the part of his back end and uh, I believe, I had more of the front. Page 54, line 5, Question *: S-, Sarah and everything else. Line 6, Answer; Okay. When Mike showed up, Dino confronted him about a couple a things. (**I WASN'T OUT THERE AT ALL THEN**). line 8, Question; Did you hear it all? line 9, Answer; Nope. I was inside... line 12, Question; Who, who's tellin' you this? line 13, Answer; Okay. Sarah and J.D. from a distance couldn't see, you know, uh,... Line 15, Question*; Sarah was in the trailer. line 16, Answer; Trailer, right. Line 17, Question*; J.D. WAS... line 18, Answer; J.D. Line 19, Question*; outside,... line 20, J.D. was... line 21, Question*; right? line 22, Answer; (over by the"Expando" next to the... Line 23, Question; Okay. line 24, Answer; (**uh, and it was like Sarah distinctly told me herself that she had heard Mike get out the car and Dino say "Hey, what the ba,ba,ba," And Din-, and, and Mike said, "Hey, you know what, fuck you punk." And he motioned like this, like he had a weapon, okay. Like...)** Page 55, Line 1, Question; Who's this? line 2, Answer; This is Mike goin' towards... Line 3, Okay. line 4, Answer; Dino. And Dino... Line 5, Question*; From Sarah's point of view. line 6, Answer; Right. And J.D.'s. Basically told me this. uh, but they couldn't see him because he was like, like I said, where he was standin' up where Mike fell, uh, they s-, she saw 'em from down in the trailer, the dark. And J.D., like I said was over right where the Expando was at the time. So, which is next to mo-, big mobile home, okay. And uh, so then that's when uh, Dino kinds stepped back and (UNIN NOISE) like that. And, (UNIN NOISE) it was, that's how it happened. Page 59, Line 21, Question; And so as far as you know that's what the plan was? line 22, Answer; Exactly. He was just gonna confront him and punch him out... Line 24, Question; Okay. line 25, Answer; like, evidently uh, supposedly, and like I said, from what I got from Sarah and, and um, pretty much J.D., THA_, that from a distance it looked like Mike said,"Well fuck you punk". And he lunged towards him, but uh, you know, it's so dark, it was so dark. I, wouldn't of be a-, been able to see if he had anything in his hands. And, and... (Line 20, Question; Have you been completely honest with us today? line 21 Answer; Very completely honest).(Page 75, Line 2, Question; Um, have you been honest

with us ? line 3, Answer; I've been one hundred percent honest.

THIS carried over into the examination of Sarah Terry, which also was clearly improper. Ms. Terry testified as follows; On Direct examination by Mr. Lamborn. R.T. pp.142, line 4. Q. What did you do in your trailer ? line 5. A. I made sure my son was still sleeping. "And then I heard Mike pull up and I was nosey". Line 7. Q. By nosey, were you looking outside your trailer ? line 9. A. Yes. Line 10. Q. When you saw Mike pull up, would you describe that for us ? line 12. A. He pulled almost all the way up the driveway. "He turned off his lights and parked behind Bonnie's camaro." **(Trial counsel's failure to address or cross-examined Ms. Terry on this crucial and Major factor was More then ineffective assistance of counsel).** On May 28, 1999, A interview of Sarah Terry, At; Via phone by Janet Ryzdynski, Detective Sheriff's Homicide Detail. On page 8 of that interview, Line 13, Q. And what drew your attention was hearing Mike ... line 14, A. Um-hmm ... Line 15, Q. and Dino argue ... line 16, A. Yeah I heard 'em, I heard fight." **I DIDN'T EVEN KNOW MIKE HAD BEEN HERE YET BECAUSE HIS, YOU KNOW, HIS CAR WAS SO QUIET "**. Line 18, Q. Okay. So you hadn't seen Mike before That ? line 19, A. "NO". This type of incompetency of cross-examination carried over to all the withesses at hand.

FAILURE TO SUBMIT CERTAIN JURY INSTRUCTIONS

An ineffective assistance of counsel claim can arise from defense counsel's failure to submit certain jury instructions. As in People v. Butler, 23 Ill. App. 3d 108. N.E. 2d 680 (5th Dist. 1974), (Accomplice instruction): People v. Gonzales. 37 Colo. App. 8, 543 P. 72 (1975). Or to object to instructions not supported by the law or facts of the case. In re 465 U.S. 1106. 80 L. Ed. 2d 138, 104 S. Ct. 1608 (1984) (burden of proving self-defense); In re Ricalday v. Procunier, 736 F. 2d 203 (5th Cir Tex. 1984). (Prejudice is shown when there is factual insufficiency of the evidence). The tender of these unwarranted and undesirable instruction can also support petitioner's incompetency claim. In re People v. Butler, 23 Ill. App. 3d 108, 318 N.E. 2d 680 (5th Dist. 1974). In People v. Lasko, Cal.4th , 2000 DAR 5791 (June 8, 2000), the

California Supreme Court found that a defendant who, with conscious disregard for life and the knowledge that such contact endangers the life of another, unintentionally kills in a sudden quarrel or heat of passion is also guilty of voluntary manslaughter. The trial court therefore erred in instructing that voluntary manslaughter required a finding of intent to kill. Likewise, in People v. Blakely, __Cal. 4th__, 2000 DAR 5785 (June 2, 2000) the Court found that the same is true for a defendant who unintentionally but unlawfully kills during an unreasonable but good faith belief in the need to act in self-defense. In such a case, the Court held that the trial court properly refused to give instructions on involuntary manslaughter. The law provides that a person who acts intentionally but unlawfully kills in a sudden quarrel or heat of passion lacks malice and is guilty of only voluntary manslaughter. Voluntary manslaughter is also committed when a person acts intentionally but unlawfully in killing while having an unreasonable but good faith belief in the need to act in self-defense. Until now, the law was unclear as to what crime is committed under similar circumstances but where the person acts unintentionally.

THE ARREST WARRANT,FAILURE TO CHALLENGE SEARCH/ARREST WARRANTS AND ARRAIGNMENT

On June 1, 1999, Del Norte Count Sheriff deputy SGT. Athey arranged to have the California Department of Corrections Special Investigative Team to begin surveillance of petitioner's son-in-law residence (Troy Caul) in the City of Crescent City, County of Del Norte. SGT. James and Deputy Goodrich arrived from the Del Norte County Sheriff Department and arrested petitioner for their "Said" 187/836 P.C. arrest warrant, See (Ex "K") and parolee at large warrant, See (Ex "K"). Petitioner was transported to the Del Norte County Jail in Crescent City, California. Where detective's, R. Empson, J. Ryzdynski and C. Bloemendaal conduct a recorded interview. This interview was "used" against petitioner during his Revocation, Trial and Probable Cause Hearings.

Petitioner was Never afforded the Statutorily Required Probable Cause Hearing or Arraignment within Forty-Eight (48) Hours after his Arrest, In fact, Petitioner was not Arraigned for 107 Days, and without counsel. Instead, Petitioner was housed in the Del

Norte County Jail from June 1, 1999, until June 16, 1999, At which time "NO" Arraignment or preliminary hearings were held. On June 16, 1999, petitioner was transported to San Quentin State Prison at which time petitioner was screened for a Revocation hearing on charges of Murder (100), Absconding (021), Instructions-Travel beyond 50 miles (028), poss. of knife with blade over two (2) inches (034). During that screening petitioner requested the accommodation of a attorney for his revocation hearing, "but was denied", See (Ex "L"). Then at that point petitioner was transported to Donovan State Prison at San DIEGO, California.

During this period of confinement, the Del Norte County Sheriff, California Department of Correction and San Diego County Law Enforcement "Specifically Targeted" petitioner's jail visits, U.S. Mail and with their informant Robert Teal to be monitored and recorded to glean evidence against petitioner in his Revoction, Criminal case and Probable Cause Hearing. Defense counsel never sought to challenge petitioner's Arrest, Arrest Warrant or Warrantless and Arraignment nor move for suppression of any evidence gleaned as a result of his arrest, Except for (Ex "M"), which was denied, and which was a investigation search.

An arrest without a warrant bypasses the safeguards provided by an objective predetermination of probable cause, and substitutes instead the far lell reliable procedure of an after-the-event justification for the arrest or search, too likely to be subtly influenced by the familiar shortcomings of hindsight judgment. U.S. v. Leon, 468 U.S. 897 (84); Beck v. Ohio, 379 U.S. 89 (64). The United States Supreme Court in Steagald v. U.S., 451 U.S. 204, 212 (81) held that a warrant was necessary because law enforcers "may lack sufficient objectivity to weigh correctly the strength of the evidence supporting the contemplated action against the individual's interest in protecting his own liberty."

Probable cause must be determined at the time an arrest is made, and fact learned or evidence obtained as a result of an arrest cannot be used to support probable cause unless they were known to the arresting officer at the moment the arrest was made.

Allen v. City of Portland, 73 F.3d 232, 236 (9 Cir. 95); Won Sun v. U.S. 371 U.S. 471 (63); Henry v. U.S. 361 U.S. 98 (590.

The Fourth Amendment protections requiring a "neutral and detached magistrate" to make such a determination was intentionally avoided in this matter of Petitioner's residence. In re Katz v. U.S., 389 U.S. 347 (67) held that "warrantless searches are per se unreasonabable under the Fourt Amendment subject only to a few specifically established and well-delineated exceptions." Those exceptions did not exist in this matter. That search was labelled a "parole search", In U.S. v. Ooley 116 F.3d (9th Cir. 1997), the court said that with respect to probationers, and by extension parolees, it has long been held that the legality of a warrantless search depends upon a showing that it was not an investigation search. See (Ex "M").

It cannot be a mere subterfuge to enable the police to avoid obtaining a search warrant. People v. Ooley, supra.

In the instant case, Petitioner was on parole. Petitioner became a suspect in the death of Michael Land which occurred at the Japatul Road property. Search warrants were obtained for that address.

A search warrant could have been obtained for the Persimmons address. " It wasn't".

The parole search of the persimmons address was a "mere subterfuge" to conduct an investigative search for the knife without obtaining a warrant.

Consequently it is alleged that the search was unlawful. Therefore, a all items and evidence seized at the residence at Persimmons, including but not limited to a collection of knives, must be suppressed pursuant to Wong Sun v. U.S. 461 U.S. 361 (9th Cir.

Here, trial counsel failure to investigate the merits of a motion to suppress evidence seized during the warrantless search of the Petitioner residences fell below an objective standard of reasonableness and deprived the petitioner of a potentially meritorious legal defense. There is a reasonable probability that, but for counsel's failings, the result would have been more favorable to the petitioner. (Strickland v.

Washington (1984) 466 U.S. 668, 687 [104 S.Ct. 2052, 80 L.Ed.2d 674]; People v. Mitcha (1992) 1 Cal.4th 1027, 1057-1058.)[1] Attorney Resnick neither brought any motions to suppress evidence or statements. She neither raised these issues despite the fact that a cursory review of the facts of the petitioner's case revealed valid grounds to suppress. Where, as here, the reason for counsel's action or inaction is apparent on record, the court must determine whether that reason reflects reasonably competent performance by an attorney acting as a conscientious and diligent advocate. (People v. Osband (19) 13 Cal.4th at 700-701.)

To make a showing of constitutionally inadequate representation by counsel when failure to seek suppression of evidence on a Fourth Amendment ground is asserted as the basis for the ineffective counsel claim, the party must establish that the Fourth Amendment claim had merit and that it is reasonably probable that a different verdict would have been rendered had the evidence been excluded. (Kimmelman v. morrison (1986) 477 U.S. 365, 375, 106 S.Ct. 2574, 91 L.Ed.2d 305; Mason v. godinez, 47 F.3d at p. 855.)

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[1] "A reason probability is a probability sufficient to under confidence in the outcome." (Strickland, supra, 466 U.S. at 694 [104 S.Ct.2o52]; In re Wilson (1992) 3 Cal.4th 945, 950.)

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