

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

21-6411

IN THE  
SUPREME COURT OF THE UNITED STATES

Harley David Sharp — PETITIONER  
(Your Name)

vs.  
Barry Goodrich "et al" — RESPONDENTS  
Warden, CCCF  
ON PETITION FOR A WRIT OF CERTIORARI TO

**ORIGINAL**

FILED  
SEP 09 2021  
OFFICE OF THE CLERK  
SUPREME COURT, U.S.

United States Court of Appeals 10th Circuit.  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Harley David Sharp #162477  
(Your Name) 6564 State Highway 96  
CCCF, P.O. Box 100  
(Address)

Oney Springs, CO 81062  
(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)

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SUPREME COURT, U.S.

## **QUESTION(S) PRESENTED**

1. Is a Brady Violation claim procedurally barred from Federal review?
2. Does the Unconstitutional Failure of the Prosecution to disclose exculpatory evidence favorable to the Defendant to defense counsel and law enforcement violate substantive Due Process rights?
3. Is the Adams County District Attorneys Office above the Law?
4. Should an indigent pro se litigant be held to more stringent standards than say, those appointed under the American Bar Association's code of professional conduct?

## LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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

Barry Goodrich, Warden, Crowley County Correctional Facility

Dean Williams, Executive Director of the Department of Corrections.

Ellen Michaels, The Attorney General of the State of Colorado.

## RELATED CASES

Brady v. Maryland, 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

Smith v. Cain, 132 S. Ct. 627, 181 L. Ed. 2d 571 (2012).

Conc v. Bell, 129 S. Ct. 1769, 1782-1783, 173 L. Ed. 2d 701 (2009).

Stickler v. Greene, 527 U.S. 263, 119 S. Ct. 1936, 144 L. Ed. 2d 286 (1999).

Ilyles v. Whitley, 514 U.S. 419, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995).

U.S. v. Bagley, 473 U.S. 667, 105 S. Ct. 3375, 87 L. Ed. 2d 1481 (1985).

Giglio v. U.S., 405 U.S. 150, 154, 92 S. Ct. 763 31 L. Ed. 2d 104 (1972).

## TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	3
STATEMENT OF THE CASE.....	8
REASONS FOR GRANTING THE WRIT.....	16
CONCLUSION.....	19

## INDEX TO APPENDICES

APPENDIX A	Case No. 21-1229.....U.S. Court of Appeals 10th Circuit ORDER
APPENDIX B	Case No. 21-cv-00207-LTB-GPG.....U.S. District of Colorado ORDER
APPENDIX C	Civil Docket/21-cv-00207.....and.....U.S. District of Colorado (ECF No. 20) RECOMMENDATION
APPENDIX D	Applicant's pro se.....Motion to Expand the Record + Exhibit (ECF No. 21) MOTION
APPENDIX E	2018CA0264...Crim.P.Rule35(c)...Adams County District Court ORDER
APPENDIX F	2019COA133.....Colorado Court of Appeals/Supreme Court ORDER/MANDATE
APPENDIX G	2013CA1761.....Colorado Court of Appeals/Supreme Court ORDER/MANDATE

## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>Brady v. Maryland</u> , 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).	5
<u>Cone v. Bell</u> , 129 S. Ct. 1769, 1782-1783, 173 L. Ed. 2d 701 (2009)	6
<u>Douglas v. Workman</u> , 560 F.3d 1156, 1173 (10th Cir. 2009).	6
<u>Giglio v. U.S.</u> , 405 U.S. 150, 154, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972).	7
<u>Kyles v. Whitley</u> , 514 U.S. 419, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995).	6
<u>Smith v. Cain</u> , 132 S. Ct. 627, 181 L. Ed. 2d 571 (2012).	7
<u>Strickler v. Greene</u> , 527 U.S. 263, 119 S. Ct. 1936, 144 L. Ed. 2d 286 (1999).	7
<u>U.S. v. Bagley</u> , 473 U.S. 667, 105 S. Ct. 3375, 87 L. Ed. 2d 481 (1985).	6

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

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

**OPINIONS BELOW**

For cases from **federal courts**:

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

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

The opinion of the United States district 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.

For cases from **state courts**:

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

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

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

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

## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was August 19, 2021.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: August 19, 2021, and a copy of the order denying rehearing appears at Appendix A.

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

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

For cases from **state courts**:

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

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

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

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

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

I just want us to focus on the two instances in which a Brady Violation occurred.

### **CLAIM ONE**

The conviction was obtained by the Unconstitutional Failure of the Prosecution to disclose evidence favorable to the Defendant.

Polanco v. Roth 2010-CV-0832; The Facts of this case are astounding and shed light in so many different directions to that of my own. Between **May 2009 and June 2009** Polanco alleged co-defendant was in Fact an employee at Roth Automotive, was also the victim of sexual harassment, sustained injuries that could have had been explored. Similarities include but not limited to, Roth “Licking and Groping” the glass, in the vicinity of Polanco's breasts and crotch, subject to sexual stories, imagery, and innuendo in the work place. etc. etc.

Polanco also lays claim to being the victim of a rape and having had suffered additional sexual assault[s]. [plural], which could possibly indicate a pattern of behavior involving Ms. Polanco. see (Appendix D)

## CLAIM TWO

The Conviction was obtained by the Unconstitutional Failure of the Prosecution to disclose Evidence favorable to the defendant.

Tasheena Polanco, alleged co-defendant and estranged lover, was in fact, pregnant with another man's child. This pregnancy played a significant role in her decision to take a plea bargain, and then testify against me. I became aware of this newly discovered information during the testimony of Legal Analyst Expert Ms. Carrie Thompson, at my Post-Conviction Relief Evidentiary Hearing. **December 22, 2017**

The pregnancy itself reveals Polanco as having a secret amorous relationship with yet another man. It unveils Polanco as having a discreet, separate, and independent life to that of my own. Stirring thought provoking questions, such as....

Who is this guy? How often was my daughter taken around him? Did Ms. Polanco ever have sexual intercourse with this man in front of my daughter? Did my daughter call him Daddy? Was my daughter ever left alone with him?

This is not conjecture, this is a Fact, Tasheena Polanco had a secret life.

## Legal Authority

In the well-known case *Brady v. Maryland*, the Court said that "the suppression by the prosecution of evidence favorable to an accused violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." > *Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

Courts do not resolve motions for a new trial based on a claim that the government failed to disclose material falling within Brady by using the Berry rule. As the Supreme Court explained, "[i]f the standard applied to the usual motion for a new trial based on newly discovered evidence were the same when the evidence was in the State's possession as when it was found in a neutral source, there would be no special significance to the prosecutor's obligation to serve the cause of justice."

The Brady requirement to disclose exculpatory evidence is a common basis for collateral attack by state and federal prisoners, and the standard for reviewing such a claim has been applied by the Court repeatedly. See > (Related Cases) Although Brady places an affirmative duty on the prosecution to disclose evidence,

the defendant carries the burden to establish that a violation occurred. > Douglas v. Workman, 560 F.3d 1156, 1173 (10th Cir. 2009). see (Appendix D) (ECF No. 21)

The Brady standard is often expressed in three prongs: (1) the evidence at issue is material and favorable to the defendant; (2) the evidence was suppressed by the government, intentionally or not; and (3) the defendant was prejudiced to the point that there is a reasonable probability that the evidence suppressed, had it been disclosed, would have led to a different result for the defendant. [A] - reasonable probability does not mean that the defendant "would more likely than not have received a different verdict with the evidence," > Cone v. Bell, 129 S. Ct. 1769, 1782-1783, 173 L. Ed. 2d 701 (2009) only that the likelihood of a different result is great enough to "undermine[ ] confidence in the outcome of the trial." USCA Const. Amends. 5 see > Kyles v. Whitley, 514 U.S. 419, 434, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995) and > U.S. v. Bagley, 473 U.S. 667, 105 S. Ct. 3375, 87 L. Ed. 2d 481 (1985).

A Brady claim for a new trial is viable only if the prosecution has suppressed, or failed to disclose, the evidence. A failure to disclose evidence due to negligence is as much within the rule as is a deliberate failure to disclose. The prosecutor cannot escape this obligation by saying that he or she overlooked the

evidence in question. That the prosecutor may not have personal knowledge of the evidence is not decisive. The government's obligation to disclose evidence under Brady and does not depend on the defendant's due diligence in seeking to discover the evidence but is instead an independent duty. see > *Giglio v. U.S.*, 405 U.S. 150, 154, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972).

The Brady rule requires the disclosure of exculpatory but not incriminating evidence. Evidence may be favorable to the defense, and within the duty to disclose, if it relates to guilt or to punishment. Evidence that goes only to the credibility of a witness and that may be favorable to the defense also falls within the meaning of the rule. > *Smith v. Cain*, 132 S. Ct. 627, 181 L. Ed. 2d 571 (2012).

The Brady rule also encompasses evidence known only to police investigators and not to the prosecutor, and thus the individual prosecutor has a duty to learn of any evidence favorable to the defense which is known to the others acting on the government's behalf in the case, including the police. > *Strickler v. Greene*, 527 U.S. 263, 119 S. Ct. 1936, 144 L. Ed. 2d 286 (1999).

## **STATEMENT OF THE CASE**

This case is about a gross miscarriage of justice, it is about parental rights that have been abolished by the state of Colorado illegally and without due process. It's about an unspoken social stigma proclaiming all men to be dead-beat father's. Who's rights are routinely belittled, down played, dejected, and unacknowledged, i.e. [trampled], by this state. It's about an unbreakable bond of a father's love and a promise to always be there. Battling for his voice to be heard in the midst of many prejudices and animus. However repugnant, this revelation may be, it has been scaled down to a garbage pale discussion about timeliness. Adding insult to injury, dodging all accountability, and subverting justice.

This case is about the denial of one of the most fundamental constitutional rights prescribed by the United States and our founding fathers; of life, liberty, family, and the pursuit of happiness.

## Procedural Background

On May 11, 2011 in Adams County, Colorado the applicant was charged in Case No. 11CR1307. Shortly after being charged, on or around July 12, 2011 the applicant was arrested and then extradited from Eugene, Oregon to Adams County, Colorado. The applicant was appointed an attorney from the Colorado Public Defender's Office but due to a conflict of interest the public defender signed off of the case and the Office of Alternate Defense Counsel was appointed to represent the applicant.

On or around August 17, 2012 attorney Steve R. Barnes from the office of ADC was appointed to represent the applicant and he handled the entire case. On May 1, 2013 Mr. Sharp was convicted on all counts and he was then sentenced on August 12, 2013.

Shortly after the applicant was convicted he appealed to the Colorado Court of Appeals and on June 11, 2015 the Colorado Court of Appeals, in an unpublished opinion, affirmed the conviction in case 11CR1307. Shortly after this unpublished opinion the applicant filed a Writ of Certiorari on July 22, 2015 to the Supreme Court of Colorado then on March 3, 2016 his petition was denied.

Then on October 18, 2016, Mr. Sharp acting pro-se, filed a timely Petition for Post-Conviction Relief in the District Court of Adams County, Colorado. The Court determined Mr. Sharp's claims held merit and appointed Alternate Defense Counsel, attorney Gustavo Bermudez to represent him on his claims. On December 22, 2017 an evidentiary hearing was held, Mr. Sharp was **Granted Relief**, his conviction in 11CR1307 was **Vacated** and a **New Trial** was Ordered. (Appendix E)

The Prosecution appealed this decision to the Colorado Court of Appeals, and on August 29, 2019, in a published opinion, Reversed and reinstated the applicants conviction and sentence. Mr. Sharp next petitioned a Writ of Certiorari to the Supreme Court of Colorado, which was declined and a Mandate was issued on March 31, 2020

Next while in the midst of a COVID-19 phase 3 Pandemic Mr. Sharp pursued review from the Federal Courts. On January 15, 2021 Mr. Sharp filed a 28 U.S.C.A. § 2254 Habeas Corpus Petition in the United States District Court for the District of Colorado. On May 27, 2021 Mr. Sharp's petition was dismissed as untimely by approximately forty (40) days pursuant to AEDPA.

A Motion to Expand the Record was improperly construed as a Motion to

Object; all to in a hurry to shut the door in my face. They have ignored the printing date of the affidavit provided as Evidence to rebut the factual predicate of it's discovery and to show proof of the Brady Violation.

Mr. Sharp appealed to the United States Court of Appeals for the Tenth Circuit, and on August 19, 2021 again was denied as untimely pursuant to AEDPA. They in their turn now claim I have waived these arguments. Even though the Magistrates recommendation predates the Motion to Expand the Record. All of this whether negligent or deliberate constitutes as **invited error**, and Mr. Sharp has not waived his rights nor would any red blooded American Citizen ever.

Mr. Sharp now respectfully moves in a petition for Writ of Certiorari to the United States Supreme Court and prays for Federal Review. Arguing that not all his claims would be time barred due to the date on which the factual predicate of the claims discoveries were made.

## Claims Raised In Petition

1. The unconstitutional failure of the prosecution to disclose evidence favorable to the defendant. In which the alleged co-defendant Tasheena Polanco successfully sued her former employer for sexual harassment during the exact same time frame I have been accused of sexual misconduct.
2. The unconstitutional failure of the prosecution to disclose evidence favorable to the defendant about this same alleged co-defendant Tasheena Polanco being pregnant with another man's child. Factual proof of an amorous relationship with another man during these scrutinizing times.
3. The prosecution committed misconduct by deliberately violating the courts sequestration order. Violating due process laws.
4. Applicant's due process rights were violated by jury instructions and verdict forms that did not conform to Colorado law.
5. The prosecution used perjured testimony to attain a conviction.
6. The trial court violated Applicant's constitutional rights by admitting statements the victim made to nurse that were not admissible under Colorado

law.

7. The trial court violated Applicant's constitutional rights by admitting unrecorded hearsay statements the victim allegedly made to a nurse that were not admissible under Colorado law.

8. The trial court did not have jurisdiction under United States law.

9. Applicant's right to appeal based upon Newly Discovered Evidence was violated.

10. Applicant's trial counsel was constitutionally ineffective in failing to investigate a plethora of information, failure to object, and failing to preserve any issues for appellate review; and

11. Cumulative Error.

This concludes the Claims raised in my previous filings and I go into a more detailed depth within those filings. To make short the Trial that I had received was a charade, a no holds barred, do not pass go, race to the guillotine. That is because the Outcome of this Trial was already pre-determined to best suit the interests of

those involved this wasn't a Democracy, this wasn't a search for the Truth, because if it were we wouldn't be blatantly sweeping exculpatory evidence under the rug trying to hide it.

Just exactly how prejudice was this case? Well, when the alleged co defendant is involved in an amorous relationship with another man while simultaneously suing another for sexual harassment, in a mechanic shop full of perverts, apparently the man they are after lives in another state, Eugene, Oregon. I would call that pretty prejudice, especially seeing how none of these other men were brought into the investigation nor mentioned during the Trial. Please see (Appendix D) and (Appendix E)

What is important to note is that the U.S. District Courts Recommendation (Appendix C) is (ECF No. 20) that means that this recommendation was made without the knowledge of (Appendix D) which is (ECF No. 21). Then later instead of construing it as a Motion to Expand the Record it was erroneously construed as a Motion to Object and on and on we circled the drain pipe; they side stepped the issue. That this document wasn't printed until **June 01, 2020**; it's on the document itself. My Motion clearly stated "This document serves as the reference point in which Mr. Sharp has attained his information, and this document could

only be accessed by Mr. Sharp from the Adams County Detention Facility's Lexis-Nexis Kiosk." (ECF No. 21)

That is a pretty clear and present declaration of the date on which the factual predicate became known to me. How do they miss that? It is because the prejudice that exists within the very frame work of this type of case is Omnipresent. An absolute complete denial of due process; then for the preparation of a Trial, and even now when exculpatory evidence is in hand to show that something fundamentally wrong was done there. That whatever was done wrong there, was deliberate, and intentional, that would be the term definition of malice; Malicious Prosecution!

How many times could the Adams County Justice Department regurgitate and re-package the elements of a singular event? This Harassment litigation is body and soul what was really going on in these women's lives and it had nothing to do with me. Coincidence? Then why try and hide it?

## **REASONS FOR GRANTING THE PETITION**

America was founded on principles, Constitutional Rights, and to those whom have been elected to uphold those positions of trust, abuse of that power rottens the very foundation on which those principles rests.

To turn a blind eye to these blatant abuses of power is to let those who have been crushed beneath it's weight to die in vain. American Citizens like George Floyd, Gabby Petito, and Rodney King, to name just a few that the system has failed through either negligence or abuse of power.

When the government intrudes on the parent-child relationship, it implicates a fundamental liberty interest of the parent who loses custody, and risks liability for having caused such deprivation wrongly. A parent cannot be deprived of his or her parental rights without due process of law and unwarranted state interference with the relationship between parent and child violates substantive due process, especially deliberate violations specifically aimed at interfering with protected aspects of the parent-child relationship.

Because if we do not hold those accountable whom break these principles it will only become common practice for those who do so, to continue to do so. Until

An important function of the Supreme Court is to resolve disagreements among lower courts about specific legal questions. Another consideration is the importance to the public.

This case has already been granted post-conviction relief on both ineffective assistance of counsel claims and newly discovered evidence. To put it another way the Adams County Judicial Department gave a man a trial and convicted him to Life. Then that same court determined that, that conviction obtained was the result of several violations in his constitutional rights.

An appellate court who has never handled this case at face value disagreed and the Colorado Supreme Court that was supposed to settle this discrepancy shrouded it's obligations and opted to not participate. So when the Supreme Court refuses to do it's duties, when it is absolutely imperative for it to do so. Due Process is Denied once again. see (Appendix E) and (Appendix F)

[a]nd because I feel a calling to a higher purpose and it's a legacy that I want to leave behind, my last name SHARP, and what it could come to represent, Sexual Harassment Assault Rape Prevention. To take up this case, [Together] we could move mountains.

## **CONCLUSION**

From the moment I was arrested and extradited from Eugene, OR. I was denied due process, and effective assistance of counsel. I was uniquely victimized, and maliciously prosecuted by the Adams County Justice Department. It is for all the above mentioned I respectfully request the United States Supreme Court to take action in this matter,

The petition for a writ of certiorari should be granted.

Respectfully submitted,

/s/ \_\_\_\_\_

DATE : November, 10, 2021

Harley David Sharp  
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