

**Cone v. Bell**  
**--- U.S. --- (2009)**

**FACTS:** Cone was convicted in Tennessee for a 1980 double murder. He pursued direct appeal, raising numerous challenges. Eventually, Tennessee rejected his claims and he sought post-conviction relief, arguing ineffective counsel. Ultimately, in 1987, that was also denied. In 1989, He filed yet another petition, claiming that the “State had failed to disclose evidence in violation of his rights under the United States Constitution.” That was again denied. He went through several other petitions over a number of years.

During this time, however, Tennessee ruled that criminal defendant was permitted to “review the prosecutor’s file in [their] case.” Cone requested his file, and learned that “evidence had indeed been withheld from him at trial,” included “statements from witnesses who had seen him several days before and several days after the murders,” in which they described him as “wild eyed,” “real weird” and “drunk or high.” (Cone’s defense was drug addiction, which had been discounted at trial.) The file also “contained a police report describing Cone’s arrest in Florida following the murders,” in which he was described as “looking around ‘in a frenzied manner,’ and ‘walking in [an] agitated manner.’” Police bulletins describing him as a “drug user” and a “heavy drug user” were also in the file.

With that evidence, Cone amended his pending petition, claiming that the “State had withheld exculpatory evidence demonstrating that he ‘did in fact suffer drug problems and/or drug withdrawal or psychosis both at the time of the offense and in the past.’” He argued that there was a “reasonable probability that, had the evidence not been withheld, the jurors would not have convicted [him] and would not have sentenced him to death.” He explained he had not raised the Brady claim at an earlier time because he had not had access to the material which proved the claim.

The postconviction court denied relief, stated that either he had waived the claim by not raising them at an earlier time, or that they were “re-statements of previous grounds” already litigated and decided. Cone ultimately requested certiorari from the U.S. Supreme Court, which accepted the case.<sup>1</sup>

**ISSUE:** Is a claim under federal law (habeas corpus) “procedurally defaulted” because it has been presented twice to the state courts?

**HOLDING:** *No*

**DISCUSSION:** During the lengthy proceeding, the “State of Tennessee offered two different justifications for denying review of the merits of Cone’s

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<sup>1</sup> The recitation of the case’s procedural history is lengthy and complex, and immaterial to the ultimate issue of the case.

Brady<sup>2</sup> claim.” First, the Court addressed the claim that the “repeated presentation of a claim in state court bars later federal review.” The Court quickly concluded that it does not create a “bar to federal habeas review.” The Court stated that a “claim is procedurally barred when it has not been fairly presented to the state courts for their initial consideration – not when the claim has been presented more than once.”

The Court also agreed that Cone’s claim had not been waived by his alleged failure to raise the issue in a timely manner. The Court stated that “when the State withholds from a criminal defendant evidence that is material to his guilt or punishment, it violates his right to due process of law in violation of the Fourteenth Amendment.”

The Court further stated:

The documents suppressed by the State vary in kind, but they share a common feature: Each strengthens the inference that cone was impaired by his use of drugs around the time his crimes were committed.

The evidence also included information that would have aided Cone’s attorney in impeaching witnesses that cast doubt on his drug addiction. The Court defined the “federal question that must be decided is whether the suppression of that probative evidence deprived Cone of his right to a fair trial.” The lower courts did not “distinguish between the materiality of the evidence with respect to guilt and the materiality of the evidence with respect to punishment – and omission [it found] significant.” The Court agreed that “the materiality of the suppressed evidence with respect to guilt and punishment is significant in this case,” since the evidence of his guilt was overwhelming, and that nothing indicated he was insane. The evidence, however, might prove critical in the sentencing phase of his case, with its “far lesser standard” necessary to “qualify evidence as mitigating in a penalty hearing in a capital case.”

The Court noted that the lower courts had not “fully considered whether the suppressed evidence might have persuaded one or more jurors that Cone’s drug addiction ... was sufficiently serious” to have caused a jury to change its sentencing decision.

The Court remanded the case back to Tennessee to determine if the suppressed evidence may have made a difference in his sentencing, “with instructions to give full consideration to the merits of Cone’s Brady claim.”

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<sup>2</sup> Brady v. Maryland, 373 U.S. 83 (1963).