

Nathan Medina AA4500

Case 05-080656-2

February 21, 2025

Judge Kennedy – Suppression of Evidence - Confirmation Bias and Abuse of Discretion in Upholding Guilty Verdict on Count Four – Attempted Murder of Sean Mendell based on Fabricated Evidence:

Recorded Interview in blue – Petitioner comments in (green) – Exhibit References in (Red)

Mendell's recorded interview was not transcribed or made available to the jury or petitioner in violation of California rules of the Court 2.1040 (exhibit A4) Petitioner only received this interview through a civil lawsuit, many years after the trial was over.

Mendell called 911 within four minutes of Joshua's murder, this call was not transcribed, nor was it given an exhibit number, it was concealed from the jury, and continues to be withheld from Petitioner. According to Mendell's interview he was on the phone with 911, for a long time, while answering their many questions. (MI9)

The prosecutor during closing, told the jury, that they could not have the police reports, because they are not evidence in this case. (C3) RT 2667

On the first day of deliberations, juror number eight, wrote two notes asking for Mendell's video interview and a TV to watch it, (J8).

Judge Kennedy immediately dismissed him from the jury, (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 jurors, (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, (J8), and found petitioner guilty without reviewing any of the recorded evidence.

In order to convict petitioner of the attempted murder of Mendell, the police reports, Mendell's 911 call, and video interview had to be concealed from the jury and petitioner, so that Mendell's multiple statements that he was on his knees, kneeling, when the gun was to his head, would be withheld from them. Then the prosecutor had to suborn perjured testimony from Mendell, stating that he never got on his knees, that he was sort of squatting down, standing, yet still taller than the prosecutor. He did this, in order to explain away the physical evidence proving that if Mendell was on his knees, the gun was fired in an upward direction and away from him.

During a motion to suppress Mendell's in court Identification, Judge Kennedy (without the jury present), stated that "Mr. Mendell got down on his knees". Petitioner presents proof that Judge Kennedy knew the prosecutor suborned perjured testimony, which Kennedy and the prosecutor knew to be untrue, and did nothing to correct it, securing a conviction of attempted murder based on fabricated evidence.

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Posted at WWW.WrongfulMurderConviction.com

Judge Kennedy – Motion Hearing – March 26, 2009 (exhibit KM1):

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. (RT 239)

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

Judge Kennedy: ...placing the barrel of the gun within an inch Mr. Mendell's head.

The shooter was screaming "where is Sam Rhoads", multiple times, approximately seven times.

Mr. Mendell was saying "I don't know, I don't know.

Mr. Mendell got down on his knees, and was begging not to be hurt or shot, and was kind of wriggling around hoping not to be shot.

The shooter then fired a round that, obviously, did not hit Mr. Mendell for reasons unknown, either he missed or the gun misfired.

Mr. Mendell got up and walked towards his cottage. (RT 242)

Sean Mendell who is 6' 7", stated multiple times, in his recorded interview, that when the assailant approached him, he dropped to his knees. His girlfriend, Longfellow, while looking out a window, stated that she saw the assailant standing over him with a gun pointing at Mendell's head. (PR 34)

The physical evidence proved that the bullet trajectory went in an upward direction and away from Mendell's head, as it lodged itself, up high, in the siding of the main house behind Mendell. The physical evidence proved that if Mendell was on his knees, the shot was fired away from his head.

Beth Hopkins – Trajectory Rod:

Using a trajectory, rod I noted the item that caused the damage came up at an angle from a southeast direction. (BT)
Police Report Page 21-22

Detective Jower was very meticulous, at getting Mendell and the shooters exact positions during the recorded interview (MI) Mendell Interview Pages 8-79

New Trial Motion - Decision by Kennedy:

Judge Kennedy:

the credibility of the witnesses and evaluating the evidence and applying the weight I think is appropriately in the jury's view, I think the conviction on count 4 was very well supported by the evidence. RT 3003 L8-12

(Judge Kennedy attributed credibility to a witness, Mendell, which he had personal knowledge at the time, that Mendell knowingly lied multiple times under oath, during the preliminary hearing, even going so far as to say he was 100% positive that statements weren't made, in which there is an actual recording of, which Judge Kennedy viewed. This is in reference to Detective McColgin, being caught on tape, lying to Mendell telling him that Petitioner was identified by another witness, before being shown the six-pack photo line-up. Judge Kennedy reviewed Mendell's recorded interview, and then he repeats Mendell's statements during a motion hearing). (KH1) RT 248-249

The trajectory of the bullet, I think, is consistent with Mr. Mendell's testimony at trial... RT 3004 L8-9

The defendant's theory about the trajectory again is based primarily on Ms. Longfellow's view, which is of course, some seconds after the shot was fired... RT 3004 L27-28

(Judge Kennedy reveals his bias by completely misrepresents the facts. Petitioner's claim was not based on a theory, it was based on solid evidence, using statements made by Mendell, Longfellow, the detectives that interviewed them, and Judge Kennedy's own statements, combined with the physical evidence presented by Officer Gerstner using a trajectory rod).

Police Report – Mendell on Knees – Shooter Standing Over Him:

Detective Bruce Jower:

When this male got near him, he (Mendell) dropped to his knees in fear because this male was pointing the gun at him...

He remembers looking towards his room (southward).

From the corner of his eye, he saw the male stand over him to his left (east), and point the gun to the left side of his head (ear/temple area). (PR32) Police Report Page 32

...called 911 (about 10:36 hours). (PR32)

He did not recognize this male and does not know who he is.

At about 1530 hours, Detective Carman and I interviewed Mariele Longfellow

At the end of this interview, I reviewed the video of this interview, and discovered that there was no audio. (PR32)

At around 1000 hours, Mendell went into the main house to make breakfast. (PR33)

(Mendell testified throughout the trial that he never went into the main house).

She heard a loud pop... She then heard Mendell scream... (PR34)

She looked through the window and saw Mendell hunched down on the cement path...

She saw a white male standing over Mendell... with a black gun in his right hand pointing right up to Mendell's head. (PR34)

Detective McColgin:

Mendell looked towards the sliding glass door and saw a white male adult, wearing a black beanie style cap, sunglasses and a black coat, exit through the sliding glass door. (PR54)

The WMA waived the handgun in the air and repeatedly yelled, "where is Sam, where is Sam Rhoads". When the WMA got near Mendell, Mendell dropped to his knees. (PR54)

Search Warrant – Narrative Statement of Probable Cause (exhibit SW7):

Page 2 – 2nd Paragraph Mendell looked towards the sliding glass door and saw a white male adult, wearing a black beanie style cap, sunglasses and a trench coat exit through the sliding glass door.

The WMA waived the handgun in the air and repeatedly yelled, "where is Sam, where is Sam Rhoads". When the WMA got near Mendell, Mendell dropped to his knees.

Mendell – Recorded Interview - Knees: Transcribed in 2014 (exhibit MI)

P8 L22 Mendell: He put the gun to my head and I think I got on my knees...

P9 L1 ...he shot and missed

P50 L18-20 Mendell: I was on my knees, I'm almost sure

Jower: Well, did you in like reaction drop to your knees?

Mendell: Yeah

P50 L21-25, P51 L1-8 Jower: So approaches you, puts a gun to your head. Were you standing up when the gun was to your head and then you dropped to your knees or did you just drop to your knees then he put the gun to your head?

Mendell: I think he put it to my head and I, kind of dropped then lowered down....

Jower:you dropped to your knees, OK

P 51 L4-19 Jower: This is where I want you to visualize as much as you can, OK, this one little part. You dropped to your knees, OK, are you still facing, what direction?

Mendell: ...

Jower: So you're facing your house?

Yeah.

P52 L1-5 Jower: Now your on your knees. Okay?

Uh-huh

Now, he puts the gun to which side of your head?

Mendell: ...left..

P54 L8-10 I know this sounds funny, but I don't know how much of this is actually my imagination and how much of this is actually exactly what he was doing.

P55 L2-7 The reason I don't think this is Nathan – I know this sounds funny, but he asked for my money.

Hold on for a second.

If I hold I'll forget what I've –

I'll bring you back...

P56 L5-6 He asked me a bunch of times where Sam Rhoads is.

P58 L16-20 Jower: OK, then you heard him say where is Sam, two more times... boom, where is Sam Rhoads, where is Sam Rhoads...

P58 L25, P59 L1-14 Mendell: I'm sitting here just saying "I'll do anything. what you want?, Don't hurt me"...

Jower: were you still on your knees?

Mendell: Yeah, I was kind of, like --

Jower: your curled up and your saying to him what?

Mendell: What do you want, I'll give you anything, please don't kill me...

P59 L3-4 Were you still on your knees?

Yeah. I was kind of like –

P59 L21-25 Jower: so, your curled up and your saying, "what do you want? I'll give you anything. please don't kill me?"

Yeah.

Okay. And then what did he –

P60 L1 Mendell: Money.

P60 L2-3 You're still kneeled down?

Yeah.

P60 L4-9 Jower: Okay. Hold on. And then as you're doing that, what was his response... after you remember saying that? "Don't kill me." Your kneeling down. "Please don't kill me. I'll give you whatever you want."

Mendell: he said, "Give me your money."

Jower: Okay...

P60 L18-25 Mendell:at this point I'm getting up and I'm like, "I have to get it. It's in my room"

Jower: Did you start getting up at this time?

Mendell: yeah. I got up

Jower: ...you said "I don't have that much money," and got up?

Mendell: yeah

P61 L25, P62 L3 L Jower: Okay. so when you stood up, what did he do?

Mendell: He was following me with the gun...

Detective Jower - summarizing the interview:

P76 L5-7 He points a gun to your head. All right. And your reaction, you kneel down. He's on your left side. You're looking toward your house, OK

Uh-huh. Correct.

P77 L10-15 Please don't kill me, as your kneeling down...

Yeah.

Judge Kennedy Bias and Abuse of Discretion Regarding a Witness he Attributed Credibility to:

Petitioner presents proof of Judge Kennedy's knowledge that Mendell gave perjured testimony under oath during the preliminary hearing and at trial. And that Judge Kennedy then endorsed that testimony in order to help strengthen

the prosecution's case and wrongfully convict petitioner using evidence he personally new to be fabricated.

Trial Testimony – Mendell – Prosecutor Suborning Purjered Testimony – Not on knees:

(RT 1252-1253)

Moawad: And what was the next thing that happened?

Mendell: The gun went off.

Moawad: Were you standing or kneeling at that moment, or in some other position?

Mendell: I can't remember if I was standing or kneeling, I think I was squatting down.

Moawad: Okay. And do you recall how high you were when you were squatting down?

Mendell: Pretty low.

Moawad: Okay. Were your knees touching the ground?

Mendell: No, not that I remember, no. I don't remember.

Moawad: Okay. When you were squatting down is it about my height (5'8") standing up or is it lower?

Mendell: Probably about your height standing up maybe a little bit higher.

Moawad: Geese, alright. When you say the gun went off, what do you mean?

Mendell: He had shot, shot a round at me.

Moawad: And what – what were you doing at that moment?

Mendell: Just standing in the – I mean, I was moving around a lot.

Had the material evidence in Mendell's 911 call, recorded interview, police report, and Judge Kennedy's own statements not been concealed and or suppressed from the jury, their verdict would have been different on Count Four.