

No. 22-7466

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IN THE  
*Supreme Court of the United States*

RICHARD EUGENE GLOSSIP,  
*Petitioner,*

v.

OKLAHOMA,  
*Respondent.*

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

**BRIEF OF THE AMERICAN CIVIL LIBERTIES  
UNION, AMERICAN CIVIL LIBERTIES UNION  
OF OKLAHOMA, AND THE HOWARD  
UNIVERSITY SCHOOL OF LAW'S CIVIL  
RIGHTS CLINIC AS *AMICI CURIAE* IN  
SUPPORT OF PETITIONER**

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## INTERESTS OF AMICI CURIAE<sup>1</sup>

The American Civil Liberties Union Foundation (“ACLU”) is a national nonprofit, nonpartisan organization with approximately 2 million members and supporters dedicated to the principles of liberty and equality embodied in the Constitution. In support of those principles, the ACLU has appeared before this Court on numerous occasions, both as direct counsel and as an amicus. The ACLU has filed amicus briefs in a broad range of civil liberties, civil rights, and criminal procedure cases before this Court, including *Brown v. Board of Education*, 347 U.S. 483 (1954), *Miranda v. Arizona*, 384 U.S. 436 (1966), *Shuttlesworth v. City of Birmingham*, 394 U.S. 147 (1969), *Batson v. Kentucky*, 476 U.S. 79 (1986) and, as regards *Brady v. Maryland*, 373 U.S. 83 (1963), in *Connick v. Thompson*, 563 U.S. 51 (2011) (determining prosecutor’s liability under 42 U.S.C. § 1983 for violation of *Brady*). The ACLU of Oklahoma is a statewide affiliate of the national ACLU.

Howard University School of Law is the nation’s first historically Black law school. For more than 150 years since its founding during Reconstruction, the law school has worked to train “social engineers”

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<sup>1</sup> Under Supreme Court Rule 37.6, counsel for *amici curiae* state that no counsel for a party authored this brief in whole or in part. No counsel or party made a monetary contribution intended to fund the preparation or submission of this brief, and no person other than *amici* or their counsel made such a contribution.

The arguments presented in this brief are made on behalf of the Civil Rights Clinic—not the Howard University School of Law or Howard University.

devoted to the pursuit of human rights and racial justice. As part of this mission, the Howard University School of Law’s Civil Rights Clinic advocates on behalf of clients and communities fighting for the realization of civil rights guaranteed by the U.S. Constitution—including the rights of criminal defendants.

This case involves the basic duty of prosecutors to disclose favorable evidence in its possession to the accused and to correct the false testimony of its witnesses. At bottom, what is at stake is whether “criminal trials [will be] fair.” *Brady*, 373 U.S. at 87. These matters are of great interest to *amici* and their members.

### SUMMARY OF ARGUMENT

Since 1998, Richard Glossip has been incarcerated by the State of Oklahoma—mostly on death row—on the basis of testimony offered by Justin Sneed, the star witness for the prosecution. The State now concedes that it violated *Brady v. Maryland*, 373 U.S. 83 (1963), and *Napue v. Illinois*, 360 U.S. 264 (1959), when it withheld evidence that critical elements of Mr. Sneed’s testimony were false, failed to correct that testimony, and only recently disclosed the evidence in its possession that conclusively impeached the testimony. In fact, the State not only concedes the *Brady* and *Napue* errors—it now asks this Court to “reverse and remand with instructions to vacate the judgment of conviction and order a new trial.” State Br. 52. The State concludes that its constitutional errors in this case mean that the underlying “decision cannot stand.” *Id.* at 2. *Amici* agree with Petitioner and the State that the serious prosecutorial misconduct



displayed in Mr. Glossip's case requires reversal to vacate his conviction.

*Amici* write to situate Mr. Glossip's case within the larger context of *Brady* and *Napue* violations endemic to Oklahoma and to underscore the dramatic impact these violations have had on the many citizens who have been wrongfully convicted as a result. For more than six decades, prosecutors in Oklahoma have failed to follow two of the best-known rules of constitutional procedure: the government must disclose to the accused any material exculpatory evidence in its possession, *Brady*, 373 U.S. at 86, and the government may not knowingly use false evidence to secure a conviction, *Napue*, 360 U.S. at 269.

*Brady* and *Napue* violations continue to plague prosecutors' offices across the nation. But Oklahoma's history, particularly that of the District Attorney's Office that prosecuted Mr. Glossip, stands out. Time after time, Oklahoma prosecutors have violated these precedents, despite repeated notice that their actions were not in compliance with the U.S. Constitution.

*Brady* violations are by their nature difficult to detect because defendants generally lack knowledge of evidence withheld by the prosecution. But even the number of known violations in Oklahoma is shocking, and in particular the number of violations in the specific jurisdiction where Mr. Glossip was tried. As *amici* document below by reference to the National Registry of Exonerations, of 48 false convictions in Oklahoma, an alarming 24 were caused either by the State withholding exculpatory evidence, failing to correct false testimony, or both.

The Oklahoma County District Attorney's Office, led by Bob Macy during Mr. Glossip's first trial in 1998, is responsible for a disturbing number of these wrongful convictions. In a span of two decades, Mr. Macy's administration prosecuted five of the innocent people later exonerated from Oklahoma prisons based on *Brady* and/or *Napue* error. *Amici* describe some of those cases below.

Mr. Glossip's case cries out for *Brady* and *Napue* relief and a clear message from the Court that violations of their core principles will not be tolerated. *See, e.g., Kyles v. Whitley*, 514 U.S. 419, 440 (1995) ("The prudence of the careful prosecutor should not [] be discouraged.").

The decision below should be reversed.

### STATEMENT

As detailed further in Petitioner's and the State's Brief, in 1997, Justin Sneed used a baseball bat to bludgeon to death Barry Van Treese in a guest room of the Oklahoma City Best Budget Inn that Van Treese owned. J.A. 982-983. Mr. Sneed pleaded guilty and received a sentence of life without parole, escaping a sentence of death by implicating Petitioner Richard Glossip. Mr. Sneed accused Mr. Glossip, the hotel manager, of hiring Mr. Sneed, the handyman, to commit the murder for \$10,000.

Mr. Glossip had no prior history of violence. After Mr. Sneed was arrested for the murder, he did not immediately implicate Mr. Glossip. Only after the police told Mr. Sneed repeatedly—six times—that Mr.

Gossip had implicated him in the murder did Mr. Sneed claim that Mr. Gossip was involved. J.A. 654-96.

Mr. Gossip was tried twice, twice convicted, and twice sentenced to death for the murder. In the 1998 trial, his attorney provided ineffective assistance of counsel, including by failing to show the jury the video of Mr. Sneed's interrogation in which the police pressured him to implicate Mr. Gossip. J.A. 26-28.

Mr. Sneed's statements accusing Mr. Gossip kept shifting, including who did what, when and where. His account alternated between claiming a plot by Mr. Gossip to rob Van Treese and one to murder him so that Mr. Gossip alone could run the hotel. *Compare* J.A. 654-96 *with* J.A. 675.

On direct examination at the second trial, the State asked Mr. Sneed if he had been "placed on any type of prescription medication" after his arrest. J.A. 312. Mr. Sneed answered:

When I was arrested I asked for some Sudafed because I had a cold, but then shortly after that somehow they ended up giving me Lithium for some reason. I don't know why. I never seen no psychiatrist or anything.

*Id.* at 312-13. As the State knew then, and concedes now, this testimony was false. And the State possessed the medical records contradicting it—records which suggested that Mr. Sneed had a serious mental illness that, coupled with his drug use, could make him violent and paranoid.

But neither Mr. Glossip nor his attorneys knew of these records—and the *Brady* violation they revealed—until January 2023. Then, following the prosecution’s disclosure of seven new banker’s boxes of materials in late 2022,<sup>2</sup> the prosecution disclosed a note from an eighth box that it had previously deemed work product. The prosecutor note stated that Mr. Sneed told the prosecutors, between the first and second trials, that he had been seeing “Dr. Trumpet” and was “on [l]ithium.” J.A. 700, 929, 975.

Mr. Glossip’s attorneys then promptly learned the following: 1) Dr. Larry Trombka was a psychiatrist at the jail where Mr. Sneed had been incarcerated; 2) he had diagnosed Mr. Sneed with bipolar disorder, for which he prescribed the lithium; and 3) in Dr. Trombka’s opinion, methamphetamine use can cause a person with bipolar disorder to become “more paranoid or potentially violent.” J.A. 903, 932, 968.

As the lower court observed, without Mr. Sneed’s testimony, Mr. Glossip could not have been charged with murder. J.A. 24. Apart from Mr. Sneed’s testimony at Mr. Glossip’s trial, the “State’s evidence was circumstantial.” *Id.* As the State has repeatedly acknowledged, Mr. Sneed was the State’s “key witness.” *Id.* at 975-78.

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<sup>2</sup> The 2022 disclosures, too, were significant, and are the subject of a pending petition for certiorari also raising *Brady* error. *Glossip v. Oklahoma*, No. 22-6500. These disclosures include a memorandum demonstrating that the State coached Mr. Sneed to change his testimony to prevent his account from conflicting with the evidence.

After the State’s January 2023 disclosure, and with an execution date of May 2023 approaching, Mr. Glossip filed a petition for post-conviction relief, his fifth, in the court below. “The Attorney General of Oklahoma [] filed a response requesting that [the] Court vacate Glossip’s twenty-five-year-old murder conviction and sentence of death and send the case back to the district court for a new trial.” J.A. 981. The State acknowledged its failure to comply with *Brady* and *Napue* when it neither disclosed the records concerning Mr. Sneed’s psychiatric treatment nor corrected the false testimony about his treatment that it knew he gave in court. *Id.* at 990.

The court below denied relief, finding that Oklahoma’s withholding of evidence did not violate *Brady* or *Napue* despite the State’s concession to the contrary. *Id.* at 990-92. This Court stayed the execution and granted the writ of certiorari.

## ARGUMENT

### I. THIS COURT HAS CAREFULLY DEVELOPED ITS *BRADY* AND *NAPUE* JURISPRUDENCE TO ENSURE FAIR TRIALS.

“Society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly.” *Brady*, 373 U.S. at 87. To that end, this Court six decades ago set down a clear rule required by due process: the government must disclose to the accused any material exculpatory evidence in its possession. *Id.* at 86.

*Brady* is perhaps the best known decision in a line of cases dating back over a century reflecting this Court's longstanding commitment to the right to a fair trial guaranteed by the Fourteenth Amendment. In *Mooney v. Holohan*, 294 U.S. 103, 112 (1935), for example, this Court held that where the sole basis for a conviction was perjured testimony and the prosecutor had actual knowledge that the testimony was perjured, the conviction violated due process. *Id.* As the Court explained, that "requirement, in safeguarding the liberty of the citizen against deprivation through the action of the state, embodies the fundamental conceptions of justice which lie at the base of our civil and political institutions." *Id.*<sup>3</sup> See also *Caldwell v. Texas*, 137 U.S. 692, 697 (1891) (holding that "no state can deprive particular persons or classes of persons of equal and impartial justice under the law").

In short, "[t]he State's obligation is not to convict, but to see that, so far as possible, truth emerges." *Giles v. Maryland*, 386 U.S. 66, 98 (1967) (Fortas, J., concurring in the judgment). Thus, the prosecutor's "obligation [is] to govern impartially," *Berger v. United States*, 295 U.S. 78, 88 (1935), and the prosecution's interest is "not that it shall win a case, but that justice shall be done," *Kyles*, 514 U.S. at 439 (quoting *Berger*, 295 U.S. at 88).

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<sup>3</sup> The Court denied the writ of habeas corpus on procedural grounds because the petitioner had not sought habeas relief in the state courts or showed it was unavailable. *Mooney v. Holohan*, 294 U.S. 103, 115 (1935).

In 1935, the Court reversed a conviction obtained through the misconduct of a United States Attorney who, among other things, “misstat[ed] the facts” in his questioning of witnesses and engaged in arguments “calculated to mislead the jury.” *Berger*, 295 U.S. at 84-85. That same year, the Court recognized that a state’s use of perjured testimony to obtain a conviction, and its withholding of evidence impeaching the perjured testimony, violated the Due Process Clause. *Mooney*, 294 U.S. at 110-11.

Following *Berger* and *Mooney*, the Court has regularly relied on the Due Process Clause to grant relief to prisoners convicted on the basis of uncorrected false or misleading testimony of government witnesses, including when the prosecutor withheld evidence that the testimony was false. *See Pyle v. Kansas*, 317 U.S. 213, 216 (1942) (citing *Mooney* and reversing habeas denial by state supreme court, based on “allegations that ... imprisonment resulted from perjured testimony, knowingly used by the State authorities to obtain his conviction, and from the deliberate suppression by those same authorities of evidence favorable to him”); *Alcorta v. Texas*, 355 U.S. 28, 31 (1957) (citing *Mooney* and reversing state high court because of state’s use of testimony that “gave the jury [a] false impression” where state knew of the falsity and withheld notes documenting it).

Building on these precedents, in *Napue*, this Court clarified that the constitutional bar against a state’s use of false testimony applies with equal force to testimony relevant “only to the credibility of the witness.” 360 U.S. at 269. In *Napue*, a key witness testified that the prosecutor had promised him no

benefit for his testimony when in fact he had promised to recommend that the witness's sentence be reduced. *Id.* at 267. The Court reasoned that the “principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, ... does not cease to apply merely because the false testimony goes only to the credibility of the witness.” *Id.* at 269; *see also Giglio v. United States*, 405 U.S. 150, 154-55 (1972) (citing *Napue* and granting new trial because codefendant falsely testified that prosecutors did not tell him he would not be prosecuted if he testified against defendant).

*Brady*, in turn, held that “suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” 373 U.S. at 87. The withheld evidence in *Brady* was the confession of a co-defendant in a capital murder case to being the party who actually killed the victim. *Id.* at 84. This Court has frequently found *Brady* violations and issued rulings clarifying its scope and application.<sup>4</sup>

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<sup>4</sup> The Court later rescinded *Brady*'s requirement that the accused “request” the exculpatory evidence. *See United States v. Agurs*, 427 U.S. 97, 114 (1976) (considering but rejecting *Brady* claim based on impeachment evidence never requested); *United States v. Bagley*, 473 U.S. 667, 682 (1985) (holding that prejudice standard, requiring showing of “reasonable probability” of different outcome but for failure to disclose, applies in cases of specific requests, general requests, and non-requests alike).



The Court has also clarified that the “disclosure” required under *Brady* is strict, and not excused by arguments that the defendant should have been aware without disclosure. *See Banks v. Dretke*, 540 U.S. 668, 695-96 (2004) (citing *Strickler v. Greene*, 527 U.S. 263, 284 & n.26 (1999)). In *Banks*, the Court explained, its “decisions lend no support to the notion that defendants must scavenge for hints of undisclosed *Brady* material when the prosecution represents that all such material has been disclosed.” *Id.* at 695. The *Banks* Court rejected an argument that the defendant had failed to track down evidence, explaining that a “rule thus declaring [the] ‘prosecutor may hide, defendant must seek,’ [was] not tenable in a system constitutionally bound to accord defendants due process.” *Id.* at 696.

In sum, *Napue* and *Brady* are bedrock cases that enforce the constitutional demand “implicit in any concept of ordered liberty” that criminal trials must be fair, and to that end, these rules must be strictly enforced. *Napue*, 360 U.S. at 269. The search for truth, and the avoidance of wrongful convictions, demand no less.

**II. OKLAHOMA PROSECUTORS HAVE FOR MANY YEARS THWARTED *BRADY* AND *NAPUE*, BUT NONE SO EGREGIOUSLY AS THE OFFICE THAT PROSECUTED MR. GLOSSIP.**

**A. The *Brady* and *Napue* violations here are the legacy of a corrupt prosecutor's office.**

The due process violations in this case were not isolated. As the Tenth Circuit has recognized, Bob Macy, the prosecutor who headed the office that prosecuted Mr. Glossip and set the tone, engaged in “persistent misconduct . . . [that] has without doubt harmed the reputation of Oklahoma’s criminal justice system and left the unenviable legacy of an indelibly tarnished legal career.” *Duckett v. Mullin*, 306 F.3d 982, 994 (10th Cir. 2002). From 1980 to 2001, Mr. Macy oversaw an office plagued by misconduct, and tainted numerous criminal trials, including Mr. Glossip’s in 1998. “Macy was appointed Oklahoma County district attorney in 1980 by then-Gov. George Nigh.”<sup>5</sup> He was re-elected “five times before retiring in 2001 for health reasons.”<sup>6</sup> Mr. Glossip’s initial trial took place during Mr. Macy’s tenure, see *Glossip v. State*, 29 P.3d 597, 598 (Okla. Crim. App. 2001), and the 2004 retrial was just three years after Mr. Macy left office, while his legacy was still very much alive.

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<sup>5</sup> *Longtime Okla. prosecutor Bob Macy dies at age 81*, Public Radio Tulsa (Nov. 20, 2011).

<sup>6</sup> *Id.*

Early in Mr. Macy's career, his office was embroiled in controversy after it was discovered that prosecutors unlawfully obtained convictions through the testimony of Joyce Gilchrist, a forensic scientist who engaged in a pattern of dishonesty and withholding of exculpatory evidence. In one case, Ms. Gilchrist "provided the jury with evidence implicating [a defendant] in the sexual assault of the victim which she knew was rendered false and misleading by evidence withheld from the defense." *Mitchell v. Gibson*, 262 F.3d 1036, 1064 (10th Cir. 2001) (quoting district court finding). The defendant was "convicted . . . of rape and forcible anal sodomy despite evidence . . . indicating that no such assault had taken place." *Id.* In another case, Ms. Gilchrist was found to have "altered lab reports and handwritten notes in an effort to prevent detection of misconduct." *McCarty v. State*, 114 P.3d 1089, 1092-94 (Okla. Crim. App. 2005) (referencing district court findings).

Mr. Macy's office's repeated use of Ms. Gilchrist's testimony called into question the validity of multiple convictions and demonstrated a disturbing pattern of abuse. *See, e.g., Pierce v. Gilchrist*, 359 F.3d 1279, 1282-83, 1301 (10th Cir. 2004) (denying dismissal of civil rights claims against Ms. Gilchrist and Mr. Macy based on Ms. Gilchrist's false testimony and Mr. Macy's collaborative pattern of withholding evidence); *see also id.* at 1283 ("Ms. Gilchrist's and Mr. Macy's behavior reflects a pattern and practice of . . . securing convictions on the basis of falsified or misleading evidence."); *McCarty v. State*, 765 P.2d 1215, 1218-19 (Okla. Crim. App. 1988) (vacating conviction because

Ms. Gilchrist gave improper testimony that “appellant was in fact present” for violent crime without knowledge or supporting science); *cf. Bryson v. Macy*, 611 F. Supp. 2d 1234, 1261,1267 (W.D. Okla. 2009) (rejecting summary judgment argument by Ms. Gilchrist in § 1983 action brought by victim of false rape conviction for bad-faith denial of access to exculpatory evidence, but granting motion of Mr. Macy due to lack of proof that he “personally participated in the alleged wrongful acts that violated plaintiff’s due process rights under the Fourteenth Amendment”), *aff’d*, 627 F.3d 784 (10th Cir. 2010).

The constitutional violations by Mr. Macy’s office were by no means limited to Ms. Gilchrist’s work. Reviewing courts frequently issued opinions critiquing Mr. Macy’s misconduct in summations, for example. *See, e.g., Hooks v. Workman*, 606 F.3d 715, 734 (10th Cir. 2010) (critiquing Mr. Macy and his fellow prosecutor’s “misstatements of Oklahoma law” in summation); *Hooks v. State*, 19 P.3d 294, 314, 316 nn.51 & 55 (Okla. Crim. App. 2001) (similar), *overruled on other grounds* in part by *Easlick v. State*, 90 P.3d 556 (Okla. Crim. App. 2004); *McCarty*, 765 P.2d at 1220-21 (holding that numerous “improper prosecutorial comments” by Mr. Macy were grounds for a new trial).<sup>7</sup>

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<sup>7</sup> *See also* Ken Armstrong, ‘Cowboy Bob’ Ropes Wins--But at Considerable Cost, *Chi. Trib.* (Jan. 10, 1999); Mark Fuhrman, *Death and Justice: An Expose of Oklahoma’s Death Row Machine* 232 (2003) (“Bob Macy created a machine for prosecuting death penalty cases whose ambition seems to have been racking up as many convictions as possible rather than seeing that justice is done.”).

*Brady* and *Napue* violations were also a common occurrence in Mr. Macy's office. In *Douglas v. Workman*, for example, the office withheld evidence that the testimony of the State's lynchpin identification witness was false. 560 F.3d 1156, 1163-65 (10th Cir. 2009). The witness testified falsely that he expected no benefit for his testimony when in fact the District Attorney's Office had promised him a benefit and, in fact, delivered on that promise after the trial. *Id.* The Tenth Circuit found the withheld evidence "was strong impeachment evidence going to the credibility of the key witness." *Id.* at 1187. As here, the evidence was withheld for years after the trial. *Id.* at 1168 (noting disclosure in 2004 of impeachment evidence from codefendant trials in 1995 and 1997); *id.* at 1159 n.1 (trial dates); *id.* at 1168 (disclosure). The court granted habeas relief because Mr. Macy's office engaged in "deliberate deception of a court and jurors by the presentation of known false evidence" and "took affirmative steps, [after the trial was completed], to cover up" his misconduct. *Id.* at 1190 (citation omitted).

Similarly, in *Bowen v. Maynard*, Mr. Macy's office withheld impeachment material. 799 F.2d 593, 613 (10th Cir. 1986). The court found "that the only identification evidence against Bowen was significantly impeachable with the withheld material." *Id.* at 611. Had the exculpatory evidence "been disclosed to the defense, the backbone of the State's case might well have been irretrievably broken." *Id.*; see also *Rogers v. State*, 285 P.3d 715, 718 (Okla. Civ. App. Div. 2012) (recounting *Brady* violation in 1999 Oklahoma

County case where state withheld evidence affecting credibility of police witness).

Throughout his career, Mr. Macy stood out amongst local prosecutors for striking “foul” blows to secure convictions. *Duckett*, 306 F.3d at 994. His persistent failure to follow this Court’s mandates earned him opprobrium in both the court of law and public opinion, with one Harvard study determining that nearly a third of the over 50 capital sentences he secured were won through prosecutorial misconduct.<sup>8</sup> The *Brady* and *Napue* violations committed in Mr. Glossip’s case—failing to disclose critical impeachment evidence related to the prosecution’s star fact witness—fit into the pattern of *Brady* and *Napue* violations during Bob Macy’s tenure.

**B. *Brady* and *Napue* violations in Oklahoma reach far beyond those committed by the Macy administration.**

The pattern of disregard for *Brady* and *Napue* is not limited to Mr. Macy’s administration but has run statewide across decades.

Mr. Macy’s immediate predecessor in the Oklahoma County District Attorney’s Office was found to have obtained murder convictions and death sentences against two codefendants based on false accomplice testimony and withholding of exculpatory evidence. *See Binsz v. State*, 675 P.2d 448, 449 (Okla. Crim. App.

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<sup>8</sup> See Fair Punishment Project, *America’s Top Five Deadliest Prosecutors* 8 (2016), [https://www.dpic-cdn.org/production/documents/FairPunishmentProject-Top5Report\\_FINAL\\_2016\\_06.pdf](https://www.dpic-cdn.org/production/documents/FairPunishmentProject-Top5Report_FINAL_2016_06.pdf).

1984) (granting relief from first degree murder conviction). The prosecutor made a plea deal with its star witness, concealed it, and then failed to correct the witness when she testified she had no deal. *Id.* at 449-50. As here, “without [the accomplice] testimony, the State lacked direct evidence that” the defendant was “involved[.]” *Id.* at 450.

In Custer County, prosecutors obtained a conviction and death sentence by withholding “photographs of the crime scene at odds with the State’s theory of the case, reports on other suspects and impeachment evidence.” *State v. Munson*, 886 P.2d 999, 1002 (Okla. Crim. App. 1994). As the court below found of the evidence at issue here, the State “simply contend[ed] . . . that this [withheld] evidence [was] not exculpatory.” *Id.* See also *Hall v. State*, 650 P.2d 893, 899 (Okla. Crim. App. 1982) (finding perjured testimony of “critical” witness in Pittsburg County “went directly to the credibility of a key witness in the case” and granting *Napue* relief).

The erroneous notion that “the State may hide and the defense must seek” evidence is what guided prosecutors in a Pontotoc murder case first tried in 1985, in which the State withheld “substantial impeachment and exculpatory evidence,” including evidence that corroborated the defendant’s alibi. *Fontenot v. Allbaugh*, 402 F. Supp. 3d 1110, 1153-54, 1160 (E.D. Okla. 2019) (critiquing the state’s claim in 2017 to have “found” records it had previously said were “unavailable” from 1985 trial), *aff’d sub nom Fontenot v. Crow*, 4 F.4th 982, 1081 (10th Cir. 2021) (finding the “cumulative impact of the favorable evidence discussed above is sufficient to create reasonable doubt”

in discussing verdict of “highly questionable validity”), *cert. denied*, 142 S. Ct. 2777 (2022).

A Tulsa County death-penalty case was similarly tainted by the State’s withholding of impeachment evidence. *See Browning v. Trammell*, 717 F.3d 1092 (10th Cir. 2013). There, the State withheld evidence that the State’s “most important witness at trial[] had been diagnosed with a severe mental disorder.” *Id.* at 1094. The court found the State’s withholding prevented the accused from attacking the witness’s “credibility and portray[ing] her as a participant in the crime.” *Id.* at 1108.

In a 2008 assault prosecution leading to a sentence of life imprisonment, the State withheld evidence of the “primary witness[’s]” pending “drug charges, plea agreement and prior felony conviction contrary to *Brady*.” *Baker v. State*, 238 P.3d 10, 11 (Okla. Crim. App. 2010). The court found the withheld evidence “went directly to [the witness’s] bias, credibility and motivation for testifying.” *Id.* at 12. The court warned that [g]amesmanship in discovery will not be condoned.” *Id.*

And this is only the tip of the iceberg.<sup>9</sup> In short, the constitutional wrongdoing at issue in this case has

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<sup>9</sup> *See also Housley v. State*, 785 P.2d 315, 316 (Okla. Crim. App. 1989) (granting *Brady* relief in Tillman County case due to withholding of criminal records of three witnesses because “[w]ithout the testimony of these witnesses, it is very likely that both Appellants would have been acquitted”); *Scott v. Mullin*, 303 F.3d 1222, 1232 (10th Cir. 2002) (granting habeas relief in capital case from McIntosh County because state withheld evidence that



been all too common in Oklahoma. And that fact only underscores the importance of this Court strongly condemning the prosecutorial misconduct at issue here.

### **III. THE COURT'S INTERVENTION IS NECESSARY NOT ONLY TO RECTIFY THE VIOLATIONS IN THIS CASE, BUT TO PREVENT FUTURE VIOLATIONS.**

*Brady* and *Napue* violations are especially pernicious because they can lead to the wrongful conviction of innocent people. In fact, such violations have been major contributors to the wrongful convictions of defendants in Oklahoma and elsewhere. Information from the National Registry of Exonerations (“the Registry” or “NRE”), which collects and analyzes information about exonerations,<sup>10</sup> sheds light on the tragic errors that result from such violations.

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“could have been used to impeach” one witness and “could have cast serious doubt on” that of three others).

<sup>10</sup> The Registry defines exoneration as follows: “A person has been exonerated if he or she was convicted of a crime and, following a post-conviction re-examination of the evidence in the case, was relieved of all the consequences of the criminal conviction, and either: (1) was declared to be factually innocent by a government official or agency with the authority to make that declaration; or (2) received (i) a complete pardon by a governor or other competent authority, whether or not the pardon is designated as based on innocence, or (ii) an acquittal of all charges factually related to the crime for which the person was originally convicted, in a court of the jurisdiction in which the person was convicted, or (iii) a dismissal of all charges related to the crime for which the person was originally convicted, by a court or by a prosecutor with the authority to enter that dismissal. The pardon, acquittal, or dismissal must have occurred after evidence of

To measure the impact of *Brady* and *Napue* violations in Oklahoma, *amici* have examined all the exonerations in Oklahoma listed in the Registry for which a court has found a *Brady* and/or *Napue* error.<sup>11</sup> Of 48 total exonerations identified in Oklahoma in the Registry, at least half—24 cases—involved some kind of *Brady* and/or *Napue* violation. *Amici* provide the information for those cases below.

These 24 defendants spent a combined total of 332 years wrongly incarcerated before they were exonerated. They have spent an average of 14 years wrongly incarcerated. Their ages at conviction range from 19 to 50. The oldest conviction dates back to 1936 and the most recent exoneration was in 2023. Oklahoma prosecutors routinely withheld exculpatory witness testimony, impeachment evidence, and alternative

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innocence became available that either (i) was not presented at the trial at which the person was convicted; or (ii) if the person pled guilty, was not known by the defendant and the defense attorney at the time the plea was entered. The evidence of innocence need not be an explicit basis for the official act that exonerated the person. A person who otherwise qualifies has not been exonerated if there is unexplained physical evidence of that person's guilt." NRE, *Glossary*, <https://www.law.umich.edu/special/exoneration/Pages/glossary.aspx> (last visited Apr. 30, 2024).

<sup>11</sup> "The Registry provides detailed information about every known exoneration in the United States since 1989—cases in which a person was wrongly convicted of a crime and later cleared of all the charges based on new evidence of innocence. The Registry also maintains a more limited database of known exonerations prior to 1989." NRE, *Our Mission: About the Registry*, <https://www.law.umich.edu/special/exoneration/Pages/mission.aspx> (last visited Apr. 30, 2024).

suspects. Prosecutors have repeatedly failed to correct false testimony by key witnesses.

Below is a table of these 24 Oklahoma exonerations that involved a *Brady* and/or *Napue* violation. Take, for example, the case of Glynn Simmons, who spent 48 years, nearly half a century, in prison before a court vacated his conviction after evidence surfaced that an important police report showing that the victim had identified a different person in a lineup had been withheld from Simmons at trial.<sup>12</sup> Or the case of Michelle Murphy, who spent 19 years in prison after her infant child was murdered, where the prosecution withheld evidence that she did not match the blood found at the scene.<sup>13</sup>

The table below includes information drawn from the National Registry, supplemented by the specific *Brady* information withheld or *Napue* testimony that was not corrected, citation to any relevant court documents, legal decisions, or other primary sources, verifying the *Brady* and/or *Napue* error and the

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<sup>12</sup> See Section III, *infra* p. 29.

<sup>13</sup> See Section III, *infra* p. 27.

exoneration, and the number of years each exoneree spent in prison.<sup>14,15</sup>

Name (Age)	Yrs.	Exculpatory Evidence Withheld or False Testimony Uncorrected
Corey Atchison (19)	30	Police reports with eyewitness naming another suspect and statements of two witnesses contradicting Atchison’s involvement. <sup>16</sup>
Ricky Dority (39)	8	Video footage of police threatening harm to mother of key witness if he did not confess and implicate Dority. Failed to correct another witness’s

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<sup>14</sup> The “Yrs.” column provides the approximate number of years each individual spent wrongfully incarcerated from the date of conviction to the date of exoneration as reported by the Registry. This number is both over and under inclusive—it excludes the years individuals spent in prison from arrest to conviction and (in some cases) the time between release following a grant of relief and the eventual acquittal.

<sup>15</sup> Age is listed at the date of the reported crime as recorded in the Registry.

<sup>16</sup> *Atchison v. City of Tulsa*, No. 21-CV-286, 2022 WL 676975, at \*2-6, \*9 (N.D. Okla. Mar. 7, 2022) (noting that “Plaintiff was found actually innocent” and describing the suppression and fabrication of evidence that plagued the investigation and trial); *Oklahoma v. Atchison*, No. CF-1991-691, Order at 2 (Okla., Tulsa Cnty. Dist. Ct. May 26, 2021) (ordering that “Corey Atchison’s conviction for First Degree Murder is vacated, the case is dismissed, and no further proceedings can be or will be held against Mr. Atchison”).

Name (Age)	Yrs.	Exculpatory Evidence Withheld or False Testimony Uncorrected
		corroborating false testimony. <sup>17</sup>
Yancy Douglas (19)	14	Deal to assist the key witness with numerous legal difficulties in exchange for favorable testimony. Failed to correct testimony denying the existence of the deal. <sup>18</sup>
Adolph Munson (37)	10	Pre-testimony hypnosis of key witness; police reports containing evidence of other suspects in the case. <sup>19</sup>

<sup>17</sup> *Dority v. Oklahoma*, No. CF-2014-387, Order Dismissing Case With Prejudice at 1 (Okla., Sequoyah Cnty. Dist. Ct. Jan. 4, 2024) (concluding that “based on the evidence presented in the post-conviction application and during the course of the proceedings ... Mr. Dority has made a threshold showing of factual innocence of the crime of murder in the first degree”); Petitioner’s Amended and Supplemental Original Application for Post-Conviction Relief and Brief in Support at 17-23, *Dority v. Oklahoma*, No. CF-2014-387 (Okla., Sequoyah Cnty. Dist. Ct. Sept. 15, 2022) (describing facts, including threats to witness’s mother and police knowledge of falsity of testimony).

<sup>18</sup> *Douglas v. Workman*, 560 F.3d 1156, 1160 (10th Cir. 2009) (granting habeas relief and discussing withheld evidence and false testimony concerning key witness in the case); *see also Death Row Inmates Freed From Prison*, Associated Press (Oct. 5, 2009) (reporting that Douglas and Powell were released following a finding of prosecutorial misconduct).

<sup>19</sup> *State v. Munson*, 886 P.2d 999, 1002, 1004 (Okla. Crim. App. 1994). (finding that “a significant amount of evidence, including police reports and photographs, was not turned over to Munson

Name (Age)	Yrs.	Exculpatory Evidence Withheld or False Testimony Uncorrected
Clinton Potts (30)	3	Key witness's receipt of reward and favorable treatment in exchange for their testimony. <sup>20</sup>
Paris Powell (19)	12	Evidence that the key witness was intoxicated during the shooting. Failed to correct testimony denying existence of a deal, despite coercion for testimony in exchange for lesser charges. <sup>21</sup>
Jimmy Lee Baker (22)	1	Evidence of key witness's pending drug charges, plea agreement, and prior

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either before or during trial” and concluding “that Munson was deprived of his right to a fair trial and due process”); Mark Hutchison, *Jury Declares Man Wrongly Convicted Defendant Served 10 Years on Death Row*, Daily Oklahoman (Apr. 6, 1995).

<sup>20</sup> *Potts v. Oklahoma*, No. F-2010-2, Opinion (Okla. Crim. App. July 21, 2011) (granting a new trial in part due to withholding of evidence concerning key witness); *State ex rel. Okla. Bar Ass'n v. Ward*, 353 P.3d 509, 514 (2015) (describing withheld evidence); Dylan Goforth, *Case Dismissed in 2004 Killing*, MuskogeePhoenix.com (July 6, 2012) (noting that Potts would not be prosecuted again).

<sup>21</sup> *Douglas*, 560 F.3d at 1160 (granting habeas relief and discussing withheld evidence and false testimony concerning key witness in the case); see also *Death Row Inmates Freed From Prison*, Associated Press (Oct. 5, 2009) (reporting that Douglas and Powell were released following a finding of prosecutorial misconduct).

Name (Age)	Yrs.	Exculpatory Evidence Withheld or False Testimony Uncorrected
		felony conviction. <sup>22</sup>
David Bryson (28)	20	Prosecution lost forensic evidence, attempted to hide forensic evidence, and gave false forensic testimony. <sup>23</sup>
De'Marchoe Carpenter (17)	21	Coercion of key witnesses to identify Carpenter at the crime scene. <sup>24</sup>
Timothy	4	Presented misleading forensic

<sup>22</sup> *Baker v. State*, 238 P.3d 10, 11-12 (Ok. Ct. Crim. App. 2010) (“A review of the expanded record establishes that the State failed to disclose the victim’s pending drug charges, plea agreement, and prior felony conviction contrary to *Brady*...”); *see also* NRE, Jimmy Lee Baker, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4270> (Sept. 24, 2013).

<sup>23</sup> *Bryson v. Macy*, 611 F. Supp. 2d 1234, 1241-50 (W.D. Okla. 2009) (discussing dismissal of charges and false and missing evidence); *see also* Diana Baldwin, *Man free after charges dismissed in ‘82 kidnapping, sexual assault*, Oklahoman (May 29, 2003).

<sup>24</sup> *Oklahoma v. Carpenter*, No. PC-2016-497, Order Denying State’s Post-Conviction Appeal and Affirming Order Granting Post-Conviction Relief at 15-16 (Okla. Crim. App. Nov. 10, 2016) (upholding grant of post-conviction relief based on factual innocence and finding that evidence showed that witnesses “originally stated they did not see who fired the shots and only adopted the law enforcement version of events identifying [Carpenter and Scott] based on coercion and fear of being prosecuted personally”); *see also* *Carpenter v. Oklahoma*, No. CF-1994-4356, Order Granting Post-Conviction Relief (Okla., Tulsa Cnty. Dist. Ct. May 13, 2016).

Name (Age)	Yrs.	Exculpatory Evidence Withheld or False Testimony Uncorrected
Durham (28)		testimony. <sup>25</sup>
Dennis Fritz (22)	11	Videotape of defendant making exculpatory statements, polygraph, and another suspect's confession. Presented misleading forensic testimony. <sup>26</sup>
Edward Johnson (58)	2	Relied on a falsified police report concerning illicit drug use. <sup>27</sup>
Curtis	21	Relied on falsified DNA evidence.

<sup>25</sup> Julie DelCour, *New Trial Possible in Rape Case*, Tulsa World (Dec. 13, 1996) (reporting forensic tests showing DNA did not come from Durham); Bill Braun, *Rapist's Exhumation Requested // Attorney Says DNA Evidence Will Clear Client*, Tulsa World (Aug. 21, 1997) (reporting sentence was vacated); *see also* NRE, Timothy Durham, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3194> (last updated Nov. 28, 2016).

<sup>26</sup> *Gore v. State*, 119 P.3d 1268, 1272 (Okla. Crim. App. 2005) (“The results of the DNA testing excluded Williamson and Fritz as the donors of the sperm found in the victim and the case against them was ultimately dismissed.”); First Amended Complaint for Damages and Injunctive Relief, *Fritz v. City of Ada*, No. Civ-00-194-S (E.D. Okla. June 19, 2000) (describing exonerations and facts of the case).

<sup>27</sup> *Johnson v. City of Tulsa*, No. 12-CV-481, Opinion and Order, at 1 (N.D. Okla. Aug. 28, 2014) (noting that police officer “falsely indicated that he saw plaintiff throw a small amount of crack cocaine” during traffic stop); Docket, *Oklahoma v. Johnson*, No. CF-2008-6347 (Okla., Tulsa Cnty. Dist. Ct.) (showing dismissal of charges).



Name (Age)	Yrs.	Exculpatory Evidence Withheld or False Testimony Uncorrected
McCarty (20)		Failed to correct false testimony by expert witness. <sup>28</sup>
Michelle Murphy (17)	19	Blood samples from scene did not match Murphy's. Key witness's mental health problems and prior convictions. <sup>29</sup>

<sup>28</sup> *McCarty v. State*, 114 P.3d 1089, 1092 (Okla. Crim. App. 2005) (affirming finding of lower court that Joyce Gilchrest, a forensic expert “acting as an agent of the state. . . withheld evidence, *most likely* lost or intentionally destroyed important and potentially exculpable (or incriminating) evidence, provided flawed laboratory analysis and documentation of her work, testified in a manner that exceeded acceptable limits of forensic science, and altered lab reports and handwritten notes in an effort to prevent detection of misconduct” (footnote omitted)); *McCarty v. Gilchrist*, 646 F.3d 1281, 1283-84 (10th Cir. 2011) (noting state court findings and that McCarty was ultimately released from death row after nearly 19 years); *see also* Jay F. Marks & Ken Raymond, *Ex-Death Row Inmate a Free Man; Judge Calls Case Tainted by Misconduct*, *Oklahoman* (May 12, 2007).

<sup>29</sup> *Murphy v. City of Tulsa*, No. 15-CV-528, 2018 WL4088071, at \*1 (N.D. Okla. Aug. 27, 2018) (noting that charges were dismissed with prejudice); *Murphy v. Oklahoma*, No. CF-1994-4410, Journal Entry of Dismissal at 1 (Okla., Tulsa Cnty. Dist. Ct. Sept. 11, 2014) (finding that Murphy “made a *prima facie* showing of actual innocence”); Supplement to Application for Post-Conviction Relief at 3-15, *Murphy v. Oklahoma*, Case No. CF-94-4410 (Okla., Tulsa Cnty. Dist. Ct. Apr. 7, 2014) (describing failure to disclose lab report that excluded Murphy); *see also Mother Found Innocent of Infant's Death After 20 Years in Prison*, *NewsOn6.com* (Sept. 12, 2014) (reporting that a Tulsa County

Name (Age)	Yrs.	Exculpatory Evidence Withheld or False Testimony Uncorrected
Jeffrey Todd Pierce (23)	15	Relied on fabricated evidence by an expert witness. <sup>30</sup>
Thomas Ranes (41)	1	Relied on fabricated evidence to secure plea bargain. <sup>31</sup>
Jeffrey Rowan (26)	3	Various credibility issues of three key witnesses, including substance abuse and allegations of planting evidence. <sup>32</sup>

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District Judge found Murphy innocent and that her previous conviction had been reversed following subsequent DNA evidence); NRE, Michelle Murphy, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4504> (last updated Oct. 6, 2020).

<sup>30</sup> *Pierce v. Gilchrist*, 359 F.3d 1279, 1294-95 (10th Cir. 2004) (noting dismissal of criminal proceeding after court found Pierce factually innocent and discussing withholding of exculpatory evidence and fabrication of evidence by forensic chemist).

<sup>31</sup> Docket, *Oklahoma v. Ranes*, No. CF-2009-4654 (Okla., Tulsa Cnty. Dist. Ct.) (showing dismissal of charges); Complaint ¶¶ 38-50, *Ranes v. Hill*, No. 12-CV-517 (N.D. Okla. Sept. 14, 2012) (describing fabrication of evidence and subsequent grant of post-conviction relief); *see also* NRE, Thomas Ranes, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=6226> (last updated Apr. 28, 2022).

<sup>32</sup> *Rowan v. Oklahoma*, No. F-2009-385, Order Granting Motion for New Trial and Dismissing Appeal at 10 (Okla. Crim. App. June 3, 2011) (granting a new trial); State's Motion to Dismiss Without Prejudice, *Oklahoma v. Rowan*, CF-2008-337 (Okla., Pittsburgh Cnty. Dist. Ct. Jan. 23, 2012) (moving to dismiss case,

Name (Age)	Yrs.	Exculpatory Evidence Withheld or False Testimony Uncorrected
Malcolm Scott (17)	21	Coercion of key witnesses to identify Scott at the crime scene. <sup>33</sup>
Glynn Simmons (22)	48	Relied on false and misleading police report at trial. <sup>34</sup>
Harold Weatherly	23	Relied on fabricated evidence by an

citing substance abuse allegations against one witness and allegations of evidence planting against Deputy Sheriff); *see also* Rachel Petersen, *McAlester Man Released After 35-Year Prison Sentence is Overturned*, McAlester News-Capital (Jan. 25, 2012).

<sup>33</sup> *Oklahoma v. Carpenter*, No. PC-2016-497, Order Denying State’s Post-Conviction Appeal and Affirming Order Granting Post-Conviction Relief at 16 (Okla. Crim. App. Nov. 10, 2016) (upholding grant of post-conviction relief based on factual innocence and finding that evidence showed that witnesses “originally stated they did not see who fired the shots and only adopted the law enforcement version of events identifying [Carpenter and Scott] based on coercion and fear of being prosecuted personally”); *see also* *Carpenter v. Oklahoma*, Case No. CF-1994-4356, Order Granting Post-Conviction Relief (Okla., Tulsa Cnty. Dist. Ct. May 13, 2016).

<sup>34</sup> *Simmons v. Oklahoma*, No. CF-1975-551, Amended Order Granting Post-Conviction Relief Including All 8 Pages (Okla., Okla. Cnty. Dist. Ct. July 20, 2023) (finding *Brady* violation and ordering new trial); *see also* Colby Thelen, *Man With Vacated 1975 Murder Sentence May Not Be Retried, District Attorney Behenna Says*, News9.com (Sept. 11, 2023) (reporting DA conclusion that no retrial would be sought); NRE, Glynn Simmons, <https://www.law.umich.edu/special/exoneration/Pages/casetail.aspx?caseid=6668> (last updated Jan. 27, 2024).

Name (Age)	Yrs.	Exculpatory Evidence Withheld or False Testimony Uncorrected
(25)		expert witness. <sup>35</sup>
Ronald Keith Williamson (29)	11	Video recording of defendant's exculpatory statements to polygraph examiner, in context of alleged confession cases. <sup>36</sup>
John Weir (22)	1	Videotapes of conflicting prior statements by the victims. <sup>37</sup>

<sup>35</sup> Lois Romano, *Police Chemist's Missteps Cause Okla. Scandal*, Wash. Post (July 11, 2019) (describing falsified evidence in Weatherly trial); Certificate of Pardon, Harold Gene Weatherly (July 3, 2007); *see also* NRE, Harold Weatherly, <https://www.law.umich.edu/special/exoneration/Pages/casetail.aspx?caseid=5590> (Aug. 1, 2019).

<sup>36</sup> *Williamson v. Reynolds*, 904 F. Supp. 1529, 1556-64 (E.D. Okla. 1995) (finding *Brady* error due to this suppression, but also granting relief due to ineffective assistance of counsel), *aff'd Williamson v. Ward*, 110 F.3d 1508, 1520 (10th Cir. 1997) (reaching only the ineffectiveness claim); *Gore*, 119 P.3d at 1268 ("The results of the DNA testing excluded Williamson and Fritz as the donors of the sperm found in the victim and the case against them was ultimately dismissed."); *see also* First Amended Complaint for Damages and Injunctive Relief ¶¶ 34-132, *Fritz v. City of Ada*, No. Civ-00-194-S (E.D. Okla. June 19, 2000) (describing exonerations and facts of the case).

<sup>37</sup> Kim Alyee Marks, *Breaks Build for Convicted Child Molester Awaiting Retrial*, Daily Oklahoman (May 10, 1987) (reporting that court granted a new trial after all parties agreed that exculpatory evidence had been withheld); *Ex-Student Sues Lawyers in Child Molesting Case*, Daily Oklahoman (May 11, 1988) (reporting that Weir had been cleared of the molestation charges); Chris

Name (Age)	Yrs.	Exculpatory Evidence Withheld or False Testimony Uncorrected
Paul Goodwin (21)	33	Eyewitness testimony where witness said co-defendant fired the fatal shots; written statements by co-defendant saying that he fired the fatal shots. <sup>38</sup>
Clifford Henry Bowen (50)	5	Material concerning an early suspect in the case. <sup>39</sup>

As this table documents, prosecutors committed *Brady* and/or *Napue* violations in at least half of the Oklahoma exonerations identified in the registry (24

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Kinyon, *Physical Marks of Abuse Seen, Physician Says*, Daily Oklahoman (July 18, 1987) (describing videotapes of witnesses); Kim Alyee Marks, *Despite Ordeal, John Weir Still Believes in Justice System*, Daily Oklahoman (Aug. 23, 1987) (describing withheld evidence); *see also* NRE, John Weir, <https://www.law.umich.edu/special/exoneration/Pages/casedetailpre1989.aspx?caseid=389>.

<sup>38</sup> *Goodwin v. Page*, 418 F.2d 867 (10th Cir. 1969) (affirming grant of habeas relief and describing withheld evidence); *Goodwin v. Page*, 296 F. Supp. 1205, 1209 (E.D. Okla. 1969), *aff'd*, 418 F.2d 867 (10th Cir. 1969); *see also* James Purdy, *Oklahoma Prisoner Freed – Absolved of Crime After 30 Years in Prison*, Daily Herald (Mar. 9, 1969).

<sup>39</sup> *Bowen v. Maryland*, 799 F.2d 593, 595-96 (10th Cir. 1986) (granting habeas relief); *see also* Ray Robinson, *DA Drops Case Against Bowen*, News OK (July 31, 1987) (reporting that “the Oklahoma district attorney’s office announced ... it was dropping prosecution of Clifford Henry Bowen in connection with three drug-related slayings in 1980 at a city motel”).

out of 48 cases).<sup>40</sup> Mr. Macy’s office and many others across Oklahoma have repeatedly secured convictions of innocents by failing to disclose exculpatory evidence or to correct knowingly false testimony. And Mr. Macy’s office did the same in Mr. Glossip’s case.

*Brady* and *Napue* are not self-enforcing. These precedents help to secure fair trials only if prosecutors abide by them, and only if courts hold them accountable when they do not. “*Brady* violations have reached epidemic proportions in recent years.” *United States v. Olsen*, 737 F.3d 625, 631 (9th Cir. 2013) (Kozinski, J., dissenting) (citing cases).

Failing to adhere to *Brady* and *Napue* comes with enormous costs—to the accused who are wrongfully convicted, to the credibility of prosecutors who have the immense responsibility to enforce criminal statutes, and to the legitimacy of the criminal process. The Court should reaffirm that a prosecutor’s obligation is to ensure that justice is done and not to secure convictions by any means necessary.

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<sup>40</sup> While the registry identifies a larger number in this category, *amici* list only cases where it could locate a judicial decision finding these types of constitutional errors.

**CONCLUSION**

For these reasons, the Court should reverse the decision below.

Respectfully submitted,

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April 30, 2024