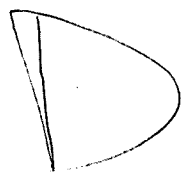
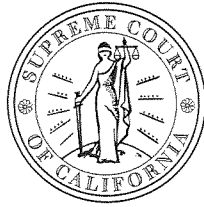


APPENDIX





EARL WARREN BUILDING
350 McALLISTER STREET
SAN FRANCISCO, CA 94102
(415) 865-7000

APRIL BOELK
AUTOMATIC APPEALS SUPERVISOR

Supreme Court of California

JORGE E. NAVARRETE
CLERK AND EXECUTIVE OFFICER
OF THE SUPREME COURT

November 15, 2019

APPEAL ON
D

John Henry Yablonsky AL-0373
Donovan Correctional Facility
480 Alta Road
San Diego, CA 92179

Re: **S256961 — In re JOHN HENRY YABLONSKY on Habeas Corpus.**

Dear Mr. Yablonsky:

Returned unfiled is your petition for rehearing in the above-referenced case. The California Rules of Court do not authorize such a filing when the petition for writ of habeas corpus is denied without the issuance of an order to show cause.

Very truly yours,

JORGE E. NAVARRETE
Clerk and
Executive Officer of the Supreme Court


By: M. Alfaro, Deputy Clerk

cc: rec

Enclosure

PROOF OF SERVICE BY AN INMATE

ACCORDING TO PRISONER MAILBOX RULE

THIS MAILING IS DEEMED FILED AND SERVED UNDER ANTHONY V. CAVERA, 236 F.3d 563 (9th Cir. 2000)

WHEN THIS MAILING HAS BEEN DELIVERED INTO THE CUSTODY OF CDCR STAFF

This service and mailing was conducted by a party and inmate of CDCR, and was conducted according to California Code Regulations § 3142 and P.C. § 2601(b). This mailing was inspected and sealed in the presence of an on duty correctional officer, into a fully prepaid envelope to be delivered by the U.S.P.S. as addressed to the following parties;

CALIFORNIA State Supreme
350 McAllister
s.f., ca, 94102

ATTORNEY GENERAL
Box 85266
S.D. CA. 92107

This service contained the following documents;

PETITION FOR RECONSIDERATION (en banc)

This service was conducted by an adult over the age of 18 years of age and mailed from a state institution, which will be logged by facility mailroom parties as [LEGAL] mail. This mailing was conducted from ;

Sandiego

CITY

92179

ZIP CODE

This service was conducted on (DATE)

11/9/19

UNDER THE PENALTY OF PERJURY

THE FORGOING IS TRUTHFUL AND ACCORDING TO BELIEF

(NAME) John Henry ayblonsky

(SIGNED)

My address is

480 alta s.d.ca.92179

RECEIVED

NOV 15 2019

CLERK SUPREME COURT

1 John Henry Yablonsky AL0373
2 18-147
3 480 Alta rd
4 Sandiego,ca,92179

5
6 CLERK OF THE COURT
7 FOR THE SUPREME COURT OF
8 THE STATE OF CALIFORNIA

9
10 In Re John Henry Yablonsky; § CASE # S256961
11 On Habeas Corpus; § Trial# FVI900518
12 Superior Court of California
13 County of Sanbernardino

14 § NOTICE OF MOTION AND MOTION IN SUPPORT
15 OF PETITION FOR REHEARING/
16 RECONSIDERATION (EN BANC) REGARDING
17 CALIFORNIA USE OF FALSE/MANUFACTURED
18 EVIDENCE TO SECURE RECONVICTION

19 § The Honorable Justices of This Court

20 TO; THE HONORABLE JUSTICES OF THIS COURT

21 On September 20, 1985 a person was killed. On March 8,
22 2009 state of California filed charges alleging that John Henry
23 Yablonsky (Petitioner) had committed this crime. On January 2011
24 a panel of jurists found true that petitioner had been responsible
25 for the crime of murder, relying in thier decision the use of false
26 manufactured evidneces which were intentionally and deliberately
27 created by state employees, known as Deputy Sheriff Robert Alexander,
28 and DDA John Thomas. This was the [ONLY] evidence used to convict!

1 Facts relating to a)misconduct b) Breach of fiduciary
2 duty by counsel and prosecutor as well as sheriff personnel had
3 become available after P.C. § 1054.9 motions for discovery were
4 made available on January 2016. Five years after the trial results,
5 and two years after this Court made a decision regarding collater-
6 al attacks. Petitioner filed second successive habeas vehicle timely
7 after The United States Supreme Court denied Certiorari ~~ON 2018.~~

8 *AUGUST 25, 2017 (U.S. SUP. CT. #16-8771)*
9 The Superior Court judge in SanBernardino argued that this
10 petition was too late. An egregious ruling for three reasons.

11 First, petitioner had been diligent in [trying[] to develop
12 develop these facts now presented here through the use of statute,
13 which was not fully complied until five years after trial, while
14 *RELEASING THE FILE IN 2016 AND THESE RECEIPTS REVIEWED WHILE*
15 The Suopreme Court retained jurisdiction. This file contains 5400
16 pages

17 Second, petitioner was made to cross reference with, auth-
18 enticate with, and validate with records that had been piece mealed
19 by trial counsel for over seven years. Initially giving 300 pages
20 in June 2009, another 1300 pages in 2011(after the injury occured),
21 another 1600 pages in 2014 after this Court ruled on habeas grounds,
22 then a final release of 5400 pages along with compact disc which
23 carried an audio version of the interrogation. This process took
24 time, and reasonable efforts to authenticate the audio with text
25 transcripts ina 136 page transcript thatw as allegedly created on
26 November 23, 2010. One year before trial. Six years before this
27 record was made available. *PROVING FALSE EVIDENCE WAS USED*

28 Third, petitioner is an inmate forced into absolute minimal
access to research materials, vehicles where laws, rules, and statutes
can be found in the prison law libraries, while petitioner suffered
visual impairments

QUESTIONS FOR THIS COURT

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- 1) Does the state of California recognize federal laws regarding the knowing use of false evidence ?
- 2) Is it the intention of this Court to ignore logic when it comes to evaluating newly discovered evidence regarding who committed the crimes?
- 3) If your prosecutor knowingly used false evidence he himself manufactured, helped manufacture, coerced the negative results of this false evidence, wouldn't it be in the interests of California to investigate such an allegation if it was supported by tangible state generated records ?

EVIDENTIARY FACTS OF THIS CASE

1
2 1) Petitioner was intimately involved with Rita Mabel
3 Cobb from one and half days before her murder, to several days before
4 she had been killed. This facts has never been disputed. (RT317)
5 (Criminalist Donald Jones)("That several days had passed after she
6 had sex with petitioner before she had been killedthat he
7 was certain of this information")(RT490)(Pathologist Dr. Bill Saukel)
8 (That at least one and a half days had passed after petitioner had
9 sex with the victim before she had been killed"(That there is no
10 tangible or scientific evidence the victim had been raped")
11 (exhibit 51)
12

13 2) That petitioner had been interrogated for 3½ hours
14 in two separate locations outside MIRANDA. Petitioners home and
15 the police station. This interrogation was recorded on march 8, 2009
16 and transcribed on November 23, 2010. As states exhibit 49A the
17 113 page transcript. As states exhibit 49 the compact disc, copy
18 of the audio recordings. The 113 page transcript was shown to jurors
19 through audio and visual aids regarding the guilt phase. Answers
20 by petitioner regarding whether he had a key to the victims home
21 were altered from saying, "NO" I DID NOT HAVE A KEY ", to saying
22 "UM, YEA" whether petitioner had a key. The altered answers in audio
23 and text matched. "UM YEA". States exhibit 49A (exhibit 42) shows
24 the altered text in the transcript. States party placed these altered
25 and unaltered records into the states exhibits as exhibit 49 and
26 49A. (exhibit 43) DDA Thomas admitted that he had to take this
27 recording home so that he could alter it so that it sounded good.
28 (exhibit 41) (EXHIBIT 40)

1 3) States lead investigator Sherifff Robert Alexander
2 gave unreliable and evasive testimony during trial regarding;

3 i) The authenticity of a transcript he created from
4 an audio recording of an interrogation swearing
5 it was accurately transcribed, knowing he changed
6 petitioners answers from saying "No" I did not have
7 a key to the home of Rita Cobb" to saying "Um, Yea"
8 I had a key to the home of Rita Cobb". (exhibits 41,
9 42, 43, & 40)

10 ii) The existance and contents of a fingerprint report
11 which had been collected on September 23, 1985.
12 (see exhibits 29, 59)

13 These testimonies were less than truthful and were
14 related to facts regarding "who committed this crime". The answers
15 givin by state actors were false, misleading, evasive and are directly
16 related to probative values of facts, evidences regarding who comm-
17 itted the crime of murdering Rita Mable Cobb on September 20, 1985.

18 The fingerprint report shows that petitioner was not
19 at the crime scene in the days before the murder of Mrs Cobb. Alexander
20 told trial counsel;

21 i) He was not sure who's prints were located at the
22 Rita Cobb murder scene (RT518:10-12) Stating he
23 was not sure any fingerprints were developed.

24 ii) That he read the fingerprint report, but that
25 he dont remember all the names(RT518;14-16)

26 iii) That he remembers a glass on the kitchen counter
27 which had a fingerprint on it. (RT518;17-19)

28 iv) That he had seen all the evidences to the Cobb
 case. (RT518)

1 This information was misleading, confusing and inconsistent
2 to the historical truth, that a fingerprint report was created
3 on September 23, 1985, with results that matched; (exhibit 29)

- 4 i) Rita Mabel Cobb
5 ii) Joseph Saunders

6 Jurors were misled about the nature of this report, the
7 contents of this report as a state investigator gave testimony
8 about inculpatory evidences. The prosecutors closing argument supported
9 the confusion by telling the jurors that "NO FINGERPRINT EVIDENCE"
10 was presented in this case." (see exhibit 59)

11 Investigator Alexander is the party who authenticated
12 the audio text transcript shown to the jurors, when he knew these
13 records were inaccurate. (see exhibits 40, 41, 42, & 43)

14 CAPITOL LETTER REAL TIME QUESTIONS AND ANSWERS

15 lower case letter altered version of question and answers

16 (exhibit 42, page 4 lines 22-23 compared to state exhibit 49
17 (at one hour seven minutes and fifteen seconds.)

18 GM- Ok, did you guys also have a key to Rita's house ?

19 JY- Um, yea.

20 VERSUS

21 GM- OK, DID YOU GUYS ALSO HAVE A KEY TO RITA'S HOUSE ?

22 JY- No.

23 This was whether petitioner, a person who did not live
24 with Rita, had moved out two to three months before she had been
25 killed, now after altering the transcripts and audio indicate some-
26 one that is not suppose to have a key, had one.

27 4) That states leading witness Bruce Nash who had been
28 interviewed several times before the trial, had been one of the

1 last coherent people to have seen her alive, spoke to her, and in
2 all statements prior to trial gave consistent information;

- 3 i) That Rita Cobb arrived at Mini Springs Ranch where
4 John Sullivan and Francesca Drake lived for a party.
- 5 ii) That Rita arrived around 1930-1945 (CT117) drinking
6 a bottle of Bourbon and stayed at a party where Francesca
7 Drake, John Sullivan, Cynthia Hooper, and Rita Cobb
8 partied until about 2145 hours. That when Bruce and
9 Cynthia left they left Rita there drinking with Sullivan.
- 10 iii) That prior to Bruce and Cynthia leaving they noticed
11 Rita had been more drunk than usual and offered to
12 drive her home, while Cynthia followed in her car.
- 13 iv) That Rita Cobb rejected the offer to drive her home,
14 because she was not ready to go home, because she was
15 thinking of going to a bar called the Zodiac Lounge
16 instead.
- 17 v) That when Bruce was rejected, he and Cynthia left
18 Rita at the party with Francesca, and Sullivan. That
19 Sullivan had already fallen asleep which was why Bruce
20 felt the need to leave. He was Sullivan's friend
- 21 *OTHER WITNESSES STATED*
- 22 vi) Cynthia Hooper never made statements to police, or
23 at least there are none available.
- 24 vii) Francesca Drake stated that Rita stayed at the party
25 until around 2345 hours. (see exhibit 14)

26 viii) That last statement made by Bruce Nash was to Detective
27 Myler on 3/12/09 where he "confirmed" all other state-
28 ments made over a period of 25 years. That Cobb was
drunk, refused to be taken home, that she was not going
home and was going to a bar called the Zodiac(exhibit 13)

1 When Burce Nash testified for the state regarding the
2 last known conversation anyone had with Rita before she had been
3 killed was that she arrived at the Sullivan drinking party on Sep-
4 tember 20, 1985, arrived drinking, drank more while there and refused
5 his offer to take her home. Nash then gave coerced, suborned test-
6 mony that he believed "Rita Cobb to have been headed home" after the
7 party." (RT417:15-27)

8
9 5) That the state knew Gregory randolph had been more
10 than a mere suspect in this case, not only due to his peculiar be-
11 havior around dead women while he worked as a county coroner, but
12 that he had confessed to this crime while at a party on 8/5/88.
13 The report was made to WE-TIP on 8/6/88. (CT326)(exhibit 15) The
14 confession report was not vague, but yet included facts related
15 to intent, location, and method of the crime committed to Rita Cobb
16 on September 20, 1985. What made this confession so magnificent
17 was that Gregory randolph who confessed stated that he met Rita
18 at a bar called the Zodiac Lounge Friday night. (September 20, 1985)
19 There would be no way for Randolph to have known that this was
20 the last known destination Rita had stated she was going when she
21 told Bruce Nash this on 9/29/85 around 2145 hours.
22 Gregory Randolphs confession was logged in the SanBernardion she-
23 riff department and assigned to Deputy Carr. (CT326) Detective
24 Palacios made a site visitation to Randolphs home on August 9, 1988
25 just three days after the confession was reported. (CT219) Upon
26 site review, the detective found probable cause because of several
27 factors determiend by the detective to get an *arrest* warrant for
28 the murder of Rita Mabel Cobb who had been killed on September 20,
1985.

1 Because of the suspicious nature of Randolphs employment
2 as county coroner for SanBernardion,sheriff assigned a code name
3 for this confession suspect, naming Gregory Randolph as William
4 Backhoff.(William Roger Backhoff) As a direct result of an affidavit
5 filed by Sheriff Polacios regarding Randolph/Backhoff, Backhoff
6 was arrested for the murder of Rita Mabel Cobb who had been killed
7 on September 20, 1985 after she left a drinking party .(see exhibit,16)

8 Backhoff was red headed, lived alone, worked as a county
9 coroner,and was also suspect to another murder that involved an
10 woman who had been killed a few month prior to the Cobb Murder.
11 His DNA was located at the Cobb scene. (CT 751)(CT753)(CT378-79)
12 Prior to filing a information for this murder on Backhoff, he committed
13 suicide on June 1, 1999. (CT357). Backhoff confession was satisfied
14 as an exception to hearsay because of the results of the confession;

- 15 i) Investigations
- 16 ii) Arrests resulting from sworn declarations
- 17 iii) Special investigations as a suspect to the Cobb murder

18
19 DDA FERGUSON RESPONSES TO THESE ALLEGATIONS
20 MADE AT FIRST FILING OF HABEAS
21 FILED IN 2012 WHCSS1200311

- 22 1) That inconsistant statements are not synonomous to
23 perjury, without more petitioner habeas should be
24 denied. WHCSS1200311 File in 2012
- 25 2) That because petitioner cannot prove William Backhoff's
26 hair was red, his argument should fail., without more
27 habeas should be denied.
- 28 3) That collusoray allegations regardindg manufacturing
of interrogation transcripts is insufficient, petitioner
is faced with the burden to provide proof. Although
states exhibit 49A(the 113 page transcript) was used
by the jurors to determine guilt. While petitioner
admitted to having a key to the victims house

1 4) That just because another mans DNA was located inside
2 the bedroom does not mean they killed anybody, regarding
3 the red hair with the roots attached located on a nude
4 body that had been killed.
5 Petitioner is faced with a heavy burden to show how another
6 persons DNA located at this scene would have changed
7 the decisions of the jurors.

8 THE ATTORNEY GENERAL ARGUED THIS EXACT SAME

9 SUPERIOR COURT RULING

10 ON OCTOBER 9, 2018

11 SECOND SUCCESSIVE INNOCENCE CLAIM

12 The Superior Court made an absolute erroneous ruling
13 regarding a factual innocence claim based on newly discovered evidence
14 which became developed five years after the trial and through a
15 manifest barrage of fact development efforts by petitioner who was
16 visually handicapped. While the United States Supreme Court retained
17 jurisdiction. The Superior Court ruled erroneously because;
18 (see exhibit A)

- 19 1) Although the petitioner filed several IAC claim the
20 Court relied that the appellate record was not used
21 to develop these arguments ((Case#EO55840) Ruling
22 facts which are under collateral attack based on
23 Newly discovered evidences as factual innocence. This
24 is the purpose of collateral attacks, to correct mani-
25 fest miscarriages of justice. Notice ground three and
26 four of the petition.
- 27 i) Failure to examine DNA on red hair with root
 - 28 ii) Failure to examine DNA on murder weapon
 - iii) Failure to examine DNA on watchband pin
 - iv) Failure examine blood smears on bedroom jamb
 - v) Failure to examine DNA on cigarette butts in
common area of the home, which had already
been determined to belong to Gregory Randolph
who had confessed to this crime

THE COURTS RULING WAS ABUSE OF DISCRETION

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2) The Court ruled regarding petitioners DNA collected from sperm that had been located inside the victim. As described earlier in this petition as well as exhibits (51) That petitioners DNA was not a factor regarding who committed the crime. Both states experts testified petitioners DNA was older then the murder by (RT317- several days-Jones) (RT490- at least 1½ days-Saukel) Relying on this DNA alone was insufficient to place petitioner at the scene at the time the murder occurred.

3) The Court acknowledge that there was a weapon which would have been DNA magnificent, which was the premice of IAC claim regarding the testing of these items which trial counsel staated he was going to test yet refused to ---

4) The Court refused obligation under Writ of Error Coram Nobis which derives the ability to challenge the facts of a case pursuant to P.C.§ 1265(a) Which explains the factual innocence claim based on newl discovered evidnece pursuant to S.B.1134 and 1909

5) The Court severely abused its discretion when stating that just because these facts were not made avaiable at the first filing of the habeas that petitioner was pro-cedurtally barred. Ignoring the plethora of fact developing efforts known as dilignece, ignoring logic of "NEWLY DISCOVERED EVIDENCE" admitting that these facts became available after December 2015, three full years after the initial filing of habeas.

6) The Court acknowledge the new laws regarding the use of false evidences under 1909 and 1134 arguuing that petitioner had not adequately explained why these claims were piece mealed, ignoring the P.C. § 1054.9 filing in 2013/14 which unlocked the stronghold trial counsel hid these records.

7) The Court admitted that these issues pertained to arguments that were under direct appeal, yet neglect to consider that the evidences now before the Court were not mentioned, implied, or used in determining the direct appeal, or could have been part of the direct appeal, implying that a) if these records were not avaiable at the appela level, that newly discovered evidences would support this piecemeal b) That if these evidcnecez were available at direct appeal, then Appellate Ineffective assitance of counsel laws apply.

The Court did not argue that these facts became newly discovered to petitioner until January 2016 five years after trial, then one could infer the Cour was prej- u
dicially refused to hear any argument irregardless of
their merits. Nor did the court deny prima facie standing.

- 1 8) The Court admits there is an exception to the piecemeal
2 that these arguments could have been brought, and if so
3 would have been meritorious, yet ignores the facts that
4 these records were hidden from petitioner from the very
5 beginning of the case, throughouyt the case, and not until
6 years after the case had been closed. Admitting that peti-
7 tioner had developed these through probing vehicles
8 as outlined in exhibits (Exhibits 1-10)
- 9 9) The Court admits petitioner did not get discovery until
10 2016, and is actually innocent according to the petition
11 before the court.
- 12 10) The Court then erroneously argues that because 21 months
13 had passed since the release of these discoveries, that
14 the petitioner took too lleng. Ignoring that The United
15 States Supreme Court retained jurisdiction until the end
16 of 2018, just months prior to the filing of this petit-
17 ion in the lowest court possible. Arguing that petitioner
18 is too late. Ignoring laws regarding factual innocence
19 claims, Writ of error coram nobis, laws statutes surrounding
20 factual innocence under Schulp v Delo, In Re Miles, ,
21 People v Gonzales, In Re Reno.
- 22 11) The Court ignorantly found that vehicle under P.C. §1405
23 were filed arguing factual innocence was the basuis for
24 a second successive petition. Petitioner had to file
25 that post trial vehicle in two seperate courts under
26 case No.# ~~Unavailable~~ S227210/S226670
27 The purpose of P.C. 1405 was to gather DNA facts related
28 to the convioction regarding who committed the crime.
DNA belonging to someone other than petitioner on the
i) murder weapon
ii) Red hair with entire roots attached on the nude body
iii) The watchband pin located under the victim
iv) The blood smears on the bedroom door jamb
v) The cigarette butts located in the dioning area of
the house where only eight butts were located in a
smokers house. (suggesting newly placed)
- 12) The Courtr admits that the petition surrounded the use
of false evidnece, while the Court had acopy of the original
interrogation recording to validate that the prosecutor
had in fact manufactured evidnece
- 13) The Court egregiously argued that petitioner did not
even [approach] the high bar set out by the Supreme Court,
acknowledging the federal laws regarding factually innocent
petitioners providing bnely discovered evidnece
- 14) Last but not least the Court ignore fiduciary duties
when the Honorable Judge Tavill ignored all common sense
when reviewing the petitioners claim founded on the
i) Newly discovered evidences now available
ii) That state actors actually used false evidnece to
coerse the verdict

1 THE SUPREME COURT
2 ACKNOWLEDGES FACTUAL INNOCENCE CLAIMS

3 The Supreme Court has repeatedly found factual innocence
4 claims must be addressed at the lowest Court regarding whether the
5 petition filed, the records supporting the petition if true would
6 afford petitioner relief. Sanders v United States 371 U.S. 806 "That
7 unless the petition and records clearly and conclusively show that
8 the petitioner is entitled to no relief, a prompt hearing must be
9 considered."(373 US 1,4) "The statute in terms requires that a
10 prisoner shall be granted a hearing on a motion which alleges sufficient
11 facts to support a claim for relief, the motion and the files and
12 records of the case 'conclusively' show that the claim is without
13 merit"

14 The Court held that so long as the petitioner had full
15 opportunity to offer proof...of the ground in successive petition,
16 good faith required that he produce them then. To reserve proof
17 for the use in attempting to support a later petition, if the first
18 failed, was to make an abusive use of the writ of habeas corpus.
19 Admitting the possibility of neglect, omission, misconduct, incom-
20 petence may have been the reason for the delay. The Court then
21 held, "If the government chooses not to deny the allegation of
22 [known use of perjured] testimony or to question its sufficiency
23 and desires instead to claim that the prisoner has abused the writ
24 of habeas corpus, it rests with the government to make that claim
25 with clarity and particularization in its return to the order to
26 show cause(Id at 292)"The Court reasoned that it would be unfair
27 to compel the habeas applicant, typically unlearned in the law and
28 unable to procure legal assistance in drafting applications with merit.

1 Finally the Court held that successive petitions heard
2 must consider the controlling weight to the denial of prior applic-
3 ations for relief only if ;

4 1) The same ground presented in the subsequent applicat-
5 ion was determined adversely to the applicant on the prior application.

6 2) The prior application was on the merits, and

7 3) The ends of justice would not be served by reaching
8 the merits of the subsequent application (373 US , 1, 16)

9 The Court held that "if the prior denial must have rested
10 on an adjudication of the merits of the ground $\frac{1}{2}$ presented in the
11 subsequent applications. (see Hobbs v Peppersack, 301 f2d 875 (C.A.4th
12 cuir 1962) This means that if the factual issues were raised in
13 the prior application, and it was not denied on the basis that the
14 files and records conclusively resolved these issue, that an evidenti-
15 ary hearing was held. Even if the same ground had been rejected
16 on the merits of the prior application, it is open to the applicant
17 to show that the ends of justice would be served by permitting the
18 redetermination of the ground. If factual issues are involved,
19 the applicant is entitled to a new hearing upon the showing that
20 the evidentiary hearing in the prior application was not full and
21 fair. (373 US 1, 17) Townsend v Sain, supra,

22 *MCCLESKY V. ZANT 499 US 467 (1991) TEAGUE V. LANE, 489 US 288 (1989)*

23 PETITIONER INITIAL HABEAS FILING
24 SUPERIOR COURT OF CALIFORNIA
25 RULING BY HONORABLE JUDGE KYLE BRODIE
26 (exhibit 57)

27 "The resolution of the petition is complicated by several
28 reasons, most significantly that petitioners appeal was still pending.

1 The Court therefore does not have available (for example)
2 the Court distillation of the facts¹¹ of petitioners cases" The Court
3 denied the case based on the following merits;

4 One, That the Court did not retain jurisdiction regarding
5 the county distriuct attorney use of petitioners case ina re-election
6 campaign smear

7 Two, That the interrogations were shown to the jurors
8 regarding altered evidnece. "There is nothing to suggest any eivdence
9 was altered by the prosecutor, petitioner ebars the burden [heavy
10 burden to plead sufficient facts for relief". Collusory allegations
11 are unsupported by the facts stated with particularity

12 Three, That ineffective assistance of counsel regarding
13 DNA evidnece evolves over DNA. That in order to establish entitlement
14 to relief petitioner must demonstrate deficient performance pre-
15 judice. Admitting petitioners DNA is older than the case based
16 on consensual sex by over a day. That speculatuions of other testing
17 copuld have been conducted, or thatanother man's DNA was also present,
18 but "EVEN IF THAT WERE TRUE(AND IT BEARS REPEATING THAT THERE IS
19 NOTHING IN THE PETITION OR EXHIBITS DEMONSTRATING THAT TO BE SO),
20 petitioner is still faced with evidnece he had had sex with the
21 victim. Regarding the allegation of William Bac khoff, the trial
22 court excluded this evidence as hearsay.

23 Four, That petitioner claims of prosecutorial misconduct
24 regarding the use of eprjured testimony. That the respondents stated
25 the only document included into appellate record is a fingerprint
26 report. To the extent of prosecutorial misconduct this Court lacks
27 jurisdiction.

28

1 "That petitioners assessment of the impact of those
2 fasle statements does not demonstrate that fasle evidnece was shown
3 to the jurors"

4 Five, That petitioner was not read MIRANDA rightys when
5 interogated. That the Court lacks jurisdiction.

6 Six, That insufficient evidnece was introduced at trial.
7 This is not vcognizable under Habeas.

8 Seven, That state parties conspired to alter evidence.
9 Given the DNA evidnece linking petitioner to the murder, and the
10 fact he admitted to having possession of a blue pinto, there is
11 no basuis to conclude that further efforts to shwo what the officers
12 did or did not do believe regarding the use of his ~~xxx~~ car would
13 have resasobnable changed the trial outcome. Collusory allegations
14 are insufficient , that manufactured evidndce is not cognizable
15 under habeas reilief.

16 Eight, That ineffective assistance of counsel based on lack
17 of investigations was not adequeately shown, becausae petitioner
18 did not show how further investoigations would have altered the
19 trial outcome.

20 Nine, That trial counsel failed to object at the use
21 of false eviudnece. That presumptions are not overcome. That failure
22 to opbject to even inadmissible evidnece is ultimately a tactical
23 decision

24 Ten, That the trial court abuse discretion for motion for
25 new trial shoudl be. litigated on direct appeal.

26 Eleven, That petitioens Marsden motion was prejudicially
27 denied. This court lacks jurisdiction.

28 Twelve. That petitioner was not afforded opportunity to

1 be present at all stages of the proceedings. This Court lacks juris-
2 diction..

3 The summation of the Superior Courts rulings on the twelve
4 grounds was that petitioner had not presented enough evidence to
5 support his claims. None of those evidences were made available
6 until January 2016 five years later. Those evidences are now avail-
7 able here, and would have affected the manner which the Court ruled
8 then. Petitioner vehemently argued otherwise. (exhibit 55) One
9 must then believe that because the facts were available without
10 supporting documentation the Courts hands were tied, while repeatedly
11 arguing the Court lacked jurisdiction to rule.(exhibit 57).
12 Therefore the trial court would have ruled differently had these
13 records been made available at the time the first habeas corpus
14 was filed in 2012. (see exhibit 42) (different transcripts from
15 the same case, created on the same day)(Exhibit 63-Page45 of 136)
16 (exhibit 64 -Page 44 of 113)(exhibits 40, 41, 42, 43-Where prosecutor
17 admitted to altering the interrogation transcripts at his home so
18 that he could make them sound better)

19
20
21 THE COURT OF APPEAL
22 ON DIRECT APPEAL
23 (Exhibit 52)

24 Even pages 2 through 18 are related to civil rulings
25 regarding misconduct allegations. Odd pages are related to direct
26 appeal. The Court acknowledge that the DNA collected matching pet-
27 ition was at least one and a half days older then the murder which
28 occurred on September 20, 1985. (*exhibit 57-page 3)The Court recogn-
ized the Cobb case had been typed with Helen Brooks case.
(Exhibit 57-page 9)

1 The Court also admitted that third party culpability
2 evidnece existed and counsel failed to effectiuvely argue this issue
3 while the prosecutor only objected on admissibility issues.

4 (exhibit 57-page 11)The Court added that "if" the confession report
5 had been brought under correct authority, such as what resulted
6 fromthe We Tip report then this evidnece would have been admissible.
7 (exhibit 57-page 14)Finding the counsel failure forfeited this
8 legal defense. Considering the fact petitioners DNA was older than
9 the actual murder itself. (exhibit 57 -page 3)

10 The Court then argued whether Bruce Nash's testimony
11 which had been squashed by prosecutors argument that his information
12 was hearsay. The Court found otherwise , that Bruce Nash'es testimony
13 about whther Rita Cobb told him she was going to a bar rather than
14 home would hav ebeen admissible "if" trial counsel knew the laws.
15 (exhibit 57-page15)(evidence code § 1250) Furhter the Court added
16 that this structural error crteated by trial counsel would have
17 allowed trial counsel to probe regarding third party culpability
18 since Backhoff admitted to picking Cobb up at the same bar Cobb
19 stated she was going the night s he had been killed. (exhibit 57-
20 page 17)This evidnece would have supported third party culpability.

21 The Court then found regarding the New Trial motion filed
22 by post trial counsel, that the motioin failed to provide reasonable
23 sequenœe of events regarding the basis of the motion. Ineffective
24 Assistance of Counsel fopr failure to investigate several DNA factors,
25 defense strtategies. (exhibit 57-pages 17-21)(emphais page 21)

26 The Court effectively recognized trial cobnsels argument
27 regarding the DNA being older then the murder. The Court of appeal
28 found the DNA evidence inconclusive in determining guilt.

1 The Court found that "petitioners DNA was at least one
2 and half days older than the murder" and that Cobb may have went
3 to another bar besides the Z odiae lounge the night she had been
4 killed. Finding that Yablonsky's DNA was not a controlling matter.
5 That (A) could have had sex with Cobb on Thursday night, and been
6 kikkled by (B) saturday morning!(EMPHASIS ADDED)

7 *SOMEbody ELSE KILLED COBB!!!*
8 YOU CANNOT IGNORE THAT FINDING!!!!

9 THAT PETITIONERS DNA WAS NOT A FACTOR IN THIS CASE REGARDING
10 WHO ^{KILLED} COMMITTED RITA MABEL COBB ON 9/20/85

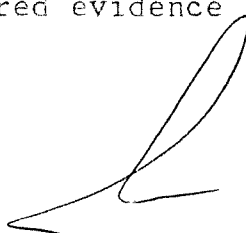
11 NEW LAWS REGARDING NEWLY
12 DISCOVERED EVIDENCE

13 Because this Court as well as the trial court have ignored
14 duty to hear matters where allegations "if true" would afford relief
15 regarding collateral attacks. *PREJUDICE IS EMINENT*

16
17
18 CONCLUSION

19
20 Petitioner finds this Court has ignore logic, common
21 sense in exchange to judicial convenience. Petitioner begs this
22 Court to entertain the arguments based on the facst now before
23 the Couirt, the exhibitis presented herein and take judicial notice
24 that the state prosecutor manufactuired evidence to securte and
25 unrelaible conviction.

26
27
28 November 9, 2019


John Henry yablonsky