John Henry Yablonsky AL-0373
Box 8500
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IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT,CENTRAL DIVISION

John Henry Yablonsky, Petitioner,	§	CASE NO. EDCV 14-01877-PA(DTB)
	§	THE HONORABLE MAGISTRATE D. BRISTOW
vs.	§	Filed:September 4,2014
Scott Fraeunheim(warden), Respondent,	§	Order:September 12,2014
	§	Response;November 6,2014

§§§

PETITIONERS REPLY TO RESPONDENT'S ANSWER

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DEFINITIONS

Perjury 1 Ballentines law dictionary 3rd edition
Wilful and corrupt false swearing or affirming,after an oath lawfully administered in the course of a judicial or Quasi-judicial proceeding as to some matter material to the issue or point in question.41 Am J 1st Perj.§2
In a broader sense,wilful false swearing in regard to any matter or thing respecting which an oath is required or even authorized by law.False statements of a witness made in open court are not the subject of perjury where they have been corrected before the case is settled and submitted.

Perjury 2 Black's law dictionary 3rd editiion
The act or an instance of a person's deliberately making material false or misleading statements under oath

Subornation of perjury 1 Ballentines law dictionary 3rd edition
The crime of procuring another to commit perjury by inciting,instigating,or persuading,in a proper sense, the equivalent of perjury itself.

Subornation of perjury 2 Blacks law dictionary 3rd edition
The crime of persuading another to commit perjury-sometimes shortened to subornation.

Accurate 1 Websters dictionary
A)[free from error] Exact,correct, perfect
b)[Characterized by precision] Deft,reliable,trustworthy, true,correct,exact,ect.....

Perjury 3 American Century Thesaurus
Lying,mendacity,mendaciousness,forswearing,prevarication, bearing false witness.

Fourth Amendment United States Constitution,IV Amend. U.S. Const.
[section 1]The right of the people to be secure in their homes,persons,houses,papers and effects,against unreasonable searches and seizures,shall not be violated, and no warrants shall issue, but upon probable cause,suppo supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.[ratified December =15,1791]

Fifth Amendment United States Conbstitution,VB Amend. U.S. Const.
[section 1] No person shall be held to answer for a capital,or otherwise infamous crime,unless on a presentment or indictment of a grand jury,except in cases arising in the land or Naval Forces,or in the militia, when in actual services in time of war or public danger; nor shall any person be be subject for the same offense twice put in jeapordy of life or limb;**nor shall be compelled in any criminal case to be a witness against himself;nor be deprived of life,liberty,or property, without [due process] of law;**
nor shall private property be taken for public use without just compensation.[ratified December 15,1791]

Sixth Amendment United States Constitution,VI Amend. U.S. Const.
[section 1] In all criminal prosecutions, the accused shal enjoy the right to speedy trial and public trial, **by an impartial jury of the state and district wherein the crime shall have been committed,**which district shall have **previously ascertained by law, and to be informed of the nature and cause of the accusation;**[TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM:TO HAVE COMPULSORY PROCESS OF OBTAINING WITNESSES IN HIS FAVOR, "AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE"] [ratified December 15,1791]

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Fourteenth Amendment United States Constitution,XIV Amend.U.S.Const.

[section 1] All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. **No state shall make or enforce any law which shall abridge the priveledges or immunities of citizens of the Unite d States;nor shall any state deprive any person of life,liberty,or property,without [DUE PROCESS OF LAW:NOR DENY TO ANY PERSON WITHIN IT'S JURISDICTION THE " EQUAL PROTECTION OF THE LAW[S]"**

Due process 1 Blacks law dictionary

The conduct of legal proceedings according to **established** rules and principles for the protections and enforcement of private rights,including notice and the right to a fair hearing before a tribumal with the power to decisde the case-also termed as due courrse of law.

Due Proceess Clause 1 Blacks law dictionary

The constitutional provisions that prohibits the goveenment from unfairly or arbitrarily depriving a person of life,liberty, or property.

There are two Due Process Clauses in the United States Constitution,one in the Fifth amendment applying to the federal governement, and one in the Fourteenth Amendment applying to the states(although the 5th Amend. Due Porcess Clause also applies to,the states under the incorporation doctrine)

Due Proceess Rights 1 Blacks law dictionary

The rights (as to life,liberty, and property) so fundamentally fair and important as to require compliance with Due -Process standards of **[FAIRNESS AND JUSTICE].**

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SWORN DECLARATION UNDER THE PENALTY OF PERJURY

I John Henry Yablonsky have prudently and deliberately presented the truth in every one of my petitions in this matter, disclosing the facts as they have been released to me, and researching their values according to the laws of the state and the country as they were made available to me. I have submitted sworn affidavits made under the penalty of perjury in everyone of my Habeas Corpus petitions throughout the state courts and now into the Federal Court.I am actually innocent of these charges, and was lied to by the state , the state attorney, the judge, and the prosecutor.

I have repeatedly requested the discovery in this matter, and still have been cheated of this right. The bar association has interviened and forced the attorney to release more evidence, but still there exists over [1000 pages] that are being hidden.

I have presented the truths in all my arguements, and provided the authority that was located pertaining to these [FACTS] that are the truth. My efforts have been diligent, and fruitful, but the state courts have ig nored every aspect of this error by their state actors, in direct violations to my Constitutional interests.

I swear under the penalty of perjury that every word inthis petition are facts as they exist and were developed through investigations and research.Every arguement inthis petition is the truth as I know it, and understand it. The documents in this writ are the evidences that were hidden before the trial from the petitioner, and support every claim in petitioners Habeas Corpus.

Date_____ _____

John Henry Yablonsky

STATE COURTS DECISIONS BASED ON INAPPROPRIATE STANDARDS

Of the twelve grounds brought into the State Superior court,only grounds one,three,four,seven and nine were considered in an informal response.Respondent then relied in his informal by mistating facts,ignoring the value of discovery filed,and his[opinion] of what or why the trial attorney did or did not do. Respondent then stated there was no proof of altered transcript but even if there was,petitioner did not or could not show how he was prejudiced.(Respondent Informal,RI from here foward) (RI24[second paragraph])"That petitioner cannot make showing of [missing] pages".Then (RI24[third paragraph])"it is surely petitioner task to render his claim understandable,but **"EVEN IF WE ARE TO GUESS AND DECIDE IT IS AN ASSERTION THAT HE OFFERED TO GO TO A DIFFERENT LOCATION WITH THE DETECTIVES, AND THAT THEY REJECTED IT,HE DOES NOT EXPLAIN HOW THIS MIGHT HAVE AFFECTED THE OUTCOME"**

[THIS IS TEXTBOOK CUSTODIAL INTERROGATION "MIRANDA"[ ]
False evidence if it is not present, and it did happen !!!!!!!!!!

The Court opined to consider to stay the ruling,even after the Informal phase,and after several motions of the court as per CalRules of Court 4.551(f) Evidentiary hearing,"**Where the petitioner nor any representatinve of the petitioner was considered or allowed to participate.**Briefs on reasons to not rule were ordered, and petitioner filed one two page brief, then a nine page brief, where petitioner tried to move the court to allow the petitioner to expand the record with thirteen more prima facie grounds, but the motions were denied on June 12,2012.

The Court addresssed the presence of the pending appeal properly befopre the 4th Appeallate district of the State of California, and took judicial notice on the minutes.The court identified the twelve grounds as [complicated] by [SEVERAL] circumstances,most signi ficantly petitioners appeal that was still pending. The court admits it does not have Court of Appeal's distillation of the facts,court of appeals view of strength of evidence,or what errors [might] have occured the [potential] prejudice from those errors.

Sate Court admits that if petitioner can convince the Court of Appeals that reversible erroror occured in trial, his petition of Habeas Corpus writ would most certainly be rendered [moot].

STATE COURTS VIEWS AND OPINION OF RULING SUPERIOR COURT AND NO OTHER COURT

Claim one (Exhibit A) - Court lacks judisdiction to consider with regards to County District Attoreney's Campaign pledge.

Claim two (Exhibit B,Z) - Court states that"there is nothing to suggest any evidence was altered by the prosecutor",petitioner bears the"burden of proof",quoting conclusory allegation supported by facts does not warrant Habeas relief.

Claim three- (Exhibit K,P, Q2,R,SU) (RT490:25-492:5) Court determines it is not apparrant what investigations could have done to help the [case].Opining that the [sex] wasconducted over one day before the murder, and that even if there was [ANOTHER MANS DNA] was present, and absent proof of this in the petition, exhibits petitioner would be faced with evidence "he had sex with the victim".Then relying that experts testimony would not have been reasonable probable to change the results.Stating petitioner did not meet his burden of IAC,

(THIS IS PRECISELY WHY THE PETITIONER SEPERATED THE ARGUEMENTS AND ITEMIZED EACH ERROR SEPERATELY, BECAUSE THE COURTS AND RESPONDENTS HID THEIR PRESENCE WHILE FOCUSING ON OTHER MATTER_)

Claim four- (Exhibit E,F, G,D,H) State court relies on unreliable and inconsistant testimony of prosecution witnesses.States lack of jusisdiction to consisder this error.

Claim five - State court relies on petitioner right under Miranda lack of jusisdiction to consider this error.

Claims six- (Ecxhibit All) Petitioner claim of lack of evidence to support proof beyond reasonable doubt, as not cognizable in habeas.

Claim seven- (Exhibit Z) Stating state conspiracy to alter evidence, and that petitioner cannot make showing a more complete record could have changed the trials outcome,or how the trial attorney's actions could have[obtained] such a recording.Therefore the petitioner claim fails.

Calim eight - (Exhibit All) Because petitioner has no t shown what further investigations would have revealed o how it would have changed the outcome, petitioner does not meet the standards for relief.

THE EVIDENCES WERE WITHELD FROM THE PETITIONER UNTIL TWO YEARS AFTER THE TRIAL AND THE APPEAL HAD BEEN EXHAUSTED

Claim nine- (Exhibit D,E, F,G,H,Z) Court's view petitioner did not present what questions could have been asked of which witnesses, is beside the point. That counsels performance is [presumed] competant,.

PETITIONER BEGGED THE ATTORNEY TO ASK [NUMEROUS]QUESTIONS,

(Exhibit All) Petitioners ground was failure to object to false evidence,inadmissible evidence is ultimately a tactical decision.Stating petitioner has not shown [which] objection would have been successful and attorney was not required to raise objection that would be futile.Then relies that if the alleged Confession of Third Party to the crime, counsel was not ineffective in efforts to bring the evidence to the jury.

Again lack of investigations that relate to investigations,WATCH_ PIN,DNA ON CIGARETTE BUTTS,RED HAIR WITH ENTIRE ROOT BULB ATTACHED,FINGERPRI NT REPORT)

Quoting "Judges are not like pigs,hunting for truffles in briefs(United States v.Dunkel(7th.cir.1991), 927 f2d 995,956)

Claim ten- Peti tioner claim of trial courts prejudice error in denying motion for new trial and self representation relying on lack of court jurisdiction to consider.

Claim eleven-Where petitioner brought that trial court during marsden hearing took the attorney's word over the petitioners without [any] investigation, that were available to attack the credibility of the attorney.

Here the court rules that petitioner brought denial of the Marsden h Motion, Then relies on lack of jurisdiction to consider.

Claim twelve-Where petitioner brought right to self representation at all critical stages of the proceedings, this court relied on lack of courts jurisdiction to consider.

ALL OTHER COURTS SUMMARLIY DENIED THE PETITIONS BROUGHT

Here the respondent relies on the inappropriate standards deemed through the Supreme courts, and not recognized by [any] of the lower court.

Respondnets consideration of the lower courts ruling as denials of habeas as full and reasonable consideration to federal authority are erroneously applied by the California Attorney General in this matter. As this court can see, the lower courts either recognized the possibility of error, but then invoked lack of jurisdiction.The other claims, because of denial of discoveryt or Trial transcripts , petitionere was prevented from presenting the merits in their entirety, therefore erroneously denied.

STATES RELIANCE ON Musladin,549U.S.70,77(2006

Under Musladin with the Circuit Court of Appeal,in reversing and ordering a REMAND,concluded that,1) Two prior decisions of Unitred States Supreme Court had established a test for inherent prejudice.,2)The California Court of Appeal applied a different test,and,3) Thus,for purposes of 2254(d)(1), The California Court of Appeal decision was contrary to and an unreasonable application of clearly established Federal law as determined by the United States Supreme Court(427 f.3d 653,2005 U.S. app. LEXIS 22735)

Souter,J. Concuring in the judgement,expressing the view that criminal trials posed by conditions that ,1)In evaluating threats to the fundamental fairness of a criminal trial posed by conditions in court-room, the question was whether the condition at issue presented an unacceptable risk of impermissible factors coming into play in the jury's consideration of the case. Here the respondent relies on this threshold as his alternative to relying on the face of the facts that were brought into the state courts to begin with.

SILENT DENIALS WITH THE LAST REASONAB:LE COURT'S DECISION

Ykl st.501 U.S. at 803,Shackleford v.Hubbard,234 f.3d 1072(9th. cir.2000)(District court"look[s] through" to the last reasoning decision as the basis for the state court's judgements),to the extent petitioner raised claims herein petitione for Habeas Corpus to the court of Appeal, the court rejected the the claim without reaching the merits.When the State Court's deny Habeas claims

on procedural grounds(The court should note that respondent doers not contend that [any] of petitioners claims in the FAP are procedurally barred)and do not reach the merits the court [must] review the claims de novo.

Rather than under AEDPA's deferential standard.See Cone v.Bell,565 556 U.S.449(2009)(if a state court did not reach on the merits of the claim,federal Habeas review is not subject to **DEFERENTIAL** Standard. That applies under AEDPA.....[and] the claim is reviewed de novo")Stanley v.Cullen,663 f.3d 852(9th.cir.2011)(where it is clear.....that the state court has not decided an issue, we review the question de novo(ommission in original)Therefore respondent reliance on deference for claims that are contrary to Supreme Court rulings and decisions,or were not decided on the merits, is hindered from disputing under reliance standards.

The records were witheld and discovery hidden with regards to this petitions birth, trial transcripts were refused and petitioner prejudiced because of these factors .Petitioner relies on the respondents failure to apply the proper standard for review, and his repeated mistatements of the facts.

STATEMENTS OF THE FACTS IN PETITIONERS REPLY

Petitioner will reply to the entire answer filed by the Attorney General of California. Petitioner will only address the issues brought in the petition EDCV 14-01877-PA(DTB),AND identify the Attorney general's errors in either failing to properly address the merits or issues stated in the petition, or their failure to apply the appropriate standards of review for this court. Petitioner noticed the Attorney General has failed to addreess certain facts, and will correct in **BOLD HIGHLIGHTED PRINT.**

The Attorney General fails at every matter set forth inthis petitiond brought by the petitioner, and petitioner will make considerable showing the Habeas Petition should be granted.

Petitioner comes now on the merits of the errors by the State of California against the petitioner John Henry Yablonsky's Constitutional interests and rights.

BURDEN OF PROOF

When enacted the 1966 Amendment to 28 U.S.C.§ 2254 congress specified that in the absence of factors [enumerated in id 2254(d)(1)-(8) the burden shall rest on the petitioner.....to establish "by convincing evidence that the factual determination of State Court's was Erroneous".....[W]e now hold that a habeas corpus court should include in it's opinion granting the Writ the response reasoning whi ch presentlead to conclude that any of the [eight] factors was present.Purkett v. Elem,514 U.S. 765, 769(1995)("[I]n Habeas proceddings in federal court, the factual findings of state courtsar e peresumed to be correct and may be set aside" only if ,

affected by "procedural error" or "if they are not fairly supported by the record"Remanding for further proceedings because"Court of Appeal did not conclude or even attempt to conclude that there was some basis not to presume correctness of state court findings. §17.1,Before congress enacted the rul es governing§2254 cases in 1988, the controlloing statue provided that "the allegation shall be acccepted as true except to the extent that the judge finds from the evidence that they are not true 28 U.S.C.§2248(2006) Wright v.Dickson,360 f.2d 878,881(9th.cir.1964)

Accordingly,if respopndents answer alleged some fact or legal principle fatal to the petition or to some claim in the petition(for example, that claims were not exhausted or that an allegedly coersed confession was in fact voluntary), the court could dismisss the petition or claim if the person failed to file a"traverse" alleging a contrary fact or principle.28U.S.C.§2254, Stewart v.Overholser,186 f.2d 339,342 n.5(DC cir.1950);Lowery v.Young,887 f.2d 1309,1311(7th cir.1989).

Section 16.2(b) ,If a factual dispute arises, in that eve nt the petitioner may respond to State pleadings by asking the court to authorize proceedings to resolve the factual dispute,such as discovery,employ of experts or investigators,expansion of the record,or an evidentiary hearing, or refer to magistrates acompanying the motions for leave to conduct fact finding procedures should be either in reply(if the state has made the arguement in it's answer).Blackledge v. Allison,431 U.S.63776(1977)(quoting Pennsylvania ex rel.Herman v.Claudy,350 U.S. 116,119(1956)

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Sec.16.2(c),If the state disputes the legal merits of the claim the petitioner first should examine respondent's arguement for implicit factual assumptions that are **UNTRUE OR IN DISPUTE** and that a request of the factual assumptions are reviewed by fact-finding procedures and discussed. If careful scrutiny reveals no factual dispute the petitioner should ask the court to set a briefing schedule.If the state asserts procedures default to relief on a claim to the petitioin as a whole, the petitioner must scrutinize the states assertions with care to identify themselves and recognize responses to the brief of default raised, unresolved factual questions that may or maynot be obvious on the face of the answer.Generally the court may find it efficient to allow the fact-finding process to proceed simultaniously with respect to petitioner claim and state defense.Smith v. Wainwright,741 F.2d 1248,1256 (11th cir.1984).In 1963 in Townsend v.Sain,372 US 293(1963) in context of review a lower court's denial of habeas hearing,The Supreme Court rulked that the district court always have the discretion to hold evidentiary hearings on dispositive factual questions arising in Habeas Court Litigations.Id.at 318.The court further ruled that "the holding od a [federal]hearings mandated in six situations,Townsend 372 US at 313(emphasis added)see Id.at 313-19(extensively discussing six situatiuons) including some circumstances in which the state courts previously held a hearing and made fact findings.

This was not the case here, the court relied on the lack of jurisdiction

1) If merits of factual dispute were not resolved in state hearing.
2)State factual determination is not **FAIRLY** supported by record as a whole.
3) The fact-finding process employed by the state court was not-

adequate to afford **FULL AND FAIR HEARING.**

4) There is substancial allegation of newly discovered evidence.

5) The material facts were not adequately developed at state court hearing.

6) For any reason it appears the state trier of fact did not afford the habeas applicant a **FULL AND FAIR HEARING**

Townsend was replaced by Tamayo-Reyes,which held that failure to present evidence which is attributable to either the prisoner or counsel can constitute procedural default "that eliminates the right to a mandatory federal hearing unless, 1)state waives reliance on default,2) petitioner demonstrates that default is "excusable" because there is "cause" for prejudice" from that failure to present evidence in state court,or,3)Petitioner shows that the denial of a hearing will result in a "fundamental miscarriage of justice" because there is a probability petitioner is innocent of crime which he was convicted.

Defendants were entitled to waive their right to conflict free representation. Where such waiver was made **KNOWING,INTELLIGENBTLY, AND VOLUNTARILY.**State v.Garcia(1975,CA5 Tex)517 f2d 272.Defendant may not make knowing waiver of constitutiional right to effective representation in absence of **SPECIFIC WARNING OF SERIOUS DANGER** TO HIS DEFENSE POSED BY HIS ATTORNEY CONFLICT OF INTEREST.

The conflict exists and is reasonably shown in this petition and the attorney's admissions in the marsden hearing, that he spent less than 6 hours discussing this case, to include the court hearing appearances. The attorney admitted to witholding evidences, of over 3700 pages of the 4000 pages of discovery. The conflict was made because tof the attorney's **INTELLIGENT AND KNOWING, DELIBERATE FAILURES TO ACT OR MAKE SHOWING.** The attorney deliberately mistated his contact with the petitioner, saying he made 4-6 jail communications visits,where the record show 1, and the jails record will show 2,1-45 minute,1-10 minute visit.

All the other communications between the defendant and the attorney were done in the court room and in front of the prosecutor,other inamtes andf not in a confidential enviornment to **ANY** DEGREE.The attorney made no effort to explain any of the [extremely importance of evidence] or what evidence exists for that matter. Under these conditions there is no **[inte ligent,knowing]** of the information about the case to the defendant by the attorney.

Opinions of the court designate the rights listed below as "structural"" constitutional rights that are so basic to a"**FAIR TRIAL**" that their infraction can never be treated as harmless error" or as so prone to prejudice,when violated, that prejudice already has been proved or should be presumed;

1) The right to counsel (including choice of counsel) at critical stages of the proceedings before and at trial and on appeal, including;
   a)The right to effective assistance of counsel,Hill v.Lockhart, 28 f2d 832,839(8th cir.1994)
   b)The right to representation by an attorney who does not simultaniously represent another criminal client with conflicting interes.
2) The right to self representation,Fulaminante,supra,499 US 168 at 310(Majority opinion on this point of Rehnquist,C.J.)
3) The,protection against prodecutorial suppression of exculpatory evidence and other prosecutorial and judicial failures to make "MATERIAL" evidence or witnesses available to the defense counsel at trial, when the "MATERIALITY" id disclosed and defined as at least a "reasonable probability that,had the evidence been discl osed to the defense, the result of the proceeding **WOULD HAVE BEEN DIFFERENT**.United States v.Bagley,473 US 667(1985)
4) Other due process,speedy trial, and like violations requiring proof of prejudice,defined as at least a reasonable probability that ,but for the violations, The outcome of the trial would have been different.Estelle v.McGuire,502 US 62,72(1990)

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lied to the jury about the [accuracy] of the transcript recording from the interrogation (exhibit 49) to (exhibit 49A) as being accurate. As outlined inthe (PHB)(Pages 61-62).The ouitline in the before arguements are considered here, as outline, they were false in nature and misleading of the truth.The respondent does not even mention the testimony of the transcripts [accuracy] becasue in doing so, he would have to admi t intentional error, in direct violation as outline in HILL V. LOCKHART,28 F.2d 832,837 (8TH CIR. 1994).Here again the respondent relies on the state courts viesw becau se the petitioner failed to showe deficient performance or prejudice.(Lodgement 13 at 5-6), but then ignores that this was an error which was constitutional and not subject to deferance due the injection of false evidence.Buisness &Practice §6068 that it is indepoendant obligation to take steps to correct witnesses known false statements.U.S. v. Whiby,75 f3d 761(1st.cir.1995); Olano,507 US at 732-36,1134 s.ct.at 1777-78.Cal.Rules of Prof.Cond. rule 30-110.Petitioner rests his arguement that the respondnet fails to respond reasonable, ignoring facts, and mistating facts inhis attemp t to dilute the error.Respondent relies on an outline earlier in the arguement that is [empty] and [void] of facts.Respondent's reliance on his outline earlier in the arguement as his applied background here, will only sh ed light that he cannot dispute the errors, without fabrications of the truth. The evidence in (exhiubit B throughout)(exhibit Z[477-590] are to be the exact copy of the exhibit 49A that detective Alexander swore was [ACCUTRATE]) to (exhibit Z after 590) the copy of [exhibit 49] that was placed onto the records in disc form.Let me be perfectly clear the disc

THIS IS OUT OF ORDER PUT IN NUMERICAL SEQUENCE

[EXHIBIT 49] THAT WAS RELEASED TO THE PETITIONERS APPELLATE ATTORNEY is "even more content" than this 136 pages. Making the detectives sworn testimonty deliberate and intentionally false. This error is not subject to [trial tactics] nor is is subject to forfeiture because of the attorney's alterior motive. "[It was false evidence!!!]" The prosecutor then relied on the courts jury instruction. This matter will be detailed later in this arguement.

Respondnets reliance on the [content] of the fingerprint report testimony as he outlined earlier, but was inconsistant with the [whole] truth, his Bac kground is short. As (exhibit D1-D2) leaves this court very little to imagine on how this officer could not recall the existance or it's content. Respondent relates the detective testimony as ,how did he put it"RATHER,THERE MIGHT HAVE BEEN INCONSISTANCIES IN TESTIMONY,IN RE GARDS TO OTHER WITNESSES,AND [DETECTIVE ALEXANDER],BUT SUCH INCONSISTANCIES DID NOT AMOUNT TO FALSE EVIDENCE(lodgement 13 at 6-7)The error in this instance relies on whethter that the attorney intentionally failed to secure this officers testimony or whether it [could be considered as trial tactical decisions] or whether these inconsistant statements with the actual truth could even be considered as [FALSE EVIDENCE], and whether the arttoreny failed to enter an objection ,securing these arrors against his client constsituional interest amounts to IAC. ACCORDING TO THE COURTS IN HILL, IT DOES.

PETITIONER ENTERS AN OBJECTION

Respondents failure to recognize the error in content as brought and relies on his incorrect appli cations of the truth earlier in his answer, that were false, this court should consider his

vague applications of the facts as possible [transparent] attempt to concede error.Hill v. Lockhart,28 f.2d 832,839(8th cir.1994), United States v.Bagley,473 US 667(1985);Estelle v.McGuire,502 US 62,72(1990):Kotteakos v.United States,328 US 750(1946):Buis.& Pract. §6068(to take immediate steps to correct false testimony(9th.cir.) Curry v.McCanless(1939)307 US 357,83 l.ed. 1339,59 s.ct.900. Authority as outline in (PHB)

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Petitioner brings Ineffective assistance of counsel, that the state presented witness Bruce Nash for testimony about the last known location of the victiom and her [character].Respondent relies on a background he [outline]earlier as his [arena].As outline earlied in respondnets background, it was reasonable deficient, since he failed to recognize the petitioners habeas brief or habeass as his outline. The facts were outlined earlier, and this ground discusses whethter this attorney's failure the secure the objection of the false evidence that was presented by Bruce Nash as [false evidence].Without relying on the evidnece brought forth in the state court ruling in Superior court, the court relied on stating that inconsistant statements over such a long period of time cannot be interpreted as perjury if the statements were inconsistant. As detailed earlied, the witness repeat ed the same statements over the years, in seperate interviews,(exhibit E2-E9)and the the court asked this witness to read the police reports to refresh his memeory. The statement that was given **(RT417:13-17)** That he was aked if she was headed home, he answered "I don't know, I believe so",.

If his statement in 1985 was that he and his grilfriend Cyathia left ther party at 9:45 p.m.(2145 hours) and his statement in 2009 that he had left around 9-10 p.m. (2100-2200 hours) which is the same [AND RITA LEFT AT 2330, 11:30 PM]. His statement also states that "When Bruce pressed her to allow him to drive her home she refused hes offer.Rita even made the comment that she was thinking of going to the Zodiac Bar, or somewhere elese before she was going home."This is **NOTHING IN ANY WAY LIKE HER SAYING SHE WAS HEADED HOME.**Therefore his testimony that was interrupted by the court (which will be addressed later [EXCEPTIONS TO HEARSAY, ABUSE OF DISCRETION] was that he believes she was hea ded home after his two alike statemen twenty five years apart and his reading the police reports just seconds before his testimony make the statement in question false, misleading and therefore **PERJURY.**The attorney had this information, and considering the line of questuions he was asking, lead one to believe he was asking the witness "where was she going".[EXHIBIT R2, 4, 5. The courts interuption, even after this attorney said he had witnesses that would corroberate this witnesses testimony "That rita was in fact seen in **A BAR THAT FRIDAY NITE**"the courts displayed that ["THE **EVIDENCE THAT WILL BE IN THIS TRIAL, WAS THAT RITA COBB WAS NOT SEEN IN "A BAR THAT NITE"**] LEFT THE ATTORNEY TO BELIEVE EVEN A DIRECT STEARN OBJECTION COULD NOT BE CONSIDERED. The error was not subject to forfeiture, nor to be considered as trial tactics. The court properly recognized that Penal code § 1473(b)(1) it was not required of petitioner to show that prosecution knew it was false.As the respondent then ADA Ferguson admits there were inconsistancies in the witnesses statements,**"that inconsistant evidence is not synonomous with false evidence",**

Again respondent claims this witness never said he was coached, this is extremely false, petitioner had the attorney ask this of this witness "WAS HE COACHED" after being prodded by the defendant then. The winesses answer was that he was, the "Friday before testifying". Petitioner cannot control errors in transcript. RESPONDENT STATES (RA52:6-9)THAT PETITIONER SAID NASH SAID HE WITNESSED COBB LEAVING THE SAME TIME HE DID. THIS IS WHAT SULLIVAN SAID, "NOT NASH".

Finally the respondent states that there is no hint of inadequeate assistance.This line of questions fell with the state and federal rule of evidence, and securing the erroe was within (PHB73:14-21)

PETITIONER ENTERS AN OBJECTION

Again this respondent mistates facts about what petitioner stated in his habeas,brief about Nash saying he saw Rita leave party. Respopndent relies on inaccurate facts in his answer and leaves the court bewildered. The lower courts deferance on an attorney's actions, without some base of [disclosure] of the facts, review, or any other fact revealing method is confusing.To rule in it's view an error there was sufficient evidence, knowing the trial transcripts were withekld, made it impossible to understand what they meant when saying **'inconsistant evidence is not synonomous with the meaning of false evidence.)"** In light of what evidence were compare d to this claim, other than the **WITHELD EVIDENCE** WHICH IS NOW PROPERLY BEFORE THIS COURT, THE LOWER COURTS RULING WERE NOT COCNSISTANT WITH Supreme Court Authority.Hill v. Lockhart, 28 f2d 832,839(8th.cir.1994)Kinsella v.United States (1960)361 US 234,4 1.ed.2d 268,80 s.ct.297(Due process has to do with denial of fundamental fairness,shocking to universal sense of justice,

it deals neither with power nor jurisdiction, but with their exercise.)McCurry v.McCanless(1939)3097 US 357.;Kotteakos v.United States,328 US 750(1946)Case and authority in (PHBO) incorporated by referwence.

12.

Petitioner bringds the state witness John Sullivan made false statemenets,and that trial attorney did not challenge them and enter an objection,ineffective assistance of counsel.Respondent relies on inappropriate backgrounds in his answer earlier in his arguement.Respondent then relies on the rules and proinciple he set out earlier also,and offers no other.In the analysis by the respondent, he claims the error was properly addressed in the state courts, which is incorrect because there was fact finding materials ,information other thabn the courts refusal to release trial tranmscripts and the attorney's failure to releaese the evidence until the Bar association got involvered(exhibit I18-I 25)The attorney was repeatedly asked numerous questions with regards to the evidence,investigations, everything with regards to this case, and was deliberatley ignored and lied to.(exhibit,J) Respondent opines that petitioner is only concerned with the attorney's failure to impeach "A SINGLE WITNEESS".Respondent then generously presents the fact that this witness said that he did not know where they got that information from, because he was still awake.(RT429)While this witnesses testimony was inconsistant with Bruce Nash,Franceessca Drake, or any other police reports made from 1985 up to 2009 when he spoke the case with detective Alexander and Myler.

Respondent states that because the dispetity had been presented, that bit was not a challengable matter for the attorney, or the prosecutor for that matter to address the inconsistant statements from 1985 to the 29009 2009 statement.There was no identifications withnthe witness' testimony that just contradicted Bruce Nash' testimony that just swore that he did not give Rita Cobb a ride home, while this witness was saying that he witnessed Nash give her the ride, and that he drove Rita Home.The evidence was there and whether the attorney was frightened of the courts, or interpreted that the court would deny it any ways, it for his FIDUCIARY OBLGATION TO DIRECTLY SECURE [ANY] FALSE EVIDENCE OR TESTIOMONY THE JURY MAY BE CONFUSED BECAUSE OF IT's contradiction to previous evidence or CONTRADICTING TO THE DIRECT EVIDENCE THAT THE SAME WITNESS HAD ALREADY CREATED A RECORD THAT WAS COLLECTED FROM STATE AUTHORITY IN THE LINE OF OFFICIAL DUTY AND INVESTIGATIONS. The attorney had this information at the table and was being prodded by the petitioner, but would not address this issue, possible because the court had interrupted the line of questions with Bruce Nash just moment before, and the courts distinct command"THE EVIDENCE THAT WILL BE IN THIS TRIAL WILL ,BE THAT RITA COBB WAS NOT SEEN IN A BAR THAT NITE, AND THAT EVEN THOUGH SHE SAUID SHE WAS GOING TO A BAR, THE EVIDENCE WAS THAT THEY HAD WITNESS THAT SHE WENT HOME AND NOT THE BAR" As outlined earlier by this respondent, it probably would not have been considered anyway by the court. The claim this is about is that this trial attorney knew the error wwas there, had the proof at his table, and refused to challenge the witness for appellatre reasons.

Was this attorney's failure consistant with the Supreme court consideration of Ineffective Assistance of Counsel ?
Again the lower courts consideration was based on insuffücient showing of PROOF.Here the respondent fails as well. He ignores thé value of the Sixth Amendment and the protections of the Fourteenth Amendment which are generously slathered across the Govermnets actions to the petitoiners rights.

PETITIONER ENTERS AN OBJECTION

The respondent relies on inappropriate outline off the facts and considders them as light in value in consideration to the petitioners Constitutional Protections from the Government officials in this case where the defendant was convicted by false evidence after the courts were informaed that he was innocent.Hill v.Lockhart 28 f2d 832,839(8th.cir.1994)United States v.Bagley,473 US 667 (1985);Curry v.McCanless (1939) 307 US 502:Kotteakos v.United States 328 US 750(1946)

5) The right to an impartial judge
6) The right to a trial by jury which encomasses;
a)The right to a jury,including a capital sentencing jury, that is **IMPARTIAL** AND IS NOT ORGANIZED TO CONVICT OR TO COcondemn,and
b)the right to a grand and petit jury selected in a **REPRESENTATIVE** MANNER free or racial discrimination.
7) The right to a public trial.
8) The right to **A JURY VERDICT WITHIN THE MEANING OF THE SIXTH AMENDMENT"**,which in light of the **FIFTH AMENDMENT REQUIREMENT OF PROOF BEYOND REASONABLE DOUBT**,IS THE RIGHT TO "a jury verdict of guilty beyond reasonable doubt",that includes,
a) the full protection of the reasonable doubt standard at trial,including the right to a jury instruction on the states burden to prove all elements of all charges beyond reasonable doubt that does not dilute to the protection afforded by the reasonable doubt standard.
b) a ban on :"direct verdicts for the state",
c) the right to a unanimous jury verdict.
9) The right in capital cased, to a sentnecing process adequatley "narrows" the catagory of offenses ans offenders eligible for capital punishment and that requires sentences consideration of all the relevant mitigating cirtcumstances.
10)In states which to death sentences are based on the sentencer's weight of aggrivationg and mitigating evidence, the right to have state court or the sentencer reweigh the proper aggrivating and mitigating factors inthe event that the sentencer premised the origuinal sentence on an aggrivating later determination to be invalid as a matter of federal law or state law.
11) The right to an appeal

After the petitioner addressses the proper facts in the respondents answer, he will apply the appropriate error standard which applies in this instant case, and provide the "proof of burden" which rests squarely upon the petitioner, without incorporating further grounds.

ANALYSIS STANDARDS

The determination consideration under [Brecht/Kotteakos] standard thus is not strength of the evidence or the,probability of conviction at a "HYPOTHETICAL" retrial absent the error,BRECHT,supra,507 US at 642(stevens concuring)(The habeas court cannot ask only whether it thinks the petitioner would have been convicted even if the constitutional error had not taken place.Kotteakos is full warning to avoid that result.)See also O'Neal v.McAninch,513 US 432,451(1995) (Thomas,J. dissenting)(The standard for judging harmless in habeas cases certainly does not turn on the innocenseof the habeas petitione Rather, the relevant question is whether the error substancially affected the actual thinking of the juriors or the deliberations or deliberate processes by which they reached their verdict.Once again the words of justice Ruthledge in Kotteakos are instructive.[2]

In Kotteakos, the court reversed a lower court conclusion that an instructional error was harmless "since guilt was so manifest" Although agreeing with the lower court that guilt was manifest, the court nonetheless found the instructioinal error prejudicial because the error "Prevaded the entire charge:" and accordingly made "highly probable: that the error has substancial and injurious

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[2] [T]he question is.....not [whether the jurors] were.....right in their judgement regardless of the error or it's affects upon the verdict.It is rather what effect the error had or reasonably may be taken to have had upon the juries decision.

The crucial thing is the impact of the thing done wrong on the minds of other men not on one's own, in total setting.This must take account of what the error meant to them, not singled out and standing alone, but in relation to all else that happened.And one must judge others' reactions not by his own, but with allowance for how others might react and not be regarded generally as acting without reason.This is the important difference, but one easy to ignore when the sense of guilt comes strongly from the record.

effect or influence in determining the jury's verdict".In reaching this result the Kotteakos Court took great plans to make clear to lower court judges that the touchstone of harmless error is not whether "there was enough [evidence] to support the result, apart from the phase affected by the error",or whehter "the evidence offered specifically and properly to convict each defendant woiuld be sufficient to sustain his conviction,if submitted in a seperate trial'or whether the jurors "were.....right in their judgement;or whether"conviction would or might probably,have resulted in a properly conducte d trial";or even whether "the evidence concerning each petitioner was so clear that conviction would have been dictated and reversal forbidden,if it had been presented in [proper] trials".

Under Kotteakos,"**The question is....rather what effect the error had or reasonably may be taken to have had upon the JURY'S DECISION.The crucial thing is the impact of the thing taken and done wrong on the minds of the [JUROR'S].....**"

In Brecht, the court simialarly fefrained from inquiring whether the evidence untainted by the constitutional violation was sufficiernt to sustain the verdict or whether the defendant would probably be convicted in a retrial free of error.Focusing on the central question of whether the constitutional violation "substancially influence[d]'" the jurors, the court concluded the error was harmless silence because the prodecutor's unconstitutional references to petitioners post-miranda silence were not only minimal but "in effect,cumulative" of entireley constitutiona evidence,given the states "extensive and permissible references to petitioners perpre-miranda silence.'"

In Brecht v.Abrahamson,possibly at the behest of Justice Stevems,whose vote made a majority for the court's new "substancial affect" harmless error rule for habeas corpus cases,, th e Court tentatively announced an exception to the rule;[2] As As Justice Stevens explained in his concurrence in Greer V. Miller,"There may be extraordinary cases in which the error is so egregious,or is combined with other errors or incidants of **Prosecutorial Misconduct**, that the integrity of the proceding is called into question"[3] To this prosecution-focused exception may be added the Brecht Court's suggestion that "affirmation evidence that state court judges are ignoring their oath"to uphold federal law might warrant a less forgiving harmless error rule in order to deter state courts from relax ing their own gaurd in reviewing constitutional error". As justice O'Connor pointed out in her dissent "The court's language in describing this exception is suggestive, forcing litigants,lawyers and court's to whether exception does exist.

2 Our holding does not forclose the possibility that in an unusual case,a deliberate and especially egregious error of the trial type,or one that is combined with a pattern of prosecutorial misconduct,might so infect the integrity of the proceeding as to warrant the grant of Habeas relief,even if it did not "substancially influence:"the jury's verdict.CF.Greer v.Miller, 483 US 756,769(1987)(Stevens,J.,conurring in judgement).ID Id.at 638 n.9

3 Greeer,supra,483 US at 768-69(stevens,J.concurring in the judgement)Cf Cf.Brown v.Illinois,422 US 590,604(1975)(in assessing taint of 4th amendmenmt violations,"purpose and flagrancy of .....official miscoinduct are .....relevant")See also Note,Harmless error,Prosecutorial Miscinduct and Due process,supra§

"State court[] error[s]...[in] the manner which...Supteme Court precedent" is applied to materially different circumstances must be assessed under section 2254(d)(1)'s "neighboring 'unreasonable appliéation'clauses" Id.

> In construing the "unreasonable application"clau.se, the majority said:"A s tate court decision that incorrectly identifies the governing leagal rule but applies it unreasonably to the facts of a particular prisoner's case certainly would qualify as a decision 'involv[ing] an unreasonabl;e application of....clearly esaablished Federal Law.'"In defending the "unreasonable application," the majority unequivocally rejected the 4th,6th,5th,and 11th Circuit's narrow reading of the phrase as limited t .o state court decisions that apply "FederalLaw" in a manner that reasonable jurists would all agree is unreasonable'"
>
> Williams v. Taylor,supra,529 US at 409 (O'Conner,J.for majority) Declaring that "[t]he placement of this additional overlay on the application clause was erroneous", the Court instead"[][s]tated simply [that] a federal habeas court making 'unreasonable application'inquiry should ask whether the state court's application of clearly established federal law was objectively unreasonable."(Williams v.Taylor,supra) Although acknowledgeing that the term "unreasonable" is no doubt difficult to define" nowithstanding the ubiquitousness of the term inthe legal "wprld" and federal judges general "familiarity with it's meaning,"the court offered no general guidelines other than to declare that,"[f]or purposes of today's opinion, the most important ru :le point is that an unreasonable application of federal law is different from an incorrect application application of federal law"and that ["a federal habeas court may not issue the writ simply because that court concludes in it's independent judgement that the relevant state court decision applied clearly applied and established federal law erroneously or incorrectly. Lockyer v.Andrade,538 US 63,75-76(2003)(even if federal court's "independent review of legal question""leaves court with""firm conviction""" that the state court's was erroneous"Habeas corpus relief is not appropriate under section 2254(d)(1)'s"unreasonable appl ication" clause absent further determination state court was "objectively unrerasonable'

The court has found "objective unreasonable" when a state court:

1) Misframed the application of legal standard or overgeneralized from the Supreme Court's application of the rule in a error prior decision by,for example,elevating merely descriptive or explanatory language from the Court's earlier decision into an element of the legal rule standard the COurt crerated or applied there;

2) Erred in it's analysis of the facts by ,for example:
a)committing "a clear factual error";
b)"merely assum[ing] that a certain factual conclusion is is correct rather than systematically scrutinizing the relevant facts;
c)uncritically "defer[ing[to an individuals assertion (such as, for, example, a trial lawyers claim of a strategic basis for an ommission or apparent error) rather than rigorously appraising the valididty of the contention;

3) erred in it's application od the legal standard to the facts by example;:
a)finding a doctrine;l exception to be applied to the facts when it actually is NOT:
B)failing to give appropriate consideration and weight to pertinant facts;
c)construing or applying some element of the legal standard in an overla y broad or unduely narrow manner that has the affect of skewering that particular element or undermining other elements of the statndard.

As the Supreme Court explained in [Wi ggins],the state court post-conviction trial court denied relief on the Strickland claim on the ground that "when the decision not to investigate,....is a matter of trial tactics, there is no ineffective assistance of counsel],"and the "Maryland Court of Appeals affirmed the denial of [postconviction] re;lief,concluding that trial court counsel had made 'a deliberate,tactical decision to concentrate their effort at convincing the jury 'the appellant was not dirtectly responsible for the murder.Wiggins v. Smith;Wiggins v. Corcoran, 537 U.S.1027(2002)

Petitioner brought errors that were the fruits of the state actors, according to the actual occurances of their fruitation. The errors were conducted in concer t and included the petitioners attorney. The petitioner researched the errors and applied them liberally according to the George Town Law Journal, and other research material. Petitioners claims are on point and the laws and rules are on All Fours. The petitioner fi led these applications sworn under the penalty of perjury, and appropriately applied the state laws, rules and statues which pertain to each and every error.

The applications were applied quoting state authority ,and federal authority to diasplay the state courts ignored their own guidelines and rules as well as the federal protections that blanketed the petitioner in his trial, for which he is innocent of the crime charged.

REPLY TO RESPONDENTS ANSWER FILED NOVEMBER . . . .

1) In respondents (II) he claims thestate courts consideration was fair and based the decision on the merits, or merit was objectively unreasonable.

Petitioner enters an objection

The merits were witheld and hidden by the state denying release of the trial transcripts and evidence, therefore erroneously denying the "Merits" unreasonably.

2) Based on the respondent deliberate refusal to admit the truth in any of the grounds brought forth in this petition, and misquotes facts as his grounds for dispute. In (III) of the answer stating there is no lawful basis.

Petitioner enters an objection (The facts are laid out following)

3) Respondents answer (V) declares the claims were rejected whose decisions are entitled to [deferance] because there was no unreasonable application of United Satates Supreme Court precedent on the facts presented. In respondents answer, he clearly ignores the grounds in areas and the authority incorporated in them and oth in his choice of [answer].

Petitioner enters an objection (as outlined in this reply a showing will prove this responedent ignored conter t of claims in his response answer, and deliberately mistated facts.)

4) In respondents answer (R.A. from here foward) (R.A.4:19-R.A.:5;3) respondent displays the conditions of the victims last known conduct according to the state witnesses. Respondent left out the fact that Nash and his girlfriend left the party at 2145, "leaving Rita there consuming Jim Beam"(CT 117,exhibit E-e2) and that she was not headed home but instead she said she was goiing to a bar called the Zodiac(CT271,Exhibit E-e2)

5) In respondent (R.A.6:7-9) states that Kramer and his girlfriend stated that they complied "staying out of the house until the crime was processed." While in his testimony he said that he entered the house after he was told not to.

6) In respondents (R.A.9:15-18) outline of the facts he neglects that this was an expert giving expert testimony.This witness testified as follows (RT471:26-472:4)

* After intercourse,those (sperm cells) are in tact for a day or two.Then their tails basically start breaking off.
In this case,most of the sperms had the tails absent,but since she was in decomposition, we couldn't use them to

state whether it was immediately prior to death or at some time prior to death.

(RT490:25-491:5) The expert does state that the sex had to have occurd up to shorter than a week, but up to a day and a half before the murder took place.

7) Respondents insinuation that petitioner blatantly denied sexual relations with Rita Cobb left the fact that petitioner was interrogated in the presence of his wife just a few feet away in listening range(RA10-12) that they had asked twice whether petitioner was sexually involved with a murder victim.The respondent suggests these denials were based on guilt, except in one of their own transcripts of the interrogation the following occured,(page 16 of 113 pages exhibit 49A),

-Hi,how are you?
-Melody ?Melody? Nice to meet you.This is,I Am Rob.This is Greg.Yess....(The transcript was altered,(what did he say yes to?) (page 51:26-52:3)(of the exhibit 49A transcript)
-You wanna after you discuss this a little bit more in DETAIL WITH HIM.I wanna ask him some more questions.I'd like to go down to um,the other location to speak.**I think some things that we are gonna talk about are gonna be a little bit private embarrassing and I just wanna make sure that we're in a comfortabl location,UM KINDA OF AWAY FROM YOUR WIFE [DO YOU MIND GOING WITH US?](THIS IS NOT HOW THAT CONVERSATION WENT[alteration]**

8) In respondents answer on (RA14:18-28) he fails to state that the ADA from the appeallate division of the district Attorney's office did not dispute the petitioners motion response or the evidences presented inthe Habeas core itself.Outlined in the petitioners motion to rules (exhibit attachment AT9-AT18)of this petition filing in the federal court.The courts denial of the petition was based on the discovery presented, and the

trial transcripts were witheld. There was no evidentiary hearing to resolve that petitioner repeatedly disputed the arguements of the state reperesentative.

The State Habeas court did not consider the Supreme Court authority outlined in the petition or the motion to rule, and thereby **Not relying on reasonable facts or authority.The state court relied on the appeal Courts to address the issuesplainly before them, knowing these issues were not addressed in the appeal court to any degree, knowing the petitioner presented Prima Facie showing in his of facts, quoting the authority that state court needed to rule.** The ADA argued there was no proof of the mailings being prejudicial, and that transcript quotes were innaccurate as his reliance to consider their values. Since the trial transcript were witheld until 2 years after the trail and the appeallate procedure concluded, petitioner could not have known until now that the trial transcripts were altered, or the value of the discovery that was witheld.There was no **FAIR OR ADEQUATE HEARING** WITH REGARDS TO ANY OF THE CLAIMS.

SILENT DENIALS WITH LAST REASONED DECISION

The answer states that the claims were denied by the trial court and later denied by the higher state courts without comment means this court looks through those silent denials to the decision of the court.Without a Full and Fair hearing on those matters, it is impossible to distinguish what merit existed or flourished because of the petitions or discovery released because of the petitions,therefore his comment is [Empty] without considering a constitutional interest.

9) While the respondent relies on untrue facts that he cho se to parrot form the ADA in the Satet ... Habeas, that (RA :21;6-14)THAT THE PETITIONERS SPERM WAS LOCATED UNDERNEATH THE VICTIMS BODY IS ENTIRELY UNFOUNDED AND UNTRUE

This attempt to bolster the courts view is far more than prejudici is more disturbing considering the facts that there is no evidence or expert analysis to corroberate his claim.

PETITIONER ENTERS AN OBJECTION ON THIS MISTATE MNTS OF FACTS

Petitioner will address the respondents denials of responsibility in the following pages of this petition. Petitioner has outlined his authority in his petition, and in the begining of this reply.

THIS CLAIM SHOULD BE GRANTED

Based on the Attorney Generals statements that irregardless of the claims made by petitioner, his claim should fail because he denied having sex with the victim.

> As the Supreme court observed more than one hundered years ago,even an innocent man may lie,in such circumstances (YABLONSKY'S DENIALS OF SEX)Hickory v.United States(1986) 160 U.S.408,417("An innocent man when placed by circumstances in a condition of [suspicion] and [danger] may resort to deception in the hopes of avoiding such proofs")internal quotations ommitted)
>
> United States v.Johnson(2nd cit.1975)513 f2d 819,824,(("falsehoods told by defendant in the hopes of exrtricating himself from suspicion of circumstances are sufficient proof on which to conduct where court is as hospitable to an interpretation consistant with the defendants innociense as it is to the governments theory of guilt.

(RT(1)36:11-19)

DDA T -So why would he say he hasn't had sex with the victim??

Court- BECAUSE THAT WOULD PUT HIS NECK IN THE NOOSE FOR MURDER!!

"

Dr.DSaukel (RT490:25-491:5-)

DDA- As far as the sex was concerned,based on your training and experience and based on a moderate amount of sperm,can you say this orrured a week prior to death ?

Dr-It would be shorter than that.

DDA-how short?

Dr-it could be up to a day and a half.

DDA-within a day and a half ?

(This was the state prosecutor asking his expert analysis and)(expert opinion, knowing himself the sex and murder were not (connected.)

Criminalist Jones(RT490:25-491:5)

(This is States expert criminalist giving expert analysis)

I WOULD SAY IT WASN'T DAYS BEFORE IN TERMS OF DID SHE HAVE (SEX) INTERCOURSE,SEVERAL DAYS PASSED AND THEN SHE DIED, I "M CERTAIN OF THAT!!!!!

The Prtoisecutor did not challenge these facts, enter an objection or even ask whether they were sure, he accepted this as facts accepted of state expert forensics team.

Therefore the Attorney general grossly understated his claim while he himself repeatedly in his answer stated there was DNA found outside the vagina and on the body which is untrue to every degree. There were collections from a [desk blotter] found under the quilt,under the victims body, but the evidence was damaged, cut only a small portion of the blotter with DNA fragments, and discarded the rest, denying [DEFENSE ANALYSIS]) for further DNA possibilities./

Respondent relied on the state courts improper analysis of the

evidences that were not challenged,reviewed or investigated to any manner by the defense counsel,whos repeated failures, incompatence and errors forfeited his client appellate , and constitutional right to a **fair trial.**

DISPUTED ARGU. MENTS

1.

Petitioner brogght Prosecutorial error of County District attorney using his case in his re-election camp aign, vouching for the defendants guilt in his election fliers he personally mailed to every registered voters ho me.

Respondent lays a backgotound that is improper basing his grounds in a motion filed by the defendants coundel for [Conflict] while the basis of this ground is the [MISCONDUCT] itself. As outlined in Petitioners Habeas Brief (from here foward (PHB) which speaks in detail the sequence of occurances. Respondent then applies rule with regards to federal habeas review comparing [ordinary] trial error. This is false. There is nothing [ordinary]of the act.Petitioner relie s on state rules and state laws, then incorporate federal authority,Gentile v.State Bar(1991)501 U.S.1030 which is the controlling authority in this claim, and is supported by the grant of Certiorari,as outlined in (PHB13-14)The actions of the District Attorney of the Co unty are and were deplorable. As the court can see (exhibitA1) of this filing the court's trial dates were schedu;led over one month before the act was conducted, bringing to light that it is believable this County District Attorney used this act intentionally, after knowing the trial dates were on calendar.(exhibit A2-A9) are co piess of the MANY

flier mailed to the homes,buisnesses,and community establishments. Respondent then relies on the Appellate Courts decisions used from the ground later discussed in this petition as his holding authority, then liberally provides the elements inwhich [any] attorney could conduct himself with regards to their opinion of any defendant.This is an improper analysis and should be considered when conducting applicable standar ds for review.Petitioner has given the appropriate analysis is his (PHB12-17)where any attorney [all] must refrain from extrajudicial statements regarding defendants and certainly anmonishes opinions of prosecutors in upcoming trial, restricting these acts to be confined to courtrooms , and **DEFINATELY NOT INTO THE LIVINGROOM OF EVERY REGISTERED VOTER WHICH WILL BE SEQUESTERD INTO TRIAL .**

(Kotteakos v. Unite dStates,328 US 750 (1946)

)- PETITIONER ENTERS AN OBJECTION

The respondent relies on the inappropriate standard, and argu .es merits of a later diuscussed ground, presenting nothing that pertaind to the arguement, prejudicing the defendant right in the 5Th Amendment and 14th Amendment Due process. Curry v.McCanless(1939)307 U.S.357,83 1.ed.1339,59 s.ct.900

2.

Petitioner brought claim that the interrogation recording the state transcribed and released to the defense attorney,which released to the defendasnt was altered.Respondent lays background that is later discussed inthis petition, but suggests it be applied in this instant.(RA30:10-13) he conceded the element of this claim as present, then goes on to discuss other factors that again are argued later inthis petition.The rules he applies in his [rule] are unfounded and frivolously discussed.

The authority he displays are the constitutions Due Process incorporated into the Fifth and Fourteenth Amendments then argues there is a need of factual bas is,that the use of [broad phrases] of the "due process'" and "fair trial" is too [broad]. While the respondent has not investigated the possibilities of this claim and relies on his conjecture, that because the petitioner cannot make a showing of this fact, there exists the following for the court to consider;(exhibit B18)page 51 of 113 in the transcription line 3 afterthe words "do you mind going with us?" there was a discussion of where we were going and this transcription was altered at this point, because the officer offered a more comfortable location, and petitioners response was " We can go to the caf e around the corner, there is enough room for everyone (there were at least two cars of officers at this time at my residence,in the drive way gaurding the entrance, and two others)while the detective said"it would have to be more comfortable than that' and defendant asked" more comfortable for whom." This section is the [hallmark] of custodial interrogations and relates to other questions presented in the petition later on.Respondent relies that petitioner did not enter an objection at trial, but negates the facts the court instructed the defendant at the time that "if [any] interuptions were to occur, the defendant would be removed from the court and held in a cell a t the end of the hall and listen to his trial over speakers placed into the cell." Respondent then relies that this derived from a "singler statement" had redacted from the transcript,, where (exhibit B1 and B2) show 23 pages of statements missing.Respondent fails to see in

(exhibit I1-I9) that details this error existed before the trial ever occured.(exhibit P3) details the attorney's release of discovery of (300)pages and any other discovery released to the defendant was done so after the trial.While the respondent on (RA34:7-9) states that there is nowhere in the record there are pages missing from the transcript.

PETITIONER ENTERS AN OBJECTION

Mistatements of facts are deplorable and this claim should grant on failing to properly dispute this claim to [any] degree and rests his arguement on errors properly brought later in this patetion. SHIH WEI SU V. FILLION, 335 F.2d 119 (2nd Cir. 2003

This ground should prevail for the above stated reasons Petitioner relies on the Due processclause of both fifth and fourteenth amendments are direct protections of individual, and is entitled to their immunity against the state. BRADY V. MARYLAND, 373 U.S. 83 (1963), CALIFORNIA V. TROMBETTA, 467 US 479 (1984) Omnia Commercial co,v.United States(1923)262 US 502,57 l.ed. 773,43 s.ct.437;Curry v.McCanless(1938)307 US 357. Kotteakos v. United States,328 US 750(1946) F.R.E. RULE #'s-901(a)(1)(A) -1002

Petitioner brought facts that DDA mistated facts during an in-limine haaring, respondent relies on inappropriate standanrds in his answer.Petitioners core was about the prosecutors statements to the courts were that he said "He never investigated the Brook's case" and therefore the merits of "third p arty should fail". Respondent lays background which he suggests Gregory Randolph (william Backhoff) should be the basis of this arguement, but this is not what was discussed in the ground brought by the petitioner and that Robert Mark Edwards was the inculpator here.

In (exhibit Q2 S1&S2) Are the core of this third party hearing held which this error was made by the prosecutor. Inculpating Robert Mark Edwards to this crime by the Vicap reoprt dated 12/2/02 as being the more likely perpetraitor inthis case. This arguement inthe court over lapped the existance of the confession of Gregory Randolph, but again this is not the basis of this arguement, that will be discussed later in this petition.Re spondent relies on the courts suggestuions that P.C. §352 applies in this instance. The court applied the incorrect standard, while it was determinaed that,1) there was no investigations into the Helen Brooks case, 2)That there were no motive or other elements presented by the defense. Here the defense attorney relied in the Third party culpability of People v.Hall.There is nothing existant in the unreasonable use of evidence or witnesses which would suggest 352 concerns, therefore the courts too applied the incorrect reasoning in their denial. Again the core of this claim come from the Presecutor mistating facts.Since the respondent does not dispute the claim to any reasonable degree, he conceded the prosecutor did in fact mistate facts in the trial hearing held, and cannot make a s howing he did not. The VICAP report controlled the Third Party direct circumstancial merits for Robert Mark Edawards, where the defendant attorney would have been fruitful had this mistatement been injected into the courts listening view of the motion in-limine.

The respondent analysis of prosecutorial error/Misconduct is better applied elsewhere, while the petitioners brief in great detail are the correct appliocations of the federal rule.

The error did violate V and XIV Amendments Due Process clauses

USC§1001 Bus+Prof§6068 Mooney V. Holohan, 294 U.S. 103 (1935)
-Omnia Commercial co.v.United States (1923)261 US 502;Curry v.Mc McCanless (1939)307 US 357;Kotteakos V. United States,328US 750(1946)

PETITIONER ENTERS AN OBJECTION

Respondents repeated refusal to address the core of the arguement in this ground, while addressing others from later in this petition should weigh on the courts view in this claim, while petitioiers arguements in)PHB (PBH250-28) and(exhibit C)support the petitioners claim.

4.

Petitioner brought prosecutorial misconduct based on his lead investigators mistatements of facts (perjury)along with subornation of perjury.Respondent qualifies this as error instead of misconduct which dramatically udder mind the weight of this error.As described inthe begining of the reply petitioner defined perjury as a maat er of convenience. Respondent clearly makes light of the detectives sworn testimony as "not sure if there were any fingerprints developed from the house" (see exhibit D) and that he could not"remember all the names".

LET PETITIONER MAKE CLEAR THIS IS NOT WHAT WAS SAID OR ANSWERED IN THE TRIAL, THE TRANSCRIP TS WERE INCORRECTLY RECORDED.HAD THEY BEEN PRESENTED IN THE FIRST INSTANCEWHEN PETITIONER ENTERED THE SUPERIOR COURT, REQUESTING THEM, THIS COULD HAVE BEEN ADDRESSED THEN [THE ALTERING OF THE TRIAL TRANSCRIPT]Addresssing this issue on the face, as outline in(PHB 29:10-23) petitioner clearly outlines the wieght of the evidence that exists. (Petitioner will attem pt to move this court to incorporate Ground 43 at the end of this petition)This s tates expert lead investigator was questioned about the content of evidence that exists and was part of the

alleged crime scene and directly relates to culpability with its content. To state that he DONT KNOW IF THE EVIDENCE EXISTS, AND IF IT DID EXIST HE CANT RECALL ALL THE NAMES LOCATED ON THIS REPORT IS IN EVERY SENCE "PERJURY," AS DEFINED IN EVERY ENGLISH LANGUAGE distionary, and legal distionary. Respondent makes light of this falsehood, while petitioner habeas brief in great detail define its value and applies the proper law with regards to this denial. Becuase the respondent fails to recognize this as Perjury ,he generously brings authority which, if considered according to the truth , does in fact apply under ,Napue v. Illinois,360 US 264,269,79 s.ct.1173,1.ed.2d 1217(1959),.

The analysis is considered when a defendant in pursuit of the truth and during cro ss examination of a states witness about evidence from a cri me scene that exculpates the defendant, but is witheld and frivolously hidden through erroneous objections of Hearsay, about the content of state evidence collect from a crime scene and controlled in the possession of the state from the time of collection until trial (even 25 years later)does not in any sense qualify as HEARSAY.Respondent does give the federal authority and Constitutional value to this claim, while he himself hides behind the erroneous assumption the MISLEADING COMMENTS BY STATES WITNESS, ESPECIALLY STATES EXPERT LEAD INVESTIGATOR ABOUT THE EXISTANCE OF THE REPORT IN QUESTION DO ES NOT QUALIFY AS PERJURY.(SEE DEFINITIONS STATED BEFORE)The re spondent brings sufg ,estions that inconsistant statements as a plausible defense mechanism is astonishing deplorable, here the proper authority is Napue v. Illinois,360 US 264(1959) while petitioner brings

exceptions to the hearsay standard discussed in the (PHB) Federal rule of evidence Rule 803(6b) and California Evidence Code § 1280 (a)(b) The writing was made by and within the scope of duty of public employee ,and the source of the information and method and time of preperation were such to indicate the (product) it's trustworthiness. The value of this evidence weighed into the juries questions when determining who was at the crime scene.This as it sat was the gatekeeper to who possibly commited this crime and was "witheld".Respondent fails to discuss the sworn statement by this detective abo ut the [accuracy]of evidence w ith rega rds to the interrogation transcript, which was sworn to be accurate. The perjured testimony was not outlined in the habeas but was the core of the petitioners brief that was filed. The fact that respondent did not address this element in the petitioners claim leads one to assume there was no arguement available. The detective that lied about the existance and content of the fingerprint report in the same testimony swore the content of exhibit 49 that was [allegedly] an [accurate] content of exhibit 49 A. This is a gross mistatements of the truth to the calculations of over twenty three pages in content. The perjured testimony of this officer hid the facts about the evidence that was brought in this trial and were deliberate acts of the prosecutor and his expert investigator "lead" man.The trial transcripts in whole, prosecutor s closing statements ,defense attorney's closing statements corroberate there is a problem in the transcript, while the attorney's trial notes will do the same. Corroberate the trial transcript were very inaccurate.

Respopndent claims this was addressed in the state courts and denied because there was no showing there was proof of this error, that there were inconsistancies in testimony by Detective Alexander, but this is just false, the error was brought in court and transcripts along with evidence were witheld do make showing this error is in fact present and does in fact depict **exactly as the petitioner claimed.** BRADY V. MARYLAND, 373 US 83(1963), ARIZONA V. FULIMINANTE, 499 US 279(19 GIGLIO V. UNITED STATES, 450 US 105(1976)

PETITIONER ENTERS AN OBJECTION

AS detail;ed in the (PHB) along with the discovery disclosed makes showing the error was prejus=dicial, while this respondent states that Detective alexander's statements were inconsistant with testimony is dispicable. This witness was asked one set of questions and lied. The prosecutor entered an objection that was clearly an abuse of the courts authority by sustaining it, that states evidence could be considered as HEARSAY.The state then asked the court for an instrucytion on the(audio/visual transcript) which was altered even more, telling the jury this was an "original media," just after they were told by the detective it was accurately transcribed with and from exhibit 49.

Petitioner relies on the authority inhis Habeas Brief.

Kotteakos v.United States ,328 US 750(1946), ARIZONA V. FULIMINANTE 499 US 279 (1991)

5.

Petitioner brings prodecutor committed misconduct by presenting witness Bruce Nash and instructing his teestimony to perjury. Respondent argues in his background the witness stated he don't recall who left first.The core of the arguement brought in this ground is that this witness under oath swore ,

(RT415:8-417:4) after an erroneous objection about the last know statements of the victim, and during further cross examination that (RT417:13-17) where he was asked whether she was ready to go home, and he answered that ".I don't remember, I believe so." The content of this t.estimony came in cross examination and just after state asked him to review the police report to refresh his memory, where the reports show he said she said she was going to a bar , instead of home.(see exhibits E)and when considering this answer was different than the police reports, petitioner had the attorney ask whether he had been coached. The answer was the same as John Sullivan's, that they were coached the friday before trial testimony.As outlined inthe exhibit, the statements are inconsistant with the truth, that if she said she was going to go to a bar, that she would not be headed home. Because the prosecutors objections on this matter were erroneously applied with the courts abuse of discretion and applications of legal rule. This led the defense attorney to seek the evicdence in further pursuit. If the statements were the same over a great period of time, and are inconsistant with the trial testimmony, it does call for perjury, especially when there was a line of questioning that was interrupted by the courts erroneously as (hearsay) this witness relied on his previous instruction he received the friday before testimony.

Respondents applications of the facts are invisible and not in any light as the habeas writ was brought, or presented. Respondent does state the rule shou;ld be applied as stated before ,petitioner relies on the presence of Napue v.Illinois,360 US 264(1959)along with the authroity brought in the (PHB).

PETITIONER ENTERS AN OBJECTION

As outlined in the Habeas core and the Brief filed, this respondent relies on facts that are mentioned but not the core of the arguemnent in whole.Respondent states this witness was NOT asked about being coached but that is exactly what was asked.John Sullivan's testimony in trascript make showing of this too, and if the transcript does not show it, it only indicates there was error in the recording. Petitioner had the attorney ask Bruce Nash was he coached, and the answer was "Yes this last friday"The courts erroneous denial of the state application rested on a long history of rememberabnce as possible defects in the testimony, but it was the prosecutor that had this witness look and read the police reports in his direct examination. Therefore his recollection could have been no longer than 5 minutes from the direct to cross.

This error should be analized by Kotteakos v. United States ,328 US 750 (1946) and the authority in the Habeas Brief. Shih Wei Su v. Fillion,335 f3d 119(2nd.cir.2003);Napue v.Illinois, 136 US 264(1959);Brady v. Maryland(1963)(citation ommitted); Killian v. United States,368 US 231(1961);Fed.R.Evid.Rule 402, 803(5)(B)(C)was made by a witness when the matter was fresh in the memory of the witness, and accurately refreshes the witnesses memory.Brecht/Kotteakos. PETITIONER NEVER SAID NASH WITNESSED COBB LEAVE THE PARTY

5.

Petitioner brought Prosecutorial miscoindact and subornation of perjury of witness testimony from John Sullivan.The Sullivan had made statements in 1985 ,just 2 days after the crime allegedly happened, that he had fallen asleep (exhibit F2) which was consistant with all the other witnesses,

28.

that were interviewed.Reapondent relies on Sullivans statements that he recalled seeing Bruce Nash and Cynthia assisted Rita Cobb reach it home. This is inconsistant with Bruce Nash' statements over the years and Cynthia's statements as well. Cynthia did not testify.While Nash said (consistantly)that he had not drank anything that nite, and that he had left before Rita left, by at lease an hour.(exhibit E2)Respondent relies on the fact that just because Sullivan said he saw Nash take Rita home in his sworn testimony, that it was the truth.(RT428:24-26)"Robert Alexander gave me papers last friday,but on thoise papers that I read,not all of the statements were actually accurate.

Respondent states that this witness was not suggestive by saying Nash was not coached. This witness did admit to being coached. (RT2428:24-26) This witness was asked about being coached, and as in the Nas h case the transcripts were recorded incorrectly. The statement as outline above does suggest this was coached testimony Respondent relied on the courts view of the merits because there was no showing the evidence to support this claim, but as the court sees now ,the eviedence was witheld and hidden. Strickland v. Washingtom(citastion ommitted)U.S. v.Frost,125 f3d 346(citation ommitted.)Where the respondent relies on the facts that this witness said that he don't recall "saying that" with regards to his 1985 testimony(RA42:3-8)This is not supported by any of the other testimony to [any]degree.Stating the (disparity) to have been inthe open there could be no false testimony.Discussed later in this petition on Ineffective assistance of counsel.

Respondent relies on disfigured records in comparison th the facts.

Begause the respondent relied on misapplied rule earlier and suggests itis consistant here as well, petitioner agrees, it did not apply there and does not apply here either.

PETITIONER ENTERS AN OBJECTION

Respondent's refusal to recognize the evidence brought in the state courts, and the courts denial of the habeas then because of (unavailable proof) when he knows the evidence was witheld in violation of petitioners rights.

Petitioner relies on the authority outlined in the begining of th is reply .Kotteakos v.United States,328 US 750(1946):Curry v. McCanless(1939)307 US 357,83 l.ed 1339,59 s.ct.900. UNITED STATES V. BAGLEY, 473 US 667(1985)

Petitioner brings that Daryll Kramer made false statements under prosecutorial miscunduct, and subornation of perjury, stating th at his relationship with his mother was considered (regular) disputes but nothing more.Respondent relies(RA43:5-10)(RT141-42) That Kramer said his relationship was arguementative, and that the last time they had a pretty good ~~relationship~~ ARGUMENT."

The discovery provided explains a very different outline on the [relationship](exhibit G12)(exhibit U3-4)(exhibit U8-9)While the state existing statements do exrox the petitioners claim, they left a less colorable picture than Mr.Kobbs Statement, that he had interupted Daryll wh ile daryll was beating on his mother in her drive way.Since the Prosecutor was using this testimony to establish in the jury minds of the relationship Daryll had with his mother, it is starkly different than the truth.

While the respondent states there are inconsistancies in the testimonies(RA43:14-17) that those inconsistancies should not be considered as perjury. This claim directly narrows the [many] inconsistancies to just this specific one.Where this witness swore his relationship was arguementative, and nothing more, while the [entire] town knew that Daryll had repeatedly beaten his mother. There was no reason to defraud the jury of the truth, this was not an abuse case, it did not suggest their relationship woul d or could alter whether she was dead or not. This evidence was used to prime the jury that Rita Cobb was a loving mother in a good relationship with her son. Exceopt that was the furthest thing from the truth.Outlined in People v. Savvides,1 N.Y.2d 554("IT IS OF CONSEQUENCE THAT THE FALSEHOOD BORE UPON THE WITNESS' CREDIBILITY RATHER THAN DIRECTLY UPON THE DEFENDANTS GUILT") Respondent then states that petitioner is disatisfied with the cross-examination.(which is discussed later in this petition) The coincidence that KObb's knowledge of the last visit with his client being that he interrupted her from being beaten in her drive way and Darylls last visti being the same time of recollection is astonishing. Indicating that Daryll had not returned to his mothers home since the fight.The question arised, whether argumentative relations are comparable to physical attercations, which terminate contact, could be suggestive as the [same].In light of the reason the prosecutor presente d this withess and asked that specific question,[relationship], does intrigue the perspective of the jury and had they known his testimony wwas inaccurate in comparison to Kobb's witnessing,, would have shed a different perspective.

While here the direct examination produced that Daryll had a good relationship with his mother, and during cross, it was revealed that it was not. The fact that this attorney did not produce the evidence to isolate to perameters of the relationship are discussed latrer.

PETITIONER RELIES ON THE AUTHORITY OUTLINED EARLIER

As the respondent relies on principles regardsto prosecutors, petitioner relies on the authority in his Brief adn the following Brecht v.Abrahamson,507 US 619(1993):Kotteakos v.United States 328 US 750 (1946)Mooney v. Holohan ,294 US 103 (1935) Curry v.McCanless(1939)307 US 357. Kinsella v.United States,361 US 234,4 1.ed.2d 268,80 s.ct. 297.

8.

Petitioner outlined inhis first seven grounds the errors that were committed by this team of state officers, from violations to buisness practices of the goveenment, panal codes of the state and of the federal government. Petitioner has brought these errors in support of his rights that were deliberat elty and calculated in cumulative effect, denying the petitioner a right to a fair trial by the production of altered evidence,perjured testimonies of state and private witnesses, after the entire county registered voters population had been primed with prejudicial matter as the result of the County prosecutors re-election intentions, quoting his personal opinion opf the defendants guilt in a trial that had already been on calendar for over a month ,and just

over a month before it was to begin.Respondent avoided the core of the arguements by not even addressing the arguements brought in each of the grounds,and implied the elements of [other] arguements that will, be discussed later in the petition should be considered. The respopndent deliberately mistated facts about the evidence and it's location, and suggested that because the petiutioner did not have the evidnece that is justly before this court now, that the earlier petitioners grounds brought were denied justifiably according to federal laws. The earlier courts avoided the rulings because of the appeal that was directly in line with these arguements but on [seperate] distinctive facts and detailed that what was presented was insufficient to determine the a ruling and decalred [lack of jurisdiction] as an alternative to ruling.As outlined in the above arguements and petitioners habeas brief, the respondent has failed to address]any] of the arguenments at all .The respondent relies on his failure to address these issues as his attempt to squarely present to this court that no error was committed at all.His claim is erroneous and addresses errors that were not even brought yet.Possibly because there is no excuse. The comment that petitioners DNA was the product of the murder is a flat out lie. The interrogation recordings will show that they were altered, hiding the facts that repeated attempts to end the interrogation were denied.The errors by the state team were calculated and in directr violation of petitioners constitutional interests.

PETITIONER ENTERS AN OBJECTION

Respondents deliberate mistatements are in violatuion of the truth.

Petitioners authority are brought incorporated by reference from the Habeas Brief and in this reply accordingly.

The court should grant an evidentiary hearing on these disputed facts, a discovery period, and an inve.stigator to have the interrogation recording evidence examined, and base it's decisions on these matters after the period of review has been accomplished. Brecht/Kotteakos (citations ommitted)Curry v.McCanless(citation,ommitt UNITED STATES V. BAGLEY, 473 US 667 (1985)

9.

Petitioner bring IAC (ineffective assistance of counsel) with his trial attorney for failing to object to false mistatements by the prosecutor during an in-limine hearing.Respondent relies on his previous authority as outline in grounds one through eight as his background for this arguement. While respondent lay s the peramater s of Strickland as an authority for investigations and attorney trial tactics . Resondent then brings Burt .v. Titlow 134 s.ct. 10 17,187 1.ed 2d 348(2013)That prisoners failure to bring [evidence] to prove affirmatively his claim 1) just what counsel's acts or ommissions were,and 2) such acts or ommissions could not possibly have had a rational basis, the proper judicial responmse is to reject the claim for lack of proof.(exhibit D11-D47)(exhibit C1-C4)While the respondent clearly recognizes there was a hearing, and that the court interrupted the process as saying that the court had addressed the issue and that even if an objection had been entered, it would have been futile. Under this condition of trial activity,it could not have been reasonable as the respondent said, to challenge this factor, the eror went unchal lenged by the attorney, and the instruction of the court to the defendant preventeed this also/.

The error was before the court but not challenged, the false evidence was an error that prevented a defense mechanism. People v. Stratton (1988)2056 Ca.2d 87, distinguishes the failure to challenge the false inadmissible evidence. This failure to secure this error was constitutional and therefore not subject to forfeit. Federal rules of Evidence Rules's 401,402 404(b)(2) which are determined in the view of thirdparty culpabitity elements. It was in this hearing where the error was presented, not an arguable error, but whethter a mistatement had occured, and if it did, was it properly addressed.Respondent then admits that this error probably occured, but that it rest upon the petitioner to make showing that a reasonable probability would have fared better.This argument was about whether Robert Mark Edwards was reasonably considered as an exculpating factor, being that he was ,1) free to commit this crime ,2)That he was convicted of one of the five profiled cases by the FBI VICAP division of a murder that had been committed [extremely] alike as the Cobb Murder, or Brooks murder. Respondent relies on the view of this claim through the lens of Yarborough v.Gentry,540 US 1,6,124 s.ct.1,157 1.ed.2d 1(2003)

When set aside in comparison to all the analysis of this attorney, the error has become habit and instinct to his conduct and courtroom conduct. Leaving no room for consideration. Respondent considers that [vague]evidence of thirdparty involvement exists, yet determin his opinion of what the attorney did or did not do as a meaningful trial tactic.(RT273-75)The error had been brought to light by the prosecutor saying "that he had not investigated the Helen Brooks case." That is this ground only."

Respondent then stated that the court reviewed this error under a Ca,Ev.C.§ 352 alanalysis standard. This may be true, that it was materially ruled, but that does not bring that this error was not a 352 consideration. The prosecutor lied to the court in response that affected the courts view of the arguements with regatds to Third-party culpability. In conjunction with that he had revealed the records to the attorney, and that Yablonsky was not a suspect to the Brooks case. The court now, has considerabl knowledge of the reverse error analysis which is determined for third party culpability. Petitioner has a right under the constitutior to present a defense, and because of the courts view in trial, the attorney was subjectively influenced when they did tell him that he thought [he] made himself cear on that matter.(RT279)

Jenkins v.Artuz,294 f3d 284(2nd.cir.2002)

PETITIONER ENTERS AN OBJECTION

Respondent states there was no error, but ignores that it was notr available to be considered as possible trial tactics it is never alright to inject false evidence into the trial. The evidence was there to refresh the attorney's comments, but this tto was froforfeited by this attorney.

Strickland v.Washington,466 US 668(1984)Curry v.McCanless(1939)307 US 357.

10.

Petitioner brings that the trial attorney did not object to the false testimony of Detective Alexander,1) That he lied about the content or existance of the [fingerprint report],2)That he

he lied about the interrogation/interview recording that was played to the jury was an **[ACCURATE] transcription** as exhibit 49A from exhibt 49.The respondent relies on his background that was [set] forht in his answer, and his [principles] regarding ineffective assistance of counsel.These applications are incorrect.The respondent analysis duer to the witholding of the evidences from the petitioner and after [numerous]requests, the courts relied that petitioner failed to show [deficient]performance.Except the court stated that it lacked jurisdiction on the [false statements in ground four of superior court Habeas] but then displays a [possible] attorney competance through more,further questions as is erroneous. The lower court made clear that petitioner did not display an objection would have been successful, and that attorney's are not requioresd to raise objections that are [futile].Thge court states that petuittioner did not display IAC.Here again,the court in summation of the ruling, that inconsistant statements over the years did not qualify as [perjury]. The court was ruling on [numerous]claims of failure to enter an object.Detective Alexander in not to be considered as **[as inconsistancies of testimony, in regards to other witnesses,and[Detective Alexander] but such inconsistancies did not amount to false evidence.**How the court can [lack jurisdiction]on the core of the arguements then rule on the result of the core, or its options is erroneously interpreted.Respondent then states that Detective Alexander was **"Not sure if there were any fingerprint report developed'"**,is only a portion of the arguement. The respondent failed to address the statement that the exhibit 49A was [accurately] transcribed from exhibit 49

The courts know as well as the attorney and the detective that was testifying for the prosecutor also knew, the transcript was altered, but this officer presented it as [accurate], knowing that it waas their responsibility to present it to the jury as [altered] and explain that it's altering did not alter the meaning of the interrogation content, and then for them to present [BOTH] **copies, the original and copy** onto the rrecord.But this was not what was done.Thge fatcs that this team erasded e impeaching evidence as well as federal rights invokation (which will be discussed later in this petition) left this attorney no choice but to challenge the way it was brought onto the record. The same goes for the statement that this detective that just swore he has all the evidences from this case,, and had reviewed [all] the evidences, and say that he was not sure that the report existed, and if it did, he was not sure it had been developed, or who's prints would be on it.((THE TRANSCRIPTS FROM THE TRIAL WERE ALTERED)

The respondents statement there is no basis for reliefe is wrong.

PETITIONER ENTERS AN OBJECTION

This respondent repeatedly mistates facts, and does not address the basis of the false statement with regards to the altered transcript that was sworn by this witness that it was [accurate]

11.

Petitioner brimgs that trial atttorney failed to object to false statements of Bruce Nash during trial.Respondent relies on the backgrounds he laid out earlier with regards to Bruce Nash testimony and the prosecutorial misconduct.

Respondent then relies on the rules outlined also.In respondnets analysis,Ground four of the state petition, the court lacked jurisdiction to consider the misconduct of the evidence,and that the courts view on inconsistant statements by a certain wittness is not synonomous to perjury,evemn if the the inconsistancies diminish the witnesses credibility.The petitioner does not in his assessment of the **IMPACT OF THOSE INCONSISTANCIES DOES NOT DEMONSTATE THAT THERE WAS FALSE EVIDENCE USED AT TRIAL.**The courts view wasa dislodgeing of the facts and detoured the core of the arguement itself.The lower court view of the meaning of[]**MISLEADING, OR FALSE STATEMENTS**[] is confusing.There sufficient showing these errors were brought, but the respomndent then relied on a diverting definitoon for the courts to rely, therefoire it is left to this court whether Nash saying that Ritas was headed home after there were several statements over the years that she told him that she was not headed home, and that she was in fact going to go to the bar instead as **MISLEADING** CONSISTANT ENOUGH TO AM,OUNT TO PERJURY, or the fact that the trial court had this witneess read the police reports to refresh him mem,orym ,and still testified differently then the statements. The BOGUS objection by the prosecutror as Hearsay was recognized by the court of appeal , that it should not have been sustained, and overuled according to PC§1250 . There is little to consider, did she say she was going to a bar ? and if she did say she was headed to a bar, should this witness have said she was going to her home, and if it were wrong, could this teastiomony be considered as false evidence sufficient to warrant an objection. Whether it would have been futile or meritorious is not the point.

The respondnets review of the facts are incorrect, and therefore erroneous. The courts decisions earlier were based on missing elements from the petitioiners arguement, and discovery along with trial transcripts were refused. The matter before this error before this court are based on the full disclosure, and doed make showing that this witness lied to the courts saying the victiom said she ewas heaeded home. The $ 4th Divsision appellate courts review this erooneous objection with regards to the victims statemens to Nash before she was murdered as **RELEVANT** and this court should also,in consideration that that statement was that she was not headed home, and that she was going to a bar, and under the context of this ground, it was considered as MISLEADING, AND therefore false.

PETITIONER ENTERS AN OBJECTION

Respondents failure to addreess the facts are egregious

12.

Petitioner brought that trial attorney should have objected to the false statements of John Sullivan. Respondent again relies on his rule and background for his analysis. The errore were induced by the courts interuption of witness Nash, about the destination of Rita Cobb after she left the party. The courts infused that **THE EVIDENCE THAT WILL BE IN THIS TRIAL WIL. BE THAT RITA COBB WENT HOME.**This attorney knew the courts direction, but this witness just impeached Nash, or Lied, and it was not a maater of trial tactics, when the result of the testimony would confuse the jury. Certainly that this statement was nothing like his other statements.

The respondents reliance that Sullivan stated "I don't know where they got that I went to bed because I was still awake" when Cobb departed(RT429)Here the analysis is frivolous becasue had this witness been awake when Nash left, he would have noticed that Nash left almost 1½ hours before Cobb left.This was factual according to the several witnesses that were there the nite Cobb attended the party.As ealirer explained ,this witness also states that when he was given the police reports by the detective Alexander the Friday Before, it was made known to the prodecutor that this witnesses rememberance was extraoddinarily different that his previous statement, and the other witnesses that were alsom interviewed by the same detective. The matter had an impeachable affect on Bruce Nash as well as hisself.The courts conmclusion in the state habeas was that inconsiistant statements could not be considered as false efvidednce. The arguement in thias amatter was whether the attoirney entered an objection on this statement. Had it been entered for 352 issues or impeachable reaosns, it was challengable, and therefore a matter of attorney responsibility. Again here, let me be perfectly clear, the defendant then brought this to the attorney's attention, and as the courts had instructed him on the **(EXIDENCE THAT THIS TRIAL WOULD BE WAS THAT THE VICTIM WENT HOME)** in conjunction with the courts instruction that Yablonsky would be removed from the court, taken down the hall and made to **[LISTEN] to the trial over speaker if he interrupted.** The error was the attorney's responsibility and was forfeited.

PETITIONER ENTERS AN OBJECTION

Again ther respondent relies on mistatewments of facts/.