

## ARGUMENT

### II.

PETITIONER WAS DENIED THE RIGHT TO A FAIR TRIAL AND DUE PROCESS OF LAW BY THE COURT FOR ALLOWING FACTUAL INSUFFICIENCY OF THE EVIDENCE AND ALLOWED CONVICTION, WHEN THE SINGLE PERCIPIENT WITNESS TO THE FIGHT WAS THOROUGHLY IMPEACHED IN EVERY RESPECT, INCLUDING WHETHER SHE COULD SEE ANYTHING OF THE FIGHT AT ALL: ALL THE WITNESSES TO THE EVENTS SURROUNDING THE FIGHT WERE UTTERLY IN CONFLICT: AND NO REASONABLE TRIER OF FACT COULD HAVE AVOIDED DOUBT THAT PETITIONER ENTERTAINED ANY FORM OF MALICE, OR THAT HE DID NOT ACT IN SOME FORM OF SELF-DEFENSE.

The trial court is further authorized to grant a new trial if it is of the opinion that the verdict is contrary to the evidence. This is pursuant to Penal Code section 1181 (6). The case law as related in People v. Robarge 41 C.2d 628 (1953) states that the court has a duty to reevaluate the available evidence independent of what the jury chose to do with the facts. This was again further discussed in the more recent case of People v. Lagunas (1994) 8 Cal.4th 1030, which in effect reaffirms that the court has a duty to reevaluate the evidence with respect to a request for a new trial.

The crucial piece of evidence is the handling of witness Terry by the parties in this particular instance. The court will no doubt be familiar with the testimony of Ms. Terry which in effect states that she was observing the confrontation between Mr. Land and Mr. Barnes. She describes the confrontation as indicating that when Mr. Land was faced by Mr. Barnes, he opened his coat and that this would appear to have initiated a lunge by the defendant Barnes and that shortly thereafter the victim fell. Ms. Terry indicated that she believes she saw a thrusting type motion of Mr. Barnes' hand and arm. She could not tell if a knife had been used or not. It was clear from Ms. Terry's descriptions that she had not seen and could not have seen all of the action between the defendant and the victim. Further, it should be noted that with the testimony of Dr. Fraser and the investigators used by the defense case

1 real substantive questions about the credibility of her testimony. The light  
2 available made it virtually impossible to have seen what she says she saw. Therefore,  
3 with this factual problem with a key witness, it is therefore the court's duty to  
4 find that there was an insufficiency of the evidence and that a new trial in this  
5 case is imperative in order to afford petitioner an appropriate and fair hearing of  
6 all the possible facts. The court also has the ability under the above indicated  
7 section to find for a lesser charge. Therefore, on this ground ~~petitioner would ask~~  
8 the court to grant petitioner's right to a new trial.

9 The constitutional guarantee of due process of law prohibits the criminal  
10 conviction of any person except upon proof beyond a reasonable doubt. (In re Winship  
11 (1970) 397 U.S. 358, 362 [25 L.Ed.2d 368, 374]; U.S. Const., Fifth and Fourteenth  
12 Amendments.; Cal. Const., Art. I, secs. 7 and 15.) A finding of criminal culpability  
13 cannot be sustained upon appeal, unless the record as a whole contains solid and  
14 credible evidence of guilt, from which a reasonable trier of fact could find the  
15 charges proven beyond a reasonable doubt. (People v. Marshall (1997) 15 Cal.4th 1, 31;  
16 People v. Johnson (1980) 26 Cal.3d 557, 576; Jackson v. Virginia (1979) 443 U.S. 307,  
17 318 [61 L.Ed.2d 550, 573, 99 S.Ct. 781].) "Evidence which merely raises a strong  
18 suspicion of the defendant's guilt is not sufficient to support a conviction" (People  
19 v. Redmond (1969) 71 Cal.2d 745, 7550, and a conviction may not be sustained upon  
20 "surmise and conjecture." (People v. Foster (1953) 111 Cal.App.2d 866, 868.)  
21 Speculation is not evidence. (People v. Berryman (1993) 6 Cal.4th 1048, 1081.)

22 Although an appellate court reviewing sufficiency of the evidence must draw all  
23 inferences favorable to the judgment (People v. Ceja (1993) 4 Cal.4th 1134, 1139),  
24 those inferences must be reasonable, and not speculative. The rationality of an  
25 inference is a question of law to be decided by the reviewing court. (People v.  
26 Morris (1985) 46 Cal.3d 1, 20-21; People v. Austin (1994) 4 Cal.App.4th 1596, 1604;  
27 People v. Cluff (2001) 87 Cal.App.4th 991, 1002.)

28 In the case of petitioner Barnes, no one saw his fight with Michael Land clearly,

1 or at all. Sarah Terry said she saw petitioner come at Land with his hand out, but  
2 the reliability of her account was very much in question, consider how it was  
3 impeached in almost every respect. None of the physical evidence was dispositive of  
4 the issue of malice, and a plethora of defense and prosecution witnesses offered  
5 highly inconsistent accounts which confused events more than clarifying them. Even  
6 if petitioner's account of the events was not taken as given, nevertheless, a  
7 reasonable trier of fact could not avoid doubt that he was guilty of even second  
8 degree murder, or even manslaughter, pursuant to the authorities cited above.

9 At the outset, it must be noted that, other than a bare outline of events, no  
10 single account of the killing, its prelude, and its aftermath is established by the  
11 record. Instead, there is a multiplicity of highly colored subjective accounts  
12 impossible to square with one another in many significant particulars, rather like  
13 the Akira Kurosawa movie, Rashomon. Other than the fact that petitioner somehow  
14 killed Land, that there was animosity between Land and petitioner, and that some of  
15 witnesses assisted in a pathetically inept effort to ~~elude~~ divert suspicion (by moving the  
16 victim's body and car across the road), little else was firmly established.

17 To begin with, it was an integral part of the prosecution theory that this  
18 killing was a first degree murder because petitioner knew Land was an informant in  
19 narcotics cases, seeking to have petitioner arrested for methamphetamine manufacturing.  
20 This not only served to establish the type of motivation to plan a murder, but also  
21 acted to refute all the prosecution and defense evidence that Land sexually harassed  
22 petitioner's wife and close friend, and provoked him into committing a classic heat  
23 of passion killing, discussed below. Therefore, it was integral to the prosecutor's  
24 case, for any degree of murder, for the prosecutor to prove that petitioner was a  
25 methamphetamine manufacturer who knew Michael Land was an El Cajon Police Department  
26 narcotics informant. In reality, neither prosecution nor defense evidence lent any  
27 credence whatsoever to either allegation. Rather, this was argued by the prosecutor  
28 in the above cited record, mainly by innuendo, based on hints that Land feared he had

1 | been exposed as an informant to someone else, and that petitioner was supposedly  
2 | angered over some form of Land misconduct over drugs.

3 |       A review of the record, witness by witness, demonstrates the lack of any solid  
4 | evidence that prtitioner was engaged in methamphetamine manufacture, or that he or  
5 | anyone in their social milieu had any notion of Michael Land's status as an El Cajon  
6 | Police Department narcotics informant. The coroner found that Michael Land had  
7 | ingested methamphetamine at an unspecified time before his death. (RT p 95.) The  
8 | victim's ex-wife, Ann Holdren, offered absurd and pathetic testimony that Land saw  
9 | her the night he died, and he was not under the influence of drugs, but merely  
10 | "startled" and afraid, because a person upon whom he was informing (Lesage Robinson)  
11 | had confronted him with his snitching at the parole office that day. (RT pp 114-122.)  
12 | However, Holdren was clear that she never spoke with anyone at the Japatul Valley  
13 | Ranch at all, and never told anyone her ex-husband was an informant. (RT pp 123-129.)  
14 | No one connected Lesage Robinson with prtitioner. In an interesting Freudian slip,  
15 | the prosecutor made no reference whatsoever in argument to Holdren's utterly  
16 | unconvincing account of petitioner (whom she barely knew) talking in front of her  
17 | (two weeks before the murder) of how he and Land were going to talk to someone in  
18 | Pacific Beach about moving his methamphetamine laboratory, because police were  
19 | conducting helicopter flyovers. (RT pp 114-117.) This appeared to be Holdren's dutiful  
20 | repetition of what Land told police, who put it in an affidavit for a search warrant  
21 | they obtained but never executed. According to Detective Bloemendaal, he refrained  
22 | from executing the warrant on the stated belief that there might be "meth lab," where  
23 | Land claimed a lab was fully assembled and in production. (RT pp 449-459.)

24 |       Police skepticism was well-founded, in that Land's account of the progress of  
25 | assembling a meth lab at the Ranch was decidedly peculiar. El Cajon narcotics detective  
26 | Carl Bloemendaal said Land reported that petitioner was staying at the Ranch, trying  
27 | to manufacture methamphetamine in Bonnie Fields' open Quonset hut. Barnes supposedly  
28 | gave Land a list of chemicals he needed, which list Land passed to Bloemendaal. (RT pp

1 430-431, 449-450.) The list was never produced in court as being connected with  
2 petitioner.

3 In addition, Land reported progress in assembling the lab, which was suspiciously  
4 nonlinear. On May 10, 1999, Land said all the chemicals he needed were at the Ranch.  
5 On May 11, 1999, petitioner had supposedly "salted out" all the chemicals he needed  
6 for methamphetamine and was ready to "cook," as soon as glassware arrived that evening.  
7 The next day, May 12, 1999, Land said petitioner did not have enough money for the  
8 chemicals he supposedly already had. Another day Land said the lab was moved away  
9 from the Ranch, due to flyovers. Still later (May 19, 1999) Land told Bloemendaal he  
10 was cooking meth with petitioner at the Ranch. (RT. pp 449-451.) The night before the  
11 killing, Land completely abandoned the meth lab scenario, and left Bloemendaal a voice  
12 mail message saying he was eager to convict petitioner ("that asshole") for something  
13 that day, saying petitioner was going to steal the Fields' guns. (RT. pp 453-454; CT  
14 PP 83.)

15 Extensive searches of the entire Ranch produced not one iota of evidence of  
16 methamphetamine manufacture. The Japatul Valley Ranch witnesses also verified that  
17 (contrary to Land's claims-RT. pp 430, 449-451), petitioner never stayed at the  
18 Ranch, or was afforded any private place he controlled there, such that he could have  
19 felt safe manufacturing methamphetamine. All described him as merely a visitor, who  
20 had no place of his own there. (RT. pp 201, 230-231, 263-265, 369-371, 386-390.) None  
21 of these Ranch witnesses said anything to support the prosecutor's premise for murder,  
22 that petitioner killed Land for informing on him regarding methamphetamine manufacture.  
23 By all indications, discussed above, Land had less to inform police about as to  
24 petitioner's drug activities than he did with several other witnesses, not to mention  
25 himself.

26 Sarah Terry was probably the Japatul Valley Ranch residence who was the closest  
27 to petitioner. She spent the day of May, 29, 99 with him in her trailer painting her  
28 bathroom, as a favor to her and her boyfriend. J.D. Fields., (the only factual eye-



1 witness to the fight) He was the son of Bonnie Fields, whose parents owned the  
2 property and trailers. (RT. pp 198-202, 230, 245.) Both Terry and all the other  
3 witnesses closest to the action described the fight between petitioner and Land as  
4 solely a matter of petitioner being angry, because he found out that day that Land  
5 had made sexual advances to petitioner's wife, and J.D. told him Land also hit on  
6 Terry. It was the consensus at the Ranch that Land (for whom petitioner had sought  
7 refuge at the Ranch) was heartily disliked by one and all for his advances, for  
8 shooting up heroin, and/or he just was not likeable. (RT. pp 202-203, 217, 224,  
9 230-233, 246, 248-249, 372.) Sarah Terry said that when petitioner went outside at  
10 night to meet Land, she heard an argument, in which she could not hear petitioner's  
11 words at all, but Land repeatedly said things prefaced with "Fuck you," including  
12 "Fuck you, Dino [petitioner's nickname], I haven't talked to anyone." (RT. pp 209-  
13 210.) This was a far cry from petitioner knowing Land was seeking to set him up for  
14 manufacturing methamphetamine.

15 The prosecutor relied upon a typically self-impeaching source at the Ranch to  
16 support his informant-killing theory-Lavonne Hampshire. Yet all she and her boyfriend  
17 (Steve Schutt) established was that in their drugbefuddled haze, Hampshire perhaps  
18 told Schutt the killing may not have been over women, but also over petitioner being  
19 angry over a "drug ripoff" (RT. pp 398-399 [Schutt], or Land having "burned"  
20 petitioner over drugs. (RT. pp 386-387 [Hampshire].) To be "burned" or "ripped off"  
21 in a drug deal is to lose money or drugs, not to be arrested. The fact is that the  
22 prosecutor's entire argument here was a fragile construct, whereby the prosecutor  
23 treated Hampshire as gospel, but misquoted the text. (RT. pp 946-947.)

24 In truth, the "talk about chemicals" was in Hampshire's view likely to have  
25 been her asking petitioner where to get ephedrine. In any case, petitioner's supposed  
26 anger over some drug interaction with Land had nothing to do with manufacturing  
27 methamphetamine, either per Hampshire or Schutt. (RT. pp 388-390.) Nothing in  
28 Hampshire's testimony suggested petitioner was angry about anything to do with Land