IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, vs. ROBERT CARRASCO, Defendant and Appellant.	)	No. S077009 [LA Super. Ct. No. BA 109453] *Automatic Appeal*

APPELLANT'S SUPPLEMENTAL BRIEF

Automatic Appeal from the Judgments of Conviction and Death in the Superior Court for the County of Los Angeles

Honorable Michael B. Harwin, Judge

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XV. During the Guilt Phase of Appellant's Trial, the Prosecution Elicited False and Misleading Information from a Police Witness and Failed to Correct that Evidence in Violation of the Basic Tenet of *Napue v. Illinois* (1959) 360 U.S. 264

A. There is a Reasonable Likelihood that the False Testimony Regarding Shane Woodland's Dealings with the Prosecution in Reaching a Plea Agreement Could Have Affected the Judgment of the Jury

On January 30, 1997, prosecutor Danette Meyers and Detectives Michael Coblentz and Angel Lopez, held extensive negotiations/interviews with the key prosecution witness, Shane Woodland, and his attorney, Bruce Hill.[1] (RT 3736; CT 745.) The January 30th session[2] is of great significance as it is full of inconsistent statements, as outlined in a Motion for New Trial, filed by Appellant's new attorney, William Pitman. (CT 745-746; 754-755.) Moreover, the prosecution did not reach a deal with Woodland at the conclusion of the January 30th interview. (RT 3737, 3908.) Woodland did not enter a plea until February 1997. (RT 3731-3732.) Thus, his February 10, 1997, memory of events is very different from that of January 30th. (RT 3905-3907.) Consequently, as argued by Mr. Pitman, the "jury in this case was left with a very false impression with respect to Woodland's testimony." (RT 3906.)

During the trial, on direct examination, prosecutor Danette Meyers asks Detective Coblentz about the first time he spoke to Woodland regarding the Allan Friedman killing that took place on October 24th, 1995:

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[1] The Woodland videotaped discussions regarding a deal with the district attorney's office would have remained behind closed doors had the prosecutor not called Bruce Hill, Woodland's attorney, to testify as its IAC expert witness in the motion for a new trial proceedings. (RT 3703-3704.) On cross-examination by Mr. Pitman, Bruce Hill revealed that Woodland had been interviewed prior to entering his February plea. (RT 3733-3734.) Beswick did not turn the videotapes over to Pitman (RT 3908) and when their existence was revealed, he initially claimed he had not received the videotapes. (RT 3770.)

[2] The videotape was marked as Defendant's Ex. O and received in evidence. (RT 3889-3894; CT 766.)

DANETTE MEYERS: And, by the way, when did you first learn of or when did you have a discussion with Shane Woodland regarding the events that occurred to Allan Friedman on the 24th of October of 1995?

DETECTIVE COBLENTZ: Could you repeat that, please.

MEYERS: When did you have a discussion with Mr. Woodland about the events that occurred to Allan Friedman on the 24th of October of 1995, sir?

COBLENTZ: That would have been February 10th, 1997.

MEYERS: And prior to that date had Mr. Woodland ever told you about his involvement in the murder of Allan Friedman?

COBLENTZ: No, Ma'am.

(RT 2692:4-16.) Incredibly, Detective Coblentz does not mention the January 30th interview to the jury instead referring to the February 10th interview as being the first time he spoke with Woodland. Though the prosecutor knew the detective's testimony was false, she failed to correct it.

One day before reaching its verdict (RT 2980, 2982), the jury requested that the testimony of Detective Coblentz (RT 2692, lines 4-16) and cross-examination of Woodland (RT 1990-2061) be read back to them. (RT 2978.)

Therefore, even though the jury was interested in the facts surrounding Woodland's testimony and his dealings with the prosecution's office, it was never made aware of the existence of the January 30th interview or its content. As discussed above, the content of the interview was favorable to Appellant because it impeached Woodland, the key witness without whom the prosecution had no direct evidence linking him to the shooting. Because the jury was never made aware of this interview or its content, Appellant did not receive a fair trial and confidence in the guilty verdicts is undermined. (*Kyles v. Whitley* (1995) 514 U.S. 419, 434.)

The Ninth Circuit recently found "textbook prosecutorial misconduct" in a similar case that violated the basic tenet of *Napue v. Illinois*, "which prohibits

'soliciting false evidence,' and requires the prosecutor to not 'allow[ ] it to go uncorrected when it appears.'" (*Dow v. Virga* (9th Cir. 2013) 729 F.3d 1041, 1043, quoting *Napue v. Illinois* (1959) 360 U.S. 264, 269.) The state court in *Dow* held that the error was harmless. (*Ibid.*) The court of appeals reversed, concluding that its decision was "contrary to" and/or an "unreasonable application" of Supreme Court precedent. (*Ibid.*) Indeed, the *Napue* standard set by the high court requires a new trial "if 'the false testimony could . . . in any reasonable likelihood have affected the judgment of the jury . . . .'" (*Giglio v. United States, supra,* 405 U.S. 150, 153, quoting *Napue v. Illinois, supra,* 360 U.S. at p. 271.)

The materiality standard is less demanding under *Napue.* (*Dow v. Virga, supra,* 729 F.3d 1041, 1048.) The question is whether "there is any reasonable likelihood that the false testimony could have affected the judgment of the jury." (*Ibid.*) This is less difficult to satisfy than the state law standard, which considers "whether it is 'reasonably probable that a result more favorable to the defendant *would* have occurred' absent the misconduct." (*Id.* at p. 1048-49.) Thus, the Ninth Circuit held that it is "contrary" to clearly established Supreme Court precedent to apply the stricter state standard rather than the *Napue* standard discussed above. (*Id.* at p. 1049.)

It has long been recognized that the prosecution may not use false evidence to obtain a criminal conviction. (*Hayes v. Brown* (9th Cir. 2005) 399 F.3d 972, 978, quoting *Napue v. Illinois, supra,* 360 U.S. at p. 269.) When a prosecutor obtains a conviction through perjured or false testimony, or by failing to correct unsolicited false testimony, a defendant's constitutional rights are violated. (*Napue v. Illinois, supra,* 360 U.S. at p. 269; *United States v. Agurs* (1976) 427 U.S. 97, 112-13; *Giglio v. United States, supra,* 405 U.S. at p. 154; *Pyle v. Kansas* (1942) 317 U.S. 213; *Hayes v. Brown, supra,* 399 F.3d at p. 978.)

The need for heightened reliability in capital proceedings, as protected by the due process clause requirement of fundamental fairness and the Eighth Amendment guarantee against cruel and unusual punishment, mandates reversal

of a conviction and death sentence obtained on the basis of false and unreliable evidence. (See *Simmons v. South Carolina* (1994) 512 U.S. 154, 161 ["Due Process Clause does not allow the execution of a person 'on the basis of information which he had no opportunity to deny or explain.'"]; *United States v. Petty* (9th Cir. 1993) 982 F.2d 1365, 1369 [defendant has due process right not to be sentenced on basis of materially incorrect information].)

Under California Penal Code section 1473, subdivision (b)(1), a writ of habeas corpus may be prosecuted if "[f]alse evidence that is substantially material or probative on the issue of guilt or punishment was introduced against a person at any hearing or trial relating to his incarceration. . . ." (See also *In re Roberts* (2003) 29 Cal.4th 726, 741-42.) Penal Code section 1473, does not require a petitioner to show that the prosecution knew or should have known that the testimony was false, or that the false testimony was perjurious. (Pen. Code, § 1473, subd. (c); People v. Marshall (1996) 13 Cal.4th 799, 830.)

Where the government knowingly permits the introduction of false testimony, reversal is "virtually automatic." (*Hayes v. Brown, supra,* 399 F.3d at p. 978, quoting *United States v. Wallach* (2d Cir. 1991) 935 F.2d 445, 456.) And a conviction must be set aside if there "is any reasonable likelihood that the false testimony could have affected the jury verdict." (*United States v. Cooper* (9th Cir. 1999) 173 F.3d 1192, 1203, quoting *Ortiz v. Stewart* (9th Cir. 1998) 149 F.3d 923, 936; see also *Hayes v. Brown, supra,* 399 F.3d at pp. 984-985.) Moreover, regardless of the prosecutor's awareness of the false testimony, a defendant is still entitled to relief. (*Hall v. Director of Corrections* (9th Cir. 2003) 343 F.3d 976, 981 [finding government's "present knowledge" that evidence was falsified is sufficient]; *Killian v. Poole* (9th Cir. 2002) 282 F.3d 1204; *United States v. Young* (9th Cir. 1994) 17 F.3d 1201, 1203-1204 [defendant convicted on false testimony is entitled to a new trial even if prosecutor unwittingly presents false evidence].)

When the false or misleading nature of the testimony comes to light, the prosecution has the duty to correct it. This obligation applies even if such

testimony goes only to witness credibility. (*People v. Morrison* (2004) 34 Cal.4th 698, 716-717.) In determining whether false evidence entitles a petitioner to relief, a court must determine whether "there is a 'reasonable probability' that, had it not been introduced, the result would have been different." (*In re Sassonian* (1995) 9 Cal. 4th 535, 546, citing *In re Wright* (1978) 78 Cal.App.3d 788, 814.) "Reasonable probability" is a chance great enough, under the totality of the circumstances, to undermine the court's confidence in the outcome. (*Ibid.*) Once a habeas petitioner has demonstrated that false evidence or testimony was presented at his trial and that the false or perjured testimony may "in all reasonable likelihood" have affected the jury's verdict, no additional showing of prejudice is required under the harmless error analysis articulated in *Chapman v. California* (1967) 386 U.S. 18, 24. (See *United States v. Bagley, supra,* 473 U.S. at p. 682; *In re Sassonian, supra,* 9 Cal.4th 535, 545, fn. 7.) At that juncture, it is the prosecution's burden to demonstrate that the outcome of the trial was not affected by the false evidence. (*United States v. Agurs, supra,* 427 U.S. at pp. 103-107.) As discussed at length, the facts in this case establish a prima facie case for relief on the ground that testimony by the prosecution's key witness, Shane Woodland, was perjured and without his perjured testimony, there is a reasonable probability that the result could have been different.

B. *Detective Coblentz's False Testimony*

Detective Coblentz's testimony throughout the trial is also implicated and the jury should have been made aware of his misleading answer especially in light of the fact that the jury requested that it be read back to them shortly before rendering a decision. (See *Milke v. Ryan* (9th Cir. 2013) 711 F.3d 998, 1001 [reversed and remanded based on violations of *Brady v. Maryland* (1963) 373 U.S. 83 and *Giglio v. United States* (1972) 405 U.S. 150].) It was crucial that the jurors be made aware of his questionable credibility.

As summarized by Chief Justice Warren in *Napue*, the "principle that a State may not knowingly use false evidence, including false testimony, to obtain a

tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness. The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend." (*Napue, supra*, 360 U.S. at p. 269.)

CONCLUSION

For the foregoing reasons, the judgment should be reversed.

Dated: May 23, 2014

Respectfully submitted,

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DECLARATION OF SERVICE BY MAIL

I declare that I am over 18 years of age, not a party to the within cause; my business address is 2107 Van Ness Avenue, Suite 203, San Francisco, California 94109. Today I served a copy of the attached **Appellant's Supplemental Brief** upon the following by mailing same in an envelope, postage prepaid, and addressed as follows:

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on this the 23rd day of May, 2014, at San Francisco, California.

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