Capital Case

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JOHN FITZGERALD HANSON,
Petitioner,

v.

THE STATE OF OKLAHOMA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
OKLAHOMA COURT OF CRIMINAL APPEALS

THIS IS A CAPITAL CASE WITH EXECUTION SCHEDULED FOR THURSDAY, JUNE 12, AT 10:00 A.M. CDT

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June 11, 2025 *COUNSEL FOR JOHN FITZGERALD HANSON*

QUESTIONS PRESENTED (CAPITAL CASE)

Mr. Hanson's juries found him guilty of capital murder, and sentenced him to death, based on the testimony of Rashard Barnes. Barnes testified to Mr. Hanson confessing to the crime, detailing how Hanson said he punched and then and shot an elderly woman, after his co-defendant shot a man who might have seen them. Reviewing the proceedings of Mr. Hanson's co-defendant on direct appeal, the Oklahoma Court of Criminal Appeals (OCCA) emphasized that Mr. Hanson's "confession to Barnes was the most critical evidence in the State's case." The trial judge also stressed that "Barnes' testimony was indeed significant to both guilt and punishment."

The State knew this and relied heavily on Barnes's testimony in its opening and closing statements at both the guilt and penalty phases. The State also elicited from Barnes testimony that he came forward solely due to the gravity of the crime, and at great personal cost. The State stressed that its case was "true because Rashad said it and everything else corroborates it."

Mr. Hanson's juries didn't know that Barnes in fact had cooperated for personal *gain*—in the form of favorable treatment to his best friend Michael Cole on various criminal charges. Because Barnes passed away long ago, Cole, as well as Barnes' father, have now come forward to share the truth before Mr. Hanson is executed in spite of the impeachment evidence that the State has long suppressed.

From these facts, the following questions are presented:

1) Whether a court may impose a diligence standard rendering any evidence that can be obtained from witnesses *per se* available via the exercise of reasonable diligence, despite prosecutorial suppression, under *Brady v. Maryland*, 373 U.S. 83 (1963).

2) Whether a court may require a defendant to demonstrate by clear and convincing evidence that no reasonable fact finder would have returned a guilty verdict to obtain relief for a violation of *Brady v. Maryland*, 373 U.S. 83 (1963) and for *Napue v. Illinois*, 360 U.S. 264, 269 (1959).

List of Parties to the Proceeding

Petitioner John Fitzgerald Hanson and Respondent the State of Oklahoma have at all times been the parties in the action below.

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PETITION FOR WRIT OF CERTIORARI

Petitioner John Fitzgerald Hanson respectfully petitions for a writ of certiorari to review the judgment of the Oklahoma Court of Criminal Appeals.

OPINIONS BELOW

The decision of the OCCA denying Mr. Hanson's state post-conviction action is found at *Hanson v. State*, Case No. PCD-2025-440 (Okla. Crim. App. June 10, 2025). *See* Appendix A.

STATEMENT OF JURISDICTION

The Oklahoma Court of Criminal Appeals rendered its opinion denying relief on June 10, 2025. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation

The Sixth Amendment to the United States Constitution provides:

> In all criminal prosecutions, 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 accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

U.S. Const. amend. VI.

The Fourteenth Amendment to the United States Constitution provides in part:

> 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.

U.S. Const. amend. XIV, § 1.

STATEMENT OF THE CASE

A. Trial Evidence

On Tuesday, August 31, 1999 at 3:51 p.m., Mary Bowles left her job as a volunteer at St. Francis Hospital in Tulsa, Oklahoma. Res.Tr. 1244. Ms. Bowles was last observed by another hospital worker, Lucille Neville, at approximately 4:10 or 4:15p.m. on a freeway service road as Ms. Bowles was presumably driving home. *Id*. at 1233. Ms. Bowles kept a regular routine and would often get exercise by walking inside the Promenade Mall in the evenings after going home from work. *Id*. at 1238-39.

On August 31, 1999, Jerald Thurman placed a cell phone call at 5:50 p.m. to his nephew and employee James Moseby.[1] Res.Tr. 1261. Mr. Thurman owned and

[1] Mr. Moseby's name is improperly spelled as "Moseley" in the trial transcripts. *See id*. at 1259.

operated a trucking business that would deliver dirt from his dirt pit in Owasso, Oklahoma. Tr. 1260. Mr. Thurman called his nephew to report that a vehicle was inside the dirt pit. *Id*. at 1261. Mr. Moseby arrived at the dirt pit about 10 minutes after the phone conversation and observed Mr. Thurman to be unconscious having sustained multiple gunshot wounds. *Id*. at 1262,1268. Mr. Thurman never regained consciousness and died 14 days later. O.R.1272. James Lavendusky lived across the road from the entrance to Mr. Thurman's dirt pit. *Id*. at 1249. At about 5:45p.m. while working outside on his boat, Mr. Lavendusky heard gunshots coming from the dirt pit and then observed a dark grey or silver car exiting the dirt pit. *Id*. at 1250, 1253.

On September 7, 1999, Tim Hayhurst was driving down "Peanut Road," which is not far from Mr. Thurman's dirt pit, and observed what he thought to be a person along the side of the road. Res.Tr. 1279-81. Mr. Hayhurst reported the body to the Owasso Police Department. *Id*. at 1281. The body was identified as Mary Bowles. *Id*. at 1298. Ms. Bowles' body was in an advanced state of decomposition and the cause of death was determined to be multiple gunshot wounds. *Id*. at 1565-66, 1585.

The State's theory of the case was predicated upon the testimony of Rashad Barnes. Barnes testified at Mr. Hanson's first trial; however, by the time of Mr. Hanson's resentencing,[2] Barnes had been killed in an unrelated incident. *See* Tr.

[2] The OCCA overturned Mr. Hanson's initial death sentence on direct appeal due to a litany of legal errors unrelated to his present claim. *See generally Hanson v. State*, 72 P.3d 40 (Okla. Crim. App. 2003). The resentencing judge granted Mr. Hanson's motion for new trial after the State revealed, on the eve of the resentencing proceeding, new evidence of Miller's confession to a jailhouse inmate that *he* had shot Mary Bowles, but the OCCA vacated that grant and remanded for only the resentencing. *State v. Hanson*, No. PR-2005-350 (Okla. Crim. App. Apr. 26, 2005).

1153-87. Barnes' 2001 trial testimony was read into the record at the re-sentencing trial via a question-and-answer format. Res.Tr. 1338-76. According to Barnes, sometime in late August or early September 1999, Mr. Hanson showed up in Barnes' yard acting nervous and talking about how something went "bad." *Id*. at 1342, 1346. Mr. Hanson allegedly told Barnes how he and co-defendant Victor Miller had carjacked a lady at Promenade Mall and drove her out to North Tulsa to let her out, but were confronted by Jerald Thurman, whom co-defendant Miller shot, after which Miller instructed Mr. Hanson that "You know what you have to do" and drove a short distance from the dirt pit where Mr. Hanson shot Mary Bowles. *Id*. at 1347-50. Barnes further testified he was told that Mr. Hanson and co-defendant Miller then drove Bowles' car to the Oasis Motel where it broke down. *Id*. at 1350. Ms. Bowles' vehicle was later recovered from that motel by police. *Id*. at 1381, 1388. The parties stipulated that Mr. Hanson had checked into the Oasis Motel between 6:05 and 6:30 p.m. on August 31, 1999. *Id*. at 1483, 1485. Mr. Hanson's fingerprint was found on the driver's seatbelt latch of Ms. Bowles' vehicle. *Id*. at 1486-87, 1595-96.

Mr. Hanson and co-defendant Miller were apprehended at the Econolodge Hotel in Muskogee, Oklahoma on September 9, 1999. *Id*. at 1443. Phyllis Miller, the wife of codefendant Miller, had called authorities and reported that Mr. Hanson and co-defendant Miller had robbed a credit union on September 8 and were at the Econolodge. *Id*. at 1426. Codefendant Miller was no stranger to criminal activity, having been previously convicted of murder in 1982. *Id*. at 1832. The Federal Bureau of Investigation, the Tulsa Police Department, and the Muskogee Police Department

all converged on the hotel and eventually arrested co-defendant Miller and Mr. Hanson. *Id*. at 1430-33, 1434, 1443. Guns consistent with those used in the murders of Jerald Thurman and Mary Bowles, a five-shot .38 caliber revolver and a 9 millimeter semiautomatic pistol, were found inside of the Muskogee hotel room. *Id*. at 1451-54, 1462, 1594-95.

B. Rashad Barnes' Role in Mr. Hanson's Trial and Resentencing Proceedings

The State relied heavily on Barnes in its guilt-phase case against Mr. Hanson, previewing the evidence that would come from Barnes in its opening argument. Tr. 1005-06 (referring to what "witnesses" would detail regarding Mr. Hanson's specific role in the crime though describing evidence to come only from Barnes); *id*. at 1015-17. Meanwhile, the defense, in opening argument, attempted to paint Barnes both as lacking credibility due to the timeline of his cooperation, *id.* at 1030-31, and as the actual perpetrator in Mr. Hanson's place. *Id*. at 1031-32. The defense turned back to these themes in cross-examining Mr. Barnes, *id*. at 1178-79, 1185, but had no actual evidence with which to impeach Barnes' credibility or motives. Though Barnes denied being present, by introducing Mr. Hanson's supposed detailed confession of the events of the crime, he assumed a quasi-eyewitness role and served as the only direct evidence that Mr. Hanson had been the triggerperson in Ms. Bowles' shooting. *Id*. at 1160-64. In doing so, he provided damning evidence of the details of the crime that appeared nowhere else in the evidence, such as what Mr. Hanson allegedly said to Ms. Bowles and violence towards her before her shooting. *See id*. at 1163.

In a lengthy back-and-forth with Tulsa County District Attorney Tim Harris, Barnes insisted he didn't "enjoy being here and testifying today," but that he was not a "snitch" for doing so, due to his personal objection to the nature of the crime Mr. Hanson had been charged with:

> Q. I want you to tell the jury what your concerns were regarding you and you your family after defendant Hanson had told you what he said in your backyard.
> MR. GORDON: Objection, irrelevant.
> THE COURT: Mr. Harris?
> MR. HARRIS: It goes to there's been an accusation made against Mr. Barnes. I think he has a right not only to give his state of mind as to why he did the things he did.
> THE COURT: Overruled.
> THE WITNESS: I didn't want him around my family.
> Q. (By Mr. Harris) Why?
> A. 'Cause he just told me he killed a old lady.
> Q. After you talked to Detective Nance and after you testified at the grand jury, did you also come in here in State court and testify at the preliminary hearing back in December?
> A. Yes.
> Q. Mr. Barnes, did you have anything to do with the death of this old lady?
> A. No, sir.
> Q. Did you have anything to do with a robbery of a credit union?
> A. No, sir.
> Q. And you understand what it means to take an oath?
> MR. GORDON: Objection. That's all self-serving.
> THE COURT: Mr. Harris?
> MR. HARRIS: Goes --
> THE COURT: I think the last question is self-serving, and the objection is sustained.
> Q. (By Mr. Harris) Mr. Barnes, do you enjoy being here and testifying today?
> A. No.
> Q. Why not?
> A. 'Cause for two years I've been called a snitch, and I don't feel I'm a snitch.
> MR. GORDON: I'm sorry, I didn't hear the answer.
> THE WITNESS: For two years I've been being called a snitch, and I don't feel I'm a snitch.
> Q. (By Mr. Harris) Why is it that you don't think you're being a snitch?

A. He told me he killed a old lady. That's not – that's not what we call something that's supposed to be just okay with everybody.
MR. STALL: I'm sorry, what was that answer, Judge?
Q. (By Mr. Harris) Can you repeat your answer, Mr. Barnes? Why isn't that okay?
A. I mean, she couldn't defend herself. There's a number of reasons.
Q. I'm asking you to tell us what the number of reasons are.
A. She couldn't defend herself. She was a elderly lady. They took advantage of her, overpowered her. That's not something I see as being a man, having respect for anyone. Call me what you want.

Tr. 1170-72. The State then turned back to Barnes in closing argument, emphasizing the facts known only through Barnes and Barnes' supposed lack of any incentive to cooperate:

> The instructions tell you to consider the credibility of the witnesses, and it also tells you to consider the corroborating evidence, so let's consider the credibility of the witnesses.
> Rashad Barnes came to tell you that sometime early September he was in his back yard when this guy shows up and starts talking to him. He says, "Man, we carjacked some old lady at the Promenade Mall. We had to carjack her 'cause we needed a car for a robbery. We took her out to some road to dump her and some guy in a dump truck saw us. Vic got out and killed the guy," showing him how he killed the guy. He tells Rashad, Vic later gets in the car and tells him, "You know what you got to do now." Tells Rashad, "We drove somewhere to some other road, dragged her out of the car, and I killed the old lady."
> **What stakes does Rashad have in this? None. For his testimony he's been labeled a snitch. He told you he was scared to testify. He has nothing in this except to tell what he knows of what happened and what that defendant told him.**

Tr. 1724 (emphasis added). The State's final guilt-phase closing argument then focused almost entirely on Barnes, concluding, again, with allegations of brutality and cruelty in the crime's commission that would have been absent from the trial entirely without Barnes' testimony:

> Rashad Barnes, who came in here from his neighborhood, not much different than my neighborhood or some of your neighborhoods, where the last thing you do is open your mouth and be a snitch. They want you to think that sounds crazy because he's big. That ain't crazy, folks, that's life.
> And he got up there and he raised that hand, and he didn't just tell you the truth, he became the third victim in all this. There's two in the ground. He's out there in north Tulsa with the label of snitch around his neck and with them trying to convince you he was involved. . .
> They got her because she was old and weak, and that's where even Rashad Barnes has to draw the line. He's not a man that comes forward to give it up on people. But he's got a line that says, I can't take that. That's what he told you, because that's what's true.
> He let this guy live in his car behind his house where his Momma was, where his sisters were. This guy that could stand over an old lady and pump smoking rounds into her chest lived right outside his house. Could have been his Momma. That's where he drew the line. And he came in here with more guts than a lot of people I know that folks stand in line to shake their hands. And he told you the truth, and he told you what he told · you.
> And we know that's true because Phyllis Miller said after the homicide, after that 31st when all that stuff happened, I drove him up there. I drove him up there.
> So what if he thinks it may have been the 31st. So what if he doesn't know the exact date. Folks, this was 1999. He's telling you the best he can recall. He ain't lying. If he was lying, he would tell you the exact time and place to make it look --
> MR. GORDON: Objection, bolstering.
> THE COURT: Overruled.
> MR. SMITH: He told you what he remembered as best as he could, but they don't like it because it puts him in the place of standing with this pistol over a little old lady that he had laid on top of. He felt her frail little body under his. He smelled her hair. He talked to her. And when she was reaching out in love, he reached out in violence, because he knew he was going to kill her. She was already dead. She just didn't know it.

Tr. 1746-48.

At Mr. Hanson's 2006 resentencing trial, the State read in Barnes' testimony from Mr. Hanson's 2001 proceeding, as Barnes was by then deceased and no longer

available to testify. Res.Tr. 1338-75. As in Mr. Hanson's first trial, the State relied heavily on evidence stemming only from Barnes regarding details of the crime in its opening statement. *See, e.g.*, *id*. at 1176 ("When John Hanson jumps on top of Mary Bowles in the back of her car, keeping her subdued during the kidnapping and the robbery of her vehicle, Victor Miller takes of (sic) driving."); 1180-81; 1192-93; 1203. In closing argument, the State highlighted not only Mr. Hanson's confession as introduced via Barnes, but Barnes' unimpugned credibility. *Id*. at 1902 (emphasis added) ("Rashad Barnes doesn't have a criminal history. Rashad Barnes hasn't been impeached. Rashad Barnes hasn't been shown to tell a lie. None of that stuff. They have previous transcripts. You've heard the previous transcript. Rashad has consistently told the truth and has never been impeached.").

Though only the question of the appropriate sentence was before the jury in 2006, the judge presiding over the resentencing proceeding noted in her Capital Felony Report of Trial Judge that Barnes' testimony—supplying the only direct evidence of Mr. Hanson's specific participation in and culpability for Ms. Bowles' murder, and his reported violence preceding the shooting—was relevant to the resentencing jury's vote for a death verdict. O.R. 1716 footnote (Capital Felony Report of Trial Judge) ("It appeared from the verdicts in each Defendant's first trials that Barnes' testimony was indeed significant to both guilt and punishment.").

The OCCA similarly appraised Barnes' role, calling, while overturning co-defendant Victor Miller's conviction in part due to the violation of his due process rights attendant to introducing Barnes' statement, "Hanson's confession to Barnes []

the most critical evidence in the State's case." *Miller v. State*, 98 P.3d 738, 748 (Okla. Crim. App. 2004). Though the same due process violation did not arise from introducing Barnes' testimony against Mr. Hanson, as the resentencing judge noted, "the issues of credibility remain." O.R. 1716 footnote.

C. Newly Discovered Evidence

New evidence was uncovered in 2025 during clemency proceedings, when, in reinvestigating the case, investigators with the Western District of Oklahoma Federal Public Defender's Office were for the first time successful in obtaining information from two sources regarding the late Mr. Barnes' suppressed incentive for cooperating with the State in Mr. Hanson's prosecution: Barnes' father, Rodney Worley, and Barnes' best friend, Michael Cole. Each independently revealed an instance in which Barnes and the Tulsa County District Attorney's Office secretly agreed that, in exchange for Barnes' continuing cooperation against Mr. Hanson, Michael Cole would receive favorable treatment on his criminal charges. *See* App. at A-210-11a (Affidavit of Rodney Worley) and App. at A-217-18a (Affidavit of Michael Cole).

Though twenty-five years later, each witness does not have perfect and identically matching memories, the recollections are mutually reinforcing and are supported by external records. They tell the story of a State witness who repeatedly sought favors in return for his continued cooperation. Worley recounted Barnes' securing of a deal for favorable treatment on Cole's 1999 felony gun possession charge. App.at A-210-11a (Worley Aff. at ¶¶ 2-3, 9-11). The relevant docket shows

that charge was dismissed three months after Barnes testified at Mr. Hanson's preliminary hearing. App. at A-216a (*State v. Cole*, CF-1999-4210 (Tulsa Cnty. Dist. Ct.)). Cole, in turn, recounted Barnes' securing of favorable treatment on a drug distribution charge Cole picked up in 2002, just before Barnes was due to testify in Mr. Hanson's co-defendant's trial. App. at A-218a (Cole Aff. at ¶¶ 7-8). *See* also App. at A-221-a (Oklahoma State Bureau of Investigation Criminal History for Michael Antwuan Cole).

Though trial counsel requested relevant, exculpatory evidence, *see* 11/28/00 M. Tr. 58-59, the State did not provide this impeachment evidence. *See* App. at A-212a (Declaration of Jack Gordon at ¶6).

D. The Decision of the OCCA

Mr. Hanson presented the new evidence to the OCCA in a Subsequent Application for Post-Conviction Relief ("SAPCR"). The OCCA rejected Mr. Hanson's claims under *Brady v. Maryland*, 373 U.S. 83 (1963) and *Napue v. Illinois*, 360 U.S. 264 (1959), as well as his state-law cumulative error claim. The OCCA found that Mr. Hanson could have uncovered this evidence earlier, App. at A-6a, detailed the "compelling" trial evidence aside from Barnes' testimony, App. at A-7a, and concluded Mr. Hanson's claims were procedurally barred because:

> He has not proven, via sufficient specific facts, that the factual basis for his claim was unavailable until now because he has not shown the information was not ascertainable through the exercise of reasonable diligence at the time of filing a prior application. 22 O.S.Supp.2022, § 1089(D)(8)(b)(l). Nor has he established that the facts underlying the claim, if proven and viewed in light of the evidence as a whole, are sufficient to establish by clear and convincing evidence that, but for the

alleged error, no reasonable fact finder would have found him guilty or imposed a death sentence. 22 O.S.Supp.2022, § 1089(D)(8)(b)(2).

App. at A-8a.

REASONS FOR GRANTING THE PETITION

I. THE OCCA'S DECISION DENYING MR. HANSON'S *BRADY* AND *NAPUE* CLAIMS DIRECTLY CONFLICTS WITH DECISIONS OF THIS COURT AND DECISIONS OF THE UNITED STATES COURTS OF APPEAL.

A fundamental premise of American justice is that "[s]ociety wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly." *Brady v. Maryland*, 373 U.S. 83, 87 (1963). As the "architect[s] of a proceeding," prosecutors must disclose the accused evidence favorable to the defense and "material either to guilt or to punishment." *Id.* at 87-88. Favorable evidence includes evidence that would impeach the credibility of the State's witnesses. *Giglio v. United States*, 405 U.S. 150, 154 (1972) ("When the reliability of a given witness may well be determinative of guilt or innocence, nondisclosure of evidence affecting that credibility falls within this general rule." (internal quotation marks omitted)); *United States v. Bagley*, 473 U.S. 667, 676-77 (1985) ("This Court has rejected any such distinction between impeachment evidence and exculpatory evidence.").

To establish a *Brady* violation, a defendant must demonstrate that the evidence had exculpatory or impeachment value, and that it was material, such that there is a reasonable probability that its omission affected the outcome of the proceeding. *Brady*, 373 U.S. at 87. Importantly, the materiality standard under

Brady is *not* outcome determinative. "[A] showing of materiality does not require demonstration by a preponderance that disclosure of the suppressed evidence would have resulted ultimately in the defendant's acquittal (whether based on the presence of reasonable doubt or acceptance of an explanation for the crime that does not implicate the defendant)." *Kyles v. Whitley*, 514 U.S. 419, 434 (1995). Rather, the inquiry is "whether, absent the non-disclosed information, the defendant received a fair trial resulting in a verdict worthy of confidence." *Id.* at 434 ("A 'reasonable probability' of a different result is accordingly shown when the government's evidentiary suppression 'undermines confidence in the outcome of the trial." (quoting *Bagley*, 473 U.S. at 678)).

Further, "[A] conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment." *Napue v. Illinois*, 360 U.S. 264, 269 (1959). False evidence includes "false testimony [that] goes only to the credibility of the witness." *Id.* This is because "[t]he jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend." *Id.* When a prosecutor knows, or should know, that a witness testifies falsely, he or she has a duty to correct the false impression; failure to do so requires reversal "if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury." *United States v. Agurs*, 427 U.S. 97, 103 (1976), *holding modified by United States v. Bagley*, 473 U.S. 667, 678 (1985).

The OCCA's decision denying Mr. Hanson's SAPCR is at direct odds with these longstanding principles.

A. The OCCA Erred by Imposing a Duty on Mr. Hanson to Discover Suppressed Information.

In denying Mr. Hanson's SAPCR, the OCCA found the following:

> Hanson fails to provide sufficient explanation why this evidence could not have been disclosed until now. Nothing suggests Worley or Cole were unknown or missing and could not have been interviewed before now and their claims made the subject of one of Hanson's previous appeals rather than in this successive post-conviction application filed days before Hanson's scheduled execution. He fails to explain what investigatory steps revealed the information and why such steps could not have been, and were not, conducted years ago as his various attorneys and investigators have continued to investigate his case and attack his conviction.

App. at A-6a (footnote omitted). The OCCA premised its application of a procedural bar to Mr. Hanson's *Brady* and *Napue* claims on this finding. App. at A-8a. The OCCA's erroneous shifting of a duty onto Mr. Hanson to discover evidence suppressed by the prosecution is in direct conflict with decisions of this Court and decisions of United States courts of appeal.

This Court has never held that counsel's failure to discover suppressed information also available in the public arena alleviates the prosecution's *Brady* obligations. Just the opposite. This Court has found the prosecution suppressed evidence even though petitioner's counsel also could have uncovered the withheld evidence. For instance, in *Strickler v. Greene*, 527 U.S. 263, 284 (1999), even though "the factual basis for the assertion of a *Brady* claim was available to state habeas

counsel" in a post-trial letter published in a local newspaper, *id.* at 284, this Court still held that the prosecution violated its "broad duty of disclosure." *Id.* at 281.

Likewise, in *Banks v. Dretke*, 540 U.S. 668 (2004), this Court held that the prosecution violated its *Brady* obligations by failing to disclose that one of its witnesses was a paid informant even though state habeas counsel failed to "attempt to locate [the witness] and ascertain his true status," or to "interview the investigating officers . . . to ascertain [his] status. . .." *Id.* at 695. Relying on *Strickler*, the Court rejected the State's argument that counsel "lack[ed] [] appropriate diligence" under these circumstances. *Id.* Similarly, the OCCA's "due diligence" requirement improperly relieves the government of its *Brady* obligations by flipping the burden to the defense to the discover the evidence the prosecution had a duty to disclose as part of "discharg[ing] their official duties." *Id.* at 696.

And in *Cone v. Bell*, 556 U.S. 449 (2009), the prosecution suppressed evidence that it knew Mr. Cone was using drugs at the time of the crime. *Id.* at 470-71. This Court held that the prosecution unconstitutionally failed to disclose information suggesting that Mr. Cone's "drug use played a mitigating, though not exculpating, role in the crimes he committed." *Id.* at 475. Certainly, Mr. Cone himself knew he was high on drugs.

The OCCA's due diligence requirement also conflicts with the decisions of at least three United States courts of appeal. In *Dennis v. Sec'y, Pennsylvania Dep't of Corr.*, 834 F.3d 263 (3d Cir. 2016), the *en banc* Third Circuit held that even if suppressed impeachment evidence was also available to the defense in public records,

there is still no due diligence requirement on the part of defense counsel because "the duty to disclose under *Brady* is absolute—it does not depend on defense counsel's actions." *Id.* at 290 (citing *United States v. Agurs*, 427 U.S. 97, 107 (1976)).

Similarly, in *United States v. Tavera*, 719 F.3d 705 (6th Cir. 2013), the Sixth Circuit relied on *Banks* to reject the government's argument that defense counsel could have exercised due diligence to obtain impeachment evidence by interviewing Mr. Tavera's co-defendant. *Id.* at 711.

And in *Banks v. Reynolds*, 54 F.3d 1508, 1517 (10th Cir. 1995), the Tenth Circuit determined the prosecution violated its duties under *Brady* irrespective of the fact that Mr. Banks' trial counsel knew or should have known about the suppressed evidence. In *Banks*, the prosecution suppressed evidence that two other individuals had been charged with the crime at issue before Mr. Banks was charged. *Id.* at 1510-11. Despite that Mr. Banks' trial counsel had represented one of these earlier-charged individuals on such charges, the circuit court held "the prosecution's obligation to turn over the evidence in the first instance stands independent of the defendant's knowledge. Simply stated, [i]f the prosecution possesses evidence that, in the context of a particular case is obviously exculpatory, then it has an obligation to disclose it to defense counsel." *Id.* at 1517 (internal citations omitted).

The OCCA's decision below subverts the "special role played by the American prosecutor in the search for truth in criminal trials." *Strickler*, 527 U.S. at 281. "Prosecutors' dishonest conduct or unwarranted concealment should attract no judicial approbation." *Banks*, 540 U.S. at 696. The OCCA's impermissible shifting of

the prosecution's constitutional duty under *Brady* and progeny onto Mr. Hanson directly conflicts with relevant decisions of this Court, as well as with decisions of several United States courts of appeal. This Court should grant the writ. *See* Sup. Ct. R. 10 (b)(c).

B. The Suppressed Evidence Is Material.

Here, the resentencing judge, the OCCA, and both parties have all made clear at various points that Barnes' testimony was vital to the State's prosecution. In co-defendant Miller's direct appeal, the OCCA labeled "Hanson's confession to Barnes [] the most critical evidence in the State's case." *Miller v. State*, 98 P.3d 738, 748 (Okla. Crim. App. 2004). *See also* O.R. 1716 footnote (Resentencing Capital Felony Report of the Trial Judge) ("It appeared from the verdicts in each Defendant's first trials that Barnes' testimony was indeed significant to both guilt and punishment.").

The State relied heavily on Barnes in its guilt-phase case against Mr. Hanson, previewing the evidence that would come from Barnes in its opening statement. Tr. 1005-06 (referring to what "witnesses" would detail regarding Mr. Hanson's specific role in the crime though describing evidence to come only from Barnes); *id*. at 1015-17.

Meanwhile, in its opening argument, the defense attempted to paint Barnes both as lacking credibility due to the timeline of his cooperation, *id*. at 1030-31, and as the actual perpetrator in Mr. Hanson's place. *Id*. at 1031-32. The defense turned back to these themes in cross-examining Mr. Barnes, *id*. at 1178-79, 1185, but had no actual evidence with which to impeach Barnes' credibility or motives. By introducing

Mr. Hanson's supposed detailed confession of the events of the crime, Barnes served as the only direct evidence that Mr. Hanson had been the triggerperson in Ms. Bowles' shooting. *Id*. at 1160-64. In doing so, he provided damning evidence of the details of the crime that appeared nowhere else in the evidence, such as what Mr. Hanson allegedly said to Ms. Bowles and violence towards her before her shooting. *See id*. at 1163.

The State then turned back to Barnes in closing argument, emphasizing the facts known only through Barnes and Barnes' supposed lack of any incentive to cooperate:

> [L]et's consider the credibility of the witnesses.
> Rashad Barnes came to tell you that sometime early September he was in his back yard when this guy shows up and starts talking to him. He says, "Man, we carjacked some old lady at the Promenade Mall. We had to carjack her 'cause we needed a car for a robbery. We took her out to some road to dump her and some guy in a dump truck saw us. Vic got out and killed the guy," showing him how he killed the guy. He tells Rashad, Vic later gets in the car and tells him, "You know what you got to do now." Tells Rashad, "We drove somewhere to some other road, dragged her out of the car, and I killed the old lady."
> **What stakes does Rashad have in this? None. For his testimony he's been labeled a snitch. He told you he was scared to testify. He has nothing in this except to tell what he knows of what happened and what that defendant told him.**

Tr. 1724 (emphasis added). The State's final guilt-phase closing argument then focused almost entirely on Barnes, concluding, again, with allegations of brutality and cruelty in the crime's commission that would have been absent from the trial entirely without Barnes' testimony:

> Rashad Barnes, who came in here from his neighborhood, not much different than my neighborhood or some of your neighborhoods, where the last thing you do is open your mouth and be a snitch. They want you to think that sounds crazy because he's big. That ain't crazy, folks, that's life.
> And he got up there and he raised that hand, and he didn't just tell you the truth, he became the third victim in all this. There's two in the ground. He's out there in north Tulsa with the label of snitch around his neck and with them trying to convince you he was involved. . .
> They got her because she was old and weak, and that's where even Rashad Barnes has to draw the line. He's not a man that comes forward to give it up on people. But he's got a line that says, I can't take that. **That's what he told you, because that's what's true**.
> He let this guy live in his car behind his house where his Momma was, where his sisters were. This guy that could stand over an old lady and pump smoking rounds into her chest lived right outside his house. Could have been his Momma. That's where he drew the line. And he came in here with more guts than a lot of people I know that folks stand in line to shake their hands. **And he told you the truth**, and he told you what he told you.
> And we know that's true because Phyllis Miller said after the homicide, after that 31st when all that stuff happened, I drove him up there. I drove him up there.
> So what if he thinks it may have been the 31st. So what if he doesn't know the exact date. Folks, this was 1999. He's telling you the best he can recall. He ain't lying. If he was lying, he would tell you the exact time and place to make it look --
> MR. GORDON: Objection, bolstering.
> THE COURT: Overruled.
> MR. SMITH: He told you what he remembered as best as he could, but they don't like it because it puts him in the place of standing with this pistol over a little old lady that he had laid on top of. He felt her frail little body under his. He smelled her hair. He talked to her. And when she was reaching out in love, he reached out in violence, because he knew he was going to kill her. She was already dead. She just didn't know it.

Tr. 1746-48 (emphasis added). Thus, both the State's case and the defense hinged on whether the jury believed Barnes.

This Court has consistently held that *Brady* materiality is shown when the withheld information bears on a key witness's credibility. *See Wearry v. Cain,* 577 U.S. 385, 387, 393-94 (2016) (noting that any juror who thought that prosecution witness "has no deal on the table" and was testifying because the victim's "family deserves to know" may have "thought differently" about the witnesses' credibility had she learned that the witness "may have been motivated to come forward . . . by the *possibility* of a reduced sentence on an existing conviction"); *Banks,* 540 U.S. at 675 (prosecution's concealment of evidence discrediting "two essential prosecution witnesses" prejudiced defendant because their testimony was the "centerpiece" of the prosecution's case).

Additionally, the withheld impeachment evidence would have bolstered the defense presented at trial. As noted above, the defense depended on showing that Barnes implicated Mr. Hanson not because Mr. Hanson was guilty but rather to curry favor with the prosecution. But for the prosecution's suppression, the defense could have impeached Barnes's credibility by confronting him with the prosecution's *quid pro quo*. Instead, trial counsel was left to question Barnes without any evidence, and "the jury might well have thought that defense counsel was engaged in a speculative and baseless line of attack on [his] credibility. . .." *Davis v. Alaska,* 415 U.S. 308, 309 (1974).

The prosecution's suppression of its agreements with Barnes gutted the defense theory. That counsel could have used the withheld impeachment material to strengthen their defense further shows materiality. *See Kyles*, 514 U.S. at 441

(evidence is material under *Brady* if its introduction at trial "would have resulted in a markedly weaker case for the prosecution and a markedly stronger one for the defense."); *Bagley,* 473 U.S. at 683 (considering "any adverse effect that the [suppression] might have had on the preparation or presentation of the defendant's case" and "the course that the defense and the trial would have taken had the defense not been misled by the prosecut[ion]").

The prosecutor's closing argument also confirms the materiality of the suppressed evidence. *See Banks,* 540 U.S. at 700 (prosecutor's "summation, moreover, left no doubt about the importance the State attached to [the witness's] testimony"); *Kyles,* 514 U.S. at 444 ("The likely damage [of suppressed impeachment evidence] is best understood by taking the word of the prosecutor.").

While there was evidence connecting Mr. Hanson to the crime scene, evidence impugning the credibility and cooperation motive of star witness Barnes, as the single source of the evidence he provided, would have "put the whole case in such a different light as to undermine confidence" in either the malice or felony murder verdicts or death sentence. *Id.* at 435. Barnes was the crucial linchpin in the State's case. Whether there "would [] have been enough left to convict," *id.*, had the jury disregarded Barnes' testimony due to this impeachment, is not the question. As this Court has explained, "none of the *Brady* cases has ever suggested that sufficiency of evidence (or insufficiency) is the touchstone [of materiality]." *Id.* at 434 n.8. Consequently, a petitioner alleging *Brady* materiality does not "lose because there

would still have been adequate evidence to convict even if the favorable evidence had been disclosed." *Id.*

Thus, the OCCA's assertion that "the evidence against Hanson, irrespective of Barnes's testimony, was compelling," App. at A-7a, is legally irrelevant to a proper *Brady* materiality analysis. For instance, in *Kyles*, the suppressed evidence "would have left two [of four] prosecution witnesses totally untouched," *id.* (quotation omitted), the third "barely affected," *id.* at 443 n.14 (quotation omitted), and the fourth only "somewhat impaired," *id.* at 468 (Scalia, J., dissenting). Significant physical evidence also would have remained "unscathed." *Id.* at 451 (majority op.). Yet the Court held that the evidence withheld was material because its disclosure would have significantly weakened the government's case and strengthened the defense, undermining confidence in an already close verdict. *Id.* at 429. *Kyles* thus confirms that a new trial may be necessary under *Brady* even if the suppressed evidence does not call into question all, or even most, of the prosecution's evidence. In any event, the OCCA's description of what it terms "compelling" non-Barnes evidence is also ambiguous information irrelevant to whether Mr. Hanson is guilty of malice murder.

Here, there is at least a reasonable probability that, given the centrality of Barnes to the State's case against Mr. Hanson, "had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Bagley*, 473 U.S. at 682. And certainly, in the absence of the critical impeaching evidence, Mr. Hanson did not "receive[] a fair trial, understood as a trial resulting in a verdict worthy of

confidence." *Kyles*, 514 U.S. at 434. Because "the government's evidentiary suppression 'undermines confidence in the outcome of the trial,'" Mr. Hanson has met the reasonable probability standard. *Id.* It should also be noted that all that *Brady* materiality requires is showing that the suppressed evidence could have flipped just one juror's vote. *Cone*, 556 U.S. at 452.

II. THE OCCA'S DECISION ON MATERIALITY STANDARDS DOES NOT FORECLOSE THIS COURT'S JURISDICTION TO CONSIDER THE QUESTIONS PRESENTED.

After its diligence discussion, the OCCA held that Mr. Hanson's *Brady* claim failed to establish "that the facts underlying the claim, if proven and viewed in light of the evidence as a whole, are sufficient to establish by clear and convincing evidence that, but for the alleged error, no reasonable fact finder would have found him guilty or imposed a death sentence." App. at A-8a. This language is from Oklahoma's postconviction statute, and it provides an exception to the statute's prohibition on successive applications. Okla. Stat. tit. 22, § 1089(D)(8)(b)(2). As for the *Napue* claim, OCCA held that it was "likewise procedurally barred for the same reasons cited in his *Brady* claim as they share the same factual basis." App. at A-9a. Neither bar forecloses this Court's jurisdiction to consider whether states can predicate *Brady* and *Napue* relief on the petitioner's diligence.

A. In Mr. Hanson's Unique Circumstances, the OCCA's Application of the Procedural Bars Violates Due Process.

Oklahoma law ensures that the longer the State conceals evidence, the harder it is for a defendant to obtain *Brady* or *Napue* relief. *See* Okla. Stat. tit. 22, § 1089(C),

(D)(8). Only on direct appeal can a defendant raise *Brady* and *Napue* claims under the proper constitutional standards. *Compare id.* (providing the heightened standards in state postconviction proceedings) *with Fuston v. Oklahoma*, 470 P.3d 306, 322 (Okla. Crim. App. 2020) (describing the *Brady* standard on direct appeal); *Reed v. Oklahoma*, 657 P.2d 662, 664 (Okla. Crim. App. 1983) (describing the *Napue* standard on direct appeal). Once a defendant enters state postconviction proceedings, the gateway standards for raising a claim are far more demanding than the materiality standards for obtaining relief under *Brady* or *Napue*. *Id.* Thus, the opportunity to remedy prosecutorial misconduct diminishes as long as the misconduct continues. As a result, Oklahoma's postconviction statute fails to give effect to federal law, and it combined with the OCCA's diligence requirement precludes any meaningful opportunity for Mr. Hanson to raise his *Brady* and *Napue* claims. The statute also violates the plain text of *Brady* and *Napue*.

"If a state collateral proceeding is open to a claim controlled by federal law, the state court 'has a duty to grant the relief that federal law requires.'" *Montgomery v. Louisiana*, 577 U.S. 190, 204-05 (2016) (quoting *Yates v. Aiken*, 484 U.S. 211, 218 (1988)). "Under the Supremacy Clause of the Constitution, state collateral courts have no greater power than federal courts to mandate that a prisoner continue to suffer punishment barred by the Constitution." *Id.* at 204. Simply put, "States may not disregard a controlling, constitutional command in their own courts." *Id.* at 198. That is especially true when "an *old rule*, settled at the time of [the defendant's] trial," is at issue. *Id.* at 219 (Scalia, J., dissenting) (emphasis in original). When "state courts

provide a forum for postconviction relief, they need to play by the 'old rules' announced *before* the date on which a defendant's conviction and sentence became final." *Id*. *Brady* and *Napue* are old rules, and both were announced decades before Mr. Hanson's trial.

Under the old rules, the *Brady* materiality standard requires a petitioner to show that "there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different." *Cone v. Bell*, 556 U.S. 449, 469-70 (2009). The *Brady* standard is easier to meet than "more likely than not" and a "preponderance of the evidence." *Kyles*, 514 U.S. at 434. Under *Napue*, a petitioner must show that the error "may have had an effect on the outcome of the trial" or the error "in any reasonable likelihood could have affected the judgment of the jury." *Glossip v. Oklahoma*, 145 S. Ct. 612, 626-27 (2025) (brackets and quotation marks omitted). "In effect, this materiality standard requires the beneficiary of the constitutional error to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." *Id*. (brackets and quotation marks omitted).

Oklahoma, however, does not play by the old rules. In state postconviction proceedings, petitioners do not have the benefit of the materiality standards under *Brady* and *Napue*. Instead, a first-time petitioner must show that "the outcome of the trial would have been different but for the errors or that the defendant is factually innocent." Okla. Stat. tit. 22, § 1089(C)(2); *Glossip*, 145 S. Ct. at 644 (Thomas, J., dissenting). Second-or-successive petitioners must show that "the facts underlying

the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for the alleged error, no reasonable fact finder would have found the applicant guilty of the underlying offense or would have rendered the penalty of death." Okla. Stat. tit. 22, § 1089(D)(8)(b)(2); App. at A-8a. Both statutory standards are far stricter than *Brady*'s "reasonable probability" of a different outcome and *Napue*'s "reasonable likelihood" of affecting the judgment of the jury. *Cone*, 556 U.S. at 469-70; *Glossip*, 145 S. Ct. at 626-27.

Indeed, OCCA described the procedural obstacles in Oklahoma's postconviction statute as "like the requirements in the Antiterrorism and Effective Death Penalty Act (AEDPA)." App. at A-8a. AEDPA's standards are demanding, and relief under it is reserved only for "extreme malfunctions in the state criminal justice systems." *Harrington v. Richter*, 562 U.S. 86, 102-03 (2011). The demanding standards are based on respect for state courts, and they are designed to push petitioners out of federal court and into state court. *Id.* at 103. So the OCCA's likening of the state postconviction statute to AEDPA is revealing. If Oklahoma's postconviction statute pushes petitioners out of state court as fast as AEDPA pushes petitioners out of federal court, it is easy to understand how petitioners like Mr. Hanson have found themselves with a claim but without a court.

When combined with AEDPA and OCCA's flawed understanding of when diligence is required, the Oklahoma postconviction statute fails to give effect to Mr. Hanson's *Brady* and *Napue* claims. The statute violates due process, *Brady* and

Napue. As a result, the procedural bars stemming from that statute cannot preclude this Court's jurisdiction to consider the question presented.

CONCLUSION

For the foregoing reasons, Mr. Hanson respectfully requests this Court grant his petition for writ of certiorari.

Respectfully submitted,

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