No. _____

24-6302

ORIGINAL

FILED
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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

_____

Willie Hearns — PETITIONER
(Your Name)

vs.

State of Mississippi — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Willie Hearns #226487
(Your Name)
S.M.C.I.
P.O. Box 1419
(Address)

Leakesville, Ms. 39451
(City, State, Zip Code)

_____
(Phone Number)

QUESTION(S) PRESENTED

WHETHER DUE PROCESS OF LAW AND EQUAL PROTECTION OF THE LAW WARRANTS THE PETITIONER A NEW TRIAL UNDER THE FACTS AND CIRCUMSTANCES OF THIS CASE

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

N/A

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III. Table of Authorities

United States Supreme Court Cases

United States Constitution

IV. Petition for Writ of Certiorari

Willie Hearns, an inmate currently incarcerated at South, Mississippi Correction Facility in Leakesville, Mississippi, Pro Se, respectfully petitions this court for a writ of certiorari to review the judgment of the Mississippi Supreme Court.

V. Opinions Below

The decision by the Mississippi Supreme Court denying Mr. Hearns' Motion to Leave to Proceed to Trial Court was on May 7, 2024. The Petitioner's motion for consideration of the motion was denied on July 1, 2024.

VI. Jurisdiction

Mr. Hearn's Motion for reconsideration filed in the Supreme Court to Exercise Its Discretion and Require the Attorney General's Office to Respond to Application for Leave to Proceed to Trial Court was denied on July 1, 2024. Hearns invokes this Court's jurisdiction under 28 U.S.C. § 1257, having timely filed this petition for writ of certiorari within the ninety days of the Mississippi Supreme Court order.

VII. Constitutional Provision Involved

United States Constitution, Article I, Section 9, Clause 3:

"No Bill of Attainer or ex post facto Law Shall be Passed"

United States Const., Article I, Section 10, Clause 1:

> No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credi; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainer, ex post

facto law, or Law impairing the Obligations of Contracts, or grant any Title of Nobility.

Fourteenth Amendment of the United States Constitution

No State Shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State 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 laws.

VIII. Statement of the Case

I.

The Defendant, Willie Hearn III, has been indicted for the charge of murder. Presently this Defendant is unaware of any physical evidence other than some alleged latent prints on the victim's car which may connect the Defendant, Hearns, to the murder of Elex Wilson. The State's proof is an alleged statement "admitting his involvement" in this case that was given to Police by Willie Hearns III, however, this statement has not been produced to the Defendant other than being mentioned in a police report and there is no indication as to what Police claim "the Defendant's involvement" entails. The only other evidence is the testimony of two other individuals, Timothy Bailey and Joseph Streeter, who claim to have seen the Defendant get out of the victim's car and shoot multiple times into the car. They originally denied seeing anything when first interviewed. Originally, other witnesses interviewed by Clarksdale Police Department Investigators claimed to have seen Streeter and the Defendant's cousin, Gerald Hearns, get out of a green colored vehicle driven by Timothy Bailey. These witnesses stated that Gerald Hearns and Streeter ran into a nearby church with guns in their hands right after the shooting. These two witnesses

were identified by Streeter's own mother and sister as having guns and running from the scene immediately after the shooting of Wilson. After being arrested and initially telling officers they saw nothing, as their incarceration continued, they subsequently told Police that they saw an unknown person running from the scene while being held "for investigation." As questioning continued and after the third day of incarceration on felony holds, Bailey and Streeter yet again gave different statements which incriminated the Defendant and exonerated themselves by saying that they actually saw the Defendant, Willie Hearns III, shoot Wilson. Gerald Hearns denied ever being at the scene of the murder and claimed to have been in Arkansas with Bailey. After continuous questioning in interviews with Police, Gerald Hearns requested an attorney. However, officers continued to question him until finally stopping his interview and arresting him after said he did not see anything. After Bailey and Streeter implicated Willie Hearns III, they were released without bond and no charges were pursued against them. Subsequently, Willie Hearn III was arrested and charged with murder.

ARGUMENTS

II.

Mississippi's Criminal Rule of Discovery

Rule 17.2 of the Uniform Circuit and County Court Rules states in part as follows:

A. Subject to the exceptions of Rule 17.6(a) and 17.7, the prosecution must disclose to each defendant or to defendant's attorney and permit the defendant or defendant's attorney to inspect, copy, test and photograph upon written request and without the necessity of court order the following which is in the possession, custody or **control of the State** the existence of which is **known or by**

the exercise of due diligence may become known to the prosecution . . . :

2. Copy of any written or recorded statement of the defendant and the substance of any oral statement made by the defendant.

4. Any **reports, statements or opinions of experts, written, recorded or otherwise preserved , made in connection with the particular case** and the substance of any oral statement made but any such expert.

5. Any **physical evidence and photographs relevant to the case or which may be offered in evidence,** and

6. **Any other exculpatory material concerning the Defendant.**

Upon a showing of materiality to the preparation of the defense, the Court may require such other discovery to the defense attorney as justice may require.

The Defendant in this case by written Motion, specifically has requested that the State produce any and all lab reports showing the results of any tests performed on any items of evidence that have been collected during the investigation of this matter. The Defendant has also requested that the State produce to the Defendant for inspection, copying, and testing any and all evidence collected in this matter as well as all Evidently Submission Forms showing evidence to be tested, whether used by the State or not used at trial. The Defendant has also specifically requested that various items of evidence that have been collected and not tested be tested since these tests are material to his defense and would produce exculpatory evidence that would

be material and vital to Hearn's defense in the interest of fair play and as justice should require. The Defendant specifically invoked this rule set out above and specifically requested all statements of the Defendant and any and all witnesses [A copy of Defendant's Request and Motion for Discovery is attached hereto.]

III.

Right to Discovery – "Brady Material"

The Due Process Clause of the Fourteenth Amendment requires the State to disclose criminal defendants favorable evidence that is material either to guilt or punishment. *Brady vs. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1983); *United States vs. Agurs*, 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed. 2d 342 (1976).

Under the Due Process Clause of the Fourteenth Amendment, criminal prosecutions must comport with prevailing notions of fundamental fairness. In the case of *United States vs. Valenzuela-Bernal*, 458 U.S. 858, 867, 201 S.Ct. 3440, 3447, 73 L.Ed. 2d 1193 (1982), our Supreme Court stated:

We have long interpreted this standard of fairness to require that criminal defendants be afforded a meaningful opportunity to present a complete defense. To safeguard that right, the Court has developed "what might be loosely be called the area of constitutionally guaranteed access to evidence." *Id.* At 458 U.S. 867, 102 S.Ct. 3447, 72 L.Ed 2d 1193 (1972).

As stated in *California vs. Trombetta*, 467 U.S. 479, 104 S.Ct. 2528, 81 L.Ed. 2d 413, our U.S. Supreme Court stated that taken together these groups of constitutional privileges deliver exculpatory evidence into the hands of the accused, thereby protecting the innocent from erroneous conviction and assuring the integrity of our criminal justice

system. *Id.* At 467 U.S. 486. The most rudimentary of the access-to-evidence cases impose upon the prosecution a constitutional obligation to report to the defendant and to the trial court whenever government witnesses lie under oath. *Napue vs. Illinois*, 360 U.S. 264, 269-272, 79 S.Ct. 1173, 1777-1779, 3 L.Ed. 2d 1217 (1959). A criminal defendant has a constitutionally protected privilege to request and obtain from the prosecution evidence that is material to the guilt of the Defendant even in the absence of a specific request. The prosecution has a constitutional duty to turn over exculpatory evidence that would raise a reasonable doubt about the Defendant's guilt. *United States vs. Agurs*, 427 U.S. at 112, 96 S.Ct. at 2401.

In *United States vs. Agurs*, 4247 U.S. 97, 96 S.Ct. 2392, 49 L.Ed 2d 342 (1976), our United States Supreme Court held that although no prosecutor has a duty to provide defense counsel with unlimited discovery of everything known by him, if the subject matter of defense counsel's request for evidence is material, or indeed if a substantial basis for claiming materiality exists, it is reasonable to require the prosecution to respond by either furnishing information or making the problem known to the trial judge when the prosecution receives a specific and relevant request, **the failure to make any response is seldom, if ever, excusable**. *Id.* 427 U.S. at 107-108, 96 Sup.Ct. at 2400, 49 L.Ed. 342 (1976).

The Court went on to say in *Agurs* that:

In many cases, however, exculpatory information in the possession of the prosecution may be unknown to the defense counsel. In such a situation, he may make no request at all or possibly a request for "all Brady material" or for anything exculpatory. Such a request really gives the prosecution no better notice than if no request is made. If there is a duty to respond to a general request of that kind, it must

derive from obviously exculpatory character of certain evidence in the hands of the prosecution. But if the evidence is so clearly supportive of a claim of innocence that it gives the prosecution notice of a duty to produce, that duty should equally arise even if no request is made . . . We conclude there is no significant difference between cases in which there has been merely a general request for exculpatory matter and cases . . . in which there has been no request at all.

Id. 427 U.S. at 107-108, 96 S.Ct. at 2400, 49 L.Ed. 2d 342 (1976).

In defining what is "material evidence", our U.S. Supreme Court set out four aspects of materiality for *Brady* purposes which were established in the case of *United States vs. Bagley*, 473 U.S. 667, 105 S.Ct. 3375, 87 L.Ed. 2d 481 (July 2, 1985).

In *Kyles vs. Whitley*, 514 U.S. 419, 1155 S.Ct. 1555, 131 L.Ed. 2d 490, the U.S. Supreme Court held that the four aspects of materiality under *Brady* as set out in *Bagley* are as follows:

(1) First, favorable evidence is material and constitutional error results from its suppression by the government, if there is a "reasonable probability" that had the evidence been disclosed to the defense, the result of the proceeding would have been different. Thus a showing of materiality does not require a demonstration by a preponderance that disclosure of the suppressed evidence would have resulted ultimately in the defendant's acquittal. 473 U.S. at 682, 105 S.Ct. at 3383-3384, 3385; *United States vs. Agurs*, 427 U.S. 97, 112-113, 96 S.Ct. 2392, 2401-2402, 49 L.Ed. 342 distinguished.

(2) In *Bagley*, the Court found materiality is not a sufficiency of evidence test. One does not show a *Brady* violation by demonstrating that some of the inculpatory evidence should have been excluded, but

by showing that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.

(3) Contrary to the Fifth's Circuit's assumptions, once a reviewing court applying *Bradley* has found constitutional error, there is no need for further harmless-error review since the constitutional standard for materiality under *Bagley* imposes a higher burden than the harmless-error standard of *Brecht vs. Abrahamson*, 507 U.S. 619, 623, 113 S.Ct. 1710, 1715, 123 L.Ed. 2d 253.

(4) The State's disclosure obligation turns on the cumulative effect of all suppressed evidence favorable to the defense not on the evidence considered item by item. *Id.* 473 U.S. at 675, and N. 7, 105 S.Ct. at 3380, and N. 7. Thus the prosecutor, who alone can know what is undisclosed, must be assigned the responsibility to gauge the likely net effect of all such evidence and make disclosure when the point of **reasonable probability" is reached**.

Moreover, that responsibility remains regardless of any failure by the Police to bring favorable evidence to the prosecutor's attention. See *Kyles vs. Whitley, Supra.*, at 514 U.S. 419 at 420-421, 115 S.Ct. 1555, at 1559-1560.

The *Kyles* case reiterated the Court's position from prior case law that the prosecutor's suppression of requested evidence, which is favorable to the Defendant, violates due process when it is material to guilt or punishment despite the good faith or bad faith of the prosecution. Further, the Court went on to say that this duty is present whether the request by the Defendant is general, specific or not even made at all because the Defendant's counsel did not know that it exists. *Id.* 514 U.S. at 433-434, 437-438. In reference to *Bagley*, the Court in *Kyles* stated that the duty to disclose does not distinguish

between exculpatory evidence or impeachment evidence used for cross-examination purposes. Regardless of the request, favorable evidence is material, and constitutional error results from its suppression by the government if there is a reasonable probability that had the evidence been disclosed, the result of the proceeding would have been different. See *Kyles, Supra.* At 514 U.S. at 434 quoting *Bagley*, 473 U.S. 682, 105 S.Ct. 3383 (Opinion of Blackman J.) *Id.* 685, 105 S.Ct. at 3385.

As stated in *Kyles*, the four aspects of materiality under *Bagley* bear emphasis. Although the constitutional duty is triggered by the potential impact of favorable but undisclosed evidence, a showing of materiality does not require demonstration by a preponderance that disclosure would have resulted ultimately in the defendant's acquittal. *Id.* At 682, 105 S.Ct. at 3383-3384 (Opinion Blackman J.). The Court in *Kyles* stated in determining whether evidence the government failed to disclose to the defendant satisfied the "materiality" test of *Brady*, the question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence. A "reasonably probability" of a different result is accordingly shown when the government's evidentiary suppression undermines confidence in the outcome of the trial. *Kyle* at 514 U.S. 419 quoting *Bagley*, at 473 U.S. at 678, 105 S.Ct. at 3381.

In *Kyles*, the Defendant's murder conviction was reversed because the net effect of the State suppressing evidence favoring Kyles raised a reasonable probability that its disclosure would have produced a different result at trial. *Kyles* at 514 U.S. 419, 115 S.Ct. 1555, 1569-1576. Some of the suppressed evidence consisted of statements of

eyewitnesses which the Court ruled had they been provided would have resulted in a weaker case for the prosecution and a markedly stronger case for the defense basically destroying the State's two best witnesses. *Id.* at 514 U.S. 419, 420-421, 115 S.Ct. 1555, 1559-1560.

Also suppressed were statements made to the Police by an alleged suspect, Beanie, who was trying to blame to the Defendant Kyles. The Court found that had these statements been disclosed, it would have known inconsistencies and self-incriminating assertions, which would have not only assisted the defense in attacking the witnesses' credibility, but also in attacking the probative value of certain crucial physical evidence. *Id.* at 314 U.S. 419, 420-421.

The Court found in *Kyles* that suppression of a computer print out list of cars at the crime scene after the murder which did not show the defendant's license plate as being on the premises would have been useful to Kyles' defense as impeachment to the prosecutor's jury arguments that the killer left his car at the scene of the murder since he drove off in the victim's car. During this argument, the Prosecutor showed a grainy picture of the scene which allegedly showed Kyles' car in the background despite the computer list which showed that Kyle's car not on that list. The Court ruled the cumulative effect of this suppressed evidence might not prove Kyle's innocence, but it destroyed the confidence that the verdict would have been the same. *Kyles* at 514 U.S. 419, 421-422, 115 S.Ct. 1555, 1574-1576.

When the reliability of a given witness may well be determinative of guilt or innocence, nondisclosure of evidence affecting credibility falls within this general rule. A new trial is required if false testimony could in any reasonable likelihood have affected the judgment of the jury. See *Giglio vs.*

United States, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed. 2d 104 (1972).

Mississippi has adopted these same basic rules for *Brady* violations. The suppression of favorable evidence that is material to the defense is a violation of due process under *Brady*. Favorable evidence includes items that are either directly exculpatory or can be used for impeachment purposes. *Manning vs. State*, 884 So.2d 717, 725 (Sup. Ct. Miss. 2004) and *Manning vs. State*, 158 So.3d 302 (Sup. Ct. Miss. Feb. 12, 2015). In the first *Manning* case (May 6, 2004), the defendant, Willie Jerome Manning, was seeking a post-conviction relief evidentiary hearing on a claim that his conviction for capital murder should be reversed for a *Brady* violation. The Mississippi Supreme Court granted his petition for an evidentiary hearing, resulting in the second *Manning* case. In the second *Manning* case (April 28, 2015), the defendant's capital murder conviction was reversed due to a *Brady* violation. In those cases, our Court discussed the law and what must be shown to establish a *Brady* violation when favorable evidence to a defendant's case is withheld or suppressed resulting in a reversal of a conviction.

While James Manning was convicted of the capital murder of two elderly women who were killed during a robbery at their home and he was later sentenced to death on July 25, 1996. On March 31, 1999, Mr. Manning's conviction was affirmed. After the United States Supreme Court denied Mannings' writ of certiorari, Manning was appointed counsel to proceed in trial court with post-conviction pleadings resulting in the above-mentioned decision.

The Court in the first *Manning* case at 884 So.2d 717, 725-726, stated that to determine if a *Brady* violation has occurred mandating a new trial, there is a four prong test. In quoting *United States vs. Spagnoulo*, 960 F2d 990, 994 (11th Cir. 1992) citing

United States vs. Meros, 866 F2d 1304, 1308 (11th Cir. 1989), our Court set out this test as follows:

To establish a *Brady* violation, a defendant must prove the following:

(1) That the government possessed evidence favorable to the defendant;

(2) That the defendant does not possess the evidence nor could he obtain it himself with any reasonable diligence;

(3) That the prosecution suppressed the favorable evidence; and

(4) That had the evidence been disclosed to the defense, a reasonable probability exists that the outcome of the proceeding would have been different.

In the first *Manning* case, Manning had asserted that a crime scene specialist, who investigated the crime, had found a shoe print in blood on a rug in the victim's apartment. When questioned about the shoe print, the investigator testified that the print was insufficient for comparison purposes. What he failed to mention was that although the print could not be used for comparison purposes, the examiner of the shoe print was able to measure the print and found it was a size 8. This fact was never disclosed to Manning's defense counsel. Manning argued that this evidence was critical since he wore a size 10 or larger shoe and thus could not have left the bloody print in the victim's apartment. The report, indicating this shoe size, was never given to trial counsel for the Defendant. At the post-conviction hearing, Manning demonstrated that the report, indicating the shoe print, was never disclosed to his attorney but was known to the prosecutor. This was not disclosed despite the defense counsel's request for standard discovery including exculpatory evidence. The Court in the first *Manning* case held

that this evidence, the report, presents a reasonable probability that the outcome of the proceeding would have been different had that evidence been disclosed to the defendant and his attorney and granted him an evidentiary hearing, *Id.* at 729.

The Supreme Court of Mississippi in the second *Manning* case ruled on whether certain post-conviction relief should be granted which would allow him a new trial. The Court in granting this relief and reversing his conviction for capital murder, again detailed Mississippi law concerning the failure to disclose or at least provide the defendant the ability to obtain favorable evidence material to his defense after his request for material or exculpatory evidence.

The Court in *Manning* stated that we adopted the four prong test set out in *Spagnoulo, Supra.*, and cited the case of *King vs. State*, 656 So.2d 1168, 1174 (Miss. 1995). In Manning's case, there was only one witness that testified that he saw Manning enter the murdered women's apartment shortly before their bodies were discovered. This witness, Kevin Lucious, was a convict serving two life sentences in Missouri claimed he was living in the apartments across the street from the victims and saw the defendant enter their apartment. No witnesses testified to seeing Manning leave their apartment. Other evidence was presented leading to his conviction, however, the Court referenced to another specific piece of evidence it deemed crucial to Manning's defense which was not disclosed to defense counsel. During the investigation of the murders, a canvass of residents of the apartments across the street was conducted by the Starkville Police Department to see who lived in those apartments at the time of the murders. Index cards recording the results were completed and maintained by the department. An entry on the cards revealed that the apartment, from which

Lucious testified he observed Manning enter the victim's apartment, was vacant at the time of the crime and that neither Lucious nor his girlfriend were listed as a resident of any of the apartments canvasssed.

The Court went through the four prong test of *Brady*. It was established that neither the prosecution nor defense counsel knew that the cards existed. It was established that these cards were obviously favorable for impeachment of the witness, Lucious, and they were in the possession of the Starkville Police Department and were never given to defense counsel. The Court ruled that this suppression of evidence satisfied the first two prongs of the *Brady* test analysis. As to prong three, i.e., the prosecution suppressed the evidence, our Court quoted the United States Supreme Court from two previous decisions where the Court stated that under a *Brady* analysis "suppression" does not encompass a determination of "moral culpability" or "willfullness". *Spagnoulo*, 960 F2d at 994-995 (quoting *United States vs. Agurs*, 427 U.S. 97, 110, 96 S.Ct. 2392, 2400, 49 L.Ed. 2d 342 (1976). The Court went on to state that the focus is on the "character of evidence" not on the "character of prosecutor". *Spagnoulo*, 960 F2d at 995 (quoting *Agurs*, 427 U.S. at 110, 96 S.Ct. at 2400). Suppression can be attributable to a State actor (emphasis added) who withholds material evidence. *Spagnoulo*, 960 F2d at 994 (quoting *U.S. vs. Antone*, 603 F2d 566, 569 (5th Circuit 1979) ("This Court has declined to draw a distinction between agencies under the same government, focusing instead upon the "prosecution team" which includes both **investigative** and **prosecutorial** personnel".) (emphasis added) (Also quoted by *King vs. State*, 656 So.2d at 1176). The Police Chief of Starkville was the lead investigator and ordered the canvas of the apartment complex. The canvass cards were all present in the Starkville Police Department file,

therefore satisfying the third prong finding suppression by the prosecution.

In analyzing the fourth prong, the Court in *Manning* found that it was satisfied in that evidence favorable to an accused includes both impeachment and exculpatory evidence. The suppressed evidence, which consisted of the canvas cards, indicated that the State's only eye witness who testified that he saw the defendant forcing his way into the victim's apartment from across the street, showed that the witness' testimony could have been substantially impeached since the cards showed that this witness not only did not live in the apartments across the street from the murders, but that the apartment was vacant at the time of the murders. The Court clearly found that the receipt of this favorable evidence would have given the defendant the opportunity to impeach the State's only witness and thereby making it at least a "reasonable probability that had this evidence been disclosed, the result of the proceedings would have been different and that this evidence was exculpatory. The defendant does not have to show that he would have been found not guilty for there to be a discovery violation of "Brady material". See *Kyles vs. Whitney*, 514 U.S. 419, 435 115 S.Ct. 1555, 1567, 131, L.Ed. 2d 90 (1995). A defendant need not demonstrate that you should discount the inculpatory evidence in light of the undisclosed evidence and therefore there would not have been enough evidence to convict the defendant. A "reasonable probability" of a different result is shown when the government's evidentiary suppression "undermines the confidence in the outcome of a trial." *Bagley*, 473 U.S. at 678, 105 S.Ct. at 3381. One does not show the fourth prong of the *Brady* analysis by showing that some of the inculpatory evidence should have been excluded, but instead that the **favorable evidence could reasonably be taken to put the whole case in such a light as to undermine the confidence on**

the verdict. (See *Kyles vs. Whitney, Supra.*, 514 U.S. at 435-436).

IV.

Right of Production, Inspection and Testing of Evidence

It is elementary that the constitution guarantees criminal defendants meaningful opportunity to present a complete defense. *Kuebler vs. State*, 2015 WL 5202944 (Court of Appeals Miss. Feb. 23, 2016) citing *Holmes vs. South Caroline*, 547 U.S. 319, 126 S.Ct. 1727, L.Ed. 2d 503 (2006).

In *California vs. Trombetta*, 467 U.S. 479, 104 S.Ct. 2528, 81 L.Ed. 2d 413 (1984), the U.S. Supreme Court held the State has a duty to preserve evidence that would play a significant role in the defendant's case, the exculpatory nature and value which is apparent before suppression or destruction and of such a nature that defendant could not obtain other comparable evidence by other reasonable means. Quoting *United States vs. Agurs*, 427 U.S. at 109-110, 965 S.Ct. at 2400.

Under Uniform Circuit and County Court Rules Criminal Rule 9.04, the prosecutor must disclose crime lab reports if the defendant invoked discovery. *Harris vs. State*, 446 So.2d at 589 In the case of *Acevedo vs. State*, 467 So.2d 220 (Miss. 1985), our Supreme Court stated that the purpose of Rule 9.04 is to avoid unfair surprise. Our Court stated the prosecutor has a continuing duty to promptly notify the other party of the existence of any additional material it was obliged to produce, that evidence is inadmissible and its wrongful admission or omission renders the conviction reversible, quoting *Harris vs. State*, 446 So.2d 585 at 589. In *Harris*, the defendant requested the State to produce and test the alleged murder weapon in order for the defendant to inspect the gun to see if it could have accidently discharged which was his defense. The

State never produced the gun, the projectile or the lab report despite being ordered to, however, the Court allowed the gun into evidence since there was no dispute that it was the gun that did the shooting. The Supreme Court reversed the defendant's conviction because the defendant was not allowed the opportunity to inspect the gun and have the gun tested when he had a clear right to its production for inspection and testing to establish his defense. The Court cited other similar cases where convictions were reversed for discovery violations by the State in *Ford vs. State*, 444 So.2d 841 (Miss. 1984); *Tolbert vs. State*, 441 So.2d 1374 (Miss. 1983); *Morris vs. State*, 436 So.2d 1381 (Miss. 1983); and *Hearns vs. State*, 426 So.2d 405 (Miss. 1983). In the *Acevedo* case, *Supra.*, the Supreme Court reversed the defendant's conviction because the State violated its continuing duty to supplement its expert's lab report. The defendant claimed that he and the victim struggled over the gun and the shooting was an accident. The expert's initial report indicated that the gunshot residue test on the victim was inconclusive and that no conclusion could be drawn as to whether the victim handled the gun. However, at trial, and to the surprise of the defendant, the expert, without supplementing his original report, testified that the explanation for no gunshot residue on the victim's hands was that either her hands had been washed or she was not in close proximity of the gun. The Court found this to be a contradiction to his original report and to be a discovery violation because the defendant was deprived of the opportunity to prepare effective cross-examination and secure his own expert to contradict the State's expert. (See *Acevedo*, 467 So.2d at 223-224, *Supra.*)

In this case of *Fuselier vs. State*, 468 So.2d 45 (Miss. 1985), our Supreme Court reversed the defendant's capital murder conviction. In that case, despite the defendant's motion for production of

certain evidence, the State failed to produce a second statement of an alleged accomplice. Also, despite the defendant's request to produce the photocopies of the State's forensic expert's latent shoe prints found at the scene, the expert testified at the trial that he was able to lift prints off of ledger cards found in the victim's garage. The expert stated that these prints are dusted and photocopied because the dusted print itself eventually fades and becomes of no value. The ledger cards and the photocopies were entered into evidence and the expert opined that these latent shoe prints were the defendant's shoe prints. The photocopy is retained as the permanent record. Neither item was produced to the defense despite the defendant's request. The State argued that the ledger sheets were work product of the lab technician and that the photocopies were in the possession of the crime lab, not the prosecution and thus were not discoverable. The Court in finding a discovery violation stated:

While the defense may have known that the State had latent prints found at the scene of the crime, there is absolutely no indication in the record that the defense had any knowledge that the State was relying on photocopies of those prints. The use of photocopies to make class comparisons may undoubtedly open the door to argument contesting the reliability of any such comparisons. Failure to discover these materials so that the defense could adequately prepare for the issue was error.

Further, where discoverable material is in the possession of the State crime laboratory, an agency charged with law enforcement or any other State agency or office, the prosecutor's obligation to produce it according to the rules of discovery remains unchanged. **The State is not free to hide discoverable material behind a curtain of agency. For purposes of discovery, all these**

agencies are "the State." (See *Fuselier, Supra.*, at 57, quoting.) (See *United States vs. Deutsch*, 475 F.2d 55 (5th Cir. 1973); *Box vs State*, 437 So.2d 19 (Miss. 1983) concurring opinion of Justice Robinson F.N. 4.

The Mississippi Supreme Court, in the case of *Hentz vs. State*, 489 So.2d 1386 (Miss. Sup. Ct. 1986), reversed the defendant's conviction of receiving stolen property. The Court gave the bench and bar the following mandate for future questions concerning what is exculpatory or important evidence that should be discovered to the defense. The Court stated as follows:

. . . the tapes that the State declined to produce or disclose very well may have been exculpatory of the crime of receiving stolen property. An important question in discovery such as involved here is who is exculpatory or important to the defense? Is the State attorney the only person who will make the determination? **We think not. The Court now declares that as a matter of good practice and sound judgment in the trial of criminal cases, prosecuting attorneys should make available to attorneys for defendants all such material in their files and let the defense attorneys determine whether or not the material is useful in the defense of the case. We direct the attention of trial judges to this problem and suggest that they diligently implement this suggestion in order to dispense with costly errors which might cause reversal of the case.** *Id.* at 1389 citing *Barnes vs. State*, 460 So.2d 126 9Miss. 1984); *Harris vs. State*, 446 So.2d 585 (Miss. 1984); Morris vs. State, 436 So.2d 1381 (Miss. 1983). Also see *McCaine vs. State*, 591 So.2d 833 (Miss. 1991) where defendant's conviction was reversed because the State committed a critical discovery violation when a fuller version of a tape recording of the defendant making allegedly incriminating

statements to an informant was played to the jury. The tape played to the jury at trial and not discovered to defense counsel was a fuller version than had been discovered to the defendant in discovery.

In *Dotson vs. State*, 593 So.2d 7 (Miss. 1991), our Supreme Court reversed the conviction of the defendant for manslaughter. In that case, the State failed to disclose the shirt of the victim to the defendant despite the Defendant's request even though they had the shirt prior to trial at the time of the request. The Court reversed the conviction and again warned the bench and the bar as follows:

Now we take this opportunity to reinforce that which we stated in Hentz with a simple message to the bench and bar. READ HENTZ! APPLY HENTZ! *Id.* at 13.

The Court found this to be a discovery violation because the shirt would have supported the defendant's claim of self-defense **depending upon** the cuts and slash marks which **may** or **may not** be found on the shirt. Dotson alleged she was defending herself in a slashing motion of the knife rather than an offensive stab. The Court stated the mandate from Hentz is clear. **Whether or not the shirt is exculpatory is a call for the defensive team to make, not the State. The fact that the State elects not to use certain evidence at trial or deems certain evidence as non-exculpatory is of no consequences in fulfilling its Rule 17 of Mississippi Rules of Criminal Procedure duty of disclosure.** *Id.* at 13, citing *Foster vs. State*, 493 So.2d 1304, 1038 where the Corut stated that **the argument about whether the crime lab reports, which were not disclosed to the defendant, were material or exculpatory did not matter or was irrelevant since the rule imposes an independent obligation under subsection 4 to disclose crime lab reports or**

tests made, whether or not exculpatory. *Id.* at 13 citing *Foster vs. State, Supra.* **One import of Hentz was to remove the State from the role of "judge" in determining the discoverability of evidence**. *Id.* at 13 citing *Foster, Supra.* at 1308. **This mandate applies even to documents used by the State to impeach a defense witness**. See *Ramos vs. State*, 710 So.2d 380 at 387-388 (Miss. 1998).

There is little doubt that the statements, lab reports, autopsy reports, and test results thereto in this case are discoverable and should be produced. Further, based on the law cited above, the Defendant is entitled to production, inspection and testing of the items specifically requested in his Motion to produce and Test as they are material to his defense and could reveal exculpatory or impeachment evidence. These items are the guns, projectiles, casings, clothing and DNA samples and swabs collected from suspects and items of evidence, some or all of which appear to have not been conducted or sent to various Crime Labs for testing as no results have been provided to the Defendant for the tests requested in the attached Evidence Submission form sent to the Mississippi Crime Lab. Further, if such evidence has not been sent for the specific tests, the Defendant has mentioned in his Motion, and Defendant contends that this evidence should be tested and compared in order for him to present a complete defense at trial for exculpatory or impeachment purposes. As provided by our rules of discovery and case law, the Defendant is entitled to access of this information to decide what is exculpatory and what can be used in his defense. Therefore, Defendant requests that he be provided this information and that these items of evidence be tested as requested and that the reports or results of these tests be provided to all counsel and this Court.

Yet the Supreme Court still held the Circuit Court erred by not reforming the Instruction.

I. THE TRIAL COURT ERRED IN ALLOWING THE STATE TO ARGUE FACTS AND NOT EVIDENCE DURING CLOSING ARGUMENT.

The Petitioner "contends" that the Pivotal question before the Jury in His case was whether the Petitioner shot Wilson with deliberate design or in self defense (or imperfect defense) in response to Wilson "upping" a gun at the Petitioner.

The Petitioner "contends" that over objection allowed by the Trial Court the Prosecutor was allowed to argue facts that's not in evidence and make the unsupported claims that the first shot entered into Wilson right shoulder. Proving that Wilson arm was down – not holding up a gun – whenever the Petitioner began shooting. The Petitioner contends that the natural and probable effect of the Prosecutor improper argument was to prejudice your Petitioner defense and to obtain his guilty verdict influenced by the speculative claim.

The Petitioner "contend" that the standard of review for misconduct during closing argument "is whether the natural and probable effect of the improper argument was to create unjust prejudice against Hearns so as to result in a decision influenced by the prejudice that was created." See: *White v. State*, 228 So.3d 893, 904 Miss. Ct. App. 2017) (quoting *Wilson v. State*, 194 So.3d) 855, 864 Miss. 2016) The State of Mississippi and Federal constitutions guarantees that "no person shall be deprived of life, liberty, or property except [without] due Process of law." Also Miss. Const. Art 3 §14; U.S. Const. Amend v. "[T]he Petitioner was entitled to a fair and impartial trial before a jury not exposed to abusive arguments that's appealing to their passions and prejudices." See: *Keyes v. State*, 312 So.2d 7, 10

(Miss. 1975). "Where the prosecutorial misconduct endangers the fairness of a trial and the administration of Justice Reversal must follow." White, 228 So.3d at 904 (quoting) *Goodin v. State*, 787 So.2d 639, 653 (Miss. 2001).

Hearns "contends" that Attorneys are allowed a side latitude in arguing their cases to the jury. However, Prosecutors are not permitted to use tactics which are inflammatory, highly prejudicial, or reasonably calculated to unduly influence the Jury." *Sheppard v. State*, 777 So.2d 659, 661 (Miss. 2000) (citing) *Hiter v. State*, 660 So.2d 961, 966 (Miss. 1995) "counsel cannot state facts which are not into evidence, and which the court does not judicially know, in aid of his evidence." *Id.* (quoting) *Williams v. State*, 445 So.2d 798, 808-09 Miss. 1994. "Arguing statements of fact which are not in evidence is error when those statements are prejudicial." *White*, 228 So.3d at 909 (quoting *Jackson v. State*, 174 So.3d 232, 237 (Miss. 2015).

The only evidence of the position of Wilson body is when Hearns began shooting came from Hearns statement to Police, which indicated that he shot Wilson when Wilson "upped a gun" on him. Although the jury was free to reject Hearns version of events, the Prosecutor was not free to make up facts to support its theory and persuade the jury to reject Hearns version, no evidence, no testimony whatsoever was presented as to the sequence or order in which Wilson specific bullet wounds were sustained of his position at the time of each shot yet the Prosecutor claimed that, "we know the first shot goes through the shoulder . . . so his arm is down and in front of him; it's not pointed over here at the passenger door." (Tr. 343-44) As the Prosecutor claim was not reasonably inferable from the evidence; it was RANK speculation that would be incompetent and inadmissible if such testimony had been offered. "It is the duty of the Prosecutor to see

that nothing but competent evidence is submitted to a Jury *Hasford v. State*, 525 So.2d 789, 792 (Miss. 1988) (emphasis in the original) (quoting) *Adams v. State*, 202 Miss. 68, 75, 30 So.2d 593, 596 (1974). In the fact, reversal would be warranted even if an expert witness had testified that the first shot went through Wilson shoulder whenever Wilson hands were down and not pointing a gun at Hearns. See e.g., *Newell v. State*, 176 So.3d 78, 80-81 (Miss. Ct. App 2014 (expert claimed that the victim bullet wound was consistent with being in a guarded position; *Parvin v. State*, 113 So.3d 1243, 1250-51 (Miss. 2013) (expert claimed that defendant shot his wife while she was seated and he was standing up over her.) Malice aforethought or deliberate design is the single most important element in this crime of murder." *McGee c. State*, 820 So.2d 700, 705 Miss. Ct. App. 2000 (citing *Pendergraft v. State*, 213 So.2d 560 Miss. 1968. As the outcome of Hearns trial turned on whether the Jury believed that he shot Wilson in self defense or imperfect self-defense in response to Wilson upping a gun on him.

The Petitioner will prove that the Prosecutor did violate Hearns rights to due process and to a fair trial by an impartial jury by recklessly making the purely speculative assertion that "we know the first shot goes through the shoulder" and that "his arm is down and in front of him." Hearns "contends" that his trial was irreparably prejudiced and he request this court to reverse and remand this case for a new trial.

II. THE TRIAL COURT ERRED IN GRANTING INSTURCTION 5-3

The Petitioner "contends" that the trial court erred in granting instruction 5-3 in which provided as follows Petitioner contends that the court did instruct the jury that he "Hearns deliberate design to effect the death" referenced elsewhere in these instructions does not have to exist in the mind of the

slayer for any given length of time, and that such element of the crime of murder is satisfied if you find beyond a reasonable doubt that the defendant formed such design at any time before the commission of the act which caused the death of the decedent and continued to have such design at the time of commission of the act, if any.

Petitioner "contends" that the standard for review of the Trial Judge's decision to grant or refuse a jury instruction is well known: note: [this court reviews the instructions as a whole to determine if the jury was properly instructed given abuse of discretion deference to the trial Judges decision. See: *Flower v. State*, 51 So.3d 911, 912 Miss. 2010 (quoting *Rubenstein v. State*, 941 So.2d 735, 787 (Miss. 2006) The principal here concern with respect to jury instruction is that the jury was fairly instructed and that it understood each parties theory of the case. *Worthman v. State*, 883 So.2d 599, 604 Miss. Ct. App 2004) quoting *McGee v. State*, 820 So.2d 700, 705 (Miss. Ct. App 2000) As deliberate design and malice aforethought should be clearly defined when the jury is instructed on murder and also on manslaughter or self-defense. *Brown v. State*, 768 So.2d 312, 316 (Miss. Ct. App 1999). As petitioner contends that the Instruction 5-3 was confusing throughout, and misleading, argumentative and an improper comment allowed on the sufficiency and weight of the evidence. During closing argument, the Prosecutor directed the jury to Instruction 5-3 and claimed that "deliberate design isn't a plan, it's a decision to shoot the gun and kill the person . . . all he has to do is think in his mind, that its time to shoot the gun, point the gun boom, and kill him. That's deliberate design (See Tr. 342).

Note: The Instruction (and the Prosecutor argument exploiting the Instruction were misleading.)

This court has explained that:

It is probably a logical inevitability that Jurors will believe that when an accused is pulling the trigger or taking another affirmative action, that at least at that moment there is a design for the consequence that follow. Though the law provides that a person because of heat of passion events i.e., circumstance mitigating the killing may have no will that explanation must be clear in the Instruction.

Brown, 768 So.2d at 316. It is well established that "one may have a deliberate to kill and yet not be guilty of murder." Pittman v. State, 297 So.2d 888, 893 (Miss. 1974); see also generally *Brown* at 316 (It is incorrect to instruct that the design can be formed instantaneously. . .") (citing) Windham v. State, 78 Miss. 369, 375m 29 So, 171, 171-72 (1901). Also, a homicide may be designed and intended, and at the same time entirely justifiable. *Id.*, at 893 (quoting Ellis v. State, 108 Miss. 62, 67, 66 So. 323, 324 (1914).

The Petitioner contends that under Instruction 5-3 (and the Prosecutor's argument). The State would have the jury believe that deliberate design could not be formed in the Heat of Passion [or imperfect self-defense] such as in manslaughter case, or in a case of self-defense where a defendant would assert and prove that he took a person's life because of an imminent fear his own life." McGee, 820 So.2d at 706 (citing *Windham*, 520 So.2d at 127). The Instruction was confusing and misleading and was not cured by other Instruction given. A material error in an Instruction, complete in itself, is not cured by a correct statement of Law in another Instruction, for the jury cannot know which Instruction is correct and the court know which Instruction influenced the jury. Banyard v. State, 47 So.3d 676, 684 (Miss. 2010) (quoting) McHale v. Daniel, 233 So.2d 764, 769 (Miss. 1970). As the Instruction 5-3 also constituted an impermissible comment on the weight and sufficiency of the

evidence. See e.g., *Sanders v. State*, 586 So.2d 792, 796 (Miss. 1991); *Gordon v. State*, 95 Miss. 543, 49 So.609 (1909) an Instruction is erroneous where "it charges that they may find the defendant guilty if they simply believe so and so. The Law of Criminal Procedure has long perceived dangers in comment upon the evidence, and in that regard, we have for years had a statute cited as MCA § 99-17-35 (1972). Which reads in pertinent: Part as the Judges in any criminal cause shall not sum up or comment on the testimony or charge the jury as to the weight of evidence. . . *Hansen v. State*, 592 So.2d 114 (Miss. 1991) (quoting) *Miss. Code Ann § 99-17-35 (1972)* Instruction that comment on the weight of the evidence are not proper." *Howell v. State*, 860 So.2d 704, 745 (Miss. 2003) (citing *Austin v. State*, 784 So.2d 186, 193 (Miss. 2001). Specifically Instruction that direct jurors attention to the quality or weight of the evidence have been condemned by this court." *Id.*, at 745 (citing *Hentz v. State*, 489 So.2d 1386, 1387 (Miss. 1986) Petitioner contends that Instruction 5-3 impermissibly commented on the weight and sufficiency of the evidence by stating that such element of the crime of murder is satisfied if you find beyond a reasonable doubt that the defendant formed such design at anytime before the commission of the act which caused the death of the decedent and continued to have such design at the time of the commission of such act if any see (C.P. 106: R.E. 9).

Petitioner contends that the trial court also erred in granting Instruction 5-3 and his defense was prejudiced thereby. Accordingly Petitioner requests this Court to revers his conviction and remand his case for a new trial.

THE TRIAL COUNSEL WAS INEFFECTIVE FOR REQUESTING INSTRUCTION D-3, WHICH CUT OFF PETITIONER HEARNS RIGHT TO CLAIM SELF-DEFENSE

Petitioner assert that his trial counsel was ineffectiveness for requesting the following Instruction, which cut-off Hearns right to claim self-defense:

The defendant in this asserting the defense of self-defense. The court instructs the jury that to make the shooting of another person justifiable on the grounds of self-defense the danger of the defendant must either be actual, present, and urgent or the defendant must have reasonable grounds to believe that the alleged victim intended to kill the defendant or to do him some great bodily harm; and in addition to this, the defendant must have reasonable grounds to believe that there is imminent danger or such act being accomplished. It is for the jury to determine the reasonableness of the grounds upon which the defendant acted.

In addition, one who claims self-defense may not have used excessive force to repel the attack, but may only use such force as is reasonably necessary under the circumstance. If you find from the evidence, beyond a reasonable doubt that the defendant, Willie Hearns, shot and killed Elex Wilson, and that said shooting was a use of more force than was reasonably necessary under the circumstances of this case, then the self-defense wouldn't apply. (See: C.P. 108 R.E. 10).

The Petitioner "contends" that on direct appeal, that said court may address ineffective assistance of counsel if either (1) the record affirmatively shows ineffectiveness of a constitutional dimensions, or (2) the Parties stipulate that the record is adequate to allow the appellate court to make the finding without consideration of the findings of facts of the Trial Judge. *Hibbler v. State*, 115 So.3d 832, 838 (Miss. Ct. App. 2012) (quoting) *Robinson v. State*, 68 So.3d 721, 723 (Miss. Ct. App. 2011). Petitioner contends that the record in his case affirmatively show clear of ineffectiveness of constitutional

dimensions, and Petitioner stipulates and asserts that the record is adequate to allow this court to address these issues.

The Petitioner "contends" that the right to effective assistance of counsel is guaranteed by the Sixth Amendment to the United States Constitution and Article 3 Section 26 of the Mississippi Constitution U.S. Const. Amend. VI; Miss. Const. Art 3 § 26. To establish a claim of Ineffective Assistance of Counsel, the defendant must show that: (1) that his defense counsel performance was deficient, and (2) that his counsel deficient performance was prejudicial to his defense. *Ravencraft v. State*, 989 So.2d 437, 443 (Miss. Ct. App. 2008) (citing *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052 (1984) where trial counsel performance is deficient if it fell below on objective standard of reasonableness." *Strickland*, 466 U.S. at 688, 104 S.Ct. 2052, as the defendant faces a rebuttable presumption that his attorney conduct is within the wide range of reasonable conduct and that his attorney decision were strategic." *Ravencraft*, at 443 (citing *Edward v. State*, 615 So.2d 590, 596(Miss. 1993). The defendant may rebut this presumption by demonstrating that, but for his trial attorney's error, there is "reasonable probability" that a different result would have been reached at trial. *Stringer v. State*, 627 So.2d 326, 329 (Miss. 1993)" "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, at 694 104 S.Ct. 2052.

"As a criminal defendant is entitled to present his defense to the finder of facts. This court has condemned outright the granting of any Instruction that precludes a defendant from asserting a claim of self-defense." *Keys v. State*, 635 So.2d 845, 848 (Miss. 1994) (citing) *McMullen v. State*, 291, So.2d 537 (Miss. 1974); *Patrick v. State*, 285 So.2d 165 (Miss. 1973); *Craft v. State*, 271 So.2d 735 (Miss.

1973) (additional citations omitted an Instruction that cuts off self-defense claims and prohibits the defendant from asserting his theory of the case is highly problematic. *Newell v. State*, 292 So.3d 239, 243 (Miss. 2020) (citing) *Boston v. State*, 234, So.3d 1231, 1234 (Miss. 2017). This court has previously held that counsel was ineffective for requesting an Instruction defining self-defense then cutting off the right to claim. *Blunt v. State*, 55 So.3d 207, 210 (Miss. Ct. App. 2011). The trial counsel performance was clearly deficient in requesting Instruction D-3, specifically, the second paragraph of the Instruction by cutting off the Petitioner rights to claim self-defense. Justifiable homicide in necessary self-defense is applicable, and the defendant is justified in using the deadly force, and killing his adversary, if he or she had reasonable grounds to do so. So if a party has an apprehension that his life is in danger and believes the ground of his apprehension just and reasonable a homicide committed by that party is in self-defense. These are the grounds upon which a claim of self-defense must be predicated *Flower v. State*, 473 So.2d 164, 165 (Miss. 1985) (emphasis added) (quoting *Scott v. State*, 446 So.2d 580, 583 (Miss. 1984). Our justifiable homicide statute necessarily contemplates that one acting in necessary self-defense will kill; the statute provides in relevant part that the killing of a human being by the act, procurement killing or omission of another shall be justifiable . . . who committed in the lawful defense of ones own person where there shall be reasonable ground to apprehend a design to commit a felony or to do some great personal injury, and there shall be imminent danger of such design being accomplished . . . Miss. Code. Ann § 97-3-15 (1)(f) (Rev. 2016) (emphasis added). Whether one was justified in killing another in self-defense defends on the reasonableness of the grounds upon which the defendant acts, not the degree of deadly force used to accomplish the killing. There was simply no

reasonable trial strategy to instruct the jury that the Petitioner could not claim self-defense and the jury determined that he had reasonable grounds to kill Wilson; but he used more force that it was necessary to do so.

The Petitioner "contends" that the trial court counsel deficient performance resulted in prejudice to Petitioner trial. And during closing argument, the State of Mississippi seized upon Instruction D-3 and used it against the Petitioner "Even if you have all of this [i.e.,] reasonable grounds to fear an imminent threat of death or serious bodily harm], in addition, one who claims self-defense may not use excessive force to repel the attack. . . after the first shot, did he still need to shoot again? After that second shot, did he need to shoot again? After the third shot, did he still need to shoot again? See: Tr. 343-345. Petitioner told the officer that the victim had pulled the gun on him; that he had shot the victim before he shot him; and the Petitioner was trying to get out of the car and get away from the victim. The points out that the spent shell casings at the scene of the crime was on the pavement leading away from the car.

As the evidence in this case did not establish a long pause between shots or otherwise indicate that the Petitioner continued shooting after he realized the threat of imminent serious bodily harm had passed. And if the Petitioner was close enough to shoot the victim, then the victim was close enough to shoot the Petitioner, consistent with the victim trying to remove a jammed bullet from the gun that he had pulled on the Petitioner in the first. As a live bullet of (a caliber different than the gun the Petitioner used) was found underneath victim leg and numerous of people had access to the crime scene before the police had arrived.

As the Petitioner knows that the evidence in his case didn't overwhelmingly establish that Petitioner

was guilty of murder or that he did not shoot the victim in self-defense.

IX. REASON FOR GRANTING THE WRIT

To protect due process liberty interests in post-conviction judicial proceedings

Recently on April 19, 2023, the United States Supreme Court found in Reed v. Goertz that the Texas legislatures created a liberty interest in post-conviction DNA testing by an enactment of the post-conviction statute. No. 21-442 (U.S. Apr. 19, 2023).

Similar to the state of Texas enactment of appellate procedures for inmates to proceed on post-conviction, Mississippi enacted post-conviction laws as well. Texas allowed Reed to file a Petition for post-conviction DNA testing. Pursuant to Mississippi Code Ann § 99-39-5 (2)(a)(ii) in pertinent part, "That, even if the petitioner pled guilty or nolo contendere, or confessed or admitted to a crime, there exists biological evidence not tested, or, if previously tested, that can be subjected to additional DNA testing that would provide a reasonable likelihood of more probative results, and that testing would demonstrate by reasonable probability that the petitioner would not have been convicted or would have received a lesser sentence if favorable results had been obtained through such forensic DNA testing at the time of the original prosecution."

Quoting and highlighting Mississippi Code Ann § 99-39-5 (2)(a)(ii) is only to demonstrate to this Court that Mississippi has a similar statute enacted by the legislatures of Mississippi creating a due process liberty interest in DNA testing and post-conviction proceedings. This court has spoken in *Reed* and has made clear that when a state allegedly violates due process through its judicial action be it thought the denial of fundamentally fair judicial procedure or through the application of a rule of decision that itself violates due process-the

remedy that Congress has provided is appellate review of challenged judgment in this Court. *Reed v. Goertz,* No. 21-4542, at *26 (U.S. Apr. 19, 2023).

However, the issue before this Court has not been decided and that issue is whether due process is violated when the legislature creates additional exceptions to the post-conviction statute of limitation bar other than the DNA testing exception and whether the Fourteenth Amendment due process clause is violated when the judiciary does not provide fundamentally fair due process to an inmate who has a liberty interest that can only be obtained through appellate review.

Specifically, Mississippi Code Ann § 99-39-5 (2)(a)(i) was created by the Mississippi legislatures in order to provide post-conviction relief to inmates and also to provide remedies to inmates who have exhausted all of their state court remedies within the statute of limitation provided by the post-conviction collateral relief statute.

Pursuant to Mississippi Code Ann § 99-39-5 (2):

(a) A motion for relief under this article shall be made within three (3) years after the time in which the petitioner's direct appeal is ruled upon by the Supreme Court of Mississippi or, in case no appeal is taken, within three (3) years after the time for taking an appeal from the judgment of conviction or sentence has expired, or in case of a guilty plea, within three (3) years after entry of the judgment of conviction. In the case, as emphasized by the order of the state supreme court, the court emphasized that the motion was timely presented. The Petitioner argues that the court's failure to reasonably address the issues presented in the motion for relief creates an unconstitutional standard of review. The motion, although presented timely was still subjected to the unreasonable standard of review and treated as if it were untimely and was further subject to procedural bars of the state. Under these circumstances, the Petitioner, including other Petitioner's are left without any reasonable avenue for appellate review. This honorable court should address these issues.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Willie Hearos

Date: August 6, 2024