SUPERIOR COURT OF THE STATE OF CALIFORNIA,

COUNTY OF SAN JOAQUIN

In re JOSEPH HATHORN NUCCIO, Petitioner On Habeas Corpus.	Case No. STK-CR-FMISC-202-0006365 (SF101949A) **Dept.: L1** **Judge: Hon. Linda L. Lofthus**

PETITION FOR WRIT OF HABEAS CORPUS
MEMORANDUM OF POINTS AND AUTHORITIES;
SUPPORTING EXHIBITS

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In re JOSEPH HATHORN NUCCIO, Petitioner On Habeas Corpus.	Case No. STK-CR-FMISC-202-0006365 (SF101949A)

TO THE HONORABLE JUDGE LINDA L. LOFTHUS, OR HONORABLE JUDGE OF THE SAN JOAQUIN COUNTY SUPERIOR COURT:

Petitioner, Joseph Nuccio, by and through his counsel, respectfully petitions this court for a writ of habeas corpus and by this verified petition sets forth the following facts and causes for the issuance of said writ:

I.

Petitioner is presently restrained of his liberty in state custody based upon his conviction rendered by the San Joaquin County Superior Court in case numbered SF101949A, as Petitioner is currently in state custody for the present offense. (*In re Jones* (1962) 57 Cal.2d 860.)

II.

This petition is being filed in this Court pursuant to its original habeas corpus jurisdiction. (Cal. Const., Art. VI, § 10.)

III.

No other appellate proceedings exist with regard to the present confinement. No other petitions are pending in any other court with respect to this judgment.

IV.

Petitioner's conviction in case no. SF101949A is unlawful because he is in fact innocent. Through the present petition and attached exhibits, Petitioner presents: 1) Newly discovered exculpatory DNA evidence which excludes him from the murder weapon, but cannot exclude two other males; 2) Evidence that the State suppressed material, exculpatory evidence in violation of *Brady*; 3) Evidence that the State "lost," destroyed or failed to maintain potentially exculpatory evidence under *Trombetta/Youngblood*; and, 4) Evidence that the State presented false evidence and failed to correct the false evidence under *Napue*. Petitioner provides this summary of the claims, and incorporates the attached original habeas petition. The evidence in support of the claims in this petition are set forth in full in the body of the petition and the accompanying points and authorities, as well as the attached Exhibits.

Along with the discovery of new DNA evidence on the murder weapon, excluding Petitioner as a contributor, Petitioner has discovered that the State suppressed material exculpatory evidence prior to, during and after trial – including evidence of the initial suspect, Terry Sprinkle's admissions which placed him at the scene, at the time that Zunino was last seen alive. In addition to this *Brady* evidence, there were significant "irregularities" with the original investigation, specifically regarding the initial suspect, Terry Sprinkle. It has come to light that no forensic evidence was ever properly collected or retained in the investigation related to Sprinkle and his vehicle. The lack of collected or retained evidence following the series of evidence collection and forensic investigation conducted by the State has created significant questions regarding the credibility of the investigation. Finally, the State's reliance upon false testimony related to the tire tread and stance evidence violated Petitioner's right to due process under *Napue*.

Ultimately, the State's pattern of suppressing, "losing" and destroying potentially exculpatory evidence and exculpatory evidence throughout the case raises serious questions – not just with respect to the integrity of Petitioner's conviction - but as to the

integrity of the State. Indeed, the evidence suggests a complete lack of integrity with respect to both.

V.

This petition is being filed in this Court, requesting relief from the conviction in San Joaquin County Superior Court No. SF101949A, the conviction this petition challenges as unlawful. Petitioner has no plain, speedy, or adequate remedy at law, save this petition, since the allegations of this petition involve matters outside the record, to wit, the matters contained in the exhibits attached thereto.

VII.

By this reference, the accompanying memorandum of points and authorities and exhibits are made part of this petition as if fully set forth herein. Petitioner's claims under this petition will be based on this petition, the accompanying memorandum of points and authorities, the exhibits attached thereto, and any further material to be developed at any future hearing which may be ordered.

PRAYER

WHEREFORE, Petitioner respectfully requests that this Court:

1. Designate the California Attorney General's Office as Respondent due to the San Joaquin County District Attorney's Office ongoing conflict of interest (See Exh. B);

2. Order the San Joaquin District Attorney's Office to turn over the CODIS results (mailed 7/19/22 and 10/25/22) from Acadiana Criminalistics Laboratory to Petitioner and the Attorney General;

3. Order Respondent to show cause why Petitioner is not entitled to the relief sought;

4. Order an evidentiary hearing for the presentation of any disputed factual matters;

5. After full consideration of the issues raised in this petition, issue a writ ordering the court to vacate the judgment of conviction in the San Joaquin County Superior Court No. SF101949A, based upon the manifest constitutional violations in this case as well as Petitioner's actual innocence;

5. Declare Petitioner actually innocent; and,

6. Grant Petitioner such other and further relief as is appropriate in the interests of justice.

Dated: October 28, 2022

Respectfully submitted,

Jennifer M. Sheetz

VERIFICATION

I, Jennifer M. Sheetz, state:

I am an attorney admitted to practice before the courts of the State of California, and have my office in the City of Mill Valley, California. I am the court-appointed attorney for Petitioner herein and am authorized to file this Petition by virtue of my representation of Petitioner.

I am verifying this petition because the facts herein are within my knowledge as Petitioner's attorney, with the exception of those facts specifically set forth in the exhibits which are attached to this petition.

I have read the foregoing Petition for Writ of Habeas Corpus and verify that all the facts alleged herein are supported by citations to the record in *People v. Joseph Nuccio*, No. SF101949A, and are supported by declarations and the exhibits attached hereto.

I certify under penalty of perjury under the laws of the state of California that the foregoing is true and correct. Executed at Mill Valley, California on October 28, 2022.

_____

Jennifer M. Sheetz

I. STATEMENT OF THE CASE

Petitioner is confined pursuant to the judgment of the California Superior Court for San Joaquin County rendered on May 6, 2008. Petitioner was charged by felony information with one count of murder (Pen. Code § 187), one count related to his personal use of the weapon (Pen. Code § 12022(b)(1)), and it was further alleged that petitioner had suffered a prison prior for a felony conviction for receiving stolen property (Pen. Code § 667.5(b)). In a bifurcated proceeding, a jury found Petitioner guilty of the charged allegations, and the court found the prison prior to be true. On May 6, 2008, Petitioner was sentenced to an indeterminate term of 25 years to life. Petitioner filed a notice of appeal two days later.

Petitioner raised several issues not relevant to the present proceedings in his direct appeal. On November 5, 2009, the Court of Appeal affirmed Petitioner's conviction. The California Supreme Court denied review on January 13, 2010. Petitioner subsequently filed a federal petition, raising the same claims in the United States District Court, Eastern District Court of California. The district court denied Petitioner's claims on March 7, 2014. Petitioner appealed the denial to the Ninth Circuit Federal Court of Appeal. On April 7, 2016, the Ninth Circuit Court denied Petitioner's claims.

In 2017, Petitioner filed a *pro se* motion for DNA testing. The contested motion was granted over the District Attorney's Opposition. Testing was completed in March 2019. The final results, which excluded Petitioner from the DNA on the murder weapon but included two other male profiles, was sent to Petitioner in December of 2019.

Present counsel entered the post-conviction case on a *pro bono* basis on or about September 9, 2020. (See Exh. B.) On or about January 21, 2021, present counsel filed a Motion for Disclosure of Chain of Custody, Reports and Status of Physical Evidence under Penal Code section 1405(c). The motion was granted. Present counsel was subsequently appointed to represent Petitioner, and counsel then filed a post-conviction

motion for formal discovery under Penal Code section 1054.9(a). This Court granted the motion. This petition follows.

II. FACTUAL AND PROCEDURAL BACKGROUND[1]

Jody Zunino was stabbed to death on September 26, 2001. (Reporter's Transcript [RT] 228-232.) At the time of her murder, Zunino was homeless, addicted to heroin, and working as a prostitute to support her habit. (See RT 284-287, 612-615, 659-661.) Zunino left her camp with Sylvia Valtierra late the night before she was murdered, and Valtierra gave Zunino her knife to take with her for protection. (RT 289-292, 609, 612-615.) Valtierra's knife was found next to Zunino's body the following morning. (RT 289-292.)

Valtierra was the last person to see Zunino alive. Valtierra said that she went to Yum Yum Donut Shop with Zunino, and they left at around 1 a.m. so that Zunino could find "work." (RT 289-292, 303, 330.) Valtierra reported that they were walking on Pinchot, near Wilson Way, when Zunino soon got into a white, two door Bronco with tinted windows. (RT 294-296; Exhs. DD, JJ.) Valtierra told Officer Rodriguez that she had seen the same Bronco in the Wilson Way area quite regularly, always driven by the same man. (Exh. AA.) In the hours after the murder, several witnesses identified a white Ford Bronco as the last vehicle that Zunino was seen getting into before she was murdered. (Exhs. K, AA, CC, DD, and JJ.) On September 27, 2001, a black male in his 40's approached Stockton Police Officer Dave Anderson and gave him a piece of paper with the vehicle license plate number 4PMZ262 written on it. (Exh. EE.)

In confidence, the man told Officer Anderson that Zunino was last seen getting into a white Ford Bronco with this license plate. The white Ford Bronco with license

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[1] Petitioner requests that the Court take judicial notice of the record of the proceedings in Petitioner's underlying case before San Joaquin County in case no. SF101949A, as set forth in the transcripts of the record on appeal and the Court's decision affirming Petitioner's conviction in *People v. Joseph Nuccio*, No. C058865. Petitioner also requests that the Court take judicial notice of the record of the post-conviction discovery proceedings related to the underlying case, as set before the San Joaquin County Superior Court.

plate 4PMZ262 was owned and driven by Terry Dean Sprinkle. FBI Task Force Officer Fields also reported seeing Sprinkle's Bronco at the AM/PM Market, near the crime scene in Stockton, on September 27, 2001. (RT 370-374.)

On September 28, 2001, Officer Fields conducted a parole search of Sprinkle's home and found blood-like spattered clothes, tennis shoes and $30 in cash. (RT 378-379; Exhs. DD, EE, at pp. 8-9, 13.) Officer Anderson noted that the evidence was taken to the police department and "booked for further processing." (Exh. EE, at p. 13.)

Officers Anderson and Rodriguez interviewed Sprinkle at the Angel's Camp police station, on September 28, 2001, for approximately 3 hours (1:30 p.m. to 3:25 p.m.). (Exh. EE, at p. 10.) During the interview Sprinkle was caught lying about a number of important facts, including the fact that he knew Zunino (they attended the same class at Lodi High School) and that he had been to Stockton over the past few weeks. (Exh. X.) During the confrontational second half of the interview, officers questioned Sprinkle about the blood spatter in the back seat of his Bronco (i.e. asking if he is a "hunter") and the latent prints in the passenger side of the vehicle. (Exh. X.) Sprinkle eventually admitted to having been in the Wilson Way area of Stockton on the night of Zunino's murder. (Exh. X.) At the end of the interview, the officers accused Sprinkle of murdering Zunino. (Exh. X.) Sprinkle asked for a lawyer and the taped questioning ended. (Exh. X.) Sprinkle was taken into custody by Officers Ramirez and Stubblefield and transported to a hospital to have his blood drawn. (See Exhs. E, X, and AA.) The officers subsequently filed the blood vial into evidence in this case. (Exh. E.)

On October 1, 2001, at approximately 7:00 a.m., Terry Sprinkle was released from custody by the Stockton Police Department. (Exh. GG.) On the same day, Officer Anderson filed a search warrant for the search of Sprinkle's Bronco (despite the fact that he was on parole, subject to parole search and the Police Department already had possession of the Bronco). (Exh. AA.) The morning of October 2, 2001, Officer Anderson and Criminalist Yoshida of the DOJ began documenting a search of Sprinkle's Bronco with the assistance of other officers. (See Exhs. J, K, and CC.) Criminalist

Yoshida's notes recount Officer Anderson's briefing from his interview of Sprinkle. (See Exh. K.) In part, Officer Anderson reported that Sprinkle had told him that he had been in the area of Pinchot between approximately 1 and 3 a.m., and that he had picked up a prostitute. (Exh. K.) However, Sprinkle told Officer Anderson that he took a knife from her purse, and she got out of his vehicle. (Exh. K.)

Officer Nasello took photographs of knife marks with rulers positioned next to the marks and a yellow evidence #1 next to what appears to be a blood-like stain on the floor of the vehicle. (Exh. J.) In addition, Officer Nasello took three latent prints from the passenger area of Sprinkle's vehicle and submitted them for testing. (See Exh. CC.) Despite references in the police reports regarding the blood-like spattered clothes, shoes, cash and the latent prints being "submitted for testing," none of the items were filed into evidence (see Exh. N), and no tests, notes or results are available for any of these items. Despite this fact, Officer Anderson's police report notes that the fingerprints were found not to be Zunino's prints. (Exh. EE, p. 14.) No evidence was preserved from the searches of Sprinkle's residence and vehicle other than the photographs taken by the Stockton Police Department and the DOJ. (Exhs. J, K.) Sprinkle's Bronco was released to him following the search. There is no record of any further investigation of Sprinkle after the search of the Bronco.

The investigation of Zunino's murder went "cold" until 2006. In 2005 and 2006, Officer Anderson was the subject of a few Internal Affairs investigations for dereliction of duty and misconduct. (See Exh. Z.) In the cases discovered by Petitioner through a post-conviction *Pitchess* motion, Officer Anderson failed to investigate, file police reports or reports of crimes for further investigation where criminal conduct had taken place. (Exh. Z.) In 2006, Officer Rodriguez investigated Petitioner as the sole, lead investigator for the Stockton Police Department. Despite his role as lead investigator during the original investigation of Jody Zunino's murder, Officer Anderson was markedly absent and not involved in the investigation of Petitioner in 2006. Officer

Anderson was still working at the Stockton Police Department at the time of Petitioner's trial. (See RT 740-747.)

DOJ criminalist Yeung Kung performed DNA analysis on the rectal swab collected at Zunino's autopsy. He isolated the DNA profile and entered the profile into the Combined DNA Index System (CODIS) database in 2002. (RT 703.) Petitioner was found to be a match.

Sarah Calvin, a DOJ criminalist, testified that Petitioner was excluded as a source from the DNA found in Zunino's fingernail scrapings and the knife. (RT 718-720; 723-726.) Neither Calvin nor Kung testified regarding any DNA testing or CODIS review related to Sprinkle with respect to the DNA evidence found in Zunino's fingernail scrapings or on the knife.

In 2006, Officer Rodriguez determined that Petitioner was driving a white Chevrolet Blazer in the fall of 2001, when he crashed it. (RT 241-242.) Officer Rodriguez spoke to Petitioner's father (who owned the vehicle), and discovered that the vehicle was still on his property and had not been functional since the accident. (RT 241-242.) Officer Rodriguez arranged to view the vehicle prior to interviewing or arresting Petitioner. (RT 241-242.) Viewing the tires on the property in 2006, Officer Rodriguez opined that the tread "looked similar" to the ones that he saw at the scene, near Zunino's body, in 2001. (RT 243.)

Initially, Criminalist Yoshida made casts of the tires on the Blazer. (RT 450, 457.) Yoshida determined that "some of the casts" made from the crime scene tire treads "matched" the tire treads on the Blazer. (RT 450, 457, 461, 463.) Yoshida acknowledged that she herself did not measure the tire tread stance at the crime scene. (RT 521, 523.) Yoshida further acknowledged that some of the tread casts were not of good enough quality to compare it to the Blazer, but she found that some of the Blazer tires could not be eliminated as the tread that made the marks at the scene in 2001. (RT 526-527.) Ultimately, Yoshida admitted that the tire treads could not be positively identified through the process that she used, and her ultimate conclusion was

"inconclusive" as to whether the Blazer tires matched the crime scene tread marks. (RT 564-565.)

Yoshida also conducted the same review of the interior of the Blazer as she had done for the Bronco. (RT 468-470, 538, 585.) Yoshida found small traces of blood on the driver's side seat and floor board, consistent with the blood scene at the scene of Petitioner's accident in 2001. (RT 468-469. 541, 543-550, 686.) Upon a complete search of the vehicle, it was determined that there was no other blood evidence, and it did not appear as though there was any attempt to clean the vehicle. (RT 538, 585.) Yoshida noted that bleach could clean off any detectable trace of blood. (RT 586.) It was stipulated between the parties that no fingerprints in the vehicle were attributable to Zunino, the blue tarp found in the rear of the vehicle was not consistent with the blue fiber found in Zunino's hair at the time of her death. (RT 828-830.)

Dr. Robert Lawrence, a pathologist from the Coroner's Office, performed the autopsy on Zunino in 2001. (RT 760-761.) Dr. Lawrence opined that Zunino died from injuries caused by a knife. (RT 763, 766.) Dr. Lawrence did not find any internal bruising or injuries to the anus, but located a minor injury to the skin of the anus. (RT 771.) While the injury could have been caused by forcible sodomy, Dr. Lawrence said that he could not conclude any cause for the injury, because it could have been caused by a fingernail or almost anything else. (RT 778.)

III. INTRODUCTION

> No man's liberty is dispensable. No human being may be traded for another. Our system cherishes each individual. We have fought wars over this principle. We are still fighting those wars.
>
> Sadly, when law enforcement perverts its mission, the criminal justice system does not easily self-correct. We understand that our system makes mistakes; we have appeals to address them. But this case goes beyond mistakes, beyond the unavoidable errors of a fallible system. This case is about intentional misconduct, subornation of perjury, conspiracy, the framing of innocent men. While judges are scrutinized — our decisions made in public and appealed — law enforcement decisions like these rarely see the light of day. The public necessarily relies on the integrity and professionalism of its officials.

(*Limone v. U.S.* (D. Mass. 2007) 497 F. Supp. 2d 143, 153.)

> The defense has tried to say this is just a big conspiracy, and I think I'm supposed to be the head of that snake.... The big conspiracy.

(RT 913-914, Rasmussen's Closing Argument attached hereto as Exh. L.)

Joseph Nuccio ("Petitioner") challenges the judgment based upon his conviction for the 2001 murder of Jodi Zunino, in case numbered SF101949A. In the present petition, Petitioner presents new evidence of his actual innocence along with a claim that the State conspired to frame him as an innocent man, while knowingly letting a violent murderer walk free. Petitioner does not provide a theory to explain the State's actions. That is on the State. Petitioner asks that this Court fairly consider the overwhelming and profound evidence of his innocence, as well as the evidence that the State was aware of his innocence at the time of his arrest and prosecution.

First and foremost, Petitioner presents new, exculpatory DNA evidence that includes two male profiles, but affirmatively excludes Petitioner as a contributor to the DNA evidence. This evidence constitutes powerful new evidence of Petitioner's actual innocence which must be viewed in light of the newly discovered evidence of State misconduct. Here, the DNA evidence supports defendant's third party culpability defense. In this context, the DNA evidence of other male individuals supports a theory that some other male, not Petitioner, used the knife to murder Zunino.

Together with his presentation of new evidence of innocence, Petitioner presents substantial evidence that the State was aware of Petitioner's innocence prior to his arrest and prosecution. This evidence, the evidence implicating Terry Sprinkle, has been suppressed, "lost" and destroyed by the State since 2001. Much of this was recently brought to light during Petitioner's post-conviction discovery process. Indeed, Petitioner has discovered significant State misconduct and suppression of evidence. Petitioner believes that the suppression of evidence continues today. (See Exh. B.)

At this juncture, the following exculpatory evidence in this case has been suppressed, "lost" or destroyed by officials acting on behalf of the Stockton Police Department, the Department of Justice and the San Joaquin District Attorney's Office, including:

> 1) The Stockton Police Department "lost" or failed to maintain Terry Sprinkle's blood-like spattered clothes, shoes and cash collected for testing two days after the murder;
>
> 2) The Stockton Police Department "lost" or failed to maintain latent fingerprints taken from the passenger area of Terry Sprinkle's vehicle within a week of the murder;
>
> 3) DOJ Criminalist Yoshida "lost" or failed to maintain evidence from blood-like spatter throughout Terry Sprinkle's vehicle, presented to the DOJ for testing and review within a week of the murder (see Exh.'s J, K);
>
> 4) DOJ Criminalist Yoshida "lost" or failed to maintain evidence and review related to the knife-like stab marks on

the ceiling and passenger seat of Terry Sprinkle's vehicle, presented to the DOJ for testing and review within a week of the murder (see Exhs. J, K);

5) The DOJ failed to maintain evidence of the tire tread prints and/or casts of the tires from Terry Sprinkle's vehicle, presented to the DOJ for testing and review within a week of the murder;

6) The Stockton Police Department and District Attorney's Office suppressed and subsequently "lost" Terry Sprinkle's blood vial, taken upon his arrest following the interrogation by Officers Anderson and Rodriguez, on 9/28/01 and put into evidence locker for this case as part of the investigation into Jody Zunino's murder. The vial was last in Ed Rodriguez's custody on 2019 (Exh. E), and the prosecution has since admitted that it was never returned by Rodriguez (see Exh. B);

7) The Stockton Police Department and District Attorney's suppressed and lost or destroyed the negative strips, representing Item's #3 and #6, found near Zunino's body on the morning of the murder (See Exhs. M, P, Q, R, S and T);

8) D.A. Rasmussen suppressed the CLETS, or criminal record for Terry Sprinkle, printed by Rasmussen on 8/29/07, and erroneously put under Court Seal with the court (Exh. U.);

9) D.A. Rasmussen suppressed police reports and interviews related to Terry Sprinkle's suspected murder of Richard Abreu in San Joaquin County, in 1980 (Sprinkle was charged with murder on or about January 24, 1980 and charges were dismissed by the San Joaquin County District Attorney on or about May 16, 1980). (See Exh. U.)

10) D.A. Rasmussen and Stockton Police Department suppressed the "complete" interviews of Terry Sprinkle. In addition to the suppression of the "full" interview of Sprinkle on 9/28/01 (saved in the District Attorney's file with the misleading label, "9/16/01 Interview of Terry Sprinkle"), which is well-documented in the record, it is believed that there were other unrecorded or recorded and destroyed interviews with Sprinkle. The DOJ and others cite to

> Sprinkle's admission that he was in the Wilson Way area between 1 a.m. and 3 a.m. on the night that Zunino was murdered, that he picked up a prostitute who was armed with a knife, and that he told officers that he took her knife and she got out of the car. (See Exh. K.) Sprinkle's admission to Anderson does not appear in the taped interview. (See Exhs. W, X.)
>
> 11) D.A. Rasmussen suppressed Officer Anderson's record of misconduct as detailed by the Internal Affairs reviews and findings, requested by Petitioner's attorney prior to trial (Exh. Z);
>
> 12) The Stockton Police Department destroyed *all tire tread evidence* related to the case in 2012 *without a court order*, including the casts and prints of Petitioner's tire treads (Exh. Y);

As set forth above and the attached petition in full, the evidence speaks for itself, describing a pattern or practice of the State suppressing, losing and destroying exculpatory evidence in an effort to wrongfully convict an innocent man for murder – and maintain his wrongful conviction, even in light of the evidence.

> Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means — to declare that the Government may commit crimes in order to secure the conviction of a private criminal — would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face.

(*Olmstead v. United States* (1928) 277 U.S. 438, 485 [Justice Brandeis' dissent].)

Petitioner prays that this Court imparts the justice that is long overdue and restore his rightful liberty. As of this October, Petitioner has spent more than 16 years as a

prisoner of this State. Justice demands that he is declared actually innocent and ordered released in the expedited fashion.

MEMORANDUM OF POINTS AND AUTHORITIES

IV. THE NEWLY DISCOVERED DNA EVIDENCE CONSTITUTES STRONG EVIDENCE OF PETITIONER'S ACTUAL INNOCENCE

"The Supreme Court, courts of appeal, superior courts, and their judges have original jurisdiction in habeas corpus proceedings." (Cal. Const., art. VI, § 10.) "The writ of habeas corpus enjoys an extremely important place in the history of this state and this nation. Often termed the 'Great Writ,' it 'has been justifiably lauded as " 'the safe-guard and the palladium of our liberties.' " ' " (*People v. Villa* (2009) 45 Cal.4th 1063, 1068.)

"[A] habeas corpus proceeding is not a trial of guilt or innocence and the findings of the habeas corpus court do not constitute an acquittal. The scope of a writ of habeas corpus is broad, but in this case, as in most cases, it is designed to correct an erroneous conviction. It achieves that purpose by invalidating the conviction and restoring the defendant to the position she or he would be in if there had been no trial and conviction." (*In re Cruz* (2003) 104 Cal.App.4th 1339, 1346, citing *In re Crow* (1971) 4 Cal.3d 613, 620; see also *In re Hall* (1981) 30 Cal.3d 408, 417.) "[A] successful habeas corpus petition necessarily contemplates and virtually always permits a retrial. [Citations.] The possibility of a retrial is often assumed without discussion." (*In re Cruz, supra*, 104 Cal.App.4th at p. 1347.)

Prior to January 1, 2017, in order to grant habeas relief, the court needed to find that the "new evidence" completely undermined the prosecution's case and pointed " ' "unerringly to innocence." ' " (*In re Johnson* (1998) 18 Cal.4th 447, 462.) The law has changed, effectively lowering the standard of proof for actual innocence. Effective January 1, 2017, relief may be granted when: "New evidence exists that is credible, material, presented without substantial delay, and of such decisive force and value that it would have more likely than not changed the outcome at trial." (§ 1473, subd.

(b)(3)(A).) The statute defines "new evidence" as "evidence that has been discovered after trial, that could not have been discovered prior to trial by the exercise of due diligence, and is admissible and not merely cumulative, corroborative, collateral, or impeaching." (§ 1473, subd. (b)(3)(B).)

The standard is comparable to the new trial standard in California, or new evidence that "is in fact newly discovered; that is not merely cumulative to other evidence bearing on the factual issue;.. and that the moving party could not, with reasonable diligence have discovered and produced [] at trial." (*People v. McDaniel* (1976) 16 Cal.3d 156, 178.) The new standard is also comparable to the federal new trial standard, which provides that the new evidence "was unknown or unavailable to the defendant at the time of trial" and that the "failure to learn of the evidence was not due to lack of diligence by the defendant[,]" (*United States v. Colon-Munoz* (1st Cir. 2003) 318 F3d.348, 358.) The statute creates a sliding scale: in a case where the evidence of guilt presented at trial was overwhelming, only the most compelling new evidence will provide a basis for habeas relief; on the other hand, if the trial was close, the new evidence need not point so conclusively to innocence to tip the scales in favor of the petitioner. (*In re Sagin* (2019) 39 Cal.App.5th 570, 579-580.)

A. Factual and procedural background

At trial, the prosecution theorized that the knife found next to Zunino's body was the murder weapon. Initial DNA testing found that Zunino could not be eliminated as a contributor to the DNA evidence on the knife. The prosecution further theorized that the motive for the murder was that Petitioner murdered Zunino because he wanted to pay for anal sex, and Zunino did not provide this service. This theory was premised on the fact that Petitioner's sperm was found in Zunino's anus at the time of her death. Petitioner's DNA was limited to the anal swab, and the DNA testing conducted on the murder weapon in 2008 eliminated him as a contributor to the DNA profiles found on the knife.

District Attorney Rasmussen relied heavily upon the limited DNA evidence and the knife as the murder weapon in his closing and rebuttal, declaring:

- The knife that's found right by her elbow, there's pictures that you can take back there, this knife that's found right there that's clean.... It's clean, there's nothing on it. She did a swab, or a swab was done, and she analyzed it and other partial profile was found and it was consistent with Jody Zunino, and it excluded the defendant, this was on the blade. Whose DNA would you expect to find on the blade of a knife found next to the murder victim that's been stabbed to death and slashed to death?.... Whose DNA would you expect to find on their? Jody's. (RT 851.)
- The statements, the measurements on the defense exhibit, he again went to Terry Sprinkle, why didn't we test his DNA? We know he is a convicted offender so we know it's in CODIS. It has been tested. (RT 912.)
- They could have retested the knife, the DNA on the knife, they didn't. The alleles, the additional location, the loci. He didn't. Why? Because he can't argue it. He didn't want to know. It would have said it was more Jody. But he didn't want to do that. (RT 913.)
- The knife evidence not requested to be tested by the defense does not exclude Jody. Does not exclude Jody. (RT 915.)

In the motion for a new trial, the D.A. Rasmussen argued:

> It all points at the defendant, regardless of whether or not she consented to anal sex. You know, if they brought up evidence that contradicted the DNA evidence, then maybe we'd have something to consider. .. If they had brought up – if the DNA on the knife, on the blade or the handle, had shown that it was possibly another person because it could not be the victim in this case, we would have an issue, but that's not the case, it was all consistently showing that it was Jody Zunino's DNA.

(RT 1089.)

Investigators largely focused on fingerprint evidence for forensic evidence. None of the palmprint or fingerprint evidence linked Petitioner to the crime scene. (RT 2520.) Much of the evidence in this case, collected within a week of Jody Zunino's murder, has been destroyed by the Stockton Police Department. (See Claim III, herein.) In the end, no one related to the initial investigation even mentioned Petitioner and there was no physical evidence which connect Petitioner to the victim or the crime scene. (RT 2520-2560.)

In 2017, Petitioner filed a *pro se* Motion for DNA Testing under Penal Code section 1405. The motion was granted over the Prosecution's Opposition, and on August 7, 2017, Judge Hoyt ordered Forensic Analytical Sciences (now known as Forensic Analytical Crime Lab [FACL]) to test the handle and blade of the knife for DNA. Pursuant to the order, the following items were ordered to be delivered to FACL:

1) Yellow-handled knife

2) 2 Untested swabs the DOJ sampled from the knife

3) Sexual Assault Kit

4) Samples from DOJ-Ripon, Tag #B58872

5) Vial of Blood (unmarked, Terry Sprinkle's blood taken 9/28/01)[2]

On March 7, 2019, FACL reported results from the DNA analysis. FACL found that the DNA recovered from the combined DOJ/FACL samples from the knife handle was a mixture of three DNA profiles. (Exh. C.) Jody Zunino was identified as the major contributor to the profile. (Exh. C.) The two other minor profiles were identified as male. Petitioner was eliminated as a contributor to the DNA samples taken from the knife blade and handle. (Exh. C.) In the report, FACL suggested that the lab that "additional reference specimens may be submitted for comparison to the DNA results." (Exh. C.) Petitioner was given the final results in December of 2019.

During the process of DNA testing, Stockton Police Officer, Ed Rodriguez, received the evidence from the evidence locker and *hand-delivered* it to FACL. He was ordered to deliver, in part, Petitioner's DNA sample (buccal swab), the victim's DNA sample and the murder weapon. Petitioner's DNA sample never made it to FACL with the murder weapon. The victim's blood sample that was delivered to FACL was found not to contain DNA. (See Exh. C.)

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[2] The blood vial identified in the order for DNA testing was not identified as Sprinkle's blood. It is not identified in the official evidence log as sourced from Terry Sprinkle. FACL technicians noted that the vial did not have any identification information on it when they received it. (See Declaration of Jennifer Mikaere Sheetz, attached hereto as Exhibit B.) As noted, Ed Rodriguez received the vial on 3/6/19, and the vial was never returned to the Evidence Locker by Rodriguez. (Exh. E.)

During the DNA testing process the Stockton Police Department's pattern of "losing" evidence was first documented by the court. (See Exh. F.) This pattern has now been established throughout this case, and is set forth in full in Claim II herein. Judge Hoyt held a hearing regarding the mishandling of evidence and ordered the Stockton Police Department to issue a declaration of lost evidence. (See Exh. F.) The Declaration notes that Rodriguez (working as an officer with the Stockton Police Department) was the last known individual to take custody of Petitioner's DNA swab and it was never returned. (See Exh. F.) Rodriguez was hired by the San Joaquin County District Attorney's Office in 2013. (See Exh. G.) Rodriguez was presented in this case as the "Conviction Integrity Unit" Investigator for the San Joaquin County District Attorney's Office, despite his role as the lead investigator with the Stockton Police in this case. Rodriguez was also a lead investigator in the underlying murder investigation (along with Officer Dave Anderson), and the sole lead investigator in the cold case investigation and prosecution of Petitioner. (See Exh. B.)

On or about June 14, 2021, present post-conviction counsel filed a Proposed Order for Comparative DNA Testing, requesting that the District Attorney's Office assist in providing Terry Sprinkle's DNA for testing. The Proposed Order was filed as an Order of the Court on June 30, 2021. (Exh. H.) The prosecution repeatedly represented that they did not have access to Terry Sprinkle's DNA. (Exh. B.) It was later acknowledged that Terry Sprinkle's DNA was listed as "blood vial" in the evidence locker up until it was released to Ed Rodriguez. The prosecution acknowledges that Terry Sprinkle's blood vial has been "lost," and Rodriguez was the last known individual to have custody of Terry Sprinkle's blood vial. (Exhs. B, E.)

Due to the stalemate, present post-conviction counsel requested that FACL conduct a CODIS review of the DNA evidence discovered on the murder weapon. On October 11, 2021, FACL filed a report detailing the CODIS review. (Exh. D.) FACL submitted the DNA result from the knife handle to the Acadiana Crime Laboratory in New Iberia, Louisiana for a CODIS search in October 2021. (Exh. D.) Following the

submission, present post-conviction counsel was informed that the result of the CODIS search would only be served on law enforcement, or Robert Himelblau in this case. (Exh. B.) Since the original submission, present post-conviction counsel has made numerous inquiries regarding the status of the CODIS search, but counsel does not have any direct communication access with the lab conducting CODIS review. (Exh. B.) The lab only responds to law enforcement in cases where innocence is the claim. (Exh. B.) Counsel reached out through FACL, once again, on or about mid-October of 2022. (Exh. B.) FACL reported that Acadiana sent the CODIS report to Himelblau in July of 2022. (Exh. B.) Acadiana noted that if the report was not "received," then they could send it again. (Exh. B.) Present post-conviction counsel has requested that Acadiana serve a copy on the court as well, but this is against their policy (unless subpoenaed). (Exh. B.) The results of the CODIS report have not been received by Petitioner at the time of the filing of this petition.

B. The exculpatory DNA evidence discovered by Petitioner constitutes evidence that could not have been discovered prior to trial through the exercise of due diligence

The former habeas standard for new evidence claims required that a habeas Petitioner act with " 'reasonable diligence' " in presenting his or her claim. (See *In re Hardy* (2007) 41 Cal.4th 977, 1016 [the petitioner's evidence was not " 'newly discovered' " because it was reasonably available to him prior to trial "had [he] conducted a reasonably thorough pretrial investigation"].) The terms " 'reasonable diligence' " and "due diligence" are essentially interchangeable. (See *People v. Cromer* (2001) 24 Cal.4th 889, 892; see also *People v. Herrera* (2010) 49 Cal.4th 613, 622.)

Here, Petitioner sought DNA testing in 2017. The testing took approximately two years to complete, due to no fault of Petitioner. Ultimately, the results of the DNA testing serves as strong evidence of Petitioner's innocence, as the DNA results from the murder weapon affirmatively exclude Petitioner as a contributor. The presence of two male contributors provides additional exculpatory evidence, suggesting that a third party male was responsible.

It is clear based on the facts of this case that the exculpatory DNA evidence could not have been discovered prior to trial by the exercise of due diligence, and Petitioner presented the evidence within a reasonable period of time after the evidence was available. Petitioner notes that he is still awaiting the results from the CODIS review, and he may supplement his actual innocence claim with this additional DNA evidence.

C. The exculpatory DNA evidence is not merely cumulative, corroborative, collateral, or impeaching

The "merely cumulative, corroborative, collateral, or impeaching" element of the new statutory definition of "new evidence" for habeas corpus purposes is similar to the considerations for excluding evidence under Evidence Code section 352. "Cross-examination is subject to restriction under Evidence Code section 352 if it is cumulative or if it constitutes impeachment on collateral issues." (*People v. Greenberger* (1997) 58 Cal.App.4th 298, 352.)

In the present case, the exculpatory DNA evidence excluding Petitioner from the murder weapon is not collateral or merely impeaching. The newly discovered DNA evidence both exonerates Petitioner and implicates a male suspect as the responsible party. In addition, given the presence of Jody Zunino's DNA as a major contributor to the DNA specimen found on the knife, the evidence corroborates the prosecution's theory that the knife was indeed the murder weapon.

In this context, the fact that Petitioner is excluded as a contributor is significant because there is no evidence to suggest that more than one person was involved in the murder. Further, because the murder was the result of extremely violent stabbing, the absence of Petitioner's DNA on the murder weapon itself is strong evidence of his actual innocence. Moreover, the fact that other suspects cannot be excluded as possible DNA contributors is corroborative. This evidence must be considered in the context of its overall value as exculpatory evidence which affirmatively excludes Petitioner from the murder weapon and points to a responsible third party – Terry Sprinkle.

D. The exculpatory DNA evidence constitutes strong and decisive evidence of Petitioner's actual innocence that it would have more likely than not changed the outcome at trial

In *In re Sagin*, the Court of Appeal granted habeas relief on a claim of actual innocence where the Petitioner presented DNA evidence which excluded him from the evidence at the crime scene that was available for testing. (See *In re Sagin, supra,* 39 Cal.App.5th at p. 570.) Unlike the present case, the DNA evidence in *Sagin* could not affirmatively exclude Petitioner from the crime scene. However, the court noted that it was significant, given the violent struggle, that the Petitioner could be excluded as a contributor to the DNA evidence found under the victim's fingernails and objects in her immediate surroundings. (*Id*. at p. 581) The Court further found that the DNA evidence which excluded Petitioner, taken with the lack of physical evidence linking him to the crime and the general closeness of the case, made it more likely than not that at least one juror would have maintained a reasonable doubt regarding guilt. (*Id*. at p. 582.)

The exculpatory DNA evidence in the present case is much stronger than that presented in *Sagin*, as it not only excluded Petitioner from the murder weapon, it points to a third party. In the present case, there is overwhelming and compelling evidence implicating Terry Sprinkle (though much of it was suppressed at trial). The evidence implicating Sprinkle fulfills the categorical trinity of criminal investigation, corroborating motive, means and opportunity. Sprinkle has a criminal history involving extremely violent behavior – much of it while wielding a knife. (See Exh. I, including a prior murder.) He had trained as a professional street fighter, and he was often described as "extremely violent," particularly when on crack cocaine. (See Exhs. X, AA.) Sprinkle admitted to having been in the area of Wilson Way on the night of the murder and picking up prostitutes. (Exh. K.) Sprinkle had cuts to his hands that Officers Anderson and Rodriguez observed during his interrogation. (See Exh. X.) Despite his initial denials, Sprinkle knew Zunino and had attended Lodi High School with her. (Exh. X.)

This is also the area where Sprinkle was known to buy crack cocaine. (See Exh. X.) Sprinkle's white Ford Bronco was identified by its make and model, as well as license plate number, as the last vehicle that Zunino was seen getting into prior to her murder. (Exh. AA.) The autopsy report found cocaine in Zunino's blood at the time of her murder. (Exh. BB.) The vehicle's interior had directional spatter on the ceiling, across the ceiling in the middle seat area. (Exhs. J, K.) As noted in the DOJ notes, the "blood-like" spatter had been cleaned on the ceiling and the windows. (Exh. K.) There were knife-like stab marks in the ceiling fabric of the vehicle. (Exhs. J, K.) Officer Nasello took latent prints from the passenger side of Sprinkle's vehicle and forwarded them for print analysis. (Exh. CC.) Officers Anderson and Rodriguez located clothes, shoes and cash at Sprinkle's home which had blood-like spatter on them. (Exhs. DD, EE.)

Conversely, the prosecution had an excruciatingly weak case against Petitioner, with no evidence of means, motive or opportunity. Petitioner has no prior convictions for violence. His prior convictions involve self-destructive behavior and substance abuse. There was no evidence to suggest that Petitioner knew Zunino prior to engaging her as a prostitute. This evidence weighs heavily against any pattern to suggest motive or means, as he had never done anything remotely violent towards another person and did not have any personal connection to Zunino. In addition to the extremely weak case presented by the prosecution, the new DNA evidence would have been further exculpatory because the DNA results pointed to an alternate suspect. The prosecution relied heavily upon the fact that there was no DNA evidence on the knife implicating a third party as implicit evidence of Petitioner's guilt. As D.A. Rasmussen aptly pointed out, "If [Petitioner] had brought up – if the DNA on the knife, on the blade or the handle, had shown that it was possibly another person because it could not be the victim in this case, we would have an issue." (RT 1089.)

Now, we most certainly have *that* issue. Ultimately, the DNA evidence excluding Petitioner as a contributor to the murder weapon constitutes strong and decisive evidence that would have more likely than not changed the outcome at trial.

V. THE STATE FAILED TO DISCLOSE MATERIAL, EXCULPATORY EVIDENCE THAT UNDERMINED CONFIDENCE IN THE OUTCOME OF PETITIONER'S TRIAL IN VIOLATION OF HIS RIGHT TO DUE PROCESS UNDER *BRADY*

> The fact that a constitutional mandate elicits less diligence from a government lawyer than one's daily errands signifies a systemic problem: Some prosecutors don't care about *Brady* because courts don't *make* them care... *Brady* violations have reached epidemic proportions in recent years, and the federal and state reporters bear testament to this unsettling trend... When a public official behaves with such casual disregard for his constitutional obligations and the rights of the accused, it erodes the public's trust in our justice system, and chips away at the foundational premises of the rule of law. When such transgressions are acknowledged yet forgiven by the courts, we endorse and invite their repetition.

(*United States v. Olsen* (9th Cir. 2013) 737 F.3d 625, 631-632 (Kozinski, J., dissenting from denial of reh'g en banc).)

In present case, the State withheld critical evidence and permitted related false testimony which gravely undermines confidence in Petitioner's conviction. Here, the state, through law enforcement – Stockton Police Department and the Department of Justice criminalists – and the prosecution, actively suppressed critical evidence, presented false evidence and failed to correct false evidence presented to the jury. Due process demands that the Court reverse Petitioner's unlawful judgment and conviction based suppressed exculpatory evidence and false evidence.

Under *Brady v. Maryland* (1963) 373 U.S. 83, "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." (*Id.* at p. 87.) Accordingly, the State has a duty to disclose any

favorable and material evidence even without a request. (*Ibid*.; *United States v. Bagley* (1985) 473 U.S. 667, 678; *In re Sassounian* (1995) 9 Cal.4th 535, 543.)

There are three elements to a *Brady* violation. First, evidence must be suppressed, either willfully or inadvertently. (*People v. Salazar* (2005) 35 Cal.4th 1031, 1035.) Second, the suppressed evidence must be favorable to the prosecution, meaning it "either helps the defendant or hurts the prosecution" (*In re Sassounian, supra*, at p. 544) in that it is exculpatory or has impeachment value. (*Strickler v. Greene* (1999) 527 U.S. 263, 282 (*Strickler*).) Lastly, the suppressed evidence must be "material," meaning there is "a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." (*United States v. Bagley, supra*, at p. 682.) "Moreover, the rule encompasses evidence 'known only to police investigators and not to the prosecutor.' [Citation.] In order to comply with *Brady*, therefore, 'the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in this case, including the police.'" (*Strickler, supra*, 527 U.S. at pp. 280-281.)

Evidence is "suppressed" where it is known to the State and not disclosed to the defendant. (*Strickler, supra*, 527 U.S. at p. 282.) The State's duty to disclose is affirmative; it applies "even though there has been no request by the accused." (*Id*. at p. 280 (citing *United States v. Agurs* (1976) 427 U.S. 97).) To satisfy its duty, the State must disclose evidence known to the prosecutor as well as evidence " 'known only to police investigators and not to the prosecutor.' " (*Id*. at pp. 280–81 (citing *Kyles v. Whitley* (1995) 514 U.S. 419, 438).) Thus, the prosecutor has an obligation "to learn of any favorable evidence known to the others acting on the government's behalf in [the] case, including the police." (*Id*. at p. 281 (citing *Kyles, supra*, 514 U.S. at p. 437).) Once the prosecutor acquires favorable information, even if she "inadvertently" fails to communicate it to the defendant, evidence has been suppressed. (*Id*. at p. 282.)

Evidence is "favorable to the accused" for *Brady* purposes if it is either exculpatory or impeaching. (*Strickler*, *supra*, 527 U.S. at pp. 281–82.) If information would be "advantageous" to the defendant (*Banks v. Dretke* (2004) 540 U.S. 668, 691, 124 S.Ct. 1256), or "would tend to call the government's case into doubt," (*Milke v. Ryan* (9th Cir.2013) 711 F.3d 998, 1012), it is favorable. Whether evidence is favorable is a question of substance, not degree, and evidence that has any affirmative, evidentiary support for the defendant's case or any impeachment value is, by definition, favorable. (See *Strickler, supra*, 527 U.S. at pp. 281–82.) Although the weight of the evidence bears on whether its suppression was prejudicial, evidence is favorable to a defendant even if its value is only minimal. (See *Ibid*.; *Milke, supra*, 711 F.3d at p. 1012.)

The suppression of favorable evidence is prejudicial if that evidence was "material" for *Brady* purposes. (*Strickler*, *supra*, 527 U.S. at 282.) Evidence is "material" if it "could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." (*Id*. at p. 290 (citing *Kyles*, *supra*, 514 U.S. at p. 435.) Similarly, California courts have held, "Evidence is material [under *Brady*] if there is a reasonable probability its disclosure would have altered the trial result." (*People v. Zambrano* (2007) 41 Cal.4th 1082, 1132.)

To establish materiality, a defendant need not demonstrate "that disclosure of the suppressed evidence would have resulted ultimately in [his] acquittal." (*Kyles, supra*, 514 U.S. at p. 434.) Rather, the defendant need only establish "a 'reasonable probability' of a different result." (*Ibid*. (quoting *United States v. Bagley* (1985) 473 U.S. 667, 678).) A "reasonable probability" exists if "the government's evidentiary suppression 'undermines confidence in the outcome of the trial.' " (*Ibid*. (quoting *Bagley*, *supra*, 473 U.S. at p. 678.); see also *United States v. Sedaghaty* (9th Cir.2013) 728 F.3d 885, 900 ("In evaluating materiality, we focus on whether the withholding of the evidence undermines our trust in the fairness of the trial and the resulting verdict.".)

In the present case, the State, through the Stockton Police Officers Anderson and Rodriguez, the Department of Justice Criminalist Yoshida and the District Attorney

Rasmussen suppressed favorable, exculpatory, and material evidence which was kept from Petitioner and the jury. In concert with the suppression of exculpatory evidence, the State presented false evidence to the jury. In addition, the State did not retain exculpatory evidence, "lost" exculpatory evidence, and actively destroyed it – all in bad faith. This evidence will be set forth in Claim III. As set forth below, the suppression of critical, exculpatory evidence and the presentation of false evidence was prejudicial to Petitioner and his defense.

A. Law Enforcement Officers, Including DOJ Criminalists, Suppressed Material, Exculpatory Evidence In Violation Of *Brady*

Brady held "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." (*Brady, supra*, 373 U.S. at 87.) This holding was an "extension" of *Mooney v. Holohan* (1935) 294 U.S. 103, which held the government's presentation of testimony it knew to be false, as well as its suppression of evidence that would have impeached that testimony, could require reversal of a conviction. (See *Brady*, *supra*, 373 U.S. at p. 86.) The Supreme Court reasoned:

> The principle of *Mooney v. Holohan* is not punishment of society for misdeeds of a prosecutor but avoidance of an unfair trial to the accused. Society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly.

(*Id.* at p. 87.) *Brady* framed the right to material, exculpatory evidence in terms of the defendant rather than the state actor responsible for the nondisclosure. As the Court later explained, the "purpose" of *Brady's* disclosure requirement is "to ensure that a miscarriage of justice does not occur." (*United States v. Bagley* (1985) 473 U.S. 667, 675.) Just one year after *Brady*, the Fourth Circuit held police officers as well as prosecutors were bound to disclose material, exculpatory evidence, explaining:

> [I]t makes no difference if the withholding is by officials other than the prosecutor. The police are also part of the prosecution, and the taint on the trial is no less if they, rather than the State's Attorney, were guilty of the nondisclosure . . . . The duty to disclose is that of the state, which ordinarily acts through the prosecuting attorney; but if he too is the victim of police suppression of the material information, the state's failure is not on that account excused. We cannot condone the attempt to connect the defendant with the crime by questionable inferences which might be refuted by undisclosed and unproduced documents then in the hands of the police.

(*Barbee v. Warden* (4th Cir. 1964) 331 F.2d 842, 846.)

Requiring police officers as well as prosecutors to disclose material and exculpatory evidence follows logically from *Brady*'s rationale. "As far as the Constitution is concerned, a criminal defendant is equally deprived of his or her due process rights when the police rather than the prosecutor suppresses exculpatory evidence because, in either case, the impact on the fundamental fairness of the defendant's trial is the same." (*Moldowan v. City of Warren* (6th Cir. 2009) 578 F.3d 351, 379.) Because police officers play an essential role in forming the prosecution's case, limiting disclosure obligations to the prosecutor would "undermine *Brady* by allowing the investigating agency to prevent production by keeping a report out of the prosecutor's hands." (*United States v. Blanco* (9th Cir. 2004) 392 F.3d 382, 388 (quoting *United States v. Zuno-*Arce (9th Cir. 1995) 44 F.3d 1420, 1427).)

In the present case, Stockton Police Officers Anderson and Rodriguez and DOJ Criminalist Yoshida deprived Petitioner of exculpatory evidence in violation of his right to due process and fundamental fairness.

1. Stockton Police Department Photographs of Sprinkle's Vehicle

a. Procedural History Related to Stockton Police Department Photographs of Sprinkle's Vehicle

Officer Nasello of the Stockton Police Department took photographs of the interior and exterior of Sprinkle's Bronco. (See Officer Nasello's police report, attached

hereto as Exh. CC; see also Exh. J.) Nasello noted that the photos depict "what appeared to be blood on the headliner and plastic window trim on the passenger side, rear seat and storage area... knife marks in the headliner above the front passenger seat" and the tire treads. (Exhs. J, CC.) In one photograph, there is a yellow evidence placard "#1" next to what appears to be a blood-like stain on the floor of the vehicle. (Exh. J.) The photographs depict accordingly. (See Exh. J.)

b. The State Suppressed Exculpatory Photographs of Evidence, Material to Petitioner's Defense, Prejudicing Petitioner

Throughout the record on appeal, Petitioner's trial counsel requests evidence from the vehicle and person of Terry Sprinkle which satisfied the State in "ruling him out" as a suspect. Trial counsel formally requests, on numerous occasions, the DOJ analysis on the physical evidence taken from the vehicle, including the tires. (See Exh. O; see also RT 62-128, attached hereto as Exh. HH.) During an *in limine* request to present a third party culpability defense, trial counsel argues:

> [S]o we never had an opportunity to look at Terry's Sprinkle's Bronco, we never got to look at his tires. There is going to be tire track evidence in this case. There was never any test prints made on Terry Sprinkle's Bronco so that we could compare the tires on his Bronco with the evidence that's presented in this case. We never had an opportunity to scientifically test what this police officer indicated to you in a declaration under oath that he believed was blood, we never got to see any of that.

(RT 66; see also Exh. HH.) It is clear from counsel's repeated requests and argument as set forth above, that the Stockton Police Department never provided the photographs to Petitioner prior to or during trial. The State suppressed these images, which depict blood-like spatter on the ceiling of Sprinkle's vehicle, next to knife marks in the ceiling and passenger seat. (See Exh. J.)

As the average person could ascertain from viewing the photographs, the photographs are provocative, material, and exculpatory. (Exh. J.) The photographs are

particularly material because the State failed to preserve ***any*** evidence from the vehicle other than the photographs. Moreover, they are both material and exculpatory because there is no evidence in the police report related to the vehicle, and the DOJ declined to take any evidence from the vehicle -- despite the directional spatter on the ceiling which the DOJ criminalists note, there has been "an attempt to clean," despite the "knife marks" in the ceiling amongst the spatter, despite the initial notation that the tire treads "appeared to be the same." (See Exhs. J, K.) Further, the photographs are exculpatory and prejudicial because they serve to reinforce the extensive, and undeniable evidence implicating Sprinkle in the murder of Zunino. As set forth below, the DOJ notes reveal that Officer Anderson obtained an admission from Sprinkle that he was in Stockton, on Pinchot near Wilson Way, between 1 a.m. and 3 a.m. on Wednesday September 26, 2001 and picked up a prostitute who had a knife in her purse. (See Exh. K.) As noted by the Court during the *in limine* proceedings:

> Yeah, a Bronco II. And then they talked to Sylvia Valtierra, who said the following. She saw Jody Zunino early in the morning of 9/26, 1:00 a.m. in the Pinchot and Wilson Way streets. She was working as a prostitute. She got into a white colored Bronco which had tinted rear windows. Sylvia described the driver as male. Sylvia watched Jody ride away in the Bronco. She last saw the Bronco turn eastbound on Harding from Wilson, never saw the Bronco or the victim again.

(RT 63, Exh. HH.)

It is axiomatic that the suppression of photographs - memorializing a vehicle with directional spatter of a "blood-like" substance, knife marks, a blood-like hand print on the back of the driver's seat, a pool of blood-like substance on the floor, the last vehicle that Zunino was scene getting into, armed with the knife which became the murder weapon in this case – was prejudicial to Petitioner.

2. Stockton Police Department Interviews With Terry Sprinkle

a. Procedural History Related to Sprinkle Interviews

Less than 48 hours after Jody Zunino's murder, Officers Anderson and Rodriguez interviewed Terry Sprinkle at Angel's Camp Police Station. (See Exh. X.) There are two versions of the interview – the full interview, labeled as 9/16/01 interview by D.A. Rasmussen and the first half of the interview, labeled as 9/28/01, offered by D.A. Rasmussen as Terry Sprinkle's *complete* interview to the defense and the Court. (See Exhs. W, X.) Neither version contains Terry Sprinkle's statement - that he was at Wilson Way, on Pinchot, between 1a.m. and 3 a.m. on Wednesday, September 26, 2001, where he picked up a prostitute during that time, but he took a knife from her purse so she got out of his vehicle. (See Exh. K, notes from both DOJ criminalists and Stockton Police Officer Nasello.)

In addition, Officers Anderson and Rodriguez ended the "full interview" of Sprinkle in an accusatory manner, explicitly acknowledging the incriminating evidence made him the prime suspect in Jody Zunino's murder. (See Exh. X.) Immediately following his interview, a blood sample was taken from Sprinkle and put into the Evidence Locker as evidence in the murder of Zunino. (See Exh. E.) Sprinkle was released from custody at 7:00 a.m. on the morning of October 1, 2001. (Exh. GG.) Officer Anderson filed the Search Warrant for Sprinkle's vehicle on October 1, 2001. (Exh. AA.)

b. The State Suppressed Exculpatory Statements of Sprinkle, Material to Petitioner's Defense, Prejudicing Petitioner

Again, the record is replete with Petitioner's pre-trial requests for evidence related to Terry Sprinkle, and replete with the State's suppression of the evidence related to Sprinkle, *which it had in its possession*. As set forth below, the DOJ notes reveal that Officer Anderson obtained an admission from Sprinkle - that he was in Stockton, on Pinchot near Wilson Way, between 1 a.m. and 3 a.m. on Wednesday September 26, 2001, and picked up a prostitute who had a knife in her purse. (See Exh. K.) Prior to the review of Sprinkle's Bronco II, Officer Anderson reported to the DOJ and Officer Nasello that Sprinkle had made a pointed admission to him. Anderson told them that,

during the interview of Sprinkle, Sprinkle admitted: that he was actually in Stockton on the night of the murder; that he was driving around the Wilson Way area looking for a prostitute during the hours of 1 a.m. and 3 a.m.; that he picked up a prostitute on Pinchot between the hours of 1 a.m. and 3 a.m.; that the woman had a knife in her purse; that he took the knife from her purse; and, that she got out of the vehicle once he took the knife. (See Exh. K.) This admission is not contained in the "full," recorded interview of Terry Sprinkle, on 9/28/01, which was suppressed by D.A. Rasmussen. (See Exh. X.) The statement was solely in Officer Anderson's control. Accordingly, Officer Anderson was the State's representative that suppressed Sprinkle's admission. Sprinkle's admission was exculpatory and material because it corroborated the other evidence that suggested Zunino was last seen getting into Sprinkle's vehicle, and when she was last seen entering Sprinkle's vehicle, she was armed with the knife which became the weapon used to murder her. Clearly, the suppression of this evidence, in light of the overwhelming corroborating evidence of Sprinkle's guilt, was prejudicial because it deprived Petitioner of a convincing third party culpability defense.

3. Negative Strips - #3 and #6 of Evidence Log

a. Chain of Custody of Negative Strips and Sleeve

The Stockton Police Department identified two negative strips near Zunino's body. The negative strips were identified as relevant to the murder and booked into evidence as Items #3 and #6, by Officer McGinnis on September 28, 2001. (Exh. N.) The chain of custody indicates that the negative strips were taken out of the evidence locker by Ed Rodriguez and sent "to the lab," ostensibly for printing, on October 17, 2006. (Exh. M.) The negatives strips were returned on October 19, 2006, to Officer Allman. (Exh. M.) The chain of custody indicates that the negatives were released on October 17, 2006 , to Officer Chapman for identification, and they were returned on April 18, 2008, to Officer Dillard. (Exh. M.) In addition, the chain of custody provides that the negative strips were released to Ed Rodriguez on October 15, 2007, to be used in court (in February of 2008.) (Exh. M.) The negative strips were returned to the evidence

locker and received by Officer Sayaphet, *over ten years later*, on February 1, 2018. (Exh. M.)

Petitioner's trial attorney requested the prints from the negative strips throughout pre-trial discovery in 2007. (Exh. O.) Prints made from the original negatives were never made available to the defense. Rather, like all other evidence connected to Sprinkle, the evidence was suppressed and described in opaque fashion and admitted into evidence as the People's Exhibits (Exhibits 34 and 36.). The officer who collected the negatives never described the images on the two strips, but described the state of the negative strips themselves as "poor." (See RT 341-344, attached hereto as Exh. P.) Remarkably, the State never described the negative strips as "immaterial" or "unconnected." (See Exh. P.) No representative of the State ever discussed the prints made from the negatives in 2006, when they were sent to "the lab" for printing. (Exh. T.) The chain of custody in this case supports the understanding that this evidence was anything but "immaterial." (See Exh. T.) The State carefully controlled the negative strips before and after trial – from 2006 to 2018, and critically suppressed any prints or images from the negative strips discovered in 2001 or 2006, when negatives were sent to the lab for printing.

The current state of the evidence will be discussed in Petitioner's *Trombetta* claim, set forth in full in Claim III.

b. The State Suppressed Exculpatory Film Negatives Evidence, Material to Petitioner's Defense, Prejudicing Petitioner

The negative strips found near Zunino's body, the knife, and the casts of the tire tracks were the only physical evidence collected from the scene where the body was found. (See Exh. N.) They were photographed as part of the scene. (See Exh. Q.) Investigating officers believed (based upon the absence of blood at the scene where the body was discovered) that Zunino was murdered elsewhere and then dumped at the scene. There were tread marks around the body and on the body, thus, the tire tread evidence was important to determining the vehicle used to dump Zunino at the scene.

Similarly, the negative strips collected near the body were believed to have come from the same vehicle when the body was dumped. They constituted important physical evidence connected to the murder of Zunino, but no prints from the negatives, no information from the negatives was ever disclosed to Petitioner prior to or during trial, despite his specific discovery request. (See Exh. O.)

Given the central role of the negatives in connecting a suspect and his vehicle to the scene, the negatives constituted material evidence. The fact that the negatives were sent to the lab to be printed in 2006, and no prints were ever turned over in pre-trial or post-trial discovery, is evidence that they were suppressed by the State. (See Exh. B.) Despite the State's careful curation of the negatives, employing them as exhibits at trial, it was never suggested that the negatives or the images on them implicated Petitioner. Accordingly, the negative strips constituted material, exculpatory evidence that was suppressed by the State in violation of Petitioner's due process rights.

3. Department of Justice Photographs and Notes From Sprinkle's Vehicle

a. Factual and Procedural Background of DOJ Photos and Notes

The Department of Justice investigated Terry Sprinkle's Bronco on October 2, 2001, pursuant to the search warrant obtained by Stockton Police Officer Anderson. (See Exhs. K, AA.) DOJ notes indicate that Officer Anderson met with them prior to the search of the Bronco, advising them of several background details, including:

> 1) The Bronco was owned by suspect, Terry Dean Sprinkle;
> 2) He is the only person who drives the vehicle;
> 3) Sprinkle claimed to have stayed South East of where Zunino's body was found;
> 4) Sprinkle claimed to have slapped a prostitute in the back seat of the Bronco a year ago (2000), and she bled;
> 5) Sprinkle admitted that he was in the Wilson Way area of Stockton on Wednesday, September 26, 2001;
> 6) Sprinkle admitted that he picked up a prostitute on Pinchot between 1 a.m. and 3 a.m.;
> 7) Sprinkle claimed that he grabbed the female's purse and took a knife out of her purse, so she got out.

(Exh. K.)

The Bronco had been repaired and had new tires put on it in April of 2001, following a police chase and accident. (See Exh. K.) Upon and inspection of the inside of the vehicle, the DOJ noted:

> 1) The seat covers were fairly new;
> 2) The interior panel from the rear gate had been removed;
> 3) There was directional spatter on the ceiling which someone had "attempted" to clean;
> 4) "Blood" spatter on the right side in the back where cleaning attempt indicated;
> 5) There were cuts to the headliner and ceiling;
> 6) Partial handprint on the back of the driver's seat;
> 7) "No blood" detected;
> 8) Tire track stance noted as "different" from the scene;
> 9) Tire prints a scene "recalled to be slightly different";
> 10) No evidence taken from vehicle (including swabs or casts of tire treads)

(Exh. K.)

b. The State Suppressed Exculpatory DOJ Photos and Notes, Material to Petitioner's Defense, Prejudicing Petitioner

It is clear from Petitioner's repeated discovery requests and discussions during the third party culpability hearings in the record on appeal that the DOJ photographs and notes were not discovered to Petitioner prior to trial. (See Exhs. O, HH.) On one of the last days of trial, in the last hearing on the defense request to present third party culpability evidence, trial counsel beseeched the court, "We never had an opportunity to scientifically test what this police officer indicated to you in a declaration under oath that he believed was blood, we never got to see any of that." (RT 66; see also Exh. HH.) Just as with the other evidence of Sprinkle and his Bronco, the DOJ notes and photos were suppressed by the State.

As argued above in full, much like Stockton Police Department photographs, the DOJ photos and notes were material and exculpatory for Petitioner for the depictions and notes set forth therein. The DOJ photographs - memorializing a vehicle with directional spatter of a "blood-like" substance, knife marks, a blood-like hand print on the back of

the driver's seat, a pool of blood-like substance on the floor, the last vehicle that Zunino was scene getting into, armed with the knife which became the murder weapon in this case – was prejudicial to Petitioner.

Furthermore set forth above, the DOJ notes themselves were also exculpatory and material because they included the admission from Sprinkle - that he was in Stockton at the exact time and place that Zunino was last seen getting into his white Bronco bearing the license plate affixed to his vehicle. (See Exh. K.) Again, the suppression of this evidence, in light of the overwhelming corroborating evidence implicating Sprinkle, was prejudicial because it deprived Petitioner of a convincing third party culpability defense.

4. Blood Vial Containing Terry Sprinkle's Blood From 9/28/01

a. Factual and Procedural Background of Sprinkle's Blood Vial

On September 28, 2001, Officers Ramirez and Stubblefield of the Stockton Police Department transported Terry Sprinkle from Angel's Camp to the local hospital for a blood sample, on his way to booking. (See Exh. E.) Officer Ramirez subsequently filed the blood vial into the Evidence Locker as evidence in the murder of Zunino. (See Exh. E.) The blood vial was not identified in the Property for the case, and it was assigned Tag #A00184743. (Exh. N.)

The blood vial was transported to FACL in 2017, along with other evidence. FACL did not open or attempt to test the blood vial because it was not labeled. (See Exh. B.) On March 6, 2019, FACL turned over the blood vial to Ed Rodriguez. (Exh. E.) Ed Rodriguez never returned Terry Sprinkle's blood vial to the Evidence Locker. Accordingly, it is no longer in evidence.

b. The State Suppressed Terry Sprinkle's Blood Vial, Which Was Exculpatory Evidence, Material to Petitioner's Defense, Prejudicing Petitioner

As argued above in full, much like DOJ and Stockton Police Department photographs, Terry Sprinkle's blood vial was material and exculpatory for Petitioner. The State suppressed Sprinkle's blood as evidence listed at property in the evidence locker related to this case, as it was not identified in the Property List, nor was it labeled.

(Exh. B.) The suppression of the evidence was material to Petitioner, as it refuted the State's argument that Sprinkle was ruled out as suspect following his interview on September 28, 2001, thus preventing Petitioner from relying upon the evidence as part of a very strong third party culpability defense.

B. The Prosecution, Under District Attorney Rasmussen, Suppressed Material, Exculpatory Evidence and Presented False Evidence In Violation of Petitioner's Right to Due Process Under *Brady*

Petitioner incorporates the *Brady* claims made above and attributes the suppression to D.A. Rasmussen as well, as he bore a constitutional duty to turn over all of the above-referenced material and exculpatory evidence to Petitioner. In addition, D.A. Rasmussen was personally responsible for suppressing the following evidence in violation of Petitioner's right to due process and a fair trial.

1. CLETS of Terry Sprinkle

a. Factual and Procedural Background of Sprinkle's CLETS

During trial, defendant requested formal discovery on Sprinkle's past criminal conduct, particularly related to the prior 1980 murder in Lodi. (See Exh. M.) Petitioner was not provided with a complete criminal background for Sprinkle as part of discovery. (See Exh. M; see also RT 123-124.) Rather, D.A. Rasmussen provided limited information on Sprinkle's criminal history. (See Exh. M.) The lack of a thorough criminal history for Sprinkle put Petitioner at a significant disadvantage in developing his third party culpability defense. In particular, Sprinkle's CLETS set forth a 9-page criminal history which included his numerous arrests for criminal conduct that was never formally prosecuted, including murder. (See Exh. I.)

b. The State Suppressed Sprinkle's CLETS Which Was Material And Exculpatory, Prejudicing Petitioner

D.A. Rasmussen suppressed the evidence of Sprinkle's CLETS by erroneously and improperly filing the CLETS under seal. There is no citation to the procedure in the record on appeal, which means that it was not done on the record, in open court. (See Record on Appeal.) Moreover, there is no legitimate, legal reason for the CLETS print

out to be "sealed," or incorporated into the record on appeal. This is particularly troubling given the repeated request for this information by the defense throughout the pretrial process and even during trial. (See Exhs. O, HH.) In this context, the D.A.'s surreptitious sealing of Sprinkle's CLETS, rather than discovering the document to the defense, constitutes suppression.

Here, in light of the evidence implicating Sprinkle in this violent murder, the suppressed evidence of Sprinkle's significant, violent criminal history served as corroborating evidence of his "means" and "opportunity" in committing the offense. Further, Sprinkle's numerous arrests without prosecution is evidence of pattern of failure to prosecute that Petitioner could have utilized in his third party culpability defense. In the context of the cold case prosecution of this case, the evidence of Sprinkle's past criminal conduct that wasn't prosecuted was as compelling as his actual convictions. The suppression of these details deprived Petitioner of evidence to support for his third party culpability defense (in several ways), thus prejudicing him.

2. Terry Sprinkle "Interviews"

a. Factual and Procedural Background of the Transcripts for Terry Sprinkle's 9/28/01 Interview

Stockton Police Officers Anderson and Rodriguez interviewed Terry Sprinkle at Angel's Camp Police Station on September 28, 2001. (See Exh. X.) During trial, D.A. Rasmussen presented the defense and the court with an edited version of a transcript representing the first half of the interview. (See Exh. W.) This portion of the interview was the "good cop" portion of the interview, where the officers joke around with Sprinkle and never make any direct accusations. (Exh. W.) Rasmussen even edits portions of the original interview that came across as incriminating – such as questions about cuts on Sprinkle's legs and hands. In the unedited, true version of the interview, Officer Anderson asks Sprinkle if he has cuts on his hands. (See Exh. X, at p. 8.) Sprinkle responds in the affirmative and shows Officer Anderson his hands, who exclaims, "Oh, wow." (Exh. X.) The edited version of the exchange which was discovered to the Court

and the defense portrays a subdued response from Anderson in viewing the cuts on Sprinkle's hands, with Anderson viewing his hands and stating, "Oh (unintelligible) oh, I see, yeah." (Exh. W, at p. 8.) There are other similar edits to the same portion of the original interview, but the most significant edit is D.A. Rasmussen's edit of *the entire second half of the interview*.

D.A. Rasmussen provided the edited portion of the interview to the Court and defense and represented it was the entire Sprinkle interview. (See RT 783.) This is clear both from the record on appeal which only contains Rasmussen's edited version of the interview, and from D.A. Rasmussen's representations to the Court, including the that Sprinkle's "statement" is approximately 25 to 30 pages. (RT 783.) The true transcript of Sprinkle's interrogation was approximately 64 pages. (Exh. X.)

During the suppressed, full interview, Officers Anderson and Rodriguez became accusatory and aggressive in their questioning. The full interview of Sprinkle included numerous acknowledgments of the incriminating evidence implicating Sprinkle and ended with the officers explicitly acknowledging the incriminating evidence made him the prime suspect in Jody Zunino's murder. (See Exh. X.) Eventually, Sprinkle asked for a lawyer, and the interview ended. (Exh. X.) Immediately following his interview, Sprinkle was taken into custody and brought to a local hospital where a blood sample was taken. (Exh. E.) This blood sample was put into the Evidence Locker as evidence in the murder of Zunino. (See Exh. E.)

b. The State Suppressed Exculpatory DOJ Photos and Notes, Material to Petitioner's Defense, Prejudicing Petitioner

D.A. Rasmussen actively suppressed the full interview of Sprinkle by providing a carefully edited version of half of the interview to the defense and Court and falsely describing it as the entirety of the interaction with Sprinkle. (See Exhs. W, X.) D.A. Rasmussen's active suppression is apparent through: 1) Rasmussen's careful edits to the original, "full" transcript; 2) Rasmussen's representations to both defense and the Court that the edited version of the interview was in fact a complete and accurate portrayal of

law enforcement's interview of Terry Sprinkle on 9/28/01; 3) Rasmussen's surreptitious submission of the full interview of Terry Sprinkle as a sealed, Confidential Document, purporting to represent a 9/16/01 interview transcript (see CT 633-696; see also Exh. KK). D.A. Rasmussen actively suppressed the true transcript of Sprinkle's 9/28/01 interview with Officers Anderson and Rodriguez. Indeed, D.A. Rasmussen's mendacious suppression technique was the same as used in suppressing Sprinkle's CLETS report – falsely "sealing" the document as "Confidential" and "under seal." As with the CLETS report, the transcript of Sprinkle's 9/28/01 interview was not in fact "Confidential," nor was the interview conducted on 9/16/01.

The suppressed version of the Sprinkle interview was exculpatory and material because it presented many examples of Sprinkle's incriminating statements as set forth in full and repeatedly within this petition. The suppression of Sprinkle's interview and his numerous incriminating statements, along with the evidence that the Stockton Police believed that Sprinkle was directly involved in the murder of Zunino – *presumably which is why he was arrested at the end of the interview and a sample of his blood was taken and put into evidence in this case* – was prejudicial to Petitioner because it prevented Petitioner from presenting a very strong third party culpability defense.

3. Terry Sprinkle File Related to "Bar Fight"

a. Factual and Procedural Background of Sprinkle's Lodi Murder

D.A. Rasmussen also actively suppressed the police reports and interviews related to a stabbing at a Lodi bar which resulted in the death of a patron. Trial counsel repeatedly requested discovery of past criminal conduct involving Terry Sprinkle. (See Exhs. O.) D.A. Rasmussen represented to the defense and the Court that the District Attorney's file on the criminal investigation had been lost, so he had provided a news article to the defense in lieu of the file. (See RT 89.) D.A. Rasmussen argued against the relevance of case as exemplary of Sprinkle's past criminal acts, stating:

> And again, here we have – I believe that the defense is trying to bring in a prior murder case, it was a murder case, the People did file it, it was dismissed, lack of evidence, because

> I think what happened, and I have not found the D.A. file, but there was some snitches that we would not turn over, or I don't know the exact – I think Mr. Sylvia and I are both reading out of a Stockton Record or Lodi Sentinel newspaper article on where we are getting that evidence.
>
> But he used a knife in that, it was a knife fight between two – it was a bar fight and then he ended up arguing with someone who he thought was the same person he was in the fight with, and in that case he did kill him. There were other people present that were with the defendant, but when the victim was found, there was a knife underneath him, so there was some kind of fight going on there, and mutual combat of some type. He may have been outnumbered, but there was some mutual combat, but because he used a knife and the victim in this case was cut by a sharp instrument, that that somehow is direct and circumstantial evidence. It isn't. That's a bar fight with a man at a bar.

(RT 89-90.)

The CLETS shows that Sprinkle was charged with murder in this case, on or about January 24, 1980. (See Exh. I.) The case was subsequently dismissed.

The investigation of the murder during that time period was substantial. (See Exh. V.) The investigation included many statements from witnesses, including the victim who stated that he did not know Sprinkle or his three associates, and did not really understand why he was stabbed. (See Exh. V.) Prior to the stabbing, Sprinkle asked him if he was a cop several times, and the victim tried to run from Sprinkle and his associates. He thought that he had successfully evaded them until he ran into Sprinkle in the middle of the street. Sprinkle stabbed him in the chest. (See victim's statement attached hereto, in Exh. V.) Several of the witnesses, including the Confidential Reliable Informant (CRI), described Sprinkle as "quick-tempered" and prone to "crazyness" (sic). The CRI noted that, at the time, Sprinkle wore a large knife which hung from the left side of his belt. (Exh. V.)

b. The State Suppressed Exculpatory Evidence of Sprinkle's Past Murder Offense which was Material to Petitioner's Defense, Prejudicing Petitioner

D.A. Rasmussen suppressed the evidence related to Sprinkle's involvement in the Lodi murder from 1980. Here, based upon the representations of D.A. Rasmussen and the sparse evidence of the "bar fight," the evidence of the murder was excluded by Judge Spaiers, as not directly relevant. (RT 123-124.)

Ultimately, the suppressed evidence related to Sprinkle's involvement in the Lodi murder was exculpatory and material to Petitioner, because it provided evidence that Sprinkle had violent tendencies, had used a knife in prior violent crimes, had potentially committed a prior murder by stabbing someone to death with a knife. The suppression of these details deprived Petitioner of strong evidence to support for his third party culpability defense, thus prejudicing him.

4. Officer Anderson's Misconduct and Internal Affairs Investigation

a. Factual and Procedural Background of Officer Anderson's Misconduct and Internal Affairs Investigations

Petitioner filed a post-conviction *Pitchess* motion in this case, pertaining to Officer Dave Anderson. In part, the motion was based upon the fact that Officer Anderson was the lead investigator in Zunino's murder. During the initial investigation, Anderson collected substantial evidence implicating Sprinkle, in 2001. Despite the overwhelming evidence implicating Sprinkle, he was not ultimately implicated. The case went "cold" for several years, and then Petitioner was arrested in 2006, at the same time public accusations of Officer Anderson's misconduct were reported in the press. The article noted that there had been an Internal Affairs investigation of Officer Anderson in 2005-2006. Despite remaining an active duty police officer with the Stockton Police Department and being the lead investigator in Zunino's murder, Officer Anderson was not involved in the cold case investigation and prosecution of Petitioner. Petitioner opined that there could be a connection between the Internal Affairs investigation of Officer Anderson and the cold case prosecution of Petitioner.

The *Pitchess* motion was granted, and this Court released information related to two separate Internal Affairs investigations of misconduct to Petitioner. (See Exh. Z.) The two investigations that resulted in reprimands took place in 2005 and 2006. (Exh. Z.) Both incidents involved Officer Anderson's dereliction of duty, in so far as he failed to file official reports or investigate crimes that were reported to him as the responding officer. (Exh. Z.) Officer Anderson received reprimands for his misconduct. (Exh. Z.)

b. The State's Suppression of Officer Dave Anderson's Misconduct Constitutes a *Brady* Violation Under *Milke*

> The jury [had] nothing more than [the detective's] word that Milke confessed. Everything the [S]tate claims happened in the interrogation room depends on believing the detective's testimony. Without [his] testimony, the prosecution had no case against Milke[.] [T]he Constitution requires a fair trial, and one essential element of fairness is the prosecution's obligation to turn over exculpatory evidence. This never happened in Milke's case and so the jury trusted [the detective] without hearing of his long history of lies and misconduct.

(*Milke v. Ryan* (9th Cir. 2013) 711 F.3d 998, 1002–03.)

In 1990, a jury convicted Debra Milke of murdering her four-year-old son based solely upon the testimony of Officer Armando Saldate, Jr. Officer Saldate testified that Milke, then twenty-five years old, had waived her *Miranda* rights and confessed during an interrogation. There were no other prosecution witnesses or direct evidence linking Milke to the murder. The judge and jury believed Saldate, and found Milke guilty of capital murder. However, the jury didn't know about Saldate's long history of lying under oath and other misconduct. The state knew about this misconduct but failed to disclose it, despite the requirements of *Brady* and *Giglio v. United States* (1972) 405 U.S. 150, 153–55. The Ninth Circuit found the State's suppression of Officer Saldate's prior misconduct to be unconstitutional under *Brady* and reversed Milke's conviction.

"As more than two decades passed while Milke lived on death row, exoneration reform expanded and litigation exposed the reality of wrongful convictions, including

those based on *Brady* violations and false confessions procured through coercive interrogations or fabricated by police officers." (Reflections on the *Brady* Violations in *Milke v. Ryan*: Taking Account of Risk Factors for Wrongful Conviction; Catherine Hancock, NY 2015.) In *Milke*, the Ninth Circuit found that post-conviction counsel's discovery of the court records concerning Officer Saldate's past misconduct revealed a "pattern" of misconduct and constituted "highly relevant" and "highly probative" evidence that "would certainly have cast doubt" on the detective's credibility if used to impeach his testimony at trial. (*Milke, supra*, 711 F.3d at p. 1008.) Ultimately, the court found that the State suppressed the past officer misconduct when it failed to affirmatively provide the information to the defense in pre-trial discovery, preventing Milke from presenting a defense, and the court reversed her conviction under *Brady* and *Giglio*. (*Id.* at p. 1019.)

Any evidence that would tend to call the State's case into doubt is favorable for *Brady* purposes. (*Milke, supra*, 711 F.3d at p. 1012, citing *Strickler, supra*, 527 U.S. at p. 290.) In the present case, Officer Anderson's pattern of misconduct and the ongoing Internal Affairs investigation would have tended to call into question both the timing and substance of the State's prosecution of Petitioner. This is especially true given the central role of Officer Anderson in the initial investigation and his complete absence from the investigation and prosecution of Petitioner. Comparably, in *Milke*, the court found that evidence of the officer's past misconduct would have been useful to the jury in determining whether the officer or the defendant was telling the truth. (*Ibid.*) Moreover, the court found that the past evidence of misconduct showed that the officer "lied under oath in order to secure a conviction or to further a prosecution" in past cases, and the same law enforcement and prosecutorial agencies were involved in those cases. (*Id.* at p. 1013.) Ultimately, the court found that if Milke had been able to present the jury and judge with evidence of the officer's past "menagerie of lies and constitutional violations," she likely would have been able to develop "legitimate questions concerning guilt." (*Id.* at p. 1015.)

The courts have long held that the State bears a *Brady* obligation "to produce any favorable evidence in the personnel records" of an officer. (*Milke, supra,* 711 F.3d at p. 1016, citing *United States v. Cadet* (9th Cir. 1984) 727 F.2d 1453.) Moreover, a defendant does not have to make an affirmative request for exculpatory or impeachment evidence: "[T]he duty to disclose [exculpatory] evidence is applicable even though there has been no request by the accused, and ... the duty encompasses impeachment evidence as well as exculpatory evidence." (*Strickler, supra*, 527 U.S. at p. 280.) In *Milke,* the court found that the evidence of the misconduct and constitutional violations had an obligation to produce the documents related to the misconduct as they "no doubt knew of this misconduct... [and t]he police must have known, too." (*Milke, supra,* 711 F.3d at p. 1016.)

i. The State Suppressed Officer Dave Anderson's Pattern Of Misconduct Which Constituted Material and Exculpatory Evidence

Much as in *Milke,* the prosecution's suppression of the Internal Affairs investigation of Officer Anderson and his past misconduct prevented Petitioner from presenting a defense related to his cold case prosecution. Here, just as in *Milke*, the law enforcement misconduct presented a pattern - Officer Anderson's failure to investigate and report on certain crimes. As in *Milke*, the pattern of misconduct could have been presented as a defense. Here, Zunino's unsolved murder was arguably at risk of being reviewed by Internal Affairs as a past unsolved crime where Officer Anderson was the lead investigator. Moreover, just as in his cases of misconduct, Officer Anderson's abrupt failure to investigate and report came in response to substantial evidence that crimes had been committed by known individuals. (See Exh. Z.) Officer Anderson's pattern of misconduct and failure to investigate crimes is compelling in light of Anderson's abrupt end to the investigation of Sprinkle in the present case. Further, the timing of the Internal Affairs investigations in 2005 and beginning of 2006 is important with respect to the timing and unusual circumstances surrounding the investigation and prosecution of Petitioner.

In this context, the suppressed pattern of misconduct, along with Officer Anderson's ongoing Internal Affairs investigation in 2006, was a violation of *Brady*, and the suppression prevented Petitioner from presenting a defense and an alternate theory of culpability.

ii. The Suppression Officer Anderson's Pattern Of Misconduct Prejudiced Petitioner's Defense

"To find prejudice under *Brady* and *Giglio*, it isn't necessary to find that the jury would have come out differently. (Citation.) Prejudice exists "when the government's evidentiary suppression undermines the confidence in the outcome of the trial. (Citation.)" (*Milke, supra*, 711 F.3d at p. 1018.) In *Milke*, the court found that the suppression of the lead investigator's past misconduct was prejudicial because the officer's testimony was the only evidence linking Milke to the murder, thus his credibility was critical.

In the present case, just as in *Milke*, there were suspicious circumstances and irregular procedures which stood out in Officer Anderson's initial investigation. First and foremost, Officer Anderson abruptly ended the investigation of Sprinkle despite the significant, incriminating evidence *that is unresolved to this day*. This unusual circumstance raised many questions related to law enforcement conduct. Secondarily, law enforcement's failure to file and properly maintain incriminating evidence in the Evidence Locker – i.e. the blood-like spattered clothes – is highly suspicious. In this context, Officer Anderson's suppressed pattern of misconduct was directly relevant to Petitioner's case. Here, Officer Anderson's pattern of failing to investigate obvious leads and individuals involved in criminal activity mirrors Petitioner's case. Moreover, the fact of the ongoing Internal Affairs investigation in 2006 was also relevant and material to Petitioner's defense, as Officer Anderson, the DOJ, and the Stockton Police Department had a keen interest in reviving the investigation to avoid appearances that the case fit the pattern of Officer Anderson's misconduct.

As set forth in full above, the third party culpability defense was critical to Petitioner. The lack of collected and maintained incriminating evidence from Officer Anderson's investigation of Sprinkle was therefore material to the present case. Had the judge and jury been informed of Officer Anderson's prior pattern of misconduct and the timing of the ongoing Internal Affairs investigation, this would have given the jury further legitimate questions concerning the failure to further investigate Sprinkle, as well as the investigation and prosecution of Petitioner. The State's suppression undoubtedly prejudiced Petitioner as "the government's evidentiary suppression undermine[d] the confidence in the outcome of the trial. (Citation.)" (*Milke, supra*, 711 F.3d at p. 1018.) Accordingly, this *Brady* violation requires reversal of Petitioner's conviction.

II. THE STATE FAILED TO MAINTAIN DISCLOSE MATERIAL AND EXCULPATORY EVIDENCE THAT UNDERMINED CONFIDENCE IN THE OUTCOME OF PETITIONER'S TRIAL IN VIOLATION OF HIS RIGHT TO DUE PROCESS UNDER *BRADY, TROMBETTA,* AND *YOUNGBLOOD*

The prosecution's duty to disclose and retain evidence stems from the due process clause of the United States Constitution, as explained and interpreted by the three leading United States Supreme Court decisions on this subject — *Brady v. Maryland* (1963) 373 U.S. 83; *California v. Trombetta* (1984) 467 U.S. 479, and *Arizona v. Youngblood* (1988) 488 U.S. 51 (*Youngblood*). As set forth in full in the prior claim, *Brady* is the leading case on the duty to disclose exculpatory evidence. "[T]he suppression... of evidence favorable to an accused upon request violates due process where the evidence is material to either guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." (*Brady*, *supra*, 373 U.S. at p. 87.) Such evidence must be disclosed if it is material, that is, if there is a reasonable probability the evidence might have altered the outcome of the trial. (*United States v. Bagley* (1985) 473 U.S. 667, 682.)

The duty to retain, rather than simply disclose, potentially exculpatory evidence is somewhat different. *Trombetta* concerned a driving under the influence case involving two drivers. The *Trombetta* court found that although breath samples taken from the

defendant had not been preserved, the test results were nonetheless admissible. The court rejected the defendant's argument that the state had a duty to retain the samples for a number of reasons. The police officers were acting in good faith and according to normal procedure, the chance the samples would have been exculpatory were slim, and defendants had other means to prove their innocence. (*Trombetta*, *supra*, 467 U.S. at pp. 488-490.) "Whatever duty the Constitution imposes on the States to preserve evidence, that duty must be limited to evidence that might be expected to play a significant role in the suspect's defense. To meet this standard of constitutional materiality, [citation], evidence must both possess an exculpatory value that was apparent before the evidence was destroyed, and be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means." (*Id*. at pp. 488-489, fn. omitted.)

Youngblood, the most recent of the three cases, explains the requirements for demonstrating a due process violation based on the failure to retain evidence under somewhat different circumstances. *Youngblood* was a sexual assault case in which the state had failed to properly preserve fluid samples from the victim's clothing and body. Unlike the situation in *Trombetta*, where the evidence was destroyed after all relevant testing was complete, in *Youngblood*, only limited testing was initially performed to determine whether sexual contact had indeed occurred. (*Youngblood*, *supra*, 488 U.S. at p. 53.) By the time more rigorous testing was attempted, it was no longer possible, because the victim's clothing had been improperly refrigerated. (*Id*. at p. 54.) The defendant's principal argument was mistaken identity, and he argued that if the victim's clothing had been properly preserved, the physical evidence might have exonerated him. (*Ibid*.) The defendant was found guilty, and ultimately, the Supreme Court upheld the conviction.

The court stated: "The Due Process Clause of the Fourteenth Amendment, as interpreted in *Brady,* makes the good or bad faith of the State irrelevant when the State fails to disclose to the defendant material exculpatory evidence. But we think the Due

Process Clause requires a different result when we deal with the failure of the State to preserve evidentiary material of which no more can be said than that it could have been subjected to tests, the results of which might have exonerated the defendant." (*Youngblood*, *supra*, 488 U.S. at p. 57.) As explained in *Trombetta,* determining the materiality of permanently lost evidence can prove problematic. The court also declined to impose on the police an absolute duty to retain and preserve anything that might possibly have some significance. (*Id*. at p. 58.)

Accordingly, "We think that requiring a defendant to show bad faith on the part of the police both limits the extent of the police's obligation to preserve evidence to reasonable bounds and confines it to that class of cases where the interests of justice most clearly require it, *i.e.,* those cases in which the police themselves by their conduct indicate that the evidence could form a basis for exonerating the defendant. We therefore hold that unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law." (*Youngblood*, *supra*, 488 U.S. at p. 58.) The court held that at worst, the conduct of the police in *Youngblood* could at best be characterized as negligent. (*Ibid*.)

Thus, there is a distinction between *Trombetta's* "exculpatory value that was apparent" criteria and the standard set forth in *Youngblood* for "potentially useful" evidence. If the higher standard of apparent exculpatory value is met, the motion is granted in the defendant's favor. But if the best that can be said of the evidence is that it was "potentially useful," the defendant must also establish bad faith on the part of the police or prosecution. (See *Youngblood*, *supra*, 488 U.S. at p. 58; *Trombetta*, *supra*, 467 U.S. at pp. 488-489.)

In the present case, the post-conviction discovery process has revealed a pattern of lost or destroyed potentially exculpatory evidence at the hands of the State. The potentially exculpatory nature of the evidence was known at the time of its loss or destruction. However, even if the Court were to find that the lost and destroyed evidence was only "potentially useful" to Petitioner's defense or exoneration, then there is

overwhelming and substantial bad faith that pervades this case which satisfies the required showing so as to rise to the level of a due process violation.

A. Factual and Procedural Background

During trial, Petitioner requested discovery regarding Sprinkle's criminal history. The prosecution opposed defendant's request for discovery – arguing that Sprinkle had an alibi and the investigation of the Ford Bronco did not reveal any incriminating evidence. The prosecution's opposition at trial is troubling for its lack of foundation and for the absence of actual evidence in the irregular forensic report. At trial, Petitioner's counsel repeatedly requested the Department of Justice reports and analysis of Sprinkle's vehicle. (RT 64, 106-108, 110-116.)

At this juncture, the following potentially exculpatory and actually exculpatory evidence in this case has been suppressed, "lost" or destroyed by the State, including:

> **1) Blood-Like Spattered Clothing, Shoes and $30 Cash**
> The Stockton Police Department "lost" or failed to maintain Terry Sprinkle's blood-like spattered clothes, shoes and cash collected for testing two days after the murder. Officer Anderson acknowledges receipt of the "white tennis shoes, turquoise shorts, and $30 in cash" which had blood-like stains on them and states that the evidence was taken to the Stockton Police Department and "booked for further processing." (See Exh. EE, p. 13.) Terry Sprinkle's blood-like spattered effects do not appear in the list of property taken into evidence in this case. (Exh. N.) It was not discovered by the prosecution during post-conviction discovery. It is therefore deemed lost.;
>
> **2) Latent Fingerprints From Terry Sprinkle's Bronco**
> The Stockton Police Department "lost" or failed to maintain latent finger prints taken from the passenger area of Terry Sprinkle's vehicle within a week of the murder. Officer Nasello took three latent prints from Terry Sprinkle's Bronco, labelled #1-#3, and he submitted the latents to the Latent Print Section at the Stockton Police Department. (Exh. CC.) The three latents do not appear in the list of property taken into evidence in this case. (Exh. N.) They were not discovered by the prosecution during post-conviction discovery. They are therefore deemed lost. ;

3) Blood-Like Spatter From Terry Sprinkle's Bronco
DOJ Criminalist Yoshida "lost" or failed to maintain evidence from blood-like spatter throughout Terry Sprinkle's vehicle, presented to the DOJ for testing and review within a week of the murder. (See Exhs. J, K.) Yoshida did not maintain or collect any swab samples of the blood-like spatter and pool in Sprinkle's Bronco. This evidence not discovered by the prosecution during post-conviction discovery. It should therefore deemed lost.;

4) Knife-Like Stab Marks In Bronco Ceiling and Passenger Seat
DOJ Criminalist Yoshida "lost" or failed to maintain evidence and review related to the knife-like stab marks on the ceiling and passenger seat of Terry Sprinkle's vehicle, presented to the DOJ for testing and analysis within a week of the murder. (See Exhs. J, K.) Yoshida did not maintain or collect any samples of the knife marks or analysis connected to the knife marks in Sprinkle's Bronco. This evidence not discovered by the prosecution during post-conviction discovery. It should therefore deemed lost.;

5) Tire Treads From Terry Sprinkle's Bronco
The DOJ failed to maintain evidence of the tire tread prints and/or casts of the tires from Terry Sprinkle's vehicle, presented to the DOJ for testing and review within a week of the murder. (See Exh. K.) Yoshida did not maintain or collect any samples of the tire treads by making a cast or prints of Sprinkle's Bronco tires. This evidence not discovered by the prosecution during post-conviction discovery. It should therefore deemed lost.;

6) Terry Sprinkle's Blood Vial
The Stockton Police Department and District Attorney's Office suppressed and subsequently "lost" Terry Sprinkle's blood vial, taken upon his arrest following the interrogation by Officers Anderson and Rodriguez, on 9/28/01 and put into evidence locker for this case as part of the investigation into Jody Zunino's murder. The vial was last in Ed Rodriguez's custody on 2019 (Exh. E), and the prosecution has since admitted that it was never returned by Rodriguez. (See Exh. B.) It must be deemed "lost.";

7) Negative Strips #3 and #6
The Stockton Police Department and District Attorney's suppressed and lost or destroyed the negative strips, representing Item's #3 and #6, found near Zunino's body on the morning of the murder. (See Exhs. M, P, Q, R, S and T.) During the post-conviction discovery process, Petitioner was given access to the negative strips for the purpose of printing. With the assistance of hobbyist photographers, Karen and Brad Pecchenino, post-

conviction counsel took photos of the exhibit envelopes, the negative strips and the negative sleeve at the Stockton Police Department evidence locker. Karen and Brad Pecchenino compared the photographs that they took of the negative strips at the evidence and compared them to photographs of the negative strips and sleeve when they were discovered at the crime scene in 2001 and the description of the evidence provided by Officer McGinnis at trial. (See Exhs. P, Q, R, S.) Upon a basic comparison, Karen and Brad Pecchenino opined under oath that the negative strips currently in evidence do not appear to be the same as those collected at the scene in 2001. (Exh. S.) A review of the chain of custody puts the negative strips last in Ed Rodriguez's custody, in 2018. Based upon the foregoing, particularly in light of the pattern of evidence loss and destruction by the Stockton Police Department in this case, the negative strips and sleeve originally identified as #3 and #6 should be deemed lost or destroyed.;

8) Cuts On Terry Sprinkle's Hands 9/28/01

The Stockton Police Department "lost" or failed to maintain photographic evidence of the cut(s) on Terry Sprinkle's hands within two days of the murder. (Exh. X, at p. 9.)[3] During the "full" interview of Terry Sprinkle, Officer Anderson inquired about possible cuts or injuries to Sprinkle's hands. Sprinkle admitted that he had cut(s) on his hand and presented the cut(s) to Officer Anderson who exclaimed, "Oh, wow" in response. (Exh. X, at p. 9.) Photographs of the cuts to Sprinkle's hands were not discovered by the prosecution during post-conviction discovery. They are therefore deemed lost.;

9) Tire Treads From Scene And Petitioner's Vehicle

The Stockton Police Department destroyed *all tire tread evidence* related to the case in 2012 *without a court order*, including the casts and prints of Petitioner's tire treads. (Exh. Y.) During the post-conviction discovery process, Petitioner was given access to the evidence locker for the purpose of viewing the property filed in this case. The records revealed that all of the casts from the scene and Petitioner's vehicle were destroyed by the request of the Stockton Police Department in 2012. (See Exhs. M, N, Y.) The record is devoid of a court order for the destruction of this evidence.

The foregoing cited evidence constitutes the material, potentially exculpatory and exculpatory evidence that the State failed to collect and maintain under *Trombetta*.

[3] Petitioner notes that the Stockton Police Department took photographs of his hands after his interrogation and arrest in 2006. The photos of Petitioner's hands do not reflect any scars or visible healed injuries.

B. The "Lost" or "Unretained" Evidence Related to Sprinkle Constitutes a Violation of Due Process Under *Trombetta/Youngblood*, Requiring Reversal

In considering the evidence of a *Trombetta/Youngblood* claim, the court must first inquire whether the lost or destroyed evidence held by the state meets either the "exculpatory value that was apparent" or the "potentially useful" standards for materiality under *Trombetta* or *Youngblood*. (See *Youngblood*, *supra*, 488 U.S. at p. 58; *Trombetta*, *supra*, 467 U.S. at pp. 488-489.) Second, if the evidence qualified as "potentially useful" under *Youngblood* but did not meet the *Trombetta* standard, was the failure to retain it in bad faith? (*Youngblood*, *supra*, 488 U.S. at p. 58.)

During the original investigation days after the murder, officers discovered significant evidence of means, opportunity and motive linking Sprinkle to the murder. The record is devoid of any evidence which might have excluded Sprinkle as the primary suspect or which would contradict this evidence. At trial, Petitioner's primary defense was a third party culpability defense focused on Sprinkle. However, Petitioner was largely prevented from presenting this defense– including presenting Sprinkle himself as a defense witness. (See RT 92, 119, 121-122.) In the context of Petitioner's right to present a defense, the exculpatory value of much of the lost or destroyed evidence was readily apparent at the time that the State either chose not to maintain it, lost or destroyed it.

Specifically, the following evidence had obvious exculpatory value at the time that is was "lost," not maintained or destroyed:

- Terry Sprinkle's blood-like spattered clothes, shoes and cash collected from his residence for testing two days after the murder (see Exhs. DD, EE);
- Latent finger prints taken from the passenger area of Terry Sprinkle's vehicle within a week of the murder (Exh. CC);
- Evidence from blood-like spatter throughout Terry Sprinkle's vehicle, including a saturated portion of the carpet, within a week of the murder (see Exh.'s J, K);
- Knife-like stab marks on the ceiling and passenger seat of Terry Sprinkle's vehicle (see Exhs. J, K);

- Tire tread prints and/or casts of the tires from Terry Sprinkle's vehicle;
- Terry Sprinkle's blood vial, taken upon his arrest following the interrogation by Officers Anderson and Rodriguez, on 9/28/01, lost or destroyed 2019;
- The negative strips, representing Item's #3 and #6, found near Zunino's body on the morning of the murder. (See Exhs. M, P, Q, R, S and T);
- Photographic evidence of the cut(s) on Terry Sprinkle's hands within two days of the murder (see Exh. X at p. 9);
- All tire tread evidence including the casts and prints of Petitioner's tire treads destroyed in 2012 (Exh. Y).

The "uncollected," lost or destroyed evidence listed above meets the heightened standard. All of the evidence set forth above would have normally been collected and maintained throughout the investigation and prosecution of any murder – as it was with Petitioner. This case involved a violent, bloody murder with a knife. It is elemental that any and all evidence related to Terry Sprinkle which was collected viewed and/or analyzed by the State with respect to potential blood-like substance, knife marks (including potential stab wounds) constituted evidence that had "readily apparent" exculpatory value..

Secondly, this case involved evidence related to the vehicle used to transport and dump Zunino's body where she was found, represented by the tire tread evidence. The State, particularly, the DOJ, did not preserve any of the evidence related to Sprinkle's vehicle, including the tire treads. Given the importance of the tread evidence from the scene, it was clear that the State should have been on notice that the evidence of Sprinkle's tires should be preserved for analysis and future inquiry. Likewise, given the central focus of the tire tread evidence at trial, the Stockton Police Department was on notice that the tire tread evidence was critical to the case. Indeed, this was the primary evidence used to convict Petitioner. In this context, the State was readily aware of the potential the exculpatory value of tire tread evidence related to Sprinkle's vehicle. Again, it would have been obvious to the Stockton Police Department, in 2012, that the

casts of the scene and Petitioner's vehicle could prove exculpatory upon further expert review.

However, should the Court find that the above evidence was "potentially useful" and the State's failure to collect and maintain the evidence, as done in the regular course of investigation, was done in bad faith as the failure to collect and maintain the evidence is not excused by professional negligence or happenstance, particularly in light of the recent misconduct related to Petitioner's DNA testing.[4]

1. Materiality

As we discussed above, *Trombetta* defines material evidence as that which "might be expected to play a significant role in the suspect's defense. To meet this standard of constitutional materiality, [citation] evidence must both possess an exculpatory value that was apparent before the evidence was destroyed, and be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means." (*Trombetta*, *supra*, 467 U.S. at pp. 488-489, fn. omitted.) Under *Youngblood*, the standard is whether the destroyed evidence, had it been subjected to analysis, was "potentially useful" to defendants. (*Youngblood*, *supra*, 488 U.S. at p. 58.)

Here, the evidence related to Sprinkle was clearly relevant to the murder inquiry of Zunino prior to the State's failure to collect, loss or destruction of the evidence. In particular, it is noted that there were numerous other individuals – including Sprinkle himself – who placed Sprinkle at the scene of the murder. His vehicle fit the description of every eyewitness who reported seeing Zunino get into his car, including the identification of his vehicle based upon *the license plate*. Sprinkle had an extremely violent criminal history – including a prior murder and several violent incidents involving a knife. Officers found clothes, money and shoes at Sprinkle's residence with "blood-

[4] Petitioner presents several "irregularities" related to the DNA testing (conducted from 2017-2019) in this case, including the personal transport of the murder weapon together with Petitioner's DNA sample and the victim's DNA sample to the independent testing lab, and the "loss" of both Petitioner's DNA sample as well as the victim's DNA sample. (See Exh. F.)

like" splatter on them. The interior of Sprinkle's vehicle had "blood-like" splatter in a pattern that appeared to be contiguous throughout the rear seat and ceiling. The ceiling appeared to have been recently "cleaned." (Exh. L.) There were knife marks in the ceiling and seat in the vehicle – which both the police and DOJ noted and photographed, but did not analyze with respect to trace blood or measurements (related to the murder weapon found at the scene). (Exh. K.) Sprinkle had no alibi for the murder, as he admitted being on Pinchot near Wilson between 1 a.m. and 3 a.m., and he even admitted that he had tried to pick up a prostitute at that time and took a knife from the purse of a prostitute. (Exh. K.) Petitioner does not offer this as a complete summary of the incriminating evidence known by the state at the time of the failure to collect, test and maintain the evidence, merely as a brief summary of the incriminating evidence corroborating Sprinkle's connection to the murder of Zunino which was known by the state. Here, Petitioner notes that evidence is "material" if the evidence is relevant as to either guilt or punishment. (See *Brady*, *supra*, 373 U.S. at p. 87.) Petitioner maintains that the evidence which was not collected, maintained or properly analyzed related to Sprinkle was material, because it was all relevant to Sprinkle's guilt and Petitioner's potential third party culpability defense.

This case has similarities to *U.S. v. Cooper* (9th Cir. 1993) 983 F.2d 928 (*Cooper*). In that case, the defendants were charged with conspiracy to manufacture methamphetamine. (*Id.* at p. 930.) After searching the premises, various pieces of equipment were destroyed and put into large drums pursuant to Drug Enforcement Agency policy. (*Ibid.*) The government was aware the drums would only be stored for a short time before destruction. (*Ibid.*) The defendants contended they were engaged in lawful manufacturing activity. (*Id.* at p. 929.) They argued the government's destruction of the entire lab deprived them of the ability to establish their defense. The government offered no reasoning for its decision. Destruction of the evidence occurred after government investigators knew the nature of the defense and after the defendants had made several requests for return of the equipment. (*Id.* at p. 931.)

"Agents involved in the search knew that the lab was ostensibly configured to make [a legal chemical]. In conversations following the seizure, agents repeatedly confronted claims that the equipment was specially configured for legitimate chemical processes and was structurally incapable of methamphetamine manufacture. In response to defense requests for return of the equipment, government agents stated that they held it as evidence. This statement was repeated even after the equipment had been destroyed." (*Cooper*, *supra*, 983 F.2d at p. 931.) The government did not challenge the defense's argument regarding the evidence's materiality or the bad faith of the law enforcement officers, instead arguing that comparable evidence was reasonably available. (*Id*. at p. 931.) The court rejected this argument and upheld the dismissal of the indictment. (*Id*. at p. 933.) "The defendants' version of the facts, which was repeatedly relayed to government agents, had at least a ring of credibility. They should not be made to suffer because government agents discounted their version and, in bad faith, allowed its proof, or its disproof, to be buried in a toxic waste dump." (*Ibid*.)

Similarly, here, the evidence related to Sprinkle had the potential to exonerate Petitioner. The police and the prosecution knew of the importance of the evidence at the time it was reviewed. In this context, the evidence meets the *Trombetta* standard of possessing "exculpatory value that was apparent before the evidence was destroyed." (*Trombetta*, *supra*, 467 U.S. at pp. 489)

However, should this Court find that the evidence does not meet that standard, the evidence clearly meets the standard set forth in *Youngblood* as "potentially useful" to Petitioner. (*Youngblood*, *supra*, 488 U.S. at p. 58.) To the extent that the evidence is found to be "potentially useful," Petitioner sets forth *Youngblood*'s bad faith requirement below.

2. Bad Faith

If the evidence is "potentially useful" under *Youngblood*, then the court turns next to the question of whether the government acted in bad faith. (*Youngblood*, *supra*, 488

U.S. at p. 58.) Here, the state's coordinated pattern of misconduct related to the evidence involving Sprinkle constitutes bad faith.

In this case, the defense made several requests for the Department of Justice reports and the corresponding evidence that should have been collected in the regular course of investigation (i.e. swabs used to conduct the Leucomalachite Green (LMG) tests with a control swab, latent prints, prosecution file related to a murder, etc.). These requests were not discovered before or during trial, nor was the DOJ report itself. It is clear from initial investigation, which implicated Sprinkle as the primary suspect, that all of the uncollected, "lost," and unmaintained evidence would have proved exculpatory for Petitioner, as it all served to corroborate and further implicate Sprinkle in the murder of Zunino. There is no existing evidence which contradicts the incriminating evidence. Accordingly, the failure to collect and preserve it in and of itself shows bad faith. (*Youngblood*, *supra*, 488 U.S. at p. 58.)

Moreover, the "lost" evidence recently discovered in the post-conviction process of this case reveals a pattern of misconduct by the State. As noted above, the Stockton Police Department destroyed all evidence related to the tire treads from the scene and Petitioner's vehicle in 2012. The destruction was done without a court order or any legal process. Again, given the central nature of this evidence to this case and to Petitioner's conviction, the destruction of this evidence implies a malicious intent or bad faith. The Stockton Police Department, through Officer Rodriguez, also "lost" Petitioner's DNA sample while personally transporting it. It should be noted that the last time that Officer Rodriguez was transporting Petitioner's DNA, *he was also personally transporting the murder weapon*. The Stockton Police Department, through Rodriguez, "lost" Terry Sprinkle's blood vial in 2019, when Petitioner was conducting DNA testing on the murder weapon. All of the evidence that has been lost or destroyed by the State is of material value, both in the context of its loss or destruction, and to the case itself. Bad faith, extremely bad faith, is the only reasonable explanation for this pattern of lost and destroyed evidence in this case.

3. Remedy

With respect to the proper remedy, courts have a large measure of discretion in determining the appropriate sanction for failure to preserve material evidence. (*People v.* Memro (1995) 11 Cal.4th 786, 831.) There are few cases after *Youngblood*, where the bad faith destruction of material exculpatory evidence warranted anything less than reversal, and reversal is proper if less drastic alternatives are unavailable. (See *U.S. v. Kearns*, *supra*, 5 F.3d at p. 1254.)

For example, the *Cooper* court found that a proposed jury instruction would pale in comparison to the potential value of the destroyed evidence. (*Cooper*, *supra*, 938 F.2d at p. 932.) The destruction of the lab equipment itself deprived the defendants the ability to establish their innocence, because experts could not determine by viewing photographs whether or not the lab was constructed for methamphetamine production. (*Ibid*; see also *U.S. v. Bohl* (10th Cir. 1994) 25 F.3d 904, 914 [bad faith destruction of evidence required dismissal because the effect of destruction and dearth of adequate secondary evidence violated the defendants' due process rights].)

Moreover, it is far from obvious what lesser remedy might come anywhere close to addressing the state's bad faith failure to retain material evidence. The importance of holding the police and the prosecution to their obligations under *Brady*, *Trombetta* and *Youngblood* cannot be overstated. Police and prosecutors are more than willing to avail themselves of technology when it is to their advantage; there must be a level playing field that gives defendants equal access to the same evidence. Equal and fair treatment in this respect is nothing less than the foundation upon which due process is built. The same is true of *Trombetta* and *Youngblood*; what is so disturbing about unretained or destroyed evidence is that we can never truly know what was lost.[5] While judges must act as

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[5] The defendant in *Youngblood* provides a disturbing cautionary note. Twelve years after the Supreme Court decided the case, the science had sufficiently improved over time to permit testing of the evidence in the case. The defendant was then exonerated due to the new DNA evidence. (See Whitaker, *DNA Frees Inmate Years After Justices Rejected Plea* (Aug. 11, 2000) The New York Times, http://www.nytimes.com/2000/08/11/us/dna-frees-inmate-years-after-justices-rejected-plea.html.)

"quality control" to remedy constitutional errors, it is ultimately up to the police and prosecutors to end the failure to retain evidence or its bad faith destruction. Here, Petitioner asks the Court to consider a remedy in accordance with all of the claims and evidence presented herein. Accordingly, Petitioner asks this Court to order Petitioner's judgment and conviction reversed with a declaration of actual innocence.

IV. THE PROSECUTION PRESENTED FALSE TESTIMONY AND FALSE EVIDENCE THROUGHOUT PETITIONER'S TRIAL, UNDERMINING THE CONFIDENCE IN THE OUTCOME OF PETITIONER'S TRIAL IN VIOLATION OF HIS RIGHT TO DUE PROCESS UNDER *BRADY* AND *NAPUE*

In this case, the State suppressed evidence related to the likely murderer and prosecuted an innocent man based upon a tenuous motive and even more tenuous tread mark evidence. The tire tread evidence constituted the most critical false evidence. The prosecution relied heavily upon this false evidence and even misstated the evidence to the jury. Ultimately, D.A. Rasmussen's presentation of this false evidence violated Petitioner's right to due process under *Napue*.

The Supreme Court has long held that a conviction obtained using knowingly perjured testimony violates due process. (*Mooney v. Holohan* (1935) 294 U.S. 103, 112.) It has long been held that knowingly presenting false testimony to a fact-finder necessitates reversal of a conviction if "the false testimony could . . . in any reasonable likelihood have affected the judgment of the jury." (*Giglio v. United States* (1972) 405 U.S. 150, 153, 154 (quoting *Napue v. Illinois* (1959) 360 U.S. 264, 271; *Dow v. Virga* (9th Cir. 2013) 729 F.3d 1041, 1047-1049.) This is known as a *Napue* violation. (See *Dow*, *supra,*729 F.3d at p. 1047.) "In addition, the state violates a criminal defendant's right to due process of law when, although not soliciting false evidence, it allows false evidence to go uncorrected when it appears." (*Soto v. Ryan* (9th Cir. 2014) 760 F.3d 947, 957-958; *Reis-Campos v. Biter* (9th Cir. 2016)832 F.3d 968; *Alcorta v. Texas* (1957) 355 U.S. 28.

The Supreme Court in *Napue* held that "a conviction obtained through use of false evidence, known to be such by representatives of the State," violates the Fourteenth Amendment. (*Napue, supra*, 360 U.S. at p. 269.) Prosecutorial misconduct in the form of false testimony violates the constitutional rights of the defendant and requires a reversal of the conviction if the following three elements are met: "(1) the testimony was actually false, (2) the prosecutor knew it was false, and (3) the false testimony was material (i.e., there is a reasonable likelihood that the false testimony could have affected the judgment)." (*Dow, supra*, 729 F.3d at p. 1050; citing *Napue,* 360 U.S. at 271-72); see also *Alcorta v. Texas* (1957) 355 U.S. 28, 31 [the state cannot allow a witness to give a material false impression of the evidence].)

Napue applies whenever a prosecution "'knew or should have known that the testimony was false.'" (*Hayes v. Brown* (9th Cir. 2005) 399 F.3d 972, 984 (en banc).) As described in the previous Claim II, D.A. Rasmussen had a clear *Brady* obligation to disclose the exculpatory evidence regarding Sprinkle as well as the pattern of prior misconduct of Officer Anderson. (*Kyles, supra*, 514 U.S. at p. 438 ["any argument for excusing a prosecutor from disclosing what he does not happen to know about boils down to a plea to substitute the police for the prosecutor, and even for the courts themselves, as the final arbiters of the government's obligation to ensure fair trials"]; *Giglio, supra,* 405 U.S. at p. 154 [whether the nondisclosure was a result of negligence or design, it is the responsibility of the prosecutor].) If the prosecutor has a duty to investigate and disclose favorable evidence known only to the police, he "should know" when a witness testifies falsely about such evidence. (*Jackson v. Brown* (9th Cir. 2008) 513 F.3d 1057, 1075.) The prosecution in the present case had a duty to correct the false testimony of Criminalist Yoshida, and the prosecution's failure to correct the testimony violated Petitioner's right to due process.

A. Factual Background

DOJ Criminalist Yoshida testified regarding the tire tread analysis at trial. (See RT 419-599; Exh. A.) It was either the first or second tire tread forensic case that she had

worked on for the DOJ. (Exh. A.) Yoshida explained that Petitioner's tires were relatively new at the time that she analyzed them, so they did not have many individualizing characteristics which could be used to identify them. (RT 530, 532.) Yoshida described the process that she used to compared the casts from the scene to the casts of Petitioner's Blazer tires, and noted that some of the impressions from the scene were "consistent" with the casts of Petitioner's Blazer tires. However, Yoshida noted repeatedly that the impressions of the treads could not be considered a positive "match." (RT 450, 457-459, 563-564.)

Yoshida also described the tire stance measurements reflecting the distance between the left and right tires of the vehicle. Stance measurements were taken by DOJ agents and Stockton Police Officer McGinnis the dirt field near Zunino's body. Officer McGinnis recorded the measurements and described the area where the measurements were taken as having a "shallow indentation, a very shallow indentation." (RT 345-347.) Yoshida did not personally take the measurements, nor did she supervise them. (RT 519-520.) Yoshida reported that the stance measurements from the crime scene were "60" inside, 66" center, and 75.5" outside. (RT 556.) She further provided the stance measurements for Petitioner's vehicle as 58.5" inside, 65.5" center, and 72.5" outside. RT 554.) To compensate for the disparity, Yoshida falsely testified that the area where the measurements "dips significantly." (RT 437-438.) Yoshida further suggested that the significant dip in terrain could make up for the disparity of 3" in length between Petitioner's vehicle and the crime scene measurements. (RT 438, 590.) Finally, Yoshida suggested that Petitioner's vehicle could leave tracks as wide as 77" across. (RT 590.) This figure is at least 4.5" wider than the original measurements that Yoshida gave for Petitioner's vehicle. (RT 554.)

B. The Prosecution Knowingly Presented False Testimony

In Petitioner's case, the prosecution's use of false testimony regarding the tire tread and stance evidence constituted prosecutorial misconduct which violated Petitioner's right to due process under *Napue* and *Brady*. (See *Napue v. Illinois* (1959)

360 U.S. 264, 269; *Brady v. Maryland, supra,* 373 U.S. at p. 83.) Here, D.A. Rasmussen knowingly relied upon Yoshida's false testimony and even misstated the substance of her testimony to create the false narrative necessary for the discrepancy in physical evidence. In his closing arguments, D.A. Rasmussen relied heavily upon a carefully constructed narrative that portrayed the tire tread and stance evidence at the scene as an "exact match" to Petitioner's vehicle. As the record bears out, this was in fact false, and D.A. Rasmussen was acutely aware of this fact – as well as the fact that Petitioner's vehicle was never at the scene.

Initially, D.A. Rasmussen misstated the facts with regard to Yoshida's analysis of the tire tread comparison itself as an forensic expert, repeatedly articulating the analysis as simplistic, something that the jury can do with the evidence before them. Rasmussen emphasized to the jury, "It doesn't take an expert. She showed you how to do it. You will have all of that back there. Look at the pictures, look at the casts, look at defendant's tire.... It doesn't take an expert.... It's the same. It's the same." (RT 855.) Rasmussen argued, "It's not rocket science, ladies and gentlemen. Take a look at the evidence back there, look at it. It's straightforward. You align things and you look. It's the same." (RT 904.)

During his closing D.A. Rasmussen emphasized Yoshida's false testimony describing the area of the scene where the measurements were taken as "uneven ground" and "a bit of a ditch." (RT 837.) He further emphasized that the State had presented the physical casts of the crime scene and Petitioner's vehicle in court, so that the jury could view it with their own eyes. (RT 838.) In addressing the defense questioning of Yoshida's "remeasurements" of Petitioner's tire stance (which led her to provide a 4" variance for the tire stance), D.A. Rasmussen argued that Yoshida remeasured "because [she] couldn't remember how [she] did that measurement. Then it fits." (RT 912.)

D.A. Rasmussen compared Sprinkle's vehicle, stating, "the defense is trying to make you say, hey, the Bronco II, this Terry Sprinkle, he is the guy that did that, look at his measurements, that Bronco II up there, and the defense did not put that on any of

these exhibits so you could see them face to face... he tried to mislead you by not putting it up there." (RT 842.) Again, emphasizing false and unsubstantiated evidence, D.A. Rasmussen told the jury, "You heard Sarah Yoshida say, we thought we had our guy... She said that she tested [the blood-like substance] and it was sugar. She looked at the tire tread, they didn't match.... the tire stance... was off, too." (RT 843.) Rasmussen emphasized, "The Bronco II that we've shown you pictures of, it doesn't even come close to the tread on the defendant's Blazer or the tread left out at the scene." (RT 843.)

Of course, the defense never had access to Sprinkle's vehicle or any evidence preserved from it, and D.A. Rasmussen was keenly aware of this fact. Here, D.A. Rasmussen not only did not correct the false testimony provided by Yoshida, he restated the false evidence in a manner that emphasized that the details did not matter, because tire tread analysis is an imperfect science, or not a science at all. Yoshida's "remeasurements," her testimony, and the evidence presented to the jury regarding the tire treads and tire stance was false. As D.A. Rasmussen conceded to the jury, it was not science. Ultimately, D.A. Rasmussen was not merely misstating the facts, he was being mendacious.

i. The False Evidence Was "Material" and Prejudicial

A "prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police." (*Kyles v. Whitley, supra*, 514 U.S. 419 at pp. 437-438; *Strickler v. Greene* (1999) 527 U.S. 263, 280-281. Further, the Ninth Circuit has observed that "[b]ecause the prosecution is in a unique position to obtain information known to other agents of the government, it may not be excused from disclosing what it does not know but could have learned." (*Amado v. Gonzalez* (9th Cir. 2014)758 F.3d 1119, 1134; *Carriger v. Stewart* (9th Cir. 1997) 132 F.3d 463, 480 (en banc).

In order to assess their materiality, *Napue* and *Brady* violations should be considered collectively. (*Jackson v. Brown* (9th Cir. 2008) 513 F.3d 1057, 1071 (stating that courts should evaluate the "cumulative effect of the prosecutorial errors for purposes

of materiality separately and at the end of the discussion.") (citing *Kyles v. Whitley*, *supra*, 514 U.S. at p. 436 n.10) (internal quotation marks omitted).) If the *Napue* errors are not material standing alone, the Court must consider the *Napue* and *Brady* errors together and determine whether "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." (*Id.*)

In this case, whether relief is warranted hinges upon the definition of "materiality" under *Napue* and *Brady*. It is well-established that a *Napue* violation is "material" and results in the reversal of a conviction "if the false testimony could in any reasonable likelihood have affected the judgment of the jury." (*Dow v. Virga* (9th Cir. 2013) 729 F.3d 1041, 1047 (citing *Napue*, *supra*, 360 U.S. at p. 271; and *Giglio v. United States* (1972) 405 U.S. 150, 153.) Although the government's knowing use of false testimony does not per se require reversal, the *Napue* materiality standard is "less demanding" than "ordinary" harmless error review. (See *Dow, supra*, 729 F.3d at p. 1048 (citations omitted).) Furthermore, in discussing materiality under *Napue*, the Ninth Circuit has "gone so far as to say that 'if it is established that the government knowingly permitted the introduction of false testimony, reversal is virtually automatic.'" (*Jackson, supra*, 513 F.3d at p. 1076 (quoting *Hayes, supra,* 399 F.3d at p. 978) (emphasis added). Thus, the question of materiality is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a "verdict worthy of confidence." (*Hayes, supra*, 399 F.3d at p. 984 (citations omitted).)

Ultimately, the false testimony of DOJ Criminalist Yoshida directly contributed to Petitioner's conviction. Her false testimony served to strengthen the very weak case which lacked motive, means and true opportunity. The false testimony impacted the fairness of Petitioner's trial, and now casts extreme, grave doubt on whether the verdict can be viewed as "worthy of confidence" given the evidence presented to this Court. To assess the materiality of this error, the Court need look no further than the direct impact of the false testimony. This is not a case where the false testimony could have had any

other impact than to contribute to the wrongful conviction of Petitioner. The prejudice is undeniable. Petitioner's conviction secured by the false testimony of the State's witnesses must be reversed.

V. CONCLUSION

Petitioner incorporates by reference all of the claims and evidence set forth in the attached original petition filed by Petitioner. Petitioner asks the Court to issue an Order to Show Cause, and order the State, through the Attorney General, to file a Return. Ultimately, after a consideration of the evidence developed before the Court, Petitioner asks this Court to reverse his conviction an declare him "actually innocent" of the murder of Zunino.

Dated: October 31, 2022

Respectfully submitted,

JENNIFER M. SHEETZ
Counsel for Petitioner

PROOF OF SERVICE

Re: People v. Joseph Hathorn Nuccio

I declare that I am over the age of 18, not a party to this action and my business address is 775 E. Blithedale Ave., PMB 146, Mill Valley, California 94941. My electronic service address is jmsheetz@hotmail.com. On the date shown below, I served the within Petition for Writ of Habeas Corpus and Exhibits to the following parties hereinafter named by placing a true copy thereof enclosed in a Priority Mailing envelope to the address below:

San Joaquin County District Attorney
c/o Robert Himelblau, Chief Deputy District Attorney
222 E. Weber Ave., #202
Stockton, CA 95202

Rob Bonta, Attorney General
c/o Eric Christoffersen, Deputy Attorney General
Attorney General's Office
1300 I St., Ste. 125
Sacramento, CA 94244-2550

I declare under penalty of perjury the foregoing is true and correct. Executed this 2nd[st] day of November 2022, at Mill Valley, California.

Jennifer M. Sheetz