

CAPITAL CASE

No. WR-50,961-12

**IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF TEXAS AND THE 21ST JUDICIAL DISTRICT
COURT OF BASTROP COUNTY, TEXAS**

EX PARTE RODNEY REED,

Applicant.

On Application for a Writ of Habeas Corpus in Cause No.
8701

**BRIEF OF AMICUS CURIAE NATIONAL ASSOCIATION OF CRIMINAL
DEFENSE LAWYERS IN SUPPORT OF APPLICANT RODNEY REED**

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INTEREST OF *AMICUS CURIAE*¹

The National Association of Criminal Defense Lawyers (NACDL) is a nonprofit voluntary professional bar association founded in 1958 that works on behalf of criminal-defense attorneys to ensure justice and due process for individuals accused of crime or misconduct. NACDL is the only nationwide professional bar association for public defenders and private criminal-defense lawyers. It has a national membership of several thousand direct members and approximately 40,000 affiliated members, who include private criminal-defense lawyers, public defenders, military-defense counsel, law professors, and judges. NACDL is dedicated to advancing the proper, efficient, and just administration of justice. The organization files numerous amicus briefs each year in the United States Supreme Court and other federal and state courts, seeking to assist in cases that present issues of broad importance to criminal defendants, criminal defense lawyers, and the justice system as a whole. This case presents a question of substantial importance to NACDL members and their clients because it concerns whether investigations heavily tainted by cognitive bias can serve as the foundation for a fair trial.

¹ * Pursuant to Tex. R. App. P. 11, amicus affirms that no counsel for a party authored this brief in whole or in part, and that no person other than amicus or its counsel made any monetary contributions intended to fund the preparation or submission of this brief.

INTRODUCTION

The prosecutor's duty is to seek justice, not convictions. The Supreme Court recognized nearly a century ago that the prosecutor represents a "sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all," and "whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done." *Berger v. United States*, 295 U.S. 78, 88 (1935). This principle is not only constitutional but is also codified in the Texas criminal code.

It is the fundamental role of defense counsel to protect the rights of criminal defendants. The reality, however, is that the ability of defense counsel to protect the constitutional rights of their clients depends significantly on, and is limited equally by, fairness from the government. Prosecutions must be premised on the pursuit of truth. Decisions by prosecutors and investigators must be based in objectivity. Biases that deprive an investigation of such objectivity result in violations of due process. This case demonstrates why.

In 1996, the State of Texas divined a theory surrounding the murder of Stacey Stites and Rodney Reed's role in that murder. It has never looked back. The approach to the prosecution of Mr. Reed, through decades of exculpatory revelations, has been to sacrifice logic, probability, and reason, in exchange for a pre-determined outcome. The evidence that has come to light, obtained over the opposition of the government at every turn, cumulatively and overwhelmingly leads to a single conclusion: that no rational jury could convict Rodney Reed of

the murder of Ms. Stites based on facts that should have been known to the government in 1996 and are unequivocally known to the government today.

NACDL writes as amicus to highlight the infectious role that biases play in a government investigation, including those of “tunnel vision” and “confirmation bias.” This case represents clear-cut examples. From its inception, investigators have never wavered in their fixation on Mr. Reed and have never taken seriously the obvious: that Ms. Stites, who is now known to have been in a romantic relationship with Mr. Reed, was likely murdered by her abusive fiancé. Investigators have also never accounted for the obvious reason why this fixation on Mr. Reed exists—Ms. Stites’s fiancé was one of their own.

The investigative flaws in this case led to a trial lacking in fundamental fairness. These flaws were cumulatively and substantively significant. Mr. Reed’s defense team has spent decades uncovering evidence one piece at a time. Nearly all of this evidence would have been available to Mr. Reed at his first trial 30 years ago, had the state, investigators and prosecutors alike, focused on justice and not victory.

The Constitution protects the right to due process as a fundamental liberty. In circumstances such as this, where an investigation is so tainted by bias, so objectively deficient, and so focused on a singular pretextual outcome, the deprivation of liberty is guaranteed. This case is one such example, albeit an extreme one. This Court should remedy the violations of Rodney Reed’s due process rights.

ARGUMENT

I. TUNNEL VISION AND CONFIRMATION BIAS ARE INFECTIOUS DETRIMENTS TO DUE PROCESS.

A. Tunnel vision and confirmation bias taint police investigations.

The adequacy of the government's investigation in a criminal case serves as a critical check on the deprivation of liberty. *See Kyles v. Whitley*, 514 U.S. 419, 446 n.15 (1995) (“indications of conscientious police work will enhance probative force and slovenly work will diminish it”); *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 218 (2009) (recognizing that those working for law enforcement “may feel pressure—or have an incentive—to alter the evidence in a manner favorable to the prosecution.”).

Yet, investigations may be hindered by the pernicious biases inherent to humankind. The human mind craves categorization; it seeks a sense of belonging and a community identity at the cost of whomever is beyond that identity. *See, e.g., Roy F. Baumeister & Mark R. Leary, The Need to Belong*, 117(3) PSYCHOLOGICAL BULLETIN 497 (1995) (finding a “powerful . . . extremely pervasive motivation” for humans to belong in a group and ensure their continued belonging); Henri Tajfel et al., *Social Categorization and Intergroup Behaviour*, 1 EUR. J. SOC. PSYCH. 149 (1971) (finding that participants in a study which placed them in arbitrary in- and out-groups demonstrated significant willingness to discriminate in favor of their own groups).

Police are no different; investigators are no different; prosecutors are no different—these humans all belong to a certain community, and their minds innately work consciously and unconsciously to remain a part of their groups. In the context of criminal proceedings involving another officer, the need to belong rears its head as a possibility for tunnel vision and confirmation bias.

Permitting the idea that actors of the state are fallible and, as science dictates, liable to bias, then investigations tainted by tunnel vision and confirmation bias are less likely to result in fair trials because of the risk that leads that are deemed inconsistent with one theory will go unexplored, thereby potentially foreclosing avenues to prove innocence forever. Brian Reichart, *Tunnel Vision: Causes, Effects, and Mitigation Strategies*, 45 HOFSTRA L. REV. 451, 462 (2016). Such investigations therefore heighten the risk that exculpatory evidence will remain undiscovered and that the facts presented to a jury will be woefully incomplete.

Tunnel vision “typically occurs early in an investigation and results from a narrow focus on a particular theory This emphasis results in the unconscious filtering of information and contributes to an inappropriate analysis of evidence.” D. Kim Rossmo & Joycelyn M. Pollock, *Confirmation Bias and Other Systemic Causes of Wrongful Convictions: A Sentinel Events Perspective*, 11 NE. U. L. REV. 790, 812-13 (2019).

Confirmation bias refers to “a type of selective thinking,” *id.* at 814, that involves “seek[ing] or interpret[ing] evidence in ways that support existing beliefs, expectations, or hypotheses,” Keith A. Findley & Michael S. Scott, *The*

Multiple Dimensions of Tunnel Vision in Criminal Cases, 2006 WIS. L. REV. 291, 309 (2006).

Tunnel vision and confirmation bias can infect each aspect of an investigation: the way that officers search for evidence, their interpretation of such evidence, their willingness to follow leads, their perceptions of witness credibility, and more. *See* Rossmo & Pollock at 814; *see also* Findley & Scott at 312-13 (empirical data reflects that recollections of information are done in a biased manner to confirm preexisting beliefs and greater weight is given to information that does the same). Investigators who jump to premature conclusions are more likely to conduct investigations tainted by tunnel vision and confirmation bias, which in turn causes “poor thinking, logic failures, misjudgment of witness reliability, and flawed evidence assessments.” Rossmo & Pollock at 810.

B. Bias is particularly prevalent in investigations involving police officers.

Investigations involving police officers are particularly vulnerable to the infection of bias. “When the investigator and the subject of investigation are members of the same organization or occupation, the investigator may interpret evidence in a biased fashion due to social pressures.” Kendall Godley, *Police Investigating Police: Systemic Injustice Shields Officers from Accountability*, 98 DEN. L. REV. 6, 16 (2021).

It is well-documented that “[i]n criminal investigations, police officers receive preferential treatment” from their officer peers. Godley, at 17, citing Erwin

Chemerinsky, *The Role of Prosecutors in Dealing with Police Abuse: The Lessons of Los Angeles*, 8 VA. J. SOC. POL'Y & L. 305, 321 (2001) (finding officers receive preferential treatment to civilians). When officers are investigated, their peers view the officer-suspects as not having reason to fabricate evidence or lie during their statements, often leading to materially preferential treatment compared to similarly situated civilians. Even in circumstances of blatant or known misconduct, fellow officers refuse to investigate or testify against one another. *See generally* John Kleinig, *The Blue Wall of Silence: An Ethical Analysis*, 15 INT'L J. APP. PHIL. 1 (2001) (tracing the roots of police loyalty and the cover-ups of serious criminality it may lead to). Such preferential treatment leads to inherent bias of investigators against viewing fellow officers as suspects.

The biases in investigations involving officers are also systemic. The criminal justice system is an “insider-driven operation” with police as the “central players,” such that officer-suspects can appear “virtually above the law.” Kate Levine, *Police Suspects*, 116 COLUMBIA L. REV. 1197, 1201, 1207-08 (2016). Consequently, the “most sophisticated suspects” are able to navigate their investigations, often with inherent advantage courtesy of the fraternity of their peers, with streamlined procedures and greater knowledge of the material elements relevant for their defense. *Id.* at 1228.

Courts have upheld the plausibility that officer-suspects benefit from the bias their position garners. *See, e.g., Sledd v. Lindsay*, 102 F.3d 282 (7th Cir. 1996)

(permitting claim that police officers in the City of Chicago maintained a “code of silence” to refrain from reporting or testifying against colleagues who violated the rights of others). Juries have confirmed that bias. *See City of Houston v. Trimmer-Davis*, No. 01-19-00088, 2020 WL 4983253, at *11 (Tex. App. Aug. 25, 2020) (finding evidence for police “code of silence”); *see also Obrycka v. City of Chicago*, No. 07 C 2372, 2012 WL 601810, at *9 (N.D. Ill. Feb. 23, 2012) (finding the existence of a “code of silence”).

It is an uncontroversial acknowledgment that officers receive preferential treatment in investigations when it is the police community investigating its own. Research continually demonstrates misplaced credibility and ineffective investigations. Even in examples where police misconduct is well known, officers often protect one another. This bias stands in the way of justice and the proper course of investigation.

II. THE INVESTIGATION OF STACEY STITES’S MURDER WAS PLAGUED BY TUNNEL VISION AND BIAS.

A. Police failed to search Mr. Fennell’s apartment or follow up on multiple, credible allegations of abuse.

The failure to fully investigate Jimmy Fennell in the murder of Ms. Stites should be undisputed. The reasons for that failure should be, as well. Although Mr. Fennell was an officer with the Giddings Police Department at the time of Ms. Stites’s murder, he was previously employed by an agency that was conducting the investigation of Mr. Reed. Thus, the situation presented not just a potential conflict that could lead to bias, but one that made such an outcome a

near certainty. See Walter Katz, *Enhancing Accountability and Trust with Independent Investigations of Police Lethal Force*, 128 HARV. L. REV. F. 235, 239 (2015) (noting the near impossibility for investigations involving an officer's own agency to be bias-free). The incomplete nature of the investigation of Mr. Fennell was no accident.

There is no credible basis to explain the failure of investigators to focus on Mr. Fennell. Investigators were aware of the turbulent relationship between Mr. Fennell and Ms. Stites. Ms. Stites's mother told investigators that Ms. Stites and Mr. Fennell had argued "on nite [sic] before homicide" and that he was "[j]ealous of everyone." Handwritten Note from Bastrop County Sheriff's Office Files (undated) App.87. A neighbor told police he regularly heard aggressive fighting coming from their apartment. 4 HRR 194:21-195:12; 197:9-198:9. Ms. Stites's colleagues at H-E-B Grocery told Richard Derleth, a Bastrop County Sheriff's Office (BCSO) deputy, that they had a system in place to warn Ms. Stites when Mr. Fennell came to the store. She would then run and hide. Mr. Derleth relayed this information to other BCSO officers. Aff. of Richard Derleth (Nov. 9, 2019), App.229-30, ¶¶ 5-6.

Beyond Mr. Fennell's documented jealousy and abusive behavior, the physical evidence similarly would have pointed any reasonable investigator straight to him. Mr. Fennell was the last person to see Ms. Stites alive, and he had no alibi for his whereabouts at the time of Ms. Stites' murder. Rather than focus

on Mr. Fennell, however, investigators lost interest, for reasons that necessarily defy appropriate investigative practices and sound diligence.

Inexplicably, police never searched the apartment that Mr. Fennell shared with Ms. Stites, notwithstanding their knowledge that part of the murder weapon that was missing might very well be found there. *Ex parte Reed*, 271 S.W.3d 698, 708 (Tex. Crim. App. 2008). They also immediately returned the truck Ms. Stites was driving to work on the morning of her murder, which Mr. Fennell spared no time in trading in. *Id.* at 707.

Officers also took Mr. Fennell at his word in his description of the night's events before Ms. Stites's murder. This persisted even after he was found to be deceptive during two separate polygraph tests during which he was asked if he "strangled, struck, or hit Stacey." *Id.* at 738.

Worse, Edward Salmela, a Bastrop police officer investigating the murder, told Robert Cook, another law enforcement officer, that he knew Mr. Fennell and had previously socialized with him. Decl. of Robert Cook (July 2, 2025), App.22-23, ¶¶ 4,6. He also told Mr. Cook that Mr. Fennell believed Ms. Stites was cheating on him and that Mr. Fennell said to Mr. Salmela if he ever caught her "screwing' that Black man, he would kill her." *Id.* To put a finer point on it, an officer directly involved in investigating Ms. Stites's murder heard Mr. Fennell say firsthand he would kill Ms. Stites if he caught her with her Black paramour and yet that was not reason enough to treat Mr. Fennell like any other suspect.

Each of the above examples are indicative of the ways that Mr. Fennell's law enforcement background and familiarity with those investigating the murder served to benefit him. *See generally* Levine (explaining that police suspects enter investigations as sophisticated criminal-justice insiders and receive protections and treatment not ordinarily afforded to civilian suspects). Every indicium of evidence told investigators to look more at Mr. Fennell. Every action from those investigators was to do the exact opposite.

B. Police failed to thoroughly investigate Ms. Stites's romantic relationship with Mr. Reed despite having knowledge of its existence.

The tunnel vision and confirmation bias that plagued the investigation was pervasive and extended to law enforcement's failure to thoroughly investigate Ms. Stites's romantic relationship with Mr. Reed. This was particularly true once Mr. Reed's DNA was found to be a match to the semen recovered from Ms. Stites's body.

Police officers investigating Stacey Stites's murder had a notion that she was in a romantic relationship with a Black man, and specifically with Mr. Reed. To name just a few examples, law enforcement told Heike Wells, Ms. Stites's coworker at the H-E-B, they had information that Ms. Stites was involved with someone other than her fiancé. Decl. of Heike Wells (Feb. 5, 2026), App.72, ¶ 6. They asked Robert Amaya, Ms. Stites's manager, what he knew about the Black man Ms. Stites was seeing. Decl. of Robert Amaya (Feb. 3, 2026), App.64, ¶ 4. As mentioned above, Mr. Salmela heard Mr. Fennell talk about the Black man

with whom she was in a relationship. Decl. of Robert Cook (July 2, 2025), App.23, ¶ 6. Curtis Davis, an officer at BCSO, learned from others at BCSO that Ms. Stites and Mr. Reed may have been in a relationship. Decl. of Jeff Griffin (Dec. 10, 2025), App.59, ¶ 12.

Notwithstanding that knowledge, law enforcement did not meaningfully investigate the prospect that Ms. Stites and Mr. Reed were romantically involved. For instance, the canvass of Ms. Stites's colleagues at the H-E-B was a clear expression of "the tendency to avoid information that would disconfirm" existing beliefs. Reichart at 459. If investigators had conducted a comprehensive canvass, they would have discovered a number of Ms. Stites's colleagues that could attest to her romantic relationship with Mr. Reed. *See, e.g.*, Aff. of Alicia Slater (Dec. 15, 2014), App.174-76; Aff. of Lee Roy Ybarra (Jan. 15, 2015), App.190-91; 5 HRR 13:5-11 (Brenda Dickinson); Decl. of Larry Bartsch (May 10, 2025), App.7-9; Decl. of Amber Pratt Lux (Aug. 5, 2025), App.35-36; Dec. of Verna Ruth Pratt (Aug. 4, 2025), App. 32-33. One of those colleagues, Sylvia Funks-Rogers, is at once proof of the relationship between Ms. Stites and Mr. Reed, proof that Mr. Fennell knew of it two weeks before the murder, proof of his violence toward Ms. Stites, proof of Ms. Stites's own fear, and proof that the investigation the jury heard canvassed every co-worker never included her. Decl. of Sylvia Funk-Rogers (Mar. 7, 2026), App. 74-76; 56 TRR 57:8-11. Ms. Stites and Mr. Reed's relationship "was an open secret among store staff" and a regular subject of gossip

among employees—had investigators conducted a thorough investigation, they would have known this. Decl. of Larry Bartsch, App.7-8, ¶¶ 3, 7.

Where officers did obtain information that would tend to bolster the existence of a relationship between Mr. Reed and Ms. Stites and could inculcate Mr. Fennell, they likewise failed to follow the leads or consider such evidence credible. Mr. Salmela told Mr. Cook that he had found surveillance video showing a Black man dropping Ms. Stites off in the H-E-B parking lot and Mr. Fennell following them in his patrol car. Decl. of Robert Cook, App.23-24, ¶¶ 9,11. Mr. Cook reported this information to the Bastrop Police Department and Bastrop District Attorney's Office and yet it appears no one acted on it. *Id.* at App.25, ¶¶ 16-17. The same appears to be true of the information Mr. Derleth relayed to BCSO regarding the system H-E-B employees had in place to alert Ms. Stites of Mr. Fennell's arrival. If police had pursued this lead, they would certainly have found employees like Ms. Funk-Rogers who knew of Ms. Stites and Mr. Fennell's tumultuous relationship.

These actions are unexplainable by an investigator operating objectively. *See* Rossmo & Pollock at 814 (“Confirmation bias can cause a detective to interpret information in a biased manner—evidence that supports the investigative theory is taken at face value, while contradicting evidence is skeptically scrutinized. Other manifestations of confirmation bias include the failure to search for evidence that might prove a suspect's alibi, not utilizing such evidence if found, and refusing to consider alternative hypotheses.”). They are each a blatant

example of the manner in which tunnel vision worked to undermine the integrity of the investigation in pursuit of a conviction against Mr. Reed. These incremental mistakes collectively constitute legal, ethical, and moral failings on the part of all of those involved. *See, e.g.,* Ethan Singer, *When Police Mess Up: The Lack of a Defense to Inadequate Police Investigations*, 54 COLUM. H.R. REV. 1168 (2023) (surveying all federal jurisdictions to find inadequate police investigations as one of the leading causes of wrongful convictions). An investigation so clearly aimed at exculpating one man and inculpating another cannot be allowed to serve as the foundation for a death sentence.

III. THE INVESTIGATIVE FAILURES AMOUNT TO A VIOLATION OF MR. REED’S RIGHT TO DUE PROCESS.

A. Deprivations and errors that are individually insufficient can, in the aggregate, amount to a violation of due process.

Courts, both federal and state, have long held that deprivations that may not individually rise to the level of reversible error may in fact violate due process when assessed cumulatively. Courts have applied this approach in the context of pretrial delay,² law enforcement investigation,³ voluntary confessions,⁴

² *United States v. Tigano*, 880 F.3d 602, 606 (2d Cir. 2018) (“[N]o single, extraordinary factor caused the cumulative seven years of pretrial delay. Instead, the outcome was the result of countless small choices and neglects, none of which was individually responsible for the injustice suffered by [the defendant], but which together created this extreme instance of a Sixth Amendment violation.”).

³ *Ex parte Brandley*, 781 S.W.2d 886, 892 (Tex. Crim. App. 1989); *Gilbert v. State*, 840 S.W.2d 138, 141-42 (Tex. App. 1st 1992).

⁴ *Fikes v. Alabama*, 352 U.S. 191, 197 (1957) (reversing death penalty where “totality of the circumstances that preceded the confessions . . . goes beyond the allowable limits”).

eyewitness identifications,⁵ evidence suppression,⁶ and trial defects,⁷ among others. For each of these procedural phases, courts have recognized that constitutional unfairness emerges from the combined effect of multiple variables, irrespective of whether each variable can individually establish constitutional injury. Due process thus requires courts to look beyond isolated acts and assess the overall fairness and reliability of the criminal proceeding.

That same principle governs this case. The question is not whether any one government misstep independently violated the Constitution but rather whether the investigation following Ms. Stites's murder, viewed as a whole, produced a proceeding that lacked the fundamental fairness that due process demands. As discussed in more detail below, the answer is decidedly no. The plethora of investigative deficiencies here, combined with the state's suppression of material evidence directly related to the investigative gaps, unequivocally undermine confidence in the integrity of the trial and conviction of Mr. Reed.

⁵ *Loserth v. State*, 963 S.W.2d 770 (Tex. Crim. App. 1998) (noting five non-exclusive factors to be used to assess lawfulness against the totality of circumstances).

⁶ *Kyles v. Whitley*, 514 U.S. at 436 (“materiality... of suppressed evidence [is] considered collectively, not item by item”).

⁷ *Taylor v. Kentucky*, 436 U.S. 478, 487 n. 15 (1978) (“the cumulative effect of the potentially damaging circumstances of this case violated the due process guarantee of fundamental fairness in the absence of an instruction as to the presumption of innocence”); *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973) (“the exclusion of [] critical evidence, coupled with the State's refusal to permit [Defendant] to cross-examine [a witness], denied [Defendant] a trial in accord with traditional and fundamental standards of due process”).

B. Under the totality of the circumstances standard, this investigation could not have produced a fair trial.

Although law enforcement officers are not legally obligated to take particular investigative steps when conducting criminal investigations, this Court has acknowledged that investigative deficiencies could lead to a trial so unfair that the deficiencies amount to a violation of the defendant's right to due process. The adequacy of a criminal investigation is judged on "the totality of the circumstances." *Gilbert v. State*, 840 S.W.2d at 141-42, citing *Ex parte Brandley*, 781 S.W.2d at 892. Investigative failures that would not individually support relief "in combination with other factors, can create the cumulative effect of a denial of a defendant's due process rights," because "[a]n investigative procedure that, considered in its totality, results in a trial lacking the rudiments of fairness violates the principle of due process." *Id.* at 142, citing *Ex parte Brandley*, 781 S.W.2d at 894.

In articulating that rule, this Court in *Ex parte Brandley* set aside a capital murder conviction in part because of the state's apparent refusal to conduct certain tests. That failure on its own would not have sufficed to support a finding of a due process violation, but when combined with the other features of the investigation, it served to deny a fair trial. 781 S.W.2d at 892-94. The reasoning turned, in part, on the character of the state's remaining proof: the conviction rested entirely on circumstantial evidence, and misconduct in an investigation has a higher likelihood of impacting the outcome of a trial of that kind. *Id.* at 894; *see*

Gilbert, 840 S.W.2d at 141-42 (distinguishing *Ex parte Brandley* because Gilbert's conviction rested on three eyewitnesses and his own admission that he was present).

The totality of the circumstances in this instance similarly, and arguably more strongly, point to a denial of due process. First, as detailed above, at every turn, investigators failed to conduct a fair and proper investigation. They failed to thoroughly investigate Mr. Fennell, despite his abuse of Ms. Stites, and they failed to follow leads that disputed their theory that Mr. Reed was Ms. Stites's rapist, not her paramour.

Second, the evidence used to convict Mr. Reed is circumstantial in the strictest sense. It includes no eyewitnesses, no confession, and physical evidence that proves contact with Ms. Stites and nothing beyond it.

Third, the state misled the jury into believing that Mr. Reed and Ms. Stites were complete strangers and thus could not have been in a consensual relationship. The state offered that investigators had "talk[ed] to everybody, every boyfriend, every co-worker, every friend, every family member, everybody" but that "[n]obody, nobody connects [Reed and Stites]." 56 TRR 57:8-11. Rocky Wardlow, the lead investigator, gave the jury the same assurance under oath. 46 HRR 112:6-113:11. As indicated above, the state did not in fact talk to every co-worker, and if it had, its theory of the case would have collapsed.

These elements, taken together, could not have resulted in a fair trial. A trial built upon an investigation infected with ingrained biases, driven by a desire to

prove a particular theory, and incomplete in a multitude of ways, and involving minimal circumstantial evidence that proves the state's case only if the jury believes the false assurances about the integrity of the investigation is not a trial that can satisfy a defendant's right to due process.

C. The state additionally suppressed material evidence, further violating Mr. Reed's due process rights.

The cognitive biases that tainted the state's initial investigation arguably also led to its suppression of material, exculpatory evidence. This broad obligation and moral imperative extends without request from the defense. *See Ex parte Miles*, 359 S.W.3d 647, 664-70 (Tex. Crim. App. 2012) (finding nearly twenty years post-conviction that defendant is "[a]t a minimum" due a new trial given undisclosed reports regarding additional suspects); *Watkins v. State*, 619 S.W.3d 265, 290-91 (Tex. Crim. App. 2021) (finding that even "subsidiary facts" that "could assist the fact-finder" in determining guilt should have been disclosed). The responsibility to decide what is exculpatory and material, and therefore subject to *Brady*, is that of the prosecutor. Confirmation bias plays a role in that decision making as prosecutors, much like investigators, are less likely to believe the credibility or importance of evidence counter to their theory of the case or to recall adverse evidence. Alafair S. Burke, *Improving Prosecutorial Decision Making: Some Lessons of Cognitive Science*, 47 WM. & MARY L. REV. 1587, 1609-12 (2006) (discussing the impact of cognitive bias on prosecutors' application of *Brady*); *see also generally*, Findley & Scott (arguing that tunnel

vision, and the cognitive biases that drive it, can infect all phases of criminal proceedings).

The state knew that Ms. Stites was having an affair with Mr. Reed but failed to make that information available to his defense team. It had information regarding surveillance footage of Mr. Reed, Ms. Stites, and Mr. Fennell from Robert Cook; it had statements from Suzan Hugen, Ron Haas, and Anthony Cardenas, Ms. Stites's co-workers at the H-E-B, confirming Ms. Stites and Mr. Reed knew each other. Letter from Matthew Ottoway to Andrew MacRae (June 25, 2021), App.243-245. The state also had information that Mr. Fennell was abusive towards Ms. Stites and was aware of her affair. It had a neighbor's reports regarding Ms. Stites and Mr. Fennell's fights and Mr. Derleth's account of the warning system the H-E-B employees set up. These are a mere few examples of the myriad amount of suppressed evidence rebutting the state's operating theory and exculpating Mr. Reed. Each individual piece of evidence could have turned the tide for Mr. Reed; cumulatively, their preclusion represents an abject failure of evidentiary presentation. That prosecutors decided not to disclose pieces of evidence that went to the heart of Mr. Reed's defense argument can only be explained by their unfounded assumption that such evidence could not move the needle enough to warrant disclosure.

Due process stands for the position that Mr. Reed be guaranteed certain procedural and substantive safeguards before the state deprives him of his life and liberty. Rather than guarantee these safeguards, the state pulled the rug from

under Mr. Reed's attempts at mounting a full and proper defense of himself. This suppression was the final nail in the coffin for Mr. Reed's due process rights. In effect, prosecutors decided the outcome of this case long before the trial even started.

CONCLUSION

Fiat justitia ruat coelum. Let justice be done though the heavens fall. The biased and deficient investigation into Ms. Stites's murder is not justice. The suppression of evidence adverse to the state's case is not justice. The conviction of Rodney Reed on the basis of an unjust investigation and an unfair trial is not justice. This Court has a legal, moral, and ethical imperative to ensure that before a man is put to death, justice is done. To that end, Amicus call on this Court to grant Mr. Reed habeas relief, or at a minimum, remand for an evidentiary hearing.

Dated: October 9, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Texas Rule of Appellate Procedure 9.4(i)(3), I hereby certify that (1) the foregoing brief complies with the type-volume limitation authorized by Texas Rule of Appellate Procedure 9.4(i)(2)(A), because it contains 4,954 words, as calculated by Microsoft Word, excluding the parts of the document exempted by Texas Rule of Appellate Procedure 9.4(i)(1), and (2) this document complies with the typeface requirements of Texas Rule of Appellate Procedure 9.4(e) and the type-style requirements of Texas Rule of Appellate Procedure 9.4(d) because it has been prepared in a proportionally spaced typeface using Microsoft Word in a double-spaced, 14-point Times New Roman font.

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CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2026, a true and correct copy of the foregoing brief was served electronically on all counsel of record via the Court's electronic filing service.

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