

No. _____

In The
Supreme Court of the United States

MICHAEL C. JAMERSON,

Petitioner,

v.

JASON LEWIS, Warden,
Missouri Eastern Correctional Center

Respondent.

**On Petition For A Writ Of Certiorari To the
Supreme Court of Missouri**

PETITION FOR A WRIT OF CERTIORARI

KEVIN L. SCHRIENER
COUNSEL OF RECORD FOR THE PETITIONER
LAW & SCHRIENER LLC
141 North Meramec Avenue, Suite 314
Clayton, Missouri 63105
314-721-7095 – telephone
314-863-7096 – fax
kschriener@schrienerlaw.com

QUESTION PRESENTED FOR REVIEW

Petitioner Michael C. Jamerson's trial was tainted by the State's suppression of material exculpatory evidence and the prosecution's use of perjured testimony. After the completion of Jamerson's direct appeal and filing of his amended post-conviction, evidence came to light that one of the State's star witnesses, Catherine Haug, made an oral statement to the police that she had invited Jamerson over to her house on the night of the incident. It was not until David Columbo, the other complaining witness, sued Haug in state court for the injuries he suffered the night of the incident that her oral statement came to light. The State further violated Jamerson's constitutional rights by allowing Haug to testify that she had not invited Jamerson over on the night in question.

The Circuit Court, Court of Appeals, and Missouri Supreme Court denied petitioner habeas relief without conducting an evidentiary hearing or appointing a special master to review the newly discovered evidence.

The questions presented are:

- I. Did the Missouri courts err in failing to find that the State's failure to disclose exculpatory evidence violated its obligation under *Brady v. Maryland*, 373 U.S. 83 (1963), and that this failure prejudiced the defense?**

II. Did the Missouri courts err in failing to find that the State's failure to correct a witness's false testimony violated its obligation under *Napue v. Illinois*, 360 U.S. 264, 269 (1959), and *Giglio v. United States*, 405 U.S. 150, 155 (1972), and that this failure prejudiced the defense?

LIST OF PARTIES

All parties appear in the case caption on the cover page of this petition.

TABLE OF CONTENTS

QUESTION PRESENTED	ii
LIST OF PARTIES	iv
TABLE OF CONTENTS	v
TABLE OF AUTHORITIES CITED	vi
PETITION FOR WRIT OF CERTIORARI	1
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISIONS INVOLVED	2
STATEMENT OF CASE	2
REASONS FOR GRANTING THE WRIT	5
I. THE COURT SHOULD GRANT THE WRIT TO STOP THE STATE OF MISSOURI FROM REFUSING TO COMPLY WITH ITS OBLIGATIONS UNDER BRADY V. MARYLAND	5
II. THE COURT SHOULD GRANT THE WRIT TO STOP THE STATE OF MISSOURI FROM REFUSING TO COMPLY WITH ITS OBLIGATIONS UNDER NAPUE/GIGLIO	11
CONCLUSION	13
INDEX TO APPENDICES	i

TABLE OF AUTHORITIES CITED

CASES	PAGES
<i>Brady v. Maryland</i> , 373 U.S. 83 (1963)	ii, v, 5, 7
<i>Giglio v. United States</i> , 405 U.S. 150 (1972)	ii, v
<i>Jamerson v. State</i> , 410 S.W.3d 299 (Mo. Ct. App. 2013)	3
<i>Kyles v. Whitley</i> , 514 U.S. 419 (1995)	6, 10
<i>Michigan v. Bryant</i> , 562 U.S. 344 (2011)	9
<i>Mooney v. Holohan</i> , 294 U.S. 103 (1935)	11
<i>Napue v. Illinois</i> , 360 U.S. 264 (1959)	ii, 11, 12
<i>Pyle v. Kansas</i> , 317 U.S. 213 (1942)	12
<i>Strickler v. Greene</i> , 527 U.S. 263 (1999)	5, 13
<i>United States v. Bagley</i> , 473 U.S. 667 (1985)	6
<i>United States v. Stofsky</i> , 527 F.2d 237 (2nd Cir. 1975)	12
STATUTES	
28 U.S.C. § 1257	1
CONSTITUTIONAL PROVISIONS AND STATUTES	
U.S. CONST. amend VIX, §1	2
SUPREME COURT RULES	
13.3	2

In The
Supreme Court of the United States

PETITION FOR WRIT OF CERTIORARI

Petitioner Michael C. Jamerson respectfully prays that a Writ of Certiorari issue to review the judgment of the Missouri Supreme Court entered in this case.

OPINIONS BELOW

The final judgment and mandate by the Missouri Supreme Court on September 3, 2019, denying petitioner's habeas petition is attached as Appendix A. The order of the Missouri Court of Appeals, Eastern District, denying petitioner's state habeas petition on January 2, 2018, is attached as Appendix B. The March 13, 2017, judgment of the Twenty-First Judicial Circuit (St. Louis County, Missouri) denying petitioner's petition for writ of habeas corpus is attached as Appendix C.

JURISDICTION

The Missouri Supreme Court issued its denial of petitioner's petition for writ of habeas corpus on September 3, 2019, and that ruling became final on that date. This Court has jurisdiction under 28 U.S.C. § 1257 to review this Petition. This petition, postmarked September 2, 2019, is timely filed pursuant to SUP. CT.

R. 13.3.

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the United States Constitution provides: "No State shall ... deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

STATEMENT OF THE CASE

The State of Missouri charged Jamerson with first degree burglary (Count I), one count of assault in the first degree (Count II), two counts of armed criminal action (Counts III and V), and first degree domestic assault (Count IV). Jamerson maintained his innocence and proceeded to trial. *See State v. Jamerson*, Cause No. 07SL-CR4697 (St. Louis County, Missouri, Circuit Court, 21st Judicial Circuit).

Trial

At trial, the witnesses who testified against Jamerson were his ex-girlfriend, Catherine Haug (hereafter Haug) and her then-boyfriend David Colombo (hereafter Colombo), it was their version of the events that occurred on September 15, 2007, which the jury heard. Jamerson did not testify in his own defense. On post-conviction appeal, the Missouri Court of Appeals summarized the evidence

adduced at trial as follows:

At 5 a.m. on September 15, 2007, Movant broke into the home of his former girlfriend Catherine Haug (Cathy), entered her bedroom where she and her then-boyfriend David Colombo (Dave) were sleeping, and shot Dave in the face and back. After a struggle, Movant fled and was apprehended by police in a nearby driveway. At trial, Cathy admitted that she had spoken with Movant the previous afternoon, but she denied having invited Movant to her house, and photographs in evidence showed that the doorjamb of her kitchen door was damaged in a manner consistent with forced entry. A jury convicted Movant of first-degree burglary, first-degree assault, and armed criminal action.

Jamerson v. State, 410 S.W.3d 299, 300 (Mo. Ct. App. 2013) (footnote omitted).

Given that Haug and Colombo were the lone witnesses, their credibility was of the utmost importance in this case.

Verdict/Sentencing

The jury found Jamerson guilty of first degree burglary (Count I), one count of assault in the first degree (Count II), and one count of armed criminal action (Count III). The jury could not reach a decision regarding one count of first degree domestic assault (Count IV) and the companion armed criminal action count (Count V). The trial court sentenced Jamerson to fifteen years' imprisonment on Count I, and seventeen years' imprisonment on both Counts II and III. All sentences to run concurrently. Subsequently, the State file a *nolle prosequi* as to Counts IV and V.

Newly Discovered Evidence

During the pendency of Jamerson's criminal case, Colombo filed a civil suit for negligence against Haug arising out of the above-recounted event. This civil action was subsequently dismissed without prejudice and refiled approximately a year after Jamerson was sentenced. *See Colombo v. Haug*, No. 10SL-CC04714 (21st Judicial Circuit, St. Louis County, Missouri). Colombo's theory of Haug's liability was that she knew Jamerson presented a substantial risk of injury to him and failed to warn him of it. He also alleged that Haug failed to take steps to secure her home to prevent Jamerson's entry on the premises. During the litigation of the civil case, Colombo's deposition was taken on December 30, 2011. During his deposition, Colombo stated that during questioning by the police, Haug admitted that she had invited Jamerson over on the evening of the incident. Also, Colombo stated that he overheard Haug telling the police that Haug had invited Jamerson over that evening.

Although defense counsel requested and received discovery, the State never disclosed to Jamerson that Haug had stated to the police that she had invited him over to her house on September 14, 2007. It was not until 2012 when Jamerson's postconviction appeal counsel informed Jamerson of the civil suit and that Colombo had taken a deposition. By this time, Jamerson's direct appeal had been

decided and his amended postconviction motion had been filed. Haug's statement should have been disclosed to the defense and was not. Moreover, during her trial testimony, Haug testified that she did not invite Jamerson to her house that night. The State did not correct her testimony.

REASONS FOR GRANTING THE WRIT

I. THE COURT SHOULD GRANT THE WRIT TO STOP THE STATE OF MISSOURI FROM REFUSING TO COMPLY WITH ITS OBLIGATIONS UNDER *BRADY V. MARYLAND*.

In *Brady v. Maryland*, 373 U.S. 83 (1963), the Supreme Court held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Id.* at 87. Later, in *Strickler v. Greene*, 527 U.S. 263 (1999), the court more precisely articulated the three essential elements for establishing a *Brady* claim: "the evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the state, either willfully or inadvertently; and prejudice must have ensued." *Id.* at 281-282. It is also well settled that the *Brady* rule encompasses evidence "known only to police investigators and not the prosecutor...In order to comply with *Brady*, therefore, 'the individual prosecutor has a duty to learn of any

favorable evidence known to others acting on the government's behalf in this case, including the police.'" *Id.* at 280-281; quoting *Kyles v. Whitley*, 514 U.S. 419, 437 (1995).

The analysis of "prejudice" under the cause and prejudice gateway is coextensive with the third element of a *Brady* claim. To determine whether suppressed evidence prejudices a defendant, the court assesses whether the evidence is material. "[A] showing of materiality does not require demonstration by a preponderance that disclosure of the suppressed evidence would have resulted ultimately in the defendant's acquittal[.]" *Kyles v. Whitley*, 514 U.S. 419, 434, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995). "[The] touchstone of materiality is a 'reasonable probability' of a different result[.]" *Id.* "A 'reasonable probability' of a different result is . . . shown when the government's evidentiary suppression 'undermines confidence in the outcome of the trial.'" *Id.* (quoting *United States v. Bagley*, 473 U.S. 667, 678, 105 S. Ct. 3375, 87 L. Ed. 2d 481 (1985)).

Although defense counsel requested discovery, Haug's oral statement to the police that she did invite Jamerson over the evening that Colombo was shot was never disclosed to him. The State had a duty to disclose this evidence as it was material impeaching evidence of one of the two witnesses that testified that Jamerson was the aggressor and shot Colombo.

As set out above, it came to light during Colombo's deposition that Haug told the police that she had invited Jamerson over to her house the evening of Colombo's shooting. Clearly, the State knew that this impeaching and exculpatory information regarding Haug existed but failed to disclose it to Jamerson prior to his trial. *Brady* required the State to disclose to the defense that Haug had stated to the police that she had invited Jamerson over on the evening of September 14 - 15, 2007. At trial, Jamerson presented a defense that because Haug's and Colombo's testimony was riddled with inconsistencies, the State had failed to meet its burden of proof. Again, Jamerson did not testify in his defense. The only witness called by the defense was St. Louis County Police Officer Dan Stoecklin. Officer Stoecklin, the departments' latent print examiner, testified that the finger print found on the gun did not match the prints of Jamerson, Haug or Colombo. Similarly, the State's witness Charles Pottgen, a crime scene detective with the Bridgeton Police Department, testified that he performed a gunpowder residue test on Jamerson's hands. Trial Tr., pp. 363-366. The test result was negative for gunpowder residue on Jamerson's hands. *Id.* at 365. Colombo, however, was not tested for gunpowder residue. *Id.* at 363. No physical evidence existed that Jamerson fired the weapon.

During her trial testimony, Haug testified that she dated Jamerson for about a year and that he had lived at her residence at 3445 Falcon Avenue, Bridgeton, Missouri. *Id.* at 229, 231. In March of 2007, Jamerson moved out of Haug's residence. *Id.* at 213. By September 2007, Haug started dating Colombo who often stayed at her house. *Id.* at 229. Haug also testified that unbeknownst to Colombo she had secretly met Jamerson and had sex with him only two weeks before Colombo was shot. *Id.* at 232. Haug further testified that on September 14, 2007, she returned a call from Jamerson at about 4:30 p.m. and he asked if he could see her later on. *Id.* at 232. Haug testified that she declined his invitation because "it wasn't right." *Id.* at 233. Haug also testified that she did not invite Jamerson to her house that night. *Id.* at 235. Haug admitted that in her written statement to the police that she never gave Jamerson a direct answer and did the same in her deposition. *Id.* at 262-64.

The undisclosed statement would have allowed defense counsel to impeach Haug with a prior inconsistent statement and, if denied, call the officer who she gave it to in rebuttal. On direct appeal, the court of appeals affirmed the trial court's ruling that defense counsel could not cross-examine Colombo as to whether Haug told a detective that she had invited Jamerson to her home the night of the incident. Also, the court of appeals found that Colombo, himself, had not

heard the statement but heard it from Detective Wooten. Because it is now known that the statement made by Haug to Wooten was made in Colombo's presence and he heard it, the statement would not have been hearsay and would have been admissible. Under *Michigan v. Bryant*, 562 U.S. 344 (2011), Haug's statement would have been admissible if Colombo had heard it.

Haug's undisclosed statement would have been material as it clearly further called into question Haug's credibility in the eyes of the jury as to what happened the night of Colombo' shooting. Given the fact that the jury did not return guilty verdicts against Jamerson for two the counts against him (first degree domestic assault, and armed criminal action), which involved Haug as the alleged victim, it is clear Haug's credibility with the jury was not on a firm footing. The suppression of this evidence requires this Court to vacate the Missouri Supreme District Court's denial of relief.

Furthermore, this undisclosed evidence would have presented Jamerson with both plausible and persuasive evidence to support his theory of innocence and it would have enabled him to present a plausible, different theory of innocence. The fact that Haug had admitted to seeing and having sex with Jamerson as recently as two weeks before the incident while dating Colombo and still answered his calls makes the undisclosed statement powerful impeachment

evidence. If Jamerson had known of this evidence, it would have allowed him to develop a defense that he had been lured over to Haug's house so that Colombo could get him out of the picture. Haug's motivation was so that she could get back the motorcycle she had promised Jamerson as partial payment for the work he did performed on her house. Once Jamerson arrived at Haug's house and was confronted by Colombo, he had no other choice but to fight for his survival.¹ This is plausible and persuasive evidence to support a theory of innocence. Similarly, the fact that he had been invited over by Haug, while Colombo was there, would have allowed Jamerson to present a different theory of innocence - self defense - that was not available to him because of the undisclosed evidence.

Finally, the prejudice cannot be disregarded by relying on the sufficiency of evidence that remains after discounting Haug's discredited testimony. "A defendant need not demonstrate that after discounting the inculpatory evidence in light of the undisclosed evidence, there would not have been enough left to convict." *Kyles*, 514 U.S. at 434-35. Again no physical evidence indicates that Jamerson fired the weapon which wounded Colombo. Evidence that was not

¹The theory that Haug duped Colombo into helping her get rid of Jamerson is consistent with Colombo's pretrial deposition in the civil case in which states that Haug was "stringing us both along" and "playing with both our heads." (Pet. Exh. B attached to state habeas petition, deposition page 31).

presented at trial exists that the crack in the back door jamb existed prior to the date of the incident. Haug also testified similarly in her pretrial deposition in Jamerson's criminal case. Moreover, the jury did not reach a verdict on counts 4 and 5 in which Jamerson was charged with domestic assault in the first degree and the attendant armed criminal action court. Trial Tr., p. 482. Given the mistrial on these counts, the jury did have reasonable doubt as to some of the State's evidence and the evidence is hardly overwhelming.

Jamerson has met the *Brady* materiality test. He has shown that the undisclosed evidence would have supported his theory of innocence and would have allowed him to develop a new theory of innocence. The failure to disclose this evidence undermines faith in the jury's verdict. Accordingly, this Court should grant this Writ and vacate Mr. Jamerson's convictions.

II. THE COURT SHOULD GRANT THE WRIT TO STOP THE STATE OF MISSOURI FROM REFUSING TO COMPLY WITH ITS OBLIGATIONS UNDER NAPUE/GIGLIO.

One of the most cherished principles of our criminal justice system, "implicit in any concept of ordered liberty," is that the state may not use false evidence to obtain a criminal conviction. *Napue v. Illinois*, 360 U.S. 264, 269 (1959). Deliberate deception of a judge and a jury is "inconsistent with the rudimentary demands of justice." *Mooney v. Holohan*, 294 U.S. 103, 112 (1935).

Therefore, "a conviction obtained through the use of false evidence, known to be such by representatives of the state, must fall under the Fourteenth Amendment." *Napue*, 360 U.S. at 269. Where it can be shown that the government knowingly permitted the introduction of false testimony, reversal is "virtually automatic." *United States v. Stofsky*, 527 F.2d 237, 243 (2nd Cir. 1975).

The government also violates a criminal defendant's right to due process of law, guaranteed by the Fourteenth Amendment when it allows false evidence to go uncorrected when it is presented. *Giglio v. United States*, 405 U.S. 150, 155 (1972); *Pyle v. Kansas*, 317 U.S. 213 (1942). As summarized below, there can be little doubt that petitioner's conviction was secured through the use of perjured testimony of Catherine Haug that was known by agents of the State to be false when it was presented.

Haug testified that she did not invite Jamerson over the night of the incident. This testimony was particularly damaging because it suggested that Jamerson broke into her house uninvited with the motive to shoot Haug and Colombo in a fit of passion. The State would have known that this testimony was false because during a police interview with Haug, Colombo overheard her telling the police that she had invited Jamerson to her home that night. Even if this information was not revealed to the prosecutor, it was still incumbent upon him to

know about it. *Strickler*, 527 U.S. at 281.

Also, Haug's testimony was not only false, but was perjured testimony because it related to a material fact of the case, specifically that Jamerson broke into the house uninvited to harm both Haug and Colombo. The reason for Jamerson's presence in Haug's home is a material fact that would have substantially affected the course of outcome of the case. This is especially true in Jamerson's case because Haug and Colombo were the only witnesses. Jamerson suffered prejudice because without Haug's perjured testimony, he would not have been convicted. As such, this Court should grant this Writ and vacate Jamerson's conviction.

CONCLUSION

For the foregoing reasons, the Court should grant this petition for a writ of certiorari and issue a writ of certiorari to review the decision of the Missouri Supreme Court.

Respectfully submitted,

KEVIN L. SCHRIENER
Counsel of Record for Petitioner
LAW & SCHRIENER LLC
141 North Meramec Avenue, Suite 314
Clayton, Missouri 63105
314-721-7095 – telephone
314-863-7096 – fax

kschriener@schienerlaw.com

December 2, 2019

INDEX OF APPENDICES

APPENDIX A – Judgment of the Missouri Supreme Court (September 3, 2019)	1a
APPENDIX B – Order of the Missouri Court of Appeals, Eastern District, Denying State Habeas Petition (January 2, 2018)	a
APPENDIX C – Circuit Court judgment denying State Habeas Petition (March 13, 2017)	a

In the Supreme Court of Missouri

September Session, 2019

State ex rel. Michael C. Jamerson,

Petitioner,

No. SC97996 HABEAS CORPUS
Mississippi County Circuit Court No. 14MI-CV00085
Eastern District Court of Appeals No. ED102185

Jason Lewis,

Respondent.

Now at this day, on consideration of the petition for a writ of habeas corpus herein to the said respondent, it is ordered by the Court here that the said petition be, and the same is hereby denied. Petitioner's motion for appointment of counsel overruled. Petitioner's motion to request a published opinion upon conclusion of the case overruled.

STATE OF MISSOURI-Sct.

I, BETSY AUBUCHON, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the judgment of said Supreme Court, entered of record at the September Session thereof, 2019, and on the 3rd day of September, 2019, in the above-entitled cause.

WITNESS my hand and the Seal of the Supreme Court of Missouri, at my office in the City of Jefferson, this 3rd day of September, 2019.



Betsy Aubuchon, Clerk

Dee S. Kraebel, Deputy Clerk

Supreme Court of Missouri

vs.

MANDATE

JUDGMENT



SCANNED

In the Missouri Court of Appeals Eastern District

IN RE: MICHAEL C. JAMERSON,) No. ED106231
PETITIONER,)
) Writ of Habeas Corpus
)
)
)
vs.)
)
JENNIFER SACHSE, SUPERINTENDENT)
OF THE MISSOURI EASTERN)
CORRECTIONAL CENTER,)
RESPONDENT.)

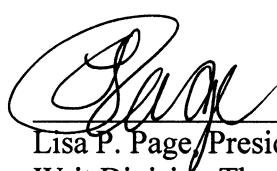
ORDER

Petitioner has filed a Petition for Writ of Habeas Corpus along with Suggestions in Support and Exhibits.

Being duly advised in the premises, the Court hereby DENIES Petitioner's Writ of Habeas Corpus.

SO ORDERED.

DATED: January 2, 2018



Lisa P. Page, Presiding Judge
Writ Division Three
Missouri Court of Appeals, Eastern District

cc: Jennifer Sachse
Kevin Schriener
Stephen Hawke



IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI
21st JUDICIAL CIRCUIT

MICHAEL C. JAMERSON,)
Petitioner,)
vs) Case # 15SL-CC04029
JENNIFER SACHSE,)
Respondent.) Division 41

For File Stamp Only

Judgment

The Court has taken judicial notice of its files and records, and has specifically reviewed the entire contents of this court file, and so is fully advised in the premises. So advised, the Court finds and determines that:

1. Respondent's *Suggestions in Opposition to Petitioner's Request for an Evidentiary Hearing* are well taken and Petitioner is not entitled to an evidentiary hearing; so that,
2. Division 38's prior setting of an evidentiary hearing is set aside; furthermore,
3. There is no genuine issue of fact; and,
4. Petitioner is not entitled to the relief sought.

Therefore, it is the Judgment of the Court that Petitioner's request for habeas corpus relief should be, and is, denied.

SO ORDERED:


Hon. Judy P. Draper, Judge

Date

3.13.17

cc: Kevin L. Schriener
LAW & SCHRIENER, LLC
141 North Meramec, #314
Clayton, MO 63105

Andrew J. Crane
Assist. MO Attorney General
PO Box 899
Jefferson City, MO 63102