No. 25-6042

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

OCT. TERM, 2025

*

CALVIN SHAW, Petitioner,

vs.

UNITED STATES OF AMERICA, Respondent.

*

On Petitioner for Writ of Certiorari
To the District of Columbia Court of Appeals
For the District of Columbia Circuit

*

PETITION FOR WRIT OF CERTIORARI

*

Calvin Shaw
Reg. #41023-007
PRO SE REPRESENTATION
FCI Hazelton Medium
P.O. Box. 5000
Bruceton Mills 26525

QUESTIONS PRESENTED FOR REVIEW

1. DID THE COURT OF APPEALS ERR WHEN IT DID NOT FIND TRIAL COUNSELS REPRESENTATION OF MR. SHAW INEFFECTIVE BASED ON HIS FAILURE TO CALL ALIBI WITNESSESS ON MR. SHAW'S BEHALF?

2. DID THE COURT OF APPEALS ERR WHEN IT DID NOT FIND TRIAL COUNSEL'S REPRESENTATION OF MR. SHAW INEFFECTIVE BASED ON HIS FAILURE TO IMPEACH ESSENTIAL GOVERNMENT WITNESSES?

3. DID THE COURT OF APPEALS ERR IN FINDING TRIAL COUNSEL'S FAILURE TO CALL ALIBI WITNESSES OR IMPEACH GOVERNMENT WITNESSES PRUDENT TRIAL STRATEGY?

4. PETITIONER REQUEST IN LIGHT OF SUPREME COURT RULING'S IN GLOSSIP V. OKLAHOMA AND ANDREW V. WHITE TO GVR AS THE LOWER COURT OF APPEALS ERRED BY NOT EVEN ADDRESSING NAPUE V. ILLINOIS VIOLATION WHEN EVIDENCE STEMMED FROM PERJURED TESTIMONY.

5. PETITIONER REQUEST IN LIGHT OF SUPREME COURT RULING'S IN GLOSSIP V. OKLAHOMA AND ANDREW V. WHITE TO GVR AS THE LOWER COURT OF APPEALS DID NOT ADDRESS TESTIMONY OR EVIDENCE OR THE EXCEEDING IT'S AUTHORITY DOWN BELOW AT ALL THAT WAS ABUSE OF DISCRETION.

PARTIES TO THE PROCEEDINGS

Calvin Shaw #41023-007, Petitioner
FCI Hazelton Medium
P.O. Box. 5000
Bruceton Mills W.V. 26525

Pro se representation for Petitioner

Attorney for Respondent,
United States,

Solicitor General
Department of Justice
Washington, D.C. 20530

RELATED CASES

Richard Eugene Glossip v. Oklahoma, 2025 U.S. Lexis 865 No. 22-7466(Feb. 25, 2025)

Brenda Evers Andrew v. Tamika White, Warden, 145 S.Ct. 75; No. 23-6573(Jan. 21, 2025)

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IN THE

SUPREME COURT OF THE UNITED STATES

OCT. TERM, 2025

CALVIN SHAW

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

Petitioner Calvin Shaw respectfully petitions for a writ of Certiorari to review the judgment of the District of Columbia of Appeals For the District of Columbia Circuit in this case.

DECISION BELOW

The Superior Court of The District of Columbia Denied on Mar. 30, 2023. The District of Columbia of Appeals For the District of Columbia Circuit Affirmed on Sept. 26, 2024. Petitioner's Appendix("Pet. Appx. A and B")

JURISDICTION

The Superior Court of The District of Columbia(Crim. No. 2012 CF1-11902) The District of Columbia Court of Appeals **Appeal from the Superior Court of the District of Columbia.....** (D.C. Cir. No. 23-CO-0332) exercised jurisdiction over the federal civil case pursuant to 18 U.S.C. § 3231. The District of Columbia Circuit of Appeals(No. 23-CO-0332) had jurisdiction pursuant to 28 U.S.C. § 1291 and § 3742(a). D.C. Cir. entered judgment 9-26-24 and Rehearing EnBanc denial on 7-23-25. This Court has Jurisdiction pursuant to 28 U.S.C. § 1254(1). ("Pet. Appx. C).

CONSTITUTIONAL PROVISION AND STATUTES

1. The Fourteenth Amendment and Fifth Amendment of the United States Constitution provides: "No person shall be...deprived of Life,Liberty, or property without due process of law;nor shall private property be taken for public use, without just compensation."

2. The Sixth Amendment of the United States Constitution provides: "In all criminal prosecutions, the accused shall enjoy the right to...be informed of the nature and cause of the accusation;and to have the assistance of counsel for his defense."

STATEMENT OF THE CASE

A. Background

On or about March 30, 2023, Shaw denied by Honorable Jennifer Anderson, Associate Judge. See(Exhibit A).

B. Appeal

On Sept. 26, 2024, panel of the District of Columbia Court of Appeals(Easterly, Howard and Shanker Associate Judges) issued a opinion Affirming the Superior Court's ruling by Circuit Per Curiam. Pet. Appx. B.

On July 23, 2025, a panel Rehearing and Rehearing En Banc of the District of Columbia Court of Appeals(Blackburne-Rigsby, Chief Judge,and Beckwith, Easterly,McLeese, Deahl, Howard, and Shanker, Associate Judges). Denied Rehearing and Enbanc.See(Pet. Appx. C).

REASON FOR GRANTING THE WRIT

Petitioner's follow in GVR in Light of Glossip v. Oklahoma and Andrew v. White.

QUESTION PRESENTED

I. THE APPELLATE COURT ERRED WHEN IT DID NOT FIND TRIAL COUNSEL'S REPRESENTATION OF MR. SHAW INEFFECTIVE FOR FAILURE TO CALL ALIBI WITNESSES TO TESTIFY ON HIS BEHALF

The Sixth Amendment to the U.S. Constitution provides that an accused shall enjoy the right to call witnesses to testify in their favor and present evidence in their favor. The court erred when it did not find that counsel's representation fell below the reasonable acceptable standards after failing to put on witnesses who would have proffered an alibi for Mr. Shaw's whereabouts during the July 4, 2012 shooting. Alibi testimony is so critical that courts have ruled that it cannot be excluded notwithstanding procedural defaults, even where counsel fails to strictly comply with the courts procedural rules requiring notice or providing discovery, and offers the court no reasonable explanation for non-compliance. See Escalera v. Coobe, 826 F.2d 185, 188 (2d Cir. 1987). "Absent evidence of complicity it is unreasonable to deprive a defendant of his right to present a defense, a right guaranteed to him by the Constitution of the United States, even if his attorney intentionally failed to timely provide a list of defense witnesses to the prosecution as required by the ... rules of criminal procedure." Chappee v. Commonwealth of Massachusetts, 659 F.Supp. 1220, 1225 (D.Mass 1987). The state's interest in applying discovery rules was not substantial enough to override the Sixth Amendment right to present "clearly material testimony." Id. At 163 United States ex re. Enoch v. Hartigan, 768 F.2d 1053, 106 S.Ct. 1281, 89 L.Ed. 588 (1986). "The compulsory process clause of the Sixth Amendment forbids exclusion of ... evidence [] as a sanction to enforce discovery

rules against criminal defendant." *United States v. Davis*, 639 F.2d 239, 243 (5th Cir. 1981); (failure to list witnesses names pursuant to pre-trial discovery order). The government could not make any such claim in this case. Therefore, it is even more clear that failure to call alibi witnesses rendered his representation inadequate. Mr. Shaw faced nearly 40 serious charges as outlined above, including first degree murder and assault with intent to kill while armed for two separate shootings. The main government witness, Mr. Savage-Bey, clearly misidentified Mr. Shaw as someone who had also threatened to kill him on yet another occasion. However, Mr. Shaw was incarcerated at the time he claimed that Mr. Shaw tried to kill him. Mr. Savage-Bey had also told several other government witnesses who did not know Mr. Shaw, that he was the shooter in the July 4th incident. These witnesses later testified that Mr. Shaw was the July 4th shooter. One even later claimed that he wasn't sure that Mr. Shaw was the shooter, but he just was trying to do what he could to help. Mr. Shaw had provided trial counsel with several alibi witnesses that would have testified that Mr. Shaw was at a cookout at the time the shooting that involved a murder took place. The trial Court erred when it failed to find the trial counsel's failure to put on alibi testimony rendered his representation of Mr. Shaw ineffective.

Mr. Shaw provided trial counsel with the contact information of at least four witnesses that would have testified that the defendant was at a block party at the time of the July 4, 2012 shooting. One of his other witnesses provided trial counsel with another witness would have testified to the same. Trial counsel subpoenaed three of the individuals that Mr. Shaw told him about. All three came and were ready to testify. A fourth potential witness appeared without being subpoenaed and also was willing to testify on Mr. Shaw's behalf. The fifth alibi witness, a grandmother at the cookout, was never subpoenaed by trial counsel and therefore did not appear.

Two of Mr. Shaw's desired alibi witnesses, Dominique Kemp and Leonard Route, testified in Mr. Shaw's 23-110 hearing. A third desired alibi witness that was subpoenaed, Jabari Fields, but is now deceased. Daquan Beaty, who was not subpoenaed to trial, also testified in Mr. Shaw's 23-110 hearing. The final alibi witness that trial counsel was aware of, Ms. Kemp's grandmother is also now deceased. Three of Mr. Shaw's alibi witnesses testified at the 23-110 hearing.

Ms. Kemp testified to the following:

> She was subpoenaed by trial counsel and appeared to testify on behalf of Mr. Shaw at trial. However, when she came trial counsel told her that he didn't need her testimony. (*2-17-23 Motion Hearing,* Pg. 21, Ln. 12 – 24). On July 4, 2012 (the day of the shooting) Mr. Shaw was at a cookout with her lighting fireworks. She confirmed her signature on an affidavit that stated, she had seen the information filed against Mr. Sharp for the July 4, 2012 shooting and that Mr. Shaw was at the cookout at 8th and Madison at the time indicated in the information. She stated that is what she would have testified to had she been called to testify for Mr. Shaw. (*2-17-23 Motion Hearing*, Pg. 22, Ln. 10 - Pg. 24, Ln 8). She was asked about the clothing specifically (when signing the affidavit) Mr. Shaw wore on the day of the cookout, and he did not have on all white that day. (*2-17-23 Motion Hearing,* Pg. 23, Ln. 7 – 13). She could not give a time that the block party started but it would have made sense to start setting up once it started getting dark. (*2-17-23 Motion Hearing,* Pg. 29, Ln. 20 – Pg. 30, Ln. 1). She couldn't give a specific time when Mr. Shaw got there, they were moving constantly throughout the day. (*2-17-23 Motion Hearing*, Pg. 32, Ln. 2 – 9). Her memory was not good now but at the time she signed the affidavit it was crystal clear. (*2-17-23 Motion Hearing,* Pg. 41, Ln. 22 – Pg. 42, Ln. 10) The affidavit also states that she was present for trial but was told she wasn't needed. (Exh. 2A)

Daquan Beaty testified to the following:

> On July 4, 2012, he saw Mr. Shaw at a block party on 8th street between Longfellow and Madison. (*3-3-23 Motion Hearing,* Pg. 28, Ln. 25 – Pg. 29, Ln. 6). He got there around 6:00 and left about 8:00 or 8:30 that night. (*3-3-23 Motion Hearing*, Pg. 29, Ln. 12 – 25). Mr. Shaw was wearing blue jeans that were not white. He spent two hours with Mr. Shaw off and on from 6:00 – 8:15, hanging out and drinking. Mr. Shaw never left the area. If Mr. Shaw had left, he would have seen him leave. Most of the time they were together. He shook Mr. Shaw's hand when he left. (*3-3-23 Motion Hearing,* Pg. 30, Ln. 1 – 22). Mr. Shaw told him that he wanted him to testify but he doesn't remember talking to anybody about testifying.

Mr. Route testified to the following:

> He saw Mr. Shaw at a "cookout slash block party for the kids" on July 4, 2012 in front of his house, 5623 8th Street, NW. Ms. Kemp was also present at the cookout. (*3-3-23 Motion Hearing,* Pg. 52, Ln. 13 – Pg. 53 Ln. 13). They got started in the evening like 4:00 or 5:00 or later and Mr. Shaw was there the entire time. Mr. Shaw was there when it was dark, and he never saw him leave. (*3-3-23 Motion Hearing,* Pg 53, Ln. 16 – Pg. 54, Ln. 9). He [Mr. Route] was subpoena-ed to testify and came to the trial every time he was called but on the last day was told by trial counsel that he was not needed. (*3-3-23 Motion Hearing,* Pg. 55, Ln. 1 – 15). Trial counsel spoke to him Jabari Fields and Dominique and they all went to get paid for coming. (*3-3-23 Motion Hearing,* Pg. 56, Ln. 13 – 25). If he would have been called to testify at trial that he would have testified that Mr. Shaw was the cookout and the time he was there. (*3-3-23 Motion Hearing,* Pg. 57, Ln. 6 –16). Mr. Shaw was wearing jeans at the cookout and did not have on all white. (*3-3-23 Motion Hearing,* Pg. 57, Ln. 20 – 25). Dominique's grandmother was on the front porch at the time of the cookout. (*3-3-23 Motion Hearing,* Pg. 69, Ln. 16 – 21).

Each of the foregoing witnesses stated that they were present at Mr. Shaw's trial and were willing to testify on his behalf. However, they were each told by trial counsel that they were not needed.

Mr. Shaw also testified to the following at his 23-110 hearing:

> On July 4, 2012 in addition to Mr. Route, Ms. Kemp and Mr. Beaty, Jabari Fields saw him after dark at Coolidge and could testify to his clothing. (*3-3-23 Motion Hearing,* Pg. 79, Ln. 14 – 23). Trial counsel subpoenaed Mr. Fields but did not call him to testify. Mr. Fields is now deceased. (*3-3-23 Motion Hearing*, Pg. 76, Ln. 17 – Pg. 77, Ln. 17). Trial counsel told him that Ms. Kemp informed him that Ms. Kemp's grandmother was also at the July 4, 2012 cookout and could vouch for him. (*3-3-23 Motion Hearing,* Pg. 77, Ln. 18 – Pg. 78, Ln 19). However, trial counsel did not call Ms. Kemp's grandmother to testify.

Based on Mr. Shaw's 23-110 hearing witnesses there were at least 20 people at the cookout and as much as 30 or more. None of these witnesses were called to testify on Mr. Shaw's behalf. Additionally, trial counsel was aware that Ms. Kemp's grandmother was at the cookout was never even contacted to determine if she'd make a good alibi witness.

The government called a number of witnesses who identified Mr. Shaw as one of the July 4, 2012 shooters. To ensure that trial counsel's representation did not fall below the standards of reasonable representation, he needed to call known available witnesses that would have placed Mr. Shaw elsewhere at the time of the shooting. Failure to do so rendered his representation of Mr. Shaw ineffective, falling below the acceptable standards as outlined in *Strickland.* See *Byrd v. United States*, 614 A.2d 25 (D.C. 1992). The need to counter the testimony of government witnesses who identified Mr. Shaw as the July 4th shooter was not eliminated because some of the witnesses first claimed not to remember everything. This is especially true when you consider that when confronted with their grand jury testimony, each witness conceded that it reflected what they'd testified to in the grand jury, and that they did so because it was the truth. The jury was left to believe that the government witnesses were either reluctant to testify, or that they honestly did not remember everything when first asked. However, most ultimately testified that their grand jury testimony was correct that Mr. Shaw was the shooter. This was testimony that needed to be countered, and the alibi witnesses that could do that. But trial counsel failed to put on alibi witnesses whose testimony was crucial to Mr. Shaw's defense.

Furthermore, counsel's failed to even interview Ms. Kemp's grandmother or the other 20 or more potential witnesses that could have provided exculpatory testimony. This further rendered his representation ineffective. The failure to make a proper pretrial investigation, to interview exculpatory witnesses, and to present their testimony constitutes ineffectiveness. See *Sykes v. United States*, 585 A.2d 1335, 1338 (D.C. 1991); *Ramsey v. United States*, 569 A.2e 142, 147 (D.C. 1990).

Trial counsel claimed that he had concerns about Mr. Shaw's witnesses' credibility.

(3-3-23 Motion Hearing, Pg. 104, Ln. 21-Pg. 105, Ln. 7). While he couldn't or didn't say what those concerns were with the alibit witnesses other than it was "in terms of time." He stated there was an affidavit that he looked at that Mr. Route had stated the time. (3-3-23 Motion Hearing, Pg. 120, Ln. 3-17). But then he later admitted that he didn't know and couldn't recall if the affidavit that Mr. Route had signed or Ms. Kemp's, or Mr. Fields' stated the time that Mr. Shaw was at the cookout at the time the shooting took place. (3-3-23 Motion Hearing, Pg. 120, Ln. 18 - Pg. 121, Ln.2). The trial court didn't find this failure to recall this information problematic, even though it is essential to determine whether or not counsel's decision not to call the alibi witnesses to testify was a reasonably prudent one or not. We submit, however, the harm of not calling alibi witnesses clearly outweighed any credibility issues allowing them to testify posed.

The trial counsel refused to call alibi witnesses he knew about, failed to investigate, and interview other possible alibi witnesses, and cannot say with any certainty what his concerns with regarding the witnesses' testimony. The court erred in not finding that trial counsel's failure to allow them to testify to the whereabouts of Mr. Shaw at the time the July 4, 2012 shooting rendered his representation ineffective.

II. THE COURT OF APPEALS ERRED WHEN IT DID NOT FIND TRIAL COUNSELS REPRESENTATION OF MR. SHAW INEFFECTIVE BASED ON HIS FAILURE TO IMPEACH ESSENTIAL GOVERNMENT WITNESSES

"Failure to impeach a key government witness with highly credible evidence may blot out a substantial defense." See Angarano v. US, 312 A.2d 295, 298 n.5 (D.C. 1973); Johnson v. United States, 413 A.2d 499 (D.C. 1980). Even though eyewitness testimony can often be unreliable, juries tend to give heavy weight to this type of testimony. People who were present at the scene of the crime [] accounts of what ... occurred. Judges

and juries listening to these eyewitness account place heavy weight on the details of their stories. This is why effective representation in a criminal case requires that counsel put forth exculpatory evidence when able where eyewitness(es) have identified their client as the perpetrator of a crime. Exculpatory evidence includes evidence affecting witness credibility, where the witness' reliability is likely determinative of guilt or innocence. There is no doubt that the reliability of the government witnesses was essential for a conviction in Mr. Shaw's case. Mr. Shaw was not arrested on the scene. He did not confess to the shootings. There was no physical evidence placing him on the scene of the crime and he was not recorded committing the crime. Without the eyewitness testimony Mr. Shaw could not have been convicted. The failure of trial counsel to impeach eyewitnesses who testified against Mr. Shaw with reliable evidence at his disposure rendered counsel's representation ineffective and was a reversible error. The trial court erred in not finding trial counsel's representation to be ineffective when he failed to impeach the government's most essential witness with indisputable exculpatory evidence as well as when he failed to impeach another essential witness with several prior inconsistent statements that contradicted her entire incriminating testimony.

As stated previously, at trial Jamar Savage-Bey was the government's most essential witness against Mr. Shaw A.K.A. Sharkim. He was the only witness that claimed to know Mr. Shaw before the July 4th shooting and he was the only witness who identified Mr. Shaw as the April 18th shooter. He also told other witnesses who later identified Mr. Shaw as the July 4, 2012 shooter, that Mr. Shaw was the shooter. Trial counsel had undisputable impeachable information against Mr. Savage-Bey but failed to use it at trial. At trial Mr. Savage-Bey testified that on July 4, 2012 he saw Sharkim shoot his friends and kill Poody (*Trial Transcript 4-14-14*: Pg. 423, Ln

15 – Pg. 429, Ln. 12, Pg. 435, Ln. 24 – Pg 436, Ln. 10, Pg. 486, Ln. 22 – Ln. 25, Pg. 441 Ln.6-7). He also made an in court dentification of Mr. Shaw (Sharkim) as shooter (*Trial Transcript 4-14-14*: Pg.447, Ln. 22 – Pg.449 Ln. 10). In addition, Mr. Savage-Bey identified Sharkim (Mr. Shaw) as the person who shot his friend Ali and shot at him on April 18, 2012. (*Trial Transcript 4-14-14*: Pg. 453, Ln. 2 - Pg. 434, Ln. 8, Pg. 455, Ln. 6 – Pg. 456, Ln. 13, Pg. 459, Ln 1 – Pg. 460, Ln. 1, Pg. 480, Ln. 10 – 16). Mr. Savage-Bey testified that he saw Sharkim (Mr. Shaw) almost every day after Ali was shot (*Trial Transcript 4-14-14:* Pg. 460, Ln. 23 – 462, Ln 25). When Mr. Savage-Bey's seemed reluctant or unable at trial to identify Mr. Shaw as the shooter, his grand jury testimony was also introduced. On one such occasion his grand jury testimony stated that Sharkim (Mr. Shaw) and another man pointed a gun at him in a threat-ening manner and tried to kill him on his birthday, June 8, 2012 (*Trial Transcript: 4-14-14*: Pg 466, Ln. 18 – Pg. 468, Ln. 9). This undoubtedly in the minds of the jurors bolstered the reliability of his identification of Mr. Shaw. Each time at trial when Mr. Savage-Bey responded that he didn't remember some points the government attorney asked him about, the attorney repeatedly and successfully introduced Mr. Savage-Bey's grand jury testimony and refreshed his recollection. Oddly this is the testimony that trial counsel refers to as *impeachment* of Mr. Savage-Bey. He somehow tries to use this as justification for his failure to impeach Mr. Savage-Bey with Mr. Shaw's incarceration records. However, there is reasonable probability, even a high probability, that after hearing the government counsel refresh Mr. Savage-Bey's recollection, and nothing was introduced to challenge his identification of Mr. Shaw, the jury was left with the impression that Mr. Savage-Bey likely did not want to testify at trial. Moreover, his grand jury testimony identifying Mr. Shaw as the perpetrator in the shootings was accurate.

Mr. Savage-Bey was the *only person* to identify Mr. Shaw as the April 18th shooter and the person who "tried to kill him on June 8, 2012." This testimony and identification of Mr. Shaw as the July 4th shooter were extremely damaging to Mr. Shaw at trial. Mr. Savage-Bey either purposely, or mistakenly misidentified Mr. Shaw as the person who tried to kill him on June 8, 2012. Claiming this happened on his birthday made his claim sound even more reliable. However, this was simply untrue. It was impossible for Mr. Shaw to have tried to kill him on June 8, 2012, as Mr. Shaw was incarcerated in the D.C. jail from June 6, 2012 until June 11, 2012, when he was extradited to Prince George's County, then released after the charges were dismissed. At the 23-110 undersigned counsel entered into evidence a stipulation by the government that Mr. Shaw was in fact incarcerated in the D.C Jail on June 8, 2012. Trial counsel knew, or should have known, this information. At the 23-110 hearing Mr. Shaw testified that he told trial counsel that he was incarcerated in June 2012. (*3-3-23 Motion Hearing*, Pg. 75, Ln. 15 – Pg. 76, Ln. 16). Trial counsel had a duty to investigate and use this information to impeach Mr. Savage-Bey, thereby undermining his entire testimony, as well as that of other witnesses whom he told that Mr. Shaw was the shooter. Failure to use Mr. Shaw's incarceration record to impeach the government's key witness when he had irrefutable evidence with which to do so, rendered trial counsel's representation of Mr. Shaw deficient and deprived Mr. Shaw of his Sixth Amendment protections.

In this case, just as in *Johnson* the crucial issue was one of credibility. Mr. Shaw was not arrested on the scene. He did not turn himself in or confess. To acquit Mr. Shaw, the jury would have to have had credible evidence discrediting the government's key witnesses. The incarceration records of Mr. Shaw undoubtedly would have served that purpose. And while there

were other witnesses to the July 4th shooting that identified Mr. Shaw as the shooter, all but one also testified that Mr. Savage-Bey told them that Mr. Shaw had shot at them or him at some point. Nevertheless, cumulatively the damaging effect of their identification of Mr. Shaw is undeniable. These other witnesses did not know Mr. Shaw prior to Mr. Savage-Bey identifying him to them. For example, Demesho Braxton testified that on the night of the shooting Mr. Savage-Bey told him that Mr. Shaw (Sharkim) killed Poody. (*Trial Transcript 4-10-14*: Pg. 221, Ln 6 – Pg. 224, Ln 5). Mr. Braxton did not know Mr. Shaw prior to that time. Mr. Braxton was actually questioned the evening of the shooting he did not identify Mr. Shaw as the shooter (*Trial Transcript 4-1-14*: Pg. 227, Ln 21 – Pg.228, Ln. 3). At the same time Mr. Savage-Bey told Mr. Braxton that Mr. Shaw was the July 4, 2012 shooter, he also told Jasmine (Mr. Braxton's father's girlfriend) that Mr. Shaw was the shooter. (*Trial Transcript 4-10-14*: Pg. 260, Ln. 25 – Pg. 261, Ln. 25). It was clear from the testimony that Jasmine was not present at the shooting. However, based on the information provided to her by Mr. Savage-Bey *after* Mr. Braxton had failed to identify Mr. Shaw as the shooter when questioned, Jasmine later showed Mr. Braxton a picture of Mr. Shaw. Mr. Braxton testified that when Jasmine showed him the picture, she said that this is the person who shot at him and his friends. (hearsay upon hearsay which trial counsel failed to object to) (*Trial Transcript 4-10-14*: Pg. 262, Ln 1 -25). Still Mr. Braxton could not, or did not, identify Mr. Shaw as the shooter until September 20, 2012 some 2 ½ months later. (*Trial Transcript 4-10-14:* Pg 253, Ln. 23 – Pg. 264, Ln. 16). A reasonable juror could believe that this was likely after he had several other conversations with Mr. Savage-Bey. Mr. Savage-Bey also had pointed Mr. Shaw out to Eugene Robinson prior to the July 4th shooting. (*Trial Transcript 4-10-14*: Pg. 305, Ln. 15 – Pg. 306, Ln. 17). Nevertheless, Mr. Robinson

testified at trial that when he went down to the police station and was shown a series of photographs on August 3, 2012, [and identified Mr. Shaw as the July 4th shooter] he didn't recognize anyone, but he *tried to help the best way he could.* (*Trial Transcript 4-10-14*: Pg. 301 Ln 15 – Pg. 302, Ln 2). A reasonable juror could have questioned the accuracy of his identification of Mr. Shaw. Did this mean he identified the person that Mr. Savage-Bey had pointed out to him previously? Could Mr. Savage-Bey have told him that Mr. Shaw was responsible for the July 4th shooting? Certainly, if the jurors knew that Mr. Savage-Bey had previously pointed out Mr. Shaw to him, and had later misidentified Mr. Shaw as someone who tried to kill him, they could have doubted his testimony as well. Mr. Robinson further testified that he had not seen Mr. Shaw (Sharkim) prior to the shooting and did not recognize him. Discrediting Mr. Savage-Bey would have gone a long way to discredit the other government witnesses and call into question the reliability of their identification of Mr. Shaw. The only other witness who identified Mr. Shaw as the July 4, 2012 shooter was Cavito Brown. His identification was riddled with reasonable doubt. He testified that he did not recognize the men responsible for the July 4, 2012 shooting and he didn't believe he had seen them before. (*Trial Transcript 4-9-14,* Pg. 112, Ln. 7 – Pg. 113, Ln. 23). He testified that when he was asked to identify the shooter, he told them he picked out a picture and said he thinks he was the shooter. (*Trial Transcript 4-9-14,* Pg. 129, Ln. 5 – Pg. 130, Ln. 3). He did not make an in-court identification of Mr. Shaw. Because this is a case that relied largely on the identification of Mr. Shaw it was essential to impeach Mr. Savage-Bey. There is a reasonable probability that doing so would have likely had a domino effect on the reliability of the government other witnesses who identified Mr. Shaw as the July 4th shooter, causing the jury to render a different result. Furthermore, being the only witness to identify Mr.

Shaw as the April 18th shooter, there is a great probability that the jury would have rendered a different result as it relates to those charges as well.

Failure to impeach Mr. Savage-Bey would have alone been justification for the court to find that the representation of Mr. Shaw fell below the objective standards of reasonableness and that there is a reasonable probability that but for counsel's error the result would have been different. However, trial counsel also failed to impeach another essential government witness, Iesha Hicks. At trial Ms. Hicks was called by the government and testified that she did not see Mr. Shaw on July 4, 2012. She claimed that he came over her house around 4am on July 5, 2012 and he had two guns with him, and that he told her he "killed, like, four people." (*Trial Transcript, 4-14-12*, Pg. 511. Ln. 20 – Pg. 512, Ln. 4; Pg. 515, Ln. 4 – Pg. 516, Ln. 9). However, former PDS investigator, Alison Horn testified at the 23-110 hearing that when PDS was representing Mr. Shaw she spoke to Ms. Hicks and memorialized her conversation in a memorandum to Kia Spears, PDS attorney handling the case at the time. She was shown a copy of that memorandum and confirmed that it was a copy of the memorandum. She testified that it stated that she spoke with Ms. Hicks over the phone on July 12, 2012 and Ms. Hicks told her that she saw Mr. Shaw on July 4, 2012. She did not see him with a gun and has never seen him with a gun and he did not tell her anything about any shooting. (*3-3-23 Motion Hearing*, Pg. 8, Ln. 7 – Pg. 10, Ln. 25). When asked whether trial counsel received a copy of the memorandum, she testified that he did. She gave specific details regarding personally delivering the file which contained the said memorandum to him. (*3-3-23 Motion Hearing*, Pg. 11, Ln 1 – Pg. 12, Ln. 5). Despite having possession of the memorandum that would impeach Ms. Hicks' testimony, trial counsel never confronted Ms. Hicks with her prior inconsistent statements. "Gross incompetence

of counsel which results in failure to present highly credible evidence bearing on the credibility of a key government witness may rise to the standard of prejudice enunciated in Angarano." Johnson v. United States, 413 A.2d 499, 500 (D.C. 1980). The appellate court erred in not finding that the trial attorney's failure to impeach the government's essential witnesses rendered his representation of Mr. Shaw ineffective.

III. THE COURT OF APPEALS ERRED IN FINDING THAT TRIAL COUNSEL'S FAILURE TO CALL ALIBI WITNESSES TO IMPEACH GOVERNMENT WITNESSES PRUDENT TRIAL STRATEGY

At the 23-110 hearing trial counsel claimed that his decision to not call the alibi witnesses was based on his concern about the credibility of the witnesses.(3-3-23 Motion Hearing, Pg. 104, Ln. 23-Pg. 105, Ln.7). According to him, it was a strategic decision and that at trial he specifically indicated that they were not putting on any additional witnesses other than Ms. Harrison. (3-3-23 Motion Hearing, Pg. 116, Ln. 24-Pg. 117, Ln.11). Trial counsel admitted that he does not have a specific recollection of when he decided not to go with the alibi witnesses, but it was "probably" after the government concluded its case.(3-3-23 Motion Hearing, Pg. 117, Ln.12-18). However, if trial counsel had spoken to and prepared in advance for the alibi witnesses' testimony but was concerned with their credibility, then it would not have been necessary to wait until the government concluded their case to decide not to use them. Furthermore, counsel's failure to call alibi witnesses cannot be attributed to strategy when counsel claimed one thing at trial with respect to the witnesses and claimed something entirely different at the 23-110 hearing. Contrary to his testimony at the 23-110 hearing, at trial counsel made it clear several times that he intended to call the alibi witnesses. He stated that he was waiting on witnesses that weren't present. Asked after the

judge] subjectively believe that the array of additional alibi witnesses would not have swayed his judgment." Id. at 965. The state's case was " not particularly strong." Obviously, a trier of fact approaching the case with fresh eyes might choose to believe the eyewitnesses and to reject the alibi evidence, but this trier of fact never had the chance to do so. Id. at 965. 2006. Such is the case in the case at bar. It was ineffective representation not to put the alibi witnesses before the jury to allow them to determine the credibility of the witnesses. And while counsel testified that if Mr. Shaw would have insisted on calling the alibi witnesses, he would have been obligated to do so.(3-3-23 Motions Hearing, Pg. 130. Ln.24-Pg. 131, Ln. 14). But given the facts that he gave Mr. Shaw incorrect information about availability, Mr. Shaw was denied that choice.

IV. PETITIONER REQUEST IN LIGHT OF SUPREME COURT RULING'S IN GLOSSIP V. OKLAHOMA AND ANDREW V. WHITE TO GVR AS THE LOWER COURT OF APPEALS ERRED BY NOT EVEN ADDRESSING NAPUE V. ILLINOIS VIOLATION WHEN EVIDENCE STEMMED FROM PERJURED TESTIMONY.

Government witness, Jamar Savage-Bey, testified that on June 8, 2012 Mr. Shaw and another man pulled out a gun and tried to kill him.(Trial transcript: 4-14-14,Pg. 466, Ln. 18-Pg. 468, Ln. 9). However, on June 8, 2012 Mr. Shaw was incarcerated at the District of Columbia Department of Corrections from June 6, 2012 through June 11, 2012. "The failure of the prosecutor to correct the testimony of the witness which he knew to be false denied petitioner due process of law..." As well when the Court of Appeals failed to address this clear violation in law. As the record is shown in lower court decision "There None by this Court". Petitioner rely on these recent Supreme Court decisions in Glossip v. Oklahoma,2025 U.S. Lexis 865 No. 22-7466 Feb. 25, 2025); Andrew v. White, 145 S.Ct.75; No. 23-6573 Jan. 21, 2025)(quoting Napue v. Illinois, 360 U.S. 265,272, 79 S.Ct. 1173(1959). In the direction a conviction obtained through the knowing use of false evidence violates the Fourteenth Amendment's and Fifth Amendment's Due Process Clause. To establish a Napue violation, a defendant must show that the prosecution knowingly solicited or allowed false testimony to go uncorrected. If a violation is established, a new trial is warranted if the false testimony could in any reasonable likelihood have affected the jury's judgment; See(Napue v. Illinois, 360 U.S.265

272, 79 S.Ct. 1173 (1959). The prosecutor knew, or should have known, that Mr. Shaw was incarcerated on June 8, 2012, the date Mr. Savage-Bey testified that Mr. Shaw tried to kill him. This was such a serious allegation made against Mr. Shaw. The prosecutor owed it for justice sake to ensure the information offered regarding Mr. Shaw was credible. What is notable is that the prosecutor pulled Mr. Shaw's telephone records for the July 4, 2012 shooting, and charged him with both the April 18, 2012 and the July 4, 2012 shooting. However, they did not pulled his phone records, nor charged him with the June 8, 2012 shooting. Coincidence? Maybe, maybe not. We do find that to be worthy of consideration in this matter. In any event, the government has a duty to at least vet the information that it receives from witnesses to ensure its reliability. Failure to do so in this case was tantamount to suborning the perjured testimony. If trial counsel did not know in advance of trial that Mr. Shaw was incarcerated at the time Mr. Savage-Bey alleged that Mr. Shaw tried to kill him, at the very least once he found out he should have moved for a mistrial based on the prosecutor's putting this testimony into evidence. His failure to seek a mistrial rendered his representation of Mr. Shaw ineffective. The U.S. Supreme Court in *Napue* held that the knowing use of false testimony by a prosecutor in a criminal case violates the Due Process Clause of the Fourteenth Amendment to the United State Constitution even if the testimony affects only the credibility of the witness and does not directly relate to the innocence or guilt of the defendant. The Court in *Alcorta v. Texas* 355 U.S. 28 (1957) held that a prosecutor's neglect to correct false testimony is equivalent to knowingly presenting perjured testimony. The suppression by the prosecution of evidence favorable to an accused violates due process where the evidence is material either to guilt or to punishment irrespective of good faith or bad faith of the prosecution. *Brady v. Maryland*, 373 U.S. 83 (1963). To establish a *Brady*

violation the defendant must show (1) that there was evidence favorable to him (2) that was suppressed or conceded by the prosecution and (3) that prejudice resulted. Strikler v. Green, 527 U.S. 263, 281-282, 119 S.Ct. 1936. 144 L.Ed 2d 286(1999). Evidence qualifies as material when there is "any reasonable likelihood" it could have "affected the judgment of the jury." Giglio v. United States, 405 U.S. 150, 154(1972)(quoting Napue at 271). Clearly a Brady violation exists in Mr. Shaw's case. Mr. Shaw was incarcerated at the time he was alleged to have known this and never told trial counsel. Mr. Shaw didn't know the exact date in June 2012 as he was incarcerated until after the trial completed. Now as the record is shown this Court of Appeals failed to address Mr. Shaw perjured claim in the lower court proceeding. Which clearly if addressed down below he could have raise Andrew v. White, 145 S.Ct. 75; No. 23-6573(Jan. 21, 2025) Glossip v. Oklahoma, 2025 U.S. Lexis 865 No. 22-7466(Feb. 25, 2025). In this Court of Appeals erred in not addressing Napue v. Illinois in ground Four, which should be GVR back to lower court at this time.

V. PETITIONER REQUEST IN LIGHT OF SUPREME COURT RULING'S IN GLOSSIP V. OKLAHOMA AND ANDREW V. WHITE TO GVR AS THE LOWER COURT OF APPEALS DID NOT ADDRESS TESTIMONY OR EVIDENCE OR THE EXCEEDING IT'S AUTHORITY DOWN BELOW AT ALL THAT WAS ABUSE OF DISCRETION.

In the event it was clear that this lower court did nothing on the record as to addressing the testimony or evidence that was purviewing the jury. Now facts is very simple this Court of Appeals did not touch on this ground down below in Five at all. Let alone speak on as with that Mr. Shaw clearly meet a Fifth Amendment violation under the law. When it is not directed on why this lower court failed to do so. Upon this it will be encourage for the Court to rely on recent decision's in Glossip v. Oklahoma, 2025 U.S. Lexis 865 No. 22-7466(Feb. 25, 2025); Andrew v. White, 145 S.Ct. 75; No. 23-6573(Jan. 21, 2025). With this Mr. Shaw rely on Wong Sun, 371 U.S. at 478), to address why that

this Court must vacate the lower court's finding. This court must also determine whether the decision maker failed to consider relevant facts, whether he relied upon an improper factor, and whether the reasons given reasonably support the conclusion. "[This court] must not invite the exercise of judicial impressionism. Discretion there may be, but 'methodized by analogy, disciplined by system,' *Cardozo, The Nature of the Judicial Process*, 139, 141 (1921) Discretion without a criteria for its exercise is authorization of arbitrariness." *Brown v. Allen*, 344 U.S. 443, 496, 73 S. Ct. 397, 441, 97 L.Ed. 469 (1953). We submit that the trial court here failed to consider relevant facts *and* the reasons given for the ruling do not support the conclusion. "Abuse of discretion is a discretion exercised to an end or purpose not justified by and clearly against reason and evidence. It is abused where a court does not exercise discretion in the sense of being discreet, circumspect, prudent and cautious. It is, in a legal sense, abused when the court exceeds the bounds of reason, all the circumstances before it being considered." *Johnson v. United States,* 398 A.2d 354 (D.C. 1979) quoting, *Bringhurst v. Harkins*, 2 W.W. Harr. 324, 331, 32 Del. 324, 331, 122 A. 783, 787 (1924). The trial court abused its discretion in several instances when considering Mr. Shaw's 23-110 motion. Most notably in its determination that Mr. Shaw did not inform trial counsel that he was incarcerated in June 2012 (at a time when Mr. Savage-Bey testified Mr. Shaw tried to kill him). At his 23-110 hearing Mr. Shaw testified that he told trial counsel that he was incarcerated in June 2012. (*3-3-23 Motion Hearing*, Pg. 75, Ln. 15 – Pg. 76, Ln. 16). Trial counsel testified on direct examination by the government that he didn't recall if Mr. Shaw told him he was in jail on June 8th. He added, however, "I'm not saying it wasn't or he didn't. I'm just saying I don't recall." (*3-3-23 Motion Hearing*, Pg 112, Ln. 16 – 23). On cross examination at that same hearing when

again asked whether Mr. Shaw told him he was incarcerated sometime around June 2012, he answered, "Not that I have a recollection. *Now, he may have*, but I don't have a recollection of us having that conversation." Then when asked again. He answered, "He may have." (*3-3-23 Motion Hearing*, Pg. 124, Ln. 24 – Pg. 125, Ln. 5). Nevertheless, the court stated that it was not satisfied that the defendant actually provided trial counsel with information that he was locked up on June 8th. (*March 30, 2023 Ruling,* Pg. 22, Ln. 18 – 25). The court went even further to say that it thinks it's unlikely that the defendant gave him this information. To support this conclusion the court stated that no one [in the 23-110 hearing confronted trial counsel with notes or records from his file that substantiate that Mr. Shaw told him [about being locked up]]. And added that Mr. Shaw had a strong motive to testify that he told trial counsel this. (*March 30, 2023 Ruling,* Pg. 23, Ln. 10 -21) The court gives the impression of not being impartial at this point. There clearly was no reasonable basis to conclude that Mr. Shaw didn't tell his counsel that he was incarcerated. All of the testimony regarding this matter weighed more towards a finding that he did. Mr. Shaw testified that he told counsel he was incarcerated. Trial counsel couldn't remember for sure, but on each occasion when asked he admitted Mr. Shaw may have told him. It does not follow that any of the testimony would lead the trial court to reasonably determine that Mr. Shaw probably didn't tell counsel he was incarcerated in June. The court's reasoning that no one presented notes or records from trial counsel's file to substantiate Mr. Shaw's claim and that Mr. Shaw had a strong motive to testify that he told counsel is totally void of any impartiality when viewing the evidence and testimony. The lack of notes regarding the conversation with Mr. Shaw does not mean that the conversation didn't happen or that the notes were ever turned over with the file. They could have been left out when the file was transferred

or there could have been no notes taken of the conversation. Also, the court reasons that Mr. Shaw had a strong motive to say he told counsel he was incarcerated in June. This is true, especially if he did tell him. However, the court ignores the fact that trial counsel also had a strong motive to deny that Mr. Shaw told him this. He was facing an ineffective assistance of counsel claim, something no attorney welcomes. The trial court even added that Mr. Savage-Bey's testimony as *Jencks* would not have been turned over until trial, so it's unlikely that the defendant gave him this information. (*March 30, 2023 Ruling*, Pg. 23, Ln 15 – 21). However, there is nothing in the record that supports this conclusion. The court was not discreet, circumspect, prudent, or cautious, but rather simply inserted its own supposition about what did or did not happen. Trial counsel's supposition or best guess cannot be the basis for a reasonable strategic tactical trial decision. The court repeatedly seems to have gone out of its way to support a narrative that justified the trial counsel's denial of Mr. Shaw's Sixth Amendment guarantees.

Nevertheless, the court goes on to state that even if counsel was ineffective the damage is minimal. (*March 30, 2023 Ruling*, Pg. 24, Ln. 1 – 15) stating that "this was not a stranger-on-stranger crime. The defendant (meaning Mr. Savage-Bey) knows Mr. Shaw. He saw him almost every day after the April incident." (*March 30, 2023 Ruling*, Pg. 25, Ln. 5 -8). However, the court ignores the fact that for this very reason (Mr. Savage-Bey's *claim* to be so familiar with Mr. Shaw) letting the jury know Mr. Savage-Bey was mistaken or purposely lied when he identified Mr. Shaw, would have been very powerful impeachment of Mr. Savage-Bey's identification of Mr. Shaw as the April 18th and the July 4th shooter. It likewise would have brought into question the testimony of others that he told who Mr. Shaw was and later identified him.

The trial court erred in basing her finding that counsel's decision not to call the alibi witnesses was a sound tactical decision based on its determination regarding their credibility. It noted also that counsel testified that the government's witnesses had been impeached extensively and had significant credibility issues. (*March 30, 2023 Ruling*, Pg. 11, Ln. 23 – Pg. 13, Ln. 21). In support of her ruling and counsel's stated credibility concerns she cited several reasons she believed that the alibi witnesses were not credible. Likewise, she rejected PDS Investigator. Ms. Horn's testimony. The trial court stated that she does not credit some portion of Ms. Horn's testimony at all. (*March 30, 2023 Ruling*, Pg. 26, Ln. 13 – 22). However, not only was that belief not justified based on the testimony, as pointed out above, the credibility of the witnesses regarding Mr. Shaw's whereabouts on July 4, 2012, was not even within the purview of the court to decide. Thus, the court's personal belief about their credibility should have played no role in determining the effectiveness of counsel. The question is whether the jury should have been given that opportunity and if so, is there a reasonable probability that *they* could have found them to be credible. The appellate court in *Ramonez* found that the state court's blanket assessment of the credibility of a potential witness - at least when made in the context of evaluating whether there is a reasonable probability that the witness's testimony, if heard by the jury, would have changed the outcome of the trial is not a fact determination within the bounds of US Code Sec. 2254(e)(1) (*a habeas corpus proceeding*). *Ramonez* at 490 (6th Cir. 2007). The court stated, "After all, what the state court has really done is to state its view that there is not a reasonable probability that the jury would believe the testimony and thus change its verdict." The Sixth Circuit rejected this approach because "the question whether those witnesses were believable for purposes of evaluating [the alleged victim's] guilt is properly a jury question." *Ramonez* at 490.

Barker v. Yukins, 199 F.3d 867, 874 (6th Cir. 1999) made it clear that our Constitution leaves it to the jury, not the judge to evaluate the credibility of witnesses in deciding a criminal defendant's guilt or innocence. The court went on to say, "In the end, weighing the prosecution's case against the proposed witness testimony is at the heart of the ultimate question of the Strickland prejudice prong, and thus it is a mixed question of law and fact not within the U.S. Code Sec. 2254(e)(1) presumption."

Even though the jury could have discredited the potential witnesses here based on factors such as bias and inconsistencies in their respective stories, there certainly remained a reasonable probability that the jury would not have. All it would have taken is for 'one juror [to] have struck a different balance' between the competing stories. *See Wiggins*, 529 U.S. at 537. The court footnoted that *Wiggins* was a death penalty case in which a single juror's vote would have spared defendant's life. In this case, of course, even a single juror's holdout would have resulted in a hung jury rather than a conviction, while a jury's unanimous striking of "a different balance" would have produced an acquittal.

Therefore, the trial court erred in concluding facts that were not supported by the testimony or evidence and by basing her decision on her determination of the credibility of the witnesses. Such a determination should be allowed to be presented to the jury to decide.

Even assuming arguendo that the credibility of the alibi witnesses regarding Mr. Shaw's whereabouts during the July 4, 2012 shooting was in the purview of the trial court to decide within the 23-110 hearing, the court should have found that there was a reasonable probability jury could have heard their testimonies and came to a different conclusion about Mr. Shaw's innocence or guilt. In finding the alibis not to be solid the court noted that Ms. Kemp testified

she was concerned that she had dementia and that she has no independent recol-lection of the facts. She didn't know if there was a shooting that day because if it wasn't trauma that involved her, she won't remember it. (*March 30, 2023 Ruling*, Pg. 14, Ln. 13 – 22). However, the court ignores Ms. Kemp's testimony that her memory was not a concern at the time of trial. Moreover, days after the July 4th shooting she signed the affidavit [*stating that she had seen the information of charges against Mr. Shaw and that he was at the cookout at the time of the shooting that he was charged with*] and that at the time her memory was crystal clear. (*2-17-23 Motion Hearing,* Pg. 41, Ln. 23 – Pg. 42, Ln. 10). We submit his would be reasonable even for someone without memory issues. The affidavit was signed years prior to her testifying at the 23-110 hearing. Certainly, the memory of events would be fresher the closer in time to them happening than they would several years later. In fact, trial counsel himself testified that his recollection is not the same as it was nice years ago. (*3-3-23 Motion Hearing,* Pg. 129, Ln, 12 -16). He testified on numerous occasions that he does not have a specific recollection regarding the trial. He had no specific recollection of having a conversation with Mr. Shaw about whether or not to put on alibi witnesses before they put on their case, or when the decision was made. He had no specific recollection of whether or not he subpoenaed Mr. Fields, or if Mr. Fields came to testify. He had no specific recollection of why he didn't impeach Jamar Savage-Bey with Mr. Shaw's incarcerations records, or whether Mr. Shaw told him he had been incarcerated in June 2012. He did not recall anyone telling him that Ms. Kemp's grandmother was at the cookout. (*3-3-23 Motion Hearing,* Pg. 117, Ln. 1, 14; Pg. 118, Ln. 4, 8; Pg. 119, Ln. 3; Pg. 120, Ln. 7-8, Pg. 124, Ln. 11; Pg. 125, Ln. 1; Pg. 129, Ln. 7). Notably he testified that he didn't have a specific recollection of what his concerns were regarding the alibi witnesses. (*3-3-23 Motion Hearing,*

Pg. 120, Ln. 3 – Pg. 121, Ln. 2). Without a specific recollection of why counsel failed to call alibi witnesses it cannot be said that he had a strategy sufficient to overcome a finding of ineffective representation, especially when government witnesses have identified him as the shooter. Yet the court credited his testimony regarding the things he did claim to remember. Furthermore, with respect to Ms. Kemp, because her memory was crystal clear at the time of trial her testimony, any possible current memory issue cannot serve as justification for assuming that she would not have been believed by the jury. Her statement was memorialized in an affidavit. It put Mr. Shaw at the cookout at the time of the shooting. It is fair to assume that this is what her testimony would have been had she been allowed to testify, providing for a credible alibi for Mr. Shaw. The court also questioned the fact that the witnesses "claim to remember" how the defendant was dressed but could not remember other information. *(March 30, 2023 Ruling*, Pg. 16, Ln. 5 – 8; Pg. 17, Ln. 3 – 10; Pg. 21, Ln. 8 -10). The court found this simply not credible. (*3-30-23 Ruling,* Pg. 16, Ln. 7-8). However, this doesn't mean that the jury could not have believe the witnesses' testimony regarding the clothing. Indeed, it's fair to assume that the jury found government's witness Cavito Brown to be credible when he testified that all the shooters were wearing white shirts, but he didn't remember anything about what he or his friends were wearing. (*Trial Transcript*, Pg. 146, Ln. 18 – Pg. 147, Ln. 24). What's more, Mr. Route and Mr. Beaty not only knew that Mr. Shaw did not have on all white, but they also knew what they were wearing themselves. Mr. Route knew he was wearing jeans and Mr. Beaty knew he was wearing shorts.

Consequently, if the credibility of the alibi witnesses was a factor that the trial court should have been deciding, there is still no justification for finding them to be incredible. The

trial court erred in concluding facts that were not supported by the evidence and by making findings that should have been allowed to be put before the jury to decide.

CONCLUSION

Wherefore, based on all of the foregoing we conclude that the sentence under which Mr. Shaw is serving time was imposed in violation of his rights guaranteed under the Sixth Amendment to the United States Constitution. Pursuant to D.C. Code Sec. 23-110 (a) Mr. Shaw is entitled to have his entire sentence vacated and be given a new trial. Trial counsel failed to call known alibi witnesses to testify on Mr. Shaw's behalf and failed to investigate and call other individuals that could have offered an alibi for Mr. Shaw whereabouts during the July 4th shooting. Also, despite having evidence with which to do so, he failed to impeach the government's two most incriminating witnesses against Mr. Shaw. Mr. Savage-Bey should have been impeached with records that showed Mr. Shaw was incarcerated in the D.C. jail on the date that he alleged that Mr. Shaw tried to kill him. Trial counsel also failed to impeach Ms. Hicks with her prior inconsistent statements that she had told to PDS Investigator Allison Horn. Failure to impeach these witnesses denied Mr. Shaw of his constitutional right to confront his accusers guaranteed under the Sixth Amendment. Even if Mr. Savage-Bey's testimony came as a surprise, trial counsel should have asked for a mistrial because the government either knowingly or carelessly put on perjured testimony. The evidence has shown that on numerous times in his trial case Mr. Shaw's Constitutional rights were violated. Thus, his convictions should not stand.

The trial court erred when it determined that the trial counsel's failure of trial counsel to call alibi witnesses and/or impeach Mr. Savage-Bey and/or Ms. Hicks was based on a reasonably prudent trial strategy.

The Court of Appeals erred in affirming Mr. Shaw's conviction and sentence as well failing to address grounds IV and V that high-light in Glossip v. Oklahoma, 2025 U.S. Lexis 865 No. 22-7466(Feb. 25, 2025); Andrew v. White, 145 S.Ct. 75; No. 23-6573(Jan. 21, 2025), which all under abuse of dicretion. As the trial court's finding were not within the bounds of supported evidence. The trial court delved into the purview of the jury when it based its decision on what it dermined was the credibility of the witnesses and their ability to overcome the government's case. It drew conclusions that beither the testimony of Mr. Shaw or his witnesses, nor that of trial counsel's testimony supported. Furthermore, the court erred in finding that trial counsel's failure to put on alibi witnesses because the government's witnesses had been impeached was a prudent trial strategy. They were not impeached and trial counsel gave an entirely different reason at trial for not calling the alibi witnessess to testify, that being that they were not available. Lastly, even though trial counsel admitted that he did not recallthe reasons that he took crucial actions, or failed to take actions, the court erred in accepting his supposition for his actions, the court erred in accepting his supposition for his actions or inactions as prudent trial strategy. Ultimately, the Court of Appeals erred in finding in culmination of error clearly prejudiced Mr. Shaw.

Wherefore, based on all of the foregoing this Court should GVR GRANT his conviction and sentence back to Court of Appeals in light of Glossip v. Oklahoma, 2025 U.S. Lexis 865 No. 22-7466(Feb. 25, 2025); Andrew v. White, 145 S.Ct. 75; No. 23-6573(Jan. 21, 2025), to address lower court failure to address his ground Four and Five under abuse of discretion or GRANT this Petition for Writ of Certiorari and remand with instruction with instructions accordingly.

Respectfully submitted on this 15 day of Sept., 2025.

Calvin Shaw #41023-007