

1 MICHAEL P. JUDGE, PUBLIC DEFENDER
2 OF LOS ANGELES COUNTY, CALIFORNIA
3 Raunda Frank, Deputy Public Defender
4 State Bar No. 158216
5 320 West Temple Street, Suite 590
6 Los Angeles, Ca 90012
7 Telephone: 213-974-3025

8 Attorneys for Petitioner

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES

11 In re Alex Umana) Sup. Ct. Case No. BA144035
12 on Habeas Corpus.) **PETITION FOR WRIT**
13) **OF HABEAS CORPUS**

14 TO THE HONORABLE JUDGE PRESIDING IN DEPARTMENT 100 OF THE
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF
16 LOS ANGELES:

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18 Petitioner Alex Umana, by and through his attorney Michael P. Judge, Public Defender of
19 Los Angeles County, hereby respectfully petitions this court to issue its Writ of Habeas Corpus to
20 relieve petitioner of his unlawful confinement upon the charge he violated Health and Safety Code
21 Section 11351, possession of cocaine for sale. Petitioner's custodial status is unlawful because his
22 arrest and subsequent conviction by a jury was based solely on the testimony of Rampart Division
23 officers Buchanan, Richardson and Lujan, some of whom have been relieved of duty for conspiring
24 to plant evidence and give false testimony in other cases.
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1 At the jury trial which commenced on September 15, 1997, in Department 117 with
2 Honorable Thomas L. Willhite, Jr. presiding, defendant was present with counsel, Deputy Public
3 Defender, Lou Spinelli.

4 Officer Buchanan testified that on January 11, 1997, he was assigned to the LAPD
5 Rampart CRASH Divison. At approximately 11:00 p.m., he went to an apartment building on
6 250 S. Kenmore Avenue in Los Angeles with his partner Officer Mark Richardson and Officers
7 Daniel Lujan and Omar Veloz. He says it is a location known for narcotics sales and gang
8 activity. (Jury Trial Transcript, Exhibit C, hereinafter "RT" 184:21-28, 185:1-13)

9
10 Officer Buchanan testified they entered the building from the rear and positioned
11 themselves at the rear door where they could see down the hallway. (RT 200:13-22) From his
12 vantage point, Officer Buchanan testified he could see Petitioner and a few other individuals in
13 the lobby area. After ten minutes of watching them, Petitioner walked towards him, reached
14 into his mouth and removed a jewelry sized baggie with an off-white substance. He then
15 observed Petitioner placed the baggie on a ledge used to house a fire hose. (RT 202-204)

16
17 Based on his observations, Officer Buchanan testified he formed the opinion Petitioner had
18 removed rock cocaine from his mouth so he and the other officers arrested him. Officer
19 Buchanan then recovered the cocaine and two other plastic containers with cocaine from the
20 same area near the fire hose on the ledge. (RT 210-211)

21
22 Officers Mark Richardson and Daniel Lujan also testified at the jury trial corroborating
23 Officer's Buchanan's testimony. (RT 264:13-19, 460-464)

24 For the defense, Orlando Lainez testified that on January 11, 1997, Petitioner and his
25 family were at his house at a barbeque and left about 10:40 p.m.. (RT 366:1-7) Nelly Cardenas,
26 Petitioner's common law wife, testified that only five minutes after she, Petitioner and her
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1 daughter, Desiree, returned home to their apartment, she went upstairs to ask the neighbors to be
2 quiet. When she first walked up the stairs to the second floor, she didn't see any police officers.
3 (RT 381-382) However, while she was upstairs, she saw four to six policeman who told her to
4 be quiet and stand against the wall. She complied until she heard Petitioner whistle for her to
5 come home. At that time, the police officers took her downstairs where she noticed other people
6 were already standing up against the wall. (RT 384)

8 As Ms. Cardenas and Petitioner were about to enter their apartment, they were both ordered
9 to the wall where the other men were being detained. (RT 385) She further testified that the
10 officers searched the men in the hallway, one by one, but Petitioner was the only one handcuffed.
11 (RT 387)

13 The last defense witness, Arturo Marcos, the manager of the building, testified that while he
14 was cleaning the hallway, he had a brief conversation with Petitioner. While they talked near the
15 open door of Petitioner's apartment, several police officers came down the stairs from the second
16 floor and told Mr. Marcos to go away and he complied. (RT 427-431)

17 Petitioner did not testify at the jury trial, but has maintained his innocence. Petitioner
18 asserts he was wrongfully arrested as soon as the officers discovered he had Eighteen Street gang
19 tattoos. His declaration regarding the facts of his arrest are consistent with the trial testimony of
20 the three defense witnesses. Defendant states he did not possess cocaine. He insists that he had
21 just returned home and was not loitering in the hallway near the fire hose before his arrest. (See
22 Petitioner's declaration, Exhibit A) In fact, according to witness Arturo Marcos, Petitioner was
23 standing near his apartment when the police came downstairs and told him to leave.
24

25 Notwithstanding the absence of any physical evidence linking Petitioner to the cocaine,
26 the jury returned a verdict of guilty on September 24, 1997, based solely on the testimony of
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1 these police officers. There is no independent corroboration of their testimony.

2 Relief should be granted in this case as the arrest and conviction of Petitioner is based
3 solely on the credibility of Rampart CRASH Officers whom have demonstrated a propensity to
4 fabricate arrest reports and commit perjury in court.
5

6 On September 8, 1999, Officer Rafael Perez, a former LAPD Rampart CRASH Division
7 officer, pleaded guilty to eight of the ten charged counts involving theft of cocaine in exchange
8 for a five year state prison term and an agreement to cooperate with law enforcement in a
9 continuing investigation into allegations of corruption by officers assigned to the Rampart
10 Division. (See People v. Rafael Perez, case number BA109900)

11 This investigation by the District Attorney's Office has revealed corruption by Officer
12 Perez as well as other Rampart CRASH Division officers. Based on statements from Officer
13 Perez, under a grant of derivative use immunity, which were corroborated by other evidence, the
14 People requested that felony cases involving CRASH officers Buchanan, Richardson, Lujan and
15 Veloz be dismissed. (See the cases cited below for judicial notice). The People's request for
16 dismissal in the following cases is evidence they no longer have confidence in the credibility of
17 these four officers.
18

19 Officer Michael Buchanan, serial number 32005, was relieved of duty in October, 1999.
20 Officer Buchanan falsely reported he was hit with a suspect's vehicle in People v. Munoz, case
21 number BA135359. He reportedly planted crack cocaine on Walter Rivas and then falsely
22 testified against him in court in People v. Rivas, case number BA165829. The District Attorney's
23 office dismissed these cases on the grounds they no longer had confidence in the credibility of
24 Officer Buchanan (See Daily Journal Article, February 18, 2000 and LA Times Article, 12-2-99,
25 Exhibits D and E, respectively)
26
27

1 reference herein.

2 VI

3 Petitioner has no other adequate or speedy remedy at law. Habeas corpus lies to challenge
4 a conviction after a trial of a defendant against whom false testimony was presented. (Pen. Code
5 § 1473, subd. (b) (1).)]
6

7 VII

8 False evidence was presented at the jury trial in this case against Petitioner resulting in
9 his conviction. That false evidence was that Officers Richardson and Buchanan actually
10 observed Petitioner take a baggie of cocaine from his mouth and place it on a ledge used to house
11 a fire hose on the wall. Such false testimony at the jury trial absent any physical or other
12 independent corroborating evidence was material to Petitioner's conviction and state prison
13 confinement.
14
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16 VIII

17 Copies of the following documents are being lodged with this court at the time of the
18 filing of this petition, and are incorporated by reference herein:
19

20 Exhibit A: Declaration of Petitioner Alex Umana

21 Exhibit B: Felony Information in case number BA144035

22 Exhibit C: Jury Trial Transcript dated September 15, 1997- September 23, 1997

23 Exhibit D: Daily Journal Article, 2-18-00

24 Exhibit E: Los Angeles Times Article, 12-2-99

25 Exhibit F: Los Angeles, Times Article, 2-14-99

26 Judicial notice of the following cases previously dismissed due to officer misconduct is
27 also requested:
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- A: People v. Rafael Perez, BA109900
- B: People v. Munoz, BA135359
- C: People v. Rivas, BA165829
- D: People v. Perez, BA143228
- E: People v. Canales, BA128222
- F: People v. Oliver, BA135752

IX

No other petition for writ of habeas corpus, or for any other extraordinary relief, has been filed on petitioner's behalf. A Notice of Appeal was filed on October 23, 1997. The judgment was affirmed and a remittitur was issued on September 4, 1998.

X

Petitioner will suffer irreparable harm if he is subjected to continued unlawful confinement in state prison.

WHEREFORE, petitioner respectfully prays

- 1) That this court order the Department of Corrections to release petitioner from custody forthwith.
- 2) That this court dismiss the action in the above-entitled case and relieve petitioner from all disabilities and penalties.
- 3) For such other and further relief as this court deems just and proper.

MICHAEL P. JUDGE, PUBLIC DEFENDER
OF LOS ANGELES COUNTY, CALIFORNIA

By Raunda Frank
Raunda Frank
Deputy Public Defender

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VERIFICATION

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, the undersigned, declare under penalty of perjury as follows:

I am an attorney at law, duly licensed to practice in all the courts of California, and I am employed as a deputy public defender for the County of Los Angeles.

In this capacity, I represent petitioner in the foregoing petition for writ of habeas corpus, and I make this verification as his attorney acting on his behalf in that the allegations made therein are more within my knowledge than petitioner's.

I have read the foregoing petition and know of my own personal knowledge that the matters alleged therein are true, based on the exhibits attached hereto, the requested judicially noticed materials and the court file in the instant case.

Executed this 3rd day of April, 2000, at Los Angeles, California.



Raunda Frank, Deputy Public Defender

1 POINTS AND AUTHORITIES

2 HABEAS CORPUS RELIEF LIES WHERE FALSE EVIDENCE WAS
3 PRESENTED AT TRIAL

4 Penal Code section 1473 provides, in relevant part:

5
6 “(a) Every person unlawfully imprisoned or restrained of his liberty, under
7 any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the
8 cause of such imprisonment or restraint.

9 “(b) A writ of habeas corpus may be prosecuted for, but not limited to, the
10 following reasons:

11 “(1) False evidence that is substantially material or probative on the issue
12 of guilt or punishment was introduced against a person at any hearing or
13 trial relating to his incarceration; or

14
15 “(2) False physical evidence, believed by a person to be factual, probative,
16 or material on the issue of guilt, which was known by the person at the
17 time of entering a plea of guilty, which was a material factor directly
18 related to the plea of guilty by the person.

19
20 “(c) Any allegation that the prosecution knew or should have known of the
21 false nature of the evidence referred to in subdivision (b) is immaterial to the
22 prosecution of a writ of habeas corpus brought pursuant to subdivision (b).”

23 The Supreme Court has construed Penal Code section 1473 to provide for relief based on
24 false evidence used against a defendant:

25 “In addition, under Penal Code section 1473, a prisoner may seek relief in
26 habeas corpus on, among other grounds, that '[f]alse evidence that is substantially
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1 material or probative on the issue of guilt or punishment was introduced against
2 [him] at any hearing or trial relating to his incarceration' (Pen. Code, § 1473,
3 subd. (b)(1).)

4 "False evidence is 'substantially material or probative' if it is 'of such
5 significance that it may have affected the outcome,' in the sense that 'with
6 reasonable probability it could have affected the outcome' (*In re Wright*
7 (1978) 78 Cal.App.3d 788, 814 [144 Cal.Rptr. 535], italics added (per Kaufman,
8 J.)) In other words, false evidence passes the indicated threshold if there is a
9 'reasonable probability' that, had it not been introduced, the result would have
10 been different. (*Ibid.*) The requisite 'reasonable probability,' we believe, is such as
11 undermines the reviewing court's confidence in the outcome. (Cf. *United States v.*
12 *Bagley*, *supra*, 473 U.S. at p. 678 [87 L.Ed.2d at pp. 490-491] [dealing with
13 prosecutorial nondisclosure of evidence in violation of the Fourteenth
14 Amendment's due process clause].) It is dependent on the totality of the relevant
15 circumstances. (*In re Wright*, *supra*, 78 Cal.App.3d at p. 817.) It is also, we
16 believe, determined objectively. (Cf. *Strickland v. Washington*, *supra*, 466 U.S. at
17 p. 695 [80 L.Ed.2d at p. 698] [dealing with ineffective assistance of counsel in
18 violation of the Sixth Amendment].)

19 "Thus, to merit relief on this basis, the prisoner must show that any false
20 evidence introduced against him was substantially material or probative, as
21 defined above. (See Pen. Code, § 1473, subd. (b)(1); see also *In re Wright*, *supra*,
22 78 Cal.App.3d at pp. 807-821 [construing and applying Pen. Code, § 1473, subd.
23 (b)(1)].)" (*In re Sassounian* (1995) 9 Cal.4th 535, 546.)

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In this case, the false physical evidence was perjurious testimony offered at the jury trial that Petitioner removed a baggie of cocaine from his mouth and put it on a ledge used to house a fire hose in plain view of several police officers. The false testimony of police officers Buchanan, Richardson and Lujan as introduced against the Petitioner was substantially material or probative because this was the only evidence against him and the result was a jury verdict of guilty.

Respectfully submitted,

MICHAEL P. JUDGE, PUBLIC DEFENDER
OF LOS ANGELES COUNTY, CALIFORNIA

By *Raunda Frank*
Raunda Frank, Deputy Public Defender

Attorneys for Petitioner

EXHIBIT "A"

DECLARATION OF ALEX UMANA

1
2 I, Alex Umana, declare as follows:
3

4 1. I am currently housed in the Calipatria State Prison,
5 7018 Blair Road, P.O. Box 5002, Calipatria, California,
6 92233, CDC number K-75291, D-4, 110(U). At the time of my
7 arrest on January 1, 1997, I resided with my family at 250
8 S. Kenmore, Los Angeles, California, Apartment number 109.

9 2. On January 11, 1997 at approximately 11:00 p.m., I
10 returned home with my wife and daughter after attending a
11 family barbeque. Shortly thereafter, my wife, Nellie Cardenas
12 left our apartment to ask a noisy neighbor to hold the noise
13 down. Ten minutes passed and my wife had not returned. I
14 left to find her and report the disturbance to my apartment
15 manager and then I saw her in the hallway.

16 3. Upon returning to the apartment together, we were
17 detained by police officers whom we noticed had already
18 detained several men in the building's lobby.

19 4. I responded truthfully to questions from the officers
20 that I was not on probation or parole, but that I did have
21 Eighteen Street gang tattoos. An officer immediately placed
22 me in handcuffs and searched my apartment without consent.

23 5. At the time of my arrest, I told the police I did not
24 have any cocaine. I did not put cocaine on the ledge near
25 the fire hose. I am not guilty of this charge and have
26 maintained my innocence at all times.

27 6. I was wrongfully arrested and convicted as a result of
28 the false police report and testimony involving Rampart
29 officers Buchanan, Richardson, Lujan and Veloz.

30 7. I respectfully request the court dismiss this case and
31 order my immediate release from State Prison because I am not
32 guilty of the charges.

33 I declare under penalty of perjury that the aforementioned
34 is true and correct.

Date:

Alex Umana
ALEX UMANA, Declarant

4/15/97

TOTAL P.22

EXHIBIT "B"

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

v.

01 ALEX UMANA (10/23/1965)

Defendant(s).

CASE NO. BA144035

INFORMATION

Held To Answer
Date: 04/03/1997
Department: CEN 117

INFORMATION
SUMMARY

<u>Ct. No.</u>	<u>Charge</u>	<u>Charge Range</u>	<u>Defendant</u>	<u>Special Allegation</u>	<u>Alleg. Effect</u>
1	HS 11351.5	03-04-05	UMANA, ALEX	PC 667.5(B) HS 11370(A)	+1 yr. per prior MSP

The District Attorney of the County of Los Angeles, by this Information alleges that:

COUNT 1

On or about January 11, 1997, in the County of Los Angeles, the crime of POSSESSION FOR SALE OF COCAINE BASE, in violation of HEALTH & SAFETY CODE SECTION 11351.5, a Felony, was committed by ALEX UMANA, who did willfully and unlawfully possess for sale and purchase for purposes of sale cocaine base.

"NOTICE: Conviction of this offense will require you to register pursuant to Health and Safety Code section 11590. Failure to do so is a crime pursuant to Health and Safety Code section 11594."

It is further alleged as to count(s) 1 pursuant to Penal Code section 667.5(b) that the defendant(s), ALEX UMANA, has suffered the following prior conviction(s):

<u>Case No.</u>	<u>Code/Statute</u>	<u>Conv. Date</u>	<u>County of Court</u>	<u>State</u>	<u>Court Type</u>
A788965	HS11359	10/09/1986	LOS ANGELES	CA	SUPERIOR
A955153	HS11360	09/09/1987	LOS ANGELES	CA	SUPERIOR
A652324	PC12021	04/11/1989	LOS ANGELES	CA	SUPERIOR

one Commitment

and that a term was served as described in Penal Code section 667.5 for said offense(s), and that the defendant(s) did not remain free of prison custody for, and did commit an offense resulting in a felony conviction during, a period of five years subsequent to the conclusion of said term.

It is further alleged as to count(s) 1 pursuant to Health and Safety Code sections 11370(a) and (c) that the defendant(s), ALEX UMANA, was previously convicted of the following offense(s), to wit:

<u>Case No.</u>	<u>Code/Statute</u>	<u>Conv. Date</u>	<u>County of Court</u>	<u>State</u>	<u>Court Type</u>
A788965	HS11359	10/09/1986	LOS ANGELES	CA	SUPERIOR
A955153	HS11360	09/09/1987	LOS ANGELES	CA	SUPERIOR

* * * * *

THIS INFORMATION CONSISTS OF 1 COUNT(S).

GIL GARCETTI
DISTRICT ATTORNEY
County of Los Angeles,
State of California

BY: _____

RICHARD SULLIVAN
DEPUTY DISTRICT ATTORNEY

Filed in Superior Court,
County of Los Angeles

/W R

DATED: _____

Pursuant to Penal Code Section 1054.5(b), the People are hereby informally requesting that defense counsel provide discovery to the People as required by Penal Code Section 1054.3.