No. 19-8527

IN THE

SUPREME COURT OF THE UNITED STATES

RODNEY DOUGLAS EAVES — PETITIONER
(Your Name)

vs.

THE STATE OF COLORADO — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS - 10th CIRCUIT (COLORADO)
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Rodney Douglas Eaves
(Your Name)

11560 County Rd. FF. 75
(Address)

Las Animas, Co. 81054
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1.) Whether the Fifth Amendment is violated when an unverified Complaint and Information is used in lieu of a probable cause hearing.

2.) Whether a court can force a defendant to choose between two Constitutional rights and is such a choice an express waiver.

3.) Whether the Fourteenth Amendment is violated when lower courts recharacterize a pro se litigant's claim.

4.) Whether the Fourth Amendment is violated if a court ignores the right to be free from false statements in an affidavit of probable cause.

5.) Whether the U.S. Supreme Court should set a new precedent requiring a distinction between failures to preserve from destruction evidence whose inculpatory or exculpatory character is unknown, and failures to to turn such evidence over to the defense upon request.

LIST OF PARTIES

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

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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STATUES AND RULES

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.

OPINIONS BELOW

[ ] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[X] For cases from **state courts:**

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

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the U.S. District Court, 10th Circuit court appears at Appendix C to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

JURISDICTION

[ ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[X] For cases from **state courts:**

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix ___A___.

[X] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix ___B___.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourt, Fifth, Sixth, and Fourteenth Amendments.

~~18 U.S.C. § 3500~~

Colorado Revised Statue § 16-5-203

Colorado Revised Statue § 16-5-301

Colorado Rule of Criminal Procedure Rule 7

Colorado Rule of Criminal Procedure Rule 17(b)

STATEMENT OF THE CASE

Petitioner, Rodney Douglas Eaves, was charged with aggravated robbery, a crime of violence sentence enhancer, theft, menacing, and possession of a weapon by a pervious offender.(CF,p.3).

Mr. Eaves was initially appointed a public defender, but fired her and chose to represent himself though pretrial motions and trial.(CF,p.57). A jury found him guilty as charged.(CF,pp.353-60). The trial court imposed a controlling 30-year prison sentence.(TR.7/29/16, p.19:19).

Eaves filed a direct appeal and the Colorado Court of Appeals affirmed his conviction.(Appendix A). He filed a Petition for Rehearing but was denied. (Appendix B). Then a Federal Habeas 2254 was filed but was denied.(Appendix C). He requested a COA from the 10th Circuit Court of Appeals and was denied. (Appendix D).

REASONS FOR GRANTING THE PETITION

A. The matter of a Court's Jurisdiction is open for question when an unverified Complaint and Information **(C & I)** is used in lieu of a probable cause hearing violating the Fifth Amendment.

A.1. ARREST & FILING

The aggrivated robbery Mr. Eaves was accused of happened on January 24, 2015. On March 13, 2015 Eaves is arrested by way of arrest warrant filed by the Colorado Springs Police Department. At Eaves' first appearance he is only informed of the charge he faces and his current bond. The court never informs him of his right to counsel or his right to a probable cause hearing.

Two weeks later on March 31, 2015 an unverified C&I is filed. On April 1, 2015 Eaves again appears in court and is not notified of any rights. The C&I is accepted without the court verifying the contents of the C&I and Eaves is specifically not informed of his right to a probable cause hearing. On May 1, 2015 Eaves' counsel waives his probable cause and bond hearing without his consent. On August 26, 2015 Eaves fires his counsel and proceeds pro se and is informed by the court for the first time of his right to a probable cause hearing.

A.2. CONSTITUTIONAL REQUIRMENTS

The U.S. Constitution guarantees "no person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury," **U.S. Const. amend. V (1791).** accord Colorado Constitution ("Until otherwise provided by law, no person shall, for a felony, be proceeded against criminally otherwise than by indictment,.... In all other cases, offenses shall be prosecuted criminally by indictment or information.") Colo. Const. Art. II, Section 8. (emphasis added).

In **Hurtado v. California, 110 U.S. 516, 4 S.Ct. 111, 28 L.Ed. 232(1884)** this Court decided Due Process did not compel States to proceed by way of grand jury indictment. However, a magistrate must still certify as "to the probable guilt of defendant" before proceeding to trial. **Id. 110 U.S. at 538, 4 S.Ct., at 122.**

States developed their own ways in proceeding in criminal prosecutions by using direct Complaints, Informations or Preliminary/Probable Cause Hearings. Most Federal Circuits view rules governing use of indictments or informations as well as nature and contents thereof to implement constitutional standards.

A.3. COLORADO'S & 10th CIRCUIT'S VIEW

Colorado statue dictates that if a defendant has not had or waived their preliminary hearing a direct C&I can be filed if lieu of the hearing but "there shall be filed with the information the affidavit of some credible person verifying the information upon personal knowledge of the affiant that the offense was committed." **Colorado Revised Statue § 16-5-203.**

Colorado has always believed that the requirement that a direct-filed complaint be supported by a verifying affidavit is non-jurisdictional. See **Bustamante v. People, 317 P.2d 885, 887 (Colo. 1975).** The 10th Circuit was not far behind believing even if an indictment lacked probable cause that a conviction by jury shows there was probable cause and therefore renders the lack of probable cause harmless. **United States v. Hillman, 642 F.3d 929, 936 (10th Cir. 2011).**

A.4. OTHER CIRCUIT'S VIEWS

Other Circuits feel differently as they still have precedent cases concerning Fed. R. Crim. P. 7. It must be conceded, also, that if the the Fifth Amendment is a limitation upon the power, or jurisdiction of the federal courts, the waiver by Petitioner would be ineffective and his conviction and sentence illegal. **Barkman v. Sanford, 162 F.2d 592 (C.C.A. 5 (Ga.) 1947).**

Scope of indictment goes to the existence of trial court's subjects matter jurisdiction, **Crosby v. U.S., C.A.D.C. 1964, 339 F.2d 743, 119 U.S. App. D.C. 244.** Where grand jury has no power to indict, court has no jurisdiction over defendant. **U.S. v. Macklin, E.D.N.Y. 1975, 389 F.Supp. 272,** affirmed **523 f.2d 193.** The constitutional requirement that no person shall be held to answer for an infamous crime unless on presentment or indictment of a grand jury is jurisdictional. Jurisdiction is a matter which the court should be concerned regardless of circumstances. **U.S. v. Krepper, 159 F.2d 958 (C.C.A. 3 (N.J.) 1946).**

A.5. CIRCUMSTANCE NEEDING ANSWER

Colorado rarely proceeds with criminal prosecutions using the grand jury. Almost all cases proceed by way of direct filing pursuant to **C.R.S. § 16-5-203** and **Colo. R. Crim. P. Rule 7.** Colorado can also establish probable cause to proceed in a criminal prosecution by way of probable cause/preliminary hearing. In fact, Colorado guarantees those charged with class 1,2, or 3 felonies have the right to a preliminary hearing. **Colorado Revised Statue § 16-5-301.**

Mr. Eaves was charged with Aggravated Robbery, a class 3 felony in Colorado, by way of direct filing. But the C&I is filed without a verifying affidavit in violation of Colorado's Revised Statue 16-5-203. His prelim is waived by counsel without his consent. Eaves fires his counsel and notifies the court he did not give the authority to waive the prelim.

Prosecution tells Mr. Eaves he does not have a constitutional right to a prelim and it was counsel's decision to waive. The trial court agrees with the prosecution, which is totaly against this Court's ruling in **Coleman v. Alabama, 339 U.S. 1, 90 S.Ct. 1999, 26 L.Ed.2d 387 (1970)** where it was determined a "preliminary hearing is a 'critical stage' of the State's criminal process...." (emphasis added).

In consideration of this Court's finding in **Gonzalez v. U.S., 128 S.Ct. 1765, 553 (U.S. 2008)** "in the case of waiver by counsel, the knowing and voluntary requirement applies to the defendant himself," and if Eaves did not agree to waive his prelim hearing, he could not be an informed and agreeing client and the waiver should be void. **Id. Gonzalez, 128 S.Ct. at 1782.**

On direct appeal Eaves claims the court never obtained jurisdiction because he never had a preliminary hearing and there was never an affidavit filed with the C&I. The State claims even though there is no affidavit on record with the C&I, an arrest warrant had been filed two weeks prior and did not address the claim the court lacked jurisdiction.

This Court in **Minneapolis & St.L.R.Co. v. Peoria & P.U. Ry. Co., 270 U.S. 580, 46 S.Ct. 402 (U.S. Iowa 1926)** determined "a court's acquisition of subject matter and personal jurisdiction depends on facts existing at the time jurisdiction is invoked."

If the trial court never certified as to the probable guilt as required in **Hurtado** and Eaves was denied a preliminary hearing, even though this Court made clear the Due Process Clause required it where states provided such process, see **Gerstein v. Pugh, 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed. 2d 54 (1975)** then the trial court never had any facts to determine Eaves' guilt and acquire jurisdiction over him. See also **Jaben v. U.S., 381 U.S. 214, 85 S.Ct. 1365 (U.S. Mo. 1965)** (holding "Complaint must provide foundation for Magistrate's neutral judgment that resort to further criminal process is justified; it must provide affiant's answer to Magistrate's hypothetical question, 'what makes you think that the defendant committed the offense charged?'") accord **Giordenello v. U.S., 357 U.S. 480, 78 S.Ct. 1250 (U.S. Tex. 1958)**.

Because the direct appeal is affirmed without addressing the jurisdictional issue Eaves filed a Federal Habeas Corpus Petition asserting the trial court never obtained jurisdiction and his Fifth Amendment right was violated.

The 10th Circuit does not address the jurisdiction question either. Instead it agreed with Colorado that because an arrest warrant had been filed two weeks prior one did not need to be filed with the C&I for the court to establish facts to proceed with a criminal prosecution.

Eaves asserted that was not in agreement with this Court's finding in **Manual v. City of Joliet, 173 S.Ct. 911, 928 (U.S. Ill. 2017)**.when you clarafied that "when an arrest warrant is obtained, the probable cause determination is made at that time, and there is thus no need for a repeat determination at the first or initial appearance. Thus, this appearance is an integral part of the process of taking the arrestee into custody and easily falls within the meaning of the term 'seizure.' But other forms of 'legal process,' for example.... a determination of probable cause at a preliminary examination or hearing, do not fit within the concept of a 'seizure,'" **Id. at 928** (emphasis added).

The COA tot he 10th Circuit Court of Appeals is also denied without answering the jurisdictional question either.

A.6. REQUEST FOR CERTIORARI

The opposing views from Colorado and the different Circuit Courts on direct filed Complaints and Informations and the protections of the Fifth Amendment are open to question to settle these disagreements. Insofar as these arguments are meritorious, because the lower courts must understand the court must acquire jurisdiction before proceeding to trial. Eaves was not afforded that right and are so many others in Colorado and a question on jurisdiction should never be taken lightly by any court.

B. Forcing a defendant to choose between two constitutional rights without resolution is open for question because it allows lower courts to choose for a defendant what rights are afforded and which are not.

B.1. SPEEDY TRIAL OR COMPULSORY PROCESS

Eaves was arrested by warrant of March 13, 2015. He entered his not guilty plea on July 15, 2015 and trial was set for December 14, 2015. On November 13, 2015, the prosecution informs the court she will have vacation for New Years and also reminds Her Honor would also have vacation time the week after Decemeber 14. Prosecution also states, two of the detectives involved with the case would also be unavailable and would like to move the trial up to December 7, 2015, even though the court has another trial schedualed that day as well. The court grants the request.

On November 28, 2015 the prosecution removes all witnesses from the endoresed witness list except police officers and the victim. On November 30, 2015 Eaves files pro se requests per **Colorado Rule of Criminal Procedure, Rule 17(b)** to have the court issue subpoenas for witnesses.

On December 3, 2015 the court informs Eaves it has no responsibility to issue subpoenas and that it was his responsibility. Ultimately Eaves tells the court he feels he is being pressured to waive his constitutional right to a speedy trial and would like a continuance set within speedy which was January 11, 2016. The court states it cannot because the docket is to heavy. Eaves still wanted to proceed and the court tells him that if he chooses to proceed it could have just withdrawl all his requests for subpoenas because they were filed after the motion deadline. Eaves waives his speedy trial and a new date is set for May 16, 2016.

B.2. CONSTITUTIONAL REQUIREMENTS

The U.S. Constitution guarantees "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial,.... to have compulsory process for obtaining witnesses in his favor,...." **U.S. Const. amend. VI(1791)** (emphasis added).

B.3. COLORADO'S CRIM. P. RULE 17(b)

The natural language of Colorado's Rule 17(b) is "subpoenas shall be issued at the request of a pro se defendant.... The court or a judge thereof.... may order at anytime.... If the court is satisfied with the affidavit it shall direct that the subpoena be issued." **Colo. Crim.P. Rule 17(b)** (emphasis added). This Rule comports with the Sixth Amendment's right to compulsory process.

B.4. COLORADO'S VIEW

On direct appeal Eaves raised four basic points: (1) he had a constitutional right to a speedy trial; (2) the court did have duty to issue subpoenas; (3) the prosecution manipulated the docket so they could go on vacation and gain a trial advantage; and (4) the court coerced Eaves to waive the Speedy trial right.

Colorado makes its ruling using a Statutory review. It also ruled Eaves expressly waived his right, that the court did not coerce him but only advised him of the risk in choosing to proceed. It also agreed with the trial court that it was his responsibility to issue subpoenas. Specifically stating "It was Eaves' responsibility to issue the subpoenas and his decision to waive his right to a speedy trial."

On Petition for Rehearing Eaves asks the Appeals Court to clarify how a waiver is considered express which requires a knowing and intelligent requirement and how the court's statement "I could just have you withdraw all of those..." was not tantamount to coercion. The Petition was denied.

B.5. 10th CIRCUIT'S FEDERAL HAEBAS REVIEW

On federal Habeas review the court agrees with Eaves that he did raise his claim as a Constitutional issue and reviews his claim using the **Barker** analysis.

Eaves asserts: (1) the delay triggered an analysis; (2) the delay was because the court gave him a choice to either proceed to trial without witnesses or waive Speedy; (3) he asserted the right several times through motions and attempted oral argument; and (4) he was prejudiced by the delay and attached exhibits showing how he was prejudiced and where he made his prejudice claim even in the trial court level.

The Habeas court ruled: (1) The **Baker** analysis was triggered for the length of the delay; (2) the delay was so Eaves could properly subpoena witnesses and obtain new advisory counsel; (3) Eaves expressly waived his right; and (4) Eaves failed to allege any prejudice and a review of the record revealed none.

B.6. CIRCUMSTANCE NEEDING ANSWER

B.6.a. Length of Delay.

Eaves being arrested on March 13, 2015 and finally having trial on May 16, 2016 is a delay long enough to trigger analysis. See **Doggett v. United States, 505 U.S. 647, 652 n.1 (1992).**

B.6.b. Reason for the Delay.

The original trial date was schedualed for December 14, 2015 but because the prosecutor and Judge had vacation time coming up and two of the detectives on the case were also going to be unavailable the court moved the date up to December 7, 2015. All the witnesses were removed but police officers and the victim. Eaves filed requests to have the court issue subpoenas because he was pro se and in custody. The court claimed it was not their responsibility to issue those subpoenas and even told Mr. Eaves if he chose to proceed it could have him withdraw all his requests.

Eaves asked for a continuance to be set within Speedy but the court denies the request claiming it was because the docket is to "heavy." Eaves needed witnesses so he chose Compulsory Process over Speedy. Just because Eaves made requests pursuant to Rule 17(b) the court should not have told him it could make him withdraw them.

It is well settled that a person should not be penalized for exercising a constitutional right. **Perry v. Sindermann, 408 U.S. 593, 597, 92 S.Ct. 2694 (U.S. Tex. 1972)**. To punish a person because he has done what the law plainly allows him to do is a due process violation. **Bordenkircher v. Hayes, 434 U.S. 357, 363, 98 S.Ct. 633(U.S. Ky. 1978)**. But, Eaves felt he had no other choice other than to waive the Speedy.

The court refused to work with Eaves to protect his rights either. This Court has made it clear that courts should "indulge every reasonable presumption against waiver," **Aetna Ins. Co. v. Kennedy to use of Bogash, 301 U.S. 389, 393, 57 S.Ct. 809, 812, 81 L.Ed. 1177 (1937)** because the right to a speedy trial "is as fundamental as any of the rights secured by the Sixth Amendment." **Klopfer v. North Carolina, 386 U.S. at 233, 87 S.Ct. at 993, 18 L.Ed.2d 1 (1967)**.

To demonstrate the court's lack to indulge a reasonable presumption against waiver, as early as November 13, 2015 the court knew that trial could last up to three weeks. When the new trial began on May 16, 2016 Eaves' first witness was not called until May 26, 2016.

It should be safe to assume then that if trial had began on December 7, 2015 as planned, Eaves' first witness would not have been called until December 17, 2015 The court informed him it only required a 48 hour notice before a witness could be subpoenad. If this was true then the court had plenty of time to accomidate Eaves' request. It most certanly should have not told him it could have him withdraw his requests.

Eaves' Assertion For The Real Reason For Delay

December 3, 2015 was suppose to be a continuance for motions hearing. This was four days until trial on December 7, 2015. The record will reflect that the court took four additional docket days to complete the various motions hearings.

The record will reflect that the Judge and Prosecutor both had vacation time coming up around the time Eaves' trial was scheduled. The record will also reflect another trial was also scheduled for December 7, 2015.

The record will reflect that in early 2016 the victim filed a statement with the police that she had identified Eaves' voice as the man who robbed her. Thus, changing her original statements. The record will also reflect Eaves had intended to claim he could not have robbed the business as he was at his storage unit when the robbery occured. In early 2016 the police conducted as experiment of the drive time between the storage unit and the business robbed. Both would not have been present at trial in late 2015.

The record will also reflect the robbery took place on January 24, 2015. Between January 24, 2015 and Eaves' arrest on March 13, 2015 only 3 police reports had been filed. Between March 13, 2015 to August 28, 2015 over 30 police reports were filed and more were filed in early 2016. This coupled with the circumstances above, the State delayed for a tatical advantage at trial. "A deliberate attempt to dely the trial in order to hamper the defense should be weighted heavily against the government. **Barker, 407 U.S. at 531**

B.6.c. Defendant Asserted His Speedy Trial Rights?

Eaves filed two motions with the trial court. One filed in August 2015 requesting that his Constitutional Speedy Trial right be protected. The second filed in May 2016 claiming his speed trial right had been violated. The second motion filed broke his claim down point-by-point. When Eaves tried to argue the motion in court, he was ordered by the court to sit down and the trial court does not address any points raised in his motion.

After his direct appeal is denied he attaches these two motions to his Federal Habeas claim as Exhibits to show he asserted his right, but the Federal court stated Eaves Expressly waived his Speedy trial right.

This Court categorically rejected a waiver as fiction when other fundamental rights are at stake. In Johnson v. Zerbst, 304 U.S. 458, 464, 58 S.Ct. 1019, 1023, 82 L.Ed. 1461 (1938), a "waiver" is defined as "an intentional relinquishment or abandonment of a known right or privilege," and "conversely, if the constitutional issue is sufficiently grave, even an express waiver by the defendant himself may sometimes be excused. Matters such as.... the procedural context in which the asserted waiver occured, ... and the overall fairness of the entire proceeding, may be more significant than the language of the test the court purports to apply. Wainwrite v. Sykes, 433 U.S. 72, 94-96, 97 S.Ct. 2497, 2510-11, 53 L.Ed.2d 594 (1977). (emphasis added). The record will show it was not until Eaves was faced with the withdraw of his request for subpoenas did he waive his Speedy trial right. (Tr. 11/13/15, pp. 11-12).

B.6.d. Prejudice to the Defendant as a Result of the Delay.

In Eaves' motion filed May 2016, he asserted prejudice but the trial court shifted its burden to prove the delay did not prejudice Eaves by denying the motion and not allowing Eaves to make record how the right was violated and how the prejudice was effecting his right to a fair trial.

Then his Federal Habeas review was extremely hastely done because the Habeas court claimed "Here, Mr. Eaves fails to allege any prejudice resulting from the delayed trial, and the Court's review of the record reveals none." See U.S. District Court finding, Case No. 18-CV-02614-CMA, DOC 32 at 16-18.

However, this cannot be true because attached to Doc 9 of his Federal Habeas claim as Exhibit #2 the motion filed in the trial court claiming prejudice. Also in his Response [Doc 22] to the State's Answer [Doc 20], Mr. Eaves states "(4) As stated in the motion at ¶11 #11 Eaves states 'The Defendant has been prejudiced because the credibility of the victim was a crucial importance and additional statements as well as experiments and reports have been filed with the District Attorney's (sic) office by the police.'" So, how the Federal Habeas court came to this conclusion is not understood. See Case No. 18-cv-02619-CMA, DOC 9 at Exhibit #2 and DOC 22 at 12.

B.7. REQUEST FOR CERTIORARI

The view that an accused expressly waives his Speedy Trial right by moving to secure another constitutional right is open to question on at least these grounds:

(1) The State might have reasonably avoided the delay; (2) it never supported its burden why it delayed; (3) it is fair to say that Eaves simply did not contemplate such an unusual situation; and (4) the court's inevitable effect was to discourage assertion of Speedy Trial and deter the exercise of the right of Compulsery Process. The court penalized Eaves for his choice and therefore it would be patently unconstitutional.

Insofar as these arguments are meritorious, they suggest this Court must intervene so it is understood that a defendant exercising constitutional rights guaranteed to them should receive a more hospitable interpretation when a defendant makes a choice base upon a court's response to the exercising of those rights.

C. Lower courts understanding the principle of liberal construction is open to question because they need guidance so when a pro se defendant raises a claim under the Fourteenth Amendment they do not use their authority to recharacterize the claim.

C.1. LIBERAL CONSTRUCTION OR RECHARACTERIZATION?

C.1.a. Claims Made in State courts.

Eaves asserted to the trial court it did not give me a fair chance because it limited his defense and the claim was denied. On direct appeal Eaves' question was "Did the trial court abuse its discretion by preventing Mr. Eaves from gathering evidence, calling witnesses or admitting evidence based on alternative suspect?" The review was also requested under the Fourteenth Amendment. No where in Eaves' page and a half argument is the word subpoena or even a question raised about the court quashing a subpoena. See Case No. 18-CV-02619-CMA, Doc 8, Exhibit B at pp. 31-33.

C.1.b. The State's Answer to Eaves' Claim and His Reply.

On Answer the State changes Eaves' question to "The trial court properly quashed defendant's subpoena and excluded his proposed alternate suspect evidence." and used 12 pages to argue a subject Eaves never raised in his opening brief. Id. 02619-CMA, DOC 8, Exhibit [redacted] C2 at pp. 41-54.

On Reply Eaves again reinstates the claim "The court did error in Limiting Mr. Eaves' defense based on Alt. Suspect." He also dedicates an entire section titled "Applicable Rebuttal Facts." The facts placed in the section were mostly facts revealed at trial and had nothing to do with a quashed subpoena. In his analysis Eaves simply states "Based on the facts the court should have not continuly denied evidence or argument based on alternative suspect." Id. 02619-CMA, DOC 8, Exhibit D, at pp. 15-17.

C.1.c. Colorado Court of Appeals Review of Eaves' Claim.

The CCA reviews Eaves' claim for "Subpoenas for Alternative Suspect Evidence" even though Eaves never raised this claim in his opening brief. Id. 02619-CMA, DOC 8, Exhibit E, at 25-29.

C.1.d. U.S. District Court's Habeas Review of Eaves' Claim.

In Eaves' Federal Habeas Petition, His Fifth Claim was "Violation of Sixth and Fourteenth Amendments" and Specifically claims "Throughout motions hearings and trial Eaves is denied the admission of evidence, testimony and witnesses of an alternate suspect defense and Eaves' supposed failure to notify the court of such a defense, Eaves objected to the court's limiting his defense based on an alternate suspect and requests the court or the prosecution to show a rule that allowed them to limit his defense. No rule is given and Eaves is continuelly denied argument, evidence and witnesses based on alternative suspect. This violated Eaves' Sixth Amendment right to witnesses and his Fourteenth Amendment right to due process to a fair trial." Id. 02619-CMA, DOC 1 at 6.

The State again recharacterizes Eaves' claim to "Claim 5 is that Eaves' Sixth Amendment right was when the trial court denied the admission of evidence, testimony, and witnesses on an alternate suspect defense." The State again proceeds to argue the subpoena issue. Id. 02619-CMA, Doc 20 at pp. 27-33.

On Reply Eaves again asserts his claim as "In addressing this claim, the CCA ignored record that Eaves' standard of review was set forth pursuant to the Due Process Clause under the Fourteenth Amendment. Therefore, Eaves contends the trial court violated Eaves' Due Process right to a fair trial concerning the owner of the business in light of the facts revealed at trial." He also states in his Habeas claim, "he should not been denied his theory in closing arguments when there was evidence raised during trial that the owner mislead investigators, as well as physical evidence pointing to foul play." Id. 02619-CMA, Doc 22 at pp. 9-11.

The Habeas court recharacterized Eaves' claim to "In Claim Five, Mr. Eaves asserts that his Sixth Amendant rights were violated when the trial court denied the admission of evidence, testimony, and witnesses on an alternate suspect defense." The Habeas court sided with Colorado in its review of Eaves' Claim stating "Here, the state courts determined that Mr. Eaves' subpoenas requested materials which were inadmissible under state rules of evidence." Again a claim never raised by Eaves in his opening brief or his Petition for Habeas. Id. 02619-CMA, DOC 32 at 24-28.

C.1.e. Eaves' Request for COA from the U.S. Court of Appeals.

On application to the Federal Court of Appeals for COA, Eaves again states "Because the CCA did not address the claim under the Fourteenth Amendment right to a fair trial it issued opinions not supported by the record and were against U.S. Supreme Court precedent." See Case No. 19-1452 (D.C. No 1:18-CV-02619-CMA) (D. Colo.), Opening Brief at 12.

The U.S. Court of Appeals States "Mr. Eaves has not made a 'substantial showing of' how these state court rulings were a 'denial of a constitutional right,'". Id. 19-1452, Order Denying COA at 8.

C.2. CONSTITUTIONAL REQUIREMENTS

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law;" U.S. Const. amend XIV (1868).

"Due process demands that a criminal defendant be afforded a fair opportunity to defend against the State's accusations." Crane v. Kentucky, 106 S.Ct. 2146 (1986)

C.3 CIRCUMSTANCE NEEDING ANSWER

The practice of lower courts in the recharacterization of pro se litigants claims is a violation of Due Process and a mutation of the principle that the allegations of a pro se litigant's complaint are to be held "to less Stringent standards than formal pleadings drafted by lawyers." Haines v. Kerner, 404 U.S. 519, 520, 92 S.Ct. 594 (U.S. Ill. 1972). "Liberal Construction" of a pro se defendant's pleadings is merely an embellishment of the notice pleading standard set forth by court rules, and thus is consistent with the general principle of American jurisprudence that "the party who brings a suit is master to decide what law he will rely upon." The Fair v. Kohler Die & Specialty Co., 228 U.S. 22, 25, 33 S.Ct. 410, 57 L.Ed. 716 (1913).

In this case recharacterization was obvious by the lower courts because unlike "liberal construction," the courts deliberately overrode Eaves' pro se choice of claim. It is clear from the record Eaves raised a claim that evidence came out during trial that supported Eaves theory for his defense. Yet the court denied him witnesses and the submission of evidence and closing argument based on alternative suspect.

On direct appeal and petition for Habeas review, he never raised a subpoena issue yet this was the only issue the court made any rulings on violating Eaves Due Process right.

C.4. REQUEST FOR CERTIORARI

The view that a court has the authority to take a pro se litigant's claim and recharacterize it is open to question because no person should be denied justice on their claims just because their claims are not worded in the manner a lawyer may put it. If someone asserts the same claim over and over and each court ignores that claim it violates a person's most basic right to be heard on the claim he has brought and destroys the hope of American justice.

D. A Fourth Amendment violation is open to question especially when a defendant has raised the claim in the level of lower courts and the claim has fallen to a silent record.

D.1. CLAIM RAISED & IGNORED

D.1.a. Claimed Raised in State Courts.

Mr. Eaves raised the claim the affidavit used to secure probable cause to search his storage unit contained false statements to the trial court. This accusation was supported by facts in the record from the motions hearing on suppression, but the trial court does not even address the claim in the slightest.

On direct appeal Eaves again raises the claim in his opening brief (See Case No. 18-cr-02619-CMA, Doc 8, Exhibit B at 21, Heading B. II.), Reply brief (Id. 02619-CMA, Doc 8, Exhibit D at 7, 913), and Petition for Rehearing (Id. 02619-CMA, Doc 9, Exhibit 6 at 4, 911). The State courts make no record or rulings concerning the false statements claim.

D.1.b. Claim Raised Again in Federal Courts.

Mr. Eaves again raises the claim in his Federal Habeas Corpus (Id. 02619-CMA, Doc 1 at 5, Claim one). The Habeas court uses the 2254 standard assuming Eaves was given a full and fair hearing ignoring the fact the lower courts had failed to make any record or ruling to Eaves' claim. On application for COA to the 10th Circuit Court of Appeals, the Harrington analysis instead of a Wilson analysis it applied and Eaves' request for COA is denied. See Harrington v. Richter, 562 U.S. 86, 99 (2011); Wilson v. Sellers, 138 S.Ct. 1188 (U.S. 2018).

D.2. CONSTITUTIONAL REQUIREMENTS

It has been well established for over 200 years that a "court of equity will not make a decree for perpetual injunction, which is to operate directly upon parties in interest, without giving them an opportunity of being heard." Marshall v. Beverley, 18 U.S. 313, 18 U.S. 313 (U.S. Va. 1820). This is because "Due Process requires, at a minimum, that there be a notice and an opportunity to be heard at a meaningful time and in a meaningful manner." Fuentes v. Shevin, 407 U.S. 67, 80, 92 S.Ct. 1983, 1994 (1972).

D.3. HARRINGTON OR WILSON?

The Habeas court states "a federal claim has been presented to a state court and the state court has denied relief, it may be presumed that the state court adjudicated the claim on the merits in the absense of any indication or state-law procedural principles to the contrary." Johnson v. Williams, 586 U.S. 289, 298 (2013) (quoting Harring at 562 U.S. 99).

Eaves asserts the Habeas court applied the wrong standard because this Court has held "that the federal court should 'look through' the unexplained decision to the last related state-court decision that does provide a relevant rationale." Wilson at 138 S.Ct. 1192 (U.S. 2018).

If the Habeas court had reviewed the record on Eaves' claim it would have found no state court had ruled or replied at all to Eaves' Fourth Amendment claim that the affidavit contained false statements and was backed by record. How can a court decree that Eaves had a fair hearing when there is no record of the court addressing this claim? There would have been "convincing grounds to believe the silent court had a different basis for its decision...," and "the federal habeas court is free'... to find to the contrary." Wilson at 138 S.Ct. 1197 (U.S. 2018) (emphasis added).

D.4. REQUEST FOR CERTIORARI

The question of whether the Fourth Amendment is violated by false statements is open to question because in this case a court cannot ignore a citizen's plea for justice. The most basic Due Process right a person has is to be heard on their claim.

In so far as this claim is meritorious, because an individuals rights must be protected or our Constitution has lost its force of effect and only this Court has the authority to now review my claim. How long shall the record remain silent to my claim?

E. Brady, Agurs, Trombetta, or Youngblood? Have we reached the pinicale in our understanding of the most curcial part of any trial, the evidence? This is open to question because so many courts go back and fourth over the preservation and provided evidence and what is a Due Process violation and what is not.

E.1. CONSTITUTIONAL REQUIREMENT

"nor shall any state deprive any person of life, liberty, or property without due process of law;" U.S. Const. amend. IIV (1868).

E.2. OUR PROGRESSION

In 1963 this Court decided in Brady v. Maryland, 373 U.S. 83 "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution."

In 1976 this Court had to stem the flood of cases coming before the Court about Brady violations. In United States v. Agurs, 427 U.S. 97, 110 it was decided "if evidence actually has no probative significance at all, no purpose would be served by requiring a new trial simply because an inept prosecutor incorrectly believed he was suppressing a fact that would be vital to the defense. If the suppression of evidence results in constitutional error, it is because of the character of the evidence, not the charater of the prosecutor."

A new three part test is set, (1) did previously undisclosed evidence reveal that prosecution introduced trial testimony that it knew or should have known was perjured; (2) did the government fail to accede to defense request for disclosure of some specific kind of exculpatory or mitigating evidence; and (3) did the government fail to volunteer exculpatory evidence never requested or requested only in a general way. Id. Agurs, 427 U.S. 97, 96 (1976).

Then in 1984, in another bench mark case, this Court in California v. Trombetta, 467 U.S. 479, set the material evidence standard in the preservation of evidence. It was decided evidence must be "limited to evidence that might be expected to play a significant role in the suspects defense." Id. Trombetta, 467 U.S. at 488-89.

To satisfy the "constitutional materiality" test it "must both possess an exculpatory value that was apparent before the evidence was destroyed, and be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means." Id. at 489 104 S.Ct. 2528.

Shortly after in 1988 the Court employed the bad faith standard in Arizona v. Youngblood, 488 U.S. 51. In order to prove bad faith it requires a defendant to prove after the fact (1) the government had knowledge or notice of exculpatory value of the evidence at the time it was lost or destroyed; (2) defendant asserts potentially exculpatory value is not merely conclusory, but instead backed up with objective, independant evidence giving the government reason to believe that further tests might lead to exculpatory evidence; (3) Government had possession of evidence when it recieved notice about the potential exculpatory value; (4) the evidence is central to the government's case; (5) Government did not offer an innocent explanation for its failure to preserve the evidence; and (6) the destruction of the evidence was not in accordance with standard procedure and the evidence was not adequatly documented prior to destruction.

E.3. A LAYMEN'S VIEW & OUR FUTURE

I saved this for my last question because I believe only this Court can save the American Justice system from the slippery slope it is on. I have always maintained I am innocent of the charges I was found guilty of. Every year 100's of People are released from custody after serving decades of their lives in prison destroying their's and their family's lives and for not. Some have even put to death.

It is hard for me to understand how I am to defend myself against a system that has almost unlimited power to prosecute and the one thing that hangs my life in the balance is the evidence of the case. However, with our modern day technologies it is hard for me to conceive when an investigation is conducted, the State who seems more concerned with winning cases then actual justice, gets to decide what evidence it provides to the defense. This concept baffles me, as for the first time in my life I found myself accused of something I did not do.

Is it impossible to digatally save police reports, body cam footage, videos, scanned written notes, photographs, scientific tests and other evidence to prove the guilt or innocences of someone cannot be placed on hard drive before they are destroyed.

E.4. CIRCUMSTANCE NEEDING ANSWER & WHY OUR CONCEPT OF DUE PROCESS AND EVIDENCE NEEDS TO CHANGE

E.4.a. Eaves' Claim and Colorado's View.

Eaves' question to the State was "did the court have an erroneous view of Rule 16 and abuse its discretion resulting in Due Process violations?" see Case No. 18-CV-02619-CMA, Doc 8, Exhibit B at 27. He supported his claim with 23 citations to the record. Id. 02619-CMA, Doc 8, Exhibit B at 10-11.

In Answer, the State claims "There was no due process or discovery violation" and uses Colorado State cases to argue its position. Id. 02619-CMA, Doc 8, Exhibit C1 at 33-35 and C2 at 36-41.

Eaves asserts on Reply "there were many due process and discovery violations" and supports his claim with an additional 14 citiations to the record where Eaves requested discovery in the posession of the prosecution and it was denied to him. Id. 02619-CMA, Doc 8, Exhibit D at 12-15.

The Colorado appeals court completely ignored Eaves' claim he requested discovery that he knew was in the State's possession and was denied. Id. 02619-CMA, Doc 8, Exhibit E at 23-25.

In a Petition for Rehearing Eaves specifically states "The Coa opinion is there was no discovery violation for failure to produce notes or recordings. (Opin. ¶48), Eaves asserts this err because they were requested and the COA does not address the request factor." The Petition was denied. Id. 02619-CMA, Doc 9, Exhibit 6 at 6-8.

E.4.b. Federal Habeas View.

On Petition for Federal Habeas Corpus Eaves' claim Four was "On 3/17/15, a pro se motion to receive discovery was filed by Eaves. On 09/16/15, Eaves files a motion for additional discovery for missing items from the first discovery request. Eaves files numerous pro se motions for discovery violations because requested discovery in possession of the police and prosecution were never provided and the court denied all the motions. This violated Eaves' Fourteenth Amendment right to requested discovery." Id. 02619-CMA, Doc 1 at 6.

On Answer the State simply claims because the prosecution claimed everything was provided and it did not need to disclose its investigatory work, Eaves' due process rights were not violated. Id. 02619-CMA, Doc 20 at 23-26.

Eaves Responded with the prosecution did not provide discovery, and there was no record to show what had been provided even upon order of the court to provide a written record to show what had been provided. Eaves also requested a certificate of proof of what had been provided in discovery. No record was ever made of what was provided to Eaves except the prosecution stating "I've provided everything." Pursuat to Brady v. Maryland, 83 S.Ct. at 1196-97 Eaves made requests for evidence in the possession of the State and was denied.

The Habeas court states the clearly established federal law relevant to Mr. Eaves' claim is found in California v. Trombetta, 467 U.S. 479 (1984) and Arizona v. Youngblood, 488 U.S. 51 (1988), and only reviews the record concerning the prosecution's direct examination of the lead detective in Eaves' case. However, if the court would have reviewed the cross-examination by Eaves that he cited, his claim would have supported a Trombetta and Youngblood analysis. His petition and request for COA were both ultimately denied.

E.5. EAVES & TROMBETTA

"[W]hatever duty the Constitution imposes on the State to preserve evidence, that duty must be limited to evidence that might be expected to play a significant role in the suspect's defense." Trombetta, 467 U.S. at 488.

El Paso County of Colorado must feel handwritten notes by detectives in a criminal investigation are important enough to preserve because the court told Eaves there were procedures in place for orders to be issued to preserve this type of evidence.

MS. DARBY: Your Honor, we've complied with Rule 16, we're complied with Brady. There was no preservation order.

THE COURT: We do those routinely, Mr. Eaves in homicides. It's a stock motion that's filed for ~~prosecution~~ preservation of notes, preservation of evidence, so that we don't have dissipation of those things or destruction of those.

MR. EAVES: And as Detective Tidwell testified, Your Honor, they were destroyed immediately after he wrote the supplement reports, so a motion to preserve would have done no good anyway.

THE COURT: Well, that's not true. As soon as a case is filed, a homicide, I have an attorney, a defense attorney that files that motion for preservation. We get that order out to law enforcement so they know from the get-go that they need to retain those. So that was not before the court, law enforcement didn't know that they had an obligation to keep all those notes before they dictated their reports.

MR. EAVES: How does that work if I didn't have counsel at the time?

THE COURT: Well, you had the chance to have counsel. You waived that right. So --

MR EAVES: I'm talking about prior to before the charges were filed, Your Honor.

THE COURT: I have P.D.'s and counsel file motions all the time before the actual charges have been filed when they know, based upon the PC affidavit with an arrest. So -- and I would find that the People know what their obligation is under Brady and Rule 16. There's been no showing of noncompliance.

(Tr. 4/22/16, pp. 51-52).

Eaves was sentenced to 30 years in DOC, just as much time as someone could receive for a homicide. So, if homicides get motions filed to preserve evidence, why don't defendants in other cases such as Eaves' robbery receive the same procedures for his charge?

Besides this seems to me a crazy concept. I'm innocent until proven guilty and shouldn't it be the State's duty to preserve evidence? Why does the defense need to file a motion in order to get the police to preserve it's evidence? This seems like a burden shifting tactic.

As laymen who has now faced this concept in a court of law, I don't understand how this is Due Process. No one can determine what might be expected to play a significant role in a suspect's defense until it's needed. Why should those in charge of gathering the evidence get to decide that? Without guidance from this Court agents of the Government are allowed to select the evidence that will only prove their case, while so many of us that are innocent are left to prove after the fact our cases, which is nearly impossible because the evidence was destroyed.

I like the D.C. Circuit's view in 1971 when it stated "It is a defendant's right to discover all evidence which may be discoverable, and to decide for himself its usefulness." U.S. V. Bryant, 449 F.2d 1182 (C.A.D.C. 1971). All things collected should be discoverable. Shouldn't Due Process require the Government to hold on to all evidence in a case? If an agent collects something in an investigation it is because they believe it played some part in either proving or disproving the case. I can understand how in the days of storage boxes and paper files how it would have been overbearing on an agent and his department to record their investigations because storage and preservation would be almost impossible or overbearing. But we live in a modern age where everything can be digitally preserved with mass storage on servers or portable hard drives accessable almost anywhere in the world. Shouldn't Due Process be given a chance to protect those it was intended to protect?

E.5.a. Trobetta in Application to Eaves' Case.

In Eaves' case a robbery had occured and because their was no physical identification of the robber the State would need two points to prove their case - (1) Placement of Eaves at the scene; and (2) motive to commit the robbery.

In closing the prosecution relied on the use of a Ford Taurus vehicle Eaves had borrowed a few weeks prior to the robbery from friends and previous customers of his construction business. (Tr. 5/31/16, p. 138:23). The prosecution also relied on the placement of Eaves' 2010 Nissian Sentra at the scene. (Tr. 5/31/16, p. 141:25). The victim's identification of Eaves' voice as that of the robber's. (Tr. 5/31/16, p. 149:14-15).

Placement Evidence:

A witness saw a vehicle two nights before the robbery when it was believed the back door to the business was disabled, which allowed the robber to enter the business. Eaves asks the lead detective about a photo shown to the witness the day the robbery occurred and why it was not placed into evidence:

Q: In Officer Dale Zehner's report he states that a witness named Rachael O' Donnell was shown a photo of a car and she pointed it out as being the exact vehicle she saw the night of the suspicious activity behind United on January 22, 2015. Why was this photo not placed in evidence?

A: I can't explain that.

Q: And was this very specific photo in my discovery request list?

A: I don't know.

(Tr. 2/26/16, p. 94:20-25 & p. 95:1-3).

But just 3 months before on direct examination by the prosecution the lead investigator claimed he reviewed each request line by line.

Q: And, in fact, as it relates to the defendant's motion for discovery, did we go through it line by line trying to figure out what Mr. Eaves was specifically asking for?

A: Yes, we did.

(Tr. 11/13/15, p. 43:22-25).

Court file citation placed in Eaves' direct appeal Opening Brief showed Eaves specifically requested that photo. Id. 02619-CMA, Doc 8, Exhibit B at 27 (CF, p. 78).

This piece of evidence was crucial because Eaves was not yet a suspect until around March 9, 2015 when the first photo of the Ford Tuarus he was in possession of was taken, meaning the witness could not have possibly identified the Ford Tuarus Eaves had possession of on January 22, 2015 as the vehicle she saw that night.

Eaves also requested a list of suspect vehicle that was in possession of the police and according to the lead detectives report was placed into evidence but Eaves never received. Id. 02619-CMA, Doc 8, Exhibit B at 27 (CF. p. 78),

Q: So you both were aware of the very specific items I was seeking?

A: I remember reading the motions, yes, I do.

Q: And one of those items was a list of Nissan Sentras?

A: OKay.

(Tr. 2/26/16, p. 81:15-21).

Q: And your supplement report also indicates that you placed this list into evidence; is that correct?

A: I don't know.

Q: Would reviewing your report refresh your memory?

A: Sure.

(Tr. 2/26/16, p. 82:10-14).

Q: It's under the heading there "Database Query from Nissian Sentras," the very last line.

A: OKay. The report does indicate that the database listing was placed into evidence. I don't -- I believe that's a typo, that it was not, because it's work product, something that we use as a guide, investigatory tool.

(Tr. 2/26/16, p. 83:4-9).

Q: So you destroyed the list?

A: No. It was work product, something we were using as a guide.

(Tr. 2/26/16, p. 86:12-13).

Q: It's my understanding that once you acquire information in an investigation you are to turn it over to the District Attorney and let the District Attorney decide whether that is discoverable evidence or not.

A: When it pretains specifically to the investigation, to a degree I suppose I might agree with that comment; however, when it's deemed unnecessary for the investigation or it's no longer -- when it becomes a dead end, that investigative lead becomes a dead end and I no longer have to pursue that avenue because it's a dead end, I can't any further substantiate that lead in the case, then it's disregarded. In this case, since we're talking about this list, these vehicles were not useful, they became a dead end in our investigation, and I discard it.

Q: Do you think it's fair to provide the Defense with your leads so that its own investigators can double-check and decide for itself whether the lead is relevant?

A: I provide information in the report that we looked at these leads. I don't know what the Defense is going to determine in their own right to be evidence.

Q: So you don't think you should have to turn that information over to the District Attorney's office?

A: There's certain things that don't need to be turned over.

(Tr. 2/26/16, p. 88:1-22).

This list was important because the victim stated the vehicle she saw leaving the scene had tinted windows. (Tr. 5/17/16, p. 156:1). Video capturing the suspect vehicle leaving the scene also showed the vehicle had tinted windows. (R. Evi., People's Ex. 112). The lead investigator also stated there were several different periods of time with different vehicles matching the description of the suspect vehicle coming and going. (Tr. 2/26/16, p. 59:21). The officer who searched Eaves' vehicle after its recovery, testified Eaves' Sentra did not have tinted windows. (Tr. 5/25/16, pp. 29-30).

The most important request was for notes and dictaphone recordings which Eaves actually had requested in his first discovery request filed August 17, 2015 (CF, p. 48). The prosecutions position to this was there was no order to preserve and therefore there was no need to provide these. (Tr. 11/13/15, p. 45:2-25).

Record will show that the investigation into Eaves as a suspect continued all the way into March of 2016 and not one note or dictaphone recording was provided even after Eaves made a request for them. Eaves discovered many original police reports were missing from the initial investigation. The robbery occured January 24, 2015, and Eaves was arrested on March 13, 2015. According to the police during the two month investigation only three reports were transcribed, dated January 24 through 26. After Eaves' arrest between March 17, 2015 and March 28, 2016 thirty-five reports are written.

Questions by Prosecution to the lead investigator:

Q: Same thing with the Dictaphone, do you actually type up all of your reports or do you dictate them?

A: They're dictated and then they are transcribed by someone else.

Q: And those dictaphone recordings, are those kept in the ordinary course of business at CSPD, or what happens to them after the reports is generated?

A: I don't know, My understanding is, is I don't know where they are stored, so I don't know that they are stored.

(Tr. 11/13/15, p. 45:16-24).

Cross-examination be Eaves:

Q: OKay. As the lead investigator, do you read every supplement report made by officers and detectives during the investigation?

A: Yes.

Q: Can you explain why there are only three supplement reports transcribed the day of the robbery and a couple days afterwards?

MS. DARBY: Objection; how is this relevant to discovery? How is this relevant to the search warrants?

MR. EAVES: Well, it has nothing to do with search warrants. It has relevance to do with the fact that in my motion for discovery I ask for all reports, and I believe reports are missing.

(Tr. 2/26/16, p. 90:8-20).

Q: Can you explain why only three supplement reports were transcribed the day of the robbery?

A: No. I don't know why. I don't know.

Q: Can you explain why a majority of the reports are transcribed between March 17 and August 28 after my arrest?

A: No, I can't. I don't know why.

(Tr. 2/26/16, p. 92:6-18).

The State's defense for not providing the notes or recordings was the reports were accurate to the notes and recordings and were checked for accuracy.

Cross-examination of lead investigator by Mr. Eaves:

Q: On November 13, 2015, under direct examination by Miss Darby, according to the transcripts, page 44 lines 20 through 24, you state, after the notes are dictated in a report and approved by you, that you destroy the notes'. Is that true?

A: Yes.

Q: How soon after a report has been dictated and the notes approved do you destroy them?

A: Immediately.

Q: Did you ever give the Prosecution a chance to view those notes before you destroy them?

A: They're accurately transcribed into my report, so to answer the question, no, she has not reviewed my notes, she has the report that reflects my notes.

Q: The most important notes are the interviews with witnesses; would you agree?

A: Those are important notes.

Q: Could they help in direct and cross-examination of a witness?

A: I suppose they could.

Q: And those utterances are translated into your supplement reports word for word or are they in your own words?

A: Depends on what's being stated, but it can be either/or.

Q: And during the transfer of that information, do you ever miss anything?

A: I'm human and I error sometimes, so there is a potential that I can miss something, yes.

Q: And those supplements are accurate enough to be used to cross-examine or direct examine a witness as to exactly what they said at that moment?

A: I don't know. It depends on the situation, the witness, and what was said.

(Tr. 2/26/16, pp. 95-97).

According to the record the detective is now stating he is not sure if what witnesses stated is accurate because it depends on if he placed statements in his own words or not. He also claimed he did not know where or if the dictaphone recordings are kept. Tidwell was a CSPD officer for 15 years. (Tr. 2/26/16, p. 93:13). However, at trial, Officer Gilman, a CSPD officer for 2 years (Tr. 5/17/16, p. 142:11), testified those recordings were kept in administration. (Tr. 5/17/16, p. 168:8-13).

Both officers also testified that they could alter their reports from the recordings even after they were transcribed. (Tr. 5/17/16, p. 166:15-18)(Tr. 5/19/16, p. 191:17-23). This means the original recordings were the only accurate compareable evidence to the notes for witnesses statements.

Brady requires the release of discovery if it is in the possession of the State. The recordings would contain the missing information from the two month investigation. It would also contain altered witnesses statements. The State should not have been able to rely on the defense that they did not have a preservation order when there were procedures in place for the State to issue that order even before Eaves was arrested.

The State cannot not rely on the accuracy of the reports either. For example the report stated the list for Nissan Sentras was placed into evidence, but when asked about it the lead detective stated it was a "typo".

More significant, Eaves claimed officers did not have a warrant when they searched his storage unit. Under direct examination by the prosecution:

Q: (BY MS. DARBY) Detective Tidwell, did you and Detective Gregory, through your investigation, learn that the defendant, Rodney Eaves, had a storage unit here in town?

A: Yes.

Q: And specifically that that was at the Citadel Self-Storage on Bijou?

A: It is.

(Tr. 11/13/15, p. 31:1-7).

Q: And in this particular case who wrote the search warrant for the storage unit, you or Detective Gregory?

A: It was Detective Gregory.

Q: And were you present when he presented that to Judge Acker?

A: I was

(Tr. 11/13/15, p. 31:23 - p. 32:3).

Q: How long -- did you and Detective Gregory, once it was signed, did you then go to Bijou Street?

A: That was the very next place we went.

Q: And how long did it take you to get there from the courthouse?

A: Approximately 15 minutes at that time of day.

Q: When you arrived at the storage unit, what, if anything, did you see? Were the doors open or closed?

A: The doors were closed when we got there. The remaining detectives in our unit arrived. They may have actually been there before Detective Gregory and I because we were coming from the courthouse, but ultimately the doors were shut and I am the first one to have rolled up any of the doors.

(Tr. 11/13/15, p. 33:22 - p. 34:9).

Q: Once you looked at the door -- you opened the door of No. 96, did you also, then, open the door of No. 98?

A: I did.

Q: And certainly after Judge Acker had signed the warrant?

A: Oh, Yes.

(Tr. 11/13/15, p. 41:9-11 & p. 41:25 - p. 42:1)

The detective claimed this information was contained in his reports. (Tr. 11/13/15, p. 45:9-12). At trial Eaves was establishing testimony evidence had been tampered with. According to Tidwell's report during the search of the storage unit which he claimed he had a warrant for, he finds a pair of gloves on the trunk of the Nissan that match the robbery video. But when questioned how they ended up inside the vehicle where they were photographed, he states he was not present when the gloves were found, he and Detective Gregory left to obtain the search warrant while other officers were seizing evidence. (Tr. 5/26/16, pp. 31-34).

How can this be accurate when he previously testified he and Gregory had the warrant before they conducted the search? This demonstrated reports were not accurate and could be manipulated or altered.

Motive Evidence:

The only motive evidence offered by the prosecution was in closing argument, which Eaves objected to because it was unsupported by any evidence submitted on record at trial. In closing she stated Eaves was not a successful business man (Tr. 5/31/16, p. 135:16-17). His motive was in a jail call that his Mother-in-law was convincing his wife to leave him because he could not support his family. (Tr. 5/31/16, p. 137:8-11). And there were no records for the sale of his business (Tr. 5/31/16, p. 179:23 - p. 180:1).

Eaves did submit physical evidence he had cashed $83,792.20 worth of checks in 2014, the last being in December just before the robbery. (R. Ex., p. 280). The police knew Eaves had sold his construction business but did not recover any of his records from the storage unit.

Q. (BY MR. EAVES) When you searched my storage units on March 12, were you and detectives aware of the possible sale of RDE Construction Solutions?

A: Yes, there had been some comments about potentially selling the business, yes. Those were observed on Facebook.

Q: And does the search warrant signed by Judge Ackes, Attachment B, state, "To search for and, if found, to seize financial records?"

MS. DARBY: Your Honor, for the purposes of speeding this up, I'll concede it says that.

(Tr. 2/26/16, p. 41:3-14).

Q: Would a contract showing the sale of a business along with a bill of sale be considered a financial record?

A: I would imagine it would.

Q: And you and detectives seized how many financial documents concerning RDE Construction Solutions?

A: I collected none.

(Tr. 2/26/16, p. 42:6-11).

Also verified by the lead detective's partner Detective Gregory, his co-lead:

Q: And financial records were listed as well, correct?

A: I believe so.

Q: And during your search you located a filing cabinet, correct?

A: I believe there was a filing cabinet.

Q: Did you seize any financial documents at all?

A: I don't recall.

Officers were instructed to seize financial records, records that would have supported Eaves' innocence and that he did in fact have a successful business. But officers chose to only seize what would support their case. They should of had a duty to seize the financial records as they would have played a significant role in Eaves' defense. Trombetta, 467 U.S. at 488.

E.6. YOUNGBLOOD

E.6.a. Was There Bad Faith?

1.) There was record the lead detective had knowledge that notes, dictaphone recordings and photographs had exculpatory value at the time they were lost or destroyed.

2.) The record reflects there was objective independent evidence the reports were not accurate. In reports the detective claimed he placed things in evidence but those were typos. He also stated he found gloves but then claimed that was not possible because he left to obtain a warrant while others seized evidence. The list that was "work product" was destroyed and as the record reflects Eaves' vehicle did not match the vehicle that left the scene of the crime. He had a Due Process right to this list so his own investigator could check these vehicles for similarities.

3.) The police had possession of the notes before they were destroyed. However, the dictaphone recordings would contain the destroyed notes. Eaves requested both notes and recordings. Some notes were still destroyed after request. An officer also verified the recordings were in fact in the possession of CSPD's administration department. The recordings were never provided.

4.) Because Eaves was not identified at the scene, the State relied on evidence collected over a two month investigation. However, none of those original reports were provided. The State relied on reports and the documentation of evidence contained in the reports and was central to the State's case.

5.) The State claimed there was procedures to preserve evidence but only typically in "homicides." That is standard procedure to destroy notes and other evidence in other cases, such as Eaves' robbery.

6.) The destruction of the notes was claimed to be in accordance with standard procedure. However, they were preserved in dictaphone recordings but Eaves was denied those recordings upon request.

E.7. CONCLUSION

Eaves requested evidence in possession of the State and "the suppression by the prosecution of evidence favorable to an accused upon request violates due process" because the dictaphone recordings contained the only "comparable evidence" that had already been destroyed. The denial of the recordings denied Eaves access to the comparable evidence.

It was also material because the lead investigator, the State's lead witness, besides the victim, was not credible in his collection of statements of witnesses and his own statements in how the investigation was conducted and how he determined Eaves to be the suspect. Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963); California v. Trombetta, 467 U.S. 479, 489, 104 S.Ct. 2528, 81 L.Ed.2d 413 (1984).

The destruction of the photograph and the list of suspect vehicle violated Due Process because the exculpatory evidence was apparent before destruction. At the time the photo was lost or destroyed Eaves was not a suspect and officers did not have a photo of the Ford Taurus driven by Eaves at the time. However, when the witness was shown a photo the day of the robbery, she identified it as the vehicle she saw the night it was believed the backdoor was disabled.

The list was destroyed after Eaves was a suspect. However, it became apparent that the vehicle Eaves was ~~also~~ driving at the time the robbery occured did not match the suspect's vehicle. The value of the list was also apparent before its destruction considering the lead detective testified at the motions hearing there were many different vehicles coming and going that matched the suspects vehicle, which was only disclosed by his testimony at the hearing, and was not in any report he or anyone else transcribed. (Tr. 2/26/16, p. 59:21). This again demonstrates there was information either known or discovered during the investigation that was not placed in a report.

The same applies for the notes that were destroyed. The State of Colorado has a procedure in place to preserve them in homicides because they know the exculpatory value of such evidence. However, in Eaves' case these items were destroyed without preservation and even after Eaves made a request for them. The State continued to destroy them. Eaves has demonstrated "bad faith on the part of the police." Arizona V. Youngblood, 488 U.S. 51, 58, 109 S.Ct. 333, 337-38, 102 L.Ed. 2d 281 (1988).

The "suppression of evidence" resulted in "constitutional error," "because of the character of the evidence." United States V. Agurs, 427 U.S. 97, 110, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976).

E.8. REQUEST FOR CERTIORARI

To me, my Due Process right was violated under these precendents. However, this claim is open to question because no person should be denied life, liberty or property without being able to see all the evidence against them, regardless if the Government feels it would not help the defense. How can Due Process allow the Government to control what evidence it realeases?

If my Sixth Amendment right guarantees me the right to confront my accussers then the Fourteenth Amendment should guarantee me the right to see even how the evidence was collected and preserved because the evidence is just as important as testimony from a witness. If something is collected, it is because an investigator believed it played a significate role in proving or disproving the case. Therefore, there should be no distinction between failures to preserve from destruction evidence whose inculpatory or exculpatory charater is unknow, and failures to ~~preserve from destruction~~ turn over such evidence upon request. With the technoligies available to modern law enforcement how can it be possible not to preserve and provide everything discovered in an investigation?

~~Eaves~~ Insofar as Eaves' allegations of Due Process violation are meritorias, it is more important to protect the individual from opressive prosecution that a new precedent be set. In light of modern day law enforcement investigation technologies, there is no reason the Government cannot collect and preserve items of evidence in every case and there should be no difference between failures to preserve and failures to turn such evidence over to the defense upon request. The Due Process Clause should protect all of its citizens at it was intended to do when it was amended by its drafters.

DECLARATION OF VERIFICATION

Pursuant to 28 U.S.C. § 1746 and 18 U.S.C. § 1621, I declare under penalty of perjury that all of the above citations to the record are true and correct to the best of my ability.

Rodney Eaves: Rodney Eaves Date: May 5, 2020

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Rodney Emmons

Date: May 6, 2020