

No. 17-8909

IN THE

Supreme Court of the United States

October Term, 2017.

MIGUEL A. JARAMILLO,

Pro Se Petitioner

v

THE PEOPLE OF THE STATE OF NEW YORK,
et. al,
Respondents.

Petition for Rehearing.

Brief for Petitioner.

Miguel A. Jaramillo

11 B0722

Attica C.F.

P.O. Box 149

Attica, New York

14611-0149

1. The question presented is whether the failure of the prosecutor to correct the testimony of the investigating officer which she knew to be false denied petitioner due process of law in violation of the Fourteenth Amendment of the Constitution of the United States.

The record in this Court contains testimony from which the following facts could be found. In the morning of October 18, 2009, outside a Watertown, New York, bar, the investigating officer (Davis) took statements from the stabbing victim (Little). In the incident report that followed, it is an undisputed fact that Davis flawed Little's allegations of a reported stabbing, and police notes and written reports had disappeared with regard to Little.

At trial Davis testified in response to a question by the prosecutor that his supervisor (Reff) told him that Little's statement was "missing some" allegations of a reported stabbing, and that Reff told Davis on October 18, 2009, to, "put, you know, a couple of extra sentences" in Little's statement to complete Little's narrative. (App. I, Ex. C., p. 340).^{*} Thereafter, Davis testified in response to a question by petitioner that Reff "checked over" the alterations made to Little's statement on October 18, 2009 (App. I, Ex. C, p. 344).

At a pretrial conference on January 21, 2011, the prosecutor had in fact stated that she spoke with Reff that morning and said, Little's statement "has not been corrected" to which Reff replied, "I'm positive I told him to correct" Little's statement on October 18, 2009, and that, unaware of a second statement, Reff went back to the station and pulled it off the computer (App. I, Ex. B, p. 4).

^{*} See Appendix for petitioner filed in this Court.

Davis had falsely testified that his supervisor had checked over the altered statement on October 18, 2009, and the prosecutor handling the case had known this to be false.

First, it is established that a conviction obtained through use of false evidence, known to be such by representatives of the State is a denial of due process of law in violation of the Fourteenth Amendment. Mooney v. Helohan, 294 U.S. 103. The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears. Alcorta v. Texas, 355 U.S. 28.

"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." See, Napue v. Illinois, 360 U.S. 264.

Second, what is overlooked here is that on January 18, 2011, during a pre trial conference, the judge found that the police and prosecution lost all police notes and written reports with regard to Little's statement to Davis, and told the prosecutor that "it looks like there might be some cutting and pasting going on" (App. I, Ex. D, p. 40).

Had the jury been apprised of the true facts, however, it might well have concluded

That Davis had fabricated testimony in order to curry the favor of the very prosecutor who was prosecuting the case in which Davis was testifying, for Davis might have believed that the prosecutor was in a position to conceal (as she ultimately attempted to do) Davis' failure to fully develop the statements made by Little and to conceal the tampering of the statement made by Little by the State authorities. That the prosecutor herself thought it important to establish before the jury that Reff checked over the adjustments made by Davis to Little's statement on October 18, 2009, is made clear by petitioner's cross-examination, which was the last testimony of Davis heard by the jury, false testimony that went uncorrected. Alcorta v. Texas, supra.

In conclusion, aim for perfection, listen to
Petitioner's appeal for review, and be of
one mind. May God be with you all.

Date: November 8, 2018

Sincerely,

Miguel A. Jaramillo