21-6475

No. 21-

IN THE
Supreme Court of the United States

MARK HOLLINGSWORTH,
Petitioner,

v.

JEFFERY NINES, WARDEN OF
NORTH BRANCH CORRECTIONAL INSTITUTION,
Respondent,

BRIEF FOR PETITITIONER

pro se Mark Hollingsworth
North Branch Corr. Inst.
14100 McMullen Hwy., S.W.
Cumberland, Md. 21502-5777

QUESTION PRESENTED

Did the Maryland State Courts err in finding that the Prosecutor did not violate *Napue v. Illinois*, 360 U.S. 264 (1959) when the Prosecutor argued to the jury during closing argument that, Petitioner never told the police that he took the murder victim's gun which he used." knowing full well that the detective's notes verified that is exactly what Petitioner told the police.?

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STATUTES

Six Amendment
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OPINIONS BELOW

The opinion of the Maryland Courts The opinion of the Court of Appeals dated August 26, 2021 DENIED Petition Docket No. 141, September Term, 2021; Court of Special Appeals No. 1461. September Term, 2019 Affirmed April 30, 2021; Circuit Court i.e., Post-Conviction No. 198044053-54, 198083006. P.C. No. 10267 Denied June 14, 2019

JURISDICTION

The petition for certiorari was denied on August 26, 2021 The Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Sixth and Fourteenth Amendment and 28 U.S.C. 225(c), 2254(d), and 2254(e) are set forth at App., *infra*, 1a.

STATEMENT OF THE CASE

Petitioner was tried by jury, the Honorable John J. Prevas, presiding, on April 1-9, 1999. Petitioner was convicted of first-degree murder, second-degree murder, first-degree assault, and related handgun offenses. On May 25, 1999, Petitioner was sentenced to life plus fifty years. Petitioner's convictions and sentences were affirmed on appeal in an unreported opinion. Hollingsworth v. State, No. 785, Spetember Term, 1999 (February 23, 2000)(App. 28-54).

Petitioner pursued post-coviction relief. The Honorable John A. Howard presiding over hearing held on March 10th, 2011. Approximately five years after the last hearing, on July 19, 2016, the court issued its decision. (App. 1-22).

Petitioner timely filed an application for leave to appeal. By Order dated August 24, 2017, the Court of Special Appeals granted the application without affirmance or reversal and remanded for the post-conviction court to address a claim for relief unaddressed in the post-coviction court's decision of july 19, 2016. On May 15, 2019, the Honorable Dennis Md. Sweeney over a hearing on remand. On June 14, 2019, the court issued its decision on remand. (App. 23-27). petitioner timely filed a supplement to his application for leave to appeal. By Order dated October 9, 2019, the Court of Special Appeals

granted the application and supplement thereto and transferred the case to the Court of Special Appeals docket as caption above.

STATMENT OF FACTS

On January 18, 1998, around 3:00 a.m., a shooting occurred at a dance party being held at 915 West Baltimore Street. Two people, Charles Hemmingway and David Jones, were killed; a third person Kenneth Tyler, was wounded. Petitioner was convicted of first-degree murder as to Hemmingway, second-degree murder as to Jones, and first-degree assault as to Tyler.

A. Petitioner's three statements to Police

In Petitioner's first statement on January 18 at 5:45 a.m this statement was suppressed prior to trial. The Petitioner was kept at the police station all day and officers interviewed him a second time at 11:15 p.m. This statement was not recorded, but notes were taken by Detectives Mark Wiedefeld and James Shields. Petitioner's third statement began at 11:57 p.m. and this statement was taped recorded. A Transcript of that recording was provided to the jury and admitted as evidence.

Defense counsel's discovery request included the following:

1. Furnish to the Defendant (a) any

material or information regarding the acquisition of statements made by the Defendant,...(E. 34, 7-25-11 at 6).[1]

The State's written disclosure provided:

2. Any material or information known to the State at this time which tends to mitigate the guilt of punishment of the defendant as to the offense charged is attached hereto.

3. Any relevant material or information which the State is required to disclose in this case pursuant to Md. Rule 4-263(a)(2) and (b)(2)-(b)(4), other than that which appears in the Statement of Charges or other subsequent charging document is hereby noted and attached (if applicable):

___ the defendant made no statement or confession, or oral or written, known to the State at this time.;
_X_ the defendant made a written statement or confession;
_X_ the defendant made an oral statement, the substance of which is as follows:
"See attached transcript."
(E. 16).

C. Defense counsel's interview of Petitioner.

As part of her post-conviction testimony, defense counsel authenticated

1. Trial and post-conviction transcript are cited to herein by reference to date.

notes that she took during her pre-trial interview of of Petitioner. These notes include the following:

"any tapeover??"
"A claims struck w/gun"

"cop said that's not going to work"
"stop/starting tape"

Before trial, the prosecutor held a meeting with defense counsel and mad the record of the cass available for defense counsel to investigate and review. Petitioner's counsel moved to suppress Petitioner first and third statements. At the hearing, Detective Wiedefeld testified that he "spoke to petitioner and made some brief notes before asking petitioner if he would make another statement that Detective Wiedefeld could record." The trial court suppressed the first statement, but declined to suppress the third statement (i.e., Taped-Recorded one at 11:57 p.m.) The second statement and Detective Wiedefeld's notes were not an issue during the motion hearing.

At trial, the defense argued self-defense and provocation. The defense's witnesses claimed to not have seen the shooter and denied seeing the petitioner with a gun. The Petitioner did not testify.

The State offered several witnesses who testified about the party at the club.

The witnesses said that they saw the Petitioner run through the club shooting and watched him shoot one of the victims in the back. Detective Wiedefeld testified for the State and detailed his investigation and Petitioner's statments. When the prosecutor asked Detective wiedefeld to describe the Petitioner's demeanor, he said that the Petitioner was afraid, Resmorseful and upset.

The Prosecutor were premitted to argue that Petitioner made up self-defense at the last minute which they knew was **untrue** as the first two statements were withheld.

REASON FOR ISSUING THE WRIT

The instant case presents a situation of such gravity that this Court should grant review notwithstanding the discretionary nature of the ruling of the Maryland Courts. The record clearly reflects *deliberate* misconduct on the part of the prosecutor. Furthermore, This Court should grant the petition to determine the extent to which the **truth** and **justice** seeking goals of the criminal trial place limits on a prosecutor's ability to comment on facts in evidence when doing so involves making false and misleading representations about material facts not in evidence, yet known to the prosecutor. This Court's review as opinion is necessary to establish when, if ever, a prosecutor closing argument

involving a corruption of the truth seeking function on the trial process, requires reversal. *United States v. Agurs, 427 U.S. 97, 104 (1976).*

In the instant case, it is an undisputed fact that Petitioner told detectives that he used the gun he took from the first victim and shot the other attacker. The Court of Special Appeals ruled that the detectives interview notes were available to the defense, therefore no prosecutioral misconduct or *Brady* violation.

The Petitioner states that due process can be violated even where there is no *Brady* violation; *Napue v. Illinois,* 360 U.S. 264, 269("conviction obtained through use of false eveidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment and the same result obtains when the State, Although not soliciting false evidence, allows it to go uncorrected when it appears"); *Giglio v. United States,* 405 U.S. 150, 155 (1972)(same); *Donnelly v. DeChristoforo,* 416 U.S. 637, 646-47 (1974)(discussing *Napue* in closing argument context); and *United States v. Stein,* 846 F.3d 1135, 1147 (11th Cir. 2017)(*Giglio* also applies when the prosecutor hereself made explicit factual representations to the court or implicit factual representations to the jury, knowing that those representations were false.").

The Petitioner states that the essential reason for granting the petition is because this Court should opine, whether a prosecutor can know or be aware of a fact or truth, yet argue the exact opposite to a jury or judge? Prosecutors are given great leeway in closing argument; they can infer on the evidence to the jury and they can give artful rhetorical presentations to the jury. What the Petitioner is asking this Honorable Court to opine upon, is whether a prosecutor can outright lie to the jury in closing argument.

ARGUMENT

Relevant to the first of three questions presented, the Court of Special Appeals remarked that it would have analyzed the closing argument issue differently had there been a violation of *Brady v. Maryland*, 373 U.S. 83 (1963); "Had there been a *Brady* violation, the answer might well have been different - a prosecutor who withheld exculpatory evidence would mislead a jury by arguing that the only available statement inculpates the defendant." (App. 18-19). In his Petition, Mr. Hollingsworth noted that this legal premise is incorrect and indicated how it implicates an unsettled legal landscape. Citing *Napue v. Illinios*, 360 U.S. 264 (1959), *Giglio v. United States*, 405 U.S. 150 (1972), and decisions from the federal courts of appeals applying these seminal Supreme Court decisions, Mr. Hollinsworth

described legal bases on which courts have found that prosecutors have violated a defendant's right to due process, despite the absence of a *Brady* violation. (petition at 7-8).

Notably, while such cases were cited and discussed by Mr. Hollingsworth in his brief in the Court of Special Appeals (Brief of Appellant at 41-42), the Court of Special Appeals cited only to *Giglio*, and only to note parenthetically the extent to which it underlies *Brady*. (App. 8). The State contends that "the Court of Special Appeals did not exhibit any confusion in interpreting *Napue* that would make granting certiorari necessary or appropriate." (Answer at 9). That is wrong. The intermediate appellate court did not even cite *Napue*, and its unanalyzed assumption that the absence of a *Brady* violation means there could have been no *Napue/Giglio* violation is without support. On a matter of first impression in Maryland - how to analyze an alleged *Napue/Giglio* violation, even if there is no *Brady* violation - the Court of Special Appeals was effectively silent. A question of first impression that implicates fundamental value of the criminal justice system deserves to be addressed by Maryland appellate courts.

In *Gomez v. Commissioner of Correction*, 243 A.3d 1163 (Conn. 2020), the Supreme Court of Connecticut provided a thorough discussion of the unsettled legal landscape in this area. The Court began:

> It is evidence that disclosure to defense counsel resolves any pure *Brady*-type concerns.
>
> ...
>
> It is less obvious, however, that disclosure to counsel -- whether direct or constructive -- is sufficient to secure a defendant's rights under *Napue* and *Giglio*. The fact that a defendant knows that the state is attempting to secure his conviction on the basis of false evidence dose not necessarily discharge the prosecutor from his duty to correct the false testimony or immunize the state from a claim that the defendant's right to due process was violated.
>
> ...
>
> The federal courts of appeals that have addressed this issue appear to break down into five different camps.

*Id.*at 1173.

As the *Gomez* Court mapped the landscape, at "one extreme" are courts that hold that "if defense counsel declines to cross-examine the witness regarding the falsehood, that choice is deemed to be strategic and, therefore, a waiver of any *Napue* claim." *Id.* (citing *United States v. Flores-Rivera,* 787 F.3d 1, 31-32 (1st Cir. 2015): *United States v. Meinster,* 619 F.2d 1041, 1045-46 and n.8 (4th Cir. 1980)). "At the other end of the spectrum are those courts of appeals holding that the prosecutor remains under a continuing duty to correct the false testimony of the state's witnesses and that the failure to do so violates *Napue,* regardless of whether defense counsel has been made aware of the falsehood." *Id.* at 1174 (citing *United States v. LaPage,* 231 F.3d 488, 491-92 (9th Cir. 2000), and *United States v. Foster,* 874 F.2d 491, 495 (8th Cir. 1988)).

> The *Gomez* court settled on a "middle path":
>
> Two other courts, the United States Court of Appeals for the Second and Seventh Circuits, have carved out a middle path between these extremes. *See, e.g., Long v. Pfister,* supra, 874 F.3d at 544: *Jenkins*

(7th Cir. 2017). 3.

Mr. Hollingsworth's case calls out for a similar endeavor as that undertaken by the Supreme Court of Connecticut. At stake are the most fundamental values that define our system of criminal justice - truth and justice - an the obligation of the prosecutor to ensure that those values are protected. Respectfully, Mr. Hollingsworth implores this Court not to walk away from the challenge that his case presents to this Court's duty to protect these values.

Briefly considering Mr. Hollingsworth's case in light of the "middle path," whether or not there was a *Brady* violation, is irrelevant. First, it was the prosecutor who elicited Wiedefeld's false testimony. (Tr. 4-1-99 at 22-25; Tr. 4-7-99 at 113-114). Second, the prosecutor capitalized on that false testimony in closing argument. (Mot. App.

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3. A similar grouping of cases, as identified in *Gomez*, includes courts, that "while generally taking the view that disclosure is sufficient to satisfy *Napue*, make an exception for cases in which the prosecutor becomes complicit in the falsehood, such as by adopting or otherwise affirmately capitalizing on a witness' false testimony." *Id.* at 1173 (citing *United States v. Barham*, 595 F.2d 231, 243-44 n.17 (5th Cir. 1979)).

1-9).[3] Third, Wiedefeld's testimony and the prosecutor's capitalization on it in closing argument were critically important to the State's case, enabling the State to argue that Mr. Hollingsworth's self-defese case was akin to "bringing a gun to a knife fight (actually, a fist fight]" and, thus, not a self-defense case at all.

Fourth, on cross-examination, Wiedefeld denied having made any statements to Mr. Hollingsworth during the pre-tape interrogation challenging the substance of Mr. Hollingsworth's statement:

> Q. But the interview didn't start until 11:57, correct?
>
> A. Yes, the taped interview didn't start until 11:57.
>
> Q. Before that you and Mr. Hollinsworth were talking about what happened?
>
> A. That's correct.

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4. Relevant portion of closing argument are included in the appendix attached hereto. (Mot. App. 1-9). The transcript containing closing argument is part of the record, having been added by way of a motion to correct filed on MDEC.

> Q. And it wasn't until after you heard what he had to say that you started the interview, is that right?
>
> A. That's correct.
>
> Q. Did there come a point in time when you told Mr. Hollingsworth, no, that's not going to work?
>
> A. No.
>
> Q. Didn't you, in fact, tell him that's not going to help you out at one point during the non-taped interview?
>
> A. No.

(Tr. 4-7-99 at 130). Plainly, defense counsel would not have asked these questions, unless she was prepared to follow up a "yes" answer something like, "What did he say that wasn't going to help him out?" That is, defense counsel clearly was trying to elicit the fact that Mr. Hollingsworth had told police that he took the gun from one of the victims, that his defense premised on this claim was not all made up at the last minute. Unsuccessful in this regard, the prosecutor was able to tell the jury in closing, "This was all made up at the

last minute in an effort to confuse you into believing that these two murders are justified.: (Mot. App. 2).

Fifth, the truth that Mr. Hollingsworth actually did not make up at the "last minute" his defense that he took the gun from one of the victim was not "revealed to the jury," the disclosure of that truth effectively quashed by the prosecutor's capitalization on Wiedefeld's testimony.

> And that testimony was false for purposes of *Napue*:
>
> In this area of the law, the governing principle is simply that the prosecutor may not knowingly use false testimony. **This includes "half-truths" and vague statements that could be true in a limited, literal sense but give a false impression to the jury.** *Id.* ("It is enough that the jury was likely to understand the witness to have said something that was, as the prosecution knew, false."). To uphold the granting of a new trial, there does not need to be conclusive proof that the

> testimony was false or that the witness could have been prosecuted for perjury; all that matters is that the district court finds that the government has knowingly used false testimony.

United State v. Freeman, 650 F.3d 673, 679-80 (7th Cir. 2011)(emphasis added)(internal citation omitted).

Wiedefeld testified that during the pre-tape interrogation Mr. Hollingsworth began to tell detectives what happened and that the detective then decided to tape his statement, a statement in which he said that he had on his person the gun used in the shooting. (Tr. 4-7-99 at 113). Wiedefeld added that Mr. Hollingsworth was remorseful in his pre-tape statement and that he said things in his pre-tape statement like "it was so stupid, things to that effect." (*Id* at 114). Adding to the already clear impression of a seamless, consistent statement from the start of the pre-tape to the end of the tape is the fact that Mr. Hollingsworth said in his taped statement, "I know it was real stupid," just like in the pre-tape statement, according to Wiedefeld's testimony. (Exhibit 5 at 8 [taped statement]). Notably, neither set of pre-tape notes reflects that Mr. Hollingsworth said

anything like "it was so stupid." (App. 3).

Wiedefeld's testimony "include[d] 'half-truths' and vague statements that could be true in a limited, literal sense but give a false impression to the jury." *Freeman*, 650 F.3d at 680. This conclusion is irrefutable.[5] The prosecutor told the jury, *inter alia*: "Defendant said he already had the gun on him"; "Nothing about self defense. He says nothing about anyone else having a weapon other than himself"; "This was all made up at the last minute in an effort to confuse you into believing that these two murders are justified"; and "Isn't that important factor for the defendant to include in his statement someone else had a gun? He doesn't mention that"? (Mot. App. 1, 2, 5).[6] The only way in which the

5. The Court of Special Appeals's ruling was that the absence of a *Brady* violation meant that there could be no due process violation with respect Wiedefeld's testimony. (App. 15-16). As explained in the Petition and herein, that ruling is erroneous and calls out for review by this Court.

6. The State wrongly asserts that "[e]ven Hollingsworth can only claim an omission from Handy's closing remarks, as opposed to the affirmative misstatements made in *Curry [v. State*, 54 Md. App. 250 (1983)]." (Answer at 9). These, in addition to other instances set out in the Petition, are instances of affirmative misstatements, and Mr. Hollingsworth has always maintained so.

prosecutor could credibly make these comments to the jury is by not correcting Wiedefeld's "'half truths'" and "vague statements" about Mr. Hollingsworth's pre-tape statement.

Mr. Hollingsworth's right to due process was violated.[7]

To reach this conclusion it is not necessary for this Court to find a *Brady* violation.[8] In this respect, the State

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7. There is no dispute that the prosecutor knew of the substance of Mr. Hollingsworth's pre-tape statement; Wiedefeld's testimony was false and not only not corrected but knowingly capitalized upon by the prosecutor; and there is a "'reasonable likelihood that the false testimony could have affected the judgement of the jury.'" *Wilson v. State*, 363 Md. 333, 347 (2001)(citation omitted).

8. Nor is it the case, however, that a *Brady* claim *vel non* is subject to clear error review, as the State suggests. (Answer at 4). *Canales-Yanez v. State*, 472 Md. 132, 157 (2021)("we reaffirm our precedent establishing the propriety of de novo review in all cases as to trial court findings in relation to alleged *Brady* violations"). Moreover, in the Petition, tracking his argument in the Court of Special Appeals, Mr. Hollingsworth presented a legal question as to whether the prosecutor satisfied *Brady* through the file review process. (Petition at 10-12).

makes a "clear error" argument that is entirely misplaced:

> [T]his Court is presented with Hollingsworth's conjectures that detective notes were withheld, and that Handy lied about it. The post-conviction court specifically found that neither theory was correct. Those findings remove this case from the *Napue* universe. What's more, the Court of Special Appeals found no clear error in those findings, so this Court should deny the Petition.

(Answer 10-11). Neither of those findings, which extend only to a determination of whether there was a *Brady* violation, "remove this case from the *Napue* universe." In light of *Gomez*, in light of the cases cited by Mr. *Hollingsworth* in his brief to the Court of Special Appeals, it is abundantly clear that such findings do not remove Mr. Hollingsworth's case from the " *Napue* universe." The only was credibly to reach that *legal* position is to engage in the kind of legal analysis undertaken by the Supreme Court of Connecticut, analysis entirely missing from the Court of

Special Appeal's opinion and from the State's arguments.

Moreover, the State is simply wrong that a *Napue* violation, a species of due process claim, is reviewed for clear error. *See Mitchell v. United States*, 101 A.3d 1004, 1007 (D.C. 2014)("*Napue* claims are reviewed de novo[.]"); *Coleman v. State*, 321 Md. 586, 604 (1991)("On our independent constitutional appraisal of the confrontation and due process claims, we see no constitutional violation in the circumstances."); *Harriston v. State*, 246 Md. App. 367, 372, *cert. denied*, 471 Md. 77 (2020)("Since a burden shifting claim [in closing argument context] is an allegation of a violated constitutional right, our review is without deference to the circuit court.").[9]

9. On the one hand, the Court of Special Appeals incorrectly stated that the question was "whether the post-conviction court clearly erred in concluding that the prosecutor hadn't misled the jury," but then indicated it reviews "allegations of prosecution misconduct closely." (App. 17.).

With respect to defense counsel's failure to object to the prosecutor's closing argument, this Court need not determine whether, in fact, defense counsel had possession of the notes. This Court limits its review of the record to a determination of whether counsel performed deficiently by not obtaining the notes or, if defense counsel had the notes, whether defense counsel performed deficiently by not using the notes as a basis for cross-examining Wiedefeld, which would have established a basis for objecting to the prosecutor's closing argument.[10].

It bears repeating here, with just a little elaboration, that defense counsel actually pursued the strategy that the post-conviction court and the Court of Special Appeals credited her for *not* pursuing: She put on witnesses who testified that Mr. Hollingsworth was attacked by one of the victims who had a gun and that Mr. Hollingsworht did not have on him the gun used in the shooting,

10. The post conviction did not find that defense counsel actually took possession of the notes. The post-conviction court found only that the"incomplete notes that detective took were known" to counsel. This could mean that counsel became aware of the existence of the notes when Wiedefeld referred to them at the suppression hearing but failed to ascertain the substance of the notes.

in direct contradiction to the taped statement, and consistent with his pre-tape statement. Like the post-conviction court, the Court of Special Appeals paid no attention to the record establishing that defense counsel actually pursued a defense inconsistent with Mr. Hollingsworth's tape statement, where the strategy imputed to her was to avoid such inconsistency at all cost. (App. 13-14).

This defense theory was perfectly crystallized in the cross-examination of one of those witnesses:

> Q. If he said he had a gun on him, that wouldn't be true?
>
> A. No, it wouldn't be true because I mean I don't know nothing about him having no gun.

(Tr. 4-7-99 at 192). And in closing this defense theory was put front and center.

The prosecutor argued: "[T]hink about the fact that the Defendant's friends came in here and told a story that is totally inconsistent with what the defendant himself says happened. They lied (Mot. App. at 8.) Notably, defense counsel took the opposite view, a view consistent with Mr. Hollingsworth's pre-tape statement and inconsistent with his taped statement, namely that the first victim to be shot, had a gun in his hand: "[t]here was a gun in Mr. Jones' hand."(Tr. 4-8-99 at 80). Having put on a defense theory consistent with Mr.

Hollingsworth's pre-tape statement and contradicting his tape statement, to the fail to use the only piece of evidence that could have prevented the prosecutor from destroying that defense in closing argument is plainly an unsound strategy, a deficient performance, and zero deference is owed the post-conviction court's conclusion otherwise.[11].

Importantly, neither of these determinations regarding deficient performance is a determination that this Court would make by reviewing only for clear error.[12]. Both of these

11. With admission of evidence that Mr. Hollingsworth did tell detectives that he took the gun from one of the victim's (which Wiedefeld, presumably, would have acknowledged had he been confronted with the notes), defense counsel could have objected on grounds that the prosecutor's comments misstated the evidence and, in fact, were untrue.

12. If the Court were to adopt the approach of courts that hold the prosecutor responsible under *Napue/Giglio* regardless of disclosure to the defense, then this Court could dispense with any ineffective assistance analysis. If the Court were to adopt the approach of courts, at the other end, that find waiver of a *Napue/Giglio* claim on the assumption that this failure to cross-examine or object is strategic, it would then be proper for the Court to determine whether any such strategy was sound.

determinations engage the independent review afforded constitutional claims. *See Coleman v. State*, 434 Md. 320, 331 (2013)("As noted in *Strickland*, 'both the performance and prejudice components of the ineffectiveness inquiry are mixed questions of law and fact.' Thus, in our independent examination of the case, we 're-weigh the facts as accepted in order to determine the ultimate mixed question of law and fact, namely, was there a violation of a constitutional right as claimed.")(internal citations omitted); *State v. Peterson*, 158 Md. App. 558, 584-85 (2004)(review of each prong of an ineffective assistance claim under *Strickland v. Washington*, 466 U.S. 668 (1984), deficient performance and prejudice, is *de novo*).

Finally, related to the foregoing regarding ineffective assistance, and apart from *Brady* and the interplay with *Napue* and *Giglio*, there is the question tied to *Curry v. State*, 54 Md. App. 250 (1983), implicating the proper scope of closing argument in Maryland. In *Curry*, the Court of Special Appeals found a violation of the defendant's "fundamental" right to a "fair trial," where the prosecutor made comments that were "verisimilar," "gross misstatements of facts." and "under the circumstances of the instant case, deceiving to the jury." *Id.* at 258. No deference is owed the post-conviction court's conclusion

that the prosecutor's comments did not rise to this level, and the Court of Special Appeals's conclusion that the prosecutor's closing argument complied with Maryland case law prohibiting comment on facts not in evidence presents a question of first impression regarding how this proscription is to be squared with a prosecutor's duty to tell the truth.

In sum, Mr. Hollingsworth's case presents important legal questions of first impression in Maryland. While factual findings and credibility assessments of lower courts are not sacrosanct or immune from appellate review[13.] , these important questions can be answered without any undue concern about getting sidetracked by extensive analysis of the record for clear error

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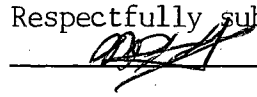
13. *See Conyers v. State*, 367 Md. 571, 600 (2002)(concluding *Brady* factual findings "not supported by the record" after "[h]aving reviewed the entire record" after "[h]aving reviewed the entire record"); *Easley v. Cromartie*, 532 U.S. 234, 243 (2001)("[T]he key evidence consisted primarily of documents and expert testmony. Credibility evaluations played a minor role. Accordingly, we find that an extentive review of the District Court's findings, for error, for clear error, is warranted.").

CONCLUSION

For the foregoing reasons, the Court should reverse the judgment of the Maryland courts and grant the petition for writ of certiorari

Respectfully submitted,



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