Cause No. 21-5426

IN THE

SUPREME COURT OF THE UNITED STATES

Stephen C. Shockley -- PETITIONER

vs.

Bobby Lumpkin, Director TDCJ CID -- RESPONDENT

PETITIONER'S REPLY TO THE STATE'S BRIEF IN OPPOSITION

Stephen C. Shockley, 1793928
Petitioner Pro-se
2661 FM 2054; Coffield Unit
Tennessee Colony, TX 75884

PETITIONER'S REPLY TO THE STATE'S BRIEF IN OPPOSITION

Petitioner, Stephen C. Shockley, comes now before this Honorable Court bringing his Reply to the State's Brief In Opposition.

I.

Petitioner first denies all facts, findings and conclusions made by the State where such are not matters of clear fact in the record. Further, he presents the following:

II.

Petitioner's Complaint Does Not Stem From A Mere Mention Of Extraneous Matters In The State's Closing

Petitioner's complaint extends beyond a mere permissible mention or summation of the extraneous evidence. He complained that the State--aware of the weakness in its case--enraged the emotions of jurors by repeatedly dangling the more-heinous complaint of the extraneous witness before them explicitly as the first basis for a guilty verdict.

The Prosecutor's closing argument time-and-again turned to Kristen's third-party extraneous complaint as demonstrated in paragraphs (5) and (6) of the instant Petition. Such arguments violated the U.S. Constitution's 14th Amendment because they "so infected the trial with unfairness as to make the resulting conviction a denial of due process," Darden v. Wainwright, 477 U.S. ~~637~~ 168, 181 (1986) citing Donnally v. DeChristoforo, 416 U.S. 637, 643 (1974).

The aggrieved arguments were improper in the extreme not because they merely mentioned Kristen Chandler's testimony or summarized it, but because they were repeated and persistent in their aim to divert the "jury from its sworn duty to decide the case on the evidence and the law and to focus instead on issues 'broader than the guilt or innocence of the accused under controlling law.'" United States v. Weatherspoon, 410 F.3d 1142, 1153 (9th Cir. 2005) citing Darden v. Wainwright, 477 U.S. 168, 191-92 (1986).

Consider how the First Circuit recently cautioned its courts concerning adherence to this Court's precedent:

> "Reader take note, please," the court urged, "even if no unfair prejudice arises solely because the evidence rests on propensity, that hardly means there is no danger to watch out for. See United States v. Rogers, 587 F.3d 816, 822 (7th Cir. 2009). The evidence could still cause the jury to condemn a defendant based on passion or bias, for example which is a NO-NO. See Old Chief v. United States, 519 U.S. 172, 180 (1997). Think of a jury that uses [the extraneous] evidence to convict because it is disgusted by the defendant's criminal past rather than convinced that he did the crime charged, Id. Or, think of a jury that--unsure of guilt--convicts anyway because it believes that the other-crimes evidence shows the accused is an evil-doer who must be locked up. Id."

In the Petitioner's case, the prosecutor's persistent dual focus in closing and her improper encouragement of jurors to employ Ms. Chandler's third-party impeachment testimony as the first set of facts upon which they should find Petitioner guilty of the charged offense sits squarely in the realm of **NO-NO**.

III.

Petitioner Has Not Waived Relief Under Cone v. Bell, 566 U.S. 449 (2009)

Findings #5, 6 and 7 of the trial court's Findings of Fact (See Petition at Appendix B, pg. 7)as adopted by the Magistrate Judge in the Fed. Dist. Ct.) explicitly constitute the trial court's erroneous finding that Petitioner was raising argument against the mere admissibility of Ms. Chandler's extraneous testimony for a second time. Petitioner's State habeas Ground Three had nothing whatsoever to do with "admissibility" and Petitioner has over-and-over notified courts accordingly to no avail. (See Petition at Appendix H).

In the "question Presented" section of his Petition, Mr. Shockley asked this Honorable Court to consider how Cone v. Bell,566 U.S. 449 (2009) applied when--as here--a Federal court holds that a State relitigation bar forecloses Federal review **AND** to consider its outlook where--as here--the facts show no bar actually existed because Petitioner didn't do the thing the State claimed.

Mr. Shockley's State habeas application relitigates nothing. He has only once ever presented the State his Federal claim of Prosecutorial Misconduct resulting in denial of his 14th Amendment due process right to fair trial. He did so in State habeas Ground Three with the corresponding IAC claim in Ground Four, subground Three. (See Petition at Appendix E).

This Honorable Court can end the on-going confusion con-

cerning Fact #5, 6 and 7 of the trial court's findings by simply compelling the trial court to produce the document where Petitioner made a prior claim in the State under the 14th Amendment concerning the Prosecutor's closing argument.

The Texas courts cannot do it.

Thus far, both the Federal District Court and the Court of Appeals for the 5th Circuit have had opportunity to examine the disputed bar but have not done so. Had they, they would have found it factually unsupportable and relief under Cone v. Bell, would be unnecessary. Sadly, no lower court has examined the matter and now, the remedy of Cone v. Bell is appropriate, timely-claimed and unwaived by Petitioner.

IV.
Petitioner's Claim Is Neither New or Successive
(The 14th Amend. Due Process Fair Trial Claim)

In State habeas Ground Three, Petitioner raised his claim explicitly under **BOTH** the 5th Amend. and the 14th Amend, to the U.S Constitution. The former to capture the indictment-related claims; the latter to capture the offense of the prosecutor's arguments to due-process via an infected verdict. This fact is absolute. This Honorable Court need only turn to Appendix CE of the instant Petition to see for itself.

Now, with the attention of this Court piqued, the State defends itself by arguing that Petitioner's claim is fundamentally different than it was.

Not. True.

What has happened is that the attention of this High Court has caused the State to finally pause, investigate and see a claim that has been there all along. Yes, Petitioner is not trained in matters of law and may do a poor job honing the edge of his arguments; but this is to be expected of a layman suddenly thrust in to the role of lawyer. Nonetheless, Petitioner made the State aware that he was presenting a due-process claim and that the verdict was infected as a resulat of Prosecutor's disregard for the same.

In December 2015 when he filed the initial writ in the state, Petitioner cited the U.S. Const. 14th Amend. to the best of his ability and pointed to the exact trial-facts he complains of still today. (Petition at paragraphs (5) and (6)).

Petitioner's arguments have matured over time but his claim has not changed. There is no new or successive claim here, just a beleguered, meritorious and yet unheard Federal claim of the denial of the due-process as it relates to the fairness of Petitioner's trial.

V.

Counsel's Failure ToPreserve Or Correct Error

The State's Bried suggests that defense counsel could have objected. (Pg 19). Petitioner wholeheartedly agrees.

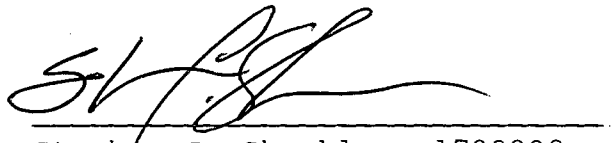
Indeed counsel's failure to object and seek curative instruction was also raised on habeas but counsel pointed to an unrelated running-bill to excuse his failure to act. (See Petition at Appendix G) Petitioner now humbly reminds this Honorable Court that his Petition seeks review of both his due-process and IAC claims on the prosecutorial misconduct issue during closing argument.

VI.

Conclusion

After a ten-year appellate journey, the 14th Amendment due-process claim is yet unheard and the State would have it stay that way. Petitioner earnestly prays this Honorable Court will GRANT certiorari.

Petitioner declares under penalty of perjury that the above is true and correct. Executed on this 9th day of December, 2021.



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