

## 22-7466 GLOSSIP V. OKLAHOMA

DECISION BELOW: 529 P.3d 218

LOWER COURT CASE NUMBER: PCD-2023-267

QUESTION PRESENTED:

Justin Sneed was, in the State's words, its "indispensable witness," and Richard Glossip's "fate turned on Sneed's credibility." Sneed is the person who "bludgeoned the victim to death, and his testimony linking Glossip to the murder was central to the conviction." State Stay Resp. 10, *Glossip v. Oklahoma*, No. 22A941 (U.S.). He only claimed Mr. Glossip was involved after being fed Mr. Glossip's name six times and threatened with execution. And his accounting of basic facts about the crime has shifted dramatically with each telling.

With Sneed's credibility already tenuous, the State undisputedly hid from the jury Sneed's having "seen a psychiatrist" who diagnosed Sneed with a psychiatric condition that rendered him volatile and "potentially violent," particularly when combined with methamphetamine use, a street drug Sneed was abusing at the time he murdered Barry Van Treese. *Id.* In fact, the State allowed Sneed to affirmatively tell the jury he had *not* seen a psychiatrist.

Before the Oklahoma Court of Criminal Appeals (OCCA), the State confessed error, admitting that the failure to disclose the truth about Sneed's psychiatric condition, leaving the jury with Sneed's uncorrected false testimony and then suppressing this information for a quarter-century, rendered "Glossip's trial unfair and unreliable." *Id.* at 4-5. Before this Court, the State has admitted Mr. Glossip is entitled to a new trial on these grounds, as well as in light of "cumulative error" regarding "multiple issues raised in Glossip's Post-Conviction Relief Application." *Id.* at 4. But the OCCA has refused to stop the execution of an innocent man who never had a fair trial.

This petition presents the following questions:

1. a. Whether the State's suppression of the key prosecution witness's admission he was under the care of a psychiatrist and failure to correct that witness's false testimony about that care and related diagnosis violate the due process of law. See *Brady v. Maryland*, 373 U.S. 83 (1963); *Napue v. Illinois*, 360 U.S. 264 (1959).

b. Whether the entirety of the suppressed evidence must be considered when assessing the materiality of *Brady* and *Napue* claims. See *Kyles v. Whitley*, 514 U.S.

419 (1995).

2. Whether due process of law requires reversal, where a capital conviction is so infected with errors that the State no longer seeks to defend it. *See Escobar v. Texas*, 143 S. Ct. 557 (2023) (mem.).

IN ADDITION TO THE QUESTIONS PRESENTED, THE PARTIES ARE DIRECTED TO BRIEF AND ARGUE THE FOLLOWING QUESTION: WHETHER THE OKLAHOMA COURT OF CRIMINAL APPEALS' HOLDING THAT THE OKLAHOMA POST-CONVICTION PROCEDURE ACT PRECLUDED POST-CONVICTION RELIEF IS AN ADEQUATE AND INDEPENDENT STATE-LAW GROUND FOR THE JUDGMENT. JUSTICE GORSUCH TOOK NO PART.

ORDER OF JANUARY 26, 2024:

CHRISTOPHER G. MICHEL, ESQUIRE, OF WASHINGTON, D. C., IS INVITED TO BRIEF AND ARGUE THIS CASE, AS AMICUS CURIAE, IN SUPPORT OF THE JUDGMENT BELOW. JUSTICE GORSUCH TOOK NO PART.

CERT. GRANTED 1/22/2024