CASE NO. ____

IN THE SUPREME COURT OF THE UNITED STATES

JAMES CODDINGTON,

Petitioner,

v.

TOMMY SHARP, Warden, Oklahoma State Penitentiary,

Respondent

ON PETITION FOR WRIT OF *CERTIORARI* TO
THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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CAPITAL CASE

QUESTION PRESENTED

On direct appeal, the state court found that constitutional error marred the trial, which ended with a death sentence for petitioner. The error—barring a defense expert from testifying that petitioner was incapable of forming the required *mens rea*—violated the Sixth Amendment's guarantee of the right to present a defense. The suppressed evidence was both "helpful" to the defense and "material," said the court, adding, "if believed by the jury, the evidence certainly might have reduced the degree of homicide for which [petitioner] was convicted" to an offense ineligible for capital punishment. Still, the state court ruled the constitutional error was harmless, a conclusion affirmed on habeas review. The question presented is:

Can the suppression of material evidence helpful to the defense *ever* be harmless error, not least when the exclusion violated the Sixth Amendment's right to present a defense?

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PETITION FOR WRIT OF CERTIORARI

In this capital case, Petitioner James Coddington seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit.

OPINIONS BELOW

The opinion of the Tenth Circuit Court of Appeals is reported at 959 F.3d 947, and is reproduced at Appendix A. The ruling of the district court is unreported, and is reproduced at Appendix B. The opinion on direct appeal of the Oklahoma Court of Criminal Appeals is reported at 142 P.3d 437, and is reproduced at Appendix C.

JURISDICTION

The Tenth Circuit issued its opinion denying relief to Mr. Coddington on May 12, 2020. *See* App. A. The circuit rejected a timely petition for rehearing on September 29, 2020. *See* App. D. Because of this Court's order of March 19, 2020, extending to 150 days the deadline by which to file any petition for a writ of certiorari, Mr. Coddington's petition is due on February 26, 2021.

The United States District Court for the Western District of Oklahoma had jurisdiction under 28 U.S.C. § 2254(d). The Tenth Circuit Court of Appeals had

jurisdiction under 28 U.S.C. §§ 1291 and 2253(a). This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Sixth Amendment to the Constitution states:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

2. Title 28 U.S.C. § 2254(d) states:

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—
>
> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
>
> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

INTRODUCTION

This capital case presents a critical question about the harmless-error doctrine.

Decades ago, the Court established in *Kyles v. Whitley* that a *Brady* violation resulting in the suppression of material, defense-favorable evidence can never be deemed harmless error, not on direct appeal nor on habeas review. *Kyles* said harm is built into the test for materiality. And long before *Kyles*, in *United States v. Valenzuela-Bernal*, the Court recognized that *Brady*'s materiality requirement also governs claims that an evidentiary exclusion in the trial court violated the constitutional guarantee of the right to present a defense. From *Kyles* and *Valenzuela-Bernal* an unassailable proposition follows: the exclusion of material evidence favorable to the defense cannot be treated as harmless error.

Yet that is exactly what took place here.

In petitioner's direct appeal, the Oklahoma Court of Criminal Appeals ruled not just that the trial court improperly excluded evidence that "would have been helpful" to the defense. The OCCA further held the error violated the Constitution, stripping the petitioner of his fundamental right to present a defense against the capital-murder charge he faced. The OCCA said the suppressed evidence was "material," a legal term of art the court understood as describing the existence of a reasonable probability that a different verdict would

have ensued had the disputed evidence been presented to the jury. Still, the OCCA affirmed petitioner's conviction, holding that the wrongful suppression of evidence amounted to harmless error. The Tenth Circuit agreed. Denying an application under 28 U.S.C. § 2254(d), it too concluded petitioner could not show prejudice.

This petition poses the obvious question: Can the exclusion of material evidence helpful to the defense *ever* be harmless error?

STATEMENT OF THE CASE

The State of Oklahoma charged Mr. Coddington with premeditated murder, what state law calls "malice aforethought" murder. Prosecutors sought the death penalty. Mr. Coddington's sole defense—more accurately, a plea for a lesser conviction—was that he could not have intended to kill, because his compromised brain was incapable of forming malice aforethought.

Limits imposed on defense expert's testimony

A cocaine addict, Mr. Coddington was embroiled in a three-day crack binge—a 72-hour frenzy of drugs, crime, and acute intoxication—when he committed the murder. As trial approached, defense lawyers hired addiction psychiatrist Dr. John Smith to evaluate Mr. Coddington and review his medical records. The lawyers aimed to support a defense of voluntary intoxication. If

successful, the defense would reduce their client's culpability from a death-eligible murder, premeditated murder, to a death-ineligible one, second-degree murder. After Dr. Smith conducted his psychiatric evaluation, he determined that a long-term addiction to cocaine, inflamed by the three-day binge, left the 25-year-old Mr. Coddington with a chemically altered brain. He could not "form the intent of malice aforethought" at the time of the homicide, Dr. Smith found, explaining "he would have been experiencing the effects of cocaine to such a degree that [his] brain would be unable to formulate that specific intent."

But the jury never heard Dr. Smith give his expert opinion. Granting a motion in limine from the prosecution, the trial judge prevented the defense expert from testifying that Mr. Coddington could not form the *mens rea* required of malice murder. Dr. Smith was barred from "rendering an opinion on [Mr. Coddington's] intent to kill unless the opinion related to a cognizable defense such as insanity," the judge ruled. The judge believed, incorrectly, that Oklahoma law barred the defense's key witness from disclosing his opinion to the jury.

The trial ended with a guilty verdict on malice murder, followed by a sentencing proceeding that yielded a penalty of death.

Omitted evidence "material" but exclusion harmless error

Mr. Coddington challenged the evidentiary ruling on direct appeal. He observed that Oklahoma law has long permitted expert witnesses to opine whether a defendant possessed the *mens rea* needed to sustain a criminal conviction. He also argued that excluding Dr. Smith's opinion violated the Constitution, undermining the Sixth Amendment's guarantee of the right to present a complete defense. The resulting prejudice, he explained, was the weakening of his involuntary-intoxication defense, an erosion that made conviction for first degree murder more probable than second-degree murder.

The OCCA, the highest court of criminal appeals in Oklahoma, largely concurred with Mr. Coddington. It recognized that "Dr. Smith could have properly testified that, in his opinion and based upon his specialized knowledge, he believed Coddington would have been unable to form the requisite deliberate intent of malice aforethought." *Coddington v. State*, 142 P.3d 437, 450 (Okla. Crim. App. 2006). After all, prosecution experts "routinely" opine in Oklahoma courts "on ultimate issues," including whether the defendant acted with culpable intent. *Id*. at 449. The state appellate court saw no reason why defendants could not also present such expertise, especially when they have raised, as Mr. Coddington did, sufficient evidence to present a voluntary-intoxication defense to the jury. The primary benefit of a voluntary-intoxication defense, if allowed, is

that an expert "may properly offer his or her opinion on whether the defendant's actions were intentional," the court wrote. *Id*. at 450. "The trial court erred and abused its discretion by sustaining the Motion in Limine and so limiting the expert witness' testimony." *Id*.

The evidentiary mistake wasn't confined to Oklahoma law. The OCCA found that the excluded evidence was so vital to Mr. Coddington's defense—"material" was the term the court used (*see* below)—that its suppression violated the federal Constitution. Had the jury accepted Dr. Smith's professional opinion, "the evidence certainly might have reduced the degree of homicide for which Coddington was convicted." *Id*. at 451.

The Oklahoma court emphasized that the omitted testimony was neither cumulative nor peripheral. Dr. Smith's judgment on the ultimate issue of intent would have been "helpful to the jury" as it considered the voluntary-intoxication defense, crafted to persuade jurors to convict Mr. Coddington not of malice murder but second-degree murder, whose maximum penalty is life imprisonment. *Id*. Although acknowledging that Dr. Smith described many deleterious effects of cocaine intoxication, the OCCA noted that the trial judge's ruling left a conspicuous gap in the evidence: whether Mr. Coddington could have formed the *mens rea* necessary for conviction. *See id.* at 450 ("Seemingly the only thing [Dr. Smith's] testimony did not cover was how cocaine intoxication

might have affected Coddington on" the day of the murder). The OCCA saw that jurors may have interpreted this gap to mean that Dr. Smith in fact believed Mr. Coddington could have formed, even did form, the *mens rea* necessary for conviction, despite suffering the ravages of cocaine. *Id.* ("[T]he absence of the expert's opinion on Coddington's ability to specifically intend to commit the homicide was notable.").

The result was a significant impairment of Mr. Coddington's "fundamental" right to present a defense, anchored in the Compulsory Process Clause of the Sixth Amendment. *Id*. at 450-51. Crucially, the state court grasped that just one pathway led to its constitutional conclusion, and that path passed directly through materiality, about whose precise legal meaning there was no confusion. "[T]o establish constitutional error, Coddington must show the evidence was material," said the OCCA, and to do that he must prove "its exclusion affected the trial's outcome." *Id*. at 451. Mr. Coddington proved just that. In the next paragraph, the OCCA called the omitted testimony "material"; indeed it was "certainly material." *Id*. The court found that Mr. Coddington had established that "if believed by the jury"—a reasonable possibility given its materiality—the excluded evidence "might have reduced the degree of homicide for which Coddington was convicted." *Id*.

Yet the OCCA affirmed Coddington's conviction, because "while helpful to the jury and certainly material," Dr. Smith's testimony "was not exculpatory in the sense that it would have exonerated the defendant." *Id*. This insistence on complete exoneration helped explain why Mr. Coddington failed to win relief despite satisfying the Constitution's materiality requirement. For even though "the evidence certainly might have" produced a lesser conviction had it been presented to and credited by the jury, Mr. Coddington nonetheless had not suffered the harm needed to survive harmless-error review. "The evidence in this case was overwhelming," the OCCA said, "and we find, beyond a reasonable doubt, that Dr. Smith's expert opinion on the ultimate issue of whether Coddington could form the requisite malice would not have made a difference in the jury's determination of guilt." *Id*. Citing *Chapman v. California*, 386 U.S. 18 (1967), the court concluded, "We find the error was harmless beyond a reasonable doubt." *Coddington v. State*, 142 P.3d at 451.

The OCCA similarly rejected Mr. Coddington's other guilt-phase arguments and affirmed his conviction, although it found that reversible error occurred during the sentencing phase. *See Coddington v. State*, 142 P.3d at 461. Following a resentencing trial, the jury found the existence of aggravating circumstances and again sentenced Mr. Coddington to death. The OCCA affirmed his sentence, *Coddington v. State*, 254 P.3d 684 (Okla. Crim. App. 2011),

and this Court denied certiorari, *Coddington v. Oklahoma*, 565 U.S. 1040 (2011). Mr. Coddington then submitted an unsuccessful petition for post-conviction relief with the OCCA. *See Coddington v. State*, 259 P.3d 833 (Okla. Crim. App. 2011).

Habeas relief denied with no mention of materiality finding

His state-court remedies exhausted, Mr. Coddington filed a 28 U.S.C. § 2254 petition, raising several grounds for the writ. One such ground pursued the claim advanced in this petition, that the OCCA unreasonably applied *Chapman v. California* when it upheld his conviction in the face of what the state court acknowledged was a violation of his constitutionally protected right to present a defense. The district judge denied relief, relying on the actual-prejudice standard required in collateral proceedings, announced in *Brecht v. Abrahamson*, 507 U.S. 619 (1993). "[T]he trial court's error in limiting Dr. Smith's testimony did not have a substantial and injurious effect on the jury's verdict," he wrote. *Coddington v. Royal*, 2016 WL 4991685, at *6 (W.D. Okla. Sept. 15, 2016). He didn't mention the OCCA's finding of materiality.

The Tenth Circuit reached the same conclusion. Also resting on *Brecht*, it held that excluding Dr. Smith's opinion caused no actual prejudice because the mistake had little "effect on the jury's verdict." *Coddington v. Sharp*, 959 F.3d 947, 955 (10th Cir. 2020). "We ultimately conclude that the trial court's error in

excluding a portion of Dr. Smith's testimony was harmless," the court ruled. *Id*. It too never uttered the words "material" or "materiality."

The full court of appeals denied Mr. Coddington's petition for rehearing *en banc* without comment. *See* App. D.

REASONS FOR GRANTING THE PETITION

I. The Exclusion of "Material" Evidence Favorable to the Defense Can Never Be Treated as Harmless Error

The court of appeals overlooked the central contradiction of this case. It never addressed how the erroneous suppression of material evidence favorable to the defense could ever embody harmless error.

Begin with the constitutional error identified and inscribed into the record. The OCCA declared that the limitation placed on Dr. Smith's testimony violated the constitutional guarantee of the right to present a complete defense. To establish the error, Mr. Coddington had to satisfy a legal test derived from a precedent nearly 40 years old. Although the OCCA didn't name this Court's opinion in *United States v. Valenzuela-Bernal* (relying instead on authorities that did), it knew of the test announced there. 458 U.S. 858 (1982). The *Valenzuela-Bernal* standard requires defendants to make two showings before they can substantiate a violation of their right to present a defense: (1) the improper exclusion of defense-favorable testimony; and (2) materiality of the excluded

testimony, defined as "a reasonable likelihood" the omitted testimony would have altered the verdict. *Id*. at 867, 874 (1982).

The OCCA said Mr. Coddington made both showings. First, the trial court "clearly erred" in limiting Dr. Smith's "helpful" testimony. *Coddington v. State*, 142 P.3d at 451. Second, turning to the crux of the *Valenzuela-Bernal* test, the OCCA said, "[T]o establish constitutional error, Coddington must show the evidence was material." *Id*. There was no confusion about what this second showing entailed, its gravamen predicated on whether the error was outcome determinative. The Oklahoma court recognized that "to determine materiality, we examine the entire record and must ask whether the evidence was of such an exculpatory nature that its exclusion affected the trial's outcome.'' *Id*. (quotations omitted). Mr. Coddington passed muster. The OCCA expressly described the excluded testimony as "material," since "if believed by the jury, the evidence certainly might have reduced the degree of homicide for which Coddington was convicted." *Id*. It was a finding that echoed Mr. Coddington's involuntary-intoxication defense, vindication he was guilty not of malice murder but of a lesser crime. It was a finding that should have ended the state court's inquiry. The Tenth Circuit's too.

That's because *Valenzuela–Bernal* imported the materiality requirement from *Brady v. Maryland*, 373 U.S. 83 (1963), into the right-to-present-a-defense

analysis. "[W]e have little difficulty holding that at least the same materiality requirement [governing *Brady* claims] obtains with respect to [right-to-present-a-defense claims]," *Valenzuela-Bernal* said. 458 U.S. at 872. Both rights are situated in "the area of constitutionally guaranteed access to evidence." *Id*. at 867. What's more, and this is crucial, *Valenzuela-Bernal* adopted *Brady*'s outcome-determinative definition of materiality, and it did so nearly 25 years before the OCCA considered Mr. Coddington's case. "As in other cases concerning the loss of material evidence, sanctions will be warranted only if there is a reasonable likelihood that the [excluded] testimony could have affected the judgment of the trier of fact." *Id*. at 873-74. (Three years later, in *United States v. Bagley*, the Court jettisoned "a reasonable likelihood" in favor or "a reasonable probability" of a different outcome as the appropriate standard to judge materiality. 473 U.S. 667, 682 (1985).)

If *Valenzuela-Bernal* weakens the prior courts' decisions, a second opinion from this Court case topples them. While *Valenzuela-Bernal* adopted the *Brady/Bagley* materiality requirement as the measure of right-to-present-a-defense claims, *Kyles v. Whitney* explained that the materiality test contains a built-in prejudice component. 514 U.S. 419, 435-36 (1995). *Kyles*, a habeas case decided well before Mr. Coddington's conviction, held that in showing the materiality of suppressed evidence, defendants have perforce showed prejudice.

They have demonstrated a reasonable likelihood of a different outcome had the evidence not been omitted or excluded. *Id*. As the *Kyles* Court put it, "[O]nce a reviewing court applying [the definition of materiality] has found constitutional error there is no need for further harmless-error review." *Id*. at 435.

Kyles anticipated that some habeas courts might still subject a proven *Brady/Bagley* error to the *Brecht* test for harmlessness anyway. The result remains the same. By definition, the "suppression must have had a substantial and injurious effect . . . in determining the jury's verdict":

> Assuming, arguendo, that a harmless-error enquiry were to apply, a *Bagley* error could not be treated as harmless, since a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different, necessarily entails the conclusion that the suppression must have had substantial and injurious effect or influence in determining the jury's verdict.

Id. (internal quotations omitted). "In sum," *Kyles* held, after defendants have shown they were denied access to material evidence—as here—the resulting error "cannot subsequently be found harmless under *Brecht*." *Id*. at 436.

A syllogism condensing Mr. Coddington's twofold argument might prove useful, its spare structure revealing an error that lies "beyond any possibility for fairminded disagreement." *See Harrington v. Richter*, 562 U.S. 86, 103 (2011):

> **Major Premise**: All right-to-present-a-defense claims are subject to the *Brady/Bagley* rules, one of which holds that suppression of material evidence can never be harmless error.

> **Minor Premise**: Mr. Coddington's is a right-to-present-a-defense claim featuring the suppression of material evidence.
>
> **Conclusion**: Therefore, the suppression of material evidence in Mr. Coddington's right-to-present-a-defense case cannot be harmless error.

The state court found that Mr. Coddington's capital-murder conviction was stained by a material, constitutional error, and this Court says such an error cannot be regarded as harmless, not even on habeas review.

Yet that is what a panel of the Tenth Circuit did in this capital habeas case. Combing the record for reasons to diminish the importance of Dr. Smith's omitted testimony (*see* Part III, below), it decided that excluding the evidence effected a harmless error, even though the state court had called the missing testimony "material." And it did so not only while expelling the words "material" and "materiality" from its opinion, but also while purging its analysis of the controlling precedents, *Valenzuela-Bernal* and *Kyles*. True, the OCCA's finding of materiality should have fixed the outcome in the state court. But when Oklahoma failed to follow binding precedent, it fell to the federal courts and ultimately the court of appeals to grant relief. The OCCA's merits-based adjudication of Mr. Coddington's constitutional claim "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U.S.C. § 2254(d).

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This Court should grant the petition because it raises a question of exceptional importance: Can the wrongful exclusion of material evidence *ever* be deemed harmless error, given that prejudice is embedded in the definition of materiality? That the question arises in a death-penalty case makes it all the more exceptional. No matter is as "grave as the determination of whether a human life should be taken or spared." *Gregg v. Georgia*, 428 U. S. 153, 189 (1976) (opinion of Stewart, Powell, and Stevens, JJ).

II. Habeas Courts Lack Authority to Reexamine Legal and Factual Determinations Made by the State Court in Favor of the Petitioner.

In opposing *en-banc* review at the Tenth Circuit, the State of Oklahoma argued that the OCCA "did not mean 'material' in the *Brady/Bagley* sense" when it found that Dr. Smith's excluded testimony was just that, material. *See* Appellee's Response to Pet. for Reh'g at 5 (filed Sept. 3, 2020). This view reflects a great deal of faulty reasoning, and it must not influence the assessment of Mr. Coddington's petition.

For starters, the State's is a view hard to reconcile with the words of the OCCA itself. By calling the Dr. Smith's opinion "material," the state court understood it was drawing on a term synonymous with 'outcome determinative,' its opinion explicitly embracing the controlling legal test: whether the omitted evidence "affected the trial's outcome," as the court put it.

Coddington v. State, 142 P.3d at 451.

But even if the OCCA failed to grasp the full implication of its materiality finding (and it clearly did), a habeas court hardly sits in a position to rewrite the state's opinion. A habeas court must take a state-court decision as it is, not as lawyers representing the state wish it were. Redressing a state court's refusal to discharge a legal duty arising from a prior finding is one reason the writ of habeas corpus exists, "to guard against extreme malfunctions in the state criminal justice system." *Harrington v. Richter*, 562 U.S. at 102-03 (internal quotations marks omitted).

There is a more concrete reason for respecting the OCCA's stated finding. As tempting as it may be to repudiate or gloss over Oklahoma's determination of materiality, habeas courts simply lack authority to revisit a state court's ruling *favoring* the defendant. Congress crafted the Anti-Terrorism and Effective Death Penalty Act to insulate states from challenges by prisoners who suffered adverse rulings in the state courts, by imposing a heightened burden on incarcerated petitioners who attack such unfavorable rulings. When the ruling is not adverse—e.g., where the state court has uncovered a constitutional violation based on a finding of materiality—there's no textual or policy justification for extending the Act to review the state's ruling or its predicating findings. Other principles or doctrines may limit habeas relief when prisoners have established

error in the state court (the non-retroactivity rule, to name one), but § 2254(d) isn't the right tool.

The law of habeas corpus does not invite federal judges to exercise plenary review of state-court opinions, substituting their judgment for that of their coequal colleagues in the states. Prison wardens can enlist AEDPA deference to defend their interpretation of the Constitution if, but only if, they arrive in the habeas court armed with a supporting ruling on the disputed question from their own state courts. Otherwise, they're just asking to revive the era before AEDPA, when federal courts wielded independent judgment in deciding matters of constitutional law. *See Williams v. Taylor*, 529 U.S. 362, 400 (2000) (O'Connor, J., concurring).

III. This Case Offers the Right Vehicle to Resolve the Question Presented

This case is the right vehicle to decide the question presented, chiefly because no procedural or other impediments obscure the purely legal nature of the inquiry.

Mr. Coddington exhausted the claim in the Oklahoma courts. During trial, he opposed the prosecutors' effort to limit Dr. Smith's testimony. His objection unsuccessful, he next attacked the evidentiary restriction on direct appeal, citing the Sixth and Fourteenth Amendments as bases for the claim. His opening brief argued that the "limitation on Dr. Smith's testimony violated Mr. Coddington's

right to present a defense."

Unsuccessful on direct appeal, he raised the same claim in his federal habeas petition, again framing the exclusion of Dr. Smith's opinion as defying the Constitution's promise of the right to present a defense. Armed now with the written decision of the OCCA, he zeroed in on its problem. The state court's reliance on the harmless-error doctrine could not be squared with its "contradictory finding" of materiality, Mr. Coddington wrote. He added that if "the excluded evidence could have negated the jury's verdict of guilt on First Degree Murder," as the OCCA acknowledged, then the "decision by the OCCA was contrary to and/or involved an unreasonable application of *Chapman v. California*." *See* Pet. for Writ of Habeas Corpus at 23, filed Jan. 26, 2017.

After the district court denied relief, Mr. Coddington raised the right-to-present-a-defense claim on appeal to the Tenth Circuit. Once again he tried to focus the panel's attention on the incoherence of the state-court decision, his opening brief condemning the OCCA's harmless-error conclusion as analytically "contradictory," inconsistent with its prior finding of materiality. *See Appellant's Opening Br*. at 11, filed Nov. 20, 2017. He argued that Oklahoma's decision amounted to a "tortuous exercise of logic," overlooking the "substantial and injurious effect" of limiting Dr. Smith's testimony. *Id*. at 26. Materiality "*is* prejudice under the *Brecht* test," said Mr. Coddington even more bluntly in his

reply brief. *See* Reply Br. at 17, filed Sept. 5, 2018. At oral argument, he volunteered to "distill" his position to "one sentence," telling the panel, "The exclusion of material evidence can never be harmless error, by definition." Oral Argument at 03:34-56.

Rather than address the implications of the OCCA's materiality finding or the paradox of the state court's harmless-error conclusion, the Tenth Circuit panel dug into the record evidence. It extracted a pair of reasons to explain why excluding Dr. Smith's opinion lacked any effect on the outcome: (1) that despite the restrictions he faced, Dr. Smith still presented facts from which Mr. Coddington could argue at summation that his cocaine use prevented him from forming malice aforethought; and (2) Dr. Smith's opinion carried questionable value anyway, because "it was disputed as to whether Coddington was even intoxicated at the time of the murder." *Coddington v. Sharp*, 959 F.3d at 955.

In this petition, Mr. Coddington does not quibble with the Tenth Circuit's selection or interpretation of the evidence. Instead, he presents a pure issue of law: whether excluding material evidence can amount to harmless error? If Mr. Coddington has correctly answered the question, then the Tenth Circuit was wrong to scrutinize the record facts in the first place. The harm it was searching for, the harm required by the *Brecht* standard, was on the surface, in plain view, built into the very legal test that, according to the OCCA, Mr. Coddington had

already satisfied. In convincing Oklahoma that his constitutional right to present a defense was violated, Mr. Coddington had demonstrated all the harm the Constitution demands.

CONCLUSION

For the reasons above, the petition for writ of certiorari should be granted. Alternatively, the Could should summarily vacate the judgment below and remand for an analysis of Mr. Coddington's right-to-present-a-defense claim in light of *Valenzuela-Bernal* and *Kyles*.

Dated this 26th day of February, 2021.

Respectfully Submitted,

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