No. _____

IN THE SUPREME COURT OF THE UNITED STATES

Ronald Hamilton, Jr.,
Petitioner,

-v-

Texas,
Respondent.

On petition for writ of certiorari from the
Texas Court of Criminal Appeals

PETITION FOR WRIT OF CERTIORARI

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ATTORNEYS FOR PETITIONER RONALD HAMILTON, JR.

QUESTIONS PRESENTED FOR REVIEW (CAPITAL CASE)

I. Did the trial prosecutors deny Mr. Hamilton Due Process by failing to disclose exculpatory fingerprint comparison results relevant to an extraneous capital murder presented at his punishment trial?

II. Was Mr. Hamilton denied Due Process when the state presented false and misleading evidence concerning an extraneous murder at his capital punishment trial, and misled the trial court and jury about the existence of exculpatory fingerprint evidence?

III. Is the Eighth Amendment's prohibition against cruel and unusual punishment violated by a death sentence grounded upon evidence that has been revealed to be materially inaccurate?

PARTIES TO THE PROCEEDINGS BELOW

The caption of the case contains the names of all the parties. *See* Sup. Ct. R.14(1)(b)(i).

RULE 29.6 STATEMENT

Petitioner is not a corporate entity.

LIST OF PROCEEDINGS

- Mr. Hamilton pleaded guilty to the capital murder of Ismail Matalkah and was sentenced to death on November 12, 2002, in cause number 901049, in the 180th District Court of Harris County, Texas.
- The direct appeal was to the Texas Court of Criminal Appeals, who denied all requested relief on October 13, 2004. *Hamilton v. State*, 74,523, 2004 WL 3094382 (Tex. Crim. App. Oct. 13, 2004).
- This Court denied certiorari on June 20, 2005.
- Hamilton filed his initial state application for writ of habeas corpus on September 15, 2004, in cause number 901049A, in the 180th District Court of Harris County, Texas. The state district court recommended denying relief, on November 25, 2014, and the Court of Criminal Appeals adopted the trial court's findings on June 24, 2015. *Ex parte Hamilton*, WR-78,114-01, 2015 WL 3899185 (Tex. Crim. App. June 24, 2015).
- Hamilton, through undersigned counsel, filed his federal writ of habeas corpus on June 17, 2016. *See* Southern District of Texas Cause No. 4:15-cv-01996, Doc. no.

6, 10. His motion to stay federal proceedings to allow for the exhaustion of claims was granted on March 20, 2017. These federal proceedings remain pending.

- Hamilton filed a subsequent application for writ of habeas corpus raising the claims relevant to this filing on November 02, 2017, in cause number 901049B, in the 180th District Court of Harris County, Texas. After an evidentiary hearing, the 180th District Court recommended that relief be granted (in the form of a new punishment trial) on October 30, 2019. *See* Appendix B. The Texas Court of Criminal Appeals then denied relief in an unpublished order on November 11, 2020. *See* Appendix A. *Ex parte Hamilton*, WR-78,114-02, 2020 WL 6588560, (Tex. Crim. App. 2020).

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The Texas Court of Criminal Appeals' (CCA's) order, *Ex parte Hamilton*, WR-78,114-02, 2020 WL 6588560 (Tex. Crim. App. Nov. 11, 2020), rejecting the trial court's recommendation of granting a new sentencing proceeding, is in Appendix A. The trial court's Findings of Fact and Conclusions of Law recommending that habeas relief be granted is in Appendix B.

STATEMENT OF JURISDICTION

The CCA's opinion issued on November 11, 2020. Mr. Hamilton is relying on this Court's March 19, 2020 order extending his filing deadline to 150 days from the date of the of the lower court judgment. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Fifth Amendment to the United States Constitution provides, in pertinent part: "No person shall be . . . deprived of life, liberty, or property, without due process of law . . . ." The Eighth Amendment to the United States Constitution provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." The Fourteenth Amendment to the United States Constitutions Provides, in pertinent part: "No State shall ... deprive any person of life, liberty, or property, without due process of law. . . ."

INTRODUCTION

On November 6, 2002, the day testimony began in his capital murder trial, Ronald Hamilton Jr. pleaded guilty to shooting and killing Ismail Matalkah during the course of a convenience store robbery. The trial moved directly to the punishment phase, where the jury was tasked with deciding whether Mr. Hamilton should be sentenced to life in prison or death. During the punishment trial, the prosecutors focused on an extraneous capital murder allegedly committed by Hamilton and his co-defendant, the "Holman" murder. The prosecution called nine witnesses and presented hundreds of pages of testimony in an attempt to prove that Mr. Hamilton committed this second murder.

However, evidence presented at a recent post-conviction evidentiary hearing proves the trial prosecutors suppressed material fingerprint evidence showing someone else committed the extraneous murder. Mr. Hamilton's trial counsel were never notified that before the trial, fingerprint comparisons had been conducted in this case, which excluded both Mr. Hamilton and his co-defendant as having been contributors to fingerprints found on a beer bottle that an eye witness identified as being touched by the Holman shooter. Had trial counsel been informed of this fact, their entire approach to defending against the extraneous murder allegation would have changed.

During the postconviction proceedings, the Harris County District Attorney's Office continued to falsely assert that no pretrial forensic comparisons had been conducted. And because, according to the District Attorney's Office, no pretrial

forensic testing had been conducted, the office agreed not to oppose forensic testing in 2017 of items found at the scene of the Holman murder. The results of the 2017 testing showed that Mr. Hamilton was excluded as leaving the fingerprint discovered on the bottle handled by the true shooter, and that the print had been left by another man, with similar physical characteristics and a prior arrest for aggravated robbery, Marshall Knight. When called to testify, Marshall Knight, through counsel, asserted his Fifth Amendment Right and refused to answer any questions about the bottle or the Holman murder. It was also proven at the evidentiary hearing that the trial prosecutors were aware that Hamilton had been excluded from leaving this fingerprint prior to trial, but had actively suppressed that fact by stating to the trial court and defense counsel that no fingerprint comparisons had been conducted.

The state district court recommended Mr. Hamilton be granted a new trial based upon the prosecution's *Brady* violation as well as the presentation of false and misleading evidence at Mr. Hamilton's trial. *See* Appendix B. Over a year later the CCA denied relief in a six-page unpublished order. *See* Appendix A.

STATEMENT OF THE CASE

I. THE HOUSTON POLICE DEPARTMENT INVESTIGATED TWO CONVENIENCE STORE ROBBERIES GONE WRONG.[1]

On November 7, 2001, at approximately 6:45 pm, convenient store clerk Ismail Matalkah was shot and killed during a robbery at 3300 Yellowstone in Houston,

[1] The facts in this subsection are supported by the offense reports for each respective murder, included as Exhibits 14 and 18 of the subsequent state application for writ of habeas corpus. *See also* Hr'g May 29, 2019, at 14-17. (parties agreeing trial court can consider this evidence).

Texas. On December 7, 2001, police received a tip that would eventually lead them to Mr. Hamilton and his co-defendant, Shawon Smith, although neither would be arrested for another month.

In the meantime, on December 8, 2001, Mr. Son Huynh, who went by the name "Tucson" or "Tulson", was killed during a robbery attempt at his convenience store at 3235 Holman. The suspects for this murder were "two young black males, who fled the scene in a small two door dark colored car." Importantly, a "40 oz. Schlitz Malt Liquor beer bottle" was found "on top of the metal bar on the south end" of the store. Print examiner Debbie Benningfield came to the scene and collected the bottle to test for prints and swab for DNA.

On December 10, 2001, Investigators Park and Hoffmaster, working the Holman murder, found witnesses Charles Douglas and Wanda Johnson who were present during and leading up to the shooting. Both witnesses provided both oral and written statements to the police, and the investigators noted about Wanda Johnson's written statement that "IT WAS NOT MENTIONED IN THE STATEMENT BUT SHE ALSO SAW THE SAME MAN SIT DOWN AN EMPTY 40 ONCE BEER BOTTLE ON THE RAIL THAT RUNS ALONG THE BURKETT SIDE OF THE STORE". Appendix F, at 2.011. The man who sat the bottle down on the rail was the same man who eventually shot Mr. Huynh.

Print Examiner Benningfield took the bottle to the lab for processing. Special photographs of the fingerprint found on the bottle were created. However, there is absolutely no indication in the offense report that the prints were ever compared

against any suspect, or ran through AFIS (Automated Fingerprint Identification System).

Meanwhile, a break in the Yellowstone murder came on January 21, 2002, when a patrol officer was called to a family disturbance call. There, the complainant, Brooke Rogers, told the officer that her child's father, Ronald Hamilton, had killed a clerk at the mobile gas station on Yellowstone and 288. Hamilton was arrested for Criminal Mischief, and homicide detectives were notified. Over the next few days, the police obtained statements from Brooke Rogers explaining that Mr. Hamilton had confessed the murder to her; from co-defendant Shawon Smith, who confessed to being a driver after the shooting; and from friend Billy Norris, explaining that Hamilton had also confessed to him.

After his arrest, Hamilton also became the main suspect in the Holman murder. At the end of January, Detectives Park and Hoffmaster presented a lineup containing Mr. Hamilton's mug shot to eyewitnesses Charles Douglas and Wanda Johnson, who had been provided copies of a police sketch depicting the suspect weeks before. Both witnesses picked Hamilton as Mr. Huynh's Killer.

The offense report for the Holman murder omitted, pursuant to police policy, that Hamilton and Smith had been excluded from leaving any of the fingerprints found at the scene, including the print found on the bottle touched and set down by the shooter just prior to shooting Mr. Huynh.

II. TRIAL: THE PROSECUTION MISLEADS THE COURT AND DEFENSE ABOUT THE EXISTENCE OF FORENSIC EVIDENCE, AND THE STATE'S PUNISHMENT CASE FOCUSES ON THE HOLMAN MURDER. [2]

A. Pretrial proceedings.

Mr. Hamilton was charged with the murder of Mr. Matalkah, and the prosecution decided to use the Holman murder as punishment evidence. Prior to trial, defense counsel filed a motion for discovery and inspection of evidence which was granted and required the production of all "results of examinations." CR at 143. The Court also granted Mr. Hamilton's *Brady* motion. *Id.* at 60. At the pretrial hearing discussing these motions, trial prosecutor Davidson specifically told the court there were no fingerprint comparisons in this case. 2 RR at 8. It was confirmed during this hearing that all orders for production of evidence applied to both the charged murder (Yellowstone) and the extraneous murder (Holman).[3] The prosecutors also affirmed the "file has been open" and that "everything that you got that you know so far is in the file." *Id.*at 7.

B. The State's punishment case relied heavily on the idea Hamilton committed the Holman murder.

Hamilton pleaded guilty to capital murder for shooting Ismail Matalkah. *See* 16 RR 10-18 (the arraignment and guilty plea). The trial proceeded directly to the

[2] Citations to the trial clerk's record and reporters record will note "CR" or "RR." The postconviction proceedings are cited as CR-A or CR-B, and citations to the post-conviction hearings will note the hearing date.

[3] Prior to revealing the fingerprints had been compared prior to trial, the Harris County District Attorney agreed that "even during the October 7, 2002, pretrial conference, the State informed the trial court there were no reports of any scientific tests like DNA or fingerprint comparisons (2 R-R- at 8-11)." SSCR at 55.

punishment phase,[4] and the state relied upon the Holman murder to repeatedly argue and persuade the jurors that a sentence of death was warranted.

Joseph Montoyer, a jail house informant, was the first witness to testify about the Holman murder.[5] Montoyer testified that he was incarcerated with Hamilton in the Harris County Jail and that, while cutting Hamilton's hair, he heard something about a "Holman Street" robbery. On cross examination, it was revealed that the facts recounted at trial were not included in Montoyer's initial statements to police and that Montoyer was referring to a general area of town when using the word "Holman." Interestingly, prior to his testimony, prosecutor Davidson stated there had been no deals offered for Montoyer's testimony (17 RR at 179-80), but later Montoyer was recalled to explain that the trial prosecutors had agreed to lower his bond in exchange for the information he provided. *See* 19 RR at 112-17.

Officer Dunn testified that he arrived at the Holman Convenience store on December 8, 2001, at about 6 pm.[6] Dunn, who knew Mr. Huynh as "Tulson," found officers already at the scene and Mr. Huynh lying a pool of blood. Twenty pictures of

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[4] Before Hamilton could be sentenced to death, the jury had to answer the following special issues unanimously:

> "Do you find from the evidence beyond a reasonable doubt that there is a probability that the defendant, Ronald James Hamilton Jr., would commit criminal acts of violence that would constitute a continuing threat to society?
>
> Do you find from the evidence, taking into consideration all of the evidence, including the circumstances of the offense, the defendant's character and background, and the personal moral culpability of the defendant, Ronald James Hamilton Jr., that there is a sufficient mitigating circumstance or circumstances to warrant that a sentence of life imprisonment rather than a death sentence be imposed?" CR at 329.

[5] Montoyer's testimony is found at 17 RR 180-98 and 19 RR 125-132.
[6] Officer Dunns testimony is found at 17 RR at 198-224.

the crime scene were introduced through this officer. State's Exhibits 52-71. Officer Thomas, who knew Mr. Huynh and his family, testified that Mr. Huynh's wife had passed away shortly before his murder and identified Mr. Huynh's family members in the courtroom.[7] Officer Thomas also reviewed the pictures of the crime scene. *Id.* at 218.

Eye witnesses, Charles Douglas and his friend Wanda Johnson, testified they were walking up to the Holman store on December 8, 2001, to get some cigarettes and beer.[8] Douglas testified that, after drinking, he saw a man in the store standing at the front counter.[9] Douglas went back outside and, looking through the front door, saw a short scuffle and then saw the man take out a gun and shoot Tulson one time. Strangely, Douglas walked back into the store (with the shooter still inside), and saw the shooter leave, run around the corner, and get into a dark blue or grey car which drove off. Three days later, Douglas met with a sketch artist and produced a composite sketch. He was given a copy of that sketch to take home. Douglas originally identified the shooter as being a teenager that weighed about 140 lbs.[10]

Wanda Johnson testified she was Douglas's friend who went to the Holman store with him on December 8, 2001. It was dark when she arrived, and she noticed a dark-colored two-door car parked on the side of the store, and a man urinating over a bench and a 40-ounce bottle of liquor. She also saw a heavyset black male sitting

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[7] Officer Thomas's testimony is found at 17 RR at 214-224.
[8] These witnesses testimony is found at 17 RR at 224-299.
[9] Twenty days later Douglas picked Hamilton out of a photo lineup.
[10] Hamilton, who was born on April 21, 1977, was 24 years old. Marshall Dwayne Knight was 20 at the time of the murder. Houston Police Department Records also show that Marshall Knight weighed 140 lbs. Hr'g Def. Ex. At 28.

in the driver seat of the car. As she and Douglas where "steady walking in the store," the person zipped up his pants and walked into the store in front of them. After Johnson paid for her things and stepped outside she heard a pop and saw Tulson fall to the floor. *Id.* at 283-85. She then ran home.

Wanda believed the suspect was in his late teens, and, although Wanda would deny the statement during her testimony, she initially told police the shooter had an "afro." Like Douglas, she was given a copy of the police sketch and looked at it every day until during the weeks before she picked Hamilton out of a photo lineup.

The third day of trial began with Detective Connie Park.[11] She testified that the descriptions of the getaway cars and suspects in the Holman and Yellowstone murders were similar. Investigator Park made no attempt to see if the car used in the Yellowstone murder (which belonged to co-defendant Shawon Smith) was drivable on the day of the Holman murder. Later, it was confirmed the car was inoperable and in an impound lot at the time of the murder.[12] Park also explained that latent prints were found on the glass door of the store, as well as on the 40 oz. beer bottle found on the side of the store. When asked "Did it tie back to my client" Park answered no.[13] She was also asked if there was "[a]ny physical evidence that came back to my client or to Shawn Smith" and replied "[n]o, not in this investigation."[14] However, there is no indication from the trial testimony that the police actually compared the prints found at the scene to Mr. Hamilton's and Mr.

[11] Officer Park's testimony is located at 18 RR at 8-60 and 19 RR at 6-8.
[12] 18 RR at 110-12.
[13] 18 RR at 41.
[14] 18 RR at 41.

Smith's and that both men were eliminated from leaving any of the prints. Officer Park falsely testified that no DNA samples were obtained.

The defense intended to prove Hamilton was not involved in the Holman murder by showing that his co-defendant Shawon Smith's car was not available on the date in question, but this plan was thwarted by Detective Park's false testimony that Smith was not a suspect. Recent discoveries show Smith's inclusion as a "suspect" on the fingerprint envelopes, which have been in the custody of HPD since December of 2001. Hr'g Def. Ex. 4-A.

Dr. Paul Shrode was called to testify about the autopsy of Mr. Matalkah and Mr. Huynh, although he had not conducted Mr. Huynh's autopsy.[15] His purpose was to convince the jury that the two shootings were similar in nature, and introduce the gruesome autopsy photographs for both men. Fourteen pictures from Mr. Huynh's autopsy were entered into evidence, and a picture of his brain was walked in front of the jury for dramatic effect. Next, Mr. Huynh's Daughter was called and a picture of Mr. Huynh in a tuxedo was introduced.[16]

C. The defense's punishment case.

The defense attempted to rebut the allegation that Hamilton was responsible for the Holman murder, but this plan was upended by the prosecution. The defense sought to prove Hamilton's innocence of the Holman murder through the testimony of co-defendant Shawon Smith, a strategy formed on the "mistaken belief that the

[15] Dr. Shrodes testimony is found at 18 RR at 60-97.
[16] State's Ex. 96.

State would proceed with trial under its oath to seek justice by not impeding Mr. Hamilton's right to a fair trial."[17] The defense was "stunned" by the "legal farce the State maneuvered in reciting to the court its reason why Mr. Smith" no longer had plea deal in place, which meant Smith would have to assert his Fifth Amendment right to any questions asked at trial.

Because Mr. Hamilton suffered through a seriously troubled childhood, the defense was able to present some strong mitigation evidence, despite the defense team's inadequate mitigation investigation.[18] The defense showed that Hamilton's mom and dad were both drug addicts and his mom abused alcohol and marijuana while pregnant. His father was rarely around, and, when around, was generally abusive towards Hamilton's mom. His dad spent most of Hamilton's life in prison. Hamilton's mom's drug addiction was so bad that she turned to prostitution to support her habit, leaving Ronald's care in the hands of a disabled grandmother, and to his uncles who were themselves drunks or drug addicts. This evidence was established and reaffirmed through multiple witnesses, and an educational diagnostician was called to explain that Hamilton suffered from severe learning disabilities and neurological deficits that contributed to his failures in life.

D. Closing argument centers around the Holman murder.

Although the prosecution presented other punishment evidence related to drug convictions, physical confrontations with his child's mother, and misbehavior in jail,

[17] CR-A at 506-507.
[18] As described in the habeas application, the defense team missed voluminous additional mitigation evidence.

the prosecution's closing arguments repeatedly focused on the Holman murder.[19] The prosecution's initial closing argument noted that "on December 8th of 2001, a little over one month later, the defendant takes a gun, goes into the Tucson store and in a cold-blooded manner blows away Mr. Tucson." It was said that Hamilton "likes guns because on December 8th of 2001 he blew away Mr. Tucson with one of his guns, another unarmed man. That's how we know this defendant likes guns." The jury was told Hamilton was frustrated he couldn't find a job so he killed Mr. Tucson. The prosecutor spent four pages of closing argument explaining the reasons why the jury should believe Hamilton committed the Holman murder. The prosecutor went so far as to mislead the jury by asking "[i]s it just a coincidence that there weren't any prints found at either scene?"

The theme continued in the final closing argument. The jury was told Hamilton was standing trial on two capital murders. The defense's evidence concerning the Holman murder – that Shawon Smith's car was wrecked at the time of the murder – was brushed aside. The prosecution doubled down on the idea that Shawon Smith and Hamilton committed the Holman murder. *Id.* at 83-84. The prosecution explained they didn't know what car was used, but "[w]e are doing everything we can to find it out. But we know he committed that second capital. And you know it, too." The prosecution, once again, misled the jury by suggesting there was no DNA to test in the Holman murder. The prosecution explained that because the witnesses "didn't come forward until two days later. Certainly, there was not any

[19] Closing arguments are found at 21 RR at 4-87.

evidence there to collect at that time."

The jury sentenced Ronald Hamilton to death, but the jury never learned that Ronald Hamilton's fingerprints had been compared to the 40-ounce bottle found set down by the true Holman shooter, and that he had been excluded as a contributor to those fingerprints.

III. POST-CONVICTION PROCEEDINGS SHOW THAT THE PROSECUTION WITHHELD EVIDENCE AND UNCOVERS ADDITIONAL PROOF THAT MR. HAMILTON DID NOT COMMIT THE HOLMAN MURDER.

A. The District Attorney agrees not to oppose testing after claiming that no prior forensic testing had been conducted.

After his case was returned to state court, Hamilton signed a declaration noting that he had learned about untested evidence in his case, explaining that he had not killed Mr. Huynh, and requesting that forensic testing be conducted. Appendix G. On July 17th, 2017, with the agreement of the District Attorney's Office, the trial court ordered testing of certain physical evidence from the Holman murder scene. Appendix C.

The results of the 2017 forensic testing proved what Mr. Hamilton knew: he was not the Holman shooter. The forensic lab fingerprint tested the "40 oz. schlitz malt liquor bottle (recovered on the metal rail)(outside) beside store." *See* Appendix D. The lab report showed that Mr. Hamilton was excluded as having left the fingerprints on the beer bottle, and that a man named Marshall Dwayne Knight had left the prints on the bottle. Further investigation showed that Mr. Knight had previously committed an aggravated robbery with a deadly weapon and been convicted of illegally carrying a weapon. *See* Appendix H. A separate DNA lab report

claimed that DNA found on the mouth of the bottle was "not suitable for comparison" and that the relevant portion of the DNA under Mr. Huynh's fingernails was "not suitable for comparison." *See* Appendix I. This idea was disputed by DNA expert Dr. Robert Collins at the evidentiary hearing who believed that Ronald Hamilton was excluded from the DNA on both items.

B. Hamilton presented his Due Process and Eighth Amendment claims to the state courts.

On November 2, 2017, Hamilton filed his subsequent state application for post-conviction relief. Claim one, related to the newly tested forensic evidence, consisted of three subparts. *See* Application at 6-36. First, Hamilton argued that he "was subjected to cruel and unusual punishment in violation of the Eighth Amendment" based on the jury's consideration "evidence that has been revealed to be materially inaccurate." *Id.* at 22 (citing *Johnson v. Mississippi*, 486 U.S. 578, 590 (1988)). Second, Hamilton argued he was deprived of Due Process of law under the Fourteenth Amendment because "the State secured his conviction through the use of false or highly misleading evidence that was material to the punishment decision." *Id.* at 26. These claims were based upon the idea that all of the evidence suggesting Mr. Hamilton committed the Holman murder was false and misleading, as shown by the recent forensic testing. Finally, Hamilton alleged that his Due Process rights as highlighted by *Brady v. Maryland* had been violated. *Id.* at 30. He specifically noted that there "is absolutely no evidence that the police or prosecution even disclosed that Hamilton himself could be excluded as the person who left the prints behind." *Id.*at

33. Of course, at this time, Hamilton was not aware that both the police and prosecutors concealed the results of forensic testing prior to trial.

On September 12, 2018, the CCA found that claim one, in its entirety, satisfied the "requirements for consideration of a subsequent application" and claim number one was "remanded to the trial court for consideration." Appendix J.

C. After remand, the District Attorney's office continued to deny the existence of pretrial forensic testing.

In the State's original answer, the State explained "[t]here is no indication in the report that the prints or swabs were ever compared to either the applicant or to anyone else prior to trial." CR-B at 40. According to the State, when the trial court granted Hamilton's request to test forensic evidence, "there was no indication in either the State or police files that these items had ever been compared to the applicant, or to anyone else." *Id.* Indeed, the State blamed Hamilton for not having tested the fingerprint or DNA evidence himself prior to trial. *Id.* at 42. The State agreed to the 2017 forensic testing because they had checked with HPD and found "no indication that any forensic analysis had been conducted" in the case. *Id.* at 45.

The denial of pretrial forensic testing continued at various hearings. At a hearing where the state attempted to block the upcoming evidentiary hearing, it was argued that no hearing should be held because the "issues that they've raised all ultimately revolves around materiality." Hr'g March 28, 2019, at 9. The State claimed that no results were suppressed because "[t]hey got the results as soon as we had the results." *Id.* at 13.

It wasn't until the trial court granted Hamilton's motion to inspect evidence, and after Hamilton filed a Memorandum of Law explaining that the inspected evidence suggested "that the Houston Police Department had compared Hamilton's fingerprints to those found on the bottle prior to trial" that the District Attorney's office finally disclosed that: (1) the prints were compared prior to trial and Hamilton was excluded as leaving any prints at the scene; and (2) trial prosecutor Barnett was aware of this fact. CR-B at 423. This was disclosed on May 15, 2019, days before the evidentiary hearing was set to begin, and seventeen years after Hamilton's trial. CR-B at 667-672. It was on this day that the District Attorney's office disclosed a memorandum, contained in their file, proving prosecutor Barnett's knowledge that Hamilton was excluded from all fingerprint evidence. *See* Appendix K.

IV. THE EVIDENTIARY HEARING: "I'M SO SURE. I WOULD PUT MY LIFE ON IT."

During the habeas evidentiary hearing, Investigator Hoffmaster gave a deposition about his involvement in the Holman investigation.[20] He noted that a 40-ounce Schlitz malt liquor bottle had been collected from the metal rail outside of the store, and that the Houston Police Department (HPD) would only have collected items they believed were important. He agreed that Ms. Johnson told him, within two days of the Holman murder, that shooter had sat down this same 40-ounce bottle "on the rail that runs along the Burkett side of the store" just prior to shooting Mr. Huynh.

Wanda Johnson testified and confirmed what she told the police years before: she saw the man who shot Mr. Huynh drink from and sit down the 40-ounce Schlitz

[20] CR-B at 829-884.

malt liquor bottle on the rail prior shooting Mr. Huynh. *See* Appendix E. Contrary to the CCA's assertions, she was clear throughout the hearing that: 1) she saw the shooter sit the bottle down on the metal rail outside of the store; and 2) she never saw the shooter pick that bottle back up. Indeed, when asked "[h]ow sure are you that the shooter set that bottle down," she responded: "I'm so sure. I would put my life on it."

Rebecca Green is a Senior Latent Print Examiner at the Houston Forensic Science Center.[21] She performed the 2017 fingerprint analysis. She tested the bottled labeled "40-once Schlitz Malt Liquor bottle recovered on the metal rail outside beside store." She ran the prints through the FBI database and discovered that the print left on the bottle matched Marshall Knight. Another print found on a different beer can matched eye witness Charles Douglas. Importantly, none of the prints matched Mr. Hamilton. Ms. Green explained that she had seen no indication that the prints had previously been tested, but she was clear that that she always documented comparisons, even those resulting in exclusions.

Debbie Benningfield testified that she became a sworn member of HPD police department in 1978 and that her entire career was spent in fingerprint related fields.[22] She was the AFIS manager for years, and confirmed that by 2001, HPD had access to an AFIS program and that anyone arrested by HPD for a jailable offense would have their fingerprints entered into AFIS. Ms. Benningfield was the person

[21] Ms. Green's testimony is found at Hr'g May 29, 2019 at 30-139.
[22] Ms Benninfield's testimony can be found at Hr'g May 30, 2019 at 57-166, Hr'g May 31, 2019 at 27-123.

who collected evidence and fingerprints at the Holman murder scene. She made the final decision of what evidence should be collected and explained she would collect evidence she thought was important or would have an impact.

Amazingly, Benningfield explained that HPD policy at the time of Mr. Huynh's murder was to not document fingerprint exclusions. A supplement to an offense report would be made if prints were collected, if prints of value were found, and if there was an identification, but not if a suspect was excluded from leaving fingerprints. And that is what happened in Hamilton's case. Based on the outside of the envelope containing the prints lifted from the 40-Ounce bottle, Benningfield knew she compared the prints to both Hamilton and Shawon Smith prior to trial, and because she made no supplemental offense report she knew that both had been excluded as leaving the print on the bottle. Indeed, two additional "suspects" were also compared, but neither the existence of the additional suspects nor their exclusion from leaving prints was ever revealed prior to the post-conviction proceedings. Ms. Benningfield also compared Hamilton and Smith's prints to other suitable prints found at the scene, and both were excluded from leaving those prints as well.

Ms. Benningfield was clear that the existence of the exclusion would have been revealed to the officer who requested the comparison, but omitted from the offense report.[23] Members of the District Attorney's Office could simply call her and ask for the results of comparisons, but defense attorneys would be directed to HPD legal.

[23] Darrell Stein, who worked as a firearms examiner for HPD during the investigation of the Holman murder, verified that the HPD crime lab would not report the results of comparisons unless an identification was made. Hr'g May 31, 2019 at 13-23. He also conducted comparisons testing which was not included in a supplemental report.

Also, if HPD arrested someone, then their prints would be maintained in one of the AFIS systems, meaning that Marshall Knight's prints would have been available to HPD prior to trial, although it is unclear whether the print found on the 40-ounce bottle was run through an AFIS system.

Doctor Trent Terrell is a cognitive psychologist who testified as an expert for Mr. Hamilton.[24] Although he did not believe the lineup shown to the eyewitness was necessarily unfairly presented, he was concerned about the accuracy of the identifications for a couple of reasons. First, he noted that three days had passed between the shooting and time when eyewitness Douglas helped created a police sketch. He noted that this duration was sufficient to affect Mr. Douglas's memory of the shooter. Secondly, he was concerned that the police gave Douglas and Johnson copies of the police sketch, which likely became their memory of the event. He was concerned the eyewitnesses selected Hamilton out of the lineup because he looked closest to the police sketch, as opposed to his resemblance to the actual shooter.

The evidentiary hearing also highlighted a dispute regarding the interpretation of DNA evidence tested from the mouth of the 40-ounce beer bottle and the swabs from beneath Mr. Huynh's fingernails. As previously mentioned, Houston Forensic Science Center analyst Jessica Powers concluded there was insufficient data to compare the relevant portions of the DNA evidence. *See* Appendix I. Dr. Collins, who testified for Mr. Hamilton, disagreed with this conclusion.[25] Related to the DNA found on the 40-ounce beer bottle, Dr. Collins concluded the DNA was left by a single

[24] Terrell's testimony is located at Hr'g May 31, 2019, 123-211.
[25] Dr. Collins testimony is locating at Hr'g June 3, 2019, at 55-107.

person, and that as a result of that conclusion, Hamilton was excluded from having left the DNA. Related to Mr. Huynh's fingernail scrapings, he agreed that Mr. Huynh was the major contributor to the DNA mixture, but he only found evidence of a two-person mixture. Dr. Collins testified that Mr. Hamilton was excluded from contributing DNA to this mixture. Dr. Collins explained that the forensic lab had not compared the DNA to Hamilton's because the lab believed it was *possible* there were additional contributors to the DNA, although there was no firm proof of *possible* additional contributors.

The State's expert, Ms. Powers, agreed that, assuming a single DNA profile on the mouth of the DNA bottle, Hamilton would be excluded from having left the DNA. She did not testify that Dr. Collins's conclusions were unsupported by the evidence, but explained his conclusions were more "aggressive than we're willing to do in our lab." Hr'g June 5, 2019 at 137.

Clear evidence also established that the trial prosecutors knew about Hamilton being excluded from all of the fingerprints collected from the Holman murder scene and that they misled the Court when they claimed there were no forensic testing results. Buddy Berringer, long time District Attorney's investigator explained that prosecutor Barnett asked him, prior to trial, to figure out if Mr. Hamilton had left any of the fingerprints at the Holman scene.[26] Berringer contacted the lab, discovered Hamilton was eliminated from all prints, created a memorandum of the fact and gave the memorandum to Barnett. He affirmed she would have known about the

[26] Berringer's testimony is located at Hr'g June 3, 2019, at 40-55.

elimination.

Loretta Muldrow, Hamilton's lead trial counsel, testified that she was not notified that Hamilton had been excluded from leaving all of the fingerprints found at the scene.[27] Indeed, she never learned that any comparisons were conducted. Ms. Muldrow explained that the District Attorney's open file policy at the time of trial meant that individual prosecutors would make their file available for review. However, defense attorneys would not be permitted to review work product and had to rely on the integrity of the individual prosecutor to include all relevant information in the file.

Ms. Muldrow testified that because Hamilton had pleaded guilty to the Yellowstone murder, the Holman Murder became the focus of the case. Had she known Hamilton and Smith were both excluded from leaving the prints at the scene, including on the 40-ounce bottle, her defense strategy would have changed. She would have called her own fingerprint expert and she would have questioned Investigator Park differently. She noted that, based on the prosecutor's pre-trial statements concerning the lack of forensic testing, she knew she could ask Investigator Park about the prints not tying to back to Hamilton or Smith, and she was clear that her defense of Holman murder was severely undermined based on the prosecution's suppression of the fingerprint evidence.

Not knowing about the suppressed fingerprint comparison results, Ms. Muldrow's main defense was going to come through co-defendant Shawon Smith, who

[27] Ms. Muldrow's testimony is found at Hr'g June 4, 2019, at 21-140.

she knew had reached a plea agreement with the trial prosecutors in exchange for providing truthful trial testimony. She expected that Smith would testify it would not have been possible for his car to be used in the Holman murder because it was in an impound lot on December 8, 2001. Further, he was Hamilton's best friend, and was confident Hamilton could not have committed the murder without Smith having found out. However, as both Ms. Muldrow and Smith's attorney testified to,[28] when the defense announced their intention to call Smith, the trial prosecutors claimed they were uncertain if there was still a plea deal in place for Smith, which resulted in Smith's attorney asserting his client's Fifth Amendment rights. Both Ms. Muldrow and Smith's attorney testified that the prosecutions reasoning for pulling the plea deal was false, and that no further investigation was conducted prior to Smith being re-offered his original plea deal after Hamilton's trial concluded.

The District Attorney's Office failed to present any evidence rebutting the fact that the trial prosecutors suppressed the fingerprint evidence prior to and during trial. Indeed, the prosecutors documented many disclosures made to defense counsel, but there was no documentation that the results of fingerprint comparisons were disclosed.[29] It should be noted that Ms. Barnett, the trial prosecutor who was aware of the elimination, still works for the District Attorney's Office and was present to testify, but the State did not call her to refute the testimony that she had suppressed the fingerprint comparison evidence.

Finally, Marshall Knight, whose fingerprint was discovered on the 40-ounce

[28] Alvin Nunnery testified at the hearing as well. Hr'g June 3, 2019 at 107.
[29] Hr'g Def. Ex. 24.

beer bottle Wanda Johnson saw the shooter handling immediately before committing the murder, was called to testify. Not surprisingly, Marshall Knight invoked his right to remain silent, through counsel, and refused to answer any questions about the bottle, crime scene, or shooting.

V. THE TRIAL COURT RECOMMENDS A NEW PUNISHMENT HEARING, THE CCA DENIES RELIEF.

The trial court found that Hamilton met his burden of proving the Eighth Amendment and Due Process claims related to the use of false evidence at trial, and that Hamilton's right to Due Process was violated by the state's suppression of the fingerprint evidence. Appendix B. The trial court's detailed findings spanned 66 pages. The trial court found that the shooter touched the 40-ounce Schlitz malt liquor bottle, that the fingerprint evidence was stronger proof than the witness identifications made weeks after the crime was committed, and that Hamilton had proven the false and misleading evidence claims by clear and convincing evidence. The court also found that the police and prosecution actively suppressed material fingerprint evidence, and that Hamilton had proven the *Brady* violation.

The CCA denied relief in a brief order unhinged from the facts and this Court's precedents. Appendix A. The Court found that "the State's trial evidence about the fingerprints was consistent with the fingerprint evidence developed at the habeas stage." *Id.* at 4. The entirety of the false evidence claim was addressed without considering the evidence discovered at the post-conviction evidentiary hearing:

> Investigating Houston Police Detective Connie Park testified at trial that the Holman fingerprint evidence—including that found on the 40-

> ounce bottle—did not "tie back" to applicant or his co-defendant in the Yellowstone murder, Shawon Smith. The habeas evidence merely confirmed Park's testimony by specifying whose prints they were—not applicant's or Smith's. Since the jury heard the "essence" of the habeas evidence — that the prints on the bottle were not applicant's or Smith's — applicant has not established the falsity of the State's trial evidence.

Id. at 5. And the *Brady* claim was apparently denied based on the materiality prong:

> No one identified the bottle in question as having been handled by the shooter. And the witness who testified in the habeas hearing that the shooter handled a bottle just before the shooting equivocated about that assertion.

Id. at 5-6.[30]

ARGUMENT: REASON'S FOR GRANTING RELIEF

I. DID THE TRIAL PROSECUTORS DENY MR. HAMILTON DUE PROCESS BY FAILING TO DISCLOSE EXCULPATORY FINGERPRINT COMPARISON RESULTS RELEVANT TO AN EXTRANEOUS CAPITAL MURDER PRESENTED AT HIS PUNISHMENT TRIAL?

The state court's denial of Hamilton's Due Process claims, like those in *Wearry v. Caine*, "runs up against settled constitutional principles." *Wearry v. Cain*, 136 S. Ct. 1002, 1006 (2016). In a surprisingly brief order, the CCA decided the *Brady* claim in such a way that both ignored almost all of the evidence presented at the post-conviction hearings[31] and decided important federal questions of law in ways which conflict with the relevant decisions of this Court.

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[30] The CCA continued its recent trend of not adopting trial court's findings recommending relief in capital cases. *See Ex parte Andrus*, No. WR-84,438-01, 2019 WL 622783 (Tex. Crim. App. Feb. 13, 2019), *cert. granted, judgment vacated sub nom. Andrus v. Texas*, 140 S. Ct. 1875 (2020); *Ex parte Moore*, 548 S.W.3d 552 (Tex. Crim. App. 2018), *cert. granted, judgment rev'd sub nom. Moore v. Texas*, 139 S. Ct. 666 (2019).

[31] This Court "has not shied away from summarily deciding fact-intensive cases where, as here, lower courts have egregiously misapplied settled law." *Wearry v. Cain*, 136 S. Ct. 1002, 1007, 194 L. Ed. 2d 78 (2016).

A. The CCA misapplied this Court's *Brady* framework.

In *Brady v. Maryland,* this Court held that the State's failure to disclose evidence favorable to the defendant "violates due process where the evidence is material either to guilt or to punishment." 373 U.S. 83, 87 (1963). This right exists "irrespective of the good faith or bad faith of the prosecutor," *id.,* because the government's overriding interest "is not that it shall win a case, but that justice shall be done," *Strickler v. Greene,* 527 U.S. 263, 281 (1999) (quotation marks omitted). Although the government must disclose material exculpatory evidence absent any specific request from the defense, "[w]hen the prosecutor receives a specific and relevant request, the failure to make any response is seldom, if ever, excusable." *United States v. Agurs*, 427 U.S. 97, 106 (1976).

The three components of a due-process violation under Brady are well-settled: (1) the evidence at issue must be favorable to the defendant; (2) the evidence must have been suppressed by the government, either willfully or inadvertently; and (3) the evidence must be material. *Strickler,* 527 U.S. at 281-82. Evidence is material if there is "a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different." *Cone v. Bell,* 556 U.S. 449, 469-70 (2009).

The evidence established before the state district court is clear: Both the Houston Police Department and District Attorney knew that Hamilton was excluded from leaving the fingerprints on the bottle touched by the Holman shooter, but the trial prosecutors specifically denied that this evidence existed and told both the judge and jury that no fingerprint comparisons had been made. It appears that the CCA

accepted that prongs one and two of the *Brady* claim were proven, but denied this claim based upon materiality because:

> No one identified the bottle in question as having been handled by the shooter. And the witness who testified in the habeas hearing that the shooter handled a bottle just before the shooting equivocated about that assertion.

Appendix B. at 5-6. This holding conflicts with this Court's previous decisions.

1. The fingerprint comparison evidence is favorable to Hamilton.

To the extent the CCA was claiming the suppressed fingerprint evidence was not favorable to the defense, the Court misapplied this Court's precedent. The sentence "[n]o one identified the bottle in question as having been handled by the shooter" could mean that the CCA was limiting the favorability analysis to evidence which modifies or improves upon the evidence previously developed at trial. But this Court directs that "the character of a piece of evidence as favorable will often turn on the context of the *existing or potential* evidentiary record." *Kyles v. Whitley*, 514 U.S. 419, 439 (1995) (emphasis added). This, of course, makes sense. By depriving defense counsel of the only direct evidence proving that a third person killed Mr. Huynh, the trial prosecutors made the fact that the shooter touched the bottle irrelevant.

This is why this Court historically looks at the effect the suppressed evidence *might* have had on defense strategy. *See id.* at 446 (discussing the ways in which Kyles's lawyer might utilize the suppressed evidence). In Hamilton's case, defense counsel even testified that had she known about the comparison results, her entire defense strategy would have changed. The favorability of the suppressed fingerprint

comparisons is so obvious that the Fifth Circuit Court of Appeals recently granted habeas relief on a very similar claim despite the extra hurdle of AEDPA deference. *Floyd v. Vannoy*, 894 F.3d 143 (5th Cir. 2018). There, the Fifth Circuit noted that "[t]he presence of a third party's fingerprints at a crime scene does not itself prove [the Defendant] was not present; but, it is evidence that a third party, not Floyd, touched an item that was singled out for dusting by investigators and linked to the commission of the crime through Detective Dillmann's testimony." The evidence is even more favorable in Hamilton's case, where an eyewitness told police, within 48 hours of the murder, that the shooter touched the 40-ounce bottle just prior to killing Mr. Huynh.

2. The fingerprint comparisons were suppressed.

There is no indication that the CCA found that the exculpatory fingerprint evidence was turned over to defense counsel. This is likely because all of the evidence, from the pretrial statements of the prosecutors to the District Attorney's assertions after trial that no comparisons had been performed, points to the fact that no disclosure was ever made. However, before the Court of Criminal Appeals the District Attorney argued it was Hamilton's fault that he did not discover the existence of the fingerprint evidence himself. This Court has previously explained that "[a] rule thus declaring 'prosecutor may hide, defendant must seek,' is not tenable in a system constitutionally bound to accord defendants due process." *Banks v. Dretke*, 540 U.S. 668, 696 (2004); *Floyd v. Vannoy*, 894 F.3d 143, 163 (5th Cir. 2018) ("[T]he State's assertions the evidence was not withheld because Floyd could have conducted

his own analysis are in direct contrast to clearly-established *Brady* law rejecting the defense's ability to conduct their own analysis as justification for prosecutorial non-disclosure.") (*Citing Banks*).

Any ruling that the favorable fingerprint evidence was not suppressed would conflict with the relevant decisions of this Court.

3. The suppressed fingerprint evidence was material.

It appears that the Court of Criminal Appeals found suppressed evidence was not material because (1) it did not directly relate to evidence presented at trial, and (2) the Court believed witness Wanda Johnson "equivocated about" the shooter touching the bottle just before killing Mr. Huynh.

It should be noted that point number two is factually incorrect. Johnson told police two days after the murder that the shooter sat the bottle down on the metal rail outside of the building and weeks later that the shooter never picked the bottle back up. *See* Hr'g Defense ex. 4. The only portion of the post-conviction hearing which could be viewed as equivocation was when Ms. Johnson was being asked about the shooter picking the bottle back up, after setting the bottle on the rail. *See* Appendix E. To make sure Ms. Johnson's testimony was clear, a follow up question was asked:

Q. How sure are you that the shooter set that bottle down?

A. I'm so sure. I would put my life on it.

*Id.*at 28. The evidence is clear and has always been clear, Wanda Johnson saw the bottle in question being touched by the shooter just before he shot Mr. Huynh, and

never saw the shooter pick the bottle back up.

In any event, even if there were equivocation, the CCA still would have misapplied this Court's jurisprudence. First, the CCA never identified that the relevant materiality standard: was there was "a reasonable probability that at least one juror would have struck a different balance" had the fingerprint evidence not been suppressed. *Andrus v. Tex.*, 140 S. Ct. 1875, 1886 (2020).[32] Second, the CCA did not consider whether "disclosure of the suppressed evidence to competent counsel would have made a different result reasonably probable." *Kyles,* 514 U.S. at 441. Instead, the Court limited the materiality analysis to the ways in which the suppressed evidence effected the evidence presented at trial, without noting that disclosure of the fingerprint comparison results would have completely changed the defense's trial strategy.

Indeed, in *Kyles* this Court specifically discussed the ways in which trial counsel might have used the suppressed evidence. *Id.* at 446. And in Hamilton's case, this would have included proving through Wanda Johnson that the shooter sat the bottle down on the metal rail just before killing Mr. Huynh, and proving that Mr. Hamilton's fingerprints were not on the bottle, but that another person's prints were on the bottle – all facts of which the jury was never made aware. *See also See also U.S. v. Bagley,* 473 U.S. 667, 682-83 (1985) (Explaining that a prosecutor's failure to disclose specifically requested information impairs the adversary process and the reviewing court must consider how the non-disclosure effected the trial process.).

[32] *See also Kyles*, 514 U.S. at 436 (equating the IAC prejudice test with the *Brady* materiality test).

Finally, the CCA erred by simply denying relief by noting "various reasons why the jury might have discounted" Ms. Johnson statements. *Smith v. Cain,* 565 U.S. 73, 76 (2012). This "argument offers a reason that the jury *could* have disbelieved [Ms. Johnson's] statements, but gives us no confidence that it *would* have done so." *Id.* Rather than casting its own credibility judgment for the jury, the CCA should have considered whether the was a reasonable possibility that one juror might have changed her punishment decision had the jury learned that the shooter had touched the bottle just before committing the murder, and that Hamilton was excluding from leaving the fingerprints on that bottle.

B. This Court should grant certiorari.

The trial prosecutors withheld the strongest exculpatory evidence relevant to the Holman murder. This Court should grant certiorari because the CCA's decided an important federal question in a way that conflicts with the relevant decisions of this Court. Sup. Ct. R. 10.

II. WAS MR. HAMILTON DENIED DUE PROCESS WHEN THE STATE PRESENTED FALSE AND MISLEADING EVIDENCE CONCERNING AN EXTRANEOUS MURDER AT HIS CAPITAL PUNISHMENT TRIAL, AND MISLED THE TRIAL COURT AND JURY ABOUT THE EXISTENCE OF EXCULPATORY EVIDENCE?

For decades, this Court has been concerned with protecting the process by which criminal sentences are obtained. The Court has also recognized that "[u]pon the state courts, equally with the courts of the Union, rests the obligation to guard and enforce every right secured by the Constitution." *Mooney v. Holohan*, 294 U.S. 103, 113 (1935). The CCA failed to guard and enforce Hamilton's right to due process

by ignoring the evidence proving that (1) the 40-ounce Schlitz malt liquor bottle was touched by the Holman shooter, (2) Marshall Knight's fingerprints are on that bottle, (3) Marshall Knight had prior violent and gun offenses, (4) Marshall Knight asserted his Fifth Amendment rights at the post-conviction hearing, and (5) the DNA evidence found on the bottle also excludes Hamilton as the true shooter. The CCA also failed to consider that the trial prosecutors misled the defense, judge, and jury by claiming there was no fingerprint comparison evidence in this case.

A. The CCA misapplied this Court's Due Process framework.

The cases that led to the *Brady* framework began with a concern about the reliability of criminal convictions. In *Mooney,* the Court confronted a Due Process claim based on the idea that "the sole basis of [Mooney's] conviction was perjured testimony, which was knowingly used by the prosecuting authorities in order to obtain that conviction, and also that these authorities deliberately suppressed evidence which would have impeached and refuted the testimony thus given against him." *Id.* at 110. Due Process is not satisfied by a trial "which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured." *Id.* at 112; *See also Pyle v. State of Kansas*, 317 U.S. 213, 216 (1942).

In Hamilton's case, prior to trial, the prosecutors specifically told both the judge and defense team that there was no fingerprint comparison evidence. The trial prosecutor also asked the jury in closing arguments "[i]s it just a coincidence that

there weren't any prints found at either scene?"[33] Of course, we know this was false, the shooters prints were on a beer bottle found at the Holman scene, and the prosecutors were aware Hamilton was excluded from leaving those prints. But there is now more evidence proving that the prosecution's trial evidence was false – we have evidence showing that the shooter touched the bottle in question and that Marshall Knight's fingerprints are present on the bottle. Based on the totality of the evidence, including the evidence presented at the post-conviction hearing, the trial court found that "Hamilton has proven by a preponderance of the evidence that the State presented false and misleading evidence at Hamilton's punishment trial. Indeed, based upon the evidence before this Court, the Court finds that Hamilton has proven his false and misleading evidence claim by clear and convincing evidence." *Id.*

The CCA tells us that there was no false evidence presented in Hamilton's case because Investigator Park "testified at trial that the Holman fingerprint evidence—including that found on the 40-ounce bottle — did not 'tie back' to applicant or his co-defendant in the Yellowstone murder, Shawon Smith." In making this ruling the CCA failed to follow this Court's precedent by considering the evidence presented at trial in its totality. *Alcorta v. State of Tex.*, 355 U.S. 28, 31 (1957) (Finding a due process violation when key witnesses testimony "taken as a whole, gave the jury the false impression. . ."). Of course, this court in *Alcorta* also considered the totality of the evidence developed in post-convictions proceedings, something the CCA clearly failed to do in Hamilton's case. There is simply no indication that the CCA considered

[33] 21 RR at 22.

the vast majority of the evidence established during the post-conviction proceedings, and as a result, the process used to secure and uphold Hamilton's death sentence should be seen as procedurally suspect. *See Gardner v. Fla.*, 430 U.S. 349, 362 (1977) ("[P]etitioner was denied due process of law when the death sentence was imposed, at least in part, on the basis of information which he had no opportunity to deny or explain.").

Also, the idea that Investigator Park testified about evidence from the Holman Murder scene not tying back to Hamilton is different than the evidence developed after trial. In various contexts, federal courts and the CCA itself have recognized that presenting affirmative exculpatory evidence is more powerful than relying on the lack of inculpatory evidence.[34] And, in *Napue v. People of State of Ill.*, this Court explained that the existence of some evidence presented at trial showing that a perjurious witness had an interest in the outcome of a criminal case did not turn "what was otherwise a tainted trial into a fair one." 360 U.S. 264, 270 (1959).

B. This Court should grant certiorari.

By failing to consider the totality of the evidence presented at trial and the totality of the evidence developed after trial showing Hamilton did not commit the

[34] *See Long v. Hooks*, 972 F.3d 442, 480 (4th Cir. 2020)(holding that "the absence of evidence is not evidence."); *Peterson v. Brookshire Grocery Company*, 751 Fed.Appx. 533, 537 (5th Cir. 2018)(quoting *White v. Wal-Mart Stores, Inc.*, 699 So.2d 1081, 1086 (La. 1997) ("The disbelief of positive evidence is not evidence of the contrary. Rather, even if entirely discredited, it is merely a complete lack of any evidence."); *McDowell v. Wal-Mart Stores, Incorporated*, 811 Fed.Appx. 881 (5th Cir. 2020)(recognizing the difference between positive evidence and inferences drawn from the lack of evidence); *Rivera v. State*, 89 S.W.3d 55, 60 n.20 (Tex. Crim. App. 2002)(noting that the lack of evidence is not necessarily indicative of innocence because "the incriminating evidence could have been washed away … [or] … because it could simply mean none was deposited.").

extraneous Holman murder the CCA's decided an important question of federal law in a way that conflicts with the relevant decision of this Court. Sup. Ct. R. 10. This Court should grant certiorari.

III. IS THE EIGHTH AMENDMENT'S PROHIBITION AGAINST CRUEL AND UNUSUAL PUNISHMENT VIOLATED BY A DEATH SENTENCE GROUNDED UPON EVIDENCE THAT HAS BEEN REVEALED TO BE MATERIALLY INACCURATE?

Hamilton's case is interesting because, although the trial prosecutors certainly suppressed the exculpatory fingerprint comparisons evidence and knew that the shooter touched the 40-ounce bottle just prior to shooting Mr. Huynh, it is unlikely the prosecutors knew Marshall Knight is the man who sat the bottle down. Because the prosecutors likely did not know about Marshall Knight, they would not have known he had committed an aggravated robbery in the months leading up to the murder, and clearly the prosecutors could not have known that Marshall Knight would invoke his Fifth Amendment right to counsel when subpoenaed to the 2019 post-conviction evidentiary hearing. These facts invoke this Court's opinion in *Johnson v. Mississippi*, 486 U.S. 578 (1988).

After presiding over the post-conviction proceeding, witnessing Wanda Johnson testify about her certainty that the shooter had handled the bottle with Marshall Knight's fingerprints on it, and considering the new DNA evidence, the trial court found that Hamilton's death sentence was obtained in violation of the Eighth Amendment because the jury was allowed to consider materially inaccurate evidence that was prejudicial. *See* Appendix B at 44-52.

In *Johnson,* this Court noted the familiar refrain that "[t]he fundamental

respect for humanity underlying the Eighth Amendment's prohibition against cruel and unusual punishment gives rise to a special 'need for reliability in the determination that death is the appropriate punishment' in any capital case." *Id.* at 584. There, the jury was permitted to consider an aggravating factor related to Johnson's prior conviction from New York, and after weighing the evidence sentenced Johnson to death. *Id.* at 582-583. However, years after his conviction, Johnson's prior New York conviction was set aside, and he filed a post-conviction request for relief which was denied by the Mississippi Supreme Court. This Court was tasked with deciding "whether the state court was correct in concluding that the reversal of the New York conviction did not affect the validity of a death sentence based on that conviction." *Id.* at 580.

This Court noted that, much like in Hamilton's case, the prosecution "repeatedly referred to that evidence in the sentencing hearing, stating in so many words: 'I say that [death is proper] because of having been convicted of second degree assault with intent to commit first degree rape and capital murder that Samuel Johnson should die.'"[35] *Id.* at 581. This Court noted that "[e]ven without that express argument, there would be a possibility that the jury's belief that petitioner had been convicted of a prior felony would be 'decisive' in the 'choice between a life sentence and a death sentence.'" *Id.* at 586. In the end, this Court found that the death sentence was obtained in violation of the Eighth Amendment because "the jury was

[35] The prosecution in Hamilton's case made similar statements: ""Even, ladies and gentlemen, without that second capital, he is a future danger; but, with it, he is an absolute menace," "[Hamilton] will just go in there and kill the clerk a second time," "[T]here is not a thing that you can do to him that is as horrible as what he did to Mr. (Huynh)." *See* Appendix B at 7.

allowed to consider evidence that has been revealed to be materially inaccurate." *Id.* at 590.

The trial court also found that Hamilton had been convicted based upon evidence that has been revealed to be materially inaccurate. After considering the evidence presented at the postconviction hearing, the trial court found "that Hamilton has proven by a preponderance of the evidence that the State presented materially inaccurate evidence at Hamilton's punishment trial. Further, the Court finds it is more likely that Marshall Knight committed the Holman murder than Hamilton." *See* Appendix B, at 48. The Court offered a number of detailed reasons why the materially inaccurate evidence prejudiced Hamilton. *Id.* at 48-51. The CCA simply denied relief on the Eighth Amendment claim without even acknowledging it had been made. *See* Appendix A. The CCA ignored its "obligation to guard, enforce, and protect every right granted or secured by the constitution" which has been required state courts for centuries. *Robb v. Connolly*, 111 U.S. 624, 637 (1884).

However, in its order denying relief, one thing was clear: the CCA did not consider the evidence established at the postconviction hearing when denying relief. There is no mention of the problems associated with Hamilton's identifications; Ms. Johnson's testimony; the identity of Marshall Knight or his fingerprint found on the bottle; Mr. Knight's violent criminal history; Mr. Knight's invocation of his Fifth Amendment right; or Mr. Hamilton's exclusion from the DNA found on the bottle. In doing so, the CCA clearly failed to follow the precedent established by *Johnson,* where the Court considered evidence developed after the trial when analyzing whether the

jury was allowed to consider evidence has been revealed to be materially inaccurate.

This Court should grant certiorari on this question because the CCA's order decided an important federal question in a way that conflict with relevant decisions of this Court. Sup. Ct. R. 10. There is an additional reason for granting review of the Eighth Amendment claim. Since *Johnson*, this Court has not had the opportunity to explore the contours and application of *Johnson's* holding, and this case presents this Court the opportunity to do so. The CCA decided that Hamilton can be executed in spite of the fact that he proved he did not commit the extraneous Holman murder, in doing so the CCA decided an important question of federal law that has not been, but should be, settled by this Court: what exactly does a capital habeas applicant have to prove to show that his jury was allowed to consider evidence that was been revealed to be materially inaccurate?

CONCLUSION

This Court should grant the petition and order merits review.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this document is within the page limits prescribed by Rule 33.2(b).

/s/ Jonathan Landers
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