

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Andrew Fortson _____ — PETITIONER
(Your Name)

Lashann Eppinger, Warden vs.
_____ — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
United States Court of Appeals For The Sixth Circuit

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

PETITION FOR WRIT OF CERTIORARI

Andrew Fortson # 388-815

(Your Name)

2500 S. Avon Belden Road

(Address)

Grafton ,Ohio 44044

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. If a State prosecutor withholds favorable evidence rather requested by petitioner, does this violate petitioner's Sixth Amendment and Fourteenth Amendment Rights of the United States Constitution of America under Brady ?
2. Does a Brady violation occur when a State prosecutor withholds evidence most favorable to petitioner whether it establishes guilt or innocence, bad faith or good faith ?
3. When a Brady violation has occurred does it also violate a petitioner's Due Process and Equal Protection Rights under the Sixth and Fourteenth Amendments of the United States Constitution ?

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:

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

For case from **federal courts:**

The opinion of the United States court of appeals appears at Appendix E to the petition and is reported at: **Brady v. Maryland** 373 U.S. 83; 83 S. Ct. 1194; 10 L. Ed. 2d 215; 1963 U.S. LEXIS 1615

The opinion of the United States court of appeals appears at Appendix F to the petition and is reported at: **Juan v. Burl** 565 U.S. 73; 132 S. Ct. 627; 181 L. Ed. 2d 571; 2012 U.S. LEXIS 576; 80 U.S.L.W. 4028; 23 Fla. L. Weekly Fed. S 32

The opinion of the United States court of appeals appears at Appendix G to the petition and is reported at: **Agurs** 427 U.S. 97; 96 S. Ct. 2392; 49 L. Ed. 2d 342; 1976 U.S. LEXIS 72

The opinion of the United States court of appeals appears at Appendix H to the petition and is reported at: **Strickler** 527 U.S. 263; 119 S. Ct. 1936; 144 L. Ed. 2d 286; 1999 U.S. LEXIS 4191; 67 U.S.L.W. 4477; 99 Cal. Daily Op. Service 5186; 99 Daily Journal DAR 6091; 1999 Colo. J. C.A.R. 3465; 12 Fla. L. Weekly Fed. S 361

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was October 4, 2017.

Case Number 17-3272

No hearing granted and no appeal.

For cases from **state courts**:

The date on which the highest state court decided my case was February 15, 2017. A copy of that decision appears at Appendix B.

No hearing granted and no appeal.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

AMENDMENT 6

[RIGHTS OF ACCUSED]

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

AMENDMENT 14

[DUE PROCESS-EQUAL PROTECTION]

All persons born or naturalized in the United States and subject to jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No States 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.

STATEMENT OF THE CASE

In the instant case Petitioner Fortson was indicted in the year 1999, for a murder that occurred in 1978, after a thorough investigation the case went old.

However, in 1998, the fingerprints of Petitioner Fortson's half-brother Robbie Robertson's were found to be at the crime scene. Mr. Fortson was then indicted for conspiracy to commit aggravated murder count one and aggravated murder count two. After a joint trial with Mr. Robertson, Petitioner Fortson was found guilty of aggravated murder. The prosecution utilized "ALL" testimony evidence to secure a guilty conviction. There were no physical evidence found at the crime scene that belonged to Petitioner Fortson. (See Tr.p.313)

However, there was plenty of evidence found. The crime lab had the phone cord that was found around the victims neck and her clothing, her blouse, pants and her panties. There was also a knife, blood, D.N.A., fingerprints, a pillow with a blood footprint and blood splattered all over the walls. (See Tr.p.955-960)

Since this is a cold case of forty (40) years and there is no physical evidence to indicate Petitioner Fortson committed this crime, the validity of the testimonial evidence is important. Fortson's motion is based upon the prosecution's Brady violation in regards to the suppression of Brady Material (specifically) states witness Ann Coulter's twelve (12) page suppressed statement that upon requesting, was said, "Not to exist!" Petitioner now presents this Court with a plain Brady violation which deprived Petitioner Fortson of a fair

trial since the trial jurors did not have opportunity to consider this **Brady Material Evidence** in determining the innocence or guilt process.

The suppressed evidence consist of **ten (10)** statements. One from states witness **Ann Coulter** and others from witnesses Archie Jones, Ronald Harris, Havannia Wade, Charles Walker, Sonea Foncea, Ronald Smith, Curtis Melton, Allen Flakes, and Elizabeth Meeks. All these witnesses statements Petitioner Fortson provides to this Court reflect as fact from the original police investigation that the **timeframe, alibi, Motive** and **Alleged Beating** of the victim was supported by perjured testimony.

REASONS FOR GRANTING THE PETITION

There are FOUR specific reasons pursuant to Brady why this Court should grant this petition.

Reason ONE: Petitioner Fortson's guilty conviction of aggravated murder is a direct result of a Brady violation.

In a (22) year old murder case with no physical evidence found belonging to the petitioner. (Tr.p.313) The validity of the "TESTIMONIAL" evidence is important, especially since all the evidence the prosecution presented, was testimonial. The evidence the prosecution suppressed that was favorable to the accused actually proves the beating of the victim, the Motive, Timeframe, and the alledged phoney Alibi presented to the trial jury as proof of petitioner's guilt for aggravated murder has been proven to have been perjured "by way of the suppressed statements," (See Appendix K. 4-17) these statements and notes also contradict "ALL" the testimony from "BOTH" states witnesses Jacque Conner's and Ann Coulter, who supplied the State with the "RECANED" testimony for the beating, the motive, the timeframe, and the alledged phoney alibi as evidence the petitioner killed the victim.

Petitioner will demonstrate to this court the suppression of favorable evidence caused him to be denied opportunity to prepare a meaningful defense and also prove that the guilty conviction of aggravated murder is based upon perjured testimony, which in turn caused petitioner to receive an unfair trial.

This Court "The Supreme Court of the United States of America" in *Brady v. Maryland* (1963), 373 U.S. 83, 87, 83, S. Ct. 1194, 1196-97, 10 L. Ed 2D 215, "held that "suppression" by the prosecution of evidence

favorable to and requested by an accused violates DUE PROCESS where the evidence is material either to guilt or punishment, irrespective of the good faith of the prosecution. (See Appendix E)

Turning one's attention to the instant case, it is clear the suppressed statements and notes from the original investigation from 1978 were never provided to defense during Discovery. In spite defense Counsels request for said documents three seperate times. **One:** Defense Counsel filed a "THOROUGH" Motion of Discovery. (See Appendix L.) **Two:** Defense Counsel also asked leading Detective Newkirk for the said documents during trial. Detective Newkirk told defense Counsel (specifically) that the (12) page statement from states witness Ann Coulter, which petitioner now presents to this Court, "Did Not Exist!" (See Tr.p.496 or Appendix K-1) **Three:** Finally defense Counsel motioned the trial judge for said documents. He was denied. (See Tr.p.509 or Appendix K-2) The prosecutor in his closing statement told the jury that the "defense Counsel had made some story up about a statement they had from Ann Coulter from 1978, but it does not exist, defense Counsel will do anything for his client. (See Appendix K-3)

Pursuant to Brady when the prosecution upon request suppressed this favorable evidence petitioner's DUE PROCESS CLAUSE of the Fourteenth Amendment of the United States of America was violated. When the United States Court of Appeals for the Sixth District denied petitioner's Certificate of Appealability it's decision was erroneous.(Tr.p.1059 or see Appendix A.) The decision is also in conflict with this Courts decision in Brady v. Maryland, which states in part: "The Court held that suppression of evidence favorable to an accused up request violated the DUE PROCESS rights of petitioner which in turn violated

his Fourteenth Amendment of the United States of America (See Appendix E)

Reason TWO: This Court should grant this petition because the Supreme Court of Ohio made a decision that is in conflict with the decision of this Court. Petitioner's Constitutional Right to due process have been violated. The prosecution suppressed favorable evidence upon request. This is not only a miscarriage of justice on petitioner's behalf, but to over look this constitutional violation would open the doors for many other Courts to do the same.

Thirdly, petitioner will show this court that the suppressed statements and notes prove petitioner did not strangle and stab Elaine to death as convicted. Keeping in mind the only evidence alledging petitioner had a motive, timeframe, and phoney alibi for this murder was states witnesses **Ann Coulter** and **Jacque Conner's** "RECANTED" testimonies. States witness **Jacque Conner's** provided the state with the motive, the (specific timeframe) and the alledged phoney alibi for petitioner killing Elaine. States witness **Ann Coulter** provided the testimonial evidence alledging petitioner had beaten the victim prior to her death.

However, the suppressed statements and notes in the police records from (13) witnesses (see appendix K.4-17) will all provide this Court with facts proving the prosecution knowingly utilized perjured testimony to obtain a guilty conviction for aggravated murder.

The **Brady** doctrine, in it's purest form, is the rule of law that the **DUE PROCESS CLAUSE** is violated when the goverment achieves a conviction through the use of perjured testimony, e.g., **Brady**, or by withholding a confession of guilt by someone other than the accused, e.g..., **Brady**,

or by withholding evidence "so clearly supportive of a claim of innocence that it gives the prosecution notice of a duty to produce. **United States v. Agurs**, 427, U.S. 97, 107, 96, S.Ct. 2392, 49, L. Ed 2d 342 (1976) "the doctrine evolved out of the tenet of constitutional law that it is fundamentally unfair for the government to obtain a conviction in such circumstances, regardless of whether the government suppressed the evidence knowingly or unknowingly.

THE BEATING: In the case at bar, in the year 2000, states witness Ann Coulter testified petitioner had beaten Elaine in front of the Biscayne Lounge prior to her death. (See Tr.p. 375-76) However, in her suppressed statement from 1978, the day she found Elaine's dead body with the petitioner, she gave a statement to the police stating in part: (specifically) that "**Archie Jones** beat Elaine in front of the Biscayne Lounge.

Coulter **QUOTES:** "Did she have any bad trouble with any particular person? One fight one night with **Archie**. When did this happen and who is Archie? Don't know the exact date, approximately Three Weeks ago that Archie jumped on Elaine. She had been knowing Archie about four days. She liked him. She was more or less infatuated with Archie. She thought she would like to spend some time with him. Become his girlfriend. They were together and they spent four days off and together and she decided that he wasn't the man she thought he was and she told him that she didn't want to be his girlfriend, that he had to leave her alone. And he told her that she couldn't just walk in and out of his life like that it wasn't that easy, and he knocked her around. Where did this take place? In front of the Biscayne. Were the police called? I think that by the time the police got there they

had.... You say the police talked to Archie, Yes. Who is Archie? Archie Jones" (See K-4)

The Coulter's suppressed statement provides reason for the prosecutions suppression. Coulter's testimony was in direct contradiction to her original statement. However, because the prosecution chose to disclose exculpatory evidence that created a reasonable doubt to the beating of Elaine in front of the Biscayne Lounge. The trial jury only heard one side. Defense Counsel was not allowed opportunity to question his accuser in regards to her "prior statement." The defense was not allowed the opportunity to present this contradiction to the jury.

Secondly, Archie Jones himself told police in 1986, that he was the one who beat Elaine up in front of the Biscayne Lounge.

Archie QUOTES: "Just before she was killed she worked for me as a prostitute. He stated he did have a few words with the victim a few days before she was killed and I did slap her a few times when she was giving me mouth in front of the Biscayne on Euclid."

(See Appendix K-5)

Curtis Melton QUOTES: From his hospital bed; "I heard that Archie had gone "Schitzo" on her. Indicated that he heard from some of the girls. But, did not know exactly who. Stated that he heard Archie had spent some time with the victim and when she tried to cut him loose he (Archie) was very upset." (See Appendix K-6)

Archie Jones and Curtis Melton's suppressed statements confirm Ann Coulter's original statement, which says, "Archie Jones had beaten Elaine prior to her death. There is no physical evidence belonging to the petitioner linking him to this crime. (Tr.p.313) The validity of

the testimonial evidence is important. In regards to states witness Ann Coulter it appears the state suppressed exculpatory evidence to hide the fact they knowingly utilized perjured testimony to secure a guilty conviction for aggravated murder.

The trial jurors were convinced "without a doubt" petitioner had beaten Elaine in front of the Biscayne. Apparently, the Sixth District Court of Ohio also "without a reasonable doubt" were convinced petitioner had beaten Elaine prior to her death.

Sixth District Court QUOTES: Although these statements may contradict the prosecution's overall theory of the case, the jury heard ample evidence to the contrary that supported the prosecution's theory regarding Fortson's motive, INCLUDING TESTIMONY THAT FORTSON HAD PREVIOUSLY BEATEN LOVETT (ELAINE) TO A BLOODY MESS." (See Appendix A.,P.4)

However, the suppressed statements from states witness Ann Coulter, along with Archie Jones and Curtis Melton reflect as fact that states witness Ann Coulter's testimony was perjured in regards to the beating of Elaine in front of the Biscayne Lounge prior to her death.

If a prosecutor fails to voluntarily disclose exculpatory evidence, and if the omitted evidence creates a reasonable doubt that did not otherwise exist, constitutional error has been committed under the Due Process Clause of the United States Constitution Amendment V. United States v. Agurs 427,U.S. 97: 96 S. Ct. 2392: 49 L. Ed 2d 342: (1976)(See Appendix G)

Pursuant to Agurs, this Court,(The Supreme Court of the United States), reversed a conviction because the prosecutor fail to disclose exculpatory evidence requested upon pretrial. As in Agurs this court should reverse petitioner's conviction.

In **Strickler**, petitioner's habeas corpus application was granted by the federal trial court based on a finding that exculpatory evidence was not disclosed. **TOMMY DAVID STRICKLER, PETITIONER v. FRED W. GREENE, WARDEN** 527 U.S. 263; 119 S. Ct. 1936; 144 L. Ed. 2d 286; 1999 U.S. LEXIS 4191; 67 U.S.L.W. 4477; 99 Cal. Daily Op. Service 5186; 99 Daily Journal DAR 6091; 1999 Colo. J. CA.R. 3465; 12 Fla. L. Weekly Fed. S 361 (See Appendix H) In the case at bar as in **Strickler** exculpatory evidence was not disclosed. The Sixth District's Court decision to deny petitioner's certificate of appealability is in conflict with the Supreme Court of the United States decision in **Strickler**. For this reason this Court should grant petitioner's *cetiorari*.

In **JUAN SMITH v. BURL CAIN, WARDEN** where there are no other witnesses and no physical evidence implicated the inmate in the crime. After being convicted, the inmate obtained detective's notes which contained statements by the witness that conflicted with states witnesses.

In the case at bar, there is no physical evidence implicating petitioner beat Elaine. States witness Ann Coulter's testimony was the only evidence alledging that petitioner had beaten Elaine prior to her death. As in **BURL** petitioner obtained detective statements and notes which contained statements by the states witness (Ann Coulter) that conflicted with her testimony regarding the beating the victim to a bloody mess, as the "Sixth District Court" quoted.

This Court in **BURL** reversed and remaned the lower courts decision and granted petitioner's *cetiorari*. **JUAN SMITH v. BURL CAIN** 565 U.S. 73; 132 S. Ct. 6727; 181 L. Ed. 2d 571; 2012 U.S. LEXIS 576; 80

U.S.L.W. 4028; 23 Fla. L. Weekly Fed. S 32. (See Appendix F)

The United States Court of Appeals for the Sixth Circuit decision to deny petitioners certificate of appealability is in conflict with the Supreme Court of the United States decision in *Burks*. In regards to the beating of the victim Elaine prior to her death the suppressed evidence provide reason for the suppression it has also been proven to be exculpatory evidence. As in *Agurs*, *Strickler*, *Burks* and *Brady* this Court granted petitioner's *certiorari*. This court should also grant petitioner Fortson's *certiorari* because the prosecution failed to disclose exculpatory evidence, which constitute a *Brady* violation of DUE PROCESS.

The Motive:

The states motive for petitioner allegedly committing this crime is because Elaine was about to brake off their relationship. The states (prosecutions) motive is supported by the "recanted" statement from states witness Jacque Conner's. (Tr.p.310-311)

However, the "suppressed" statements from three witnesses the Detectives questioned in 1978 provide testimonial evidence confirming petitioner's "original" statement, which states, "There was no relationship between Elaine and himself prior to her death."

Petitioner Fortson QUOTES: "that there was no relationship between himself and Elaine prior to her death. (See Appendix K-7)

The (12) page suppressed statement from states witness Ann Coulter, which was said, "not to exist" states in part:

States witness Ann Coulter QUOTES: "she was just laying there, I couldn't even look at her. Who were you with tonight? Her **ex-boyfriend**, (ANDY). I was living on 113 and Euclid so I stopped to

Speak to him cause I knew this was Elaine's **ex-boyfriend**, and I asked him had he seen Elaine. (See Appendix K-4)

Archie Jones himself QUOTES: "Elaine worked for him as a prostitute prior to her death." (See Appendix K-5)

Charles Walker QUOTES: "he recalled being with the victim, Sonia (Elaine) and **Archie Jones**, Oscar Williams and Havannia Fails" the night before the victim was discovered murdered. They were all at Oscar Williams apartment at 1644 Doan Avenue. He stated Sonia (Elaine) chose Oscar over Archie, and in fact paid Oscar cash on the spot. (See Appendix K-8)

The suppressed information from Ann Coulter's, Archie Jones and Charles Walker all confirm petitioner's "ORIGINAL" statement, which he stated there was no relationship between himself and Elaine. (See Appendix K-7)

The prosecution knowingly used perjured testimony to secure a guilty conviction for aggravated murder. Their original investigation provided evidence that the "MOTIVE" they based this murder upon was not true or without a doubt, "questionable," ACCORDING to "ALL" the "SUPPRESSED" witness statements, "including states witness Ann Coulter's original statement."

In **Juan Smith v. Burl Cain**, the United States Supreme Court determined that the witness's undisclosed statements alone sufficed to undermine confidence in the inmate's conviction because the undisclosed statements were plainly material to the determination of the inmate's guilt since the witness's testimony was the only evidence linking the inmate to the crime and the witness's undisclosed statements directly contradicted the witness's testimony, the U.S. Supreme Court reversed

Juan Smith's conviction.

In the case at bar, as in **Smith** there is only testimonial evidence linking petitioner to this crime. Likewise, the undisclosed statements directly contradict the witness's testimony (specifically) States witness Ann Coulter. As this Court has **REVERSED Smith's** conviction, the same should be done with petitioner Fortson's conviction as well.

Reason THREE:

This Court should grant this petition for two reasons in regards to the motive in this case.

1. Because the Motive was based upon one witness's **"RECANTED"** testimony. However, the suppressed statements from (4) **FOUR** witnesses contradict that one states witness **"RECANTED"** testimony as in **Smith** this court should grant petitioner's certificate of appealability.

2. When the United States Court of Appeals For the Sixth Circuit denied petitioner Fortson's certificate of appealability, it was in direct conflict with the decision made by the Supreme Court of the United States in **Juan Smith .v Burl Cain** 565 U.S. 73, *; 132 S. Ct. 627,**;181 L. Ed 2d 571,***;2012 U.S. Lexis 576 (See Appendix F)

The TIME FRAME and ALIBI:

In regards to the **"TIMEFRAME and ALIBI"** the Brady Violation allowed the prosecution the opportunity to hide evidence proving the **"TIMEFRAME and ALIBI was knowingly supported by perjured testimony.** The facts from the suppressed statements from Sonia Foncea, Ronald Harris, Havannia Wade, and states witness Ann Coulter all prove without a doubt that Elaine was in the company of friends during the (specific) timeframe the prosecution alledged to the trial jury that petitioner had committed this murder. The suppressed statements also

provide proof without a doubt that Elaine was not with petitioner between the timeframe of 3:00 to 4:00 AM., May 31, 1978 as states witness Jacque Conner's (**specifically**) stated that petitioner had came back to their hotel room saying, "I gotta find a witness." (Tr.p.669-670, see Appendix K-9) The "**ORIGINAL**" police records reflect the fact that Elaine was alive and in the company of friends during the timeframe specifically stated by states witness Jacque Conner's.

As in **Smith**, once again in this case as well, there is only one testimony alledging petitioner left the hotel room between the hours of 3:00 to 4:00 AM. May 31, 1978. (Tr.p.676, see Appendix K-10) The suppressed statements from (4) four witnesses prove it was impossible for petitioner to have killed Elaine during this (specific) timeframe.

In the case at bar, the "**ALIBI**" is very important because it is tied together with the "**TIMEFRAME**." States witness Jacque Conner's A.K.A Tina Hiemer's gave detectives (3) **THREE** different testimonies regarding the (**SPECIFIED**) timeframe the prosecution convinced the trial jury petitioner committed this murder. 1. States Witness Conner's told police in 1978, that she was with petitioner all night of May 31, 1978. The night Elaine was killed. (See Appendix K-10) 2. However in Conner's "**RECANIED**" statement from 1986, she (**specifically**) stated (3) **three** sepearate times she couldn't remember the time petitioner alledgely left the hotel room. (See Appendix M) 3. Finally, in 2000, during petitioner's trial Conner's conviently remembered a timeframe of 3:00 to 4:00 AM. May 31, 1978. However, the suppressed **Brady Material** provides the whereabouts of Elaine prior to her death. The statements state as followed:

1. at Two O'clock Elaine was with Sonia Foncea, who **QUOTED**:

"Sonia stated she didn't see Elaine leave the area until 2:00 AM."

(See Appendix K-11)

2). **Three** O'clock Elaine was with Ronald Harris and Elizabeth Marks. **QUOTE:** Harris stated that he called the Prospect Lounge around 1:00 A.M. Friday morning. He talked to Elizabeth and she told him that her and Sonia (Elaine) would drive to the home (1620 Crawford). Stated they arrived at 3:00 A.M. and he made them some breakfast, but Sonia (Elaine) didn't eat anything. Stated that they all left together at around 3:30 A.M. and Sonia dropped them off at the Midtown Hotel..."

(See Appendix K-12)

3). **Four** O'clock Elaine was in the presence of Havannia Wade. **QUOTE:** Candy (Havannia) when was the last time you saw Elaine Lovett? The last time I saw her was Wednesday morning, May 31 around **four in the morning**. Where was this? At 3844 Euclid Ave. It's where we hang out. (See Appendix K-13)

4). **Ann Coulters** "SUPPRESSED" (12) twelve page statement, which was said "NOT TO EXIST," **QUOTES:** Last time I saw her was **Thursday 4:00 A.M.** She told me she was tired and going home. (See Appendix K-4)

5). Ronald Smith who verified Harris' statement (See Appendix K-14)

It is also aparent petitioner Fortson did not need an alibi, the suppressed evidence proved that Elaine was alive during the (specific) timeframe the prosecution convinced the trial jury petitioner committed this crime. The suppressed statements also confirm states witness Jacque Conner's "ORIGINAL" statement, which said she was with petitioner all night May 31, 1978. Sonia Foncea, Ronald Harris,

Havannia Wade, Ronald Smith and states witness Ann Coulters suppressed statement all reflects one truth, petitioner was not with the victim during the timeframe the prosecution sllpecifically alledged petitioner was killing Elaine. When considering the facts from the suppressed evidence it is more likely both Conner's and Fortson's original statements were true, that they were together May 31, 1978.

It is fact petitioner Fortson could not have received a fair trial since the trial jurors did not have opportunity to consider this **Brady Material Evidence** in determining the innocence or guilt process of petitioner Fortson. Pursuant to **United States v Bagley** this court should set aside this guilty verdict. It is not a worthy conviction. **United States v Bagley** (1985) 473 U.S. 667, 105 S. Ct. 3375, 87 L. Ed. 2d 481. also see **Strickler v Green** (1999), 527, U.S. 263, 289-90, 119, S. Ct. 1936, 1952, 144, L. Ed. 2d 286.

In spite the **evidence proving the motive, timeframe alledged beating** and the alledged phoney alibi was supported by perjured testimonial evidence. The Sixth Circuit over looked the **Brady violation** which revealed the prosecutions evidence is not based on truth. It is evident the prosecution knew where petitioner was in 1978. This is why the timeframe is so specific in this case. It also gives reason for the prosecutions suppression. Why the suppression of this **Brady Material** should be the real question.

Fact one, as the Sixth District Court **QUOTED**: "Fortson claims withheld statements contradict the evidence presented at trial with respect to the timeline of Lovett's murder."

Petitioner has never said nor commented on a timeline of Lovett's death. However, through the police records from the detectives

"ORIGINAL" investigation petitioner has proven he did not and could not have killed Elaine during the **(specific)** timeframe alleged by states witness Jacque Conner's. The timeframe is important in this case because in 1978 petitioner's whereabouts were known by everyone. The prosecution's alledged accusations are founded upon the petitioner leaving the hotel room for two hours to kill Elaine. Now this accusation from the **"RECANED"** testimony of states witness Jacque Conner's has been proven perjured.

Petitioner's issue is a **Brady** violation that denied the constitutional right to **DUE PROCESS** under **Brady v Maryland** (1963), 373 U.S. 83, 87, 83 S.Ct. 1194, 1196-97, 10 L. Ed 2d 215. (See Appendix E)

In the instant case petitioner Fortson was denied the ability to present a complete defense in regards to the alleged beating of the victim, the motive, the timeframe and alibi due to the prosecution's failure to disclose evidence favorable to the accused upon request to defense counsel, the statement from states witness Ann Coulter and witnesses Sonia Foncea, Ronald Harris and Havannia Wade, which were suppressed denied defense counsel the opportunity to present this **Brady material** to the trial Jurors to prove petitioner's innocence nor expose the perjured testimonies from both states witnesses Jacque Conner's and Ann Coulter.

Reason FOUR: Finally in regards to the **Motive** the prosecution's theory for petitioner committing this murder, which was allegedly because Elaine was about to leave him. (See Tr. P.310-311) The suppressed evidence from states witness Ann Coulter, **"which was said not to exist,"** and the statements from witnesses Archie Jones, Charles Walker, and even states witness Jacque Conner's statement from

1986, all confirm petitioner's original statement, which states there was no relationship between himself and Elaine before her death. (See Appendix 7). It is evident through the revealing of the suppressed evidence that the motive the prosecution founded their theory for petitioner committing this murder was not true according to the evidence, opposed to the one "RECAPTED" testimony of states witness Jacque Conner's

However, the Sixth Circuit Court of Ohio QUOTED: Although these statements may contradict the prosecution's overall theory of the case, the JURY heard ample evidence to the contrary that supported the prosecution's theory regarding Fortson's MOTIVE, (See Appendix A.,p.4).

In the case at bar, there is only one testimony supporting the prosecution's theory for petitioner Fortson's alleged motive. That one states witness is Jacque Conner's, whose testimony contradicts two other previous statements made by Conner's. Because the Sixth Circuit Court of Ohio has chosen not to honor the Constitutional rights to Due Process under the Sixth and Fourteenth Amendments of petitioner, they had depended upon the evidence that had been proven perjured in determining petitioner's innocence or guilt process.

In Smith this Court reversed and remanded his conviction. The same should be done in petitioner Fortson's case as well.

IN CONCLUSION

As this court reversed and granted certificates of Appealabilities in "Brady" for Due Process violations, "Agurs" because the prosecution

failed to disclose favorable evidence to the accused, in "Smith" because the only testimony was proven contradicive and finally, "Bagley" as where this court found the conviction was not a worthy conviction.

As in these four cases, this court reversed and remanded, because petitioner Fortson's situation is exactly the same as in all four of these cases. This court should reverse Fortson's case as well.

To deny this motion would be in conflict with the above listed cases already remanded by this court.