

### **Ground 1 Prosecutorial Misconduct – Brady Violations:**

Petitioner's conviction was based on fabricated evidence by way of prosecutorial misconduct which violated California Penal Code section 141, The State Bar Act, sections 6106 and 6128 (California Business and Professions Code (sections 6106 and 6128), and case precedent of Brady v. Maryland, 373 U.S. 83 (1963)

At trial both the prosecutor and defense counsel intentionally chose to not disclose exculpatory evidence; two audio recordings from 911 phone calls, two video interviews of witnesses, one audio interview of a witness/victim. These actions remove any confidence of the outcome in petitioners trial, as these illegal actions were taken by both the prosecutor and defense counsel (Mendez v. Artuz, 2000 U.S. Dist. LEXIS 8841, June 6, 2000).

As in Mooney v. Holohan: (1935) 294 U.S. 103 Petitioner charges that the state holds him in confinement without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States. The grounds of his charges are, in substance, that the sole bases of his conviction was perjured testimony, which was knowingly used by the prosecuting authorities in order to obtain a conviction, and also that these authorities deliberately suppressed evidence which would have impeached and refuted the testimony thus given against him.... Petitioner urges that the 'knowing use' of perjured testimony to obtain the conviction and the deliberate suppression of evidence to impeach that testimony constituted a denial of due process of law. Petitioner further contends that the state deprives him of his liberty without due process of law by its failure, in the circumstances set forth, to provide any corrective judicial process by which a conviction so obtained can be set aside.

### **Prosecutor Suborned Perjured Testimony:**

During Rhoads recorded interview she never described the assailant, she was consistent in stating that she could not see. She stated multiple times that the intruder was wearing a mask. In her 911 call she stated that she was immediately sprayed with pepper-spray and could not see. In violation of CRC 2.1040 these recordings were not transcribed or made available to the jury.

Prosecutor asked leading questions of Rhoads during the trial regarding what she remembered telling the detective regarding the central issue in this case. (Identity and her ability to see). Rhoads then repeatedly testified falsely that she described the assailants nose, chin, and mouth to the detective and stated that he was wearing sunglasses and a beanie which matched the other witness testimony and gave her testimony a false credibility. Rhoads never described the assailant's nose, chin, or mouth, or that he was wearing sunglasses, she stated that he was wearing a mask and that she could not see. See exhibit: B Rhoads Interview

The prosecutor allowed this false testimony (fabricated evidence) to be presented to the jury multiple times while suppressing the the actual recorded evidence which could have impeached Rhoads testimony. He allowed Rhoads to lie to the jury.

The prosecutor cannot claim that he did not know what was on the recordings as he played parts of them to the jury without having them transcribed.

**Improper closing statements which violated Petitioner's Constitutional rights:**

These closing statements by the prosecutor confirm:

1. Rhoads testimony was the central issue in this case,
2. Prosecutor rested his case on perjured testimony which he suborned,
3. Prosecutor lied to the jury about Rhoads ability to see and what she told the detective,
4. Prosecutor lied to the jury knowing that there was impeachment evidence that both he and counsel withheld from them.
5. Prosecutor points out counsel's ineffective use of impeachment evidence by stating that counsel used a part of a recording which did not give reference to time regarding Rhoads ability to see. (This actually brings attention to the crime committed by both counsel and the prosecutor in not having the recordings transcribed or made available in their entirety to the jury.)

**Prosecutor – Closing:**

“This case is about identity. And that’s all it is about. If you believe Ms. Rhoads when she says I immediately recognized the Petitioner when he walked in the door I knew it was Nathan Medina, and then he pepper sprayed me.” (RT 2665:12).

As the Prosecutor makes clear, the fact that Petitioner was identified by a witness was the central issue in this case. However, the evidence which could have been used to impeach this testimony was not made available.

“Ms Roads was honest she told you what happened what she saw”... (RT 2668:1)

The Prosecutor lent the weight of the states credibility to a witness by vouching for her testimony. He vouched for a witness that he suborned perjured testimony from which contradicted her original statements.

“But you can bet that if there was other information that would be helpful to you in making your decision making process that either counsel or myself would have brought it out during trial”(RT 2667:7).

The Prosecutor made this statement knowing that crucial exculpatory evidence which would have impeached his eyewitnesses was withheld from the Jury. He also stated that since the jacket wasn't officially tested for blood, it could have had blood on it. Inappropriately referencing evidence that was not in the record.

RT 2832 - 2833 “Counsel played you a tape of Ms. Rhoads and this is the other point I was getting to about the three dimensional versus the two dimensional. Plays you a tape, a portion of a tape where she says I really couldn't see, I couldn't really see, is my son alive?”

“What does she say on the stand? She says as I was laying in laundry room the odor from the pepper spray was getting to me and I couldn't see”... RT 2833

RT 2833 L 6 “What are we missing from that quotation on that tape? Reference to time. She said that when I was laying on that counter top for an hour, that's when I couldn't see. Could you see the man who sprayed you with pepper spray? Yes. Did you have trouble? No.”

**Prosecutor committed perjury and fraud on the court regarding evidence which was central to petitioners case:**

Prosecutor stated that petitioners jacket was not tested for blood which was a lie and then stated that it could have had blood on it, that just because it wasn't tested doesn't mean that there wasn't blood on it.

See exhibit: (F – Jacket)

**Brady violation regarding jacket:**

The prosecutor and/or the Walnut Creek Police suppressed exculpatory evidence in the form of lab results regarding a blood residue test of petitioners jacket.

See exhibit: (F – Jacket)

**The state failed to test petitioner’s clothing for pepper-spray**

See exhibit: (F – Jacket)

**a. Supporting facts:**

At the start of petitioners trial, the prosecutor played the beginning of Rhoads 911 recording where she told the 911 operator that “Nathan Medina just shot my son”. However, what was never transcribed or played for the jury is that she also told the 911 operator that “I couldn’t see, I really couldn’t see, but it had to be him because we don’t have any other enemies”.

It was clear from Rhoads 911 call and witness interview that she did not see the assailant, only that she just claimed to know it was petitioner. Admitted by Rhoads in her interview which was kept from the jury; she had a history of calling the police and filing police reports accusing petitioner of crimes in which she claimed to know it was petitioner without seeing who committed them.

See exhibit: B Rhoads Interview

Mendell’s testimony during the preliminary hearing and at trial was that when he was shown the photo of plaintiff on a police car computer that he

said “that looks like the guy”; however, after being shown plaintiff’s photo at the crime scene, during his recorded interview he told the detectives four times that he did not think it was the plaintiff. These statements were withheld from the jury.

See exhibit: C Mendell Interview

**b. Supporting documents:**

See exhibits: B – Rhoads Interview, C – Mendell Interview

**c. Supporting cases, rules, or other authority:**

Brady evidence includes statements of witnesses or physical evidence that conflicts with the prosecutions witnesses (People v. Johnson, 38 Cal. App. 3d. 228, 113 Cal. Rptr. 303 (1974)).

Suppression of Exculpatory Material, manipulation of the facts in question, under (Brady v. Maryland, 373 U.S. 83 (1963); that had reasonable probability that [Petitioners] conviction or sentence would have been different had these materials been disclosed, (Strickler v. Greene, 527 U.S. 263, 296 (1999)).

In Mack v. Yost, (March 21, 2023) U.S. App. LEXIS 6670 “[the court has concluded] that the constitutional rule that [framing and or convicting] criminal defendants through the use of fabricated evidence, including false or [\*44] perjured testimony, violates their constitutional rights applies with such obvious clarity that it is unreasonable for us to conclude anything other [than] the [detectives and or prosecutors] were on sufficient notice that their fabrication of evidence violated clearly established law. “(see also Dennis v. City of Philadelphia, 19 F.4<sup>th</sup> 279, 290 (3d Cir. 2021) ; and [In] Halsey, 750 F.3d at 296 (“The Supreme Court established decades before the original investigation in this case that the Constitution forbids prosecutors from knowingly using perjured testimony to secure a criminal conviction.”)

Napue v. Illinois (1959); A conviction based on testimony known to the prosecution to be perjured is a denial of due process.

Petitioner has a right to make a collateral attack on the issues that were presented in trial that led the Petitioners conviction and incarceration (Griffin v. Illinois (1956) 351 U.S. 12; 76 Supra 585; 100 L. Ed. 891).

Violation of Petitioners 5<sup>th</sup> Amendment United States Constitutional Rights to be given a fair trial by appropriate Due Process.

"Unfairness of a right to a fair trial" (Darden v. Wainwright, 477 U.S. 186, (1968); Parker v. Mathews 132 S. Ct. 2148 (2012); In re Winship, 397 U.S. 358 (1970)

Petitioner has demonstrated by clear and convincing evidence which he turned over to the Conviction Integrity Unit along with his actual innocence claim in January of 2022 that the government (law enforcement, investigators, prosecutors, etc...) fabricated evidence in his case.

The state will in no way be able to succeed on an appeal as petitioner's case is overturned with all evidence declared inadmissible, according to the following Penal code; case law, due process rights, along with established doctrine, such as "Fruit of the poisonous tree"; evidence that is derived from... an illegal action," and according to California Penal Code section 141 "It is illegal to alter, modify, plant, place, conceal, manufacture, or move any physical matter with the intention of causing someone to be charged with a crime, or physical matter to be used as evidence in a trial, inquiry, or proceeding."

This penal code has been cited in many cases showing that it extends to exculpatory evidence; has the effect of bad faith by the prosecution, and comes with a severe penalty.

The State Bar Act, section 6106 (California Business and Professions Code (section 6106) "The commission of any act involving moral turpitude, dishonesty, or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony, or a misdemeanor, or not, constitutes a cause for disbarment or suspension."

"The section 6106 terms are not unconstitutionally overbroad, nor are the terms 'moral turpitude', 'dishonest', or 'corruption'" (see Camatella v. Stovitz (N.D. Cal. 2005), 365 F. Supp 2d. 1064 2005 U.S. Dist. LEXIS 5976 and LEXIS 29985 9<sup>TH</sup> Cir. (Cal. 2006)).

“The State Bar Act section 6128 (CA Bus. & Prof. Code sec. 6128) Deceit, Collusion, Delay of Suit, and Improper Receipt of Money as Misdemeanor: Every attorney is guilty of a misdemeanor who is either : (a) Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party; (b)... (c)... Any violation of the provisions of this section is punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding (\$2500), or by both. (orig. Pen. Code section 160) Amended by (Stats. 1936 CH. 1125).”

*In re Jenkins, 2023 Cal. LEXIS 1585*: Finally, we urge the prosecutors in this case, and in every other, to carefully consider the constitutional, ethical, and habeas corpus procedural duties that we have outlined herein to ensure that they faithfully bear the special responsibilities ascribed to the prosecution in our system of justice. We remind the prosecutors of today of what was said in *In re Ferguson (1971) 5 Cal. 3d 525 [96 Cal Rptr. 487 P. 2d 1234]* “The search for truth is not served but hindered by the concealment [\*\*1084] of relevant and material evidence. Although our system of administering criminal justice is adversarial in nature, a trial is not a game. Its ultimate goal is the ascertainment of truth, and where furtherance of the adversarial system comes in conflict with the ultimate goal, the adversarial system must give way to reasonable restraints designed to further that goal. Implementation of this policy requires recognition of a [\*\*\*59] duty on the part of the prosecution to disclose evidence to the defense in appropriate cases.” (I’d. at pp. 531-532) [\*529]

*Fay v. Noia, 1963 372 U.S. 391, 401-402* Its root principle is that in a civilized society, government (and all those serving therein) must always be accountable to the judiciary for a man’s imprisonment: if imprisonment can not be shown to conform to the fundamental requirement of law the individual is entitled to immediate relief.