NO. S_____

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re JESUS CAMARILLO,	)	
	)	**Case No. _____**
Petitioner,	)	
	)	(First Appellate District,
On Habeas Corpus.	)	Division Five, Case No.
	)	A160365)

Solano County Superior Court No. FCR331711
The Honorable, Judge E. Bradley Nelson

PETITION FOR WRIT OF HABEAS CORPUS

(Request for Judicial Notice; Petition for Review; And Application to Exceed the Word Count, filed concurrently herewith)

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TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Jesus Camarillo, by and through his appointed appellate attorney, Danalynn Pritz, respectfully petitions this Court for a writ of habeas corpus, and by this verified petition sets forth the following facts which require issuance of the writ:

I.

Petitioner, Jesus Camarillo, is unlawfully confined at Pelican Bay State Prison, Crescent City, by Warden James Robertson and Kathleen Allison, Secretary of the California Department of Corrections and Rehabilitation. Petitioner is in custody pursuant to a judgment by the Solano County Superior Court in case No. FCR331711.

II.

On December 20, 2016, the District Attorney of Solano County filed a juvenile transfer petition charging then 16-year-old Jesus Camarillo

with murder (count 1: Pen. Code, § 187, subd. (a)[1]), with personally using and intentionally discharging a firearm causing great bodily injury and death (§ 12022.53, subd. (b), (c) & (d)), and with having committed the murder for the benefit of a criminal street gang (§ 186.22, subd. (b)). (1Supplemental CT (SCT) 1-5[2].) Following the presentation of evidence at a contested transfer hearing in the juvenile court, petitioner's case was transferred to a court of criminal jurisdiction on July 21, 2017. (CT 7.)

On the same day, the District Attorney of Solano County filed a felony complaint charging Camarillo with the murder of Sulpicio Rios (count 1: § 187) and attempted murder of Eduardo Ramirez (count 2: §§ 664 / 187), with gang (§ 186.22, subd. (b)(a)), with gang (§ 186.22, subd. (b)) and firearm enhancements (§ 12022.53, subds. (b), (c) & (d)) on each count. (CT 1-2.) On January 5, 2018, petitioner was held to answer on both charges and the attendant enhancements. (CT 23.) The operative Second Amended Information realleged the same charges and enhancements against appellant, along with Jorge Hernandez.[3]

Camarillo went to trial alone and the jury acquitted him of first degree murder, but found him guilty of second degree murder (count 1) and attempted murder (count 2). It found the firearm enhancements (§ 12022.53, subds. (d) & (c)) true on counts 1 and 2, but found the gang

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[1] All further statutory references are to the Penal Code, unless otherwise indicated.

[2] Key: "CT" references are to the "clerk's transcript" and "RT" references are to the "reporter's transcript" in petitioner's original appeal, Court of Appeal case No. A155577. Petitioner is concurrently filing a request that this Court take judicial notice of the appellate record and the record from his transfer hearing in juvenile court (Case No. J43702).

[3] Prior to trial, Hernandez entered into a leniency agreement with the prosecution, and pled no contest to being an accessory after the fact (§ 32), in exchange for his testimony. (5RT 45, 50.)

enhancements **not** true on either count. (CT 198-200, 204-205 [verdicts].)

On August 31, 2018, petitioner was sentenced serve a determinate term of seven years on count 2 consecutive to an indeterminate sentence of 40 years to life on count 1. Citing petitioner's youth, among other things, the trial court struck the firearm enhancement on count 2, pursuant to sections 1385 and 12022.53, subdivision (h). (15RT 641-643, CT 255.)

III.

On October 18, 2018, petitioner timely appealed the judgment of conviction in First Appellate District Court of Appeal, Division Five, in case number A155577. The Appellant's Opening Brief was filed on October 29, 2019, and the Respondent's Brief was filed on May 4, 2020. On June 25, 2020, Camarillo filed the Appellant's Reply Brief in the direct appeal and a habeas petition and request for judicial notice in Court of Appeal case No. A160365. On June 30, 2020, Camarillo filed an amended habeas petition. Pursuant to the court's request, respondent filed an informal response to the habeas petition on July 27, 2020, and Camarillo filed an informal reply on August 17, 2020. The Court of Appeal deferred consideration of whether to issue an order to show cause pending consideration of the related appeal, and it advised the parties that the oral argument notice issued in the direct appeal would not operate to permit oral argument on the habeas petition, absent issuance of an order to show cause returnable to the Court of Appeal. The Court of Appeal did not issue an order to show cause.

The direct appeal was argued and submitted on January 14, 2021. On January 20, 2021, the Court of Appeal filed its unpublished opinion in the direct appeal, affirming the judgment and remanding for resentencing. On the same day, it issued a "postcard" denial of the habeas petition. On January 29, 2021, Camarillo filed a petition for rehearing on the grounds that the reviewing court's opinion omitted or misstated numerous material

facts relevant to petitioner's plea of self-defense, and applied the wrong standard in assessing prejudice in the context of instructional error. The order denying rehearing was filed February 2, 2021. This habeas petition, the accompanying request for judicial notice, and the concurrently filed petition for review in the direct appeal, timely follow.

IV.

This habeas petition is presented to this Court under its original habeas corpus jurisdiction. (Cal. Const., art. VI, §10.) Other than the concurrently filed petition for review, no other habeas or appellate proceedings presently exist with regard to the present confinement.

V.

In order to avoid unnecessary duplication, petitioner will rely on the record on appeal which has been filed in his direct appeal. By this petition, and in a separate request for judicial notice filed concurrently herewith, petitioner requests this Court take judicial notice of the transcripts, files, briefs, motions and records in Solano County Superior Court case number FCR331711, including Court of Appeal case number A155577, habeas case No. A160365, and juvenile court case No. J43702. (Evid. Code §§ 452 & 459.)

VI.

Petitioner suffers from illegal restraint because he was denied his constitutional right to the effective assistance of counsel. Under the Sixth Amendment to the United States Constitution and article I, section 15, of the California Constitution, petitioner had a right to counsel in the criminal proceedings against him in superior court. (*Gideon v. Wainwright* (1963) 372 U.S. 335; *Powell v. Alabama* (1932) 287 U.S. 45.) This right includes the right to the effective assistance of counsel. (*Strickland v. Washington* (1984) 466 U.S. 668, 686; *McMann v. Richardson* (1970) 397 U.S. 759, 771, fn. 14.)

A reasonably competent attorney acting as a diligent advocate for his client has an obligation to investigate all defenses (*In re Neely* (1993) 6 Cal.4th 901, 919) and to explore the factual basis for the defenses and the applicable law. (*People v. Plager* (1987) 196 Cal.App.3d 1537, 1543; *People v. Saunders* (1970) 2 Cal.3d 1033, 1041-1042.) Counsel has a duty "to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." (*Strickland, supra,* 466 U.S. at p. 691.) Failure to conduct adequate pretrial investigation and to adequately prepare for trial may be grounds for finding ineffective assistance of counsel. (*Ibid*.) A defendant receives ineffective assistance of counsel when trial counsel fails to perform these obligations and such failures result in the withdrawal of a potentially meritorious defense. (*People v. Ledesma* (1987) 43 Cal.3d 171, 215; *People v. Maguire* (1998) 67 Cal.App.4th 1022, 1028.)

A reasonably competent attorney acting as a diligent advocate for his client also has an obligation to effectively supply " 'to a defendant those skills and *legal knowledge* which we can reasonably expect from any member of the bar.' " (*In re Edward S.* (2009) 173 Cal.App.4th 387, 411, original italics, quoting *People v. Cook* (1975) 13 Cal.3d 663, 672-673.) "[I]f trial counsel makes a critical tactical decision which would not be made by diligent, ordinarily prudent lawyers in criminal cases[,]" the right to constitutionally adequate legal assistance has not been satisfied, and this is "true even if the decision[s] were not made from ignorance of the law or a fact." (*People v. Pope* (1979) 23 Cal.3d 412, 424.)

VII.

Petitioner avers that his trial counsel's acts and omissions fell below an objective standard of reasonableness under prevailing professional norms and that there is a reasonable probability that, but for his counsel's errors and omissions, the result of petitioner's trial would have been more

favorable to him. (*Strickland, supra*, 466 U.S. at pp. 687-688, 694; *Ledesma, supra*, 43 Cal.3d at pp. 216-218.) As a result of his counsel's ineffective assistance, as set forth herein, petitioner was denied his rights to due process and a fair trial as guaranteed by the Fourteenth Amendment to United States Constitution, and to his right to reliable jury verdicts under the Sixth and Fourteenth Amendments to the United States Constitution.

VIII.

The factual grounds for petitioner's contention that he was denied the effective assistance of trial counsel are as follows:

A. Petitioner was prejudicially denied his right to the effective assistance of counsel because his trial counsel unreasonably failed to investigate or follow reasonable investigative leads, and consequentially also failed to call an expert on adolescent brain development to testify at petitioner's trial, to request an instruction on youth, and to argue how youth factored into the determination of whether petitioner, an adolescent, subjectively believed in the need to use deadly force, and whether his belief was objectively reasonable, matters directly relevant to perfect and imperfect self-defense, petitioner's defenses at trial.

Dr. Elizabeth Cauffman, one of the world's leading experts on adolescent development, testified at petitioner's juvenile transfer hearing. However, trial counsel did not review her testimony, did not investigate or otherwise follow reasonable investigative leads and therefore, did not present evidence, argument, or request an instruction on youth. Reasonable investigation would have revealed that neurobiological research and developments in psychology have shown, and continue to show, fundamental differences between adolescent and adult minds. Unlike other personal characteristics, youth yields **objective** conclusions, relevant to the subjective and objective aspects of a self-defense inquiry. (See e.g., *J.D.B. v. North Carolina* (2011) 564 U.S. 261, 275.) Because a

defendant claiming perfect or imperfect self-defense is required to prove his own frame of mind, and jurors "must consider what 'would appear to be necessary to a **reasonable person in a similar situation and with similar knowledge**. . . .' " (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1083), youth was an essential factor for petitioner's jury to consider in assessing the circumstances from **his perspective**.

A reasonably competent attorney acting as a diligent advocate would have followed reasonable investigative leads and/or conducted investigation by, inter alia, reading Dr. Cauffman's testimony from the juvenile transfer hearing and/or consulting an expert on adolescent brain development to inform his position before making further strategic choices. " '[S]trategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation.' " (*Wiggins v. Smith* (2003) 539 U.S. 510, 521, quoting *Strickland, supra,* 466 U.S. at pp. 690-691.) Additionally, after conducting an investigation, a reasonably competent attorney acting as a diligent advocate would have called an expert on adolescent brain development, such as Dr. Cauffman, to testify in petitioner's defense at trial, would have requested a jury instruction on youth, and, would have argued the "characteristic of youth," as it pertained to petitioner's subjective belief in the need to use deadly force, and whether his belief was objectively reasonable.

B. Petitioner was also prejudicially denied his right to the effective assistance of counsel because his trial attorney unreasonably failed to investigate and call a use-of-force expert to testify at petitioner's trial to explain how an aggressor can be shot in the back by someone acting in self-defense. Expert testimony in this area was essential to petitioner's plea of self-defense and to refuting the People's position that petitioner did not act in self-defense because he shot the victim in the back.

Reasonable investigation would have revealed that the location of the injuries does not necessarily negate self-defense. A reasonably competent attorney acting as a diligent advocate would have investigated and called a use-of-force expert to testify on petitioner's behalf.

IX.

As the declarations and exhibits attached hereto demonstrate, the acts and/or omissions of petitioner's trial counsel, set forth in the preceding paragraph, were not the result of any reasonable tactical decision on the part of trial counsel. Counsel's decisions fell below an objective standard of reasonableness under prevailing professional norms. (*Strickland, supra*, 466 U.S. at p. 687; *Pope, supra*, 23 Cal.3d at p. 425.)

X.

It is reasonably probable a result more favorable to petitioner would have been reached here, but for counsel's acts and/or omissions as set forth herein. Petitioner suffered extreme prejudice as a result of defense counsel's deficiencies. (*Strickland, supra*, 466 U.S. at pp. 693-694; *In re Fields* (1990) 51 Cal.3d 1063, 1070.) Counsel's acts and omissions individually, and certainly when combined, resulted in the withdrawal of an adjudication of petitioner's defenses at trial – perfect and imperfect self-defense – because crucial evidence was not presented to the jury at trial.

The lack of evidence, instruction and argument concerning the characteristics of youth unreasonably denied petitioner the right to have the jury consider **his** subjective state of mind, as well as what 'would appear to be necessary to a reasonable person in **a similar situation and with similar knowledge**. . . . judged "from the point of view of **a reasonable person in the position of defendant** . . .' " (*Humphrey, supra,* 13 Cal.4th at p. 1083.) Without evidence and instruction on youth, jurors did not have the tools they needed to assess petitioner's mental state.

The lack of evidence from a use-of-force expert was also prejudicial because it would have bolstered petitioner's plea of self-defense and directly refuted the People's position that petitioner was not acting in self-defense because Rios was shot in the back. A use-of-force expert would have explained to the jury that the location of the injuries does not necessarily negate self-defense, and did not do so in this case.

Had the jury been presented with evidence on the characteristics of youth and/or testimony from a use-of-force expert, the jury could have reasonably reached a verdict more favorable to petitioner – either manslaughter or an acquittal. There was overwhelming evidence petitioner acted in self-defense. However, after struggling for nearly two full days to decide petitioner's mental state, and grappling between second degree murder and manslaughter, petitioner was convicted of second degree murder. The evidence counsel should have, but did not present at petitioner's trial, individually or collectively, would have established self-defense, negated malice, and/or created reasonable doubt as to whether the People proved the absence of self-defense beyond a reasonable doubt.

XI.

The grounds set forth in paragraphs VIII. through X. were previously presented by petitioner to the Court of Appeal by way of a petition for writ of habeas corpus (case No. A160365).

XII.

Petitioner believes the record in his direct appeal is sufficient on theses and other issues to entitle him to a reversal of his convictions; but if it is not, petitioner has no other plain, speedy or adequate remedy at law in that this petition is based, in part, upon material not included in the record on appeal, to wit: the declaration of appellate counsel Danalynn Pritz (Exhibit A), the declaration of Elizabeth Cauffman (Exhibit B), the

declaration of Chuck Joyner (Exhibit C), the declaration of Jesus Camarillo (Exhibit D), and exhibits attached hereto.

XIII.

By this reference, the accompanying memorandum of points and authorities, declarations, records, and exhibits are incorporated herein and made part of this petition as if fully set forth herein. Petitioner's claims under this petition will be based on the petition, the memorandum of points and authorities, the declarations and exhibits attached hereto, and the records, documents, and pleadings on file in Solano County Superior Court case number FCR331711, including Court of Appeal case number A155577, habeas case No. A160365, and juvenile court No. J43702.

WHEREFORE, petitioner respectfully requests that this Court:

1. Take judicial notice of the records itemized in the request for judicial notice filed concurrently herewith (Evidence Code sections 452, 459);

2. Reverse petitioner's convictions;

3. Issue a writ of habeas corpus vacating the judgment and return the cause to the trial court with directions to grant petitioner a new trial;

4. Order respondent to show cause why petitioner is not entitled to the relief sought and afford petitioner the opportunity to reply to the government's response;

5. Set this matter for an evidentiary hearing; and/or

6. Grant petitioner whatever further relief is appropriate in the interests of justice.

Dated: February 24, 2021 Respectfully Submitted,

Danalynn Pritz,
Attorney for Petitioner Jesus Camarillo

VERIFICATION

I am an attorney duly admitted to practice law in and before all of the courts in the State of California. I was appointed by the Court of Appeal to represent Jesus Camarillo in appealing his conviction. Mr. Camarillo is unable to make this verification because he is absent from this county; for that reason I make this verification on his behalf. I am authorized to file this petition.

I have read the foregoing Petition for Writ of Habeas Corpus, and the following Statement of Case and Facts, Memorandum of Points and Authorities in support thereof, and verify that the matters stated therein are supported by citations to the record on appeal in *People v. Jesus Camarillo,* case No. A155577, and/or by the attached declarations and/or exhibits. All facts alleged in this petition, not otherwise supported by citations to the record, declarations, exhibits or other documents, are true of my own personal knowledge. I have personal knowledge of the matters set forth in the petition and attached memorandum of points and authorities in that I have communicated with trial counsel, David Nelson, former defense counsel from the juvenile court proceedings, Dionne Choyce, Dr. Elizabeth Cauffman, Mr. Chuck Joyner, and petitioner, Jesus Camarillo. Also, I reviewed what Mr. Nelson represented to me to be Jesus's "entire" file from the trial court proceedings, the reporter's transcripts from the juvenile court proceedings, and the entire record on appeal and all the attached declarations.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct. This verification was executed at Oxnard, California on this 24th day of February 2021.

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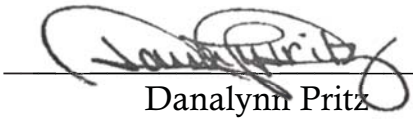

Danalynn Pritz
State Bar No. 164488

SUMMARY OF THE CASE AND FACTS

A. CAMARILLO'S GROUP IS ATTACKED BY NORTEÑO GANG MEMBERS AT A 7-ELEVEN CONVENIENCE STORE.

On December 10, 2016, then 16-year-old Camarillo got together with Sevren Mangskau, Jorge Hernandez, and Joel Melendez to go to a party in Fairfield. (9RT 440-441.) Around 8:00 p.m., they went to a popular taco truck located down the street from a 7-Eleven convenience store in the City of Fairfield. (8RT 267, 316-317.) They placed their food orders and went to 7-Eleven to get drinks. (8RT 268-270, 318-319, 338.)

Camarillo and Mangskau went inside the store. Melendez waited in the car parked in front of the entrance. As Hernandez walked towards the entrance to the 7-Eleven, his attention was drawn to two men wearing red clothing–Ernesto Garcia, who was in his 30's, and Eduardo Ramirez–and a woman, Elena Jimenez, who were also approaching the entrance. (8RT 270, 7RT 122-126.) Ramirez and Garcia were documented Norteño gang members (9RT 393, 400-402), and Jimenez was an associate of the Noterño gang. (9RT 405.) Garcia was wearing a red shirt and Ramirez was wearing a red and black plaid jacket, colors worn by Norteño gang members. (7RT 126.)

Hernandez was concerned because Garcia and Ramirez looked like Norteño gang members and at the time he and Camarillo were Sureño gang members. The two gangs are rivals. (8RT 271-273, 319, 9RT 389-390.) The 7-Eleven was in Sureño territory and not often frequented by Norteños. (7RT 129, 8RT 275.)

Hernandez stopped to hold the door open for Garcia and Ramirez. (8RT 275.) When they were face-to-face, Garcia asked Hernandez, "What's up bitch ass nigga?" and Hernandez replied by asking Garcia if he knew where he was, referring to the fact that he was in Sureño territory. (7RT 128-129.) Hernandez asked, "What the fuck?" and Garcia and

Ramirez called Hernandez a "Fucking scrap" a derogatory term for Sureños. (8RT 276.)

Garcia then cold-cocked Hernandez, punching him directly in the face without warning. (7RT 129, 154, 157, 8RT 277, 9RT 414.) The unprovoked attacked was captured on the store's surveillance cameras and played for the jury at trial.[4] Hernandez did not make any movements before Garcia attacked him. (8RT 320, Exh. No. 1 [Ch. 12 at 20:41:55–20:42:04].) Garcia attempted to continue to assault Hernandez, but he ran away, running past the car where Melendez was seated.

Melendez got out of the car and Garcia engaged him in a fist-fight. (8RT 277-278, 321; Exh. No. 1 [Ch. 12 at 20:42:10].) While the fight between Garcia and Melendez was ongoing, Camarillo and Mangskau came out of the store and stood off to the side, watching.

As Garcia and Melendez were fighting, Ramirez encircled them, pacing around, keeping his hand on his pocket as if he was holding onto to a weapon. (Exh. No. 1 [Ch. 13 at 20:42], Exh. 28 [Ch. 14 at 20:42:35].) Hernandez testified that while he was holding his side or pocket, Ramirez was saying, "Y'all don't want none, y'all don't want it." (8RT 280.) Hernandez believed Ramirez had a gun and was going to shoot them. (8RT 321-322, 335.) Camarillo also believed Ramirez had a gun. While petitioner did not testify, his recorded police interrogation was played for the jury. He told the detectives many times he thought Ramirez had a gun. (Transcript pages 12-13, 16-17.) Petitioner said when he came out of the door of the 7-Eleven he thought, "Oh my god he [Ramirez] has a gun." (Page 16.) Petitioner said Ramirez was acting "like [he had a] thing, a gun." (Pages 12-13, 17.) Petitioner was scared. (Page 17.)

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[4] People's trial exhibit Nos. 1, 2, and 28 were the surveillance videos from the 7-Eleven. (7RT 182-183.) Exhibit Nos. 1 and 28 show different views of the parking lot where the attack occurred.

The People's gang expert validated the reasonableness of the belief that Ramirez had a gun. He testified it would be risky for Norteño gang members wearing gang colors, as Ramirez and Garcia were, to enter rival gang territory, such as this 7-Eleven, **without** a weapon. He testified Norteños would be **expected** to have a weapon in this type of situation. (9RT 405.)

As the fist-fight wound down, Garcia continued "talking shit." (7RT 130-131.) He called Hernandez's group, "pussy ass scraps" and Hernandez responded by shouting out the name of his gang. (8RT 279, 9RT 379, 395.) For the first time at trial, Jimenez claimed that Hernandez told Garcia to "stay right there" because he had something for them and they could "get smoked on the tracks," but no evidence corroborated her claim. (7RT 130, 144, 157, 9RT 468-469.)

Fearing they would be killed, Camarillo's group retreated, but their efforts to retreat were met with more violence. As Camarillo's group got into their car to leave, Jimenez took a swing at Hernandez's face. She missed, but when Hernandez got into the driver's seat of the car, she tried to slam the car door on his feet. (8RT 281.) She also attacked the car, punching and kicking the hood while yelling "Norte!" (8RT 282; Exh. No. 1 [Ch. 12 at 20:44:04–08].)

Garcia intensified the attack on Camarillo's group as they attempted to retreat. After they got into the car, Garcia twice threw a large can at the driver's side of the vehicle, causing its contents to splatter all over the driver's side of the vehicle. (Exh. No. 1 [Ch. 13 at 20:43:53-56].)

Before Hernandez was able to back out of the parking space, the video clearly reflected Garcia removing a knife, or similar object, from his pocket and lunging towards the driver's side front tire. (Exh. No. 1 [Ch. 12 at 20:43:58; 8RT 323.) Once Hernandez got the car into "drive," he drove towards Garcia to scare him off. The concrete parking block stopped the

car before it hit anyone. (7RT 1335, 8RT 282.) As they left the parking lot, Garcia threw a large commercial trash can lid at the windshield of the vehicle. (8RT 283, 9RT 420; Exh. No. 1 [Ch. 12 at 20:44:13–44:20].)

The People's gang expert testified that the attack by Garcia, Ramirez and Jimenez was unprovoked. (9RT 402; & 8RT 325.)

B. HERNANDEZ RETRIEVED A WEAPON.

Hernandez knew he had been beaten up in his own territory and he felt "like a bitch." (8RT 283-284.) He wanted to gain some respect back (8RT 285-286), so he went to his house and got a revolver, loaded with six rounds, and wrapped it in a sweatshirt. (8RT 286, 9RT 423-424.) When he got back in the car, he told everyone he had a gun and handed it to Melendez. (8RT 287.) Camarillo was quiet. (8RT 337.) Hernandez testified he obtained the weapon for protection, in case the Norteños tried to shoot them. (8RT 283-284, 324.)

Hernandez then drove back to the 7-Eleven to look for Garcia and Ramirez, but they were not there and nothing further happened at the 7-Eleven. (8RT 288.) Camarillo did not participate in any discussion about returning to the 7-Eleven to fight. Camarillo never said he wanted to fight anybody. He was quiet in the car. (8RT 338.)

The car started making noise from where Garcia had slashed the tire, so Camarillo's group drove slowly back to the taco stand and parked. (8RT 289-290.) Melendez handed the gun to Camarillo, who put it in his waistband. (8RT 292.) There was no talk of getting revenge. Camarillo was quiet, and, as far as Hernandez was concerned, it was over, his anger had dissipated. (8RT 327.)

C. JIMENEZ LIED TO RIOS ABOUT BEING PHYSICALLY ASSAULTED.

After the confrontation at 7-Eleven, Jimenez, Garcia, and Ramirez walked back to Jimenez's apartment where her boyfriend, Sulpicio Rios, and several other Norteños were waiting. (7RT 136-137.) Rios was a

validated Norteño gang member and he was wearing red and black, Norteño colors. (7RT 140, 155, 9RT 393.) Jimenez wanted some attention, so she lied to Rios and told him that Hernandez hit her at the 7-Eleven, and that the guys said they were going to come back with a gun. This made Rios very upset. (7RT 160, 163, 174.)

D. CAMARILLO'S GROUP IS ATTACKED AGAIN BY NORTEÑO GANG MEMBERS AT THE TACO STAND.

Petitioner's group was parked near the taco stand fixing the car tire Garcia had slashed. Two independent percipient witnesses called by the prosecution, Luis Lacatero and Lino Uscanga, testified that petitioner's group was just working on the car, not bothering anybody. (8RT 228-229, 255, 260.) It had been about 20 minutes since the Norteños attacked Camarillo's group at the 7-Eleven, when the Norteños confronted Camarillo's group again at the taco stand. (1CT 63.)

Jimenez, Ramirez, and Rios were walking to a market near the taco stand. (7RT 138-139, 161, 1CT 63.) Jimenez saw Hernandez and she pointed him out to Rios. Jimenez immediately had a "bad feeling" and tried to get Rios to go home, but he said "fuck no." Rios was very upset and Jimenez knew there would be trouble, so she called her Norteño cousins for backup. (7RT 142, 163.)

Rios was angry and he immediately aggressively confronted Hernandez. (7RT 141-142, 161-164.) Both independent percipient witnesses testified that Rios and Ramirez started the confrontation with petitioner's group (8RT 225, 229, 255), and both percipient witnesses and Jimenez testified that Rios and Ramirez's body language reflected that they wanted to fight. (7RT 143, 8RT 220, 224-226, 232, 246.) Witness Uscangea testified that Ramirez was trying to hold Rios back as Rios was attempting to attack Camarillo's group. (8RT 247-248, 260.)

Jimenez testified Hernandez was just standing there as Rios and

Ramirez were "talking shit," but Rios was the main person "talking shit." (7RT 143.) Hernandez didn't know why Rios was upset with him because he didn't know Jimenez had lied to Rios. (8RT 295, 329-330.) Camarillo's group did not engage Rios, but eventually Hernandez reacted to Rios's and Ramirez's body language and belligerent attitude and exchanged gang slurs with them. (7RT 142-143, 166, 8RT 225, 240-241; 9RT 429-430.)

As the heated exchange continued, Hernandez saw at least three Norteños in the area of the taco truck (8RT 329), including Garcia who had a knife. (8RT 294, 329.) Ramirez, who was believed to have a gun, was standing behind Rios, pacing behind him, holding onto his side, making the same motions he made at the 7-Eleven indicating he had a gun. (8RT 299, 332.) Hernandez believed Ramirez still had a gun. (8RT 299-300, 332, 335.)

Camarillo was standing next to Hernandez when suddenly, in the midst of the heated confrontation, Rios made a motion towards his waistband while simultaneously quickly advancing towards Camarillo. (8RT 301-302, 330-331, 9RT 431-434, 454.) Hernandez testified that Rios took several aggressive steps, and was moving quickly forward towards Camarillo when he fired the gun. (8RT 302, 331.) Hernandez believed Rios was going to attack petitioner and Camarillo fired to avoid getting seriously hurt or killed. (8RT 302, 330-334.)

Mangskau also testified Rios was loud and walking aggressively towards Camarillo when petitioner shot at Rios. (9RT 431-434, 454-455.) Camarillo fired the first shot as Rios was advancing on him then, after the first shot, Rios turned to run and Camarillo fired two more shots very quickly after firing the first shot. (9RT 435-455.)

Independent percipient witness Uscanga confirmed Mangskau's and Hernandez's testimony. Uscanga testified that Rios made a motion as though he was going to rip his shirt off, tearing it off his chest from the

middle outward, took a fighting stance, and approached Camarillo straight on. Uscanga confirmed that Rios was moving his hands upward from his waistband area as he advanced on petitioner, and Camarillo fired while Rios was advancing toward him. (8RT 242-244, 248, 256-257, 260-262.) According to Uscanga, Camarillo fired three shots in rapid succession. (8RT 249, 262.)

Jimenez testified to hearing Rios say something about a gun or, "Watch out, he's got a gun" before turning to run. Camarillo fired three times as he was running away. (7RT 146-148, 150-152.) Camarillo fired three shots in rapid succession when Rios was about 20-to-25 feet away from him. (8RT 242-244, 248-249, 262.)

The coroner confirmed Rios was shot twice in the back and once in the left arm. The one fatal shot entered through the back. (7RT 98-99, 102.) However, the coroner also testified that Rios's body could have been twisting or turning when the fatal shot hit him. (7RT 108, 100.) The prosecutor also acknowledged that Rios could have been turning to run when Camarillo fired. The prosecutor told the jury, "He's turning and he's running. That's how that angle [of the fatal bullet] happens. He turns and runs." (11RT 556.)

Meanwhile, Ramirez ran towards a nearby carwash. Video surveillance from the car wash, which was played for the jury, reflected petitioner chasing Ramirez and firing two shots at him. (7RT 176, 180-181, 187-188, 191.)

E. THE CHARGES, ARGUMENTS AND VERDICTS.

Following a contested hearing in the juvenile court, petitioner's case was transferred to adult court where Camarillo was charged with the first degree premeditated murder of Rios, and the premeditated attempted murder of Ramirez. Gang and firearm enhancements were alleged as to each charge. Petitioner's defense at trial was perfect and imperfect self-

defense. Accordingly, the jury was instructed with CALCRIM 505, self-defense (CT 152-153), and CALCRIM 571, imperfect self-defense (CT 159-160), as well as first and second degree murder, attempted murder, heat of passion manslaughter and attempted voluntary manslaughter based on heat of passion. (CT 155-157, 161, 164.)

The prosecution's theory at trial was that petitioner committed first degree premeditated murder because, after petitioner's group had been beaten and driven out of their own territory at the 7-Eleven, Camarillo shot Rios to avenge his gang. (11RT 541.) The prosecutor incorrectly told the jury in closing argument that self-defense did not apply because once Hernandez (not petitioner) obtained a weapon, Camarillo's group were the aggressors at the taco stand. (11RT 541, 551, 559, 564, 581.) The prosecutor argued that at the moment Hernandez decided to go and retrieve his gun, "[t]he defendant's crew is now the aggressor. . . . The defendant argues self-defense. That does not apply once you become the aggressor." (11RT 551-552, see also 541, 550, 552.) During closing and final arguments, the prosecutor also focused heavily on the fact that Rios was shot from a distance away and in the back which, the People contended, was not consistent with self-defense. (11RT 541, 55, 556, 578, 579, 584.)

Defense counsel relied on the facts, including the videos from the 7-Eleven showing the brutal beating the Norteños inflicted on Camarillo's group, establishing that petitioner would have reasonably been in fear of sustaining great bodily injury or death at the hands of the Norteños when they aggressively confronted petitioner's group again, just 20 minutes later at the taco stand. Counsel urged the jury to consider the situation from Camarillo's perceptive, including his youth. He told the jury, "You can look at the fact that these Norteños were quite a bit older than these Sureños. How old was Mr. Mangskau, 15, 16? How old was [petitioner]

in 2016? 16 years of age. [¶] Neither one of them [Camarillo or Mangskau] even had a driver's license. I doubt my client's ever shaved. **He's just a kid**. [¶] And what you saw at the 7-Eleven wasn't just some dustup, oh, just a fight, it's just a fight. [¶] Later on, Mr. Rios came for blood. These were bullies wearing their colors out hunting, looking for trouble, armed, because you heard their gang expert, Norteños are not going to go for a foray into Sureño territory without being armed. And they acted like they were armed. What is he [Camarillo] . . . supposed to think?" (11RT 573.) As to Ramirez, defense counsel correctly told the jury that petitioner had the right to stand his ground and to pursue the aggressors until the lethal threat had subsided. It was reasonable to chase and fire the gun at Ramirez, counsel argued, because Ramirez was believed to have had a weapon which he could have used to kill Camarillo. Had petitioner not fired the weapon, counsel told the jury, Ramirez and/or Rios would be on trial for petitioner's murder. (11RT 571.) Defense counsel urged the jury to return not guilty verdicts on both counts and repeatedly emphasized that Camarillo was not the aggressor. (11RT 568, 571, 575.) In rebuttal, the prosecutor told the jury that age made no difference. (11RT 575.)

The jury acquitted petitioner of first degree murder and found the gang enhancements not true on both counts, rejecting the prosecution's premeditated, gang-retaliation theory. However, petitioner was convicted of second degree murder and attempted murder with true findings on the firearm enhancements (§ 12022.53, subds. (d) & (c)). While the jury did not accept the prosecution's premeditated gang-retaliation shooting theory, it also rejected self-defense notwithstanding overwhelming evidence that Rios and Ramirez presented an imminent threat of inflicting great bodily injury or death, and Camarillo fired the weapon as Rios was advancing toward him while reaching for his waistband.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

A PETITION FOR WRIT OF HABEAS CORPUS IS THE PROPER VEHICLE FOR PRESENTING PETITIONER'S CLAIMS AND THIS WRIT SHOULD BE CONSOLIDATED WITH PETITIONER'S DIRECT APPEAL.

An investigation conducted during the pendency of petitioner's direct appeal revealed that trial counsel did not act as a diligent, competent advocate on petitioner's behalf in a number of respects that deprived Camarillo of the adjudication of potentially meritorious defenses. (See Args. II & III., *post*.) The record on appeal did not include all of the information necessary to establish that Camarillo was denied his Sixth Amendment right to effective counsel, and/or did not reflect counsel's reasons for acting or failing to act in the manners herein described. Therefore, Camarillo presents this petition for a writ of habeas corpus which is based, in part, upon material not included in the record on appeal, to wit: the declaration of appellate counsel Danalynn Pritz (Exhibit A), the declaration of Dr. Elizabeth Cauffman (Exhibit B), the declaration of Mr. Chuck Joyner (Exhibit C), the declaration of Jesus Camarillo (Exhibit D), and exhibits attached thereto.

Since petitioner's allegations of ineffective assistance of counsel can be supported by matters outside the record on appeal, a habeas petition is the appropriate vehicle for presenting these claims. (*Pope, supra,* 23 Cal.3d at 426, fn. 17; *In re Carpenter* (1995) 9 Cal.4th 634, 646; *In re Bower* (1985) 38 Cal.3d 865, 872; *People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266-267.)

II.

PETITIONER WAS DENIED HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE COUNSEL BECAUSE HIS TRIAL ATTORNEY DID NOT INVESTIGATE, FOLLOW REASONABLE INVESTIGATIVE LEADS, PRESENT EVIDENCE, REQUEST AN INSTRUCTION, OR ARGUE ADOLESCENT BRAIN DEVELOPMENT ESSENTIAL TO THE QUESTION OF WHETHER CAMARILLO ACTED IN SELF-DEFENSE.

A. INTRODUCTION.

Petitioner was denied his Sixth Amendment right to effective counsel, within the meaning of *Strickland, supra,* 466 U.S. 668, and the Sixth Amendment (Cal. Const., art. I, §15; *Ledesma, supra,* 43 Cal.3d at 215), because his trial attorney should have, but did not investigate, follow reasonable investigative leads, consult an expert, present evidence, request an instruction on youth, or argue the significance of adolescent brain development as a factor to consider in determining whether petitioner subjectively believed in the need to use deadly force, and whether his belief was objectively reasonable, matters directly relevant to perfect and imperfect self-defense–petitioner's defenses at trial.[5] Had evidence, instruction and argument on the characteristics of youth been presented to the jury, the jury would have returned verdicts more favorable to petitioner.

B. OUR BURDEN IN A HABEAS PROCEEDING.

"A habeas corpus petitioner bears the burden of establishing that the judgment under which he or she is restrained is invalid. [Citation.] To do

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[5] References to "self-defense" refer to perfect and imperfect self-defense, unless otherwise indicated.

so, he or she must prove, by a preponderance of the evidence, facts that establish a basis for relief on habeas corpus. [Citation.]" (*In re Visciotti* (1996) 14 Cal.4th 325, 351.) In a claim of failing to investigate and/or failing to call witnesses, "[t]he petitioner must demonstrate that counsel knew or should have known that further investigation was necessary, and must establish the nature and relevance of the evidence that counsel failed to present or discover." (*People v. Williams* (1988) 44 Cal.3d 883, 937.) As demonstrated, counsel knew of and considered Camarillo's youth, but he did not follow reasonable investigative leads or present evidence of adolescent brain development because he misunderstood how youth was relevant to self-defense.

C. THE LAW OF SELF-DEFENSE.

"For killing to be in self-defense, the defendant must actually and reasonably believe in the need to defend. If the belief subjectively exists but is objectively unreasonable, there is "imperfect self-defense," i.e., "the defendant is deemed to have acted without malice and cannot be convicted of murder," but can be convicted of manslaughter. To constitute "perfect self-defense," i.e., to exonerate the person completely, the belief must also be objectively reasonable." (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1082, citations omitted.) A homicide is considered justified as self-defense where the defendant actually and reasonably believed the use of deadly force was necessary to defend himself from imminent threat of death or great bodily injury. Under such circumstances, the killing is not a crime. (*People v. Elmore* (2014) 59 Cal.4th 121, 133-134; *People v. Sotelo-Urena* (2016) 4 Cal.App.5th 732, 744.) "The subjective elements of self-defense and imperfect self-defense are identical. Under each theory, the [defendant] must actually believe in the need to defend . . . against imminent peril to life or great bodily injury." (*People v. Viramontes* (2001) 93 Cal.App.4th 1256, 1262.)

A defendant claiming self-defense or imperfect self-defense is required to "prove his own frame of mind." (*People v. Davis* (1965) 63 Cal.2d 648, 656; *People v. Minifie* (1996) 13 Cal.4th 1055, 1065 [" 'The defendant's perceptions are at issue. . . .' "].) For perfect self-defense, which requires that the belief in the need to defend be objectively reasonable, "a jury must consider what 'would appear to be necessary to a reasonable person in a similar situation and with similar knowledge. . . .' [Citation.]" (*Humphrey, supra,* 13 Cal.4th at 1082-1083.) Although the test is objective, "reasonableness is determined from the point of view of a reasonable person in the defendant's position." (*Minifie,* at 1065.) To evaluate whether defendant's belief in the need to defend is objectively reasonable, " '. . . a defendant is entitled to have a jury take into consideration all the elements in the case which might be expected to operate on his mind. . . .' " (*Humphrey,* at 1083.) As explained, youth is the most critical factor which might be expected to operate on an adolescent's mind.

D. YOUTH SHOULD BE CONSIDERED WHEN ASSESSING AN ADOLESCENT'S MENTAL STATE.

1. Youth, As A Class Characteristic, Should Be Considered in Assessing Both the Subjective and Objective Aspects of a Self-Defense Inquiry.

Under the rationale of *J.D.B. v. North Carolina* (2011) 564 U.S. 261 (*J.D.B*), *Roper v. Simmons* (2005) 543 U.S. 551, *Graham v. Florida* (2010) 560 U.S. 48, and other Supreme Court decisions, as well as research on adolescent brain development and state law, petitioner contends that evidence and instruction concerning youth was necessary because youth was relevant to whether petitioner subjectively believed in the need to use deadly force and whether that belief was reasonable, matters directly relevant to self-defense.

a. The Science.

There was ample evidence of adolescent brain development available to trial counsel. Dr. Elizabeth Cauffman, one of the world's leading experts in this area, testified at petitioner's juvenile transfer hearing. Dr. Cauffman discussed the biological and neurological differences between juvenile and adult minds based on scientific studies and research findings. (J43702, 8RT 319-350.) Her testimony provided trial counsel the ideal springboard for further investigation into adolescent brain development and how it plays a role in self-defense.

At petitioner's transfer hearing, Dr. Cauffman explained the lag between cognitive and emotional development that occurs during adolescence, and particularly at age 16. (J43702, 8RT 328-329; Exh. A-6 [slide: "The Immaturity Gap"].) The slide reflects that while a 16-year-old's cognitive level may be equivalent to that of an adult, emotional development is severely less and does not intersect, or pair with cognitive abilities until the mid-to-late 20's. (Exb. A-6.)

It takes longer for adolescents to learn to control their emotions because the frontal lobe, or prefrontal cortex, which is like the CEO of a company, is the last part of the brain to fully develop. (J43702, 8RT 329.) The prefrontal cortex is responsible for impulse control, regulating emotions, and long-term thinking. (J43702, 8RT 329, 345.) All of these areas are underdeveloped in a 16 year old. (J43702, 8RT 329.) Research suggests that those parts of the brain are not fully developed until roughly 25 years of age. (*Ibid.*) Synaptic pruning (where the brain discards or prunes away unnecessary matter and increases the synaptic connections in the brain), and increases myelination (the process which regulates the rate at which information travels through the brain), only just begin to increase during adolescence. (J43702, 8RT 330.) These processes increase the connectivity among the regions of the brain, and specifically the

connectively between the higher-order processing centers of the brain, such as the frontal lobe, with the more primitive parts of the brain. (J43702, 8RT 330-331.) The Limbic system, responsible for emotions, and the amygdala, responsible for fight or flight, are the more primitive parts of the brain, and, because the more primitive parts of the brain have not yet connected with higher-order thinking, adolescents are driven by the primitive parts of their brain. (J43702, 8RT 331-332.)

There is also a lack of impulse control during adolescence. (J43702, 8RT 333.) This is because self-control is regulated by the pre-frontal cortex, but that part of the brain has not fully developed in adolescence. (J43702, 8RT 333.) Therefore, adolescents have a harder time inhibiting or stopping themselves than an adult, and they have a harder time regulating their emotions. (*Ibid.*) At 16, Camarillo was at the apex of the upward trend in terms of risky behavior and lack of self-control. (J43702, 8RT 343.)

These characteristics are exacerbated when an adolescent feels threatened. (J43702, 8RT 333.) In test studies, when an adolescent felt threatened, they were more reactive and tended to **approach** the threat rather than withdraw from it. (*Ibid.*) This is because adolescents rely more on the amygdala than the frontal lobe, which regulates impulse control, long-term thinking, and decision-making. (J43702, 8RT 333-334, 342.) Peer presence also influences adolescent behavior. (J43702, 8RT 334.) Adolescents are much more likely to take risks when their peers are present. (J43702, 8RT 334, 335, 340.) The reward center of the brain is activated in adolescents when peers are present. (J43702, 8RT 341.)

These factors have shown that crime tends to peak in the late teen / early 20's before declining years later. (J43702, 8RT 335.) The decline generally corresponds to the development of impulse control and the ability to think long term. (J43702, 8RT 337.) A study undertaken by Dr.

Cauffman reflected that the majority of adolescents who committed very serious felony-level offenses showed a decline in criminal behavior with age, they "basically grew up and gr[e]w out of crime." (*Ibid.*)

Dr. Cauffman's research findings on adolescent brain development have been corroborated for many years by others in the field. (See e.g., Steinberg et al., *Age Difference in Future Orientation and Delay Discounting* (2009) 80 Child Development 28, 39; Steinberg, *A Social Neuroscience Perspective on Adolescent Risk-Taking* (2008) 28(1) Developmental Review 78, 79; Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants* (2003) 27(4) Law & Hum. Behav. 333, 357; Modecki, *Addressing Gaps in the Maturity of Judgment Literature: Age Differences and Delinquency* (2008) 32 Law & Hum. Behav. 78, 85.)

Neurobiological research has long shown that the portions of the human brain responsible for self-control do not reach full maturity until at least the mid-20s. (Steinberg, *supra,* 28(1) Developmental Review at 83.) And, the gap between intellectual and emotional maturity in adolescents is exacerbated when decisions are made in situations that are emotionally arousing. These especially include situations common in crimes that cause negative emotions, such as fear, threat, anger or anxiety. (Cohen et al., *When Is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Nonemotional Contexts* (2016) 27(4) Psychol. Sci. 549, 559.)

b. The Law.

(i) *United States Supreme Court And Other Authority*

Drawing on much of the research cited above, in *J.D.B., supra,* 564 U.S. 261, the United States Supreme Court held that youth is an objective characteristic that must be considered in determining whether a suspect is

"in custody" for purposes of a *Miranda*[6] analysis. A *Miranda* custody analysis is a two-part **objective** inquiry: "first, what were the circumstances surrounding the interrogation; and second, given those circumstances, **would a reasonable person** have felt he or she was at liberty to terminate the interrogation and leave.' " (*J.D.B., supra,* 564 U.S. at 270, emphasis added.) The question before the Court was whether a juvenile could be held to the same objective standard as an adult when considering whether a "reasonable person" would have felt free to leave under the circumstances. (*Id.* at 271-272.) While the State and its *amici* vigorously argued that youth has no place in an **objective** analysis, the Court resoundingly disagreed. (*Id.* at 277.)

J.D.B. held that the test for determining whether or not a juvenile was "in custody" must be evaluated through the lens of a reasonable juvenile, not a reasonable adult because, youth " 'would have affected how a reasonable person' in the suspect's position 'would perceive his or her freedom to leave.' " (*J.D.B., supra,* 564 U.S. at 271-272.) The Court found ample support for its determination in a long line of United States Supreme Court authority that has recognized "[a] child's age is far 'more than a chronological fact.' " (*J.D.B.,* at 272, citing *Eddings v. Oklahoma* (1982) 455 U.S. 104, 115, *Gall v. United States* (2007) 552 U.S. 38, 58, *Roper, supra,* 543 U.S. 551, and *Johnson v. Texas* (1993) 509 U.S. 350; *Miller v. Alabama* (2012) 567 U.S. 460, 472, fn. 5; *Haley v. Ohio* (1948) 332 U.S. 596, 599-600; *Gallegos v. Colorado* (1962) 370 U.S. 49, 54.) " 'Our history is replete with laws and judicial recognition' that children cannot be viewed simply as miniature adults." (*J.D.B,* at 274.)

"[Youth] is a fact that 'generates commonsense conclusions about behavior and perception.' [Citations.] Such conclusions apply broadly to

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[6] *Miranda v. Arizona* (1966) 384 U.S. 436.

children as a class." (*J.D.B., supra*, 564 U.S. at 272.) "Time and again, this Court has drawn these commonsense conclusions for itself. We have observed that children 'generally are less mature and responsible than adults,' [citation] that they 'often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them,' [citation], [and] they 'are more vulnerable or susceptible to . . . outside pressures' than adults, *Roper v. Simmons* (2005) 543 U.S. 551, 569; and so on. (See *Graham v. Florida*, 560 U.S. 48, 68 (finding no reason to 'reconsider' these observations about the common 'nature of juveniles')." (*J.D.B.*, at 272.)

Indeed, youth has been a consideration in many different arenas. For example, minors are precluded from buying alcohol (see, e.g., *Kirby v. Alcoholic Bev. etc. App. Bd.* (1968) 267 Cal.App.2d 895, 899); sex between mutually consenting teenagers is illegal in almost every state (*In re T.A.J.* (1998) 62 Cal. App. 4th 1350, 1364; *Bellotti v. Baird* (1979) 443 U.S. 622, 637, fn. 15); and young adults between 18 and 21 years old cannot buy firearms (*Nat'l Rifle Ass'n, Inc. v. Bureau of A.T.F.* (5th Cir.2012) 700 F.3d 185). And, "[i]n negligence suits, . . . where liability turns on what an objectively reasonable person would do in the circumstances, '[a]ll American jurisdictions accept the idea that a person's childhood is a relevant circumstance' to be considered." (*J.D.B., supra,* 564 U.S. at 274.)

Additionally, other states have held that the "reasonableness" standard for adolescents should be the standard of a reasonable adolescent, not a reasonable adult. (See e.g., *J.R. v. State* (Alaska Ct. App. 2003) 62 P.3d 114, 114 [court committed instructional error because "the jury should have judged whether [defendant's] conduct was reckless against the standard of a reasonable juvenile—i.e., a reasonable person of his age, intelligence, and experience under similar circumstances"]; *In re William G.* (Ariz. Ct. App. 1997) 963 P.2d 287, 293 [the legislature

intended for reference to the "reasonable person" to be to juveniles of like age, intelligence, and experience for a fifteen-year-old charged with criminal recklessness for riding a shopping cart in a parking lot]; *In re Welfare of S.W.T.* (Minn. 1979) 277 N.W.2d 507, 514 [culpable negligence of juveniles charged with aiding and abetting manslaughter must be decided with reference to the conduct and appreciation of risk reasonably to be expected from an ordinary and reasonably prudent juvenile of similar age].)

The differences between children and adults has perhaps been most emphasized in the context of punishment. Eighth Amendment jurisprudence is replete with the recognition that children cannot be treated as mere miniature adults. (*Eddings, supra,* 455 U.S. at 115; *Gall, supra,* 552 U.S. at 58; *Johnson, supra,* 509 U.S. at 367; *Miller, supra,* 567 U.S. at 472, fn. 5 [" 'It is increasingly clear that adolescent brains are not yet fully mature in regions and systems related to higher-order executive functions such as impulse control, planning ahead, and risk avoidance' "].)

Citing these findings and "[d]escribing no one child in particular," *J.D.B.* stressed, "these observations restate what 'any parent knows' – indeed, what any person knows – about children generally. . . adolescents, as a class, are fundamentally different than their adult counterparts." (*J.D.B., supra,* 564 U.S. at 272-273, fn. 5; *Graham, supra,* 560 U.S. at 68; *Miller, supra,* 567 U.S. at 472, fn. 5.) Thus, *J.D.B.* held that "[p]recisely because childhood yields objective conclusions . . . considering age in [an objective] custody analysis in no way involves a determination of how youth 'subjectively affect[s] the mindset' of any particular child[.]" (*J.D.B.,* at 275.)

While *J.D.B.* was decided in the context of *Miranda*, a *Miranda* custody analysis is remarkably similar to the inquiry that must be made when assessing self-defense. In self-defense, the question is: what would

appear to be necessary to a reasonable person in a similar situation, with similar knowledge, taking into consideration all the elements which might be expected to operate on the defendant's mind. Similarly, the question of whether a suspect is "in custody" for purposes of *Miranda* is also objective. Self-defense and "custody" both look to the objective circumstances, then pose the question of how a "reasonable person" in a similar situation, with similar knowledge, would have felt (i.e., would a reasonable person feel free to leave; or, would a reasonable person feel the need to act in self-defense). The correlations between custody and self-defense are striking.

(ii) *California Law*

Like *Roper, Graham*, *Miller, J.D.B.*, and many cases preceding them, California's Legislature also relied on adolescent brain development research to justify legislation relating to youthful offenders. In 2013, the Legislature provided protections for young people by providing mandatory hearings before the Board of Parole Hearings for youthful offenders, requiring the Board to consider youth as a factor in mitigation if the defendant was age 18 or younger when they committed the controlling offense. (Senate Bill No. 260 (2013–2014 Reg. Sess.), enacting section 3051.) Citing much of the same research, in 2015 California increased the age for youth offender parole hearings for individuals who committed their crimes at or before the age of 23 (S.B. No. 261, Stats.2015, ch. 471, § 2), and in 2018, it increased it again to age 25. (§3051; Stats.2017, ch. 684 (S.B.394), §1.5, eff. Jan. 1, 2018.) The Legislature made these changes in light of scientific evidence that "certain areas of the brain, particularly those affecting judgment and decision-making, do not develop until the early-to-mid-20s." (Assem. Com. on Public Safety, Analysis of Assem. Bill No. 1308 (2017–2018 Reg. Sess.) as amended Mar. 30, 2017, p. 2.).

This Court has also repeatedly emphasized the differences between adolescents and adults in the context of punishment, beginning nearly a

decade ago. (*People v. Caballero* (2012) 55 Cal.4th 262; *People v. Gutierrez* (2014) 58 Cal.4th 1354, 1360; *People v. Franklin* (2016) 63 Cal.4th 261; *People v. Contreras* (2018) 4 Cal.5th 349.) More recently, Justice Liu has written to express concerns that it may be time for the Legislature to rethink the old *Roper* line, in light of changes in the legal and scientific landscape. (*People v. Montelongo* (2020) __ Cal.App.5th __, 274 Cal.Rptr.3d 267 (S265597: statement concurring from denying petition for review); see also *In re J.E.* (2020) __ Cal.App.5th __, 273 Cal.Rptr.3d 113, 125 (S265077: Justice Liu's statement dissenting from the denial of review, in which Justice Cuéllar concurred).

2. California Cases Have Considered Other Objective Class Characteristics, Like Youth, in the Context of Self-Defense.

In California, the "reasonable person" standard in the context of self-defense has been held to include other class characteristics, like youth, when those characteristics affect the lens through which a "reasonable person" in the defendant's position would view the situation and the need for self-defense. Three cases are particularly instructive: *Humphrey, supra,* 13 Cal.4th 1073, *Sotelo-Urena, supra,* 4 Cal.App.5th 732, and *People v. Mathews* (1994) 25 Cal.App.4th 89.

In *Humphrey, supra,* 13 Cal.4th 1073, the defendant, a battered woman who had endured years of abuse, shot her partner as he slept. At trial, she claimed self-defense and presented expert witness testimony concerning Battered Woman's Syndrom. (*Id*. at 1077-1080.) The court instructed the jury on second degree murder and voluntary and involuntary manslaughter. It also instructed the jury it could consider the evidence of intimate partner battering in deciding whether the defendant **actually believed** it was necessary to kill in self-defense, but **not** in " 'evaluating the objective reasonableness requirement for perfect self-defense.' " (*Id.* at 1081.) The defendant was found guilty of voluntary

manslaughter with personal use of a firearm, and her conviction was affirmed on appeal. (*Ibid.*) This Court reversed the Court of Appeal, holding: "The trial court should have allowed the jury to consider . . . testimony [concerning intimate partner battering] in deciding the reasonableness as well as the existence of defendant's belief that killing was necessary." (*Id.* at 1076-1077.)

This Court held "that evidence of battered women's syndrome is generally relevant to the reasonableness, as well as the subjective existence, of defendant's belief in the need to defend, and, to the extent it is relevant, the jury may consider it in deciding both questions." (*Humphrey, supra,* 13 Cal.4th at 1088-1089.) "Although the ultimate test of reasonableness is objective, in determining whether a reasonable person in defendant's position would have believed in the need to defend, the jury must consider all of the relevant circumstances in which defendant found herself." (*Id.* at 1083.) By precluding the jury from considering the evidence as it pertained to the reasonableness element of self-defense, the trial court "failed to consider that the jury, in determining objective reasonableness, must view the situation from the defendant's perspective." (*Id*. at 1086.) *Humphrey* also rejected the People's argument that by considering evidence of intimate partner battering, the Court was "changing the standard from objective to subjective, or replacing the reasonable 'person' standard with a reasonable 'battered woman' standard." (*Id.* at 1087; *People v. Ochoa* (1993) 6 Cal.4th 1199, 1205.)

"For the same reasons" as stated in *Humphrey* and *Ochoa, Sotelo-Urena, supra,* 4 Cal.App.5th 732, held that expert testimony regarding chronic homeless was relevant and admissible to both the defendant's actual belief in the need to use lethal force and the reasonableness of that belief in considering the defendant's claim of self-defense. (*Id.* at 745.) The defendant in *Sotelo-Urena,* a homeless man, was

charged with murdering another homeless man. To support his claim of self-defense, the defense sought to admit expert testimony "that individuals who are chronically homeless, like defendant, are subjected to a high rate of violence by both housed and homeless individuals, and that the experience of living for years on the streets instills a perpetual fear of violence that would have affected defendant's belief in the need to defend himself with lethal force." (*Id.* at 745-746.) The trial court found the testimony irrelevant to both perfect and imperfect self-defense and excluded it. (*Id.* at 742-743.) Sotelo-Urena was convicted of first degree murder with use of a knife.

The Court of Appeal reversed Sotelo-Urena's murder conviction, holding that expert testimony regarding chronic homelessness was relevant to both the objective and subjective components of perfect and imperfect self-defense because a "defendant claiming self-defense or imperfect self-defense is required to 'prove his own frame of mind.' [Citation.]" (*Sotelo-Urena, supra,* 4 Cal.App.5th at 745.) "In other words," the court held, "the jury was to evaluate defendant's belief in the need to use lethal force *from his perspective*." (*Ibid.,* original italics) Observing that, "[t]he relevance of expert testimony to show a defendant's perception of a threat of imminent harm has long been recognized in a different context" (*ibid.*), the court held that, "[e]vidence that would assist the jury in evaluating the situation from defendant's perspective was thus relevant." (*Id.* at 745, original italics.)

Sotelo-Urena also rejected the People's argument that allowing chronic homelessness to factor into an objective determination of whether the defendant acted reasonably for purpose of self-defense would turn an objective standard into a subjective one. The Court of Appeal observed that this Court had rejected similar arguments in both *Humphrey* and *Ochoa* and paraphrasing *Humphrey*, found that "[e]vidence of [chronic

homelessness] not only explains how a [chronically homeless individual] might think, react, or behave, it places the behavior in an understandable light." (*Sotelo-Urena, supra,* 4 Cal.App.5th at 751; *Humphrey, supra,* 13 Cal.4th at 1088.)

The Court of Appeal reached a similar conclusion in *Mathews, supra,* 25 Cal.App.4th 89. In *Mathews,* the police forcibly entered the defendant's home, after announcing their presence and receiving no response. When they entered the home, the defendant, who was legally blind and hearing impaired, confronted them with a shotgun. The defendant was convicted of exhibiting a firearm in the presence of a peace officer under then-section 417, subdivision (b) (now subd. (c)), which required, inter alia, that the person "know[], or reasonably should know," the officer was engaged in the performance of his or her duties. (§ 417, subd. (c).)

The defendant asserted self-defense and the jury was given the standard instruction on self-defense. (*Mathews, supra,* 25 Cal.App.4th at 100.) The defense proposed a special instruction, to augment the standard instruction, stating: " 'In considering the self-defense issues, you must take into account any sensory impairment the defendant had in determining how a reasonable person with such disabilities would have acted.' " (*Id.* at 98-99.) The trial court refused to give the special instruction, but permitted counsel to argue the point. (*Ibid.*) The judgment was reversed on appeal.

The Court of Appeal held: "[T]he failure to instruct on the principle of physical handicap, i.e., sensory impairment, was erroneous. It makes no sense, either in law or logic, to hold appellant to the standard of a reasonable person with normal eyesight and hearing." (*Mathews, supra,* 25 Cal.App.4th at 99.) The court also found that considering defendant's sensory impairments would not turn an objective standard into a

subjective one: "While the objective reasonable person standard remains, it is the reasonable person with a similar physical disability. . . . [¶][¶] "What is 'apparent' to a reasonable person who can see and hear is not 'apparent' to a person who is blind and hearing impaired." (*Id*. at 99-100.)

3. These Cases Reflect That The Jury Should Have Considered Youth In Deciding Both the Subjective and Objective Aspects of Self-Defense.

The foregoing cases demonstrate that evidence of adolescent brain development and jury instruction(s) to consider youth in assessing what an adolescent defendant claiming self-defense actually believed and whether that belief was reasonable, can be done without compromising the objective nature of a self-defense inquiry. Indeed, if a jury can consider intimate partner battering in deciding the question of whether a reasonable person in that circumstance would have perceived a threat of imminent injury or death, and the reasonableness of that belief (*Humphrey, supra,* 13 Cal.4th at 1088), it can certainly consider youth. Intimate partner battering is arguably more "subjective" than youth because everyone experiences adolescence and the science yields objective conclusions about adolescent brain development, but not everyone experiences being battered by their partner, chronic homeless (*Sotelo-Urena, supra,* 4 Cal.App.5th 732), or sensory impairments (*Mathews, supra,* 25 Cal.App.4th 89).

Paraphrasing *Humphrey*, "[e]vidence of [youth] not only explains how [an adolescent] might think, react, or behave, it places the behavior in an understandable light." (*Humphrey, supra*, 13 Cal.4th at 1088; *Sotelo-Urena, supra,* 4 Cal.App.5th at 751.) Here, as in *Sotelo-Urena*, "A question before the jury was what a reasonable person would have believed about the need to use lethal force, taking into consideration defendant's situation and knowledge. [Dr. Cauffman's] expert opinion would have shed light on this question." (*Id.* at 752.) Moreover, as

Mathews observed, "[i]t makes no sense, either in law or logic, to hold" an adolescent to the same standard of reasonableness as an adult. What is "apparent" to an adult may not be "apparent" to an adolescent. (Cf. *Mathews, supra,* 25 Cal.App.4th at 99-100; see e.g., *In re J.G.* (2014) 228 Cal.App.4th 402, 410 [observing that *J.D.B.* may implicate other areas including "areas of **substantive criminal law, such as** blameworthiness of [the defendant's] conduct and/or **state of mind**"], emphasis added.)

Indeed, it is not a stretch to extend *J.D.B.,* and considerations of youth to a self-defense inquiry because, as explained, the inquiry in a custody and self-defense analysis are extremely similar. Self-defense and custody both look to the objective circumstances, then pose the question of how a reasonable person in a similar situation, with similar knowledge, would have felt (i.e., would a reasonable person feel free to leave; or, would a reasonable person feel the need to act in self-defense).

Jurors here were told to consider what a "reasonable person" would have believed about the need to use lethal force, taking into consideration the defendant's situation and knowledge. (CALCRIM 505, 517.) However, petitioner's jury was comprised of adults who brought their own unique adult perspective to the trial. Due to fundamental biological and developmental differences between adolescent and adult minds, absent evidence and instructions, the jury here did **not** consider the situation from **Camarillo's perspective**.

Given the marked differences between adults and adolescents, trial counsel should have investigated, followed reasonable investigative leads, presented evidence from an expert, such as Dr. Cauffman, requested an instruction, and argued the concepts of adolescent brain development and how it impacted Camarillo's belief in the need to use self-defense and the reasonableness of that belief, matters directly relevant to perfect and imperfect self-defense. Absent evidence, instruction, and argument

concerning adolescent brain development, jurors **did not** evaluate petitioner's belief in the need to use lethal force **from his perspective.**

E. CAMARILLO WAS DENIED HIS SIXTH AMENDMENT RIGHT TO COMPETENT COUNSEL.

1. The General Law.

Under the Sixth Amendment to the United States Constitution and article I, section 15, of the California Constitution, a criminal defendant has a right to the effective assistance of counsel. (*Ledesma, supra,* 43 Cal.3d at 215; *People v. Jones* (2010) 186 Cal.App.4th 216, 234.) The standard for showing ineffective assistance of counsel is well settled. A defendant must demonstrate that: (1) counsel's representation was deficient, i.e., it fell below an objective standard of reasonableness under prevailing professional norms; and (2) counsel's representation subjected the defendant to prejudice, i.e., there is a reasonable probability that, but for counsel's failings, the result would have been more favorable to the defendant. (*Strickland, supra*, 466 U.S. at 687-696; *Ledesma,* at 217.)

"Deficient" performance means that "counsel's representation fell below an objective standard of reasonableness." (*Strickland, supra,* 466 U.S. at 688; *Pope, supra,* 23 Cal.3d at 423-425.) In evaluating a claim of ineffective assistance, courts generally grant deference to the reasonable tactical decisions of trial counsel and should attempt to avoid the distorting effects of hindsight. (*Strickland*, at 689.) However, while a court's review of trial tactics is generally deferential, "[w]e must **emphasize** . . . that deferential scrutiny of counsel's performance is limited in extent and indeed in certain cases may be altogether unjustified. '[D]eference is not abdication' [citation]; it must never be used to insulate counsel's performance from meaningful scrutiny and thereby automatically validate challenged acts or omissions. Otherwise, the constitutional right to the effective assistance of counsel would be reduced to form without

substance." (*Ledesma, supra,* 43 Cal.3d at 217, emphasis added.)

Criminal defense counsel have a duty to investigate carefully all defenses of fact and law that may be available to the defendant. (*In re Williams* (1969) 1 Cal.3d 168, 175.) To render reasonably competent assistance, in an appropriate cases, counsel may be required to obtain the services of an expert witness. (*People v. Frierson* (1979) 25 Cal.3d 142, 160-161.) The failure to investigate and utilize expert witnesses can constitute ineffective assistance of counsel when testimony from an expert would promote the defense theory of the case. (*Id.* at 166; *In re Hill* (2011) 198 Cal.App.4th 1008, 1023-1024.)

" '[A] defense attorney who fails to investigate potentially exculpatory evidence . . . renders deficient representation. [Citations.] California case law makes clear that counsel has an obligation to investigate all possible defenses and should not select a defense strategy without first carrying out an adequate investigation.' (*In re Edward S.*, *supra,* Cal.App.4th 387, 407.)" (*In re Hill, supra,* 198 Cal.App.4th at 1016-1017.) A defendant receives ineffective assistance of counsel when trial counsel's failure to investigate or prepare for trial results in the withdrawal of a potentially meritorious defense. (*Ledesma, supra,* 43 Cal.3d at 215.)

Counsel also has an obligation to follow reasonable investigative leads. "In assessing the reasonableness of an attorney's investigation, . . . a court must consider **not only the quantum of evidence already known to counsel, but also whether the known evidence would lead a reasonable attorney to investigate further**." (*Wiggins v. Smith* (2003) 539 U.S. 510, 527, emphasis added; accord, *In re Jones* (1996) 13 Cal.4th at 582.)

"[S]trategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." (*Strickland, supra,* 466 U.S. at 690-691.) "In other words, counsel has a duty to make reasonable

investigations or to make a reasonable decision that makes particular investigations unnecessary." (*In re Jones, supra,* 13 Cal.4th at 565.) A decision on strategy and tactics that is not founded on adequate investigation and preparation, is not a rational and informed decision, and "such a decision . . . – no matter how unobjectionable in the abstract – is professionally deficient." (*Ledesma,* at 215.)

2. Counsel's Deficient Performance.

Trial counsel unreasonably failed to investigate or follow reasonable investigative leads by not consulting with, and calling an expert to testify about adolescent brain development and by failing to request an instruction on youth relative to self-defense. Counsel's failures were not based on valid tactical reasons.

While trial counsel refused to provide a declaration in this matter, despite numerous requests from appellate counsel (Exh. A, ¶¶14, 15), he did speak to appellate counsel and provide her with what he represented to be Camarillo's "entire" trial file, including the file from petitioner's juvenile court proceedings. (*Id*. ¶ ¶ 7 & 11, 12.) The file contained no evidence to indicate trial counsel conducted any investigation, researched adolescent brain development, consulted with, or retained an expert on the subject prior to trial. (Exh. A, ¶12.)

Trial counsel, David Nelson, knew (or should have known) about the concepts associated with adolescent brain development. As discussed, Dr. Cauffman testified at petitioner's transfer hearing providing a wealth of information. Counsel's file included the reporter's transcript from Camarillo's transfer hearing and Dr. Cauffman's testimony. (Exh. A, ¶13.) The record from the transfer hearing would have altered competent counsel of the need to further investigate and consult with a qualified expert on how normative adolescent behavior impacts the subjective belief in the need to use deadly force, and whether the belief is objectively

reasonable.

Had trial counsel investigated and consulted an expert like Dr. Cauffman, in addition to what was presented at the transfer hearing, counsel would have learned that adolescents are more reactive in threatening situations, like the situation Camarillo experienced when he believed he saw Rios reaching for a gun, and was afraid. Research has shown that under negative emotional arousal, adolescents react more impulsively than adults. (Exh. B, ¶11.) Also, when adolescents are negatively aroused they make more mistakes than older adults. (*Ibid.*) And, when they are under duress, as Camarillo was when he was confronted by Rios and the other Norteños, adolescents do not use the more advanced parts of their brain. Their reactions are primitive, such as fight or flight, and these reactions are exaggerated in stressful situations. Under stress, adolescents have even **less** ability to use cognitive, higher-order thinking processes. (*Ibid.*)

According to Dr. Cauffman, a 16-year-old in a stressful situation where one's life is in danger, would be unable to regulate his emotions, impulse-control, harm-avoidance, or decision-making effectively because the prefrontal cortex, responsible for such self-regulatory behavior, has not yet fully matured at that age. (Exh. B., ¶15.) Also, early exposure to stress and trauma, affect those regions of the brain responsible for regulating behavior, emotion, and cognitive processes. These factors, combined with being in a threatening situation, like petitioner faced when he believed Rios was reaching for a gun, could cause an adolescent to respond impulsively. The stress of being in fear for one's life, could also cause an adolescent in Camarillo's situation to potentially overreact. This is because adolescents are more prone to make mistakes in threatening situations because they are not using the more advanced parts of their brain when under duress. An adolescent in what they perceive to be a life-

threatening situation, could impulsively respond with deadly force before thinking through the future consequences of their actions. Mid-adolescents, like petitioner, often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them. (*Ibid.*)

According to Camarillo's declaration, Nelson told him he was not going to call an expert to testify at trial about adolescent brain development because he was going to admit Dr. Cauffman's testimony from the transfer hearing. (Exh. D, ¶11.) The fact that trial counsel discussed this topic with petitioner reflects counsel's awareness of the need to admit expert testimony. However, the record from the direct appeal reflects counsel never attempted to admit such evidence.

While Nelson told Camarillo he would seek admit Dr. Cauffman's testimony from the juvenile transfer hearing at trial, he told appellate counsel a different story when asked if he consulted an expert on the characteristics of youth and if so, why he did not offer evidence of adolescent brain development at trial. (Exh. A.) When discussing petitioner's youth, trial counsel focused only on the specifics of Camarillo's childhood, and not the broader, objective concepts of "youth" as a class.

Nelson said he considered the fact Camarillo was only 16 years old at the time of the shooting and that he had a tumultuous upbringing. However, he did not present evidence of adolescent brain development because he believed it would have opened the door to the admission of other evidence he had successfully moved to exclude, specifically more gang evidence and evidence of an uncharged crime. (Exh. A, ¶8.) Nelson was also concerned that if he attempted to admit evidence of Camarillo's abusive childhood it would focus the case too much on petitioner, and he wanted to keep the focus on Rios and how Rios and his group were the aggressors. (Exh. A, ¶9.)

Counsel's stated tactical reasons for not investigating or following reasonable investigative leads were not founded on adequate investigation and therefore are not reasonable. Counsel's main reason for not presenting evidence of adolescent brain development was that he sought to avoid opening the door to the potential admission of negative evidence about Camarillo that he had successfully excluded. Fundamentally, however, counsel did not recognize that "youth" is an objective class characteristic that yields objective conclusions, and "in no way involves a determination of how youth 'subjectively affect[s] the mindset' of any particular child[.]" (*J.D.B., supra,* 564 U.S. at 275.) Had counsel read the opinion in *J.D.B.,* he would have understood that objective information on **normative** adolescent behavior **would not** have opened the door to anything in particular about Camarillo, because the testimony would not have been about petitioner in particular.

Failure to investigate is often intertwined with, or caused by a misconception about the applicable law. (See e.g., *Correll v. Ryan* (9th Cir. 2008) 539 F.3d 938, 945 [counsel's failure to gather evidence did not result from its unavailability; "it resulted from counsel's complete failure to ask any relevant questions"]; *In re Jones, supra,* 13 Cal.4th at 566.) But counsel is required to know the applicable law. (*People v. Plager* (1987) 196 Cal.App.3d 1537, 1543.) Therefore, counsel knew or should have known that a jury considering self-defense must consider what would appear to be necessary to reasonable person in a similar situation, with similar knowledge, considering all the elements in the case which might be expected to operate on the defendant's mind. (*Humphrey, supra,* 13 Cal.4th at 1082-1083.) And, considering a "reasonable person" in petitioner's situation required considering youth.

Indeed, if Nelson had simply read Dr. Cauffman's testimony from the transfer hearing he would have seen that the prosecutor asked Dr.

Cauffman multiple times whether she had ever met Camarillo, and whether the research in the area pertained to him in particular. Each time Dr. Cauffman explained that the research and findings applied to adolescence **as a class**, and were not specific to any adolescent in particular. In fact, Dr. Cauffman had never met Camarillo. (J43702, 8RT 338-339, 344, 346-347.)

However, it appears counsel did not read Dr. Cauffman's testimony from the transfer hearing. This is apparent first because he did not understand that her testimony would have had nothing to do with Camarillo in particular. Second, although counsel purported to send appellate counsel his "entire file," there was no billing, notes, research, or anything to indicate counsel actually read Dr. Cauffman's testimony. (Exh. A, ¶12.)

If counsel did not read Dr. Cauffman's testimony, and it appears he did not, then he did not make an **informed** tactical decision not to admit evidence of adolescent brain development. A decision on strategy and tactics that is not founded on adequate investigation and preparation, **is not a rational and informed decision**, **and "such a decision . . . – no matter how unobjectionable in the abstract – is professionally deficient**." (*Ledesma, supra,* 43 Cal.3d at 215, emphasis added; *Morris v. California* (9th Cir. 1991) 966 F.2d 448, 454-455 [counsel's performance was deficient because he had not "done his homework" in researching the relevant law].) "There is nothing strategic about ignorance." (*Smith v. Lewis* (1975) 13 Cal.3d 349, 359.)

Moreover, counsel's explanation that he wanted to keep the focus on Rios and the fact that his group were the aggressors, and that evidence of adolescent brain development would focus too much attention on Camarillo fails to consider two **critical** points: First, that the concepts associated with adolescent brain development also applied to Rios, who

was 19 years old at the time; and second, counsel needed to focus the jury's attention on Camarillo because his defense was self-defense!

First, the findings outlined by Dr. Cauffman would have helped explain why Rios would take the impulsive, ill-advised action that he did–setting the entire chain of events into motion. Adolescents, like Rios, are more likely to engage in risky behavior and especially when their peers are present. This helps explain why Rios would not walk away after Jimenez urged him to go home. Rios was with his peers, which exacerbated his predisposition to engage in risky behavior and make poor decisions. Rios was not using the higher-order processing centers of his brain when he created the situation that led to the need for self-defense. Rios engaged in impulsive, risky behavior that reflected poor decision making. Thus, evidence of adolescent brain development would have **supported** the defense that Rios was the aggressor and presented an imminent threat or death or great bodily injury. (*Sotelo-Urena, supra,* 4 Cal.App.5th at 749 [a defendant is entitled introduce expert testimony to corroborate his own narrative].)

Second, counsel's decision not to admit evidence of adolescent brain development because he did not want the jury to focus too much on Camarillo is **not** a viable tactical reason when the defense at trial is self-defense. A defendant claiming self-defense is **required** to "prove his own frame of mind." (*Davis, supra,* 63 Cal.2d at 656; *Minifie, supra,* 13 Cal.4th at 1065 [" 'The defendant's perceptions are at issue. . . .' "].) To evaluate whether a defendant's belief in the need to defend is objectively reasonable, " '. . . a defendant is **entitled** to have a jury take into consideration all the elements in the case which might be expected to operate on his mind. . . .' " (*Humphrey, supra,* 13 Cal.4th at 1083.) Youth is the most critical operating on an adolescent's mind. To paraphrase *Humphrey*,"[e]vidence of [adolescent brain development] not only explains

how [an adolescent] might think, react, or behave, it places the behavior in an understandable light." (*Humphrey, supra*, 13 Cal.4th at 1088; *Sotelo-Urena, supra,* 4 Cal.App.5th at 751.) Thus, counsel's strategy not to focus the jury on petitioner's mental state when advancing self-defense is manifestly unreasonable.

Finally, counsel's "big concern" over the gang enhancement, and that the prosecution might admit more gang evidence, was not a valid tactical reason for not admitting evidence of adolescent brain development. First, it is not likely the prosecutor would have been permitted to admit more gang evidence about Camarillo in particular because evidence of adolescent brain development pertains to adolescents as a class, and not Camarillo in particular. Also, gang membership does not rebut the science. Second, the worst thing that could have happened ***if*** the prosecution admitted more gang evidence was that the jury would have found the gang enhancement true–but in context, it didn't matter. Petitioner was facing first degree murder charges with a 25-year-to-life firearm enhancement. There was no dispute at trial that Camarillo fired a gun, the only question was whether he did so in self-defense. Thus, if the jury did not find self-defense, it would assuredly find petitioner guilty of murder and the firearm enhancement true. If the jury also found the gang enhancement true, it would have made no practical difference. Under *People v. Rodriguez* (2009) 47 Cal.4th 501, 508-509, gang and firearm enhancements cannot be imposed for a single offense of using a firearm in commission of violent felony. (§1170.1, subd. (f).)

Counsel's decision to forego the presentation of evidence extremely relevant to self-defense in order to avoid the speculative potential admission of more gang evidence which would not have affected Camarillo's sentence, was not a reasonable tactical decision that benefitted petitioner. A strategic decision is one made "on the basis of sound legal

reasoning, to yield some benefit or avoid some harm to the defense." (*Moore v. Johnson* (5th Cir. 1999) 194 F.3d 586, 615.) Counsel did not make this decision after thoroughly investigating the law and facts relevant to all plausible lines of defense and thus, his decision was unreasonable.

In short, not one of trial counsel's reasons for not presenting evidence of adolescent brain development was a sound tactical decision that a reasonable attorney in the same situation would make. Trial counsel made poor decisions because he did not conduct investigation, or follow even the most basic investigative leads by simply reading Dr. Cauffman's testimony from the transfer hearing. The failure to investigate, or to follow the lead established by Dr. Cauffman's testimony at the transfer hearing was deficient performance. (*Wiggins, supra,* 539 U.S. at 527-528 [counsels' decision to end their investigation in the face of "evidence that would have led a reasonably competent attorney to investigate further . . . **[made] a fully informed decision with respect to . . . strategy impossible**"], emphasis added; accord, *In re Lucas* (2004) 33 Cal.4th at 725.) "Ineffectiveness is generally clear in the context of complete failure to investigate because counsel can hardly be said to have made a strategic choice against pursuing a certain line of investigation when s/he has not yet obtained the facts on which such a decision could be made." (*United States v. Gray* (3d. Cir. 1989) 878 F.2d 702, 711.)

Lastly, it bears emphasizing that whether, **after** conducting a reasonable investigation and following reasonable investigative leads, trial counsel would have ultimately admitted evidence of adolescent brain development is **not** the deciding factor here in considering whether counsel's performance was deficient. According to the Supreme Court, " 'our principal concern in deciding whether [trial counsel] exercised "reasonable professional judgment], [citation], is **not** whether counsel should have presented [the evidence]. **Rather, we focus on whether the**

investigation supporting counsel's decision not to introduce . . . [the] evidence . . . was *itself reasonable.*" (*Wiggins, supra,* 539 U.S. at 521; *id.* at 522-523, original italics, bold added.)

Petitioner has established deficient performance. When, as here, decisions are uninformed and strategy and tactics are not founded on adequate investigation and preparation, counsel's "action – no matter how unobjectionable in the abstract – is professionally deficient." (*Ledesma, supra,* 43 Cal.3d at 215.) An uninformed decision can never be a reasoned strategy. "It is, in fact, no strategy at all." (*Correll, supra,* 539 F.3d at 949.)

F. REVERSAL IS REQUIRED.

" 'When a defendant challenges a conviction, the question is whether there is a reasonable probability that, absent [trial counsel's] errors, the factfinder would have had a reasonable doubt respecting guilt.' " (*In re Hill, supra,* 198 Cal.App.4th at 1028, quoting *Strickland, supra,* 466 U.S. at 695.) " 'A reasonable probability is a probability sufficient to undermine confidence in the outcome.' " (*Ibid.*) However, petitioner need **not** show that counsel's deficient performance more likely than not altered the **outcome** of the case. (*Strickland,* at 693-694.) "The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." (*Id*. at 686; *In re Visciotti* (1996) 14 Cal.4th 325, 351-352.)

Prejudice is established when counsel's acts or omissions deprived the petitioner "of an adjudication of a crucial or potentially meritorious defense." (*People v. Shaw* (1984) 35 Cal.3d at 541.) It is sufficient if the defense not presented was potentially meritorious, and the petitioner was denied an adjudication on the matter because of his counsel's inadequate

factual and legal preparation. (*In re Hall'* (1981) 30 Cal.3d at 434.)

The facts here were **more than enough** to create a reasonable doubt as to whether petitioner acted in perfect, and especially imperfect self-defense, but the jury rejected self-defense. Camarillo's frame of mind, and what he actually and reasonably believed when the need for self-defense arose, began with the terrifying, unprovoked attack by members of the Norteño gang at the 7-Eleven just minutes before the second attack. The videos from 7-Eleven attack speak volumes. (Peo's trial exh. Nos. 1 & 28.) This was not just some minor scuffle. These Norteños were, as trial counsel put it, out for blood. They were aggressive and **extremely** violent. Garcia started what the People's gang expert and even Jimenez characterized as an unprovoked attack (9RT 402 & 7RT 154) by punching Hernandez directly in the face. Hernandez ran away, but the assault on Camarillo's group was far from over.

Garcia engaged Melendez in a fist-fight while Ramirez paced around them, keeping his hand on his waistband in a manner that would indicate to **any reasonable person** that he had a weapon. (E.g., Exh. 28 [Ch. 14 at 20:42:35], Exh. No. 1 [Ch. 13 at 20:43:25–43:36].) Camarillo and Hernandez reasonably believed Ramirez had a gun. (Exh. D, ¶8; 8RT 321, 335.) And the People's gang expert confirmed their beliefs were reasonable, by testifying that Norteños would be **expected** to have a weapon in this type of situation. (9RT 405.)

The violence inflicted on petitioner's group only increased when they attempted to retreat. In addition to slashing their car tire, Garcia threw several objects at the car, including beer cans and a large heavy commercial trash can lid which miraculously did shattered the car windows. Jimenez was similarly out of control. She attempted to punch Hernandez in the face, and slam the car door on his feet. Then she beat on the hood of the car with her closed fists yelling "Norte!" (Exh. No. 1 [Ch.

12 at 20:43:44], 8RT 282.)

When appellant left the 7-Eleven, he was terrified. He reasonably believed Ramirez had a gun and he knew Garcia had a knife or similar object. (Exh. No. 1 [Ch. 12 at 20:43:58.) He also knew Hernandez and Melendez were violently attacked by older, bigger Norteño gang members who did not hesitate to inflict physical harm or destroy property, and that the attack only intensified when Camarillo's group attempted to retreat.

These were the facts known to Camarillo when, only about 20 minutes, later he was violently confronted by the Norteños again at the taco stand. Just the mere fact the Norteños were back would invoke fear of imminent grave danger. Even Jimenez had a "bad feeling" and knew there would be violence. (7RT 165-166.) Thus, she attempted to persuade Rios to leave and when that failed, she called her cousins for back up. (7RT 166-167.)

There was no dispute that the Norteños started the confrontation and were the aggressors at the taco stand. Every witness testified that Rios's and Ramirez's body language indicated they wanted to fight. (7RT 166, 8RT 220, 224-226, 232, 246.) Uscangea testified that Ramirez was trying to hold Rios back from attacking petitioner's group. (8RT 247-248, 260.) Hernandez saw multiple people wearing Norteño gang colors "all scattered" around, including Garcia, who had a knife. (8RT 294.)

According to Jimenez, Rios the main person "talking shit." (7RT 143.) Ramirez paced behind him, holding onto his waistband, as he had done at the 7-Eleven, leading Camarillo and Hernandez to believe Ramirez had a gun. (8RT 299-300, 332, 335, Interrogation transcript at 16-17; Exh. D.) Any reasonable person watching the video from the 7-Eleven, showing Ramirez "pacing" around holding his side or his pocket, would believe he had a gun. (Exh. No. 1 [Ch. 13 at 20:43:25–43:36].) Camarillo was standing right next to Hernandez as the volatile confrontation

escalated.

While Rios was in the midst of a very combative confrontation with Hernandez, and Ramirez was pacing around seemingly ready to draw his weapon, Rios made a sudden motion towards his waistband while simultaneously aggressively advanced towards Camarillo. (8RT 301-302, 330, 9RT 431-434, 454.) According to independent percipient witness Uscanga, Rios made a motion as though he was going to rip his shirt off, tearing it off his chest from the middle outward, took a fighting stance, and approached Camarillo straight on. Uscanga testified Rios was moving his hands upward from his waistband area and advancing on Camarillo when Camarillo fired at him. (8RT 242-244, 248, 256-257, 260-262.) Hernandez and Mangskau also testified Rios took several aggressive steps, and was moving quickly towards Camarillo when he fired the gun. (8RT 302, 331, 9RT 431-434, 454-455.)

Given the testimony at trial, petitioner submits there can be **no question** Rios presented an imminent threat of death or great bodily injury– but the jury rejected self-defense. Thus, the question of whether Camarillo subjectively believed in the need to use deadly force, and whether his belief was objectively reasonable, was squarely before the jury. (*Humphrey, supra,* 13 Cal.4th at 1088; *Sotelo-Urena, supra,* 4 Cal.App.5th at 756.) Evidence of adolescent brain development was relevant to both inquiries.

A reasonable probability exists that, if presented with Dr. Cauffman's testimony regarding adolescent brain development, the jury would have either acquitted Camarillo, or found him guilty of manslaughter and attempted manslaughter. Dr. Cauffman would have testified about the empirical data which reflects that when an adolescent is in a stressful, fearful situation, the primitive parts of the brain dominate. They go into a "fight or flight" mode but, unlike adults, adolescents tend

not to take flight. Research and studies have shown that when adolescents are faced with the choice, they tend to approach the threat rather than withdraw from it. (8RT 333.) This is because adolescents rely more on the amygdala than the frontal lobe, which regulates impulse control, long-term thinking, and decision-making, and has simply not fully developed in a 16 year old. (8RT 329, 333-334, 342-345.) The higher-order thinking centers of the brain are not fulled connected and operational in a 16 year old. And, higher-order thinking is even less likely to happen in a stressful, fearful situation, such as the one petitioner found himself in.

Dr. Cauffman would have explained that adolescents are also generally more inclined to engage in risky behavior especially in the presence of their peers. These factors, combined with being in a threatening situation like Camarillo was in when he believed Rios was reaching for gun, could cause him to respond impulsively. The stress of being in fear for one's life, could also cause an adolescent in Camarillo's situation to potentially overreact because adolescents are more prone to make mistakes in threatening situations since they are not using the more advanced parts of their brains, especially under duress. An adolescent in what they perceive to be a life-threatening situation could impulsively respond with deadly force before thinking through the future consequences of their actions. Mid-adolescents, like petitioner, often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them. Indeed, Camarillo declared that he acted impulsively, firing the weapon without thinking through the potential consequences of his action. (Exh. D, ¶7.)

Whatever the jury believed a reasonable person in this situation should have done, it clearly required higher-order thinking from the frontal lobe or prefrontal cortex – which has simply **not developed to that point** in a 16-year-old. Camarillo had to make a split-second decision under

extremely stressful conditions, relying on the primitive parts of his brain. As he stated in his declaration, he felt threatened and his gut immediately alerted him of danger. His heart was beating fast and his mind was racing. He reacted without thinking of the consequences. (Exh. D, ¶7.)

With a broader understanding of how a 16 year old in Camarillo's position may have perceived and reacted to the situation, jurors could have reached a result far more favorable to Jesus. To paraphrase *Humphrey*, "[e]vidence of [youth] not only explains how [an adolescent] might think, react, or behave, it places the behavior in an understandable light." (*Humphrey, supra*, 13 Cal.4th at 1088; *Sotelo-Urena, supra,* 4 Cal.App.5th at 749 [presenting expert testimony would permit the defendant to " 'present the matter to the jury fully and under the most favorable circumstances" '], quoting *People v. Smith* (1907) 151 Cal. 619, 629.)

The lack of evidence of adolescent brain development was also prejudicial to count 2, the attempted murder of Ramirez. Not only did petitioner have the legal right to pursue his aggressor until the threat had subsided, Camarillo could have reasonably perceived him as a threat, even though he was running from the scene. Dr. Cauffman's testimony would have explained to the jury that adolescents lack impulsive control, the ability to regulate their emotions, and to evaluate the long-term consequences of their behavior. Dr. Cauffman also would have explained that adolescents tend to make poor decisions and to act rashly. It was necessary for the jury to consider these normative biological characteristics in considering how petitioner assessed the threat, and the reasonableness of his belief that he Ramirez was an imminent threat. As in *Humphrey*, "the expert testimony in this case was . . . relevant 'to explain a behavior pattern that might otherwise appear unreasonable to the average person.' " (*Humphrey, supra,* 13 Cal.4th at 1088.)

From the evidence presented, and the jury's verdict, it jurors had doubts. By acquitting Camarillo of first degree murder and finding the gang enhancements not true, the jury rejected the prosecution's theory that this was a premeditated gang-retaliation killing. The second degree murder verdict means the jury did not believe petitioner premeditated this killing or that he planned to kill, but that he formed his intent to kill only under the immediate circumstances of the confrontation. This finding is entirely consistent with voluntary manslaughter arising from imperfect self-defense. (*People v. Vasquez* (2006) 136 Cal.App.4th 1176, 1180.)

This case had many objective indications of a close case, indicating the jury was struggling to decide one question: Camarillo's mental state when he fired the gun. In addition to the acquittal on first degree murder and not true finding on the gang enhancements, the jury made several requests to have testimony regarding self-defense read back during deliberations. It requested a readback of: 1) the pathologist's testimony (CT 189); 2) Uscanga's testimony specifically regarding Rios's "actions prior to the shooting" (CT 188); and 3) Hernandez's testimony (CT 187). These requests are extremely telling. For example, because cause of death was not in dispute, the pathologist's testimony was likely important to the question of how Rios's body might have been positioned when the fatal shot was fired. The pathologist testified Rios could have been turning, and the prosecutor confirmed in argument the fatal shot was fired as Rios turned to run. (11RT 556.) Jury questions during deliberations are a sign of a close case. (*People v. Pearch* (1991) 229 Ca1.App.3d 1282, 1295.)

Significantly, the jury also requested "clarification of [the] definition of second degree murder and manslaughter" (CT 194), which reflects the jury was struggling between the two, and it can be reasonably inferred that the elements of second degree murder were difficult questions for the jury. Manifestly, Dr. Cauffman's testimony bearing directly on the question of

Camarillo's mental state was imperative to this choice. The jury also deliberated for nearly two full days (CT 184, 196, 209), when the issues in the case were straightforward.

Had Dr. Cauffman testified about adolescent brain development, jurors could have had reasonable doubt that appellant acted with malice. Camarillo did not have "to prove the homicide was justified; []he merely has to raise a reasonable doubt that it might have been." (*Humphrey, supra,* 13 Cal.4th at 1103 (conc. opn. of Brown, J.); *id.* at 1090 ["The actual verdict was reasonable, but so too would have been a different one"].)

A defendant need only raise a reasonable doubt in the mind of **one juror** to either escape liability or put the People to the burden of retrying the case, either of which is more favorable outcome than a conviction. (*People v. Soojian* (2010) 190 Cal.App.4th 491, 521.) Thus, counsel's failures were prejudicial. The judgment must be reversed.

III.

CAMARILLO WAS DENIED HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE COUNSEL BECAUSE HIS TRIAL ATTORNEY DID NOT INVESTIGATE OR PRESENT TESTIMONY FROM A USE-OF-FORCE EXPERT, NECESSARY TO EXPLAINING THAT CAMARILLO WAS ACTING IN SELF-DEFENSE EVEN THOUGH RIOS WAS SHOT IN THE BACK.

A. INTRODUCTION.[7]

Camarillo was denied his Sixth Amendment right to effective counsel, within the meaning of *Strickland, supra,* 466 U.S. 668, and the Sixth Amendment (Cal. Const., art. I, §15; *Ledesma, supra,* 43 Cal.3d at 215), because his trial attorney should have, but did not investigate, consult an expert, or present testimony from a use-of-force expert to explain to the jury that petitioner was acting in self-defense even though Rios was shot in the back. This evidence was absolutely essential to bolstering petitioner's plea of self-defense and rebutting the prosecution's theory that he did not act in self-defense because Rios was shot in the back.

B. COUNSEL'S DEFICIENT PERFORMANCE IN THIS CASE WAS PREJUDICIAL TO APPELLANT.

As discussed, "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." (*In re Jones, supra,* 13 Cal.4th at 565; *In re Marquez* (1992) 1 Cal.4th at 602; *Strickland, supra,* 466 U.S. at 690-691.) A decision on

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[7] Petitioner incorporates his discussion of the law of self-defense, the general law concerning his right to the effective assistance of counsel, and the discussion of prejudice set forth in the previous argument. (Arg. II.C, E.1, & F.)

strategy and tactics that is not founded on adequate investigation and preparation, is not a rational and informed decision, and "such a decision . . . – no matter how unobjectionable in the abstract – is professionally deficient." (*Ledesma, supra*, 43 Cal.3d at 215.)

The fact that Rios was shot in the back and Camarillo was asserting self-defense was a vital fact defense counsel could not ignore. Defense counsel said he discussed it with his investigator, a former Sheriff's deputy, and was advised that he would "have a real tough time" arguing that shots to the back were fired in self-defense, so he did not pursue the matter further. Counsel did no other pre-trial "investigation." In hindsight, trial counsel felt he got important evidence before the jury at trial when he elicited the coroner's testimony that the shot to Rios's left side could have been fired as Rios was turning to run. (Exh. A, ¶10.)

Counsel's stated reason for not consulting and calling a **qualified expert,** such as Mr. Chuck Joyner (Exh. C), to testify at trial was not reasonable. Trial counsel claims he "investigated" because he discussed it with his investigator. However, counsel simply took his investigator's word that counsel would "have a real tough time" arguing self-defense at face value and did nothing further. This was not reasonable for several reasons.

Most significantly, counsel could not simply ignore that Rios was shot in the back. Thus, counsel had to prepare to explain how an aggressor can be shot in the back, even while a person is acting in self-defense. As the declaration of Mr. Joyner demonstrates, had counsel conducted an investigation and consulted a qualified expert, he would have learned that it was not "tough" at all to explain how Rios ended up being shot in the back while Camarillo was acting in self-defense. Given the importance of the issue, reasonably competent counsel defending a case of this caliber would not have simply ended his investigation into this matter. "

'[S]trategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation.' " (*Wiggins, supra,* 539 U.S. at 527-528 [the decision "to abandon their investigation at an unreasonable juncture, **[made] a fully informed decision with respect to . . . strategy impossible**"], emphasis added; accord, *In re Lucas, supra,* 33 Cal.4th at 725; *Strickland, supra,* 466 U.S., at 690-691.)

Secondly, there is no evidence Nelson's investigator was qualified to opine on the matter at hand. Nelson did not indicate his investigator possessed any specialized training or knowledge, beyond that of any ordinary Sheriff's deputy, which qualified him to render an opinion, or justified counsel's exclusive reliance on his opinion. The fact that numerous studies have explained that a suspect can be shot in the back by a person acting in self-defense, particularly in the context of police shootings, readily reflects that counsel's investigator was **not qualified** to render an opinion on this subject. (See e.g., William J. Lewinski, *New Developments in Understanding the Behavioral Science Factors in the "Stop Shooting" Response*, <https://www.iletsbeiforumjournal.com/ images/Issues/FreeIssues/ ILEEF%202009-9.4.pdf> [as of Oct. 1, 2019], at 49.)

Many studies conducted in the context of police shootings have often found shootings to be justified even when a suspect is shot numerous times in the back. (See e.g., https://www.usconcealedcarry.com /blog/response- time-human-factors-self-defense-shooting ["Extensive experiments conducted by William J. Lewinski, Ph.D., Director, Force Science Research Center, have determined that a suspect can retrieve a gun from the waistband, point and fire in 9/100ths of a second, while an officer, upon perceiving the threat, will take 31/100ths of a second to pull the trigger. This time includes 25/100ths for perception processing time

and 6/100ths of a second for reaction/motor time"].)

Other studies conducted on a controlled group of police officers, as described in Wound Ballistics Review (the Journal of the International Wound Ballistics Association), in 1997, by Ernest Tobin and Martin Flackler, M.D., concluded that: "The reaction-response and 'turn' times show that persons can turn their torsos and end up facing away from a shooter by the time a gun is fired even though they were facing the gun at the time the shooter decided to fire." (http://thinlineweapons.com/IWBA/1997-Vol3No1.pdf, at 6.) The same publication observed, "we have shown that a person who decides to turn rapidly at the time a shooter decides to shoot can easily be hit in the side or back due to the reaction-response time required to fire a handgun." (*Id.* at 9.)

If counsel had conducted nothing more than a simple Google search, he would have rejected his investigator's conclusion that counsel was going to have "a real tough time" arguing that self-defense because Rios was shot in the back. As demonstrated by the attached declaration of Mr. Joyner, a **qualified expert** in the area of use-of-force would have provided the jury with an easily understandable explanation of how Rios ended up being shot in the back while Camarillo was acting in self-defense. As discussed more below, because Camarillo fired the first shot in self-defense, and the shots were fired in rapid succession, all three shots were fired in self-defense. By not conducting reasonable investigation before selecting a defense strategy, counsel did not act as a reasonably competent attorney would, and petitioner has established deficient performance.

C. REVERSAL IS REQUIRED.

The absence of testimony from a qualified use-of-force expert was extremely prejudicial to petitioner. The fact that Rios was shot in the back was very likely a huge factor causing the jury to reject self-defense. The

average juror would instinctively reject self-defense upon learning that the person was shot in the back. It is common knowledge that someone running away no longer presents an imminent threat of great bodily injury or death, and the prosecutor capitalized on this in argument.

In argument, the prosecutor repeatedly emphasized that Rios had been shot in the back. The prosecutor began closing argument by reminding jurors that Camarillo "shot and killed Sulpicio Rios as [he] was running away. He got shot in the back and killed. . . .[¶] This is not a self-defense case." (11RT 541.) Petitioner didn't shot Rios once in the foot, argued the prosecutor, "[h]e aimed and shot at Mr. Rios, and continued shooting, even though Mr. Rios was running away . . ." (11RT 558-559.) The prosecutor told the jury Camarillo "just pull[ed] out a gun and [shot] an unarmed man in the back three times . . ." (11RT 563.)

The same theme continued in rebuttal. The prosecutor argued that Camarillo intentionally shot Rios who had "turned away and [was] running for his life." (11RT 575-576.) According to the prosecutor, Rios didn't deserve to be shot in the back while he was fleeing. "You cannot do that in our society. [¶] You don't get imperfect self-defense and self-defense unless you basically believe at that point that you are instantly about to die or suffer great bodily injury." (11RT 578.) Just before the jury retired to deliberate, the prosecutor ended with: "There's no self-defense, in that the facts does [sic] not support the [sic] self-defense . . . [¶] Bottom line, you cannot shoot unarmed people in a crowded parking lot as they're running away . . ." (11RT 584.)

There is no doubt that Rios being shot in the back was an extremely essential aspect of the prosecution's case. In returning a verdict of second degree murder, the jury had to accept the prosecutor's argument. It explains the second degree murder verdict and rejection of self-defense which, petitioner contends, is **against** the weight of the evidence.

That Rios was shot in the back was a fact that could not be ignored. Defense counsel needed to explain to the jury how it happened, and an expert such as Mr. Joyner would have done that. Mr. Joyner would have explained to the jury that at the moment Camarillo decided he had no choice but to fire the weapon in self-defense, Rios decided to turn and run; **but,** the fact that Rios had turned to run, **did not mean** Camarillo was no longer acting in self-defense.

According to Mr. Joyner, Rios presented an imminent threat of lethal harm when petitioner fired the first shot because Rios was advancing on Camarillo while making a motion towards his waistband, which would reasonably indicate he had a weapon.[8] The evidence established that Camarillo fired all three shots in rapid succession. Thus, if jurors determined Camarillo fired the first shot in self-defense, then all the shots were fired in self-defense. (Exh. C, ¶¶ 9, 10.) The location of an injury to a person posing an imminent threat of great bodily injury or death is not dispositive of whether the shooter acted in self-defense. (Exh. C, ¶ 9.)

Though Rios was advancing on Camarillo when he fired, Rios turned at the same moment and Camarillo decided he had no choice but to shoot in self-defense. Thus, Camarillo did not have enough time to

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[8] Police officer shootings are often found to be justified in situations where the suspect is shot multiple times in the back after a suspect reaches for their waistband. (See e.g., https://www.washingtonpost.com /news/the-watch/wp/2014/08/29/when-unarmed-men-reach-for-their-waistbands/ ["According to **four** of the officers, [the suspect] ignored their commands and instead **reached for the waistband** of his pants. **Fearing that he was reaching for a gun, all five officers opened fire.** They fired about twenty shots in two to three seconds . . . [¶] To decide this case a jury would have to answer just one simple question: **Did the police see [the suspect] reach for his waistband? If they did, they were entitled to shoot"**].)

process the information that Rios had turned and was potentially no longer a threat. (Exh. C, ¶ 10.) This phenomenon has been explained by the OODA loop and human response time. (*Ibid.*)[9] It takes an average trained police officer one to one-and-one-half seconds in a dynamic, "real-world," life-threatening encounter to process the information that the threat has subsided–to Observe that the suspect has turned and process that information; to Orient to the fact that the danger had abated, which could take several seconds; to Decide to stop shooting; and to Act by ceasing movement on the trigger–however, by this time, eight-to-nine rounds could be fired. (Exh. C, ¶ 10.)

Additionally, even though Rios had turned to run, it did not necessarily mean he was no longer a potential threat. (Exh. C, ¶ 11.) A suspect can be running away and still turn and fire a weapon. It takes only a **fraction** of a second to turn and shoot, even while running. (*Ibid.*) And, armed suspects often run to gain a tactical advantage; to obtain cover and shoot from a protected vantage-point. (Exh. C, ¶ 12.)

Rios and Ramirez could have been running to obtain cover, to gain a tactical advantage and open fire on petitioner's group from a distance. Just because Ramirez was running away from the immediate scene did not mean the threat of lethal force had subsided. Mr. Joyner's testimony would have given the jury a basis on which to find self-defense as to Rios and Ramirez, and to rebut the prosecutor's argument.

Petitioner submits that testimony from an expert like Mr. Joyner would have made the difference between conviction and acquittal, or at a minimum, would have resulted in manslaughter and attempted manslaughter convictions. As thoroughly discussed in the previous issue

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[9] "OODA" is an acronym for: Observe, Orient, Decide, and Act; a theory developed in the 1950's used by our U.S. Military Forces to gain an advantage against our enemies in combat.

(Arg. I.F.), there was overwhelming evidence Camarillo acted in self-defense–he did not fire the weapon until Rios aggressively advanced towards him while simultaneously making a motion towards his waistband, a place where people commonly carry a weapon. This case had numerous objective indications of a close case and the jury had narrowed its choice to between second degree murder and manslaughter on count 1. It is reasonably likely, however, the jury settled on murder because it just could not get past the fact that Rios was shot in the back. Had counsel investigated and presented an expert witness, like Mr. Joyner, it would have given the jury a much needed explanation of how Rios was shot in the back, and why Camarillo chased Ramirez, providing a path to acquittal or to convict of a lesser offense. On this record, there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been more favorable to Jesus. (*Strickland, supra*, 466 U.S., at 694; *Wiggins, supra*, 539 U.S. at 534.)

IV.

THE CUMULATIVE EFFECT OF COUNSEL'S DEFICIENT PERFORMANCE PREJUDICIALLY DEPRIVED CAMARILLO OF DUE PROCESS AND A FAIR TRIAL.

The combined effect of counsel's ineffective assistance, set forth herein, undermines confidence in the outcome of this trial, and requires that the judgment be vacated. (*In re Jones, supra,* 13 Cal.4th at 583-584.) As a result of his failure to investigate all possible defenses, and to otherwise reasonably prepare for trial, trial counsel did not have an adequate basis on which to make reasonable tactical decisions in planning and executing a defense strategy. (*In re Edward S., supra*, 173 Cal.App.4th at 407; *In re Fields, supra,* 51 Cal.3d at 1069.) Had counsel conducted a reasonable investigation, he would have presented evidence of adolescent brain development, and the jury would have been instructed to consider youth in deciding whether Camarillo actually believed in the need for self-defense and whether that belief was reasonable. Jurors would have also learned, contrary to the prosecutor's argument, that self-defense does apply even if the aggressor is shot in the back. (Exh. B & C.) Had the jury heard testimony from Dr. Cauffman, and/or Mr. Joyner, or similar experts, petitioner would have achieved a more favorable result at trial. (Arg. I.F.) Reversal is required.

CONCLUSION

For the foregoing reasons, Camarillo respectfully requests that this Court grant this petition, vacate the judgment of conviction and return the case back to the trial court with instructions to grant a new trial, or, alternatively, grant him whatever further relief is appropriate in the interest of justice as set forth in the prayer of the attached Petition.

Dated: February 24, 2021 Respectfully Submitted,

Danalynn Pritz,
Attorney for Jesus Camarillo

CERTIFICATE OF WORD COUNT

Pursuant to California Rules of Court, rules 8.384(a)(2) and 8.204(c)(1), I hereby certify that the Memorandum of Points and Authorities accompanying this petition contains a total of 12,781 words as counted by the word-processing program used to generate the brief.

Dated: February 24, 2021

Respectfully Submitted,

Danalynn Pritz,
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