

Case No. 25A1399

Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

RICHARD LOUIS ARNOLD PHILLIPS,)
Petitioner,)

vs.)

RAYTHEL FISHER, Warden,)
Valley State Prison,)
Respondent.)

Ninth Cir. No. 25-2789

U.S.D.C. No.
1:19-cv-01509-KES-SAB
Eastern Dist. of California

TO: THE HONORABLE ELENA KAGAN, Supervising Associate Justice of
the Ninth Circuit Court of Appeals:

*On Petition for Certificate of Appealability
to the United States Court of Appeals
for the Ninth Circuit*

RICHARD L.A. PHILLIPS
filing pro se
C-13707
Calif. Health Care Facility
P.O. Box 213040
Stockton, CA 95213

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U.S.D.C. Excerpt 020-021
(21 August 2015 Declaration of
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U.S.D.C. Excerpt 061
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Phillips v. Woodford, 267 F.3d 968 (9th Cir. 2001)

STATUTE:

28 U.S.C. 2254 (d)

28 U.S.C. 2254 (d)(2)

Case No. _____

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TO: THE HONORABLE ELENA KAGAN, Supervising Associate Justice of
the Ninth Circuit Court of Appeals:

RICHARD LOUIS ARNOLD PHILLIPS (Phillips), filing pro se,
petitions for Certificate of Appealability (COA).

I. WHY THIS CHAMBER SHOULD INVEST TIME IN UNDERSTANDING
PHILLIPS' REQUEST:

28 March 2025 – the first day after the district court
denied Phillips' writ of habeas corpus – was the very first day
Phillips' case was not actively before a court in 17,266 days.
Not a single day in 47+ years had Phillips' case been "final."

Phillips sets the tenor of his request with three quotes:

- (1) "Phillips' claim does not depend on his being
innocent. Phillips does not deny that he was
present at the crime scene and that he fired
his gun at the victims. Nor does he deny that
he is guilty of serious offenses. Rather, ...
he would not have been convicted of the ultimate
offense – first degree murder[.]" (Phillips
v. Woodford, 267 F.3d 966 at 977 (9th Cir.
2001) (Emphasis added.))
- (2) "Over the course of his habeas proceedings
Phillips has established that, contrary to her
testimony and [district attorney] Minier's
statements, Colman was offered and received

significant benefits from the state in exchange for testifying as she did.

...

Minier not only failed to disclose the agreement reached with Colman's counsel ... then wilfully, deliberately and unequivocally falsely represent[ed] to the jury in his closing arguments that Colman had "never been promised anything for her testimony in this case."

...

Although whether the state's Napue violations were material to the jury's finding that Phillips had premeditated Bartulis' murder is a closer question, we hold that the evidence of premeditation the prosecution presented...." (Phillips v. Ornoski, 673 F.3d 1168 at 1183; 1186-87 (9th Cir. 2012) (Emphasis in original.))

- (3) "What else remains to be discovered? This is not Due Process!" (Phillips' Opening Brief in Phillips v. Woodford.)

Point three above was written in reference to Freedom of Information Act (FOIA) information disclosing 140 pages of FBI reports and documentation of wiretap recordings withheld by the prosecution. Phillips had filed under FOIA following the 1990 disclosure by a Madera County detective that Phillips had been captured in this case in Utah in 1978, following a taped and traced telephone call with one of the prosecution's witnesses.

The answer to Phillips' rhetorical question turned out to be, quite a bit – each undermining the prosecution's theory of premeditation argued to the jury.

In federal depositions Phillips' co-defendant Sharon Colman (Colman) acknowledged she had testified falsely at Phillips' preliminary hearing, guilt trial, and penalty retrial regarding having possession of Phillips' gun the night of the crime;

Minier's replacement as district attorney released a heretofore withheld letter from Minier to counsel for Colman outlining

a deal requiring Colman testify in compliance with previous recorded statements given to the detectives investigating this case;

On 29 July 2015 special prosecutor brought in by Madera County inadvertently provided Phillips with a CD containing two 24 December 1977 law enforcement interviews with material witnesses that had never been provided to the defense; and,

On 04 April 2018 the prosecution provided to Phillips a previously undisclosed four page FBI Airtel Memo dated "3/10/78" that details Madera County detective Glenn Seymour (Seymour) was obtaining confidential assistance from the telephone company without a warrant. The 3/10/78 FBI Airtel Memo also disclosed the name of Tamara Nichols (Nichols), a person assisting the FBI and Madera law enforcement regarding telephonic contact with Phillips. Nichols' name appears in no other report provided to the defense since 1977. Nichols possessed information critical to refuting the prosecution's theory of premeditation.

II. BASIS FOR COA:

In the district court Phillips petitioned for a writ of habeas corpus; an Order directing the FBI to provide under seal to the Court unredacted copies of all reports, inclusive of those still being withheld from Phillips – and all wiretap tapes that have never been provided to Phillips; and an evidentiary hearing. Phillips raised five grounds for relief. Phillips seeks COA for appellate review regarding two of the raised issues. In his writ Phillips pled:

Ground One: The Due Process Clause of the Federal Constitution is violated if the State

withholds from the defense materially favorable evidence. The withheld evidence is material if nondisclosure reasonably would have effected defense investigation or trial strategy.

...

Ground Three: Due Process, guaranteed by the Fourteenth Amendment is violated when the prosecutor structures an accomplice's plea agreement requiring the witness testify in accordance with previous statements to law enforcement; the agreement omits any requirement of truthful testimony.

Ground One: The district court held:

"All but one of petitioner's objections were squarely addressed by the findings and recommendations. Petitioner's only unaddressed objection is as follows: Petitioner argues that the findings and recommendations should have employed a de novo standard of review, rather than 28 U.S.C. § 2254(d)'s deferential standard of review, to his Brady claim regarding the FBI reports and recordings. See Doc. 74 at 9-11. He points out that the state trial court concluded that petitioner "fail[ed] to offer documentary evidence from which one could reasonably conclude that the referenced report and recording exist[]," and denied the claim on that basis. Doc. 38-25 at 5-6. Petitioner points out that he submitted to the state trial court multiple FBI reports which clearly show that the FBI recorded his telephone calls. See Doc. 3 ("Excerpts") at 7, 54, 61. Petitioner argues that the state court's ruling "resulted in decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding," 28 U.S.C. § 2254(d)(2), and therefore, AEDPA's deferential standard of review should not apply. Doc. 74 at 9-11; see Taylor v. Maddox, 366 F.3d 992, 1001 (9th Cir. 2004) ([W]here the state courts plainly misapprehend or misstate the record in making their findings, and the misapprehension goes to a material factual issue that is central to petitioner's claim, that misapprehension can fatally undermine the fact-finding process, rendering the resulting finding unreasonable....").

Even if this Court were to apply a de novo standard of review to this claim, however, petitioner would not be entitled to habeas relief." (Denial (Doc. 65-67) at p. 2:6-24.)

The district court focused on one paragraph regarding Colman in Phillips' Brief in Support of the writ. The district court did not reach the merits of Phillips' Brady claims regarding any other withheld evidence, nor impact on pre-trial investigation.

The Case: On 07 December 1977, surrounded in the dense tule fog of Chowchilla, California Phillips, Ron Rose (Rose) and Bruce Bartulis (Bartulis) met at a freeway offramp to review stolen building materials that were in short supply in California. (Rose and Bartulis were partners in a construction company. Rose and Phillips had a pending cocaine shipment enroute from Peru.)

Colman, Phillips' live-in girlfriend was sitting in the car next to the Rancho occupied by Bartulis and Rose. Due to the fog, the truck with supplies was late. The meeting took a dark twist when Richard Graybill (Graybill) arrived, and Phillips shot into the Rancho. Phillips told Graybill to leave immediately.

Bartulis suffered a single fatal wound to the chest. Rose was struck five times but survived. Phillips removed both victim's wallets/identification, leaving behind several thousand dollars in cash. Phillips and Colman fled the crime scene.

Arrest warrants were issued for Phillips and Colman. Graybill, working with law enforcement, convinced Colman to cross Phillips and turn herself in. Before Colman was interviewed by law enforcement, a jail deputy wrote a report that he overheard Graybill tell Colman they only had enough to put her at the crime scene, and to "bluff all the way." This was never disclosed to the jury.

After deciding to cross Phillips, but before turning herself

in to Madera Sheriff's Department, Colman told Dr. ReVille (Phillips' brother-in-law) that the windshield had been broken in the vehicle she and Phillips had been driving when "both parties started shooting at each other at the same time." The jury was never told of this conversation.

The prosecution had the Rancho destroyed prior to Phillips' arrest; there were no crime scene photos taken of the inside of the driver's side of the vehicle.

The prosecution theory of the case presented to the jury was that Phillips traveled to Sacramento to establish an alibi and borrow a car; Phillips "brought with him his gun, his .45 weapon."¹ Phillips' actual reason for this was because Phillips lured Rose and Bartulis to a remote location for purpose of robbing and killing them. There was no cocaine deal; there was no stolen building supplies.

Rose testified that after his employees warned him to be careful around Phillips, he brought with him to the meeting a .44 magnum revolver, however, the ammunition was behind the seat and he did not fire any shots.

Richard Graybill (Graybill) testified as a prosecution witness. He denied being present at the crime scene. Because the name of Tamara Nichols (Nichols) did not appear on any pre-guilt trial discovery document, Nichols was not interviewed, nor called as a rebuttal witness. (See attached U.S.D.C. Excerpts

¹ The actual reason for Phillips' travel to Sacramento was given to law enforcement in the withheld law enforcement taped interview disclosed in 2015; in federal deposition Colman admitted she, not Phillips, transported and had possession of Phillips' gun the night of the crime.

pp. 020-21 at 7.; p. 076.)

Legal Arguments for Ground One COA: Ground One is a claim of violation by the prosecution of it's constitutional obligations under Brady. Initially Phillips makes this point: The requirements of the prosecutor under Brady are not diminished by a defendant's knowledge of events. That Phillips knew of the conversations between himself and Graybill is separate and distinct from the defense being provided information there are law enforcement recordings of these conversations. This is especially true when, as here, the defense pre-trial is granted a discovery motion for all taped interviews. That Phillips' prosecutor apparently chose to expunge from the case files all reports from the FBI and local law enforcement regarding tracing and recording Phillips' telephone calls (see attached U.S.D.C. Excerpt p. 061 – Letter to Phillips from office of District Attorney) does not lessen the Brady constitutional duty. Phillips briefing what the to this day withheld wiretap tape will show (Graybill apologizing for arriving late and stating "the shoot-out would not have happened if I hadn't been late") does not excuse a Brady violation.

The district court correctly held Ground One passed through the threshold of 28 U.S.C. § 2254(d)(2) because the state habeas court ignored the FOIA provided partially redacted FBI reports stating Phillips' phonecalls were recorded; Phillips was arrested following the tracing of one of his calls. (See page 4 above.)

The district court focused on one paragraph regarding Colman in Phillips' writ. The district court did not reach the merits

of Phillips' claims regarding any other witness, nor the claim of impact on pre-trial investigation.

In his writ before the district court Phillips provided excerpts to make a prima facie showing:

- (a) the prosecution withheld approximately 140 pages of FBI reports;
- (b) the FBI recorded telephone conversations between Phillips, Graybill and Colman;
- (c) under FOIA the FBI is continuing to refuse to disclose reports – have never provided tapes or transcripts of the recorded conversations;
- (d) the prosecutor withheld tapes of two law enforcement interviews with key witnesses.

On its face de novo review requires review of all evidence in support of a Brady claim. After looking at all available evidence in support then, and only then, can a determination of materiality – is it reasonably probable at least one juror would have looked at the withheld evidence and found reasonable doubt as to premeditation of the killing of Bartulis – be made.

COA should issue for the Ninth Circuit to determine if it was clear error for the district court to make a finding of law (rule on materiality) when 28 U.S.C. § 2254(d)(2) has been met, without reviewing all evidence in support of a Brady claim, inclusive of granting Phillips' motion for an Order directing the FBI to provide to the court under seal, the currently withheld reports and wiretap tapes and hear for itself Graybill refer to the confrontation as a "shoot-out." (See attached U.S.D.C. Excerpt p. 076, Point 3.)

Ground Three: The facts of Ground Three are complex and convoluted. In Phillips v. Ornoski the Court noted Phillips, the

only California death row petitioner granted permission to proceed pro se in his capital litigation, had not asserted prosecutorial misconduct regarding Point (2) on p. 1-2 above.

After studying relevant case law Phillips determined withholding the plea agreement fell under Napue.

As Phillips was briefing what became Phillips v. Ornoski, California passed new penal code statutes regarding post-conviction discovery (PC §1054.9). Filing pro se, Phillips petitioned in state court for discovery regarding a statement Colman's trial counsel had made about a letter she had received from then district attorney David Minier (Minier). As Phillips was writing his Reply Brief in the Ninth Circuit, Minier's replacement as district attorney provided Phillips with a copy of the requested letter. (See attached U.S.D.C. Excerpt p. 061.) Phillips had no idea what to do with this newly discovered support for his claim. Phillips called the head of the Federal Defender's Office, then a law professor at Stanford Phillips has a rapport with. No one knew of any court rule or case law for this. So on page 39 of his Reply Brief Phillips wrote a footnote explaining the above, concluding with "see p. 39a attached[]" and included Minier's letter as the next page in his brief! This led to the Ninth's writing: "Over the course of his habeas proceedings Phillips has established..." (see (2) at p. 1 above).

Phillips asserts the existence of a deal, and the contents of a deal, are two distinct issues. Phillips urges withholding the existence of a plea deal violates Napue; structuring a deal

locking a witness into previous statements "which are tape recorded" the prosecutor knew or should have known were false, and excluding a requirement of truthful testimony in exchange for charges being dismissed, is prosecutorial misconduct. This allowed the prosecutor to falsely tell the jury Phillips flew to Sacramento, carrying his .45 automatic, so he could travel to Madera and shoot Bartulis and Rose.

Phillips' co-defendant Colman, facing the death penalty, as a result of this pre-trial plea agreement, was released on her own recognizance.

When the Ninth Circuit ordered partial retrial, Phillips filed a writ of habeas corpus in the state trial court. The state court held Phillips could have filed at the Ninth Circuit for an evidentiary hearing when he received the plea agreement letter, and because Phillips did not, the issue is waived.

The magistrate held the state court ruling was presumed correct under the AEDPA.

Simply put, there is no provision in the Federal Rules of Appellate Procedure for Phillips file for an evidentiary hearing when briefing in the court of appeals. Phillips urges the state court's factual finding relying on a non-existent federal procedure does not meet the deference standard of the AEDPA.

COA should issue to determine (a) may a district court rely on a state court ruling citing an unavailable procedure; and (b) the merits of Phillips' claim of violation of due process as a result of prosecutorial misconduct.

III. CONCLUSION:

This discussion comes full circle back to the Ninth's writing at p. 2 above: "We hold that the evidence of premeditation the prosecution presented...." Phillips urges in a claim of constitutional violation as a result of the prosecution's violation of Brady, a finding of materiality of what was not presented as a result of a Brady violation can only be made after de novo review of all evidence, inclusive of what is acknowledged still being withheld by an agency actively involved in the prosecution.

COA should issue for a review of clear error in the district court's determination of what constitutes de novo review.

Phillips so prays.

DATED: 14 May 2026


RICHARD LOUIS ARNOLD PHILLIPS
filing pro se

DECLARATION OF TAMARA GAEL NICHOLS BERESS

I, TAMARA GAEL NICHOLS BERESS, SAY:

1. Due to the passage of time, I do not remember dates or even years, however, I remember events in proximity to others.
2. When Richard "Speed" Phillips and Sharon Coleman were wanted in connection with the charges for which Speed is now in prison, I was employed by the Carnation Restaurant on Blackstone, in Fresno, California as an Assistant Manager.
3. Before Speed's case happened, for a short period of time Sharon Coleman was living with me and I introduced her to Richard Graybill.
4. After Speed's case happened and after Sharon Coleman had been released from jail in Madera and went back to living with Richard Graybill, Ms. Coleman and Mr. Graybill used the payphones at the Carnation Restaurant to receive calls from Speed.
5. After Mr. Graybill and Ms. Coleman were taken into custody in Fresno for Heroin sales, Sharon told me she had to tell law enforcement that these phones were how she had been receiving calls from Speed. Individuals who identified themselves as FBI Agents asked me if they could record the payphones for calls from Mr. Phillips and of course I said yes.
6. Several years ago, Speed talked with my daughter and told her that he had received a partial reversal in his case, and that he wanted to write or speak with me. In subsequent communications Speed told me that he had filed to obtain FBI documents, and that these documents said his calls were recorded.
7. Prior to Speed's original trial I was never interviewed by anyone from Speed's defense team.
8. Speed had requested I provide a declaration as to these matters but I did not receive his request at that time. I was going through ongoing medical issues that had hospitalized me several times and I had moved a few times and changed my address before his request finally reached me.

I declare under penalty of perjury the above is true and correct. If called, I would so testify. Executed on the 26th day of August 2015 in, Tempe, Arizona.


TAMARA GAEL NICHOLS BERESS

ERNEST J. LICALSI
District Attorney



GOVERNMENT CENTER
209 W. Yosemite Avenue
Madera, California 93637

Telephone: (559) 675-7726
Facsimile: (559) 673-0430

OFFICE OF THE
DISTRICT ATTORNEY

October 29, 2007

Richard Louis Arnold Phillips
C-13707 1-EB-94
San Quentin State Prison
San Quentin, CA 94964

RE: Post-Conviction Discovery Ruling

Dear Mr. Phillips:

Pursuant to the Madera Superior Court's September 21, 2007 "Ruling on Motion for Post Conviction Discovery," please find enclosed a letter dated March 6, 1978 from District Attorney David D. Minier to Sharon Coleman's attorney, Cassandra Dunn.

Please be advised that I have looked through all of the Madera County Sheriff's Department files, as well as the District Attorney's Office's files, and have found no reports or notes that speak of a traced phone call that led to your arrest in Utah. Thus, I will be filing an affidavit in the Madera Superior court to that effect.

Sincerely,

Ernest J. LiCalsi
District Attorney

Cc: Katherine L. Hart, Attorney at Law
R. Todd Marshall, Deputy Attorney Attorney

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DECLARATION OF TAMARA GAEL NICHOLS

I, Tamara Gael Nichols say,

1. In December of 1977 I was living in Fresno, California, working as an assistant manager for the Carnation Family Restaurant on Blackstone.

2. Richard Dale Graybill (Graybill) was living with me at the time. I had met Graybill through Richard "Speed" Phillips (Speed), whom I had dated in 1975.

3. Due to the passage of time I do not recall the date, but am told that it was December 7, 1977, Graybill came home extremely upset. He told me that a business deal had gone completely sour and ended in a shoot-out. Graybill stated all of a sudden both parties started shooting at each other. He kept repeating in substance, "they started shooting at each other and Speed shot the hell out of everything."

4. I remember hearing Graybill and Gary Bishop (Bishop) discussing how the deal had gone bad, and heard Bishop state in substance that when he arrived with the truck of supplies, all he could see was fire trucks and what he thought were police cars, so he kept on driving.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and if called to testify, I would testify as written. This declaration was executed on 24 September 1991 at Madera, California.


TAMARA GAEL NICHOLS

CERTIFICATE OF SERVICE

RICHARD LOUIS ARNOLD PHILLIPS,
Petitioner,

Case No.

vs.

D.C. No. 1:19-cv-01589-
KES-SAB, Eastern Dist. of
California - Fresno

RAYTHEL FISHER, (former) Warden,
Valley State Prison,
Respondent - /

I, the undersigned, hereby declare: I am a citizen of the United States; over the age of 18 years; and am a party to the above entitled matter. My business/residence address is:

C-13707
P.O. Box 213040
Stockton, CA 95213

and on below handwritten date I sent a true and correct copy of:

PETITION FOR CERTIFICATE OF APPEALABILITY

to the below listed parties by placing same in an envelope, postage prepaid, and depositing it in the institution mail for processing in accordance with institution procedures for the handling of outgoing inmate legal mail.

OFFICE OF ATTORNEY GENERAL
1300 I Street
Sacramento, CA 95814

I declare under penalty of perjury: The foregoing is true and correct; this was executed on the 14th day of May, 2026, at Stockton, San Joaquin County, California.


RICHARD LOUIS ARNOLD PHILLIPS
filing pro se