

FILED

2011 OCT -3 PM 1:00

BY [Signature]
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
SANTA ANA

NAME
Eleazar Secundino
PRISON IDENTIFICATION/BOOKING NO.
G-62412
ADDRESS OR PLACE OF CONFINEMENT Calipatria State
Prison, P.O. Box 5005, Calipatria-Cali. 92233

Note: It is your responsibility to notify the Clerk of Court in writing of any change of address. If represented by an attorney, provide his name, address, telephone and facsimile numbers, and e-mail address.

530

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Eleazar Secundino, In pro per.
FULL NAME (Include name under which you were convicted)

Petitioner,

v.

L.S. McEwen, Warden
NAME OF WARDEN, SUPERINTENDENT, JAILOR OR AUTHORIZED
PERSON HAVING CUSTODY OF PETITIONER

Respondent.

CASE NUMBER:
SACV 11-01527 DOC (VBK)

To be supplied by the Clerk of the United States District Court

AMENDED

PETITION FOR WRIT OF HABEAS CORPUS
BY A PERSON IN STATE CUSTODY
28 U.S.C. § 2254

PLACE/COUNTY OF CONVICTION _____
PREVIOUSLY FILED, RELATED CASES IN THIS DISTRICT COURT
(List by case number)
CV _____
CV _____

INSTRUCTIONS - PLEASE READ CAREFULLY

- To use this form, you must be a person who either is currently serving a sentence under a judgment against you in a California state court, or will be serving a sentence in the future under a judgment against you in a California state court. You are asking for relief from the conviction and/or the sentence. This form is your petition for relief.
- In this petition, you may challenge the judgment entered by only one California state court. If you want to challenge the judgment entered by a different California state court, you must file a separate petition.
- Make sure the form is typed or neatly handwritten. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
- Answer all the questions. You do not need to cite case law, but you do need to state the federal legal theory and operative facts in support of each ground. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit a legal brief or arguments, you may attach a separate memorandum.
- You must include in this petition all the grounds for relief from the conviction and/or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.
- You must pay a fee of \$5.00. If the fee is paid, your petition will be filed. If you cannot afford the fee, you may ask to proceed *in forma pauperis* (as a poor person). To do that, you must fill out and sign the declaration of the last two pages of the form. Also, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account at the institution. If your prison account exceeds \$25.00, you must pay the filing fee.
- When you have completed the form, send the original and two copies to the following address:
Clerk of the United States District Court for the Central District of California
United States Courthouse
ATTN: Intake/Docket Section
312 North Spring Street
Los Angeles, California 90012

±FP
submitted

PLEASE COMPLETE THE FOLLOWING: (Check appropriate number)

This petition concerns:

- 1. a conviction and/or sentence.
- 2. prison discipline.
- 3. a parole problem.
- 4. other.

PETITION

1. Venue

- a. Place of detention _____
- b. Place of conviction and sentence Orange County Superior Court, P.O. Box 1994, Santa Ana, Cali. 92702.

2. Conviction on which the petition is based (a separate petition must be filed for each conviction being attacked).

- a. Nature of offenses involved (include all counts): attempted murder assault with a firearm, shooting at an occupied vehicle, criminal threats, discharging and personal use of a firearm.
- b. Penal or other code section or sections: 664/187(a), 245, 246, 422, 12022.53(b)(c), 12022.5(a)

- c. Case number: 07CF2125
- d. Date of conviction: Feb. 26, 2009
- e. Date of sentence: April 24, 2009
- f. Length of sentence on each count: (Count 1) attempted murder; (Count 2) assault with a firearm; (Count 3) shooting at an occupied vehicle and (see additional)
- g. Plea (check one):
 - Not guilty
 - Guilty
 - Nolo contendere
- h. Kind of trial (check one):
 - Jury
 - Judge only

3. Did you appeal to the California Court of Appeal from the judgment of conviction? Yes No

If so, give the following information for your appeal (and attach a copy of the Court of Appeal decision if available):

- a. Case number: G041979
- b. Grounds raised (list each):
 - (1) whether the court of appeal correctly concluded that there was (see additional)

(Additional to: 2.F.)

(Count 4) criminal threats.

(2) Whether the court of appeal correctly concluded (See additional)

(3) _____

(4) _____

(5) _____

(6) _____

c. Date of decision: 6/17/10

d. Result Denied

4. If you did appeal, did you also file a Petition for Review with the California Supreme Court of the Court of Appeal decision? Yes No

If so give the following information (and attach copies of the Petition for Review and the Supreme Court ruling if available):

a. Case number: S184932

b. Grounds raised (list each):

(1) Whether the court of appeal correctly concluded that there (See additional)

(2) Whether the court of appeal correctly concluded that there (See additional)

(3) _____

(4) _____

(5) _____

(6) _____

c. Date of decision: 9/1/2010

d. Result Denied

5. If you did not appeal:

a. State your reasons _____

b. Did you seek permission to file a late appeal? Yes No

6. Have you previously filed any habeas petitions in any state court with respect to this judgment of conviction?

Yes No

If so, give the following information for each such petition (use additional pages if necessary, and attach copies of the petitions and the rulings on the petitions if available):

(Additional to: 3.b.(1))

sufficient evidence to establish that appellant used a firearm.

(Additional to: 3.b.(2))

that there was sufficient evidence to give flight instruction (CALCRIM 572)

(Additional to: 4.b.(1))

was sufficient evidence to establish that appellant used a firearm.

(Additional to: 4.b.(2))

was sufficient evidence to give flight instruction (CALCRIM 572)

- a. (1) Name of court: Orange County Superior Court
 (2) Case number: 07CF2125
 (3) Date filed (or if mailed, the date the petition was turned over to the prison authorities for mailing): 2/9/11
 (4) Grounds raised (list each):
 (a) IAC; Trial and Appellate counsel.
 (b) Insufficient crime scene investigation.
 (c) Prosecutorial Misconduct.
 (d) _____
 (e) _____
 (f) _____
 (5) Date of decision: 2-24-11
 (6) Result Denied
 (7) Was an evidentiary hearing held? Yes No

- b. (1) Name of court: 4th Appellate Dist.
 (2) Case number: G04S102
 (3) Date filed (or if mailed, the date the petition was turned over to the prison authorities for mailing): _____
 (4) Grounds raised (list each):
 (a) IAC; Failure to conduct crime scene investigation.
 (b) Insufficient Evidence, failure to produce weapon.
 (c) _____
 (d) _____
 (e) _____
 (f) _____
 (5) Date of decision: April 28, 2011
 (6) Result Denied
 (7) Was an evidentiary hearing held? Yes No

- c. (1) Name of court: California Supreme Court
 (2) Case number: S195220
 (3) Date filed (or if mailed, the date the petition was turned over to the prison authorities for mailing): 5/16/11
 (4) Grounds raised (list each):
 (a) Motion to show Cause
 (b) Motion to Reduce Offense (P.C. § 1181(b))

- (c) IAC; Trial and Appellate counsel
- (d) _____
- (e) _____
- (f) _____

(5) Date of decision: _____

(6) Result Denied

(7) Was an evidentiary hearing held? Yes No

7. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than five grounds. Summarize briefly the facts supporting each ground. For example, if you are claiming ineffective assistance of counsel, you must state facts specifically setting forth what your attorney did or failed to do.

CAUTION: *Exhaustion Requirement:* In order to proceed in federal court, you must ordinarily first exhaust your state court remedies with respect to each ground on which you are requesting relief from the federal court. This means that, prior to seeking relief from the federal court, you first must present all of your grounds to the California Supreme Court.

a. Ground one: Reduction of degree of offense pursuant to Pen. C. 1182 (b) based on personal discharge of firearm during the commission (See additional)

(1) Supporting FACTS: On or about 2006 in the early months, Petitioner was living with Francisca Quintana in his family's home in Santa Ana-California. (C.F. 82-83) At the time of the incident, Francisca told police petitioner had been storing weapons at their home. She said the guns were real because they did not feel like her child's toy. (See additional)

(2) Did you raise this claim on direct appeal to the California Court of Appeal? Yes No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court? Yes No

(4) Did you raise this claim in a habeas petition to the California Supreme Court? Yes No

b. Ground two: IAC; based on defense to be presented, due to lack of real firearm as opposed to using an "imitation firearm" B.B. gun-device.

(1) Supporting FACTS: Trial counsel failed to call gunpowder expert for the defense to detail the importance of Gunshot Residue. There are currently several test's used to determine gunshot residue data:

(A) Diphenylamine (DPA) testing: (See additional)

(2) Did you raise this claim on direct appeal to the California Court of Appeal? Yes No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court? Yes No

(Additional to: ? a. Ground 1)

of Count 1 (§12022.53, subd. (c)) and personal use of firearm during the commission of Counts 2 and 4 (§12022.5, subd. (a)).

(Additional to: 7.a.(1). Supporting facts.)

Later, she said she wanted to leave him because of the weapons being in their home (C.T. 83-86)

|2|

Francisca said petitioner told her "If you leave, i'm gonna kill you and i'm gonna kill your brother and your brother-in-law. That petitioner held a gun to her head and chest and thought petitioner would kill her. (C.T. 87-88)

|3|

Three days later, Francisca moved to her brother's house in Costa Mesa. Francisca said petitioner came to her brother's home and threatened her so she called the police (C.T. 92-93). Around a week later on March 2, 2007, Francisca wanted to pick up her belongings from petitioner's home so she arranged to meet with petitioner's mother (C.T. 93).

|4|

Francisca's brother Oscar Quintana borrowed a truck and took Francisca and two other cousins to pick up her belongings at petitioner's home. Petitioner's mother was not home and petitioner's father was unaware of the arrangement and did not allow Francisca in his house. Francisca left and planned to return (C.T. 56, 57, 94-95).

|5|

As they pulled away, Francisca said she saw petitioner pull up to the house in a black canaro (C.T. 57, 95). When Oscar approached the next intersection, Oscar said petitioner pulled up on the cross street to their left, they said petitioner placed his hand out the window and pointed a gun at their car and fired at them.

|6|

Oscar drove to a major street where he saw a parked police officer, so he

stopped and contacted the officer and reported the incident. Officer Sergio Gutierrez of Santa Ana Police was dispatched to take a report. Officer Gutierrez reported observing no bullets or fragment in the truck and no shell casings at the scene.

|7|

When Officer Gutierrez searched petitioner's home, he found no weapons nor any paraphernalia of any type. That Francisca accused petitioner of staring at their home.

|8|

The prosecution alleging someone "fired" a "real firearm" must present a real firearm was discharge by Gunpowder residue positive results, as to trace evidence, considered physical evidence.

|9|

Officer Gutierrez reported that on 3/2/07, Victim L-Francisca Quintana observed petitioner fire several rounds in the direction of the vehicle, striking the windshield area twice. That she heard 3 or 4 shots.

|10|

Immediately thereafter, Officer Gutierrez interviewed Oscar Quintana, the driver of the 1994 Nissan pick up truck. Oscar told Officer Gutierrez he observed petitioner point an unknown type handgun in their direction and fire several rounds in their direction. Oscar said he heard 3 or 4 shots and could see 2 of the rounds strike the windshield. (Refer to section 16) (See exhibit A, pg. 4)

|11|

On Feb. 5, 2009, Officer Gutierrez testifies under oath (C.T. 128, L: 20-24, 22.) Prosecutor Mr. Yu asked: "Q. When you examined the windshield, Did you see any actual holes going into the windshield?"

"A. Yes. ~~Note~~: but now testifying there was only one hole and one bullet impact.

Petition for Writ of Habeas Corpus by a person in state custody Page 5 of 10

In his police report, p. 5, 2nd paragraph. It's stated there was 2 bullet holes in the windshield (Refer to section 161).

1121

Day of incident 5/2/07., Santa Ana police dispatched C.S.I. Forensic examiner FS-IL Correa no. 1984., to conduct all necessary forensic tests for discharging firearm at an occupied vehicle in an attempt to commit murder. (see ex. cov. B). The totality of FS-IL Correa, forensic examiner consisted of only 8 digital photos and conducted no Gunshot Residue analysis (GSR test).

1131

forensic examiner Correa reported photographing the vehicle showing 2 bullet impacts and the projectiles that struck the window, Did not pass through.

1141

Gunshot Residue is considered physical evidence, trace evidence, that can be examined in a Laboratory. There are (2) basic tests, which examiner Correa failed to conduct:

(1). Atomic Absorption analysis (AA). (Note: The AA test is consisting of wiping the area that was shot with a cotton swab. The cotton swab gets analyzed for GSR).

(2). Scanning Electronic Microscopy (SEM) with elemental analysis method. (Note. The only problem here is immediately after photographing the window, release of the vehicle was given to Oscar Quintana (C.T. 74.)

1151

A couple of months after the incident occurred, on or about August 29, 2007, A dist. atty. investigator made a supplemental report by Nasario Salis. (see exhibit C.)

1161

In his interview with Francisca Quintana. She now states, she saw nor heard
Petition for Writ of Habeas Corpus by a person in State Custody

Page 5 of 10.

nothing. She said she recalls Oscar telling her to get down because they were being shot and when she looked up, Petitioner was directly behind them.

|17|

Now in Solis's report, he interviewed Oscar Quintana. Oscar now said petitioner was driving toward them, as if to cut them off. He said he saw petitioner reach out of his driver's window with an outstretched arm and point a large black frame semi-automatic weapon with a long barrel but now he did not hear any "bang" or "pop" but knew he was being shot because the window was breaking. Oscar estimated the distance between the vehicles to be 23 feet.

|18|

In a report taken by Detective Cpl. Valdez no. 2383 of Santa Ana Police with petitioner Secundino. Petitioner stated that he was intoxicated and upset over their breakup; He said, he shot at their truck with a BB gun, not a real firearm. (see exhibit D).

|19|

Immediately before trial began, prosecutor Mr. Yu attempted to introduce a "Forensic Report" (see exhibit E) but the court would not allow it in, because defense did not have a chance to review it. (Note: Under Brady, although the court did not allow the evidence, the prosecution's attempt to have it as an exhibit.)

|20|

The forensic report was ordered by dist. atty. Investigator Vandiver on 8/29/07 and conducted by Matsudario F.S., in this report, he indicated evidence received: 5 photographs received through E-mail.

Paragraph 1: 2 bullet impacts - non-penetrating:

Paragraph 4: Suggest all tests conducted built on pure speculation and assumptions.

Also indicated (ansi-Z97.1-1984 glass), to shoot at the vehicle involved

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was a 1994 Nissan pick up truck, then F.S. Matsudario took the estimated 25 feet between vehicles and changed (distance) to 25° degree (angle) to obtain a "prosecution preferred result".

121

Officer Matsudario's total report was built on assumptions. There is no way to tell the exact degree, petitioner shot the BB gun. Slight movement will result differently.

122

The California Penal Code book 2010, §246.3(c), §1200.1(g), §12530(c): Imitation firearm means; Any instrument that expels a projectile, such as a "B.B." or a pellet through the force of air pressure, gas pressure, or spring action. (Refer to section 1181)

123

The testimony of a single witness, including the defendant can constitute substantial evidence (Refer to section 1181) requiring the court to instruct on its own initiative. A juror must be able to lay aside his impression or opinion and render a verdict based on the evidence presented in court. In the instant case, there has been no weapon presented to the jury by the prosecution and no gunpowder analysis. Due process requires only that the petitioner be tried by a jury capable and willing to decide the case solely on the evidence before it and a trial judge ever watchful to prevent prejudicial occurrence. Prejudice established.

124

Trial testimony of Feb. 25, 2009 (see exhibit F).

Oscar Quintana (P.67, L:23-26) Oscar said: "It was when he pulled out his hand and fired".

(P.68, L:1-18) Oscar said: "He could distinguish between a rifle and a handgun but does not know what color he saw."

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125

(P.68, L:19-21) Prosecution, Mr. Yu. "Q". When you say he raised his hand, was his hand, was his hand inside the car or truck?

Oscar said: "a". "Inside".

(P.75, L:6-9) Prosecution, Mr. Yu. "Q". When you saw Secundino extend his arm outside the window with the gun?

Oscar said: "a": "Yes".

Francisca's testimony. Page 100-102.

Francisca said; she saw nothing and heard something "fast".

126

Petitioner states if a reviewing court determines that a rational Judge or Jury find the essential elements of the crime proven beyond a reasonable doubt, is the Due Process clause of the U.S. Constitution satisfied. (Jackson v. Virginia, supra 443 U.S. at pp.318-319) or the Due Process clause of the California Constitution, article 1, section 15. (People v. Berryman (1995) 6 Cal. 4th 1048, 1083).

127

Officer Sergio Gutierrez of S.A. P.D, searched petitioner and his home, found no weapons nor any paraphernalia.

Evidentiary Hearing requested; for production of real firearm and gun powder residue positive results. State court's fact finding is unreasonable.

Prayer:



Petitioner asks the Court to uphold the most sacred of Constitutional guarantees: Innocent until proven guilty, while the use of manufactured evidence and perjury while concealing evidence of innocence. Inconsistency in effect rather than contradiction governs the case of a forgetful witness. Petitioner request this Court as the evidence checker to find that the evidence is Constitutionally insufficient and Order petitioner released from conviction and sentence.

Relief sought: Petitioner is without remedy save for habeas corpus. Accordingly, Petitioner request that the Court grant any and all other necessary or appropriate relief pursuant to P.C. § 1182, § 1484. After full consideration of the issues by this petition, Vacate the 2/26/09, Judgment of conviction and sentence of the Orange County Superior Court, in case no. 07CF2125.

I declare under penalty of perjury under the Laws of the State of California that the foregoing is true and correct.

Date: 9-29-11

Eleazar Secundino

(Additional to: 7. a. (1), Supporting cases, rules or other authority).

The Constitutional prohibition against convicting a person of a crime without sufficient evidence implicates the core values of the Due Process clause. The State before it brands a person a criminal and locks him up, must present to the jury not merely some evidence but substantial evidence the person is actually guilty of the crime charged.

The Due Process clause of the 14th Amendment (U.S. Const. Amend. XIV) and the California Constitution (Cal. Const. art. 1, §15) permit a defendant to be convicted of a crime only presentation of sufficient evidence that he committed that crime.

U.S. Const. VI and XIV; Cal. Const. art. 1, §15. Due Process.
The Constitutional guaranty that a person accused of a crime will be treated fairly; the laws must be fair and they must be applied fairly to the individual.

Jackson v. Virginia 443 U.S. 307 (1979)
The evidence adduced at trial was such that no rational trier of fact could have found proof of guilt beyond a reasonable doubt.

Sumner v. Mata 449 U.S. 539, 551 (1981)
Petitioner must prove the facts necessary to support his claim by only a preponderance of the evidence.

Smith v. Phillips 445 U.S. 209, 218, (1982)
Presumption of correctness may be overcome only by convincing evidence.

Holland v. Jackson (2004) U.S. 159 L.Ed.2d. 683, 124 S.Ct.; Miller-El v. Cockrell (2003) 537 U.S. 322, 348, 154 L.Ed.2d. 931, 957, 123 S.Ct. 1029.

Whether a state court's decision was unreasonable must be assessed in light of the record they had before it.

Sullivan v. Louisiana (1993) 508 U.S. 275, 124 L.Ed.2d. 182, 113 S.Ct. 2078.
Failure to require jury to find guilt beyond reasonable doubt.

Apprendi v. New Jersey (2000) 530 U.S. 110, 114 L.Ed.2d. 173, 111 S.Ct. 1723.
Sentence or the manner in which it was determined violates Due Process.

Suniga v. Bunnell (9th Cir. 1993) 908 F.2d. 664.
Instructional error that permitted jurors to convict on legally erroneous theory of liability.

Irwin v. Dowd, supra. 366 U.S. 717, 723; People v. Nesler (1997) 16 Cal. 4th 561, 583 (Nesler)

A juror must be able to lay aside his impression or opinion and render a verdict based on the evidence presented in Court.

People v. Duvall (1995) 9 Cal. 4th 464, 474.

The burden is on petitioner to establish grounds for relief.

People v. Johnson (1980) 26 C3d. 557, 576, 162 CR 431; People v. Steger (1976) 16 C3d. 539, 128 CR 161.

Reducing murder conviction from first to second degree based on insufficient evidence to support original degree.

People v. Price (1986) 184 Ca 3d. 1405, 229 CR 550.

If only part of a sentence is unauthorized, the sentencing court following remand or retrial may not increase the sentence on all counts.

People v. Tufunga (1999) 21 Cal. 4th 935, 944.

In determining whether substantial evidence supports an instruction, the trial court is not to weigh the credibility of any witnesses.

People v. Lewis (2001) 25 Cal. 4th 610, 646.

The testimony of a single witness, including the defendant, can constitute substantial evidence requiring the court to instruct on its own initiative.

Based on Information and belief.

Appeals and Writs in criminal cases. 2nd edition.

Based on Information and belief.

The California State Prisoners Handbook. 4th edition.

(Additional to: 7.6. Ground 2)

- (B). The Modified Griess Test:
- (C). The Atomic Absorption Spectroscopy (AA) test:
- (D). The Induced couple plasma spectro scope (ICP) test:
- (E). Scanning Electron Microscopy (SEM) with elemental analysis method.

|2|

Test have shown that residue in the enissions around a discharging gun will be deposited several feet to each side and to the rear of the shooter. GSR has been detected as much as 14 feet down roge of the muzzle.

|3|

Clothing can be examined with a Scanning Electron Microscope (SEM). GSR can stay for an extended period of time. Residue will be deposited mainly on the back of the hand and outside of the fingers. If a gun or rifle is fired.

|4|

Petitioner states that, then girlfriend Francisca Quintana stated petitioner threatened to kill her and held a gun to her head and stuck the gun in her chest but she said she saw the gun but could not tell what it looked like nor what color she saw. Francisca made different descriptions each time, she was interviewed.

|5|

Court appointed Gunpowder expert for the defense, Would of explained the sizes, colors and impact upon discharge per category of firearm. Petitioner states a violation of the 6th and 14th Amendments occurred in the instant case. No legally sufficient aggravating circumstances have been established. The record in the instant case does not contain sufficient evidence to support a real firearm, as petitioner stated to Det. Cpl. Valdez

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no. 2583 of Santa Ana Police Department. (see exhibit D.)

171

The witnesses testified seeing petitioner with a large black frame semi-automatic weapon with a long barrel towards Nasario Solis, District atty. investigator (see exhibit C.). The trial court concluded that the witness had seen petitioner with a firearm. Constitutional error established because the testimony about weapon was not sufficient to establish a dangerous weapon as required.

Prayer:

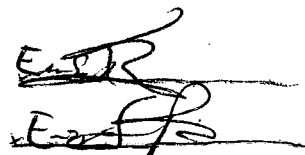
The trial court's determination was an unreasonable application. The evidence is insufficient to establish the specific intent to kill, which is required for attempted murder. Never firmly cemented.

Relief sought: Petitioner is without remedy save for habeas corpus. Accordingly, Petitioner request that the Court grant any and all other necessary or appropriate relief pursuant to P.C. §1181, §1484. After full consideration of the issues by this petition, Vacate the 2/26/09, Judgement of conviction and sentence of the Orange County Superior Court, in case no. 07CF2125.

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

Date: 9.29.11

Eleazar Secundino



(Additional to: 7. b. (2). Supporting cases, rules or other authority.)

Murray v. Carrier (1986) 477 U.S. 478, 492, 91 L. Ed. 2d 397, 411, 106 S. Ct. 2639.
Attorney ignorance, inadvertence or error short of that which is Constitutionally ineffective under the 6th Amendment, U.S. Constitution.

Strickland v. Washington 466 U.S. 668, 694 (1984)
By failing to investigate, present considerable evidence; The Court defined reasonable probability as a probability sufficient to undermine confidence in the outcome.

Cuyler v. Sullivan 466 U.S. 335 (1983)
Defense counsel was actively representing conflicting interests; The conflict had an adverse effect on counsel's performance.

Sumner v. Mata 449 U.S. 539, 551 (1981)
Petitioner must prove the facts necessary to support his claim by only a preponderance of the evidence.

Based on Information and belief.
Appeals and Writs in criminal cases. 2nd edition.

Based on Information and belief.
The California State Prisoners Handbook. 4th edition.

(4) Did you raise this claim in a habeas petition to the California Supreme Court? Yes No

c. Ground three: _____

(1) Supporting FACTS: _____

(2) Did you raise this claim on direct appeal to the California Court of Appeal? Yes No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court? Yes No

(4) Did you raise this claim in a habeas petition to the California Supreme Court? Yes No

d. Ground four: _____

(1) Supporting FACTS: _____

(2) Did you raise this claim on direct appeal to the California Court of Appeal? Yes No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court? Yes No

(4) Did you raise this claim in a habeas petition to the California Supreme Court? Yes No

e. Ground five: _____

(1) Supporting FACTS: _____

(2) Did you raise this claim on direct appeal to the California Court of Appeal? Yes No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court? Yes No

(4) Did you raise this claim in a habeas petition to the California Supreme Court? Yes No

8. If any of the grounds listed in paragraph 7 were not previously presented to the California Supreme Court, state

briefly which grounds were not presented, and give your reasons: Ground 1: in state habeas was presented as Notice of motion to Reduce offense (Pen. C. 1181 (b))
Ground 2: in state habeas was presented as Ineffective assistance of (See additional)

9. Have you previously filed any habeas petitions in any federal court with respect to this judgment of conviction?

Yes No

If so, give the following information for each such petition (use additional pages if necessary, and attach copies of the petitions and the rulings on the petitions if available):

a. (1) Name of court: _____

(2) Case number: _____

(3) Date filed (or if mailed, the date the petition was turned over to the prison authorities for mailing): _____

(4) Grounds raised (list each):

(a) _____

(b) _____

(c) _____

(d) _____

(e) _____

(f) _____

(5) Date of decision: _____

(6) Result _____

(7) Was an evidentiary hearing held? Yes No

b. (1) Name of court: _____

(2) Case number: _____

(3) Date filed (or if mailed, the date the petition was turned over to the prison authorities for mailing): _____

(4) Grounds raised (list each):

(a) _____

(b) _____

(c) _____

(d) _____

(e) _____

(f) _____

(5) Date of decision: _____

(6) Result _____

(Additional to: 8.)

Counsel: The conviction was obtained as a result of ineffective assistance of counsel then was secured through lack of effectiveness of appellate counsel (Strickland Standard, *Cronic supra*) (Edwards v. Carpenter)

Reasons: Petitioner is a Layman and uniformity in grounds was not established.

(7) Was an evidentiary hearing held? Yes No

10. Do you have any petitions now pending (i.e., filed but not yet decided) in any state or federal court with respect to this judgment of conviction? Yes No

If so, give the following information (and attach a copy of the petition if available):

(1) Name of court: _____

(2) Case number: _____

(3) Date filed (or if mailed, the date the petition was turned over to the prison authorities for mailing): _____

(4) Grounds raised (list each):

(a) _____

(b) _____

(c) _____

(d) _____

(e) _____

(f) _____

11. Are you presently represented by counsel? Yes No


If so, provide name, address and telephone number: _____

WHEREFORE, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding,

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on 9-29-11
Date


Signature of Petitioner

Proof of Service by Certified/Legal mail.

Clerk,
U.S. D. Court for
the C.D. of California
Southern Division
411 West Fourth Street, Suite 1053
Santa Ana, Cali. 92701-4516

(Original w/ copies, among
exhibits, served.)

On ~~Ensd~~ , petitioner served the interested parties listed above with copies of this action. Petitioner's current placement is at Calipatria State Prison, P.O. Box 5005, Calipatria - Cali. 92233.

Memorandum of Points and Authorities
in support thereof.

28 U.S.C. § 2254(d)(2); authorizes federal courts to grant relief where the state court's decision was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding:

- (1) The state court's plainly misapprehend or misstate the record in making their findings;
- (2) The state court has before it, yet apparently ignores, evidence that supports petitioner's claim;
- (3) The factual findings are infected by substantive legal error;
- (4) The process employed by the state court is defective.

28 U.S.C. § 2254(e)(1).

Clear and convincing evidence that the factual finding was incorrect.

United States Constitution Amendment 14th § 1

Nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Penal Code § 1473(a)

Every person unlawfully imprisoned or restrained of his liberty, under any pretense whatever may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment or restraint.

Penal Code § 1237: authorizes the defendant in a criminal case to appeal from a final judgment:

penal Code §1237(a) and from an order made after judgement:
penal Code §1237(b) affecting the substantial rights of the defendant.

Question or Proposition of Law

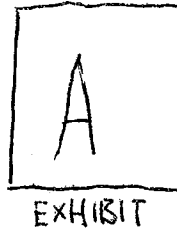
The question whether the Due Process standard recognized in the Constitution protects an accused against conviction except upon evidence that is sufficient to support a conclusion that every element of the crime has been established beyond a reasonable doubt.

When the analysis of an error depends on whether the error is characterized as a violation of state law or a violation of the federal constitution.

Is it clear beyond a reasonable doubt that a rational Judge or Jury would have found the petitioner guilty absent the error?

Did a jury find every fact necessary for proof of a conduct based enhancement that increases the maximum term for the offense.

EXHIBIT COVER PAGE



Description of this exhibit: Contains 6 pages of an incident report by Officer Sergio Gutierrez no. 3066 of 3/3/07. Pages 5-10 report on alleged attempted murder, shooting at occupied vehicle.

Number of pages to this Exhibit: 6 pages.

JURISDICTION: (Check only one)

- Municipal Court
- Superior Court
- Appellate Court
- State Supreme Court
- United States District Court
- State Circuit Court
- United States Supreme Court
- Grand Jury

(25)

NARRATIVE

On 030207 at approximately 1723 hours, I received a radio call to respond to the area of 900 E. 3rd St. in regards to an assist for Spanish translation.

Upon arrival, I observed that several officers were at the location. I also observed that there was a black Nissan pickup truck parked at the location. There were two bullet holes in the windshield of the vehicle.

I made contact with Officer Nguyen #2879 and he told me that there had apparently been a shooting on east Pine St. and that the subjects at the location were the victims. He told me that since all of the subjects at the location were Spanish speaking only - he could not get enough information to complete a report and asked for my assistance.

I made contact with Victim #1, [REDACTED], who was being treated by Santa Ana Fire Department for anxiety and is six-months pregnant. She told me that the incident that had just occurred involved her ex-boyfriend, Elezar Secundino. She told me that she and Elezar had been dating for approximately one year and that she was pregnant with his child. She said that after approximately six months into the relationship, Elezar Secundino was arrested and was in jail for approximately three months. She said that he got out of jail approximately three months ago in December 2006.

I asked [REDACTED] if she had been a co-habitant with Elezar. She told me that up until recently she had been living with him at Elezar's parent's house at 329 E. Pine St. She said that she and Elezar shared the basement area with her two children from a previous relationship.

[REDACTED] told me that shortly after Elezar had been released from jail she found out that one of his friends had been murdered nearby. She stated that shortly afterwards she observed Elezar return to the residence on several occasions with several handguns and a rifle. She said that she then suspected that Elezar might be a gang member. She told me that around the same time several younger male Hispanic subjects would come to the basement area of the residence where she and Elezar were living. She said that Elezar would exit the basement area and speak with these individuals out in the backyard of the residence.

She said that when she began to question Elezar about his gang affiliation and about him bringing weapons into the basement area where she and her children were staying, Elezar would become angry. She said that on one occasion when they got into an argument about the handguns, Elezar threatened to kill her. She

stated that she was in fear since Elezar had been bringing handguns into the residence and because she then suspected that Elezar was a gang member.

She told me that approximately one week later in early February 2007, she decided that she no longer wanted to live with Elezar and told him that she was going to move in with her sister and cousins at [REDACTED]. [REDACTED] told me that when she told Elezar this, he became extremely angry and retrieved a small caliber handgun from an area underneath the residence and put the gun to her head. She said that he told her that she was not going to move and that if she tried to he would kill her and the rest of her family.

[REDACTED] told me that she was in fear that Elezar would carry out the threats and decided to move out immediately. She told me that she moved out of the residence on February 12, 2007 and has been staying at [REDACTED] ever since.

I asked [REDACTED] if Elezar used drugs. She told me that to her knowledge he would occasionally use methamphetamine and would come home high. She told me that she also found a methamphetamine pipe among Elezar's clothing on one occasion.

[REDACTED] told me that on either February 15th or 16th, Elezar came to her residence in Costa Mesa and threatened her sister and cousin, telling them that he was going to kill them if they did not tell her to move back in with him. She told me that a terrorists threats report was made with Costa Mesa Police Department on that date, but that she did not have the report number.

On 030207 at approximately 1000 hours, she told me that she decided to attempt to recover all of her personal belongings from [REDACTED], so that she would no longer need to have contact with Elezar or his family again. She said that she called the residence and spoke with Elezar's mother. His mother told [REDACTED] that Elezar was not home and that she did not know where he was. [REDACTED] made arrangements with Elezar's mother to come to the residence and pick up her clothing and the rest of her belongings.

[REDACTED] said that she called the residence again at approximately 1500 to 1530 hours and again spoke with Elezar's mother. His mother told her that she was going to be home and the she could come over to pick up her clothing. [REDACTED] drove to [REDACTED] with her sister, Victim [REDACTED], and two cousins - Victim [REDACTED] and Victim [REDACTED].

[REDACTED] said that she arrived at the residence at approximately 1720 hours and knocked on the front door. She spoke with Elezar's father who told her that his

wife was not home and that he knew nothing about [REDACTED] coming over to pick up her belongings. [REDACTED] told me that she thought that this was strange since she had just spoken with Elezar's mother approximately one hour earlier and decided to wait at a shopping center nearby with her family for approximately half an hour. She said that they intended to return a short time later to see if Elezar's mother was home so that they could pick up her belongings.

[REDACTED] told me that she was seated in the front passenger's seat of the vehicle driven by her cousin, [REDACTED]. She said that her sister, [REDACTED], was seated in the right rear passenger's seat of the pickup truck and her cousin, [REDACTED] was seated in the left rear passenger's seat of the pickup.

[REDACTED] said that as [REDACTED] drove eastbound on Pine St. towards Maple St. she observed Elezar driving his black Chevrolet Camaro in a westbound direction on Pine St. She said that she told everyone else in the vehicle, "There he is." She said that Elezar drove past their vehicle and that [REDACTED] made a northbound turn onto Maple St. from Pine. She said that as [REDACTED] reached the corner of south Maple St. and east Walnut St., Elezar had driven around the block and was stopped at the stop sign facing eastbound on Walnut St.. She said that [REDACTED] stopped at the intersection for a moment waiting to see what Elezar was going to do. She said that she told him to drive away quickly. She said that [REDACTED] continued driving northbound through the intersection and as he did so, she observed Elezar fire several rounds in the direction of the vehicle, striking [REDACTED] vehicle in the windshield area at least twice. She told me that she heard three to four shots.

I asked [REDACTED] if she actually observed Elezar driving the black Camaro and she told me that she observed him driving the vehicle and that no one else was in the vehicle.

[REDACTED] said that [REDACTED] continued driving northbound out of the area to 1st St. where he made a right turn. He then turned left onto N. Garfield and then a right onto E. 3rd St. where he parked the vehicle. There was a parked Orange Police Department unit at that location and [REDACTED] stopped to contact the officer to tell him what had occurred.

[REDACTED] said that she is in fear for her life, as well as the lives of her children and relatives. She said she is desirous of prosecution for the attempt murder and is willing to cooperate with any subsequent investigation.

I spoke with Victim [REDACTED]. [REDACTED] is Victim [REDACTED]'s brother. [REDACTED] told me that he had met Elezar on several occasions over the past few months.

He said that he was aware of the problems that [REDACTED] and Elezar were having and the reason that [REDACTED] decided to move out of [REDACTED] and back to Costa Mesa. [REDACTED] was present when Elezar arrived at [REDACTED] and made the terrorist threats against him and other family members. He offered to drive [REDACTED] to [REDACTED] to assist her in retrieving her belongings from the residence.

When they arrived at the location [REDACTED] knocked on the door and contacted Elezar's father. He said that [REDACTED] returned to the vehicle and told him that she thought that it was strange that Elezar's mother was not at the residence since she had spoken with her less than one hour earlier. [REDACTED] told him to drive to a nearby shopping center to wait so that they could contact Elezar's mother and retrieve her property.

[REDACTED] told me that as he was driving eastbound on Pine St., away from the residence, [REDACTED] told him, "There he is." - as she pointed to a black Camaro that was driving westbound in their direction. [REDACTED] recognized the driver of the Camaro as Elezar Secundino from his previous contacts with him and also recognized his vehicle.

[REDACTED] made a northbound turn onto Maple St. He said that Elezar continued westbound on Pine St. and drove around the block. [REDACTED] said that as he arrived at the intersection of Maple and Pine, Elezar had driven around the block and was stopped at the stop sign. He said that [REDACTED] told him to drive away quickly. As he continued to drive northbound through the intersection he continued to watch Elezar. He observed Elezar point an unknown type handgun in the direction of his vehicle and fire several rounds. [REDACTED] said that he heard three to four shots and could see that two of the rounds had struck the windshield of his vehicle. [REDACTED] told me that he drove away from the location at a high rate of speed and contacted a parked Orange Police Department vehicle in the area of 3rd St. and Standard.

I then contacted [REDACTED] who is [REDACTED] cousin. [REDACTED] told me that she agreed to assist [REDACTED] in removing her property from [REDACTED]. She told me that after [REDACTED] was not able to make contact with Elezar's mother at the front door of the residence, [REDACTED] decided to drive to a nearby shopping center to wait to see if they could contact Elezar's mother at a later time to retrieve [REDACTED] property.

[REDACTED] said that as [REDACTED] was driving away from the residence she heard [REDACTED] say, "There he is." [REDACTED] pointed to a black [REDACTED] that was driving in the opposite direction on the street past their vehicle. Rosario said that

she looked at the driver of the vehicle and recognized him as Elezar Secundino from previous contacts with him.

██████████ said that as ██████████ continued to drive away from the area, Elezar drove around the block and was stopped at the stop sign waiting for their vehicle to pass. When ██████████ saw that Elezar was waiting at the intersection, she told ██████████ to drive away quickly. As ██████████ drove through the intersection she heard several shots being fired and assumed that Elezar was shooting at them.

I then contacted ██████████ who is ██████████ cousin. ██████████ also agreed to assist ██████████ in retrieving her property from ██████████. He said that ██████████ attempted to make contact with Elezar's mother at the front door but was unsuccessful. She returned to the vehicle and told ██████████ to drive to a nearby shopping center to wait for Elezar's mother. As they drove away from the residence, he heard ██████████ say, "There he is." ██████████ pointed to a black Camaro that was driving in the opposite direction. ██████████ said that he recognized Elezar Secundino from several previous contacts and also recognized his vehicle. He said that there was no one else in the vehicle.

██████████ said that ██████████ drove away from the direction of the residence and said that Elezar must have driven around the block at a high rate of speed. ██████████ said that when they reached the next intersection Elezar was waiting for their vehicle to pass. As ██████████ drove through the intersection, ██████████ observed Elezar point a handgun in their direction and begin firing. ██████████ heard two to three shots being fired. He also heard two rounds hit the vehicle. He said that ██████████ drove away from the location at a high rate of speed and observed a parked Police Department vehicle on another street nearby. ██████████ said that ██████████ stopped to make contact with the officer.

Officer's Hibbison #1933, Nguyen #2879, Achziger #2978, Craft #2979 and myself drove with the victims to ██████████ so that ██████████ could retrieve her property. We contacted several family members at the residence and obtained consent to enter the residence to gain access to the basement where ██████████ had her property. We also gained consent from Elezar's mother to search the residence for Elezar. He was not located.

As we checked the basement area of the residence with ██████████ she pointed out a door to the left of the staircase where she said that Elezar hid several of the handguns and a rifle. During a search of the area underneath the residence for suspect Elezar we did not locate any handguns or rifles in plain view.



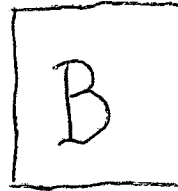
██████████ was able to retrieve most of her property from the residence. She reiterated to us that she was very scared of Elezar and stated that she was afraid that he would attempt to kill her and her family when she returned home.

Forensic Specialist Correa #1904 took photographs of the victim vehicle. No shell casings were located in the area of Maple and Walnut.

A records check of Elezar Secundino revealed that he has a no bail warrant for a drug offense. A criminal history also revealed several arrests including battery, obstructing/resisting peace officers, giving false information to a peace officer, possession of a controlled substance, and corporal injury to a spouse or cohabitant.

Officer Gutierrez #3066/mjb
WESTEND DISTRICT, WATCH II
3/3/07 11:06 AM

EXHIBIT COVER PAGE



EXHIBIT

Description of this exhibit: CSI Summary of FS:IL Correa #1904,
Santa Ana Police Dept.

Number of pages to this Exhibit: 1 pages.

JURISDICTION: (check only one)

- Municipal Court
- Superior Court
- Appellate Court
- State Supreme Court
- United States District Court
- State Circuit Court
- United States Supreme Court
- Grand Jury

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Legal owner:

CSI Summary:

Requested by: Ofc. A. Nguyen #2879, Santa Ana Police Dept.
 Performed by: FS-I L. Correa #1904, Santa Ana Police Dept.
 CSI Location: 300 N. Breeden Street, Santa Ana, CA
 Grid: 185 Dist.: 2
 Latent prints: N/A
 Photographs: Digital:
 Exterior; victim vehicle
 Other CSI: None

Property/Evidence:

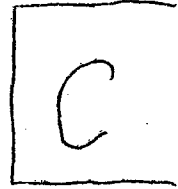
Line	Involvement / Status / Description	Value Stolen	Value Recovered
1)	Evidence (<i>Booked, Package 20070087170001</i>) DIMS Digital Media, 8 photos Obtained on 3/2/2007 1730 by FS-I L. Correa #1904		

Narrative:

I responded to 300 N. Breeden for crime scene investigation on a shooting case that occurred in the area of 200 S. Main. I photographed the vehicle showing two bullet impacts on the passenger side windshield. The projectiles that struck the window did not pass through.

I then responded to the area of 200 S. Main to search for possible evidence. I did not locate any evidence in and around the intersection of pine and main. I made contact at a beauty salon at 220 S. Main and asked the many patrons and employees if they heard any gunshots or witnessed any shooting. Those that had been there for more than an hour stated that they heard and saw nothing.

EXHIBIT COVER PAGE



EXHIBIT

Description of this exhibit: Supplemental report ordered by District Attorney Investigator, Wesley Vandiver, but conducted by Nasario Solis (Spanish speaking det.)

Number of pages to this Exhibit: 3 pages.

JURISDICTION: (check only one)

- Municipal Court
- Superior Court
- Appellate Court
- State Supreme Court
- United States District Court
- State Circuit Court
- United States Supreme Court
- Grand Jury

RE: SECUNDINO, ELEAZAR

D.A. #07F02167

INTERVIEW OF: [REDACTED] and [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

BY: NASARIO SOLIS
ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE

DATE AND TIME: AUGUST 29, 2007 1144 HOURS

LOCATION: 7580 YORKSHIRE
COSTA MESA, CA 92626

Orange County District Attorney Investigator WESLEY VANDIVER requested my assistance in interviewing two Spanish speaking witnesses to a shooting. VANDIVER asked me to question the witnesses regarding the positioning of the victim and suspect vehicle when the shooting took place.

The first witness ([REDACTED]) said she could not tell me "exactly" where the vehicles were located at the time of the shooting because she was very frightened and nervous. She recalled hearing her brother ([REDACTED]) telling her to get down because they were being shot. [REDACTED] said she ducked, down in her car seat and looked up again after the shooting and saw SECUNDINO in his car directly behind them as they made a left turn (W/B) onto First Street from Maple Street. [REDACTED] told me her brother (the driver of the vehicle they were in at the time of the shooting) would be able to give me a better description of the location of both vehicles.

I spoke to ██████████ at his home; he identified himself by handing Inv. VANDIVER a Mexican Identification card. ██████████ said he and his two sisters were driving E/B on Pine Street in Santa Ana when they saw SECUNDINO passing them W/B. He said he then drove N/B on Maple Street and again saw SECUNDINO in his car driving W/B on Walnut approaching the intersection where he (██████████) was stopped for a stop sign. ██████████ said he continued through the intersection and as he approached the center he noticed SECUNDINO driving towards him as if to cut him off. He saw SECUNDINO reach out of his driver window with an outstretched arm and point a black, large frame semi automatic weapon, with a long barrel at him.

██████████ said he did not hear a bang or pop and felt that maybe SECUNDINO was using a silencer. ██████████ told me he knew he was being shot because his windshield was cracking. ██████████ said that as soon as he saw the gun he warned his sisters to get down which they did. ██████████ told me that after he was shot at by SECUNDINO he sped thought the intersection and then went through a solid green arrow W/B First Street in an attempt to get away from SECUNDINO, which he did.

██████████ was asked to estimate the distance between his vehicle and SECUNDINO'S vehicle at the time the shots struck his windshield. Using a vehicle parked in front of his residence as a reference point, he walked backward until he reached a point he felt represented the distance between the vehicles at the time of the incident. That distance was measured by myself and Investigator VANDIVER using a tape measure to be approximately 23 feet.

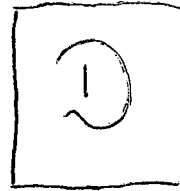
These interviews were conducted in Spanish as both witnesses told me they did speak English. I took photographs of the intersection [REDACTED] said the shooting took place at, see attached photos.

NASARIO SOLIS
INVESTIGATOR

DATE OF REPORT: AUGUST 29, 2007

ns

EXHIBIT COVER PAGE



EXHIBIT

Description of this exhibit: Supplemental report of petitioner Eleazar Secundino. Pages 3 of 4, 4 of 4. Conducted by Detective CPL. Valdez #2383, C.A.P. Family Crimes 6/19/07.

Number of pages to this Exhibit: 2 pages.

JURISDICTION: (Check only one)

- Municipal Court
- Superior Court
- Appellate Court
- State Supreme Court
- United States District Court
- State Circuit Court
- United States Supreme Court
- Grand Jury

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License Plate: 3KCM369 CA (California) US (USA), Type PC, Reg 9/2007
Registered owner: Eleazar Roman Secundino
 329 E. Pine Street, Santa Ana, CA
Legal owner:

Vehicle: **Pickup Truck**
Involvement: Victim / Released to Owner
Description: 1994 Nissan XE, Pickup, Black
License Plate: 5A36059 CA (California) US (USA), Type PU
Registered owner:
Legal owner:

Domestic Violence Information:

Parties Relationship: Dating, former cohabitants
Duration of Relationship: 1 year
Weapons Involved:
Firearm Involved: Handgun
Witnesses Present: No
Number of Children: 0
Existing Restraining Orders: No - RO
DV History: Yes, documented, investigating agency: Costa Mesa Police Department

Property/Evidence:

Line	Involvement / Status / Description	Value Stolen	Value Recovered
1)	Evidence (Booked, Package 20070087170002) Recorded Interview on Disk Interview with Suspect Secundino Recording of <i>Suspect Interview Eleazar Secundino, DOB 07/01/1972</i> Recording made on 6/20/2007 0855 by Det. R. Valdez #2383		

Narrative:

On 030907, I received the following shooting investigation for follow up investigation. The initial report by Officer S. Gutierrez #3066 stated 35 year old [REDACTED] and three of her relatives had been shot at by her ex-boyfriend (**Eleazar Secundino**) while driving in a vehicle. Secundino was not located at the time of the initial report. For details, see Officer Gutierrez' report under the same case number.

Suspect Eleazar Secundino was subsequently arrested on a no bail narcotic warrant on 030907 and was housed at the Orange County Men's Jail.

On 061907, a probable cause declaration was served at the Orange County Men's Central Jail additionally charging Eleazar Secundino with PC 664-187 and PC 246.

062007, 0845 hours- I interviewed Eleazar Secundino at the Orange County Men's Central Jail. The

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following is a synopsis of the audiotaped interview:

I began the interview by admonishing Secundino of his rights per Miranda. The Miranda rights were read from my SAPD Officers Index book. Secundino stated he understood his rights and agreed to talk to me about what happened.

I told Secundino I was investigating what occurred on March 02, 2007 involving the incident with his ex-girlfriend (██████████). Secundino acknowledged and agreed to talk to me. I first asked him about his relationship with ██████████. Secundino told me he had been a one year dating relationship with ██████████ and lived with her for about 5-6 months. She is currently pregnant with his baby.

Approximately one week prior to March 02, 2007, Secundino gave ██████████ and her kids a ride to a relatives house in Costa Mesa. At the time, they had been having an ongoing argument over him getting home in the late hours of the night. At the end of this day, he returned to Costa Mesa to pick them up. ██████████ did not return home with him and stated she was terminating the relationship. Secundino agreed to leave her alone and left without further incident.

Approximately one week later (March 02, 2007), Secundino saw ██████████ and some family members return to their residence (329 E. Pine). Secundino was intoxicated and was upset over her breaking up with him. He was angry and shot at ██████████ and the other people in the car with a BB gun. He stated the gun was not real and was only a BB gun. He shot at them because he wanted to scare her. He wasn't thinking about the consequences and did it because he was intoxicated, angry, and "stupid". ██████████ left the area and thinks she later returned when the police were called. Secundino had already left the area prior to police arrival.

I asked Secundino about any DV history. Secundino stated he had never physically assaulted ██████████ during their one year relationship. I asked him if Santa Ana PD or Costa Mesa PD had been called out to any domestic violence incidents involving both of them to which he stated, no".

The interview was terminated at 0855 hours.

A RAP arrest history for suspect Secundino revealed previous arrests for PC 204-242, PC 148. H&S 11350, PC 273.5, H&S 11364, PC 12020, and PC 12025, and PC 12031. An internal records check with SAPD revealed no previous documented incidents of Domestic Violence. A records check with Costa Mesa P.D. revealed no documented incidents of Domestic Violence involving both parties.

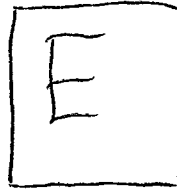
ATTENTION RECORDS: CASE CLEARED BY ARREST.

Detective Cpl. Valdez #2383/C.A.P-Family Crimes/061907

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EXHIBIT COVER PAGE



EXHIBIT

Description of this exhibit: Report of Evidence Examination.
Requestor: OC JA, Inv. Vandiver, By: Matsudaira

Number of pages to this Exhibit: 2 pages.

JURISDICTION: (check only one)

- Municipal Court
- Superior Court
- Appellate Court
- State Supreme Court
- United States District Court
- State Circuit Court
- United States Supreme Court
- Grand Jury

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Orange County Sheriff-Coroner Department
Forensic Science Services

Report of Evidence Examination

Name: SECUNDINO, Eleazar (s) FR #: 07-53980

Crime: CPC 664/187 Date: 3/2/2007 Dept: Santa Ana P.D. Case#: 07-08717

Item No. FSS Item Description of Evidence to be Examined
Photographs of damage to windshield of Nissan.

Requestor: OCDA Inv. Vandiver Phone: (714) 347-8557 By: Matsudaira Date: 8/29/07

Type of Examination Requested: Determine if a BB pistol caused the damage to the windshield.

RESULTS and INTERPRETATIONS:

1 The two impacts in the photographs appear to be non-penetrating.

2 The impact closest to the midline of the windshield was created from a projectile traveling in the direction from the driver side toward the passenger side, striking the windshield at a shallow angle. The impact at the bottom of the windshield is consistent with being produced by a projectile traveling in the same direction, however, the angle of the strike is unclear.

3 Test shots of various velocities into laminated glass were produced using BBs and pellets at an angle of approximately twenty-five degrees.

Assuming the following:

- The angle of the projectile strike to the windshield was approximately twenty-five degrees or lower.
- The glass used for the test shots (6mm laminated glass, ANSI Z97.1-1984) performs similarly to the windshield of the Nissan (laminated windshield glass, e.g. ANSI Z26.1).
- The photographs accurately document the damage to the windshield.
- The damage to the windshield was produced by the same gun and within a short time frame.
- The velocities of the BBs or pellets shot by the air pistol used in the shooting do not exceed the velocities attained by the test shots.

5 Then the damage depicted in the photographs is not consistent with the damage that would be produced by BBs or pellets that were shot from a .177 or .22 caliber repeater air pistol.

EXAMINATIONS:

6 Five photographs of damage to a vehicle windshield were received from OCDA Investigator VANDIVER, via electronic mail. These five photographs were printed and enclosed in this case file for reference. The photographs show two projectile impacts to the passenger side of a vehicle's windshield, one at the windshield perimeter below the wiper and one several inches above the same wiper, located closer to the midline of the windshield.

7 The photograph of the impact damage at the perimeter of the windshield shows a pulverized area of glass approximately three inches wide. Radial fractures approximately three to four inches in length radiate from the impact point. Concentric fractures are heaviest on the passenger side of the impact site.

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Orange County Sheriff-Coroner Department
Forensic Science Services

Report of Evidence Examination

Name: SECUNDINO, Eleazar (s)

FR #: 07-53980

EXAMINATIONS (continued):

8 The photograph of the impact damage closest to the midline of the windshield shows an approximate one inch long smear starting at the impact point and traveling across the windshield toward the passenger side. An underlying pulverized area is approximately three inches wide. Concentric fractures are heavily concentrated on the passenger side of the impact site. Radial fractures approximately four to five inches long radiate from the impact point.

9 According to available manufacturer literature, repeater type air pistols are available in BB, .177 pellet and .22 pellet calibers. The maximum reported velocity for BB repeater air pistols is 490 feet per second. The maximum reported velocity for .177 pellet caliber repeater air pistols is 556 feet per second. The maximum reported velocity for .22 pellet caliber repeater air pistols is 435 feet per second.

10 Pellet pistols and rifles from the laboratory reference collection were used to shoot into two 6mm thick laminated glass sheets (12"x15" size, ANSI Z97.1-1984 rated) at an angle of approximately twenty-five degrees. Crosman brand steel BB velocities ranged from approximately 489 to 693 feet per second. Crosman brand .177 caliber lead pellet (7.9 grains) velocities ranged from approximately 531 to 841 feet per second. Benjamin brand .22 caliber lead pellet (14.0 grain) velocities range from approximately 374 to 430 feet per second. Both glass panels were retained and submitted as a new evidence item.

11 None of the twelve pellet strikes to either of the glass panels fractured the glass. A lead smear was deposited on the glass surface for each of the twelve shots.

12 One BB strike at an approximate velocity of 491 feet per second failed to fracture the glass. A faint BB sized abrasion mark was visible on the glass surface. A second BB strike at an approximate velocity of 489 feet per second produced a pulverized mark less than one inch in diameter in the top layer of the glass laminate. The second layer of glass did not fracture. Radial fractures were limited to the pulverized area of the glass. A BB sized imprint is visible at the impact point.

13 Using a separate glass panel, a BB strike at an approximate velocity of 693 feet per second produced a non-penetrating impact mark. A BB sized imprint is visible at the impact point, with an underlying pulverized area approximately one-half inch in diameter in both layers of glass. Many radial fractures in the top layer of glass are approximately one-half inch in length and concentric fractures are limited to the glass area forward of the impact point. The bottom layer of glass has a few radial fractures approximately one inch in length.

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Thomas S. Matsudaira
Forensic Scientist III

10/01/07

Date

(714) 834-4510

LIMS By: _____

Reviewed By: CLH

Date: 10/2/07

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EXHIBIT COVER PAGE



EXHIBIT

Description of this exhibit: (1) Relevant Testimony from trial Feb. 25, 2009. from Oscar Quintana on pages 67, 68, 75, 76, 77, 78, 79, .
(2) Relevant Testimony of trial Feb. 25, 2009. from Francisca Quintana on pages 100, 101, 102.

Number of pages to this Exhibit: 10 pages.

JURISDICTION: (Check only one)

- Municipal Court
- Superior Court
- Appellate Court
- State Supreme Court
- United States District Court
- State Circuit Court
- United States Supreme Court
- Grand Jury

1 THE COURT: DO YOU NEED THE BAILIFF TO --

2 MR. YU: YES. THANK YOU, YOUR HONOR.

3 Q. WHEN YOU ARRIVED AT THE SECOND INTERSECTION AND
4 SECONDS LATER YOU SAW THE DEFENDANT'S CAR, DID YOU SEE WHO
5 IS DRIVING THE CAR?

6 A. YES.

7 Q. WHO WAS THAT?

8 A. THE DEFENDANT.

9 Q. WAS THERE ANYBODY ELSE IN THE CAR -- IN HIS CAR?

10 A. NO.

11 Q. AND WHEN YOU GOT -- OKAY. CAN YOU TELL US WHAT
12 HAPPENED NEXT AFTER YOU ARRIVED AT THAT INTERSECTION AND YOU
13 SAW THE DEFENDANT'S CAR?

14 A. I KEPT DRIVING.

15 Q. AND WERE YOU DRIVING FAST, WERE YOU DRIVING SLOW?

16 A. SLOW BECAUSE I WAS PULLING OUT OF THE STOP SIGN.

17 Q. AND AS YOU WERE GOING THROUGH THE INTERSECTION,
18 WERE YOU GOING STRAIGHT THROUGH THE INTERSECTION OR WERE YOU
19 TURNING?

20 A. STRAIGHT.

21 Q. AND AS YOU WERE GOING THROUGH THE INTERSECTION,
22 WHAT HAPPENED NEXT?

23 A. IT WAS WHEN HE PULLED OUT HIS HAND AND FIRED.

24 Q. WHEN YOU SAY "FIRED," DID HE HAVE SOMETHING IN HIS
25 HANDS?

26 A. YES.

1 Q. CAN YOU DESCRIBE WHAT IT WAS THAT HE HAD IN HIS
2 HAND?

3 A. A WEAPON.

4 Q. WHAT KIND OF WEAPON? CAN YOU TELL US WHAT KIND OF
5 WEAPON IT LOOKED LIKE?

6 A. I DON'T KNOW ABOUT WEAPONS.

7 Q. ALL RIGHT. DID IT LOOK LIKE -- WELL, WHEN YOU SAY
8 WEAPON, WAS IT LIKE A GUN, WAS IT LIKE A KNIFE, WHAT ARE WE
9 TALKING ABOUT?

10 A. A GUN.

11 Q. OKAY. COULD YOU SEE THE GUN?

12 A. YES.

13 Q. ALL RIGHT. WHAT COLOR WAS THE GUN, IF YOU
14 REMEMBER?

15 A. NO.

16 Q. YOU DON'T REMEMBER THE COLOR? DO YOU REMEMBER IF
17 IT WAS A BIG GUN OR LIKE A RIFLE OR A GUN LIKE A HANDGUN?

18 A. A HANDGUN.

19 Q. AND WHEN YOU SAY HE RAISED HIS HAND, WAS HIS HAND
20 INSIDE THE CAR OR OUTSIDE THE CAR?

21 A. INSIDE.

22 Q. ALL RIGHT. AS YOU WERE -- WHEN HE FIRED, WHAT
23 HAPPENED NEXT?

24 A. I DROVE FASTER.

25 Q. ALL RIGHT. CONTINUING UP THROUGH THE INTERSECTION;
26 CORRECT?

1 ALL THE WAY DOWN; CORRECT?

2 A. YES.

3 Q. AND THE PASSENGER SIDE WINDOW WHERE FRANCISCA WAS
4 SITTING, THAT WAS ROLLED ALL THE WAY DOWN; CORRECT?

5 A. YES.

6 Q. AND WHEN YOU LOOKED AND YOU SAW MR. SECUNDINO, HE
7 ACTUALLY EXTENDED HIS LEFT ARM OUTSIDE OF THE WINDOW WHILE
8 HE HELD THE GUN -- WHAT APPEARED TO BE A GUN; CORRECT?

9 A. YES.

10 Q. OKAY. SO WHEN YOU SAID EARLIER THAT HE HELD THE
11 GUN INSIDE THE CAR, THAT WAS INCORRECT. HE ACTUALLY
12 EXTENDED HIS ARM OUTSIDE THE WINDOW, HIS LEFT ARM?

13 A. YES.

14 Q. ALL RIGHT. AND YOU DIDN'T GET A GOOD LOOK AT THE
15 GUN, DID YOU?

16 A. NO.

17 Q. WHEN YOU SAW THE GUN, YOU TOLD FRANCISCA "GET DOWN;
18 IS THAT RIGHT?

19 A. I TOLD THEM TO GET DOWN WHEN I SAW THE SHOTS FIRED.

20 Q. OKAY. SO YOU SAW SHOTS BEING FIRED?

21 A. YES.

22 Q. DO YOU RECALL TESTIFYING IN COURT AT A PRELIMINARY
23 HEARING ON OCTOBER 30, 2007? IN FACT, I WAS ASKING YOU
24 QUESTIONS DURING THAT HEARING. DO YOU REMEMBER THAT?

25 A. YES.

26 Q. AND YOU TESTIFIED UNDER OATH THAT YOU NEVER SAW ANY

1 SHOTS BEING FIRED.

2 THE COURT: IS THAT A QUESTION?

3 MR. LO: IT'S A QUESTION.

4 Q. ISN'T THAT TRUE?

5 A. NOT ME. NO. I DON'T UNDERSTAND THE QUESTION.

6 Q. OKAY. WHEN YOU TESTIFIED AT THE PRELIMINARY
7 HEARING ON OCTOBER 30TH, YOU TOOK AN OATH AND SWORE TO TELL
8 THE TRUTH; CORRECT?

9 A. YES.

10 Q. OKAY. AND THAT WAS OCTOBER 30, 2007. WERE THE
11 EVENTS FRESHER IN YOUR MIND AT THAT TIME THAN TODAY?

12 A. I DID NOT UNDERSTAND THE QUESTION.

13 Q. OKAY. WAS YOUR MEMORY BETTER BACK IN OCTOBER, 2007
14 THAN IT IS TODAY, FEBRUARY, 2009?

15 A. IT'S THE SAME.

16 Q. OKAY. DID YOU HEAR ANY GUNSHOTS?

17 A. YES.

18 Q. OKAY. DO YOU RECALL TESTIFYING AT YOUR PRELIMINARY
19 HEARING BACK IN OCTOBER OF 2007 THAT YOU NEVER HEARD ANY
20 GUNSHOTS?

21 A. I DON'T RECALL.

22 Q. DIDN'T YOU TESTIFY THAT THE ONLY SOUND YOU HEARD
23 WAS SOMETHING STRIKING THE WINDSHIELD, CRACKING THE GLASS?
24 THAT WAS THE ONLY SOUND YOU HEARD?

25 A. THAT IS THE SOUND THAT I'M TELLING YOU NOW.

26 Q. OKAY. SO JUST SO WE'RE CLEAR, THE SOUND THAT YOU

1 HEARD WHEN YOU SAW MR. SECUNDINO EXTEND HIS LEFT ARM OUTSIDE
2 THE WINDOW WAS THE SOUND OF SOMETHING HITTING YOUR
3 WINDSHIELD AND CRACKING IT?

4 A. YES.

5 Q. ALL RIGHT. IN FACT, YOU NEVER HEARD A POP, A
6 POPPING SOUND?

7 A. NO.

8 Q. YOU NEVER HEARD A BANG FROM A GUN, AN EXPLOSION?

9 A. NO.

10 Q. YOU NEVER HEARD A SOUND OF, LIKE A FIRECRACKER,
11 SOMETHING SIMILAR TO A FIRECRACKER?

12 A. NO.

13 Q. AND, IN FACT, THE ONLY SOUND YOU EVER HEARD WAS
14 SOMETHING HITTING YOUR WINDSHIELD AND CRACKING IT, TRUE?

15 A. YES.

16 Q. AND ARE YOU SAYING THAT YOU SAW THE MUZZLE BLAST
17 FROM A GUN THAT MR. SECUNDINO WAS HOLDING? YOU SAW
18 SOMETHING COME OUT, LIKE A FLASH OF FIRE, IS THAT WHAT
19 YOU'RE SAYING?

20 MR. YU: OBJECTION. MISSTATES THE TESTIMONY.

21 THE COURT: WELL, OVERRULED ON THOSE GROUNDS.

22 IS THAT WHAT YOU SAW?

23 THE WITNESS: WHAT FLASH?

24 BY MR. LO:

25 Q. DID YOU EVER SEE A FLASH OF ANYTHING COMING OUT OF
26 WHAT MR. SECUNDINO WAS HOLDING IN HIS LEFT HAND, A FLASH OF

1 LIGHT?

2 A. NO.

3 Q. SO YOU NEVER SAW THE GUNSHOT?

4 MR. YU: OBJECTION. ARGUMENTATIVE.

5 THE COURT: DO YOU UNDERSTAND THE QUESTION?

6 THE WITNESS: NO.

7 BY MR. LO:

8 Q. WHEN YOU FIRST SAW THE GUN IN MR. SECUNDINO'S LEFT
9 HAND OUTSIDE THE WINDOW, YOU DECIDED YOU HAD TO DRIVE FAST
10 RIGHT THROUGH THE INTERSECTION; CORRECT.

11 A. YES.

12 Q. SO YOU TURNED YOUR ATTENTION FORWARD AND YOU DROVE
13 STRAIGHT THROUGH THE INTERSECTION, TRUE?

14 A. YES.

15 Q. ALL RIGHT. AND YOU TESTIFIED WHEN YOU WERE IN THE
16 INTERSECTION, THAT'S WHEN YOU HEARD THE SHOT HIT YOUR
17 WINDSHIELD?

18 A. YES.

19 Q. OKAY. SO YOU NEVER SAW ANYTHING COMING OUT OF
20 MR. SECUNDINO'S GUN HE WAS HOLDING; CORRECT?

21 A. IT'S IMPOSSIBLE TO SEE IT.

22 Q. OKAY. AND JUST FOR CLARIFICATION, YOU SAW
23 MR. SECUNDINO EXTEND HIS LEFT ARM OUT THE WINDOW WHILE
24 HOLDING A GUN; IS THAT CORRECT?

25 A. YES.

26 Q. AND WHEN YOU SAW MR. SECUNDINO EXTEND HIS LEFT ARM

1 OUTSIDE THE WINDOW, IT WAS OUTSIDE MR. SECUNDINO'S DRIVER'S-
2 SIDE WINDOW; CORRECT?

3 A. PARDON?

4 Q. WHEN MR. SECUNDINO EXTENDED HIS LEFT ARM OUTSIDE OF
5 HIS WINDOW, WAS IT THROUGH HIS DRIVER'S-SIDE WINDOW?

6 A. YES.

7 Q. OKAY.

8 MR. LO: MAY I APPROACH?

9 THE COURT: YOU MAY.

10 BY MR. LO:

11 Q. I'M LOOKING AT PEOPLE'S 1. DO YOU SEE THE BLACK,
12 APPEARS TO BE A VEHICLE, MARKED NUMBER 3, AT THE TOP OF THE
13 DIAGRAM THERE?

14 A. YES.

15 Q. NOW, THAT VEHICLE, NUMBER 3, THAT'S FACING
16 EASTBOUND; CORRECT?

17 A. YES.

18 Q. SO THE DRIVER OF THAT VEHICLE WOULD BE ON THE
19 NORTHBOUND SIDE OF THAT DIAGRAM?

20 A. YES.

21 Q. SO HE PLACED HIS LEFT HAND OUTSIDE THAT DRIVER'S
22 SIDE WINDOW AS YOU DROVE BY, THAT'S WHEN YOU HEARD THE
23 IMPACT ON YOUR WINDSHIELD, TRUE?

24 A. YES.

25 MR. LO: NOTHING FURTHER.

26 THE COURT: ANYTHING FURTHER?

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Francisco

1 A. WHEN OSCAR WAS TELLING THIS, I WAS NERVOUS ALREADY
2 FROM THE MOMENT I ARRIVED TO HIS HOUSE.

3 Q. ALL RIGHT. BUT YOU DIDN'T HEAR -- ASIDE FROM OSCAR
4 TELLING YOU TO GET DOWN, YOU DIDN'T HEAR ANY OTHER SOUNDS
5 THAT YOU REMEMBER; IS THAT CORRECT?

6 A. I DON'T RECALL. IT WAS ONLY WHEN OSCAR DID THE --
7 AND THEN HE LEFT THE STREET AND THAT'S IT. I DON'T RECALL
8 THE STREET.

9 Q. ALL RIGHT. LISTEN TO MY QUESTION. I'M GOING TO
10 TRY THIS AGAIN, ALL RIGHT.

11 WHEN OSCAR WAS GOING THROUGH THE INTERSECTION AND
12 YOU HEAR HIM SAY "GET DOWN, BEND DOWN," DID YOU HEAR
13 ANYTHING ELSE? DID YOU HEAR A SOUND, DID YOU HEAR SOMEONE
14 SAY ANYTHING ELSE?

15 A. A SOUND, BUT NOT VERY STRONG.

16 Q. OKAY. WHAT --

17 A. BUT IT WAS ALSO FAST.

18 Q. WHAT WAS THE SOUND THAT YOU HEARD?

19 A. WELL, SOMETHING LIKE THAT -- SOMETHING LIKE THAT I
20 CANNOT DESCRIBE, I CANNOT RECALL.

21 Q. WAS IT SOMETHING BREAKING?

22 A. NO, I CANNOT RECALL. I WAS VERY NERVOUS.

23 Q. THAT'S FINE. SO OSCAR CONTINUES DRIVING AND THEN
24 HE STOPS --

25 A. YES.

26 Q. -- WHEN YOU SEE A POLICE OFFICER; IS THAT CORRECT?

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Francisca

1 A. YES.

2 Q. OKAY. NOW, THE TRUCK THAT YOU ARE IN, LET ME SHOW
3 YOU SOME PHOTOGRAPHS. I WILL DO IT FROM THE WITNESS STAND.

4 SHOW YOU PEOPLE'S 4. THIS IS THE TRUCK THAT YOU'RE
5 IN; CORRECT?

6 A. YES.

7 Q. AND IN PEOPLE'S 5, DOES THIS LOOK LIKE A CLOSER
8 PICTURE OF THE TRUCK?

9 A. YES.

10 Q. NOW, THERE'S TWO THINGS THAT YOU SEE THERE THAT ARE
11 ON THE WINDSHIELD. DO YOU SEE WHAT LOOKS LIKE IS BROKEN?

12 A. YES.

13 Q. BEFORE WHAT HAPPENED IN THIS INTERSECTION, WAS
14 THERE THIS DAMAGE TO THIS WINDSHIELD?

15 A. NO. NO.

16 MR. YU: IF I CAN JUST HAVE ONE MOMENT, YOUR HONOR.

17 THE COURT: YES.

18 BY MR. YU:

19 Q. THERE WERE POLICE OFFICERS THAT --

20 A. YES.

21 Q. -- YOU MET WITH AFTER OSCAR HAD STOPPED THE TRUCK;
22 CORRECT?

23 A. YES.

24 Q. AT SOME POINT YOU WENT WITH THEM BACK TO THE HOUSE
25 ON PINE STREET?

26 A. YES.

Calipatria State Prison
Eleazar Secundino #G 62412
P.O. Box 5005
Calipatria, Cali. 92233

In pro per.

United States District Court
Central District of California

Eleazar Secundino
Petitioner
v.
L.S. McEwen, Warden
Respondent



}
}
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}
}

Case no. 07CF2125
Notice of Appeal from Judgment of
conviction and sentence. Pursuant to: 28 U.S.C.
§2254(d)(2), §2254(e)(1).

To the Clerk of the U.S. District Court.
Please take notice that petitioner, Eleazar Secundino appeals from the
Judgment of conviction and sentence in the above entitled matter.

Date: x 9-29-11

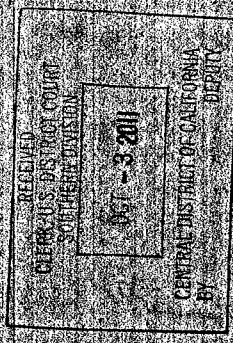
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99 9/29/11