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CENTRAL JUSTICE CENTER
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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

DEC - 7 2016

DAVID H. YAMASAKI, Clerk of the Court
BY: **BRENDA RAAB** DEPUTY

Kenneth Clair
501 City Drive South
Orange, CA. 928868
Booking Number: 2925186

In: Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

PEOPLE OF THE STATE OF

CALIFORNIA,

Plaintiff,

VS.

KENNETH CLAIR

Defendant

) Case No. C-57572

)
) DEFENDANT KENNETH CLAIR
) MOTION THAT THE COURT
) REMOVE DAN WAGNER AND THE
) ENTIRE TONY RACKAUCKAS
) ORANGE COUNTY DISTRICT
) ATTORNEYS OFFICE FROM HIS
) CASE BECAUSE OF BENCH
) ORDERED DISCOVERY THAT WAS
) NOT PRODUCED PURSUANT TO
) COURT BENCH ORDER.

)
) AB 1328 REMEDIES REQUESTED
) AB 1909 REMEDIES REQUESTED

*Set: Friday, January 6, 2017
9:00am C45*

To The Honorable Judge GOETHALS of Department C45:

**KENNETH CLAIR, Defendant in the above matter seeks the following
order:**

**To remove Dan Wagner and the entire Orange County Tony Rackauckas
office from his case for violating bench order issued by the court
on November 10, 2016, and production and marketing at taxpayers
expense a 7 Part series on You Tube on why the Defendant is guilty.**

1

**DEFENDANT KENNETH CLAIR REQUEST THAT THE COURT REMOVE DAN WAGNER AND THE ENTIRE TONY RACKAUCKAS
ORANGE COUNTY DISTRICT ATTORNEYS OFFICE FROM HIS CASE BECAUSE OF BENCH ORDERED DISCOVERY THAT WAS NOT
PRODUCED PURSUANT TO COURT BENCH ORDER.**

AB 1328 REMEDIES REQUESTED

1 Defendant was notified by his investigator, whose declaration is
2 attached, (EXHIBIT E) that the District Attorney has made absolutely
3 no effort to comply with the court bench order Ref: (EXHIBIT A) (10
4 TEXT)

5
6
7 Defendant feels that his case has been compromise irreconcilably by
8 the Orange County District Attorneys office that has produced and
9 is marketing at the taxpayer's expense, a 7 part mini series based
10 on claiming the defendant is guilty. (EXHIBIT B) This 7 part
11 series featuring Dan Wagner and the Santa Ana Police Department not
12 only misrepresents the facts of the Defendant's case, but the
13 District Attorney is introducing discovery that was never given to
14 the defendant's previous counsel according to Brady. The district
15 attorney should not be introducing Brady matters in an open case to
16 the public. These new discovery issues serve as proof that the
17 District Attorney has violated past Brady discovery rules and laws.
18
19

20
21 The Orange County District Attorney also contacted the family of
22 the victim, Linda Rodgers, and featured them as a means to support
23 the Orange County District Attorney's contention on these videos.
24 The Orange County District Attorney in these videos put together a
25 presentation and made a misleading factual attempt to convince
26 anyone that followed all 7 videos in the series that all the
27

DEFENDANT KENNETH CLAIR REQUEST THAT THE COURT REMOVE DAN WAGNER AND THE ENTIRE TONY RACKAUCKAS
ORANGE COUNTY DISTRICT ATTORNEYS OFFICE FROM HIS CASE BECAUSE OF BENCH ORDERED DISCOVERY THAT WAS NOT
PRODUCED PURSUANT TO COURT BENCH ORDER.

1 statements that were made where based on facts and that the
2 defendant was rightfully guilty. The Orange County District
3 Attorney introduced segments of a video of Pauline Flores that was
4 never discovered at anytime to the defense and according to Brady
5 should have been introduced to defendant's prior counsels.

6
7 (EXHIBIT C)
8

9 The defendant Kenneth Clair does not feel that he will ever get a
10 fair opportunity to full discovery because of past discovery
11 violation by this same district attorney's office, and the
12 defendant's only remedy is to have Dan Wagner who was featured in
13 this 7 part video removed from his case. Dan Wagner and the
14 district attorney office only purpose for making this 7 part mini
15 series was to use a "reality type show" method to get an audience
16 enticed with the defendant's case, and to hook them into looking
17 forward to the next adventure. The defendant believes that the sole
18 purpose of this 7 part mini series was to incriminate him, and to
19 introduce new evidence that was never discovered to his prior
20 counsel. The defendant does not have the resources that the Orange
21 County District Attorney is expending through the taxpayers.
22
23

24
25 The defendant's entire case now has been put in serious jeopardy
26 because the defendant was depending on the court bench order to get
27

1 his discovery that was bench ordered. The defendant wanted his
2 investigator who has represented to the court that his intentions
3 are to expedite this matter and to review the court ordered
4 discovery.

5
6
7 The defendant has been incarcerated for over 30 years for a crime
8 that he did not commit and the DNA findings and the exculpatory
9 discovery that was bench ordered is relevant to the defendant's
10 case. The defendant needs to effectively retain counsel and to
11 respond to the Orange County District Attorney brief claiming that
12 the court may only have the authority to "only" resentence.
13

14
15 The defendant feels that this violation of the discovery order was
16 intentionally done so that the January 13, 2016 date would come up
17 and the defendant would never have the opportunity to have his
18 investigator be in position to review the discovery and be able to
19 tell his counsel that the defendant is attempting to hire what is
20 missing in the discovery. The fact that the Orange County District
21 Attorney has introduced new discovery has made the defendant's
22 burden to respond impossible.
23

24
25
26 The defendant has now lost his opportunity because of the direct
27 violation of the courts bench order, to come up with counsel and a

28 **DEFENDANT KENNETH CLAIR REQUEST THAT THE COURT REMOVE DAN WAGNER AND THE ENTIRE TONY RACKAUCKAS
ORANGE COUNTY DISTRICT ATTORNEYS OFFICE FROM HIS CASE BECAUSE OF BENCH ORDERED DISCOVERY THAT WAS NOT
PRODUCED PURSUANT TO COURT BENCH ORDER.**

1 defense by the January 13, 2017 deadline, so the defendant is also
2 requesting that the January 13, 2017 date be extended indefinitely
3 until the Orange County District Attorney does comply with the
4 bench order. If the court is inclined to remove the Orange County
5 District Attorney entirely from his case as per the order he is
6 seeking, then these issues can be adjudicated if necessary by
7 whatever prosecution agency replaces the Orange County District
8 Attorney's office.
9

10
11 The defendant in this order is also requesting that this court
12 follow through with all sanctions, criminal prosecution, or other
13 remedies available under AB-1328, AB-1909, any existing law that is
14 applicable for violating the bench order and putting the defendant
15 in an irreconcilable situation. (EXHIBIT D)
16
17

18 The defendant is also seeking because of the severity of the action
19 of the Orange County District Attorney's office, that the court
20 considers exoneration as a remedy and to have the Orange County
21 District Attorney's office re-file this case. The
22 Orange County District Attorney's office has violated so many Brady
23 laws and have withheld so much exculpatory Brady material
24 maliciously and the defense will never know the true extent of
25 these violation and the impact on the defendant's case. It would be
26
27

1 proper for the court to consider exoneration. The Orange County
2 District Attorney's office has bought these conditions on by their
3 own actions and the defendant should not have to be incarcerated
4 during these tactics by the Orange County District attorney. These
5 tactics are crude and the defendant, in result, has suffered crude
6 and unusual punishment. Every right that the defendant has under
7 the 6th and 14th amendment has been breached by the Orange County
8 District Attorney's office.
9

10
11 The goal of the Orange County District Attorney's office is to have
12 the defendant eventually die in custody without having his
13 discovery or a means of a timely defense in his lifetime. The
14 Orange County District Attorney office will habitually defy any
15 court order for discovery because their goal is to use taxpayer
16 resources to win at all cost in this matter.
17
18
19

20 Dated: December 7, 2016
21

22 Respectfully Submitted,
23

24 
25

26 Kenneth Clair/ Defendant in Pro Per
27
28

EXHIBIT A

Code	Text
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- 1 HHELD **Hearing held on 11/10/2016 at 09:00:00 AM in Department C45 for Motion Discovery.**
- 2 OFJUD Judicial Officer: Thomas Goethals, Judge
- 3 OFJA Clerk: B. Raab
- 4 OFBAL Bailiff: Z. T. Hathaway
- 5 OFREP Court Reporter: Kary Parker
- 6 APDPP Defendant present in Court in propria persona.
- 7 APDDA People represented by Daniel Wagner, Deputy District Attorney, present.
- 8 MOTBY Motion by Defense for all discovery materials.
- 9 MOTION Motion granted.
- 10 TEXT The Court orders effective immediately that the People deliver forthwith to defendant all discovery related to statue, case law and constitutional mandate. The People are to deliver discovery to defendant's Investigator, CJ Ford, Jr. within 15 days.
- 11 CLSET2 **Sentencing re: Re-Sentencing set on 01/13/2017 at 09:00 AM in Department C45.**
- 12 CLVAC **Further Proceedings vacated for 01/13/2017 at 08:30 AM in C45.**
- 13 DFREM Defendant remanded to the custody of the Sheriff.
- 14 DFOTR Defendant ordered to return.
- 15 BLNOB Court orders bail to remain at NO BAIL.
- 16 NTJAL **Notice to Sheriff issued.**

EXHIBIT A

EXHIBITS B



(/default.asp)

News Releases and Media Advisories

Search

Date	Description
12/1/2016:	CORONA MAN ARRAIGNED FOR PIMPING AND PANDERING TWO WOMEN AND 17-YEAR-OLD BOY IN COSTA MESA THEN ASSAULTING AND FURNISHING METH (/civica/press/display.asp?layout=2&Entry=5014)
11/30/2016:	MEDIA ADVISORY - People v. Kenneth Clair Part 7 (/civica/press/display.asp?layout=2&Entry=5010)
11/22/2016:	MEDIA ADVISORY - People v. Kenneth Clair video Part 6 (/civica/press/display.asp?layout=2&Entry=5006)
11/15/2016:	MEDIA ADVISORY - People v. Kenneth Clair video Part 5 (/civica/press/display.asp?layout=2&Entry=4992)
11/9/2016:	MEDIA ADVISORY - People v. Kenneth Clair Full Audio video (/civica/press/display.asp?layout=2&Entry=4986)
11/8/2016:	MEDIA ADVISORY - People v. Kenneth Clair video Part 4 (/civica/press/display.asp?layout=2&Entry=4983)
10/27/2016:	MEDIA ADVISORY - People v. Kenneth Clair video Part 3 (/civica/press/display.asp?layout=2&Entry=4970)
10/24/2016:	MEDIA ADVISORY - People v. Kenneth Clair video Part 2 (/civica/press/display.asp?layout=2&Entry=4963)
10/18/2016:	MEDIA ADVISORY - People v. Kenneth Clair video (/civica/press/display.asp?layout=2&Entry=4957)

ORANGE COUNTY
DISTRICT ATTORNEY

NEWS RELEASE

TONY RACKAUCKAS,
District Attorney



James King, Executive Chief of Staff
1440 N. Main Street, Suite 200
Santa Ana, CA 92701
Phone: (714) 292-2718

Public Affairs Unit
Office: (714) 441-4403

Case # C-57572

Date: October 18, 2016

MEDIA ADVISORY

WHO: Orange County District Attorney (OCDA) Tony Rackauckas

WHAT: Published a video regarding People v. Kenneth Clair, who is expected to be reinterred for the violent murder of Linda Rodgers in 1984. The video aims to set the record straight on false information published in this case.

This video is the first in a seven-part series and can be viewed at the following link:
<http://youtube.com/ocda1984>

WHEN: Today, Oct. 18, 2016

###

YouTube

Inmate Kenneth Clair and his defense team have disseminated false information about his case on the internet and throughout the media.

The Orange County District Attorney (OCDA) is setting the record straight.



592 views

592 views

People vs. Kenneth Clair: Introduction

Orange County DA

Published on Oct 18, 2016

In 1987 inmate Kenneth Clair was convicted of the violent murder of Linda Rodgers. Recently Clair and his defense team have disseminated false information about the case on the internet and through the media.

COMMENTS

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Tue 11:49:20 PM C.J. Ford Jr.

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Up next

People vs. Kenneth Clair: Linda

People vs. Kenneth Clair: Conclusion

People vs. Kenneth Clair: Audio Recording

People vs. Kenneth Clair: November 15, 1984

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People vs. Kenneth Clair: DNA

People vs. Kenneth Clair: Child Witness

5th Annual Ford Incentive Preview

What Does it Take To Get a Rental? CA Inmate Kenneth

Full Audio Recording | People vs. Kenneth Clair

Martel v. Clair: Oral Argument - December 06, 2011

People vs. Kenneth Clair: Introduction



People vs. Kenneth Clair: Introduction

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In 1987, inmate Kenneth Clair was convicted of the violent murder of Linda Rodgers. Recently, Clair and his defense team have disseminated false information about the case on the internet and through the media.

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People vs. Kenneth Clair: Introduction



Orange County DA
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- People vs. Kenneth Clair: Linda
1:24
- People vs. Kenneth Clair: Conclusion
4:55
- People vs. Kenneth Clair: Audio Recording
1:00
- People vs. Kenneth Clair: November 15, 1984
1:22
- Selected | Latest Uploads
5:26
- People vs. Kenneth Clair: DNA
1:00
- People vs. Kenneth Clair: Child Witness
1:22
- 5th Annual Ford Incentive Preview
1:15
- What Does It Take To Get a Retrial? CA Inmate Kenneth
1:24
- Full Audio Recording | People vs. Kenneth Clair
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- Marcel v. Clair: Oral Argument - December 05, 2011
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People vs. Kenneth Clair: Introduction

OrangeCountyGA

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Published on Oct 18, 2016

In 1987, inmate Kenneth Clair was convicted of the violent murder of Linda Rodgers. Recently, Clair and his defense team have disseminated false information about the case on the internet and through the media.

COMMENTS

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Martin v. Clair: Oral Argument - December 06, 2011
1:01:10

EXHIBIT C

EXHIBIT D



AB-1909 Falsifying evidence. (2015-2016)

SHARE THIS:

Date Published:

Assembly Bill No. 1909

CHAPTER 879

An act to amend Section 141 of the Penal Code, relating to crimes.

[Approved by Governor September 30, 2016. Filed with Secretary of State
September 30, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1909, Lopez. Falsifying evidence.

Existing law makes it a misdemeanor for a person, or a felony for a peace officer, to knowingly, willfully, intentionally, and wrongfully alter, modify, plant, place, manufacture, conceal, or move any physical matter, digital image, or video recording, with the specific intent that the action will result in a person being charged with a crime.

This bill would make it a felony punishable by imprisonment for 16 months or 2 or 3 years for a prosecuting attorney to intentionally and in bad faith alter, modify, or withhold any physical matter, digital image, video recording, or relevant exculpatory material or information, knowing that it is relevant and material to the outcome of the case, with the specific intent that the physical matter, digital image, video recording, or relevant exculpatory material or information will be concealed or destroyed, or fraudulently represented as the original evidence upon a trial, proceeding, or inquiry.

By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 141 of the Penal Code is amended to read:

141. (a) Except as provided in subdivisions (b) and (c), a person who knowingly, willfully, intentionally, and wrongfully alters, modifies, plants, places, manufactures, conceals, or moves any physical matter, digital image, or video recording, with specific intent that the action will result in a person being charged with a crime or with the specific intent that the physical matter will be wrongfully produced as genuine or true upon a trial, proceeding, or inquiry, is guilty of a misdemeanor.

(b) A peace officer who knowingly, willfully, intentionally, and wrongfully alters, modifies, plants, places,

manufactures, conceals, or moves any physical matter, digital image, or video recording, with specific intent that the action will result in a person being charged with a crime or with the specific intent that the physical matter, digital image, or video recording will be concealed or destroyed, or fraudulently represented as the original evidence upon a trial, proceeding, or inquiry, is guilty of a felony punishable by two, three, or five years in the state prison.

(c) A prosecuting attorney who intentionally and in bad faith alters, modifies, or withholds any physical matter, digital image, video recording, or relevant exculpatory material or information, knowing that it is relevant and material to the outcome of the case, with the specific intent that the physical matter, digital image, video recording, or relevant exculpatory material or information will be concealed or destroyed, or fraudulently represented as the original evidence upon a trial, proceeding, or inquiry, is guilty of a felony punishable by imprisonment pursuant to subdivision (h) of Section 1170 for 16 months, or two or three years.

(d) This section does not preclude prosecution under both this section and any other law.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Assembly Bill No. 1328

CHAPTER 467

An act to amend Section 6086.7 of the Business and Professions Code, and to add Section 1424.5 to the Penal Code, relating to criminal procedure.

[Approved by Governor October 3, 2015. Filed with
Secretary of State October 3, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1328, Weber. Criminal procedure: withholding of evidence.

Existing law requires the prosecuting attorney to disclose to the defendant or his or her attorney certain materials and information, including statements of all defendants and any exculpatory evidence, as specified. Existing law authorizes a court to grant a motion to disqualify a district attorney from performing an authorized duty, subject to specified procedural requirements.

This bill would authorize a court, upon receiving information that the prosecuting attorney has deliberately and intentionally withheld relevant or material exculpatory evidence or information in violation of law, to make a finding, supported by clear and convincing evidence, that a violation occurred. If the court makes such a finding, the bill would require the court to inform the State Bar of California of that violation if the prosecuting attorney acted in bad faith and the impact of the withholding contributed to a guilty verdict, guilty or nolo contendere plea, or, if identified before conclusion of trial, seriously limited the ability of a defendant to present a defense. The bill would authorize a court to disqualify an individual prosecuting attorney from a case if the court finds that a violation occurred in bad faith. The bill would also authorize, upon a determination by a court to disqualify an individual prosecuting attorney from a case, the defendant or his or her counsel to file and serve a notice of a motion to disqualify the prosecuting attorney's office if there is sufficient evidence that other employees of the prosecuting attorney's office knowingly and in bad faith participated in or sanctioned the intentional withholding of the relevant or material exculpatory evidence or information and that withholding is part of a pattern and practice of violations. The bill would specify that its provisions do not limit the authority or discretion of, or any requirement placed upon, the court or other individuals to make reports to the State Bar of California regarding the same conduct, or otherwise limit other available legal authority, requirements, remedies, or actions.

The people of the State of California do enact as follows:

SECTION 1. Section 6086.7 of the Business and Professions Code is amended to read:

6086.7. (a) A court shall notify the State Bar of any of the following:

(1) A final order of contempt imposed against an attorney that may involve grounds warranting discipline under this chapter. The court entering the final order shall transmit to the State Bar a copy of the relevant minutes, final order, and transcript, if one exists.

(2) Whenever a modification or reversal of a judgment in a judicial proceeding is based in whole or in part on the misconduct, incompetent representation, or willful misrepresentation of an attorney.

(3) The imposition of any judicial sanctions against an attorney, except sanctions for failure to make discovery or monetary sanctions of less than one thousand dollars (\$1,000).

(4) The imposition of any civil penalty upon an attorney pursuant to Section 8620 of the Family Code.

(5) A violation described in paragraph (1) of subdivision (a) of Section 1424.5 of the Penal Code by a prosecuting attorney, if the court finds that the prosecuting attorney acted in bad faith and the impact of the violation contributed to a guilty verdict, guilty or nolo contendere plea, or, if identified before conclusion of trial, seriously limited the ability of a defendant to present a defense.

(b) In the event of a notification made under subdivision (a) the court shall also notify the attorney involved that the matter has been referred to the State Bar.

(c) The State Bar shall investigate any matter reported under this section as to the appropriateness of initiating disciplinary action against the attorney.

SEC. 2. Section 1424.5 is added to the Penal Code, immediately following Section 1424, to read:

1424.5. (a) (1) Upon receiving information that a prosecuting attorney may have deliberately and intentionally withheld relevant or material exculpatory evidence or information in violation of law, a court may make a finding, supported by clear and convincing evidence, that a violation occurred. If the court finds such a violation, the court shall inform the State Bar of California of that violation if the prosecuting attorney acted in bad faith and the impact of the withholding contributed to a guilty verdict, guilty or nolo contendere plea, or, if identified before conclusion of trial, seriously limited the ability of a defendant to present a defense.

(2) A court may hold a hearing to consider whether a violation occurred pursuant to paragraph (1).

(b) (1) If a court finds, pursuant to subdivision (a), that a violation occurred in bad faith, the court may disqualify an individual prosecuting attorney from a case.

(2) Upon a determination by a court to disqualify an individual prosecuting attorney pursuant to paragraph (1), the defendant or his or her counsel may file and serve a notice of a motion pursuant to Section 1424

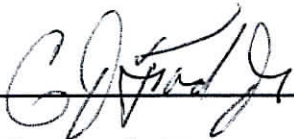
to disqualify the prosecuting attorney's office if there is sufficient evidence that other employees of the prosecuting attorney's office knowingly and in bad faith participated in or sanctioned the intentional withholding of the relevant or material exculpatory evidence or information and that withholding is part of a pattern and practice of violations.

(c) This section does not limit the authority or discretion of, or any requirement placed upon, the court or other individuals to make reports to the State Bar of California regarding the same conduct, or otherwise limit other available legal authority, requirements, remedies, or actions.

EXHIBIT E

1 I swear that this declaration is true and correct under the penalty
2 of perjury.

3
4
5 Dated: December 7, 2016
6

7
8 
9 C. J. Ford Jr.