

APPENDIX

E



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APRIL BOELK
AUTOMATIC APPEALS SUPERVISOR

Supreme Court of California

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

November 21, 2019

APPENDIX
E

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:

Return unfiled is your "Motion to Amend Habeas Corpus" received November 20, 2019. The order denying your petition for writ of habeas corpus in the above-referenced matter was final forthwith and may not be reconsidered. Please rest assured, however, that the petition, and the contentions made therein, were considered by the entire court, and that the denial expresses the decision of the court on this matter.

Very truly yours,

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


By: M. Alfaro, Deputy Clerk

cc: rec

PROOF OF SERVICE BY AN INMATE

ACCORDING TO PRISONER MAILBOX RULE

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3650 McAllister
sanfrancisco, ca, 94102

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motion to amend habeas corpus #S256961

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92179

CITY

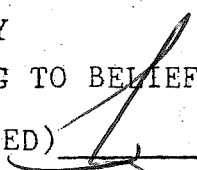
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This service was conducted on (DATE) November 12, 2019

UNDER THE PENALTY OF PERJURY

THE FORGOING IS TRUTHFUL AND ACCORDING TO BELIEF

(NAME) John Henry Yablonsky

(SIGNED) 

My address is 480 alta rd. s.d.ca.92179

480 alta rd. s.d.ca.92179

RECEIVED

NOV 20 2019

CLERK SUPREME COURT

John Henry yablonsky AL0373
480 alta rd.
sandiego,ca,92179

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CLERK OF THE COURT
FOR THE SUPREME COURT
OF THE STATE OF CALIFORNIA

In Re John Henry Yablonsky, § CASE NO³ S256961
On Habeas corpus,

notice of motion and motion to
amend habeas corpus adding one more
ground of injury as ground Seven
THAT PETITIONERS SIXTH AMENDMENT
RIGHT OF AUTONOMY WAS VIOLATED WHEN
TRIAL COUNSEL CHOSE TO ARGUE DIFF-
ERENT DEFENSE THAN WAS DISCUSSED
BETWEEN CLIENT AND COUNSEL PRIOR
TO TRIAL, FORFIETING OPPORTUNITY
TO INVESTIGATE AND PLACE PROSECUTORS
CASE AND THEORY TO ADVERSARIAL TESTING

Petitioner under habeas corpus rule 7 and 8 may move to
expand the record when facts sufficient are made available after the
petition had been created. Here petitioner, ~~an~~ an inmate suffered
miscarriage of justice of case #FVI900518 in 2011 when trial counsel
forfeited rights to challenge the state case with reasonable dili-
gence. Prior to trial counsel and client discussed defense mechanisms
to place states case to adversarial testing . These defenses were
available, and promised by trial counsel to have examined;

RYAN V. MARTINEZ - BRACY V. GRAMLEY - HARRIS, SUPRA 394 US AT 296
1) The interrogation recording AUTHENTICATE RECEIVED

AMEND HABEAS-01

NOV 20 2019

CLERK SUPREME COURT

1 2) Hair that had been located on the victims torso which
2 had the entire roots structure in tact.

3 *THE HAIR WAS RED, PETITIONER IS BLONDE.*

4 3) The murder weapon used to kill Rita Mabel Cobb

5 *3 1/2) CIGARETTE BUTTS LOCATED IN SUSPECT LOCATION*

6 4) That the desk blotter located in a ~~questionable~~ location
7 under the victims bedspread which had petitioners DNA
8 located on it, for DNA belonging to another female
9 that was present at the time petitioner last had sex
10 with Rita Cobb, on or about September 18, 1985. (RT317)
11 (Several days before Cobb had been killed)(RT490)(at

12 least one and a half days before Cobb had been killed)

13 *5) SUBPOENA ALIBI WITNESSES LYNDA MITCHELL-HOLLY MITCHELL/BROWN*

14 This discussion was held while petitioner was in pretrial

15 detention and over the phone which was recorded for validation

16 by GTL John Henry Yablonsky while detained at West Valley detent-
17 ion. #0903041068 P.I.D.

18 Trial counsel withheld that there was a watchband $\frac{1}{2}$ pin
19 located under the victims head. Counsel also withheld that there
20 were blood stains on the victims bedroom door jamb which had
21 been place there by an ungloved hand in the victims blood. Counsel
22 also withheld that there were cigarette butts located matching
23 a person who confessed to the murder of Rita Mabel Cobb and had
24 been arrested. Trial counsel agreed to have [all] the DNA testing
25 to this case prior to trial, which would have supported petitioner
26 was not the person who killed Rita Mabel Cobb on September 20, 1985.

27 It was not until after the trial and records had been
28 released to petitioner on March 2011 that [NO] DNA examinations
had been done at all. Post trial motion for new trial based on
ineffective assistance of counsel revealed that counsel also forfeited

1 1) Right to object to hearsay objections that prosecutor
2 erroneously argued regarding Gregopry Randolph confess-
3 ion, which led to arrest, special investigatuions.
4 *THIRD PARTY CULPABILITY DEFENSE.*

5 2) Right to know the laws surrounding the victims
6 last known statement to Bruce Nash which stated she was not going
7 home after the Sullivan drinking party on September
8 20, 1985 at 1145 p.m. "Counsel did not know the laws"
9 under Evid. Code § 1250 would have made that statement
10 exception to hearsay laws and would have admitted
11 to thirdparty direct or circumstancial evidnece allowing
12 gregory randolph confession to be admitted as reliable.
13 *"INDICA RELIABILITY"*

14 3_ That trial counsel forfeited the right regarding the
15 use of false evidnece regarding the manufactured evidnece
16 of the interrogation transcript which changed petition-
17 ers answers from saying he did not have a key to the
18 victims hose to ds saying he did.

19 4) Forced petitioner to forfeit right to testify

20 As a direct result of trialcounsels choice in defense
21 stratrgies trial counsel "never" discussed with his client as well
22 as "never" completing any of the ordinary trial investigations indicate
23 that trial counsel had waived petitioners opportunity at a fair
24 hearing regarding relevant and material facts related to who killed
25 Cobb that Saturday in September 1985. Petitioners DNA was not a
26 factor which ~~these~~ investigations would have shown, specifically
27 the DNA on the murder weapon which ~~had~~ been tied around the victims
28 neck which caused the death. During habeas arguments petitioner
was defeated with this failure to investigate strategy while the
attorney general argued that because petitioner could not prove
whose DNA was on that weapon his argument fails, adding that just
~~not have been in the hands of the victims from the~~

1 just because another mans DNA was located inthe victims bedroom
2 does not mean they killed her.

3 That maybe Rita Cobb collected watchband poins and
4 because petioenr cannot prove that DNA belonged to someone specif-
5 ic, his argument fails.

6 That there is no proof there was any alterations to
7 the interroigatio~~n~~ recording, and collusory allegations are in=suff-
8 icient to deserve relief.

9 That because petioenr cannot ~~pr~~ove Gregory ranbdolph
10 who confessed was a red headed man that petitioners argument fails,
11 adding that there is no proof the hair ~~was not~~ found on T&E BODY
12 WAS IN FACT RED,

13 POINTS AND AUTHORITIES

14 The holdoing of McCoy, v Louisiana (2018) 138 s.ct.1500
15 is simple. A criminal defendant has a sixth amendmen~~t~~ right
16 to dictate the untlimate goals of his defense. When defense counsel
17 overrides the defendants known wishes, by , for example, conceding
18 the results of states examinations without testing, while defendants
19 argued that he was~~a~~ innocent. The right under the sixth amednemnt
20 was violated. (Id at pp.1508-09) The error is structural , requiring
21 reversal without a showing of prejudice. (Id at 1151) The under=pin-
22 ings of McCoy are set out in details. (citationsa. McCoy discussed
23 the defendants right to ~~pa~~rticipate in their defense under Faretta
24 v californ~~ia~~ (1975) 422 US 806. This is because the right to
25 defend is personal. (Id at 834) "The sixth amednemtn does ~~not~~ provide
26 merely that a defense shall be made for the accused, it grants
27 to the accuse personally the right to make his defense. (ID at819)

1 The defendants wishes for an ultimate goals are critical
2 . In Florida v Nixon(2004) 543 US 175, defense counsel believed
3 that it would be beneficial to concede guilt during the penalty
4 phase in hopes of avoiding a death penalty sentence. Defense counsel
5 explained this strategy to the defendant who was unresponsive
6 during the discussion. Neither opposing nor consenting.(Id at 181)
7 Nixon was convicted and sentenced to death. On appeal defense counsel's
8 ~~refusal to~~ concession amounted to a failure to subject the prosec-
9 utions case to meaningful adversarial testing under United States
10 v Cronin,(1984) 466 US 648 which would require a finding of
11 deficient performance and prejudice before relief could be granted.

12 The appellate court found;

13 "But certain decisions regarding the exercise or waiver
14 of basic trial rights are of such moment that they cannot
15 be made for the defendant by surrogate. A defendant, this
16 Court affirmed, has the [ultimate] authority] to determine
17 whether to plead guilty, waive a jury, testify in his behalf,
18 or take an appeal. Concerning those decisions, an attorney
19 must both consult with defendant and obtain consent to
20 the recommended course of action"

21 The Court held that in the face of the defendant's stubborn
22 ~~obstinance~~ ^{obd}ness, defense counsel could not be deemed ineffective. (Id
23 at 189)

24 "To summarize, in capital cases, counsel must consider
25 in conjunction with both the guilt and penalty phase in
26 determining how to proceed. When counsel informs the
27 defendant of the strategy counsel believes to be in the defendant's
28 best interests and the defendant is unresponsive, counsel's
strategic choice is not impeded by any blanket rule demanding
the defendant's explicit consent:


1 BRACY V. RAMLEY 520 US 899 (1997) HARRIS, SUPRA 394 US AT 299
2 HARRIS SUPRA 394 US AT 290; MCSAELAND V. SCOTT, SUPRA 512 US AT 860
ANALYSIS

3 Here counsel was clearly told by petitioner that he was
4 innocent, before he ever knew of the DNA results which ultimately
5 cleared him by at least one and half days before the murder (RT490)
6 and several days before the murder occurred (RT317) This would have
7 indicated to counsel that petitioner was being truthful about
8 the case. When petitioner demanded to see the state's entire
9 file, instead of complying, trial counsel lied and withheld discovery
10 from his client that plead innocence, wanted a specific defense
11 and trial counsel without revealing the facts of the case agreed
12 with defendant to perform specific duties. THEN DECIDED OTHERWISE

13 It was not until ^{AFTER} trial, ~~and~~ post trial developments ^{WITHOUT DISCUSSING THE CHANGE OR EXPOSURE}
14 ^{REVEALED} that trial counsel not only reneged on his promise to have certain
15 testings, but had withheld valuable defenses regarding third party
16 defenses. Specifically since other DNA located at the scene, in
17 the red hair, in the victims blood, on the weapon, on the watchband
18 pin would have supported petitioners claim. It is petitioners belief
19 that counsel as well as the prosecutor knew there was another
20 man's DNA on these items and forfeited those opportunities
21 to probe for merit, probative values, relevant. SUPPORTING INNOCENCE

22 As a result of the afore stated information petitioner
23 moves this Court to add as ground seven these allegations and
24 authorities hereforward.

25
26
27 November 12, 2019


John Henry Yablonsky