no fetus, that was a child," [Juror No. 7] said. "Everyone heard I referred to  
20 him as 'Little Man.' If he could have been born, he would have survived. It's unfair. He didn't  
21 give that baby a chance.'" (*Ibid.*)" (Petition, p. 103; Denial, pp. 14, 16-17.)

22         Factual allegation No. 26: "In letters to petitioner, [Juror No. 7] disclosed an obsessive  
23 interest in the death of Petitioner's unborn child." (Petition, pp. 103-104; Denial, p. 22.)

24         Factual allegation No. 33: "Juror [No. 7] concealed on voir dire a subject that was  
25 extremely important and emotionally critical to her: that she had personally experienced the  
26 threat of losing a child through the intentional, harassing conduct of her ex-boyfriend's  
27 girlfriend." (Petition, p. 106; Denial, p. 22.)  
28



1 Factual allegation No. 34: “Juror [No. 7]’s experience of a juror deeply concerned  
2 about losing an unborn child through intentional misconduct of another was material to the  
3 issues in petitioner’s case, which similarly involved the death of an unborn child through  
4 misconduct of another.” (Petition, p. 106; Denial, p. 22.)

#### 5 TESTIMONY AND EVIDENCE AT THE HEARING

6 The Court determined that an evidentiary hearing was required to resolve the parties’  
7 disputes over the allegations. The following summarizes the evidence related to Petitioner’s  
8 claims.

#### 9 A. Evidence Adduced

#### 10 1. Juror No. 7’s December 10, 2020, Declaration

11 The first witness called by Petitioner was Juror No. 7. She was questioned for almost  
12 two days. Initially she appeared nervous. Her attorney, Geoffrey Carr, was present in court.  
13 After several preliminary questions, Mr. Carr invoked Juror No. 7’s right to remain silent, (RT  
14 21:2-7), and the Respondent, District Attorney, presented the Court with a grant of immunity,  
15 which was signed and entered into the record. (*Id.* at 21:10-25.)

16 Petitioner started his examination of Juror No. 7 by directing her attention to the  
17 declaration she signed on December 10, 2020, included in Respondent’s Return. Juror No. 7  
18 confirmed she understood what perjury meant. (RT 23:8-9.) Juror No. 7 was directed to  
19 specific statements made in the declaration asking if they were truthful and accurate. As to  
20 some statements, she responded that they were “absolutely” truthful and accurate; to others she  
21 responded “yes” or “yeah”; and to some she testified “more or less” and/or gave an  
22 explanation. Relevant to the Court’s inquiry are some of the following questions and answers:  
23

24 Q: We were on question 5. ... Statement 5. If you look at paragraph 5, was paragraph 5 a  
25 truthful and accurate statement?<sup>13</sup>

26 A: Absolutely.

27  
28 <sup>13</sup> Paragraph 5 stated: “I responded to the juror questionnaire candidly, truthfully, and to the best of my  
ability.” (Exh. 10, ¶ 5.)

1 Q: Okay. ... Was paragraph 8 a truthful and accurate statement?<sup>14</sup>

2 A: Absolutely.

3 Q: I will take you to paragraph 10. Take a second and read it. Was paragraph 10 a truthful  
4 and accurate statement?<sup>15</sup>

5 A: Yes.

6 Q: Take you to paragraph 11. Was paragraph 11 a truthful and accurate statement?<sup>16</sup>

7 A: Yeah.

8 Q: I'll take you to paragraph 12, please. Was paragraph 12 a truthful and accurate  
9 statement?<sup>17</sup>

10 A: Yes.

11 Q: Thank you. I'll skip you down to paragraph 16. Is paragraph 16 is [sic] a truthful and  
12 accurate statement?<sup>18</sup>

13 A: Yes.

14 Q: I'll skip you to paragraph 18, please. Was paragraph 18 a truthful and accurate  
15 statement?<sup>19</sup>

16 A: Yes.

17 (RT 26:22-27:21.)

18 Juror No. 7 confirmed as truthful and accurate her statement that at the time of jury  
19 selection she did not recall that she had requested a restraining order against Marcella Kinsey in  
20 November of 2000. (RT 28:7-14; Exh. 10, ¶ 19.) She clarified, however, that her statement  
21 that Ms. Kinsey had come to her home to confront her about Juror No. 7's relationship with

22 <sup>14</sup> Paragraph 8 stated: "I had never been a plaintiff or defendant to my memory, and therefore placed an  
23 'X' in the response field to question '54a.'" (Exh. 10, ¶ 8.)

24 <sup>15</sup> Paragraph 10 stated: "At the time that I answered these questions—together and right in the middle of  
25 a twenty-page questionnaire—I understood the word 'lawsuit' to mean and refer to a suit for money or  
26 property. I did not think the question was a reference to any other appearance in court." (Exh. 10, ¶ 10.)

27 <sup>16</sup> Paragraph 11 stated: "I am not a lawyer and have no legal education, so my understanding of the word  
28 'lawsuit' at the time that I filled out the form excluded other types of court proceedings. I also looked to  
the language of question '54b.,' which referred to 'plaintiff' and 'defendant' to confirm my  
understanding of the questionnaire." (Exh. 10, ¶ 11.)

<sup>17</sup> Paragraph 12 stated: "I was not asked to clarify this written response by the judge or either of the  
parties or their representatives. No one followed up with me to explain what the word 'lawsuit' meant to  
me. No one defined the word 'lawsuit' to include being in court for any reason." (Exh. 10, ¶ 12.)

<sup>18</sup> Paragraph 16 stated: "I answered all the questions that were asked of me by the judge, the  
prosecutors, and the defense attorneys. I clarified my oral responses when I was asked to do so, an  
opportunity I was not given when I filled out my written questionnaire." (Exh. 10, ¶ 16.)

<sup>19</sup> Paragraph 18 stated: "At no time during the jury selection process did any court case in which I was  
involved cross my mind." (Exh. 10, ¶ 18.)

1 Ms. Kinsey's ex-boyfriend, Eddie Whiteside, was "more or less" truthful and accurate because  
2 Ms. Kinsey had not come to confront *her*, but rather Mr. Whiteside. (RT 28:15-22; Exh. 10, ¶  
3 20.)

4 Juror No. 7 answered "yes" in response to paragraph 21's accuracy which stated in part  
5 that she "sought a restraining order based on that behavior [described in paragraph 20]."<sup>20</sup>

6 Juror No. 7 also confirmed the statements in that same paragraph that she "did not hire an  
7 attorney" but rather "filed the petition myself." (RT 28:24-26; Exh. 10, ¶ 21.)

8 With respect to paragraph 22, Juror No. 7 explained that the whole paragraph was  
9 "somewhat true."<sup>21</sup> (RT 29:26-30:10.) She clarified that she did not consider herself a victim  
10 of Ms. Kinsey's behavior testifying that "[i]t's been a long time but, if I recall, there may have  
11 been a court date, and I do remember telling the Judge, 'I'll drop all charges against Marcella.'"  
12 (*Id.* at 30:15-21.) Juror No. 7 confirmed that paragraphs 23 and 24 were truthful and accurate  
13 statements.<sup>22</sup> Regarding paragraph 25, she testified that the paragraph was "somewhat" truthful  
14 and accurate explaining:

15  
16 "It's just different wording than I would -- how I would word it. I've been in many  
17 fights, and I don't consider myself a victim. Might be different from you or  
18 somebody else. You may consider a fight -- you may consider that you're a victim,  
19 but I don't."

20  
21  
22 <sup>20</sup> Juror No. 7's statement and testimony that she sought a restraining order based on Ms. Kinsey's  
23 behavior on September 23, 2000, is inconsistent with her later testimony that "the restraining order  
wasn't as a result of when she came to my house," (RT 44:19-22), but rather because Ms. Kinsey had  
"continued to bother" her in the following months. (*Id.* at 47:21-48:8.)

24 <sup>21</sup> Paragraph 22 stated: "I did not and still do not personally know what resulted of Marcella Kinsey's  
25 behavior the night that she disturbed my peace. I did not testify against her in any criminal action and  
26 cannot state with any level of certainty whether her actions resulted in any conviction or otherwise.  
Based on the fact that I did not participate in any criminal proceedings, I did not consider myself a  
victim of a crime. I still do not. I never sought to prosecute Marcella Kinsey for her behavior for that  
very reason." (Exh. 10, ¶ 22.)

27 <sup>22</sup> Paragraph 23 stated: "I did not interpret the circumstances leading to the petition for a restraining  
28 order as a crime. I still do not." Paragraph 24 stated: "Minor indignities, shoving matches, raising of  
voices, and other undignified means of communicating frustration do not stick out to me, let alone cause  
me to feel 'victimized' the way the law might define that term." (Exh. 10, ¶¶ 23 and 24.)

1 (RT 31:21-32:2.)<sup>23</sup>

2 Paragraphs 26-30 of her December 10, 2020, declaration dealt with the November 2001  
3 incident involving herself and Eddie Whiteside. When questioned about paragraph 30, Juror  
4 No. 7 testified that the first sentence [“No one has ever contacted me about this incident and it  
5 never crossed my mind during jury selection of the trial of Scott Peterson.”] was true and that  
6 the next two sentences [“This incident did not stick out to me as anything out of the ordinary,  
7 nor did it ever cross my mind when I was responding to the juror questionnaire. Had it crossed  
8 my mind, or had I been asked about it, I would have immediately disclosed the incident.”] were  
9 “[a]bsolutely” true. (RT 33:7-17; Exh. 10, ¶ 30.)

10 Juror No. 7 was asked about paragraph 31 which stated, “At no time before, during, or  
11 after the Scott Peterson trial did I ever for a moment harbor any personal animus toward Scott  
12 Peterson, nor was I biased against him or in favor of the prosecution.” (Exh. 10, ¶ 31.) She  
13 testified as follows:

14 Q: Okay. Paragraph 31. Would you take a look a minute to read that?

15 A: This is partially true, yes.

16 Q: Okay. When you say partially true what do you mean by that?

17 A: Before the trial I didn’t have any anger or any resentment towards Scott [Peterson] at  
18 all. After the trial it was a bit different because I sat through the entire trial and listened  
19 to the evidence.

20 Q: Okay. So what is partially true is the before the trial but not necessarily after the trial:  
21 did I get that right?

21 A: Right.

22 (RT 33:20-34:6.)

23 As to the three remaining paragraphs, Petitioner only asked Juror No. 7 about  
24 paragraphs 32 and 33, not 34.<sup>24</sup> Petitioner again questioned Juror No. 7 about each sentence.

25 \_\_\_\_\_  
26 <sup>23</sup> Paragraph 25 stated: “I had been involved in many loud verbal disagreements. I have never  
27 considered myself a victim and I do not know whether lawyers and judges would agree or disagree with  
28 my opinion.” (Exh. 10, ¶ 25.)

<sup>24</sup> Paragraph 32 stated: “I did not purposely withhold any information from the court during the jury  
selection process. I have had countless unpleasant experiences in my life. Those outlined above did not

1 Q: Okay. Thank you. Now if you go to paragraph 32.

2 A: First sentence is absolutely true.

3 Q: I'm sorry. You're absolutely right. I should have gone sentence by sentence, so the  
4 first sentence is true and accurate?

5 A: It is.

6 Q: Second sentence please.

7 A: Yeah. I've had unpleasant situations in my life.

8 Q: Okay. So that's true and accurate?

9 A: Sure.

10 Q: The third sentence?

11 A: Absolutely true.

12 Q: Okay and the last sentence?

13 A: Absolutely true.

14 Q: Now, let's go to the last one in paragraph 33 if you would read the first sentence there  
15 please and tell us if that's true and accurate?

16 A: That's absolutely true.

17 Q: Okay and the last sentence?

18 A: That's true.

19 (RT 34:7-35:2.)

## 20 **2. Juror No. 7's Testimony About the Marcella Kinsey Incident**

21 Juror No. 7 testified about the November 27, 2000, application for a restraining order  
22 involving Marcella Kinsey, the former girlfriend of Juror No. 7's then boyfriend, Eddie  
23 Whiteside.<sup>25</sup> Juror No. 7's memory surrounding her November 27, 2000, application against  
24 Ms. Kinsey and the December 13, 2000, restraining order hearing in San Mateo Superior Court

25 \_\_\_\_\_  
26 cross my mind during any portion of the jury selection process or during the trial. They did not play any  
27 role in my evaluation of the evidence or my verdicts." Paragraph 33 stated: "I did not form any  
28 conclusions regarding the evidence in the case until I was called into the jury deliberation room. I recall  
discussing the evidence with the remaining jurors before a unanimous verdict was reached." Paragraph  
34 stated: "I have an abiding conviction that the charges are true based on the evidence that was  
presented at trial. This abiding conviction is based solely on the strength of the evidence presented at  
trial." (Exh. 10, ¶¶ 32, 33, 34.)

<sup>25</sup> There is a slight ambiguity in the record. In her November 2000 petition for a restraining order, Juror  
No. 7 refers to Mr. Whiteside as her ex-boyfriend at the time of the September 23, 2000 incident. (See  
Exh. 45 to the Petition for Habeas Corpus, HCP-000905.) During her testimony, however, Juror No. 7  
referred to Mr. Whiteside as her boyfriend at the time. (See, e.g., RT 45:16-26.)

1 was imperfect given the passage of over two decades. Juror No. 7 was able to recall some  
2 things but not others. For example, Juror No. 7 was able to recall bringing the restraining order  
3 forms to court but not going and testifying about the incidents at a hearing. (RT 41:20-42:17;  
4 187:3-189:1.)

5 Juror No. 7's testimony about the reason for seeking a restraining order against Ms.  
6 Kinsey was inconsistent at points. Juror No. 7 was shown the court filings for the application  
7 for a restraining order. (Exhibit 1A)<sup>26</sup> She acknowledged that the handwriting was hers but did  
8 not remember filling out the model forms. (RT 36:19-39:15.) "I mean, I remember the  
9 incident, but I don't remember filling the paperwork out. I know I did it." (*Id.* at 39:14-15.)  
10 Despite confirming the language in paragraphs 20 and 21 of her December 10, 2020,  
11 declaration that she sought a restraining order based on the behavior of Ms. Kinsey coming to  
12 the home where she lived and causing a disturbance on September 23, 2000, Juror No. 7  
13 testified at the hearing that had Ms. Kinsey not continued with *other* conduct after that incident,  
14 she would not have filed for a restraining order. (*Id.* at 43:26-44:22; 47:21-48:13.) According  
15 to Juror No. 7, the September incident "show[ed] a history of being a little stalkerish," which is  
16 why Juror No. 7 included it in her restraining order application. (*Id.* at 48:3-4.) The "other"  
17 alleged conduct Juror No. 7 listed in the application included Ms. Kinsey: (1) telling Mr.  
18 Whiteside that she saw his car in Juror No. 7's driveway; (2) calling Juror No. 7's new home  
19 phone on November 11, 2000, and hanging up when Juror No. 7 answered; thereafter calling  
20 Juror No. 7's phone again and saying it was "Kim" when Juror No. 7 answered the second  
21 time; (3) allegedly checking the caller I.D. at Mr. Whiteside's mother's home to get Juror No.  
22 7's new phone number; and (4) following Juror No. 7 on November 21, 2000, in her car and  
23 pointing her finger at Juror No. 7.<sup>27</sup> (Exh. 45 to the Petition for Habeas Corpus, HCP-000909.)  
24  
25

26 <sup>26</sup> Exhibit 1A (admitted for limited purposes during the 2022 evidentiary hearing) and Exhibit 45  
27 (attached to the Petition) contain the same documents related to Juror No. 7's restraining order litigation  
28 against Ms. Kinsey.

<sup>27</sup> On December 13, 2000, San Mateo Superior Court Commissioner Rosemary Pfeiffer granted Juror  
No. 7's request for a restraining order and ordered Ms. Kinsey to "stay at least 100 yards away" from  
Juror No. 7 and her unborn child. (Exh. 1A, p. 4.)

1 Juror No. 7 also testified that she did not think that a petition for a civil harassment  
2 restraining order was a lawsuit and did not recall the Kinsey incident<sup>28</sup> or the petition for the  
3 restraining order when she was filling out the jury questionnaire. She testified several times  
4 that it “never crossed [her] mind, ever.” (RT 84:12-20; 278:13-23.) Juror No. 7 further  
5 testified that, “I don’t hold on to things. I didn’t remember.” “That was over. I didn’t hold any  
6 grudges. It was past me.” (*Id.* at 84:24-85:3.)

7 Juror No. 7 admitted that she filed a second lawsuit against Ms. Kinsey seeking  
8 damages as a result of Ms. Kinsey’s conduct. The second lawsuit was filed in Santa Clara  
9 County and sought “lost wages and a number of other things.” (RT 42:18-43:7.) No records of  
10 the suit were admitted into evidence. Juror No. 7 stated on the stand that she understood a  
11 lawsuit to mean “[w]hen you sue somebody for money,” though she later clarified that in her  
12 mind she “didn’t sue [Ms. Kinsey]” because she “dropped [the] charges” the first time she went  
13 before a judge about the civil lawsuit. (*Id.* at 290:23-291:11; *see also* 42:25-43:6; 94:7-11.)  
14 When asked why she dropped the suit, Juror No. 7 replied, “[c]ause it was over with, and her  
15 and I came to the realization that we were both stupid, and this was over a stupid guy, and there  
16 was no need to continue.” (*Id.* at 94:12-15.) Juror No. 7 stated that after she dropped the  
17 lawsuit, “Marcella and I stood outside and we talked and kind of made amends.” (*Id.* at 94:22-  
18 95:25.) As to the timing, Juror No. 7 testified that she was still pregnant with her third child  
19 when she went to court and dropped the lawsuit against Ms. Kinsey.<sup>29</sup> (*Ibid.*)

21 Given the timeline in the record, it appears that Ms. Kinsey and Juror No. 7 had a truce  
22 for over a year. According to Juror No. 7, however, she believed that Ms. Kinsey “still held  
23 some animosity towards me because of the love she had for [Mr. Whiteside].” (RT 96:4-6.)  
24 Juror No. 7 denied that Ms. Kinsey continued to harass her. (*Id.* at 96:7-8.)  
25

26 \_\_\_\_\_  
27 <sup>28</sup> The September 23, 2000, incident where Ms. Kinsey came to Juror No. 7’s home is, at times, in this  
Order referred to as the “Kinsey incident.”

28 <sup>29</sup> At the time of the restraining order litigation, Juror No. 7 had two older children. The first child Juror  
No. 7 had with Mr. Whiteside was and is her third child. The third child was also the “unborn” child  
referred to in the restraining order application.

1 Juror No. 7 testified that she did not know if Ms. Kinsey was ever *charged* with  
2 violating the restraining order. The only evidence in the record regarding any alleged  
3 restraining order violations were two incidents, one reported on July 21, 2001 and the other  
4 reported on June 29, 2002. (RT 505:24-513:19.) Juror No. 7 only testified about the second  
5 violation.

6 According to Juror No. 7, she was in the hospital having her fourth child<sup>30</sup> when the  
7 alleged violation occurred. During her hospitalization, there was a video taken which showed  
8 Ms. Kinsey at Mr. Whiteside's mother's house holding her third child. "They were having a  
9 party, and she was on video holding my son." (RT 97:3-7; 192:18-193:20.)

10 Juror No. 7's testimony about what she did after she saw the video was unclear. She  
11 testified that she learned about Ms. Kinsey being near her son after she was out of the hospital.  
12 (RT 193:12-20.) After seeing the video, Juror No. 7 reached out to either an East Palo Alto  
13 police officer or a detective. She testified that she "want[ed] to say it was an East Palo Alto  
14 police officer," but she was not "a hundred percent sure." (*Id.* at 96:20-97:2.) She then  
15 testified that the person she contacted might have been a detective who was "kind of a family  
16 friend." (*Id.* at 194:24-195:5.) Juror No. 7 testified that she did not remember another incident  
17 where Ms. Kinsey violated the restraining order. (*Id.* at 97:25-98:2; 192:4-20.)

18 Juror No. 7 was asked if she believed that Ms. Kinsey's act in holding her son, who was  
19 also covered by the December 13, 2000, restraining order after hearing, was a crime.  
20

21 Q. Can you tell me, did you believe that Ms. Kinsey was committing a crime when she  
22 was with your child?

23 A. Actually, no, I didn't. I talked to the police out of spite.

24 Q. You called the police out of spite? [...]

25 A. Yeah, I did. She was actually being nice to my child, so it wasn't a crime. I was just  
26 being spiteful.

27 (RT 195:6-7; 195:21-26.)  
28

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<sup>30</sup> Mr. Whiteside is also the father of Juror No. 7's fourth child. (RT 68:26-69:2.)



1                                   **3. Juror No. 7 and the Incident With Eddie Whiteside**

2                   Juror No. 7 was questioned about a November 2, 2001, purported domestic violence  
3 incident involving Eddie Whiteside that ended in his arrest. Juror No. 7 testified that she had  
4 an on-and-off relationship with Mr. Whiteside for about 6 years. (RT 69:8-10.) During their  
5 relationship, “[h]is stuff remained at [her] house all the time” even though he was not always  
6 there. (*Id.* at 70:14.) They had two sons together. (*Id.* at 66:4-6; 69:9-19.)

7                   With respect to the domestic violence incident, Juror No. 7 testified to the following:

8                   Q. Now at some point Mr. Whiteside and you, you discussed, had a disagreement where  
9 you went inside the bedroom; is that what I understand?

10                  A. Yes.

11                  Q. And he came in and followed you?

12                  A. I followed him.

13                  Q. Okay. And when you followed him what happened next?

14                  A. I handed my mom my son, and my mom was in the kitchen and he was already in the  
15 bedroom, and I walked into our bedroom and I shut our door and I ran up to him and I  
16 took off on him.

17                  Q. You say took off?

18                  A. I’m sorry, I punched him.

19                  Q. How many times?

20                  A. I don’t recall.

21                  Q. Was it more than one?

22                  A. Probably.

23                  Q. Okay. Did he punch you back?

24                  A. Never touched me.

25 (RT 70:16-71:9.)

26                  Juror No. 7 testified that during this incident, she believed her lip got caught on her  
27 braces, “probably when I was screaming at him [Mr. Whiteside],” causing a small cut. Juror  
28 No. 7 testified adamantly that Mr. Whiteside was not responsible for the cut on her lip. In her  
words, “[h]e didn’t do it,” “he never touched me.” (RT 71:10-23.)

                  Juror No. 7 testified that she was unsure if Mr. Whiteside had any injuries.

                  Q. Did he have any injuries?

1 A. Him? I don't know.

2 Q. Yeah. You don't recall when you hit him he was injured?

3 A. No. He was pretty dark skinned, so you can't really tell if he had bruises or not.

4 (RT 71:24-72:3.)

5 As a result of the altercation, Mr. Whiteside called the police.

6 Q. What happened when the police showed up?

7 A. What I recall is I opened the door when the police showed up, and I said – can I  
8 be candid?

9 Q. Yes, please.

10 A. I said, "I didn't fucking call you. I don't have shit to say to you. Go talk to him. He  
11 called you."

12 Q. Okay.

13 A. And how – I remember the police said, "What happened to your lip?" And I said, "I  
14 don't know what happened to my lip," because I didn't even know there was a little  
15 cut. And I said, "Get the fuck out of my house 'cause I didn't call you."

16 (RT 72:14-26.)

17 Juror No. 7 was aware that the police took Mr. Whiteside away that night and he went  
18 to jail. (RT 73:5.) Juror No. 7 testified that Mr. Whiteside returned to her house the next day  
19 and stayed with her for a few years thereafter. (*Id.* at 74:24-75:4.) When asked whether she  
20 was aware he was going to court as a result of the charges against him, she testified that  
21 although she "knew he had that case," she did not "discuss the case" with him "back then." (*Id.*  
22 at 75:5-25.) As she put it, their relationship was "complicated" at that time and "he didn't  
23 share all that with me." (*Id.* at 75:8-10.) Juror No. 7 testified that at the time she was unaware  
24 that he had pled guilty to any charge. (*Id.* at 76:23-25.)

25 Juror No. 7 recalled that a female police officer tried, "that night or after the fact," to get  
26 her to say that Mr. Whiteside hit her, but Juror No. 7 refused. "They wanted me to say that  
27 Eddie hit me, and Eddie never hit me, so I wasn't going to then, now, or any time. Eddie never  
28 hit me, so I was not a victim of domestic violence." (RT 78:5-80:6.)

Juror No. 7 recalled receiving a restraining order protecting her from Mr. Whiteside but  
testified that she ignored it. "He didn't touch me, so he didn't have to stay away from me." "I

1 wasn't scared." (RT 77:2-14) She also testified she threw the restraining order away. (*Id.* at  
2 82:19-22.)

3 During her testimony, Juror No. 7 agreed that hitting Mr. Whiteside was a crime but she  
4 denied being a witness to a crime because she "didn't see [her]self do it." "I don't stand  
5 outside my body and watch, but I did punch him, yes." (RT 81:9-21.) Juror No. 7 denied  
6 hitting Mr. Whiteside other than that one incident. (*Id.* at 73:19-24.)

7 When asked about the Whiteside incident<sup>31</sup> as it related to jury selection in Petitioner's  
8 trial, Juror No. 7 said it never crossed her mind. Juror No. 7 testified that had this incident  
9 crossed her mind or had she been asked about it, Juror No. 7 would have immediately disclosed  
10 it. (RT 281:20-282:9.)

#### 11 **4. Juror No. 7 as a Victim or Witness to a Crime**

12 Despite being questioned by Petitioner several times, Juror No. 7 was adamant  
13 throughout her two-day testimony that at the time of jury selection she did not believe she was  
14 the victim of or witness to a crime involving either Ms. Kinsey or Mr. Whiteside. "I wasn't and  
15 I'm still not a victim." (RT 281:1-282:1.) As it pertained to Ms. Kinsey, Juror No. 7 testified  
16 she did not see Ms. Kinsey slash Eddie Whiteside's tires, (*id.* at 64:19-22); she did not witness  
17 Ms. Kinsey kicking down the door, (*id.* at 65:1-3); and it was probably Mr. Whiteside who told  
18 her Ms. Kinsey sprayed him with mace. (*Id.* at 231:5-6.)

19 Juror No. 7 acknowledged that she considered Ms. Kinsey "stalking" and kicking in the  
20 front door of her home, crimes. (RT 57:12; 56:17-21.) Juror No. 7 explained, however, that  
21 she only sought a restraining order because "at the time [she] was pregnant, and [she] knew  
22 [Ms. Kinsey] and [Juror No. 7] would fight." Juror No. 7 did not want to fight Ms. Kinsey  
23 while she was pregnant. (*Id.* at 48:10-13.) Juror No. 7 was unwavering in her testimony that  
24 throughout her life "[she's] been in many fights," and therefore does not consider herself a  
25 victim. "Might be different from you or somebody else. You may consider a fight – you might  
26  
27

28  

---

<sup>31</sup> The November 2, 2001, incident is, at times, in this Order referred to as the "Whiteside incident."

1 consider yourself a victim, but I don't." (*Id.* at 31:25-32:2; *see also* 30:15; 59:9-22; 64:19-22;  
2 65:1-3; 80:5-6; 81:9-18; 230:26-6; 281:1-7.)

### 3 **B. Other Witnesses Called During the Evidentiary Hearing**

#### 4 **1. Greg Beratlis**

5 Greg Beratlis served as an original juror in Petitioner's case and participated in jury  
6 deliberations for both the guilt and penalty phase. (RT 344:26-345:20.) During the guilt phase  
7 of the deliberations, two jurors were removed and two alternates were substituted in, the first  
8 alternate being Juror No. 7. (*Id.* at 345:22-346:13.)

9 Mr. Beratlis explained that prior to the alternates being seated, the jurors "had a  
10 process" in the jury deliberation room. In addition to charting things out and putting things on  
11 the wall to assist in the deliberations, (RT 364:12-18), the jury "spent a little time respecting  
12 each other's thoughts," and "giv[ing] a little time to basically get out what [they] had kept  
13 inside for the whole trial." (*Id.* at 346:24-26.) According to Mr. Beratlis, when Juror No. 7  
14 entered the jury deliberation room, she "blurted out" that Petitioner should pay for killing  
15 "Little Man." (*Id.* at 352:4-10.) Mr. Beratlis' understanding of "Little Man" was that she was  
16 talking about Laci's unborn child, Conner. (*Id.* at 352:24-353:5.) After making that comment,  
17 and since Juror No. 7 was the "new kid on the block," Mr. Beratlis immediately informed her  
18 "that we have a process in place before she just gave her opinion." (*Id.* at 365:19-366:2.)  
19 According to Mr. Beratlis, Juror No. 7 was not making any signs or gestures when she made  
20 the comment about "Little Man." Mr. Beratlis also testified that Juror No. 7 did "nothing  
21 aggressive in any way." (*Id.* at 352:20-23.)

#### 23 **2. Alfreda Bracksher**

24 Alfreda Bracksher was called by Petitioner to authenticate records from the East Palo  
25 Alto Police Department ("EPAPD"). Ms. Bracksher is the current Custodian of Records and  
26 has been a records clerk for EPAPD for approximately 10 years. (RT 493:2-12; 515:1-3.) Ms.  
27 Bracksher was familiar with the Records Information Management System ("RIMS") that the  
28 EPAPD currently uses to maintain, among other things, police reports. RIMS was not in place

1 in 2001. In the old system, police officers would write a paper report and narrative. (*Id.* at  
2 515:20-25; 520:7-521:2.) While the face sheets were later entered into RIMS, some of the  
3 original reports and narratives were purged. (*Id.* at 521:3-7.)

4 Petitioner issued a subpoena to EPAPD for records pertaining to the November 2001  
5 incident between Juror No. 7 and Mr. Whiteside (incident EP01-306-17). (Exh. 9.) In  
6 response, Ms. Bracksher filled out a declaration as custodian and returned one record of  
7 incident EP01-306-17. (Exh. 8.) Ms. Bracksher testified that Petitioner's counsel sent her a  
8 declaration that she was to fill in and return. (RT 518:17-21.) On the stand, Ms. Bracksher  
9 admitted that she made a mistake in paragraph 5 of her November 30, 2021, declaration.  
10 Paragraph 5 incorrectly stated that Ms. Bracksher had prepared the "original records from  
11 which the accompanying copies were made." (*See* Exh. 8, ¶ 5.)  
12

13 Ms. Bracksher testified as follows:

14 Q. But you didn't prepare that report, did you?

15 A. No, I did not. And what – I guess I misinterpreted it because when I read it, I  
16 produced it, and that's what I thought. When I signed it [her declaration], that's what I  
17 meant. I didn't mean that I actually generated the report. I provided the report. I printed  
the report which in hindsight is not generating now that I think about it.

18 (RT: 519:14-21.)

19 Ms. Bracksher admitted to another error in the records she submitted. When asked by  
20 Petitioner's counsel to certify screen shots of other incidents appearing in RIMS, E01-202-19  
21 and E02-182-18 involving Ms. Kinsey allegedly violating Penal Code section 166(a)(4)—  
22 contempt to disobey a court order—she admitted that she mistakenly also certified an email  
23 sent by someone unrelated to the EPAPD.

24 Q. Do you see the same red stamp?

25 A. Yes.

26 Q. So just to be clear, when you were asked for a certified copy, you put the red stamp on  
the email that the HRC [Habeas Corpus Resource Center] sent to you?

27 A. Yeah, I did. I don't know why, but yes.

28 Q. I'm sorry. I couldn't hear the last part of what you said.

1 A. I said yes, I did. I don't know why, but yes, I did.

2 Q. Can you certify somebody else's email?

3 A. Not at all. No.

4 (RT 538:10-21.)

5 With respect to the incident involving Eddie Whiteside, Ms. Bracksher testified that in  
6 the RIMS report, Juror No. 7 was identified as a "confidential victim" and Mr. Whiteside as the  
7 suspect. (RT 505:1-15; *see also* Exhs. 8, 23.) Regarding the alleged restraining order  
8 violations by Ms. Kinsey, Ms. Bracksher testified that one incident was reported on July 21,  
9 2001 (E01-202-19) and the other was reported on June 29, 2002 (E02-182-18). With respect to  
10 the July 21, 2001, incident, the victim was reported to be Juror No. 7. (RT 508:22-509:5.) As  
11 to the June 29, 2002, incident, Juror No. 7 was again listed as the victim. (*Id.* at 511:3-14.)  
12 Neither incident listed Juror No. 7's son as the victim.

### 13 **3. Shareen Anderson**

14 Shareen Anderson was listed as a witness by Petitioner. Ms. Anderson had interviewed  
15 Juror No. 7 after the trial as part of an A&E documentary. Prior to her testimony at the  
16 evidentiary hearing, Ms. Anderson invoked the journalist privilege pursuant to Evidence Code  
17 section 1070. In lieu of calling her, the parties stipulated as follows:  
18

19 If called to testify, Shareen Anderson would testify that in 2017, she interviewed  
20 [Juror No. 7] at [Juror No. 7's] home. After the interview, as Ms. Anderson was  
21 leaving, she saw a photograph on a wall of a small child. The child was wearing  
22 clothing that had the words "Little Man" visible.

(RT 485:10-23.)

### 23 **4. Mark Geragos**

24 Mark Geragos was listed as a witness for Petitioner. In support of the original habeas  
25 petition, Mr. Geragos submitted a declaration. (*See* Exh. 49 to the Petition for Habeas Corpus.)  
26 The parties stipulated that Mr. Geragos would not be called as a witness, but that if called to  
27 testify, Mr. Geragos would testify to the following:  
28

- 1 1. I was lead counsel for defendant Scott Peterson in *People v. Peterson*, SC055500A, and  
2 I conducted jury selection. As part of the process, I reviewed the jury questionnaires of  
prospective jurors.
- 3 2. Juror 7 was initially selected as an alternate juror. She later became a seated juror. I  
4 reviewed her jury questionnaire. I also questioned her during voir dire.
- 5 3. When Juror 7 was selected as an alternate, and later seated, I did not know any of the  
6 circumstances that have been alleged by Petitioner regarding Juror 7's background.
- 7 4. I had been a trial lawyer for almost 40 years. Had I known any of the circumstances that  
8 have been alleged by Petitioner regarding Juror 7's background I would have  
9 challenged Juror 7 for cause. There is no way I would have wanted such a juror on the  
jury which would decide Mr. Peterson's fate. If the trial court did not grant a for-cause  
challenge, I would certainly have exercised a peremptory challenge on this juror.

10 (Joint Stipulation to Testimony of Mark Geragos, pp. 1-2, filed February 28, 2022.)

11 **5. Justin Falconer**

12 Justin Falconer, one of the original jurors, was listed as a witness by Petitioner. At the  
13 time of the evidentiary hearing, Mr. Falconer was in Iraq training dogs with the United States  
14 Military. (RT 438:2-23; Petitioner's Witness List, filed December 27, 2021.) Petitioner made  
15 an offer of proof that if called, Mr. Falconer would testify to four points: (1) Juror No. 7 talked  
16 about Conner a lot and referred to him as "Little Man" during the trial; (2) Juror No. 7 said she  
17 was having money problems as the result of her job not paying her; (3) Juror No. 7 told him  
18 that she could have been excused for a financial hardship but she stayed because she wanted to  
19 be on the jury; and (4) Juror No. 7's statements about a book deal. (Petitioner's March 14,  
20 2022, Status Conference Statement, pp. 10-15.)

21  
22 Petitioner requested that Mr. Falconer be permitted to appear for the hearing through  
23 Zoom or other remote technology. Respondent opposed. According to Respondent, Mr.  
24 Falconer was in a "unique situation" because the trial judge dismissed him as a juror citing a  
25 lack of credibility. (RT 431:2-20.) Petitioner did not dispute that Mr. Falconer had been  
26 dismissed for the reasons stated by Respondent. Respondent argued, and the Court agreed, that  
27 in person testimony was required so that the Court, as fact finder, could observe Mr. Falconer  
28

1 as it had all witnesses during the evidentiary hearing, and assess his credibility in the same  
2 manner as it would other live witnesses.<sup>32</sup> (*Id.* at 436:11-25.)

3 In addition to opposing a remote appearance, there was confusion as to whether the  
4 Habeas Corpus Resource Center (“HCRC”) investigator had secured a second declaration from  
5 Mr. Falconer that it had not provided to Respondent despite court-ordered discovery. (RT  
6 424:12-430:26.)

7 The Court granted Petitioner additional time to secure the attendance of Mr. Falconer in  
8 person. (RT 438:19-439:6.) Ultimately, Mr. Falconer was unable to appear for in-person  
9 testimony to conclude the evidentiary hearing. (*Id.* at 482:21-483:3.)

## 10 LEGAL STANDARDS

### 11 A. Applicable Legal Principles

12 A criminal defendant has the constitutional right to trial by an impartial and unbiased  
13 jury. (U.S. Const., 6th and 14th Amends.; Cal. Const., art. I, § 16; *People v. Merriman* (2014)  
14 60 Cal.4th 1, 95.) “The right to unbiased and unprejudiced jurors is an inseparable and  
15 inalienable part of the right to trial by jury guaranteed by the Constitution.” (*In re Boyette*  
16 (2013) 56 Cal.4th 866, 888, internal citations and quotation marks omitted.) “An impartial jury  
17 is one in which no member has been improperly influenced [citations] and every member is  
18 “capable and willing to decide the case *solely* on the evidence before it” [citation].” (*In re*  
19 *Hamilton* (1999) 20 Cal.4th 273, 294, italics added.) Thus, the constitutional right to an  
20 impartial jury is violated even if only a single juror is biased<sup>33</sup>. (*People v. Merriman, supra*, 60  
21 Cal.4th at p. 95, citing *People v. Nesler* (1997) 16 Cal.4th 561, 578.)

22  
23 “[D]uring jury selection the parties have the right to challenge and excuse candidates  
24 who clearly or potentially cannot be fair. . . . Voir dire cannot serve this purpose if prospective  
25

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26 <sup>32</sup> Being able to view the demeanor of the witnesses and evaluate their veracity is “of vital importance  
27 when, as here, the critical decision turns on the credibility of the witnesses. (*In re Hitchings* (1993) 6  
28 Cal.4th 97, 114.)

<sup>33</sup> Although the evidence of Petitioner’s guilt is overwhelming and not in reasonable doubt, the strength  
of the evidence is not relevant when considering the question of juror misconduct, and it has not been  
considered as part of this proceeding. (*In re Carpenter* (1995) 9 Cal.4th 634, 654.)



1 jurors do not answer questions truthfully.” (*In re Cowan* (2018) 5 Cal.5th 235, 247, quoting *In*  
2 *re Hamilton, supra*, 20 Cal.4th at p. 295.) “A juror who conceals relevant facts or gives false  
3 answers during the voir dire examination thus undermines the jury selection process and  
4 commits misconduct. Such misconduct includes the unintentional concealment, that is, the  
5 inadvertent nondisclosure of facts that bear a substantial likelihood of uncovering a strong  
6 potential of juror bias.” (*In re Manriquez* (2018) 5 Cal.5th 785, 796, internal citations and  
7 quotation marks omitted.)

8         When a petitioner makes a claim of juror misconduct, the court conducts a two-step  
9 inquiry. The court must “first determine whether there was any juror misconduct. Only if we  
10 answer that question affirmatively do we consider whether the conduct was prejudicial.”  
11 (*People v. Collins* (2010) 49 Cal.4th 175, 242.)

12         If the petitioner establishes juror misconduct by the preponderance of evidence, then the  
13 court proceeds to the second step of the inquiry: whether the misconduct requires reversal of  
14 the judgment. “Once a court determines a juror has engaged in misconduct, a defendant is  
15 presumed to have suffered prejudice. [Citation.] It is for the *prosecutor* to rebut the  
16 presumption by establishing there is “no *substantial likelihood* that one or more jurors were  
17 actually biased against the defendant.” [Citations.]” (*In re Manriquez, supra*, 5 Cal.5th at p.  
18 797.) “This presumption of prejudice may be rebutted by an affirmative evidentiary showing  
19 that prejudice does not exist or by a reviewing court’s examination of the entire record to  
20 determine whether there is a reasonable probability of actual harm to the complaining party  
21 resulting from the misconduct.” (*In re Hitchings, supra*, 6 Cal.4th at p. 119, internal citations  
22 and quotation marks omitted.)

#### 24         **B. Burden of Proof**

25         “Because a petition for a writ of habeas corpus is a collateral attack on a presumptively  
26 final criminal judgment, ‘the petitioner bears a heavy burden initially to *plead* sufficient  
27 grounds for relief, and then later to *prove* them.’ [Citation.] To obtain relief, the petitioner  
28 must prove by a preponderance of the evidence the facts that establish entitlement to relief.”

1 (*In re Cowan, supra*, 5 Cal.5th at p. 243.) ““For purposes of collateral attack, all presumptions  
2 favor the truth, accuracy, and fairness of the conviction and sentence; *defendant* thus must  
3 undertake the burden of overturning them. Society’s interest in the finality of criminal  
4 proceedings so demands, and due process is not thereby offended.” (*People v. Duvall* (1995) 9  
5 Cal.4th 464, 474, quoting *People v. Gonzalez* (1990) 51 Cal.3d 1179, 1260.)

6 Where, however, the court determines that a juror has committed misconduct by  
7 concealing “relevant facts or gives false answers” during jury selection, the court presumes  
8 prejudice and the burden shifts to the People to demonstrate the absence of prejudice. (*In re*  
9 *Manriquez, supra*, 5 Cal.5th at p. 797.) “Any presumption of prejudice is rebutted, and the  
10 verdict will not be disturbed, if the entire record in the particular case, including the nature of  
11 the misconduct or other event, and the surrounding circumstances, indicates there is no  
12 reasonable probability of prejudice, i.e., no *substantial likelihood* that one or more jurors were  
13 actually biased against the defendant.” (*In re Hamilton, supra*, 20 Cal.4th at p. 296.) “In other  
14 words, the test asks not whether the juror would have been stricken by one of the parties, but  
15 whether the juror’s concealment (or nondisclosure) evidences bias.” (*In re Boyette, supra*, 56  
16 Cal.4th at p. 890.)

17  
18 This objective standard is “a pragmatic one, mindful of the ‘day-to-day realities of  
19 courtroom life’ [citation] and of society’s strong competing interest in the stability of criminal  
20 verdicts.” (*In re Hamilton, supra*, 20 Cal.4th at p. 296.) Our Constitution demands that jurors  
21 be selected from a cross section of the community as a means of ensuring the defendant’s right  
22 to an impartial jury. (*People v. Crittenden* (1994) 9 Cal.4th 83, 119.) This requires a process  
23 that allows for varied levels of education and diverse backgrounds and experiences, which “is  
24 both the strength and the weakness of the institution.... ‘The criminal justice system must not  
25 be rendered impotent in quest of an ever-elusive perfection.... Jurors are imbued with human  
26 frailties as well as virtues. If the system is to function at all, we must tolerate a certain amount  
27 of imperfection short of actual bias.” (*In re Hamilton, supra*, 20 Cal.4th at p. 296, quoting *In*  
28 *re Carpenter* (1995) 9 Cal.4th 634, 654-655.)

1 The United States Supreme Court has also recognized that jurors are not held to a  
2 standard of perfection. “The varied responses to respondents’ question on *voir dire* testify to  
3 the fact that jurors are not necessarily experts in the English usage. Called as they are from all  
4 walks of life, many may be uncertain as to the meaning of the terms which are relatively easily  
5 understood by lawyers and judges. Moreover, the statutory qualifications for jurors require  
6 only a minimal competency in the English language.” (*McDonough Power Equipment, Inc. v.*  
7 *Greenwood* (1984) 464 U.S. 548, 555.)

8 Actual bias is “a state of mind . . . in reference to the case, or to any of the parties,  
9 which will prevent the juror from acting with entire impartiality, and without prejudice to the  
10 substantial rights of any party.” (*In re Manriquez, supra*, 5 Cal.5th at p. 799, citing Code Civ.  
11 Proc., section 225, subd. (b)(1)(C).) Indeed, “[a] sitting juror’s actual bias, which would have  
12 supported a challenge for cause, renders him ‘unable to perform his duty’ and thus subject to  
13 discharge and substitution.” (*People v. Keenan* (1988) 46 Cal.3d 478, 532.)

14 Generally, “[t]he gravity of the misconduct correlates with the amount of proof  
15 necessary to rebut the presumption of prejudice.” (*People v. Echavarria* (2017) 13 Cal.App.5th  
16 1255, 1267.) “In addition to the nature and seriousness of the misconduct, courts have  
17 recognized the strength of the evidence of misconduct and the probability that actual prejudice  
18 may have ensued is relevant to a determination whether the presumption of prejudice has been  
19 rebutted.” (*People v. Hill* (1992) 3 Cal.App.4th 16, 38.)

20 A juror’s intentional concealment is strong proof of prejudice, but it is not dispositive of  
21 actual bias; “an unintentional nondisclosure may mask actual bias, while an intentional  
22 nondisclosure may be for reasons unrelated to bias.” (*In re Manriquez, supra*, 5 Cal.5th at p.  
23 798.) However, if an unintentional concealment is caused by an honest mistake on *voir dire*, it  
24 “cannot disturb a judgment in the absence of proof that the juror’s wrong or incomplete answer  
25 hid the juror’s actual bias.” (*Id.* at pp. 797-798, quoting *In re Hamilton, supra*, 20 Cal.4th at p.  
26 300.)  
27  
28

1 Courts have relied on specific factors in determining whether a juror intentionally  
2 concealed relevant information. A juror volunteering undisclosed information after the trial is  
3 one of them. (See, e.g., *In re Manriquez, supra*, 5 Cal.5th at p. 804 [juror disclosed childhood  
4 abuses in post-trial questionnaire]; *People v. San Nicolas* (2004) 34 Cal.4th 614, 646 [two  
5 months after trial, juror informed defense counsel of having been stabbed 15 times when he  
6 was a teenager].) “[I]f the juror ‘had formed improper opinions about the case and intended to  
7 act in ways prejudicial to the defense, common sense suggests that the juror would have simply  
8 remained silent.’” (*In re Manriquez, supra*, 5 Cal.5th at p. 804, quoting *People v. Ray* (1996)  
9 13 Cal.4th 313, 344.)

10 Pretrial publicity, pretrial questionnaire, or voir dire may also alert a juror to the  
11 importance of their undisclosed personal experiences, and trigger relevant memories. If the  
12 court finds that a juror “had a reason to anticipate the importance of her own [...] experiences  
13 while completing the pretrial questionnaire or participating in voir dire, her nondisclosures may  
14 [indicate] an attempt to conceal [them], which could in turn indicate juror bias.” (*In re*  
15 *Manriquez, supra*, 5 Cal.5th at p. 809.) Such a conclusion requires the line of questioning by  
16 counsel and the court to be sufficiently clear though. (*People v. Blackwell* (1987) 191  
17 Cal.App.3d 925, 929; *In re Hitchings, supra*, 6 Cal.4th at p. 116.)

18 In addition to these specific factors, courts assessing whether a non-disclosure was  
19 intentional also look at the reasons given by the juror for failing to disclose the information.  
20 Courts may find a non-disclosure to have been inadvertent when a juror *credibly* provides a  
21 reason for the non-disclosure. (*In re Manriquez, supra*, 5 Cal.5th at p. 806; *In re Cowan,*  
22 *supra*, 5 Cal.5th at pp. 244-246.) Finally, a juror’s partiality can be supported by the  
23 surrounding circumstances of the misconduct. (See *In re Hitchings, supra*, 6 Cal.4th at p. 120  
24 [juror violated her oath as a juror by discussing the case before trial was over].)  
25

### 26 C. Factors Regarding Credibility of Witnesses

27 The credibility of several witnesses is critical to resolving the factual allegations in  
28 dispute. The Judicial Council of California Criminal Jury Instruction (“CALCRIM”) 226 and

1 California Civil Jury Instruction (“CACI”) 5003 prescribe the factors to be considered by jurors  
2 in determining witness credibility in criminal and civil proceedings. The Court finds that these  
3 factors, and the other instructional guidance regarding credibility provided by the Judicial  
4 Council, are appropriate in guiding the Court’s determination of credibility in this proceeding.

5 Those factors include:

- 6       ◦ How well was the witness able to remember and describe what happened?
- 7       ◦ What was the witness’s behavior while testifying?
- 8       ◦ Did the witness understand the questions and answer them directly?
- 9       ◦ Was the witness’s testimony influenced by a factor such as bias or prejudice, a  
10       personal relationship with someone involved in the case, or a personal interest in  
11       how the case is decided?
- 12       ◦ Did the witness make a statement in the past that is consistent or inconsistent with  
13       his or her testimony?
- 14       ◦ How reasonable is the testimony when you consider all the other evidence in the  
15       case?
- 16       ◦ Did the witness admit to being untruthful?
- 17       ◦ Has the witness engaged in other conduct that reflects on his or her believability?
- 18       ◦ Was the witness promised immunity ...in exchange for his or her testimony?

19 (See CACI No., 5003, CALCRIM No., 226; see also CALJIC No. 2.20.)

20 Factfinders should not automatically reject testimony just because of inconsistencies or  
21 conflicts. As the Judicial Council has explained, it is appropriate to “[c]onsider whether the  
22 differences are important or not.” (CALCRIM No., 226; see also CACI No., 5003.) The law  
23 acknowledges the fact that “[p]eople sometimes honestly forget things or make mistakes in  
24 what they remember.” (CACI No., 5003.) “Also, two people may witness the same event yet  
25 see or hear it differently.” (*Ibid.*)

26 Factfinders are instructed to use their “common sense and experience” when evaluating  
27 the testimony and to view the reasonableness of the testimony considering all other evidence  
28 presented in the case. Finally, if a witness was not truthful about something important, the  
factfinder “may chose not to believe anything that the witness said.” (CACI No., 5003.)  
However, if a factfinder thinks “the witness did not tell the truth about some things but told the

1 truth about others, [the factfinder] may accept the part [the factfinder] thinks is true and ignore  
2 the rest.” (*Ibid.*)<sup>34</sup> Evidence that a witness has lied under oath on another occasion is directly  
3 relevant to the witness’s credibility. (*See generally People v. Ayala* (2000) 23 Cal.4th 225,  
4 271.)

5 With these principles in mind, the Court now turns to Petitioner’s claims against the  
6 backdrop of the record evidence.

### 7 FINDINGS OF FACT AND CONCLUSIONS OF LAW

8 The Court finds that several of the answers provided by Juror No. 7 on her juror  
9 questionnaire were false in certain respects. This shifts the burden to Respondent to  
10 demonstrate that she was not biased against Petitioner. The Court finds that Respondent has  
11 sustained its burden. The Court concludes that Juror No. 7’s responses were not motivated by  
12 pre-existing or improper bias against Petitioner, but instead were the result of a combination of  
13 good faith misunderstanding of the questions and sloppiness in answering. The Court’s  
14 findings are based on the evidence in the record, including an assessment of the credibility of  
15 Juror No. 7 and the other witnesses pursuant to the factors recited above.

17 //

18 //

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20 <sup>34</sup> Evidence Code section 780 lists similar factors for consideration for determining the credibility of a  
21 witness. These factors include “any matter that has any tendency in reason to prove or disprove the  
22 truthfulness of [her] testimony, including but not limited to any of the following:

- 23 (a) [Her] demeanor while testifying and the manner in which [s]he testifies.  
24 (b) The character of [her] testimony.  
25 (c) The extent of [her] capacity to perceive, to recollect, or to communicate any matter about which  
26 [she] testifies.  
27 (d) The extent of [her] opportunity to perceive any matter about which [she] testifies.  
28 (e) [Her] character for honesty or veracity or their opposites.  
(f) The existence or nonexistence of a bias, interest, or other motive.  
(g) A statement previously made by [her] that is consistent with [her] testimony at the hearing.  
(h) A statement made by [her] that is inconsistent with any part of [her] testimony at the hearing.  
(i) The existence or nonexistence of any fact testified to by [her].  
(j) [Her] attitude toward the action in which [she] testifies or toward the giving of testimony.  
(k) [Her] admission of untruthfulness.

1           **A. Juror No. 7's Answers to Questions 54a and 54b Were False**

2           Read together, questions 54a and 54b were asking Juror No. 7 if she had ever been  
3 involved in a lawsuit, and if so, as the plaintiff, the defendant, or both. Respondent contends  
4 Petitioner did not demonstrate that Juror No. 7's failure to list her petition for a restraining  
5 order was misconduct because Juror No. 7 did not understand that the request and hearing for a  
6 restraining order was a lawsuit because it was not a "suit for money or property." (People's  
7 Post Evidentiary Hearing Brief, pp. 29-30.) The Court disagrees.

8           With respect to Question 54b, it is clear from her testimony that Juror No. 7 identified  
9 herself as a "Plaintiff" when she filled out the form for the restraining order. She testified that  
10 she understood what was meant by "Plaintiff" and "Defendant" in the petition and explained  
11 that she was the "Plaintiff" because she was "the person asking for the restraining order." (RT  
12 197:2-198:20.) In the petition for her restraining order, the word "Plaintiff" appears at least 10  
13 times. (See Exh. 1A.)

14           In addition, Juror No. 7 testified that she did, in fact, seek money damages from Ms.  
15 Kinsey in another proceeding after the restraining order. That proceeding was in Santa Clara  
16 Superior Court. While the records of that proceeding are not available and not part of this  
17 record, Juror No. 7's testimony was clear: it was a lawsuit for money. (RT 42:18-43:6.)

18           Therefore, the Court finds that Juror No. 7's answers to Questions 54a and 54b were  
19 incorrect. There is a meaningful argument that "incorrect," in the context of this case, does not  
20 mean "false" because the questions at issue require the interpretation of legal terminology and  
21 Juror No. 7 was an unsophisticated layperson. Although the Court credits this argument, it  
22 finds that it is better addressed in the context of whether Juror No. 7 was motivated by bias in  
23 giving her answer. Accordingly, the Court concludes that the legally incorrect answer provided  
24 by Juror No. 7 was "false" and the burden will shift to Respondent. (*In re Manriquez, supra*, 5  
25 Cal.5th at p. 797 ["A juror who conceals relevant facts or gives false answers during voir dire  
26 ... commits misconduct."].)  
27

28 //

1           **B. Juror No. 7's Answer to Question 74 was False**

2           The second issue presented<sup>35</sup> concerns Juror No. 7's response to Question 74: "Have  
3 you, or any member of your family, or close friends, ever been the victim or witness to any  
4 crime?" The Court finds that Juror No. 7's response to Question 74 was also false for several  
5 reasons.

6           First, Juror No. 7 testified that she heard Ms. Kinsey stand outside her home yelling for  
7 her and Mr. Whiteside to come outside "so [they] could fight," and then kicked in Juror No. 7's  
8 front door. (RT 46:15-47:15; 56:15-16.) Juror No. 7 also knew that Mr. Whiteside had been a  
9 victim of Ms. Kinsey's behavior that day when she slashed the tires of his car and tried to spray  
10 him with mace. (*Id.* at 230:26-231:6.) Juror No. 7 admitted on the stand that she considered  
11 kicking in the front door and the slashing of Mr. Whiteside's tires to be crimes. (*Id.* at 56:17-  
12 26.) When asked why she called the police that day, Juror No. 7 conceded that it was because  
13 she "thought a crime was being committed." (*Id.* at 55:24-56:3.)

14           Second, Juror No. 7 saw Ms. Kinsey following her in her car and testified that Ms.  
15 Kinsey was showing a history of being "stalkerish." (RT 47:26-48:8.) Again, when asked by  
16 Petitioner whether she considered Ms. Kinsey stalking her to be a crime, Juror No. 7 answered,  
17 "sure." (*Id.* at 57:1-2.) Third, while Juror No. 7 testified that Mr. Whiteside did not assault her  
18

19  
20  
21 <sup>35</sup> As noted above, Petitioner appears to have abandoned the issue regarding Question 72 on the  
22 Questionnaire which reads: "Have you ever participated in a trial as a party, witness, or interested  
23 observer?" Juror No. 7 checked the box "No." Petitioner failed to cover Question 72 during the 2022  
24 hearing or in his post-hearing briefing, but he has not formally waived or abandoned it. Assuming it was  
25 not abandoned, there is no evidence in the record that Juror No. 7 was ever a party, witness or interested  
26 observer *in a trial*. The record evidence is that Juror No. 7 dismissed the lawsuit against Ms. Kinsey in  
27 Santa Clara County Superior Court before it went forward to trial and the restraining order hearing was  
28 not a trial as that term is commonly understood. A hearing is a court appearance on a specific matter in  
which a court session takes place to review evidence and arguments that are presented in an effort to  
resolve a disputed issue, generally resulting in an order issued by the court. A trial, on the other hand, is  
more appropriately described as the examination of facts and law put in issue in a cause resulting in a  
final judgment usually against an individual or entity. (*See, e.g.*, Code Civ. Proc. section 527.6  
[Temporary Restraining Order and Order After Hearing]; sections 588-598 [Mode of Trial]; and  
sections 607-613 [Conduct of Jury Trial].) However, even assuming the answer to Question 72 was  
false, the same facts underlying the Kinsey incident apply to Question 72. Put another way, the findings  
of this Court would be the same.



1 during the incident in her home in November 2001, she admitted she hit him, consequently  
2 admitting that Mr. Whiteside had been a victim of her assault.

3 Similar to the previous questions, whether Juror No. 7 had been the “victim” or  
4 “witness” of a “crime” raises issues regarding the interpretation of terms that have particular  
5 legal meanings. However, the issue before the Court at this stage of the findings is not whether  
6 Juror No. 7 misunderstood the terms; it is whether she gave an incorrect answer. For purposes  
7 of Question 74, the Court finds that her incorrect response was “false.”

### 8 **C. Juror No. 7 Was Not Biased Against Petitioner<sup>36</sup>**

9 Having found that Juror No. 7’s failure to disclose (1) the incident involving Ms.  
10 Kinsey, (2) the civil lawsuit against Ms. Kinsey, and (3) the incident involving her hitting Mr.  
11 Whiteside, constitutes misconduct, the Court turns to the next issue: Has the presumption of  
12 prejudice based on the finding of misconduct been rebutted? In other words, in reviewing the  
13 record as a whole, is there no substantial likelihood that Juror No. 7 was actually biased against  
14 Petitioner? For all the reasons set forth below, the Court finds that Juror No. 7 did not engage  
15 in prejudicial misconduct by failing to disclose her prior involvement, or the involvement of  
16 her family and close friends, in legal proceedings.  
17

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18  
19 <sup>36</sup> Petitioner relies on the case of *Dyer v. Calderon* (9th Cir. 1998) 151 F.3d 970 to support his  
20 contention that the evidence of the Kinsey incident demonstrates that Juror No. 7 was impliedly biased  
21 against him. As a first point, while actual bias is a factual question, implied bias is a legal determination  
22 that may exist “in those extreme situations where the relationship between a prospective juror and some  
23 aspect of the litigation is such that it is highly unlikely that the average person could remain impartial in  
24 his deliberations under the circumstances.” (*Fields v. Brown* (9th Cir. 2007) 503 F.3d 755, 766, citations  
25 omitted.) These extreme situations might be “a revelation that the juror is an actual employee of the  
26 prosecuting agency, that the juror is a close relative of one of the participants in the trial or the criminal  
27 transaction, or that the juror was a witness or somehow involved in the criminal transaction.” (*Smith v.*  
28 *Phillips* (1982) 455 U.S. 209, 222 (O’Connor, J., concurring).) In *Dyer*, the federal court found implied  
bias after the juror, when questioned by the trial court, told the judge that she believed her brother’s  
death was an accident. In fact, the brother had been pistol whipped and shot in the back of the head.  
Shortly after his shooting, the juror sued the defendant that shot him. In addition, the juror’s mother,  
with whom she lived, testified at the preliminary hearing involving the brother’s death. There was also  
evidence that the juror’s husband was in jail and had been arrested on a rape charge a month before trial.  
(*Dyer v. Calderon*, *supra*, 151 F.3d at pp. 979-980.) Here, the facts are completely distinguishable from  
those in *Dyer* and do not support a finding of such an extreme situation.

1                                   **1. Juror No. 7's Nondisclosures Were Honest Mistakes**

2                                   **i. Juror No. 7 was a Credible Witness**

3                   Applying the factors set out in Evidence Code section 780, CALCRIM No., 226 and  
4 CACI No., 5003, this Court finds Juror No. 7 to be credible. Juror No. 7's demeanor while  
5 testifying was appropriate, respectful, and forthcoming. (CALCRIM No., 226.) Although she  
6 appeared somewhat nervous when she initially took the stand, given the publicity in the case  
7 and the accusation of misconduct, that nervousness was, in the Court's view, appropriate and  
8 justified. During the two days of questioning that followed, Juror No. 7 never lost her temper,  
9 or behaved in any manner other than someone who was respectful of the process and  
10 understood the seriousness of the proceeding. Juror No. 7 answered the questions presented to  
11 her. Juror No. 7's answers were direct and not evasive, and she spoke in a clear manner.  
12 (CACI No., 5003; CALCRIM No., 226.) When she was unable to understand the question, she  
13 so stated. When she was unable to recall an event, she also so stated.  
14

15                   Despite the passage of time, Juror No. 7's memory of the underlying events giving rise  
16 to this proceeding were, for the most part, clear. (CACI No., 5003; CALCRIM No., 226.) The  
17 Kinsey incident occurred in 2000 and the Whiteside incident in 2001, yet as to each she was  
18 able to describe what happened to the best of her recollection. Juror No. 7 credibly and directly  
19 explained: why she requested a restraining order against Ms. Kinsey; the lifestyle she and Mr.  
20 Whiteside shared and the events that led to his arrest in 2001; her reasons for "dropping" the  
21 civil lawsuit against Ms. Kinsey; and her reason for reaching out to an acquaintance who was  
22 also a police officer when she claimed that Ms. Kinsey violated the restraining order.

23                   Although Petitioner alleges that Juror No. 7 was biased against him when she filled out  
24 her questionnaire in 2004, there is no evidence that her testimony during this proceeding was  
25 influenced by bias or prejudice. (CACI No., 5003; CALCRIM No., 226.) Juror No. 7  
26 requested and was granted immunity. (CALCRIM No., 226.) Nothing that she said could have  
27 been used against her by the District Attorney. Put another way, she had every reason to be  
28

1 truthful during the evidentiary hearing. In addition, there is no evidence that Juror No. 7  
2 harbored a personal interest in how this Petition is decided.

3 **ii. Juror No. 7 was not “impacted by the trauma of having her own**  
4 **unborn child threatened.”**

5 After hearing and observing Juror No. 7 during two days of testimony, the Court finds  
6 that far from being a traumatic life experience as painted by Petitioner, the incident involving  
7 Juror No. 7, Ms. Kinsey, and Mr. Whiteside can be described, for lack of a better word, as a  
8 love triangle. In this context, it is noteworthy that at the time of the September 23, 2000,  
9 incident, Juror No. 7 was approximately 30 years old, and Mr. Whiteside was 22 years old.  
10 (Exhs. 4, 8.) Ms. Kinsey was Mr. Whiteside’s ex-girlfriend. Juror No. 7 was approximately 3  
11 months pregnant with his child. Juror No. 7 testified that while Mr. Whiteside had all of his  
12 belongings at her house, he did not always live there. She specifically described Mr. Whiteside  
13 as someone who fit the model for the song “Papa Was a Rolling Stone.” (RT 98:14-16.)  
14 During oral arguments, Petitioner described the relationship between Mr. Whiteside and Juror  
15 No. 7 as “a complex relationship.” (8/11/22 Final Arguments RT 166:18-19.) Underscoring  
16 the on-and-off again nature of the relationship, is Petitioner’s allegation that by the time Juror  
17 No. 7 filed for a restraining order two months after the Kinsey incident, Juror No. 7 and Mr.  
18 Whiteside appeared to have already broken up. (Exh. 45 to the Petition for Habeas Corpus,  
19 HCP-000905 [“4. How is it that you know the defendant (i.e., landlord/tenant, neighbor, etc.)?  
20 (Specify): Marcella is my *ex-boyfriends* [sic] ex-girlfriend.”], emphasis added.)

21 Moreover, before Juror No. 7 sought the restraining order, she *called* Ms. Kinsey to “try  
22 to put a stop” to Ms. Kinsey’s behavior, as alleged by Petitioner’s supporting document. (Exh.  
23 45 to the Petition for Habeas Corpus, HCP-000909.) When that attempt failed, she proceeded  
24 with the restraining order to avoid “handl[ing] it on the streets.” (*Ibid.*) Though by her own  
25 admission she has been in many fights in her life, Juror No. 7 testified that at that time she was  
26 5 months pregnant and “rolling around like some dummies on the ground” could cause her to  
27 lose the baby. (RT 53:15-19; 57:9-11.)  
28

1 Understanding Juror No. 7's testimony needs to be put in the context of "common  
2 sense and experience." (CACI No., 5009; *see also* CALCRIM Nos., 105, 226.) There are  
3 several considerations that the Court takes into account in evaluating her testimony. First, if an  
4 individual *actually* fears that another person would harm that individual or the individual's  
5 unborn child, it is not reasonable for that individual to actively reach out to the other party and  
6 ask them to stop the conduct. Second, Juror No. 7's background needs to be considered in the  
7 context of how she viewed Ms. Kinsey's conduct. Jurors should represent a cross section of the  
8 community.<sup>37</sup> Juror No. 7 was part of that cross section. She grew up in East Palo Alto,  
9 California.<sup>38</sup> She had only a high school education with limited training as a certified medial  
10 assistant. Her brother served time in state prison for a drug related offense and her mother was  
11 a methadone drug counselor. Juror No. 7 testified repeatedly about the fact that she had been in  
12 many fights in her life, but that she did not consider herself to be a victim. (Exh. 10, ¶ 25; RT  
13 31:25-26.) Witnessing her very candid demeanor when she described her life and her life  
14 experiences, the Court finds her testimony vis-à-vis Ms. Kinsey, while unusual, to be true.

15  
16 In addition, Juror No. 7 had four children with three different fathers and never married.  
17 When she appeared for jury duty, she had visible tattoos, and her hair was dyed a "bright  
18 pinkish-red color." (RT 235:18-24.) As Respondent argued, she appeared to be a juror  
19 Petitioner wanted to keep on his jury. (8/11/22 Final Arguments RT 145:22-26.) Consistent  
20 with that argument is the fact that the trial court excused her for cause based on a financial  
21 hardship *but it was Petitioner's attorney, Mark Geragos, that insisted she remain.*<sup>39</sup>

22  
23 <sup>37</sup> (U.S. Const., 6th Amend.; Cal. Const., art. I, § 16; *Duren v. Missouri* (1979) 439 U.S. 357, 358-367;  
*People v. Burgener* (2003) 29 Cal.4th 833, 856.)

24 <sup>38</sup> Between the years of 1983 and 2000, East Palo Alto struggled with high rates of violent crime and  
25 gang violence. The crack epidemic had decimated the city and by 1992, the city had gained a reputation  
26 of being the U.S. "murder capital" and was the nation's leader in per capita murders that year.  
([https://www.smcgov.org/district-4-warren-slocum/history-east-palo-alto.](https://www.smcgov.org/district-4-warren-slocum/history-east-palo-alto)) In short, it was a challenging  
place to grow-up.

27 <sup>39</sup> There is no indication in the record that Juror No. 7 did anything to resist the trial court's dismissal.  
28 (Exh. 10, ¶ 14; Exh. 5, p. 4599:2-12; RT 133:8-13.) She testified that when she was excused, she picked  
up her belonging and had walked three chair lengths to leave the courtroom when Mr. Geragos insisted  
she remain. Had Juror No. 7 wanted to be on the jury to punish Petitioner for what he did to Conner, it

1           Petitioner correctly argues that Juror No. 7's application for a restraining order, which  
2 stated that she was seeking the order because she was "in fear for her unborn child" is a past  
3 statement that on its face, is inconsistent with Juror No. 7's current testimony that she was not  
4 in fear of Ms. Kinsey hurting her or her unborn child. Evidence that a witness has lied under  
5 oath on another occasion is directly relevant to the witness's credibility. (*See generally People*  
6 *v. Ayala, supra*, 23 Cal.4th at p. 271.) However, in this context, the Court also credits Juror  
7 No. 7's "admission ... of untruthfulness." (CALJIC No., 2.20.) Juror No. 7 admitted at the  
8 evidentiary hearing that she had been untruthful, and she candidly explained why she requested  
9 a restraining order against Ms. Kinsey. In her own words, Juror No. 7 said she did not want to  
10 physically fight Ms. Kinsey and risk losing the baby. "[S]he wasn't going to deliberately hurt  
11 my child, but if we fought and rolled around like some dummies on the ground then, yes I  
12 would be fearful that I would lose my child doing something stupid like that." (RT 53:15-19.)<sup>40</sup>

13  
14           Juror No. 7 also admitted she was "being spiteful" when she requested the restraining  
15 order be both for herself and her unborn child. (RT 52:15-19.) She credibly testified that she  
16 had absolutely no "genuine fear" that Ms. Kinsey was going to hurt her child. (*Id.* at 52:20-24.)  
17 Juror No. 7's testimony on this point is supported by her alleged behavior immediately prior to  
18 and after seeking the restraining order. Juror No. 7 twice initiated contact with Ms. Kinsey:  
19 once allegedly by telephone just days before requesting the restraining order, and once *after* the  
20 restraining order was issued outside the courthouse after dismissing the civil lawsuit. In both  
21 instances she was still pregnant with the unborn child covered by the restraining order.

22           Juror No. 7 conceded at the evidentiary hearing that she called law enforcement about  
23 Ms. Kinsey violating the restraining order approximately two years after it was issued.

24           However, on the stand, Juror No. 7 stated that, again, she was "just being spiteful." (RT

25  
26           \_\_\_\_\_ would be reasonable to conclude that she would have done more to resist dismissal in the beginning.  
27 Instead, she accepted the dismissal and started to leave.

28           <sup>40</sup> Unlike the juror in *Dyer* who repeatedly lied to the trial judge about the incident involving the killing  
of her brother four years earlier, Juror No. 7's testimony about the Kinsey incident was believable with  
respect to the reason Juror No. 7 requested the order. (*Dyer v. Calderon, supra*, 151 F.3d at pp. 979-  
980.)

1 195:21-26.) The incident that precipitated Juror No. 7 calling the police was a video of Ms.  
2 Kinsey at a birthday party at Mr. Whiteside's mother's house holding Juror No. 7's son—the  
3 "unborn" child that was the subject of the restraining order. At the time the video was taken,  
4 Juror No. 7 was in the hospital recovering from just having given birth. Juror No. 7 testified  
5 that she did not believe Ms. Kinsey was committing a crime when she was with her son. "She  
6 was actually being nice to my child, so it wasn't a crime." (*Id.* at 195:6-7, 25-26.) "I talked to  
7 the police out of spite." (*Id.* at 195:21-22.)

8           The Court finds Juror No. 7's testimony about her reason for contacting law  
9 enforcement regarding a restraining order violation to be credible given *both* the history  
10 between the parties and where Juror No. 7 was when the video was taken: In the hospital,  
11 having just given birth to Mr. Whiteside's second child.

12           The Court also finds Juror No. 7's non-disclosure of the lawsuit against Ms. Kinsey to  
13 be an honest mistake. Juror No. 7 forthrightly acknowledged she did, in fact, file a lawsuit  
14 seeking money damages against Ms. Kinsey. Her testimony that, in her mind, she "didn't sue  
15 her [Ms. Kinsey]" because instead of pursuing the civil lawsuit, Juror No. 7 asked the judge to  
16 "drop" the action, is credible. Juror No. 7's testimony is bolstered by the fact that after she  
17 asked the judge to "drop" the action, she and Ms. Kinsey made amends outside the courthouse.  
18 (RT 42:25-43:6; 94:7-95:25.)

19           Based on all of the record evidence, the Court is not persuaded that Juror No. 7 was  
20 "impacted by the trauma of having her own unborn child threatened," such that she was  
21 prejudiced against Petitioner. The Court accepts and credits Juror No. 7's explanations and  
22 finds the non-disclosures to be inadvertent.<sup>41</sup> The Court further finds that Juror No. 7 did not  
23

24  
25 <sup>41</sup> The Court notes that there are examples of inadvertence and mistakes made by trained professionals  
26 in this proceeding. Ms. Bracksher signed a declaration as a custodian of records representing that the  
27 original records from which the accompanying copies were made were prepared by her. That statement  
28 was incorrect: it was a police officer who prepared the records. In a second instance, Mr. Bracksher  
certified copies of screenshots of records rather than the records themselves. She admitted this was an  
error. Another example involves the HCRC. Petitioner's counsel represented to the Court that it is  
HCRC's "policy" not to keep interview notes of investigators. Rather, after an interview, a declaration

1 intentionally conceal information on the jury questionnaire to punish Petitioner for what she  
2 had herself experienced when she was pregnant. The Court finds credible that for Juror No. 7,  
3 these incidents simply did not cross her mind, in the context of these questions as asked during  
4 the jury selection process. In Juror No. 7's words, "I don't hold on to things. I didn't  
5 remember. It didn't cross my mind." (RT 84:24-25.)

## 6 **2. Juror No. 7 Was Not a Victim of Domestic Violence**

7 As explained above, Eddie Whiteside is the ex-boyfriend of Juror No. 7 and the father  
8 to her two youngest children. Mr. Whiteside lived with Juror No. 7 at the time of jury  
9 selection, was present during the Kinsey incident and later named as a witness to an alleged  
10 restraining order violation. He was also the named suspect in the purported domestic violence  
11 incident involving Juror No. 7. Neither Petitioner nor Respondent listed Mr. Whiteside as a  
12 witness. Rather, it was Petitioner's intent to call Mr. Whiteside as a rebuttal witness to  
13 impeach Juror No. 7's testimony if necessary. (RT 144:8-10.)

14 According to Petitioner, Mr. Whiteside had spoken with an investigator from the  
15 HCRC, Hannah Gilson, on May 27, 2021, for approximately 15-20 minutes. (Petitioner's  
16 Response to Court Inquiry Re: Contact with Eddie Whiteside, p. 3.) Petitioner alleged that  
17 during the brief interview, Mr. Whiteside stated that he was not on board with Juror No. 7  
18 staying on the jury for financial reasons, contrary to Juror No. 7's representations to the trial  
19 judge and testimony at the evidentiary hearing. (RT 138:4-17.) Pursuant to standard HCRC  
20 practice, after interviewing a potential witness, investigators add the statements obtained from  
21 the witness to a draft declaration. (Petitioner's Response to Court Inquiry Re: Contact with  
22 Eddie Whiteside, Exh. 3 [Declaration of Shelley Sandusky] ¶ 2.) Original notes are not kept  
23 once the statements are memorialized in the draft declaration. (*Ibid.*) Once interviews are  
24

25  
26 is prepared for the witness and notes are destroyed. This turned out to be incorrect as it pertained to  
27 Shareen Anderson, whose interview notes were found after a subsequent search. Finally, Juror No. 7's  
28 Questionnaire, (Exh. 4), which has been the centerpiece of the habeas proceedings since 2015, was  
missing page 22. Upon inquiry by the Court, Petitioner secured page 22, admitted as Exhibit 4A, to  
complete the form. Exh. 4A did not contain critical information, but it demonstrates that oversights and  
honest mistakes are made by even the most professional individuals.

1 completed, the witness is then asked to review the draft declaration and correct any errors.  
2 (*Ibid.*) Though Mr. Whiteside initially agreed to meet with the HCRC investigator again,  
3 subsequent attempts to speak with him were unsuccessful. (RT 145:21-26.) Consequently,  
4 HCRC's draft declaration was never reviewed or signed by Mr. Whiteside.

5 Petitioner complained during the 2022 evidentiary hearing that he was having problems  
6 serving Mr. Whiteside with a trial subpoena. (RT 377:9-20.) Petitioner was given additional  
7 time to secure service on Mr. Whiteside. (*Id.* at 383:11-12.) Eventually, service was complete  
8 on the evening of March 3, 2022. (*Id.* at 451:1-10.) Petitioner informed the Court that unless  
9 Mr. Whiteside voluntarily spoke with counsel before the evidentiary hearing resumed on March  
10 24, 2022, he would not call Mr. Whiteside to testify. (*Id.* at 451:11-452:19.) Ultimately,  
11 Petitioner did not call Mr. Whiteside as a witness and neither did Respondent.

12 Mr. Whiteside's testimony is directly relevant to three points. First, it is relevant to his  
13 alleged agreement to carry the financial load brought by Juror 7's service if selected. Second, it  
14 is relevant to the September 23, 2000, incident with Ms. Kinsey and the aftermath that followed  
15 and third, it is relevant to the purported domestic violence incident in 2001 and Mr. Whiteside's  
16 reason for entering his plea. In the Court's view, Mr. Whiteside was a logical witness to call  
17 where Petitioner sought to introduce doubt regarding Juror No. 7's motives for wanting to be  
18 on the jury and undermine her credibility regarding her account of certain events that  
19 transpired.<sup>42</sup> The same, however, could be said for Respondent, whose burden it is to rebut the  
20 presumption of prejudice. (*See People v. Ford* (1988) 45 Cal.3d 431, 446-449.)<sup>43</sup> In either  
21

22  
23 <sup>42</sup> In Petitioner's Post-Hearing Opening Brief, Petitioner challenges and attempts to undermine Juror No.  
24 7's explanation for failing to disclose the Whiteside incident—that it was *she* who hit Mr. Whiteside—  
25 by arguing that her explanation was inconsistent with: (1) Juror No. 7's conduct in 2001 in refusing to  
26 exculpate him, (2) Mr. Whiteside's conduct in failing to ask her to testify on his behalf, (3) the false  
27 imprisonment and endangering the health of a child charges brought against him, and (4) all of the  
28 contemporaneous police and court records regarding the incident. (*Id.* at pp. 22-24, 37, fn.10.)

<sup>43</sup> The Court declines Respondent's invitation to draw an adverse inference under Evidence Code  
section 412 for Petitioner's failure to call Mr. Whiteside as a witness. (*See People's Reply to*  
Petitioner's Post-Evidentiary Hearing Brief, p. 9, fn. 5.) Petitioner's decision to not list or call Mr.  
Whiteside was a judgment call. Moreover, as stated above, Respondent could have just as easily called  
Mr. Whiteside as a corroborating witness given that it was Respondent's burden to rebut the  
presumption of prejudice. (*See id.* at p. 10, fn. 5.)



1 case, Mr. Whiteside’s testimony would have either confirmed Juror No. 7’s testimony on these  
2 subjects, or not.

3           Consequently, the record evidence as to what happened the night of the alleged  
4 domestic violence incident is limited to Juror No. 7’s testimony, which the Court finds credible.  
5 Juror No. 7 described the incident in a very matter of fact manner, accepted responsibility for  
6 hitting Mr. Whiteside, and with the Court’s permission, was graphic in the language that she  
7 used when the police came to her house after Mr. Whiteside called them. (RT 70:16-72:26.)  
8 Moreover, looking at the record as a whole, the Court cannot help but note the semblance  
9 between the motives underlying the Kinsey incident and the Whiteside incident. While the  
10 Court does not condone violence for any reason, the record is clear that due to his ongoing  
11 infidelity, Mr. Whiteside was physically attacked by two women with whom he was  
12 romantically linked—Juror No. 7 and Ms. Kinsey—in the span of a little over a year.

13           Petitioner also contends that Juror No. 7 is not to be believed because it was Mr.  
14 Whiteside who was arrested; charged with crimes of domestic violence and child  
15 endangerment; who pled to a misdemeanor charge; and who was required to attend domestic  
16 violence classes. On its face, Petitioner’s argument has merit. Juror No. 7 testified that she  
17 knew Mr. Whiteside was the one who was arrested that night. But she also testified that she  
18 was not aware of the charges or the fact that Mr. Whiteside entered a plea. Moreover, the arrest  
19 and subsequent plea of Mr. Whiteside, should be put in context of the time. In 2001, Mr.  
20 Whiteside was a Black man in his early twenties living in East Palo Alto with a woman who  
21 appeared to be White. When the police arrived, Juror No. 7 answered the door and told them to  
22 “get the fuck out of my house cause I didn’t call you.” When Juror No. 7 was asked about a cut  
23 on her lip, she did not offer an explanation and told the police officers that she did not know  
24 what happened to it. (RT 72:14-26.)

25           Today it is a well-known and well-studied fact that there has been a historical bias in  
26 policing. (See Marnie Lowe, *Fruit of the Racist Tree: A Super-Exclusionary Rule for Racist*  
27 *Policing Under California’s Racial Justice Act* (2022) 131 Yale L.J. 1035, 1037; Elayne E.  
28

1 Greenberg, *Unshackling Plea Bargaining from Racial Bias* (2020) 111 J. Crim. L. &  
2 Criminology 93, 98.) Training is ongoing to address racial bias in law enforcement. (Lowe,  
3 *supra*, 131 Yale L.J. at p. 1056, fn 98.) It is, therefore, not unreasonable to conclude that  
4 because of his age, race, and the fact that Juror No. 7 had blood on her lip, Mr. Whiteside was  
5 the one who was arrested. It is also not unreasonable that Mr. Whiteside simply accepted a  
6 plea rather than fight the charges given both his “complicated” relationship with Juror No. 7  
7 and the existing racial bias in the justice system.

8 For all these reasons, the Court finds credible Juror No. 7’s testimony that she was the  
9 one who hit Mr. Whiteside and that he never touched her.

10  
11 **3. Juror No. 7 Volunteered Undisclosed Information to Petitioner’s**  
12 **Investigator**

13 Petitioner argues that Juror No. 7’s lack of cooperation in voluntarily coming forward  
14 after trial to reveal the previously undisclosed information in her questionnaire supports a  
15 finding that the non-disclosure was intentional. (Petitioner’s Post-Hearing Opening Brief, p.  
16 31, citing *In Re Manriquez*, *supra*, 5 Cal.5th at 801-804 [an intentional concealment is strong  
17 proof of prejudice].) Petitioner contends that additional post-trial conduct of Juror No. 7  
18 supports their argument. That conduct includes: (1) Juror No. 7 refusing to speak with the  
19 defense or Respondent; (2) Juror No. 7 hiring a lawyer; and (3) her refusal to testify at the 2022  
20 evidentiary hearing absent a grant of immunity. (*Id.* at pp. 33-34 [distinguishing *In Re*  
21 *Manriquez* where C.B. admitted her non-disclosure in a post-trial questionnaire and  
22 “voluntarily compl[ied] with the parties’ ... requests for more information.”].)

23 Setting aside that *In Re Manriquez* and the instant case both involve similar  
24 explanations for the non-disclosures, the circumstances post-trial here are distinguishable.  
25 First, there was no post-trial questionnaire in this case like there was in *Manriquez*. Ten years  
26 passed between Petitioner’s guilty verdict and death sentence and the first time Petitioner’s  
27 investigator from HCRC sought out Juror No. 7. Most importantly, and contrary to Petitioner’s  
28 assertions, Juror No. 7 *did* speak with his HCRC investigator when invited, and Juror No. 7 was

1 candid with her responses. (See RT 223:4-14.) Juror No. 7 spoke with Petitioner's investigator  
2 on November 2, 2015. (*Id.* at 220:14-19; 250:1-9.) Though Juror No. 7 could not really recall  
3 the specifics of the discussion, (*id.* at 223:16-20; 225:18-226:4; 250:15-23), she did recall  
4 telling the investigator that "[r]estraining orders don't do any good" and that she "dropped all  
5 charges" against Ms. Kinsey. (*Id.* at 268:3-13; 274:3-275:13.) Petitioner does not argue, nor  
6 did he put forward any evidence that Juror No. 7 refrained from discussing the Kinsey incident  
7 and the civil lawsuit when asked, or otherwise failed to answer any of the investigator's other  
8 questions.

9           Based on this record, the Court does not draw an inference of bias from the fact that  
10 Juror No. 7 refused to speak a *second* time with the defense investigator *after* the misconduct  
11 claim was made. (See Petitioner's Post-Hearing Opening Brief, pp. 15-16, 34.) Petitioner filed  
12 his Habeas Petition on November 23, 2015—three weeks after HCRC's *first* interview with  
13 Juror No. 7. Juror No. 7 testified that at the time she spoke with the investigator she was  
14 unaware whether Petitioner had filed any paperwork accusing her of anything. (RT 272:22-  
15 26.) Once public, however, the amount of publicity that follows this case and the negative  
16 connotation that an accusation of jury misconduct carries, all adds to the Court's understanding  
17 of why Juror No. 7 hired an attorney. In other words, it was reasonable that when Juror No. 7  
18 found out she was being accused of misconduct, she refused to speak with Petitioner's  
19 investigator a second time and instead sought the services of a lawyer.

21           The Court also rejects Petitioner's argument regarding Juror No. 7's request for  
22 immunity. First, the facts underlying Juror No. 7's decision to seek immunity are not part of  
23 this record. Second, there is no basis for the Court to draw any adverse inference simply  
24 because the request was made by Juror No. 7 or that immunity was granted by the District  
25 Attorney.

26           For all these reasons, the Court does not find Juror No. 7's behavior after the juror  
27 misconduct claim became public supports a finding that the original non-disclosure on the  
28 questionnaire was intentional.

1                   **4. Juror No. 7's December 10, 2020, Declaration Corroborates Her**  
2                   **Testimony**

3                   Juror No. 7 hired an attorney, Negad Zacky, to assist her in preparing a declaration for  
4 submission with the Return filed on December 11, 2020. (*See* Exh. 10.) Mr. Zacky, a criminal  
5 defense attorney, was retained by Juror No. 7 approximately three months prior to October 26,  
6 2020. (RT 573:1-11.) He had contact with the Stanislaus County District Attorney's Office on  
7 that same date, October 26, 2020. (*Id.* at 573:12-24.)

8                   The District Attorney's Office provided Mr. Zacky with copies of the pleadings in the  
9 habeas petition. (RT 575:8-576:6.) At the time of the initial contact, Mr. Zacky informed the  
10 District Attorney that he was not sure whether or not Juror No. 7 would be providing a  
11 declaration for the Return. (*Id.* at 576:20-577:16.)

12                  On November 9, 2020, Mr. Zacky provided the District Attorney's Office an unsigned  
13 draft declaration of Juror No. 7. (RT 582:15-25; 583:14-15.) Mr. Zacky made clear that the  
14 words of the draft declaration were not those of Juror No. 7. (*Id.* at 583:16-21.) After  
15 receiving a copy of a draft of the Return, changes were made to the draft declaration. (*Id.* at  
16 587:9-23.) At the hearing, Mr. Zacky explained that changes to the declaration were not based  
17 on his review of the Return, but rather on responses regarding the scope of the Return and  
18 information that had been provided from the District Attorney's Office that was not previously  
19 provided. (*Id.* at 587:21-588:3.) Juror No. 7's signed declaration was given to the District  
20 Attorney shortly thereafter. (*Id.* at 588:11-18.) Mr. Zacky testified that at no point did the  
21 District Attorney tell him what to put into Juror No. 7's declaration. (*Id.* at 589:5-9.)

22                  In Petitioner's Post-Hearing Opening Brief, he suggests Juror No. 7's answers in her  
23 declaration "bore remarkable similarities to the explanations proposed by the Attorney General  
24 in the 2017 Informal Response filed in opposition to the Petition for Writ of Habeas Corpus  
25 (the "Informal Response"), which Mr. Zacky had obtained." (Petitioner's Post-Hearing  
26 Opening Brief, p. 18.) For example, in addressing why she did not disclose her involvement in  
27 the November 2000 restraining order litigation against Ms. Kinsey, the declaration repeated the  
28

1 “money or property” rationale in the Informal Response filed three years earlier. (*Compare*  
2 Exh. 10, ¶ 10 [“I understood the word “lawsuit” to mean and refer to a suit for money or  
3 property.”] *with* Informal Response, pp. 27-28 [speculating that Juror No. 7 might not have  
4 understood her lawsuit against Ms. Kinsey was a lawsuit; “[L]awsuit could reasonably be  
5 understood as an action in which one person sues another for money [or] property.”].) As to  
6 why she did not disclose having been the victim of any crimes, the declaration repeated the  
7 Informal Response’s 2017 speculation that Juror No. 7 did not view Ms. Kinsey’s conduct as a  
8 crime. (*Compare*, Exh. 10, ¶ 23 [“I did not interpret the circumstances leading to the petition  
9 for a restraining order as a crime. I still do not.”] *with* Informal Response, p. 29 [speculating  
10 that Juror No. 7 may not have “understood Ms. Kinsey’s harassment to be a crime.”].)

11 At first glance, Petitioner’s argument regarding the similarities between the two  
12 documents is well taken. However, at the evidentiary hearing, Juror No. 7 repeated and  
13 expanded on the explanations she gave in her declaration about her answers to questions 54a,  
14 54b, and 74. During the evidentiary hearing, Petitioner was provided ample opportunity (and  
15 did) to go through each and every statement attested to by Juror No. 7 in her declaration. Juror  
16 No. 7’s responses to questioning during the hearing was candid and direct. She thoughtfully  
17 responded to each question about the truthfulness of the statements in her December 10, 2020,  
18 declaration. When asked whether paragraphs 10 and 23 in her declaration were truthful and  
19 accurate statements, Juror No. 7 responded unequivocally, “Yes.” (RT 27:5-8; 31:7-12.) Later  
20 in her testimony, Juror No. 7 affirmed her statement.

21  
22 Q. “I understood the lawsuit to mean and refer to a suit for money or property.” Was that a  
23 phrase you used?

24 A. Yeah.

25 Q. Specifically with the – to put into the declaration?

26 A. Yeah.

27 (*Id.* at 301:4-10.)

28 Juror No. 7 noted minor discrepancies in her declaration and stated that she should have  
met with counsel in person in drafting the declaration, but due to COVID, everything was done

1 over the phone, on Zoom, or through email. (RT 299:13-300:24.) The declaration, however,  
2 corroborates her testimony and overarching position that, due to “countless unpleasant  
3 experiences in [her] life” Juror No. 7 did not consider herself a victim of Ms. Kinsey’s  
4 behavior, and neither the Kinsey incident nor the Whiteside incident ever crossed her mind  
5 during jury selection. (See, e.g., Exh. 10, ¶¶ 18, 19, 24, 25, 27, 30, 32; RT 189:26-190:1  
6 [“When I filled out that questionnaire, honestly and truly, nothing of this ever crossed my mind,  
7 ever.”].)<sup>44</sup> Juror No. 7 further testified that she has never spoken to anyone from the District  
8 Attorney’s Office or Attorney General’s Office. (RT 217:21-24.)<sup>45</sup> Mr. Zacky’s testimony was  
9 also clear that he crafted the original draft declaration without any influence by the District  
10 Attorney.

##### 11 **5. Financial Hardship and the Child Support Forms Are Inconclusive**

12 Petitioner requested that other exhibits be admitted during the evidentiary hearing.  
13 Included were two cases filed by the Department of Child Support Services (DCSS) on May  
14 10, 2004, and September 8, 2004, regarding child support. The May 10, 2004, filing, Case  
15 Number 72904, involved William Robinson as the Respondent/Defendant and The County of  
16 San Mateo at Petitioner/Plaintiff. The September 8, 2004, filing, Case Number F07931,  
17 involved Juror No. 7 as Petitioner/Plaintiff and James D. Smith as Respondent/Defendant.<sup>46</sup> As  
18 part of the child support applications, Juror No. 7 filled out an Income and Expense Declaration  
19 in each case. Both forms were signed under penalty of perjury. Question 12 on the Income and  
20

21  
22 <sup>44</sup> To the extent there were some corrections or clarifications made to her December 10, 2020,  
23 declaration during the evidentiary hearing, the Court does not find that these impact the Court’s  
24 determination regarding Juror No. 7’s credibility given the entire record.

25 <sup>45</sup> Furthermore, it is not extraordinary that the Attorney General was able to surmise a possible  
26 explanation for why Juror No. 7 did not disclose that she was the victim or witness to a crime or that she  
27 had been involved in a prior lawsuit. A definition of the word “lawsuit” was not provided in the jury  
28 questionnaire, (Exh. 4; RT 278:1-3), and the word “lawsuit” is, generally, commonly understood to  
involve “money or property.”

<sup>46</sup> The Court granted Respondent’s request that it take judicial notice of Family Code sections 17404  
and 17406. (RT 266:12-24; 487:16-488:9; 599:19-25.) Family Code section 17404 relates to the  
procedures and actions, including pleadings involving child support services. Family Code section  
17406 relates to the attorney-client relationship between a local agency and any person resolving a  
complaint for paternity or support in a child support services case.

1 Expense Declaration asks the declarant to list the members of the household: “The following  
2 people live with me[.]” In both cases, Juror No. 7 listed only her 4 minor children. (Exh. 16,  
3 SLP400508.)

4 The Income and Expense declarations were completed around the same time Juror No.  
5 7 was going through the jury selection process.<sup>47</sup> As Petitioner points out, the information  
6 Juror No. 7 provided on her Income and Expense Declarations is inconsistent with her answers  
7 on the questionnaire and her representation during voir dire where she stated that she was living  
8 not just with her four children, but with her “significant other” as well as her mother. (See Exh.  
9 4, Q.17, 18, 25; Exh. 5, pp. 4610, 4627.) Petitioner contends that these inconsistencies are  
10 important because they undermine Juror No. 7’s credibility and also evidence her intent in  
11 misrepresenting the financial hardship her jury service presented.  
12

13 During voir dire, when asked by the trial judge if her employer would pay her salary  
14 during the estimated five-month trial, Juror No. 7 explained that although she would only be  
15 paid for two weeks, she was willing to sit as a juror. (Exh. 5, pp. 4598-4599.) Juror No. 7 then  
16 twice indicated—once to the prosecution and once to defense counsel—that her significant  
17 other, whom she was living with, agreed to “carry the [financial] load.” (*Id.* at pp. 4610, 4627.)

18 Petitioner argues Juror No. 7 purposefully provided false information to the trial court  
19 about her financial status to make it appear as if jury service would pose no financial burden.  
20 (Petitioner’s Post-Hearing Opening Brief, p. 39.) According to Petitioner, Juror No. 7 was  
21 “allaying” the trial judge’s concerns by claiming to live with Mr. Whiteside, instead of availing  
22 herself to a financial hardship. (*Id.* at p. 40.) Petitioner claims Juror No. 7’s willingness to  
23 forego a hardship excusal with four children at home shows, at a minimum, that she was “eager  
24 to serve.” (*Id.* at p. 41, citing *Dyer v. Calderon, supra*, 151 F.3d at p. 982.)  
25  
26  
27

28 <sup>47</sup> Juror No. 7 completed her jury questionnaire on March 9, 2004 and returned for voir dire on April 12,  
2004. The Income and Expense declarations have a signature date of March 26, 2004 and April 17,  
2004, although the actual support actions were filed later.

1 The Court is not persuaded that Juror No. 7 lied or was otherwise less than candid with  
2 the trial court about her financial condition in order to get on the jury. Further, the Court is not  
3 persuaded that this evidence supports a finding that Juror No. 7 was “eager to serve.” Juror No.  
4 7 did not hide the fact from the trial court or trial counsel that her employer would not pay her  
5 salary for the entire length of trial. She did not protest when she was initially dismissed by the  
6 trial judge: she picked up her belongings and started moving three chair lengths from her seat to  
7 leave the courtroom. Juror No. 7 also testified credibly at the evidentiary hearing that Mr.  
8 Whiteside was living with her when she reported to jury service. When questioned by  
9 Petitioner whether she told the trial court that Mr. Whiteside was going to help take care of the  
10 financial burden during the trial, she responded in the affirmative:

11 A. Yeah. I was living with him and my mom, so I said it wasn’t a financial burden, and it  
12 wasn’t.

13 Q. It was not a financial burden?

14 A. It was not.

15 (RT 120:14-21.) She testified that at that time, Mr. Whiteside was working as a mail courier at  
16 Stanford Hospital and helping support her financially. (*Id.* at 119:11-21.) Given that neither  
17 side called Juror No. 7’s mother, Ms. Cosio, or Mr. Whiteside to contradict her statements, the  
18 uncontroverted evidence in the record on this point is Juror No. 7’s testimony.

19 The fact that Juror No. 7 did not list Mr. Whiteside or Ms. Cosio as living with her on  
20 her Income and Expense Declaration adds little to support Petitioner’s claim of bias and if  
21 anything, supports Respondent’s claim that Juror No. 7 is not good at filling out legal forms.  
22 As a first point, uniform guideline for child support in California is generally determined by the  
23 parents’ actual income and the level of responsibility for the children—it does not depend on  
24 who is living in the home. (Cal. Fam. Code, sections 4053, 4055.) Second, Juror No. 7’s lack  
25 of attention to detail on legal forms is well documented in this proceeding. For example, Juror  
26 No. 7 testified she made a separate mistake on page 2, paragraph 5E on the very same Income  
27 and Expense Declaration filed May 10, 2004, when she listed spousal support. “I don’t know  
28



1 why I put spousal support. I wasn't married. I was probably thinking child support, but go  
2 ahead." (RT 117:2-4.) In the subsequent Income and Expense Declaration filed on September  
3 8, 2004, Juror No. 7 listed "-0-" in response to the same question. Similarly, when Juror No. 7  
4 filled out the form for the restraining order, she listed Marcella Kinsey as her attorney even  
5 though Juror No. 7 did not have an attorney for that proceeding. (*Id.* at 259:13-21.)

6 Finally, even in the questionnaire which trial counsel had available to them before and  
7 during voir dire, there were other obvious mistakes. (*See* Exh. 4.) For example, Question 97a  
8 of the jury questionnaire stated that "[t]he jurors that sit in this case will be instructed that they  
9 must base their decision entirely on the evidence produced in court, not from any outside  
10 source or pre-existing opinion or attitudes. Can you do that, despite what you had read, heard,  
11 or seen about this case?" Juror No. 7 checked the box "NO" and provided no explanation. (*Id.*  
12 at p. 17.)<sup>48</sup> Yet, in Questions 94 and 95 on the very same page, Juror No. 7 indicted that  
13 despite her exposure to pre-trial publicity, she had not formed any preliminary opinions about  
14 the case and that she did "[n]ot have enough information" to "form[] or express[] any opinions  
15 about the guilt or innocence of the defendant, Scott Peterson." (*Ibid.*)

17 Juror No. 7's testimony during voir dire was consistent with the later responses and not  
18 with her response to Question 97a. Petitioner's counsel even conceded during oral argument  
19 that her response to 97a must have been a "mistake." (8/11/22 Final Arguments RT 52:2-13.)  
20 The Court finds that this is a "mistake" that someone who was purportedly giving false answers  
21 with the intent to be on the jury would not have made; if Juror No. 7 intended to be deceptive in  
22 order to conceal existing bias, she assuredly would not have answered "NO" to Question 97a.  
23 Instead, this "mistake" provides further compelling evidence of Juror No. 7's sloppiness and  
24 lack of sophistication in understanding and answering the questions put to her.

25 In the Court's view, the child support forms from May 10 and September 8, 2004  
26 filings, do not advance Petitioner's argument that Juror No. 7 intentionally misrepresented her  
27

28 <sup>48</sup> Neither Petitioner's counsel nor the People followed-up on this response during in person voir dire of  
Juror No. 7.

1 financial situation to avoid being struck from the jury. (Cf. *Dyer v. Calderon, supra*, 151 F.3d  
2 at p. 982.) At best, the child support documents are inconclusive about prior inconsistent  
3 statements regarding her finances and who lived with her during the jury voir dire. To the  
4 extent they are consistent, Juror No. 7 listed only her children as living with her on both forms.

5  
6 **6. Juror No. 7's Reference to "Little Man" Is Not Evidence that She  
7 Prejudged the Case**

8 Petitioner also contends Juror No. 7 made considerable effort at the evidentiary hearing  
9 to distance herself from the phrase "Little Man." (Petitioner's Post-Hearing Opening Brief, pp.  
10 37-38, 44-45.) Juror No. 7 testified that she gave Conner the nickname "Little Man" not during  
11 trial but "after trial was over and the first interview I did." (RT 105:9-14.) She did not recall  
12 going into the jury room and calling Conner "Little Man." (*Id.* at 106:12-14; 107:2-7.) Mr.  
13 Beratlis, however, credibly testified that when she first walked into the jury deliberation room,  
14 Juror No. 7 suggested the jurors convict Petitioner because of what he did to "Little Man."

15 Petitioner argues Juror No. 7's reference to "Little Man" when entering the jury room is  
16 evidence Juror No. 7 prejudged the case and entered deliberations with an impermissibly closed  
17 mind. (Petitioner's Post-Hearing Opening Brief, pp. 37-38, citing *In re Manriquez, supra*, 5  
18 Cal.5th at p. 818 and *People v. Weatherton* (2014) 59 Cal.4th 589, 599.) The Court is not  
19 persuaded by this argument for two reasons. First, the case on which Petitioner relies, *People*  
20 *v. Weatherton*, is factually distinguishable from the record here. In *Weatherton*, the juror  
21 repeatedly talked about the case outside deliberations and did so in defiance of the trial court's  
22 repeated admonitions. (*People v. Weatherton, supra*, 59 Cal.5th at p. 599.) The juror discussed  
23 the case during his daily commute, at lunch, during cigarette breaks, in court hallways, and in  
24 elevators. (*Ibid.*) He telephoned non-deliberating jurors during deliberations, reporting what  
25 was occurring in the jury room. Multiple jurors testified that, long before the prosecution  
26 rested its case, the juror conveyed a belief in defendant's guilt. (*Ibid.*) Jurors testified that, *on*  
27 *the first day of trial*, the juror stated that [a called witness'] testimony was dispositive on guilt.  
28 (*Ibid.*) In other words, he "expressed these opinions long before the prosecution finished its

1 case and before the defense was able to present any evidence in rebuttal.” (*Ibid.*) On these  
2 grounds, the California Supreme Court found that given the nature, scope, and frequency of the  
3 juror’s misconduct, along with his repeated and admitted untruthfulness on a variety of topics,  
4 the People had not rebutted the presumption of bias. (*Id.* at p. 600.)

5 Here, there is no evidence that Juror No. 7 “prejudged the case long before deliberations  
6 began and while a great deal more evidence had yet to be admitted.” (*See People v.*  
7 *Weatherton, supra*, 59 Cal.5th at p. 599, quoting *Grobesson v. City of Los Angeles* (2010) 190  
8 Cal.App.4th 778, 794.) Juror No. 7 testified that she only formed an opinion *after* she heard all  
9 the evidence in the case. (RT 282:10-19; *see also* 33:20-34:6.) When she made her comments  
10 in the jury room, Juror No. 7 had just replaced a seated juror and had not yet participated in  
11 jury deliberations with the other jurors. (*Id.* at 364:19-365:8.) After making her statement,  
12 Juror No. 7 was immediately corrected by Mr. Beratlis and told that the jury had a process in  
13 place before she just gave her opinion. (*Id.* at 365:22-25.) Mr. Beratlis testified that he had  
14 never heard Juror No. 7 make statements of Petitioner’s guilt or reference “Little Man” aside  
15 from when she first entered the jury room. (*Id.* at 353:6-7.) The record evidence is also clear  
16 that Juror No. 7 continued to deliberate with the other jurors, and that after those deliberations,  
17 the 12 jurors unanimously decided that Petitioner was guilty of Laci’s murder in the first degree  
18 and Conner’s murder in the second degree.

20 Second, Petitioner concedes that Juror No. 7 was not required by the jury instructions  
21 given at trial to refrain from expressing her opinion before deliberating with the other jurors.  
22 Juror No. 7 (along with the other jurors) was instructed by the trial judge that it was “rarely  
23 helpful for a juror at the beginning of the deliberations to express an emphatic opinion on the  
24 case.” (Exh. 18, 111 RT 20565.) Juror No. 7’s disregard of that instruction does not, in and of  
25 itself, constitute misconduct since the instruction is not considered mandatory. (*People v.*  
26 *Bradford* (1997) 15 Cal.4th 1229, 1352.)

27 //

1                                   **7. Letters Juror No. 7 Sent to Petitioner Post-Conviction Do Not Show**  
2                                   **a Hidden Agenda**

3                   During the evidentiary hearing, Juror No. 7 was asked about letters she wrote Petitioner  
4 after the trial concluded. (*See* Exh. 6.)<sup>49</sup> Petitioner contends the letters are material because  
5 they demonstrate that Juror No. 7 was obsessed with Conner and referenced men cheating. (RT  
6 308:23-311:10; Petitioner’s Post-Hearing Opening Brief, pp. 42-43.)

7                   Assuming the letters do appropriately reflect Juror No. 7’s state of mind during the jury  
8 selection process, the letters do not support Petitioner’s theory that Juror No. 7 wanted to be on  
9 the jury to punish him or that Juror No. 7 was fixated with Conner. At best, the letters  
10 demonstrate that Juror No. 7 was emotionally impacted by her participation in the trial. In her  
11 letter dated December 3, 2005, Juror No. 7 writes: “The jury is going to get together on the 16  
12 of Dec. just for support.” “Scott, I just want you to know that its not at all a happy day for us.  
13 Each one of us felt like we were just struck by a Mac truck.” (Exh. 6, HCP-000962-HCP-  
14 000963.) She described the trial as an “emotional roller coaster.” (*Ibid.*) In another letter  
15 dated December 17, 2005, Juror No. 7 admits she “had a break down.” (*Id.* at HCP-000966.)  
16 She writes, “I never knew how much this trial had an impact on me, plus I have never had a  
17 great life. All the pressure just hit me. I think it has been the time of year. Our verdict, Laci &  
18 Conner.” (*Ibid.*)<sup>50</sup>

19                   An emotional reaction to evidence presented during a criminal trial is very different  
20 from a predetermined bias at the outset. If Juror No. 7 did have a “hidden agenda” and mindset  
21 to punish Petitioner, the letters do not reveal one. On August 8, 2005, Juror No. 7 tells  
22 Petitioner, “I want you to know, whether it means anything to you or not, that I do not hate you.  
23 I hate what you did. I know that you & a lot of others say we were full of hate, but you are all

24 <sup>49</sup> Eight (8) letters, dating from August 2002 to May 30, 2006, were admitted not for the truth, but for  
25 Juror No. 7’s then existing state of mind under the state of mind exception to the hearsay rule. (Cal.  
26 Evid. Code section 1250.)

27 <sup>50</sup> During her testimony, Juror No. 7 explained that the letters she wrote to Petitioner were done at the  
28 suggestion of her therapist. (RT 253:8-19.) Petitioner claims Juror No. 7’s answer regarding her writing  
the letters at the suggestion of her therapist was stricken. Not so. The last question by Respondent asked  
Juror No. 7 what she hoped to accomplish by writing the letters. (*Id.* at 253:20-21.) That question was  
withdrawn after the break and the question and answer regarding her therapist was never stricken. (*Id.* at  
254:13-19.)

1 so wrong. The verdict was not based on hate or emotions.” (Exh. 6, HCP-000957.) On  
2 December 3, 2005, Juror No. 7 writes, “[b]elieve it or not I look forward in [sic] hearing from  
3 you also.” (*Id.* at HCP-000965.) At one point, Juror No. 7 talks to Petitioner about enrolling in  
4 school, and “pass[ing] her final.” (Exh. 6-A, SLP402254.) She tells Petitioner that she has  
5 thought about writing “[her] own book” about the trial, but promised she would “do nothing  
6 without [his] consent [sic]. I am not out to get you or make shit any worse for you as it all [sic]  
7 ready is. Please believe me when I say that.” (*Id.* at HCP-000968-HCP-000969.) Juror No. 7  
8 also added her concern about Petitioner’s reaction when she publicly spoke out about the trial  
9 writing, “I hope your [sic] not mad at me....” (*Id.* at HCP-000977.) All told, the letters do not  
10 support the finding of someone with a vengeful state of mind.

11 Petitioner also asserts the letters show an obsession with Conner and suggests that Juror  
12 No. 7’s continued post-trial focus on Laci’s unborn child is consistent with a juror who has  
13 been impacted by the trauma of having her own unborn baby threatened. (Petitioner’s Post-  
14 Hearing Opening Brief, p. 43; *see also* RT 309:7-15.) It is true Juror No. 7 references Conner  
15 and uses the phrase “Little Man” in her letters. Equally true, however, is that in those same  
16 letters, Juror No. 7 expressed sadness for Laci, Laci’s mother and family, *and for Petitioner*.  
17 Furthermore, in none of the letters does Juror No. 7 reveal that at one time or another, the life  
18 of her own unborn child had been threatened. At best, the letters demonstrate that Juror No. 7  
19 was sad about what had happened to Laci, Conner and their families and was someone who  
20 was seeking to have Petitioner come to peace with his actions. (Exh. 6, HCP-000960-HCP-  
21 000961 [“I will continue to pray for Laci, Conner & the rest of the family ... as well as you. I  
22 hope one day before you pass, you will finally set their souls free.”]; HCP-000967 [“I think of  
23 you & how you are doing. Scott I just can’t help but constantly think why? Why was that your  
24 only option?”]; HCP-000976 [“I keep praying for them & you Scott.”].)

25 Finally, Petitioner suggests the letters are evidence of Juror No. 7’s state of mind about  
26 cheating. In her February 15, 2006, letter, Juror No. 7 asked Petitioner: “One other reason I  
27 really wanted to write you is this is for my sake. *Nothing really to do with the trial really*. Your  
28 [sic] a man & I want to know. Why do you me [sic] cheat? Take of course, you & Laci. She

1 was cute, beautiful, full of life, love, love for you, spunky, happy just to be who she was & who  
2 she fell in love with. So why cheat? *I'm asking because the man I was with for 5 years had the*  
3 *same problem....So from a man's point of view Why?* Or why do you think? I'm sure there are  
4 some that don't I believe that. I do believe you can cheat & still love the one your [sic] with. So  
5 will you help me?" (Exh. 6-A, SLP402255 [emphasis added].) "I really do pray for you at  
6 these times Scott." (*Id.* at SLP402256.)

7 Juror No. 7 testified that her question about cheating was about men in general and why  
8 they cheat as opposed to asking Petitioner why *he* cheated. (RT 255:6-20.) Again, these  
9 statements in her letter demonstrate that her state of mind was not one of vindictiveness against  
10 Petitioner but more of a general inquiry based on the experience she had, and went through,  
11 with Mr. Whiteside. In any event, at the time of jury selection Juror No. 7 and Mr. Whiteside  
12 were together despite his ongoing infidelity. The issue of cheating was raised only briefly  
13 during voir dire but there was no follow-up or further questioning on the issue by Petitioner's  
14 counsel. (Exh. 5, p. 4624:10-16.) Moreover, the Court notes the questionnaire did not ask  
15 Juror No. 7 if anyone had cheated on *her* before: rather it was a generic question "[d]o you  
16 have any opinions about people involved in extramarital affairs." (Exh. 4, p. 5, Q. 26.)

17 Taken as a whole, the letters demonstrate a person who suffered long term adverse  
18 effects from the graphic evidence presented at trial<sup>51</sup> which was summarized in detail by the  
19 California Supreme Court. (*People v. Peterson, supra*, 10 Cal.5th at pp. 422-423.) The  
20 evidence included the intact body of Conner that had washed up on the shore and the later  
21 discovered body of Laci Peterson which, due to decomposition, had no head, no arms and one  
22 leg. (*Ibid.*) On the day the jury was sent into deliberations, Petitioner's own defense counsel  
23 described Conner's autopsy picture as "one of the most disturbing pictures ... [they] will  
24 see."<sup>52</sup> (111 RT 20505:8-9.)

25  
26 <sup>51</sup> The Court had to take a break during the evidentiary hearing after Juror No. 7 broke down in tears  
27 when questioned about the letters. She also displayed appropriate but tearful emotions during other parts  
28 of her questioning. Observing Juror No. 7's emotional reactions years later during the 2022 hearing, it is  
evident that her experience as a juror in the *People v. Scott Lee Peterson* trial has been long lasting.

<sup>52</sup> Mr. Geragos's full statement during his final argument was:

1 The letters also evidence a juror who, despite all she heard and saw, was trying to get  
2 Petitioner to come to peace with what he did and the impact it had on his life and the life of  
3 Laci's family. The letters do not demonstrate a state of mind of contrivance or hatred to  
4 support a conclusion that at the time Juror No. 7 filled out the questionnaire, her goal was to lie  
5 to sit on the jury and punish Petitioner.

6 For all these reasons, the Court finds that Juror No. 7's letters either by themselves or  
7 viewed against the entire record evidence, fail to demonstrate prejudice or actual bias on the  
8 part of Juror No. 7.

9 **CONCLUSION AND DISPOSITION**

10 For all the foregoing reasons, the Petition for Writ of Habeas Corpus is DENIED.

11 The Clerk is ordered to serve a copy of this Order upon Petitioner, Scott Lee Peterson;  
12 upon Shelley J. Sandusky, Esq. and Andras Farkas, Esq., Habeas Corpus Resource Center, Cliff  
13 Gardner, Esq. and Pat Harris, Esq., as counsel for Petitioner, and upon District Attorney Birgit  
14 Fladager and Special Assistant District Attorney David P. Harris, as counsel for Respondent.  
15 The Clerk is also ordered to serve a courtesy copy upon Supervising Deputy Attorney General  
16 Donna Provenzano, as counsel for the Secretary of the California Department of Corrections  
17 and Rehabilitation.

18  
19  
20 Dated: December 20, 2022



21 ANNE-CHRISTINE MASSULLO  
22 San Francisco County Superior Court Judge,  
23 sitting as San Mateo County Superior Court Judge

24  
25  
26 The last kind of section of evidence that I haven't talked about would be the twine  
27 around the baby. And I'm not going put that picture up on the screen. I don't know about  
28 you, but I remember the first time I saw it on -- in the discovery. It's still kind of seared  
into my brain. It's one of the most disturbing pictures, I think, that you will see.

(111 RT 20505:3-9.)