

No. **20-7641**

Supreme Court, U.S.  
FILED

MAR 08 2021

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IN THE  
SUPREME COURT OF THE UNITED STATES

HAWKINS — PETITIONER  
(Your Name)

vs.

SHOOP — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Dist. Ct. for the Southern Dist. of Ohio, Western Div. at Dayton  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Brian Hawkins

(Your Name)

P.O. Box 5500

(Address)

Chillicothe, Ohio 45601

(City, State, Zip Code)

N/A

(Phone Number)

ORIGINAL

### QUESTION(S) PRESENTED

1. Has the trial court erred by adding a credibility analysis to an unjustifiable pre-indictment delay test of Due Process prescribed by United States v. Lovasco, 431 U.S. 783 (1977)?
2. What amount of prejudice must be demonstrated for a Due Process violation, when there is an unjustifiable reason for a preindictment delay?
3. Has the State's post - delay "intentional devise to gain tactical advantage over the accused," which prejudiced him, amount to a Due Process violation?

### LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows: N/A

### RELATED CASES

- State v. Hawkins, 2015-CR-1099, Court of Common Pleas of Montgomery County, Ohio. Trial court's decisions on:  
Motion to dismiss, entered on Oct. 5, 2015;  
Jury trial Verdict Dec. 17, 2015, entered Dec. 21, 2015;  
Termination and Sentencing Entry Feb. 4, 2016, entered Feb. 5, 2016.
- State v. Hawkins, 2018-Ohio-867, Ohio Court of Appeals, 2nd Appellate District. Judgment of trial court Affirmed, entered Mar. 9, 2018.
- Hawkins v. Shoop, 2019 U.S. Dist. LEXIS 208878, U.S. Dist. Court for the Southern District of Ohio, Western Division at Dayton. Magistrate Judge's Report and Recommendations, Dec. 4, 2019.
- Hawkins v. Shoop, 2019 U.S. Dist. LEXIS 221232, U.S. Dist. Ct. S.D. OH, W.Div. at Dayton, Judge's Recommittal Order, Dec. 20, 2019.

## RELATED CASES CONTINUED

- Hawkins v. Shoop, 2019 U.S. Dist LEXIS 221475, U.S. Dist. Ct. S.D. OH, W. Div. at Dayton. Magistrate Judge's Supplemental Report and Recommendations, Dec. 26, 2019.
- Hawkins v. Shoop, 2020 U.S. Dist. LEXIS 27048, U.S. Dist. Ct. S.D. OH, W. Div. at Dayton. Magistrate Judge's Order Denying Discovery and Expansion of Record, Feb. 18, 2020.
- Hawkins v. Shoop, 2020 U.S. Dist. LEXIS 42090, U.S. Dist. Ct. S.D. OH, W. Div. at Dayton. Judge's Decision and Order Adopting Report and Recommendations, Mar. 11, 2020.
- Hawkins v. Shoop, 2020 U.S. App. LEXIS 25379, U.S. Court of Appeals, Sixth Circuit. Order Denying COA, Aug. 10, 2020.
- Hawkins v. Shoop, 2020 U.S. App. LEXIS 32266, U.S. Court of Appeals, Sixth Circuit. Rehearing Denied, Oct. 13, 2020.

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix J to the petition and is

☒ reported at 2020 U.S. App. LEXIS 25379; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the United States district court appears at Appendix I to the petition and is

☒ reported at 2020 U.S. Dist. LEXIS 42090; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.



## JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was August 10, 2020.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: October 13, 2020, and a copy of the order denying rehearing appears at Appendix K.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

### **USCS Constitution Amendment Five**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

### **USCS Constitution Amendment Fourteen**

**Sec. 1. [Citizens of the United States.]** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## **STATEMENT OF THE CASE**

### **Statement of the facts**

On July 30, 2002, A.J. reported an alleged rape to police. Subsequently, she was taken to the hospital where a rape kit was performed and sent to crime lab for analysis. Detective Carol Ewing, the original detective, interviewed A.J. on August 1, 2002. A.J. identified Hawkins on August 6, 2002, based on information from her friends. (Page ID 1903-05)

On October 29, 2002, Detective Ewing interviewed Hawkins at his home, because he was recovering from being shot and memory loss. Detective Ewing only provided a name and a detail of the allegation, but no picture of A.J., and Hawkins did not recognize the name and denied the allegation. (Page ID 1859, 1905)

Detective Ewing obtained a court order for Hawkins' DNA on October 23, 2003. A different detective obtained his DNA in December of 2003, as Detective Ewing was on restricted duty, and retired on February 2, 2004. In March of 2004, a crime lab report identified Hawkins' DNA as a match. According to the prosecutor's presentation, the case laid dormant for eleven years. (Page ID 1907-08, 1915-16)

Detective Dulaney interviewed Hawkins in May of 2015. He was shown two pictures of A.J., one when she was 18-years-old (three-plus years after the allegation date), and the other in 2013 (eleven-years after the allegation date), thus neither picture depicted her as she was when the allegation occurred. (Page ID 1933-34)

After Hawkins reviewed the police report, he realized the allegations involved "Shoop," he recognized it as the stranger he had met on Shoop with whom he had consensual intercourse in 2002, and he was forthcoming with the events of the night, but he did not know their name. (Page ID 1845-47, 1864, 1882-83)

Hawkins asserted that the pre-indictment delay violated his due process rights, as it caused several witnesses to become unavailable that could have verified his version of events. Hawkins was prevented from asserting an additional exculpatory witness whom had also now become deceased, Detective Phil Olinger, the last detective to investigate and resolve the case, before the eleven-year delay. (Page ID 89-90, 1968)

Although subpoenaed to testify at the Motion to Dismiss, A.J. failed to show. (Page ID 1942-44)

#### **Statement of the Procedure**

Hawkins was indicted May 11, 2015. (Page ID 73)

Hawkins was re-indicted July 22, 2015. (Page ID 85)

Hawkins filed a Motion to Dismiss June 2, 2015. (Page ID 75)

Trial court held Evidentiary Hearing July 23, and August 19, 2015, and permitted briefs from the parties. (Page ID 87, 92, 1835)

Trial court overrule MTD on October 5, 2015. (Page ID 103)

The matter was presented to a jury on December 14, 2015, and found Hawkins guilty on two counts. (Page ID 1556-57)

Hawkins timely appealed February 19, 2016. (Page ID 143)

Hawkins filed a Post-Conviction Petition January 4, 2017. (Page ID 692)

The appellate court affirmed the judgment of trial court on

and denied Post-Conviction Petition at the same time, without findings of fact or conclusions of law, on March 9, 2018. State v. Hawkins, 2018 Ohio App. LEXIS 917.

Hawkins motioned for reconsideration March 19, 2018, which was overruled April 12, 2018. (Page ID 355, 364, 374)

Hawkins appealed to Ohio Supreme Court May 24, 2018, and the court declined jurisdiction August 1, 2018. (Page ID 409); State v. Hawkins, 103 N.E. 3d 831 (Ohio 2018).

Hawkins filed an Application for reopening Appeal June 11, 2018. However, the Clerk of Court filed with a false cover page, resulting in dismissal because of Clerk's error. Hawkins then moved to reinstate his filing under correct case number, which appellate court denied. Hawkins filed Delayed Application for Reopening July 11, 2018, also denied by appellate court, and subsequently the Clerk of Supreme Court of Ohio refused to file. (Page ID 2302-03)

Hawkins filed timely Petition for Writ of Habeas Corpus March 11, 2019. (Doc. 3) Federal District Court denied March 11, 2020. Hawkins v. Shoop, 2020 U.S. Dist. LEXIS 42090.

Hawkins timely appealed to the Federal Sixth Circuit Court of Appeals on April 9, 2020. The Sixth Circuit denied Application for COA on August 10, 2020. Hawkins v. Shoop, 2020 U.S. App. LEXIS 25397.

Hawkins timely requested rehearing on his Application for COA, which the Sixth Circuit denied on October 13, 2020. Hawkins v. Shoop, 2020 U.S. App. LEXIS 32266.

## REASONS FOR GRANTING THE PETITION

It is well established that dismissal of a case is required by the Due Process Clause when pre-accusation delay results in prejudice to a defendant's right to a fair trial, if the "delay was an intentional devise to gain tactical advantage over the [defendant]." United States v. Lovasco, 431 U.S. 783, 788-89 (1977).

However, with respect to the prejudice inquiry, the exact amount of prejudice that must be demonstrated for a due process violation to be recognized is unclear. Additionally, it is unclear whether prevailing on a claim must be strictly "an intentional device to gain a tactical advantage" by the government, or whether simple negligence of the government, recklessness on the part of the government, investigative delay from the government, or lack of law enforcement and government resources may suffice. The Supreme Court did not directly answer that question in United States v. Marion, 404 U.S. 307 (1971). And in Lovasco, the Court did introduce a few additional principles, but it did not fully clarify the level of prejudice required and again refrained from explicitly stating whether something less could lead to a successful claim, instead leaving it to the lower courts to decide on a case by case basis. Marion, 404 U.S., at 324-25.

### A Call for Supreme Court Action to Further Analyze Pre-Accusation Delay

The Supreme Court has never clearly established a definitive test for evaluating due process claims premised on pre-indictment delay, "leaving it for the lower courts to decide on a case by case basis." Marion, 404 U.S., at 324-25.

The Supreme Court has never clearly held that governmental negligence would suffice to satisfy a test for due process violation based on pre-indictment delay. Given that the Supreme Court left it to the lower courts to make such determination, it follows that the lower courts created their own standards. However, the circuits are split as to the proper test for claims of pre-indictment delay, particularly as to whether mere negligence by the government could ever give rise to a due process claim. See i.e., United States v. Ray, 578 F.3d 184, 186, 200 (2nd Cir. 2009) (finding neutral reason, such as negligence weighs against the government); United States v. Sebetich, 776 F.2d 412, 430 (3rd Cir. 1985) (government mixup falling closer to negligence, but not addressing prejudice as no showing of intentional delay); United States v. Ross, 123 F.3d 1181, 1186 (9th Cir. 1997) ("preindictment delay that results from negligence or worse may violate due process").

The Supreme Court noted such a split when it denied certiorari in Hoo v. United States, 484 U.S. 1035, 1036 (1988) (White, J., dissenting), saying, "exemplifying the significant disagreement in the lower courts over the proper test, panels in the Fifth and Seventh Circuits have acknowledged conflicts between decisions from their own circuits on this issue." The Court did not establish a definitive rule to alleviate this circuit split, but it did note that, "The continuing conflict amongst the Circuits on this important question of constitutional law requires resolution by this Court." Id.

Where the gap really comes into play with regards to the

lower courts' interpretations of Marion and Lovasco, is how those courts examine the government's reasons for the delay, typically under prong two of the due process test for pre-accusation delay. After finding actual prejudice, "consider[ing] the reasons for the delay as well as prejudice to the accused" is also necessary. See United States v. Crouch, 84 F.3d 1497, 1510 (5th Cir. 1996) (steadfast in its position, the Fifth Circuit said, "that neither Marion nor Lovasco is crystal clear on this issue, and each opinion contains some language that can give comfort to either view."). Additionally, the delay must "violate[] those 'fundamental conceptions of justice which lie at the base of our civil and political institutions,' and which define 'the community's sense of fair play and decency.'" Lovasco, 431 U.S., at 790.

At present, the majority of circuits employ the narrow two-prong test. Only the Fourth and Ninth Circuits use a different test that balances government conduct against prejudice suffered by the accused. See i.e., United States v. Uribe-Rios, 558 F.3d 347, 358 (4th Cir. 2009); United States v. DeJesus Corona-Verbera, 509 F.3d 1105, 1112 (9th Cir. 2007).

It is significant that the Ninth Circuit reasoned, "pre-indictment delay that results from negligence or worse may violate due process." United States v. Ross, 123 F.3d 1181, 1186 (9th Cir. 1997). Disunity even persists within circuits themselves, as seen by Judge McKay of the Tenth Circuit, who articulated his distaste of the two-prong test used by his circuit as being "excessively narrow." United States v. Radmall, 591 F.2d 548, 522 (10th Cir. 1978) (McKay, J., dissenting). And he added that, the Supreme Court failed



to exclude constitutional reasons other than intentional delay or harrassment, leaving it instead to the lower courts to decide. But, by adhering to the narrow interpretation of Marion, circuits adopting the narrow rule would be unable to consider other types of delays that may violate the Fifth Amendment. Judge McKray also reasoned that finding intentional delay requires an inquiry into the government's subjective motives for the delay - an inquiry which can be easily refuted.

If Marion and Lovasco would have created clearly established precedent, there would not be a circuit split in the first place. With the Marion and Lovasco decisions being nearly a half century ago, the time has come for the Supreme Court to decide the proper standard to employ when an appellant claims he was prejudiced by a pre-indictment delay that resulted solely from governmental negligence, and what concretely constitutes prejudice.

### **Prejudice in the Present Case**

The trial court found the State did Not have a justifiable reason for the thirteen-year delay in prosecuting. Therefore, the pertinent questions before this Court balance on how much prejudice the Petitioner has suffered, and has his Due Process rights been violated because of the prejudice.

The State and lower Federal courts failed to consider all of pertinent facts affecting decisions in this case. Specifically, the prosecution used "missing case-file," death of witnesses, and manipulated evidence as POST-intentional devices to gain tactical advantage over the Petitioner.

Relevant to the First question presented to this Court, the Ohio Supreme Court said, "[W]e have firmly established a burden shifting framework for analyzing a due-process claim based on preindictment delay. Once a defendant presents evidence of actual prejudice, the burden shifts to the state to produce evidence of a justifiable reason for the delay." State v. Jones, 148 Ohio St.3d 167, 170 (2016)(citing cases omitted, based on United States v. Marion, 404 U.S. 307 (1971); and United States v. Lovasco, 431 U.S. 783 (1977)).

To demonstrate prejudice, the defendant must establish the exculpatory value of the alleged missing evidence. The Ohio Supreme Court said, "[W]e have held that a defendant may establish actual prejudice where he is unable to seek verification of his or her story from a deceased witness. Luck, at 157. Luck demonstrates that a defendant need not know what the exact substance of an unavailable witness's testimony would have been to establish actual prejudice based on the witness's unavailability. Actual prejudice exists when missing evidence or unavailable testimony, identified by the defendant and relevant to the defense, would minimize or eliminate the impact of the state's evidence and bolster the defense. Id. at 157-58." State v. Jones, 148 Ohio St. 3d 167, 174, citing State v. Luck, 15 Ohio St.3d 150 (1984).

However, the trial judge added a credibility determination to the legal framework established by the Ohio Supreme Court for analysis of due process violations of preindictment delay. On the one hand, the trial judge admits that "the testimony lost by virtue of Moochie's and Toni Ousley's deaths would, despite

certain evidentiary issues, have exculpatory value." Yet, the trial judge used circular reasoning by denying the very evidence that would exculpate, based on credibility while not considering all of the facts affecting credibility. (Doc. 10, Page ID 111, ftnt.)

The prosecution skewed evidence regarding Petitioner's credibility, by impermissibly vouching to Petitioner's timing of a changed story - only after and because of finding out about a DNA match. (Doc. 10, Page ID 1929, 1934) However, this is manipulative of the evidence. In 2015, when Detective Dulaney renewed investigation, she presented unrecognizable name and pictures of complainant to Petitioner. (Doc. 10, Page ID 1859-61, 1879, 1929, 1933-34, 1937) Petitioner expressed the 2002 case had been resolved by Chief Detective Olinger, who is now deceased. (Doc. 10, Page ID 1209) Petitioner thought that case had been resolved, and that this was a different accuser. When Petitioner found out this accuser was the person he had met on Shoop at the after-hour-joint, it was then that he realized it was the same accuser from which he had thought was a resolved case. (Doc. 10, Page ID 1846, 1882-83) Manipulation can affect the jury. See Donnelly v. DeChristoforo, 416 U.S. 637, 647 (1974).

Petitioner Motioned to Federal District Court for Discovery and Expansion of the Record to include, among other things, the 2015 DVD interview with Detective Dulaney, which content confirms Petitioner's credibility that he, in fact, did know about his DNA match before the extended delay. (Doc. 10, Page ID 1937) And, that Prosecution's argument wrongly manipulated the evidence to

show Petitioner only found out about DNA evidence just prior to Motion to Dismiss hearing. (Doc. 26, Page ID 2415-19)

However, District Court denied, further prejudicing Petitioner of his right to due process because the DVD video interview with Detective Dulaney will restore Petitioner's credibility and will damage state's credibility - revealing state's post intentional devise to gain tactical advantage over Petitioner, (Doc. 27, Page ID 2434-38) because state did not show DVD to court.

Relevant to the facts of Petitioner's case, he now asks his First question of this Court: Has the trial court erred by adding a credibility analysis to an unjustifiable pre-indictment delay test of Due Process prescribed by United States v. Lovasco, 431 U.S. 783 (1977).

Next as to the second question, Petitioner is prejudiced because he could not question Olinger, the last known detective investigating the case - prior to the delay - to verify that the case had been resolved. (Doc. 10, Page ID 1209) Several courts have found the loss of law enforcement witnesses to be prejudicial. See United States v. Sabath, 990 F.Supp. 1007, 1011 (Ill.N.D. 1998) (loss of special agent significant); State v. New, 2013-Ohio-3193, ¶18 (9th Dist. COA) (prejudiced by death of investigator, among other things); State v. Keenan, 2013-Ohio-4029, ¶27 (8th Dist. COA) (witnesses of importance deceased, including detective); State v. Willingham, 2019-Ohio-1892, ¶37 (8th Dist. COA) (defendant prejudiced by passing of investigator).

Further prejudicing Petitioner is the loss of original case-file packet, which could have helped to prove Olinger's part in

investigation clearing Petitioner of charges. The prosecution argued that, "We actually cannot find, not lost, we actually cannot find just the [original case file] packet." (Doc. 10, Page ID 997-99, 1218-19, 1228-29, 1911-12, 1932-33, 1936) Yet, never does prosecution produce original case-file packet, nor do they produce Detective Olinger's case-file packet. Courts have found missing case files can be prejudicial and significant. See State v. Bourne, 2019-Ohio-2327, ¶15 (8th Dist. COA)(notes in original case file could have minimized or eliminated the impact of state's evidence); United States v. Santiago, 987 F.Supp.2d 465, 485 (N.Y. S.D.C. 2013)(Actual prejudice in the context of Marion/Lovasco paradigm generally means the loss of documentary evidence or the unavailability of a key witness).

Petitioner again reiterates that he motioned the Federal District Court for Discovery and Expansion of the Record. His request included the original case-file packet and Detective Olinger's case-file packet. (Doc. 26, Page ID 2414-15) Contents of these case-file packets are relevant to Detective Olinger's or other detectives' further investigation of case - prior to delay - showing resolution of the case. And thus, affecting the positive affect toward Petitioner's credibility and negative impact upon prosecution credibility in deceiving and manipulation.

Again, the District Court denied, further prejudicing the Petitioner of evidence that the state used post intentional devises to gain tactical advantage over the Petitioner. (Doc. 27, Page ID 2434-38)

Petitioner now asks his Second question to this Court:

What amount of prejudice must be demonstrated for a Due Process violation, when there is an unjustifiable reason for a pre-indictment delay?

Finally, in regards to the last question, the state capitalized by deception at Motion to Dismiss hearing, which is only evident by comparing later testimony at trial. During MTD, Detective Ewing, who retired before DNA results were returned from lab, testified to "Not" knowing whether investigation was done after getting court order to obtain DNA from Petitioner. (Doc. 10, Page ID 1916) Later during trial, Detective Ewing testified that further investigation "Was" done, when she filled out property card and her partner - Chief Detective Olinger, who is now deceased (Doc. 10, Page ID 1209) - went to collect DNA from Petitioner and then submitted to crime lab. (Doc. 10, Page ID 1207) This significantly prejudices Petitioner by detracting from the fact that more investigation was done after Detective Ewing retired, to the point of resolution of the case. But, the last one to investigate the case is now deceased, and the original case-file packet mysteriously cannot be found to verify the final investigation done before the delay. (Doc. 10, Page ID 997-99, 1218-19, 1228-29, 1911-12, 1932-33, 1936) Manipulation can affect the jury. See Donnelly v. DeChristoforo, 416 U.S. 637, 647 (1974).

Then, prosecution attacked Petitioner's credibility by vouching that the DNA swab was taken from Petitioner at his home, after Petitioner testified to DNA swab being taken from him in

jail. (Doc. 10, Page ID 1535, compare Page ID 1470-71) But the jailhouse records verify that Petitioner was indeed in jail when the DNA swab was taken. (Doc. 10, Page ID 2104-07) United States v. Young, 470 U.S. 1, 18-19 (1985) (prosecutorial vouching improper); Donnelly v. DeChristoforo, 416 U.S. 637, 647 (1974) (manipulation can affect the jury).

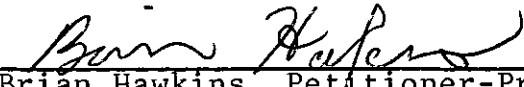
Also at MTD, Detective Dulaney testified that complainant was able to remember the facts that occurred that night, and "she was very surprised and she remembered and was able to provide some information." (Doc. 10, Page ID 1052) However at trial, the complainant testified that, "I didn't" remember any of that, and still don't have a very clear recollection of what happened that night. (Doc. 10, Page ID 1052, 1625-26) Petitioner suffered prejudice from the complainant not showing to testify at MTD hearing. Had the complainant testified at hearing as she did at trial - that she did not remember the case - then, the result would be different.

Because the state misrepresented evidence at MTD hearing in order to proceed to trial, and such misrepresentation only became evident in subsequent trial testimony, and because prosecution skewed evidence regarding Petitioner's credibility, and because prosecution avoided presenting the original case-file packet, the Petitioner now asks his Third question to this Court: Has the State's post-delay "intentional devise to gain tactical advantage over the accused," which prejudiced him, amount to a Due Process violation?

### CONCLUSION

The Petition for a writ of certiorari should be granted, in order to resolve Federal Circuit Court split regarding pre-indictment delay. Petitioner asks for the answers to his questions be applied to his case, and grant him all relief this Court finds necessary under the constitution and laws of the United States, as this Court interprets.

Respectfully submitted,

  
\_\_\_\_\_  
Brian Hawkins, Petitioner-Pro se

Date: Tuesday March 2, 2021