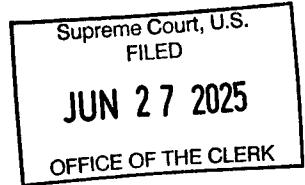


No. 25-5428 **ORIGINAL**

IN THE
SUPREME COURT OF THE UNITED STATES



RODGER STEVENS – PETITIONER

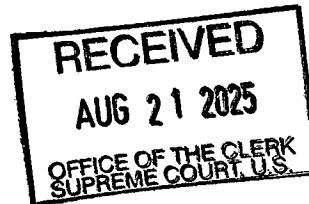
vs.

WILLIAM RANKINS, WARDEN.

ON PETITION FOR A WRIT OF CERTIORARI TO
U.S. CORT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

RODGER STEVENS, 244965
ALLEN GAMBLE CORRECTIONAL CENTER
6888 E 133RD RD
HOLDENVILLE, OK 74848-9020
(405) 598-6900



QUESTIONS PRESENTED

- 1) How does a defendant obtain the evidence that proves his innocence when the prosecutor knowingly presents false evidence and refuses to turn over the exculpatory material documents so that the defendant can present them to the court and obtain the relief he deserves either in the trial district court, Oklahoma Court of Criminal Appeals, or getting relief through a Writ of Habeas Corpus and is it a violation of Due Process ?
- 2) Did the 10th Circuit Court of Appeals violate Due Process of Law and conduct Abuse of Discretion by not granting a Certificate of Appealability in order for Mr. Stevens to be able to appeal the denial of his Writ of Habeas Corpus to the Northern District of Oklahoma regarding exculpatory evidence that would potentially prove Mr. Stevens' innocence to the specific crime he was charged with and not be barred by the AEDPA?
- 3) Are the specific text messages that Mr. Stevens is asking for not considered potentially exculpatory material evidence under *Brady v. Maryland* and a violation of the Due Process Clause to 14th Amendment to the U.S. Constitution and Okla. Const. Art. 2 § 7 due to being withheld by the prosecution ?
- 4) Did trial counsel conduct ineffective assistance of counsel under 6th Amendment to the U.S. Constitution for not acquiring the withheld text messages, and requesting that the prosecutor search for, obtain, and disclose the exculpatory material evidence, filing a preservation letter, and a *Brady* motion under *Brady* and *Strickland v. Washington* ?

5) Did Appellate Counsel, Mr. James H. Lockard, conduct ineffective assistance of counsel violating the 6th Amendment to the U.S. Constitution for not acquiring the excluded text messages that his client asked him to and present them to the court in his direct appeal?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

State Cases

- *Oklahoma v. Stevens*, No. CF-2016-412, District Court of Creek County, State of Oklahoma. Judgment and Sentence entered Oct. 18, 2017.
- *Stevens v. Oklahoma*, No. F-2017-1089, In the Court of Criminal Appeals of the State of Oklahoma. Judgment entered Oct. 22, 2018.
- *Stevens v. Oklahoma*, No. PC-2023-923, In the Court of Criminal Appeals of the State of Oklahoma. Judgment entered Dec. 20, 2023.

Federal Cases

- *Stevens v. Rankins*, No. 24-CV-0053, U.S. District Court for the Northern District of Oklahoma. Judgment entered Dec. 30, 2024.
- *Stevens v. Rankins*, No. 24-5150, U.S. Court of Appeals for the Tenth Circuit. Judgment entered Apr. 17, 2025.

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APPENDIX F	Order Affirming Denial of Post-Conviction Relief, <i>Stevens v. Oklahoma</i> , No. PC-2023-923 (Okla. Crim. App. Dec. 20, 2023)

1) The habeas petition was originally filed in the United States District Court for the Eastern District of Oklahoma, but was transferred by order of the court to the Northern District.

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR A WRIT OF CERTIORARI
“Introduction”

Rodger Stevens, appearing pro se, respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

- The opinion of the United States Court of Appeals for the Tenth Circuit appears at **Appendix A** to the petition and is unpublished.
- The opinion of the United States District Court for the Northern District of Oklahoma appears at **Appendix C** to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided my case was April 17, 2025. No petition for rehearing was timely filed in my case. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Rodger Dale Stevens, was charged in Creek County District Court, Case No. CF-2016-412 with one count of lewd molestation under Title 21 O.S. § 1123 (A) (5) (e) and was sentenced on October 17, 2018, to life imprisonment. Mr. Stevens appealed to the OCCA in Case No. F-2017-1089 that was affirmed on October 22, 2018. Mr. Stevens filed an Application for Post-Conviction Relief on October 18, 2022 that was denied on September 18, 2023.

ARGUMENT

This appeal stems from the District Court of Creek County denying Mr. Stevens' Application for Post-Conviction Relief regarding the ineffectiveness of trial and appellate counsel and prosecutorial misconduct for withholding exculpatory evidence. The texts received by defense counsel as acknowledged by appellate counsel in a letter (*Please see attached letter as Exhibit A*) to Defendant with all the texts in defense file proves that the only texts received were only the texts retracted by M. Swafford (Tr. 206). There were a multitude of texts that weren't retracted. At trial, Mr. Swafford's testimony also states in (Tr. 206-213, 214) that State received from his forensic investigation over **100,000 texts.**

Had the State at any time in the investigation, pre-hearings, and trial provided defense all of the texts requested, a different result would have been obtained. Had Judge Hake and the jury had the chance to examine all evidence instead of only from the pretrial hearing

that didn't include testimony of the officer that conducted forensic investigation of the phones, the court would have seen from the State's own prosecution team that proves texts were withheld creating a violation of Defendant's rights under the U.S. Constitution, Amendments 6, 14 and the Oklahoma Const, Art. 2 § 7.

Had Judge Hake and the jury examined all of the file, the court would have seen a subpoena filed in court dated September 12, 2022 asking AT&T to provide text messages from AT&T to the Defendant that were texts from his own phone. The DA filed a Motion to Quash on September 28, 2022, further denying Defendant access to these texts, a due process violation and obstruction of justice.

All phones in this case were and still are in the possession of the State leaving the Defendant no access to these messages. Search warrant used to acquire the phones from Defendant on 11-3-16 shows that the phones were seized. Also during trial there was false D.A. and witness testimony conducted that will be mentioned in Question one.

Petitioner Respectfully Asks

QUESTION ONE

**HOW DOES A DEFENDANT OBTAIN THE EVIDENCE THAT PROVES HIS
INNOCENCE WHEN THE PROSECUTOR KNOWINGLY PRESENTS FALSE
EVIDENCE AND REFUSES TO TURN OVER THE EXONERATORY
MATERIAL DOCUMENTS IN THE FIRST PLACE SO THAT THE
DEFENDANT CAN PRESENT THEM TO THE COURT AND OBTAIN THE
RELIEF HE DESERVES EITHER IN THE TRIAL DISTRICT COURT,
OKLAHOMA COURT OF CRIMINAL APPEALS, OR IN FEDERAL COURT
THROUGH A WRIT OF HABEAS CORPUS AND IS IT A VIOLATION OF DUE
PROCESS ?**

Since the beginning of the case and before trial Mr. Stevens had been asking his trial attorney to obtain all of the text messages from his phone that the prosecution had retracted from his phone. Yes, there were approximately 100,000 text messages but Mr. Stevens needed to obtain the messages so that he could review the evidence and retract himself the needed texts that prove that he was not alone with the alleged victim at any time mentioned by the prosecution, that there was false testimony/false evidence presented at trial, and that his statements are true.

UNDER RICHARD EUGENE GLOSSIP 2025 WL 594736, 604 U.S. ____

Background: After the Oklahoma Court of Criminal Appeals, 157 P.3d 143, affirmed his murder conviction and death sentence, state prisoner filed fifth application for state post-

conviction relief and motions for evidentiary hearing, discovery, and stay of execution.

The Oklahoma Court of Criminal Appeals, Lewis, J., 529 P.3d 218, denied the application and the motions. Prisoner's petition for writ of certiorari was granted.

Holdings: The Supreme Court, Justice Sotomayor, held that:

1 Oklahoma Court of Criminal Appeals did not deny post-conviction relief on independent and adequate state ground;

2 witness who was actual killer falsely testified about his lithium prescription;

3 prosecution knew witness's testimony was false;

4 false testimony was reasonably likely to have affected verdict; and

5 remand for vacatur of conviction and new trial was warranted.

Reversed and remanded.

Chief Justice Roberts and Justices Kagan, Kavanaugh, and Jackson joined, and Justice Barrett joined in part.

Justice Barrett filed opinion concurring in part and dissenting in part.

Justice Thomas filed dissenting opinion, in which Justice Alito joined and Justice Barrett joined in part.

5Habeas Corpus

Holding of Oklahoma Court of Criminal Appeals, in denying prisoner's successive petition for post-conviction relief from murder conviction, that petition was procedurally barred under Oklahoma's Post-Conviction Procedures Act (PCPA) rested solely on antecedent holding of federal law, and thus, such holding was not independent and

adequate state ground depriving Supreme Court of jurisdiction to review denial of prisoner's petition, which argued prosecutor knew of but failed to correct false testimony in violation of due process and Napue v. Illinois, 79 S.Ct. 1173; Oklahoma court first held Oklahoma attorney general's confession of *Napue* error was not "based in law or fact" and could not overcome application of PCPA, then applied PCPA to prisoner. U.S. Const. Amend. 14; 22 Okla. Stat. Ann. § 1089(D)(8).

To establish a violation of due process under Napue v. Illinois, 79 S.Ct. 1173, a defendant must show that the prosecution knowingly solicited false testimony or knowingly allowed it to go uncorrected when it appeared; if the defendant makes that showing, a new trial is warranted so long as the false testimony may have had an effect on the outcome of the trial, that is, if it in any reasonable likelihood could have affected the judgment of the jury. U.S. Const. Amend. 14.

Just like in *Glossip* and *Napue*, in Mr. Stevens' case, during trial witness Melanie Daugherty falsely testified by stating that one of the days that SD was alone with Mr. Stevens was October first, and the D.A. leads her to agree with him that the alleged crime happened on 10-1-16 which was a Saturday, SD was not at the lake on that day, Melanie would go clean on Sundays not Saturdays. The excluded/withheld texts and pics show he was there on 10-23-2016, that I was clothed and he was running to the water

with no clothes on. Also Kim and sometimes her husband Wes would be at the lake while SD was there and Kim never witnessed any inappropriate behavior from Mr. Stevens or being alone inside the boat with SD. Mr. Stevens' son Josh started to come visit and stay with his father, Mr. Stevens on about August 17 which was also there at the lake house on the dates mentioned by the D.A., Mr. Loeffler. This is part of what the missing texts will prove, dates and times. Soliciting false testimony in subornation to commit perjury by having state witness, Melanie Daugherty lie on the stand during trial had an effect on the outcome of the trial. (*Please See Exhibit B*), Defendant showing that prosecution knowingly solicited false testimony and evidence where the credibility of the witness was diminutive and it affected the outcome of the trial and the judgment of the jury.

Evidence can be material, supporting a new trial under Napue v. Illinois, 79 S.Ct. 1173, based on the knowing use of false evidence to obtain a conviction in violation of due process, even if it goes only to the credibility of the witness; indeed, the jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence. U.S. Const. Amend. 14.

... it 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, Mooney v. Holohan, 294 U.S. 103, 55 S.Ct. 340, 79 L.Ed. 791; Pyle v. State of Kansas, 317 U.S. 213, 63 S.Ct. 177, 87 L.Ed. 214; Curran v. State of Delaware, 3 Cir., 259 F.2d 707. See State of New York ex rel. Whitman v. Wilson, 318 U.S. 688, 63 S.Ct. 840, 87 L.Ed. 1083, and White v. Ragen, 324 U.S. 760, 65 S.Ct. 978, 89 L.Ed.

1348. Compare Jones v. Commonwealth of Kentucky, 6 Cir., 97 F.2d 335, 338, with In re Sawyer's Petition, 7 Cir., 229 F.2d 805, 809. Cf. Mesarosh v. United States, 352 U.S. 1, 77 S.Ct. 1, 1 L.Ed.2d 1. The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears. Alcorta v. State of Texas, 355 U.S. 28, 78 S.Ct. 103, 2 L.Ed.2d 9; United States ex rel. Thompson v. Dye, 3 Cir., 221 F.2d 763; United States ex rel. Almeida v. Baldi, 3 Cir., 195 F.2d 815, 33 A.L.R.2d 1407; United States ex rel. Montgomery v. Ragen, D.C., 86 F.Supp. 382. See generally annotation, 2 L.Ed.2d 1575.

3The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness. The 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. As stated by the New York Court of Appeals in a case very similar to this one, People v. Savvides, 1 N.Y.2d 554, 557, 154 N.Y.S.2d 885, 887, 136 N.E.2d 853, 854—855:

'It is of no consequence that the falsehood bore upon the witness' credibility rather than directly upon defendant's guilt. A lie is a lie, no matter *270 what its subject, and, if it is in any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth. * * * That the district attorney's

silence was not the result of guile or a desire to prejudice matters little, for its impact was the same, preventing, as it did, a trial that could in any real sense be termed fair.'

Mr. Stevens was not trying to present to the court all of the 100,000 texts, only what he knows that will prove his statements are true. Mr. Stevens has knowledge of all text messages between Melanie Daugherty and himself from receiving to sending messages. If the Petitioner, Mr. Stevens is denied the evidential documents he is asking for at every stage of the proceedings from before trial throughout all the way to the 10th Circuit, then how was he and is he supposed to show the court judges the documented texts that he is referring to that prove that what he states is true to demonstrate his innocence. Per *Brady* a defendant needs to receive the evidence in question to be able to present it as New Reliable Evidence to show his innocence, if the prosecution refuses to turn it over and defense attorney refuses to ask for it, then how is he supposed to get any relief?

Petitioner's Writ of Habeas Corpus is an Actual Innocence Claim and Actual Innocence Claims cannot be barred either by AEDPA or 2244(d)(1) because they are inapplicable here. Petitioner plead "Not Guilty" is not a Federal Prisoner, but a State Prisoner, and has maintained his innocence throughout all proceedings and his propositions have been under Actual Innocence from the start of him filing his Motions and his Application for Post-Conviction Relief.

In *House v. Bell*, 126 S.Ct. 2064... (a) To implement the general principle that "comity and finality ... 'must yield to the imperative of correcting a fundamentally unjust

incarceration,’ ” *Murray v. Carrier*, 477 U.S. 478, 495, 106 S.Ct. 2639, 91 L.Ed.2d 397, this Court has ruled that prisoners asserting innocence as a gateway to defaulted claims must establish that, in light of new evidence, “it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt,” *Schlup*, 513 U.S. at 327, 115 S.Ct. 851. Several features of *Schlup*’s standard bear emphasis here. **First**, while the gateway claim requires “new reliable evidence ... not presented at trial,” *id.*, at 324, 115 S.Ct. 851, the habeas court must assess the likely impact of “ ‘all the evidence’ ” on reasonable jurors, *id.*, at 327–329, 115 S.Ct. 851. **Second**, rather than requiring absolute certainty about guilt or innocence, a petitioner’s burden at the *519 gateway stage is to demonstrate that more likely than not, in light of the new evidence, no reasonable juror would find him guilty beyond a reasonable doubt. Finally, this standard is “by no means equivalent to the standard of *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560,” which governs insufficient evidence claims, *id.*, at 330, 99 S.Ct. 2781. Rather, because a *Schlup* claim involves evidence the trial jury did not have before it, the inquiry requires the federal court to assess how reasonable jurors would react to the overall, newly supplemented record. See *ibid.* *Contrary to the State’s arguments, the standard of review in two provisions of the Antiterrorism and Effective Death Penalty Act of 1996, 28 U.S.C. §§ 2244(b)(2)(B)(ii) and 2254(e)(2), is inapplicable here. In addition, because the standard does not address a “district court’s independent judgment as to whether reasonable doubt exists,”* *Schlup, supra*, at 329, 115 S.Ct. 851, a ruling in

House's favor does not require the showing of clear error as to the District Court's specific findings. It is with these principles in mind that the evidence developed in House's federal habeas proceedings should be evaluated. Pg. 2076 – 2078.

Mr. Stevens' should have been provided with and should still receive "all the evidence" in the form of the text messages pursuant to *Brady* to be assessed by the habeas court that would more than likely have an impact and demonstrate that more likely than not, in light of the new evidence, no reasonable juror would find him guilty beyond a reasonable doubt.

Petitioner, Mr. Stevens, believes that by correcting this issue, it will benefit and impact everyone else and therefore, asks this Honorable Court to Order the 10th Circuit Court of Appeals to issue a Certificate of Appealability so that he can appeal the decision to the habeas court and get the relief he deserves.

QUESTION TWO

DID THE 10TH CIRCUIT COURT OF APPEALS VIOLATE DUE PROCESS OF LAW AND CONDUCT ABUSE OF DISCRETION BY NOT GRANTING A CERTIFICATE OF APPEALABILITY IN ORDER FOR MR. STEVENS TO BE ABLE TO APPEAL THE DENIAL OF HIS WRIT OF HABEAS CORPUS TO THE NORTHERN DISTRICT OF OKLAHOMA REGARDING THE EXCLUSION OF EXONERATORY EVIDENCE RESULTING IN A DUE PROCESS VIOLATION THAT WOULD POTENTIALLY PROVE MR. STEVENS' INNOCENCE TO THE SPECIFIC CRIME HE WAS CHARGED WITH AND NOT BE BARRED BY THE AEDPA?

In Mr. Stevens' position, he is a layman, not knowledgeable in the study of law, Rules, Statutes etc., however, Mr. Stevens' direct appeal was affirmed on October 22, 2018. He did not know that he had 1 year to file his Writ of Habeas Corpus with the Northern District, much less that he could Petition the U.S. S.Ct for a Writ of Certiorari, and so his time ran out. He filed his Application for Post-Conviction on October 18, 2022. The 1080.1, 1 year limitation period did not come into effect until November 1, 2022.

Therefore, Mr. Stevens filed his Application for Post-Conviction well within the time limitation period, but even if he did not file it within the limitation period, Mr. Stevens filed his Application for Post-Conviction Relief under Actual Innocence, which cannot and shall not be barred by any court within jurisdiction to grant him the relief he seeks.

Beginning with the Trial District Court of Creek County, If the prosecution would have followed Rule 3.8 Special Responsibilities of a Prosecutor and the law under the United States of America under (*Brady v. Maryland etc.*), and his trial attorney also followed the Rules of Professional Conduct and insisted on obtaining the evidence requested, Mr. Stevens would have received the evidence requested and presented it to the jury at trial and received the relief he seeks in the trial court. There would have been no need for him to appeal to the OCCA on Direct Appeal. The finding of guilt due to the evidence not being turned over by the prosecution of course, resulted in Mr. Stevens having to continue on and follow procedure. At the Direct Review stage, if the evidence again would have been turned over by the prosecution to appellate counsel, more likely than

not, Mr. Steven's case would have been remanded for New Trial or at least an Evidentiary Hearing where he would have counsel appointed and could have obtain the evidence requested and present it to the Jury and Judge of the District Court.

Direct Appeal, (Direct Review) affirming the verdict of Mr. Stevens' case forced him to file an Application for Post-Conviction Relief accompanied by a Sworn Affidavit, Motion for Evidentiary Hearing and Motion for Appointment of Counsel that at that time in October of 2022 was within the limitation period. Again, if Mr. Stevens' Application for Post-Conviction Relief would not have been denied and the evidence in question not withheld, then he would have been able to counsel appointed, present the New Reliable Evidence to the District Court of Creek County in an Evidentiary Hearing forum and would not of had to file a Writ of Habeas Corpus.

Writ of Habeas Corpus (*You Have The Body*) it is well known that the purpose of the Writ is not to determine prisoner's guilt or innocence, and only issue which it presents, that is whether prisoner is restrained of his liberty by due process. And the primary function of the Writ is to release from unlawful imprisonment.

In Mr. Stevens' case, he reached the process of having to file a Writ of Habeas Corpus in order for him to present the Constitutional errors conducted by the State Officials in the Creek County District Court and at every stage of his appeal process. It is clear to see that Mr. Stevens is being restrained of his liberty and unlawfully imprisoned due to Due

Process violations. Mr. Stevens strongly believes that not turning over the requested exculpatory evidence from the beginning is a violation of the Due Process Clause under the U.S. Constitution Amend. 14, the Oklahoma Constitution Art. 2 § 7 and *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 LEd. 2d 215 (1963). Also the denial of his Writ of Habeas because it was untimely filed according to the 1 year limitation period under AEDPA is also a Due Process violation and Abuse of Discretion since Mr. Stevens filed his pleadings under Actual Innocence. (*See Brady Primer attached as Exhibit D*)

The denial of Mr. Stevens Writ of Habeas Corpus led him to seek a Certificate of Appealability from the 10th Circuit Court of Appeals in order for Mr. Stevens to be able to appeal the decision from the Northern District Court of Oklahoma Judges that was denied for untimely filing the Writ since it was passed the limitation period according to AEDPA.

Even the Tenth Circuit interprets “new reliable evidence” broadly, to include any evidence that was not presented at trial, regardless of whether such evidence is newly discovered. *See Fontenot v. Crow*, 4 F.4th 982, 1032-33 (10th Cir. 2021).

If there is “new reliable evidence,” then petitioner must demonstrate that when considering the new evidence “it is more likely than not that no reasonable juror would have found [him] guilty beyond a reasonable doubt.” *Schlup*, 513 U.S. at 327. And “[w]hile a gateway innocence claim requires new reliable evidence to be credible, the habeas court’s analysis is not limited to such evidence.” *Fontenot*, 4 F.4th at

1052 (internal quotation marks omitted). “Rather, the habeas court must consider all the evidence, old and new, incriminating and exculpatory, and thereby base its probabilistic determination about what reasonable, properly instructed jurors would do on the total record.” *Id.* (internal quotation marks omitted).

Mr. Stevens strongly believes that the 10th Circuit Court of Appeals Abused its Discretion and violated Due Process in not granting him a Certificate of Appealability and asks this Honorable Court to Order a remand to the Creek County District Court for a New Trial or for an Evidentiary Hearing to be held so that MR. Stevens can obtain counsel and obtain the exculpatory evidence in question. By this Honorable Court granting this request Mr. Stevens believes it will help and effect everyone going through the appeals process.

QUESTION THREE

**ARE THE SPECIFIC TEXT MESSAGES THAT MR. STEVENS IS ASKING FOR
NOT CONSIDERED POTENTIALLY EXCULPATORY MATERIAL EVIDENCE
UNDER *BRADY V. MARYLAND* AND A VIOLATION OF THE DUE PROCESS
CLAUSE TO 14TH AMENDMENT TO THE U.S. CONSTITUTION AND OKLA.
CONST. ART. 2 § 7 DUE TO BEING WITHHELD BY THE PROSECUTION?**

The Holding In *Brady V. Maryland* has been the law since 1963, and yet it is incredibly under-minded. The decision in *Brady*, *United States v. Bagley*, and *Kyles v. Whitley* have predominantly dictated the requirements of the prosecution to turn over all materials that include the following: (1) information that would exonerate the accused; (2) exculpatory

information; (3) information that would lessen the punishment; (4) all material impeachment of the government's evidence or witnesses; (5) any evidence that would support a valid defense.

What Must The Prosecution Turn Over?

Prosecutors are required to turn over far more than exonerating evidence, and the *Brady* disclosure obligation is limited to information of which the prosecutor has actual knowledge. Rather, the prosecutor has a nondelegable duty to learn of *Brady* information in the case. All evidence that would fall under *Brady* in the hands of law enforcement and other investigative agencies is chargeable to the prosecution.

In other words, if the police know, even when they do not tell the prosecutor, the government is charged with knowing. *Kyles v. Whitley* made it very clear. (*See Brady Primer Attached as Exhibit D*)

There were a multitude of texts that were retracted. Mr. Swafford's testimony also states in (Tr. 206-213, 214) that State received from his forensic investigation over 100,000 texts.

If the prosecution at any time in the investigation, hearings, and trial provided defense all of the texts requested, a different result would have been obtained. If the Judge and Jury examined all the evidence instead of only from the pretrial hearing that didn't include

testimony of the officer that conducted forensic investigation of the phones, the court would have seen from the State's own prosecution team that proves texts were withheld creating a violation of Due Process under the U.S. Constitution, Amendments 6, 14.

Mr. Stevens believes in the United States Constitution and after Congress it is the Law of the Land. The Due Process Clause is under the 14th Amendment and it was put there so that Law Enforcement, Government Officials, The Courts and for all of us to follow the laws under it. If Law Enforcement, Government Officials and The Courts don't follow the Constitution of the United States then why should anyone else. Due Process violations occur every single day and every time in criminal cases and nothing is done about it. These cases like *Brady*, *United States v. Bagley*, and *Kyles v. Whitley* etc. are *United States Supreme Court Precedence*, they exist so that we follow them as citizens and government officials of this country.

Why is having to obtain exculpatory evidence have to be made so difficult by the prosecution when they are there to uphold justice not to convict? It seems that prosecutors in the State of Oklahoma are confused about that because all they see is "conviction" seems like they are caught in tunnel vision, won't hear and won't see that there is a possibility through material evidence that the defendant they are trying so hard to convict is innocent of the charges.

Mr. Stevens believes that the withheld text messages not presented in court at the time of trial are exculpatory material evidence under *Brady* and a violation of the Due Process Clause under the 14th Amendment to the U.S. Constitution by the prosecution for not turning over and disclosing the exculpatory evidence.

Mr. Stevens asks this Honorable Court to Order a remand to the Creek County District Court for a New Trial or for an Evidentiary Hearing to be held so that MR. Stevens can obtain counsel and obtain the exculpatory evidence in question. By this Honorable Court granting this request Mr. Stevens believes it will help and effect everyone going through the appeals process.

QUESTION FOUR

**DID TRIAL COUNSEL CONDUCT INEFFECTIVE ASSISTANCE OF COUNSEL
UNDER 6TH AMENDMENT TO THE U.S. CONSTITUTION FOR NOT
ACQUIRING THE WITHHELD TEXT MESSAGES, AND REQUESTING THAT
THE PROSECUTOR SEARCH FOR, OBTAIN, AND DISCLOSE THE
EXCULPATORY MATERIAL EVIDENCE, FILING A PRESERVATION
LETTER, AND A BRADY MOTION UNDER BRADY AND STRICKLAND V.
WASHINGTON ?**

Ineffective Assistance of Counsel has a "standard" under *Strickland v. Washington*, 466 U.S. 668, 694, 104 S.Ct. 2052, 2068, 80 L.Ed. 2d 674 (1984).

In this case counsel's assistance was unreasonable considering all the circumstances. Unreasonable Performance, in other words, "that counsel's performance was "not within the range of competence demanded of attorneys in criminal cases." *Strickland*, 466 U.S. at 687-88 would include (1) failing to conduct a reasonable amount of legal research to determine that Mr. Stevens was being wrongfully charged (2) Counsel's failure to investigate the applicable law was fatal to Mr. Stevens' defense.

The duty to investigate is universally recognized. Inadequate defense investigation, including the failure to investigate *all plausible lines of defense*, constitutes ineffective representation. *Osborne v. Schillinger*, 861 F.2d 612, 627 (10th Cir. 1988). The failure to investigate cannot be considered strategic or objectively reasonable: This is another example of U.S. S.Ct. Precedence.

Search, Find, Disclose

What must a defense lawyer do to require the prosecution to fulfill its obligations under *Brady*? "Do nothing" is the wrong answer. The defense lawyer cannot sit back and expect the prosecutor to fulfill his or her obligations. A specific *Brady* motion must be filed and calendared for hearing.

Specific areas must be listed for the prosecutor to search and report back on each area. Reasoning behind the filing of a specific motion can be found in *United States v. Bagley*, 473 U.S. 667, 105 S.Ct. 3375.

And the more specifically the defense requests certain evidence, thus putting the prosecutor on notice of its value, the more reasonable it is for the defense to assume from the nondisclosure that the evidence does not exist.

The defense team should request that the prosecutor search for, obtain, and disclose the following items:

- Emails (prosecutor to police, police to prosecutor, state witnesses to police or prosecutor and police or prosecutor to witness, lay and expert).
- *Text messages and instant messages.*
- Messages between officers or officer to station.
- Two way dispatch messages.
- 911 calls.
- Audiotapes and videotapes (including those captured via body cameras or cell phone cameras)
- Records stored, sent or received via Drop box or similar cloud computing or FTP (file transfer protocol) websites. And so much more.
- All electronic devices including but not limited to computers, laptops, iPads, cellular phones and smart phones that may contain discoverable material.

- *Any favorable treatment of any kind given or offered to any government witness in return for cooperation as well as any favorable treatment, money, or anything of value requested by a state witness in return for cooperation.*

Now, if the prosecution is supposed to turn over to the defense all these items, information and so much more pursuant to *John Leo Brady v. Maryland*, then why or hasn't the prosecution in this case been able to provide a simple request to Mr. Stevens, "*the rest of the text messages, 10,000 from Mr. Stevens phone and 90,000 from Melanie's, phone that Mr. Stevens asked his attorney to obtain from the District Attorney who had or has possession of at this time*".

A State Court Rule or Law excusing prosecutor from having to disclose any evidence to defense does not supersede that prosecutor's *Brady* obligations under the due process clause. *Fontenot v. Allbaugh*, 402 F.Supp. 3d. 1110. U.S. Const. Amend. 14.

Mr. Stevens believes that Mr. Serner, Trial Counsel's refusal to obtain the requested text messages that were retracted from his phone by forensic investigator who turned them over to the prosecution fell under reasonable performance and under the range of competence demanded of attorneys in criminal cases.

Mr. Stevens asks this Honorable Court to Order a remand to the Creek County District Court for a New Trial or for an Evidentiary Hearing to be held so that MR. Stevens can obtain counsel and obtain the exculpatory evidence in question. By this Honorable Court

granting this request Mr. Stevens believes it will help and effect everyone going through the appeals process.

QUESTION FIVE

**DID APPELLATE COUNSEL, MR. JAMES H. LOCKARD, CONDUCT
INEFFECTIVE ASSISTANCE OF COUNSEL VIOLATING THE 6TH
AMENDMENT TO THE U.S. CONSTITUTION FOR NOT ACQUIRING THE
EXCLUDED TEXT MESSAGES THAT HIS CLIENT ASKED HIM TO AND
PRESENT THEM TO THE COURT IN HIS DIRECT APPEAL?**

The "*Strickland Standard*" applies to Ineffective Assistance of Appellate Counsel as it does for Trial Counsel does it not? The U.S. Constitution 6th Amendment states that all accused shall enjoy the right to counsel, Effective Counsel, that is.

Trial Counsel's and Appellate Counsel's deficiency and incompetency caused severe consequences to the Defendant due to their incompetence and negligence. It was trial counsel's duty, to investigate the withheld exculpatory evidence and it was Appellate Counsel's duty to raise the "Ineffectiveness Claim" for his client when he asked him to because of his trial counsel failing to thoroughly investigate and utilize the excluded messages that were left out showing exculpatory evidence.

State Appointed Appellate Counsel, James H. Lockard, of the OIDS failed to fully investigate the facts of the case and he had a predetermination that even though Mr. Stevens had orally discussed with him the missing exculpatory evidence raised herein in

this proposition, he felt that his proposed substantive claims had more factual merit than those of Mr. Stevens whom was privy to the actual facts of the case and Mr. Lockard's refusal produced an ineffective appeal. Mr. Stevens requested that Mr. Lockard, his appellate counsel raise the claim of the missing text messages and Mr. Lockard refused.

Mr. Stevens believes that this creates a due process violation, the ineffectiveness of counsel and deficient performance because the evidence that Mr. Stevens asked his counsel to obtain and present were exculpatory and material in fact per Mr. Stevens. Mr. Stevens did not ask his attorney to present any harmful messages, only the messages that would be helpful in his case and that would show him being exonerated, like the letter that was written by trial counsel dated June 17, 2018 states. The State contends, the point is that the Court of Criminal Appeals would have determined that trial counsel exercised a strategy in choosing not to offer the text messages that his client asked him to. The real point is that the Court of Criminal Appeals would have determined that trial counsel exercised a failing strategy because he failed to investigate that there were additional text messages that were not turned over by the prosecution that would in fact exonerate his client. How could trial counsel choose not to present evidence that he has not yet seen. The State does not contend that many more text messages were withheld and not presented in court at the time of trial.

Appellate Counsel, Lockard, reviewed only the texts he received from trial counsel that Mr. Serner, contained in the defense files. These texts are not the texts that Mr. Stevens requested into the appellate record. The texts that were withheld by the prosecution

received from Mark Swafford, as testified in trial court and on record (Tr. 214 dates 10-17-17, 10-18-17) were obtained by a forensic investigation by Mr. Swafford and provided to the D.A. This was the first time these texts were discussed. Also Mr. Lockard said, as you can see in the letter, they only go back to mid-September, knowing Petitioner was asking for all of the texts which were 100,000 texts. These texts were asked for in a ***Subpoena Duces Tecum*** to AT&T that the D.A. suppressed with a ***Motion to Quash*** (*See Exhibits B and F*).

Appellate counsel did not investigate the facts of this case because he refused to retrieve all 100,000 texts from the D.A. which were clearly presented to the D.A. before trial from Swafford. (Tr. 214) Appellate counsel failed to investigate all the facts from the trial record and therefore, would not be able to analyze all the text messages and the complete facts of this case since he did not have them and could not determine that the OCCA's decision was reasonable when he also did not have the evidence. Mr. Stevens claims that appellate counsel was ineffective for failing to adequately raise the *Brady* claim of Exculpatory Evidence in the form of the missing texts withheld by the prosecution and for failing to adequately raise the claim of ineffective assistance of trial counsel on direct appeal because trial counsel failed to request and obtain all the missing exculpatory evidence in the form of the text messages regardless of his strategy. That is why Mr. Stevens in his Application for Post-Conviction Relief asked for an evidentiary hearing to be held on the evidence of material facts. *Brafford v. State*, No. PC-2014-803 (Sept. 11, 2015). Trial counsel failed to investigate additional evidence of Mr. Stevens' innocence

which are the missing texts. Appellate counsel should have filed a Motion for a Hearing under Rule 3.11 to supplement the record with the evidence that was excluded after obtaining the missing text messages that were withheld by the prosecution.

In this case under “*Brady*” the defense should have filed a Motion for an In Camera Review of all evidence that the government has determined *not to be material* and therefore not turned over to the defense.

Mr. Stevens asks this Court to find Appellate Counsel’s performances deficient based on the fact that Mr. Stevens was denied a fair trial and on the “*inadequacy*” to raise the claims of ineffective assistance of trial counsel and for failing to investigate and obtain the withheld messages that would prove that Mr. Stevens’ claims are true and correct and that the conclusion that but for the error of counsel the outcome would have been different. And to find that this evidence not presented at trial be considered “New Reliable Evidence” because it is more likely than not that no reasonable juror would have found him guilty beyond a reasonable doubt and it would have changed the outcome within a reasonable probability and find that an error has resulted in a miscarriage of justice or that new material facts require vacation of a conviction in the interests of justice.

21 O.S. 2011, § 3001.1; 22 O.S. § 1080(d). In *Hill v. Long*, 2023 WL 5695666- Remanded, “To be credible, such a claim requires petitioner to support his allegations of constitutional error with new reliable evidence whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence that was not

presented at trial.” *Schlup v. Delo*, 513 U.S. 298, 324 (1995). The Tenth Circuit interprets “new reliable evidence” broadly, to include any evidence that was not presented at trial, regardless of whether such evidence is newly discovered. *See Fontenot v. Crow*, 4 F.4th 982, 1032-33 (10th Cir. 2021).

If there is “new reliable evidence,” then petitioner must demonstrate that when considering the new evidence “it is more likely than not that no reasonable juror would have found [him] guilty beyond a reasonable doubt.” *Schlup*, 513 U.S. at 327. How can Petitioner here in this case, demonstrate that the new reliable evidence would be more likely than not, that no reasonable juror would have found him guilty beyond a reasonable doubt and would have changed the outcome when the entirety of the record was incomplete and trial counsel, and appellate counsel, failed and refused to fulfill their obligations and the prosecution deceptively withheld and still is withholding the rest of the text messages in their possession.

This Court can recognize that Petitioner was not entitled to “perfect representation” from his defense counsel. *Harrington v. Richter*, 562 U.S. 86, 110 (2011). But “[a]n accused is entitled to be assisted by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair.” *Strickland*, 466 U.S. at 685. Having reviewed the relevant record and authorities, this Court should conclude that Petitioner's counsel did not fulfill that role and that Petitioner was therefore deprived of his Sixth Amendment right to the effective assistance of trial counsel and appellate counsel consistent with this conclusion, this Court should determine that “law and justice require” that Petitioner be

afforded a new trial. *see United States v. Bergman*, 746 F.3d 1128, 1134 (10th Cir. 2014) (“[T]he presumptively appropriate remedy for an effective assistance violation is a New Trial[.]”).

Mr. Stevens asks this Honorable Court to Order a remand to the Creek County District Court for a New Trial or for an Evidentiary Hearing to be held so that MR. Stevens can obtain counsel and obtain the exculpatory evidence in question. By this Honorable Court granting this request Mr. Stevens believes it will assist and benefit everyone going through the appeals process.

REASON FOR GRANTING THE PETITION

The 6th Amendment to the U.S. Constitution states that all accused shall enjoy the right to counsel, Effective Counsel, that is. The 14th Amendment states that no State shall 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.

To promote fairness and uniformity across the circuits, this Petitioner begs this Court to consider the Petitioner's claims on these questions and that expressed in his Writ for Certiorari. Mr. Stevens has maintained his innocence and recognizes that the Fourth Amendment of the Constitution guarantees the protection from an overreaching government and state actors.

Mr. Stevens believes that due to the showing of the denial of the constitutional rights presented, a COA should have been granted and that the Habeas Court should have at

least ordered an Evidentiary Hearing where the exculpatory evidence claimed by Petitioner could have been presented to the Creek County District Court Judge and Petitioner prove his argument and his innocence.

Mr. Steven's believes that by granting this writ everyone, the public and prisoners alike will benefit by being able to present their claims in a reasonable way and legally. For this reason, Mr. Stevens asks this Honorable Court to grant this Writ of Certiorari in the name of justice.

CONCLUSION

"All federal courts have the power to issue all writs necessary to ensure substantial justice. *U.S. v. Higdon*, 638 F.3d 233, 45-46. Mr. Stevens strongly believes that the 10th Circuit Court of Appeals erred by not granting Certificate of Appealability, thereby violating Due Process and Abuse of Discretion.

The Petition for a Writ of Certiorari should be Granted.

Respectfully Submitted,

Rodger Stevens

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares, (or certifies, or verifies, or states), under penalty of perjury that he is the Petitioner in the above Petition for a Writ of Certiorari to the United States Supreme Court, that he has read the above Petition and that the information contained therein is true and correct. **28 U.S. C. § 1746 and 18 U.S.C. § 1621.**

ALLEN GAMBLE CORRECTION FACILITY
Executed at the ~~Oklahoma State Reformatory~~, on the 14 day of AUG JUNE 2025

2025.

Respectfully Submitted,

Rodger Stevens