

In the
Supreme Court of the United States

ROLLAND G. SHOUP, II,

Petitioner,

v.

STATE OF INDIANA,

Respondent.

**On Petition for a Writ of Certiorari to the
Indiana Court of Appeals**

PETITION FOR A WRIT OF CERTIORARI

Michael J. Bruzzese
Counsel of Record
SMID LAW, LLC
12115 Visionary Way, Suite 174
Fishers, IN 46038
(773) 350-9828
mbruzzese@smidlaw.com

QUESTION PRESENTED

Whether a state may deprive a citizen of his right to due process and ignore this Court's ruling in *Brady v. Maryland*, 373 U.S. 83 (1963) by treating speeding infractions as civil matters rather than criminal matters.

LIST OF PROCEEDINGS

Indiana Supreme Court

Court of Appeals Case No. 22A-IF-00122

Rolland G. Shoup, II, *Appellant*, v.
State of Indiana, *Appellee*.

Date of Final Order: March 2, 2023

Court of Appeals of Indiana

No. 22A-IF-122

Rolland G. Shoup, II, *Appellant-Defendant*, v.
State of Indiana, *Appellee-Plaintiff*.

Date of Final Opinion: November 17, 2022

Marion County Superior Court

No. 49D22-2106-IF-23648

State of Indiana, *Plaintiff*, v.
Rolland G. Shoup, II, *Defendant*

Bench Trial Verdict: January 3, 2022

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PETITION FOR A WRIT OF CERTIORARI

Rolland G. Shoup, by and through Michael J. Bruzzese, counsel for Mr. Shoup on Petition to Transfer to the Supreme Court of Indiana below, respectfully petitions this court for a writ of certiorari to review the judgment of the Indiana Court of Appeals.



OPINIONS BELOW

The trial court's entry of judgment against Mr. Shoup, dated January 3, 2022, is included in the Appendix at App.29a. The memorandum opinion of the Indiana Court of Appeals, dated November 17, 2022, affirming the trial court's decision, is included in the Appendix at App.3a. The Order of the Indiana Supreme Court, dated March 2, 2023, denying Mr. Shoup's Petition for Transfer, is included in the Appendix at App.1a. No opinion herein was designated for publication.



JURISDICTION

The Supreme Court of Indiana denied the Petition for Transfer on March 2, 2023. By letter of the Clerk of Court dated June 5, 2023, Petitioner was provided 60 additional days in which to file a Rule 33.1 booklet petition. Mr. Shoup invokes this honorable Court's jurisdiction pursuant to 28 U.S.C. § 1257(a).



CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const., amend. XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States,; nor shall any Stat deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.



STATEMENT OF THE CASE

Over 50 years ago, this Court held in *Brady v. Maryland* 373 U.S. 83 (1963) that a prosecution must turn over all evidence that may exonerate a criminal defendant. This case presents the question of whether a State may ignore *Brady* by electing to treat speeding infractions as civil, rather than criminal matters. Does a prosecution by the State become a civil case, immune to the due process protections of *Brady*, simply because the State declares it so?

1. On June 22, 2021, Mr. Shoup was stopped by Clermont Police Department Officer John Mattingly, for allegedly traveling at fifty miles per hour in a thirty mile per hour zone (App.13a). Officer Mattingly

utilized both an in-car radar and a handheld radar to effect the stop. (App.13a).

The use of the in-car radar, a Python II, was not disclosed to the defense during pre-trial discovery despite information on any radar guns used in the stop being specifically requested, and this fact was made known to the trial court through testimony. (App.15a). Mr. Shoup's trial counsel highlighted the *Brady* violation to the trial court in closing argument stating, "the Defense was also unaware that the Python II was used that day until the testimony today." (App.24a).

The trial court ignored the State's failure to turn over exculpatory evidence to the defense, and found against Mr. Shoup and in favor of the State. (App.24a).

2. On appeal, Mr. Shoup argued that his due process rights had been violated by the State's discovery abuses, but the Indiana Court of Appeals held the issue had been waived. (App.5a). The Court of Appeals did not address the subject of fundamental error or the holding in *Brady* in its memorandum decision. The Indiana Supreme Court thereafter denied Mr. Shoup's petition for transfer on March 2, 2023. (App.1a).



REASONS FOR GRANTING THE PETITION

It is easy to dismiss the importance of the State's violations here because this matter is "just a speeding ticket." The question before this Court, however, is not one of the importance of speeding ordinances and their application, but rather one of the importance of an American citizen's fundamental right to due process and a fair trial. Though the potential deprivation of liberty may be comparatively small for conviction of a speeding infraction compared to that for a conviction for murder as was the issue in *Brady*, a defendant's right to a fair trial should be held inviolate regardless of the nature of the case.

It is not within a State's authority to simply declare one prosecution by the State is less important than another and, therefore, may be tried as a civil matter and ignore this Court's holding in *Brady*.

To avoid erroneous deprivations of the right to due process, this Court must clarify that infractions are criminal in nature, even if tried as civil matters, and that *Brady* requires a state to produce all evidence which may exculpate the defendant.

In *Brady v. Maryland*, this Court held that a prosecution's suppression of evidence favorable to an accused violates the defendant's rights to due process. 373 U.S. 83, 87 (1963). The *Brady* Court reasoned that, "society wins not only when the guilty are convicted but when criminal trials are fair." *Id.* For more than fifty years the holding in *Brady* has remained undisturbed for sound reasoning: a free nation must

guarantee fair trials and due process to its citizens if it is to remain a legitimate government.

Petitioner asks this Court to consider the logical extension of the *Brady* Court's reasoning: does society win if only criminal trials are fair or must all prosecutions by the State, even infractions, be fair?

Indiana treats speeding infractions as civil matters, but the State acknowledges the matters are criminal in nature, "they are enforced by the police; complaints are initiated and litigated by a prosecuting attorney on behalf of the state; and violators are fined by the government." *Cunningham v. State*, 835 N.E. 2d 1075, 1079 (Ind. Ct. App. 2005). In Indiana, those accused of a speeding infraction are guaranteed the right to a trial by jury in recognition of the criminal nature of the infraction. *Id.*

It follows that the *Brady* Rule must, therefore, apply to trials for speeding infractions in Indiana: the State must produce all potentially exculpatory evidence to the defense.

In the present case the State failed to produce documents, duly requested in discovery, related to the radar gun used by the arresting officer. The State produced documents related to one radar gun, but not documents related to a second radar gun the arresting officer had in his vehicle and used to record Petitioner's alleged speed:

Witness: The radar picks up [Petitioner] in a red GMC, traveling westbound, doing 50 miles an hour. I also have a — that was the in-car radar. I also have a secondary radar, which is hand-held.

(App.13a).

Witness: So the in-dash is a Python II — or the dash one is a Python II, and then also the handheld is going to be a Genesis VP.

(App.15a).

Petitioner's trial counsel immediately notes the State's discovery abuse, responding falsely to discovery requests indicating only a single radar gun was in use, in the record through the questioning the witness:

Defense Counsel: Okay. Because in the discovery that we requested from you and Mr. MacDougall, it was only stated that one radar gun was used, so I was unaware of the Python II that was used in the vehicle. Was that a recent discovery that you guys didn't think of?

Witness: No. . . .

(App.15a-16a).

In closing argument, Petitioner's counsel again brings the discovery abuse to the attention of the trial court:

Defense Counsel: That being said, the Defense was also unaware that the Python II was used that day until the testimony today.

(App.24a).

The Trial Court failed to address the error and found Petitioner guilty (App.26a).

On appeal to the Indiana Court of Appeals, Petitioner alleged the Trial Court's failure was fundamental error requiring reversal. In Indiana, an appell-

late court may address issues of fundamental error on appeal even when the issue is not raised at the trial court level. *Curtis v. State*, 948 N.E.2d 1143, 1148 (Ind. 2011). Assertions of fundamental error must be made in a party’s principal brief on appeal rather than raised for the first time in a reply brief. *Id.*

To qualify as fundamental error, an error must be so prejudicial to the rights of the defendant as to make a fair trial impossible’ and must ‘constitute a blatant violation of basic principles, the harm or potential for harm must be substantial, and the resulting error must deny the defendant fundamental due process.

Absher v. State, 866 N.E.2d 350, 355 (Ind. Ct. App. 2007) (quoting *Benson v. State*, 762 N.E.2d 748, 755 (Ind. 2002)).

Here, Petitioner properly raised the issue of fundamental error in his principal appellate brief. Section II is entitled, “[Petitioner] was stripped of his right to a fair trial.”

The argument cites *In re Pilot Project for Elec. News Coverage in Indiana Trial Cts.*, for the contention that it is the “fundamental duty” of the judicial system, “to ensure that every citizen receives his or her constitutionally guaranteed right to a fair trial.” 895 N.E.2d 1161, 1166 (Ind. 2006) (App.41a).

Petitioner contends that he, “was not given the fair opportunity of due process.” *Id.* The argument concludes that, “the judgment should be reversed on the ground of fundamental due process . . . ” *Id.* Nonetheless, the Court of Appeals held the issue was waived

stating, “[Petitioner] failed to allege fundamental error in his principal appellate brief, and therefore the issue is waived” (App.6a). The Court of Appeals holding is in error.

Petitioner’s argument does indeed lack the magic words, “fundamental error”, but unequivocally argues an error so prejudicial to Petitioner’s rights as to make a fair trial impossible within the meaning of *Absher*. Nothing in Indiana jurisprudence suggests that a Petitioner must specifically use the phrase “fundamental error” in order to appeal on such grounds. The Indiana Court of Appeals should have considered Petitioner’s argument on the merits rather than deeming the argument waived. The Indiana Court of Appeals failure to do so allows the trial court’s *Brady* error to go unchecked.

Indiana jurisprudence has twice failed Mr. Shoup, first in denying him a fair trial by failing to produce potentially exculpatory evidence and again for failing to recognize his assertion of being denied a fair trial was an allegation of fundamental error. Mr. Shoup seeks review by this Court to correct these failings.

The *Brady* Rule should apply in infractions matters even where a State elects to pursue those matters as civil cases. As Indiana recognizes, infractions are prosecuted by the State following an arrest by police officers, just the same as any criminal matter. The arbitrary designation that they be litigated as civil matters should not relieve the State of its obligations to provide the accused a fair trial and due process. *Brady* must apply to State prosecutions of infractions.

This case presents this Court with an opportunity to clarify that The *Brady* Rule applies to *all* prose-

cutions by the State. Mr. Shoup asserts that it is only the unlikelihood that a matter such as this is appealed to the level of this Court that has prevented review. It is after all, “just a speeding ticket.” A State should not, however, be free to declare that “just a speeding ticket” is a prosecution so insignificant as to allow for a citizen’s constitutional rights to be ignored. All prosecutions by the State carry with them the potential for a deprivation of American liberty; it should not be for the State to decide which deprivations are insignificant enough that the Fourteenth Amendment simply does not apply.

Absent intervention by the Supreme Court of the United States, Indiana Courts, and indeed the judiciary of every state, may deny its citizens due process simply by declaring infractions to be civil matters. It is unjust for a citizen to be denied a fair trial simply because the case is “just a speeding ticket.” Review by this Court is in the interests of justice, because society wins when *all* prosecutions by the State are fair. No prosecution should be considered so insignificant that constitutional rights may be violated.



CONCLUSION

For the foregoing reasons, Mr. Shoup respectfully requests that this Court issue a writ of certiorari to review the judgment of the Indiana Court of Appeals.

Respectfully submitted,

Michael J. Bruzzese
Counsel of Record
SMID LAW, LLC
12115 Visionary Way, Suite 174
Fishers, IN 46038
(773) 350-9828
mbruzzese@smidlaw.com

Counsel for Petitioner

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