

No. 22-5478

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

AUG 22 2022

OFFICE OF THE CLERK

LESESTER D. McDAUGHTERY

PETITIONER

(Your Name)

vs.

TAMM Toss (WARDEN)

RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeal for the Ninth Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

LESESTER DUA McDAUGHTERY

(Your Name) #BG 1718

31625 HWY 101 (PO. BOX 1050)

(Address)

Soledad, CA 93960

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Did the Ninth Circuit depart "... so far... from the accepted and usual course of judicial proceeding..." and thereby "... sanction such a departure by a lower court..." when it ruled that clear and convincing evidence (in the form of trial transcripts) of outrageous prosecutorial misconduct (in the form of substantially material fabricated false evidence) did not make a "substantial showing of a denial of a Constitutional Right" that it calls for an exercise of the Court's supervisory power in that the Court must once again affirm the principles of Napue v. Illinois, 360 U.S. 264; Mooney v. Holohan, 294 U.S. 103; Alcorta v. Texas, 355 U.S. 28; Pyle v. Kansas, 317 U.S. 213; United States v. Bagley, 473 U.S. 667; Strickler v. Greene, 527 U.S. 263; inter alia?

LIST OF PARTIES

☒ 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:

RELATED CASES

- *California v. McDAUGHTERY*, No. TA144991, Sup. Ct. of Cal., County of Los Angeles, JUDGEMENT ENTERED APR. 13, 2018
- *California v. McDAUGHTERY*, No. B289453, Cal 2nd App Dist, Div 4, JUDGEMENT ENTERED MAR. 28, 2019
- *California v. McDAUGHTERY*, No. S255590, SUPREME CT. OF CAL, JUDGEMENT ENTERED JUN. 19, 2019
- *IN RE McDAUGHTERY ON HABEAS CORPUS*, No. TA144991, Sup. Ct. of Cal., County of Los Angeles, JUDGEMENT ENTERED DEC. 12, 2019
- *IN RE McDAUGHTERY ON HABEAS CORPUS*, No. B303747, Court of App, 2nd App Dist., Div. 4, JUDGEMENT ENTERED FEB. 10, 2020
- *IN RE McDAUGHTERY ON HABEAS CORPUS*, No. S261396, SUPREME CT. OF CAL., JUDGEMENT ENTERED JUN. 10, 2020
- *McDAUGHTERY v. FOSS*, No. CV-08488(RAO) U.S. Dist. Court, Cen. Dist. of Cal., JUDGEMENT ENTERED MAR. 5, 2021
- *McDAUGHTERY v. FOSS*, No. 21-55306, U.S. Court of App for the Ninth Circuit, JUDGEMENT ENTERED JUN. 28, 2022

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	
STATEMENT OF THE CASE.....	
REASONS FOR GRANTING THE WRIT.....	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A *ORDER DENYING COA - NINTH CIRCUIT COURT OF APPEALS*

APPENDIX B *MEMORANDUM OPINION AND ORDER BY MAGISTRATE DENYING PETITION -
UNITED STATES DISTRICT COURT - CENTRAL DISTRICT OF CALIFORNIA*

APPENDIX C *CT 60-61*

APPENDIX D *RT 328-330*

APPENDIX E *RT 347-348*

APPENDIX F *RT 350-351*

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

<u>MOONEY V. HOLAHAN</u> , 294 U.S. 103 (1935) -	QUESTION(S) PRESENTED
<u>DYER V. KANSAS</u> , 317 U.S. 213 (1942) -	QUESTION(S) PRESENTED
<u>ALBERTA V. TEXAS</u> , 355 U.S. 28 (1957) -	QUESTION(S) PRESENTED
<u>NARVE V. ILLINOIS</u> , 360 U.S. 264 (1959) -	QP, PG. 6, PG. 10
<u>FARETTA V. CAL.</u> , 422 U.S. 806 (1975) -	PG. 8, PG. 11
<u>U.S. V. AGURS</u> , 427 U.S. 97 (1976) -	PG. 8, PG. 10
<u>U.S. V. BAGLEY</u> , 437 U.S. 667 (1985) -	QUESTION(S) PRESENTED
<u>GREER V. MILLER</u> , 483 U.S. 756 (1987) -	PG. 10
<u>STRICKLER V. GREEN</u> , 527 U.S. 263 (1999) PG -	QUESTION(S) PRESENTED
<u>BUSHNELL'S CASE</u> (1677) 124 ENG. REP. 106 -	PG. 6

STATUTES AND RULES

OTHER

CAICRIM JURY INSTRUCTION 3470 PG. 10

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 A 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.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits 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 _____ 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.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was JUNE 28, 2022.

☒ 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).

☐ 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 timely petition for rehearing was thereafter denied 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

THE UNITED STATES CONSTITUTION AMENDMENT 14 - SECTION 1:

"ALL PERSONS BORN OR NATURALIZED IN THE UNITED STATES, AND SUBJECT TO THE JURISDICTION THEREOF, ARE CITIZENS OF THE UNITED STATES AND THE STATE WHERE THEY RESIDE, NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES AND IMMUNITIES OF CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE A PERSON OF LIFE, LIBERTY OR PROPERTY, WITHOUT DUE PROCESS OF LAW, NOR DENY ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAW."

STATEMENT OF THE CASE

This is a case of self-defense. Petitioner was lured to the apartment of his then girlfriend at the behest of rival gang members to be murdered.

The Prosecution has suppressed exculpatory evidence in the form of surveillance videos of the apartment complex which show petitioner under attack. Petitioner has personal knowledge of the surveillance system as petitioner had lived in the apartment complex and had been in the manager's office and viewed the monitors.

Petitioner cannot afford counsel so cannot prove it and the state and the District Court and the Appeals Court refuse to grant petitioner an evidentiary hearing.

However, petitioner can prove outlandish prosecutorial misconduct yet the courts still refuse to acknowledge the constitutional violation.

On January 11, 2018, the witness Vanessa Conley at preliminary hearing testified on direct examination by District Attorney Frank Dunnick that she "had to have surgery" and that "she had not been to a doctor." (SEE CT ATTACHED PP 60-61 - APPENDICE C).

On March 27, 2018, direct-examination by District Attorney Frank Dunnick at jury trial, Vanessa Conley testified to an elaborate surgical procedure that she had had. (SEE RT 328-330 ATTACHED AT APPENDICE D).

On March 27, 2018, on cross-examination by petitioner who had invoked his Faretta rights, the prosecution's elaborate ruse fell apart as the witness Vanessa Conley that the elaborate surgery occurred prior to her testifying at preliminary hearing. (SEE RT AT 347-348, ATTACHED AT APPENDICE E).

Statement of the Case conts.

And if being poor and representing yourself in county jail blues and battling an unscrupulous District Attorney were not enough obstacles to overcome, when petitioner sought to emphasize the relevance of the perjury to the jury the court piled-on and misled the jury instructing that petitioner "...misstates the evidence..." (SEE RT 350-351, ATTACHED AT APPENDICE F).

In order to sweep it under the rug the courts have denied petitioner redress.

REASONS FOR GRANTING THE PETITION

Now does a civilized nation curtail the arbitrary power of the government when one of its citizens stands in jeopardy of life and liberty?

In Anglo-Saxon jurisprudence habeas corpus stands as a buffer between government power and citizen jeopardy. Habeas corpus antedates the Federal Constitution. See Bushnell's Case (1677) 124 ENG. REP. 1006.

Perhaps the foremost principle of proceedings enacted by the government in order to seize a citizen's life or liberty is that the proceedings are fair.

Perhaps the foremost abuse of its power by the government is fabricating evidence during the proceedings in order to seize a citizen's life or liberty.

The wanton abuse of power in this case stands against all the precepts of fair play in the adversarial process.

"Unfairness or corruption of officers in performance of administrative functions in civil or criminal cases in state court as in violation of the Fourteenth Amendment."
98 ALR 411.

The Court has affirmed consistently, never wavering, that the government may not use false evidence in order to seize a citizen's life or liberty.

The Court in NAPUE V. ILLINOIS, 360 U.S. 264, 269, 3 L. Ed. 2d 1217, 79 S. Ct. 1173 (1959) held:

"The principle that a state may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness. The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend."

In this case the wanton abuse of power and the total disregard of morality in relation to fair play is staggering.

Let us examine the false evidence.

On March 27, 2018, at jury trial, on direct-examination by Deputy District Attorney Frank Dunnick of the witness Vanessa Conley, Ms. Conley testified detailing an elaborate surgery. (see app D).

Dep. Dist. Att. Frank Dunnick engages the witness in detailing the surgical procedure and rehabilitation. (see id.)

The first oddity concerning the evidence is "where are the medical records?" Although medical records are not essentially required under circuit law concerning medical treatment, medical records would essentially

establish the state's proffer. The defense objected profusely to the proffer. (see id).

It should be noted that petitioner had invoked his rights pursuant to *Faretta v. Cal.*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed. 2d 562 (1975).

On March 27, 2018, at jury trial, on cross-examination the defense establishes an approximate time-line of the alleged surgery as the state proffered no date concerning the alleged surgery. (The second additivity - such a detailed account of the surgery and rehabilitation yet no dates.)

The defense establishes that the alleged surgery was to have occurred prior to the witness Vanessa Conley's preliminary testimony. (see App E).

Let us rewind the clock seventy-five days to January 11, 2018, to the witness Vanessa Conley's preliminary hearing testimony and Dep. Dist. Att. Frank Dunnick's direct-examination of Ms. Conley; Ms. Conley testifies to having to have surgery and not having been to an emergency room or to see a doctor. (see App C).

Unequivocally perjury is reflected in the transcripts of the proceedings. (compare Appendices C and E).

Now let us examine the level of deceit employed by Dep. Dist. Att. Frank Dunnick. We know that Mr. Dunnick examined the witness Vanessa Conley on direct at both preliminary hearing and at jury trial.

FROM THESE TWO EXAMINATIONS WE KNOW THAT MR. DUNNICK KNEW THAT THE WITNESS WAS COMMITTING PERJURY AND THAT IN FACT MR. DUNNICK WAS FACILITATING THE INTRODUCTION OF FALSE EVIDENCE INTO THE TRIAL.

EXAMINING THE DETAIL THE WITNESS TESTIFIED TO ABOUT THE SURGERY AND REHABILITATION WE CAN CONCLUDE, WITH A REASONABLE AMOUNT OF SURETY, THAT THE STATE FABRICATED THE EVIDENCE AND COERCED PERJURY.

IT STRETCHES THE BOUNDS OF RATIONALISM TO CONCLUDE THAT THE WITNESS OF HER OWN FREE WILL INVENTED SUCH A DETAILED TESTIMONY OR THAT THE WITNESS WOULD PUT HER LIBERTY IN JEOPARDY WITHOUT THE SANCTION OF THE STATE.

THE SIMPLEST ANALOGY BEGS: "IF THE SURGERY HAD ACTUALLY OCCURRED WHY LIE ABOUT IT?"

IN ALL OF ITS MANIPULATIONS THE STATE FAILED TO ACCOUNT FOR HUMAN ERROR AS BOTH MR. DUNNICK AND MS. CONLEY FAILED TO CONSIDER MS. CONLEY'S PRELIMINARY HEARING TESTIMONY AS EVIDENCE OF PERJURY IN RELATION TO MS. CONLEY'S SLIP-UP.

HOWEVER, THE MOST IMPORTANT CONSIDERATION NOT TAKEN INTO ACCOUNT IS THE CHANCE THAT A POOR, UNINITIATED, SELF-REPRESENTED FELON IN COUNTY JAIL BLUES WOULD BE ABLE TO HOLD THE STATE ACCOUNTABLE.

THIS IS WHY THE COURT SHOULD GRANT THE PETITION: TO SEND THE MESSAGE THAT EVEN ONE SUCH AS THIS IS ENTITLED TO A FAIR TRIAL; AGAIN AFFIRMING THE

PRINCIPLES OF MOONEY-NAPUE AND THE PROGENY
that such behavior by the state is intolerable
"... IN ANY CONCEPT OF ORDERED LIBERTY..."

NAPUE V. ILLINOIS, 360 U.S. 264, 269, 79 S.Ct. 1173,
1176, 3 L.Ed. 2d 1217, 1220, 1959 U.S. LEXIS 811, 7.

IN THIS CASE THE PREJUDICE INCURRED BY
PETITIONER AS A RESULT OF THE FALSE EVIDENCE IS
TREMENDOUS.

IN THE EVOLUTION OF THE COURT'S FALSE EVIDENCE
DOCTRINE U.S. V. AGURS, 427 U.S. 97, 96 S.Ct. 2392,
49 L.Ed. 2d 342 (1976) ESTABLISHES THE "STANDARD"
FOR FALSE EVIDENCE/TESTIMONY CLAIMS: A NAPUE VIOLATION
IS MATERIAL WHEN THERE IS "ANY REASONABLE LIKELIHOOD
THAT THE FALSE TESTIMONY COULD HAVE AFFECTED THE
JUDGEMENT OF THE JURY." (id at 103).

WE KNOW THAT THE GREAT BODILY INJURY FINDING BY THE
JURY IS PREDICATED UPON THE FALSE EVIDENCE. HOWEVER,
EVEN MORE MATERIAL IS THE IMPUTATION OF MALICE CONVEYED
BY THE FALSE EVIDENCE. PETITIONER ACTED IN SELF-DEFENSE
WHICH UNDER CALCRIM JURY INSTRUCTION 3470 THE DEFENDANT
MUST USE "... NO MORE FORCE THAN... REASONABLY NECESSARY
TO DEFEND AGAINST DANGER."

THE SHEER FABRICATION OF THE EVIDENCE IS STAGGERING.
UNCONSTITUTIONAL PROSECUTORIAL MISCONDUCT OCCURS WHERE
THE PROSECUTOR ENGAGES IN ACTIONS THAT "SO INFECT THE
TRIAL WITH UNFAIRNESS AS TO MAKE THE RESULTING CONVICTION
A DENIAL OF DUE PROCESS. GREER V. MILLER, 483 U.S. 756, 765,
107 S.Ct. 3102, 97 L.Ed. 2d 618 (1987).

After behaving in such a manner is it far fetched to believe Dep. Dist. Att. Frank Dunnick suppressed the exculpatory surveillance videos? An evidentiary hearing would vindicate petitioner.

Dep. Dist. Att. Frank Dunnick behaved in such a manner because he believed one such as petitioner could not hold him accountable. This is why the Court should grant the petition. It is in the Public Interest to hold him accountable, to affirm the principle that all are entitled to a fair trial; even "one who is his own lawyer (and) a fool for a client." Faretta v. Cal., 422 U.S. at 852.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A. McDaugherty

Date: AUG. 19, 2022