

No. 22-7466
CAPITAL CASE

IN THE
Supreme Court of the United States

RICHARD EUGENE GLOSSIP,
Petitioner,

v.

STATE OF OKLAHOMA,
Respondent.

**On Writ of Certiorari to the
Oklahoma Court of Criminal Appeals**

**BRIEF FOR *AMICI CURIAE* FORMER
MEMBERS OF THE OKLAHOMA DEATH
PENALTY REVIEW COMMISSION IN
SUPPORT OF PETITIONER**

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INTEREST OF *AMICI CURIAE*¹

Amici are former members of the Oklahoma Death Penalty Review Commission (“the Commission”). The Commission comprised eleven Oklahomans of diverse background (five women and six men) formed in 2016 to study all aspects of the Oklahoma death penalty system.² The Commission was an independent, bipartisan body that included both Republicans and Democrats and, critically, both supporters and opponents of the death penalty. Its composition included the full range of stakeholders—lawyers and non-lawyers, residents of urban and rural areas, prosecutors and defense attorneys, individuals who have served in each of the three branches of government, law school professors and law school deans, victims’ advocates, and advocates for Native Americans.

Amici are the following:

Governor Brad Henry served as co-chair of the Commission. He served as Oklahoma’s 26th Governor and is currently of counsel to the law firm Spencer Fane LLP. Prior to his election as Governor, he practiced law and served ten years in the Oklahoma State Senate.

Andy Lester served as co-chair of the Commission. He is a partner in the law firm Spencer Fane LLP.

¹ Pursuant to Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici* or their counsel made any monetary contributions intended to fund the preparation or submission of this brief.

² Ten of the eleven former members are participating in this brief. The eleventh, Judge Reta M. Strubhar, was a member of the Oklahoma Court of Criminal Appeals during some of the early phases of Mr. Glossip’s cases and thus could have no involvement in this brief. *Amici* submit this brief in their individual capacities.

He is a former United States Magistrate Judge and served on President Reagan's Transition Team for the Equal Employment Opportunity Commission.

Robert H. Alexander, Jr. is a trial lawyer and founder of a law firm which bears his name. An honorably discharged U.S. Army 2nd Lieutenant, he is a nationally recognized speaker and lecturer who has been featured in national legal publications.

Howard Barnett is president emeritus of Oklahoma State University-Tulsa. An attorney, he previously served as Chief of Staff for Governor Frank Keating and as Oklahoma's Secretary of Commerce.

Andrew Coats is Dean Emeritus and Professor Emeritus at the University of Oklahoma College of Law. He previously was a trial lawyer and a partner at a law firm in Oklahoma City, the district attorney of Oklahoma County, and the Mayor of Oklahoma City.

Valerie Couch is Dean Emeritus and Professor Emeritus at the Oklahoma City University School of Law. She is a former United States Magistrate Judge and was in private practice for 16 years in Oklahoma City.

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Christy Sheppard is a Licensed Professional Counselor in Ada, Oklahoma. She has been an advocate for victims of crime and criminal justice reform for many years.

Kris Steele is Executive Director of The Education and Employment Ministry, a nonprofit dedicated to

breaking the cycle of poverty and incarceration in Oklahoma. He previously served as State Representative from 2000–2012, and Speaker of the Oklahoma House for the 53rd Legislature.

Gena Timberman (Choctaw) has planned and guided numerous cultural projects in Indian Country toward successful completion. She is an attorney and focuses her practice on Indian Country business development relative to cultural tourism.

The Commission’s study spanned more than a year and included ten full-day meetings at which it heard from experts from Oklahoma and around the country. The Commission also met with public officials, interviewed experts, and reviewed immense volumes of data, articles, and studies. The result was a 294-page report issued in March 2017 (the “Commission Report”).³ The Commission Report comprehensively examined all facets of the Oklahoma death penalty process, from arrest to execution. The Commission Report included 45 recommendations for reform on topics including forensics, innocence protection, the role of prosecutors and defense counsel, the judicial process, death eligibility, and the execution process. *Id.* at ix–xv. Although the Commission took no position on the death penalty itself, its unanimous, overarching recommendation was that “the current moratorium on the death penalty be extended until significant reforms have been accomplished.” *Id.* at ix; *id.* at vii (explaining that this recommendation was based on “the volume and seriousness of the flaws in Oklahoma’s

³ *The Report of the Oklahoma Death Penalty Review Commission*, The Constitution Project (Mar. 2017), <https://www.courthousenews.com/wp-content/uploads/2017/04/OklaDeathPenalty.pdf>.

capital punishment system” and the fact that “it is undeniable that innocent people have been sentenced to death in Oklahoma”). The Commission’s former members have an enduring interest in the issues addressed and the implementation of the Commission’s recommendations.

This case affects the interests of *amici curiae* because it illustrates and indeed epitomizes the numerous problems that the Commission identified as undermining the reliability of capital convictions in Oklahoma. The Commission identified a number of weaknesses and deficiencies that can allow innocent people to be convicted of capital crimes and sentenced to death in Oklahoma. Many of those failings were present in Mr. Glossip’s case and undermine the integrity of his conviction.

The Commission has a unique perspective on Mr. Glossip’s claims because it comprehensively explored the workings of Oklahoma’s criminal justice system in capital cases. Its views will assist the Court in resolving the issues presented.

SUMMARY OF ARGUMENT

The Commission Report identified myriad problems that undermine the integrity of capital convictions in Oklahoma. Many of the problems permeate Mr. Glossip’s case and therefore undermine the reliability of his conviction.

Initially, the Commission Report identified several ways in which faulty criminal investigations and flawed police tactics can increase the risk that innocent people will be prosecuted for capital crimes. Several of these risk factors are present in Mr. Glossip’s case, including substantial reliance on the statements

of a self-interested co-defendant, problematic interrogation techniques, and a failure to collect and preserve key physical evidence.

The Commission also determined that prosecutorial misconduct has led to wrongful convictions in Oklahoma. In particular, it identified violations of *Brady v. Maryland*, 373 U.S. 83 (1963), as a commonplace factor in wrongful convictions and in reversals of convictions. See *infra* at 14. Recently, evidence has come to light of several significant *Brady* violations in Mr. Glossip's case. All of these prosecutorial errors cast doubt upon the reliability of his conviction. This same evidence has revealed that the prosecution knew that its key witness testified falsely and did nothing to correct the false statements. This appears to be a clear Due Process violation under *Napue v. Illinois*, 360 U.S. 264 (1959), and further calls into question Mr. Glossip's conviction.

Further, the Commission highlighted the fact that wrongful capital convictions are often the product of a combination of flaws that implicate multiple aspects of the process and state actors involved therein. See *infra* at 17–18. Mr. Glossip's conviction involves multiple errors and irregularities, and these problems should be considered collectively, not item-by-item. Taken together, these errors undermine confidence that the jury reached the correct result—as the State itself has tellingly conceded. This case thus powerfully exemplifies the concerns the Commission identified with administration of the death penalty in Oklahoma.

ARGUMENT

In 2017, the bipartisan Commission recommended that Oklahoma extend the then-existing moratorium on the death penalty because the State's criminal justice system had pervasive problems that undermined

the reliability of capital convictions in Oklahoma. In other words, the Commission concluded that imposing the death penalty in Oklahoma carried with it a significant risk that the State would execute innocent people—an event that members of this Court have described as “constitutionally intolerable.” *Herrera v. Collins*, 506 U.S. 390, 419 (1993) (O’Connor, J., concurring); see Commission Report at 41 (noting that the Report “sets forth continuing problems in Oklahoma’s system, which risk convicting and executing the innocent”).

The moratorium was subsequently lifted, despite the absence of meaningful reform in response to the Commission’s Report. Indeed, some former members of the Commission have advocated for reimposition of the moratorium, noting that “after five years, virtually none of [the Commission’s] recommendations have been adopted.” See Brad Henry & Andy Lester, *Oklahoma Executions Should Stop Until System is Reformed*, *The Oklahoman* (July 24, 2022), <https://www.oklahoman.com/story/opinion/2022/07/24/opinionoklahoma-executions-should-stop-until-system-is-reformed/65376052007/>.

Meanwhile, new evidence of grave prosecutorial misconduct has emerged in Mr. Glossip’s case, providing additional foundation for long-standing concerns that he was wrongfully convicted. See Reed Smith LLP, *Independent Investigation of State v. Richard E. Glossip: Final Report* (June 7, 2022) (“Reed Smith Report”)⁴; Pet. App. 47a–66a (Rex Duncan, *Independent Counsel Report in the Matter of Richard Eugene Glossip*, Oklahoma Cnty. Case CF-1997-244 (Apr. 3, 2023) (“Duncan

⁴ Reed Smith’s reports are available at <https://tinyurl.com/3kapbx6v>.

Report”⁵). Many of the problems and irregularities identified in the independent investigators’ reports correspond to widespread problems in Oklahoma that the Commission Report identified as undermining the reliability of capital convictions. The Commission Report therefore provides relevant and useful context for evaluating Mr. Glossip’s claims. In addition, because the problems that undermine Mr. Glossip’s conviction mirror findings and conclusions of the Commission Report more generally, they confirm the validity of those conclusions and the continuing need for the recommended reforms.

I. MR. GLOSSIP’S CASE ILLUSTRATES NUMEROUS PROBLEMS IDENTIFIED BY THE COMMISSION THAT UNDERMINE THE RELIABILITY OF CAPITAL CONVICTIONS IN OKLAHOMA.

Mr. Glossip’s case illustrates the sorts of failings that the Commission identified as substantially increasing the risk of wrongful convictions in Oklahoma. These failings include a flawed investigation, dependence on a co-defendant who stood to gain by implicating Mr. Glossip, an overreaching and suggestive police interrogation, and pervasive prosecutorial misconduct in the form of violations of *Brady v. Maryland*, 373 U.S. 83 (1963), and *Napue v. Illinois*, 360 U.S. 264 (1959). Both individually and collectively, these errors undermine the integrity of Mr. Glossip’s conviction.

⁵ The Duncan Report is available at <https://tinyurl.com/mupyumcr>.

A. The State’s flawed investigation and reliance on the self-interested statements of the killer undermine the reliability of Mr. Glossip’s conviction.

The Commission Report identified several ways in which flawed police tactics and deficient investigations can increase the risk that innocent people will be prosecuted for capital crimes. Several of these risk factors are present in Mr. Glossip’s case.

Reliance on statements of a self-interested co-defendant: The Commission Report found that inculpatory statements by co-defendants “raise reliability concerns” because “co-defendants are often offered leniency in exchange for testifying against their co-defendant.” Commission Report at 59. In particular, “co-defendants sometimes inculcate innocent persons who are charged and convicted as co-defendants.” *Id.* As the Commission noted, this Court itself has recognized that “[t]he use of informers, accessories, accomplices, false friends, or any of the other betrayals which are ‘dirty business’ may raise serious questions of credibility.” *Id.* at 58–59 (quoting *On Lee v. United States*, 343 U.S. 747, 757 (1952)). The Commission further noted that “[t]he National Registry of Exonerations includes 195 exonerations involving co-defendant confessions that implicated the exonerees.” *Id.* at 59 & n.201. As a result, one of the Commission’s reform recommendations is that “[l]aw enforcement officials should record the entire interrogation of any suspect or potential suspect in a homicide case, *including any representations or promises made to the person interviewed.*” *Id.* at 68 (emphasis added).

This risk posed by reliance on self-interested statements of a co-defendant was acute in Mr. Glossip’s case because such statements were the linchpin of the State’s case. The undisputed killer, Justin Sneed,

agreed to plead guilty and testify that Mr. Glossip directed and paid him to commit the murder in exchange for the State dropping its request that he (Sneed) receive the death penalty. As noted, the Commission concluded that this sort of agreement between the prosecution and a co-defendant who stands to gain by implicating another person inherently raises severe reliability and credibility concerns. Here, Sneed's incentive to lie to obtain leniency could not have been greater because his own life was at stake. See Pet. App. 50a (Duncan Report at 3 ("Sneed testified against Glossip, basically to save himself from the death penalty")). And Sneed's testimony was crucial because it was the *only direct evidence* linking Mr. Glossip to the crime.

Notably, the State has acknowledged the indispensable role of Sneed's testimony by taking the remarkable step of confessing error and conceding that Mr. Glossip's conviction should be set aside in light of the recently disclosed information that undermines Sneed's credibility. Pet. App. 150a (State acknowledging that Sneed "made material misstatements to the jury regarding his psychiatric treatment and the reason for his lithium prescription."). The State's position before this Court confirms that the reliability of Mr. Glossip's conviction is in serious doubt.

Use of suggestive interrogation techniques: The risks posed by the State's reliance on Sneed, a killer seeking to avoid the death penalty, were exacerbated by the techniques that the State used to interrogate him. The Commission Report found that police interrogation techniques can contribute to wrongful convictions. Commission Report at 49–58. It explained that problematic interrogation techniques are often linked to investigative errors. *Id.* at 53–55. For example, the Commission described the investigative error of "misclassi-

fication,” which “occurs when law enforcement incorrectly decides that an innocent person is guilty.” *Id.* at 53. Misclassification and other investigative errors can lead to interrogation tactics such as “leading questions” and the introduction by police of “inaccurate information,” both of which “promote inaccurate witness accounts, which can ultimately lead to procedural injustice and wrongful imprisonment.” *Id.* at 54 (citation omitted).

Given the importance of police interrogations and the potential for abuse, some of the Commission’s reform recommendations address interrogation practices. For example, one of the Commission’s recommendations is that law enforcement officials receive training on best practices for interrogations and that police departments “encourage a culture that enforces following best practices.” *Id.* at 68. The Commission also recommends that “[l]aw enforcement officials should record the entire interrogation of any suspect or potential suspect in a homicide case, including any representations or promises made to the person interviewed.” *Id.*

The foregoing risks were present in this case and undermine the reliability of Mr. Glossip’s conviction. Sneed was arrested and interrogated by police detectives approximately one week after he committed the murder. The conduct of the interrogation strongly suggested that the lead detective had already concluded that Mr. Glossip put Sneed up to the murder, and he coached Sneed to implicate Mr. Glossip. The independent investigation by Reed Smith concluded that “[b]efore Sneed ever implicated Glossip as being involved, Detective Bemo interjected his view that Sneed did not do this alone, that he could help [himself], that Glossip was arrested, and that Glossip was blaming Sneed for the murder.” Reed Smith Report at 59 &

n.253 (citing videotape of interrogation); *id.* at 60 (concluding that Bemo’s “tunnel vision contoured the entire investigation, including the interrogation of Sneed”). Indeed, in the first 20 minutes of the interrogation, detectives brought up Mr. Glossip’s name six times, while they did not mention any other individual’s name before Sneed confessed. *Id.* at 59. As the Reed Smith investigation concluded, “[i]t is hard to imagine any reasonable person facing a first degree murder charge not taking this life line signaled by police, even if it meant adopting an untruthful narrative.” *Id.*; see also Pet. App. 51a–52a (Duncan Report at 4–5 (“Sneed eventually claimed the murder was Glossip’s idea and he (Sneed) finally went along with it *because he saw no other way out.*”) (Emphasis added)).

Sneed’s interrogation was videotaped, but neither jury that convicted Mr. Glossip ever saw this tape. Notably, after Mr. Glossip’s first trial, the Oklahoma Court of Criminal Appeals (“OCCA”) reversed his conviction on the ground that he had received constitutionally ineffective assistance of counsel, in part because of counsel’s failure to use the videotape of Sneed’s interrogation to impeach him. See *Glossip v. State*, 29 P.3d 597, 601 (Okla. Crim. App. 2001) (finding that this was a “glaring deficiency” given the many “obviously material” inconsistencies in Sneed’s account). Inexplicably, defense counsel *again* failed to use the videotape of Sneed’s interrogation at the retrial. The detectives’ suggestive interrogation techniques cast serious doubt upon the reliability of Sneed’s testimony, and the jury’s inability to consider these doubts significantly taints Mr. Glossip’s conviction.

Failure to collect and preserve physical evidence: The Commission Report found that proper forensic techniques and practices are “critical to the identification

of perpetrators of crime and to safeguarding against the prosecution and conviction of innocent persons.” Commission Report at 13; *id.* at 16 (“The integrity of the criminal justice system is grounded in the reliability of evidence that is used to support criminal investigations and prosecutions.”). The Report also highlighted Oklahoma capital cases that were impacted by lost evidence. *Id.* at 23, 76, 165 & n.59.

Mr. Glossip’s case was seriously undermined by forensic failures and evidentiary gaps, all of which increased the risk of a wrongful conviction. This deficient police work likely reflected the fact that “[t]he initial investigation was brief and immediately focused on Glossip and Sneed, to the exclusion of all others.” Pet. App. 51a (Duncan Report at 4). The State’s mistakes included both failures to collect pertinent physical evidence and failures properly to preserve key evidence. For example, the police failed to search Sneed’s room at the motel, Reed Smith Report at 39. In addition, the police did not process fingerprints from the interior of the murder victim’s vehicle or from the van parked next to that vehicle. *Id.* at 76–77. They collected fingerprints from a drinking glass found in the murder victim’s vehicle but apparently never processed them. *Id.* at 76. The police also failed to identify—and thus failed to process for fingerprints or DNA—an envelope that Sneed claimed contained money that he and Mr. Glossip took from the vehicle. *Id.* They likewise neglected to collect the motel’s financial records and daily reports from the motel’s office. *Id.* at 77.

The lost evidence in this case includes a security camera video taken on the night of the murder from the gas station that is within walking distance of the motel. Reed Smith Report at 75. Additional pieces of

evidence that were “lost or destroyed” include motel financial records and a shower curtain allegedly handled by Mr. Glossip in connection with the crime. Pet. App. 54a (Duncan Report at 7). The victim’s wallet was either lost or returned to the victim’s family. Pet. App. 54a–55a (Duncan Report at 7–8). In sum, Mr. Glossip’s prosecution was “permeated by failures to secure, safeguard and maintain evidence.” Pet. App. 62a (Duncan Report at 15).

All of these evidentiary gaps and deficiencies tainted the truth-seeking process and undermine confidence in the outcome in Mr. Glossip’s case. They compounded the problems posed by Sneed’s unreliable testimony and escalated the risk that Mr. Glossip was wrongly convicted.

B. Prosecutorial misconduct further undermines the reliability of Mr. Glossip’s conviction.

The State’s case against Mr. Glossip was further compromised by prosecutorial misconduct. This circumstance is consistent with the Commission’s findings that prosecutorial misconduct is a prevalent cause of wrongful convictions in Oklahoma. See Commission Report at 42, 66. The Commission highlighted the case of Robert Macy, a district attorney in Oklahoma for 21 years (1980–2001), who sought more death sentences than any other individual district attorney in the United States. *Id.* at 78. A 2016 study found that prosecutorial misconduct occurred in a third of the death penalty cases during Macy’s tenure. *Id.* at 80. Indeed, prosecutorial misconduct in the capital cases brought by Macy contributed to the exoneration of three individuals freed from death row. *Id.* at 80–81. The Commission further found that courts reversed almost half

of the death sentences imposed under Macy's tenure. *Id.* at 81.⁶

Apart from the tragedy of wrongful convictions, the Commission found that prosecutorial misconduct undercuts public trust in the criminal justice system, an element that is vital to the proper functioning of that system. *Id.* at 87. As detailed below, Mr. Glossip's case was infected by prosecutorial misconduct, principally in the form of *Brady* and *Napue* violations.

Brady violations: The Commission emphasized the importance of capital defendants receiving full discovery from prosecutors, as required by *Brady* as well as Oklahoma's statutes and its Rules of Professional Conduct for attorneys. Commission Report at 72–73. The Commission cited research concluding that “[t]he second most common reversible error identified on appellate or post-conviction review of capital cases was the ‘prosecutorial suppression of evidence that the defendant is innocent or does not deserve the death penalty.’” *Id.* at 75 (citing James S. Liebman et al., *Restructuring Federal Courts: Habeas: Capital Attrition: Error Rates in Capital Cases, 1973–1995*, 78 Tex. L. Rev. 1839, 1850 (2000) (finding that 16 percent of state post-conviction reversals are attributable to prosecutors' suppression of evidence favorable to the defendant)). The Commission concluded that “[l]ater discovery of exculpatory evidence withheld by prosecutors—whether intentional or not—has led to the wrongful convictions of capital defendants.” *Id.* at 77.

⁶ According to the Duncan Report, District Attorney Macy signed the Bill of Particulars in the 1997 case that led to Mr. Glossip's first trial, but he was not involved in the case after that point. Pet. App. 62a–63a (Duncan Report at 15–16).

The Report discussed several Oklahoma capital cases in which prosecutors either intentionally or inadvertently failed to turn over evidence favorable to capital defendants. *Id.* at 75–76. The suppressed evidence in these cases included DNA evidence, critical physical evidence, and a deal between the State and its key witness. *Id.* In another case that is particularly relevant here, the suppressed evidence consisted of two psychiatric reports showing that the witness who implicated the defendant suffered from a severe mental disorder and that she was known to blur reality and fantasy and project blame onto others. *Id.* at 75; see *Browning v. Trammell*, 717 F.3d 1092, 1094 (10th Cir. 2013) (affirming district court’s reversal of conviction due to *Brady* violation).

Because of the importance of full disclosure by prosecutors, one of the Commission’s reform recommendations is that prosecutors and their investigators receive regular and mandatory training concerning common causes of wrongful convictions, along with “critical safeguards,” such as “discovery practices and *Brady* requirements.” Commission Report at 87. The Commission also recommends that Oklahoma district attorneys’ offices and the Office of the Attorney General be required to allow “open-file discovery” at all stages of capital cases. *Id.* at 88. Finally, the Commission recommends that district attorneys adhere to “the highest standards of evidence retention” by retaining all files in a capital case until 60 days after the inmate is no longer on death row. *Id.*

Here, Mr. Glossip asserts that the prosecutors failed to provide him with material discovery in several significant ways. As detailed in petitioner’s brief, the suppressed information included (1) evidence of Sneed’s mental disorder, (2) evidence that prosecutors coached Sneed’s testimony about a knife found at the murder

scene, and (3) evidence of an innocent explanation for the cash that Mr. Glossip was carrying after the murder. See Br. for Pet. at 9–16. Given the vital importance of Sneed’s testimony and the lack of other evidence linking Mr. Glossip to the murder, each of these *Brady* violations was material on its own and could have altered the result of the trial. When considered together, these evidentiary suppressions cast serious doubt upon the reliability of Mr. Glossip’s conviction.

Napue violation: The Commission emphasized the importance of ethical behavior by prosecutors, stating that “[p]rosecutors have an ethical responsibility not merely to convict, but to ensure that justice prevails.” Commission Report at 71. Indeed, the Commission noted that “[t]he duties of a prosecutor to act in the interest of justice and to ensure due process are even more important when a life hangs in the balance.” *Id.* at 87. Notably, in cataloguing potential forms of prosecutorial misconduct, the Commission specifically included “[a]llowing witnesses, who prosecutors know (or should know) are not truthful to testify.” *Id.* at 83 (quoting report of the Oklahoma Justice Commission).

In Mr. Glossip’s case, the State knowingly permitted its star witness to testify untruthfully. Sneed testified that he had never seen a psychiatrist, when in fact he had been treated for a mental health disorder by a prison psychiatrist and been prescribed lithium. See Br. for Pet. at 9–10; Pet. App. 58a–60a (Duncan Report at 11–13). The recently discovered notes of the lead prosecutor reveal that she knew that Sneed had been treated by the psychiatrist and prescribed lithium, yet she did nothing to correct his false responses to her questions on the stand. Br. for Pet. at 9–10.

This appears to be a straightforward violation of the Due Process Clause under *Napue v. Illinois*, which

held that the State “may not knowingly use false evidence, including false testimony, to obtain a tainted conviction.” 360 U.S. at 269. A conviction obtained through the knowing use of false testimony must be set aside if there is “any reasonable likelihood” that the false testimony could “have affected the judgment of the jury.” *Id.* at 271. Here, there is at least a “reasonable likelihood” that Sneed’s false testimony affected the outcome of the trial because he was the seminal witness. Yet the jury was unaware of critical information that had a direct bearing on his memory and credibility. The State’s alleged actions in this case, therefore, are precisely the sort of prosecutorial misconduct that the Commission found can undermine the reliability of a capital conviction.

II. THE FLAWS AND OMISSIONS IN MR. GLOSSIP’S CASE SHOULD BE CONSIDERED COLLECTIVELY.

The foregoing inventory of significant flaws in Mr. Glossip’s case is striking because any one of them is sufficient to call into question the reliability of his conviction. These irregularities should be considered collectively, however, not item-by-item. The jury considered the totality of the evidence put before it, and the reliability of its verdict must be considered in light of the totality of the evidentiary gaps that have been exposed, the problems with the testimony presented at trial, and the cumulative effect of those errors.

The Commission found that there is no “one cause of wrongful convictions.” Commission Report at 42. They are “most often” the result of “a combination of factors that implicate multiple components and actors within the criminal justice system, as well as external factors.” *Id.* Where, as here, multiple errors occur in a single case, this Court has instructed that such errors must be “considered collectively, not item by item.”

Kyles v. Whitley, 514 U.S. 419, 436 (1995) (discussing suppression of evidence); *id.* at 421–22 (reversing conviction because the “net effect” of the evidence withheld “raises a reasonable probability that its disclosure would have produced a different result”); see *Wearry v. Cain*, 577 U.S. 385, 394 (2016) (per curiam) (*Kyles* requires “a ‘cumulative evaluation’ of the materiality of wrongfully withheld evidence”) (quoting *Kyles*, 514 U.S. at 441).

The wrongs in Mr. Glossip’s case implicate many components and actors within Oklahoma’s criminal justice system, and the “net effect” of those wrongs is to undermine the integrity of his conviction. The Commission found that wrongful convictions can be caused by errors of omission, such as failures by police and investigators to collect or retain pertinent evidence and failures by prosecutors to disclose material exculpatory evidence, as required by *Brady*. Wrongful convictions can also be caused by errors of commission, such as tunnel vision and suggestive interrogations by law enforcement officials and misconduct by prosecutors. All of the foregoing errors occurred in Mr. Glossip’s case, due to the neglect, carelessness, and intentional acts of many different individuals. Taken together, these errors seriously undermine confidence that the jury reached the correct result—as the State itself has now acknowledged.

* * * * *

The Commission members—both supporters and opponents of the death penalty—all “agreed that, at a minimum, those who are sentenced to death should receive this sentence only after a fair and impartial process that ensures they deserve the ultimate penalty of death.” Commission Report at vii. The Commission recommended a moratorium on the death penalty in Oklahoma because “the evidence demonstrates that

the death penalty, even in Oklahoma, has not always been imposed and carried out fairly, consistently, and humanely, as required by the federal and state constitutions.” *Id.* Mr. Glossip’s case illustrates many of the shortcomings that the Commission identified in Oklahoma’s system for handling capital cases, and those shortcomings undermine the reliability of his conviction and demonstrate the continuing importance of the Commission’s work and the need to implement its recommendations.

CONCLUSION

For the foregoing reasons, the decision of the Oklahoma Court of Criminal Appeals should be reversed.

Respectfully submitted,

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