

1 Answer: "but as soon as Mike got there, see, I was in the house
2 then." (Page 22)

3 Question: "Okay."

4 Answer: "And uh, he was waitin' for Mike to show up. And uh, Mike
5 hadn't got there. And he told me uk, "The best thing for
6 you to do Dave, is just to go in he house and Bob too,
7 You know, and don't get involved with this situation.
8 Cause the, You know, I'm just gonna confront him and I'll
9 just sock him up real quick. Uh, if he pulls a knife on
10 me or somethin' then it's gonna be, You know, I'm gonna
11 have to defend myself that way." That's exactly what he
12 told me, You know. And so then, evidently, now see I, I
13 wasn't out there when this came down." (Page 24)

14 Question: "When you say you went in the house, who did you leave
15 outside there when you went in the house?"

16 Answer: "J.D. and Dino." (Page 25)

17 Question: "S-, Sarah and everything else."

18 Answer: "Okay. When Mike showed up, Dino confronted him about a couple
19 a things. I wasn't out there at all then."

20 Question: "Did you hear it all?"

21 Answer: "Nope. I was inside..."

22 Question: "Okay."

23 Answer: "Sittin' down..." (Page 54,55)

24 Question: "Did you ever hear uh, Mike pull up that, in his car that day?"

25 Answer: "Nope."

26 Prior to eliciting the above false and misleading testimony from witness Mr.
27 Friese. The prosecutor "knew" that Mr. Friese was "Not" outside when Michael Land
28 was driving up, as Witness Mr. Friese testified too. See Interview of: David Friese,
on May 27, 1999 by: Detective's William Donahue and Carl Bloemendaal, attached hereto
as EXHIBIT "U".

During direct examination, by prosecutor Daniel G. Lamborn, the following testimony
was elicited from all witnesses who testified knowing it was false and misleading to

1 obtain a conviction in this case.

2 It is clear from the record in this case, that Law Enforce, "Detective's", Parole
3 Agent's and Witnesses, named: David Friese, Robert Teal, Sarah Terry and other's thinks
4 nothing of lying under oath and/or misrepresenting the facts if it means obtaining a
5 conviction for murder or a related offense. It is inconceivable that the county
6 prosecutor would allow such conduct from any of his witnesses. The fact of the matter
7 is, the Deputy District Attorney in this case knowingly elicited perjured testimony from
8 a key prosecution witness - and allowed his witness to commit an additional act of
9 perjury during cross-examination by defense counsel and himself.

10 As long ago as 1935, in Mooney v. Holohan, 294 U.S. 103, 112, 55 S.Ct. 340, 342, 79
11 L.Ed. 791 (1935), the United States Supreme Court made it clear that the deliberate
12 deception of a court and jurors by the presentation of known false evidence is
13 incompatible with 'rudimentary demands of justice.' In Mooney, supra, it was alleged
14 that petitioner's conviction was based on perjured testimony "which was knowingly used"
15 by the prosecuting authorities in order to obtain that conviction, and also that these
16 authorities deliberately suppressed evidence which would have impeached and refuted the
17 testimony thus given against him." 294 U.S., at 110, 55 S.Ct., at 341. The Court held
18 that such allegations, if true, would establish such fundamental unfairness as to
19 justify a collateral attack on the conviction. In reversing that conviction, the Court
20 stated "It is a requirement that cannot be deemed to be satisfied by mere notice and
21 hearing if a state has contrived a conviction through the pretense of a trial which in
22 truth is but used as a means of depriving a defendant of liberty through a deliberate
23 deception of court and jury by the presentation of testimony known to be perjured..."
24 Id., at 112, 55 S.Ct., at 342.

25 The Supreme Court reaffirmed this principle in Napue v. Illinois, 360 U.S. 264, 79
26 S.Ct. 1173, 3 L.Ed.2d 1217 (1959). In Napue, supra, the Court held that the knowing use
27 of false testimony to obtain a conviction violates due process regardless of whether
28 the prosecutor solicited the false testimony or merely allowed it to go uncorrected

1 when it appeared. The Court explained that the principle that a state may not knowingly
2 use false testimony to obtain a conviction -- even false testimony that goes only to
3 the credibility of the witness -- is "implicit in any concept of ordered liberty." Id.,
4 at 269, 79 S.Ct. 1177. The Court in Napue, supra, also held that a conviction obtained
5 by the knowing use of perjured testimony must be set aside if "the false testimony
6 could...in any reasonable likelihood have affected the judgment of the jury..." Id., at
7 271, 79 S.Ct. 1178.

8 In petitioner's case, the prosecution's theory of the crime depended almost
9 entirely on Sarah Terry and David Friese testimony; without it there could not have
10 been any evidence of a "murder" - nor could the elements of the offense be shown to
11 exist. Moreover, Sarah Terry and David Friese was presented as witnesses and took
12 advantage of that status to express their opinions and theories as to the manner in
13 which Michael Land arrived. (Knowing that testimony to be false and not supported by
14 their interview reports). Sarah Terry and David Friese's credibility was therefore an
15 important aspect of the prosecution's case - with the jury placing the utmost confidence
16 in their testimony. Sarah Terry and David Friese's testimony was key to the prosecution
17 proving its case - and contributed greatly to the verdict rendered.

18 Perhaps equally unfair as the false testimony used in this case, was the
19 prosecutor's reliance on that false testimony in his closing argument to the jury.
20 Repeatedly throughout his closing argument, the prosector referred to Ms. Terry and
21 Mr. Friese testimony regarding the events of that evening being a necessary component
22 of his theory used in the offense. In petitioner's case, the prosecutor's argument to
23 the jury contained numerous improper insinuations and assertions calculated to mislead
24 the jury into believing that there was evidence of a murder in relation to self-defense,
25 when, in fact, the prosecutor knew full well that the discovery and interviews reports
26 indicated otherwise.

27 In U.S. V. Kojayan, 8 F.3d 1315 (9th Cir. 1993), the Ninth Circuit addressed a
28 similar situation wherein the prosecutor made factual assertions he well knew were

1 untrue. The Court in *Kojayan*, supra, found that "Evidence matters; closing argument
2 matters; statements from the prosecutor matter a great deal." Id., at 1323. In reversing
3 that conviction, the court noted that the prosecutor went well beyond asking the jury
4 to 'infer' matters outside the record - he actually made unsupported factual claims.
5 That, the court determined, was the difference between fair advocacy and misconduct.
6 Id., 8 F. 3d at 1321.

7 Finally, in *Killian v. Poole*, 2002 WL 386392 (9th Cir. 2002), the ninth Circuit
8 held that perjury by a key prosecution witness, and the reliance on the perjury by the
9 prosecutor in his final argument, deprived the defendant of her right to a fair trial
10 and due process of law. The court in *Killian*, supra, assumed, without deciding, that the
11 prosecutor neither knew nor should have known about the perjury occurring in that case.
12 The court found that the cumulative effect of the perjury and the prosecutor's reliance
13 on the false testimony, were so prejudicial as to require reversal. See also *U.S. V.*
14 *DeCruz*, 82 F.3d 856 (9th Cir. 1996).

15 In the case at bar, petitioner asserts that his conviction was obtained by the
16 prosecution's knowing use of false and misleading testimony - thereby denying him the
17 right to a fair trial and due process of law in violation of the Fourteenth Amendment
18 to the United States Constitution.

19 Lastly, in an abundance of caution, petitioner submits that defense counsel was
20 incompetent and ineffective for failing to recognize the false and misleading testimony
21 set forth herein.

22 The Sixth Amendment to the United States constitution and article 1, section 15 of
23 the California Constitution guarantee a criminal defendant the right to effective
24 assistance of counsel. See *Strickland v. Washington*, 466 U.S. 668, 80 L.Ed.2d 694, 104
25 S.Ct. 2052 (1984): *In re Gray* (1998) 19 cal. 4th 771, 789.

26 In order to obtain relief on a claim of ineffective assistance of counsel,
27 petitioner must first show that counsel's representation fell below an objective
28 standard of reasonableness, and then that counsel's deficient performance prejudiced

1 the defense. Strickland, supra, 466 U.S. at 687-688. Prejudice is found where "there
2 is a reasonable probability that, but for counsel's unprofessional errors, the results
3 of the proceeding would have been different".

4 In the case at bar, Sarah Terry, David Friese and others was key prosecution
5 witnesses. The fact that some law enforcement agents was qualified by the court as
6 being "experts" in the field of criminal investigation added to their credibility - and
7 allowed them to express their opinions and theories to the jury with great authority.

8 In light of these circumstances, there is simply no logical explanation for defense
9 counsel's failure not to use the "Discovery Reports" to expose the perjury committed by
10 prosecutions witnesses. In fact, defense counsel, being an officer of the court, was
11 obligated to inform the court of any perjured testimony she became aware of during the
12 trial. Counsel failed to do so.

13 Based on the factual allegations set forth herein, petitioner submits that habeas
14 relief must be granted in this case - reversing the judgment of conviction on all
15 counts, and ordering that petitioner be released from custody or afforded a new trial.

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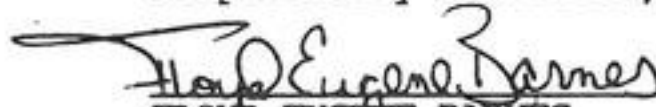
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1 CONCLUSION

2 Because there is more than a reasonable probability that, but for counsel,s
3 errors and omissions, a more favorable verdict would have resulted, and for all of
4 the foregoing reasons and authority, petitioner,s present confinement pursuant to
5 his conviction in Superior Court action No. SCE 199531 is illegal. Petitioner
6 therefore respectfully request that this Court issue and order to show cause, and
7 upon full hearing, grant Petitioner,s prayer for relief, and in so doing, set aside
8 his conviction and remand with instruction to grant a new trial.

9 Dated: July 22, 2004

Respectfully Submitted,

10 
11 FLOYD EUGENE BARNES
(Petitioner In Pro PER)

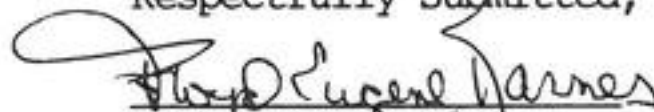
12 PRAYER FOR RELIEF

13 Petitioner therefore request that this Court;

- 14
- 15 1. Take judicial notice of all recrds relevant to Petitioner,s previous jury trial,
16 entitled People v. Barnes, No. SCE 199531,EHC No. 435, Court of Appeal No.D044297.
 - 17 2. Declare the rights of the parties;
 - 18 3. Issue and Order to Show Cause, returnable to Petitioner, as to why Petitioner's
19 conviction and sentence should not be set aside;
 - 20 4. Upon review, order that Petitioner's conviction and sentence be set aside; order
21 a new trial be granted; and provide such other and further relief as may be deemed
22 appropriate in the interest of justice.

23 Dated; July 22, 2004

Respectfully Submitted,

24 
25 FLOYD EUGENE BARNES

26 VERIFICATION

27 I, Floyd Eugene Barnes, Petitioner in this case, hereby verify that I have read
28

1 the foregoing petition for writ of habeas corpus and memorandum of points and
2 authorities in support thereof, and that the information contained therein is true
3 and correct, and if called upon to testify as to the contents of this petition I
4 would do so as a sworn witness.

5 Dated: July 22, 2004

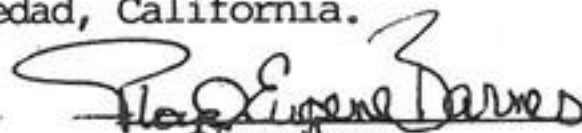
Respectfully Submitted,


FLOYD EUGENE BARNES

8 DECLARATION

9 I, Floyd Eugene Barnes, declare under penalty of perjury under the laws of the
10 State of California the foregoing is true and correct and that this declaration was
11 executed on July 22, 2004, at Soledad, California.

12 FLOYD EUGENE BARNES
Declarant


Signature

15 CERTIFICATE OF SERVICE

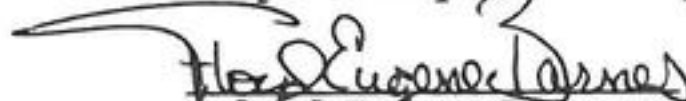
16 I, Floyd Eugene Barnes, the petitioner in this action, hereby certify that I
17 have caused to be served a copy of the foregoing petition for writ of habeas corpus
18 and memorandum of points and authorities in support thereof on the following parties,
19 by placing same in the U.S. Mail, postage prepaid, addressed as follows:

20 The Office of the State Attorney General
21 San Diego Office
110 West "A" Street, Suite 1100
San Diego, California. 92101

23 I, Floyd Eugene Barnes, hereby swear under penalty of perjury that the foregoing
24 is true and correct.

25 Dated: July 22, 2004

Respectfully Submitted,


Floyd Eugene Barnes
(Petitioner In Pro Per)