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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES
CLARA SHORTRIDGE FOLTZ CRIMINAL JUSTICE CENTER
DEPARTMENT 132, JUDGE STEPHEN A. MARCUS

In re,)	CASE NO. A396080
WILLIE EARL GREEN)	MEMORANDUM OF DECISION
Petitioner,)	OF HABEAS CORPUS
On Habeas Corpus)	

Preamble

The Court held an evidentiary hearing on the dates of November 2, 2007, November 30, 2007, and January 11, 2008 for the purpose of determining whether the habeas petition filed on behalf of Petitioner Willie Green should be granted. Petitioner Willie Green was convicted of the crimes of murder, burglary and robbery in 1984 in connection with the robbery of a rock house by two suspects and received a sentence of 33 years to life. The sole eyewitness who identified Willie Green as being involved in the robbery and murder was Willie Finley.

According to Willie Finley's testimony at the jury trial, he was going to the store and returning to the rock house where he worked when he was accosted by a gunman. The gunman hits Finley on the side of the head with a gun and walks him back to the house (trial, pg. 74). One of the persons inside the rock house opens the door for Willie Finley and the gunman follows Willie Finley into the house. The gunman who comes in with Mr. Finley orders everyone in the house to lie down on the ground. The people inside the rock house included

1 Patricia Austin, her child, Greg White, and Dee Dee Walker (hereinafter referred to as Denise
2 Walker). Ms. Walker is told by the gunman to open the back door which was locked so that a
3 second robber could enter the rock house. Finley testified at the trial that he heard Denise
4 Walker say something that sounded like "Willie" in a trembling, frightened voice." Patricia
5 Austin who also testified at the trial said Denise Walker had yelled "Oh No, Willie."

6 After Denise Walker opened the back door and let suspect number two in the house,
7 Finley testified he heard the unidentified man holler "to kick this bitch's ass" (trial pp. 86-87).
8 The second suspect who was carrying a sawed-off shotgun pulled Denise Walker by her hair into
9 the kitchen area. Mr. Finley identified the second man with the shotgun as being Willie Green
10 (trial pp. 87-88).

11 The second man demands "the money and the dope" from Finley. He also hits Finley in
12 the head with his shotgun. Willie Finley testifies at trial that being hit with a gun had no affect
13 on him (trial p. 74). Suspect 2 (Willie Green) opens a locked bedroom in the house and recovers
14 a shoe box with money in it. Suspect two exchanges his shotgun for a pistol with suspect one.
15 Suspect two leaves the rock house with the shoe box and the pistol which had been given to him
16 by suspect one.

17 According to Willie Finley, after suspect number two leaves the house, Finley heard
18 suspect one say to Denise Walker, "You're the only one who knows me" (trial, p. 95).

19 Suspect number one shoots Denise Walker with the shotgun. He shoots her once, then
20 reloads the shotgun, and shoots her again. Finley was able to see the shots hitting Ms. Walker
21 (trial pp. 97-98). Mr. Finley testified at the trial that he talked to Detective Bunch about the
22 shooting and that he selected the photo of Willie Green during a photo identification procedure
23 conducted by Detective Bunch on September 21, 1983.

24 Mr. Finley identified Willie Green as the person with the shotgun who came through the
25 back door of the rock house. Apparently, one week after the photo identification procedure, Mr.
26 Finley viewed a live lineup at the county jail and again selected Willie Green as the second
27 robber with the shotgun. During his trial testimony, Willie Finley denied receiving any help
28

1 from Detective Bunch in selecting Willie Green. He also claimed that he only learned the name
2 of the person he had picked was “Willie Green” after the live lineup.

3 Detective Bunch testified about both the photo lineup and the live lineup. Detective
4 Bunch stated that when Finley was handed the lineup card, he looked at the photo of Willie
5 Green and said, “I’m pretty sure this is the man.” When asked if he was positive, Finley said,
6 “No, I’m pretty sure it is.” He was about 80% sure (trial, p. 379).

7 Detective Bunch also confirmed that Willie Finley identified two other persons as the
8 possible shooter of Ms. Walker. Lemuel Goode was identified by Willie Finley as looking
9 similar to the shooter. He was eliminated as a suspect when Patricia Austin could not identify
10 Mr. Goode. The second suspect selected by Finley, Mr. Lewis, was also ruled out as being the
11 shooter.

12 Dr. William Shomer testified as an eyewitness identification expert and told the jury
13 about factors which would be involved in making an accurate identification in a crime situation
14 such as the one involved in the murder of Denise Walker (trial, p. 451).

15 Leslie Goode testified at the trial that while in jail with Finley, Finley had said that “he
16 wouldn’t identify Lemuel Goode, Willie Green, or anybody” (trial, pp. 496-497).

17 **Willie Finley’s Recantation**

18 Willie Finley has since recanted his trial testimony and has claimed that he identified
19 Petitioner Willie Green because Detective Bunch improperly suggested that he pick the photo of
20 Willie Green. He also claimed he selected the photo of Willie Green because he was informed
21 by Detective Bunch during the photo lineup that Willie Green had been involved with Denise
22 Walker before and had robbed her house. In his recantation, Mr. Finley has made additional
23 claims as to why his identification of Willie Green was not reliable. For example, Mr. Finley
24 claims he was under the influence of cocaine at the time of the murder and this impacted his
25 ability to make identification. He also claims he suffers from hemophilia and his face was
26 swollen because the robbers hit him the face with a pistol and a shotgun. Once again, Mr. Finley
27 states that his ability to identify Mr. Willie Green was impaired by his medical condition.

1 The Court's task of deciding the truth of Mr. Finley's recantation is very important in this
2 case because Finley's eyewitness identification and the statements by Denise Walker (motive
3 evidence) is the only evidence in the case. None of the adults who were present at the rock
4 house that night were able to identify Mr. Green as one of the suspects involved in the murder of
5 Denise Walker. There was no physical evidence or forensic evidence which connects Willie
6 Green to the crime scene. Willie Green who was arrested on September 27, 1983, did not make
7 any incriminating statements. However, there was important motive testimony introduced at the
8 jury trial which did link Willie Green to the murder of Denise Walker. Both Willie Finley and
9 another witness, Patricia Austin, indicated that when the victim Denise Walker opened the back
10 door of the rock house to the second robber, she exclaimed "Oh, No Willie" or "Willie." It was
11 revealed at trial through stipulation that:

12 **People would stipulate that the Defendant Willie Earl Green**
13 **knew the decedent in this case, Denise Walker, and that in**
14 **1982, for a period of three months, Mr. Green lived with**
15 **Denise Walker and a person known as Robert Jackson at the**
16 **apartment of Denise Walker's and that on or about May 1,**
17 **1982, a dispute arose between them and defendant and Mr.**
18 **Jackson was forced to leave the apartment by Ms. Walker.**
19 **(Trial pp. 398-399)**

20 In reality, Mr. Green was convicted of stealing a television from Denise Walker after she
21 had testified to this fact. The prior relationship between Denise Walker and Willie Green
22 probably played a significant role in the jury's decision to convict. It is also important because
23 Willie Finley now claims that it is the primary reason he picks out Willie Green from the photo
24 lineup shown by the police. The Court agrees that the stipulation entered into above may have
25 caused the jury to speculate about the true relationship between Willie Green and Denise Walker.
26 There was an affidavit filed by one of the jurors that she thought Willie Green and Denise
27 Walker had a romantic relationship. They did not have such a relationship.

28 The Court's task of deciding the truth of Mr. Finley's recantation is made difficult by the
fact that Mr. Finley has an extensive criminal history which includes a murder conviction, two
robbery convictions, a possible burglary conviction, and several parole violations. Moreover, the

1 delayed actions of Mr. Finley in coming forward with the information about his false
2 identification of Willie Green suggests that he does not care about his role in this trial or does not
3 understand the obligation of a witness to testify fully and truthfully. The Court had an
4 opportunity to view Mr. Finley testify and has concluded that he is credible as to some of his
5 claims and not believable as to others.

6 The frantic cry of Denise Walker as she confronted the second robber still echoes through
7 the smoke rings of time and is evidence which is difficult to dismiss. A claim has been made by
8 petitioner that perhaps Ms. Denise Walker was calling out to Willie Finley. However, it is
9 important to note that the people in the rock house that night and most of his friends did not call
10 "Willie Finley" by his first name of "Willie". Instead, the evidence at the trial and the
11 evidentiary hearing supported the fact that most of Willie Finley's friends called him by the first
12 name of Doug. Notwithstanding this evidence, it is a possibility that Denise Walker was calling
13 out to Willie Finley when she exclaimed "Oh no, Willie" or that there was another "Willie" in
14 her life.

15 The Court is assigned the task of assessing Mr. Willie Finley's credibility at the habeas
16 evidentiary hearing. Again, this is difficult because Mr. Finley's testimony at the evidentiary
17 hearing can't be squared with his testimony at the jury trial and the preliminary hearing almost
18 twenty-five years ago.

19 At the jury trial, Mr. Finley seems to be very certain of his identification and conveys in
20 the trial transcript that he is correctly identifying one of the persons involved in the robbery
21 murder at the rock house of Willie Finley. For example, Mr. Finley testifies at the trial: (Trial,
22 pg. 236):

23 **"I didn't know exactly what was going to happen and that's**
24 **why I was paying attention so close and looking to see**
everything that was going on."

25 Mr. Finley goes on to testify at the jury trial in 1984 (Trial, pg. 185):

26 **"yes, when I saw him in the picture, there was no doubt in my**
27 **mind that he was the second man who came in the back door."**

1 When questioned by the prosecutor at the end of his direct testimony, Mr. Finley testified
2 as follows: (Trial, 126).

3 **Prosecutor: Mr. Finley, is there any doubt in your mind as you**
4 **sit there today that Mr. Green is the person that came in the**
5 **back door with a shotgun?**

6 **Answer: No, no doubt.**

7 Moreover, Willie Finley survives a vigorous cross-examination by defense counsel David
8 Wesley at the trial, despite being challenged on several occasions as to the accuracy of his
9 identification. Willie Finley is also asked at the preliminary hearing whether he was under the
10 influence of drugs at the time of the murder and he indicates he was not.

11 In contrast, Willie Finley is now claiming at the evidentiary hearing that his identification
12 of Willie Green is not reliable. Indeed, Mr. Finley now claims he really was not able to identify
13 the robber at the backdoor at all because of new factors that he is revealing for the first time.

14 **Finley Claims He Was Using Cocaine On Night Of Murder**

15 **And Therefore His Identification Is Unreliable**

16 Mr. Finley claims one such factor was that he was under the influence of cocaine at the
17 time he made observations involving the murder of Denise Walker. The Court credits this
18 testimony by Mr. Finley because there is extrinsic evidence which supports this claim and Mr.
19 Finley was credible when testifying about this fact. Every witness at the evidentiary hearing who
20 testified on the issue of Willie Finley's use of cocaine/drugs supported his claim that he was a
21 drug addict who was abusing drugs at the time of the murder. Larry Finley, the brother of Willie
22 Finley, testified that his brother had a substance abuse problem in the 1980's and that he used
23 crack cocaine. (E.H., p.153). Mr. Larry Finley also confirmed that Willie Finley had previously
24 told him that he was using cocaine on the night of the murder. The Court found Mr. Larry Finley
25 to largely be a believable witness because of his demeanor in court and his background as a vice
26 president of a security and investigation firm in Torrance. Mr. Larry Finley also had military
27 experience and was very consistent in his testimony. It did not appear that Larry Finley had a
28 stake in the outcome of the case, and therefore no reason to lie. Mr. Finley did clearly act on
behalf of Centurion Ministries in trying to get his brother to provide them with a statement or

1 affidavit. Mr. Larry Finley also claimed that his brother's drug addiction drove him to make a
2 quick identification because he was hoping to be released so he could get a hit of cocaine. This
3 is consistent with the Court's experience with drug addiction and is supported by Willie Finley's
4 testimony. In addition, Ms. Patricia Austin also confirmed that Mr. Willie Finley was using
5 drugs during the time of the murder. (E.H. pg. 12-14). She was able to tell because of his
6 physical condition (face sunken in) and his physical appearance. Ms. Austin was credible on this
7 point. Moreover, it is not a great leap of faith to believe this testimony since Willie Finley was
8 running a rock house and selling cocaine when the murder occurred. Even Detective Bunch
9 testified Mr. Finley was a drug user and was likely to be using drugs on any given day. The drug
10 addiction of Willie Finley seems undisputed. In fact, at the trial Willie Finley indicates he was
11 tired from working a night job (trial, p. 220). Finley testifies at the evidentiary hearing he was
12 tired at the trial because he was using drugs at the time.

13 **Finley's Medical Condition Of Hemophilia Affected His Ability To Identify Willie Green**

14 The second statement introduced by Willie Finley at the evidentiary hearing which the
15 Court finds credible concerning his claim that his vision was impaired because of his medical
16 condition of hemophilia that was triggered when Mr. Finley was hit in the face and head by the
17 robbers with their guns. Mr. Finley testified himself that he had this condition and that his face
18 was swollen the night of the murder as a result of being hit by the robbers in the face with a gun.
19 Ms. Patricia Austin confirmed that Willie Finley's face was swollen and his eye bloody and his
20 mouth busted at the time of the murder (E.H. pg. 15). She also testified he was bloody all over
21 his face. Further, Ms. Austin testified that he had visible injuries to his face at the time of the
22 live lineup a month after the murder. (E.H. pg. 27). There was also a reference to a prison
23 record in the evidentiary hearing that shows Mr. Finley is in fact a hemophiliac. It should also be
24 noted that when Detective Bunch interviewed Mr. Finley about the murder after he was arrested
25 on a parole violation, he was in the infirmary part of the jail. This indirectly confirms his
26 testimony that he was still suffering from the injury to his face several weeks after the murder.
27 The Court understands that just because someone has a swollen face, it does not mean that the
28 person is unable to identify someone committing a crime. Nevertheless, it is a fact which was

1 not disclosed to the jury in this case and which may have affected their evaluation of Mr.
2 Finley's identification.

3 **Willie Finley Claims Detective Bunch Suggested That He Pick**

4 **"Willie Green's" Photo From The Photo Lineup**

5 It is the third aspect of Mr. Finley's recantation that it is more difficult to find Mr. Finley
6 credible. Mr. Finley testified at the evidentiary hearing that Detective Bunch pointed out or
7 moved his fingers around the photo lineup card so as to suggest which person Mr. Finley should
8 pick. The petitioner is claiming that Finley picked Willie Green out of the photo lineup simply
9 because Detective Bunch suggested the person he should pick. The Court rejects Finley's
10 testimony as to this fact and does not find him credible. The Court does not believe that Mr.
11 Finley randomly picked Willie Green because the officer suggested he do so. There are special
12 reasons why the Court rejects this part of Willie Finley's testimony.

13 First, Mr. Finley equivocates when it comes to stating Detective Bunch actually helped
14 him pick out the photo of Willie Green. He states at the evidentiary hearing:

15 **"it seemed like he had his hand there"**

16 This is also evident by the statements included by Finley in his affidavit in support of the
17 habeas petition. Thus, Mr. Finley states in his affidavit in 2004:

18
19 **"I have to say that at some point during the photo spread**
20 **session, I got some help from Detective Bunch in picking out**
21 **Willie Green's photo. Detective Bunch pointed to a photo and**
told me his name was 'Willie' and that he had been involved
with Dee Dee before, and had robbed her house."

22 After about ten meetings with investigators from Centurion Ministries, and three years after the
23 initial affidavit, Mr. Finley now claims in great detail how Detective Bunch slid the pictures over
24 to him before he picked anyone out and kept saying "are you sure? You ain't saw none of these
25 guys here?" and put his hand on Willie Green's picture. The Court was concerned about the
26 manner in which the people from Centurion Ministries seemed to pressure Mr. Finley by
27 repeatedly asking him to add new information to his initial affidavit in support of this petition.
28 The most interesting part of Mr. Finley's testimony in the evidentiary hearing regarding

1 Detective Bunch picking out Willie Green's photo is the use of the phrase "it seemed like" four
2 or five times to describe Detective Bunch's actions in suggesting what picture he should choose.
3 In the Court's opinion, Mr. Finley can't bring himself to say Detective Bunch did touch the
4 picture because it never happened. Mr. Finley is clearly hedging his testimony when he testified
5 "it seemed like he (Detective Bunch) had his hand there."

6 Mr. Finley addresses this aspect of the investigation in his interview with deputy district
7 attorney Sisman on August 7, 2006:

8 **Sisman:** By the way – uh – you – you – uh – you signed these –
9 uh – three different – uh – declarations – you know, I
10 mentioned the dates to you – uhm – is that because
11 the – uh – the people who typed them up and asked
12 you to, you know, read them and sign them, did they
13 come back to you again and again to ask you to – to
14 do that? Or did – did you call them up and say, "Oh,
15 I forgot some – to tell you something and, could you
16 add that to it?"

17 **Finley:** No, I — I — I didn't call nobody.

18 **Sisman:** How'd that happen?

19 **Finley:** They – they – uh – just come to see me.

20 **Sisman:** Okay.

21 **Finley:** Called me and asked me questions involving the case.

22 **Sisman:** All right.
23 And then – then they came back to you a second time
24 and a third time, asking you to –

25 **Finley:** Yeah, just – uh –

26 **Sisman:** — sorta sup- — supplement what you'd — uh—

27 **Finley:** Just try and find out if there's anything I done forgot
28 or left out or, could it be this, or – uhm – could you
hadda made a mistake, if it's possible that you coulda
made a mistake.

Sisman: Right.

1 **Finley: Yeah, it's possible, you know. I mean, at one time, I**
2 **didn't think it was possible. But more and more I**
3 **look at it, I see it coulda been.**

4 Despite the tactics utilized by Centurion Ministries, the Court is convinced that most of
5 the new evidence provided by Willie Finley voluntarily came from Finley and was not the result
6 of overbearing interview techniques. The Court does find that this additional detail of Detective
7 Bunch pointing out the picture of "Willie Green" which presumably came out during these
8 interviews never happened. It is simply not believable that facts of police misconduct of such an
9 egregious nature would not have been revealed at a much earlier date in the interviews of Mr.
10 Finley.

11 There are two additional segments of the testimony which causes the Court to conclude
12 Finley is not telling the truth when he claims Detective Bunch pointed out Willie Green's picture
13 to him. The first segment involves the following question and answer:

14 **Court: "Is that the way the officer did it or –**

15 **Willie Finley: You got to understand how many years this**
16 **was. (E.H. 102)**

17 This hesitation to answer the Court's question came after he answered a series of leading
18 questions by petitioner's counsel regarding Detective Bunch's actions and seemed quite willing
19 to say the detective had pointed out the picture.

20 The second segment concerns the occasion when he is asked generally to identify why he
21 picked out Willie Green.

22 **Q. Did you identify that picture because you recognized the**
23 **man in the picture as someone who came in the house or**
24 **did you choose that photo for a different reason?**

25 **A. I picked the picture out because of him explaining to me**
26 **what Willie Green had did. And I'm a drug user, and at**
27 **the time without any help, I really doubt I would have**
28 **picked it out.**

Q. So the basis for choosing that photo was what?

A. The what?

1 **The Court: Why did you pick that picture out? That’s what**
2 **he’s asking you.**

3 **The Witness: Why did I pick the picture.**

4 **The Court: What was the reason you picked the picture that**
5 **you did?**

6 **The Witness: Because he explained to me who he was ... and I**
7 **had help on ... see, by Dee Dee saying “Willie” was the star,**
8 **because my name is Willie. So I never forgot that name. And**
9 **when he explained to me Willie Green at one time robbed Dee**
10 **Dee and ... I mean, what is he telling me? Everybody can**
11 **figure that out.**

12 In the entire sequence, Mr. Finley doesn’t mention the fact that Detective Bunch put his
13 finger on the photo of Willie Green before he selected a photo. More importantly, I observed
14 Mr. Finley testifying about this point and my notes reflected he was nervous.

15 The Court also finds it interesting that in the affidavit of 2004, Mr. Finley acknowledges
16 that he picked “Willie Green” out because he recognized him.

17 **“From what I could remember in the impaired state that I was**
18 **in that night, and recalling as best as I could, I thought that**
19 **Willie Green’s photo looked similar to the #2 suspect. I put**
20 **two and two together and told Detective Bunch that, I although**
21 **I wasn’t positive, he could be the guy.”**

22 As we fast forward to the evidentiary hearing, Willie Finley denies any recognizable
23 knowledge of the suspect and claims **“Because, like I told him before, I had . . . I couldn’t**
24 **recognize – really recognize anyone on the six-pack until he gave me help.”** I find this newer
25 version of the six-pack identification process not to be credible. The Court also observed Mr.
26 Finley during these exchanges and felt that he was not believable when it came to committing to
27 the story that Detective Bunch picked out “Willie Green” for him. I also noted a difference in
28 Mr. Finley’s responses when asked leading questions by counsel for petitioner regarding the
29 touching of the photos by Detective Bunch and the answers given by witness Finley to non-
30 leading questions on the same subject.

31 Finally, Detective Bunch testified as to how the six-pack lineup was conducted and I
32 found his denial that he had suggested a particular photo to be much more believable. It was also

1 more consistent with Detective Bunch's conduct with the rest of the identification procedures.
2 When witness Finley tells him that he is only 80% sure that Willie Green is one of the robbers,
3 Detective Bunch makes no efforts to increase the percentage, or report it differently. (E.H. pg.
4 170). Moreover, as Detective Bunch explained he had no special interest in the case and agreed
5 that Mr. Finley could appear at a live lineup which would be run by the Sheriff's Department.

6 Detective Bunch would not have readily agreed to a live lineup run by an independent
7 police agency if he had actually picked the photo for Willie Finley.

8 Petitioner has argued that Finley's testimony about Detective Bunch pointing out the
9 picture of Willie Green is corroborated by the testimony of Patricia Austin who claims that
10 Detective Bunch also attempted to point out a particular picture in the six pack for her to
11 identify. It is the Court's position that Ms. Austin demonstrated very little memory of the events
12 of the murder and its investigation except for the details of the photo lineup shown by Detective
13 Bunch. Indeed, the Court finds that Ms. Austin may have been influenced by Willie Finley to
14 tailor her testimony to match his. She offered this testimony about the photo line-up because
15 Finley told her that is what happened to him and she is a friend of Mr. Finley. Moreover, it is
16 Finley who contacts Ms. Austin about testifying at the evidentiary hearing, not an independent
17 investigator. This alone taints her testimony in the Court's view. Based on her selective
18 memory (she forgot statements that she overheard the robbers say to each other (E.H. 36, 37), her
19 attitude at the evidentiary hearing, and the fact that she never even mentioned in her declaration
20 of 2005 that Detective Bunch had suggested that she pick a certain photo, I discounted her
21 testimony on this aspect of the photo lineup. She also seemed to be annoyed at Detective Bunch
22 because he wanted her to come back to Los Angeles from New Orleans to assist in the
23 investigation.

24 **Willie Finley Claims Police Told Him About Prior Relationship Between Willie Green**

25 **And Denise Walker During The Photo Identification Procedure**

26 There is a final aspect of identification procedure which Finley claims influenced him.
27 He claims that he was told by Detective Bunch that Willie Green had a prior relationship with
28 Dee Dee Walker and had robbed her. He also learned that Denise Walker helped put Willie

1 Green in jail for the theft of her television. I find this claim by Mr. Finley to be true. The Court
2 finds that Willie Finley was given the information about Willie Green's past contact with Denise
3 Walker some time during the identification process. It may have occurred during the photo
4 lineup or shortly after Mr. Finley actually chose a picture. The Court does find it did occur as
5 Mr. Finley states, "at some point during the photo spread session." Mr. Finley has maintained
6 throughout the habeas proceedings, both in affidavits and his testimony that Detective Bunch
7 told him that Willie Green had a prior relationship with Denise Walker. For example, at the
8 preliminary hearing, Mr. Finley is asked by defense counsel:

9 **Q. Did they tell you they had a suspect in mind?**

10 **A. A suspect in mind, yes.**

11 In his conversation with his brother Willie Finley in 1993, Larry Finley recalled that
12 "Willie Finley" had been told that Willie Green had robbed Dee Dee's mother's house or
13 something (Evidentiary Hearing 157). Even in the statement introduced by the respondent of
14 their taped interview of Willie Finley on August 7, 2006, Mr. Finley states:

15 **"I hear it at the police station—uh-uh—"well, this guy is Willie**
16 **Green. He have robbed their house once before." And so**
17 **everything is building up, Willie Green, you know."**

18 It is also the Court's opinion that although Detective Bunch did categorically deny he
19 may have given information to Willie Finley about the relationship between Willie Green and
20 Denise Walker during the identification process, the Court finds this testimony to be not credible.
21 If Finley is told the information about Willie Green during or before his selection of a photo, this
22 is clearly suggestive and taints the photo identification process. Moreover, Finley suggests that
23 other police may have told him about the relationship of Willie Green to Denise Walker. This
24 background information about Green is a problem because it reinforces Willie Finley's belief
25 that he has picked the right person. This is even more of a concern with a person like Willie
26 Finley who cared about Denise Walker and wanted to help get her killer. Finally, I have
27 concerns that Mr. Finley was not someone who was concerned about his responsibilities as a
28 witness in a criminal case and would be easily influenced by information given to him by the

1 police. The Court finds credible that Willie Finley received information about Willie Green
2 either during the photo lineup process or shortly thereafter which impacted his ultimate trial
3 testimony. It is certain that Willie Finley was more positive about his identification of Willie
4 Green at trial than he had been at the photo lineup or the live lineup. The inference to be drawn
5 is that he had information which convinced him that his choice of Willie Green as the person
6 who came through the back door during the robbery, was the correct one.

7 The Court did give weight to the interview of Willie Finley by the deputy district attorney
8 Sisman and senior investigator Ratliff. During the interview, Mr. Finley maintains that the
9 police told him during the photo identification process that Willie Green had robbed Denise
10 Walker of a television:

11 **Finley:** -- I think it was -- I'm not for sure if it was during
12 the photos or before. But -- uhm -- I know someone
13 had told me that they was involved in breaking in --
14 in her house before that.

15 **Sisman:** And, assuming that all they're doing is mentioning
16 this --

17 **Finley:** Yeah, that's all they're doing.

18 **Ratliff:** -- guy by name --

19 **Finley:** Right

20 **Sisman:** -- they're just talking about it?

21 **Finley:** Yeah.
22 It's just like you saying -- uh -- you got five, six
23 pictures, here, and -- and -- uh -- uh -- they laid out,
24 and it seem like-- uh -- uhm -- one or two pictures
25 might, end up in front of you more than other
26 pictures. And it seem like, well, this -- uh -- guy,
27 here -- uh -- know Dee Dee or -- rob Dee Dee or
28 took a tv outa Dee Dee and them' house, or
something.

Now they were saying Willie Green did this. . . .

Sisman: So--so --uh -- what -- what else -- what else--uh --
were you told, besides -- uhm -- that somebody

1 **named Willie Green – uh – took a tv out of the**
2 **apartment?**

3 **Finley: No, I don't know who told me that. I mean, I—**
4 **the— someone told me – officer told me that – that**
5 **Willie Green and somebody else had broke in Dee**
6 **Dee's house, and they went to jail. They – they had**
7 **called the police on them, or whatever. I don't**
8 **know, though if they went to jail or did any time, or**
9 **not. But –**

10 Throughout his testimony at the evidentiary hearings and during interviews by the Centurion
11 Ministries and the District Attorney's Office, there has been an internal consistency to Mr.
12 Finley's statements that he was given information about the fact that Willie Green had taken a
13 television from Denise Walker. The Court has accorded this consistency evidentiary weight in
14 support of the habeas petition.

15 Coincidentally, Patricia Austin also testified that Detective Bunch told her during the
16 identification process that:

17 **“He said Willie was Denise's boyfriend and that Willie had**
18 **broken into her mother's house and that when he went to jail,**
19 **he told her when he got out he was going to get her.”**

20 The Court did assign some weight to Ms. Austin's testimony regarding Detective Bunch
21 telling her about the relationship between Willie Green and Denise Walker. The Court also
22 considered the affidavit of Betty Walker, the mother of the victim Denise Walker, that she gave
23 Detective Bunch the information about “Willie Green” at a much earlier point in the
24 investigation than he claimed. (See pp. 166-167 of E.H., November 2, 2007.)

25 Finally, the Court was concerned that Detective Bunch did not read the required photo
26 admonition to either Willie Finley or Patricia Austin. While this fact does not mean that
27 Detective Bunch was not believable, it does add credence to the claim he might bend the rules
28 and reveal information about the suspect “Willie Green” to the witnesses.

Another aspect of petitioner's shotgun approach is the claim that Willie Finley had a
pending burglary felony at the time of his trial testimony and that he may have received leniency
from the prosecution on issues of bail or the ultimate case settlement. The petitioner has alleged

1 that the fact this impeachment evidence was not available to him was a violation of *Brady v.*
2 *Maryland* (1963) 373 U.S. 83. The Court is not able to reach a decision whether a *Brady*
3 violation occurred because there was no evidence presented that the prosecutor was aware of this
4 possible impeachment evidence, nor is there any evidence to support it was exculpatory. The
5 allegation that Mr. Finley received favorable treatment on his pending burglary job is a
6 supposition at this time and not supported by evidence introduced at the habeas evidentiary
7 hearing. Detective Bunch testified he did nothing to help Willie Finley on his pending cases.
8 The Court acknowledges that Finley's further involvement with crime might have been used to
9 impeach his trial testimony and should have been revealed if known.

10 It is clear from observing Mr. Finley at the evidentiary hearing that he is far from a
11 perfect witness. Mr. Finley clearly suffers from selective memory. He remembers very specific
12 details of his interaction with Detective Bunch but cannot remember that he picked out Willie
13 Green at a lineup. He also falters at the evidentiary hearing in discussing his interview with
14 District Attorney Sisman in 2006 and the dates and times of his criminal convictions and periods
15 of incarceration. In fairness to Mr. Willie Finley, most of the witnesses who testified about the
16 events surrounding the murder of Denise Walker and their role in those events suffered lapses of
17 memory. Clearly, both Patricia Austin and Detective Bunch profess to have memory loss about
18 what they did twenty-five years ago. It is, of course, easy to understand why the passage of time
19 would dim a witness' memory. Certainly, witness memories don't get better over time.
20 Notwithstanding these memory problems, the Court does conclude that Willie Finley is credible
21 on the matters previously discussed regarding cocaine use and visual impairment due to
22 hemophilia and the background information about Willie Green that influenced Willie Finley
23 during the identification process.

24 It is also the Court's observation that Mr. Finley is a detached and somewhat selfish
25 person. He really does not seem to care what happens in this case. While one could argue that
26 Mr. Finley may empathize with Mr. Green because he was also convicted of murder and had to
27 serve time in prison, the Court finds that Mr. Finley has come to believe that he did not correctly
28 identify Willie Green as the robber and accomplice in the murder of Denise Walker. There

1 seems to be no relationship between Willie Finley and Willie Green, and the Court has concluded
2 that Mr. Finley in his curmudgeon style has attempted to testify as truthfully as he can. The
3 People have argued that Mr. Willie Finley is only changing his testimony because of his brother
4 Larry Finley. The Court does not find this to be true. Mr. Finley does not seem to have a motive
5 to lie on behalf of Willie Green. More importantly, his previous statements to his brother Larry
6 Finley in 1993 make the claim of recent fabrication not believable.

7 Conclusion

8 The Court agrees with petitioner's claim that there is newly discovered evidence and that
9 his new evidence is "of such significance that it may have affected the outcome" of the trial.
10 Penal Code section 1473(b)(1) allows relief on habeas corpus where petitioner shows
11 substantiating material or probative false evidence was introduced against him on issues of guilt
12 or punishment. It is the Court's finding that Willie Finley's failure to disclose he was under the
13 influence of cocaine at the time of the robbery murder, his visual impairment due to hemophilia,
14 his acquired knowledge from law enforcement before trial that Willie Green had a relationship
15 with Denise Walker and had robbed her television, all contributed to the conclusion that the jury
16 did not have important information in which to evaluate the sole eyewitness to the crimes. The
17 Court has determined that the net effect of the evidence withheld largely by the witness Willie
18 Finley in this case raised a reasonable probability that its disclosure would have produced a
19 different result (*Kyles v. Whitley* 514 U.S. 419, 115 S.Ct. 1555 (1995)). **It is important to note**
20 **that this case did not involve overwhelming evidence of petitioner's guilt and, therefore, the**
21 **testimony of Willie Finley, the star witness, is critical to the result of the case.** The other
22 factors which the Court considered in evaluating Mr. Finley's identification includes:

- 23 1) No description of robbers ever given by Willie Finley;
- 24 2) No one else at rock house was able to identify Willie Green;
- 25 3) The identification by Willie Finley of Willie Green in the photo lineup
26 occurred more than one month after the murder (September 21, 1983).
- 27 4) The level of certainty by Willie Finley was expressed as 80%.

- 1 5) When questioned at the jury trial, he is unable to describe the clothing worn by the
2 second robber. He also testifies he cannot tell the age of the would-be robber.
3 This lack of a previous description is a factor which may be considered in
4 weighing the reliability of an identification.
- 5 6) Witness Finley incorrectly identified the shooter of Denise Walker on two
6 occasions. First, he looks at mug shots, and he identifies Lemuel Goode as the
7 shooter. Ms. Austin eliminated Lemuel Goode as a suspect. Mr. Finley also
8 identified a Mr. Lewis as the shooter from a live lineup. Again, Mr. Finley was
9 proven to be mistaken about his identification of Lewis as the shooter. Apparently,
10 Mr. Lewis was simply someone used by the Sheriff's Department to stand in for a
11 lineup and did not represent a possible suspect. Even more troubling is Mr. Finley's
12 insistence at trial that he still thought his selection of Lewis as the shooter was
13 correct. The failure of Mr. Finley to correctly identify the second suspect
14 certainly undermines his identifications of Willie Green.
- 15 7) Leslie Goode testified at trial that Willie Finley told him while in jail that he
16 could not identify "Lemuel Goode, Willie Green, or anybody during the trial."
17 Finley denied having a conversation with Leslie Goode about his inability to
18 identify anyone from the robbery murder. This testimony is now much more
19 significant in light of Willie Finley's recantation. It is further evidence that at
20 a much earlier date, Mr. Finley was expressing doubts about his identification
21 of Willie Green and the other participant in the robbery murder. It also raises the
22 distinct possibility that the jury could have given greater weight to Leslie Goode's
23 testimony if they were aware of all the weaknesses of Finley's identification of
24 "Willie Green."
- 25 8) The defense called an eyewitness identification expert, Dr. Robert Shomer, at
26 the trial for the purpose of explaining the factors with might affect the accuracy
27 of an identification made during a stressful crime situation. It is certain
28

1 that Dr. Shomer would have included additional factors for the jury to
2 consider had he known of Finley's being under the influence of drugs and the
3 suggestive nature of the photo identification.

4 Under California Law, Willie Green was allowed to present testimony by an eyewitness
5 identification expert (*People v. McDonald* (1984) 37 Cal.3d 351.) Petitioner's right to present
6 this evidence and thus, his right to present a defense was impeded by the failure to disclose
7 important factors relevant to the expert's testimony. This Court agrees with this claim.

8 The Court finds that Willie Finley did make an identification of Willie Green as being
9 one of the robbers and assisting in the murder of Denise Walker, partially based on seeing the
10 person involved in the murder robbery. However, factors affecting the reliability of that
11 identification were not revealed to the jury because Willie Finley did not testify truthfully about
12 how and why he made the identification of Willie Green. Since the Court determines the omitted
13 factors might have resulted in a different outcome at the trial, especially in view of the fact that
14 there was no independent evidence corroborating Willie Finley's identification, the Court
15 determines that a new trial must be ordered (*Chapman v. California* (1967) 386 U.S. 18.) The
16 Court is not finding that Willie Green is factually innocent but that the totality of circumstances
17 surrounding the identification of Willie Green by Mr. Finley makes it an unreliable
18 identification.

19 The Court has been asked to grant the habeas petition because the pretrial identification
20 procedure is so impermissibly suggestive that it gives rise to a very substantial likelihood of
21 irreparable misidentification (*People v. Blair* (1979) 25 Cal.3d 640, 659.) The application of this
22 rule depends on the circumstances of each case (*Simmons v. United States* (1968) 390 U.S. 377,
23 384-385.) The United States Supreme Court has held that identification evidence is admissible
24 even though the confrontation procedure was suggestive if the evidence was nevertheless reliable
25 under the totality of circumstances. It identified the factors to be considered in determining the
26 reliability of the identification as including the opportunity of the witness to view the criminal at
27 the time of the crime, the degree of attention, the accuracy of the witness' prior description of the
28 criminal, the level of certainty demonstrated by the witness at the confrontation, and the length

1 of time between the crime and the confrontation. (*Neil v. Biggers* (1972) 409 U.S. 188, *People v.*
2 *Cunningham* 2001 25 Cal.4th at 989, *People v. Kennedy* (2005) 36 Cal.4th 595.) This Court finds
3 the identification procedures used in this case does meet the test announced in the Supreme
4 Court case of *Neil v. Biggers, supra* in that the suggestive nature of the photo identification was
5 unreliable. As noted by the petitioner in his brief, there is the testimony that the events during
6 the robbery were chaotic and Mr. Finley was laying on the floor for some period of his
7 observation. This would seem to put into question his degree of attention. Mr. Finley did not
8 make an identification of Willie Green at the photo lineup until a month after the crime. While
9 the level of certainty is open to debate, Mr. Finley did state to Detective Bunch the following:

10 **Q. “Are you positive?”**

11 **A. “No, I’m pretty sure it is.**

12 **Q. “Can you put a number on it?”**

13 **A. “80%.”**

14 As previously indicated Mr. Finley never gave a prior description of “Willie Green”
15 before the photo lineup or live lineup.

16 Finally, the information received by Willie Finley regarding the prior contact between
17 Willie Green and Denise Walker is an important factor which influenced his identification.

18 The touchstone of a fair trial is that a defendant be permitted to produce all relevant
19 evidence to a jury. As a result of Willie Finley’s failure to tell the truth and disclose certain
20 relevant evidence, the petitioner was unable to prove there was an unreliable identification made
21 by Willie Finley. It is a well settled principal of law that “the defendant bears the burden of
22 demonstrating the existence of an unreliable identification procedure.” The Court has concluded
23 that the petitioner has met his burden under the “totality of circumstances” test. (*People v.*
24 *Gonzalez* (2006) 38 Cal.4th 932.)

25 Even if the test in *Biggers* is not met in this case, it is certain that if the jury had known
26 all of the aspects of Mr. Finley’s identification, there is a strong likelihood it would have
27 produced a different result at trial. Certainly, the disclosure of Mr. Finley’s reasons for
28 recanting his identification testimony would have resulted in a markedly weaker case for the

1 prosecution and a markedly stronger one for the defense. For these reasons, this Court is not
2 confident that the jury verdict would have been the same.

3 The Court finds that the jury is entitled to hear all of the evidence in this case. The jury
4 must be given an opportunity to judge the credibility and accuracy of the identification of Willie
5 Finley in light of newly discovered evidence that has been presented by the petitioner.

6 As stated in *People v. Williams* (1961) 57 Cal.2d 263, 274, 275:

7
8 **“...where the newly discovered evidence contradicts the**
9 **‘strongest evidence’ introduced against defendant (citation), it**
10 **would appear proper that defendant should have the**
11 **opportunity of trying to present such evidence for**
12 **consideration of the trier of the facts. Here there is every**
13 **reason to believe that defendant did not have a ‘fair trial on the**
14 **merits, and that by reason of the newly discovered evidence the**
15 **result would reasonably be different on a retrial.” (citation)**

16
17 In the instant case, the Court finds based on the evidence presented at the habeas
18 evidentiary hearings that petitioner did not have a fair trial on the merits. The Court orders that
19 petitioner be given a new trial.
20

21 Dated: _____

22 Hon. _____
23 Stephen A. Marcus, Judge
24 Los Angeles Superior Court
25
26
27
28

The Clerk is to send notice.