No. 22-7405

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

EARL C. HANDFIELD II — PETITIONER
(Your Name)

vs.

BOBBI JO SALAMON — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE THIRD CIRCUIT COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

EARL C. HANDFIELD II
(Your Name)

1 Rockview Place
(Address)

Bellefonte, PA 16823
(City, State, Zip Code)

NA
(Phone Number)

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

EARL HANDFIELD- Petitioner

VS.

BOBBI JO SALAMON- Respondent

ON PETITION FOR WRIT OF CERTIORARI TO

Third Circuit Court of Appeals

Earl Handfield
SCI-Rockview; 1 Rockview Place Box A
Bellefonte, PA 16823
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QUESTION(S)

1. DOES *BRADY V MARYLAND* LAW WARRANT CLARIFICATION DUE TO FEDERAL COURTS ADDING A 'COUNSEL PERFORMANCE' PRONG TO THE *BRADY* ANALYSIS WHICH CONFUSES THE LAW WITH *STRICKLAND V WASHINGTON* AND INCREASES THE BURDEN OF SHOWING PREJUDICE?

LIST OF PARTIES

[X] 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:

TABLE OF AUTHORITIES CITED

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Due Process Clause of the Fourteenth Amendment

STATEMENT OF THE CASE

Witness, Willie Suber, gave a recorded interview on video to the police, explaining that on the night in question, Petitioner, Handfield did not come to the apartment he (Suber) shared with his mother, Adrienne Beckett. Handfield and Beckett dated off and on around of the time of the crime. The prosecution failed to turn over this video recording.

Beckett and David Johnson were the primary witnesses who implicated Handfield in the crime. Both witnesses were heavily impeached which is not in dispute.

The 'Suber Video' was exculpatory and impeaching because Beckett testified that Handfield arrived shortly after the shooting and told her "I did what I had to do" regarding the shooting. She further testified that she and Handfield then drove to Maryland to dispose a gun.

At a PCRA hearing, **trial counsel testified that "[S]eeing the video would more likely make an impression on a reasonable juror"** (Petitioner's brief in the Court of Appeals, p. 46, 2/18/22, JA1844-45). In the Opinion, Circuit Judge Thomas Hardiman did not ackowledge this crucial fact which goes to the heart of the third prong of prejudice. Instead **the judge focused on how good counsel performed without the *Brady* video.**

In doing so Judge Hardiman effectively added a fourth prong of 'counsel performance' to *Brady* where he found: "Green had good reason not to call Suber at trial, considering he had other avenues to impeach Beckett without making her look sympathetic to the jury as a mother. Green focused on Beckett's different versions of that night and emphasized the apparent conflict between the timeline she described at trial and her phone records". (Court of Appeals' Opinion, p. 6, 9/14/22).

The Court of Appeals' Opinion wholly violated the dictates of this Court's long settled law of *Brady v Maryland*, by adding an additional prong that this Court did not establish, thus *Williams v Taylor* was also violated in the process.

REASONS FOR GRANTING THE PETITION

The Third Circuit Court of Appeals herein like other circuits have added a fourth prong to *Brady v Maryland* 373 U.S. 83 (1963) that warrants clarification.

The three prongs of *Brady* that a petitioner must establish to be entitled relief are: 1) evidence was suppressed by the state; 2) the evidence is favorable to the accused, either because it is exculpatory, or because it is impeaching; and 3) prejudice ensued.

In accord with the **AEDPA**: "Interpreting Supreme Court precedent in a manner that adds an additional element to the legal standard for proving a constitutional violation is "contrary to" clearly established federal law" *Williams v Taylor*, 529 U.S. 362, 393-397 (2000)(reasoning that the Virginia Supreme Court's interpretation of *Strickland v Washington*, 466 U.S. 668 (1984), which increased the burden on petitioners, was "contrary to" Supreme Court precedent).

Maintaining the conformity of *Brady* is of massive importance because if federal courts are permitted to rely solely on reasons why trial counsel would not have used exculpatory evidence; than *Brady* would effectively become a quasi *Strickland v Washington* claim and cause distortion throughout the circuits on one of the most important cases in criminal law.

This Honorable Court recognizes the significance of *Brady* as it stated in *Skinner v Switzer,* "Brady claims have ranked within the traditional core of habeas". 562 U.S. 521, 536 (2011).

A petitioner's claim of ineffective assistance of counsel are controlled by the two-part test set forth in *Strickland.* Petitioner must demonstrate that: (1) counsel's representation fell below an objective standard of reasonableness; and (2) there is a reasonable probability that, but for counsel's error, the result would have been different. To satisfy *Strickland's* prejudice prong, the petitioner must show only a probability sufficient to undermine confidence in the outcome.

This Court foresaw this misuse in *Bagley* wherein it directed: **"Only after considering an *effective use* of the *Brady* evidence can the court properly determine** the reasonable probability of a different result". *U.S. v Bagley*, 473 US 667, 676 (1985).

Once it is established that the *Brady* material was exculpatory; the main question is if the evidence was used effectively, would that have changed the outcome? Therefore, courts violate *Brady* when searching for and creating negative reasons why counsel would not have used the evidence, *without considering the exculpatory effects of the evidence.*

In the case at hand, Circuit Judge Hardiman's reasoning clearly misapprehends *Brady* where he put too much weight on counsel's performance and less weight on the exculpatory and impeaching value of the evidence itself. The judge concluded his findings with the following words: "In sum, *counsel's strategic decision* not to call Suber to testify at trial is supported by the record, *regardless of the content of the video*. So as the state court rightly recognized, Handfield cannot show that "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." (Opinion p.6-7, 9/14/22).

The judge confuses the *Brady* standard. "[R]egardless of the content of the video" means that no matter how substantial and strong the video; counsel's reasoning in not using it overcomes petitioner's claim. This is unconstitutional. The judge further explained that counsel "made a strategic decision not to call Suber. Green did not want to "beat up" the son of the prosecution's witness" (Opinion, p.6, 9/14/22). However, this rationale supplants a *Strickland* analysis in place of a proper *Brady* analysis.

After watching the video at the PCRA hearing for the first time he was asked if it would have changed his trial strategy, and counsel answered, "I dont know". (Court of Appeals Opinion, p. 3, 9/14/22). But one thing he did know: **"[S]eeing the video would more likely make an impression on a reasonable juror".**

In a case that lacked overwhelming evidence of guilt; counsel's testimony on the materiality of the video is enough to satisfy the prejudice prong under *Brady*.

The Eleventh Circuit Court of Appeals in *Antone* understood the domino affect of this type of fundamental error: "Applying the wrong legal standard led the state court to rely upon the wrong facts. Hence Antone's *Brady* claim requires reexamining the law. All the fair and full hearings in the world could not correct the core legal flaw" *Antone v Strickland*, 706 F.2d 1534 (11th Cir.1983).

Since it is difficult enough already for petitioners to prove how much suppressed exculpatory evidence affected a trial in hindsight; allowing federal courts to *de facto* restructure a bedrock principle as *Brady* increases the burden on petitioners exponentially, forcing them to raise a claim against the prosecution and essentially an additional claim against trial counsel.

This High Court in *Klyes* found prejudice where "disclosure of the *suppressed evidence to competent counsel* would have made a different result reasonably probable", which may be causing federal courts to step over the *Brady* line into *Strickland* territory. *Kyles v Whitley* 514 U.S. 419, 441 (1995).

This Court's conclusion was sound and logical: In a case without overwhelming evidence of guilt; suppressed exculpatory evidence used by competent counsel would probably cause a different result. But the key word that the previous panel herein failed to apply is: **Use**.

A court does not properly assess *Brady* unless it *analyzes the potential use of the evidence*. Judge Hardiman analyzed the claim the opposite way. The judge transformed the claim opining that counsel should not have used it all together. But even under the judge's own erroneous analysis Handfield would still be entitled relief. In other words, even under a *Strickland* analysis, counsel would be ineffective for not using evidence that has been established as favorable, especially where the evidence supported counsel's strategy in impeaching Beckett.

The judge states: "Handfield asks us to ignore Green's testimony because only a constitutionally ineffective lawyer would have failed to call Suber after seeing the video of his police interview. We disagree". (Opinion, p.6, 9/14/22).

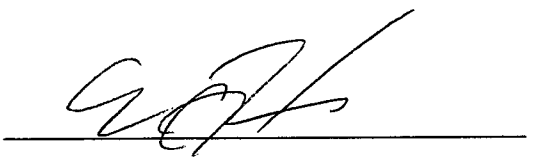
Respectfully, the panel was wrong even about a wrong analysis. Where trial counsel testified that "seeing the video would make an impression on a reasonable juror, but still fail to use the video"; all jurists of reason would find that counsel performed deficiently.

Therefore, I appeal to you to consider clarifying this foundational Due Process law. Though defendants are not entitled to a perfect trial; they are guaranteed a fair one so maintaining this Court's spirit of *Brady* will ensure that defendant's are properly retried when a *Brady* violation has resulted in prejudice. Thank you.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 1/24/23