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SUPERIOR COURT OF ARIZONA
IN AND FOR THE COUNTY OF COCHISE

State of Arizona

Plaintiff,

vs.

Kenneth Carl Beatty
Defendant

CR201400381

AMENDMANT TO RESPONSE TO STATES MOTION TO DISMISS

I filed a writ of habeas last year and after paying several hundred dollars to do so. The court just took my money and never bothered to respond to it. I had to check online to find out it had been dismissed but I never received any thing on the court's decision as to why. After having this case independently reviewed by several legal professionals because I was beginning to think I crazy after being repeatedly shot down by the court for trying to prove my claims that the police sat there and presented the jury with a completely falsified story about how I broke the law by stealing my own tools.

It was clear to everybody, that every one of the state's witnesses was being dishonest. I tried to point it out in the Trial but I was afraid if I spoke over my compromised attorney, I would be thrown in jail for contempt because I had been told by the Judge I was not allowed to speak during the proceedings. It was so blatant and obvious to me and I could see Mr. Bennett get bent out shape when one of his witnesses accidentally told the truth. These where the times he would ask a question that had just been answered using the tone of his voice to compel the witness to change his testimony right there on the stand. Asked and answered, but then asked and answered again.

All I asked of the people that reviewed this case to do was to read the victim's (Michael Miller's) testimony first. The lies just seem to jump off the pages. The gentleman who was a prosecuting attorney for almost 30 years. Pointed out that

this was a 1-day trial at the most. But the state needed to pound the misinformation into their heads and coach the alleged victim on what he needed him to say to cover the fact that he never called and filed a police report in September of 2013.

Mr. Miller actually provided more than enough reasonable doubt to question his ownership of the tools in question. I already know Mr. Miller reported his tools stolen on the 2nd of October 2013. I just need the court to let me subpoena Mr. Miller so I can finally confront one of my accusers and I know we will hear quit an interesting revelation of truth that will for sure shock the conscience and clarify for the court once and for all, the miscarriage of justice that took place throughout these entire proceedings. The lies the police told are already crystal clear. Tampering with evidence and witness testimony

First, A state violates the Fourteenth Amendment's due process guarantee when it knowingly presents or fails to correct false testimony in a criminal proceeding. *See Napue* , 360 U.S. at 269, 79 S.Ct. 1173 ; *Giglio* , 405 U.S. at 153, 92 S.Ct. 763 ; *see also Lambert v. Blackwell* , 387 F.3d 210, 242 (3d Cir. 2004). Consequently, "the [Supreme] Court has consistently held that a conviction obtained by the knowing use of perjured testimony is fundamentally unfair, and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury." *United States v. Agurs* , 427 U.S. 97, 103, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976), *holding modified by United States v. Bagley* , 473 U.S. 667, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985).

Since the only testimony the jury heard was perjured and submitted by the attorney for the plaintiff. This should be a Void Judgement Not Voidable. Simply Void. And since I was planning on taking on these allegations to trial. The State should not be able to use the Gestapo tactics it used in trial to force the defendant into a plea that would have otherwise not been signed had the defendant any faith whatsoever that he would receive a fair trial.

The Supreme Court has long counseled that "a deliberate deception of court and jury by the presentation of testimony known to be perjured ... is [ ] inconsistent with the rudimentary demands of justice[.]" *Mooney v. Holohan* , 294 U.S. 103, 112, 55 S.Ct. 340, 79 L.Ed. 791 (1935). Put differently, "[it is a] well-established rule that a conviction obtained by the knowing use of perjured testimony is fundamentally unfair[.]" *Bagley* , 473 U.S. at 678–79, 105 S.Ct. 3375. In *Brecht* itself the Court recognized "the writ of *habeas corpus* has historically been regarded as an extraordinary remedy, a bulwark against convictions that violate

fundamental fairness." 507 U.S. at 633, 113 S.Ct. 1710 (internal quotation marks omitted). Thus it is difficult to see how concerns of finality would trump rudimentary demands of justice and fundamental fairness when those are precisely the values the writ of *habeas corpus* is intended to protect.

Second, when the state knowingly presents perjured testimony, we are not presented with a "good-faith attempt[ ] to honor constitutional rights," *Id.* at 635, 113 S.Ct. 1710, but instead with a bad-faith effort to deprive the defendant of his right to due process and obtain a conviction through deceit. After all, courts apply *Napue* 's"strict standard of materiality" to perjured-testimony cases "not just because they involve prosecutorial misconduct, but more importantly because they involve a corruption of the truth-seeking function of the trial process" by the state itself. *Agurs* , 427 U.S. at 104, 96 S.Ct. 2392.

Third, there is little chance that excluding perjured testimony claims from *Brecht* analysis will "degrade[ ] the prominence of the trial itself [.]" *Brecht* , 507 U.S. at 635, 113 S.Ct. 1710. A defendant will usually be unable to litigate his claims of perjured testimony at "the trial itself" because the trial is where the perjury occurs. And it is possible, even likely, that petitioners will not know of the prosecution's use of perjured testimony until after the opportunity for direct review has passed.

Finally, the First and Sixth Circuits note that, without *Brecht* review, perjured testimony faces a lower bar than suppression claims. *Gilday* , 59 F.3d at 268 ; *Clay* , 720 F.3d at 1026. But to us that seems to be a feature, not a bug. If suppression of evidence (and thereby, the truth) is a serious constitutional error, its fabrication is a greater error still. That is why the Supreme Court set out differing materiality standards for the three types of error that implicate *Brady* : (1) the government's knowing presentation of or failure to correct false testimony, (2) its failure to provide requested exculpatory evidence, and (3) its failure to volunteer exculpatory evidence never requested. *See Agurs* , 427 U.S. at 103-06, 96 S.Ct. 2392. Presenting false testimony cuts to the core of a defendant's right to due process. It thus makes sense that "the materiality standard for false testimony is lower, more favorable to the defendant, and hostile to the prosecution as compared to the standard for a general *Brady* withholding violation." *Clay* , 720 F.3d at 1026. At root is how can a defendant possibly enjoy his right to a fair trial when the state is willing to present (or fails to correct) lies told by its own witness and then vouches for and relies on that witness's supposed honesty in its closing? As the Supreme Court recited in *Napue* ,

> i]t is of no consequence that the falsehood bore upon the witness' credibility rather than directly upon defendant's guilt. A lie is a lie, no matter what its subject, and, if it is in any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth.

360 U.S. at 269–70, 79 S.Ct. 1173 (quoting *People v. Savvides* , 1 N.Y.2d 554, 154 N.Y.S.2d 885, 136 N.E.2d 853, 854-55 (1956)) (internal ellipses omitted). For these reasons, we hold that the actual-prejudice standard of *Brecht* does not apply to claims on *habeas* that the state has knowingly presented or knowingly failed to correct perjured testimony. A reasonable likelihood that the perjured testimony affected the judgment of the jury is all that is required.

* * * * *

Haskell has demonstrated that there is a reasonable likelihood that Blue's false testimony could have affected the judgment of the jury. Hence he is entitled to relief. He need not go on to show that this error had a substantial and injurious effect or influence in determining the jury's verdict because, when the state has corrupted the truth-seeking function of the trial by knowingly presenting or failing to correct perjured testimony, the threat to a defendant's right to due process is at its apex and the state's interests are at their nadir. Accordingly, we grant Haskell's *habeas* petition and remand for further proceedings consistent with this opinion.

I have a stack of cases with holdings consistent with this holding from Federal and Arizona State Supreme Courts. Now that I have had the time to investigate the matter. I would welcome another trial. I guarantee the court the truth will come out. And I should have the opportunity to confront these officers about their relationship with Victor Olson. I have learned he was caught in the act of a burglary with a woman I assume to be his girlfriend in the house right across the street from Mr. Millers. I spoke with the person who called the police. An officer responded and they were let go. If we take that with the several police reports that were altered and kept from defense despite State Law that say's all related reports are to be made available to the defense. Within 30 days. And where not.

And we look at the Trial Proceedings starting with Mr. Millers testimony because that's where the record should begin. Mr. Miller is careful not to answer the question of exactly when he was out of town. He also tells us the only thing he can remember about reporting the crime was that he spoke to Andela and fingerprint dust everywhere. This is an Officer in the U.S, Army that the military is paying to send to M.I.T. and he can't remember these simple encounters. His testimony was rehearsed. He himself testified that there would be no way to determine his tools from anybody else's. So, explain to me how I have been convicted of this crime. Gross negligence and a police set-up? Lets further pay attention to Mr. Miller. He says he found his tools on C/L within a couple of days of reporting them stolen. He also says he was out of town from town for 3 weeks in September. Not the beginning of the month or the end of the month. The middle 3

weeks.

Please explain to me how he could possibly have reported these tools stolen when his own testimony is inconsistent with the story the police have created. The police ARE NOT credible witnesses. These 2 aren't even credible police officers. I have already provided the court with several improprieties that any one of should be unacceptable. Stacked on each other and brought to light. It is preposterous. It took them 3 years to present this to a jury. I believe I have made a reasonable effort with this court to work this out. I have used the record of the proceedings to impeach every single witness.

If the rules of Crim proceedings, the constitutional rights of the defendant, and the integrity of the witness's and the state for that matter would have held to the strict requirement the law demands. The truth-seeking aspect we expect when we invoke our right to a trial by jury wouldn't be stained with whatever this was. There is no way to conclude the jury's decision was not tarnished by the intentional acts to prejudice by the police and the state. There is nothing to prove it is in the courts own record. Proven

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Wilson v. Lawrence County
260 F.3d 946, **957** (8th Cir. 2001)

The general test of whether executive action denying a liberty interest is egregious enough to violate due process is whether it shocks the conscience. *County of Sacramento v. Lewis,* 523 U.S. 833, 846, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). The Supreme Court has taken a context specific approach to determining whether intermediate culpable states of mind, such as recklessness, support a section 1983 claim by shocking the conscience and, thus, violating due process. *Id.* at 854, 118 S.Ct. 1708 (holding, in context of high speed chase, officials violate substantive due process only if they act with an intent to harm); *City of Revere v. Massachusetts Gen. Hosp.,* 463 U.S. 239, 244-45, 103 S.Ct. 2979, 77 L.Ed.2d 605 (1983) (finding deliberate indifference/recklessness to a pretrial detainee's serious medical needs violates due process); *see also Arizona v. Youngblood,* 488 U.S. 51, 57, 109 S.Ct. 333, 102 L.Ed.2d 281 (1988) (holding, in a non-1983 case, that failure to preserve evidentiary material that was not obviously exculpatory, only violates due process if done in bad faith); *Brady v. Maryland,* 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) (holding, in a non-1983 case, that suppression

by the prosecution of evidence favorable to the defendant material to either guilt or punishment violates due process regardless of good faith or bad faith by the prosecution).

It almost goes without saying that the liberty interest involved here is the interest in obtaining fair criminal proceedings before being denied one's liberty in the most traditional sense. *See Brady v. Maryland,* 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) (holding that suppression by the prosecution of evidence favorable to the defendant material to either guilt or punishment violates due process); *Napue,* 360 U.S. at 269, 79 S.Ct. 1173 (holding that the use of false evidence against a criminal defendant violates due process and this principle is inherent in any concept of ordered liberty). "Society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly." *Brady,* 373 U.S. at 87, 83 S.Ct. 1194.

In *Neal v. St. Louis County Board of Police Commissioners,* 217 F.3d 955, 958 (8th Cir. 2000), we stated, based on *Lewis,* that in situations where state actors have the opportunity to deliberate various alternatives prior to selecting a course of conduct, such action violates due process if it is done recklessly. *Id.* This statement from *Neal* certainly applies to the present claim.

It is important to recall that this reckless standard normally contains a subjective component similar to criminal recklessness. For example, in the Eighth Amendment context, from which the standard is borrowed, prison officials must actually be aware of a prisoner's serious medical need or other risks to the prisoner's well-being for there to be a constitutional violation. *Farmer v. Brennan,* 511 U.S. 825, 837, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994); *Gregoire v. Class,* 236 F.3d 413, 417 (8th Cir. 2000). The district court's characterization of the facts demonstrates a proper application of this subjective recklessness standard.

In deciding to apply the intent standard for due process violations in high-speed chases in *Lewis,* the Court noted that "[t]o recognize a substantive due process violation in these circumstances when only midlevel fault has been shown would be to forget that liability for deliberate indifference to inmate welfare rests upon the luxury enjoyed by prison officials of having time to make unhurried judgments, upon the chance for repeated reflection, largely uncomplicated by the pulls of competing obligations." 523 U.S. at 853, 118 S.Ct. 1708. Thus, only an intent to harm in the context of high-speed chases rises to the level of a constitutional violation. *Id.* at 854, 118 S.Ct. 1708. In the present situation, officers conducting the post-arrest investigation certainly had the luxury of unhurried judgments and repeated reflections, which make a reckless standard appropriate. The preliminary hearing in Wilson's case did not occur until October 1, 1986-five and one-half

months after appellants secured his involuntary confession.

In *Lewis,* the Court relied heavily on its previous analysis in prison cases under the Eighth Amendment. The Court analogized a high-speed chase to a prison riot situation, which it had found demanded a higher level of culpability than just recklessness. *Whitley v. Albers,* 475 U.S. 312, 106 S.Ct. 1078, 89 L.Ed.2d 251 (1986). In doing so, it distinguished *Lewis* from those cases where recklessness was found sufficient to state a claim in prison conditions and medical needs cases under the Eighth Amendment, *Farmer,* 511 U.S. at 837, 114 S.Ct. 1970; *Estelle v. Gamble,* 429 U.S. 97, 104, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976). This standard was applied to pre-trial detainees under due process because the Court thought it would be remarkable if convicted prisoners had more rights under the Eighth Amendment than a pre-trial detainee had under due process. *City of Revere,* 463 U.S. 239, 103 S.Ct. 2979, 77 L.Ed.2d 605.

Law enforcement officers, like prosecutors, have a responsibility to criminal defendants to conduct their investigations and prosecutions fairly as illustrated by the *Brady* line of cases requiring the state to disclose exculpatory evidence to the defense. Although charged with investigating and prosecuting the accused with "earnestness and vigor," officers must be faithful to the overriding interest that "justice shall be done." *United States v. Agurs,* 427 U.S. 97, 110-11, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976), *overruled on other grounds, United States v. Bagley,* 473 U.S. 667, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985); *see also Youngblood,* 488 U.S. at 54-55, 109 S.Ct. 333 (evaluating whether *Brady* applied where officers, rather than prosecutors, lost evidence). They are "`the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer.'" *Agurs,* 427 U.S. at 111, 96 S.Ct. 2392 (quoting *Berger v. United States,* 295 U.S. 78, 88, 55 S.Ct. 629, 79 L.Ed. 1314 (1935)). There is no countervailing equally important governmental interest that would excuse the appellants from fulfilling their responsibility to investigate these leads when faced with an involuntary confession and no reliable corroborating evidence. Therefore, the proper standard to judge whether the officers' conduct violates due process is recklessness.

Although *Bagley* overruled a different aspect of *Agurs,* it reaffirmed the notion that a prosecutor's overriding responsibility is that justice shall be done. 473 U.S. at 675 n. 6, 105 S.Ct. 3375.

If Wilson's evidence proves credible at trial, a failure to investigate these other leads could easily be described as reckless or intentional. We affirm the denial of qualified immunity.

III. CONCLUSION

Accordingly, we affirm the district court. The case is remanded for further proceedings consistent with this opinion.

Let's have a look at Zahrey v. Coffey, 221F.3d 342
It is firmly established that a constitutional right exists not to be deprived of liberty on the basis of false evidence fabricated by a government officer. *See Scotto v. Almenas*, 143 F.3d 105, 113 (2d Cir. 1998) (parole officer); *Ricciuti v. N.Y.C. Transit Authority*, 124 F.3d 123, 130 (2d Cir. 1997) (police officers); *White*, 855 F.2d at 961 (same). As we recently stated, citing ample pre-1996 authority, "When a police officer creates false information likely to influence a jury's decision and forwards that information to prosecutors, he violates the accused's constitutional right to a fair trial . . . ." *Ricciuti*, 124 F.3d at 130. *See also Malley*, 475 U.S. at 346 n. 9 (arrest unconstitutional if police officer obtained warrant from judicial officer on the basis of evidence that "no officer of reasonable competence" would have considered sufficient).
It has also long been established that a prosecutor who knowingly uses false evidence at trial to obtain a conviction acts unconstitutionally. *See Napue v. Illinois*, 360 U.S. 264, 269 (1959); *Pyle v. Kansas*, 317 U.S. 213, 216 (1942); *Mooney v. Holohan*, 294 U.S. 103, 112 (1935). Although a prosecutor is protected by absolute immunity for his actions in presenting evidence *at trial, see Imbler*, 424 U.S. at 431, 96 S.Ct. 984, these cases serve to inform every prosecutor that his knowing use of false evidence is unconstitutional. Any prosecutor aware of these cases would understand that fabricating evidence in his investigative role violates the standards of due process and that a resulting loss of liberty is a denial of a constitutional right.

I have pointed out that the victim testified under penalty of perjury that the tools the police claimed where stolen under penalty of perjury where in fact never reported stolen and never belonged to him. I have pointed out the perjury of the police and state in claiming they lost evidence that was in fact not lost and illegally suppressed to further deny me my liberty and rights to due process and a fair trial. When you ignore all the lies told by the police and actually listen to Mr. Millers testimony. There is nothing that supports any criminal actions or intent on my part. The criminal intent and actions are clearly on the police and prosecution for presenting a jury with false evidence and false statements that lacked probable cause and truth.

I would lastly like to add that I have been fighting this injustice tooth and nail for five almost 6 years. I did file a writ of habeas that I paid several hundred dollars to file. And I never even received a decision from the court. I responded to the attorney generals' motion to dismiss because I named the wrong defendant and

I served it through the mail instead using the sheriffs dept. I served the Attorney General exactly how the clerk the writ was filed with told me to. After I filed my response, I never heard anything more about it. So, if I can't seek relief through direct review and I can't seek relief with a writ of habeas. I have proven beyond doubt that the state illegally suppressed evidence, the police and state presented false evidence and perjured testimony. I've proven through the testimony of the victim that the tools the police took from me where in fact not the victims' tools. And I know for a fact that the victim did not report his tools stolen in September but on October 2nd which implicates these officers in a felony burglary.

These are clear facts that have been substantiated by every single person that has reviewed this case in its entirety. Yet the county attorney has asked the court to ignore these facts and has made no argument against these facts. And has taken the position that regardless of the fact the police mysteriously had knowledge of a burglary before the victim did, they flat out lied through out the entire proceeding, they coerced the victim into lying to cover their misconduct.

They knowingly presented hearsay testimony that they turned into perjured testimony that Mr. Bennett based his entire closing argument on. They tampered with evidence and presented only the police reports that had been tailored to fit there narrative and withheld anything that contradicted their lies. And on top of that they lied about losing evidence that was never lost at all. They just had no case and they couldn't tell all the lies they needed to if the jury could just see for themselves who said what and when. I can assure the court those two officers lied about every word they claimed I said, about reading me my rights, about who arrested me and when. About there being heroin in my possession. And the state's position is "well it's been 5 years so who cares.

I sincerely hope the court overturns these fraudulent convictions and sends a clear message to these officers and the county attorney that these kinds of abuses of discretion and power are not acceptable. They brought this fraud into your court room your honor. Not I. And instead of holding these officers and the deputy county attorney to account for the clear actions they took to deny me my rights to freedom, privacy in my home, seizing my property without due process and probable cause. Ignoring the duty, they have to correct this injustice and investigate how the police came to have knowledge of this burglary before the victim reported it. And the steps they took to hide their involvement by hiding that police report that did not include the tools they claimed Mr. Miller had the only tool box in the country that included those tools. THEY ARE LIARS AND

THEIVES.

This is not the first time Officer Nicola was involved in setting me up for a crime I did not commit. And the county attorneys' position is that because they got away with it for 5 years, I should just have to continue living my life with the consequences. That is a massive failure of the justice and goes to show the lack of ethics in the county attorney's office. Just another day and life ruined because they get to break the laws and ignore the rules of court the legislation created to insure justice in the criminal court system.They abused and used their positions as police officers and officers of the court to set me up for a crime they themselves created.

I would again like to request counsel because I feel like I'm at a disadvantage because I don't know exactly how the court system works and it would be another injustice to be shut down because I didn't do something I didn't know I needed to do. Thank You for your time today your honor.

11-3-2021

Kenneth C. Beatty