

No. 24-7352

ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.  
FILED  
MAY 28 2025  
OFFICE OF THE CLERK

ROBERT ALLEN BENNEY - PETITIONER

-VS-

THOMAS McGINLEY ET AL., - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO  
THE THIRD CIRCUIT COURT OF APPEALS  
PETITION FOR WRIT OF CERTIORARI

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## **QUESTION(S) PRESENTED**

**INTRODUCTORY STATEMENT-** Brady v. Maryland laid the constitutional framework for the prosecutions duty when handling evidence, but it did not address whether courts can or cannot impose a due diligence requirement on a defendant to discover evidence of the prosecutors misconduct, or apply it to a defaulted Brady claims “cause” analysis. However, it gave guidance in Strickler v. Greene & Banks v. Dretke that explicitly rejected the notion that courts can, because Brady is entirely focused on the prosecutor’s conduct & their duty to ensure fairness., The 3<sup>rd</sup> Circuit used this guidance in Dennis v. Sec'y Pa. D.O.C., 834 F.3d 263, 290-93 (3<sup>rd</sup> Cir. 2016)(*en banc*) to clarify its position that the concept of due diligence plays no role in the Brady’s analysis.

Arizona v. Youngblood laid the constitutional framework for the prosecutions conduct when handling evidence, consequently, unlike for Brady claims, this Court has never addressed nor offered guidance as to whether courts can or cannot impose a due diligence requirement on a defendant to discover evidence of a law enforcement officers misconduct, or apply it to a defaulted Youngblood claims “cause” analysis. However, in Jimerson v. Payne, 957 F.3d 916, 927 (8<sup>th</sup> Cir. 2020), the 8<sup>th</sup> circuit applied Dennis’ guided position on Brady & due diligence to Youngblood & Napue v. Illinois claims. Instantly, the 3<sup>rd</sup> cir. did not extend Dennis’ position on Brady & due diligence to petitioner’s Youngblood claim and did not excuse “cause” for default because, petitioner did not exercise due diligence in discovering evidence of the law enforcement officers alleged misconduct that formed, concealed & hindered him from raising the claim earlier.

In Fisher v. Illinois & Glossip v. Oklahoma, the Supreme Court clarified procedures for analyzing separate constitutional violations under Youngblood & Napue, however, it has never addressed the procedures for analyzing an incorporation of those constitutional violations. Instantly, the 3<sup>rd</sup> cir. found petitioner’s Youngblood claim was ‘properly analyzed as two distinct

claims under Youngblood & Napue because, the law enforcement officers alleged false testimony was intertwined with the Youngblood claims facts.'

Petitioner's case presents an opportunity for this Court to provide clarity, guidance, or establish uniform standards on: an issue constitutionally akin to the one guidance was provided for under Brady and, on how to analyze an incorporation of constitutional violations. Intervention is necessary to eliminate inferior courts inconsistent rulings on constitutionally-comparable prosecutorial misconduct based claims, protect due process rights, uphold the integrity of criminal proceedings and ensure the fair and equal administration of justice nationwide.

**QUESTION(S) PRESENTED:**

- 1.) Since Youngblood & Brady are doctrines governing evidentiary preservation and focus on the prosecutions conduct, should courts be allowed to impose a due diligence requirement on a defendant to discover evidence of a law enforcement officers misconduct, or apply it to a defaulted Youngblood claims "cause" analysis; or does that imposition undermine the fundamental due process protections guaranteed by the 14<sup>th</sup> Amendment or violate Equal Protection of the Law? If courts are *not* allowed, is petitioner entitled remand, permitted an evidentiary hearing, and/or merits review of his Youngblood claim?
- 2.) If a destruction of evidence claims facts include false testimony, should the false testimony be unified into Youngblood's bad faith analysis or, is the destruction of evidence claim properly analyzed as two distinct claims under Youngblood & Napue? If analyzed separately, does it violated Equal Protection of the Law or create an arbitrary distinction that places an unequal burden on defendants based upon the type of prosecutorial misconduct based claim they are raising?

## 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:

- 1.) Superintendent of State Correctional Facility at Coal Township -Respondent
- 2.) The District Attorney of Washington County, Pennsylvania -Respondent
- 3.) The Attorney General of Pennsylvania -Respondent

## RELATED CASES

Benney v. McGinley, 2024 U.S. App. Lexis 34014, C.A. No. 24-1436 November 13, 2024  
Third Circuit Court of Appeals

Benney v. McGinley, 2024 U.S. Dist. Lexis 10573 Civil No. 18-cv-1223 January 22, 2024  
District Judge

Benney v. McGinley, 2023 U.S. Dist. Lexis 114497, WL4274073 (W.D. Pa. June 29, 2023)  
Magistrate Judge

Commonwealth v. Benney, 217 A.3d 390, 2019 Pa. Super. unpub. Lexis 1837 (May 10, 2019)  
State Habeas Court

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## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was NOVEMBER 13, 2024.

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: MARCH 4, 2025, 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 \_\_\_\_\_ (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 \_\_\_\_\_. A copy of that decision appears at Appendix \_\_\_\_\_.

A timely petition for rehearing was thereafter denied 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. § 1257(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

### **AMENDMENT 14**

#### **SEC. 1 [Citizens of the United States]**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any 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 the law. (Emphasis on relevant part)

## STATEMENT OF FACTS & PROCEDURAL HISTORY

Record based & verifiable facts with appendixes for review if necessary.

In 2008, two assailants burglarized a house, one assailant was of unknown height and less culpable, while the more culpable assailant who robbed and assaulted the victim Osko, was 5'9" tall, had a firearm, and was the only person fully in the basement to have bound Osko to the chair with duct tape.

Petitioner, who was 6'0" tall,<sup>FN1</sup> was alleged/charged/convicted as the 5'9" more culpable assailant based upon the 5'9" codefendants inconsistent/contradictory statements/testimony.<sup>FN2</sup>

At petitioner's trial, the prosecutions "17 year seasoned investigator & detective" Luppino, disclosed evidence of & testified about a partial fingerprint on a piece of duct tape evidence he obtained from the chair Osko was bound to in the basement:

**Detective Luppino:** I got a partial print. When I say a partial print, it wasn't a print I felt I could talk to an expert about. It wasn't good enough to send into the AFUS system. The AFUS system is a system where you send a fingerprint into. If you've ever been arrested, then that's how you find a match. I couldn't find any centers on the print. The centers are points, is how you compare fingerprints. Normally there are anywhere between 7 and 12 points. I think there were 1 point on this partial. So all you could tell from the print was the loop pattern of the fingerprint. That's the only thing to compare. So you couldn't match it up to anybody's fingerprint. The most you can say is: you know what, that is their loop pattern. So it ended up not being any good.

**Prosecution:** You didn't have enough to compare it?

**Detective Luppino:** No.

**Prosecution:** You've done this comparison on fingerprints before?

**Detective Luppino:** Sure, many times.

**Defense Counsel:** Your testimony was there was a partial print on the duct tape that was not useable?

**Detective Luppino:** Correct.

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<sup>FN1</sup> Technically 5'11<sup>3/4</sup>"

<sup>FN2</sup> There was other evidence presented that could place petitioner at the scene, however, the *only* evidence specifically placing petitioner in the 5'9" more culpable assailants role, was the 5'9" codefendant.

**Defense Counsel:** Did you send it to an expert like you did the DNA?

**Detective Luppino:** Yes. I did send it to an expert. I sent it to Trooper Liebhart, Forensic State Police.

**Defense Counsel:** Did he give you a report?

**Detective Luppino:** No, he did not.

**Defense Counsel:** Did he discuss it with you verbally?

**Detective Luppino:** Yes. -Complete recitation in **Appendix C at 12-14-**

Because Detective Luppino was part of the prosecution and his *sworn testimony* represented: that the duct tape, fingerprint, nor the loop pattern had *any* evidentiary value and it was verified by an expert, and there was nothing to demonstrate to the contrary, no further examination or inquiry was warranted into the duct tape evidence. Cf. **Appendix N at 2.**<sup>FN3</sup>

Petitioner was convicted on 2/5/09 and sentenced on 5/21/09 to an aggregate term of 47-94 years while his codefendant pled guilty as the less culpable assailant and was sentenced to 11<sup>1/2</sup>-23 months.

The Pa. Superior Court affirmed petitioner's conviction on direct appeal on 6/14/11.

However, during this direct appeal, petitioner obtained information stating that anything sent/submitted to Forensic State Police ("FSP") or their experts, *would* have a record of its submission and the experts findings, regardless of the evidences utility. See **Appendix E at 1-2.**

After this, petitioner obtained a picture of the duct tape evidence. See **Appendix F.**

Based upon: a novices observation of detail in the partial print, the lack of its record in discovery, and what was learned about FSP's evidence procedures, petitioner sought and was denied, any records related to the duct tape evidence. See **Appendix G, H.**

The Pa. Supreme Court denied an Allowance of Appeal on 10/25/11. (direct appeal)

Petitioner filed his 1st *pro-se* PCRA petition on 3/14/12, which was denied on 6/6/14.

However, while pending appellate review and after *numerous unsuccessful* novice attempts at the Pennsylvania Right-to-Know Law ("RTK"), petitioner obtained viable information that: (1)

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<sup>FN3</sup> Some Appendix omit factual history and other matters irrelevant to the scope of this petition.

Luppino was *not* qualified to examine, "compare," nor determine the evidentiary value of fingerprints, as his testimony strongly inferred he had done "many times;" 2) FSP's policy contradicted Luppino's testimony that an expert (like Liebhart) could verbally discuss the results of his findings without drafting a report; and most importantly, (3) contradicted Luppino's testimony that he sent/submitted the duct tape evidence to a FSP expert. See **Appendix I at 1-2, J at 1-2; K at 1-3; & L at 1-4** respectively.

Petitioner also discovered that Luppino misrepresented, concealed, or destroyed the potentially useful properties a loop pattern had just by being (admittedly) present/observable in the partial print, not to mention, "comparable."<sup>FN4</sup>

Petitioner filed a RTK request to Luppino regarding the duct tape evidence. See **Appendix M at 1-2.**

Once the 1st PCRA petitions Allowance of Appeals were denied (12/6/17), petitioner filed a 2nd PCRA petition on 12/30/17 raising a Brady-derived claim under the incorporation of California v. Trombetta, 467 U.S. 479 (1984) & Arizona v. Youngblood, 488 U.S. 51 (1988).<sup>FN5</sup>

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<sup>FN4</sup> If the observable and admittedly "comparable" loop patterns (right/left) slant did not match petitioner nor Osko's or, neither of them had a loop pattern because they had a whorl or arch pattern, that would have been exculpatory information/evidence *proving petitioner was not* the 5'9" more culpable and only person fully in the basement touching the duct tape that bound Osko. See U.S. v. Wright, 2022 U.S. Dist. Lexis 156833 (E.D. Pa. 2022).

<sup>FN5</sup> Due to a material issue in dispute as to if the duct tape evidence was sent to FSP's expert, the claim was raised under two different Brady-derived standards of review because; (1) if it was verified that Luppino lied about sending the evidence to the expert, Youngbloods bad faith standard would apply because he falsely testified about what he did with the evidence and destroyed or concealed potentially useful information/evidence, Id. 488 U.S. at 58; and (2) if it was verified that Luppino *did* send the evidence to the expert, Trombetta's standard would apply because any potentially useful information would/should have been apparent to the expert. Id. 467 U.S. at 489.

The PCRA court dismissed the Brady-derived claim on 1/12/18 because 'the issue was fully explored at trial.' See **Appendix N at 1.**

During the 2nd PCRA petitions appellate review, petitioner timely filed his 1st federal habeas corpus petition on 8/6/18, where for the reasons expressed in FN5 *supra*, he raised an underdeveloped Brady-derived claim identical to the one raised in the state courts, i.e. habeas ground 5. Petitioner asked and was granted a stay to continue to exhaust state remedies.

The Pa. Superior Court found the Brady-derived claim untimely because, petitioner "could have learned of the circumstances surrounding the examination of the duct tape earlier with the exercise of due diligence." Commonwealth v. Benney, 168 WDA 2018, 2019 WL2068505 at \*6 (Pa Super. Ct. May 10, 2019).<sup>FN6</sup> See **Appendix S.**

On 2/14/20, petitioner re-opened his habeas petition.

As a result of a mandamus action, on 2/11/21 petitioner finally received a response to the 5/8/17 RTK request to Detective Luppino (Appendix M) regarding the duct tape evidences alleged submission to FSP. See **Appendix O.**

Because Luppino's response (Appendix O) contradicted the FSP's RTK response (Appendix L), petitioner filed another RTK request to FSP inquiring again if Luppino submitted the duct tape evidence, and again, FSP 'did not locate any records.' See **Appendix P at 1-2.**

Furthermore, petitioner ask FSP to verify the authenticity of Luppino's RTK submission form (Appendix O) that represented he submitted the duct tape evidence to FSP, whereafter, FSP's search for record of the submission form, was met with "negative results." See **Appendix Q at 1-3.**

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<sup>FN6</sup> The Superior court elaborated that "it is unclear to us if the [RTK] response [Appendix L] that [petitioner] relies on even contradicts [] Luppino's testimony at trial." Id. at \*7.

Based upon subsequent RTK responses from the FSP attesting they have no record of Luppino submitting the evidence, nor the alleged submission form he put forth after a mandamus action, petitioner developed ground 5 into a Youngblood destruction of evidence claim.

Thereafter, on 6/29/23 the federal Magistrate filed a Report & Recommendation to deny in relevant part, the destruction of evidence claim. See **Appendix C at 11-18**. The Magistrate gave a myriad of reasons, some unfeasible, but all focusing on what *petitioner* could have done to discover evidence of detective Luppino's, [or the states], alleged misconduct earlier, with the exercise of due diligence. **Id. at 16**. Furthermore, the Magistrate divided and "properly" analyzed the destruction of evidence claim into two distinct claims, one under Youngblood and the other under a novel and never briefed Napue v. Illinois claim. See **Appendix C at 12, 17**.

After objections, on 1/22/24 the District Judge adopted R & R, dismissed ground 5 (the Brady-derived Youngblood claim), as procedurally defaulted. **Appendix B**. Petitioner filed for an application for a COA, and since Youngblood was Brady-derived and in Dennis the 3<sup>rd</sup> cir. adopted Supreme Court holdings rejecting due diligence requirements for Brady claims, petitioner ask the court to extend that rationale to Youngblood claims, which was denied on 11/13/24. **Appendix A**. Petitioner filed for a Panel and *en banc* rehearing, which was denied by the majority on 4/4/25. **Appendix D**.

(**Note:** Petitioner asserts a destruction of evidence claim, yet he ultimately obtained a picture of the evidence (Appendix F). First, a picture cannot be magnified to the same clarity as the actual evidence, nor can Touch DNA be obtained. Second, it actually alleges the *concealment* of information by the State (i.e. Det. Luppino), which falls under the purview of Youngblood. Nonetheless, the important issue, and the premise of the claim, is why did Det. Luppino allegedly lied about sending the evidence to an expert and conceal the evidences potential utility.)

## ARGUMENT

1.) Since Youngblood & Brady are doctrines governing evidentiary preservation and focus on the prosecutions conduct, should courts be allowed to impose a due diligence requirement on a defendant to discover evidence of a law enforcement officers misconduct, or apply it to a defaulted Youngblood claims “cause” analysis;

The Due Process Clause of the 14<sup>th</sup> Amendment imposes an affirmative duty on the prosecution to ensure a fair trial by: disclosing exculpatory and impeaching evidence (Brady v. Maryland, 373 U.S. 83, 87 (1963)), refraining from presenting false testimony (Napue v. Illinois, 360 U.S. 264, 269-70 (1959)), and preserving potentially useful evidence in good faith (Youngblood, 488 U.S. at 58).<sup>FN7</sup>

These doctrines are all prosecutorial conduct based and rooted in the same foundational principle that: prosecutorial misconduct undermines the integrity of the criminal justice system, and the burden of ensuring fairness rests solely on the state, not the defendant.

Two of these doctrines, Brady & Youngblood, established the constitutional framework governing the prosecutor’s duties & conduct when handling evidence. However, a critical distinction exists in how courts treat procedurally defaulted claims under these identically principled due process based claims.

For e.g., the Supreme Court gave guidance for Brady by rejecting the notion that courts can impose a due diligence requirement upon defendants to discover evidence of the State’s misconduct or apply it to its defaulted claims “cause” analysis, (Strickler v. Greene, 527 U.S. 263, 283 (1990)), which led to the 3rd & 8th circuit’s adopting the position ‘that the concept of due

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<sup>FN7</sup> Youngblood centers specifically on law enforcement officer’s conduct or whether they acted in bad faith, however, because they are part of the prosecutions “team” and the state is responsible for their conduct, they also fall under the purview of “prosecution” or “State”. See e.g., Kyles v. Whitley, 514 U.S. 419, 437-38 (1993).

diligence plays no role in the Brady's analysis." Dennis, 263 F.3d at 289-93; Jimerson, 957 F.3d at 927.

Consequently, because of the lack of guidance, some courts inject this same due diligence requirement into Brady-derived Youngblood claims or its "cause" analysis if defaulted, effectively shifting the burden onto defendant's to uncover the states misconduct and penalizing them by not addressing the misconduct if it was not discovered in a timely manner.

For e.g., (without explanation), the 3<sup>rd</sup> circuit did not extend Dennis' adopted position on Brady & due diligence, to (petitioners) Youngblood claim (when ask). Conversely, in Jimerson, the 8<sup>th</sup> circuit applied the 3<sup>rd</sup> circuits adopted position from Dennis to all prosecutorial misconduct based claims, Brady, Youngblood, Napue, and Giglio v. U.S., 405 U.S. 150 (1972). See Jimerson, 957 F.3d at 927; **Appendix R**. This lends support that there is an inconsistent application of constitutional protections among circuits.

This petition contends that: due diligence requirements should not apply to Youngblood claims or its "cause" analysis when defaulted, just as it does not apply to Brady or the other prosecutorial misconduct based claim Napue because, the principles articulated in all three violations under the 14<sup>th</sup> Amendment, form a cohesive due process framework that: (1) focuses exclusively on prosecutorial or the States misconduct, not defendants diligence; (2) prohibits courts from imposing scavenging duties on defendants to discover the States misconduct; and (3) mandate that defendants are entitled to presume prosecutorial honesty absent affirmative evidence of misconduct.

Furthermore, it contends that focusing on defendants actions or applying due diligence requirements to Youngblood claims or its "cause" analysis, but not to other similarly situated due

process based violations, create an unjust asymmetry, undermines due process, and disproportionately burdens defendants.

The U.S. Supreme Court has already explicitly or implicitly rejected imposing a due diligence requirement or conditioning Brady & Napue violations on defendants actions, but has never addressed the issue for Youngblood.

First, under Brady, the Supreme Court held suppression of materially exculpatory evidence violates the Due Process Clause of the 14<sup>th</sup> Amendment and imposes a duty to disclose favorable evidence, regardless of defenses request. U.S. v. Agurs, 427 U.S. 97, 107 (1976).

Brady violations focus on the *prosecutions* failure to disclose evidence, not the defendant's ability to discover it.

In Strickler, the Supreme Court explicitly rejected imposing a due diligence requirement on defendants to discover prosecutorial misconduct or to timely raise a Brady claim. Id. 527 U.S. at 283. The Court held that Brady violations are rooted in the prosecutor's duty to disclose, regardless of whether the defendant could have discovered it independently. Id.

Similarly, in Banks v. Dretke, 540 U.S. 668, 694-96 (2004), the Court refused to penalize defendants for failing to scavenge for hints of undisclosed Brady material, noting that the prosecution alone controls the evidence and courts must focus on the *States* conduct.

Brady is principled under the Due Process Clause which: obligates the prosecution to ensure a fair trial, bear that burden as the States actor, and entitles defendants to presume that the prosecutor has fulfilled its obligations. This Court has emphasized that the adversarial system relies on the prosecutions ethical duties. Kyles, 514 U.S. at 419.

If a Brady claim is procedurally defaulted, cause exists because the prosecutions suppression prevented the defendant from discovering or raising the claim earlier. Courts cannot

penalize defendants for failing to uncover what the prosecution has concealed.

The Brady analysis examines: (1) whether the evidence was favorable, (2) whether it was suppressed willfully or inadvertently, and (3) whether it was material. The defendant's diligence plays no role in this inquiry.

Second, Napue is paralleled principally to Brady under the Due Process Clause, just as defendants need not scavenge for hints of Brady material, they need not investigate whether witnesses are lying.

Napue prohibits the prosecution from knowingly presenting false testimony or allowing it to go uncorrected. Id. 360 U.S. at 269. Like Brady, it is a violation centered on *prosecutorial* misconduct and rooted in the Due Process Clause under the 14<sup>th</sup> Amendment. This Clause imposes 'the responsibility and duty to correct false testimony on the representative of the State, not on defense counsel.' Napue, 360 U.S. at 269-70.

This duty includes all state actors conduct including law enforcement officers because, the Supreme Court has consistently held that the prosecution is responsible for law enforcement officer's actions in the context of due process violations. In Kyles, the Court ruled that prosecutors are accountable for Brady material held by the police, even if they are unaware of it. Similarly, in Giglio, the Court treated law enforcement's false testimony as a *prosecutorial* Napue violation because the State bears the responsibility for its agents. Id. 405 U.S. 150. This principle stems from agency law: police act on behalf of the State, so their misconduct implicates due process when it affects trial fairness.

A Napue claim hinges on the prosecution's knowledge of falsity, not the defendant's ability to detect it, and it is implicit that courts cannot require defendants to exercise due diligence to uncover prosecutorial deception, as it would undermine Napue's purpose.

Third, Youngblood holds that the Due Process Clause of the 14<sup>th</sup> Amendment is violated when law enforcement destroys (or conceals) potentially useful evidence (or information) in bad faith. This deprivation undermines the defendants ability to present a complete defense and challenges the fairness of the trial process. Police, as state agents, can nonetheless taint a trial and deprive a defendant of fundamental fairness. Trombetta, 467 U.S. at 489-90; Strickler, 527 U.S. at 281.

Though distinct from Brady (which involves suppression not destruction), Youngblood is similarly rooted in the realm of prosecutorial misconduct, i.e. whether the State or law enforcement officer acted with a culpable mindset.

Like Brady, Youngblood is a doctrine governing conduct for evidentiary preservation and is paralleled principally under the Due Process Clause of the 14<sup>th</sup> Amendment.

Youngblood is based upon a cohesive due process framework akin to Brady's suppression and Napue's deception, and only requires that a defendant show: (1) that the evidence in question was potentially useful (i.e. Brady-derived), and (2) that the State (or law enforcement officer) acted in bad faith (i.e. Napue's deception).

While the burden is on the defendant to show bad faith on part of the State, a nearly improbable task, Youngblood never held nor even suggested that a defendant must exercise due diligence in discovering that bad faith or misconduct. Similarly, in Illinois v. Fisher, 540 U.S. 544, 547-48 (2004), the Court reiterated that a Youngblood analysis focuses on the *State*'s conduct, but it did not hold, nor even suggest, that a defendant must exercise due diligence in discovering a violation. The defendants diligence is irrelevant not only because Youngblood focuses on the State's conduct, but the action constituting misconduct or bad faith, is entirely concealed and outside of a defendants control.

If a Youngblood claim is defaulted because a defendant did not discover such egregious conduct from the State, courts should not penalize them for failing to anticipate or police the State for misconduct that is guaranteed under the Due Process Clause to not even happen.

Introducing a due diligence requirement would distant Youngblood from the cohesive framework rooted under the Due Process Clause by: shifting the States constitutional duty (to ensure a fair trial) to the defendant, ignore prosecutorial misconduct that impeded access to evidence, reward prosecutorial or law enforcement misconduct or bad faith, absolve the State of any misconduct because the defendant did not discover it earlier, and imply defendants should presume a *law enforcement* officer or the prosecution, who are *sworn* to uphold the law and officers of the court, would stoop to improper conduct.

It would also contradict Napue's part of Youngbloods cohesive framework because: the State cannot rely on its deception, i.e. false testimony about evidence (bad faith), to claim the defendant should or could have known about or investigated for, a violation.

Courts must deter prosecutorial misconduct, not excuse it based on a defendants lack of foresight.

In sum, consistent with Brady & Napue, courts should not impose a due diligence requirement on defendants to discover a Youngblood violation because: (1) bad faith is beyond defendants control: if police conceal or destroy evidence or information, the defendant cannot reasonably be expected to presume it occurred or uncover it; (2) Due Process focuses on State misconduct: like Brady & Napue, Youngblood is about the States misconduct, not defendants efforts; and (3) prosecutors bear responsibility since law enforcement acts for the State, the prosecution must answer for evidence or information that was destroyed or concealed just as it does for Brady's suppression or Napue's perjury.

All three doctrines, Brady, Napue, & Youngblood arise from the same constitutional imperative, preventing prosecutorial misconduct that deprives a defendant of a fair trial. Imposing a due diligence requirement upon Youngblood claimants or applying it to its “cause” analysis if defaulted but not to Brady or Napue, other similar due process based prosecutorial misconduct claims, creates an unfair asymmetry by forcing defendants to police the States conduct.

**1.)(continued) does [the] imposition [of a due diligence requirement] undermine the fundamental due process protections guaranteed by the 14<sup>th</sup> Amendment or violate Equal Protection of the Law?**

The imposition of a due diligence requirement undermines the fundamental due process protections guaranteed by the 14<sup>th</sup> Amendment, violates Equal Protection by creating an arbitrary distinction between Brady and Youngblood claims, and lack any rational basis.

The Supreme Courts guidance in Strickler & Banks, as well as this Courts broader due process jurisprudence, forecloses such a requirement.

The Due Process Clause requires that criminal defendants be afforded a fair opportunity to defend themselves. Youngblood recognizes that the States destruction of potentially useful evidence violates this Due Process Clause when done in bad faith. Unlike Brady, which concerns the suppression of material evidence, Youngblood focuses on the States duty to preserve evidence in good faith.

Courts imposition of a due diligence requirement improperly shifts the burden onto the defendant to uncover the *States* misconduct.

This Court has never held that a defendant must proactively investigate police malfeasance to assert a Youngblood claim.

Strickler & Banks explicitly reject the notion that defendants must scavenge for hints of undisclosed Brady material, (Banks, 540 U.S. at 695), and the same logic applies to Youngblood.

Police officers testify under oath, and defendants are entitled to rely on their veracity absent affirmative signs of deceit. By conditioning defendants ability to raise a Youngblood claim on their own diligence, effectively insulates police misconduct from judicial scrutiny, undermining the very purpose of due process protections.

Furthermore, the Equal Protection Clause prohibits the government from treating similarly situated individuals differently without a rational basis.

Courts are creating an irrational distinction by: refusing to impose a due diligence on Brady claims (per Strickler & Banks), while implicitly requiring due diligence for Youngblood claims. There is no meaningful distinction between the two claims that justifies this disparity. Both concern the States obligation to ensure a fair trial under the Due Process Clause of the 14<sup>th</sup> Amendment, Brady by disclosing exculpatory evidence, Youngblood by preserving in good faith.

If a defendant need not anticipate the State's perjury to assert a Brady (or even a Napue) claim, then neither should they be required to do so for a Youngblood claim. This arbitrary distinction disadvantages defendants, who are penalized for failing to uncover misconduct that the State actively concealed and denies equal protection of due process rights.

Such a rule creates a perverse incentive for law enforcement to withhold or destroy evidence or information, knowing that courts will blame defendants for not discovering it sooner.

Any purported justification for treating Youngblood claims differently than Brady (or Napue) claims collapse under scrutiny: (1) States duty is paramount as both (or all three) doctrines exist to constrain prosecutorial misconduct, not impose investigative burdens on defendants, and (2) (Judicial economy), courts cannot prioritize efficiency by foreclosing a claim on default over fundamental fairness. Youngbloods bad faith requirements already limits a claim; adding due diligence creates an unjust barrier.

The Due Process and Equal Protection Clauses demand that Youngblood claims be evaluated based on the *States* conduct, not the defendants ability to discover it.

The presumption of truthfulness in judicial proceedings and the prosecutions duty to preserve evidence are fundamental to ensuring a fair trial and uphold due process. Requiring a criminal defendant to presume that a law enforcement officer would testify falsely under oath or flatly conceal useful information about their investigation and evidence, places an unreasonable burden in the defendant and undermines the integrity of the judicial system. Similarly, imposing a due diligence requirement on defendants to discover and present claims of destroyed or concealed evidence or information, shifts the burden of preserving evidence from the State to the defendant, violating due process principles. The adversarial system relies on the preservation, not the defendant's ability to anticipate and counteract potential misconduct. Any departure from the principles, risk to erode the fairness and reliability of criminal trial.

#### **Reason why the United States Supreme Court should GRANT a Certiorari on this issue.**

The imposition of a due diligence requirement on defendants to discover evidence of a Brady-derived Youngblood claim presents a significant issue affecting defendants across the United States. The Supreme Court has previously recognized the need for uniformity in the application of constitutional rights as seen in Strickland v. Washington, where the Court established a standard for ineffective assistance of counsel that *all* states must follow. The absence of a clear ruling or even guidance on due diligence in this context creates uncertainty and inconsistency across jurisdictions as demonstrated *supra* between the 3<sup>rd</sup> & 8<sup>th</sup> circuits.

This case offers the Supreme Court an opportunity to clarify the legal standards surrounding due diligence in the context of Youngblood claims. The Court's guidance would provide much-needed clarity to lower courts and ensure defendants are not unjustly penalized for

the State's failure to disclose or preserve potentially useful evidence or information in good faith.

The issue presented in this case touches upon the core principles of due process and the right to a fair trial. As articulated in Gideon v. Wainwright, 372 U.S. 335 (1963), the right to a fair trial is fundamental to the American legal system. The Supreme Court's intervention is crucial to uphold these rights and ensure that the legal system operates fairly and justly.

Petitioner prays that this Court grant a Certiorari to address question #1 and this issue and/or remand to the 3<sup>rd</sup> circuit for a full analysis.

**1.)(continued) If courts are *not* allowed to [impose a due diligence requirement], is petitioner entitled remand, permitted an evidentiary hearing, and/or merits review of his Youngblood claim?**

If, like in Strickler & Banks, this Court rejects the notion that courts can impose a due diligence requirement upon defendants like petitioner to discover evidence of the States misconduct for a Youngblood claim, then petitioner contends he is entitled to at least an evidentiary hearing on his Youngblood-derived destruction of evidence claims issue in dispute.

Petitioner claims that the state violated his due process rights under the 14<sup>th</sup> Amendment by failing to preserve or disclose potentially useful information and presenting misleading testimony about that evidence at trial. Under Youngblood, the state has an obligation to preserve potentially useful evidence in good faith. When the state fails to preserve such evidence or disclose its potentially useful information, the defendant's due process rights are violated if: (1) the evidence was potentially useful, and (2) the defendant can demonstrate bad faith on part of the State. Here, on its face, both elements are satisfied.

Detective Luppino testified there weren't enough points on the fingerprint to compare or match to any individual, however he admitted there was a loop pattern observable & identifiable. Consequently, it was **concealed** that just by being able to identify a loop pattern existed; meant its

right/left slant, patterns type, or touch DNA, could have been compared against petitioners, Osko's, and the codefendants, and if it didn't match petitioner's or Osko's slant, pattern type, or DNA, it excluded petitioner as the more culpable and *only* person (assailant) fully in the basement to have touched the duct tape that bound Osko to the chair. i.e. **potentially exculpatory information**. Cf. FN4 *supra*.

Since the 5'9" codefendant was the only evidence placing the 6'0" petitioner in the 5'9" more culpable assailants role, the State's failure to disclose the loop patterns potential utility, deprived petitioner of the opportunity to further challenge the codefendants testimony, raise reasonable doubt about his involvement in binding Osko to the chair, and prove his innocence.

Luppino testified that he sent the duct tape to a Pa. Forensic State Police expert where no report was generated, but the results were discussed verbally. Mid-state habeas appeal, petitioner obtained credible evidence that the state police had no record of receiving the duct tape for analysis. This confliction strongly suggested that Luppino either failed to send the evidence as required or concealed the results of the analysis and raised serious unresolved questions about his credibility and conduct. Such deceptive conduct on its face constituted **bad faith** because it indicates an intentional effort to withhold, conceal, or misrepresent the potentially exculpatory utility the evidence may have had.

The loop patterns concealed information could have been central to petitioner's defense as it was possibly the *only* physical evidence linking the more culpable assailant to the crime scene.

Petitioner was prejudiced because Luppino's (or the State's) alleged misconduct undermined the integrity of the investigation and the fairness of the trial.

Like the state, the federal court, more specifically the Magistrate Judge, recommended dismissing petitioner's destruction of evidence claim on the basis of procedural default because,

he could have obtained his own expert, or raise the claim on direct appeal, i.e. did not exercise due diligence in discovering the *State's misconduct* earlier. See **Appendix C at 16**.

In response, petitioner demonstrated this claim could not have been raised on direct appeal or in his 1<sup>st</sup> PCRA petition because he did not obtain evidence for support of potential misconduct until the 1<sup>st</sup> PCRA's mid-appeal. Cf. pages 5 & 6 *supra*; **APPENDIX L**.

Therefore, since petitioner's Youngblood claim is Brady-derived and procedurally defaulted based upon his 'lack of diligence,' he ask the federal court, more specifically the District Judge, to excuse defaults "cause" based upon 3<sup>rd</sup> circuit precedent in Dennis.

In Dennis, the state courts found a Brady claim procedurally defaulted because Dennis failed to exercise due diligence in discovering the State's misconduct, earlier. As a result, the 3<sup>rd</sup> circuit *en banc* adopted the U.S. Supreme Courts guidance for Brady & due diligence from Strickler & Banks, and held that "cause" for default was excused because, 'due diligence plays no role in Brady's analysis.' Dennis, 834 F.3d at 290-93; see also Bracey v. Sup't Rockview, 986 F.3d 274, 279-80 (3<sup>rd</sup> Cir. 2021)-where defaults "cause" was excused on the same state courts due diligence ruling under Dennis' holding.

Petitioner argued like Brady, due diligence should play no role in Youngblood's inquiry, as the focus is on the State's misconduct. As support, petitioner referenced Jimerson, where the 8<sup>th</sup> circuit applied Dennis, the 3<sup>rd</sup> circuit's position on Brady & due diligence, to excuse "cause" for a Youngblood claims (due diligence based) default. Jimerson, 957 F.3d at 927; **Appendix R**.

Nonetheless, the District Judge found this argument 'did not undermine the Magistrate Judge's [due diligence] analysis.' **Appendix B**. Petitioner ask the 3<sup>rd</sup> circuit court of appeals to extend Dennis' guided position to Youngblood, however, devoid reasoning, they stated 'jurist of reason would [not] find it debatable whether the District court was correct in its due diligence

ruling.’ **Appendix A.** Petitioner ask for a rehearing *en banc* on this issue, where ‘a majority of the Judge’s...denied *en banc* rehearing.’ **Appendix D.**

At the onset, petitioner’s case preliminarily demonstrates Youngbloods two factors, but the federal (& state) courts never addressed them because they conflated & prioritized procedural timeliness with and over the merits of petitioners Youngblood claim. The question of whether petitioner could have discovered evidence of the State’s alleged misconduct earlier through due diligence, is irrelevant as to whether Detective Luppino acted in bad faith by lying about submitting fingerprint evidence to an expert or concealing its potential utility.

Petitioner’s defense team cross-examined Luppino and was entitled to rely on his testimony as a *sworn* officer of the law and of the court. Once he *testified* it was sent to an expert, implicitly verified as useless,<sup>FN8</sup> and never used against petitioner in any manner, they had no further obligation to independently investigate the chain of custody or the veracity of Luppino’s claims.

This logic and presumption is based upon the judicial system operates on the foundational principle that witnesses, including law enforcement officers, are presumed to testify truthfully under oath and is rooted in the sanctity of the oath itself, which carries legal & moral consequences.

Imposing the due diligence requirement essentially presumed that Luppino testified falsely, and this undermined the foundational principle and placed an unreasonable burden on petitioner. Furthermore, it ignored that the prosecution had a duty to ensure the integrity of evidence and the honesty of witnesses.

The lower courts created or allowed an unjust barrier to petitioner’s Youngblood claim.

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<sup>FN8</sup> There was no evidence suggesting Luppino lied about sending the duct tape to Trooper Liebhart, nor that the duct tape, fingerprint, or loop pattern, was potentially useful. While the expert allegedly failed to generate or provide a written report, the absence of a report corroborated Luppino’s claim that the duct tape evidence had no evidentiary value.

Petitioner cannot be faulted for failing to discover Detective Luppino's (or the State's) misconduct.

The post-trial revelation that the duct tape evidence may have been mishandled or destroyed and the contradictory evidence obtained, further supports the argument that the prosecution failed in its duties to preserve evidence (or disclose its potentially exculpatory utility) in good faith and ensure a fair trial.

In sum, petitioner's claim preliminarily meets the Youngblood factors, and Luppino's or the State's deceptive actions impeded petitioners efforts to discover or raise the claim earlier, i.e. "cause" for default. Therefore, petitioner should be entitled to a remand or at least an evidentiary hearing to resolve the material issue in dispute, i.e. whether the duct tape was submitted and analyzed by an expert.

**2.) If a destruction of evidence claims facts include false testimony, should the false testimony be unified into Youngbloods bad faith analysis or, is the destruction of evidence claim properly analyzed as two distinct claims under Youngblood & Napue? If analyzed separately, does it violate Equal Protection of the Law or create an arbitrary distinction that places an unequal burden on defendants based upon the type of prosecutorial misconduct claim they are raising?**

This case presents a critical question about the proper framework for analyzing a Youngblood destruction of evidence claim when the facts underlying that claim involves false testimony or concealment by the State.

Because false testimony was alleged in petitioner's destruction of evidence claim, the federal Magistrate Judge severed and "properly" analyzed it as "two distinct claims," Youngblood and (a never raised or briefed) Napue claim. See **Appendix C at 11-12, 17**. It also found petitioner

did not prove a constitutional violation occurred under a Napue analysis. ***Id.*** at 17.

Petitioner argued it was error to sever the claim and find no violation occurred as the false testimony was alleged proof of and an integral part of Youngbloods bad faith and a Napue analysis was irrelevant. The District Judge never addressed that argument and held the claim was procedurally defaulted. **Appendix B.** Petitioner's COA was denied as the court upheld the district courts finding that no constitutional violation occurred under Napue's analysis. **Appendix A.**

Petitioner contends it is error to sever a Youngblood claim into two distinct claims, not only because false testimony is an integral part of proving bad faith, but it also imposes an arbitrary and unequal burden on defendants challenging similar due process based prosecutorial misconduct claims.

The latter approach violates Equal Protection principles by creating irrational distinctions between defendants raising Brady claims and those raising Youngblood claims intertwined with false testimony.

Under Brady, Youngblood, and Napue, the common thread is prosecutorial misconduct that undermines due process. When false testimony is used to conceal the destruction of evidence or its potentially exculpatory value, it is inextricably linked to Youngbloods bad faith analysis. Forcing defendants to bifurcate such claims into separate doctrines, imposes a higher burden on them than Brady claimants, lacks a reasonable basis, and distorts the purpose of due process protections.

Brady, Youngblood, and Napue, are all prosecutorial misconduct claims rooted in the Due Process Clause of the 14<sup>th</sup> Amendment. The U.S. Supreme Court has consistently held that Brady, Youngblood, and Napue are from the same constitutional imperative: preventing prosecutorial misconduct that deprives defendants of a fair trial. Brady requires disclosure of material

exculpatory evidence, Youngblood bars the destruction of evidence in bad faith when it is potentially useful to the defense, and Napue prohibits the prosecution from knowingly presenting false testimony.

All three doctrines safeguard due process by ensuring the integrity of evidence and testimony. When the State suppresses, destroys or falsifies evidence, it undermines the truth-seeking function of a trial. Thus, when false testimony is used to conceal the destruction or suppression of evidence or information, it should be analyzed as part of Youngblood claims bad faith inquiry, not severed into a separate claim.

The District court's bifurcation of petitioners destruction of evidence claim into Youngblood and Napue components was erroneous because: (1) false testimony is direct evidence of bad faith under Youngblood. When an officer lies about sending evidence to a lab or conceals its potential utility, the deception or false testimony is *prima facie* evidence of bad faith. This bad faith requirement already encompasses the knowing misconduct from the State (or law enforcement officer) that underlies Napue claims. The same conduct, lying about evidence can simultaneously violate Napue and prove Youngblood's bad faith. The doctrines are not mutually exclusive; they are complementary; (2) Bifurcation creates an arbitrary and unfair burden. Under Brady, a defendant need only show (a) suppression (b) of material evidence. No separate bad faith showing is required. Under Youngblood, a defendant must prove bad faith and that the evidence was potentially useful. If false testimony is excluded from Youngblood's bad faith analysis, defendants raising Youngblood claims face a higher burden than Brady claimants even though both involve prosecutorial misconduct. This violates equal protection by treating similarly situated defendants or due process based claims, differently without justification; (3) An unified analysis prevents manipulation by the State. Allowing the State to evade Youngblood's bad faith

requirement by lying about evidence, would create a perverse incentive; the state could destroy or conceal information, lie about it, and force defendants to meet two separate legal standards instead of one. This undermines Youngbloods purpose: to deter intentional deprivations of evidence.

Including false testimony within this unified analysis would not create a new standard, but would ensure that all forms of prosecutorial misconduct claims are treated consistently, prevent arbitrary distinctions, and promote fairness in the judicial process. This would also align with the Equal Protection Clauses guarantee of equal treatment.

The District Courts approach violated equal protection by creating irrational distinctions. The 14<sup>th</sup> Amendment prohibits arbitrary classifications that burden fundamental rights. By requiring petitioner, or any Youngblood claimants, to bifurcate their claims while Brady claimants face no such burden, the District Court's ruling: 1.) lacks a reasonable basis –there is not legitimate reason for treating false testimony about destruction of evidence differently than other forms prosecutorial misconduct. In both Brady and Youngblood (and Napue), the State's misconduct equally deprives the defendant of a fair trial. 2.) Disadvantages defendants raising Youngblood claims. A Brady claimant can obtain relief by proving materiality alone. A Youngblood claimant must prove bad faith and potential usefulness. If false testimony is excluded from Youngbloods bad faith analysis, the State can exploit this disparity to shield itself from accountability. 3.) Contradicts Supreme Court precedent. In Fisher and Glossip, this Court emphasized that Youngblood & Napue claims must be analyzed in a manner that preserves their due process objectives, not in a way that elevates form over substance.

In sum, the District Court's severance of Petitioner's Youngblood claim into two distinct claims, was error. False testimony used to conceal the destruction of evidence was direct proof of bad faith and should be analyzed as such. To hold otherwise would violate equal protection.

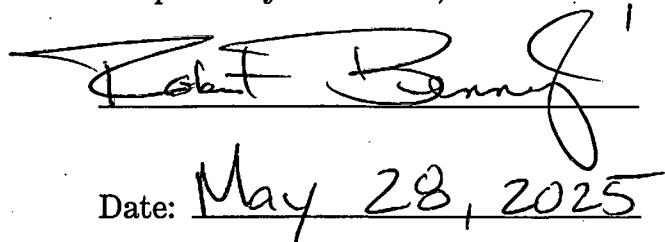
## CONCLUSION

Petitioner prays this Court GRANT a Certiorari and address questions 1 & 2 and/or remand back to the 3<sup>rd</sup> circuit for a full analysis. If the issues presented are not addressed, some court will continue to review the destruction of evidence (Youngblood) claims and/or excuse defaults "cause" in one manner, while other courts will flatly deny review because the *defendant* did not exercise due diligence in anticipating or discovering evidence of, alleged misconduct that is not even supposed to happen.

The imposition of due diligence requirements cause an ongoing unconstitutional burden on defendants to presume all prosecutors and law enforcement officers may be lying or concealing information. Society, nor defendants, should not have to have this additional burden upon them that undermines trust in the judicial system.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

  
Date: May 28, 2025