

Updated February 21, 2025

Beverly Rhoads – Newly Presented Evidence – Obsession – Perjured Trial Testimony (RP1):

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

Petitioner presents proof that Rhoads had a one sided, four year obsession with Petitioner, which continued more than three years, after having absolutely no contact with him. Rhoads' one sided obsession was revealed in Sean Mendell's recorded interview, preliminary hearing, and trial testimony. Rhoads constant and continuous fabrications, over a four year period, about Petitioner and Petitioner's father, Tony Latteri, infected Mendell in such a profound way, that he formed a very strong disdain for for them. For two people which he never met.

Vandalism at the Rhoads' house:

Before Rhoads and Petitioner's parents had any disagreements. The police were called out to her home on multiple occasions, for: noise disturbances, parties, and her Son and Mendell riding their loud dirt bikes up and down the streets of their quiet neighborhood. In direct opposition to the Prosecutor and Rhoads claim, that she did not have any other enemies, (C11). The evidence suggests that Rhoads had at least one persistent enemy, who not only vandalized Mendell's work van twice in front of her home, but also vandalized petitioner's fathers' work van twice, during construction, while it was parked in front of her home, between the years 2003 and 2004. Petitioner, repeats, this was prior to any disagreements between Rhoads' and Petitioner's parents.

The fact that; the police were called out to the Rhoads' house, by her neighbors on multiple occasions, and that Petitioner's father's work van and Rhoads tenant, Sean Mendell's work van were both vandalized twice, while parked in front of her home, prior to any disagreements, didn't matter. In November of 2007, someone threw a rock through Rhoads' car window and a front window of her house. Rhoads immediately called the Walnut Creek Police and filed a police report stating that she knew Nathan Medina did this, even though she did not see who did it. This was one of the earlier statements she made to detective McColgin in her recorded interview, the day of her Son's murder.

Sean Mendell: Petitioner presents proof of Beverly Rhoads obsession with Petitioner and her over four year manipulation of Mendell. A manipulation so pervasive that Mendell's automatic response, to any thing that happened, at the Rhoads' house was that it was done by Petitioner.

The following is a perfect example of Mendell's absurd and illogical justification for blaming Petitioner, when all evidence, was to the contrary:

Rock Incident - Recorded Video Interview - Sean Mendell: (MI)

P7 L6-12 -- six months ago -- maybe four months ago -- there was another incident. It was probably the same guy. Throwing a rock through the front window. Throwing a rock through her back window. She's always afraid of this guy. He's, I think made numerous threats to her and stuff. She's in a lawsuit with the father of the guy.

P109 L5-25, P110 L1-11 Last time she got a letter, a rock was thrown through the back window of her car and through the front window of the house. No other vehicles were effected.

We filed a police report. There was a police officer there. You guys have that information.

Q. Do you know how long ago that was?

Probably six months ago. Maybe four or six months ago....

P114 L2-17 Gotta look at the police report because last time this happened... I pulled up to the house, somebody was parked and raced off and burned out, out of the place. At that point I didn't see who it was. I couldn't see because it was dark. And I told her -- **I saw the girl. It was a young girl that was driving. And that's how we kind of figured it was Nathan too because it was probably his girlfriend or something like that.**

(Mendell who was 24 or 25 years old, did not see a man, he saw a young girl and immediately thought of Petitioner, who was 42, with a 37 year old fiancé, who he had been with for eight years).

What kind of car was it?

This was a while ago, but I think it was, like, a silver sports car. This is all -- should all be in the detailed police report.

(The evidence suggests that Rhoads had Mendell claim to see a silver Mitsubishi Eclipse, with a young girl driving, drive away from the scene. Mendell described a car that Petitioner's fiancé, drove around the time, when the addition was being built, four years prior. That car was a lease that was turned in, a few years before this vandalism. Rhoads did not know that petitioner's fiancé owned a black Mercedes SUV, or that Petitioner drove a 2003 Ford F150 Harley Davidson edition truck. The purpose for pointing out Petitioner's vehicle will become apparent when it comes to Rhoads' interview and trial testimony, following shortly.

**Mendell -- Very strong opinion of Petitioner based solely on Rhoads' fabrications over a four year period --
Petitioner repeats -- Mendell never met Petitioner:**

P110 L14-25, P111 L1-16 Nathan definitely does not like Sam. Absolutely hates --

Detective Jower: Why do you say that?

Mendell: ... he always had a very bad attitude with her. She always didn't want him in the house because -- she has so

many stories. I think he was smoking in the – she told him – I know there was a bunch of little issues that she had with him. She never liked him. He's, like, this drug using – he's –

Detective Reese: When you say "smoking," smoking what?

Mendell: Probably smoking cigarettes. I don't even think it was the smoking. I think it was his attitude.

Mendell: Finally I think she might have kicked him out. Said, "I don't want this guy in my house anymore," to Tony. This is six years ago.

Rhoads Obsession – Mendell Interview:

P111 L17-112 L1-3

Detective Tracie Reese: Has she mentioned Nathan over the last six years?

Mendell: Oh, all the time.

Detective Reese: And why –

Mendell: Every time something happens she thinks Nathan is the –

Detective Reese: Why does she think it's Nathan and not Tony?

Mendell: Because he's – I don't know all the gory – the details, but. I'm pretty sure that Nathan has a bad history of this violence and whatever's going on.

P112 L4-7 Tony lives in Oregon, I think or something. I don't – skipped out of town or something because he's getting sued and he's trying to – I don't know.

P113 L7-19

Mendell: She is always afraid.

Jower: --Threats or exchanges of –

Mendell: I think he's threatened her before. Called her and threatened her

Detective Reese: Who is "he"?

Mendell: Nathan

Detective Jower: Why do you say that?

Mendell: I think I recollect Sam saying something like that.

Detective Jower: What kind of threats?

Mendell: I have no idea. I just think I've heard Sam saying before – I know she's afraid of the guy...

P115 L24-25, P116-1-6 I think he lives in Martinez. He looks – not to be prejudice, you know, saying statements like that, but he looks like the kind of guy that would live in Martinez. Hopefully none of you guys live in Martinez. I'm sorry. No. You know what I mean.

He's not a Walnut Creek kind of guy.

Not one of these things that Mendell told the police about Petitioner were true. These statements from Mendell revealed Rhoads obsession and ability to manipulate other people's opinions in a hateful manor.

Petitioner ran his own business, getting houses up to code for the local Realtors and property management companies for about ten years prior to 2008. He has never had one complaint about his work. As far as Rhoads saying to Mendell and testifying at trial that she never wanted Petitioner on her job, that is rebutted by her writing him a personal check on December 4, 2004, for extra work she asked him to do during construction. Petitioner worked on Rhoads' addition at almost half his rate of pay as a favor to Tony, because, at that time, Tony and Petitioner's Mom believed Rhoads was their friend. A perfect example of Rhoads making lies up about Petitioner, is her telling Mendell that Petitioner smoked cigarettes on the job, Petitioner has never been a cigarette smoker.

During trial Rhoads' even had to admit that she only seen Petitioner working on her job a couple times, and that he never threatened her. She claimed that Petitioner called her on the phone, cussing and screaming at her for writing him a bad check, which she claimed she didn't do. Rhoads' wrote Petitioner a check for his work which had insufficient funds, then she tried to blame Petitioner's bank, when her check bounced. It is a reflection on her character, that over four years later, she still denied writing him a bad check. To be clear her claim that Petitioner cussed and screamed at her on the phone was also a fabrication.

As far as Rhoads convincing Mendell that Petitioner threatened her, here is Rhoads' having to admit that he never threatened her while under direct examination:

RT 891 L11-12 exhibit: (NA3)

Q. Did he ever threaten to harm you?

Rhoads: No.

Petitioner's dad, Tony, a Licensed Painting contractor was very successful, his clients waited over a year for him to paint their homes. Tony has a reputation for the highest quality work and attention to detail in the wealthier areas of

Contra Costa. For his clients, it was considered a privilege and a great source of pride to tell others that Tony painted their home. There has never been a complaint about Tony's work.

This truth of course did not stop Rhoads from slandering Tony's name to everyone who would listen to her, including Mendell, who during his recorded interview had very bad things to say about Tony, such as telling the detectives that Tony fled to Oregon to avoid all the civil suits filed against him. Tony and Petitioner's Mom, still live in the same house, in Martinez which they have lived in, for more than forty years.

Rhoads - History of blaming Petitioner – Preliminary Hearing – Mendell:

Counsel: Early in the interview you mentioned Nathan as associated with an individual who may have been responsible for this.

Mendell: Nathan was a name mentioned a-lot before this incident.

Counsel: Why Nathan ?

Mendell: Rock incident. Sam said "I know Nathan did this" I knew she didn't see who did it. **CT P 30 L 10 – P 32**

When anything bad happened Nathan's name would be brought up. **CT P 77**

Rock incident Rhoads said Nathan did this **CT P 78**

Rhoads discussed civil case 3-4 times a week (with Mendell). **CT P 97**

RT 907-908 (RM1) Rhoads during trial – Covering up her obsession by denying ever talking to Mendell about the lawsuit).

Mendell Interview - Doesn't know Nathan – Presented to establish that Mendell's very strong opinion of Petitioner came only from Rhoads' obsessive comments:

P99 L17-21 I don't even know Nathan at all. I Seen him in a bar once

P101 L1-2 Detective Jower: You know Nathan; right?

Mendell: The problem is that – no, I don't know Nathan.

Detective Jower: You don't know Nathan?

Mendell: I've very vaguely seen him at a bar before.

Detective Jower: Okay. So you don't even know what Nathan looks like?

Mendell: No.

Detective Reese: And would you recognize Nathan if you saw him –

Mendell: No.

P101 L4-L25, P102 L1 Detective Jower: When was the last time you saw Nathan?

Mendell: Probably when I was – see, I can't remember, but I think when I was doing work on – I have been good friends with Sam and Josh. Back when they were doing the addition I think I came by once and he was – yeah. That's where I remember.

Detective Jower: How long ago?

Mendell: Probably over four years ago. When I saw him at the bar, I don't even remember what he looks – I mean, it was –

Detective Jower: So Nathan is a stranger to you then?

Mendell: Yes. Completely. He didn't know who I was.

Mendell Interview: **P102 L25, P103 L1-4** Sam Rhoads is basically, like, my second mother. I met Josh seven years ago.

And then she started inviting me for the holidays. I was over there all the time. Every day.

Mendell considered Rhoads to be a second mother, seven years prior to 2008, he spent every day over at her home, then in 2007, he moved into her cottage. In all that time Mendell stated that he only seen Petitioner once, during construction in 2004.

Mendell's recorded statements, blatant and provable perjury during the preliminary hearing and at trial, revealed that he was willing to change his story and say anything, in order to help Rhoads convict petitioner of a crime that petitioner believes Mendell knew he did not commit.

Petitioner presents proof that Rhoads' made many unfounded inflammatory statements to the police and jury about Petitioner and Petitioner's father that were not true. That just as Rhoads did with Mendell, over a four year period, she told the police, prosecutor, and jury flat out lies to gain their sympathy, in order to wrongfully convict Petitioner.

Petitioner presents proof that the prosecutor knowingly suborned perjured testimony regarding the central issue of this case; Rhoads ability to see the assailant. 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. (OM1, SW1, SW2)

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: exhibit (RI)

Rhoads Perjured trial testimony – Proven false in 2014, by her recorded interview that was concealed from the jury and Petitioner:

- She immediately recognized who she said was petitioner when he came in the door, then he pepper-sprayed her,
- She doesn't remember mentioning a mask,
- She just remembers the detective asking her about a mask,
- She gave a full description of the assailant to the detective,
- She could see the assailants nose, mouth, and chin,
- She was pepper-sprayed in the chest
- Her vision wasn't effected by the pepper spray until hours later,
- She described petitioners current truck to the detective,
- She had no difficulty dialling 911,
- She did not remember blaming Petitioner for the rock incident.

RT 1684-1685 Detective McColgin: Rhoads certainty was the same in the rock incident as it was for the murder (exhibit MR1)

According to Rhoads recorded interview, she was immediately pepper-sprayed in the face at the hallway entrance, which was six feet from the front door. She never made it into the dark living room entry. This is corroborated by Detective McColgin's police report, which was concealed from the jury, and the physical evidence of where the pepper spray was found by Officer Kim Gerstner:

Police Report P52 Detective McColgin – Immediately sprayed in the face (PR1)

Prosecutor Motion (Filed 3-26-09) – Immediately sprayed in the face (PM1)

Police Report P72 Kim Gerstner – Swabbed for pepper spray (PR7)

Swab from photo... The photo was on the front entrance about six feet from the front door. The photo was sitting on a

small table about four feet tall. The swabs were taken to check for possible pepper spray used by the suspect to spray the victims.

Swab from floor... The substance on the floor was in the entrance to the hallway. The substance was about six feet from the front door. It was about 2 inches in diameter. The swabs were taken to check for possible pepper spray used by the suspect to spray the victims.

Rhoads Interview – Perjured Trial Testimony – Comparison:

Some time after 12:05pm, during Rhoad's recorded interview with Detective McColgin, she mentioned a mask multiple times, but stated that she knew it was Nathan Medina. Whenever asked about facial features, she kept mentioning a neck.

The following is directly taken from her recorded interview which Petitioner's family acquired through an insurance company in 2014. It was transcribed by Zandonella Reporting Service on February, 14, 2014. The relevant parts are included that have to do with identification.

Rhoads full interview is included as: exhibit (RI)

The parts in **bold** are taken directly from the transcribed interview of Beverly (Sam) Rhoads by Detective McColgin, Page, line number. Underline Petitioner's own emphasis.

(Petitioner's comments Green and in Parentheses)

Directly following each of Rhoads' interview statements is her **perjured trial testimony in blue**, which was only possible because her recorded interview was concealed from the jury and Petitioner:

The first thing she said after spelling her last name to Detective McColgin was:

I couldn't really see. Is my son alive? Page 2, Line 4,5

RT 846 L 20 Do you remember saying at one point that you really couldn't see?

Rhoads: I don't remember.

After some formalities she said: **I'm a single mom. This guy did the lot – he did an addition on my house, and there's a lot of problems. So we're involved in a lawsuit, and I guess they were mad. They already – earlier they threw a – had a report – I know Nathan threw that river rock through my front plate glass window and the back of my car.** P 3, L 6-12

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Q. And has he ever done anything to you in the past – A. Yes. Well, I filed a complete police report with – Walnut Creek Police... they threw a river rock through my front plate glass window and through the back window of my car... it was clearly obvious to me, you know. Nathan... Nobody saw it. P 14, L 9-25, P 15, L 1-8

RT 851 (Rock incident) Do you recall telling the police I know it was Nathan Medina?

Rhoads: No I do not recall that.

RT 902 L 14 Do you remember telling the police that you knew it was Nathan Medina who threw the rocks through your window at the earlier--?

Rhoads: I don't remember saying that.

Do you remember saying to the detective that you knew it was Nathan Medina who was involved in the shooting?

Rhoads: Yes

P 5, L 2 (Break taken.)

After break Rhoads talked about construction job and civil suit from **P 5, L 21 – P 6, L 24** (This was further evidence of her one sided obsession with Petitioner and his Father)

P 7, L 11 (Break taken.)

P 7, L 16 (Break taken.)

...my son was saying somebody came in the front door and I went to look to see who it was, and it was him. And he came in spraying me with this stuff, and he chased me down the hall. I started screaming – P 9, L3-7

(As is made clear by Rhoads earlier unfounded accusations, and the totality of this interview, Rhoads statement “it was him”, was not from sight, but from belief, just as with the rock incident).

RT 1684-1685 Detective McColgin: Rhoads certainty was the same in the rock incident as it was for the murder (MR1)

McColgin: Right out of the shoot without saying anything he just started –

Rhoads: Without saying a word, yeah. Well, because he was masked. You know he had his black – that knitted thing on his head. P 9, L 8-12

How could you tell it was him? I know him. I've known him. You have no idea. I know who it is. There's no doubt in my mind who it was. P 9, L13-16

Q: So you know him so well. But even though he was wearing a mask, you clearly recognized him? Oh I clearly recognized him. So did my son. P 9, L 21-23

Q: Let's go over that one more time. He was wearing a mask over his head and he had a hat on?

Rhoads: He had a black hat – like, a black hat on him? I think the – there was – I think it was, kind of, masked. I mean, it was Nathan. I know who it was. I mean, I know. P 13, L 6-11

Q: But what I mean is you could see portions of his face?

Rhoads: Yeah. You could see portions of his face. I could see his neck and his –you know–” P 13, L 12-15

Rhoads: Yeah. And I don't know – I can't remember if it was all the way down or just down about here (she wasn't sure if it covered his entire face, or if it went just above the assailant's mouth, as McColgin's next question, revealed that she gestured somewhere around her mouth).

Q. Okay

Rhoads: You know what I mean like that? P21 L16-25, P22 L1-3

Q. How about covering his mouth though? “ no. I mean, I don't remember – I just don't – its like, kind of—it happened all so fast and I got sprayed so fast that it was hard for me to see. But I clearly knew it was him. I saw his neck and his – and he had a round collar – a round shirt – T-shirt on long sleeves but like dark like either a jacket or sweatshirt that probably zipped up It wasn't a pull over” P22 L4-17

Q: Now, since your thinking about that, let me go back to his description again. You know he had the hat on with the bill – a knit cap with the bill rolled up?

A: Uh – huh.

Q: Do you remember now because you saw his chest?

A. And his neck. P 25 L 10-17

Q: you could see his neck and chest. Do you remember now whether or not his entire face was covered. Were there certain facial features that you recognized? I absolutely – yea. It hit the profile of his face. I just knew. (She was still clearly referring to a mask when she said) “it” hit the profile of his face. I just knew. P 25, L 18-24

Q: So his face might not have been covered with a mask? “Yeah it might not have been, but – see, he sprayed me so fast that my vision just” -- OK. So it may have – P 25 L25, P26 L1-4

RT 904 Counsel asked you some questions both last week and today about what you could see and at one point last week you said I couldn't see very well at that point, referencing the ambulance ride to the hospital?

Rhoads: That's correct.

Did your vision get worse throughout this several hours that you were in the laundry room?

Rhoads: Yes.

Why was that?

Rhoads: Because the spray started out on my chest, there was a lot of it on my chest. And I laid on the counter and it got up in my face.

RT 913 L 8 Ms. Roads, as I understand it, its your testimony that when you were in the ambulance telling the detective that you couldn't see, that you're referring to at the time when you are talking to the detective, not about the time of the incident?

Rhoads: That's right I had been on the counter for several hours.

(What you just read was both the prosecutor and counsel asking leading questions of Rhoads in order to mislead the jury into believing Rhoads vision wasn't effected until several hours after the shooting. While the truth was concealed from them, proving that her vision was immediately effected by the pepper spray).

Q: Describe what he was wearing for me again today when he came in your house. He had on a – you talked about a hat or a mask or something like that?

Rhoads: "yeah. He had a – I'm not – see, I just don't – I just knew it was him. P 21, L11-15

RT 846 L 12 Do you remember describing to the detective that he might have been wearing a mask?

Rhoads: I don't remember.

RT 902 ...I remember describing the person.

RT 903 L 1 Do you recall talking to the detective about whether or not the person was wearing a mask?

Rhoads: I remember them asking me.

RT 903 L 5 And do you remember telling them that you're not sure, but you knew it was Nathan Medina?

Rhoads: I remember what he had on. I don't remember everything at the time. I remember seeing his nose and his mouth, and I remember the glasses and the rolled up beanie hat that he had on. That's what I remember.

RT 846 L 15 Do you remember describing to the detective that you could see portions of his face? Yeah his nose and mouth and chin that was not covered.

(Rhoads never saw the assailants nose, chin, mouth, or said she seen sunglasses, during her interview).

Q. Did you recognize any other parts of his body that you would –

Rhoads: Yeah. His neck, everything. You know I know him. P 9, L 17-20

P13 L22-25, P14 L 1-3 Okay. Tell us again what kind of vehicle he drive drives?

A. big pickup truck, and it's blue.

Q. Blue Jacked up?

A. I think it's blue.

Q. Jacked up?

A. It's always jacked up, yeah.

RT 901 L 12 Do you recall any other description about that truck? I know it's black, Harley Davidson or something, that's all I know

Q. Which hand did he hold the gun in?

A. I believe it was the right hand

Q. He held the gun in his right hand?

A. I believe. P 16, L 2-5

Regarding 911 call **Did you have difficulty dialling the number because you were pepper sprayed?**

Rhoads: Yes P 17; 2-4

Rhoads: And I was on the phone and I couldn't see. P 29; 14

RT 906 L11-20 When you grabbed it, (Phone), did you, did you dial 911?

Rhoads: Yes, that was after the door was closed.

Q. Okay. And did you have to dial several times?

Rhoads: No, once

Q. Could you see the buttons on the phone?

Rhoads: Yes.

Q. Did you have any trouble?

Rhoads: No.

Q. So then after you heard the gunshots and you realized your son was shot, you didn't leave the house because you felt the suspect was still in there?

A. I knew he was still in there. P 17, L 9-12

(Rhoads consistent use of "I Knew", when the evidence was to the contrary, Mendell called 911 four minutes after Rhoads 911 call, after seeing the assailant exit the main house. Mendell stated that he waited 10 minutes before calling 911. Mendell was clearly mistaken about waiting ten minutes; however, unless there were two assailants, the assailant immediately left the main house after shooting Joshua Rhoads. Rhoads' statement about knowing the assailant was still in the house was incorrect).

Q. But you met him in the hallway, he pepper sprayed you –

A. In the hall

(Rhoads was six feet away from the front door, where she said the assailant was waiting for her, as she came around a blind corner. She heard the door open and close, before heading down the hallway).

RT 902 L 9 And do you remember telling that detective on several occasions that you couldn't really see? At that point I couldn't really see, not when I saw the person come in the door.

(Rhoads repeatedly lied to the jury, stating that she couldn't see when she was being interviewed by the detective; however, she had no problem seeing the person as they came in the door. Both these statements were false).

Q. – you ran back – you ran back –

A. Back down the hallway towards my office. I passed the laundry room, and he came around and was attacking me trying to spray more stuff in my face.

Q. And is that when you ran into the laundry room?

A. Yeah. ... P 17, L 20-25 P 18, L 1-4

... -- he broke the door, like, in half, so I couldn't get out of the laundry room. I couldn't even see. P 18, L 13-15

Q. Okay.

A. He had a black hat on and, you know, that – with a roll up thing.

Q. Roll up front?

A. Yeah and I'm not sure –

Q. Like a knit cap?

A. Like a knit cap.

Q. Okay.

A. ...and I don't remember the color of his slacks. P 22, L 23-24

(This statement contradicts Rhoads' and the prosecutor's multiple references to Rhoads' "waist up only", which they used to mislead the jury in-order to overcome Rhoads' statement that she never saw the assailant with the bag. A bag which was found two days after the shooting, and which the prosecution referred to as an arson kit).

RT 904 When you saw the defendant standing at the front door do you recall seeing that he did not have a black bag in his hand?

Rhoads: I Only looked at him from the waist up. So I didn't look below the waist. I couldn't tell you anything that he had on below the waist.

(This was repeated to the jury multiple times, as it also excused the fact that every witness except Rhoads described the assailant as wearing a black trench coat).

That's the only thing that – I mean, if he had known that I was – I don't know how he didn't know I was up there. P 23, L 8-10

(There is no possibility that the assailant could have not known where Rhoads' was, as he was literally three feet away from her while she was laying on a counter, talking to 911 on a corded house phone).

You know, so – and I could only see my son's foot out of the corner of my eye because, I couldn't see – and I saw this red on the floor, and I just – P 25 L2-3

All right. Was he wearing gloves? Do you remember? He might have been P 25, L 5-7

P 27, L 17 (Break taken)

... but did you also see his face or his body? No. I couldn't see his – I just saw the hand, the arm. P 30; 17-20

Okay. But, again, you recognized – Oh, I know it was – there's no doubt. There's no doubt that that's who it was. P 30, L 21-24

RT 1684-1685 Detective McColgin: Rhoads certainty was the same in the rock incident as it was for the murder (exhibit MR1)

Notice that during Rhoads interview, she never described being able to see a face, nose, mouth, or chin. That she kept referring to a neck. She never mentioned sunglasses and that when she was talking about her vision being affected, it was when the intruder was there and not later. Keep in mind that throughout this interview and through to it's completion, Rhoads was the one who consistently said the intruder was wearing a mask.

Regarding Rhoads' interview and the fact that she consistently mentioned a mask. It must be noted, the issue is NOT that Petitioner is claiming that the intruder was wearing a mask, and that is why she couldn't identify him. The legal issue is that both the prosecutor and Counsel allowed her to lie to the jury regarding what she told the detective during her recorded interview. An interview which was withheld from them.

Because this recorded interview was kept from the jury, Petitioner's family, and Petitioner until 2014, long after Petitioner's trial was over, Rhoads was able to testify during the trial that she immediately recognized who she said was Petitioner without a mask. When asked about a mask at trial Rhoads said, "**I remember the detective asking me about a mask, I just remember telling him I could see his nose, and his mouth, and his chin, and sunglasses with a rolled up beanie, that's what I remember**". This was repeated to the jury many times. It was never rebutted, objected to, or had any evidence presented to challenge it. So this stood as a fact.

Counsel even corroborated it during his closing statements

Counsel did not transcribe or play the parts of this interview which you have read above where she mentioned a mask. He played small parts which corroborated the prosecutions case.

At trial Rhoads made two separate claims regarding when she couldn't see: One, she stated that whenever she mentioned during her interview that she couldn't see, she meant that it was much later after the fumes from the pepper spray that hit her chest (and not her face), got into her eyes. Two, she claimed that when she couldn't see, it was while McColgin was interviewing her. not before she saw who she knew to be Nathan Medina.

Counsel

You got a little bit around the corner and saw the person standing just inside the front door? That's correct

RT 867 You're holding your left hand with your index finger? Yes, that is the hand I was sprayed with.

(During Rhoads recorded interview, she never stated that she saw the person with their hand up, holding a spray bottle, this was another coached ploy to give Rhoads a detailed credibility that did not exist).

How quickly did the spraying occur?

Shortly after I came into the living room.

So, when you came around that corner the person was already in the house, obviously? Right,

Rhoads: I got sprayed several times before I reached the laundry room...

RT 873 So on the day of the incident you weren't sure, you thought that maybe they could have been wearing gloves, right?

Rhoads: Right, I don't remember what I told him, but I do remember that it was later on that I remembered the vision of gun and the gloves, so that's when I knew there were no gloves.

(Again, this is Rhoads claiming that she knew something that was not true, as Longfellow gave a detailed description of the assailant wearing tight fitting black rubber gloves).

And as you sit here now and as when you were telling the officer back then, you're sure the person wasn't wearing gloves?

Rhoads: Positive

Safe to say you are as positive of that as you are of anything you testified to?

Rhoads: Yes

RT 887 L 24 Well, they weren't spraying yet. They were holding it and then after I got there they started spraying.

RT 888 L 1 Okay so by the time you got around the corner the persons arm was up, though, in the manor you showed?

Rhoads: Correct

And it was your testimony that immediately upon coming around the corner you recognized the person?

Rhoads: That's correct,

RT 898 L 18 I was surprised to see who was standing there. I was expecting to see Sean.

(This repeated coached line of "I was expecting to see Sean", was meant to minimize the fact that anytime something bad happens at her home she automatically blames Petitioner).

RT 898 L 20 Now you testified earlier that you thought the person had forgot that you were in the laundry room?

Rhoads: Yes

RT 899 L 2 And the reason you say forgot is because you specifically remember the person looking at you when you were in the laundry room? Absolutely, I walked right in front of him behind my son into the laundry room

(Two points here:

One: Rhoads' was blinded by pepper spray, therefore she could not have seen where the assailant was looking.

Two: There is no way the assailant could have forgotten that he trapped Rhoads in the laundry room just a few seconds before he broke the door down, as she was less than three feet from him, while calling 911 from a corded phone).

RT 900 L 28 So the sole call you made during the entire time you were in that laundry room was the one call to 911?

Rhoads: That's the sole call I made.

(Rhoads also called her civil attorney; however, the prosecution concealed her phone records to hide the duration of her 911, to conceal her statements to the 911 operator that she could not see, and to mislead the jury by hiding her obsession regarding the civil suit).

RT 902 L 4 Do you recall him (McColgin) asking you about or being able to describe the person; do you recall that? I don't remember. I remember describing the person.

RT 902 L 24 And do you remember telling him that it had to be him because you didn't think you had any enemies? No, I don't remember saying that. We don't have any enemies.

RT 903 L 5 And do you remember telling them that you're not sure, but you knew it was Nathan Medina?

RT 903 I remember what he had on. I don't remember everything at the time. I remember seeing his nose and his mouth, and I remember the glasses and the rolled up beanie hat that he had on. That's what I remember.

(This was the last question Counsel asked Rhoads regarding ability to see. Here Counsel helped to corroborate the prosecutions case).

RT 913 L 8 Ms. Roads, as I understand it, its your testimony that when you were in the ambulance telling the detective that you couldn't see, that you're referring to at the time when you are talking to the detective, not about the time of the incident?

Rhoads: That's right I had been on the counter for several hours.

The prosecutor concealed Rhoads' interview in order to hide these facts:

- She was immediately pepper-sprayed in the face,
- She could not see during the time of the crime,
- She thought the assailant was wearing a mask that either covered his entire face or went below his nose,
- Whenever she was asked to describe the person, she kept saying that she was sprayed so fast that she couldn't see, but that she just knew it was petitioner,
- She filed a police report stating that she knew that Petitioner vandalized her car and home, even though she did not see who committed that crime either,
- During her interview, she described a truck that petitioner no longer owned, then during trial she told the jury that she described petitioner's current truck,

Closing Arguments Regarding Identity:

Prosecutor:

During closing the prosecutor intentionally misled the jury, by misrepresenting Rhoads' recorded interview. Then he lent the credibility of the State by falsely telling the jury that she was honest:

RT 2665 L 12 This case is about identity. And that's all it is about. If you believe Ms. Rhoads when she says I immediately recognized the defendant when he walked in the door. I knew it was Nathan Medina, and then he pepper sprayed me. If you believe her when she says that, then you can't go back in the jury room and say, well what if he had a twin brother. There is no evidence of that. That's speculation and conjecture.

RT 2667 L 7 But you can bet that if there was other information that would be helpful to you in making your decision making process that either counsel or myself would have brought it out during trial.

(What about the Police Report, two 911 calls, and three recorded witness interviews that were concealed and/or suppressed).

RT 2668 L 1 Ms Roads was honest she told you what happened what she saw...

(The Prosecutor knowingly suborned perjured testimony from Rhoads, then lent the credibility of the State to her testimony, by telling the jury she was honest).

RT 2672 L 25- 2673 L 3- There is certainly a lot of corroborating evidence as to the story from each of the witnesses. Ms, Rhoads describes similar clothing, from the waist up at least.

RT 2692 L 2 Ms. Rhoads came in and testified that she immediately recognized him as Nathan Medina...

Counsel Closing:

RT 2751- I'll play Ms. Rhoads statement to Detective McColgin, but she says I know it was him that threw those rocks through the window...

RT 2751 L 20- So – So the government's position is that... walks in, wanted to kill Ms. Rhoads, he has got a gun in his hand, wanted to kill Ms. Rhoads right there. Didn't – pepper sprays her as you will hear on that tape immediately. (This was never transcribed or played to the jury).

RT 2752- Sprays her in the face, not down the chest. There is no conversation, there is no – she doesn't walk towards him and confront him. She walks around that corner, sees a guy in a cap big dark sunglasses that many people say, yeah, pretty hard to say, big dark sunglasses, a cap and a black jacket in a dark hallway, she has already said it's a dark area there in that foyer, and says when I came around the corner, yeah what was he doing, his hands were like this, and started spraying. A fraction of a second is what she had to view the intruder...

RT 2780 L 18 These are the witnesses. I know it's him. I know it's him (Tape played) I couldn't see. Let's get one thing very clear, that when the government tries to tell you that what she is saying there is I can't see right now, at that's what they are saying. That that's what the examination was.

RT 2780-2781 I can't see right now versus I couldn't see when the detective first meets her trying to find out what happens, you have someone in the background saying she has been pepper sprayed. She has been pepper sprayed and she says – (taped played) I know Nathan threw that river rock through my door. Not I believe, I think, you know, what makes sense is I know it was Nathan. Not Tony, not anyone else, not the persons that vandalized Mr. Mendell's truck a number of times, I know that it was Nathan Medina, because when something bad happens, it's Nathan Medina. (tape played) Listen to that she knows it's Nathan Medina who threw the rocks.

RT 2781 L 20 And then when they are talking about it and the detective is going so he had a mask on, and she goes, well, maybe not a mask, maybe not quite a mask, but I know it was Nathan Medina. And, of course, the detective, yeah, right, because there are some parts of his face you could see, right. Listen to the way the detective interviews her. But that's her. Couldn't see. I know its him.

(Counsel misquoted Rhoads, and used the only part of her interview that was misleading, making her lie about not mentioning a mask seem true. Rhoads told the 911 operator and Detective McColgin that she could not see, she did not say that she couldn't see that well.)

RT 2783 I saw a bad man in my house and it's Nathan Medina. I don't know if it's a mask, I couldn't see him that well. I know it's him, I know it's him.

RT 2782 L 26 Ms Rhoads at best, before she is pepper sprayed, is a second. Listen to the way she described it, what she said here. The person came around the corner and was already like this when she first sees him, held her arm up, demonstrated, and started spraying. In a dark hallway with these glasses on and a coat, with these glasses on and another witness who has seen him outside and said, you know, kind of tough to tell. She had no immediately, that's the key. It's not that you know what, after I was able to look at him, you know, it was immediately. And it's Nathan Medina. I don't know if it's a mask, I couldn't really see him that well. I know it's him, I know it's him.

How much time did she really have before she is pepper sprayed? Seconds? No A second? Maybe.

RT 2786 L 27 ...the mom positively identified. She said it was Nathan, what the detective says. What does Mendell say? She said it was Nathan for sure? Yes she did. Wasn't wearing a mask it was just a hat, a hat. A beanie rolled up and then the detective says he said, hey man, it's him, it was him. She positively ID'd him. Then they take him to the lineup.

RT 2805 L 17 When they got that call it's Nathan Medina. I saw him for a quarter of a second. I couldn't see, I couldn't see, I know it's him, though, this case was over.

(As Rhoads interview and 911 call were withheld from Petitioner and the jury, no evidence was entered into the record or made available to the jury that Rhoads told the 911 operator that she couldn't see. The jury was instructed that Counsel's statements were not evidence. This left Rhoads perjured testimony as the only evidence the jury could consider).

Prosecutor:

RT 2832 - 2833 Counsel played you a tape of Ms. Rhoads and this is the other point I was getting to about the three dimensional versus the two dimensional. Plays you a tape, a portion of a tape where she says I really couldn't see, I couldn't really see, is my son alive?

RT 2833 L 6 What are we missing from that quotation on that tape? Reference to time. She said that when I was laying on that counter top for an hour, that's when I couldn't see. Could you see the man who sprayed you with pepper spray? Yes. Did you have trouble? No.

The prosecutor intentionally mislead the jury and court, by having Rhoads give perjured testimony for the following specific purposes:

1. To hide Rhoads obsession with Petitioner,
2. To hide her previous unfounded accusations against Petitioner,
3. Convict Petitioner of felony murder, in order to gain a conviction of first degree murder without having to prove premeditation,

4. Give a false credibility to Rhoads testimony by making it seem that she had a clear view of the assailant before being pepper-sprayed in the face,
5. Give a false credibility to Rhoads testimony by stating she gave a full description of the assailant to the detective during her recorded interview,
6. Give a false credibility to Rhoads testimony by having her lie to the jury, multiple times, stating she recognized who she said was Petitioner; by his nose, chin, and mouth which matched Longfellow and Mendell's phrasing.
7. Give a false credibility to Rhoads testimony by having Rhoads lie and state that she described sunglasses and a beanie to match Longfellow and Mendell's testimony.
8. To have Rhoads state that she only viewed the assailant "from the waist up", to explain away the discrepancies in her description.

Black Bag – No Physical or Eye Witness Connection To Assailant:

Petitioner was convicted of felony murder by way of intent to commit arson based on an unproven theory with no evidence – Based solely on Rhoads claim that a bag found two days later was not hers or Joshua's – This verdict was not supported by any evidence:

The black bag and it's contents were tested for fingerprints and DNA, no match was found for Petitioner.

Officer John Rabinowitz – Bag – Two days after the murder:

The prosecution circumvented having to prove premeditation, by convicting Petitioner of felony murder, by way of an unproven theory stating that the assailant intended to commit arson.

1. This required Rhoads to testify that a bag with flammable contents found at her house, two days after the murder was not hers or Joshua's. There was no way to verify that the bag did not belong to Joshua, Mendell or any of the multiple people who had access to her house.
2. Rhoads falsely testified that she had a full view of the assailant; however, she never looked below his waist. This was used to explain why she never saw the person bring in the bag with the flammable contents. Rhoads and the prosecutor repeated many times that Rhoads gave a full description from the waist up only.

Police Report P 41:

On 3-22-08 responded 2055 hours, to retrieve evidence, black bag sitting on leather chair in office at Rhoads house.

Uhl (Rhoads house cleaner) first saw the bag on the floor next to the small closet door, in the hallway in front of the office on 3-21-08, at approximately 1100 hours. Uhl left the bag, and then left with Rhoads purse. Uhl returned approximately 1600 hours, and in the process of cleaning, she moved the bag to its present location on the leather chair.

When Rhoads returned, she told Uhl, the bag did not belong to her. Rhoads believed the suspect brought it.

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Rhoads did not see the suspect bring the bag into the house, and she never saw the suspect holding it. The bag does not belong to her or her son, and she believes the suspect brought the bag into the house and was going to burn her, her son and the house, after he killed them.

CT P141 Rhoads called McColgin, was frantic about bag with flammable liquids, she said it was not hers or Joshua's, that she thinks Nathan brought it to her house.

CT P142 McColgin: ...did you see the bag with him when he came in, and she said, I did not. I did not see it at that time, but it's not mine.

Police Report P46: ...blue 1999 Dodge pickup... This vehicle was currently registered to Richard James with an address in Castro Valley. I contacted the Alameda County Sheriff's office and requested that they drive by the residence to see if the vehicle was there.

(This is evidence of how convincing Rhoads was with the Walnut Creek Police, as they contacted the Alameda Sheriffs department to find a vehicle that Petitioner sold more than a year prior to this incident. Since Rhoads' described Petitioner's old truck during her recorded interview, and then falsely testified during trial that she described Petitioner's current truck, Petitioner believes this is further evidence of the prosecutor coaching Rhoads on what to say during trial. As the only way Rhoads could have been able to describe a truck which she never saw, was by the prosecutor describing it to her and then have her repeat what he told her to the jury. Falsely stating that is what she described to the detective during her recorded interview.