FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SUSAN MELLEN; JULIE CARROLL; JESSICA CURCIO; DONALD BESCH, *Plaintiffs-Appellants*, v. MARCELLA WINN, *Defendant-Appellee*.	No. 17-55116 D.C. No. 2:15-cv-03006-GW-AJW OPINION

Appeal from the United States District Court
for the Central District of California
George H. Wu, District Judge, Presiding

Argued and Submitted May 18, 2018
Pasadena, California

Filed August 17, 2018

Before: Kim McLane Wardlaw, Jacqueline H. Nguyen, and John B. Owens, Circuit Judges.

Opinion by Judge Wardlaw

SUMMARY*

Civil Rights/Qualified Immunity

The panel reversed the district court's summary judgment in favor of Detective Marcella Winn on qualified immunity grounds in a 42 U.S.C. § 1983 action.

Plaintiff Susan Mellen was wrongly imprisoned for seventeen years before securing habeas relief in October 2014, and she and her children brought this civil rights action against Detective Winn based on her failure to disclose evidence.

The panel held that the record demonstrated as a matter of law that Detective Winn withheld material impeachment evidence under *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. United States*, 405 U.S. 150 (1972), and raised a genuine issue of material fact as to whether Detective Winn acted with deliberate indifference or reckless disregard for plaintiff's due process rights.

The panel held that the law at the time of 1997–98 investigation clearly established that police officers investigating a criminal case were required to disclose material, impeachment evidence to the defense.

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

The panel concluded that the district court abused its discretion by striking the declaration of Mellen's police practices expert, Roger Clark.

The panel reversed summary judgment on qualified immunity grounds and the order striking Clark's declaration, and remanded to the district court for further proceedings.

COUNSEL

Anna Benvenutti Hoffmann (argued), Rick Sawyer, and Nick Brustin, Neufeld Scheck & Brustin LLP, New York, New York; Deirdre Lynn O'Connor, Seamus Law APC, Torrance, California; for Plaintiffs-Appellants.

Calvin House (argued), Gutierrez Preciado & House LLP, Pasadena, California; Laura E. Inlow, Collinson Law, Torrance, California; for Defendant-Appellee.

OPINION

WARDLAW, Circuit Judge:

Susan Mellen was wrongly imprisoned for seventeen years before securing habeas relief in October 2014. After release from prison, Mellen and her three children, Julie Carroll, Jessica Curcio, and Donald Besch, brought suit under 42 U.S.C. § 1983 against Detective Marcella Winn,[1] arguing that Detective Winn

[1] Mellen's complaint also named the City of Los Angeles and Richard Hoffman, Detective Winn's supervisor, as defendants.

failed to disclose evidence that would have cast serious doubt on the testimony of June Patti, the star prosecution witness in Mellen's trial. Detective Winn asserted qualified immunity, arguing there was no genuine dispute of material fact as to whether the withheld evidence was material or as to whether Detective Winn acted with deliberate indifference or reckless disregard for Mellen's due process rights, and that the law at the time of the investigation did not clearly establish that police officers were required to disclose material, impeachment evidence. The district court granted summary judgment in Detective Winn's favor.

We conclude, first, that the record demonstrates as a matter of law that Detective Winn withheld material impeachment evidence under *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. United States*, 405 U.S. 150 (1972) (extending *Brady* to impeachment evidence), and raises a genuine issue of material fact as to whether Detective Winn acted with deliberate indifference or reckless disregard for Mellen's due process rights. Second, we conclude that the law at the time of the 1997–98 investigation clearly established that police officers investigating a criminal case were required to disclose material, impeachment evidence to the defense. Finally, we conclude that the district court abused its discretion by striking the declaration of Mellen's police practices expert, Roger Clark. We

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Mellen voluntarily dismissed Hoffman from this case on March 23, 2016, and she voluntarily dismissed the City and her claims under *Monell v. Department of Social Services*, 436 U.S. 658, 690 (1978), on April 1, 2016.

reverse the grant of summary judgment on qualified immunity grounds and the order striking Clark's declaration, and remand to the district court for further proceedings consistent with this opinion.

I.

Susan Mellen was convicted of first-degree murder in June 1998, based largely on the testimony of June Patti (Patti). Mellen contends that Detective Winn wrongfully withheld a statement that June Patti's sister, Laura Patti (Laura), made to Detective Winn before trial. Laura, who was a Torrance police officer at the time of the investigation, told Detective Winn that her sister, June Patti, was "the biggest liar" that she had "ever met" in her life and that she did not "believe anything [Patti] says."

Laura said that she based this conclusion on her personal experiences with her sister, who, since the age of four or five, "had a habit of not telling the truth." Laura also explained that her sister had filed more than twenty complaints against Laura with the Torrance Police Department, all unsubstantiated, and that Patti "constant[ly]" lied to Laura's colleagues. At her deposition, Laura also said that she believed that Patti had been a "certified informant" with the Torrance Police Department in the early 1990s.

Laura stated that her conversation with Detective Winn was brief, and Detective Winn did not inquire into why Laura believed her sister was a liar. But it turned out that Laura was right about her sister. Patti

was deemed an "unreliable informant" by the Torrance Police Department five years before Mellen's trial. And in a fourteen-year span between 1988 and 2002, Patti had more than 800 contacts with law enforcement, where she was known to exaggerate or outright lie to police officers to protect or advance her own interests.

Although the revelations about Patti proved the loose thread that unraveled Mellen's wrongful conviction, Detective Winn contends that no reasonable officer would have understood that *Brady*/*Giglio* required the disclosure of Laura's statements.[2] Because the Supreme Court has instructed that *Brady*/*Giglio* requires a "fact-intensive" inquiry into whether "there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different," *Turner v. United States*, 137 S. Ct. 1885, 1888, 1893 (2017) (citations omitted), we turn to a close examination of the investigation and the trial that resulted in Mellen's wrongful conviction.

A. The Investigation

Rick Daly's body was found burned near a dumpster in San Pedro, California, on July 21, 1997. After two weeks while police officers struggled to identify

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[2] Detective Winn now also disputes that she ever spoke with Laura Patti about her sister. She argues, in the alternative, that if the statements were made, she would have communicated them to the prosecutor, undermining her argument that no reasonable officer would have known she was required to do so.

the body, calls flooded into the Los Angeles Police Department's (LAPD) South Bureau Homicide Unit, and filtered to Detective Winn, who had taken responsibility for the case. The first tips would later prove the most accurate: a caller told detectives that Daly was killed by three members of "Lawndale 13," a gang that congregated around the "Mellen Patch," a duplex in Torrance, California, owned by members of the Mellen family and frequented by methamphetamine users. Detectives also heard that Daly was killed in the back house of the Mellen Patch, where Susan Mellen had lived before February 1997,[3] and that Daly's body was transported in Scott "Skip" Kimball's car to San Pedro where the three men set Daly on fire.

On August 12, 1997, Detective Winn prepared a search warrant for the Mellen Patch and arrest warrants for Lester "Wicked" Monllor, Chad "Ghost" Landrum, and Santo "Payaso" Alvarez, the three men identified in the caller's tip and corroborating reports. The LAPD executed the search warrant at the Mellen Patch early in the morning the next day. The warrant yielded several potential witnesses and residents of the Mellen Patch, including Monllor's mother and sister, Mellen's sister-in-law, niece, and nephew, and two other people from the neighborhood. Detective Winn later learned that Monllor, Landrum, and Alvarez were in custody on unrelated charges. Detective Winn had also earlier spoken with Scott Kimball, who was also

[3] Mellen moved out of her family home at the Mellen Patch to live with her boyfriend, Thomas Schenkelberg, and her two children.

in jail on unrelated charges, and who told Detective Winn that he had lent his car to his friends on the night of the murder.

The evening after the LAPD executed the search warrant at the Mellen Patch, June Patti contacted Detective Winn for the first time, leaving a voicemail message that indicated that Patti had information about the Daly murder. The next morning, Patti appeared at Monllor's arraignment, along with Monllor's mother. And two days after Monllor's arraignment, Patti directed Detective Winn's attention to Susan Mellen, Daly's ex-girlfriend, and a long-time Mellen Patch resident.[4]

Patti gave her first oral statement to Detective Winn on August 15, 1997. At the time, she told Detective Winn that, on the same night that the LAPD executed the arrest warrant at the Mellen Patch, Patti called Mellen and Mellen's boyfriend, Tom Schenkelberg (Tom), to buy "speed." Because Patti was purportedly a paralegal at the courthouse (she was not), and came from a family of police officers, Mellen asked to meet Patti at the motel where Patti was staying to talk about the Daly murder.

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[4] Detective Winn interviewed a second witness, Cynthia Sanchez, who also implicated Mellen, but Sanchez told Detective Winn that she had learned what she knew from June Patti. Sanchez also stated that Monllor's mother had asked about whether bleach would "remove blood from linoleum," and had cleaned the back of the house—leads that officers did not follow.

It was at the Travelodge motel that Mellen allegedly confessed her involvement in Daly's murder to Patti. Patti said that Mellen told her that she and Tom, with help from Chad Landrum, killed Daly because Daly "kept going in [Mellen's mother's house] and stealing all her things, their speed, their pips [sic]." Patti said that Mellen had told her that Tom and Landrum kicked Daly and taped his mouth shut, that Landrum pulled out a knife and threatened to stab Daly, and that Tom and Landrum set fire to Daly in Mellen's mother's house.[5] Mellen allegedly told Patti that she pulled back Daly's head with his bandana, kicked Daly, and got high while Tom and Landrum beat Daly. Patti also said that a fourth, unnamed person came over from next door to tell Mellen, Tom, and Landrum to be quiet, and that this person was already in custody.[6] Patti said that Mellen and Landrum put Daly in the back of Mellen's car and "dropped him off" in San Pedro because "Tom didn't want to go."

At the end of the August 15, 1997 recorded oral statement,[7] Detective Winn prepared a written

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[5] Patti also told Detective Winn that Tom and Landrum set fire to the back house of the Mellen Patch that night. In fact, however, the back house was not burned until ten days after police discovered Daly's body.

[6] Patti ended her oral statement to Detective Winn by stating that she had previously helped a Lomita detective named "Marshall" arrest someone named "Trigger" for murder. Neither this statement nor Patti's role as a paid informant was investigated.

[7] The transcript of Patti's oral statement is undated. It is therefore unclear whether Patti's defense counsel had the benefit of the transcript at Patti's criminal trial or whether Patti's habeas

statement for Patti's signature. The written statement adds more detail to Patti's oral statement, detail that Detective Winn was aware of from the police investigation thus far. Notably, the written statement mentioned that the fourth, unnamed person acted as a lookout for Mellen, Tom, and Landrum. Patti's written statement also added that Landrum set Daly on fire again in San Pedro, and that Patti and Tom had left Daly's body near a trash can in an alley with a chain link fence because "only Mexicans live there and they won[']t say anything"—details that did not come from Patti's oral statement. The written statement also added that Mellen and Landrum dumped the body in San Pedro around "8:30 or 9:00 P.M.," when Patti previously told Detective Winn only that Landrum and Tom started beating Daly "during the daytime."

Relying on Patti's written statement, Detective Winn presented the case against Mellen to district attorney Steven Schreiner, who, in turn, filed one count of first-degree murder against Mellen.[8] Mellen was arrested on August 25, 1997, and in an interview with Detective Winn, insisted that she had nothing to do with Daly's murder. Mellen told Detective Winn that she and Cory Valdez, Daly's then-girlfriend, had learned from a woman named Ginger Wilborn that

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counsel transcribed the oral statement as part of the habeas proceedings.

[8] The district attorney's office filed separate murder charges against Landrum and Monllor, but never filed charges against Tom or Alvarez. In fact, Alvarez told Innocence Matters investigators that he was never even questioned about the Daly murder.

Landrum, Monllor, and Alvarez had murdered Daly, and had wrapped his body in a blanket to transport him to San Pedro. Mellen also told Detective Winn that she had returned to the Mellen Patch with her children on the evening of the murder, but that she had stayed in the area for only ten to fifteen minutes. Mellen said that while she was there, she saw Daly alive, and he must have been murdered after she left. Detective Winn told Mellen that she did not believe her.

The preliminary hearing in Mellen's criminal case, where she was charged alongside co-defendants Monllor and Landrum, took place on November 13, 1997. Mellen was represented by Lewis Notrica, a private family law attorney whom Mellen had previously asked to handle her divorce. The government was represented by Valerie Rose, a deputy district attorney who had prosecuted cases since 1991.

Patti testified at the preliminary hearing. She again said that Mellen had confessed her involvement in Daly's murder to Patti at the Travelodge motel, reiterating that Mellen and Tom recruited Landrum from next door to beat up Daly for stealing Mellen's things. This time, however, when defense counsel questioned Patti about the involvement of a fourth person, Patti insisted that the fourth person had only banged on the window and said "shut the fuck up," but otherwise had nothing to do with the murder. When defense counsel pressed Patti about the inconsistencies between her written statement and her preliminary hearing testimony as to this fourth person, Patti said that Detective Winn made up the details of the story.

Patti testified that she told Detective Winn that she was "not signing" the written statement because Detective Winn "wrote something to the [effect] that the person in jail was a lookout" when that was not true. Patti also testified that Detective Winn told her that "the person was in jail and she wanted him to be blamed for it, and he didn't do it, and he wasn't around when it happened." Patti said that Detective Winn was "pissed off" when Patti told her "four or five times" that the written statement did not reflect what Mellen had said, but Patti ultimately signed it because she was pressed to get to the airport.

This is the most notable inconsistency between Patti's earlier oral and written statements and her preliminary hearing testimony, but there are others. In her oral statement, Patti said that she called Mellen to buy speed, and that the "motel receipt" would show the phone number to which the call had been placed. Patti initially testified that she had "dial privileges" from her room, but when pressed by Mellen's counsel about how she paid for the phone call, Patti changed her story: "Actually," she testified, "we didn't call from the room. We called from downstairs at the pay phone, because it was a pager, and my dad paid for the calls and I didn't want him to find out I was paging people for speed." And for the first time at the preliminary hearing, Patti testified that she was on speed the night that she talked to Mellen at the hotel. Patti's preliminary hearing testimony did not mention whether anyone else had been present with her at the hotel, whether Daly's attackers had used a hammer or a knife, or any

other detail about how they had allegedly kept Daly quiet or transported his body to San Pedro.

B. Pre-Trial Matters

As Mellen's case approached trial in May 1998, several events, in addition to the alleged telephone call between Laura Patti and Detective Winn, shed further light on Patti's unreliability as the star government witness.

In a letter dated February 25, 1998, Patti wrote to District Attorney Rose explaining that she could not return to California to testify at Mellen's murder trial because Patti's sister, Laura, had threatened to arrest her. Patti sent the letter to the prosecutor while living with her boyfriend in Washington State. In the letter, Patti said that she was writing to notify District Attorney Rose that she had outstanding warrants for traffic tickets and for an incident where she used her "sister Serina Patti [sic] name after [she] hit a women's car in a [sic] accident." Patti said that her sister, Laura, a Torrance police officer, had warned Patti that if she returned to California she would be arrested on those warrants. Patti also recounted numerous incidents where she had lied to police to evade arrest warrants, had impersonated her sister, Serina Patti, and had otherwise interacted with law enforcement. She asked the district attorney to "contact the Torrance D.A." to get the ticket "dismissed in the interest of justice."

The district court found that Patti's February 1998 letter was placed in the "murder book," a dossier that

was supposed to contain all of the investigatory information about the Daly murder and which was turned over to defense counsel on October 1, 1997. But the record demonstrates that the district attorney's office received Patti's letter after the murder book had already been turned over to the defense, and it is not clear from the record that defense counsel had access to the letter. District Attorney Rose's own declaration suggests that she would not have turned over the letter because she was "unaware of any legal authority which provided that sibling rivalry . . . was *Brady* evidence."

Rose replied to Patti's letter on April 16, 1998, two and a half weeks before Mellen's criminal trial would start on May 4, 1998, in a letter intended "to memorialize [a] telephone conversation regarding [Patti's February 1998] letter." It advised "[n]either your sister nor any other officer can serve you or arrest you for anything that happened in this state prior to the date that you came into . . . the state in order to comply with the subpoena." The letter then concluded, "I will send a copy of this letter to your sister, as well as to the defense attorneys on the criminal case of *People v. Monllor, Mellen & Landrum.*"

Patti's credibility was also at issue in a hearing on the morning before trial, where the parties argued pending motions in limine. District Attorney Rose asserted that it would be inappropriate "to ask about [Patti's] arrests and a misdemeanor." Patti had two prior misdemeanor convictions for forgery and for harassment of her sister Laura, and Patti had numerous prior arrests for drug-related charges. The trial court

opined that Patti's prior "misdemeanor conviction[s]" and arrests were "not admissible," and Notrica, Mellen's defense counsel, replied "I [have] no quarrel with that."

Rose then discussed Patti's testimony that she had stabbed Mellen's prior boyfriend because he had grabbed her breast, and an allegation that Patti had stolen Mellen's brother's vehicle because Mellen's brother killed one of Patti's dogs. As to the first incident, Notrica replied, "I don't even know where I got the information." When the trial court asked whether Notrica intended to use the information at trial, he said "no." As to the second incident, Notrica said, "I don't have [Mellen's brother] under subpoena," so "[testimony about] it is not going to happen."

The parties also discussed whether Patti was a paid informant. Notrica had suggested to the district attorney that Patti might be a paid informant because she "appears to have a lot of arrests, but no convictions." In reply, district attorney Rose said that she had "no knowledge of such," and she argued that raising Patti's potential role as a paid informant would be "inappropriate" at trial. At the time, Patti had, in fact, enrolled as a paid informant with the El Segundo and Redondo Beach police departments, and the Torrance Police Department deemed Patti an "unreliable informant" in 1993 for providing exaggerated and untruthful information to law-enforcement officers. The court, however, agreed with the prosecutor, concluding that "absent some good faith basis," it would not be "appropriate" for the defense to ask whether Patti had

worked as a paid informant. The case then proceeded to trial.

C. The Trial

Opening statements began on May 4, 1998. There, the prosecution offered its theory of the case, which relied entirely on June Patti's preliminary hearing testimony. The prosecution suggested that, on the night of Daly's murder, Mellen instructed Tom and Landrum to kill Daly, who had previously dated Mellen, because Daly had stolen from Mellen's mother's house. The district attorney stated that Mellen and Tom had returned to Mellen's mother's abandoned house on the night of the murder and found Daly sleeping there. This allegedly made Tom angry and led him to convince a neighbor, Landrum, to help beat up Daly in exchange for a "quarter ounce of speed." The district attorney told the jury that Mellen gagged and kicked Daly, and, after he was set on fire, drove his body to San Pedro and dumped it in an alley.

Patti took the witness stand on May 6, 1998. At trial, Patti changed her testimony significantly from her preliminary hearing testimony, offering an entirely new motive for Daly's murder and details that she had never before offered to anyone. Patti testified that, on that night at the Travelodge motel, Mellen confessed that she had been giving oral sex to Daly when Tom "kind of caught her with her pants down." Patti testified that Daly and Mellen had a child together and that Mellen "loved" Daly even though Daly had been stealing from Mellen, and Mellen had started a new

relationship with Tom. She testified that Tom became angry when he figured out what had happened, and started beating Daly on the head with a hammer that Tom had taken from Daly's bicycle.

Patti then testified that "somebody from next-door" (Landrum) came over to help Tom beat up Daly. Tom allegedly convinced Landrum to help him beat up Daly and Mellen in exchange for "a quarter ounce of dope." Patti testified that Tom left, and Landrum continued to beat up Daly. When Tom returned, Mellen gagged Daly with his own bandana by stuffing it down his throat and supergluing and taping his mouth shut. Patti said that, after hearing Mellen's confession, she avowed to tell her sister, who was a Torrance police officer.

At the end of Patti's direct examination and, evidently recognizing that Patti's testimony contradicted much of her prior testimony—and the prosecution's opening statement—Rose prompted Patti to admit that she had not told the whole truth at the preliminary hearing. Patti said that she lied at the preliminary hearing because, she said, "I don't want Susie [Mellen] to go to jail." Patti also admitted that she had never previously told anyone that Mellen had given Daly oral sex on the night of the murder:

> Q. Did you indicate anything about the motivation behind the killing, Tom walking in on this sexual act?

A. Did I tell anybody about that before? Absolutely not. It was something she told me in private.

The prosecutor later returned to this topic:

Q. Why, today, are you telling us this additional information regarding motive, regarding the additional activity?

A. Because since I have been here for the last two days, I heard that Susan [Mellen] has had people come and try to lie against my character; and one of her brothers, which I don't know, said he killed a dog of mine.

That is the law. If she is going to lie against me, I am going to tell the truth of what she said.

The prosecutor also asked Patti about the super glue, another fact that Patti had never previously disclosed:

Q. You had indicated—was there any changes in your testimony regarding the movement of the body or the movement of Rick [Daly] to San Pedro?

A. No.

Q. Now, you had indicated something about the super glue on the mouth.

A. Yes.

Q. Was she—did she do that or did [Landrum] do that, or did they both do it together?

A. She did that.

After this questioning, Mellen's counsel cross-examined Patti. Notrica pointed out that Patti's testimony was inconsistent with her testimony at the preliminary hearing:

Q. You have gone out of your way to embellish your testimony, haven't you?

A. No, I have not.

Q. Well, you were under oath when you testified in November of 1997, weren't you?

A. I told the truth. I just didn't tell the complete truth.

Q. You hid some facts from Ms. Mellen, as well as her counsel.

A. No, I hid the facts from the police that Ms. Mellen had told me because I didn't want to crucify her.

. . .

Q. Ms. Patti, you said that Susan [Mellen] and Rick [Daly] were engaged in a sex act in their house when Tom walked in.

A. That is what she told me.

Q. You never testified to that before, though.

A. I didn't want people to know she was a cock-sucker. No, I did not. It was a private conversation between her and I.

Notrica also pointed out that Patti had not told the police the fact about the "super glue." On cross-examination, the defense asked:

> Q. Are we getting the whole truth today?
>
> A. Probably not because I don't want to crucify her. I told you what you need to know.

The day after cross-examination, the prosecution reopened Patti's direct examination. Patti then testified that she saw Mellen driving Kimball's green BMW away from the Travelodge motel on August 13, 1997. She further testified that Mellen had told her that she used Kimball's car to drive Daly's body to San Pedro. When the prosecutor asked Patti why she had not offered this testimony the day before during her first direct examination, Patti said, "I wasn't asked." During her second cross-examination, Patti admitted that she had "never discussed" Mellen driving Kimball's car "with anybody until yesterday."

Detective Winn took the stand days after Patti's testimony. Detective Winn admitted that Patti had not mentioned the "sexual contact" between Mellen and Daly until the other day in court.

The only other rebuttal of Patti came from Mellen herself. Mellen testified that Patti was "a lier [sic]," "a snitch," "a thief," and "something I would never want to call my friend." Mellen testified that Patti had called her at 2 A.M. one morning at the beginning of August, but that Mellen had told her "don't call back here" and had hung up without finding out why Patti had called.

Mellen also stated that she never went to the Travelodge motel to meet Patti.

At closing argument, defense counsel argued that Patti was a liar and framed the trial as a contest between the credibility of June Patti and Susan Mellen. He said:

> But what she said was full of misstatements, and she said them under oath. And she was quick to tell this court, this jury, that: when I testified the first time, I didn't tell the whole truth.
>
> Why didn't she tell the whole truth? Well, I was trying—I felt sorry for Susan. Well, what she said was enough to, quote, hang her anyway. So she came back the second time and the next day which is the third time and embellished her statement.
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> Now, she is telling the whole truth. She had to get everything out. Why couldn't she get everything out the first time when we had a chance to cross-examine her. I can't answer that question. I'm just saying I believe she lied for whatever reason and she lied so well that Ms. Mellen was arrested for homicide.
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> . . .
>
> So the issues are simple. I submit, respectfully, that it's between June Patti and Susan Mellen.

The jury returned a guilty verdict, and the judge sentenced Mellen to life imprisonment without the

possibility of parole on June 5, 1998. Speaking at her sentencing hearing, Mellen said, "I don't understand why I'm being put in the fire, why this woman lied and told the things that she said that are so evil. I'm totally innocent. . . . With God's hands upon me now, I'm innocent."

D. Habeas Proceedings

Nearly two decades later, Mellen's case came to the attention of Innocence Matters, a non-profit legal organization whose mission is to secure habeas relief for people with valid innocence claims. As part of its investigation, Innocence Matters spoke with Laura Patti, who told them that she had spoken with Detective Winn in advance of Mellen's trial and had then shared her belief that her sister was not to be trusted. Laura also admitted that she had never been present for one of her sister's lies to law enforcement, and had no personal information about whether her sister lied as part of the Daly murder investigation. And she offered her own belief that Detective Winn reasonably relied on June Patti's statements because, she remembered, Detective Winn had told her that her sister offered details about the murder that were not publicly available. After Innocence Matters contacted her, Laura called Detective Winn to let her know that she had been contacted as part of Mellen's habeas proceedings.

In addition to speaking with Laura Patti, Innocence Matters contacted numerous others close to the

investigation, including Chad Landrum and Santo Alvarez, who confessed to the murder and said that Mellen had nothing to do with it. Armed with this information and testimony from other witnesses, Innocence Matters filed a habeas petition on Mellen's behalf, which the state court granted in October 2014.

II.

We now review this evidence to determine whether Detective Winn violated *Brady*/*Giglio* by failing to disclose Laura's statements that her sister, June Patti, was "the biggest liar" that she had "ever met," and that she did not "believe anything [Patti] says."

A. *Brady*/*Giglio* Violation

The elements of a civil *Brady*/*Giglio* claim against a police officer are: (1) the officer suppressed evidence that was favorable to the accused from the prosecutor and the defense, (2) the suppression harmed the accused, and (3) the officer "acted with deliberate indifference to or reckless disregard for an accused's rights or for the truth in withholding evidence from prosecutors." *Tennison v. City & Cty. of San Francisco*, 570 F.3d 1078, 1087, 1089 (9th Cir. 2009). Although Detective Winn now disputes that she spoke with Laura Patti before Mellen's trial, she concedes that, if the conversation took place, Laura's statements were favorable to Mellen, and were never shared with the prosecutor or the defense. The only questions the parties debate are whether Laura's statements were material and

whether Detective Winn was deliberately indifferent not to disclose them. *See Youngblood v. West Virginia*, 547 U.S. 867, 869–70 (2006) (per curiam) ("*Brady* suppression occurs when the government fails to turn over even evidence that is known only to police investigators and not to the prosecutor." (citation and quotation marks omitted)); *United States v. Bagley*, 473 U.S. 667, 676 (1985) ("Impeachment evidence . . . as well as exculpatory evidence, falls within the *Brady* rule.").

1. Materiality

We conclude that Laura's statement was material *Brady* evidence as a matter of law. Suppressed evidence is material if "the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." *Kyles v. Whitley*, 514 U.S. 419, 435 (1995). We have recognized that "[i]mpeachment evidence is especially likely to be material when it impugns the testimony of a witness who is critical to the prosecution's case." *Silva v. Brown*, 416 F.3d 980, 987 (9th Cir. 2005) (collecting cases). Indeed, we have concluded that "[t]he recurrent theme . . . is that where the prosecution fails to disclose evidence . . . that would be valuable in impeaching a witness whose testimony is central to the prosecution's case, it violates the due process rights of the accused and undermines confidence in the outcome of the trial." *Horton v. Mayle*, 408 F.3d 570, 581 (9th Cir. 2005).

No one disputes here that June Patti's testimony was crucial to the district attorney's prosecution of Mellen for murder. Although the government offered ten witnesses in its case-in-chief,[9] the prosecutor recognized even at the time that "the bulk of the evidence" in the government's case would come from "a conversation between [Mellen] and a People's witness by the name of June Patti." The district attorney's word about the "likely damage" of the suppressed evidence is particularly strong evidence that the testimony was material. *Kyles*, 514 U.S. at 444; *see Silva*, 416 F.3d at 990 ("The prosecutor's actions can speak as loud as his words."). And the prosecutor's assessment has been confirmed many times over. In habeas proceedings, the state court observed that Patti's testimony was "the only evidence of Ms. Mellen's involvement in this crime." And at oral argument in this appeal, Detective Winn conceded that, without Patti's trial testimony, there "would not have been a conviction." Oral Argument at 13:00 ("We're not disputing the fact that her testimony is probably responsible for the conviction.").

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[9] The witnesses were (1) Jeremy Duncan, (2) June Patti, (3) Ogbonna Chinwaah, (4) Robert Marti, (5) Kenneth Whitehead, (6) Erin Riley, (7) Robert Monson, (8) Felicia Mena, (9) Talbot Terrell, and (10) Marcella Winn. Chinwaah was a deputy medical examiner in the county coroner's office; Riley and Monson were criminalists with the LAPD's serology unit; Duncan, Marti, Whitehead, Terrell, and Winn were homicide detectives and police officers; and Mena testified that on the night of the murder she observed Landrum, accompanied by unknown individuals, drive away from the Mellen Patch in Scott Kimball's BMW, carrying a heavy load in the trunk, and return about an hour later, without the heavy load, accompanied by one other man.

The issue of Patti's credibility is made all the more important because Patti testified to what amounted to a confession, to which she claimed to be the only witness. As the Supreme Court has noted, "A confession is like no other evidence. Indeed, 'the defendant's own confession is probably the most probative and damaging evidence that can be admitted against him.'" *Arizona v. Fulminante*, 499 U.S. 279, 296 (1991) (quoting *Bruton v. United States*, 391 U.S. 123, 139 (1968) (White, J., dissenting)). Patti provided the only "direct" evidence that connected Mellen to the crime. No fingerprints, DNA evidence, or eyewitness testimony placed Mellen at the scene. And because Patti and Mellen were the only people in the room at the time of the alleged confession, the trial turned, as Mellen's defense counsel put it at closing argument, on a decision between Patti's word and Mellen's.

Detective Winn nonetheless contends that Laura's statements were not material because Mellen's defense counsel had access to other more probative evidence of Patti's credibility. But we have rejected this argument before. "[T]he government cannot satisfy its *Brady* obligation to disclose exculpatory evidence by making some evidence available and claiming the rest would be cumulative. Rather, the government is obligated to disclose *all* material information casting a shadow on a government witness's credibility." *Carriger v. Stewart*, 132 F.3d 463, 481–82 (9th Cir. 1997) (en banc) (citation and internal quotation marks omitted) (emphasis in original). "[A] defendant's conviction in spite of his attempt at impeaching a key government

witness demonstrates only the inadequacy of the impeachment material *actually presented*, not that of the suppressed impeachment material; in light of the failure of the impeachment attempt at trial, the suppressed impeachment material may 'take[] on an even greater importance.'" *Silva*, 416 F.3d at 989 (quoting *Benn v. Lambert*, 283 F.3d 1040, 1055 (9th Cir. 2002)) (alteration in *Silva*).

The undisclosed statements were not cumulative of the other impeachment evidence presented at trial; they were of a different kind. *See United States v. Collicott*, 92 F.3d 973, 980 n.5 (9th Cir. 1996) (listing five types of impeachment evidence); *see also Gonzalez v. Wong*, 667 F.3d 965, 984 (9th Cir. 2011) ("Where the withheld evidence opens up new avenues for impeachment, it can be argued that it is still material."). The possibility for the defense to use statements from Laura—an immediate family member, a police officer, and a source unaffiliated with the drug culture of which both Mellen and Patti were a part—"would have provided the defense with a new and different ground of impeachment." *Benn*, 283 F.3d at 1056.

At trial, the best impeachment evidence that the defense could offer were Patti's own statements that she had lied to law-enforcement officers in the past, but even those statements did not have the same probative value as the possibility of hearing from a law-enforcement officer and Patti's immediate family member, who grew up with Patti and could testify to a lifetime, and a lifestyle, of habitual lies. The prosecution's reopening of direct testimony gave Patti the

chance to explain away, with success, the inconsistencies in her prior testimony as attempts to protect Mellen's reputation. And doing so, Patti may have even bolstered her own credibility further by also demonstrating a willingness to admit mistakes. *See* 3 Christopher B. Mueller & Laird C. Kirkpatrick, *Federal Evidence* § 6:102 (4th ed. 2018) (explaining how witnesses may repair credibility by explaining prior inconsistent statements). As we have recognized before, "[i]t is one thing for a witness to admit that he could lie; everyone can lie"; it is a different thing altogether when hard evidence, which cannot so easily be explained away, provides proof of past lies, deception, and manipulation. *Gonzalez*, 667 F.3d at 985.

Nor would Laura's statements have been duplicative of evidence that the defense possessed about Patti's prior misdemeanor convictions, prior drug use, or rumors that Patti had stolen Mellen's brother's car or stabbed Mellen's ex-boyfriend, all of which the prosecution discussed with defense counsel on the morning of the first day of trial. The defense could not impeach Mellen with her prior misdemeanor convictions because the state trial court determined that the convictions were not admissible impeachment evidence under the California Evidence Code.[10] And we have

[10] The "Truth in Evidence" amendment to the California Constitution, Cal. Const., art. I, § 28, subd. (d), abrogated the felony-convictions-only rule in criminal cases and gave criminal courts "broad discretion to admit or exclude acts of dishonesty or moral turpitude relevant to impeachment." *See People v. Wheeler*, 841 P.2d 938, 939 (Cal. 1992). Defense counsel, however, failed to protest on this ground.

recognized that evidence of prior drug use is not probative of a witness's credibility, absent other evidence linking the drug use to a "motivation, bias, or interest in testifying" or indicating that the witness was "intoxicated while testifying." *United States v. Kizer*, 569 F.2d 504, 505–06 (9th Cir. 1978). Nor were the rumors about Patti's interactions with Mellen's close associates probative of Patti's truthfulness—they reflected Patti's lack of respect for persons and property, but not Patti's reputation for lying. At best, the defense could have used Patti's feud with the Mellens to suggest a motive for Patti to lie against Mellen, but even that evidence would have been of minimal probative value, given that Patti's fights were limited to incidents involving Mellen's brother and ex-boyfriend, not Mellen herself. At worst too, the prosecution could have used the rumors to further link Patti and Mellen to each other, and to a drug culture that impugned both women.

Although Mellen later learned through her own investigation that Patti had been a paid informant for the El Segundo, Redondo Beach, and Torrance police departments, the prosecutor disclaimed any knowledge of Patti's role as a paid informant on the first morning of trial, so this evidence was never introduced. We think it likely that the government violated *Brady* a second time by failing to obtain and review Patti's status as an informant with other local law-enforcement agencies prior to trial, particularly when Patti was undisputedly the prosecution's star witness; Patti had previously disclosed to Detective Winn that she had helped another detective with a different

homicide investigation; and defense counsel specifically questioned whether Patti was a paid informant. *See Carriger*, 132 F.3d at 479–80 ("Because the prosecution is in the 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."). At a minimum, however, that Patti was a paid informant does not undermine the materiality of Laura's statements to Detective Winn, which the government also did not make available for Mellen's defense.

The only extrinsic evidence attacking Patti's character for truthfulness at trial was Mellen's own testimony that Patti was a liar. But, as the prosecution pointed out at trial, Mellen's obvious interest in the outcome of her case severely undercut the force of her testimony. *See Tennison*, 570 F.3d at 1091 ("[T]he availability of particular statements through the defendant himself does not negate the government's duty to disclose." (citation omitted)); *see also Bailey v. Rae*, 339 F.3d 1107, 1116 (9th Cir. 2003) ("Independent corroboration of the defense's theory of the case by a neutral and disinterested witness is not cumulative of testimony by interested witnesses." (quoting *Boss v. Pierce*, 263 F.3d 734, 735 (7th Cir. 2001)).

Had the defense known to call Laura as a witness, Laura's trial testimony could have highlighted the evidence that demonstrated that Patti was not testifying truthfully. Had Laura testified to Patti's reputation as a liar, the jury would have had an opportunity to evaluate Patti's prior inconsistent statements in a different

light, and likely would have given those prior inconsistent statements more weight, particularly given Laura's profession and Laura and Patti's shared family history. Moreover, as illustrated by Mellen's habeas proceedings, Laura was the gateway to a whole host of other information about Patti's unreliability as a paid informant and her many, untruthful contacts with law enforcement. Mellen argued to the district court that, had the defense had the opportunity to question Laura, it might have unraveled earlier that Patti had been an unreliable informant for the Torrance police department, and the defense could have called a number of other witnesses, including Torrance police officers, who would have testified to Patti's reputation as a liar. The district court dismissed Mellen's arguments, suggesting that they amounted to no more than a "nursery rhyme" that schoolchildren use to teach themselves that "a kingdom might be lost 'all for the want of a horseshoe nail.'" We do not find Mellen's arguments so fanciful, and conclude that the district court was wrong to dismiss them.

Detective Winn further contends that because Mellen's defense counsel knew that Patti had a sister who was a Torrance police officer and had access to much of the other evidence that could have been used to impeach Patti, this case is analogous to *Raley v. Ylst*, 470 F.3d 792, 804 (9th Cir. 2006), *Rhoades v. Henry*, 598 F.3d 495, 502 (9th Cir. 2010), and *Cunningham v. Wong*, 704 F.3d 1143, 1154 (9th Cir. 2013), where we concluded that a *Brady*/*Giglio* violation could not lie where the accused is aware of the essential facts to be

established by the evidence. But *Raley, Rhoades*, and *Cunningham* are readily distinguishable. In *Raley*, the evidence suppressed was the defendant's own medical records, 470 F.3d at 803–04; in *Rhoades*, the evidence was the defendant's own statement that he invoked his right to remain silent, 598 F.3d at 502; and, in *Cunningham*, the evidence was the victim's medical records and autopsy report, 704 F.3d at 1154.

In each of those cases, we noted that the defendant was aware of the "existence of the records he claims were withheld," *id.* (quoting *Raley,* 470 F.3d at 804), because the defendant either participated personally in the creation of the records or the records were disputed in the case, *see id.* Thus, it was logical for us to conclude that the defendant "could have sought the documents through discovery." *Id.* (quoting *Raley*, 470 F.3d at 804). But Laura's statement is different than the evidence withheld in *Raley, Rhoades*, and *Cunningham* because the defense did not know that the statement existed. At most, the defense knew that Patti and her sister were feuding; it had no reason to know that the sisters' feud was fueled by Patti's reputation as a liar. Based on the limited evidence available to the defense about Patti's relationship with Laura, it was not reasonable to expect that the defense would have requested to depose Laura or would even have prioritized speaking with her without knowing about the statements that Laura made to Detective Winn.

This case is also unlike *Turner v. United States*, where the Supreme Court last year concluded that the withheld evidence was not *Brady* evidence because it

was "too little, too weak, or too distant from the main evidentiary points." 137 S. Ct. at 1894. *Turner* involved the brutal rape and murder of Catherine Fuller, in what the government believed had been a group attack. *Id.* at 1889. The withheld evidence in *Turner* was a witness's statement that he had seen two men, James McMillan and Gerald Merkerson, run into the alley where Fuller was murdered and stop near the garage where she had allegedly been raped. *Id.* at 1891. Turner's habeas counsel argued that this statement was material because after Fuller's murder, McMillan assaulted and raped two other women of comparable age in the same neighborhood, and the suppressed statement suggested that McMillan was returning to the scene of the crime to cover his tracks. *Id.* at 1897 (Kagan, J., dissenting). The Court found the argument unpersuasive, relying on the testimony of seven other government witnesses who affirmed that Fuller had been killed in a group attack, and reasoning that, given the strength of the evidence presented to the jury, the withheld evidence was not sufficient to undermine confidence in the verdict. *Id.* at 1894.

Because the evidence supporting Mellen's conviction was far less extensive than the seven witnesses that the government presented in *Turner*, this case is closer to *Kyles* and *Carriger*, than it is to *Turner.* There is no dispute here that Patti was the prosecution's star witness and the only witness that linked Mellen to Richard Daly's murder. The LAPD and Los Angeles District Attorney concurred in Mellen's habeas petition, and Mellen has been exonerated of any

involvement in the crime. *Kyles* considered a similar fact pattern, where the court recognized that " 'the essence of the State's case' was the testimony of eyewitnesses," two in particular whose credibility could have been "substantially reduced or destroyed" by the withheld evidence. 514 U.S. at 441. The facts were even more dramatic in *Carriger*, where the sole witness to testify to Carriger's confession was a known habitual liar who himself later confessed to committing the murder for which Carriger was charged. 132 F.3d at 466–68. We are therefore convinced that it is *Kyles* and *Carriger*, not *Turner*, that dictate the outcome here.

In sum, had the jury learned that Laura Patti—the star witness's own sister and a law-enforcement officer—believed that June Patti was "the biggest liar" she had ever met, it would have put the government's critical witness in a new light. Had this evidence been turned over to the defense or pursued by either side, the case may never have even gone to the jury. Given that the prosecution was so heavily dependent on June Patti's testimony, we conclude that "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Kyles*, 514 U.S. at 433 (citations omitted). Laura's statements, if made, were undoubtedly material to Mellen's conviction for murder.

2. Deliberate Indifference

We are also convinced that the evidence that Mellen presented at summary judgment raised a genuine

dispute of material fact as to whether Detective Winn acted with deliberate indifference to or reckless disregard for Mellen's rights and to the truth by withholding Laura's statement from prosecutors. *See Tennison*, 570 F.3d at 1089; *see also Tatum v. Moody*, 768 F.3d 806, 821 (9th Cir. 2014) (quoting *Gantt v. City of Los Angeles*, 717 F.3d 702, 708 (9th Cir. 2013), for the deliberate indifference standard). Whether a defendant acted with deliberate indifference or reckless disregard "is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence." *Lemire v. Cal. Dep't of Corrs. & Rehab.*, 726 F.3d 1062, 1078 (9th Cir. 2013) (citation omitted). Summary judgment should not have been granted unless the district court concluded that "no reasonable jury viewing the summary judgment record could find by a preponderance of the evidence that the plaintiff is entitled to a favorable verdict." *George v. Edholm*, 752 F.3d 1206, 1214 (9th Cir. 2014) (citation and internal quotation marks omitted).

The undisputed evidence demonstrates that Detective Winn knew that Patti's testimony was critical to Mellen's prosecution. Patti was the only witness to incriminate Mellen in the murder. And, as the lead detective who had taken Patti's initial oral and written statements, Detective Winn was aware of the subject of Patti's statements, where Patti claimed to be the only witness to Mellen's confession. As the lead investigator, Detective Winn also was present during trial, where Patti's credibility was a central issue; Patti's many prior inconsistent statements even forced the

prosecution to put Detective Winn on the stand to clarify the testimony. So, Detective Winn no doubt knew that Patti's credibility was of utmost importance.

That the withheld statements came from a particularly credible source makes Detective Winn's failure to disclose them to the prosecutor all the more culpable. Laura Patti was not only an immediate relative who had grown up with June Patti, she was also a law-enforcement officer, aligned with the values of trustworthiness and dependability typically associated with that profession. Because of this, Laura's statements should have carried even more weight with Detective Winn. From the defense's perspective then, a juror could reasonably find that Detective Winn was reckless in withholding a *fellow law-enforcement officer's* opinion, even if that same juror would conclude that withholding a *layperson's* opinion was no more than negligent.

Although Detective Winn now disputes that she spoke with Laura Patti before trial, whether this conversation took place should have been a factual question for the jury to resolve at the § 1983 trial; it is not a question that the district court could resolve at summary judgment. If Laura's statements are to be believed, as they must at summary judgment, then Detective Winn called Laura to investigate Patti's credibility before trial. Laura stated in her deposition that Detective Winn did not inquire further when Laura told Detective Winn that Patti was a habitual liar, and it is undisputed that Detective Winn never communicated Laura's statements to the district

attorney. A reasonable juror could conclude from these facts that Detective Winn investigated Patti's credibility and communicated only evidence that favored the government, while willingly suppressing unfavorable evidence. In fact, Detective Winn's decision not to inquire further into Laura's claims is the hallmark of a "deliberate action[] to avoid confirming suspicions"—an action tantamount to knowledge under the law. *See United States v. Heredia*, 483 F.3d 913, 917 (9th Cir. 2007) (en banc); *see also United States v. Jewell*, 532 F.2d 697, 699–700 (9th Cir. 1976) (en banc). These facts alone, if proven at trial, would have established the mental state necessary to prove a violation of Mellen's due process rights.

But, there is more. At the time of the investigation, Detective Winn was an experienced detective, who had participated in a hundred homicide investigations, and who had the training and experience to know the value of Laura's statements. Detective Winn testified in deposition that she knew she had an obligation "to report and summarize what each witness said," and she claimed, based on this obligation, that if "Laura Patti or anybody told me that June Patti was not credible or she was a liar, I would have communicated that to the district attorney's office." And Detective Winn's own assessment was supported at summary judgment by Mellen's police practices expert, Roger Clark, who explained that, "[a]ny reasonably trained officer or detective would have vetted the credibility of the key witness in this case." Because Detective Winn acknowledges that she was obligated to disclose

Laura's statements, if made, and Clark's report would have demonstrated that any reasonable police officer would have done the same, a reasonable jury could conclude that Detective Winn knowingly suppressed the statements to secure a conviction.

Other evidence suggests that Detective Winn bolstered Patti's credibility in the early stages of the investigation. The discrepancies between Patti's oral statement and the written statement prepared by Detective Winn suggest that Detective Winn modified Patti's written statement to conform to the physical evidence the police had found and to feed Patti information that Patti did not originally offer to investigators. For example, the written statement added that Daly's body had been set on fire in San Pedro, a fact that the coroner's report had suggested but that Patti had not mentioned in her initial oral statement. The written statement also added details about when and where the perpetrators left Daly's body in San Pedro that did not appear in Patti's oral statement. And, remarkably, even June Patti questioned the credibility of her own written statement when she testified at the preliminary hearing that Detective Winn had forced her to alter the statement to implicate a fourth person. But no one followed up to investigate these claims.[11] Detective Winn should have known how important these details were, particularly

[11] We also question whether LAPD practices at the time, which allowed detectives to file the written statement in the murder book but to file the tape recording of the oral statement elsewhere, facilitated these discrepancies.

when she had also collected information from various other sources that indicated three other men had committed the crime.

And still other evidence suggests that Detective Winn would have taken any means necessary to secure Mellen's conviction. Mellen's evidence suggests that Detective Winn knowingly exceeded the scope of a search warrant for Kimball's car; suppressed the content of her conversation with another detective, Doral Riggs; spoke with a suspect without counsel present; and failed to investigate other credible witness accounts of Daly's murder. And Detective Winn's willingness to ignore Mellen's requests for counsel during her initial interrogation is indicative of the aggressive police tactics which Detective Winn used to investigate this case.

That Laura believed that Detective Winn was justified to proceed with Patti as a witness is beside the point. It is for a jury to determine whether a reasonable officer in Detective Winn's position acted with deliberate indifference to Mellen's due process rights, taking into account the seriousness of the charges levied against Mellen, what was known to Detective Winn at the time, and evidence about what a reasonable police officer would do in the same position.

We conclude that this evidence raised a genuine dispute of material fact that Detective Winn acted with deliberate indifference or reckless disregard of Mellen's due process rights when she failed to disclose

Laura's statements about her sister's reputation for honesty to the prosecutor.

B. Clearly Established Law

We next must decide whether it was clearly established, in 1997, that police officers had a duty to disclose material impeachment evidence to prosecutors. This is not an open question in our Circuit.

In *Carrillo v. County of Los Angeles*, we concluded that "[t]he law in 1984 clearly established that police officers were bound to disclose material, exculpatory evidence." 798 F.3d 1210, 1219 (9th Cir. 2015). *Carrillo* cited approvingly *United States v. Butler*, 567 F.2d 885 (9th Cir. 1978) (per curiam), an even earlier case that concluded that police investigators violate *Brady* when they fail to disclose material impeachment evidence to prosecutors. *Carrillo*, 798 F.3d at 1220 (citing *Butler*, 567 F.2d at 891); *see also id.* at 1222 ("[T]he vast majority of circuits to have considered the question have adopted the view that police officers were bound by *Brady*."). In *Butler*, we observed that "[s]ince the investigative officers are part of the prosecution, the taint on the trial is no less if they, rather than the prosecutor, were guilty of nondisclosure." 567 F.2d at 891. There, the impeachment evidence was the officers' assurances to the witness that he would be treated favorably by the judge if he testified successfully in the criminal trial—evidence that could have been used to undermine the credibility of the witness's testimony. *Carrillo* also relied on *Kyles*, the case where the Supreme Court

expressly extended *Brady* obligations to police officers. *Carrillo*, 798 F.3d at 1221 (quoting *Kyles*, 514 U.S. at 438). *Kyles*, decided in 1995, involved police officers' suppression of prior inconsistent statements that defense counsel could have used to impeach key eyewitnesses in a homicide trial. 514 U.S. at 441–54. We noted in *Carrillo* that "*Kyles* itself *rejected* the state's argument that 'it should not be held accountable under *Bagley* and *Brady* for evidence known only to police investigators and not to the prosecutor.'" 798 F.3d at 1221 (quoting *Kyles*, 514 U.S. at 438).

Detective Winn offers no meaningful way to distinguish *Carrillo, Butler*, and *Kyles*, and we agree that these cases are controlling. We therefore reverse the district court's grant of summary judgment for Detective Winn on Mellen's § 1983 claim premised on a violation of her due process rights, and we remand for further proceedings.

C. Familial Association Claims

The district court also granted summary judgment on Mellen's children's claims, which were dependent on Mellen's due process claim. Because Mellen's children's associational claims rise and fall with Mellen's due process claim, we must also reverse the grant of summary judgment on these claims and remand for further proceedings. *See Crowe v. Cty. of San Diego*, 608 F.3d 406, 441–42 (9th Cir. 2010) (concluding that unlawful incarceration due to police misconduct qualifies as "[u]nwarranted state interference with the

relationship between parent and child" and violates substantive due process (internal quotation marks and citations omitted)).

D. Police Expert Opinion

The district court abused its discretion in striking the declaration of police practices expert, Roger Clark. *See Estate of Barabin v. AstenJohnson, Inc.*, 740 F.3d 457, 460 (9th Cir. 2014) (en banc) (standard of review). The district court mistakenly concluded that a police practices expert cannot assist the jury in making the legal determination about whether an officer's conduct was "reasonable." But Mellen did not offer Clark's expert declaration for a legal conclusion that Detective Winn's conduct was unreasonable; rather, she offered the report as circumstantial evidence of Detective Winn's state of mind and to show that Detective Winn's failure to disclose Laura's statement deviated far from the norm of what would be expected of a reasonable police officer in Detective Winn's position. The report should have been admitted to assist the trier of fact in determining whether Detective Winn's conduct deviated so far from institutional norms that the jury could conclude that Detective Winn was reckless or deliberately indifferent to Mellen's constitutional rights. *See United States v. Christian*, 749 F.3d 806, 811 (9th Cir. 2014); *see also Jimenez v. City of Chicago*, 732 F.3d 710, 721–22 (7th Cir. 2013) (admitting police practices expert testimony in a § 1983 civil suit as circumstantial evidence of reckless misconduct).

III.

Susan Mellen was convicted for murder based solely on the testimony of June Patti. Mellen's evidence at summary judgment raises a genuine dispute of material fact as to whether Detective Winn knew that June Patti was a liar, and failed to disclose material, exculpatory, evidence of that fact. Summary judgment should not have been granted on this record. Mellen should have the opportunity to prove, after nearly two decades, whether wrongful conduct played a role in her conviction, and whether she deserves compensation for her wrongful imprisonment.

REVERSED and REMANDED.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. CV 15-3006-GW (AJWx) Date December 22, 2016

Title *Susan Mellen, et al. v. City of Los Angeles, et al.*

Present: The Honorable	GEORGE H. WU, UNITED STATES DISTRICT JUDGE	
Javier Gonzales Deputy Clerk	None Present Court Reporter/ Recorder	Tape No.

Attorneys Present for Plaintiff:	Attorneys Present for Defendants:
None Present	None Present

PROCEEDINGS: **IN CHAMBERS – RULING ON DEFENDANTS' JOINT MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, MOTION FOR PARTIAL SUMMARY JUDGMENT [78]**

Attached hereto is the Court's Final Ruling on Defendants' Joint Motion [87]. Defendants' Motion is GRANTED. Counsel for Defendants will prepare and file a proposed judgment forthwith.

_____ : _____

Initials of Preparer JG

Mellen v. City of Los Angeles, et al., Case No. CV-15-3006-GW (AJWx)

Final Ruling on Defendant Winn's Motion for Summary Judgment or, in the Alternative, Partial Summary Judgment

I. Background

Susan Mellen ("Susan") and her three children – Julie Carroll ("Carroll"), Jessica Curcio ("Curcio"), and Donald Besch ("Besch") (collectively, "Plaintiffs") – originally brought this lawsuit against the City of Los Angeles (the "City"), Los Angeles Police Detective Marcella Winn ("Winn"), and Winn's supervisor Richard Hoffman ("Hoffman") (collectively, "Defendants") raising eight causes of action all based on alleged violations of 42 U.S.C. § 1983. *See generally* Compl., Docket No. 1. Remaining in the case are three causes of actions against Winn, including: two claims brought by Susan for (1) deprivation of civil rights for failure to provide information required by *Brady v. Maryland*, 373 U.S. 83 (1963) ("*Brady* violations"), and (2) deprivation of civil rights for "deliberate indifference to constitutional right[s] in refusal to investigate obvious evidence demonstrating [Susan] Mellen's innocence"; and one claim brought by Carroll, Curcio, and Besch for violation of Fourteenth Amendment rights.[1] *See generally* First Amended Complaint ("FAC"), Docket No. 35.

[1] On March 18, 2016, the parties agreed to dismiss the second cause of action for joint action/conspiracy to violate civil rights for *Brady* violations and the fifth cause of action for joint

In May 1998, Susan was convicted of the July 21, 1997 murder of Richard Daly ("Daly"). *See id.* ¶ 2. Susan was sentenced to life without the possibility of parole and was in custody for over 17 years in maximum security prisons until her release in 2014. *Id.* ¶ 42. On October 10, 2014, Judge Mark Arnold ("Judge Arnold") of the Los Angeles County Superior Court granted Susan's habeas petition. *Id.* ¶ 42. On November 21, 2014, Judge Arnold granted Susan's unopposed motion for a finding of innocence by a preponderance of evidence pursuant to California Penal Code § 1485.55(b). *Id.* ¶ 43; Ex. 2 (Order Granting Motion for Finding of Innocence).

Now pending before the Court is Winn's Motion for Summary Judgment or, in the Alternative, Partial Summary Judgment ("MSJ"). *See* Docket No. 78. Plaintiffs have filed an Opposition (*see* Plaintiffs' Amended Opposition to MSJ ("Opp'n"), Docket No. 103) to which

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action/conspiracy to violate civil rights for false evidence violations. *See* Docket No. 71. On March 23, 2016, the parties agreed to dismiss Defendant Hoffman – and therefore the sixth cause of action for deprivation of civil rights pursuant to § 1983 due to supervisorial liability – from the case. *See* Docket No. 76. On April 1, 2016, after the instant Motion for Summary Judgment was filed, the parties agreed to dismiss the City, and therefore the eighth cause of action for municipal liability under § 1983 pursuant to *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690 (1978). *See* Docket No. 86. On June 10, 2016, the parties agreed to dismiss the fourth cause of action for alleged false evidence violations. *See* Docket No. 209.

Winn has replied.[2] *See* Reply of Def. Winn to Opp'n ("Reply"), Docket No. 110. In addition, the parties have filed supplemental briefing as requested by the Court. *See* Pls. Supp'l Br., Docket No. 205; Def. Winn's Supp'l Br., Docket No. 211.

II. Legal Standard

Summary judgment is proper when the pleadings, the discovery and disclosed materials on file, including any affidavits/declarations, show that "there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law."[3] Fed. R. Civ. P. 56; *see also Miranda v. City of Cornelius*, 429 F.3d 858, 860 n.1 (9th Cir. 2005). To satisfy its burden at summary judgment, a moving party *with* the burden of persuasion must establish "beyond controversy every essential element of its [claim or defense]." *S. Cal. Gas Co. v. City of Santa Ana*, 336 F.3d 885, 888 (9th Cir. 2003); William W. Schwarzer, et al., *Cal. Prac. Guide Fed. Civ. Proc. Before Trial* (The Rutter Group 2016) § 14:126 at 14-45. By contrast, a moving party

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[2] The MSJ was filed jointly by the City and Winn; however, the City was thereafter dismissed from the case. *See* Docket No. 86. As such, the Reply was filed solely by Winn.

[3] Under Federal Rule of Civil Procedure 56, the same legal standard applies to motions for partial summary judgment and ordinary motions for summary judgment. *See* Fed. R. Civ. P. 56(a): *see also California v. Campbell*, 138 F.3d 772, 780 (9th Cir. 1998); *Barnes v. Cnty. of Placer*, 654 F.Supp.2d 1066, 1070 (E.D. Cal. 2009), *aff'd*, 386 F.App'x 633 (9th Cir. 2010) ("A motion for partial summary judgment is resolved under the same standard as a motion for summary judgment.").

without the burden of persuasion "must either produce evidence negating an essential element of the nonmoving party's claim or defense or show that the nonmoving party does not have enough evidence of an essential element to carry its ultimate burden of persuasion at trial." *Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Cos., Inc.*, 210 F.3d 1099, 1102 (9th Cir. 2000).

> If the party moving for summary judgment meets its initial burden of identifying for the court the portions of the materials on file that it believes demonstrate the absence of any genuine issue of material fact, the nonmoving party may not rely on the mere allegations in the pleadings in order to preclude summary judgment[, but instead] must set forth, by affidavit or as otherwise provided in Rule 56, *specific facts* showing that there is a genuine issue for trial.

T.W. Elec. Serv., Inc., v. Pac. Elec. Contractors Ass'n, 809 F.2d 626, 630 (9th Cir. 1987) (internal citations and quotation marks omitted, emphasis in original) (citing, among other cases, *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986)). "A non-movant's bald assertions or a mere scintilla of evidence in his favor are both insufficient to withstand summary judgment." *See FTC v. Stefanchik*, 559 F.3d 924, 929 (9th Cir. 2009). In addition, the evidence presented by the parties must be admissible. *See* Fed. R. Civ. P. 56(e); *see also Pelletier v. Fed. Home Loan Bank of S.F.*, 968 F.2d 865, 872 (9th Cir. 1992) (to survive summary judgment, the non-movant party "ordinarily must furnish affidavits containing admissible evidence tending to show the existence of a genuine

dispute of material fact"). Conclusory, speculative testimony in affidavits and moving papers is insufficient to raise genuine issues of fact and defeat summary judgment. *See Thornhill Publ'g Co., Inc. v. GTE Corp.*, 594 F.2d 730, 738 (9th Cir. 1979). With that said, courts do not make credibility determinations or weigh conflicting evidence at the summary judgment stage, and must view all evidence and draw all inferences in the light most favorable to the non-moving party. *See T.W. Elec.*, 809 F.2d at 630-31 (citing *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574 (1986)); *see also Motley v. Parks*, 432 F.3d 1072, 1075, n.1 (9th Cir. 2005) (en banc).

III. Analysis

A. Requests for Judicial Notice

Under Federal Rule of Evidence 201(b), a court may take judicial notice of facts that are not in dispute either because they are "(1) generally known within the territorial jurisdiction of the trial court, or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). Defendants request judicial notice of three documents, including (1) the certified copy of the docket from Susan's criminal case, (2) the reporter's transcript from the preliminary hearing in Susan's criminal case, and (3) excerpts from the reporter's transcript of the jury trial in Susan's criminal case. *See* Defendants' Joint Request for Judicial Notice ("Def's RJN") at ¶¶ 1-3, Docket No. 80.

A court may take judicial notice of a public record not for the truth of the facts recited in the document, but for the existence of the matters therein that cannot reasonably be questioned. *See*, *e.g.*, *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001) (taking judicial notice that an extradition hearing was held); *Walker v. Woodford*, 454 F.Supp.2d 1007, 1022 (S.D. Cal. 2006), *aff'd in part*, 393 F.App'x 513 (9th Cir. 2010) (citations omitted) ("Documents that are part of the public record may be judicially noticed to show, for example, that a judicial proceeding occurred or that a document was filed in another court case, but a court may not take judicial notice of findings of facts from another case."). As such, this Court would take judicial notice of the referenced documents on those limited grounds.

Plaintiffs request judicial notice of five exhibits, including (1) published newspaper articles related to the Daly murder, *see* Plaintiffs' Request for Judicial Notice ("Pl.'s RJN") Ex. 57, Docket No. 90-1; (2) a calendar from the year 1997, *see* Pl.'s RJN Ex. 67, Docket No. 90-2; (3) the preliminary hearing transcript from Susan's criminal case, *see* Pl.'s RJN Ex. 68, Docket No. 90-3, 90-4; (4) the hearing transcript from Susan's habeas proceeding, *see* Pl.'s RJN Ex. 69, Docket No. 90-5; and (5) the Los Angeles Superior Court's Order granting Susan's motion for finding of innocence by preponderance of the evidence. *See* Pl.'s RJN Ex. 70, Docket No. 90-6. A court may take judicial notice of news reports and press releases to show that the "market [or public] was aware [or could have been aware] of the

information contained in news articles." *Scripps-America, Inc. v. Ironridge Glob. LLC*, 119 F.Supp.3d 1213, 1231 (C.D. Cal. 2015) (internal quotations and citations omitted). Judicial notice of these documents is for the purpose of indicating what the public was [or could have been] aware of at the time, "not whether the contents of those articles were in fact true." *Id.* Additionally, the 1997 calendar is a matter not subject to reasonable dispute. *See Ravens v. Iftikar*, 174 F.R.D. 651, 667 (N.D. Cal. 1997) (taking judicial notice of a calendar). As discussed *supra*, a court may take judicial notice of the reporter's transcripts from the preliminary hearing and habeas proceedings in regards to what was said therein. Finally, the Los Angeles Superior Court's Order granting Susan's motion for finding of innocence by preponderance of the evidence was attached as an exhibit to the First Amended Complaint (*see* FAC Ex. 2, Docket No. 35), and thus, this Court can take notice of it. *See Stewart v. Wu*, Case No. CV 15-3877-AB (AS), 2016 U.S. Dist. LEXIS 150635 *2 n.1 (C.D. Cal. Sept. 4, 2016) (taking "judicial notice of the . . . Complaint and attached exhibits filed in this action.").

B. Undisputed Facts[4]

Winn was an officer with the Los Angeles Police Department ("LAPD") from 1986 until her retirement on June 30, 2015, and was assigned to the LAPD's South Bureau Homicide Unit ("SBH") from 1994 to

[4] Some of the underlying "undisputed" facts cited herein have been challenged in part by Plaintiffs or Winn. However, the Court has reviewed all of the parties' disputes and has included in this summary only facts that are supported by the cited evidence, altering the proffered facts if necessary to accurately reflect the evidence. To the extent that the cited "undisputed" facts have been purportedly challenged, the Court finds that the stated disputes: (1) fail to actually controvert the proffered undisputed fact, (2) dispute the fact on grounds not germane to the discussion delineated below, and/or (3) fail to cite admissible evidence in support of the disputing party's position and therefore fail to establish that the dispute actually exists. As such, the Court treats such facts as undisputed. Any proffered facts not included in this Tentative Ruling: (1) were found to be duplicative of other facts set forth herein, (2) were improper opinions or conclusions rather than facts, (3) were unsupported by admissible evidence, and/or (4) were deemed extraneous or irrelevant to the Court's present analysis.

Additionally, it is undisputed that, prior to both the preliminary hearing and the trial in the underlying criminal case, Susan's defense counsel was given a copy of the Los Angeles Police Department's "Murder Book" prepared by Winn and her partner which was "the actual file on this investigation. . . . [containing a 'Chronological Record' of the investigation,] notes, reports and all other pertinent information about the investigation." *See* Decl. of Marcella Winn re Defs. Joint Mot. for Summ. J. ("Winn Decl.") at ¶ 6, Docket No. 78-4 (portions of Murder Book are included in the Defendants' Joint Appendix of Exhibits, Docket No. 79); *see also* SSUF at ¶ 85, Docket No. 110-2. References to the contents of the Murder Book are made, not necessarily for the truth of the items, but simply to show that the information was provided to Susan's counsel by the Los Angeles Police Department well before the trial in the criminal case.

1999. *See* Defs. Response to Pls. Opp'n to Defs. Statement of Undisputed Material Facts ("SSUF") ¶ 4, Docket No. 110-2. Winn was assigned to the investigation of the Daly murder, along with her partner Detective Talbert Terrell ("Terrell"), who is now deceased. *Id.* ¶¶ 4, 7(a).[5]

Until February 1997, Susan lived with Curcio and Besch at one of two homes located at 16416 Firmona Avenue in Lawndale, collectively known as the "Mellen Patch." *Id.* ¶¶ 26; 18(a). Susan, Curcio, and Besch occupied the "rear" house; Susan's brother (Robert Mellen), Robert's wife (Wende Mellen), and their two children occupied the "front" house. *Id.* ¶ 19(a). At some point after February 1997, Susan, Curcio, and Besch moved to Redondo Beach to live with Susan's boyfriend, Thomas Schenkelberg ("Schenkelberg"). *Id.* ¶ 21(a). Sometime in July 1997, Susan and Schenkelberg decided to move to Gardena with Curcio and Besch. *Id.* ¶ 25(a). Even after leaving the rear house at the Melloen [sic] Patch, some of the family's belongings were stored there. *Id.* ¶¶ 21(a), 27(a). Susan picked up the keys to the Gardena house on Sunday, July 20, 1997. *Id.* ¶ 26(a).

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[5] Plaintiffs proffered their own "Additional Undisputed Facts" which they designated numerically beginning at "1," thereby overlapping with Defendants' numbering. For clarification, the Court has added the letter "a" to the numbers for each of Plaintiffs' cited Additional Facts.

1. The Homicide

Shortly before midnight on Monday, July 21, 1997, Winn was notified of and assigned to investigate a homicide involving a body that had been found in San Pedro that evening. *Id.* ¶ 6. The body was discovered ablaze near a trash can and chain link fence; the body was found with a backpack, but no identification. *Id.* ¶¶ 6-7, 3(a). Two women and one man called 911 to report the fire. *Id.* ¶ 4(a).

The Los Angeles City Fire Department arrived on the scene of the burning body at 10:55 PM, followed by LAPD Officers at 10:57 PM, who noted in their report that there were approximately 20 citizens in the alley on their arrival. *Id.* ¶ 6(a). The initial investigation revealed that the victim was a Caucasian male who sustained severe blunt force trauma and had been gagged, bound, wrapped in a blanket and set on fire. *Id.* ¶ 7. The victim remained unidentified for approximately two weeks while detectives searched for his identify. *Id.* ¶ 10.

Detective Hoffman was the supervising detective on the scene and prepared a press release stating that the "Los Angeles City Fire Department responded to a reported trash fire in the alley to the rear of 864 W. 1st St. in San Pedro. . . . [and] discovered the burning body. . . ." *Id.* ¶ 8(a). Local newspapers initially reported the discovery of the victim's body and later the various investigative updates, including the location where the body was found and the facts that the victim had been bound, gagged and beaten to death. *Id.*

¶ 11(a); 12(a). On or before August 9, 1997, the press received access to the autopsy report which indicated that the victim had died of "multiple blunt-force trauma to the head."[6] *Id.* ¶ 14(a).

On August 1, 1997, there was an intentional fire started in the kitchen of the rear house at the Mellen Patch (where it was eventually determined that the Daly murder took place) which caused extensive damage to the structure. *Id.* ¶ 12.

2. The Investigation

a. Telephone Conversations with "Shoes"

On August 2, 1997, an individual who stated that her name was "Shoes" called Detective Baer of the LAPD Harbor Division, and reported that the victim was Rick Daly and that he had been murdered by a "Jeff Millen or Mullen" and "Piasso"[7] at 165th and "Gravilla" Streets in Lawndale.[8] *Id.* ¶ 14. Shoes stated that the victim had been killed in the rear of two houses that were located on the property at the Northeast corner of the intersection. *Id.* ¶ 14; MSJ Ex. 3 at

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[6] The final Autopsy Report of the July 23, 1997 examination of Rick Daly's body was dated "08-25-97" and indicated that "Death is due to multiple blunt force head trauma *and airway obstruction* [emphasis added]." *See* pages 1 and 9 of Autopsy Report, section 19 of the Murder Book. Both Winn and Terrell are listed as witnesses to the autopsy. SSUF ¶ 142(a).

[7] *See* footnote 9, *infra.*

[8] "Gravilla" is actually Grevillea Street. Additionally, the Court takes judicial notice that the intersection of 165th and Grevillea Streets is about one block away from the Mellen Patch.

1, Docket No. 79-1 at 19. Shoes also stated that the victim was transported in Jeff's car and dumped in Redondo Beach. SSUF ¶ 43(a), Docket No. 110-2; MSJ Ex. 3 at 1, Docket No. 79-1 at 19. The first call was not recorded by Detective Baer; however, he wrote a message to Terrell describing the call, and the contact was noted in the Murder Book. *Id.* ¶ 14, Docket No. 110-2.

Later that day, Shoes called Detective Baer again and stated that the murder had taken place at 16416 Firmona Street in Lawndale, which was the address for the back house of the Mellen Patch. *Id.* ¶¶ 15, 43(a), 62(a); MSJ Ex. 3 at 3, Docket No. 79-1 at 21. Shoes stated that the individuals who had killed Daly lived in the front house of the Mellen Patch, at 4579 W. 165th Street, along with Bob Mellen, his wife Wende, and their daughter Jennie. SSUF ¶ 43(a), Docket No. 110-2; MSJ Ex. 3 at 3, Docket No. 79-1 at 21. Shoes also disclosed that a woman named "Cindy" was involved in the murder, along with "Payaso," "Skip," and two other "guys" whose names she did not know. SSUF ¶ 43(a), Docket No. 110-2; MSJ Ex. 4 at 1-3, Docket No. 79-1 at 23-25. Shoes explained that she had mistakenly called Skip "Jeff" during her first call to Detective Baer. *Id.* In addition, Shoes stated that the rear house had been burned by the "same guys" because "they didn't want any evidence of anything showing up." *Id.* Shoes indicated that she was willing to help obtain more information as long as her name remained anonymous and offered to assist in uncovering the identity of the two other "guys." She further said that Wende Mellen would likely be willing to share information as well. *Id.*

The second call was recorded by Detective Baer and shared with Terrell, and a note about the second call was made in the Chronological Record/Murder Book. SSUF ¶ 15, Docket No. 110-2.

On August 6, 1997, Winn listened to the recording of Baer's call with Shoes. *Id.* ¶ 19. In her deposition, Winn conceded that Shoes was a witness that she "would want to talk to because of the information [Shoes] provided." *Id.* ¶ 44(a); Transcript of Marcella Winn's Deposition ("Winn Dep. Tr.") at 481:20-482:9; 484:12-23, Docket No. 97-9. However, other than the two calls from Shoes to Detective Baer, there is no indication in the Murder Book as to what efforts Winn (or any other LAPD officer) made to contact Shoes regarding the Daly murder. SSUF ¶ 45(a), Docket No. 110-2.

b. Lisa Postert Interview

On August 5, 1997, Winn met with a Redondo Beach Police Department informant, Lisa Postert ("Postert"), who told Winn that three gang members, "Ghost," "Wicked," and "Payaso," killed Daly inside Susan's residence at 16416 South Firmona Avenue in Lawndale, with assistance from "Skip."[9] *Id.* ¶¶ 16,

[9] In the search warrant issued for the Mellen Patch, "Ghost" was identified as Chad Landrum ("Landrum"); "Payaso" was identified as Santo Alvarez ("Alvarez"); "Wicked" was identified as Lester Monllor ("Monllor"); and "Skip" was identified as Scott Kimball ("Kimball"). *See* MSJ Ex. 7 at MELLEN00124-127, Docket No. 79-2 at 18-21. Winn obtained these names from the Los Angeles Sheriff's Department. *See* SSUF ¶ 20, Docket No.

46(a); MSJ Ex. 7 at MELLEN001233-235, Docket No. 79-2 at 16-18. Postert stated that the three men kicked and beat up Daly while Landrum struck him with a claw hammer, and that the men then bound Daly and transported his body to San Pedro in Kimball's car, where they proceeded to set the body on fire. *Id.* Postert did not implicate Susan in the murder and told Winn that Susan was "living with someone named Tom on Meyer Lane."[10] SSUF ¶¶ 47(a), 48(a), Docket No. 110-2; Winn Dep. Tr. at 523:6-15, Docket No. 97-9.

On the same day, Winn learned that Kimball and Alvarez were in police custody on another matter. SSUF ¶¶ 17, 19, 50(a). On August 5, 1997, Winn attempted to interview Kimball at the Los Angeles County Jail but he provided no information as to the Daly murder at that point. *Id.* ¶ 17. Winn interviewed him again on August 14, 1997, and he "stated that he let friends use his car on the night of the murder." *See* 08-14-97, 1600 entry in Murder Book, Docket No. 79-1 at page 7 of 43.

110-2. Hereafter, the Court refers to these individuals primarily by their identified names rather than by their aliases.

[10] Winn's interview with Postert formed the basis for the statement of probable cause in the search warrant issued for the Mellen Patch. *See* Ex. 7 at Mellen 00123-00125, Docket No. 79-2 at 16-18. The statement refers to Postert as a "Confidential Reliable Informant;" however, in her deposition Winn testified that the informant was Lisa Postert. *See* Winn Dep. Tr. at 521:3-522:1, Docket No. 79-10.

c. Katherine Kenny Interview

On August 7, 1997, Winn was notified by the Los Angeles Sheriff's Department that Katherine Kenny ("Kenny") had information about the Daly murder. *Id.* ¶ 22. Winn conducted a recorded interview of Kenny, which was noted in the Murder Book. *Id.* During the interview, Kenny stated that Monllor had bragged about killing Daly with a hammer and about setting Daly on fire while he was still alive. *Id.* On August 11, 1997, Kenny reviewed a photographic six-pack and identified Monllor and Alvarez. *Id.* ¶ 24. On August 12, 1997, Kenny informed Winn that Cynthia Sanchez might also have information about the Daly murder. *Id.* ¶ 25. Winn's notes from the interview were included in the Murder Book. *Id.* at ¶ 22.

d. Ginger Wilborn Interview

On August 11, 1997, Winn learned about another potential witness named Ginger Wilborn ("Wilborn"), who was Monllor's friend. *Id.* ¶¶ 23, 53(a). On August 13, 1997, Winn interviewed Wilborn, who told her that Monllor, Landrum and Alvarez killed Daly in the rear house of the Mellen Patch. *Id.* ¶ 31. Wilborn explained that Monllor had showed her the crime scene, including a large amount of blood in the rear house's kitchen, where Daly was killed. *Id.* ¶¶ 31, 54(a). Wilborn stated that Daly brought drugs to the Mellen Patch frequently, and that Alvarez was homeless and slept in the back house. *Id.* ¶¶ 57(a), 58(a). Wilborn also informed Winn that Susan had control over the gang

members and that they did what Susan told them to do. *Id.* ¶ 32. Wilborn stated that Susan had complained to Monllor that Daly was stealing from her and that Daly was a snitch. *Id.* Wilborn's interview was recorded and documented in the Murder Book. *Id.* ¶ 31.

On August 26, 1997, after Susan's arrest, Wilborn took a polygraph and again spoke with Winn. *Id.* ¶ 83. Wilborn stated that a few days before Daly's murder, Schenkelberg caught Daly in Susan's room and threatened Daly with a gun. *Id.* Wilborn informed Winn that: (1) she saw Landrum and Monllor with Daly at Susan's house and that Landrum started hitting Daly so Wilborn left; (2) the rumor on the street was that Susan "lured" Daly into the house on the day of the murder by giving him oral sex; (3) Monllor had told her that Susan was offering to pay people if they would get Daly; and (4) she thought Susan was living near the location where Daly's body was dumped. *Id.*

e. The Search Warrant

On August 12, 1997, Winn obtained a search warrant for the Mellen Patch. *Id.* ¶¶ 26; 61(a). In the probable cause statement supporting the warrant, Winn advised the court that it was believed that Monllor, Landrum and Alvarez had killed Daly with a hammer at the Mellen Patch on July 21, 1997. *Id.* Winn also obtained *Ramey* arrest warrants[11] for Monllor, Landrum

[11] A "*Ramey* warrant" is a warrant authorizing the arrest of a suspect within the home before the filing of criminal charges by

and Alvarez for the murder. *Id.* ¶ 27. On the same day, Winn learned that Monllor and Landrum were also already in custody with other law enforcement agencies on unrelated charges. *Id.*

On August 13, 1997, Winn and officers from the LAPD and Redondo Beach Police Department executed the search warrant at the Mellen Patch and recovered two claw hammers. *Id.* ¶ 29. During the search, Winn and the officers interviewed the residents of the Mellen Patch, but did not (in her opinion) obtain any relevant information. *Id.* ¶ 30. Terry Monllor, Lester Monllor's mother, was present at the Mellen Patch when the warrant was executed and attempted to provide an alibi for her son. *Id.* No arrests for the Daly murder were made when the warrant was executed. *Id.* ¶ 67(a).

f. Cynthia Sanchez Interview

On August 14, 1997, Winn interviewed Cynthia Sanchez ("Sanchez"), who said that she had been staying at the Mellen Patch, and that Susan had lured Daly into the rear house on the day of the murder and had oral sex with him. *Id.* ¶¶ 34-35. According to Sanchez, Daly and Susan had previously "been a couple." *Id.* ¶ 35. Sanchez told Winn that Daly had been stealing from Susan and that Schenkelberg had caught Susan in bed with Daly twice, causing Tom to threaten Daly. *Id.* ¶ 36. Sanchez further indicated that Schenkelberg

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the district attorney. *Goodwin v. Superior Court*, 90 Cal.App.4th 215, 224 (2001) (citing *People v. Ramey*, 16 Cal.3d 263 (1976)).

had keys to the Mellen Patch, and that Sanchez had seen Susan and Schenkelberg wiping their fingerprints off the doors at the Mellen Patch on the night of the house fire. *Id.*

Sanchez told Winn that she had met a woman named June Patti ("Patti") at the Mellen Patch about two months earlier, and had also seen Patti in the courthouse when Sanchez and Terry Monllor were looking for the courtroom for Lestor Monllor's arraignment. *Id.* ¶ 37. Sanchez explained that she and Terry could not find the correct room, and Patti, who (Cynthia believed) worked at the courthouse, helped them locate it. *Id.* Sanchez indicated that she knew Patti from the "drug world," and that Terry Monllor was a friend of Patti as well. *Id.* ¶ 80(a); MSJ Ex. 10 at 32:16-33:22, Docket No. 79-2 at 145-50. Sanchez stated that she and Terry Monllor had discussed Daly's murder with Patti, as well as the location where the body was dumped, and Patti indicated that she may have visited the location where the body was found. SSUF ¶ 81(a), Docket No. 110-2.

The August 14, 1997 interview with Sanchez was recorded; and the interview, a brief summary of what was said, and the existence of the recording were noted in the Chronological Record/Murder Book. *See* Ex. 1 to Defendants' Joint Appendix of Exhibits at 6, Docket No. 79-1 at page 7 of 43.

g. June Patti Interview

On August 13, 1997, Patti left a phone message for Winn stating that she had information about the Daly murder, but did not leave a phone number she could be reached. *Id.* ¶ 33. Winn had no prior contact with or information about Patti. *Id.* However, Susan knew Patti from several years past, when Patti had stabbed Douglas Besch, the father of two of Susan's children. *Id.* ¶ 36(a).

On August 14, 1997, the same day as the Sanchez interview, Winn received another telephone call from Patti, who stated that she was a paralegal at the Torrance courthouse and that Susan had told her information about the Daly murder. *Id.* ¶ 38. Winn arranged to meet Patti the next day to obtain a statement. *Id.* According to Winn, she likely reviewed Patti's criminal history ("rap sheet") before the meeting. *Id.* Other than a notation in the Chronological Record portion of the Murder Book, there are no other notes or records relating to this call. *Id.* ¶ 84(a).

On August 15, 1997, Winn and Terrell met with Patti, who informed them that she had met with Susan and that Susan had implicated herself in the murder. *Id.* ¶ 39. Patti claimed that Susan had asked whether she could be charged with murder if she had kicked a man and gagged him while he was being beaten to death. *Id.* Patti claimed that Susan confessed that she, Schenkelberg and "Ghost" (*i.e.* Landrum) had killed Daly. *Id.* Patti recounted the following details concerning her meeting with Susan and the confession: (1)

Patti had initially contacted Susan by phone to buy drugs,[12] and when Susan arrived at her hotel room she confessed that she had been present when Daly was murdered; (2) Daly had previously been robbing Susan and her family, which angered Susan; (3) Susan and her boyfriend, Schenkelberg, had discovered that Daly had broken into the back house of the Mellen Patch, so Susan and Schenkelberg went to the front house to get Landrum to help them kill Daly, in exchange for which Schenkelberg paid Landrum with drugs; (4) Susan, Schenkelberg, and Landrum started beating Daly and, when he began screaming, Susan gagged him with tape; (5) Landrum picked up a hammer and bludgeoned Daly to death, then set him on fire; the body was then transported and set on fire again in an alley in San Pedro; (6) Susan helped wipe the house of fingerprints; and (7) Susan disclosed to her where the body was dumped and "that the male who was involved in the murder would be killed if he implicated Mellen and something about going after some person named "Cindy." *Id.* ¶¶ 40-46. Susan also allegedly told Patti that Landrum was involved in setting the rear house on fire. *Id.* ¶ 47.

Approximately 15.5 minutes of the August 15, 1997 interview with Patti was recorded. *Id.* ¶ 86(a).

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[12] In the transcript of the 08-15-97 interview, Patti indicated that she initially told Susan that she wanted to buy some "speed" from her and, during that conversation Susan said to Patti that "she wanted to talk to me about something" so they later met at the Travelodge. At Susan's trial, Patti gave the same testimony. *See* Ex. 3 of Defendants' Request for Judicial Notice, Transcript of Trial, Docket No. 81 at pages 14-15 of 123.

The interview was documented in the Murder Book. *Id.* ¶ 49. After the recorded interview, Winn drafted a handwritten statement that Patti reviewed and signed. *Id.* According to Winn, she believed Patti was credible because Patti was able to provide information about the crime scene that Winn thought was unknown the public, such as the fact that the body had been gagged, wrapped, and placed near a trash can and a chain link fence.[13] *Id.* ¶ 48. In her deposition, Winn testified that she did not ask Patti questions regarding her criminal history because Winn "had her rap sheet" and "didn't need to discuss it with her." *Id.* ¶ 127. Winn further testified that Patti's reliability was "not an issue" that required her to conduct any additional investigation. *Id.*

h. Lester Monllor Interview

On August 19, 1997, after his girlfriend notified Winn that he wanted to talk with her, Winn met with Monllor, who told Winn that on the night of the murder he had helped Landrum transport Daly's body, along with Kimball and one of Kimball's friends that he did not know. *Id.*; MSJ Ex. 14 at 33:7-25, Docket No 79-3. When Winn asked whether Kimball's friend was Susan's boyfriend, Schenkelberg, Monllor responded that it "could have been, cause he looked the same." *Id.* However, Monllor testified that Susan was not in the car when the body was taken, and that the only time

[13] Plaintiffs dispute whether these details were not known to the public, and argue that newspaper articles from the time disclosed those elements. *See* Pl.'s RJN Ex. 57, Docket No. 90-1.

he saw Susan that night was when she "came to the house and was wiping – wiping the door knobs and shit with her shirt." SSUF ¶ 53, Docket No. 110-2; MSJ Ex. 14 at 34:1-11, Docket No. 79-3.[14] The Monllor interview was recorded and noted in the Murder Book. *Id.*

i. Schenkelberg Interview

On August 22, 1997, Winn interviewed Schenkelberg and he stated he had no pertinent knowledge regarding the Daly murder. *Id.* ¶ 54.

j. Detective Such Memo

On August 22, 1997, Winn received a memo from Torrance Police Detective Patrick Such implicating Susan and Schenkelberg in the Daly murder. *Id.* ¶ 57. Detective Such indicated that he had received information from an informant, Richard Lago, who reported that Schenkelberg had told him that Daly was killed with a hammer at the Mellen Patch, after which the body was dumped and set on fire by a trash can in San Pedro. *Id.* ¶ 58. The informant stated that Schenkelberg had disclosed that Susan had set up the murder and was giving Daly oral sex when Landrum started beating him. *Id.* Lago also told Detective Such that Sabrina Trace, an individual Lago was familiar with, was good friends with Susan and had told him

[14] However, Monllor also stated that he was not present at the time Daly was killed and was only asked to help transport the body after the murder had taken place. SSUF ¶ 53, Docket No. 110-2.

that Susan set up the Daly murder. *Id.* ¶ 59; MSJ Ex. 16 at 3, Docket No. 79-4.

3. Susan's Arrest

Winn presented the Daly case to the Los Angeles District Attorney's Office ("LADAO") and, on August 18, 1997, District Attorney Steven Schreiner ("Schreiner") filed one count of murder against Susan. *Id.* ¶ 50. Schreiner does not recall what documents he reviewed prior to filing the charges, but states that Winn did not influence him or pressure him to file charges against Susan in 1997. *Id.*; Decl. of Steven Schreiner ("Schreiner Decl.") ¶¶ 4-8, Docket No. 78-5. Schreiner further indicated that he would have reviewed the LAPD file on the case and would have only filed charges if (1) he had a good faith belief that the suspect committed a crime, and (2) he felt that he could prove the case beyond a reasonable doubt. SSUF ¶ 51, Docket No. 110-2; Schreiner Decl. ¶¶ 6, 8. Schreiner declined to file murder charges against Alvarez and initially declined to file charges against Landrum in relation to the Daly murder. SSUF ¶ 55, Docket No. 110-2. Ultimately, the LADAO filed murder charges against Landrum and Monllor, but determined that there was insufficient evidence to file murder charges against Schenkelberg.[15] *Id.* ¶ 56.

Approximately a week before her arrest, Susan learned that the LAPD wanted to speak with her. *Id.*

[15] Although the parties do not address the issue, it also appears that no charges were ever filed against Kimball.

¶ 52. Thereafter, on August 25, 1997, Susan called Winn to inform her that she had information regarding the Daly murder, and agreed to meet Winn at a McDonald's later that day. *Id.* ¶ 60. Susan was then arrested at the McDonald's pursuant to the arrest warrant and interrogated by SBH the same day.[16] *Id.* ¶ 62.

During the interrogation (which was conducted after she was advised of her *Miranda* rights and given the opportunity to call her lawyer, and which was videotaped and included in the Murder Book), Susan indicated that she was Daly's ex-girlfriend but denied being involved in his murder. *Id.* ¶¶ 63, 64. Susan told Winn that she first learned Daly was missing from Cory Valdez, Daly's girlfriend. *Id.* ¶ 1(a). Valdez had last seen Daly at her house in Lawndale on the night of the murder. *Id.* ¶ 2(a). Valdez told Susan that Daly left Valdez's house for the Mellen Patch at approximately 8 PM, after which Valdez did not see him again. *Id.* ¶¶ 32(a), 33(a). Susan informed Winn that after Daly went missing, Susan and Valdez began searching for Daly. *Id.* ¶ 34(a). On the Friday after the murder, Wilborn told Susan and Valdez to stop looking for Daly, because he had been murdered by Landrum, Monllor, and Alvarez. *Id.* ¶ 65(a). Wilborn also told Susan that Daly's head had been hammered, and Valdez later told Susan that Daly's body had been wrapped in a blanket. *Id.* ¶ 72.

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[16] By the time of Susan's arrest, there were statements from Wilborn, Sanchez, Patti, Monllor, and Detective Such's informant regarding Susan's involvement in killing Daly and/or in the efforts to conceal the evidence of the murder.

During the interrogation, Susan stated that she was at the back house of the Mellen Patch around 5 PM on the day of the murder with her children, but left within 10-15 minutes. *Id.* ¶ 67. While Susan was at the house, Daly and Wende Mellen were also there.[17] *Id.* ¶ 68. Susan stated that Daly had a backpack when she saw him. *Id.* ¶ 70. She could not recall whether Monllor was also present, but stated that Schenkelberg was at work and not at the house. *Id.* ¶¶ 69, 70. Susan thought that "Cindy" may also have been at the house, but was not certain. *Id.* ¶ 71.

Susan informed Winn that people had been stealing things from her room at the Mellen Patch, where she still had a lot of things and "hadn't moved out of the house," but also indicated that she was living with Schenkelberg in either Redondo Beach or Gardena. *Id.* ¶ 78. Winn never asked Susan about her whereabouts during the time of the murder, and Susan never told her that she was moving to the Gardena house on that day with Schenkelberg's father. *Id.* ¶ 82.

Susan initially told Winn that she knew Patti, but had not spoken to her for a few years. *Id.* ¶ 73. Later in the interrogation, Susan stated that she had spoken with Patti recently on the phone, when Patti called her from the Dynasty Inn to buy drugs. *Id.* Susan also told Winn that Patti was a liar. *Id.* ¶ 74.

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[17] If the last time Susan saw Daly alive was at around 5:15 PM at the Mellen Patch, that would have been inconsistent with what Valdez told her that Daly was with her until about 8 PM and then he left for the Mellen Patch thereafter.

4. The Preliminary Hearing and the Deputy District Attorney's Knowledge and Independent Evaluation of the Evidence and Patti's Credibility

On November 13, 1997, the preliminary hearing in the criminal case entitled *People of the State of California v. Chad Landrum, Susan M. Mellen and Lester D. Monllor*, Case No. YA033982, was held. *Id.* ¶ 84. Susan was represented by attorney Lewis Notricia ("Notricia"). *Id.* Prior to the preliminary hearing, copies of the Murder Book were provided to the LADAO and Notricia.[18]

The Deputy District Attorney assigned to the case at that point was Valerie Cole ("Cole"). *Id.* ¶ 86; Declaration of Valerie Cole ("Cole Decl.") ¶ 3, Docket No. 78-6. In her Declaration submitted in this case, Cole stated that she conducted a detailed review of the Murder Book prior to the preliminary hearing and based on her review, formulated the opinion that the charges filed against Susan were appropriate. SSUF ¶ 86, Docket No. 110-2; Cole Decl. ¶ 5, Docket No. 78-6.

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[18] The parties dispute whether Patti's rap sheet was included in the copies of the Murder Book that were provided to defense counsel. Plaintiffs contend that the Murder Book was given to the defense on October 1, 1997, but that the rap sheets in Winn's original Murder Book are dated October 14, 1997. SSUF ¶ 85, Docket No. 110-2. However, there is no dispute that Susan's defense counsel was aware of Patti's criminal history by the time of the preliminary hearing.

The prosecution's witnesses at the preliminary hearing were Patti, Felicia Mena[19] and Terrell.[20] SSUF ¶ 87, Docket No. 78-6. Patti testified that she had a phone conversation with Susan at some point in July 1997, during which she first spoke with Schenkelberg and then Susan. *Id.* ¶ 88. Patti testified that thereafter she and Susan then met at a Travelodge Hotel (where Patti was staying); and Susan asked for advice in relation to her friend Rick Daly, and indicated that she, Schenkelberg, and another male were involved in Daly's murder. *Id.* ¶ 89. Patti testified that Susan told her that Landrum had come over from Susan's sister-in-law's house next door and was offered drugs in exchange for helping Susan and Schenkelberg beat Daly; that the three had kicked Daly and bound and gagged him to stop him screaming; that someone from next door had come over to ask them to be quiet; that Landrum eventually set Daly on fire; that Susan and the others had wiped their fingerprints off the doorways in the house; and that they had placed Daly's body in the back of Susan's car, put the body in the San Pedro alley, and Landrum then set the body on fire again. *Id.* ¶¶ 90-97.

During her testimony, Patti indicated that her sister, Laura Patti ("Laura") was a police officer with the

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[19] Neither party has addressed Felicia Mena's role in the case. *But see* the 08-19-97 1600 entry in the Chronological Record section of the Murder Book., MSJ Ex. 1, Docket No. 79-1 at page 7 of 43.

[20] Winn did not testify at the preliminary hearing. SSUF ¶ 87, Docket No. 78-6.

Torrance Police Department. *Id.* ¶ 98. Patti also admitted to having stabbed Susan's boyfriend five years earlier. *Id.* ¶ 100. Patti further testified that she had provided assistance to the Torrance Police Department (identifying Detective Jim Wallace) on at least one occasion prior to the Daly investigation. *Id.* ¶ 103.

Cole stated that she was aware that Patti's testimony at the preliminary hearing conflicted in some ways with her statement to Winn, but stated that she believed Patti was a credible witness. *Id.* ¶ 106; Cole Decl. ¶¶ 7, 9, Docket No. 78-6. Among the reasons Cole has cited for that belief was: "Based on the circumstances of the of the victim's death, the toxicologist could not rule out that the victim was alive for some period of time after he was set on fire. This was significant because June Patti claimed that Mellen admitted to her that Daly was still alive when he was set on fire." *See* Cole Decl. ¶ 10, Docket No. 78-6.

As of the preliminary hearing, Cole was aware that Patti had a sister who was a police officer. *Id.* ¶ 144. Later, Patti sent a letter to Cole dated February 25, 1998, stating that her sister Laura was a Torrance police officer and had threatened to arrest Patti, who was living in Washington at the time, if she returned to California to testify.[21] *Id.* ¶ 145. The letter further stated that Patti had been accused of providing false information in relation to a hit-and-run incident and

[21] While Plaintiffs dispute whether Cole ever received or was aware of Patti's 02-25-98 letter, it is undisputed that Cole responded to that letter by sending Patti a written note dated 04-16-98. *Id.* ¶ 145; *see also* Docket No. 79-4 at page 79 of 85.

indicated that Patti and her sister (Laura) did not get along. *Id.* ¶ 145; MSJ Ex. 19, Docket No. 79-4 at pages 75-78 of 85. Patti also admitted that Laura was aware that, "a few yrs [sic] back," Patti had a $30,000 state warrant against her for failing to complete her community service and, when confronted by a sheriff's officer, she used her sister Serina's name and date of birth to avoid being arrested. *Id.* at page 77 of 85. A copy of Patti's 02-25-98 letter was placed in the Murder Book. SSUF ¶ 145. In a note dated April 16, 1998, Cole wrote to Patti advising her that she had been subpoenaed under California Penal Code § 1334.4 which provides that a person coming into the state in compliance with the subpoena could generally not be arrested nor the subject of service of process. *See* Ex. 19 to MSJ, Docket No. 79-4 at page 79 of 85. Thus, Cole told Patti that: "Neither your sister nor any other officer can serve you or arrest you for anything that happened in this state prior to the date that you came into to the state in order to comply with the subpoena." *Id.* Cole further stated that she was sending a copy of the letter to the defense attorneys in *People v. Monllor, Mellen, and Landrum. Id.*

In her declaration, Cole states that she sent a copy of Patti's letter to Laura Mehegan Patti along with her 04-16-98 response, and may have also spoken to Laura by telephone. *See* Cole Decl. at ¶ 12, Docket No. 78-6 at page 5 of 10. Additionally, Cole stated that: "During the years 1997 and 1998, I was unaware of any legal authority which provided that sibling rivalry or bad blood between siblings, including when one sibling is a police

officer and the other a civilian witness in a homicide investigation, was Brady evidence." *Id.* ¶ 13.

5. The Trial

On May 4, 1998, Susan's criminal trial commenced, and she was again represented by Notricia. SSUF ¶ 108, Docket No. 110-2. The prosecution's trial witnesses were Jeremy Duncan, Patti, Dr. Ogbonna Chinwah, Kenneth Whitehead, Erin Riley, Robert Monson, Felicia Mena, Terrell, Winn, and Lori Villalpondo. *Id.* ¶ 109. The defense's witnesses consisted of James Schenkelberg (Tom Schenkelberg's father), Susan, and Cory Valdez.[22] *Id.* ¶ 110.

During Patti's trial testimony, she stated that she first contacted Susan on August 13, 1997 by calling the number on a pager of Susan's boyfriend, Tom Schenkelberg, which she had obtained the previous day. *Id.* ¶¶ 113-14. Patti testified that Schenkelberg responded first to the page, and Patti then spoke with Susan for the purpose of purchasing drugs. *Id.* ¶ 116. According to Patti, Susan spoke with her at that time about obtaining legal advice. *Id.* ¶ 117. Patti testified that she had legal training as a paralegal and stated that her uncle and sister were police officers. *Id.* ¶ 118. She also explained that she had known Susan for fifteen years

[22] Although Susan's defense counsel were aware of them, he did not call as witnesses at her trial any of her children, Tom Schenkelberg, any member of the Mellen family, any resident of the Mellen Patch during the relevant period, any other alleged participant in the crime (*i.e.* Landrum, Alvarez, Kimball or Monllor), Laura Patti or Detective Jim Wallace. *Id.* ¶ 111.

and that Susan was familiar with "all this information." *Id.* ¶ 119.

Patti testified that prior to speaking with Susan on the phone, she had not heard anything about Daly's death. *Id.* ¶ 120. Patti stated that Susan told her Rick Daly had been killed "and that she was involved, but not really involved," and asked Patti whether she was going to get in trouble or not. *Id.* ¶ 121. Patti claimed she met Susan in person that night, at which point Susan confessed that Schenkelberg had caught her with Daly, that Daly had been beaten up "pretty bad" and had died, and that she was afraid the police were looking for her. *Id.* ¶ 123. Patti further testified that Susan had a prior relationship with Daly and that Susan and Daly had a child together. *Id.* ¶ 124.

Patti also testified that Susan told her the crime took place at Susan's mother's house. *Id.* ¶ 126. Patti claimed Susan described how the murder took place, including Susan's own involvement and the murder weapon – a hammer – that Susan handed to Landrum to use to slam a gag down Daly's throat.[23] *Id.* ¶ 127. Susan told Patti the body was dumped in an alley near a fence and a trash can, and that Susan had destroyed the evidence at her mother's house, which Landrum later set on fire. *Id.* ¶ 130. Patti also testified that she did not tell the complete truth earlier to either the

[23] According to the Autopsy Report, approximately 10 inches of cloth ("probably [a] scarf") "was stuffed down into his throat." *See* page 5 of Autopsy Report, Section 19 of Murder Book.

police or at the preliminary hearing because she did not want Susan to go to jail. *Id.* ¶ 134.

Detective Winn also testified at Susan's trial. During her testimony, Winn admitted that Patti's trial testimony differed in some respects from her initial statement to Winn in August 1997. *Id.* ¶ 157.

During trial, multiple issues regarding Patti were raised in a 402 hearing, including her prior criminal record,[24] her drug use, that she had stabbed Susan's prior boyfriend, and whether she was a paid informant. *Id.* ¶ 150. During the prosecution of the case and prior to trial, Cole was not contacted by Patti's sister, Laura, or provided with any information from Laura regarding Patti. *Id.* ¶¶ 163-64.

Susan testified at trial and relied primarily on her alibi that she was moving to Gardena at the time of the murder. *Id.* ¶ 158. However, she was impeached by DDA Cole on many areas including, but not limited to: (1) although raising her move to Gardena with James Schenkelberg at the time of the July 21, 1997 murder as her alibi at trial, it was established that she never mentioned that alibi or referenced James Schenkelberg at any of her interviews/interrogations with the police; (2) she also stated in her interrogation that she was with her kids at the time of the murder, but at trial testified that she was only with her daughter Jessica (who she did not call as a witness at the trial) and

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[24] Patti had no felony but one misdemeanor conviction. *See* page 63 of Reporter's Transcript of 01-28-98 Trial Proceedings, Volume 1 of 3 of Reporter's Transcript on Appeal.

James Schenkelberg; (3) that she had made conflicting statements during her interrogation regarding whether she ever knew Patti and when she had last spoken with Patti; and (4) that she had made inconsistent statements regarding what time she left the Mellen Patch and had last seen Daly on the day of the murder. *Id.* ¶¶ 158-61.

6. The Habeas Proceedings and Finding of Actual Innocence

Deirdre O'Connor and an organization called "Innocence Matters" became involved with Susan's case decades later in its habeas application stage and conducted a series of interviews with Laura Patti in 2014 regarding Patti's credibility. *Id.* ¶ 239. Laura Patti has been a police officer for the City of Torrance since 1990. *Id.* ¶ 202. During interviews with Innocence Matters, Laura stated that she was not involved in the Daly murder investigation but did recall being contacted by Winn, who stated that Patti "was a witness or she had information regarding a murder and asked me about my sister." *See* 06-18-14 Interview of Laura Patti, Exhibit 52 to Declaration of Deirdre O'Connor ("O'Connor Decl."), Docket No. 95-2 at page 4 of 27. Laura stated that she told Winn that "my sister is probably the biggest liar I've ever met in my life. And if I don't see something happening directly that she's involved in, I don't believe anything that she has to say."[25] *Id.*

[25] Plaintiffs claim that, according to notes taken by Susan's habeas counsel/investigators of a 01-23-14 interview with Laura

In her deposition for this matter, Laura testified that she ceased speaking with Patti sometime in 1980, although she had contact with Patti at family functions and as a result of Patti's criminal activity. SSUF ¶ 203; *see also* 12-16-15 Deposition of Laura Patti ("Laura Depo.") Exh. 80 to O'Connor Decl. at 35:5-17, 59:1-8, 61:3-6, Docket No 97-10. At some point prior to the time Patti relocated to the State of Washington in the late 1990s, Laura became aware that Patti was a police informant. SSUF ¶ 205, Docket No. 110-2. Laura recalled that Patti had been arrested a few times by the Torrance Police. *Id.* ¶ 207. Laura did not recollect speaking to anyone from the LADAO about the Daly murder during the late 1990s. *Id.* ¶ 208. Laura and Patti did not have a "relationship" in July of 1997. *Id.*

(which was not recorded), Laura told Winn that her sister Patti was a "pathological liar" who would have "lied to anyone if it suited her purpose." *See* SSUF, Plaintiffs' objection to ¶ 241. However, a review of the notes themselves only indicates that Laura purportedly told the interviewers from Innocence Matters that "June was a 'pathological liar.' June 'would lie to anyone if it suited her purpose.' " Exhibit 26 to Defendants' Joint Appendix of Exhibits, Docket No. 79-6 at page 2 of 19. Nothing in the notes establishes that Laura told Winn that Patti was a "pathological liar." Likewise, in her 02-05-14 declaration, Laura described Patti as a "drug user and a pathological liar." *Id.*, Docket No. 79-6 at page 13 of 19. But again, her declaration does not state that she ever used that term in speaking with Winn. Moreover, in the recorded interview of 06-18-2014, Laura again does not use the term "pathological liar" but merely calls Patti "the biggest liar I've ever met in my life" (Exhibit 52 to O'Connor Decl., Docket No. 95-2 at page 4 of 27). In her deposition, Laura also only states: "I know I definitely told [Winn] that my sister was the biggest liar that I ever met in my life and I don't believe anything she says." Docket No. 97-10 at page 186 of 319.

¶ 209. At some point, Laura learned that her sister was a witness in the Daly murder investigation, which was being run by the LAPD. *Id.* ¶ 211.

However, Laura did recollect that Winn had contacted her to discuss Patti's credibility as a witness; although Laura did not remember the date of the call, she recalled learning that Winn was trying to put together a case at the time with Patti as a witness, and thus believed it was likely at some point before Susan's trial.[26] *Id.* ¶¶ 100(a)-101(a). Laura believed she was at work at the Torrance Police Department when she received Winn's call. *Id.* ¶ 100(a). Laura stated that: (1) she had only one conversation with Winn; (2) Winn telephoned her; (3) the chat lasted only "a few minutes;" and (4) it consisted of Winn asking her what she thought about her sister. *Id.*; O'Connor Decl. Ex. 80 at 91:25-92:18, Docket No. 97-10. Laura testified that during the call, she informed Winn that Patti "was the biggest liar that [Laura] had ever met in [her] life and [Laura] didn't believe anything [Patti]" said, and stated that Patti only "gave information that would benefit her[self]." SSUF ¶ 106(a), Docket No. 110-2. Laura also told Winn that "[Patti will] do anything to get either herself out of trouble or her boyfriend Dean because that was my sister's MO. She only gave information that would benefit her." However, in her deposition, Laura also testified that [sic]: (1) that she was never actually present or personally witnessed Patti

[26] Winn testified that she never spoke with Laura regarding Patti's credibility and claims that the first time she ever spoke with Laura was in 2001. *See* SSUF ¶ 237; O'Connor Decl. Ex. 79 at 352:5-353:20, Docket No. 97-9.

give false information to a law enforcement officer or even been present when Patti was interviewed regarding a crime; (2) Patti had never directly spoken to Laura regarding the Daly murder; (3) Laura had no personal knowledge about the Daly homicide investigation that was conducted by the LAPD; (4) Winn "seemed to believe that [Patti] was giving good information because [Patti] knew about the case. . . . And based on that, [Winn] believed her;" and (5) that Laura did not "think that [it] was unreasonable for Detective Winn to reach that conclusion. . . ." *See* pages 97-98 of Laura Depo., Docket No. 97-10. Laura further testified that after their father's funeral services in 2001, Laura overheard Patti telling two of their other sisters that Susan had made incriminating statements to her about: (1) being present when the murder took place, (2) providing details such as the "sock and a hammer," (3) and giving "details of what happened prior to the murder and after the murder." *Id.* at pages 101-03. Laura said that she had no reason to doubt that "Susan Mellen told her [*i.e.* Patti] those things." *Id.* at page 103. Laura also stated she "cannot say that June Patti lied to Detective Winn in relation to the Daly murder investigation."[27] *Id.* at page 118. Other than her conversation with Winn, Laura has no personal knowledge about the LAPD's investigation into the Daly murder. SSUF ¶ 222, Docket No. 110-2. Laura also agreed that it was fair to say that when Detective Winn "contacted [her] to speak to [her] about June [Patti],

[27] It is undisputed that "Laura Patti could not say that June Patti lied to Winn in relation to the Daly murder investigation." SSUF ¶ 235.

[Laura] had no information to offer [Winn] in relation to her investigation into the Daly murder." *Id.* at page 108.

After interviewing Laura, Innocence Matters drafted at least one declaration for Laura to review and sign to support Susan's habeas petition. SSUF ¶ 242. The final version of the declaration does not provide a date for the alleged call between Winn and Laura. *Id.* ¶ 244.

In preparation for the habeas proceedings, Innocence Matters requested information from the City of Torrance regarding any arrests of June Patti, the use of Patti as a paid or non-paid informant, any police report in which Patti was a witness or suspect, and any other information about the use of Patti as an informant by other agencies. *Id.* ¶¶ 92(a), 98(a); O'Connor Decl. Ex. 44 at 1, Docket No. 94-5. In their response, the City of Torrance provided a Torrance Police Department Informant Information Report dated December 23, 1993, which documented Patti as an "unreliable informant." *Id.*

Defendants issued a subpoena for Notrica's [sic] records, but were informed that the case file had largely been lost or destroyed, and Notricia was incapacitated on hospice and not able to be deposed. *Id.* ¶ 247.

On September 18, 2014, Susan represented by Innocence Matters filed a Petition for Writ of Habeas Corpus which, with exhibits, contained 942 pages. On September 30, 2014, the LAPD wrote a letter to the

LADAO stating that the LAPD had reviewed the LADAO's Habeas Corpus Litigation Team's ("HABLIT") investigation of Susan's case and concurred with the latter's conclusion that her conviction "is no longer supported by any credible or corroborated evidence." *See* Docket No. 131-2. On October 8, 2014, the LADAO wrote to Judge Arnold stating that:

> HABLIT has determined that the testimony of Ms. June Patti incriminating Susan Mellen in the murder of Richard Daly is doubtful. Consequently, it is the LADA's position that Susan Mellen has met her burden required for habeas corpus relief under California Penal Code Section 1473(b)(1).

See Docket No. 131-1. Based on the LADAO's concession, on October 10, 2014, Judge Arnold granted Susan's habeas petition. *See* Docket No. 90-5. On October 15, 2014, Susan filed an eleven-page Motion for a Finding of Innocence by a Preponderance of the Evidence Pursuant to Penal Code Section 1485.55, Subdivision (b). Said motion was unopposed and granted on November 21, 2014. *See* Docket No. 90-6.

C. *Analysis*

Plaintiffs' remaining accusations center on Winn's investigation of the Daly murder and her reliance on Patti's allegedly false statements to arrest, prosecute, and convict Susan. *See* FAC at ¶¶ 3-6, Docket No. 35. Each of Plaintiffs' claims against Winn is brought pursuant to § 1983, which "creates a private right of action

against individuals who, acting under color of state law, violate federal constitutional or statutory rights." *Tatum v. Moody*, 768 F.3d 806, 814 (9th Cir. 2014), *cert. denied*, 135 S. Ct. 2312 (2015). Winn contends that summary judgment should be granted because Plaintiffs cannot establish that she violated any of Susan's constitutional rights. *See generally* MSJ, Docket No. 78. Winn also asserts that Plaintiffs' claims are barred because she is entitled to qualified immunity under § 1983. *Id.*

1. *Brady* Violations

a) Applicable Law

A criminal defendant's due process rights are violated if the "government fails to disclose evidence that is materially favorable to the accused." *Youngblood v. W. Va.*, 547 U.S. 867, 869 (2006) (citing *Brady v. Maryland*, 373 U.S. 83, 87 (1963)). As delineated in *Milke v. Ryan*, 711 F.3d 998, 1012 (9th Cir. 2013):

> A *Brady* violation has three elements. *Strickler* [*v. Greene*], 527 U.S. [263] at 281-82 [(1999)]. First, there must be evidence that is favorable to the defense, either because it is exculpatory or impeaching. *Id.* at 281-82. Second, the government must have willfully or inadvertently failed to produce the evidence. *Id.* at 282. Third, the suppression must have prejudiced the defendant. *Id.*

As to the third element, the Ninth Circuit has used the terms "prejudicial" and "material" interchangeably.

See, *e.g.*, *Bailey v. Rae*, 339 F.3d 1107, 1116 n. 6 (9th Cir. 2003) ("The terms 'material' and 'prejudicial' are frequently used inter-changeably to describe the final requirement of a Brady violation. 'Evidence is not "material" unless it is "prejudicial," and not "prejudicial" unless it is "material."' *Benn v. Lambert*, 283 F.3d 1040, 1053 n.9 (9th Cir. 2002)."). Evidence is material "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different, although a showing of materiality does not require demonstration by a preponderance that disclosure of the suppressed evidence would have resulted ultimately in the defendant's acquittal." *Youngblood*, 547 U.S. at 870 (internal quotations and citations omitted). "The question 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." *Kyles v. Whitley*, 514 U.S. 419, 434 (1995).[28]

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[28] As recently observed by the Supreme Court in *Wearry v. Cain*, ___ U.S. ___, 136 S. Ct. 1002, 1006 (2016):

> Evidence qualifies as material when there is "'any reasonable likelihood'" it could have "'affected the judgment of the jury.'". . . . To prevail on his Brady claim, [defendant] need not show that he "more likely than not" would have been acquitted had the new evidence been admitted. . . . He must show only that the new evidence is sufficient to "undermine confidence" in the verdict. Given this legal standard, [a defendant] can prevail even if . . . the undisclosed information may not have affected the jury's verdict.

However, evidence sufficient to establish a *Brady* violation requires more than mere speculation. *See Downs v. Hoyt*, 232 F.3d 1031, 1037 (9th Cir. 2000). Where the most that can be said of the purported *Brady* material is that "the withheld material *might* have led to some admissible evidence which *might* have been sufficiently favorable," there is no *Brady* violation. *Id.* (emphasis in original). Thus, "*Brady* does not require a prosecutor to turn over files reflecting leads and ongoing investigations where no exonerating or impeaching evidence has turned up." *Id.*; *see also Barker v. Fleming*, 423 F.3d 1085, 1099 (9th Cir. 2005) ("The most [plaintiff] can offer is a theory woven largely of threads he has created himself to link pieces of evidence. That is not enough."); *Phillips v. Woodford*, 267 F.3d 966, 987 (9th Cir. 2001) (dismissing *Brady* claims based on "mere suppositions" about exculpatory evidence that withheld material might have led to); *United States v. Croft*, 124 F.3d 1109, 1124 (9th Cir. 1997) ("The mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish 'materiality' in the constitutional sense." (internal quotation marks and citations omitted)).

A *Brady* violation can occur not only when the prosecutor fails to turn over exculpatory evidence, but also when police investigators fail to turn over such evidence of which the prosecutor is not aware.[29] *See*

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[29] It has been noted that "[i]n order to state a claim for violation of his Constitutional rights by suppression of evidence, under *Brady* . . . , plaintiff must allege that defendants were aware of

Youngblood, 547 U.S. at 869-870 (holding that *Brady* suppression occurs even where evidence is "known only to police investigators and not to the prosecutor"); *see also Kyles v. Whitney*, 514 U.S. 419, 438 (1995) (holding that *Brady* violations exist where "favorable evidence [is] known to the others acting on the government's behalf in the case, including the police").

As pertains to this case, there arises a tension when the *Brady* violation is utilized as the basis for a § 1983 claim. The rule in *Brady* was created in the context of *criminal* proceedings – where the finding of prejudice to a defendant from a failure by the government and/or its agents to turn over materially favorable evidence to the defense results in a reversal of a defendant's conviction, whether that suppression of evidence was intentional or inadvertent. *See Tennison v. City & Cnty. of San Francisco*, 570 F.3d 1078, 1088 (9th Cir. 2009). The reason for that rule is "to ensure that a miscarriage of justice does not occur," *see United States v. Bagley*, 473 U.S. 667, 675 (1985), and to avoid putting "the whole case in such a different light as to undermine confidence in the verdict."[30] *See Kyles*, 514 U.S. at

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evidence that was material and exculpatory [and] did not make an adequate disclosure of that evidence to the prosecutor. . . ." *Trulove v. City & Cnty. of San Francisco*, Case No. 16-050-YGR, 2016 WL 5930634, at *7 (N.D. Cal. Oct. 12, 2016).

[30] As observed in *Carrillo v. Cnty. of L.A.*, 798 F.3d 1210, 1219 (9th Cir. 2015):

> [The *Brady*] holding was an "extension" of *Mooney v. Holohan*, 294 U.S. 103 (1935), which held the government's presentation of testimony it knew to be false, as well as its suppression of evidence that would have

435. However, where a plaintiff seeks damages from a police officer arising from a *Brady* violation, the analysis is different and, in certain ways, more complicated.

First, as delineated above, a *Brady* violation in the criminal law context can arise where the failure to disclose materially favorable evidence has occurred without any improper motive or conduct on the officer's part, but simply through inadvertence. That situation gives rise to the question as to whether the § 1983 claim based on a *Brady* violation requires a showing of bad faith on the part of the officer defendant. Initially, as discussed in *Daniels v. Williams*, 474 U.S. 327, 329-30 (1986):

> After examining the language, legislative history, and prior interpretations of the statute, we concluded that § 1983, unlike its criminal counterpart, 18 U.S.C. § 242, contains no state-of-mind requirement independent of that necessary to state a violation of the underlying constitutional right. *Id.*, at 534-535.

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impeached that testimony, could require reversal of a conviction. *See Brady*, 373 U.S. at 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 87 (emphasis added).

> We adhere to that conclusion. But in any given § 1983 suit, the plaintiff must still prove a violation of the underlying constitutional right; and depending on the right, merely negligent conduct may not be enough to state a claim. *See, e.g., Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252 (1977) (invidious discriminatory purpose required for claim of racial discrimination under the Equal Protection Clause); *Estelle v. Gamble*, 429 U.S. 97, 105 (1976) ("deliberate indifference" to prisoner's serious illness or injury sufficient to constitute cruel and unusual punishment under the Eighth Amendment).

The circuit courts have split in regards to whether a police officer's failure to disclose exculpatory evidence establishes a § 1983 claim in the absence of bad faith. *E.g.*, *compare Helmig v. Fowler*, 828 F.3d 755, 760 (8th Cir. 2016) (a showing of bad faith is necessary); *with Steidl v. Fermon*, 494 F.3d 623, 631-32 (7th Cir. 2007) (bad faith is not required). The Ninth Circuit has taken the position that, while proof of bad faith is not necessary, the plaintiff must still show at least "that [the] police officers acted with deliberate indifference to or reckless disregard for an accused rights or for the truth in withholding evidence from prosecutors." *Tennison*, 570 F.3d at 1088.

The deliberate indifference standard for a § 1983 *Brady* claim is "consistent with the standard imposed in the substantive due process context, in which government action may violate due process *if it 'shocks the conscience.'*" *Id.* at 1089 (emphasis added). "Deliberate

indifference is a stringent standard of fault, requiring proof" that an individual "disregarded a known or obvious consequence of his action." *Connick v. Thompson*, 563 U.S. 51, 61 (2011) (citations omitted). Under this standard, "[t]he appropriate inquiry [is] whether the [defendants] were aware that [their actions] would pose a substantial risk of serious harm" to the rights of others. *See Lemire v. Cal. Dep't of Corrections & Rehab.*, 726 F.3d 1062, 1077-78 (9th Cir. 2013); *see also Farmer v. Brennan*, 511 U.S. 825, 843-44 (1994). Thus, in *Tennison*, a police inspector who listened to the recording of a confession indicating that he had arrested the wrong individual, but failed to disclose the confession, was liable under § 1983 where his actions indicated that he was not "merely negligent in withholding the confession." 570 F.3d at 1090.

Second, as noted by the Supreme Court in *Connick*, 563 U.S. at 71, the *Brady* rule "has gray areas and some *Brady* decisions are difficult." Indeed, the Court therein distinguished between prosecutors and law enforcement officers in regards to *Brady* determinations observing that "attorneys, unlike police officers, are equipped with the tools to find, interpret, and apply legal principles."[31] *Id.* at 70. Therefore, a police

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[31] It would further be noted that a prosecutor's decision not to turn over *Brady* material to the defense, whether intentional or inadvertent, can never be the subject of a § 1983 civil action because he or she has absolute immunity in regards to that decision. *See Broam v. Bogan*, 320 F.3d 1023, 1030 (9th Cir. 2003) ("A prosecutor's decision not to . . . turn over exculpatory material before trial, during trial, or after conviction is a violation of due process under *Brady*. . . .). It is, nonetheless, an exercise of the

investigator (through no fault of his or her own) may not correctly appreciate the scope of the materials that must be turned over to the defense under *Brady*. This is especially true as to impeachment evidence, "given the random way in which such information may, or may not, help a particular defendant." *United States v. Ruiz*, 536 U.S. 622, 630 (2002). As the Supreme Court has observed, "[t]he degree of help that impeachment information can provide will depend upon the defendant's own independent knowledge of the prosecution's potential case – a matter that the Constitution does not require prosecutors to disclose." *Id.*

Third, even though a police investigator can be liable under § 1983 for a *Brady* violation, under the applicable case law, the officer is not obligated to turn over any exculpatory or impeachment evidence directly to defense counsel. As noted in *D'Ambrosio v. Marino*, 747 F.3d 378, 389 (6th Cir. 2014), "the role that a police officer plays in carrying out the prosecution's *Brady* obligations is distinct from that of a prosecutor. . . . *Brady* obliges a police officer to disclose material exculpatory evidence only to the prosecutor rather than directly to the defense." *See also Cannon v. Polk Cnty/Polk Cnty Sheriff*, 68 F.Supp.3d 1267, 1279 (D. Or. 2014) ("The requirement that police disclose evidence known only to the police merely imposes a duty on prosecutors to learn of exculpatory evidence from the police. It does not require the police officer to disclose

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prosecutorial function and entitles the prosecutor to absolute immunity from a civil suit for damages."); *see also Imbler v. Pachtman*, 424 U.S. 409 (1976).

any sort of information – even information known only to the officer – directly to the defense."). Thus, questions can arise as to *Brady* liability where: (1) even though an investigator fails to turn over some item of evidence to the prosecutor, the investigator knows that the prosecutor is aware of related evidence, and/or (2) a district attorney indicates that he or she did not believe that such evidence would fall within the *Brady* obligation to reveal such evidence to the defense.[32]

Fourth, as the Ninth Circuit has repeated [sic] noted, "*Brady* does not necessarily require that the prosecution turn over exculpatory material before trial. To escape the *Brady* sanction, disclosure 'must be made at a time when disclosure would be of value to the accused.' *United States v. Davenport*, 753 F.2d 1460, 1462 (9th Cir. 1985). . . ." *United States v. Gordon*, 844 F.2d 1397, 1403 (9th Cir. 1988). It has been held that the disclosure of *Brady* impeachment evidence *at trial* was timely where it was still of value to the defense as it was used to cross-examine the relevant witness. *See United States v. Vgeri*, 51 F.3d 876, 880 (9th Cir. 1995). Thus, there arises the question as to the point in time that the *Brady* assessment as to the officer's actions is conducted: (1) at the time the police investigator learns of the purported exculpatory or impeachment evidence, or (2) merely prior to trial so long as there would

[32] As discussed below, this and related quandaries may perhaps be better considered in the context of evaluating: (1) whether the evidence was actually suppressed, (2) whether the officer has acted in reckless disregard in failing to turn over the particular item of evidence to the prosecutor, and/or (3) whether the officer is still entitled to qualified immunity despite the nondisclosure.

be enough time to confirm the additional evidence and to utilize it at trial.

Additionally, there are a number of species of claims which, while appearing to be similar to the *Brady* scenario, are not treated as *Brady* violations. For example, the failure "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" is not a *Brady* violation and requires a showing of actual bad faith to establish a violation of the Due Process Clause. *Arizona v. Youngblood*, 488 U.S. 51, 57-58 (1988). Similarly, a "police officer's failure to preserve or collect potential exculpatory evidence does not violate the Due Process Clause unless the officer acted in bad faith." *Cunningham v. City of Wenatchee*, 345 F.3d 802, 812 (9th Cir. 2003) (emphasizing that "while [defendant's] investigative work may have been negligent or incomplete, it was not conducted in bad faith," and there was no evidence of an "improper motive").

Likewise, a failure to adequately investigate – as opposed to a failure to disclose – is not a *Brady* violation. Because no court has recognized a right to an adequate investigation, to bring a failure to investigate claim under § 1983, the claim must be anchored to a separate recognized constitutional right. *See Gomez v. Whitney*, 572 F.2d 1005, 1006 (9th Cir. 1985) ("[W]e can find no instance where the courts have recognized inadequate investigation as sufficient to state a civil rights claim unless there was another recognized constitutional right involved."); *see also Ogurinu v. City of*

Riverside, 79 Fed.App'x 961, 962-63 (9th Cir. 2003) ("An inadequate investigation alone does not involve the deprivation of a protected right, but must involve another recognized constitutional right" (internal quotation marks and citations omitted)).

Finally, a claim that a law enforcement officer lacked probable cause is properly analyzed as a false arrest or malicious prosecution claim, not as a *Brady* violation. *See Yousefian v. City of Glendale*, 779 F.3d 1010, 1014 (9th Cir. 2015), *cert denied* 136 S. Ct. 135 (2015); *Broam v. Bogan*, 320 F.3d 1023, 1032 (9th Cir. 2003). Under such a claim, the Ninth Circuit has emphasized that "[o]nce probable cause to arrest someone is established, [] a law enforcement officer is not required by the Constitution to investigate independently every claim of innocence, whether the claim is based on mistaken identity or a defense such as lack of requisite intent." *Broam*, 320 F.3d at 1032 (internal quotations and citations omitted). Additionally, although an officer "may not ignore exculpatory evidence that would negate a finding of probable cause," an officer is entitled to make credibility determinations in deciding whether probable cause exists. *Yousefian*, 779 F.3d at 1014 (emphasizing that "[t]he mere existence of some evidence that could [indicate the defendant was not guilty] does not negate probable cause").

b) Plaintiffs' Delineated Grounds for Alleging Brady Violations Herein

Plaintiffs have stated that the precise and complete grounds for their *Brady* violation claim in this lawsuit rests upon the following alleged "material" nondisclosures:[33]

> (1) Winn's failure to document and turn over Torrance Police Officer Laura Patti's statement that her sister, June Patti, was a "pathological liar" and not to be trusted;
>
> (2) Winn's failure to produce the "Baer Shoes" tape or to otherwise convey the full contents of Shoes' statements;
>
> (3) Winn's failure to document the fact that she interrogated six occupants (not necessarily residents) at the station, four of whom were taken their [sic] without a warrant of [sic] probable cause to arrest;
>
> (4) Winn's failure to document the statements she obtained from all six Mellen Patch detainees;
>
> (5) Winn's failure to document the fact that she seized Scott "Skip" Kimball's car without a warrant, consent or exigent circumstances;

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[33] As noted *infra*, the instances of Winn's alleged "material nondisclosures" cited by the Plaintiffs are not in fact either "nondisclosures" (*e.g.*, the failure to document the statements of the six Mellen Patch detainees) or within the ambit of a *Brady* violation (*e.g.*, failing to document that she seized a suspect's vehicle without probable cause or warrant).

> (6) Winn's failure to disclose that she fabricated her search warrant return and informed the court that she properly seized Kimball's car during the Mellen Patch search;
>
> (7) Winn's failure to disclose that she violated Lester "Wicked" Monllor's 6th Amendment right to counsel when she interrogated him without his counsel's knowledge and consent after Wicked was formally charged and represented by counsel;
>
> (8) Winn's failure to document and turn over the substance of her conversations with LASD Detective Doral Riggs regarding the uncharged gang suspect, Santo "Payaso" Alvarez.

See SSUF ¶ 3, Docket No. 110-2.

c) Discussion

1) Failure to Disclose Laura Patti's Statement That Her Sister Was a "Pathological Liar" and Could Not Be Trusted

Plaintiffs contend that Winn concealed exculpatory evidence in violation of *Brady* by failing to disclose information she allegedly received from Laura, *i.e.* that Laura had said that her sister Patti was a "pathological liar" and/or that Patti was "the biggest liar that

[Laura] had ever met in her life."[34] *See* Opp'n at 18:15-20:10, Docket No. 103. Specifically, Plaintiffs argue that had the defense known about Laura's statements, they would have had Laura and other officers who were familiar with Patti's history of lying to law enforcement testify at trial, and "the impact of such testimony from a respected police officer . . . is obvious." *Id.* at 19:2-7. Plaintiffs contend that, absent Patti's alleged false testimony that Susan had confessed to being a participant in the murder, she would never have been arrested, much less convicted. *Id.* at 19:8-14. As such, Plaintiffs claim that the materiality of Laura's information regarding Patti is indisputable and there is "no question that [Susan] was prejudiced at trial" by its suppression. *Id.*

However, the Court would agree with Winn that, even if the conversation between Winn and Laura took place (a fact which the parties dispute but which, for the purposes of this motion, the Court accepts as having taken place sometime before Susan's trial), the failure to disclose that conversation was not a *Brady* violation.

First, it is extremely important to focus on what is the exact evidence that Winn is accused of suppressing. As discussed above, in the context of an alleged *Brady* violation by a police officer, a plaintiff must establish the following three elements: (1) the evidence *at issue*

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[34] However, as discussed in footnote 25, *supra*, there is no evidence that Laura ever used the term "pathological liar" in speaking to Winn about Patti.

must be favorable to the accused, either because it is exculpatory or impeaching; (2) the officer must have failed to provide that evidence to the prosecutor *and*, in so doing, the officer acted at a minimum with deliberate indifference to or reckless disregard for the accused's rights or for the truth; and (3) the suppression of that particular evidence must have prejudiced the accused. *See Tennison*, 570 F.3d at 1087-90. The *only* item of suppressed evidence which Plaintiffs arguably establish is Laura's statement that she believed her sister was the biggest liar she had ever met in her life, and that her "MO" was only to give information that would benefit her. Plaintiffs contend that had Susan's defense counsel been informed of that opinion, they would have questioned Laura further, discovered that Patti had served as an informant for the Torrance Police Department in the past and that Patti had been found to be an unreliable informant by Torrance Police, which in turn would have resulted in Susan's never being arrested or convicted in the first place.[35] However,

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[35] Plaintiffs' argument in this regard brings to mind the nursery rhyme:

> For the want of a nail the shoe was lost,
> For the want of a shoe the horse was lost,
> For the want of a horse the rider was lost,
> For the want of a rider the battle was lost,
> For the want of a battle the kingdom was lost,
> And all for the want of a horseshoe-nail.

However, as observed by Justice Roberts in his dissent in *Massachusetts v. EPA*, 549 U.S. 497, 546 (2007), commenting on the issues of redressability and causation: "Schoolchildren know that a

there is no evidence that Laura ever told Winn about Patti's serving as a police informant on any prior occasion or that the Torrance Police Department had previously deemed her to be an unreliable informant. Hence, that information was not suppressed by Winn. Likewise, at the time Patti initiated the contact with Winn and to Winn's knowledge thereafter, Patti had never asked Winn for any benefit or quid pro quo for her cooperation and testimony. Further, the present situation is not one where either Winn or the prosecution hid (or failed to disclose to the defense) Laura's existence as the sister of Patti and that Laura was an officer with the Torrance Police Department. Indeed, at Susan's preliminary hearing, Patti herself stated that her sister was a Torrance police officer. More significantly, Patti also stated that she had previously provided assistance to the Torrance Police Department prior to the Daly murder investigation. Additionally, Cole has sworn (and Plaintiffs have failed to proffer any evidence to rebut Cole's statements) that, prior to the trial, the LADAO knew that: (1) Patti had a sister (Laura) who was with the Torrance Police Department; (2) Patti had previously provided assistance to the Torrance Police Department; (3) Patti had written to Cole claiming that Laura had threatened to arrest her if she came down from Washington to testify at Susan's trial; (4) Patti had stated in her letter that she had been accused of providing false information in regards to a hit-and-run incident; (5) Patti had admitted to falsely

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kingdom might be lost 'all for the want of a horseshoe nail,' but 'likely' redressability is a different matter."

using another sister's identity to avoid being arrested pursuant to a state warrant; and (6) Patti did not get along with Laura. Cole also stated that she believes she provided a copy of Patti's letter and her response to defense counsel. Thus, it cannot be disputed that, prior to Susan's trial and at a time when the information could have been pursued and timely developed for her defense, her counsel knew of Laura's existence and that Patti had provided assistance to the Torrance Police Department in at least one other criminal case.

Second, in deciding whether Laura's statement regarding Patti's being a liar was favorable to Susan because it constituted impeachment evidence, one must consider applicable California law. California Evidence Code ("Cal. Evid. C.") § 780(e) provides that a "court or jury may consider in determining the credibility of a witness any matter that has any tendency in reason to prove or disprove the truthfulness of his testimony at the hearing, including . . . (e) His character for honesty or veracity or their opposites." "A person lacking in veracity is an untrustworthy witness and may be impeached by proof of this bad character trait." 3 *Witkin, California Evidence (Fifth Edition): Presentation at Trial* § 292 at 413. However, such testimony is subject to the trial court's discretion under Cal. Evid. C. § 352 to exclude evidence where its probative value is substantially outweighed by its potential for prejudice, confusion, or undue consumption of time. *Id.* § 298 at 421; *see also People v. Wheeler*, 4 Cal.4th 284, 295 (1991). Still, a court may, in its discretion, permit questions to a witness about whether another person is

telling the truth, if the witness to whom the questions are addressed "has personal knowledge that allows him [or her] to provide competent testimony that may legitimately assist the trier of fact in resolving credibility questions." *People v. Chatman*, 38 Cal.4th 344, 384 (2006).

In light of the above, Laura's statement regarding Patti's being a liar is favorable impeachment evidence, but only marginally so. Under California law, a person's character trait is normally proven by one of three ways: (1) opinion evidence, (2) reputation evidence, or (3) evidence of specific instances of the person's conduct. *See* Cal. Evid. C. §§ 1100-1101(a); 1 *Witkin, California Evidence (Fifth Edition): Circumstantial Evidence* § 45 at 423. Here, Laura's statement falls within the opinion evidence category. While it does challenge Patti's veracity, its impact is lessened by the fact that Laura did not supply Winn with the background information that would have made the statement strongly impeaching, *e.g.* that the Torrance Police Department had previously found Patti to be an unreliable informant. Consequently, the evidence which Winn supposedly did not turn over to the prosecution was merely that Patti's sister (a police officer) thought Patti was the biggest liar she ever met, and her MO was to only supply information when it would benefit her. That is hardly the type of impeachment evidence that one would consider to be significant. Nevertheless,

it is sufficiently "favorable" to meet the first criterion to establish a *Brady* violation.[36]

Third, Plaintiffs have failed to offer evidence to meet the second *Brady* element that Winn's failure to tell the prosecutor of Laura's remarks constitutes "deliberate indifference to or reckless disregard for [Susan's] rights or for the truth" (*see Tennison*, 570 F.3d at 1088) – where: (1) that standard is "consistent" with the showing that "government action may violate due process if it 'shocks the conscience.' *County of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998)" (*Id.* at 1089); (2) "[t]he level of culpability required to meet the conscience-shocking standard depends on the context" (*Id.*); and (3) deliberate indifference is "a stringent standard of fault," *Connick*, 563 U.S. at 61. The only evidence proffered by the Plaintiffs on this issue is the nondisclosure itself. Plaintiffs do quote the following testimony from Winn's deposition:

> Q. Do you agree that if you found out that June Patti was a pathological liar in 1997, that would be the kind of information that you would have to turn over?
>
> A. Yes.

However, because there is no evidence that Laura told Winn that Patti was a "pathological liar," that

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[36] However, the relative weakness of the undisclosed evidence again comes into play in considering the other two criteria (*i.e.*, the presence of reckless disregard/deliberate indifference and resulting prejudice/materiality) and the additional issue of qualified immunity.

portion of Winn's deposition does not establish reckless disregard or deliberate indifference.

As noted above, the evidence actually undisclosed by Winn was very limited. Even then, there is no indication that Winn did (or should have) fully appreciated the significance of Laura's opinion that Patti was the biggest liar that she ever met in her life. The statement itself is only of modest impeachment value. Further, Winn was not an attorney (who is "equipped with the tools to find, interpret and apply legal principles, *Connick*, 563 U.S. at 70), and the evaluation of the degree of help that impeachment evidence will provide can depend on factors which are not readily apparent to the investigating police officer, *see generally Ruiz*, 536 U.S. 630. Also, after the preliminary hearing, it was undoubtedly disclosed to the defense that: Patti had a sister who was a Torrance Police Department officer; Patti had been a cooperator/informant with the Torrance Police Department; and there were many grounds on which Patti's credibility/veracity could be challenged (*e.g.*, the fact that five years earlier she stabbed Susan's then-boyfriend; the increasing number of inconsistent statements that she made each time she was interviewed or testified; etc.). Finally, as Laura stated, there was merely one phone conversation with Winn only which lasted a few minutes. Dep. of Laura Patti at 91-92, Docket No. 97-10. Laura did not have any personal knowledge regarding Patti's involvement in the Daly investigation or whether Patti lied at any stage of it – indeed, Laura testified at her deposition in the instant case that she had never spoken directly

with Patti regarding the Daly murder or the investigation. *See* SSUF ¶¶ 222, 235; Laura Depo. at 97-98.

At its worst, Winn's conduct was only perhaps negligent. Plaintiffs at one point in their Supplemental Brief seem to implicitly agree when they assert: "A reasonable detective would have wanted to resolve obvious concerns about whether June Patti was a credible witness or someone who was involved in the crime before relying on her statements." *See* Docket No. 205 at 12 of 43.

In *Tennison*, the Ninth Circuit held that the plaintiff in a § 1983 action had sufficiently shown for purposes of a summary judgment motion that one of the defendant police officers (*i.e.* Hendrix) acted with deliberate indifference/reckless disregard in failing to turn over to the prosecutor the taped confession of the actual killer (*i.e.* Ricard) even though Hendrix was aware of it. *See* 570 F.3d at 1089-90. That holding was based on: (1) the high exculpatory value of the suppressed item; (2) Hendrix's inconsistent testimony as to when he had first learned about the confession, from whom he had obtained that information, and the details of the confession; (3) the overwhelming evidence that he knew of the tape within days of its being taken; (4) his admission that he "didn't care about the tape;" (5) his statement that he was angry at the subordinate officers for taking the confession without him; and (6) his expressed opinion that the confession was not "sincere" because it was not made to him (as one of the officers in charge of the investigation). *Id.*

There is no similar indicia of deliberate indifference or reckless disregard on Winn's part in failing to disclose Laura's purported statements. Certainly, there is nothing that "shocks the conscience." Indeed, Laura herself testified that Winn had "seemed to believe that [Patti] was giving good information because [Patti] knew about the case. . . . And based on that, [Winn] believed her." *See* Laura Depo. at 97-98, Docket No. 97-10. Moreover, Patti's testimony was corroborated by several other witnesses that implicated Susan in the Daly murder, including Sanchez and Wilborn, who informed Winn that Susan: (1) had control over the gang members, (2) believed Daly was stealing from her, (3) had offered to pay people if they killed Daly, (4) had lured Daly to the Mellen Patch on the evening of the murder, and (5) that Susan and Shenkelberg had been seen wiping their fingerprints off the doors at the Mellen Patch the night of the house fire.[37] SSUF ¶¶ 32, 36, 83. In addition, Winn had received a memo from Detective Such implicating Susan and Shenkelberg in the murder.[38] *Id.* ¶ 57. There is thus no indication that Winn was (or should have been) aware that failing to disclose Laura's statement "pose[d] a substantial risk

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[37] Monllor, who admitted to Winn that he helped to dispose of Daly's body on the night of the murder, told Winn that he had seen Susan that night wiping door knobs and other surfaces at the scene of the murder.

[38] Detective Such indicated that a known informant told him that Schenkelberg revealed to the informant that Susan had set the murder up and was giving Daly a blow job when Ghost (*i.e.* Landrum) started beating him.

of serious harm" to Susan's rights.[39] *Cf. Tennison*, 570 F.3d at 1089-90.

Fourth, Plaintiffs have not shown the third *Brady* element that the nondisclosed evidence was material or that its nondisclosure prejudiced Susan's defense in her murder trial. Again, the focus must be on what Winn purportedly failed to turn over to the prosecutor (*i.e.* that Laura had stated that Patti was the biggest liar she ever met and would only give information if it would benefit herself), and not on what was not stated by Laura to Winn and thus unbeknownst to Winn (*e.g.* Patti was found in 1993 to be an unreliable informant by the Torrance Police Department).

Initially, as discussed above, the nondisclosed statements do not constitute significant impeachment evidence. They themselves would not give rise to "any reasonable likelihood" that the judgment of the jury would have been affected nor would their absence "undermine confidence" in the verdict.

Additionally, had Laura's statements been offered at trial by the defense to impeach Patti, the prosecution

[39] While Laura is alleged to have informed Susan's habeas counsel in 2014 that Patti would "lie[] to anyone if it suited her purpose," there is no evidence as to what purpose Patti would have had to have lied about her purported conversation with Susan. In this case, Patti was not a "jail house informant." Nor was she initially questioned by the police in regards to some crime with which she was suspected of committing. Rather, Patti on her own contacted the LAPD to offer evidence in the Daly murder investigation. There is also no proof that Patti was ever paid for her testimony or was ever offered (or given) some special treatment in return for the evidence she supplied.

would have been allowed on redirect to rehabilitate her. *See generally People v. Cleveland*, 32 Cal. 4th 704, 746 (2004) ("Redirect examination's 'principal purposes are to explain or rebut adverse testimony or inferences developed on cross-examination, and to rehabilitate a witness whose credibility has been impeached.' (3 Witkin, *Cal. Evidence (4th ed. 2000) Presentation at Trial*, § 256, p. 328.)"). In her deposition, Laura stated that she had never actually been present or personally witnessed Patti give false information to a law enforcement officer, and that she had never been present when Patti was interviewed regarding a crime. *See* Laura Depo. at 97-98. Further, for many years prior to the Daly murder, Laura had no significant contacts with Patti. Additionally, she testified that, even given her opinion that her sister was a "liar," she had no reason to doubt that Susan had in fact confessed to Patti, and that she could not "say that June Patti lied to Detective Winn in relation to the Daly investigation." *Id.* at 103, 118. She also agreed that it was fair to say that when Detective Winn contacted [her] to speak to [her] about June [Patti], [Laura] had no information to offer her in relation to her investigation into the Daly murder" (*id.* at 108), and that she (Laura) did not think that it was unreasonable for Winn to have believed Patti's statements. *Id.* at 97-98, SSUF ¶ 226.

Also, prior to trial, Deputy District Attorney Cole received a letter from Patti stating that her sister was a Torrance police officer, that Patti did not get along with her sister, and that her sister had threatened to

arrest Patti if she returned to California. SSUF ¶ 145. In the letter, Patti admitted that she had previously lied to a police officer to avoid getting arrested on an outstanding warrant and that Laura was aware that Patti had lied to law enforcement. *See* Ex. 19, Docket No. 79-4. Thus, the prosecutors in Susan's case were cognizant not only of Patti's being a "cooperator/informant" for the Torrance Police Department, but also that Laura knew that her sister had previously lied to law enforcement on a prior occasion to avoid being arrested.

Additionally, Laura's opinion that Patti was a liar would only have been cumulative of impeachment and other evidence that was in the possession of both the prosecution and the defense long before the criminal trial. Susan herself informed Winn that Patti was a liar. SSUF ¶ 74. At Susan's preliminary hearing, Patti testified that her sister was a police officer with the Torrance Police Department; that Patti had stabbed Susan's boyfriend five years ago, and that Patti had been an informant for the Torrance Police Department in cases prior to the Daly investigation. SSUF ¶¶ 98, 100, 103. There is no reason the defense could not have contacted Laura to obtain more information, or the Torrance Police Department regarding Patti's prior history as an informant. *See United States v. Marashi*, 913 F.2d 724, 733-34 (9th Cir. 1990) (holding that government had not committed *Brady* violation by failing to turn over identity of a private detective whose testimony could have been helpful, because defense was aware that several private detectives had been hired

and could have obtained the identity of the detective themselves).

Indeed, during trial, multiple issues regarding Patti were raised during a 402 hearing, including her prior criminal record, her drug use, that she had stabbed Susan's prior boyfriend, and whether she was a paid informant. SSUF ¶ 150. Winn also testified at trial that Patti's trial testimony had differed in some respects from Patti's initial statement to Winn in August 1997. SSUF ¶ 157. Indeed, Patti herself acknowledged those inconsistencies at the trial and also testified that she did not tell the complete truth either initially when discussing Susan's involvement in the Daly murder with the LAPD or when giving her testimony at the preliminary hearing.[40] Thus, even though Winn did not disclose Laura's statements regarding her opinion that Patti was the biggest liar she ever met, the prosecutor was aware of Patti's relationship with Laura, the difficulties they had through the years, and some of the past instances where Patti had lied to (or was accused of lying to) law enforcement.

Given all of the above, there is no question that the defense was in possession of the relevant evidence with

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[40] To paraphrase Agatha Christie's dialogue in *Witness for the Prosecution* of master barrister Sir Wilfrid Robarts when questioning a witness who admitted not telling the truth when first questioned by the police, on another occasion, and finally giving yet a different version at the trial: "And now today you've told us a new story entirely; the question is . . . were you lying then, are you lying now, or are you not in fact a chronic and habitual LIAR?!"

which to impeach Patti's credibility – Laura's alleged statement that her sister was a liar was merely cumulative of that evidence, and Winn's alleged failure to disclose the statement is therefore not a *Brady* violation. *See Williams v. Woodford*, 384 F.3d 567, 569 (9th Cir. 2004) (holding that there was no prejudice under *Brady* where cumulative impeachment evidence would not have placed the witness in a "significantly worse light" and therefore the result of the proceedings would not have been different); *Raley v. Yist*, 470 F.3d 792, 904 (9th Cir. 2006) ("where the defendant is aware of the essential facts enabling him to take advantage of any exculpatory evidence, the Government does not commit a *Brady* violation by not bringing the evidence to the attention of the defense"); *Silva v. Brown*, 416 F.3d 980, 989 (9th Cir. 2005) (holding that the undisclosed evidence must have "provided the defense with a new and different ground of impeachment" to qualify as *Brady* material); *Marashi*, 913 F.2d at 733 (holding that withheld evidence was not *Brady* material because it was cumulative and contradicted witness's testimony in same manner as evidence already in possession of defense).

Fifth and finally, even if Laura's statement was *Brady* material, and even if there was evidence that Winn acted recklessly in failing to disclose it, Winn would be entitled to qualified immunity. "The doctrine of qualified immunity protects government officials 'from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person

would have known.'" *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (citing *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). "For a legal principle to be clearly established, it is not necessary that the very action in question has previously been held unlawful. Rather, the dispositive inquiry is whether it would be clear to a reasonable official that his conduct was unlawful in the situation he confronted." *Tennison*, 570 F.3d at 1093-94 (citations omitted). Thus, the qualified immunity analysis "must be undertaken in light of the specific context of the case, not as a broad general proposition." *Saucier v. Katz*, 533 U.S. 194, 201 (2001), *overruled on other grounds by Pearson v. Callahan*, 555 U.S. 223 (2009). "If the law did not put the officer on notice that his conduct would be clearly unlawful, summary judgment based on qualified immunity is appropriate." *Id.* at 202. "Once the qualified immunity defense is raised, the burden is on the plaintiff to demonstrate that the officials are not entitled to qualified immunity." *Moldowan v. City of Warren*, 578 F.3d 351, 375 (6th Cir. 2009) (citations omitted).

Here, it would not have been clear to a reasonable officer that Winn's conduct was unlawful under the circumstances. Winn was in possession of multiple sources implicating Susan and corroborating Patti's testimony, and Laura did not have any personal knowledge that Susan was lying in the Daly investigation. It was by no means clearly established in 1997 that a sibling's general opinion of her sister's lack of veracity, absent any substantiating information tying that opinion to the case, qualified as *Brady* material;

indeed, it is not clearly established today. *See Drumgold v. Callahan*, 707 F.3d 28, 57 (1st Cir. 2013) (holding that it was not clearly established in 1989, or even today, that a police officer "had an affirmative obligation under *Brady* to disclose potential impeachment evidence" consisting of the prosecution's failure to disclose that it was paying for key prosecution witness, who was homeless, to be housed in a hotel); *Beaman v. Souk*, 7 F.Supp.3d 805, 830-31 (C.D. Ill. 2014) (police officer was entitled to qualified immunity for failure to disclose polygraph report of alternative suspect, which had indicated his answers related to murder were "doubtful," because it was not clearly established that polygraph reports had to be disclosed under *Brady* at the time); *but see Carrillo v. Cnty. of L.A.*, 798 F.3d 1210, 1226 (9th Cir. 2015) (holding that officers were not entitled to qualified immunity for failing to disclose evidence that another man who resembled the eyewitness description of the accused killer had previously tried to kill the victim, emphasizing that "[a]ny reasonable police officer in 1984 would have understood that evidence potentially inculpating another person fell within *Brady*'s scope"). Indeed, Deputy District Attorney Cole, who during the relevant time period had similar information regarding Laura's relationship with and opinion of Patti, did not believe that such evidence constituted *Brady* material.[41]

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[41] As noted by the Supreme Court in *Connick*, 563 U.S. at 70-71, the *Brady* doctrine has "grey areas" and some *Brady* decisions are difficult even for prosecutors who are attorneys, let alone for law enforcement officers who not only do not have such extensive

For all of these reasons, the Court would find that Winn's purported failure to disclose Laura Patti's opinion of her sister did not violate *Brady* and, in any case, Winn is entitled to qualified immunity.

2) Winn's Failure to Produce the "Baer Shoes" Tape or to Otherwise Convey the Full Contents of Shoes' Statements

Plaintiffs' second *Brady* claim contends that Winn failed to disclose the full contents of Detective Baer's interview with Shoes, who provided details about the Daly murder indicating that "Wicked, Ghost, and Payaso" were involved in the crime. *See* Pls. Supp'l Opp'n at 14, Docket No. 205. Plaintiffs contend that "there were many exculpatory statements in the tape that were not mentioned" in the notes included in the Murder Book about the interview. *Id.* at 15.

However, as Winn points out, the existence of the Shoes tape was disclosed in the Murder Book, including Detective Baer's note summarizing the call. SSUF ¶ 15. The defense could have requested a copy of the tape to compare its contents to Baer's summary; and its failure to do so does not make the tape itself or the contents of Shoes' statements *Brady* material. *See Raley*, 470 F.3d at 804 (finding no *Brady* violation where the defense "possessed the salient facts regarding the existence of the records that he claims were

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legal training but also are not equipped with the tools for finding and applying legal principles.

withheld. . . . Because [the defense] knew of the existence of the evidence, his counsel could have sought the documents through discovery); *see also United States v. Griggs*, 713 F.2d 672, 674 (11th Cir. 1983) (which was cited by *Raley*, 470 F.3d at 804 to support the proposition that "the prosecutor did not violate *Brady* by failing to turn over statements by government witnesses where the defendant had access to a list of potential government witnesses").

Moreover, the materiality of the Shoes interview is speculative at best. Shoes did not state that Susan did not commit the murder, but merely provided leads to other individuals that may have been involved. As such, it is doubtful that her statements could have influenced the outcome of the trial. *See Downs v. Hoyt*, 232 F.3d 1031, 2017 (9th Cir. 2000) (holding that undisclosed evidence of several other investigative leads in sheriff's files was not material under *Brady* because it was entirely speculative how that evidence would have helped the case or altered the outcome). Moreover, those other individuals identified by Shoes (*i.e.* "Wicked, Ghost and Payaso") were already referenced in myriad other places in the Murder Book which was provided to the defense.

Finally, there is no dispute that the interviews with Shoes were conducted by Detective Baer, not Winn. The Court is unaware of any authority requiring Winn to disclose the full content of an interview taken and noted by another police officer. In any event, Winn's conduct was not "reckless," as the Shoes interviews (one of which was recorded) were summarized

and disclosed in the Murder Book, and there was no requirement that Winn do anything more.

3) Winn's Failure to Document That She Interrogated Six Mellen Patch Occupants at the Station, Four of Whom Were Allegedly Detained without a Warrant or Probable Cause

Plaintiffs also allege that Winn violated *Brady* by failing to disclose that she took six Mellen Patch occupants to the police station against their will and interrogated them, and that she did not have probable cause to arrest four of them. *See* Pls. Supp'l Brief at 18. Plaintiffs assert that Winn's "brief mention of her encounter with the Mellen Patch detainees" in the Chronological Record was deficient and misleading. *Id.*

It is entirely unclear how Winn's purported failure to disclose the full interrogations of the Mellen Patch occupants constitutes a *Brady* violation. As Winn points out, none of the Mellen Patch occupants testified in the underlying criminal case, nor did any of them offer any relevant information about the Daly murder. *See Amado v. Gonzales*, 758 U.S. 1119, 1134 (9th Cir. 2014) ("The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching." (citations omitted)); *Raley*, 470 F.3d at 804 (emphasizing that *Brady* evidence must be material either to guilt or punishment). Any impact that such information could have had on the verdict is purely speculative. *See Phillips*, 267 F.3d at 987

(dismissing *Brady* claims based on "mere suppositions" about exculpatory evidence that withheld material might have led to).

Moreover, the defense was aware that the occupants had been detained, and were free to question any of them and raise at trial any issues related to the manner in which they were detained. *See Raley*, 470 F.3d at 804; *Griggs*, 713 F.2d at 674. Because the relevant information was in the possession of the defense, it cannot constitute a *Brady* violation. Nor can Winn's purported failure to disclose the full extent of the occupants' detention be classified as "reckless," as she did in fact document the incident in the Chronological Record/Murder Book, and there was no requirement that she do anything further.

Finally, to the extent that Winn violated the constitutional rights of any of the six Mellen Patch occupants, Plaintiffs do not have standing to raise those violations in their § 1983 action. Likewise, any such violations themselves would not constitute *Brady* material.

4) Winn's Failure to Disclose the Substance of the Mellen Patch Interrogations

Plaintiffs next argue that Winn violated *Brady* by failing to disclose the substance of the interrogations of the Mellen Patch occupants. *See* Pls. Supp'l Br. at 20. Plaintiffs argue that "a jury could reasonably find that the reason the results of the Mellen Patch

interrogations were not provided to the defense is that what the detainees told her was inconsistent with the case she wished to develop." *Id.* at 21. This Court would disagree.

Plaintiffs' argument is, again, entirely speculative and insufficient to establish a *Brady* violation. There is no evidence (in existence either in 1997-98 or now) that any Mellen Patch occupant provided any exonerating or impeaching evidence during the interrogations; indeed, Winn testified that she did not obtain any relevant information after interviewing the Mellen Patch occupants. SSUF ¶ 30; *see also Phillips*, 267 F.3d at 987 (finding no *Brady* violation where there was "absolutely no evidence [that the undisclosed report] would have contained exculpatory evidence, and that claim is directly contradicted by [the officer's] own declaration"); *Downs*, 232 F.3d at 1073 ("*Brady* does not require [an officer] to turn over files reflecting . . . ongoing investigations where no exonerating or impeaching evidence has turned up.").

Nor did Winn have any obligation to record her interviews with the Mellen Patch occupants or document them in any specific manner. Indeed, the Ninth Circuit has "flatly rejected" such a theory. *See Marashi*, 913 F.2d at 734 (holding that government had no *Brady* obligation to record interviews with witness); *United States v. Bernard*, 625 F.2d 854 (9th Cir. 1980) (holding that DEA agent had [sic] did not violate *Brady* by deliberately decid[ing] not to take notes of a series of interviews with a paid drug informant).

Moreover, Winn's purported failure to disclose the content of her interviews cannot be said to have been "reckless," as she did disclose that the interviews took place, and there was no requirement that she do more.

5) Winn's Failure to Disclose That She Seized Scott "Skip" Kimball's Car Without a Warrant and Lied on the Search Warrant Return[42]

Plaintiffs also contend that Winn violated *Brady* by failing to disclose the fact "that she lied to the court on the search warrant return when she claimed to have seized Skip's car at the Mellen Patch." *See* Pls. Supp'l Br. at 22. Plaintiffs contend that Winn actually seized the car from Skip's home, and that she did not have a search warrant to seize his car there. *Id.* According to Plaintiffs, this was a "critical fact" that Winn had lied, which was not disclosed to the prosecutor or the defense. *Id.*

As an initial matter, Plaintiffs contention is unsupported by the evidence. In the search warrant request, Winn stated that she had received information from an informant that Ghost, Wicked, and Payaso killed Rick Daly at the Mellen Patch and transported him in Skip's car to San Pedro. *See* MSJ Ex. 7, Docket

[42] Plaintiffs' fifth *Brady* claim alleges that Winn failed to disclose that she seized Skip's car without a warrant; the sixth *Brady* claim alleges that Winn failed to disclose that she fabricated her search warrant return. Because these claims significantly overlap, the Court addresses them together.

No. 79-2 at page 18. Winn thereafter stated that she had checked the department resources and that Skip had a 1977 BMW, California License number 3VXZ103, registered to his address at 4159 West 160th Street, and that on August 11, 1997, Winn had visited "the above location and observed a green two door BMW with license plate 3VXZ103 parked in the driveway." *Id.* at page 19. Winn further stated that Skip was currently in custody. *Id.* The warrant request also listed the address for the Mellen Patch. *Id.* The warrant then sought permission to search the "above vehicles," explained that Winn believed evidence related to the murder would be found in the vehicles, and specifically requested a search warrant for the "above vehicles." *Id.* No other vehicle was specifically listed in the warrant request other than Skip's. *Id.* Moreover, the Vehicle Identification Report stated that the car was seized at Skip's home. *See* Ex. E to Motion in Limine No.2, Docket No. 193-5. The mere fact that the Search Warrant Return stated that Winn seized the car at the Mellen Patch, *see* Opp'n Ex. D, Docket No. 168-4, rather than Skip's home, does not establish that Winn intentionally lied about where she seized the car.

Second, the search warrant, search return, and Vehicle Identification Report were all included in the Murder Book and in the possession of the defense; the defense could have identified the above discrepancies and raised them at trial. Moreover, the discrepancy in Winn's statements regarding where the car was seized are in no manner material (or even related) to Susan's guilt or innocence. Nor is there any indication that the

result of the trial would have been different – any impact the purported lie would have had is entirely speculative. *See Carvajal v. Dominguez*, 542 F.3d 561, 568 (7th Cir. 2008) (holding that discrepancies in officer's statements about when he first identified defendant was not *Brady* material, emphasizing that "it is already established law that *Brady* does not extend so far as to provide relief in a situation where a 'police officer makes a false statement' ").

Finally, there is no evidence indicating that Winn's actions were "reckless" in failing to disclose her alleged lie – indeed, there is no evidence she was even aware of the discrepancies between the search warrant request, the Vehicle Identification Report, and the search warrant return.

6) Winn's Failure to Disclose that She Violated Lester "Wicked" Monllor's Sixth Amendment Right to Counsel

Plaintiffs' next *Brady* claim is that Winn failed to disclose that she violated Lester "Wicked" Monllor's Sixth Amendment right to counsel by interrogating him without his counsel's knowledge and consent. There is no evidence in support of this claim.[43]

[43] Standing alone, the attorney-client privilege is merely a rule of evidence; it has not been held to encompass a constitutional right. *Clutchette v. Rushen*, 770 F.2d 1469, 1471 (9th Cir. 1985). In some situations, government interference with a confidential relationship between a defendant and his counsel may implicate the defendant's Sixth Amendment rights. *Id.* (citing

Moreover, Lester Monllor's interview was recorded and included in the Murder Book, and thus in possession of the defense, who could have raised any issues regarding the interview at trial. *See* SSUF ¶ 53. Additionally, as delineated in the transcript of the interview, Monllor initiated the contact with Winn seeking to set up a meeting; and at the meeting, he was first specifically advised of his *Miranda* rights and he stated that he did not want any attorney present. *See* Exhibit 14 to MSJ, Docket No. 79-3 at pages 63-65 of 128. Finally, there is no indication how Winn's alleged actions as to the Monllor interview are relevant to Susan's guilt or innocence, nor how any further disclosure of her actions in that regard could have impacted the trial.

Weatherford v. Bursey, 429 U.S. 545 (1977)). "In order to show that the Government's alleged intrusion into the attorney-client relationship amounted to a violation of the Sixth Amendment, a defendant must show, at a minimum, that the intrusion was purposeful, that there was communication of defense strategy to the prosecution, or that the intrusion resulted in tainted evidence." *United States v. Fernandez*, 388 F.3d 1199, 1240 (9th Cir. 2004) (emphasis omitted). Further, the intrusion violates the Sixth Amendment only when it substantially prejudiced the defendant, in that the prosecutor actually used or otherwise gained an unfair advantage from the confidential information. *United States v. Danielson*, 325 F.3d 1054, 1069-70 (9th Cir. 2003). Plaintiffs have not proffered any evidence relating to the above issues.

7) Winn's Failure to Document and Disclose her Conversations with LASD Detective Doral Riggs Regarding Santo "Payaso" Alvarez

Plaintiffs contend that Winn "withheld the purpose and the content of her conversations with LASD Detective Riggs" regarding an uncharged suspect, Santo "Payaso" Alvarez. *See* Pls. Supp'l Br. at 25, Docket No. 205. Prior to the Daly investigation, Alvarez had implicated two other gang members in a separate murder case, which was being investigated by Detective Riggs. SSUF ¶ 70(a). A copy of Riggs' business card was in the Murder Book, and the Chronological Record indicates that Winn and Riggs spoke over the phone on August 6 and 7, 1997. *See* SSUF ¶¶ 21, 153(a); MSJ Ex. 1, Docket No. 79-1 at page 5. Although the Chronological Record does not provide any information regarding the substance of Winn's conversation with Riggs, Plaintiffs contend that there "was no alternative purpose possible for the call" than for Winn to obtain information about Payaso from Riggs. *See* Pls. Supp'l Br. at 26. Plaintiffs argue that "had Winn sought any information from [Riggs] regarding Payaso, he would have told her what he knew and would have had no reason to withhold information from her." *Id.* Plaintiffs contend that Winn suppressed the information regarding her conversation with Riggs, after learning that he was a key witness on a pending murder investigation." *Id.* at 27.

Plaintiffs' theory fails on numerous grounds. First, there is no evidence regarding what Winn and Riggs

discussed. Indeed, Riggs testified that he had no recollection of the Daly case or speaking with Winn. *See* MSJ Ex. 5, Docket No. 79-1 at pages 30-36. Similarly, Winn testified that the only information she obtained from LASD was the names of the Lawndale 13 gang members. *See* Winn Decl. ¶ 29. She further testified that she did not receive any information about Alvarez from Detective Riggs or anyone else at LASD. *Id.* Plaintiffs' claim that Winn and Riggs discussed Alvarez is entirely speculative and unsupported by any evidence. *See Barker*, 423 F.3d at 1099 ("The most [plaintiff] can offer is a theory woven largely of threads he has created himself to link pieces of evidence. That is not enough."); *Phillips*, 267 F.3d at 987 (dismissing *Brady* claims based on "mere suppositions" about exculpatory evidence that withheld material might have led to).

Second, Plaintiffs' theories on this issue are totally nonsensical as well as unsupported. Plaintiffs contend that: "on the very day DDA Schreiner rejected her efforts to obtain murder charges against Payaso. . . . Winn opted for the easier target [Susan Mellen] and left the references to her conversations with Riggs obscure." *See* Docket No. 174 at 4:23-28; *also* Plaintiffs' Supp. Br. at 26 n.6. They surmise that: "Winn deliberately chose to halt her investigation of Payaso [Alvarez] once she learned of his role as a key witness on a pending murder investigation because she believed her chances of securing a conviction were greatly reduced by one of the Lawndale gang members who actually committed the murder [sic]." *See* Docket No. 205

at 27:2-7. However, there is no evidence that, on or after her August 6 and 7 telephone conversations with Detective Riggs, Winn stopped her investigation into Alvarez's connections with the Daly murder or otherwise failed to include them in her reports. For example, Winn recorded and placed in the Murder Book the August 13th interview with Ginger Wilborn who stated that "Wicked" (Monllor) had told her that he, "Ghost" (Landrum) and "Payaso" (Alvarez) had killed Daly at the rear house of the Mellen Patch. *See* SSUF ¶ 31. Likewise, on August 12, Winn obtained *Ramey* arrest warrants as to Monllor, Landrum and Alvarez for the Daly murder. *Id.* ¶ 27. In applying for the Mellen Patch search warrant, Winn stated in the Probable Clause Declaration that it was believed that Monllor, Landrum and Alvaez [sic] had killed Daly at the premises with a hammer. *Id.* ¶ 26. Further, it is not disputed that: (1) Winn did not conceal that she had conversations with Detective Riggs or his contact information; (2) Winn did gather and disclose considerable evidence regarding Alvarez's involvement in the Daly murder both before and after August 6-7; (3) the decision not to prosecute Alvarez was made by Assistant District Attorney Schreiner and not by Winn; and (4) even with Alvarez not being pursued by the LADAO for Daly's murder, Monllor and Landrum, who were also identified as Lawndale 13 gang members (as was Alvarez – *see* the 07-21-97 Follow-Up Investigation Report, Docket No. 79-2 at page 3 of 167), remained as named

suspects in the case.[44] Given all of the above, there is no basis to believe that the substance of the conversations between Winn and Detective Riggs in August of 1997 could possibly constitute *Brady* material.

Third, an officer is not required to "turn over files reflecting leads and ongoing investigations where no exonerating or impeaching evidence has turned up." *See Downs*, 232 F.3d at 1037. There is no indication that Winn had any information at the time of her investigation that Alvarez could have exonerated Susan.[45]

Fourth, as discussed *supra*, there was no requirement that Winn record or summarize conversations and interviews related to the investigation. *See Marashi*, 913 F.2d at 734; *Bernard*, 625 F.2d at 854.

Fifth, the defense was aware that Winn had spoken to Detective Riggs and could have questioned Riggs regarding the substance of those conversations on their own; could have called Riggs to testify at trial regarding the conversations; and could have cross-examined Winn about the conversations. The defense's

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[44] Initially, the LADAO declined to charge either Alvarez or Landrum with the Daly murder, although murder charges against Landrum were subsequently filed. *Id.* ¶¶ 55-56.

[45] Plaintiffs seem to believe that Alvarez's "admitted involvement [in Daly's murder] is irreconcilable with Patti's claim of Susan Mellen's involvement." *See* Docket No. 174 at 5. Assuming *arguendo* that dubious contention is even remotely plausible, it cannot be contested that Winn not only never concealed Alvarez's involvement, she continually referenced it in her reports up until the time she presented the Daly case to the LADAO.

failure to do so does not render the conversations *Brady* material. *See Raley*, 470 F.3d at 804; *Griggs*, 713 F.2d at 674.

Finally, there is no indication that Winn acted recklessly in not disclosing the full substance of her conversation with Riggs, rather than noting that they occurred in the Chronological Record – indeed, there was no requirement that she do so.[46]

d) Conclusion

In sum, Plaintiffs have failed to establish a *Brady* violation. As such, the Court would DISMISS the first cause of action.

2. Failure to Investigate

Plaintiffs' § 1983 inadequate investigation claim is based on Winn's purported failures to inquire further regarding Patti's testimony and Susan's innocence, despite allegedly knowing that Patti was not trustworthy; and that Winn didn't independently corroborate Patti's version of the events. *See* Pls. Supp'l Br. at 28-29. At the previous hearing on the Motion, the Court requested briefing on whether a failure to investigate claim had to be tied to some other constitutional violation, such as discrimination based on race or gender. Plaintiffs now contend that their failure to

[46] The Court also notes that, for the same reasons as *Brady* Claim 1, Winn would also be entitled to qualified immunity for Claims 2-8, as a reasonable officer would not have believed Winn's alleged disclosure failures violated *Brady*.

investigate claim "*is* tied to a constitutional violation, specifically, Ms. Mellen's right to due process and her right to a fair trial." *See* Pls. Supp'l Br. at 28.

However, as Winn points out, the Ninth Circuit has made clear that there is no right to an adequate investigation claim under § 1983, unless it is anchored to a *separate* constitutional right. *See Gomez v. Whitney*, 572 F.2d 1005, 1006 (9th Cir. 1985) ("[W]e can find no instance where the courts have recognized inadequate investigation as sufficient to state a civil rights claim unless there was another recognized constitutional right involved."); *see also Ogurinu v. City of Riverside*, 79 Fed.App'x 961, 962-63 (9th Cir. 2003) ("An inadequate investigation alone does not involve the deprivation of a protected right, but must involve another recognized constitutional right" (internal quotation marks and citations omitted)). This is because "the guarantee of due process under the Fourteenth Amendment applies only when a constitutionally protected liberty or property interest is at stake." *See Ingraham v. Wright*, 430 U.S. 651, 672 (1977); *Erickson v. United States*, 67 F.3d 858, 861 (9th Cir. 1995). However, the Ninth Circuit has made clear that a right to an adequate investigation is not a constitutionally protected liberty or property interest. *See Gomez*, 572 F.2d at 1006; *Ogurinu*, 79 Fed.App'x at 962-63; *Morrow v. City of Oakland*, No. C 11-023351 LP, 2012 WL 368682, at *14-15 (N.D. Cal. Feb. 3, 2012) (dismissing § 1983 alleging due process violation for failure to investigate, emphasizing that there is no constitutional right to a particular investigative procedure); *Secual Sin De Un*

Abdul Blue v. City of L.A., No. CV 09-7573-PA (JEM), 2010 WL 890172, at *6 (C.D. Cal. Mar. 8, 2010) ("an inadequate investigation by police officers is not sufficient to state a § 1983 claim unless another recognized constitutional right is involved, such as failure to protect against discrimination").

Plaintiffs rely on *Commonwealth of N. Mariana Islands v. Bowie*, 243 F.3d 1109 (9th Cir. 2001) and *Tatum v. Moody*, 768 F.3d 806 (9th Cir. 2014), to argue that no separate constitutionally protected right is required. However, *Bowie* did not involve a § 1983 claim, but rather was a direct appeal from the defendant's criminal conviction. Moreover, *Bowie* held only that a *bad faith* failure to collect potentially exculpatory evidence violates due process, which requires that the government have actual knowledge that the exculpatory evidence existed. *See* 243 F.3d at 1118. For both of these reasons, *Bowie* is not applicable here.

In addition, *Tatum* is not applicable here. *Tatum* concerned claims that two officers had intentionally withheld or concealed exculpatory evidence from the prosecutors; it did not involve a claim that the officers had conducted an inadequate investigation. *See* 768 F.3d at 808, 815.

Because Plaintiffs' § 1983 claim for inadequate investigation is not anchored to any separate constitutionally protected right, the Court would DISMISS the second cause of action.

3. Due Process and Familial Association Claims

Winn claims that Plaintiffs' fourth cause of action for concomitant violation of due process and familial association claims fail on the basis that Susan has not established that any of her constitutional rights were violated. *See* MSJ at 29:23-26, Docket No. 78. The Court would agree.

IV. Conclusion

In conclusion and for the reasons stated above, the Court would GRANT Winn's Motion for Summary Judgment.

V. Winn's Request for Evidentiary Ruling, Docket No. 110-1

1-53.	Sustained.[47]
53(a).[48]	Overruled.
54.	Overruled.
55.	Overruled.
56.	Overruled.
57.	Sustained.
58.	Sustained.
59.	Overruled.
60.	Overruled.
60(a).	Overruled.
61.	Overruled.
62.	Overruled.
63.	Overruled.
64.	Overruled.
65.	Sustained.
66.	Overruled.

[47] Winn requests that the Court strike the Declaration of Roger Clark, *see* Docket No. 92, in its entirety. *See* Request for Evid. Ruling at 2:4-4:18. The Declaration relates to Clark's expert opinion regarding Winn's alleged failure to properly investigate the Daly murder and the ultimate unreasonableness of Winn's actions. *See generally* Docket No. 92. Because Ninth Circuit law precludes reliance on expert reports on the question of reasonableness to avoid summary judgment, the Court would strike the Declaration. *See Lal v. Cal.*, No. C 06-5158 PJH, 2012 WL 78674, at *8 (N.D. Cal. Jan. 10, 2012), *aff'd*, 746 F.3d 1112 (9th Cir. 2014) (citing *Billington v. Smith*, 292 F.3d 1177, 1189 (9th Cir. 2002)) (striking similar declaration of Roger Clark opining on reasonableness of officer's actions). Because Objections No. 1-53 relate to Clark's Declaration, the Court would sustain them in their entirety.

[48] Winn's Request for Evidentiary Ruling repeats certain numbers. As such, the court denotes each subsequent repetition with the letter "a" to avoid confusion.

67. Sustained.
68. Overruled.
68(a). Overruled.
68(b). Overruled.
68(c). Sustained.
69. Overruled.

VI. Plaintiffs' Request for Evidentiary Rulings, Docket No. 91

1. Overruled.
2. Overruled.
3. Overruled.
4. Overruled.
5. Overruled.
6. Overruled.
7. Overruled.
8. Overruled.
9. Overruled.
10. Overruled.