

Updated February 21, 2025

Judge Kennedy – Judicial Misconduct – Bias – Abuse of Discretion:

Trial Testimony in blue – Petitioner comments in (green) – Exhibit References in (Red)

Petitioner has been delayed in filing any petitions, He now presents credible evidence that exculpatory material evidence has been, and continues to be suppressed and/or concealed from him for more than sixteen years. October of 2024 was the first time Petitioner has been in possession of the clerks transcripts, reporters transcripts, and two of the three recorded eye witness interviews all together. Two material 911 calls, and one video witness interview continue to be suppressed. See Exhibit (G) showing how far the Court, Prosecutor, Walnut Creek Police, and Trial Counsel went to keep this evidence from Petitioner.

March 11, 2009 - Motion in limine hearing RT 89 L 12-19 (Exhibit A)

(Prosecutor) MR. MOAWAD: ... One other thing I should say is not so many motions in limine, but I notice that – and I do intend to play the 911 tape from the victim, Ms. Rhodes, in my opening. Something – if there are any issues at some point prior to doing that, but right now –

THE COURT: Okay. I appreciate the notice

(At this point the court was required by California Rules of the Court 2.1040 (A4), to have the prosecutor make a transcription of Rhoads 911 call. The prosecutor played less than an eight second clip out of Rhoads more than twenty minute call to 911. The rest of her call, where she told the dispatcher that she was immediately pepper sprayed in the face and that she could not see was concealed from the jury and Petitioner. It is now more than sixteen years later, and this recording among others, have continued to be concealed from the jury, Court, and Petitioner. To compound this violation by Judge Kennedy (Tape Played) was all that was entered into the record, which made these recordings unavailable for Petitioner's direct appeal.

There was a second call to 911 at 10:36 AM, four minutes after Rhoads' 911 call, by witness, Sean Mendell. That call was also never transcribed, nor was it given an exhibit number, it too was concealed from the jury, and continues to be concealed from Petitioner.

Opening Statements:

Showing the materiality of the 911 recordings and witness interviews that were withheld from the jury and Petitioner:

Prosecutor - Mr. Moawad – Opening:

April 6, 2009 RT P278 L2-17 (Exhibit B)

Mr. Moawad would you like to make an opening statement?

Mr. Moawad: I would, your Honor.

(PEOPLES EXHIBIT NUMBER 2

MARKED FOR IDENTIFICATION)

(TAPE PLAYED)

Mr. Moawad: What you just heard was Beverly Rhoads calling 911, on March 20, 2008, to tell them the murderer is Nathan Medina.

RT 281 L25-26 You heard her talking to 911 saying “we are being murdered” and then she stops talking.

RT 282 L10-11 She is begging the police to come help her.

P288 L18-20 Ladies and gentlemen, this case started with Beverly Rhoads telling you the murderer is Nathan Medina.

Trial Counsel – Mr. Manoukian – Opening:

Mr. Manoukian:

April 6, 2009 RT2 P 281-303 (Exhibit O1)

RT 290 L 16-21 ...the intruder immediately pepper sprays her. As soon as she walks in, she is – or as soon as she walks in to the room the intruder is there, she is pepper sprayed as I will comment later tells the police who do not listen that she couldn't see.

RT 291 L9-10 you'll hear a tape of her, her very first interview...

(This recording was not transcribed or made available to the jury, Petitioner's, mother received it, in 2014 through a civil suit. Since then, the court has denied every motion and petition, Petitioner has filed trying to get the court to review it. Rhoads' recorded interview proves that her entire trial testimony regarding her identification of Petitioner was a fabrication).

P291 L12-13 She tells you in that tape what really happened.

P292 L4-6 she says “I couldn’t see, I couldn’t see”. She says that twice to the detective at the very beginning of the interview.

P292 L18-20 You’ll hear her say in that interview over and over, “It happened so fast. I couldn’t see. I couldn’t see. I don’t know if he was carrying anything I don’t think so”.

294 L1-4 ...it all started, and, unfortunately, it all ended with that 911 tape. That 911 tape from the moment she says “It’s Nathan Medina “ ...

P294-295 ...the emotion and power of what you just heard on that 911 tape, the case was over. We got a 911 tape saying it was Nathan Medina.

P295 L13 - In fact, you’re going to hear the detective on tape, fortunately, tell Ms. Rhoads even when she is saying, well, he had a mask, that he goes, right, but even though you knew it was him, right, but you knew – that’s how you know. You can hear the detective convincing Ms. Rhodes that she really knows who it is. (This part was never played for the jury).

P295 L20-26 You can even hear the detective when Ms. Rhodes is trying to tell him that she couldn’t see – talking over her and another officer saying she was pepper sprayed, she was pepper sprayed, as she said I couldn’t see, I couldn’t see, and he is going now who is it, you are sure who it was.

That is the power of this 911 tape. That is the power of Ms. Rhoads saying I’m sure its him, that a seasoned detective (McColgin) has a witness (Mendell) trying to explain to him why he thinks it may not be someone and he stops that person. You’re absolute wrong. A witness has positively identified him, and it’s him, there is no doubt. They then show him a lineup.

P296-297 L25-28 L1-9 And when Mendell is trying to explain the reasons why, you know what, I don’t think it was Mr. Medina, the detective stops him on tape, and you’ll hear this, “no, no, no, it was Nathan Medina, he has been positively identified”.

P297-298 L23-28 L1-4 All of the witness that we hear from who identify Mr. Medina, all of the percipient witnesses were told inappropriate things. Were shepherded towards what to say by the police department. The only one we don’t have evidence on that something inappropriate on is Ms. Longfellow, the roommate of the person in the back, an on her interview the audio erased or somehow malfunctioned and we have no idea what was said.

RT P303 L21-22 ...this case started with that 911 tape, unfortunately it ended with that 911 tape.

In 2011, Counsel claimed that the district attorneys office made him sign a confidentiality agreement stating that he could not release the recordings to anyone else, including his client: (exhibit CA1).

(This communication in 2011, was the first time an agreement between Counsel and the prosecutor was ever mentioned. An agreement that was an obvious due process violation, betrayal of attorney - client agreement, and a violation of the rules of professional conduct).

These recordings were not made available to the jury or petitioner, in fact on the first day of deliberations, juror number eight, wrote two notes asking for Mendell's video interview and a TV to watch it, (exhibit J8).

Judge Kennedy immediately dismissed him from the jury, (exhibit J8A), after he asked for a Friday afternoon off, to see his wife's parents who were hospitalized. Juror number eight was already told that day would be off, to accommodate other juror's, (exhibit J8b). Juror number eight expressed that he wanted to stay on the jury and that he would have no problem being present on Monday. The jurors did not even return till Tuesday. On Tuesday, they cancelled juror number eight's request, (exhibit J8), and found petitioner guilty without reviewing any of the recorded evidence.

As is made clear by both the prosecutor and counsel, Rhoads' 911 call and recorded witness interview was central to the prosecution's case and Petitioner's conviction. The prosecutor violated Petitioner's due process rights by playing a few seconds of this un-transcribed call, while concealing the rest of it, where Rhoads' told the 911 operator that she was immediately pepper sprayed in the face and could not see, but it had to be him, (Nathan Medina) because she claimed to not have any other enemies. Petitioner presents evidence that Rhoads claim of not having any other enemies was not true.

Rhoads' told the police and jury many inflammatory things about Petitioner and Petitioner's father that were not true. That just as petitioner proves, Rhoads did with Mendell over a four year period, she did the same with the police, prosecutor, and jury in telling them provable lies, in order to wrongfully convict petitioner, whom she had a documented obsession with. Petitioner presents proof that the prosecutor knowingly suborned perjured testimony regarding the central issue of this case; Rhoads ability to see the assailant. See: Rhoads – Obsession – Perjured Trial Testimony: Exhibit (RP1)

The prosecutor made false and misleading transcripts of witness recorded interviews, which he presented to two judges, in order to mislead them, and have them deny petitioner's motions before trial. (SW1,SW2,CT1)

Petitioner presents new evidence which was withheld from him and the jury that undermines Rhoads entire testimony, regarding her interaction with the assailant and her ability to see:

Rhoads recorded interview taken the day of the murder: (RI)

Contra Costa Court Clerks: Illegal Judicial Decisions in continuing to keep evidence from Petitioner:

On September 30, 2024, the Contra Costa Courts received Petitioner's discovery request, based on penal code 1054.9, (DM1). Upon receiving that motion, the clerk of the court made a judicial decision, and refused to file it, they did not notify petitioner of their refusal to perform their legal obligation, and then when both, Petitioner's resentencing attorney and mother asked them about the status of the motion, they were lied to, as every inquiry was met with the same lie, that they could not find it.

Petitioner who is handicapped by being in prison, asked the public defender assigned to him for a resentencing petition, to contact the court clerk to find out the status of his motion. She was told that they could not find it. Petitioner's mother inquired twice about his motion, she was also lied to. On the second attempt, Petitioner's mother brought in copies of the proof of service along with the prison legal mail logs. Only after this, and having been lied to by three clerks, did they inform petitioner's mother that they received his motion and scanned it in, as received on September 30th. They then told her that they did not file it, because petitioner had an attorney of record. Petitioner's mother explained to the clerk that the assigned attorney had nothing to do with petitioner's discovery motion, as she was only assigned to him for resentencing. The clerk then continued to make an illegal judicial decision and again refused to file petitioner's motion.

Petitioner's mother, then told the clerk that she had Petitioner's power of attorney and that she wanted to file it at the window. The clerk told her that she could not file a petition for Petitioner, and that the petition had to be sent from the prison.

On December 5, 2024, Petitioner filed another Discovery motion from prison. Petitioner received the following response in February of 2025: (DM2), the judge's response was not an order, but a filed stamped correspondence, this is an intentional delay tactic, as the court has proven that they have no intention of giving Petitioner evidence that can be used to overturn his wrongful conviction.

Petitioner continues to be deprived of his liberty, while impeachment and exculpatory evidence are withheld from him. It is now late in February of 2025, and every attempt to acquire Petitioner's proof of innocence has been blocked by the Contra Costa Court's.

Sean Mendell:

Sean Mendell called 911, just minutes after his contact with an assailant, an assailant which he stated that he had never seen before. This call has been concealed, never made available, and wasn't given an exhibit number. More than sixteen years later, in response to a discovery request sent to petitioner's trial counsel, petitioners mother received two boxes of discovery which were illegally withheld from petitioner. Included in one of the boxes was an envelope marked: 911 Tapes: – Rhoads, B – Mendell, S - "orig." (DT1)

In the envelope were three 120 minute cassettes. On one side of each tape, written in black marker was: Original 911 call, on the other side, one was marked: 911 call with Sean Mendell. (This tape was blank). Two tapes marked: 911 call with Beverly Rhoads. (These tapes both had static noise and beeping added to them in order to conceal Rhoads statements that prove she did not see the assailant before being pepper-sprayed.

Petitioner's mother informed Brian Feinberg, head of the Contra Costa Conviction Integrity Unit, that she was just given new material recorded evidence which was tampered. Brian Feinberg has had Petitioner's actual innocence claim since January of 2022, along with all evidence proving Petitioner's conviction was based on fabricated evidence.

She received no reply.

Mendell – Description of Assailant:

Sean Mendell gave a very detailed description of the assailants face in his recorded interview, which was never transcribed (in violation of CRC 2.1040) and withheld from the jury and petitioner. His recorded statements were as follows:

Mendell – Recorded Interview – Meth Face (Transcribed in 2014 (exhibit MI)

- **P47 L8-9** Mendell:, You know shriveled up face. Looked like he was definitely on drugs
- **P96 L7-12** Mendell: This looks like a guy -- I know it sounds funny, but, you know when you look at a guy and he does meth and his whole --

Jower: Like a meth face; right?

Mendell: He looked like he had a meth face. Definitely.

- **P93 L3-5** Mendell: Not -- it didn't -- it wasn't, like, a perfect straight nose. The -- I think I remember it being kind

of shrively.

- **P95 L21** His face was very shriveled. Very shriveled.

(As this description did not match Petitioner in any way, Judge Kennedy who listened to Mendell's interview went to great lengths to conceal it from the jury, and then had Mendell testify that his description meant a small chin. No reasonable person could mistake the four descriptions you just read, as only describing a small chin).

Mendell also described the persons behavior, as obviously on drugs. Petitioner's blood was taken and tested for drugs the day he turned himself in. The toxicology test came back negative for drugs and alcohol. Counsel did not enter the toxicology report into evidence, so the prosecutor suppressed it, then during closing he told the jury that Petitioner could have been on drugs, because there was no evidence presented by the defense that he wasn't.

At the preliminary hearing and during trial, Mendell changed his description of the assailant from the four times he described the face as shriveled up and/or meth face, to saying that what he meant was a small chin, even though, nowhere in his interview, did he ever say the assailant had a small chin. In direct opposition to this, Judge Kennedy falsely claimed that Mendell's description matched plaintiff. This, Judge Kennedy used to excuse the multiple instances of police misconduct regarding witness tampering and blatant eye witness procedural violations. See: **Search Warrant – No Probable Cause (SWP)**

Mendell and his girlfriend, Longfellow were shown a drivers license photo of petitioner, moments after their interaction with an assailant. Neither of their initial descriptions matched petitioner's photo or petitioner's face. Petitioner believes, that this is why Mendell's 911 call has been concealed and/or suppressed, as Mendell was on the phone with 911 for a long time, answering their many questions.

Petitioner's same drivers license photo was then used in the six-pack photo lineup, and broadcast all over the local news, which forced petitioner to have an attorney safely bring him into the Walnut Creek police station, the next morning.

When asked at the preliminary hearing, and at trial, what Mendell meant by a shriveled up face like a meth addict, he stated that he meant a small chin.

Preliminary hearing:

Mendell – "Shriveled up face means short small chin – jaw". **CT 115**

The multiple references in his interview were concealed from the jury and petitioner, therefore the false "small chin" was the only evidence entered into the record, regarding Mendell's facial description of the assailant, which did not match Plaintiff.

Motion to suppress Mendell's in court identification of petitioner before trial:

In order to excuse the blatant eye witness procedural violations committed by the Sheriff's department, showing the driver's license photo with info of petitioner to Mendell and Longfellow, at the scene together, and Detective McColgin's hallway conversation where the detective told Mendell it was petitioner, and that another witness positively identified him, shortly before being shown the six-pack photo lineup, Judge Kennedy misrepresented Mendell's description, with reckless disregard for the truth.

For this hearing, judge Kennedy viewed Mendell's un-transcribed video interview, and read the preliminary hearing transcript. The following statement by Judge Kennedy, prove he had personal knowledge of Mendell's detailed description that did not match petitioner, and that Mendell never stated that the assailant had a small chin in his recorded interview. Judge Kennedy showed bias in ignoring Mendell's recorded interview description that did not match Petitioner.

(RT 239) Judge Kennedy: I did watch the two-hour DVD of the interview of Mr. Mendell at the Walnut Creek Police Department in the context of this issue.

I read the preliminary hearing transcript of Mr. Mendell...

RT 250-251 Judge Kennedy: "At the preliminary hearing Mendell described... five foot ten inches tall.. 180 pounds... a small chin or shorter jaw that he kept referring to as shriveled, but when he was asked to explain that he referred to the size of the shooters chin".

(Notice, Kennedy ignores all reference to "meth face").

"I would say that a description of his chin as small is accurate based on the photos and my observation of the defendant in court".

Judge Kennedy, stated that Mendell gave an accurate description of petitioner in his interview by describing mid 30's, 5'10, 180lbs, with a small chin. Kennedy said that petitioner was a youthful 42 with a small chin.

(From watching Mendell's interview and reading the preliminary hearing transcript, Judge Kennedy knew the police computer shown to Mendell had petitioner's WT 180, HT 5'10, and hair color Brown on the screen).

In evidence to the fact that Mendell was influenced by the driver's license description on the police car computer, Mendell stated that he could not see the assailant's hair as it was covered by a beanie, but he thought it was brown. This matched the hair color on

petitioner's driver's license.

Police picture said Nathan Medina on it RT 1347

Info next to photo on police screen RT 1352

During this motion hearing, Judge Kennedy described the hallway conversation with Mendell.

Therefore Judge Kennedy, knew that Mendell gave perjured testimony, when he denied under oath during the preliminary hearing that this conversation ever happened:

"No one talked to me prior to the lineup 100% positive." CT P 107

Then Judge Kennedy allowed Mendell to do the same at trial:

Trial – Mendell:

No one mentioned Nathan Medina besides me before photo lineup RT 1340-1342

Denying McColgin conversation in hallway RT 1342

Does not remember hallway conversation RT 1410 L 22

100% Positive no hallway conversation RT 1411-1414

After Mendell was informed that there was a recording of the hallway conversation:

If you are referring to the one who showed me the lineup, I had some sort of conversation with him in the hallway before seeing the lineup. I think it was Detective McColgin. Don't recall what the conversation was about. RT 1435-1436

Prosecutor Moawad – Opposition to motion to suppress in court Identification:

Prosecutor committed fraud on the court by fabricating evidence, falsifying a transcript as he omitted statements by detective McColgin that were fatal to the witness identification by Mendell, as this recorded hallway conversation took place, right before Mendell was shown the six-pack photo lineup, which detective Reese used to acquire the search and arrest warrant.

What is also missing from the prosecutors transcript is that detective Tracie Reese is heard before, during, and after

this witness tampering by detective McColgin on this recording.

(It must be noted that Judge Kennedy listened to this recording, therefore he had personal knowledge that the prosecutor's transcript had material misrepresentations by omission).

Prosecutor Transcript of Hallway conversation (OM1):

CT 1 P285 (Page six of Opposition to motion to suppress in court Identification)

McColgin: Do you know uh, do you know (Nathan)?

Mendell: Yes

McColgin: Did you recognize the person as (Nathan)?

Mendell: Uh, the problem is I haven't seen(Nathan).

McColgin: Okay

Mendell: What happened is they showed me a picture of (Nathan), (unintelligible). (Unintelligible).

McColgin: She positive – the mom positively (unintelligible)

– she's sure its (Nathan).

Mendell: Is she?

McColgin yeah, (unintelligible) Nathan. (Unintelligible).

Intelligible evidence which contradicts the above was later uncovered and is as follows:

Actual - Hallway Conversation – Mendell – Lead Detective McColgin – Detective Reese:

(This is the conversation Mendell stated under oath, twice, that he was 100% positive never happened).

Detective Reese: ...I'm sorry

Detective McColgin: What's your name?

Mendell: Sean

Detective McColgin: Oh yeah Sean, you live in the house in the back

Detective Reese: yeah yeah ...

Detective McColgin: Hello how you doing buddy uh?

Mendell: I've been better

Detective Reese: Can I get your phone. Do you mind?

Mendell: Yeah

Detective McColgin: Do you, uh do you know Nathan?

Mendell: Yes

Detective McColgin: Did did you recognize the person as Nathan?

Mendell: Uh, the problem is I haven't seen Nathan...(interrupted)

Detective McColgin: Okay

Mendell: What happened is they showed me a picture of Nathan.... The problem is the reason I don't think it is Nathan... looked bigger (interrupted again by McColgin)

Detective McColgin: She positively, the mom positively identified Nathan, she said it was Nathan for sure.

Mendell: She said it was Nathan?

Detective McColgin: Yeah she did, she said it was Nathan, he wasn't wearing a mask, just a hat,

Mendell: ...A beanie

Detective McColgin: a beanie yeah, it was rolled up the front

Mendell: Yep, sunglasses

Detective McColgin: She said hey man its him, she positive ID'd him

Detective McColgin: Uh do you live in the cottage in the back?

Mendell: Yes

Detective McColgin: Do you rent the house from her?

Mendell: Yes

Detective McColgin: ...Sam...

Detective Reese ...all this

Detective McColgin: (Asking Detective Reese) What are we going to do with him?

Detective Reese: ...

Mendell: Is everybody OK?

Detective Reese: Oh yeah, everything is so preliminary at this point...

According to Mendell, McColgin took him to pick Petitioners picture (The same picture that he and Longfellow were shown at the scene with Petitioners information next to the photo) out of a six picture line-up. Where Petitioners picture was in the middle, on the top, and had a different look than the other five pictures. Even at that point Mendell was still reluctant. He was then told by the detective "Just pick whichever looks most like, whichever one seems the most familiar. **RT 1363 (LU1)**

So he picked the photo he had now been shown twice, and was of the person he was told by detective McColgin that Rhoads' identified. "The most familiar".

He reluctantly stated "I think it was #2 that tried to kill me".

The Following is what Judge Brady had to say about Mendell's identification regarding a motion to quash and traverse the search and arrest warrant on March 9, 2009:

RT P66 L11 If Law enforcement said that to Mr. Mendell, I can't even imagine why they would do that. I think that taints Mr. Mendell's identification, no matter how good or bad it was. I think it is fatal, frankly to his identification. **I don't think I need a Frank's hearing to make that determination**, to be honest with you. **(exhibit SW5)**

P67 L 6-7 But the six pack ID I think is tainted beyond redemption.

In order to minimize the witness tampering by McColgin, he stated during trial that he thought Mendell already identified petitioner. There are multiple issues with this:

1. Detective McColgin interrupted Mendell, while Mendell was telling him why he didn't think it was petitioner
2. Detective Tracie Reese who knew Mendell had not been shown the six-pack lineup was involved in this conversation.
3. Detective Reese then misled Judge Brady by omitting this conversation in her affidavit to secure the search and arrest warrant

4. Mendell was shown a photo that he knew was of Nathan Medina at the scene. The six-pack photo lineup, used the exact same photo in the number 2 position. Therefore when Mendell viewed the photo in the number 2 position, he knew he was looking at a photo of Nathan Medina for the second time.

5. The admonishment that a witness signs, has this line: "Please do not discuss this case with other witnesses nor indicate in anyway that you have identified anyone". Lead Detective McColgin violated that instruction.

McColgin stated that it was not his intention to taint Mendell's identification; however, that is exactly what he did. **RT 1688-1696 (exhibit H3)**

Judge Kennedy – Unbelievable Bias and Abuse of Discretion:

It doesn't appear that Detective McColgin said she (Rhoads) identified photo two in the photo spread, that it was in fact defendant, just that she had identified Nathan Medina, but that didn't affect Mr. Mendell particularly because he didn't recognize the photo as Nathan Medina. He recognized the photograph as the shooter. So that to me is the most compelling factor in the finding the identification at each stage to be reliable. **RT 264 (AD5)**

Judge Kennedy is completely silent regarding the prosecutor submitting a falsified transcript of the Detective McColgin, Detective Reese, and Mendell hallway conversation.

Judge Kennedy allowed Petitioner to be convicted of an attempted murder, which Kennedy knew never happened. He did this by concealing the police reports, Mendell's 911 call, and video interview from the jury and petitioner. This was done, so that the prosecutor could suborn perjured testimony from Mendell, in order to explain away the physical evidence proving that a gun was never fired at him: See: **Mendell - Count 4 – Attempted Murder**

In Limine hearing – Judge Kennedy determines Constitutionalist papers found at petitioner's home and in his truck would be too prejudicial for the jury to hear:

CT 269-271 In limine hearing: Judge Kennedy: And I do find that it is unduly prejudicial. In other words, the relevance is a bit attenuated and the prejudice is fairly substantial.

So I'm not going to permit the inquiry of the constitutionalist position that the defendant may have or the papers that were seized from him.

Mr. Moawad: That includes the paperwork found in the center console regarding the plan to go into the house and find the suspect's tear gas and wrap tied them hopefully without a shot being fired? (Moawad here, misstates a document, there was no letter about going into the house)

The Court: Yes, I did read that and I understand the theory, but I still think that is too far out there in the relevance

department, there is no way to get into that without opening the entire can of worms.

So, I am excluding that as well.

Judge Kennedy, on his own, reversed his earlier decision, and allowed this highly prejudicial evidence, which had no nexes to the crime, forced Petitioner to testify in order to explain the document, and changed the outcome of the trial.