No. _____

In The
Supreme Court of the United States

WILLIE JENKINS,
Petitioner,

v.

TEXAS,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

CAPITAL CASE

OFFICE OF CAPITAL AND FORENSIC WRITS
Benjamin B. Wolff, Director
Sarah Cathryn Brandon*
sarah.brandon@ocfw.texas.gov
1700 N. Congress Ave., Ste. 460
Austin, Texas 78701
(512) 463-8600

* *Counsel of Record*
Members, Supreme Court Bar

Counsel for Mr. Jenkins

QUESTIONS PRESENTED

The State's theory of capital murder in this case was Mr. Jenkins committed murder in the course of committing a sexual assault. The case was deemed solved, some four decades after the murder, by DNA evidence allegedly connecting him to spermatozoa inside the victim and the blouse she was wearing when she died. The State's witnesses told the jury that the pathologist who conducted the autopsy had passed away and was therefore unable to testify, but that he had concluded a sexual assault occurred. This was untrue. The pathologist was actually alive at the time of trial, and willing to testify that he found no injuries consistent with sexual assault and that the spermatozoa he found was consistent with a sexual encounter prior to her death—information that was in a police report in the State's possession. Mr. Jenkins filed an initial habeas corpus application raising that the State introduced multiple instances of false testimony at his trial.

While Mr. Jenkins's initial state habeas proceedings were pending, the crime lab reinterpreted the DNA evidence and concluded that they could no longer connect Mr. Jenkins to the blouse, which the State originally argued was a "date and timestamp" that proved Mr. Jenkins had committed the murder and sexual assault. Mr. Jenkins filed a subsequent habeas corpus application, raising that the new evidence rendered DNA analyst testimony at his trial false and that he is actually innocent.

The Texas Court of Criminal Appeals denied Mr. Jenkins's initial application by applying a never-before-used procedural bar to the false evidence claims, holding Mr. Jenkins's trial counsel should have discovered the falsities, corrected them, and preserved them for direct appeal. In the same order the TCCA dismissed Mr. Jenkins's subsequent application without explanation.

In *Glossip v. Oklahoma*, this Court held that a *Napue* false evidence claim imposes 'the responsibility and duty to correct' false testimony on 'representatives of the State,' not on defense counsel." 604 U.S. ----, 145 S.Ct. 612, 630 (2025).

In light of the preceding facts, this case presents the following questions:

(1) Was the novel state procedural ground for denying the false evidence claims in the initial habeas application inadequate?

(2) Was the state procedural ground dismissing the subsequent application independent of federal law when it required an applicant to make a *prima facie* case for relief on the underlying federal claim?

(3) Whether Mr. Jenkins's Fourteenth Amendment rights were violated due to the cumulative presentation of false evidence at his capital trial?

PARTIES TO THE PROCEEDINGS BELOW

Willie Jenkins, petitioner here, was the state habeas applicant below.

The State of Texas, respondent here, was the respondent below.

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES

Federal Cases

State Cases

Constitutional Provisions

Statutes

Other Authorities

No. _____

In The
Supreme Court of the United States

WILLIE JENKINS,
Petitioner,

v.

TEXAS,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

Willie Jenkins respectfully petitions for a writ of certiorari to review the Texas Court of Criminal Appeals ("TCCA") judgment in this case.

OPINIONS BELOW

The TCCA's unpublished order denying the initial application for writ of habeas corpus and dismissing the subsequent application for writ of habeas corpus is attached as Appendix A and cited as "App.A." The district trial court's findings of fact and conclusions of law and the State's proposed findings of fact and conclusions of law incorporated by the district trial court are attached as Appendix B and cited

as "App.B." The TCCA's order remanding Mr. Jenkins's proceedings to the district trial court is attached as Appendix C and cited as "App.C." The district trial court's supplemental findings of fact and conclusions of law are attached as Appendix D and cited as "App.D."

STATEMENT OF JURISDICTION

This Court has jurisdiction to review these orders pursuant to its authority to issue writs of certiorari. 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides as follows: "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."

Texas Code of Criminal Procedure article 11.071 § 5(a)(1) provides in pertinent part:

> If a subsequent application for a writ of habeas corpus is filed after filing an initial application, a court may not consider the merits of or grant relief based on the subsequent application unless the application contains sufficient specific facts establishing that: "the current claims and issues have not been and could not have been presented previously in a timely initial application or in a previously considered application filed under this article or Article 11.07 because the factual or legal basis for the claim was unavailable on the date the applicant filed the previous application.

STATEMENT OF THE CASE

A. The 1975 Cold Case

On November 24, 1975, in San Marcos, Texas, a drug trafficker named Wayne Andrus reported finding his girlfriend, Sheryl Norris, murdered in their apartment. 37 RR 144.[1] Andrus and Ms. Norris had moved to San Marcos a couple months prior, where Andrus took classes at the local university. 37 RR 53-54. Andrus had made a sizable marijuana deal the week before, and worried his dealings played a role in his girlfriend's murder. 37 RR 156. When Andrus found Ms. Norris, she was partially submerged in a bathtub filled with water, wearing a blouse, pants that were pulled down, and boots. Sub.App.Ex. 13 at 20.

A local medical doctor, Dr. Charles Bell, performed an autopsy on Ms. Norris. 37 RR at 219. He determined Ms. Norris died of strangulation and suffocation. He also noted the presence of dried blood in the perineal area and near the thigh, and fecal material present. Sub.App.Ex. 11 at 2. Dr. Bell detected a small amount of spermatozoa in the vaginal cavity and took a swab of the area. He did not note any injuries indicative of sexual assault and indicated the spermatozoa could have been there from the night before. Sub.App.Ex. 13 at 53, 69.

[1] "CR" refers to the Clerk's Record from Mr. Jenkins's capital trial. "RR" refers to the Reporter's Record from Mr. Jenkins's capital trial. "App.Ex." refers to exhibits to Mr. Jenkins's initial application. "Sub.App.Ex." refers to exhibits to Mr. Jenkins's subsequent application.

San Marcos police conducted witness interviews with Andrus, a neighbor, and individuals who knew Andrus and Ms. Norris, but were unable to solve Ms. Norris's murder. Ms. Norris's case remained cold for nearly four decades.

In the meantime, the scarves found with Ms. Norris that were the presumed ligatures disappeared during the investigation. In 1996, the San Marcos Police Department reopened the case and worked with the Texas Department of Public Safety (DPS) crime lab to separate the vaginal swab sample into a sperm cell fraction and an epithelial (skin) cell fraction.

In 2010, a DPS analyst generated a profile from the sperm cell fraction and uploaded it to CODIS. In August 2010, CODIS identified Willie Jenkins as a "candidate match" for the profile. 11 39 RR 235. Mr. Jenkins was in town on emergency leave from the marines at the time of Ms. Norris's murder. 38 RR 196; 39 RR 31. A saliva swab was taken from Mr. Jenkins, and on September 15, 2010, DPS issued a serology report concluding Mr. Jenkins could not be excluded from the profile associated with the sperm cell fraction of the vaginal swab. Sub.App.Ex. 8.

On November 19, 2010, a grand jury indicted Mr. Jenkins for the capital murder of Sheryl Norris. 1 CR 4. The State's theory of capital murder was that the murder occurred during the course of a sexual assault. *Id*. Nothing from the crime scene or apartment connected Mr. Jenkins to the murder, and the possibility of a prior consensual sexual encounter was unexplored.

After the indictment, an officer from the local police department reviewed the evidence in the case and found an "oily handprint" on Ms. Norris's blouse that had

gone unnoticed in the preceding decades. In June 2012, DPS reported the profile from the blouse was consistent with a mixture and that Mr. Jenkins could not be excluded as a contributor. Sub.App.Ex. 9 at 2.

B. The Trial

On May 28, 2013, the State proceeded to trial on the theory that Ms. Norris was sexually assaulted in the course of her murder. Thus, the State needed to prove that 1) a sexual assault occurred, and 2) the individual who sexually assaulted Ms. Norris was also the murderer, and 3) Mr. Jenkins did both.

1. The Boyfriend Was Concerned His Girlfriend's Murder Stemmed From His Drug Dealings

Ms. Norris's boyfriend, Wayne Andrus, testified that he moved to San Marcos to attend school in 1975, and Ms. Norris joined him several months later and moved in with him. 37 RR 53-54. In their opening, the State acknowledged that Andrus "did a pretty good job of supplementing his income back then by selling pot[,]" *id*. at 62, and Andrus testified that he was concerned his drug dealing played a role in his girlfriend's murder because he sold a "significant amount of marijuana" the week before. *Id*. at 156. Andrus was on probation at the time of the murder for a Georgia marijuana conviction and was arrested in Austin in 1987 on a conspiracy case involving marijuana. *Id*. at 156, 162-63. Andrus also testified he cooperated fully with the police, and that he provided a detailed statement of his whereabouts the morning of her murder. *Id*. at 156; App.Ex. 42. Commander Penny Dunn with the San

Marcos Police Department testified that after the case was reopened, she ruled Andrus out as a suspect because his alibi had been "confirmed quite strongly" in the earlier investigation. 38 RR 174-75.

2. The State Claimed the Original Pathologist Concluded a Sexual Assault Occurred But Was Unavailable to Testify Because He was Dead

In opening statements, the State told the jury: "Now Dr. Bell I'll tell you has long since passed away. At first blush that might sound like a bit of a problem but for the fact that there were other people present at that autopsy." 37 RR 59. The State had evidently communicated its belief Dr. Bell was deceased to its witnesses, two of whom testified as such. 37 RR 219 (Urbanovsky testifying it was his "understanding [Dr. Bell's] deceased"); 38 RR 36 (Dr. Barnard reiterating that Dr. Bell was deceased).

The State assured the jury they would hear Dr. Bell's opinions from Ron Urbanovsky, a young criminalist at the time who was present with Dr. Bell for the autopsy, and that Urbanovsky would tell the jury that Dr. Bell believed the case involved a "rape/murder." 37 RR 60. Urbanovsky testified that Ms. Norris was partially dressed and had blood and fecal matter in the genital areas, and agreed with the State's assertion the case was probably a murder/sexual assault. *Id*. at 214, 218. He also stated that although he could not specifically recall what Dr. Bell said, "***I think that we did share that opinion*** . . . I don't remember him saying that . . . ***But I think that he felt like that*** because of the results of the one of the samples he had taken." 37 RR 222 (emphases added).

In closings, the State told the jury "there wasn't a single person who you heard on this stand who had any motive to lie to you or did." 40 RR 36. It also offered heavenly praise for Dr. Bell—"if Dr. Bell hears anything from heaven, I want him to hear this: He did a good job . . . If Dr. Bell did this today, I'd pat him on the back and say, 'Nice job.'" *Id.* at 38.

3. The Surrogate Pathologist Testified That Strangulation and Sexual Assault "Seem to Go Hand in Hand" in His Experience

The State brought in a surrogate pathologist, Dr. Jeffery Barnard, who testified to his opinion Ms. Norris was strangled and sexually assaulted. Dr. Barnard based his opinion on photos taken from the autopsy in 1975, crime scene photos, and Dr. Bell's original autopsy report. Dr. Barnard never examined Ms. Norris's body in person, but based his conclusion on: 1) his observations that the photos revealed that some of Ms. Norris's clothes were off and she had some blood and fecal matter on her; and 2) that "[s]trangulation is frequently seen with sexual assault and sexual assaults are frequently seen with strangulation in [his] experience." 38 RR 113.

Dr. Barnard told the jury that strangulation and sexual assault "seem to go hand in hand" and the two "are tied together." *Id.* at 113-14. He claimed it was "common" to see strangulation and sexual assault together, *id.* at 114, and that there have only been a "few" cases where people were strangled but not sexually assaulted, *id.* at 126. Dr. Barnard provided no statistics or research to support his claims.

4. The DNA Evidence

At trial, the DNA analyst who was able to generate a profile in this case testified as to how she generated a profile using technology that was relatively new at the time. 39 RR 220-21. The analyst testified that in 2010 she compared a buccal swab of Mr. Jenkins to the profile generated from the sperm cell fraction, and that he "could not be excluded" from that sample. *Id.* at 237-38. She also analyzed the blouse in this case in 2011. *Id.* at 248. At the time, the analyst was able to determine the profile from the blouse was a mixture, *id.* at 256, from which Mr. Jenkins also "could not be excluded." *Id.* at 257.

5. The Blouse as a "Date and Timestamp for the Murder"

The handprint on the blouse had particular significance to the State. At trial, it argued the handprint was a "a date and timestamp" for the murder/sexual assault. The State argued the murder "happened after she put these clothes on, she went to work and she got home . . . He put a date and timestamp on the outside of her body and he put an evidence stamp inside her body with the semen." *Id.* at 34.

The jury convicted Mr. Jenkins of capital murder on May 31, 2013, and following the penalty phase, the trial court sentenced Mr. Jenkins to death on June 13, 2013.

C. State Post-Conviction Proceedings

1. Initial State Habeas Proceedings

After Mr. Jenkins's conviction, the trial court appointed the Office of Capital and Forensic Writs ("OCFW") to represent Mr. Jenkins in his state habeas proceedings. On July 8, 2015, the OCFW filed Mr. Jenkins's Initial Application for Writ of

Habeas Corpus Relief ("initial application"). In his initial application, Mr. Jenkins raised, *inter alia*, several allegations that the State presented false and misleading evidence at both phases of his trial, including that:

- the State told the jury Dr. Bell was dead and had concluded Ms. Norris had been sexually assaulted when in fact Dr. Bell very much alive at the time of trial, never concluded that Ms. Norris had been sexually assaulted, and could have testified to both his extant state and autopsy conclusions;
- Andrus significantly downplayed the scope and nature of his drug dealing and criminal history; that Andrus had an alibi that was confirmed when he, in fact, did not;
- marijuana had not been found in Andrus's and Ms. Norris's apartment when it, in fact, had and related back to the significance of Andrus's drug dealing;
- that original investigating officers were also deceased when they also were still alive at the time of trial.

In addition, Mr. Jenkins also raised several grounds of ineffective assistance of counsel.

The State conceded that Dr. Bell was alive at the time of trial. *See* State's Original Answer at 41-42 ("The State was incorrect in its belief that Dr. Bell was dead . . . [] Dr. Bell was apparently not dead."); *id*. at 42 (stating the testimony that Dr. Bell was dead "gave the jury a false impression that Dr. Bell was indeed dead"). However, the State argued that it did not present false testimony of a sexual assault, eliding Mr. Jenkins's claim that the undead pathologist *Dr. Bell* had never concluded that Ms. Norris had been sexually assaulted.

Mr. Jenkins sought an evidentiary hearing on his false testimony and ineffective assistance of counsel claims. The district court, however, only designated

Mr. Jenkins's ineffective assistance of counsel claims for factual development at an evidentiary hearing. Mr. Jenkins's false evidence claims were decided on the exhibits attached to his initial application and the State's answer. An evidentiary hearing was held in September and December 2021. The trial court entered findings of fact and conclusions of law on May 12, 2022, recommending that the TCCA deny relief to Mr. Jenkins, and sent the application to the TCCA to review. *See* App.B.

2. Subsequent DNA Developments

Prompted by a 2015 letter from the Texas Forensic Science Commission about misleading interpretation of DNA mixtures, in 2017 the State requested that DPS reinterpret the DNA evidence in Mr. Jenkins's case. DPS, however, took years to reinterpret the DNA evidence in Mr. Jenkins's case.

In July 2022, the DPS analyst handling the reinterpretation informed the State and Mr. Jenkins of a contamination event in the reagent blank associated with the epithelial cell fraction of the vaginal swab extracted in 1997 by DPS. The parties asked DPS to continue with its reinterpretation of the DNA from the sperm cell fraction and the DNA on the blouse. In January 2023, Mr. Jenkins filed a motion in the TCCA asking it to stay the proceedings so the trial court could determine the relevance of the new DNA evidence to the claims raised. The TCCA granted the motion and remanded Mr. Jenkins's case to the trial court and instructed it "to consider the alleged new developments" and "determine whether those developments affect the claims Applicant raised in his initial writ application." App.C at 2.

On June 27, 2023, DPS issued a new report containing the results of newer, more sensitive testing and updated interpretation guidelines than were used previously. The more sensitive testing kit revealed two new pieces of information regarding the evidence in this case: 1) that due to the quantity and/or quality of DNA on the blouse, *no* conclusions could be drawn about the identity of any contributor to the DNA mixture; 2) the contamination event that DPS informed the parties of in July 2022.

DPS initially reported in 2012 that the blouse was consistent with a mixture, and that Mr. Jenkins could not be excluded as a contributor to the profile. At trial, the DPS analyst who evaluated the DNA evidence in this case testified that the "probability of selecting an unrelated person at random who could be a contributor to this profile is approximately 1 in 457.9 trillion for Caucasians, 1 in 44.68 trillion for Blacks, and 1 in 8.977 quadrillion for Hispanics." Sub.App.Ex. 9 at 2. The analyst agreed with the State's suggestion that a "trillion is more than a thousand times the world population," emphasizing the initial inculpatory power of the DNA results. 39 RR 260.

In 2023, however, after using more scientific tests and protocols, DPS acknowledged that they could not connect Mr. Jenkins to the decedent's blouse. Sub.App.Ex. 3 at 2. DPS acknowledged the change from inculpatory statistics that ranged from trillions and quadrillions to being wholly unable to develop and reliably interpret a DNA profile or connect the blouse to Mr. Jenkins as follows: "the inability to make comparisons to the DNA profile obtained from item MW9 (cutting from

white blouse) is a change from the conclusion reported on June 27, 2012." Sub.App.Ex. 4 ¶10. Ultimately, because the complex profile on the blouse was of such low quantity and quality, it was uninterpretable and cannot connect Mr. Jenkins to the blouse.

Regarding the contamination, DPS asserted that it was low-level but could not determine its source. DPS acknowledged that it is possible the contamination was present from the time of the original extraction when the epithelial cells and the sperm cell fractions reagent blanks were generated—meaning, the original sample itself could have been contaminated, implicating the sperm cell fraction, as well. DPS also could not say whether the associated epithelial cell fraction of the swab from the vaginal slide was actually a mixture that was only detected because of the more sensitive amplification kit, as opposed to a contamination event as indicated in July 2022.

After DPS issued its report, the trial court entered supplemental findings of fact and conclusions of law addressing the TCCA's question whether the DNA developments impacted the claims raised in Mr. Jenkins's initial application. The court found that "the new developments in the DNA—the detected contamination and the new DNA results—were obtained using a newer, more sensitive testing kit called Qiagen Investigator 24plex QS." App.D at 4. It found that DPS began using this kit "four years after [Mr. Jenkins's] trial" and that "post-trial developments in the DNA evidence could not have been known to trial counsel at trial." *Id*. at 6.

Accordingly, the trial court concluded that any "factual allegations or claims predicated on the post-trial developments in DNA or on the 2010-2012 DPS interpretation guidelines would be untimely amendments to Applicant's initial writ, which means any such claims would be subsequent." *Id.* at 7.

3. Mr. Jenkins's Subsequent Habeas Application

On May 14, 2024, while his initial application remained pending in the TCCA, Mr. Jenkins filed a subsequent application for writ of habeas corpus raising, as relevant to this instant petition, that the prosecution presented false testimony when it informed the jury that Mr. Jenkins could not be excluded from the blouse when newer interpretation revealed the blouse was uninterpretable, that DNA analysts testimony regarding the reliability of their opinion on the sperm cell fraction was misleading because the jury was not informed of the contamination event, and that Urbanovsky and Dr. Barnard presented misleading testimony by providing purported expert opinion regarding whether a sexual assault occurred during the course of the murder where new developments in forensic science do not support those conclusions.[2]

---

[2] Mr. Jenkins also raised that the developments regarding the contamination event and reinterpretation of the blouse constitute new scientific evidence previously unavailable to him under Texas's "junk science" statute under Texas Code of Criminal Procedure Article 11.073.

Mr. Jenkins further raised that he is actually innocent, citing the new DNA evidence and that Urbanovsky's and Dr. Barnard's opinions were not reliable to establish a sexual assault occurred, *i.e.*, a necessary element of the capital murder. Mr. Jenkins argued that no court could have confidence in his conviction due to compounding nature of the false evidence introduced at his 2013 trial, citing both the new false evidence and that raised in his initial application.

For the latter ground, developments generally in the field of forensic sciences have called into question opinions like those rendered by Urbanovsky and Dr. Barnard. Urbanovsky testified solely to his speculation that he "thought" they were investigating a probable murder/sexual assault, based merely on the presence of spermatozoa. 37 RR 214 (Urbanovsky also agreeing with State's characterization that it was "probably" a sexual assault/murder). This is despite police records noting Dr. Bell's opinion that the spermatozoa could have been left there before the murder, possibly even the night before.

Dr. Barnard did not personally conduct the autopsy, but reviewed photos taken from the autopsy in 1975, crime scene photos, and Dr. Bell's original autopsy report. Dr. Barnard told the jury he believed Ms. Norris had been sexually assaulted based on his observations in the photos that some of Ms. Norris's clothes were off and she had some blood and fecal matter on her,[3] but also on his conclusion Ms. Norris had been strangled.

And at trial, Dr. Barnard agreed that the "presence of [blood] doesn't indicate the specificity of its organ or its cause[.]" 38 RR 123. The main thrust behind Dr. Barnard's conclusion that a sexual assault occurred was his opinion that "[s]trangulation is frequently seen with sexual assault and sexual assaults are frequently seen with strangulation in [his] experience," that the two "seem to go hand in hand,"

[3] Of note, 38 RR 123. Dr. Bell's autopsy report noted dried blood in the perineal area and near the thigh, and fecal material present, as well. Sub.App.Ex. 11 at 2. Dr. Bell did not note any injuries to genital or anal areas. *Id.*; App.Ex. 2 ¶5.

"are tied together," that it is "common" to see strangulation and sexual assault together, and that there have actually only been a "few" cases where people were strangled but not sexually assaulted." *Id.* at 113-114, 126. Dr. Barnard did not provide statistics, research, or articles to support his personal observations that sexual assault and strangulation are so connected.

Mr. Jenkins argued that his false evidence claims should be authorized by the TCCA because the factual bases for the claims was previously unavailable to him at the time he filed his initial application. *See* Tex. Code Crim. Proc. art. 11.071, §5(a)(1) (allowing a court to consider the claim if "the factual or legal basis for the claim was unavailable on the date the applicant filed the previous application"). The State did not file any response or opposition to Mr. Jenkins's seeking the TCCA to authorize the claims raised in his subsequent application.

4. The TCCA's April 16, 2025 Order

On April 16, 2025, in a single, unpublished opinion, the TCCA denied relief to Mr. Jenkins on all the claims raised in his initial application and dismissed the subsequent application. Regarding the initial application, the TCCA stated that it adopted in full the trial court's findings of fact and conclusions of law on the false evidence claims. However, the TCCA ultimately devoted two sentences to summarily denying the false evidence claims, holding they were "procedurally barred from receiving a merits' review because they were raised and rejected on direct appeal,

or they could have been raised on direct appeal, but were not." App.A at 6.[4] The TCCA cited two cases that have nothing to do with false evidence claims, but state Texas's general proposition that habeas corpus is not a substitute for direct appeal. *See id.* (citing *Ex parte Hood*, 304 S.W.3d 397, 402 n.21 (Tex. Crim. App. 2010) and *Ex parte Nelson*, 137 S.W.3d 666, 667 (Tex. Crim. App. 2004)).

The TCCA's second sentence stated, "Alternatively, Applicant is not entitled to relief on the merits of these claims." *Id.* The TCCA did not discuss the merits of Mr. Jenkins's claims, and did not reference any of the factual allegations or applicable law.

Regarding the subsequent application, the TCCA dismissed Mr. Jenkins's new false evidence and actual innocence claims, stating only that Mr. Jenkins's "failed to satisfy the requirements of Article 11.071, Section 5(a)." *Id.* at 7.

Mr. Jenkins's Petition for Writ of Certiorari follows.

REASONS FOR GRANTING RELIEF

I. THE TCCA'S JUDGMENT DENYING THE INITITAL FALSE EVIDENCE CLAIMS WAS NOT BASED ON ADEQUATE STATE LAW GROUNDS BECAUSE IT APPLIED A NOVEL PROCEDURAL BAR THAT DEPRIVES APPLICANTS OF RAISING MERITORIOUS FOURTEENTH AMENDMENT FALSE EVIDENCE CLAIMS

Generally, "[t]his Court will not take up a question of federal law in a case 'if the decision of [the state] court rests on a state law ground that is *independent* of the federal question and *adequate* to support the judgment.'" *Cruz v. Arizona*,

[4] No false evidence claims were raised in Mr. Jenkins's direct appeal proceedings. *See Jenkins v. State*, 493 S.W.3d 583 (Tex. Crim. App. 2016).

598 U.S. 17, 25 (2023) (citing *Lee v. Kemna*, 534 U.S. 362, 375 (2002)) (emphases in original). By stating that Mr. Jenkins should have raised his false evidence claims on direct appeal, the TCCA's judgment was not based on adequate state law ground.

First, this constituted a novel procedural bar that it has never applied to false evidence claims. Second, the TCCA shifted the foundational nature of *Napue* claims by looking at what defense counsel knew or should have known regarding the false evidence, rather than the prosecution, that would bar *Napue* claims from being litigated in post-conviction.

A. The TCCA's Judgment Constituted a Novel Application of a Procedural Bar Entirely Unforeseen by Mr. Jenkins That It Has Never Applied to False Evidence Claims

1. The TCCA Has Always Recognized and Considered the Merits of False Testimony Claims Raised in Initial State Habeas

Up until Mr. Jenkins's case, habeas applicants could rely on Texas's robust false evidence jurisprudence that routinely reviewed the merits of post-conviction false evidence claims. Indeed, decades-old TCCA case law firmly established that a federal due process claim that the State presented false or misleading testimony at trial was reviewable in Texas post-conviction proceedings. *See, e.g.*, *Ex parte Fierro*, 934 S.W.2d 370, 374-75 (Tex. Crim. App. 1996).

The availability of false evidence claims in post-conviction in Texas is so paramount in that, even if the false evidence claim potentially *could* have been raised before, the only difference was the harm analysis applied—not whether the claim would be reviewed at all. *Ex parte Ghahremani*, 332 S.W.3d 470 (Tex. Crim. App. 2011) (addressing the question left open in *Fierro*, "of whether the preponderance-

of-the-evidence standard should apply to the State's knowing use of false testimony when the applicant could not have raised the issue on direct appeal"). *Ghahremani* was important because, as this Court is aware and is discussed further below in Ground I, Section B, the availability to challenge false evidence often turns on the prosecution's cunningness in withholding or hiding evidence that contradicts the evidence presented at trial, and when the defendant/applicant is able to learn of its existence. *Id*. at 482 ("When the State knowingly uses false testimony, the determinative factor in whether the defendant can raise the issue on direct appeal is, frequently, how well the State hides its information.").

The cognizability of both unknowing/knowing false evidence claims in post-conviction review, regardless of the availability to raise the same claims at trial or on direct appeal, and the TCCA's consistency in reviewing the merits of such claims, have occurred time and time again, without fail. *See, e.g.*, *Ex parte Chavez*, 371 S.W.3d 200, 207-10 (Tex. Crim. App. 2012) (confirming the cognizabilty of false evidence claims, regardless of whether the false evidence was introduced knowingly or unknowingly by the prosecution); *Ex parte Weinstein*, 421 S.W.3d 656, 664-65 (Tex. Crim. App. 2014); *Ex parte Lalonde*, 570 S.W.3d 716, 723 (Tex. Crim. App. 2019) ("A habeas applicant relying on a due process false testimony contention must show both materiality of the testimony and that the error in its use was not harmless if the defendant could have raised the claim in the trial court or on direct appeal.") (citing *Ghahremani*, 332 S.W.3d at 481–82.); *Ex parte Colone*, 663 S.W.3d 611, 612 (Tex. Crim. App. 2022).

A review of the TCCA's case law in this area reveals one instance in which the TCCA indicated interest in revisiting its false evidence jurisprudence, but that it ultimately declined to do so. In *Ex parte De La Cruz*, the TCCA asked the parties to brief whether the applicant could have raised his false evidence claim in an earlier proceeding, and whether it should be subject to procedural default. 466 S.W.3d 855, 864 (Tex. Crim. App. 2015). The TCCA noted the general principle that a habeas applicant may not raise claims in post-conviction if the claims could have been raised at trial or direct appeal. *Id*. Under the facts of *De La Cruz*, the TCCA then held that his initial post-conviction proceedings were his first opportunity to raise his false evidence claims. *Id*. at 865.

However, false evidence cases decided by the TCCA since *De La Cruz*—which was decided a ***decade*** before Mr. Jenkins's case—have reinforced TCCA precedent regarding reviewability of false evidence claims. *Lalonde* unequivocally affirmed, just six years ago, that "if the applicant could not have raised the matter at trial or on appeal, in a habeas proceeding he must show materiality but need not show the error was not harmless." *Lalonde*, 570 S.W.3d at 723. There has been ***no*** intervening caselaw overruling this line of precedent. Indeed, in a recent TCCA decision deciding a false evidence claim, the TCCA again cited to *Lalonde*, *Ghahremani*, and *Weinstein* as its false evidence precedent, without any limitation or qualification.

See Ex parte Carter, --- S.W.3d ---, 2025 WL 2161258, at *12 (Tex. Crim. App. July 30, 2025).[5]

2. The TCCA's Decision Constitutes an "Unforeseeable and Unsupported State-Court Decision"

A state procedural rule that is "firmly established and regularly followed" ordinarily will suffice to foreclose this Court's review of a federal claim. *Id*. at 25-26. However, if the state court's procedural rule is applied "in a way that "renders the state ground inadequate to stop consideration of a federal question"' this Court has jurisdiction to review the case. *Id*. at 26 (quoting *Lee*, 534 U.S. at 375).

In Mr. Jenkins's case, the TCCA forfeited his false testimony claims by holding, for the first time ever in the false evidence context, that it should have been raised on direct appeal. This novel procedural bar is a clear aberration that Mr. Jenkins could not have foreseen. While the TCCA does generally apply procedural bars to claims that could or should have been raised on direct review, the TCCA has *never* applied a procedural bar to false evidence claims raised for the first time in initial habeas proceedings.[6] Thus, where state court applicants like Mr. Jenkins rely upon firmly established and regularly followed state court judgments,

---

[5] In *Carter*, the TCCA cited this Court's recent February 2025 decision in Richard Glossip's case, yet failed to apply *Glossip* to Mr. Jenkins's case. *See infra* Reasons for Granting Relief, Section (I)(B).

[6] The same carveout exists for ineffective assistance of counsel claims, where the record on appeal typically lacks the evidence necessary to reliably evaluate and adjudicate these claims. As such, they must be raised in post-conviction where a record can be developed. *See, e.g.*, *Ex parte Nailor*, 149 S.W.3d 125 (Tex. Crim. App. 2004). Similar with false evidence claims, the record may be inadequate to address false evidence claims, which are frequently developed with extra-record evidence on collateral review.

"[n]ovelty in procedural requirements cannot be permitted to thwart review in this Court applied for by those who, in justified reliance upon prior decisions, seek vindication in state courts of their federal constitutional rights." *NAACP* v. *Alabama ex rel. Patterson*, 357 U. S. 449, 457 (1958).

As this Court stated in *Cruz v. Arizona*: "This is one of those exceptional cases." *Id*. Mr. Jenkins's case represents the "the rarest of situations"—where "an unforeseeable and unsupported state-court decision on a question of state procedure does not constitute an adequate ground to preclude this Court's review of a federal question." *Id.* (quoting *Bouie* v. *City of Columbia*, 378 U. S. 347, 354 (1964)). The TCCA has never before procedurally barred a false evidence claim by saying that it should have been raised on direct appeal. Thus, its decision in Mr. Jenkins's case represents an entirely new procedural rule, unknown to Mr. Jenkins or any other applicant in Texas, applied for the very first time in his case. *See Walker v. Martin*, 562 U.S. 307, 320 (2011) ("A state ground, no doubt, may be found inadequate when 'discretion has been exercised to impose *novel and unforeseeable requirements without fair or substantial support in prior state law*'" (quoting 16B C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 4026, p. 386 (2d ed. 1996)) (emphasis added).

The TCCA cited no case law supporting its position that a false evidence claim can be procedurally defaulted in the initial habeas stage, did not invite the parties to brief the issues or provide any indication it was considering departing from its jurisprudence, and failed to even acknowledge it had quietly overturned

decades of false evidence precedent. The totality of its treatment of Mr. Jenkins's false evidence claims in his initial application boiled down to two sentences. The first dismissed his claims on the never-before-seen procedural basis, and the other, styled as an "alternative" to the procedural bar, was a covering-its-bases sentence claiming he was not entitled to relief on the merits either, but with no sentences devoted to discussing why.

The TCCA's novel rule barring review of Mr. Jenkins's case, therefore, does not constitute an adequate and independent ground to support its judgement. This Court can and should review Mr. Jenkins's case.

B. The TCCA's Decision Prevents Applicants From Raising Fourteenth Amendment False Evidence Claims, in Contravention of *Glossip*

The TCCA's novel procedural rule operated to completely bar review of Mr. Jenkins's meritorious federal constitutional claim that he raised for the first time in his *initial* habeas proceedings. In so holding, the TCCA's decision in Mr. Jenkins's case not only sidestepped its own procedural rules regarding the reviewability of false evidence claims, but had the effect of denying consideration of his federal due process claim. *Young v. Ragen*, 337 U.S. 235, 238 (1949) ("[I]t is not simply a question of state procedure when a state court of last resort closes the door to any consideration of a claim of denial of a federal right.").

It is facially unclear what reasons the TCCA had for deciding that Mr. Jenkins's false evidence claims were procedurally barred because the TCCA did not provide any support for its rationale. However, the fact that the court indicated the claims should have been raised on direct appeal indicates its willingness to put the

onus on Mr. Jenkins's trial counsel to raise false evidence claims, rather than on the prosecution to correct. This is substantively in direct contravention of this Court's precedent and provides additional support showing that the TCCA's order was not based on an adequate state law ground. *See Cruz*, 598 U.S. at 25 ("Nevertheless, in 'exceptional cases,' a 'generally sound rule' may be applied in a way that 'renders the state ground inadequate to stop consideration of a federal question.'").

In *Glossip v. Oklahoma*, this Court noted the Oklahoma Court of Criminal Appeals's (OCCA) "holding rested on a mistaken interpretation of *Napue*" because the defense in that case "'was aware or should have been aware that Sneed was taking lithium at the time of trial,' and the prosecution could not have 'knowingly concealed' something the defense already knew." *Glossip v. Oklahoma*, 604 U.S. ---, 145 S.Ct. 612, 630 (2025). This Court, in no uncertain terms, stated: "In any event, the Due Process Clause imposes 'the responsibility and duty to correct' false testimony on 'representatives of the State,' not on defense counsel." *Id.* (citing *Napue*, 360 U.S. at 269-70) (internal quotations omitted).

Whether a false evidence claim was available on direct appeal or for the first time in initial state habeas proceedings forces courts to undergo unnecessary hair-splitting analysis that could turn on what a habeas applicant's *trial counsel* knew or should have known and should have corrected, rather than what the *prosecution* knew or should have known and should have corrected. This precludes courts from reaching the merits of prosecutorial due process claims and in turn, cabins habeas applicants to Sixth Amendment ineffective assistance of counsel claims, rather than

availing themselves of the protections of Fourteenth Amendment, under which *Napue* false evidence claims fall. *Id.* ("What matters is that his testimony was false and a prosecutor knowingly let it stand nonetheless."); *see also Napue*, 360 U.S. at 269 ("[I]t is established that a conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment").

Such a limitation would also deprive habeas applicants of one of the most powerful components of a *Napue* claim—the ability to show the impact of the prosecution being forced to correct the false evidence before the jury, rather than defense counsel doing it. *Glossip*, 145 S.Ct. at 614 ("*Napue* does not require that the false testimony itself must have directly affected the trial's outcome; *Napue* requires assessing whether the prosecutor's failure to correct the testimony could have contributed to the verdict.").

II. BECAUSE THE TCCA'S DECISION NECESSARILY IMPLICATES FEDERAL LAW, ITS JUDGMENT DISMISSING THE SUBSEQUENT APPLICATION WAS NOT BASED ON INDEPENDENT STATE LAW GROUNDS

Although the TCCA refused to specify the basis for not authorizing Mr. Jenkins's false evidence claims raised in his subsequent application, its decision was not based on independent state ground, and this Court has jurisdiction to review the decision. Because Mr. Jenkins's subsequent federal false evidence claims are meritorious, the TCCA erred by refusing to authorize them.

Mr. Jenkins relied on Article 11.071 § 5(a)(1) to justify raising his false evidence and actual innocence claims in the subsequent application. The § 5(a)(1) hurdle has two requirements: "1) the factual or legal basis for an applicant's current claims must have been unavailable as to all of his previous applications; and 2) the specific facts alleged, if established, would constitute a constitutional violation that would likely require relief from either the conviction or sentence." *Ex parte Campbell*, 226 S.W.3d 418, 421 (Tex. Crim. App. 2007). Under the second prong, the applicant must show that "the specific facts alleged . . . would constitute a constitutional violation that would likely require relief from either the conviction or sentence." *Id.* In Mr. Jenkins's § 5(a) order, it is unclear whether the TCCA engaged in the second step under *Campbell*, but regardless, this Court can review this case.

The full, two-step *Campbell* analysis necessarily implicates a federal law inquiry into the factual sufficiency of the claim. Thus, if the TCCA engaged in the second step, this Court unquestionably has jurisdiction to review his case. That the TCCA dismissed the subsequent application "without considering the merits of the claim" does not mean it did not engage in *Campbell*'s step two. App.A at 7. The TCCA, in its unelaborated opinion, may in fact still have conducted a *prima facie* factual sufficiency analysis, meaning "the merits" would refer to the TCCA's consideration of the claim *after* deciding whether the two-step § 5(a)(1) hurdle was met. If it was merits-based, this means the dismissal was not based on an independent state ground and is subject to this Court's review. *Foster v. Chatman*, 578 U.S. 488,

497 ("When application of a state law bar 'depends on a federal constitutional ruling, the state-law prong of the court's holding is not independent of federal law, and our jurisdiction is not precluded.'") (quoting *Ake v. Oklahoma*, 470 U.S. 68, 75 (1985)).

Further, TCCA decisions cannot circumvent federal review by refusing to provide the basis for their dismissals. Where the TCCA's order does not indicate whether it dismissed a claim based on just the unavailability of the claim or both the unavailability and the factual sufficiency, the order may still be merits-based. In that situation, the § 5(a)(1) ground would still not be considered "independent" because the ambiguous denial interweaves state-law ground with federal law. Further, when the independence of the state ground is ambiguous, as in this case, this Court is presumptively in favor of its appellate jurisdiction. *See Coleman v. Thompson*, 501 U.S. 722, 733 (1991) (discussing presumption from *Michigan v. Long*, 463 U.S. 1032, 1040 (1983)); *see also Rocha v. Thaler*, 626 F.3d 815, 835 (5th Cir. 2010) (Fifth Circuit noting that the TCCA sometimes dismisses § 5(a)(1) because it finds the federal constitutional claim is meritless, and in those cases the "decision is interwoven with the merits of the federal constitutional claim and thus does not rest on an independent state-law ground"). Because § 5(a)(1) was asserted as a gateway for the claims raised in Mr. Jenkins's subsequent application, the *Long* presumption applies.

Finally, in cases like this where the order dismissing the claims is unelaborated, this Court can rely on inference to determine whether the state court judgment was based on an adequate and independent state law judgment. *See Foster*, 578 U.S. at 497. Here, when the TCCA issued its remand order in light of the new DNA developments, it specifically instructed the trial court to "determine whether those developments affect the claims Applicant raised in his initial writ application." App.C at 2. The district court specifically concluded that the facts were previously unavailable to Mr. Jenkins at the time he filed his initial application and would need to be raised in a subsequent proceeding to be reviewed. App.D. at 7-8. The State did not contest the prior unavailability of this evidence and did not file opposition to Mr. Jenkins's subsequent application. Thus, the main issue before the TCCA was not whether the claims were previously unavailable, *i.e.*, a state law ground, but whether they had merit, *i.e.*, a federal law ground.

Mr. Jenkins's subsequent application claims were subject to authorization under Article 11.071 §5(a)(1)'s subsections because the factual bases for the new false evidence claims were not available to him until DPS issued the reinterpretation of evidence in his case and the developments in forensic science undermining Dr. Barnard's opinion had occurred. The developments also breathed new life into the earlier false evidence claims regarding Dr. Bell and Andrus because they were part of the procedural gateway for his actual innocence claim. *See Ex parte Franklin*, 72 S.W.3d 671, 675 (Tex. Crim. App. 2002) (citing *Schlup v. Delo*, 513 U.S. 298

(1995)). The TCCA erred in refusing to authorize Mr. Jenkins's false evidence claims, and this Court has jurisdiction to review those claims.

III. THE PROSECUTION PRESENTED NUMEROUS INSTANCES OF FALSE EVIDENCE THROUGHOUT MR. JENKINS'S TRIAL THAT VIOLATED HIS FOURTEENTH AMENDMENT RIGHT TO DUE PROCESS

Through Mr. Jenkins's combined initial and subsequent habeas applications he raised numerous instances of false evidence the prosecution presented at his trial that merit close attention, not a waving off. This Court should find that a Fourteenth Amendment violation occurred in Mr. Jenkins's case.

A. The False Evidence

1. The Original Pathologist Was Not Actually Dead and Could Have Testified That He Did Not Conclude a Sexual Assault Occurred

The State told Mr. Jenkins's jury in opening statements that Dr. Bell had "long since passed away[,]" but that they would present his conclusions through other witnesses. 37 RR 59- 60. The State claimed Dr. Bell reached a "conclusion that we're probably dealing with a rape/murder here." *Id.* at 60. It then presented testimony through Ron Urbanovsky, who testified that it was his understanding Dr. Bell had died, *id.* at 219, and that he thought Dr. Bell concluded Ms. Norris had been sexually assaulted, *id.* at 222.

But Dr. Bell was not dead at the time of trial and never concluded a sexual assault occurred. Indeed, police records at the time indicate the exact opposite—law enforcement recorded that Dr. Bell expressly informed them that he found spermatozoa but could not state whether it was present from the evening before. Sub.App.Ex. 13 at 53. This is important, too, because the State never made the same

"date and timestamp" argument for the semen evidence as it had for the blouse. Dr. Bell's autopsy report notes no injuries to the genital or anal areas that would help show whether a sexual assault occurred. Sub.App.Ex. 11. Dr. Bell attested to as much in a post-conviction declaration. App.Ex. 2. Consistent with his prior findings in 1975, Dr. Bell stated that there is no indication he was able to conclude a sexual assault occurred. For the prosecution to tell the jury that Dr. Bell reached a conclusion he never made was grossly misleading.

2. Urbanovsky and Dr. Barnard's Conclusions Regarding Whether a Sexual Assault Occurred Were Overstated and Outside Their Expertise

Dr. Barnard's and Ron Urbanovsky's testimony claiming that a sexual assault occurred at the time of Ms. Norris's death was misleading because they drew conclusions that neither had the expertise to draw and, more importantly, that science does not support. *See* 38 RR 113-14, 126 (Dr. Barnard testifying that "[s]trangulation is frequently seen with sexual assault and sexual assaults are frequently seen with strangulation in [his] experience," that the two "seem to go hand in hand," "are tied together," and that it is "common" to see strangulation and sexual assault together).

Since the time of Mr. Jenkins's trial, evolving standards in forensic science prohibit speculation testimony that is dressed up as an expert opinion like those offered by Dr. Barnard and Urbanovsky. Neither opinion "offered a valid methodology or scientific basis for his conclusion" that this was a rape case. Sub.App.Ex. 5 at 6 (Report of Keith Findley). And neither Dr. Barnard nor Urbanovsky "offered a valid methodology or scientific basis for his conclusion" and absolutely "[n]othing in

their methods or science could tell them that the circumstantial evidence in this case meant this was a rape case." *Id*. at 6. Finally, neither applied any actual expertise based in peer reviewed and published research, instead offering *ipse dixit* opinion testimony that was based on their recollection of their collective experiences and personal beliefs.

Forensic science admissibility should hinge on empirical research, established error rates, and peer review. But in Mr. Jenkins's case, the State called witnesses who testified beyond the scope of their expertise that were not based on data or a scientifically accepted methodology. Urbanovsky was not a pathologist. He was simply the individual present during Dr. Bell's autopsy. For Dr. Barnard, there was no way he could make a statistical or probabilistic association with such data or empirical evidence, yet he did anyway. *See id*. at 7 (Dr. Barnard relied upon his "own subjective judgments and their subjective assessment of the frequency with which a particular pattern or set of features will be observed") (internal quotations and citation omitted). The concern is that "the experts' sense of the rate of association could be entirely wrong, because they have no way of knowing if their past assessments that previous cases they examined involved both strangulation and rape were accurate." *Id*. Examiners, such as Dr. Barnard conducting routine autopsies, simply do not know how often they are right or wrong in their opinion that a sexual assault occurred in any given case over any given amount of time. *See id*. (noting that while "judgment and experience can have some role in some expert opinions, such as opinions about the adequacy of care provided by a physician . . .

that is not so when the expert is purporting to draw statistical or probabilistic associations").

In fact, empirical data that does exist regarding the correlation between sexual assault and strangulation contradicts Dr. Barnard's testimony that they seem to go "hand in hand." *Id*. at 7-9. Indeed, there appears to be no study that "suggests [the] overwhelming association" that Dr. Barnard insinuated existed. *Id*. at 7. Neither Urbanovsky nor Dr. Barnard have the qualifications or the research to back up their claims. Accordingly, the testimony that they had reliably concluded a sexual assault had occurred was misleading to the jury. *See Alcorta v. Texas*, 355 U.S. 28, 31 (1957) (evidence is false if it gives jury a "false impression").

Without the gloss of an expert informing them a sexual assault occurred, the evidence otherwise was scant. Ms. Norris was found in a bathroom, where it is not uncommon for an individual's pants to be around their ankles or for blood and feces to be present in the vaginal/anal areas. The bathtub was full of water, indicating an intention to take a bath. Further, feces were also found on Ms. Norris's bedroom sheets, yet there is no biological evidence connecting Mr. Jenkins to those items or any other item found inside of the apartment.

3. The DNA Evidence was False

At Mr. Jenkins's trial, the State's DNA experts at trial told the jury unambiguously that Mr. Jenkins was connected to the blouse. This was false. There is no reliable biological evidence connecting Mr. Jenkins to the blouse. Those same experts implied there was no issue with the samples in this case. They told the jury

they took careful steps in using reagent blanks and establishing controls when handling the evidence. This testimony was also false, as DPS now acknowledges that there was a contamination event.

The blouse was central to the State's theory that whoever murdered Mr. Norris also sexually assaulted her because, at that time, the State believed Mr. Jenkins's DNA could reliably be determined to have come from both the semen and the blouse. To them, the profile on the blouse was a purported "date and timestamp" for when the murder occurred, and because they believed there was a consistent contributor to both the semen and the blouse, this meant the same person who had a sexual encounter with her also killed her.

The most the DNA indicates is that Mr. Jenkins may have had sex with the decedent within 3-7 days of her death. *See* Sub.App.Ex. 2 at 3 (Report of DNA expert Dr. Danial Crane) ("Many studies indicate that sperm can persist from 3-7 days. Ultimately, while the presence of sperm on the vaginal slide, Item 14B, supports a conclusion that sexual activity occurred, no objective method exists for concluding when that activity occurred."). There is no evidence that he strangled the decedent. There is no evidence that he sexually assaulted the decedent. There is no evidence that he sexually assaulted her in the course of murdering her.

Further, there is confirmed contamination in this case. It is known the epithelial cell fraction's regent blank has contamination, and it is possible the epithelial sample itself does, as well. Sub.App.Ex. 4 ¶23 ("[ ] I therefore cannot conclude if the associated epithelial cell fraction of the swab . . . is contaminated as well or

was a mixture[.]"). And because "the original sample from the vaginal swab started with one reagent blank, it is possible that additional low-level contributors in the evidence sample or low-level contaminants in the associated reagent blank for the sperm cell sample would also be observed." Sub.App.Ex. 1 ¶28. This information fundamentally alters the quality of the sperm cell evidence presented to the jury. Without knowledge of the contamination, the jury had no reason to doubt the quality of the work performed on the case or to question the results obtained. *See Colone*, 663 S.W.3d at 612 (granting relief when "one of the DPS analysts who testified at trial gave the jury a false impression when he suggested that there was nothing 'awry' with the manner in which DPS handled the glove and towel").

4. The State Introduced False Testimony Concerning Ms. Norris's Boyfriend

At trial, Ms. Norris's boyfriend, Wayne Andrus, testified that at the time of his girlfriend's murder, he was on probation for a conviction out of Georgia for marijuana and that he had once been arrested for a conspiracy case relating to marijuana out of Texas. 37 RR 161-63. He testified that since his drug dealing days, he had not gotten so much as a traffic ticket since 1987. *Id*. at 159. Andrus was asked whether there was a large amount of cash hidden in the apartment at the time of the murder, to which he could not recall, but did testify that he had sold a "significant amount of marijuana" about a week before her death. *Id*. at 156.

In truth, the "significant" marijuana deal yielded Andrus an estimated $20,000 to $30,000 which he stowed in their apartment freezer. App.Ex. 37 at 2.

The deal was for 1,000 pounds of marijuana. *Id*. The Drug Enforcement Administration (DEA) had a file on Andrus documenting his lengthy criminal history in multiple states for trafficking in marijuana, methaqualone, and cocaine, arrests for drugs, robbery, and flight to escape. App.Ex. 44 at 7. DEA documents indicate Andrus was distributing large quantities of cocaine that were smuggled in from South America, that he was arrested in Louisiana for delivery of 13,000 Quaaludes, and that he owned 20,000 pounds of marijuana. App.Ex. 36 at 1-2. And his 1987 criminal case actually led to the seizure of one kilogram of cocaine, 100 pounds of marijuana, and $33,800. *Id*. at 2.

Andrus was himself a suspect in the case. When questioned in 1975, Andrus gave law enforcement a statement detailing an hour-by-hour play by play of his whereabouts the morning of Ms. Norris's murder. App.Ex. 42. One of the individuals he mentioned he was with that morning was a fellow college student named Janet Brightman. At trial, the officer with the San Marcos Police Department who reopened the cold case in the mid-1990s, Commander Dunn, testified that she ruled Andrus out as a suspect because "early on [Andrus's] alibi had been confirmed by Sergeant John East" and that she "felt like it was confirmed quite strongly." 38 RR at 174-75. This was not true.

In 1997, Commander Dunn wrote a report following an interview she conducted with Sergeant East about his investigation into Andrus's alibi. App.Ex. 39. The report reveals that Sergeant East informed Commander Dunn that he "was unsure if he was unable to verify the alibi," and could not recall whether he had

created any notes regarding those attempts. *Id.* Sergeant East apparently recalled attempting to verify Andrus's alibi by "speaking with an employee at the Southwest Texas University library or cafeteria" who stated she "could not remember seeing Andrus at school the day of the murder." *Id.* at 1. In that same report, Commander Dunn documented that she was unable to find any notes or reports in the case file regarding attempts to confirm Andrus's alibi in 1975, and that attendance and other records from Southwest Texas State University were no longer available. *Id.*[7]

Of note, Sergeant East also indicated to Commander Dunn that he believed Ms. Norris's death was "related to Andrus' drug business." App.Ex. 39 at 1. This is consistent with the reports of another officer who originally worked the case, Lieutenant James O'Connell. In line with an apparent theme at Mr. Jenkins's trial, the prosecution also told the jury Lt. O'Connell was deceased even though he was still alive—just like it had with the pathologist, Dr. Bell. In a post-conviction statement, Lt. O'Connell attested that he recovered a quantity of marijuana from a drawer under the oven that led him to believe that the occupants of the apartment were involved in drug dealing, and that it was his belief that "whoever killed Norris tortured her and it appeared that they were trying to get something out of her" such as "money or information related to the drug dealing." App.Ex. 9 at ¶¶6, 8.[8]

---

[7] Further, Janet Brightman, who Andrus claimed he had coffee with the morning of November 24, 1975, attested in a post-conviction declaration that she has no clue who Andrus is. Ms. Brightman attested that she never heard of Andrus and did not have lunch with him in 1975. App.Ex. 60 (Declaration of Janet Egizi née Brightman).

[8] Unlike Dr. Bell and Lt. O'Connell, Sgt. East did pass away before Mr. Jenkins's trial.

B. The Cumulative False Evidence Presented at Mr. Jenkins's 2013 Capital Trial Was Material to the Jury's Verdict

The false evidence must be reviewed cumulatively to assess the prejudice in this case, particularly where the TCCA combined the cases into a single order to dismiss the claims all together. *See Glossip*, 125 S.Ct. at 629 ("Because prejudice analysis requires a "cumulative evaluation" of all the evidence, whether or not that evidence is before the Court in the form of an independent claim for relief, these documents reinforce our conclusion that the *Napue* error here prejudiced the defense.") (citing *Kyles v. Whitley*, 514 U.S. 419, 441 (1995)). False evidence is material 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). There, the question is not whether the false testimony itself directly affected the trial's outcome. Rather, it is "whether the prosecutor's failure to correct the testimony could have contributed to the verdict." *Glossip*, 125 S.Ct. at 614.

Because Ms. Norris was wearing the blouse when she died, the blouse was critical to the State's case as it was the only evidence purporting to place Mr. Jenkins in direct contact with Ms. Norris at the time of her death. Having the evidence from the blouse was the only way the State could proceed on a theory that Mr. Jenkins was the perpetrator. But without the blouse, there is no evidence that Mr. Jenkins had any contact with Ms. Norris on the day she died.

At the time of Ms. Norris's autopsy, Dr. Bell discovered a small amount of spermatozoa but knew even then it was impossible to tell when it was deposited. At most, the evidentiary picture today is consistent with the possibility Mr. Jenkins

left semen inside Ms. Norris—something that is consistent with a sexual encounter the day before. There is no evidence that any sexual encounters prior to her murder were non-consensual. And as indicated, the State's experts exceeded the bounds of science in claiming a sexual assault occurred at all.

Today, the combination of the new DNA evidence and question marks around the reliability of Urbanovsky's and Dr. Barnard's testimony collectively show that the presence of spermatozoa could have been the result of a prior consensual encounter, and that Ms. Norris was unfortunately murdered later by strangulation without an associated sexual assault. This false evidence was the evidentiary picture the jury relied on at trial to convict Mr. Jenkins, therefore it not only could have affected the judgment of the jury, but it was also the only direct evidence supporting the jury's judgment.

With the linkage between the offense and Mr. Jenkins significantly weakened, the other false Andrus evidence presented at trial is even more consequential. The jury was misled as to the large amounts of marijuana and cash involved in Andrus's dealing just one week prior to his girlfriend's murder and the extent of Andrus's interstate drug trafficking activity. This evidence was not only relevant to his credibility as a witness but bore directly on the credibility of the State's theory that Ms. Norris's murder was the result of a random attack. Andrus's concerns that someone may have hurt her because of his drug dealing were appropriate, but the jury didn't get to consider just how fitting his fears were.

The State's closing arguments to the jury construed the false evidence it relied upon as true. The State literally told the jury "there wasn't a single person who you heard on this stand who had any motive to lie to you or did." 40 RR 36. It reinforced Dr. Bell's work and purported conclusions on the case—"if Dr. Bell hears anything from heaven, I want him to hear this: He did a good job . . . If Dr. Bell did this today, I'd pat him on the back and say, 'Nice job.'" *Id*. at 38.

Had the prosecution been forced to correct before the jury that Mr. Jenkins cannot be connected to the blouse, that Dr. Barnard's conclusions that a sexual assault occurred were not scientifically reliable, that the original pathologist in this case was alive and would have testified that he never concluded Ms. Norris was sexually assaulted, that Andrus watered-down his criminal history, and that Andrus's alibi was never confirmed, these "correction[s] would have made a material difference" to the jury's verdict in this case. *Glossip*, 145 S.Ct at 631.

The prosecution's failure to correct all these instances of false evidence violated Mr. Jenkins's Fourteenth Amendment rights under the Due Process Clause.

CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, Mr. Jenkins prays that this Court grant a writ of certiorari to resolve the Questions Presented.

Respectfully submitted,

OFFICE OF CAPITAL & FORENSIC WRITS

August 14, 2025

/s/ Sarah Cathryn Brandon

Benjamin B. Wolff, Director
Sarah Cathryn Brandon,
Counsel of Record
1700 North Congress Avenue, Suite 460
Austin, Texas 78701
(512) 463-8600

Counsel for Petitioner,
Willie Jenkins