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DOUGLAS R. STANKEWITZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF FRESNO

DOUGLAS R. STANKEWITZ, Petitioner, On Habeas Corpus.	Case No. 21CRWR685993 SECOND SUPPLEMENTAL FILING TO EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS Related Appeal Pending – LWOP SENTENCE NO. F079560 (Fresno Superior Court Case #CF78227015)

TO THE SUPERIOR COURT FOR THE COUNTY OF FRESNO AND TO THE DISTRICT ATTORNEY FOR THE COUNTY OF FRESNO:

YOU WILL PLEASE TAKE NOTICE that Defendant DOUGLAS R. STANKEWITZ, through counsel, hereby submits this Second Supplemental Filing of recent cases to his pending habeas petition.

Dated: January 24, 2022

Respectfully Submitted,

J. TONY SERRA
CURTIS BRIGGS

Attorneys for Defendant
DOUGLAS RAY STANKEWITZ

By CURTIS L. BRIGGS

1 **Petitioner hereby submits the following additional case law:**

2 **XVIII. Memo of Points and Authorities**

3 Paragraphs E. Ineffective Assistance of Counsel; G. Brady/ Prosecutorial Misconduct; and I. False
4 Testimony

5

6 In a case before the Commission on Judicial Performance, *Inquiry re Judge Michael F.*
7 *Murray*, dated 1/5/2022, attached as Exhibit 21b hereto, the Commission investigated Judge
8 Murra's conduct as a district attorney in the case of *People v. Wilkins, infra*. Upon review, it
9 determined that the *Brady* violations that he committed necessitated the initiation of formal
10 proceedings against him. The Commission's Notice of Formal Proceedings stated as follows, "The
11 duty to disclose favorable evidence extends to evidence reflecting on the credibility of a material
12 witness. (*People v. Kasim* (1997) 56 Cal.App.4th 1360, 1380.) **A prosecutor's disclosure**
13 **obligation also extends beyond the contents of the prosecution case file and encompasses a**
14 **duty to ascertain, as well as divulge, any favorable evidence known to those acting on the**
15 **government's behalf.** [emphasis added] (*People v. Williams* (2013) 58 Cal.4th 197, 256, citing *In*
16 *re Brown* (1998) 17 Cal.4th 873, 879.) **A prosecutor's duty to inquire about potentially**
17 **exculpatory evidence and to disclose favorable evidence is continuing and does not end when**
18 **the trial is over.** [emphasis added] (*Imbler v. Pachtman* (1976) 424 U.S. 409, 427, fn. 25; see also
19 *People v. Garcia* (1993) 17 Cal.App.4th 1169, 1179.)"

20

21 The Commission further stated that DA Murray's failure to disclose exculpatory evidence
22 after the first trial violated his "continuing duty to disclose evidence favorable to the accused that
23 is material either to guilt or punishment, pretrial, under *Brady v. Maryland, supra,* 373 U.S. 83
24 (see also *Giglio v. United States* (1972) 405 U.S. 150, 154), and **post-trial** [emphasis added]
25 pursuant to *Imbler v. Pachtman, supra,* 424 U.S. 409, 427, fn. 25, *People v. Garcia, supra,* 17
26 Cal.App.4th 1169, 1179, and *People v. Kasim, supra*, 56 Cal.App.4th 1360, 1380." At 15.

27

28

In both counts, the Commission determined that DA Murray's conduct violated the California Constitution, article VI, section 18, subdivisions (d)(2) and (d)(3).

In the underlying case, *People v. Wilkins (Case* #G055603 2020) CA4, Div 3 (Not for publication), due in part to the Brady violations, the court, in the interests of justice, modified the conviction from first degree murder to involuntary manslaughter. In *Wilkins*, *supra*, the court found that the evidence showed that the government committed outrageous misconduct. Specifically, the destruction and alteration of exculpatory law enforcement reports which wrongfully shifted the blame to the defendant rather than the CHP officer who was involved in the incident. Further, then DA Murray withheld critical reports from the defense. In *Wilkins*, the prosecution provided the reports and knowledge of the altered law enforcement reports in between the defendant's first and second trials. Therefore, because he could use the evidence during his second trial, Mr. Wilkin's right to counsel was not violated. However, unlike *Wilkins*, Mr. Stankewitz's counsel did not have the exculpatory evidence described in the instant Emergency Petition for Writ of Habeas Corpus prior to his second trial.

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PROOF OF SERVICE

The undersigned declares:

I am a citizen of the United States. My business address is P. O. Box 7225, Cotati, California 94931. I am over the age of eighteen years and not a party to the within action.

On the date set forth below, I caused a true copy of the within

SECOND SUPPLEMENTAL FILING TO EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS

to be served on the following parties in the following manner:

Mail _X___ Overnight mail ____ Personal service ____ Fax ____

Office of District Attorney
2220 Tulare Street, Suite 1000
Fresno, CA 93721

Courtesy copy sent via email to: afreeman@fresnocountyda.gov

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration is executed on January 24, 2022, at Sebastopol, California.

Alexandra Cock

SECOND SUPPLEMENTAL FILING EXHIBIT 21b

FILED
JAN 5 2022
COMMISSION ON
JUDICIAL PERFORMANCE

STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING JUDGE MICHAEL F. MURRAY, No. 207	NOTICE OF FORMAL PROCEEDINGS

To Michael F. Murray, a judge of the Orange County Superior Court from January 2017 to the present:

Preliminary investigation pursuant to Rules of the Commission on Judicial Performance, rules 109 and 111, having been made, the Commission on Judicial Performance has concluded that formal proceedings should be instituted to inquire into the charges specified against you herein.

By the following allegations, you are charged with engaging, between approximately January 3, 2011, and September 17, 2015, in conduct prejudicial to the administration of justice that brings the judicial office into disrepute and improper action within the meaning of article VI, section 18 of the California Constitution, providing for removal, censure, or public or private admonishment of a judge or former judge, to wit.

COUNT ONE

On July 7, 2006, Cole Wilkins stole several boxed appliances from a home under construction in Riverside County and, without properly securing them, loaded the appliances into his truck. As Mr. Wilkins drove on State Route 91 in Anaheim around 5:00 a.m., approximately 60 miles

from the scene of the burglary, a stove fell from the back of his truck onto the second lane of the freeway. Three motorists, traveling in either the second or third lanes, collided with the stove without serious injury. Shortly thereafter, off-duty Los Angeles Deputy Sheriff David Piquette suddenly swerved from the first lane, crossed several lanes, and struck a big rig traveling in the fourth lane. The big rig, hauling a load of powdered cement, jackknifed and fell onto Piquette's car, crushing him to death.

The collisions were investigated by the California Highway Patrol (CHP). Officer Michael Bernardin investigated the fatal collision. Officer John Heckenkemper investigated two other nonfatal collisions occurring just before the fatality. The traffic collision report that Officer Bernardin submitted to the CHP's accident investigation unit (AIU) identified the cause of the fatality, also known as the primary collision factor or PCF, as Deputy Piquette's unsafe speed for the conditions. The traffic collision report that Officer Heckenkemper submitted to the AIU identified the PCF of the crashes he investigated as the unsafe speed for the conditions of one of the drivers who hit the stove.

Thereafter, CHP Sergeant Joseph Morrison directed Officer Bernardin to change the PCF for the collision involving Deputy Piquette to "other than driver." Additionally, because Officer Heckenkemper's report involved collisions close in time to the fatality, Sergeant Morrison, without the knowledge of Officer Heckenkemper who was away on vacation, rewrote Officer Heckenkemper's report under his own name, changed the PCF to "other than driver" to match Officer Bernardin's altered PCF, and added a recommendation that the report be forwarded to the Orange County District Attorney's Office (OCDA) for the filing of charges against Mr. Wilkins. Sergeant Morrison then destroyed Officer Heckenkemper's original report.

On July 11, 2006, police arrested Mr. Wilkins on charges of receiving stolen property and driving with a suspended license. Two days later, on July 13, 2006, OCDA charged Mr. Wilkins with murder and receiving stolen property. (*People v. Wilkins*, No. 06NF2339.)

When Officer Heckenkemper returned from vacation, he spoke with Sergeant Morrison who explained that they found the person who dropped the stove and that he was going to be charged with felony murder. Sergeant Morrison told Officer Heckenkemper that they changed Officer Bernardin's PCF to "other than driver" because they did not feel they could obtain a murder conviction with the deputy sheriff being at fault for the crash.

In approximately November 2006, you were assigned to prosecute the *Wilkins* case. Between June 19, 2007, and January 24, 2008, Mr. Wilkins's defense counsel, Joseph Vodnoy, filed five motions to continue the trial so that he could obtain, and have his expert review, the analysis of the black box in Deputy Piquette's car. Mr. Vodnoy represented in his June 15, 2007 declaration that information about Deputy Piquette's operation of his vehicle was crucial to determining the circumstances of the fatal collision.

Prior to trial, the lead case agent, CHP Investigator Theresa Pines, informed you that other CHP officers did not believe Mr. Wilkins should be prosecuted for murder. You did not conduct any inquiry concerning this potentially exculpatory information to determine if it was, in fact, exculpatory and subject to mandatory disclosure.

On April 21, 2008, shortly before jury selection, Mr. Vodnoy told the court that he anticipated his defense to be that Deputy Piquette was at fault for the fatality because he was traveling at an unsafe speed for the conditions. He also said that he expected to call a reconstruction expert who would testify that the deputy was at fault due to his unsafe speed. During that hearing, you equated any evidence of fault on the part of the

deputy with evidence of contributory negligence. The following exchange regarding the issue of the decedent's speed and causation then occurred.

> MR. MURRAY: ...I'm going to object to expert testimony regarding contributory negligence, because I don't think that's the law. I think the law is very clear that contributory [*sic*] on the part of the defendant [*sic*] is not relevant to an analysis under the felony murder rule. It's the straight causation analysis based on substantial test. And the defendant, if he's one percent a factor –
>
> THE COURT: Well, I think clearly, in terms of the facts and circumstances of the accident, in terms of causation, there's going to be evidence in that regard.
>
> MR. MURRAY: Well, the only reason why I offer it is because, when we get there -- I don't even have the report, so I don't know what the expert is going to say. But in the event there's an offer dealing with contributory negligence, I'm going to object. And at that time, I guess when the issue is right [*sic*], the court will take it up and evaluate it based on the authority that both sides offer, and make a decision as to what the parameters are for the expert testimony. [¶] The only reason why I raise the issue now is because Mr. Vodnoy is trying to decide whether or not he wanted to approach that subject with the jury in anticipation that I might try to bring it in after his expert testifies. [¶] I'm just saying, we don't know what the parameter of that expert's testimony is going to be right now. And I offer it only for -- in terms of a heads up.
>
> MR. VODNOY: Well, the position that I'm taking is that this is a second degree murder charge here. Unless they're –
>
> THE COURT: That's another issue, the People have indicated that they will be seeking

> instructions to applied [*sic*] malice, and that is an issue also. And I haven't fully established a set of jury instructions in this case, but speed may have relevance to one theory [of murder] not the other.
>
> MR. MURRAY: It may, Your Honor.

On April 22, 2008, in your opening statement, you told the jury that the stove caused Deputy Piquette's death. You concluded your opening statement as follows. "And when you've heard all the evidence, I ask that you do one thing, you just hold the defendant responsible. That's it. Nothing more, nothing less, just hold him responsible for his actions for what he did, for what he caused."

One day during the trial, as you were leaving the courtroom during a recess, a reporter asked you what you thought about the fact that some CHP officers did not believe that Mr. Wilkins should have been charged with murder, or words to that effect. You responded that you did not believe it was relevant whether some CHP officers agreed or disagreed with the charges being pursued by the district attorney's office, or words to that effect.

Before or during the trial, then-CHP Assistant Chief Steven Beeuwsaert informed you that the CHP collision reports concerning the *Wilkins* case had been altered, the PCFs had been changed, and that the officers did not find Mr. Wilkins at fault. You responded that it did not matter because the defendant was a fleeing felon at the time the stove fell from his vehicle, or words to that effect. You did not conduct any further inquiry concerning Assistant Chief Beeuwsaert's statements. You also did not disclose any exculpatory evidence that the officers' reports had been altered, that the PCFs had been changed, or that Officer Bernardin had

found that the decedent, not the defendant, had caused the fatal accident until September 17, 2015.

In your case-in-chief, several witnesses testified that the stove was directly involved in the first three collisions. None, however, testified that the stove caused Deputy Piquette to swerve.

Officer Bernardin's altered report, however, stated that the stove caused the fatal collision. You included Officer Bernardin's name on the witness list read to the jury and subpoenaed him to testify at trial. He appeared at the courthouse pursuant to that subpoena. While outside the courtroom, Officer Bernardin told Investigator Pines that his report had been changed. Investigator Pines told you or the OCDA Investigator assigned to the case, Robert Sayne, about this conversation with Officer Bernardin. You or Investigator Sayne told Investigator Pines words to the effect that the cause of the accident did not matter because the defendant was charged as a fleeing felon.

Shortly before or at the time of trial, Officer Heckenkemper, who was the first officer on the scene, met with prosecution reconstruction expert and OCDA Investigator Wesley Vandiver to discuss the stove's initial location in the second lane before Officer Heckenkemper dragged it to the side of the freeway. During this meeting, Officer Heckenkemper told Investigator Vandiver that "there were some things going on with this investigation that the D.A. probably should know about. And that the [*sic*] Officer Bernardin didn't -- didn't believe in the PCF, and if he was put on the stand that he would probably not agree with what the PCF is." Officer Heckenkemper also told Investigator Vandiver some of his concerns regarding the changes to his own report.

Despite the fact that Officer Bernardin was the investigating officer, had found that the stove caused the fatal collision, and appeared in court to testify, you did not call him as a witness. After you rested the prosecution's

case, Mr. Vodnoy called his reconstruction expert, Donald Gritton, a former 20-year CHP officer and certified reconstructionist who had been in practice in the field for 16 years. Mr. Gritton opined, over your objections, that the PCF of the fatality was Deputy Piquette's unsafe speed for the conditions. He also opined that Piquette made a lane change that he was unable to correct, and subsequently struck the big rig. Mr. Gritton further testified that, in his review of the evidence, he did not see anything that specifically showed that Deputy Piquette swerved to avoid the stove. On cross-examination, you asked Mr. Gritton if he had any evidence or saw anything in the reports that would account for Deputy Piquette's actions other than the stove. Mr. Gritton responded, "No."

On rebuttal, Investigator Vandiver, who had already met with Officer Heckenkemper, opined that the stove was a "substantial factor" in the fatal collision and that, in the absence of the stove, he did not believe "we have a swerve." When you asked if Investigator Vandiver saw anything else in his review of the evidence, the witness statements, or the photographs that indicated any other cause that contributed to Piquette's "evasive maneuver," Investigator Vandiver stated, "There's nothing else." Investigator Vandiver also testified on cross-examination that he would estimate that, just before Deputy Piquette took the right turn, he was going the same speed as those around him. When Mr. Vodnoy asked if he had evidence of that, Investigator Vandiver responded, "I have evidence -- I have the lack of evidence in that I think if he was going extremely fast, we would probably hear about it." He also testified on cross-examination that it did not appear that Deputy Piquette was traveling at an unsafe speed. On redirect examination, you asked, "And is there anything else in the evidence -- anything in witness statements, photographs, or anything that you had become aware of, other than the stove, that would explain that set of

circumstances depicted on the diagram?" Investigator Vandiver responded, "No."

In your closing argument, you stated the following about the defense's efforts to prove that it was Deputy Piquette, not the defendant, who caused the fatal collision.

> Felony murder says accident. If the death is result [*sic*] of an accident, if it's unforeseen, unintended, it doesn't matter. [¶] So, why is the defense try [*sic*] and put on an expert and say, I've looked at everything and I think the [*sic*] David Piquette made an unsafe turning movement? What's with that whole system of smoke and mirrors? To try and make David Piquette, are you kidding me, to try and blame it on the victim. That takes some audacity. [¶] You're going to get a jury instruction that says, even if it were there [*sic*], okay, even if David Piquette did something completely wrong. If the stove was a substantial factor, and then David Piquette made a [*sic*] did make a negligent turning movement, let's just say it was not just unsafe, it was totally negligent, it doesn't matter. Negligence on the part of the victim is irrelevant. This is not a civil case where you start looking at who's at what percent at fault. It is irrelevant.

You also argued two theories of murder to the jury – first degree felony murder and second degree implied malice murder. Judge Richard Toohey instructed the jury on both theories.

On May 5, 2008, the jury convicted Mr. Wilkins of first degree murder. The court scheduled sentencing for July 11, 2008. Approximately one month before sentencing, on or about June 8, 2008, you returned a telephone message from reporter Jon Cassidy. Mr. Cassidy told you that he had received a tip that the CHP had altered an accident report as to the finding of fault in order to place the blame for the accident on Mr. Wilkins.

You responded that you had not heard of a report being altered, and that it would not have any bearing on a criminal case and would only affect civil liability, or words to that effect. You did not conduct any inquiry concerning Mr. Cassidy's statement to determine if the potentially exculpatory information was, in fact, exculpatory and subject to mandatory disclosure. You did not tell the defense about this potentially exculpatory information.

On July 11, 2008, you appeared in court for the *Wilkins* sentencing hearing. At the outset of the hearing, the court noted that, on July 8, the defense had filed a motion to continue the sentencing hearing, and asked Mr. Vodnoy if he had anything to add. Mr. Vodnoy responded that he had a "completely different ground" to add. The following colloquy occurred:

> MR. VODNOY: There [*sic*] alleged improprieties by the Highway Patrol in connection with the investigation of this case. It is my understanding, and these are allegations that I would like to explore in terms of having these people being witnesses.
>
> First of all, with respect to the [*sic*] Lieutenant Mark Worthington of the Highway Patrol, there is [*sic*] allegations that he's been fired for tampering with the report in our case. There was an allegation that he tampered with another report in another case involving the same CHP officer. That was one of the investigators in our case.
>
> In addition to that, there was allegation [*sic*] that Internal Affairs seized the computer signed [*sic*] to Accident Review Officers [*sic*] Scott Taylor. My understanding [is] that he's one of the officers, he is one of the officers in our case.
>
> In addition to that and his, both was [*sic*] Worthington and Worthington's superior, Ken Rosenberg was additionally demoted from

captain to lieutenant over this and some other matters. And he lost the command over this investigation.

I would like to explore that for a motion for new trial and move to continue the case so that I may subpoena these officers into court.

THE COURT: Mr. Murray.

MR. MURRAY: With the regard to the grounds stated in Mr. Vodnoy's 1050, there were no legal grounds whatsoever stated in his 1050. He said he'd been on vacation. He said that the probation report was long and he wanted more time.

Those are not legal grounds. This is a date for sentencing that Mr. Vodnoy picked. He picked it at that time that the jury came back with their verdict and nothing has changed as of today in terms of good legal cause.

He's just stated some reasons that are not contained in his declaration that was filed with the 1050. And he still hasn't stated any reasons that indicate that there's new evidence or a change in evidence that would affect in any way the outcome of this case.

He's made some allegations that aren't his. He hasn't talked about the substance of where these allegations came from. I'm not familiar with any of this material. And he hasn't talked about how any of that affects the outcome of this case.

It's notable that none of these individuals, Lieutenant Worthington, Officer Rosenberg, none of them were witnesses in the trial.

And he hasn't talked about how there's any relevance to an alleged Internal Affairs investigation, which I don't even have any

> confirmation. There is an investigation ongoing. How any of that would in any way impact the jurors['] findings in this particular case. So, I don't think there's any good legal cause stated.
>
> And the People are ready to proceed in [*sic*] I may briefly.
>
> MR. VODNOY: There it [*sic*] was tampering with the report in this case in terms of causal connection between the incident that occurred in this case. It's clear that that would be crucial to the gravamen of the offense. This is not an intentional killing. This a situation [*sic*] of felony murder regarding an item that was on the freeway that other witnesses had managed to avoid.
>
> If there was evidence that the deputy was traveling at an unsafe speed or something else, that certainly should be, is relevant to the issue itself with respect to how the accident happened. So, I think it is relevant and I think that it is goes to the heart of the case itself in terms of how the accident occurred.
>
> There's no allegation and never was a [*sic*] allegation that Mr. Wilkins deliberately pushed this thing off his truck or knew that the item was off his truck at the time that Deputy Piquette died.
>
> So given the fact that that is the facts of the case [*sic*], and it's not some guy goes [*sic*] into a liquor store and shoots the clerk behind the counter. I think that we should be allowed to explore this by subpoenaing these witnesses and having Your Honor listen to the testimony.

You did not conduct any inquiry concerning the potentially exculpatory information Mr. Vodnoy provided at the sentencing hearing to

determine if the information was, in fact, exculpatory and subject to mandatory disclosure.

Judge Toohey sentenced Mr. Wilkins to 26 years to life in prison. Mr. Wilkins subsequently filed an appeal on the grounds that the trial court erred in refusing his request to instruct the jury that, for purposes of the felony murder rule, the felony continues only until the perpetrator reaches a place of temporary safety (the "escape rule").

On January 7, 2011, the Fourth District Court of Appeal affirmed Mr. Wilkins's conviction. Thereafter, the California Supreme Court granted review. On March 7, 2013, the Supreme Court issued an opinion finding that the trial court erred in failing to instruct the jury on the escape rule, reversed Mr. Wilkins's conviction, and remanded the case for a new trial. (*People v. Wilkins* (2013) 56 Cal.4th 333.) On June 21, 2013, you made your first appearance on behalf of the People before Judge Toohey in the retrial proceedings. You began providing pretrial discovery to Mr. Wilkins's new defense counsel in July 2013.

Between January 3, 2011, and July 2015, you failed to meet your continuing duty to inquire about potentially exculpatory evidence, including possible changed reports, a possible Internal Affairs investigation, and possible officer discipline or termination as a result of their conduct in the *Wilkins* case, to determine if that information was, in fact, exculpatory and subject to mandatory disclosure.

Prior to providing pretrial discovery to Mr. Wilkins's new defense counsel beginning in July 2013, you failed to meet your continuing duty to inquire about potentially exculpatory evidence, including possible changed reports, a possible Internal Affairs investigation, and possible officer discipline or termination as a result of their conduct in the *Wilkins* case, to determine if that information was, in fact, exculpatory and subject to mandatory disclosure.

On March 19, 2014, defense counsel filed a motion seeking to continue the March 21, 2014 trial date. In her supporting declaration, counsel stated that she notified you by email of her need for a continuance. She stated that you told her that the case had been reassigned to DDA Larry Yellin. On March 21, 2014, DDA Yellin specially appeared for you on the *Wilkins* case. Thereafter, DDA Yellin appeared for the People until the case was reassigned back to you in approximately July 2015.

On October 3, 2014, defense counsel filed a *Pitchess* motion seeking information about the Internal Affairs investigation from the personnel files of both Officer Bernardin and Officer Taylor. In the accompanying declaration, defense counsel stated that she had interviewed Officer Bernardin and he confirmed that he originally found Deputy Piquette at fault for the accident because of unsafe speed but was directed to change his report, that Officer Heckenkemper told him his report also had been changed, and that he (Officer Bernardin) had been interviewed by an Internal Affairs investigator about the changes to his report. The defense sent a copy of the *Pitchess* motion and the supporting declaration to OCDA, where it was received on October 3, 2014.

In approximately January 2015, defense counsel talked with DDA Yellin and expressed concern that you knew of the changed reports, did not disclose them, and were aware of *Brady* violations in the case.

As a result of defense allegations, DDA Yellin, who was then handling the case, twice asked you whether you knew about changed reports in the *Wilkins* case. You stated that you did not. After each discussion with DDA Yellin about changed reports, you failed to meet your continuing duty to inquire about potentially exculpatory evidence, including possible changed reports, a possible Internal Affairs investigation, and possible officer discipline or termination as a result of

their conduct in the *Wilkins* case, to determine if that information was, in fact, exculpatory and subject to mandatory disclosure.

By failing to conduct any inquiry, between January 3, 2011, and July 2015, concerning possible improprieties in the CHP's investigation of the July 7, 2006 collisions, despite the information provided by, among others, CHP Assistant Chief Beeuwsaert, defense counsel Vodnoy, CHP Investigator Pines, and reporter Jon Cassidy, and questions about changed reports twice posed to you by DDA Yellin, you violated your obligations under *Brady v. Maryland* (1963) 373 U.S. 83, which mandates the disclosure of evidence favorable to the accused that is material either to guilt or punishment. The duty to disclose favorable evidence extends to evidence reflecting on the credibility of a material witness. (*People v. Kasim* (1997) 56 Cal.App.4th 1360, 1380.) A prosecutor's disclosure obligation also extends beyond the contents of the prosecution case file and encompasses a duty to ascertain, as well as divulge, any favorable evidence known to those acting on the government's behalf. (*People v. Williams* (2013) 58 Cal.4th 197, 256, citing *In re Brown* (1998) 17 Cal.4th 873, 879.) A prosecutor's duty to inquire about potentially exculpatory evidence and to disclose favorable evidence is continuing and does not end when the trial is over. (*Imbler v. Pachtman* (1976) 424 U.S. 409, 427, fn. 25; see also *People v. Garcia* (1993) 17 Cal.App.4th 1169, 1179.) Your conduct also violated Penal Code section 1054.1, and former rule 5-220 of the Rules of Professional Conduct, governing attorney conduct (effective from September 14, 1992, to October 31, 2018).

Your conduct violated the California Constitution, article VI, section 18, subdivisions (d)(2) and (d)(3).

COUNT TWO

The allegations set forth in Count One are herein incorporated by reference. Between January 3, 2011, and approximately September 17,

2015, you failed to meet your continuing duty to disclose to the defense exculpatory evidence, about which you had actual knowledge, including that relevant original traffic collision reports in the *Wilkins* case had been altered, that the PCFs had been changed, and that Officer Bernardin found that the decedent, not the defendant, caused the fatal collision.

Beginning in July 2013, you provided discovery to new defense counsel of the same altered CHP reports provided prior to the first trial, but without disclosing that the reports had been altered, that the PCF findings by CHP officers had been changed, and that Officer Bernardin originally found that Deputy Piquette, and not Mr. Wilkins, caused the fatal accident. You failed to disclose any exculpatory evidence to the defense until approximately September 17, 2015.

In failing to disclose exculpatory evidence, about which you had actual knowledge, you violated your continuing duty to disclose evidence favorable to the accused that is material either to guilt or punishment, pretrial, under *Brady v. Maryland*, *supra,* 373 U.S. 83 (see also *Giglio v. United States* (1972) 405 U.S. 150, 154), and post-trial pursuant to *Imbler v. Pachtman*, *supra,* 424 U.S. 409, 427, fn. 25, *People v. Garcia*, *supra,* 17 Cal.App.4th 1169, 1179, and *People v. Kasim*, *supra*, 56 Cal.App.4th 1360, 1380. Your conduct also violated Penal Code section 1054.1, and former rule 5-220 of the Rules of Professional Conduct, governing attorney conduct (effective from September 14, 1992, to October 31, 2018).

Your conduct violated the California Constitution, article VI, section 18, subdivisions (d)(2) and (d)(3).

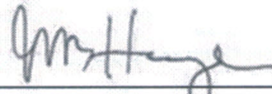
YOU ARE HEREBY GIVEN NOTICE, pursuant to Rules of the Commission on Judicial Performance, rule 118, that formal proceedings have been instituted and shall proceed in accordance with Rules of the Commission on Judicial Performance, rules 101-138.

Pursuant to Rules of the Commission on Judicial Performance, rules 104(c) and 119, you must file a written answer to the charges against you within twenty (20) days after service of this notice upon you. The answer shall be filed with the Commission on Judicial Performance, 455 Golden Gate Avenue, Suite 14400, San Francisco, California 94102-3660. The answer shall be verified and shall conform in style to the California Rules of Court, rule 8.204(b). The Notice of Formal Proceedings and answer shall constitute the pleadings. No further pleadings shall be filed, and no motion or demurrer shall be filed against any of the pleadings.

This Notice of Formal Proceedings may be amended pursuant to Rules of the Commission on Judicial Performance, rule 128(a).

BY ORDER OF THE COMMISSION ON JUDICIAL PERFORMANCE

Dated: December 17, 2021



Honorable Michael B. Harper
Chairperson

FILED
JAN 5 2022
COMMISSION ON JUDICIAL PERFORMANCE

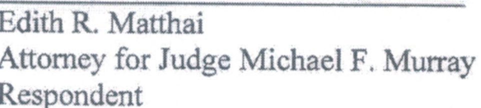
STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING JUDGE MICHAEL F. MURRAY, No. 207	ACKNOWLEDGMENT OF SERVICE OF NOTICE OF FORMAL PROCEEDINGS

I, Edith R. Matthai, on behalf of my client, Judge Michael F. Murray, hereby waive personal service of the Notice of Formal Proceedings in Inquiry No. 207 and agree to accept service by mail. I acknowledge receipt of a copy of the Notice of Formal Proceedings by mail and, therefore, that Judge Murray has been properly served pursuant to Rules of the Commission on Judicial Performance, rule 118(c).

Dated: Jan 4, 2022



Edith R. Matthai
Attorney for Judge Michael F. Murray
Respondent