No. 19-6646

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Paul John Denham – Petitioner

vs.

Stu Sherman – Respondent

Supreme Court, U.S.
FILED
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ON PETITION FOR A WRIT OF CERTIORARI TO
THE CALIFORNIA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

Paul John Denham
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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Case law **Page**

Statutes and Codes

TABLE OF AUTHORITIES, Cont.

Statutes and Codes **Page**

I.
QUESTIONS PRESENTED

I. Whether Paul John Denham's Constitutional right to due process as defined in *Napue v. Illinois* (1959) 370 U.S. 264, 79 S. Ct 1173, 3 l. Ed. 2d 1217, was violated when the prosecutor introduced knowingly false testimony that Detective Bryan McMahon discovered a document in Petitioner's belongings – four days after the murder, bearing the names and phone numbers of two commercial airline companies;

II. Whether the prosecutor violated Petitioner's due process rights as defined in *Pyle v. Kansas* 317 U.S. 213, 63 S.Ct. 177, 87 L.Ed. 214 (1942).), by failing to correct Detective McMahon's false testimony, as the state would have been forced to disclose to the jury, after Detective McMahon testified concerning his discovery of the airline document, the testimony was false; that McMahon had manufactured the document; and that the state had solicited McMahon's false testimony to the contrary knowing that he would be providing false evidence. And such a disclosure would have a devastating effect on the credibility of the entire prosecution's case; and

III. Whether the Detective McMahon's false testimony was material – could have affected the judgment of the jury within the meaning of *United States v. Agurs* 427 U.S. 97, 103, 96 S.Ct. 2392, 49 L.Ed 2d 342; *United States v. Bagley* (1985) 473 U.S. 667, 678, 103 S. Ct. 3375, 87 l. Ed. 2d 481, where it was established that Petitioner was in San Francisco on the day of a Long Beach murder and could only have committed the murder by flying into Southern California and his name did not appear on any flight manifests. Whereas, the false testimony connected Petitioner to two airlines, i.e., indicating that Petitioner took one flight to commit the murder and another to return to San Francisco. Furthermore the document was not disclosed nor was information that it was handwritten by the Detective McMahon. Lastly, the false testimony was the sole testimony that the jurors requested to be read-back before convicting Petitioner.

II.
LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

III.

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

IV.

OPINIONS BELOW

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is unpublished.

The May 20, 2019, opinion of the California Court of Appeal, Second Appellate District, Division Five appears at Appendix B to the petition and is unpublished

The September 6, 2019, opinion of the California Court of Appeal, Second Appellate District, Division Five appears at Appendix C to the petition and is unpublished.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

V.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

When the government obtains a criminal conviction and deprives an individual of his life or liberty on the basis of evidence that it knows to be false, it subverts its fundamental obligation, embodied in the Due Process Clauses of the Fifth and Fourteenth Amendments, to provide every criminal defendant with a fair and impartial trial.

Similarly, it has held that the government is obligated to correct any evidence introduced at trial that it knows to be false, regardless of whether or not the evidence was solicited by it. (See, *Napue v. Illinois* 360 U.S. 264, 269, 79 S.Ct. 1173, 3 L.Ed 2d 1217 (1959), *Alcorta v. Texas* 355 U.S. 28, 78 S.Ct. 103, 21 L.Ed 2d. 9 (1957), *Pyle v. Kansas* 317 U.S. 213, 63 S.Ct. 177, 87 L.Ed. 214 (1942).) The Supreme Court has accordingly held that the government may not knowingly suppress evidence that is exculpatory or capable of impeaching government witnesses. (See *Banks v. Dretke* 540 U.S. 668, 691, 124 S.Ct. 1256, 157 L.Ed 2d 1166 (2004). (discussing *Brady v. Maryland* 373 U.S. 83, 83 S.Ct. 1194, 101 L.Ed 2d 215 (1963).) These duties provide fundamental protections that are vital to the successful operation of an adversial system of criminal justice, they embody the state's obligation not to obtain the accused's conviction at all costs, but rather to do justice by furthering the truth finding function of the court and jury.

VI.

STATEMENT OF THE CASE

February 1998, Petitioner was convicted of murder and attempted murder in a California Superior court.

November 2013, the prosecution belated released the handwritten notes of its ballistics criminalist that undermine his testimony that ballistics from Petitioner match ballistics from the crime scenes; the notes do not record such findings.

February 25, 2014, Petitioner presented a petition for writ of habeas corpus to the California Superior Court, in and for the County of Los Angeles raising Prosecutorial Misconduct claims related to the ballistic evidence.

April 10, 2014, the California Superior court denied the Petition without prejudice and directions for Petitioner to obtain "newly discovered evidence" in his "pending motion pursuant to California Penal Code section 1054.9." (Hereinafter "Motion.") Thus, the court prevented Petitioner from pursuing his habeas petition at the same time that the Motion was pending. Petitioner was represented by court-appointed counsel during the Motion proceedings. (NOL[1] Ex. GG, p. 571.)

June 2014, the prosecution belated released a copy of a handwritten airline document that refutes detectives' testimony that he discovered such in Petitioner's belongings four days after the murder; it is handwritten by same detective.

July, 2014, Petitioner requested reconsideration of his habeas claim and presented the false testimony claim; relating to the airline document. The California Superior court denied such on July 28, 2014, upon the same grounds for its denied on April 10, 2014. (NOL Ex. GG, pp. 574-756.)

The Motion continued from 2011, and in **February 23, 2018,** the California Superior court denied the motion holding that Petitioner had not established good cause for release of the exhibits and that the Motion must be filed concurrently with the habeas corpus petition. (NOL Ex. GG. p. 597.)

March 13, 2018, Petitioner presented a petition for writ of habeas corpus to the California Superior Court, in and for the County of Los Angeles raising the false testimony ground in the instant petition. (NOL Ex. GG. pp. 597-598.)

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[1] All NOL references are to the Lodgment of Evidence filed in support of the underlying habeas corpus petition filed in the California Supreme Court. Petitioner requests an expansion of this record to allow him to lodge such records in this Court.

August 9, 2018, having received no ruling on his habeas petition, Petitioner filed Notice and Request for ruling on his Petition pursuant to California Rules of Court, Rule 4.551 (a) (3), requiring the court to render a ruling within 30 days. (Id at (a) (3) (B) (ii).) Notwithstanding this notice and request, the Superior Court failed, and continues to fail to rule on the Petition.

September 24, 2018, Petitioner presented a petition for writ habeas corpus to the California Court of Appeal, Second Appellate District, Division Five, wherein he stated the aforementioned facts and requested that the court issue an order mandating the Superior court to rule on his Petition. On October 5, 2018, the court read and considered the petition but declined to do so, by denying the petition, and denying the substantive issues without prejudice. (NOL Ex. GG. p. 523.)

November 19, 2018, Petitioner presented a petition for writ habeas corpus to the California Court of Appeal, Second Appellate District, Division Five, wherein he stated the aforementioned facts and presented this petition issue. Petitioner requested that the court issue an order mandating the Superior court to rule on his Petition, and in the alternative to rule on the merits of the petition. On January 18, 2019, the court read and considered the petition but declined to do so, by denying the petition, and denying the substantive issues without prejudice. (NOL Ex. GG. p. 524.)

February 7, 2019, Petitioner sent an application to the California Superior court requesting am expedited issuance of the petition for writ of habeas corpus and noting that he initially filed the petition in 2014, was directed to pursue "new evidence" via collateral proceedings, then filed the petition in March, 2018 followed by a notice for request for ruling in August 9, 2018. To which no ruling had been issued. To date, the California Superior court has failed to respond to this application.

March 20, 2019, Petitioner presented a petition for writ habeas corpus to the California Court of Appeal, Second Appellate District, Division Five, wherein he raised the grounds in this Petition and stated that the California Superior court has been provided his petition, a notice for ruling, and failed to rule on both. On May 20, 2019, the court read and considered the petition but denied the petition without prejudice and instructed Petitioner to file it on or after June 20, 2019. The court relied on *People v. Seijas* (2005) 36 Cal. 4th 291, 307, which is not relevant to the instant case as it applies to habeas petitions that are not first presented to the California Superior court. (Appendix B; NOL Ex. GG. p. 525.)

On **June 26, 2019,** Petitioner followed the Court of Appeal's May 20, 2019 order and presented a petition for writ habeas corpus to the California Court of Appeal, Second Appellate

District, Division Five, wherein he raised the grounds in this Petition. On September 6, 2019, the court read and considered the petition but denied the petition without prejudice and instructed Petitioner to file it after the Superior court has ruled on it. Again the court cited to *People v. Seijas* (2005) 36 Cal. 4th 291, 307. (Appendix C; NOL Ex. GG. pp. 526-527.)

June 24, 2019, Petitioner presented a petition for writ habeas corpus to the California Supreme Court, wherein he raised the grounds in this Petition. On , 2019, the court denied the petition.. (Appendix A; NOL Ex. GG. p. 528.)

VII.

REASONS FOR GRANTING THE PETITION

The Ninth Circuit Court of Appeals clarified a *Napue* violation by holding that "if it is established that the government knowingly permitted the introduction of false testimony reversal is 'virtually automatic'" (*Hayes v. Brown* 399 F. 3d 972, 978 (9th Cir. 2005).) The *Brown* Court clarified the U. S. Supreme Court opinion when there is a "reasonable likelihood that the false testimony ***could*** have affected the judgment of the jury," (*United States v. Agurs* 427 U.S. 97, 103, 96 S.Ct. 2392, 49 L.Ed 2d 342 (1976) (emphasis added).) Here, there is no doubt that the Detective McMahon's false testimony was crucial to the judgment of the jury; they required it read-back before they convicted Petitioner --- and no other testimony was read-back.

A. KNOWINGLY FALSE TESTIMONY

1. Detective Bryan McMahon's testimony/evidence was false

Detective McMahon testified that on March 16, 1995, he discovered a document in Petitioner's belongings that bore the names "South West" and "Delta" along with their phone numbers. (Hereinafter "airline document"; RT p. 448, NOL Exhibit A, p. 126.) The document, or a copy thereof, was not introduced into trial. (Pet. ¶ 8, at pp. 5-3.) Petitioner asserts that Detective McMahon introduced false testimony when he testified to discovering the airline document in Petitioner's belongings. This is proved where it is shown that Detective McMahon is the author of the airline document, and the handwriting does not match anyone else connected to the case, including Petitioner. (Pet. ¶¶ 9-10, 14, 16-17, at pp. 5- 3 through to 5-5.)

Pursuant to California Evidence Code §1418, "[t]he genuiness of writing, or the lack thereof, may be proved by an expert witness with writing (a) which the court finds was admitted or treated by the party against whom the evidence is offered or (b) otherwise proved to be genuine to the satisfaction of the court."

The airline document has been examined by a court-certified handwriting expert, Mr. Bradford, who declared that he examined official LBPD documents bearing the signature Bryan McMahon and compared such to the airline document and thereafter opinioned that it is highly probable that the person who wrote on the documents bearing the signature "Bryan McMahon" is the same person that authored the questioned document bearing the handwriting "SOUTHWEST" and "DELTA" along with the telephone numbers "1-800-531-5601", and "1-800-221-1212." (Pet. ¶¶ 16-17, at pp. 5-5; California Evidence Code §1418,)

In addition, Mr. Bradford examined the documents authored by Detective Estella Martinez, Paul Denham (Petitioner), and Dolores Legaspi, and compared such with the airline document then opinioned that these authors are eliminated as possible authors of the airline document. (Id.)

Other circumstantial evidence bolsters Petitioner's contention that Detective McMahon authored the airline document, in that McMahon is the same person that claimed to have discovered it among Petitioner's belongings. (RT p. 448, NOL Exhibit A, p. 126.) And McMahon failed to introduce a copy of the airline document into the investigative file. Which, according to Mr. Swanson, an expert homicide supervisor, should have been done as well as it being sent to a handwriting expert to try and connect the handwriting with Petitioner. Neither was done in this case. (Pet. ¶¶ 20-21, at p. 5-6.)

Furthermore, when Petitioner's demands for disclosure of the airline document were relayed to Detective McMahon in 2012, the forthcoming response was that it has "been provided or do[es] not exist." (Pet. ¶ 24, p. 5-7.) However, McMahon's contention "been provided" is refuted by Detective McMahon's declaration averring that the original investigative file consisted of pages 1 through 343, and does not included a copy of the airline document. (Pet. ¶ 20, P. 5-6.) Refuting McMahon's response "does not exist," is that in 2014 a copy was disclosed to Petitioner following McMahon's retirement from the LBPD. (Pet. ¶ 25, at p. 5-7, citing to NOL at Exhibit P, p. 428, item No. 12.)

Further, following McMahon's 2012 retirement from the LBPD he only worked on a consulting basis. (NOL Exhibit Q ¶ 5, p. 433.) Yet, McMahon took concrete steps to conceal the airline document. Specifically, "on March 13, 2014...Detective McMahon... breached [the] evidence box" containing the airline document (referred to as "two white papers"). Such that it was not in the evidence box on March 9, 2016 when Sgt. Woods conducted a search. A subsequent search by an evidence control official resulted in the discovery of return of the airline document to

"secure them in the original evidence box." (NOL Exhibit C, p. 253B.) Thus, McMahon concealed the document while employed by the LBPD then took steps aimed at preventing future LBPD officials from disclosing the airline document after his retirement.

In addition, Petitioner's opinion is available to prove that Detective McMahon authored the airline document, pursuant to California Evidence Code §1416:

> "A witness who is not otherwise qualified to testify as an expert may state his opinion whether a writing is in the handwriting of a supposed writer if the court finds that he has personal knowledge of the handwriting of the supposed writer. Such personal knowledge may be acquired from:
> (a) Having seen the supposed writer write;
> (b) Having seen a writing purporting to be in the handwriting of the supposed writer and upon which the supposed writer has acted or been charged."
> (d) Any other means of obtaining personal knowledge of the handwriting of the supposed writer."

Petitioner alleges that Detective McMahon authored the airline document based upon; On March 16, 1995, Petitioner saw Detective McMahon handwrite documents, contained at Bates pp. 92 and 93, and he is familiar with McMahon's handwriting style such that he can recognize it. Petitioner asserts that Detective McMahon writes using uppercase letters. His distinctive style includes; his letter "T" sometimes resembles the number "7," his number "5" is made with two strokes and sometimes the upper stroke is separated from the lower stroke; his letter "E" has a curved lower section. Petitioner has copies of documents in the LBPD investigative file that are handwritten by Detective McMahon, McMahon testified to handwriting a statement on one document which is contained in the LBPD investigative file. Petitioner has examined these documents and compared such with the airline document. After viewing the handwriting on the airline document Petitioner is positive that the handwriting is written by Detective McMahon. (Pet. ¶ 14, at p. 5-4; NOL Exhibit D, Decl. Denham ¶ 30; Evidence Code §1416, (a), (b) and (d).)

In addition, it would have been easy for Detective McMahon to manufacture this false evidence, since in order to do so, he needed a writing instrument and paper. And, this court must take judicial notice that a writing instrument and paper are items that are easy to obtain. (California Evidence Code §451 (f).) Taking judicial notice of facts and propositions of general knowledge that they are so universally known that they cannot reasonably be the subject of dispute.)

The combination of the following prove, beyond a reasonable doubt, that Detective McMahon authored the airline document; (1) Petitioner's specific request for the airline document

directed to McMahon and his response claiming it no longer existed; (2) McMahon's failure introduce a copy of the airline document into the investigative file, or into trial; (3) McMahon's failure to forward the document with Petitioner's handwriting exemplars for a handwriting comparison with Petitioner's handwriting; (4) McMahon is the person that discovered the document and it would have been easy for him to manufacturer the document; (5) McMahon handwrote documents in Petitioner's presence such Petitioner can, and does, recognize McMahon's handwriting on the airline document (Pet. ¶ 14, at p. 5-4; NOL Exhibit D, Decl. Denham ¶ 30; Evidence Code §1416, (a), (b) and (d).); (6) Petitioner denies having the airline document, or authoring it, or providing it to officers (Pet. ¶ 14 at p. 5-4.); (7) of the four people that had access to Petitioner's belongings --- where Detective McMahon claimed to have discovered the airline document --- the handwriting expert's declared that it is highly probable that McMahon authored the document and Petitioner, Detective Martinez, and Dolores Legaspi are eliminated as possible authors. (Pet. ¶ 17 at p. 5-5.); and (8) McMahon took concrete steps to conceal the airline document by breaching the evidence box after his retirement and removing it.

Given the above, that Detective McMahon authored the airline document, his testimony that he discovered it in Petitioner's belongings is false.

2. <u>The prosecution knew or should have known that Detective Bryan McMahon's testimony was actually false</u>

The Supreme court noted that pursuant to *Brady v. Maryland*, the prosecution must disclose material exculpatory evidence whether the defendant makes a specific request (*Brady v. Maryland* 373 U.S. at p. 87, 83 S.Ct at 1196-1197.) a general request, or none at all (*United States v. Agurs* 427 U.S. 97, 197, 96 S.Ct. 2392, 2399, 49 L.Ed 2d. 342.) The scope of this disclosure obligation extends beyond the contents of the prosecutor's case file and encompasses the duty to ascertain as well as divulge "any favorable evidence" known to the others acting on the government's behalf" (*Kyles* 514 U.S. at p. 437, 115 S.Ct. at p. 1567.) Courts have thus consistently "decline[d] 'to draw a distinction between different agencies under the same government, focus instead upon the "prosecution team" which includes both investigative and prosecutorial personnel.'" (*United States v. Auten* (5th Cir. 1980) 632 F.2d 478, 481) "A contrary holding would enable the prosecutor to avoid disclosure of evidence by the simple expedient of leaving relevant evidence to repose in the hands of another agency while utilizing his access to it in preparing his case for trial.' [Citation]" (*Martinez v.*

Wainwright 621 F.2d 184, 188 (5th Cir. 1980); *United States ex rel Smith v. Fairman* (7th Cir. 1985) 769 F.2d 386, 391-392.)

Thus, "whether the nondisclosure was a result of negligence or design, it is the responsibility of the prosecutor. The prosecutor's office is an entity and as such it is the spokesman for the Government." (*Giglio v. United States* 405 U.S. 150, 153, 92 S.Ct. 763, 33 L.Ed 2d. 104 (1972); *Kyles, supra*, 514 U.S. at p. 439, 115 S.Ct. at p. 1568.) As a concomitant of this duty, any favorable evidence known to the others acting on the government's behalf is imputed to the prosecution. "The individual prosecutor is presumed to have knowledge of all information gathered in connection with the government's investigation." (*United States v. Payne* (2nd. Cir 1995) 63 F.3d 1200, 1208, see *Smith v. Secretary Dept. of Corrections* (10 Cir. 1995) 50 F.3d 801, 824-825 and cases cited therein) The Supreme Court reiterated this principle "whether the prosecutor succeeds or fails in meeting this obligation [to learn of favorable evidence] whether, that is, a failure to disclose is in good faith or bad faith, [citation], the prosecution's responsibility for failing to disclose known favorable evidence rising to a material level of importance is inescapable." (*Kyles, supra,* 514 U.S. at p. 437-438, 115 S.Ct. at p. 1567-1568, see also. *Giglio*, supra, 405 U.S. at p. 154, 153, 92 S.Ct. at p. 766,)

As raised in the petition, and above, Detective McMahon handwrote the airline document and falsely planted it on Petitioner through false police reports and false testimony, so he knew his testimony and the airline document, was false. (Pet. ¶¶ 8-10, p. 5-3.) Detective Martinez booked the false airline document into evidence she read and documented its contents, and was familiar with McMahon's handwriting. Thus, Martinez was aware that the airline document was handwritten by McMahon, and that McMahon's testimony claiming to have discovered the document in Petitioner's belongings was false. (Pet. ¶¶ 37-41, pp. 5-12 through to 5-13.) Accordingly, Detectives McMahon and Martinez were both aware that McMahon manufactured the airline document and introduced false testimony that it was obtained from Petitioner. Since both were the government's lead investigating officers, then this information is imputed to the prosecutor. (Pet. at Ground 1 Issue 1, pp. 5-2 et seq.)

Any favorable evidence known to the others acting on the government's behalf is imputed to the prosecution. "The individual prosecutor is presumed to have knowledge of all information gathered in connection with the government's investigation." (*United States v. Payne* (2nd. Cir 1995) 63 F.3d 1200, 1208, see *Smith v. Secretary Dept. of Corrections* (10 Cir. 1995) 50 F.3d 801, 824-825 and cases cited therein) "[T]he denial of due process which occurs when perjured testimony is

knowingly used against an accused is applicable where there is knowledge on the part of representatives of the government, notwithstanding those representatives are not the 'prosecuting officers.'" (*Napue v. Illinois*, annotation 3 L.Ed 2d 1990, 1994.) "Knowledge on the part of the police officers who testified for the state was held to be sufficient to cause defendant's trial to 'pass the line of tolerable imperfection and fall into the field of fundamental unfairness." (*Id.* at p. 1995 (quoting *Curran v. Delaware*, (1958, CA3 Del) 259 F.2d 707, cert den 358 U.S. 948, 3L.Ed 2d 353, 79 S.Ct. 355.)

Both Detectives McMahon and Martinez were aware that McMahon manufactured the airline document in connection to the government's investigation and that favorable evidence existed by disclosing McMahon's manufacture and planting of the document on Petitioner to falsely connect Petitioner to airline agencies. Accordingly, McMahon's and Martinez' knowledge imputed on the prosecutor is proof that the prosecutor knew or should have known of Detective McMahon's false testimony when he testified to discovering the airline document in Petitioner's belongings.

3. <u>Detective Bryan McMahon's false testimony was material</u>

The introduction of Detective McMahon's false testimony claiming that he discovered the airline document in Petitioner's belongings --- four days after the murder--- affected the judgment of the jurors by making it more likely that Petitioner committed the murder because at the time of the murder Petitioner was in San Francisco. Thus, his opportunity to commit the murder could only be established by taking a flight. McMahon's false testimony that the airline document was discovered in Petitioner's belongings --- four days after the murder, which was not explained by the defense, implied that Petitioner had contacted airline agencies to plan flights. It established the link with not one, but two airline agencies. Further implying that Petitioner could have arranged one flight into the Los Angeles area, and a second one to return.

Detective McMahon's false claim of discovery had the additional affect of elevating his credibility in the minds of the jurors by portraying him as a diligent officer that discovered a critical piece of evidence hidden in Petitioner's belongings, that might otherwise be overlooked by a less competent officer.

For "jurors to do their job, they must be presented with all the evidence that is relevant and legally admissible for them to consider. It is their duty to sit through that body of evidence to resolve what they can accept and believe. The withholding of admissible evidence from them can result in their drawing wrong conclusions and can undermine the certainty of their belief in other evidence

that never had to be reconciled with the undisclosed information." (*In re Soderson,* (2007) 146 Cal App 4th, 1163, 1170.)

However, under "the circumstances in which the airline document was obtained and those circumstances raise a possibility of fraud, indications of conscientious police work will enhance probative force and slovenly work will diminish it." (*Kyles v Whitley,* 514 U.S. 419, 437-438, 115 S.Ct. 1555, 131 L.Ed 2d 490 (1995), at fn. 15.) The prosecution's withholding of the airline document prevented the jury from considering no such document was discovered in Petitioner's belongings, and its affect on Detectives McMahon's and Martinez's credibility. With this information, the jury could have easily discredited all information introduced into trial by them.

Petitioner was further prejudiced by the state allowing the false testimony to go uncorrected, as the state would have been forced to disclose to the jury, after Detective McMahon testified concerning his discovery of the airline document, the testimony was false; that McMahon had manufactured the document; and that the state had solicited McMahon's false testimony to the contrary knowing that he would be providing false evidence. Such a disclosure would have a devastating effect on the credibility of the entire prosecution's case Furthermore, the defense would also undermine the credibility of Detective Martinez who on April 12, 1995, filed a police property report claiming that Petitioner had given the airline document to the investigating officers on March 16, 1995. (Pet. ¶ 38, p. 5-13; NOL Exhibit C at p. 200.) Detective Martinez was one of the investigating officers, and Detective McMahon, her partner, was the other. (RT pp. 46, 292, NOL Exhibit A at pp. 8, 70.) The airline document is handwritten by Detective McMahon. (See *supra.*, in this Ground.) Thus, it was not given to the investigating officers by Petitioner and Detective Martinez's property report claiming such, is false. Which undermines her truthfulness. (See; *People v. Hustead* (1999) 74 Cal. App. 4th 410, 417. (False reports bear on the truthfulness of the officer).)

McMahon testimony regarding the airline document was a critical issue as it implied Petitioner had been in contact with airline agencies to arrange a flight into the Los Angeles area. Since McMahon manufactured the document, his testimony claiming to have discovered the document in Petitioner's belongings is willingly false and given with an intention to deceive Thus, the jury could have disregarded all evidence presented by McMahon under the doctrine of *falsus in uno, falsus in omnibus*, "false in one thing, false in everything. [Citation] [P] The doctrine means that if testimony of a witness on a material issue is willingly false and given with an intention to deceive, [the] jury may disregard all the witnesses' testimony. [Citation]" (Black's Law Dict. 5th ed.

(1979) p. 543; *People v. Cook* (1978) 22 Cal. 3d 67, 86, 148 Cal. Rptr 605, 583 P. 2d 130; *In re Vargas* (2000) 83 Cal. App. 4th 1125, fn. 4.)

That Martinez filed a false police report regarding the airline document, but did not testify to such, does not permit her to evade impeachment. Her police report is filed under oath (Cal. Penal Code §119.), and has a direct bearing on her truthfulness. (*People v. Hustead* (1999) 74 Cal. App. 4th 410, 417.)

California courts have had no difficulty providing habeas relief under these circumstances. (See, *Soderson, supra* 146 Cal App 4th, 1163, the outcome of the trial depended to a large extent on the witnesses' credibility and the reliability of their testimony, and defense counsel's attack on their credibility likely would have been devastating to the prosecution's case. Because of the nature and quality of the exculpatory evidence that was suppressed, the factual underpinnings upon which the jury relied to make its critical decisions were seriously eroded, and defendant was denied a fair trial, which entitled him to habeas relief under penal Code § 12473 (b) (1).)

Likewise in the instant case, disclosure of the airline document would have permitted trial counsel to attack the credibility of Detectives McMahon and Martinez, and likely would have been devastating to the prosecution's case. By showing that both investigating officers were manufacturing false evidence, filing false reports wherein they claimed the airline document was obtained from Petitioner and introducing false testimony to convict Petitioner because no such document linking Petitioner to airline agencies was in Petitioner's belongings. "Since all of these possible findings were precluded by the prosecution's failure to disclose the evidence that would have supported them, 'fairness' cannot be stretched to the point of calling this a fair trial." (*Kyles, supra,* 514 U.S. at p. 454.)

The false testimony's affect on the judgment of the jury in their decision to convict Petitioner, is seen in the California Court of Appeal, Second Appellate District's opinion dated January 27, 2000, which denied Petitioner's direct appeal by noting the strength of the people's case, which held, *inter alia,* "On March 12 and 13, 1995, [Petitioner] was in San Francisco ... A search of [Petitioner's] duffel bags after the murder yielded pieces of paper with the telephone numbers of South West and Delta airlines." (RJN[2] Exhibit C, at p. 4.) Indeed, the jurors' estimate of the

[2] All RJN references are to the Request for judicial notice filed in support of the underlying habeas corpus petition filed in the California Supreme Court. Petitioner requests an expansion of this record to allow him to lodge such records in this Court.

truthfulness and reliability of McMahon's testimony was determinative of the finding of guilt, and "obviously important to the jurors since they requested it to be read back to them during deliberations." (CT p. 239, NOL Exhibit B, p. 191; *In re Hill* (4th App. Dist. 2011.) 198 Cal. App. 4th 1008, 1023.) Showing that they were grappling with his testimony and the guilty verdict was affected by his evidence. Which they rendered that same day for the attempted murder, and the following for the murder. (CT pp. 295, 296, NOL Exhibit B, pp. 192, 193.) Accordingly, there can be no doubt that the introduction of detective McMahon's false testimony claiming that he discovered the airline document in Petitioner's belongings --- four days after the murder--- affected the judgment of the jurors.

If the false testimony had been corrected and/or the airline document disclosed, defense counsel would have called Petitioner to testify to the following:

i. Detective McMahon testified that Petitioner married Legaspi for the sole purpose of residing legally in the United States. (RT 417-418, NOL Exhibit A, pp. 104-105.) Petitioner denies the truth of this allegation and denies stating such to McMahon. (Decl. Denham ¶ 59, i. NOL Exhibit D, p. 267.)

ii. Detective McMahon testified that Petitioner met the victim when the latter brought Legaspi home. (RT 417, NOL Exhibit A, p. 104.) Petitioner denies the truth of this allegation and denies stating such to McMahon. Petitioner alleges that he informed McMahon that he met the victim when Petitioner, Legaspi and her sister were going out for a meal. The victim arrived at the Legaspi home, argued with Legaspi, became angry with Legaspi, then left in his car and caused the wheels to screech and spin on the road as he departed and drove through the neighborhood. (Decl. Denham ¶ 59, ii, NOL Exhibit D, pp. 267-268.)

iii. Detective McMahon testified that Petitioner admitted to following Legaspi and the victim to the victim's Long Beach home. (RT 449, NOL Exhibit A, p. 127.) Petitioner denies the truth of this allegation and denies stating such to McMahon. (Decl. Denham ¶ 59, iii, NOL Exhibit D, p. 268.)

iv. Detective McMahon testified that Petitioner acknowledged telephoning the victim's home and speaking to the victim's mother. (RT 445-446, NOL Exhibit A, pp.123-124.) Petitioner denies the truth of this allegation and denies stating such to McMahon. (Decl. Denham ¶ 59 iv, NOL Exhibit D, p. 268.)

v. Detective McMahon testified that he discovered a document in Petitioner's belongings bearing the phone numbers for Southwest and Delta. (RT 448, NOL Exhibit A, pp..) Petitioner denies that McMahon discovered such and alleges that McMahon manufactured the document and planted it in Petitioner's belongings with the assistance of Detective Martinez. (Decl. Denham ¶ 59, v, NOL Exhibit D, p. 268.)

vi. Detective McMahon testified that Petitioner's hand injury was real slight and in the webbing. (RT 439, NOL Exhibit A, p. 117.) Petitioner denies the truth of this allegation and denies stating such to McMahon. Petitioner alleges that he informed McMahon that he suffered a gunshot wound to his palm over the base of the small finger causing a fractured left ring-finger. That the entrance wound was extended to remove the bullet, then sutured, gauzed and splinted with a bulky dressing. And that the debilitation prevented Petitioner from shaving, tying his laces, and cutting food. In addition, the dressing/splint remained on Petitioner's arm for several weeks during which period he kept his left arm in a sling. (Decl. Denham ¶ 59, vi, NOL Exhibit D, p. 268.)

vii. Detective McMahon testified that Petitioner stated "it didn't look good for him," but he had been in the Bay area and pulled receipts from his pocket --- four days after the murder. And detectives had not mentioned the murder and/or when it occurred and/or questioned his whereabouts. (RT 408-409, NOL Exhibit A, pp. 101-102.) Petitioner denies the truth of this allegation and denies stating such to McMahon. Petitioner alleges that the detectives introduced themselves as Long Beach homicide detectives. Thereafter, Petitioner informed them that he had received their business card from Dolores Legaspi. Petitioner stated that Legaspi had informed him that a homicide victim had dropped her off on Sunday night, March 12, shortly before being killed. And that Legaspi had given Petitioner a Long Beach Police Department Detectives business card along with instructions from the detectives to gather and preserve all receipts regarding his whereabouts for Sunday March 12. Petitioner informed McMahon that he had followed their instructions as relayed through Legaspi and the receipts were in Legaspi's room. Thereafter, Petitioner and McMahon entered Legaspi's home and retrieved the receipts. (Decl. Denham ¶ 59, vii, NOL Exhibit D, p. 268.)

viii. Detective McMahon testified that the interview was friendly, using no force, the interview room door was not locked, and the interview ended when detectives became more accusatory. (RT 59, 441-445, NOL Exhibit A, pp. 9, 119-123.) Petitioner denies the truth of this allegation. Petitioner alleges that Detectives McMahon and Martinez shouted profanity at him, McMahon grabbed Petitioner's disabled left hand causing pain, and then placed Petitioner's head in an arm lock as he thumped his fingers into the side of his head. Following this, detectives locked Petitioner up, alone, in the interview room for about an hour and a half. On or about, August 27, 1995, Petitioner filed a complaint on these detectives regarding this incident, with the LBPD. A true and correct copy of said document is attached to the NOL, at Exhibit K, p. 401, and incorporated herein by this reference. (Decl. Denham ¶ 59, viii, NOL Exhibit D, pp. 268-269.)

ix. Detective McMahon testified that Petitioner denied owning a firearm. (RT 441, NOL Exhibit A, p. 119.) Petitioner denies the truth of this allegation and denies stating such. Petitioner alleges that he informed Detectives McMahon and Martinez, on two occasions, that he owned a firearm. Once before entering the

police station and a second time inside the interview room to which he observed Detective Martinez generate notes by writing on a note pad recording his responses to their questions concerning his firearm purchase. (Decl. Denham ¶ 59, ix, NOL Exhibit D, p. 269.)

x. Detective McMahon testified that Petitioner denied a request to tape recording his statement and signed a statement to that effect. (RT 443-445, NOL Exhibit A, pp. 121-123.) Petitioner denies the truth of this allegation, Petitioner denies stating such to McMahon, and Petitioner denies signing such a statement. Petitioner alleges that as a result of the detectives assaulting him, he asked to terminate the interview and leave the police station. Detectives McMahon and Martinez responded by locking him in the interview room for about an hour and a half. Thereafter, they returned and McMahon ordered Petitioner to write a statement as to why Petitioner wanted to leave the station, otherwise, Petitioner would not be permitted to leave. Petitioner was given a blank piece of paper and a pen and complied by writing; "Rather than stay any longer here in the station I'd prefer to leave and go home." McMahon asked Petitioner to sign the statement. Petitioner did so. At no time, before signing the statement, did the piece of paper contain any other writings. Petitioner later discovered that his statement had been amended with the handwritten statement; "I refuse to tape record my statement." This writing is in a different handwriting style to Petitioner's handwriting style. It is identical to McMahon's handwriting style. Which, McMahon testified to writing. (RT p. 444, NOL Exhibit A, p. 122.) A true and correct copy of said document is attached to the NOL at Exhibit F, p. 296, and incorporated herein by this reference. (Decl. Denham ¶ 59, x, NOL Exhibit D, p. 269.)

Petitioner was further prejudiced because the false testimony and the manufacture of the document, combined with both investigating officers filing police reports falsely claiming they obtained it from Petitioner, was material in that its disclosure would have made the difference in strategically deciding whether to place Petitioner on the stand to testify. With the document and the correction of the false testimony, Petitioner would have been more credible than the investigating officers, and defense counsel would have called Petitioner to testify. The uncorrected false testimony and the suppression of the airline document, and trial counsel's reliance on the prosecutor to have discharged its fair trial and disclosure obligation, misrepresented to trial counsel that Detective McMahon did not testify falsely and the detectives did not manufacture any evidence to frame Petitioner, and resulted in the abandonment of the defense that the officers were introducing false testimony and manufacturing evidence to frame Petitioner.

Accordingly, there is a "reasonable likelihood that the false testimony ***could*** have affected the judgment of the jury," (*United States v. Agurs* 427 U.S. 97, 103, 96 S.Ct. 2392, 49 L.Ed 2d 342 (1976) (emphasis added).) Here, there is no doubt that the Detective McMahon's false testimony was crucial to the judgment of the jury; they required it read-back before they convicted Petitioner --- and no other testimony was read-back. Thus, Petitioner was deprived of his constitutional right to due process such that the resulting conviction must be reversed.

VIII.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted. In the alternative this Court should summarily reverse the California Supreme Court's denial because it is a demonstrably erroneous application of federal law. (*Maryland v. Dyson* 527 U.S. 465, 144 L. Ed 2d 442, 119 S. Ct. 2013 (1999).)

DATED : October 29, 2019

Respectfully submitted,

P. Denham

Paul John Denham
Petitioner in *Pro se*