No. 25-6707 (CAPITAL CASE)

IN THE

SUPREME COURT OF THE UNITED STATES

ELIJAH DWAYNE JOUBERT,

Petitioner,

v.

ERIC GUERRERO, Director,
Texas Department of Criminal Justice, Correctional Institutions Division,

Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals for the Fifth Circuit

PETITIONER'S REPLY IN SUPPORT OF PETITION FOR CERTIORARI

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REPLY IN SUPPORT OF PETITION

Petitioner Elijah Joubert respectfully petitions this Court for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Fifth Circuit.

INTRODUCTION

Petitioner, Elijah Joubert asks this Court to decide whether, as seems clear from its recent decision in *Glossip v. Oklahoma,*[1] clearly established federal law requires that the harmless error standard set forth in *Chapman v. California*[2] be applied to claims brought under *Napue v. Illinois,*[3] thereby placing the burden on the State to prove its elicitation of false testimony was harmless beyond a reasonable doubt. Joubert also contends that, under the *Chapman* standard, the *Napue* error in this case was material.

The State responds that, even if the *Chapman* standard applies, Joubert has not shown "a reasonably debatable claim" that the Texas Court of Criminal Appeals (TCCA) "misapplied clearly established federal law." BIO at 1. This is so, the State contends, because there was no law establishing the correct standard before this Court decided *Glossip*. *Id.* at 1–2. Finally, the State briefly argues that, even under *Chapman*'s standard, the state court reasonably concluded that the false testimony in this case could not have affected the jury's decision. *Id.* at 2. Joubert replies.

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[1] 604 U.S. 226 (2025).
[2] 386 U.S. 18, 24 (1967).
[3] 360 U.S. 264 (1959).

ARGUMENTS AND AUTHORITIES

I. The State is wrong that confusion among the courts means that this Court's precedent is not clearly established.

Pointing out that Joubert must satisfy 28 U.S.C. § 2254(d)(1)'s requirement to show that the TCCA's decision denying his *Napue* claim was contrary to "clearly established law," BIO at 17–18, the State argues that, before *Glossip*, this Court had not settled the question whether, when confronted with a claim that prosecutors elicited false or misleading testimony at trial, the State bears the burden to prove that the error did not contribute to the verdict. BIO at 14.[4] This, of course, is the question that Joubert asks the Court to decide. *See* Pet. at i (asking the Court to decide whether failing to apply *Chapman* to a *Napue* claim is contrary to clearly established federal law).

In seeking certiorari, Joubert points to confusion among some courts regarding the proper standard for *Napue* claims. Pet. at 19–21. In the State's view, confusion among the courts indicates that the materiality standard applied in *Glossip* was not clearly established. BIO at 14–17. Contrary to the State's arguments, a plain reading of this Court's precedent reveals no ambiguity about the appropriate standard. The standard for reviewing *Napue* claims was ensconced in *Chapman v. California*, 386 U.S. 18, 24 (1967); *see also* Pet. at 15 (citing cases). In *Brecht v. Abrahamason*, the

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[4] The State's half-hearted suggestion that *Glossip*'s articulation of the standard was dicta should be rejected. *See* BIO at 17. The language could not be dicta—it set forth the standard applied to decide the case. Although it is true that the Court did not announce that it was "actually" establishing the correct standard, that is because the Court plainly assumed the standard was well-settled. *See Glossip*, 604 U.S. at 246 (citing *Chapman* standard for *Napue* claims).

Court adopted a more stringent standard, but only for due process claims on collateral review. 507 U.S. 619, 637-38 (1993). It has never applied that standard to a *Napue* claim. Indeed, when it had the opportunity to do so, in *Kyles v. Whitely*, it explicitly declined. *See* Pet. at 16 (citing *Kyles*, 514 U.S. 419, 436 n.7 (1995)). A failure by lower courts to properly apply clearly established federal law does not mean that the law was not clearly established.

It is of no moment that, as the State points out, two courts of appeals have held that the less-onerous standard for *Napue* claims was not clearly established. *See* BIO at 14 (citing *Uvukansi v. Guerrero,* 126 F.4th 382, 390–91 (5th Cir.), *cert. denied*, 146 S. Ct. 96 (2025), and *Ventura v. Att'y Gen. of Fla.*, 419 F.3d 1269, 1279 n.4 (11th Cir. 2005)). As an initial matter, since *Glossip* was decided, the Eleventh Circuit has taken a contrary position. *See In re: Killen*, No. 25-13084, 2025 WL 4052407 at *3 (11th Cir. Oct. 3, 2025).[5] In *Killen*, the court rejected the petitioner's claim that *Glossip's* articulation of the materiality standard was "a new rule of constitutional law." *Id.* Rather, the Court held, *Glossip* "merely applied *Napue* and clarified the materiality analysis for *Napue* error." *Id.*; *cf. State v. Page*, No. CR 9911016961, 2025 WL 1157214 at *2 (Del. Super. Ct. Apr. 16, 2025) (observing that the Court applied "long-standing constitutional principles" in *Glossip*).

More importantly, it is this Court's precedent that, in the first instance, dictates whether a rule is clearly established. *See Andrew v. White*, 604 U.S. 86, 95

[5] Although *Killen* is unpublished, under 11th Cir. R. 36-2, it "may be cited as persuasive authority."

(2025) (rule is clearly established if it is a holding "of this Court"); *Williams v. Taylor,* 529 U.S. 362, 405 (2000) (rule is clearly established if set forth in "this Court's" cases);

This Court's precedent is plain. In *Bagley,* the Court held that the correct standard for reviewing *Napue* claims was the standard set forth in *Chapman v. California,* 386 U.S. 18, 24 (1967)—a standard that places the materiality burden on the beneficiary of the false testimony. *United States v. Bagley,* 473 U.S. 667, 680 n.9 (1985). Since *Bagley,* this Court has given no indication that the standard has changed, and, in fact, has reiterated the standard as recently as *Glossip*. *See United States v. Kaufman*, 783 F.2d 708, 709 (7th Cir. 1996) (recognizing standard articulated in *Bagley*).

The State contends that state and federal courts reasonably could be confused about the appropriate standard such that Joubert cannot meet his burden in federal habeas. *See* BIO at 16. But that argument ignores this Court's clear precedent. Not only did the Court not address *Napue* error in *Kyles,* it also pointedly noted that a potential *Napue* claim was "not before" it and emphasized that its decision "does not address *any* claim" involving the introduction of false testimony. *Kyles*, 514 U.S. at 433 & n.7 (emphasis added). It would, therefore, be *unreasonable* and beyond fair-minded disagreement to assume that, in applying *Brecht*'s standard to *Brady* claims, the Court was inviting the courts of appeals to apply it to *Napue* claims as well. The State's reliance on *Shoop v. Hill*, 586 U.S. 45, 48 (2019) (per curiam), is therefore misplaced, *see* BIO at 16.

This is especially so given the courts' repeated admonitions that prosecutor-sponsored false testimony raises special concerns, above those addressed by *Brady v. Maryland*.[6] The knowing use of perjury, this Court has held, "is inconsistent with the rudimentary demands of justice." *Mooney v. Holohan*, 294 U.S. 103, 112 (1935). *Napue* violations are especially "egregious and highly damaging prosecutorial misconduct." *United States ex. rel. Washington v. Vincent*, 525 F.2d 262, 268 (2d Cir. 1975). This is so because, when a prosecutor knowingly sponsors perjury, she engages in a "bad-faith effort to deprive the defendant of his right to due process and obtain a conviction through deceit." *Haskell v. Superintendent Greene SCI,* 866 F.3d 139, 151 (3d Cir. 2017). Thus, *Napue*'s materiality threshold is lower, "not just because [*Napue* cases] involve prosecutorial misconduct, but more importantly because they involve a corruption of the trial process." *United States v. Agurs*, 427 U.S. 97, 104) (1976); *see Nash v. Illinois,* 389 U.S. 906, 907 (1967) (Fortas, J., dissenting) ("there is no place in our system of criminal justice for prosecutorial misconduct"); *see also Com. of Northern Mariana Islands v. Bowie*, 236 F.3d 1083, 1087 (9th Cir. 2001) (the "ultimate mission" of the legal justice system is "utterly derailed by unchecked lying witnesses, and by any law enforcement officer or prosecutor who finds it tactically advantageous to turn a blind eye" to it).

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[6] 373 U.S. 83 (1963).

II. The State is wrong to suggest that the TCCA did not apply the incorrect standard in "any meaningful way."

The State suggests that, whether or not the standard was clearly established federal law, the TCCA may not have applied the wrong standard in "any meaningful way." BIO at 17. In support of its argument, it points to a 2011 decision in which the Texas court cited the *Chapman* standard in a footnote and suggests that the TCCA "may see no meaningful distinction between the two[,] and clarifying the matter would not change its analysis." BIO at 17 (citing *Ex parte Gharhremani*, 332 S.W.3d 470, 478 (Tex. Crim. App. 2011)). Of course, a 25-year-old decision in another case provides no information about what the TCCA did or intended to do in Joubert's case. And, as Joubert argues above, that the TCCA has taken two approaches does not mean that this Court's precedent is not clearly established; any assumptions the TCCA may have made that are contrary to the Court's precedent were not reasonable.

The State suggests that the difference between the *Chapman* and *Brecht* standards is immaterial, and that Joubert conceded as much in a prior petition to this Court. BIO at 17–18 (citing Pet. for Writ of Cert., *Joubert v. Texas*, 142 S. Ct. 2672 (No. 21-6424), at 32)). In so suggesting, the State simply misreads the arguments Joubert made in that petition. There, discussing a circuit split over whether the more lenient *Chapman* standard applies in *Napue* claims, Joubert noted an additional division among the courts applying the more onerous *Brecht* standard. Some courts in that group require the defendant to show only a "reasonable likelihood" that the error *could have* affected the jury; others require the defendant to show a reasonable likelihood that the error *did* affect the judgment of the jury. *See id*. at 24, 29-30;

see also Pet. at 20–21 (describing this splinter). In the language pointed to by the State, Joubert pointed out that both in decisions placing the burden on the beneficiary of the evidence *and* decisions that require a showing from defendants that the evidence merely "could have" affected the verdict, the result is "significantly more favorable to the defendant." *Id* at 32. Joubert did not suggest that there is no difference between a standard that places the burden on the defendant and a standard that places the burden on the State.

III. Joubert's confession does not alter the conclusion that the TCCA's decision was unreasonable.

Relying solely on the fact that Joubert made an inculpatory statement to police before trial, the State argues that the erroneous burden was not prejudicial. BIO at 19. Joubert fully addressed the materiality of the *Napue* error in his petition. Pet. at 23-26. Importantly, although Joubert did make a statement, he denied shooting anyone during the robbery. Pet. at 25. The only testimony that he fired a weapon came from the State's informant, Deshan Glaspie, who owned the gun used to shoot Ms. Jones and whose testimony about the crime was riddled with self-serving falsehoods. It is no secret that "…suspects with nothing to sell sometimes embark on a methodical journey to manufacture evidence and to create something of value, setting up and betraying friends," but "[s]uch false testimony…corrupts the criminal justice system and makes a mockery out of its constitutional goals[.]" *Bowie*, 236 F.3d at 1096. The State cannot prove that the failure to reveal and correct Glaspie's falsehoods did not substantially affect the jury's decision.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted and the judgment of the court of appeals reversed.

Respectfully submitted,

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