FILED
ALAMEDA COUNTY
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CLERK OF THE SUPERIOR COURT
By _____ Deputy

Superior Court of California, County of Alameda

Rene C. Davidson Courthouse

In re Pierre Rushing,
on habeas corpus.

Case No. HC166345-1

Related Case Nos. HC166345-1
166345

Order Re Petition for Writ of Habeas Corpus

Department: 2

Petitioner Pierre Rushing was convicted in 2011 of murdering Dawonye Taylor. On October 31, 2025 and June 25, 2026 this court found that Rushing had made a prima facie case meriting an order to show cause as to some of the claims in his pending habeas corpus petition. Specifically, the court issued an order to show cause (OSC) as to the following three claims:

Claim(1)(A): That the contents of the February 1, 2023 Andre Morris declaration constitute new evidence, presented without substantial delay, that is sufficient material and credible that it more likely than not would have changed the outcome of the case. *See* Penal Code § 1473(b)(1)(C)(i).[1]

Claim(1)(B): That the contents of the February 13, 2023, Robert Green declaration constitute new evidence, presented without substantial delay, that is sufficient material and credible that it more likely than not would have changed the outcome of the case. *See id.*

Claim(1)(C): That newly disclosed police reports and officer notes relating to a 2011 investigation of Charles Dunn and Andre Morris constitute new evidence, presented without

[1] All section references are to the Penal Code unless otherwise indicated.

substantial delay, that is sufficient material and credible that it more likely than not would have changed the outcome of the case. *See id.*

Claim(1)(D): That newly developed DNA evidence constitutes new evidence, presented without substantial delay, that is, in light of the other pending claims sufficient material and credible that it more likely than not would have changed the outcome of the case. *See id.*

Claim(2)(A): That Green's trial testimony identifying Rushing as the shooter was false. § 1473(b)(1)(A).

Claim (3)(A): That the government's failure to disclose information relating to the investigation of Dunn and Morris violated its duty to disclose exculpatory information under *Brady v. Maryland*, 373 U.S. 83 (1963).

After the parties filed initial and supplemental returns and denials, the court held an evidentiary hearing over four days. Based on the evidence, as well as the parties' extensive written [2] and oral arguments, I find that Rushing has failed to meet his burden to show a *Brady* violation or that false evidence was used to convict him, but that he has shown that the new evidence would more likely than not have caused at least one juror to have a reasonable doubt as to his guilt.

1 New Evidence (Claims (1)(A) - (1)(D))

A prisoner may bring a habeas petition based on "new evidence … that is presented without substantial delay, is admissible, and is sufficiently material and credible that it more likely than not would have changed the outcome of the case." § 1473(b)(1)(C)(i). This provision is far more favorable to petitioners than it was before a 2016 amendment. Before that change, the statute "required a petitioner to conclusively establish innocence." *In re Sagin*, 39 Cal. App. 5th 570, 579 (2019). But now, the "Legislature has chosen to more closely protect society's interest in ensuring that a person convicted of a crime is the person who committed it," even though doing may impair society's interest in the finality of criminal convictions. *Id.* at 580. Under this new standard, I must grant relief if the petitioner shows that the new evidence more likely than not "would have led at

[2] Rushing's request for leave to file supplemental briefing following closing argument is granted.

least one juror to maintain a reasonable doubt of guilt." *Sagin*, 39 Cal. App. 5th at 579.[3] Older cases that would deny relief in these circumstances are no longer good law.

The current statute "creates a sliding scale: in a case where the evidence of guilt presented at trial was overwhelming, only the most compelling new evidence will provide a basis for habeas corpus relief; on the other hand, if the trial was close, the new evidence need not point so conclusively to innocence to tip the scales in favor of the petitioner." *Id.* at 579–80. The court must make this determination based on the evidence presented at trial and the new evidence identified by the petitioner. *Id.* at n.2. The court also may consider "any evidence not presented to the trial court and which is not merely cumulative in relation to evidence which was presented at trial insofar as it assists in establishing [the petitioner's] innocence." *In re Hall*, 30 Cal. 3d 408, 420 (1981). But it does not include inculpatory evidence that was put before the jury. *Sagin*, 39 Cal. App. 5th at 580 n.2. I therefore consider the evidence presented by the People at the hearing only for the purpose of evaluating the credibility and weight of the exculpatory evidence presented by Petitioner.

For these purposes, "'new evidence' means evidence that has not previously been presented and heard at trial and has been discovered after trial." § 1473(b)(1)(C)(ii).

Rushing presented three types of new evidence at the hearing:

1. The testimony of Green.
2. Analysis of DNA recovered from the car in which the shooter was riding.
3. Information about an investigation of Charles Dunn, apparently known as "C."

Morris did not testify.

1.1 Green Recantation

The most significant evidence that Rushing presented was the recantation of Robert Green, the sole witness who identified Rushing at trial as the shooter. Green testified at the hearing that his trial testimony was false and that Rushing was not at the scene and was not the shooter.

I did not find Green's testimony to be particularly credible. He admitted on the stand what is plain from the history of his various conflicting statements about this case: he is willing to say

[3] Rushing does not argue that the new evidence would have affected his case in any way other than changing the verdict.

whatever he thinks will help him get out of a bad situation. He felt pressure from both sides, particularly Rushing's family, to conform his statements to whatever he thought they wanted to hear, and he did so.

The question before me, however, is not whether I believe Green, but whether I believe that, had the jury somehow been transported to 2026 and heard his most recent testimony along with the other new evidence, at least one of them would more likely than not have believed there was a reasonable doubt as to Rushing's guilt.

The trial evidence showed that in the early morning of April 15, 2011, Green was a passenger in a car along with Andre Morris, a man identified as "C,"[4] and the driver, Patrick Smith. C spotted the victim Taylor and told the driver to let him out. C and Morris got out of the car, accused Taylor of stealing C's iPod, and then started beating him. C then shot Taylor. The men then left him to die.

Green initially described the shooter to the police as 5'10" tall, 120 lbs, with light skin. He later changed this to 5'8." Then, after encountering Rushing at a BART station, he said that the shooter was 6'2," which accurately describes Rushing's and Green's height. Although Green stated that he misjudged the shooter's height because Green was sitting down in the car during this interaction, he also testified that he had been with the shooter for about 5 minutes a few weeks before the shooting during a drug deal. The seller referred to himself as C during this transaction.

Green testified that Rushing is not light-skinned.

Green heard the shooter refer to himself as C. The only connection between this nickname (or its possible homonyms) and Rushing was that an officer had once seen Rushing wearing a red baseball cap that the transcript describes as having "keepers town" written on it. I agree with the People that this almost certainly is an inaccurate transcription of "Cooperstown," the location of the baseball hall of fame, given the officer's reference to the major leagues. *See* Evid. Code § 452(h). But, as the People acknowledge, even if I assume that the jury heard and understood it this way, the hat is of minimal probative value: "C" is a generic nickname, and there is no evidence that Rushing wore this

[4] This could also have meant "see" or "sea."

hat as a signature (Green stated that Rushing was wearing a hat with an "A" – likely referring to the Oakland Athletics – when he saw him at the BART station).

Green admitted that he had 7 prior felony convictions. His fingerprints were found in the car. Rushing's fingerprints were not recovered. Green stated that the shooter had been on the phone just before the shooting; Rushing's phone records showed that a phone linked to him had not been used during this period

Green told the jury that he was certain that Rushing was the shooter.

Substantial evidence corroborated Green's trial testimony. He had little reason to contact the police about the shooting in the first place. He declined to identify numerous other potential suspects as the shooter before positively identifying Rushing during a photo line-up. Even if the possibility of receiving a reward gave him a reason to identify someone as the shooter, there is no explanation of why he would have decided to implicate Rushing rather than somebody else. The jury also heard that Rushing sold drugs from a location where Green said he had bought them from him.

Former Oakland Police Sgt. Nowak testified at the evidentiary hearing that he first met with Green on April 21, 2011, and told him about a possible reward under a crime-stoppers program.[5] Green identified the shooter as "C" on that date. On April 30, Green contacted Nowak to tell him he had encountered the shooter near a BART station.

Green, who was unemployed and homeless at the time of the trial, received a $500 reward after the trial. He testified at the hearing that he did not think he would have identified Rushing as the shooter had he known that the police were investigating somebody else known as "C" along with Morris.

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[5] The jury was never told about this reward or the promise of it. At the time of his appeal and first habeas petition, it does not appear that Rushing knew that Green had been informed of the possible reward before trial. *See People v. Smith*, No. A133769, 2013 WL 4017400, at *12 (Cal. Ct. App. Aug. 1, 2013), *as modified* (Aug. 27, 2013) ("There is no indication in the allegations of the petition or the supporting exhibits that Green asked for or was promised the reward or knew prior to trial that he was likely to receive the reward for his testimony.").

1.2 DNA

The new DNA evidence shows that the DNA found on several cigarette butts found in the red car near where the shooter was seated did not match Rushing. This is not particularly compelling, because the car was not seized until some12 days after the shooting, there is evidence that numerous people would ride in this car, and no evidence that the shooter smoked.

Rushing also presented an expert analysis of DNA recovered from the inside rear door handle of the car that the shooter would have touched when exiting the car just before the shooting. This handle had DNA from at least 4 contributors on it, but it is extremely unlikely that Rushing was one of them. Again, the circumstances make this less probative than it might at first seem – Rushing's expert explained that DNA can get wiped off a smooth surface if other people touched it, and there is considerable reason to think that multiple people touched that handle after the shooter did. But, given the lack of any other physical evidence linking Rushing to the crime, a juror may have found it significant that DNA was recovered from the handle but did not match Rushing.

1.3 Dunn investigation

Oakland police officers testified at the hearing that, between Taylor's murder and Rushing's trial, they were investigating a series of robberies involving Andre Morris, who was in the car with the shooter, and Charles Dunn. A witness (Dixon) told them that Dunn was known as "C."

The statute is clear that I can consider new evidence only if it is admissible. § 1473(b)(1)(C)(i). No testifying witness had personal knowledge of the robberies or that Dunn was known as "C." As the People have consistently argued, the testimony about these topics was based on statements by civilians and is hearsay. Although Rushing argues that the court can consider the statements in various police reports under the official-records exception to the hearsay rule, that exception does not allow the admission of statements by non-employees for the truth of the matter. *People v. Hall*, 39 Cal. App. 5th 831, 844 (2019); *People v. Hernandez*, 55 Cal. App. 4th 225, 240 (1997). It cannot justify admission of "opinions or conclusions." *Hall*, 39 Cal.App.5th at 844. Rushing's inadmissible hearsay cannot support a third-party culpability defense. *See People v. Clark*, 63 Cal. 4th 522, 597-98 & n. 55 (2016).

Nor is this material relevant to the new-evidence claim for its effect on any listener or for any other non-hearsay purpose. Rushing has failed to show that any effect it would have had on a listener or reader is relevant. That the police are investigating a third party or believe him to be guilty is no more admissible to show that person is guilty than it would be to show a defendant is guilty. *Cf. People v. Hawthorne*, 4 Cal. 4th 43, 71-72 (1992).

In short, the jury would not have been able to consider any of this evidence to support a third-party culpability defense. Rushing has therefore failed to present sufficient evidence of third-party culpability.

1.4 Cumulative impact of new evidence

As noted above, the dispositive question is what effect Rushing's new evidence would have had on the jury in light of the evidence it heard. But it is not entirely clear how I should factor-in evidence that the Court of Appeal held was erroneously introduced at trial. Specifically, the jury heard evidence that Rushing had shot a man named Parree Foster three times in San Francisco in 2009 over a $16 or $40 debt, with instructions to consider this only for the limited purpose of the shooter's identity and credibility (since Rushing denied it on the stand), not his identity. Three prosecution witnesses testified about the incident, including Foster and two members of the San Francisco Police Department who were on scene immediately after the shooting.

Rushing was cross examined about this incident, much to his disadvantage: he denied shooting Foster, which contradicted Foster's testimony, circumstantial evidence about the incident, and the spontaneous statements Foster made at the scene of the shooting, as recounted by a San Fransico police sergeant. He denied being in San Francisco to collect his own debt, which contradicted a statement attributed to him by a police officer. Rushing admitted that when the Oakland police questioned him about the incident he lied and said he had nothing to do with it, even though he had been arrested at the scene.

The Court of Appeal held that admission of this evidence was error, observing that "whether this error was prejudicial presents a close question." It ultimately found the error harmless under the *Watson* standard, in part because of the limiting instructions.

It is clear that I should not consider this evidence as substantive evidence of identity. I also believe that, given the Court of Appeal's determination that the jury should not have heard this evidence at all, I should not consider Rushing's testimony about the incident in determining prejudice. Instead, I address whether the jury would have convicted him had this error not occurred.

The strongest evidence against Rushing at trial was Green's eyewitness testimony that he was sure Rushing was the shooter. Green's testimony at the hearing was just the opposite. As noted above, I do not find his recantation particularly credible; it is clear that he is willing to say whatever he thinks will reduce his involvement in this case. But his willingness to change his story and testify falsely under oath – albeit 15 years later – is itself new evidence that may be a reason for a juror to doubt his trial testimony. Although there is no reason to think he had a motive to implicate Rushing, the reward did give him a motive to implicate somebody. That the jury was apparently willing believe Green despite his extensive felony record does not mean that they would not have had doubts about his testimony had they also known that he would recant. His certainty about the identification is the only aspect of his testimony that gave it credibility, particularly given his changing description of the shooter. His testimony at one hearing or the other was clearly false, and knowing that a witness is willing to commit perjury is a clear reason to doubt his veracity.

The other key trial evidence against Rushing was Rushing's own statements, including his false alibis, his denial that he had shot Foster in San Francisco – despite compelling evidence to the contrary – and his admission that he had lied to the police about having been involved in that prior shooting. His testimony about the Foster shooting must have destroyed any credibility he would otherwise have had when he denied shooting Taylor.

Finally, the evidence that Rushing shot Foster in San Francisco doubtless had some effect on the jury in itself, the limiting instruction notwithstanding. *See People v. Ewoldt*, 7 Cal.4th 380, 404-05 (1994). In both shootings, the allegation was that Rushing had shot a person over a minor property dispute and then claimed mistaken identity when he was arrested. The evidence that he was guilty of the San Francisco shooting was far stronger than the evidence that he shot Taylor. Moreover, there was no evidence he had been punished for the San Francisco shooting (in fact, Foster testified that his refusal to identify Rushing in that case made him question whether he was

responsible for the shooting in the present case, and that by testifying he was correcting a wrong) . Although the erroneous admission of this evidence did not in itself merit overturning the judgment on appeal, it surely had "substantial prejudicial effect." *See id*; *People v. Walker*, 139 Cal. App. 4th 782, 806–07 (2006).

Finally, the jury knew that Rushing's fingerprints were not found on the car, although those of Green and another passenger from that same night were. New evidence shows that his DNA was not found on the door handle that the shooter used to exit the car, either. Although this has minimal probative value, particularly given the time between the shooting and the seizure of the car, a reasonable juror could have accorded it some weight.

In sum, the conviction rested on Green's testimony, which included a description of the murderer that changed after he encountered Rushing at a BART station from 5'8" with light skin to 6'2" with a different complexion. None of the non-testimonial evidence – fingerprints, DNA analysis, or the cellphone records -- was inculpatory. Green never identified Rushing before the BART encounter. He had a motive to identify a shooter. Although it is a close call, I conclude that if the jury had the new evidence and had not been exposed to the evidence that the Court of Appeal held should not have been introduced, at least one juror would more likely than not have maintained a reasonable doubt as to Rushing's guilt.

2 False Evidence

A prisoner may petition for habeas corpus on the grounds that "false evidence that is material on the issue of guilt or punishment was introduced against [them] at a hearing or trial relating to the person's incarceration." § 1473(b)(1)(A). The U.S. Supreme Court's *Napue* decision mandates that a "conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment." *In re McCowen*, 121 Cal. App. 5th 1194, 1203–04 (2026) (citing *Napue v. People of State of Ill.*, 360 U.S. 264, 269 (1959)). "To establish a *Napue* violation, a defendant must show that the prosecution knowingly solicited false testimony *or* knowingly allowed it "to go uncorrected when it appeared." *Id.* "If the defendant makes such a showing, a new trial is warranted so long as the false testimony may have had an effect on the outcome of the trial—that is, if it in any reasonable likelihood could have affected the

judgment of the jury." *Id.* This requires the government to "prove beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." *Id.*; *see In re Richards*, 63 Cal. 4th 291, 312 (2016).

Even if the prosecution did not know the evidence was false, a prisoner may obtain habeas relief under state law if they can show a reasonable probability that the false evidence affected the verdict. § 1473(b)(3); *In re Moore*, 123 Cal. App. 5th 57, 70–71 (2026). The threshold question is therefore whether Rushing has proved by a preponderance of the evidence that false material evidence was introduced at his trial. *See id.* at 68.

As discussed above, I did not find Green's recantation credible, and the DNA evidence is not particularly exculpatory. Even if the third-party-culpability evidence were admissible, it does not show innocence, alone or in combination with the other evidence presented. Rushing has failed to meet his burden to show that any of the evidence used to convict him was false.

3 *Brady* claim

Rushing claims the prosecution failed to disclose evidence relating to an investigation and prosecution of Charles Dunn, who was known as "C" and who was suspected of committing violent crimes along with Morris, in violation of *Brady v. Maryland*, 373 U.S. 83 (1963).

Under *Brady*, "the prosecution has a constitutional duty to disclose to the defense material exculpatory evidence, including potential impeaching evidence." *In re Jenkins*, 14 Cal. 5th 493, 504–05 (2023). Even after conviction, the prosecution has a continuing duty to disclose any such information that was known to it before the verdict. *See id.* at 512.

The prosecution's *Brady* "obligation is not limited to evidence the prosecutor's office itself actually knows of or possesses, but includes evidence known to the others acting on the government's behalf in the case, including the police." *Id.* This means that the assigned "prosecutor has the duty to learn of any favorable evidence known to others acting on the government's behalf in the case." *J.E. v. Superior Ct.*, 223 Cal. App. 4th 1329, 1335 (2014). But this "does not mean that the prosecution must routinely review all available files for evidence that might impeach a prosecution witness." *Id.* at 1336 n.6 (citing *United States v. Brooks*, 966 F.2d 1500, 1501 (D.C. Cir. 1992) and *United States v. Joseph*, 996 F.2d 36, 37 (3d Cir. 1993)). Instead, the "prosecution's duty to inspect

for exculpatory and impeachment evidence is generally limited to materials possessed by the 'prosecution team.'" *Id.* at 1335. The prosecution team generally includes people connected to the investigation or prosecution of the charges against the defendant. *Id.* at 1335. But it does not include investigators "who are not involved in the investigation." *IAR Sys. Software, Inc. v. Superior Ct.*, 12 Cal. App. 5th 503, 516 (2017). "And, even when agents are involved in the investigation, they are not always so integral to the prosecution team that imputation is proper." *Id.*

Even without a defense request, prosecutors must seek-out and disclose various types of information that are plainly helpful to the defense that they, but not the defense, can reasonably access. *J.E.*, 223 Cal. App. 4th. at 1335-36; *Brooks*, 966 F.2d 1500, 1503 (D.C. Cir. 1992). This includes, for example, criminal-history information and other evidence that could cast doubt on their witnesses' credibility, since credibility is always an issue. *See id.* In addition, if the defense requests specific information, prosecutors cannot argue that they were unaware of it. *See Joseph*, 996 F.2d at 40-41; *Brooks*, 966 F.2d at 1504. But absent such a request, *Brady* does not charge individual prosecutors or officers with complete knowledge of every matter in which they are involved. *Joseph,* 996 F.2d at 39, 41 (trial prosecutor not required to search for exculpatory information in other case he was also prosecuting). "When deciding the scope of the prosecution's duty to search files unrelated to the case, the courts consider such factors as whether a request has been made by the defense; the prosecution's ease of access to the information; and the likelihood of evidence favorable to the defense." *Brooks*, 966 F.2d at 1336. n.6.

Here, there is no evidence that the prosecutor or anybody involved in Rushing's prosecution had sufficient information about the Dunn investigation to trigger their *Brady* obligations. Connecting the two cases would have required, at the very least, a person to know that both involved a person known as "C" (hardly a unique nickname) and Morris. Although Dunn's case was presented to the District Attorney's office well before Rushing was convicted, there is no indication that Rushing's prosecutor had any knowledge of it. And although some of the investigating officers in one case may have had some peripheral involvement in the other, Rushing has failed to show that any of them knew or should have known enough to connect the two matters. In fact, the evidence shows that if any of them had made this connection they would have acted on it, at least before Rushing's arrest.

That the prosecution referred to the information it disclosed in 2024 as *Brady* material does not change this analysis. A prosecutor's determination that material "is subject to disclosure under *Brady* … is not dispositive as to the existence of a constitutional duty." *In re Jenkins*, 14 Cal. 5th 493, 507 (2023). Prosecutors should err on the side of disclosure of any evidence that may potentially assist the defense. *See id.* It would make no sense to create a rule that could potentially give them an incentive not to do so.

Because there is no evidence that, at the time of Rushing's 2011 trial, any member of the prosecution team made or should have made a connection between the two cases, Rushing has failed to show a *Brady* violation. I therefore need not decide whether he has shown that the information is material or to what extent a *Brady* claim can rest on evidence that it not itself admissible to prove the exculpatory facts but that could have allowed the defense to locate admissible exculpatory evidence.

4 Conclusion

For the above reasons, I grant relief as to the claim that newly discovered evidence would probably have changed the result of the trial. I deny relief on all other claims.

In part because of the age of this case, I stay this order for 30 days to allow sufficient time for an appeal and request for an appellate stay. *See* §§ 1484, 1506; *People v. Esquivias*, 20 Cal. 5th 734, 742-44 (2026). After that time expires, the People will have 60 days to retry Rushing, unless he waives his right to a speedy trial. *See* § 1382(a)(2); *People v. Bilbrey*, 25 Cal. App. 5th 764 (2018).

The order to show cause is discharged.

SO ORDERED

11/16/2026

Michael T. Risher
Judge of the Superior Court