

21-6041

IN THE  
SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_ Term, 2021

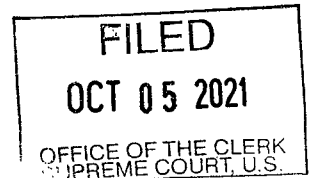
Eric Benson Skeens

*Petitioner*

v.

State of Indiana

*Respondent*



ON PETITION FOR WRIT OF CERTIORARI  
TO THE Court of Appeals of Indiana

\_\_\_\_\_  
PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

Eric Benson Skeens

*Petitioner*

Indiana State Prison  
1 Park Row St.  
Michigan City, Indiana

## QUESTION(S) PRESENTED

- A. Whether the state courts erred when they allowed the State and its agents to tamper with, suppress and withhold evidence favorable to the Petitioner. Furthermore, the courts allowed them to knowingly lie to the court, commit perjury and violate local, state and federal rules. All, of which, is clearly supported by the record, but without any consequence or investigation into their illegal misconduct.
- B. Whether the State Courts erred when they allowed trial counsel to tell the jury that he believed the child's allegations against his client.

## 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 judgement is the subject of this petition is as follows:

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No. \_\_\_\_\_

IN THE  
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Eric Benson Skeens,

*Petitioner*

v.

State of Indiana,

*Respondent*

\_\_\_\_\_  
PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

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

OPINIONS BELOW

[ ] For cases from **Federal Courts**:

The opinion of the United States Court of Appeals 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[ ] is unpublished.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 opinions of the United States District Court appears at Appendix \_\_\_\_\_ to the  
the petition and is

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[ ] is unpublished.

[ ✓ ] cases from **state courts**:

the opinion of the Highest State Court to review the merits appears at Appendix A to the  
petition and is

[ ✓ ] reported at Skeens v. State, 2021 Ind. LEXIS 484; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

The opinion of the Court of Appeals of Indiana court appears at Appendix B 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 \_\_\_\_\_.

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

☐ a timely petitioner for rehearing was denied by the United States court of Appeals on the following date : \_\_\_\_\_, and a copy of the order deny 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. § 1254(1)

☒ For cases from **State Courts**:

The date on which the highest state court decided my case was July 19<sup>th</sup> Sept. 2, 2021. A copy of that decision appears at Appendix A+B.

☐ a timely petitioner 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 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, STATUTORY PROVISIONS AND RULES INVOLVED

The illegal misconduct by the State and its agents violated the Indiana Constitution and the Fifth, Sixth and Fourteenth Amendments to the United States Constitutions. This caused procedural, fundamental and structural errors that violated fundamental due process and prevented a fair trial and the effective assistance of trial, appellate and post-conviction counsel. It further violated the Confrontation Clause, obstructed justice and violated local, state and Federal Rules.

STATEMENT OF THE CASE

A.

1. The State and its agents tampered with the audio recording of Petitioner's trial, resulting in the loss of the majority of Brenda Waite's testimony as recorded in her affidavit (PCR Exhibit 16; PCR Tr. Vol. II p. 4); wherein, she states she was seated in the jury box being questioned as a potential juror during voir dire when she made the following statements to the courtroom:

"I was married to a police officer for about ten years. I worked security at Marshall Fields for twelve years. Ninety-nine percent of the time there is no evidence of sexual abuse but

one-hundred percent of the time it occurred. I don't need to see any evidence to know he's guilty, because I know for a fact he is. Nobody makes up stories about being sexually abused. He is guilty beyond a reasonable doubt, he doesn't deserve a trial, and he should go straight to jail. I am familiar with cases similar to this and they didn't have any evidence either but they were guilty. I have a friend who is a nurse at the Fort Wayne Sexual Assault Unit. She told me there is almost never any evidence in these types of cases and that is why people like him almost always get away with it."

The trial judge was so angry with her

that he wanted to punish her for "the rest of the afternoon" because she went into what trial counsel argued to begin with (DA Tr. p. 289-290).

The current audio recording does NOT provide any justification for such remarks from the trial judge; because all of Brenda Waite's testimony is missing after "Ninety-nine percent" (DA Tr. p. 259).

Further, the post-conviction court's decision was clearly erroneous because it did NOT address the issue, that is clearly supported with multiple sources of corroborating evidence, that her testimony was tampered with, thus missing from the audio recording and transcript of Petitioner's trial (PCR Tr. Vol. III p. 243-247).

Furthermore, the Court of Appeals of Indiana

erred when it declined Skeens permission to file a successive petition for post-conviction relief in order to fully develop the facts to prove/demonstrate that he is confined illegally and is entitled to relief, thus violating Brady v. Gramley, 520 U.S. 899 (U.S. June 9, 1997).

2. The trial proceedings were in violation of Brady v. Maryland and Napue v. Illinois, when by official misconduct, the State's agent committed perjury multiple times and his false testimony led to a critical and outcome determinative violation; and when the State committed prosecutorial misconduct when it repeatedly lied to the court and further elicited false testimony from its agent to suppress exculpatory and impeaching evidence from discovery. The following facts are needed to

establish the full extent of such illegal misconduct:

On December 5, 2008, during K.W.'s forensic interview, K.W. disclosed being subjected to numerous pornographic films, including one titled "real sex" and another with "four different couples doing it, one out in the pool, one in the living room, one in a bedroom and one in a different living room," K.W. further testified about these films at trial (PCR Exhibit 7 and DA Tr. p. 539, 543).

On December 10, 2008, the State searched Petitioner's apartment and seized his computer, cell phone, undeveloped film, Playstation, thumb drive, DVD's, CD's, VHS tapes, etc. (PCR Exhibit 11; PCR Tr. Vol. II p. 66-67). All of these items were analyzed by the State and no pornography was found (PCR Exhibit 5; PCR Tr. Vol. II p. 43; PCR Exhibit 14; PCR

Tr. Vol. II p. 91-93). However, K.W.'s mother admitted she watches pornographic films on her computer and K.W. had access to them (PCR Brief of Appellee p. 27).

On March 30, 2009, a hearing was held in order to obtain and search mother's computers to find these exact films K.W. described. Petitioner needed this evidence to confront and cross-examine K.W. to impeach her and mount a strong defense and only possible defense.

First, the State tried to suppress mother's computers by claiming the Petitioner did not pass the "three-part-test" (DA Tr. p. 81-82). Then, the State tried to claim the Petitioner was on a "fishing expedition" (DA Tr. p. 83). After overcoming these

two hurdles, the trial judge deemed mother's computers "material" evidence and stated that the films K.W. described must be somewhere else because the Petitioner did not have them. Knowing this must be true, the State committed prosecutorial misconduct when it knowingly and repeatedly lied to the Court and claimed that K.W. never claimed to be subjected to pornography in Huntington and that all the computers and items seized from Petitioner's apartment only pertain to Kosciusko County (DA Tr. p. 89-91, 133). It further committed prosecutorial misconduct when it knowingly allowed and elicited false testimony from its agent to keep mother's computers suppressed (PCR Brief of Appellant p. 11-28, 43, 46; PCR Reply Brief of Appellant p. 4-10, 12). Petitioner would have overcome this third hurdle, had truth

prevailed; instead, its agent committed official misconduct when it committed perjury numerous times when it repeated the same lie that the State initiated (DA Tr. p. 103-117).

Again, the trial judge, in his ORDER, stated, "The defense argued that the victim described movies and that gave relevance to its request to examine the computers," but he denied the motion because the State's agent testified the "computers had to do with a Kosciusko County case, and not the matter before the court" (DA Appendix of Appellant Vol. 1 p. 86). The State now concedes that its agent's perjury was the sole, direct and proximate cause for the trial court's denial of the non-party discovery request to obtain mother's computers

(PCR Brief of Appellee p. 24).

Now, the State has the audacity to claim a Brady violation did not occur because Petitioner "offers no evidence that the State ever possessed or searched mother's computers." However, that is NOT the issue. The issue is that the State did NOT want to possess or search mother's computers, especially since the State did NOT find the pornography they were searching for in Petitioner's apartment. The State had full knowledge that the only other logical place that the pornographic films could be were on mother's computers; Knowing this and that if Petitioner were to obtain such exculpatory and impeaching evidence, it would severely diminish their case against Petitioner. With this

in mind, the State placed Skeens in grave peril when it knowingly and repeatedly lied to the court and further elicited false testimony from its agent in order to suppress such favorable evidence as to change the outcome of the trial.

Again, the State had full knowledge that it was preventing the film "real sex" along with the others K.W. described from being discovered and with them, the knowledge and insight she gained from watching them. The full extent of what K.W. accessed and when could only have been ascertained by examining mother's computers.

Further, the State's agent did NOT testify at trial because he had huge credibility problems, including:

- (1) tampering with and planting evidence; (2) falsifying reports;

(3) grooming K.W.; (4) committing perjury on multiple occasions and at multiple pre-trial hearings, in order to obtain a search warrant, suppress favorable evidence and distance himself from K.W. on specific dates; and (5) watching pornographic films, at the police department, while on duty, during his investigation of Skeens (PCR Tr. p. 145).

Furthermore, the State repeatedly tried to dismiss Petitioner's original petition for post-conviction relief but when it failed, it lied, again, and claimed the Petitioner requested it be dismissed. For a summary of this cover-up, see the "State's Response To Motion To Amend Petition" filed December 28, 2018.

3.

The State violated local rule LR 35-CR-21-39,

Indiana Rule of Trial Procedure 26(B)(4)(a)(i) and U.S.C.S. Federal Rule of Criminal Procedure 16(a)(1)(G) when it withheld expert witness testimony that was specifically requested for on multiple occasions by trial counsel. The following facts are needed to establish the full extent of such illegal misconduct:

On December 16, 2008, and March 5, 2009, trial counsel filed motions requesting "verbatim" written statements and opinions of expert witnesses (DA Appendix of Appellant Vol. 1 p. 22-23, 56-57). The State refused such evidence because it was part of its "trial strategy" (DA Appendix of Appellant Vol. 1 p. 145), thus violating all of said rules when it only provided names and addresses of its experts (DA Appendix of Appellant Vol. 1 p. 111-112). However, the Petitioner

obeyed said local rule, even though it conflicted with said rules 16 and 26, when he provided all of his witnesses testimonies to the State (DA Appendix of Appellant Vol. I p. 150-151, 123-125, 201-203).

To further hinder Petitioner's defense, the State provided him with a report of K.W.'s forensic medical exam that repeatedly noted "No INJURY" from head to toe and specifically noted K.W.'s hymen "crescentic, smooth edges" (DA Appendix of Appellant Vol. II p. 325-327).

This led trial counsel to convince the Petitioner not to hire a doctor to testify; but instead to use the State's witness that performed said exam because it would be best for the defense. He told the Petitioner that this witness would testify that "everything she said" is "medically inconsistent," which led Petitioner

to believe it would prove K.W. was a virgin (PCR Exhibit 8; PCR Tr. Vol. II p. 50, 56). Further, trial counsel convinced Petitioner that "normally cases like this they have a lot of good hard evidence, they have trauma to the vagina, the anus and they have porn on the computer and... witnesses" (PCR Exhibit 6; PCR Tr. Vol. II p. 45).

Finally, at trial, the State revealed its expert's testimony to explain the said exam that misled trial counsel and Petitioner; its expert told the jury that she teaches doctors about myths (DA Tr. p. 566), for example, the hymen or "cherry" doesn't have to "pop" at intercourse (DA Tr. p. 587-588). "The most recent study out currently says ninety to ninety-five percent of pre-pubertal children, females,

do not have any type of genital injury" (DA Tr. p. 592) and for these reasons "I did not" expect to find any injuries to K.W.'s genitals (DA Tr. p. 594).

The State argues that its violations of said rules did not prejudice Petitioner because trial counsel "anticipated" this expert's testimony (PCR Tr. Vol. III p. 85). However, this contradicts all of what trial counsel told Petitioner, as documented above in the transcripts of said PCR Exhibits. Whether or not trial counsel anticipated this testimony, Petitioner was prejudiced because the State and trial counsel misled Petitioner, resulting in the Petitioner not hiring a doctor to rebut the State's expert and further resulting in Petitioner denying any sort of plea because he was led to believe said exam and

expert would lead the jury to believe that its findings were "medically inconsistent," thus he denied a plea that would have released him from incarceration 147 years sooner.

The State should now be estopped from claiming Petitioner was not prejudiced when it violated all of said rules to mislead the defense as its said "trial strategy."

Furthermore, due to all the illegal misconduct by the State and its agents, which included: (1) planting, suppressing, tampering with and withholding evidence favorable to Petitioner; (2) lying to the Court; (3) perjury; (4) grooming the child (the sole witness) and (5) all the other reasons outlined in this petition, the State should be estopped

from asking Petitioner to overcome anymore of its "hurdles." Petitioner cannot explain how or why K.W. gave such details because the State and its agents literally interfered in every aspect of the investigation to hinder Petitioner's defense because the State wanted its victory, no matter the cost.

### B.

1. The State Courts erred when they allowed trial counsel to bolster K.W.'s credibility and diminish the prosecution's burden to prove guilt when, in closing, he told the jury, "I believe her, it's more likely than not," (DA Tr. p. 673); afterwards, the State told the jury "if you believe her" too

"you return a verdict of guilty" (DA Tr. p. 686).

This certainly influenced the jury in its decision to find Petitioner guilty, especially those teetering on the scales of guilty or not guilty.

## REASONS FOR GRANTING THE PETITION

The national importance of this Highest Authority and its discretionary jurisdiction to exercise its authority in this matter is to set as an example that the State and its agents will be held accountable for its intentional and illegal misconduct; and to set the record straight on whether or not trial Counsel is allowed to tell the jury, in closing, that he believes the allegations against his client is true.