PROOF OF SERVICE ACCORDING TO PRISONER MAIL BOX RULE

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Department of Justice
Calif.Att.General
Attn;Delgado
Box 85266
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This service contained the following ;

Entry of objection
Courts denial of expansion

This service was conducted by an adult over the age of 18 years of age,, and mailed in compliance with ordinary daily mail practices and routines that are processed and del;ivered by the U.S.P.S. from the city of;

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ACCORDING TO THE PRISONER MAIL BOX RULE
THIS SERVICE IS CONSIDERED FILED ON THE DATE OF THE SERVICE

UNDER THE PENALTY OF PERJURY

The forgoing of this proof of service is the truth to the bets and direct knowledge of;

John Henry Yablonsky — 2/11/15 Date

My adress is Box 8500 Coalinga,Ca.93210

John Henry Yablonsky AL-0373
Box 8500
Coalinga,Ca.93210

IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

John Hneyy Yablonsky,
Petitioner,

vs.

Scott Fraeunheim(warden)
Respondent,

EDCV 14-01877-PA(DTB)

ENTRY OF OBJECTION 28 U.S.C§636(b)(1) COURTS DENIAL OF EXPANSION OF RECORD PURSUANT TO HABEAS RULE 7 REQUEST

Filed :september 4,2014
The Honorable Magistrate D. Bristow

Enacted in 1966 Amendment to 28 U.S.C.§ 2254,congress specified the [absence] of [factors] enumerated in 2254(d)(1-8) the burden rests on petitioner....to establish "by convincing fact s and evidence that the factual determination of state court's was erroneous"....Purkett v.Elem,514 U.S. 765(1995) However when petitioner seekd to expand for reasons as to cure the [ommissions] in the state court regarding records.See Dpbbs V. Zant(1993)506 U.S.156;People v. Linden(1959)52 Cad 1, also concuring opinions justice Goldberg in Hardy v.United States (1964) 375 U.S. 277.

The Magistrates Act's and habeas rules ambiguity and the severe consequences of a failure to object give parties little choice but tc object in comprehensive manner to any respect of the Magistrate Judges report or ordered denials that is by itself

objectionable or that it does or could contribute to an objectionable fact-finding,legal conclusion,or disposition.McKeever v.Block,932 f2d 795,799(9th.cirt.1991).

Petitioner requested expansion of the records in the early fact-finding phase of the petition based off the Attorney Generals repeated denials in petitioiners calims throughout the entire petition and brief filed by petitioner, declaring, (Attorney Generals answer, from here foward [R.A.])

(RA:26-9) "On claims fairly presented to state court,petitioner fails to prove their rejection either was not on the merits, or the merits rejections was objectively unreasonable.28 USC §2254(d)."

(RA2:10-15) "Petitioner shows no lawful basis to issue the writ under a system of review already "secondary" and "limited" prior to 1996,Barefoot v.Estelle,463 U.S. 880,887,103 s.ct. 3383,77 L.Ed.2d 1090(1983), and now further "limited rather than expanded" under the AEDPA of 1996,Fry v,Pliler,551 US 112(2007),and the petition must be denied.

(RA32:18-23) (Regarding the recording transcript) "Moreover,it is simply wrong.The only transcript utilized at trial was that of petitioner's interview with the detectives Alexander, and Myler.This was shown to the jurors by way of the overhead projector during playback of the [inter]view] and a hard copy was provided to assist the jurors deliberations.Though not formally admitted into evidence,it was designated as exhibit 49(a) and appears as such in the clerks transcripts.

Here the exhibit 49(a) that was placed into the records was only 113 pages in length (hard copy) while the states exhibit

49 the actual disc of the recording ,both of which are in the petitioners habeas exhibits Z, and neither are what was played to the jury, while the disc shows over three hours and 48 minutes, and states minute record of that day show, only one hour and fifty five minutes played to the jury. Which is against state Penal code section 1401(B)(1) for authentications ,and Rules of Federal Rules of evidence 901(a)(7)(A) and 1002,Strickler v.Greene(1999)5 U.S. 263:Kyles v.Whitley (1995)514 US.419;See also Brady v.Maryland(1963)373 U.S. 83. (RA41:21-24)"The court denied the claim because petitioner failed to show there was false evidence.Rather,there might have been incoinsistancies in testimony,but such inconsistancies did not amount to false evidence.

Where herethe state court claimed lack of jurisdiction on this ground, but this was after transcipts were requested several times, and denied, and the trial attorney had not provided the remainder of the discovery in this case, which on their face do make clear and fair showing the testimonies were perjured, or suborned,

Shih wei su v.Fillion,335 f3d 119(2nd.cir.2003);Napue v.Filinois, 136 U.S. 264(1959).

(RA64:2-6)(The desk blotter)

"Petitioner has failed to show even if there was DNA it was viable and that it showed it belonged to another person.Third,that even if there was another persons DNA on a desk blotter, that doe s not show that the person was linked to a murder since there is nothing to indicate when that DNA was placed on the blotter"

Here thi s evidence was capable of showing that any other DNA located on this item, was on it for longer or shorter periods of time through PCR analysis, and being the petitioners DNA located inside the victim that had been inside there for at least one and a half full days to several days before she was killed does create [T]hird party culpable elemenss.

Objection 3))

Strickland v.Washington,466 U.S.668(1984();California v.Trombetta, 467 U.S 479(1984)

Where here the evidence had been destroyed, and what ever is left was never examined, and certainly if the DNA that is located on this item, comes back matching Gregory Randolph AKA William Backhoff or anyone else established relevance and credibility factors that are considered in third party culpability requirements.

(RA65:17-22) (' watch pin)

"Petitioner has failed to show there was actual DNA on the watchpin to test. He also fails to show that if there was something to test, it would have shown who this other person was.Additionally,even if there was another persons DNA on the watch pin, that does not show that the person was linked to a murder since there is nothing to indicate when the DNA was put on the watch pin, or that the victim may have found the watch pin and kept it."

This pin was used in the trial and shown as proof of the struggle,and was located on a the sheets right next to the victims body, where everything about this crime indicated there was severe struggled activity.And certainly of the pin tests with anyones DNA other than the petitioner, it established exculpating factors of Third Party.PCR analysis can determine the presence and length of time of it existance.

(RA67:24-26) (The red hair with root bulb attached)

"There was apparrently no physical evidence that linked Backjhoff to the murder scene, and the claimed DNA connection was not substanciated by the information petitioner provided."

Where here William Backhoffs DNA was. located in the dining

area and in the ashtray that had only eight butts in it, and three of them had the DNA of Backhoft, and one of those had his DNA on a butt that had victims DNA as well. Making this attorney Generals statement very odd. The incriminating facts in that are that this person told the detectives after he had approached them in their station uncoersed or requested, that he had heard they were looking for his help in solving this case, and that he had been at the victims house almost two weeks prior to her death, and none after.

Where this reasoning is impossible that a smoker like Rita, and [all] of her friends, to have one ashtray at a central ized area of the house at the entrance, and only having eight cigarette butts [only] for two whole weeks. The reasonable and more believable scenario of that theory was the butts were from the days of or the day before the murder and no longer.

> Wiggins v. Smith(2003)539 U.S. 510,A capital case, the courts described the signi ficance of thorough investigations, and that [s]trategic decisions made after could only be considered realistic determinations of plausible decisions regarding the investigatable evidences.
>
> Strickland v. Washington (citation ommitted)

(RA70:27-71:1)(The states witness Lori Amaro)

" There is no declaration from the trial counsel as to what he did or did not do in terms of this witness.Additionally ,any such testimony was not as critical as petitioner makes it out to be." (RA71:3-5)"Finally, and very importantly, this evidence did not come in because petitioner never testified, and there was no need for this evidence to be presented".

Where here, not only what this witness was willing to lie to the jury about, a report she has made of an alleged prior rape by her fiance Yablonsky while he lived in the ir home, but this lie was held over petitioner as a threat of what they would present to the jury should He testify of the facts regarding his relationship with the alleged victim Rita Cobb.There was an investigation by counsel Hal Smith who did investigate and did speak to David Sanders about the investigations, and after thorough investigations on Smiths behalf, he injected the failure to investigate this witness, and even commented on the incompetance of the trial attorney to announce trial readiness the day after receiving contact information on Lori Amaro. WITHOUT CONTACT There was a certified questionaire that was served to the attorney, who chose to not comment.

Discovery of this attornbey's failure to investigate was purged from his possession through Penal Code 1054.9.

Strickland v. Washington (citation ommitted)Rompilla v.Beard (2005) 545 U.S. 374,Federal Rules of Evidence Rules 602,803(6)(A)(B)(C) (RA85:24-28) (The transcript played to the jury and placed into) "The only transcript utilized at trial was that of petitioner's interview with det.Alexander and Myler.This was shown to the jurors by way of the overhead projector during playback of [the] interview, and a hard copy was provided to assist to jurors deliberations. Though not formally admmitted into evidence,it was (idesign[ed] as exhibit 49(a), and appears as such in the Clerk's Transcript." (RA86:12-14) "There is nothing in the record to show there were any missing pages from the material in the transcript,or that both sides colluded against petitioner. "

Here there exists three seperate and different versions of the transcript. FILED IN HABEAS EXHIBITS, AND THE DISC OF INTERROGATION

The following are quotes of the state officers on the Record. (RT402:25-403:13) (Prosecutor)"No,I have to do it because I have to ensure that everythings taken out that needs to be taken [out]. I don't want to leave that up to somebody else."

(prosecutor)"The only question I did have for Mr.Sanders is theres reference at the end of the interview where Mr.Yablonsky is invoking)MIRANDA)."I was planning on taking that out ....."(Prosecutor) "So I gotta go through everthing and find out where I got to cut the interview out and make sure it sounds [godd] "

(RT508:22-509:4)

(Prosecutor)As far as the digital audio portion,have you had an oppertunity to review the transcript, along with the recording,to ensude that it was [accurate[ ] ?

(Det. Alexander) Yes.

(Prosecutor)As far as exhibit 49A, which id the recording do you believe that that's accurate to the [best] of your abolity ?

(Det.Alexander) Yes.

Then as the court had listened to what they were told was accurate when it was [not], the courts interviened and gave a jury instruction. (RT550:18-23) (the courts instruction)

"I haven't been inthe 21st century for long yet,i'm kinda low tech generally. Remeber when you saw the transcript ?See it helps you understand what's on the tape, but the recording media is the [[original]".

Here not only was the recording altered and presented to the jury as [accutate[] and original [media], but the court took great interest for the jurors to understand what the defendants answers were, when the pretext in the conversations had been removed, and then told to the jury they had not.

Objection 7

THE COURT WAS MOVED UNDER KEENEY V. TAMAYO-REYES,504 u.s.1,Rule 7

Justice O'Conner and Kennedy have suggested that the court is, and should be, more willing to grant habeas corpus petitioner leave to utilize effective and fact development procedures that it is to recognize the conizability of certain kinds of legal claims."

We ought not to take steps which diminish the cognizability hurdles, likelihood that those courts will base their legal decisions on an accurate assessment of the [facts]"

(emphasis added)

Libbert in v.Ryan,583 f3d 1147(9th.cir.2009),cert denied,130 s.ct. 3412(2010)(applying Cooper-Smith v.Palmeteer,infra, to find rule 7 expansion of the record should have been allowed because of Libberton"(execcise of diligence")

Here these expected results of the expansion request, even with the states own admissions they may very well exist, could and would have certainly carried heavy credibility on the courts view of this entire case, and the evidences that were misinterpreted or witheld and or hidden from the fact finders of the jury.

Petitioner has been lied to, admittingly through the evidence presented in the petitioners claim, that were not released until after the appeal process had run it's course, and there is nothing in this or any record they revealed the altered or hidden material from the appellate attorneys thorough investigations of this case, and certainly one that wo uld argue merits of hearsay, and courts direction to jurors without competant counsel present

or the courts abuse of discretions in ruling on motions, would certainly have had an overwhelming and catastrophic interest in the elements this expansion could and would have on the appellate courts view in this case. But they were not. Because they were witheld, and therefore the state record in egregiously misinterpreted, and represented of the facts that directly and materially , and therefore the petitioners right to appeal was crippled because of the hidden factors of purchased witnesses, manufactured evidences where answers in an interrogation were altered audio and visually for the jury that was to determine the value of the defendants answers and their meanings in their considerations of the facts.

PETITIONER HUMBLY ENTERS AN OBJECTION

FOR FAILURE TO GRANT HABEAS RULE 7 EXPANSION OF THE RECORD

Date 2/11/15

Respectfully,

John Henry Yablonsky

MIME-Version:1.0 From:cacd_ecfmail@cacd.uscourts.gov To:ecfnef@cacd.uscourts.gov Bcc: John Henry Yablonsky
AL-0373
PLEASANT VALLEY STATE PRISON (8500)
P.O. BOX 8500
COALINGA CA 93210
--Case Participants: David Delgado-Rucci (david.delgadorucci@doj.ca.gov, docketingsdawt@doj.ca.gov, monica.seda@doj.ca.gov), Kevin R Vienna (bonnie.peak@doj.ca.gov, docketingsdawt@doj.ca.gov, kevin.vienna@doj.ca.gov, michelle.renaud@doj.ca.gov, susan.volsky@doj.ca.gov), Judge Percy Anderson (crd_anderson@cacd.uscourts.gov, stephen_montes_kerr@cacd.uscourts.gov), Magistrate Judge David T. Bristow (crd_bristow@cacd.uscourts.gov)
--Non Case Participants:
--No Notice Sent:
Message-Id:<18901490@cacd.uscourts.gov>Subject:Activity in Case 5:14-cv-01877-PA-DTB John Henry Yablonsky v. S Fraeuheim Order on Motion for Leave Content-Type: text/html

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UNITED STATES DISTRICT COURT for the CENTRAL DISTRICT OF CALIFORNIA

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Case Name:	John Henry Yablonsky v. S Fraeuheim
Case Number:	5:14-cv-01877-PA-DTB
Filer:	
Document Number:	51

Docket Text:
MINUTES (IN CHAMBERS): ORDER [47] Motion for Leave by Magistrate Judge David T. Bristow. The Court has not requested an expansion of the record pursuant toHabeas Rule 7. As such, petitioner's Request is DENIED.MINUTES (dc)

5:14-cv-01877-PA-DTB Notice has been electronically mailed to:
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Coalinga,Ca.93210

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT,CENTRAL DIVISION

John Henry Yablonsky,
Petitioner,

vs

Scott Fraeunheim(warden),
Respondent,

EDCV 14-01877-PA(DTB)

MOTION FOR LEAVE OF COURT TO EXPAND THE RECORD RULE 7 HABEAS CORPUS § 2254 MEMORANDUM POINTS AND AUTHORITIES.

(see attachment of appointment)

Filed ;September 4,2014
The Honorable Magistrate D.Bristow

Federal habeas corpus often is prisoners last oppertunity to ensure that the process by which the state convicted and sentenced him accords with federal law;in capital cases,habeas corpus almost always is the last meaningful chance to do so and ,indeed, to appeal to [any] judicial authority to spare the prisoner's life.

In all, and especially in capital,cases,therefore,counsel bears the responsibility of ensuring that all re asonably available avenues of legal redress are considered.This responsibility does require counsel not only to explore thoroughly the legal bases for petitioners claims,but also to take full advantage of the capacity of federal proceddings to develop the factual bases for the claims.

Justice O'Connor and Kennedy have suggested that the court is,and should be,more willing to grant habeas corpus petitioners leave to utilize effective and fact development procedures that it is to recognize the cognizability of certain kinds of legal claims.See Keeney v.Tamayo-Reyes,504 U.S. 1,19-20. (1992)(O'Connor,J.dissenting)(Court's recent cutting back on habeas corpus "all concern the question whether federal court will concider the merits of the claim,that is,whether the court has the authority to upset a judgement affirmed by ditrect appeal....The question we are considering here [the petitioner's rights to an evidentiary hearing] is quite different.Here the Federal District Court has already determined that it will consider the claimed constitutional violation; the only question is how the court will go about it.When it comes to determining that it will allow a hearing is to be held to resolve a claim that is already properly before a court, the federalism concerns underlying our procedural default cases are diminished somewhat.By this point our concerns is less with encroaching on the territorial of the state courts than it is with managing the territory of the federal courts in a manner that will best implimant our responsibility to consider habeas petitions...Federalism,comity, and finality are all advanced once relitigation [properly] occurs....."")id.at 24(Kennedy,J.dissenting)(Court's recent decisions limit habeas corpus to "actions which present questions federal cour:ts are bound to decide in order to protect constitutional rights.

We ought not to take steps which diminish the cognizibility hurdles,likelihood that those courts will base their legal decisions on an accurate assesment of the [facts]"(emphasis added)

> In this view,"once[the cognizibility hurdles] have been surmounted-once a claim is properly before the district court-a habeas petitioner [should be treated].....like a civil litigant" for the purposes of the"right to a hearing[or, presumably, any other less intrusive fact-development procedure] where [the procedure] is necessary to prove the facts supporting his claim."id, at 14-15(O'Connor,J.,dissenting.)

Here in petitioners habeas,petitioner makes colorable claims,if true would inherently influence the courts to order an evidenc=tiary hearing on the matters set forth in the facts that would be developed once the results of the fact-finding procedures have been conducted.

There exist numerous meritorious value in the result of simple investigations, and when several factors in this discovery flourish, any reasonable fact-finder would interpret the results as critical and relevant to the conviction in question.

The following are matters that,if discovered, would alter the opinions of any rerasonable fact-finders reasoning.

A) The transcript recording that was [allegedly] played to the jury over the courts audio system, and visually on the screen,

i)States exhibits 49 and 49A

ii)That was altered before being played to the jury, but the jury was instructed that it was the [original media[] and an [accurate] copy from one to the other.(INCORRECTLY ADVISED)

iii)This version played to the jury is not like or [accurate] to what was placed onto the records as exhibit 49 and 49A.

iv)This recording was altered erasing incriminating factors of the state before being given to the defense.

v)Answers were altered from yes to no, and no to yes, or versions of answers altering the parties who were speaking. This

wa

was then played to the jury with the altered answers, in an attempt to intrude on the opinions of the jurors minds and about the answers and circumsatances of the defendants re: asons for those answers.

vi)That after a version was played to the jury, another set was placed onto the records, A DIFFERENT SET.

Investigations into a technical analyst for these recording devices will produce relevant and material factors that would have altered the jurors opinion of why certain answers were answered the way they were.The interrogation recording was played to the jury which lasted only one hour and fifty-five minutes, when the entire interrogation was over three hours and forty-five minutes. Investigations would in fact make showing that the defendants answers were altered from one answer to the other on the printout of exhibit49A in comparison to the exhibit 49 (CD disc of the actual interrogations recording) WHILE A CAM-CORDER CASSETTE EXISTS, BUT IS UNKNOWN.

This act would constitute manufacturing false evidence.The jurors could then be deposed as to their memory of what was played in this recording, and would prove that the wife of the defendant was removed from the recording,that the defendant owned a blue pinto was removed, that numerous factors of hallmark custodial was removed,that defendant tried to end interrogation and was refused freedom to leave or end the interrogatiion,AND FORCED TO POLICE STATION.

B)There was a item left behind by the killer, that the DDA prosecutor presented to the jury, as proof of the struggle that the victim put up with when she was killed, and this item was located on an undisturbed area of the crime (right next to the victims head on the sheets)

The prosecution made clear that this evidence was left behind, by the way the crime scene was found and the citrcumstances of the murder . The state lead expert testified that this item could and would have DNA located on it, but that he had not conducted this type of examination himself. The item was a watch band pin, that did not belong to the victim, while the respondent here indicates that this victim collected watchband pins as a hobby, then suggests that even if there was another DNA located on this item left behing by the [killer] and belonged to someone other than the petitioner was mere speculation. This item was located and carried,

i) DNA properties which could be colected and compare to codis data, and may have come back to the man who had confessed of this crime.

ii) This information was made available to the defense attorney before trial, an inquiry into why he did not examine or investigate the evidence or have it forensicly tested.

iii) This itemn was located on the victims upper right side of her head, and would have been left behind by a right handed person that wore their watch on their left wrist.

iv) That the prosecutor knew the DNA qualities and did have this item examined for DNA and witheld the results of the test. BECAUSE THIS DNA DID NOT MATCH PETITIONERS.

Simple testing of this item would produce a different DNA type than the petitioners, and may come back matching their confessor.

The fact this item was witheld from the petitioner when he asked for all the evidence, speaks volumes, and when it was placed in front of the jurors as [the] watchpin the killer left behind, certainly weighed into the jurors collected views in this case, and if this item's DNA would have been shown, the jury would never have voted guilty.

Expansion 5

The results of simple forensics examinations would convince the court to order an evidentiary hearing on the results this item would have revealed.

C)The state collected from the crime scene, and revealed inthei'r list of DNA itemns located, one red-hair with the entire root bulb structure fully intact.This hair was collected from the victims torso area, and did not belong to the victim. Rita Cobb was salt and pepper hair colored.This hair did not belong to the petitioner either,he is blonde.The crime scene presented such a struggled atmosphere, where the victim was found strangled and a litigature was wrapped around her neck. The prosecution presented an hypothetical atmosphere, where this [struggle] occured and detailed how the struggle lasted for over three minutes. It is more than reasonable to believe that in this struggle, the victim at some point attempted to fight off the perpetraitor and in this struggle for her life, managed to pull several hairs from the assailants arms, or facial area, and subsequently pulled out one hair with the entire root bulb structure attached. The red-hair with the root bulb attached, and this item would,

i)Prove another DNA profile than the petitioners, and possible coming back to match the confessors.

ii) This item was given to the defense attorney, but the color was witheld from the petitioner, and the attorney had told the petitioner this item would be tested, and at some point did te;ll his client that it had been tested and that they were ready for trial.

iii)The state expert was qurestioned about what was located when processing this scene, but witheld that they found a red-hair with the root bulb fully in tact.

A simple examination and forensics test will prove this item that was located on the victims nude body, very material and relevant when compared to the petitioners DNA profile. Being that this item's DNA would be different than petitioners, and proving this fact to a fair minded fact-finder, they would not vote the defendant guilty when the other states expert testified that the petitioners DNA that was located on this crime scene was at least one and a half days to several days older than the actual murder. CRIMINALIST JONE, DR SAUKEL

D) The state collected DNA from a itemn that was located on this crime scene, under the bedroom quilt, and after cutting a small portion of this evidence, they destroyed the evidence remaining and discarded it before letting the petitioners attorney examine it. The remainder of the desk blotter was not examined by the attorney at all. The attorney told petitioner that this item would be, and had been examined and tested, [but was not.]

Testing of this item would have proved relevant and material which would have affected the reasoniong of the jurors opinions of the evidence,

i) By showing that there was more than just two DNA's located on this item.

ii) That after thorough examination, would have shown this item was damaged and destroyed, where a larger portion of the evidence is now missing. (REASONABLE DOUBT)

iii) When the forensics on this item reveals who's DNA actually is on it, will undermine the prosecutors case, saying that petitioners DNA was the only one found in this case.

iv) Simple examinations would prove relevant and material facts.

The examinations by forensics would have shown more than two DNA's located on this item, and while the prosecutor witness statement that this item had both petitioners DNA and victims DNA and that these DNA's were placed under a mutual circumstance. The expert did no t testify about the evidence itself, because they did not examine the evidence, only the DNA that was collected from it on that tiny portion that was cut free from the large blotter. They did not test the evidence to [any] degree, and could not say for historical certain there was no other DNA's located on this item.

Testing and examinations on the tiny remaining portion of thi s evidence will prove relevant and material to the facts.

E)The state collected a wire litigature from the victims neck, and produced this evidence to the defense attorney, who declared that he would have this item examined. The state presented this item to the jury and explained how this weapon was used, and infered that it was the weapon petitioner used. The state prosecutor witheld the DNA report from this item, possibly be cause the DNA that was collected form this item, did not belong to [petitioner.] The facts that the defense attorney agreed to have this item forensically examined, and did [not] after he had already told the petitioner that it had been, raises serious questions about the material value of the DNA that is located on this item, where further examinations would prove,

i)That this item that was used to kill Rita Cobb was not touched by the petitioner to any degree.

ii)That there was no possible way this item could be used and not have the perpetraitor leave some sign of forensics DNA onit.

Expansion 8

iii)That the DNA that is located on this item does not belong to the petitioner.

The examinations of this item would prove relevant and material, historically incredible because the state presented this item to the jury as if to suggest that the petitioner had used it to kill the victim. The state presenting this to the defense attorney, and the suggestions that this item would be examined, and then telling the petitioner it had, when it had [not], would support, that the state knew the DNA located on this item did not belong to the petitione

F)The state present ed witness John Sullivan that testified differently than his friends that were at the same party, and his own initial statements when firs t given. Then saying that he had fallen asleep before Rita Cobb left his drinking party arou nd 9:30 p.m.,which is exactly as everyo ne else had made statements of, that John Sullivan had fallen asleep around 9:30 p.m..

Bruce Nash had gone to the party with his girlfriend ,Cynthia Nash (now), and after John had fallen asleep, he and Cynthia left the party.On the stat d though, . John Sullivan testified that he witnessed Bruce Nash giving Rita Cobb a ride home that nite.

(AT 9:15 - 10:00 PM)

(RITA LEFT PARTY AT 10:30 P.M.)

John's testimony came just after Nash's testimony, where Nash testified that he did not give the victim a ride home, now afterwards Sullivan says he witnessed Nash giving her the ride.

This testimony was coersed,admittingly by Sullivan, and an investigation in the following,

i)The accounts of Sullivan for possible financial compensation for his [different] testimony.

ii)Interviews with John Sullivan and his wife seperately to determine when the state prosecutor convinced them to testify

differently than their previous statements to the det ectives just a few days after the murder.

iii) Look into the counties compensation payout fund account for state wit nesses stipen.

The fact that the court argued with the defense attorney as Bruce Nash was testify ing, telling the defense attorney that ["The]evidence that will be in this trial is that Rita Cobb did not do as she said she was going to do (go to a bar) and the evidnece that will be inthis trial is that she did not go to a bar, and that she went home,[we] have witnesses to testify to this'"[ ]

Not knowing what Sullivan would testify to, because he had not yet been called, as Bruce Nash testified that he ,

a)offered Rita a ride home that she declined.

b)left the party before she left

c) That she had told him she was going to a bar,not home. When this evidence had not been produced into the trial yet of John Sullivans testimony, the only possible explaination for Sullivan's different testimony was that there was coersi ion and influence from the state team to convince his testimo ny to now be different than everyone elses, and different than his previous statements as well.

G)The state intended to call witness Lori amaro, who had previously filed a false report of sexual abuse against the petitioner, but was dismissed for lack of prosecutors interests after preliminary investigations. There was a restraini ng order placed on Lori by petitioner after this false allegation, and records show that a waiver of release was signed by Lori Amaro. This person now had interests in testifying of the alleged actions, and came with earmarks of compensated witnesses.

There is resaon to believe this witness was also paid to testify in this trial, and investigations would prove,

i)That she was in fact recorded accepting compensation for her anticipated testimony.

ii)That there is recording material where the detectives primed this witness for coersed and false testimony.

iii)That there is payout receipt s for her anticipated testimony. This witness was used to bolster the states case, suggesting that prior bad acts would influence the jury. This witness had filed the false allegation, which was investigated, and there was a waiver signed by this witness, and a restraining order placed against her.

This witnesses testimony supported the states enhancement into a L.W.O.P. scenario. Investigations w ould prove relevant and material facts about this paid witness.

H)The attorney had made several comments to petitioner over the recorded phone service of globaltel, which is used in the county jail system, and investigations into this system under # #0903341068 to phone number (760)241-0413 between petitioner and County public defender David Sanders would show,(BETWEEN 3/09 AND 3/12

i)That there was a conversation about the altered interrogation tr anscript, where the attorney told the petitioiner that this transcript was an interpretation only and that if this case went to trial that verbatim transcripts would be used.

ii)That the attorney told the petitioiner that the investigations had been completed, and petitioner and attorney were ready for trial.

iii) This attorney lied about the campaign flyers, and told his client that only 3000 flyers were sent out.

iv)That this attorney admitted that the 300 pages of discovery he gave petitioner was all there was, [except] for DNA graphs.

v)That this attorney had been begged for the discovery before and after the trial.

vi) That this attorney was told that the official visi. t right was terminated by the county jail, and that he said he called jail commander, and the commander told the attorney that "if he did not like his decision to take it up with his boss"

The investigations into the above stated matters or relevant evidence will make fair reasonable and historically correct facts, that petitioner was prosecuted by altered evidence,manufactured evidence, paid and coersed witnesses, and appointed an attorney that conspired with the other state officers,DDA Thomas,Detective Alexander,Public defender Sanders, and the Superior Court judge Tomberlin to convict the petitioner of a murder that he [is] factually innocent of.

Futther investigations will unveil that the County District atorney intentionally and maticulously calculated his mailing of his campaign flyers to the entire county voter population where he historically placed his reputation and the reputation of his entire Cold Case team as he [PROMISED] the victims family closure for a trail that was just a few days away from the mailings.

EXPANSION OF THE RECORD

Either on a party's motion or sua sponte, a federal court "may direct the parties to expand the record by submitting additional material relating to the petition." Rule 7(a) of the rules governiong section 2254 cases inthe United States District Courts(2020).see Lonchar v. Thomas ,517 U.S. 314,326 (1996);Ashworth v. Bagley,2002 U.S. Dist. LWEXIS 27219,at*37(S.D. Ohio March 28,2002)(expansion of record pursuant to habeas rule 7 is not governed by AEDPA sec. 2254(e)(2)

restrictions on evidentiary hearing sought by petitioner who failed to develop facts in state court;"Congress expressly modified§ 2254(e)(2);Congress did not modify ru le 7");McNair v. Haley,97 f.supp.2d 1270,1284,1286(M.D. Ala 2000)(Examinaing rule 7 relationship to AEDPA new restrictions on evidentiary hearings in 28 U.S.C.§2254(e)(2) and concluding that "rule 7 has not been supplanted but was instead left in tact to functuion as it always has along side the petitioner revised§ 2254".

"The materials t hat may be required include letters predating the filing of the petition,documents,exhibits, and answers under oathe to written interrogatories propounded by the judge. Affidavits may also be submitted and considered as part of the record".Although habeas rule 7 ,which embodies this "expanded record" option,is discretionary,courts may abuse their discretion by failing to utilize the procedure in compelling circumstances.The Supreme court has indicated,and some federal courts of appeals have held, that a habeas corpus petitioner's use of Rule 7 to expand the record is subject to AEDPA's restrictions upon the granting of a federal evidentiary hearing when the petitioner's default was responsibl e for the state court's failure to develop the material facts. Libberton v.Ryan,583 f3d 1147,1165(9th.cir.2009),cert denied,130 s.ct. 3412(2010)(applying the Cooper-Smith v. Palmateer,infra, to find that rule 7 expansion of the records should have been allowed becauseof Libberton"(exercise of diligence)

Habeas Rule 7 is a "simplifying procedure[]" designed to "minimize the burden to all concerned"of the fact development process.Rule 7 pursues this goal in two ways.First,it permits the court to receive all or at least some of the evidence relevant to the disposition

of the petition without a formal hearing-even,possibly,in situations in which a hearing would be inappropriate or impermissible. Ruine v.Walsh,2005 U.S. Dist,LEXIS 14297,at *19 n.4(S.D.N.Y.July 20 2005)(explaining that applicability of section 2254 (e)(2)'s restriction to rule 7 "remains an open question in this circuit" and "declin[ing] to adopt [such] restrictions on ...Rule 7 applications")Ashworthy v.Bagley,2002 U.S.District LEXIS 27219,at *37 (S.D. Ohio March 28,2002);McNair V Haley,97 f supp.2d 1270,1284 1286(M?D. Ala.2000);Campbell v.Sabourin,37 f.supp.2d at 603(district court ordered supplementation of record with affidavits of witness,"[a]lthough the state court's record was ....sufficient"so as to "clarify any ambigiuty').In appropriate cases.a habeas corpus petitioner who has been denied an federal evidentiary hearing m ay nonelteless establish a ri ght to relief on a fact-based clai m by demonstrating that ,

1)evidence developed during discovery or through some other investigative techniques justifies relief even absent incourt evidentiary hearing proceedings conducted by petitioiner,and,

2)The evidence may appropriately be placed before the court via the "expansion of the record" device.

Sec ond,it relaxes the rules of evidence by giving the court discretion to admit virtually all evidnece that,

1)"relates to the [pet]ition (Rule 7(a)

2)was in existance pric r to filing the petition,or is tangible or "real"evidence that was not created in anticipation of litigation,or is comprised of or supported by sworn atatement(Rule 7(b))(Expanded record may include "documents [and] exhibits"); Schulp v. Delo,513 U.S. 298,308-10 &nn18,19(1995)

3)is not already part of the record of prior proceedings in the case

"

FINANCIAL ASSISTANCE

The Criminal Justice Act does not define the phrase "necessary for adequate representation".Nor does the Anti-Drug Abuse Act define the analogous phrase "rerasonably necesaary". Taken together with established habeas corpus jurisprudence,however, the language of both Acts suggest that Congress intended to provide prisoners,upon request,with all resourcess neededd to discover,plead,develop, and present evidence determinative of their "colorable" constitutional calims.see id (O'Connor,J.concurring in judgement in part)(goal of counsel appointed under Act is to ensure that "first petition adequately set forth all of state prisoners's colorable claims grounds for relief")In Re Braxton,258 f3d 250,255(4th.citr.2001) (district court granted petitioners request pursuant to 21 U.S.C.§ 848(q) for funds for DNA retesting of states physical evidence as "reasonably necesaary to support Cherricx's claim of actual innocense...and innocense as a'gateway' to proving other constitutional claims,,..as well as a potential clemency petition;Patrick v. John son,48 f.supp.2d 645,646(N.D.Tex.1999)

Congress and the Court have both recognized that habeas corpus claims often turn on factual questions, and that "The procedures by which the facts of a case are determined assume an importance fully as great as the validity of the substancive rule of law to be applied")Wingo v. Wedding,418 U.S. 461,474(1974)(quoting Speiser v.Randall,357 U.S. 513,520(1958).see e.g.McFarland v.Scott, 512 UsS at 855(Purpose of habeas corpus procedures is developmental odf of possible claims of factual innocense")Wingo v.Wedding,418 U.S. at 468("More often than not, claims of constitutional detention turn upon the resolutions of contested issues of [FACTS].

Both have insisted,therefore,that full development of determinative factual questions precede the final adjudication of habeas corpus claimsSee,eg. 28 U.S.C.§ 2243(2006)Rule 8 of the Governing section 2254 cases in the United States District Courts(2010);Jackson v. Virginia,443 U.S. 307 ,318(1979)("A federal court has a duty to assess the historcical facts when it is called upon to apply a constitutional standard to a conviction obtained in a state court"); Blackledge v.Allison,431 U.S. 63,82-83(1977)(Habeas corpus petitioner is"entitled to careful consideration and plenary processing of [his claim],including full oppertunity for representation of the relevant facts"(quoting Harris v. Nelson,394 U.S.286,298(1969) And both have made a variety of fact-determinative procedures available to habeas corpus petitioners,including evidentiary hearings, discovery, and even if an evidentiary hearing is not available or required expansion of the record to include documentry evidence.

see 28 U.S.C. § 2243 (2006)Rule 8 of the governing section 2254 cases;Wingo v. Wedding(citation ommitted);Rule 6 of the Governing section 2254 cases;Harris v.Nalsom ,394 U.S.286(1969)

The policies favoring providsions of financial sdervices are even stronger in capital cases because the "finality" of death and "it's" qualitive][[] difference from a sentence of imprisonment, however long" magnifies the "need for reliability" and accordingly, the need for reliable fact-determinative procedures.

As Chief Justice Merritt of the 6th Circuit stated in a letter drawing attention of District Judges in the circuit to the support -services provisions of the Anti-Drug Abuse Act; "[T]he Act...provides that "investigative,expert or other services [which] are reasonably necesaary for the representation of the defendant,whether in connection with issues

relating to guilt or . sentence "21 U.S.C.§848(q)(9)(recodified at 18 U.S.C.§3599(f),Shall be authorized by the court..

Both in noncapital and capital cases, the prisoner must accompany the ex-parte requests for funds for investigative,expert,or other services with a memorandum,an application to proceed in forma pauperis,an affidavit of indigence, and other supporting documentation.

REQUESTED EXPANSION AND ANTICIPATED RELEVANCE OF HISTORICAL FACTS

The interrogation recording devices

After preliminary investigations, historical facts will make showing that there were answered questions where the answers were altered, and that petitioners attempt to invoke miranda was ignored, attempts to leave were denied,and attempts to end interrogatio were refused, while petitioner was interrogated outside his 4th Amendment rights. This manufactured evidence and false and illegal evidence was used to influence the jurors opinions of the evidence, and that defense attorney,prosecutor,lead investigator, and judge conspired to alter and hide evidence for this territorial conviction.

The DNA located on the watchpin

After thorough investigations and DNA analysis, this item will prove to not have the petitioners DNA located on it, and quite possibly may match that person Gregory Randolph that confessed to this murder. This item was left behind by the probability of the circumstances of the crime, and the di rect scene, that it was left by the person who historically killed Rita Cobb, and prove that petitioner did not

The red-hair with ther entire root-bulb attached DNA profile

After thorough investigations this itemn that was located on the victims nude body, will show the DNA profile does not match petitioner. The state presented a crime scene that an actual struggle occured, and reasonable inferences would lead one to believe that a hair tnat was pulled out by the entire roots was located on tne nude body, that did not match petitioner would also not match the victim leads one to historically believe the crime was commited by someone other than the petitioner.

The wire litigature that was located on the victim, the murder weapon

After thorough investigations, this item that was located around the victims neck, will provide a different DNA profile than the petitioners, and will not have the petitioners DNA located on it. The result of this investigation would historically prove that petitioner did not touch or attach this item to the victim, and possible would come back matching Gregory Rabndolph (the man who actually confessed to this crime)

The desk blotter that was collected ,but destroyed

After thorough investigations, this item will prove tnat it was in fact destroyed, and that the majority of this evidence was discarded. The remaiminge part of this evidence will show there are more DNA's than just the victim and petitioner. This investigation will historically prove the evidence was damaged and destroyed.

The alleged witness Lori Amaro + KYE SUN DELGADO

After preliminary investigations, and possible interviews, the witness was hired to testigy, and compensated for their alleged testimonyCS

The investigations will also show this witness LORI AMARO was in fact mentally complicating when her alleged prior rape occured, and that she had falsified her report to get ewen with petitioner for his moving out and not marrying her as promised. Investigations will show there was an investigation and their reports were discarded, and that she LORI had personally waived any rights to this accusation. Investigations woiuld show that she hads bragged about her false report to several of her friends, in a laugning matne manner. WHILE DELGADO WAS DEPOSED. This investigation will show the state was willing to hire witnesses to convict.

The witness John Sullivan

After preliminary investigations and background checks into banking accounts, will show this witness was coersed to testify differently than his previous statements or anyone elses for that matter, in an attempt to nide the fact the victim Rita Cobb had went to a bar that nite she was killed. Investigations into phone recordings and conversations, the state coersed this mans entire testimony to confuse the jury of the facts, in an attempt to hide the [indica reliability[ ] of Gregory Randolphs comfession that he had met Rita at the bar on that Friday Nite after eleven at nite, took her home and killed her because she was sexually turned off by Gregory. The state declared that there was no mutilation, but the victims blood smeres on the bedroom door jamb and hall way indicate otherwise, WHILE A WIRE WAS RAPPED AROUND VICTIMS NECK.

The public Defender David Sanders

After preliminary investigations, and review of telephone calls, evidence that this attorney did in fact agree to test all the evidence, that he admitted the eviedences [were] tested, that

he had told the petitioner that he had release all the discovery (the 300 pages), and that he had been ready for trial. That if this case went to trial, that verbatim transcripts would be used, and that petitioner repeateldy begged for the disoovery to this case form months, and again after the trial was over, to please give the petitioner all the discovery, and that he did not. Investigations would prove this attorney did not examine or test one piece of evidence to [any] degree. Investigations will show this attorney hid the facts of the case, evidence for the case from his client to prevent from having to investigate, and that rights were forfeited carelessly and recklessly injuring petitioner.

Finally after preliminary investigation

After preliminary interviews with the jurors, information that the jury was coersed and forced into a verdict, and that there was a heavy presence of influence on votes. That the jurors understanding of the courts instructions were influencial. Information that this jury was not shown the states exhibit 49 or 49A to any credible degree, and that matteres were palyed to the jury. That they believed the transcript they were played was in fact accurate as they were sworn by the state detective, and original media as the courts had instructed them, and the court forced them into a verdict after three seperate declarations of hopelessly deadlocked points intne deliberation.

Finally, the results of this investigations will prove the evidence that was used to influence the jury was manufactured, and false. That evidence was tamprered with, them presented to the jury as factual and accurate.

That after the DNA hit on CODIS in October of 2008, of petitioner to this scene, the prosecutor was told by Criminalist Jones, and Dr.Saukel that the then DNA was older than this case by at least one and a half days,up to several days before the crime had been committed DR.SAUKEL "UP TO 1½ DAY BEFORE" CRIM. JONES "SEVERAL DAYS PASSED, THEN SHE DIED"

The County District Attorney's team then set out to further investigate. In these investigations they illegally interrogated petitioner for numerous hours in two seperate locations,, then altered that interrogatrion recording, switching answers from one to another.When they then presented it to the defense, they witheld that over 23 pages were missing, and that they had altered petitioners answers.Petitioner made request for discovery less than a week after arrest, and finally after three months was given less than 10% of the evidence in this case, ands was expected to make logical and intelligent decisions from th ose pages that wer e witheld.Petitioner immediately told the attorney that the transcript was altered, and areas of the interrogation were missing.. Petitioner at that time did not even know there was another set of transcripts, which now have become ,after Bar Association intrusion, petitioner was correct all along. That the transcripts were altered. The attorney contiunuously lied to petitioner, about the evidence, the investigations, what evidences existed, and[pretended]to defend the petitioner through calculated and reckless tactics.The attorney told the petitioner the case had been re ady for trial, and set dates. That same month April 2010, the County District Attorney,after the dates had been set, sent out memo reminders to the entire county's pooulation there 1)was a trial being held FOR MALONSK soon for a cold case 2) that he personally promised the victims family closure in that trial 3) that he was running for new county re-elect County District Attorney.

The attorney was not even the one to tell the petitioner this mailing occured, that showered the entire mailing population of the county, where three different flyers were mailed to their homes, post office boxes,and buisnesses in a months span of time. **Which might I add that this person used the federal post office to comit a crime of constitutioinal magnitude.**It was the cops in the jail. Petitioners attorney's response once confronted by petitioner was that he tried to comment through the local news paper,but that they would not listen. Petitioner was the one who wrote the suit From a cell, after getting the courts permission to sue and transport .The trial was cancelled and rescheduled. The evoiden ce that was given to the petitioner in the begining of this case, did have at lease two seperate police reports of Sullivan and Nash, that revealed that Rita Cobb had been at their party on the nite she was killed. The other reports were witheld.The motion to recuse the Couty's District attorney's office was fumbled by the attorney at a critical point in this case, and the attorney general was not served at all ,leaving the only opposition to the motion waa the District Attorney's office alone [a prejudicial and politically connected party in this case].The motion was not heard, it was a chambers meeting,off the record, then a continuance was granted and motion denied.

Knowing the DNA that belonged to the petitioner was older than the crime by up to several days before she was killed, the prosecutor then coersed the witnesses testimony, or with the courts assistance interveined with the probing of defense.The entire team for some unknown reason other than to convict this case, again

alter the 113 page version of the interrogation recording, where the answers that were altered on paper were now synthisized from another place in the audio recording into their new homes, where answers were altered from yes to no, and no to yes, among other areas. All the incriminating factors of MIRANDA were removed, even the petitioners attempt to end the interogation, invoking MIRANDA and trying to leave but was not allowed. This team of prosecutors then (attorney included) presented this altered version to the jury where petitioners wife was removed from the recording, fact that petitioner owned a blue pinto was removed while state presented witness that saw a silver pinto at the crime scene, not blue, then told the jury what they were going to listen to was an accurate copy of the actual recording. The state then presented states exhibit 49 and 49A on the records, after the prosecutors lead investigator told the jury that this recording and visual transcript they were going to listen to was [accurate]. After the jury listened to this recording the courts then interveined and displayed it's authority telling the jury what they had listened to was [an original media] of the actual recording, and they as jurors should use what was played to them to decide what the petitioners answers were to detectives questions as [reliable].

After investigations, proof that the jury did not listen to the exhibit 49 or 49A vesrsion of the interrogation, that the witnesses did not tell the truth, and were compensated for their testimony, possibly the states only way of proving petitioner was an interested party to this case. Because the only forensics evidence or reliable proof the petitioner was AT THE SCENE in this case was

The DNA that was collected from inside the victim and had been there for over one and a half full days before the victim was killed and up to several days before she was killed.

Evidence was witheld from petitioner to prevent him from defendaing himself of this case, where the relibale confession was witneld, the witnesses last words to Nash were witneld, and the petitioner was forced into a prejudicial trial in a community where every juror had been primed with the County District attorney's campaign propaganda. The flyers he personally mailed into the homes of every adult mind on the communities roster of prospective jurors. CONTAMINATING THE ENTIRE POOL OF JURORS.

Investigations into this case that deliberatley and intelligently, through calculated and conspiratorial acts on behalf of the entire state team, prosecuted the wrong person for this crime. The state then presented this fake evidence to the petitioners appellate attorney, to interrupt the petitioners appeal in the state courts. The state, before this case was heard inthe appeal or state supreme courts, made a movie of this case, priming the entire panel of judicial community with the altered facts, then played it to the entire west coast through public broadcastings.

The evidence that was finally released two years after the sentencing, and after the appeal show that this incredible habeas corpus is factually provable, which need s further investigation into the histoirical facts in this case, before the Magistrate makes his recommendation.

PETITIONER REFUSES TO WAIVE ONE MORE RIGHT, OR TRUST ONE MORE STATE OFFICIAL IN THIS CASE WHERE EVERYONE PARTICIPATED IN THE LIE

That the petitioner is in fact historically and factually innocent of this crime.

PRAYER

Petitioner asks this court to grant an allowance of expansion of the record regarding these facts listed above, and that an aappointment of an authorized federal investigator be either assigned or reimbursed for his investigations listed, That this person receive the Federal district Courts Order s when investigating these matters and that these matters be presented onto the records in support of the petitioners colorable claim of innocense in his habeas corpus before this court now.

Respectfully:

Date 2/1/15

John Henry Yablkonsky

AFFIDAVIT UNDER THE PENALTY OF PERJURY

I John Henry Yablonsky am an adult and party to this case, and swear under the penalty of perjury, that my finanacila status has not changed, nor can I afford an attorney, or hire legal assistance or an investigator .

I am currently granted forma pauperis in this case, and= an inmate that is laymen on the law. I am asking this court to appoint an attorney that will represent my interests, or grant propria persona and an investigator, for the invcestigations of this request.

Date 2/1/15

John Henry Yablonsky