

1 **Kenneth Clair**
2 **550 N. Flower Street**
3 **Santa Ana, CA. 92702**
4 **Booking Number: 2925186**

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

DEC 29 2016

5 **In: Pro Per**

DAVID H. YAMASAKI, Clerk of the Court

6 BY: **BRENDA RAAB**, DEPUTY

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**

9
10 **PEOPLE OF THE STATE OF**

11 **CALIFORNIA,**

12
13 **Plaintiff,**

14 **vs.**

15 **KENNETH CLAIR**

16
17 **Defendant**

) **Case No. C-57572**

) **MOTION FOR NEW TRIAL**

) **JANUARY 6, 2017 AT 8:30 AM**

) **RECEIVED**

) **DEC 29 2016**

18
19 **OFFICE OF THE DISTRICT ATTORNEY**
CENTRAL JUSTICE CENTER
45 SANTA ANA, CA

20 **To The Honorable Judge GOETHALS of Department**

21 **KENNETH CLAIR, Defendant in the above matter seeks the following**

22 **order:**

23 **Defendant Kenneth Clair motions for an order for a new trial.**

24 **Defendant Kenneth Clair is requesting a new trial because of newly**

25 **discovered scientific evidence that the DNA found at the crime**

26 **scene, all physical evidence, trace evidence, and all crime scene**

27 **evidence belongs to someone else, not him. Defendant seeks order**

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1 for a new trial on the aforementioned grounds and the following
2 grounds.

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5 **PROSECUTIONAL MISCONDUCT**
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7 The Orange County District Attorney's Office has violated the law
8 under AB-1909 so severely by withholding critical and exculpatory
9 scientific test results that prejudice the defendant's case. By
10 willfully and in Bad Faith withholding exculpatory evidence and
11 results from the defense have made it impossible for the defense to
12 further their investigation to find the real perpetrator of the
13 crime. The DA's concealment actions also prejudice the defendant
14 and the defense to establish the fact that ALL the evidence that
15 has been scientifically tested in the control of the Orange County
16 District Attorney's Office actually clears the Defendant.
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20 The defense has no obligation to solve the crime, although the
21 defense efforts have been diligent in the attempt to have the
22 opportunity under Brady. However, the prosecution misconduct in the
23 matter has been so severe and criminal that it has been impossible
24 to obtain the evidence of the party that left DNA at the crime
25 scene that the DA investigated. The DA has refused to turn over the
26 discovery of each of the items, locations, and test results in
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1 their possession that exonerates the defendant. The prosecution
2 misconduct is so criminal and rampant in this matter that they have
3 refused a bench order to disclose discovery, Brady materials, and
4 to obey the law under AB-1909.
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7 The defendant deserves a new trial because of the degree of
8 prosecution Misconduct alone, and the defendant's only remedy is to
9 have a new trial.
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11 **NEWLY DISCOVERED EVIDENCE THAT WAS NOT PRESENTED AT THE**
12
13 **FIRST TRIAL**
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15 The first trial did not have the use of DNA or modern methods.
16 Science has evolved and once the DNA determined that the
17 defendant's DNA was not on any item, test result, or at the crime
18 scene at all, the defendant only remedy is a new trial. The newly
19 discovered evidence belongs to someone else, not the defendant. If
20 this information would have been available at the first trial, the
21 jury would not have convicted the defendants, and chances are that
22 the Orange County District Attorney's Office would not have been
23 able to file this case or get a conviction.
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1 CRITICAL AND DAMAGING TESTIMONY BY PAULINE FLORES WOULD
2 HAVE DISMISSED PAULINE FLORES AS A CREDITABLE WITNESS IN
3 THE FIRST HEARING IF THE DA WOULD HAVE TURNED OVER THE
4 DISCOVERY TO THE DEFENSE.
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7 The district attorney relied heavily on, and got a conviction
8 because their star witness Pauline Flores's testimony that she was
9 in the area on the night of the murder and witnessed the defendant
10 being in the area of the murder. Part of the defense Newly
11 Discovered evidence is testimony by Flores in a declaration and
12 audio interview with defense investigator C. J. Ford Jr. Flores
13 testified that she was disabled by a brain surgery operation, and
14 had no memory of some family members and all of her friends on the
15 night of the murder.
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19 Flores testified that she was under the care of two caregivers that
20 also filed declarations supporting the fact that Flores was under
21 their care. Flores and the caregivers testified that Flores could
22 not have gone out that night unassisted because of her brain
23 surgery and medication she was taking. All of the declarations
24 support the fact that Pauline Flores had no motoring skills, almost
25 total memory loss, could not have remembered family members or even
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1 the defendant Kenneth Clair, nether less jewelry that she testified
2 in the first trial.

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4 The district attorney is trying to conceal their taped interviews
5 with Pauline Flores by not turning over the tapes of the interviews
6 that they conducted with Flores. Flores told investigator C. J.
7 Ford Jr. that these interviews were recorded and she only
8 cooperated because she was being extorted by the Police to say that
9 she was in the area of the murder at the specific time it occurred.
10 Flores testified that the police were going to indict her as an
11 accessory to the murder if she didn't cooperate. The missing tapes
12 are critical because Flores declared in her declaration that went
13 unchallenged in Federal court, that she was not at the crime scene
14 because of her incapacity due to the brain surgery and the
15 medication she was taking. The declarations of her caretakers also
16 were unchallenged in Federal Court which claimed and supported the
17 same claim regarding Flores.
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22 The defendant's need for a new trial is essential because the
23 prosecutor will have to turn over the evidence that the prosecution
24 has publically says exist, but has never turned over to the
25 defense. The defense in a new trial can prove that Pauline Flores
26 was not with Clair on the night of the murder, and all of the
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1 previous testimony given in the first trial will become moot
2 because Pauline Flores was not there.
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4 **DEFENDANT KENNETH CLAIR HAS ALWAYS MAINTAINED HIS**
5 **INNOCENCE**
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8 Defendant Kenneth Clair has always maintained his innocence. If a
9 new trial is not granted by this court, Kenneth Clair could be
10 resentenced without the newly discovered evidence being heard and
11 given parole. The chances of this newly discovered evidence ever
12 being adjudicated, once he accepted parole, for a new trial would
13 be impossible. Parole is accepting a guilty verdict, and the
14 defendant is not guilty as the newly discovered evidence proves.
15 The Orange County District Attorney's office are demanding that the
16 newly discovered evidence be destroyed as part of the resentencing
17 and parole process, and that the defendant would never be allowed
18 to present this evidence or ever seek a new trial.
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22 **INSUFFICIENT EVIDENCE**
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24 The defense believes that this court has broad discretion in
25 acquittal in this matter. The evidence that the prosecution would
26 be presenting in a new trial would be insufficient to sustain a
27 guilty verdict. The prosecution will be relying on circumstantial
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1 evidence in the first hearing that has been replaced with modern
2 proven scientific evidence. The prosecution would be relying on
3 testimony from their star witness, that has already testified in
4 Federal court with 2 witnesses that she wasn't and could not have
5 been at the crime scene.
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8 The prosecution clearly has insufficient evidence to proceed in a
9 new trial and is the main reason for violating Brady Discovery,
10 this courts order, and California State Law AB-1909.
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12 In conclusion, this court has sufficient grounds to grant the
13 defendant a new trial or acquittal.
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16 Dated: December 28, 2016

17 Respectfully Submitted,
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21 Kenneth Clair/ Defendant in Pro Per
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