

1 JOHN HENRY YABLONSKY
#2309342444
2 9500 ETIWANDA
R.C., CA.91739
3 IN PROPRIA PERSONA
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7 SUPERIOR COURT OF CALIFORNIA
8 COUNTY OF SANBERNARDINO

9 THE PEOPLE OF CALIFORNIA,
10 Plaintiff,

11 vs.

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13
14 JOHN HENRY YABLONSKY
15 Defendant

Case No.: FVI900518

NOTICE OF MOTION TO ATTACK THE DISTRICT
ATTORNEY'S USE OF UNRELIABLE EVIDENCE
WHICH DOES NOT RISE TO REQUISITE
BURDENS SET OUT BY SB 775, 1473 ALTERED
EVIDENCE VIOLATES PETITIONERS RIGHT TO
TRUTH IN EVIDENCE CA. CONST. ART. I SECT. I

DATE: OCTOBER 18, 2024
TIME: 0830
DEPT: V-3

THE HONORABLE JUDGE OF THE COURT

16
17
18 **TO; THE COUNTY DISTRICT ATTORNEY**
19 **JASON ANDERSON YOUR OFFICE**
20 **HAS CAUSED A NAPUE ERROR**

21 If it pleases the Court John Henry Yablonsky (PETITIONER) now moves this court
22 in defense of the district attorney's use of false and unreliable evidence at the prima facie stage,
23 in response to my verified petition pursuant to PC 1172.6. The district has violated the rules of
24 ethics by moving the court with known misleading and false evidence CRPC Rule 5-200(B) as
25 well as violating standing federal laws outlined by (NAPUE V ILLIONOIS). (CITATION
26 OMMITTED)
27

28 1 | PAGE

DADS COPY

1 I am speaking about the "DISTRICT ATTORNEY STATEMENT EVIDENCE" allegedly
2 created on March 8, 2024, from an interrogation between petitioner and SBSB Detectives
3 Alexander and Myler. When in reality was manufactured by the district attorney himself on
4 January 26, 2011 (455; 24) These issues must be addressed at the prima facie stage before the
5 Court makes a decision whether that evidence is sufficient to meet the requisite burdens set out
6 under (BANKS , SUPRA @ 803) (CLARK , SUPRA @ 617) (SENATE BILL 775)
7

8 At this time the court is required to take notice of these facts that pertain to the prima
9 facie hearing now standing before this Court, while acknowledging all filings with this Court
10 pursuant to PC 1172.6(a) **THE VERIFIED PETITION WHICH THE DISTRICT**
11 **ATTORNEY IS OPPOSING WITH THESE UNRELIABLE EVIDNECES.**
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14 (All references to trial transcripts will only read the page numbers)
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25

26 October 2, 2024

John Henry Yablonsky

1 This turning point in facts is to develop as to whether the district attorney's
2 response actually proves that the content of the verified petition has been defeated. PC 1172.6(b)
3 (A-C). If the reply does not overcome the claims within the petition then an evidentiary hearing
4 is to be scheduled. (PEOPLE V DAVENPORT 95 Cal App (2023) "That previously admitted
5 evidence now being relied on in defense of the verified petition must be reliable, sufficient"

6 (BANKS); (CLARK); (STRONG); (LOPEZ 78 CAL.APP.5TH 1); (LEWIS @ 975)

7 **THE DISTRICT ATTORNEY'S RESPONSE**

8 (DSM3;5-8)" His DNA and the fact that he admitted to law enforcement he knew Rita,
9 but denied having sex with her is the evidence that [connected] the defendant to the murder,
10 therefore [is the evidence] on which the jury relied to find defendant guilty"

11 **PETITIONER WAS NOT FOUND GUILTY AS THE ACTUAL KILLER**

12 (DSM3;22-4;2)"Pathologist Dr Saukel found the DNA matching petitioner [could] have
13 occurred as much as one and a half days [BEFORE] Cobb's death"(470-72, 491) Because the
14 district attorney office relies on factual content of the appellate courts opinion petitioner [MUST]
15 elaborate to this response (DSM3;25-28) (THE 4TH APPELLATE DISTRICT COURT)(COA)
16 (COA @2) "The jury found Yablonsky guilty of first degree murder" (COA 3) "The weapon
17 used to commit this crime was found at the scene of the crime" (458-65, 474-77)

18 (COA @4) "The DNA matching Yablonsky was from an act which occurred as much as one and
19 a half days before Rita was killed" (491) "That SBSJ Jones revealed that there was at [LEAST]
20 sixteen different DNA profiles created from evidence located at this scene" (245, 265, 267, 318)
21 (COA @ 6)"The night Cobb was killed she told Mr. Nash that she was not going home after the
22 parity and was going to a bar instead" (COA @ 11) " That Rita dated several men at the same
23 time, regularly invited them back to her home"

1 (COA @13) "That in this case there was a confession to this crime by a different person than
2 Yablonsky) (CT 85, 319, 360) (15-16) **HIS DNA IS AT THIS SCENE A LOCATION IT**
3 **SHOULD NOT HAVE BEEN FOUND** (CA EV 1200) (COA 17) " That Cobb could have had
4 sex with [A] (PETITIONER) on Thursday and been killed by [B] on Saturday" "That Rita may
5 have been waylaid in the parking lot of the Zodiac lounge or went to another bar than the patron
6 who offered statement she did not see Rita at the Zodiac Lounge "

8 **NOW WITH ALL THIS BEING SAID!**

9
10 **IT WOULD BE ILLOGICAL AND INCOMPREHENSIBLE TO**
11 **THINK THAT IF THE ACTUAL MURDER EVIDENCES OF THIS**
12 **CASE WERE MATCHED TO PETITIONER THAT OUR HIGHER**
13 **COURT WOULD HAVE MADE THESE CONCLUSIONS OF**
14 **FACTS SET BEFORE THEM UNDER DIRECT APPEAL!**

15 Because the district attorney made it clear that the statement evidence and the DNA
16 are what the jury relied to verdict guilty [WE MUST] look at the actual murder evidence and
17 consider why the jury did not. (DSM 5; 1) "That Rita was last seen alive on 9-20-85 more drunk
18 than usual and left the party about 11 p.m. after refusing Mr. Nash's offer to drive her home
19 safely. (394-99) However John Sullivan clearly stated, after Mr. Nash already testified he did not
20 drive her home, that he seen Mr. Nash drive Rita home. (409-10, 415)

21 Here the district attorney did not rely on the actual murder evidence,[BECAUSE
22 THAT EVIDENCE PLACES A DIFFERENT SUSPECT AS THE ACTUAL KILLER,
23 POSSIBLY ONE OF THE OTHER SIXTEEN DNA PROFILES], and instead relied on snippets
24 from the record so that he could bolster the "DISTRICT ATTORNEY STATEMENT" evidence.
25 (MAY @ 16-33) (EXHIBIT- 1) (DSM 7; 27)The district attorney argues the manner which the
26

1 jury were instructed was sufficient to rise to the now current burden. (There is no need to revisit
2 the entire briefing on this) (AUGUST @ 27-33)

3 NOT ONE OF MY DEADLOCKED JURORS WERE ASKED WHETHER
4 I WAS THE ACTUAL KILLER, NOR WERE THEY INSTRUCTED TO!

5 Calcium 520 “The implied malice exists if the natural and probable consequence of the
6 act were dangerous to human life” Under old law district attorney’s only need to prove
7 [somebody] was killed with specific intent. **THAT THRESHOLD WAS ABOLISHED.** New
8 law now requires that [somebody specific] killed with specific intent as of January 1, 2019, and
9 that the district attorney must produce sufficient evidence to prove each and every element of the
10 alleged crime/s! CALCRIM 540A “The defendant committed, intended to commit” versus the
11 new standard, “The defendant personally committed the acts that directly caused the death”

12
13
14 **THESE ARE SIGNIFICANT TECHNICAL LEGAL DIFFERENCES!**

15 Furthermore because of change in law the 540A instruction now requires special
16 guidance which states “**THERE MUST BE A LOGICAL CONNECTION BETWEEN THE**
17 **HOMICIDE AND FELONY**” More on [point my jury were required to hear the defining
18 elements to these crimes. (PEOPLE V CAIN 10 Cal.4th 1(1995) Even further yet CALCRIM 240
19 is now required, a new instruction that would have made a difference in this deadlocked panel.
20 (COA @17) That an act causes the injury if the injury is the direct natural and probable
21 consequence of the act, and, injury would not have happened without the act which occurred on
22 Saturday, more than one full day after Yablonsky last seen Rita. (317, 491) In this instance
23 theory of felony- murder, that is the felony led to the murder was the catalyst of the homicide,
24 ergo, causation. CALCRIM 240 which is now required. (PEOPLE V BERNHARDT 222
25 Cal.app.2d 567(1963); (Cervantes 26 Cal.4th 860)

1 Be that as it may, we must look at the totality of the facts, totality of the instructions
2 which contradict the new requisite burdens, which at this time the district attorney office is trying
3 to use evidence they themselves created two years after it was initially recorded. (455; 2,455; 24)
4 This evidence being used violates CRPC Rule 5-200(B)
5

6 As a result of misstatement by the DA office who told the Court the evidence was
7 original media, the Court gave that improper and misleading instruction .(550;1) “The statement
8 evidence is original media” (DSM 3;5) “The instructions were proper” **THEY WERE NOT**
9 **THEY WERE ILLEGAL AND MISLEADING!**
10

11 Even further yet the Court mis-instructed the jury that the prosecutor was not
12 required to prove elements of these charges. (570;13) (CALCRIM 540A & 24) The Court then
13 instructed the jury to make their decisions based on this statement evidence which was unlike
14 real time recordings. There is content in the statement evidence used in this trial that did not
15 occur at the original interrogation. There are statements made in that interrogation that was not
16 in the statement evidence used. (549; 12) In this case the district attorney’s use of these tywo
17 specific pieces of evidence that the jury seen, does not rise to the new reqwuisite burdens set out
18 under BANKS & CLARK. At this time, at the prima facie stage these evidence are [vulnerable]
19 because they did not rise to the requisite burdens. One clears Yablonsky of the crime by at the
20 very least one and half day. While the other clearly has nothing to do with these alleged crimes at
21 all, therefore the use of these evidences are highly prejudicial for being irrelevant and
22 misleading. (CURIEL 15 Cal5th @ 463) “At the prima facie stage a court must accept as true
23 petitioner’s allegations, that he could not be convicted of murder if he were tried today. There
24 shall be no fact finding at the prima facie stage. (PATTON 89 Cal.app.5th @ 657)
25
26
27

1 (DAVENPORT 71 Cal.app.5th 476(2021) this is a test on the petitioners statement pled in the
2 verified petition not an inquiry into the truth of those allegations, or, credibility of the evidence
3 which he may rely. (DAVENPORT @ 480) The prima facie bar was deliberately set this low.
4 (WORTHEN @ 13(2024) (DAVENPORT @ 483)
5

6 In this instance the law of the case may not be considered at all prior to an
7 evidentiary hearing. (MADERA 98 Cal.app.5th 1254) (HARDEN 81 Cal.app.5th 45(2022)
8 (HARDEN @ 50) “prior to a hearing the law of the case doctrine cannot conclusively establish
9 disentitlement” HARDEN precludes the Court from invoicing law of this case! (MEDRANO
10 @1262) “The Court [MUST} accept petitioner’s allegations as true” (RAMON 175 Cal.app.4th
11 843(2009) “inconsistent evidence with an integrated need is not substantial evidence” This exists
12 because we want triers of fact to not become misled”
13

14 THERE IS ACTUAL MURDER RELATED EVIDENCE, BUT,
15 THEY WERE NOT MATCHED TO PETITIONER PHYSICALLY
16 OR SCIENTIFICALLY! (MUST SEE) (APRIL @ 23)

17 (SBSD CRIMINALIST JONES) (PH 14; 1)(DA) “Do you recall the cause of death?
18 (JONES) “There was a wire wrapped around the victims neck” (TC) “did each item of evidence
19 het packaged separately?” (JONES)” I don’t recall” (TC) “did the clothing get packaged
20 together?”(JONES) “Same thing if it were in a pile then it was collected as one submitted as
21 open” **THESE ARE NOT ACCEPTED SCIENTIFIC PRACTICES DESIGNED TO**
22 **PRESERVE THE INTEGRITY OF THE EVIDENCES. (21; 27)** (TC) “Isn’t it true that there
23 is no evidence this is a rape case or not?” (JONES) “Yes sir, there is no sign either way” (254-
24 317) “There was evidence all over the house” “there was a watch band found beneath the victims
25 head” “we collected tape lifting’s off the body” “The weapon was found around the victims
26 neck”
27

1 “somebody other than Jones damaged the desk felt pad, cutting off a small piece then discarded
2 the rest” “Yablonsky DNA cells were fairly hardy and would live longer” “Yablonsky DNA is
3 the result of a sex act which occurred several days before the murder” “**THERE WAS AT
4 LEAST 16 SEPARATE DNA PROFILES FOR THIS CASE**”

5
6 (SBSD MC COY) (218; 12- 233;18) “I found tire tracks at the scene in the dirt driveway”
7 “There was an entire 6 pak of beer missing from the scene after I sketched the evidence and
8 before I photographed the evidence” “We did not think to process the Slurpee cup off the desk”
9 “We processed cigarette butts from this scene” (ITEMS H-2 & H-3) (THESE MATRCH
10 GREGORY RANDOLPH) “We processed blood stains from the door jamb”

11
12 (CRIMINALIST SEIWERTSEN) (328-351) “She did not extract DNA from item A11”
13 “somebody just gave her a vial with DNA cells that she created a profile from” “That she made
14 copies from item A11”

15 (SBSD Anderson (362-371) “Sample cells collected from item A18 possibly match another
16 woman”

17
18 (FRAN SULLIVAN) (395; 24-400) “Last seen Rita on Friday September 20, 1985” “That
19 Rita left the party about 11ish” “She seen Joseph Saunders at the party”

20 (BRUCE NASH (414-430) “That he did not drink at that party on Friday September 20,
21 1985” “That he noticed Rita more drunk than usual and offered to drive her home, but that she
22 did not accept” “That he left the party without driving Rita home” “That he did not see Joseph
23 Saunders at the party”

24
25 (JOHN SULLIVAN) (425-432) “ That he knew Joseph Saunders, but did not see him at the
26 party” That Rita arrived at the party drinking a bottle of bourbon by herself” “That he witnessed
27 Bruce Nash drive Rita home” “ That he himself drank at the party”

1 (SBSD CORONER FRANEY) (436-451) "That they found levidity on the victim's body on
2 her upper outer right side" "There was a weapon found around the victims neck" "The blood on
3 the victims face was after death" "levidity is found on the lowest portion of the body after death"

4
5 (SBSD PATHOLOGIST SAUKEL) (464; 14- 491) "There was a weapon found around the
6 victims neck" "That spermatozoa start losing their tails after a day or two" "That in this case the
7 tails were missing from most of the spermatozoa" " That the spermatozoa was so old bacteria
8 began digesting it" "That the cause of death was the weapon attached to the victims neck" "That
9 sperm is not always found in the panties after sex" "That after review of all the evidence his
10 conclusion was the DNA matching Yablonsky was the result of sexual activity which occurred as
11 much as one and a half days before Rita was killed"

12
13 We ask ourselves why is it necessary to review all of these facts at this stage?
14 Because the law of this state tells us that at the prima facie stage petitioner is entitled to
15 challenge the integrity of the district attorney's response and all evidence they refer to. Which in
16 this case is evidence that was manufactured by the district attorney office on January 26, 2011.
17 The "statement" evidence used in this trial had dates on the bottom of the page indicating the
18 transcript was created on January 26, 2011. The audio/ video program used in this case also
19 showed the date of January 26, 2011 as it's creation date. Yet the states records now indicate a
20 different date of November 23, 2010. Where is the set used for this case that was actually used
21 in this trial ? Where is the audio/ text version that the jury heard and read during trial in the
22 courtroom ? Why are we looking at evidence that the jury never seen? Why is this evidence now
23 being used to defeat my verified petition, regardless whether it rises to the requisite burden or
24 not, even though it means nothing, is irrelevant and at this point scandalous in nature. The laws
25 of this state forbid this style of convictions with the use of manufactured evidence!

1 POE-In California are petitioners able to challenge the integrity of evidence at
2 the prima facie stage pursuant to PC 1172.6? That answer is shocking to the motion filed by the
3 district attorney office alleging that Yablonsky is ineligible because he allegedly lied during an
4 illegal interrogation! (PEOPLE V DAVENPORT 95 Cal App (2023) (EXHIBIT I)

5
6 "If" the district attorney asserts that the statement is their proof then petitioner is entitled
7 to see the entire arsenal of "transcripts, copies of transcripts" created from the March 8, 2009
8 interrogation. There is sufficient showing that the statement evidence is the states most reliable
9 evidence, then petitioner is entitled to the integrity of that evidence.
10

11 **WHICH OF THE FIVE TRASNSCRIPTS ARE THEY REFERING TO?**

12 **ON NOVEMBER 23, 2010 THREE SETS WERE CREATED**
13 **1- 113 PAGE TEXT 1- 136 PAGE TEXT 1-3h 45m AUDIO**

14 **ON JANUARY 26, 2011 TWO SETS WERE CREATED**
15 **1- 113 PAGE TEXT USED FOR DELIBERATION ROOM;**
16 **2- ONE AUDIO/TEXT SHOWN TO JURY THATW AS 2h 50m LONG**

17 **MR JASON ANDERSON WHICH OF THESE ARE YOU REFEREING TO?**

18 **BECAUSE THE STATEMENT EVIDENCE YOU ARE REFERING DOES NOT**
19 **MATCH THE REAL TIME RECORDING. THERE ARE THINGS IN YOUR**
20 **EVIDENCE THAT DOES NOT EXIST IN REAL TIME RECORDINGS AND**
21 **THERE ARE THINGS IN THE REAL TIME RECORDING THAT ARE NOT**
22 **IN YOUR EVIDENCE WHICH YOU USED IN THIS TRIAL AND CERTAINLY**
23 **THE EVIDENCE WHICH YOU ARE REFERING TO. WHICH OF THESE**
24 **STATEMENTS ARE YOU REFERING TO SIR!**

25
26
27 Petitioner is entitled to a fair hearing with reliable evidence. There is a standing
28 suppression motion before this Court that must be heard before the Court makes any decisions on
whether that evidence is sufficient!

October 3, 2024

John Henry Yablonsky

POE

Asked POE the questions each 2 times and here are the results

Question #1 - In California, are petitioners able to challenge the integrity of evidence at the Prima Facie stage pursuant to penal code 1172.6?

Yes, under California Penal Code 1172.6, petitioners can challenge the integrity of evidence at the prima facie stage. This code allows individuals convicted of murder under certain theories to petition for relief. During this stage, the court evaluates whether the petitioner has made a prima facie case for relief based on the evidence presented, which includes the ability to challenge the integrity and sufficiency of the evidence used in the original conviction.

However, the specifics of how evidence can be challenged and the standard the court applies can vary, so it's advisable to consult legal counsel for guidance tailored to individual circumstances.

Yes, in California, petitioners can challenge the integrity of evidence at the prima facie stage under Penal Code 1172.6. This code allows individuals convicted of murder under certain circumstances to petition for resentencing if they believe they were convicted based on a theory of liability that is no longer valid.

During the prima facie stage, the court assesses whether the petitioner has made a sufficient showing to warrant a hearing. This can include challenges to the integrity of the evidence used in the original conviction. If the court finds that the petitioner has established a prima facie case, it will then hold a hearing to further evaluate the evidence and any challenges presented.

It's important for petitioners to present compelling arguments and evidence to support their claims during this stage.

Question #2 - In California, in penal code 1172.6 proceedings, can the District Attorney rely on unreliable evidence to prove intent?

In California Penal Code 1172.6 proceedings, the District Attorney cannot rely on unreliable evidence to prove intent. The court's review is focused on whether the petitioner has made a prima facie case for relief based on the current standards of law regarding intent and liability.

During these proceedings, the court evaluates the evidence presented to determine if it is sufficient to support the original conviction. If the evidence is found to be unreliable or insufficient, it cannot be used to prove intent. The goal of the proceedings is to ensure that any conviction aligns with current legal standards, especially regarding theories of liability that may have changed since the original conviction.

Ultimately, the integrity and reliability of the evidence are crucial in determining the outcome of the petition.

In California Penal Code 1172.6 proceedings, the District Attorney cannot rely on unreliable evidence to prove intent. The court must evaluate whether the evidence presented is credible and sufficient to establish the necessary elements for the original conviction.

If the evidence is deemed unreliable, it cannot be used to support a finding of intent. The focus is on ensuring that any conviction aligns with current legal standards, particularly concerning theories of liability

ATTACHMENT

PEOPLE V. DAVENPORT (2023) 95 CAL APP. PREVIOUSLY ADMITTED
MAY BE USED, IT MUST STILL MEET STANDARDS OF RELIABILITY UNDER CURRENT LAW

Suppression motions, which address the admissibility of evidence, are usually not considered at this stage. If the court finds that a prima facie case exists, a subsequent evidentiary hearing may be conducted, where more detailed issues, including challenges to evidence, can be raised.

Question #5 - In California, can a state statute impede upon the state constitution?

In California, a state statute cannot impede upon the state constitution. The California Constitution is the supreme law of the state, meaning that any statute that conflicts with it is invalid.

If a statute is found to violate the state constitution, it can be challenged in court, and the courts have the authority to strike down or invalidate such statutes. This principle ensures that all laws adhere to constitutional standards and protections.

In California, a state statute cannot impede upon the state constitution. The California Constitution is the highest law in the state, and any statute that conflicts with it is considered invalid.

If a statute is challenged as unconstitutional, courts have the authority to review and potentially strike it down. This ensures that all laws comply with constitutional provisions and protections.
