CASE NO. _____

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re

Sara J. Kruzan

On Habeas Corpus

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO PENAL CODE SECTION 1473.5 AND TO REDRESS SENTENCING ERROR PURSUANT TO PENAL CODE SECTION 190.5

Superior Court of California, County of Riverside
Habeas Case No. RIC10001919
The Honorable F. Paul Dickerson

Ronald A. McIntire, Bar No. 127407
Melora M. Garrison, Bar No. 205408
PERKINS COIE LLP
1888 Century Park East, Suite 1700
Los Angeles, California 90067-1721
Telephone: 310.788.9900
Facsimile: 310.788.3399

Attorneys for Petitioner
Sara J. Kruzan

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PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

This petition is brought by Sara Kruzan, who is serving a sentence of life without possibility of parole for a shooting she committed in 1994, when she was 16 years old. Her victim, the 36-year-old pimp who had sexually abused her since she was 11 and trafficked her since she was 13, was shot as he was preparing to instigate sex with Ms. Kruzan. The facts in this petition describe a tragic life marked by incessant intimate partner abuse leading up to the shooting. Most importantly, the law now provides relief for Ms. Kruzan on two grounds.

First, Ms. Kruzan is entitled to relief under California Penal Code section 1473.5. Enacted in 2001, this law gives practical effect to the California Supreme Court's recognition of the importance of expert testimony on intimate partner abuse in cases of intimate partner violence. It does so by authorizing habeas corpus relief for abuse victims who were convicted of a violent felony prior to August 1996[1] in trials where expert testimony on intimate partner battering was not presented, if there is a reasonable probability that such evidence would have affected the result.

[1] Both the date and the substance of section 1473.5 are derived from the California Supreme Court's 1996 decision in *People v. Humphrey* (1996) 13 Cal.4th 1073, 1088 [56 Cal.Rptr.2d 142, 921 P.2d 1], in which the Court held that expert testimony on intimate partner battering is needed to "disabuse jurors of commonly held misconceptions" and "explain a behavior pattern that might otherwise appear unreasonable to the average person."

Ms. Kruzan's case illustrates the wisdom of this law. Barely 16 at the time she shot the pimp who had abused her since age 11, her childhood was characterized by horrific physical, emotional and sexual violence. T he extensive evidence of intimate partner abuse set forth in this petition—based on hospital and other public records, witness declarations and declarations from two national experts on intimate partner battering and its effects—stands unrebutted,[2] and compels the conclusions that (a) Ms. Kruzan suffered from the effects of intimate partner battering at the time of the crime and (b) the trial proceedings were affected by the absence of expert testimony on intimate partner battering. That the trial result was affected by the absence of such expert testimony is demonstrated not only by the opinions of experts and the arguments of counsel, it is also supported by evidence that, if not unique, is highly unusual in that it comes from the jurors themselves as reported in the trial transcript of six jurors' colloquy with the court.

The transcript reveals a jury that is struggling to understand and apply the mental element of the first degree murder instruction, the very element of the crime for which expert testimony on the effects of intimate

[2] The facts presented in this petition have never been disputed. As explained, they were not presented at the trial more than 16 years ago. Moreover, Ms. Kruzan's initial habeas petition to the Riverside County Superior Court, dated February 4, 2010, was summarily denied. The Court concluded only that the petition was insufficient and did not request any response from the State. For the reasons discussed herein, Petitioner respectfully submits that the evidence overwhelmingly favors the requested relief.

partner battering would have been most critical. The absence of expert testimony denied these jurors the equivalent of a translator who could interpret Ms. Kruzan's conduct in terms that would have directly assisted them in applying the court's instructions. As one of the experts noted, in her long history as an expert, she has "never seen more concrete proof that expert evidence on intimate partner battering would have affected the outcome of criminal proceedings." (Tab 6, Ex. B, at 720.)[3] Ms. Kruzan is entitled to relief under section 1473.5.

The second ground for relief is a sentencing error that denied Ms. Kruzan, 16 at the time of her offense, the discretion to which juveniles were entitled under California Penal Code section 190.5, subdivision (b), before they were sentenced to life without possibility of parole. This ground is made especially compelling by the fact that Ms. Kruzan's then-defense counsel, now-Riverside County Superior Court Judge, David Gunn, has submitted a declaration admitting that he was mistaken in his understanding of the law at the time of Ms. Kruzan's sentencing, acknowledging that he was unaware that the Court had discretion to sentence Ms. Kruzan to a sentence other than life without the possibility of parole because she was 16 and stating that he believes the court and prosecutor were similarly mistaken. (Tab 2, ¶¶ 7-9, at 593.) Beyond Judge Gunn's declaration, the

[3] Petitioner's Index of Documents in Support of Petition for Writ of Habeas Corpus (Volumes I and II) is filed concurrently herewith. Reference herein to a document in the Index is supported by a citation to the Index tab and page number.

probation officer's written report unambiguously contains the same mistake of law, erroneously stating that a life without possibility of parole sentence was mandatory in Ms. Kruzan's case. And beyond both Judge Gunn's declaration and the probation officer's erroneous report, the trial record independently and clearly reveals that the prosecutor and sentencing judge had the same mistaken understanding of the law. As a result, Ms. Kruzan was denied the exercise of discretion at sentencing to which section 190.5, subdivision (b) entitled her. Importantly, the California Court of Appeals has addressed this issue on virtually indistinguishable facts in a recent case, *People v. Ybarra* (2008) 166 Cal.App.4th 1069 [83 Cal.Rptr.3d 340]. For the same reasons that the Court reversed and remanded the *Ybarra* case for re-sentencing, Ms. Kruzan is entitled to, at a minimum, a re-sentencing consistent with section 190.5, subdivision (b).

* * * * *

Sara Kruzan, now 32 years old, has spent half of her life in prison. She resides in the Honor Dorm at the California Correctional Facility for Women in Chowchilla, California. Experience confirms what expert and other testimony would have revealed if expert evidence concerning intimate partner battering and its effects had been heard at her trial or sentencing. An educated, accomplished woman,[4] Ms. Kruzan is a model of what can happen if an abused child is taken from horrific circumstances and given a

[4] Attached to her declaration are appendices that speak to her educational accomplishments and many honors.

chance to mature free from intimate partner abuse. By granting this petition, the Court can honor the purpose and intent behind California Penal Code section 1473.5 as well as remedy a grave sentencing error.

II. STATEMENT OF FACTS

A. Sara Was Physically, Emotionally, and Sexually Abused Since Birth, Making Her an Ideal Target for Intimate Partner Abuse by G.G.

Sara Kruzan was born on January 8, 1978, to Nicole Kruzan, an emotionally disturbed woman on public welfare. (*See* Tab 4, ¶¶ 3, 6, at 597; Tab 1, Ex. C, at 77, 79.) Sara's mother had three other children. Each of the four children had a different father, none of whom was married to Sara's mother. (Tab 1, Ex. D, at 86; Tab 4, ¶ 11, at 598; *see also* Tab 1, Ex. F, at 498.)[5] Sara did not know her father, an ex-convict and a heroin addict. (Tab 1, Ex. E, at 300; Tab 1, Ex. C, at 79; Tab 4, ¶ 7, at 597.)[6]

Sara's mother physically and emotionally abused Sara throughout her childhood.[7] When Sara was ten, someone at her school discovered bruises on Sara's body caused by her mother striking her and reported the

[5] Nicole Kruzan gave one of her children up for adoption, so some records reference three children rather than four. (Tab 1, Ex. D, at 84; Tab 1, Ex. H, at 505.)

[6] She encountered him on only three occasions in her life, during one of which he was shooting up heroin in a bathroom. (Tab 4, ¶ 7, at 597; Tab 1, Ex. D, at 89.)

[7] She hit Sara, called her names (*e.g.*, "whore," "slut," "worthless"), threw hot tea on her, and threw plates of food at her. (Tab 4, ¶ 8, at 598; *see also* Tab 1, Ex. F, at 497.) One of Sara's earliest memories, from when she was about four years old, is of her mother hitting her in the face so hard that blood spattered from her nose and onto the dresser nearby. (Tab 4, ¶ 8, at 598; Tab 1, Ex. D, 88; Tab 1, Ex. C, at 82; Tab 1, Ex. G, at 500.)

abuse to Child Protective Services, which conducted an investigation and substantiated the allegations. (*See* Tab 1, Ex. D, at 102 (discussing referral to Child Protective Services on Jan. 3, 1989); Tab 4, ¶22, at 600.)

When Sara was 15, a petition was filed in Riverside Superior Court to remove Sara from her mother's home. (*See generally* Tab 1, Ex. D.) Sara was placed in child protective custody because of the physical, emotional and sexual abuse she was experiencing at home and "the mother's incapacity to parent the minor and the mother's failure to protect the minor due to [the mother's] own emotional difficulties." (*Id.* at 98.) At that time, Sara's mother admitted that she had "take[n] Sara's head and hit it on the floor" (*id.* at 89), and a social worker determined that the physical abuse was such that "the minor is at risk if she returns to her mother's care." (*Id.* at 93).[8]

Nicole Kruzan had numerous "boyfriends." (Tab 4, ¶ 12, at 598.) Sara witnessed several of these men abusing her mother. (*Id.*)[9] Sara's mother, in turn, exposed Sara to sexually inappropriate and exploitative situations and some of the men with whom Sara's mother associated

[8] Sara's mother also abused Sara's half-sister, Amy, who lived with Sara and her mother until Sara was nine. (Tab 4, ¶ 10, at 598; Tab 1, Ex. F.) Sara recalls seeing her mother stomp on Amy, who was seven months pregnant at the time, then shake her violently and drag her across the living room by her hair. (Tab 4, ¶ 10, at 598.)

[9] Sara recalls one, André Pearson, who beat her mother until she had a ruptured eardrum and was black and blue, disassembled a four-poster bed and "terrorized" the household until it looked as if a "hurricane" had passed through. (Tab 4, ¶ 12 at 598) He left after that incident but returned and was in and out of their lives over a period of two years. (*Id.*)

molested Sara. (Tab 4, ¶ 14, at 598.) When Sara was five years old, her mother left her with a man named Bob Brown, who molested her. (Tab 1, Ex. F, at 495; Tab 4, ¶ 14, at 598-99.) When Sara was ten, one of her mother's boyfriends touched her sexually while she was in bed. (Tab 1, Ex. F, at 495; Tab 4, ¶ 14, at 599.) Sara told her mother about both incidents, but her mother did nothing, in spite of, or perhaps because of, the fact that these sexual assaults on Sara were criminal acts that could have subjected the perpetrators (her mother's "boyfriends") to prison.[10] (Tab 4, ¶ 14, at 599.) Rather than protect Sara from sexual exploitation and abuse, Sara's mother expressed jealousy towards Sara and accused her of trying to "steal" her boyfriends. (Tab 4, ¶ 15, at 599; *see also* Tab 1, Ex. D, at 88.)

Sara's childhood home in Monrovia, California was a "party house" where people came to buy or take drugs. (Tab 4, ¶ 6, at 597.)[11] Nicole Kruzan's drug use led to her losing her job as a hairdresser when Sara was nine. Sara and her mother had to move from Monrovia to a cheaper home in Rubidoux, in Riverside County. The house lacked heat and had only one bedroom, forcing Sara to choose between sleeping with her mother or on the couch. (*Id.* ¶¶ 18-19, at 599.) Sara's older sister Amy was pregnant and

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[10] Under section 288 of the Penal Code, "[a]ny person who willfully and lewdly commits any lewd or lascivious act . . . upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years."

[11] Sara's mother was addicted to cocaine and regularly used marijuana. (Tab 1, Ex. D, at 89; Tab 1, Ex. C, at 79; Tab 4, ¶ 6, at 597.)

stayed behind in the move, leaving Sara without any buffer between her and her mother. (*Id.* ¶ 18, at 599.) The new neighborhood was poor and gang-infested. (*Id.* ¶ 19, at 599.)

By the fourth grade, the abuse and neglect, coupled with the fear Sara felt in her new, dangerous surroundings, began to manifest itself in Sara's behavior. She began intentionally cutting herself, using scissors to carve on her legs until she saw blood. (Tab 1, Ex. C, at 79 ("She has multiple scars overlying the arms, the legs, and other areas of her skin… from carving herself."); Tab 4, ¶ 21, at 599.) In an attempt to garner her mother's attention and concern, Sara also began running away from home. (Tab 4, ¶ 21, at 599-600.) Her mother responded by kicking her out of the house. (Tab 4, ¶ 21, at 600; *see also* Tab 1, Ex. D, at 84 ("The mother refuses to allow the minor to reside in the home thereby depriving the minor of food, clothing, shelter, medical treatment, supervision and protection for the minor.").)

In 1989, at age 11, Sara was hospitalized for attempted suicide. Clinical assessment records describe Sara as "depressed and overwhelmed at the emotional demands and instability of her mother." (Tab 1, Ex. H, at 505.) The records document that Sara's mother discussed her own thoughts of suicide, talking to Sara "about being better off dead, or feeling out of control." (*Id.*) Clinical records also indicate that Sara's mother was "angry and resentful about multiple issues of her own and projects feelings onto

daughter." (*Id.* at 502.)[12] Under the circumstances, crying did not ameliorate her mother's behavior, garner sympathy or improve her condition, and Sara learned to shut down her emotions in order to better endure the constant abuse. (Tab 4, ¶ 16, at 599.)

Sara also learned from repeated, painful experiences that state agencies charged with protecting children like her from abuse provided little, if any, protection. Consequently, she sought hope and protection wherever she could find it, including from George Gilbert Howard ("G.G."), a prominent pimp who, in his 30s, had a well-developed "program" for manipulating abused, abandoned girls, offering them money, hope and protection in exchange for his sexual gratification and the profits they could produce as prostitutes.

B. G.G. First Sexually Assaulted Sara When She Was 11 and Began Grooming Her for Prostitution.

When Sara was 11, G.G. spotted her walking home from school. He pulled up next to her in a red Mustang, asked where she was going and offered to buy her ice cream. G.G., 31 years old at the time, was a big, muscular man. He took 11-year-old Sara to get ice cream, to the park and then to his house in Moreno Valley, where he left her in a room filled with erotic art and sculpture while he changed clothes. (Tab 4, ¶¶ 23-24, at 600.)

[12] Nicole Kruzan suffered from chronic depression, suicidal thoughts and an underlying personality disorder. (Tab 1, Ex. H, at 502, 505.) She often isolated herself in her room for days. (Tab 4, ¶ 9, at 598.) These withdrawals were punctuated by unpredictable, violent outbursts. (*Id*.)

When G.G. returned, he ordered Sara to stand in front of him while he undressed her. As he sexually molested Sara, G.G. told her, "Using you will be fantastic. We will make lots of money." (Tab 4, ¶ 25, at 600.) He then instructed her to get dressed. On this, 11-year-old Sara's first encounter with 31-year-old G.G., she became the victim of his first felony sexual assault of her,[13] and Sara started down a path that led to further sexual assaults by him and, in time, exploitation of her for profit.

Capitalizing on Sara's youth, vulnerability, and poverty,[14] G.G. lost no opportunity to manipulate Sara and ingratiate himself to her, treating her and her friends to roller-skating, the movies, money and trips to the mall. He impressed Sara with his fancy cars and other ostentatious displays. (*See* Tab 4, ¶¶ 27, 30, at 601; Tab 1, Ex. E, at 190 (testimony of Tanja Gillam: G.G.'s custom Jaguar was so unusual that "if one were to see this car driving down the street, you would immediately notice that car").) Sara also became very popular with her friends as a result of G.G.'s attention. (Tab 4, ¶ 27, at 601.)

After several months of group outings, G.G. began to spend more and more time alone with Sara, while gradually asserting greater control over her. He kept close track of Sara, driving by her house to talk to her or

[13] *See* Pen. Code section 288: Lewd or Lascivious Acts on a Minor.
[14] Clinical notes indicate that Sara's "three wishes" at age twelve were "1. world peace 2. to be rich 3. wants to have a date with Prince." (Tab 1, Ex. F, at 499.)

having his limousine driver find her and pressure her to contact him. (Tab 4, ¶¶ 28-29, at 601.)

Sara observed that G.G.'s wealth and self-assurance "commanded respect" from others. (Tab 4, ¶ 30, at 601; Tab 1, Ex. E, at 190 (testimony of Tanja Gillam: "[H]e wore a lot of jewelry. He liked flashy clothes. He liked clothes that stood out. He was a person who stood out in a crowd.").) Impressed by G.G.'s wealth and confidence, both of which were completely unfamiliar to her, Sara came to believe that G.G. would save her from the abuse and neglect she experienced at the hands of her mother and the other adults in her life. (Tab 4, ¶ 30, at 601.)

Intoxicated by the attention, prestige and relative wealth she enjoyed in the company of a man old enough to be her father, 11-year-old Sara was incapable of appreciating where her relationship with G.G. was leading. Her deeply troubled mother, who had enabled men to abuse Sara for years, not only failed to intervene between Sara and G.G. but continued to provide opportunities for further abuse by others.

C. Sara Was a Victim of Statutory Rape at Age 12 and Was Gang-Raped by Three Men at Age 13.

When Sara was 12, Nicole Kruzan enlisted one of the men with whom she smoked marijuana, 23-year-old Roosevelt Carroll, to act as Sara's "mentor." (Tab 4, ¶ 31, at 601; *see also* Tab 1, Ex. G, at 500.) What Nicole Kruzan intended is not clear, but to Mr. Carroll it was an opportunity

to have sex with 12-year-old Sara—*i.e.*, to engage in statutory rape of her—on a regular basis. (Tab 4, ¶ 31, at 601.)[15]

In July 1991, shortly after Sara turned 13, she was brutally raped by three gang members from her neighborhood while taking a short cut through the school on her way to the market. (Tab 1, Ex. I, at 510 (noting that patient was gang raped and indicating Post Traumatic Stress Disorder); Tab 1, Ex. D, at 102 (indicating that Child Protective Services received a report on July 31, 1991 that Sara was raped by three gang members); Tab 1, Ex. J; Tab 4, ¶ 32, at 602.) Sara knew all three of the rapists—one was her friend's uncle. They threw Sara on concrete steps and raped her. Afterwards they threw her ripped shorts on her and told Sara, "You're in the gang now. That's how we do it." (Tab 4, ¶ 32, at 602.)

Sara wanted to press charges, but her mother told her that they would move away from the neighborhood instead because she was afraid of gang retaliation if the men were prosecuted. (Tab 1, Ex. J, at 521; Tab 4, ¶ 33, at 602.) Her mother never moved them away. (Tab 4, ¶ 33, at 602.) Moreover, Sara's mother attempted to rationalize her own inaction, blaming Sara for the rape, saying that Sara had probably asked for it and calling her a "whore" and a "cunt." Traumatized and filled with shame, Sara tried to kill herself again. (*Id.* ¶¶ 33-34, at 602.) From 1989 to 1993, she was

[15] After smoking marijuana with Sara's mother, Carroll often sneaked Sara out of the house to a motel room, where he gave her alcohol and had frequent sex with her over a period of approximately a year. (Tab 4, ¶ 31, at 601.)

hospitalized twice at Charter Hospital and three times at Knollwood Hospital for attempted suicides. (Tab 1, Ex. K, at 526; Tab 4, ¶ 34, at 602.)

D. Shortly After the Violent Gang Rape, 33-Year-Old G.G. Raped 13-Year-Old Sara and Accelerated the Pace of Her Indoctrination into Prostitution.

From early in their relationship, G.G. sought to convince Sara that marriage and male/female relationships were just legalized forms of prostitution. He told her that a man "will wine you and dine you," but all he really wants is sex. (Tab 4, ¶ 28, at 601.) These ideas matched Sara's own experiences as a repeated victim of sexual exploitation, including at the hands of G.G. himself. Having endured repeated sexual abuse and, most recently, a brutal gang rape, Sara had little, if any, experience upon which to challenge these notions and G.G. moved from inculcating Sara with his philosophies about sex and relationships to increasingly indoctrinating her into the prostitution "lifestyle." *(Id.)*

When Sara was 13, G.G. took her to his "main house"—a different house than the one she had been in when G.G. first molested her. He showed her jewelry, stacks of hundred dollar bills and photographs of women next to cars and told her, "These are my girls, my women." (Tab 4, ¶¶ 35, 36, at 602.)

A few weeks later, 33-year-old G.G. took 13-year-old Sara to a motel room and, telling her that he was "gonna teach her some things," had sex with her for the first time. (Tab 4, ¶ 37, at 602-603.) G.G. was a very strong, muscular man, approximately 6'4" tall and more than twice Sara's

age. The sex was extremely painful for Sara. Nevertheless, she did not resist G.G.'s (statutory) rape.[16] (*Id*.) As she came increasingly under his domination and control, G.G. lavished even more time and money on Sara, treating her to meals and clothes and complimenting her on her beauty. She endured still another (statutory) rape by him, though it was, again, extremely painful. (*Id.* ¶ 38, at 603.)

The next part of her indoctrination was left to the older prostitutes who worked for G.G. It was their job to watch Sara and keep her "under their wing." (Tab 4, ¶ 39, at 603.) Sara knew of about nine other women who worked for G.G. (*Id.*; Tab 1, Ex. E, at 191, 192, 289.) Many of the women lived together in a gated community in Hollywood. G.G. called them all his "wives." (Tab 4, ¶ 39, at 603.) Some of the women had children, and G.G. had a woman working for him named "Big Mama" who took care of the children. *(Id*.; Tab 1, Ex. E, at 192, 290, 308.)

G.G. explained his "business" to Sara, stating that the women paid him to be "protected" and that he provided them with cars, homes, clothes and jewelry. He told her that this was what good women did and that she would have the "opportunity" to experience it. (Tab 4, ¶ 40, at 603.)

E. G.G. Began Trafficking Sara When She Was 13.

G.G. paired 13-year-old Sara with one of the adult prostitutes who worked for him, had her wear "prostitute's clothes," and put her out on the street in Hollywood and Orange County to traffic her. Sara spent half her

[16] *See* Pen. Code section 261.5.

first night on the street shadowing another woman, and the other half working alone providing sexual services to approximately 10 or 11 men. (Tab 4, ¶ 41, at 603.) Each instance of sexual intercourse was, by law, statutory rape by the "johns," who could hardly have mistaken 13-year-old Sara as old enough to consent. These rapes were aided and abetted by G.G., who facilitated and profited from them.[17]

By the time G.G. first put Sara out on the street—two years after he picked her up when she was an 11-year-old girl walking home from school—he had manipulated her into believing that working for him held more promise for a better future than the life she had been living. (Tab 4, ¶ 42, at 604.)

Sara prostituted for G.G. on and off until just before she turned 16.[18] To get through the ordeal of having to prostitute herself, Sara detached emotionally, going through the motions without thinking or feeling, as she had done previously with G.G. and other men who had exploited her. (Tab 4, ¶ 44, at 604.)[19]

G.G. strictly enforced a series of "rules" on the women and girls he trafficked, through which he controlled their behavior. For example, he

[17] G.G.'s actions were in violation of Penal Code sections 266, subdivision (h) and 266 subdivision (i) .

[18] Her "working" hours were from 6 p.m. to 6 a.m. G.G. dropped Sara and the other women off at night, but he was never far away. (Tab 4, ¶ 43, at 604.) He moved groups of women together from one location to another.

[19] Beyond G.G.'s sexual and emotional exploitation of Sara, the demands he placed on her exposed her to numerous dangerous and violent or potentially violent situations, including a john locking Sara in a car, brandishing a Taser gun and attempting to rape her. (Tab 4, ¶ 46, at 604-605.)

forced Sara to eat candy bars to "fatten her up" and told her what to wear. He prohibited his prostitutes from kissing any "johns" on the mouth, straying from where the other women were working, "talking trash" about him, and asking questions. He required the women to do their "job" as quickly as possible, because time equals money. He required the women to call him "Daddy." (Tab 4, ¶ 45, at 604.) G.G. inflicted violent punishment on those who disobeyed his "rules." Sara witnessed him make one of the girls get into a swimming pool, naked, where he beat her with a rope. He kicked another woman so hard that she could not get up, telling her, "Don't worry, we can replace that hip." (*Id.* ¶ 46, at 604-605.) When Sara disobeyed him (*e.g.*, failing to call him as instructed), he became extremely angry and punished her by requiring that she prostitute herself more to "make up for it." On one occasion, Sara expressed concern that she might be pregnant as a result of having sex with a john. G.G. yelled at her, called her names and left her and all her belongings at a liquor store in Los Angeles. (*Id.* ¶ 47, at 605.) Sara became very fearful of "setting him off." She believed that as long as she did what he wanted, she would be safe and protected. If she defied him, she expected to "pay" for it. (*Id.* ¶ 44, at 604.)

During the time she worked for G.G., Sara lacked a stable living arrangement and spent very little time in school. She attempted to live with her mother but ran away frequently to escape the abuse she experienced at home. In April 1993, Sara went joy-riding with a boy who wrecked the car during a high-speed chase with the police. Her closest friend died in the

crash. Sara was badly injured. (Tab 4, ¶ 50, at 605; Tab 1, Ex. L; Tab 1, Ex. M.) Following the incident, Sara was placed in foster care and lived in five or six foster homes over approximately the next five months. During that time, she continued to run away and work for G.G. (Tab 4, ¶ 51, at 606; *see also* Tab 1, Ex. N, at 531, Tab 1, Ex. O, at 534.) Contemporaneous records indicate: "The minor has admitted to running to Los Angeles where she works as a prostitute." (Tab 1, Ex. O, at 534.)

In November 1993, Sara met a 15-year-old boy named Johnny Otis[20] at a party. He took Sara to live at his mother's house in Ontario. When Sara's mother threatened to report her to the police for harboring a runaway, Johnny's mother kicked Sara out of her house. Sara moved in with her mother briefly at the beginning of 1994, but, again, this arrangement did not last, and, because Sara had nowhere else to live, Johnny took her to stay at the house of his friend's uncle, James Earl Hampton. (Tab 1, Ex. E, at 300-01; Tab 4, ¶¶ 52-53, at 606.)

F. Circumstances of the Offense.

James Earl Hampton (known as "James Earl") was a drug dealer with an extensive criminal record who had recently been released from prison on parole when Sara met him in 1994. He was 25 years old and had been convicted of, and served time for, multiple felonies, including second degree robbery, second degree burglary, possession for sale of rock cocaine,

[20] Johnny was a gang member who was convicted in 2001 for battery on a spouse/cohabitant. (Tab 1, Ex. R, at 553.)

use of rock cocaine, resisting a peace officer, driving under the influence, and disturbing the peace, and he had also been held to answer for sale or transportation of a controlled substance and possession for sale of cocaine base. (Tab 1, Ex. P, at 545-50; Tab 1, Ex. Q, at 551.) He bragged to Sara about his prison record and numerous murders and other violent acts that he had committed.[21]

James Earl Hampton's criminal record would come to reflect his boasting, as he was later convicted and imprisoned for breaking into a woman's home and raping her in front of her children, then slitting her throat, ransacking her home and stabbing her in the chest. (Tab 1, Ex. T.) [22]

The house in Pomona where James Earl lived was a crack house that was open for business 24 hours a day. It was common to have guns in the house because of the drug dealing. (Tab 4, ¶ 55, at 606; Tab 1, Ex. E, at 315.) Sara was afraid of being in the house and afraid of James Earl. (Tab 4, ¶ 56, at 606; Tab 1, Ex. S, at 564.) In addition to bragging about the people he had killed and the crimes he had committed, James Earl threatened and intimidated 16-year-old Sara. On one occasion, James Earl

[21] Among other things, he said he had killed an "older white man" at an ATM machine and shot "some Mexicans" on the freeway. (Tab 1, Ex. E, at 315; Tab 4, ¶ 54, at 606.)

[22] For this crime, James Earl was found guilty of attempted murder, rape by force/fear, oral copulation by force/fear, burglary, robbery, making a criminal threat and two counts of false imprisonment. (Tab 1, Ex. P, at 548.) He was also convicted of battery on a peace officer relating to a separate incident and has committed multiple violent batteries on other prisoners while in prison. (*Id.* at 545, 549-50.) He is currently serving a minimum sentence of life plus 27 years and eight months at California State Prison, Los Angeles County. (Tab 1, Ex. U.)

detained her as she was leaving the house to get something to eat and said, "You really love Johnny, don't you?" He then threatened her, "I bet if I killed that motherfucker you couldn't love him." (Tab 4, ¶ 56, at 606-607; Tab 1, Ex. E, at 315.) James Earl's threat made a strong impression on Sara, making her even more fearful. (Tab 4, ¶ 56, at 606-607.)

Johnny and Sara planned to get an apartment together, but they needed money to do so. Because G.G. had given Sara money in the past, Sara told Johnny that she could ask G.G. for money. (Tab 1, Ex. E, at 378.) Johnny apparently shared this information with James Earl, who saw an opportunity to exploit Sara's familiarity with G.G. (*Id.* at 310.)

On the evening of March 9, 1994, James Earl, Johnny, and another man drove Sara to a pay phone from which, at James Earl's direction, she paged G.G. (Tab 1, Ex. E, at 307, 309-310.) G.G. sent "Big Mama" to pick Sara up. (*Id.* at 308.) Big Mama brought Sara to a house in Riverside. (*Id.* at 309.) Sara left the house and went to a nearby market, where she telephoned James Earl. (*Id.* at 337-338.) Someone at the market then drove her to where James Earl and the other men waited. James Earl and the other men drove Sara back to the house in Riverside where G.G. was to pick her up. On the ride back, James Earl repeatedly told Sara that she had to get G.G. to a motel room. (*Id.* at 331, 332, 340.)

G.G. came to get Sara at the house in Riverside and took her to a movie. (Tab 1, Ex. E, at 312.) James Earl and Johnny paged Sara during the movie. She went to the bathroom to call them, leaving her purse, with a

gun of James Earl's that Johnny had placed in it earlier, on the seat next to G.G. (*Id.* at 312, 316-317, 339-340.)

After the movie, G.G. stopped at a liquor store to get some Cognac and 7-Up. (Tab 1, Ex. E, at 317-318.) She began receiving pages from James Earl that said "187," which she knew from listening to music was the California Penal Code section for murder. (*Id.* at 312-313, 340-341.)

G.G. took Sara to the "honeymoon suite" of the Dynasty Suites—the same motel room to which he had taken her for sex on a prior occasion. While G.G. was paying for the motel room, Sara called James Earl and asked to talk to Johnny. James Earl laughed and told her in a threatening voice that Johnny was with him and that she did not need to talk to him. James Earl then told her to shoot and rob G.G. (Tab 1, Ex. E, at 314, 348, 354.) James Earl threatened to kill Sara if she did not do as he said. (*Id.* at 314-15, 318-19, 323, 328, 383-83.)

James Earl's insistence that Sara shoot G.G. and steal his money, his threats to Sara's life, his multiple pages throughout the night, and his prior threats to Johnny's life and refusal to let her talk to Johnny, together with the knowledge that G.G. wanted to have sex with her, made Sara increasingly panicked and fearful. When G.G. closed the motel room door, she felt trapped and desperate. (Tab 5, ¶ 37, at 662-63.)

In the motel room, G.G. turned the TV on to a pornographic movie. (Tab 5, ¶ 36, at 662.) He pulled out a box that said "Magic Wand" and contained a large, long sex toy. (Tab 1, Ex. E, at 318.) G.G. undressed and

began touching Sara. (*Id.* at 318, 351.) Sara dreaded G.G. using the sex toy on her and dreaded having sex with G.G. When G.G. turned to plug the vibrator into the wall, Sara shot him. (*Id.* at 318.)

Sara was so focused on complying with James Earl's demand that she take G.G.'s money that she left her purse, identification, and shoes behind as she fled from the room. (Tab 1, Ex. E, at 319, 354.) Although she had little experience driving—she did not have a driver's license—she then drove G.G.'s Jaguar to where James Earl, Johnny, and the other man were waiting. (*Id.* at 319.) James Earl asked Sara where the money was, and when she told him it was in the Jaguar, he got in the Jaguar and left. (*Id.* at 320.) Later that morning, James Earl told his sister that he had just shot someone, and James Earl and Johnny stripped down G.G.'s car, burned his identification, and took all his credit cards. (*Id.* at 374.) James Earl then made up an alibi for Sara to tell to the police. James Earl took G.G.'s money—about $1500—and split it up, giving Sara $200. Sara gave the money back to Johnny, who used it to buy drugs from James Earl. (*Id.* at 320.)

In the days after the shooting, James Earl continued to exert control over Sara. He held a gun to her and made her call her mother and tell her the lie he invented about what had happened in the motel room. (Tab 1, Ex. E, at 322-23, 327.) He was going to send Sara to Arizona on a Greyhound bus, but instead took her to Long Beach, where he left her in the locked room of a woman's house and told the woman not to let Sara out and not to

let her use the phone. (*Id.* at 321, 376.) Finally, James Earl took Sara back to his mother's house. Shortly thereafter, Sara was arrested. After initially telling the police the story James Earl had concocted for her, Sara confessed to the shooting. (*Id.* at 322-23, 328.)

At the time of the shooting, Sara had no prior criminal history. She was 16 years and two months old. Neither James Earl Hampton nor Johnny Otis were ever tried in connection with the offense.

G. Sara's First Degree Murder Trial.

Sara's case was assigned to defense panel counsel David Gunn, who assured the naïve 16-year-old that she should go to trial, rather than accept the prosecution's plea offer that would have sent her to prison for 30 years with time off for good behavior and the opportunity for release on parole. (Tab 4, ¶ 58, at 607.) Sara's trial began Wednesday, May 2, 1995, in the courtroom of Judge J. Thompson Hanks of the Riverside County Superior Court. Testimony lasted two and one-half days until Tuesday, May 9.[23]

The State called seven witnesses over two days, including three police officers who identified the evidence at the scene and played the taped confession of Sara, a forensic pathologist from the county coroner's office who described the cause of G.G.'s death, the hotel employee who found G.G.'s body, and two of G.G.'s former prostitutes who testified to

[23] Court recessed for the week after the morning session on Thursday, May 4. Defense attorney Gunn was ill and unable to come to court on Monday, May 8. (*See* Tab 1, Ex. E, at 257.)

their contacts with Sara the day of the shooting. (Tab 1, Ex. E, at 130-253, 277-293.)

The defense called only one witness: Sara. (Tab 1, Ex. E, at 109-110.) On direct, she testified primarily to the events leading up to and following the shooting. By the time she was done, the jurors knew little about her life's circumstances and her relationship with G.G., and nothing about the impact that prolonged psychological and physical abuse can have on a teenager's ability to satisfy the mental elements of the serious crime with which she was charged. (*See id.* at 300-383.) Unprepared for cross examination, deeply depressed, medicated, and unable to joust with a skilled prosecuting attorney, Sara agreed with virtually every leading question the prosecutor asked. (*See generally id.* at 325-378.)

No expert witnesses were called on Sara's behalf. (Tab 1, Ex. E, at 109-110.)

Without the benefit of expert testimony on the effects of intimate partner battering, the jury found Sara guilty of Murder in the First Degree. The record shows that the jury struggled with the question of whether Sara's mental state met the requirements of first degree murder:

> THE COURT: We are back in the matter of People versus Kruzan, all members of the jury, with the exception of the alternates, are present.
>
> Ms. Kruzan's presence was waived by her attorney, it was agreed she didn't need to be here, and her attorney has another matter he is attending to and Mr. Valdez has agreed to sit in on his behalf.

Let me get the paperwork here. The foreman is Mr. Ward, and I have your question and I will read it for the record.

"The Judge or representative to explain the term deliberate—the word 'deliberate' is in quotes—as it pertains to first degree murder. We would like this term clarified."

In the instructions that I gave you, and in particular instruction 8.20, among other things the instruction reads:

The word deliberate means formed or arrived at or determined upon as a result of careful thought and weighing of considerations for and against the proposed course of action.

Is there something that is confusing about that, Mr. Ward?

JUROR WARD: There was a discussion amongst the jury as to—Can I confer with the jury?

THE COURT: If you would like.

JUROR WARD: Okay. There was a discussion as to, how should I describe it, can someone do better than this?

JUROR ARMSTRONG: The intent of time to deliberately, under fear or deliberately to do this, or was it afterthought, or was it –

THE COURT: As I indicated to you when the jury was selected, I am a judge of the law and the jury is a judge of the facts; it is the jury's duty to determine factually what occurred. That's what you are to do, that's what you are deliberating for, you must determine factually what occurred.

So, the question you were relating to me was really a factual determination for the jury to arrive at.

JUROR JANSEN: What we need is a clarification on what you feel deliberate means.

THE COURT: I read you what the law says deliberate means.

JUROR BAILEY: How about careful thought?

THE COURT: Are you confused about careful thought?

JUROR RUDD: In other words, are we to determine or decide whether she, in the act of doing this, did careful, gave careful thought to it?

THE COURT: You must decide factually what happened, okay. Now, careful thought is part of the definition; and, therefore, you must determine if that occurred, that is what you determine because that is a piece of the facts. So, you have to determine factually did that occur, you see, that's your job.

JUROR ABSHIRE: I believe someone had another question, someone raised a question about the paragraph following that, the rash portion of it, rash impulses. And there was some discussion whether this person could understand to decide, whether there was a rash impulsive action or not, and is that what we are to determine?

THE COURT: Well, again, the paragraph you are talking about, "If you find the killing was preceded and accompanied by a clear, deliberate intent on the part of the defendant to kill, which was the result of deliberation and premeditation so that it must have been formed upon pre-existing reflection and not under a sudden heat of passion or other condition precluding the idea of deliberation, it is murder of the first degree."

Once again, you must decide factually whether or not that circumstance exists. I cannot tell you that. You are the judges of the facts, that's what you have to decide. I understand it's often a difficult decision you have to make, but there is nothing, this language is not—it does not appear to me that this language is confusing, it appears rather straightforward to me, the language here, the law. You simply have to determine what facts existed and apply that law.

JUROR WARD: Seem satisfactory to everybody?

THE COURT: Okay. All right. We will send you back out again.

(Tab 1, Ex. E, at 467-469.)

The jury found that Sara used a firearm and that the alleged special circumstances were true, namely that the shooting was committed while Sara was engaged in the commission of a robbery and that Sara shot the victim while lying in wait. (Tab 1, Ex. E, at 470-472.)

H. Sara's Sentencing.

Following the jury's verdict, and in anticipation of sentencing, Sara's defense attorney requested that Sara be examined by the California Youth Authority ("Youth Authority") under section 707.2 of the Welfare and Institutions Code for a determination of her suitability for referral or housing with the Youth Authority. The Youth Authority conducted an examination and issued a report finding that Sara possessed the capacity to make positive change and that she was amenable to treatment. (*See generally* Tab 1, Ex. V.) In its report to the trial court, the Youth Authority explained that a "person is amenable to treatment when there is a reasonable possibility that his/her likelihood to commit criminal behavior can be significantly reduced or eliminated within the confinement time and jurisdiction time available." (*Id.* at 571.) The Youth Authority further noted that Sara had "no prior arrests and she has never been afforded correctional treatment" and that "her male cooffender [James Earl Hampton] was considerably older than Sara and she was strongly vulnerable to exploitation by him." (*Id.* at 572.) The Youth Authority

recommended that Sara be referred to it, rather than sentenced to an adult term. (*Id.* at 573.)

The probation officer assigned to Sara's case also submitted a report to the court and counsel prior to the sentencing. (*See generally* Tab 1, Ex. W.) This report, which the court "read and considered" (Tab 1, Ex. E, at 479), misstated California law. Several times, the probation officer incorrectly asserted that California law required the court to sentence Sara to life without the possibility of parole. (Tab 1, Ex. W, at 580-581.) In fact, however, section 190.5 of the Penal Code, a relatively new provision at the time,[24] granted the trial court discretion to sentence defendants between the ages of 16 and 18 years old at the time of the crime to prison terms of 25 years to life—terms that allowed for future parole consideration.

Sara's defense attorney (now Riverside Superior Court Judge), David Gunn, was also unfamiliar with the new sentencing law.[25] He has admitted that he was mistaken in believing that a sentence of life without possibility of parole was mandatory. In his declaration, dated August 1, 2009, Judge Gunn states:

> 7. After Sara's conviction, it was my understanding that the sentencing law relevant to Sara's case required the court to sentence her to life without possibility of parole because the

[24] Section 190.5 of the Penal Code was enacted by the voters of California in 1990, five years prior to Sara's trial.

[25] Instead, Mr. Gunn filed a motion to strike the jury's finding of special circumstances—a request in direct contradiction to section 1385.1 of the Penal Code.

> jury convicted her of first-degree special circumstances murder.
>
> 8. It was not until recently that I first read *People v. Ybarra*, 149 Cal. Rptr. 3d 340 (2008), and learned that a life without parole sentence was not mandatory in Sara's case under Cal. Penal Code 190.5 because of her age at the time of the crime.

The record from Sara's sentencing demonstrates that the probation officer's and defense counsel's misunderstandings of law were shared by the prosecutor and trial judge. Neither made reference to the court's discretion to sentence Sara to a sentence of 25 years to life, even if only to correct the repeated misrepresentations in the Probation Officer's Report characterizing a life without possibility of parole sentence as mandatory. In his declaration, Judge Gunn also addressed the prosecutor's and trial judge's apparent misunderstanding of the law, as follows:

> 9. Based on their statements and actions, I believe that the trial court and the prosecution were also unaware that Penal Code 190.5 allowed the court to impose a sentence of 25 years to life in Sara's case.

The contemporaneous trial record supports Judge Gunn's observations, namely that the prosecutor and judge were unaware that the court had discretion at sentencing. Consequently, once the court denied defense counsel's motion to strike the jury's special circumstance findings, the sentencing became a perfunctory exercise: (1) no argument was made by

Sara's counsel under section 190.5, subdivision (b) of the Penal Code; (2) no witnesses were called to testify that the 16-year-old girl who shot her pimp on March 10, 1994 could rehabilitate if separated from the physical and psychological abuse she had endured at the hands of many, including G.G., during her horrific "childhood"; and (3) at her sentencing, as at her trial, no expert witness was called to testify regarding intimate partner battering and its effects on Sara. (*See* Tab 1, Ex. E, at 475-493.)

Unaware of its discretion under section 190.5 subdivision (b) of the Penal Code, without further argument, and with no witnesses to provide scientific, behavioral or other evidence concerning the degree of Sara's culpability and potential for reform, the court imposed what it mistakenly believed to be the only possible sentence: life without the possibility of parole. (*See* Tab 1, Ex. E, at 492.)

I. Two Experts Independently Concluded that Sara Suffered from the Effects of Intimate Partner Battering at the Time of the Shooting and that Expert Testimony Would Have Affected the Outcome of the Criminal Proceedings.

1. Dr. Linda S. Barnard's Qualifications and Opinions.[26]

Dr. Linda Barnard is a widely recognized expert in intimate partner battering and its effects, domestic violence, rape, trauma, and posttraumatic stress disorder. She has testified in criminal, civil, and family court matters and in state and federal court. Her expertise has been utilized by the government and by defendants in 32 counties in California, as well as in Nevada, Idaho, and Oregon. Dr. Barnard has completed forensic

[26] *See* Tab 6, ¶¶ 2-3, at 690; Tab 6, Exs. A & B.

assessments in over 1,000 cases and has testified nearly 300 times as an expert.

Dr. Barnard received her Ph.D. in Counselor Education from the Southern Illinois University in 1979 after receiving her master's degree in Counseling from Ball State University. Prior to arriving in California in 1981, Dr. Barnard worked as a professor in the Counselor Education program at the University of Southern Maine. Since entering private practice in 1982, she has been a licensed therapist and is a board certified expert in Traumatic Stress and in Domestic Violence by the American Academy of Experts in Traumatic Stress. Dr. Barnard regularly provides trainings and presentations to other professionals, including to the California District Attorneys Association and the California Public Defenders Association.

Dr. Barnard evaluated Sara in person and reviewed relevant documents and materials. She concluded that "Sara was suffering from the effects of intimate partner battering in March 1994 and her behaviors and actions were affected—if not controlled by—the years of abuse she endured." (Tab 6, Ex. B, at 721.)

Given her extensive experience and the respect given to Dr. Barnard's expertise over many years, it is especially significant that she states that in her long history as an expert, she has

> "never seen more concrete proof that expert evidence on intimate partner battering would

> likely have affected the outcome of criminal proceedings. Expert testimony at trial would have provided jurors with the needed framework to assess Sara's actions accurately. Expert testimony would have buttressed Sara's own testimony, placing her beliefs, perceptions, and behaviors in the proper context."

(Tab 6, Ex. B, at 720.) Dr. Barnard further opined:

> By failing to have an expert on intimate partner battering and its effects to explain the many complexities involved in this case, Sara Kruzan's defense was severely limited. Without this testimony, the jury was forced to find Sara culpable without the benefit of information that would have provided a context in which to evaluate her behavior – as that of a victim of abuse. The knowledge and information presented by an expert regarding intimate partner battering and its effects would have provided an understanding of the perceptions and realities of living with physical, sexual, psychological, and verbal violence. It would further have explained the impact of a lifetime of abuse from multiple persons. Additionally, it would have explained the impact of the relationship with G.G. on the life of a young girl whom he sexually exploited, groomed, and abused for five years – a third of her life in 1994.

(Tab 6, Ex. B, at 720.) According to Dr. Barnard, Sara's "risk of future violence was low and her probability of rehabilitation was excellent." (*Id.*)

2. Dr. Nancy Kaser-Boyd's Qualifications and Opinions.[27]

Dr. Nancy Kaser-Boyd is a clinical and forensic psychologist and expert in the effects of intimate partner battering. After completing her

[27] *See* Tab 5, ¶¶ 1-15, at 655-657; Tab 5, Ex. A.

doctorate in clinical psychology in 1980 and finishing her post doctoral training in psychology and the law, she has focused her clinical and forensic practice on the effects of violence. Since receiving her license to practice in California, she has seen over 1,000 battered women for evaluation or treatment. Dr. Kaser-Boyd is an Associate Clinical Professor at UCLA's Geffen School of Medicine and a seasoned lecturer on battered woman syndrome and the effects of intimate partner battering for organizations such as the American Bar Association, the California Attorneys for Criminal Justice, and the California Public Defender's Association. She has also authored textbook chapters and articles on the effects of intimate partner battering and battered woman syndrome. Dr. Kaser-Boyd has been qualified as a court expert in counties throughout California, as well as in Alaska, Guam, Hawaii, Oregon, and several federal courts. She has testified or consulted as an expert witness on behalf of the government as well as of defendants and has served on the Los Angeles County Dependency Court Psychiatric Panel since 1982 and the Los Angeles County Superior Court Psychiatric Panel since 1995.

Dr. Kaser-Boyd evaluated Sara over the course of two days, conducted forensic and psychological interviews lasting six hours, and reviewed relevant background materials related to the criminal proceedings and Sara's mental health. Based on this evaluation, Dr. Kaser-Boyd concluded, "Ms. Kruzan clearly suffered from the common effects of intimate partner battering on the night of the shooting." (Tab 5, ¶ 44, at

664.) According to Dr. Kaser-Boyd, "most young people [suffering from intimate partner battering and its effects] respond to therapy, and they can become healthy adults with therapeutic intervention." (*Id*. ¶ 43, at 664.) She further opined that had she been able to testify during Sara's trial, "the judge would have likely seen Ms. Kruzan as a young woman who could be rehabilitated in prison." (*Id*. ¶ 52, at 666.)

J. At 32, Sara Is a Model of the Kind of Person an Intimate Partner Battering Victim Can Become Once Removed from Abuse.

Experience confirms what expert and other testimony would have revealed during Sara's sentencing if testimony about intimate partner battering and its effects had been heard. Sara was not only capable of rehabilitation, she is a model of what can happen if an abused child is taken from horrific circumstances and given a chance to mature.

For a time, as a child, Sara saw and seized positive opportunities outside her dysfunctional and abusive home. She loved school and excelled at academic and extracurricular pursuits. In fourth grade, she and a friend won first prize in a writing competition for their book about the evils of drugs. In fifth grade, Sara was on the principal's honor roll. She ran for student body president and won. She also won ribbons in track and field, participated in the spelling bee and the science fair, and was on the school newspaper. (Tab 4, ¶ 17, at 599; *see also* Tab 1, Ex. X, at 585 (noting that Sara had been an honor student and student body president).) Her resilience during her earliest school years proved to be an accurate predictor

of her capabilities when, years later, she was removed from the violence and abuse she suffered on the streets.

For the past several years, Sara has lived in the Honor Dorm, an opportunity typically unavailable to women serving life without parole. As recognized by the Honor Dorm Staff, Sara is quick to identify problems and bring them to the staff's attention, as well as to offer possible solutions. Her peers, as well as prison staff, respect her. Her input is positive and she follows through on all assignments given to her in a positive manner. She demonstrates initiative and the ability to motivate others and to carry out program needs in an environment that can be difficult. (*See* Tab 4, Ex. C, at 625.) The Honor Dorm Staff has further praised Sara:

> We as Staff enjoy the interaction with you regarding Honor Dorm Self-Help issues as well as your quick wit and the way you interact with your team members. It has been a pleasure watching your personal growth and your willingness to go over and above the expectation. It is obvious to Staff that you hold yourself to a high standard of excellence, therefore encouraging your peers to do the same.

(*Id.*) Most recently, Sara was awarded the honor of "Woman of the Year" for the Honor Dorm and was selected for this honor by a vote of the prison guards. The award reads: "We commend you for your dedication to the mission of the Honor Dorm. Your encouragement, positive attitude and friendship to your peers shows that you are a positive link to a successful

future. You stand as an inspiration to all. We thank you." (Tab 4, ¶ 61, at 607, Ex. C.)

In addition to serving as a leader in the Honor Dorm, Sara has earned leadership positions in a number of prison groups and has become a mentor to many women in the prison. (Tab 4, ¶ 67, at 608.) Among other things, she served as the representative for her unit to the Women's Advisory Council, communicating the collective concerns of her unit to prison staff, and has completed training to facilitate Nonviolent Conflict Resolution workshops for other women through the Alternatives to Violence Project. (*Id.*)

In November 2007, Sara started the prison's Committee for Youth, which prepares young women for their release from prison, teaches them what to expect when they face the parole board, conducts mock parole board hearings, provides GED and etiquette classes, and brings in guest speakers. Sara served as the committee's chairperson from its inception through May 2008. (Tab 4, ¶ 67, at 608.)

Sara has also completed numerous vocational training classes during the course of her incarceration. In November 2002, she earned a Certificate in Office Services and Related Technology from Sierra Vista Adult School, and she has become proficient in all of the Microsoft Office programs. (Tab 4, ¶ 68, at 608.)

In her 15 years of incarceration, Sara has held various employment positions, including but not limited to, the Librarian for her Honor Dorm,

Dental Technician, Administrative Assistant, and Flag Productions Clerk. Until recent budget cuts, she served as a Teacher's Assistant in the education building, helping with Adult Basic Education classes. (Tab 4, ¶ 69, at 608-609.) Through these jobs, Sara has earned between 30 to 50 cents an hour, and has worked enough to pay $4,400 of her restitution. (*Id.* ¶ 70, at 609.)

In addition to her other activities and work, Sara has continued to pursue her own educational goals. Sara earned her high school diploma in 1995 while at Riverside Juvenile Hall, and recently began college. Since June 2008, Sara has been enrolled full-time in college level classes through Feather River College. (Tab 4, ¶ 71, at 609.)

Attached as Exhibit B to Sara's declaration is a chart that reflects the other many programs and activities in which Sara has been involved while in custody. Also included as Exhibit C to the declaration is a sampling of the many certificates of accomplishment Sara has received while incarcerated.

Today, Sara is an articulate, well-adjusted, and talented 32-year-old. She has come to accept her past and to hope for her future. She remains positive and continues to educate herself, serve her fellow inmates as their teacher and representative to prison staff, fulfill her work responsibilities, and bring joy to those around her. Sara has accomplished all of this behind bars, and with the belief that she would remain there for the rest of her life. Given her track record in prison, it is apparent that Sara would make a

significant positive contribution to society if given the opportunity to flourish outside the bounds of prison.

III. PROCEDURAL HISTORY

1. Petitioner Sara Jessimy Kruzan is unlawfully incarcerated at the Central California Women's Facility in Chowchilla, California, by her custodian, Warden Mary Lattimore, pursuant to a judgment of conviction in *People v. Sara Jessimy Kruzan* (Super. Ct. Riverside County, 1995, CR 65498), Judge J. Thompson Hanks.

2. On May 11, 1995, a jury found Sara guilty of first degree murder, with the special circumstances of lying in wait and robbery-murder pursuant to sections 187 and 190.2 of the Penal Code. On October 6, 1995, she was sentenced to life without parole, which included a four-year enhancement for use of a firearm pursuant to section 12022.5 of the Penal Code. Her conviction was affirmed by the Fourth District Court of Appeal, Division Two, in an unpublished opinion on December 13, 1996 (*People v. Sara Jessimy Kruzan* (Dec. 13, 1996, E017118) rehg. den. Dec. 30,1996). The Court of Appeal denied her petition for rehearing on December 30, 1996. The Supreme Court of California denied her petition for review on March 26, 1997 (*People v. Sara Jessimy Kruzan* (March 26, 1997, S058564)).

3. On May 16, 2005, Sara filed a *pro se* petition for writ of habeas corpus claiming ineffective assistance of counsel, as well as violations of due process, the Sixth Amendment and the Welfare and

Institution Code. On June 13, 2005, the Fourth District Court of Appeal, Division Two, summarily denied the petition. *See* Court Order filed June 13, 2005. On August 2, 2005, Sara filed a second pro se petition for writ of habeas corpus also claiming ineffective assistance of counsel, as well as violations of due process, the Sixth Amendment and the Welfare and Institution Code. On July 12, 2006, the Supreme Court of California summarily denied the petition. *See* Court Order filed July 12, 2006. Neither petition included the arguments that the lack of expert testimony on intimate partner battering and its effects prejudiced her trial or that the trial court's legal error at sentencing prejudiced her sentence.

4. On February 4, 2010, now represented by counsel, Sara sought habeas corpus relief from the Riverside Superior Court pursuant to Penal Code sections 1473.5 and 190.5(b). (Petition for Writ of Habeas Corpus, Feb. 4, 2010.) Just three court days later, on February 10, 2010, the court summarily denied Sara's petition. (Order Re Petition for Writ of Habeas Corpus, Feb. 10, 2010.)

5. Sara files this petition and shows that she suffers from illegal restraint pursuant to section 1473.5 of the Penal Code because:

- She was convicted of a violent felony committed in 1994;
- She experienced a lifetime of emotional, physical, and sexual abuse at the hands of many, including her victim;
- No expert on intimate partner battering and its effects testified at her 1995 trial, which resulted in her conviction of first degree murder;

- An expert witness and other intimate partner battering evidence was critical to a proper jury determination of whether she was credible, acted reasonably under the circumstances, and held the required mental state for the crime for which she was convicted. Hence, the absence of intimate partner battering expert evidence prejudiced the jury's verdict because if the jury and the judge had heard such evidence, there is a reasonable probability, sufficient to undermine confidence in the conviction and sentencing, that the outcome of her trial and sentencing would have been more favorable to her; and
- The denial of her previous habeas petitions did not address the issues of whether her trial was prejudiced by a lack of intimate partner battering expert testimony or whether her sentencing was invalid because of the trial court's sentencing error.

6. This Court should grant this petition because no expert evidence of intimate partner battering and its effects was introduced at Sara's trial, thereby prejudicing Sara and resulting in her conviction for first degree murder and her sentence of life without the possibility of parole. Because the California Legislature has acted to correct injustices suffered by abused women convicted of a violent felony committed before August 29, 1996, this Court should grant her relief pursuant to section 1473.5 of the Penal Code.

7. As an alternate basis for relief, Sara was deprived of a sentencing proceeding that conformed to California law. Under these circumstances, California law requires vacating Sara's sentence and remanding for a proper exercise of the trial court's sentencing discretion.

8. Sara has no other plain, speedy, or adequate remedy at law, since this petition raises issues based largely upon facts outside the record on direct appeal. Thus, she brings this petition pursuant to section 1473.5 of the Penal Code. She also brings this petition pursuant to section 190.5 subdivision (b) of the Penal Code based on the court's error of law at her sentencing.

9. The accompanying memorandum of points and authorities, declarations and exhibits are made part of this petition by reference as though fully set forth herein. The Court is requested to take judicial notice of the files and records in *People v. Sara Jessimy Kruzan* (Super. Ct. Riverside County, 1995, No. CR 56498); *People v. Sara Jessimy Kruzan* (December 13, 1996, E017118) [nonpub. opn.], rehg. den. Dec. 30,1996; *People v. Sara Jessimy Kruzan*, (March 26, 1997, S058564); *In re Sara Jessimy Kruzan on Habeas Corpus* (June 13, 2005, E038155) [nonpub. opn.]; *In re Sara Jessimy Kruzan on Habeas Corpus* (July 12, 2006, S137142).

IV. CLAIM FOR RELIEF

Petitioner seeks relief pursuant to section 1473.5 of the Penal Code because she was suffering from the effects of intimate partner battering at

the time of the crime for which she is incarcerated. Because no expert on intimate partner battering and its effects testified at her trial, her judge and jury were unable to understand how emotional, physical and sexual abuse affected her cognitive and emotional processes at the time of the shooting. The lack of this expert testimony prejudiced the outcome of her trial. This Court should now grant her relief under any of the appropriate means available under sections 1473.5 and 1260 of the Penal Code. If the Court denies her relief under section 1473.5, Petitioner also seeks relief because Petitioner's sentencing proceeded under an erroneous application of California sentencing law. The trial court's error denied Sara the required exercise of judicial discretion in imposing her sentence.

V. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Issue a Writ of Habeas Corpus and release Petitioner from unlawful custody;

2. Set aside the sentence and judgment of conviction, dismiss the charges with prejudice, and order the expungement of all relevant court and law enforcement records;

3. Reduce Petitioner's conviction level to voluntary manslaughter and impose a punishment that would not exceed the maximum sentence for voluntary manslaughter of 11 years, with credit for time served;

4. In the alternative, order that an evidentiary hearing pursuant to section 1484 of the Penal Code be held immediately;

5. In the alternative, set aside the sentence and judgment of conviction and schedule the matter for a new trial;

6. In the alternative, set aside the sentence and schedule a resentencing under section 190.5 of the Penal Code; or

7. In the alternative, grant Petitioner whatever further relief the Court deems appropriate and in the interests of justice.

DATED: April 28, 2010

Marc A. Boman
Ronald A. McIntire
Melora M. Garrison
Kelly F. Moser
PERKINS COIE LLP

Michael J. Teter

Patricia J. Arthur
NATIONAL CENTER FOR YOUTH LAW

By: _____
Ronald A. McIntire, Bar No. 127407
RMcIntire@perkinscoie.com
Melora M. Garrison, Bar No. 205408
MGarrison@perkinscoie.com
Michael J. Teter, Bar No. 222456
Michael.Teter@pomona.edu

Attorneys for Petitioner
Sara J. Kruzan

VI. VERIFICATION

I, Melora M. Garrison, hereby declare as follows:

I am an attorney admitted to practice law in the State of California. I represent petitioner herein, who is confined and restrained of her liberty at the Central California Women's Facility in Chowchilla, California.

I am authorized to file this petition for writ of habeas corpus on petitioner's behalf. I make this verification because petitioner is incarcerated in a county different from that of my law office. In addition, many of the facts alleged are within my knowledge as much as petitioner's.

I have read the petition and know the contents of the petition to be true.

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

Executed this 7th day of April, 2010, at Los Angeles, California.

Melora M. Garrison

MEMORANDUM OF POINTS AND AUTHORITIES

I. CALIFORNIA PENAL CODE SECTION 1473.5 ENTITLES SARA TO HABEAS RELIEF

A. The California Legislature Enacted Section 1473.5 to Require Courts to Reexamine the Trial Proceedings of Individuals like Sara Kruzan.

The California Legislature enacted section 1473.5 of the Penal Code in 2001. *See* Stats. 2001, ch. 858, § 1. Since then, habeas relief is available to any person convicted of a violent felony committed before August 29, 1996, who can show a reasonable probability that the absence of expert testimony relating to intimate partner battering affected the results of the proceedings. *See* Pen. Code section 1473.5. Section 1473.5 provides, in relevant part:

> (a) A writ of habeas corpus also may be prosecuted on the basis that expert testimony relating to intimate partner battering and its effects, within the meaning of Section 1107 of the Evidence Code, was not received in evidence at the trial court proceedings relating to the prisoner's incarceration, and is of such substance that, had it been received in evidence, there is a reasonable probability, sufficient to undermine confidence in the judgment of conviction, that the result of the proceedings would have been different . . . . As used in this section, "trial court proceedings" means those court proceedings that occur from the time the accusatory pleading is filed until and including judgment and sentence.
>
> (b) This section is limited to violent felonies as specified in subdivision (c) of Section 667.5 that were committed before August 29, 1996, and that resulted in judgments of conviction after a plea or trial as to which expert testimony admissible pursuant to Section 1107 of the

Evidence Code may be probative on the issue of culpability.

California courts define intimate partner battering and its effects [28] as "a series of common characteristics that appear in women who are abused physically and psychologically over an extended period of time by the dominant male figure in their lives." *People v. Humphrey* (1996) 13 Cal.4th 1073, 1088 [56 Cal.Rptr.2d 142, 921 P.2d 1]. Under section 1107 subdivision (a) of the Evidence Code, expert testimony regarding intimate partner battering and its effects includes "the nature and effect of physical, emotional, or mental abuse on the beliefs, perceptions, or behavior of victims of domestic violence." Evid. Code section 1107, subd. (a). Expert testimony is admissible as long as the witness is qualified and the evidence is relevant. Evid. Code section 1107, subd. (b) .

Section 1107 of the Evidence Code became effective on January 1, 1992. Originally, the legislature limited the reach of section 1473.5 of the Penal Code to those who had pleaded guilty or were convicted prior to the effective date of Evidence Code section 1107. *Id*. In 2004, however, the legislature amended section 1473.5 to apply to individuals charged with violent felonies committed before August 29, 1996, the date of the California Supreme Court's decision in *Humphrey*, *supra,* 13 Cal.4th 1073.

[28] "Intimate partner battering and its effects" is the preferred term for the condition formerly referred to as "battered women's syndrome." *See Humphrey*, *supra,* 13 Cal.4th at 1083-84 fn.3 . The California Legislature changed references in state law from "battered women's syndrome" to "intimate partner battering and its effects" in 2004. Stats. 2004, ch. 609, § 1.

Thus, under section 1473.5, a petitioner must demonstrate that (1) she was convicted of a violent felony committed before August 29, 1996; (2) expert testimony relating to intimate partner battering and its effects was not received in evidence at the trial court proceedings, including sentencing; and (3) a reasonable probability exists that the results of the proceedings would have been different had such expert testimony been introduced.

Sara Kruzan was convicted of a violent felony occurring before August 29, 1996, and no expert testimony relating to intimate partner battering and its effects was received in evidence during her trial proceedings. A wealth of evidence, including Sara's history of abuse, the findings of respected experts, and questions asked by the jurors during their deliberations, establishes more than a reasonable probability that expert testimony on intimate partner battering and its effects would have led to a different result in Sara's trial court proceedings. For the reasons that follow, Sara Kruzan is entitled to relief under section 1473.5.

B. Sara Suffered from the Effects of Intimate Partner Battering at the Time of the Shooting.

For purposes of this petition, two of the country's most respected experts on the subject of intimate partner battering and its effects—Dr. Linda Barnard, a licensed therapist and an expert in Traumatic Stress and Domestic Violence board certified by the American Academy of Experts in Traumatic Stress, and Dr. Nancy Kaser-Boyd, an Associate

Clinical Professor at UCLA's Geffen School of Medicine—were asked to independently assess whether Sara suffered from the effects of intimate partner battering at the time of the shooting. The experts agreed: Sara clearly suffered from the common effects of intimate partner battering at the time she shot G.G. on March 10, 1994.

1. Expert Declaration of Dr. Linda Barnard.

Based on hours of interviewing Sara, as well as on extensive review of relevant medical, social service, police and court records, Dr. Barnard concluded that "Sara was suffering from the effects of intimate partner battering at the time of the crime for which she is incarcerated." (Tab 6, Ex. B, at 699.) Dr. Barnard found that

> . . . from the very early stages of her life and up until March 1994, Sara suffered physical, verbal, sexual, and psychological abuse…Sara's abusive relationship with G.G. spanned nearly five years, beginning before she was even a teenager. Over the course of the relationship, G.G. exercised multiple aspects of coercive control over Sara. His power over, and domination of, her and the sexual, physical, emotional, and psychological abuse she suffered at his hands constituted intimate partner battering. The cascading effects of Sara's lifetime of abuse, and the five-year relationship with G.G. that she endured, left her suffering from the effects of intimate partner battering at the time of G.G.'s shooting.
>
> . . . The effects of intimate partner battering—including hyper-vigilance, dissociation, fear, re-experiencing of trauma, and labile emotions—were critical in the behavior and mental state of Sara Kruzan in the months preceding, at the time of, and subsequent to, the shooting of G.G.

> Specifically, her history of traumatic exposure, including the relationship dynamics with G.G., led Sara to suffer from these effects of intimate partner battering. Moreover, the intimate partner battering Sara suffered undoubtedly led to the behaviors she displayed, and the actions she took, in response to threats from James Earl Hampton. Finally, the shooting itself was a culmination of the years of abuse and coercive exploitation she endured at G.G.'s hands.
>
> . . . Without the assistance of expert testimony, jurors, judges, and attorneys cannot understand the effects of intimate partner battering on its victims. Sara Kruzan's case presents an extremely severe case of intimate partner battering for which such testimony would have been critical. The absence of such evidence deprived the jury of essential information in evaluating Sara's mental state at the time of the events for which she was convicted and deprived the judge of information necessary to make a reasonable determination regarding the exercise of his discretion in sentencing Sara.

(*Id*.)

In short, Dr. Barnard concluded that at the time of the shooting, Sara was suffering from the effects of intimate partner battering and that expert testimony is likely to have altered the outcome of Sara's criminal proceedings. (Tab 6, Ex. B, at 699.)

2. Expert Declaration of Dr. Nancy Kaser-Boyd.

Dr. Nancy Kaser-Boyd, after conducting forensic and psychological interviews on Sara and reviewing relevant medical, social service, and other materials, including the complete transcript of Sara's trial and sentencing, similarly concluded that "Sara Kruzan clearly suffered from the common

effects of intimate partner battering on the night of the shooting." (Tab 5, ¶ 44, at 664.) Dr. Kaser-Boyd explained:

> Ms. Kruzan had many abusive relationships. Although "intimate partner" is typically defined as boyfriend or husband, it is used more broadly in the psychological literature as abuse in a "significant" relationship. Her early history of abuse by her mother, molestation at age 5, and gang raped at age 12, created effects on her personality that led to re-victimization. By the time she was a young teenager, Ms. Kruzan had already experienced recurring abuse in her relationships. Her seduction and manipulation by G.G. at age 11, and his sexual exploitation beginning at age 13, constitutes an intimate partner relationship giving rise to intimate partner battering and its effects . . . .
>
> While still a young teenager, Ms. Kruzan showed many of the psychological effects of neglect and abuse. She had much conflict about her racial identity and her sense of worth, she had unstable emotions and frequent feelings of despair, she self-mutilated, and she was a target for re-victimization up to and including the time of the shooting of G.G. . . . .
>
> Ms. Kruzan's relationship with G.G. was the most abusive relationship she had experienced because it began when she was 11 years old and was based on exploiting her for sex, without any pretense of the genuine love she desperately needed. In the time period from age 11 to G.G.'s death when [she] was 16, she became deeply embroiled in the relationship and altered by G.G.'s abuse.

(*Id.* ¶¶ 45, 46, 48, at 664-665.)

In discussing the ramifications of Sara's inability to effectively convey her story at the time of her trial proceedings—or to even understand her own behavior because of the effects of intimate partner battering (Tab 5, ¶ 51, at 666), Dr. Kaser-Boyd concluded:

> When the abuse and victimization begins at a young age or there is more than one source of victimization and abuse, the effects tend to be more severe. Both of these situations existed for Ms. Kruzan. However, the victimization by G.G. was alone sufficient to cause serious effects on psychological functioning. With G.G., Ms. Kruzan felt overpowered, fearful, worthless and entrapped. He shaped her to be a tool for others and, when she met James Earl Hampton, she was easy to manipulate and intimidate.
>
> In the motel room and facing more unwanted, painful sex with G.G., it is likely that her fear of G.G., her explosive anger at G.G., and her fear of James Earl placed her in a mental state of panic.

(*Id.* ¶¶ 47, 50, at 664-665.)

The facts and expert opinion are clear: Sara Kruzan suffered from the effects of intimate partner battering at the time of the shooting.

3. Value of Intimate Partner Battering Expert Testimony at Criminal Proceedings.

"Laypersons—including jurors, lawyers, and judges—generally lack the necessary training and experience to understand the consequences of battering without the assistance of expert testimony." (Tab 6, Ex. B, at 711.) Experts, therefore, "can assist the trier of fact to place the intimate

partner battering victim's behavior into the context in which it occurred. Myths about battered women can be replaced with realities, and testimony can be presented to rebut stereotypes and assumptions." (*Id*.) California courts have repeatedly recognized this truth in explaining why expert testimony on intimate partner battering is essential. Without expert testimony, a defendant's behavior may not seem reasonable to jurors because most jurors lack firsthand experience with battering and "can rely only on their intuition or on relevant evidence introduced at trial." *Humphrey*, *supra,* 13 Cal.4th at 1088 (internal quotation marks omitted) (quoting *People v. McAlpin* (1991) 53 Cal.3d 1289, 1302 [283 Cal.Rptr. 382, 812 P.2d 563]) . Expert testimony is necessary to "disabuse jurors of commonly held misconceptions [about victims of intimate partner battering]" by "explain[ing] a behavior pattern that might otherwise appear unreasonable to the average person." *Id.* (internal quotation marks omitted) (quoting *McAlpin*, 53 Cal.3d at 1301 and *People v. Day* (1992) 2 Cal.App.4th 405, 419 [2 Cal.Rptr.2d 916]).

Women or girls suffering from the effects of intimate partner battering, moreover, often cannot relay their stories or even understand their own actions because of the trauma of abuse. (Tab 5, ¶¶ 20, 21, at 658-659; Tab 5, ¶ 51, at 666.) In Sara's case, she was

> unable to convey her true emotions about her victimization by G.G. and about the shooting, due to the combined effects of emotional numbing (common in victimization) and being medicated with an antidepressant. As a witness,

> she was unable to tell (or even understand) her psychological self. For example, she greatly minimized the amount of time she had worked for G.G. as a prostitute, and did not discuss some of her horrible and frightening experiences on the street. She said she "didn't want to seem like a bad person." It is common for victimized people to use denial, and a competent expert would have been able to explain this to the jury . . . .
>
> There was a great deal for an expert on intimate partner battering and its effects to say about Ms. Kruzan's experience of violence and abuse at the hands of many, about how these experiences led to multiple effects of victimization, about the nature of the relationship between Ms. Kruzan and G.G., and about the impact of G.G.'s abuse on Ms. Kruzan's mental state when she shot him.

(*Id.* ¶¶ 51, 54, at 666.)

Expert testimony, therefore, assists the triers of fact, the lawyers, and the court in assessing the culpability of an abused defendant. As Dr. Barnard states, expert testimony "dispels myths about intimate partner battering as well as bolsters the credibility of the abused woman… Moreover, counterintuitive behavior can be put into its proper psychological context, thus making sense of actions that defy credibility outside the context of intimate partner violence." (Tab 6, Ex. B, at 711.)

It is for these reasons that the California Legislature determined that the outcomes of criminal proceedings of individuals suffering from the effects of intimate partner battering deserve increased—and refocused—scrutiny.

C. There is a Reasonable Probability that the Result of the Trial Court Proceedings Would Have Been Different Had Expert Testimony on Intimate Partner Battering and Its Effects Been Received in Evidence.

The absence of expert testimony on intimate partner battering denied the jury highly relevant evidence bearing on Sara's culpability. It also denied the sentencing judge information essential to determining an appropriate sentence for Sara. A different result likely would have followed had expert testimony been received and considered.

1. Expert Testimony Would Have Rendered an Already Doubting Jury Incapable of Finding Beyond a Reasonable Doubt That Sara Possessed the Requisite Intent for Conviction.

California courts expressly recognize that evidence of intimate partner battering may be introduced to explain the effects of abuse on the defendant and thus assist the fact finder in determining if the defendant possessed the requisite mental state. *See People v. Erickson* (1997) 57 Cal.App.4th 1391, 1399 [67 Cal.Rptr.2d 740] . The instant case powerfully demonstrates how such testimony could have aided a jury in applying the law to the facts of Sara's case.

The record demonstrates that even without the benefit of expert testimony, the jury struggled with the question of whether Sara possessed the requisite intent for a first degree murder conviction.

On the mental state required to convict Sara of first degree murder, the trial court instructed:

> The word "willful" as used in this instruction means intentional.

> The word "deliberate" means formed or arrived at or determined upon as a result of careful thought and weighing of considerations for and against the proposed course of action. The word "premeditated" means considered beforehand.
>
> If you find that the killing was preceded and accompanied by a clear, deliberate intent on the part of the defendant to kill, which was the result of deliberation and premeditation, so that it must have been formed upon pre-existing reflection and not under a sudden heat of passion or other condition precluding the idea of deliberation, it is murder in the first degree.

(Tab 1, Ex. E, at 454.) After deliberations had begun, however, the jury returned to court and six members of Sara's jury spoke up to request that the court clarify the meaning of "deliberate"—a key word in the court's first degree murder jury instruction. (*See id.* at 467-469.) The jurors' questions demonstrate the difficulty they had in determining whether Sara exhibited the requisite intent for first degree murder:

> THE COURT: We are back in the matter of People versus Kruzan, all members of the jury, with the exception of the alternates, are present.
>
> Ms. Kruzan's presence was waived by her attorney, it was agreed she didn't need to be here, and her attorney has another matter he is attending to and Mr. Valdez has agreed to sit in on his behalf.
>
> Let me get the paperwork here. The foreman is Mr. Ward, and I have your question and I will read it for the record.
>
> "The Judge or representative to explain the term deliberate—the word 'deliberate' is in quotes—as it pertains to first degree murder. We would like this term clarified."

In the instructions that I gave you, and in particular instruction 8.20, among other things the instruction reads:

The word deliberate means formed or arrived at or determined upon as a result of careful thought and weighing of considerations for and against the proposed course of action.

Is there something that is confusing about that, Mr. Ward?

JUROR WARD: There was a discussion amongst the jury as to—Can I confer with the jury?

THE COURT: If you would like.

JUROR WARD: Okay. There was a discussion as to, how should I describe it, can someone do better than this?

JUROR ARMSTRONG: The intent of time to deliberately, under fear or deliberately to do this, or was it afterthought, or was it –

THE COURT: As I indicated to you when the jury was selected, I am a judge of the law and the jury is a judge of the facts; it is the jury's duty to determine factually what occurred. That's what you are to do, that's what you are deliberating for, you must determine factually what occurred.

So, the question you were relating to me was really a factual determination for the jury to arrive at.

JUROR JANSEN: What we need is a clarification on what you feel deliberate means.

THE COURT: I read you what the law says deliberate means.

JUROR BAILEY: How about careful thought?

THE COURT: Are you confused about careful thought?

JUROR RUDD: In other words, are we to determine or decide whether she, in the act of doing this, did careful, gave careful thought to it?

> THE COURT: You must decide factually what happened, okay. Now, careful thought is part of the definition; and, therefore, you must determine if that occurred, that is what you determine because that is a piece of the facts. So, you have to determine factually did that occur, you see, that's your job.
>
> JUROR ABSHIRE: I believe someone had another question, someone raised a question about the paragraph following that, the rash portion of it, rash impulses. And there was some discussion whether this person could understand to decide, whether there was a rash impulsive action or not, and is that what we are to determine?
>
> THE COURT: Well, again, the paragraph you are talking about, "If you find the killing was preceded and accompanied by a clear, deliberate intent on the part of the defendant to kill, which was the result of deliberation and premeditation so that it must have been formed upon pre-existing reflection and not under a sudden heat of passion or other condition precluding the idea of deliberation, it is murder of the first degree."
>
> Once again, you must decide factually whether or not that circumstance exists. I cannot tell you that. You are the judges of the facts, that's what you have to decide. I understand it's often a difficult decision you have to make, but there is nothing, this language is not—it does not appear to me that this language is confusing, it appears rather straightforward to me, the language here, the law. You simply have to determine what facts existed and apply that law.
>
> JUROR WARD: Seem satisfactory to everybody?
>
> THE COURT: Okay. All right. We will send you back out again.

(*Id.*)

To aid a jury through such difficulties is one of the circumstances that gave rise to the California Legislature's passage of section 1473.5 of the Penal Code. *See, e.g.*, Evid. Code section 1107; *Humphrey*, *supra,* 13

Cal.4th at 1076-77. No expert testimony was heard to assist the jury in evaluating whether Sara acted intentionally, willfully, deliberately and with premeditation. The absence of such expert testimony denied the jury the equivalent of a translator who could interpret Sara's conduct in terms that would have directly assisted them in applying the court's instructions. In fact, Dr. Barnard states that in her long history as an expert, she has "never seen more concrete proof that expert evidence on intimate partner battering would likely have affected the outcome of criminal proceedings. Expert testimony at trial would have provided jurors with the needed framework to assess Sara's actions accurately. Expert testimony would have buttressed Sara's own testimony, placing her beliefs, perceptions, and behaviors in the proper context." (Tab 6, Ex. B, at 720.) It is likely, therefore, that with the admission of expert testimony, the government would not have met its burden of convincing twelve jurors beyond a reasonable doubt that Sara possessed the requisite mental state. The jury would have likely concluded, as both experts have, that G.G.'s shooting was the result of a traumatic reexperiencing of Sara's lifetime of abuse and sexual exploitation—sexual exploitation that 36-year-old G.G. was planning on continuing in the early hours of March 10, 1994, when he was shot by 16-year-old Sara.

Further, under California law, a person who commits an intentional and unlawful killing but who lacks malice is guilty of voluntary manslaughter—a lesser-included offense of murder. *See People v. Barton* (1995) 12 Cal.4th 186, 199 [47 Cal.Rptr.2d 569, 906 P.2d 531] . A

defendant lacks malice when she acts in a "sudden quarrel or heat of passion." Pen. Code section 192, subd. (a). Because voluntary manslaughter is not a defense, but a lesser-included offense of murder, it is "the People's burden to prove beyond a reasonable doubt the defendant committed murder rather than voluntary manslaughter." *In re Walker* (2007) 147 Cal.App.4th 533, 552 [54 Cal.Rptr.3d 411].

If the court and jury had heard expert witnesses testify regarding the effects of intimate partner battering, including Dr. Barnard's testimony that the shooting was "triggered by the multiple traumatic events [Sara] experienced in her lifetime and the traumatic re-experiencing of her sexual exploitation by G.G.," (Tab 6, Ex. B, at 712), evidence would have been in the record obligating the court to give the voluntary manslaughter instruction (if it were not already so obligated).[29] Just as expert testimony on the effects of intimate partner battering would most likely have led the jury to conclude that Sara did not act with premeditation, so too would such evidence most likely have led the jury to believe that Sara—responding to the reexperiencing of her sexual abuse—did not act with malice. With such

[29] A trial court has a duty to *sua sponte* instruct a jury not only on the crime for which the state charged the defendant, but also for any lesser-included offenses supported by the evidence. *See Barton, supra*, 12 Cal.4th at 190. This duty arises "when the evidence raises a question as to whether all of the elements of the charged offense were present, but not when there is not evidence that the offense was less than that charged." *Id*. at 194-95 (internal quotation marks omitted) (quoting *People v. Sedeno* (1974) 10 Cal.3d 703, 715 [112 Cal.Rptr. 1, 518 P.2d 913], *overruled on other grounds by People v. Breverman* (1998) 19 Cal.4th 142, 148 [77 Cal.Rptr.2d 870, 960 P.2d 1094]). At Sara's trial, the court rejected the defense counsel's request for such an instruction.

evidence in place, Sara—and the jury—would have been entitled to a voluntary manslaughter instruction. *See Barton, supra*, 12. Cal.4th at 199-200. And with that evidence and instruction, the jury likely would not have convicted Sara of first degree murder.

The value of such testimony is further underscored by the fact that after the trial ended, several jurors informed an investigator that they had sought a way to avoid convicting Sara of first degree murder. (*See* Tab 3, ¶¶ 5-6, at 595; Tab 3, Ex. A.) Expert evidence on intimate partner battering and its effects may well have provided the "tipping point" that pushed an already doubting jury to reject the government's claim of premeditation. (Tab 6, Ex. B, at 720.) Given the jurors' questions to the court during deliberations and the reticence to convict expressed after the verdict, it is highly improbable that the unanimity required to convict Sara of first degree murder could have been reached if an expert had explained the effects of intimate partner abuse to these jurors. In sum, it is reasonably probable that expert testimony on the effects of intimate partner battering would have rendered an already doubting jury incapable of finding beyond a reasonable doubt that Sara possessed the requisite intent for conviction of first degree murder.

2. The Absence of Expert Evidence Affected the Jury's Evaluation of the Reasonableness of Sara's Actions.

The California Supreme Court recognizes that expert testimony on intimate partner battering and its effects is relevant to a jury's assessment of

the reasonableness of a defendant's actions. *See Humphrey, supra*, 13 Cal.4th at 1087. "Evidence of [intimate partner battering and its effects] not only explains how a battered woman might think, react, or behave, it places the behavior in an understandable light." *Id.* (internal quotation marks omitted) (quoting *Day, supra*, 2 Cal.App.4th at 419). Expert testimony enables the "jury [to] view the situation from the *defendant's perspective*," because ultimately, "[t]he jury must consider what would appear to be necessary to a reasonable person in a similar situation with similar knowledge." *Id*. at 1082-83. Expert evidence is, therefore, necessary to "disabuse jurors of commonly held misconceptions [about battered women]" by "explain[ing] a behavior pattern that might otherwise appear unreasonable to the average person." *Id.* at 1088 (internal quotation marks omitted) (quoting *McAlpin, supra*, 53 Cal.3d at 1301 and *Day, supra*, 2 Cal.App.4th at 419).

Nowhere is this more true than in Sara's account of the threats she faced from James Earl and her responses to those menaces—testimony that lay at the heart of the robbery charge, the predicate offense offered to support a felony murder theory. Expert testimony on intimate partner battering and its effects would have supported Sara's testimony regarding her fears stemming from James Earl's threats, which was critical to a duress defense.

The defense of duress is available to defendants who commit crimes, including robbery, "under threats or menaces sufficient to show that they

had reasonable cause to and did believe their lives would be endangered if they refused." *People v. Anderson* (2002) 28 Cal.4th 767, 780 [122 Cal.Rptr.2d 587, 50 P.3d 368] (internal quotation marks and citation omitted). Specifically,

> [a] person is not guilty of a crime when she engages in conduct, otherwise criminal, when acting under threats and menaces under the following circumstances: (1) [w]here the threats and menaces are such that they would cause a reasonable person to fear that her life would be in immediate danger if she did not engage in the conduct charged, and (2) [i]f this person then actually believed that her life was so endangered.

CALJIC No. 4.40. Although "duress is not a defense to any form of murder," "duress can, in effect, provide a defense to murder on a felony-murder theory by negating the underlying felony. If one is not guilty of the underlying felony due to duress, one cannot be guilty of felony murder based on that felony." *Anderson, supra*, 28 Cal.4th at 780, 784 (citations omitted).

A court is not obligated to instruct the jury on duress—even if it is a critical part of the defense—unless the court believes the evidence warrants the instruction. *See People v. Flannel* (1979) 25 Cal.3d 668, 684 fn.12 [160 Cal.Rptr. 84, 603 P.2d 1]. In Sara's case, the court *found* that substantial evidence existed—based exclusively on Sara's testimony—to give the duress instruction to the jury even without expert testimony on intimate partner battering. (Tab 1, Ex. E, at 459.) As part of her duress defense,

Sara needed to "raise only a reasonable doubt that [she] acted in the exercise of [her] free will." *People v. Petznick* (2003) 114 Cal.App.4th 663, 676 [7 Cal.Rptr.3d 726] . The reasonableness of Sara's fears and her credibility on the stand were therefore of utmost importance. Expert evidence on intimate partner battering and its effects would have supported Sara's testimony regarding James Earl's threats and her fears for her life.

As Sara testified at her trial, James Earl told her to take G.G.'s money and threatened to kill her, Johnny Otis, and Sara's mother if she did not. (Tab 1, Ex. E, at 314-315, 319.) Sara believed he was capable of such acts because he told her that he had "just got out of jail for murder" and that he had recently killed several other people.[30] (*Id.* at 315.) During the brief time Sara lived in the same house as James Earl leading up to the incident, she had seen James Earl carrying guns. (*Id.*) And, tellingly, Sara testified that she grabbed G.G.'s wallet and keys—but left her shoes, identification, and purse—after the shooting because "[t]hat was the last thing James Earl told [her] on the phone" after threatening her and her family. (*Id.* at 354.)

Importantly, the prosecutor focused on the reasonableness of Sara's fears and her responses to the threats. According to the prosecutor, the

[30] Shedding light on the reasonableness of Sara's fears for her life is the fact that James Earl Hampton is currently serving a term of life plus 27 years for the attempted murder of one of his female associates. (Tab 1, Ex. T.) He was found guilty of attempted murder, rape by force/fear, oral copulation by force/fear, burglary, robbery, making a criminal threat, and two counts of false imprisonment. He perpetrated this crime in front of his victim's child. (Tab 1, Ex. P, at 548.) He was also convicted of battery on a peace officer, relating to a separate incident, and has committed multiple violent batteries on other prisoners while in prison. (*Id.* at 545, 549-550; Tab 1, Ex. U.)

"threats and menaces" Sara received from James Earl would not cause a "reasonable person to fear that her life would be in immediate danger if she did not engage in the conduct charged." (Tab 1, Ex. E, at 402-03.) He claimed that a "reasonable person" would have gone to the police or called somebody for help. (*Id.* at 403.) He argued that a "reasonable person would not have taken the threat of somebody she met a mere week . . . [prior] to the [sic] committing this murder." (*Id.* at 403.) He presented Sara's thought processes as "illogical," "stupid," and "ludicrous." (*Id.*)

Expert testimony would have provided context within which the jury could have evaluated Sara's testimony and her responses to James Earl's threats. As the California Supreme Court established long ago, "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." *People v. Smith* (1907) 151 Cal. 619, 628 [91 P. 511]. Citing that basic proposition, the Court in *Humphrey* ruled that expert intimate partner battering evidence is relevant to the reasonableness of a defendant's beliefs. *Humphrey, supra*, 13 Cal.4th at 1084, 1086-87. "[T]he jury, in determining objective reasonableness, must view the situation from the *defendant's perspective*." *Id*. at 1086. Further,

> [t]o effectively present the situation as perceived by the defendant, and the reasonableness of her fear, the defense has the option to explain her feelings to enable the jury to overcome stereotyped impressions . . . . It is appropriate that the jury be given a professional explanation of the battering syndrome and its

> effects on the woman through the use of expert testimony.

Id. (quoting *State v. Allery* (1984) 101 Wash.2d 591, 597 [682 P.2d 312]).

An expert would have explained how an individual with Sara's history of abuse—compounded by her young age—might reasonably respond to James Earl's threats. The jury, then, could have evaluated the reasonableness of Sara's responses to the James Earl's threats from Sara's perspective, not from their own perspective, and would likely found her responses reasonable under the circumstances. The coercion and fear that Sara felt are "constant parts" of intimate partner battering. (Tab 5, ¶ 18, at 658.) Indeed, individuals suffering from the effects of intimate partner battering often display "a heightened sense of danger, hyper-arousal and hyper-vigilance, experiencing and re-experiencing intense emotions of fear

and vulnerability . . . ." (*Id.* ¶ 19, at 658.)[31] Specifically, an expert in intimate partner battering would have explained that

> [a]t the point when Sara encountered James Earl, she was already well trained to respond to potential threats with compliance….Indeed, in the short period of time that Sara was under the control of James Earl, she fell quickly into the same pattern established because of her abuse by G.G.: complying with the dominant person out of fear of dire consequences. She believed that James Earl had killed people. She knew he had recently gotten out of prison, he always carried guns; and, she believed he was a person who would harm her if she crossed him. James Earl's ability to control Sara, under those circumstances, was easy for him to achieve.

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[31] Although not an identical fact pattern, *People v. Riggs* (2008) 44 Cal.4th 248, 262 [79 Cal.Rptr.3d 648, 187 P.3d 363], *cert. den.* (2009) 129 S. Ct. 2386 [173 L.Ed.2d 1302], is instructive. There, over objection, the court admitted testimony from a domestic violence expert as to why a battered woman would succumb to the demands of her abuser. The expert described "battered woman accommodation syndrome":

> in which a woman who has been a chronic victim of abuse does things which are both inconsistent with her own history of behavior and which are criminal acts under the direction and under the fear and threat of the person who's been her batterer. Typically, in these situations, the woman believes that if she doesn't do exactly what she's told, that she will be killed. In some cases the woman reports that . . . even though she'd be willing, she doesn't care if she dies, she's tired of living, she's sure that even killing her wouldn't be enough, he would kill other people that she loved.

Id.

(Tab 6, Ex. B, at 710.)

Put simply, "[f]ear and threats from James Earl, in the context of Sara's experience with intimate partner battering, would be heightened. Sara's behaviors, therefore, were based on the threats and menaces that she perceived to be real and extremely dangerous." (Tab 6, Ex. B, at 713.) Thus, expert opinions would have buttressed Sara's account of danger.

Given the fact that the trial court believed that Sara's testimony provided substantial enough evidence to warrant the jury instruction for duress, expert testimony would have aided the jury's evaluation of this critical issue. With the assistance of this expert testimony, the jury would have better understood Sara's feelings of fear and concern for her own, as well as others', safety if she did not obey James Earl's demands. It is reasonably probable that with the help of this expert testimony, the same jury that struggled over the meaning of "deliberate" would have found that Sara was acting under duress, thereby preventing the jury from finding true the special circumstance of robbery and negating any underlying offense to support conviction under a felony murder theory.

3. Expert Testimony Would Have Assisted the Jurors' Assessment of Sara's Credibility.

Intimate partner battering expert evidence is relevant to a jury's evaluation of a defendant's credibility. *See Humphrey, supra*, 13 Cal.4th at 1087; *see also In re Walker, supra*, 147 Cal.App.4th at 552. Here, the value of expert intimate partner battering evidence is heightened by the fact that

Sara's testimony was the *only* evidence offered by the defense. Her credibility and personal account of the events leading to G.G.'s shooting were therefore of singular importance. At her trial, Sara testified that she was operating under threats against, and fears for, her own life, as well as those of people she loved. (Tab 1, Ex. E, at 314-35.) And throughout her testimony, even as she accepted many of the prosecutor's statements and arguments (*see, e.g.*, *id.* at 344-347), Sara held firm to the fact that she had not planned, deliberated, or premeditated the crime. (*Id.* at 347-348.)

The prosecutor's cross-examination of Sara is replete with examples of him seeking to paint Sara as a liar and with examples of his incredulity as to her testimony. He questioned Sara's explanation of why she originally lied to the police during her interrogation (Tab 1, Ex. E, at 328-338), and why she would have lied to her mother. (*Id.* at 327.) He summed her up as having been "putting on an act" for the police when they began interrogating her. (*Id.* at 329.) The prosecutor also expressed disbelief about Sara's testimony regarding the gun supplied by James Earl Hampton and placed in Sara's purse by Johnny Otis. (*Id.* at 334-335, 341.)

Experts would have testified that the effects of intimate partner battering include disassociation and passivity that make the abused individual more susceptible to acquiescing to the demands of others without question. (Tab 5, ¶ 20, at 658-659.) Sara testified that James Earl told Sara what to tell her mother and the police. (Tab 1, Ex. E, at 322-323.) Sara's

explanation seemed incredulous to the government, but expert testimony would have assisted the jury in assessing Sara's testimony.

Moreover, at several points during Sara's testimony, the *court itself* interjected and directly posed questions to Sara, expressing doubt about her credibility. For example:

> THE COURT: Maybe we can back up a little bit. When were you given the gun?
>
> THE WITNESS: About 20 minutes before Big Mama came and picked me up.
>
> THE COURT: When was the first time anybody discussed with you killing G.G.?
>
> THE WITNESS: Over the telephone.
>
> THE COURT: That was the first time anybody ever discussed with you killing G.G.?
>
> THE WITNESS: Yes.
>
> THE COURT: They gave you a gun and nobody ever talked about killing anybody?
>
> THE WITNESS: No, they didn't talk about that.
>
> THE COURT: They gave you a gun, cocked it, took the safety off, put it in your purse and told you to be careful, but nobody ever discussed with you killing anybody?
>
> THE WITNESS: Not specifically, no.
>
> THE COURT: Your witness.

(*See* Tab 1, Ex. E, at 332.)[32]

[32] This was not the only instance of the court questioning Sara in a skeptical manner that appeared to place her in a position adverse not only to the state

In addition, near the end of Sara's testimony, the prosecutor attempted to highlight the fact that G.G. never hurt or threatened Sara while at the motel (ignoring, of course, the fact that this 36-year-old man was in a motel about to have sex with a girl who had just turned 16 and whom he had previously molested and statutorily raped). (Tab 1, Ex. E, at 367-368.) The implication in the prosecutor's questioning is that it was not reasonable for Sara to act in the manner that she did since G.G. had not hurt or threatened her while at the motel. Experts, however, would have been able to explain to a jury how a teenage girl with Sara's history of sexual abuse at G.G.'s hands might have perceived the situation. The jury would have benefited from learning about the hyper-vigilance and re-experiencing of traumatic events that is common in victims of intimate partner battering. (Tab 5, ¶ 19, at 658.)

Finally, during closing argument, the government also challenged the credibility of Sara's account of James Earl's threats by focusing on Sara's failure to tell the police about those threats. (Tab 1, Ex. E, at 404-405.)[33] The prosecutor told the jury, "[Y]ou can't believe what she is telling you is the truth, it doesn't make any sense." (*Id.* at 410.) Courts, however, have concluded that expert testimony is particularly helpful in assisting the trier of fact in evaluating a person's "earlier statements to the police." *People v.*

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prosecutor but to the court as well. (*See, e.g.*, Tab 1, Ex. E, at 363-364, 370.)

[33] The government's attack on Sara's credibility is similar to that discussed in *In re Walker, supra*, 147 Cal.App.4th at 553 fn.19, and for which the court found expert evidence relevant.

Brown (2004) 33 Cal.4th 892, 895-96 [16 Cal.Rptr.3d 447, 94 P.3d 574]. In Sara's case, an expert would have been able to discuss how victims of intimate partner battering—and especially someone as young as Sara—often respond to threats and why, therefore, it would not have occurred to Sara to inform the police about James Earl's menaces during her interrogation. (Tab 5, ¶ 20, at 658-659.)

The government's—and court's—questions to Sara and the government's arguments to the jury demonstrate how important expert testimony on intimate partner battering was in Sara's case. The government's questioning of Sara revealed it believed many of the "myths" about what would be reasonable behavior for a victim of intimate partner battering—assumptions that affected the evaluation of Sara's credibility. In fact, the government's entire framing of the case and Sara's relationship with G.G. demonstrates a "serious misunderstanding of the psychological effects of the intimate partner battering Sara had endured for years and how those effects manifested themselves in Sara's behaviors and actions." (Tab 6, Ex. B, at 715.) As Dr. Barnard explains in great detail, an expert would have challenged, among other things:

- The government's characterization of money being the motive for the shooting. (Tab 1, Ex. E, at 428-29.) Dr. Barnard states: "Sara had no motive related to stealing; that was James Earl's motive, perhaps, but the money had no relevance to Sara (as evidenced by the fact that Sara gave James Earl everything of G.G.'s that she had taken from the motel). Sara

was operating under the fear and control of James Earl. Sara's taking of G.G.'s belongings was the result of the control exerted over her by James Earl, exacerbated by her own hyper-vigilance and heightened sensitivity to danger. The fact that Sara did not keep any of G.G.'s money reinforces the conclusion that, for Sara, the shooting was not for the purpose of obtaining money." (Tab 6, Ex. B, at 715-716.);

- The government's attempt to paint Sara as unbelievable. (*See, e.g.*, Tab 1, Ex. E, at 410.) Dr. Barnard concludes, "The basis for the government's skepticism of Sara's testimony stems directly from the fact that her actions are difficult to understand outside of the context of intimate partner battering and its effects. To a non-expert, Sara's testimony that she did not intend to steal from G.G. . . . and that she felt considerable fear and duress as a result of James Earl's threats . . . may be difficult to understand. But to an expert in battering, one sees in Sara's behavior, actions, and testimony the common effects of intimate partner abuse – dissociation, fear, and hyper-vigilance. Therefore, expert testimony on the effects of intimate partner battering was needed not just to provide the proper context for the jury to assess Sara's actions and behaviors, but was equally important in bolstering the credibility of Sara's testimony." (Tab 6, Ex. B, at 716.);
- The government's suggestion that Sara shot an unarmed man who was not "doing anything to her." Rather, as Dr. Barnard notes, "Expert testimony would show that the entire

relationship with G.G. involved him 'doing something to her.' He molested her as an eleven-year-old child; he groomed her for further sexual exploitation; he raped her when she was thirteen years old; and, he pimped her as a prostitute when she was fourteen years old. He continued to exert this power and control over her up to and including the night he was shot. G.G.'s presence in Sara's life was a threat to her. A man who picks up a young girl, molests her, continues to have sex with her, and puts her on the streets would usually be prosecuted for his actions and it would not be acceptable to characterize his actions as 'not doing anything to her and not threatening her.' He was a sexual predator and she was his victim." (Tab 6, Ex. B, at 717.);

- The government's contention that Sara's personal history was not an issue in the case. Dr. Barnard states, "Sara's life was very much an issue in understanding the context in which these acts occurred. It was precisely because of Sara's life, and the abuse and battering she endured, that she was vulnerable to exploitation and control by others." (Tab 6, Ex. B, at 717.)
- The government's assertion that Sara lacked credibility because she did not report James Earl's threats to the police. (Tab 1, Ex. E, at 401-402.) An expert could have informed the jury that "[t]o use calling the police as a litmus test for credibility does not fit in this case. Moreover, her failure to call the police is entirely consistent with the behaviors of abuse victims." (Tab 6, Ex. B, at 718.)

- The government's statement that Sara was "blaming the victim" during her testimony in which she stated that at the time of the shooting she remembered all of the things that G.G. had done to her. (Tab 1, Ex. E, at 432.) Dr. Barnard responds, "Expert testimony would have explained exactly what Sara meant when she said this. She knew that G.G. had sexually abused and exploited her for five years. She knew he coerced her into having sex with him and being a prostitute. She knew that she did whatever he demanded out of fear of him beating her as she had seen him do to other women. This would not be 'blaming the victim' but putting G.G.'s actions against Sara in context of the domination and power he exercised over her." (Tab 6, Ex. B, at 718.)

Thus, without the aid of expert testimony, the jury was denied essential information and likely swayed by the government's arguments and both the prosecutor's and the judge's skeptical treatment of Sara and her testimony.

It is therefore reasonably probable that the admission of such expert testimony at trial would have altered the jury's assessment of Sara's credibility, thereby making it significantly less likely that it would have convicted Sara of first degree murder or found true the special circumstances.[34]

[34] For the same reasons discussed in the previous three subsections, expert testimony also would have likely prevented a jury from finding true the special circumstance of Lying in Wait. Without the finding of special circumstances, Sara would not have been subject to a life sentence without the possibility of parole.

4. The Absence of Expert Evidence on Intimate Partner Battering and Its Effects Affected the Outcome of Sara's Sentencing Proceeding.

At the penalty phase of a trial, "a defendant must be permitted to offer any relevant potentially mitigating evidence, *i.e.* evidence relevant to the circumstances of the offense or the defendant's character and record." *In re Gay* (1998) 19 Cal.4th 771, 814 [80 Cal.Rptr.2d 765, 968 P.2d 476]. Section 190.3 of the Penal Code and California Rules of Court, rule 4.423 set forth the mitigating factors relevant at sentencing. *See People v. Ybarra* (2008) 166 Cal.App.4th 1069, 1092 [83 Cal.Rptr.3d 340]. Expert guidance on the effects on intimate partner battering would have focused on a number of these highly relevant factors, thereby aiding the court in properly exercising its sentencing discretion. *See People v. Guinn* (1994) 28 Cal.App.4th 1130, 1149 [33 Cal.Rptr.2d 791]. Specifically, an expert would have testified that the offense was committed while Sara was under the influence of extreme mental and emotional disturbance given her history of intimate partner battering and its effects. *See* Pen. Code section 190.3, subd. (d); Cal. Rules of Court, rule 4.423(b)(2). The court would have learned that Sara's history of abuse made her more susceptible to the coercion and domination of James Earl Hampton and that, given his threats, Sara was acting under extreme duress at the time of the crime. *See* Pen. Code section 190.3, subd. (g); Cal. Rules of Court, rule 4.423(a)(4) & (a)(5). An expert would have testified that Sara, with no apparent

predisposition to do so, was induced by James Earl to participate in the crime. *See* Cal. Rules of Court, rule 4.423(a)(5); Tab 6, Ex. B, at 720-721.

The court also would have "heard about [Sara's] experiences of victimization by almost everyone she had known, and particularly, about her seduction and sexual exploitation by G.G., beginning when she was just a child" and of the "effects of such violence and exploitation." (Tab 5, ¶ 40, at 663.) In addition, at a sentencing hearing, an expert would have been able to place Sara's experiences and behavior in the context of the psychological development of abused children and would have explained the potential value and likely success of therapeutic intervention. (*Id.* ¶ 43, at 664.) The introduction of such evidence would have "assisted the judge in developing an interpretational framework to assess Sara's behavior in its proper context." (Tab 6, Ex. B, at 720.)

The record itself demonstrates that the outcome of Sara's sentencing would have likely been different if the court had been educated by expert testimony. At the penalty hearing, the court made statements demonstrating that it would have benefited from expert testimony on intimate partner battering as it attempted to assess Sara's actions and behaviors. For example, unaware of the effects of intimate partner battering, the court concluded that Sara lacked "moral scruples" and that there "just wasn't any inhibition, apparently, felt by her with regards to this conduct." (Tab 1, Ex. E, at 484.) And yet, actually, "[i]n Sara's case, the risk of future violence was low and her probability of rehabilitation was excellent, facts that are

borne out by many indicators of success since her incarceration." (Tab 6, Ex. B, at 720-721.) For many of the reasons that expert evidence of intimate partner battering assists jurors, such testimony would have assisted the court in assessing Sara's behavior for purposes of imposing a fair and just sentence. This is especially true in this case because, at sixteen, Sara had a much greater claim than an adult to the possibility of future rehabilitation. Thus, the characteristics of youth, acknowledged as the bases for the United States Supreme Court's decision in *Roper v. Simmons*, could have been explained by an expert to assist the judge at sentencing. In outlawing the death penalty for juveniles, the Court found, among other things:

> These differences [between juveniles and adults] render suspect any conclusion that a juvenile falls among the worst offenders. The susceptibility of juveniles to immature and irresponsible behavior means their irresponsible conduct is not as morally reprehensible as that of an adult. Their own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment. The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character.

(2005) 543 U.S. 551, 570 [125 S.Ct. 1183, 161 L.Ed.2d 1] (internal quotation marks and citations omitted). Given the opportunity to hear from

an expert on intimate partner abuse, it is unlikely that the sentencing judge would have concluded that, at 16, Sara was such an irreparable danger to society that she must be imprisoned until she dies. And the life Sara has lived since being incarcerated shows her redemption.

II. THE TRIAL COURT SENTENCED SARA UNDER THE WRONG STATUTE AND THEREFORE SHE IS ALSO ENTITLED TO RELIEF ON A SEPARATE GROUND

A. The Probation Officer's Report Incorrectly Informed the Court that the Law Mandated a Sentence of Life Without the Possibility of Parole.

The record demonstrates that the sentencing judge erroneously believed that life without the possibility of parole was mandatory in Sara's case. At the time of the charged crime, however, Sara was 16 years, two months, and two days old. (Tab 1, Ex. E, at 299.) Because of her age, section 190.5 subdivision (b) of the Penal Code prescribed either a sentence of "life without the possibility of parole *or, at the discretion of the court, 25 years to life*." (Emphasis added.)

The probation officer assigned to Sara's case submitted a report to the trial court and counsel prior to sentencing. (*See generally* Tab 1, Ex. W.) The probation officer's report, which the court "read and considered" (Tab 1, Ex. E, at 479), contained an erroneous statement of California sentencing law and failed to account for the fact that a defendant of Sara's young age could be sentenced to 25 years to life. Several times the probation officer instructed that "in view of the jury's findings that the defendant committed murder in the first degree while lying in wait and

while in the course of a robbery, she is absolutely ineligible for probation consideration and the *mandated term is state prison without the possibility of parole*." (Tab 1, Ex. W, at 426-427 (emphasis added).)

This error had serious implications because, under California law, a court *must* consider a probation officer's report before sentencing. Pen. Code section 1203, subd. (b)(3). In fact, "[p]robation officers' reports are used by judges in determining the appropriate length of a prison sentence." *See* Cal. Rules of Court, rule 4.411. The California Supreme Court has stated that "[t]he overall significance of probation reports finds vivid illustration from the high proportion of recommendations contained in such reports actually accepted by sentencing courts." *People v. Edwards* (1976) 18 Cal.3d 796, 801 [135 Cal.Rptr. 411, 557 P.2d 995] (internal quotation marks and citation omitted). Indeed, a survey of California superior courts revealed that sentencing judges accepted and followed probation report recommendations an astonishing 95.6 to 97.3 percent of the time. *Id*.

In addition, the prosecutor here specifically requested that the court "follow the recommendation of the probation department," without recognizing that the report contained a critical inaccuracy. (Tab 1, Ex. E, at 491.) Given these statistics and the prosecutors' request, the court, unsurprisingly, relied on the report when it sentenced Sara to life without parole: "As to Count I, she is sentenced to state prison for the term *prescribed by law*, that is, life without the possibility of parole." (*Id.* at 492 (emphasis added).) Yet, as explained above, life without the possibility of

parole is not *the sentence* prescribed by law under section 190.5 subdivision (b) of the Penal Code; the court had the discretion to sentence Sara to 25 years to life rather than life without the possibility of parole.

B. Sara's Defense Counsel, the Prosecutor and the Trial Judge Were All Mistaken As to the Applicable Sentencing Law for a Defendant of Sara's Young Age.

As the record makes clear, neither counsel nor the court was aware of section 190.5 subdivision (b)'s applicability or the discretion it conferred upon the court. Sara's attorney failed to bring the critical misstatement of the law contained in the probation officer's report to the court's attention because he was unaware of the discretion the court possessed. In his August 2009 declaration, her defense counsel, now Riverside Superior Court Judge, David Gunn states:

> 7. After Sara's conviction, it was my understanding that the sentencing law relevant to Sara's case required the court to sentence her to life without parole because the jury convicted her of first-degree special circumstances murder.
>
> 8. It was not until recently that I first read *People v. Ybarra*, 149 Cal. Rptr. 3d 340 (2008), and learned that a life without parole sentence was not mandatory in Sara's case under Cal. Penal Code 190.5 because of her age at the time of the crime.

(Tab 2, ¶¶ 7-8, at 593.) Instead, Sara's counsel filed a futile pre-sentencing motion asking the court to strike the jury's findings of special circumstances. (*See generally* Tab 1, Ex. Y.) Defense counsel based his

request on the court's "power under Penal Code section 1385 to dismiss special circumstances where the court believes it would be in the interest of justice to do so." (*Id.* at 588.) However, Sara's counsel was mistaken; section 1385.1 of the Penal Code expressly prohibits a court from striking special circumstances in cases such as Sara's. *See* Pen. Code section 1385.1 ("Notwithstanding Section 1385 or any other provision of law, a judge shall not strike or dismiss any special circumstance which is admitted by a plea of guilty or nolo contendere or is found by a jury or court as provided in Sections 190.1 to 190.5, inclusive.").

Sara's sentencing proceeding focused exclusively on her defense counsel's mistaken request to strike the special circumstances rather than on whether the court should exercise the discretion authorized by section 190.5 of the Penal Code and sentence the juvenile before it to 25 years to life. (Tab 1, Ex. E, at 480.) Neither the prosecutor nor the court ever suggested that striking the special circumstances was outside the court's authority. In fact, the parties and the court treated the court's decision to deny the motion to strike the special circumstances as dispositive of Sara's sentence. (*Id*.) In the transcript's fifteen pages dedicated to Sara's sentencing proceeding, there is not a single reference to section 190.5 subdivision (b) of the Penal Code. In his declaration, Sara's defense counsel addressed the fact that his mistake as to the applicable law appeared to be shared by the prosecutor and judge:

> 9. Based on their statements and actions, I believe that the trial court and the prosecution were also unaware that Penal Code 190.5 allowed the court to impose a sentence of 25 to life in Sara's case.

(Tab 2, ¶ 9, at 593). Ultimately, the court sentenced Sara to the term it mistakenly believed was mandated by law. (Tab 1, Ex. E, at 492.)

C. The Trial Court's Misconception of Its Sentencing Authority Requires that Sara Be Resentenced Under Penal Code Section 190.5 subdivision (b).

The trial court's failure to understand its discretionary sentencing power warrants at a minimum that Sara be resentenced under the correct sentencing regime. A defendant is "entitled to sentencing decisions made in the exercise of the 'informed discretion' of the sentencing court." *People v. Belmontes* (1983) 34 Cal.3d 335, 348, fn.8 [193 Cal.Rptr. 882, 667 P.2d 686] (quoting *United States v. Tucker* (1972) 404 U.S. 443, 447 [92 S.Ct. 589, 30 L.Ed.2d 592]). "A court which is unaware of the scope of its discretionary powers can no more exercise that 'informed discretion' than one whose sentence is or may have been based on misinformation regarding a material aspect of a defendant's record." *Id*. (citing *People v. Ruiz* (1975) 14 Cal.3d 163, 168 [120 Cal.Rptr. 872, 534 P.2d 712]). Moreover, "habeas corpus is a proper remedy to secure reconsideration of the sentence" when a court may have been "influenced by an erroneous understanding of the scope of its sentencing powers." *Id*. (citing *People v. Tenorio* (1970) 3 Cal.3d 89, 95 fn.2 [89 Cal.Rptr. 249, 473 P.2d 993]).

"[W]hen the record shows that the trial court proceeded with sentencing on the erroneous assumption it lacked discretion, remand is necessary so that the trial court may have the opportunity to exercise its sentencing discretion at a new sentencing hearing." *People v. Brown* (2007) 147 Cal.App.4th 1213, 1228 [54 Cal.Rptr.3d 887] (citing *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 [53 Cal.Rptr.2d 789, 917 P.2d 628]).

The 2008 case of *People v. Ybarra, supra*,166 Cal.App.4th 1069, proves instructive here. The facts before the court in *Ybarra* are strikingly similar to the facts here. In *Ybarra*, a jury convicted the defendant of first degree murder with special circumstances. *Id.* at 1074. At the time of the crime, the defendant was 17 years old. *Id*. at 1088. As here, section 190.5 subdivision (b) of the Penal Code applied, granting the trial court discretion to sentence the defendant to a lesser penalty than life without the possibility of parole. However, despite the clear language of section 190.5 subdivision (b), the probation officer's report misstated the sentencing law: the finding of special circumstances "establish[ed] the sentence to be life without the possibility of parole." *Id*. at 1093. Just like Sara's defense counsel, counsel in *Ybarra* relied on a motion to strike the special circumstances to reduce his client's sentence. *Id*. But, after "read[ing] and consider[ing]" the probation officer's report, the *Ybarra* trial court denied the motion to strike the special circumstances "essentially for the reasons set forth" in the

probation officer's report. *Id*. The *Ybarra* court then sentenced the defendant to life without the possibility of parole. *Id*.

Based on these facts—equally applicable to Sara's sentencing—the appellate court reversed and remanded the *Ybarra* sentence. In so doing, the appellate court explained:

> Implicit in the trial court's ruling on [defendant's] motion to strike and stating reasons for so ruling is a lack of awareness by the court and counsel alike of the electorate's express elimination of the power the trial court purported to exercise. Consequently, the silence of the sentencing hearing record about [defendant's] age is suggestive of a lack of awareness by the court and counsel alike of the discretion that section 190.5, subdivision (b) confers to impose on a youthful offender a 25-to-life term instead of an LWOP term.

People v. Ybarra, supra, 166 Cal.App.4th 1093

Relying on *Guinn*'s mandate that a court properly exercise its discretion under section 190.5 subdivision (b) by considering the mitigating factors, the appellate court set forth the potentially relevant mitigating and aggravating circumstances found in California Rules of Court, rule 4.421 and 4.423, as well as in section 190.3 of the Penal Code. *People v. Ybarra, supra,* 166 Cal.App.4th at 1089-92. The appellate court then found that the record before it explicitly showed a "lack of meaningful argument by counsel about the facts and the law and implicitly show[ed] a belief by the court and counsel alike that an LWOP term was mandatory if the special circumstances were not stricken." *Id*. at 1094. As such, the court held that

even its "deferential review" required it to vacate the sentence and to remand to the trial court for "resentencing in light of the factors in section 190.3 and the circumstances in aggravation and mitigation in rules 4.421 and 4.423." *Id*.

As in *Ybarra*, Sara's trial court "read and considered" the probation officer's report, which provided an incorrect statement of the applicable sentencing law. Like the *Ybarra* record, the record of Sara's sentencing is silent as to section 190.5 subdivision (b) of the Penal Code, the significance of Sara's age at the time of the crime for purposes of sentencing,[35] and the relevant mitigating circumstances. Just like *Ybarra*'s lawyers and trial court, Sara's lawyers and trial court proceeded with a baseless motion to strike the special circumstances as if the court possessed authority to take such action. And, once it denied defense counsel's baseless motion to strike the special circumstances, the court in Sara's case—like the court in *Ybarra*—immediately imposed a sentence of life without the possibility of parole without exercising its discretion under section 190.5 subdivision (b) to impose a sentence of 25 years to life. Thus, under *Ybarra*, the record of Sara's sentencing hearing "explicitly shows a lack of meaningful argument by counsel about the facts and the law and implicitly shows a belief by the court and counsel alike that an LWOP term was mandatory if the special

[35] The trial court inquired as to Sara's age at the outset of the hearing to calculate how long she would be imprisoned if the court sentenced her to the custody of the Youth Authority. (*See* Tab 1, Ex. E, at 480.)

circumstances were not stricken." *People v. Ybarra, supra,* 166 Cal.App.4th at 1094.

As illustrated in *Ybarra*, the exercise of judicial discretion at sentencing *requires* consideration of all material factors, circumstances and legal principles necessary to an informed, reasoned, intelligent, and just decision. *People v. Ybarra, supra,* 166 Cal.App.4th at 1093-94*; see also People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 977 [60 Cal.Rptr.2d 93, 928 P.2d 1171]; *In re Cortez* (1971) 6 Cal.3d 78, 85-86 [98 Cal.Rptr. 307, 490 P.2d 819]. Because the court failed to apply the correct sentencing law or to consider the applicable mitigating factors, its decision in sentencing Sara must be vacated. It is impossible for the court to have conducted a "proper exercise of discretion" as required under section 190.5 subdivision (b) of the Penal Code because it was unaware of the discretion it held in the first place. *See Belmontes, supra*, 34 Cal.3d at 348 fn.8. *Ybarra* therefore requires vacating Sara's sentence and remanding for a proper exercise of sentencing discretion by the trial court.

III. THE REVIEWING COURT HAS BROAD POWER TO PROVIDE SARA A FAIR AND JUST REMEDY

In enacting section 1473.5 of the Penal Code, the legislature provided this Court with extensive authority in a small subset of cases in which the victims of intimate partner battering were convicted of violent crimes committed before 1996. Because section 1473.5 incorporates Sections 1260 through 1262 of the Penal Code, this Court has broad

discretion to reduce a defendant's conviction level or sentence, or to order a new trial, as well as other remedies:

> The court may reverse, affirm, or modify a judgment or order appealed from, or reduce the degree of the offense or attempted offense or the punishment imposed, and may set aside, affirm, or modify any or all of the proceedings subsequent to, or dependent upon, such judgment or order, and may, if proper, order a new trial and may, if proper, remand the cause to the trial court for such further proceedings as may be just under the circumstances.

Pen. Code section 1260.

This Court should provide Sara with appropriate relief under section 1473.5 because she was a victim of intimate partner battering convicted of a violent crime committed before 1996, and evidence on intimate partner battering was unquestionably relevant to her trial and sentencing. Had evidence on intimate partner battering and its effects been admitted at Sara's trial or sentencing, there is a reasonable probability, sufficient to undermine confidence in her conviction, that she would not have been convicted of first degree murder with special circumstances and sentenced to life in prison without the possibility of parole.

Sara Kruzan respectfully requests this Court to reduce her conviction to voluntary manslaughter and sentence her to time served or to a sentence it deems appropriate to achieve justice or, alternatively, to reverse the judgment of conviction and remand the case for a new trial so that Sara may present expert testimony on intimate partner battering and its effects.

Only if the Court determines that Sara has not met her burden under section 1473.5 must it turn to the fact that Sara was sentenced under the wrong statute. In that case, California law makes clear that Sara is entitled to a new sentencing proceeding conducted under section 190.5 and at which she can present expert testimony and other mitigating evidence to support her request for a sentence other than life without parole.

Word Count Certification

Pursuant to California Rules of Court, rule 8.204(c), the undersigned certifies that the foregoing Memorandum of Points and Authorities in Support of Petition for Writ of Habeas Corpus contains 10,647 words per a computer-generated word count.

DATED: April 28, 2010

Respectfully submitted,

Marc A. Boman
Ronald A. McIntire
Melora M. Garrison
Kelly F. Moser
PERKINS COIE LLP

Michael J. Teter

Patricia J. Arthur
NATIONAL CENTER FOR YOUTH LAW

By: _____
Ronald A. McIntire, Bar No. 127407
RMcIntire@perkinscoie.com
Melora M. Garrison, Bar No. 205408
MGarrison@perkinscoie.com
Michael J. Teter, Bar No. 222456
Michael.Teter@pomona.edu

Attorneys for Petitioner
Sara J. Kruzan

PROOF OF SERVICE BY MAIL

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 1888 Century Park East, Suite 1700, Los Angeles, California 90067-1721. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. On April 28, 2010, I placed with this firm at the above address for deposit with the United States Postal Service a true and correct copy of the within document(s):

(1) Petition for Writ of Habeas Corpus Pursuant to Penal Code Section 1473.5 and to Redress Sentencing Error Pursuant to Penal Code Section 190.5;

(2) Index of Documents In Support of Petition for Writ of Habeas Corpus Pursuant to Penal Code Section 1473.5 and to Redress Sentencing Error Pursuant to Penal Code Section 190.5, Volume I, Part 1 of 2;

(3) Index of Documents In Support of Petition for Writ of Habeas Corpus Pursuant to Penal Code Section 1473.5 and to Redress Sentencing Error Pursuant to Penal Code Section 190.5, Volume I, Part 2 of 2; and

(4) Index of Documents In Support of Petition for Writ of Habeas Corpus Pursuant to Penal Code Section 1473.5 and to Redress Sentencing Error Pursuant to Penal Code Section 190.5, Volume II

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in a sealed envelope, postage fully paid, addressed as follows:

District Attorney
County of Riverside
3960 Orange Street
Riverside, CA 92501
Phone: (951) 955-5400

Office of the Attorney General
110 West "A" Street, Suite 1100
P.O. Box 85266-5299
San Diego, CA 92186-5266
Phone: (619) 645-2001

Clerk of the Court
Superior Court of California, County of Riverside
30755-D Auld Road, Suite 1226
Murrieta, CA 92563
Phone: (951) 304-5000

Following ordinary business practices, the envelope was sealed and placed for collection and mailing on this date, and would, in the ordinary course of business, be deposited with the United States Postal Service on this date.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on April 28, 2010, at Los Angeles, California.

_____
Sharon Jones