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IN THE SUPREME COURT OF THE UNITED STATES

Wilfred Doyle Hinchman, II, *Petitioner*,

v.

State of West Virginia, *Respondent*.

On Petition for a Writ of Certiorari to the Supreme Court of Appeals of West Virginia

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Under *Brady v. Maryland*, 373 U.S. 83 (1963), does the materiality standard require that the suppressed evidence directly go to proving any count against a defendant?

PARTIES TO THE PROCEEDINGS BELOW

1. Wilfred Doyle Hinchman, II.
 - a. Mr. Hinchman is a criminal defendant in the Circuit Court of Randolph County, West Virginia, whose conviction is the subject of the instant Petition for Writ of Certiorari.
 - b. Mr. Hinchman is the Petitioner in the direct appeal of his conviction to the Supreme Court of Appeals of West Virginia, in *State v. Wilfred H.*, Docket No. 17-0170, (W.Va., June 15, 2018).
2. The State of West Virginia.
 - a. The State of West Virginia is the Plaintiff in Mr. Hinchman's criminal case in Randolph County, West Virginia.
 - b. The State of West Virginia is the Respondent in Mr. Hinchman's direct appeal of his conviction to the Supreme Court of Appeals of West Virginia, in *State v. Wilfred H.*, Docket No. 17-0170, (W.Va., June 15, 2018).

TABLE OF CONTENTS

Questions Presented.....	<i>ii</i>
Parties to the Proceedings Below.....	<i>iii</i>
Table of Contents.....	<i>iv</i>
Appendix Table of Contents.....	<i>v</i>
Table of Cited Authority.....	<i>v</i>
Citations of Opinions and Orders.....	1
Statement of Jurisdiction.....	1
Constitutional Provisions Involved in this Case.....	1
Statement of the Case.....	2
Argument Amplifying Reason for Allowance of the Writ.....	5

APPENDIX TABLE OF CONTENTS

Document	Page
Memorandum Decision of Supreme Court of Appeals of West Virginia in <i>State v. Wilfred H.</i> , Docket No. 17-0170.....	1
Order Denying Rehearing in <i>State v. Wilfred H.</i> , Docket No. 17-0170.....	11
Post Trial Motions of Wilfred D. Hinchman, II.....	12

TABLE OF CITED AUTHORITY

FEDERAL CASES

<i>Brady v. Maryland</i> , 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).....	4-6
<i>United States v. Bagley</i> , 473 U.S. 667 (1985).....	5-6
<i>Kyles v. Whitley</i> , 514 U.S. 419 (1995).....	5-6

STATE CASES

<i>State v. Wilfred H.</i> , Docket No. 17-0170, (W.Va., June 15, 2018).....	11
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CONSTITUTIONAL PROVISIONS

U.S. Const. Amend. XIV, Sec. 1.....	1
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STATUTES

28 U.S.C. § 1257(a).....	1
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PETITION FOR WRIT OF CERTIORARI

The Petitioner, Wilfred Doyle Hinchman, II, respectfully requests that this Court issue a Writ of Certiorari to review the judgment of the Supreme Court of Appeals of West Virginia, for the reasons stated herein.

CITATIONS OF OPINIONS AND ORDERS

State v. Wilfred H., Docket No. 17-0170, (W.Va., June 15, 2018). Memorandum opinion of the Supreme Court of Appeals of West Virginia (included in the Appendix to this Petition at p. 1).

STATEMENT OF JURISDICTION

The Petitioner's conviction was affirmed on direct appeal by Memorandum Decision issued by the Supreme Court of Appeals of West Virginia on June 15, 2018. A Petition for rehearing was filed, and denied on October 9, 2018. This Honorable Court has jurisdiction over final judgments of the highest court of a state pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED IN THIS CASE

U.S. Const. Amend. XIV, sec. 1:

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 laws.

STATEMENT OF THE CASE

This case began based upon allegations that the Petitioner, Wilfred Hinchman, committed a series of sexual acts upon M.A.H., the minor daughter of his double first-cousin, for several years starting when she was nine years old, in Randolph County, West Virginia. Following M.A.H.'s 2012 disclosure (by means of a note meant for classmates located by school personnel after she falsely self-reported her own drug use), a forensic interview was conducted upon her by Allyson Scott of CPS. Next, the Petitioner was interrogated, and convinced to part with his electronic equipment under threat of arrest by law enforcement, who had not obtained a warrant. The electronics were submitted to the State Police Crime Lab, and no further action was taken in the case until the Petitioner's indictment in the fall of 2014. The Petitioner was indicted on 61 counts; primarily of sexual assault in the first and third degree (depending on M.A.H.'s age at the time), plus one count of display of obscene matter to minors.

Included in the data files from the Petitioner's seized computer was a grainy photograph purportedly depicting M.A.H., nude, at a young age. The Petitioner submitted numerous pre-trial motions, including a motion to suppress evidence on the grounds that the seizure of the Petitioner's electronics was involuntary, which was denied; as well as evidentiary motions, including two rape shield motions requesting respectively to use M.A.H.'s own seemingly exculpatory description of her sexual history, as well as to be permitted to cross-examine the alleged victim about her hymen not being present, both of which were also denied. The case ultimately came to trial, during which five counts were dismissed, and the jury hung after extended deliberations.

Following the mistrial, the State filed a motion to introduce 404(b) evidence in the form of incriminating statements purportedly made by the Petitioner's daughter to M.A.H.'s mother, as well as the testimony of another woman that the Petitioner had groped her breasts

when she was a teenager many years before. The daughter's statement was not admitted, but the latter testimony was permitted to be brought forth at trial. Additionally, certain confidential records were disclosed, and several other motions were litigated, not least of which was a motion concerning the scope of expert testimony of a law enforcement officer.

At the second trial, the Petitioner made one motion for mistrial, which is germane to the instant Petition for Writ of Certiorari. This motion was made upon the basis of the State's prior publication of a photograph to the jury that purported to depict a nude, underage image of the alleged victim. Prior to said publication, the Defendant objected to the publication on two grounds: a reassertion of issues that had been litigated prior to trial (suppression, etc), and secondly, that the State had failed to establish a chain of custody pertaining to the photograph. The Court overruled the Petitioner's objections, and the State published the photograph by physically holding and moving the image in close proximity to the seated jury.

Subsequently, the state elicited additional testimony from Trooper Hevener. During his testimony, Trooper Hevener admitted, under the State's direct examination, that the materials received back from the State Police Crime Lab sat unguarded on his desk for a period of approximately five months. Following said testimony, the Court precluded the State from publishing the photograph through a different witness.

The Defendant moved for a mistrial on the basis that the State had offered inadmissible evidence of a highly prejudicial nature to the jury. The Court ruled that the State had failed to prove the chain of custody on the basis of Trooper Heavner's testimony. The Court also agreed that the evidence was prejudicial. The Court further inquired of the parties what the appropriate remedy would be. At that time, the Defendant argued that a mistrial was warranted, and further that a dismissal of all charges with prejudice was warranted because the

that the photograph would be removed from evidence, and that the jury would be instructed not to consider the photograph. The Defendant objected to the Court's remedy. Following the verdict, the Defendant renewed the motion for mistrial, and memorialized the same in his Post-Trial Motions. The Post-Trial Motions also addressed the photograph by means of a motion invoking *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), relating to the State's failure to produce exculpatory evidence pertaining to the damaged chain of custody of the photograph. (Appendix, at p. 20-23).

The Jury found the Defendant guilty of five counts of first degree sexual assault, one count of display of obscene matter to a minor, and two counts of third degree sexual assault. The jury reached no verdict on the forty-nine remaining counts. After the denial of the Petitioner's post-trial motions, the Petitioner was sentenced to an effective sentence of 50-200 years, plus an additional consecutive 1-5 year sentence running concurrently with a 3 year determinate sentence, followed by fifty years of supervised release.

On appeal to the Supreme Court of Appeals of West Virginia, the Petitioner raised ten assignments of error, including the denial of the *Brady* Motion concerning the chain of custody of the photograph. In a ten page memorandum, the West Virginia Supreme Court denied relief on all assignments of error. (Appendix, at p. 1-10). Concerning the *Brady* motion, the Court stated [footnote omitted]:

Here, petitioner contends that it is clear from Trooper Heavener's trial testimony that petitioner's electronic devices remained on his desk, unprotected, for a period of five months. It is undisputed that the State never disclosed this information to petitioner, and that petitioner remained unaware of any defect in the chain of custody until the second trial. Petitioner argues that had he known of the "defect" prior to trial, it would have been possible to litigate and determine the admissibility of the photograph before any prejudicial exposure.

Conversely, the State argues that the circuit court correctly

that a *Brady* violation occurred. Under the limited facts and circumstances of this case, we conclude that the alleged defect in the chain of custody was not material, as it did not directly go to proving any count against petitioner. Accordingly, we find the circuit court did not err in this regard.

(Appendix, at p. 6).

The Petitioner moved for rehearing following the issuance of the opinion. That motion was denied on October 9, 2018 by the Supreme Court of Appeals of West Virginia. (Appendix, at p. 11). This Petition for Writ of Certiorari to that Court arises from that judgment below.

ARGUMENT AMPLIFYING REASON FOR ALLOWANCE OF THE WRIT

Wilfred Doyle Hinchman, II, the Petitioner, urges that this Court grant Certiorari to review the judgment below because of the manifest error promulgated by the Supreme Court of Appeals of West Virginia. In denying the Petitioner relief on a *Brady* claim, the lower court held that the evidence in question was not material because “it did not directly go to proving any count against petitioner.” (Appendix, at p. 6). The Petitioner invokes Rule 10(c) of this Court’s Rules to assert that the lower state court has decided an important federal question in a way that conflicts with relevant decisions of this Court. For the West Virginia Court to so rule, it is essentially ignoring decades of jurisprudence on *Brady* materiality, and violating the vital federal due process rights of its citizens.

This Court first spoke of materiality in *Brady* in the following sense:

We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.

Brady, 373 U.S. at 87. The definition of materiality under *Brady* was examined in *United States v. Bagley*, 473 U.S. 667 (1985), and developed further in *Kyles v. Whitley*, 514 U.S. 419

(1995). The lower court’s holding directly contradicts the definition of the second form of

materiality under *Kyles*:

The second aspect of Bagley materiality bearing emphasis here is that it is not a sufficiency of evidence test. A defendant need not demonstrate that after discounting the inculpatory evidence in light of the undisclosed evidence, there would not have been enough left to convict. The possibility of an acquittal on a criminal charge does not imply an insufficient evidentiary basis to convict. 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.

Kyles, 514 U.S. at 434-35.

The West Virginia court's assertion that materiality must be tied to direct proof of an element of an offense is blatantly wrong in this regard. What would have put the Petitioner's "whole case in... a different light" would have been the suppression of the single most damaging evidence the State possessed; the only piece of evidence that corroborated the alleged victim's account of events. By limiting *Brady* disclosure to direct proof of the elements of an offense, the lower court has dramatically curtailed what information the State would be required to turn over. Impeachment evidence, which is clearly within the scope of *Brady*, per the holding of *United States v. Bagley*, 473 U. S. 667 (1985), also does not implicate direct proof of an element of an offense. Yet under the lower court's standard in the case below, the State's duty to supply such information would evaporate.

The total disregard of federal constitutional law by the Supreme Court of Appeals of West Virginia speaks for itself in this situation. The Petitioner respectfully requests a grant of certiorari to the lower court and consideration on the merits.

Respectfully Submitted,



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