

Nathan Medina AA4500

Case 05-080656-2

February 21, 2025

Search Warrant – No Probable Cause

Detective Tracie Reese acquired a search and arrest warrant based on an affidavit submitted with a reckless disregard for the truth and having omitted multiple instances of eyewitness procedural violations, every exculpatory statement by the witnesses, and blatant recorded witness tampering, which she was present for. With her material misrepresentations removed and the omitted statements included, probable cause no longer exists for the warrant. Detective Reese loses any good faith claim, as she had personal knowledge of the lies and omissions at the time of filing for the warrant, which is evidence that she must have known that without her misrepresentations a warrant would not have been issued.

Petitioner presents proof of claims using: Police Report (PR), Reporter Transcript (RT), Clerk Transcript (CT), Mendell Recorded Interview (MI), Rhoads Recorded Interview (RI)

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

Detective Reese stated that three witnesses positively identified Petitioner:

Beverly Rhoads (911 call and recorded witness interview withheld from Jury and Petitioner)

Sean Mendell (911 call and recorded witness interview withheld from Jury and Petitioner)

Marielle Longfellow (Police claim video interview has no audio)

Mendell – Interview and Hallway Conversation with detectives McColgin and Reese

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 shortly 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.

Prosecutor Transcript of Hallway Conversation CT 285 (OM1):

CT285 (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 – Transcribed by: Zandonella Reporting Service- Rajahnique Jones, CSR No. 13457:

Mendell – Lead Detective McColgin – Detective Reese – Witness Tampering:

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

Mendell Interview - DETECTIVE REESE: You might be more comfortable in our lobby. There's a couch and you can, kind of hang out. (MI) P 120 L17-19

START OF HALLWAY CONVERSATION Pages 121 L11-25, P 122 L1-22:

(There are minor differences, where the transcriber typed (Inaudible); however, after turning up the volume, those parts became clearly audible). The recording is available upon request for verification. Transcript (HW1)

Detective Reese: Okay. I'm sorry?

Detective McColgin: What's your name?

Mendell: Sean

Detective McColgin: Oh you're Sean. You live in the house that's in the back?

Detective Reese: yeah yeah ...

Detective McColgin: Hello how you doing buddy uh?

Mendell: I've been better

Detective McColgin: Huh?

Mendell: 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...

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This hallway conversation was not an accident, Mendell was held in the interview room, until Detective McColgin arrived at the station.

During Mendell's interview, detectives Jower and Reese ignored the many statements by Mendell of why he did not think it was Petitioner, and as you just read, Detective McColgin did the same, even interrupting Mendell twice, as he was trying to tell the detectives why he did not think it was Petitioner.

Judge Brady, in listening to Rhoads' recorded interview, even made a comment that Detective McColgin unfortunately keeps interrupting her during the interview.

Detectives Jower and Reese omitted from their reports all exculpatory statements by the witnesses. Detectives McColgin and Reese, omitted this entire conversation from their reports. Detective McColgin completely omitted from his report the multiple statements by Rhoads' that she could not see the assailant. Detective Reese omitted from her affidavit, this hallway conversation, and that Mendell repeatedly told her that he did not think it was Petitioner.

On the video recording of Mendell's interview, you can see that he was left alone for some time before Detective Reese returned, opened the door, and called Mendell into the hallway, while Detective McColgin was waiting by the door, as this recorded conversation happened as Mendell walked out the door.

Detective Reese knew at this time; because, Mendell told her during his interview, that he had not yet been shown the six-pack photo line-up, therefore when Detective McColgin lied to Mendell, telling him that it was Petitioner, and that Rhoads' positively identified him, in her presence, and she did not stop him from tainting Mendell's identification, that made her a coconspirator in the witness tampering by Detective McColgin. Detective Reese at that point had an ethical and legal responsibility to report Detective McColgin's misconduct. Instead she concealed this misconduct by omitting it from the police report, and then she committed fraud, by omitting it from her affidavit, in order to secure a search and arrest warrant.

If the interview room video recorder had not picked up the audio, and Counsel's investigator, had not watched the video, long after the interview was completed, this misconduct would have remained concealed. As the detectives involved concealed it, by omitting it from their reports.

Before Mendell was informed that there was an actual recording of this conversation, he swore under oath, multiple times, that it never happened, he even stated that he was 100% positive. (Court Transcript (CT) P107, Reporter Transcript (RT) P1341-1342, 1411-1414 (H3, H4,H5))

During Mendell's interview, he expressed doubt about it being Petitioner; however, he stated his certainty in Rhoads' ability to recognize Petitioner when he made the following statement to the detectives:

Mendell: "Sam, Josh's mom and Josh would know, exactly, they can say right now, you can call them and say; was it Nathan, and they can say yes or no, guaranteed."

Detective Jower: Sam and Josh would know?

Mendell: oh yeah, for sure (Mendell Interview) (MI2) P102 L4-10

It is not a coincidence, that Detective McColgin was just outside the door when Detective Tracie Reese, had Mendell exit. Nor was it a coincidence that Detective McColgin told Mendell about the person Mendell informed Detective Reese and Jower that he believed would know exactly, for sure, guaranteed, if it was Petitioner.

According to Mendell, after this hallway conversation took place, Detective McColgin showed him the line-up

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

Detective Jower stated that he was alone with Mendell when he showed him the lineup (PR35)

Witnesses Sean Mendell and Marielle Longfellow - Affiant omitted:

- Mendell’s statement, that in the last seven years, in which he spent everyday at the Rhoads house, he only seen petitioner once, while petitioner was doing electrical work four years ago. Mendell: “I was over there all the time, every day” (MI) P101 L4-11, P102 L25-P103 L1-4
- Mendell’s statements during his recorded interview evidencing Rhoads’ obsession with Petitioner - she talks about Nathan “oh, all the time” (Mendell Interview (MI) P111 L17-19
- Mendell’s statements that Rhoads constantly blamed petitioner everytime something happened at her house “everytime something happens, she thinks Nathan is the –” (Mendell Interview (MI) P111 L21-22
- Mendell’s statement that Rhoads filed a police report stating that she knew petitioner committed vandalism at her home, even though she did not witness the crime, she stated: “I know Nathan did this” to the Walnut Creek Police. (MI) P7 L6-12, P109 L5-25-P110 L1-11, P114 L2-17 (Rhoads Interview (RI) P3 L6-12
- The highly suggestive single photo show up, at the scene shown to two witnesses, moments after their interaction with an assailant, which used the same photo, in the six pack photo lineup, and broadcast all over the news. (MI) P98 L1-4
- This photo with drivers license info was shown to both witnesses at the same time
- The photo had Petitioners height 5’10”, weight 180, and hair color brown, which Mendell stated precisely. To emphasize how suggestive this single picture show-up was, Mendell stated that he could not see the assailants hair; however, he said he thought is was brown. (MI) P93 L20-24, P97 L4-5
- Longfellow heard Mendell’s comments when he was shown Petitioners photo
- That Longfellow’s statements cannot be verified because the audio did not record during her one hour and twelve minute interview. (Petitioner has not been able to verify this). (LA1) RT 1822)
- Mendell told affiant multiple times during his interview that he did not think it was Petitioner. (This was after Mendell had been shown Petitioner’s photo at the scene). (MI) P55 L2-7, P96 L22-23, P99 L12-14)
- The recorded hallway conversation between Detective McColgin and Mendell, which affiant was preset for, as she can be heard on the recording from the beginning through to the end of McColgin’s witness tampering. It must be noted that affiant knew at this time that Mendell had not been shown the six-pack photo line-up yet. (H9) RT 1692-1695)
- That Detective McColgin interrupted Mendell, while Mendell was trying to tell him why he did not think it was petitioner, in order to tell him that it was Petitioner, and that Rhoads positively identified him. Then

according to Mendell, Detective McColgin showed him the six-pack photo line-up. (MI) 120-122

- Detective McColgin later states that Detective Jower might have been in the hallway during this witness tampering. (H5) RT 1695
- Jower claims that he was alone with Mendell during the six pack photo line-up, and that he did not say anything to him. (PR35) Police Report P35
- Jower later admits that another detective might have been with him when he did the line-up: (RT 1903 L8-11)
- Mendell claims the Detective that had the hallway conversation with him, showed him the line-up, he believes it was Detective McColgin (CT P 50 L6-11, RT 1436-1436)
- The detective showing Mendell the photo lineup told him to: “Just pick whichever one looks like, whichever seems the most familiar”. (LU1) RT 1363

Mendell claimed that Detective McColgin showed him the line-up:

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

In addition to the unmarked white police car with – what you think are sheriff's deputies showing you a photo of this person that you've said was Nathan Medina, you said “That looks like him” or something, words to that effect, did somebody else show you a photo line-up of – what I mean by a photo line-up, is an array of, like, six pictures or so of individuals and ask you if you saw – If this is the responsible person in that photo line-up? CT P49 L19-25

A. Yeah, when I was at the station.

Q. And was that Detective Jower, the same one that interviewed you?

A. Yeah, Give a second because there was two. There was another detective who sat me down and told me about the – in this case I don't think it was detective Jower was the – the one that did the line-up. I'm pretty sure the line-up officer was a different officer. CT P50 L6-11

The following is what Judge Brady had to say about Mendell's identification:

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. (SW5) RT P66 L11

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

While Judge Brady, clearly concedes that Affiant omitted in her affidavit, the police misconduct in which Affiant was personally involved in, and present for, she ignores the following evidence in which Affiant did the same with Rhoads.

Witness Beverly Rhoads – Affiant Omitted:

- Rhoads was immediately pepper-sprayed in the face when she came around a blind hallway corner that was six feet from the front door (PR1) P52, (PM1) CT298 - Prosecutor Motion Page 2, (Rhoads 911 call - suppressed)
- Rhoads never approached or opened the front door (RI) and 911 Call)
- The pepper spray started six feet from the front door at the entrance to the hallway (PR7) P72
- Rhoads constant and continuous statements during her interview, stating that she couldn't see (Rhoads 911 Call and Interview (RI) P2 L4-5, P17 L2-4, P18 L15, P21 L11-15, P22 L4-8, P25 L2-4, P25 L25, P26 L1-4, P29 L14
- Rhoads described a mask that went below the assailants nose, she also stated that: "it hit the profile of his face" (RI) P21 L11-25-P22 L1-8, P25 L21-24
- Rhoads told the detective that she knew petitioner committed another crime which she filed a police report stating "I know Nathan did this", a crime which she also did not witness (RI) P3 L6-12, P14 L9-25-P15 L1-8
- Rhoads obsession with Plaintiff, documented by Mendell's recorded interview (MI) P111 L17-19, 21-22
- Rhoads had a persistent enemy which vandalized vehicles at her home, including Mendell's work van twice, and petitioner's fathers van twice, four years prior, when he was working at the Rhoads house (M14) CT 109
- The neighbors called the police multiple times to the Rhoads house for loud noises, parties, and because her son and Mendell rode their dirt bikes up and down the road in their quiet neighborhood (M14) CT 109
- Rhoads did not see the assailant, she just claimed to know it was Plaintiff (RI)

Prosecutor intentionally mislead the court by fabricating a transcript of Rhoads interview – Omitting all exculpatory statements:

Prosecutor transcribed only eight lines, less than a quarter of a page of Rhoads' interview: CT 232 (SW3), completely omitting Rhoads multiple statements that she couldn't see and that she thought the assailant was wearing a mask. Full interview (RI) transcribed in 2014 is 32 pages long.

Judicial Misconduct – abuse of discretion in denying a Frank's hearing with reckless disregard for the truth and confirmation bias, as every misstatement of fact favored the prosecution.

Judge Laural Brady March 9, 2009 - Regarding Rhoads identification:

I would note that I carefully listened to the entire CD... First I reviewed the search warrant itself, the entire search warrant, and the affidavit... I reviewed the detail of the affidavit and compared that against the interview with the victims mother, Ms. Rhoads, was marked as Defense A. RT P61

So I don't see that there is anything, first of all, that law enforcement does in, or has omitted in, telling me, the magistrate, in terms of her identification. RT P64 L10-13

See: Affidavit for search and arrest warrant (SW)

See: Motion to Quash and Traverse the Search and Arrest Warrant (SW1)

As Rhoads 911 call and recorded interview were not transcribed in violation of CRC 2.1040 (A4), and withheld from the jury and Petitioner, Petitioner was deprived of his sixth amendment right to a fair trial, and was prevented from helping his attorney defend against charges solely based on fabricated evidence. This allowed Judge Brady to misrepresent Rhoads recorded interview, as it was concealed from Petitioner.

Misrepresentations and Omissions of Rhoads' interview during hearing by Judge Brady (BH5):

RT P61 L27-28 And she says repeatedly that she recognized him immediately 100% positive

- (Omitted is Rhoads' constant and consistent statements that she could not see, that she just knew (not by sight) , that it was Petitioner). See Rhoads full recorded interview transcribed in 2014 (exhibit (RI), specifically pages: P2 L4-5, P17 L2-4, P18 L15, P21 L11-15, P22 L4-8, P25 L2-4, P25 L25, P26 L1-4, P29 L14).

She also describes at various times in the questioning and in the interview how he was dressed, and she describes a hat. (RT) P 62 L4-6

(Rhoads ONLY statements regarding clothing: “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, And it was like he had on long underwear or something under here. I don’t know what, and I don’t remember the color of his slacks).

(Rhoads’ stated a hat and a knitted thing which hit the profile of the assailants face, Detective McColgin was the first to mention beanie).

– and the officer, who unfortunately interrupts her at various times as she’s trying to describe what he was wearing... P62 L19

(This was a misrepresentation of what occurred, McColgin, a 26 year police veteran, was trying to lead Rhoads in her interview, as he was in constant contact with the other detectives getting the other witnesses descriptions. He ignored Rhoads constant and continuous statements that she could not see and just focused on, and kept repeating that she knew it was petitioner, even though she could not see). (In further evidence of McColgin’s confirmation bias and deliberate witness coaching, see: exhibit (HW1); Mendell, McColgin, Reese, hallway conversation).

But when you listen to it as a whole she is giving consistent information. P62 L19-21

(Rhoads’ was consistent in stating that she could not see, that she thought the assailant was wearing a mask, and that she just knew it was petitioner, (not by sight, but by belief), just as in the Rock incident)

She’s describing that he has a hat on. And she describes it either as a hat or a beanie cap P62 L22

(Detective McColgin was the first to mention a knit cap, Rhoads statements about a knitted thing, was of a mask that rolls up the front that “hit the profile of his face”.)

...she uses the word mask several times, but never describes that it as pulled over the entire face L32

...at one point says its pulled down over, and he doesn’t go further L26

And at no point does anyone say it is pulled over the entire face L28

Rhoads Interview (RI) – Mask Covering Face:

Rhoads: Yeah. And I don’t know – I can’t remember if it was all the way down or just down about here. (she was clearly gesturing how far she thought the mask was going down the assailants face. By McColgin’s very next

question, it is obvious, she gestured below her nose).

McColgin: Okay

Rhoads: You know what I mean like that?

McColgin: 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.

McColgin: 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? P 21 L24-25 P 22 L1-24

Rhoads: I absolutely – yea. It hit the profile of his face. I just knew. (She is still clearly referring to a mask when she says) "it" hit the profile of his face. I just knew. P 25, L 18-24

McColgin: So his face might not have been covered with a mask?

Rhoads: Yeah it might not have been, but – see, he sprayed me so fast that my vision just" -- McColgin: OK. So it may have – P 25; 25, P26; 1-4

(Judge Brady ignored these two statements regarding the issue of the mask).

1. "It hit the profile of his face"
2. "Yeah. And I don't know – I can't remember if it was all the way down or just down about here". (Rhoads wasn't sure if it went all the way down his face, or as she gestured, with her hand below her nose, as is made clear by Detective McColgin's next question "could you see his mouth?"

These statements also clearly establish that Rhoads was telling the detective that her vision was immediately effected by the pepper spray, that she just knew it was Petitioner, not by sight.

In direct opposition to this, both Rhoads' and Detective McColgin testified at trial that Rhoads vision was not effected by the pepper spray until much later. Rhoads gave perjured testimony, stating that she was not sprayed in the face and that her vision wasn't effected till several hours later, when the fumes from the spray on her chest got into her eyes. (PS3) RT 904-906

The Prosecutor also suborned perjured testimony, asking leading questions, having her state that she had no trouble calling 911 as she could see the phone and buttons. (PS3) RT 904-906

Rhoads Interview - Regarding 911 call:

McColgin: Did you have difficulty dialling the number because you were pepper sprayed?

Rhoads: Yes (RI) P 17; 2-4)

Judge Brady gave an example, regarding counsel opening a door and recognizing his law partner which he has known for over twenty years, and is in recent, and continuous contact with. (RT) P63 L2-13

(Her example, in no way had any similarities with petitioner's lack of relationship and over three year absence from Rhoads'. Rhoads was pepper-sprayed six feet away from the front door).

(This example by Judge Brady is evidence of the Walnut Creek Police and the prosecutions intentional misrepresentation of Rhoads recorded interview, and of Judge Brady's confirmation bias, in up-holding a warrant by misrepresenting the actual recorded evidence which she personally reviewed).

She makes recognition who it is as she opens the door before the pepper spray takes place RT 64 L8-9

(Rhoads' was blinded by pepper spray, and never made it past the hallway entrance to the living room, which was six feet away from the front door. The evidence of this, not only comes from Rhoads' herself, in her interview, but is also backed up by the physical evidence, from where Officer Kim Gerstner found the start of the pepper spray, at the entrance to the hallway, six feet away from the front door).

Longfellow's description corroborates Rhoads' description RT 65

(Longfellow stated that the assailant was wearing a dark colored beanie, sunglasses, black leather trench coat, and black rubber gloves. Rhoads stated; he was masked, with 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. Rhoads was also positive that the assailant wasn't wearing gloves. Rhoads stated black hat and mask, it was detective McColgin who led her description by saying roll up front and knitted cap. In direct opposition to Rhoads trial testimony, Rhoads never stated the assailant was wearing sunglasses during her recorded interview).

(There are no verifiable statements by Longfellow, as Detective Jower claimed that the audio did not record during her one hour and twelve minute recorded video interview).

She is very clear that she got pepper sprayed, and early on, right at the door, and it obscured her vision after that happened, but she's also clear that she makes the recognition who it is as she opens the door before the pepper spray takes place. RT 64 L5-9

(Rhoads was six feet away when she was pepper-sprayed, after coming around a blind corner in a dark room, before entering the living room. She never came to, or opened the front door, while in the laundry room, she heard the front door open and close.) (D1,D2,D3) RT 818, 887, 900

So I don't see that there is anything, first of all, that law enforcement does in, or has omitted in, telling me, the magistrate, in terms of her identification. (SW4) P 64 L10-13

(This statement by Judge Brady is in direct opposition to all evidence presented).

So there's obviously been interaction between Ms. Rhoads and Mr. Medina that brought her into regular contact with him, so this isn't a casual contact. (SW4) P64 L26-28

(Petitioner repeats, this contact was over three years prior, and as both Mendell and Rhoads make clear, even then, both Mendell and Rhoads, only remember seeing Petitioner once at the house during the construction) (NA 1,2,3) CT P 59, 60, RT 891-892

(Longfellow) -- her description, physical description of Mr. Medina corroborates what Rhoads has described. P65 L11-12

(Rhoads gave no physical description of the assailant)

There's still, in my estimation, a strong identification by Ms. Rhoads, and a corroborating identification by Ms. Longfellow. And I think that provides plenty for purposes of issuing the warrant.

Judge Brady's overwhelming confirmation bias is revealed in the following omissions and statements:

- Omitted Rhoads' multiple statements that she could not see
- Rhoads was immediately pepper-sprayed in the face, from six feet away
- Omitted the two instances where Rhoads described the mask covering the assailants face
- Stating Rhoads' seen the assailant when she opened the door before being sprayed
- Omitted that it was McColgin who described a beanie, not Rhoads
- Omitted that Rhoads was also positive and equally certain Petitioner committed a prior crime of which there was no witness.
- Stating Longfellow's statements corroborate Rhoads
- Omitted that it has been over three years since Rhoads has seen petitioner

- Omitted that Rhoads was not a friend of petitioner, her acquaintance was with petitioner's parents which ended over three years prior. Rhoads seen petitioner not more than three times in the last seven years and not at all for over three years.

Narrative Statement of Probable cause – Search Warrant - by Detective Tracie Reese

Statements Made with Reckless Disregard for the Truth and Material Omissions:

Page 1 – 1st Paragraph The female caller, later identified as Beverly M. Rhoads, told WCPD dispatcher, Michelle Morgret, that her son, Joshua Rhoads was just murdered by Nathan Medina in the laundry room at the residence. She described Medina as a white male in his 30's, wearing a black hat and possessing a handgun.

(Detective Reese omitted that Rhoads told the 911 operator that she was immediately pepper-sprayed in the face and could not see).

Page 1 - 2nd Paragraph "Mendell, who was calling from the same residence, told Bushnell that Medina shot at him in the back yard of the residence with what he believed was a handgun or pellet gun.

(This crucial evidence where detective Reese claimed Mendell told the 911 operator that petitioner shot at him, continues to be concealed from petitioner, as it was not even given an exhibit number, nor was it made available to the jury. According to Mendell, he never told the 911 operator that Petitioner shot at him).

Page 1 - 4th Paragraph

She went to the front door and was confronted by a white male adult, who she recognized as Nathan Medina. Medina was wearing a black knit cap and dark colored shirt.

(Rhoads stated multiple times that she could not see and never went to the front door).

She said she has known Medina and his family for approximately twenty years.

(Rhoads had not seen Petitioner for more than three years, her only contact with him was when he did the electrical work at her home, more than three years prior. Petitioner had no social contact with Rhoads. During Mendell's recorded interview, he stated that he spent every day, for the last seven years at Rhoads home, and that in that time, he only saw petitioner once, while he was doing the electrical work at Rhoads house).

Page 2 – 1st Paragraph On 3/20/08, Detective Jower and I spoke with Sean Mendell at the Walnut Creek Police Department.

(Omitted is Mendell's multiple statements that he did not think it was Petitioner, and the Detective Reese, Detective McColgin hallway conversation with Mendell).

Page 3 – 1st Paragraph

Approximately six months ago, Rhoads was the victim of vandalism and believed the responsible to be Tony or Nathan.

(Omitted in this statement is the fact that Rhoads' filed a police report stating that she knew that Petitioner (not petitioner or his father) committed this crime. That, just as in this present case, Rhoads was just as certain, when she claimed to know it was petitioner back then, and in both instances she did not see the perpetrator of either crime).

Page 3 – 3rd Paragraph On 03-20-08, Detective Jower and Detective Carmen interviewed Mariele Longfellow in an interview room at the Walnut Creek Police Department.

(Omitted is that there are no verifiable statements by Longfellow, as the WCPD claim that the audio did not record during this one hour and twelve minute video interview).

Page 4 – 3rd Paragraph Officer Rohwer with the Walnut Creek Police Department showed Beverly Rhoads a Department of Motor Vehicles photograph of Nathan Medina. Rhoads positively identified Medina as the person who shot Joshua Rhoads.

(Officer Rohwer did not take notes or record this interaction with Rhoads. Rhoads Identified a photo of Nathan Medina because she knew it was a photo of Nathan Medina. She did not see the person who shot her son). See (RI) Transcript of Rhoads recorded interview, transcribed in 2014.

On 3/20/08, Detective Jower prepared a photo line-up with a picture of Nathan Medina in the number two position, along with five other similar looking subjects. Detective Jower, who was alone with Longfellow, read Longfellow the photo line-up admonishment. Longfellow looked at the photo line-up and said, "number 2 is what best fits my memory".

(Omitted is that Lonfellow was reluctant, and told Detective Jower, that the photo of Petitioner in the six-pack photo line-up, was the same exact single photo she was shown at the scene. That Jower told Longfellow to pick the photo that best fits her memory, and that he wrote that line and had Longfellow sign it)

(Detective Jower claimed throughout the trial that he did not know who assembled the photo line-up, because if it was him, he knew from Mendell's interview that he was using the same photo that was already shown to both

Mendell and Longfellow together at the scene. This six-pack photo line-up was also highly suggestive, as Petitioners photo was visibly different in several ways than the other five photos).

Detective Jower also read Sean Mendell the photo line-up admonishment. Detective Jower was alone with Mendell. Mendell looked at the photo line-up and said, "I think it was number two that tried to kill me".

(Omitted is that Mendell stated that it was Detective McColgin that showed him the line-up, and that he was told him to: "Just pick whichever one looks like, whichever seems the most familiar"). (LU1) RT 1363

RT 1696 Detective McColgin claimed he was not involved in the line-up after the hallway conversation (LMU) RT1696

Mendell states differently: 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 143

It is a matter of record that Lead Detective Brian McColgin was caught on tape witness tampering and falsifying his police report. As he was the lead detective in petitioner's case, this puts everything and everyone he was in contact with into question. Since Detective Jower claims that Longfellow's one hour and twelve minute video interview has no audio, there are no verifiable statements from her. According to Detective McColgin's testimony, there is a possibility that he also tampered with her as well as Mendell. RT 1686-1687 McColgin - he could have spoke to Longfellow (LM1)

After Detective McColgin was informed during trial that his witness tampering was caught on tape, he implicated his fellow detectives:

RT 1694 Detective McColgin - Detective Tracie Reese made the introduction (H11)

RT 1695 Detective McColgin – Jower might have also been in the hallway during the hallway conversation (H5)

Rock Incident:

Judge Brady omitted the fact that in Rhoads' interview, she claimed to know that petitioner committed an earlier vandalism which she also did not see; however, she filed a police report stating that she knew Nathan Medina committed that crime too.

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. (RI) P3, L 6-12

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

Prosecutor – Making sure Judge Brady’s decision was concealed from the trial court:

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. RT 66 L11-15

But the six pack ID I think is tainted beyond redemption. RT 67 L6-7

(Prosecutor) Mr. Moawad: The courts determination, obviously, is only for the purposes of the motion to quash and motion to traverse. RT 67 L9-12

The Court: Right

Mr. Moawad: And obviously, the steps for the substantial likelihood of misidentification are factual, and would be heard by the trial court, should that become an issue, as I assume it will.

(Here the prosecutor wanted to be sure Judge Brady’s decision was concealed from the trial court, Judge Kennedy. Moawad argued, counter to his admittance here regarding the “substantial likelihood of misidentification” that it was just a harmless mistake that had no influence on Mendell’s identification of petitioner. Judge Kennedy excused this fatal tainted identification, as just a harmless mistake). (AD5) RT 263-267

While petitioner can agree with Judge Brady’s assessment of the Walnut Creek Police misconduct regarding Mendell's identification, which she referred to as “tainted and fatal to identification, her misrepresentations and omissions of Rhoads interview, clearly show a bias and abuse of discretion in her decision to deny a Frank’s hearing and uphold a search and arrest warrant which lacked probable cause.

Fabricated Evidence

Mills v. Barnard, 869 F.3d 473 (August 28, 2017) Where it was proven the government (police, prosecutors, investigators, etc...) took part in knowingly or unknowingly, fabrication of evidence, it questions the validity of all alleged statements of facts against the defendant, which resulted in overturning all of the convictions of the case...

Pro typical case of malicious prosecution involves an official who fabricates evidence that leads to a wrongful arrest, or indictment of an innocent person. Even if independent evidence establishes probable cause against a suspect, it would be unlawful for [any part of the government] to fabricate evidence in order to strengthen a case against that suspect. (See Mills v. Barnard, 869 F. 3d 473 (August 28, 2017); see also Webb v. United States, 789 F.

3d 647, 670, (June 17, 2015)

When an appellant [petitioner] asserts... there is a discrepancy between the oral pronouncement... and the minute order. The oral pronouncement controls. "The State cannot ignore the audio recordings when they directly contradict the transcript." (People v. Mitchell (2001) 26 Cal. 4th 181, 185-186, 109 Cal. Rptf. 2d 303, 26 P. 3d 1040).

If a fact is recklessly omitted or omitted with the intent to mislead, the warrant should be quashed, regardless of whether the omission is ultimately deemed material. People v. Carpenter (1997) Cal. 4th 312,363.

If the officer whose good faith is in question was involved in the preparation of the affidavit, the fact that he or she misstated any information, or was aware of such misrepresentations, tends to show the objective unreasonableness of belief in existence of probable cause. Peoples v. Maestas (1988) 204 Cal. App. 3d 1208,1219 discussing Leon. Supra at 914.