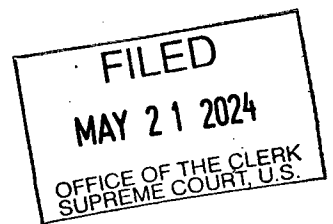


No. 24 - 5272



IN THE
SUPREME COURT OF THE UNITED STATES

Brian Waterman — PETITIONER
(Your Name)

vs.

State of Kansas — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Kansas Supreme Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Brian Waterman
(Your Name)

(K). 915 East Country Rd
(Address)

Columbus KS 66725
(City, State, Zip Code)

(Phone Number)

(1)

QUESTION(S) PRESENTED

1. Can state prosecutor's do discovery receipts on defendants attorney-client case files containing, Attorney letters of strategy, self incrimination, evidence, under KSA 22-3212?
2. Does the Sixth amendment right to counsel and KSA 60-426, KSA 60-426(a) prohibit attorneys from disclosing private communications to state prosecutors?
3. Did the Kansas supreme Courts error in not having the appellate Courts answer issue four in prose supplemental Brief; The state of Kansas used Information from defendants attorney-client confidential case file at trial?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

State of Kansas v. Brian Waterman, No. 16-CR-000124
 District of Cherokee County, Kansas Judgment entered
 Nov. 14th, 2021

State of Kansas v. Brian Waterman, No. 16-CR-000124/ No. 22-124725A
 Court of Appeals of Kansas. Judgment entered Nov. 22, 2023

The Supreme Courts of Kansas, Judgment entered
 March 28th, 2024.

Brian Waterman v. Jesse Howes, case no. EW-CV-24-00023
 Ellsworth County District Court house. KSA 60-1501

Brian Waterman v. Michelle Tippie Case no. CK-24-CV-00040
 Cherokee County District Court house. KSA 60-1501.

Both on throwing away legal mail, or tampering with
 criminal appeal and writ of Certiorari.

TABLE OF AUTHORITIES CITED

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Fisher v. U.S. 425 U.S. 391, 403 (1976) ...	8
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McMann v. Richardson, 397 U.S. 759, 771 n.14 (1970) ...	14
Cuyler v. Sullivan 446 U.S. 344 ...	14
Stuickland v. Washington, 466 U.S. 688 (1984) ...	14

1. The first part of the document is a list of names and titles, including "The Hon. Mr. Justice" and "The Hon. Mr. Justice".

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix C to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the Kansas Appellate court appears at Appendix A to the petition and is

- ☒ reported at 540 P.3d 378; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 3-28-24.
A copy of that decision appears at Appendix C.

☒ A timely petition for rehearing was thereafter denied on the following date: May 10th, 2024, and a copy of the order denying rehearing appears at Appendix D.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including June 13, 2024 (date) on Aug 11th 2024 (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The sixth Amendment of the United States Constitution:

" In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

KSA 22-3212: Discovery and Inspection (a)(d)

KSA 60-426: Attorney-client privilege (a)(b)

KSA 60-426(a) Attorney-client privilege and work product; Limitations on waiver (a)(e)

STATEMENT OF THE CASE

The facts necessary to place in their setting the questions now raised can be briefly stated:

On October 18th, 2018 Counsel Forrest-Lowry gave Cherokee County Prosecutor's the defendant's attorney-client confidential case file. Which was an two year on going case, that contained letters from the defendant to his attorney's concerning strategy, evidence, witnesses what they would testify too. Attorney notes, and mental impressions.

Cherokee County Prosecutor's Jacob Leonard then seized and searched the case file for sixty days. When new counsel Sara Bazley requested the box back Leonard told her NO, not until he was finished going through it. Dec 19, 2018 Counsel was able to retrieve the case file back from the state of Kansas. Cherokee County Prosecutor's then claimed under KSA 22-3212 Discovery and Inspection they could do a inventory of the confidential case file to ensure all discovery was given to counsel to prepare for trial (Rl. 324)

They hid their actions from the district Judge Lynch.

The motion to dismiss was denied on the bases that according to the prosecutor's former counsel Forrest Lowry had told them the file was solely discovery (Rl. 325) Lowry was not present at the hearing. Contrary to that statement the Cherokee prosecutors admitted there was attorney client letters and work product. The facts and findings of the court things could've been handled differently, that it was reasonable for county attorney's office to be under the impression that they were going through

Brian Waterman continued page 5 Statement of the case —
it to make sure it was complete so new counsel would have everything she should have in order to pursue her defense. There might have been better ways to handle things after it was learned that there was some correspondence in there. That if the state had reviewed it there would be no prejudice involved with that (R.11, 39)

These motions were renewed and denied on other occasions. (R.1, 389-97; R.19, 22; R.28, 23; R.30, 55-56) Newly discovered evidence was admitted and denied, Attorney provided a letter stating the only letters he took out were of jail complaints.

Attorney Beezley provided an affidavit stating she gave no one permission to look through the materials of the box, the file contained information that would be privileged under the attorney-client relationship. Beezley notes that there was seven letters written to Steven Stockard about strategy, defense theories, about witnesses. Her next attorney notes state why would Jacob insist on going through confidential letters.

Beezley and the state prosecutors were dishonest at the hearing to dismiss, no remedy was allowed.

Next issue Forrest Lowry was not given permission to hand over attorney-client communications and work product to Cherokee County Prosecutor Jacob Coward on October 18th, 2018 after being removed from counsel

last issue The appellate courts for Kansas granted The defendant permission to file a pro se supplemental

Brian Waterman continued page 6 Statement of the case _____

Brief. The Kansas court of Appeals refused to hear issue four; The state of Kansas used information from defendant's attorney-client confidential case file at trial. The Kansas Supreme Court also refused to have the court of appeals to issue an opinion. Issue four dealt with the state of Kansas changing its witness list of doctors over Hopkins amnesia. Charity Hopkins was going to testify over the victim attempting to have sex with her, trying to get her to have her children to have sex with each other. Along with the knife sizes that matched five small knife wounds, that Duany was wearing a white T-shirt, the bloody one they found. There was a third party defense motion filed, due to all the evidence, and the states two main witnesses Bobby Hopkins false amnesia, and Duany Hopkins countless lies at preliminary hearing, at which I was charged for two new crimes, after review the evidence supported Duany had lied, they were dropped before trial. The state using these letters were able to file new motions to stop my witnesses, to add to Hopkins preliminary testimony, and have Duany make an entirely different testimony at trial. That resulted in a conviction of 440 month imprisonment.

REASONS FOR GRANTING THE PETITION

The Kansas Supreme Court and the court of appeals of Kansas has decided federal questions in a way in conflict with the applicable decisions of their court and the United States Supreme Court.

This case is intentional intrusion by state prosecutors to win a criminal case. First Kansas legislature has enacted KSA 22-3212; Discovery and inspection for the purposes of new discovery is to be issued by the state of Kansas to the defendants. Subsection (d) reads as follows; Except as to scientific or medical reports, subsection (c) "does not authorize the discovery or inspection of reports, memoranda or other internal defense documents made by the defendant, or the defendant's attorney or agent's in connection with the investigation or defense of the case, or statements made by the defendant or by prosecution or defense witnesses, or by prospective prosecution or defense witnesses, to the defendant, the defendant's agent or attorney's" clearly prosecutor's are very familiar on discovery practices. As discovery is fundamental to the administration of justice. Prosecutors now being allowed in the state of Kansas to inventory defendants confidential case file threatens the entire criminal justice system. There isn't attorney client confidentiality when discovery is abused like this. No client would ever speak frankly with an attorney knowing

Those letters could now be viewed under discovery. The attorney client privilege is

Brian Waterman page 8 reason for granting the petition _____

The oldest of the privileges for confidential communications known to the common law. 8 J. Wigmore, Evidence § 2290

(McNaughton rev. 1961) "its purpose is to encourage full and frank communications between attorneys and their attorneys, clients and thereby promote broader public interests in the observance of the law and administration of justice. The privilege recognizes that sound legal advice or advocacy

serves public ends and that such advice or advocacy depends upon lawyers being fully informed by the client"

Upjohn Co. v. United States, 449 U.S. 383 (Jan. 13, 1981);

Trammel v. United States, 445 U.S. 40, 51 (1980); Fisher v. U.S.

425 U.S. 391, 403 (1976) The privilege "is founded upon the necessity, in the interest and administration of

justice, which assistance can only be safely and readily availed of when free from the consequences or

apprehension of disclosure" Hunt v. Blackburn 128 U.S.

464, 470 (1888) The district court's ~~findings~~ findings

are in conflict with well-established law. There are

a few cases similar to this. United States v. Valencia,

541 F.2d 618, 620-624, 1976 U.S. App. Lexis 7279 * 1-6

(6th Cir. 1976) Detectives were purchasing

attorney-client case files from a secretary

at a law firm. From the correspondences prosecutors were able to arrest suspects. Due to the intrusion

into the attorney-client relationship. The courts

The courts have found there is a

constitutional protection attached to

a defendant's case file.

Brian Watson man continue page 9. Reason for granting petition
Because the state of Kansas did not notify the attorney
or get a court order from a judge, nor notify the courts
of the defendants case file in their possession. Then did
a discovery receipt to cover up for their intrusion
rendered any effective assistance of counsel which
violated the sixth amendment. United States v. Cronis,
466 U.S. 648, 659-60, 104, S.Ct. 2039, 80 L.Ed. 2d 657 (1984)
"Where circumstances are so prejudicial against
the defendant that competent counsel could not render
effective assistance of counsel" Ellover v. Miro, 262
F.3d 268, 275 (4th Cir. 2001) "Although counsel is
available to assist the accused during trial, the
likelihood that any lawyer, even fully competent one,
could provide effective assistance is so small that
a presumption of prejudice is appropriate without
inquiry into the actual conduct of the trial (Quoting
Cronis 466 U.S. at 569.) In reaching its decision
to affirm, the courts ruled outside of controlling
law.

I respectfully urge that all aspects of this are
erroneous and ~~not~~ variance with this court's decision as
explained in the arguments below.

Arguments for Allowance of the writ

1. Can the state prosecutors do discovery receipts on
defendants attorney client case files containing attorney
letters of strategy, self incrimination, evidence under
KSA 22-3212?

Brian Waterman continued page 10 reason for granting petition —

This holds major public importance due to the states actions, affects the entire criminal proceedings under the sixth amendment. The public holds the state accountable to practice law that is fundamentally fair and upholds the law. For the public to allow state prosecutors to go way outside the scope and latitude of Discovery and inspection to spy on attorney-client communications to win a

case, violates the public's ~~Trust~~. Public must trust these public servants to uphold the integrity of justice. This is a first impression case where state prosecutors use Discovery and Inspection to inventory a defendants case. This is very out of the ordinary. As it does not deal with a search warrant, Attorney-client fraud, or a separate taint team.

Kansas state prosecutor's knowingly and intelligently accepted a on-going attorney-client case file. without permission began to rummage through it. which is intrusion. Then the prosecutors came up with a scheme that they were just inventorying to ensure all discovery was there. It was totally erroneous for the courts to accept out of court statements by the prosecution that the defendant's former Counsel told them it was solely discovery. which was not admissable

The courts were also in error when the letters in the case file were not preserved or an in camera view done.

The court of appeals in this case used incorrectly weatherford doctrine.

Brian Waterman continued page 11. reason for granting petition as the state intelligently accepted the case, then willfully going through it, was intentional. The state had capable state of mind. Then refused to give the file back.

The main issue is the state of was in possession of attorney-client communications. No motions to suppress were granted, but all denied. The tenth Circuit has dealt with a few cases of intrusion. Just recently United States v. Carter, 429 F. sup. 3d 788 * 2019 U.S. Dist. Lexis 137728. case no. 20032-02-JAR. where federal Kansas prosecutors were spying on defendants and their attorneys communications, by video, phone, and visitation. At the CCA Federal prisons. Kansas courts are guided by Skilling v. Haworth, 70 F.3d 1132, 1142 (10th Cir. 1995)

when the state has intruded into the attorney-client relationship, prejudice is presumed. Prosecutor Conrad and his legal assistance Britain are both actors for the prosecution. There was no separation in forces or unity. State v. Bain, 292 NEB. 398, 418-19, 872 N.W. 2d. 777 (2016)

is great guidance for any court in this situation. The defendants letters were disclosed to the prosecution. Bains sixth Amendment claim stems from a series of prosecutors who saw confidential communications between Bain and his originally retained counsel. The disclosure disqualified them from prosecuting the case. The actual communications are not in the record because the court failed to conduct an evidentiary hearing or receive the communications as evidence. Bains case was vacated.

Brian Waterman page 12 continued reason for granting petition

As Mr. Justice Marshall, with Mr. Justice Brennan dissenting in *Weatherford* Boldly stated: "Illegitimate and unconstitutional practices get their first footing in that way, namely by slight deviations from legal modes of procedure"

Boyd v. United States, 116 U.S. 616, 635 (1886) This is a new foot hold where private communication, and evidence or lack of it can be viewed by state prosecutors under the presumption of Discovery and Inspection.

which threatens the integrity of the adversary system and fairness of ~~the~~ trials in all of Kansas courts, and may spread to other states courts. As this unconstitutional practice is deemed legitimate. For this reason this honorable should grant review.

2. Does the Sixth Amendment right to counsel and KSA 60-426 and KSA 60-426(c) prohibit a Horney's from disclosing private communications to state prosecutors?

on October 18th, 2018 Counsel Forrest Lowry was dismissed from my case, Counsel then gave an on going two year case file over to Kansas state prosecutors without permission by the defendant disclosing communications between the defendant and former attorneys about trial strategies, evidence, witnesses, and what they would testify too.

There were also emails from attorneys to my private investigator Jack Kelley, concerning the investigation. KSA 60-426, in pertinent part states: (a) Except as otherwise provided by subsection (b) communications found by the

Brian Waterman page 13 continue, reason for granting petition.

Judge to have been between an attorney and such attorney's client in the course of that relationship and in professional confidence, are privileged, and a client has a privilege ... (2) to prevent such client's attorney from disclosing it.

The attorney-client privilege under KSA 60-426(a) has been distilled into the following elements:

"(1) where legal advice is sought (2) from a professional legal advisor in his, or her capacity as such, (3) communications made in the course of that relationship (4) made in confidence (5) by the client (6) are permanently protected (7) from disclosure by the client, the legal advisor, or any other witness (8) unless the privilege is waived" State v. Munyon, 240 Kan. 53, 58, 726 P.2d 1333 (1986); State v. Maxwell, 10 Kan. App. 2d. 62, 63, 691 P.2d 1316 (1984) State v. Boatwright, 54 Kan. App. 2d. 433 406, P. 2d, 657 (2017)

The record clearly shows no waiver was made for Counsel Lowry to disclose all my private communications to Kansas prosecutors. This is a statutory right in Kansas under that statutory right those communications were to be permanently protected. Since they weren't The state of Kansas violated my sixth Amendment right to counsel

"In a long line of cases that include Powell v. Alabama, 287 U.S. 45 (1932); Johnson v. Zerbst, 304 U.S. 458 (1938) Gideon v. Wainwright, 372 U.S. 335 (1963) This court has recognized that the sixth Amendment right

Brian Waterman page 14 continued reason for granting petition to counsel exists, and is needed, in order to protect the fundamental right to a fair trial" for this reason, the court has recognized that "the right to counsel is the right to the effective assistance of counsel." McMann v. Richardson, 397 U.S. 759, 771 N. 14 (1970) Counsel, however, can also deprive a defendant of the right to effective assistance, simply by failing to render "adequate legal assistance" Cuyler v. Sullivan, 446 U.S. 344; Strickland v. Washington, 446 U.S. 688 (1984) Unlike most states, Kansas has a statutory right to counsel, or privilege if you will. When that statutory right was allowed to be abolished not by legislature or the Supreme courts of Kansas, but by attorneys, then the defendants sixth Amendment was also abolished.

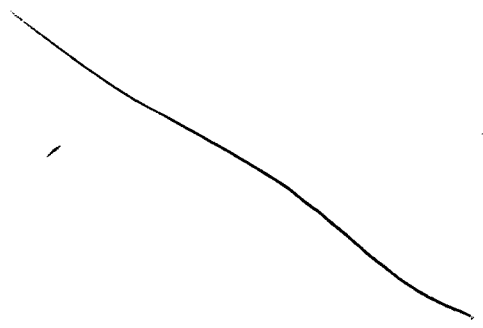
The court explained in Bain supra Id. at 494 "That the right to counsel protects a broader range of interests than the outcome of a trial." Forrest Lowry's and state prosecutor's actions were inherently detrimental to my defense and the outcome of my trial, that no other attorney could ever effectively represent me. for such reasons writ of Certiorari should be granted.

3. Did the Kansas Supreme courts error in not having the appellate courts answer issue four in supplemental Brief: The state of Kansas used information from defendant's attorney-client confidential case file at trial

Brian Watsonman page 15 continued reason for granting
petition

This issue was submitted in a petition for review
under Rule 8.03 supreme court rules (a)(c)(ii)
If this issue was raised and responded too, then
the Kansas Court of Appeals would have to
acknowledge that Cherokee County prosecutors
did read attorney-client privilege materials
and the purpose is clear before ~~the~~ courts,
that the inventorying my case file was for the
sole purpose to gain access to confidential
communications. In order to craft these
arguments and witness list

once again petitioner respectfully
requests granting of certiorari of important
issues.



1. The first thing I noticed when I stepped out of the car was the cold. It was a sharp contrast to the warm blanket I had been sitting under. I shivered slightly, but then I remembered that this was just the beginning of the journey.

2. The second thing I noticed was the smell. It was a mix of old leather, fresh coffee, and the faint scent of pine trees. It felt like I had stepped into a storybook.

3. The third thing I noticed was the view. The road stretched out ahead of me, flanked by rolling hills and a few scattered houses. It was a beautiful sight, and I felt a sense of peace.

4. The fourth thing I noticed was the sound. The engine of the car hummed softly, and the wind whistled through the trees. It was a soothing melody that put me at ease.

5. The fifth thing I noticed was the people. A few faces were visible through the windows, some looking at me with curiosity and others with a friendly smile. It felt like I was part of a community.

6. The sixth thing I noticed was the time. The sun was just starting to rise, and the sky was a pale blue. It was a perfect time to be on the road.

7. The seventh thing I noticed was the weather. It was a crisp, clear day, and the air was just what I needed.

8. The eighth thing I noticed was the road itself. It was a well-maintained highway, and the road signs were clear and easy to read.

9. The ninth thing I noticed was the distance. It felt like I had traveled a long way, but at the same time, it felt like I was just getting started.

10. The tenth thing I noticed was the journey itself. It was a mix of all these things, and it was exactly what I needed.

THE UNIVERSITY OF CHICAGO

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