No. 24-26

In The

Supreme Court of the United States

Hugh H. Baldwin, Jr.,

Petitioner,

v.

State of Maryland,

Respondent.

On Petition for Writ of Certiorari
to the Maryland Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Did the State commit a Bad Faith Due Process Violation resulting in outstanding legal consequences to the petitioner, to wit: Significant Collateral Consequences not previously recognized by the Court?

2. Did the State's failure to provide discovery result in outstanding legal consequences to the petitioner, to wit: Significant Collateral Consequences not previously recognized by the Court?

3. Was legal counsel to petitioner, Public Defender, Mr. Robert V. Jones and Appellate Counsel, Public Defenders, Mr. John L. Kopolow, and Mr. Alan H. Murrell ineffective?

4. Did the inability to obtain transcripts of all court hearings, deprive petitioner of the earliest opportunity to pursue post-conviction relief, (while incarcerated, on parole, or on probation) thereby resulting in outstanding legal consequences to the petitioner, to wit: Significant Collateral Consequences, not previously recognized by the Court?

STATEMENT OF RELATED PROCEEDINGS

Hugh Hartman Baldwin v. State of Maryland, In the Supreme Court of Maryland. Petition No. 371, September Term 2023, April 19, 2024.

Hugh Baldwin v. State of Maryland, Unreported In the Appellate Court of Maryland No. 1693, September Term 2023 January 31, 2024

Hugh Baldwin v. State of Maryland, In the Circuit Court for Cecil County Case No. C-07-CV-20-047, September 29, 2023.

Hugh Hartman Baldwin v. State of Maryland, In the Court of Appeals of Maryland Petition Docket No. 203, September Term 2022, October 25, 2022.

Hugh Hartman Baldwin v. State of Maryland, Unreported In The Court of Special Appeals No. 1084, September Term 2021, July 11, 2022.

Hugh Baldwin v. State of Maryland. In the Circuit Court for Cecil County Case No. C-07-CV-20-000047, August 27, 2021.

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Hugh H. Baldwin respectfully petitions for a writ of certiorari to review the judgement of The Supreme Court of Maryland.

OPINIONS BELOW

The Supreme court of Maryland, Petition No. 371, September Term, 2023, *Hugh Hartman Baldwin v. State of Maryland,* is a one page order, (April 19, 2024), denying a Writ of Certiorari, unpublished, but reprinted at Pet. App. 58a. The Appellate Court of Maryland, No. 1693, September Term 2023, *Hugh Baldwin v. State of Maryland,* is a two page order, (January 31, 2024), denying application for leave to appeal, is unreported but reprinted as Pet. App. 1a. The Statement and Order of Court, for Cecil County, Maryland Case, No. C-07-CV-20-047, *Hugh Baldwin v. State of Maryland,* (September 29, 2023), denying *Coram Nobis* relief, is unpublished but reprinted at Pet. App. 17a.

The Supreme Court of Maryland, Petition No. 203, September 2022, *Hugh Hartman Baldwin v. State of Maryland,* is a one-page order, (October 25, 2022), denying a Writ of Certiorari, unpublished, but reprinted at Pet. App. 19a. The Maryland Court of Special Appeals No. 1084, September Term 2021, *Hugh Hartman Baldwin v. State of Maryland,* is an Unreported Opinion (July 11, 2022), denying *Coram Nobis* relief, is reprinted at Pet. App. 20a. The Statement and Order of The Court for Cecil County, Maryland Case No. C-07-CV-20-000047, *Hugh*

Baldwin v. State of Maryland, (August 30, 2021), denying *Coram Nobis* relief, is unpublished but reprinted at Pet. App. 32a.

JURISDICTION

The Supreme Court of Maryland issued its Order on April 19, 2024. That order makes this petition due on July 17, 2024. This Court has jurisdiction under 28 U.S.C. Section 1257(a).

RELEVANT CONSTITUTIONAL PROVISION

The Due Process Clause of the Fourteenth Amendment, Section I, provides that no state shall, "deprive any person of life, liberty, or property without due process of law." U.S. Constitution, Fourteenth Amendment, Section I.

INTRODUCTION

The matter before this Honorable Court, is the denial of a Writ of Error *Coram Nobis* by The State of Maryland. The transgressions by The State of Maryland are circumstances compell ing such action to achieve justice. Petitioner seeks an order voiding the judgement of conviction.

"Continuation of litigation, after judgement and after exhaustion or waiver of any statutory right of review, should be allowed through the extraordinary remedy of coram nobis only under circumstances compelling such action to achieve justice, *United States v. Morgan,* 346 U.S. 502, 511 (1954). This Court went

on to state; "Since the results of the conviction may persist through the sentence has been served and the power to remedy an invalid sentence exists, respondent is entitled to an opportunity to attempt to show that his conviction was invalid." *United States v. Morgan,* 346 U.S. 502, 512-513, (1954).

This Court made clear long ago that when the government "obtains a conviction through the use of perjured testimony, it violates civilized standards for the trial of guilt or innocence and thereby deprives an accused of liberty without due process of law," *Hysler v. Florida,* 315 U.S. 411, 413 (1942); *see also Mooney v. Holohan,* 294 U.S. 103, 112 (1935) (same). Thus when the government knows that a witness for the prosecution has testified falsely, the prosecutor "has the responsibility and duty to correct what he knows to be false and elicit the truth." *Napue v. Illinois,* 360 U.S.264, 270 (1959). Failure to fulfill that duty "prevent[s] ... a trial that could in any real sense be termed fair." *Id.*

Subsequently, the Court established a separate due process rule: The government may not suppress material, exculpatory evidence in a criminal case. See, *Brady v. Maryland,* 373 U.S. 83 (1963). Twenty-two years later, this court in: *United States v. Bagley,* 473 U.S. 667 (1985) Held: "Such evidence must be disclosed if it is material, that is if there is a reasonable probability the evidence might have altered the outcome of the trial,"

This Court, in *Arizona v. Youngblood,* 488 U.S. 51, (1988), when the state fails to preserve evidentiary

material of which "no more can be said than that it could have been subjected to tests," the results of which might have exonerated the defendant there is no violation of due process, unless a criminal defendant can show bad faith on the part of the police." This Court should grant the petition and make clear that the *[Brady]* rule does not qualify the prohibition against the knowing use of false evidence. "A conviction obtained through the use of false evidence, known to be such by representatives of the State must fall under the Fourteenth Amendment," *Napue, 360 v. Illinois,* 360 U.S. at 269.

The due process clause of the Fourteenth Amendment provides that no state shall "deprive any person of life, liberty, or property, without due process of law." Under this clause, "criminal prosecutions must comport with prevailing notions of *fundamental fairness." California v. Trombetta,* 467 U.S. 479, 485, (1984).

STATEMENT OF THE CASE

The following facts are adapted from Petitioner's appeal of his third trial, *See Baldwin v. State* 56 Md. App. 529, 468 A.2d. 394 (1983). In May of 1978, Petitioner, became the subject of an investigation being conducted by agents of the Maryland State Police Narcotics Section and the Federal Drug Enforcement Administration. On May 19, 1978, Corporal Spicer, a member of the Maryland State Police, followed Petitioner from the Atlantic Glass Company in Easton to a farmhouse on State Route 662. Later that day, Spicer trailed Petitioner to the

campus of Washington College in Kent County and from the college to the Kent Plaza Shopping Center. Agent McGeehan of the Federal Drug Enforcement Administration met Spicer at the shopping center and handed him a paper bag containing three or four plastic baggies holding a green residue. Spicer stated that he received the paper bag from McGeehan "several minutes" after he observed Petitioner in the shopping plaza.

McGeehan testified that he observed Petitioner place the bag in the shopping center trash can. Upon analysis the green substance was determined to be parsley adulterated with alleged phencyclidine (PCP). Trooper William O. Murphy of the Maryland State Police was involved in the surveillance on May 19. He observed Petitioner depart from the farmhouse at 10:00 A.M. and go to the Washington College campus. Petitioner carried a large paper bag into a dormitory and reappeared several minutes later without the bag. Murphy followed Petitioner from the college campus to the shopping center. Trooper Murphy lost contact with Petitioner who left the shopping center at 11 :58 A.M. but he saw McGeehan retrieve the brown bag from the trash can at the shopping center approximately fifty minutes after Petitioner had departed.

On May 22, 1978, a search and seizure warrant was executed at the farmhouse. Among the items seized from a shed were a fifty gallon can, a five-gallon bucket, and two scoops, all containing alleged PCP. Other items confiscated included cans of alleged benzene and potassium cyanide, a bag of parsley flakes, a bottle of methanol, several measuring cups, a

chemical thermometer, a triple beam Balance and filter papers. J. James Rivera, an agent of the Federal Drug Enforcement Administration, testified that the ninety-three pounds of alleged PCP powder seized is not an amount one would use for his own consumption. Testimony from a state police chemist, John J. Tobin, established that potassium cyanide is one of the compounds from which PCP is synthesized, and that the powdered product is often dissolved in benzene for spraying on parsley flakes. On May 24, 1978, search and seizure warrants were executed on a safe deposit box in the Maryland National Bank in Easton and upon the home of Petitioner's parents in Chestertown, including the vehicle Petitioner had been operating during the earlier surveillance. The safety deposit box contained $11,477.00 in antique currency. The box was rented by Atlantic Canvas Products; Petitioner was the vice-president thereof. Items seized from the house and car included several guns, $5080.00 in antique currency, chemical formulas, a drug index, a key to the farmhouse shed.

On July 12, 1978, an eight-count criminal information was filed against appellant in the Circuit Court for Talbot County, charging him. At each of the two locations, with (1) unlawfully possessing a CDS (Phencyclidine) in sufficient quantity to indicate an intent to manufacture, distribute, and dispense the same; (2) manufacturing a CDS (Phencyclidine); (3) possession of machines, equipment, and implements adapted for the production of a CDS; and (4) maintaining a common nuisance.

B. Procedural History

Petitioner was initially tried on November 14, 1978. The three-day trial resulted in a conviction that was subsequently reversed and remanded by the Court of Special Appeals whose ruling was affirmed by the Court of Appeals, *State v. Baldwin,* 289 Md. 635, 426 A2d. 916 (1981). Petitioner was tried again on July 29, 1981. This conviction was similarly overturned, *Baldwin v. State,* 51 Md. App. 538, 444 A2d 1058 (1982). The reason the conviction was overturned, the Petitioner, was tried without a lawyer.

On November 23, 1982, the conclusion of the third trial, Petitioner was convicted on three counts: maintaining a common nuisance; possessing PCP with intent to distribute, and possessing equipment adapted for the production and sale of controlled dangerous substances. On January 3, 1983, the trial court imposed consecutive five-year sentences on each of the three convictions with one year of each suspended. Petitioner was placed on probation on all three counts upon release from confinement. On January 11, 1983 Petitioner appealed those convictions and the verdict was affirmed on appeal, See *Baldwin v. State,* 56 Md. App. 529, 468 A.2d. 394 (1983).

On May 21, 1985 a Petition for Violation of Probation was issued, which was subsequently dismissed by the court following a hearing. On October 24, 1989, Petitioner was charged with a violation of probationary conditions for not paying fines. The Circuit Court found him guilty of the violations for not paying the fines and not working or attending school

regularly and revoked his probation on two counts. The Court of Appeals ultimately vacated the revocation because the Petition for Violation of Probation never included the violation of failing to work or attend school regularly and held that a failure to object to uncharged violations did not constitute waiver. *Baldwin v. State,* 324 Md. 676, 598 A.2d 475 (1991).

C. The Coram Nobis Hearings

On August 5, 2021, the Honorable Judge V. Michael Whelan conducted a hearing on Petitioner's Amended Petition for Writ of Error *Coram Nobis.* A Statement and Order of the Court was issued on August 30, 2021. The *Coram Nobis* Court found that Petitioner failed to demonstrate that he suffered from or faced any actual or significant collateral consequences and denied Petitioner's requested relief. A timely appeal was noted. The Appellate Court of Maryland, in an unreported opinion filed July 11, 2022, affirmed the decision of the *Coram Nobis* Court. The Appellate Court of Maryland found that Petitioner had failed to prove significant collateral consequences stemming from his convictions. The Appellate Court further found that Petitioner's failure to prove significant collateral consequences was fatal to Petitioner's request for relief; the Appellate Court found it unnecessary to address Petitioner's first six questions. The Appellate Court of Maryland found that the circuit court properly denied relief. *Baldwin v. State,* No. 1084, September Term, 2021. A timely appeal was noted. The Maryland Court of Appeals, in an order dated October 25, 2022, denied a Writ of

Certiorari, See: Petition Docket 203 No. 1084, September Term 2021.

On June 20, 2023, Petitioner filed a Motion to Reopen a Previously Concluded Post Conviction Proceeding, alleging the following errors of the *Coram Nobis* Court; in addition too newly proffered significant collateral consequences.

1. Petitioner has been unable to obtain transcripts of all court hearings, which deprived him of the earliest opportunity to pursue, post conviction relief, while incarcerated, on parole, or probation.

2. There was no Frye-Reed Hearing to determine the reliability of the evidence. The State's failure to provide discovery resulted in outstanding legal consequences to the Petitioner to wit: significant collateral consequences.

3. Violation of the Petitioner's Due Process Right to a fair trial regarding the analysis of the alleged CDS, including improper destruction of the alleged CDS after the Petitioner had been granted the right to have the alleged CDS independently analyzed. A Bad Faith Due Process Violation resulted in outstanding Legal Consequences to the Petitioner, to wit: Significant collateral consequences.

4. Ineffective assistance of counsel at the Petitioner's Third Trial, including the absolute failure to cross examine the State's Chemist and to request Missing Evidence Instruction. Trial Counsel failed to pursue a Frye-Reed Hearing Violation. Trial Counsel

failed to pursue a Bad Faith Due Process Violation. The failures by Trial Counsel and Appellate Counsel resulted in outstanding legal consequences to the Petitioner, a significant collateral consequence; and

5. The failure of the *Coram Nobis* Court, (V. Michael Whelan), to issue a ruling on the alleged Discovery and Bad Faith Due Process Error(s), perpetrated by States Attorney Sidney Campen and The Maryland State Police, is simply, Judicial Error.

The *Coram Nobis* Court, The Honorable Brenda Sexton presiding, issued, A Statement and Order of the Court on September 29, 2023. The *Coram Nobis* Court, The Honorable Brenda Sexton found that the allegations of error set forth in Petitioner's, Motion to reopen A Previously Concluded Post-Conviction Proceeding were previously litigated and are barred by res judicata, waiver and the law of the case. Petitioner's requested relief is denied without a hearing. Pet. App. 5a.-17a. A timely appeal was noted. The Appellate Court of Maryland in an unreported opinion filed January 31, 2024. Denied the Application for Leave to Appeal. Pet. App. 1a.-4a. A timely appeal was noted. Maryland's Supreme court on April 19, 2024, dismissed the Writ of Certiorari for lack of jurisdiction. Pet. App. 58a.

REASONS FOR GRANTING THE WRIT

The Federal Courts of Appeals and Maryland's Supreme Court are split over the question of significant collateral consequences. Only this Court can resolve this entrenched and widespread

disagreement. This Court should grant review and hold, consistent with its precedents, *Coram Nobis* relief is warranted, "under circumstances compelling such action to achieve justice." *United States v. Morgan* 346 U.S. 502, 511,(1954). The legal questions presented, are of importance even beyond the scope of the present case. The lower court had made an error that is grievous and should be remedied.

A. Federal court of appeals and The Maryland Appellate courts are openly split over the question presented.

The Appellate Court of Maryland has held, "In Maryland, Appellate Courts have only explicitly acknowledged that subsequent enhanced sentences and deportation proceedings may constitute, significant collateral consequences." See: *Griffin v. State of Maryland,* 242 Md. 432, 440-445 (2019).

The Ninth Circuit Court of Appeals presumes that significant collateral consequences always result from a criminal conviction. See; *United States v. Walgreen,* 885 F.2d 1417, 1421 (9**th** Cir. 1989). In *United States v. Mandel,* 862 F.2d. 1067,1071 (4th Cir. (1988), *cert.* denied, 491 U.S. 906 (1989), the Fourth Circuit did not contemplate whether the petitioners sufficiently alleged significant collateral consequences. Instead the court relied on the notion the *coram nobis* was appropriate, "in order to achieve justice." noting that the petitioners had "appealed their cases at each stage of the proceeding." *Id.* At 1074-75.

B. This case is an ideal vehicle to resolve the conflict.

This case provides a particularly good opportunity to resolve the entrenched disagreement among the courts on the questions presented.

1. Petitioner raised his Due Process claim before The Circuit Court for Cecil County, Maryland, The Appellate Court of Maryland, and Maryland's Supreme Court to no avail. Pet. App. 56a,20a-30a.,19a. Petitioner then filed a Motion to Reopen a Previously Concluded Proceeding, in The Circuit Court for Cecil County, Maryland, then petitioned, The Appellate Court of Maryland, then petitioned, Maryland's Supreme Court for relief, to no avail. Pet. App. 5a-17a,1a-4a.,58a. This court can accordingly consider that claim do novo, without being limited by the deferential standards applicable in collateral proceedings or on plain error review. *Cf. Shih Wei Su v. Filion,* 335 F.3d 119, 127 (2d Cir. 2003). (recognizing that prosecution's introduction of false testimony would require a new trial if the case were on direct review, but declining to grant relief in case on collateral review.)

2. The split over what defendant's must show to prevail on a *Coram Nobis* claim is also squarely implicated here. In review, The State of Maryland allows enhanced sentences and deportation proceedings; these may constitute significant collateral consequences. The Ninth

Circuit presumes that significant collateral consequences always result from a criminal conviction. The Fourth Circuit has relied on the notion that *Coram Nobis* is appropriate in order to achieve justice.

3. If the Due Process Clause was violated here, petitioner is entitled to a new trial. "[T]he standard of review applicable to the knowing use of perjured testimony is the *Chapman* harmless error standard." *United States v. Bagley,* 473 U.S. 667, 679 (1985).

C. The decision below is incorrect.

1. Since *Mooney v. Holohan,* 294 U.S. 103 (1935), this Court has recognized that a conviction cannot stand if it is obtained "through a deliberate deception of court and jury by the presentation of testimony known to be perjured." *Id.* At 112. "The same result obtains" when the government allows false testimony "to go uncorrected when it appears." *Napue v. Illinois,* 360 U.S. 264, 269 (1959).

2. The Petitioner will now argue the four questions presented, stating the questions are valid and there has been no waiver.

QUESTION 1. Did the State commit a Bad Faith Due Process Error, resulting in outstanding legal consequences to the Petitioner to wit: Significant Collateral Consequences not previously recognized by the Court?

Immediately after the Petitioner's second Jury Trial, July 30,1981, prior to the time in which to file an appeal, without any prior notice to the Petitioner, or his Counsel, or order by the Court, and contrary to, an in violation of Maryland State Police Policy and Procedures, the State of Maryland deliberately and willfully destroyed all the evidence. Pet. App. 66a,67a. The alleged C.D.S. was destroyed despite the Order by the Court permitting the Petitioner to have his expert analyze the alleged C.D.S. Pet. App. 101a. The timing of the destruction suggests, "Official Animus" or a conscious effort to suppress exculpatory evidence, Bad Faith.

During the Petitioner's third Jury Trial, after, the Court's initial instructions to the jury, Mr. Sidney Campen, States Attorney, requested a bench conference, after which conference, the Court recess for approximately fifteen (15) minutes. When the Court reconvened, out of the presence of the jury. The State's Attorney stated:

> **MR. CAMPEN**; Because these chemicals over the years now, have caused a problem with the Maryland State Police in retaining and storing them, specifically one it em was a container of potassium cyanide, which was beginning to eat the metal container, in which it was contained up. That had to be destroyed. It had to be burned professionally.

> And there came a time that we determined that all of these articles, especially the illegal phencyclidine, large quantity of it, had to be destroyed because the police had no way to continue to hold it, and we took photographs of each and every item. And I propose today that, instead of introducing the chemicals and the raw phencyclidine itself, to introduce, with the police officers testimony as to what they seized and their identification of the photographs, the photographs of what was seized. Pet. App. 61a.

Petitioner's Counsel responded to the State's Attorney statement:

> **MR. JONES;** We do wish to establish that, as we object to to the evidence that will be one of my points, that the original evidence is not here. It is the best evidence, and there has not been any reason, justifiable reason, to destroy it.
>
> The posture of this case, ever since the arrest in May of 1978, has either been pending trial or pending appeal. There has never been a gap whereby the matter was finally resolved.
>
> And therefore, the prosecution was under the knowledge that there could be a retrial and the evidence would be

needed again, since this matter has always been pending before the appellate or the Circuit Court.

And I submit that, therefore, by destroying the evidence, We cannot come back now and merely introduce photographs, when the original evidence is what we are entitled to have presented against us, to examine and also for the Jury to examine and determine its weight, however they evaluate it. Pet. App. 6la.-62a.

The Honorable Owen Wise presiding stated:

THE COURT; Well, I don't have much difficulty in granting your Motion, or in recognizing the continuing objection of the Defendant, throughout the trial, to the failure of the State to produce the actual evidence. However, since it was available to the Petitioner, for discovery purposes and was, in fact, available to the senses of the Jury in at least one, if not both, of the previous trials, and since I don't understand, so far, the Petitioner's defense to be that the substance isn't what it is charged, and the opening statement of counsel in this case almost infers that this is not the issue, that it's not that material to the case. Pet. App. 63a-64a.

Mr. Sidney Campen, States Attorney, later stated:

> **MR. CAMPEN;** Yes, Your Honor. The photographs offered as State's Exhibits 5-B, 1 through 28, are the photographs of the evidence that was obtained as a result of the search and seizure warrant on the Route 662 farm residence.
>
> They show the evidence as it existed just after the last trial of this case. At that time the evidence had reached a point that it was extremely difficult to manage. The potassium cyanide, for instance, had eroded it's container and certain articles had to be destroyed for public safety purposes. It was determined by Maryland State Police that it would be best to go ahead and destroy all of these clandestine objects. Pet. App. 65a,66a.

Mr. Sidney Campen States Attorney gave "Notice" of the destruction of evidence, the day of the trial, after the jury had been convened. "Notice" of the destruction was a complete and total surprise to Defense Counsel, Mr. Robert V. Jones and Petitioner. Mr. Campen's admission was prosecution by ambush, (unfair surprise). Mr. Campen lied to the Court as to the foundation for the destruction of all the alleged C.D.S, and all of these clandestine objects. Mr. Campen's two separate statements regarding

Potassium Cyanide in a metal container, was deliberate fraud, a lie. Pet. App. 61a. 66a.

Ms. Kathleen Spicer, Chemist working for The Maryland State Police Lab. NEVER, testified as to an assay yielding Potassium Cyanide. Ms. Kathleen Spicer's testimony can be found at, Pet. App. 70a-80a. Mr. Sidney Campen, States Attorney, repeated this lie twice, to the Court to justify the destruction of all the evidence. Pet. App. 61a.,66a. The destruction of all the Alleged C.D.S. was in Violation of Established Procedure. The Maryland State Police Patrol Manual (2nd. Edition, October 1, 1977, Revised 7/9/90; Chapter 30, Handling and Disposition of Property; Section 1. Procedures for the Administration of Evidence, Controlled Dangerous Substances, and Found or Recovered Property; 10-0, Controlled Dangerous Substances Procedures, 30-15.2(3) (iv), provides that, if it is determined that any stored substance poses a threat: See; Pet. App. 105a.-107a.

> When conditions are safe, a small sample of the Substance should be collected for analysis and an order to destroy the remaining substance will be obtained from the state's attorney having jurisdiction. (30-15.2(3)(iv).

The import of the above procedural requirement is clear: No alleged C.D.S. may be destroyed without a prior Order of Court obtained by the State's Attorney for the County prosecuting the case. Certainly, in a Criminal Proceeding, the Petitioner would be entitled to notice of the request to destroy the alleged C.D.S.

and, an opportunity to be heard. Even in the event the Court issues an Order authorizing and permitting destruction of the alleged C.D.S, "a small sample of the substance should be collected for analysis, which would include analysis by the Petitioner, particularly if the Trial Court had previously entered an Order granting the Petitioner the right to analysis the alleged C.D.S, as was the case in the above matter. Pet. App. 101a.

The States explanation for the destruction of the alleged C.D.S, as stated above, was, "specifically one item was a container of potassium cyanide, which was beginning to eat the metal container, in which it was contained, up." "That had to be destroyed." "It had to be burned professionally." "And there came a time that we determined that all of these articles, especially the illegal phencyclidine, large quantity of it, had to be destroyed because the police had no was to continue to hold it." Pet. App. 61a.

The State, and specifically the Maryland State Police, failed to honor or comply with their own regulations regarding obtaining a Court Order prior to destroying the alleged C.D.S. and, preserving a small sample to analysis. Petitioner avers the alleged C.D.S. was destroyed to prevent any subsequent exculpating independent analysis. Petitioner clearly stated that one of his defenses was that the analysis of the alleged C.D.S. was flawed, the alleged C.D.S. was not C.D.S. and an independent analysis of the alleged C.D.S. would be exculpatory. The Honorable Owen Wise the Court stated: "and since I don't understand so far, the

Defendant's defense to be that the substance isn't what it is charged." Pet App. 63a.,64a.

The State's conduct in destroying the alleged C.D.S. was beyond a violation of *Brady v. Maryland,* 373 U.S. 83 (1963). *Brady* requires the State to provide exculpating evidence to the Petitioner. Here, in lieu of providing the exculpatory evidence to the Petitioner, the State destroyed it.

The Maryland Article-Public Safety 3-301(g) "Police misconduct" means a pattern, a practice or conduct by a police officer or law enforcement agency that includes (3) a violation of law enforcement agency standards and policies, See: Pet. App. 132a, 133a. There was no sample collected for analysis, there was no order to destroy the remaining substance, there was no notice of the destruction of all the evidence. There was no hearing conducted despite an "Order" of Hon. H. Kenneth Mackey that Chemist for the Defendant is permitted to analyze the evidence. Pet. App. 101a.

In *Arizona v. Youngblood,* (1988) 488 U.S. 51, when the state fails to preserve the evidentiary material of which, "no more can be said than that it could have been subjected to test," the results of which might have exonerated the defendant there is no violation of due process, unless a criminal defendant can show bad faith on the part of the police." *Id.* At 57-58; accord *Illinois v. Fisher,* (2004) 540 U.S. 544-548.

The state was clearly on notice that defendant deemed the alleged C.D.S. was expected to play a

significant role in Petitioner's defense, Mr. Sidney Campen, States Attorney, stated the following:

> **MR. CAMPEN;** let me say, Your Honor, for the record, the Court will note there was a motion on behalf of Mr. Baldwin's earlier counsel to inspect all these chemicals, that motion was granted. Mr. Sothoron had an opportunity to go through each and every item and indeed an opportunity to have his own chemist prepare his own analysis. Pet. App. 63a.

The testing that was sought had the scientific potential to produce exculpatory evidence, relevant to a claim of wrongful conviction and sentencing. The alleged C.D.S. was assayed in June 1978, using Vacuum-Tube Technology. There are over a 100 Million known chemical compounds. Pet. App. 126a. The States Chemist failed to identify the mass, weight, and structure of the alleged C.D.S. Absent a key precursor, potassium cyanide, synthesis of 1-(1-Phenylclohexyl)piperidine, HCL, is impossible. Again the States Chemist, never testified as to the presence of potassium cyanide, Period. Pet. App. 70a-80a.

The deliberate and willful destruction of all the evidence, by The Maryland State Police, in clear violation, of stated standards and policies, resulted in irreparable prejudice to the Petitioner: (1) Petitioner can no longer assay the alleged C.D.S. despite a Court Order allowing assay: Pet. App. 101a. (2) The State gained an unfair advantage through the destruction of

all the evidence. (3) Petitioner was denied an effective defense, denied an opportunity to impeach the States Chemist, Ms. Kathleen Spicer and her findings. (4) Denied a Fair Trial. A Bad Faith Due Process Violation resulted in outstanding Legal Consequences to the Petitioner, a significant Collateral Consequence, the likes that have not been recognized by the Courts, below. Simply how do you prove your Innocence when all the evidence has been illegally destroyed by The State of Maryland?

Illinois v. Fisher, 540 U.S.544 (2004), "We have held that when the State suppresses or fails to disclose material exculpatory evidence, the good or bad faith of the prosecution is irrelevant, a due process violation occurs whenever such evidence is withheld. See; *Brady v. Maryland,* 373 U.S. 83 (1963), *United States v. Agurs* 427 U.S. 97 (1976).

Mr. Sidney Campen States Attorney for Talbot County, Maryland, affirmatively capitalized on his materially false testimony. The Court, The Hon. Owen Wise, accepted Mr. Campen's perjured testimony and allowed the jury trial to move forward, despite objections from defense counsel, Mr. Robert V. Jones,

> **MR. JONES;** I do, Your Honor, and we do wish to establish that, as we object to the evidence, that will be one of my points, that the original evidence is not here. It is the best evidence, and there has not been any reason, justifiable reason, to destroy it. Pet. App. 6 la.

Mr. Sidney Campen, not only failed to correct his perjured testimony, regarding the presence of potassium cyanide, but also affirmatively capitalized on it. Mr. Campen's materially false testimony created a materially false impression on the Court,

> **THE COURT;** Well, I don't have much difficulty In granting your motion, or in recognizing the continuing objection of the Defendant, throughout the trial, to the failure of the State to produce the actual evidence. Pet. App. 63a.

Mr. Sidney Campen, affirmatively capitalized on his perjured testimony, in that there would be no further inquiry from the court regarding potassium cyanide or the alleged C.D.S. The destruction (suppression) of all the constitutionally material evidence was now accepted by the Court. The alleged C.D.S. constituted constitutionally material evidence as it is described in *California v. Trombetta,* 467 U.S. 488-89 (1984), defining constitutionally material evidence, "Whatever duty the Constitution imposes on the States to preserve evidence the duty must be limited to evidence that might be expected to play a significant role in the suspect's defense."

Mr. Sidney Campen, further capitalized on his materially false testimony, the avenue of rebuttal was now shut, the constitutionally material evidence, now destroyed, would never be re-assayed. The November 8, 1978 Order of The Honorable H. Kenneth Mackey that Chemist for the Defendant is permitted to analyze the evidence, is now Moot. Pet App. 101a.

Mr. Sidney Campen, further affirmatively capitalized on his perjured testimony, with no rebuttal possible of the now suppressed evidence, a False Conviction was assured. On November 23, 1982, a jury found Petitioner guilty on three counts: Possessing P.C.P. with intent to distribute, Possessing equipment adapted for the production and sale of C.D.S., Maintaining a common nuisance. See: *Baldwin v. State,* 56 Md. App. 529 (1983).

Petitioner continues to maintain what was seized was not illegal. The Court, The Honorable Owen Wise, stated:

> **THE COURT;** and since I don't understand so far, the Defendant's defense to be that the substance isn't what it is charged, and the opening statement of counsel in this case almost infers that that is not the issue, that it's not that material to the case. Pet. App. 64a.

How do you prove your innocence when all the evidence against you has been destroyed (suppressed) in Bad Faith? Truly a Significant Collateral Consequence , brought on by the transgressions of The State of Maryland.

First it is established that a conviction obtained through use of false evidence known to be such by representatives of the State, must fall under the Fourteenth Amendment, *Mooney v. Holohan,* 294 U.S. 103 (1935). Since *Mooney v. Holohan,* 294 U.S. 103

(1935), This court has recognized that a conviction cannot stand if it is obtained "through a deliberate deception of court and jury by the presentation of testimony know to be perjured." *Id.* At 112. "The same result obtains" when the government allows false testimony "to go uncorrected when it appears." *Napue v. Illinois,* 360 U.S. 264, 269 (1959). "It is no consequence that the falsehood bore upon the witness credibility, rather than directly upon defendant's guilt." "A lie is a lie, no matter," *Napue v. Illinois,* 360 U.S. 264, 269 (1959). This court has applied a different rule in cases where "the undisclosed evidence demonstrates that the prosecution's case includes perjured testimony and that the prosecution knew, or should have known, of the perjury," *United States v. Agurs,* 427 U.S. 97, 103, (1976). In such cases , the materiality standard is stricter (against the State). *Id.* At 104; see also *Giglio v. United States,* 405 U.S. 150, 154 (1972). ("A new trial is required if the false testimony could ... in any reasonable likelihood have affected the judgement of the jury ...") (quoting *Napue v. Illinois* 360 U.S. 264, 271, (1959).

Petitioner states: But for the State's Suppression of all the Evidence, (a Bad Faith Due Process Error,) the proceeding would have turned out differently, Petitioner was denied a Fair Trial.

> **QUESTION 2.** Did the State's failure to provide Discovery, (Brady rule Violation) result in outstanding legal consequences to the petitioner, to wit: Significant Collateral Consequences, not previously recognized by the lower Court?

All the evidence in this case, was destroyed on or about July 30, 1981, fourteen months prior to Petitioner's third jury trial. Pet. App. 67a. Md. Rule 4-263 details the State's discovery obligations in circuit court criminal cases. Md. Rule 4-263 (a) requires that State's Attorney disclose, without request, "any material or information tending to negate or mitigate the guilt or punishment of the defendant as to the offense charged." Md. Rule 4-263 (I) Retention Mandate details the State's obligation to retain evidence, "until the earlier of the expiration of (i) any sentence imposed on the defendant." Pet. App. 134a.-136a.

To prevail on a *Brady* claim. The Defendant must plead and prove that:

> (1) The prosecution suppressed evidence;
>
> (2) The evidence was favorable to the defendant, Either as to guilt or punishment; and
>
> (3) Evidence was material to the issue of Guilt or punishment. See:

Brady v. Maryland, 373 U.S. 83 (1963); *Giglio v. U.S.,* 405 U.S. 150 (1972). Evidence is material if there is a reasonable probability, sufficient to undermine the confidence in the outcome-that had the evidence been disclosed, the result of the proceeding would have been different, *U.S. v. Bagley,* 473 U.S. 667 (1985). The Maryland Court of Special Appeals in; *Cumberland Insurance Group v. Delmarva Power,* No. 72

September Term 2015, stated; "the doctrine of spoliation is grounded in fairness and symmetry; Stated simply, a party should not be allowed to support its claims or defenses with physical evidence that it has destroyed to the detriment of its opponent."

Petitioner, Hugh H. Baldwin, has not waived his claim that the state failed to provide required discover. In his request for Discovery filed on July 1, 1982, Pet. App. 104a., Public Defender, Robert V. Jones and the Petitioner, asked for all written documents related to the equipment used to analyze the alleged C.D.S. in the above matter, which documents shall include:

> A. The certification of the Maryland State Police laboratory.
>
> B. The certification of the machines upon which the alleged C.D.S. was analyzed.
>
> C. The certification of the chemist conducting the analysis.
>
> D. The purchase agreement, operating instructions and Warranties which would have included the Limitation of Liability Clauses, for the equipment used.
>
> E. The maintenance logs for the specific equipment used to analyze the alleged C.D.S.
>
> F. The notes of the chemist made at the time the alleged C.D.S. was analyzed.

G. All printouts or reports produced by any equipment used in analyzing the alleged C.D.S. specifically including any Mass Spectrometer.

None of the above-described documents were provided in response to the Petitioner's request for Discovery. Each group of documents described in Sub-Paragraphs A through G were separately required to protect the Petitioner's Sixth Amendment right to confrontation and the Petitioner's constitutional due process right to a fair trial. The Maryland Supreme Court in *Cole v State,* No. 5 September Term 2003, stated: "Defense counsel cannot prepare to evaluate or challenge a State expert's qualifications or testimony without an understanding of what test the expert performed and how the expert performed them." See also; *Reed v. State,* 374,391 (1978). "The general objectives of Maryland's criminal discovery rules are to assist the defendant in preparing his or her defense and to protect the accused from unfair surprise; See *Mayson v. State,* 238 Md. 283, 287, 208 A.2d. 599, 602 (1965).

The material exculpatory evidence, withheld by the State, Sub-Paragraphs A through G, would have proven the absence of Potassium Cyanide, a key factor in producing the alleged C.D.S. The States Chemist, Ms. Spicer, never testified as to the presence of Potassium Cyanide; her lab notes, the printouts, and the reports generated by the equipment used in analyzing the alleged C.D.S. would have verified the fact there was no Potassium Cyanide present. The

absence of Potassium Cyanide, goes to the core of the case, material exculpatory evidence.

As this court has stated in *Illinois v Fisher* 540 U.S. 544 (2004), "We have held that when the State suppresses or fails to disclose material exculpatory evidence, the good or bad faith of the prosecution is irrelevant; a due process violation occurs whenever such evidence is withheld. See *Brady v. Maryland,* 373 U.S. 83 (1963): *United States v. Agurs,* U.S. 97 (1976).

The failure of the State to provide discovery, resulted in a *Brady Violation,* this resulted in outstanding legal consequences to the Petitioner. These legal consequences were prejudice to the Petitioner, (the legal impossibility of mounting a defense where the evidence, that has been destroyed lies at the core of the case). The loss of evidence was so prejudicial that it denied the Petitioner the ability to defend a claim of Innocence. Truly, a Serious Collateral Consequence resulting from a *Brady Violation,* not previously recognized by the courts below.

> **QUESTION 3.** Was legal counsel to petitioner, Public Defender, Mr. Robert V. Jones of Elkton, Md. and Appellate Counsel, Public Defenders, Mr . John L. Kopolow and Mr. Alan H. Murrell ineffective?

During Petitioner's third trial, Mr. Sidney Campen, States Attorney for Talbot County, Md., announced" all of these articles, especially the illegal phencyclidine, large quantity of it, had to be

destroyed." Pet. App. 61a. Public Defender Mr. Robert V. Jones did note an "objection" to the evidence, there was no Motion for a Mistrial, no Motion for Dismissal. Pet. App. 61a.-68a. Petitioner believes this was an unprofessional error.

The Court below, The *Coram Nobis* Court, Statement and Order of the Court, The Honorable Brenda Sexton, stated; "The Court found that trial counsel's conduct was not deficient and petitioner has not rebutted the presumption of regularity attached to the trial." Pet. App. 13a.-16a. Petitioner continues to rebut the presumption of regularity attached to the trial.

The now destroyed evidence was subject to a Motion for Discovery, filed by Mr. Robert V. Jones, on July 1, 1982. Pet App. 104a. In his requests, Mr. Robert V. Jones and Petitioner, asked for all written documents related to the equipment used to assay the alleged C.D.S. and the actual assay of the alleged C.D.S. None of the described documents were provided in response to the request for Discovery. Mr. Robert V. Jones never filed an "objection" to the States failure to provide the described documents nor was a Motion to Compel Discovery ever filed. Pet. App. 59a.-69a. Petitioner believes this was an unprofessional error.

Mr. Robert V. Jones failed to cross examine The States Chemist, stating: "I have no questions." Pet. App. 79a. Mr. Robert V. Jones failure to cross-examine the States Chemist, was ineffective assistance of council particularly in light of the Petitioner's contention that the alleged C.D.S. was not a controlled

dangerous substance. The trial court, The Honorable Owen Wise stated: "and since I don't understand so far, the Defendant's defense to be that the substance isn't what it is charged." Pet. App. 63a.,64a. Petitioner believes this was an unprofessional error.

The second-prong of the *Strickland* standard requires the defendant to show prejudice. A showing of prejudice is present where, "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." 104 S. Ct. 2068, L. Ed . 2d. 674 (1984). Mr. Robert V. Jones failure to pursue a Bad Faith Due Process Error, a Discovery, *(Brady)* rule violation, failing to cross-examine the States Chemist, is simply a series of unprofessional errors, that rendered the entire Third Trial fundamentally Unfair and Unreliable. Such deficient performance was prejudicial to the defense, the jury believed the State's chemist, for the Petitioner was convicted. Mr. Robert V. Jones conduct so undermined the proper functioning of the adversarial process that the trial court cannot be relied on as having produced a just result.

Maryland Public Defenders, Appellate Division, Mr. John L. Kopolow and Mr. Alan H. Murrell were on direct appeal, constitutionally ineffective for failing to pursue; (1) Trial counsel's failure to pursue a Bad Faith Due Process Error, (2) Trial Counsel's failure to pursue a Discovery, *(Brady)* rule violation (3) Trial counsel's failure to cross-examine the State's chemist. (4) a retention mandate violation.

The Court below, the *Coram Nobis* Court, The Honorable Benda Sexton, Statement and Order of the Court, stated: "the Court found that any issues regarding the C.D.S. should have been raised on appeal; the allegations that the State acted in bad faith should have been raised on appeal." Pet. App.13a. "The Court went on to find that the evidence retention policy of the Maryland State Police was not an issue properly before the Court." Pet. App. 13a., 14a. See also, earlier decision of The Honorable V. Michael Whelan, *Coram Nobis* Court, Pet. App. 46a.,50a.

The Court below, the *Coram Nobis* Court, also found: "trial counsel's conduct was not deficient and Petitioner has not rebutted the presumption of regularity attached to the trial." "But the *Coram Nobis* Court had determined that Petitioner had failed to establish that his appellate counsel's performance was deficient. Pet. App. 14a.

An advocate does render ineffective assistance of counsel, however by failing to preserve or omitting on direct appeal a claim that would have had a substantial possibility of resulting in a reversal of petitioner's conviction; See *Banks v. Reynolds,* 54 F.3d. at 1515, 10th Cir. (1995); *U.S. v. Cook* 45 F.3d. at 395, 9th Cir. (1995). The crucial inquiry is whether confidence in the reliability of the conviction is undermined by the failure to preserve or raise the claims on appeal. See; *Lockhart v. Fretwell,* 506 U.S. 364, 369, 113 S. Ct. 838842 (1993). With these principles in mind there is no doubt, the affirmation of the conviction on appeal, *Baldwin v. State* 56 Md. App.

529, 468 A.2d. 344, (1983), could only have resulted from ineffective assistance of counsel.

The outstanding adverse legal consequence, of ineffective assistance of counsel, denied Petitioner a Fair Trial, resulting in an Erroneous Conviction. The Maryland Public Defender's Service caused significant collateral consequences to the Petitioner by failing to provide effective assistance at trial and on direct appeal. The Maryland Supreme Court has recognized that allegations of ineffective assistance of counsel implicates a fundamental Constitutional Right, U.S. Const. Amend VI. See; *Smith v. State* 443 Md. at 606, 117 A. 3d. 1093.

Petitioner continues to maintain but for Trial Counsel and Appellate Counsel's unprofessional errors the proceeding would have turned out differently.

> **QUESTION** 4. Did the inability to obtain transcripts of all court hearings, deprive petitioner of the earliest opportunity to pursue post-conviction relief, (while incarcerated, on parole, or on probation) thereby resulting in outstanding legal consequences to the petitioner, to wit: Significant Collateral Consequences, not previously recognized by the lower Courts?

In *Griffin v. Illinois,* 351 U.S. 12 (1956), this Court has held that indigent Defendants have a constitutional right to free transcripts of all proceedings in their case. The Maryland Supreme Court stated in footnote 14, the case of *Jose F. Lopez v.*

State of Maryland, No. 61 September Term 2012 the following:

> In the case before it, the Court of Special Appeals denied relief because trial transcript would have been required to assess the merits of the alleged errors and the inmate Petitioner was unable to carry the burden of proving that someone other than himself was responsible for the failure to obtain transcript.

Petitioner appealed the convictions from all three (3) of his trials and his violation of probation hearing. Transcripts of all the proceeding in the above matter were prepared in a timely fashion for the purpose of those appeals, Petitioner has made diligent, ongoing, and persistent efforts to obtain all trial transcripts.

Letter to Hugh Baldwin from the Attorney General's Office dated November 22, 2017 in a request for trial transcripts states: "Unfortunately the Office of the Attorney General is not in possession of these documents." Pet. App. 119a. Seven months later, letter to Hugh Baldwin from the Attorney General's Office dated June 27, 2018 states: "Apparently, there was some confusion in our records as to whether this was a Cecil County case or a Talbot County case. Regardless, I appreciate you bringing this error to our attention, and I apologize for the error and the resulting delay in providing the materials." Pet. App. 120a,121a.

Prior to the Attorney General's letter of November 22, 2017, (request for Trial Transcripts) Pet. App. 119a., Petitioner has made persistent and ongoing requests, to obtain a complete copy of all Orders, pleadings, documents, and transcripts in the above matter. In Petitioner's First Amended Petition for Writ of Error Coram Nobis, (under affidavit), filed by Attorney, David C. Wright, (deceased) of Chestertown, Maryland. Pet. App. 108a. Mr. Wright outlines the numerous attempts by Petitioner in seeking all Trial Documents. Pet. App. llla.-118a.

Prior to the receipt of the Trial documents, June 27, 2018, Pet. App. 120a.,121a., Petitioner, had been deprived of a much earlier opportunity to pursue post-conviction relief, while incarcerated, on parole or probation. The States failure to provide Trial Transcripts in a timely manner, resulted in Outstanding Legal Consequences and Significant Collateral Consequences to the Petitioner. The Petitioner's only recourse in pursuing an action to achieve justice was through the filing of A Writ of Error Coram Nobis Petition. The Petition was denied on the basis, Petitioner failed to prove Significant Collateral Consequences. Pet. App. 3a, 17a, 19a, 56a, 58a.

The outstanding adverse legal consequences are simply; had the State of Maryland provided Trial Transcripts in a timely manner, while petitioner was still incarcerated , on parole , or probation there would have been no need to provide or prove Significant Collateral consequences in a post-conviction filing. Significant Collateral Consequences are required for

the filing of a Coram Nobis Petition, Maryland Rule 15-1202, Pet. App. 129a-131a.

Recently received information from The Attorney Generals Office confirms *Hugh Hartman Baldwin v. State of Maryland* No. 1084 September Term 2021, Cecil County Criminal #4608 was Misfiled, a Clerical Error. Pet. App. 122a-124a. The State of Maryland caused Significant Collateral Consequences, to the Petitioner, by not providing Trial Transcripts in a timely manner.

Justice Sexton in her Statement and Order of Court dated September 29, 2023, purposefully avoided ruling on the most egregious of allegations contained in Petitioner's Motion to Reopen a Previously Concluded Post Conviction Proceeding. Pet. App. 5a.-18a. This avoidance has further delayed Petitioner's quest for justice, these are truly circumstances compelling such action to achieve justice.

The above facts and circumstances constitute sufficient significant collateral consequences to entitle the Petitioner to Coram Nobis Relief. Coram Nobis relief would result in amelioration of the collateral consequences the Petitioner is presently suffering and will continue to suffer without such relief to wit: A clearly wrongful conviction, based on Materially False Statements by the prosecutor and deliberate and wrongful destruction of all the evidence by The Maryland State Police.

"The government of a strong and free nation does not need convictions based upon false testimony. It cannot afford to abide with them." *Mesarosh v. United States,* 352 U.S. 1, 14 (1956). "In the end, the writ is designed to do justice, not facilitate a miscarriage of justice." *United States v. George,* 676 F.3d 240, 249 (1st Cir. 2012).

CONCLUSION

WHEREFORE, for the foregoing reasons, Hugh Hartman Baldwin Jr. respectfully request that this Honorable Court, GRANT, The Petition for Writ of Certiorari to The United States Supreme Court.

Respectfully submitted,

/s/
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