

26-5056

No. \_\_\_\_\_

FILED

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SUPREME COURT U.S.

**ORIGINAL**

IN THE  
SUPREME COURT OF THE UNITED STATES

Pharoah Gerald Ashley, PETITIONER

vs.

STATE OF MINNESOTA, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

MINNESOTA COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

Pharoah Gerald Ashley

1101 Linden Lane

Faribault, MN 55102

## Questions Presented

Whether the Minnesota Court of Appeals violated the Due Process clause of the fourteenth Amendment by not upholding or understanding, the duty and responsibility to correct known false testimony falls on representatives of the state not defense counsel.

Whether a state court unreasonably applies clearly established Federal Law when it permits its state prosecution to avoid its Constitutional obligation and stay silent in the face of known false testimony. Contrary to this court's holdings in;

Napue v. Illinois, 360 U.S. 264 (1959)

Giglio v. UNITED STATES, 405 U.S. 150 (1972)

Glossip v. Oklahoma, 604 U.S. 226 (2025)

### **List of Parties**

Petitioner: Pharoah Gerald Ashley

Respondent: State of Minnesota

### **Opinions below**

Minnesota Court of Appeals opinion affirming conviction (attached)

Minnesota Supreme Court denying review (attached)

### **Jurisdiction**

This court has jurisdiction under 28 U.S.C. § 1257(a).

The final judgement of the MN courts was on 12/31/25.

This petition is timely filed within 90 days of judgement.

### **Constitutional Provisions Involved**

U.S. Const. Amend. XIV, § 1 (Due Process Clause)

### **Statement of the case and procedural history.**

Mr. Ashley was charged with attempted second-degree murder, second degree assault with a dangerous weapon, and firearm possession by an ineligible person following an incident on October 4<sup>th</sup>, 2022. A jury convicted him on all counts.

The conviction rested primarily on the testimony of one eyewitness R.T., who identified Mr. Ashley as the shooter. R.T. claimed to seen thru a peephole.

During trial R.T. testified that he had been sober for thirteen years, had successfully completed probation, and no longer used drugs and alcohol.

"I been on probation for thirteen years. I have successfully passed probation. I don't do drugs anything of that sort." "My abstinence, that's important to me." "I'm successfully off probation 13 years, I have 40 years of probation." "Yes, and I'm proud of that, that's why I said that about drinking." (T.T. pg. 231-233)

In fact, R.T. had violated probation for alcohol use, drug use, and failure to submit to drug testing. R.T. had multiple DWI convictions within the thirteen years of testified to sobriety. These facts were known or should have been known to the prosecution, as they were discussed during pretrial proceedings as reflected in the district court's rulings on evidentiary motions. (T.T. pg. 13, 22-23) (Evid. H. Ex. 2-3)

Mr. Ashley's trial counsel did not impeach R.T. with this information and the prosecution did not correct R.T.'s false statements. The jury was left with the impression that R.T. had lived a sober and law-abiding life for over a decade, enhancing his credibility.

The Minnesota Ct. of Appeals rejected petitioners *Napue* and *Giglio* argument, affirmed the conviction holding that no *Due Process* violation occurred.

Pg.26 they held, the testimony was elicited by Ashley's defense counsel, and "Ashley cites no caselaw holding that the state had to correct R.T.'s testimony under these circumstances." The MN Supreme Ct. denied review.

### Standard of review

The Supreme court has recognized that a prosecutor's failure to correct the false testimony of a witness, which the prosecutor knows to be false violates *Due Process*. *Napue v. Illinois*, 360 U.S. 264, 269, 79 S. ct. 1173 3 L. 2d 1217 (1959). This is true whether the prosecutor solicits false testimony or "*allows it to go uncorrected when it appears.*" *Id.* When false testimony "*may have had an effect on the outcome of the trial,*" the judgement must be reversed. *Id.* At 272; see also *United States v. Agurs*, 427 U.S. 97, 103, 96 S. ct. 2392, 49 L. Ed. 2d 342 (1985). ("*A conviction obtained by the knowing use of perjured testimony is fundamentally unfair, and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgement of the jury.*")<sup>17</sup> "*A finding of materiality of the evidence is required under Brady,*" and a new trial is required if the false testimony could... in any reasonable likelihood have affected the judgement of the jury." See *Giglio v. United States*, 405 U.S. 150, 153-54, 92 S. ct. 763, 31 L. Ed. 2d. 104 (quoting *Napue*, 360 U.S. at 271) (ellipses in *Giglio*)

*"To establish a due process violation based on the prosecutorial use of false testimony, a defendant must show that (1) The prosecution used false testimony; (2) The prosecution should have known or actually knew of the falsity; (3) There was a reasonable likelihood that the false testimony could have affected the jury's verdict."* United States v. Bass, 478 F. 3d 948, 951 (8<sup>th</sup> Cir. 2007) (quoting United States v. Funchess, 422 F. 3d 698, 701 (8<sup>th</sup> Cir.2005)). *"The Agurs standard for evaluating the materiality of the governments knowing use of perjured testimony is less onerous... than the standard of materiality for a general Brady violation,"* United States v. Clay, 720 F. 3d 1021, 1026 (8<sup>th</sup> Cir. 2013). A reviewing court *"must evaluate the reasonable impact of the omitted evidence, and the governments misleading closing arguments on the jury verdict."* United States v. Bigeleisen, 625 F. 2d 203, 208 (8<sup>th</sup> Cir. 1980).

### **Argument**

1. R.T. provided false testimony, the prosecution used R.T.'s false testimony.

At trial R.T. testified that he had been sober for thirteen years, had successfully completed probation and no longer used drugs or alcohol. (T.T. pgs. 231-33). This was demonstrably false. Court and probation records show that R.T. has multiple DWI convictions within this time frame, (T.T. pg. 13, 22-23) had violated probation for consuming alcohol, failing drug tests, and using controlled substances. (Evid. H. Ex. 2-3) The false testimony directly enhanced R.T.'s credibility before the jury. The prosecution used R.T.'s

enhanced credibility and by not correcting R.T.'s perjury before the jury in his closing argument.

"The only person who saw – can say that they saw the defendant at 865 Hague Ave. on October 4<sup>th</sup>, 2022 is Rodgerick Thomas."

"You're the sole judges of whether Mr. Thomas's testimony is to be believed." (T.T. pg. 566, 11-13, 20-21)

2. The state knew or should have known the testimony was false.

The prosecution had access to R.T.'s criminal and probation history. Prior to trial, the court held hearing on motion in limine addressing R.T.'s 2008 felony drug conviction, gross misdemeanor DWI, and misdemeanor DWI convictions. The state therefore knew of R.T.'s substance related history and probation issues. Under Napue, 360 U.S. at 269, the prosecutor's duty to correct falsehoods applies even when the false statement emerges during defense questioning. Silence in the face of known perjury violates *Due Process*.

By failing to correct R.T.'s false sobriety claims the prosecution permitted the jury to receive a material misleading impression of the witness's reliability and truthfulness.

3. There was a reasonable likelihood that the false testimony could have affected the jury's verdict and was material to the outcome.

R.T.'s credibility was the linchpin of the state's case. No other eyewitness identified Ashley as the shooter. Evidence corroborating R.T.'s identification

was circumstantial. By falsely portraying himself sober and rehabilitated, R.T. bolstered his credibility and moral standing before the jury. There is at least a reasonable likelihood that the corrected truth about his substance use and probation violations would have affected the jury's assessment of his testimony.

The Supreme Court has made clear that credibility related falsehoods can be material when a witness's testimony is central to the state's case. Giglio, 405 U.S. at 154; Weary v. Cain, 577 U.S. 385, 392 (2016).

(T.T. pg. 8, 4-5) Credibility is central, its critical.

That standard is satisfied here.

#### **Additional arguments**

1. The MN Ct. of Appeals on pg. 26 of there opinion state. "Ashley cites no caselaw holding that the state had to correct R.T.'s testimony under these circumstances."

But in fact, petitioner cites *Napue*, *Giglio*, and *Glossip* in handwritten Pro Se brief. (Please see table of authorities/pgs.14-20) Also petitioner is Pro se and a layman but is unaware of any circumstance in which a prosecutor can knowingly allow false testimony to go uncorrected and presented to a jury.

2. The Ct. of Appeals ruled R.T.s nontestimonial outbursts did not prejudice Ashley.

They point to the court's curative instruction.

But in fact, a curative instruction is supposed to come promptly, not three days later to allow inflammatory comments made before the jury to fester. R.T.s vulgar language, racial slurs, threats, and other comments tainted the jury. The jury was no longer impartial.

3. The Ct. of appeals ruled the states pre-trial discovery violation of exculpatory cell tower evidence did not violate petitioners *Due Process* or violate Brady v. Maryland, 373 U.S. 83 (1963).

Petitioner contends the investigation lacks integrity and due diligence.

4. The Ct. of Appeals rejects petitioners cumulative effect argument. Holding that these errors were harmless and did not deny a fair trial.

Petitioner hardly thinks any of this is harmless. The trial was fundamentally unfair and violated substantial Constitutional rights.

### **Reasons for Granting the Writ**

This case presents a direct conflict with this court's precedents. In *Napue* and *Glossip* this court held that the duty and responsibility to correct known or reasonably knowable false testimony falls on representatives of the state, not defense counsel.

To ensure uniformity between State and Federal Laws and to clarify to the State of Minnesota and its Ct. of Appeals, its prosecutors are Constitutionally obligated to correct all known and reasonably knowable false testimony. *Giglio* extends that obligation to information constructively known by the prosecution team, including probation officers and investigators.

### Conclusion

The petition for a WRIT OF CERTIORARI should be granted.

Respectfully submitted,

Pharoah Gerald Ashley

Petitioner Pro Se

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*Pharoah G. Ashley*  
*4-1-2026*