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9 SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO

10 CENTRAL DIVISION

11
12 DOUGLAS R. STANKEWITZ,

13 Petitioner,

14
15 On Habeas Corpus.

Case No. 21CRWR685993

FOURTH SUPPLEMENTAL FILING –
RE: IN RE JENKINS, California
Supreme Court, Decided 3/27/2023

(Fresno Superior Court Case
#CF78227015)

16
17 TO THE HONORABLE ARLAN L. HARRELL, THE SUPERIOR COURT FOR THE
18 COUNTY OF FRESNO AND TO THE DISTRICT ATTORNEY FOR THE COUNTY OF
FRESNO:

19 YOU WILL PLEASE TAKE NOTICE that Petitioner DOUGLAS R. STANKEWITZ,
20 through counsel, hereby files his Fourth Supplemental Filing Re: In re Jenkins, California
21 Supreme Court, Decided March 27, 2023. Petitioner requests a hearing on this matter.

22 In light of the recent decision handed down by the California Supreme Court in the case of
23 *In re Jasmine Jenkins*, 2023 Cal. LEXUS 1585, the Petitioner, Douglas R. Stankewitz, by
24 counsel, respectfully requests this Court take notice of the following substantive and procedural
25 violations of the U S Constitution, 14th Amendment, California Constitution, Article Five,
26 Section 13, and California Constitution Article I, Section VII, by the prosecution in the
27 Stankewitz case, mirrored in the ruling set forth in *Jenkins*:

- 1) Prosecution's Failure to Disclose Exculpatory, Material Evidence Pursuant to *Brady v. Maryland*, (1963) 373 U.S. 83 in Pre-trial Discovery Through Trial.
- 2) the State's Failure of Its Continuing Duty to Disclose Evidence Subject to *Brady* Though Post-Trial Proceedings, Including Petitions for Habeas Corpus.
- 3) Violations of the duty to disclose outside *Brady*.
- 4) The State's Failure to Disclose Evidence in Violation of Rule 3.8 of the Rules of Professional Conduct.
- 5) Additional violations discussed herein.

Dated: April 16, 2023

Respectfully Submitted,

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DOUGLAS RAY STANKEWITZ


By CURTIS L. BRIGGS

I. Prosecution's Failure to Disclose Exculpatory, Material Evidence Pursuant to *Brady v. Maryland*, (1963) 373 U.S. 83 in Pre-trial Discovery Through Trial.¹

In addressing the prosecution's constitutional duty to disclose exculpatory evidence, the *Jenkins* Court, citing *People v. Cordova* (2015) 62 Cal.4th 104, 123, states that, "The obligation is not limited to evidence the prosecutor's office itself actually knows of or possesses, but includes "evidence known to the others acting on the government's behalf in the case, including the police." " *Jenkins, supra*, at 16.

The Court further concluded that, "[w]here a habeas corpus petitioner claims not to have received a fair trial because a trial prosecutor failed to disclose material evidence in violation of

¹ For the sake of brevity, Petitioner has included only some examples of the prosecution's disclosure violations. For the sake of discussion, Petitioner has used the court's outline in *Jenkins* to characterize the many disclosure failures by the prosecution against Mr. Stankewitz. It should be noted that a *Brady* violation is also an ethical violation. Further, there can be overlap between a discovery violation and a *Brady* violation.

1 *Brady* – and where the Attorney General² has knowledge of, or is in actual or constructive
2 possession of, evidence that the trial prosecutor suppressed in violation of *Brady* – the Attorney
3 General has a constitutional duty under *Brady* to disclose the evidence.” *Jenkins, supra*, at 30-31
4 [*footnotes omitted*]. As such, we direct this Court’s attention to the following:

5 A. State’s Pre-Trial Failures to Disclose Exculpatory Evidence:

- 6 1. Meras attempted murder FCSD reports³ including reports that the Meras
7 weapon and the Stankewitz weapon were different calibers, Habeas, p. 108⁴
- 8 2. Petitioner’s Interview Tapes with Det. Snow and Det. Lean, Habeas, p. 107
- 9 3. Autopsy Report and X-rays of the victim, Habeas, p. 111
- 10 4. Failure to allow the defense to inspect the car, Habeas, p. 112
- 11 5. Tapes of co-defendant interviews, Habeas, p. 113
- 12 6. Failure to disclose Billy Brown’s 4/14/78 meeting with DDA Ardaiz, Habeas p.
13 123
- 14 7. Petitioner’s ‘lost’ blood sample, Habeas, p. 160
- 15 8. Date on holster and omission from prosecution reports and court filings, Third
16 Supplemental Filing to Amended Emergency Petition, p. 3-4
- 17 9. Withholding Napa State Hospital Reports from 1965 & 1970, Habeas p. 154
- 18 10. Labeled spent casings as .22 cal that were actually .25 cal, Habeas p. 140,142
- 19 11. That the DDAs got Billy Brown drunk before he testified, Habeas, p. 124-125

20
21 B. State’s Failures at Trial, above and beyond Pre-Trial to Disclose Exculpatory
22 Evidence:

- 23 1. Withheld evidence that the Petitioner was high on heroin, Habeas p. 160

24
25 ² Although it refers to the Attorney General in discussing *Brady* responsibilities, the court makes it clear that it is
26 referring to the government’s duty regarding evidence. See *Jenkins*, at 20.

27 ³ Petitioner filed a Second Motion to Dismiss for Failure to Preserve or Destruction of Evidence, Pursuant to PC §§
1054.1, 1054.5(b), under *Brady, Youngblood* and *Trombetta* in the underlying criminal case on December 6, 2018.
That motion raised the Meras reports, inter alia, as *Brady* violations. The court gave the prosecution 70 days to
respond but it never did. The court never ruled on the motion.

28 ⁴ All references to ‘Habeas’ refer to the Amended Emergency Petition, filed in this court on March 8, 2021.

2. Withheld GSR negative test and the fact of no fingerprints on the gun, Habeas p. 165
3. Withheld the true height of the victim, Habeas p. 170
4. That the DDAs got Billy Brown drunk before he testified, Habeas, p. 124-125

II. Application of *Jenkins* to the State’s Failure of Its Continuing Duty to Disclose Evidence Subject to *Brady* Though Post-Trial Proceedings, Including Petitions for Habeas Corpus.

In not having previously considered whether the State had a continuing duty under *Brady* to disclose evidence forming the basis of a claim in the context of a petition for habeas corpus, the *Jenkins* court looked to decisions in other jurisdictions dispositive of this issue. The Court cited several cases confirming that the State’s obligations to disclose information does not cease at the conclusion of trial, but is an ongoing duty continuing through post-trial proceedings.

The *Jenkins* Court found one case particularly instructive on this issue, *Steidl v. Fermon* (7th Cir. 2007) 494 F.3d 623, wherein the *Steidl* Court reasoned,

In our view, *Brady*, *Ritchie* [footnote omitted], and the other cases in this line impose on the state an ongoing duty to disclose exculpatory information if, as *Brady* put it, that evidence is material either to guilt or to punishment and available for trial . . . For evidence known to the state at the time of trial, the duty to disclose extends throughout the legal proceedings that may affect either guilt or punishment, including post-conviction proceedings. . . . *Steidl*, at p. 630. *Jenkins*, *supra*, at 18-19.

Additionally, determination of whether any evidence is material would certainly be more discernable in hindsight in post-trial proceedings. As stated in *Jenkins*, “. . . determining whether *Brady* applies to a piece of evidence may be easier in the postconviction context given that its materiality, or lack thereof, may be more apparent than it is before judgment.” *Jenkins*, *supra*, at 22.

The State’s post-conviction *Brady* violations include, but are not limited to:

1. Failing to disclose the holster evidence that was known at trial, Habeas, p. 56
2. ‘Losing’ the photos of the car taken by Criminalist Smith, Habeas, p. 112

1 3. Withholding autopsy notes and the coroner's report, Habeas, p. 171

2 **III. Violations of the duty to disclose outside *Brady***

3 In its discussion of the applicability of Rule 3.8(d) of the Rules of Professional Conduct as
4 establishing a duty to provide discovery of any exculpatory evidence, the *Jenkins* court noted the
5 duty “requires the prosecution to provide all exculpatory evidence, not just evidence that is
6 material under *Brady* and its progeny.” [citing *People v. Cordova* (2015) 62 Cal4th 104]” *Jenkins*,
7 *supra*, at 38.

8
9 A. The State's Pre-Trial non-*Brady* violations, include, but are not limited to failing to disclose:

- 10
11 1. Billy Brown's Field Trip and testimony prepping to Modesto K-Mart with DDA
Ardaiz and DAI Spradling, Habeas, p. 123-124
12
13 2. Recorded interviews of jailhouse snitches Richardson, Jones, and Hammett, Habeas, p.
130
14
15 3. That DDA Robinson threatened Billy Brown with being criminally charged if he did
not testify that Petitioner committed the crimes, Habeas, p. 132
16
17 4. Failure to provide reports for Gary Lewis case #75-41415 regarding the firearm and its
relevance to Petitioner's case, Third Supplemental Filing, p. 7

18 B. The State's Trial non-*Brady* violations include, but are not limited to:

19 That DDA Robinson threatened Billy Brown with being criminally charged if he did not
testify that Petitioner committed the crimes, Habeas, p. 132

20 C. The State's Post-conviction non-*Brady* violations include, but are not limited to:

21 Failure to provide the contents of 15 boxes that DA has in her office, See Request for
22 Extension of Time, Declaration of Kelsey Peterson, dated 10/24/22, at 3.

23
24 **IV. The State's Failure to Disclose Evidence in Violation of Rule 3.8 of the Rules of Professional Conduct**

25 Rule 3.8 of the Rules of Professional Conduct set forth an affirmative duty upon the
26 prosecutor to timely disclose to the defense “all evidence or information known to the prosecutor
27
28

1 that the prosecutor knows or reasonably should know tends to negate the guilt of the accused,
2 mitigate the offense, or mitigate the sentence...”

3 In *Jenkins*, the Court reiterates its prior recognition of the continuing duty of the
4 prosecution in postconviction proceedings to disclose exculpatory evidence that should have been
5 disclosed at trial. *Jenkins, supra* at 31-32. In revisiting its decision in *People v. Gonzalez* (1990)
6 51 Cal.3d 1179, the Court referenced its holding that “[a]t trial this duty is enforced by the
7 requirements of due process, but [even] after a conviction the prosecutor . . . is bound by the
8 ethics of his office to inform the appropriate authority of . . . information that casts doubt upon the
9 correctness of the conviction. [citations omitted].” *Jenkins, supra*, at 32.

11 That admonition in *Gonzalez* was repeated in *In re Lawley* (2008) 42 Cal.4th 1231,
12 wherein the *Jenkins* court again reminded us of the “continuing ethical duties of a prosecutor – in
13 the postconviction setting – to disclose evidence that should have been disclosed at trial. . .”
14 *Jenkins, supra*, at 32.

16 Any argument by the prosecution that the application of Rule 3.8(d) relies upon its
17 assessment of whether the evidence at issue is material to Petitioner’s conviction would be
18 overruled by the *Jenkins* court’s reading of Comment [3] to Rule 3.8 which expressly states, “The
19 disclosure obligations in paragraph (d) are not limited to evidence or information that is material
20 as defined by *Brady* . . . and its progeny” and for the *Jenkins* court, makes clear that “the ethical
21 disclosure obligation under Rule 3.8(d) is not limited to evidence material to a conviction.”
22 *Jenkins, supra*, at 39.

24 The State’s Rule 3.8 Rules of Professional Conduct violations, include, but are not limited to⁵:

- 25 1. Failure to comply with a subpoena re: Meras evidence, Habeas, p. 168
- 26 2. Failure to provide Public Records Act documents, Habeas, p. 169

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28 ⁵ This list includes violations that are above and beyond what is already listed above in I and II, supra.

1 3. Instructing witnesses to mislead and not correct false testimony, Habeas, p. 172

2
3 **V. Petitioner Demonstrates He Has a Reasonable Belief That Exculpatory Evidence**
4 **Exists and Is Entitled to Receive That Evidence Without Having to Show Materiality,**
5 **In Reference to and In Accordance With, California Penal Code Section 1054.9**

6 The *Jenkins* Court makes no specific finding regarding the applicability of Section 1054.9,
7 since the statute allows for postconviction discovery in cases involving a criminal conviction of a
8 felony resulting in a sentence of 15 years or more, which was not the case in *Jenkins*. However,
9 the Court does reference the holding in *In re Scott* (2003) 29 Cal.4th 783, 813, that the “scope of
10 discovery in habeas corpus proceedings has generally been resolved on a case-by-case basis.”
11 *Jenkins, supra*, footnote 10⁶.

12 *Jenkins* also makes reference to the ruling in *Barnett v. Superior Court* (2010) 50 Cal.4th
13 890, 901 [for purpose of postconviction discovery under §1054.9, “[i]f petitioner can show he has
14 a reasonable basis for believing a specific item of exculpatory evidence exists, he is entitled to
15 receive that evidence without additionally have to show its materiality”]. *Jenkins, supra*, at 38.

16 In the instant case, the Petitioner filed discovery requests seeking evidence he believes
17 was and continues to be in the possession of the State, which was not made available to the
18 Defendant either in pre-trial discovery, during trial, or upon filing of his *Brady* claim in his
19 habeas corpus petition. Petitioner contends this failure to disclose evidence, to which he is
20 entitled without requesting, and despite his post-conviction requests is, not only a violation of the
21 State’s duty under *Brady*, but runs contrary to the authority granted in Section 1054.9, and
22 warrants scrutiny by this Court in whether the Petitioner’s rights to due process were violated by
23 the State’s failures to produce.
24

25
26 **VI. Prosecution’s Duties under Petitioner’s 1978 Discovery Motion and Order**

27 ⁶ As argued in his Motion for Conditional Examinations filed with this court, Petitioner’s case warrants the court
28 fashioning appropriate discovery given the 45-year history of prosecutorial misconduct, the age of witnesses, the loss
of DA case files for Petitioner and the co-defendants, and the need for Petitioner to prove his habeas claims.

1 In 1978, as part of the pretrial motions, the Court entered a broad discovery order and
2 ordered the prosecution to produce records. The original discovery order has been in effect since
3 April 24, 1978, (T1 CR Vol. I CT 116), and includes case notes. Based on Petitioner's knowledge
4 of the case, he believes that the prosecution has been mostly responsive to discovery requests since
5 2016. However, many of the materials were not turned over until after 2012, some 34 years after
6 the case started. All of these materials should have been turned over but the majority of them were
7 not turned over until after 2016. After stating for years that they had turned everything over, the
8 prosecution admitted in 2017 (PRH Vol. XXVII RT 404 - 405) that their files were lost. After
9 Petitioner made specific discovery requests starting in 2017, only then did the prosecution turn
10 over additional materials. The following has still not been turned over.

11
12 The State's 1978 Discovery Motion and Order violations, include, but are not limited to:

- 13 1. Failure to provide the tapes and notes of the Billy Brown interviews, Habeas, p. 113
- 14 2. Failure to provide discovery pursuant to a request in 2010, Habeas, p. 167
- 15 3. Failure to preserve and provide Petitioner's and co-defendants' files, Habeas, p. 167,
16 169
- 17 4. Failure to disclose that the State had lost Petitioner's and co-defendants' files, Habeas,
18 p. 169

19
20 **VII. Application of Brady In the Context of Procedural Law Governing Petitions for Writ
21 of Habeas Corpus**

22 The *Jenkins* Court reviewed well established law governing petitions for writ of habeas
23 corpus and summarized the pleading burdens and procedures outlined in *People v. Duvall* (1995)
24 9 Cal.4th 464.

25 Relative to those procedures, the *Jenkins* court alluded to its prior discussion of the
26 prosecution's continuing duty in disclosing exculpatory and material evidence where a *Brady*
27

1 violation is alleged in the petition for habeas corpus, and in accordance with the ethical duty
2 disclose evidence subject to Rule 3.8(d).

3 **A. Prosecution Duties at time of filing Petition for Writ of Habeas Corpus**

4 At the time of filing a habeas petition, constitutional and ethical duties arise if evidence is
5 actually *Brady* material. The mere assertion of *Brady* material does not demonstrate that
6 Petitioner has direct or concrete evidence to support the allegations. Sometimes evidence may not
7 be revealed until the habeas proceeding. At this stage, if evidence is not subject to *Brady* but
8 subject to Rule 3.8, the prosecution has an ethical duty to disclose. See *Jenkins*, *supra*, at 43.

9 **B. Prosecution Duties regarding Informal Response**

10 In addressing the respondent's obligation in an informal response, the *Jenkins* court
11 acknowledges that the respondent [government] may "chose to neither 'confirm nor dispute' the
12 existence of the alleged *Brady* evidence and may argue instead that, assuming the existence of the
13 evidence, the evidence is not subject to *Brady*. *Jenkins*, *supra*, at 46, noting that such
14 acknowledgement does not negate any duty imposed under *Brady* and/or Rule 3.8(d).

15 The court does, however, impose one restriction on a respondent's informal
16 response:

17 "Specifically, we conclude that, if the Attorney General has knowledge of, or is in
18 actual or construction possession of, evidence underlying a habeas corpus
19 petitioner's *Brady* claim, he shall not file an informal response on behalf of
20 respondent that argues the petitioner has failed to present 'documentary evidence
21 supporting the claim' (*Duvall*, *supra*, 9 Cal.4th at p. 474), unless the Attorney
22 General explains the basis for such argument (e.g., by explaining that
23 confidentiality provisions prohibit the Attorney General from confirming the
24 existence of the evidence and the petitioner has failed to utilize available
25 procedures to seek access to the evidence."
Jenkins, *supra*, at 42.

26 This restriction is designed to prevent rejection of a petition based on "the erroneous
27 premise that the evidence does not exist, when in fact the Attorney General has knowledge of the
28 existence of the evidence. *Jenkins*, *supra*, at 43.

1 The State's Informal Response violations, include, but are not limited to:

- 2 1. Omitting the content of evidence, the first date inscribed on the holster Informal
3 Response, p. 13-14; and Exhibit A to Informal Response, at 1,⁷ when the prosecution
4 had knowledge of the markings on the holster.
- 5 2. Stating that there was an attempt to conceal the serial number on the gun, when there
6 is no evidence to support the statement, Informal Response, p. 14
- 7 3. Stating that 'there is no evidence that Billy Brown's testimony was coerced', when
8 there is evidence that his testimony was coerced, Informal Response, p. 22

9 **C. Prosecution Duties Upon Issuance of Order to Show Cause (OSC) and in Filing the
10 Return**

11 Upon the issuance of an order to show cause, a different rule applies. 'After the issuance
12 of an order to show cause, the Attorney General, on behalf of the respondent, would normally be
13 required to file a return that either admitted or denied' *Brady* evidence. Jenkins, at 48 (citing
14 *People v. Duvall* (1995) 9 Cal. 4th 464, 480). The "[respondent] shall not persist in raising any
15 argument put forth in an informal response that the petitioner failed to carry his or her burden of
16 showing the evidence exists without providing a reason for why respondent is unable to confirm
17 or deny the existence of the evidence (e.g., because the alleged evidence is subject to disclosure
18 prohibitions) [footnote omitted]. *Jenkins, supra*, at 48-49.

19 The State has not yet filed a Return.

20 **VIII. Conclusion**

21 As eloquently summed up by the *Jenkins* court, each of the prosecution's constitutional
22 and ethical duties is separate from the other. As explained above, the prosecution has committed
23 *Brady*, Rule 3.8 and court ordered discovery violations numerous times throughout the 45 years
24 of this case. Each of these violations constitutes prosecutorial misconduct. In *Jenkins*, improper
25 drafting of the prosecution's pleadings and only one *Brady* violation, the court reversed and
26 27

28 ⁷ Informal Response to Petition for Writ of Habeas Corpus, dated 9/1/2021

1 remanded the case. Here, given the multiple *Brady*, non-*Brady*, Rule 3.8 and discovery order
2 violations, the appropriate remedy is for this court to grant the Amended Emergency Petition and
3 dismiss the case against Petitioner with prejudice.

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