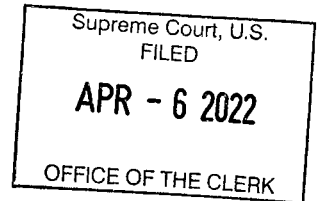


No. 21-7682

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



Travon DeAngelo Brown — PETITIONER
(Your Name)

vs.

State of Mississippi — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Mississippi Supreme Court

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Travon DeAngelo Brown #197151
(Your Name)

P.O. Box 1419
(Address)

Leakesville, MS 39451
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1.) Whether newly discovered evidence helping to establish the bad faith standard announced in this court's decision of *Arizona v. Youngblood*, 488 U.S. 1 (1988), is sufficient to except such due process claim from procedural default, or the bar of res judicata pursuant to the Law of RESTATEMENT (SECOND) OF JUDGEMENTS § 28?

[p.g. 6]

2.) Whether the spoliation of evidence by a forensic analyst in bad faith has significance under the controlling standard for establishing a due process violation for destruction of evidence of unknown value by police in bad faith? [p.g. 18]

3.) Whether newly discovered evidence doubly establishing the State's forensic analyst violated my due process rights under *Napue v. People of State of Ill.*, 360 U.S. 264 (1959) & Fed. Rule(s) of Evidence 701 & 702 is sufficient to except such due process claim from res judicata (&/or procedural default) pursuant to the Law of RESTATEMENT (SECOND) of Judgements § 28? [p.g. 22]

4.) Whether there exists extraordinary circumstances to except a claim of ineffective assistance of counsel, whether at trial or direct appeal from res judicata or procedural default, pursuant to the Law of RESTATEMENT (SECOND) OF JUDGEMENTS §

QUESTION(S) PRESENTED

28? [p.g. 27]

(5.) Whether a constitutional violation has probably resulted in the conviction of one who is actually innocent [SEE *Murray v Carrier*, 477 U.S., at 496, 106 S. Ct. at 2649], where applying an analysis under *Brecht v Abrahamson* 507 U.S. 619, 113 S. Ct. 1710 to the relevant facts, the defect occurring in the proceeding had a substantial & injurious effect or influence in determining jury's verdict? [pg. 30]

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:

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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 _____ 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 _____ 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 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 _____ 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 _____.

☐ 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: _____, 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. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was March 2, 2022.
A copy of that decision appears at Appendix A.

☐ 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

This case presents extraordinary circumstances raising questions for this Court's decision, seeking guidance that would have an impact far reaching beyond the issues of this case, while leading to further development of the law. It involves the relationship of the Law of RESTATEMENT (SECOND) OF JUDGEMENTS § 28, and the extent to which it limits the preclusive effect of state court judgements to bar by res judicata, claims of Federal Constitutional error, from being relitigated when substantiated by newly discovered evidence in state post-conviction collateral proceedings.

Although Mississippi's holding, *Rowland v State* 42 So. 3d at 506-07 states, "We take this opportunity to hold, unequivocally, that errors affecting constitutional rights are excepted from the procedural bars of the UPCCRA [,"] including the statute's time bars, AND further that "... the common-law doctrine of res judicata does not apply to post-conviction claims of Constitutional dimensions." *Floker v State* 170 So. 3d 471, 475 (¶¶9) (2015) AND THAT "... res judicata is a procedural bar that 'CAN BE OVERCOME' by claiming a fundamental constitutional violation." *Jones v State* 174 So 3d 902, 906 (¶¶9) BECAUSE "... no discretion is afforded when deciding to except a claim involving a fundamental constitutional right from procedural bars." *Rowland, Id.* at 507 (¶¶11) [Emphasis & internal comments mine]

The above holdings are ALL arbitrarily applied to the extent that it transgresses the protections of Due Process of Law under the 14th Amendment, while also denying equal protection of the law.

STATEMENT OF THE CASE

In September 28th 2011, Petitioner was unintentionally involved in a verbal dispute that escalated into a physical altercation, resulting in the deaths of two people, and in which Petitioner was also wounded by gunfire. The investigation of the case was botched from the outset. Law enforcement, inter alia, failed to properly secure the scene of the incident, as well as compromising the integrity of it by other means so as to subsequently undermine the integrity of the trial proceedings, & in effect, every attempt at relief thereafter.

Subsequent to conviction, & during direct appeal, Petitioner noticed the results of a particular sample of a lab report entered into evidence [see Appendix B] were missing. Direct appeal counsel was notified, yet no action was taken. I therefore proceeded pro se making amends to the direct appeal brief, bringing the court's attention to the error yet to no avail. The direct appeal was denied, & an attempt thereafter at State Post-conviction relief. I then sought relief via Federal Habeas Corpus; relief was denied along with a C.O.A. Yet it was at this stage, in a federal collateral proceeding, that the clear contradiction arose between the memorandum opinion of the District Judge, the Mississippi attorney general, & the state's forensic analyst regarding the results of her lab report.

After finally obtaining a copy of my trial transcript in May 2021, in addition to filing a successive motion for state post-conviction collateral relief, I also filed a complaint of forensic misconduct to the "American Society of

STATEMENT OF THE CASE

Crime Laboratory Directors" (ASCLD) regarding the forensic analyst's ethical violations, misrepresentations & distortions of evidence under the ASCLD's ethical code. This led to newly discovered evidence, August 22, 2021, that contrary to her trial testimony, Kathryn Rodgers is not, nor ever has been a member or qualified analyst under the ASCLD system.
[SEE APPENDIX C]

The state supreme court has turned a blind-eye to this evidence & I am humbly now petitioning this Court for Certiorari Review.

ISSUE ONE

Whether newly discovered evidence helping to establish the bad faith standard announced in this court's decision of *Arizona v Youngblood*, 488 U.S. 1 (1988), is sufficient to except such due process claim from procedural default, or the bar of res judicata pursuant to the Law of RESTATEMENT (SECOND) OF JUDGEMENTS §28?

Without unnecessary detail here, as my motion for post-conviction relief (MPCR) attached as appendix I, @ GROUND ONE pgs 1 thru 39; ESPECIALLY NOTE ALSO ¶'s 27 thru 86, deeply discusses the matter, the crux upon which I respectfully pray this Honorable Court would grant certiorari review for this issue is as follows:

In *Arizona v Youngblood*, 488 U.S. 1 (1988), a decision forming a link in a chain of cases of which this court termed, "...might loosely be called the area of constitutionally guaranteed access to evidence." *Youngblood* Id. at 55, 109 S.Ct. at 336 citing *United States v Valenzuela - Bernal*, 458 U.S. 858, 867, 102 S.Ct. 3440, 3446, 73 L. Ed. 2d 1193 (1982), the point was settled that, "...unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law." *Youngblood* Id. at 58, 109 S.Ct. at 337.

Deciding *Youngblood* caused this Court to "... face the treacherous task of diving the import of materials whose contents are unknown and very often disputed, *Arizona* Id. at 58, 109 S.Ct. at 337, citing *Trombetta* 467 U.S., at 486, 104 S.Ct., at 2532.

Although the decision in *Youngblood* particularly dealt with police destruction of evidence, in explaining that the government had not acted in bad faith, this Court pointed out that none of the spoiled evidence at issue was concealed from the defendant. "None of this information was concealed from respondent at trial,..." *Youngblood* Id. at 58, 109 S.Ct. at 337. (Emphasis Mine) This point is clear recognition that if not government destruction of, "concealment of" evidence in bad faith is ranked as material, & such actions should still be controlled by this Court's decision in *Youngblood*. [Although I have not read a case where this Court has firmly established such as Federal Law, the unique factual scenario of this case offers this Court an invitation to specifically decide the matter on Petition for Certiorari. Moreover, this is the position of Issue 2.]

Be it destruction or concealment of evidence, in the legal realm, both actions are definitive of what is termed as "spoliation," and the unconstitutional action(s) herein shall be referred to as such:

"spoliation: n- the intentional destruction, mutilation, alteration, or concealment of evidence, usu. a document. If proved, spoliation may be used to establish that the evidence was unfavorable to the party responsible. Also termed spoliation

of evidence. (emphasis mine) Black's Law Dictionary 10th Edition.

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The bad faith standard of Yangblood is an extremely high one, & as many have failed to meet it, as have failed to solve the riddle of the sphinx. With this case, that evidence was spoliated (concealed from a document [lab report]) was not discovered by me until after conviction, during direct appeal. I informed direct appeal counsel of the discovery, yet no action was taken to investigate the significance of this concealment in light of the trial proceeding. I also requested he provide a copy of the transcript so that I might investigate and argue the issue pro se, yet a copy of the transcript was never provided. Exercising due diligence, I proceeded, to make several amendments to my direct appeal brief to bring the State Court's attention to the matter. A review, "if" taken by this court shall reveal that the general theory argued upon the relevant nucleus of facts at the time was premised upon this Court's decision in Brady v Maryland 377 U.S. 83, 83 S.Ct. 1194 (1963). This holds true during time of direct appeal, my first MPCR, and an unsuccessful attempt at obtaining Federal Habeas Corpus Relief.

At this point it is critical that this Court be made aware of "three" things, placed in the occurring order, so that this Court from the outset, can thoroughly understand what caused the sudden change in theory from Brady v Maryland, Id., to Arizona v Yangblood, Id., & why these extraordinary circumstances, along with Newly Discovered Evidence (NDE), should be accepted from res judicata (&/or procedural default),

pursuant to the Law of RESTATEMENT (SECOND) OF JUDGEMENTS § 28 (SEE APPENDIX D.), lest my convictions & sentences of life imprisonment rest on constitutionally infirm judgements, & my imprisonment until death constitute a manifest miscarriage of justice:

1.) THE NATURE OF SPOILIATION (concealment of evidence) IN THE LAB REPORT.

[NOTE: I DID NOT OBTAIN A COPY OF THE TRIAL TRANSCRIPT UNTIL AFTER THE EVENTS OF NO. 2 BELOW. My arguments during direct appeal, my 1st motion for post-conviction relief, & an unsuccessful attempt at filing habeas corpus were misdirected because direct appeal counsel "incorrectly" referenced the lab report in his direct appeal brief as "S-91;" which erroneously led me to think & argue for SEVEN YEARS that the lab report was entered into evidence as a state's exhibit. This was thoroughly explained to the State Court in my most recent MPCR. SEE APPENDIX I ¶ 3-19.]

It was only upon receipt of the trial transcript that I realized ineffective trial counsel entered the lab report into evidence as "ex. D-91," completely failing to investigate its contents. Later at trial during questioning of forensic analyst Kathryn Rodgers (KR), who compiled the lab report, the following exchange took place:

Q. Okay. I looked through these lists. There is nine things you tested; is that right? Well, there are nine paragraphs there.

A. Yes, sir. There are nine total items that were --

a DNA profile was obtained from those nine items.

Q. And at least none of the samples that you tested, blood or what have you, were of Cornelius Harris?

A. That's correct. In fact, every DNA profile that I did generate for this case did match Travon Brown.

vol. 7 of 9; Tr. 480: 6-14.

THIS TESTIMONY WAS FALSE & BOLSTERED DUE TO THE DEFICIENT PERFORMANCE OF COUNSEL. A copy of the lab report can be found immediately attached for inspection as Appendix B & also at Appendix J EXHIBIT PC6. Attached Appendix I, p.g.s 11 thru 15; ¶s 28 thru 36 explain that the results of the blood on carpet sample, top chart p.g. 1 of the lab report, located at Tent 13, are completely concealed from the lab report. Therefore, instead of "nine" results, or paragraphs on page 3, as erroneously announced by defense counsel at trial, and falsely testified to by the analyst, there should be at least "ten." My argument is chiefly that the results were concealed in bad faith, so that the lab report would only reflect matches for me, expressly identified therein as the suspect. This ringing true, as the results of the blood on carpet sample located at tent-13 would have been a match for the male victim Cornelius, as his blood served as the source for the bloody shoe impressions made by law enforcement. [BUT KEEP IN MIND, the analyst testified none of the items

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she recieved for testing matched Cornelius. [NOTE: The missing blood on carpet results were not a controversy at trial, because the matter was unknown.] Also, it is my personal production of a plethora of evidence that makes it indisputable that the concealed blood on carpet results were a match for Cornelius, in both State & Federal collateral proceedings, PLEASE BE AWARE, THERE WAS NO CARPET IN THE LIVING ROOM WHERE THE SHOOTING OCCURED.

2.) THE INTERNALLY CONTRADICTIONG JUDGEMENT OF THE FEDERAL DISTRICT COURT FOR THE NORTHERN DISTRICT OF MISSISSIPPI DENYING HABEAS CORPUS RELIEF: No. 1:17 cv 137 EHD-RP April 28th 2021.

[NOTE: I am unable to attach this Memorandum Opinion in its entirety as an Appendix because it was destroyed due to flooding in the area of the prison I was housed. However, because the relevant pages had already been attached as Exhibits "AB", "AC", & "AD" ; included at Appendix H, the substantial proof necessary is readily available for review. Further, I humbly caution this court of a serious error of judgement in the Memorandum Opinion. The factual conclusions contradicts the trial record in asserting "all parties agreed the blood came from Cornelius." This is so because, since it was unknown, AND therefore never an issue at trial that the results were concealed, it was not a matter upon which the parties could agree. Thus, what should have been a controversy at the trial below, did not arise "UNTIL" a Federal Collateral Proceeding.]

Essentially, the District Judge, & Mississippi Attorney General, as evidenced by Appendix H at Attached Exhibits, "AB, AC, & AD", concluded the fact

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that the blood on carpet results would match Cornelius, would not be materially exculpatory for the purposes of Brady v Maryland 377 U.S. 83, 83 S. Ct. 1194 (1963). Essentially also, both consistently held, although inadvertently, & without doubt, the concealed blood on carpet sample results were a match for Cornelius. This position on behalf of the District Judge & State Attorney General in the Federal Collateral proceeding produces two serious internal conflicts & contradictions:

1.) It directly contradicts the State's forensic analyst who testified none of the items she received for testing matched Cornelius.

2.) It directly conflicts with, & contradicts the Judge's & State's concurrent position of vouching for the analyst's credibility to affirm my convictions on the basis of her testimony that the processed evidence only returned matches for me, & that only my DNA was found on the gun to a 1 in 999 trillion degree of certainty. How can the forensic analyst, on such a material matter, be simultaneously contradicted & vouched for as a credible witness?

Essentially also, to concede that the blood on carpet sample results would have been a match for Cornelius, is to support my position of the analyst's false testimony. MUST I REITERATE, the source of this sample did not originate in the living room where the scuffle occurred;

it originated in a back bedroom. It's source were shoe impressions made by police who, inter alia, failing to properly secure the scene, tracked through Cornelius' blood upon entry in the front doorway.

At that point, in a Federal Habeas proceeding, one aspect of the falsity of ~~the~~ KR testimony became fully, & indisputably manifest. It provides strong evidence for the conclusion that Kathryn Rodgers (KR) concealment of the blood on carpet sample results as a match for Cornelius, labeled "victim" in the lab report, was an intentional bad faith effort so that the lab report would only reflect matches for me, labeled "suspect" in the lab report, in order to bolster her testimony for the prosecution. Therefrom, the entire credibility of her testimony, & the truthfulness of the disclosures of her lab report must be reexamined in light of these facts; for it naturally follows, if she would conceal the lesser, results of Cornelius' blood/DNA on the carpet, she would no doubt conceal the greater, results of Cornelius' blood/DNA being found on the gun. This is a compelling argument to raise reasonable doubt of which the defense was deprived due to counsel's deficient performance of failing to investigate the contents of the lab report he entered at trial as his own defense exhibit, & cross-examining KR.

Because these facts were unknown at trial, & that KR testimony & lab report were foundational & central to the prosecution's unimpeached, uncontroverted theories of the case (i.e., if according to KR only my DNA was found on the gun, that means there was no struggle between Cornelius & myself for the firearm; if according to KR

only my DNA was found on the gun, that means I singlehandedly shot Felicia Ruffin), along with other inferences thereby gained; & that this same testimony & lab report have been relied upon as credible evidence to affirm my convictions, so far as being denied habeas corpus relief; I humbly submit that under the Law of RE-STATEMENT (SECOND) OF JUDGEMENTS §28 (SEE APPENDIX D.), [to be discussed below], with the production of newly discovered evidence, this Youngblood claim, rather than being ~~barred by res judicata~~, or procedurally defaulted, & forever lost, should be ripe for review.

3.) THE NEWLY DISCOVERED EVIDENCE SUBSTANTIATING THE EXISTENCE OF BAD FAITH EFFORTS ON BEHALF OF STATE'S FORENSIC ANALYST KATHRYN RODGERS [KR]

From the outset I was of the belief that this contradiction of material fact occurring in the Federal Habeas proceeding would not be enough to surmount the state procedural bars to filing a successive MPER. [neither enough to the filing of a successive habeas petition] So, as a measure of due diligence, upon obtaining a copy of my trial transcript May 2021, & being able to finally point directly to the falsity of KR testimony occurring at vol. 7 of 9, Tr. 460:6-14, see previous pages 9 thru 10; I was further prompted to file a complaint against KR for forensic misconduct. Vol. 7 of 9, Tr. 468: ~~27~~ 29 thru 469:1-19 of the transcript confirms KR as testifying she has specialized training, & become a qualified

analyst under the "American Society of Crime Laboratory Directors. [ASCLD] Therefore I followed with filing a complaint to the ASCLD. [NOTE: A copy of the complaint that was filed, & the issue as presented to the state court "after" receipt of the newly discovered evidence (NDE) can be found respectively at Appendix J, exhibit PC6, & Appendix J, Ground Four. A copy of the NDE, the disposition of my complaint by the ASCLD can be found immediately attached as Appendix C. [THE DOCUMENT APPEARS ON A COLORED LETTERHEAD, CONTAINS AN ADOBE DIGITAL SIGNATURE, & IS SELF-AUTHENTICATING.]

Contrary to KR testimony at vol. 7 of 9 Tr. 468:27-29 thru 469:1-19, the disposition of the ASCLD reveals she is not, nor ever has been a member. The report's assertion that "... based on membership records dating back to 2002, have never been ASCLD members," demonstrates its own investigation, & is a clear jab at KR testimony, "so once I became a qualified analyst in 2006..." SEE vol. 7 of 9, Tr. 469:17-19.

Now, since KR alleged qualifications as an analyst, explicitly relied on specialized training she received from the ASCLD, this newly discovered to be false, what credentials did she possess to qualify as an expert below? Should the State still be allowed the numerous inferences they were allowed to receive and argue before an unsuspecting jury? A jury that had no reason to doubt KR credibility?

This controversy has not developed until the stage of a federal habeas proceeding. I humbly submit the evidence is now overwhelming to establish the existence of bad faith under Yangblood: That the forensic analyst in bad faith spoliated her lab report, offered false testimony in support of the same; as well as the newly discovered fact that she falsely embellished her credentials. Under any view of the law, I am doubtful these actions could be considered good faith. I humbly submit this claim should be excepted from the bar of res judicata pursuant to the doctrine of the Law of RESTATEMENT (SECOND) OF JUDGEMENTS § 28 (SEE APPENDIX D).

Specifically, subsections (2)(b), (3), (4), § 502(b), § (c) are applicable in the context of the circumstances presented here. Take for instance subsection (4):

"The party against whom preclusion is sought had a significantly heavier burden of persuasion with respect to the issue in the initial action than in the subsequent action; the burden has shifted to his adversary; or the adversary has a significantly heavier burden than he had in the first action."

Also in conjunction with subsection (5), (b) & (c):

(b) because it was not sufficiently foreseeable at the time of the initial action that the issue would arise in the context of a subsequent action, or

(C) because the party sought to be precluded, as a result of the conduct of his adversary or other special

circumstances, did not have an adequate opportunity or incentive to obtain a full and fair adjudication in the initial action.

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The standard of bad faith announced in *Youngblood* is an extremely high one. Pursuant to which this Court has unequivocally declared, if the existence of bad faith be shown in the context of a spoliation of evidence, such spoliation constitutes a denial of due process. And where there has been a denial of due process, any incarceration resulting therefrom is unconstitutional. But in asserting this claim, the accused, defendant, or in this case, the Petitioner, bears the "heavier burden" of persuasion, to be substantiated with clear & convincing evidence.

Well, what if the forthcoming proof, such as I'm now presenting, to meet such a high standard, does not arise until after one's first run through the State appellate courts, along with unsuccessful State & Federal collateral proceedings? What if the Federal Collateral proceeding itself opens Pandora's Box exposing the issue? If the newly discovered evidence, by showing bad faith vitiates the convictions, & therefore any affirmations thereafter, should it be ignored to the extent the constitutional guarantees of the 6th & 14th Amendments become non-effective? Are the Supremacy Clauses of the U.S. Constitution circumvented by procedural rules in every single instance? In this country today, does the idea of finality of conviction rank precedent over fundamental fairness?

Or, if this Court would recognize that in extraordinary circumstances, a rule is required that an exception should be made, does this case present circumstances sufficient to meet the exception, & if not, what should be the

guiding rule should this circumstance arise in future cases, specifically dealing with the issue of proving bad faith under *Arizona v. Youngblood*, 488 U.S. 1, 109 S.Ct. 333 (1988), with newly discovered evidence pursuant to the Law of RESTATEMENT (SECOND) OF JUDGEMENTS §287, "...as... noted in *Engle*, '[I]n appropriate cases, the principles of comity & finality that inform the concepts of cause & prejudice "MUST YIELD TO THE IMPERATIVE OF CORRECTING A FUNDAMENTALLY UNJUST INCARCERATION." 456 U.S. at 135, 102 S.Ct. at 1576, citing from *Murray v. Carrier*, 477 U.S. 478, 495, 106 S.Ct. 2639, 2649 (Emphasis Mine)

ISSUE TWO

Whether the spoliation of evidence by a forensic analyst in bad faith has significance under the controlling standard for establishing a due process violation for destruction of evidence of unknown value by police in bad faith?

I most respectfully & humbly move to present this issue without redundancy, as the basis for it has been set forth in ISSUE ONE. Only it asks this Court for guidance, if the actions of the forensic analyst in this case, (or any case), if found to constitute bad faith, should be controlled by this Court's decision in *Arizona v. Youngblood* 488 U.S. 51, 109 S.Ct. 333 (1988). In *Youngblood*, the holding specifically addressed the police '...'

unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law." *Yangblood Id.*, at 58. Well, what if the spoliation, (i.e., concealment, destruction, alteration, etc.) of the evidence is not committed by the police, but rather a coroner, or a firearms examiner, a forensic pathologist, or as in this case, a forensic analyst?

Being mindful, *Yangblood's* holding only dealt with evidence determined to be either 'potentially useful', or possess 'unknown value.' SEE *Yangblood Id.* at 57, "...evidentiary material of which no more can be said than that it could have been subjected to tests..." Under the unique factual scenario of this case, the significance of the spoliated evidence is "indirect." Taking into consideration the plethora of evidence I've produced to prove the blood on carpet results were a match for Cornelius, as well as the inadvertent concession of the district Judge & Mississippi Attorney General of the same, if this fact is inserted against the testimony of the forensic analyst at which point she declined developing profiles for only nine items, & denied sample results for Cornelius, it disputably renders her testimony false; raising a question of her overall credibility of which an unsuspecting jury was deprived of assessing. It naturally raises the question, what else was concealed in order for her to give such favorable testimony for the state? It is not unreasonable, in light of the evidence presented to

draw this conclusion. To strengthen this position, might I point this Court to the record. Vol. 7 of 9 Tr. 477: 8-10, ¶ 20-24. KR testified, "I process all evidence first. And the evidence profiles that I obtained were all from a male." THEN she said, "... all the evidence is processed first... And, of course, I saw the evidence profiles were all male..." THERE IS NO TESTIMONY WHATSOEVER that any of the evidence profiles failed to yield a result. In fact, KR actual testimony is, "... the evidence profiles that I obtained were all from a male." This MUST include the evidence profile of the blood on carpet sample results, correct? Well what happened to it? Surely if it matched me, the suspect Travon Brown, KR report would have reflect such, right?

Ineffective defense counsel's failure to investigate & challenge the State's evidence in this respect left the jury with a false impression of the evidence. This false impression occurring during KR questioning on the stand, the prosecution's arguments during closing, & when unsuspecting jurors retired with the lab report to the deliberating room. This Court has condemned convictions resting on giving jurors a false impression of the evidence. [SEE *Miller v Pate* 388 U.S. 1, 87 S. Ct. 785 (1967)] This Court has also classed false testimony as false evidence: SEE *Napue v Illinois* 360 U.S. 264, 269, 79 S.Ct. 1173, 1177

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"The principle that a State may not knowingly use false evidence, INCLUDING FALSE TESTIMONY, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness". In *Napue Id.*, this Court also unequivocally held, "First it is established that a conviction obtained through use of false evidence known to be such by representatives of the State, MUST FALL under the Fourteenth Amendment, *Maney v Holohan*, 294 U.S. 103, 55 S.Ct. 340, 79 L.Ed. 791; *Pyle v State of Kansas*, 317 U.S. 213, 63 S.Ct. 177, 87 L.Ed. 214 [other citations omitted] (Emphasis Mine) This was declared in 1959; under the factual scenario presented herein, I humbly ask, does the same still hold true in the year 2022?

[NOTE! Grand 1 & 2 of my MPCR presented to the State Court were drafted & submitted prior to the receipt of the NDE of Grand Fore of the MPCR.]

Lastly, even if one would like to disregard the NDE concerning KR for substantiating the presence of bad faith, her bad faith actions are sustained by the fact that, even if she actually was a member, her forensic misconduct in this case transgresses the ASCLD CODE OF ETHICS Section 1: Policy, & Section 2: Code, & Section 2: Subsections (1) & (4) SEE APPENDIX I at Attached Exhibit PC1.

For example:

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Section 2: Code

(1) No member of ASCLD shall engage in any conduct that is harmful to the profession of forensic science, including, but not limited to, any proven illegal activity, any documented technical misrepresentation or distortion.
...

(4) No member of ASCLD will knowingly fail to address or attempt to cover-up any misrepresentation and/or falsification of analytical work or testimonial presentations...

[KR performed this in her own stead]

ISSUE THREE

Whether newly discovered evidence doubly establishing the State's forensic analyst violated my due process rights under *Napue v People of State of Ill.*, 360 U.S. 264 (1959) $\frac{1}{2}$; Fed. Rules of Evidence 701 $\frac{1}{2}$, 702 is sufficient to except such due process claim from res judicata ($\frac{1}{2}$ for procedural default) pursuant to the Law of Restatement (Second) of Judgments $\S$ 28?

Over half a century ago, Mr. Chief Justice Warren, delivering the opinion of the Court in *Napue v People of State of Ill.*, 360 U.S. 264, 269, 79 S. Ct. 1173, 1177 (1959), succinctly declared this Court's position, "First it is established that a conviction obtained through use of false evidence, known to be such by representatives

of the State MUST FALL under the Fourteenth Amendment, [citations omitted]... The principle that a State may not knowingly use false evidence, INCLUDING FALSE TESTIMONY, TO OBTAIN A TAINTED CONVICTION, implicit in any order of liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness. The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness testifying falsely that a defendant's life or liberty may depend." (Emphasis mine)

Eight years afterward, Mr. Justice Stewart delivering the opinion of the Court reaffirmed this position in *Miller v Pate*, 386 U.S. 1, 7, 87 S. Ct. 785, 788, (1967), "More than 30 years ago this Court held that the Fourteenth Amendment cannot tolerate a state criminal conviction obtained by the knowing use of false evidence. *Mooney v Holohan*, 294 U.S. 103, 55 S. Ct. 340, 79 L. Ed. 791 THERE HAS BEEN NO DEVIATION FROM THAT ESTABLISHED PRINCIPLE. *Napue v People of State of Illinois*, 360 U.S. 264, 79 S. Ct. 1173, 3 L. Ed. 2d 1217; *Pyle v State of Kansas*, 317 U.S. 213, 63 S. Ct. 177, 87 L. Ed. 214; *Alcorn v State of Texas*, 355 U.S. 28, 78 S. Ct. 103, 2 L. Ed. 2d. 9. THERE CAN BE NO RETREAT FROM THAT PRINCIPLE HERE. (Emphasis mine)

The issue presented before the Court, in this question, under circumstances which I believe extraordinary, &

respectfully pray this Court finds the same, is it in ²⁴ of
light of the prejudice suffered, and my convictions result- ⁴⁰
ing from a manifest miscarriage of justice, can there be a
retreat from this principle in the year 2022?

What makes this case extraordinary in light of
this Court's past decision in *Napue* over 60 years ago is
that it surpasses the factual scenario that gave rise
to *Napue* as a controlling authority. *Napue* involved
the false testimony of an accomplice, a partner in
crime of whom a jury was apprised of other grounds
giving rise to doubt his credibility. Still, this cir-
cumstance, in opinion of this Court, was not sufficient
to turn "... what was otherwise a tainted trial into a fair
one." *Napue* supra at 270, 79 S.Ct. at 1177. This makes it
clear, that counsel for *Napue* below did exact "some"
effort to cross-examine, impeach, & negate credibility
of the State's principal witness.

Here, although the foundation existed (i.e. the
spoliated lab report) from which to raise questions of
credibility regarding the analyst, my counsel's deficient
performance in failing to investigate his own trial exhibit
deprived the defense of raising reasonable doubt in
this respect. The raw truth is, the jury had no reason
at all to doubt any aspect of KR testimony, lab
report, or credentials. "Expert evidence can be both
powerful and quite misleading because of the difficulty in
evaluating it." *Daubert v. Merrell Dow Pharmaceuticals, Inc.* 509 U.S. 579, 595 (1993) ("[E]xpert testimony

may be ~~given~~ talismanic significance in the eyes of lay jurors, and, therefore, the district courts must take care to weigh the value of such evidence against its potential to mislead or confuse." U.S. v Fraizer, 387 F.2d 1244, 1263 (11th Cir. 2004)) ("[A] certain patina attaches to an expert's testimony unlike any other witness; this is 'science', a professional's judgment, the jury may think, and give more credence to the testimony than it may deserve." U.S. Hines 55 F. Supp. 2d 62, 64 C.D. Mass. 1999). Ultimately, KR repeatedly denying any of the items she received for testing matched Cornelius, & that only nine items were received for testing, (bolstered on by ineffective defense counsel), left jurors with a false impression of the evidence that stands on par with the deliberate misrepresentation of the truth in Miller v Pate, 386 U.S. 1 (1967), 87 S. Ct. 785, where the prosecution repeatedly described as 'bloody shorts' what was well known at trial to be shorts stained with paint. This Court held the deliberate misrepresentation invalidated the conviction.

Furthermore, on this point the record is impeccable, vol. 7 of 9 Tr, 468:27-29 thru 469:1-19, KR was qualified as an expert due to her alleged "specialized training" & becoming an analyst under the ASCLD system. NDE showing this to be false, Rule 702 of the Federal Rules of Evidence would mandate that her testimony as stands on the record is invalid. Not having the qualifications, or "specialized training" of

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of which she falsely embellished before jurors, her opinion testimony can only be limited to that of a lay witness pursuant to Federal Rules of Evidence Rule 701(c), that is, an opinion "not based on scientific, technical, or other specialized knowledge within the scope of Rule 702." Because she misrepresented and distorted the truth, she did not reliably apply the principles and methods of the ASCLD to the case. (702)(d)

At this point, I would humbly note before the Court, Rule Supreme Court Rule 24(a), "At its option, however, the Court may consider a plain error not among questions presented but evident from the record and otherwise within its jurisdiction to decide." However, this plain error IS among the questions presented herein, as well as an issue raised below [SEE Appendix J, Ground Four at ¶ 198. In conjunction with this, I also humbly submit, under this Court's standard announced in Brecht v. Abrahamson, 507 U.S. 619, 113 S.Ct. 1710, the compound falsity of KR misrepresentations "had a substantial and injurious effect or influence in determining the jury's verdict. Essentially, KR actions constitute fraud on the court pursuant to Fed. R. Civ. P. 60(b) 1, (d)(1) 1, (3). The issue of 'fraud on the court' was also raised as grounds for relief in my most recent MPCK pursuant to U.S. R. Civ. P. Rule 60(b) SEE Appendix H.

Again, the issue of KR disqualifications as an expert was presented & argued below. A case expressly relied upon, well-known in federal circuits is U.S. v. Jones, 84 F. Supp. 2d 124 (1999). There, the Court found, evidence that police officer testifying as expert lied about credentials necessitated new trial. The officer was a Detective Brown. "... Brown testified in a civil deposition that

SEE APPENDIX H

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he had a doctorate in pharmacology from Howard University, and it was later shown that he had no such degree from that institution." Jones supra, at 125. Detective Brown did not testify at trial about his qualifications. Here, KR DID. There is no mention that Detective Brown falsified anything other than his credentials. Here, KR falsely embellished her credentials, spoliated a lab report, & gave false testimony in support of the same. Thus, the circumstances are exceptionally greater here, than those of Napre & Jones combined.

I very well understand that simply alleging the falsity of KR testimony, & spoliation of her lab report could be deemed barred by res judicata, or possibly procedurally defaulted, as suppression of the blood on carpet results were previously attacked under Brady v Maryland 377 U.S. 83, 83 S. Ct. 1194 (1963). However, & I must humbly ask, with NDE amplifying these actions, showing a greater depth of a fundamental miscarriage of justice, do concerns of comity & finality prevail, or must they yield to the higher principles of federal policy to maintain the Constitution inviolate by correcting a fundamentally unjust incarceration? Especially when this NDE is combined to relitigate the issue pursuant to the Law of RESTATEMENT (SECOND) OF JUDGEMENTS § 28?

ISSUE FOUR

Whether there exists extraordinary circumstances to except a claim of ineffective assistance of counsel?

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whether at trial or direct appeal, from res judicata or procedural default, pursuant to the Law of RESTATEMENT (SECOND) OF JUDGEMENTS § 248 (2)(b) & 5(b) & (c) in light of newly discovered evidence supporting that the isolated errors of counsel in both instances were sufficiently egregious & prejudicial?

With the above, I humbly & respectfully plead before this Court, that although previously considered, it should be re-considered whether or not I received ineffective assistance of counsel because, "...a new determination is warranted in order to take account of an intervening change in the applicable legal context or otherwise to avoid inequitable administration of the laws... because it was not reasonably foreseeable at the time of the initial action that the issue would arise in the context of a subsequent action... [and] as a result of the the conduct of [my] adversary or other special circumstances, [I] did not have an adequate opportunity or incentive to obtain a full and fair adjudication in the initial action.

In light of NDE, the extraordinary circumstances adjunct to it are:

1.) Trial counsel's failure to investigate the contents of the lab report in question; so that failing to cross-examine & impeach the forensic analyst regarding the deficiencies of her lab report, he inadvertently bolstered her credibility. [Trial counsel entered the lab report into evidence as defense exhibit "D-91."] & violated my 6th Amendment right to confront & cross-examine the witness.

2.) Direct Appeal counsel incorrectly referenced the lab report as state's exhibit, "S-9," in his direct appeal brief. [NOTE: Direct Appeal counsel's arguments did not involve the substance of anything currently presented for review.]

Upon noticing the missing results, I brought them

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to direct appeal counsel's attention. Counsel took no legal action, nor did he provide me a copy of the trial transcript to do so, pro se. Drafting arguments concerning the lab report using Direct Appeal counsel's brief, because I believed the lab report was a state's exhibit (S-91), my arguments had no sound legal basis. For instance, I argued trial counsel was ineffective for failing to object to the introduction of state's exhibit S-91. Because there was no such thing as "ex. S-91," & because the lab report was entered into evidence by my own attorney, this position was completely unfounded & absurd! Counsel was fully aware of my amendments on direct appeal, yet must have never fully investigated the matter concerning the lab report, or if he did, he failed to admonish me in the least, "Hey, Traven, that exhibit you are referring to as 'S-91' is actually 'D-91' it was not entered into evidence by the prosecution but rather your own defense attorney!" Instead counsel's deficient performance caused me to proceed pro se through direct appeal, as well as state & Federal collateral proceedings on a false premise for nearly 7 years!

Therefore, I humbly contend, because these isolated errors prejudiced my ability to confront the state's witness(es) at trial, or raise arguments on a sound legal basis post-conviction, they should be considered sufficiently egregious as to undermine the constitutional safeguard of effective assistance of counsel. SEE *Strickland v. Washington*, 466 U.S. 668, at 693-696, 104 S. Ct. at 2067-2069. The totality of my claim(s) for IAC are lengthily discussed at attached Appendix J, GROUND FIVE. Due to page limitations here, I must make economy of the appendix in order to present the issues(s).

ISSUE FIVE

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Whether a constitutional violation has probably resulted in the conviction of one who is actually innocent [SEE *Murray v Carrier*, 477 U.S., at 496, 106 S.Ct. at 2649], where applying an analysis under *Brecht v Abrahamson* 507 U.S. 619, 113 S.Ct. 1710 to the relevant facts, the defect occurring in the proceeding had a substantial & injurious effect or influence in determining jury's verdict?

Before continuing, I alert this Court that the Mississippi Supreme Court's Order, Appendix A, contains an error in enunciating the grounds presented for relief. It incorrectly states that I charged the trial court with failing to grant a self-defense instruction. [By this same token, I am also uncertain if that Court entirely misinterpreted the actual issue(s) that [was] were present for relief.] The actual ground, the substance of which was fairly presented to the state court corresponding to Issue Five here can be found fully explained at attached ~~A~~ppendix I, Ground THREE. The argument was also supplemented by an error involving ineffective assistance of counsel bearing directly on the matter at Appendix J, Ground FIVE, ¶¶ 250 thru 262. The issue is a compound one which if it please the Court, I shall divide into three-parts for an easier discussion.

1.) NO DIRECT EVIDENCE TO SUPPORT THE STATE'S THEORY OF CAUSE-II

The record indisputably confirms, the prosecution was aware that its case concerning Felicia Ruffin boiled down to my statement.

[Prosecutor] Neely: Your Honor, may I speak, Your Honor? I believe the only thing that has been put forward in this case regarding Ms. Ruffin is the statement of Travon Brown. That's really it... as to Ms. Ruffin, Your Honor, the statement basically says, I don't know how she got shot... The only statement that they put in as far as Ms. Ruffin is basically I don't know how she got shot. I don't know she got shot. (Tr. 604:1-22 vol. 8 of 9)

ADVERSE TO THIS, THE STATE'S POSITION RELIED EXCLUSIVELY UPON THE INFERENCES IT WAS ALLOWED TO DRAW FROM THE TESTIMONY & LAB REPORT OF ITS FORENSIC ANALYST:

[Prosecutor] Weddle: "... Now, that's not word for word, but that is in his statement. AND THAT'S THE ONLY THING THE JURY HAS TO RELY UPON.

[Prosecutor] Neely: AND THE FORENSICS, YOUR HONOR, FROM THE DUST OF THE WEAPON.

(Tr. 612: 8-20 vol. 8 of 9)

[The "dust of the weapon" referring to the alleged swabbing & DNA testing of the gun by KR.]

The above foregoing, be it to support ISSUE THREE IN THIS PETITION FOR CERTIORARI, my Nape claim, within this grand (or any other grand), the State's express

reliance upon the forensic analyst in obtaining jury instructions, & during summations to the jury, it can not be reasonably argued that the supposed expert testimony & evidence by Kathryn Rodgers did not have a material effect & influence on an unsuspecting jury. I humbly ask, with the unknown falsity of KR testimony at the time, & NDE of her falsely embellished credentials now manifest, is it complicit with the demands of due process & the federal constitution that I remain incarcerated pursuant to a tainted conviction?

2.) TRIAL COURT ERROR GRANTING IMPROPER JURY INSTRUCTION;
AN INSTRUCTION WITHOUT FOUNDATION IN THE EVIDENCE:

Let the record reflect, a point also indisputably settled, my theory of defense regarding Count-II, Felicia Ruffin, was NOT self-defense, NOR was there any foundation in the evidence for a self-defense instruction as regards Ruffin. The prosecution conceded this point at trial:

[Due to page limitations I'll only recite the corresponding parts of the record here (However, SEE APPENDIX I pgs 67-61 at TT's 134-136.)]

- 1.) Tr. 598: 12-16 vol. 8 of 9
- 2.) Tr. 599: 6-10 vol. 8 of 9
- 3.) Tr. 599: 11-15 vol. 8 of 9
- 4.) Tr. 602: 5-8 vol. 8 of 9
- 5.) Tr. 602: 9-17 vol. 8 of 9
- 6.) Tr. 602: 18-27 vol. 8 of 9
7. Tr. 602: 28-29 thru 603: 1 vol. 8 of 9
8. Tr. 603: 12-15 vol. 8 of 9

9.) Tr. 604:1-22 vol. 8 of 9

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10.) Tr. 604:25-28 vol. 8 of 9

Despite the clear recognition above, the jury was improperly & erroneously instructed regarding self-defense in relation to Ruffin:

SEE Tr. 648:9-24 AND 650:19-29 vol. 9 of 9

[A detailed discussion of exactly what ~~is~~ wrong is provided at appendix I pgs 63-100.]

Not only was the jury given an improper self-defense charge, they were also not properly instructed concerning the law on death by accident & misfortune. Under the U.S. Constitution's contemplation of Due Process & Right to a fair trial, an accused has an absolute right to present a defense and to have instructions that allow the jury to consider that defense. Thus this right is absolutely fundamental. A fundamental right I was denied. This Court has stated, "Our power to regulate procedural burdens [is] subject to proscription under the Due Process Clause if it 'offends some principle of justice so rooted in the traditions & conscience of our people as to be ranked as fundamental.'" *Cooper v Oklahoma* 517 U.S. 348, 367; 116 S. Ct. 1373 (1996) (quoting *Patterson v New York*, 432 U.S. 197, 201-02, 97S.)

The defected instruction is "S-14" located @ vol. 3 of 9 Clerk's Papers pg. 248. S-14 defines justifiable homicide. For count-I the state received a murder instruction for count-I that included a self-defense clause; [SEE vol. 3 of 9 C.P. pg. 245] as instruction S-14 defining self-defense. This was correct. However, for Count-

II, the State received, and the jury instructed with a murder instruction "amended" to add the clause "...and not as a result of accident or misfortune." SEE (Tr. 604:23-29 thru 605:1-9 vol. 8 of 9; SEE Also Tr. 628:1-22 & 632:11 vol. 9 of 9; THEN COMPARE vol. 3 of 9 C.P. 238 v.s. C.P. 246 paragraph 3).

However, unlike with Count-I, supplementing & defining Justifiable homicide/self-defense with a separate instruction, for Count-II, there was no supplementary instruction legally defining for the jury "accident or misfortune." Instead, the jury was also supplemented with "S-14" (a justifiable homicide) instruction for Count-II. SEE Tr. 648:9-24 AND 650:18-29, vol. 9 of 9. The relevant inquiry is whether the failure to give an instruction "by itself so infected the entire trial that the resulting conviction violates due process." *Cupp v. Naughten*, 414 U.S. 141, 94 S. Ct. 396. "A crucial assumption underlying that system is that juries will follow the instructions given them by the trial judge." *Parker v. Randolph* 442 U.S. 62, 73, 99 S.Ct. 1232 (1979)

Taking this view of the law, the jury had no option but to find me guilty on the premises of instructions 4-A & S-14 as regards Count-II, the female Felicia Ruffin. It is an absolute horrible thing to contemplate jurors were misled by the trial court to believe I was asserting I felt actual and urgent danger, or had reason to fear Felicia Ruffin intended to kill. Yet this is exactly the case. Defense Counsel's performance was deficient in failing to properly object to S-14 on these grounds prior to its reading to the jury, or, if taking notice thereafter, raising

the issue in a motion for j.n.o.v. Because under Brecht v. Abrahamson, 507 U.S. 619, 113 S. Ct. 1710, I firmly believe this instruction, compounded with other factors, had a "substantial & injurious effect or influence on the jury." I humbly invoke as an added measure before this Court Fed. Rules of Civ. P. Rule 51(d)(2):

PLAIN ERROR: A Court may consider a plain-error in the instructions that has not been preserved as required by Rule 51(d)(1) if the error affects substantial rights.

In conjunction with this also, I humbly move this Court for intervention pursuant to Supreme Court Rule 24(2):

"At its option however, the Court may consider a plain-error not among the questions presented but evident from the record and otherwise within its jurisdiction to decide."

However here, the plain-error is evident & among the questions presented.

3.) INEFFECTIVE ASSISTANCE OF COUNSEL CONTRIBUTED TO THIS COMPOUND ERROR.

If the burden of Brecht were not met already, to show an injurious influence was had on the jury, the issue is supplemented by an instance of ineffective assistance of counsel. SEE Appendix J pg 139-145, at ¶s 250-262.

Unaware of the State's Motion in Limine, & its purpose, Counsel proceeded to seek the opinion

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testimony of police officers whether they saw evidence of a struggle. Of course, the answer was negative. The State, aware of, but disregarding its own motion in limine, proceeded to do the same, however, the State specifically pointed in the direction of Felicia. The State's action erroneously implied to jurors that the evidence was against the defense because there existed no signs of a struggle in relation to Felicia. This was misleading because my position as the Defendant never had anything to do with Felicia & I being involved with a struggle for the firearm. Ironically, at the time for jury instructions, the state was the first to scream that there was no evidence of self-defense with relation to Ruffin. Contrary to this, they received a decisive windfall of a self-defense instruction that could only serve to inflame a jury to convict me in light of the evidence presented at trial.

The only thing the state had to rely upon for its proposition to the jury that I singlehandedly shot Felicia was KR testimony, & lab report that only my blood/DNA was found on the gun during its closing summations to the jury. However, her lab report was splintered, her testimony tainted, & her credentials falsely embellished. I humbly submit that the Due Process Clause of the Fourteenth Amendment renders my conviction & continued incarceration obtained on this count void, and on these premises it should be vacated & dismissed. Essentially, since the state relied on this forensic evidence to support its theory on material matters for both counts, I humbly submit that both my convictions should therefore be vacated & dismissed. As this Court stated in Brady v Maryland, "In Pyle v Kansas, 317 U.S. 213, 215-216, 63 S. Ct. 177, 178, 87 L. Ed.

214, we phrased the rule in broader terms:

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"Petitioner's papers are ineptly drawn, but they do set forth allegations that his imprisonment resulted from perjured testimony, knowingly used by state authorities to obtain his conviction, and from the deliberate suppression by these same authorities of evidence favorable to him. These allegations sufficiently charge a deprivation of rights guaranteed by the Federal Constitution, and, if proven, would entitle petitioner to release from his present custody. *Mooney v Holohan* 294 U.S. 103, 55 S.Ct. 340, 79 L.Ed. 791.

REASONS FOR GRANTING THE PETITION

Within the Supreme Court Rules, "PART III. JURISDICTION ON WRIT OF CERTIORARI," Rule 10, sets forth, "Considerations Governing Review on Certiorari," Listed at subsections (a)(b) & (c) is an indication of the character of the reasons this Court grants consideration of the writ. Denoting a petition for writ of certiorari is granted only for compelling reasons, Rule 10 also indicates that subsections (a)(b) & (c) are ~~neither~~ "...neither controlling nor fully measuring the Courts discretion." In addition, "A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."

Nevertheless, this Court, in all cases where rules are made & standards established, honoring fundamental fairness, & justice for both scales of the balance, the accuser, & the accused, makes provision that there shall always arise the exceptional and or extraordinary case(s) before its bar, where "...the principles of comity and finality that inform the concepts of cause & prejudice must yield to the imperative of correcting a fundamentally unjust incarceration." (citing from *Murray v Carrier*, 477 U.S. 478, 495, 106 S.Ct. 2639, 2649.)

I believe Rule 10 subsections (a)(b) & (c) are "neither controlling nor fully measuring the Court's

discretion" for this reason. It cannot be predetermined to what extent this Court must exercise its discretion to maintain the Constitution inviolate. Nor the extent to which it must exercise its power of discretion, enforcing the Constitution, to deter lower courts from abusing their discretion.

No doubt, a case requiring such action to be taken shall be extremely rare, & I humbly submit, this is such a case. And that this Court's intervention is warranted because the Court below continues to arbitrarily apply an unfairly steep standard for state post-conviction collateral relief cases. Also, in this instance, turning a blind-eye to clear & convincing evidence demonstrating relief is warranted from my fundamentally unjust incarceration.

Such action taken in this case is of wide public importance because, what has been perceived as decades long injustice within the criminal justice system, has eroded public faith in institutions that are designed to guarantee due process & equal protection of the law. By correcting the record here, perhaps it can begin to restore that faith.

This Court may soon consider another petition raising the same issues presented here; I humbly move this Court to hold this case as it considers the scope of the issues there; and/or grant such other relief as justice requires.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

David F. Angelo (FBI) ml

Date: April 5th 2022

APPENDIX

A

2 pages

Serial: 240701

IN THE SUPREME COURT OF MISSISSIPPI

No. 2013-M-02044

FILED

MAR 02 2022

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

TRAVON BROWN

Petitioner

v.

STATE OF MISSISSIPPI

Respondent

ORDER

Now before the panel of Randolph, C.J., Coleman and Griffis, JJ., is the Motion for Relief from Judgment or Order, the Application for Leave to Proceed in the Trial Court, and Amended Motion for Post-Conviction Relief, all filed *pro se* by Travon Brown. Brown was convicted of two counts of deliberate-design murder and was sentenced to two terms of life imprisonment. Brown appealed and challenged the denial of several jury instructions, the exclusion of toxicology results, the sufficiency of the evidence, the weight of the evidence, and ineffective assistance of counsel; the Court of Appeals affirmed. *Brown v. State*, 194 So. 3d 139 (Miss. Ct. App. 2016). Brown filed his first application for leave to proceed with post-conviction relief in 2016, which a panel of this Court denied. Brown now seeks leave again. He claims that he received ineffective assistance of counsel, that the testimony of the State's forensic analyst was fraudulent, that the circuit court erred in failing to grant him a jury instruction of self defense, and cumulative error.

Brown's application is barred as a successive writ pursuant to Mississippi Code Section 99-39-27(9) and also time-barred pursuant to Mississippi Code Section 99-39-5(2).

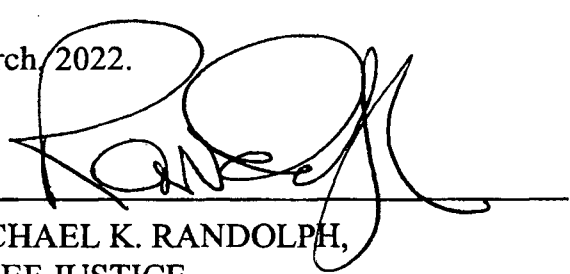
Further, the issues raised are barred by the doctrine of *res judicata* or they are waived pursuant to Mississippi Code Sections 99-39-21(1)-(3). The panel finds that the issues are subject to the procedural bars without exception.

While claims of ineffective assistance of counsel can be excepted from the application of the procedural bars in exceptional circumstances, “there must at least appear to be some basis for the truth of the claim.” *Means v. State*, 43 So. 3d 438, 442 (Miss. 2010). The panel finds that the procedural bars still do apply to Brown’s claim of ineffective assistance. Therefore, after due consideration, the panel finds each filing is not well-taken and should be denied.

The panel further finds that the claims raised in Brown’s successive petition are frivolous, and Brown is hereby warned that future filings deemed frivolous could result in monetary sanctions or in restrictions on his ability to file applications for post-conviction collateral relief (or pleadings in that nature) *in forma pauperis*. See Order, *Dunn v. State*, 2016-M-01514 (Miss. Nov. 15, 2018).

IT IS THEREFORE ORDERED that the Motion for Relief from Judgment or Order, the Application for Leave to Proceed in the Trial Court, and Amended Motion for Post-Conviction Relief filed *pro se* by Travon Brown are hereby denied.

SO ORDERED, this the 2 day of March, 2022.



MICHAEL K. RANDOLPH,
CHIEF JUSTICE

**Additional material
from this filing is
available in the
Clerk's Office.**