

People v. Ruthford: Reversible Error Standards for Prosecutorial Suppression of Evidence

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Introduction

In an unanimous opinion authored by Chief Justice Wright, the California Supreme Court reaffirmed in *People v. Ruthford*¹ that a prosecutor must “disclose all substantial material evidence favorable to an accused,” irrespective of defense counsel’s request for such evidence.² The decision established that the prosecutor’s duty to disclose extends to evidence related to guilt or punishment as well as to the credibility of material witnesses,³ and that this duty of disclosure is mandated by the Fourteenth Amendment of the federal Constitution.⁴ In determining whether the prosecutor’s negligent or wilful failure to provide evidence bearing on the credibility of a witness constitutes a denial of due process, the court further held that the constitutional harmless error test of *Chapman v. California*⁵ must be applied.⁶ In that case, the United States Supreme Court ruled that a federal constitutional error would be deemed harmless if “the court [were] able to declare . . . that it was harmless beyond a reasonable doubt.”⁷ The *Ruthford* court concluded that when the prosecutor suppressed evidence of the principal motivation for adverse testimony by a key prosecution witness, the defendant was denied a fair trial, and that this error was not harmless beyond a reasonable doubt.⁸

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1. 14 Cal. 3d 399, 534 P.2d 1341, 121 Cal. Rptr. 261 (1975).
2. *Id.* at 406, 534 P.2d at 1346, 121 Cal. Rptr. at 266 (emphasis omitted).
3. *Id.*
4. *Id.* at 408, 534 P.2d at 1347, 121 Cal. Rptr. at 267.
5. 386 U.S. 18 (1967).
6. 14 Cal. 3d at 408-09, 534 P.2d at 1347-48, 121 Cal. Rptr. at 267-68.
7. 386 U.S. at 24.
8. 14 Cal. 3d at 410, 534 P.2d at 1348, 121 Cal. Rptr. at 268.

*People v. Ruthford*⁹ exemplifies Chief Justice Wright's concern for fairness in the criminal justice system. The purpose of this article is to examine the mode of analysis employed by the Chief Justice in defining the scope of the prosecutor's duty to disclose evidence favorable to the defense. The significance of Chief Justice Wright's contribution to criminal procedure will hopefully be revealed by this discussion of the case.

I. The Facts

Fred Thomas and another man entered an apartment occupied by Mrs. Constance Hannaford and Mr. Ferdinand Castillo. Thomas displayed a gun, announced a "holdup," and the two men proceeded to rob the apartment. The robbers induced Castillo to lead them to a cache of money hidden in a closet in return for Mrs. Hannaford's safety. As the pair left the apartment, Castillo ran toward the getaway car. Thomas got out and scuffled with Castillo while the accomplice remained in the car. The getaway car, later found abandoned, was traced through the license number to Thomas. The trial record indicated that Thomas and defendant Ruthford were neighbors and that they had traveled to Las Vegas with their wives on the evening of the robbery. Several items taken during the robbery were later discovered in a Las Vegas pawn shop.¹⁰

At trial, Castillo could not identify Ruthford as Thomas' accomplice. Mrs. Hannaford had failed to identify Ruthford both in a lineup and a photospread, but she positively identified him as the accomplice at trial. Although she had paid little attention to the accomplice during the robbery,¹¹ she testified that she had recognized his profile at the preliminary hearing.¹² Thomas, who was the final prosecution witness, testified that Ruthford was his accomplice and corroborated the victims' description of the robbery.¹³ After two and a half days of deliberation, the jury returned a guilty verdict against Ruthford.¹⁴

After the trial, Thomas sent a letter to Ruthford stating: "The D.A. came to see me and offered me [my wife's] freedom in return for my testimony against you."¹⁵ On the basis of this disclosure, Ruthford moved for a new trial, claiming that the prosecution had suppressed evidence

9. 14 Cal. 3d 399, 534 P.2d 1341, 121 Cal. Rptr. 261 (1975).

10. *Id.* at 401-02, 534 P.2d at 1342-43, 121 Cal. Rptr. at 262-63.

11. "[S]he had looked directly at him '[j]ust for a split second' but had had a good side view of him" *Id.* at 402, 534 P.2d at 1343, 121 Cal. Rptr. at 263.

12. *Id.*

13. *Id.* Thomas had previously pleaded guilty to one armed robbery charge arising from the Hannaford/Castillo incident and to three other armed robbery counts; the prosecutor dismissed twelve other charges. *Id.* at 402 n.1, 534 P.2d at 1343 n.1, 121 Cal. Rptr. at 263 n.1.

14. *Id.* at 410, 534 P.2d at 1348, 121 Cal. Rptr. at 268.

15. *Id.* at 403, 534 P.2d at 1343, 121 Cal. Rptr. at 263.

relevant to Thomas' credibility. The record at the hearing for a new trial revealed that Thomas had indicated to deputy district attorney Norris a willingness to testify against Ruthford if Thomas' wife, who had recently been convicted of another robbery, received a lenient sentence. Thomas' position was communicated to the trial judge who was to sentence Mrs. Thomas. After being informed that the judge "would consider" Thomas' cooperation, Norris relayed this message to Thomas in the presence of the deputy district attorney who subsequently prosecuted defendant Ruthford. The record further indicated that both Norris and Thomas understood that the *quid pro quo* for Thomas' testimony was the assurance that, if incarcerated at all, Mrs. Thomas would not receive a state prison term.¹⁶ Despite this showing, which demonstrated that the deputy district attorney had suppressed crucial evidence bearing upon the credibility of a key prosecution witness, the motion for a new trial was denied.¹⁷

II. The Decision

A. The Prosecutor's Duty to Disclose

In his petition for hearing in the California Supreme Court, Ruthford alleged that either the prosecutor's affirmative misrepresentation to the trial judge about inducements for Thomas' testimony¹⁸ or the prosecutor's failure to inform Ruthford or his trial attorney of the inducement warranted a new trial.¹⁹ In addressing these claims, Chief Justice Wright began his analysis by examining California and federal authority governing a prosecutor's duty to disclose substantial material evidence favorable to the defense. The Chief Justice noted that the duty of disclosure exists because the prosecutor is more than an advocate; he is a participant in the adversary system of criminal justice who must "fully and fairly present to the court the evidence material to the charge upon which the defendant stands trial."²⁰ To impose a lesser responsibility would permit the prosecutor to suppress evidence favorable to the accused and thereby allow him to gain unfair control over the fact-finding province of the judge or jury.

16. *Id.* at 404, 534 P.2d at 1344, 121 Cal. Rptr. at 264. At the hearing on the motion for a new trial, Thomas was asked if he had "received special consideration." Thomas, "a manifestly clever witness," testified that he was never asked at Ruthford's trial a general question as to why he had testified: "There was always a qualification on the question, and I answered the questions as they were asked. They were asked semantically. I answered them semantically." *Id.*

17. *Id.* (by implication).

18. The hearing record also showed that during Ruthford's trial, the judge asked prosecutor Weiner if Thomas had been granted immunity. Weiner's response was, "No. There is no immunity. He [Thomas] is convicted, I think, of 10 counts. There was no promise made to him." *Id.* at 405 n.2, 534 P.2d at 1345 n.2, 121 Cal. Rptr. at 265 n.2 (emphasis omitted).

19. *Id.* at 404-05, 534 P.2d at 1344, 121 Cal. Rptr. at 264.

20. *Id.* at 405, 534 P.2d at 1345, 121 Cal. Rptr. at 265 (quoting *In re Ferguson*, 5 Cal. 3d 525, 531, 487 P.2d 1234, 1238, 96 Cal. Rptr. 594, 598 (1971)).

The Chief Justice relied upon three cases in explaining the prosecutor's duty to disclose. He reiterated that the state's high court had recently held in the case of *In re Ferguson*²¹ that a prosecutor must "disclose substantial material evidence favorable to the accused without [a] request" for such evidence from either the defendant, the defense counsel, or the court.²² Chief Justice Wright also observed that both *Brady v. Maryland*,²³ the leading United States Supreme Court opinion on the prosecutor's duty to disclose, and *Ferguson* deemed the prosecutor's good or bad faith irrelevant in suppressing evidence favorable to the defendant.²⁴ Finally, the Chief Justice noted that *Giglio v. United States*,²⁵ which was decided subsequent to *Ferguson* and *Brady*, not only reaffirmed the duty to disclose such evidence but also imposed upon the prosecutor the additional "duty to correct false or misleading testimony concerning inducements for incriminating testimony and the duty to disclose such inducements to the defense and to the jury."²⁶ In sum, Chief Justice Wright formulated the prosecutor's disclosure duty in California as follows:

We recognize the foregoing cases as establishing a duty on the party of the prosecution, even in the absence of a request therefor, to disclose all substantial material evidence *favorable to an accused*, whether such evidence relates directly to the question of guilt, to matters relevant to punishment, or to the credibility of a material witness.²⁷

While this holding clarified existing California precedent, it did not substantially change the cited case law. *Ferguson* had established that a defense request for exculpatory evidence was unnecessary;²⁸ it had also extended the duty of disclosure to include evidence relevant to the credibility of a key witness.²⁹ The significance of *Ruthford* is that by relying in part on *Giglio* it left no potential exceptions to the prosecutorial disclosure rule. California prosecutors may have once *assumed* that they were constitutionally required to disclose all inducements for incriminating testimony and to correct false and misleading testimony about such inducements;³⁰ *Ruthford* leaves no doubt that they now have an *affirmative duty* to do so.

B. The Test for Reversible Error

Having reaffirmed and clarified the prosecutorial disclosure rule, Chief

21. 5 Cal. 3d 525, 487 P.2d 1234, 96 Cal. Rptr. 594 (1971).

22. 14 Cal. 3d at 405-06, 534 P.2d at 1346, 121 Cal. Rptr. at 265.

23. 373 U.S. 83 (1963).

24. 14 Cal. 3d at 406, 534 P.2d at 1345, 121 Cal. Rptr. at 265.

25. 405 U.S. 150 (1972).

26. 14 Cal. 3d at 406, 534 P.2d at 1345, 121 Cal. Rptr. at 265.

27. *Id.*, 534 P.2d at 1346, 121 Cal. Rptr. at 266 (emphasis in original).

28. See text accompanying note 22 *supra*.

29. 14 Cal. 3d at 407, 534 P.2d at 1346, 121 Cal. Rptr. at 266.

30. See *Napue v. Illinois*, 360 U.S. 264 (1959) (false and misleading testimony).

Justice Wright considered the effect of a breach of this duty on a judgment of conviction when the suppressed evidence bears on the credibility of a material witness. The Chief Justice began his analysis by noting that where material evidence bearing directly on the question of guilt has been suppressed by the prosecutor, and a fair trial is denied as a result, the reviewing court must employ a per se reversible error rule.³¹ If the court concludes that the suppressed evidence would have been considered on the issue of guilt if it had been made known to the finder of fact, the court *must* reverse the conviction without weighing the degree of prejudice to the accused.³² Reversal is mandatory because evidence bearing on the issue of guilt is at the very heart of the fact-finding process in a criminal case. Suppression of such evidence, particularly when favorable to the defense, has an incalculable effect upon the judge or jury; normally the evidence is so important to a defendant's case that the prosecutor's suppression deprives the defendant of both the appearance and reality of a fair trial.

Following these guidelines, the Chief Justice discussed whether the suppression of material evidence bearing on the credibility of a key prosecutorial witness constitutes denial of a fair trial, and, if so, whether automatic reversal of a judgment of conviction is required. He turned to federal precedent, noting that in *Giglio* and *Napue v. Illinois*³³ the United States Supreme Court reversed convictions where material evidence bearing on the credibility of a witness had been suppressed by the prosecutor.³⁴ *Giglio* held that reversal was required because the prosecutor's conduct "did not comport with 'due process requirements.'" ³⁵ Similarly, *Napue* stated that a conviction partially obtained on the basis of false testimony that reflected on the credibility of a witness "must fall under the Fourteenth Amendment."³⁶ In both of these cases, however, the Court was careful to point out that it was not articulating a per se reversible error rule; rather, *Napue* and *Giglio* held that where the suppression of such evidence may have affected the verdict, reversal is required.³⁷ The *Rutherford* court thus noted that "when the

31. 14 Cal. 3d at 406-07, 534 P.2d at 1346, 121 Cal. Rptr. at 266.

32. *Id.* at 407, 534 P.2d at 1346, 121 Cal. Rptr. at 266. "It is necessary in such circumstances, of course, that the materiality of the evidence suppressed or otherwise not disclosed be examined in order that we may judge whether an accused has been fairly tried, but that examination is one which goes to the question of the materiality of the evidence rather than prejudice to the accused." *Id.*

Rutherford does not require that the suppressed evidence that is material to and favorable to the defense on the issue of guilt be evidence that would necessarily affect the verdict since such a requirement would render the per se rule meaningless.

33. 360 U.S. 264 (1959).

34. 14 Cal. 3d at 407-08, 534 P.2d at 1346, 121 Cal. Rptr. at 266.

35. *Id.* at 408, 534 P.2d at 1346, 121 Cal. Rptr. at 266 (citing *Giglio v. United States*, 405 U.S. 150, 155 (1972)).

36. 360 U.S. at 269.

37. See *Giglio v. United States*, 405 U.S. 150, 154 (1972); *Napue v. Illinois*, 360 U.S. 264, 271 (1959).

credibility of a key witness is at issue an accused is not entitled to the reversal of a judgment of conviction obtained by the suppression of material substantial evidence unless prejudice is demonstrated.’³⁸

Recognizing that the United States Supreme Court had found that prosecutorial suppression of evidence favorable to the defense is a due process issue, Chief Justice Wright likewise concluded that “the suppression of substantial material evidence bearing on the credibility of a key prosecution witness is a denial of due process within the meaning of the Fourteenth Amendment.”³⁹ He further reasoned that whether such a denial of due process required reversal must be determined by deference to the appropriate federal standard.⁴⁰ The rule articulated by the United States Supreme Court in *Chapman v. California*⁴¹ for federal constitutional denials resulting from error by the court was then adopted for application to similar denials resulting from error by the prosecution: “An accused, accordingly, is entitled to relief in such circumstances unless we can declare a belief that the denial ‘was harmless beyond a reasonable doubt.’ ”⁴² The Chief Justice emphasized that a per se rule similar to that utilized in the case of suppressed evidence bearing directly on guilt or innocence was not being adopted in the present case where the suppressed evidence was relevant to credibility only.⁴³ If the latter type of suppressed evidence would not have affected the verdict, reversal of a conviction is not required “simply because a complete accounting of all conceivably exculpatory evidence [was] not made.”⁴⁴

The Chief Justice concluded his analysis with an application of the *Chapman* test to the *Ruthford* facts.⁴⁵ The record indicated that only one of the two victims, Mrs. Hannaford, could identify the defendant as the robbery accomplice, despite the fact that the second victim, Mr. Castillo, had a greater opportunity to observe him. Moreover, it was clear that the testimony of Thomas, whose credibility was effectively insulated from defense attack, was devastating to the defendant. Finally, the jury deliberated two and a half days before returning the guilty verdict, even though Thomas’ possible motive for perjury was unknown to the jury. Under those circumstances, a unanimous court held that the prosecutor’s suppression of the inducement for Thomas’ testimony was *not* harmless beyond a reasonable doubt, and accordingly reversed the judgment of conviction.⁴⁶

38. 14 Cal. 3d at 408, 534 P.2d at 1347, 121 Cal. Rptr. at 267.

39. *Id.*

40. *Id.* at 408-09, 534 P.2d at 1347, 121 Cal. Rptr. at 267.

41. 386 U.S. 18 (1967).

42. 14 Cal. 3d at 408, 534 P.2d at 1347, 121 Cal. Rptr. at 267 (quoting *Chapman v. California*, 386 U.S. 18, 24 (1967)).

43. 14 Cal. 3d at 409, 534 P.2d at 1348, 121 Cal. Rptr. at 268.

44. *Id.*

45. *Id.* at 409-410, 534 P.2d at 1348, 121 Cal. Rptr. at 268.

46. *Id.* at 410, 534 P.2d at 1348, 121 Cal. Rptr. at 268.

Conclusion

Under Chief Justice Wright's leadership, the California Supreme Court broke new ground in the area of criminal law and procedure. It clarified the rights of criminal defendants to ensure that the criminal justice system established a proper balance between the interests of the prosecution and those of the defense. The clarification of the reversible error test applicable to suppression of evidence by the prosecutor that was set forth in *People v. Ruthford*⁴⁷ is an important contribution to the maintenance of that balance. The case laid to rest any doubts that may have remained concerning the scope of the prosecutor's duty to disclose substantial material evidence favorable to the defense. The opinion also reflects Chief Justice Wright's concern for fairness in the criminal justice system. His insistence upon both the appearance of fairness and actual fairness was one of the Chief Justice's great contributions to California criminal jurisprudence.

47. 14 Cal. 3d 399, 534 P.2d 1341, 121 Cal. Rptr. 261 (1975).

