

One Minute Brief

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TOPIC: False Testimony by Prosecution Witnesses

ISSUE: What is a prosecutor's obligation when a prosecution witness gives false testimony?

In *In re Melson* (2026) 121 Cal.App.5th 660, the Court of Appeal reaffirmed that prosecutors have an affirmative constitutional duty to correct false testimony when the prosecutor knows or should know the testimony is false. The duty applies even when the prosecutor did not solicit the testimony or defense counsel fails to object or impeach the witness.

The rule is derived from *Napue v. Illinois* (1959) 360 U.S. 264, 269: the prosecution may not knowingly use false evidence or allow false testimony "to go uncorrected when it appears." *Glossip v. Oklahoma* (2025) 604 U.S. 226 recently reaffirmed that principle.

The Melson Case

Melson was prosecuted for a gang shooting. At his retrial, two eyewitnesses gave testimony that differed materially from their prior statements to police. One witness testified that he had told police he saw a tattoo near the shooter's eyebrow, although his recorded interviews reflected that he had denied seeing a tattoo. Another testified that she saw Melson, who is Black, running from the scene with a gun, despite previously telling police that she had not seen Melson and that the only people she saw were Hispanic.

The prosecutor was aware of the inconsistencies, but the testimony was not affirmatively corrected before the jury. Although the witnesses' prior statements had been provided in discovery, defense counsel did not use them to impeach the witnesses. The Court of Appeal concluded that the false testimony was not adequately corrected, found a *Napue* violation, and vacated Melson's convictions.

The Prosecutor's Duty Under *Napue*, *Glossip*, and *Melson*:

- Correct testimony the prosecutor knows or should know is false. The duty applies regardless of who elicited the testimony.
- Do not rely on the defense to correct the record. Defense counsel's failure to object or impeach does not eliminate the prosecutor's independent duty.

- General impeachment is not necessarily sufficient. In *Melson*, questioning the witnesses generally about their memory did not correct the specific false testimony.
- Do not rely on false testimony or attempt to cure it in argument. Using known false testimony compounds the error, and addressing its falsity in argument does not satisfy the duty to correct the record. (*Melson*, supra, 121 Cal.App.5th at p. 679; *Glossip*, supra, 604 U.S. at pp. 249–250.)

When Does Error Require Reversal?

A *Napue* violation requires: (1) actually false testimony—although highly misleading testimony may qualify (*In re Hill* (2024) 104 Cal.App.5th 804, 830); (2) the prosecution knew or should have known it was false or misleading; and (3) the testimony was material, meaning there is a reasonable likelihood it could have affected the jury’s judgment. (*Melson*, supra, 121 Cal.App.5th at p. 669.) If material, reversal is required unless the prosecution proves beyond a reasonable doubt that the false testimony did not contribute to the verdict.

Correcting False Testimony

Melson declined to establish a blanket rule for what is necessary or sufficient to correct false testimony because the circumstances will vary from case to case. (*Melson*, supra, 121 Cal.App.5th at p. 679, fn. 5.) However, general impeachment of the witness’s credibility is insufficient if it does not address the specific falsity. (*Id.* at p. 679; *Glossip*, supra, 604 U.S. at pp. 249–250.)

Potential methods of correction include:

- Confront the witness with the prior inconsistent statement.
- Present contradictory evidence through another witness. (See *People v. Morales* (2003) 112 Cal.App.4th 1176.)
- Inform the court and defense and determine how to correct the testimony before the jury. (See *United States v. LaPage* (9th Cir. 2000) 231 F.3d 488, 492.)

In *Morales*, the prosecution presented evidence through another witness that contradicted the witness’s false testimony and fully addressed the falsity in closing argument. The court concluded due process was satisfied because the prosecution presented the jury with evidence revealing the falsity and allowed the jury to perform its factfinding role.

BOTTOM LINE: When a prosecutor knows or should know that a prosecution witness has testified falsely, the prosecutor has an affirmative duty to correct the testimony. That obligation exists regardless of whether the prosecutor elicited the testimony or the defense could have exposed the error. *In re Melson* (2026) 121 Cal.App.5th 660.

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